**Niagara Escarpment Commission**

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# MINUTES OF P79/05-2021

**NIAGARA ESCARPMENT COMMISSION**

**VIA WEBEX DUE TO COVID 19 PANDEMIC**

**May 19, 2021**

**Members Present:** B. Burton, B. Clark, M. Curley, J. Downey, G. Driedger.
R. Gibson, L. Golden, J. Horner, D. Hutcheon, G. Krantz,
K. Lucyshyn, B. Mackenzie, D. McKinlay, P. McQueen,
R. Nicholson, J. Vida, A. Witteveen.

**Regrets:** None.

**Staff Present:** D. Ramsay, K. Peters, N. Mott, L. Grbinicek, K. Bannister,
J. Rhodes-Munk, J. Loiacono, D. D’Silva, K. Xu, L. Wang, J. Olah, A. Obradovic, A. Bochenek.

**Also Present:** S. Cooper, C.Darevic, R. Pineo, Ministry of Natural Resources and Forestry; R. Patrick, C.O.N.E.

**Meeting called to order:** Wednesday, May 19, 2021 at 10:00 a.m.

Chair Rob Nicholson presided.

**Introductions:**

Chair welcomed everyone to the meeting, and thanked staff for their work on the virtual meetings. He thanked staff and the Commissioners who participated in the Policy subcommittees. Their participation was very helpful to staff in ensuring fulsome reports.

The chair welcomed newly hired summer students Eric Griffin, Enforcement Assistant, Jasmine Nijjar, Project’s Assistant, Matteo Fortino, Land Use Planning Assistant, Rameez Sadafal, Land Use Planning Assistant, and Haleema Sarwar, Land Use Planning Assistant.

**Land Acknowledgement**

The Chair read aloud the Land Acknowledgment.

**BUSINESS ARISING FROM PREVIOUS MEETINGS:**

None.

**P1**

## Policy Guideline Development Background and Context Setting

## Temporary Dwelling Unit(s) Accessory to Agricultural Uses

## Accessory Facilities and Uses to Single Dwellings

Lisa Grbinicek, Senior Strategic Advisor, provided a review of the staff report and answered questions.

### RECOMMENDATIONS:

That the Commission endorse this Report and direct staff to proceed, including limited consultation and development of draft Policy Guidance material for further consideration.

**P79R1/05-2021** *Moved By: Krantz*

 *Seconded By: McKinlay*

*“That the Commission approve the staff recommendations.”*

**For the Motion: 16 votes**

Burton, Clark, Curley, Downey, Driedger, Gibson, Golden, Horner, Hutcheon, Krantz, Lucyshyn, Mackenzie, McKinlay, McQueen, Vida, Witteveen.

**Against the Motion: 0 votes**

None.

 *Motion Carried*

**DISCUSSION: How may Guidelines address policy respecting the need for justification for temporary farm help:**

The Commission noted that it is not the role of the NEC to review agricultural business cases, and that if a farm is not successful within the 3 year time limit and the property can’t be severed, the temporary accommodation can’t be converted into a dwelling or Air B and B, or be required to be removed, business justification should not be required.

A Commissioner noted that business plans to get financing(which can include farm help accommodation), can be 20 years plans and the NEC permits for temporary farm accommodation are only for a 3 year period. He asked if increasing the time limit for the NEC permit to match the business case was possible. Staff advised that the 2017 NEP has more flexibility with expiration timeframes.

**DISCUSSION: How may Guidelines address the policy respecting the need for farm help dwellings to be temporary and how Guidelines may assist in defining “temporary”:**

The Commission asked how the Covid 19 public health guidelines are being applied to temporary farm help accommodations; staff noted that the impacts of COVID have resulted in a challenging situation for farmes and other agricultural related businesses and have significant impacts on seasonal workers. Staff advised that there may be some factors that emerge from the reviews of public health guidelines and this is being tracked by staff. There may be some factors that emerge from the reviews which have bearing on DP applications. A Commissioner advised that the Georgian Bay Fruit Growers Association put a comprehensive plan in place for seasonal workers at the beginning of the pandemic in 2020 which is based on “team bubbles” for work, and use of online ordering for food and banking.

A Commissioner noted the federal government is considering giving permanent resident status to 30,000 temporary farm help workers who may work on a farm over several growing seasons.

A Commissioner asked if the Ministry of Municipal Affairs and Housing has been contacted to discuss the *More homes, More Choices Act* in relation to temporary farm help and secondary dwelling unit policies. Staff advised that the *More Homes, More Choices Act* was taken into consideration in the 2017 NEP policies for secondary dwelling units being permitted in the Escarpment Rural-designated properties (as attached units), subject to Development Criteria . Staff noted that secondary detached dwelling units are not permitted in the more sensitive NEP designations due to concerns respecting environmental impacts and intensification of use.

The Commission noted continued concern with the maximum size of houses being built in the NEP and the need for a policy change and/or the need to provide guidance to municipalities.

A Commissioner asked if there a mechanism to flag when the 3-year approval is approaching expiry orhas expired. Staff advised that there is no automatic notification at this time.

A Commissioner noted that temporary accommodations do not need to be in the form of a trailer or bunkie, and that houses that can be moved can be considered temporary.

A Commissioner inquired if a scenario where a designated Heritage dwelling could be moved as a secondary dwelling unit for temporary help accommodation. Staff noted that if the dwelling were listed (not designated through a Heritage Conservation Easement Agreement), that the dwelling could be considered as a farm help house (provided it could be moved and remain temporary). Additionally Staff noted that heritage conservation easements agreements are required for properties with designated Heritage homes. A Commissioner provided an example in the Town of the Blue Mountains where a heritage dwelling was designated and a second home on the property was built, the heritage dwelling was then used as farm labor accommodations for seasonal workers.

A Commissioner asked if farm program applications for foreign workers can be approved in advance or fast tracked. Another Commissioner noted that when there are labour shortages, the NEC approval process should not slow down hiring workers.

A Commissioner indicated they shared the same concerns respecting challenges for farmers in securing on-site farm accommodation for farm help noted that a friend has to rent offsite for his workers, cost 60,000 peryear, the Commissioner noted experience with restrictive covenants, could be an option to consider.

The Commission noted the need to revisit rules for siting temporary help accommodations to include updated living standards such as minimum distance requirements to animal barns. It was noted that historical farm cluster planning did not consider nature conservation and features, and it is very important to consider alternatives and working use of the land.

A Commissioner noted that siting in the farm cluster is not the general rule anymore, for example, siting living quarters living in the vicinity of the chicken coop would not be ideal.

A Commissioner advised the Commission of specialty crop farmers severing land with a condition to the severance the condition that only seasonal help could reside on the specialty crop land.

**DISCUSSION: The Commission discussed the use of Agreements on Title:**

The Commission requested information on when an Agreement on Title is triggered as necessary and the intent of the Agreement. Staff advised that the Agreement is to ensure future owners are aware of the approved uses on the property.

The Commission asked if a dwelling size limit could be included in the guidelines. Staff noted that imposing size limits would be considered a policy change, and is not in the scope of the guidelines .

**DISCUSSION : Accessory facilities and uses to single dwellings**

Staff provided an overview of the proposal to develop guidelines for accessory facilities and uses to single dwellings.

The Commission discussed whether the size of accessory facilities, specifically how to assess “incidental and subordinate” could be addressed through guidelines. Staff provided that setting size limitations would be outside of the scope of guideline development.

A Commissioner inquired about the use of Agreements on title, and what other jurisdictions use these tools. Staff provided background into the use of agreements and reference to the Act which provides the basis for these tools.

The Commission discussed how guidelines may address how to prevent accessory structures from being used for human habitation as separate dwelling units. Staff provided that an agreement on title is a tool that is commonly used. Also removal of kitchen and or washroom facilities is also used as a mitigative measure.

A Commissioner suggested that a change to policy could be considered to restrict the size of accessory structures or gie guidance to municipalities given the development pressures respecting these uses.

With respect to the reference in the staff recommendation to undergo “limited consultation, a Commissioner inquired what the intent of the limited consultation was, and suggested for example, there were a number of agricultural interest groups that would be interested. Staff provided that the intent is to undertake more widespread consultation at the time there are draft Guidelines to consider, and that those special interest groups would be targeted.

BREAK: 11:35 a.m. to 11:50 a.m.

**P2**

**STAFF REPORT**

**Policy Guideline Development - Events**

Nancy Mott, Senior Strategic Advisor, provided a review of the Addendum Information Report and answered questions.

## RECOMMENDATIONS:

That the Niagara Escarpment Commission:

1. Endorse the report;
2. Direct staff to proceed with:
	* targeted, informal discussions with key stakeholders and OPS staff to inform the development of guidance material; and,
	* NEC website updates to include information and checklist to support applications for events;
3. Return to the Commission with draft guidance material for events in the fall of 2021.

**P79R2/05-2021** *Moved By: Burton*

 *Seconded By: Gibson*

*“That the Commission approve the staff recommendations.”*

**For the Motion: 16 votes**

Burton, Clark, Curley, Downey, Driedger, Gibson, Golden, Horner, Hutcheon, Krantz, Lucyshyn, Mackenzie, McKinlay, McQueen, Vida, Witteveen.

**Against the Motion: 0 votes**

None.

 *Motion Carried*

**DISCUSSION:**

The Commission discussed if events constitute development; staff advised that an event is considered a change of use, which requires a development permit.

The Commission noted concern that the NEC permit is an added layer of red tape for property owners in addition to municipal permits and bylaws. Staff noted that municipalities review event applications in relation to municipal by laws, not in relation to the NEP, and that the aim is to harmonize with municipalities, not abdicate responsibility. A Commissioner suggested that the municipal review would be sufficient, and the municipality could provide the NEC with the event information. Staff noted that part of the NEC development permit process includes environmental and cumulative impacts and the need to consider the event impact on neighbours, if it may involve sound systems and evening events.

A Commissioner noted that there is a lack of awareness about requiring an NEC permit when there is no development proposed. He asked if MNRF counsel had provided an opinion if an event is development. Staff advised that the issue is complex and a meeting is being scheduled with MNRF counsel. In the short term staff are recommending new information on the NEC website to alert applicants about the possible need for a permit.

The Commission noted concern that processing applications for events creates an unnecessary strain on staff resources. Need to harmonize with municipal approaches.

A Commissioner requested the NEP definition for Event. Staff advised that there is a specific but limited exemption for event tents, and that guidance materials will assist in the finalizing the definition.

A Commissioner asked how long it takes to get a Development Permit. Staff advised that the time varies depending on whether the application has all the necessary supporting information and timeliness of response from circulated agencies.

The Director noted a need to differentiate between a one-time event compared to recurring frequent events.

Lunch: 12:45 p.m. to 1::45 p.m.

**P3**

**STAFF REPORT**

**Draft Technical Criteria for Vegetation Protection Plans**

Karen Bannister, Landscape Architect, provided a review of the Staff Report and answered questions.

## RECOMMENDATIONS:

That the Niagara Escarpment Commission:

1. Approve the Draft Technical Criteria for Vegetation Protection Plans attached to this staff report; and,
2. Direct staff to undertake targeted consultation with key stakeholders and municipalities within the Plan area.

**P79R3/05-2021** *Moved By: Hutcheon*

 *Seconded By: Witteveen*

*“That the Commission approve the staff recommendations.”*

**For the Motion: 16 votes**

Burton, Clark, Curley, Downey, Driedger, Gibson, Golden, Horner, Hutcheon, Krantz, Lucyshyn, Mackenzie, McKinlay, McQueen, Vida, Witteveen.

**Against the Motion: 0 votes**

None.

 *Motion Carried*

**DISCUSSION:**

A Commission commented that strong language is needed to prevent people from using tree replacement as a means to justify tree cutting. Staff noted this concern.

A Commissioner asked if tree protection fencing is required in all situations for protecting vegetation. Staff advised that fencing is important as it delineates a ‘no go zone’ for construction activities and that the need for fencing and the most appropriate type of fencing varies based on a number of factors.

A Commissioner asked if plant recommendations are matched with vegetation and soil types as these can be very different from the northern tip of the Escarpment to the southern tip. He also asked if the wording could be stronger regarding new plantings to ensure like-for-like replacement plants. Staff noted this suggestion.

A Commissioner asked if a development permit is required for farmers to clear land to prepare it to be farmed. Staff noted that tree cutting associated with a permitted agricultural use is generally exempt subject to other applicable legislation.

A Commissioner asked how invasive species are managed in the NEP area. Staff noted that the requirement for invasive species management is a question of scale, most often being included in the scope of larger scale development projects or where needed to support proposed restoration works.

A Commissioner asked if pit and quarry operators in the NEP area will be consulted and noted that there could be overlap with other provincial programs. Staff noted this suggestion.

**P4**

**STAFF REPORT**

**Draft Technical Criteria for Landscape Plans**

Karen Bannister, Landscape Architect, provided a review of the Staff Report and answered questions.

## RECOMMENDATIONS:

That the Niagara Escarpment Commission:

1. Approve the Draft Technical Criteria for Landscape Plans attached to this staff report; and,
2. Direct staff to undertake targeted consultation with key stakeholders and municipalities within the Plan area.

**P79R4/05-2021** *Moved By: Burton*

 *Seconded By: Hutcheon*

*“That the Commission approve the staff recommendations.”*

**For the Motion: 16 votes**

Burton, Clark, Curley, Downey, Driedger, Gibson, Golden, Horner, Hutcheon, Krantz, Lucyshyn, Mackenzie, McKinlay, McQueen, Vida, Witteveen.

**Against the Motion: 0 votes**

None.

 *Motion Carried*

**DISCUSSION:**

A Commissioner noted an issue with people’s use of unclean fill, use of seed mixes with noxious weeds, and/or planting of invasive plants spreading onto neighbouring properties and farms. Staff advised that this will be considered.

A Commissioner requested detail regarding the professional expertise needed to prepare landscape plans, and asked if accreditation was required. Staff advised that a range of professionals may have the skills needed to be prepare a landscape plan and that expertise is particularly important when the landscaping is required to accomplish goals like visual impact mitigation.

A Commissioner requested that Night Sky guidelines be required in every development permit and that there should be reference to green infrastructure, directing drainage away from watercourses, and bird-proofing buildings. Staff advised that these are all good practices and noted the suggestion.

**MOTION FOR SPEAKERS**

**P79R5/05-2021:**

*Moved By: Witteveen*

*Seconded By: Driedger*

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

***Motion Carried***

**A3**

**STAFF REPORT**

**Lost Forest Park**

**4449 Milburough Line**

**Part Lot 24, Concession 2 North of Dundas Street (Nelson)**

**City of Burlington, Region of Halton**

## RECOMMENDATIONS:

That the Commission direct NEC staff to return with a restoration order for Commission consideration, containing the following provisions:

* A generous but specified timeframe for the landowner to see to the removal of all unauthorized manufactured homes (e.g., five years);
* Immediate notification of the occupants that a restoration order has been served on the current owner, including clear explanation of the timeframe for removing manufactured homes from the campground;
* Provision of a detailed inventory and site plan specifying the number and location of manufactured homes that will be subject to removal;
* Clarification of the need for future DPs and possibly Niagara Escarpment Plan Amendment if the replacement of any of the identified manufactured homes with an authorized structure cannot meet the exemption criteria set out in O. Reg. 828/90; and
* Annual compliance inspections to be undertaken by NEC staff, to ensure the conditions of the restoration order and any subsequent DPs are adhered to.

**Note:**

* Kim Peters, Manager, presented a summary of the report and answer questions.
* Counsel and Agent for property owner presented and answered questions.

**P79R6/05-2021:**

 *Moved By: Curley*

 *Seconded By: Mackenzie*

*“That a decision on the matter be deferred to the next available meeting to allow staff to consult with Ministry of Natural Resources and Forestry for legal advice.”*

**For the Motion: 6 votes**

Clark, Curley, Gibson, Hutcheon, Mackenzie, McKinlay.

**Against the Motion: 10 votes**

Burton, Downey, Driedger, Golden, Horner, Krantz, Lucyshyn, McQueen, Vida, Witteveen.

 *Motion Defeated*

**P79R7/05-2021:** *Moved By: Vida*

 *Seconded By: Downey*

*“That the Commission directs staff to prepare a compliance letter to the owners of Lost Forest Park advising that the park is operating in compliance with the Niagara Escarpment Plan and Development Permits that have been issued in regard to the existing 122 park model trailers and the 28 manufactured homes. Further, that change of any of the 122 sites to a manufactured home will require a Development Permit from the NEC.”*

**For the Motion: 1 vote**

Hutcheon.

**Against the Motion: 15 votes**

Burton, Clark, Curley, Downey, Driedger, Gibson, Golden, Horner, Krantz, Lucyshyn, Mackenzie, McKinlay, McQueen, Vida, Witteveen.

 *Motion Defeated*

**P79R8/05-2021:** *Moved By: Vida*

 *Seconded By: Downey*

*“That the Commission directs staff to prepare a compliance letter to the owners of Lost Forest Park advising that the park is operating in compliance with the Niagara Escarpment Plan and Development Permits that have been issued.”*

**For the Motion: 10 votes**

Burton, Downey, Driedger, Golden, Horner, Krantz, Lucyshyn, McQueen, Vida, Witteveen.

**Against the Motion: 6 votes**

Clark, Curley, Gibson, Hutcheon, Mackenzie, McKinlay.

 *Motion Carried*

**DISCUSSION:**

The Commission noted that the landowners worked closely with the NEC and the city of Burlington over several years and were not advised at any time prior to trying to sell the campground that it was not in compliance with NEP. A Commissioner noted that staff’s interpretation of the policy is rigid. The Commission noted that the campground policies in the NEP need to be reviewed and updated to address changes in the camping industry, while ensuring that the Plan’s Purpose and Objectives continue to be upheld.

The Commission requested clarification on what months the park operates and was advised by the landowner’s counsel that the campground is occupied throughout the year, although trailers/homes are not be occupied on a year-round basis, as noted in the tenancy agreements. The landowner’s agent advised that the tenancy is monitored and action can be taken to end a tenancy agreement if necessary. He also noted that leniency may be required because of travel restrictions and stay-at-home orders due COVID-.

The Commission noted concern that supplying a compliance letter would set a precedent for the use of manufactured homes in camgrounds the NEP area.

A Commissioner noted that there is a housing crisis in Ontario, and that tenants may be unable to find new affordable housing or locations for their trailers/homes.

A Commissioner inquired if providing a compliance letter would permit the replacement of the remaining trailers with manufactured homes. Staff advised that development permit applications would be required since the replacement travel trailers with manufactured homes is not included as an exemption under O. Reg. 828/90.

Commissioners requested that staff prepare a motion, for consideration at the May 20th meeting, that would direct staff to proceed with examining NEP campground policies and explore the need for an amendment to update those policies in accordance with camping trends.

**PRESENTATION:**

**NEPOSS COUNCIL**

The NEPOSS Council presentation was moved to the May 20, 2021 Commission meeting due to the May 19, 2021 Policy meeting running behind schedule.

**NEW BUSINESS**

None.

**ADJOURNMENT**

**P79R9/05-2021** *Moved By: Curley*

*“That this meeting be adjourned.”*

 *Motion Carried*

**Time of Adjournment:** 4:30 p.m.

 Rob Nicholson

Chair