

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



ISSUE DATE: November 15, 2019

CASE NO(S): PL190204

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:	Joseph Edward Faul
Subject:	Consent
Property Address/Description:	1191 Sheffield Road
Municipality:	City of Hamilton
Municipal File No.:	FL/B-19:27
LPAT Case No.:	PL190204
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LPAT Case Name:	Faul v. Hamilton (City)

Heard: August 20, 2019 in Hamilton, Ontario

APPEARANCES:

Parties

Representative

Joseph Edward Faul

Self-represented

DECISION DELIVERED BY M.A. SILLS AND ORDER OF THE TRIBUNAL

[1] The matter before the Local Planning Appeal Tribunal ("Tribunal") is the appeal by Joseph Faul (the "Applicant") from the decision of the City of Hamilton (the "City") Committee of Adjustment (the "COA") to refuse his application for Provisional Consent in respect to his property located at 1191 Sheffield Road (the "subject property/lands").

[2] The subject property is approximately 91 hectares (“ha”) in area and comprises organic pastures, hay fields and bushland. For more than 40 years these lands were being used for the raising of organic grass-fed beef cattle. In more recent years, the property has been used for growing hay and as pasturelands. An existing house on the subject property is currently rented out.

[3] The subject application proposes to divide the property into two land parcels: the proposed severed parcel would be approximately 40.4 ha in area and is intended to be used for agricultural purposes. The proposed retained lot would be approximately 50.6 ha in area and will continue to be used for agricultural purposes and residential use.

[4] The subject lands are designated “Agriculture” and “Open Space” by the Rural Hamilton Official Plan (the “RHOP”) and “Protected Countryside” and “Natural Heritage System” by the Greenbelt Plan and are zoned Agricultural (A1) Zone by Zoning By-law No. 05-200 (the “ZBL”).

[5] The RHOP permits severances in the Agriculture designation, except surplus farm dwelling severances, subject to certain conditions being met. In this case, the relevant policy provisions are:

- a. The permitted agricultural use or agricultural-related use shall comply with the policies of Section D.2, Agriculture;
- b. The minimum lot size for newly created agricultural lots and retained agricultural lots within the Agricultural designation shall be 40.4 hectares;
- c. The calculations of the minimum lot size requirements for the Agricultural designation may include lands designated as Open Space, or identified within the Natural Heritage System.
- d. New lots shall be considered for agricultural uses and agricultural-related uses only and shall demonstrate to the satisfaction of the City, by a report prepared by an

accredited professional knowledgeable in farm economics, such as an agrologist or agronomist, that the proposed agricultural uses on the severed and retained lots are of sufficient size and nature to be reasonably expected to: sustain a commercially viable farm operation; allow farm operators the flexibility to change the existing and proposed farm operation in the event of business failure; and, allow farm operators the flexibility to diversify and intensify the production of agricultural commodities in response to changing economic conditions and trends in agriculture.

[6] The severance policies of the RHOP reflect the intent of the policies of the Greenbelt Plan in respect to agricultural severances in the Rural Area.

[7] In support of the application, the Applicant, who is an accredited expert in agricultural economics and rural development (Bsc Ag Econ & Rural Development), prepared and submitted the requisite economic viability report to the City's Planning and Economic Development Division.

[8] In a report to the COA dated April 4, 2019, City planning staff indicated that the severance proposal conforms to the Greenbelt Plan, the RHOP and the ZBL, and has regard to the matters listed in s. 51 (24) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended (the "Act"). Accordingly, staff recommended that the application be approved, subject to the conditions set out in that same report.

[9] The application was tabled at the April 4, 2019 meeting of the COA to allow committee members to conduct a site inspection. City staff subsequently withdrew their support of the application on the basis that "the evidence is inconclusive", and the COA denied the application at its meeting on April 11, 2019.

[10] It appears that City staff withdrew their support of the application based on the content of a report prepared by an (unnamed) independent Certified Crop Advisor operating under the banner of KC AG Solutions. This report denotes that the author was contacted by an individual by the name of Dale Smith and tasked with inspecting the subject property "in order to determine its agricultural uses as well as viability as a

40-hectare parcel, separate from the existing acreage”. Ultimately, the author of this report concludes that the 40-hectare (severed) parcel cannot be considered a viable farm due to the lack of top soil. In that respect, the author estimates that the farmable acreage is at best, 25% of the entire property. The content of that report is further detailed later in this decision.

[11] In direct contrast, the report prepared by Mr. Faul indicates that “it is reasonable to expect favourable economic returns from both parcels”. Mr. Faul submits that both parcels have the ability to operate a cow calf enterprise, or a feeder rearing or finishing operation. In that regard, he pointed out that in recent years the demand for ‘organic grass fed’ has continued to rise, and commands premiums over conventional feeding programs.

[12] Mr. Faul further pointed out that the clay-based soil composition of these parcels provides enhanced drought tolerance in low rainfall years. As an alternative to livestock production, both parcels could be utilized for organic hay production, a commodity that he said also commands a premium price. Another option is organic edible horticulture production if conventional crop economics are not sustainable for a desired return. Organic vegetable production can achieve a level of income on a small acreage (1 – 5 ha) that is comparable with much larger land requirements for a regular agricultural endeavour. In support of this assertion, Mr. Faul submitted an information bulletin prepared by New Crop Development Specialist, Evan Elford, and distributed by the Ministry of Agriculture, Food and Rural Affairs - Local Hops: A brewing industry (Exhibit 2).

[13] The Applicant subsequently obtained correspondence and a brief from Dr. Harry Cummings which supports the economic viability of farming on the proposed 40.4 ha severed parcel and the 50.6 ha retained parcel (Exhibit 1). Dr. Cummings taught agricultural and rural planning at the University of Guelph from 1982 to 2016 and is an internationally respected expert in agriculture and the economics of agriculture, and specifically, the viability of farming on smaller properties in Ontario.

THE PARTICIPANTS

[14] The following individuals requested and were granted Participant status: Maggie McGuire, Miranda Reis, Lidia DeAngelis and Marilyn Smith.

[15] Ms. McGuire has owned the farm property located next to the proposed severed parcel for 15 years, and her father for 40 years prior to that. Her 100-acre property contains 50 acres of workable farm lands which are being used by a local farmer for growing organic hay. The remaining 50 acres is bushland.

[16] Ms. McGuire said that the Applicant has owned the subject lands for many years but does not live on the property. She said that these lands are unkept and have not been worked for 20 years, or longer.

[17] Ms. McGuire told the Tribunal that she wants this area to remain agricultural and is concerned about what other uses may be made of the property if the severance is allowed. She contends that if the application is approved there is no guarantee that the severed farm lot would be converted to agricultural operations given the current unmanaged state of the property, the financial investment that would be required, and “the high probability that the parcels would be sold for residential building lots”. She is also concerned that as the Applicant owns a trucking business, he may want to use the property for the parking of his company vehicles. Ms. McGuire further noted that several large operations/successful farmers in our area have no interest in this land for farming purposes.

[18] Ms. Reis supports the severance. She owns a farm across the road from the subject property on which she raises sheep and goats and grows organics. She would like to expand and enhance her farming/agricultural operation and is interested in purchasing the severed parcel if the severance is allowed. She said she is not interested in the larger (retained) parcel because it is too big for her to maintain.

[19] Ms. Smith, who has lived on the subject property for eight years, spoke in support of the application. She maintains a horticultural operation on a small portion of the subject property which involves the growing and selling of plants and flowers. She provided the Tribunal with several photographs of her small but thriving and successful business operation, which she said provides her with a good income.

[20] Ms. DeAngelis owns a 24-acre land parcel internal to the subject property. She told the Tribunal that she has maintained a sheep farm operation on her property for 20 years, from which she earns a very good income. She was approached by a member of the COA who was conducting a site visit of the property and spoke at length about the self-satisfaction and economic success she derives from her farm operation. She supports the severance, and in her view, people should not speculate about what the property will be used for.

ANALYSIS AND FINDINGS

[21] In arriving at this disposition, the Tribunal takes note of the documents contained in the file materials, particularly, the staff planning report and recommendation to the COA dated April 4, 2019. In that report staff confirm that the proposed severed and retained parcels exceed the minimum lot size requirement established in the Greenbelt Plan and the RHOP, and that both lots are intended to be used for agricultural purposes.

[22] The critical policy issue in this case, and that for which it appears the original staff recommendation in support of the application was reversed, is whether the proposed (40.6 ha) severed parcel can sustain an economically viable agricultural/farming operation. In that regard, the Tribunal found the report prepared by Mr. Faul and supported by Dr. Cummings more compelling.

[23] By contrast, the conclusions in the AG Solutions report (set out following) are subjective and grounded in conjecture:

I would not consider the 40-hectare area a viable farm due to the lack of top soil. I would estimate the 'farmable' acreage to be at best 25% of the entire property. Livestock could still be grazed on the remaining acres as pasture, but additional feed would have to be brought in from off farm sources.

This farm has not been farmed in quite some time, as the grass hay on the viable portion is tall and thick. My farming experience tells me that if a farmer owns acreage with potential of being farmed, he is going to farm it and use that acreage to its full potential as land is a hot commodity. The fact that a farmer owns this already but does not use it for agricultural purposes tells me that there are reasons for that.

In my opinion, as an agronomist and as a farmer, if this piece of property came up for sale close to me and I had an option to purchase it, I would not be interested as I do not believe it the (sic) return on the investment would pay itself back or add value to my farming operation. If I owned this parcel already, I would be looking to do the same as the applicant is and would attempt to sell it in the future as a building lot.

[24] Principally, the notion that these parcels will be used for non-farming/agricultural purposes is at best, speculative. Furthermore, the ZBL establishes the permitted uses of the property and any intent to deviate from the approved uses will require the property owner to obtain the approval of the municipal Council for a zoning by-law amendment. The local area residents will have an opportunity to let their concerns about any intended new uses of the property be known at any time that such an application is advanced. Notably, Mr. Faul has stated that it is not his intent to park his business trucks on the subject property.

[25] Ms. McGuire has stated that she wants this area to remain agricultural. However, except for a small portion of the property that is being used for the growing of hay and the area being utilized by Ms. Smith for her horticultural growing operation, the subject lands are not and have not been used for agricultural/farming purposes for several years.

[26] In that regard, the Tribunal takes note of the expressed interest by Ms. Reis in purchasing the proposed (40.6 ha) severed parcel to add to her current farming operation, as well as the letter from a neighbouring farm owner (Ryszard Lach) confirming his interest in either renting or purchasing the property. It is also noteworthy

that both Ms. Smith and Ms. DeAngelis indicated that they derive a good income from their farming/agricultural operations, which are being carried out on a significantly smaller acreage of land than that of the proposed severed parcel.

[27] In sum, the Tribunal finds that the application meets the criteria established in s. 51(24) of the Act, and pursuant to s. 53(1) of the Act, a plan of subdivision is not required. The severance application has due regard to matters of Provincial interest and the public interest has been duly regarded. The severance proposal is consistent with the policy directives of the Provincial Policy Statement and maintains the intent of the policies of the RHOP and the Greenbelt Plan. Overall, the severance proposal furthers the policies aimed at the protection and preservation of lands for agricultural purposes and aligns with the principles of good land use planning.

ORDER

[28] The Tribunal orders that the appeal is allowed, and the provisional consent is given subject to the fulfillment of the following conditions:

1. The owner shall submit a deposited Ontario Land Surveyor Reference Plan to the Committee of Adjustment Office, unless exempted by the Land Registry. 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 owner/applicant shall submit survey evidence from a BCIN Qualified Designer (Part 8 Sewage System) or Professional Engineer that the existing septic system complies with the clearance requirements of Part 8 of the Ontario Building Code for the lands to be severed and or retained, to the satisfaction of the Planning and Economic Development Department (Building Division – Plan Examination Section/Building Engineering Section).

3. The owner shall pay any outstanding realty taxes and/or all other charges owing to the City Treasurer.
4. Approximately 3.0 metres are to be dedicated to the right-of-way on Sheffield Road, as per the Council Approved Official Plan: Schedule C-1 – Future Right-of-Way Dedications. Sheffield Road is to be 26.213 m.

A survey conducted by an Ontario Land Surveyor and at the Applicant's expense will determine the ultimate dimensions for the right-of-way widening(s).

5. The owner submits to the Committee of Adjustment office an administrative 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.

"M.A. Sills"

M.A. SILLS
VICE CHAIR

If there is an attachment referred to in this document,
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Local Planning Appeal Tribunal

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