



# Niagara Escarpment Hearing Office

Case No.: 06-016  
(NEC File No.: H/R/05-06/296)

## **Paletta International Corporation v. Niagara Escarpment Commission**

In the matter of an appeal by Paletta International Corporation filed April 27, 2006 for a hearing before a Hearing Officer pursuant to section 25(8) of the *Niagara Escarpment Planning and Development Act*, R.S.O. 1990, c. N.2, as amended, with respect to a decision of the Niagara Escarpment Commission dated April 13, 2006, whereby the Commission conditionally approved Development Permit application H/R/05-06/296 made by Edward Svetek and Lesley Seager to construct a  $\pm$  161 sq m ( $\pm$  1735 sq ft) second storey (extending over existing garage) living space addition and a covered porch addition to an existing single dwelling, on an existing .40 ha (.99 ac) lot located on Part Lot 9, Concession 1, N.S., City of Burlington, Region of Halton; and

In the matter of a Hearing held on June 27, 2006 in Room 307, Burlington City Hall, Burlington, Ontario.

**Before:** Jerry V. DeMarco, Hearing Officer

### **Appearances:**

Scott Snider	- Counsel for the Appellant, Paletta International Corporation
Edward Svetek	- Applicant, on behalf of himself and Lesley Seager
David Johnston	- Planner, Niagara Escarpment Commission

**Dated this 7<sup>th</sup> day of July, 2006**

## **Report to The Minister of Natural Resources Confirming The Decision of the Niagara Escarpment Commission**

### **Background:**

The Applicants, Edward Svetek and Lesley Seager, applied to the Niagara Escarpment Commission (“NEC”) for a Development Permit to construct a ± 161 square metre (± 1735 square foot) second storey (extending over the garage) living space addition and a covered porch addition to an existing single dwelling on an existing .40 ha (.99 ac) lot at Part Lot 9, Concession 1, N.S., City of Burlington, Region of Halton. The subject lands are located in the Escarpment Rural Area designation of the Niagara Escarpment Plan.

On April 13, 2006, the NEC granted the Application for a Development Permit subject to 13 conditions. On April 27, 2006, Paletta International Corporation (“Paletta”), which owns the lands directly west of the Svetek-Seager property, filed an appeal of the NEC’s decision. On May 31, 2006, a Pre-Hearing conference was held and the Parties identified the adequacy of the Applicants’ septic system as the sole issue in dispute.

### **Issue:**

The issue in this appeal is whether the NEC’s decision to conditionally approve the Svetek-Seager Application for a Development Permit should be confirmed. The sub-issue of central importance is whether the conditions of approval relating to the Applicants’ septic system are sufficient.

### **Discussion and Analysis:**

At the outset of the Hearing, David Johnston, NEC Planner, summarized the NEC’s review of the Application and the comments the NEC received from Conservation Halton, the City of Burlington and the Region of Halton. Mr. Johnston also explained the basis for the NEC’s decision to approve the Application subject to conditions. Scott Snider, Counsel for Paletta, outlined Paletta’s interest as an adjoining landowner in ensuring that the Applicants’ septic system was sufficient with regard to potential off-site impacts. Mr. Snider indicated that Paletta did not object to the proposed addition to the Svetek-Seager house so long as a secondary treatment septic system was in place. Mr. Svetek indicated that he was prepared to follow the

conditions imposed by the NEC and that he had a secondary treatment system in place and was not planning to remove it.

After hearing the Parties' opening submissions, the Hearing Officer inquired as to whether the Parties wished to explore the possibility of a mutually agreed-upon solution to the septic system issue. All Parties were in agreement that a short adjournment to allow time for discussion could lead to a resolution. Following the adjournment, the Parties informed the Hearing Officer that they had reached a three-Party agreement that involved revising Condition 11. That condition originally read as follows:

The City of Burlington Building Department shall be satisfied that the existing waste disposal system has the capacity to accommodate the proposed additions. Should an expansion, modification or new system be required, all works (design, installation and location) shall be undertaken pursuant to plans approved by the City of Burlington.

The Parties jointly presented to the Hearing Officer the following revised wording for Condition 11 (changes underlined):

Prior to the issuance of a Building Permit, the City of Burlington Building Department shall be satisfied that the existing waste disposal system has the capacity to accommodate the existing structure and proposed additions. Should an expansion, modification or new system be required, all works (design, installation and location) shall be undertaken pursuant to plans approved by the City of Burlington, and shall include, at a minimum, a secondary treatment unit.

The Parties indicated that the appeal would be satisfactorily concluded if the Hearing Officer incorporated the revised condition into an amended approval. Section 25(12.1) of the *Niagara Escarpment Planning and Development Act* ("NEPDA") provides a mechanism for confirming NEC decisions where all Parties agree to revised conditions of approval and the Hearing Officer is satisfied with the changes.

### **Findings:**

The Hearing Officer commends the Parties for resolving their differences through negotiation. The Hearing Officer is satisfied that the factors listed in section 25(12.1) of the *NEPDA* have been met and that the revised wording of Condition 11 resolves all of the Parties' concerns.

## **Decision**

The NEC's Decision to conditionally approve the Svetek-Seager Application for a Development Permit is confirmed pursuant to section 25(12.1) of the *NEPDA*, with revisions to Condition 11 as agreed to by the Parties and as set out in Appendix C.

*NEC Decision Confirmed with Revised Condition*

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Jerry V. DeMarco, Hearing Officer

Appendix A – List of Parties

Appendix B – Exhibit List

Appendix C – List of Revised Conditions

**Appendix A**

**List of Parties**

Appellant: Paletta International Corporation

Counsel for the Appellant: Scott Snider  
Turkstra Mazza  
15 Bold Street  
Hamilton, ON L8P 1T3

Applicants: Edward Svetek and Lesley Seager  
2041 Watson Drive  
Burlington, ON L7R 3X4

Planner, Niagara Escarpment Commission: David Johnston  
232 Guelph Street  
Georgetown, ON L7G 4B1

**Appendix B**

**Exhibit List**

1. Minutes of Settlement dated June 27, 2006

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**Appendix C**

**Revised Conditions of Approval**

1. Non-fulfilment or breach of any one of the conditions shall render the Development Permit void.
2. A site inspection(s) to the property may be undertaken by the Niagara Escarpment Commission to ensure that the development complies with the conditions of the Development Permit. Persons may accompany the Commission representative on the site inspection(s) who possess expert or special knowledge related to the conditions of the Development Permit.
3. No building permit or other licence, certificate, permit or other similar permission relating to development shall be issued or be considered to be in force unless a Development Permit is in effect.
4. The Development Permit shall expire three years from its date of issuance unless a valid Building Permit is issued within the three years and the development has been completed.
5. Development shall take place only in accordance with the site plan and development permit application submitted (except where special conditions are to apply as noted below).
6. No grading of the existing contours of the lot in the area of the development is permitted, with the exception of that which is required for the construction of the additions to the residence.
7. No trees other than dead or diseased trees shall be cut or removed from the lot in the area of the development except those absolutely necessary for the construction of the additions to the residence.
8. Screening, landscaping and rehabilitation shall be completed by the end of the growing season immediately following the completion of the development.

NOTE: The Commission recommends that for major trees, species native to the area shall be used rather than exotic species.

9. Upon the issuance of a Development Permit, the applicants shall obtain a Building Permit from the City of Burlington Building Department.
10. Prior to the issuance of a Building Permit, the applicants shall submit detailed building plans, with elevations, for the review and approval of the Niagara Escarpment Commission.

**REVISED  
CONDITION**

11. Prior to the issuance of a Building Permit, the City of Burlington Building Department shall be satisfied that the existing waste disposal system has the capacity to accommodate the existing structure and proposed additions. Should an expansion, modification or a new system be required, all works (design, installation and location) shall be undertaken pursuant to plans approved by the City of Burlington, and shall include, at a minimum, a secondary treatment unit.
12. If considered necessary by the City of Burlington Building Department, the existing tile field shall be temporarily fenced to protect it from compaction due to vehicular movement or materials storage.
13. Neither the dwelling unit nor the additions shall contain an apartment unit, a second residential unit, or an accessory dwelling unit (e.g., an “in-law” suite or “granny flat”).