TO: Chair and Members Planning Committee  
WARD(S) AFFECTED: WARD 11  

COMMITTEE DATE: January 17, 2012  

SUBJECT/REPORT NO: Application to Amend Township of Glanbrook Zoning By-law No. 464 for Lands Located at 3316 and 3332 Regional Road 56 (Glanbrook) (PED12007) (Ward 11)  

SUBMITTED BY: Tim McCabe  
General Manager  
Planning and Economic Development Department  

PREPARED BY: Peter De Iulio  
(905) 546-2424, Ext. 1345  

SIGNATURE:  

RECOMMENDATION  

That approval be given to **Zoning Application ZAR-11-038, by Dave Pitblado, Agent for Paletta International (2000 Inc.), Owner**, for changes in zoning from the General Agriculture “A1-237” Zone to the General Agriculture “A1-236” Zone, with a Special Exception (Block “2”), and from the General Agriculture “A1-236” Zone to the General Agriculture “A1-237” Zone, with a Special Exception (Block “3”), in the Township of Glanbrook Zoning By-law No. 464, to facilitate lot additions to permit the construction of a new dwelling on the reconfigured lot at 3332 Regional Road 56, and to prohibit a dwelling on the remnant farm property at 3316 Regional Road 56 (Glanbrook), as shown on Appendix “A” to Report PED12007, on the following basis:  

(a) That the draft By-law, attached as Appendix “B” to Report PED12007, which has been prepared in a form satisfactory to the City Solicitor, be enacted by City Council.
(b) That the proposed changes in zoning implement the decision of the Ontario Municipal Board (OMB), are consistent with the Provincial Policy Statement (PPS), and conform with the Greenbelt Plan, the Hamilton-Wentworth Official Plan, and the Township of Glanbrook Official Plan.

EXECUTIVE SUMMARY

The purpose of this application is to facilitate a lot reconfiguration on the subject properties as approved by Order of the Ontario Municipal Board (see Appendix “F”). The provisional consents require a Zoning By-law Amendment to reflect the reconfigured lots, which would prohibit a dwelling on 3316 Regional Road 56 and permit the relocation and reconstruction of the surplus farm dwelling on 3332 Regional Road 56.

The application can be supported since the OMB has ruled that the lot reconfiguration is consistent with the Provincial Policy Statement, and conforms to the Greenbelt Plan, the Hamilton-Wentworth Official Plan, and the Township of Glanbrook Official Plan.

Alternatives for Consideration - See Page 10.

FINANCIAL / STAFFING / LEGAL IMPLICATIONS (for Recommendation(s) only)

Financial: N/A.

Staffing: N/A.

Legal: As required by the Planning Act, Council shall hold at least one (1) Public Meeting to consider an application for a change in zoning.

HISTORICAL BACKGROUND (Chronology of events)

Chronology:


September 2, 2010: Notices of Decision issued denying both applications.

September 28, 2010: Appeals filed on both applications.

May 9, 2011: Provisional Consent granted by Order of the Ontario Municipal Board.


July 14, 2011: Sign Posting Notice issued to Applicant.

July 20, 2011: Circulation of Notice of Complete Application and Preliminary Circulation to all residents within 120 metres of the subject lands.

December 22, 2011: Circulation of Notice of Public Meeting to all residents within 120 metres of the subject lands and all residents who provided written comments.

Proposal

The Application is for changes to Glanbrook Zoning By-law No. 464 from the General Agriculture “A1-237” Zone to the General Agriculture “A1-236” Zone for Block “2”, to prohibit construction of a dwelling on 3316 Regional Road 56, and from the General Agriculture “A1-236” Zone to the General Agriculture “A1-237” Zone for Block “3”, to permit the construction of a new dwelling on 3332 Regional Road 56.

Consent Applications GL/B-10:62 and GL/B-10:79

Consent Application GL/B-10:62 (see Appendix “C”) proposed to sever the existing driveway for the property municipally known as 3332 Regional Road 56 with the remainder of the parcel being merged on title with 3316 Regional Road 56. Consent Application GL/B-10:79 (see Appendix “D”) proposed to sever an L shaped parcel of land, approximately 29.8 metres by 102 metres, to be added to the severed lands from GL/B-10:62, resulting in a horseshoe shaped lot surrounding 3322 Regional Road 56 see Appendix “E”). Staff was not supportive of either severance applications, and both were denied by the Committee of Adjustment at their meeting of September 2, 2010. The applicant appealed the denial of both applications to the OMB, who issued an order granting provisional consent on May 9, 2011.

Details of Submitted Application:

Location: 3216 and 3332 Regional Road 56 (Glanbrook)

Owner/Applicant: Paletta International (2000 Inc.)
(c/o David Pitblado)
Property Description:

3316 Regional Road 56:  
  **Frontage:** Approximately 98.9 metres  
  **Depth:** Approximately 1,224 metres  
  **Area:** Approximately 38 hectares

3332 Regional Road 56:  
  **Frontage:** Approximately 29.8 metres  
  **Depth:** Approximately 101.58 metres  
  **Area:** Approximately 4,611.2 square metres

EXISTING LAND USE AND ZONING:

<table>
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<th>Subject Lands</th>
<th>Existing Land Uses</th>
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<tr>
<th>Surrounding Lands</th>
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<tr>
<td>North Single Detached Dwelling, Vacant and Public Open Space</td>
<td>General Agricultural “A1” Zone (Zoning By-law No. 464) Public Open Space (P4) Zone (Zoning By-law No. 05-200)</td>
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<td>South Single Detached Dwellings and Agriculture</td>
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<td>East Agriculture</td>
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<td>West Agriculture</td>
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Vision: To be the best place in Canada to raise a child, promote innovation, engage citizens and provide diverse economic opportunities.
Values: Honesty, Accountability, Innovation, Leadership, Respect, Excellence, Teamwork
POLICY IMPLICATIONS

Provincial Policy Statement

The subject application has been reviewed with respect to the Provincial Policy Statement (PPS). Policy 2.3.3.1 states that in prime agricultural areas, permitted uses and activities are: agricultural uses, secondary uses, and agriculture-related uses.

Policy 2.3.4 addresses lot creation and lot adjustments within agricultural areas. Specifically, Policy 2.3.4.1 states that lot creation in prime agricultural areas is discouraged and may only be permitted for:

"a) Agricultural uses, provided that the lots are of a size appropriate for the type of agricultural use(s) common in the area, and are sufficiently large to maintain flexibility for future changes in the type or size of agricultural operations;

b) Agriculture-related uses, provided that any new lot will be limited to a minimum size needed to accommodate the use and appropriate sewage and water services;

c) A residence surplus to a farming operation as a result of farm consolidation provided that the planning authority ensures that new residential dwellings are prohibited on any vacant remnant parcel of farmland created by the severance. The approach used to ensure that no new residential dwellings are permitted on the remnant parcel may be recommended by the Province, or based on municipal approaches which achieve the same objective; and,

d) Infrastructure, where the facility or corridor cannot be accommodated through the use of easements or rights-of-way."

Policy 2.3.4.2 states that lot adjustments in prime agricultural areas may be permitted for legal or technical reasons. Staff notes that legal or technical reasons are defined as “severances for purposes such as easements, correction of deeds, quit claims, and minor boundary adjustments, which do not result in the creation of a new lot” under the PPS.

Further, Policy 2.3.4.3 states that the creation of new residential lots in prime agricultural areas shall not be permitted, except in accordance with Policy 2.3.4.1 (c).

As per the OMB decision (see Appendix “F”), the consent applications were deemed to be for the purpose of minor boundary adjustments, which did not result in the creation of a new lot. Accordingly, the subject rezoning application facilitates the approval of the consent applications, and is consistent with the Provincial Policy Statement.
Greenbelt Plan

The subject lands are designated as “Protected Countryside - Prime Agricultural Area” within the Greenbelt Plan. Policy 3.1.3.1 states that within prime agricultural areas, as identified in municipal Official Plans, normal farm practices and a full range of existing and new agricultural, agricultural-related, and secondary uses are supported and permitted.

Policy 4.1.1.1 states that with the exception of those uses permitted under the general policies of Section 4.0 of this Plan, and subject to the Natural System policies of Section 3.2, non-agricultural uses are not permitted in the specialty crop area, as shown on Schedule 2 of this Plan, or within prime agricultural areas in the Protected Countryside, as designated in municipal Official Plans.

Policy 4.6.1 states that lot creation is permitted in the Protected Countryside for the range of uses permitted by the policies of this Plan. Policy 4.6.2 c) states that lot creation is also permitted for minor lot adjustments or boundary additions, provided they do not create a separate lot for a residential dwelling in specialty crop or prime agricultural areas and there is no increased fragmentation of a key natural heritage feature or key hydrologic feature.

Policy 4.6.3 goes on to more specifically state that, within the specialty crop area and prime agricultural area, lot creation is permitted for:

"a) Agricultural uses where the severed and retained lots are intended for agricultural uses, and provided the minimum lot size is 40 acres within a specialty crop area and 100 acres within prime agricultural areas;

b) Existing and new agriculture-related uses, provided that any new lot will be limited to the minimum size needed to accommodate the use, including a sewage and water system appropriate for such a use;

c) The severance of a residence surplus to a farming operation as a result of a farm consolidation, which residence was an existing use as of the date this Plan came into force, provided that the planning authority ensures that a residential dwelling is not permitted in perpetuity on the retained lot of farmland created by this severance. Approaches to ensuring no new residential dwellings on the retained lot of farmland may be recommended by the Province, or municipal approaches that achieve the same objective should be considered; and,

d) The surplus dwelling policy in 4.6.3(c) also applies to rural areas, as defined by municipal Official Plans. The severance should be limited to the minimum size needed to accommodate the dwelling, including existing and reserve areas for individual sewage and water services."
As per the OMB decision (see Appendix “F”), the consent applications were deemed to be for the purpose of minor boundary adjustments, which did not result in the creation of a new lot. Accordingly, the subject rezoning application facilitates the approval of the consent applications, and conforms with the Greenbelt Plan.

**Hamilton-Wentworth Official Plan**

The subject lands are designated as “Rural Area - Prime Agricultural Area” in the Hamilton-Wentworth Official Plan. Policy D-8 of the plan addresses land severances, and states that the severance of land on prime agricultural lands is generally inconsistent with the principles of sustainable development. Policy D-8.1.1 requires that Area Municipal Official Plans contain detailed policies consistent with the policies of this plan, which limit consents in the Rural Area and on prime agricultural lands and direct severance activity to Rural Settlement Areas.

As per the OMB decision (see Appendix “F”), the consent applications were deemed to be for the purpose of minor boundary adjustments, which did not result in the creation of a new lot. Accordingly, the subject rezoning application facilitates the approval of the consent applications, and conforms with the Hamilton-Wentworth Official Plan.

**Glanbrook Official Plan**

The subject lands are designated “Agricultural” on Schedule “A” - Land Use Plan in the Township of Glanbrook Official Plan. The Plan does not contain a policy with respect to lot additions.

As per the OMB decision, the consent applications were deemed to be for the purpose of minor boundary adjustments, which did not result in the creation of a new lot. Accordingly, the subject rezoning application facilitates the approval of the consent applications, and conforms with the Glanbrook Official Plan.

**City of Hamilton Rural Official Plan**

The City of Hamilton Rural Official Plan was adopted by Council on September 27, 2006, and approved, with modifications, by the Province on January 7, 2009. The Plan has been appealed to the OMB. An interim Order of the Board was issued June 28, 2011, bringing the majority of the plan into full force and effect, with the exception of the land division policies and some site-specific appeals that have yet to be resolved. As a result, the land division policies are not in force and effect, but do represent Council’s direction for lot creation in the rural area. Accordingly, staff has reviewed the proposal with regard to these policies for information purposes only.
The subject lands are designated “Agriculture” in the Ministerial approved Rural Hamilton Official Plan. Policy D.2.1 states that permitted uses in the Agriculture designation are limited to agricultural uses, agricultural-related commercial and agriculture-related industrial, and on-farm secondary uses.

Policy F.1.14.2.6 states that minor lot line adjustments only for legal or technical reasons shall be permitted provided a separate lot is not created for a dwelling or any other non-farm use, there is no increased fragmentation of a key natural heritage feature or key hydrologic feature, and the adjustments do not conflict with the intent of the policies of this plan.

Staff notes that legal or technical reasons are defined as “severances for purposes such as easements, correction of deeds, quit claims, and minor boundary adjustments which do not result in the creation of a new lot (PPS, 2005)” under the Ministerial approved Rural Hamilton Official Plan.

As per the OMB decision (see Appendix “F”), the consent applications were deemed to be for the purpose of minor boundary adjustments, which did not result in the creation of a new lot. Accordingly, the subject rezoning application facilitates the approval of the consent applications, and would conform with the new Rural Hamilton Official Plan.

RELEVANT CONSULTATION

The following Departments/Agencies had no comments or objections:

- Operations and Waste Management Division, Public Works Department.
- Traffic Engineering Section, Environment and Sustainable Infrastructure Division, Public Works Department.
- Budgets and Finance Division, Corporate Services Department.
- Hamilton Municipal Parking System.
- Hydro One Networks Inc.

Public Consultation

In accordance with the new provisions of the Planning Act, Notice of Complete Application was circulated to 155 property owners within 120 metres of the subject property on July 20, 2011. In addition, a Public Notice Sign was erected on the property on September 27, 2011, and Notice of the Public Meeting was given in accordance with the requirements of the Planning Act. To date, no letters have been received.
In accordance with Council’s Public Participation Policy, preliminary circulation of the application was not required since the property was also the subject of Consent Applications, which is a Public Process. No letters were received in response to the circulation of the severance applications, and no members of the public attended the Committee of Adjustment Meeting.

### ANALYSIS / RATIONALE FOR RECOMMENDATION

(include Performance Measurement/Benchmarking Data, if applicable)

1. The proposal has merit and can be supported for the following reasons:

   (i) The Zoning By-law Amendment application is a requisite condition of approval of both Consent Applications GL/B-10:62 and GL/B-10:79, which were approved by the OMB in its order dated May 9, 2011 (see Appendix “F”); and,

   (ii) The Council approved Rural Hamilton Official Plan does not permit the creation of keyhole shaped lots. The proposed lot reconfiguration would eliminate an existing keyhole lot and, therefore, be in conformity with the intent of the Rural Hamilton Official Plan.

2. The reconfiguration of the lots requires a Zoning By-law Amendment to transfer the permissions for a dwelling to the relocated lot, but there are also modifications that need to be made to both the General Agricultural “A1-236” Zone and the General Agricultural “A1-237” Zone to address the modifications in frontage for the two lots. Staff has modified the site-specific provision in each Zone to recognize the transfer of approximately 28 metres in frontage from 3316 Regional Road 56 to 3332 Regional Road 56.

3. The OMB Order of May 9, 2011 (see Appendix “F”), also imposed a condition that the existing dwelling at 3332 Regional Road 56, and the quonset hut at 3316 Regional Road 56, be removed so that the lands can be returned to agricultural production. Accordingly, staff removed the reference to the quonset hut from the General Agricultural “A1-236” Zone. The provision prohibited the quonset hut to be used for the housing of livestock and the Board Order requires the removal of the structure. Finally, staff removed any reference to it in the site-specific zoning to ensure that any future agricultural buildings erected on the property are done in accordance with the provisions of the General Agricultural “A1” Zone provisions.
Vision: To be the best place in Canada to raise a child, promote innovation, engage citizens and provide diverse economic opportunities.

Values: Honesty, Accountability, Innovation, Leadership, Respect, Excellence, Teamwork

ALTERNATIVES FOR CONSIDERATION
(include Financial, Staffing, Legal and Policy Implications and pros and cons for each alternative)

This is not applicable since the application is required to implement an Ontario Municipal Board Order.

CORPORATE STRATEGIC PLAN (Linkage to Desired End Results)


Social Development
• Everyone has a home they can afford that is well maintained and safe.

Healthy Community
• Plan and manage the built environment.
• An engaged Citizenry.

APPENDICES / SCHEDULES

• Appendix “A”: Location Map
• Appendix “B”: Draft By-law
• Appendix “C”: GL/B-10:62 Severance Sketch
• Appendix “D”: GL/B-10:79 Severance Sketch
• Appendix “E”: Survey of Reconfigured Lot at 3332 Regional Road 56
• Appendix ‘F”: OMB Order of May 9, 2011.

:PD
Attachments. (5)
Appendix “A” to Report PED12007

Location Map

File Name/Number: ZAR-11-038
Date: July 13, 2011
Appendix "A"

Scale: N.T.S.
Planner/Technician: MB / MB

Subject Property

3316 Regional Road No. 56
- Lands to be rezoned to prohibit any new residential dwellings

3332 Regional Road No. 56
- Lands to be rezoned to permit a residential dwelling
CITY OF HAMILTON

BY-LAW NO. 464

To Amend Zoning By-law No. 464
Respecting the Lands Located at 3316 and 3332 Regional Road 56 (Glanbrook)

WHEREAS the City of Hamilton Act, 1999, Statutes of Ontario, 1999 Chap. 14, Sch. C, did incorporate, as of January 1, 2001, the municipality “City of Hamilton”;

AND WHEREAS the City of Hamilton is the successor to certain area municipalities, including the former municipality known as the “The Corporation of the Township of Glanbrook” and is the successor to the former regional municipality, namely, “The Regional Municipality of Hamilton-Wentworth”;

AND WHEREAS the City of Hamilton Act, 1999 provides that the Zoning By-laws and Official Plans of the former area municipalities, and the Official Plan of the former regional municipality, continue in force in the City of Hamilton until subsequently amended or repealed by the Council of the City of Hamilton;

AND WHEREAS Zoning By-law No. 464 (Glanbrook) was enacted on the 16th day of March, 1992, and approved by the Ontario Municipal Board on the 31st day of May, 1993;

AND WHEREAS the Council of the City of Hamilton, in adopting Item of Report 12- of the Planning Committee, at its meeting held on the day of , 2012, recommended that Zoning By-law No. 464 (Glanbrook) be amended as hereinafter provided;

AND WHEREAS this By-law is in conformity with the Official Plan of the City of Hamilton (the Official Plan of the former Township of Glanbrook);
NOW THEREFORE the Council of the City of Hamilton enacts as follows:

1. That Schedule "D", appended to and forming part of By-law No. 464 (Glanbrook), is amended:

   (a) by changing from the General Agricultural "A1-237" Zone to the General Agricultural "A1-236" Zone, the land comprised as Block "2"; and,

   (b) by changing from the General Agricultural "A1-236" Zone to the General Agricultural "A1-237" Zone, the land comprised as Block "3";

   the extent and boundaries of which are shown on a plan hereto annexed as Schedule "A".

2. That Section 44, "Exceptions to the Provisions of the By-law", of Zoning By-law No. 464, be amended by deleting and replacing special provision, "A 1-236", as follows:

   "A1-236" 3316 Regional Road 56

   Notwithstanding SECTION 8: GENERAL AGRICULTURAL "A1" ZONE, Sub-section 8.1 - PERMITTED USES, the following use shall be prohibited on the lands zoned "A1-236";

   • a single detached dwelling.

   Notwithstanding the regulations of SECTION 8: GENERAL AGRICULTURAL "A1" ZONE, Sub-section 8.2 - REGULATIONS FOR USES PERMITTED IN PARAGRAPH (a) OF SUB-SECTION 8.1 (AGRICULTURAL USES), Clause (a), the following regulation shall apply to lands zoned "A1-236";

   (a) Minimum Lot Frontage .............................................98.0 metres.

3. That Section 44, "Exceptions to the Provisions of the By-law", of Zoning By-law No. 464, be amended by deleting and replacing special provision, "A1-237", as follows:

   "A1-237" 3332 Regional Road 56

   Notwithstanding the regulations of SECTION 8: GENERAL AGRICULTURAL "A1" ZONE, Sub-section 8.3 - REGULATIONS FOR USES PERMITTED IN PARAGRAPH (b) OF SUB-SECTION 8.1 (SINGLE DETACHED DWELLINGS), Clause (a), the following regulation shall apply to the lands zoned "A1-237";

   (a) Minimum Lot Frontage .............................................29.0 metres.
4. That no building or structure shall be erected, altered, extended or enlarged, nor shall any building or structure or part thereof be used, nor shall any land be used, except in accordance with the General Agricultural “A1” Zone provisions, subject to the special requirements referred to in Sections 2 and 3.

5. That the Clerk is hereby authorized and directed to proceed with the giving of notice of the passing of this By-law, in accordance with the Planning Act.

PASSED and ENACTED this [ ] day of [ ], 2012.

____________________________________  ______________________________________
B. Bratina                        R. Caterini
Mayor                             Clerk

ZAR-11-038
Schedule "A"

Map Forming Part of By-Law No. 12-____

to Amend By-law No. 464

Subject Property

3316 Regional Road No. 56
- Block 1 - Lands to remain General Agricultural "A1-236" Zone

3332 Regional Road No. 56
- Block 3 - Change in zoning from the General Agricultural "A1-236" Zone to the General Agricultural "A1-237" Zone to permit the construction of a new dwelling

- Block 4 - Lands to remain General Agricultural "A1-237" Zone

This is Schedule "A" to By-Law No. 12-
Passed the .......... day of ......................, 2012

Clerk
Mayor

PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT

Hamilton
Appendix "D" to Report PED12007 (Page 1 of 1)

Committee of Adjustment

Subject Property
3316 Highway 56

- Lands to be Retained
- Lands to be Severed and Added to 3332 Highway 56

File Name/Number: GL6/10-75
Date: July 6, 2016
Technician: NS
Map Not to Scale
Appendix "A"

City of Hamilton

PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
IN THE MATTER OF subsection 53(19) of the Planning Act, R.S.O. 1990, c. P.13, as amended

Subject: Consent
Property Address/Description: 3332 Highway 56
Municipality: City of Hamilton
Municipal File No.: B-62/10
OMB Case No.: PL101231
OMB File No.: PL101231

IN THE MATTER OF subsection 53(19) of the Planning Act, R.S.O. 1990, c. P.13, as amended

Subject: Consent
Property Address/Description: 3316 Highway 56
Municipality: City of Hamilton
Municipal File No.: B-79/10
OMB Case No.: PL101231
OMB File No.: PL101232

APPEARANCES:

Parties

City of Hamilton

Counsel

Scott Snider
Joanna Wice

DECISION DELIVERED BY S. J. SUTHERLAND AND ORDER OF THE BOARD

Paletta International (2000) Inc. (Paletta) is seeking permission under s. 53(1) of the Planning Act to allow the following:

1. Application No. GL/B-10:62 The conveyance of an irregular-shaped parcel of land (+/- 0.46 ha) at 3332 Highway 56 (Subject Property) containing an existing dwelling to be added to the lands known municipally as 3316 Highway 56 (Subject Property) for agricultural
purposes, and to retain a parcel of land measuring 10.97 m x 101.58 m to be assembled with the conveyed lands in application GL/B-10:79 for residential purposes.

The "key" shaped lot, which contains the existing single family dwelling, was created as a separate lot by Consent Application GL/B-07:93.

2. Application No. GL/B-10:79 The conveyance of an irregular-shaped vacant parcel of land having a frontage of 29 m and an area of 4,611.2 m² to be assembled with the retained lands in application GL/B-10:62 for residential purposes, and to retain a parcel of land having a frontage of 96.95 m, and an area of 38 ha for agricultural purposes.

On September 2, 2010, the Committee of Adjustment (COA) denied the applications, and Paletta appealed those decisions to the Board pursuant to s. 53(19) of the Planning Act.

The Subject Properties are located on the west side of Highway 56, just south of the Village of Binbrook, in the former Township of Glanbrook, now the City of Hamilton (City). The property is designated as "Rural Area – Prime Agricultural Lands" in the Hamilton-Wentworth Official Plan (HWOP) and "Agricultural" in the Township of Glanbrook Official Plan (TOP).

3316 Highway 56 is zoned General Agricultural "A1-236" Zone in the Township's Zoning By-law 464, and the site specific provisions prohibit the construction of a single detached dwelling on the farm parcel, although there is a Quonset hut on the property which, although now it is not in use, was used at the time of the passage of the amending By-law on May 14, 2008, for the housing of livestock. A minimum lot frontage of 127 m is permitted.

3332 Highway 56 is zoned General Agricultural "A1-237" Zone in the Township's Zoning By-law 484, and the site specific provision permits a minimum lot frontage of 10.63 m.

In 2007, Consent Application GL/B-07:93 was granted conditional approval by the COA to permit the conveyance of the existing farm dwelling (3332 Highway 56) from
the balance of the existing farm (3316 Highway 56) as a surplus farm dwelling as a result of a farm consolidation.

At the same time, Consent Application GL/B-07:92 was granted conditional approval by the COA to permit the conveyance of the existing farm dwelling from the balance of the existing farm at 3552 Highway 56 as a surplus farm dwelling as a result of a farm consolidation. These lands are immediately to the south of 3316 Highway 56.

On May 14, 2008, By-law 08-113 was passed to rezone the lands at 3316 Highway 56 to the Agricultural “A1-236” Zone and the lands at 3332 Highway 56 to the Agricultural “A1-237” Zone.

J. M. Hagarty, an experienced agrologist and agricultural resource planner, gave expert agrology evidence on behalf of Paletta. Peter R. Walker and Peter De Iulio gave expert land use planning evidence on behalf of Paletta and the City respectively.

Key to Paletta’s position was its contention that the consents do not create a new lot, but constitutes a minor lot adjustment to facilitate the more effective, efficient use of agricultural land. In essence: there are two lots currently; there will be two lots if the consents are granted. There is one dwelling on the Subject Properties currently. There will be one dwelling on the Subject Properties if the consents are granted.

Policy 2.3.4.2 of the Provincial Policy Statement (PPS) permits lot adjustments in prime agricultural areas for legal or technical reasons. Within the policy document, legal and technical reasons are defined as “… for purposes such as easements, corrections of deeds, quit claims and minor boundary adjustments, which do not result in the creation of a new lot.

The Province’s Greenbelt Plan states in policy 4.6.2 (c) that lot creation is permitted for:

Minor lot adjustments or boundary additions, provided they do not create a separate lot for a residential dwelling in specialty crop or prime agricultural areas and there is no increased fragmentation of the key natural heritage feature or key hydrologic feature.

The Ministry of Agriculture, Food and Rural Affairs publication, “A Guide to Lot Creation in Prime Agricultural Areas” sets out only one ground for consideration of severances involving lot adjustments: does the lot adjustment create a new lot?
In the opinion of both Mr. Hagarty and Mr. Walker, the proposed lot adjustment does not result in the creation of a new lot. The number of residential dwellings abutting the farm property at 3316 Highway 56 will remain unchanged. Mr. Hagarty stated that the proposed lot adjustment complies with PPS policy 2.3.4.2, Greenbelt Plan policy 4.6.2 (c) and the OMAFRA guidelines.

Mr. Walker, a land use planner of considerable experience, pointed out that when Paletta, a large agricultural conglomerate, bought the land in 2004 and when it was severed in 2007; the farmhouse on the "keyhole" lot was habitable. Since that time, one of the tenants was discovered running a "grow op", the result of which made the house mouldy and uninhabitable. The dwelling has since been trashed. He said that had the house been uninhabitable at the time of the 2007 severance, that severance would not have been granted. Mr. Walker said the existing entrance will be maintained if the consents are granted, and that the house will be better located along Highway 56 than it was on the keyhole lot. He said in response to the City's staff report, which focused on the origin of the lot, "a lot is a lot", and how it came about is irrelevant. He said the use of the proposed adjusted lot is permitted from a policy standpoint, and that another residence would not be permitted on the keyhole lot.

Mr. Hagarty testified that the proposed lot reconfiguration of 3332 Highway 56 would involve the removal of 0.418 ha (approximately 1.03 acres) of cultivated area presently within the farm operation in 3316 Highway 56. He estimates, however, that rehabilitation of the land occupied by the current dwelling and Quonset shed (which would be removed) would return 0.817 ha (approximately 2.02 acres) of currently disturbed lands to full production. This results in a net increase of approximately 0.4 ha, or one acre, of cultivated production area.

He said that currently, cultivators must navigate around the existing dwelling and 3332 Highway 56 as well as the Quonset shed. Proceeding from south to north, all equipment operations, including tillage, seeding, spraying, crop cultivation and harvesting must wrap around these obstructions resulting in an interrupted and inefficient cultivation pattern involving some 10 separate turns. With the removal of the house and the shed, the expanded field could be cultivated with only four turns, representing a substantial improvement in field efficiency.
He said the present keyhole lot intrudes a long way into the Agricultural designated lands of 3316 Highway 56, and that the proposed lot adjustment would remove the current residence from the agricultural area and align it with the existing non-farm residential uses located along the west side of Highway 56. Since there are no livestock facilities situated along Highway 56 in the vicinity of the proposed lot adjustment, there is, in Mr. Hagarty's opinion, no MDS Formula 1 restraint.

Mr. Hagarty told the Board that agricultural rehabilitation of disturbed areas associated with residences, farm building and laneways is technically possible and is an increasingly common practice of farm enlargement and related consolidation of agricultural holdings.

Mr. Walker led the Board through a detailed analysis of the relevant criteria of s. 51(24) of the Planning Act, opining that each of these would be met by the applications. It was Mr. Walker's conclusion that the boundary adjustment was minor and that the granting of the applications would result in a positive impact on farming, would protect the public interest and represent good planning. He gave evidence to support his opinion that the applications are consistent with the PPS and in conformity with the Greenbelt Plan, the HWOP, the TOP and the Zoning By-law. He recommended their approval.

On the key question of whether the granting of the applications would result in the creation of a new lot, Mr. De Iulio, Senior Project Manager with the City, twice stated in a letter to Dave Pitblado, of Paletta, dated January 22, 2010 (Exhibit 1, Tab 7), that he acknowledged that the proposed lot adjustment "will not result in the creation of a new lot." In the letter, as in his testimony before the Board, he went back to the reason for the creation of the lot in the first place – a residence surplus to a farm operation as the result of a farm consolidation, defined in the PPS as "an existing farm residence that is rendered surplus as a result of a farm consolidation (the acquisition of additional farm parcels to be operated as one farm operation)." On this basis, Mr. De Iulio concluded that the proposed lot adjustment is not consistent with the principles and policies of the PPS.

By the time of the hearing, Mr. De Iulio had changed his mind about whether the proposed lot adjustment resulted in the creation of a new lot without, in the Board's view, any credible explanation for doing so. Simply to say that the consents do not
represent "a typical boundary adjustment" is not good enough. Just because something is atypical makes it neither right nor wrong. Neither does it make it more nor less "minor". The Board cannot accept Mr. De Iulio's conclusion that the proposed severances are not consistent with the PPS or in conformity with the Greenbelt Plan, "since a new lot is being created to accommodate a new dwelling." In the Board's view, he was right, back in January of 2010, when he acknowledged that no new lot would be created as a result of granting the consents.

It was Mr. De Iulio's opinion that the applications were not in conformity with the HWOP or the TOP because, in the case of the HWOP, a consent had already been granted; and in the case of the TOP extensions of linear development along roadways is not permitted. He said the proposed lot additions result in the creation of a new lot which is not in keeping with the established lot pattern in the area, as required by the TOP. He argued that granting the applications would take land currently used for agricultural purposes out of agricultural use. He did not accept that it was significant that more land would be returned to agricultural use than would be removed from it, although he said he "could not refute" that the granting of the applications would result in the more efficient use of an agricultural resource.

The Board found the case for the granting of the consents more convincing than the case for denying the consents. In the Board's opinion, Mr. Hagarty's and Mr. Walker's conclusion that the applications did not result in the creation of a new lot is eminently supportable. The granting of the applications will result in the creation of a "different" lot as a result of minor boundary adjustments, but not a "new" lot. There are currently two lots and one residence. The result of the severances will be two lots and one residence. A portion of the driveway servicing the keyhole lot will continue to service the residential lot. The one residence will not appreciably add to the existing linear development along Highway 56, and will have no negative impact on the existing residences. Most critically, the severances will result in more agricultural land being put into production, conforming to the PPS and the Greenbelt Plan.

To argue that the situation is not "typical" is a cursory, inadequate argument. Being "typical" might not make it right, any more than being atypical makes it wrong. We must look deeper to the real issues at hand. The Board finds that Mr. De Iulio did not do so in this instance.
The Board finds that the applications are consistent with the PPS, in conformity with the Greenbelt Plan, the HWOP and the TOP, and meet the relevant criteria of s. 51(24) of the Planning Act.

The Board Orders that the appeal is allowed and provisional consents are given subject to the conditions set out in Attachments "1" and "2" to this Order.

With regard to the Notes in each attachment, the Board Orders that the first paragraph of Note 1 be deleted, and the words "any of the above" be deleted from the second paragraph. This is on the basis of the Staff Report (Exhibit 1, Tab 12) which stated, "If this severance is granted, the City does not require an archaeological assessment."

The Board adds the following condition to those in Attachments "1" and "2":

That rehabilitation of the lands currently occupied by the dwelling, the Quonset shed and part of the driveway be confirmed by a qualified agrologist, the cost to be born by Paletta International (2000) Inc.

So Orders the Board.

"S. J. Sutherland"

S. J. SUTHERLAND
MEMBER
ATTACHMENT "1"

CONSOLIDATION REPORT
SEVERANCES

September 2nd, 2010

The attached comments have been reviewed with regard to Committee of Adjustment Severance File GL/B-10-79 (3332 Highway 55, Glenbrook) and the following is submitted:

Should the Committee grant the severance, an approval should be subject to the following conditions:

1. The owner shall submit a deposited Ontario Land Surveyor's Reference Plan to the Committee of Adjustment Office, unless exempted by the Land Registrar.

2. The lands to be conveyed shall be registered in the same name and title as the lands to which they are to be added.

3. The lands to be retained shall be merged in the same name and title as the conveyed lands in application GL/B-10-79.

4. The existing home on the lands to be conveyed shall be demolished, to the satisfaction of the City of Hamilton, Building Services Division.

5. The owner/applicant shall apply for and receive final approval of a Zoning By-law Amendment application prohibiting the construction of a new residential dwelling on the conveyed lands, to the satisfaction of the City of Hamilton, Building Services Division and Planning Division.

6. The owner/applicant shall obtain final approval of consent application GL/B-10-79.

7. The owner/applicant shall confirm the sustainability of private servicing for the retained lands to be assembled with the conveyed lands in application GL/B-10-79, through a scoped hydrogeological or servicing capability study, which will include confirmation of sufficient potable water supply and site conditions supportive of effective sewage effluent treatment to the satisfaction of the City of Hamilton's, Infrastructure & Source Water Planning Section.

8. The owner shall receive final approval of any necessary variances from the requirements of the Zoning By-law as determined necessary by the Planning and Economic Development Department (Building Services Division).

9. The owner shall dedicate to the City of Hamilton by deed, sufficient land along the entire frontage of the retained lands in order to establish the property line 16.29m metres from the original centroid of Highway #56, to the satisfaction of the Manager of Engineering Design and Construction.

10. The owner shall pay any outstanding realty taxes and/or all other charges owing to the City Treasurer.
NOTES:

1. That prior to any further approvals under the Planning Act or any construction requiring a building permit issued by the City of Hamilton, the property owner shall carry out an archaeological assessment of the entire development property and mitigate, through preservation or resource removal and documentation, adverse impacts to any significant archaeological resources found. No demolition, grading, construction activities, landscaping, staging, stockpiling or other soil disturbances shall take place on the subject property prior to the approval of the Director of Planning and the Ministry of Tourism and Culture confirming that all archaeological resource concerns have met licensing and conservation requirements. All archaeological reports shall be submitted to the City of Hamilton concurrent with their submission to the Ministry of Tourism and Culture.

The subject lands are considered to be of archaeological potential, and should deeply buried archaeological remains be found on the property during any of the above development activities the Ontario Ministry of Tourism and Culture (MTC) should be notified immediately (613.676.7742). In the event that human remains are encountered during construction, the applicant/landowner should immediately contact both MTC and the Registrar or Deputy Registrar of the Cemeteries Regulation Unit of the Ministry of Government Services (416.326.8382).

2. The owner, agent and staff should all be made aware that the correct street name is Regional Road 58, as passed by Regional Bylaw R69-05 on June 15 1999 and Registered under Instrument No. LT566230. Based on the attached plans, and on this application being approved and all conditions being met, the owner / applicant should be made aware that the lands to be retained will remain as 3552 Regional Road 58.
CONSOLIDATION REPORT
SEVERANCES

The attached comments have been reviewed with regard to Committee of Adjustment Severance File GL/B-10-79 (3510 Highway 66, Glenbrook) and the following is submitted:

Should the Committee grant the severance, an approval should be subject to the following conditions:

1. The owner shall submit a deposited Ontario Land Surveyor's Reference Plan to the Committee of Adjustment Office, unless exempted by the Land Registrar.

2. The lands to be conveyed shall be registered in the same name and title as the lands to which they are to be added.

3. The owner/applicant shall apply for and receive final approval of a Zoning By-law Amendment application permitting the construction of a new residential dwelling on the conveyed lands, to the satisfaction of the City of Hamilton, Building Services Division, and Planning Division.

4. The owner/applicant shall obtain final approval of consent application GL/B-10-69.

5. The owner/applicant shall confirm the sustainability of private servicing for the conveyed lands to be assembled with the retained lands in application GL/B-10-62, through a scoped hydrogeological or servicing capability study, which will include confirmation of sufficient potable water supply and site conditions supportive of effective sewage effluent treatment to the satisfaction of the City of Hamilton's Infrastructure & Source Water Planning Section.

6. The owner shall dedicate to the City of Hamilton by deed, sufficient land along the entire frontage of the lands to be conveyed and remnant lands (Part 4) in order to establish the property line 15.0m metres from the original centreline of Highway 66, to the satisfaction of the Manager of Engineering, Design and Construction.

7. The owner shall enter into a Consent Agreement, to be registered on title to the subject lands, with the City of Hamilton to the satisfaction of the Manager of Development Engineering, for the purpose of, but not limited to lot grading, for the development of the severed parcels.

8. The owner shall submit to the Committee of Adjustment Office an administration fee of $15.00, payable to the City of Hamilton, to cover the cost of setting up a new tax account for the newly created lot.

9. The owner shall pay any outstanding realty taxes and/or all other charges owing to the City Treasurer.
NOTES:

1. That prior to any further approvals under the Planning Act or any construction requiring a building permit issued by the City of Hamilton, the property owner shall carry out an archaeological assessment of the entire development property and mitigate, through preservation or resource removal and documentation, adverse impacts to any significant archaeological resources found. No demolition, grading, construction activities, landscaping, staking, stockpiling or other soil disturbances shall take place on the subject property prior to the approval of the Director of Planning and the Ministry of Tourism and Culture confirming that all archaeological resource concerns have met licensing and conservation requirements. All archaeological reports shall be submitted to the City of Hamilton concurrent with their submission to the Ministry of Tourism and Culture.

The subject lands are considered to be of archaeological potential, and should deeply buried archaeological remains be found on the property during any of the above development activities the Ontario Ministry of Tourism and Culture (MTC) should be notified immediately (519.075.7742). In the event that human remains are encountered during construction, the applicant/landowner should immediately contact both MTC and the Registrar or Deputy Registrar of the Cemeteries Regulation Unit of the Ministry of Government Services (416.326.8992).

2. The owner, agent and staff should all be made aware that the correct street name is Regional Road 56, as passed by Regional Bylaw R99-063 on June 15, 1999 and Registered under Instrument No. LT666239. Based on the attached plan, and on this application being approved and all conditions being met, the owner/applicant should be made aware that the lands to be conveyed will be assigned the municipal address of 3332 Regional Road 56, and that the lands to be retained will remain as 3316 Regional Road 56.