Ontario Municipal Board
Commission des affaires municipales
de l'Ontario

ISSUE DATE: February 11, 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

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

Heard : January 27, 2015 in Arnprior, Ontario

APPEARANCES:

Parties	**Counsel**
Miller Paving Ltd.	John Ewart

Township of McNab-Braeside	Janet Bradley
FACT-MB Inc.	Ramani Nadarajah
David Simek	Self-represented
John Kerr	Self-represented

MEMORANDUM OF ORAL DECISION DELIVERED BY KAREN KRAFT SLOAN ON JANUARY 27, 2015 AND ORDER OF THE BOARD

INTRODUCTION

[1] This is the second pre-hearing conference ("PHC2") for appeals related to an application by Miller Paving Ltd. ("Miller") for an Official Plan Amendment ("OPA") and a Zoning By-Law No. 2013-31 ("ZBL No. 2013-31") for their lands at Part Lot 16 & 17, Concession A, Usborne Street ("subject property"), in the Township of McNab-Braeside ("Township") where they operate a quarry.

[2] ZBL No. 2013-31 allows for the expansion of the existing quarry. The subject property has an area of 322 acres and is designated mineral aggregate in the Township's Official Plan ("OP"). The operational quarry occupies 74 acres on lands that are zoned Extractive Industrial, while the remainder of the subject property is zoned Extractive Industrial Reserve. Miller applied to rezone the portion of the subject property that is Extractive Industrial Reserve to Extractive Industrial in order to expand the quarry operation. Miller also applied for an OPA in order to permit the operation of an asphalt plant as a permanent use on the quarry lands.

[3] The Township's council approved ZBL No. 2013-31; however, Miller, along with a local residents group FACT-MB Inc., David Simek and John Kerr appealed the decision. The Township's council denied the OPA, and Miller, FACT-MB Inc., David Simek and John Kerr appealed this decision.

[4] It is noted that the Parties suggested that contingent arrangements could be made in the event the Township's council chamber is not sufficient to accommodate all those interested in attending the hearing on the merits. However, for now the hearing of the merits will proceed in the Township's council chamber. Further noted, a church hall has been booked for March 2, 2015, which is the day that Participants are expected to address the Board.

PROCEDURAL ORDER

[5] The Parties asked the Board to consider the following changes to the Procedural Order ("PO") that would allow:

- extension of the expert witness statement submission date,
- consolidation of By-law No. 2015-03 ("ZBL No. 2015-03"), which was approved recently by Township council,
- additions to the issue list,
- the blasting witnesses and the air emissions witnesses to hold a teleconference call ("TCC") instead of an in-person expert meetings,
- consolidation of the Miller's Ministry of Natural Resources and Forestry ("MNRF") licensing application, and
- additions to the witness list.

Extension of the Expert Witness Statement Submission Date

Parties requested and the Board agreed that the date for submission of expert witness statements be changed from February 2, 2015 to February 6, 2015.

Consolidation of ZBL No. 2015-03

[6] The Township's council approved ZBL No. 2015-03, which would increase the setback adjacent to Golf Course Road from 150 metres ("m") to 300 m and it would reduce the acreage of the expansion of the quarry operation by 24 acres. This would still allow Miller an additional 88 acres for the quarry operation expansion. By the date of the PHC2, two appeals to ZBL No. 2015-03 had been received. These appeals were submitted by Miller and by FACT-MB Inc. However, the Township's counsel noted that the deadline for appeal of ZBL No. 2015-03 was not until midnight, Tuesday, January 27, 2015, and at the time of the PHC2 it was not clear if there would be additional appeals. The Township's counsel submitted that as ZBA No. 2015-03 deals with the same matter as ZBA No. 2103-31, and the appeals involve similar Parties; the Board should consider consolidating the files. Parties were canvassed and all concur. As the Board was not yet in receipt of the appeals for ZBA No. 2015-31 it was premature to order consolidation of the files. However, the Board told the Parties that this would be noted in the PHC2 decision. The Board has now received the appeal (PL150073) and will consolidate it with the matter herein.

Addition to the Issue List

[7] Counsel for FACT-MB Inc. requested that a set of questions regarding blasting be added to the issue list, and all Parties agreed. The Revised Issue List including FACT-MB Inc. blasting questions (page 4) is found in Attachment 1.

Blasting and Air Emission Expert TCC instead of In-Person Expert Meetings

[8] Counsel for FACT-MB Inc. asked that the two expert meetings amongst the blasting experts and amongst the air emission experts be held via TCC versus through in-person expert meetings. FACT-MB Inc. submitted that their experts are outside of Canada and it would be costly to pay for travel and accommodation costs for the two

expert meetings. Counsel for Miller preferred to have these expert meetings in-person and counsel for the Township had no position on this matter. After hearing submissions from FACT-MB Inc. and Miller, the Board determined that a TCC would be held for the blasting experts and a TCC would be held for the air emissions experts instead of the in-person expert meetings.

Consolidation of Miller's MNRF Licensing Application

Counsel for Miller provided an update on the status of its MNRF licensing. While counsel expects appeals will arise from the process, there are no appeals before the Board and there is no file to consolidate. Counsel will update the case coordinator as needed.

Addition to the Witness List

[9] Mr. Kerr and Mr. Simek requested that the witness list be revised by adding an expert planning witness they would share. Mr. Kerr and Mr. Simek told the Board that this would not impact the issue list. Counsel for Miller expressed concern that the planning experts had already convened their expert meeting the day before the PHC2. The other Parties supported Mr. Kerr and Mr. Simek's request. The Board heard submissions from the Parties. The request was granted such that the following conditions are met: that the evidence proffered by Mr. Kerr and Mr. Simek's planning witness is not duplicative but that it adds to the testimony of other planning witnesses on the same side, that the planning witness sticks to the issue list identified by Mr. Kerr and Mr. Simek, that the proponent has an opportunity to respond thus the new planning witness will have to prepare his witness statement expeditiously, and that all of the Parties' planning witnesses meet in the afternoon after the PHC2 has concluded. Parties agreed to the conditions and Counsel for Miller agreed with the caveat that their planning witness is able to attend the meeting.

[10] The hearing on the merits remains as previously set for **four weeks, commencing on March 2, 2015 at 10 a.m. at:**

Township Office
2508 Russett Drive
R.R. #2
Arnprior, McNab-Braeside ON K7S 2G8

[11] The member is not seized.

"Karen Kraft Sloan"

KAREN KRAFT SLOAN
MEMBER

ATTACHMENT 1

TOWNSHIP OF McNAB/BRAESIDE

REVISED ISSUES LIST

1. Is the requested Official Plan Amendment to permit an asphalt plant on the Subject Property consistent with the Provincial Policy Statement and in conformity with the policies of the Official Plan?

2. Has the owner demonstrated that there will be no adverse impact from the proposed asphalt plant in accordance with the Official Plan policies?

3. Does the proposed Zoning By-law comply with the Provincial Policy Statement and with Official Plan policies?

4. Has there been compliance with the performance standards in the Zoning By-law with respect to the expansion of the quarry and, specifically, with required setbacks?

5. Does the proposed licence meet the requirements of the *Aggregate Resource Act?*

6. Does the proposed Site Plan meet the requirements of the *Aggregate Resource Act* and respond adequately to concerns of responding agencies?

FACT- MB

ISSUES LIST

Planning

1. Whether the proposal to expand the quarry and establish an asphalt plant for permanent use on Part of Lots 16 &17, Concession A (12) geographic Township of McNab (the Miller property) in close proximity to residential homes constitutes good planning?

2. Whether the proposed Official Plan amendment and Zoning by-law amendment is consistent with the Provincial Policy Statement (PPS), in particular policies in sections 2.1.2, 2.1.4(d), 2.1.6, 2.2.1(d), 2.5.2 with regard to protection of natural heritage and section 1.1.(c) which provides that a municipality should avoid development patterns which may cause environmental or public health and safety concerns.

3. Whether the proposed Official Plan amendment and Zoning By-law amendment are in accordance with the industrial land use policies of the McNab/Braeside Official plan, in particular subsection 6.2(2)and 6.3(12)?

4. Whether the proposed Official Plan amendment and Zoning By-law amendment are in accordance with the Mineral Aggregates polices in the McNab/Braeside Official plan, in particular subsection 11.2 (4) and subsection 11.2(5)?

5. Whether the proposed Official Plan amendment and Zoning By-law amendment are in accordance with the Land Use Compatibility policies of the McNab/Braeside Official Plan, in particular subsection 14.2.(3)?

6. Whether the proposed expansion of the quarry and the proposal to establish an asphalt plant for permanent use on the Miller property are in accordance with subsection 1.5.2, section 3 and section 13 of Zoning by-law 2010-49?

7. Whether the proposed expansion of the quarry and the proposal to establish an asphalt plan for permanent use on the Miller property are in accordance with the Ontario Ministry of Environment's Guideline D-6, in particular sections 4.1.1 (Influence Area Concept) and Section 4.4 (Minimum Separation Distance)?

Hydrogeology/Hydrology

8. The proposed quarry expansion's impact on groundwater quantity and quality, including:

   - the lack of a water balance for the Braeside Ridge;
   - the likelihood that the expansion will cause loss of water in domestic wells;
   - the failure to do baseline monitoring of all residential wells;
   - the lack of a Well Water Protection Plan to protect homeowners; and
   - the lack of details regarding groundwater monitoring plans for the expanded quarry.

9. The proposed quarry expansion's impact on surface water quantity and quality, including:

   - the failure to classify the adjacent wetlands;
   - the lack of a water balance for the adjacent wetlands;
   - the failure to do baseline monitoring of the adjacent wetlands; and
   - the lack of details regarding surface water monitoring plans for the expanded quarry; and
   - the lack of any proposed wetland monitoring program.

10. The extent to which the proposal to establish an asphalt plant for permanent use will impact on groundwater or surface water quantity, groundwater or surface water quality, domestic wells, and the water-dependent ecosystem?

Air Quality

11. Whether the proposal to establish an asphalt plant for permanent use would cause adverse impacts as defined under the Ontario *Environmental Protection Act*, in particular harm or material discomfort to any person?

12. Whether the air modelling assessment done in support of the establishment of the proposed asphalt plant for permanent use is adequate?

Blasting

13. Whether the proposed quarry expansion will cause adverse effects due to blasting including:
    1) damage to neighbouring homes;
    2) increased noise and dust; and
    3) threat of fly rock incidents.

14. Whether the proposed separation distance for the quarry expansion is adequate?

MILLER PAVING LIMITED

ISSUES LIST

1. Is an asphalt plant an appropriate and compatible use in a quarry expansion area?

2. Is an asphalt plant use consistent with the Provincial Policy Statement?

3. Does an asphalt plant use meet the policy tests in the Official Plan for a quarry use in a quarry expansion are?

4. Can the asphalt plant be constructed and operated safely in accordance with a required Environmental Compliance Approval from the Ministry of Environment?

DAVID SIMEK

ISSUES LIST

In addition to the issues already identified on the Procedural Order, I would like to add the following issues:

1. Do the setbacks permitted in the proposed zoning by-law constitute good planning?

2. Will the setbacks permitted in the proposed zoning by-law limit or interfere with the ability of adjoining property owners to exercise their development rights within the current zoning of their properties?

In addition to the foregoing, while I reserve my right to make submissions in respect of any of the issues identified by other parties, I would like to notify the Board that I intend to make submissions and lead evidence in respect of the following issues already identified on the Procedural Order:

(a) FACT – MB's issues 1, 2, 5 and 7; and

(b) The Township of McNab/Braeside's issues 1, 2 and 3 on the draft issues list.

JOHN KERR AND OTHERS

ISSUES LIST

We adopt the issues list of FACT-MB in relation to Nos. 1, 3, 4, 5, 6 and 7.

In addition to the foregoing, we are raising one additional issue of legal non-conforming rights.