

Environmental Review Tribunal
Tribunal de l'environnement



ISSUE DATE: December 14, 2020

CASE NO.: 19-013

PROCEEDING COMMENCED UNDER section 100(4) of the *Ontario Water Resources Act*, R.S.O. 1990, c. O.40

Appellant: Morriston Park Nursing Home Inc.
Respondent: Director, Ministry of the Environment, Conservation and Parks
Subject of appeal: Order to perform work in regards to the on-site septic system
Reference No.: 7040-B9JQUB-1
Property Address/Description: 7363 Calfass Road
Municipality: Township of Puslinch
Upper Tier: County of Wellington
ERT Case No.: 19-013
ERT Case Name: Morriston Park Nursing Home Inc. v. Ontario (Environment, Conservation and Parks)

APPEARANCES:

Parties

Counsel

Morriston Park Nursing Home Inc.

Peter Pickfield

Director, Ministry of the Environment, Conservation and Parks

Andrea Huckins

HEARD:
ADJUDICATOR(S):

September 25, 2020 by telephone conference call
Laurie Bruce, Member

ORDER

BACKGROUND

[1] Morriston Park Nursing Home Inc. (“Appellant”) operates a nursing home on a 10-hectare property near the Village of Morriston, in the Township of Puslinch (“Site”). On February 19, 2019, Michael Hindriks, a Senior Environmental Officer with the Ministry of the Environment, Conservation and Parks (“MECP”), issued Provincial Officer’s Order No. 7040-B9JQUB (“P.O. Order”) requiring the Appellant, by February 26, 2019, to retain a qualified person to carry out required work and, by March 8, 2019, to cease discharging raw sewage from the septic tanks into the leaching bed, to retain a licensed waste hauler to empty the septic tanks and pumping chamber on a regular basis and dispose of the sewage at an approved waste disposal site, to visually inspect the septic tanks and pumping chamber daily, and to retain all receipts and records.

[2] The Appellant requested a review of the P.O. Order. On February 28, 2019, Amy Shaw, Director with the MECP, issued the Director’s Order No. 7040-B9JQUB-1 (Director’s Order) varying the compliance date to March 8, 2019 for the Appellant to retain a qualified person and confirming the remainder of the P.O. Order.

[3] The Appellant appealed the Director’s Order to the Environmental Review Tribunal (“Tribunal”) in accordance with s. 100(4) of the *Ontario Water Resources Act* (“OWRA”).

[4] At a June 26, 2019 prehearing conference (“PHC”) held before a different Tribunal member, the Parties requested Tribunal-assisted mediation to resolve the issues under appeal. The Mediation led to an Interim Settlement Agreement that set out technical steps that both Parties agreed to undertake. This Interim Settlement Agreement, dated January 24, 2020, is attached as Appendix 1 to this Order.

SEPTEMBER 25, 2020 TELEPHONE CONFERENCE CALL

[5] On the September 25, 2020 telephone conference call (“TCC”), the Parties advised the Tribunal that the Ministry had been provided with a rehabilitation report and

has inspected the sewage system in accordance with the technical steps agreed to in the Interim Settlement Agreement. Once the rehabilitation report has been reviewed and accepted by the Ministry, the Parties will move to the next phase of the settlement, which involves operating and monitoring the system and leaching bed. The Parties will also initiate pre-submission consultation in advance of the Appellant's submission of a completed Environmental Compliance Approval application.

[6] A TCC has been set for **Friday, February 26, 2021** for the Parties to provide the Tribunal with an update and to confirm that the terms of the Interim Settlement Agreement continue to be fulfilled.

ORDER

[7] The Tribunal orders that a status update on the implementation of the Interim Settlement Agreement is set for **Friday, February 26, 2021 at 10 a.m.** This will be carried out by TCC, details of which will be provided by the Tribunal's Case Coordinator.

Status Update Scheduled

"Laurie Bruce"

LAURIE BRUCE
MEMBER

Appendix 1 - Interim Settlement Agreement

If there is an attachment referred to in this document,
please visit www.olt.gov.on.ca to view the attachment in PDF format.

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

ERT Case No.: 19-013

Appellant

MORRISTON PARK NURSING HOME INC.

v.

DIRECTOR, MINISTRY OF THE ENVIRONMENT CONSERVATION AND PARKS

Respondent

IN THE MATTER OF an appeal by Morriston Park Nursing Home Inc. for a hearing before the Environmental Review Tribunal pursuant to section 100 of the Ontario Water Resources Act, RSO 1990, c O14, as amended, regarding Order Number 7040-B9JQUB-1, issued by the Director, Ministry of Environment, Conservation and Parks, on February 28, 2019 under section 16.4(5) of the Ontario Water Resources Act, RSO 1990, c O40 as amended.

INTERIM SETTLEMENT AGREEMENT

(January 24, 2020)

1. Within two weeks of the execution of these interim minutes of settlement (“Interim Minutes”), or as soon thereafter (weather permitting), percolation testing of the onsite sewage system is to be completed at the Morriston Park facility.
2. Morriston Park will submit the results of the percolation testing, confirmation of the actual onsite septic tank volumes and the presence or absence of partition walls in the septic tanks to the Ministry no later than February 7, 2020. This information will be used to determine an appropriate maximum average daily flow rate to the leaching bed that will be permitted by the Ministry, until such time that subsequent ministry approval is granted to increase the average daily flow rate following successful rehabilitation of the leaching bed (see items #3-6 below)

3. Rehabilitation of the existing leaching bed can proceed upon the execution of the Interim Minutes and will be carried out as per Mr. Morlock's Interim Wastewater Servicing Plan dated December 31, 2018. Morriston Park agrees to provide a rehabilitation schedule to the Ministry in advance of any work taking place at the site. In addition, a minimum of 24 hours written notice will be provided prior to the start of the rehab work. Morriston Park will notify the Ministry upon completion of the rehabilitation work and prior to the implementation of the proposed performance monitoring program. The proposed performance monitoring program must include the installation of a flow meter with a data logger along with audible alarms to monitor daily flow rate to the leaching bed (or suitable alternative as agreed to by the Ministry).
4. Within four weeks of the completion of the rehabilitation work, Morriston Park will submit a final rehabilitation report, completed by their Consultant to the Ministry. The report will include findings of the rehabilitation, results of the specified performance monitoring program and any recommended modifications or upgrades being proposed for the system as a result (i.e. any modifications to the system to manage and monitor the approved maximum average daily flow rate to the leaching bed)
5. Following the Ministry's review of the final and complete rehabilitation report, and an inspection of the system by the Ministry, if satisfied, the Ministry will grant written approval to Morriston Park for the utilization of the reconditioned system. The Ministry will make best efforts to issue this written approval within two weeks of receipt by the Ministry of the final rehabilitation report. This written approval will list the maximum average daily dosing rate permitted to the leaching bed and any contingency measures required during this period (pump out etc).
6. Morriston Park may operate the reconditioned bed as outlined in the approval listed above for up to a maximum of one year.
7. The parties agree they will participate in a pre-submission consultation meeting within one month following the submission of the final rehabilitation report to the Ministry. The meeting should include Morriston Park staff and its Consultant, MECP District Engineer, Approvals Engineer, Technical Support Staff or any other required Ministry staff.
8. Morriston Park will submit a complete and thorough Environmental Compliance Approval ("ECA") application to the Environmental Approvals and Permissions Branch of the MECP to the Ministry within three months of submitting the final rehabilitation report to the Ministry. The ECA Application shall address all the items sets out in Jennifer Volpato's November 7, 2019 memo - condition IV a) to e).

9. Following the ECA Application submission, the District manager agrees to request prioritization from the Environmental Approvals and Permissions Branch to expedite the application approval process.
10. Morriston Park agrees to provide monthly reports as outlined in Jennifer Volpato's November 7, 2019 Memo- Condition VI with the possibility of reducing the monthly reporting requirement upon written consent of the Ministry.
11. Morriston Park staff will carry out daily visual inspections of the system and document the findings in a log that will be made available to the ministry upon request. If breakout or malfunction of the system results in any known or suspected impact to the environment, Morriston Park will immediately notify the Spills Action Centre by phone and the District Manager (in writing) and will immediately reduce the dosing rate to the bed as contemplated by Condition V of Jennifer Volpato's November 7, 2019 memo.
12. Within ten months from the commencement date of the operation of the rehabilitated system the parties will meet to discuss progress of the ECA application, function of the system and what next steps are required to bring the appeal proceedings to a conclusion.
13. The parties will jointly request an adjournment of the appeal proceedings to a prehearing TCC to be scheduled for a date within two months following the scheduled date of the meeting referenced in item 12 above.
14. The parties acknowledge and agree that this Agreement may be executed by their legal counsel, respectively, in counterpart, and if so executed, these Minutes shall be of force and effect as if executed by the parties themselves.

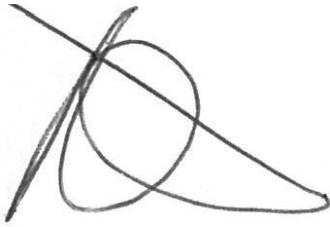
DIRECTOR, MINISTRY OF ENVIRONMENT CONSERVATION AND PARKS
By its legal Council:



Andrea Huckins on behalf of the Director

Date: January 24, 2020

MORRISTON PARK NURSING HOME INC.
By it Legal Council

A handwritten signature in black ink, consisting of a series of overlapping loops and a long horizontal stroke extending to the right.

Peter Pickfield on behalf of the Appellants

Date: January 24, 2020