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Ontario Municipal Board

IN THE MATTER OF Section 5(3) of
The Pits and Quarries Control Act,
1971, c. 96

- and -

IN THE MATTER OF a reference by the Minister of Natural Resources for a hearing in connection with the granting of a licence to Dufferin Materials and Construction Limited for the operation of a sand and gravel pit in part of Lot 27, Concession 2, subdivision Lots 1 and 2, abandoned C.N.R. right of way, Lot 26, Concession 3, in the Township of South Dumfries in the County of Brant

C O U N S E L :

- R. B. Tuer, Q.C. and - for Dufferin Materials and
D. R. Scott Construction Limited
- B. H. Kellock, Q.C. and - for the Town of Paris
P. D. Amey
- J. S. Ganning and - for the County of Brant
G. R. Houlding, Q.C.

REPORT TO THE MINISTER OF NATURAL RESOURCES

The first part of this report will deal with the hearing commencing March 11, 1974 and continued March 12, 13 and 14, 1974.

The principal evidence in support of the application for a licence to operate a pit was furnished by John Sutherland, employed by Dufferin Aggregates, a division of Dufferin Materials and Construction Limited. This witness is a civil engineer, employed as Manager of Engineering Service, well qualified in all phases of pits and quarries operations. Dufferin Materials and Construction Limited commenced its sand and gravel operations about 40 years ago. This company has also over the years been engaged in the operation of quarries. As a consequence of a deficiency of supply and the extent of its operations and market demand

in southern Ontario, the company must purchase all its sand and some gravel requirements.

The subject property is located within the Township of South Dumfries bordering the Town of Paris to the south. The lands involved in this application are shown delineated in red in the aerial photograph (Exhibit 8) and comprise some 615 acres. Acquisition of these and other lands commenced in 1955 with the final purchase made in 1965. These properties were obtained as a reserve for such time as other properties were phased out. However, some of the materials were used in 1956 and 1957 for the purpose of a grade separation constructed on Provincial Highway No. 24A over the Canadian National Railway spur line in order to serve the property. At this time, a sum in excess of \$100,000 was expended. Some materials after the crushing operations were stockpiled on the property in 1965. A small amount of gravel was sold in about the year 1971. In addition, a company sign showing the nature of the intended operation was installed on the southern part of the property in 1965. It is intended to extend the spur line on the property to join with the main C.N.R. line.

Sheet No. 1 of Exhibit 3 shows the existing land uses surrounding the subject lands. With the exception of residential development along the north side of West River Road and the Town of Paris pumping station on the south side, there is no development along the peripheries of the remaining surrounding areas, except for some farm buildings. Provincial Highway No. 24A slightly to the west leads to the City of Cambridge to the north and may also be used in reaching Brantford to the south. Concession Road No. 3 bisects the property and would be exclusively used by trucks proceeding in a westerly direction if the application is granted. There would be little or no use for easterly-oriented traffic along this road as the Grand River is located a short distance to the east of the lands.

An analysis of the test borings indicates an overburden of between two and three feet; usable gravel varies with a general depth of between 35 to 45 feet with greater depth on the plateau on the north end of the property. The quality of the material is rated as excellent for construction purposes. Concentrated efforts have been made to locate other sites in the southern part of the Province, suitable for extracting sand and gravel. No such property properly zoned was found. Indeed, it was stressed that there is a critical shortage of sand and gravel pits in the Province. Even if the application is now approved, there would be a lapse of three to four years before gravel would be ready for shipment after an expenditure of some \$1,500,000 to \$2,000,000. It is intended to develop the operation in five phases as indicated on Sheet 2 of Exhibit 3: The plant to be used for crushing, screening, washing and gravel processing is also indicated on this exhibit, and would be located about 2,000 feet from the Golf Links Road. The property would be shielded from this road by a natural ridge.

The problem of dust pollution, according to the evidence of Sutherland, would be mitigated because of the washing process in the operation, and the creation of conveyor belts in underground tunnels.

Annual production is estimated at between 800,000 and 1,000,000 tons. Only one area would be utilized at any one time, while the balance of the lands would remain in agricultural use in the interim. Before proceeding to the next phase, the previous phase would be restored and returned to agricultural use. It is intended that about 10 acres of land would be excavated annually. This would be a seasonal operation for eight months of the year, excluding

the winter months. About 4,590 tons would be produced daily, based on 22 working days per month. This would result in a total tonnage of 106,920 tons per month, or a total of 855,360 tons per year. The work would be performed only during the day time over a period of nine working hours. Berms would be constructed around the whole of the perimeter, except where not required because of the natural ridge. All other rehabilitation and restorative procedures would be in accordance with the site plan filed.

It was suggested that Township By-law 1282 regulating pits and quarries enacted September 19, 1962, was more stringent in some respects than the Pits and Quarries Control Act, and that the applicant would be willing to abide by the stricter requirements. This would particularly affect the setback requirements.

The bulk of the materials would be transported by rail, and it is hoped that the optimum shipping condition of a 4,000 ton train involving about 50 cars would be used daily and no concern was expressed if a condition is imposed that the train movements be restricted to day-time use.

The surplus of 590 tons daily would be transported by trucks. This would involve the use of 34 trucks, making 68 trips daily. The loading of the washed materials would minimize the dust factor. If necessary, spray bars could be installed to control dust. There would be no gravel truck traffic on Golf Links Road, with minor access through an existing road on the south-east boundary of the property. The major means of ingress and egress for trucking purposes would be from Concession 3 Road as shown on Exhibit 3.

Concession 3 Road is a Grade B gravel road, and the applicant is prepared to negotiate with the township to construct at its own expense a hard surface road leading

westerly on Concession Road 3 to Highway 24A. There would be a total rehabilitation period of 30 to 40 years, at which time the total property would be restored for agricultural use. Sheet 3 of Exhibit 3 shows the final rehabilitation state of the property.

Evidence was given by Derrick J. Coleman, an Environmental planner dealing with environmental and recreational planning. The use of the subject lands is agricultural and contains well-drained gravel. There is a small pond on the site with an intermittently flowing creek to the south. It contains very little natural vegetation, with little wild life. The area has a low class rating for geese and ducks. There is little potential for outdoor recreation. A gravel pit use would not affect recreational enjoyment on the site following excavation and upon restoration. If recreational uses are desired there would be an improvement. The loss of ecological advantages would be minimal, resulting in loss of some muskrats and water fowl. Further, there would be no effect on the environmental character of the surrounding area. According to this witness, the proposed gravel pit operation would be a "most innocuous operation". Natural screening would provide a natural buffer to the south. The berms and vegetation to be provided would be in excess of the regulations. The system of handling the gravel would ameliorate any noise pollution and should be dust-free. There would be compatibility with any existing dwellings in the area. The property could be rehabilitated for agricultural use or used for recreational purposes, even while being mined.

Authoritative evidence as to the possible noise level was furnished by Valtin Henderson, a retired associate professor, specializing in the field of acoustics and vision.

This witness made sound level measurements of existing sources of sounds affecting the general area, including the hospital in the vicinity. In his opinion, the sounds created by rail use in the proximity of the hospital would be slight and muffled, and this witness concludes that it is doubtful if any occupant of the hospital would be aware of any train movements. Also having regard to the equipment intended to be used by the applicant, there would in Professor Henderson's opinion be little cause for concern to the residents on Golf Links Road.

The Board does not intend to dwell on one of the principal concerns of the Town of Paris and some of the objectors to the proposed pit operation, that is, the possible effect on the quality and quantity of the water supply to the town. Our reason is that after considerable evidence was adduced by hydro geologists for the applicant as well as the town, it was suggested by the Board that if conditions might be established to the satisfaction of the town to ensure the required standard of water qualitatively as well as quantitatively, the Board, if it saw fit to recommend that a licence be granted, would recommend that the issue of a licence be made subject only to such conditions. Such conditions were mutually agreed upon and filed as Exhibit 47. It is therefore recommended, that if a licence is granted it should be made subject to the conditions therein contained.

Evidence was given by Dennis Sager, a former plant superintendent for Consolidated Sand and Gravel operating two large pits, partly within the Town of Paris on the east and western parts of the municipality. This witness had been in this company's employ for about 34 years and engaged in an attempt to locate new sources of supply. The present

production of the west pit is about 1,000,000 tons annually and the east pit, 900,000 tons annually. The life span of the west pit, unless additional land had been acquired in the past two years (subsequent to his retirement) would be six to eight years. The east pit would be worked out in from three to five years. The gravel in the Paris area, including the subject lands, is of a high calibre, made even more valuable because of difficulty of locating new sources of supply.

The considerable number of objectors appearing at the hearing focused their areas of concern mainly on the immediate effects of the mining operation resulting in noise and dust; the effects on the Town of Paris because truck transportation will likely make considerable use of Provincial Highway No. 24A, which is the main street of Paris, thus causing gravel and sand spillage as well as the usual side effects of truck traffic; fear of water pollution and the possible effect upon the water supply; the possible effect upon the Willett Hospital and the Paris District High School; the need to preserve agricultural lands; truck traffic on Golf Links and West River Roads. Some of the objectors argued that while the Dufferin lands might ultimately be used as a gravel pit, this application, in view of existing gravel supplies in the area should be considered premature.

In connection with an objection by K. Farmer, the operator of a mink farm who would require a written guarantee that the water supply upon his property located north of West River Road would be replaced at the applicant's cost, it was suggested by counsel for the applicant that Dufferin would be prepared to provide such alternative water supply if necessary and required because of the applicant's operation. If a licence is granted it should be made subject to such condition.

Upon resumption of this hearing on August 20th, and continued August 21st, 22nd, 28th and 29th, further evidence

was adduced by hydrologists which for the reasons above stated need not be extensively referred to; however, it became apparent as the evidence progressed, that in the interim, since adjournment of the hearing on March 14th, further observation wells were established, indicating a different water table than that used for the preparation of the site plan. This necessitated an amendment to the site plan which was filed as Exhibit 46. This exhibit is intended to replace the original site plan forming part of the application and marked as Exhibit 3. In the result, wherever there is any conflict or inconsistency, Exhibits 3, 10, 11, 12, 14, 15 and 16 would be superseded by Exhibit 46. Any grant of licence therefore, should have reference to the site plan indicated by Exhibit 46.

To further demonstrate the problems faced by the aggregate industry, Professor Alexander McLellan, Assistant Professor of Geography and Assistant Dean of Environmental Studies at the University of Waterloo, testified that out of total resources of 10.3 billion tons in the Central Ontario Planning Region, only 1.9 billion tons, because of restrictive zoning and other factors, would be actually available. There is in his opinion an impending "crisis of supply" and within 15 to 20 years all available materials would be exhausted. The subject site has a very high gravel content with an estimated 42 million tons of material which might be produced. The site is also large enough to hide any undesirable aesthetic features.

According to the evidence of Robert Bee, a landscape architect, who prepared the revised site plan, Exhibit 46, there would now be certain changes in phasing and ponding which, in effect, would allow release of larger blocks of land on completion of any phase. There would now be six

phases instead of five. Over a three-year period there would be approximately 30 acres in use, including restoration during any such period. The location of a plant as shown is most desirable because of the railway location, natural screening and availability of the water pond. If the plant were constructed north of the 3rd Concession Road as recommended by James Longley, a consulting engineer for the Town of Paris, such site would be less desirable aesthetically, because it would be more visible; there would also be less accessibility to the railway and water, and the material available for mining in such area would not be as great. Mr. Longley admitted that he has had no experience in the operation of gravel pits and the Board prefers the evidence on behalf of the applicant based on experience and a study of the most economic procedural methods. Mr. Longley, as did others in general opposition, admitted that the aggregate should be mined, but not at the present time. In addition, this witness filed Exhibit 50 as an alternate truck route. This route, however, presupposes the construction of a continuation of Provincial Highway No. 403, an interchange and a bridge across the Grand River. While this would avoid the use of Highway No. 24A through Paris, there is considerable doubt as to whether such construction would take place, and there is no indication as to timing if it ever does take place. Failing the adoption of such alternate route, if a licence is to be granted, it is our opinion that no alternative exists, except the use of Highway No. 24A as contemplated. When evidence was given to the Board that the applicant could not expect to supply the needs of Brantford because of the existence of a pit in closer proximity, it becomes evident that the factor of proximity to existing markets could determine the viability of the operation and competing forces in the market cannot be ignored. It is axiomatic that every additional mile of

transportation must cut into the cost of operation and reflect the price paid by the consumer. Therefore, the most direct route to the Toronto-Hamilton markets would be necessary. An alternate route as proposed by Mr. Longley, based on so many variables, and without taking into account the effect upon persons affected by an alternate route is simply meaningless. If then a licence is to be granted, it is our recommendation that there is no alternative to Highway No. 24A.

The thrust of all the evidence clearly illustrates that before any other land uses are made of the lands under review it is necessary first to mine the gravel. This theme was repeated again and again. The only legitimate quarrel as the Board sees it, is as to timing. When one considers the lifetime span left to existing pits in the Paris area, and the time it will take to actually commence production on the applicant's lands, it is not unreasonable that all other things being equal, the Minister ought to consider the grant of a licence at this time.

The Board agrees that the quality and the quantity of the material involved would make it desirable to mine. In our view, we also agree that the property is favourably located transportation-wise to existing markets. The lands are zoned for extractive purposes, such zoning by-law having been enacted in 1967. It is also significant that some surrounding lands are not so zoned. There would be conformity with the official plan. The township and county have indicated agreement to a licence being granted. Before recommending that a licence be granted, however, the Board must consider Section 6 of The Pits and Quarries Control Act, 1971. In our opinion, it would be necessary to impose certain conditions to the licence.

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For the past 40 years or more, Paris has been an important part of the gravel industry in the Province, and while it is true that it is almost surrounded by gravel pits, when considering Section 6(c) of the Act, viz:

" the need, if any, for restricting excessively large total or quarry output in the locality; "

the factor of excessiveness becomes relative. Fortunately or unfortunately, the natural resource is there. No responsible and knowledgeable person has suggested that mining upon the applicant's property should not take place. The question is, should it be done now. In our opinion, the answer should be in the affirmative. The rapid depletion of existing supplies and the time lapse involved before actual operations commence suggest such a move. This recommendation is supported by evidence as to existing supplies elsewhere in southern Ontario, and the demand.

It is our recommendation that the adoption of the following conditions to a licence issued would as much as possible under the circumstances deal with those considerations specified in Section 6 of the Act.

1. There shall be no ingress or egress for gravel trucks from the applicant's property on to Golf Links Road;
2. If authorized by the Township of South Dumfries, the applicant will, prior to the commencement of operations, pave to the satisfaction of the township, Concession Road III at the applicant's expense from the intersection of Concession Road III and the major road within the southern portion of the applicant's property, westward to Highway 24A;
3. The applicant will pave any road within the boundary of its property used by gravel trucks hauling finished gravel product;

4. The applicant will not excavate sand and gravel at the gravel pit for more than nine (9) hours per day and will only excavate during daylight hours, provided that maintenance operations may be performed by the applicant on any equipment in the gravel pit at any time, and processing operations may continue beyond such nine (9) hour period on an overtime basis in order to process all the sand and gravel that has been excavated during such nine (9) hour period.
The working hours may be regulated by municipal by-law which would take precedence to the hours of work herein provided;
5. The applicant will use its best efforts to require the Canadian National Railway or other railway company to haul any shipments of sand and gravel out of the gravel pit by rail only during daylight hours;
6. All equipment operated by diesel or gasoline motors which is used within the gravel pit will be equipped with appropriate muffling devices;
7. The gravel pit will be operated as a wash production plant with all screens to be equipped with spray bars where feasible;
8. The applicant will not store salt on its property or mix sand and salt on its property for sale from its property;
9. Before commencement of gravel mining on the applicant's property, the applicant will install at its expense observation wells and piezometers at locations designated by the Town of Paris provided that the total number of wells in use at any time within the

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- applicant's property or in the vicinity thereof will not exceed twenty-five. Provided further that should the location of an observation well or piezometer interfere with the excavation operation of the applicant, such will be moved at the applicant's expense to an alternative location designated by the Town of Paris;
10. The applicant will so long as mining operations continue, take regular readings in the wells described in paragraph (9) (water level readings and ground water samples) at appropriate intervals to ascertain the ground water stage and quality, and Dufferin Materials and Construction Limited shall make such readings immediately available to the Town of Paris. The Town of Paris will have the right to take readings at any time at its expense.
 11. Subject to condition (12), the applicant will maintain at its expense, the natural ground water stage or its equivalent, on its property as shown by the readings taken at the observation wells and piezometers installed pursuant to condition (9).
 12. The applicant will co-operate with the Town of Paris to facilitate any proposed expansion of the water collection system of the Town of Paris in the vicinity of the applicant's property and for that purpose will give Town of Paris officials access to its property for the purpose of making any investigations relating to such proposed expansion. However, the applicant need not co-operate in any proposed expansion of the Town of Paris water collection system which inhibits, impedes or prevents the applicant's gravel pit operation on its property.

13. The applicant will not bring into or store upon its property any petroleum products, liquid or solid wastes, or other pollutants unless provision is made in accordance with good engineering practice to adequately protect the ground water supply from pollution by such substances.
14. The setback requirements under By-law 1282, if more stringent than that provided by provincial regulations, should apply.
15. There should be an undertaking given to K. Farmer as above referred to.

The motion for costs by the Town of Paris is dismissed as in our opinion this is not a proper case for costs. The applicant should be required to pay the cost of reporting.

All of which is respectfully submitted.

DATED at Toronto this 25th day of September, 1974.

W. SHUB
VICE-CHAIRMAN

S. S. SPEIGEL
MEMBER