



Niagara Escarpment Hearing Office

Case Nos.: 10-003 to10-009;
10-011 to10-013
(NEC File No.: W/L/2009-2010/147)

Kabelitz v. Niagara Escarpment Commission

In the matter of appeals by Fred Kabelitz filed April 8, 2010, and by Michelle Torsney, Brian and Sue Samson, Henrica and Michelle Aitken, Theresa and Robert Monkelbaan, Krista Maxemiuk and Frank Kasierski filed April 9, 2010, for a Hearing before a Hearing Officer pursuant to section 25(8) of the *Niagara Escarpment Planning and Development Act*, R.S.O. 1990, c. N.2, as amended, with respect to a decision of the Niagara Escarpment Commission dated March 26, 2010, whereby the Commission conditionally approved Development Permit application W/L/2009-2010/147 made by the City of Hamilton to construct sections of a 4.5 m (14.8 ft) wide asphalt multi-use trail located within the Niagara Escarpment Development Control Area on City of Hamilton land covering 83 ha (205 ac) which supports the Chedoke Golf Course, and to permit site alterations for a golf hole tee relocation to accommodate the trail location on Part Lots 19 - 21, Concession 4, in the (Former) City of Hamilton, City of Hamilton; and

In the matter of a Pre-Hearing Conference held on May 14, 2010 at 10:00 a.m. in the Council Chambers, Stoney Creek Municipal Centre, Stoney Creek, Ontario.

Before: Dirk VanderBent, Hearing Officer

Appearances:

Michelle Torsney	-	Appellant, on her own behalf
Brian Samson	-	Appellant, on his own behalf and on behalf of the Appellant, Sue Samson
Henrica Aitken	-	Appellant, on her own behalf and on behalf of the Appellant, Michelle Aitken
Robert Monkelbaan	-	Appellant, on his own behalf and on behalf of the Appellant, Theresa Monkelbaan
Krista Maxemiuk and Frank Kasierski	-	Appellants, on their own behalf
Daryl Bender	-	Representative for the Applicant, City of Hamilton
Martin Kilian	-	Planner, Niagara Escarpment Commission

Michelle Ariga	-	Other Party, on her own behalf
Duncan O'Dell	-	Other Party, on his own behalf
Cameron Blimkie	-	Other Party, on his own behalf and on behalf of the Other Party, Janice Blimkie
Jennifer Merriam	-	Other Party, on her own behalf and on behalf of the Other Party, Ron Merriam
Stephen Barrett	-	Other Party, on his own behalf
William Harris	-	Presenter, on his own behalf

Dated this 2nd day of **June, 2010**.

Reasons for Decision

Background:

On August 21, 2009, the City of Hamilton (the “City”) filed an application with the Niagara Escarpment Commission (“NEC”) for a Development Permit to construct sections of a 4.5 metre (14.8 foot) wide asphalt multi-use trail covering 83 hectares (205 acres), which supports the Chedoke Golf Course, and to permit site alterations for a golf hole tee relocation to accommodate the trail location.

The NEC conditionally approved the proposal on March 26, 2010. The following persons filed Notices of Appeal under section 25(8) of the *Niagara Escarpment Planning and Development Act* (“NEPDA”):

- Brian and Sue Samson, on April 9, 2010;
- Krista Maxemiuk and Frank Kasierski, on April 9, 2010;
- Henrica and Michelle Aitken, and Theresa and Robert Monkelbaan, on April 9, 2010;
- Michelle Torsney, on April 9, 2010; and
- Fred Kabelitz, on April 8, 2010.

In summary, these appeals raise concerns regarding the impact of the proposed development on residential homes bordering on the Chedoke Golf Course, as a section of the proposed bike path will be constructed in a wooded area that separates these properties from the golf course. The Appellants indicate that the proposed development includes the installation of fencing on either side of the bike path. They cite concerns regarding the visual impact of the bike path and the fencing, and increased exposure to pedestrian and cycling traffic, due to the proximity of the proposed location of the path to these residential properties. They assert that the location of the bike path will significantly interfere with their recreational use of the wooded area. It is asserted that the golf course is also a park accessed by residents of the local neighbourhood, who have enjoyed year round use of this open green space for more than 60 years. The Appellants note that the proposed development requires the removal of some trees. They assert that the proposed fencing would limit the access to the golf course, both to the residents of the homes bordering on the golf course, and to residents in the neighbourhood generally, as an existing street access to the golf course will also be fenced off. The proposed bike path is half a metre high, and one of the Appellants expresses concern as to how it will affect drainage in the area. None of the Appellants oppose the installation of the bike path in principle, but assert that route location refinements should be implemented to avoid these negative impacts.

A Pre-Hearing Conference was held on May 14, 2010, in Council Chambers, Stoney Creek Municipal Centre, Stoney Creek, Ontario. All Appellants except Mr. Kabelitz participated

personally or were represented by another Appellant on their behalf. Daryl Bender represented the City of Hamilton, and Martin Kilian, Planner, represented the NEC.

Discussion and Analysis:

At the Pre-Hearing Conference, several residents in the neighbourhood adjacent to the Chedoke Golf Course, as set out in the Order below, requested and were granted Party status, on the basis that they live in the neighbourhood and/or they were provided with the NEC's Notice of Decision pursuant to section 25(5) of the *NEPDA*. Their interests, therefore, may be directly and substantially affected by the Hearing or its result. William Harris, who is also a resident in this neighbourhood, requested and was granted Presenter status. None of the Parties opposed these requests for status.

The Parties engaged in a discussion of the issues, and agreed that it would be worthwhile to pursue settlement negotiations at a meeting to be scheduled prior to June 14, 2010, the date currently scheduled for the Hearing of these appeals. Mr. Bender undertook to ensure that the City would be represented in this meeting by someone who was authorized to agree to a binding settlement. The Parties acknowledged that, from the City's perspective, an amendment to the proposed route location could impact the administration of Chedoke Golf Course, which is a municipal golf course. Therefore, Mr. Bender undertook to have a member of City staff who is responsible for the administration of the golf course attend the settlement negotiation meeting. Mr. Bender asked which members of the public should participate in the settlement meeting. He noted that there have been public consultation meetings regarding the proposed development prior to the commencement of these appeals, in which a larger number of citizens have participated. The Parties acknowledged and agreed that, as the settlement negotiation is in respect of the appeals before the NEHO, the meeting would include only the Parties to this proceeding. The Parties also acknowledged that it would be helpful to have someone facilitate the settlement negotiation meeting, and they all agreed that, even though the NEC is a Party to this proceeding, Mr. Kilian could assume this role. Mr. Kilian consented to act in this capacity.

As the Parties agreed that they wished to pursue their settlement negotiations before addressing other procedural requirements in preparation for the main Hearing, the Hearing Officer adjourned this Pre-Hearing Conference to May 31, 2010, at 1:00 p.m. to be held by teleconference. At that time, the Parties will provide a status update regarding the progress of their settlement negotiations, and, if necessary, the Hearing Officer will also address all outstanding procedural matters, including requests, if any, for an adjournment of the main Hearing.

Order

The Hearing Officer grants Party status to Stephen Barrett, Cameron and Janice Blimkie, Jennifer and Ron Merriam, Duncan O'Dell, and Michelle Ariga. The Hearing Officer grants Presenter status to William Harris.

The Pre-Hearing Conference is adjourned to Monday, May 31, 2010 at 1:00 p.m. The Parties will be notified by the Case Manager of the teleconference number and access code.

*Requests for Party and Presenter Status Granted
Pre-Hearing Conference Rescheduled*

Dirk VanderBent, Hearing Officer