

IGA store owner fined \$700 in Provincial court

MIDLAND — Theo Bernard, owner of the IGA stores in Coldwater, Waubashene and Victoria Harbour was found guilty and fined \$700 in Provincial court on Monday for continuing to have a sewage nuisance at his Waubashene store.

After hearing evidence from both Mr. Bernard and Public Health Inspector, Jerry Kapko, Judge P. Parker from Toronto told the court he was satisfied there is an on going sewage problem on the property.

Mr. Bernard pleaded not guilty to the charge of willfully refusing to abate the sewage nuisance. His counsel, Rod Ferguson agreed there has been sewage ponding on the property. He added "there has been no willful neglect" and lead evidence to support this fact.

According to Jerry Kapko, who took the witness stand first, the sewage system at Mr. Bernard's Waubashene IGA which opened in January 1978 is inadequate causing sewage to overflow the tile bed and "pond" on top of the ground. He pointed out that repeated attempts by the Ministry of Health between November 1977 and April 1978 to have Mr. Bernard replace the system were ignored.

On several occasions samples of the sewage were taken and tested by the Ministry of Health Laboratory in Orillia. Mr. Kapko told the court that the samples proved the

run off was sewage. On another occasion a dye was flushed down the toilet of the IGA store and was identified in the sewage.

Mr. Kapko testified that letters were mailed and hand delivered to Mr. Bernard asking the situation be rectified and plans for a new sewage system be submitted to the Ministry. He claimed the plans were never received.

On April 13, Mr. Kapko said he visited the store and saw a ditch had been dug into the municipal right of way which eventually carried the effluent into Matchedash Bay.

"The Department of Health made an order which was written on April 19," Mr. Kapko told the court. The order was signed by Dr. Peter Watson the Medical Officer of Health for Simcoe County. It ordered the new sewage system be completed by June 1 and the existing system pumped until the new one is built.

Mr. Kapko said when he visited the Waubashene store after the order was delivered he saw "sewage showing above the ground." He said on one occasion several children were playing close to the sewage run-off and a child's ball was floating on it.

Then questioned by Mr. Ferguson, Mr. Kapko stated the store had been there for 25 years and it was only since Mr. Bernard had bought it that the sewage system had been deemed inadequate.

Mr. Bernard was the only other witness who took the stand. He testified that he has owned the store since September 1977 and was not aware when he purchased it that the septic system was inadequate.

He said it was impossible to put in a new sewage system during the winter and he had problems deciding where it should go. He testified that the Ministry suggested he buy an adjacent piece of property for his septic system or install it where his driveway into the store was. Mr. Bernard said both of these ideas were not feasible. He said he finally hit upon having an Aquarobic system installed. He spent the winter months trying to arrange financing from the Federal Business Development Loan Corporation. Before he had this financing he could not go ahead and sign a contract for the system to be installed. He

only received word financing is available two weeks ago.

The cost of installing the Aquarobic system is going to be \$12,800 according to Bernard. This is more than the cost of a conventional tile bed.

Since the ministry order was delivered Mr. Bernard said his system has been pumped eight to 10 times. He claimed his staff at the Waubashene store have been in charge of the pumping operation.

Mr. Bernard said, "there were attempts by me to get a hold of them at the ministry." He also stated, "there has been a great deal of friction between Mr. Kapko and my staff."

In his summary to the court Mr. Ferguson claimed his client complied with the ministry order and there is no pictures or sample certificates of the effluent after the date of the order.

"We have not admitted that since the order was laid there has been a

nuisance," Mr. Ferguson stated. "The order asks him to pump and arrangements were made to have it pumped."

Mr. Ferguson pointed out that his client made efforts to purchase an Aquarobic system and called the June 1 deadline on the order "unreasonable" in light of the fact that his client had to get financing for the system.

"I submit that this is not a strict liability offence," he said stating his client did not willfully disregard the ministry's order. He reminded the court that since the spring break up Mr. Bernard has been working on the problem.

The Ministry of Health prosecutor reminded the court Mr. Bernard "is operating an IGA store which has a substantial business." He added, "we are dealing with a fairly substantial property."

Judge Parker was not convinced by the argument for the defense. He said the evidence supported the fact that the sewage wasn't pumped out properly after the order was made.

"Mr. Bernard failed to meet his obligations," he told the court. "If you can't operate within the law you shouldn't

operate." The maximum fine under the Public Health Act is \$2,000. Mr. Ferguson reminded the judge that Mr. Bernard is faced with a \$13,000 expense putting his system in and hasn't had any convictions before. Mr. Bernard was given 60 days to pay his \$700 fine.

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Man in custody

PORT MCNICOLL — A Peterborough man, in custody at Barrie jail, was to have a bail hearing Monday on charges stemming from a two-car accident which occurred just outside village limits here late Saturday afternoon.

Facing charges which include impaired driving, refusal to take a breath test, and driving while

under suspension is Francis Teatro, 43.

Midland OPP reports that Teatro's car was in the process of turning off Tay Concession 4 onto County Road 37 when it suddenly stopped in the middle of the roadway and was struck by a car driven by Deborah Osmond, which was heading in an eastbound direction on County Road 37.

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