

TOWN OF INNISFIL
OPERATIONAL SERVICES

Court File No. 04-B7552

APR 04 2005

RECEIVED

IN THE COURT OF THE
DRAINAGE REFEREE OF ONTARIO

REFEREE)
)
O'BRIEN)
)
), the 3rd day of ~~April~~ ^{March}, 2005.

BETWEEN:

Boris Horodynsky, Paul Horodynsky, Horodynsky Farms Inc., Lawrence Kwok,
Elaine Kwok, Easley Produce Ontario Inc., Norman Tasca, Joeseeph Tasca, Luigi
Tasca, Norma Tasca, L & L Gardens Inc., Joseph Cestaric, Sandra Cestaric, Imre
Mora, Heidi Mora, and Innisfil Gardens Inc.

Applicants

- and -

Town of Innisfil and The Nottawasaga Valley Conservation Authority

Respondents

ORDER

THIS APPLICATION proceeded on November 3, 4, and 5, 2004, March 29, 30
and 2005, at the Court House at 114 Worsely Street, Barrie, Ontario, in the presence
of counsel for all parties

ON READING, the Notice of Application, the prior orders of this Honourable
court and the materials filed in this proceeding **AND UPON HEARING** the evidence,
including the evidence of concerned landowners who were given notice of these
proceedings;

AND UPON BEING ADVISED THAT the respondent Town of Innisfil consents to the terms of this order, without any admission of liability and, that the Applicants consent to the terms of this order,

AND UPON BEING ADVISED that that Applicants acknowledge that prior to the commencement of these proceedings, they never made a written request to the Town that specifically asked that an engineer be appointed pursuant to section 78 of the Drainage Act, R.S.O. 1990, c. D-17 (the "Act"), however this is not an admission that they did not request repairs and/or improvements that would have required the appointment of an engineer under section 78 of the Act

AND UPON BEING ADVISED THAT the respondent Nottawasaga Valley Conservation Authority does not oppose the terms of this order, except as they relate to its claim for costs to date in these proceedings;

1. **THIS COURT ORDERS THAT** the Town of Innisfil forthwith appoint an engineer (the "Engineer") acceptable to the applicants, pursuant to section 78 of the Drainage Act, R.S.O. 1990, c. D-17 (the "Act"), in order to carry out the activities and reports contemplated by this Order. The Engineer is being appointed for the purpose of preparing and completing preliminary and final reports under the Act, in order to alter, improve and/or extend, the South Innisfil Creek Drain (the "Drain"), and in particular to address the concerns with flooding of the area known as the market garden farming area which is adjacent to the Drain .

2. **THIS COURT ORDERS THAT** within thirty (30) days of being appointed, the Engineer shall serve a report to the Referee setting out a proposed schedule for undertaking and completing the preliminary report contemplated by this Order. The report shall be served on counsel for each of the parties, and counsel for the respondent, Town of Innisfil (the "Town") shall then forward a copy to the Referee and file it with this Honourable Court.

3. **THIS COURT ORDERS** that if any party does not agree with the proposed schedule, it shall be reviewed and approved following a hearing before the Referee.

4. **THIS COURT ORDERS** that, upon request, the parties provide the Engineer with access to all relevant documents and records in their possession which might assist the Engineer in carrying out the duties and responsibilities contemplated by this order. The court also requests that the Engineer consider the following in the course of preparing both the preliminary and final reports provided for by this Order:

(a) the incorporation and repair/improvement, as required, of the channel joining the Drain and the Innisfil Creek and Nottawasaga River Drainage Works;

(b) the repair and improvement of the Drain to provide the required capacity;

(c) the addition of one or more storm water management facilities to the Drain;

- (d) the incorporation and improvement, as required, of the original outlet (Branch A of the Drain) of the Hny dczak Drain;
- (d) the preparation of complete specifications for construction and future maintenance of all components of the Drain;
- (e) the incorporation, improvement, replacement or removal of all crossings on the Drain, and the necessity of additional crossings;
- (f) the preparation of complete assessment schedules for construction and maintenance of all components of the Drain;
- (g) the requirements of the Nottawasaga Valley Conservation Authority ("NVCA") and the Department of Fisheries and Oceans.

5. **THIS COURT ORDERS** that in the course of preparing the preliminary report, the Engineer shall make all reasonable efforts to consult with interested parties, and shall conduct an on site meeting for all affected land owners and all affected agencies, as required by the Act.

6. **THIS COURT ORDERS** that following completion of the preliminary report, the Engineer shall forward copies to counsel for all the parties. The Town shall then forthwith obtain a hearing date from this Honourable Court for a review of the preliminary report. The Town shall, within fourteen (14) days of obtaining the hearing date, provide notice of the preliminary report and the hearing date by sending notice to all landowners in the assessed area, by regular mail. The notice shall provide a brief description of the preliminary report, the date and location of the hearing, and will

advise that copies of the preliminary report are available from the Town's Clerk, upon request, and that the preliminary report also is available on the Town's website.

7. **THIS COURT ORDERS** that at the hearing to review the preliminary report, the Engineer shall provide a proposed schedule for then proceeding with and completing the Final Report, which schedule shall be reviewed and approved by this Honourable Court.

8. **THIS COURT ORDERS** that, pending completion of the final report, the Town shall conduct semi-annual inspections of the Drain and carry out any required maintenance or repairs identified as a result of such inspections. This is in addition to any maintenance or repairs which may be identified and required as a result of a request being made by any landowner.

9. **THIS COURT ORDERS AND DECLARES** that, subject to the right of any landowner to dispute this finding, each of the following constitute obstructions under the Act, and shall be removed as provided for in this Order:

(a) the dam structure immediately up stream of the field crossing on the property of the Applicant, Joe Cestarc (the "Cestarc Dam");

(b) the truck frame crossing, which is the first field crossing upstream from the Cestarc Dam,

(c) the timber bridge crossing situated in the south half of lot 8, concession II, in the Town of Innisfil

(d) the beams and pipes adjacent to and/or suspended from the cart path crossing structures, located on the golf course property shall be removed or relaid to be at or above the top of ditch banks, or the level of the crossing decks.

10. **THIS COURT ORDERS** that the entrance conditions at the inlet to the service road culverts shall be improved by:

- (a) removal of the island material above the low water level;
- (b) subject to any objection from the owner, removal of the four panels of fence immediately upstream of the service road culverts, and if the owner objects a satisfactory improvement must be undertaken;
- (c) removal of accumulated sediment and vegetation in the overflow channel immediately upstream of the higher service road culverts, and above the low water level.

The Town shall complete plans to carry out this work and submit them with a completed application for work permit to the Nottawasaga Valley Conservation Area ("NVCA") on or before April 30, 2005. Subject to any approvals which require the direct involvement of the Department of Fisheries and Oceans, the NVCA shall process application on or before May 15, 2005. If NVCA provides the required permit on or before May 15, 2005, then the Town shall carry out and complete the work between June 15 and 30, 2005.

The Town shall be entitled to include the costs of these repairs as part of any levy for maintenance and repair with respect to the Drain can be assessed against the Drain.

11. **THIS COURT ORDERS** that for all obstructions, the Town shall send notice to the registered owner of the obstruction providing them with 30 days to remove the obstruction or bring a motion to this Honourable Court disputing the finding that they are obstructions, failing which they shall be removed by the Town.

12. **THIS COURT ORDERS** that any relief sought with respect to claims for damages, including declaratory relief with respect to liability for damages, shall be left to be determined in Superior Court of Justice, court file 04-CV-278045, and shall not be dealt with further in these proceedings unless the issue of damages is referred back to this Honourable Court in accordance with the provisions of section 120 of the Act.

13. **THIS COURT ORDERS** that the Town shall pay the Applicants' their costs of this proceeding from August 17, 2004 up to and including the date of this order, on a substantial indemnity basis, as agreed to or fixed by the Referee. The Town shall be entitled to include such costs as part of the costs of the Engineer's report provided for in this order.

14. **THIS COURT ORDERS** that the Applicants shall provide notice of this order to the three landowners who gave evidence, being Iris Curtis, Peter Kubas and Rebecca Cooper, at the addresses they gave in evidence, by sending a copy of this order to them by ordinary mail.

15. **THIS COURT ORDERS** that any party may seek further directions or assistance of this court upon motion to the Referee.

16. **THIS COURT ORDERS** that the issue of costs payable to NVCA, if any, shall be and are hereby reserved to be determined following the submission of a bill of costs by counsel for NVCA.



DELBERT O'BRIEN, Q.C.

Entered at	10/17/2015
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BORIS HORODYNSKY ET AL

-and-

TOWN OF INNISFIL ET AL

Applicants

Respondents

Court File No. 04-B7552

IN THE COURT OF THE DRAINAGE REFEREE

Proceeding commenced at BARRIE

ORDER

GRAHAM, WILSON AND GREEN
Barristers and Solicitors
190 Cundles Road East
Suite 107, P.O. Box 987
Barrie, Ontario, L4M 5E1

MARY E. VALLEE
(705) 737-1811
(705) 737-5390 - fax

Solicitors for the Respondent
Town of Innisfil