

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



ISSUE DATE: May 14, 2020

CASE NO.:

19-071

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

Appellant:	Armand Pede
Respondent:	Niagara Escarpment Commission
Subject of leave to appeal:	Refusal of a Development Permit Application to construct a dwelling, install a private sewage disposal system and install a shared driveway
Reference No.:	G/R/2018-2019/9097
Property Address/Description:	Part Lot 25, Concession A
Municipality:	Grey Highlands
Upper Tier:	County of Grey
NEHO Case No.:	19-071
NEHO Case Name:	Pede v. Ontario (Niagara Escarpment Commission)

APPEARANCES:

Parties

Representative

Armand Pede

Self-represented

Niagara Escarpment Commission

Brandon Henderson

Participants

Joseph Pede

Self-represented

Jack Levett-Fuller

Self-represented

Klaus Rodenkirchen

Self-represented

Victoria Selby

Self-represented

Nicholas and Sue-Anne Smart

Self-represented

HEARD:

In writing

ADJUDICATOR(S):

Helen Jackson, Hearing Officer

PROCEDURAL ORDER

Background

[1] This Order relates to a request for Participant status by Nicholas and Sue-Anne Smart (“Smarts”) in the appeal by Armand Pede (“Appellant”) from the decision of the Niagara Escarpment Commission (“Commission”) to refuse his development permit application. This Order also provides procedural directions in this matter.

[2] The proposed development was to construct a dwelling, install a private sewage disposal system and install a shared driveway on a 1.0 hectare (“ha”) (2.5 acres (“ac”)) proposed lot, to be severed from a 1.9 ha (4.8 ac) existing lot. An existing dwelling, sewage disposal system, driveway, detached garage, and observatory will be located on the 0.9 ha (2.3 ac) retained lot. The property is located at Part Lot 25, Concession A in Grey Highlands (“Subject Property”).

[3] The Commission issued notice of its decision to refuse the development permit on August 23, 2019. The Appellant filed his appeal with the Niagara Escarpment Hearing Office (“NEHO”) on September 6, 2019.

[4] The NEHO held the first Pre-hearing Conference (“PHC”) in this matter on January 23, 2020, which was continued on April 1, 2020, to address procedural matters for the hearing.

Nicholas and Sue-Anne Smart's Request for Participant Status

[5] By email on April 1, 2020 to the NEHO, the Smarts requested Participant status in the proceeding. Given that the request was received following the PHC continuation on April 1, 2020, the Hearing Officer directed that the request was to be dealt with in writing and provided dates for the Smarts to file their request and for the Parties to respond.

[6] By letter to the NEHO and the other Parties dated April 7, 2020, the Smarts requested that the NEHO grant them Participant status in the proceeding. In their request, the Smarts stated, in part:

We are concerned neighbours of the property under consideration, our lot being Part Lot 25-26 Con A, being Part 8 on Plan R-123 (135 Osprey Heights).

As we are immediately overlooked by the subject property, any severances and additional development would have a direct impact on us.

We believe that the proposed further severance of the property, and constructing additional dwellings, would be contrary to both the character of our neighbourhood, and principles of protecting the Niagara escarpment area. Many of us residents on Osprey Heights share a strong desire to retain as much as possible of the natural beauty of the escarpment, and enjoy quiet lifestyles, that the proposed further subdivision would preclude.

Further, we are concerned that if this development were to go ahead, it may create a dangerous precedent for further densification in this fragile natural area.

[7] By letter to the NEHO dated April 14, 2020, the Commission advised that it had no objection to the requested status. The Appellant did not provide a response.

[8] The NEHO has considered the request and grants Participant status to Nicholas and Sue-Anne Smart for the reasons set out below.

Relevant Rules of Practice

[9] The relevant *Rules of Practice* (“Rules”) of the Environmental Review Tribunal, which govern NEHO proceedings, lay out what the NEHO is to consider in granting status. Rule 66 governs naming of a participant, and states:

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.

[10] Rule 67 outlines the role of a participant, and identifies that a participant 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.

[11] Rule 68 identifies that a Participant 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.

Analysis and Findings

[12] In determining whether participant status should be granted, the NEHO considers the persons’ connection to the matter, and their contribution to the hearing in their role as a participant.

[13] Nicholas and Sue-Anne Smart are neighbours of the Appellant, and as noted in their request, their property is overlooked by the subject property, and potentially subject to impact from the proposed development. There were no objections to their request for Participant status.

[14] The NEHO finds that the Smarts' interest in the appeal satisfies the considerations set out in the Tribunal's Rules. The Smarts have a genuine interest in the subject matter of the proceeding and are likely to make a relevant contribution to the Hearing Officer's understanding of the issues. As such, Nicholas and Sue-Anne Smart are granted Participant status in the appeal.

Hearing Procedure

Disclosure

[15] At the PHC continuation on April 1, 2020, the Hearing Officer provided procedural direction for the hearing, including directing the Parties and Participants to provide a witness statement and any associated documents they intend to rely on at the hearing, and to serve these on each other and file them with the NEHO by May 25, 2020.

[16] As such, the Smarts are directed to serve upon the Parties and other Participants, their Participant Statement by May 25, 2020.

[17] The Parties and Participants are reminded to file their information electronically.

Hearing Format

[18] The hearing was scheduled to be held in-person on June 8 and 9, 2020 in Ravenna, Ontario. Due to the COVID-19 pandemic, the NEHO directs that the in-person hearing is converted to a telephone conference call (“TCC”) format to be heard on the June 8 and 9, 2020 dates previously scheduled. The NEHO directs the parties to provide written submissions by May 22, 2020 if they have any concerns with proceeding with the hearing on June 8 and 9, 2020 via TCC. If so, the NEHO encourages the Parties to suggest alternatives on consent where possible.

ORDER

[19] The NEHO orders that:

- a. The new Participants, Nicholas and Sue-Anne Smart, along with the other Parties and Participants, are to serve and file documents they intend to rely on at the hearing and their witness statements, with each other and the NEHO, in accordance with Rule 167 and Rule 170, by May 25, 2020.
- b. The in-person two-day hearing scheduled for **June 8 and 9, 2020**, in Ravenna, Ontario **will no longer be held in-person**, due to the ongoing COVID-19 pandemic. The hearing will instead proceed by way of telephone conference call on those same hearing dates.
- c. The NEHO directs the parties to provide written submissions by May 22, 2020 if they have any concerns with proceeding with the hearing on June 8 and 9, 2020 via telephone conference call. If so, the NEHO encourages the parties to suggest alternatives on consent where possible.

*Participant Status Granted
Procedural Directions Ordered*

"Helen Jackson"

HELEN JACKSON
HEARING OFFICER

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
Environmental Review Tribunal**

A constituent tribunal of Tribunals Ontario - Environment and Land Division
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