April 21, 2022

# A4: STAFF REPORT

## DEVELOPMENT PERMIT APPLICATION:

### W/A/2021-2022/587

711 York Road

Lot 27, West Flamborough Concession 2

Pleasant View Survey, City of Hamilton

## SUMMARY

### PROPOSAL:

To clear all vegetation on a section of the subject property, convert the land to an agricultural use as a fruit orchard and to install a 1 m (3.5 ft) wire fence, on the existing
1.6 ha (3.95 ac) vacant lot. (Appendix 1 – site plan)

### DESIGNATION:

Escarpment Protection Area

**ISSUE:**

Use not permitted in Niagara Escarpment Plan (NEP) for Pleasant View Survey lands.

### RECOMMENDATION:

Refusal

### REASONS:

1. New agricultural use not permitted on lands within Pleasant View Survey as set out in the NEP, Part 2.2.21.
2. The proposal conflicts with the City of Hamilton Official Plan.
3. City of Hamilton staff do not support the application.
4. Community concern about vegetation clearing and driveway installation on the subject property.

## RECEIVED:

November 18, 2021

## SOURCE:

REDACTED, owners

REDACTED agent

## DISCUSSION:

### Property characteristics and land use context

The subject property is located on the north side of York Road, west of Highway 6 in the Pleasant View Survey area of the City of Hamilton. The lot is 1.6 hectares (4.015 acres) in size. The property is vacant, except for a driveway access but features a wooded/vegetated area that has been partially cleared. The property is un-serviced. The surrounding area includes single dwellings on small lots, some institutional uses (places of worship) and public parks.

The Pleasant View Survey area was added to the NEP in 2013 through a Plan Amendment. The lands were already subject to the Greenbelt Plan, the Growth Plan, and the Parkway Belt West Plan. The basis for the Amendment stated:

The addition of these lands to the Niagara Escarpment Plan would bring all of the Escarpment features in this area into the NEP. The lands also constitute a logical extension of a natural corridor of sensitive lands, stream valley features, contiguous forest patches and scenic rural landscapes that is missing from the NEP. This gap would be removed through the connection of these lands to areas now within the NEP, found to the north and west.[[1]](#footnote-1)

This is a rural area which features low intensity uses such as public parks and single dwellings on lots with a minimum lot size of 10 hectares. Some properties in Pleasant View are partially serviced with municipal water due to historic water quality issues. The NEP policies for this area restrict the land uses to reflect these issues and the policies are supported by and reflected in the Rural Hamilton Official Plan.

Although Amendment No. 179 established land use designations for the area based on the designation criteria of the NEP, site specific provisions in Part 2.2.21 limit the uses of land mainly to uses that existed in the 1990’s. The policies were informed by extensive consultation with agencies, the City of Hamilton and private landowners at the time.

The subject lands are also within the Cootes to Escarpment Park System. This is a collaboration between a number of municipalities and conservation authorities to protect public lands for conservation and recreation as well as to encourage private land owners to practice stewardship on their properties. the organization’s website sets out the purpose of the Park System as follows:

The Cootes to Escarpment EcoPark System is a collaborative initiative to protect, restore and connect more than 3,900 hectares (9,600 acres) of natural lands at the western end of Lake Ontario. This is one of the most biologically rich areas of Canada, home to nearly a quarter of the country’s wild plants and more than 50 species at risk. It is also the last intact ecological connection between Lake Ontario wetlands and the Niagara Escarpment.

Pleasant View Survey and the provincial and municipal policies that apply to it, support the need to limit the development of the area to protect important and sensitive natural areas.

### Agency comments received:

Conservation Halton (CH):

They noted that the subject property is adjacent to lands traversed by tributaries of the Grindstone Creek. CH regulates a distance of 15 metres from the flooding and erosion hazards (meander belt) associated with the watercourse at this particular site. A small portion of the subject site may fall within CH’s regulated area.

CH requested that the application be deferred until additional information is provided by the applicant, specifically a revised site plan, to scale, which delineates the Conservation Halton regulated area to determine if a permit would be required from them and also an environmental study, as the subject property provides a linkage between the City of Hamilton’s Natural Heritage System and may contain unmapped significant features such as Significant Wildlife Habitat and Habitat for Species at Risk. Additional information pertaining to the proposed method of irrigation proposed needs to be provided to determine if water quality or quantity would be affected for sensitive surface and groundwater features.

City of Hamilton:

The applicant was advised by City staff that the proposal does not comply with the City’s Rural Hamilton Official Plan (RHOP), which contains special policy limiting the permitted uses to existing uses, public park, nature preserve, non-intensive recreational activities, single dwellings that existed prior to 1998 or a new single dwelling on a minimum 10-hectare lot and accessory uses to a single dwelling, where permitted. The proposed use is a new agricultural use which is not permitted. City staff also noted that the agent for the applicant had inquired about opportunities to construct 4 single dwellings on the same property.

In addition, under Schedule B (Natural Heritage System) of the RHOP, the subject property has been identified as a Linkage.  Linkages are natural areas that ecologically connect Core Areas.  Core Areas (wetlands, watercourse) have been identified on lands adjacent to the subject property. Where development or site alteration is proposed within a Linkage, a Linkage Assessment is to be prepared.  The Linkage Assessment is to: i) identify and assess the Linkage; ii) assess the potential impacts on the viability and integrity of the Linkage; and iii) make recommendations on how to protect, enhance or mitigate the impacts on the Linkage through planning, design and construction practices (policy F.3.2.2.1).  No linkage assessment has been provided.  Planning staff do not support the proposal.

### Public comments received

NEC staff received several inquiries from area residents regarding the vegetation removal and driveway construction on the subject property. Concern was expressed that vegetation removal would negatively impact wildlife corridors in the area.

### Compliance history

Brief compliance/file history

The NEC compliance team received complaints late last year regarding unauthorized development activities occurring on the subject property. The nature of the complaint related to an unauthorized gravel driveway being constructed on the subject property, in addition to the more recent removal of vegetation from a large portion of the property. In response to these complaints, compliance staff received permission from the landowner to attend the property to assess the alleged works completed on the property in absence of a Development Permit.

While on site compliance staff observed the significant removal of vegetation from the subject property. It was determined that the removal of vegetation that took place (grasses, shrub, bush, saplings) did not constitute development that would require a permit from the NEC The vegetation was not large enough to satisfy the definition of a tree as defined within our legislation. The landowner clarified that the vegetation removal was not to prepare the site for future development, but an attempt to address issues relating to trespassing on the property.

Compliance staff also observed the construction of a gravel driveway on the subject property that likely involved the removal of several mature trees. Based on available aerial imagery, these developments were undertaken early 2021, prior to the addition of Pleasant View to the NEC Area of Development Control. It was confirmed with City of Hamilton Transportation and Parking Division staff that a driveway access ramp onto York Road was approved in 2007. No response was received from the Municipal Law Enforcement Division regarding the recent construction of a driveway through the subject property. According to the landowner, this driveway was erected by his neighbour at 715 York Road without his consent. Since these developments occurred prior to the property being added to our area of Development Control, no permit was required for these works.

### Provincial Policy Statement 2020 (PPS)

Part 1.1.5 of the PPS allows the management or use of resources, resource-based recreational uses, agricultural uses, and residential development, including lot creation, that is locally appropriate on rural lands. Rural lands include lands that are not prime agricultural areas. However, both the NEP and the City of Hamilton Official Plan both contain more restrictive land use policies that apply to the subject. The policies of the NEP prevail over the PPS to the extent of any conflict.

It is an objective of the PPS to protect natural features and areas for the long term. The diversity and connectivity of natural features in an area should be maintained, restored or where possible, improved, recognizing linkages between and among natural heritage features, surface water features and ground water features. Pleasant View Survey as a whole contains many important natural heritage features and areas and provides for connectivity and wildlife passage. The removal of vegetation on the subject lands and the proposed development of the property for an orchard, do not support the environmental objectives of the PPS. The applicant has not provided any information to support the proposed land use in terms of any potential impact to natural heritage or species at risk which are numerous in this area.

### Parkway Belt West Plan (PBWP)

The subject property is designated Public Open Space and Buffer Area in the PBWP. Among the Objectives of the PBWP is the objective to “preserve prominent natural features, such as river valleys and the Niagara Escarpment, and protect other features, such as wooded areas, watercourses, and other points of interest.[[2]](#footnote-2) This designation permits existing uses, linear facilities and public open space and buffers. Open space and recreation-oriented uses may be permitted for the general public on publicly owned land, if all natural features are preserved to the maximum possible degree. Agriculture is not listed as a permitted use for the subject lands in this Provincial Land Use Plan.

### Niagara Escarpment Plan

The Pleasant View Survey in the City of Hamilton was included in the Niagara Escarpment Plan Area in 2013 with the approval of a Plan Amendment (NEPA 179). This area was included in the NEC Area of Development Control in 2021 through an amendment to Regulation 826. Therefore any proposed development within the Pleasant View Survey is subject to the policies of the NEP and any proposed development (e.g., change of land use) requires a development permit from the NEC.

In addition, the Pleasant View Survey is subject to site specific policies which limit the permitted uses. NEP Part 2.2.21 restricts the permitted uses to:

1. Only uses except for single dwellings, that existed on or before February 16, 1993;
2. Only single dwellings that existed on or before August 14, 1998;
3. Uses accessory to an existing use or single dwelling;
4. A new single dwelling if the lot size is 10 hectares or greater;
5. Forest, wildlife and fisheries management, archaeological activities, public park or open space, trails, nature preserves, non-intensive recreational activities and essential transportation and utility facilities.

The limited number of permitted uses in Pleasant View Survey reflects the sensitivity of the natural heritage significance in this area which includes several Environmentally Significant Areas, Areas of Natural and Scientific Interest, regulated natural hazards, sensitive groundwater infiltration areas, and wildlife habitat. This area is associated with significant creek valleys, including Grindstone Creek, which is a protected Urban River Valley under the Greenbelt Plan. In the Pleasant View area, the NEP and the Greenbelt Plan’s Natural Heritage System are intertwined and complement one other. A significant portion of Pleasant View Survey is under public ownership for passive recreation and environmental protection.

The limitations in the special policies for the Pleasant View Survey also reflect a 1995 Ontario Municipal Board (OMB) decision on Amendment 23 to the former Town of Dundas Official Plan. According to the NEC Initial Staff Report regarding NEPA 179, “The Decision (OMB File No. 0930179), in which the NEC was a participant, was to limit residential development to 1 unit per 10 hectares (25 acres). This essentially has limited development to existing lots of record where those lots of record could be sustained on private services.”[[3]](#footnote-3)

The proposed use of the subject lands for an orchard (agricultural use) is not permitted by the area-specific NEP policies. The subject lands are not part of a Prime Agricultural Area. The applicant has not demonstrated environmental stewardship of the land in the vegetation removal that took place prior to and after submission of their application. The applicants have also signaled that despite the policy restrictions in the NEP, they may seek to further intensify the use of the property in the future by inquiring with City staff about residential development opportunities. Additional lot creation and residential uses are likewise not permitted by the NEP or the Rural Hamilton Official Plan on a 1.6-hectare lot in Pleasant View Survey.

NEC staff have contacted the applicant and the agent to explain that this Development Permit application is in conflict with NEP policy. The applicants were given the opportunity to withdraw the application, but no response was received from them in response to our email at the time of writing this report.

## CONCLUSION: It is the opinion of NEC staff that the subject Development Permit application should not be approved. As the proposed use is not a Permitted Use in the NEP, an analysis of the Development Permit criteria is not provided in this report. This is standard practice in this circumstance.

## RECOMMENDATION:

That the Commission **refuse** the application for the following reasons:

## The use is not permitted in the Niagara Escarpment Plan.

1. The use is not permitted in the City of Hamilton Official Plan.
2. City of Hamilton staff do not support the proposed use.

## Prepared by:

ORIGINAL SIGNED BY: ORIGINAL SIGNED BY:

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Andrej Obradovic Kevin Toste

Senior Planner A/Compliance Program Supervisor

ORIGINAL SIGNED BY:

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Nancy Mott, MCIP, RPP

Senior Strategic Advisor

**Approved by:**

ORIGINAL SIGNED BY: ORIGINAL SIGNED BY:

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Kim Peters, MCIP, RPP John Dungavell

Manager Acting Director

Appendix 1 – Site plan for proposed orchard

Appendix 2 – Air photo

Appendix 3 – NEP designation map

1. Amendment No. 179 to the Niagara Escarpment Plan, July 18, 2013, p. 4 [↑](#footnote-ref-1)
2. Government of Ontario, Parkway Belt West Plan, Section 3.13, p.6, July 1978. [↑](#footnote-ref-2)
3. Initial Staff Report, Addition of the Pleasant View Survey to the Niagara Escarpment Plan, Ken Whitbread, January 20, 2011. [↑](#footnote-ref-3)