

File No. CA 006-11

M. Orr )  
Deputy Mining and Lands Commissioner )

Tuesday, the 5th day  
of June, 2012.

**THE CONSERVATION AUTHORITIES ACT**

**IN THE MATTER OF**

An appeal to the Minister under subsection 28(15) of the **Conservation Authorities Act** against the refusal to grant permission for development through the construction of a single family dwelling on the east part of Lot 22, Concession 1, Township of Amaranth, municipally known as 555106 Mono-Amaranth Townline (the “Proposed Building”), in the Town of Shelburne, County of Dufferin, Province of Ontario;

**AND IN THE MATTER OF**

Ontario Regulation 172/06.

**B E T W E E N:**

ALEX GILMOR AND TANIA GILMOR  
Appellants

- and -

NOTTAWASAGA VALLEY CONSERVATION AUTHORITY  
Respondent

- and -

THE TOWNSHIP OF AMARANTH  
Applicant for Party Status  
(Amended June 5, 2012)

**ORDER**

**WHEREAS THIS APPEAL** to the Minister of Natural Resources was received by the tribunal on the 2nd day of September, 2011, having been assigned to the Mining and Lands Commissioner (“the tribunal”) by virtue of Ontario Regulation 795/90;

**AND WHEREAS** a preliminary motion was considered in this matter by way of written materials submitted by the appellants and the applicant for party status, the respondent choosing to not take a position on the matter;

1. **IT IS ORDERED** that the request for party status be and is hereby granted.

2. **IT IS FURTHER ORDERED** that no costs shall be payable by either party to this matter.

**DATED** this 5th day of June, 2012.

Original signed by M. Orr

M. Orr  
DEPUTY MINING AND LANDS COMMISSIONER

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**REASONS**

This Preliminary Motion was heard by way of written submissions filed by Mr. Aradki Bouchelev, counsel for the appellants and by Mr. David N. Germain, counsel for the applicant for party status. Mr. Kenneth C. Hill, counsel for the Respondent, did not file materials and chose to not take a position on this matter.

## **Introduction and Overview of Facts Not in Dispute**

The appellants own property in the Township of Amaranth and the location of the property brings it under the jurisdiction of the Nottawasaga Valley Conservation Authority (the “NVCA”). The appellants applied to the NVCA in 2009 to construct a single family home on the property. They commenced construction prior to obtaining permission from the NVCA which made a formal decision on July 22, 2011. They appealed the decision to the Minister of Natural Resources in a letter dated August 19, 2011. The appellants are also the respondents in an action filed in the Ontario Superior Court of Justice by the County of Dufferin Chief Building Official, pursuant to section 38 of the **Building Code Act**.

The Minister referred the appeal to this tribunal on September 2, 2011. The applicant for party status, the Township of Amaranth (the “Township”) subsequently filed a motion applying for party status claiming that it had a “direct and specific interest” in the matter. The appellants and the applicant agreed to file written submissions to the tribunal for purposes of the motion.

## **Analysis**

### **(a) Statutory Context**

The **Conservation Authorities Act** provides the legislative context for the establishment of conservation authorities within watersheds in the province. An authority as such has the powers set out in the **Act**. The objects of every authority are to “establish and undertake, in the area over which it has jurisdiction, a program designed to further the conservation, restoration, development and management of natural resources other than gas, oil, coal and minerals.”

Section 28 of the **Act** is applicable to this matter. By this section, authorities are allowed to make regulations (subject to approval of the Minister) for the areas under their jurisdiction that deal with a variety of activities that might affect the objects mentioned above. For example, regulations might be made that prohibit, regulate or require the permission of the authority for development if, in the opinion of the authority, the control of flooding, erosion, dynamic beaches or pollution or the conservation of land may be affected by the development. The regulations set out the standards that are to be met and the regulations themselves are enforced by the authorities.

An appeal is provided where after a hearing permission is refused or where the applicant objects to the conditions that have been imposed by the authority on the permission it grants. The appeal is made to the Minister who may refuse the permission or grant the permission with or without conditions. The Mining and Lands Commissioner has been assigned the powers and duties of the Minister of Natural Resources for the purpose of hearing and determining appeals under subsection 28(15) of the **Conservation Authorities Act** by Ontario Regulation 571/00.

**(b) The Issue**

Should the Township of Amaranth be granted party status?

**(c) The Parties Positions**

The Township states that it is compelled to seek party status to protect interests that it claims have come under attack by the appellants of the NVCA's decision. The appellants have pointed to the Township's road work as the source for flooding issues that in turn, figured some way into the NVCA's decision to deny permission to build. The Township is concerned that there may be findings at a hearing before this tribunal that could lead to culpability on its part in some other venue. It claims to have a "vital and legitimate interest" in the issue of whether road works undertaken by the Township have had a "negative impact on flooding on the Gilmor lands".

The appellants to the main hearing say that the Township has no role to play in a hearing dealing with their request to have permission granted by the tribunal. They also seek to have certain email correspondence struck from the Township's motion materials.

**(d) Application of the law to the Arguments and Conclusions**

The hearing before the tribunal is a hearing *de novo*, meaning a new hearing. The tribunal will first and foremost be asked to grant permission by one party (the appellant) and to deny permission by the other (the NVCA). Referring to the documents filed by the Township for the Motion, which included a copy of the NVCA's Notice of Decision, the tribunal will hear evidence from the NVCA concerning its guidelines, the Provincial Policy Statement and its mandate as it applies to this appeal. On a more specific level, the tribunal can expect to hear about features known as "floodways" and "floodplains". Of course, this does not in any way place a limit on the NVCA's case, but it gives some idea as to what the tribunal will possibly hear. It appears that permission was denied because (amongst other things), the "location of the proposed works is within the floodway which is contrary to direction within the NVCA Planning and Regulation Guidelines (2009)." Essentially, the NVCA is concerned about "the control of flooding and conservation of land." It should be noted that the terms "floodway" and "floodplain" are common planning and conservation authority words. The tribunal notes that conservation authorities and municipalities are sometimes occupied in identifying and mapping these features as part of their planning efforts.

This sets the stage for what the tribunal can expect to hear on the appeal. The appellant of course will attempt to persuade the tribunal (with whatever evidence it intends to file) that its request for the granting of permission complies with all relevant policies and guidelines.

What is the Township's interest and is it relevant to the appeal of the NVCA's decision?

The Township's submissions on this point are contained in a letter from its counsel. According to Mr. Germain, the appellants of the NVCA decision have "asserted that road works undertaken by the Township have had a negative impact on flooding on the [their] lands." He states that the issue is one in which the Township has a "vital and legitimate" interest; that it "raises questions of fact that are common to both the Township's interest and to the inquiry that the Mining and Lands Commissioner...is required to undertake under cl. 28(1)(c) of the **Conservation Authorities Act**. The Township can...make a useful contribution to the determination of this issue." He also quotes the appellants' counsel's appeal letter to the Minister wherein a claim was made that the NVCA was biased, among other things. Mr. Germain makes reference to the allegation that the NVCA allowed certain road works to be carried out by the Township without requiring any studies. Mr. Germain believes that "it is reasonable to anticipate that the Gilmors will ask the MLC to make findings of fact regarding the Township's road works and whether or not they have had a negative impact on flooding on the Gilmors' lands." The tribunal notes that included in the Township materials is at least one document ("Water's Edge – Flood Impact Assessment March 11, 2011) that was referred to by the NVCA in a letter dated April 18, 2011 (also included) wherein the NVCA commented on a proposed zoning by-law amendment for the appellant's property. The NVCA letter is useful as it highlights some of the policies that have confronted the appellants in their quest to seek permission to build in an area that is located in a floodplain. But both documents are useful in that they draw attention to the Township's road works and indicate that the road works do figure into calculations that may or may not be useful to the tribunal.

The law regarding the question of party status being granted to others not directly connected to the original application has been the subject of previous decisions by this tribunal. The Township has called upon the tribunal to apply the test set out in the case of *Donald Bye and the Otonabee Region Conservation Authority* (tribunal file CC 1357, November 19, 1993, unreported) wherein the City of Peterborough was found to have a "genuine interest" in the issue of whether the then Wetlands Policy Statement was binding on conservation authorities and the tribunal.

Do the Township's concerns have any connection with the question that will be answered by the tribunal – namely, does the proposed development comply with the applicable NVCA policies and guidelines? Does the Township have a "vital or legitimate interest" in the appeal? The Township has not stated that it has taken up a position either in favour of the proposed development or in objection to it. What it has to offer is evidence regarding its road works which the tribunal may find useful – or not. The Township says that it has an interest "in the question of flooding", and at this stage, the tribunal agrees that the question of flooding is one that it will have to understand in order to make an informed decision.

The tribunal does not find any need to strike out portions of the Township's materials. Evidence is weighed for relevance and the sections identified by the respondents to the Township's motion and to which they objected had no bearing on this decision.

The tribunal will not be on a fact-finding mission to determine whether the Gilmor application for permission has been affected in a negative way by anything the Township has or has not done. The tribunal has no interest in knowing whether the road works were legal or illegal and no interest in knowing whether the NVCA approved the road works or not. All of those issues belong in another forum, not before this tribunal. The tribunal notes with some

irritation that the letter of appeal to the Minister was brimming with such phrases as “demonstrated bias”, “false and misleading information”, “procedural violations” and “prejudice” when describing the appellants’ experiences with the NVCA. The tribunal wishes to make it absolutely clear that the hearing will not be a forum for accusations of this nature.

The application of the Township of Amaranth for party status will be granted.

There will be no costs to either party in this motion.