

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: May 21, 2024

CASE NO(S):

OLT-24-000056

PROCEEDING COMMENCED UNDER subsection 53(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant:
Subject:
Description:

Farhi Farming Corporation
Application for Consent – Appeal of Refusal
To permit the severance of a residence
surplus to a farm operation as a result of
consolidation

Reference Number:
Property Address:
Municipality/UT:
OLT Case No.:
OLT Lead Case No.:
OLT Case Name:

B-20-2023
14387 Ilderton Road
Middlesex Centre/Middlesex
OLT-24-000056
OLT-24-000056
Farhi Farming Corporation v. Middlesex
Centre (Municipality)

Heard:

May 6, 2024, by Video Hearing

APPEARANCES:

Parties

Farhi Farming Corporation

Municipality of Middlesex Centre

Counsel

Jack Sousa

Paula Lombardi (*in absentia*)

MEMORANDUM OF ORAL DECISION DELIVERED BY JACKIE DENYES ON MAY 6, 2024 AND ORDER OF THE TRIBUNAL

INTRODUCTION

[1] This matter consists of an appeal pursuant to section 53(19) of the *Planning Act* (the “Act”) regarding an application for Consent to Sever the lands legally described as Part of Lot 16, London Concession 10, in the Municipality of Middlesex Centre (the “Municipality”), County of Middlesex (the “County”), municipally known as 14387 Ilderton Road (“Subject Property”). The application is to split the Subject Property into two lots by means of a surplus farm dwelling severance.

[2] On November 15, 2023, Farhi Farming Corporation (the “Applicant” / “Appellant”) made an application to Council of the Municipality of Middlesex Centre in Municipal file B-20-2023 for a Consent to Sever a residence considered surplus to a farm operation as a result of consolidation (the “Consent Application”) from the Subject Property.

[3] On December 20, 2023, the Municipality of Middlesex Centre refused the application, citing that the proposal is not consistent with the Provincial Policy Statement, 2020 (“PPS”) and does not conform to the County of Middlesex Official Plan and the Middlesex Centre Official Plan (“OP”) and, that approval of such Consent Application would further exacerbate the potential loss of prime agricultural lands.

[4] Immediately before the commencement of the first Case Management Conference (“CMC”) in this proceeding, the Tribunal was advised that, on consent, the Parties sought to convert the CMC to a Settlement Hearing. The Municipality did not appear.

SUBJECT PROPERTY, ZONING AND SURROUNDINGS

[5] The Subject Property is situated in an agricultural area of the Municipality. It is generally located on the southeast corner of Ilderton Road (Middlesex County Road 16) and Richmond Street (Provincial Highway No. 4). This parcel measures approximately 38.4 hectares (“ha”) in area and has approximately 457 metres (“m”) of frontage on Ilderton Road and approximately 544 m of total flankage along Richmond Street. At present, no additional development or demolition is proposed on the Subject Property.

[6] The Subject Property is designated Agricultural Area pursuant to Schedule A of the County’s OP and zoned Agricultural (A1) per Schedule A of the Middlesex Centre’s Comprehensive Zoning By-law 2005-005 (“Zoning By-law”). The Subject Property is regulated by the Upper Thames River Conversation Authority. It contains a Natural Heritage Feature, as identified by the Middlesex Natural Heritage Systems Study, as Significant Woodlands pursuant to Schedule B of the Municipality’s OP.

[7] The Subject Property is approximately 94.99 acres (“ac”) and is predominately used for agricultural purposes, with most of the property under active cultivation. The Subject Property currently contains a single detached dwelling and a detached accessory structure utilized as part of the agricultural operation.

PURPOSE AND EFFECT

[8] The purpose and effect of the Consent Application is to sever a surplus farm residence on a lot having approximately 10.4 m (95 feet) of frontage along Ilderton Road and an area of approximately 4.99 ac. The residence is rendered surplus to the Appellant because of a farm consolidation. The lands associated with the surplus residence are referred to as the Severed Parcel.

[9] The Retained lot would maintain a broken frontage of approximately 446.5 m along Ilderton Road and an area of approximately 90 ac. This Retained Parcel would be maintained as farmland in crop production. No loss of active farmland would occur because of this severance. The detached accessory structure would also remain part of the Retained Parcel and be used as part of the existing agricultural operation.

[10] The existing laneway from Ilderton Road to the single detached dwelling is approximately 280 m in length. Access to the Retained Parcel would be provided by the laneway used for the Severed Parcel through an easement to be entered into and registered on title to both the Retained and Severed Parcels.

EVIDENCE AND ANALYSIS

[11] The uncontroverted evidence in support of the Appeal was provided by Scott Allen, Member of the Canadian Institute of Planners (MCIP) and Registered Professional Planner (RPP), who was qualified by the Tribunal to provide opinion evidence as an expert in land use planning.

[12] Four Exhibits were filed during the hearing:

1. Administrative Notice dated March 14, 2024 (**Exhibit 1**);
2. Affidavit of Scott Allen (**Exhibit 2**); and
3. Signed Minutes of Settlement with Conditions (**Exhibit 3**).
4. Minutes of Settlement attached to this Order and Decision for reference purposes only (**Exhibit 4**).

LEGISLATIVE TESTS

Provincial Policy Statement

[13] It was the opinion of Mr. Allen that the proposed severance is consistent with the PPS. In particular, he said it is consistent with PPS policy 2.3.1, which states that prime agricultural areas shall be protected for long-term use. Mr. Allen stated that:

- (i) The proposed severance does not result in the loss of any agricultural lands under active production. The existing agricultural operation on the Subject Property is approximately 36.4 ha in area, and the same area will remain in agricultural production following the proposed severance.
- (ii) The Minutes of Settlement includes a requirement that the Applicant enter into an agreement with the Municipality to advise future owners of the Severed Parcel of normal farm practices occurring in the area as outlined in the *Farming and Food Production Protection Act*, 1998, S.O. c.1, as amended.

[14] Further commenting on Policy 2.3.4.1(c), which permits lot creation for a residence surplus to a farming operation in prime agricultural areas, Mr. Allen testified:

- (i) The new lot is not utilized for agricultural purposes;
- (ii) Is limited to a minimum size needed to accommodate the residential use and appropriate sewage and water services; and,
- (iii) The existing access, by way of a common private laneway, will be retained through an agreement or easement registered on title.

[15] Mr. Allen further testified that the Minutes of Settlement include a condition requiring the applicant to enter into an agreement with the Municipality acknowledging that new residential dwellings are prohibited on any vacant remnant parcel of farmland created by the granting of the severance which also satisfies PPS policy 2.3.4.1(c)(2), which states:

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.

County of Middlesex Official Plan

[14] As outlined in his report, Mr. Allen indicated that the County's OP provides the overall land use policy direction for the County and its various settlement areas and includes lot creation policies for prime agricultural areas. He specifically referred to section 2.2.2.1, which states that all land in the County, except lands located in settlement areas, are designated as Agricultural Area under the County's OP and are considered as prime agricultural lands. This includes the Subject Property.

[15] Section 4.5.3.4. of the County's OP sets out the criteria for the severance of surplus residences in this designation, which are relevant to this Consent Application:

a) Consent to sever a residence surplus to a farming operation as a result of farm consolidation may be permitted, provided the residence was built at least 10 years prior, the new lot will be limited to a minimum size needed to accommodate the use and appropriate sewage and water services, and provided new residential dwellings are prohibited on any vacant remnant parcel of farmland created by the severance.

[16] It was the opinion of Mr. Allen that the following considerations of the Consent Application satisfy the prescribed severance criteria:

- i. The residence situated on the Severed Parcel was constructed prior to January 1, 1999;
- ii. The Severed Parcel is to be limited in size to accommodate the existing residence, on-site water and sanitary disposal facilities and the access driveway. To ensure compliance, a condition of the severance requires the Applicant to confirm that the Severed Parcel being proposed accommodates on-site water and sanitary disposal facilities through the preparation of a survey by an Ontario Land Surveyor. As well, a condition of the severance requires an appropriate contingency area to be established for the private sewage disposal system servicing the residence situated on the Severed Parcel; and
- iii. The applicant will be required to acknowledge, through an agreement entered into with the Municipality and registered on title, that new residential dwellings are prohibited on any vacant remnant parcel of farmland created by the granting of the severance.

Middlesex Centre Official Plan

[16] Mr. Allen identified that section 1.2 of the Municipality's OP is intended to provide for the orderly growth and development of the Municipality and includes goals and policies relating to land use, agricultural and settlement areas, the classification of natural systems, and economic, social, and servicing matters.

[17] He further identified section 10.3.2.2, which prescribes policies for proposals to sever lands situated within the agriculture designation. Mr. Allen referred to subsection d) specifically as follows:

- d) Consent to sever a residence surplus to a farming operation as a result of farm consolidation may be permitted, provided the following conditions are satisfied:
- i. Farm consolidation occurs or has occurred through acquisition of an additional farm property;
 - ii. The farming operation consists of at least two farms. The farms may be located in different municipalities and the registered ownerships of the farms need not necessarily be identical provided it is demonstrated that the farms are operated as a single operation;
 - iii. The farming operation demonstrates that the acquired farm has rendered a residence surplus to the needs of the operation;
 - iv. The residence was constructed prior to January 1, 1999;
 - v. The residence is habitable, as determined by the Municipality's Chief Building Official;
 - vi. The lot for the surplus farm residence is limited to the minimum size needed to accommodate the use and appropriate sewage and water services, including contingency areas. The loss of agricultural land shall be avoided wherever possible when determining an appropriate lot size. Environmental features, including but not limited to natural heritage features and hazards, will also be avoided when determining an appropriate lot size;
 - vii. That safe ingress/egress for vehicles is possible for both resulting lots...
 - xi. A notice is registered on the title of the lot that is to accommodate the surplus farm residence, specifically

notifying future owners of normal farm practices as outlined in the *Farming and Food Production Protection Act*, 1998, as amended;

- xii. New residences are prohibited on any remnant farm lot resulting from the severance, specifically through the Municipality's Comprehensive Zoning By-law;
- xiii. If the remnant farm lot does not meet the minimum lot area and lot frontage, standards of the Comprehensive Zoning By-law, the new minimum lot area and lot frontage that result are to be recognized through an implementing zoning by-law amendment. This requirement shall not apply if the remnant farm is merged in title with an abutting farm; and
- xiv. There are no negative impacts on natural and built heritage features as a result of the severance.

[18] Through the evidence presented, Mr. Allen indicated that subsections i to iii confirm that the owner of the Subject Properties, Farhi Farming Corporation, has numerous agricultural holdings. The residence located on the Subject Property is surplus to the farming operation.

[19] Respecting policies iv and v, the residence was constructed prior to January 1, 1999, and, to his understanding, is habitable.

[20] Policy vi for the surplus farm residence is limited to the minimum size required to accommodate the use and appropriate sewage and water services; to avoid loss of productive farmland, the lot configuration of the Severed Parcel purposely excludes the portion of the Subject Property under active cultivation, and the Severed Parcel also excludes the Natural Feature situated on the Subject Property in order to minimize the lot area required for the Severed Parcel.

[21] Regarding policy vii, the existing residence and farming operation are currently accessed by way of a common private driveway from Ilderton Road, and an agreement or easement will be required to be registered on title. The existing laneway is of sufficient size to ensure no disruption to the residence, agricultural operations or vehicular traffic using Ilderton Road. It should provide safe ingress/egress for vehicles to the Retained and Severed Parcels.

[22] Addressing policies xi and xii, as set out in the Minutes of Settlement, a severance agreement is required to be entered into and registered on title between the Applicant and the Municipality, notifying future owners of the Severed Parcel of normal farm practices occurring in the area and on the Retained Lands. The agreement is also required to acknowledge that new residential dwellings are prohibited on any vacant remnant of farmland created by the granting of the severance.

[23] Regarding policy xiii, an implementing Zoning By-law Amendment or Minor Variance may need to be obtained by the Applicant to satisfy the Zoning By-law regulations applicable to the Severed and Retained Parcels.

[24] Respecting policy xiv, the granting of the severance does not result in any negative impacts on the Natural Features or any built heritage features.

[25] Mr. Allen recited a brief history of the Official Plan Amendment (“OPA 59”). Council of the Municipality approved OPA 59 on May 18, 2022 to reflect a Municipal Comprehensive Review/General Official Plan Update with regard to matters of provincial interest set out in Section 2 of the Act, consistency with the PPS, alignment with the County OP, and to generally update the Middlesex Centre OP. OPA 59 was subsequently approved with modifications by the Council of the County on September 26, 2023. This amendment has been appealed to the Tribunal (OLT-23-00173) by several parties and is not currently in force.

[26] It was Mr. Allen's opinion that OPA 59 does not materially change the intent of the severance policies applicable to this Consent Application.

FINDINGS

[27] In determining this matter, the Tribunal has considered Mr. Allen's uncontroverted *viva voce* evidence, the documents filed, and the Minutes of Settlement contingent upon conditions, to make an informed decision.

[28] Upon inquiry by the Tribunal and confirmed by Counsel, the Tribunal is satisfied and finds that pursuant to section 51(25) of the Act, the conditions to the Consent set out in **Attachment 1** to this order are reasonable having regard to the nature of the development proposed.

[29] The Tribunal is satisfied and finds, upon confirmation by Counsel, that pursuant to section 53(41) of the Act, the conditions to the Consent can be fulfilled and are achievable within a two-year time frame from the date of this decision.

[30] The Tribunal is satisfied and finds the proposed Consent Application has regard to the matters of provincial interest set out in section 2 of the Act, is consistent with the PPS, conforms to the County and the Municipality's OPs through the conditions to be imposed on the Consent, and has regard to the criteria set out in section 51(24) of the Act.

ORDER

[31] **THE TRIBUNAL ORDERS THAT** the appeal is allowed, and the provisional consent is to be given subject to the conditions set out in **Attachment 1** to this Order.

“Jackie Denyes”

JACKIE DENYES
MEMBER

Ontario Land Tribunal

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

The Conservation Review Board, the Environmental Review Tribunal, the Local Planning Appeal Tribunal and the Mining and Lands Tribunal are amalgamated and continued as the Ontario Land Tribunal (“Tribunal”). Any reference to the preceding tribunals or the former Ontario Municipal Board is deemed to be a reference to the Tribunal.

ATTACHMENT 1

ONTARIO LAND TRIBUNAL

PROCEEDING COMMENCED UNDER subsection 53(19) of the *Planning Act*,
R.S.O. 1990, c. P.13, as amended

Applicant and Appellant:	Farhi Farming Corporation
Subject:	Consent to Sever Land
Property Address/Description:	14387 Ilderton Road
Municipality:	Municipality of Middlesex Centre
Municipality File No.:	B-20-2023
OLT Case No.:	OLT-24-000056
OLT File No.:	OLT-24-000056
OLT Case Name:	Farhi Farming Corporation v. Middlesex Centre (Municipality)

MINUTES OF SETTLEMENT

B E T W E E N:

FARHI FARMING CORPORATION

(hereinafter "**Farhi Farming**")

Of The First Part

-and-

THE MUNICIPALITY OF MIDDLESEX CENTRE

(hereinafter the "**Municipality**")

Of The Second Part

WHEREAS the Appellant, Farhi Farming Corporation, made an application to the Council of the Municipality of Middlesex Centre in municipal file B-20-2023 for a consent to sever a residence considered surplus to a farm operation (the "**Application**") from the lands legally described as Part of Lot 16, London Concession 10, in the Municipality of Middlesex Centre, County of Middlesex, Province of Ontario, and is municipally known as 14387 Ilderton Road (the "**Farhi Property**");

AND WHEREAS the Farhi Property and lands subject to the Application are set out in Schedule "A" attached to these Minutes of Settlement;

AND WHEREAS the Council of The Municipality of Middlesex Centre (the "**Municipality**") denied the Applicant's consent application and issued its Notice of Decision dated December 20, 2023;

AND WHEREAS Farhi Farming filed an appeal of the Municipality's refusal to grant the consent to sever application to the Ontario Land Tribunal on December 20, 2023 (the "**Appeal**");

AND WHEREAS the severed lot with the residence has been limited in size only to be as large as necessary to accommodate on-site water and sanitary disposal facilities that includes the required contingency area to be identified as part of the survey of the severed and retained parcel to be prepared to the satisfaction of the Municipality, acting reasonably;

AND WHEREAS it has been confirmed that the retained parcel does not result in a risk to potentially increase the reduction of prime agricultural lands due to the significant woodlot situated on the retained parcel and abutting the severed parcel;

AND WHEREAS the Parties have reviewed the consent application and discussed the conditions to be applied and have resolved any outstanding concerns associated with the Application and agree to enter into these Minutes of Settlement;

NOW THEREFORE in consideration of the foregoing and of the mutual covenants and undertakings hereinafter set out in these Minutes of Settlement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto consent to settle the Ontario Land Tribunal proceeding OLT Case Number OLT-24-000056 and agree as follows:

Recitals

1. The recitals to these Minutes of Settlement are true and accurate and form a binding part of these Minutes of Settlement.

Settlement

2. The Parties shall mutually request that the Ontario Land Tribunal (the "**Tribunal**") allow the appeal of Farhi Farming on the following basis:
 - a. That the boundaries of the severed and retained portions of the Farhi Property be as shown in Schedule "A" to these Minutes of Settlement;
 - b. That the Tribunal approve the severance of the Farhi Property based on the boundaries shown on Schedule "A";
 - c. That the severance be approved and subject to the conditions attached as Schedule "B" to these Minutes of Settlement; and,
 - d. That the Tribunal attach a copy of these Minutes of Settlement to its Order (the "**Order**").

General

3. The Parties agree to jointly request that the Tribunal approve the consent to sever and revised conditions to the consent to sever as attached in Schedules "A" and "B" to these Minutes of Settlement.
4. The Parties agree not to seek costs against each other with respect to the matters before the Tribunal that are subject to these Minutes of Settlement. Each Party will bear its own costs and expenses incurred in connection with these Minutes of Settlement, including its legal fees and expenses.
5. The Parties agree that they are contractually bound to the terms of these Minutes of Settlement, and that the obligations and benefits thereof are enforceable by

any Party against the other Party in the event of a breach of them. The Parties covenant and agree that at all times, and from time to time hereafter, upon every reasonable written request to do so, they shall make, execute, deliver or cause to be made, done, executed and delivered all such further acts, deeds, assurances, and things as may be required for more effectively implementing and carrying out the true intent and meaning of these Minutes of Settlement.

6. The Parties agree to act reasonably and with good faith in respect of all dealings between themselves pursuant to these Minutes of Settlement. If any dispute arises between the Parties relating to the application, interpretation, and/or implementation of these Minutes of Settlement or any part thereof, the Parties agree to refer the matter to the Tribunal for determination. In the event the Tribunal does not have jurisdiction or refuses to entertain any such application, then the Parties agree to resolve the dispute in an expeditious manner by arbitration in accordance with the provisions of the *Arbitration Act, 1991*.
7. These Minutes constitute the entire agreement between the Parties with respect to the Matters set out in these Minutes of Settlement and supersede all prior agreements, negotiations, and understandings with respect to the Minutes of Settlement.
8. Any amendment to or waiver of any provisions of these Minutes of Settlement must be in writing and signed by the Parties.
9. The undersigned represent and warrant that they have all necessary power and authority to execute these Minutes of Settlement.
10. These Minutes of Settlement may be executed in counterparts, each of which so executed is deemed to be an original, and such counterparts together constitute one and the same instrument.

11. The terms and obligations set forth in these Minutes of Settlement shall be binding on the Parties, their respective heirs, beneficiaries, affiliates, successors, permitted, assigns and successors in title.
12. The Parties agree that they shall not question the capacity or legality of any portion hereof, nor question the legality of any obligation created hereunder, and this Agreement, their successors and assigns are and shall be estopped from contending otherwise in any proceeding before a Court of competent jurisdiction or any administrative tribunal.
13. These Minutes of Settlement are made pursuant to, and shall be governed by, and shall be construed in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable in Ontario.
14. These Minutes of Settlement shall be deemed to be jointly prepared by the Parties, and any ambiguity herein shall not be construed for or against any of the Parties.
15. The Parties agree that these Minutes of Settlement shall be a public document and filed with the Tribunal.

One signature page to follow.

IN WITNESS WHEREOF the Parties have caused this agreement to be executed by their duly authorized representatives.

May 3, 2024

Dated this _____ day of _____, 2024.

FARHI FARMING CORPORATION

DocuSigned by:
Shmuel Farhi
84EFDD97F8BA451...

Name: Shmuel Farhi

Position: President

I/we have authority to bind the Corporation.

Name:

Position:

I/we have authority to bind the Corporation.

May 3, 2024

Dated this _____ day of _____, 2024.

THE MUNICIPALITY OF MIDDLESEX CENTRE

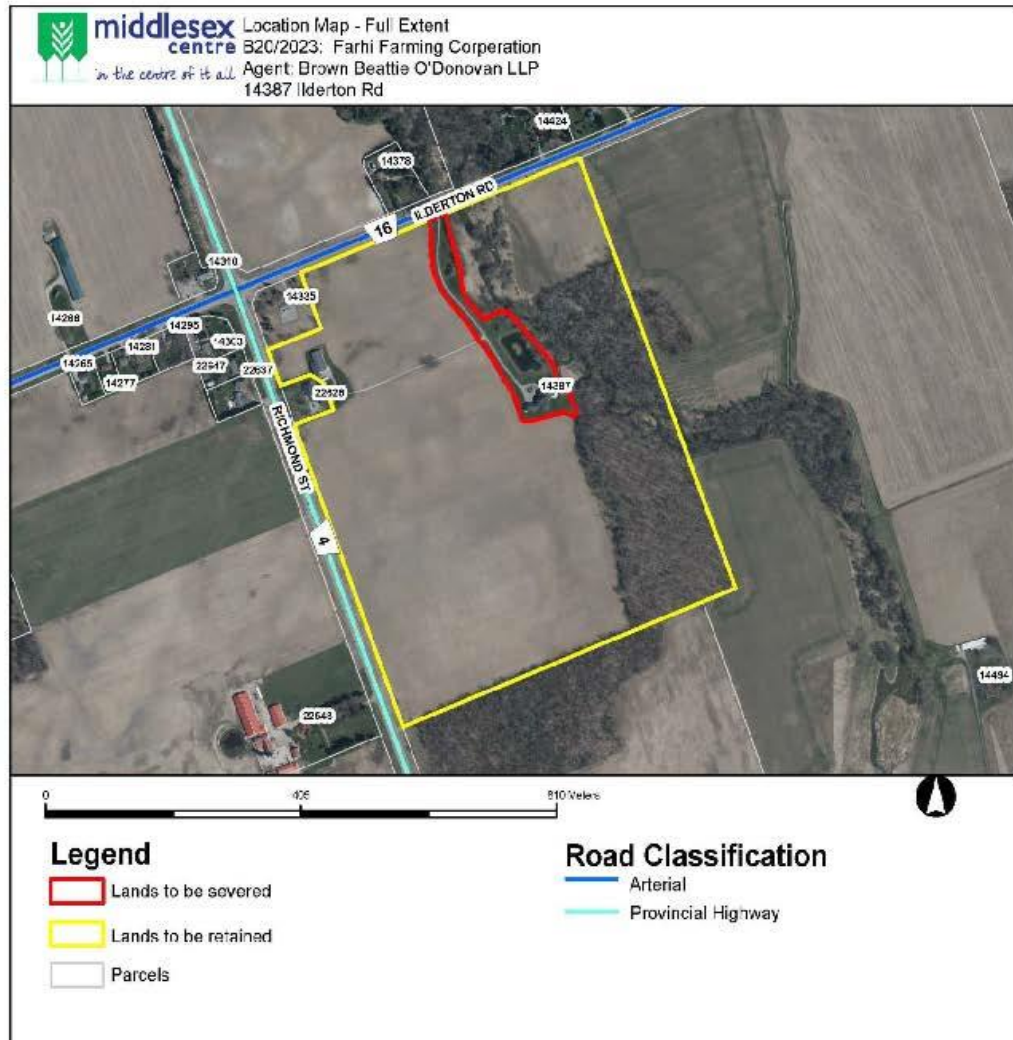
DocuSigned by:
Michael Di Lullo
7223E91197D740D

Name: Michael DiLullo

Position: Chief Administrative Officer

I have authority to bind the Corporation.

Schedule "A"



Schedule "B"

1. That the Certificate of Consent under Section 53(42) of the *Planning Act* shall be given within two years of the date of the notice of the decision. The request for the Certificate of Consent shall be accompanied by a written submission that details how each of the conditions of severance has been met.
2. That the fee for the Certificate of Consent be paid in accordance with the Municipality's Fees and Charges By-law.
3. That a draft reference plan be prepared by an Ontario Land Surveyor for the purposes of facilitating the transaction of Consent B-20/2023 and that this plan be approved by the Municipality prior to being deposited with the Land Registry Office.
4. That the Owner's solicitor provides a Transfer in Preparation to the Municipality, together with a deposited reference plan and a Schedule describing the land to be transferred, for the purposes of the issuance of a Certificate of Consent.
5. That the Owner's solicitor submits an undertaking in a form satisfactory to the Municipality to register an electronic transfer of title consistent with the Consent decision.
6. That the Owner enter into a severance agreement with the Municipality in order to advise future owner of the severed lot of Consent B-20/2023 of normal farm practices occurring in the area as outlined in the *Farming and Food Production Protection Act*, 1998, S.O. 1998, c.1, as amended.
7. That as part of the severance agreement entered into with the Municipality acknowledges that new residential dwellings are prohibited on any vacant remnant parcel of farmland created by the granting of the severance.
8. If required, the Owner may need to obtain either a zoning by-law amendment or minor variance, for the severed and retained parcels.
9. That any outstanding property taxes for the severed and retained lots of Consent B-20/2023 be paid in full.

10. That, if necessary a revised assessment schedule in accordance with the *Drainage Act*, R.S.O. 1990, c.D. 17, as amended, be commissioned, and paid for by the Owner.
11. That the Owner provide confirmation that the private sewage disposal system that services the residence on the severed lot of Consent B-20/2023 is wholly contained on the said lot and that the appropriate contingency area exists, to the satisfaction of the Municipality.
12. An agreement be registered on title of the severed land granting access to the Retained Parcel as it currently exists through a portion of the laneway providing access to the retained parcel for the purposes of allowing the retained parcel to continue to be utilized for normal farming practices and for no other purposes.
13. That the hydro service for the severed lands be fully within the boundary of the proposed severed lot.
14. That any remaining buildings on the retained lands maintain their own hydro service wholly contained on the retained lands.
15. That an address be assigned, and number erected for the retained agricultural parcel.
16. That the Owner will be required to dedicate lands measured up to 18 metres from the centreline of construction of County Road 16 (Ilderton Road) across the severed and retained parcels to the County of Middlesex for the purposes of road widening if the right of way is not already to that width.