



Niagara Escarpment Hearing Office

Case No.: 00-014
(NEC File No.: G/C/99-00/187)

Coalition On the Niagara Escarpment v. Niagara Escarpment Commission

In the matter of an appeal by the Coalition On the Niagara Escarpment from a Decision of the Niagara Escarpment Commission dated April 27, 2000 whereby the Commission approved an application for a Development Permit made by John Craig to construct a 14 unit, 2400 square foot “mini-storage” building on a 3.57 hectare (8.83 acre) existing lot on Part Lot 25, Concession 1 SCR, Sydenham, Township, Grey County.

In the matter of a hearing held on July 25, 2000, in Owen Sound, Ontario.

Before: David Hutcheon, Hearing Officer

Appearances:

Parties

Karyn Keenan - Agent for the Appellant, Coalition On the Niagara Escarpment
John Craig - Applicant
Lynne Richardson - Senior Planner, Niagara Escarpment Commission

Presenters

Malcolm Kirk - Grey County Association For Better Planning
John Corrigan - Beaver Valley Club of the Bruce Trail Association
Ziggy Kleinau - Citizen

Dated this 3rd day of August, 2000.

Report to the Minister of Natural Resources

Background:

John Craig, owner of the subject lot on Part Lot 25, Concession 1 SCR, Sydenham, Township, Grey County, applied to construct a new building on his property. Craig was granted permission by the Niagara Escarpment Commission (“NEC”) to build a 14 unit, 2400 square foot “mini-storage” building on the existing lot that is 3.57 hectare (8.83 acre). This approval was appealed. The property presently has a 4,800 square feet commercial building, 200 square feet storage building (shown as “Craig Equipment Building in Exhibit 3, Map 3) and a communications tower. All of which are permitted uses on the site. The site is zoned Escarpment Rural Area.

The proposed building if built would be situated near the southwest corner of intersection Highway 26 and County Road 11. The building would front on to Highway 26 and the back of the proposed building would face a treed berm with the existing Craig equipment building and communications tower behind the berm on the same lot (See Map 3, Exhibit 3).

Issues:

Does the proposed new building conform to the *Niagara Escarpment Plan and Development Act* (“NEPDA”) and the Niagara Escarpment Plan (“NEP”) requirements to situate a new building on land designated as Escarpment Rural Area.

Evidence:

John Craig (Applicant)

John Craig said that he had owned the property for 35 years. He argued the “NEPDA was introduced to assure that development within the plan boundaries would not be detrimental to the escarpment.” In his opinion, the “mini-storage proposal in a minor urban area designation already utilised, as a commercial-industrial property must be one of the least offensive development applications requested of the commission.” Craig said there was a need for a mini-storage facility. “I have had farmers and residents of the township asking to lease space in the mini-storage.” He stated that there were 15 businesses and an advertising sign surrounding his

site at the crossroads and his was not different. Craig provided a list and a map of these businesses (Exhibit 12). Craig pointed out that the reporting agencies and the NEC had supported his application. Craig said, “the decision of the commissioners of the NEC is in the best interests for development in the area.”

Lynne Richardson (Senior Planner, Niagara Escarpment Commission)

Lynne Richardson authored the NEC report that recommended refusal of the proposed mini-storage building, because it is “not a permitted use in Escarpment Rural Area” (Exhibit 3). She stated that the brow of the Escarpment’s rock out crop is less than 1000 feet away from Craig’s property.

Richardson said the Commission had dealt with a variety of applications on the subject property and a lot severed from the original property. She provided a list of these applications and the subsequent decisions (Exhibit 11). Richardson pointed out that the “Commission has dealt with this issue in three other applications for a second building on the property or on a severed lot, and had refused.” The one time in 1985, the Commission had approved, Craig had not registered the lot and the building had not been built. On two occasions (applications G/C/89-90/509 and G/R/90-91/124) the appeals had gone to the Minister who had refused the applications. Asked by the Coalition On the Niagara Escarpment (“CONE”) if she thought Craig’s request was “an abuse of process?” She replied it was on “a fine line.”

Richardson stated that discussion had taken place between the NEC and the Grey County Planning Department about amending this corner from Rural to Minor Urban Centre. “The property is shown as a potential new hamlet in the local Official Plan.” But the Plan states “that this will require an Amendment to both the NEP and the Official Plan” (Exhibit 3). The Grey County Planning Department did undertake some preliminary work but it was not pursued. Richardson maintained that “given the environmental and planning limitations on the site any intensification should only be permitted after a “full and proper review of these matters via a NEP and Official Plan Amendment.” She said all of the existing businesses, except for the sign, were in conformity with the Plan. The sign was being investigated. One of the permitted uses at this site was Sydenham’s municipal township office. She also noted that one of the area

businesses was a golf course, which afforded views to the Escarpment, and that land was being used for agricultural at this intersection.

On behalf of the NEC, Richardson contacted the following agencies for their comments.

- Sydenham Township - supports the application providing the “applicant obtains a building permit for this commercial building” (Exhibit 6).
- Grey County Planning - no comments were received. In her evidence, Richardson stated that Grey County Planning does not normally comment on proposals as they have adopted the NEP as their official policy and defers to the NEC.
- Ministry of Transportation - no objection providing conditions are met. The conditions include a site plan, a Building and Land-use permit and that only the existing access to County Highway No. 26 will be permitted to be used (Exhibit 4).
- Grey County Highways Department - no objection to the application (Exhibit 5).

To determine if a proposed development is “small-scale”, Richardson stated the NEC pools the sizes of the buildings on a site. It is the NEC’s policy that small-scale is considered to be a building(s) up to 5,000 sq. ft in total size.

Richardson argued that a mini-storage building use is “not one that particularly” services agriculture or rural community needs.

Richardson concluded that the proposal:

- Is not permitted under the Escarpment Rural Area designation to the NEP.
- Does not comply with the Plans Existing Uses Development Criteria and;
- Is premature pending the initiation of an Official Plan and NEP Amendments to assess the area for expanded uses through a Hamlet designation.

On April 20, 2000, the NEC approved Mr. Craig’s proposal with conditions (Found in Exhibit 7 and Exhibit 10) on a recorded vote of 8 to 7. The Commission gave its reason: “Based on the existing use, this application does not offend the objectives of the designation” (Exhibit 10).

Richardson was asked by CONE if the Commissions' decision altered her opinion of the proposal. She replied with conviction that it did not. "The staff position is that it shouldn't be approved."

Karyn Keenan (Agent for the Appellant, CONE)

Karyn Keenan argued on behalf of CONE that the proposal violated the Purpose of the Act. Which "is to provide for the maintenance of the Niagara Escarpment and land in its vicinity substantially as a continuous natural environment" (*NEPDA*, section 2). Keenan charged that Mr. Craig's proposal was an abuse of process.

Presenters

All of the presenters spoke against the proposal and supported the positions taken by the NEC's Senior Planner and CONE.

Malcolm Kirk (Grey County Association For Better Planning) opposed the project on the basis that it is not a permitted use. It would increase the density and lead to more potential problems such as water and sewage problems. He argued that Craig by continually reapplying to build on the site was abusing the planning process, and wasting public money. "This betrays the public's interest and expectations in the planning process" (Exhibit 13).

John Corrigan (Beaver Valley Club of the Bruce Trail Association) said that Kirk had said all he wanted to say.

Ziggy Kleinau said he thought Craig's proposal would make the Escarpment's buffer zone non-conforming and thought he should seek a plan amendment.

Findings:

To the uniformed observer placing a storage building facing on to a County Highway 26 at the intersection of County Highway 26 and Highway 11 with its back to a treed berm and existing buildings might not be a detriment to the Niagara Escarpment.

However, the Commission's decision was challenged by evidence of the majority of the witnesses, including the Commission's planning witness. The Commission's brief reason does not assist this Hearing Officer when compared to the arguments put forth by the NEC planning staff, CONE, and the members of the public who appeared before this Hearing Officer.

The proposed new building fails to meet the test using the NEP criteria for designation and permitted uses on three counts and does not meet the objectives of the *NEPDA*.

Under the Permitted Uses, Section 1.5 of the Escarpment Rural Area, in the NEP the following three uses are relevant to this hearing.

Permitted use number 2. "Existing uses". Given the property has existing uses; this however, does not apply as the proposal is for a new and separate building with a different purpose than the existing buildings.

Permitted use number 10. "Small scale commercial uses accessory to agricultural operations". For this to apply the site would have to be already in use for agriculture operations. It is not. Further it would have to be a "small-scale" operation. The uses on this site already exceed a small-scale operation, judged to be less than 5,000 square feet. The existing commercial building is 4,800 square feet, the existing storage building is 200 square feet, and there is also an existing communications tower on the site. The proposed new building is 2,400 square feet.

Permitted use number 17. "In non-agricultural areas, small-scale commercial and industrial development servicing agricultural and the rural community." Given there is farming going on in this area, it is not a "non-agricultural" area and the proposed building exceeds the small-scale criteria.

No case was made during the hearing to show how this proposal would be "compatible with the environment" or "provide for the maintenance of the Niagara Escarpment and land in its vicinity" as required in "The Purpose" of the *NEPDA*, Section 2. This purpose is repeated in the NEP, Section 1.5 of the Escarpment Rural Area, under "Objectives".

The issue of abuse of process raised by CONE and Kirk in this case is a misnomer. The *NEPDA*, Office Consolidation, January 2000, Section 25.(8.1) under “Exceptions”, provides only for an opportunity to dismiss an appellant’s application, in this case CONE’s. It does not provide for Craig’s application to be thrown out, as he is not the appellant in this hearing. Section 25.(8.1) in part reads that a Hearing Officer may:

Refuse to conduct or continue a hearing, if,

- (a) in the opinion of the officer, the appeal does not disclose a planning justification for the appeal, is not in the public interest, is without merit, is frivolous or vexatious, or is made only for the purpose of delay.

(For a definition of abuse of process and how it applies to the *NEPDA*, see *Hynes v. NEC*, Case No. 00-024, released on July 11, 2000.)

While it might be appropriate for this intersection to be considered for an Official Plan, the NEP Amendment review to assess whether the Escarpment Rural designation still fits with the area or if it should be changed, the notion of a Minor Urban Area designation is one option. That issue is not before this Hearing Officer.

Recommendation:

I recommend that this proposal be refused, as the proposed new building is not a permitted use in an Escarpment Rural Area.

David Hutcheon
Hearing Officer

Appendix A - Exhibit List

Appendix A**Exhibit List**

1. Appointment of Hearing Officer, David Hutcheon.
2. John Craig Development Permit Application, November 26, 1999.
3. NEC Development Permit Application and comments, December 15, 1999.
4. Letter: MTO Owen Sound District Office comments, December 15, 1999.
5. Letter: County of Grey Highways Department, Comments, December 14, 1999.
6. Resolution: The Corporation of the Township.
7. Notice of Decision from NEC, April 27, 2000.
8. Letter: Coalition On The Niagara Escarpment advising of appeal, May 4, 2000.
9. Excerpt from Niagara Escarpment Plan, 1.5 Escarpment Rural Area.
10. Niagara Escarpment Commission Minutes from meeting of April 20, 2000.
11. Chronology of Applications for subject lot on Part Lot 25, Concession 1 SCR, Sydenham, Township, Grey County.
12. John Craig Presentation, Owner of property, dated July 25, 2000.
13. Malcolm Kirk Presentation, Grey County Association For Better Planning, dated July 29, 2000.