

**DECISION
CONSENT/SEVERANCE**

Date of Decision	October 13, 2023
Panel:	3 - Rural
File No(s):	D08-01-23/B-00230 and D08-01-23/B-00231
Application:	Consent under Section 53 of the <i>Planning Act</i>
Owner(s)/Applicant(s):	Grant & Michelle Huibers
Property Address:	1444 Dwyer Hill Road
Ward:	21 – Rideau-Jock
Legal Description:	Part of Lot 5, Concession 11, Geographic Township of Goulbourn
Zoning:	RU
Zoning By-law:	2008-250
Hearing Date:	October 3, 2023, in person and by videoconference

APPLICANTS' PROPOSAL AND PURPOSE OF THE APPLICATIONS

- [1] The Owners want to subdivide their property into three separate parcels of land to create two new lots for residential development. The existing dwelling and storage barns/sheds will remain.

CONSENT IS REQUIRED FOR THE FOLLOWING

- [2] The Owner requires the Committee's consent to sever land. The property is shown as Parts 1,2, and 3 on the sketch plan filed with the applications, and the separate parcels will be as follows:

Table 1 Proposed Parcels

File No.	Frontage	Depth	Area	Part No.	Municipal Address
B-00230	179 metres	310 metres	20.97 ha	3	1340 Dwyer Road
B-00231	198 metres	144 metres	2.85 ha	2	1400 Dwyer Road

- [3] The retained lands, shown as Part 1 on the sketch, will have a frontage of 528 metres, a lot depth of 530 metres and contain a lot area of 16.27 ha. This property will contain the existing dwelling and storage barn/sheds and will be known municipally as 1444 Dwyer Road.

PUBLIC HEARING

- [4] Prior to the hearing, the Committee received an adjournment request from City Planning staff due to errors in the Official Plan Policies. At the hearing, the Committee heard from Jack Graham, City Planner, who reiterated the request for adjournment.
- [5] The Committee also heard from Paul Robinson, Agent for the Applicant, who requested that the Committee hear the applications.
- [6] The Committee agreed to hear the applications without delay.

Oral Submissions Summary

- [7] Paul Robinson raised concerns with some of the conditions of provisional consent requested by the City, specifically the need to register a notice on title regarding groundwater, the need to provide a road widening on the retained lands along Dwyer Hill and Crawford Side Road and the need for a noise attenuation study in relation to the railway corridor. It was his opinion that the notice on title regarding groundwater could be addressed through an adequacy of aquifer report condition, that the road widening on the retained lands are not necessary and that the noise attenuation study in relation to the railway corridor was not necessary as it was no longer an active railway corridor, and the proposed development would be at least 500 metres from the corridor.
- [8] Mr. Graham reiterated that the notice on title regarding groundwater be included as conditions of consent. He confirmed that a road widening along Crawford Side Road could be removed, but that the widening along the entire frontage of Dwyer Hill Road should be conveyed to the City as a condition of provisional consent. He also confirmed that the noise study was requested as a condition of consent due to the proximity of the proposed lot at 1340 Dwyer Hill Road to an arterial road.
- [9] Following the public hearing, the Committee reserved its decision.

DECISION AND REASONS OF THE COMMITTEE: APPLICATIONS GRANTED

Applications Must Satisfy Statutory Tests

- [10] Under the *Planning Act*, the Committee has the power to grant a consent if it is satisfied that a plan of subdivision of the land is not necessary for the proper and orderly development of the municipality. Also, the Committee must be satisfied that an application is consistent with the Provincial Policy Statement and has regard for matters of provincial interest under section 2 of the Act, as well as the following criteria set out in subsection 51(24):

Criteria

(24) In considering a draft plan of subdivision, regard shall be had, among other matters, to the health, safety, convenience, accessibility for persons with disabilities and welfare of the present and future inhabitants of the municipality and to,

- a) the effect of development of the proposed subdivision on matters of provincial interest as referred to in section 2;
- b) whether the proposed subdivision is premature or in the public interest;
- c) whether the plan conforms to the official plan and adjacent plans of subdivision, if any;
- d) the suitability of the land for the purposes for which it is to be subdivided;
- d.1) if any affordable housing units are being proposed, the suitability of the proposed units for affordable housing;
- e) the number, width, location and proposed grades and elevations of highways, and the adequacy of them, and the highways linking the highways in the proposed subdivision with the established highway system in the vicinity and the adequacy of them;
- f) the dimensions and shapes of the proposed lots;
- g) the restrictions or proposed restrictions, if any, on the land proposed to be subdivided or the buildings and structures proposed to be erected on it and the restrictions, if any, on adjoining land;
- h) conservation of natural resources and flood control;
- i) the adequacy of utilities and municipal services;
- j) the adequacy of school sites;
- k) the area of land, if any, within the proposed subdivision that, exclusive of highways, is to be conveyed or dedicated for public purposes;
- l) the extent to which the plan's design optimizes the available supply, means of supplying, efficient use and conservation of energy; and
- m) the interrelationship between the design of the proposed plan of subdivision and site plan control matters relating to any development on the land, if the land is also located within a site plan control area

designated under subsection 41 (2) of this Act or subsection 114 (2) of the *City of Toronto Act, 2006*. 1994, c. 23, s. 30; 2001, c. 32, s. 31 (2); 2006, c. 23, s. 22 (3, 4); 2016, c. 25, Sched. 4, s. 8 (2).

Evidence

[11] Evidence considered by the Committee included all oral submissions made at the hearing, as highlighted above, and the following written submissions held on file with the Secretary-Treasurer and available from the Committee Coordinator upon request:

- Application and supporting documents, including a cover letter, plans, an environmental impact statement, a parcel register, a letter from a solicitor, a photo of the posted sign, and a sign posting declaration.
- City Planning Report received September 28, 2023, requesting adjournment.
- Rideau Valley Conservation Authority email dated September 29, 2023, with no objections.

Effect of Submissions on Decision

[12] The Committee considered all written and oral submissions relating to the application in making its decision and granted the application.

[13] The Committee notes that the City's Planning Report "requests an adjournment" of the applications, stating that "with the requested conditions, staff's only concern is with the rural severance policies that have yet to be fully approved and included in the Official Plan."

[14] The Committee agrees to remove the portion of the requested condition for a Noise Attenuation Study as it relates to the railway corridor, and a portion of the requested condition for road widening as it relates to Crawford Side Road but feels that the condition for a Notice on Title relating to groundwater should remain.

[15] Based on the evidence, the Committee is satisfied that the proposal is consistent with the Provincial Policy Statement that promotes efficient land use and development as well as intensification and redevelopment within built-up areas, based on local conditions. The Committee is also satisfied that the proposal has adequate regard to matters of provincial interest, including the orderly development of safe and healthy communities; the appropriate location of growth and development; and the protection of public health and safety. Additionally, the Committee is satisfied that a plan of subdivision of the land is not necessary for the proper and orderly development of the municipality. Moreover, the Committee is satisfied that the proposal has adequate regard for the criteria specified under subsection 51(24) of the *Planning Act* and is in the public interest.

[16] THE COMMITTEE OF ADJUSTMENT therefore grants the provisional consent, subject to the following conditions, **which must be fulfilled within a two-year period from the date of this Decision**:

1. That the Owner(s) provide evidence that payment has been made to the City of Ottawa for cash-in-lieu of the conveyance of land for park or other public recreational purposes, plus applicable appraisal costs. The value of land otherwise required to be conveyed shall be determined by the City of Ottawa in accordance with the provisions of By-Law No. 2022-280, as amended. Information regarding the appraisal process can be obtained by contacting the Planner.
2. That the Owner enter into an Agreement with the City, at the expense of the Owner(s) and to the satisfaction of **the Development Review Manager of the Relevant Branch within Planning, Real Estate and Economic Development Department, or his/her designate**, which provides the following covenant/notice that runs with the land and binds future Owner(s) on subsequent transfers:

“The City of Ottawa does not guarantee the quality or quantity of the groundwater. If, at some future date, the quality or the quantity of the groundwater becomes deficient, the City of Ottawa bears no responsibility, financial or otherwise, to provide solutions to the deficiency, such solutions being the sole responsibility of the homeowner.”

The Committee requires a copy of the Agreement and written confirmation from **City Legal Services** that it has been registered on title.

3. That the Owner enter into an Agreement with the City, at the expense of the Owner(s) and to the satisfaction of **Development Review Manager of the Relevant Branch within Planning, Real Estate and Economic Development Department, or his/her designate**, which provides the following covenant/notice that runs with the land and binds future Owner(s) on subsequent transfers:

“The City of Ottawa has identified that there is potential karst topography and organic soils within the area that may require site specific detailed geotechnical engineering solutions to allow for development, the City of Ottawa bears no responsibility, financial or otherwise, to provide solutions to the deficiency, such solutions being the sole responsibility of the homeowner.”

The Committee requires a copy of the Agreement and written confirmation from **City Legal Services** that it has been registered on title.

4. That the Owner acknowledges and agrees to convey to the City, at no cost to the City, an unencumbered road widening across the complete frontage of the lands, measuring 15 meters from the existing centerline of pavement/the abutting right-of-way along Dwyer Hill Road, pursuant to Section 50.1(25)(c) of the Planning Act and Schedule C16 of the City’s new Official Plan. The exact widening must

be determined by legal survey. The Owner shall provide a reference plan for registration, indicating the widening, to the **City Surveyor** for review and approval prior to its deposit in the Land Registry Office. Such reference plan must be tied to the Horizontal Control Network in accordance with the municipal requirements and guidelines for referencing legal surveys. The Owner(s) must provide to the City Surveyor a copy of the Committee of Adjustment Decision and a draft Reference Plan that sets out the required widening. The Committee requires written confirmation from **City Legal Services** that the transfer of the widening to the City has been registered. All costs shall be borne by the Owner.

5. The Owner(s) shall prepare a Noise Attenuation Study in compliance with the City of Ottawa Environmental Noise Control Guidelines to the satisfaction of the **Development Review Manager of the Relevant Branch within Planning, Real Estate and Economic Development Department, or his/her designate**. The Owner(s) shall enter into an agreement with the City that requires the Owner to implement any noise control attenuation measures recommended in the approved study. The Committee requires a copy of the Agreement and written confirmation from **City Legal Services** that it has been registered on title. The study shall address concerns related to the highway for the proposed lot 3.
6. That the Owner(s) provide a report, to the satisfaction of the City of Ottawa, demonstrating the adequacy of the aquifer with respect to quality and quantity to support the proposed development, failing which the Owners construct a new well on the severed lot and provide a report, to the satisfaction of the City of Ottawa, to demonstrate the adequacy of the aquifer with respect to quality and quantity to support the proposed development. The report must include a septic impact assessment to evaluate the water quality impact of the on-site septic system on the receiving aquifer.

The Owners' report must demonstrate the following to the City of Ottawa:

- That the construction of any new well on the severed parcel is in accordance with the Ministry of the Environment, Conservation and Parks
- That the quality of the water meets the Ministry of the Environment, Conservation and Parks Regulations, Standards, Guidelines and Objectives;
- That the quantity of water meets all the Ministry of the Environment, Conservation and Parks requirements.
- That the septic impact assessment meets the Ministry of the Environment, Conservation and Parks requirements.

A qualified Professional Engineer or Professional Geoscientist must prepare the report. It is the Owner's responsibility to coordinate the person drilling a new well,

if required, and the professional noted herein in order to properly satisfy this condition.

If the accepted report recommends specific mitigation measures or design requirements, the Owners shall enter into a Development Agreement with the City, at the expense of the Owners, which is to be registered on the title of the property, which includes those recommendations. In instances where the subject site has sensitive soils, the drilling of a well or the conveyance of a 30-centimetre reserve may be required. Both the report and any required Development Agreement shall be prepared to the satisfaction of **Development Review Manager of the Rural Branch within Planning, Real Estate and Economic Development Department, or his/her designate.**

7. That the Owner(s) file with the Committee a copy of the registered Reference Plan prepared by an Ontario Land Surveyor registered in the Province of Ontario, and signed by the Registrar, **confirming the frontage and area of the severed land. If the Registered Plan does not indicate the lot area, a letter from the Surveyor confirming the area is required.** The Registered Reference Plan must conform substantially to the Draft Reference Plan filed with the Application for Consent.
8. That upon completion of the above conditions, and **within the two-year period outlined above**, the Owner(s) file with the Committee, the “electronic registration in preparation documents” for the Conveyances for which the Consent is required.

“William Hunter”
WILLIAM HUNTER
VICE-CHAIR

“Terence Otto”
TERENCE OTTO
MEMBER

“Beth Henderson”
BETH HENDERSON
MEMBER

“Martin Vervoort”
MARTIN VERVOORT
MEMBER

“Jocelyn Chandler”
JOCELYN CHANDLER
MEMBER

I certify this is a true copy of the Decision of the Committee of Adjustment of the City of Ottawa, dated **October 13, 2023**



Matthew Garnett
Acting Secretary-Treasurer

NOTICE OF RIGHT TO APPEAL

To appeal this decision to the Ontario Land Tribunal (OLT), a completed appeal form along with payment must be received by the Secretary-Treasurer of the Committee of Adjustment by **November 2, 2023**, delivered by email at cofa@ottawa.ca and/or by mail or courier to the following address:

Secretary-Treasurer, Committee of Adjustment,
101 Centrepointe Drive, 4th floor, Ottawa, Ontario, K2G 5K7

The Appeal Form is available on the OLT website at <https://olt.gov.on.ca/>. The Ontario Land Tribunal has established a filing fee of \$400.00 per type of application with an additional filing fee of \$25.00 for each secondary application. Payment can be made by certified cheque or money order made payable to the Ontario Minister of Finance, or by credit card. Please indicate on the Appeal Form if you wish to pay by credit card. If you have any questions about the appeal process, please contact the Committee of Adjustment office by calling 613-580-2436 or by email at cofa@ottawa.ca.

Only the applicant, the Minister or a specified person or public body that has an interest in the matter may appeal the decision to the Ontario Land Tribunal. A "specified person" does not include an individual or a community association.

There are no provisions for the Committee of Adjustment or the Ontario Land Tribunal to extend the statutory deadline to file an appeal. If the deadline is not met, the OLT does not have the authority to hold a hearing to consider your appeal.

If a major change to condition(s) is requested, you will be entitled to receive Notice of the changes only if you have made a written request to be notified.

NOTICE TO APPLICANT(S)

All technical studies must be submitted to Planning, Real Estate and Economic Development Department a minimum of **40 working days** prior to lapsing date of the consent. Should a Development Agreement be required, such request should be

initiated **15 working days** prior to lapsing date of the consent and should include all required documentation including the approved technical studies.

Ce document est également offert en français.

Committee of Adjustment
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