

ISSUE DATE:

Jun. 22, 2004

DECISION/ORDER NO:

1102



Ontario

Ontario Municipal Board

Commission des affaires municipales de l'Ontario

PL030359

At the request of Aly Saïd, Louise Bélisle Saïd and the Township of Alfred and Plantagenet, the Minister of Natural Resources has referred to the Ontario Municipal Board under subsection 11(5) of the *Aggregate Resources Act*, R.S.O. 1990, c. A.8, as amended, an application for a Class A licence for the removal of aggregate from lands being composed of Part of Lot 4, Concession 4, in the Geographic Township of Alfred, Township of Alfred and Plantagenet
OMB File No. M030041

APPEARANCES:

Parties

Township of Alfred and Plantagenet

Maurice Duval Excavation Inc.

Aly Saïd and Louise Belisle-Saïd

Counsel

J. C. Gelinis

M. Labrosse

J. Canapini

DECISION DELIVERED BY R. G. M. MAKUCH AND ORDER OF THE BOARD

In June 2001, the applicant Maurice Duval Excavation Inc. made application to the Ministry of Natural Resources for a licence under the *Aggregate Resources Act* to permit the extraction of more than 20,000 tonnes of sand per year from the subject property in part of Lot 4, Concession IV, located northwest of the Village of Alfred in the former geographic Township of Alfred. The subject property has an area of 18.8 hectares of which approximately 16 hectares would comprise the proposed licensed extraction operation.

There were two objections filed against the licence application following the public consultation process carried out by the Ministry of Natural Resources. The first objection by the Township of Alfred and Plantagenet related to an unopened road allowance over which the applicant was proposing to gain access to its site and the improvements that must be made thereto including measures for dust control. The Township was also concerned with the financial responsibility for making those

improvements as well as the financial responsibility for any abnormal degradation of Montee Lajeunesse as a result of the sand pit operation on the subject lands. Montee Lajeunesse provides access from the unopened road allowance referred to above to County Road 17 (former Provincial Highway 17), which is a main arterial running through the United Counties of Prescott and Russell. The second objection by Aly Said and Louise Belisle-Said relate to concerns over noise and dust emissions from the sand pit operation, traffic safety concerns on local roads, unacceptable environmental impact on wildlife, flora and water table as well as a reduction of market value of their residence and quality of life. Their house is located on the property located immediately to the north of the unopened road allowance over which the sand pit operator would gain access to its site. The house itself is situated approximately 100 m. from the unopened road allowance and approximately 600 m. from the proposed pit operation.

These objections were not resolved during the consultation process and have been referred to this Board for determination by the Minister of Natural Resources pursuant to subsection 11 (5) of the *Aggregates Resources Act*.

After hearing submissions from counsel for the parties at a Pre-Hearing Conference on January 14, 2004 (Decision/Order No. 0642 issued March 25, 2004) the Board ordered that no evidence would be heard by it on the issue of Official Plan conformity as it was not raised during the consultation process or in the letter of objection filed by the objectors. The Board ordered that the hearing of this matter would be restricted to the issues raised in the letters of objection filed in this matter and referred to in the Minister's letter of referral to this Board pursuant to subsection 11 (5) of the *Aggregate Resource Act*. On April 1, 2004, the Ontario Superior Court of Justice ordered that the January 14, 2004 decision be quashed, thereby allowing the appellants to adduce evidence relating to the Official Plan of the United Counties of Prescott and Russell at the hearing of this matter by the Board.

It is noted that the Township withdrew its appeal at the commencement of the hearing after advising the Board that it had satisfactorily negotiated an agreement with the applicant respecting certain improvements to the unopened road allowance between Lots 4 and 5 Concession IV over which the applicant will gain its access to the subject site. Counsel for the Township filed a proposed "Road Allowance Use and Maintenance Agreement" (Exhibit 2) with the Board, which is intended to be executed by the

applicant and Township pending the Board's determination of the objection filed by Aly Said and Louise Belisle-Said.

The Board has carefully considered all of the evidence as well as the submissions of counsel for the parties and finds that the objection by Aly Said and Louise Belisle-Said should be dismissed and the application by Maurice Duval Excavation Inc. for licence to extract sand under the provisions of the *Aggregate Resource Act* should be approved by the Ministry of Natural Resources for the reasons that follow.

The subject property and surrounding lands to the north and south on the west side of Montee Lajeunesse were designated "General Rural" in the former Alfred Township Official Plan. Section 8.4.3 establishes the policies for this designation and specifically permits small pit operations in the "General Rural" designation, which remove less than 15,000 tonnes per year and does not require Official Plan amendments for such small operations. Official Plan and zoning bylaw amendments are required for larger operations, presumably to ensure a proper examination of the potential impacts associated with such larger operations. This designation permits pits and quarries in conformity with the relevant policies of the plan, which establishes an overall concept for the "Mineral Aggregate Areas" designation.

The property is located in a Restricted Rural Zone (RU3) under former Township of Alfred Zoning By-law 5-95. Sand pits are a permitted use in this zone with no restriction as to the maximum amount of aggregate, which may be removed per year. While the proposed use to extract in excess of 20,00 tonnes of sand per year may not be in conformity with Section 8.4.3 of the former Township of Alfred Official Plan referred to above, it is nevertheless a permitted one under the Township's zoning by-law and complies with all zone standards. Zoning By-law 5-95 is deemed to be in conformity with the Township's Official Plan pursuant to subsection 24(4) of the *Planning Act* as it was passed while the Official Plan was in effect and no appeals were taken against the enactment of the by-law.

Section 24 (4) reads as follows:

If a by-law is passed under section 34 by the council of a municipality or a planning board in a planning area in which an Official Plan is in effect and, within the time limited for appeal no appeal is taken or an appeal is taken and the appeal is withdrawn or dismissed or the by-law is amended by the Municipal Board or as directed by the Board, the by-law shall be conclusively deemed to be in conformity with the Official Plan, except, if the by-law is passed in the circumstances mentioned in subsection (2), the by-law shall be conclusively deemed to be in conformity with the Official Plan on or after the day the by-law was passed, if the amendment to the Official Plan comes into effect.

It is also noted that Township Zoning By-law No. 107-80 establishes three Rural zones for the traditional rural areas of the Township. The RU1 Zone is meant for agricultural areas, which are designated Agriculture in the Official Plan while the RU2 zone is meant to be a buffer zone adjacent to the former Village of Alfred and other developed areas along the Ottawa River, it is similar to the RU1 Zone except that intensive agricultural uses such as mink farms, piggeries and poultry houses are not permitted. The added RU3 Zone is the same as the RU2 Zone, except that it applies to areas designated General Rural in the Official Plan that are not adjacent to the Village of Alfred and other existing developed areas. All three zones permit pits but not quarries and are not subject to the 15,000 tonnes limit specified under the Official Plan.

It must also be noted that the Council of the United Counties of Prescott and Russell approved a "first ever" Official Plan for the United Counties on December 31, 1999. This plan replaces the various Official Plans in effect for the constituent municipalities within the United Counties, including the former Township of Alfred (now the Township of Alfred and Plantagenet as a result of amalgamation). The subject property is designated "Rural Policy Area" under this plan and the policies more or less mirror the General Rural and agriculture designations of the former Township of Alfred Official Plan in the immediate area of the proposed pit. Pits and quarries are not a permitted use in the Rural Policy Area except for wayside pits and quarries. Pits and quarries are only permitted in the "mineral aggregate Resource Policy Area" designation and the policies provide that the creation of new or expanded pits outside this designation requires an Official Plan amendment. It is agreed by all witnesses that the proposed pit on the subject property does not conform to the United Counties Official Plan.

The Board finds that this lack of conformity with the United Counties Official Plan is not fatal to the subject application for a pit licence. Although there is an onus on the local municipality under subsection 27 (1) of the Act, to amend its zoning by-law to conform with the policies set out in the new United Counties Official Plan, this does not affect the validity of the permitted use set out in the zoning by-law, in this case the sand pit use. The United Counties had the legal authority to amend the Township's zoning by-law to bring it into conformity with its Official Plan approved in 1999 but chose not to do so.

Subsections 27 (1) and (2) of the Act read as follows:

27.

(1) The council of a local municipality shall amend every Official Plan and every by-law passed under section 34 or a predecessor of it to conform with a plan that comes into effect as the Official Plan of a county, regional, metropolitan or district municipality.

(2) If the Official Plan of a county, regional, metropolitan or district municipality comes into effect as mentioned in subsection (1) and any Official Plan or zoning by-law is not amended as required by that subsection within one year from the day the plan comes into effect as the Official Plan, the council of the county or the regional, metropolitan or district municipality may amend the Official Plan of the local municipality or zoning by-law, as the case may be, in the like manner and subject to the same requirements and procedures as the council that failed to make the amendment within the one-year period as required.

The main haul routes for the sand extracted from the site would be on the currently unopened road allowance between Concession 4 and 5, which provides access from the subject site to Montee Lajeunesse, which in turn connects to County Road 17. The roads are paved except for the unopened road allowance. The length of unopened road allowance between the proposed sand pit and Montee Lajeunesse is approximately 600 m. The objectors complain of the impacts they are likely to suffer if this proposal goes ahead, but their own evidence suggests that they currently experience dust and noise from the unopened road allowance as a result of all terrain and recreational vehicles using this unopened road allowance. The proposed improvements to the road allowance as set out in the proposed "Road allowance Use and Maintenance Agreement" (Exhibit 2) between the municipality and the proponent is intended to impose an obligation on the proponent to make the necessary improvements to the unopened road allowance which would reduce or eliminate the

nuisance resulting from the use of the road. The Board finds however that paragraph 2.2 of the agreement should be revised to obligate the proponent to make such improvements on the full length of the unopened road allowance from the intersection with Montee Lajeunesse to the entrance of the subject site. Furthermore, the proponent should be obligated to plant and or erect some form of screening to act as buffering along the unopened allowance along the boundary of the objectors' property to further reduce any noise or dust emissions.

It is also noted that Montee Lajeunesse already carries a certain amount of truck traffic as it leads to a municipal landfill site located to the northwest of the subject property, it also provides access to residential properties along the Ottawa River to the north. The Board is satisfied based on the evidence that the number of truck trips to be generated from this operation are relatively low and will have negligible impact on the objectors' use of their property when the mitigation measures proposed are implemented.

With respect to the concerns raised as to the impact of the proposal on the ground water table, the Board is satisfied that there will be no impacts thereon provided that, excavation does not occur lower than 1.5 m. above the ground water table.

The Board is satisfied that the application for a Category 3 - Class "A" Pit Licence represents appropriate planning as it gives due regard to the Provincial Policy Statement by ensuring that as much of a valuable mineral resource as is realistically possible will be made available to supply mineral resource needs, as close to market as possible.

Issuance of the licence on the subject property would not generate unacceptable impacts on the objectors' use of their lands with respect to dust, noise, visual impact and traffic provided that the proposed "Road Allowance Use and Maintenance Agreement" referred to above is entered into between the municipality and the proponent subject to the revisions suggested by the Board. The Said property would be well buffered from the sand pit operation by the thick mature tree cover at the rear of the property and on the subject lands. The sand pit use is a relatively quiet use and is a compatible use for a rural area and is considerably less noisy than a gravel pit, quarry or crushing operation.

The proposed rehabilitation plan would return the subject to woodland in accordance with the relevant Official Plan policies.

Accordingly, the objection by Aly Said and Louise Belisle-Said is dismissed and the Ministry of Natural Resources is hereby directed to issue the subject licence to Maurice Duval Excavation Inc., subject to the condition that the municipality and the proponent enter into an agreement for the maintenance and use of the unopened road in accordance with this decision.

It is so Ordered.

"R. G. M. Makuch"

R. G. M. MAKUCH
MEMBER