Local Planning Appeal Tribunal
Tribunal d'appel de l'aménagement local

ISSUE DATE: December 20, 2019 **CASE NO(S).:** PL180696

The Ontario Municipal Board (the "OMB") is continued under the name Local Planning Appeal Tribunal (the "Tribunal"), and any reference to the Ontario Municipal Board or Board in any publication of the Tribunal is deemed to be a reference to the Tribunal.

PROCEEDING COMMENCED UNDER subsection 53(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant:	Pat Paletta Livestock
Subject:	Consent
Property Address/Description:	2069 Binbrook Road
Municipality:	City of Hamilton
Municipal File No.:	GL/B-17:110
LPAT Case No.:	PL180696
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LPAT Case Name:	Pat Paletta Livestock v. Hamilton (City)

Heard: April 17 and June 12, 2019 in Hamilton, Ontario

APPEARANCES:

Parties	**Counsel**
Pat Paletta Livestock	S. Snider
City of Hamilton	P. MacDonald

DECISION DELIVERED BY HUGH S. WILKINS AND ORDER OF THE TRIBUNAL

[1] Pat Paletta Livestock ("Appellant") applied for a Consent to sever agricultural lands in the City of Hamilton ("City") located at 2069 Binbrook Road ("subject property"). The City's Committee of Adjustment refused the Consent application and the Appellant

appealed the decision to the Tribunal.

[2] The Appellant purchased the subject property in October 2017. It owns and farms over 900 hectares ("ha") of land in the City, including neighbouring farmlands to the east of the subject property, and plans to consolidate the subject property into these larger farming operations. Its application for the proposed Consent was filed in November 2017.

[3] The subject property consists of a 36.58 ha farm. It has two primary buildings on it: a farmhouse built in the 1940s; and a second residential building built in 1989. Both buildings are in good habitable condition. The Appellant does not wish to act as a landlord and rent the buildings. It views them as surplus to its farming operation and wishes to sever and sell them. The Appellant states that the proposed Consent would be a farm surplus severance as part of a farm consolidation. The severed lot would be roughly 2 ha. The City objects to it.

[4] The subject property is designated "Agriculture" under the City's Rural Hamilton Official Plan ("RHOP") and is zoned "Agricultural A-1" under the City's Zoning By-law No. 05-200 ("Zoning By-law"). The subject property is located in a prime agricultural area. It is designated "Protected Countryside" under the Greenbelt Plan.

ISSUES

[5] On a consent appeal, the Tribunal must determine whether the proposed Consent is consistent with the Provincial Policy Statement, 2014 ("PPS"), conforms with provincial plans, including the Greenbelt Plan, and conforms with the applicable official plans. The Tribunal must also consider whether the proposed Consent has regard to the criteria set out in s. 51(24) of the *Planning Act*.

EVIDENCE AND SUBMISSIONS

Appellant's Evidence and Submissions

[6] Mark Dorfman was qualified to provide opinion evidence as a professional land use planner on behalf of the Appellant.

[7] Mr. Dorfman stated that single detached dwellings are permitted under RHOP and the zoning for the subject property. He said the second residential building on the subject property was originally used to accommodate farm workers, but that at some point of time in the 2000s, the need for it as a residence for farm help ceased. After that time, the building was used as a residence for a member of the family that owned the property. It is now vacant. Mr. Dorfman said that although it was initially a “farm help house”, it transitioned into a second farm residence on the property.

[8] Mr. Dorfman stated that the existing structures on the subject property, including the farmhouse and the second residential building, are legally non-complying structures as the subject property does not comply with the minimum lot area provisions in the Zoning By-law, which require agricultural lots to be 40 ha. It is 36.58 ha. He said that when the second residential building was built, the City entered into a site plan agreement with the property owner permitting its construction. The agreement does not require that the second residential building be demolished if it ceased to be used as a farm help house. He said the second residential building is a permanent structure.

[9] In response to the City’s concerns that the Zoning By-law only allows one dwelling on each lot, Mr. Dorfman stated that the Zoning By-law only states that one dwelling may be erected on each lot. It does address existing structures. He said the subject property is undersized, but the existing structures are legal. Mr. Dorfman opined that the proposed Consent would not remove a significant amount of farmland from agricultural production and noted that the land to be severed has been used most recently as an outdoor storage area and not for growing crops.

[10] Mr. Dorfman opined that the proposed Consent is consistent with the PPS. He stated that PPS policy 2.3.4 allows for lot creation in prime agricultural areas where a residence is surplus to a farm operation as a result of a farm consolidation. He said there are two ways for a farm consolidation to be undertaken: the merging of adjacent

farms on title; or the consolidation of various farm lands without merging in title. He said although the land to the east of the subject property is part of the Appellant's operations, it is separated from the subject property by a road. Therefore, the lots are not adjacent. As a result, the second scenario applies here. He said PPS policy 2.3.4.1(c)(2) prohibits dwellings on retained parcels, which he said would be complied with in the present case. He said both buildings in question are habitable and are in good condition and each has value.

[11] Mr. Dorfman opined that the proposed Consent conforms with the Greenbelt Plan. Regarding Greenbelt Plan s. 4.6, which addresses lot creation, he said that like the PPS, it allows for severances for surplus residences resulting from farm consolidations. He said the Growth Plan for the Greater Golden Horseshoe, 2017 does not apply to the subject property.

[12] Mr. Dorfman opined that the proposed Consents conform with the RHOP. He stated that RHOP policy F1.14.2.8 sets out conditions for the severance of surplus farm dwellings as a result of a farm consolidation. He said these include that the dwellings must only be made surplus due to the consolidation, the buildings must have been built before 2004, and they must be habitable. He said severed lots must be at least 0.4 ha, have private water and septic services, have shapes and dimensions that do not impinge on agricultural operations, and must not include farm infrastructure such as barns. He stated that for consolidations where lands will not be merged on title, such as in the present case, RHOP policy F1.14.2.8 requires that the lots be of sufficient size and that proper zoning be applied. He opined that the proposed Consents satisfy these requirements.

[13] Mr. Dorfman said RHOP policy F1.14.2.1 prohibits the severance of "farm labour residence" lots. He said "farm labour residences" are defined as accessory detached buildings of temporary construction. He said the second residential building is not a temporary building and therefore not a farm labour residence. He said RHOP policy F1.14.2.1(a)(iii) prohibits the severance of an existing dwelling that was permitted in a previous official plan and zoning by-law as a farm labour residence, farm help house, or

help house. He said the use of the second residential building as a farm residence was a legal non-conforming use and this provision, therefore, does not apply. He said RHOP policy F.1.14.2.1(a)(iv) prohibits severing an existing second dwelling, unless it is the result of a farm consolidation. He said the second residential building is an existing second dwelling on the subject property, and, therefore, its severance is permissible provided that the farm surplus severance requirements in policy F.1.14.2.8 are satisfied.

[14] In regard to the criteria in s. 51(24) of the *Planning Act*, Mr. Dorfman stated that the proposed Consent is consistent with provincial interests, is in the public interest and is not premature. He said the proposed Consent provides for sufficient land on the proposed severed lot for water and wastewater services and it would not impact roadway widths.

[15] Mr. Dorfman stated that the proposed conditions to the Consent that were recommended by the City's planning staff are appropriate and reasonable, apart from the recommendation that zoning by-law amendments would need to be secured. The proposed conditions include that the Appellant is to receive approval of a zoning by-law amendment to restrict the development of a single detached dwelling on the proposed retained lot and provisions to facilitate a road allowance widening on Binbrook Road through the dedication of land by the Appellant to add to the right-of-way along the frontage of the proposed severed lot.

[16] Mr. Dorfman reviewed the matters of provincial interest set out in s. 2 of the *Planning Act* and opined that the proposed Consent has regard for them. He said the proposed Consent protects agricultural resources, provides affordable housing, and will not have environmental impacts.

[17] David Pitblado is the Appellant's Director of Real Estate Development. He provided fact evidence. Mr. Pitblado stated that the subject property was purchased and then consolidated as part of the Appellant's overall farming operations. He said the Appellant wishes to sever the surplus dwellings which are not needed for the consolidated farming operations. The Appellant has an existing farm dwelling on its

existing consolidated farm holdings. Mr. Pitblado reiterated that the Appellant is not interested in becoming a landlord. He raised issues regarding the challenges with having vacant buildings on farmlands and the difficulties for the Appellant to act as a landlord. He said that from a financial perspective, it is a problem for the Appellant to purchase homes with value and to leave them empty or be required to have them demolished. He said there is a market for the dwellings on the subject property and that it would be wasteful not to sever and sell them.

City's Evidence and Submissions

[18] Alaina Baldassarra was qualified to provide opinion evidence in the area of land use planning on behalf of the City.

[19] Ms. Baldassarra stated that the proposed Consent should be denied because:

- RHOP states that a farm help house cannot be severed as part of a farm surplus severance;
- if the second residential building is to be used as a farm residence, an official plan amendment and a zoning by-law amendment would first need to be obtained to allow two dwellings on one lot;
- there is insufficient land in the proposed lots for servicing; and
- the RHOP farm surplus severance provisions do not permit a farm help house to be severed and no farm buildings are allowed to remain on a severed lot.

[20] Ms. Baldassarra opined that the proposed Consent is not consistent with the PPS. She said PPS policy 1.2.1 requires the protection against the loss and fragmentation of the agricultural land base and it supports agriculture as the predominant land use in rural areas. She said PPS policy 4.6.1 restricts farm surplus severances limiting them to a minimum size. She said the proposed severed lot would not be a minimum size because of the need for sufficient land for sewage and water

services for each dwelling. She also said multiple farm residences on one lot are not permitted under the PPS.

[21] Ms. Baldassarra opined that the proposed Consent does not conform with the Greenbelt Plan. She stated that the Greenbelt Plan policy 4.6 limits lot creation to surplus farm dwellings. She said the second residential building is not a dwelling.

[22] Ms. Baldassarra opined that the proposed Consent does not conform with RHOP. She stated that RHOP policy F.1.14.2.1(a)(iii) does not allow the severance of farm buildings for non-agricultural uses and RHOP policy F.1.14.2.1(a)(iv) prohibits the severance of existing second dwellings. She said RHOP policy C.3.1.4 and the Zoning By-law s. 4.5 allow a maximum of one dwelling on a lot and the proposed Consent is premature until official plan and zoning by-law amendments are passed to permit multiple dwellings on the proposed severed lot. She said the intent of the RHOP is to limit the amount of lot creation in rural areas.

[23] Ms. Baldassarra opined that the proposed Consent does not have regard for the criteria in s. 51(24) of the *Planning Act*, including the criterion that the proposed Consent conform with the applicable official plan. She also opined that the proposed Consent is premature as official plan and zoning by-law amendments should be obtained before the proposed Consent is sought.

[24] Ms. Baldassarra stated that if the proposed Consent is approved, it must be made subject to conditions, including:

- any barns on the proposed severed lot be removed;

- a zoning by-law amendment to restrict the use of the retained lot from being used as a residential care facility, which is currently allowed on the subject property; and

- an official plan and a zoning by-law amendment to recognise the second

dwelling on the severed lot.

[25] In reference to the RHOP definition of a “farm labour residence”, she acknowledged that these are temporary structures, while the buildings on the subject property are permanent. She said farm help houses are to accommodate farm labour and if that use changes, official plan and zoning by-law amendments should be obtained to make the building a standalone dwelling. She acknowledged that it is not good planning to demolish a habitable single detached dwelling as part of a farm surplus severance.

ANALYSIS AND FINDINGS

[26] On this appeal, the Tribunal must determine whether the proposed Consent is consistent with the PPS and conforms with the Greenbelt Plan and RHOP. The Tribunal also must consider whether the proposed Consent has regard to the criteria set out in s. 51(24) of the *Planning Act*.

PPS and Greenbelt Plan

[27] The Tribunal must determine whether the proposed Consent is consistent with the PPS and conforms with the Greenbelt Plan. The applicable lot creation provisions in the PPS are found in PPS policy 2.3.4.1(c). It states:

> 2.3.4.1 Lot creation in prime agricultural areas is discouraged and may only be permitted for:
>
> […]
>
> c) a residence surplus to a farming operation as a result of farm consolidation, provided that:
>
> 1. the new lot will be limited to a minimum size needed to accommodate the use and appropriate sewage and water services; and
>
> 2. the planning authority ensures that new residential dwellings are prohibited on any 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; […]

[28] Similarly, s. 4.6 of the Greenbelt Plan states:

> 4.6 For lands falling within the Protected Countryside, the following policies shall apply:
>
> 1. Lot creation is discouraged and may only be permitted for:
>
> […]
>
> c. The severance of a *residence surplus to a farming operation* as a result of a farm consolidation, on which a habitable residence was an *existing use*, provided that:
>
> i. The severance will be limited to the minimum size needed to accommodate the use and appropriate sewage and water services; and
>
> ii. 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.

[29] The term "residence surplus to a farming operation" is defined in Greenbelt Plan s. 7 as:

> an existing habitable farm residence that is rendered surplus as a result of farm consolidation (the acquisition of additional farm parcels to be operated as one farm operation).

[30] The term "existing use" is defined in Greenbelt Plan s. 7 as:

> (a) uses legally established prior to the date that the Greenbelt Plan came into force on December 16, 2004; or
>
> (b) for the purposes of lands added to the Greenbelt Plan after December 16, 2004, uses legally established prior to the date the Greenbelt Plan came into force in respect of the land on which the uses are established.

[31] Based on the evidence before it, the Tribunal finds that both the farmhouse and the second residential building are habitable residences on a farm that are rendered surplus as a result of a farm consolidation. It also finds that the farmhouse and the second residential building were used as habitable residences, which was a legally established use on the subject property prior to the entry into force of the Greenbelt

Plan.

[32] The Tribunal also finds that the proposed Consent is limited to the minimum size of 2 ha which is needed to accommodate the use and appropriate sewage and water services. The Appellant has also agreed to include as a condition to the proposed Consent that it obtain a zoning by-law amendment to ensure that a residential dwelling is not permitted on the retained lot. As such, the Tribunal finds that the proposed Consent is consistent with PPS policy 2.3.4.1(c) and conforms with Greenbelt s. 4.6.

[33] The Tribunal finds that the proposed Consent will provide housing in a rural area, which is consistent with PPS policy 1.4 and helps to ensure that prime agricultural areas are protected for long-term use for agriculture under PPS policy 2.3.1.

[34] The Tribunal finds that the proposed Consent is consistent with the PPS and conforms with the Greenbelt Plan.

RHOP

[35] The intent of the RHOP lot creation policies in agricultural areas is to limit the severance of agricultural lands, to maintain those lands in agricultural production, and to limit land fragmentation. The relevant RHOP policies for farm surplus severances are policies F.1.14.2.1 and F.1.14.2.8.

[36] RHOP policy F.1.14.2.1 states:

> F.1.14.2.1 The following policies shall apply to all severances and lot additions, including minor lot line adjustments and boundary adjustments in the Agriculture, Rural, Specialty Crop, and Open Space designations, and designated Rural Settlement Areas, as shown on Schedule D – Rural Land Use Designations:
>
> a) Severances that create a new lot for the following purposes shall be prohibited:
>
> i) Residential uses except in accordance with:
>
> 1) Policies F.1.14.2.1 b) iii) and F.1.14.2.8, where a dwelling may be severed as a result of a farm consolidation; and,

> […]
>
> iii) Severance of a lot for a farm labour residence or an existing dwelling that was permitted in a previous official plan and zoning by-law as a farm labour residence, farm help house, or help house;
>
> iv) Severance of any existing second dwelling on a lot, irrespective of the origin of the second dwelling, except in accordance with Section F.1.14.2.8, where a dwelling may be severed as a result of a farm consolidation.
>
> b) Severances that create a new lot(s) may be permitted for only the following purposes:
>
> […]
>
> iii) Severance of a surplus farm dwelling made surplus as a result of a farm consolidation in accordance with Policies F.1.14.2.1 and F.1.14.2.8;

[37] Policy F.1.14.2.1(a)(i) prohibits severances for residential uses except where the requirements in policy F.1.14.2.8 are met (which will be analyzed further below).

[38] Policy F.1.14.2.1(a)(iii) prohibits the severance of a lot for a farm labour residence or an existing dwelling that was permitted in a previous official plan and zoning by-law as a (1) farm labour residence, (2) farm help house, or (3) help house (which are analyzed here). RHOP policy G defines a “farm labour residence” as:

> […] secondary accommodations provided for full-time farm labour where the size and nature of the farm operation requires additional employment in the form of either of the following:
>
> a) an accessory apartment attached to and forming part of the principal farm residence; or
>
> b) an accessory detached dwelling of temporary construction, such as a mobile home or bunk house, located in close proximity to the farm cluster.

This definition states that a farm labour residence is an “accessory apartment” or a “detached dwelling of temporary construction”. The second residential building is a detached dwelling of permanent construction. The Tribunal finds that is not a farm labour residence.

[39] RHOP policy F.1.14.2.1(a)(iii) also addresses severances of existing dwellings that were permitted in a previous official plan and zoning by-law as a farm labour

residence, farm help house, or help house. RHOP defines “existing” in the following manner:

> When used in reference to a use, lot, building or structure, means any use, lot, building or structure legally established or created prior to the day of final approval and coming into effect of the relevant sections of this Official Plan or at some earlier date as may be specified in the policies such as December 16, 2004 for the Greenbelt Plan policies.

RHOP does not define “dwelling”. However, the Zoning By-law states that a dwelling:

> Shall mean a building used or intended to be used for human habitation but shall not include a recreational vehicle or tent, or Farm Labour Residence.

The evidence before the Tribunal is that the second residential building is a permanent structure that has been used as accommodation for members of the family that previously owned and farmed the subject property. It was legally established prior to the coming into effect of RHOP and is “existing”. It has been used for human habitation, and continues to be habitable, and is not a recreational vehicle or tent, or farm labour residence. Therefore, based on the definitions in RHOP and the Zoning By-law, the Tribunal finds that the second residential building is an “existing dwelling” for the purposes of policy F.1.14.2.1(a)(iii). The Parties agree that when the second residential building was built, it was intended to be used as a farm help house and was permitted to be such under the official plan and zoning by-law in force at that time. The Tribunal therefore finds that the second residential building is an existing dwelling that was permitted in a previous official plan and zoning by-law as a farm help house. Based on these findings, its severance is prohibited under RHOP policy F.1.14.2.1(a)(iii). The Tribunal notes that even if the second residential building is a legal non-complying structure, it is still an existing dwelling that was permitted in a previous official plan and zoning by-law as a farm help house. The Tribunal notes the reasoning of the Ontario Municipal Board in *Hamilton (City) v. Hamilton (City)*, [2014] O.M.B.D. No. 706 that a farm help house that is no longer occupied by farm employees is a legally existing use; however, the Tribunal notes that RHOP policy F.1.14.2.1(a)(iii) was not addressed in that decision and this use does not affect the application of policy F.1.14.2.1(a)(iii).

[40] RHOP policy F.1.14.2.1(a)(iv) states that the severance of any existing second dwelling on a lot is prohibited, irrespective of the origin of the second dwelling, except where the dwelling is to be severed as a result of a farm consolidation and the requirements in policy F.1.14.2.8 are met. Based on the findings detailed above, the Tribunal finds that the second residential building is a second dwelling and its severance is permissible provided that the requirements in RHOP policy F.1.14.2.8 are satisfied.

[41] For the purposes of conformity with RHOP policies F.1.14.2.1(a)(i) and (iv), the proposed Consent must satisfy the requirements in RHOP policy F.1.14.2.8. That policy states:

> F.1.14.2.8 An existing farm dwelling that is a residence surplus to a farming operation as a result of a farm consolidation may be severed provided all of the following conditions are met:
>
> a) In all cases where surplus farm dwellings are to be severed the following shall apply:
>
> i) The farm consolidation shall have been completed prior to the time of application.
>
> ii) The farm dwelling shall be determined to be surplus to the farm operation for no reason other than the farm dwelling is surplus to the needs of the farm consolidation. Farm dwellings that have been determined to be surplus to a farm operation prior to December 16, 2004 and prior to the acquisition of the additional farm parcel(s), or as a result of changing agricultural operations, are deemed not to be surplus farm dwellings for the purposes of Section F.1.14.2.8.
>
> iii) The proposed surplus farm dwelling:
>
> 1) shall have been built on or before December 16, 2004; and,
>
> 2) shall be habitable on the date of the application for the surplus farm dwelling severance and shall meet the City's standards for occupancy without requiring substantial demolition and new construction.
>
> iv) The surplus dwelling lot shall be a minimum of 0.4 hectares (1 acre), or such larger area as may be required by Section C.5.1, Private Water and Wastewater Services of this Plan. The maximum size of the surplus dwelling lot shall be the size required for servicing in accordance with Section C.5.1, with as little acreage as possible taken out of agricultural production;

v) A private water well and private sewage disposal system shall be provided in accordance with Section C.5.1, Private Water and Wastewater Services of this Plan;

vi) The shape and dimensions of the surplus farm dwelling lot shall:

1. not impair agricultural operations on the retained land; and

2. generally not exceed a depth of 122 metres (400 feet);

vii) The surplus dwelling lot shall not include barns or other farm buildings which are not suitable to be used as accessory structures to a residential use prescribed by the Zoning By-law, and no such buildings or structures shall be used for industrial or commercial purposes.

viii) Where a barn or other farm building exists within the immediate vicinity of the surplus residence, the City may require demolition of the barn.

[…]

c) In cases of a farm dwelling made surplus as a result of acquisition as part of a farm operation that does not result in the merging in title of parcels of land, applications for severance of the surplus dwelling shall comply with the following conditions:

i) The owner and operator of the farm maintains an existing dwelling on land that is also part of the consolidated farm operation;

ii) The parcels of land comprising the consolidated farm operation shall generally be a minimum of 38.4 hectares (95 acres) in total in the Agriculture designation and 14.2 hectares (35 acres) in the Rural and Specialty Crop designations;

iii) The parcel of land from which the surplus dwelling is severed shall generally be a minimum of 8.1 hectares (20 acres) in size for lands designated Specialty Crop on Schedule D – Rural Land Use Designations, or 16.2 hectares (40 acres) in size for lands designated Agriculture or Rural on Schedule D – Rural Land Use Designations;

iv) Prior to granting of final consent, one of the following conditions shall be met for the retained farm parcel as a result of a surplus farm dwelling severance:

1. The land owner shall apply for and receive final approval to rezone the farm parcel to prohibit the construction of a dwelling unit; or

2. The land owner shall grant in favour of the City, a restrictive covenant which prohibits the construction of any dwelling unit.

If the land owner grants a restrictive covenant in favour of the City, the City shall rezone the farm parcel to prohibit the construction of any

dwelling unit.

[42] Regarding the requirements in RHOP policy F.1.14.2.8(a), the Tribunal finds that based on the evidence before it:

- the farm consolidation was completed in October 2017 and the application for the proposed Consent was filed on November 2017; therefore, the farm consolidation was completed prior to the time of application;

- the Appellant purchased the subject property for its agricultural operations and has no interest in using the residences; they are surplus to its operations;

- the surplus buildings were constructed in the 1940s and in 1989, and, therefore, before 2004;

- both residences are habitable;

- the proposed severed lot is the minimum size for accommodating the existing well and two existing septic systems for the two residences and there is little productive agricultural land on the proposed severed lot. Although, a severance of only one residential dwelling would reduce the necessary size of the proposed severed lot, the fact that there are two residential buildings on the proposed lot necessitates the larger size;

- there is a well and two septic systems on the proposed severed lot;

- the proposed severed lot is rectangular in shape, it does not include existing farmed land, and the proposed Consent would not impair agricultural operations; and

- existing barns and non-residential agriculture related buildings on the proposed severed lot are in poor condition and will be demolished.

[43] Regarding the requirements in RHOP policy F.1.14.2.8(c), the Tribunal finds that:

- the Appellant has an existing farm dwelling on its consolidated farm holdings;
- the Appellant owns and operates over 900 ha of farmland in the City;
- the subject property is more than 16.2 ha;
- the Appellant has agreed to a condition to the proposed Consent that it obtain a zoning by-law amendment prohibiting residential dwellings on the proposed retained lot.

[44] Based on these findings, the Tribunal finds that the proposed Consent conforms with RHOP policy F.1.14.2.8(a) and (c) and with RHOP policies F.1.14.2.1(a)(i) and (iv).

[45] The City argues that the proposed Consent would result in the creation of a lot with two dwellings on it which would contravene RHOP policy C.3.1.4 and the Zoning By-law s. 4.5. The relevant part of RHOP policy C.3.14 states:

> C.3.1.4 The following uses shall be permitted in the Agriculture, Specialty Crop, and Rural designations, provided the applicable conditions are met:
>
> > a) Except as permitted in Sections D.2.1.1.4 and C.3.1.4 b) and c) of this Plan, a maximum of one dwelling per lot shall be permitted in designations where residential uses are permitted. The Zoning By-law shall limit permitted dwellings to a maximum of one residence per lot in designations where residential uses are permitted; […]

[46] The relevant part of the Zoning By-law is s. 4.5(a). It states:

> 4.5(a) unless otherwise provided for in this By-law, in any zone where a single detached dwelling, semi-detached dwelling or duplex dwelling is permitted, no more than one such dwelling shall be erected on a lot.

[47] The Appellant argues that the second residential building is a legal non-complying structure and therefore is permitted under RHOP policy C.3.14 and that the Zoning By-law s. 4.5(a) only applies to the erection of dwellings on a lot. In the present

case, where a new lot is proposed to be created with two existing dwellings on it, the Tribunal finds that this contravenes RHOP policy C.3.1.4, regardless of whether the dwellings are legal non-complying structures or their uses are legally non-conforming on the subject property. The subject property does not contravene this policy; but the creation of a new lot with two dwellings on it would. Regarding compliance with the Zoning By-law s. 4.5(a), the Tribunal finds that there is no dwelling proposed to be erected. The two existing residential structures on the proposed severed lot would not contravene this section of the Zoning By-law.

Section 51(24) of the Planning Act

[48] Taking into account its findings above, the Tribunal finds that the proposed Consent conforms with RHOP, except with respect to conformity with RHOP policies F.1.14.2.1(a)(iii) and C.3.1.4. Based on the evidence of Mr. Dorfman in this regard, the Tribunal finds that the proposed Consent has regard to the other criteria in s. 51(24) of the *Planning Act* and to the matters of provincial interest set out in s. 2 of the *Planning Act*.

Proposed Conditions to the Consent

[49] Both Mr. Dorfman and Ms. Baldassarra reviewed proposed conditions to the Consent. They agree to conditions including those that the Appellant is to receive approval of a zoning by-law amendment to restrict the development of a single detached dwelling on the proposed retained lot and provisions to facilitate the road allowance widening on Binbrook Road through the dedication of land by the Appellant to add to a right-of-way along the frontage of the proposed severed lot. The Parties also agree to conditions that any barns on the proposed severed lot be removed and that a zoning by-law amendment be obtained to restrict the use of the retained lot.

[50] The Parties disagree over a condition proposed by the City that the Appellant receive approval of an official plan amendment in order to permit two detached dwellings on the severed parcel.

[51] The Tribunal finds that the conditions proposed by the City are reasonable. Based on the Tribunal's findings that the proposed Consent does not conform with RHOP policies F.1.14.2.1(a)(iii) and C.3.1.4, the Tribunal finds that conditions are necessary that the Appellant receive approval of site-specific official plan amendments to: (1) allow the severance of an existing dwelling that was permitted in a previous official plan and zoning by-law as a farm help house; and (2) allow for two dwellings on the severed lot.

Conclusions

[52] Based on the evidence before it, the Tribunal finds that the proposed Consent does not conform with RHOP policies F.1.14.2.1(a)(iii) and C.3.1.4. However, it finds that this can be addressed through the inclusion of conditions to the proposed Consent requiring that the Appellant apply for and obtain site-specific official plan amendments exempting the proposed severed lot from the restrictions in those specific RHOP policies and (1) allow the severance of an existing dwelling that was permitted in a previous official plan and zoning by-law as a farm help house, and (2) allow for two dwellings on the severed lot. The Tribunal finds that such conditions are reasonable and capable of fulfillment. It notes that the second residential building has been used as a single detached dwelling (and not as a farm help house) for multiple years in the past. It also notes that the condition requiring an official plan amendment to permit two single detached dwellings on the severed parcel was proposed by the City and two single detached dwellings presently exist on the subject property.

[53] The Tribunal finds that the proposed Consent with the conditions in Attachment 1 to this Decision is consistent with the PPS, conforms with RHOP and the Greenbelt Plan, and has regard to the criteria set out in s. 51(24) of the *Planning Act*. It facilitates a farm surplus severance and farm consolidation that sustains farming operations in the area and protects both agricultural resources and the rural character of the area. It will not result in the erection of further residential dwellings in the area, it will protect existing housing stock, and it will not increase housing density in this agricultural area.

[54] To ensure that the Appellant has sufficient time to apply for and obtain approval of the official plan amendments required in the conditions to this Order, the Tribunal withholds its Order until July 1, 2020, at which time it will come into full force and effect.

ORDER

[55] The appeals are allowed and the proposed Consent is given subject to the conditions set out in Attachment 1 attached to this Decision.

[56] This Order is withheld until July 1, 2020 at which time it will come into full force and effect.

"Hugh S. Wilkins"

HUGH S. WILKINS
MEMBER

ATTACHMENT 1

CONSENT CONDITIONS

1. The owner shall submit a deposited Ontario Land Surveyor's Reference Plan to the City's Manager, Development Planning, Heritage and Design, unless exempted by the Land Registrar. The reference plan must be submitted in hard copy and also submitted in CAD format, drawn at true scale and location and tied to the City corporate coordinate system.

2. The applicant shall receive final and binding approval of a Zoning By-law Amendment in order to restrict the development of a single detached dwelling and/or residential care facility on the retained farm parcel to the satisfaction of the City's Manager, Development Planning, Heritage and Design.

3. The applicant shall receive final and binding approval of Official Plan Amendments in order to (1) permit two single detached dwellings on the severed parcel; and (2) allow the severance of an existing dwelling that was permitted in a previous official plan and zoning by-law as a farm help house.

4. The applicant shall provide proof that all farm-related structures have been demolished from the severed lot to the satisfaction of the City's Manager of Development Planning, Heritage and Design.

5. The applicant shall ensure compliance with Ontario Building Code requirements regarding spatial separation distances of any structures to the satisfaction of the City's Planning and Economic Development Department (Building Division - Plan Examination Section.) ·

6. The owner shall receive final approval ·of any necessary variances from the requirements of the Zoning By-law as determined necessary by the City's Planning and Economic Development Department (Building Division - Zoning Section),

7. The owner shall submit survey evidence that the lands to be severed and/or the lands to be retained, including the location of any existing structure(s), conform to the requirements of the Zoning By-Law or alternatively apply for and receive final approval of any variances from the requirements of the Zoning By-Law as determined necessary by the City's Planning and Economic Development Department (Building Division – Zoning Section).

8. The owner/applicant shall submit survey evidence from a BCIN Qualified Designer (Part 8 Sewage System) or Professional Engineer that the existing septic systems comply with the clearance requirements of Part 8 of the Ontario Building Code for the

lands to be severed, to the satisfaction of the City's Planning and Economic Development Department (Building Division - Plan Examination Section) and Hamilton Water.

9. An appropriate road allowance widening shall be conveyed to the City as per the Urban Official Plan; Schedule C-2 - Future Right-of-Way Dedications (Binbrook Road between Regional Road 56 and East limits of settlement Area, 26.213 metres). The owner shall dedicate approximately 3 metres to add to the right-of-way along the frontage of the severed lot. A survey conducted by an Ontario Land Surveyor and at the applicant's expense will determine the dimensions of the right-of-way widening to meet the ultimate road allowance requirements.

10. If necessary, the owner shall dedicate to the City sufficient land adjacent to Binbrook Road East in order to establish the property line 18.579 m (60 feet) from the original centreline of this roadway.

11. If necessary, the owner shall dedicate to the City sufficient land adjacent to Hendershot Road in order to establish the property line as 18.576 m (60 feet) from the original
centreline of this roadway.

12. The owner shall satisfy the requirements of the City's Public Works Department, Operations and Maintenance Division - Forestry and Horticulture Section.

13. The owner shall submit to the City an administration fee of $17.70, payable to the City of Hamilton, to cover the cost ·of setting up a new tax account for the newly created lot.

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

Acknowledgement: The subject property has been determined to be an area of archaeological potential. It is reasonable to expect that archaeological resources may be encountered during any demolition, grading, construction activities, landscaping, staging, stockpiling or other soil disturbances. If archeological resources are encountered, the proponent may be required to conduct an archaeological assessment prior to further impact in order to address these concerns and mitigate, through preservation or resource removal and documentation, adverse impacts to any significant archaeological resources found. Mitigation, by an Ontario-licensed archaeologist, may include the monitoring of any mechanical excavation arising from this project. If archaeological resources are identified on-site, further Stage 3 Site-specific Assessment and Stage 4 Mitigation of Development Impacts may be required as determined by the Ontario Ministry of Heritage, Sport, Tourism, and Culture Industries. All archaeological reports shall be submitted to the City

of Hamilton for approval concurrent with their submission to the Ministry of Heritage, Sport, Tourism, and Culture Industries.

Should deeply buried archaeological materials be found on the property during any of the above development activities the Ministry of Heritage, Sport, Tourism, and Culture Industries should be notified immediately (416.314.7143). In the event that human remains are encountered during construction, the proponent should immediately contact both Ministry of Heritage, Sport, Tourism, and Culture Industries and the Registrar or Deputy Registrar of the Cemeteries Regulation Unit of the Ministry of Small Business and Consumer Services (416.326.8392).