MINUTES OF M790/09-2018
NIAGARA ESCARPMENT COMMISSION
GEORGETOWN, ONTARIO
September 20, 2018


Regrets: None.


Also Present: R. Pineo, Niagara Escarpment Program Team Leader, (MNRF), R. Patrick, President, C.O.N.E., J. Thompson, Counsel (MNRF).

Meeting called to order: 10:00 a.m.
Chair Russ Powers presided.

Introductions:
The Chair welcomed the Commissioners and members of the public to the meeting.

APPROVAL OF MINUTES – M789/08-2018

M790R1/09-2018 Moved By: Downey
Seconded By: Mausberg

“That the Commission accept the Commission Minutes of August 16, 2018 as amended on pages 19 and 20.”

Motion Carried

CONFLICTS OF INTEREST – Declaration of Conflicts of Interest
None declared.
MOTION FOR SPEAKERS

M790R2/09-2018

Moved By: McKinlay
Seconded By: Horner

“That the persons representing the Applications listed on the Agenda be invited to address the Commission.”

Motion Carried

D1

Minor Variance Application HM/A-18:224
467 Charlton Avenue East
City of Hamilton

BACKGROUND

The NEC was previously involved in the review of two zoning by-law amendments for the subject property. These applications were to facilitate the development of three multi-unit residential buildings each having a height of six stories. While the City of Hamilton reduced the height of the building within Block 1c to five stories before passing the applicable zoning by-law, the NEC appealed this zoning by-law (No. 14-241), partially on the basis that the proposed massing of the building within block 1c, and the size of the mechanical level upon this building would result in a visual impact on the escarpment environment by skylining above the Niagara Escarpment.

A settlement was reached through an Addendum Visual Impact Assessment presented by the applicant to NEC staff and subsequently to the Commission in March of 2015. This assessment confirmed that reducing the size, and increasing the setback of the mechanical penthouse upon all three buildings, as well as increasing the setbacks between the buildings would mitigate NEC concerns regarding visual impact. As such, the Commission approved the withdrawal of the appeal. The settlement was based on the fact that no building or structure within Block 1c would exceed 5 storeys above grade or 18.0 metres in height. Such provisions were included in the Ontario Municipal Board (OMB)-approved amendment to By-law No. 6593.

ISSUE

While the Niagara Escarpment Commission was a commenting agency on previous development applications on the subject land, the NEC was not circulated on Minor Variance Application HM/A-18:224. Instead, staff were notified by a member of the public advising of the MVA, which seeks relief from the aforementioned zoning by-law provisions to permit building 1c to have a height of six (6) stories above grade or 21.0 metres in height (excluding the mechanical penthouse).
Per the letter sent to the Hamilton Committee of Adjustment on September 19, 2018, NEC staff are of the opinion that approval of the proposed application will result in a negative visual impact upon the scenic resources of the Escarpment, and thus do not support the approval of Minor Variance No. 1 of application HM/A-18:224 on the basis that it conflicts with Part 1.7 and 2.13 of the NEP, and varies from the OMB approved amendment to By-law No. 6593.

Further, since By-law No. 6593 was approved by the OMB in 2015, the NEP policies respecting protection of scenic resources (visual impact) have been enhanced and are now more definitive; whereas the guidelines that were relied upon to formulate the NEC’s position in 2015 have now been adopted as provincial land-use policy in the NEP (2017).

It is also important to note that NEC staff are aware of two Hamilton residents that oppose the Minor Variance Application.

**RECOMMENDATION**

That the Commission direct staff to appeal the Minor Variance Application HM/A-18:224 if it is approved by the Hamilton Committee of Adjustment today.

**Note:**

- Nancy Mott, Senior Strategic Advisor, presented and answered questions.
- Linda Laflamme was present and answered questions.
- Jim Avram, Senior Planner, was present and answered questions.

**M790R3/09-2018**

Moved By: VanderBeek
Seconded By: Mausberg

“That the Commission not support the staff position and direct staff not to appeal an approval of Minor Variance Application HM/A-18:224 if approved.”

**DISCUSSION**

Commissioner VanderBeek noted that the property is not located in the Niagara Escarpment Plan Area, the Commission is only a commenting agency, the additional storey is permitted in the City’s Official Plan, City staff are supportive of the Variance, the additional floor will make the building more viable for the owners, she was concerned about the Commission spending money on an appeal, and did not support the Staff Recommendation, stating “This feels wrong.”

The Commission requested clarification on the NEC role with the current MVA, and what position the Commission has taken historically and if a Committee of Adjustment can vary an Ontario Municipal Board approval. The Manager noted that it is common practice for the Commission to comment on Applications for lands where the NEP is in effect.
The Chair relinquished Chair duties to Commissioner Carr, and noted that it was troubling that the NEC was not circulated on this MVA and was instead advised of it by a member of the public. He noted that both he as a Commissioner and Commissioner McQueen were involved with past Commission decisions for this property. He then resumed Chair duties.

Commissioner Mausberg expressed his support for Commissioner VanderBeek, citing inconsistencies in the Commission approving a “monster home” in Prime Agricultural Land but not approving municipal high density housing. He asked if the building would have to be demolished if the Commission appealed the Variance.

Commissioner McQueen noted that it is important that the Commission support staff recommendations on this property, given all the history and previous work done on this matter.

Commissioner Haswell noted that the Commission has historically upheld the NEP, and does not support removing the Commission’s right to appeal.

Commissioner Carr advised that if the Commission does not appeal, it will tie the Commission’s hands and the Commission would lose the right to participate in a hearing.

Staff noted that the commenting period closed on September 19, 2018.

M790R4/09-2018

Moved By: McQueen
Seconded By: Horner

“That the Commission move in-camera.”

Motion Carried

M790R5/09-2018

Moved By: McQueen
Seconded By: Baty

“That the Commission move out-of-camera.”

Motion Carried
“That Motion M790R3/09-2018 be deferred to the appropriate time later in the meeting.”

At the Request of Commissioner Pim, the vote was recorded.

For the Motion: Baty Burton Carr Downey Gilhespy Greig Haswell Horner Mackenzie McKinlay McQueen Pim Robertson VanderBeek

Against the Motion: Mausberg

Motion Carried

“That the Commission confirm the direction given In-Camera.”

At the Request of Commissioner Pim, the vote was recorded.

For the Motion: Baty Burton Carr Gilhespy Greig Haswell Horner Mackenzie McQueen Pim Robertson

Against the Motion: Downey Mausberg McKinlay VanderBeek

Motion Carried

D1 discussion was continued after the lunch break.
A1 and A3

DEVELOPMENT PERMIT APPLICATIONS  
Mike Bottos  
806 Beeforth Road  
Part Lot 3, Concession 5 FE FLM  
City of Hamilton (former Town of Flamborough)

PROPOSALS:

W/R/2017-2018/464  
To demolish an existing 1 story single dwelling, and construct a new 2 storey, ± 436.6 sq. m (± 4,700 sq.ft.) single dwelling having a maximum height to peak of ± 9.6 m (± 31.5 ft.), install a ± 35.7 sq. m (± 384 sq. ft.) swimming pool, construct a new driveway, and install a new well and private sewage disposal system on a 0.4 ha (0.95 ac.) lot.  
Note: The above total floor area for the dwelling excludes 2 porches totalling ± 42.7 sq. m (± 460 sq. ft.).

W/R/2017-2018/371:  
To construct a 2 storey, ± 369.7 sq. m (± 3,980 sq. ft.) single dwelling (including an attached garage) with a maximum height to peak of ± 9.45 m (± 31 ft.), a ± 15.7 sq. m (± 170 sq. ft.) porch, install a private septic system and a private well, and construct a new driveway on a vacant 0.31 ha (0.77 ac.) lot.

RECOMMENDATIONS

That the proposals be refused for the following reason:

REASON FOR REFUSAL  

1. The proposed developments conflict with Part 2.2.3 of the Niagara Escarpment Plan as the subject properties are not recognized as existing lots of record by the NEP.

Note:

• Jim Avram, Senior Planner, presented and answered questions.
• Hal Watson, O’Connor MacLeod Hanna, Counsel, presented and answered questions.
• Mike and Pam Bottos, Applicants, were present and answered questions.
M790R8/09-2018
Moved By: Pim
Seconded By: Gilhespy

“That the Commission move in-camera.”

Motion Carried

M790R9/09-2018
Moved By: McKinlay
Seconded By: Robertson

“That the Commission move out-of-camera.”

Motion Carried

M790R10/09-2018
Moved By: Carr
Seconded By: VanderBeek

“That the Commission approve Applications W/R/2017-2018/464 and W/R/2017-2018/371 in principle and direct staff to return to the next meeting to finalize the decision and provide Conditions of Approval.”

At the request of Commissioner Baty, the vote was recorded.

For the Motion: Baty
Burton
Carr
Downey
Gilhespy
Greig
Horner
Mackenzie
McQueen
VanderBeek

Against the Motion: Haswell
Mausberg
McKinlay
Pim
Robertson

Motion Carried

DISCUSSION:

The Commission requested further information on when the lots were severed, registered as unique and separate lots, and if they were taxed as separate lots since 1976. The Applicant advised that she is paying separate tax bills for each lot.

Commissioner Gilhespy inquired if a Plan Amendment was a possible solution for the Applicants. Staff noted that a Plan Amendment Application could be entertained but would not necessarily meet NEP policies.
Commissioner McQueen noted that this situation is more of a technical issue.

Commissioner McKinley inquired why the lots were merged; the Applicant’s Counsel advised that no merge had taken place.

Commissioner Pim advised that she supported the staff recommendation and noted there are other options available to the Applicant, such as a Secondary Dwelling Unit.

**A2**

**DEVELOPMENT PERMIT APPLICATION P/R/2018-2019/088 (AS BUILT)**

Mark Krapez (Applicant)

Jim Wallace (Agent)

17710 Mississauga Road

Part Lot 12, Concession 4, WHS

Town of Caledon, Region of Peel

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**PROPOSAL:**

To recognize the unauthorized construction of a two-story, ±638 square metre single dwelling on a 1.3 hectare lot.

**RECOMMENDATION:**

That the proposal be **approved** with the following Conditions:

**CONDITIONS OF APPROVAL**

P/R/2018-2019/088

1. Development shall occur in accordance with the **Landscape and Vegetation Preservation Plan** and **Sewage System and Slope Restoration Plan ("Site Plans")**, and Conditions as approved.

2. The Development Permit shall expire three years from its date of issuance unless the development has been completed in accordance with the Development Permit.

3. The landowner shall advise the Niagara Escarpment Commission in writing of the start and the completion date of the development. This notice shall be provided to the NEC 48 hours prior to the commencement of development, and within 14 days upon completion.

4. No site alteration of the existing contours of the property including the placement or stockpiling of fill on the property is permitted with the exception of that identified within the development envelope in accordance with the approved Site Plans.

5. No vegetation shall be cut or removed from the development envelope except for that identified within the development envelope in accordance with the approved Site Plans.
6. The dwelling shall not contain more than one dwelling unit.

7. The approved **Landscape and Vegetation Restoration Plan** (dated August 1, 2018) shall form part of the Site Plan referred to in Condition # 1 and development shall proceed in accordance with the details of the Landscape and Vegetation Restoration Plan. Stipulations:

   a) Planting and the rehabilitation of all disturbed areas shall be completed, by the end first growing season following the completion of grading to the satisfaction of the Niagara Escarpment Commission;

   b) All trees, shrubs and nursery stock shall be native to Ontario except those where approved under the Development Permit. Native plant material should be sourced from local plant nurseries when available; bush dug plant material is not acceptable.

   c) All plant material shall be guaranteed for 24 months following installation. All plant material found during this time to be dead or dying must be replaced with a size and species to the satisfaction of the Niagara Escarpment Commission;

   d) Subsequent to the completion of the works a letter certifying the work has been completed in accordance with the approved plan shall be provided to the Niagara Escarpment Commission by the consulting expert.

8. The approved **Sewage System and Slope Restoration Plan** (dated July 30, 2018) shall form part of the Site Plan referred to in Condition # 1 and development shall proceed in accordance with the details of the Sewage System and Slope Restoration Plan. Stipulations:

   a) All fill placed along the western side of the dwelling shall be removed, and all slope restoration works shall be carried out under the supervision of a geotechnical engineer. The geotechnical engineer shall remain on site during removal of fill, the slope restoration, and confirmation that footing elevation and frost protection is maintained; and

   b) A biodegradable erosion mat is to be placed on the restored slope, and a nurse crop shall be applied to the slope to aid with achieving soil stability.

9. **Prior to the commencement of any development**, all Erosion and Sediment Controls (ESC) and vegetation protection fencing and other measures shall be installed as per the Site Plans. The installation of all protective measures shall be inspected by a qualified professional, and a letter including photographs confirming the same be filed with the Niagara Escarpment Commission. It is the responsibility of the permit holder to implement and maintain all protection measures. Any deficiencies shall be reported to the Niagara Escarpment Commission and addressed immediately.

10. All waste materials generated from the demolition shall be completely removed from the property (e.g., taken to an approved landfill site, savage/reclamation facility, re-used/recycled elsewhere) and not otherwise stored or buried on-site.
All disturbed areas shall be immediately stabilized / rehabilitated as per the approved Site Plan (Condition # 1).

NEW CONDITION:

11. No additional development related to NEC Development Permit #11151/P/R/2016-2017/071 shall occur effective as of September 21, 2018.

Notes:

a) This Development Permit does not limit the need for or the requirements of any other approval, license or certificate under any statute (e.g., Ontario Building Code, Conservation Authorities Act, Endangered Species Act, etc.).

b) The Niagara Escarpment Commission supports the protection of the night sky from excessive residential lighting and recommends that the applicant obtain information on shielding the night sky through the use and operation of appropriate lighting fixtures. This information is available at www.darksky.org.

Note:

• Kim Peters, Senior Strategic Advisor, presented and answered questions.
• O.J. MacDonald, Senior Compliance Specialist, was present and answered questions.
• Jim Wallace, Agent, was present and answered questions.

M790R11/09-2018

Moved By: Downey
Seconded By: McKinlay

“That the Commission accept the Staff recommendation with an additional Condition voiding the original Development Permit.”

Motion Carried

DISCUSSION:

The Commission inquired why the Applicant relocated the proposed dwelling in violation of current Development Permit. The Agent advised that the current Development Permit required trees to be removed and the Applicant wanted to protect the trees.

The Chair requested clarification between the Applicant and the Owner, Caledon Mountain Trails Inc., as the proposed construction is for a single dwelling. The Agent advised that Caledon Mountain Trails Inc. is the Applicant’s construction company. The Commission requested further information on the stability of the unauthorized location; staff advised that the slope stability study was acceptable to the Conservation Authority.
The Commission noted that unapproved relocation has caused additional work and cost for staff and partner agencies.

Commissioner Gilhеспy asked what next steps would be if the Commission refused the Application. The Senior Compliance Specialist advised that a Restoration Order could be issued.

The Chair and Commission complimented staff on working with partner agencies with so many variables in this situation.

Broke for lunch: 12:15 p.m.
Reconvened: 12:50 p.m.

PRESENTATION

Kelso – Glen Eden Conservation Area Master Plan

The Director advised that the Kelso – Glen Eden Conservation Area Master Plan Presentation will be presented at the November 2018 Commission meeting.

C1

INFORMATION REPORT
Development Permit Application B/R/2014-2015/9060
Lot 2, Plan 3M-117, Part Lot 7, Concession 14 EBR
Municipality of Northern Bruce Peninsula (Eastnor), County of Bruce

BACKGROUND:

Staff presented an update to the Commission on the lengthy Hearing process following appeal by OHT and Chippewas of Nawash of the NEC decision to allow development on Lot 2 of Hunter’s Point subdivision.

Development Permit #6302/B/R/2009-2010/9078 was issued for the construction of a dwelling, accessory building, sewage disposal system and driveway on Lot 2, Plan 3M-117. Chippewas of Nawash appealed the Commission’s decision. A settlement agreement was reached prior to Hearing. The Hearing Officer confirmed the decision to issue a DP with the inclusion of two notes agreed to by the parties. The notes reference an agreement between the applicant and Nawash to develop a comprehensive protection plan for Nochemowenaing and to not apply for Development Permits for any other existing lots at Hunter’s Point until such plan is in effect. This Development Permit expired December 2014.
Knowing the Development Permit was to lapse, the applicant submitted Development Permit Application B/R/2014-2015/9060 in October for the identical development approved under this earlier settlement and permit.

The Commission conditionally approved the application and included the same notes from the previous Development Permit. The Heritage Development Criteria was considered satisfied based on the earlier archaeological assessment and clearance of this lot by Ministry of Culture. The decision was appealed by both OHT and Chippewas of Nawash citing concerns for the protection of the sacred area despite clearance of the archaeological resources on this particular lot.

Following 7 teleconference Pre-Hearings and requests for adjournment, a settlement agreement was reached. The parties filed agreements of purchase and sale executed between the applicant and the Chippewas of Nawash that transfer ownership of not only the subject lot, but also Lot 25 and Lot 5 of Plan 3M-117. The Hearing Office confirmed the decision of the Commission with modification to the Conditions of Approval to reflect a change in date for the expiration of the Conditional Approval to expire May 15, 2018 agreed to by all parties.

The intent of the change of date was to allow the disposal of the appeals as the applicant no longer wanted to develop the property and had agreed to sell to Nawash. If the appeals were withdrawn before the Hearing Officers report was issued there would have been no jurisdiction to amend the condition and technically the original permit would be in force according to s. 25(10.2) of the Niagara Escarpment Planning and Development Act (NEPDA).

The expiry date has now past and NEC staff have informed the applicant and commenting agencies by letter that the Conditions of Approval have lapsed without conditions being fulfilled and the file is now closed. The parties are completing their land transfer agreement.

**RECOMMENDATION**

That the Commission receive this report for information.

**Note:**

- Judy Rhodes-Munk, Senior Planner, presented and answered questions.

**M790R12/09-2018**

Moved By: Gilhespy
Seconded By: Pim

“That the Commission receive the information report.”

Motion Carried
Commissioner VanderBeek advised that the City of Hamilton Committee of Adjustment approved Minor Variance Application HM/A-18:224.

**M790R13/09-2018**

Moved By: Mausberg  
Seconded By: Pim  

“That the Commission move in-camera.”  

Motion Carried

**M790R14/09-2018**

Moved By: Gilhespy  
Seconded By: Burton  

“That the Commission move out-of-camera.”  

Motion Carried

**M790R15/09-2018**

Moved By: VanderBeek  
Seconded By: Mausberg  

“That Motion M790R3/09-2018 be withdrawn, and that staff approach the Applicant and City of Hamilton for further discussion and bring back an information report to the next possible Commission meeting.”  

Motion Carried

**INFORMATION REPORTS – G Package**

**M790R16/09-2018**

Moved By: Pim  
Seconded By: Horner  

“That the Commission receive the G package.”  

Motion Carried

**DISCUSSION:**

Commissioner Horner commended staff on the high number of Director-approved reports. The Director commended the Manager, and the Manager commended staff on the excellent work.

Commissioner Pim thanked staff for including the As-built information on the Director Approvals report. Commission Mackenzie inquired why the Development Permit Applications are processed for As-builts; the Manager advised that...
applications encourages compliance with the NEP, ensures there is a record of approval and it is part of a range of compliance tools in use. Commissioner Gilhespy asked if there is a statute of limitations for properties not in compliance; the Manager advised that the NEC can issue tickets within 30 days of non-compliance awareness, and that Ministry Compliance staff may get involved if needed. Commissioner McKinlay also noted that banks and insurance companies play a role in ensuring compliance.

Commissioner McKinlay was glad to see approval of a dairy farm and asked if staff is aware of dairy farmer requirements, and if they can be harmonized with the NEP.

Commissioner Pim asked about a recent meeting that staff attended with the Northern Bruce Peninsula Environment Network and Parks Canada. Staff reported details of that meeting.

The Director provided a high level update on the NEC Mandate Review that is completed every 7 years, and advised that most items raised have already been addressed; Commissioner Baty noted that it would be beneficial to review the complete report. The Chair commended staff and Commissioners on their participation, noting that every recommendation raised was address in staff interviews. He also noted that phenomenal impact of the Outreach sessions done this year. Commissioner McKinlay suggested reaching out to rural property owners with the positive points of being the Plan Area. Commission Mausberg asked if more outreach to the public can be done. The Chair noted there are resource and budget constraints to consider.

NEW BUSINESS

M790R17/09-2018

Moved By: Haswell
Seconded By: McQueen

“That the Commission approve the 2019 meeting schedule.”

Motion Carried

DISCUSSION

The Director provided an update on accommodations, noting that Commission will remain in the current location at the new Government’s direction.

The Director advised that the NEC website is being migrated to the Ministry’s website platform over the next year.

Commissioner Gilhespy noted that Bruce Trail Conservancy is hosting an event of November 8, 2018, to thank donors who helped contribute over $9 million in the last 2 years; she will forward the invitation to Commission members.

Commissions Pim and Gilhespy noted their concern with Commissioners coming to meetings late and leaving early.
Commissioner Baty requested an update on the Cave Springs Master Plan and was advised that it is still with the Conservation Authority for review.

The Commission inquired about the status of the last vacant Commissioner position, and if it is to be filled by an aggregate expert. The Director also noted that several Commissioner terms will end in 2019 and the need for new appointees, as noted in the NEC Mandate Review.

**ADJOURNMENT**

**M790R18/09-2018**

Moved By: Mackenzie

“That this meeting be adjourned.”

Motion Carried

**Time of Adjournment:** 4:10 p.m.

R.F. (Russ) Powers
Chair