



SUBJECT: Refusal of Official Plan Amendment Application for 6515 McNiven Road

TO: Planning and Development Committee

FROM: Planning and Building Department

Report Number: PB-34-17

Wards Affected: 3

File Numbers: 505-01/16

Date to Committee: November 1, 2017

Date to Council: November 13, 2017

Recommendation:

Refuse the application for an Official Plan Amendment for lands at 6515 McNiven Road, submitted by Fothergill Planning & Development Inc. on behalf of Andrew and Lorraine McLean; and

Endorse the Planning Department comments on Niagara Escarpment Commission Development Permit application file H/R/2015-2016/393, attached in Appendix 5, and direct the Director of Planning and Building to forward these comments to the Niagara Escarpment Commission.

Purpose:

The purpose of this report is to recommend that Council refuse the subject application for an Official Plan Amendment for lands at 6515 McNiven Road.

The following objectives of the Burlington Strategic Plan 2015-2040 are germane to the discussion of the subject application:

A City that Grows

- Intensification
 - 1.2.e: Older neighbourhoods are important to the character and heritage of Burlington and intensification will be carefully managed to respect these neighbourhoods.

A Healthy and Greener City

- Environmental and Energy Leadership

- 3.2.a: The city has a healthy natural heritage system that is protected, well-connected, conserved and enhanced and forms a fundamental component of the city's urban and rural areas.

Executive Summary:

RECOMMENDATIONS:		<i>Refuse Application</i>	Ward No.:	3
Application Details	APPLICANT:	<i>Ed Fothergill Planning & Development Inc.</i>		
	OWNER:	<i>Andrew and Lorraine McLean</i>		
	FILE NUMBERS:	<i>505-01/16</i>		
	TYPE OF APPLICATION:	<i>Official Plan Amendment</i>		
	PROPOSED USE:	<i>Redesignate from Open Space to Residential to permit 1 additional detached residential lot</i>		
Property Details	PROPERTY LOCATION:	<i>East side of McNiven Road, south of Kilbride Street</i>		
	MUNICIPAL ADDRESSES:	<i>6515 McNiven Road</i>		
	PROPERTY AREA:	<i>2.5 ha</i>		
	EXISTING USE:	<i>1 detached dwelling (designated Residential) and woodlot (designated Open Space)</i>		
Documents	OFFICIAL PLAN Existing:	<i>“Kilbride Rural Settlement Area: Open Space” (approximately 2.1 ha), and “Kilbride Rural Settlement Area: Residential” (approx. 0.4 ha)</i>		
	OFFICIAL PLAN Proposed:	<i>“Kilbride Rural Settlement Area: Residential” (entire lot) with reduced minimum lot size</i>		
	ZONING Existing:	<i>Not applicable (NEC Development Control Area)</i>		
	ZONING Proposed:	<i>Not applicable</i>		
Processing Details	NEIGHBOURHOOD MEETING:	<i>June 27, 2016</i>		
	PUBLIC COMMENTS:	<i>Staff have received two letters since the statutory public meeting of September 13, 2016.</i>		

Background and Discussion:

General

On May 6, 2016, the Planning and Building Department acknowledged that a complete application had been received to amend the Official Plan to redesignate land at 6515 McNiven Road from Open Space to Residential to facilitate the creation of two new residential lots (for a total of three lots), as shown in Appendix 2.

On November 2, 2016, City staff hosted a meeting between the applicant and staff from Halton Region, Conservation Halton, and the Ministry of Natural Resources and Forestry, to discuss technical comments related to the impacts on natural heritage of the proposed development. In response to these comments, the applicant submitted a revised proposal on March 1, 2017 which proposed the creation of only one additional lot (for a total of two), as shown in Appendix 3.

This report provides an analysis of the application with consideration for relevant provincial and municipal policies, and presents staff's recommendation that Council refuse the application.

Site Description

The subject property is located on the east side of McNiven Road, south of Kilbride Street, as shown on Appendix 1: Sketch No. 1. It has an area of 2.51 hectares, 184 metres of frontage on McNiven Road, and an average depth of approximately 122 metres.

Approximately 83% of the site is wooded, as shown in Figure 1. The unwooded, southern portion of the site is occupied by an existing 1.5-storey, detached dwelling with a ground floor area of 242 m², and an accessory outdoor swimming pool.

The site is located entirely within the Niagara Escarpment Commission (NEC) Development Control area, and is designated as Minor Urban Centre in the Niagara Escarpment Plan.

The subject property is surrounded by the following uses:

- to the north: single detached dwellings on properties fronting on Kilbride Street with an average area of 0.13 ha;
- to the east and south: single detached dwellings on properties fronting on Jane Street and McNiven Road, with an average area of 1.35 ha;

- to the west: McNiven Road, beyond which are single detached dwellings on properties with an average area of 0.43 ha.

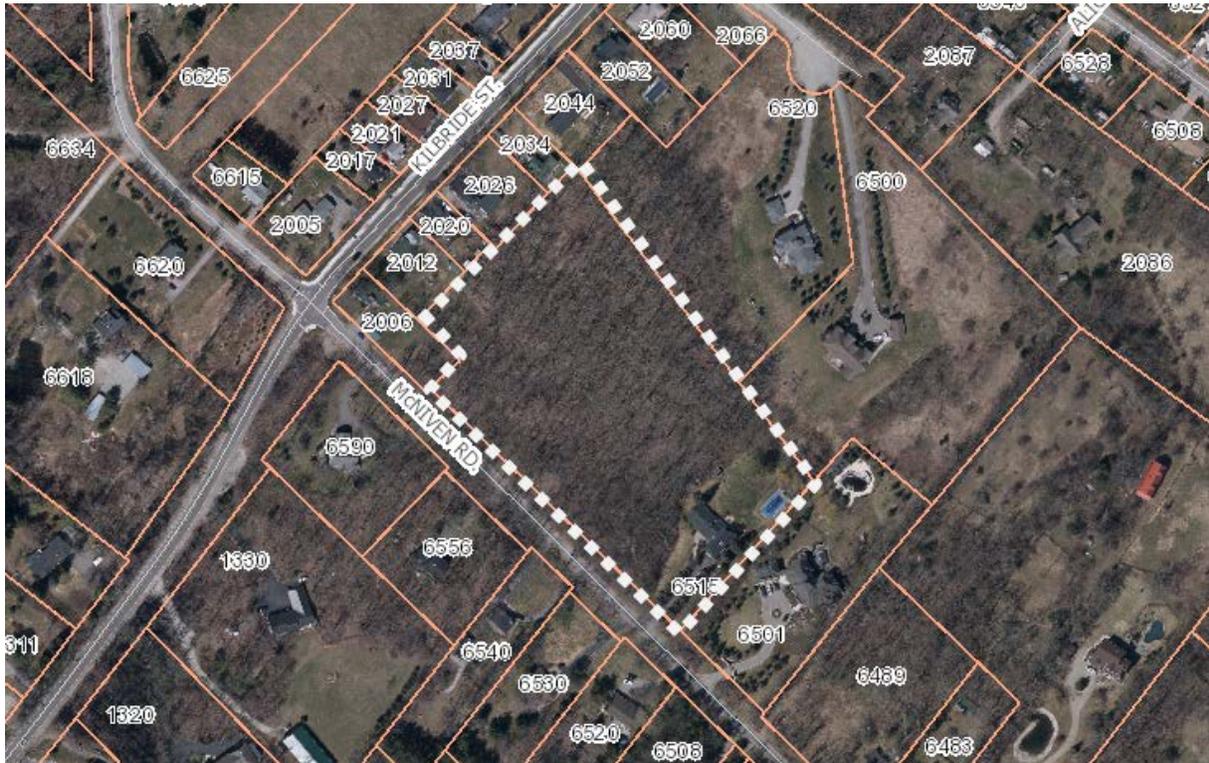


Figure 1: 2015 Air Photo with subject property outlined

Site History

The subject property as it exists today was created through severance of a larger parcel in 2001; however, the relevant history of the site extends back to the 1980s.

The original parcel had an area of approximately 6.7 ha and extended from McNiven Road to Jane Street, as shown in Figure 2. The former owners of this parcel submitted an application to Halton Region in 1988 to subdivide the parcel into 7 lots. The processing of this application was delayed because hydrogeological studies were not completed to the satisfaction of the Region. The application was modified and resubmitted in 1992, still proposing a seven-lot subdivision. This application was referred to the Ontario Municipal Board (OMB) in 1993.

On September 15, 1995, the OMB ordered that the plan of subdivision be refused on the basis that the Board could not be assured that the Region's hydrogeological concerns had been adequately addressed.

In 1997, another application to subdivide the parcel into 7 lots was submitted to the City of Burlington (files 510-02-4/97 and 24T-97013/B). This application was identical to the

one refused by the OMB in 1995, but was submitted with revised hydrogeological studies. In 2000, the owner withdrew this subdivision application, and instead applied to the Committee of Adjustment for consent to sever the parcel into four lots.

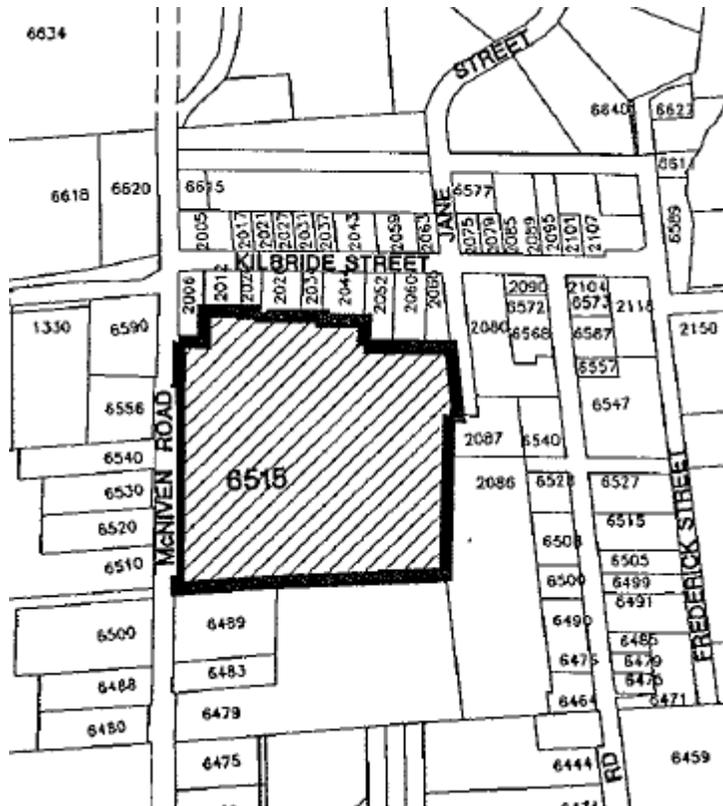


Figure 2: The original 6.7 ha parcel, which was the subject of unsuccessful subdivision applications in 1988, 1992, and 1997 and was ultimately severed in 2001.

The severance was supported by City of Burlington staff, and was approved by the Committee of Adjustment in 2001 (files B01/002/B and B01/003B). The original 6.7 ha parcel therefore became four lots: two fronting on Jane Street and two fronting on McNiven Road. One of the newly created lots on McNiven Road was the 2.5 ha lot that is the subject of the current application for an Official Plan Amendment, shown in Figure 3. The four new lots were configured in such a way as to retain the existing woodlot within what is now the subject property. A required condition of the severance was that maximum dwelling size on the lots be restricted to 325 m² including garage.

In 2009, the current owners of the subject property submitted applications to the Niagara Escarpment Commission (NEC) to permit the creation of two new residential lots from the subject property (files 555-04/09 and 555-10/09). City of Burlington staff submitted comments to the NEC indicating that they did not support the applications because the proposed lot creation did not conform to the “Open Space” Official Plan designation. The applications were closed by the NEC after they lapsed.

In 2016, the City of Burlington received the current application to amend the Official Plan for the subject property, to address the conformity issues cited in 2009.

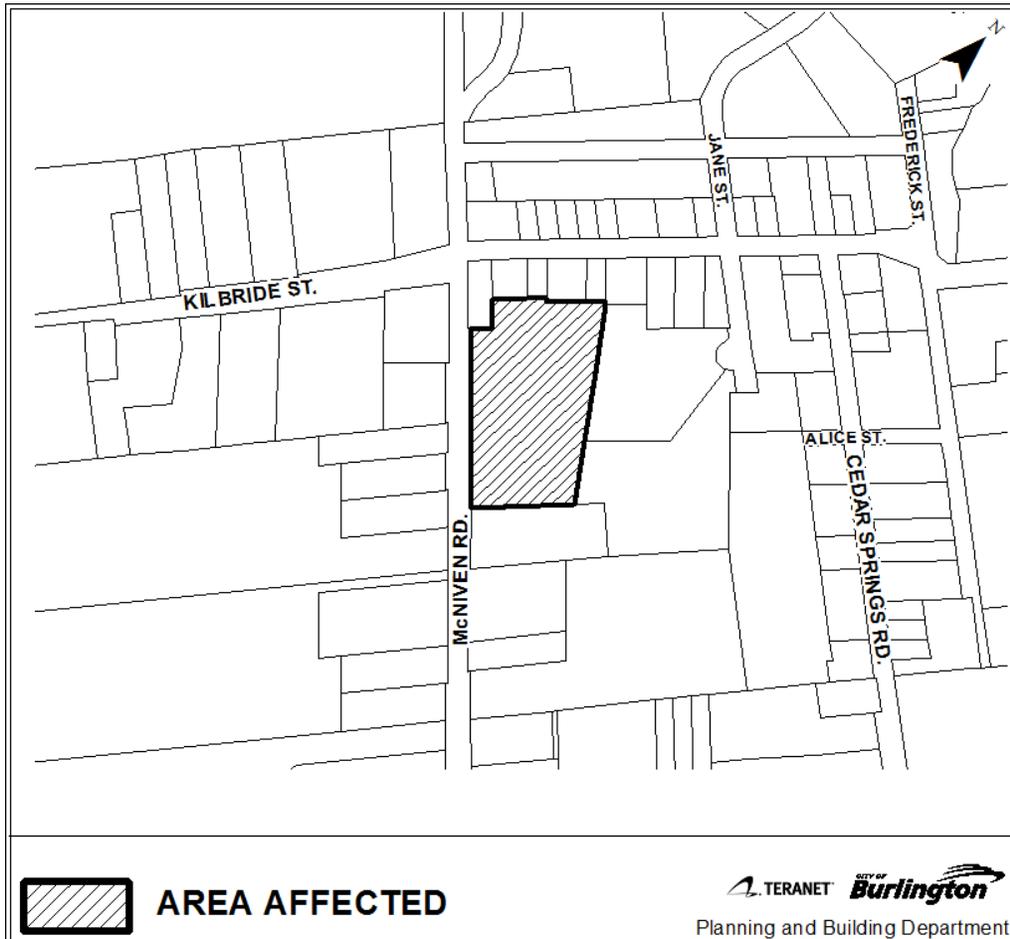


Figure 3: The subject property as it exists today: created through severance in 2001, and the subject of a 2009 NEC permit application. It is now the subject of the current 2016 applications for Official Plan Amendment and NEC permits

Description of Application

The applicant originally intended to create two new residential lots through consent, resulting in a total of three lots, which would accommodate the development of two new single detached dwellings as shown in Appendix 2, Sketch No 2. The characteristics of these three lots were to be as follows:

- Lot 1 (south), containing existing detached dwelling: 0.73 ha, with approximately 60 metres of frontage on McNiven Road;
- Lot 2 (centre): 0.8 ha, with approximately 73 metres of frontage on McNiven Road; and

- Lot 3 (north): 0.97 ha, with approximately 52 metres of frontage on McNiven Road.

The applicant revised the application in response to technical comments on the natural heritage components of the first submission and modified the proposal to create one additional lot, resulting in a total of two lots, which would accommodate the development of one new single detached dwelling as shown in Appendix 3, Sketch No. 3. The lot characteristics of the current proposal are:

- Lot 1 (south), containing existing detached dwelling: 0.73 ha, with approximately 60 metres of frontage on McNiven Road; and
- Lot 2 (north): 1.78 ha, with approximately 123.66m of frontage on McNiven Road.

Figure 4 below shows the revised proposal superimposed over an air photo, demonstrating that the new development, if approved, will be located within the existing woodlot.

Prior to applying for consent to sever the property, the applicant must obtain a Development Permit from the Niagara Escarpment Commission (NEC) as well as an Official Plan Amendment (OPA) from the City of Burlington. The OPA is necessary to:

- redesignate the wooded portion of the subject property from “Open Space” to “Residential”; and
- reduce the minimum lot size requirement from 0.8 ha to 0.7 ha

The original application requested that the minimum lot frontage required in the Official Plan be reduced from 60 m to 52 m; however, the revised application eliminates this request and shows all lots conforming to the 60m minimum lot frontage requirement.

The OPA application and NEC permit application have been processed concurrently by the City of Burlington and the NEC. This report pertains primarily to the OPA application but also addresses City staff’s process to provide input to the NEC on the Development Permit application.

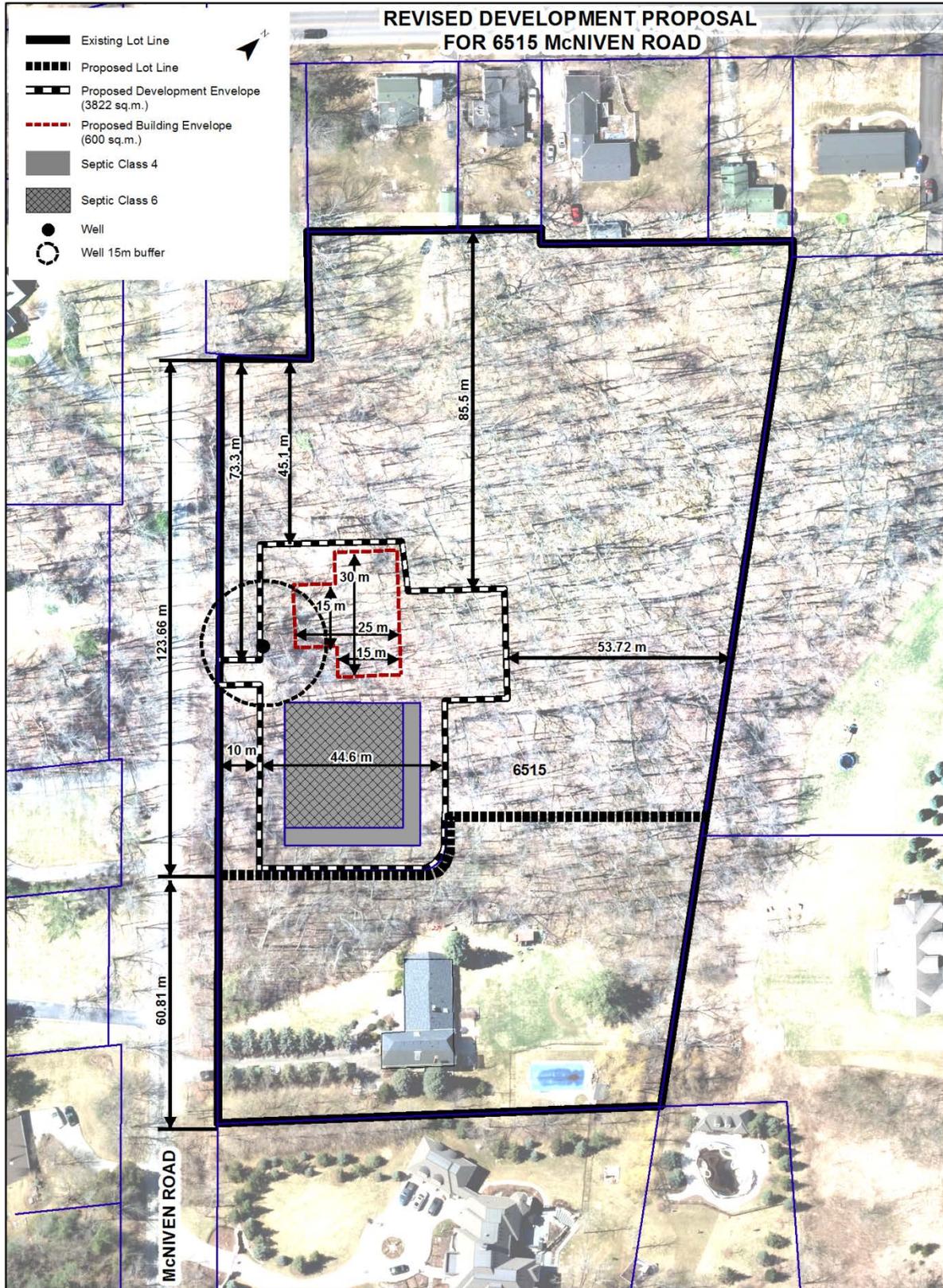


Figure 4: Proposed new lot layout superimposed over air photo

Submitted Technical Reports

The following studies were submitted in support of the application to amend the Official Plan to permit the original (May 2016) concept for the creation of two new lots:

- Planning Justification Report, prepared by Fothergill Planning & Development Inc, dated March 12, 2016
 - This report presents an independent planning opinion that argues that the proposed development represents good planning in that it is compatible with the local rural context, will not have adverse impacts on the natural features or water supply in the area, and conforms to provincial, regional, and municipal policies. The report includes proposed wording for a draft Official Plan Amendment.
- Septic System Impact Assessment, prepared by Norbert M. Woerns M.Sc. P.Geo, dated February 28, 2015
 - This report concludes that the creation of two additional lots on the subject property is sustainable from a groundwater quality impact perspective.
- Hydrogeological Investigations Report, prepared by Norbert M. Woerns M.Sc. P.Geo., dated October 5, 2015
 - This report provides an overview of the hydrogeological conditions of the subject property and local area, and assesses the hydrogeological suitability of the proposed severance for two additional lots. Its conclusions include: that adequate groundwater supplies are available for residential domestic use on the two proposed severances, that the proposed development is sustainable without adverse impacts on the groundwater quality, and that enhanced sewage treatment (i.e.: a Class 6 septic system) is appropriate given the highly vulnerable nature of the local groundwater system.
- Environmental Impact Assessment, prepared by North-South Environmental Inc, dated March, 2016
 - This report provides a biophysical inventory of the site and assesses the expected impacts on the environment from the proposed development. The report does not anticipate significant impacts on woodland, species at risk bat maternity roost sites, significant wildlife habitat, or hydrogeology. The report also recommends measures to avoid and mitigate negative impacts to natural heritage features.
- Tree Preservation Plan, prepared by North-South Environmental Inc, dated April, 2016

- This report identifies trees to be retained, potentially retained, or removed, assesses potential impacts to retained trees, and recommends measures to mitigate negative impacts on natural features. The report concludes that the proposed development will result in the removal of 325 trees, including 44 hazard trees that are recommended to be removed due to safety concerns.
- Acoustic Bat Survey Results, prepared by North-South Environmental Inc, submitted August 2, 2016
 - This brief provides the results of an acoustic survey conducted on the subject property in June, 2016. The survey was conducted as follow-up on the Environmental Impact Assessment that had been completed in March 2016. Survey results explain that endangered Myotis bats “were detected on most nights by all detectors”.
- Investigations of Candidate Bat Maternity Roost Habitat, prepared by North-South Environmental Inc, dated September 2016
 - This report documents and provides in-depth analysis of the results of the acoustic bat survey that had earlier been summarized in a brief submitted on August 2nd, 2016. The in-depth report describes and discusses the methods and results of the survey. The report concludes that the proposed development could occur without eliminating the capacity of the existing woodlot to provide habitat for detected bat species, and recommends mitigation measures including the provision of human-made roosting habitat options such as “bat condos” or “bat boxes”.

Revised Technical Reports

The applicant revised their Official Plan Amendment and NEC applications to propose only one additional lot, rather than two. This revision was made in response to technical comments on the natural heritage issues of the original proposal that been provided between August and December 2016, and discussed in person at a meeting with technical agencies on November 2, 2016. On March 1, 2016, the applicant submitted the following documents in support of the revised proposal:

- Cover letter, prepared by Fothergill Planning & Development, dated February 24, 2017
 - This letter was addressed to both the City of Burlington and the NEC, and outlined the applicant’s intent to change their applications to both agencies to a scaled-back proposal that would only introduce one additional lot, rather than two. The letter also outlined the reasons why the applicant felt this revision would address the technical concerns raised by agencies over the original proposal.

- Revised site plan showing proposed lot fabric, dated February 15, 2017
- Revised draft Official Plan Amendment
- Revised Environmental Impact Assessment, prepared by North-South Environmental Inc., dated February 2017
- Revised Tree Preservation Plan, prepared by North-South Environmental Inc., dated February 2017.

Digital copies of all submitted studies and drawings are available at www.burlington.ca/6515mcniven.

Policy Framework

The proposed Official Plan Amendment is subject to the following policy framework: the Provincial Policy Statement, the Niagara Escarpment Plan, the Growth Plan for the Greater Golden Horseshoe, the Greenbelt Plan, the Halton Region Official Plan, and the City of Burlington Official Plan. The applicable policies from these documents are discussed below.

Zoning By-law 2020 does not apply to the subject property due to the property's location within the Niagara Escarpment Commission's Development Control Area.

Staff note that the applicable policy framework changed during the course of the review of the subject applications. The applicant submitted their Official Plan Amendment application in May 2016, and their revised submission in February 2017. At the time, the Province of Ontario was preparing amendments to several provincial plans as the result of a co-ordinated review of those plans. Those amendments came into effect in spring 2017 with the release of the amended Niagara Escarpment Plan (June 1, 2017), Greenbelt Plan (July 1, 2017), and Growth Plan for the Greater Golden Horseshoe (July 1, 2017). None of these amended plans contained transition policies that would allow existing applications to continue to be evaluated under the policies of the old plans. Therefore, the City must ensure that any decisions on the subject application conform to the current provincial plans, regardless of when the application was submitted.

Provincial Policy Statement (PPS) (2014)

The Provincial Policy Statement (PPS) provides policy direction on matters of provincial interest related to land use planning and development. All municipal land use planning decisions must be consistent with the PPS.

The PPS dictates that “healthy, liveable and safe communities are sustained by... avoiding development and land use patterns which may cause environmental or public health and safety concerns”, and by “promoting development and land use patterns that conserve biodiversity and consider the impacts of a changing climate” (PPS 1.1.1).

Part V, Section 2.0 of the PPS contains policies guiding municipalities in the use and management of resources. These policies require that natural features and areas be protected for the long term (2.1.1), and state that “the diversity and connectivity of natural features in an area, and the long-term ecological function and biodiversity of natural heritage systems, should be maintained, restored or, where possible, improved” (2.1.2).

Crucially for the subject application, the PPS prohibits development and site alteration in significant wildlife habitat or on lands adjacent to significant wildlife habitat, “unless it has been demonstrated that there will be no negative impacts on the natural features or their ecological functions” (2.1.5 d, and 2.1.8). Development and site alteration are also prohibited in habitat of endangered species and threatened species, except in accordance with provincial and federal requirements (2.1.7).

The subject application does not conform to the Provincial Policy Statement as it proposes development within a woodlot consisting of both significant wildlife habitat and species at risk habitat, and has not demonstrated that there will be no negative impacts on the natural features or their ecological functions.

Niagara Escarpment Plan (2017)

The subject property is located within the Niagara Escarpment Commission Development Control Area and is designated as Minor Urban Centre in the 2017 Niagara Escarpment Plan (NEP). The NEP provides a framework of objectives and policies to strike a balance between development, protection, and the enjoyment of the escarpment and the resources it supports (NEP 1).

Details of the subject application’s compliance with the NEP are discussed below under Technical Circulation.

Growth Plan for the Greater Golden Horseshoe (2017)

The Growth Plan for the Greater Golden Horseshoe (“the Growth Plan”) requires municipalities to plan for complete communities that are compact, transit-supportive, and make effective use of investments in infrastructure and public service facilities, while at the same time ensuring protection of agricultural and natural areas and supporting climate change mitigation and adaptation.

The Growth Plan directs municipalities to protect natural heritage features and systems in a manner that is consistent with the PPS (Growth Plan 4.2.2.6). Regarding the issues pertinent to the subject application, the Growth Plan defers to the relevant and similar policies of the PPS and the Niagara Escarpment Plan (Growth Plan 1.2.3).

Greenbelt Plan (2017)

The Greenbelt Plan informs municipal decision-making to permanently protect the agricultural land base and the ecological and hydrological features, areas, and functions occurring within the Greenbelt.

The subject property is located within the Greenbelt Plan Area; however, because the property is also located within the Niagara Escarpment Plan Area, the requirements of the NEP prevail over the Greenbelt Plan policies. An exception is section 3.3 of the Greenbelt Plan, which is still applicable in the NEP area but is not relevant to the subject application (Greenbelt 2.2).

Halton Region Official Plan (2009)

The Regional Official Plan (ROP) Map 1 designates the subject property primarily as Regional Natural Heritage System, with a small portion designated as Hamlet. Map 1G identifies the wooded area on the subject property as being a Key Feature of the Regional Natural Heritage System.

Halton Region staff have provided comments describing their analysis of the subject application. These comments indicate that the proposed development does not conform to the ROP and Regional staff are not in support of the subject application. The details of the Region's analysis are incorporated into the discussion of the application below under "Technical Review".

City of Burlington Official Plan

The subject property is located in the Kilbride Rural Settlement Area, as shown on Schedule C of Burlington's Official Plan, "Comprehensive Land Use Plan – Rural Planning Area". Rural Settlement Area policies are guided by the principle that growth and development "shall be compatible with and provide protection for the natural environment and have regard for existing settlement patterns" (Part IV, 3.1a). The objectives of the Rural Settlement Area include providing limited opportunities for rural, non-farm residences in certain rural communities; and ensuring that the impacts of development on groundwater supplies are evaluated and considered (Part IV, 3.2). The policies for Rural Settlement Areas establish that the minimum lot size shall be 0.8 ha or as determined by site-specific hydrogeological studies, whichever is the greater. Development proposals must ensure to the maximum possible degree the preservation of significant natural features, including wooded areas and groundwater recharge areas (Part IV, 3.3).

Schedule G of Burlington's Official Plan, "Kilbride Settlement Area – Land Use Plan", designates the wooded area of the property as Open Space, while the southern portion of the property where the existing house is located has a Residential designation.

The Residential designation permits single-detached dwellings on lots with a minimum lot width of 60 m, a minimum front yard setback of 10 m, and a minimum side yard setback of 5 m (Part IV, 3.4).

The Open Space designation applies to lands that are flood-susceptible, are within defined creek valleys, have rock outcrops or wooded areas, or are imperfectly drained due to shallow depth of overburden. There shall be no encroachment of development or major landscape alteration on Open Space lands (Part IV, 3.7).

The applicant acknowledges that the proposed development does not conform to the policies of the Official Plan concerning minimum lot area and encroachment of development on Open Space lands; hence, they have applied to amend the Official Plan to permit the development as outlined under “Description of Application” above.

Detailed analysis of the subject application as it relates to the Official Plan is discussed under Strategy/Process below.

Strategy/process

Processing of the subject application progressed as follows:

- May 2016: acknowledgement of receipt of complete application; public and technical circulations
- June 27, 2016: site visit by City and Region staff, neighbourhood meeting
- June-September 2016: receipt of technical comments from originally circulated agencies
- August-September 2016: receipt of additional information (bat habitat reports) from applicant
- September 2016: circulation extended to MNRF
- September 13, 2016: statutory public meeting
- November 2, 2016: meeting with applicant and technical agencies to discuss natural heritage comments
- December 2016: formal comments received from MNRF
- November 2016-February 2017: City awaits applicant’s response to agency comments
- March 2017: applicant submits revised proposal and City circulates it to relevant technical agencies
- June 1, 2017: release of new Niagara Escarpment Plan
- April-September 2017: receipt of technical comments on revised submission
- November 1, 2017: staff recommendation report presented at public meeting

Technical Review

On May 16, 2016, staff circulated a request for comments on the subject application to internal and external technical agencies including Halton Region, the Niagara Escarpment Commission (NEC), and Conservation Halton. As the reports on bat habitat submitted by the applicant in August and September 2016 indicated the presence of species-at-risk (SAR) bats on the property, the technical circulation was extended to the Ministry of Natural Resources and Forestry in September 2016.

Niagara Escarpment Commission (NEC)

City staff requested comments on the subject Official Plan Amendment application from the NEC, while simultaneously the NEC requested comments on the parallel NEC Development Permit application from City staff. Neither City staff nor NEC staff were able to formally respond to the circulation of the other without first obtaining direction from their approval authority (City Council and the Commission, respectively). Nonetheless, City and NEC staff consulted informally with one another throughout the parallel reviews of the two applications.

From June to August of 2017, City and Regional staff sought guidance from NEC staff on the interpretation of the policies of the new Niagara Escarpment Plan (NEP), which had come into effect on June 1, 2017. NEC staff provided the requested guidance in the form of a letter to City staff dated August 23, 2017. This letter communicated NEC staff's interpretation of the relevant policies from the new NEP.

In this letter, NEC staff advised that the proposed development requires removal of a portion of the existing woodlot on the subject property, which would be contrary to the requirements of the NEP: specifically, that development in Minor Urban Centres must be compatible with and provide for the protection of existing natural heritage features and functions (NEP 1.6.8.9a), and that the creation of new lots must both protect and enhance existing natural heritage and hydrologic features and functions (NEP 2.4.5b). It is noted that "protect and enhance" is specific to the existing natural heritage feature, and there is no allowance for net gain or overall benefit in the NEP".

NEC staff also referred to part 2.7.4 of the NEP, which emphasizes that development should be avoided within natural heritage features even if they are not identified as key natural heritage features.

Part 2.7.2 (a) of the NEP allows for the development of a single dwelling and accessory facilities within a key natural heritage feature on an existing lot of record; therefore, the NEC and City are advised not to approve the requested Development Permit and Official Plan Amendment, as these would facilitate the creation of a lot of record, which by extension would allow development in a key natural heritage feature.

The letter advised that in accordance with these policies, NEC staff do not support the subject Official Plan Amendment application, and will be recommending that the

Commission refuse the parallel Development Permit application at the earliest opportunity.

City staff responded in kind by sending NEC staff a letter which provided an interpretation of the City policies relevant to the Development Permit application, and advising that City staff intended to recommend that City Council refuse the requested Official Plan Amendment. City staff have additionally prepared formal comments for the NEC; these are attached to the subject report as Appendix 5, and will be sent to the NEC if endorsed by Council as recommended.

Ministry of Natural Resources and Forestry (MNRF)

The MNRF was not included in the original technical circulation, as MNRF interests are typically represented in the comments from Conservation Halton, through the memorandum of understanding between these two agencies. After reviewing the submitted materials, Conservation Halton advised the MNRF that species-at-risk bats had been detected on the subject property; MNRF staff then expressed an interest in providing comments directly. City staff therefore extended the technical circulation to the MNRF in September 2016.

MNRF staff provided informal comments on the application at a meeting with the applicant and other agencies on November 2nd, 2016. Formal comments followed in a letter dated December 9, 2016. The City received MNRF comments on the applicant's revised submission on April 28 and May 5, 2017.

The MNRF recognizes the woodlot on the subject property as habitat for Little Brown Myotis and Northern Myotis, and most likely for Eastern Small-footed Myotis as well. All three of these species are listed as Endangered on the List of Species at Risk in Ontario, and have both species protection and general habitat protection in accordance with sections 9 and 10 of the Endangered Species Act (ESA). MNRF staff opine that the woodlot is likely maternity roost habitat for these bats. The woodlot is therefore protected and consequently the proposed development may require an authorization under the ESA in order to proceed.

In their 2016 comments on the original application, MNRF staff required the applicant to consider alternative development concepts which would avoid development in SAR habitat. In their 2017 comments on the applicant's revised submission, MNRF staff acknowledged the applicant's efforts to reduce the impact of the proposed development, but did not consider the revisions to have sufficiently avoided or mitigated impacts to the protected habitat. The MNRF do not support the subject application as proposed.

Conservation Halton (CH)

The subject property does not contain wetlands or any flooding or erosion hazards associated with a creek, and therefore it is not regulated by Conservation Halton; however, CH commented on the subject application nonetheless in accordance with

their memoranda of understanding with Halton Region and with the Ministries of Natural Resources and Forestry (MNR) and Municipal Affairs and Housing (MMAH).

CH provided comments on the original application on August 5, 2016, indicating that further information was required to demonstrate conformity with applicable legislation including the PPS, and that the natural heritage constraints on the subject property may preclude development. At the time these comments were issued, CH staff had not yet reviewed the Acoustic Bat Monitoring study results that the applicant had submitted after the circulation of the other studies. Once they had reviewed this study, CH staff referred the application to the MNR for consideration of species at risk.

CH staff attended a meeting with the applicant along with City, Region, and MNR staff on November 2, 2016, to discuss their comments and their concerns with the original proposal. The applicant revised their proposal based on these comments.

The City received CH comments on the revised submission on August 30, 2017. These comments acknowledge the applicant's efforts to address the concerns that arose from the original proposal, but they assess that the revisions do not succeed in addressing all of those concerns.

Included among those areas of concern are the applicant's proposed mitigation measures. CH staff note that many of these measures depend on the behaviour of future landowners. Although the subject application delineates a development envelope, future landowners may be expected to remove tall cavity trees outside of the development envelope to lessen the risk of them falling and damaging their house, pool, or other property. If development is permitted to occur within the woodlot, then the same tall cavity trees that appeal to endangered bats as maternity roost sites may be seen by humans as safety hazards. Negative impacts on the natural heritage features would therefore be expected to compound over time, beyond those impacts anticipated in the submitted Environmental Impact Assessment.

Notwithstanding these possible additional impacts, even the impacts anticipated in the EIA are excessive as they fail to meet the PPS requirement that there be no negative impacts on significant wildlife habitat at all. CH staff therefore do not support the proposed development as currently proposed.

Halton Region

Halton Region provided preliminary comments on the original circulation on September 26, 2016. These comments pertained only to natural heritage considerations, and did not include discussion of hydrogeological or public health matters. Regional staff attended a meeting at Burlington City Hall on November 2, 2016, to discuss these comments with the applicant alongside representatives from the City, Conservation Halton, and the MNR.

On September 18, 2017, City staff received the Region's comprehensive comments on the full original application, as well as the revised natural heritage studies submitted by the applicant in February 2017.

Hydrogeology

In accordance with Regional and Local Official Plan policies, the applicant submitted a Septic System Impact Assessment and Hydrogeological Investigations (Stage 1 – Preliminary and Stage 2 – Final) as part of their applications. Halton Region had these studies peer-reviewed to ensure compliance with the Region's Guidelines for Hydrogeological Studies and Best Management Practices for Groundwater Protection. These studies relate to the original proposal to create two new lots, and were not required to be updated to reflect the revised proposal to create only one new lot.

The Region's peer reviewer concluded that the applicant's consultant had followed the Regional Guidelines, and agreed with the conclusions of the submitted studies that adequate supplies of potable water exist and the developed aquifer is capable of delivering potable groundwater supplies suitable for domestic use with some minor treatment, with nominal interference to adjacent on-site wells. The peer reviewer also agreed with the applicant's consultant that a Class 6 or similar nitrate-removing private sewage treatment system with fully raised leaching bed with mantle would be required to account for the low-permeability soils, shallow saturation, and fractured bedrock on the subject property.

The peer reviewer agreed that the minimum lot sizes proposed in the submitted studies are sufficient to ensure that the proposed lots will be self-sustaining and that nitrate levels at the down-gradient property boundary will not exceed 10mg/L. Regional staff nonetheless had some concerns from a public health perspective, as the area is considered hydrogeologically sensitive (fractured bedrock at surface) and this could increase nitrate levels beyond the levels predicted by the dilution model used in the submitted report. The Region therefore recommended that a 5-year groundwater monitoring and treatment system agreement be required if the application is approved.

Natural Heritage

Regional staff have reviewed the revised Environmental Impact Assessment and Tree Preservation Plan that the applicant submitted in response to the first round of natural heritage comments, and find that there are several technical matters still outstanding. Regional staff have reviewed the comments of the NEC, MNRF, and Conservation Halton, and share their concerns. Regional staff do not support the subject application on the basis that it fails to meet the tests required under the applicable legislation, including the PPS requirement to demonstrate no negative impacts to significant wildlife habitat.

Other

Regional staff advise that the majority of the subject property is identified as having archaeological potential; however, an archaeological assessment is not requested due to the Region's recommendation that the application should be refused. Should any works occur on the subject property in the future and archaeological resources be found, the property owner should immediately contact the Ministry of Tourism, Culture, and Sport.

The Region has reviewed the submitted Environmental Site Screening Questionnaire and has no concerns that the subject property may be contaminated.

City Departments and Advisory Committees

Site Engineering staff had no objections to approval of the application so long as the requirements of Halton Region and the NEC were satisfied. Forestry staff deferred to Halton Region and Conservation Halton to determine whether the woodlot on the subject property was appropriate for development. Both Site Engineering and Forestry staff provided additional comments reflecting additional requirements that would apply at the severance stage if the subject application were to be approved.

Transportation staff have no objections to the proposed development.

Finance staff raised no objections and provided standard comments indicating that all property taxes must be paid in full.

Burlington's Sustainable Development Committee (SDC) was included in the original circulation and advised that they would not be providing comments as they did not feel they would have constructive input to offer. At the Statutory Public Meeting in September 2016, Council requested that SDC reconsider this position. In response to this request, SDC reviewed the technical circulation again and maintained their position that they would not provide comments as they felt they did not have constructive input to offer.

Other Agencies

Burlington Hydro raised no objections to the subject application, and provided standard comments advising of hydro connection requirements that will apply if development is approved.

Neither Halton District School Board nor Halton Catholic District School Board raised any objections to the subject application. Both boards advised that if development is approved, Education Development Charges will apply.

Analysis

The applicant has applied for an Official Plan amendment to redesignate the wooded portion of the subject property from Open Space to Residential, and to reduce the required minimum lot area from 0.8 ha to 0.7 ha. In evaluating the subject application,

staff considered whether the requested amendment is consistent with the intent of the Official Plan (OP).

Request for redesignation

The wooded portion of the subject property is currently designated Open Space because it is wooded, contains rock outcrops, and may be imperfectly drained due to shallow depth of overburden (Part IV, 3.7 d). This designation prohibits the encroachment of development or major landscape alteration (Part IV, 3.7 f). The applicant proposes to redesignate this area so that the entirety of the property would have a Residential designation. This designation would permit the development of single detached dwellings, as well as home occupations and cottage industries as an accessory use to a single detached dwelling. Bed and breakfast homes are also permitted in this designation. The applicant's revised proposal conforms to the minimum lot width and setback requirements established in the Residential Land Use Policies (Part IV, 3.4).

One of the guiding principles of the OP addresses "the need to promote the intensification of residential and other land uses" in appropriate areas of the city including Rural Settlement Areas; however, "the Plan also recognizes that the extent and type of intensification must be evaluated in light of other important planning considerations, such as the protection of the natural environment, health and safety and the need for compatibility with existing residential neighbourhoods" (Part I, 3.0 h). This principle reinforces the need to ensure that the proposed development will not have negative impacts on the existing natural heritage features on the subject property.

Development proposals in Rural Settlement Areas are required to ensure to the maximum possible degree the preservation of significant natural features, including wooded areas (Part IV, 3.3 j). While the woodlot on the subject property does not meet the definition of a significant woodlot, it does constitute species-at-risk habitat for endangered bats, as well as significant wildlife habitat for Eastern Wood Pewee and certain types of non-endangered bats. It is therefore a significant natural feature. The subject application proposes to remove at least 0.38 ha of this habitat to make room for development, and technical agencies have expressed concerns that additional removals could occur during the construction and future occupation of the proposed residential use.

The applicant has reduced the scale of their proposal from proposing two new lots to just one, and has recommended a number of mitigation measures such as managing construction activities, erecting fences, and providing a brochure to future landowners advising how to minimize impacts on natural features. Comments from technical agencies indicate that despite these efforts, the proposed development still fails to meet the tests required by applicable legislation: in particular, the PPS requirement that the development cause no negative impacts on the natural features or their ecological

functions. With this in mind, staff are not satisfied that the proposal represents preservation of significant natural features to the maximum possible degree, or that it represents good planning. Staff oppose the requested amendment to redesignate from Open Space to Residential.

Request for reduced minimum lot size

Part II, section 2.11.2.3 of the OP contains policies to restrict development that would cause a decline in the quantity or quality of groundwater, and to restrict development in hydrogeologically sensitive areas. In accordance with these policies, the applicant was required to submit studies of hydrogeological and septic system impacts from the proposed development. As discussed under Technical Review above, these studies were evaluated by the Region through a peer review, and were found to demonstrate that the proposed development is supportable from a hydrogeological perspective.

The subject application proposes the creation of a new lot with an area of 1.78 ha, leaving a retained lot with an area of 0.73 ha. To facilitate this, the applicant requests an OP amendment to reduce the minimum required lot size from 0.8 ha to 0.7 ha. Part IV, section 3.3, policy (e) requires that minimum lot size for new lots to be created through severance be determined based on detailed site analysis including a hydrogeological study which addresses the impacts of the new lots on ground and surface water resources. The applicant submitted a Septic System Impact Assessment that concludes that 0.73 ha is the minimum lot size needed to ensure the proposed development is sustainable from a groundwater quality impact perspective. The area of the proposed retained lot matches this minimum; however, the minimum of 0.7 ha requested in the submitted draft Official Plan Amendment is less than the 0.73 ha minimum recommended by the submitted study. The requested 0.7 ha is therefore unsupportable.

The OP also requires that the Hydrogeological Investigations prepared by Halton Region for each Settlement Area be referred to when determining appropriate lot sizes for development proposals (IV 3.3 f). Halton Region staff advise that the 2009 Regional Official Plan contains updated standards that require individual study on a lot-specific basis rather than depending on the Region's past studies that considered lot size on a settlement area-wide basis. Nonetheless, past Regional studies were considered by the applicant's consultant and the Region's peer reviewer.

Part IV, section 3.3 (c) of the OP states that minimum lot size shall be the greater of 0.8 ha or an area determined by study. This policy anticipates that studies may recommend reduced lot sizes but expresses a clear intent that lot size should not be less than 0.8 ha. Site-specific hydrogeological studies are only intended to determine when it is necessary to increase the minimum, not to decrease it. Staff therefore do not support the applicant's request to reduce the minimum lot size below 0.8 ha as this would not conform with the intent of this section of the OP.

Financial Matters:

All applicable development application processing fees have been paid.

Environmental Matters:

Halton Region staff have advised that the wooded area on the subject property is not considered to be “significant woodlands”. Woodlands are deemed to be significant if they meet certain ecological, functional, or economic criteria identified in the PPS, such as species composition, age of trees and stand history, site quality, and past management history. The Regional Official Plan refines these criteria to reflect the Halton context.

Despite not being significant woodland, the wooded area on the subject property is nonetheless a key natural heritage feature as defined in the Niagara Escarpment Plan, as it constitutes both species-at-risk habitat for endangered bat species and significant wildlife habitat for Eastern Wood Pewee and certain non-endangered bat species. This status affords the wooded area protections under provincial and municipal policies, as described above under Policy Framework and Strategy/Process.

The applicant was required to submit an Environmental Impact Assessment and Tree Preservation Plan in accordance with sections 118(3), 118(3.1), 147(5f) of the Regional Official Plan and Part VI, section 1.3 (f) of the City’s Official Plan. The applicant was also required to submit an Environmental Site Screening Questionnaire in accordance with section 147(17) of the Regional Official Plan.

Conservation Halton (CH) confirmed in 2014 that the subject property does not contain or lie adjacent to any wetland or CH-regulated area. Nonetheless, CH was circulated on the application and provided comments on submitted studies as per their memoranda of understanding with Halton Region and with the Ministry of Natural Resources and Forestry and Ministry of Municipal Affairs and Housing.

Public Engagement Matters:

The application was subject to the standard circulation requirements for a property in the rural area. A public notice and request for comments were circulated in June 2016 to all property owners and tenants within 300 m of the subject property. A notice sign was posted on the subject property on May 5, 2016.

A webpage was created on the City of Burlington website: www.burlington.ca/6515mcniven. This webpage provides information about the subject application including dates of public meetings, links to supporting studies, and contact information for the applicant's representative and the City's Planning Department.

Open House

The applicants hosted their own public open house at Kilbride Public School on November 16, 2015, several months prior to the submission of their applications to the City of Burlington and NEC. City staff were not involved in organizing this meeting, but Planning Department staff attended the meeting, as did Ward 3 Councilor Taylor.

The applicant advises that eighteen people attended the Open House, and that most of the questions and concerns raised were concerning potential impacts to the local groundwater supply.

Neighbourhood Meeting

City staff held a neighbourhood meeting on June 27, 2016 at the Conservation Halton office at 2596 Britannia Road, Burlington. City Planning and Site Engineering staff were present, as were the owners of the subject property and their representatives. The meeting was attended by eight residents, as well as by Ward 3 Councilor Taylor.

Concerns raised by residents at this meeting generally concerned impacts from the proposed development on groundwater supplies and the natural environment. These concerns were shared with staff at Halton Region and Conservation Halton for consideration in their review of the submitted studies. Technical review of the submitted hydrogeological studies by Halton Region's peer reviewer concluded that the impacts on groundwater supply would be nominal. The technical review of the natural heritage studies by several agencies concluded that the proposed development would have unacceptable impacts on significant wildlife habitat if approved.

Public Comments

Prior to the statutory public meeting of September 13 2016, staff received four letters in response to the public circulation. These letters were addressed in the information report PB-54-16 presented at the statutory public meeting.

Since the writing of the information report, staff have received two additional letters related to the subject application from members of the public. Both of these letters express opposition to the proposed development. These letters are attached in Appendix 4.

Staff's response to the concerns raised in the received letters is as follows:

- a) Concern that the proposed development would be affected by flooding because the subject property is poorly drained.
 - The wooded area on the subject property is currently designated Open Space. This designation applies to lands that are flood-susceptible, are within defined creek valleys, have rock outcrops or wooded areas, or are imperfectly drained due to shallow depth of overburden (OP Part IV, 3.7 d). Development and major landscape alteration are not permitted to encroach on Open Space lands. Staff are recommending that the wooded area of the subject property retain its Open Space designation.
- b) Concern that wildlife will be affected if the proposed development is permitted.
 - The applicant was required to submit an Environmental Impact Assessment in support of their application, which was reviewed by Halton Region, Conservation Halton, the Niagara Escarpment Commission, and the Ministry of Natural Resources and Forestry. Staff have considered the impacts of the proposed development on wildlife habitat, and are recommending refusal of the application.
- c) Concern that insufficient groundwater supplies exist to support the proposed development.
 - The applicant was required to submit Phase 1 and 2 Hydrogeological Investigations in support of their application. Halton Region had these studies peer-reviewed to ensure compliance with Regional guidelines. The Region's peer reviewer agreed with the conclusion of the studies that the subject property could accommodate the proposed development with only nominal effects on adjacent wells. Nonetheless, staff are recommending refusal of the application due to natural heritage and OP conformity concerns.
- d) Disagreement with the suggestion that the community is satisfied with the proposed development.
 - Staff received four letters from residents prior to the statutory public meeting, and two after. All of these letters expressed opposition to the subject application. Staff considered public comments in the evaluation of the subject application.
- e) Concern that information report PB-54-16 implied that the proposed development conforms to the City's Strategic Plan
 - Staff wish to clarify that the language in the information report saying certain objectives of the Strategic Plan "align with" the subject application was intended to convey that these objectives are relevant to the discussion of the subject application.
- f) Concern about setting a precedent for future land use proposals.

- Staff evaluate all applications on their merits, with consideration for the context of the specific site under application. The public will be consulted on future development applications in accordance with the Planning Act. An approval or refusal for one application does not guarantee the same result for a future application.
- g) Concern that if the subject application is approved, future landowners may remove trees outside of the proposed development envelope.
 - Technical agencies share this concern: although NEC site plan conditions and the Region's Tree bylaw could provide enforcement options if tree removal occurred outside the development envelope, these mechanisms could not undo the damage caused by unlawful tree removals, and would not be applicable to the removal of hazard trees. It is preferable to prevent such damage in the first place by not permitting the proposed development to occur and by extension causing trees within the wooded area to become considered as hazards to said development.
- h) Concern that the proposed development does not conform to municipal or provincial plans.
 - Policy conformity has been considered in this report, and staff are recommending that the application be refused on the basis that it does not conform to applicable policies.

Conclusion:

Staff have evaluated the subject application with consideration for the applicable provincial, regional, and municipal policies, as well as input from technical agencies and the public. Staff find that the requested Official Plan Amendments do not satisfy the requirements of the applicable legislation and therefore recommend that the subject application be refused.

Respectfully submitted,

Thomas Douglas

Planner – Development Review & Heritage

(905) 335-7600 ext. 7811

Appendices:

1. Sketch 1: Location/Zoning Sketch

2. Sketch 2: Detail Sketch – Original Proposal (May 2016)
3. Sketch 3: Detail Sketch – Revised Proposal (February 2017)
4. Public Comments received since Statutory Public Meeting of September 13, 2016
5. Proposed City Comments on Niagara Escarpment Commission Development Permit Application H/R/2015-2016/393

Notifications:

Ed Fothergill, President

Fothergill Planning & Development Inc.
62 Daffodil Crescent, Ancaster ON, L9K 1E1

Shelley Partridge, Senior Planner

Legislative & Planning Services
Halton Region
1151 Bronte Road, Oakville ON, L6M 3L1

Michael Baran, Planner

Niagara Escarpment Commission
232 Guelph Street, Georgetown ON, L7G 4B1

Leah Chishimba, Environmental Planner (cc: Heather Dearlove)

Conservation Halton
2596 Britannia Road West, Burlington ON, L7P 0G3

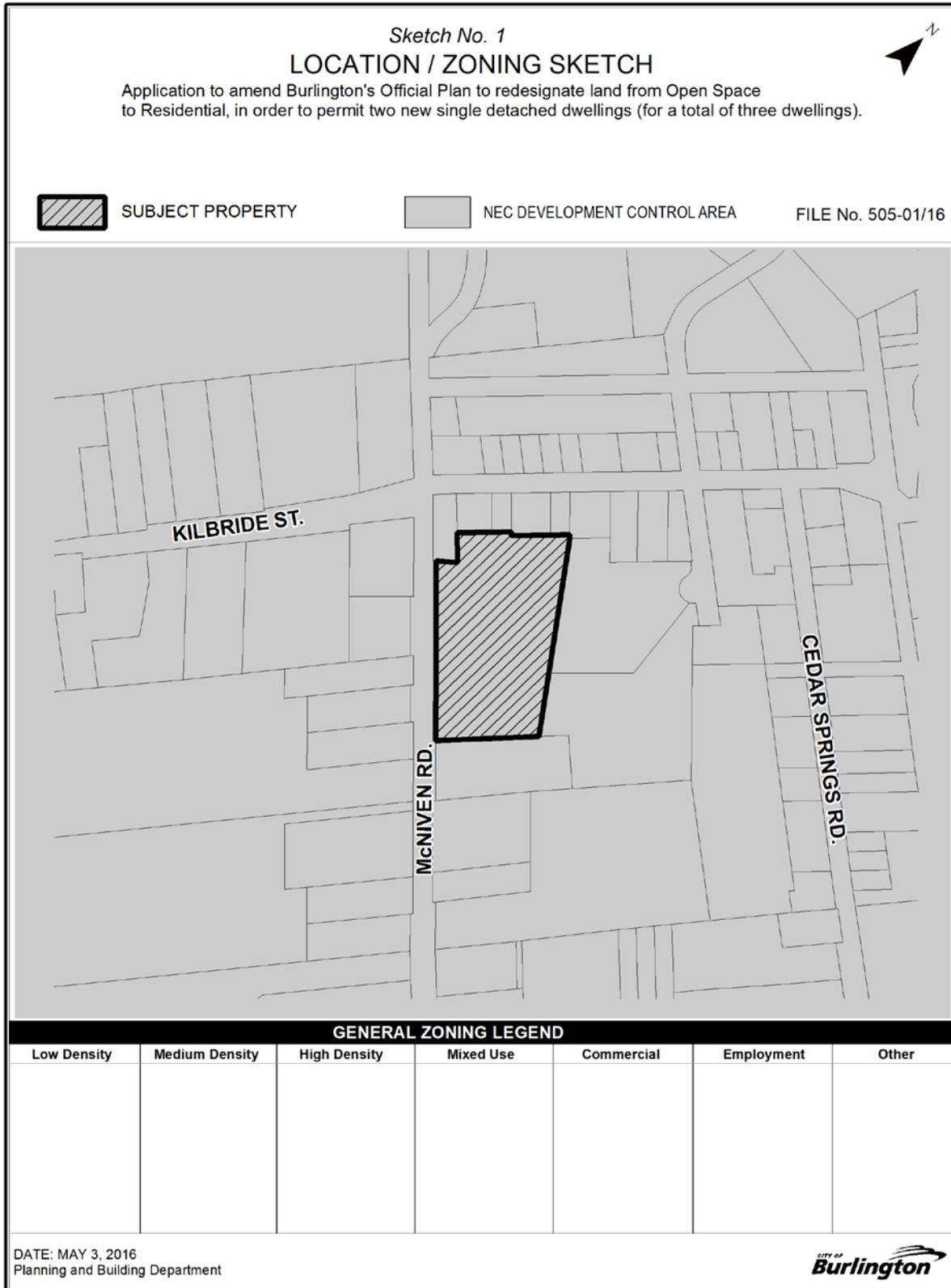
Aurora McAllister, Management Biologist

Ontario Ministry of Natural Resources and Forestry – Aurora District Office
50 Bloomington Road, Aurora ON, L4G 0L8

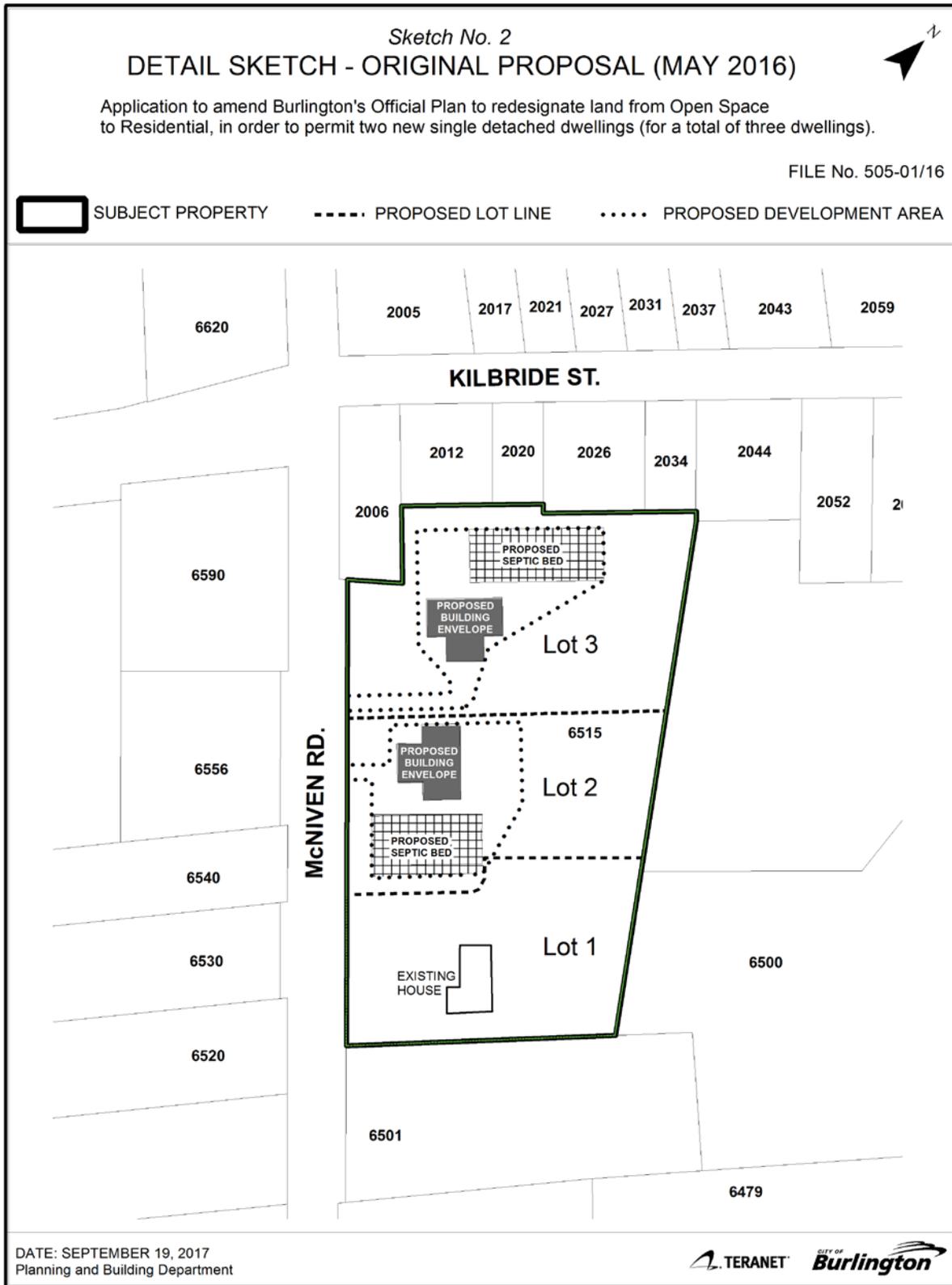
Report Approval:

All reports are reviewed and/or approved by Department Director, Director of Finance and Director of Legal. Final approval is by the City Manager.

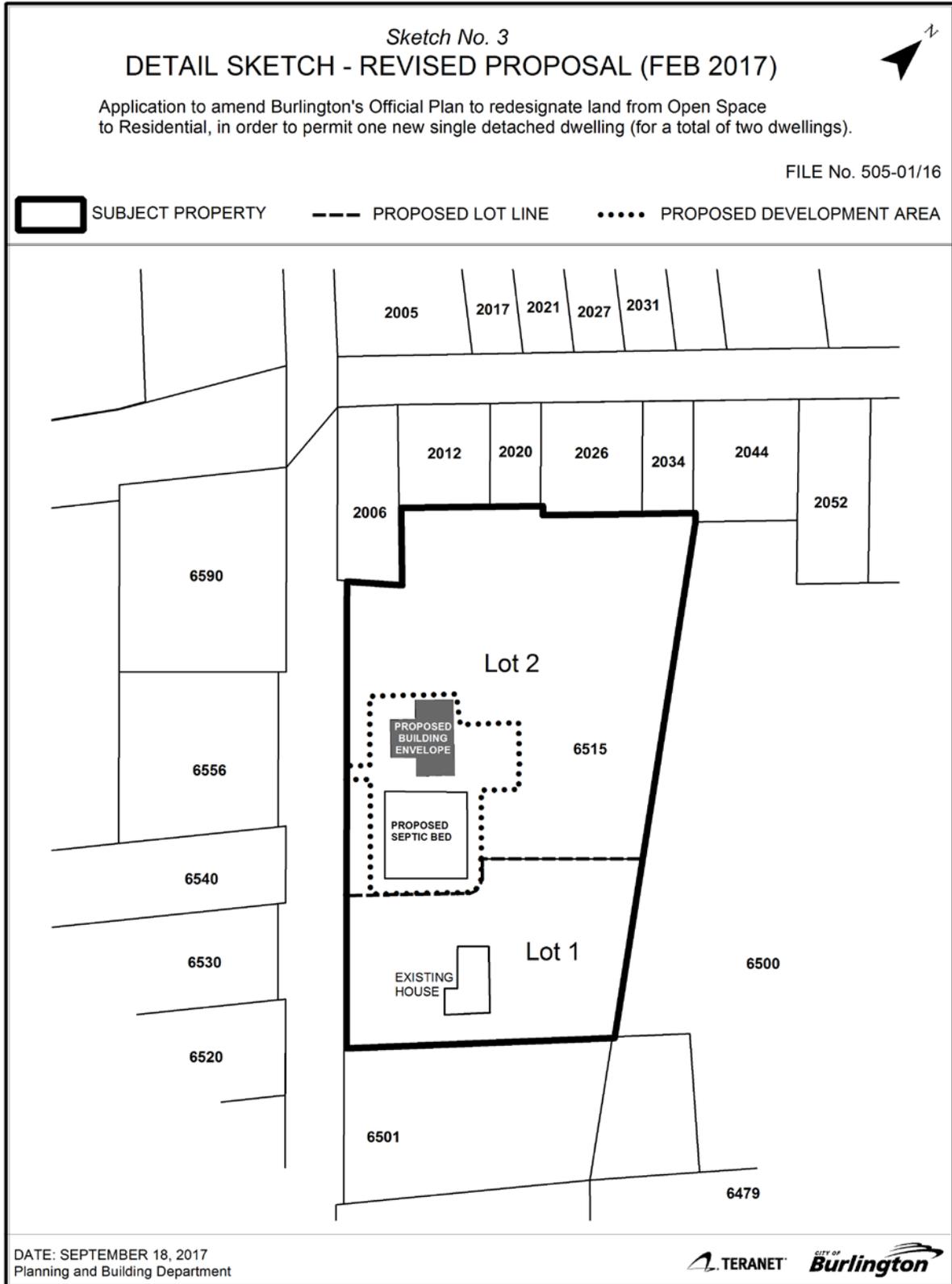
Appendix 1: Sketch No.1



Appendix 2: Sketch No. 2



Appendix 3: Sketch No. 3



Appendix 4: Public Comments received since Statutory Public Meeting held September 13, 2016

Letter 1:

September 19, 2016 (by email)

Hi Thomas,

I would like to say that after attending the Burlington city council meeting on Sept 13 2016, about the planned change of status of the open space at 6515 McNiven, that I am very disappointed in the presentation made by Fothergill Planning and Development, and how the presentation was received.

As I understand Open Space, some of the criteria that define it are, significant natural features, significant natural habitat, a heavily treed area, or an area prone to flooding. Questions to these points were asked and answers were completely avoided. When questioned why one lot had a smaller frontage than the width of the lot the correct answer is because there is a large outcropping of the Niagara Escarpment. That is why the two driveways for the proposed lots are beside each other, because there is no easy way to get into these lots due to the size of that outcropping. We are waiting on the results of the bat habitat study, but in addition to that there are foxes back in there and deer, and you can hear coyotes when the GO trains are parking for the night and sounding their horns, the coyotes answer. The area is heavily treed and acres of trees will be cut down in order to accommodate these houses. And lastly when specifically asked why would anybody want to build a house where it can flood the answer was - it doesn't flood. Well that is clearly and obviously false. It's rock. It rained well Sept 17th and I was out for a walk past 6515 and there was standing and ponding water everywhere, on the road, beside the road, peoples lawns, everywhere, because it's rock, with a bit of dirt over it.

The water problem in Kilbride is two fold. One, there is not enough potable water in Kilbride already because of the homes added on Jane Street, Chelsea, Breckenridge, and Carriage Trail over the last forty years. That is why people haul water from Burlington up Cedar Springs to Kilbride and have done so for years. But the other problem is when the snow melts, or if we have a large rain in the summer, or a fall storm, and the power often goes out because of downed trees, and it continues to rain, you are going to get flooded . That is why most home owners out here have a backup generator, and a backup pump, yes a second pump because when the water comes it comes fast, exactly like a flash flood, because it is a flash flood. A little bit two or three times a year, a big one every three or four years. My neighbors and I have been repeatedly flooded out to the tune of thousands of dollars of damage, mostly in our basements because that is where the water flows.

The last thing that Fothergill Planning said was that the community was satisfied with the plan as it stands. Nothing could be further from the truth. The community is hopeful that the NEC, Halton Conservation, and the city of Burlington, could not possibly believe that more homes are appropriate for Kilbride. We are hopeful that the people who have come before us and settled this issue many years ago including taking this to the OMB twice will prevail. We are hopeful that the obviously minimum capacities of McNiven Road, Burlington Hydro, Bell Canada, Cogeco, (for instance we will never have FIBE, or a better power grid, or curbs and sidewalks on McNiven, or a water tower or sewage etc), would alone disqualify this property to be changed from open space to residential. We are hopeful that by the very definition of Open Space the city is not going to grant numerous variances to do what, make it worse. No, we are not satisfied, we are hopeful that this question of adding more houses to Kilbride has been asked and answered. There is absolutely no need for there to be more pressure on this area of Burlington, except to line other peoples pockets and leave the current residents of Kilbride with the bill by way of even less water, more congestion, less redundancy and quite frankly for them to adjust to a new reality. Bluntly, the opportunity for the owners of the property to profit on it comes directly on the backs of, and at the expense of, their neighbors.

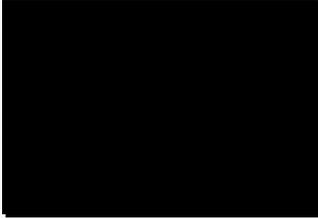
Sincerely,

A solid black rectangular redaction box covering the signature of the author.

Letter 2

By E Mail and Hard Copy

September 27, 2016



City of Burlington

426 Brant Street

PO Box 5013

Burlington, Ontario

L7R 3Z6

Attention: Thomas Douglas (thomas.douglas@burlington.ca)

Re: File 505-01/16

6515 McNiven Road

Dear Sir:

Please be advised that we are opposed to the proposed official plan amendment that is being considered for the above noted property,

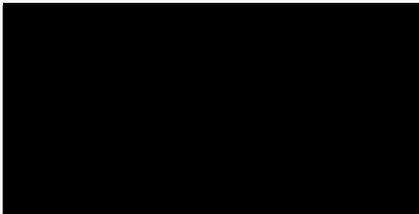
We object for the following reasons;

- 1) The staff report states that the proposal aligns with the objectives of the city. We cannot understand this observation as it does not meet the objectives of the strategic plan at all. This proposal directly contravenes the "healthy and cleaner city" as it removes protected wildlife area that also is used as a corridor and habitat for wildlife. The intensification was certainly not intended for the Kilbride Area. The Kilbride settlement area objectives are "limited "development providing the groundwater supplies are not affected.
- 2) This property was recently purchased and the current owners would have certainly been aware of the past history of this property as well as the open space designation. If this application is approved what is to stop current or future land owners from rezoning or densifying their property.
- 3) This proposal does not meet the minimum frontage or lot size as required under the OPA

- 4) There is no effective mechanism in place to ensure that the remaining woodlot is left undisturbed, the septic systems are maintained in good order and the high water usage of the large houses i.e. multiple bathrooms, pool, lawn sprinklers is monitored. For these reasons the land use restrictions, as well as the hydrogeological and septic studies are meaningless. If these studies are not correct what recourse do the affected residents have after the fact?
- 5) The hydrological study appears to address short term drawdown or impacts only. All residents have to draw from the same aquifer and given the lack of rainfall /snow and in anticipation of the situation getting worse it defies logic that two more wells will have no impact. From our own experience our well is certainly not as productive as three years ago
- 6) This proposal is in direct conflict with the provinces own desire to protect and enhance the Greenbelt and Niagara Escarpment
- 7) When we purchased our property in the area one of the main attractions was the rural nature and the extensive woodlots and open space. This proposal will certainly not enhance the community and we fail to see the benefit to the local community as well to the city at large,
- 8) This area has been subject to numerous applications and even an OMB hearing. As a compromise four lots were severed, this should be the end of this discussion and proposal

We expect and hope that our Planning Department and the Committee will turn down this application for development. For the reasons above it is difficult to find merit in this proposal other than for the landowner to make a windfall on the sale of the lots. There does not appear to be any net benefit to the City and especially to the local community.

We trust this correspondence states our position clearly and please ensure that we are copied on future correspondence or meetings.



Cc: John Taylor (john.taylor@burlington.ca)
Blair Lancaster (blair.lancaster@burlington.ca)
Amber LaPoint (Amber.LaPoint@burlington.ca)

PB-34-17 Appendix 5: Comments to NEC on Development Permit Application (Comments to be endorsed by Council)

Niagara Escarpment Commission
232 Guelph Street
Georgetown ON L7G 4B1

Attention: Michael Baran

Re: LORRAINE DAWN MCLEAN
ANDREW STEPHEN MCLEAN
6515 McNiven Rd.
CON 2 NS PT LOT 9 RP 20R14580 PART 1

File: **555-018/16 H/R/2015-2016/393**
Related City files: 505-01/16, 555-044/17
Related NEC files: H/R/2017-2018/154

PLANNING DEPARTMENT

Planning District	-	Rural
Rural Settlement Area	-	Kilbride
Official Plan Designation	-	Rural Settlement Area – Residential, and Rural Settlement Area – Open Space

Comment

Description of Property

The subject property is located on the east side of McNiven Road, south of Kilbride Street, and is municipally known as 6515 McNiven Road. It has an area of 2.51 hectares, 184 metres of frontage on McNiven Road, and an average depth of approximately 122 metres. Approximately 83% of the site is wooded. The unwooded, southern portion of the site is occupied by an existing 1.5-storey, detached dwelling with a ground floor area of 242 m², and an accessory outdoor swimming pool.

Description of Application

The original application proposed the creation of two new residential lots through consent, which would accommodate the development of two new single detached dwellings. The applicant revised the application in response to technical comments on the natural heritage components of the first submission and modified the proposal to create one additional lot, resulting in a total of two lots, which would accommodate the development of one new single detached dwelling. The characteristics of the proposed lots are as follows:

- Lot 1 (south), containing existing detached dwelling: 0.73 ha, with approximately 60 metres of frontage on McNiven Road; and
- Lot 2 (north): 1.78 ha, with approximately 123.66m of frontage on McNiven Road.

To permit the proposed development, the applicant has applied concurrently for a Development Permit from the Niagara Escarpment Commission (NEC) as well as an Official Plan Amendment (OPA) from the City of Burlington. The comments in this letter pertain to the Development Permit application. The City refused the Official Plan Amendment application at the November 13th meeting of Council.

Official Plan Designation

The subject property is located in the Kilbride Rural Settlement Area, as shown on Schedule C of Burlington's Official Plan (OP), "Comprehensive Land Use Plan – Rural Planning Area". Rural Settlement Area policies are guided by the principle that growth and development "shall be compatible with and provide protection for the natural environment and have regard for existing settlement patterns" (OP Part IV, 3.1a). The objectives of the Rural Settlement Area include providing limited opportunities for rural, non-farm residences in certain rural communities; and ensuring that the impacts of development on groundwater supplies are evaluated and considered (OP Part IV, 3.2). The policies for Rural Settlement Areas establish that the minimum lot size shall be 0.8 ha or as determined by site-specific hydrogeological studies, whichever is the greater. Development proposals must ensure to the maximum possible degree the preservation

of significant natural features, including wooded areas and groundwater recharge areas (OP Part IV, 3.3).

Schedule G of Burlington's Official Plan, "Kilbride Settlement Area – Land Use Plan", designates the wooded area of the property as Open Space, while the southern portion of the property where the existing house is located has a Residential designation.

The Residential designation permits single-detached dwellings on lots with a minimum lot width of 60 m, a minimum front yard setback of 10 m, and a minimum side yard setback of 5 m (OP Part IV, 3.4). The Open Space designation applies to lands that are flood-susceptible, are within defined creek valleys, have rock outcrops or wooded areas, or are imperfectly drained due to shallow depth of overburden. There shall be no encroachment of development or major landscape alteration on Open Space lands (OP Part IV, 3.7).

To permit the proposed development, the applicant applied to amend the Official Plan to redesignate the wooded area from "Open Space" to "Residential" and to reduce the minimum lot area from 0.8 ha to 0.7 ha.

Analysis

Proposed Residential Development in Natural Heritage

The wooded portion of the subject property is currently designated Open Space because it is wooded, contains rock outcrops, and may be imperfectly drained due to shallow depth of overburden (OP Part IV, 3.7 d). This designation prohibits the encroachment of development or major landscape alteration (OP Part IV, 3.7 f). The applicant proposes to redesignate this area so that the entirety of the property would have a Residential designation. This designation would permit the development of single detached dwellings, as well as home occupations and cottage industries as an accessory use to a single detached dwelling. Bed and breakfast homes are also permitted in this designation. The applicant's revised proposal conforms to the minimum lot width and setback requirements established in the Residential Land Use Policies (OP Part IV, 3.4).

One of the guiding principles of the OP addresses “the need to promote the intensification of residential and other land uses” in appropriate areas of the city including Rural Settlement Areas; however, “the Plan also recognizes that the extent and type of intensification must be evaluated in light of other important planning considerations, such as the protection of the natural environment, health and safety and the need for compatibility with existing residential neighbourhoods” (Part I, 3.0 h). This principle reinforces the need to ensure that the proposed development will not have negative impacts on the existing natural heritage features on the subject property.

Development proposals in Rural Settlement Areas are required to ensure to the maximum possible degree the preservation of significant natural features, including wooded areas (OP Part IV, 3.3 j). While the woodlot on the subject property does not meet the definition of a significant woodlot, it does constitute species-at-risk habitat for endangered bats, as well as significant wildlife habitat for Eastern Wood Pewee and certain types of non-endangered bats. It is therefore a significant natural feature. The subject application proposes to remove at least 0.38 ha of this habitat to make room for development.

The applicant has reduced the scale of their proposal from proposing two new lots to just one, and has recommended a number of mitigation measures such as managing construction activities, erecting fences, and providing a brochure to future landowners advising how to minimize impacts on natural features. Comments from the MNRF, Conservation Halton, and Halton Region indicate that despite these efforts, the proposed development still fails to meet the tests required by applicable legislation: in particular, the PPS requirement that the development cause no negative impacts on the natural features or their ecological functions (PPS 2.1.5d and 2.1.8). With this in mind, the City is not satisfied that the proposal represents preservation of significant natural features to the maximum possible degree, or that it represents good planning. The City therefore opposes the proposed development.

Lot Size

Part II, section 2.11.2.3 of the OP contains policies to restrict development that would cause a decline in the quantity or quality of groundwater, and to restrict development in hydrogeologically sensitive areas. In accordance with these policies, the applicant was required to submit studies of hydrogeological and septic system impacts from the proposed development. These studies were evaluated by Halton Region through a peer review, and were found to demonstrate that the proposed development is supportable from a hydrogeological perspective.

The subject application proposes the creation of a new lot with an area of 1.78 ha, leaving a retained lot with an area of 0.73 ha. To facilitate this, the applicant requests an OP amendment to reduce the minimum required lot size from 0.8 ha to 0.7 ha. Part IV, section 3.3, policy (e) requires that minimum lot size for new lots to be created through severance be determined based on detailed site analysis including a hydrogeological study which addresses the impacts of the new lots on ground and surface water resources. The applicant submitted a Septic System Impact Assessment that concludes that 0.73 ha is the minimum lot size needed to ensure the proposed development is sustainable from a groundwater quality impact perspective. The area of the proposed retained lot matches this minimum; however, the minimum of 0.7 ha requested in the submitted draft Official Plan Amendment is less than the 0.73 ha minimum recommended by the submitted study. The requested 0.7 ha is therefore unsupportable.

The OP also requires that the Hydrogeological Investigations prepared by Halton Region for each Settlement Area be referred to when determining appropriate lot sizes for development proposals (IV 3.3 f). Halton Region staff advise that the 2009 Regional Official Plan contains updated standards that require individual study on a lot-specific basis rather than depending on the Region's past studies that considered lot size on a settlement area-wide basis. Nonetheless, past Regional studies were considered by the applicant's consultant and the Region's peer reviewer.

Part IV, section 3.3 (c) of the OP states that minimum lot size shall be the greater of 0.8 ha or an area determined by study. This policy anticipates that studies may recommend

reduced lot sizes but expresses a clear intent that lot size should not be less than 0.8 ha. Site-specific hydrogeological studies are only intended to determine when it is necessary to increase the minimum, not to decrease it. Staff therefore do not support the applicant's request to reduce the minimum lot size below 0.8 ha as this would not conform with the intent of this section of the OP.

Conclusion

The City of Burlington opposes the issuance of the requested Development Permit for a proposal to create a new lot for residential development at 6515 McNiven Road, as it does not conform to the applicable legislation, including the policies of the City of Burlington Official Plan, Halton Region Official Plan, and Provincial Policy Statement (2014). The City has considered an Official Plan Amendment application for the proposed development (file 505-01/16), and refused this application at the Council meeting of November 13, 2017.

Date: October 5, 2017

Prepared By: Thomas Douglas