

Case No.:

**ENVIRONMENTAL REVIEW TRIBUNAL**

BETWEEN:

**THE GREENSPACE ALLIANCE OF CANADA'S CAPITAL  
and THE SIERRA CLUB CANADA**

Applicants

-and-

**PETER TAYLOR, DIRECTOR, MINISTRY OF THE ENVIRONMENT,  
FINDLAY CREEK PROPERTIES LTD. and 1374537 ONTARIO LIMITED**

Respondents

**AFFIDAVIT OF ERWIN DREESSEN**

**Sworn May 12, 2009**

I, Erwin Dreessen, of the City of Ottawa, economist, make Oath and Say as follows:

1. I am a co-founder and former Chair and Director of the Greenspace Alliance of Canada's Capital (the Alliance) which is one of the persons seeking leave to appeal from the decision of the Director to issue Permit to Take Water, Surface and Ground Water, Number 8130 - 7HNPVW posted on the Environmental Register on May 5 2009, and a stay of the permit pending the decision of the Environmental Review Tribunal (Tribunal) on the leave application.

**About the Alliance**

2. The Greenspace Alliance was formed in 1997 and incorporated federally as a non-profit corporation in 2003. At the present time there are nine Board members. According to Janice Seline, our membership chair, paid up membership fluctuates

with about 50 people at any one time. According to Ron Rancourt, our list coordinator, there are currently about 100 supporters on our email list. These supporters provide input on specific issues, from time to time.

3. The Alliance is a public interest environmental group that works to preserve greenspaces in Canada's Capital. The Alliance is active in every major environment planning issue in the Ottawa area, providing comments and making submissions to all levels of government including the City of Ottawa, the National Capital Commission and the Ontario Ministries of the Environment and Natural Resources. It often works by forming coalitions with other organizations. The Alliance has retained counsel and prosecuted appeals from environmental planning decisions to the extent possible having regard to its limited financial resources.

**Delay In Case No. 07 – 164 / 07 – 165**

4. On March 11, 2008 the leave applicants sought leave to appeal a permit to take water (PTTW) issued to Findlay Creek Properties Ltd. and 1374537 Ontario Limited, from the Leitrim Wetland. On April 8, 2008 the instrument holders moved to dismiss that application on various grounds, all of which were found by the Tribunal to be without merit. Notwithstanding this result, the rights of the leave applicants were effectively frustrated by the delay caused by preliminary motions because the permit was scheduled to expire before the leave application could be dealt with on its merits.
5. The preliminary motion brought by the instrument holders sought to quash the leave application on the grounds that the Director could not look behind the application to the true proposal, that the evidence of Dr. Clark Topp and Albert Dugal was inadmissible because they trespassed into the wetland and that the evidence of Dr. Topp was inadmissible because he was not a Professional Geoscientist (P.Geo). When that motion failed, the qualifications of Dr. Topp were challenged. That challenge was abandoned as the permit expiry date approached and a motion to

declare the proceeding moot was substituted. Because of the delay, the leave applicants consented to the dismissal of this application as moot.

6. Exhibits "1" to "4" to this affidavit are true copies of the decisions of the Tribunal in Case No. 07 – 164 / 07 – 165 issued from July 21, 2008 to November 27, 2008.

#### **History of this permit**

7. On July 14, 2008 the instrument holders applied for a PTTW from a trench sump in the amount of 17, 020, 800 litres per day. In support of this application, Golder Associates Ltd. (Golder) submitted a Report on Category 3 Permit To Take Water Application Findlay Creek Village Subdivision Site Future Stages Ottawa, (Gloucester), Ontario dated July 2008. A true copy of this report is exhibit "5" to this affidavit.
8. Also submitted at the same time was a Groundwater Monitoring Report, Environmental Monitoring Program October 2003 to March 2008 Findlay Creek Village Ottawa, Ontario dated April 2008. A true copy of this report is Exhibit "6" to this affidavit.
9. On September 3, 2008 the leave applicants made submissions to the Director in respect of this application. Exhibit "7" is a true copy of these submissions.
10. On August 29, 2008 the instrument holders indicated their intent to take surface water in addition to ground water. This intention was set out in a letter report by Golder to the Director entitled Provision of Information Category 3 Permit To Take Water Application Future Stages of Findlay Creek Village Subdivision Ottawa, Ontario MOE Reference # 4635 – 7GFNDT. Exhibit "8" is a true copy of this report.
11. On September 12, 2008 the instrument holders submitted a new application seeking a permit to pump surface water as well as ground water. The application requested a

permit to pump a maximum of 17,020,800 litres per day of ground water and 13 million litres of surface water, as indicated in the table below:

**Water Source Information – Table A (units in Litres)**

| Source Name                         | Purpose<br>(select from<br>"purpose" column<br>in table above) | Maximum<br>Rate<br>Per<br>minute | Maximum<br>Number<br>of<br>Hours of<br>Taking a<br>day | Maximum<br>volume<br>per day | Typical<br>volume<br>per day | Maximum<br>number of<br>days of<br>taking in a<br>year | Earliest<br>Calendar<br>date of<br>taking<br>(mm/dd) | Latest<br>Calendar<br>date of<br>taking<br>(mm/dd) |
|-------------------------------------|--|----------------------------------|--|------------------------------|------------------------------|--|--|--|
| Trench Pump                         | CONSTRUCTION   | 11,820                           | 24   | 17,020,800                   | VARIABLE                     | 365  | 01 / 01  | 12/31  |
| Drainage Ditch<br>Modification Area | CONSTRUCTION   | 2,083                            | 24   | 3,000,000                    | 1,000,000                    | 365  | 01 / 01  | 12/31  |
| Findlay Creek<br>Extension Area     | CONSTRUCTION   | 6,944                            | 24   | 10,000,000                   | 1,500,000                    | 365  | 01 / 01  | 12/31  |

Exhibit "9" is a true copy of this application.

12. On October 1 and November 3, 2008 the leave applicants made further submissions to the Director. Exhibits "10" and "10A" are true copies of those submissions.
13. On November 10, 2008 the Ministry sought further information from the instrument holders. On November 17, 2008 the Ministry again sought further information based on input from the Ministry of Natural Resources (MNR). Exhibits "11" and "12" are true copies of these inquiries.
14. Golder responded to the Ministry of Environment's concerns on December 16, 2008, in a report entitled Response to Ministry of Environment Comments - Category 3 Permit To Take Water Application Future Stages of Findlay Creek Village Subdivision, Ottawa, Ontario. Exhibit "13" is a true copy of this response.
15. Golder's response to MNR's concerns was also made on December 16, 2008 in a report entitled Response To Ministry of Natural Resources Comments Category 3 Permit To Take Water Application Future Stages of Findlay Creek Village Subdivision Ottawa, Ontario MOE Reference # 4635 – 7GFNDT. Exhibit "14" is a true copy of this response.

16. On January 23, 2009, in light of these responses, the leave applicants made further submissions with respect to this application. Exhibit "15" is a true copy of this submission.
17. On February 27, 2009 Golder submitted a monitoring program to the Director. Exhibit "16" is a true copy of this letter report entitled Permit To Take Water Monitoring Program Future Stages of Findlay Creek Village Subdivision Ottawa, Ontario MOE Reference # 4635 – 7GFNDT.
18. The leave applicants were given an opportunity to address the monitoring program and other issues on March 9, 2009 at a meeting with Ministry Officials at their Ottawa office. Representatives of Golder were invited by the Director to attend this meeting, as were representatives of the MNR and South Nation Conservation. Exhibit "17" is a true copy of the objectives of the leave applicants in respect of the Leitrim Wetland.
19. These objectives include the development and implementation on an interim and long term basis of a remediation program designed to address damage to the ecology of the wetland since 1989. This damage includes backflooding which killed a stand of 120 year old cedars, destroyed a marsh which has been identified as potential Blanding's Turtle habitat, and has resulted in the proliferation of glossy buckthorn in the fen area.
20. It was our position that this remedial work should be undertaken prior to the issuance of a new permit or as conditions in the permit. I have been advised by Cheryl Doran, Chair of the Alliance, that she spoke with the Director on May 1, 2009. She was advised that, as for Tartan doing rehabilitation work in the wetland, at least a dozen calls from Tartan in March made it clear that if he required rehabilitation work before issuing the permit, Tartan would appeal. Tartan was said to feel that it was not responsible for rehabilitation.

21. Unknown to the leave applicants, on April 7, 2009 the permit holders submitted a new monitoring program entitled Permit To Take Water Monitoring Program Future Stages of Findlay Creek Subdivision, Ottawa, Ontario dated April 7, 2009. This document is Item 1 in Schedule A of the PTTW. This new monitoring program was not disclosed to the leave applicants prior to the issuance of the permit on April 27, 2009.
22. It is my understanding that the Environmental Bill of Rights (EBR) guarantees to Ontario residents the right to participate in an effective way in the making of significant decisions affecting the environment. The government is to be held accountable for its environmental decision making.
23. The leave applicants are Ontario residents. They have participated in this prolonged process of decision making openly, diligently and in good faith. They have retained top quality experts to advise them. This advice has been made available to the Director.
24. Based on our close involvement with the Director throughout the application process for this PTTW, I would have expected to have been told about the radically different quantities of surface water Tartan is permitted to draw or divert under this permit.
25. I believe that a major change of this kind requires a reposting of the application on the EBR. This belief is consistent with the fact that the application was reposted in September of 2008 to reflect Tartan's request to add surface water takings.
26. In any event, the rights of the leave applicants have been torpedoed. The proposal to which they have responded – posted on the Environmental Registry on September 16, 2008 – bears little resemblance to the permitted water taking outlined in Table A of the PTTW issued on April 27, 2009, specifically Sources 2, 3 and 4. The leave applicants responded to a proposal to take a total of 13 million litres of surface water

per day from the Findlay Creek Extension Area and the Drainage Ditch Modification Area. The permit is for just under 215 million litres of water per day from the Findlay Creek Diversion, the North South Swale and miscellaneous ponded areas. Of this, it appears that just under 207 million litres of water per day are to be taken starting July 1, 2009, at the height of the growing season and during the drier summer months.

27. For these reasons alone, the operation of this permit should immediately be stayed, the application reposted, and Ontario residents provided with an opportunity to make submissions to the Director.

### **Compliance with Environmental Laws**

28. We have taken the position with the Director that the Taggart-Tartan group of companies which include the instrument holders, or their consultants are ungovernable, as they have breached governmental approvals, taken water without permits, and falsified water taking records. I see this as a basis for staying the permit because the monitoring provisions of the permit are effective only to the extent that the Tartan-Taggart group of companies and their consultants are honest and reliable.
29. The following paragraphs outline the unlawful conduct of the Tartan-Taggart group of companies, to the extent to which it is known to us.

#### Violation of Provincial Officer's Order

30. On October 26, 2007, the Ministry of the Environment issued a Provincial Officer's Order to Findlay Creek Properties Ltd., Taggart Construction and 1374537 Ontario Ltd. as provided for in section 34.1 of the Ontario Water Resources Act. The Order requires that water taking not exceed 50,000 liters/day while no Permit is issued, and that weekly monitoring reports be submitted to confirm that the limit has not been exceeded.

31. The Officer's Report found that, between September 10 and October 25, the legal limit had been exceeded during 29 out of the 43 days. The Ottawa District Office also forwarded the issue of non-compliance to its Investigation and Enforcement Branch for their consideration. As well, the federal Department of Fisheries and Oceans (hereafter DFO) was made aware of the site alterations that have taken place. Attached as Exhibit "18" to this affidavit is a true copy of the Provincial Officer's report and order.

#### Offences at Other Sites

32. It is my understanding that Wesley M. Nicol, the founder of Tartan Homes, one of the two companies building houses in the Findlay Creek Village subdivision, is the only Director of 1374537 Ontario Limited. James Taggart, of Taggart Construction (the company doing site preparation and servicing work in the Findlay Creek Village subdivision), is the only Director of Findlay Creek Properties and an executive with Tamarack Homes, the other company building houses in the Findlay Creek Village subdivision.

33. I have assembled certain correspondence from the MOE to Ken McRae who is an Alliance supporter. This correspondence illustrates that:

- On November 14, 2006, a Provincial Offences Act Notice (Ticket) was issued at the Jackson Trails Subdivision in Stittsville for taking water and discharging it to a sedimentation pond without the necessary permits in place.
- On December 8, 2006, a Provincial Offences Notice was issued on the site of the Fairwinds Subdivision, Phase 1 (Mattamy Homes) in Kanata, for water taking exceeding the 50, 000 liters/ day limit without a permit.

34. Both at Jackson Trails and at Fairwinds the markings on the machinery showed the Taggart Construction name.



35. The following letters are true copies of the MOE correspondence provided to me by Ken McRae for the purpose of assistance in the Leitrim Wetland litigation:

- Exhibit “19” letter dated November 14, 2006 from MOE to Ken McRae
- Exhibit “20” letter dated November 20, 2006 from MOE to Ken McRae
- Exhibit “21” letter dated December 13, 2006 from MOE to Ken McRae
- Exhibit “22” letter dated December 22, 2006 from MOE to Ken McRae

#### Violations of DFO Requirements

36. Attached as Exhibit “23” to this affidavit is a true copy of the DFO Authorization issued October 25, 2003 and subsequently extended. Taggart has not complied with the terms and conditions of the authorization issued by the DFO, as documented in paras. 37 to 40 below.

37. On January 25, 2006 Fishery Officers Alain Duguay and Andy Smith made a site inspection at Findlay Creek. As a result of that inspection, violations of the DFO permit were documented. Attached as Exhibit “24” to this affidavit is a true copy of a letter dated January 30, 2006, from Andy Smith to Ottawa. This letter documents failure to implement measures required to prevent siltation.

38. On May 12, 2006 Andy Smith of DFO reported further violations of the DFO permit. Attached as Exhibit “25” to this affidavit is a true copy of Andy Smith’s email documenting violations.

39. On May 15, 2006 the IBI Group transmitted an email to Taggart outlining violations of the DFO permit. Attached as Exhibit “26” to this affidavit is as true copy of the IBI Group transmittal.

40. On May 30, 2006 DFO made an Occurrence Report documenting violation of the permit. Attached as Exhibit "27" to this affidavit is a true copy of the DFO Occurrence Report.
41. I am not aware of any documentation showing that these violations were rectified to the satisfaction of DFO. We are in the process of compiling a detailed list of ongoing violations which we will bring to the attention of DFO.

Fines and Charges – Providing False and Misleading Statements

42. On January 15, 2009 Taggart Construction Limited, Paterson Group Inc. and Robert Passmore were fined \$5000 each totaling \$15, 000 plus a conviction fine surcharge after pleading guilty to violations under the Ontario Water Resources Act. Taggart Construction Limited and Paterson Group Inc. were convicted of failing to comply with a Provincial Officer Offences Order by taking more than 50,000 litres of water per day, and Mr. Passmore was convicted of giving false or misleading information to the Ministry. Exhibit "28" is a true copy of the Ministry Media Release of January 28, 2009.
43. On January 22, 2009 Peter Taylor advised Linda McCaffrey that 7 charges had been sworn on August 13, 2008 with regards to the Findlay Creek Development project.
44. Taggart Construction Limited, Michael Taggart, 1374537 Ontario Limited and Findlay Creek Properties Ltd. were charged jointly with providing false and misleading information contrary to Section 98 (2) of the Ontario Water Resources Act; and with failing to comply with Provincial Offences Order No. P814 – 141, item 2 by failing to submit weekly water taking records, showing daily water taking volumes, contrary to Section 107 (2) of the Ontario Water Resources Act.
45. They were further charged jointly with five separate offences for taking water in excess of 50, 000 litres per day without a permit from the Director, contrary to

Section 34 (3) (d) of the Ontario Water Resources Act. Exhibit "29" is a true copy of the email exchanges setting out this information.

### **Geotechnical Reports Disclosure**

46. Since 2007 the leave applicants have sought disclosure of the geotechnical reports relating to the Leitrim wetland in the possession of or under the control of the Tartan-Taggart group of companies.
47. This quest was renewed in January of 2009 at which time the Director offered to wrestle this issue to the ground once and for all. He requested that the leave applicants provide him with the list of 9 geotechnical reports which were admitted by the Tartan-Taggart group to contain geotechnical information relevant to the Leitrim wetland as attested to in a Golder affidavit filed in a judicial proceeding. The Director agreed to get these reports and to share them with us. Exhibit "30" is a true copy of the email from the Director to Linda McCaffrey confirming this commitment.
48. On February 2, 2009, Nancy Barton, Assistant to Linda McCaffrey, forwarded the list of 9 geotechnical reports to Peter Taylor. Exhibit "31" is a true copy of this email.
49. This list of 9 reports was selected by Golder. We have not accepted that these were all the relevant reports. Therefore, I prepared a list of all geotechnical reports pertaining to the Leitrim wetland of which we knew the existence but which were not in our possession. The references were drawn from Golder or government documents. A total of 23 missing reports and a data set were identified. This list was forwarded to the Director on February 4, 2009. Exhibit "32" is a true copy of that list.
50. None of the reports or data requested were ever produced.
51. Ultimately no geotechnical reports or data, apart from the reports prepared in support of the applications, have been provided.

52. We have been advised by Dr. Michel and Dr. Topp that disclosure of all geotechnical data is required to assess the permit, not just the data selected by Tartan to support its permit applications. Moreover, they have specifically advised that on the crucial matter of groundwater levels over time, the numerical data, not just the graphs, are required for proper analysis.
53. Section 9 of O. Reg 387 / 04 in effect July 1, 2005 requires every person to whom a permit has been issued under section 34 of the Act to collect and record data on the volume of water taken daily and to submit the data collected and recorded for the previous year on or before March 31, in every year.
54. On April 17, 2009 Linda McCaffrey requested these data. Exhibit "33" is a true copy of this email request. While I recognize that given the convictions and allegations with respect to failure to record watertakings and falsifying records, these data will understate the watertakings by the instrument holders, it would nonetheless be of assistance to the leave applicants to have them in order to make full submissions with respect to the PTTW. Ms. McCaffrey informs me that no response to the request was received.
55. On May 1, 2009 the Director forwarded to Linda McCaffrey a copy of the PTTW issued on April 27, 2009. This copy of the permit did not include the four Schedule A items. Linda McCaffrey asked the Director to provide the schedules and any new or amended application or new data provided by the permit holder. Exhibit "34" is a true copy of the email which was sent to the Director.
56. On May 4, 2009 Linda McCaffrey reminded the Director of our need for the schedules. Exhibit "35" is a true copy of the email which was sent to the Director.
57. The notice of the issuance of the PTTW was posted to the Environmental Registry on May 5, 2009. The Permit Letter is available online, but the Schedule A items are not.

Exhibit "36" is a true copy of the Decision and of the Permit as posted on the environmental registry.

58. On May 7, 2009, our counsel received a copy of the permit with what were said to be the schedule A documents. Three of the four documents were incorrect. On May 8, 2009, the Director was notified of the deficiencies. Finally, on May 11, 2009, we received the proper documents for schedule A. Exhibit "37" is a true copy of the e-mail exchange in this regard.

59. The proposal to which comments were addressed is radically different from the watertaking authorized by the permit, and the permit information provided is incomplete. Therefore, the leave applicants have been deprived of a reasonable opportunity to submit pertinent comments to the Director prior to the issuance of the permit or to respond to the permit as issued within the fifteen days provided.

**AFFIRMED BEFORE ME** at the City of )  
Ottawa, in the Province of Ontario )  
this 12<sup>th</sup> day of May, 2009. )  
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Commissioner for Taking Affidavits )

  
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**Erwin Dreessen**