

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



ISSUE DATE: November 06, 2020

CASE NO.:

20-026

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

Appellant:	Ron Chyczij
Applicant:	Ivanka Bien-Melo
Respondent:	Niagara Escarpment Commission
Subject of appeal:	Approval of a Development Permit Application to construct a 2-storey single dwelling with partial rear walk-out, attached garage, decking, sewage disposal system and driveway
Reference No.:	P/R/2018-2019/408
Property Address/Description:	Part lot 28, Concession 5 WHS
Municipality:	Town of Caledon
Upper Tier:	Regional Municipality of Peel
NEHO Case No.:	20-026
NEHO Case Name:	Chyczij v. Ontario (Niagara Escarpment Commission)

APPEARANCES:

Parties

Counsel*/Representative

Ron Chyczij Self-represented

Ivanka and Jeff Bien-Melo Self-represented

Niagara Escarpment Commission Ken Hare*

HEARD: October 30, 2020 by video hearing
ADJUDICATOR(S): Laurie Bruce, Hearing Officer
Warren Morris, Hearing Officer

ORDER

BACKGROUND

[1] Ivanka Bien-Melo (“Applicant”) applied to the Niagara Escarpment Commission (“Commission”) for a Development Permit to construct a two-storey single dwelling with partial rear walk-out, attached garage and decking, a sewage disposal system and a driveway on a 0.17-hectare parcel located at 47 Baturyn Street within the Poltawa Country Club property. The Commission approved the Development Permit Application subject to conditions.

[2] Ron Chyczij, a neighbour of Ms. Bien-Melo, appealed the Development Permit to the Niagara Escarpment Hearing Office (“NEHO”) citing 19 issues as set out in a Preliminary Issues List included in this Order as Appendix 1.

[3] This order is the result of a pre-hearing conference (“PHC”) held before NEHO on October 30, 2020 for the purpose of refining the Mr. Chyczij’s Preliminary Issues List.

[4] The NEHO Hearing Officers heard submissions on the nature of the appeal and the relevance of the issues identified by Mr. Chyczij to the matter that is before it.

[5] Based on the submissions heard, the Hearing Officers concluded that the NEHO lacks jurisdiction to adjudicate issues 1, 2, 3, 7 and 19 on Mr. Chyczij’s Preliminary Issues List.

[6] Issues 1, 2 and 19 raised by Mr. Chyczij focused on site plan review processes. It was his submissions that the process should be consistent with what is provided to the rest of Terra Cotta from the Town of Caledon. Further, he submitted that there should be standards related to dwelling height, size and setback.

[7] Mr. Hare stated, on behalf of the Commission, that there is no ability for the NEHO to rule that the Commission should have different standards and different internal processes as stated by Mr. Chyczij. Mr. Hare took issue with Mr. Chyczij's objection that the "[Commission] has acted contrary to the decision of the Coordinated Review". Mr. Hare submitted stating the Coordinated Review of the Niagara Escarpment Plan resulted in recommendations, not a decision. Further, this was not a matter that the NEHO could adjudicate. The Hearing Officers agree that Issues 1, 2 and 19 are not matters that can be adjudicated by the NEHO as part of a Development Permit appeal.

[8] Issue 3 on Mr. Chyczij's Preliminary Issues List relate to his concern with the notification process provided by the Commission. Mr. Hare confirmed that notification process adhered to the requirements. Mr. Chyczij expressed opinions on ways this could be improved, however, this is not a matter correctly before the NEHO.

[9] Issue 7 on Mr. Chyczij's Preliminary Issue List relate to his opinion that the Commission should establish and engage in inspection practices to ensure compliance with approvals. Mr. Hare stated that the conditions set out in the Development Permit are intended to bind the Applicant and that what Mr. Chyczij is asking for are conditions to bind the Commission. The Hearing Officers find that NEHO has no jurisdiction to deal with internal workings of the Commission.

[10] The parties and the Hearing Officers collectively reviewed Issues 8-18. These issues generally reflect wording from the Niagara Escarpment Plan but lack detail in terms of how the objectives and criteria therein were not adequately addressed as alleged by Mr. Chyczij. The Hearing Officers concluded that Issues 8-18 require further refinement. Mr. Chyczij stated that without access to the Commission's staff report or other technical reports, he was not able to be more specific. He indicated he intended to retain a consultant to review the documents and to serve as a witness at the merits hearing.

[11] To assist with the continued refinement of the Issues List, the Hearing Officers direct that disclosure among the parties of relevant documents is required by **November 13, 2020**. Based on that information, Mr. Chyczij is directed to review his Issues List and provide more specificity on Issues 8-18 to the parties and NEHO by **November 27, 2020**. In addition, Mr. Chyczij is directed to confirm to the parties and NEHO that he has retained a consultant(s) who will undertake a technical assessment of the issues that he has raised. A third PHC is scheduled by video hearing for **10 a.m.** on **December 2, 2020**. At that PHC, dates will be set for the exchange of the list of witnesses, witness statements and documents to be relied upon at the merits hearing. In addition, a date will be set for the merits hearing.

ORDER

[12] The Hearing Officers orders that a third PHC is set for **Wednesday, December 2, 2020** at **10 a.m.** This will be carried out by video hearing, details of which will be provided by the Tribunal's Case Coordinator.

[13] The Hearing Officers will not adjudicate issues 1, 2, 3, 7 and 19 as set out in Appendix 1.

[14] Further, the Hearing Officers order that by **Friday, November 27, 2020** Mr. Chyczij provide a refined Issues List and confirmation that he has retained consultant(s) that will undertake a technical assessment of some or all of the issues that remain on the Issues List.

*Procedural Directions Ordered
Pre-Hearing Continuation Scheduled*

“Laurie Bruce”

LAURIE BRUCE
HEARING OFFICER

“Warren Morris”

WARREN MORRIS
HEARING OFFICER

Appendix 1 – Preliminary Issues List

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

**Niagara Escarpment Hearing Office
Environmental Review Tribunal**

A constituent tribunal of Ontario Land Tribunals

Website: www.olt.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

Appendix 1: Preliminary Issues List

1. Failure to establish a comprehensive site plan review and approval process consistent with the services received by the rest of Terra Cotta from the Town of Caledon
2. Failure to establish consistent zoning requirements and any exceptions to such zoning requirements, including but not limited to height, size, and setback requirements
3. Failure to communicate appropriately with neighbouring residences of a proposed development as a common-sense internal practice
4. Failure to adequately consider not only current but also future possibilities pertaining to water seepage, water runoff and other issues
5. Failure to protect existing vegetation, the natural environment and environmental sustainability over the long term
6. Failure to protect existing drilled wells
7. Failure to establish and engage in a timely inspection practice to ensure compliance with approvals
8. Failure to maintain the identity and traditional character of a MUC
9. Failure to apply stated development and growth objectives of the NEP regarding a MUC
10. Failure to consider the visual impact of a development
11. Failure to protect hydrological features and functions
12. Failure to establish and/or comply with targets, criteria and recommendations of applicable water, wastewater and storm water master plans, approved watershed planning and/or subwatershed plan in land use planning
13. Failure to consider flooding hazards, erosion hazards or other water-related hazards
14. Failure to identify planning, design and construction practices that will minimize erosion, sedimentation and the introduction of nutrients and pollutants
15. Failure to impose sediment control devices after construction
16. Failure to identify vegetation protection zone including an analysis of land use, soil type and slope class
17. Failure to restrict a sewage system from being closer than 30 m from a key hydrological feature
18. Failure to avoid changes to natural drainage
19. NEC has acted contrary to the decision of the Coordinated Review (dated 25 May 2017) and has no jurisdiction in this matter