

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



ISSUE DATE: May 16, 2019

CASE NO(S): PL180697

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:	Robert and Renee Johnston
Subject:	Consent
Property Address/Description:	28 Maureen Avenue
Municipality:	City of Hamilton
Municipal File No.:	B-27/18
OMB Case No.:	PL180697
OMB File No.:	PL180697
OMB Case Name:	Johnston v. Hamilton (City)

Heard: November 23, 2018 and February 1, 2019 in
Hamilton, Ontario

APPEARANCES:

Parties

Counsel*/Representative

Robert and Renee Johnston

Self-represented

Gordon Dunn

Self-represented

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

INTRODUCTION

[1] On February 28, 2018, Robert and Renee Johnston (“Appellants”) applied to the City of Hamilton (“City”) Committee of Adjustment for a Consent to sever lands located at 28 Maureen Avenue (“subject property”) in the former Town of Ancaster.

[2] The subject property originally consisted of two lots which were later merged in title. The Appellants propose severing the subject property back into two lots so that it is similar to its original configuration. The retained lot would have an area of 1334.78 square metres (“m²”). The severed lot would have an area of 814.5 m². The Appellants propose to maintain the existing dwelling on the retained lot and build a new detached dwelling on the severed lot.

[3] The subject property is designated “Neighbourhoods” on both Schedule E – Urban Structure and Schedule E-1 – Urban Land Use Designations in the Urban Hamilton Official Plan (“UHOP”).

[4] On May 10, 2018, the Committee denied the proposed Consent.

[5] On June 4, 2018, the Appellants appealed the Committee’s decision to the Tribunal.

[6] The appeal was heard on November 23, 2018 and February 1, 2019 in Hamilton. The City did not attend the hearing.

ISSUES

[7] The issues in this appeal are whether the proposed Consent has regard for matters of provincial interest under s. 2 of the *Planning Act*, is consistent with the Provincial Policy Statement, 2014 (“PPS”), conforms with provincial plans or does not

conflict with them, complies with the requirements in s. 53 of the *Planning Act*, and addresses the criteria in s. 51(24) of the *Planning Act*.

REQUESTS FOR STATUS

[8] At the commencement of the hearing, a number of persons requested Party or Participant status. Gordon Dunn requested Party status. He lives in the area. He is concerned that the proposed Consent will affect the quiet enjoyment of the neighbourhood and represents over-development of the subject property. He was granted Party status.

[9] Margaret Skinner, Stephen Leathley, Brian Shangrow, Herbert Fischer and Gordon Speirs each lives in the vicinity of the subject property. They each expressed concerns regarding the impacts of the proposed Consent on the character of the neighbourhood. The Appellants did not oppose any of these requests for status. Each was granted Participant status as requested.

EVIDENCE AND SUBMISSIONS

Appellants' Evidence and Submissions

[10] The Tribunal heard opinion evidence on behalf of the Appellants from Ryan Ferrari and Brynne O'Neill. Mr. Ferrari is employed at the City as a planning technician. He was summoned to appear by the Appellants and was qualified by the Tribunal to provide opinion evidence as a planning technician. Ms. O'Neill is a land-use planner who was retained by the Appellants. She was qualified by the Tribunal to provide opinion evidence in the area of land use planning.

[11] Mr. Ferrari opined that the proposed Consent is consistent with the PPS and conforms with the Growth Plan for the Greater Golden Horseshoe, 2017 ("Growth Plan"). He stated that the subject property is located in a settlement area under the

PPS and would facilitate efficient development using existing services and roads. He stated that it is located in a Built-up Area under the Growth Plan. He said the proposed Consent would result in the efficient use of land in an area targeted for growth.

[12] Mr. Ferrari stated that the subject property is designated Neighbourhoods in the UHOP. Reviewing the UHOP's intensification policies, he said the subject property is unique in that there are few double lots in the area, particularly where a lot could be severed without requiring the existing dwelling to be demolished. He described the character of the neighbourhood. He said it includes a variety of lot configurations. He opined that the proposed severed lot could be integrated into the neighbourhood character through the construction of a future dwelling with similar massing and scale to existing neighbouring dwellings. He said that under the UHOP, new lots are to reflect the general character and development pattern of the area, which he opined the proposed Consent would facilitate.

[13] Mr. Ferrari stated that the dimensions of the proposed lots comply with the regulations in the existing Town of Ancaster Zoning By-law No. 87-57; but he noted that the east side yard of the retained lot would not comply with the setback requirements in the recently passed Zoning By-law No. 18-105, which is under appeal to the Tribunal in a separate proceeding. The Consent would result in a 1.5 metre ("m") setback, whereas Zoning By-law No. 18-105 requires 3.5 m. Zoning By-law No. 18-105 is not yet in force.

[14] Mr. Ferrari reviewed the criteria in s. 51(24) of the *Planning Act* and opined that the proposed Consent is in the public interest and is not premature. He said it conforms with the UHOP and adjacent plans of subdivision, conforms with the built form in the area, and will be subject to site plan control. He said the proposed Consent would result in a suitable use of the property as the portion proposed for severance is presently, in his opinion, an under-utilized piece of land.

[15] Mr. Ferrari also described the City's conditions to giving of the proposed Consent. He opined that they are reasonable.

[16] Ms. O'Neill supported Mr. Ferrari's opinions. She opined that the proposed Consent is consistent with the PPS, conforms with the Growth Plan and complies with the statutory requirements in s. 2, 51(24) and 53 of the *Planning Act*. Regarding matters of provincial interest in s. 2 of the *Planning Act*, she said the subject property has access to services, the proposed Consent represents orderly development, and it promotes built form that encourages a sense of place. Regarding the criteria in s. 51(24) of the *Planning Act*, she said the proposed severed lot is suitable for a residential dwelling and conforms with the UHOP. She reviewed the Consent policies in UHOP policy F.1.14.3 and opined that the proposed Consent would comply with them. She said the proposed Consent is compatible with existing uses in the area. She stated that there is a range of house sizes and lot shapes in the area and that the proposed lots would have similar lot sizes and frontages to various other nearby lots. She said the existing size of the subject property is out of character for the area and that the proposed Consent would bring it more into character. She said the proposed Consent would not result in transportation, stormwater infrastructure or servicing issues and that the subject property is a fully serviced and sewered lot. She also said the proposed Consent would not result in privacy or overlook concerns. Applying the term "compatible" to mean ensuring that new development does not create negative implications for the existing neighbourhood, she stated that the proposed Consent would be compatible in terms of scale and character with the area, and would maintain the planned urban structure for the area.

[17] Ms. O'Neill stated that a plan of subdivision for the subject property is not necessary for the proper and orderly development of the municipality due to the availability of services at the subject property, the fact that only one lot is being proposed for severance, and because the proposed Consent would maintain the low density residential nature of the area.

[18] In her reply evidence, Ms. O'Neill reiterated that the appeal before the Tribunal is for a Consent. It is not for constructing a new dwelling on the subject property. She said arguments that the proposed Consent would represent overdevelopment on the subject property are not applicable.

[19] Ms. O'Neill opined that the City's proposed conditions are reasonable.

Added Party's and Participants' Evidence and Submissions

[20] The Tribunal heard opinion evidence on behalf of Mr. Dunn from Allan Ramsay who is a land-use planner. He was qualified by the Tribunal to provide opinion evidence in the area of land use planning.

[21] Mr. Ramsay agreed with the Appellants that the proposed Consent would be consistent with the PPS and would conform with the Growth Plan. He also agreed that it has regard to the matters of provincial interest in s. 2 of the *Planning Act*. His concerns were about conformity with the UHOP, compliance with Zoning By-law No. 18-105, and addressing the criteria in s. 51(24) of the *Planning Act*.

[22] Mr. Ramsay stated that the general area is known as Mansfield Park. He said it constitutes a series of subdivisions which commenced in the 1950s. He said it is a well-established neighbourhood consisting of homes on large lots with generous setbacks. Mr. Ramsay described lots in the neighbourhood to demonstrate this pattern of development. He said that the parameters of the neighbourhood to be considered are important. He stated that the subdivisions outside the immediate vicinity of the subject property have a different character and should not be taken into account when determining the character of the subject property's neighbourhood. He said the proposed severed lot would be one of the immediate neighbourhood's smallest lots in terms of lot area and have uncharacteristically large lot coverage.

[23] Regarding the UHOP's provisions on residential intensification, Mr. Ramsay stated that UHOP policy B.2.4.1.4 sets out relevant criteria to be considered. He said that under this policy, residential intensification should maintain or enhance the existing character of the neighbourhood, which, he opined, the proposed severed lot's small lot size and setbacks would not satisfy. He also stated that the proposed Consent would result in development that is not well integrated with the neighbourhood in terms of scale or character. He said the proposed Consent would not be compatible with the existing character of the neighbourhood and would not contribute to achieving the planned urban structure for the area.

[24] Mr. Ramsay stated that the proposed Consent also would not comply with UHOP policy B.2.4.2.2, which requires compatibility with adjacent land uses. He said the Consent would result in development that causes overlook and noise issues. He also raised a concern that the height of the eventual building on the proposed severed lot would present an inappropriate scale and massing. He added that the proposed severed lot would be out of character with the existing lot pattern, have insufficient amenity space, and have insufficient separation from neighbouring homes. He stated that the proposed Consent would result in a form of intensification that is not compatible with the existing scale of the neighbourhood.

[25] Mr. Ramsay also argued that the proposed development does not comply with UHOP policies E.3.1.4 and E.3.1.5, which set out policy goals for Neighbourhoods. Policy E.3.1.4 states that the UHOP seeks to promote and support design which enhances and respects the character of existing neighbourhoods while allowing their ongoing evolution and policy E.3.1.5 seeks to promote and support residential intensification of appropriate scale and in appropriate locations. He said the neighbourhood has gone through some change, but not on the scale proposed by the Appellants. He said policy E.3.2.4 states that the existing scale of established Neighbourhoods shall be maintained; but that the proposed Consent would not do this.

[26] Mr. Ramsay said policy F.1.14.3.1 sets out lot creation criteria, which the proposed Consent fails to meet regarding UHOP compliance, conformity with zoning, and reflection of the general scale and character of the established development patterns in the area. He said the proposed lot widths, lot areas and setbacks would not reflect the general scale and character of the area.

[27] Mr. Ramsay stated that the proposed Consent also would not conform with the built form requirements in UHOP policy B.3.3.3.2 requiring that new development be designed to minimize impact on neighbouring buildings and public space. He expressed concern regarding the proposed setbacks, the proposed building separation distances, and transition between dwellings.

[28] Mr. Ramsay reviewed the applicable zoning regulations for the subject property and stated that if the proposed Consent were granted, a variance to Zoning By-law No. 18-105 would be required for the retained lot. He stated that Zoning By-law No. 18-105 requires a side yard setback of 2 m and front yard setback of 8.8 m and that the proposed Consent would result in a retained lot side yard setback of 1.5 m and severed lot front yard setback of 7.5 m. He said it would not be appropriate to give a Consent that violates the not-yet-in-force Zoning By-law.

[29] Mr. Ramsay stated that the proposed Consent also does not satisfy the criteria in s. 51(24) of the *Planning Act*. He said it is premature and not in the public interest and does not conform with UHOP or Zoning By-law No. 18-105 as set out above. He said the proposed Consent would be incompatible with the neighbourhood and therefore not in the public interest. He said it would require a variance and is therefore premature. He said it is undersized and not suitable and would have dimensions that are out of character for the area.

[30] The Tribunal also heard presentations from Mr. Leathley, Ms. Skinner, Mr. Fischer and Mr. Speirs. Mr. Leathley expressed concerns regarding the impacts of the proposed Consent on the area's character and his view that the proposed Consent

would be inappropriate as it would result in a development that would be out of place and the severed lot would be too small. Ms. Skinner described the character of the area and the prominent location of the subject property. She said the proposed Consent would change the character of the area and would become a precedent which may be followed elsewhere locally. Mr. Fischer said the proposed Consent would not fit in with the neighbourhood and would impact the neighbours' enjoyment of their properties. Mr. Speirs stated that the proposed Consent would result in a severed lot size that is not compatible with other lots in the area, would set a precedent for the erosion of the neighbourhood's character, and would not comply with the standards in Zoning By-law No. 18-105. He said there has been considerable community concern raised regarding the proposed Consent.

ANALYSIS AND FINDINGS

[31] On Consent appeals, the Tribunal must have regard to matters of provincial interest under s. 2 of the *Planning Act*. The Tribunal's decision must be consistent with provincial policy statements issued under s. 3(1) of the *Planning Act* and shall conform with provincial plans or not conflict with them. The Tribunal must be satisfied that a plan of subdivision of the land in question is not necessary for the proper and orderly development of the municipality pursuant to s. 53(1) of the *Planning Act*. The Tribunal also must have regard to the criteria set out in s. 51(24) of the *Planning Act*.

[32] Based on the evidence before it, the Tribunal finds that the applications for Consent in this case meet the requirements in s. 2, 3(1) and 53 of the *Planning Act*. The uncontradicted opinion evidence before the Tribunal is that there are no issues concerning matters of provincial interest in this case and that the proposed Consent is consistent with the PPS and conforms with the Growth Plan. It is also the uncontradicted evidence before the Tribunal that a plan of subdivision of the lands is not necessary for the proper and orderly development of the municipality.

[33] The Added Party argued that the proposed Consent does not meet the UHOP's intensification and lot creation requirements, does not comply with the regulations in Zoning By-law No. 18-105, and does not satisfy the criteria in s. 51(24) of the *Planning Act*. His position is that the proposed Consent would result in over-development of the subject property and would not be in character with the area.

[34] The Tribunal finds that although the proposed severed lot would be small for the area in terms of lot size and setbacks, the proposed Consent would maintain the existing character of the neighbourhood. The parameters of the area to be considered were at issue at the hearing; however, the Tribunal finds that even if only the most immediate neighbourhood is taken into account, the proposed Consent would result in development that would be integrated and compatible with it. The Tribunal emphasizes that the appeal before it relates solely to the proposed Consent and not a future building application for the subject property.

[35] In terms of whether the proposed Consent would be compatible with the existing character of the neighbourhood, the Tribunal refers to the definition of "compatibility/compatible" in Chapter "G" of the UHOP, which states:

Compatibility/compatible: means land uses and building forms that are mutually tolerant and capable of existing together in harmony within an area. Compatibility or compatible should not be narrowly interpreted to mean "the same as" or even as "similar to".

Applying this definition, the Tribunal finds that the proposed Consent is compatible with adjacent land uses. The proposed severed lot will be small, but based on the evidence of Mr. Ferrari and Ms. O'Neill, it would be capable of existing together in harmony with the area. Mr. Ramsay opined in essence that the proposed severed lot would not be the same as others in the immediate neighbourhood; however, based on the UHOP definition, this does not mean that it would not be compatible. He said the height of the building that is eventually constructed on the proposed severed lot would present a scale and massing that is not appropriate; however, plans for a future building are not before the Tribunal. Given the dimensions of the proposed severed lot and character of

the neighbourhood, the Appellants may only have the option to build a small dwelling with a restricted footprint and height, but that does not mean they cannot have the lot severed and have the opportunity to apply to build such a building there.

[36] The Tribunal finds that the proposed Consent would result in a form of intensification that is compatible with the existing neighbourhood. Given that the subject property is a corner lot, the Tribunal finds that the proposed Consent would have minimal impacts on neighbouring buildings and would not adversely affect elements of transition in the area. There was insufficient evidence before the Tribunal to demonstrate that a dwelling on the proposed severed lot would adversely impact the existing dwelling on the retained lot or public space. The Tribunal also notes that the subject property is subject to site plan control.

[37] The uncontradicted opinion evidence before the Tribunal is that the proposed Consent complies with the existing zoning for the subject property but would not comply with the setback requirements in Zoning By-law No. 18-105 should it come into force. The Tribunal finds that requiring the Appellants to seek a variance, if Zoning By-law No. 18-105 comes into force, as a condition to a Consent does not make the proposed Consent premature or result in non-conformity.

[38] Based on these considerations, the Tribunal, finds that the criteria in s. 51(24) of the *Planning Act* have been addressed.

[39] Based on uncontradicted opinion evidence of Mr. Ferrari and M. O'Neill regarding the City's conditions to the proposed Consent, the Tribunal finds that they are reasonable.

[40] The Tribunal finds that the Applicant's proposed Consent meets the statutory requirements under the *Planning Act*, is consistent with the PPS, and conforms with the Growth Plan.

ORDER

[41] The Tribunal allows the appeal.

[42] The Tribunal orders that the provisional Consent is given as set out in the sketch in Attachment 1 appended to this Decision subject to the following conditions:

- a. The Appellants shall submit a deposited Ontario Land Surveyor's Reference Plan to the City, 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.
- b. The Appellants shall ensure compliance with Ontario Building Code requirements regarding spatial separation distances of any structures to the satisfaction of the Planning and Economic Development Department (Building Division - Building Engineering Section).
- c. The Appellants shall receive final approval of any necessary variances from the requirements of the City's Zoning By-laws as determined necessary by the Planning and Economic Development Department (Building Division – Zoning Section).
- d. The Appellants shall enter into and the City of Hamilton register on title, a Consent Agreement, having an administrative fee of \$4,110 (2018 fee) to address issues including but not limited to: lot grading and drainage to a suitable outlet on the conveyed and retained parcels (detailed grading plan required), erosion and sediment control measures (to be included on the grading plan); cash payment requirements for items such as trees (each street tree at \$613.84 plus Harmonized Sales Tax), inspection of grading and securities for items that may include: lot grading (\$10,000 grading security),

water and sewer service inspections, driveway approaches, relocation of any existing infrastructure and any damage during construction.

- e. The Appellants shall pay any outstanding realty taxes and/or all other charges owing to the City Treasurer.
- f. The Appellants shall submit to the City an administration fee of \$17.70 payable to the City of Hamilton to cover the costs of setting up a new tax account for the newly created lot.

“Hugh S. Wilkins”

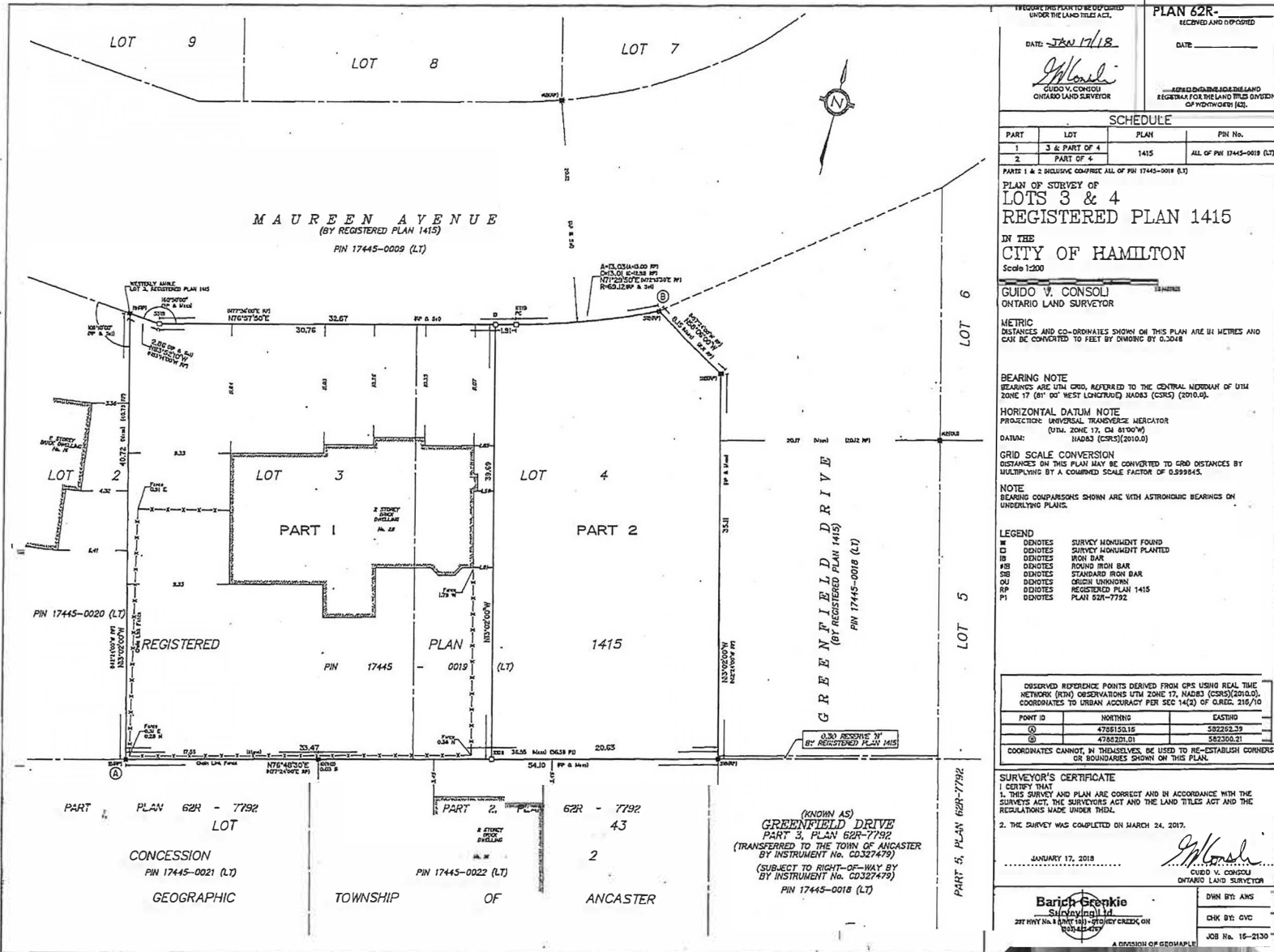
HUGH S. WILKINS
MEMBER

If there is an attachment referred to in this document,
please visit www.elto.gov.on.ca to view the attachment in PDF format.

Local Planning Appeal Tribunal

A constituent tribunal of Tribunals Ontario - Environment and Land Division
Website: www.elto.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

ATTACHMENT 1



REGISTERED PLAN TO BE DEPOSITED UNDER THE LAND TITLES ACT.			
DATE: <u>JAN 17/18</u>		PLAN 62R-	
<i>G.M. Gordon</i> GUIDO V. CONSOLI ONTARIO LAND SURVEYOR		RECEIVED AND DEPOSITED	
DATE: _____		DATE: _____	
APPROVED UNDER THE LAND REGISTRATION FOR THE LAND TITLES DIVISION OF HYDROGRAPHY (42)			
SCHEDULE			
PART	LOT	PLAN	PIN No.
1	3 & PART OF 4	1415	ALL OF PIN 17445-0018 (LT)
2	PART OF 4		
PART 1 & 2 INCLUSIVE CONVEY ALL OF PIN 17445-0018 (LT)			
PLAN OF SURVEY OF LOTS 3 & 4 REGISTERED PLAN 1415 IN THE CITY OF HAMILTON Scale 1:200			
GUIDO V. CONSOLI ONTARIO LAND SURVEYOR			
METRIC DISTANCES AND CO-ORDINATES SHOWN ON THIS PLAN ARE IN METRES AND CAN BE CONVERTED TO FEET BY DIVIDING BY 0.3048			
BEARING NOTE BEARINGS ARE UTM GRID, REFERRED TO THE CENTRAL MERIDIAN OF UTM ZONE 17 (61° 00' WEST LONGITUDE) NAD83 (CSRS) (2010.0)			
HORIZONTAL DATUM NOTE PROJECTION: UNIVERSAL TRANSVERSE MERCATOR (UTM, ZONE 17, CM 6190W) DATUM: NAD83 (CSRS) (2010.0)			
GRID SCALE CONVERSION DISTANCES ON THIS PLAN MAY BE CONVERTED TO GRID DISTANCES BY MULTIPLYING BY A CORRECTED SCALE FACTOR OF 0.999545.			
NOTE BEARING COMPARISONS SHOWN ARE WITH ASTROLOGICAL BEARINGS ON UNDERLYING PLANS.			
LEGEND <ul style="list-style-type: none"> ⊙ DENOTES SURVEY MONUMENT FOUND □ DENOTES SURVEY MONUMENT PLANTED ▣ DENOTES IRON BAR # DENOTES ROUND IRON BAR ⊠ DENOTES STANDARD IRON BAR ⊞ DENOTES OTHER MONUMENT RP DENOTES REGISTERED PLAN 1415 P1 DENOTES PLAN 62R-7792 			
OBSERVED REFERENCE POINTS DERIVED FROM GPS USING REAL TIME NETWORK (RTN) OBSERVATIONS UTM ZONE 17, NAD83 (CSRS) (2010.0), COORDINATES TO URBAN ACCURACY PER SEC 14(2) OF O.R.C. 216/10			
POINT ID	NORTHING	EASTING	
①	4785150.15	522262.39	
②	4785201.01	522306.21	
COORDINATES CANNOT, IN THEMSELVES, BE USED TO RE-ESTABLISH CORNERS OR BOUNDARIES SHOWN ON THIS PLAN.			
SURVEYOR'S CERTIFICATE			
I CERTIFY THAT			
1. THIS SURVEY AND PLAN ARE CORRECT AND IN ACCORDANCE WITH THE SURVEYORS ACT, THE SURVEYORS REG. ACT AND THE LAND TITLES ACT AND THE REGULATIONS MADE UNDER THEM.			
2. THE SURVEY WAS COMPLETED ON MARCH 24, 2017.			
JANUARY 17, 2018		<i>G.M. Gordon</i>	
DATE		SIGNATURE	
GUIDO V. CONSOLI		ONTARIO LAND SURVEYOR	
NAME		TITLE	
Barich Grenkie		DWN BY: ANS	
Surveying Ltd.		CHK BY: GVC	
287 HWY 14 & HWY 101 - STONEY CREEK ON		JOB No. 15-2130	
ROAD 400		A DIVISION OF GEOMATICS	

CERTIFIED A TRUE COPY
 SECRETARY - TREASURER
 SECRET (1)
 AN/10-18-27

(KNOWN AS)
GREENFIELD DRIVE
 PART 3, PLAN 62R-7792
 BY INSTRUMENT No. C0327479
 (SUBJECT TO RIGHT-OF-WAY BY
 BY INSTRUMENT No. C0327479)
 PIN 17445-0018 (LT)