**Niagara Escarpment Commission**

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# MINUTES OF M813/02-2022

**NIAGARA ESCARPMENT COMMISSION**

**VIA WEBEX DUE TO COVID-19 PANDEMIC**

**February 17, 2022**

## MEMBERS PRESENT:

B. Burton, B. Clark to 1:15 p.m., M. Curley, J. Downey to 2:00 p.m., G. Driedger,
R. Gibson, L. Golden, J. Horner, D. Hutcheon, G. Krantz to 1:00 p.m., K. Lucyshyn,
B. Mackenzie, D. McKinlay, P. McQueen, R. Nicholson, J. Vida, A. Witteveen.

## REGRETS:

None.

## STAFF PRESENT:

D. Ramsay, K. Peters, L. Grbinicek, N. Mott, K. Toste, Paul Widmeyer, D. D’Silva,
A. Obradovic, E. Vanderwal, L. Wang, D. D’Silva, W. Baldin, J. Olah, A. Bochenek.

## ALSO PRESENT:

D. Kappos, Counsel, Natural Resources and Forestry; R. Patrick, C.O.N.E.

## MEETING CALLED TO ORDER 10:00 a.m.

Chair Rob Nicholson presided.

## INTRODUCTIONS:

The Chair welcomed Commissioners, staff and participants to the meeting. He thanked staff for their continued work.

## LAND ACKNOWELDGEMENT

The Chair read aloud the Land Acknowledgment.

### BUSINESS ARISING FROM PREVIOUS MEETINGS:

None.

## APPROVAL OF MINUTES – P80/11-2021

**M813R1/02-2022**

*Moved By: Clark*

*Seconded By: Gibson*

*“That the Commission minutes of November 17, 2021 be approved as written.”*

***Motion Carried***

**DISCUSSION:**

## None.

## APPROVAL OF MINUTES – M812/11-2021

**M813R2/02-2022**

*Moved By: Hutcheon*

*Seconded By: Driedger*

*“That the Commission minutes of November 18, 2021 be approved as written.”*

***Motion Carried***

**DISCUSSION:**

## None.

## MOTION FOR SPEAKERS

**M813R3/02-2022:**

*Moved By: Krantz*

*Seconded By: Driedger*

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

***Motion Carried***

## CONFLICTS OF INTEREST – Declaration of Conflicts of Interest

## None.

## DISCUSSION AGENDA: A and B PACKAGES

## (*Staff Reports, External submissions)*

## C1

**INFORMATION REPORT**

**Niagara Escarpment Plan Amendment PP 220 20 (Baghai Developments Ltd.)**

2975 Escarpment Sideroad, Town of Caledon, Region of Peel

## BACKGROUND:

On March 18, 2021, NEC staff presented an initial staff report to the Commission regarding an amendment application made by Baghai Development Ltd. The plan amendment application sought site-specific policy exceptions to allow the severance of the above-noted lot subject of a Heritage Conservation Easement Agreement, and by doing so facilitate the acquisition of approximately 21.8 ha of lands by a public body (the Credit Valley Conservation), for conservation purposes and securement of the permanent route of the Bruce Trail. The Commission endorsed the staff recommendation to initiate the proposal. Notice of the application was posted on the Environmental Registry, the NEC website, local newspaper, and circulated to ministries, agencies and landowners within 120m with an invitation to comment (60-day comment period).

On November 11, 2021, the planning consultant for the applicant advised NEC staff in writing that the applicant wished to withdraw their application. No further action is required by staff or the Commission.

## RECOMMENDATION:

That the Commission receive this Report for information only.

Note:

* Lisa Grbinicek, Senior Strategic Advisor, provided a summary of the report and answered questions.

**M813R4/02-2022:**

*Moved By: Witteveen*

*Seconded By: Hutcheon*

*“That the Niagara Escarpment Commission receive the information report.”*

***Motion Carried***

**DISCUSSION:**

A Commissioner noted that had the application been approved, there would be a double standard for other property owners who are not able to receive similar approvals.

## A1

**STAFF REPORT**

### DEVELOPMENT PERMIT APPLICATION N/C/2020-2021/547

140 Ridge Road West

Part Lot 11 and 12, Concession 2 and 3

Town of Grimsby, Region of Niagara

## PROPOSAL:

To establish a home occupation (physiotherapy and wellness practice) operating out of an existing 58 square metre accessory structure. Additionally, one 0.37 square metre sign is being proposed along Ridge Road West promoting the bed and breakfast and wellness practice.

Note: A three-bedroom bed and breakfast operates from the dwelling on the lot.

### RECOMMENDATION:

That the application be approved with the following conditions of approval:

**CONDITIONS OF APPROVAL N/C/2020-2021/547**

1. Development shall occur in accordance with the Terms and Conditions of the Development Permit.
2. No construction or site alteration is to be undertaken in association with this Development Permit.
3. The accessory structure associated with the physiotherapy practice is not to be used for human habitation, as short or long-term rental accommodation, or for livestock purposes.
4. The following restrictions shall apply to the home occupation (physiotherapy/wellness practice), in addition to those established by the other conditions of this Development Permit:
	* 1. The applicant shall install only one sign not larger than 0.6 square metres.
		2. No one other than the property owner may operate the physiotherapy practice.
		3. Services shall be limited to a 1:1 service ratio (i.e., only one client at a time being served during operating hours).
		4. The operating hours of the physiotherapy practice shall be limited to:
			1. Monday and Wednesday from 5:00pm to 7:00pm
			2. Tuesday, Thursday and Friday from 10:00am to 3:00pm
			3. Saturday from 9:00am to 1:00pm.
			4. Sunday closed.
5. The development permit is not transferrable to a new owner should the subject property be sold.

**Note:**

This Development Permit does not limit the need for or the requirements of any other applicable approval license or certificate under any statute (e.g., Ontario Building Code, business licensing by-law, public health requirements, professional standards and practices, etc.). The Niagara Escarpment Commission Development Permit is required prior to the issuance of any other applicable approval, license or certificate.

Note:

* Andrej Obradovic, Senior Planner, provided a summary of the addendum staff report and answered questions.
* The Applicant presented and answered questions.

**M813R5/02-2022:**

*Moved By: McKinlay*

*Seconded By: Lucyshyn*

*“That the application be approved subject to the following conditions, including an amendment to the hours of operation in Condition 4iv to be capped at 40 hours per week, with days and hours of operation at the landowner’s discretion:*

***REVISED CONDITIONS OF APPROVAL N/C/2020-2021/547***

1. *Development shall occur in accordance with the Terms and Conditions of the Development Permit.*
2. *No construction or site alteration is to be undertaken in association with this Development Permit.*
3. *The accessory structure associated with the physiotherapy practice is not to be used for human habitation, as short or long-term rental accommodation, or for livestock purposes.*
4. *The following restrictions shall apply to the home occupation (physiotherapy/wellness practice), in addition to those established by the other conditions of this Development Permit:*
	* 1. *The applicant shall install only one sign not larger than 0.6 square metres.*
		2. *No one other than the property owner may operate the physiotherapy practice.*
		3. *Services shall be limited to a 1:1 service ratio (i.e., only one client at a time being served during operating hours).*
		4. *The operating hours of the physiotherapy practice shall be limited to 40 hours a week.*
5. *The development permit is not transferrable to a new owner should the subject property be sold.*

***Note:***

*This Development Permit does not limit the need for or the requirements of any other applicable approval license or certificate under any statute (e.g., Ontario Building Code, business licensing by-law, public health requirements, professional standards and practices, etc.). The Niagara Escarpment Commission Development Permit is required prior to the issuance of any other applicable approval, license or certificate.”*

**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 role of the Commission in prescribing a business’s hours of operation was discussed. The Condition was found to be too prescriptive, would not allow the business owner to alter the hours of operation if needed, and would require a new development permit application be submitted to change hours of operation.

**Break: 10:45 a.m. to 11:00 a.m.**

## PRESENTATION

### Balancing On-Farm Diversification and Agricultural Land Preservation in Ontario:

### Assessing effectiveness and identifying best practices for the implementation of the Ministry of Agriculture, Food and Rural Affairs Guidelines

### School of Environmental Design and Rural Development, University of Guelph

**BACKGROUND:**

At the November 17, 2021 policy meeting, staff presented an agricultural policies staff report. The Commission questioned if the NEP policies support agriculture in the NEPA.

The University of Guelph School of Environmental Design and Rural Development has done extensive outreach and evaluation of the Ministry of Agriculture, Food and Rural Affairs agricultural policies and those of the NEP and prepared 8 recommendations and next steps. Pam Duesling, County of Brant, Emily C. Sousa, and Dr. Wayne Caldwell, University of Guelph, presented the study’s findings and next steps to the Commission.

**DISCUSSION:**

The Chair thanked the presenters for their extensive and ongoing analysis of OFDU’s in Ontario.

The Commission requested information on how outreach was done, as some counties, including Bruce County, were not included in the results.

A Commissioner noted that buying and running a farm is very expensive in Ontario, and most farmers need to supplement their income. He noted that OFDU policies can conflict with the NEP policies. He noted that farm labour housing is also an issue with the NEP.

A Commissioner noted that the Ontario Federation of Agriculture members receive online studies regularly and that there are often internet connection issues that interfere with farmers’ ability to complete the studies online. Another Commission advised that survey language can be an issue and education is a critical issue to be addressed. She noted that farmers are unsure of how the survey will be used and because of that, can be reluctant to complete the surveys.

A Commissioner noted that some OFDU’s are better located off of prime agricultural land and the NEC policies should be changed to allow this.

The Director advised that staff will return to the May Policy meeting with a report that considers agricultural policies, followed by a report that initiates an amendment to the Niagara Escarpment Plan.

**Broke for Lunch: 11:45 a.m.**

**Reconvened: 1:00 p.m.**

## A2

**ADDENDUM REPORT**

**ORDER TO DEMOLISH / RESTORE # 2021.001**

17221 Airport Road, Town of Caledon, Region of Peel

**BACKGROUND:**

The proposed Restoration Order was originally before the Commission in November 2021. The Commission deferred the Order to the January meeting in order to provide sufficient time to submit a DPA. No DPA was submitted by the requested date of January 13, 2022. The January meeting was postponed, and the landowner’s son was given until February 14, 2022 to submit a DPA.

### RECOMMENDATION:

That the Commission approve the Restoration Order, with the dates amended as follows:

1. No later than **April 18th, 2022**, prepare and submit a proposed restoration plan, that includes a grading and drainage plan, for the approval of the Niagara Escarpment Commission (NEC) Director. The plan must be prepared by a qualified professional working in the field who is acceptable to the NEC Director and must address the following:
2. Identification of an appropriate site for disposal of the unauthorized fill material (“disposal site”). At no time shall the fill material be deposited in any location regulated by any agency or regulatory body without prior written approval from the relevant governing body and the NEC Director.
3. The safe removal of the unauthorized fill material from the subject property to the disposal site.
4. Restoration of the area of fill placement on the subject property to the condition it was in prior to the unauthorized filling, including through implementation of a site grading plan and revegetation plan.
5. The use of a qualified professional(s) who will undertake and/or supervise the restoration in a manner that will minimize risks to the environment and to public safety.
6. Fully implement the restoration plan no later than **September 30th, 2022.**
7. No later **October 28, 2022** the qualified professional is to provide to the NEC Director written or email confirmation, including photographs, confirming that all of the unauthorized fill material has been removed from the subject property and that the areas impacted by the unauthorized development have been stabilized in accordance with the restoration plan. The restoration plan shall not be considered fully implemented until such time as the NEC Director has confirmed that the restoration plan has been implemented to her satisfaction.

Note:

* Kevin Toste, Compliance Supervisor (A), provideD an update and answered questions.
* Applicant was present and available to answer questions.

**M813R6/02-2022:**

*Moved By: Downey*

*Seconded By: McKinlay*

*“That Order to Demolish/Restore 2021.001 be withdrawn at this time in order to allow the landowner’s development permit application to be processed.”*

**For the Motion: 14 votes**

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

**Against the Motion: 0 votes**

None.

***Motion Carried***

**DISCUSSION:**

A Commissioner asked how long the development permit application would take to be processed. Staff noted that it can take up to a year, depending on the nature of the development.

## C2

**INFORMATION REPORT**

**2022 Compliance Program Update**

**BACKGROUND:**

The Commission last received an overview of the Compliance Program in 2016. Changes have been implemented since then, including adding seasonal staff address budget pressures, and implementing an informed judgement matrix to prioritize and manage the increasing number of compliance issues.

### RECOMMENDATION:

That the Commission receive this report for information.

## Note:

* Kim Peters, Manager, and Kevin Toste, Compliance Supervisor (A), provided a brief review of the report and answered questions.

**M813R7/02-2022:**

*Moved By: Hutcheon*

*Seconded By: Mackenzie*

*“That the Commission receive the information.”*

***Motion Carried***

**DISCUSSION:**

## The Commission discussed the possibility of relying on municipal partners and law enforcement to assist with NEC staffing and budget issues.

A Commissioner noted that a higher fine is needed to deter tree cutting. It was noted that higher fines can be issued by conservation authorities but the NEC must escalate to charge higher fines.

A Commissioner asked if staff confirm that conditions are adhered to after a development permit is issued. Staff noted that higher risk applications are identified for follow up as needed, and that staff sometimes have issues accessing properties to do inspections.

## C3

**STAFF REPORT**

**Compliance and Enforcement**

***Niagara Escarpment Planning and Development Act* – Legislative**

**Modernization of Compliance Methods**

**BACKGROUND:**

The NEC is experiencing an increase in the number of non-compliance occurrences, as well as an increase in the degree of risk associated with these occurrences. At present, the powers conferred upon a NEC officer are severely lacking, which is leading to frustration on the part of the public and NEC staff. The proposed changes below would require amendments to section 24 of the NEPDA, and are currently being used by other provincial, municipal, commission and authority entities which have mandates similar to the NEC. If adopted they would allow for quicker response to public concerns, provide greater assurance that the persons to whom permits and orders are issued conduct their activities in compliance, and would lead to cost savings through efficiencies. Most importantly, it would allow for more effective implementation of the Niagara Escarpment Plan Purpose and Objectives.

The legislative amendment proposals are:

* A new definition creating a term or name for a NEC officer, for example, “Enforcement Officer”. **Reason:** Creates a class of persons to enforce the NEPDA and allows the new requested powers below to be assigned to that class.
* The inclusion of a provision indicating that all NEC development permits and orders issued include a condition permitting an Enforcement Officer to inspect the property subject to the permit or order, with the exception of dwellings or parts of buildings being used as dwellings, during reasonable hours if 72 hours written notice has been provided to the landowner or occupant. **Reason:** Allows the NEC to enforce the requirements of a permit or order.
* The inclusion of a provision enabling an Enforcement Officer to make application to a Justice of the Peace to enable entry to inspect any land or other place, other than a dwelling or part of a building being used as a dwelling, where there are reasonable grounds to believe the inspection would assist in determining whether there is compliance with s. 24 of the NEPDA (Development without a DP) and anywhere in the Area of Development Control. **Reason:** Adds a further means of inspection of properties in the Area of Development Control, even where no DP has been issued for that property, through judicial authorization.
* A requirement that when an Enforcement Officer attends a property he or she shall provide identification and state the purpose of the visit upon demand. **Reason:** Reduces chances of persons impersonating a NEC officer for nefarious purposes.
* A provision clearly establishing the inspection powers of an Enforcement Officer which sets out that the officer may take photographs, recordings, measurements, conduct tests and make reasonable inquiries of any person. **Reason:** Allows an officer to get information required to come to an informed decision concerning the compliance status of a property or a development during an inspection.
* A provision making it an offence to submit false or misleading information to any employee of the NEC. **Reason:** Makes it an offence to provide false information within an application for a development permit for example, thereby providing greater assurance that the information obtained by the NEC may be relied upon to come to reasonable decisions.

In addition, it is recommended that the power to issue a stop work order under s. 24 (6.1) of the Act be delegated internally to an Enforcement Officer to allow the officer to immediately stop persons from working on an undertaking if the officer has grounds to believe that the work poses a risk to public safety or may cause significant environmental damage, thereby enhancing the protection of the public and the sensitive nature of the Niagara Escarpment.

### RECOMMENDATIONS:

1. That the Commission approve the proposals for legislative amendments to the Niagara Escarpment Planning and Development Act as outlined in this Report.

2. That the Chair write to the Minister of Northern Development, Mines, Natural Resources and Forestry and provide these legislative proposals to the Minister for his information and consideration.

Note:

* Paul Widmeyer, Compliance Supervisor, provided a brief review of the report and answered questions.
* Demetrius Kappos, Legal Counsel, was present and answered questions.

**M813R8/02-2022:**

*Moved By: Hutcheon*

*Seconded By: Vida*

*“That the Commission approve the proposals for legislative amendments to the Niagara Escarpment Planning and Development Act as outlined in the Report, and that the Chair send a letter to the Minister of Northern Development, Mines, Natural Resources and Forestry along with a copy of the Report for the Minister’s information and consideration and that the Commission be engaged in future discussions.”*

**For the Motion: 11 votes**

Burton, Driedger, Gibson, Horner, Hutcheon, Lucyshyn, Mackenzie, McKinlay, McQueen, Vida, Witteveen.

**Against the Motion: 2 votes**

Curley, Golden.

***Motion Carried***

**DISCUSSION:**

A Commissioner noted his shock that until fairly recently, there was only one compliance officer for the NEPA. He requested that the need to fund staffing to adequately protect the NEPA be included in the letter to the Minister.

A Commissioner suggested that the development permit application form be revised to permit onsite inspections, noting that it is a commonplace practice.

The use of drones for inspection was discussed. It was noted that the legal height clearance is 1,000 feet, and that there is an impact to the reasonable expectation of privacy for property owners and residents.

A Commissioner noted the need to respect food security laws when inspections take place on farms. Staff noted that agricultural environment officers use biocides to clean their boots in between inspections to prevent any bio-sharing.

## CONSENT AGENDA/ITEMS MOVED FOR DISCUSSION:

Information only Items

G1 Director Approvals and Dashboard for December 2021 and January 2022

G2 Appeals and Hearings Status Chart as of January 31, 2022

G3 Director’s Report for December 2021 and January 2022

G4 Plan Amendments Status Update as of January 31, 2022

G5 Chair’s Response Letter RE Municipality of Grey Highlands sale of Talisman Lands

G6 Correspondence received from the Protecting Talisman Lands Association

G7 NEC Value for Money Audit Information

**M813R9/02-2022:**

*Moved by: Horner*

*Seconded by: Witteveen*

*“That the Commission receive Consent Agenda information items, G1, G2, G3, G4, G5 and G6.”*

***Motion carried***

**M813R10/02-2022:**

*Moved by: Hutcheon*

*Seconded by: Gibson*

*“That the Commission receive Consent Agenda information item G7.”*

***Motion carried***

### DISCUSSION:

A Commissioner requested G7 be discussed and voted on separately. He inquired of the Commissioners role for the Value for Money Audit in progress by the Auditor General. The Director advised that Commissioners may share any confidential information with the Auditor General if they are contacted.

## NEW BUSINESS

The Director advised that she will be retiring in early April, and thanked the Commission for their support during her time as Director. The Chair thanked the Director for all of her hard work.

A Commissioner asked if half day meetings could take place to ensure applicant needs are met in a timely manner.

## ADJOURNMENT

**M813R11/02-2022**

*Moved By: McKinlay*

*“That this meeting be adjourned.”*

***Motion Carried***

Time of Adjournment: 3:00 p.m.

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 Rob Nicholson

Chair