MINUTES OF M783/11-2017
NIAGARA ESCARPMENT COMMISSION
GEORGETOWN, ONTARIO
November 16, 2017


Regrets: D. Ramsay.


Also Present: R. Pineo, Niagara Escarpment Program Team Leader, S. Cooper, Partnership Liaison and Advisor, Natural Heritage Section, J. Thompson, Counsel, Natural Resources and Forestry; R. Patrick, President, C.O.N.E.

Meeting called to order: 10:00 a.m.

Chair Russ Powers presided.

Introductions:

No introductions.

CONFLICTS OF INTEREST – Declaration of Conflicts of Interest

Commissioner Gilhespy declared a conflict with Agenda Item A1, G/T/2017-2018/9003.

APPROVAL OF MINUTES – M780/10-2017

M783R1/11-2017 Moved By: Baty
Seconded By: McQueen

“That the Commission accept the Commission Minutes of October 18, 2017 as written.”

Motion Carried

Note: Commission McKinley forwarded a motion regarding Recommendation 2 on page 4; staff is reviewing and will bring it forward at the January 2018 meeting.
APPROVAL OF MINUTES – M781/10-2017

M783R2/11-2017  Moved By: Horner  
Seconded By: VanderBeek  

“That the Commission accept the Commission Minutes of October 19, 2017 with the addition of Commissioner Pim in the For the Motion column on page 20.”  

Motion Carried

MOTION FOR SPEAKERS

M783R3/11-2017  Moved By: Pim  
Seconded By: Mausberg  

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

Motion Carried

A2

DEVELOPMENT PERMIT APPLICATION H/R/17-18/031
Dave Jolly  
5717 Guelph Line  
Part Lot 5, Concession 4, NS, City of Burlington, Region of Halton  

PROPOSAL:

To demolish an existing 1 storey, 121 sq m (1302.0 sq ft) single dwelling, having a height of 6.0 m (20 ft), and to construct a new 2 storey, ± 209 sq m (± 2249 sq ft) single dwelling (plus a rear deck), with a height to peak of ± 10.4 m (± 34.0 ft), including installation of a new sewage treatment system, on an existing 4.04 ha (9.98 ac) lot.

RECOMMENDATION:

The proposal be approved subject to conditions.

Note: Michael Baran, Planner, presented and answered questions.  
Dave Jolly, Applicant, was present and answered questions.

M783R4/11-2017  Moved By: VanderBeek  
Seconded By: McKinley  

“That the Commission accept the staff recommendation with the following conditions.”
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 (NEC) in writing of the start and the completion date of the development. This notice shall be provided to the NEC forty-eight (48) hours prior to the commencement of development, and within fourteen (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 on the approved Site Plan.

5. No vegetation shall be cut or removed from the development envelope except for that identified on the approved Site Plan or in conjunction with Condition 10.

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 the site grading and access road construction. All trees, shrubs, herbs and nursery stock shall be native to Ontario (see Condition 10). 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. Appropriate erosion/sediment control and tree protection measures (e.g. silt fencing and tree hoarding) shall be installed around all parts of the development site prior to commencing demolition/development and photographs verifying the installation of the fencing shall be submitted to the Niagara Escarpment Commission prior to commencing construction. The controls shall be maintained until the works are completed and the sites are stabilized.

8. Prior to the issuance of a Development Permit by the Niagara Escarpment Commission, final floor plans and elevations of the singe dwelling shall be submitted to the Niagara Escarpment Commission for approval.

   The floor plans shall include a schedule signed by the architect/designer confirming the gross floor area of each applicable building level and the maximum height of the building/structure, as defined by the Niagara Escarpment Commission, including a description of exterior construction details/colouration demonstrating the use of non-reflective materials and neutral colouration.

9. The single dwelling shall not contain an apartment unit, second residential unit, or an accessory dwelling unit (e.g., an “in-law suite” or "granny flat").
10. Prior to the issuance of a Development Permit by the Niagara Escarpment Commission, a Landscaping/Tree Protection Plan shall be prepared by a qualified person for Niagara Escarpment Commission approval. The Plan shall prescribe native tree planting to provide suitable screening/backdrop associated with the development site and shall identify vegetation protection zones/mitigation measures (see Condition 7). The Plan shall include details for the type, size and numbers of all new plant material to the satisfaction of the Niagara Escarpment Commission.

Stipulations:

a) All new tree and shrub species shall be native to Ontario. Plant material shall be sourced from local plant nurseries; bush dug plant material is not acceptable.
b) Planting and the rehabilitation of all disturbed areas shall be completed, by the end first growing season following the completion of site grading, servicing and building construction to the satisfaction of the Niagara Escarpment Commission.
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 a qualified person.

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

11. All exterior site lighting shall be designed to be minimal, subdued, of low height and downward facing.

12. Prior to the issuance of a Development Permit by the Niagara Escarpment Commission, details for the design and location of the new sewage treatment system shall be submitted to the Niagara Escarpment Commission for approval.

13. This conditional approval expires one (1) year from the date of confirmation of the decision to approve the Development Permit Application. Condition #’s 8,10 and 12 of this conditional approval shall be fulfilled before the expiry date.

Notes/Advisories:

1. This Development Permit does not limit the need for or the requirements of any other applicable approval, licence or certificate under any statute (e.g., Ontario Building Code/municipal building permits/final grading and drainage plan, Endangered Species Act, etc.). The Niagara Escarpment Development Permit is required prior to the issuance of any other applicable approval, licence or certificate.
2. The Regional Municipality of Halton advises that the majority of the property is identified as having archaeological potential. Although an archaeological assessment is not required by Halton Region, the proponent is cautioned that during development activities, should archaeological materials be found on the property, the Ministry of Tourism, Culture and Sport (MTCS) should be notified immediately (416-212-8886 or archaeology@ontario.ca). In the event that human remains are encountered during construction, the proponent should immediately contact the appropriate authorities (police or coroner) and all soil disturbance must stop to allow the authorities to investigate and the Registrar of Cemeteries be consulted.

3. The Niagara Escarpment Commission supports the protection of the night sky from excessive residential lighting and recommends, in conjunction with Condition 11, that the applicant obtains information on shielding the night sky through the use and operation of appropriate lighting fixtures. This information is available at www.darksky.org.

Motion Carried

A4

DEVELOPMENT PERMIT APPLICATION H/R/2016-2017/422
Scott Design Build Ltd.
Part Lot 9, Concession 4
9459-9463 Guelph Line
Town of Milton, Region of Halton

PROPOSAL:

To carry out the following development on an existing 6.4 ha (15.8 ac) lot:

1. To re-establish an industrial use (custom fabrication facilities) in conjunction with an existing 1,393.5 sq m (15,000 sq ft) building (former welding shop with office); to modify the building by adding a ± 561.9 sq m (± 6,048 sq ft) second storey addition (new office facilities), increasing the building height from 4.9 m to ± 9.1 m (16 ft to ± 30 ft); and, to increase the footprint of the building by ± 139.4 sq m (± 1,500 sq ft) as a result of adding new exterior cladding

2. To construct a ± 557.4 sq m (± 6,000 sq ft) accessory building (industrial equipment storage), to have a maximum height of ± 9.1 m (± 30 ft)

3. To construct a parking area(s) with ± 50 parking spaces and establish a large outdoor worksyard/outdoor storage area

RECOMMENDATION:

That the Application be refused for the following reasons:
REASONS FOR REFUSAL

H/R/2016-2017/422

1. The proposed development is not a permitted use in the Escarpment Rural Area or Escarpment Natural Area.

2. The subject proposal is contrary to the purpose and applicable objectives of the NEP.

3. The proposed development conflicts with Sections 1.1.3.1 and 1.1.5.2 of the Provincial Policy Statement.

4. The proposed development is not supported by the Town of Milton or the Region of Halton.

Note: Amaraine Laven, Planner, presented and answered questions. Scott Galadja, Applicant’s Counsel, presented and answered questions.

DISCUSSION:

The Planner noted an error in the Staff Report, which states that the original 1975 approval for the industrial use proposed was made prior to the Niagara Escarpment Planning and Development Act and the Niagara Escarpment Plan; the Planner clarified that the original approval only predated the Niagara Escarpment Plan, not the Act. The Planner noted that the approved use ceased operation approximately in 2012 and possibly as early as 2011 and is in staff’s opinion no longer an existing use. The planner pointed out that the current Niagara Escarpment Plan now includes the requirement for an existing use to be continuous and uninterrupted. It was also noted by the Planner that there is an occupied dwelling onsite, which is the current and primary permitted use on the property.

The Commission discussed how the term ‘continuous use’ is interpreted in the Niagara Escarpment Planning and Development Act versus change of use, active use and interrupted use.

The Commission inquired if the proposed business could be considered a home industry; the Planner noted that the proposal does not meet the home industry development or size restriction criteria.

The Commission asked if economic development was considered in staff’s analysis; the Chair noted that the Niagara Escarpment Plan does not address economic development.

The Commission asked if the owner could apply for a legal, non-conforming use; this is not a designation in the Niagara Escarpment Plan Area.

The Commission asked if On Farm Diversified uses are applicable only to farms as this use serves the surrounding agricultural areas. The Planner noted that On Farm Diversified uses apply only to farms.
Counsel for the Applicant provided that the use ceased in 2011 and that since that time there was an intention to sell the property as an industrial property. Counsel questioned staff’s interpretation of ‘cease of use’ and stated that no action has been taken to discontinue the approved use, which has been in place since 1975. Counsel interprets existing use as being based on the intent of the property owner. Counsel explained that since taking ownership in 2015, the applicant has cleaned up the property with the intention of relocating his business to the property and continued to pay commercial taxes.

The Commission asked why such a large expansion is required; the applicant responded that the expansion is the same as what was previously approved [in 1975]. The applicant further indicated that an existing operation along with 30 staff will be relocating to the subject property.

The Commission asked for an estimate of how much of the proposed business would service the local agricultural business; the Applicant stated that with service fluctuations, it is difficult to accurately predict.

The Commission asked if a Development Permit would have been required if the use never stopped; the Planner clarified in that case the assessment would be on the proposed development, rather than a change in use, and whether it meets applicable Development Criteria. Staff clarified that although there was a previous approval [in 1975] for a large expansion much like what is proposed currently, only a portion of that was built under the previous approval. The original approval would have expired 3 years after issuance, so if the approved development was not built out during that time, a new Development Permit would be required to complete the original proposal and applicable policies at the time would apply. The Planner noted that the proposed development is approximately a 380% increase to the developed area whereas the existing use development criteria would allow up to a 25% increase, subject to meeting applicable development criteria, and any increase beyond that would require proof of compatibility with the natural environment.

**M783R5/11-2017**

Moved By: Gilhespy

Seconded By: Pim

“Be it resolved that the Commission defer the application pending further planning analysis on the proposed development to determine if it meets the other policies of an existing use; staff will bring the recommendation to the January 2018 meeting.”

Motion Carried
DEVELOPMENT PERMIT APPLICATION N/R/2017-2018/026
James Christopher Young
Part of Lot 7, Concession 3, Town of Pelham, Region of Niagara

PROPOSAL:

To construct a 2 storey (with walk-out), ± 656.80 sq m (± 7070 sq ft) single dwelling with a maximum height to peak of ± 13.2 m (± 43.33 ft), a ± 122.25 sq m (± 1316 sq ft) attached garage, a 1 storey, ± 45.52 sq m (± 490 sq ft) pool cabana with a maximum height to peak of ± 4.27 m (± 14 ft), to construct ± 189.79 sq m (± 2043 sq ft) of deck space, a ± 187 sq m (± 2012.75 sq ft) patio walkway, a swimming pool, a septic treatment system, and driveway expansion, on a 1.5 ha (3.7 ac) lot.

RECOMMENDATION:

That the Application be refused for the following reasons:

REASONS FOR REFUSAL

1. The subject parcel when registered was in contravention of section 50 of the Planning Act R.S.O 1990, C. P.13.

2. The subject lands are not recognized as being created in compliance with the Niagara Escarpment Plan;

3. The subject lands are not recognized as an ‘existing lot of record’ per the definition contained with the Niagara Escarpment Plan and are therefore not eligible for development under the NEP;

4. The subject lands are not recognized as being created in compliance with the Niagara Escarpment Planning and Development Act.

5. The Town of Pelham objects to the application as the lot was not created in accordance with Planning Act R.S.O 1990, C. P.13, and does not meet the policies of the NEP.

Moved By: VanderBeek
Seconded By: Mausberg

“That the Commission defer the application until the January 18, 2018 meeting, at the request of the Applicant.”

Motion Carried
DEVELOPMENT PERMIT APPLICATION G/T/2017-2018/9003
Meaford & District Ridge Runner Snowmobile Club and
Beaver Valley Bruce Trail Club
Un-maintained Road Allowance (3rd Line), Lot 22 & 23, between Concession 2 & 3
Municipality of Grey Highlands (Euphrasia), County of Grey

PROPOSAL:

To install a 1.5 m diameter x 4.8 m long (5 ft x 16 ft) culvert within a watercourse along
an open, un-maintained section of the 3rd Line between Concessions 2 and 3, Lots 22
and 23, to allow for year round crossing by the public, including Bruce Trail hikers, and
as a dedicated trail route for the Snowmobile Club.

RECOMMENDATION:

The application be refused for the following reasons:

REASONS FOR REFUSAL

1. a) Motorized trails (e.g., dedicated snowmobile route) is not a permitted use
   within the Escarpment Natural Area designation (Part 1.3).

   b) Recreation uses (e.g., dedicated snowmobile route), other than those
   associated with the Bruce Trail, and with uses within Parks and Open Space
   System Master/Management Plans not in conflict with the NEP, are not a
   permitted use within the Escarpment Natural Area designation (Part 1.3).

   c) The application does not satisfy the General Development Criteria (Part 2.2),
   the Water Resources Development Criteria (Part 2.6), the Natural Heritage
   Development Criteria, the Recreation Development Criteria (Part 2.11), and,
   the Infrastructure Development Criteria (Part 2.12).

   d) The application does not meet the Objectives of the Escarpment Natural Area
   designation (Part 1.3.1).

2. The recommendation for refusal does not preclude the Beaver Valley Bruce Trail
   Club from submitting an application for a pedestrian footbridge crossing.

NOTE:

The Beaver Valley Bruce Trail Club withdrew its co-applicant status for this
application on November 14, 2017 per B1.
DISCUSSION:

The Planner noted that the trail in question had ceased use/maintenance between 1995 and 2004, according to evidence presented during the appeal Hearing regarding G/T/2005-2006/9047 as confirmed by the Minister of Natural Resources in 2006, and was no longer an existing use when the current application was submitted. Further, the proposed use is not compatible with the Niagara Escarpment land designation, and that the Applicants were asked to provide alternate crossing locations; no alternate locations were brought forward for review. It was also noted that the proposal is not in the public’s interest.

The Commission questioned if the snowmobile trail is an existing use. The Planner noted that the trail is not shown on the Ontario Federation of Snowmobile Clubs mapping, so is not a recognized OFSC trail and referenced the Minister’s 2006 decision. The Commission asked for clarification where storm sewers have been permitted in Escarpment Natural designations. Staff indicated that approvals are given only for essential service infrastructure in Escarpment Natural designations and the proposed use for this application does not meet any requirements for an essential service infrastructure.

The Commission considered how best to protect the watercourse and limit access to the crossing as the trail is in use regardless of a valid permit existing. Restricting access was discussed, including a requirement to install a locked gate with landowner access only, as well as requesting the Municipality to block access to the road.

The Director noted that regardless of any alternatives discussed, the trail is not a permitted use.

The Niagara Escarpment Commission Compliance Specialist spoke regarding recent violations regarding the trail, including a flatbed truck laid over the watercourse to permit crossing. No charges were laid, and the property owners brought the property back into compliance.

Commissioner McKinlay noted that the proposal is not a permitted use and that there was no choice but to refuse the application.

The Applicant addressed the Commission with submission B2, which indicated that the trail was maintained from 1997 to 2004, and that there was no lapse in use or in the trail maintenance.

Note: Judy Rhodes-Munk presented and answered questions on behalf on Rick Watt, the Planner for the file. O.J. MacDonald, Compliance Specialist, presented and answered questions. Wil Bulsink, Applicant, presented and answered questions.
Be it resolved that the application be deferred to allow staff time to work with the municipality and other agencies regarding limiting access to the road, and to do further planning analysis to determine if the proposed development would meet the policies of the Niagara Escarpment Plan, in that context.”

Motion Carried

Broke for lunch: 12:10 p.m.
Reconvened: 1:05 p.m.

“That the Commission move in-camera to discuss legal advice.”

Motion Carried

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

Motion Carried

A5

ADDENDUM REPORT
DEVELOPMENT PERMIT APPLICATION P/R/2016-2017/442
Pam Jackson and Josh Phillips
18178 Horseshoe Hill Rd.
Part Lot 14, Concession 3, EHS
Town of Caledon, Region of Peel

BACKGROUND:

At the October 19, 2017 Commission meeting the Commission supported a motion to approve the above noted Development Permit Application, subject to conditions of approval to be drafted by staff and presented to the Commission at its November 16 meeting. The Commission’s motion was contrary to staff’s recommendation of refusal. The proposal is to:
- construct a 2 storey ± 288 sq. m (± 3100 sq. ft.) detached second single dwelling on an existing 40 ha (100 acre) parcel which currently supports a 232 sq. m (2500 sq. ft.) single dwelling (farm house), and associated accessory barns, and drive sheds in the Escarpment Rural Area designation;
- construct a separate access way on a ± 3 ac portion to be added to the subject parcel from the adjacent lot.

Subsequent to the October 19, 2017 Commission meeting, a letter was received by the Commission from the Coalition on the Niagara Escarpment (CONE) at the Commission’s meeting on November 2, 2017. The CONE correspondence indicated that, should the Commission approve the application with conditions, it is CONE’s intent to appeal on the basis that, in CONE’s opinion, the decision is contrary to the Niagara Escarpment Planning and Development Act (NEPDA) and the Niagara Escarpment Plan (NEP).

At the November 2 meeting the Commission gave notice of intent for a motion to be made to reconsider its motion in relation to Development Permit Application P/R/2016-2017/442 Jackson & Phillips at its November 16, 2017 meeting.

**SUMMARY ANALYSIS:**

The staff recommendation presented to the Commission in the October 19, 2017 Staff Report was refusal of the application on the basis that the proposal for a second single dwelling on an existing lot of record which already supports a single dwelling, does not comply with the NEP Permitted Uses or applicable Part 2 Development Criteria. Staff also concluded that the proposal does not conform to the Provincial Policy Statement (PPS, 2014), or the Town of Caledon Official Plan.

Given the identified conflict with the NEP, there are no conditions of approval that could be recommended by staff that would bring the application, as proposed by the Applicant, into conformity with the NEP.

**OPTIONS:**

The following supplemental information is being provided with respect to the options available to the Applicant, should the Commission refuse the application as currently before it.

It should be noted that staff provides the following as general context regarding the potential options available to the applicant. In the absence of complete information and subjecting these options to the full planning assessment, staff is unable to comment on whether they would meet the applicable tests of the NEP.
OPTION 1:
The Applicant may submit a Development Permit Application for a mobile or portable dwelling unit accessory to agriculture in the Escarpment Rural Area designation in keeping with the Permitted Uses. Such a proposal would be assessed against the applicable Development Criteria in Part 2. The potential for further developable areas within the existing farm cluster, and the use of the existing farm access could be fully explored through such an application.

In the October 19, 2017 Staff Report, staff provided the Commission with information related to Development Permit Application G/A/2016-17/9179, which was approved by the Commission in March 2017, for mobile or portable accommodation accessory to an agricultural use. In this case the scale of the second dwelling for farm help was kept to approximately 1,000 sq. ft. in order to remain secondary in nature to the principal farm house and the siting was within the existing farm cluster. The dwelling unit accessory to agriculture was proposed as a modular unit (to be constructed on a concrete pad), and staff sought confirmation by the Commission as to whether the requirement to be mobile or portable and without a basement, as required by the Plan, could be satisfied by the modular nature of the dwelling. In this instance the Commission found the proposal to be in keeping with the policy intent respecting the need for the dwelling to be “temporary” and approved the application on this basis.

OPTION 2:
The family has identified that they own a vacant parcel of land on the east side of Horseshoe Hill Road (currently under field crop production). Development on this site has not been assessed through a Development Permit Application. A single dwelling is a permitted use on an existing lot of record in the Escarpment Rural Area, in principle, subject to being assessed against all applicable Development Criteria in Part 2 of the NEP. A single dwelling on this lot may be considered through a Development Permit Application.

OPTION 3:
The NEPDA provides for applications to be made to amend the NEP. Applications to amend the NEP, for example, may be considered where:

- a proposed development is not a Permitted Use by the NEP; a proposal cannot meet the applicable Development Criteria of Part 2;
- in order to change a land use designation; or,
- to bring lands into the NEP Area.

Amendments to the NEP may be initiated by the Minister or by the Commission, and application may be made to the Commission by any person or public body.

Subsection 6.1 (2.1) of the NEPDA requires that justification be given as part of each Amendment application. All amendments to the NEP must be considered against the Purpose and Objectives of the NEPDA, and the objectives and provisions of the NEP and be consistent with other Provincial policies.

Note: Lisa Grbinicek, Senior Strategic Advisor, presented and answered questions.
M783R10/11-2017
Moved By: Baty
Seconded By: McKinlay

“That decision M781R10/10-2017 to approve the proposal for application P/R/2016-2017/442 be reopened and discussed further.”

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

For the motion
Baty
Downey
Gilhespy
Greig
Horner
Mausberg
McKinlay
McQueen
Pim
VanderBeek

Against the Motion

Motion Carried Unanimously

M783R11/11-2017
Moved By: Downey
Seconded By: Mausberg

“That decision M781R10/10-2017 be withdrawn and replaced based on further discussion at the November 16, 2017 Commission meeting.”

Motion Carried

M783R12/11-2017
Moved By: Downey
Seconded By: Mausberg

“WHEREAS recent agriculturally based applications have raised questions regarding conflicting and contradictory principles and polices being used to guide the staff and Commission decision making process surrounding land use in the Escarpment Rural Area; and

WHEREAS the Ontario government has made protecting farmland, for both food production and ancillary uses, a priority; and

WHEREAS successive Provincial Policy Statements have made progress in recognizing the agricultural sector as a valued partner in conservation of not only farm land but, natural and heritage features; and
WHEREAS it is recognized that 98% of farm operations in Ontario are family owned and operated and, further, criteria has been adopted that recognize the unique model of these operations, including the fact that these farms require lateral transition of intergenerational farming and a modernized approach to accommodate the current environmental and economic pressures thereof; and

WHEREAS the NEC strives for transparency, clarity and a common sense approach to land use planning.

THEREFORE BE IT RESOLVED THAT:

1) Development Permit Application P/R2016-2017/442 (Pam Jackson and Josh Phillips) be approved with appropriate conditions to be presented to the Commission at the January 2018 meeting; and

2) Time be allocated at a future meeting prior to the April 2018 Policy Meeting for the purpose of engaging NEC staff and Commission in a fulsome policy discussion regarding, but not limited to:

- Density transfer and farm labour housing
- The purpose of secondary dwelling relating to the agricultural industry
- Succession planning as interpreted by the agricultural sector as well as the upcoming labour shortage.
- Any other issues that are applicable to NEC involvement with agricultural lands.

3) That NEC staff and Commission engage with the following Ministries, Stakeholders and relevant others to develop basis for an amendment to the NEP and set of criteria specific to the above matters and the agricultural sector prior to future meeting required in Sec 2) above:

   - Ministry of Agriculture
   - Ministry of Natural Resources and Forestry
   - Ministry of Municipal Affairs
   - Ministry of Rural Affairs
   - Ministry of Labour
   - Association of Municipalities of Ontario
   - Rural Ontario Municipalities Association
   - Ontario Federation of Agriculture
   - Christian Farmers Federation

DISCUSSION:

Commissioner Downey acknowledged the difficulty in supporting the agricultural community and farm succession planning within the confines of Niagara Escarpment Plan policies on second single dwellings. She noted that while the Commissioners are appointed to uphold the Niagara Escarpment Plan, ‘some things are the right thing to do’, and that the support to approve the proposal at the October 18, 2017 speaks to the
need to review the policies regarding secondary dwellings on farms. There is a need to promote and protect the way land is farmed. She requested full discussion with partner agencies including the Coalition on the Niagara Escarpment and the Ontario Federation of Agriculture (OFA); the Commissioner advised that the OFA sees the NEP polices as prejudicial and a human rights issue.

Commissioner Pim stated that while she supports the agricultural community, there is no room for interpretation on second single dwellings; they are clearly not a permitted use. The Commissioner expressed concern that approving this proposal will set a significant precedent with widespread ramifications that will not be limited to only agricultural lands. She also noted that there is a need to look at the future of farming in the Plan area, and farm succession planning for the continued involvement of young farmers as the cost of land is prohibitive for young farmers. She suggested splitting the motion into 2 parts, with the agency consultation as a separate motion. The suggestion was not supported by the Mover.

Commissioner McKinlay expressed support to the agricultural sector, and also noted that the Applicant has other options that are permitted in the Plan.

Commissioner McQueen expressed his support for the Motion and for the agricultural community, and suggested that the Ministry of Agriculture, Food and Rural Affairs draft policy on agricultural systems need to be reviewed as well. He also noted that farms are out of reach for young people, and that this issue is also about food and Ontario. He noted that if this motion is approved, it is a scoped approval with specific intent, not a free-for-all.

Commissioner Mausberg recognized that approving this application would set a precedent but noted that farming in the Niagara Escarpment Plan area is not receiving the attention and support needed; he acknowledged that the Applicant will need to explore other options if the application is approved, then appealed and the Commission's decision is not upheld.

Commissioner Gilhespy asked the land owners if they would consider freezing development on their other lot (across the road) to allow this proposal to be approved; the landowners expressed that they have considered this and are reluctant to commit to it, they would not want to prevent development on the lot perpetually, they would want it to be able to be re-opened. The Chair noted that the landowners would be able to submit a development permit application for reconsideration.

Commissioner Greig expressed her support for the motion; she noted that agencies outside the Niagara Escarpment Plan have contradictory policies on this, and noted that Bruce County is actively considering this issue.

Commissioner Horner noted that supporting the Applicant while upholding the Plan has caused the Commission angst; she also noted that the work needs to be scoped to farm labour and second generation farm housing only; the Ministry of Agriculture, Food and Rural Affairs has not come to terms with this issue yet.
Commissioner VanderBeek noted that this application speaks to economic viability and farming sustainability; she suggested adding a condition to limit building on the second lot until the primary dwelling has been removed in order the protect the integrity of the Plan. Staff cautioned the Commission about the ability of implementing a Condition on a property that is not part of the Application, however there may be other tools to achieve this including a Plan Amendment Application to sterilize the lot across the road and a Condition could be included respecting the removal of the existing house at some point in time.

The Director will direct staff to undertake an in depth analysis to provide a broader provincial policy analysis in relation to the Niagara Escarpment Plan only. Such a broader analysis would involve the Ministry of Natural Resources and Forestry and broader government involvement; consultation and communication would need input from the Province; he also noted that the previous Commission did not request this policy analysis and consultation during the 2015 Plan Review. The Director also noted that exercise being undertaken by staff to review policy interpretations and guidelines could prioritize agricultural related items.

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

For the Motion
Baty
Downey
Gilhespy
Greig
Horner
Mausberg
McKinlay
McQueen
VanderBeek

Against the Motion
Pim

"Motion Carried"

C1 SUB #9613

STAFF REPORT
 Proposed Amendment to the Parkway Belt West Plan (PBWP)
 Mapping Changes Affecting the Niagara Escarpment Plan Area

BACKGROUND:

The PBWP is a provincial land use plan that was first approved in July 1978 with the goals of defining the boundaries of urban areas, linking those urban areas, providing a land reserve for future linear facilities and providing a system of open space and recreational facilities. Only a portion of the PBWP overlaps the Niagara Escarpment Plan Area.
Staff of the Niagara Escarpment Commission (NEC) became aware of proposed changes to the Parkway Belt West Plan (PBWP) and associated Minister’s Zoning Orders through a newspaper notice. Comments to the Ministry of Municipal Affairs (MMA) must be submitted by November 20, 2017 and so NEC staff are bringing this report forward at this time.

NEC staff had a teleconference with staff from MMA on November 1 to better understand the proposed amendment and to identify certain mapping issues of concern. There is a willingness on the part of MMA to work with the NEC to address its concerns through the proposed amendment or through subsequent processes.

ANALYSIS:

A) Proposed Amendment to PBWP
The purpose of the proposed amendment to the PBWP is to:

- Revise certain maps to realign the Inter-Urban Transit designation on lands not within the NEP; and
- Replace Maps 1-8 with more up to date and accurate mapping based on work by the Ontario Surveyor General (OSG).

NEC staff is only concerned with the second aspect of the proposed PBWP amendment and only with respect to the proposed changes to Map 2 of the PBWP (Escarpment Link map).

As set out in Appendix 1 to this report, there are seven areas where the maps that form part of the PBWP Amendment may be in conflict, either with the Plan Area or the Development Control Area. These mapping inconsistencies may be a result of two facts.

1. As the NEC is aware through another staff report, the Ontario Surveyor General is currently updating the maps showing the Development Control Area to improve their accuracy, similar to the process being undertaken by MMA for the PBWP. NEC staff need to continue consultation with MMA staff and the OSG to ensure that the separate mapping exercises are aligned such that there are no gaps where lands are not covered by the PBWP or by the NEP or the Development Control Area.

NEC staff are confident that the mapping inconsistencies may be resolved but further discussion and a review of a revised set of maps prepared by MMA to address the areas identified in Appendix 1 would be in order, before the amendment to the PBWP is approved.

2. Niagara Escarpment Plan Amendments that added lands to the NEP but which may also be subject to the PBWP are another area of concern to NEC staff. These amendments include Amendment No. 176 (Cootes Paradise/RBG), Amendment 177 (Gap lands) and Amendment No. 179, known as Pleasantview,
within the City of Hamilton. It appears that these amendments may also be subject to the PBWP, resulting in a possible overlap of planning jurisdiction.

It is staff's understanding that in the event of a conflict between provincial plans, the more restrictive policy would apply. However, it is confusing to landowners, the municipality and the NEC when development is proposed as to what planning approvals may be necessary from the NEC or the local municipality. In addition, some of the lands that were added to the NEP are in development control and some are not. If through the proposed PBWP, certain lands were taken out of the PBWP the NEP would be in effect, but there would have to be a subsequent process to apply development control. In addition, there would need to be consultation with the affected municipalities, the City of Hamilton and the City of Burlington as they may have different views on whether development should be regulated by development control or municipal zoning (if the municipality has underlying zoning within the area of development control).

B) Proposed Changes to Minister's Zoning Orders

In addition to the proposed changes to the PBWP, MMA is proposing to amend or revoke certain Minister’s Zoning Orders (MZO’s). MZO’s were put into place in 1973 to protect land needed to implement the PBWP. Of the 14 original MZO’s, only 5 remain. NEC staff has reviewed the proposed zoning orders and finds that none affect lands within the NEP Area.

CONCLUSION:

NEC staff concludes that further discussion with MMA staff regarding proposed changes to Map 2 of the PBWP should be undertaken in consultation with the OSG before the amendment to the PBWP is approved. Consultation may also be in order to assess the implications of overlapping areas of planning jurisdiction.

RECOMMENDATION:

That the Commission support staff’s conclusion and that a copy of this report be sent to the MMA before the November 20 deadline.

Note: Nancy Mott, Senior Strategic Advisor, presented and answered questions.

DISCUSSION:

Commissioner Pim expressed concern that the NEC was not contacted by the Ministry leading the project as NEC lands are impacted by the proposed changes; relevant ministries should be aware of Plans that are not regulated under their jurisdiction but still impacted. Staff noted that there may have been confusion with the various overlays of planning jurisdiction.
Commissioner VanderBeek inquired if the proposed Amendment had been shared with the City of Hamilton; she also noted that there are no street names on the mapping, and it is difficult to determine effected areas. Staff noted that the City of Hamilton was consulted and had discussed the proposed Amendment with MMA staff.

The Chair noted that a City of Hamilton staff report is raising similar issues.

**M783R13/11-2017**

Moved By: Mausberg
Seconded By: Downey

“That the Commission receive the report and accept staff’s recommendations.”

Motion Carried”

C2

**STAFF REPORT**

**Town of Mono Official Plan Amendment #41: Natural Heritage System**

**BACKGROUND**

The Province describes a Natural Heritage System as a system made up of natural heritage features and areas, and linkages intended to provide connectivity (at the regional or site level) and support natural processes which are necessary to maintain biological and geological diversity, natural functions, viable populations of indigenous species, and ecosystems. These systems can include lands that have been restored or have the potential to be restored to a natural state, areas that support hydrologic functions and working landscapes that enable ecological functions to continue (PPS, 2014).

The policy framework for the development of NHSs in the Province was strengthened in 2014 with changes to the Provincial Policy Statement (PPS, 2014), which includes a new requirement to identify natural heritage systems in southern and eastern Ontario (Ecoregions 6E and 7E). This policy establishes that “natural heritage features and areas shall be protected for the long term,” and “the diversity and connectivity of natural features and the long-term ecological function and biodiversity of natural heritage systems should be maintained, restored, or where possible, improved, recognizing linkages between and among natural heritage features and areas, surface water features, and ground water features.” The development of natural heritage systems plans at the municipal level are also one of the targets identified in Ontario’s Biodiversity Strategy.

The Town of Mono Official Plan Amendment 41 – Natural Heritage System was initiated with the primary goal the identification, protection and enhancement of the Town’s natural heritage resources. To assist with the development of the System, Council created an advisory panel comprised of citizens of Mono and two Council Members, referred to as the Natural Heritage Steering Committee (NHSC).
The purpose of OPA 41 as proposed by the Town is to augment existing Official Plan policy and to provide enhanced protection for the Town’s NHS. More specifically, as described by the Town, OPA 41 is intended to:

(a) Replace and/or enhance existing Natural Heritage Features policies and Greenlands System policies with Natural Heritage System policies developed from the Natural Heritage Strategy that provided the necessary and comprehensive background science based report;
(b) Augment existing Official Plan Schedule A (Land Use Plan) to reflect new Natural Heritage System mapping and to correct existing Natural Heritage Features as illustrated on Schedules H1 to H8; and,
(c) Modify or replace various terms and related policies throughout the Official Plan to provide better clarity and continuity in support of OPA 41.

The primary focus of OPA 41 is to amend existing OP Section 14 – Environmental Protection Areas by dividing it into two new sub-sections 14A – Natural Heritage System and 14B- Environmental Hazard. The revised Section includes a Natural Heritage Strategy based on features and functions as the primary basis for a Core and Non-Core Natural Heritage policy framework, which is illustrated on new Schedules H1-H8. OPA 41 also modifies or replaces various terminology and related policies for the purposes of greater clarify and continuity.

The OPA also clarifies existing OP policy to minimize conflicts between permitted rural to agricultural activities and operations and natural heritage system objectives and to provide certainty for the agricultural industry. A key goal identified is to also strengthen natural heritage preservation and system linkages in view of potential future aggregate extraction and related activities. In accordance with Planning Act, OPA 41 was deemed complete by Council at its meeting of July 25, 2017.

**DISCUSSION:**

Approximately thirty-three percent of the Town of Mono (9257 ha) is within the Niagara Escarpment Plan (NEP) Area. Of this area, approximately fifty percent is in woodland (4630 ha). Public lands in the Town of Mono include some highly significant natural areas lands owned/managed by Ontario Parks, the Toronto Region, Credit Valley and Nottawasaga Valley Conservation Authorities, Dufferin County, the Town of Mono, the Bruce Trail Conservancy, Nature Conservancy of Canada and the Escarpment Biosphere Conservancy.

Natural heritage features addressed through OPA 41 include: significant wetlands, woodlands, valleylands, and other natural areas. These are linked across the landscape by natural stream corridors, woodlots, and hedgerows, to form a connected network of habitats and landforms whose conservation is the purpose of a Natural Heritage Strategy. A key element of a Natural Heritage Strategy is the encouragement of community awareness and identity of its natural environments and the benefits and responsibilities that conservation means for the community.
The Town of Mono recognizes that the goal of protection and enhancement of the Town’s natural heritage resources will be achieved through its land use decisions in concert with other programs and in conformity with the PPS, Provincial Land Use Plans including the Niagara Escarpment Plan, and in coordination with the County of Dufferin OP and of adjoining municipalities. This is reflected in the designations and policies proposed through OPA 41, which are based on the requirements of the PPS (2014), and harmonized with the existing designations and policies of the Niagara Escarpment Plan, Oak Ridges Moraine Conservation Plan, and Greenbelt Plan, in a manner that considers the diversity of stakeholders across the Town of Mono. The NHS and supporting policy framework prepared by the Town will, in staff’s opinion, contribute to the Regional landscape approach of the Province.

CONCLUSION:

The proposed NHS introduced through OPA 41 will provide partners, including municipalities and the Province, with a science-based NHS, based on ecological and hydrological principles within a watershed ecosystem context, and supported by science-based data and a framework of protection policies. The NHS proposed by the Town is consistent with the NEP and PPS, and in some cases, exceeds the minimum standards of the Province. The extent of woodland and other natural heritage features and areas being protected through the Strategy will contribute to achieving the Purpose of the Niagara Escarpment Planning and Development Act (NEPDA) and the NEP for the Niagara Escarpment to be maintained substantially as a contiguous natural environment, and to ensure that only such development occurs as is compatible with this natural environment. The Strategy compliments the landscape approach of the 2017 NEP confirmed by the Coordinated Plan Review.

The Town of Mono has circulated OPA 41 to the NEC with a request for comments. The comments and recommendations in the attached letter prepared by staff are intended for the purposes of clarity and enhanced consistency in interpretation and indicate overall support for proposed OPA 41.

RECOMMENDATIONS:

1. That the Commission endorse the draft letter containing comments and recommendations in support of Official Plan Amendment 41 – Natural Heritage System and that the letter be submitted to the Town of Mono in response to their request for comments.

2. That the Commission commends the Town of Mono for their development of a Natural Heritage Strategy that is supportive of the Purpose and Objectives of the Niagara Escarpment Plan.

Note: Lisa Grbinicek, Senior Strategic Advisor, presented and answered questions.
Moved By: Horner
Seconded By: Pim

“That the Commission receive the report and endorse the letter as amended.”

DISCUSSION:

Commissioner Gilhespy requested clarification of how ‘no negative impact’ is applied; the Senior Strategic Advisor noted that the focus is on avoidance, then mitigation, not compensation; there are no provisions for net gain in the NEP. Guidelines are likely to be forthcoming.

The Commission commended the Town of Mono for its leadership in protecting the Town’s highly significant natural features and areas through the Amendment.

Motion Carried

C3, SUB #9614

STAFF REPORT
Development Control in the Niagara Escarpment Plan Area
Future Mapping and Regulation Changes

BACKGROUND:

At the June 2017 meeting of the Niagara Escarpment Commission (NEC), staff presented its Operational Strategy. One of the projects referenced in the Strategy was a comprehensive and strategic initiative to review and adjust the Areas of Development Control (ADC) to achieve the following goals:

- Reduce complexity of the development application process;
- Streamline NEC planning processes;
- Demonstrate government responsiveness to feedback heard through the Coordinated Plan Review and other consultation; and
- Respond to a Commission motion from its June 2017 meeting directing NEC staff to:
  - “…review the development permit process and provide recommendations for applications streamlining and greater municipal collaboration to facilitate more timely comments on NEC development permit applications…”

Staff is taking this opportunity to update the NEC regarding the status of this project, confirm the NEC’s support for the ongoing work and provide additional information on future phases of the project that staff would like to initiate in 2018.
The ADC is established in Ontario Regulation 826 and described in metes and bounds textual descriptions (i.e. using words to describe the limits of the area). In some instances the metes and bounds descriptions are vague (e.g. the forested edge of the Escarpment), which makes interpreting the boundary of the ADC challenging. Furthermore, there are instances where the boundaries of the Niagara Escarpment Plan (NEP) Area and the ADC are not aligned. In other words, some properties are in the ADC but are not within the Niagara Escarpment Plan Area. This can be confusing to applicants and regulatory partners, and can make implementation of the NEP problematic. Where proposed development is in the ADC but outside of the NEP Area, it is difficult to determine, and confusing to understand, what specific policies of the NEP apply.

ANALYSIS:

The project would include three major components:

A) Mapping improvements

The purpose of the proposed amendment to Regulation 826 is to:
- Update and clarify the ADC using regulation plans developed by the OSG in consultation with NEC staff;
- Provide a foundation for the future consideration of adjusting the ADC in certain designations in the NEP Area, subject to consultation with partner ministries, municipalities and landowners.

NEC staff has been working with the OSG throughout 2017 to evaluate updated regulation plans prepared by the OSG. The OSG has made significant progress and the target for completion of this work is the end of the calendar year.

Once the regulation plans have been completed, a proposed change to Regulation 826, will need to be posted on the Environmental Registry. At this stage, the purpose of the proposed change to the Regulation is not to add or subtract lands from the ADC, but just to produce regulation plans that are more precise and easier to use. The new regulation plans will have descriptive text that will allow NEC staff to produce more accurate maps, and may enable better alignment with municipal zoning and other provincial regulations (e.g. Minister’s zoning orders/Parkway Belt West Plan mapping).

B) Adjusting the Area of Development Control

While the process is underway to update the mapping through a change to Regulation 826, staff propose to identify areas—in collaboration with affected municipalities—where the ADC might be adjusted to streamline processes by reducing the number of planning approval authorities. Staff are considering the designations of Urban Area, Minor Urban Centre and Escarpment Recreation Areas as possible locations where the ADC might be adjusted.
These designations apply to lands that are largely developed and would not include the most sensitive areas of the Escarpment. These designations are also areas where underlying municipal zoning is in place, or could potentially be put in place in the future, to ensure the requisite planning control remains throughout the NEP Area. NEC staff would have the opportunity to review the municipal zoning to ensure that it is not in conflict with the NEP.

It should be noted that, to ensure the Purpose and Objectives of the NEP continue to be applied, staff would propose that:

- Any lands removed from the ADC remain in the NEP Area; and
- The identification of areas where development control could be lifted would be contingent on municipal support and set criteria (yet to be developed).

**C) Alignment with Greenbelt Plan Settlement Area boundaries**

During the Co-ordinated Provincial Plan Review, staff of the Ministry of Municipal Affairs (MMA) consulted with NEC staff regarding the boundaries of settlement areas, as identified in the Greenbelt Plan and municipal official plans. It was identified that in some locations, settlement area boundaries did not align with the Urban Area and Minor Urban Centre boundaries in the NEP. As part of the mapping process relating to the ADC, NEC staff propose to continue discussions with MMA staff to identify areas of inconsistency and identify mapping changes that could achieve better alignment of settlement area boundaries. As identified in the related staff report regarding proposed amendments to the Parkway Belt West Plan (PBWP), there would be opportunities to also address any differences relating to the boundary of the PBWP and Minister's Zoning Orders to ensure that there are no gaps in planning control at the provincial level.

**Guiding Principles of the Project:**

The following guiding principles would apply to any adjustments made under this project to the ADC:

- All development within the NEP Area will continue to meet the Purpose and Objectives of the Niagara Escarpment Planning & Development Act and the NEP.
- The outcomes of the project will align with the Ministry of Natural Resources and Forestry’s broader mandate and objectives.
- Opportunities to adjust the ADC and/or align the Greenbelt Plan settlement boundaries with the NEP’s Minor Urban/Urban boundaries will be supported by impacted municipalities, Ontario government ministries and landowners.

**CONCLUSION:**

NEC staff supports the Development Control Regulation project as an important part of the NEC’s Operational Strategy, and a key initiative to help address the Commission’s June 2017 motion directing staff to work collaboratively with municipalities to streamline
processes. Staff should continue to work with the OSG to complete the regulation plans of the ADC by year end. Staff should also proceed with the background work and analysis to prepare for the next phases of the project, in consultation with the MNRF and MMA, in order to support efficiencies in the land use planning process.

Staff proposes to return to the Commission in 2018, once details of the proposed criteria for municipal participation and consultation process have been developed.

RECOMMENDATIONS:

1) That the Niagara Escarpment Commission (NEC) endorse the staff recommendation to continue working with the Office of the Surveyor General to produce regulation plans of the Area of Development Control (ADC) as prescribed in Regulation 826. This will provide the NEC with more accurate ADC mapping; and,

2) Direct staff to begin evaluating opportunities to adjust the ADC, in partnership with the Ministry of Natural Resources and Ministry of Municipal Affairs subject to the development of criteria for municipal participation and a consultation process to engage affected municipalities and landowners.

Note: Nancy Mott, Senior Strategic Advisor, presented and answered questions.

DISCUSSION:

The Senior Strategic Advisor noted that Regulation 826 must be changed for areas to be removed from development control; municipal Official Plans will also need to be updated; criteria for removing areas from Development Control need to be drafted. The project will review areas in development control but outside of the Plan Area as well as areas that are partly in DC.

The Director advised that the government considers changes only in January and July, so any proposed changes will need to be strategic to accomplish as much as possible with limited time scope.

Commissioner Gilhespy inquired if conservation authorities could apply to stay in the ADC; yes. Landowners will also have a say in any changes.

M783R15/11-2017

Moved By: Horner
Seconded By: Gilhespy

“That the Commission receive the report and endorse the staff recommendation.”

Motion Carried”
PRESENTATION

Electronic Staff Reports

The Communications Specialist gave a demonstration of how Commissioners will be able to access meeting staff reports online, and fill out per diem forms and submit them electronically. The goal is to be paper-free over time, but packages may be mailed to Commissioners if requested. A walk through will be provided at the January 18, 2018 meeting. Commissioner Greig noted that reviewing maps on-screen is difficult.

Note: Danielle D’Silva, Communications Coordinator, presented and answered questions.

M783R16/11-2017

Moved By: Greig
Seconded By: McQueen

“That the Commission receive the presentation.”

Motion Carried

INFORMATION REPORTS – G Package

DISCUSSION:

NEC staff answered several questions that arose from the Director’s Report. Commissioner Greig requested that any changes to the Director Approval report include detailed information.

Commissioner Horner noted that 3 decisions the Commission made at the October 19, 2017 meeting have been appealed.

M783R17/11-2017

Moved By: VanderBeek
Seconded By: McQueen

“That the Commission receive the “G” package.”

Motion Carried
NEW BUSINESS

M783R18/11-2017
Moved By: Downey
Seconded By: Horner

“Whereas, the Niagara Escarpment Commission (NEC) was unable to carry out its mandate due to an insufficiency of appointed Commission members creating a lack of quorum and an inability to meet at four of five of its scheduled meetings between May and September 2017,

Therefore, be it resolved that we, the Commissioners of the NEC, respectfully request of our Minister that:

A. All the terms of the NEC public-at-large appointments be staggered to ensure that optimal quorum numbers are maintained to allow for all duties and responsibilities to be carried out in a timely manner.

B. All municipal appointments to the NEC align with the municipal election cycle to ensure that all regions of the NEC are fully represented. Note: Currently, neither Simcoe County nor Halton Region are represented at our Commission table.”

DISCUSSION:

Commissioner Greig commented on the long stretches of vacant appointments for Public Commissioners.

Commissioner McQueen noted that for Commissioners appointed in December, there may be lag time getting new Commissioners on board to meetings.

Motion Carried As Amended

M783R19/11-2017
Moved By: Downey
Seconded By: Greig

“Whereas, staff from the Ministry of Natural Resources and Forestry (MNRF), the Niagara Escarpment Commission (NEC) and others are currently reviewing the 'Commission Meeting Guidelines and Procedures', the 'Delegation of Authority' procedures and the 'MOU between the Minister and the Chairs', therefore;

Be it resolved that NEC and/or MNRF staff shall provide progress updates to the Commission on a quarterly basis.”

Motion Carried
The Chair thanked everyone for their work on the procedural matters presented, and wished everyone safe holidays.

**ADJOURNMENT**

**M783R20/11-2017**

*Moved By: Baty*

“That this meeting be adjourned.”

*Motion Carried*

**Time of Adjournment:** 3:30 p.m.

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R.F. (Russ) Powers
Chair