**Niagara Escarpment Commission**

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# MINUTES OF M819/10-2022

**NIAGARA ESCARPMENT COMMISSION**

**HYBRID MEETING:**

**Microsoft Teams and In-person (Georgetown, Ontario)**

**October 20, 2022**

## MEMBERS PRESENT:

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

## REGRETS:

None.

## STAFF PRESENT:

K. Woeller, K. Peters, L. Grbinicek, J. Muller, A. Laven, N. Hayward, C. Tansony,
S. Dobbyn, K. Bannister, E. Vanderwal, L. Wang, J. Olah, A. Bochenek.

## ALSO PRESENT:

S. Cooper, Natural Heritage and Land Use Planning Advisor, Ministry of Natural Resources and Forestry; Robert Patrick, C.O.N.E.

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

Chair Rob Nicholson presided.

## INTRODUCTIONS:

The Chair welcomed the meeting participants.

The Director reviewed the hybrid meeting procedures.

## LAND ACKNOWELDGEMENT:

The Chair read aloud the Land Acknowledgment.

## BUSINESS ARISING FROM PREVIOUS MEETINGS:

None.

## APPROVAL OF MINUTES – M818/09-2022

**M819R1/10-2022**

*Moved By: Hutcheon*

*Seconded By: Horner*

*“That the Commission minutes of September 15, 2022, be approved as written.”*

***Motion Carried***

**DISCUSSION:**

## A Commissioner requested information on what criteria is used to initiate the Public Interest Advisory Committee (PIAC) involvement in applications. Staff advised that PIAC, which is provided for in the Niagara Escarpment Planning and Development Act, currently advises on plan amendment applications following the receipt of public comments, although the Minister of Natural Resources and Forestry has the ability to assign additional functions to the committee.

## MOTION FOR SPEAKERS

**M819R2/10-2022:**

*Moved By: Hutcheon*

*Seconded By: Krantz*

*“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)*

## A1

**ADDENDUM STAFF REPORT**

### Development Permit Application H/I/2018-2019/261

7106 McNiven Road

Lot 11, Concession 1

Town of Milton, Region of Halton

## PROPOSAL:

To recognize the unauthorized establishment of a grass cutting and snow plowing business (Pro Mow Maintenance Inc.) involving the use of two existing accessory structures and outdoor storage of machinery and vehicles on a 1.6 ha (4.1 ac) lot.

## BACKGROUND:

At the June 20, 2019 Commission meeting, the Commission deferred a decision on the subject application to allow the applicants additional time to prepare. The meetings subsequently switched to a virtual platform due to COVID-19 and at the request of the applicant, the application was put on hold so they could attend the meeting in person. With meetings now taking a hybrid format, the application is again before the Commission for a decision.

The applicant supplied additional information in September 2022. Staff considered the new information and found that it did not change the initial staff recommendation.

## RECOMMENDATION:

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

1. The proposal is not a permitted in the Escarpment Rural Area designation of the Niagara Escarpment Plan.
2. The proposal does not conform to the Region of the Halton Official Plan nor the Town of Milton Official Plan. The proposed is not supported by either of these consulted agencies.
3. The proposal is not supported by policies in Section 2.3 for Agriculture in the Provincial Policy Statement.

Note:

Cheryl Tansony, Senior Planner, presented and answered questions.

The applicant presented and answered questions.

**R819R3/10-2022:**

*Moved By: Hutcheon*

*Seconded By: Witteveen*

*“That the Commission* *supports the application but defers the approval until NEC staff return to the Commission with appropriate conditions of approval as a recognized home occupation/home industry.”*

***For the Motion: 14 votes***

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

***Against the Motion: 0 votes***

*None.*

***Motion Carried***

**DISCUSSION:**

The Commission found that while there is no active farming on the property, the applicants are providing a service to the surrounding agricultural operations and consider the use to be a home occupation/industry. The Commission also noted that the applicants have worked to address concerns raised by a neighbour, that there is no signage for the business, and that the use is compatible to the area.

A Commissioner noted that while the Commission may approve the application, it is still not compliant with policies of the Town of Milton or the Region of Halton.

## A2

## STAFF REPORT

### Development Permit Application G/R/2022-2023/025

569649 6th Sideroad

Part Lot 7, Concession 2, Collingwood Township

Town of the Blue Mountains, County of Grey

### PROPOSAL:

To construct a two storey ± 1,263.7 m2 (13,603 ft2) accessory structure with a maximum height of ± 15 m (49.2 ft), including a new private sewage system and a ± 48.8 m
(160 ft) water supply line, on the existing 10.1 ha (25 ac) lot with an existing two and a half storey ± 1,640 m2 (17,552 ft2) single dwelling with a maximum height of ± 11.5 m (37.7 ft).

## RECOMMENDATION:

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

1. The proposed use is not supported by Part 1.5.3 because the proposed structure does not meet the definition of an Accessory Facility
2. Part 2.2.1 requires that we have regard to multiple or successive development that has or is likely to occur
3. The proposal does not clearly meet the intent of policies 1.1.4 and 1.1.5 of the Provincial Policy Statement
4. The proposal would not be approved if it were within zoning
5. Approving the proposal would be contrary to Objective 7 of the NEP.

Note:

Sandy Dobbyn, Senior Planner, presented and answered questioned.

The applicant presented and answered questions.

**M819R4/10-2022:**

*Moved By: Vida*

*Seconded By: Lucyshyn*

*“That the Commission approve the application as proposed as the Niagara Escarpment Plan does not have a prescriptive accessory building size limit.”*

***For the Motion: 8 votes***

*Burton, Clark, Driedger, Krantz, Lucyshyn, McQueen, Vida, Witteveen.*

***Against the Motion: 6 votes***

*Curley, Gibson, Golden, Horner, Hutcheon, Mackenzie.*

***Motion Carried***

**M819R6/10-2022:**

*Moved By: Vida*

*Seconded By: Lucyshyn*

*“That the Commission approve the following Conditions of approval for Agenda Item A2, G/R/2022-2023/025:*

1. *Development shall occur in accordance with the Terms and Conditions of the Development Permit.*
2. *The Development Permit shall expire three (3) years from the date it has been issued or once the development has been completed in accordance with the Development Permit.*
3. *No site alteration of the existing contours of the property including the placement or stockpiling of fill (i.e., excess or imported soil) on the property is permitted with the exception of that identified within the development envelope in accordance with the Final Site Plan.*
4. *No vegetation shall be cut or removed from the development envelope except for that identified within the development envelope in accordance with the Final Site Plan.*
5. *If development has commenced under this Development Permit, any/all disturbed areas of land or soil shall be re-vegetated and stabilized to the satisfaction of the Niagara Escarpment Commission on or before the date of expiry of the Development Permit.*
6. *Prior to the issuance of a Development Permit by the Niagara Escarpment Commission, an accurate and detailed Final Site Plan prepared by a qualified person shall be submitted for Niagara Escarpment Commission approval. The following stipulation shall be included directly on the Plan:*
7. *The Final Site Plan shall be prepared by a qualified professional;*
8. *All drawings submitted must be drawn to scale (bar scale shown), reference the application number and address of the proposal, be dated (revisions as well), and include the name of the relevant individual or consultant who prepared the drawing;*
9. *Outline of the approved development envelope / extent of all disturbed areas;*
10. *Location of all existing and proposed structures, sewage disposal system, well/cistern, driveway, construction access / haul routes, exterior lighting, etc. showing setbacks from the property lines, wooded areas, etc.;*
11. *Grading, drainage, and fill management details including the areas of excavation and temporary or permanent fill placement. The type, quantity, quality and source location of any imported fill material must be accurately identified.*
12. *Identify the areas of existing vegetation to be retained, areas of vegetation to be removed, and the location of proposed plantings.*

*Development shall proceed in accordance with the details of the approved Final Site Plan.*

1. *Prior to the issuance of a Development Permit by the Niagara Escarpment Commission, the landowner shall submit for the approval of the Niagara Escarpment Commission, final construction details for the proposed development, including exterior elevations, total floor area, floor plans, height to roof peak from lowest grade, and any exterior lighting.*

*Development shall proceed in accordance with the details of the approved Final Construction Details.*

1. *Prior to the issuance of a Development Permit, the landowner shall (at the landowner’s expense), enter into an Agreement (to be registered on title) with the Niagara Escarpment Commission pursuant to Section 24(2.1) of the Niagara Escarpment Planning and Development Act, that shall ensure that all accessory buildings shall be used in a manner that is incidental and subordinate to the single dwelling residential use on the property, shall not contain full kitchen facilities, shall not be used as secondary dwellings or short or long-term vacation rentals, and shall not be used for commercial, industrial, institutional, or livestock purposes.*

*Conditions 6, 7 and 8 must be fulfilled within eighteen (18) months**from the date of confirmation of the Commission’s decision or this conditional approval shall lapse, and a Development Permit will not be issued.*

***Advisory Notes***

1. *A Development Permit does not relieve the permit holder of any other permission (e.g., Ontario Building Code, Conservation Authorities Act, Endangered Species Act, etc.). A Niagara Escarpment Commission Development Permit is required prior to the issuance of any other permission.*

1. *The Niagara Escarpment Commission supports the protection of the night sky from excessive lighting and recommends the applicant* *obtain information on the use and operation of appropriate lighting fixtures in keeping with dark sky approaches.*
2. *Should deeply buried archaeological remains/resources be found on the property during construction activities, the Heritage Operations Unit of the Ontario Ministry of Tourism, Culture and Sport (MTCS) shall be notified immediately. In the event that human remains are encountered during construction, the owner shall immediately notify the police.”*

***For the Motion: 13 votes***

*Burton, Clark, Curley, Driedger, Gibson, Horner, Hutcheon, Krantz, Lucyshyn, Mackenzie, McQueen, Vida, Witteveen.*

***Against the Motion: 1 vote***

*Golden.*

***Motion Carried***

**DISCUSSION:**

The Commission noted that there is no defined maximum size or prescriptive formula for singe dwellings or accessory structures and that there is insufficient guidance in the Niagara Escarpment Plan about dwelling and accessory structure size. A Commissioner noted that he is concerned that this does not meet similar zoning by-law provisions, and it appears that building in the Niagara Escarpment Plan Area is a means of circumventing more restrictive zoning provisions that apply elsewhere in the municipality.

**A3**

**ADDENDUM STAFF REPORT**

### Development Permit Application G/R/2020-2021/606

235474 Grey Road 13

Part Lot 8, Concession 4 South

### Municipality of Grey Highlands, County of Grey

### PROPOSAL:

To recognize the existing use of a motel within an existing ± 4,500 ft2 (418 m2) structure that includes eight ± 180 ft2 (16 m2) private rooms and a 520 ft2 (48 m2) common area (kitchen / lounge), on a 0.23 ha (0.59 ac) existing lot supported by private servicing.

**BACKGROUND:**

At the July 21, 2022, Commission meeting, NEC staff presented a report recommending refusal of the proposal to establish a bed and breakfast within a structure that was previously operated as an eight-room motel because the structure does not meet the definition of a single dwelling due to the floor layout and design of the individual rooms with exterior access points. The structure was previously operated as a motel and maintains a similar design concept that is not consistent with a bed and breakfast. The Commission deferred a decision on the application to provide the applicant more time to provide additional information to demonstrate that the motel has operated continuously and is therefore an existing use, as defined in the Niagara Escarpment Plan. Staff reviewed the additional information provided by the applicant and found that it did not change the initial staff recommendation.

**RECOMMENDATION:**

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

1. The motel use has not continued without interruption and therefore does not meet the existing use policies as defined in the Niagara Escarpment Plan.
2. The lay out of the building is not consistent with a bed and breakfast and is therefore not approvable under bed and breakfast policies.
3. The proposal is not supported by the Municipality of Grey Highlands.

Note:

Nick Hayward, Senior Planner, presented and answered questions.

The applicant was online and answered questions.

**M819R5/10-2022:**

*Moved By: Burton*

*Seconded By: Vida*

*“That the Commission confirm that the motel is an existing use, and as such, no development permit is required.”*

***For the Motion: 14 votes***

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

***Against the Motion: 0 votes***

*None.*

***Motion Carried***

**DISCUSSION:**

The Commission noted that the motel was undergoing renovations for several years. It was noted that the two-year limit on cessation of use is not enshrined in policy, and that it needs to be reviewed as it does not consider extenuating circumstances (e.g., COVID-19 pandemic lockdown, renovations).

## CONSENT AGENDA/ITEMS MOVED FOR DISCUSSION:

Information only Items

G1 Director Approvals and Dashboard for September 2022

G2 Appeals and Hearings Status Chart as of September 30, 2022

G3 Director’s Report for September 2022

G4 Plan Amendments Status Update as of September 30, 2022

G5 Petition regarding the Talisman Lands in Beaver Valley, Grey Highlands

**M819R7/10-2022:**

*Moved By: McQueen*

*Seconded By: Gibson*

*“That the Commission receive Consent Agenda information items.”*

***Motion carried***

**DISCUSSION:**

None.

**LUNCH BREAK 11:50 a.m.**

**RECONVENED: 1:00 p.m.**

**C1:**

**STAFF REPORT**

### Official Plan Amendment and Zoning By-Law Amendment, 442, 450, 454, 462 Wilson Street East, City of Hamilton

**PROPOSAL:**

To consolidate four lots and to permit either a seven-storey retirement home or a six-storey residential apartment building with commercial uses at grade on lands municipally known as 442, 450, 454, and 462 Wilson Street East within the City of Hamilton (Former Town of Ancaster).

**BACKGROUND:**

NEC staff have been involved in this application since it was circulated to the NEC in 2020 as a Formal Consultation (FC-20-064). NEC staff identified a potential for negative visual impact due to the proposed height increase and, as such, required a Visual Impact Assessment (VIA) to be prepared in accordance with a Terms of Reference to the satisfaction of the NEC.

NEC staff have identified the potential for policy conflicts with Parts 1.7 and 2.13 of the Niagara Escarpment Plan. Staff requires the submission of a Stage 2 VIA in order to properly assess any potential visual impacts resulting from the proposed development. Party status through the OLT process will enable staff to uphold the NEP by remaining involved in the appeal process. If, as part of pre-hearing discussions and additional submissions from the applicant, staff find that the proposed development does not have a negative visual impact, the NEC can withdraw from the hearing.

**RECOMMENDATION:**

That the Niagara Escarpment Commission ***obtain party status*** in Ontario Land Tribunal case OLT-22-004156 to uphold the Niagara Escarpment Plan by seeking to reduce potential visual impacts on the Escarpment from the proposed development at 442, 450, 454, and 462 Wilson Street East within the City of Hamilton.

Note:

Andrej Obradovic, Senior Planner, and Karen Bannister, Landscape Architect, presented and answered questions.

**M819R8/10-2022:**

*Moved By: Gibson*

*Seconded By: Curley*

*“That the Niagara Escarpment Commission obtain party status in Ontario Land Tribunal case OLT-22-004156 to uphold the Niagara Escarpment Plan (NEP) by seeking to reduce visual impacts on the Escarpment from the proposed development at 442, 450, 454 and 462 Wilson Street East within the City of Hamilton (Ancaster).”*

***For the Motion: 14 votes***

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

***Against the Motion: 1 vote***

*Lucyshyn.*

***Motion Carried***

**DISCUSSION:**

The Commission supported the continued staff role in the hearing process.

**NOVEMBER 2022 POLICY AGENDA ITEMS**

**DISCUSSION:**

The Director advised that the November policy meeting will include a discussion on agricultural polices and noted that feedback from Ontario Craft Wineries will be included if it is received on time.

The Director also advised that a portion of the policy meeting will include a meeting to hear from the public regarding Plan Amendment PW 218 20, Columbia Northcliffe Campus Inc. A significant amount of public feedback has been received considering the school an urban use. Commenting members of the public and the applicant will be invited to

address the Commission by delegation. This meeting will satisfy the commitment made earlier this year for additional public consultation. A Commissioner noted that the city of Hamilton should also be invited. Another Commissioner advised that a site visit for Commissioners will help in responding to questions and making recommendations.

A Commissioner asked that the three-year development permit time period be revised at the policy meeting.

A Commissioner requested that the Commission also discuss applying a condition of approval for use of green infrastructure. The size of dwelling and accessory structures was also suggested as a policy item that should be reviewed.

A Commissioner requested a discussion on possible legislative and regulation changes to assist the Commission in decision making. The manager advised that staff maintain a list of possible legislative improvements that can be brought to the January 2023 Commission meeting for discussion. She noted that significant policy changes normally happen during the Coordinated Plan Review, which is every 10 years. The next Coordinated Plan Review takes place in 2027.

Note:

Kathy Woeller, Director, and Kim Peters, Manager, provided brief updates regarding the November policy meeting agenda.

**NEW BUSINESS**

The Commission requested an update on the status of the Auditor General of Ontario’s review of the NEC. The Director advised that the draft recommendations have been received, and management is in the process of providing responses. The Director advised that the report is confidential and will be shared when possible.

## ADJOURNMENT

**M819R9/10-2022**

*Moved By: Witteveen*

*“That this meeting be adjourned.”*

***Motion Carried***

Time of Adjournment: 1:40 p.m.

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 Rob Nicholson

Chair