

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



ISSUE DATE: September 08, 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: August 18, 2016 by telephone conference call

APPEARANCES:

Parties

Counsel

Walker Aggregates Inc.

Wayne Fairbrother, Mary Bull and Samantha Foster

Township of Clearview

Harold Elston

Niagara Escarpment Commission

Demetrius Kappos

Blue Mountain Watershed Trust
Foundation

Sarah Powell

Wendy Franks and David
Stevenson

Anne Sabourin

ORDER DELIVERED BY MARLENE CASHIN AND HEATHER I. GIBBS**REASONS****Background**

[1] This Order deals with an adjournment request, as the Applicant has indicated it will be applying for a Niagara Escarpment Plan Amendment that is related to this application.

[2] 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 ("NEP") as Escarpment Natural, Escarpment Protection and Escarpment Rural areas, located in the Township of Clearview, Region of Simcoe.

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

[4] Between December 8 and December 11, 2015, Harry and Eleonore Urbaniak ("Urbaniaks"), Marilyn Young, Melksham Holdings Ltd. ("Melksham Holdings"), Allan Fisher, the Township and Walker Aggregates Inc. ("Walker Aggregates") appealed the refusal to the Niagara Escarpment Hearing Office ("NEHO") under s. 25(8) of the *Niagara Escarpment Planning and Development Act*.

[5] At a pre-hearing conference (“PHC”) held in Stayner, Ontario on March 11, 2016, the Hearing Officers granted party status to the Blue Mountain Watershed Trust Foundation (“Watershed Trust”), Wendy Franks and David Stevenson. A number of other organizations and individuals were granted participant and presenter status and at his request, Alan Fisher’s status was changed from party to presenter. 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 appeals.

[6] Further information on the appeals may be found in the Orders of the NEHO dated April 15, 2016 (revised May 2, 2016) and May 18, 2016.

[7] On August 18, 2016, the NEHO held a telephone conference call at the request of several of the parties. Representatives of the Township, Walker Aggregates, NEC, Watershed Trust, Ms. Franks, and Mr. Stevenson attended the call. At that time, on consent of the parties attending the call, counsel for the Township requested an adjournment of proceedings, and that the dates associated with the appeals be vacated. The Hearing Panel granted both requests.

Relevant Rules

[8] The relevant rules of the Environmental Review Tribunal (the “Rules”) that apply to the NEHO in this circumstance are:

105. In deciding whether or not to grant a request for an adjournment, the Tribunal may consider:

- (a) the interests of the Parties in a full and fair Hearing;
- (b) the interests of others potentially affected by the matters before the Tribunal who, after notification of the Hearing, may have arranged their affairs in the expectation of observing or participating in the Hearing;
- (c) the integrity of the Tribunal’s process;
- (d) the circumstances giving rise to the need for an adjournment;

- (e) the timeliness of the request for the adjournment;
- (f) the position of the other Parties on the adjournment request;
- (g) whether an adjournment will cause or contribute to any existing or potential risk of environmental harm;
- (h) the consequences of an adjournment, including expenses to other Parties;
- (i) the effect of an adjournment on Participants and Presenters;
- (j) the public interest in the delivery of the Tribunal's services in a just, timely and cost effective manner; and
- (k) whether the proceeding before the Tribunal is an appeal of a renewable energy approval under section 142.1 of the Environmental Protection Act.

144. A member who presides at a Pre-Hearing Conference may make such orders as he or she considers necessary or advisable with respect to the conduct of the proceeding.

Issue

[9] The issue is whether the requests for an adjournment of the hearing of the appeals should be granted and whether the dates for the current hearing and related procedural dates should be vacated.

Discussion, Analysis and Findings

[10] During the August 18, 2016 telephone conference call, the Township told the Hearing Panel that it had come to its attention that there are two areas of proposed road work involved with the Project, as it has been described above, that will encroach into wetland areas, and that policy 2.6.10 of the NEP prohibits any development in a wetland. As a result, the Township will make an application to amend the Plan.

[11] Lisa Grbinicek, Senior Strategic Advisor for the NEC, outlined the process involved in making an application for a Niagara Escarpment Plan amendment and provided approximate timelines involved with each of the steps.

[12] All parties consented to adjourning the current appeal, in order to allow the NEP amendment application and normal processing to take place. The Township requested a six-month adjournment of proceedings and the parties in attendance all agreed that an adjournment of approximately six months would allow for the NEP amendment process to take place.

Findings on Adjournment

[13] Consistent with Rule 144 of the Rules, the Hearing Panel notes that it may make any order that is necessary or advisable when conducting a proceeding, and that Rule 105 may be used to guide the Hearing Panel when deciding whether or not to grant a request for an adjournment.

[14] The Hearing Officers are satisfied that the NEP amendment application is closely related to the current appeal and that an adjournment of approximately six months is reasonable. As such, the date set for the commencement of the Hearing and other associated dates are no longer appropriate.

ORDER

[15] The PHC in this matter is adjourned. A status update telephone conference call is scheduled for **Tuesday, March 28, 2017 at 9:30 a.m.** The NEHO Case Coordinator will forward details for the telephone conference call to the parties, participants and presenters.

[16] The Hearing scheduled to commence on November 29, 2016 has been cancelled, and all other dates related to the appeals, as set out in the NEHO Orders dated April 15, 2016 (revised May 2, 2016) and May 18, 2016, are vacated.

*Hearing Adjourned
Telephone Conference Call Scheduled*

"Marlene Cashin"

MARLENE CASHIN
HEARING OFFICER

"Heather I. Gibbs"

HEATHER I. GIBBS
HEARING OFFICER

Appendix 1 – Appellant List

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