

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: March 27, 2018

CASE NO(S): MM170050

PROCEEDING COMMENCED UNDER section 57 of the *Ontario Water Resources Act*, R.S.O. 1990, c. O.40, as amended

Complainant: Joseph Chapman
Respondent: Town of Northeastern Manitoulin and the Islands
Municipality: Town of Northeastern Manitoulin and the Islands
OMB Case No.: MM170050
OMB File No.: MM170050
OMB Case Name: Chapman v. Northeastern Manitoulin and the Islands

Heard: March 20, 2018 by telephone conference call

APPEARANCES:

Parties

Counsel*/Representative

Joseph Chapman

self-represented

Town of Northeastern Manitoulin and the Islands

Paul Courey*

**MEMORANDUM OF ORAL DECISION DELIVERED BY SHARYN VINCENT ON
MARCH 20, 2018 AND ORDER OF THE BOARD**

INTRODUCTION

[1] Joseph Chapman has brought a complaint, and is seeking damages pursuant to ss. 57 and 58 of the *Ontario Water Resources Act* (“Act”) claiming injurious affection attributable to the proposal by the Town of Northeastern Manitoulin and the Islands, NEMI, (the municipality) to construct and operate a sewer outlet through an unopened municipal road allowance, abutting the complainants property.

[2] Mr. Chapman has also brought a motion seeking to, amongst other things, adjourn the hearing of the complaint until such time as the municipality responds to the direction set out by the Ontario Municipal Board (“Board”) in October of 2017.

[3] Prior to filing the motion, Mr. Chapman had through correspondence dated March 14, 2018, brought to the attention of the Board correspondence dated February 28, 2018 from Christina Labarge, Director Ministry of the Environment and Climate Change (MOECC), wherein the Director advises the complainant that MOECC is reviewing the geotechnical information forwarded by the complainant relating to the Environmental Compliance Approval (ECA) of the proposed infrastructure undertaking central to this complaint before the Board.

[4] At the outset of the telephone conference call (“TCC”) the Board sought clarification from the municipality on any update since the February 28th letter of MOECC in an attempt to crystalize the status of the ECA.

[5] Paul Courey advised, as was corroborated by David Williamson, the CAO of the municipality who was also on line in the TCC, that the municipality had had a telephone session with the aforementioned Director of MOECC on March 1, 2018, the municipality being represented by Counsel, Mr. Courey, CAO Mr. Williamson, the project Design Engineer, and the Drainage Superintendent.

[6] The review session concluded with MOECC advising that the findings of their review would be made known to the municipality by the end of the month of March or early April.

[7] The Board also queried whether any work contemplated by the ECA had commenced. Mr. Courey advised that none had, whereas Mr. Chapman asserted that vegetation had been removed from the area abutting his property, claiming that such action constituted construction as referenced in s. 57 of the Act.

[8] The Board questioned the broader assertions of the complainant, and whether the appeal to the Board was in fact premature given that the municipality did not agree with Mr. Chapman's characterization of construction. More importantly, as was pointed out by the Chair, Mr. Chapman's complaint and the supporting materials of his experts is consistently founded on apprehension of damage and injurious affection, and not damages caused, as is the threshold test of s. 57 of the Act.

[9] The complainant challenged the following:

- (i) that the construction had in fact commenced sufficiently to support the appeal as filed;
- (ii) that the activity by the municipality or its agents had affected the value of the complainants property; and
- (iii) whether the ECA had in fact been issued for the correct address.

ORDER

[10] Having considered the oral submission of both parties, and while awaiting the outcome of the MOECC review with respect to the ECA, the Board **orders** that the parties make written submissions specifically addressing the issue of prematurity, such submissions not to exceed 20 double spaced type written single-sided pages (exclusive

of a maximum of 5 authorities) on or before **12 p.m. on Friday, April 20, 2018** to be served and filed with the Board simultaneously. The materials may be served electronically, with a hard copy to be provided.

[11] Any reply must be similarly served and filed within 10 days, being no later than **12 p.m. Monday, April 30, 2018**.

[12] The Member is seized of the matter.

“Sharyn Vincent”

SHARYN VINCENT
MEMBER

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Ontario Municipal Board

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