

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: July 08, 2021

CASE NO(S): PL210024

PROCEEDING COMMENCED UNDER subsection 22(7) of the *Planning Act*,
R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: Willow Valley Holdings Inc.
Subject: Request to amend the Official Plan - Refusal
of request by City of Hamilton
Existing Designation: Open Space
Proposed Designated: Rural
Purpose: To permit the creation of two new residential
lots
Property Address/Description: 8475 English Church Road East
Municipality: City of Hamilton
Approval Authority File No.: RHOPA-17-039
LPAT Case No.: PL210024
LPAT File No.: PL210024
LPAT Case Name: Willow Valley Holdings Inc. v. Hamilton (City)

PROCEEDING COMMENCED UNDER subsection 34(11) of the *Planning Act*,
R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: Willow Valley Holdings Inc.
Subject: Application to amend Zoning By-law No. 464
(Glanbrook) - Refusal or neglect by City of
Hamilton to make a decision
Existing Zoning: Open Space (P4)
Proposed Zoning: Rural (A2)
Purpose: To permit the creation of two new residential
lots
Property Address/Description: 8475 English Church Road East
Municipality: City of Hamilton
Municipality File No.: ZAC-17-082
LPAT Case No.: PL210024
LPAT File No.: PL210025

PROCEEDING COMMENCED UNDER subsection 53(14) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: Willow Valley Holdings Inc. et al
 Subject: Application for Consent - Failure of City of Hamilton to make a decision
 Purpose: To permit the creation of two new residential lots
 Property Address/Description: 8475 English Church Road
 Municipality: City of Hamilton
 Municipal File No.: GL/B-15:66
 LPAT Case No.: PL210024
 LPAT File No.: PL210112

PROCEEDING COMMENCED UNDER subsection 53(14) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: Willow Valley Holdings Inc. et al
 Subject: Application for Consent - Failure of City of Hamilton to make a decision
 Purpose: To permit the creation of two new residential lots
 Property Address/Description: 8475 English Church Road
 Municipality: City of Hamilton
 Municipal File No.: GL/B-15:65
 LPAT Case No.: PL210024
 LPAT File No.: PL210111

Heard: June 22, 2021 via video hearing

APPEARANCES:

Parties

Willow Valley Holdings
 (“Applicant/Appellant”)

City of Hamilton (“City”)

Counsel

Anna Toumanians

Patrick MacDonald

MEMORANDUM OF ORAL DECISION DELIVERED BY T. PREVEDEL ON JUNE 22, 2021 AND ORDER OF THE TRIBUNAL

INTRODUCTION

[1] This is the first Case Management Conference (“CMC”) conducted in respect of the Appeals from Willow Valley Holdings pursuant to section 22(7) and 34(11) of the *Planning Act* against the City’s refusal to approve the Appellant’s proposed Official Plan Amendment and Zoning By-Law Amendment . There are related appeals under section 53(14) of the *Planning Act* with respect to the City’s refusal of two related consent applications.

[2] The municipal address of the subject property is 8475 English Church Road East, Glanbrook, otherwise known as the Willow Valley Golf Course.

[3] The Applicant/Appellant filed an application with the City to amend the Official Plan and Zoning By-Law to permit the development of two new residential lots fronting onto English Church Road East. They further propose replacing two less desirable opportunities for residential development on Upper James Street by consolidating them with the adjacent agricultural operation, thus resulting in no net new residential lots.

PARTY AND PARTICIPANT STATUS

[4] There were no requests for Party or Participant Status.

PROCEDURAL ORDER AND ISSUES LIST

[5] A draft Procedural Order and Issues List was submitted to the Tribunal in advance of the CMC. The Parties advised they are still in the process of refining the Issues List to avoid duplication and overlap. They requested a few weeks to finalize the Procedural Order and Issues List once the Hearing date has been set.

OPPORTUNITY FOR MEDIATION

[6] The Parties were asked if they wished to pursue mediation in advance of the

Hearing. All Parties advised they were still willing to consider this and will advise the Case Coordinator at the Tribunal well in advance of the hearing date if a settlement can be reached.

ORGANIZATION OF THE HEARING

[7] The Applicant/Appellant has suggested they would be calling four to five witnesses. The City also will be calling up to five witnesses.

[8] The Parties initially requested 10 days for the hearing, but after some discussion, it was agreed that eight days would be sufficient for the Hearing.

[9] Parties and Participants are asked to log into the video hearing at least **15 minutes** before the start of the event to test their video and audio connections:

<https://global.gotomeeting.com/join/125174269>

Access code: 125 174 269

[10] Parties and participants are asked to access and set up the application well in advance of the event to avoid unnecessary delay. The desktop application can be downloaded at [GoToMeeting](#) a web application is available:

<https://app.gotomeeting.com/home.html>.

[11] Persons who experience technical difficulties accessing the GoToMeeting application or who only wish to listen to the event can connect to the event by calling into an audio-only telephone line: (Toll Free): [1 888 299 1889](tel:18882991889) or [+1 \(647\) 497-9373](tel:+16474979373).

The access code is 125 174 269.

[12] Individuals are directed to connect to the event on the assigned date at the correct time. It is the responsibility of the persons participating in the hearing by video to ensure that they are properly connected to the event at the correct time. Questions

prior to the hearing event may be directed to the Tribunal's Case Coordinator having carriage of this case.

ORDER

[13] A Procedural Order and Issues List was finalized and received by the Tribunal on July 7, 2021 and is attached as Attachment 1. As such, it is in full force and effect.

[14] An eight-day Hearing is scheduled to proceed by video hearing starting on **Monday, May 17, 2022 at 10 a.m.**

[15] The Parties are to inform the Case Coordinator should there be any changes as a result of discussions regarding a potential settlement.

[16] This Member is not seized, but may assist with case management, schedules permitting.

[17] No further notice will be given.

"Tony Prevedel"

TONY PREVEDEL
MEMBER

Ontario Land Tribunal

Website: olt.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

The Conservation Review Board, the Environmental Review Tribunal, the Local Planning Appeal Tribunal and the Mining and Lands Tribunal are amalgamated and continued as the Ontario Land Tribunal.

ATTACHMENT 1

ONTARIO LAND TRIBUNAL

PROCEEDING COMMENCED UNDER subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

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 Purpose: To permit the creation of two new residential lots
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 Municipality File No.: ZAC-17-082
 OLT Case No.: PL210024
 OLT File No.: PL210025

PROCEEDING COMMENCED UNDER subsection 53(14) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: Willow Valley Holdings Inc. et al.
 Subject: Application for Consent - Failure of City of Hamilton to make a decision
 Purpose: To permit the creation of two new residential lots
 Property Address/Description: 8475 English Church Rd.
 Municipality: City of Hamilton
 Municipal File No.: GL/B-15:66
 OLT Case No.: PL210024

OLT File No.: PL210112

PROCEEDING COMMENCED UNDER subsection 53(14) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: Willow Valley Holdings Inc. et al.
 Subject: Application for Consent - Failure of City of Hamilton to make a decision
 Purpose: To permit the creation of two new residential lots
 Property Address/Description: 8475 English Church Rd.
 Municipality: City of Hamilton Municipal File
 No.: GL/B-15:65
 OLT Case No.: PL210024
 OLT File No.: PL210111

PROCEDURAL ORDER

The Tribunal orders that:

1. The Tribunal may vary or add to these rules at any time, either on request or as it sees fit. It may alter this Order by an oral ruling, or by another written Order.

Organization of the Hearing

2. The Hearing will begin on **May 17, 2022 at 10 a.m.** via video hearing:
<https://global.gotomeeting.com/join/125174269>
3. The length of the Hearing will be about **eight (8) days**. The length of the Hearing may be shortened as issues are reordered as settlement is achieved.
4. The Parties and Participants identified at the case management conference are set out in **Schedule 1** (see **Schedule 3** for the meaning of these terms).
5. The Issues are set out in the Issues List attached as **Schedule 2**. There will be no changes to this list after the date set out in paragraph 2 above unless the Tribunal permits, and a party who asks for changes may have costs awarded against it.
6. The order of evidence shall be as set out in **Schedule 4** to this Order. The Tribunal may limit the amount of time allocated for opening statements, direct evidence (including the qualification of witnesses), cross examination, evidence in reply and final argument. The length of written argument, if any, may be limited either on consent or by Order of the Tribunal.

7. Any person intending to participate in the Hearing should provide a mailing address, email address and a telephone number to the Tribunal as soon as possible – ideally before the case management conference. Any person who will be retaining a representative should advise the other parties and the Tribunal of the representative's name, address, email address and the phone number as soon as possible.

Requirements Before the Hearing

8. A party who intends to call witnesses, whether by summons or not, shall provide to the Tribunal, the other parties and to the Clerk a list of the witnesses and the order in which they will be called. This list must be delivered on or before **January 17, 2022**.
9. Expert witnesses in the same field shall have a meeting on or before **February 16, 2022** to try to resolve or reduce the issues for the Hearing. The experts must prepare a list of agreed facts and the remaining issues to be addressed at the Hearing. This list shall be provided to all of the Parties and filed with the Tribunal on or before **March 8, 2022**.
10. An expert witness shall prepare an expert witness statement, which shall list any reports prepared by the expert, or any other reports or documents to be relied on at the Hearing. Copies of this must be provided as set out in paragraph 122. Instead of a witness statement, the expert may file his or her entire report if it contains the required information. If this is not done, the Tribunal may refuse to hear the expert's testimony.
11. Expert witnesses who are under summons but not paid to produce a report do not have to file an expert witness statement; but the Party calling them must file a brief outline of the expert's evidence, as set out in paragraph 122. A Party who intends to call a witness who is not an expert must file a brief outline of the witness' evidence, as set out in paragraph 12.
12. On or before **March 25, 2022**, the Parties shall provide copies of their expert witness statements to the other Parties.
13. On or before **March 25, 2022**, a Participant shall provide copies of their written participant statement to the other Parties. A Participant cannot present oral submissions at the Hearing on the content of their written statement, unless ordered by the Tribunal.
14. Parties may provide to all other Parties a written reply to any witness or expert witness statement, provided that such reply is circulated to all other Parties on or before **April 26, 2022**.

15. On or before **April 26, 2022**, the parties shall provide copies of their visual evidence to all of the other Parties. If a model will be used, all Parties must have a reasonable opportunity to view it before the Hearing.
16. A person wishing to change written evidence, including witness statements, must make a written motion to the Tribunal in accordance with the Tribunal's Rules.

See Rule 10 of the Tribunal's Rules with respect to Motions, which requires that the moving party provide copies of the motion to all other parties 15 days before the Tribunal hears the motion.
17. A Party who provides written evidence of a witness to the other Parties must have the witness attend the Hearing to give oral evidence, unless the Party notifies the Tribunal on or before May 10, 2022, that same is not part of their record.
18. The Parties shall prepare and file a hearing plan with the Tribunal on or before **May 3, 2022** with a proposed schedule for the hearing that identifies, as a minimum, the Parties participating in the hearing, the preliminary matters (if any to be addressed), the anticipated order of evidence, the date each witness is expected to attend, the anticipated length of time for evidence to be presented by each witness in chief, cross-examination and re-examination (if any) and the expected length of time for final submissions. The parties are expected to ensure that the Hearing proceeds in an efficient manner and in accordance with the hearing plan. The Tribunal may, at its discretion, change or alter the hearing plan at any time in the course of the Hearing.
19. Documents may be delivered by personal delivery, facsimile or registered or certified mail or email, or otherwise as the Tribunal may direct. The delivery of documents by fax and email shall be governed by the Tribunal's Rules (Rule 7) on this subject. Material delivered by mail shall be deemed to have been received five business days after the date of registration or certification.
20. No adjournments or delays will be granted before or during the Hearing except for serious hardship or illness. The Tribunal's Rule 17 applies to such requests.

This Member is not seized.

So Orders the Tribunal.

SUMMARY OF KEY DATES

Date	Hearing Event
January 17, 2022	Deadline to exchange expert witness list
February 16, 2022	Meeting of like experts
March 8, 2022	Exchange and file Agreed Statement of Facts
March 25, 2022	Exchange of expert reports/expert witness statements/written evidence, participant statements. evidence outlines for witnesses under summons
April 26, 2022	Exchange of Reply Evidence/Statements
April 26, 2022	Exchange of Visual Evidence
May 3, 2022	Parties to file Hearing Plan with Tribunal
May 10, 2022	Notification to Tribunal and Parties if witness not to provide oral evidence
May 17, 2022	Hearing start date

SCHEDULE 1 – PARTIES AND PARTICIPANTS**PARTIES**

- 1. Willow Valley Holdings Inc. et al.**
(Willow Valley Holdings Inc., Greenhorizons Sod Farms, The Greenhorizons Group of Farms Ltd.)

Turkstra Mazza Associates
15 Bold Street
Hamilton, ON L8P 1T3
Tel: 905-529-3476

Scott Snider
Email: ssnider@tmalaw.ca

Anna Toumanians
Email: atoumanians@tmalaw.ca

- 2. City of Hamilton**

City of Hamilton
50 Main Street East, 5th Floor
Hamilton, ON L8N 1E9

Patrick MacDonald
T: 905-564-2424 ext. 4708
Email: Patrick.MacDonald@hamilton.ca

SCHEDULE 2 – ISSUES LIST**City of Hamilton Issues**

1. Is the development proposal consistent with the Provincial Policy Statement in protecting the Hamilton International Airport from incompatible land uses and development with respect to Policies 1.2.6.1, 1.6.9.1 and 1.6.9.2?
2. Is the development proposal consistent with the Provincial Policy Statement, by allowing residential development outside of the designated rural settlement area with respect to Policies 1.1.4.2 and 1.1.5.2?
3. Is the development proposal consistent with the Provincial Policy Statement agriculture and lot creation Policies 2.3.3.1, 2.3.4.1 and 2.3.4.3?
4. Does the development proposal conform with the Growth Plan for the Greater Golden Horseshoe in protecting the Hamilton International airport from incompatible land uses with respects to Policies 3.2.5.1 and 3.2.5.2?
5. Does the development proposal comply with the Rural Hamilton Official Plan Airport Influence Area Policies in protecting the Hamilton International Airport from incompatible land uses as per Policies B.3.6.3.2, B.3.6.3.8, C.4.8.5, C.4.8.7 and C.4.8.8?
6. Is it good planning and appropriate to permit the development of two new residential lots within the 35-40 Noise Exposure Forecast contours as per Table C.4.8.1 in the Rural Hamilton Official Plan?
7. Does the development proposal comply with the Noise and Vibration Emissions policies of the RHOP, specifically Policies B.3.6.3.8 and C.4.8?
8. Do the proposed lots comply with the lot creation policies of the Rural Hamilton Official Plan, specifically Policy F.1.14.2.1?
9. Do the proposed lots comply with the Rural Designation lot creation policies of the Rural Hamilton Official Plan, specifically Policy F.1.14.2.3?
10. Do the proposed lots comply with the Private Water and Wastewater Services policies of the RHOP, specifically C.5.1.1?
11. Does the development proposal maintain an appropriate setback to the intermittent stream located at the rear of the proposed second lot "Part 2" on Survey prepared by

A.T. McLaren Ltd. and dated May 1, 2015 as per Policy C. 2.4.11 in the Rural Hamilton Official Plan?

12. Do the proposed lots meet the zoning requirements of the City of Hamilton Zoning By-law No.05-200 Rural (A2) Zone, specifically Provision 12.2.3.7?
13. Does the proposal have sufficient regard for the matters in s. 51(24) of the Planning Act?

Willow Valley Holdings Inc. et al. Issues

14. Is the proposal consistent with the Provincial Policy Statement (PPS) when considering policy 4.2 regarding the assessment of all the policies of the PPS together as per Implementation and Vision of the PPS outlined in Part IV?
15. Does the proposal, with appropriate conditions, constitute new development with respect to the lot creation policies in Policy 2.3.4 of the PPS and Policies F.1.14.2.1 and F.1.14.2.3 of the Rural Hamilton Official Plan (RHOP)?
16. What are the implications of the Airport Nose given other noise sources?
17. Is the proposal consistent with policies which protect and promote agricultural uses in Policy 1.1.5.7, 2.3.1 of the PPS, Policy 4.2.6.4 of the Growth Plan, and Policies D.1.0 and D.4 of the RHOP?
18. Is the proposal consistent with improving the quality of life, building rural character, and leveraging rural amenities and assets in accordance with Policy 1.1.4.1(a) of the PPS?
19. Does the proposal encourage the conservation and redevelopment of existing rural housing stock on rural lands in accordance with Policy 1.1.4.1(d) of the PPS?
20. Is the proposal compatible with the rural landscape in accordance with Policy 1.1.5.4 of the PPS?
21. Does the proposal minimize potential conflicts between residential and agricultural uses as anticipated in Policy 2.3.4 of the PPS, Policy 4.2.6.3 of the Growth Plan and Policies D.2.0 and D.3.0 of the RHOP?
22. Is the proposal generally consistent with the intent of the surplus farm creation policies in Policy 2.3.4 of the PPS and Policy F1.14.2 of the RHOP?
23. Does the proposal allow for an increase in the amount of land used for agricultural purposes and for the consolidation and enlargement of an existing farm parcel consistent with the intent of Policy 2.3 of the PPS, Policy 2.2.9 of the Growth Plan, and Policies D.1.0, D.2.0 and D.3.0 of the RHOP?

Note 1: *The identification of an issue on this Issues List is intended to provide notice to all parties that a party will lead evidence and/or argument on the matter, unless the party notifies the parties opposite prior to the commencement of the hearing that it is abandoning the issue. The identification of issues does not serve as an acknowledgement by the parties opposite of their relevancy to the determination of the Tribunal. The extent to which these issues are relevant to the determination of the Tribunal will be addressed as a matter of evidence and argument at the hearing.*

Note 2: *Where an issue refers to a provision from the PPS or the Growth Plan or either of the Official Plans in addressing the issue, the planning document from which the provision is taken should be read in its entirety with all relevant provisions being considered. For greater certainty, the identification of a specific provision in an issue does not preclude the parties opposite from referring to other provisions from the same planning document in addressing that issue.*

SCHEDULE 3 – TERMS AND INFORMATION

Meaning of Terms Used in the Procedural Order

Party is an individual or corporation permitted by the Tribunal to participate fully in the hearing by receiving copies of written evidence, presenting witnesses, cross-examining the witnesses of the other parties, and making submissions on all of the evidence. If an **unincorporated group** wishes to become a party, it must appoint one person to speak for it, and that person must accept the other responsibilities of a party as set out in the Order. Parties do not have to be represented by a lawyer, and may have an agent speak for them. The agent must have written authorization from the party.

NOTE that a person who wishes to become a party before or at the hearing, and who did not request this at the case management conference (CMC), must ask the Tribunal to permit this.

A **participant** is an individual, group or corporation, whether represented by a lawyer or not, who may make a written submission to the Tribunal. A participant cannot make an oral submission to the Tribunal or present oral evidence (testify in-person) at the hearing (only a party may do so). Subsection 33.2 of the Local Planning Appeal Tribunal Act states that a person who is not a party to a proceeding may only make a submission to the Tribunal in writing. The Tribunal may direct a participant to attend a hearing to answer questions from the Tribunal on the content of their written submission, should that be found necessary by the Tribunal. A participant may also be asked questions by the parties should the Tribunal direct a participant to attend a hearing to answer questions on the content of their written submission.

A participant must be identified and be accorded participant status by the Tribunal at the CMC. A participant will not receive notice of conference calls on procedural issues that may be scheduled prior to the hearing, nor receive notice of mediation. A participant cannot ask for costs, or review of a decision, as a participant does not have the rights of a party to make such requests of the Tribunal.

Written evidence includes all written material, reports, studies, documents, letters and witness statements which a party or participant intends to present as evidence at the hearing. These must have pages numbered consecutively throughout the entire document, even if there are tabs or dividers in the material.

Visual evidence includes photographs, maps, videos, models, and overlays which a party or participant intends to present as evidence at the hearing.

A **witness statement** is a short written outline of the person's background, experience and interest in the matter; a list of the issues which he or she will discuss and the witness' opinions on those issues; and a list of reports that the witness will rely on at the hearing.

An **expert witness statement** should include his or her (1) name and address, (2) qualifications, (3) a list of the issues he or she will address, (4) the witness' opinions on those issues and the

complete reasons for the opinions and (5) a list of reports that the witness will rely on at the hearing.

A **participant statement** is a short written outline of the person's or group's background, experience and interest in the matter; a list of the issues which the participant wishes to address and the submission of the participant on those issues; and a list of reports, if any, which the participant wishes to refer to in their statement.

Additional Information

Summons: A party must ask a Tribunal Member or the senior staff of the Tribunal to issue a summons. This request must be made before the time that the list of witnesses is provided to the Tribunal and the parties. (See Rule 13 on the summons procedure.) If the Tribunal requests it, an affidavit must be provided indicating how the witness' evidence is relevant to the hearing. If the Tribunal is not satisfied from the affidavit, it will require that a motion be heard to decide whether the witness should be summoned.

The order of examination of witnesses: is usually direct examination, cross-examination and re-examination in the following way:

- direct examination by the party presenting the witness;
- direct examination by any party of similar interest, in the manner determined by the Tribunal;
- cross-examination by parties of opposite interest;
- re-examination by the party presenting the witness; or
- another order of examination mutually agreed among the parties or directed by the Tribunal.

SCHEDULE 4 – ORDER OF EVIDENCE**Order of Evidence**

1. Willow Valley Holdings Inc. et al.
2. City of Hamilton
3. Willow Valley Holdings Inc. et al. (reply)