**Niagara Escarpment Commission**

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# MINUTES OF M820/11-2022

**NIAGARA ESCARPMENT COMMISSION**

**HYBRID MEETING:**

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

**November 17, 2022**

## MEMBERS PRESENT:

B. Clark, B. Burton, M. Curley, J. Downey, 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, L. Grbinicek, J. Muller, A. Laven, C. Tansony, A. Obradovic, 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 – M819/10-2022

**M820R1/11-2022**

*Moved By: Gibson*

*Seconded By: Burton*

*“That the Commission minutes of October 20, 2022, be approved as written.”*

***Motion Carried***

**DISCUSSION:**

## None.

## MOTION FOR SPEAKERS

**M820R2/11-2022:**

*Moved By: McQueen*

*Seconded By: Curley*

*“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**

**Proposed 2023 Commission Meeting Schedule**

## BACKGROUND:

Management presented the proposed 2023 meeting schedule for Commissioner consideration.

**DISCUSSION:**

The Commission discussed the need/preference for monthly meetings, and the possibility of including policy items at each meeting, noting it would enable the Commission to be more proactive and assist the sub-committee groups with continuity.

The Commission also noted that if agendas were not full day, half day meetings could take place virtually, noting that monthly meetings provide better customer service for applicants.

A Commissioner advised that monthly meetings were moved to bi-monthly a few years ago due to budget pressures.

The Director thanked the Commission for their feedback.

**C2 and C3**

**SUMMARY STAFF REPORTS**

**Niagara Escarpment Plan Amendments PH 221 and PH 222**

4000 Campbellville Road and 3475 Campbellville Road

Part Lot 5 Concession 5 and Part Lot 6 Concession 4(Nassagaweya)

Town of Milton, Halton Region

**PROPOSAL SUMMARY PH 221 21 (4000 Campbellville Rd, Milton):**

To undertake an amendment to the Niagara Escarpment Plan (NEP) to allow for a site-specific change to the Land Use Designation from Mineral Resource Extraction Area (MREA) to Escarpment Natural Area and Escarpment Protection Area; as it relates to the surrender of the *Aggregate Resource Act* (ARA) licence (# 5478), on the former gravel pit operated by Campbellville Sand and Gravel.

**STAFF SUMMARY RECOMMENDATION:**

That the Commission endorses the amendment as set out in this Report and attached as Schedule A, and requests that the Minister of Natural Resources and Forestry approve the amendment pursuant to Section 10 (11) of the Niagara Escarpment Planning and Development Act (NEPDA).

**PROPOSAL SUMMARY PH 222 21 (3475 Campbellville Road, Milton):**

To undertake an amendment to the Niagara Escarpment Plan (NEP) to allow for a site-specific change to the Land Use Designation from Mineral Resource Extraction Area (MREA) to Escarpment Protection Area; as it relates to the surrender of the *Aggregate Resource Act* (ARA) licence (# 5479), on the former gravel pit operated by Campbellville Sand and Gravel.

**STAFF SUMMARY RECOMMENDATION:**

That the Commission endorses the Amendment as set out in this Report and attached as Schedule A, and requests that the Minister of Natural Resources and Forestry approve the Amendment pursuant to Section 10 (11) of the Niagara Escarpment Planning and Development Act (NEPDA).

Note:

Lisa Grbinicek, Senior Strategic Advisor, presented and answered questioned.

**R820R3/11-2022:**

*Moved By: Krantz*

*Seconded By: Curley*

*“That the Commission* *endorse* *Niagara Escarpment Plan Amendments PH 221 21 and PH 222 21 and request that the Minister of Natural Resources and Forestry approve the Amendment pursuant to Section 10 (11) of the Niagara Escarpment Planning and Development Act (NEPDA).”*

***For the Motion: 15 votes***

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

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

*None.*

***Motion Carried***

**DISCUSSION:**

The Commission requested information on the permitted uses of Natural and Protection NEP designations, including if on-farm diversified uses would be permitted, and if the current landowners were consulted.

Staff confirmed that OFDUs, in principle are a Permitted Use in both Escarpment Natural Area and Escarpment Protection Area, subject to meeting all applicable Development Criteria. Staff also confirmed that the current landowners were notified of the amendment proposal and of this final recommendation being presented to the Commission.

The Commission noted that the lands show an excellent example of post-extraction rehabilitation.

## C4

## SECOND 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 storage of machinery and vehicles on a 1.6 ha (4.1 ac) lot.

**BACKGROUND:**

The subject application was first before the Commission at the June 20, 2019 meeting. The decision was deferred at that time to allow the applicants additional time to prepare. The application was subsequently put on hold at the request of the applicants due to COVID-19 and the switch to virtual meetings. The application returned to the Commission for a decision at the October 20, 2022 meeting. While the application does not conform with the NEP, and staff is unable to recommend approval, the Commission passed a motion to support the Development Permit Application at the October 2022 meeting, subject to conditions of approval to be drafted by staff and presented to the Commission at a later date.

Note:

Cheryl Tansony, Senior Planner, presented and answered questions.

The applicant was present to answer questions.

**M820R4/11-2022:**

*Moved By: Downey*

*Seconded By: Curley*

*“That the Commission approve the following amended Conditions of Approval for application H/I/2018-2019/261:*

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, vegetation removal or construction is permitted in conjunction with the Development Permit, unless it is recommended as mitigation within an Environmental Impact Study.*
4. *The Development Permit is not transferable to a new property owner.*
5. *The home industry shall be operated by residents of the household on the property. A maximum of 3 additional employees is permitted.*
6. *The total area devoted to the home industry on the property, including interior storage within the two accessory buildings and parking, shall not exceed 125 square metres.*
7. *There shall be no outdoor storage on the property associated with the home industry, with the exception of vehicles.*
8. *There shall be no storage of landscaping materials, waste, or road salt on the property.*
9. *Employee vehicles may only be parked temporarily during business hours.*
10. *Retail sales shall not be permitted.*
11. ***Prior to the issuance of a Development Permit by the Niagara Escarpment Commission****, an accurate and detailed* ***Final Site Plan*** *prepared by a qualified professional shall be submitted for Niagara Escarpment Commission approval. The following stipulations shall be included directly on the Plan:*
12. *The Final Site Plan shall be prepared by a qualified professional;*
13. *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;*
14. *Outline of the approved development envelope / extent of all disturbed areas;*
15. *Location of all existing and proposed structures, parking area, sewage disposal system, well/cistern, driveway, exterior lighting, etc. showing setbacks from the property lines.*
16. *Surveyed location of the watercourse bank and dripline of the wooded area and the setback of these features to the parking area.*
17. *Summary table showing the total area devoted the home industry use, including each accessory building and parking area.*

*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 Floor Plans*** *for the existing and proposed development, including the total area devoted to each use. Development shall proceed in accordance with the details of the approved Final Floor Plans.*
2. *All parking areas shall be setback a minimum of 10 metres from the wooded area and creek. If this setback is not met, one of the following conditions will apply:*
	1. ***Prior to the issuance of a Development Permit by the Niagara Escarpment Commission****, an* ***Environmental Impact Study*** *shall be submitted for the approval of the Niagara Escarpment Commission; OR*
	2. ***Prior to the issuance of a Development Permit by the Niagara Escarpment Commission****, a* ***Restoration Plan*** *shall be submitted for the approval of the Niagara Escarpment Commission showing the restoration of all parking areas within 10 metres of the wooded area and creek.*
3. *Conditions 11, 12, and 13 must be fulfilled within eighteen (18) months (1.5 years)**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, Town of Milton Open Air By-law, etc.). A Niagara Escarpment Commission Development Permit is required prior to the issuance of any other permission.*
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 or coroner, the Registrar of Cemeteries of the Ministry of Small Business and Consumer Services, and Ministry of Tourism, Culture and Sport.*
3. *This Development Permit does not authorize the use of signage for advertising or any other purpose, unless such signage was approved under this Permit, is required by law (e.g., Ontario Building Code, municipal by-law) or is exempt under Section 5.35 or 5.36 of Ontario Regulation 828/90. Please consult the Niagara Escarpment Commission should you wish to erect signage on your property.”*

***For the Motion: 15 votes***

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

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

*None.*

***Motion Carried***

**DISCUSSION:**

The Commission asked if the applicants agreed with the conditions and whether the neighbour’s concerns have been addressed. The applicants advised that they were satisfied with the conditions.

**NEW BUSINESS**

The Commission noted that there are several proposed *Acts* that the government has brought forth that may impact the NEP, including proposed changes to conservation authority commenting and the *Municipal Act*. In particular, the Commission inquired about the potential impact of Bill 23, which limits conservation authority comments on potential development impacts to natural hazards. The Director noted that while there is no direct change to the NEP, staff are reviewing potential impacts of the Bill and looking at potential options such as peer reviews and requesting environmental studies from applicants. Staff will take the Commission comments into account when preparing the comments for the upcoming deadlines and bring to the January 2023 meeting for further discussion.

**A1**

**STAFF REPORT**

### Development Permit Application N/F/2022-2023/140

2400 Effingham St

Part Lot 6 S of Hydro Lands, Concession 3 Pelham

Town of Pelham, Region of Niagara

### PROPOSAL:

To recognize the importation of ± 50 truck loads (± 497 cu m / ± 650 cu yd) of fill for the purpose of improving drainage over a ± 929 sq m (10,000 sq ft) area; to recognize and complete construction of a ± 111.4 sq m (± 1200 sq ft) dwelling addition (attached garage), with a height to peak of ± 7.28 m (± 23.9 ft); and to recognize and complete construction of a driveway extension, on an existing 1.89 ha (4.68 ac) lot.

**RECOMMENDATION:**

### Recommendation:

That the Commission approve the application, subject to the conditions of approval.

Note:

Cheryl Tansony, Senior Planner, presented and answered questions.

The applicant was online and answered questions.

**M820R5/11-2022:**

*Moved By: Burton*

*Seconded By: Downey*

*“That the Commission approve application N/F/2022-2023/140 with the following Conditions of Approval:*

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. *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.*

1. ***Prior to the issuance of a Development Permit by the Niagara Escarpment Commission****, an accurate and detailed* ***Final Site Plan and Grading/Drainage Plan*** *prepared by a qualified professional shall be submitted for Niagara Escarpment Commission approval.* *The following stipulation shall be included directly on the Plan:*
	1. *The Final Site Plan shall be prepared by a qualified professional*
	2. *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;*
	3. *Outline of the approved development envelope / extent of all disturbed areas;*
	4. *Location of all existing and proposed structures, construction access / haul routes, any watercourses or water features, top / bottom of slope, wooded areas, etc.;*
	5. *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.*
	6. *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****, a* ***Final Landscape Plan*** *shall be prepared by a qualified person, for Niagara Escarpment Commission approval. The Plan shall address all vegetation retention and planting requirements in accordance with the standard practices of the implementing authority. The following stipulations shall be included directly on the Plan:*
	1. *All new tree and shrub species (including seed mixes) shall be native to Ontario except where otherwise approved by the Niagara Escarpment Commission. Plant material shall be sourced from local plant nurseries; bush dug plant material is not acceptable.*
	2. *Planting and the rehabilitation of all disturbed areas shall be completed on or before the date of expiry of the Development Permit to the satisfaction of the Niagara Escarpment Commission.*
	3. *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.*
	4. *Once the development has been completed, a letter certifying the landscaping / planting work has been completed in accordance with the approved Landscape Plan shall be provided to the Niagara Escarpment Commission by a qualified person.*
2. *Conditions #6 and 7 must be fulfilled within six (6) 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.*

***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, Town of Niagara-on-the-Lake Urban Tree By-law, etc.). A Niagara Escarpment Commission Development Permit is required prior to the issuance of any other permission.*
		2. *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.*
		3. *Should deeply buried archaeological remains/resources be found during construction activities, all activities impacting archaeological resources must cease immediately, and the proponent must notify the Archaeology Programs Unit of the Ministry of Tourism, Culture and Sport (416-212-8886) and contact a licensed archaeologist to carry out an archaeological assessment in accordance with the Ontario Heritage Act and the Standards and Guidelines for Consultant Archaeologists.*

*In the event that human remains are encountered during construction, all activities must cease immediately and the local police as well as the Cemeteries Regulation Unit of the Ministry of Government and Consumer Services (416-326-8800) must be contacted. In situations where human remains are associated with archaeological resources, the Ministry of Tourism, Culture and Sport should also be notified to ensure that the site is not subject to unlicensed alterations which would be a contravention of the Ontario Heritage Act.”*

***For the Motion: 15 votes***

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

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

*None.*

***Motion Carried***

**DISCUSSION:**

The Commission asked the applicant why he did not submit an application for the fill; the applicant advised that he was not aware a permit was required and stopped the work as soon as he was informed of the permit requirement.

##  CONSENT AGENDA/ITEMS MOVED FOR DISCUSSION:

Information only Items

G1 Director Approvals and Dashboard for October 2022

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

G3 Director’s Report for October 2022

G4 Plan Amendments Status Update as of October 31, 2022

**M820R6/11-2022:**

*Moved By: Vida*

*Seconded By: Hutcheon*

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

***Motion carried***

**DISCUSSION:**

A Commissioner noted that an application that the Commission approved at the October 2022 meeting has been appealed and inquired if staff had been aware of the commercial use of the building during the application review. Management advised that the application is being revisited for factual completeness.

**LUNCH BREAK 11:30 a.m.**

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

**IN CAMERA ITEM**

**M820R7/11-2022:**

*Moved By: Downey*

*Seconded By: Burton*

*“That the Commission move in-camera.”*

***Motion Carried***

**M820R8/11-2022:**

*Moved By: Burton*

*Seconded By: Hutcheon*

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

***Motion Carried***

**M820R9/11-2022:**

*Moved By: Curley*

*Seconded By: Vida*

*“That the Commission direct NEC Counsel to work with staff to seek to resolve the NEC’s interests in the appeal of* the *City of Hamilton OPA and ZBA for Mixed Use and Residential Development at 299-307 John Street South and 97 St. Joseph’s Drive, in a manner that is consistent with the Niagara Escarpment Plan and based on reduced building heights proposed by the Applicant through without prejudice settlement discussions.”*

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

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

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

*None.*

***Motion Carried***

Note: Commissioner Krantz was not present and did not vote on the Motion.

A delegation request for an upcoming meeting was received from an applicant with property in Caledon, to discuss the processing timelines for their application.

**M820R10/11-2022:**

*Moved By: Hutcheon*

*Seconded By: Vida*

*“That the Commission accept the delegation request for an upcoming 2023 meeting.”*

***Motion Carried***

## ADJOURNMENT

**M820R11/11-2022**

*Moved By: Horner*

*“That this meeting be adjourned.”*

***Motion Carried***

Time of Adjournment: 1:40 p.m.

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 Rob Nicholson

Chair