

ISSUE DATE:

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PL090122

Ontario
Ontario Municipal Board
Commission des affaires municipales de l'Ontario

At the request of Preston Sand and Gravel Company Limited, 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 6618, 6492 and 6524 Roszell Road, in the Township of Puslinch

OMB File No. PL090122

Preston Sand and Gravel Company Limited has appealed to the Ontario Municipal Board under subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's refusal or neglect to enact a proposed amendment to Zoning By-law 19/85 of the Township of Puslinch to rezone lands respecting 6618, 6492 and 6524 Roszell Road from A and NE to IND and NE to permit an aggregate operation

OMB File No. MM090020

APPEARANCES:

Parties

Counsel

Preston Sand and Gravel Company Limited J. Wilker, D. Germain

Township of Puslinch H. Murphy

DECISION DELIVERED BY K. J. HUSSEY AND ORDER OF THE BOARD

Preston Sand and Gravel Company Limited ("Preston") has appealed Council's refusal or neglect to enact a proposed amendment to Zoning By-law No. 19/85 as amended, with respect to lands at 6618, 6492, and 6524 Roszell Road, in the Township of Puslinch. The subject lands are zoned Agricultural (A) and Natural Environment (NE). Preston seeks to rezone a portion of the lands to Extractive (EX-1). This would permit the establishment of an aggregate extraction operation.

The Ministry of Natural Resources (MNR) has referred to the Board, determination of Preston's application for a Class 'A' licence for the removal of aggregate from lands, including below the water table.

At the onset of the hearing, Counsel for Preston informed the Board that the Parties had succeeded in resolving all but two issues, the vertical zoning and the haul route. Counsel told the Board that Preston was in the process of pursuing alternatives to using Concession Road 4 for aggregate traffic, which would satisfy the Township's request for a private haul route. Counsel reported that Preston had achieved some success but needed more time to continue its negotiations and for that purpose, Preston requested a one week adjournment. On consent, the Board granted the request.

When the hearing reconvened Counsel informed the Board that the Parties were successful in resolving all the issues; an alternative proposal for a private haul route was secured, subject to the County's approval, and an agreement was reached on the outstanding zoning issue.

Mr. Robert Stovel presented evidence on the merits of the proposed settlement. Mr. Stovel was qualified by the Board to give opinion evidence in the areas of land use planning, aggregate planning, environmental planning, and agrology. Mr. Stovel was retained by Preston in 2004 for the preparation of the zoning and licensing applications. He prepared the Planning Report, the Natural Environmental Levels 1 & 2 Reports, the Agricultural Study, and the Site Plan. Mr. Stovel is certified to prepare Site Plans under the *Aggregate Resources Act*. Mr. Stovel presented an overview of the site, and reviewed the process that led to the settlement.

The subject property consists of three farm parcels and is approximately 59.1 hectares. It is located in the outwash areas of the Speed River. The area proposed to be extracted is approximately 35 hectares and it is estimated that approximately 5 million tonnes of aggregate are available for extraction. Of this amount, approximately 2.8 million tonnes are below the water table.

The eastern and southern limits of the property are bounded by Roszell Road. The Speed River with its associated valley system is approximately 120 metres to the west. There are significant natural heritage features associated with the Speed River system, specifically, significant wetlands, significant woodlands, fish habitat and wildlife habitat. On the subject property there are tributaries that feed into the Speed River and there is a small wetland in the south west portion of the subject property that has recently been classified as a significant wetland. The protection of these natural heritage features and their functions was the focus of the hydro-geological and

ecological studies on this proposal. The hydro-geologists and ecologists in an agreed statement of facts indicated that there are no outstanding ecological or hydro-geological matters associated with the proposal. The environmental reports were reviewed by the Grand River Conservation Authority and the Ministry of Natural Resources. These agencies confirmed that they had no outstanding technical concerns with the proposal.

The subject property contains three farmsteads that are located in the north, south-east, and south-west portions of the site. The extraction limit has been set to avoid the area in which these buildings are located. An archaeological assessment of the subject property revealed no significant archaeological resources. The Ministry of Culture reviewed the archaeological assessment and concurred that the requirements were satisfied.

The subject property is designated Prime Agricultural and Core Greenlands. It was Mr. Stovel's opinion that the proposal does not require an Official Plan Amendment as it is mapped in the County of Wellington Official Plan as part of the Mineral Aggregate Overlay. The area has a number of active and rehabilitative aggregate pits and is recognized as a deposit area of primary significance. Extraction will occur below the water table and those lands will not be rehabilitated to agricultural use but will result in the creation of approximately 25 hectares of lakes and wetlands.

A report setting out the rationale for below water table extraction was reviewed by the County's Planner who provides advice to the Township. The Provincial Policy Statement and the County of Wellington Official Plan contain policies that must be considered when the rehabilitation plan would not return the lands to a similar agricultural capability as existed before the extraction. This report concluded that the proposal conforms with the County's policies and is consistent with provincial policies. Those circumstances set out in the Official Plan, in which extraction below the water table is permitted on prime agricultural land, are as follows:

1. there is a substantial quantity of mineral aggregate below the water table warranting extraction or the depth of the planned extraction in a quarry makes rehabilitation unfeasible;
2. on lands designated prime agricultural area, other alternatives have been considered by the Applicant and found unsuitable, and rehabilitation in the remaining areas will be maximized;

3. impacts on the environment, including quality and quantity of surface and groundwater resources will be minimal; and the intended after use will be compatible with the long term uses of adjacent areas.

It was Mr. Stovel's opinion that the Official Plan requirements have been met. Mr. Stovel also considered other relevant policies in the Official Plan, and in the PPS he noted in particular, sections 2.1, 2.2, 2.3, 2.5, and 2.6. Mr. Stovel concluded that the application is consistent with each of those policies.

Mr. Stovel reviewed in detail the Site Plan (Exhibit 4), including the existing features, the operational plan, phasing, and the rehabilitation plan. Mr. Stovel testified that the Site Plans have been designed to have minimal social and environmental impact, especially on the residences south of the subject property, which were the focus of the noise, dust and hydro-geological studies. The probable impacts on those property owners were considered and addressed, and measures have been established to ensure that any impact will be eliminated or appropriately mitigated. The Site Plans and relevant reports were all peer-reviewed. Mr. Stovel testified that the agencies and experts are satisfied that the mitigating measures and technical recommendations have been incorporated into the Site Plan and he observed that the private haul route will further substantially minimize impacts on the residents. At the hearing, at the request of Counsel for the Township, Mr. Stovel indicated in ink, revisions to the Site Plans that reflect the settlement between the Township and Preston on the haul route. The Site Plans, as revised, have now been filed with the Board.

Mr. Stovel opined that the proposed Zoning By-law (Exhibit 6) effectively implements the Site Plans, conforms with the County's Official Plan, is consistent with the PPS, represents good planning and is in the public interest.

Mr. Stovel concluded that the requirements of Section 12 of the *Aggregate Resources Act* have been complied with and he recommended that the Board directs the Ministry of Natural Resources to issue a license.

The Participant

Helen Purdy was the only Participant at this hearing. Although she is not a resident of Puslinch, Ms Purdy has roots there; her family still resides in the area. She is a member of Gravel Watch Ontario, which she described as a coalition of concerned,

knowledgeable citizen groups working to improve planning and aggregate licensing processes, the operation of pits and quarries, and rehabilitation. Ms Purdy's concerns focused on two issues; the permanent loss of agricultural lands and whether the proposal requires an amendment to the County of Wellington Official Plan. With the consent of both Parties, Ms Purdy submitted a written participant statement after the hearing ended because she was unable to complete her oral evidence within the appointed time. The Board has considered Ms Purdy's oral and written submissions.

The Board's Findings

While the Board understands Ms Purdy's reasonable concerns with the loss of agricultural lands, the Board finds that the proposal meets the Official Plan and Provincial Policy Statement requirements to remove a part of the prime agricultural lands on the subject property. More than half the aggregate to be extracted is below the water table and the County's Plan and the *Provincial Policy Statement* contemplate that in these circumstances, those lands will not be rehabilitated to agricultural use.

With respect to Ms Purdy's concern regarding the necessity of an Official Plan Amendment, the Board accepts Mr. Stovel's unchallenged expert planning opinion in this regard, which is also the opinion of the County's Planner, that an Official Plan Amendment is not required as the subject lands are mapped in the Official Plan as part of the Mineral Aggregate Overlay.

On the strength of Mr. Stovel's expert opinion evidence, the Board finds that the proposal represents good planning and is in the public interest. It is consistent with the Provincial Policy Statement and conforms to the County's Official Plan policies.

Accordingly, the Board Orders that the appeal by Preston Sand and Gravel Company Limited under subsection 34(11) of the *Planning Act* from Council's refusal or neglect to enact a proposed amendment to Zoning By-law No. 19/85 as amended for aggregate extraction operations referred to as the Roszell Pit be allowed and Zoning By-law 19/85 as amended, is hereby further amended in the form set out in Exhibit "6" and as attached to this Order. The Board authorizes the municipal clerk to assign a number to this By-law for record keeping purposes.

The Board directs the Minister of Natural Resources to issue the licence for the Roszell Pit in accordance with subsection 11(8.1) of the *Aggregate Resources Act* subject to the prescribed conditions and in accordance with the Site Plans filed as Exhibit "4" as revised.

This is the Order of the Board.

"K. J. Hussey"

K. J. HUSSEY
MEMBER

THE CORPORATION OF THE TOWNSHIP OF PUSLINCH

A BY-LAW TO AMEND BY-LAW NUMBER 19/85, AS AMENDED, BEING THE ZONING BY-LAW OF THE TOWNSHIP OF PUSLINCH

WHEREAS, the Ontario Municipal Board deems it appropriate and in the public interest to amend By-Law Number 19/85 pursuant to Section 34 of the Planning Act, R.S.O. 1990, as amended;

AND WHEREAS, the purpose of the EXI-20 Zone is in part to maintain natural separators of earth, aggregate and other native materials between the lakes created by aggregate extraction below water table;

NOW THEREFORE THE FOLLOWING AMENDMENT IS ENACTED:

1. That Schedule 'A' to By-law 19/85 is hereby amended by rezoning Part of Lots 1 and 2, Concession 3 and Concession 4, from Agricultural (A) Zone to a site specific **Extractive (EXI-19) Zone** as shown on Schedule "A" to this By-law.
2. That Schedule 'A' to By-law 19/85 is hereby amended by rezoning Part of Lots 1 and 2, Concession 3 and Concession 4, from Agricultural (A) Zone to a site specific **Extractive (EXI-20) Zone** as shown on Schedule "A" to this By-law.
3. That Schedule 'A' to By-law 19/85 is hereby amended by rezoning Part of Lots 1, and 2, Concession 3 and Concession 4, from Agricultural (A) Zone to a site specific **Agricultural (A-46) Zone** as shown on Schedule "A" to this By-law.
4. That Schedule 'A' to By-law 19/85 is hereby amended by rezoning Part of Lots 1, and 2, Concession 3, from Natural Environment (NE) Zone to site specific **Natural Environment (NE-13) Zone** as shown on Schedule "A" to this By-law.
5. That SECTION 16 (Extractive Zone) is hereby amended by the addition of the following exception zone:
 "(s) **EXI-19 (Preston Sand & Gravel - Roszell Pit)**
 Notwithstanding any provisions of this By-law to the contrary including the provisions of Section 16(3), within the area zoned **EXI-19** on Schedule "A" hereto, the following special provisions shall apply:

- i) Uses Permitted

All uses permitted within the EXI Zone in accordance with the approved aggregate site plans for the subject land pursuant to the Aggregate Resources Act.."

6. That SECTION 16 (Extractive Zone) is hereby amended by the addition of the following exception zone:

“(t) **EXI-20 (Preston Sand & Gravel - Roszell Pit)**

Notwithstanding any provisions of this By-law to the contrary including the provisions of Section 16(2), 16(3), within the area zoned **EXI-20** on Schedule “A” hereto, the following special provisions shall apply:

i) **Uses Permitted**

All uses permitted within the EXI Zone in accordance with the approved aggregate site plans for the subject land pursuant to the Aggregate Resources Act, subject to the following additional provisions:

- a) Notwithstanding the provisions of Section 16(2), 16 (3) or any provisions of this By-law to the contrary, the land zoned **EXI-20** on Schedule “A” may be included within a licenced pit pursuant to the Aggregate Resources Act, R.S.O., 1990, as amended, for the operation of a pit use whereby the depth of aggregate extraction shall not occur below any point which is 1.0 metres above the high water table.
- b) Notwithstanding the above provision or any other sections of this By-law to the contrary, extraction below the water table within the **EXI-20** Zone may occur in order to establish a permanent hydraulic barrier in accordance with the approved aggregate site plans for the subject land pursuant to the Aggregate Resources Act.
- c) The purpose of the **EXI-20** Zone is in part to maintain natural separators between the lakes created by aggregate extraction below water table. Variations to the precise location and size of the natural separators or the banks of the lakes created by aggregate extraction within the **EXI-20** Zone are permitted without amendment to the Zoning By-law. Deletion of the **EXI-20** Zone, in whole or in part, shall require an amendment to the Zoning By-law.”

7. That SECTION 5 (Agricultural Zone) is hereby amended by the addition of the following exception zone:

“(tt) **A-46 (Preston Sand & Gravel - Roszell Pit)**

Notwithstanding any provisions of this By-law to the contrary, the area zoned **A-46** on Schedule “A” may be included within a licenced pit pursuant to the Aggregate Resources Act, R.S.O., 1990, as amended. The land uses within the **A-46** Zone shall be restricted to agricultural uses, existing single-detached dwellings, reforestation, ecological enhancement, and the following temporary uses: private internal haul route, entry signage, acoustical and landscape berms, and scientific monitoring for ecological and hydrogeological purposes. No aggregate extraction, processing, loading or stockpiling is permitted within this zone. For the purposes of the **A-46** Zone, ‘temporary’ shall mean until such time as the aggregate extraction use on part of Lots 1 and 2, Concessions 3 and 4 continues and the applicable licence remains in effect.”

8. That SECTION 20 (Natural Environment Zone) is hereby amended by the addition of the following exception zone:

"(m) **NE-13 (Preston Sand & Gravel - Roszell Pit)**

Notwithstanding the provisions of Section 20 or any provisions of this By-law to the contrary, the land zoned **NE-13** on Schedule "A" may be included within a licenced pit pursuant to the Aggregate Resources Act, R.S.O., 1990, as amended, but shall not be used for the making, establishment or operation of a pit nor any ancillary land use related to aggregate extraction. The uses permitted within the **NE-13** zone shall be restricted to conservation uses as defined by this By-law and scientific monitoring for ecological and hydrogeological purposes.

9. This By-law shall become effective on the date that the Order of the Ontario Municipal Board is issued.

THE CORPORATION OF THE TOWNSHIP OF PUSLINCH SCHEDULE "A"

