**Niagara Escarpment Commission**

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# MINUTES OF M828/09-2023

**NIAGARA ESCARPMENT COMMISSION**

**HYBRID MEETING**

**September 14, 2023**

## MEMBERS PRESENT:

J. Chevalier, J. Collard (Chair), M. Curley, M. Francis, R. Gibson, D. Hutcheon,
L. Kiernan, G. Krantz, G. Little, K. Lucyshyn, D. McKinlay, D. Nielsen, J. Vida,
A. Witteveen.

## REGRETS:

## G. Driedger, L. Golden, D. Measures.

## STAFF PRESENT:

K. Woeller, M. Cairns, G. Hang, C. Tansony, L. Wang, L. Rodriguez Miguel, D. Alorse, A. Bochenek.

## ALSO PRESENT:

E. Kerr, Counsel.

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

Chair Jim Collard presided.

## INTRODUCTIONS / ANNOUNCEMENTS:

The Chair announced that the Director, Kathy Woeller, will be retiring on November 30th and wished her the best. The Chair thanked the Director for making his job easier and appreciated her guidance in his new role as Chair.

## LAND ACKNOWELDGEMENT:

The Chair read the Land Acknowledgment.

**DIRECTOR’S REMARKS:**

The Director thanked the Chair for his kind words and expressed appreciation to those Commissioners that were able to attend the meeting in person this month.

The Director announced that two new staff will be starting in the coming weeks and she looks forward to introducing them to the Commission next month. She also announced that Annemarie Bochenek’s position has been reclassified.

## BUSINESS ARISING FROM PREVIOUS MEETINGS:

No business arising.

**APPROVAL OF MINUTES**

**M828R1/09-2023**

*Moved By: McKinlay*

*Seconded By: Hutcheon*

*“That the Commission approve the August 17, 2023 Commission Minutes M827-08-2023 with the following amended wording on page 9 as read by Commissioner McKinlay.*

*Commissioner McKinlay noted that he had been approached by members of the public regarding the alarming tree mortality in valley lands and upland slopes along the escarpment. The public suggestion was that a multi-agency review or investigation should be considered including the Niagara Escarpment Commission as a key agency.*

*He also noted that he has been approached by community stakeholders who are concerned that NEP policies are eliminating agricultural uses which have traditionally separated vulnerable environments within the NEP. The suggestion is that a policy review is required to allow certain agricultural uses on the basis that they form valuable fire breaks to protect vulnerable areas in the face of increasing wildfire risk.*

*Commissioner McKinlay also requested the proposed issues list for the next plan review include exploring a minor variance policy to help the Commission better serve the goals of the NEP.”*

**Motion Carried**

## MOTION FOR SPEAKERS

**M828R2/09-2023**

*Moved By: Krantz*

*Seconded By: Gibson*

*“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

## No conflicts were declared.

## DISCUSSION AGENDA: A and B PACKAGES

## (*Staff Reports, External submissions)*

**A1**

**STAFF REPORT**

### Development Permit Application H/C/2021-2022/787

9459 Guelph Line

Part Lot 9, Concession 4

Town of Milton, Region of Halton

### PROPOSAL:

To implement a new commercial use (warehousing and commercial storage) within an existing ±1,394 sq m (15,000 sq ft) vacant industrial building on an existing 4.82 ha (11.9 ac) lot that also supports a single dwelling.

### RECOMMENDATION:

That the application be **refused.**

Note:

* Ginny Hang, Senior Planner, provided a summary of the staff report and answered questions.
* Clare Riepma, Agent, presented and answered questions.

**M828R3/09-2023**

*Moved By: Hutcheon*

*Seconded By: Curley*

*“That the Commission move in camera.*

**Motion Carried**

**M828R4/09-2023**

*Moved By: Curley*

*Seconded By: Kiernan*

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

**Motion Carried**

**M828R5/09-2023**

*Moved By: Hutcheon*

*Seconded By: Little*

*“That the Commission accept the staff recommendation to refuse the application for the following reasons.*

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 Regional Municipality of Halton.”*

***For the Motion: 3 votes***

*Hutcheon, Krantz, Little.*

***Against the Motion: 10 votes***

*Chevalier, Curley, Francis, Gibson, Kiernan, Lucyshyn, McKinlay, Nielsen, Vida, Witteveen.*

**Motion Defeated**

**M828R6/09-2023**

*Moved By: McKinlay*

*Seconded By: Vida*

*“That the Commission conditionally approve the application with conditions to be prepared by staff in consultation with the Town of Milton and Region of Halton and presented at the October 19th Commission meeting.*

***For the Motion: 12 votes***

*Chevalier, Curley, Francis, Gibson, Kiernan, Krantz, Little, Lucyshyn, McKinlay, Nielsen, Vida, Witteveen.*

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

*Hutcheon.*

**Motion Carried**

**A2**

**ADDENDUM STAFF REPORT**

### Development Permit Application N/C/2020-2021/233

5584 Niagara Town Line Road

PT SMFD TWP GORE 3

City of Niagara Falls, Region of Niagara

### PROPOSAL:

To recognize the conversion of an existing 1.36 ha (3.38 ac) lot to support an agricultural use (organic farm) and on-farm diversified use/agriculture-related use by undertaking the following work:

* To convert the existing 2-storey 56 sq m (602 sq ft) accessory structure to support a retail store on the first floor (on-farm diversified use/agriculture-related use), and a residential use on the second floor
* To construct a ±18 sq m (±200 sq ft) washroom building
* To install a temporary portable washroom
* To construct a ±267.56 sq m (±2,880 sq ft) structure accessory to agriculture (greenhouse) with a maximum height to peak of ±4.5 m (±14.7 ft)
* To construct a ±178.4 sq m (±1,920 sq ft) structure accessory to agriculture (hoop house), with a maximum height to peak of ±4.5 m (±14.7 ft)
* To place a ±33.4 sq m (±360 sq ft) shipping container accessory to agriculture (flower storage and display), with an upper deck for an apiary, with a height to peak of ±3.96 m (±13 ft)
* To place a ±33.4 sq m (±360 sq ft) shipping container accessory to agriculture (cold storage), with an upper deck for an apiary, with a height to peak of ±3.96 (±13 ft)
* To construct a ±156.1 sq m (±1,680 ft) concrete pad and a ±17.2 sq m (±185 sq ft) gazebo/trellis, with a height to peak of ±3 m (±10 ft)
* To construct a ±15.8 sq m (±170 sq ft) gazebo with associated concrete pad, with a height to peak of ±4.5 m (±14.8 ft)
* To construct a ±49.2 sq m (±530 sq ft) structure accessory to agriculture (yurt for seed storage)
* To construct a ±27 sq m (±290 sq ft) structure accessory to agriculture (cooler fridge)
* To construct a ±40 sq m (±430.5 sq ft) building accessory to agriculture (shed)
* To construct an asphalt, 13 space, ±1,330 sq m (± 14,316 sq ft) parking area
* To upgrade a private sewage disposal system
* To import approximately 100 tonnes (5 truck loads) of organic compost to help improve soil conditions.
* To install a ±3.3 sq m (±35.2 sq ft) sign
* To use the lawn area for organized programs, including yoga

Note: All work has already commenced with the exception of the washroom building.

### RECOMMENDATION:

That the Commission accept the conditions of approval staff have drafted from the August 17, 2023 Commission meeting to ensure that the proposed On Farm Diversified Uses (OFDUs) have met the policies of the Niagara Escarpment Plan. Staff remain concerned that the OFDU development criteria related to lot size will not be met, the drafted conditions of approval are provided to mitigate any conflicts with these policies.

Note:

* Cheryl Tansony, Senior Planner, provided a summary of the addendum staff report and answered questions.
* Agent for the applicant presented and answered questions.

**M828R7/09-2023**

*Moved By: Hutcheon*

*Seconded By: McKinlay*

*“That the Commission accept staff’s conditions of approval as follows with a change to condition 14 to read that signage shall not be internally illuminated.*

1. *Development shall occur in accordance with the Terms and Conditions of the Development Permit.*
2. *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.*
3. *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.*
4. *The retail store shall be used for the sale of produce grown on the property, produce grown in the area, and value-added farm products from the area. The sale of non-agricultural products (i.e., baked goods, coffee) shall be secondary to the sale of produce grown on the property and in the area.*
5. *The approved structures shall not be used as a restaurant, café/bistro, banquet hall, conference facility, or for large-scale recurring events.*
6. *A dwelling unit is permitted within the second storey of the retail store. No other single dwelling or dwelling unit is permitted elsewhere on the property unless approved through a subsequent development permit application. The dwelling unit is not approved for use as a short-term vacation rental or for commercial, industrial, institutional or livestock use.*
7. ***Prior to the issuance of a Development Permit by the Niagara Escarpment Commission,*** *an accurate and detailed* ***Final Site Plan*** *shall be submitted for Niagara Escarpment Commission approval. The following stipulations shall be included directly on the Plan:*
	1. *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;*
	2. *Location of all existing and proposed structures, sewage disposal system, signage, driveway, exterior lighting, etc. showing setbacks from the property lines, any watercourses or water features, top / bottom of slope, wooded areas, etc.*
	3. *The uses of each existing and proposed structure shall be labelled directly on the final site plan.*
	4. *The location and dimensions of the private sewage system and washroom facilities shall be included as per Condition #10.*

*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 washroom building and sheds, 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.*
2. ***Prior to the issuance of a Development Permit by the Niagara Escarpment Commission****, the landowner shall receive an Acknowledgement Letter from the* *Ministry of Citizenship and Multiculturalism (copied to the NEC) confirming that archaeological reporting has met licensing requirements prior to development on site.*
3. ***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 and Niagara Region, a* ***final septic system design****. The proposed washroom building may be redesigned and/or relocated in accordance with the results of the septic system design. The final location shall be included on the final site plan.*
4. ***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 and Ministry of Transportation, an updated stormwater management brief.*
5. ***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 and Ministry of Transportation, an updated traffic brief.*
6. *All exterior lighting shall be designed to be minimal, subdued, of low height, and downward facing.*
7. *The sign shall not be internally illuminated.*
8. *The lot area for all on-farm diversified uses shall not exceed two per cent of the farm lot at any given time. The dimensions of the structures dedicated to the on-farm diversified use are as follows:*
	1. *9.2 square metres of the retail store*
	2. *4.8 square metres of the washroom building*
	3. *34.3 square metres of the septic system*
	4. *133 square metres of the parking lot*
9. *Programs and events shall be secondary to the principal agricultural use on the lot.*
10. *The frequency of programs and events shall be limited to a maximum of ten hours per week.*
11. *The number of persons attending the programs and events shall be limited by the recommendations of the final septic system design and traffic brief.*
12. *Conditions #7, 8, 9, 10, 11, and 12 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, Regional Construction Encroachment and Entrance Permit, Regional Sign permit, 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. *The Region of Niagara advises that the access closest to the intersection will need to be closed and the entrance removed and boulevard reinstated to Regional standards.*
4. *The Region of Niagara advises the subject property has frontage along Regional Road 61 (Niagara Townline Road). This section of road has a substandard road allowance. It should be noted that a widening may be required for future road expansion.*
5. *If previously undocumented archaeological resources are discovered, this may be an archaeological site, subject to Section 48(1) of the Ontario Heritage Act (OHA). Work altering the site must cease immediately and a licensed consultant archaeologist engaged to carry out an archaeological assessment to comply with Section 48(1) of the OHA. You may contact the Ministry of Citizenship and Multiculturalism (MCM) for guidance (at* *archaeology@ontario.ca**).*

*The Funeral, Burial and Cremation Services Act, 2002, S.O. 2002, c.33 (FBCSA) requires that any person discovering human remains must cease all activities immediately and notify the police, and if the coroner does not suspect foul play, they shall notify the Registrar, Ontario Ministry of Public and Business Service Delivery about the burial site for its administration under the FBSA. If the human remains are associated with archaeological resources, as above the MCM should also be notified (at* *archaeology@ontario.ca**) to ensure compliance with the OHA.”*

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

*Chevalier, Curley, Francis, Gibson, Hutcheon, Kiernan, Krantz, Little, Lucyshyn, McKinlay, Nielsen, Vida, Witteveen.*

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

*None.*

**Motion Unanimously Carried**

**DELEGATION**

576799 Concession 9

W Part Lot 3, Concession 10 EGR

Municipality of Chatsworth (Holland), County of Grey

Alexis Brenner, co-owner of the above noted subject lands known as Bubble Grove (subject to previous Development Permit Application G/A/2022-2023/583) spoke to the Commission about how Bubble Grove aligns with the four pillars of sustainability. Ms. Brenner also spoke about how Bubble Grove aligns with the principles of a Biosphere Reserve and the educational principles associated with the use including how it gives the public an opportunity to enjoy the beauty of the Niagara Escarpment. She thanked the Commission for allowing her this time to discuss her business and encouraged the Commissioners to come and visit the property.

The Chair thanked Ms. Brenner for her presentation.

**Broke for lunch:** 12:20 p.m.

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

**A3**

**STAFF REPORT (As-built)**

### Development Permit Application N/R/2019-2020/141

**2010 Hansler Street**

Part Lot 1, Concession 5

Town of Pelham, Region of Niagara

### PROPOSAL:

To recognize the following work on an existing 1.73 ha (4.29 ac) lot supporting an existing 1 storey ± 174.28 sq m (± 1876 sq ft) single dwelling and ± 464.51 sq m
(± 5,000 sq ft) accessory building (shop).

* The construction of a ± 63.91 sq. m (± 688 sq ft) detached pergola-style deck at a maximum height to peak of ± 3.65 m (12 ft) in the front yard.
* The construction of a ± 103.8 sq m (1117.5 sq ft) detached deck at a maximum height of ± 4.3 m (14 ft) in the rear yard and the construction of walkways connecting the deck to the dwelling.
* The construction of addition(s) to the accessory building totalling ± 161.3 sq m (1736 sq ft).
* The importation of Table 1 fill in the rear yard at a depth of 15 to 20 cm.

**RECOMMENDATION:**

That the Commission **approve** the accessory buildings and structures with conditions, and;

That the Commission **refuse** the fill importation.

Note:

* Cheryl Tansony, Senior Planner, provided a summary of the addendum staff report and answered questions.
* Neighbour presented and answered questions.

**M828R8/09-2023**

*Moved By: Curley*

*Seconded By: Lucyshyn*

*“That the Commission move in camera.”*

**M828R9/09-2023**

*Moved By: Hutcheon*

*Seconded By: McKinlay*

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

**M828R10/09-2023**

*Moved By: Witteveen*

*Seconded By: Kiernan*

*“That the Commission accept staff’s recommendation and approve the existing building and structures with the following conditions.*

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.*
6. *The accessory building and structures shall not be used as long or short-term rental accommodation, or for commercial, industrial, institutional or livestock purposes.*
7. ***Prior to the issuance of a Development Permit by the Niagara Escarpment Commission****, an accurate and detailed* ***Final Site Plan*** *shall be submitted for Niagara Escarpment Commission approval.* *The following stipulations shall be included directly on the Plan:*
	1. *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;*
	2. *Location of all existing structures, sewage disposal system, well/cistern, driveway, exterior lighting, etc. showing setbacks from the property lines, wooded areas, etc.;*

*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 two decks and accessory building, 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.*
2. *Conditions #7 and 8 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.*

*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.*
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. *If previously undocumented archaeological resources are discovered, this may be an archaeological site, subject to Section 48(1) of the Ontario Heritage Act (OHA). Work altering the site must cease immediately and a licensed consultant archaeologist engaged to carry out an archaeological assessment to comply with Section 48(1) of the OHA. You may contact the Ministry of Citizenship and Multiculturalism (MCM) for guidance (at* *archaeology@ontario.ca**).*

*The Funeral, Burial and Cremation Services Act, 2002, S.O. 2002, c.33 (FBCSA) requires that any person discovering human remains must cease all activities immediately and notify the police, and if the coroner does not suspect foul play, they shall notify the Registrar, Ontario Ministry of Public and Business Service Delivery about the burial site for its administration under the FBSA. If the human remains are associated with archaeological resources, as above the MCM should also be notified (at* *archaeology@ontario.ca**) to ensure compliance with the OHA.*

*And that the Commission refuse the fill importation for the following reasons.*

1. *The fill importation is not a permitted use within the Escarpment Protection Area under the Niagara Escarpment Plan.*
2. *The fill importation does not meet Part 2.6 (Water Resources) and Part 2.13 (Scenic Resources and Landform Conservation) of the NEP, as it is unclear whether the changes in grade have caused drainage issues impacting an adjacent property.*
3. *The fill importation does not meet Part 2.8 (Agriculture) of NEP, which does not permit the placement of fill that does not meet the definition of topsoil on cropland. Staff are not satisfied that Section 2.3 (Agriculture) of the Provincial Policy Statement is met.”*

***For the Motion: 12 votes***

*Chevalier, Curley, Francis, Gibson, Hutcheon, Kiernan, Krantz, Little, Lucyshyn, McKinlay, Nielsen, Witteveen.*

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

*Vida.*

**Motion Carried**

## CONSENT AGENDA/ITEMS MOVED FOR DISCUSSION:

Information only Items

G1 Director Approvals and Dashboard for August 2023

G2 Appeals and Hearings Status Chart as of August 31, 2023

G3 Director’s Report for August 2023

G4 Plan Amendments Status Update as of August 31, 2023

**M828R11/09-2023**

*Moved By: Curley*

*Seconded By: Witteveen*

*“That the Commission receive the information reports.”*

**Motion Carried**

**NEW BUSINESS**

Commissioner Vida requested an update on the status of the Niagara Crossing Environmental Assessment. The Director reported that there is no change since the previous update.

Commissioner McKinlay addressed the Commission through the Chair as follows.

“I believe that in the interest of maintaining and improving public support that it is important that the interpretation of the NEP by this Commission be demonstrated to be both fair and reasonable while supporting the goals of the Plan. With this in mind,
I propose that the topic of ‘ceasing of existing, non-conforming use’ be considered at a future policy discussion. Any land use, and the people and infrastructure supporting that use are subject to sometimes complex human, environmental and economic factors, and cycles. This includes a land use which has become existing non-conforming with the evolution of the NEP. I would hope we could discuss and develop a policy interpretation that would consider events such as death or ill health of owners, sale of a property and infrastructure supporting a land use, temporary closing of doors for business or infrastructure renewal as part of a normal land use cycle rather than as evidence of cessation of use. While the resulting policy could be more complex than the two-year (no formal evidence of continuation of use), I believe it would demonstrate an improved level of fairness and reasonableness which I believe is supportive of the NEP’s long-term goals.”

**M828R12/09-2023**

*Moved By: McKinlay*

*Seconded By: Nielsen*

*“That the Commission acknowledge Commissioner McKinlay’s comment above and instruct staff to bring this item forward at a future policy meeting for discussion.”*

**Motion Carried**

## ADJOURNMENT

**M828R13/09-2023**

*Moved By: McKinlay*

*“That this meeting be adjourned.”*

**Motion Carried**

**Time of Adjournment:** 2:10 p.m.

 ORIGINAL SIGNED BY:

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 James (Jim) Collard

Chair