

Niagara Escarpment Hearing Office
Bureau des audiences sur
l'escarpement du Niagara



ISSUE DATE: April 15, 2016
REVISED ISSUE DATE: May 02, 2016

CASE NO.: 15-176

PROCEEDING COMMENCED UNDER section 25(8) of the *Niagara Escarpment Planning and Development Act*, R.S.O. 1990, c. N.2, as amended

Appellant:	See Appendix 1 – Appellant List
Respondent:	Niagara Escarpment Commission
Subject of appeal:	Refusal of a Development Permit Application to reconstruct 26/27 Sideroad from seasonal to year round open road
Reference No.:	S/T/2013-2014/9152
Property Address/Description:	Lots 25 to 31, Concession 10 & 11
Municipality:	Township of Clearview
Upper Tier:	County of Simcoe
NEHO Case No.:	15-176
NEHO Case Name:	Urbaniak v. Ontario (Niagara Escarpment Commission)

Heard: March 11, 2016 in Stayner, Ontario

APPEARANCES:

Parties

Counsel/Representative⁺

Harry and Eleonore Urbaniak

Self-represented

Marilyn Young

Self-represented

Melksham Holdings Ltd.

Richard Young⁺

Walker Aggregates Inc.

Wayne Fairbrother and Mary Bull

Township of Clearview

Harold Elston and Aynsley Anderson

Niagara Escarpment Commission	Demetrius Kappos
Blue Mountain Watershed Trust Foundation	Sarah Powell
Wendy Franks and David Stevenson	David R. Donnelly and Anne Sabourin

Participants

Municipality of Grey Highlands	Dan Best ⁺
Janet Gillham on behalf of the Clearview Community Coalition	Self-represented
Mark Bell	Self-represented
Raymond Mueller	Self-represented
Doug Dingeldein	Self-represented

Presenters

Allan Fisher	Self-represented
Emelia Franks	Self-represented
Brewster Lake Homeowner's Association	Gary Fohr ⁺
Victoria Selby	Self-represented

ORDER DELIVERED BY MARLENE CASHIN AND HEATHER I. GIBBS

REASONS

Background

[1] Steve Sage, on behalf of the Township of Clearview (the "Township"), submitted development permit application S/T/2013-2014/9152 (the "Development Permit Application") to the Niagara Escarpment Commission (the "NEC") on January 31, 2014,

seeking permission to reconstruct 26/27 Sideroad, from the 10th Concession, westerly to the Grey County Road 31. The proposed works include: “converting the eastern portion of 26/27 Sideroad, which is currently a seasonal road, to a year-round, open road, overall within the road corridor, improving the vertical alignment, improving the road base, clearing and grubbing and controlling drainage through properly designed road side ditches. A gravel base is proposed initially with the intent to pave when traffic reaches 400 vehicles per day” (the “Project”). The Project was proposed to occur on lands designated by the Niagara Escarpment Plan (the “NEP”) as Escarpment Natural, Escarpment Protection and Escarpment Rural areas, located in the Township of Clearview, Region of Simcoe.

[2] On November 27, 2015, the NEC refused the Development Permit Application.

[3] On December 8, 2015, Harry and Eleonore Urbaniak (“Urbaniaks”), Marilyn Young and Melksham Holdings Ltd. (“Melksham Holdings”) appealed the refusal to the Niagara Escarpment Hearing Office (“NEHO”). On December 9, 2015, Allan Fisher appealed the refusal, and on December 11, 2015, the Township and Walker Aggregates Inc. (“Walker Aggregates”) also appealed. All of the appeals were brought under s. 25(8) of the *Niagara Escarpment Planning and Development Act*. The Urbaniaks, Ms. Young, Melksham Holdings, Mr. Fisher, the Township and Walker Aggregates are jointly referred to as the “Appellants”.

[4] A pre-hearing conference (“PHC”) regarding the appeals was held in Stayner, Ontario on March 11, 2016. At the PHC, the Hearing Officers granted party status to the Blue Mountain Watershed Trust Foundation (the “Watershed Trust”), Wendy Franks and David Stevenson; participant status to the Municipality of Grey Highlands (“Grey Highlands”), Janet Gillham on behalf of the Clearview Community Coalition (“CCC”), Mark Bell, Raymond Mueller and Doug Dingeldein; and presenter status to Emelia Franks, Brewster Lake Homeowner’s Association (the “Homeowners”) and Victoria Selby. The Hearing Officers also granted a request from Alan Fisher to have his status changed from party to presenter.

[5] During the PHC, the parties agreed to a schedule for the proceedings, and the Hearing Officers provided procedural directions and set dates for the hearing of the appeal.

Relevant Rules

[6] The relevant rules of the Environmental Review Tribunal (the “Rules”) that apply to the NEHO are attached at Appendix 2.

Issue

[7] The main issue at the PHC was whether requests for party, participant and presenter status should be granted.

Discussion, Analysis and Findings

[8] During the PHC, concerns were raised that some of the individuals and entities requesting status may be intending to adduce evidence at the hearing that may not be relevant to the issues before the NEHO for determination in this appeal. The Hearing Officers treated these concerns as a separate issue from the granting of status. Such concerns may be raised during preparation of the issues list, or by motion or at the continuation of the PHC, once witness statements have been exchanged.

Requests for Party Status

[9] One organization and two individuals participating in the PHC on March 11, 2016 expressed interest in having party status at the hearing.

Blue Mountain Watershed Trust Foundation

[10] The Watershed Trust, an incorporated organization, requested party status in support of the NEC's decision to refuse the Development Permit Application. Counsel for the Watershed Trust submits that it is one of the leading environmental organizations within the Georgian Triangle region, with approximately 170 active members, and whose volunteers have for more than 20 years worked to protect the Blue Mountain watershed ecosystem. The Watershed Trust submits that it satisfies all three criteria under Rule 63 and thereby meets the requirements for party status. There were no objections to the granting of party status to the Watershed Trust.

Wendy Franks and David Stevenson

[11] Ms. Franks and Mr. Stevenson are owners of a property located on Side Road 26/27 in the Township. They requested party status in the proceeding to support the NEC's decision to refuse the Development Permit Application. Counsel for Ms. Franks and Mr. Stevenson submit that they filed a letter of objection to the Project on November 25, 2014, appeared before the NEC in that regard on November 19, 2015, and that they intend to retain a planner and other experts to provide evidence at the hearing. Ms. Franks and Mr. Stevenson submit that they meet the requirements for party status set out in Rule 63. There were no objections to the requests for party status.

Findings on Party Requests

[12] The Hearing Officers are satisfied that the Watershed Trust, Ms. Franks and Mr. Stevenson all meet the requirements for party status under Rule 63, as each of their interests may be directly and substantially affected by the hearing, each have a genuine interest in the subject matter of the proceeding and each is likely to make a relevant contribution to the Hearing Officers' understanding of the issues in the proceeding.

Requests for Participant Status

[13] Mr. Bell, Mr. Mueller, Mr. Dingeldein, Grey Highlands and Janet Gillham on behalf of the CCC, each requested participant status.

Municipality of Grey Highlands

[14] Grey Highlands requested participant status in support of the NEC's position to refuse the Development Permit Application. Dan Best, representing Grey Highlands told the Hearing Officers that Grey Highlands was one of the agencies consulted on the development permit. There were no objections to the granting of participant status to Grey Highlands.

Janet Gillham, on behalf of the Clearview Community Coalition

[15] Janet Gillham requested participant status on behalf of the CCC, in support of the NEC's position to refuse the Development Permit Application. Ms. Gillham explained that the application has arisen because of a settlement in another related matter and that the CCC was a party to that related matter. The Township took no position on the request for status, and there were no objections from the other parties to Ms. Gillham's request for participant status; although concerns were raised with respect to the relevance of the settlement agreement to the appeal before the NEHO.

Mark Bell

[16] Mr. Bell is a resident of Side Road 26/27, who stated that he will be directly affected by the outcome of the hearing and that he disagrees with the decision of the NEC. Mr. Bell requested participant status in support of the Appellants' position that the development permit should have been issued. There were no objections to Mr. Bell's request for participant status.

Raymond Mueller

[17] Mr. Mueller is a resident of the Project area. He stated that he is in favour of improvements to the road, which he said will improve safety for drivers. Mr. Mueller requested participant status in support of the Appellants' position that the development permit should have been issued. There were no objections to Mr. Mueller's request for participant status.

Doug Dingeldein

[18] Mr. Dingeldein requested participant status at the hearing. Mr. Dingeldein stated that he lives in Singhampton and frequently travels on Country Road 91 ("CR 91"), which he says is planned to be closed on the western end. The NEC has no objection to Mr. Dingeldein's participation. However, Walker Aggregates, Ms. Young, Melksham Holdings and the Urbaniaks all oppose granting participant status to Mr. Dingeldein. They say that although they don't challenge his sincerity, his main concern, the closure of part of CR 91, is not part of the Development Permit Application and is therefore irrelevant.

Findings on Participant Requests

[19] The Hearing Officers are satisfied that Grey Highlands, Ms. Gillham on behalf of the CCC, Mr. Bell, Mr. Mueller, and Mr. Dingeldein all meet the requirements for participant status under Rule 66, in that each of their interests may be directly and substantially affected by the hearing, each has a genuine interest in the subject matter of the proceeding and each is likely to make a relevant contribution to the Hearing Officers' understanding of the issues in the proceeding.

[20] As noted above, concerns relating to the relevance of proposed evidence will be dealt with as a separate issue from the granting of status. Such concerns may be raised during preparation of the issues list, or by motion or at the continuation of the

PHC, once witness statements and participant statements have been exchanged.

Requests for Presenter Status

[21] Ms. Franks, the Homeowners and Ms. Selby each requested presenter status. Mr. Fisher requested that his status be changed from party to presenter.

Emelia Franks

[22] Ms. Franks is a property owner on Side Road 26/27. Ms. Franks stated that she and her husband strongly agree with the NEC's decision to reject the Development Permit Application. She said that their interests are to protect the quiet solitude of the property and prevent deleterious effects on fish and wildlife in the area. Ms. Urbaniak opposes the request for presenter status because she says that Ms. Franks has not lived on her property for many years.

Brewster Lake Homeowner's Association

[23] Gary Fohr appeared on behalf of the Homeowners, an incorporated organization, to request presenter status at the hearing. He stated that the Homeowners support the NEC's decision to refuse the Development Permit Application. Walker Aggregates, Ms. Young, Melksham Holdings and the Urbaniaks oppose the Homeowners' participation as not relevant, given that the group's main concern is the possible closure of CR 91, which they say is not a component of the Development Permit Application.

Victoria Selby

[24] Ms. Selby stated that she lives in Singhampton and is a 25 year resident of the area who uses CR 91 every day. Ms. Selby requested presenter status in order to support the NEC's decision to refuse the Development Permit Application. There were no objections from the parties supporting the permit refusal. Walker Aggregates,

Ms. Young, Melksham Holdings and the Urbaniaks oppose Ms. Selby's participation on the issue of relevance, given that her main concern is the possible closure of CR 91, which they say is not a component of the Development Permit Application.

Alan Fisher

[25] Mr. Fisher, who is an Appellant, and therefore a party pursuant to Rule 62, requested to have his status changed from party to presenter. There were no objections.

Findings on Presenter Requests

[26] The Hearing Officers are satisfied that Ms. Franks, the Homeowners and Ms. Selby all meet the requirements under Rule 69 for presenter status, in that each of their interests may be directly and substantially affected by the hearing, each have a genuine interest in the subject matter of the proceeding and each is likely to make a relevant contribution to the Hearing Officers' understanding of the issues in the proceeding. The Hearing Officers note that a genuine interest in a proceeding may arise in various ways, only one of which is permanently residing in the immediate area of a proposed development. The Hearing Officers are also satisfied that it is appropriate to grant Mr. Fisher's request to have his status changed from party to presenter, upon his request.

ORDER

[27] The Watershed Trust, Wendy Franks and David Stevenson are granted party status.

[28] Grey Highlands, Ms. Gillham on behalf of the CCC, Mark Bell, Raymond Mueller and Doug Dingeldein are granted participant status.

[29] Emelia Franks, the Homeowners and Victoria Selby are granted presenter status.

[30] Allan Fisher's status is changed from party to presenter. His appeal (Case No. 15-182) is dismissed.

[31] The Hearing Officers direct the following schedule related to the appeal:

April 8, 2016	Draft issues list to be circulated by the Township to all other parties. Parties and participants to exchange all documents relevant to the proceeding and in their possession, control or power.
April 15, 2016	Draft procedural order and issues list to be jointly filed by the parties with the NEHO.
April 29, 2016	Witness statements and documents to be relied on at the hearing, of Urbaniaks, Marilyn Young, Melksham Holdings, Township, and Walker Aggregates to be served on the other parties, on participants who so request, and filed with the NEHO.
May 13, 2016	Witness statements and documents to be relied on at the hearing, of NEC, Watershed Trust, Wendy Franks, and David Stevenson to be served on the other parties and participants who so request, and filed with the NEHO.
May 13, 2016	Witness statements/presentations of Grey Highlands, CCC, Mark Bell, Raymond Mueller, Doug Dingeldein, Allan Fisher, Emelia Franks, Homeowners, and Victoria Selby to be filed with the NEHO and electronic copies sent to all parties and participants.
May 27, 2016	Appellants may file responding materials (one of the Township witnesses is permitted to file his/her material by June 3, 2016).
June 10, 2016	Continuation of the PHC in person or by TCC if requested.
Dates in September or October 2016, to be determined	Hearing of the appeal commencing at 10 a.m. at a venue to be determined in Stayner, Ontario.

[32] The PHC in this matter is adjourned and will reconvene on June 10, 2016 at 10 a.m. in Stayner or as otherwise ordered by the NEHO. The NEHO Case Coordinator will forward details for the resumption of the PHC to the parties, participants and presenters.

*Requests for Party, Participant and Presenter Status Granted
Procedural Directions Ordered
Pre-hearing Conference Adjourned
Appeal Dismissed (Case No. 15-182)*

"Marlene Cashin"

MARLENE CASHIN
HEARING OFFICER

"Heather I. Gibbs"

HEATHER I. GIBBS
HEARING OFFICER

Appendix 1 – Appellant List
Appendix 2 – Tribunal's *Rules of Practice*

If there is an attachment referred to in this document,
please visit www.elto.gov.on.ca to view the attachment in PDF format.

Niagara Escarpment Hearing Office

A constituent tribunal of Environment and Land Tribunals Ontario
Website: www.elto.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

Appendix 1**Appellant List**

Appellant Name	File No.
Eleonore Urbaniak	15-176
Harry Urbaniak	15-177
Marilyn Young	15-179
Melksham Holdings Ltd.	15-181
Allan Fisher (now presenter)	15-182
Walker Aggregates Inc.	15-183
Township of Clearview	15-184

Appendix 2**Tribunal's Rules of Practice**

62. The following persons are Parties for the purpose of the Rules:
- (a) persons specified as Parties by or under the statute under which the proceeding arises;
 - (b) persons otherwise entitled by law to be Parties to the proceeding; and
 - (c) persons who request Party status and are so specified by the Tribunal as Parties for all or part of the proceeding, and on such conditions as the Tribunal considers appropriate.
63. In deciding whether to name a person as a Party to the proceeding, the Tribunal may consider relevant matters including whether:
- (a) a person's interests may be directly and substantially affected by the Hearing or its result;
 - (b) a person has a genuine interest, whether public or private, in the subject matter of the proceeding; and
 - (c) a person is likely to make a relevant contribution to the Tribunal's understanding of the issues in the proceeding.
- ...
66. The Tribunal may name persons to be Participants in all or part of a proceeding on such conditions as the Tribunal considers appropriate. A Participant to a proceeding is not a Party to the proceeding. In deciding whether to name a person as a Participant, the Tribunal may consider whether the person's connection to the subject matter of the proceeding or issues in dispute is more remote than a Party's would be. A person who may otherwise qualify as a Party may request Participant status.
67. A Participant in a Hearing may:
- (a) be a witness at the Hearing;
 - (b) be questioned by the Parties;
 - (c) make oral and written submissions to the Tribunal at the commencement and at the end of the Hearing;
 - (d) upon request, receive a copy of documents exchanged by the Parties that are relevant to the Participant's interests; and
 - (e) attend site visits.
68. A Participant in a Hearing may not:
- (a) raise issues that have not already been raised by a Party;
 - (b) call witnesses;
 - (c) cross-examine witnesses;
 - (d) bring motions;
 - (e) participate in a mediation, unless permitted to do so by the Tribunal; and
 - (f) claim costs or be liable for costs.
69. The Tribunal may name persons to be Presenters in all or part of a proceeding on such conditions as the Tribunal considers appropriate. A Presenter to a proceeding is not a Party to the proceeding. In deciding

whether to name a person as a Presenter, the Tribunal may consider whether the person's connection to the subject matter of the proceeding or issues in dispute is more remote than a Party's or Participant's would be. A person who may otherwise qualify as a Party or Participant may request Presenter status.

70. A Presenter in a Hearing may:

- (a) be a witness and present his or her relevant evidence at a pre-arranged time, either during a Hearing's regular day-time session or at a special evening session;
- (b) be questioned by the Parties;
- (c) provide the Tribunal with a written statement as a supplement to oral testimony; and
- (d) upon request, receive a copy of documents exchanged by the Parties
- (e) that are relevant to the Presenter's interests.

71. A Presenter in a Hearing may not:

- (a) raise issues that have not already been raised by a Party;
- (b) call witnesses;
- (c) cross-examine witnesses;
- (d) bring motions;
- (e) make oral and written submissions to the Tribunal at the commencement and at the end of the Hearing;
- (f) participate in a mediation, unless permitted to do so by the Tribunal;
- (g) attend site visits unless permitted to do so by the Tribunal; and
- (h) claim costs or be liable for costs.