

The Foundation for Aggregate Studies

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STATUS REPORT

Prepared for:

Mr. and Mrs. Alfons F. Buchholz
R. R. #4,
STAYNER, Ontario.
LOM 150

Submitted by:

Ms. Joyce Collier
Researcher
Foundation for Aggregate
Studies

I Introduction

The following brief Status Report results from a request from Mr. and Mrs. Alfons F. Buchholz to review materials as follows:

1. Status of application.
2. Institutional and legal procedure of applying for a pit and quarry licence. Commentary on relevant sections of Pits and Quarries Control Act, 1971.
3. Strategy regarding approach to Township Council.
4. Relevance to Official Plan.
6. Suggested list of conditions if site is approved.
7. Referrals to legal expertise if required.

It is organized in seven sections, the last of which includes a Section 'Summary and Recommendations'. This Report should be viewed as basic background materials and used as reference material.

II. Status of Application

The licence application process is over, and all necessary materials have been referred to the Ontario Municipal Board. All parties are currently awaiting the announcement of a hearing date.

Chronology:

March 1978

Ken Monaghan limited applied for a licence to operate a permanent pit on N.W. $\frac{1}{4}$ Lot 18, Con. VII, Nottawasaga Township.

The application and subsequent public notice conformed with requirements of the Pits and Quarries Control Act, 1971.

Spring 1978

The Ministry of Natural Resources Huronia District Office in Midhurst received nine (9) objections to the application, and referred the matter to the Ontario Municipal Board. The objectors were as follows:

Mr. J. B. Alexandor, R. R. #2, Creemore, Ontario.

Mr. & Mrs. A. Buchholz, c/o Larry E. Land,
Barrister & Solicitor,
168 Hurontario Street,
Collingwood, Ontario. L9Y 3Z5

Lucia N. Lines, R. R. #2, Creemore, Ontario.
LOM 1G0

Mr. R. Krivy, 153 Chipwood Cres., Willowdale, Ont.
M2J 3X6

James & Patricia Mackay, R.R. #2, Creemore, Ont.
LOM 1G0

Ivor McMullin, Niagara Escarpment Commission,
11-13 Marsh Street,
Clarksburg, Ontario.
NOH 1J0

Maryian E. Milsom, 5 Green Valley Road, Willowdale,
Ontario.

P. S. Milsom, Metromarket Newspapers Ltd.,
102 Bloor Street West,
Toronto, Ontario, M5S 1M8

Douglas & Mary Skelton, 109 Sunnidale Road,
Barrie, Ontario. L4N 1G8

- June 12, 1979 The Township enacted Official Plan Amendment No. 6 to change the designation of the site from "Rural" to "Industrial".
- October 10, 1979 The Township passed By-Law 15-79, which rezones the site to Extractive Industrial (M2) to permit the operation of a gravel pit.
- November 27, 1979 Township requested that the Minister of Housing cause the Municipal Board to hear the Official Plan and zoning change at the same time as the licence application is heard.

III. Application Procedure

1. The applicant must apply to the Ministry of Natural Resources for a licence to operate a permanent pit and must attach a copy of the site plan to the application. March 1978

2. After the licence application is made the applicant must publish notice of the application in "two successive issues of at least one daily or weekly newspaper having general circulation in the area."
Pits and Quarries Control Act, 1971, Ontario Regulation 545/71 S. 4(2)
(Notice given in March 1978)

3. Anyone who would be directly affected by the proposed pit may file an objection to the application with the Minister of Natural Resources, causing the matter to be referred to the Ontario Municipal Board. Pits and Quarries Control Act, 1971, S. 5(3).

(Ministry received nine objections during spring 1978.)

4. The Minister of Natural Resources may refuse to issue a licence where it would be against the public interest in his opinion, taking into account the following points:

- a) the preservation of the character of the environment;
- b) the availability of natural environment for the enjoyment of the public;
- c) the need, if any, for restricting excessively large total pit or quarry output in the locality;
- d) the traffic density on local roads;
- e) any possible effect on the water table or surface drainage pattern;
- f) the nature and location of other land uses that could be affected by the pit or quarry operation; and
- g) the character, location and size of nearby communities.

Pits and Quarries Control Act, 1971, S. 6(1)

5. The Minister of Natural Resources may also refer a licence application to the Municipal Board on his own motion, whether or not objections have been filed. Pits and Quarries Control Act, 1971, S. 5(4)

6. A licence cannot be issued if the operation would be in contravention of Official Plan or zoning by-law. Pits and Quarries Control Act, 1971, S. 6(2)

(Therefore the applicant must request that the municipality change the Official Plan designation and zoning of his site if necessary.)

7. An Official Plan amendment and zoning change must be approved by the Ontario Municipal Board. After council passes the by-law bringing the amendment into force, and the by-law to change the zoning, council must give notice to affected persons that the changes have been made and Provincial approval has been requested. Residents may file objections with the municipal Clerk by the date specified by the Municipal Board. Council need not have given any earlier public notice of its intentions. Planning Act S. 35 (11), (12), (13).

(Council approved the Official Plan change on June 12, 1979, the zoning change on October 10, 1979, and requested Municipal Board approval of both changes on November 27, 1979.)

8. All parties involved will be notified by the Municipal Board no less than 10 days before the scheduled hearing date.
9. At the Ontario Municipal Board hearings:
 - a) The Board will consider the merits of the Official Plan and zoning changes, and decide whether to grant or refuse them. The decision is appealable to the Supreme Court on points of law only. Any person can petition the lieutenant Governor in Council, within 28 days of the decision, and the Lieutenant Governor in Council may change the decision, Ontario Municipal Board Act S. 94, and Pits and Quarries Control Act, 1971, S. 9(2).

- b) At the same time the Board may consider the merits of the licence application. It is empowered to make a recommendation to the Minister of Natural Resources on whether the licence should be granted. The Minister makes the final decision within 30 days, but does not have to agree with the Board's recommendation. Pits and Quarries Control Act, 1971, S. 9.

Analysis of Site Plan Requirements

Requirements under the <u>Pits and Quarries Control Act, 1971, S. 4(2)</u>	Site Plan Response
(a) the location, true shape, topography, contours, dimensions, hectareage and description of the lands set aside for the purposes of the pit or quarry;	<p>the validity of the property boundary survey has been questioned by some residents.</p> <p>Mr. Buchholz's concerns are:</p> <ol style="list-style-type: none"> 1) the property boundary on the western side of Mr. Monaghan's land is incorrect and he feels that some of his own land is wrongly included in the Monaghan property. 2) the location of the swamp is incorrect. 3) surface drainage details are incorrect. <p>These claims need to be verified by a professional surveyor.</p>
(b) the use of all land and the location and use of all buildings and structures lying within a distance of 150 metres of any of the boundaries of the lands set aside for the purposes of the pit or quarry;	<p>the land has not actually been shown to a distance of 150 metres, but the adjoining uses are indicated. One presumes that there are no buildings within 150 metres, as none are mentioned.</p>
(c) the location, height, dimensions and use of all buildings or structures existing or proposed to be erected on the lands set aside;	<p>the only structure shown is a scale-house.</p>
(d) existing and anticipated final grades of excavation, contours where necessary and excavation set backs;	<p>final contours are shown, along with set backs and final slopes, as required.</p>
(e) drainage provisions;	<p>site drainage is shown in a generalized way, but is felt to be inaccurate by Mr. Buchholz.</p>
(f) all entrances and exits;	<p>entrance/exit shown as required.</p>

<p>(g) as far as possible, ultimate pit development, progressive and ultimate road plan, any water diversion or storage, location of stockpiles for stripping and products, tree screening and berming, progressive and ultimate rehabilitation and, where possible, intended use and ownership of the land after the extraction operations have ceased;</p>	<p>according to the site plan there will be no water storage or roads on the site, and no stockpiles of excavated material other than topsoil.</p>
<p>(h) cross sections where necessary to show geology, progressive pit development and ultimate rehabilitation; and</p>	<p>cross-section shown as required.</p>
<p>(i) such other information as the Minister may require or as is prescribed by the regulations, 1971, c. 96, S. 4 (2); 1978, c. 87, S. 29(1).</p>	<p>the site plan does not show any other information over and above that required by (a) - (h) as listed.</p>

In Ontario Regulation 545/71 under the Pits and Quarries Control Act, 1971, an operator must erect a heavy-duty fence at least five feet high around his property. The fence is shown on the site plan as required, except that the surveyed boundary is incorrect according to Mr. Buchholz. ✓

Regarding tree screens and berms, under the regulation a tree screen need only be created on a pit property 50 feet from roads and 50 feet from adjoining zoned residential property. A berm may be erected in conjunction with, or in place of, the tree screen. The site plan correctly shows the only areas where such a screen is required, again based on a possibly incorrect survey.

V. Analysis of Pit Proposal

In accordance with the Pits and Quarries Control Act, 1971, the Minister of Natural Resources must take seven issues into account when considering whether or not a proposed pit would be against the public interest. These are detailed on p.3 and 4. The Ontario Municipal Board considers the merits of an application from the same points of view. We have examined the Monaghan proposal the same way.

(a) The preservation of the character of the environment.

In considering the "character of the environment" it is hard to conceive that a 21-acre pit, generating 80 trucks a day, could possibly operate harmoniously in a farming and rural/residential neighbourhood. Its impacts, particularly dust, noise and truck traffic could be lessened by the inclusion of strict provisions in the site agreement or as conditions attached to the licence.

Recommendation: Residents should urge Council to adopt stricter requirements in the site agreement. See "Analysis of Site Agreement", page 7-8.

(b) Availability of natural environment for the enjoyment of the public.

As the site and all the surrounding land is privately owned, and the site no longer lies within the Niagara Escarpment Planning Area, it is doubtful that the OMB will feel that the site ought to remain rural for the good of the general public.

The public's enjoyment of the local landscape will, however, be impaired by noise, dust and truck traffic, but again impacts can be lessened by strict controls through agreements.

- (c) The need, if any, for restricting excessively large total pit or quarry output.

The OMB tends to uphold the Ministry of Natural Resources' view that Southern Ontario is, or soon will be, facing a serious gravel shortage. It is therefore difficult to convince the Board that a particular locality has too many pits.

Monaghan wants to remove low quality aggregate which is cheap and abundant but it is not readily apparent how much money he will save by mining his own material rather than purchasing it.

- (d) Traffic density on local roads.

A report on required road improvements was prepared for Ken Monaghan Ltd. by Ainley and Associates Ltd. The consultants claim that the maximum traffic on the Sixth Line will be about 300 vehicles per day, including the 80 trucks per day generated by the pit. They feel that the road is wide enough, at 30 feet, and structurally sound enough for this traffic load except for three areas where reconstruction will be required.

The road is not, in fact, 30 feet wide everywhere, as it was measured by Mr. Buchholz to be only 22 feet wide in front of the Skelton property. This narrow spot was not mentioned in the report and it is feared that other potentially unsafe areas have also been overlooked.

Recommendation: In order to view the Monaghan proposal as valid, independant contractors should be hired to measure the road in places where it is thought to be less

The development agreement does not require the operator to provide dust control on 18/19 Sideroad (or the 6th Line), and does not state explicitly the operator's road maintenance responsibilities, with the exception of July and August, the 6th Line between the proposed pit and Hwy. 91 is a school bus route used by both elementary and high school students. The aforementioned consultants' report makes no mention of this fact, or whether any special road improvements would be necessary to accommodate both buses and gravel trucks on the 6th Line.

When the 18/19 Sideroad is being reconstructed it may restrict Mr. Buchholz's access to the western part of his property, which is cut off by an abandoned railroad line. Since 1878 the Sideroad has been the only access to the west side of the Buchholz lands. Provision should be made to keep this access route open at all times, except when reconstruction is directly in front of the gateway to the field.

Recommendation: Objectors should urge the Township to consider allowing Monaghan to open the approximately $\frac{1}{2}$ mile of 18/19 Sideroad's unopened allowance which would take trucks directly out to Hwy. 24.

- (e) Any possible effect on the water table or surface drainage pattern.

The Township required Ken Monaghan Ltd. to evaluate the pit's possible impact on ground-water, and a study was carried out for him by Ian Wilson Associates.

From the report it was impossible to tell whether the water table, tentatively identified in test hole 6, was part of a local or a larger-scale regional system. If a regional system does exist at greater depth, it was not identified. There was no discussion of the relationship between the maximum depth of excavation and the depth of water-yielding layers. There was also no discussion of the relationship of the test-hole depths, which were quite shallow (5.6 to 12.2 feet) to the probable depth of excavation. Without identifying at least an approximate pit depth, the report errs when it concludes that there will be no effect on ground-water on the basis of information from shallow test holes. On reading the report one cannot feel confident that mining operations would not intercept a regional ground-water system at a greater depth than the test holes.

There was no discussion of the depth and a real extent of the perched watertable, no proof that it was perched, and no discussion of its possible importance to neighbouring properties should it be disrupted. The test holes were all dug on March 6, 1979, when it was still cold and snow was still on the ground. The Report did not discuss whether local groundwater flow was at a seasonal minimum at that time, and whether some of the "seeps" in the test holes might assume more significance later in the year.

The Consultant's report treated the physiography and ground-water flow on the site too generally and did not adequately address the extension of specific glacial deposits and the local

flow system beyond the property lines. For example, Mr. Buchholz's well, approximately 300 metres from the site, was pronounced safe from interference, but there was no mention of the possible effect on two springs much closer to the site, which feed his pond.

The report does not mention how many gallons of water per day may be pumped from the water table, and the possible effects of any pumping.

The report is altogether a superficial study. It also contains an apparent contradiction in the analysis of flow direction. On page 4 it is stated that the water in test pit 10 enters from the swamp. On page 6 the same swamp is cited as an example of a condition which arises when ground water flows laterally towards a discharge point (the swamp). This contradiction on a very simple point casts doubts on the reliability of the entire study. With respect to surface drainage Mr. Buchholz contends that the site plan is inaccurate and that the swamp's position and outline is incorrect.

Recommendation: Objectors should urge that the proposed site plan be amended to accurately show surface water conditions as they are in summer months.

- (f) The nature and location of land uses that could be affected by the pit or quarry operation.

The surrounding lands are farmed or are in rural residential use. Livestock, crops and other vegetation can be injured by dust. Pedestrians and cars can be endangered by vastly increased truck traffic. Noise and possible well interference can hamper an individual's enjoyment of his own property. In particular the Buchholz horse farm, which is directly downwind (east) of the proposed site and also bounded on two sides by the 18/19 Sideroad and the 6th Line, can expect to suffer severe dust problems unless strict control measures are imposed.

The proposed pit will constitute a major disruption in this rural setting.

- (g) Character, location and size of nearby communities.

Within two miles of the proposed site there are no communities except the hamlets of Smithdale and Glen Huron, neither of which are on the proposed truck routes. There are no zoned residential areas adjacent to the pit. It is unlikely that the proposed pit will have any effect on communities in Nottawasaga Township so long as loaded trucks only travel northwards on the 6th Line.

VI Analysis of Site Agreement

The proposed Site Agreement between Ken Monaghan Ltd. and the Township of Nottawasaga is summarized as follows:

1. Before issuing a building permit, if one is requested, the Township must approve all plans and specifications, the application must be in accordance with the Municipal Building By-law, any septic tank proposal must be approved by the Simcoe County District Health Unit, and the Ministry of Natural Resources must have already issued a pit licence for the site.
2. To develop his site in accordance with the site plan. ✓ *18/19 Sideroad*
3. To restrict crushing and truck movements to and from the pit to the hours between 7 a.m. and 7 p.m. Monday through Friday.
4. To rehabilitate the site in accordance with the site plan requirements.
5. To undertake progressive rehabilitation as each extraction stage is completed.
6. To restructure and maintain 6th Line from 18/19 Sideroad north to Highway 91, and 18/19 Sideroad from 6th Line west to the pit entrance, to install road signs as required by the municipality, and apply dust control treatment to roadways and parking areas with the pit.

To ensure compliance Ken Monaghan Limited must deposit with the Township:

\$2,000.00 to cover "legal and planning services",

\$37,000.00 to cover 6th Line and 18/19 Sideroad reconstruction,

\$3,000.00 as a performance security to be withheld by the municipality for three years,

and in addition pay any further municipal expenses relating to the pit, including the Township's expenses at the Ontario Municipal Board.

The impact of the proposed pit could be greatly lessened if the site agreement was amended to include stricter provisions. For example:

- (a) To develop, operate, maintain and rehabilitate the subject lands in accordance with the requirements of the Pits and Quarries Control Act, 1971 any successor legislation to that enactment, and in accordance with the site plan approved by the Ministry of Natural Resources.
- (b) No excavation, crushing and truck movement to and from the site shall take place except between the hours of (for example) 8:00 a.m. to 6:00 p.m., Monday to Friday. The pit shall not be operated in any manner whatsoever on any Sunday or Statutory Holiday.
- (c) The installation or operation of an asphalt plant or concrete batching plant on the subject property is prohibited.

- (d) To plant grass, Crown vetch or other suitable vegetation on all stripped land surfaces located between the property boundary and limits of excavation as shown on the site plan, so as to prevent surface erosion or gullyng which may undermine the property's perimeter fence.
- (e) All drainage ditches on the pit property located within 30 feet (for example) of the property line shall have the sides properly armoured or vegetated so as to prevent gullyng or surface erosion.
- (f) Vehicular access from the eastern part of Mr. Buchholz's property to his field on the west side of the abandoned rail line shall be maintained at all times during the reconstruction of 18/19 Sideroad except during that brief period when reconstruction work is being carried out directly in front of the gates to the field. Ken Monaghan Limited shall consult with abutting property owners in advance to establish a mutually agreeable date and length of time when access will be cut off.
- (g) All water used in any gravel washing operation shall be recycled through settling ponds on the subject land, with no overflow permitted onto adjacent lands. Water from settling ponds may be discharged only into existing water courses and only after all impurities have been removed from the water to the satisfaction of the Ministry of the Environment.

- (h) Ken Monaghan Ltd. shall compensate adjacent property owners for any well interference or water pollution which, in the opinion of the Ministry of the Environment, has been caused by the pit operation.
- (i) No mining shall take place below the water table.
- (j) Ken Monaghan Ltd. shall be responsible for applying such dust control treatments and carrying out such road maintenance as determined by the Township Roads Superintendent on the following roads:
- 18/19 Sideroad from the pit exit west to 6th Line,
 - and
 - 6th Line from 18/19 Sideroad north to Highway 91.

If the licence application is approved at the OMB, the Board could be encouraged to include the above in the licence conditions or Council could be encouraged to include them in the Site Agreement.

VII Summary and Recommendations

Summary

The Ken Monaghan Limited gravel pit proposed for the N.W. $\frac{1}{4}$ Lot 18, Concession 7 in the Township of Nottawasaga will severely disrupt its quiet rural environment. Its impacts have been inadequately researched by the consultants, and judging from the weak proposed site agreement its impacts have been underestimated by the Township.

At the upcoming Ontario Municipal Board Hearings, where the Board will consider the licence application, together with the zoning by-law, the opponents should retain legal counsel at their earliest opportunity to allow sufficient preparation time. It is our view that there is an excellent chance of success if the case is argued competently.

What follows is a series of steps or "recommended course of action" for Mr. and Mrs. Buchholz.

Course of Action and Recommendations

1. Mr. and Mrs. Buchholz should contact all neighbours owning property adjacent to the proposed pit site, as well as all other objectors, urging them to:
 - (a) write to Council opposing pit,
 - (b) form a group and deposit \$300 initially to pay for legal counsel,
 - (c) appoint 2 executive officers to co-ordinate and supervise action.

2. Objectors should meet with Township officials and urge them to:
 - (a) revise the site agreement with Ken Monaghan Ltd. to include the suggested stricter provisions,
 - (b) consider opening the 18/19 Sideroad allowance west of the proposed site to provide an alternate truck route directly out to Highway 24.
 - (c) negotiate with residents and Ken Monaghan Ltd. to define acceptable truck routes.
 - (d) amend Zoning By-Law 15-79, which permits Ken Monaghan Ltd. to operate a gravel pit on Lot 18 Concession 7, to specifically prohibit the construction or operation of an asphalt or concrete plant. If these uses are banned in a by-law any change will require public notice. If they are only banned in the site agreement the public need not be informed of changes.

- (e) negotiate amendment to the site plan so that it accurately shows property boundaries and summer surface drainage conditions.
3. A residents' representative should contact the Simcoe County public and separate school boards with regard to the prospect of school buses sharing the 6th Line with gravel trucks. The school boards may be persuaded to object to the pit, or at least to call for tighter controls if it is approved.
 4. The Township's annual financial statements and road budgets should be checked. If little money is allotted or spent on road repairs, there is all the more reason for Ken Monaghan Ltd. to pay for road reconstruction, dust control and maintenance.
 5. Mr. Buchholz should have his property line between his land and the Ken Monaghan Ltd. land re-surveyed to determine the true property boundary.
 6. Objectors should retain legal counsel whose expertise lies specifically in land use planning, and environmental law. We can recommend the firm of Vaughan, Willms, 73 Richmond St. W., Suite 200, Toronto, Ontario, (416) 863-0711. Mr. John Willms' fees can be as high as \$800.00 per day of hearings as well as high fees for the necessary witnesses - an hydrologist and land use planner. If the objectors can demonstrate need, the Canadian Environmental Law Association may consider taking the case - contact Ms. Grace Patterson, (416) 366-9717.

7. Ensure media coverage of the case to generate local and regional public support.
8. Meet with representatives of FAS on a regular basis to advise on strategy.
9. Review and assess the need for new sources of granular "C" type gravel from within Township boundaries.
10. Evaluate social impact on the community (if thought desirable by legal counsel).
11. Meet with local Provincial politicians and Regional or County Councillors for support.
12. Develop course of action if pit licence is approved.