

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



**ISSUE DATE:** April 9, 2020

**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

Appellants:	See Appendix 1 – Appellant List
Applicant:	Township of Clearview
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)

<b>HEARD:</b>	March 27, 2020 by teleconference
<b>HEARING OFFICER:</b>	Maureen Helt, Hearing Officer

**APPEARANCES:**

**Parties**

**Counsel/Representative+**

Melksham Holdings Ltd.

Richard Young+

Walker Aggregates Inc.

Wayne Fairbrother

Township of Clearview

Harold Elston

Niagara Escarpment Commission	Demetrius Kappos and Nancy Mott <sup>+</sup>
Blue Mountain Watershed Trust Foundation	Sarah Powell
Wendy Franks and David Stevenson	David R. Donnelly and Morgan Fletcher

## **PROCEDURAL ORDER**

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### **BACKGROUND**

[1] This order relates to a number of procedural matters that were discussed with the above noted parties (the “Parties”) during the pre-hearing continuation before the Niagara Escarpment Hearing Office (“NEHO”) on March 27, 2020.

[2] By way of background, 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 10<sup>th</sup> 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. (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 within the 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 (the “Urbaniaks”), Marilyn Young, Melksham Holdings Ltd. (“Melksham Holdings”), Allan Fisher, the Township and Walker Aggregates Inc. (“Walker Aggregates”) appealed the refusal to the NEHO under s. 25(8) of the *Niagara Escarpment Planning and Development Act*.

[5] At a pre-hearing conference (“pre-hearing”) held on March 11, 2016, the Hearing Officers granted party status to the Blue Mountain Watershed Trust Foundation (“Watershed Trust”), Wendy Franks and David Stevenson. The Hearing Officers also granted participant and presenter status to a number of other organizations and individuals. During the pre-hearing, 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] On August 18, 2016, the NEHO held a teleconference 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 Officers granted both requests.

[7] Since that time, the Township advised the NEHO and the Parties that it would be seeking a Niagara Escarpment Plan Amendment (“Plan Amendment”) that is related to the Development Permit Application that is the subject of these appeals. As such, the appeals before the NEHO were held in abeyance pending the outcome of the Plan Amendment application. In 2018 and 2019, the NEHO required the Parties to present status updates with respect to the application for the Plan Amendment.

[8] A status update was scheduled for January 31, 2020. Rather than proceeding with a further status update on January 31, 2020, the NEHO contacted the parties to

schedule a teleconference to discuss next steps. As a result, a pre-hearing continuation was scheduled for March 27, 2020.

[9] On February 4, 2020, the Appellants sent an email to the NEHO advising that the Township's application for the Plan Amendment had been circulated by NEC staff to all commenting agencies and NEC staff were in the process of preparing responses to the comments received. On this basis, the Township requested an adjournment of the pre-hearing continuation to late summer or early fall 2020.

[10] By way of email, dated February 4, 2020, the NEC wrote the NEHO advising that it had determined that the proposed Plan Amendment will require recirculation for comments on the basis of the Township's recently proposed changes to wording. The NEC also advised that after recirculation the NEC staff summary report would need to be finalized and go before the NEC after which time it may or may not be referred to NEHO. The NEC suggested a pre-hearing continuation in the fall of 2020.

[11] Despite the parties request to delay the pre-hearing to the Fall, 2020 the Tribunal scheduled a pre-hearing continuation on March 27, 2020. It was clear from the outset of the pre-hearing continuation that there were issues in dispute between the Parties with respect to the wording of the proposed Plan Amendment, the need for recirculation, how to address the Township's Development Permit Application, and how to proceed with the appeals before the NEHO. I heard submissions from the Parties on proposed next steps and make the following order.

## **ORDER**

[12] The Parties agreed to dates for serving and filing certain information. I have added an additional week to the agreed upon schedule as a result of the upcoming statutory holidays.

[13] The Hearing Officer orders that:

- a. On or before **April 17, 2020**, the Township must provide a document setting out the exact wording of its proposed Plan Amendment. The Township must also provide responses to questions raised by the Parties about the proposed Plan Amendment, as set out in their respective letters. In addition, on or before April 17, 2020 the Township shall serve and file a submission as to how to proceed with its Development Permit Application before the NEHO, including the possibility of consolidation and other procedural matters.
- b. On or before **May 1, 2020**, the Niagara Escarpment Commission must serve and file its responding submissions.
- c. On or before **May 15, 2020**, all other Parties must serve and file their respective responding submissions, if any.
- d. On or before **May 22, 2020**, the Township must serve and file any reply submissions.
- e. The Parties' submissions must not exceed 8 pages, double spaced, 12 point, Arial or Times New Roman font. The Township's reply submission must not exceed 5 pages.

*Procedural Directions Ordered*

*"Maureen Helt"*

MAUREEN HELT  
HEARING OFFICER

Appendix 1 – Appellant List

If there is an attachment referred to in this document,  
please visit [www.elto.gov.on.ca](http://www.elto.gov.on.ca) to view the attachment in PDF format.

**Niagara Escarpment Hearing Office  
Environmental Review Tribunal**

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

**APPENDIX 1****Appellant List**

<b>Appellant Name</b>	<b>File No.</b>
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