

**The Corporation of the City of Kawartha Lakes**  
**Committee of Adjustment Report – Gascho**  
Report Number COA2018-064

**Public Meeting**

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**Meeting Date:** September 20, 2018  
**Time:** 1:00 pm  
**Location:** Victoria Room, City Hall, 26 Francis Street, Lindsay

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Ward 7 – Geographic Township of Verulam

**Subject:** An application to sever a 0.8 hectare vacant farm retirement lot and retain approximately 30.4 hectares of agricultural land with a single detached dwelling and barn. The property is located at 64 Mitchell's Road, geographic Township of Verulam (File D03-2018-008).

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**Author:** Janet Wong, Planner II

**Signature:**

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**Recommendation:**

**RESOLVED THAT** Report COA2018-064, Richard and Mary Gascho, be received; and,

**THAT** consent application D03-2018-008, being an application to sever a 0.8 hectare vacant farm retirement lot and retain approximately 30.4 hectares of agricultural land with a single detached dwelling and barn at 64 Mitchell's Road, be **DENIED**.

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**Background:**

The owners have applied to sever 0.8 hectare of vacant land on the north side of the property as a farm retirement lot. The 30.4 hectare (approximate) retained lands has a dwelling which was constructed in 1977 (MPAC) and a barn that currently is being used for storage. The intent is to sever the lot for a separate dwelling for Mr. and Mrs. Gascho and to allow their son and daughter-in-law to establish a beef cattle operation on the retained lands.

The owners provided information on their farm income history as they do not currently have an active Farm Business Registration Number which is standard demonstration of "bona fide farmer". The Gaschos purchased the property in 1982 and operated a beef farm until around 2003 – 2005 (21 – 23 years). Since then, there has not been a farming operation and Mr. Gascho also retired from employment off the farm in 2005.

Income tax filed with Revenue Canada from 2006 forward does not include farming income. Since 2006 (12 years) as directed by Revenue Canada, the Gaschos have filed income tax with rental income. In this instance, rental income is income received from land being rented to another farmer for his/her farm business use. In this situation, the land is used for hay production. Revenue Canada and the Province do not recognize rental of land to be farm business income.

On this basis, neither owner of the property has been a “bona fide farmer” for about 12 years.

This application was deemed complete May 25, 2018.

Owners:	Richard and Mary Gascho
Applicant:	EcoVue Consulting Services Inc. (Nolan Drumm)
Legal Description:	Lot 24, Concession 2, geographic Township of Verulam, City of Kawartha Lakes
Official Plan:	“Rural” both the retained and severed and “Environmental Protection on severed lands – City of Kawartha Lakes Official Plan
Zone:	“General Rural (A1) Zone” – Township of Verulam Zoning By-law 6-87
Site Size:	Severed – 0.8 hectares Retained – 30.4 hectares (approximate)
Site Servicing:	Private individual wells and septic systems
Existing Uses:	Agricultural
Adjacent Uses:	North: Agricultural East: Agricultural South: Agricultural West: Agricultural and Rural Residential

## **Rationale:**

The applicant submitted the following reports and plans in support of the application, which were circulated to various City Departments and commenting Agencies for review:

1. Planning Justification Report (EcoVue Consulting Services, dated November 7, 2017). The report discusses and assesses the proposal in the context of the 2014 Provincial Policy Statement, Growth Plan for the Greater Golden Horseshoe (2017), City of Kawartha Lakes Official Plan, and the Township of Verulam Zoning By-law 6-87.
2. Scoped Environmental Impact Study (EIS) for Proposed Severance at 64 Mitchell's Road, Fenelon Falls (Cambium, dated October 5, 2017). The report identifies and assesses the natural heritage features in the context of the proposed severance and 2014 Provincial Policy Statement Natural Heritage policies.

3. Minimum Distance Separation (MDS) Calculation (EcoVue Consulting Services, dated October 26, 2017). The calculations were prepared to identify the minimum distance the proposed lot would be required to be set back from barns and manure storage facilities.
4. Consent Sketch (EcoVue Consulting Services, dated January 3, 2018).

The Planning Justification Report advises that the severed lands would be consistent with both provincial and municipal planning policies and documents as supported by the EIS assessment and MDS calculations. The EIS concluded that the woodland in the north-east corner of the subject property adjacent to the severed lands is not considered to be a significant natural heritage features in the context of the Provincial Policy Statement. The swamp on the north-east side of the property is not considered to be adjacent to the severed lands being more than 120 metres from the proposed lot line. The MDS calculations indicate the proposed lot distance will be greater than the calculated minimum separation distances.

Staff has reviewed the Planning Justification Report and accompanying documents filed in support of the proposed severance.

## **Policy Conformity**

### **Provincial Policy Statement, 2014 (PPS)**

Under the PPS, the subject property is considered to be Rural Lands within the Rural Area of the City. Development may be directed to Rural Lands where the City “does not have a settlement area”, including rural settlement areas (Section 1.1.4.4). There over 30 settlement areas within the City with the Fenelon Falls urban boundary about 3.5 kilometres from the proposed lot.

The City has articulated the circumstances in its Official Plan where limited residential development may be directed that in the long term can be sustained by rural service levels as well as minimize constraints on future agricultural activities consistent with PPS policies for directing development on Rural Lands (see below).

### **Growth Plan for the Greater Golden Horseshoe, 2017 (Growth Plan)**

The Growth Plan provides a framework to plan for growth and development in urban areas, rural towns and villages that are able to support surrounding rural and agricultural areas. The Agricultural System for the Growth Plan does not identify the subject property as being within the prime agricultural area. It is a candidate area, however until such time as the City brings its Official Plan into conformity with the Growth Plan, the Agricultural System policies do not apply. The Natural Heritage System for the Growth Plan covers the entire property. Until such time as the City brings the Official Plan into conformity with the Growth Plan, the KRCA provides advice to the City on conformity with Growth Plan natural heritage system policies. The EIS did not speak to conformity with the Growth Plan natural heritage system having been prepared before the release of the Provincial Natural Heritage System Map February 9, 2018.

The Growth Plan directs development to rural and urban settlement areas except where policies permit otherwise (Section 2.2.1d). In Rural Areas, development outside of rural

settlement areas “may be permitted” when the land use “would not be appropriate in” the settlement area (Section 2.2.9.3c). Residential use is very appropriate within a settlement area, albeit it is not the preferred location and form for the applicant.

### **City of Kawartha Lakes Official Plan (Official Plan)**

In keeping with Provincial policies and plans, the strategic direction in the Official Plan is to direct development to settlement areas except where necessary for development related to the management or use of resources and the rural land use cannot be located in the settlement areas (Section 4.1j). A residential use can be located in the settlement area where full municipal services (both hard and soft services) will be available. Limited residential development is allowed in the rural area provided that very specific criteria are met.

The subject property is designated “Rural” in the Official Plan. Environmental Protection designation follows watercourses on the retained lands. Objectives of the Rural designation include to “ensure that non-agricultural uses and development is encouraged to locate within designated settlement areas” (Section 16.2a). The achievement of this objective and supporting the farming operation is established through very specific criteria, which must all be met, regarding the creation of a residential lot for a retiring farmer as follows:

1. the person meets the definition for retiring farmer. The definition is: “a bona-fide full-time farmer and is of normal retiring age who has operated the farm for a substantial number of years”;
2. the lot is between 0.4 and 1 hectare;
3. the lot meets the MDS criteria; and
4. the farm parcel is not the result of a lot having been severed for a residential lot.

A definition of a farmer is “the owner or operator of an agricultural operation” (Farming and Food Protection Act). While Mr. Gascho was a farmer for a number of years, he retired from farming at least 12 years ago and there is no farm business operating from this property. A main principle behind allowing for a farm retirement lot has been to support the farming operation through the retiring farmer being proximate to the farm operation in order to mentor successors to the business. This key criterion, thus all of the criteria for a farm retirement lot, would not be met in this instance. While the City supports new agricultural businesses, the creation of a lot is not necessary to achieving this objective.

### **Zoning By-law Conformity**

The subject property is zoned “General Rural (A1) Zone” in the Township of Verulam Zoning By-law 6-87.

The lot to be retained exceeds the minimum lot frontage (180 metres) and area (25 hectares) requirements of the A1 Zone by proposing more than 500 metres and 30 hectares respectively.

The A1 Zone category requires that lots for residential use have a minimum lot area of 2050 square metres up to a maximum of 1 hectare with a frontage of 36 metres. The

proposed severed lands would exceed these criteria being 0.8 hectares and 75 metres respectively.

### **Other Alternatives Considered:**

Staff advised the applicant, prior to deeming the application complete, that the application would not be supported as the owners had not demonstrated that they are bona fide farmers. It was suggested that the City Official Plan does support the development of a 'garden suite', which is a separate dwelling on the lot temporarily constructed to allow for family to be reside on the same lot. Staff recommended that this be pursued to allow Mr. Gascho to live nearby and provide support to his son in the establishment of a farm operation.

### **Servicing Comments:**

The severed lands will be serviced by private well and septic system. The retained lands have a private well and septic system.

### **Consultations:**

Notice of this application was circulated in accordance with the requirements of the Planning Act. Comments have been received from:

### **Agency and City Comments:**

Building Division – Building Inspection (June 28, 2018): No concerns

Building Division – Sewage Inspection (August 29, 2016): There is adequate area to accommodate an on-site Class 4 sewage disposal system. A minimum are of 500 square metres is available.

Community Services Department (July 4, 2018): Cash-in-lieu of parkland required.

Development Engineering Division (July 5, 2018): No objection. Suitability and availability of an entrance required.

Economic Development – Agriculture (July 30, 2018): Not supportive as application does not meet the criteria of a retiring farmer. See comments.

Kawartha Region Conservation Authority (June 6, 2018): No concerns with recommended best practices identified in the Environmental Impact Study (EIS) were adhered to. The severed lands are located in an area regulated under Ontario Regulation 182/06. A permit will be required.

### **Public Comments:**

Richard Mitchell (July 11, 2018): opposes application. See comments.

### **Planning Analysis:**

There is strong policy direction at the Provincial and City level to direct new residential land uses to urban and rural settlement areas and the protection of rural lands for agricultural use. It is estimated that there are 600 farm properties with a dwelling

occupied by a farmer within the Rural designated lands. In the City as whole, it is also estimated that there are 500 vacant residential lots between 0.4 and 1 hectare (MPAC). There are a significant number of vacant residential lots and a significant number of potential farm retirement lots within the City.

Mitchell's Road is a rural gravel road with few lots. One rural residential lot was created by consent in 1990 prior to current policies being in place. 155 Mitchell's Road was created by consent in 2013. The owner had discussed the opportunity to sever a rural residential lot or splitting the property along the original lot lines with staff. An application to sever the property along the original lot lines was approved by the Committee of Adjustment which created a 32 hectare lot along the original lot lines.

The Official Plan has policies intended to direct future growth to settlement areas. The Official Plan also has policy support for development of garden suites on Rural designated lands. The Township of Verulam Zoning By-law 6-87 does allow for a second unit for full-time farm help. A second dwelling could be constructed for full time farm help, which could be for the son with Mr. Gascho holding the farm business licence. As well there is Provincial Policy direction to support second units, thus the City would be prepared to entertain a second unit without the creation of a new lot.

Based on the foregoing, staff has recommended that this application be denied as:

1. the application is not consistent with the applicable policies of the Provincial Policy Statement 2014;
2. the application does not conform with the Provincial Growth Plan for the Greater Golden Horseshoe, 2017; and,
3. the application does not conform with the City of Kawartha Lakes Official Plan policies.

## Attachments



Appendix A-E.pdf

Appendix A – Location Map

Appendix B – Orthoimage

Appendix C – Applicant's Sketch

Appendix D – City and Agency and Public Support Comments

Appendix E – Correspondence Related to Mitchell Comments

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**Department Head:** Chris Marshall

**Department File:** D03-2018-008