

SUPREME COURT OF ONTARIO

BETWEEN:

CORPORATION OF THE TOWN OF MILTON

APPLICANT(S)

(Court seal.)

and

CORPORATION OF THE CITY OF BURLINGTON
and NATIONAL SEWER PIPE LIMITED

RESPONDENT(S)

(Insert statutory
provision or rule
under which the
application
is made.)APPLICATION UNDER The Municipal Act, sections 138, 139 & 140;
The Courts of Justice Act, sections 110 & 114
and The Rules of Civil Procedure, s. 14.05(1)(2) & (3)
NOTICE OF APPLICATION

TO THE RESPONDENT(S)

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant(s). The claim made by the applicant(s) appears on the following page.

(Insert a High Court
judge, a local judge
of the High Court
or as may be.)THIS APPLICATION will come on for a hearing before a Justice of the Supreme
Court of Ontarioon Tuesday, July 29th, 1986, at 10:00 a.m.
(day) (date) (time)(Address of court
house.)

at Osgoode Hall, 130 Queen Street West, Toronto, Ontario M5H 2N9

IF YOU WISH TO OPPOSE THIS APPLICATION, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38C prescribed by the Rules of Civil Procedure, serve it on the applicant(s) lawyer(s) or, where the applicant(s) do(es) not have a lawyer, serve it on the applicant(s), and file it, with proof of service, in this court office, and you or your lawyer(s) must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer(s) must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant(s) lawyer(s) or, where the applicant(s) do(es) not have a lawyer, serve it on the applicant(s), and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but not later than 2 p.m. on the day before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Date July 22, 1986

Issued by WARREN E. J. DUNLOP E. SUGAR
Local registrar(Name and address
of each respondent.)TO: Corporation of the City of Burlington, City Hall, 426 Brant Street, Burlington, Ontario, L7R 3Z6
Address of court office: 145 Queen Street West, Toronto, Ontario, M5H 2N9AND TO: National Sewer Pipe Limited,
1650 Lakeshore Road West,
Mississauga, Ont. L5J 1J3

APPLICATION

1.

The applicant makes application for:

- (a) an Order pursuant to section 140 of the Municipal Act, R.S.O. 1980, c.302, as amended, quashing the Respondent Corporation of the City of Burlington (the Respondent Burlington) Resolution EM-63-86 dated June 9, 1986, and Resolution EM-35-86 dated April 7, 1986, relating to an application of the Corporation of the City of Burlington to the Council of the said City for approval to expropriate lands owned by the Respondent National Sewer Pipe Limited, as identified in a Notice of Application for Approval to Expropriate Lands published June 25, 1986;
- (b) in the alternative, an Order pursuant to section 110 of The Courts of Justice Act, or alternatively pursuant to Rule 14.05(3)(d),(g) of the Rules of Civil Procedure declaring that the Resolutions referred to in para. (a) above passed by the Respondent Burlington are invalid and unenforceable;
- (c) an Order declaring that the Respondent Burlington, in purporting to authorize the expropriation of the lands referred to on a preliminary, proposed plan of expropriation prepared by the City of Burlington Department of Public Works - Survey Section, dated May 16, 1986, acted in an ultra vires manner, acted in bad faith as regards the Corporation of the Town of Milton, and violated the provisions of the Environmental Assessment Act and Regional Municipality of Halton Act, or any of these;
- (d) an Order pursuant to s. 140(6) of The Municipal Act directing that the Respondent Burlington do nothing under the aforesaid Resolutions until this Application is disposed of;
- (e) a permanent injunction pursuant to s.114 of The Courts of Justice Act, or pursuant to Rule 14.05(3)(g) of the Rules of Civil Procedure, prohibiting, restraining and enjoining the Respondent Burlington, its servants, agents, or

representatives from enforcing or taking any steps or acts pursuant to the Resolutions referred to in para. (a) above, or alternatively, from enforcing or taking any steps or acts pursuant to the aforesaid Resolutions to proceed with the expropriation of those lands shown on the said expropriation plan dated May 16, 1986; and

- (f) an Order granting leave to the Applicant to bring this Application on short notice.

2. The grounds for the application are:

- (a) The Resolutions which are treated as by-laws under s.138 of The Municipal Act are void at law, illegal and unenforceable in that they were enacted in bad faith by the Respondent Burlington Council not for the purported purposes but to prevent the utilization of the Respondent National Sewer Pipe's lands as a landfill site either as a privately operated landfill site or as a site to be operated by the Regional Municipality of Halton. The purported expropriation is an attempt to illegitimately frustrate the statutory duties of the Regional Municipality of Halton to obtain approvals for a new regional landfill facility where the Region of Halton's consultants have identified the Respondent National Sewer Pipe's lands as part of the preferred site for a regional landfill. Expropriation of Part 1 in particular, as well as Part 3 of the said Plan of Expropriation, will interfere with both the Region's pending environmental assessment process and with National Sewer Pipe's pending application filed with the Ministry of the Environment for a Certificate of Approval for a privately operated landfill site on the said lands. The Respondent Burlington's actions integrally affect the interests of the Corporation of the Town of Milton insofar as the alternative but secondary site identified by the Region of Halton's consultants for

the next Regional landfill facility is in the Town of Milton. The Town of Milton has, consistently since at least 1976, taken the position that the preferred location for a Regional landfill facility is in the City of Burlington at or about the lands sought to be expropriated by the Respondent Burlington and the Region's studies made pursuant to the Environmental Assessment Act have confirmed this. However the Respondent Burlington's purported expropriation would eliminate or at least greatly prejudice the approval of a Regional landfill in Burlington and concurrently render the Town of Milton the de facto preferred site;

- (b) the Resolutions are ultra vires the Respondent Burlington in that the Respondent Burlington exceeded its statutory authority under s. 139 of The Municipal Act as the said Resolutions concern land which is not required for legitimate purposes by the said Respondent;
- (c) the Resolutions are ultra vires the Respondent Burlington in that the purpose of the expropriation of the majority of the lands to be taken as shown on the preliminary, proposed plan of expropriation prepared by the City of Burlington dated May 16, 1986, is for an undertaking which is subject to the Environmental Assessment Act and no environmental assessment of the undertaking has been submitted to or approved by the Minister of the Environment pursuant to the requirements of sections 5 and 6 of the Environmental Assessment Act; and
- (d) the Resolutions are ultra vires the Respondent Burlington in that the purpose of the expropriation is to allow for the collection and disposal of sewage within the meaning of Section 86 of the Regional Municipality of Halton Act and pursuant to the said Act the sole statutory responsibility for the collection of such

sewage lies with the Regional Municipality of Halton.

3. The applicant intends to rely upon the following statutory provisions:

- (a) The Municipal Act, R.S.O. c. 302, as amended; and in particular sections 138, 139, 140(6) and 193;
- (b) The Environmental Assessment Act, R.S.O. 1980, c. 140, as amended; and in particular sections 5 and 6;
- (c) R.R.O. 1980 Reg. 293, as amended; and in particular s. 5;
- (d) Regional Municipality of Halton Act, R.S.O. 1980 c. 436, s. 86.
- (e) The Expropriations Act, R.S.O. 1980, c. 148, as amended, sections 4, 5, 6 and 7;
- (f) The Courts of Justice Act, R.S.O. 1984, c. 11, section 110, 114; and
- (g) The Rules of Civil Procedure, Rule 14.

4. The following documentary evidence will be used at the hearing of the application:

- (1) The Affidavit of Roy Main;
- (2) The Application made by the National Sewer Pipe Limited (applicant) and the Corporation of the City of Burlington (respondent) Court File No. RE 1630/86 dated July 17, 1986 filed in the Supreme Court of Ontario, including the Notice of Application, Affidavit and Exhibits filed in support thereof by the Applicant National Sewer Pipe Limited;
- (3) Such further and other materials as counsel may advise and this Honourable Court permit.

DATE OF ISSUE: July 22, 1986.

DAVID ESTRIN,
Barristers & Solicitors
22 Scollard Street
Toronto, Ontario
M5R 1E9 Tel: (416) 927-8
Solicitors for the Appli

JULY 29 1986

TOWN OF MILTON

and

CITY OF BURLINGTON ET AL

APPLICANT(S)

RESPONDENT(S)

(Short title of proceeding)

Court file no. RE 1659/86

SUPREME COURT OF ONTARIO

Proceeding commenced at Toronto

THE SUPREME COURT OF ONTARIO
5-1-86

is

NOTICE OF APPLICATION

(Form 14E under the Rules)

DYE & DURHAM CO. LIMITED—Form No. 932

Name, address and telephone number of solicitor or applicant:

DAVID ESTRIN,
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22 Scollard Street
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Solicitors for the App