

Environmental Review Tribunal
Tribunal de l'environnement



ISSUE DATE: January 22, 2021

CASE NOS.:

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):

January 12, 2021 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 on October 19, 2020.

[4] Independently from the hearing process, the parties participated in Tribunal assisted mediation. As a result of the settlement negotiations that were initiated through mediation, the hearing was adjourned to allow the parties further time to resolve the remaining issues of disagreement. A telephone conference call (“TCC”) was held on October 20, 2020, whereupon the parties advised the Tribunal that settlement was successful; however, the parties required further time to come to agreement on a

Delineation Plan. The parties requested and were granted an adjournment to a further TCC to continue to work through and hopefully agree upon a Delineation Plan.

TCC of January 12, 2021

[5] At the TCC of January 12, 2021, Mr. Adamson, counsel for the Director advised the Tribunal that the Director is not satisfied with the Delineation Plan proposed by the Appellants, and is of the view that further settlement discussions with respect to the Delineation Plan is not likely to be productive. Rather, counsel indicated that it is the MECP's intention to issue a new Provincial Officer's order which will provide more prescriptive detail regarding what is expected in a suitable Delineation Plan. Further, this new order will also require that the Appellants implement further measures to address discharges of DDT that are above the standard.

[6] Mr. Adamson indicated that he expects the MECP will issue the new order in about six weeks' time. He requested an adjournment of this appeal to a further status update TCC in about 10 weeks' time from now, to provide sufficient time for the Appellants to review the new order. The effect will be that the current appeal will be held in abeyance pending the possible appeal of the new order, at which time the existing appeal may be either settled or withdrawn.

[7] Counsel for the Appellants consented to the requested adjournment and the timing of a further TCC. On behalf of the Appellants, Mr. Engel indicated that the Appellants will continue to work on the Delineation Plan in an effort to address the Director's requirements and are continuing to work to try to resolve the issue related to discharge of DDT.

[8] In considering whether to grant the requested adjournment, the Tribunal looks to its *Rules of Practice and Practice Directions* Rules 104 and 105 that set out the factors that parties are to provide to the Tribunal when requesting an adjournment and the

factors that the Tribunal is to consider when determining whether to grant the requested adjournment.

[9] Considering the submissions of the parties, the Tribunal finds that it is appropriate to grant the request to adjourn to a further TCC in about 10 weeks' time. This will allow the MECP sufficient time to prepare and issue a new order that is more prescriptive with respect to the Delineation Plan required, and to order additional interim measures. The Appellants consent to the adjournment of the appeal to permit time for the new order to be issued. The timing of the further TCC will provide the Appellants sufficient time to determine their response to the new order. The adjournment does not result in any additional risk of environmental harm as the Appellants are currently subject to the Director's Order (as amended). The Tribunal finds that adjourning to a further TCC is in the public interest, as it will provide more direction to the Appellants and therefore be more likely to result in resolution of the environmental concerns that are at the root of the orders issued by the MECP and hence resolution of the appeal that is before the Tribunal.

[10] The Tribunal directs the parties to attend a further TCC on **Wednesday, March 31, 2021** to provide the Tribunal with an update on the status of any new order by the MECP in relation to this matter, and the consequent status of the current appeal. The TCC will address whether a settlement hearing or a withdrawal of the current appeal is contemplated; or whether a contested hearing is required.

ORDER

[11] The Tribunal orders that:

1. The matter is adjourned to a telephone conference call scheduled for **Wednesday, March 31, 2021, at 10 a.m.** for the parties to provide the Tribunal with a status update on this matter; and to set further procedural directions.

*Adjournments 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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