

**Local Planning Appeal Tribunal**  
Tribunal d'appel de l'aménagement  
local



**ISSUE DATE:** February 08, 2019

**CASE NO(S):**

PL151041  
PL151043

The Ontario Municipal Board (the “OMB”) is continued under the name Local Planning Appeal Tribunal (the “Tribunal”), and any reference to the Ontario Municipal Board or Board in any publication of the Tribunal is deemed to be a reference to the Tribunal.

**PROCEEDING COMMENCED UNDER** subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

|  |   |
|--|---|
| Applicant and Appellant:<br>Subject:           | Greenwood Construction Company Limited<br>Request to amend the Official Plan<br>- Failure of the Township of East Garafraxa to<br>adopt the requested amendment |
| Existing Designation:                          | Agricultural  |
| Proposed Designated:                           | Extractive Industrial   |
| Purpose:                                       | To permit the expansion of two existing<br>aggregate operations   |
| Property Address/Description:<br>Municipality: | Concession 17 West 1/2 Lot 2 (West Pit)<br>Township of East Garafraxa   |
| Approval Authority File No.:                   | OPA2/12   |
| OMB Case No.:                                  | PL151041  |
| OMB File No.:                                  | PL151041  |
| OMB Case Name:                                 | Greenwood Construction Company Limited v.<br>East Garafraxa (Township)  |

**PROCEEDING COMMENCED UNDER** subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

|                                      |  |
|--------------------------------------|--|
| Applicant and Appellant:<br>Subject: | Greenwood Construction Company Limited<br>Application to amend Zoning By-law No. 69-<br>2004<br>- Refusal or neglect of the Township of East<br>Garafraxa to make a decision |
| Existing Zoning:                     | Agricultural (A) Zone  |
| Proposed Zoning:                     | Extractive Industrial (MX) Zone  |
| Purpose:                             | To permit the expansion of two existing  |

Property Address/Description: aggregate operations  
Concession 17 West 1/2 Lot 2 (West Pit)  
Municipality: Township of East Garafraxa  
Municipality File No.: Z2/12  
OMB Case No.: PL151041  
OMB File No.: PL151042

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

Referred by: Greenwood Construction Company Limited  
Objector: Township of East Garafraxa  
Applicant: Greenwood Construction Company Limited  
Subject: Application for a Class A licence for the removal of aggregate

Property Address/Description : West 1/2 Lot 2, Concession 17  
Municipality: Township of East Garafraxa  
OMB Case No.: PL151041  
OMB File No.: MM160077

**PROCEEDING COMMENCED UNDER** subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: Greenwood Construction Company Limited  
Subject: Request to amend the Official Plan  
- Failure of the Township of East Garafraxa to adopt the requested amendment  
Existing Designation: Agricultural  
Proposed Designated: Extractive Industrial  
Purpose: To permit the expansion of two existing aggregate operations

Property Address/Description: Concession 18 East 1/2 Lot 1 (East Pit)  
Municipality: Township of East Garafraxa  
Approval Authority File No.: OPA3/12  
OMB Case No.: PL151043  
OMB File No.: PL151043  
OMB Case Name: Greenwood Construction Company Limited v. East Garafraxa (Township)

**PROCEEDING COMMENCED UNDER** subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: Greenwood Construction Company Limited  
Subject: Application to amend Zoning By-law No. 69-2004

|                               |   |
|-------------------------------|---|
| Existing Zoning:              | - Refusal or neglect of the Township of East Garafraxa to make a decision |
| Proposed Zoning:              | Agricultural (A) Zone   |
| Purpose:                      | Extractive Industrial (MX) Zone   |
|                               | To permit the expansion of two existing aggregate operations              |
| Property Address/Description: | Concession 18 East 1/2 Lot 1 (East Pit)                                   |
| Municipality:                 | Township of East Garafraxa  |
| Municipality File No.:        | Z3/12   |
| OMB Case No.:                 | PL151043  |
| OMB File No.:                 | PL151044  |

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

|                                |  |
|--------------------------------|--|
| Referred by:                   | Greenwood Construction Company Limited                         |
| Objector:                      | Township of East Garafraxa                                     |
| Applicant:                     | Greenwood Construction Company Limited                         |
| Subject:                       | Application for a Class A licence for the removal of aggregate |
| Property Address/Description : | East 1/2 Lot 1, Concession 18                                  |
| Municipality:                  | Township of East Garafraxa                                     |
| OMB Case No.:                  | PL151043   |
| OMB File No.:                  | MM160076   |

**Heard:** January 14, 2019 in Amaranth, Ontario

#### **APPEARANCES:**

##### **Parties**

##### **Counsel\*/Representative**

|  |                |
|--|----------------|
| Greenwood Construction Company Limited | David S. White |
| Township of East Garafraxa             | Jeffrey Wilker |
| County of Dufferin                     | Jeffrey Wilker |

**MEMORANDUM OF ORAL DECISION DELIVERED BY GERALD S. SWINKIN ON JANUARY 14, 2019 AND PARTIAL ORDER OF THE TRIBUNAL**

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## INTRODUCTION

[1] This was a settlement hearing. There were six matters before the Local Planning Appeal Tribunal (the “Tribunal”). Greenwood Construction Company Limited (the “Appellant”) is the owner of the west half of Lot 2, Concession 17 in the Township of East Garafraxa (the “Township”), which lands will be referred to in this decision as “the West Pit”. The Appellant is also the owner of the east half of Lot 1, Concession 18 in the Township, which lands will be referred to in this decision as “the East Pit”.

[2] The Appellant appealed the failure of Township Council to act upon its applications for official plan amendment and zoning amendment for the West Pit and the East Pit respectively. The purpose of the applications was to re-designate both parcels from Agricultural to Extractive Industrial, and to rezone both parcels from Agricultural to Extractive Industrial.

[3] In addition to the two official plan amendment appeals and the two zoning amendment appeals, there were two referrals from the Minister of Natural Resources of applications for pit licenses for the West Pit and the East Pit respectively, the referrals initiated at the instance of the Township.

[4] The short background to the applications is that the Appellant is currently operating two pits in this area, one on the east side of 17<sup>th</sup> Line and the other on the west side of 17<sup>th</sup> Line. The subject matters of these appeals represent effective abutting extensions of these two operating pits although for aggregate administrative regulatory purposes, the West Pit and the East Pit are treated as new pits.

[5] The Tribunal was advised that over the course of the last two years, there have been numerous appearances before the Tribunal in the form of pre-hearing conference sessions and considerable discussion with the Township and the County of Dufferin (the “County”) as well as persons who presented themselves in the prior pre-hearing sessions as interested persons. The result of those consultations is that the interested persons are now satisfied with the pit proposals and the municipalities are also satisfied

with the resultant site plans and settled Development Agreement.

[6] Apart from the two municipalities, no other persons were present to address the Tribunal at this hearing session.

[7] On consent, David White, counsel to the Appellant, called two witnesses, a qualified geologist, William Fitzgerald, and a qualified land use planner, Heather Sadler.

[8] Mr. Fitzgerald outlined his educational history and his experience in the field of geology, including a 12 year stint with the Ministry of Natural Resources and Forestry ("Ministry") in the Huronia District with increasingly responsible roles, followed by his move to the private sector in 1992, at which time he established his firm, Geological Investigations, which carries on to this day. Geological Investigations provides consulting advice to the aggregate industry and in this instance, Mr. Fitzgerald had responsibility for preparing and advancing the license applications for the two new pits. He has been qualified to offer opinion evidence on geology and aggregate resource matters on a number of prior appearances before this Tribunal or its predecessor. He was qualified to offer that character of opinion evidence in this proceeding.

[9] Mr. Fitzgerald produced two site plans (for the two respective proposed pits) which were in their last draft version. These drafts are apparently close to their final form for submission, subject to incorporation of modifications which have been settled with the municipalities but not transcribed onto the plans as of the day of the hearing.

[10] Mr. Fitzgerald advised that the limit of extraction is shown to be 1.5 metres above the water table, which will limit any impact on the subsurface water. The site plans describe the intended progress of extraction across the pits, hours of operation, types of equipment to be used and other pertinent matters to the management of the pits.

[11] The site plans also contain a sheet which details the rehabilitation of the pits once the permitted extraction is complete. To this end, when the pit is initially excavated, the topsoil and subsoil will be retained on site to be fashioned into perimeter

berms which will aid in the visual screening of the pits and also operate to attenuate noise transmission from the in-pit activity. That topsoil and subsoil will then be used to rehabilitate the lands to a state which will again be fit for agricultural use.

[12] In accordance with the *Aggregate Resources Act* ("Act") concerning the matters which are to be considered by the Minister in dealing with a pit licence application, Mr. Fitzgerald took the Tribunal through the clauses of s. 12 of that Act. Section 12 is herein set forth:

Matters to be considered by Minister

**12 (1)** In considering whether a licence should be issued or refused, the Minister or the Local Planning Appeal Tribunal, as the case may be, shall have regard to,

- (a) the effect of the operation of the pit or quarry on the environment;
- (b) the effect of the operation of the pit or quarry on nearby communities;
- (c) any comments provided by a municipality in which the site is located;
- (d) the suitability of the progressive rehabilitation and final rehabilitation plans for the site;
- (e) any possible effects on ground and surface water resources including on drinking water sources;
- (f) any possible effects of the operation of the pit or quarry on agricultural resources;
- (g) any planning and land use considerations;
- (h) the main haulage routes and proposed truck traffic to and from the site;
- (i) the quality and quantity of the aggregate on the site;
- (j) the applicant's history of compliance with this Act and the regulations, if a licence or permit has previously been issued to the applicant under this Act or a predecessor of this Act; and
- (k) such other matters as are considered appropriate.

[13] Regarding these matters, Mr. Fitzgerald responded as follows:

- a) based on the assessment and reports of the various subconsultants who were retained to consider environmental effects, none are anticipated.
- b) in connection with the nearby community, a noise impact study was prepared and based upon the intention to create the berms to attenuate noise and recommendations as to modification of the backup warning to be employed on the mobile construction equipment, there is no expectation of adverse effect on the nearby community.
- c) the comments from the municipalities has resulted in an extensive Development Agreement among the Appellant, the Township and the County. It deals with a host of matters which were of concern to the municipalities, including various operational controls, land dedications for road widening purposes, road works at 17<sup>th</sup> Line and County Road 3, haul route terms, a complaint resolution process and various administrative matters.
- d) the progressive rehabilitation shown on the site plans is apparently to the satisfaction of the Ministry.
- e) certain provisions are to be undertaken to restore a natural area which will now be designated as Environmental Protection area and similarly zoned. The proposal has been thoroughly reviewed by Credit Valley Conservation and they are apparently satisfied that there will not be adverse surface or groundwater impacts.
- f) in terms of impact on agricultural resources, the lands were not Class 1, 2 or 3 lands, and will be restored after completion of extraction to enable agricultural use again.
- g) land use was addressed by Ms. Sadler (as discussed below).

- h) the new pits will use the same haul route as presently serves the existing pits, and this matter has been fully addressed in the Development Agreement discussed above.
- i) Mr. Fitzgerald advised that he has reviewed the core samples and other pertinent information which is available and is satisfied as to the quality and quantity of aggregate which will be generated by these pits.
- j) the Appellant has been involved in aggregate extraction and has a clean record relating to compliance with the Act and its regulations.
- k) there were no other relevant considerations which he thought to be necessary to deal with these applications.

[14] In conclusion, Mr. Fitzgerald was of the opinion that the s. 12 considerations have all been appropriately addressed and, subject to finalization of the site plans, he recommended issuance of the two licenses.

[15] Ms. Sadler is a Registered Professional Planner. She has previously been qualified to offer opinion evidence on land use planning matters before this Tribunal or its predecessor, and she has worked on various aggregate extractions matters prior to this retainer by the Appellant. She was qualified to offer opinion evidence on land use planning matters in this proceeding.

[16] In providing her opinion, she advised that she had the benefit of referring to various other consultant reports, most specifically an Environmental Impact Report prepared by Robin Craig (who is a wildlife biologist), a Level 1 Hydrogeological Report by MTE Consultants, an archeological report cleared by the Ministry of Tourism, Culture and Sport, an aggregate resource report prepared by the Appellant, a Noise Assessment Study by Aercoustics and a Traffic Impact Assessment prepared by Paradigm Engineering.



[17] Ms. Sadler tendered two draft documents, which were taken in as Exhibits 4 and 5, being the proposed official plan amendment and the proposed zoning amendment by-law, both of which were apparently drafted by the Township. These documents each deal with both pits.

[18] The draft official plan amendment has been styled as Official Plan Amendment 6 (“OPA 6”). It has the effect of amending the mapping in the Township Official Plan to designate the subject lands as Extractive Industrial Special Policy 3 (MX-3), which functions as an overlay designation on the existing Agricultural designation. OPA 6 also re-maps to reduce an existing Environmental Protection designation and to create a new area of Environmental Protection.

[19] A new s. 5.6.8 is added to the Township Official Plan, which details the policies which will apply to the Extractive Industrial Special Policy 3 designation, and the existing s. 5.6.8 zoning is renumbered to s. 5.6.9. In addition to detailed policies pertaining to operation of the pits on the lands, a policy has been included which declares that upon completion of rehabilitation and surrender of the license, Extractive Industrial Special Policy 3 shall cease and the lands shall revert to their Agricultural designation. This will facilitate resumed agricultural use of these lands.

[20] The draft zoning amendment by-law implements the OPA 6 policies and contains further detailed performance standards.

[21] Ms. Sadler reviewed various policies in the Provincial Policy Statement 2014 (“PPS 2014”). She discussed the policies in s. 1.1, s. 2.1 and 2.2 regarding the preservation of the adjacent wetland and protection of the water resource due to the extraction being limited in extent. She spoke to the aggregate resource policy in s. 2.5 in that this land has been identified as High Potential Mineral Aggregate Reserve. Based upon the archeological assessment, there is not expected to be any impact on cultural heritage and with reference to s. 3.1 and 3.2, there are no natural or human hazards to be expected.

[22] On the basis of her analysis, she concluded that the draft amendments were consistent with the PPS 2014.

[23] Ms. Sadler spoke to the Growth Plan for the Greater Golden Horseshoe 2017 (the “Growth Plan”), which recognizes aggregate extraction in designated areas and she declared that there were no key natural heritage features here which would be impacted.

[24] Ms. Sadler’s comments here were supplemented by Mr. White’s submission that the proposal was exempt from conformity with the Growth Plan by the terms of s. 4.2.8 (7) of the Growth Plan. This section declares that where an application under the Act has been received and deemed complete by the Province as of July 1, 2017, any applications under the *Planning Act* to establish a pit to which that application relates, if approved, will not be subject to the policies of the Growth Plan. These applications would have the benefit of that provision.

[25] Ms. Sadler addressed the principles of the current Township Official Plan and advised that the draft amendment to it was in keeping with those principles. In this regard, she particularly pointed out that no servicing was required for the proposed use and that based upon its design, it would be compatible with the adjacent agricultural uses.

[26] Ms. Sadler offered the opinion that the proposed amendments would be in conformity with the County Official Plan approved in 2015.

[27] The Tribunal accepts the opinion evidence adduced through Mr. Fitzpatrick and Ms. Sadler, and on the submissions of counsel, will allow the appeals by the Appellant as to the requested official plan amendment and the zoning amendment. As the drafts were put forward by the Parties as in finished form, the Tribunal will thus direct issuance of its Order authorizing those amendments and directing the Township to amend its official plan and its Zoning By-law in accordance with the forms of Exhibits 4 and 5 respectively.

[28] With respect to the two pit license referrals, the Tribunal finds that issuance of those two permits is appropriate and that those two permits should issue on the basis of the conditions appearing on the site plans and the prescribed conditions but the final Order to that effect will await advice from counsel for the municipalities that the final version of the two respective site plans has been received by the municipalities as cleared by the Ministry.

[29] If any unanticipated difficulties arise in connection with the finalization of the site plans which may affect completion of the Tribunal's final Order relating to those site plans, the Parties may contact the Case Co-ordinator at the Tribunal to arrange a further hearing session with this Member, whether by teleconference call, in-person hearing or written submissions.

*"Gerald S. Swinkin"*

GERALD S. SWINKIN  
MEMBER

If there is an attachment referred to in this document,  
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**Local Planning Appeal Tribunal**

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