

F.A.S.

Municipal

Advisory

Service

Legal Review

Issue #3

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1. RE. TOWNSHIP OF NORTH DUMFRIES RESTRICTED AREA BY-LAW 73-32

August 15th 1974
S.S. Spiegel and
H.H. Lancaster

CIT: 3 O.M.B.R. 450-452

John M. Harris for the Township of North Dumfries.
F. L. Dreger, Q.C., for Forwell Limited.
T. W. Ouchterlony, for Garth O. Thompson and others.

Application under s. 35 of the Planning Act for approval of a zoning by-law.

This case was an application by the Township of North Dumfries for approval of a zoning by-law which would amend By-law 1289 to permit the establishment of an asphalt plant in an existing gravel extraction area. The site was a 6-acre parcel then zoned Agricultural. This zoning permitted the operation of a pit or quarry.

Evidence indicated that there were no residences closer to the site than one quarter of a mile. Objections were heard from landowners on properties surrounding the site, concerning traffic flow, air and water pollution.

With respect to air and water pollution, the Board heard evidence that the air emitted by the proposed asphalt plant would be 99.9% pure, and that silting ponds would be created to allow surface water to clear before leaving the site.

Forwell Limited and the Township of North Dumfries had entered into an agreement specifying conditions for the operation of the asphalt plant. Forwell agreed to operate only between 7 a.m. and 6 p.m. Monday to Friday, to upgrade roads in the vicinity of the operation, to supply asphalt to the Township for certain road repairs, and to cease operating the asphalt plant when the gravel pit ceases operations.

The Board was convinced that an asphalt plant was a logical extension to the existing gravel pit operation, and felt that the objectors were concerned more about the overall operation than about the plant itself. For these reasons, the Board approved the application.

2. RE. REGIONAL MUNICIPALITY OF HALDIMAND-NORFOLK RESTRICTED AREA
BY-LAW 5000-33-H

December 18th 1975

CIT: 5 O.M.B.R. 303-308

F. G. Blake, Vice Chairman
and C. G. Charron, Q.C.

Thomas A. Cline, for the Regional Municipality of Haldimand-Norfolk.
R. B. Tuer, Q.C., and R. W. Cosman, for the Flintkote Company of
Canada Limited.

L. C. E. Brown, for Cayuga Materials and Construction Company Limited.

Application under s. 35 of the Planning Act by the Region of Haldimand-Norfolk for approval of a zoning by-law.

The proposed Zoning By-law 5000-33-H would re-zone approximately 1000 acres of land from "Agricultural A Zone" to "Extractive Industrial M4 Zone".

By-law 5000-33-H would permit a limestone quarry together with a ready-mix concrete plant and an asphalt paving plant. The major objection was that the by-law was not in conformity with the Official Plan which designated the area "Rural" with quarrying as an incidental use. It was contended that the proposed quarry was not incidental to the rural designation and was not the type of quarry contemplated by the Official Plan as its products are not intended for local use but for export.

The Board considered the definition of the "Rural" designation and its policies. The words "and quarries" ended a list of uses which may be considered necessary in a rural area, or were subordinate to the major uses: agriculture, forestry, and conservation of soil and wildlife. The proposal was found to be neither necessary or subordinate to the major uses in the "Rural" designation.

It was the decision of the Board that the proposed quarry, cement and asphalt plant represented heavy industrial use inappropriate in a rural area. For these reasons, approval of By-law 5000-33-H was refused.

3. RE. TOWNSHIP OF KINGSTON OFFICIAL PLAN AND TOWNSHIP OF KINGSTON BY-LAW 75-8

February 18th 1976

CIT: 5 O.M.B.R. 336-344

P. M. Brooks and
J. A. Wheler

P. G. D. Swan, Q.C., and James R. Herrington, for Kingston Township.
Thomas R. Wilcox, Q.C., for Woods Sand and Gravel Division of Woods Fuel
and Supply Company Limited.

R. Mackenzie, for I. Graham et al.

Three matters were heard together: a) a reference by the Minister of Housing of a portion of the Township of Kingston Official Plan relating to the subject lands; b) an application by Kingston Township for the approval of Restricted Area By-law 75-8; c) a reference by the Minister of Natural Resources in connection with granting a licence pursuant to The Pits and Quarries Control Act, 1971, Vol.2 c. 96.

The site in question comprised parts of Lots 4 and 5, Concession 3, Township of Kingston. Clinton Wood had applied for a licence to extract no more than 500,000 tons per year for a maximum of 15 years. A great deal of evidence was heard in support of, and in opposition to, the proposed quarry relating to the three matters above.

With respect to portions of the Official Plan, objectors referred to the manner in which the Planning Board arrived at the decision to designate the site for pits and quarries use without public meetings or technical advice.

In consideration of proposed Zoning By-law 75-8, evidence was heard relating to the proposed pit's impact on the local area. The Board was convinced that Highway 2 can accommodate the increased volumes of truck traffic, that blasting operations would have little or no effect on nearby residents, and that there would be minimal interference with neighbourhood wells.

Notwithstanding assurances that the company would run a model operation, the Board was conscious of the disruption this would cause to the rural-residential community, especially that resulting from excessive truck noise and vibration.

In consideration of the disruption which local residents would have to endure, and the fact that the evidence did not demonstrate an over-riding need for aggregate from that particular location, it was the decision of the Board that:

- 1) confirmation of the Pits and Quarry designation in the Official Plan was refused; and
- 2) approval of Restricted Area By-law 75-8 was refused and a rural designation substituted.

The matter of the licence application would be dealt with and reported on separately.

4. RE. CANADA CEMENT LAFARGE LIMITED

March 15th 1976
W. H. J. Thompson, Q.C.
and M. Corbett

CIT: 5 O.M.B.R. 407-411

M. W. Carty for Canada Cement Lafarge Limited.
Stephen A. Weese, for Charles Murphy.

Report to the Minister of Natural Resources under s. 5(3) of the
Pits and Quarries Control Act, 1971.

Canada Cement Lafarge Limited applied for a licence to operate a sand and gravel pit on a 51-acre site in the Township of Sidney, County of Hastings.

The Board heard evidence that, based on a survey of south-eastern Ontario, the proposed site was the only one in the area containing the desired quality of sand in economically-viable quantities. The Board was advised that the high quality of this sand would result in considerable savings in energy during the manufacture of cement.

The Board heard evidence on the ecology of the area and the suitability of an extractive operation in it. No objections had been raised at the public hearing. Evidence was presented to show that the operation would have little or no adverse effect on local ecology, settlement, or adjacent land use.

Notwithstanding the lack of objections, the Board felt it desirable to apply certain conditions to the operation of the pit. These conditions dealt with details of the site plan: tree screens, drainage, and depth of extraction. Further, the operations must cease whenever a funeral is conducted a cemetery adjacent to a portion of the site.

The Board was satisfied that the pit operations would have no adverse effect on the local area, and recommended that a licence be approved, subject to the aforesaid conditions.

5. RE. TOWN OF EAST GWILLIMBURY PROPOSED AMENDMENT NUMBER 8 TO THE
OFFICIAL PLAN

May 10th 1978
E. Z. Seaborn

John S. Rogers for the Town of East Gwillimbury.
Susan Plamondon, for Raymond Jackson.
J. Robert Gardiner, for Paul Lee.

Application under s. 44 of the Planning Act for approval of an Amendment to an Official Plan.

This case was a reference by the Minister of Housing of an application by the Town of East Gwillimbury for the approval of proposed Amendment Number 8 to the Official Plan, as requested by Vanbots Construction Company Limited. The purpose of the proposed Amendment was to change the designation of 3219 acres of land from Rural to Extractive.

The Board was advised that no implementing zoning by-law was to be introduced, and no application had yet been made for a pit licence.

The site was part of the Overholt Farm owned by Roy Jackson, on Concession 7, East Gwillimbury. It was almost entirely surrounded by rural non-farm uses. Virtually all of the local residents raised objections, the major concern being increased volumes of truck traffic should extraction commence.

At the time there was an extractive operation known as the Ash pit located several hundred feet south of the proposed site. The Board heard evidence that a truck could pass the homes on the 7th Concession as often as every two minutes. The operator of the proposed pit also operated the Ash pit. When the proposed site was in operation, extraction would cease at the Ash pit, so that the volume of truck traffic was expected to remain the same.

Other objections were heard from the Franklin Fishing Club and the Franklin Trout Farm. The former was a private fishing club, while the latter was a commercial fish hatchery. The business could be seriously damaged by any effect on their five wells.

A great deal of evidence was heard on many subjects, but the Board was not convinced that the evidence was sufficiently conclusive with respect to geology and hydrogeology.

The Board did not believe that noise and dust pollution from the site would seriously affect local residents. It was not satisfied that there would be no adverse effect on local wells, and cannot accept the continuation of the serious truck traffic problems on the 7th Concession Road. Therefore the proposed Amendment Number 8 to the Official Plan was not approved.

6. CLAUDETTE MILLAR V. THE MINISTER OF NATURAL RESOURCES FOR THE PROVINCE OF ONTARIO, AND THE PRESTON SAND AND GRAVEL COMPANY LIMITED

July 13th 1978
Southey,
Saunders, and
DuPont, J.J.

Supreme Court of Ontario
Divisional Court

J. Willms, for Claudette Millar.
Miss J. E. Minor, for the Minister of Natural Resources.
M. J. Somerville, for Preston Sand and Gravel Company Limited.

An application to declare a gravel pit licence null and void, on the ground that the Minister of Natural Resources violated s. 6(2) of The Pits and Quarries Control Act, 1971 in granting the licence.

The applicant contended that the licence was issued in contravention of local and regional Official Plans in the City of Cambridge, Region of Waterloo, thus violating s. 6(2) of The Pits and Quarries Control Act.

The property for which the licence had been granted was zoned "gravel pit" under By-law 47 of the City of Cambridge. In June of 1975 the Ontario Municipal Board had refused an application by the City of Cambridge to re-zone the site to permit agricultural uses only, which would have prohibited the gravel operation.

The Court heard a history of gravel extraction operations on the site. Extraction commenced without a licence in October 1972, and the company was ordered by the Ministry of Natural Resources to cease operations. In February 1973 a licence was applied for, and was refused on the recommendation of the Ontario Municipal Board. A new application was submitted in July 1974. The Ontario Municipal Board again recommended against it, but a licence was issued by the Natural Resources Minister in November 1975.

The Court then examined the Official Plans of the City of Cambridge and the Regional Municipality of Waterloo, as evidence was heard interpreting the intent of the Plans.

The key paragraph in the Cambridge Official Plan states that the Agricultural designation "may include" certain uses. Extractive operations were not mentioned. The Court felt that the inclusion of only a limited number of possible uses did not at the same time necessarily prohibit any or all other uses. The Court stated that the Natural Resources Minister had not been bound to comply with any stated or inferred intent of the Region of Waterloo Official Plan, as the Plan did not come into force until five months after the licence in question was granted.

For these reasons, the Court dismissed the application.