



## NOTTAWASAGA VALLEY CONSERVATION AUTHORITY HEARING MINUTES

In the Matter of the Conservation Authorities Act, R.S.O. 1990, Chapter 27  
and in the Matter of an application by Canadian Tire Real Estate Limited and Leesa Turnbull  
for

Permission of the Nottawasaga Valley Conservation Authority (NVCA) to permit the construction of a Canadian Tire retail store, gas bar and automotive centre and to permit fill placement on the property at part Lot 21, Concession 1, Township of Essa (geographic Township of Sunnidale) municipality known as 305 Mill Street, Angus.

**Date:** Friday, May 14, 2010

**Location:** John L. Jose Environmental Learning Centre  
Tiffin Conservation Area  
8195 8<sup>th</sup> Line, Utopia, On L0M 1N0

**Time:** 10:30 a.m.

### PRESENT

**For the APPLICANT:** Leesa Turnbull, Applicant  
Gary Bell, President, Skelton Brumwell & Associates Inc.  
Bryan Bolivar, Senior Project Planner, Skelton Brumwell & Associates Inc.  
Alicia Kuntz, Canadian Tire Real Estate Ltd.  
Linda Lum, Canadian Tire Real Estate Ltd.

**For the NVCA:** Wayne Wilson, CAO/Secretary-Treasurer  
Chris Hibberd, Director of Planning  
Tim Salkeld, Resource Planner  
Patti Young, Senior Planner  
Barb Perreault, Senior Environmental Officer  
Glenn Switzer, Director of Engineering and Technical Services  
Susan Richards, Manager of Administration and Human Resources  
Kim Garraway, Communications/PR Assistant

**NVCA Solicitor** Ken Hill, Hill Hunter Losell Law Firm

**Hearing Board:**

Chair, Walter Benotto	Vice Chair, Gord Montgomery
Rick Archdekin	Mary Brett
Reg Cowan	Dan Davidson
Terry Dowdall	Tom Elliott
Debbie Fawcett	Sonny Foley
Ron Henderson	Ralph Hough
Harry Hughes	John McKean
Rick Milne	Brian Mullin
Cal Patterson	Fred Nix (left at 12:00 noon)
Gerrald Poisson	Ron Simpson
Joan Sutherland	Bill Van Berkel
Percy Way	Barry Ward

**Regrets:** Orville Brown  
Chris Carrier  
Robert Walker

**Recorder:** Laurie Barron, Executive Assistant

**HEARING UNDER SECTION 28, CONSERVATION AUTHORITIES ACT**

**RES#1**            MOVED BY: Daniel Davidson            SECONDED BY: John McKean

**RESOLVED THAT:** The Board of Directors now sit as a Hearing Board

**Carried**

Chair Walter Benotto Commenced Hearing and advised that the Board will conduct the Hearing under Section 28 of the Conservation Authorities Act with respect to an application by Leesa Turnbull and Canadian Tire Real Estate Ltd. (APPLICANT) for permission of the Nottawasaga Valley Conservation Authority (NVCA) to permit the construction of a Canadian Tire retail store, gas bar and automotive centre and to permit fill placement on the property at part Lot 21, Concession 1, Township of Essa (geographic Township of Sunnidale) municipality known as 305 Mill Street, Angus.

The Nottawasaga Valley Conservation Authority Regulation 172/06 under Section 28 of the Conservation Authorities Act which requires the permission of the Authority for development within an area regulated by the Authority in order to ensure no adverse affect on (the control of flooding, erosion, dynamic beaches or pollution or conservation of land) or to permit alteration to a watercourse or interference with a wetland.

Staff have reviewed this proposed work and a copy of the staff report has been given to the applicant.

Permission required under a regulation made under Subsection 1(a), (b) or (c) shall not be refused or granted subject to conditions unless the person requesting permission has been given the opportunity to require a hearing before the authority.

In holding this hearing, the Hearing Board is to determine whether or not a permit is to be issued. In doing so, only the application in the form that is before us may be considered, the presentation by staff, and such evidence as may be given and the submissions to be made on behalf of the applicant.

The proceedings were conducted according to the Statutory Powers Procedure Act and the witnesses have the protection of the Canada Evidence Act

Chair Walter Benotto Introduced Wayne Wilson, CAO/Secretary-Treasurer,

Wayne Wilson            Asked the APPLICANTS, Gary Bell, President, Skelton Brumwell & Associates Inc., Bryan Bolivar, Senior Project Planner, Skelton Brumwell & Associates Inc. and Alicia Kuntz, Canadian Tire Real Estate Ltd. if they would swear or affirm that the information they would give was the truth and nothing but the truth.

The applicants were sworn in.

Wayne Wilson            Asked NVCA staff members Chris Hibberd, Director of Planning  
Tim Salkeld, Resource Planner, Glenn Switzer Director of Engineering  
and Technical Services if they would swear or affirm that the information  
they would give was the truth and nothing but the truth.

NVCA staff were sworn in.

Chris Hibberd            Commenced with evidence on behalf of the Nottawasaga Valley  
Conservation Authority. He supplied the following exhibits:

- Exhibit 1            Notice of Hearing dated April 13, 2010
- Exhibit 2            Planning Staff Report
- Exhibit 3            Power Point Presentation – Hearing in the Matter of the Conservation  
Authorities Act R.S.O. 1990 and Leesa Turnbull and Canadian Tire Real  
Estate Ltd.
- Exhibit 4            Location of the applicant's property in relation to the area regulated by the  
NVCA under Ontario Regulation 172/06
- Exhibit 5            Pictures of the Property
- Exhibit 6            Application for Permission with Supporting Documentation
- Exhibit 7            Greenland International Consulting Angus Flood Map (2005)
- Exhibit 8            Topographic Survey showing current spot elevations on the property
- Exhibit 9            Site Plan showing the one in one year flood elevation on the property
- Exhibit 10           Resolution from the Township of Essa
- Exhibit 11a           Curriculum Vitae, Chris Hibberd, Director of Planning
- Exhibit 11b           Curriculum Vitae, Tim Salkeld, Resource Planner
- Exhibit 11c           Curriculum Vitae, Glenn Switzer, Director of Engineering and Technical  
Services
- Exhibit 11d           Will Say Statement, Glenn Switer, Director of Engineering and Technical  
Services.

Chris Hibberd

Presented a PowerPoint Presentation which outlined the considerations of staff and the rationale for the suggested staff recommendations.

- 1) The site for the proposed development is located entirely within an area regulated under the NVCA's Development, Interference with Wetlands and Alteration to Shorelines and Watercourses Regulation (Ontario Regulation 172/06).
- 2) The applicants have submitted an application for permission to undertake the proposed work in accordance with Section 4 of the Ontario Regulation 172/06. This application was accompanied by supporting documents
- 3) Section 3.1.2 d) of the *Provincial Policy Statement (2005)*, which provides policy direction on matters of provincial interest, states that development and site alteration shall not be permitted within a floodway regardless of whether the area of inundation contains high points of land not subject to flooding.

Section 3.1.5 of the *Provincial Policy Statement* states that where the two zone concept for floodplains is applied, development and site alteration may be permitted within the flood fringe, subject to the appropriate flood proofing.

Section 4.3 of NVCA's Planning and Regulation Guidelines identify that a one zone concept will be applied across the watershed except where a two zone concept has been established.

- 4) Regional Storm floodplain elevation for the site is 187.78 m. The one in one hundred year flood level for this area has been established at 186.80m. Current floodplain mapping states that a topographic survey and professional expertise may be used to more precisely locate the flood line on specific properties.
- 5) In accordance with Essa Township Official Plan policy, a cumulative impact analysis has been completed which demonstrates the proposed development, including the placement of fill within the Regional Storm floodplain will not result in adverse impacts on the floodplain. A stormwater management plan is currently being developed for the site.

The site for the proposed development is designated Commercial in the Essa Township Official Plan and zoned Core Commercial in the Essa Township Zoning By-law.

The Township of Essa Council has by resolution dated April 21, 2010 supported the use of the Greenland Consulting Angus Flood Study and mapping and any and all other data required to make an informed decision. The Township of Essa is in general support of growth and development within its borders provided a proposal is in keeping with accepted Provincial and Township policy.

**NVCA Staff Summary** NVCA staff are directed to follow NVCA's Planning and Regulation Guidelines (2009) approved by the Board of Directors in August 2009. The location of the proposed works is within the floodway which is contrary to the NVCA Planning and Regulation Guidelines (2009).

The proposal is contrary to Natural Hazard policies of the *Provincial Policy Statement (2005)* and the associated Technical Guide – River and Stream Systems: Flooding Hazard Limit (2002). These documents state that development and site alteration shall not be permitted within a floodway.

Section 27.3 of the Official Plan for the Township of Essa generally defines the (two-zone) floodway for the community of Angus as those lands located below the one in one hundred year flood level where development and site alteration are prohibited/restricted; and

The issuance of a permit for development and filling of the floodplain would set a negative precedent for development within the floodway. This could result in further development within the floodway which eventually could have unacceptable cumulative negative impacts on the control of flooding and conservation of land.

**Chair Walter Benotto** Invited Gary Bell (Representing the APPLICANT) to present his case.

**Gary Bell** Commenced with a power point presentation outlining the reasons for his appeal. Mr. Bell advised that the purpose of the appeal is to request the Hearing Board to enable approvals of the proposed Canadian Tire Store to proceed as planned using the NVCA 2005 Angus Flood Study mapping of the 100 year floodway.

A chronology of the background to this application was presented reviewing the highlights of the references attached to the chronology. Plans and drawings were presented.

The topographical mapping of the NVCA Angus Flood Study 2005 identifies portions of the property subject to the 100 year flood elevation. The property owner cut the trees and cleared the land which created an interim elevation of much of the property below the 100 year flood elevation and made it impossible to provide a topographic survey and elevation of the land pre-development.

The development, including placement of fill in the regional storm floodplain in the Angus settlement area portion of the property will not have adverse impacts on the floodplain.

- Gary Bell Summary Requested that a resolution of the Board to enable approval and development of the proposed Canadian tire Store to proceed using the 2005 Angus Flood Study Mapping.
- It is reasonable to use the 2005 mapping in these circumstances
  - Consistent with the two zone floodplain management policies
  - The area to be developed will not be in the rationalized floodway
  - No inappropriate precedent
  - Development will be safe above the Regional Storm elevation
  - The land will fulfill its planned commercial function.

Chair Walter Benotto The Chair asked staff for rebuttal and items of clarification. Chris Hibberd, Director of Planning and Glenn Switzer, Director of Engineering and Technical Services provided clarification for the Board Members

Chair Walter Benotto The Chair asked the APPLICANT for rebuttal and items of clarification. Gary Bell, President, and Bryan Boliver, Senior Project Planner with Skelton Brumwell & Associates Inc. provided clarification for the Board Members.

#### **PECUNIARY INTEREST**

*Board member Gerald Poisson declared a pecuniary interest due to his employer, Beacon Environmental Ltd. who has been retained by a landowner immediately to the north and west of the land that was the subject of the Board Hearing. Mr. Poisson did not participate in the in-camera discussions and did not vote on the outcome of the hearing.*

**RES. #2** MOVED BY: Debbie Fawcett SECONDED BY: Rick Archdekin  
**RESOLVED THAT:** The Hearing Board go "In-Camera at 11:50 a.m. to consider information presented by staff and the applicant to formulate a decision regarding an application submitted by, Canadian Tire Real Estate Limited and Leesa Turnbull, under Section 28 of the Conservation Authorities Act; and

**THAT:** Wayne Wilson, CAO/Secretary Treasurer, NVCA Solicitor Ken Hill, Hill Hunter Losell Law Firm and Laurie Barron, Recording Secretary be present.

**Carried;**

***Fred Nix left the meeting at 12:00 noon***

**RES.#3**            MOVED BY: Ron Simpson            SECONDED BY: Debbie Fawcett  
**RESOLVED THAT:** The Hearing Board come out of "In Camera" at 12:25 p.m.

**Carried;**

**RES.#4**            MOVED BY: Rick Milne            SECONDED BY: Bill Van Berkel  
**WHEREAS:** the Canadian Tire Real Estate Limited and Leesa Turnbull have applied for permission under the Conservation Authorities Act to permit the construction of a Canadian Tire retail store, gas bar and automotive centre and to permit fill placement on the property at Part Lot 21, Concession 1, Township of Essa (geographic township of Sunnidale) municipally known as 305 Mill Street, Angus; and

**WHEREAS:** The proposed works have been demonstrated by a qualified professional to not result in any adverse off site flooding impacts; and

**WHEREAS:** The applicant proposes to dry flood proof the proposed works to above the Regional Storm Floodplain level; therefore

**BE IT RESOLVED THAT:** the application be approved subject to the following conditions:

1. That the applicant has 2 years to fulfill the below conditions.
2. That prior to staff issuance of the permit, the applicant must fulfill the following:
  - a. Engage a professional engineer to demonstrate to the satisfaction of NVCA staff that the proposal can be appropriately flood proofed and withstand Regional Storm flood conditions.
  - b. Engage a professional engineer to demonstrate to the satisfaction of NVCA staff that storm water runoff can be managed consistent with Ministry of the Environment and NVCA requirements.
  - c. Provide detailed plans prepared by a professional engineer to satisfaction of NVCA staff addressing site grading, erosion and sediment control and restoration of all disturbed undeveloped areas.
  - d. Permanently protect the remaining floodway from future development to the satisfaction of NVCA staff through the appropriate measures (e.g. restrictive zoning, on title restrictions, etc.).
  - e. Obtain Site Plan approval from the Township of Essa.
3. That a permit, subject to NVCA's standard permit conditions, be obtained.
4. That in addition to the standard conditions, the NVCA permit will also include (but not limited to) conditions stating:
  - a. The development must be appropriately dry flood-proofed with the minimum opening elevation of the all proposed structures being at least 0.3 metres above the Regional Storm Flood elevation.

- b. The owner shall engage a qualified professional to certify in writing that the works were constructed in accordance with the plans, reports and specifications, as approved by the conservation authority.

**Recorded Vote**

**In Favour:**

D. Davidson  
T. Dowdall  
R. Henderson  
R. Hough  
H. Hughes  
D. Fawcett  
R. Milne  
B. Mullin  
R. Simpson  
B. Van Berkel  
P. Way

**Against**

R. Archdekin  
W. Benotto  
M. Brett  
R. Cowan  
T. Elliott  
S. Foley  
J. McKean  
G. Montgomery  
C. Patterson  
J. Sutherland  
B. Ward

**Total in favour: 11**

**Total against: 11**

**Defeated;**

**RES.#5** MOVED BY: Reg Cowan SECONDED BY: Cal Patterson

**WHEREAS:** the Canadian Tire Real Estate Limited and Leesa Turnbull have applied for permission under the Conservation Authorities Act to permit the construction of a Canadian Tire retail store, gas bar and automotive centre and to permit fill placement on the property at Part Lot 21, Concession 1, Township of Essa (geographic township of Sunnidale) municipally known as 305 Mill Street, Angus; and

**WHEREAS:** The proposed works have been demonstrated by a qualified professional to not result in any adverse off site flooding impacts; and

**WHEREAS:** The applicant proposes to dry flood proof the proposed works to above the Regional Storm Floodplain level; therefore

**BE IT RESOLVED THAT:** the proposed Canadian Tire Retail Store, Gas Bar and Automotive Centre portion of the application be approved with the remaining portion of the site being maintained as floodway.

**FURTHER, BE IT RESOLVED THAT:** the application be approved subject to the following conditions:

1. That the applicant has 2 years to fulfill the below conditions.
2. That prior to staff issuance of the permit, the applicant must fulfill the following:
  - a. Engage a professional engineer to demonstrate to the satisfaction of NVCA staff that the proposal can be appropriately flood proofed and withstand Regional Storm flood conditions.

- b. Engage a professional engineer to demonstrate to the satisfaction of NVCA staff that stormwater runoff can be managed consistent with Ministry of the Environment and NVCA requirements.
  - c. Provide detailed plans prepared by a professional engineer to satisfaction of NVCA staff addressing site grading, erosion and sediment control and restoration of all disturbed undeveloped areas.
  - d. Permanently protect the remaining floodway from future development to the satisfaction of NVCA staff through the appropriate measures (e.g. restrictive zoning, on title restrictions, etc.) and terminate the proposed severance application (B17/09).
  - e. Obtain Site Plan approval from the Township of Essa.
3. That a permit, subject to NVCA's standard permit conditions, be obtained.
  4. That in addition to the standard conditions, the NVCA permit will also include (but not limited to) conditions stating:
    - a. The development must be appropriately dry flood-proofed with the minimum opening elevation of the all proposed structures being at least 0.3 metres above the Regional Storm Flood elevation.
    - b. The owner shall engage a qualified professional to certify in writing that the works were constructed in accordance with the plans, reports and specifications, as approved by the conservation authority.

**Recorded Vote**

**In Favour:**

R. Archdekin  
W. Benotto  
W. Brett  
R. Cowan  
D. Davidson  
T. Dowdall  
T. Elliott  
D. Fawcett  
R. Henderson  
R. Hough  
H. Hughes  
J. McKean  
R. Milne  
G. Montgomery  
B. Mullin  
C. Patterson  
R. Simpson  
J. Sutherland  
B. Van Berkel  
B. Ward  
P. Way

Total in favour: 21

**Against**

S. Foley

Total against: 1

**Carried;**

**RES.#6**      MOVED BY: Harry Hughes      SECONDED BY: Sonny Foley  
RESOLVED THAT: This meeting adjourn at 12:40 p.m. to meet again at the call of the Chair.

**Carried;**

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**Walter Benotto, Chair**

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**Wayne R. Wilson, CAO/Secretary-Treasurer**

**Dated on the                      day of**

**, 2010**