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PL090690

Ontario Municipal Board
Commission des affaires municipales de l'Ontario

IN THE MATTER OF subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: Kurt Rastorfer, John Menzi, Carolyn & Steven Rastorfer
Subject: By-law No. 49-2009
Municipality: Municipality of Huron East
OMB Case No.: PL090690
OMB File No.: PL090690

APPEARANCES:

Parties

Counsel

Kurt Rastorfer, John Menzi, Carolyn and
Steven Rastorfer

G. S. Watt

Municipality of Huron East

G. F. Stewart

Ontario Greenways Inc.

B. Card

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

Introduction

Ontario Greenways Inc. (the Applicant) applied for rezoning of Lots 31 and 32 on Concession 18, commonly known as 45170 Perth Line 55, RR#3, Monkton.

The subject lands are designated Agriculture and Natural Environment in the Huron County and Huron East Official Plans and are zoned AG1 (General Agriculture), E 2 (Environment 2), ER 3 (Protected Extractive Resources related to Agriculture) and ER4 (Protective Extractive Resources related to the natural environment) in Zoning By-law No. 52-2006.

By-law No. 49-2009 proposes an additional permitted use in the AG1 zone to permit the storage of "processed organic material with the existing buildings".

Processed Organic Non-Agricultural Source Material is defined in the by-law as follows:

Processed Organic Non Agricultural Source Material: means waste that is predominantly organic in composition, has been treated by means of stabilization and is non agricultural source material that is capable of being applied to land as a nutrient subject to the provisions of the Ontario Water Resources Act. This material does not include the following: paper and paper biosolids, sewage biosolids and anaerobic digestion output.

John Menzi, Carolyn and Steve Rastorfer and Kurt Rastorfer (the Appellants) appealed the Zoning By-law No. 49-2009 to this Board.

The Board heard evidence from Mark Dorfman, consulting planner retained by the Appellants, Carolyn and Steven Rastorfer (two of the Appellants), Michael Payne, Environmental Specialist from the Ministry of Agriculture, Food and Rural Affairs (OMAFRA) subpoenaed by the Applicant, Chad Anderson, consulting agronomist retained by the Applicant, James H. Brimner, consulting agricultural chemist retained by the Applicant and Carol Leeming, County Planner.

The Proposal

The Applicant proposes to store organic waste material in two former turkey barns (Barn #1 is 60 feet by 250 feet and Barn #2 is 60 feet by 200 feet) and to apply this material to agricultural lands during the crop cycle. The material will be dropped off by truck (usually one per day). The total storage is 5,831 m² and the material weight is 6,425 tonnes. The site will require a Certificate of Approval (C of A) from the Ministry of the Environment (MOE). The permitted additional use is “a transfer and storage facility for processed organic non-agricultural source material in the existing buildings”.

Positions of the Parties

The Municipality of Huron East (the Municipality) puts forward the position that the proposed use is agricultural in nature; that the proposed use is consistent with the Provincial Policy Statement (2005) conforms to the County of Huron and Municipality of

Huron East Official Plans; that the proposed use is consistent with the provisions of Zoning By-law No. 52-2006; and that the proposed use represents good planning. The evidence was presented by the County planner.

The Applicant supports the position of the Municipality and provided evidence about the nature of the operation and the use of the material as a soil amendment.

The Appellants' case is that this is not an agriculturally related use but a waste transfer facility that is not consistent with the PPS, does not conform to the County of Huron and Municipality of Huron East Official Plans and does not represent good planning. The evidence was presented by two of the Appellants, and a planner retained by the Appellants.

Review of the Evidence

The evidence of Mr. Dorfman was that the proposed use as a waste transfer facility was not an agricultural use, agricultural related use or secondary use within the meaning of the Provincial Policy Statement (PPS). From the zoning by-law perspective it is not an agricultural use in general, not an accessory use and not related to the farm operation according to Mr. Dorfman. The use requires a Certificate of Approval (C of A) from the Ministry of the Environment that is awaiting the Municipality's decision on the rezoning.

Mrs. Rastorfer (an Appellant) expressed her concerns about the proposed use from an odour point of view, which is exacerbated by the prevailing winds that pass over the proposed waste storage barns and move toward her home. The turkey barns presented odour problems on an intermittent basis (2 to 3 times per year) when the barns were being cleaned out. The proposed use would, in her opinion, create an ongoing and persistent odour problem. Mrs. Rastorfer indicated there were a number of unresolved concerns that had not been adequately addressed by the statutory public meeting under the *Planning Act* or the C of A process under the *Environmental Protection Act*. The issues included odour, runoff, rodents, traffic and the adequacy of the former turkey barns to house the waste material. The Appellants were also concerned about the impacts that the proposed might have on land values in the area.

The Council decision on the matter had been rushed and concerns of the residents ignored.

Mr. S. Rastorfer (an Appellant) is a cash crop farmer and neighbouring property owner with experience in farming and livestock operations. Mr. Rastorfer visited the Better Beef – Cargill meat processing plant and collected samples of the dewatered DAF (dissolved in air floatation) that contains beef tissue residues and expressed concerns about the odour produced by the product and its use as a fertilizer. He also expressed concerns with the chemical coagulant added to the DAF.

Mr. M. Payne of the OMAFRA testified that he was a nutrient management specialist that advised farmers and the industry concerning matters relating to the application of Non-Agricultural Source Materials to farmland. He indicated that the normal farm practice is to spread the material using a rear or side discharge spreader. The use of land disposal materials was reviewed by a joint OMAFRA – MOE committee called the BUC (Biosolids Utilization Committee). The C of A would prescribe application rates, setbacks and timing of application. The Nutrient Management Plan is required in the case of a large farming operation (more than 300 Nutrient Units) or an agricultural operation within 100 m of a municipal well. Mr. Payne stated that he had visited the site and was of the opinion that the site could work subject to the conditions under a certificate of approval. He indicated that the dewatered DAF material could not be applied to frozen ground and required winter or inside storage.

Mr. Anderson, a professional agronomist, testified that the DAF material had low concentrations of nitrogen, phosphorus and potassium as well as micro nutrients zinc and manganese. The material should be applied to fields in the summer and fall prior to seeding the crop because of its oily nature. Mr. Anderson indicated that he didn't foresee any difficulty getting farmers to apply the material to their farms.

Dr. James Brimner, an agricultural chemist with extensive laboratory experience and experience serving on the BUC, testified that the dewatered DAF material was innocuous containing 30 to 40% dry matter that did not contain the chemical components to produce major odour problems because of the low content of ammonia and methane are the major odour producing chemicals. The chemical composition of the DAF consisted of fats and carbohydrates, potash, calcium, copper, zinc, nitrogen, sulphur, phosphorus, potassium, and high carbon content that binds the nitrogen. The

material presents no problems in terms of environmental impact when mixed with the soil.

Mr. Steve Gloor, the Manager of Ontario Greenways Inc., testified about the site selection process and the permitting processes required to ship, store and land apply the DAF material. Mr. Gloor stated that he contacted the MOE and visited the subject site. He had been present when Mr. Payne of OMAFRA visited the property. He had sent by mail or personally delivered the required notices for the C of A process. The C of A application was posted on the Environmental Bill of Rights Registry (EBR). The final C of A is now awaiting the confirmation of the zoning of the property for final approval. The County and the Municipality of Huron East had both sent letters of approval subject to rezoning.

Each day a 30 tonne truck will deposit a load of DAF material on a concrete pad in front of one of the barns. The material will be pushed into each barn and deposited on the field from the rear of each barn. The piles will be 14 feet high and within 5 feet of the walls of the barns. Because weather conditions may delay shipments as much as 100 tonnes of material a day may be handled on the site. The storage buildings will handle eight months of material. The operation will run Monday to Saturday throughout the year from seven in the morning to seven in the evening. The material will be spread on farms within a three to four mile radius. The prime users of the material will be Ontario Greenways Inc. owned or leased land.

Mr. Gloor stated that odour control will consist of an application of lime and that all spills of material will be contained on the property and appropriately managed. The site is bonded to ensure proper operation and the MOE can use the performance bond to correct any errors made by the operator including removal of all of the material from the site and disposing of it in a sanitary landfill site.

Ms Leeming indicated that the subject site was 23.24 hectares (57 acres) in size and the lands contained a house, swimming pool, two sheds, a grain bin and the two barns to be used to store the dewatered DAF material (Barn #1 is 60 ft x 250 ft and Barn #2 is 60 ft x 200 ft). Ms Leeming explained that the zoning of the lands – AG1 General Agriculture covered the majority of the subject lands including the two barns, the Natural Environment NE2 covers an upland woodlot and the ER3-1 and ER 4-2 are potential extractive zone and extractive zones that were passed as housekeeping

amendments reflecting aggregate resources in the area. The subject lands contain agricultural lands and buildings, a bush area, wind breaks and an abandoned railway line to the rear. The surrounding uses according to Ms Leeming consist of farmland to the north and east, farmland and extractive use to the south and to the west a small lot rural residence.

Ms Leeming indicated that no commenting agency had any objections to the proposal and that changes to the definition of Processed Organic Source material had been made at the council meeting as a result of concerns expressed by the public.

Ms Leeming illustrated the distances from the barns to the closest residences. The distances are as follows:

- Johnson: 1,840 ft (550 m)
- Menzi*: 1,450 ft (440 m)
- Rastorfer*: 1,900 ft (579 m) (Carolyn and Steve)
- Rastorfer* : 2,450 ft (746 m) (Kurt)

*Appellant (Ex 4, Tab 9).

Ms Leeming reviewed the processing of the application that was first discussed with the Applicant in April 2009. The organic material from a beef processing plant that would be land applied as a nutrient material. The material is a stackable product that does not need to be stored and can be directly applied to the land.

Ms Leeming testified that the factors considered in analyzing the rezoning to permit the existing turkey barns to be used as a transfer station were the use of the product as an agricultural enhancement that would be used in farms in the area and has nutrient value. Ms Leeming reviewed the definitions in the zoning by-law including:

- Agricultural Establishment
- Agricultural Processing Establishment
- Agricultural Servicing

The proposed use is agriculturally related in Ms Leeming's opinion because it is applied to the land similar to commercial fertilizer or manure. The use is an additional permitted use that will not impair future agricultural use of the land or the use of the former turkey barns. The zoning and the C of A apply to the whole property. The use and location provides for timely application of the material and will not hinder agriculture and is consistent with the PPS. The use conforms to Huron County Official Plan Section 2.3.(i) because it promotes agriculture.

Ms Leeming opined that the Huron East Official Plan provides for the ability to farm and the use is primarily related to agriculture and that the proposed use is in conformity.

Ms Leeming declared that the additional permitted use is consistent with the agricultural uses in the AG1 zone in that it is similar to fertilizer or manure.

Ms Leeming concluded that the proposed use represents good planning, has no adverse impacts and does not have adverse impacts upon abutting land.

Findings

The difference between the two planners is the definition of the use. Mr. Dorfman defines the use as a waste transfer site using non-agricultural source material. Ms Leeming defines the use as a storage site for an agriculturally related product not unlike fertilizer or manure. Mr. Dorfman's analysis focuses on the input – the storage of non-agricultural source material. Ms Leeming's analysis focuses on the output – the application of the non-agricultural source material to the land – similar to fertilizer or manure. The Board finds Ms Leeming's analysis more complete. To use Mr. Dorfman's analysis one would describe an automobile manufacturing plant – as a parts collection facility – the inputs – not the cars – the outputs. The outputs provide a more complete analysis of the nature of the use as an agriculturally related use similar to the storage and application of manure or fertilizer.

The Board finds that the agriculturally related use consistent with the PPS that encourages waste products to be diverted away from land fill sites and encourages agricultural uses.

The Board finds that the agriculturally related use conforms to the Official Plans of Huron County and the Municipality of Huron East.

The Board accepts that the conditions of the Certificate of Approval can deal with the odour and environmental concerns of the Appellants'. Ideally odour control can be applied to the material at source – Better Beef in Guelph. This was suggested by the Applicant and contained in Ms Leemings' zoning report that stated "The applicant has indicated that the organic material is treated for odor prior to its arrival..." (Ex. 11, Tab 3, pg 44) The Appellants are not located in close proximity of the use (the closest residence is 440 m away) and with proper management the impacts of the use will be minimal.

The Board notes that the Municipality's rush to make a decision in case of comments made to the MOE and the finalizing of the rezoning gave the Appellants the feeling that their concerns about odour and other environmental impacts were not given adequate consideration. The Board notes the evidence of Dr. Brimner that indicated the chemical composition of the DAF lacks the constituent chemical components to produce major odour problems.

The Board Orders that the appeal against By-law No. 49-2009 of the Municipality of Huron East is dismissed.

So Orders the Board.

"J. E. Sniezek"

J. E. SNIEZEK
MEMBER