



Board of Directors Meeting

Addendum

Thursday, December 5, 2024 at 6:00 p.m.

Hamilton Conservation Authority is now conducting meetings in a hybrid format via an in-person and Webex platform.

**All hybrid meetings can be viewed live on HCA's You Tube Channel:
<https://www.youtube.com/user/HamiltonConservation>**

5. Consent Items for Applications, Minutes and Correspondence

5.5. Correspondence with respect to an in-process Permit Application for 820 Sulphur Springs Road

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December 4, 2024

Raj Kehar
Partner
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VIA EMAIL

File 24970.00001

Hamilton Conservation Authority Board of Directors
c/o Sandra Winninger, Administrative Coordinator – Office of the CAO
Hamilton Conservation Authority
838 Mineral Springs Road
P.O. Box 81067
Ancaster, ON L9G 4X1

Dear Chair & Members of the Board of Directors:

Re: 820 Sulphur Springs Road, Ancaster (the “Subject Site”)

Conservation Permit pursuant to subsection 28.1 of the *Conservation Authorities Act*, R.S.O. 1990, c. C.27

Applicant/Owner: Anthony Quinn

We are counsel to Anthony Quinn in respect of our client’s application to the Hamilton Conservation Authority (the “**HCA**”) for a conservation permit. We write to advise the Hamilton Conservation Authority Board of Directors (the “**Board**”) that we were hopeful to have a section 28.1 hearing before you on January 9, 2025, as previously confirmed by HCA staff, but for unknown reasons that hearing date was cancelled by HCA staff.

We are now advised by HCA staff that the matter may be heard at hearing before the Board in March, 2025 or later. We do not understand why there is delay in the hearing of our client’s conservation permit application, especially when the supporting reports and studies have, in part, been under review by HCA staff for several years now as part of an associated Niagara Escarpment Permit application. HCA staff have not made a formal refusal decision on our HCA permit, however, we understand that they do not intend to approve it at the HCA staff level.

As you know, the HCA has an obligation to make a decision on a conservation permit within 90 days of it being deemed complete as per the *Conservation Authorities Act*. After some back and forth on this issue, HCA staff confirmed the completeness of our client’s HCA permit application as of September 30, 2024. While we think our client’s HCA permit application was likely complete

well before then, even if HCA staff's completeness date is assumed to be correct, the HCA should make a decision on our client's conservation permit application by December 30, 2024.

HCA staff indicated on several occasions that our client's conservation permit application would be considered at a hearing before the Board at its January 9, 2025 meeting. We agreed that the modest delay from when the decision needed to be made was acceptable in the circumstances given the intervening holidays. It is unfortunate that after planning for a hearing on our client's conservation permit before the Board for several months now, HCA staff are now advising the January 9, 2025 hearing date is no longer available to our client.

Our client has a right to appeal its conservation permit application to the Ontario Land Tribunal ("OLT") for non-decision on or about December 31, 2024. Our client intends to file this appeal as soon as its rights crystalize, subject to any response we may receive from the Board indicating a willingness to have a s. 28.1 hearing on an expedited hearing date that is acceptable to our client.

Request

We hereby request the Board to advise us whether it will hear our client's conservation permit application on an expedited basis, and if so, on what date it can be heard. Should a mutually acceptable expedited hearing date not be feasible, our client will appeal its conservation permit application to the OLT. However, despite this pending appeal, our client remains open to without prejudice discussion with the HCA, in particular as it is directed by the Board, in order to address any concerns the Board may have with our client's conservation permit application. Our client's hope remains that this matter can be resolved without a contested hearing given that its application is no different than applications that have been granted by the HCA for other lands within the surrounding area.

Background

Our client's conservation permit is to allow for the construction of:

- (i) a new dwelling on the Subject Site;
- (ii) improvements to the existing driveways on the Subject Site, and if necessary, the construction of a new driveway to provide safe access to the new dwelling; and
- (iii) repurposing the existing dwelling on the Subject Site (that has been partially damaged by fire) as an accessory structure to the proposed new dwelling.

The Subject Site is an approximate 22.9 hectare parcel of land located south of Governors Road and east of Highway 52 in the City of Hamilton. Adjacent lands within the same Escarpment Natural Area are developed with single detached dwellings. The proposed development of the Subject Site seeks to construct a new dwelling on the Subject Site, on lands that already have legal non-complying rights because there has been a dwelling on the Subject Site (that has been lived in, or there was an ongoing intent to live in) since well before conservation authorities even existed. Post development, the vast majority of the Subject Site will remain naturalized, and in fact improved once the various recommendations of our client's consultants are implemented as part of the proposed development.

Our client, through its various consultants, has submitted ample justification for why the proposed development can occur in a manner that is safe to people and property, does not negatively impact any natural heritage features or their functions, and is otherwise consistent with the HCA's policies and complies with the *Conservation Authorities Act* and associated regulations. These reports and studies include the following:

- (1) Complete application form
- (2) Plan of Survey dated October 7, 2023
- (3) Top of Bank Survey dated June 17, 2024
- (4) Planning Report dated July 2024
- (5) Site Plan dated July 15, 2024
- (6) Sight Distance Study dated January 25, 2024
- (7) Stage 1-2 Archaeological Assessment dated October 24, 2023
- (8) Heritage Report dated November 17, 2021
- (9) Environmental Impact Assessment dated April 20, 2020
- (10) Environmental Impact Assessment dated May 2023
- (11) Environmental Impact Assessment dated April 2024
- (12) Environmental Impact Assessment addendum dated July 17, 2024
- (13) Floodplain Analysis Report dated June 2021
- (14) Floodplain Analysis Report dated November 2023
- (15) Preliminary Grading and Erosion Control Plan and Technical Memo for Culvert Sizing dated June 2024
- (16) Geotechnical Investigation Report re: Proposed Residential Development dated March 30, 2022
- (17) Geotechnical Investigation Report re: Proposed Residential Development / Access Road dated July 2023

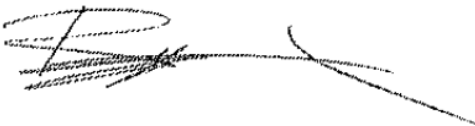
- (18) Technical Memo re: Slope stability assessment for Northern Slope dated November 17, 2023
- (19) Hydrogeological Site Assessment dated March 30, 2022
- (20) Various response letters to HCA staff comments from client's consultants

There are several iterations of the above-referenced reports because the technical analysis was updated to address comments received from HCA staff, and to explore new areas that HCA sought information on to formulate an opinion on the proposed development. HCA staff now have all the information they need to decide on the conservation permit application as evidenced in part by the HCA deeming our client's conservation permit application complete.

We thank the Board for its consideration of this request, and we look forward to the Board's response.

Yours truly,

WeirFoulds LLP

A handwritten signature in black ink, appearing to read 'Raj Kehar', with a long horizontal flourish extending to the right.

Per: Raj Kehar
Partner

C: John Olah & Brandon W. Orct, Counsel to Hamilton Conservation Authority
Lisa Burnside, CAO, Hamilton Conservation Authority
Client