

CHAPTER Pr31

An Act respecting the Town of Niagara-on-the-Lake

Assented to June 28th, 1990

Whereas The Corporation of the Town of Niagara-on-the-Lake hereby applies for special legislation in respect of the matters hereinafter set forth; and whereas it is expedient to grant the application;

Preamble

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) In this Act,

Definitions

"council" means the council of the Town;

"designated area" means the area designated by by-law under subsection 2 (1);

"Town" means The Corporation of the Town of Niagara-on-the-Lake.

(2) A reference in this Act to land area is a reference to land in the designated area that is capable of cultivation and all rates and charges established under this Act shall be calculated on the basis of land capable of cultivation.

Interpretation and calculation

2.—(1) The council of the Town may by by-law establish and operate an irrigation system servicing the area designated in the by-law.

By-law respecting irrigation system

(2) Before passing a by-law under subsection (1), notice of the intention to pass the by-law and a petition supporting the irrigation system and authorizing a detailed engineering study of the proposed system shall be mailed to each owner of land in the designated area.

Notice, petition

(3) If the owners of more than 60 per cent of the hectareage of land in the designated area submit a signed petition within thirty days of the mailing of the notice, the council may by by-law authorize the engineering study which shall include an estimate of costs of the proposed irrigation system and the

Engineering study

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maximum additional rate of flow that will be permitted to pass through the proposed irrigation system.

Report to be distributed

(4) Upon the filing of the engineering report, the council shall ensure that the contents of the report, including the estimated costs, and notice of the rights under subsection (5) are mailed to the owners in the designated area.

Changes to petition

(5) The owners in the designated area shall have thirty days after the mailing of the report to add or delete their names from the petition.

Rejection of proposal

(6) If the petition reveals that the owners of less than 60 per cent of the hectareage in the designated area remain in favour of the proposed irrigation system, the council shall not pass the by-law unless those persons remaining in favour of the proposal agree to pay the total cost of the proposed irrigation system including the engineering study.

If no by-law

(7) If a by-law is not passed, the costs of the engineering study shall be apportioned among those persons who signed the original petition on the basis of land area.

Support for project

(8) If the petition reveals that the owners of 60 per cent or more of the land in the designated area remain in favour of the irrigation system,

- (a) the council may pass the by-law and establish and operate the irrigation system;
- (b) the costs of the engineering study and the cost of establishing the irrigation system shall be apportioned among the owners of land in the designated area on the basis of land area;
- (c) the costs of operating and maintaining the irrigation system shall be apportioned among the owners of land who agreed by petition to the establishment of the system and such other persons in the designated area that later agree and are permitted to participate in the system or are added to the designated area under subsection (11); and

R.S.O. 1980,
c. 126

- (d) if a portion of the irrigation system is also a drainage works under the *Drainage Act*, the cost of maintaining that portion shall be divided so that one-half is borne by the persons responsible for the drain and one half is borne by the persons described in clause (c).

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(9) The clerk of the Town shall promptly mail notice of the passage of the by-law under subsection (8) to all owners of land abutting the irrigation system and to the Niagara Peninsula Conservation Authority.

Notice

(10) An owner who receives a notice under subsection (9) may, within thirty days from the date of the mailing of the notice, appeal to the Ontario Municipal Board with respect to,

Appeal to
O.M.B.

- (a) whether or not the maximum additional rate of flow of water that will be permitted to pass through the proposed irrigation system is too great or too little;
- (b) whether the owner's land should be added to or deleted from the designated area; and
- (c) whether the assessment accurately reflects the hectareage of the owner's land that is capable of cultivation.

(11) The by-law of the council shall be amended to conform with the Ontario Municipal Board's decision.

Amendment
to by-law

3.—(1) If the costs for the irrigation system, as bid, exceed the original estimates of costs by more than 25 per cent, the owners of land in the designated area shall be notified by the clerk of the Town.

Where costs
exceed
estimates

(2) The work on the irrigation system shall proceed,

Work to
proceed

- (a) if the owners of 60 per cent of the land in the designated area approve the additional costs; or
- (b) if 60 per cent of the owners fail to approve the additional costs but the remaining owners agree to pay all of the costs.

(3) If clause (2) (b) applies, those owners who were not willing to pay the additional costs are excluded from participating in the irrigation system but this subsection does not prevent those owners from later being included in the irrigation system under clause 2 (8) (c) or section 5.

Exclusion

(4) If an approval or agreement is not obtained under subsection (2), the work on the irrigation system shall be abandoned and the costs, including the costs of the Ontario Municipal Board appeal and the other costs incurred by the Town in carrying out the procedures under this Act, shall be

Work not to
proceed

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apportioned among the owners of land in the designated area on the basis of land area.

Lien 4. Any costs apportioned under this Act shall be a lien upon the land to which they relate and may be added to the collector's roll and collected in like manner as municipal taxes.

Land added later 5.—(1) The Town shall have the right to add land to the designated area after construction of the irrigation system if,

- (a) the irrigation system does not have to be extended;
- (b) the maximum rate of flow of water that will be permitted to pass through the proposed irrigation system is not increased; and
- (c) the level of service established under the by-law is maintained for those already in the system.

Allocation of funds (2) Any money received by the Town in payment for the right to add land to the irrigation system shall be used by the Town,

- (a) to retire the debentures for the irrigation system and, once retired, to improve and maintain the irrigation system;
- (b) if the irrigation system no longer exists, to retire the debentures for other irrigation works and, once retired, to improve and maintain those works; and
- (c) if no other irrigation works exist, to support the general purposes of the Town.

Contents of by-law 6.—(1) A by-law passed under subsection 2 (1) may,

- (a) establish the conditions under which and the times in which water may be taken from the irrigation system;
- (b) adopt from the engineering report the rates at which water will be added into the irrigation system;
- (c) regulate the amounts of water which may be taken out of the irrigation system;
- (d) prohibit access to water in the irrigation system except in accordance with the by-law;

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- (e) prohibit the sale or re-sale of water taken from the irrigation system;
- (f) establish the period during which the irrigation system will be in operation;
- (g) declare existing waterways to form part of the irrigation system;
- (h) regulate the equipment and facilities by which water may be drawn;
- (i) establish standards for the maintenance of the irrigation system;
- (j) establish the costs for adding land to the designated area;
- (k) establish the charges and levies for the construction, operation and maintenance of the irrigation system and the manner and timing of the collection of these charges and levies.

(2) The council may by by-law provide for the issuing of debentures for a term not exceeding ten years for the capital cost of the irrigation system. Debentures

(3) A by-law under subsection (2) may include an option to the owners participating in the irrigation system to commute their portion of the capital costs before issuing the debentures. Early payment

7. In establishing the irrigation system, the Town has the power to purchase, lease or expropriate land, rights-of-way in land and easements over land necessary for the project. Acquisition of land

8.—(1) An agent or employee of the Town may enter upon land for the purpose of constructing, maintaining and inspecting the irrigation system. Powers of entry

(2) The Town shall restore any land not owned by the Town that is affected by the construction, maintenance or inspection of the irrigation system as closely as practicable to its condition before the construction, maintenance or inspection. Restoration of land

(3) If there is reason to believe that any equipment is being used to obtain unauthorized or improper access to the irrigation system; an agent or employee of the Town may apply to a justice of the peace for a warrant authorizing the entry upon Warrant for entry

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land where the equipment is located and seizing the equipment.

Issue of
warrant

(4) If the justice of the peace is satisfied by evidence under oath of an agent or employee of the Town that there is reason to believe that equipment is being used to obtain unauthorized or improper access to the irrigation system, the justice of the peace may issue a warrant authorizing the agent or employee named in the warrant, together with such police officers as may be called upon for assistance, to enter upon the land and seize the equipment.

Receipt

(5) The agent or employee of the Town shall, upon request, give a receipt for any equipment seized under subsection (4).

Execution

(6) A warrant issued under subsection (4) shall be executed at reasonable times as specified in the warrant and the warrant shall state the date upon which it expires which date shall not be later than fifteen days after the warrant is issued.

Application
to court

(7) The owner of any seized equipment may apply to the District Court within thirty days of the seizure and the Court may return the items to their owner upon such terms, including an injunction preventing the owner from further access to the irrigation system, as the Court considers just.

Disposal of
goods

(8) If application is not made within thirty days to the District Court, or such extended time, up to a maximum of one year, as the Court by leave may grant, the goods shall become the property of the Town and may be sold by it and the proceeds used for the purposes of the irrigation system.

Proof of
identity

(9) When carrying out his or her duties under this section, an agent or employee of the Town shall provide identification and authorization upon request.

Riparian
rights
restricted

9. If an existing watercourse is declared to be part of the irrigation system, no person shall draw water from that watercourse during the period the irrigation system is in operation except in accordance with the by-law.

Private
irrigation
works

10.—(1) The council may by by-law allow privately-owned irrigation works to be placed in municipal road allowances in the manner and at the locations specified in the by-law.

Insurance

(2) A by-law under subsection (1) may require the owner of the drains to obtain insurance against any damage that may result from water escaping from the drains.

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11.—(1) This Act, or a by-law passed under this Act, does not prevent the owner of land abutting the irrigation system from continuing to use the amount of water authorized by a permit issued on or before the 19th day of June, 1990 under section 20 of the *Ontario Water Resources Act*.

Right
protected

R.S.O. 1980,
c. 361

(2) The land to which subsection (1) applies shall form part of the designated area and a by-law passed under this Act may impose the same controls over use and charges for the use as are imposed on the remaining lands in the designated area.

Land part of
designated
area

12.—(1) If the notice of assessment in respect of the operation of the irrigation system contains a numerical or clerical error, the owner of the land may apply to the clerk of the Town for a correction of the error within thirty days of receiving the notice.

Clerical,
numerical
errors

(2) If the clerk of the Town neglects or refuses to dispose of an application under this section within thirty days after receiving it, an appeal lies to the court of revision established under the *Local Improvement Act* in respect of the numerical or clerical error but not in respect of an error in judgment in making the assessment.

Appeal to
court of
revision

R.S.O. 1980,
c. 250

13.—(1) The Town is not liable for damages caused by any shortage of water in the irrigation system.

Exemption
from liability

(2) The Town is not liable for damages caused by any excess of water in the irrigation system unless it introduces water into the irrigation system at a rate exceeding the maximum flow of water permitted to pass through the irrigation system as established by the engineering report and modified by the Ontario Municipal Board under subsection 2 (10).

Limited
exemption

14. Every person who interferes or obstructs an agent or employee of the Town in the exercise of his or her powers under section 8 is guilty of an offence.

Offence,
obstruction

15.—(1) If there is a conflict between a by-law passed under this Act and the *Lakes and Rivers Improvement Act*, that Act prevails.

Conflict
R.S.O. 1980,
c. 229

(2) If there is a conflict between a by-law passed under this Act and a regulation made under section 28 of the *Conservation Authorities Act*, the regulation prevails.

Idem
R.S.O. 1980,
c. 85

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Commence-
ment 16. This Act comes into force on the day it receives Royal Assent.

Short title 17. The short title of this Act is the *Town of Niagara-on-the-Lake Act, 1990*.