



Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

THE CITY OF HAMILTON

Applicant

and

JUSTIN HOLMES

Respondents

NOTICE OF APPLICATION

APPLICATION UNDER section 440 of the *Municipal Act, 2001*, SO 2001, c.25

TO THE RESPONDENT

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

THIS APPLICATION will come on for a hearing (*choose one of the following*)

- In person
- By telephone conference
- By video conference

at the following location

Video conference details to be provided by the Trial Coordinator

on January 25, 2023, or on a day to be set by the Registrar at Hamilton in accordance with the *Notice To The Public and Profession for Central South Region*, effective April 19, 2022.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer 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 must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it,

with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date _____ Issued by _____
Local Registrar

Address of court office: Superior Court of Justice
45 Main Street East
Hamilton, ON L8N 2B7

TO Justin Holmes
1802 Regional Road 97
Hamilton, ON N0B 2J0

APPLICATION

THE APPLICANT, the City of Hamilton, will make an application to the Court for:

1. An Order for an injunction restraining and enjoining the Respondent from undertaking or causing, directly or indirectly, site alteration to the property municipally known as 1802 Regional Road 97 in the City of Hamilton (the "Property") without having obtained in advance an approved site alteration permit in accordance with City of Hamilton By-Law No. 19-286, as amended, and without acting in compliance with such duly issued permit (the "Injunction"); which Injunction shall remain in force until varied or discharged by a further Order of this Court;
2. An Order that any officer with the City of Hamilton's Municipal Law Enforcement ("MLE"); a duly authorized agent of the City of Hamilton, including a licensee under the *Private Security and Investigative Services Act, 2005*, S.O. 2005, c. 34, as amended ("Authorized City Agent"); or any police officer with the Hamilton Police Service (the "Police"); shall be authorized to take any steps deemed reasonable and necessary to prevent any uses of or activity on the Property that contravene the Injunction, including but not limited to authorization to restrict or block access to the Property if MLE, the Authorized City Agent, and/or the Police have reasonable grounds to believe site alteration is being or has been performed in contravention of the Injunction;
3. An Order that the City of Hamilton and/or the Police shall retain discretion as to the manner and means of any enforcement activity conducted by them in accordance with paragraph 2 herein;
4. If necessary, an Order dispensing with, abridging the time for, and/or validating the service of this Notice of Application, Application Record, Factum, and other materials filed in support of this Application;
5. If necessary, an Order abridging the time for filing this Notice of Application, Application Record, Factum, and other materials filed in support of this Application,

6. Costs of this Application on a substantial indemnity basis; and
7. Such further and other relief as counsel may advise and this Honourable Court may deem just.

THE GROUNDS FOR THE APPLICATION ARE:

The Parties

8. The Applicant, the City of Hamilton (the “Applicant” or the “City”) is a municipality continued as a body corporate pursuant to the provisions of the *City of Hamilton Act*, 1999, S.O. 1999, c.14, Sch. C, as amended.
9. The City is a municipality within the meaning of the *Municipal Act, 2001*, S.O. 2001, c. 25 (the “*Municipal Act, 2001*”).
10. The Respondent, Justin Holmes, is an individual ordinarily resident in the City of Hamilton.
11. At all material times, the Respondent was and is the owner of property municipally known as 1802 Regional Road 97 in the City of Hamilton (the “Property”).

Breach of By-Laws

12. As set out below, the Respondent has contravened, and in fact has acted with complete disregard for, the City’s Site Alteration By-Law, By-Law No. 19-286 (the “Site Alteration By-Law”).
13. The Site Alteration By-Law provides, at section 11(1), that “[n]o person shall undertake site alteration or cause site alteration to be undertaken unless a site alteration permit has been issued to undertake such site alteration.”
14. In or around May 2021, the Respondent applied for a site alteration permit from the City with respect to a proposed farming operation at the Property. The permit was not granted.

15. Notwithstanding that the Respondent's site alteration permit was not granted, and notwithstanding the Respondent's apparent knowledge of the requirement to obtain a permit for site alteration, beginning in approximately October 2021, the Respondent has caused and is causing fill to be deposited at the Property, altering the site in contravention of the Site Alteration By-Law.
16. Between October 2021 and August 2022, MLE have issued eight tickets to the Respondent for violations of the Site Alteration By-Law. Since approximately November 2022 to present, MLE has issued at least four further tickets to the Respondent for further violations of the Site Alteration By-Law. On December 21, 2022 MLE served the Respondent with a summons in relation to these violations.
17. Additionally, MLE has issued approximately three hundred tickets to operators of trucks who have transported and are transporting fill to the Property at the behest of the Respondent from outside the City of Hamilton, also in contravention of the Site Alteration By-Law.
18. It is clear that the Respondent has no intention of complying with the Site Alteration By-Law, despite being repeatedly notified of infractions.
19. In fact, the Respondent has publicly stated to the *Hamilton Spectator* newspaper, in an article published December 9, 2022, that he is bringing in "thousands of loads" of fill to create "40 acres of primo workable land" on the Property, and that "he hopes the land will be ready to farm by June."
20. The Site Alteration By-Law, like all By-Laws, was made in the public interest. It is intended, among other things, to ensure that site alteration does not adversely impact infrastructure, the environment, and the community; to prohibit or regulate the alteration of property grades within the City of Hamilton; to limit interference and damage to watercourses, drainage systems and

water supplies; to limit unanticipated drainage and site alterations; to limit the use of improper fill; and to limit erosion arising from such changes.

21. The permitting process with which the Respondent has failed to comply would, among other things, ensure that:
 - (a) The fill to be deposited does not contain potentially harmful materials such as garbage, asphalt, glass, plastic, metals, petroleum products, putrescible material, soluble or decomposable chemical substances, or similar materials;
 - (b) The site alteration does not cause adverse impacts, including adverse impacts to other lands, with respect to matters such as surface water drainage, groundwater or water sources intended for agricultural use or human consumption;
 - (c) The site alteration in process does not contravene the City's Noise By-Law (By-Law No. 11-285); is not done on Saturdays, Sundays, or statutory holidays; and is done in accordance with the City's Traffic By-Law (By-Law No. 01-215), including using an approved haul route; and
 - (d) The source of the fill is identified, along with the particulars of the fill and the property from which it is sourced; and that the fill is not from a source site outside the City of Hamilton.
22. Section 440 of the *Municipal Act, 2001* provides that the contravention of a municipal By-Law may be restrained by application at the instance of the municipality.
23. The Injunction sought by the City is required urgently to compel the Respondent to comply with the Site Alteration By-Law, the breach of which is on-going by the Respondent, and which the Respondent has shown no intention of complying with otherwise.
24. The Applicant also relies upon:

- (a) The City of Hamilton Site Alteration By-Law No. 19-286;
- (b) The *Municipal Act, 2001*, S.O. 2001, c. 25, as amended;
- (c) Rules 1.04, 2.03, 3.02, 14.05, 16.08, 38, 39, and 57 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended;
- (d) Section 131 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended; and
- (e) Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the application:

- 25. The Affidavits sworn and to be sworn in support of the Application; and
- 26. Such further and other evidence as counsel may advise and this Honourable Court may permit.

Dated: January 9, 2023

GOWLING WLG (CANADA) LLP

Barristers & Solicitors
1 King Street W, Suite 1500
Hamilton ON L8P 1A4

Tel: 905-523-5666

Bevin Shores (LSO #56161F)

Tel: 905-540-2468
bevin.shores@gowlingwlg.com

Jordan Diacur (LSO #65860E)

Tel: 905-540-2500
jordan.diacur@gowlingwlg.com

Lawyers for the Applicant, City of Hamilton

CITY OF HAMILTON

Applicant

- and -

JUSTIN HOLMES

Court File No.

Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
HAMILTON

NOTICE OF APPLICATION

GOWLING WLG (CANADA) LLP

Barristers & Solicitors

1 King Street W, Suite 1500

Hamilton ON L8P 1A4

Tel: 905-523-5666

Bevin Shores (LSO#56161F)

Tel: 905-540-2468

bevin.shores@gowlingwlg.com

Jordan Diacur (LSO#65860E)

Tel: 905-540-2500

jordan.diacur@gowlingwlg.com

Lawyers for the Applicant, City of Hamilton