

Environmental Review Tribunal
Tribunal de l'environnement



ISSUE DATE: April 01, 2021

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
5841-BCVQ4K-1
Reference No.:
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

Jennifer Danahy

Nicholas Adamson

HEARD:

ADJUDICATOR(S):

March 31, 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 an agreement on a Delineation Plan. The parties requested and were granted an

adjournment to a further TCC on January 12, 2021 to allow time to continue to work through and hopefully agree upon a Delineation Plan.

[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. He 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. The Director requested an adjournment to a further TCC to allow time for the new draft order to be issued and for the Appellants to review the draft order. The Appellants agreed with the approach and indicated they would continue to work towards resolving the issues with respect to the discharge of DDT. The Tribunal granted an adjournment to a further TCC on March 31, 2021, for the parties 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 appeals.

TCC of March 31, 2021

[6] At the TCC of March 31, 2021, Mr. Adamson indicated that the draft Provincial Officer's order was delayed and was only provided to the Appellants on the day previous to this TCC, on March 30, 2021. The delay was due in part to a new Provincial Officer being assigned to the matter.

[7] The Appellants have recently retained new counsel, Jennifer Danahy. Ms. Danahy indicated that she has had a cursory review of the new draft Provincial Officer's order provided just yesterday, and will need some time to review background to this matter and the details of the new draft order, and to obtain instruction from her clients with respect to the new draft order.

[8] The parties indicated that it would be helpful to adjourn to allow time to review material, discuss, and determine a path forward for the resolution of the appeals. The

parties requested an adjournment of about two months for this to occur, whereupon they would report on their progress.

[9] 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.

[10] Considering the submissions of the parties, the Tribunal finds that it is appropriate to grant the request to adjourn to a further TCC. This will allow the parties the opportunity to discuss a way forward with the draft Provincial Officer's order as an outline of the remaining issues from the MECP's perspective, and provide Ms. Danahy sufficient time to review the background to these appeals and determine a 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 appeals that are before the Tribunal.

[11] The Tribunal directs the parties to attend a further TCC on **Wednesday, June 16, 2021** to provide the Tribunal with an update on the parties' proposed path forward for the resolution of these appeals. 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

[12] The Tribunal orders that:

1. The matter is adjourned to a telephone conference call scheduled for **Wednesday, June 16, 2021, at 9 a.m.** for the parties to provide the Tribunal with a status update on this matter; and to set further procedural directions. The Case Coordinator will provide the call-in details.

*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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