

CITY OF HAMILTON
Proposed Appellant
(Moving Party)

and

2417985 ONTARIO INC. & 2417972 ONTARIO INC.
Proposed Respondents
(Responding Parties)

Page 1

Feb 23 / 2021

Court File No. DC 366-20

*For City of Hamilton : S. Chisholm
For Respondent : S. Snider*

ONTARIO
SUPERIOR COURT OF JUSTICE
(DIVISIONAL COURT)

Proceeding commenced at HAMILTON

The test for leave to be granted is for the City to establish

MOTION RECORD OF THE MOVING PARTY,
CITY OF HAMILTON

(1) the issue of the City's ability to monitor, inspect and enforce substandard performance of on-site sewage systems is of sufficient importance to warrant attention of Divisional Court and

CITY OF HAMILTON
Legal Services Division
Mailing Address:
71 Main Street West
Hamilton ON L8P 4Y5

Office Address (Courier/Personal Service):
50 Main Street East, 5th Floor
Hamilton ON L8N 1E9

(2) do there some reason to doubt the correctness of the decision of the LPAT in determining ~~the correctness~~ that the performance of tertiary septic systems are enforceable under the Ontario Building Code - See Vaughan (City) v. Rizmi

Stephen Chisholm (LSO #46571V)
Stephen.Chisholm@hamilton.ca

Tel: (905) 546-2424, ext. 3663
Fax: (905) 546-4370

Lawyer for the Moving Party, City of Hamilton

Holdingof Ltd · 2003 Carswell

p. 2

Regarding correctness, in my opinion, the City is simply making the ^{same} submission that was dealt with by evidence outlined in the decision of member B.

Taylor, May 29, 2019, under LPA129170858 (Decision) and affirmed by Local Planning Appeal Tribunal (LPAT) - April 9, 2020 (Review Decision). ^{B. Taylor} ~~which~~ concluded, after considering evidence of Ms. Egan (expert for the respondents) - see ~~Decision~~ decision at paras 86-88 - and concluded ~~that~~ at para 120 of the Decision.

[120] Thus, the Tribunal clearly prefers the evidence of the Applicants' experts and finds that the proposed on-site sewage system will achieve the appropriate nitrate levels

at the property boundaries, will enable a more compact and efficient development proposal and with the proposed conditions of approval as set out in Exhibit 6B will require mandatory testing at the expense of the owner and will be enforceable.

I am not convinced that there were any errors in law made in either the Decision or the Review Decision. There is no "convincing or compelling" justification to grant leave to appeal. - see Citizens Coalition of Greater Sud. Erie v Niagara RM

[7.212]

Regarding sufficient importance to warrant
the attention of the Divisional County
as pointed out by B Taylor in
the original decision at paras
109, 110.

[109] The consideration of advanced treatment systems or tertiary treatment systems
is not unique to this appeal.

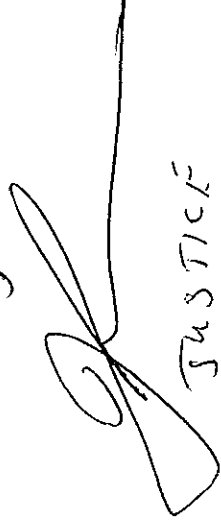
[110] In fact, they have been considered in a number of cases dating back about 20
years and have been used in subdivisions with conditions of approval. Below are a
number of cases that have been reported.

A number of cases have been referred to by B. Taylor.

Accordingly (There is not sufficient
importance) to grant leave to appeal to the
In the result Divisional Court.

In the result, the City's application
for leave to appeal is dismissed.
Costs are awarded to the respondents.

Costs are awarded to the respondents
to be paid by the City forthwith
on a partial indemnity
basis fixed at \$23,000.



JUSTICE
SKARICA

Feb 23 / 2021

For City of Hamilton: S. Chisholm

For Respondent: S. Snider

The test for leave to be granted is for the City to establish:

- (1) The issue of the City's ability to monitor, inspect and enforce substandard performance of on-site sewage systems is of sufficient importance to warrant attention of Divisional Court, and
- (2) Is there some reason to doubt the correctness of the decision of the LPAT in determining that the performance of tertiary septic systems are enforceable under the Ontario Building Code – see *Vaughan (City) v. Rizmii Holdings Ltd.*

Regarding correctness, in my opinion, the City is simply making the same submission that was dealt with by evidence outlined in the decision of member B. Taylor, May 29, 2019, under LPAT PL9170858 ("Decision") and affirmed by Local Planning Appeal Tribunal (LPAT) – April 9, 2020 ("Review Decision"). B. Taylor concluded, after considering evidence of Ms. Egan (expert for the respondents), see Decision at paras 86-88 – and concluded at para 120 of the Decision:

[120] Thus, the Tribunal clearly prefers the evidence of the Applicant's experts and finds that the proposed on-site sewage system will achieve the appropriate nitrate levels at the property boundaries, will enable a more compact and efficient development proposal and with the proposed conditions of approval as set out in Exhibit 6B will require mandatory testing at the expense of the owner and will be enforceable.

I am not convinced that there were any errors in law made in either the Decision or the Review Decision. There is no "clear and convincing or compelling" justification to grant leave for appeal – see *Citizens Coalition of Greater Fort Erie v. Niagara RM [2013]*

Regarding sufficient importance to warrant the attention of the Divisional Court, as pointed out by B. Taylor in the original decision at paras 109, 110:

[109] The consideration of advanced treatment systems or tertiary treatment systems is not unique to this appeal.

[110] In fact, they have been considered in a number of cases dating back about 20 years and have been used in subdivisions with conditions of approval. Below are a number of cases that have been reported.

A number of cases are then referred to by B. Taylor.

Accordingly, there is not sufficient importance to grant leave to appeal to the Divisional Court.

In the result, the City's application for leave to appeal is dismissed. Costs are awarded to the respondents to be paid by the City forthwith on a partial indemnity basis fixed at \$23,000.

"Skarica J."