Normal Farm Practices Protection Board

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Commission de protection des pratiques agricoles normales

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Ontario

Normal Farm Practices Protection Board

IN THE MATTER OF THE *FARMING AND FOOD PRODUCTION PROTECTION ACT, S.O. 1998, c.1.*

AND IN THE MATTER OF AN APPLICATION TO THE BOARD UNDER SECTION 6 OF THE *FARMING AND FOOD PRODUCTION PROTECTION ACT, S.O. 1998, c. 1.*

BOARD FILE NUMBER: 2004-02

BEFORE: Kirk W. Walstedt, Chair
Marty Byl, Member
Dwayne Acres, Member

BETWEEN:

Rick and Sally Stull,

Applicants

and

Town of Halton Hills,

Respondents

APPEARANCES:

Applicants: Mr. Bert Arnold, Counsel

Respondents: Mr. Christopher Tzekas, Counsel

DECISION

Purpose of the Hearing

The application is made by Rick and Sally Stull for relief under section 6 of the *Farming and Food Production Protection Act, 1998,* with respect to the Town of Halton Hills Site Alteration Bylaw No. 2010 – 0119.

The Applicants seek a determination as to whether the placing of topsoil on a portion of a closed gravel pit, in order to farm the property, is a normal farm practice for the purposes of the non-application of the municipal bylaw which prohibits or regulates site alterations within the Town.

A site alteration permit has been granted to complete the remediation, however it is subject to a number of conditions imposed by the Town of Halton Hills. These conditions include a deposit, notification of neighbors and restricted hours of operation.

Witnesses for the Applicants

Sally Stull

Sally and her husband Rick have farmed for 17 years on 165 acres of land which is located on two adjacent farm parcels within the Town of Halton Hills. The farming operation consists of 80 head of purebred Angus cattle and various crops.

She stated that all of their farm property is located in the Greenbelt Plan which permits farming and the rehabilitation of former aggregate sites to farming purposes.

The portion of the property in question is two hectares (5 acres) that was part of an unlicensed gravel pit when they purchased the property in 1997. This parcel cannot be farmed without the addition of 6000 m^3 of topsoil.

As they will be losing currently rented land to development within the next five years the property in question is required for their farm operation. Mrs. Stull testified that the Town of Halton Hills Site Alteration Bylaw 2010 – 0119 prohibits rehabilitation of land in the agricultural area despite all provincial and local legislation that specifically states that agriculture and the rehabilitation of former aggregate uses is the intended use of the land. The bylaw provides that Council create a committee of citizens to decide on exceptions to the site alteration prohibition in rural areas.

The Stulls completed an application to place one foot of topsoil over the two hectares in question where topsoil had not been replaced after aggregate extraction. Mrs. Stull stated that the committee approved the application subject to a number of onerous conditions which she said were intended to make it very difficult if not impossible for them to complete the soil placement. She listed the conditions as follows:

- Restraining the hours and number of hours for the operation. The site alteration bylaw allows one year normally to complete the work. Their approval is limited to 10 to 12 days. The hours of operation are limited to less than six hours per day between 8:45 AM and 2:30 PM.
- Requirement for a large deposit of $10,000 without terms and conditions for its successful return. The town staff noted in an email that it was for road fouling. Mrs. Stull noted that, once, in the past, road washing was billed to their taxes at $233 after a previous application of soil. In her view, it would be impossible to have to wash the road that often in the limited 12 days of operation they had imposed to justify the $10,000 deposit.
- The Stulls are required to notify neighbors that they are undertaking the work, but they must also have the Town approve the notice and the list of who is to be notified before they circulate or the permit is issued. Mrs. Stull testified that weather, availability of topsoil and the likelihood of delay at the staff level of the Town would make it very difficult to secure the material and undertake the work within a 10-12 day period.

Mrs. Stull stated that she has reviewed the *Farming and Food Protection Act* which states, *"it is desirable to conserve, protect and encourage the development and improvement of agricultural lands for the production of food, fiber and other agricultural or horticultural products."*

She agreed that truck traffic may be inconvenient for nearby landowners but it is temporary and necessary to bring fertility benefit to the land. There is only environmental improvement achieved from this farm land improvement.

Mrs. Stull further testified that the addition of one foot of topsoil to this parcel is a necessary farm practice to achieve productive farmland. She stated that this is a one-time improvement and is the same as undertaking tile drainage of land which is a farming practice that provides permanent agriculture benefit to the fertility of the land.

Under cross examination Mrs. Stull stated that she was a planner by trade and that the municipality for which she works does have a similar bylaw. She stated that bylaw did not prohibit agricultural activity but merely regulated it.

Mrs Stull and her husband purchased the land in 1997 through their earthmoving business. At that time the property was a licensed aggregate gravel pit. She stated that they had hauled 56,000 metric tons into the site but were stopped pursuant to a court order. They applied for a permit to truck in 900,000 m^3 but were denied. That application is currently before the courts.

Mrs. Stull explained that she and her husband had a detailed Agricultural Rehabilitation Plan with which the Town had not expressed any concerns. The plan was prepared by Stovel and Associates Inc., a professional firm which prepares plans for properties such as theirs.

Paul Stovel, a professional planner and agrologist is president of Stovel and Associates Inc. He testified for the Applicants. He stated that he is approved by the Ministry of Natural Resources to prepare Class A Site Plans, including progressive rehabilitation and final rehabilitation plans under section 8.4 of the *Aggregate Resources Act*. He has developed over 20 agricultural rehabilitation plans for pits in Ontario since 1988.

He was retained in June 2014 by the Applicants to prepare a rehabilitation plan for a two-hectare (approximately) portion of their farm parcel in the Town of Halton Hills. He completed the plan dated July 29, 2014 which he stated implements proper and accepted customs and standards in restoring agricultural land for the purpose of cultivation.

Mr. Stovel testified that it was his opinion that through the implementation of this agricultural rehabilitation plan, the lands in question will be restored and will be capable of sustaining an agricultural land use. The lands in question will be improved for uses such as the production of forage or feed for livestock.

In his opinion the implementation of this agricultural rehabilitation plan for the purpose of cultivation and improved drainage is a normal farm practice.

Witnesses for the Respondents

Steve Grace

Mr. Grace stated that he is the Manager of Development and Traffic Engineering for the Town of Halton Hills.

Mr. Grace explained that the bylaw in question was passed by Council in 2010 and is the third generation of this bylaw.

He provided some history with respect to the subject property, which had for many years been licensed as an aggregate pit under the *Aggregate Resources Act*. He described how the Applicants had attempted to bring fill to the property in question, in 2011 and 2012 without the benefit of a license under the bylaw and how the Town commenced proceedings in the Superior Court of Justice to stop this activity.

Mr. Grace testified that the Town Council and the Bylaw Committee approved the Stull's application. However the Stulls took issue with respect to the terms and conditions that were imposed as part of this approval. He explained that the conditions in question are standard conditions that apply to all permits. These conditions can be changed and have been changed in the past on other applications. He noted that the condition with respect to the notification to the area property owners was due in part to the fact that the Stulls had brought in 56,000 m^3 of fill previously to the site without a plan or permit. The $10,000 deposit is required by the Town for infrastructure repair should the property owner not repair any damage to roads etc. to the satisfaction of the town. Although the Applicants appealed the conditions to Council no changes were made.

Sean Colville

Mr. Colville is a professional agrologist registered to practice agrology in the province of Ontario.

He was retained by the Town in June 2014. He drove by the property in question and described it as a weed patch. In his opinion it is not a normal farm practice to add soil to such a property to create an area for crop. In this case it is an unusual amount of soil that does not appear to be economically viable for forage. It would be cheaper to buy hay. He reviewed the Rehabilitation Plan in July 2014 and commented that it is a typical plan.

Mr. Colville testified that in this case he agreed that rehabilitation of the property should occur but he does not consider it a normal farm practice.

THE ISSUES

1. Is the placing of fill on the portion of the former aggregate extraction site (gravel pit) at 12519 8th Line, Town of Halton Hills, in order to grow agricultural crops, a normal farm practice within the meaning of the legislation?

2. If the placing of fill on the property in question is deemed to be a normal farm practice, does the Town of Halton Hills Site Alteration Bylaw No. 2010 – 0119 and/or the permit issued pursuant to that Bylaw restrict this practice?

FINDINGS AND REASONS

1. Is the placing of fill on the portion of the former aggregate extraction site (gravel pit) at 12519 8th Line, Town of Halton Hills, in order to grow agricultural crops, a normal farm practice within the meaning of the legislation?

Section 1(1)(a) of the *Farming, Food and Production Protection Act, 1998,* defines a "normal farm practice" as a practice that *"(a) is conducted in a manner consistent with proper and acceptable customs and standards as established and followed by similar agricultural operations under similar circumstances, or (b) makes use of innovative technology in a manner consistent with proper advanced farm management practices."*

The Board must therefore consider the facts of this case to determine whether it agrees with the Applicants' position that their placing of topsoil on a portion of an abandoned aggregate pit meets the previously referenced definition.

The bulk of the Applicants' evidence deals with the non-application of the Town's Site Alteration Bylaw. They argue that what they are planning for this two-hectare parcel is a "normal farm practice" as defined in the Act wherein it states, "it is desirable to conserve, protect and encourage the development of

agricultural lands for the production of food, fiber, etc…". The Applicants argue that the conditions set by the Town of Halton Hills effectively interfere with their normal farm practice.

While it is true what they are proposing will greatly benefit the land by making it productive, the Board notes that the entire property remains an abandoned aggregate site that requires a great deal of rehabilitation. This is evidenced by the Agricultural Rehabilitation Plan that was presented in the Applicants' evidence. However, the parcel in question is a small two-hectare parcel that only requires approximately one foot of topsoil to become productive.

Both parties agree that the subject parcel was farmland prior to it being licensed for aggregate extraction. It has no topsoil and has not been farmed. With this being the case, the Respondent holds that the proper process for this issue is to develop a rehabilitation plan application under the *Aggregate Resources Act* to be approved by the Ministry of Natural Resources and other responsible agencies, however, no authority for this statement was provided. This decision of course does not affect any required provincial approvals.

The Respondent brings to the Board's attention the Ontario Superior Court of Justice case of *Township of Uxbridge v. Corbar Holdings Inc.*, [2012] O.J. No. 3558. One of the issues before the Court in that case was, "*Is it normal farming practice to alter the topography of lands by the depositing of large quantities of fill?"*

The *Uxbridge* case dealt with the dumping of large quantities of fill that would approximate 30,000 dump truck loads. It is the Board's position that while that case is somewhat similar to the one before the Board, the facts are distinguishable from the case at hand. In the *Uxbridge* decision, Justice Edwards held that the importation of 30,000 truckloads of fill into an abandoned aggregate pit was not a normal farm practice. For the most part he based his decision on the fact that the Oak Ridges Moraine Conservation Plan prevented such an activity without a permit, as well as on the finding that he didn't believe the respondents were sincere in their evidence with respect to their future plans for the property to be farmed.

The Board notes in the case at hand that we are dealing with only a two hectare (5 acre) parcel of a former aggregate pit that is to be included in the Applicants' farming operation once the addition of 6000 m^3 of topsoil is applied. Additionally, the Board notes the Applicants' history of farming and finds that their future plans to use the subject two-hectare parcel for the growing of forage for their cattle to be *bona fide*. The fact that they have farmed 165 acres for the past 17 years and raise purebred cattle is convincing evidence that their intentions for this parcel are genuine.

When we consider the Applicants' plan to import topsoil in order to return a limited in area portion of their lands to agricultural use, it is clear that taking steps to return lands to agriculture and increase the viability of an existing agricultural operation *could be* a normal farm practice as defined in the Act if it is conducted in a manner consistent with proper and acceptable customs and standards as established and followed by similar agricultural operations under similar circumstances or if it makes use of innovative technology in a manner consistent with proper advanced farm management practices.

The Board finds that, in respect of importing 6000m^3 of topsoil in order to return a portion of the Applicants' lands to agricultural use, proper and acceptable customs and standards as established and followed by similar agricultural operations under similar circumstances would include consideration of

limiting interference to existing water courses and water bodies and existing drainage patterns; preserving water quality; preventing erosion and sedimentation; the scope of the work; preventing possible unanticipated site alteration; the use of proper and safe fill; protection of natural heritage and archaeological features; and the appropriateness and safety of haul routes and schedules, including remediating potential road damage and minimizing the disturbance of others. These considerations must be made specifically in relation to the agricultural operation at issue. If importing topsoil to remediate lands with a view to farming those lands reflects these considerations (among possible others, depending upon the circumstances), then such practice would be a normal farm practice within the meaning of the Act. This finding reflects the purposes of the Bylaw; the effects of the Applicants' proposal on abutting lands and neighbors; the provincial interest in the considerations regarding health, safety, water quality, drainage, and protection of natural heritage and archaeological features; and the site in question.

2. If the placing of fill on the property in question is deemed to be a normal farm practice, does the Town of Halton Hills Site Alteration Bylaw No. 2010 – 0119 and/or the permit issued pursuant to that Bylaw **restrict this practice?**

The Town of Halton Hills applied the following conditions to the permit for the placement of 6000 m^3 of fill onto the Applicants' two-hectare parcel of land:

- Hours of operation - 8:40 AM to 2:45 PM. 10 to 12 business days to import soil after notification letter is delivered, weather permitting.
- Quantity of materials – importing the material not to exceed 6000 m^3.
- Source of materials – owner to confirm source of material to staff and provide confirmation to be approved by staff that imported material meets Table 1 Ministry of Environment requirements prior to commencing works.
- Truck route – Highway 7 to 22nd Side Road and North on 8th Line to site.
- Owner to ensure sediment and erosion control measures have been properly installed prior to commencing work and maintained for the duration of the permit.
- Owner to ensure the existing drainage pattern is maintained to not cause a negative impact on the adjacent properties.
- A Site Alteration Permit is obtained by the Applicants after Council approval, including refundable deposit. The amount of deposit to be determined by staff.
- Provide written notification to all properties with access to 22nd Side Road east of Highway 7 and 8^{th} Line north of 22^{nd} Side Road. The notice will identify the duration of work under the permit, the anticipated scope of work and provide the contact information for the owner and/or the owner's agent for comments, questions and/or complaints. A copy of the notice and mailing list shall be forwarded to the Town of Halton Hills for approval prior to distribution.

In her testimony Mrs. Stull stated that a number of the conditions would be difficult to complete. She listed her concerns as follows:

- Restraining the hours and number of days for the operation.

- Requirement for large deposit, $10,000 without terms and conditions for its successful return.
- The Stulls are required to notify neighbors that they are undertaking the work, but they must also have the Town approve the notice and approve the list of who is to be notified before they circulate or the permit is issued.

The Board heard testimony that the Town of Halton Hills Site Alteration Bylaw was passed in 2010 and is the third generation of this bylaw. The Board was also provided some background history with respect to the Applicants' property. In 2011, and in 2012, the Applicants had attempted to bring fill onto the former aggregate pit without the benefit of a license under the bylaw. It was explained that the conditions in question are standard conditions that apply to all permits. Evidence was presented that former applications were also approved contingent on certain conditions being followed. It was noted that the condition with respect to the notification of the area property owners was due in part to the fact that the Applicants had brought in 56,000 m^3 of fill previously with no permit which resulted in numerous complaints from neighboring property owners. The $10,000 deposit was established in the event road repair was required due to damage from the trucks hauling fill into the property.

Limiting the number of hours is reasonable due to the number of residences in the area and the possibility of school buses traveling the roads that lead to the site, although it was not confirmed in the hearing whether school buses traveled on these roads. Despite this the Board realizes that there are always safety concerns with respect to heavy truck traffic on local roads.

The $10,000 deposit is appropriate considering the evidence with respect to the history of this operation in relation to past attempts at transporting fill onto the site and considering the link between the appropriateness and safety of haul routes and schedules, including potential road damage, and the above findings regarding the Applicants' proposal being a normal farm practice.

The 10 – 12 days allowed to complete the trucking of the 6000 m^3 of fill appears to be a relatively short timeframe. The Applicants expressed their concerns that possible bad weather, the restricted daily hours of 8:40am to 2:45 to haul the fill and the municipal half load law on the roads in question were too restrictive. The Board however, believes that this frame is workable considering the amount of fill to be trucked to the site and thus finds that this condition reflects the above noted considerations regarding haul schedules. The Board also realizes that it is often difficult for the farming community to coexist with non-farming residential properties. However, this is a situation that both the Applicants and the Town must deal with.

The notification requirement is important to minimize the disturbance of others, and thus this condition reflects the above findings regarding the Appellants' proposal being a normal farm practice. Part of the notification process is to ensure that everyone in the area understands what is to take place as part of the Applicants' plan to remediate their agricultural land.

The Board therefore finds that the Town of Halton Hills Site Alteration Bylaw does not restrict what the Board has deemed to be a normal farm practice. It is the Board's determination that the purposes of the Bylaw and the rationales for the challenged conditions are integral to the findings regarding when importing topsoil to return lands to agriculture could be a normal farm practice, and that the Bylaw simply

has been employed to put in place a number of reasonable conditions to ensure that trucking of the fill is carried out in a proper and safe manner.

DECISION

Having considered all of the evidence, we find:

1. The placing of fill on a portion of the former aggregate pit in question, in order to grow agricultural crops, is a normal farm practice within the meaning in the legislation when conducted in a manner as described above.

2. The Town of Halton Hills Site Alteration Bylaw No. 2010-0119 and the conditions of the permit issued do not restrict this normal farm practice.

DATED: September 24, 2014

Kirk W. Walstedt, Chair
Normal Farm Practices Protection Board