

Environmental Review Tribunal
Tribunal de l'environnement



ISSUE DATE: October 27, 2020

CASE NO.:

20-015

PROCEEDING COMMENCED UNDER section 140(1) of the *Environmental Protection Act*, R.S.O. 1990, c. E.19 and section 100(4) of the *Ontario Water Resources Act*, R.S.O. 1990, c. O.40;

Appellant: David Bartlett (File No. 20-015)
Appellant: James Bartlett (File No. 20-016)
Appellant: N.M. Bartlett Inc. (File No. 20-017)
Respondent: Director, Ministry of the Environment, Conservation and Parks
Subject of appeal: Order to perform work in regards to stormwater management and soil and sediment remediation
Reference No.: 5841-BCVQ4K-1
Property Address/Description: 4509 Bartlett Road
Municipality: Lincoln
Upper Tier: Regional Municipality of Niagara
ERT Case No.: 20-015
ERT Case Name: Bartlett v. Ontario (Environment, Conservation and Parks)

APPEARANCES:

Parties

N.M. Bartlett Inc., James Bartlett and David Bartlett

Director, Ministry of the Environment, Conservation and Parks

Counsel

Albert M. Engel

Nicholas Adamson

HEARD:

ADJUDICATOR(S):

October 20, 2020 by teleconference
Helen Jackson, Member

PROCEDURAL ORDER

BACKGROUND

[1] N.M. Bartlett Inc., James Bartlett and David Bartlett (“Appellants”) appealed Director’s Order No. 5841-BCVQ4K-1 (“Director’s Order”) to the Environmental Review Tribunal (“Tribunal”). The Director’s Order, issued by the Director, Ministry of the Environment, Conservation and Parks (“MECP”) under s. 140(1) of the *Environmental Protection Act* (“EPA”) and s. 100(4) of the *Ontario Water Resources Act* (“OWRA”), requires the Appellants to conduct stormwater management and soil/sediment remediation.

[2] Pursuant to s. 143(2) of the *EPA* and s. 102(2) of the *OWRA*, the Appellants requested a stay of the operation of the contested portions of the Director’s Order. Subsequently, the parties reached an agreement whereby the Director’s Order would be amended, and the Appellants would withdraw their stay request. The Tribunal heard submissions and directed the Director to amend Director’s Order No. 5841-BCVQ4K-1 (“Amended Order”) by Procedural Order issued April 9, 2020, amended April 27, 2020.

[3] On May 27, 2020, the Tribunal held a pre-hearing conference via video for the purposes of identifying parties, participants and presenters, scheduling a hearing, and addressing procedural matters for the hearing. No persons attended to request status. The Tribunal scheduled a two-week hearing commencing October 19, 2020. A Procedural Order was issued on June 8, 2020 that set out dates for the parties to exchange information in preparation for the hearing.

[4] Independently from the hearing process, the parties participated in Tribunal assisted mediation on August 19, 2020. As a result of the settlement negotiations that were initiated through mediation, the parties jointly requested that the hearing be postponed, and the exchange dates be vacated to allow the parties further time to resolve the remaining issues of disagreement.

[5] The Tribunal granted the request and directed the parties to attend a further teleconference on October 20, 2020, to advise the Tribunal whether settlement has been reached and to set procedural directions for either a settlement hearing or a contested hearing.

Teleconference of October 20, 2020

[6] At the teleconference call of October 20, 2020, the parties advised the Tribunal that there is one outstanding issue remaining, being a Delineation Plan. The MECF has provided comments to the Appellants on the proposed plan, which was submitted to the MECF on September 18, 2020. The Appellants are in the process of revising the plan based upon these comments. The parties anticipate that two months will be required to work through and agree upon the Delineation Plan. They requested an adjournment to a further teleconference, whereupon the parties would report upon their progress in reaching full settlement in this matter.

[7] In considering whether to grant the requested adjournment, the Tribunal looks to its *Rules of Practice and Practice Directions* (“Rules”) 104 and 105.

Motions for Adjournment

104. A Party seeking an adjournment shall provide evidence and submissions in support of the motion respecting:

- (a) whether the other Parties consent to the request and the date suggested for the commencement or continuation of the Hearing;
- (b) detailed reasons for the request, including, if appropriate, affidavit evidence;
- (c) evidence that the Party made all reasonable efforts to avoid the need for the adjournment request;
- (d) any urgency for the request because of the public interest;
- (e) any inconvenience to other Parties, Participants and Presenters due to the adjournment; and
- (f) any other factors relating to the considerations listed in Rule 105.

105. In deciding whether or not to grant a request for an adjournment, the Tribunal may consider:

- (a) the interests of the Parties in a full and fair Hearing;
- (b) the interests of others potentially affected by the matters before the Tribunal who, after notification of the Hearing, may have

- arranged their affairs in the expectation of observing or participating in the Hearing;
- (c) the integrity of the Tribunal's process;
 - (d) the circumstances giving rise to the need for an adjournment;
 - (e) the timeliness of the request for the adjournment;
 - (f) the position of the other Parties on the adjournment request;
 - (g) whether an adjournment will cause or contribute to any existing or potential risk of environmental harm;
 - (h) the consequences of an adjournment, including expenses to other Parties;
 - (i) the effect of an adjournment on Participants and Presenters;
 - (j) the public interest in the delivery of the Tribunal's services in a just, timely and cost effective manner; and
 - (k) whether the proceeding before the Tribunal is an appeal of a renewable energy approval under section 142.1 of the *Environmental Protection Act*.

[8] Considering the above, the Tribunal finds that it is appropriate to grant the request to adjourn to allow the parties sufficient time to fully settle this matter. The request is upon consent, and settlement of the remaining outstanding issue will resolve the appeals in a just, timely and cost-effective manner. The adjournment does not result in risk of environmental harm as the Appellants are subject to the Director's Order (as amended). The Tribunal finds that adjourning to a further teleconference is in the public interest.

[9] The Tribunal directs the parties to attend a further teleconference on **Tuesday, January 12, 2021**, to advise the Tribunal whether settlement has been reached and to set procedural directions for either a settlement hearing or a contested hearing.

ORDER

[10] The Tribunal orders that:

1. The matter is adjourned to a teleconference scheduled for **Tuesday, January 12, 2021, at 10 a.m.**, for the parties to advise the Tribunal whether settlement has been reached; and to set further procedural directions.

*Adjournment Granted
Procedural Directions Ordered*

"Helen Jackson"

HELEN JACKSON
MEMBER

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Environmental Review Tribunal

A constituent tribunal of Ontario Land Tribunals

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