

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



ISSUE DATE: March 05, 2021

CASE NO.:

15-176
20-036

PROCEEDING COMMENCED UNDER sections 25(5.1) and 25(8) of the *Niagara Escarpment Planning and Development Act*, R.S.O. 1990, c. N.2

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)

PROCEEDING COMMENCED UNDER section 10(3) of the *Niagara Escarpment Planning and Development Act*, R.S.O. 1990, c. N.2, as amended

Applicant: Township of Clearview
Subject of hearing: Proposed Amendment to the Niagara Escarpment Plan to add policy exceptions to permit infrastructure improvements on Sideroad 26/27

Reference No.: Proposed Niagara Escarpment Plan Amendment No. PS 215 18

Municipality: Township of Clearview
Upper Tier: County of Simcoe
NEHO Case No.: 20-036
NEHO Case Name: Plan Amendment No. PS 215 18 (Re)

APPEARANCES:**Parties****Counsel**

Township of Clearview

Harold Elston, Sarah Hahn and
Carly Emmett (student-at-law)

Niagara Escarpment Commission

Demetrius Kappos and
Andrew Bonnell (student-at-law)

Walker Aggregates Inc.

Kim Mullin, Monica Poremba and Mary Bull

Blue Mountain Watershed Trust
Foundation

Sarah Powell and Robyn Barabash

Wendy Franks and David
Stevenson

David R. Donnelly and Morgan Fletcher

HEARD:
ADJUDICATOR(S):February 24, 2021 by video hearing
Helen Jackson, Hearing Officer**PROCEDURAL ORDER**

BACKGROUND

[1] By way of background, the Township of Clearview ("Township") submitted Development Permit Application S/T/2013-2014/9152 ("Development Permit Application") to the Niagara Escarpment Commission ("NEC") on January 31, 2014, seeking permission to reconstruct 26/27 Sideroad from the 10th Concession westerly to 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.

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

[3] Between December 8 and December 11, 2015, Harry and Eleonore Urbaniak (the “Urbaniaks”), 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 (5.1) of the *Niagara Escarpment Planning and Development Act* (“NEPDA”).

[4] By previous orders of the NEHO, Blue Mountain Watershed Trust Foundation (“Watershed Trust”), Wendy Franks and David Stevenson were all granted Party status to the appeals of the refusal of the Development Permit Application. Additionally, participant status to the appeals of the refusal of the Development Permit Application was granted to Doug Dingeldein, the Clearview Community Coalition, Raymond Mueller, Mark Bell and the Municipality of Grey Highlands, and presenter status was granted to Allan Fisher, Emelia Franks, Gary Fohr, and Victoria Selby.

[5] The Township advised the NEHO and the parties that it would be seeking a Niagara Escarpment Plan Amendment (“Plan Amendment”) related to the Development Permit Application that is the subject of these appeals. As such, the Development Permit Application appeals before the NEHO were held in abeyance pending the outcome of the Township’s Plan Amendment application.

[6] On February 6, 2018, the Township made an application to amend the NEP and set out specific proposed amendments. In 2018 and 2019, the NEHO required the parties to present status updates with respect to the application for the Plan Amendment.

[7] By way of email, dated February 4, 2020, the NEC wrote to 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 the proposed Plan Amendment may or may not be referred to the NEHO.

[8] A case management conference was convened by the NEHO on March 27, 2020 and attended by the parties to the Development Permit Application. A Procedural Order issued on June 30, 2020 related to this event which directed that should the Plan Amendment be referred by the NEC to the NEHO, then the hearing for the referral of the Plan Amendment application and the appeals of the refusal of the Township's Development Permit Application should be heard at the same; and the evidence admitted is to be attributed to both matters.

[9] On October 29, 2020, the NEC held a Commission meeting at which time a Staff Summary Position Report was presented regarding the Plan Amendment application. The report described the undertaking and the results of the recirculation of the application. The recommendation of the staff was that because there are written objections to the proposed Plan Amendment, the NEC must ask the Environmental Review Tribunal to appoint one or more Hearing Officers to hold a public hearing pursuant to s. 10 (3) of the *NEPDA*.

Pre-Hearing Conference of February 24, 2021

[10] Resulting from the direction of the NEHO in the Order issued June 30, 2020, and the referral of the Plan Amendment by the NEC to the NEHO, the NEHO held a pre-hearing conference ("PHC") on February 24, 2021. This was the first PHC for the Plan Amendment matter, and a continuation for the appeals of the refusal of the Development Permit Application. Additionally, parties, and those requesting party status to the Plan Amendment matter, were directed to provide a list of issues in advance of the PHC.

Requests for Status in the Plan Amendment Matter

[11] The NEHO asked those who wished to request party, participant or presenter status to the Plan Amendment matter to advise the NEHO in advance of the PHC scheduled for February 24, 2021.

[12] Requests for party status were made by Walker Aggregates., Watershed Trust, Wendy Franks and David Stevenson. Each of these entities are parties to the Development Permit Application appeals, and each has been involved in the related matter for a considerable period of time. There were no objections to the granting of party status to these entities. The Hearing Officer is satisfied that it is appropriate that each of these entities be granted party status to represent their long-standing interest in this matter and each will contribute to the Hearing Officer's understanding of the issues in the Plan Amendment matter, and in coming to findings. On that basis, Walker Aggregates, Watershed Trust, Wendy Franks and David Stevenson were granted Party status with respect to the Plan Amendment matter.

[13] Participant status was requested by the Town of the Blue Mountains (Alar Soever, Mayor), the Municipality of Grey Highlands (Michael Benner, Director of Building and Planning Services), Doug Dingeldein, Ray Mueller and Margaret (Peggy) Hutchison. Both Municipalities expressed concern regarding traffic issues; and the others expressed concern regarding traffic, safety, and environmental issues. The Hearing Officer is satisfied that the participation of the Municipalities and these individuals will assist the Hearing Officer in coming to findings in the Plan Amendment matter, and Participant status was granted to each.

Procedural Matters for Hearing

[14] The Hearing Officer explored with the parties the issues, and the estimated timing, length, and format for the hearing of these two matters. It was determined that a five to six week hearing in the late fall was appropriate. The format of the hearing will be determined closer to the hearing date and will be determined on the basis of public health considerations due to the Covid-19 pandemic. Mr. Donnelly expressed a strong desire to hold an in-person hearing, particularly as there is unreliable internet in much of the local area making a virtual hearing difficult.

[15] A brief discussion of the items that should be included in a draft Procedural Order ensued. Mr. Elston committed to preparing a draft Procedural Order to guide the hearing in these two matters. The draft Procedural Order will be prepared in consultation with the parties, which would include a date for disclosure, the exchange of witness statements, a meeting of experts, an agreed statement of facts, and the like.

[16] The Hearing Officer confirmed that Participants will be permitted to make oral submissions at the hearing.

[17] A further PHC was scheduled in about eight weeks time to address the draft Procedural Order and any issues that may arise. The parties committed to providing the draft Procedural Order to the Hearing Office in advance of the next PHC.

ORDER

[18] Based on the above, the NEHO orders a further PHC scheduled for **April 28, 2021**, at **10 a.m.** by video hearing. The Tribunal's Case Coordinator will provide details for accessing the PHC.

[19] The hearing in this matter is to commence on **November 8, 2021** and continue to **December 17, 2021**. There will be no sitting on November 11, 2021 (Remembrance Day) and December 9, 2021 (Tribunal professional development day). The format for the hearing will be determined closer to then and will be communicated by the Tribunal's Case Coordinator.

[20] There will be no further notice and this Hearing Officer is not seized.

*Party Status Granted
Participant Status Granted
Procedural Directions Ordered
Hearings Scheduled*

"Helen Jackson"

HELEN JACKSON
HEARING OFFICER

Appendix 1 – List of Appellants for 15-176 (Development Permit Application)

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**Appellant List for 15-176**

Appellant Name	File No.
Eleonore Urbaniak	15-176
Harry Urbaniak	15-177
Richard Young	15-178 (File Closed)
Marilyn Young	15-179 (File Closed)
Melksham Holdings Ltd.	15-180
Alan Sampson	15-181 (File Closed)
Allan Fisher	15-182
Walker Aggregates Inc.	15-183
Township of Clearview	15-184