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The Foundation for Aggregate Studies

LEGAL REVIEW

ISSUE: 8

LEGAL REVIEW #8

INDEX

(This Issue)

		Date	Page
Re.	Towland-Hewitson Construction Limited	April 16th, 1973	1
Re.	Campeau Corporation and City of Ottawa	December 14th, 1978	2
Re.	Weldon J. Wilson Construction Limited	April 9th, 1979	3

1. RE: TOWLAND-HEWITSON CONSTRUCTION LIMITED

April 16th, 1973
A. H. Arrell, Vice-Chairman

Ontario Municipal Board
File No.: S. 1438

J. T. Saint, for Towland-Hewitson Construction Limited.
A. H. Little, for Wyton Road Homeowners Protective Association.

This was an application under s.5(4) and 9 of The Pits and Quarries Control Act for a licence to operate a gravel pit on Lot 11, Concession 1 of the Township of West Nissouri, by the Towland-Hewitson Construction Company Limited.

The company had applied for a licence to extract up to 140,000 tons of gravel per year from a 150-acre property at the intersection of Wyton Road and Wyton Side Road. The Board felt that this would result in a traffic increase on the order of 10 trucks per hour exiting the pit. The site contained high quality gravel for asphalt and lower quality gravel suitable for road work, and it was anticipated that there would be a great local demand for the lower quality material.

The Board heard objections from local residents, cottagers and farmers who were served by either the Wyton Road or the Wyton Side Road. These roads were not paved, and objections centred around dust problems.

Residents complained that dust stirred up by existing traffic caused dangerous driving conditions, affected fields and cattle, and seeped into homes. It was the opinion of the Board that heavy truck traffic on gravel roads could not be reconciled with the reasonable amenities of adjacent residents.

Argument was heard concerning truck routes and the location of the pit entrance. Since both roads were gravel the Board felt that the use of either road would create problems for residents. It was the opinion of the Board that substantial reconstruction of the Wyton Road and the Wyton Side Road to bring them up to highway standards would be required before residents would be protected from gravel truck traffic.

For that reason, the Board recommended that a licence not be granted at that time.

2. RE: CAMPEAU CORPORATION AND CITY OF OTTAWA

December 14th, 1978
Hughes, Steele,
and Holland, J.J.

Divisional Court
(1979) 22 O.R. pp. 40-43

George E. Fisk, for the Campeau Corporation.
Barry Card, for the City of Ottawa.

This was an application by the Campeau Corporation, under the Judicial Review Procedure Act, 1971, to quash a municipal by-law.

The City of Ottawa had issued By-law 142/78 pursuant to s. 354(1) para. 123 of the Municipal Act, which allows municipalities to require the grading and levelling of inactive quarries so that they are not "dangerous or unsightly to the public."

Section 2 of the Ottawa By-law 142/78 stated that the quarries must be levelled and graded "so as to prevent ponding of water." Quarries subject to the by-law were those located within 300 feet of a road and out of operation for 12 consecutive months.

The by-law provided for an official of the City to direct a quarry owner to comply with the by-law by meeting particular requirements within a stated time period. The order could be appealed to the Community Development Committee, which would make a recommendation to City Council. Council's decision would be final.

Fines could be imposed on an owner guilty of contravening the by-law. If the work was not completed within the required time the by-law provided for the City to carry out the work at the owner's expense and recover that expense through taxes.

The Court warned that City officials and Council may only make orders in strict accordance with s. 2 of the by-law. The assumption of any other powers by the City would exceed its authority under the by-law and the Municipal Act.

The Court noted that there was no definition of "ponding" as used in s. 2. None of the definitions of ponding to which the Court was referred were precise, and might even have been interpreted to require that the entire quarry be filled to the rim so that no water at all could lie on the surface.

It was the opinion of the Court that the power to level and grade inactive quarries under s. 354(1) of the Municipal Act was not intended to give a municipality the power to fill them in completely. It felt that the ponding of water would not necessarily be dangerous or unsightly; thus the City's by-law was vague and did not restrict itself to the Legislation.

For that reason City of Ottawa By-law 142/78 was declared invalid, rather than quashed, as the application was brought under the Judicial Review Procedure Act and not the Municipal Act.

3. RE: WELDON J. WILSON CONSTRUCTION LIMITED

April 9th, 1979.
S. S. Speigel and
W. L. Blair, members

Ontario Municipal Board
File No.: M 78294

John H. Deacon, for the Township of West Carleton.
Paul Dioguardi, for Lucy Loates, Donald Irwin, Ronald Tolmie, May Clouthier.
G. Ray Simser, for Weldon J. Wilson Construction Limited.

This was an application under s. 5(3) of The Pits and Quarries Control Act for a licence to operate a pit on Lot 10, Concession III, Township of West Carleton, by Weldon J. Wilson Construction Limited.

The subject property had been intermittantly used as a gravel source under wayside permits for at least 10 years prior to the construction company's acquisition of the land in 1978. The proposed site was not subject to an Official Plan designation or to a Restricted Area by-law, as the Township's Official Plan was still in preparation.

The Board was informed that prior to the commencement of the hearing there had been considerable negotiations between the construction company and objecting residents. After a recess in the hearing to permit negotiations to continue, the Board was told that an agreement had been reached between the objectors and the applicant. Details of the agreement included a berm to be built within a 50-foot setback, and the access road, exiting onto Regional Road 5, would be relocated behind the berm. Trees would be planted at the exit location.

Only one objection was raised at the hearing, concerning the access road, a private road owned by the company. A resident who lived 200 feet south of the road requested that the road be moved 200 metres farther north, thus creating less noise and dust at his home. Evidence showed that if the road were to be moved north it would then be across the property of one of the parties to the agreement.

The Board did not feel that the location of the access road posed a problem meriting refusal of the licence. It did, however, suggest to the Minister of Natural Resources that some form of dust control might be required.

The Board was satisfied that the operation of the pit, under the terms of the development agreement, would not be contrary to the public interest, and therefore recommended that a licence be granted.

I N D E X

	Date	Issue
Claudette Millar v. The Minister of Natural Resources for the Province of Ontario, and the Preston Sand and Gravel Company Ltd.	July 13th 1978	3
E.R.S. Holdings Ltd. v. Town of Pickering	December 9th 1976	2
Monteith et al. v. Township of Downie et al.	December 23rd 1976	2
Rockcliffe Park Reality Ltd. and Director of Ministry of Environment	June 3rd 1975	1
Town of Richmond Hill v. Miller Paving Ltd.	April 24th 1978	5
Township of Goulbourn v. The Minister of Natural Resources for the Province of Ontario, and Elizabeth Kelly	January 19th 1978	4
R. v. B.L.S. Sanitation Ltd.	September 8th 1976	1
R. v. Chinook Chemicals Ltd.	January 9th 1974	1
R. v. Glen Leven Properties Ltd.	February 10th 1977	1
R. v. Springbank Sand and Gravel Ltd.	May 30th 1975	1
Re. Bertrand and Frere Construction Ltd.	April 23rd 1979	7
Re. Campeau Corporation and City of Ottawa	December 14th 1978	8
Re. Canada Cement Lafarge Ltd.	March 15th 1976	3
Re. City of London Restricted Area By-Law C.P. 374 (hf)-524 South Winds Development Company Ltd. v. Harris	June 28th 1977	2
Re. Dufferin Materials and Construction Ltd.	September 25th 1974	4
Re. Premier Concrete Products	April 27th 1976	5
Re. Preston Sand and Gravel Company Ltd.	November 29th 1973	2
Re. Regional Municipality of Haldimand-Norfolk Restricted Area By-Law 5000-33-H	December 18th 1975	3

	Date	Issue
Re. Regional Municipality of Haldimand-Norfolk Restricted Area By-Law 5000-73-H, and The Flintkote Company of Canada Ltd.	May 9th 1978	4
Re. St. Lawrence Cement Company Ltd.	June 11th 1975	4
Re. Starr and Township of Puslinch et al.	May 31st 1977	1
Re. Towland-Hewitson Construction Limited	April 16th 1973	8
Re. Town of East Gwillimbury Proposed Amendment Number 8 to the Official Plan	May 10th 1978	3
Re. Township of Anderdon Restricted Area By-Law 2160, as Amended by By-Laws 2032, 2107, 2180, 2117	September 27th 1978	5
Re. Township of Delaware Amendment Number 4 to the Official Plan, and Restricted Area By-Law 3-78	January 11th 1979	6
Re. Township of Elizabethtown Restricted Area By-Law 1712, as Amended by By-Laws 1762 and 1766	October 16th 1978	6
Re. Township of Gloucester: Licence to Operate a Quarry	April 11th 1974	2
Re. Township of Kingston Official Plan and Township of Kingston By-Law 75-8	February 18th 1976	3
Re. Township of Manvers	March 24th 1975	2
Re. Township of Mersea	May 15th 1975	2
Re. Township of North Dumfries Restricted Area By-Law 73-32	August 15th 1974	3
Re. Township of Oro Restricted Area By-Law 1140 and Amendment No. 8 to Oro Planning Area Official Plan	November 1st 1978	5
Re. Township of Uxbridge Restricted Area By-Laws 1517 and 1613	December 10th 1973	2

	Date	Issue
Re. Township of Waterloo Restricted Area By-Law 1282	May 21st 1979	7
Re. Weldon J. Wilson Construction Limited	April 9th 1979	8
Re. Township of West Flamborough	March 28th 1974	2
Re. Township of West Nissouri Restricted Area By-Law 12-1967-42	August 19th 1975	4
Re. Township of Wilmot Restricted Area By-Law 77-22, as Amended by By-Law 78-11	August 18th 1978	6
Re. Township of Zorra	March 6th 1978	7
Re. Township of Zorra Restricted Area By-Law 28-1974	September 25th 1975	2

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