

F.A.S.
Municipal
Advisory
Service

Legal Review

Issue #4

LEGAL REVIEW #4

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1. RE. DUFFERIN MATERIALS AND CONSTRUCTION LIMITED

September 25th, 1974
W. Shub, Q.C., Vice-Chairman, and
S.S. Speigel

CIT: 4 O.M.B.R. 63-72

R. B. Tuer, Q.C., and D. R. Scott, for Dufferin Materials and Construction Ltd.
B. H. Kellock, Q.C., and P. D. Amey, for the Town of Paris.
John S. Canning and George R. Houlding, Q.C., for the County of Brant.

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

This case concerned an application by Dufferin Aggregates, a division of Dufferin Materials and Construction Limited, to operate a pit near the Town of Paris, Township of North Dumfries. The company intended to mine 800,000 to 1,000,000 tons annually from a 615 acre site, and ship most of the product by rail.

The Board heard a great deal of evidence to support the application. Evidence was adduced stressing a critical shortage of pits in Ontario, emphasizing the need to develop this site. The company was prepared to build an access road to Highway 24A for truck traffic.

An environmental planner testified that gravel pit use would not affect the surrounding environment, and once rehabilitated the site would have increased recreational potential. Dust controls and berms would prevent interference with nearby dwellings.

Objections came from local residents concerned about noise and dust, and worried that trucks would make use of Highway 24A, the main street of Paris. The Board dealt with objectors concerned with the effect on water supply for the Town of Paris, by ruling that if a licence were to be granted the company must satisfy the Town that water quality and quantity would not be affected.

During the latter part of the hearing, much discussion again took place over whether there is a gravel shortage in Southern Ontario, and the possibility of using alternate truck routes. It was the conclusion of the Board that the site must be mined for gravel before any other use is made of the land, and that there is no alternative to Highway 24A for truck traffic to and from the pit.

The Board felt it desirable to attach 15 conditions to the issuance of a licence. These dealt with truck routes, hours of operation, and assurances that local water quality and quantity will be monitored and maintained. North Dumfries Township By-Law 1282 (a pits and quarries regulation) will apply where its set-back regulations are more stringent than those in The Pits and Quarries Control Act.

Noting that the site had been zoned for extraction since 1967, the Board recommended that a licence be issued, subject to the above conditions.

2. RE. ST. LAWRENCE CEMENT COMPANY LIMITED

June 11th, 1975

CIT: 5 O.M.B.R. 44-46

D. Jamieson, Vice Chairman, and
P. M. Brooks

R. B. Tuer, Q.C., and D. R. Scott, for St. Lawrence Cement Company Limited.
J. W. Quinn, for 287477 Ontario Limited.

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

An application had been made by the St. Lawrence Cement Company Limited for a licence to allow continued quarrying of shale from a further 60 acres of its property in Mississauga. Excavation of shale had been going on since 1956 on portions of the same site.

Detailed evidence was heard concerning the quarrying method itself. The Board was convinced that: no trucks would have to use public roads; there would be no noise offensive to adjacent property owners; there would be no effect on ground water or surface runoff; there would be no dust problem. Extraction on the site is permitted by the Official Plan and pertinent zoning by-laws.

The only objection heard was lodged by the counsel for 287477 Ontario Limited, owner of lands west of the site. His client felt that the proposed quarrying might interfere at some time with some future use of his property, which is presently unused. No indication of the nature of future use was given.

The Board concluded that it had not been shown that continued quarrying would be against the interest of the public. Therefore the Board recommended to the Minister of Natural Resources that the application for a licence be granted.

3. RE. TOWNSHIP OF WEST NISSOURI RESTRICTED AREA BY-LAW 12-1967-42

August 19th, 1975

CIT: 5 O.M.B.R. 129-130

D. Jamieson, Vice Chairman, and
E. A. Seaborn

D. J. Hamilton, Q.C., for South Winds Development Company
A. H. Little, for R. P. Little et al.
J. G. McNeil, for D. McNeil

Application under s.35 of The Planning Act for approval of an amending zoning by-law.

The proposed zoning amendment would re-zone 34 acres of land from open space to M2 Industrial, in order to permit aggregate extraction.

The Board received a great deal of evidence respecting adjacent land uses and zoning boundaries near the lands in question. South of the subject property are lands previously designated M2, containing operating pits.

Ratepayers' objections to the re-zoning were heard. These primarily concerned the increased volume of local truck traffic should another pit be opened. Ratepayers suggested that extractive activity be confined to the present M2 lands until the active pits are exhausted.

The Township of West Nissouri had an Official Plan which had not yet been approved by the Minister of Housing. The Board felt that there was a strong possibility that the Plan will be changed before final approval is given.

Due to the uncertainty regarding what future land use for the subject land will be designated when the Official Plan is approved, the Board felt that the application for re-zoning was premature. For this reason the application was not approved.

4. RE. TOWNSHIP OF GOULBOURN vs THE MINISTER OF NATURAL RESOURCES FOR THE PROVINCE OF ONTARIO, AND ELIZABETH KELLY

January 19th, 1978
O'Driscoll,
Southey, and
Griffiths, J. J.

Supreme Court of Ontario,
Divisional Court.

P. A. Weber, for the Township of Goulbourn
J. Polika and V. L. Freidin, for the Minister of Natural Resources
Mrs. M. J. Rice and E. Honey, for Elizabeth Kelly

An application by the Township of Goulbourn to declare a pit licence void and setting aside a decision by the Minister of Natural Resources granting that licence to Elizabeth Kelly.

The Township of Goulbourn became subject to The Pits and Quarries Control Act on May 15, 1975. The Minister had felt that the pit was in operation immediately before that date, and granted a licence without publishing public notice or applying for an Ontario Municipal Board hearing. It was the contention of the Township that the pit was not in operation immediately prior to that date, and that the public notice and hearings would therefore have been necessary under s.5 of The Pits and Quarries Control Act.

The Minister's position was supported by a letter and affidavit from Elizabeth Kelly and a memorandum from a Ministry of Natural Resources pit and quarry inspector. The letter stated that each year Kelly moved gravel from the site to her home or to a neighbour's home. The Court noted that the definition of a "pit" in The Pits and Quarries Control Act did not require that the excavated material be sold.

The Court felt that ample evidence was provided to support the Minister and put the onus on the Township to show that the pit was not, in fact, in operation immediately prior to the date of designation. The Township produced affidavits from local residents stating that they had not observed material being removed from the property. In view of the small amount extracted (3000 tons in two years) the Court felt that extraction could have taken place unobserved.

It was the judgement of the Court that the Township could not satisfactorily establish that the pit was not operating prior to May 15, 1975. For this reason the application was dismissed, and the Township ordered to pay Elizabeth Kelly's costs.

5. RE. REGIONAL MUNICIPALITY OF HALDIMAND-NORFOLK RESTRICTED AREA BY-LAW 5000-73-H, and THE FLINTKOTE COMPANY OF CANADA LIMITED

May 9th, 1978

W. T. Shriver, Vice-Chairman, and
S. S. Speigel

T. A. Cline and J. Backus, 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.
J. W. Samuels and D. Marshall, for Diane Fahselt, Charles Gordon Winder, and
Paul Frederick Maycock

An application by the Regional Municipality of Haldimand-Norfold for approval of Restricted Area By-Law 5000-73-H, and
A report to the Minister of Natural Resources under s.5(3) of The Pits and Quarries Control Act, 1971.

The Board dealt with two matters at once: the application for approval of Restricted Area By-Law 5000-73-H, and the hearing concerning an application for a pit licence from The Flintkote Company. 500 acres of land zoned Agricultural "A" would be re-zoned as Extractive Industrial M4, to permit the removal of one million tons of limestone annually, over 40 to 50 years.

With respect to the zoning by-law, argument was heard giving various interpretations of the Regional Official Plan and the proposed by-law's compliance with that Plan. In a December 1975 decision, the Board had ruled against a similar by-law (Restricted Area By-Law 5000-33-H), a ruling overturned by a March 1976 order-in-council. The Board made it clear that this was a completely new hearing. After consideration of arguments and evidence, it was the decision of the Board that the by-law did conform to the Official Plan, and Restricted Area By-Law 5000-73-H was approved.

With respect to the licence application, the Board was advised that The Flintkote Company had agreed to set aside 48 acres of its site for an environmental protection area, as many scientists had protested the company's intention to mine what they felt was a geologically and botanically unique site. A consultant planner for Haldimand-Norfolk was of the opinion that the proposed quarry would have very little impact on the public.

Objections came from three groups: scientists from the University of Western Ontario and Erindale College, local residents, and Cayuga Materials and Construction Company Limited.

Much discussion was heard over the uniqueness of this particular site and the necessity of preserving all or part of it. The Board concluded that The Flintkote Company's offer to set aside the 48 acre area was a generous one and would satisfy many conservationist concerns.

Resident's complaints were primarily concerned with truck traffic and destruction of the rural atmosphere. The Board felt that with increasing urbanization projected for the area resulting from the Nanticoke project, traffic would increase and quiet rural life disappear with or without the quarry.

The Cayuga Materials and Construction Company Limited objected to the opening of a pit very close to one they are operating. On the basis of evidence from marketing experts and planners, the Board felt a second pit would only provide competition, rather than widespread adverse socio-economic impacts.

Certain conditions would have to be met by The Flintkote Company before a licence could be granted. These dealt with setting aside the environmental protection area, dust and noise control, truck traffic and hours of operation.

It was the recommendation of the Board that a pit licence be granted to The Flintkote Company of Canada Limited.

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