

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: February 16, 2016

CASE NO(S): PL150471

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

| | |
|----------------|--------------------------------|
| Appellant: | Arie Van Den Berg |
| Subject: | By-law No. 60-15 |
| Municipality: | County of Brant |
| OMB Case No.: | PL150471 |
| OMB File No.: | PL150471 |
| OMB Case Name: | Van Den Berg v. Brant (County) |

Heard: January 7, 2016 in Paris, Ontario

APPEARANCES:

Parties

Counsel*/Representative

Arie Van Den Berg

Self-represented

Pelton Bros. Transport Ltd.

J. A. Hitchon*

**MEMORANDUM OF ORAL DECISION DELIVERED BY J. V. ZUIDEMA ON
JANUARY 7, 2016 AND ORDER OF THE BOARD**

[1] Pelton Bros. Transport Ltd. ("Applicant") sought a change to Zoning By-Law No. 60-15 ("ZBA") from Special Exception Rural Commercial (C5-16) to Special Exception Special Industrial (M2-18) to limit the uses and lot coverage and recognize an existing dwelling located at 2 Hwy No. 2, Part Lot 1, Concession 1 in the former Township of Burford, now in the County of Brant ("subject property").

[2] The County of Brant (“County”) approved the ZBA relying upon advice from its municipal staff and specifically, Mr. Marcus Davidson, who prepared a report in support of the ZBA.

[3] Mr. Arie Van Den Berg (“Appellant”) appealed the decision and cited the following in his notice of appeal:

- a. The Hamlet of Falkland is a bedroom community. There is no M1 zoning allowed.
- b. Loss of value and enjoyment of the property due to spray painting, welding, unloading and loading of large beams by crane and heavy lift trucks in residential property.
- c. Discrimination and harassment by the County.
- d. The current zoning was provided through an OMB order in 1987 when the lands were designated as Agricultural.

[4] The subject property was redesignated from Agriculture to Hamlet and then through the latest County Official Plan (“OP”), Hamlets and Villages. As such, the proposed light industrial zoning would be permitted.

[5] The Applicant requested the special provision M2, which would remove many of the heavier industrial uses permitted, as the current operation does fabricate metal, but does not involve stamping or the use of furnaces to do so.

[6] Mr. Van Den Berg testified on behalf of himself as a layperson. I re-iterated the concerns which had been set out in his appeal. His concern was that he thought heavy industrial was proposed whereas it is not. Many of his complaints stemmed from his numerous grievances with the County and its handling of his phone calls and correspondence. Those are outside of the Board’s jurisdiction as the only matter before the Board was whether or not the proposed ZBA represented good and proper planning.

[7] In the end, I provided an oral decision granting the appeal in part so to amend the proposed draft ZBA to permit limited outdoor storage immediately adjacent to the structure with sufficient screening so the storage of goods and materials and the activity thereon would not be visible from either Highway No. 2 or Puttown Road.

[8] I heard from Mr. Davidson who appeared under summons and Mr. Robert van Poorten, each of whom were qualified and accepted as experts in Land Use Planning. The evidence of Messrs. Davidson and van Poorten was the only expert evidence presented to the Board and it was on that basis that I provided an oral decision.

[9] Specifically, Mr. Davidson set out the history and geographical context of the area and reviewed his Planning Report which was before County Council when it made its decision to approve the proposed ZBA. He agreed that a slight amendment to permit outdoor storage would be acceptable and would represent good planning.

[10] Mr. van Poorten echoed the opinions of Mr. Davidson and reviewed all operative policies both at the provincial and county level to opine that the proposed draft ZBA with the amendment to allow outdoor storage represented good planning. Mr. van Poorten recommended approval.

[11] Mr. Van Den Berg's cross-examination did not successfully undermine the expert opinions of either Mr. Davidson or Mr. van Poorten. Based on their testimonies and documentary evidence, the Board orders as follows:

[12] The Board orders that the appeal is allowed in part and in doing so, amends the proposed draft ZBA in order to permit limited outdoor storage on the condition that adequate screening, satisfactory to the County, be provided such that neither the storage of materials nor the activity on the outdoor concrete area are visible from the municipally travelled roads adjacent to the subject property. The specific location of the outdoor storage area is identified on page 93 of Exhibit 2. The site plan raised through testimony at the hearing is hereby attached and marked as "Attachment 2."

[13] For ease of reference, the proposed draft ZBA which has been amended and therefore approved, is appended to this decision and marked as Attachment 1.

[14] In all other respects, the appeal is dismissed and there will be no award as to costs.

“J. V. Zuidema”

J. V. ZUIDEMA
VICE-CHAIR

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 1

BY-LAW NUMBER xxx-15

- of -

THE CORPORATION OF THE COUNTY OF BRANT

To amend By-law Number 110-01, the Zoning By-law for the County of Brant, as amended Pelton Brothers Transport Limited, 2 Highway #2.

WHEREAS an application was received from Waterous, Holden, Amey, & Hitchon, on behalf of Pelton Brothers Transport Limited, with respect to land described as Part Lot 1, Concession 1, in the geographic Township of Burford, County of Brant and located at 2 Highway #2, to amend By-law Number 110-01, to change the present Special Exception Rural Commercial (C5-16) zoning to Special Exception Special Industrial (M2-18) to limit the uses and lot coverage and recognize an existing dwelling;

AND WHEREAS the *Planning Act* empowers a municipality to pass by-laws prohibiting the use of land and the erection, location and use of buildings or structures, except as set out in the by-law;

AND WHEREAS this by-law is in conformity with the Official Plan for the County of Brant;

AND WHEREAS the Planning Advisory Committee of the Corporation of the County of Brant has recommended approval of this by-law;

AND WHEREAS the Council of the Corporation of the County of Brant deems it to be desirable for the future development and use of the lands described above;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE COUNTY OF BRANT HEREBY ENACTS as follows:

1. **THAT** Schedule 'A', Key Map 30 of By-law Number 110-01 is hereby amended by changing the zoning on the subject lands from Special Exception Rural Commercial (C5-16) to Special Exception Special Industrial (M2-18), as shown on Schedule "A" of this by-law.
2. **THAT** Section 36(4)(r) Special Industrial, is hereby amended by adding the following as subsection 36(4)(r):
 - (r) **M2-18 (LIMITED USES & GROSS FLOOR AREA)**
Notwithstanding any provision of this by-law to the contrary, within any area zoned M2-18 on Schedule "A" hereto, the uses shall be limited to the following:
 - Business office
 - Contractor's yard or shop
 - Light manufacturing
 - Office
 - Repair and rental establishment
 - Service shop
 - Accessory use

The above uses are to be contained within an accessory structure with a maximum gross floor area of 3,048m² to a maximum of 45% of the total lot coverage. Outdoor storage accessory to any principal use shall be permitted, located to the east of the existing structure and having a maximum area of 255m². An existing dwelling unit

shall also be permitted on the property. All other requirements of the By-law shall apply. (Map 30)

3. **THAT** this by-law shall come into force on the day it is passed by the Council of the Corporation of the County of Brant.

READ a first and second time, this 28th day of April 2015.

READ a third time and finally passed in Council, this 28th day of April 2015.

THE CORPORATION OF THE COUNTY OF BRANT

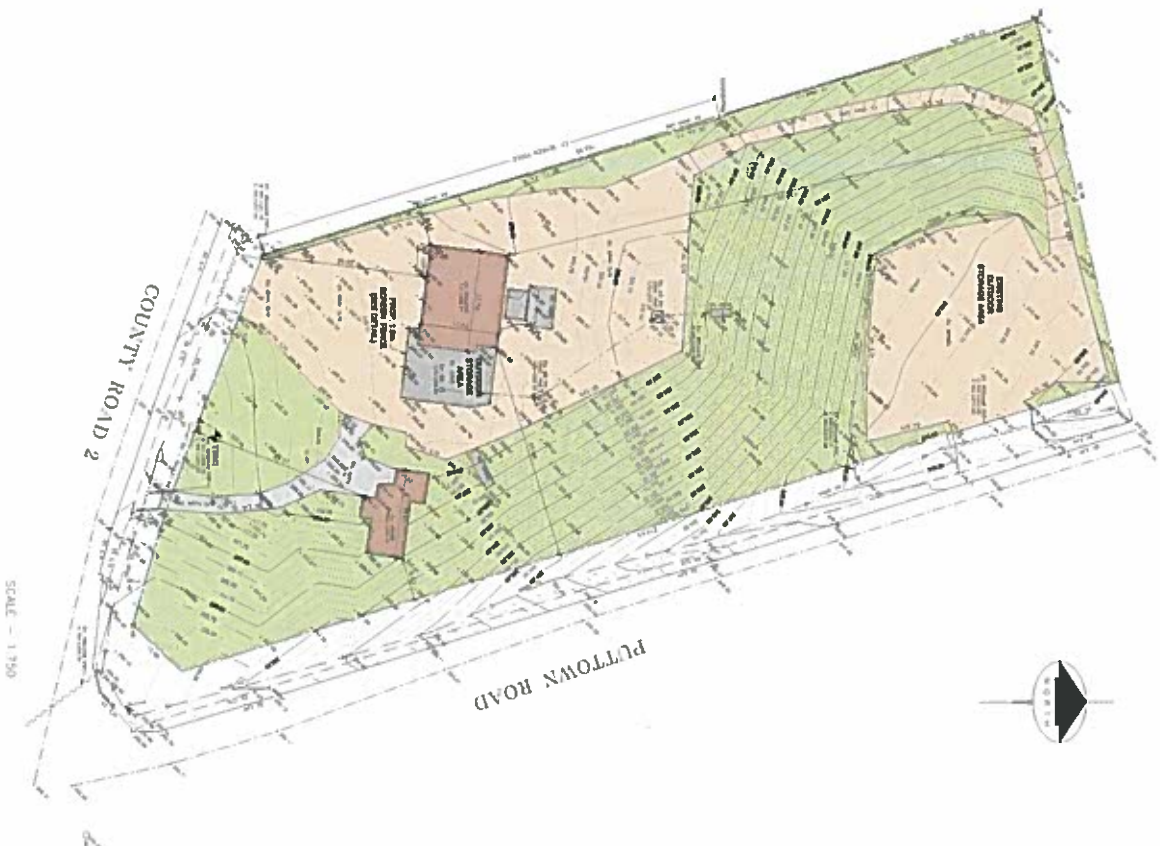
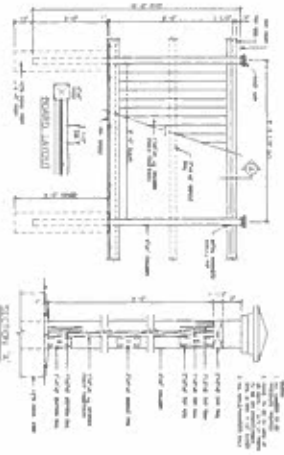
Mayor

Clerk

SITE STATISTICS

| SITE | | TOTAL | |
|------------------------------|-----------|-----------|--|
| LOT AREA (SQ. FT.) | 1,100,000 | 1,100,000 | |
| LOT AREA (ACRES) | 25.23 | 25.23 | |
| PERMITTED LOT AREA (SQ. FT.) | 1,100,000 | 1,100,000 | |
| PERMITTED LOT AREA (ACRES) | 25.23 | 25.23 | |
| PERMITTED LOT AREA (%) | 100% | 100% | |
| PERMITTED LOT AREA (SQ. FT.) | 1,100,000 | 1,100,000 | |
| PERMITTED LOT AREA (ACRES) | 25.23 | 25.23 | |
| PERMITTED LOT AREA (%) | 100% | 100% | |

PROPOSED WOOD IMPACT FENCE



SCALE - 1/8" = 1'-0"

J.H. COORON ENGINEERING LIMITED
 CONSULTANTS

REZONING
 M/N 2 HIGHWAY NO. 2
 COUNTY OF BRANT

SITE PLAN

| | | |
|----------|-----|-------------------|
| DATE | NO. | DESCRIPTION |
| 10/11/11 | 1 | ISSUED FOR PERMIT |

10444

10444-1