

The Foundation for Aggregate Studies

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LEGAL REVIEW

ISSUE: 5

LEGAL REVIEW #5

INDEX

(This Issue)

	<u>Date</u>	<u>Pages</u>
Re. Township of Oro Restricted Area By-Law 1140 and Amendment No. 8 to Oro Planning Area Official Plan	November 1st 1978	1-2
Re. Premier Concrete Products	April 27th 1976	2-3
Re. Township of Anderdon Restricted Area By-Law 2160, as Amended by By-Laws 2030, 2107, 2108, 2117	September 27th, 1978	4-5
Town of Richmond Hill vs. Miller Paving Limited.	April 24th, 1978	5-6

1. RE. TOWNSHIP OF ORO RESTRICTED AREA BY-LAW 1140 AND AMENDMENT NO.8 TO ORO
PLANNING AREA OFFICIAL PLAN

November 1st, 1978
H.W. Kelly, and
E. A. Seaborn

Ontario Municipal Board
File Nos.: R772415 and R772938

Donald S. Mills, Q.C., for Russell H. Stewart Construction Company Limited
David S. White, for the Township of Oro.
Richard Clarke, for Fergus Hill Estates Limited, and Alexander Richmond.

This was an application for the approval of Township of Oro Official Plan Amendment No. 8 and zoning By-Law 1140, under The Planning Act which would permit aggregate extraction by Russell H. Stewart Construction Company Limited on a site in eastern Oro Township, and an application for a licence under The Pits and Quarries Control Act.

The size of the subject site is 117 acres, of which 86 acres will be mined. It is part of a larger property owned by the construction company. At the time of the hearing the site was designated and zoned for Agriculture. Evidence was adduced to show that only a portion of the site is good for agriculture, the rest overlies some of Oro Township's high quality sand and gravel deposits. The Board observed that the Official Plan of the Township appeared to encourage aggregate extraction. The surrounding area is agricultural, with the exception of a mobile home park situated 1800 feet from the nearest point of operation.

The company had retained a number of consultants to investigate the nature of the aggregate deposit and to determine the effect, if any, of the crushing and washing operation on the water table.

Objections were heard from neighbouring farmers, and the residents and operators of Fergus Hill Estates, the mobile home park. The farmers feared that the washing operation would interfere with water supplies for livestock. A hydrogeologist testified that interference was unlikely, and enlargement of the storage ponds on the site would reduce this possibility even further.

Concern was also expressed over the effect of adding more truck traffic to that already travelling to established pits. A professional engineer estimated that the traffic increase would be no more than 13%, which he did not feel was significant.

Residents of the mobile home park also objected to possible effects on the water table and increased traffic, as well as visual impacts and noise pollution. The Board felt that the first concerns had already been adequately answered, and addressed itself to the problems of visual impact and noise.

Evidence adduced by the pit operator showed sight-lines from the mobile home park to the proposed excavation. The Board was convinced that although the operation could be seen from certain locations in the park, it would present no undue visual impact.

An accoustics expert satisfied the Board that the noise level increase at the mobile home park would be insignificant.

The Board concluded that this operation would have little or no adverse impact on the public, and appeared to be in the interest of good planning. For this reason, Amendment No. 8 to the Township of Oro Official Plan, and By-Law 1140 of the Township of Oro, were approved.

2. RE. PREMIER CONCRETE PRODUCTS

April 27th, 1976

H. H. Lancaster, and
A. B. Ball

Ontario Municipal Board
File No.: M75155

B. H. Kellock, Q.C., and P. D. Amey, for T.C.G. Materials Limited, and
and Telephone City Gravel Limited.

R. B. Tuer, Q.C., and D. R. Scott, for Premier Concrete Products and
Lake Ontario Cement Limited.

R. B. Hungerford, Q.C., for the Township of Erin, and the Village of Erin.
L. C. E. Brown, for David Wright, et al.

M. James and L. M. Eades, for Braden Stapells and Caledon Ski Club, and
Ross Wortley.

J. S. Herron, for the Town of Caledon.

R. K. Webb, Q. C., for W. Arlington Murray.

A report to the Minister of Natural Resources under s.5(4) of The Pits and Quarries Control Act, 1971.

This is an application by Premier Concrete Products, a Division of Lake Ontario Cement Limited, for a licence to operate a pit on part of Lots 10 and 11, Township of Erin. The site comprises 304 acres of Class I and II agricultural land, used mainly as pasture, and zoned for agriculture.

Premier Concrete Products applied for a licence to extract no more than one million tons of aggregate per year, for at least 15 years. The material would be washed and crushed at the site. The operation was designed to replace a pit at Alton, due to be mined out within the next four years.

Progressive rehabilitation would take place so that only a small area would be worked at any one time.

The gravel washing operation would require the use of approximately 80,000 gallons of water per day. Evidence was adduced to show that this pumping rate would cause lowering of the water table to a distance up to 2,500 feet away. The company stated its willingness to provide compensation for any local wells affected by the washing operation.

Objections were heard from Erin Township, the Village of Erin, and local residents. Both the Township and the Village objected on the grounds that the Village of Erin was experiencing greater than anticipated growth, and wished to expand to the east. This would mean that any new residential development would border on the pit site. The Village of Erin also objected to the increased truck traffic which would result from this operation, estimated by the company to be 364 trips per day at peak periods.

Local residents objected to the impact of increased noise, dust and traffic in a scenic rural environment. A fish hatchery, Shamrock Trout Farm, relies on a consistent supply of uncontaminated water from a spring in the local bedrock. The owners feared a deleterious effect on both quality and quantity of their water, should the washing operation commence. The Board felt that the source of this spring was sufficiently isolated from the aquifer which would be tapped by Premier Concrete that it would not be affected by the operation.

The Board felt that the company had made a good effort to reduce the impact of its pit, and the only factor affecting approval of a licence was the question of truck traffic.

The Board felt that the increased truck traffic would constitute a serious problem in Erin Township, especially inasmuch as another pit licence application for a nearby site was being considered at the same time. Approval for the Premier Concrete Products licence was given, with the recommendation that conditions of the licence include provision for certain road and intersection improvements, and the definition of certain haulage routes. Other provisions are to cover hours of operation, dust and noise control, water table monitoring, and berm location.

3. RE. TOWNSHIP OF ANDERDON RESTRICTED AREA BY-LAW 2160, AS AMENDED BY
BY-LAWS 2032, 2107, 2108, 2117

September 27th, 1978
W. T. Shrives, Vice-Chairman, and
D. S. Colbourne, Vice-Chairman.

Ontario Municipal Board
File No.: 73197

Richard J. Bondy, for the Township of Anderdon.
J. D. Lawson, for Allied Chemical of Canada Limited.

This is the last part of the hearings begun in 1974 in connection with approval of Township of Anderdon Restricted Area By-Law 2016, as amended by four subsequent by-laws. In October 1974 most parts of the by-law, dealing with residential and agricultural land uses, were approved, with the remainder being referred back to Anderdon Council for further consideration. The Ontario Municipal Board dealt with this remainder in June 1978, except for that portion of the by-law pertaining to lands owned by Allied Chemical of Canada Limited.

The subject lands comprise 700 acres, of which Allied Chemical had purchased a substantial part by 1952. The surrounding land use is rural-residential and agricultural. The land is designated Resource Extraction in the 1970 Official Plan, and quarrying began in that year on the portion of the Resource Extraction area which had been zoned Industrial Extractive.

The effect of By-Law 2160 would be to permit the expansion of Allied Chemical's quarrying further onto the subject land.

It had been Council's understanding that as quarrying progressed beyond the boundary of the Industrial Extractive zone, further zoning amendments could be undertaken as desired. Evidence was adduced which showed that the company had exceeded the zoning boundaries almost immediately, during the period 1970-1972, without permission in the form of a zoning amendment.

At the same time, The Pits and Quarries Control Act, 1971 was enacted, which came into effect in Anderdon Township in 1974. Evidence indicated that since 1971 the company attempted to comply with the expected legislation and applied for a licence when affected by the Act. This licence was granted by the Minister of Natural Resources in February, 1974.

The company had also received a water-taking permit, which required it to compensate for water supplies interfered with due to drainage from the quarry. Permission had been granted for the construction of a crusher in 1971.

The planner for Anderdon Township testified that the site plans conformed to the Official Plan and The Pits and Quarries Control Act and was, in his opinion, compatible with surrounding land use.

In support of its position, Allied Chemical presented evidence that blasting vibrations would not damage buildings which met current building standards. Evidence of inspections and operations monitoring was also adduced.

The Board censured Allied Chemical for its lack of adequate and reasonable response to objectors' complaints about blasting effects, interference with water supplies, night operations, and truck traffic. It noted that there are no hours-of-work or noise control by-laws in Anderdon Township.

It was noted by the Board that the company had, however, acquired the right to quarry the land in the proper manner, with the exception of seeking the necessary zoning amendment. The Board felt that Allied Chemical met the law, but went no further, in its dealings with and responsibility to its neighbours.

In consideration of the fact that the quarrying was a continuous operation since long before The Pits and Quarries Control Act was implemented, and that a licence was issued without objection, and in consideration of the economic impact of the operation on the local community, the Board concluded that the Extractive Industrial zoning should be extended to a portion of the subject lands. When the need for mining the remaining land is established, a new application will have to be made.

For these reasons, the final part of Township of Anderdon Restricted Area By-Law 2160 was approved.

4. TOWN OF RICHMOND HILL vs. MILLER PAVING LIMITED

April 24th, 1978
Saunders, J.

Supreme Court of Ontario
(unreported)

Frank Felkai, and John Stirling, for the Town of Richmond Hill.
Richard Hassard, Q.C., and John Richardson, for Miller Paving Limited.

An application by the Town of Richmond Hill for an injunction restraining Miller Paving Limited from using certain lands in the former Township of Whitchurch for the manufacture of asphalt, on the grounds that said use contravenes Whitchurch Township By-Law 2083 and Town of Richmond Hill By-Law 33-75.

In early August, 1970, site preparation took place and equipment was installed. Some raw material had arrived at the site prior to September 8 1970 (when the Whitchurch by-law was enacted), although production did not commence until September 22 1970. The plant remained in continuous production to the end of the 1977 construction season.

Whitchurch By-Law 2083, restricting pit and quarry land use, received a series of temporary approvals from the Ontario Municipal Board after it was enacted in 1970, and was replaced by Town of Richmond Hill By-Law 33-75 in September 1975. The Richmond Hill by-law allows use of the subject land for pits and quarries, but prohibits the production of asphalt.

The plaintiff, Town of Richmond Hill, contended that an asphalt plant was a prohibited use of the subject land, under Whitchurch By-Law 2083. The defendant, Miller Paving Limited, claimed that the manufacture of asphalt is a legal non-conforming use, as defined by The Planning Act s.35 (7) (a).

It was the opinion of the Court that the subject lands were indeed used for asphalt manufacture prior to the enactment of By-Law 2083, even though actual production did not start until two weeks later. The shipment of equipment and some raw material was felt to be sufficient indication of the subsequent use, which was borne out by the plant's record of production for the next seven years. The Court felt that the land had not been intended for, nor had it been used for, any purpose other than the production of asphalt.

Argument was heard over whether this land use was legal prior to September 8 1970. The Court ruled that no earlier by-law had been contravened, and that the intention of the former Township of Whitchurch to prohibit an asphalt plant was not clear. Miller Paving Limited had been in lawful use of the subject land prior to September 8 1970, and in lawful non-conforming use thereafter.

The action was dismissed with costs to be paid by the Town of Richmond Hill.

I N D E X

	<u>Date</u>	<u>Issue</u>
Claudette Millar v. The Minister of Natural Resources for the Province of Ontario, and the Preston Sand and Gravel Company Ltd.	July 13th 1978	3
E. R. S. Holdings Ltd. v. Town of Pickering	December 9th 1976	2
Monteith et al. v. Township of Downie et. al.	December 23rd 1976	2
Rockcliffe Park Realty Ltd. and Director of Ministry of Environment	June 3rd 1975	1
Town of Richmond Hill v. Miller Paving Ltd.	April 24th 1978	5
Township of Goulbourn v. The Minister of Natural Resources for the Province of Ontario, and Elizabeth Kelly	January 19th 1978	4
R. v. B.L.S. Sanitation Ltd.	September 8th 1976	1
R. v. Chinook Chemicals Ltd.	January 9th 1974	1
R. v. Glen Leven Properties Ltd.	February 10th 1977	1
R. v. Springbank Sand and Gravel Ltd.	May 30th 1975	1
Re. Canada Cement Lafarge Ltd.	March 15th 1976	3
Re. City of London Restricted Area By-Law C.P. 374 (hf)-524 South Winds Development Company Ltd. v. Harris	June 28th 1977	2
Re. Dufferin Materials and Construction Ltd.	September 1974	4
Re. Premier Concrete Products	April 27th 1976	5
Re. Preston Sand and Gravel Company Ltd.	November 29th 1973	2
Re. Regional Municipality of Haldimand-Norfolk Restricted Area By-Law 5000-33-H,	December 18th 1975	3
Re. Regional Municipality of Haldimand-Norfolk Restricted Area By-Law 5000-73-H, and The Flintkote Company of Canada Ltd.	May 9th 1978	4

	<u>Date</u>	<u>Issue</u>
Re. St. Lawrence Cement Company Ltd.	June 11th 1975	4
Re. Starr and Township of Puslinch et al.	May 31st 1977	1
Re. Town of East Gwillimbury Proposed Amendment Number 8 to the Official Plan	May 10th 1978	3
Re. Township of Anderdon Restricted Area By-Law 2160, as Amended by By-Laws 2032, 2107, 2180, 2117	September 27th 1978	5
Re. Township of Gloucester: Licence to Operate a Quarry	April 11th 1974	2
Re. Township of Kingston Official Plan and Township of Kingston By-Law 75-8	February 18th 1976	3
Re. Township of Manvers	March 24th 1975	2
Re. Township of Mersea	May 15th 1975	2
Re. Township of North Dumfries Restricted Area By-Law 73-32	August 15th 1974	3
Re. Township of Oro Restricted Area By-Law 1140 and Amendment No. 8 to Oro Planning Area Official Plan	November 1st 1978	5
Re. Township of Uxbridge Restricted Area By-Laws 1517 and 1613	December 10th 1973	2
Re. Township of West Flamborough	March 28th 1974	2
Re. Township of West Nissouri Restricted Area By-Law 12-1967-42	August 19th 1975	4
Re. Township of Zorra Restricted Area By-Law 28-1974	September 25th 1975	2

N.B. The Index will be updated with every mailing.