

Niagara Escarpment Commission

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Commission de l'escarpement du Niagara

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Niagara Escarpment Commission
An agency of the Government of Ontario

November 6, 2017

DEVELOPMENT PERMIT APPLICATION H/R/2016-2017/422**Scott Design Build Ltd.**

Part Lot 9, Concession 4
9459-9463 Guelph Line
Town of Milton, Region of Halton

SUMMARY PROPOSAL:

To carry out the following development on an existing 6.4 ha (15.8 ac) lot:

1. To re-establish an industrial use (custom fabrication facilities) in conjunction with an existing building formerly used for a welding shop with office; to modify the building by adding a second storey addition for new office facilities; and, to increase the footprint of the building as a result of adding new exterior cladding
2. To construct an industrial accessory building (industrial equipment storage)
3. To construct a parking area(s) and establish a large outdoor worksyard/outdoor storage area

DESIGNATIONS: Escarpment Rural Area and Escarpment Natural Area

LOT SIZE: 6.4 ha (15.8 ac)

ISSUES: An industrial use is not permitted in the Escarpment Rural or Escarpment Natural Areas unless it is an Existing Use; the previous industrial use (approved by the NEC in 1975) lapsed greater than 5 years ago and therefore there is no Existing Use provision for an industrial use at the subject property.

RECOMMENDATION: Refusal

REASONS: The proposal is contrary to the Niagara Escarpment Plan, 2017 (NEP); it conflicts with lower tier and upper tier official plans; and, it is not consistent with the Provincial Policy Statement.

DATE RECEIVED: February 6, 2017

SOURCE: 24355991 Ontario Inc. (Sovereign Fusion) (owner – April 2016)

DETAILED PROPOSAL:

To carry out the following development on an existing 6.4 ha (15.8 ac) lot:

1. To re-establish an industrial use (custom fabrication facilities) in conjunction with an existing 1,393.5 sq m (15,000 sq ft) building (former welding shop with office); to modify the building by adding a ± 561.9 sq m ($\pm 6,048$ sq ft) second storey addition (new office facilities), increasing the building height from 4.9 m to ± 9.1 m (16 ft to ± 30 ft); and, to increase the footprint of the building by ± 139.4 sq m ($\pm 1,500$ sq ft) as a result of adding new exterior cladding
2. To construct a ± 557.4 sq m ($\pm 6,000$ sq ft) accessory building (industrial equipment storage), to have a maximum height of ± 9.1 m (± 30 ft)
3. To construct a parking area(s) with ± 50 parking spaces and establish a large outdoor worksyard/outdoor storage area

RELATED FILES/BACKGROUND:

Development Permit #74/H//1975-1975/134 (A. Kayser Engine Co.) was issued on October 14, 1975 to establish a light manufacturing building that, according to the final approved site plan, included an assembly and office building; a future assembly building; a proposed storage and supply depot; outside storage area; parking and visitor parking on the front half of the property.

The Town of Milton supported the application as the Nassagaweya Official Plan and Zoning By-law, which designated and zoned the lands as industrial, were still applicable at the time.

NEC staff recommended refusal of the application for the following reasons:

- 1) Conflicts with the Commission's objective of maintaining the open-landscape character of the rural landscape, and would be incompatible with the nearby Halton Region forest; and,
- 2) There is no justification on planning grounds for the establishment of an isolated industrial use at this location, especially when major efforts are underway to provide a planned industrial area nearer to the former Town of Milton.

The Niagara Escarpment Commission made the decision to approve the application. It should be noted that the application and its decision preceded the Development Control legislation, the *Niagara Escarpment Planning and Development Act* and the Niagara Escarpment Plan.

Only a small portion of the overall proposed development was constructed. The constructed $\pm 1,393.5$ sq m ($\pm 15,000$ sq ft) building and some parking were the only aspects of the original proposal constructed, and these were in use until several years ago as a welding shop and office. The building has been vacant for several years.

Development Permit Application H/S/2015-2016/289 (2435991 Ontario Inc.) to recognize the installation of a new gas line service and associated site alterations/trench excavation, having a depth of ± 1.5 m (± 5 ft) and a length of ± 144.7 m (± 475 ft) and backfilled with pipe bedding sand, on an existing 4.8 ha (11.9 ac) lot was conditionally approved on July 25, 2016. As the condition was not satisfied, the conditional approval has now lapsed and no permit has been issued. Discussions with the applicant are required to identify options regarding the compliance issue.

ANALYSIS:

1) Niagara Escarpment Plan, 2017 (NEP):

NEP Designations

The property is designated Escarpment Rural Area and Escarpment Natural Area in the Niagara Escarpment Plan, 2017 (NEP), however it should be noted that the actual limit of these designations has changed since the filing of the Development Permit Application. With the new Niagara Escarpment Plan 2017, which came into effect June 1, 2017, and related updated designation mapping, the Escarpment Natural Area on the property has increased to reflect the existing key natural heritage features. The existing industrial building is within the Escarpment Rural Area designation. The proposed development, to establish an industrial use and construct additional industrial facilities, is located within the Escarpment Rural Area and Escarpment Natural Area designations. Specifically, the proposed outdoor storage/works yard is partially within a portion of the Escarpment Natural Area designation associated with a hedgerow that is continuous with the Halton Forest South - Area of Natural and Scientific Interest (Provincially Significant Life Science ANSI) as well as the Hilton Falls Complex - Environmentally Sensitive Area (ESA) and Candidate Significant Woodland.

It should be noted that the subject property is at the very edge of the NEP area and within 1200 metres of the Campbellville Minor Urban Centre to the east. The proposed use would be more suited to an appropriately zoned area outside of the Plan area or within the Minor Urban Centre.

Permitted Uses

The proposed industrial use is not a permitted use within the Escarpment Rural Area or Escarpment Natural Area designation. Part 1.5.3 of the NEP lists Permitted Uses in the Escarpment Rural Area designation. Industrial uses are not a listed permitted use.

The subject property contains an existing single dwelling. A single dwelling use is listed as a permitted use in the applicable designations.

Existing Use Provisions

A use may be recognized as a legal use, even if it is not listed as a permitted use under the applicable designation in the NEP, if it was:

- a) *existing on the day of approval of the Niagara Escarpment Plan, June 12, 1985;*

- b) *approved in accordance with the provisions of the Niagara Escarpment Plan since June 12, 1985 but prior to the date of any amendment to this Plan under which the use ceased to be a permitted use; or*
- c) *existing, in an area added to the Niagara Escarpment Plan at the date of the approval of the amendment to this Plan that added the lands to this Plan;*

provided that the existing use has continued without interruption after the effective date as set out under a), b), and c). (Definition of Existing Use, NEP, 2017)

The former industrial use was approved in 1975 by the Niagara Escarpment Commission (NEC) and it is understood that the use continued until approximately 2012. Although the previous use would have met condition a) of the above definition, the Existing Use provision, in staff's opinion, would not apply to this property as the industrial use ceased several years ago and therefore has not continued without interruption.

Purpose and Objectives of the NEP

The purpose of the NEP *"is to provide for the maintenance of the Niagara Escarpment and land in its vicinity substantially as a continuous natural environment, and to ensure only such development occurs as is compatible with that natural environment."* Specific applicable Objectives of the NEP include the following:

- 4. *To maintain and enhance the open landscape character of the Niagara Escarpment in so far as possible, by such means as compatible farming or forestry and by preserving the natural scenery;*
- 5. *To ensure that all new development is compatible with the purpose of the Plan;*
- 7. *To support municipalities within the Niagara Escarpment Plan Area in their exercise of the planning functions conferred upon them by the Planning Act.*

The subject proposal is to establish an industrial use within an existing building and to substantially expand the facilities. The proposal is not consistent with the above noted purpose or specific objectives of the NEP. Regarding Objective 4, the subject proposal would be a significant intensification of use on the subject property, which is not consistent with the maintenance and enhancement of the open landscape character of the Niagara Escarpment.

Regarding Objective 5, staff advise that the application proposes development that would result in a significant increase in impervious ground cover and is a use that is incompatible (*would not blend, conform or be harmonious with the Escarpment Environment* – NEP Definition of Compatible) with the natural environment and that would pose potential negative impacts to the surrounding Significant Woodlands. Therefore, staff find the proposal contrary to Objective 5.

Regarding Objective 7, the proposal is not supported by the Region Official Plan or the Town of Milton Official Plan. Therefore, municipal planning staff do not support the application, which is discussed later in this report.

2) Local Official Plan: The subject lands are designated in the Town of Milton Official Plan as Escarpment Rural Area and Escarpment Natural Area. The Escarpment Rural Area and Escarpment Natural Area permit uses such as: agricultural uses; existing, legally established uses; single detached dwellings, accessory buildings, structures and facilities, and other uses described under Section 4.2.3.3 (Escarpment Natural Area) and 4.2.3.8 (Escarpment Rural Area). The proposed industrial use is not a permitted use within either the Escarpment Rural Area or the Escarpment Natural Area.

3) Regional Official Plan: The subject property is located within the Agricultural Area and Regional Natural Heritage System in the 2009 Halton Region Official Plan (ROP). The policies of both designations apply to this development permit application as the proposed works are within both designations. These ROP designations encourage and support the use of land for agricultural and other non-invasive incidental uses. An industrial use is not identified as a permitted use in either the Agricultural Area and Regional Natural Heritage System designations in the ROP. Industrial uses, including those that support the agricultural uses, are encouraged to locate in areas designated Urban Area or Hamlets.

4) Provincial Policy Statement: Part 1.1.5.2 of the Provincial Policy Statement, 2014 (PPS) states that within rural lands located in municipalities, permitted uses are:

- a) *the management or use of resources;*
- b) *resource-based recreational uses (including recreational dwellings);*
- c) *limited residential development;*
- d) *home occupations and home industries;*
- e) *cemeteries; and*
- f) *other rural land uses.*

Industrial uses are not listed as a permitted use within rural lands.

Part 1.1.3.1 states that Settlement areas, including urban areas and rural settlement areas, shall be the focus of growth and development. The subject lands are not within a settlement area.

Based on the above, the subject proposal to establish an industrial use within rural lands is not consistent with the PPS.

5) Consultations:

- **Town of Milton** – Town planning staff do not support the proposal as it conflicts with the Town of Milton Official Plan. Should the NEC support the proposed application, staff would ask that as a condition of the issuance of a Niagara Escarpment Development Permit, that the applicant receive Site Plan Approval from the Town of Milton and that the applicants obtain all required building permits from the Town of Milton prior to commencement of construction.
- **Region of Halton** – Regional staff do not support the application as it does not conform to the Region's Official Plan, 2009.

- **Conservation Halton** – As the proposed development is outside of the area regulated by Conservation Halton, staff have no objection, subject to the applicant obtaining a No Objections Letter from Conservation Halton for the proposed work.
- **Ministry of Natural Resources and Forestry (MNR)** – The MNR advises that there are records of endangered species in the vicinity of the proposed development and the rear of the property contains significant habitat as well as the Halton Forest South Provincially Significant Life Science Area of Natural and Scientific Interest. The proposal appears to affect a treed (hedgerow) area. All trees proposed for removal should be identified by species and diameter at breast height. All tree species (including seedlings) within 25 metres of proposed site alterations should be listed.

6) Site Description:

The property is located on the east side of Guelph Line, between Sideroad 10 and Campbellville Road. A portion of Hilton Falls Conservation Area (Niagara Escarpment Parks and Open Space System) is located directly north of the property and further east. The Mohawk Raceway is situated on the opposite side of Guelph Line.

The lands are characterized by irregular topography; gently rolling conditions and slightly west-sloping on the front portion (consisting of developed and disturbed areas, with some deciduous hedgerows), with more elevated/rolling conditions and forest area associated with the Escarpment Natural Area.

A vegetated berm of moderate height extends along the lot's frontage, with a low stone retaining wall established along parts of the berm, adjacent to the roadway.

The approximate east third of the lot and the directly north abutting lands coincide with the Halton Forest South - Area of Natural and Scientific Interest (Provincially Significant Life Science ANSI) and the Hilton Falls Complex - Environmentally Sensitive Area (ESA) and Significant Woodland. These features are associated with the Sixteen Mile Creek Valley.

The aforementioned existing building (former industrial use), including related parking and exterior storage area, are situated close to the road, but are largely obscured from view by the berm feature. The area immediately surrounding the vacant building, including a small field to the south, is quite disturbed. An existing single dwelling is located on the property due east of and slightly elevated above this site. The north gravel driveway provides access to both structures and lies parallel to the north lot boundary, until it veers southeast to the dwelling site. A second gravel driveway is located in the centre of the property.

CONCLUSION:

The application to establish an industrial use on the site, is not a permitted use within either the Escarpment Rural Area or Escarpment Natural Area designations. The proposed expansion of industrial facilities does not meet applicable Development

Criteria or the purpose and objectives of the NEP. Staff are therefore recommending refusal of the application. Section 25(4) of the *Niagara Escarpment Planning and Development Act* requires Commission decisions on Development Permit Applications to be in accordance with the Niagara Escarpment Plan.

While there is an existing building (former industrial use) on the subject property, the formal industrial use lapsed greater than 5 years ago. Re-establishing the industrial use would be contrary to the permitted uses as existing use provisions would not apply where there has not been a continuation of use without interruption.

Both the Town of Milton and Region of Halton object to the proposal as it conflicts with their respective Official Plans and the proposal is contrary to the direction provided by the PPS.

RECOMMENDATION:

The proposal be **refused** for the reasons listed on the attached Appendix.

Prepared by:

Approved by:

Original Signed by:

Original Signed by:

Amaraine Laven
Planner

Debbie Ramsay, MCIP, RPP
Manager

APPENDIX

Scott Design
H/R/2016-2017/422

REASONS FOR REFUSAL

1. The proposed development is not a permitted use in the Escarpment Rural Area or Escarpment Natural Area.
2. The subject proposal is contrary to the purpose and applicable objectives of the NEP.
3. The proposed development conflicts with Sections 1.1.3.1 and 1.1.5.2 of the Provincial Policy Statement.
4. The proposed development is not supported by the Town of Milton or the Region of Halton.