

## **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 m<sup>2</sup>, 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 13<sup>th</sup> 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