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LEGAL REVIEW

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LEGAL REVIEW #6

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1. RE. TOWNSHIP OF WILMOT RESTRICTED AREA BY-LAW 77-22, AS AMENDED BY BY-LAW 78-11

August 18th, 1978.  
P. M. Brooks

Ontario Municipal Board  
File No. R772285

William H. White, Q.C., for the Township of Wilmot.  
Connie L. P. Giller, for the Regional Municipality of Waterloo.  
Bruce W. Binning, for Warren Bitulithic Limited.  
J. R. Guy, for Dun-Rose-Dee Limited, and Dundee Golf Course Limited.

This was an application under s. 35 of The Planning Act for approval of Township of Wilmot Restricted Area By-Law 77-22, intended to amend By-Law 1175, to permit an asphalt plant and gravel washing operation.

The subject land, located at the southwestern corner of Township Road No. 6 and Regional Road 12, was zoned Agricultural "A" at the time of the hearing. Parts of the land had a history of use as a gravel pit.

The proposed by-law would permit construction of an asphalt plant, gravel washing plant, and the necessary office, maintenance shop and parking area associated with such an operation.

By-Law 77-22 contained the restriction that all structures must be confined to a specified "buildable area" of the subject land, as well as conforming to Township and Regional requirements.

Surrounding land use was described by the planning director for Wilmot Township: five non-farm residences and five farm residences within half a mile of the "buildable area", and the main Township gravel pit, which was in active operation, to the south of the subject land. An area of heavy bush separated the subject land from a camping and picnic ground.

Objections were heard from Dun-Rose-Dee Limited and Dundee Golf Course Limited, who operated a golf course situated close to the subject land. Regional Road 12 separated the northwest corner of the golf course property from the southeast corner of the subject land. A distance of 1500 feet would separate the nearest point used for golf from the "buildable area". The golf course operators were afraid that noise and odour from the plant would penetrate their property. They also called for the access to the plant to be from the Township Road.

With regard to noise, odour and visual pollution, a witness who sold this type of plant claimed that the effect will be insignificant at a 1500 foot distance. Regarding the access route, both the Township and Regional engineers testified that the Township Road would require extensive reconstruction to carry the heavy truck traffic, whereas there would be no such problem with the Regional Road.

Objections were heard from Dr. Paul Gilmore, who also pressed for access from the Township Road, and felt that the "buildable area" was not in the best location. Evidence on the merits of using the Regional, rather than the Township, Road was adduced, as before.

Evidence in support of the proposed operation was given by the Township planning director, and by a Regional planner, both of whom felt that an asphalt plant would be reasonably accessory to a gravel pit.

The Board did not feel that there was any real merit in the objections. It was only concerned that the by-law contained no specific indication that the asphalt plant must be accessory to the extractive operation. The Board felt that it would be undesirable to introduce a heavy industry that could continue once extraction had ceased. The Township of Wilmot and Warren Bitulithic Limited said that they had no objection to including such a restriction in the by-law.

For this reason, the Board approved By-Law 77-22 as it was subsequently amended by By-Law 78-11.

2. RE. TOWNSHIP OF ELIZABETHTOWN RESTRICTED AREA BY-LAW 1712, AS AMENDED BY BY-LAWS 1762 AND 1766.

October 16th, 1978.  
H. E. Stewart, and  
P. G. Wilkes.

Ontario Municipal Board  
File No.: R752113

John E. Henderson, Q.C., for the Township of Elizabethtown.  
Duncan C. Fraser, for Leo C. Willie, David Murray and others.  
A. K. Cohen and Bruce A. Carson, for Dibblee Construction Company Limited.  
Ian MacFee Rogers, Q.C., for Dodge Construction Company Limited.

This was an application under s. 35 of The Planning Act for approval of Township of Elizabethtown Restricted Area By-Law 1712, as amended by By-Laws 1762 and 1766.

Restricted Area By-Law 1712 as amended was a comprehensive zoning by-law for the Township. The municipality in most cases recognized the existing land use, rather than pre-zoning to future uses. The Board heard eighteen objections to the by-law, two of which concerned pits and quarries. These objections were raised by the Dodge Construction Company Limited and the Dibblee Construction Company Limited.

a) The Dodge Construction Company operated a gravel pit for many years

adjacent to the hamlet of Tincap. The subject land is designated "Pits and Quarries" and zoned M3-2 under By-Law 1712. Local residents had worried that the site would later be used for a quarry. Their concerns prompted Council in 1975 to assign the M3-2 zoning, which permits a pit but not a quarry.

The Board heard evidence that the company began using the subject land as a quarry in 1978, without having applied for a zoning amendment to permit that use. The Dodge Construction Company requested that the Board change By-Law 1712 as amended to permit the quarrying. There was no appeal under The Planning Act whereby the Board could consider the merits of a zoning change.

The company requested a deferment of the Board's decision until an application for a zoning change could be made to the Township. The Board felt that consideration of such an application would initially be a municipal matter, and agreed to the deferment.

For that reason, the Board reserved its decision on By-Law 1712 as amended with reference to the subject land for a period of four months, to allow the company to apply for a zoning change.

b) The property owned by Dibblee Construction Company Limited was divided into three parts by a pipeline and by a Bell Telephone easement. The northernmost portion was designated "Pit and Quarry" in the Official Plan and would have been zoned M3-1 by By-Law 1712 as amended. The middle and southern portions were designated "Industrial" and "Pit and Quarry" respectively. Both would have been zoned "D" Development. The middle portion was being quarried at the time of the hearing.

The subject property was purchased by the Dibblee Construction Company in 1965, but prior to 1976 very little quarrying had taken place. The Board was satisfied that the company's intention had always been to develop the entire property for quarrying.

They objected to the "D" zoning proposed by the subject by-law. The Township's policy was to zone to existing use, thus the active portion of the subject land was zoned M3-1, permitting quarrying; the vacant land (containing a later quarry) was zoned "D", prohibiting extraction. It was the company's contention that zoning to existing use ought to have reflected the company's intention at the time to quarry the entire property.

Upon consideration of the evidence, the Board felt that the requested zoning change from "D" to M3-1 in the Industrial designation would first require an amendment to the Official Plan. Until such time, the middle and southern portions of the property will be zoned "D".

For that reason, the Board approved By-Law as amended as it applied to the subject land.

3. RE. TOWNSHIP OF DELAWARE AMENDMENT NO. 4 TO THE OFFICIAL PLAN, AND  
RESTRICTED AREA BY-LAW 3-78.

January 11th, 1979.  
P. M. Brooks, and  
P. G. Wilkes.

Ontario Municipal Board  
File Nos.: R78293  
R78245

Martin Morrissey, Q.C., for the Township of Delaware.

This was an application under s. 35 and 44 of The Planning Act for approval of Amendment No. 4 to the Delaware Planning Area Official Plan, and Restricted Area By-Law 3-78.

The purpose of the Official Plan amendment and enacting by-law was to allow the operation, by the Township, of a municipally-owned gravel pit. The subject land comprised approximately 20 acres in northern Delaware Township. The amendment would change the designation from "Rural" to "Mineral Resources Area"; the by-law would rezone the property from "Agricultural use Zone - A" to "Industrial Use Zone (Extractive) M2".

Witnesses for the Township testified that the subject land contained 450,000 to 500,000 tons of Granular A material which would supply municipal needs for 35 years. It was projected that the municipality could save \$7,000 annually by operating its own pit. The Township was satisfied that the operation of the proposed pit on the subject land would not be against the public interest.

Objections were heard from representatives of the North East Delaware Rate-payers Association. Some nine complaints were submitted, concerning the possible impact of the pit on the local area and on groundwater levels, loss of agricultural land, the possibility of the pit setting a precedent for further extraction in the area, and the need for a more thorough search for alternate sites.

In consideration of the evidence adduced by Township planners the Board felt that the pit would have little impact on the local area. The nearest homes are 800 to 1000 feet from the site, and the property is so screened by trees that the operation could be seen from only a few residences. The pit would be in actual operation for a maximum of 15 days each autumn.

Engineering evidence convinced the Board that the pit would not affect ground-

water levels beyond a distance of 300 feet, and that adequate care would be taken to prevent water pollution.

With regard to the consumption of agricultural land, the Board felt that the sacrifice of 20 acres of farmland in order to fulfill the Township's gravel needs for 35 years was in the public interest.

The Township Reeve testified that the presence of a municipally-owned and operated pit would not set a precedent for future acceptance of commercial operations.

The Board felt that a more thorough search for an alternate site was not necessary, as there was no evidence that other available sources in the Township contained the required quantity and quality of aggregate. The Board concluded that the use of the subject land for extraction would be appropriate and in the public interest.

It was noted, however, that By-Law 3-78 contained no provision that extraction would be carried out only at a municipally-owned and operated site. Approval was withheld until the by-law was so amended.

For those reasons, Amendment No. 4 to the Delaware Planning Area Official Plan was approved, as was Restricted Area By-Law 3-78, as amended by By-Law 2-79 to reflect the above intention.

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