REPORT TO: COMMITTEE OF ADJUSTMENT

FROM: Chris Russell

DATE: March 4, 2015

SUBJECT: Application B21/14
Innovative Planning Solutions
934 & 946 Penetanguishene Road

REPORT HIGHLIGHTS

- The applicant is applying for consent to sever and re-establish two agricultural lots which inadvertently merged on title in 2005.
- The subject lands are located within a ‘Prime Agricultural Area’ as defined by the Provincial Policy Statement 2014 and designated ‘Agricultural’ within the Township of Springwater Official Plan.
- Based on staff’s review of case law and various legal opinions obtained, merged lots may only be recreated under the policy regime at the time of a new application and no exemptions, exceptions or automatic permissions to sever exist with respect to a ‘technical severance’.
- The proposed consent does not conform to the lot creation policies within Prime Agricultural Areas of the Provincial Policy Statement (2014), County of Simcoe Official Plan or Township of Springwater Official Plan.
- Staff recommend refusal of application B21/14.

RECOMMENDATION

THAT the report from the Planner regarding Consent Application B21/14 dated March 4, 2015 be received; and,

THAT subject to input received at the public meeting and discussion that follows, the Committee of Adjustment refuse application B21/14 as it does not conform to the policies of the Provincial Policy Statement (2014), County of Simcoe Official Plan or Township of Springwater Official Plan.

BACKGROUND

The subject lands, municipally known as 934 & 946 Penetanguishene Road, are approximately 46.1 hectares (113.8 acres) in size with 623.5 metres (2045.6 feet) of frontage along Penetanguishene Road (County Road 93) and 117.8 metres (583.3 feet) of frontage along Brown Road.

The applicant is proposing a ‘technical severance’ to re-establish two lots, which inadvertently merged on title in 2005 due to a death in the family. The proposed
The property currently contains one dwelling and multiple accessory farm-related structures serviced by private well and septic systems. Municipal Property Assessment Corporation (MPAC) records obtained for the property detail the on-site structures are provided above.

### Proposal

The applicant is proposing to re-create two lots from the subject lands as a result of an inadvertent merger of title. The severed lands are proposed to have approximately 210 metres (688.9 feet) of lot frontage and 35.6 hectares (87.9 acres) of lot area. Further, the severed parcel complies with all requirements of the Agricultural (A) Zone of By-law 5000, as such no variances would be required for the severed lands.

The retained lands are proposed to have approximately 401 metres (1,315.6 feet) of lot frontage and 10.5 hectares (25.9 acres) of total lot area. As such, the retained lands would not comply with the minimum lot area requirements of Zoning By-law 5000 and would not conform to the Official Plan.

In addition to the existing dwelling unit and attached garage, the retained lands would include several accessory farm-assessed structures totalling approximately 1,103.6 square metres (11,880 square feet). Zoning By-law 5000 permits a maximum 115 square metres (1,238 square feet) of detached accessory structure on agriculturally zoned residential properties.
Analysis

Provincial Policy Statement, 2014

The Provincial Policy Statement (PPS 2014) defines ‘prime agricultural areas’ as follows:

Prime Agricultural Area
"means areas where prime agricultural lands predominate. This includes areas of prime agricultural lands and associated Canada Land Inventory Class 4 through 7 lands, and additional areas where there is a local concentration of farms which exhibit characteristics of ongoing agriculture. Prime agricultural areas may be identified by the Ontario Ministry of Agriculture and Food using guidelines developed by the Province as amended from time to time. A prime agricultural area may also be identified through an alternative agricultural land evaluation system approved by the Province."

Based on the above definition, the subject lands are within a Prime Agricultural Area as the property; contains Class 1-3 & 5-7 soil, is surrounded by a local concentration of active farming operations to the north, south and west and is currently being cropped as part of an active farming operation.

The Planning Justification Report prepared by Innovative Planning Solutions and submitted in support of the consent contends the application can be considered a legal or technical severance as defined by Section 2.3.4.2 of the Provincial Policy Statement based on the fact it will restore the property back to its original configuration.

Based on the applicable policy, staff maintains a different position than the applicant. Section 2.3.4.2 of the Provincial Policy Statement indicates “Lot adjustments in prime agricultural areas may be permitted for legal or technical reasons.” Staff further note that “legal or technical reasons” is a defined term with PPS 2014 as follows:

Legal or technical reasons
"means severances for purposes such as easements, corrections of deeds, quit claims, and minor boundary adjustments, which do not result in the creation of a new lot."

The above noted policy is clear that that while lot adjustments may be permitted in prime agricultural areas for specific ‘legal or technical reasons’, these reasons do not include an exemption from existing policy guidance for “technical severance” application, which seek to re-create two lots that have merged on title under the Planning Act. This application must be processed under the current and in-effect policies dealing with lot creation in Prime Agricultural Areas which has been confirmed through a legal opinion obtained by staff as well as documented OMB case law.
Therefore, Section 2.3.4.1 of the Provincial Policy Statement applies to the application as follows:

“Lot creation in prime agricultural areas is discouraged and may only be permitted for:
   a) agricultural uses, provided that the lots are of a size appropriate for the type of agricultural use(s) common in the area and are sufficiently large to maintain flexibility for future changes in the type or size of agricultural operations;
   b) agriculture-related uses, provided that any new lot will be limited to a minimum size needed to accommodate the use and appropriate sewage and water services;
   c) a residence surplus to a farming operation as a result of farm consolidation, provided that:
      1. the new lot will be limited to a minimum size needed to accommodate the use and appropriate sewage and water services; and,
      2. the planning authority ensures that new residential dwellings are prohibited on any remnant parcel of farmland created by the severance. The approach used to ensure that no new residential dwellings are permitted on the remnant parcel may be recommended by the Province, or based on municipal approaches which achieve the same objective; and,
   d) infrastructure, where the facility or corridor cannot be accommodated through the use of easements or rights-of-way.”

The above policy only permits severances in Prime Agricultural Areas under two specific circumstances:

i. Severances where both the retained and severed parcel meet the minimum Zoning By-law requirements for agricultural uses.

ii. Severances where the residence is deemed surplus as a result of a farm consolidation.

The proposed severance seeks to create (and retain) a 10.5 hectare (25.9 acre) lot and would not meet the minimum lot requirements of subsections a & b of Section 2.3.4.1. As the proposed consent does not meet the policies of Section 2.3.4.1 with respect to Prime Agricultural Areas, staff find that the application as applied for does not conform to the policies of the Provincial Policy Statement, 2014.

**County of Simcoe Official Plan**

The subject lands are designated ‘Rural & Agricultural’ within the County of Simcoe Official Plan.

The Planning Report prepared by Innovative Planning Solutions states that Section 3.6.6 of the County Official Plan 2007 applies and contends the County Plan is satisfied as the proposed consent intends to return the parcel back to its original survey size.
Staff note however Section 3.6.6 of the County Plan states as follows:

3.6.6 “Prime agricultural areas will be protected for agriculture and compatible uses. Permitted uses are agriculture, agriculture related uses, secondary uses, natural heritage conservation and forestry, aggregate developments subject to Section 4.4, processing of agricultural products, and agricultural produce sales outlets generally relating to production in the local area. Subject to Section 4.10.1, lots may be created for an agricultural use, a farm retirement lot, a residence surplus to a farming operation and residential infilling. New lots for agricultural uses should generally not be less than 35 hectares or the original survey lot size, whichever is lesser, or 4 hectares on organic soils used for specialty crops.”

Section 3.6.6 of the in-force County Official Plan currently allows for the consideration of severances associated with agricultural uses, retirement lots, surplus farm dwelling, etc. Retirement lots and residential infilling are not permitted under either the Provincial Policy Statement (PPS) or the Township Official Plan in areas that are designated as prime agricultural.

Regardless of the lots original survey size, Section 4.10.1 defers to the local Official Plan in instances where local policies are more restrictive. As such, a severance (severed & retained) may only be permitted for agricultural uses that meet the minimum lot requirements (35 hectares or 86.4 acres) of the local Official Plan in accordance with Section 4.10.1.

Based on the above, staff are of the opinion that the proposed consent does not conform to the in-effect policies of the County of Simcoe Official Plan.

**Township of Springwater Official Plan and Comprehensive By-law 5000**

The subject lands are designated ‘Agricultural’ in the Springwater Official Plan and zoned ‘Agricultural’ (A) under Comprehensive Zoning By-law 5000.

Based on the Provincial Policy Statement definition above the subject lands are considered a ‘Prime Agricultural Area’, as the property contains Class 1-3 & 5-7 soil, is surrounded by a local concentration of farms to the north, south and west and is currently being cropped as part of an active farming operation. Further, the applicants planning justification report states Section 3.6.6 of County of Simcoe Plan applies, which specifically relates to new lot creation in Prime Agricultural Areas. Consequently, staff are of the opinion that the subject lands are within a Prime Agricultural Area.

Section 28.2.2.10 of the Township Official Plan states the size of any parcel created by consent shall be appropriate for the use proposed and in no case shall any parcel be created, which does not conform to the provisions of the implementing zoning by-law.
Further, the Agricultural policies of Section 17 prohibit severances to occur if both the severed and retained parcels do not comply with the minimum lot area requirements. The proposed consent would sever 35.6 hectares (87.9 acres) of farmland area, which meets the minimum lot size for the agricultural zone. However, the proposal seeks to retain 10.5 hectares (25.9 acres) of land, which does not meet the minimum lot area requirements of Zoning By-law 5000.

Section 28.4 of the Township Official Plan states farm related severances are those occurring in areas designated as ‘Agricultural’ or otherwise identified as having good agricultural land by the policies of this Official Plan. Under the policies of Section 28.4, the only mechanism for consent to sever in the Agricultural designation is via surplus farm dwelling severance as part of a farm consolidation or an agricultural severance where both the severed and retained lands meet the minimum lot area requirement of 35 hectares (86 acres). As the proposal does not represent a farm consolidation and does not meet the minimum lot area requirements of By-law 5000, staff is of the opinion that the proposed consent does not conform to the policies respecting severances in the Agricultural designation.

Further, Section 28.7.1 of the Township’s consent policies state:

“Consents may be granted for technical or legal reasons which may include boundary adjustments where one land owner is deeding part of his property to an adjacent land owner, not resulting in the creation of a separate lot, provided that boundary adjustments which are not merely for the purposes of correcting title deficiencies or errors shall be governed by the following policies:”

Township’s Official Plan does not have policies in place which would exempt, exclude or permit an automatic technical severance based on historic lot configurations and only those specific circumstances, which do not result in the creation of a new lot can be considered a ‘legal or technical reason’ for consent.

Section 28.7.1.2 of the Official Plan further states:

“The area and frontage of the land holding proposed to be created shall comply with the minimum and maximum area and frontage requirements of the Zoning By-law provided however, where the requirements set out in section 28.7.1 and 28.7.1.1 or both of them, are not met by the application, the consent may nevertheless be given where it is determined that the effect of the severance is to promote the policies of the Official Plan and to bring the area and/or the frontage of the land holding proposed to be created closer to compliance with the minimum and maximum area and frontage requirements of the Zoning By-law.”

Based on the above analysis, it is staffs opinion that the application does not promote the policies of the Official Plan regarding lot creation in Prime Agricultural Areas, nor does it create a situation which brings the properties closer to compliance with the Zoning By-law as the retained 10.5 hectare (25.9 acre) parcel and would not comply with the
provisions of By-law 5000. The effect of the application would transfer a parcel that currently complies with the minimum lot requirements into a situation where the parcel is fragmented and the retained lot has a deficient lot area.

Staff are of the opinion the proposed technical severance does not comply with the consent polices of Section 28 or the objectives of the ‘Agricultural’ designation of the Springwater Official Plan and consequently cannot be supported.

**Conclusion**

Regardless of the fact that the lots previously existed as separate parcels, the application must be processed under current and in-effect policies dealing with lot creation in Prime Agricultural Areas. It is staff’s opinion that the policies do not provide exemptions for “technical severances” or a recognition of historical lot configurations with respect to the re-creation of lots merged on title in both the Provincial Policy Statement (PPS) and Township Official Plan.

While the events which have led to the current situation are understandably unfortunate, staff find that the proposed consent application does not conform to the applicable policies of the Provincial Policy Statement, the County of Simcoe Official Plan or the Townships of Springwater Official Plan and cannot be supported. Therefore, staff recommends refusal of Application B21/14.

**Applicable Municipal Policy or Legislation**

- Planning Act, R.S.O 1990;
- Provincial Policy Statements (2014)
- County of Simcoe Official Plan (2007)
- Township of Springwater Official Plan;
- Township of Springwater Comprehensive Zoning By-Law 5000;

Prepared by: Chris Russell MCIP, RPP, Planner
Reviewed by: Brent Spagnol MCIP, RPP, Manager of Planning
Approved by: Robert Brindley, Chief Administrative Officer

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**Background/Relevant reports on the subject:**
- Appendix – Proposed Consent Sketch
- Appendix – IPS Planning Justification Report
Appendix – B21/14 Proposed Consent Sketch