MINUTES OF M801/07-2020
NIAGARA ESCARPMENT COMMISSION
VIA WEBEX DUE TO COVID 19 PANDEMIC
July 16, 2020


Regrets: B. Clark.


Also Present: D. Kappos, Counsel, Ministry of Natural Resources and Forestry; K. Novacek, Ministry of Natural Resources, S. Cooper, Ministry of Natural Resources.

Meeting called to order: 1:00 p.m.

Chair Rob Nicholson presided.

Introductions:

The Chair welcomed newly-appointed Commissioner Gibson to the meeting.

Land Acknowledgement

The Chair read aloud the Land Acknowledgment.

BUSINESS ARISING FROM PREVIOUS MEETINGS:

None.
APPROVAL OF MINUTES – M800/06-2020

M801R1/07-2020 Moved By: Hutcheon
Seconded By: Burton

“That the Commission approve the Commission Minutes of May 21, 2020, as revised to include Commissioner Witteveen’s votes on the Motions.”

Motion Carried

DISCUSSION:

Commissioner Witteveen noted that he was in favour of the motions and was unable to vote during the meeting due to technical issues.

MOTION FOR SPEAKERS

M801R2/07-2020 Moved By: Burton
Seconded By: Downey

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

Motion Carried

CONFLICTS OF INTEREST – Declaration of Conflicts of Interest

Commissioner Driedger declared a conflict with Agenda Item A3, Niagara Escarpment Plan Amendment PA PB 208, Dyer’s Bay.

Commissioner Golden advised that she had consulted with the Office of the Integrity Commissioner regarding her possible conflict with Agenda Item A4, Order to Demolish/Restore #2020.002. She reluctantly declared a conflict as she awaits a response from the Integrity Commissioner.

DISCUSSION AGENDA: A and B PACKAGES (Staff Reports, External submissions)

C1

INFORMATION REPORT
Duty to Consult: Planning and Indigenous Communities and People
BACKGROUND:

As an agency of the Provincial Government, the NEC has a duty to consult with respect to matters that may impact Aboriginal peoples including First Nations and Métis. This duty comes from S. 35 of the Constitution Act, as well as the Provincial Policy Statement and the Niagara Escarpment Plan. Arising from a staff report considered at the June 2020 Commission meeting, staff prepared this brief report to provide some context to the intersection of the work of this agency and the rights of Indigenous people and their relationship to the land that includes the Niagara Escarpment Plan Area.

NEC staff has met with staff of the MNRF to discuss developing an NEC-specific approach recognizing the overall duty to consult but being respectful and considering the capacity of Indigenous communities to respond to all the planning and outreach activities of the NEC. An NEC staff team has been formed and further dialogue will be undertaken in the coming months. Staff will bring a draft guidance document to a future meeting of the NEC.

RECOMMENDATION:

That the Niagara Escarpment Commission receive this report for information.

Note:

- Nancy Mott, Senior Strategic Advisor, reviewed the staff report and was available to answer questions.

M801R3/07-2020

Moved By: Hutcheon
Seconded By: Driedger

“That the Commission receive the report for information.”

Motion Carried unanimously.

DISCUSSION:

Commissioner McKinlay noted that the report is a glimmer of a much larger matter, and is the start of change. The Chair noted his appreciation of the Ministry of Natural Resources and Forestry reference document and the list of relevant sections in the Provincial Policy Statement and Niagara Escarpment Plan relating to Indigenous consultation.
PROPOSAL:

To demolish twelve (12) cold-frame greenhouses, and to construct a new ± 2,423 sq. m (± 26,072 sq. ft.) greenhouse with a maximum height to peak of ± 9.5 m (± 31.17 ft), a ± 361 sq. m (± 3,886 sq. ft.) loading dock, and a ± 100 m (± 328 ft.) long bioretention swale on a ± 19.3 ha (± 47.6 acre) lot supporting an agricultural operation (nursery) with private servicing.

RECOMMENDATION:

That the Application be approved, subject to the following Conditions:

CONDITIONS OF APPROVAL

1. Development shall occur in accordance with the Site Plan, Development Permit Application 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 Plan.

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 Plan.

6. All disturbed areas shall be re-vegetated and stabilized, in accordance with the approved Site Plan, by the end of the first growing season following the completion of site grading and building construction. All trees, shrubs and nursery stock shall be native to Ontario. Only in extenuating circumstances will non-native species be considered. Native plant material should be sourced from local plant nurseries when available; bush dug plant material is not acceptable.
7. **Prior to the issuance of a Development Permit by the Niagara Escarpment Commission**, an accurate and detailed Final Site Plan shall be submitted to the Niagara Escarpment Commission for approval. The Plan shall include but not be limited to the following:

   a) All drawings submitted must be drawn to scale (bar scale shown), reference the application number and address of the proposal, be dated (revisions as well) and denote the relevant consultant;
   
   b) An accurate delineation of the approved development envelope with temporary fencing;
   
   c) The accurate location of all structures, and driveway within the development envelope showing setbacks from the property lines, watercourse, top/bottom of slope, wooded areas, etc.;
   
   d) Extent of all disturbed areas;
   
   e) Extent and amount of fill removal or placement. Grading and drainage design including the areas of excavation and temporary or permanent fill placement. The type, quantity, quality and source location of any imported fill material must be accurately identified. Any fill material approved for importation under this Permit shall conform to the definition of “inert fill” per Ontario Regulation 347 and Table 1 of the Soil, Groundwater and Sediment Standards for use per Part XV.1 of the Environmental Protection Act, dated March 9, 2004;
   
   f) Erosion and sediment control measures;
   
   g) Surveyed location and inventory of vegetation to be preserved and removed as well as all protection measures;
   
   h) Final building design to be consistent with the information and drawings provided with the application and any modifications required by the Niagara Escarpment Commission. This would include, but not be limited to height to the peak of roof, area/square meters, architectural treatment, lighting and fenestration.

The approved Final Site Plan shall form the Site Plan referred to in Condition #1 and development shall proceed in accordance with the details of the approved Final Site Plan.

8. **Prior to the issuance of a Development Permit by the Niagara Escarpment Commission**, the applicant shall submit for the approval of the Niagara Escarpment Commission, **Final Construction Details** for the greenhouse including exterior elevations, floor area, height above existing and proposed grades, the number of stories, and exterior lighting. Upon approval, these plans will be stamped “NEC Approved” and shall form part of the Development Permit referred to in Condition #1.

9. **Prior to the commencement of any development**, appropriate erosion/sediment control measures shall be implemented and maintained as shown on the approved Site Plan (Condition #1) until all disturbed areas are stabilized. The landowner shall confirm the installation of the erosion/sediment control measures through the submission of photographs to the Niagara Escarpment Commission. It is the responsibility of the landowner to implement, monitor and maintain all
erosion/sedimentation control structures until vegetative cover has been successfully established. Any deficiencies shall be addressed immediately.

10. There shall be no lighting for the purpose of growing plants installed within the proposed building. On the sides of the greenhouse facing the provincially significant wetland (i.e., the north-east and north-west sides), any exterior lighting shall be downward facing and designed to minimize light spill. Drawing notes and/or details shall indicate such in order to satisfy Condition # 8.

11. All waste materials generated from the demolition shall be completely removed from the property (e.g., taken to an approved landfill site, salvage/reclamation facility, reused/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).

12. Prior to the commencement of any development, the wetland restoration works shall be completed to the satisfaction of Conservation Halton.

13. This conditional approval expires one (1) year from the date of confirmation of the decision to approve the Development Permit application. Conditions # 7 and 8 of this conditional approval shall be fulfilled before the expiry date.

Advisory Notes:

a) This Conditional Approval does not limit the need for, or the requirements of any other approval, licence or certificate under any statute (e.g., Ontario Building Code, Conservation Authorities Act, Endangered Species Act, etc.). The Niagara Escarpment Commission Development Permit is required prior to the issuance of any other applicable approval, licence or certificate.

b) The Niagara Escarpment Commission supports the protection of the night sky from excessive 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

c) The subject property has been determined to be an area of archaeological potential. It is reasonable to expect that archaeological resources may be encountered during any demolition, grading, construction activities, landscaping, staging, stockpiling or other soil disturbance, in addition to any areas impacted by the installation of services, such as water, electricity and ground-source heat pumps, and the proponent is advised to conduct an archaeological assessment prior to such impacts in order to address these concerns and mitigate, through preservation or resource removal and documentation, adverse impacts to any significant archaeological resources found. Mitigation, by an Ontario-licensed archaeologist, may include the monitoring of any mechanical excavation arising from this project. If archaeological resources are identified on-site, further Stage 3 Site-specific Assessment and Stage 4 Mitigation of Development Impacts may
be required as determined by the Ministry of Heritage, Sport, Tourism and Culture Industries (MHSTCI).

All archaeological reports shall be submitted to the City of Hamilton concurrent with their submission to the MHSTCI.

Should deeply buried archaeological materials be found on the property during any of the above development activities the MHSTCI should be notified immediately (416-314-7143).

In the event that human remains are encountered during construction, the proponent should immediately contact both the MHSTCI and the Registrar or Deputy Registrar of the Cemeteries Regulation Unit of the Ministry of Small Business and Consumer Services (416-326-8392).

**Note:**

- Jim Avram, Senior Planner, reviewed the staff report and answered questions

James Webb, agent for the applicant was not in attendance during the review of the staff report. Discussion of the item was therefore suspended until after Item A2.

Break: 1:45 to 2:00 pm.

**A2**

**STAFF REPORT**

**DEVELOPMENT PERMIT APPLICATION D/R/2017-2018/9180**

Part Lot 8, Concession 1 E (civic address not assigned)

Township of Mulmur, County of Dufferin

**PROPOSAL:**

To construct a single dwelling, install a private sewage disposal system and construct a driveway on a 19.6 ha (48.5 ac) existing lot. Two access/entrance options are proposed, one from frontage on 1st Line East and, the second from Centre Line which will require the purchase of adjacent lands for the driveway route.

**RECOMMENDATION:**

The application be **refused** for the following reasons:

1. The development of a new access and driveway from 1st Line East has not been adequately assessed and thus insufficient information has been provided to review Part 2.2.2, Part 2.6, & Part 2.7 of the NEP. Development within a wetland
feature and watercourse is not supported by the NEP (Part 2.2.2 and 2.6) (access option 1).

2. The development of a new access and driveway within an unevaluated wetland feature and watercourse is not supported by the PPS (Section 2.1.1 and 3.1.7) (access option 1).

3. Insufficient information has been provided to review the proposed access from Centre Street against Part 2.7 and Part 2.13 of the NEP (2017). The application cannot authorize development on abutting lands (access option 2).

4. The proposed severance and conveyance to resolve the access/frontage issue would result in an unusual lot configuration that would not be considered good planning nor meet typical frontage width requirements (access option 2).

Note:

- John Stuart, Senior Strategic Advisor, reviewed the staff report and answered questions.
- Richard Sali, Applicant, presented and answered questions.

**M801R4/07-2020**

Moved By: McKinlay
Seconded By: Horner

“That the decision on the Sali application be deferred for 60 days to provide the applicant opportunity to provide information supporting access #2 option which could be considered with regard to access, including but not limited to a separate application for reconfiguration of potential access lands.”

For the Motion:  
Downey  
Driedger  
Golden  
Horner  
Lucyshyn  
McKinlay  
McQueen  
Witteveen

Against the Motion:  
Burton  
Curley  
Gibson  
Hutcheon  
Krantz  
Mackenzie

Motion Carried

**DISCUSSION:**

The Commission was sympathetic to the Applicant, as the historical driveway access had lapsed from lack of use. The Commission advised that further information was required regarding the unevaluated wetlands in order to make an informed decision on the application.
A1 Continued:

- James Webb, agent for the applicant answered questions.

M801R5/07-2020

Moved By: Curley
Seconded By: Mackenzie

“That the Commission approve the staff recommendation.”

For the Motion: Against the Motion:

Burton
Curley
Driedger
Gibson
Golden
Horner
Hutcheon
Krantz
Lucyshyn
Mackenzie
McKinlay
McQueen
Witteveen

Motion Carried

Note: Due to technical issues, Commissioner Downey did not vote on Agenda Item A1.

DISCUSSION:

The Commission requested more information on the proposed storm water management and how the lands between the greenhouse and the wetland would be used upon completion of the cold frame greenhouse demolitions.

A3

Proposed Niagara Escarpment Plan Amendment PB 208 15
Dyer’s Bay, Municipality of Northern Bruce Peninsula

BACKGROUND:

In 2015, staff of the NEC initiated an Amendment to the Niagara Escarpment Plan (NEP) for properties located on Dyer’s Bay Road within the Minor Urban Centre of Dyer’s Bay. These properties, or parts of them, were previously designated Mineral Resource Extraction Area (MREA) in the NEP, but the licence had been surrendered and so in accordance with the policies of the NEP, staff needed to recommend new designations for the former pit. The Niagara Escarpment Plan Amendment (NEPA)
mainly applies to 941-943 Dyer’s Bay Road and 953 Dyer’s Bay Road, but also applies to the rear portions of a number of cottage lots facing the Bay which had been partly designated MREA due to the imprecise boundary of the former licence.

In 2019, following consultation with area residents and site visits, NEC staff recommended that the subject lands be re-designated Escarpment Natural Area and Escarpment Rural Area. Some residents of the Dyer’s Bay community objected to the proposed NEPA and so it was forwarded to the Niagara Escarpment Hearing Office for a hearing, in accordance with S. 10(3) of the *Niagara Escarpment Planning and Development Act* (NEPDA).

The hearing was held between October 16 and October 18, 2019 in Lion’s Head. During the hearing, the parties, including one of the landowners and the Dyer’s Bay Association, reached a settlement on a revised version of the NEPA. It was shared with all the landowners who participated in the hearing or who would be affected by the NEPA and with the Municipality of Northern Bruce Peninsula, the owner of part of the subject lands. There were no objections to the revised NEPA.

The Hearing Officer’s recommendation was released on March 11, 2020. The Hearing Officer, Mr. Wilkins, recommended that the NEPA, as revised in accordance with the settlement reached between the parties, be accepted. In accordance with S. 10(9) of the NEPDA, the NEC must submit its recommendations on the proposed NEPA to the Minister of Natural Resources Forestry, who will make a final decision on its approval.

**RECOMMENDATION:**

That the Niagara Escarpment Commission (NEC):

1) endorse this Staff Report; and,
2) send a copy of the Report and the Commission’s recommendation to the Minister of Natural Resources and Forestry for a final decision.

**Note:**

- Nancy Mott, Senior Strategic Advisor, reviewed the staff report and answered questions.
- Barbara Rabicki, landowner, presented and answered questions.
- Jim Wadleigh, Dyer’s Bay Association, presented and answered questions.
“That the Commission approve the staff recommendation.”

Moved By: Hutcheon
Seconded By: McKinlay

For the Motion: Burton, Curley, Gibson, Golden, Horner, Hutcheon, Krantz, Lucyszyn, Mackenzie, McKinlay, McQueen, Witteveen

Against the Motion: Gibson, Golden, Horner, Hutcheon, Krantz, Lucyshyn, Mackenzie, McQueen, Witteveen

Motion Carried

Note: Due to technical issues, Commissioner Downey did not vote on Agenda Item A3.

Note: Commissioner Driedger declared a conflict and did not participate in the discussion or vote on the item.

DISCUSSION:

The Commission and landowner thanked staff for the excellent work done to reach the settlement. The Chair noted that this is a great success story for the NEC.

Commissioner Mackenzie advised that the grassroots work on the Plan Amendment made him proud to be part of the Commission.

A4

ORDER TO DEMOLISH/RESTORE #2020.002
Plan 3M-117 Lot 21 and Plan 3M-117 Lot 20
Municipality of Northern Bruce, Bruce County

BACKGROUND:

Development approved by the Niagara Escarpment Commission (NEC) Development Permit # B/R/2002-2003/9089 was not completed in accordance with the approved site plan as required by condition #1. Most of the driveway, a portion of the single dwelling, accessory tree planting, construction of a shoreline well, and a portion of the
underground servicing lines were partially constructed on the incorrect lot (known as Lot 20), as opposed to Lot 21, without approval from the NEC.

The intent of the Order to Demolish/Restore is to return Lot 20 to as close to its original condition as possible, and to ensure that no further development occurs in contravention of the NEP.

The Order consists of a five-step approach to compliance that includes:

1) Archaeological and environmental evaluation by a qualified professional to identify possible options for restoration of the driveway, accessory facilities, and encroachment of the dwelling as well as the relative merits of each option;
2) Preparation of terms of reference and a restoration plan by a qualified professional, to the satisfaction of the NEC and the co-managers of Lot 20 (the Ontario Heritage Trust (OHT) and Chippewas of Nawash Unceded First Nation);
3) Implementation of the approved restoration plan overseen by qualified professionals to the satisfaction of the NEC, OHT and Chippewas of Nawash Unceded First Nation;
4) Vegetation plantings and site stabilization, including ongoing monitoring to ensure the success of the plantings; and,
5) Requiring a new Development Permit to be obtained to address the location of the dwelling, relocation of the driveway and other accessory and servicing elements to Lot 21, or, pursing demolition and restoration of Lot 21.

Note:
- O. J. MacDonald, Compliance Program Supervisor, reviewed the report and answered questions.
- Peter Loucks, Legal Counsel for the Landowner, presented and answered questions.
- Beth Hanna, OHT, presented and answered questions.
- Councillor Anthony Chegahno, Councillor Sidney Nadjiwon, and Lorraine Land, Legal Counsel, Chippewas of Nawash Unceded First Nation, presented and answered questions.
M801R7/07-2020

Moved By: McKinlay
Seconded By: Burton

“Be it resolved that order 2020.002 be deferred for report to the September Commission meeting to provide opportunities for the landowner and his agents, the First Nation partners, and the Ontario Heritage Trust to explore possible options which might resolve issues to the long-term satisfaction of all parties.”

For the Motion: Burton
Curley
Downey
Driedger
Gibson
Horner
Hutcheon
Krantz
Lucyshyn
Mackenzie
McKinlay
McQueen
Witteveen

Against the Motion:

Burton
Curley
Downey
Driedger
Gibson
Horner
Hutcheon
Krantz
Lucyshyn
Mackenzie
McKinlay
McQueen
Witteveen

Motion Carried

Note: Commissioner Golden declared a conflict and did not participate in the discussion or vote on the item.

DISCUSSION:

The Commission strongly supported the need to protect the lands and prevent any further encroachment.

Concern was raised about demolishing the dwelling; the Director advised that the language in the Niagara Escarpment Planning and Development Act for a Restoration Order is Demolish/Restore; staff are not necessarily seeking the demolition of the dwelling at this time; the Order seeks a new Niagara Escarpment Commission Development Permit to address the location of the dwelling to bring it into conformity with the Niagara Escarpment Plan.

The Commission expressed concern that the unauthorized location of the dwelling should have been made known when OHT purchased the lands in 2006.

The Commission recognized that while several attempts had been made to contact the landowners earlier in the year to address the issues, additional time was justified as the landowners were out of the country and only recently were made aware of the proposed Order. The Commission, in discussion with the landowner’s agent, OHT’s Chief
Executive Officer, and the Chippewas of Nawash Unceded First Nation Legal Counsel, agreed with all parties that additional time would be acceptable.

**NEW BUSINESS**

Commissioner Mackenzie thanked staff for the continued work to ensure virtual

The next Virtual Commission meeting will take place on August 20, 2020.

**ADJOURNMENT**

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M801R9/07-2020 Moved By: McQueen

“That this meeting be adjourned.”

Motion Carried

Time of Adjournment: 5:40 p.m.

Rob Nicholson
Chair
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