

*John*  
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The Foundation for Aggregate Studies

LEGAL REVIEW

ISSUE: 7

LEGAL REVIEW # 7

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1. RE: TOWNSHIP OF WATERLOO RESTRICTED AREA BY-LAW 1282

May 21st, 1970  
D. Jamieson, Vice-Chairman

Ontario Municipal Board  
File No.: R. 1034-69

J. Harper, Q.C., for the Township of Waterloo.  
A. H. L. Miller, Q.C., for Kieswatter Cartage and Excavating Company Limited.  
E. F. West, for the Village of Bridgeport, and others.

This was an application under section 30 of The Planning Act by the Township of Waterloo for approval of Restricted Area By-Law 1282, which would change the zoning of certain property from "Agricultural" to "Gravel Pit".

The subject property comprised 142 acres adjacent to the eastern side of the Village of Bridgeport. It was zoned "Agricultural" at the time of the hearing, but was not designated in any Official Plan.

The Board heard several submissions in support of the proposed rezoning. In particular, it was informed that extractive operations were regulated by Township of Waterloo By-Law 1184, and by agreements drawn up between the Township and the pit operator. The Kieswatter company had offered to exceed the requirements of By-Law 1184 in its operating procedures on the subject property.

Objections were heard from the Village of Bridgeport, and residents located near the site. They feared the potential impact of a pit situated adjacent to a residential area, especially with respect to truck traffic, danger to children, inadequate berms and rehabilitation plans, and decreased property values. The objectors informed the Board that residents had already suffered nuisance from an existing pit located somewhat farther from their homes than the subject property. They felt that the gravel deposit was not of particularly high quality and that comparable material was available elsewhere.

The Board acknowledged that the Township and the owner of the subject property had both instituted measures to reduce adverse impacts of the proposed pit. It was the Board's opinion, however, that in this instance the major objection - proximity of the proposed pit to a residential area - had not been adequately resolved, as the two adjacent uses would be incompatible.

For that reason, it was the recommendation of the Board the application for approval of Restricted Area By-Law 1282 be refused.

2. RE: TOWNSHIP OF ZORRA

March 6th, 1978  
A. J. L. Chapman

Ontario Municipal Board  
File No.: M 76302

Alexander M. Graham, for the Township of Zorra.  
J. Velanoff, for John Conway et al.

This was an application under s. 5(3) of The Pits and Quarries Control Act by the Township of Zorra for a licence to operate a gravel pit on part east half Lot 6, Concession 3.

The Township of Zorra proposed to operate a gravel pit on a 4.5 acre property leased from the Union Drawn Steel Company Limited, to supply municipal needs. The Township would remove a maximum of 15,000 cubic yards annually, for a maximum of twelve years.

The subject property was surrounded by agricultural land, with the nearest residence half a mile away, and contained an existing pit which had been worked intermittantly over many years. The exit route from the site was to be onto the Third Line road. The property would eventually be rehabilitated to agricultural use after extraction ceased.

The subject property was designated "Rural" in the Oxford County Planning Area Official Plan, a designation in which gravel pits are permitted, and zoned "A2" agricultural. The question of whether a municipal pit was a "public use" as permitted by the "A2" zoning was the subject of much discussion. After careful consideration of the by-law and evidence from the Oxford County Planning Director, the Board concluded that the "A2" zoning did not prohibit the pit. Evidence was adduced by the Township to show that the proposed pit would have no adverse effects on the local water table, surface drainage or surrounding land uses.

Objections were heard from Zorra Township pit owners and operators, who were concerned that there were too many pits in the Township already, many of which were idle through want of a market.

The local pit operators objected to estimates of both quantity and quality of gravel at the proposed site. Evidence was adduced to show that the gravel deposit might be smaller and/or of poorer quality than the Township estimated, and that the Township would save money by purchasing gravel from licenced operations, rather than running its own pit.

The Board was satisfied that the deposit contained about half the amount of gravel estimated by the Township, and that it would be more expensive to operate than the Township realized. Nevertheless, the Board felt that these points were of no concern in a hearing under s.6 of The Pits and Quarries Control Act.

Argument was heard as to the suitability of existing sites to supply the Township's gravel, and the suitability of the Third Line as a thoroughfare for gravel trucks. Except for visibility in one direction at the exit from the proposed pit, the Board was satisfied that the Third Line was a safe road.

The Board heard an objection that the structure of the lease (renewable every two years, i.e. the length of a council's term of office) meant that rehabilitation or liability claims might be outstanding after the lease had expired. Again, the Board felt that this issue was outside the concern of the hearing.

The most serious objection in the Board's view was the poor visibility near the pit exit, caused by a hill on the Third Line. The Board felt that the hill represented a real danger to traffic, and strongly recommended that the Township take steps to improve the sight lines from the proposed exit.

It was the recommendation of the Board that the Township of Zorra be issued a licence to operate a gravel pit, subject to the above condition concerning road improvement.

3. RE: BERTRAND AND FRERE CONSTRUCTION COMPANY LIMITED

April 23rd, 1979  
C. G. Ebers, and  
P. G. Wilkes.

Ontario Municipal Board  
File No.: M 74237

R. B. Tuer, Q.C., and D. R. Scott, for Bertrand and Frere Construction Company Limited.  
S. S. Wiseman, for F. E. Johnson et al.  
S. J. Ryan, for George W. Drummond.  
S. F. Burrows, and Janice B. Payne, for the Township of Gloucester.

This was an application under section 5(3) of The Pits and Quarries Control Act for a licence to operate a quarry in North Half Lot 28, Concession V, Township of Gloucester, by Bertrand and Frere Construction Company Limited.

The construction company had applied for a licence to quarry an 87.7 acre property abutting their existing operation, which would allow extraction to

continue for another twenty to twenty-five years. Surrounding land use included residences, industry, another quarry, and vacant land. The Official Plan designation and zoning on the subject property both permitted quarrying.

Objections were heard from local residents, the Township, and from the operator of a nearby quarry. The residents feared that the proposed quarry would interfere with groundwater flow such that arsenic-polluted water would spread into their wells. They were also opposed to possible noise and vibration problems. The Township was concerned about truck routes and details of the operation and rehabilitation. The other quarry operator was concerned that the possible spread of arsenic-laden water might interfere with his own operation.

The Board was satisfied that there was nothing unique about the character of the surrounding land and felt that expanded quarrying was the best use. It also felt that rehabilitation would enhance the environment for the enjoyment of the public.

The Township objected to the proposed access route, which would need resurfacing before it could carry gravel trucks, and suggested that an unopened road allowance be improved so that trucks could enter and exit on the east side. Much argument was heard over possible cost-sharing arrangements to pay for road improvements, as the Township had allocated no funds for that purpose. The Board was satisfied that either route would prove suitable, and ruled that the detailed arrangements for cost-sharing were outside the scope of the hearing.

With respect to water quality, the Board heard evidence that some local wells had been polluted by arsenic, which in places exceeded Ministry of the Environment safety standards. Evidence showed that the arsenic source was almost certainly a slag pile north of the proposed site, on the property of Masterloy Products Limited. Local residents were concerned that when the depth of the proposed quarry reached the water table it would increase the spread of contaminant as the groundwater flow increased.

Evidence was adduced by a professional hydrogeologist who stated that the increased flow, along with the addition of rainwater on the quarry floor, would serve to dilute the arsenic content to safe levels. The Board was satisfied that any contaminated water to be pumped from the quarry would be sufficiently diluted so as to have no adverse effects on surface or groundwater quality.

The Board refused to comply with requests that the quarry licence be withheld until the slag pile should be removed, or at least until further studies be carried out.

With respect to residents' fears of noise and vibration from blasting, the Board heard that in addition to Provincial standards the company had proposed

several controls of their own, which had been accepted by the Township. The Board felt, therefore, that the residents would not be adversely affected by blasting.

The final objection came from the Township of Gloucester concerning rehabilitation details. Following discussion of the merits of a 35-foot wide planting strip, as proposed by the Township, rather than a berm, the Board concluded that a berm was the more useful divider.

The Township had also wanted to provide input into details of the rehabilitation plan as it progressed. The Board did not believe that this condition should be attached to the licence, but recommended that the municipality work closely with the Ministry of Natural Resources to take advantage of the Ministry's expertise.

It was the opinion of the Board that the operation of the proposed quarry would not be contrary to the public interest under s.6(1) of The Pits and Quarries Control Act, and for that reason recommended that the licence be granted.

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