

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



ISSUE DATE: November 03, 2020

CASE NO.:

20-030

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

Appellant:	Kenneth Robert Campbell
Respondent:	Niagara Escarpment Commission
Subject of appeal:	Refusal of a Development Permit Application to undertake the construction of a 2-storey dwelling, the installation of solar collectors, a private sewage disposal system, construction of a cantilevered deck, an accessory building, install above ground hydro, construct a private driveway and install a gated entrance
Reference No.:	B/R/2017-2018/9228
Property Address/Description:	Part Lot 9, Concession 14 EBR
Municipality:	Northern Bruce Peninsula (Eastnor)
Upper Tier:	County of Bruce
NEHO Case No.:	20-030
NEHO Case Name:	Campbell v. Ontario (Niagara Escarpment Commission)

APPEARANCES:

Parties

Counsel+/Representative

Niagara Escarpment
Commission

Demetrius Kappos⁺

Kenneth Robert Campbell

Leroy Dirckx

HEARD:
ADJUDICATOR(S):

September 30, 2020 by telephone conference call
Laurie Bruce, Member

PROCEDURAL ORDER

Background

[1] Kenneth Robert Campbell (“Applicant”) applied to the Niagara Escarpment Commission (“NEC”) for a Development Permit to allow a single detached two-storey dwelling, a detached garage, a cantilevered deck, roof-mounted solar collectors and a septic system. In addition, the Applicant proposes to install above ground hydro from Georgian Drive to the northern boundary of Lot 8, Concession 14 EBR and then underground to service the proposed dwelling. The Applicant also proposes to install a private driveway 6.1 metres (“m”) wide by approximately 450 m long from the terminus of Georgian Drive across a lot owned by Warren Stewart in which the Applicant will purchase an interest, and following, what is described as an existing access road to the subject lot at Part Lot 9, Concession 14 EBR.

[2] The Applicant has a binding purchase of sale for the subject lot.

[3] In a decision, dated June 30, 2020, the NEC refused the Development Permit on the grounds that it:

- a. Conflicts with the Purpose of the Purpose and Objectives 1, 5 & 7 of the Niagara Escarpment Plan (“Plan”);
- b. Conflicts with Objective 3 of the Escarpment Natural Area designation;
- c. Provides insufficient information to properly assess Objective 2 of the Plan and Objective 2 of the Escarpment Natural Area designation;
- d. Conflicts with the County of Bruce Official Plan;
- e. Was objected to by multiple agencies; and,

- f. Conflicts with Part 2.6.5 of the Provincial Policy Statement 2020. The proposal is opposed by the Ontario Heritage Trust and Chippewas of Nawash Unceded First Nation (“Chippewas of Nawash”) due to the high significance of the subject property and surrounding area in terms of Indigenous cultural heritage.

[4] The Applicant filed an appeal of the NEC’s decision on July 6, 2020.

The Pre-hearing Conference

[5] On September 30, 2020, the Niagara Escarpment Hearing Office (“NEHO”) conducted a pre-hearing conference.

[6] The Chippewas of Nawash, represented by counsel Lorraine Land, sought and was granted party status. It was their position that the proposed development affects significant cultural landscape and that there is a high likelihood of burial practices in the area. Mr. Dirckx opposed this status stating that studies have been undertaken and there have been no archaeological finds in the area and that there have been ongoing discussions with the Chippewas of Nawash. The NEC was not opposed to the granting of party status.

[7] The Ontario Heritage Trust (“OHT”), represented by counsel Anthony Scane, sought and was granted participant status. The OHT is the owner of lands near the proposed development. The OHT states that the lands are of natural and cultural significance. Mr. Dirckx was opposed to this status stating that the OHT had been part of an ongoing conversation and left the discussions and that OHT represents all of Ontario landowners. The NEC did not object to the granting of participant status.

[8] The parties discussed the issues and next steps. Mr. Kappos for the NEC suggested that the hearing be held in a staged fashion, first dealing with the issues associated with the construction of the driveway (“access hearing”). The Hearing Office

was advised that there may be issues associated with obtaining access via the proposed driveway and if access is not attainable there is no value in continuing with the rest of the hearing. This was agreed to by all the parties.

ORDER

[9] The Hearing Officer orders that the exchange of relevant documents (disclosure) related to the construction of the driveway will occur by **November 16, 2020**. By **December 14, 2020**, the parties will exchange and file all documents they intend to rely on at the access hearing, including:

1. a list of witnesses that each party intends to call;
2. a witness statement for each witness;
3. a curriculum vitae for each proposed expert witness; and,
4. any reports a proposed expert witness intends to submit as evidence at the hearing.

[10] If a party intends to call an expert witness to give opinion evidence, the witness must sign an Acknowledgement of Expert's Duty form (see Form 5, Appendix F and Rule 170 of the Environmental Review Tribunal's *Rules of Practice*) and the party must file this with the NEHO.

[11] The access hearing will be held via videoconference on **January 26 and 27, 2021 starting at 10 a.m.** The parties suggested to the Hearing Office that these hearing dates be solely for the purpose of witness examination and advised that they would prefer written final arguments for the access hearing. The Hearing Office concurs and orders that final submissions can be made in writing. The Case Coordinator will provide the parties with the videoconference hearing details by email.

[12] Dates for the written final arguments on the access hearing are as follows:

- a. February 10, 2021 - Kenneth Robert Campbell
- b. February 16, 2021 - NEC and the Chippewas of Nawash
- c. February 22, 2021 - Reply from Kenneth Robert Campbell

[13] The parties have asked that a date for oral argument in the access hearing be set by videoconference for **February 26, 2021**, should the Hearing Office determine it is necessary after reviewing the written final submissions. The Hearing Office concludes that this approach is acceptable. The Case Coordinator will provide the parties with the video hearing details by email.

*Procedural Directions Ordered
Hearing Scheduled*

“Laurie Bruce”

LAURIE BRUCE
HEARING OFFICER

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

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