

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: December 18, 2015

CASE NO(S): PL130785

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

Applicant and Appellant: Miller Paving Ltd.
Subject: Request to amend the Official Plan –
Refusal of request by Township of McNab-
Braeside
Existing Designation: Mineral Aggregate
Proposed Designation: Mineral Aggregate – Exception One
Purpose: To permit a permanent asphalt plant as an
additional use
Property Address/Description: Part Lot 16 & 17, Conc A, Usborne St
Municipality: Township of McNab-Braeside
Approval Authority File No.: OPA 2
OMB Case No.: PL130785
OMB File No.: PL130785
OMB Case Name: Miller Paving Ltd. v. McNab-Braeside
(Township)

PROCEEDING COMMENCED UNDER subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: FACT-MB Inc.
Appellant: David Simek
Appellant (jointly): John Kerr, And Others
Subject: By-law No. 2013-31
Municipality: Township of McNab-Braeside
OMB Case No.: PL130785
OMB File No.: PL130786

PROCEEDING COMMENCED UNDER subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant:	FACT-MB Inc.
Appellant:	Miller Paving Ltd.
Subject:	By-law No. 2015-03
Municipality:	Township of McNab-Braeside
OMB Case No.:	PL130785
OMB File No.:	PL150073

Heard: November 24, 2015 by telephone conference call

APPEARANCES:

Parties

Counsel/Representative*

Miller Paving Ltd.	J. Ewart
Township of McNab/Braeside	J. Bradley
Friends Addressing Concerns Together in McNab/Braeside Inc.	R. Lindgren
John Kerr and David Simek	David Simek*

MEMORANDUM OF ORAL DECISION DELIVERED ON NOVEMBER 24, 2015, BY M. C. DENHEZ AND AMENDING ORDER OF THE BOARD

INTRODUCTION

[1] The following deals with a request to the Ontario Municipal Board (the "Board") for an Amending Order, to clarify aspects of the Board's decision, in this file, issued on October 27, 2015 (the "October decision").

[2] Miller Paving Ltd. (the "applicant") had applied to expand the geographic scope of its quarry Licence under the *Aggregate Resources Act* ("ARA"). There was also an application for (i) an Official Plan Amendment ("OPA"), to permit a permanent asphalt

plant, and (ii) rezoning. The applicant had operated an aggregates facility at the subject property for decades, under a pre-existing ARA Licence, which had also authorized a temporary portable asphalt plant. However, the latter portable plant had been declared a nuisance by Court Order, upheld on appeal.

[3] These proposals were opposed, at least in part, by the local Township of McNab/Braeside (the "Township"), and by an organization of neighbours, Friends Addressing Concerns Together in McNab/Braeside Inc. ("FACT-MB"). The applications were also opposed by two individual neighbours, John Kerr and David Simek.

[4] In 2015, the Township adopted By-law No. 2015-03, which agreed with some – but not all – of the applicant's proposed rezoning.

[5] In its October decision, the Board directed the Minister to issue the ARA Licence, subject to specified adjustments, notably concerning boundaries. However, the Board withheld its Order on that account, pending a revised Site Plan and Site Plan Notes.

[6] The Board did not approve the applicant's proposed OPA for a permanent asphalt plant. The Board also amended part of By-law No. 2015-03.

[7] On November 4, 2015, counsel for the applicant made a written request for two "clarifications" of that decision. One pertained to mapping of the expanded extraction area. The other dealt with the topic of asphalt plants.

[8] The Board received submissions in writing, followed by a teleconference. After some initial confusion, most of the proposed clarifications turned out to be uncontested, and the Board's Amending Order is produced at the end of this decision. The explanation is as follows.

BOUNDARIES

[9] The first request pertained to the boundaries of the extraction zone, as expanded

in accordance with the Board's decision. To summarize the context,

- To the north and northwest of the applicant's property, there are rural residential properties. The question of setbacks and separation distances, between the extraction zone and those rural residential properties, was central to the hearing.
- The applicant's existing extraction zone is on the west and southwest side of its property. There was no serious suggestion at the hearing that the existing setbacks and separation distances should change on that side, i.e. rolling back the applicant's existing extraction zone under its current Licence.
- To the south of the applicant's property, there is an unopened right-of-way and vacant land, much of which is wet. There was no evidence about its ownership, or plans for its future; nor was there any evidence or argument about any particular needs, concerning setbacks or separation distances on that side.
- To the east of the applicant's property, there is an area designated for Open Space. There was little evidence or argument about any particular needs there either, concerning setbacks or separation distances on that side.

[10] In short, the debate focused only on the north and northwest. Ultimately, the Township argued that its rezoning (Zoning By-law No. 2015-03) should provide for a 300 metres ("m") setback, between the new extraction zone and the rural residential lands there. On the west and southwest sides, there would be essentially no change to the existing Licenced extraction zone. To the south, the By-law foresaw an expanded extraction zone extending to the right-of-way. To the east, the mapping suggested a setback from the Open Space lands in the range of 150 m.

[11] The mapping of the expanded extraction zone, which the Board endorsed, was attached to the rezoning which the Board upheld in its October decision, i.e. the one

“recommended by the Township at Tab 1 of its document entitled Proposed By-law and Site Plan Recommendations and Book of Authorities.”

[12] There was some confusion, however – because there had been more than one iteration of that map.

[13] Meanwhile, beyond the mapping, the text of the Board's decision had focused on the extraction boundaries which had been in debate (north and northwest). This inadvertently produced ambiguity in wording, leading some readers to infer that the conclusions applicable to the north and northwest sides were equally applicable to the other sides.

[14] After some initial confusion, the other parties agreed that the context for the decision was actually about the north and northwest, and that the intent dealt specifically with the boundaries as portrayed in the Township's By-law No. 2015-03.

[15] The Board agrees with that consensus opinion. The Board also still agrees that the final zoning map indeed represents the correct demarcation of the extraction zone. Out of an abundance of caution, that mapping is reproduced herewith.

ASPHALT PLANTS

[16] The applicant also sought a second "clarification / amendment" pertaining to asphalt plants.

[17] As mentioned, its pre-existing ARA Licence had authorized a temporary portable plant, though there had been difficulties in the Courts.

[18] The October decision turned down that proposed OPA. Its approach to the Site Plan was similar. In paragraph [260](b) of the October decision, the Board had provided as follows:

[260] The applicant shall, within six months of the date of issue of this Decision, file to the Board a revised Site Plan and revised Site Plan Notes, as follows...:

b) There shall be no reference to an asphalt plant.

[19] The applicant then proposed a "clarification / amendment" which would insert wording to specify that this clause (b) referred only to *permanent* asphalt plants, not to temporary portable ones. The applicant's proposed wording was: "There shall be no reference to a *permanent* asphalt plant."

[20] In oral argument, counsel for the applicant added that there should be a similar change to Clause 6 of the Board's Order, which had said:

6. The Board dismisses the applicant's appeal pertaining to an Official Plan Amendment to allow an asphalt plant.

[21] On discussion, it was agreed that the OPA in question did indeed pertain specifically to a permanent asphalt plant, and that it was therefore appropriate to amend clause 6 of the Order, to reflect that specificity accurately.

[22] The Board was not persuaded, however, that it was necessary to amend paragraph [260](b) concerning the Site Plan. A permanent asphalt plant was clearly excluded; and there was simply no evidence, at the hearing, that any other form of asphalt plant deserved mention in the Site Plan or Site Plan Notes.

AMENDING ORDER

[23] Under the Board's *Rules of Practice and Procedure*, the Board may make technical corrections to clarify a decision or order. The Board disposes of this matter as follows:

[24] The Board amends its decision in this file, issued on October 27, 2015, as follows:

1. By replacing paragraph [249] with the following:

[249] Concerning the ARA Licence, the Board has found that the licence should issue, but the extraction zone should be subject to the setbacks from the property line now recommended by the Township in By-law No. 2015-03.

2. By replacing paragraph [260](a) with the following:

[260] The applicant shall, within six months of the date of issue of this Decision, file with the Board a revised Site Plan and revised Site Plan Notes, as follows:

- a) The boundaries of the extraction area shall be revised, to provide minimum setbacks from neighbouring properties as shown in Zoning By-law No. 2015-03 of the Township of McNab/Braeside, as amended herein.

3. By replacing Clause 6 of the Board's Order with the following:

6. The Board dismisses the applicant's appeal pertaining to an Official Plan Amendment to allow a permanent asphalt plant.

4. For greater certainty, the Board confirms that the mapping of the extraction zone shall be in accordance with the final zoning map of the said Zoning By-law No. 2015-03 of the Township of McNab/Braeside, as amended by the October decision, the whole as it appears herewith at Attachment A.
5. In all other respects, the Board's Decision remains the same.

"M. C. Denhez"

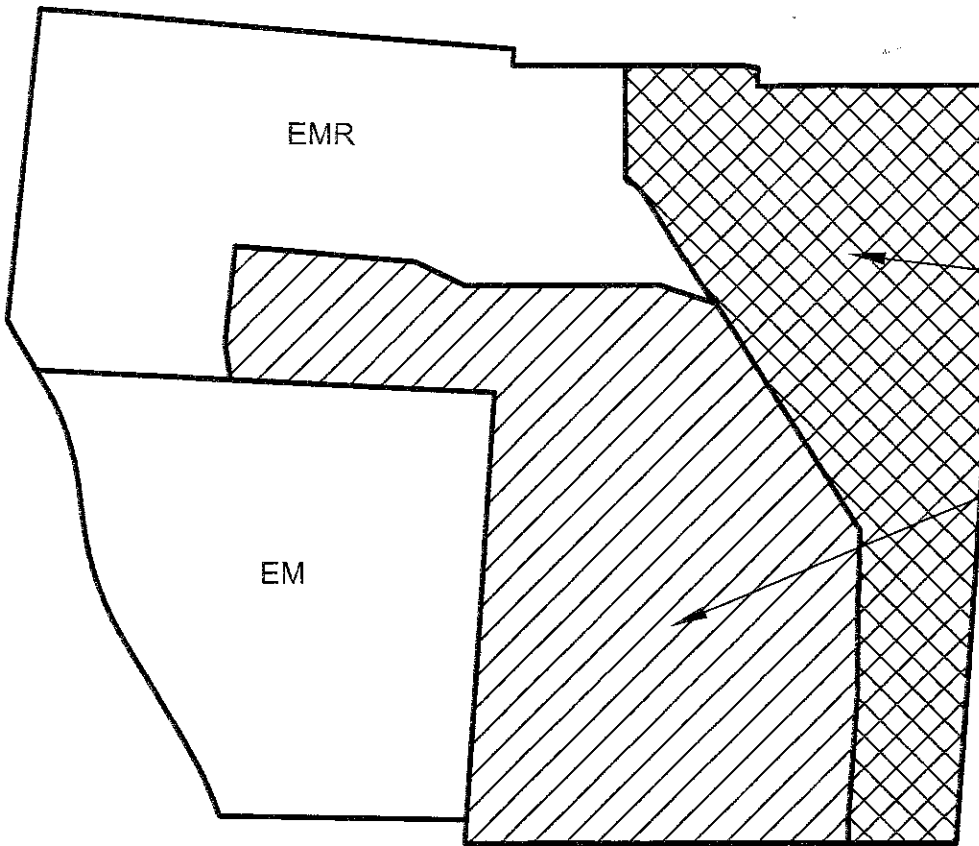
M. C. DENHEZ
MEMBER

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

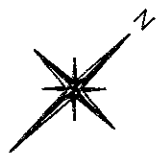
A constituent tribunal of Environment and Land Tribunals Ontario
Website: www.elto.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

ATTACHMENT A



Item 1:
From EMR
to EMR-E1

Item 2:
From EMR
to EM



1:10,000

Corporation of The Township of McNab/Braeside

This is Schedule 'A' to the By-law Number _____.
Passed the ____ day of _____ 20____.
Signature of Signing Officers

Mayor

CAO/Clerk