

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: December 15, 2017

CASE NO(S): MM160053

PROCEEDING COMMENCED UNDER subsection 11(5) of the *Aggregate Resources Act*, R.S.O. 1990, c. A.8, as amended

Referred by:	Ministry of Naturel Resources and Forestry
Objector:	Gregory Dubiel
Objector:	Danielle Gauthier
Objector:	Josephine Kus; and others
Applicant:	Tri City Lands Ltd.
Subject:	Application for a Class A licence for the removal of aggregate
Property Address/Description :	Lots 14-18, Concession B
Municipality:	Guelph Eramosa
OMB Case No.:	MM160053
OMB File No.:	MM160053
OMB Case Name:	Dubiel v. Ontario (Ministry of Natural Resources and Forestry)

Heard: November 22, 2017 in Guelph, Ontario

APPEARANCES:

Parties

Counsel

Tri City Lands Ltd.

Marc Kemerer

**MEMORANDUM OF ORAL DECISION DELIVERED ON NOVEMBER 22, 2017
BY J.V. ZUIDEMA AND ORDER OF THE BOARD**

INTRODUCTION

[1] Tri City Lands Ltd. ("Applicant") filed an application in order to permit a Category 3 - Class 'A' Licence to allow for an aggregate extraction pit above the water table. The Licence would provide permission to remove more than 20,000 tonnes of aggregate

each year. The aggregate extraction pit is commonly referred to as the “Spencer Pit.”

[2] The Applicant’s property is located adjacent to the intersection of Kossuth Road and County Road 124. Access to the extraction area would be to County Road 124. The area of the proposed extraction is approximately 42.25 hectares.

[3] There had been an accompanying Zoning By-Law Amendment which had been filed with the Township of Guelph-Eramosa (“Township”) and that had been appealed by the County of Wellington (“County”) as a “place holder” until the necessary Official Plan Amendment (“OPA”) had been filed with the County. Once that was done, the appeal was withdrawn.

[4] The County OPA was properly processed and had not been appealed. As such, it is in place.

[5] Therefore, the only matter the Board had before it was the referral of licence application. A number of objectors had opposed the licence but by the time the hearing convened, only one objector remained: Danielle Gauthier. Ms. Gauthier is the spouse of Gregory Dubiel who had also objected but withdrew his objection only the day before the hearing was to commence.

[6] On November 2, 2017, I conducted a Telephone Conference Call (“TCC”) at the request of Mr. Kemerer, counsel to the Applicant so that he could obtain specifics concerning Mr. Dubiel’s objection. Mr. Kemerer explained that in order for his client to properly prepare for the hearing, it needed to know Mr. Dubiel’s specific concerns and what evidence Mr. Dubiel would call.

[7] Approximately 10 minutes prior to the TCC, I received a message from the Board’s Case Co-ordinator that she received correspondence that morning that Mr. Dubiel would not be calling in for the TCC.

[8] The general areas of concern noted in Mr. Dubiel’s objection were:

- a. potential water contamination from extraction below the water table;
- b. potential air pollution from dust;
- c. other environmental reasons as there are many bats in the area.

[9] Neither the County nor the Township appeared or in any way participated in the hearing. That had been conveyed to the Board in advance so came as no surprise.

[10] At the commencement of the hearing, the only remaining objector did not appear either. The Board stood down the hearing until 10:30 a.m. given that the start time was 10 a.m. pursuant to the Board's Rules in case Ms. Gauthier was running late. She did not attend nor did she advise either the Board or the parties in advance that she would not attend.

[11] Mr. Dubiel's withdrawal letter did not indicate that he was speaking on behalf of himself and his wife.

[12] The Board heard evidence from Melanie Horton, who was qualified and accepted as an expert in land use planning as well as Glenn Harrington, who was qualified and accepted as an expert in landscape architecture and site planning. These experts testified in support of the licence application.

[13] Ms. Horton opined that the application for the Spencer Pit expansion was consistent with the Provincial Policy Statement, conformed to the Growth Plan and with the County's Official Plan and met the criteria under s. 12 of the *Aggregate Resources Act* ("ARA").

[14] She testified that the application was in the public interest and represented good planning. She recommended that the Board direct the Minister of Natural Resources and Forestry ("MNRF") to issue the licence under the new corporate name of Resources 124 Ltd.

[15] Ms. Horton's evidence was unchallenged given that no objectors attended and she aptly answered the questions which I posed to her.

[16] Similarly Mr. Harrington opined that the specific criteria under s. 12 of the ARA had been satisfactorily met. He went through each criterion to explain how the Applicant had addressed it. He methodically reviewed the Site Plans for the Spencer Pit to show how the operation was intended to proceed as well as the rehabilitation plan.

[17] He also identified the haulage routes and provided some background of the Applicant's business. He too recommended the licence be issued as in his professional opinion, all of the technical requirements under the ARA and its Regulations had been met. His evidence was not challenged and he answered my queries to my satisfaction.

[18] Following the evidence, I provided an oral decision that the MNRF should be directed to issue the licence. I relied on the uncontested evidence of Ms. Horton and Mr. Harrington.

[19] Mr. Kemerer also asked that the licence be issued under the new name given that a transfer of Tri City Lands Ltd. to Resource 124 had occurred earlier that month. Pursuant to s. 38 of the *Ontario Municipal Board Act*, the Board "can add or substitute parties" and issue necessary and incidental orders.

[20] In this instance, I was informed that the principal of Tri City Lands Ltd. continues to be a principal of Resource 124, and as such, the two corporations are connected. I find no reason to object to Resource 124 stepping into the shoes of Tri City Lands Ltd. in relation to this licence application.

[21] As such, the licence should be issued under the new corporate name of Resources 124 Ltd.

[22] Following my oral disposition, Mr. Kemerer made a motion for costs in the

amount of \$1500 against Mr. Gauthier. He argued that as the only remaining objector, she had caused an unnecessary delay of the proceedings and because she had not advised the Board or the other parties of her intention to not appear, those actions suggested *mala fides* on her part which should attract an award of costs.

[23] I explained that I would not make a ruling on the Cost Motion until both Ms. Gauthier and Mr. Dubiel had an opportunity to respond. A separate decision will be provided at a later date concerning this Cost Motion.

[24] Therefore the Board directs that the Minister is to issue the licence subject to the prescribed conditions.

“J. V. Zuidema”

J. V. ZUIDEMA
VICE-CHAIR

If there is an attachment referred to in this document,
please visit www.elto.gov.on.ca to view the attachment in PDF format.

Ontario Municipal Board

A constituent tribunal of Environment and Land Tribunals Ontario
Website: www.elto.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248