

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE)
JUSTICE TZIMAS) MONDAY , THE 23RD DAY
OF FEBRUARY, 2015

B E T W E E N:

THE CORPORATION OF THE TOWNSHIP OF AMARANTH and
THE CORPORATION OF THE COUNTY OF DUFFERIN

Applicants

- and -

MARC BOISVENUE and MANON CHARETTE

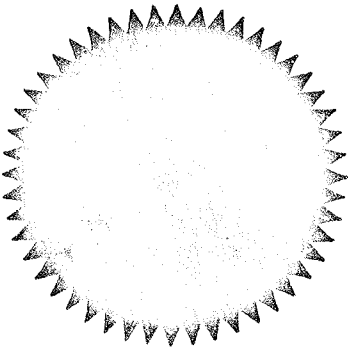
Respondents

ORDER

THIS APPLICATION, made by the Applicants, for an Order for injunctive and other relief disposing and determining this Application was heard this day at the Court House, 10 Louisa Street, Orangeville, Ontario, L9W 3P9;

ON hearing from Counsel for the Applicants and on reading the Consent of the parties to this Order;

1. THIS COURT ORDERS that a permanent injunction is granted prohibiting and restraining the Respondents and/or their agents from importing, placing and/or depositing Fill (being any type of fill material deposited or placed



on lands and includes soil, earth, topsoil, loam, subsoil, clay, sand, gravel, stone, concrete, peat, sod or turf either singly or in combination) on the lands owned by the Respondents and from carrying on grading, (save and except for the ploughing of furrows and the application of permissible fertilizers for the cultivation of crops), on the lands owned by the Respondents, which lands are legally described as the East Half of Lot 21, Concession 3 in the Township of Amaranth, and as are more particularly described in the Parcel Register for PIN 34052-0024 (LT) in the Land Registry Office No. 7 for the County of Dufferin, and with a municipal address of 475056 County Road 11, without express written permission from the Township of Amaranth;

2. THIS COURT FURTHER ORDERS that a permanent injunction is granted prohibiting and restraining the Respondents and/or their agents from importing, placing and/or depositing Fill (being any type of fill material deposited or placed on lands and includes soil, earth, topsoil, loam, subsoil, clay, sand, gravel, stone, concrete, peat, sod or turf either singly or in combination) on lands owned by the County and from grading lands owned by the County, without express written permission from the County of Dufferin;

3. THIS COURT FURTHER ORDERS that the Respondents shall comply with the terms, conditions and obligations set out in Schedule "A" attached to this Order;

4. THIS COURT FURTHER ORDERS that the Respondents shall reimburse the Applicant, the Township of Amaranth, its engineering costs in the amount of \$9,234.29 on or before March 31, 2015;

5. THIS COURT FURTHER ORDERS that the Respondents shall pay legal costs in the amount of \$20,000.00 to the Applicants, which payments shall be made in two equal installments of \$10,000 each, the first on or before May 15, 2015 and the second on or before June 12, 2015.

E. Ria Zuma J.

ENTERED AT ORANGEVILLE
in Book No. 1
as Document No. 94
on Feb 23 2015
by <u>COAK</u>

Schedule "A"

1. The following words used in Schedule "A" shall have the following meanings:

"Fill" means: "any type of fill material deposited or placed on lands and includes soil, earth, topsoil, loam, subsoil, clay, sand, gravel, stone, concrete, peat, sod or turf either singly or in combination;"

"Respondents' Property" means: "the lands legally described as the East Half of Lot 21, Concession 3 in the Township of Amaranth, and as are more particularly described in the Parcel Register for PIN 34052-0024 (LT) in the Land Registry Office No. 7 for the County of Dufferin, and with a municipal address of 475056 County Road 11;"

"Burnsides" means: "R.J. Burnsides and Associates Limited, being the Township of Amaranth Engineers, and for the purposes of Schedule "A" are acting as agents of the Township of Amaranth and the County of Dufferin and are therefore authorized to provide express written permission for any Fill activities or grading required to fulfill the terms and obligations of Schedule "A" and the Court Order."

2. The Respondents shall meet with Burnsides to review a Work Plan including a Construction Schedule in order to ensure that the required obligations are completed as quickly and as cost effectively as possible.
3. The Respondents agree to work cooperatively with Burnsides and the Respondents further agree that they shall carry out their obligations under Schedule "A" in a diligent manner, including having the appropriate equipment and manpower on site as per the Work Plan including meeting the Construction Schedule.
4. The Respondents shall make best efforts to obtain copies of all way bills and produce same to Burnsides for Fill already deposited on the Respondents' Property. Such copies shall be produced on or before March 31, 2015.
5. Burnsides shall carry out a visual inspection of the Respondents' Property to determine the amount of surface debris (asphalt, plastics). The Respondents shall remove such debris to Burnsides' satisfaction.

6. Burnsides shall take such Fill samples, as it deems in its sole professional judgement are necessary, from the Respondents' Property and have such Fill tested to make an assessment as to whether or not the Fill is clean. The standard for determining whether or not the Fill is clean is whether or not the Fill meets the standards as set out in Table 1 of the Ministry of Environment Guideline entitled "Soil, Ground Water and Sediment Standards for Use Under Part XV.1 of the Environmental Protection Act." If it is determined in the professional engineering judgement of Burnsides that the Fill is clean, then all or the majority of the Fill may remain on the Respondents' Property, subject to any grading difficulties. If, instead, it is determined by Burnsides in its professional engineering judgement that the Fill is not clean, then the Respondents shall be required to remove parts or all of the Fill as may be directed by Burnsides and to dispose of such Fill legally elsewhere at the Respondents' cost. In these circumstances, such further sampling and testing shall then be carried out by Burnsides to confirm in Burnsides' professional judgement that the Respondents' Property now meet the standards as set out in the applicable Table 1.
7. Burnsides shall determine the appropriate grading of the Respondents' Lands to ensure that stormwater is handled properly and that any nuisance impacts on the neighbouring lands are eliminated. Should there be excess Fill that cannot be appropriately graded, then the Respondents shall be required to remove the excess Fill as may be directed by Burnsides and to dispose of such Fill legally elsewhere at the Respondents' cost. Grading shall be carried out by the Respondents and/or agents of the Respondents only as directed by Burnsides. No grading activities shall occur on the Respondents' Lands without Burnsides authorizing the grading and without Burnsides being available to be on site for such grading activities, should Burnsides deem it necessary for it to attend to supervise such grading activities. Burnsides shall make such inspections of the grading as Burnsides sees fit and the Respondents shall follow any directives issued by Burnsides throughout. Any additional topsoil required to finish the grading shall be as determined by Burnsides, and shall be brought onto the Respondents' Property and graded by the Respondents at the Respondents' cost, and as directed and supervised by Burnsides. All seeding as needed shall be determined by Burnsides and shall be carried out by the Respondents

under Burnsidés' direction and supervision at the Respondents' cost.

8. The Respondents shall pay for the costs of Burnsidés' engineering services, which services are as described in Schedule "A". The Respondents shall deposit the amount of \$15,000.00 with the Township of Amaranth on or before March 7, 2015. The deposit shall be applied against Burnsidés' invoices for the engineering services, with any remainder of the deposit to be returned to the Respondents upon the completion of the obligations contained within Schedule "A". It is acknowledged, that subject to the Respondents complying with their obligations under paragraphs 2 and 3 of Schedule "A", that the cost of the Burnsidés engineering services as described herein that the Respondents are liable for is limited to \$15,000.00. The Township of Amaranth and/or County of Dufferin shall provide to the Respondents copies of all Burnsidés accounts paid from the \$15,000.00 deposit when received. It is noted that the amounts payable in the Court Order under paragraph 5 of said Order are an additional amount of monies to be paid by the Respondents to the Township of Amaranth.
9. The Respondents, at their own cost, will fix, regrade and restore any portions of the County of Dufferin Lands that were damaged or otherwise altered by the Fill activities and/or grading carried out by the Respondents, as the County of Dufferin directs, through Burnsidés as the agents for the County of Dufferin. If there is a dispute as to the extent of the restoration required owing to boundary line issues, then the Respondents shall be required to pay 50% of the cost of any survey carried out to resolve such dispute. Should a survey be so required, the Respondents shall pay its share of the costs within 30 days of the County of Dufferin providing a copy of the survey invoice. It is acknowledged the cost of the portion of the survey that the Respondents shall be required to pay for is limited to \$950.00 together with 50% of disbursements and applicable HST.
10. In satisfying their obligations under this Schedule, the Respondents are not permitted to engage the services of any agent, operator, company or other legal entity who had been involved in the illegal Fill activities and/or grading giving rise to this Court Application (File No. 210/14). To ensure compliance with this restriction, any agent, operator, company or other legal entity engaged by the Respondents

for the purposes of satisfying any obligation under this Schedule is subject to approval by the Township of Amaranth and the County of Dufferin.

11. The obligations and works set out in Schedule "A" shall be carried out in a timely manner by the Respondents and shall be completed by no later than June 30, 2015. This completion deadline may be extended in writing by Burnsides, which deadline shall then govern, should conditions outside the control of the Respondents so warrant.

ONTARIO

SUPERIOR COURT OF JUSTICE

Proceeding Commenced at Orangeville

ORDER

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