

ISSUE DATE:

Feb. 4, 2009



PL080798

Ontario Municipal Board
Commission des affaires municipales de l'Ontario

Roger LeClair 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 2000-08 of the Township of Bonfield to rezone lands respecting Lots 13 & 14, Concession 7 from Rural (A2) to Special Zone No. 38 (SZ. 38) to allow for a Drag Strip complete with return land and accessory uses such as Chip Stand, Shower and Beer Garden.

Municipal Submission No. ZC 4/2007

OMB File No(s). PL080798

APPEARANCES:

Parties

Roger LeClair

Township of Bonfield

Counsel

W. A. Brunton

E. Veldboom

DECISION DELIVERED BY J. E. SNIEZEK AND ORDER OF THE BOARD

Roger LeClair (the Appellant) applied to amend Zoning By-law 2000-08 for part of Lots 13 and 14, Concession 7, being Parcel 169 Nip., From Rural A2 to SZ Special Zone to permit a drag strip with a return and accessory uses such as chip stand, shower and washroom facilities and beer garden.

The Township of Bonfield (the Township) refused the request and the refusal was appealed to this Board.

The Board heard testimony from two land use planners, a blasting expert with basic knowledge about noise metres and sound transmission, the Appellant and two residents in the area, one in favour and one opposed.

The subject lands are located in a rural area along the north side of Development Road, a major traffic artery in the Township, with a road allowance width of 86 feet. The present use of the subject land is a vacant farm field. The property also contains a licensed aggregate operation (License# 622761) that is zoned M3. There is an existing

cattle operation to the east, bush to the north and further west across the Line Three South Side Road, there is a pit operated by Miller Paving and a Municipal Public Works Garage. The proposed racetrack will be approximately one kilometre from the Hamlet of Bonfield.

The drag strip would hold four to five events per season with each event lasting two to three days. The estimated attendance would be between 3,000 and 7,000 people.

The Planning Framework

The Planning Framework consists of the Provincial Policy Statement (PPS) and the Township of Bonfield Official Plan (BOP).

The Appellant's Planner, Mr. Goodridge, points to the fact that the PPS contains policies that promote the development of strong communities based upon efficient development patterns, compatible with other rural uses, provision of employment opportunities, support long term prosperity and protects mineral aggregate extraction potential.

Mr. Goodridge testified that the drag racetrack and existing licensed mineral aggregate operation could co-exist on the same property. The development would sustain the financial well-being of the municipality. The municipality is not experiencing much growth with the exception of some rural and lakefront development. Mr. Goodridge concluded that the proposed use is compatible with the surrounding uses.

The present BOP provides for the exploitation of aggregate resources and the imposition of site plan control.

The proposed special zone conforms to the Official Plan in that the plan provides for such uses outside of a settlement area.

The existing road network can handle the expected traffic and the topographic location of the drag strip in a saddle depression, which ensures minimal sound impact on surrounding uses. The soil conditions are ideal for the track and septic tile fields required for the accessory uses.

Mr. Chris Jones, consulting planner for the Township, agreed with the Appellant's Planner, Mr. Goodridge, that the BOP would permit the use of a drag strip. It was his opinion that the necessary studies had not been completed to ensure that the use could be properly assessed. The studies required include a noise study, traffic impact assessment, preliminary servicing assessment, geological analysis, hydrogeological analysis, and business and operational plan.

The noise assessment would deal with the MOE Guidelines for sensitive receptors and would give the Township a comfort level that the proposed drag strip would not negatively impact surrounding residential uses.

Mr. Jones testified that the Aggregate Resource Inventory Papers (ARIP) identified the subject lands as part of the Bonfield Esker. This area has primary and secondary aggregate potential that must be protected.

The Question of the Noise Study

Mr. Tom Palangio was educated as an architect and does acoustical studies for mining companies that have rock blasting programs. He is familiar with sound metres and their use and operation. He conducted a sound test using a hot rod without the benefit of a muffler, on the site of the proposed drag strip. It was his conclusion that based upon the noise readings that he took, the proposed use would have a minimal impact upon surrounding uses and that a berm could be designed for the section of property impacted by the sound to bring it down to acceptable levels.

Mr. Palangio provided assistance as a former member of the Planning Board in the Township. He admitted that he did not prepare his report as an expert's report for the purposes of an OMB hearing. He admitted that he had not reviewed or used the proper guideline or methodology recommended by the Ministry of the Environment.

Board Conclusions and Findings

The Board must find an appropriate balance between the public interest and the development interests of landowners. The BOP is not a barrier to the proposed drag

strip. The proposed strip is well located away from centres of population and provides potential for the development of a use that would provide employment in the community experiencing negative to neutral growth characteristics.

The Township is concerned that there are a lack of studies to support the application, specifically noise and aggregate potential. The Board notes that the Township accepted the application as a complete application and acted on it.

The noise measurements taken by Mr. Palangio may have been flawed but they provide the Board with some comfort that the results of a properly conducted sound study would be positive. Mr. Palangio is a competent professional who was helping out. He is not an acoustical expert but has sufficient knowledge and background, in the use of sound metres and sound measurement that the Board can rely on the relative accuracy of his measurements in the circumstances.

With respect to the nature of the Aggregate Resource, the Board heard the assessment of the Township's Planning Consultant. However, Mr. Goodridge testified that he had contacted the Ministry of Natural Resources and no concern was expressed. The Board notes in a corporate memo (Exhibit 2, Tab 12) "After meeting with Remi LaBreche from the Ministry of Natural Resources, it was determined that the area in which the proposed drag strip would be located is not an active pit area and therefore, can be removed from the licensed area". The Ministry was not at the hearing. The Board is sure that if the MNR was concerned, it would have appeared at the hearing. The nature of the land use is such that if aggregate resources are critical in the future, the extraction of the resource is not precluded. The owners of the drag strip also operate the gravel pit and if they thought valuable aggregate resources were located under the proposed drag strip; they would not have proposed the development.

Given the above, the Board will issue an interim decision deferring a decision on the matter subject to a noise assessment carried out by a competent acoustical expert, and a confirmation from the Ministry of Natural Resources (MNR) that the aggregate potential in the vicinity of the proposed drag strip is either not significant or will not be hindered by the proposed development of the drag strip.

The Acoustical Report will be prepared by a competent professional in accordance with the Ministry of the Environment. The Township's Planning Consultant will review the report and attest to its methodology.

The Board will accept a letter from the Ministry of Natural Resources attesting to the fact that mineral aggregate resources will not be negatively impacted by the proposed drag strip. The Township's Planning Consultant will attest to the letter received from the MNR.

Subject to the above, the Board is prepared to amend the By-law.

The Board deadline for the completion of the above studies is February 1, 2010.

If a dispute arises over any of the above conditions, the Board will reconvene the hearing in person or by telephone.

So Orders the Board.

"J. E. Sniezek"

J. E. SNIEZEK
MEMBER