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Feb. 25, 2010



Ontario

Ontario Municipal Board

Commission des affaires municipales de l'Ontario

PL050096

Edelbrock Bros. Limited, William Matthews and Allto Investments Holdings Inc. appealed to the Ontario Municipal Board under subsection 17(36) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from a decision of the Minister of Municipal Affairs and Housing to approve the Official Plan for the Township of Amaranth
Approval Authority File No. 22-OP-5450
OMB File No. O050177

Edelbrock Bros. Limited appealed to the Ontario Municipal Board under subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, against Zoning By-law 69-2004 of the Township of Amaranth
OMB File No. R050017

APPEARANCES:

Parties

Edelbrock Bros. Limited, and
Allto Investments Holdings Inc.

Township of Amaranth

Counsel

William Stutz

Jeffrey J. Wilker

DECISION DELIVERED BY SUSAN de AVELLAR SCHILLER AND ORDER OF THE BOARD

These matters have been the subject of pre-hearing conferences and considerable narrowing of the several appeals initially before the Board. Only two Parties' appeals now remain: Allto Investments Holdings Inc. [Allto] and Edelbrock Bros. Limited [Edelbrock]. The appeals deal with different lands and different policies. This Decision deals only with the Allto appeal. The Board will issue a separate Decision dealing with the Edelbrock appeals.

Appeal by Allto Holdings Inc.

Part of Allto's business involves the extraction of peat. The Township of Amaranth is rich in peat resource areas, but many are associated with wetlands and other areas the Township wishes to protect. The Township works with three conservation authorities that have jurisdiction in different parts of the Township:

Nottawasaga Valley Conservation Authority, Credit Valley Conservation and Grand River Conservation Authority. There are a number of interests engaged in peat extraction in the Township in addition to Allto. The Board was advised that none of the peat extraction operations has obtained the necessary permits from the appropriate conservation authority. Allto is the only peat extraction interest to appeal relevant sections of the Official Plan and the only peat extraction interest to come forward and participate fully in these proceedings.

Following extensive discussions, the Township and Allto have now reached a settlement. The core of what is now proposed is that the Official Plan of the Township of Amaranth will have a separate section devoted to peat extraction, including extensive requirements and stringent criteria that must be met before any lands are designated for peat extraction. The new section, and associated designation, is Peat Extraction – Industrial and will become section 3.11 of the Township’s Official Plan. Section 3.11, Peat Extraction – Industrial, is found at Attachment “1” to this Decision.

The Official Plan had previously included policies governing peat extraction in section 3.6 Extractive Industrial. Allto and the Township both now ask the Board to modify the Official Plan by deleting all references to peat extraction and top soil from section 3.6, in accordance with Schedule B of Exhibit 6 as filed in these proceedings, and, as so modified, to approve section 3.6 of the Township Official Plan. Allto and the Township both now also ask the Board to modify the Official Plan by adding the proposed new section 3.11 Peat Extraction – Industrial, which includes the stringent development criteria that must be met prior to the designation of lands as Peat Extraction - Industrial.

The intent of section 3.11 is to prohibit new areas of peat extraction and to prohibit the expansion of existing areas. The settlement between Allto and the Township contemplates the possibility of one existing Allto peat extraction area being designated as Peat Extraction – Industrial, subject to Allto meeting all the development criteria set out in section 3.11. That site is part of a 40 hectare lot on the east side of the 10th Line south of the 20th Sideroad. Allto wishes to pursue regularization of its peat extraction activities at this site and has agreed to the development criteria for designation to Peat Extractive – Industrial, as set out in section 3.11.

The site, composed of two sub-areas A and B, is shown on the map filed in these proceedings as Schedule C to Exhibit 6 and is found at Attachment "2" to this Decision. The site is in an area now designated Environmental Protection. Allto has built an access road to the extraction site that goes across and through the Environmental Protection area. The Board was advised by counsel that the access road was built without benefit of the required permits for a road at this location and along this route.

Allto has also agreed to cease peat extraction at all other sites in the Township, including specifically a site located approximately in the northeast corner of County Road 12 and County Road 109.

The development criteria are set out in section 3.11.4 Development Policies, as follows:

This Plan may recognize, by amendment to the Official Plan, existing areas of peat extraction provided the Development Policies are fulfilled and subject to the Provincial Policy Statement and the other provisions of this Official Plan. In order to be so considered, the peat extraction operation on the property must have been in existence from 2004 and documentation must be provided to so demonstrate same.

Development of new Peat Extraction – Industrial areas are not permitted.

Expansions of existing Peat Extraction – Industrial areas are not permitted.

Existing Peat Extraction – Industrial areas may be recognized subject to the following Development Criteria:

a) All requirements of the Conservation Authority, including the requirement to obtain a Permit from the Conservation Authority, must be satisfactorily addressed;

b) The applicant shall submit a Site Plan, subject to Site Plan Approval under the Planning Act. The Site Plan shall address the following matters: setbacks to public roads, setbacks to adjacent properties, setbacks to significant natural heritage features, processing areas, administration areas, buildings/structures, internal parking and roads, landscaping (including tree screens), rehabilitated end use. Any buildings shall be appropriately located outside of wetland areas and subject to permit from the Conservation Authority;

c) All requirements of the municipal road authorities, including haul routes, access to public roads, maintenance of public roads. If requested, the proponent shall complete a Traffic/Road Impact Study to address matters such as maintenance or road improvements to the public road system;

d) If extraction and/or processing facilities are located within 150 m of a sensitive receptor, a Noise Impact Study is required to determine whether or not provincial guidelines can be satisfied;

e) If extraction and/or processing facilities are located within 150 m of a sensitive receptor, a Dust Impact Study is required to ensure that dust and air pollution generated from the site are controlled and within the parameters established by the Ministry of the Environment;

f) If requested, an Environmental Impact Study to ensure that there will be no negative impacts on natural features or their ecological functions;

g) If extraction and/or processing facilities are located in a Prime Agricultural Area on prime agricultural land and/or within 500 m of an agricultural operation, an Agricultural Impact Study is required. The Agricultural Impact Study will address how Prime Agricultural Lands and agricultural operations are protected for long-term use for agriculture;

h) A Cultural Heritage Resource Study to determine if there are any known significant archaeological resources on the subject property and the potential of the site to have heritage resources;

i) If requested, a Hydrogeological Study to ensure that sensitive surface water features, sensitive ground water features (and their hydrologic functions) are protected, improved or restored;

j) If any of the peat extraction areas are on lands outside of lands regulated by the Conservation Authority, then the applicant shall comply with the Township's site alteration by-law.

Should the applicant have prepared an Environmental Impact Study or Hydrogeological Study as part of a related Permit application to the Conservation Authority, these reports may be used by the applicant to satisfy part of the documentation requirement set out above.

Adjacent to the Allto peat extraction areas shown on Attachment "2" is an irregular wedge of land, approximately five hectares in size, that is also east of the 10th Line and on the south side of the 20th Sideroad. This site is designated and zoned

Agricultural. The site is a plantation woodlot with poorer quality soils. Opposite the site on the north side of the 20th Sideroad are lands designated Rural. Allto and the Township now ask the Board to modify the Township Official Plan by designating this site Rural. The Board was advised by counsel for Allto that the intention behind the requested Rural designation is to permit severance of all or part of the site to accommodate redevelopment for limited residential uses. No other Rural use is intended for the site. Agriculture is a permitted use within the Rural designation. Access to the site might be through the access road to the peat extraction site, if that road secures all required permits. Alternatively, access might be from the 20th Sideroad.

The parties acknowledge that no proposal for residential development is before the Board and also acknowledge that the current zoning for the site would need to be amended to permit both agricultural uses and rural residential uses. In addition, if Allto meets all of the requirements and the Board is satisfied that the adjacent peat extraction site should be designated Peat Extraction – Industrial, a site specific companion zoning by-law amendment would be necessary to zone the site for peat extraction.

The existing zoning on both the plantation woodlot and the peat extraction site was approved by the Board in its Decision/Orders dated March 10, 2009 and March 16, 2009, as part of the Board's disposition of appeals of the Township's comprehensive by-law. That by-law had been appealed in its entirety by Edelbrock. Allto filed no appeal of the zoning by-law. As a result of earlier settlement discussions, Edelbrock narrowed its appeal to certain lands, withdrawing its appeal as it related to any other lands, including the five hectare plantation woodlot and the peat extraction site. In light of the narrowing and withdrawal of the Edelbrock appeal, the Township asked the Board to deem the by-law to come into force on the date of its passage, save and except for those lands that remained under appeal by Edelbrock. Allto was in attendance at this proceeding and raised no objection to the Township's request.

The parties now ask the Board to exercise its discretion under section 43 of the *Ontario Municipal Board Act* to amend its earlier Decision regarding the zoning by-law and approve the proposed zoning change for the plantation woodlot site from Agricultural to Rural if the Board is satisfied that the change of designation from Agriculture to Rural in the Official Plan is appropriate. The parties make a similar provisional request for the Board to exercise its discretion under section 43 of the

Ontario Municipal Board Act to re-zone the peat extraction site to permit peat extraction if the Board is satisfied that Allto has met all the necessary requirements and that the Official Plan should be amended to designate Allto's peat extraction site as Peat Extraction – Industrial. Since Allto has not yet met all of the necessary requirements to satisfy the Board that its peat extraction site should be designated Peat Extraction – Industrial, the Board defers any further consideration of a possible zoning by-law amendment to permit peat extraction at this site until such time as the possible Official Plan amendment to re-designate the site is finally decided.

No zoning by-law amendment has been placed before the Board to zone the five hectare plantation woodlot Rural. In addition, the Board is not satisfied that all Rural uses are appropriate for the site, should the Board agree to the Official Plan amendment to designate the site Rural. Specifically, the Board finds that, given the nature of the site and its position adjacent to sensitive environmental lands, any such zoning by-law amendment should be restricted to permit agricultural and limited residential uses, and no other uses. The parties consent to this limitation and, conditional on the Board approving the proposed Official Plan change from Agriculture to Rural, have agreed to prepare the appropriate form of by-law amendment and circulate it in accordance with the Board's instructions as set out below.

Since the matter of the Official Plan and zoning by-law amendments from Agriculture to Rural arises entirely as part of the settlement between the Township and Allto regarding Allto's appeal of the Official Plan on matters related to peat extraction, the Board will consider the proposed zoning by-law amendment from Agriculture to Rural, and the associated request that the Board exercise its discretion under section 43 of the *Ontario Municipal Board Act*, after the possible re-designation and re-zoning of Allto's adjacent peat extraction site have been fully disposed of.

The Board heard from Messrs David Matthews and Robert Stovel, both of whom are full members of the Canadian Institute of Planners and Registered Professional Planners in Ontario qualified to provide the Board with expert opinion evidence in land use planning matters. Mr. Stovel was also qualified to provide the Board with expert opinion evidence in agrology.

The Provincial Policy Statement, in section 2.1, calls for the protection of natural heritage lands and, in section 2.3, calls for the protection of agricultural lands. Section 2 of the *Planning Act* sets out matters of Provincial interest. Section 2(a) deals specifically with the protection of ecological systems, including natural areas, features and functions, and section 2(b) highlights the protection of agricultural resources.

The Board finds that the proposed section 3.11 of the Township's Official Plan that deals with Peat Extraction – Industrial is consistent with the Provincial Policy Statement and has had regard for section 2 of the *Planning Act*. The Board also finds that modifying the Official Plan to designate the five hectare Agricultural site Rural, as shown in Attachment "3" to this Decision, is consistent with the Provincial Policy Statement and has regard for section 2(b) of the *Planning Act*. In this case, as noted above, the soils are poor quality and the lands are now a plantation woodlot. In addition, the proposed Rural designation continues to permit agricultural uses.

The policy regime of the Township's Official Plan emphasizes the importance of environmental protection, natural heritage, and agriculture. The Board finds that the proposed modifications to the Official Plan, namely: the deletion of references to peat extraction and top soil in section 3.6, the proposed addition of section 3.11 Peat Extraction – Industrial, and the change of designation from Agriculture to Rural for the five hectare plantation woodlot, conform to and maintain the policy regime of the Official Plan.

Counsel for Allto advised the Board that Allto has agreed to cease all peat extraction activities, including extraction on the subject lands shown on Attachment "2". Allto has agreed to pursue diligently the re-designation of these lands to Peat Extraction – Industrial by preparing the documentation to fulfill the development policies set out in section 3.11.4. In order to ensure that matters move forward, the Board has, on consent, set down certain deadlines and reporting requirements for Allto that are outlined below.

Counsel for Allto shall file with the Board, with a copy to counsel for the Township, two status update reports, the first on or before January 29, 2010, and the second on or before April 30, 2010. At the time of this writing, counsel for Allto had already filed the January report. On reviewing the January report, the Board finds that

some additional information would be helpful in the April report. The April report must outline the status of Allto's efforts by specific reference to the status of each matter set out in the development policies of section 3.11.4. In addition, the April status report is to include a statement of the specific steps Allto has taken to secure the necessary permits regarding its existing access road to the peat extraction site. In all cases of items referred to in the status report, counsel for Allto is to include the date upon which each step was taken.

If Allto meets all of the requirements set out in section 3.11.4, and does so in a timely manner, the Board will issue its Order to re-designate the Allto lands marked as area A and B on Attachment "2" as Peat Extraction – Industrial. The Board is to be advised by counsel for the Township, not later than July 30, 2010, that Allto has met all of the requirements of section 3.11.4.

If Allto believes it has met these requirements, and the Township does not agree, the parties have jointly agreed to then ask the Board to reconvene and decide the matter.

If, by July 30, 2010, the Board has not been advised by counsel for the Township that Allto has met all the requirements of section 3.11.4, and if the Board has not received a request from the parties to reconvene and decide the matter, the Board will dismiss the appeal to redesignate the lands shown on Attachment "2" to Peat Extraction – Industrial.

As noted above, the Board defers consideration of the request to exercise its discretion under section 43 of the *Ontario Municipal Board Act* to vary the Board's earlier decision regarding the Township's comprehensive zoning by-law to zone the areas shown on Attachment "2" for peat extraction and to zone the plantation woodlot from Agriculture to Rural with the limitation that only agricultural and limited residential uses would be permitted on the site.

In an effort to ensure efficiency in future proceedings, to ensure fairness and proper notice to adjacent land owners, and to ensure that appropriate advice from the Grand River Conservation Authority is before the Board when these two possible zoning by-law changes are considered by the Board, the Board directs and the parties consent to having these two proposed zoning by-law changes circulated in the normal fashion to

adjacent owners and to the Grand River Conservation Authority for comments. Counsel for the Township is to file with the Board a copy of the proposed zoning by-law changes along with any comments or objections that are received as a result of this circulation.

The Board defers the scheduling of any hearing of these zoning matters until the Board has disposed of the possible Official Plan designation of the Allto lands as Peat Extraction – Industrial.

The appeal by Allto Investments Holdings Inc. is allowed in part. The Official Plan of the Township of Amaranth is modified by:

1. deleting all references to peat extraction and top soil in section 3.6;
2. adding section 3.11 Peat Extraction – Industrial, as set out in Attachment “1” to this Decision; and
3. changing the designation from Agriculture to Rural for the five hectare plantation woodlot, shown on Attachment “3” to this Decision.

As so modified, the Official Plan of the Township of Amaranth is approved except for:

1. the lands subject to the appeal by Edelbrock Bros. Limited, which are the subject of a separate Decision, and
2. the Allto lands identified on Attachment “2”, which are the subject of further filings regarding the possible redesignation of these lands as Peat Extractive – Industrial.

If difficulties arise, the Board may be spoken to.

So Orders the Board.

“Susan de Avellar Schiller”

SUSAN de AVELLAR SCHILLER
MEMBER

3.11 PEAT EXTRACTION -- INDUSTRIAL

3.11.1 Identification

New Peat Extraction - Industrial areas are not permitted.

This Plan may recognize, by amendment to the Official Plan, existing areas of peat extraction provided the Development Policies are fulfilled.

Expansions of Peat Extraction – Industrial areas are not permitted.

3.11.2 Objectives

- a) To prohibit new areas of peat extraction;
- b) The Township has had ongoing difficulties with existing peat extraction operations which operation/use is not permitted under Township planning documents and which operations are extracting peat in areas regulated by the Conservation Authorities without permits. This Official Plan Amendment provides a framework to legalize those existing areas, by amendment to the Plan, where peat extraction operations are located, subject to fulfillment of the development policies and subject to the Provincial Policy Statement and the other provisions of this Official Plan.

3.11.3 Permitted Uses

Permitted uses in the Peat Extraction – Industrial designation are as follows:

- a) Extraction of peat;
- b) Processing of peat;
- c) Forest, fisheries and wildlife management;
- d) Public Uses.

Administrative buildings and processing areas associated with the peat extraction operation may be permitted as an ancillary use.

3.11.4 Development Policies

This Plan may recognize, by amendment to the Official Plan, existing areas of peat extraction provided the Development Policies are fulfilled and subject to the Provincial Policy Statement and the other provisions of this Official Plan. In order to

be so considered, the peat extraction operation on the property must have been in existence from 2004 and documentation must be provided to so demonstrate same.

Development of new Peat Extraction – Industrial areas are not permitted.

Expansions of existing Peat Extraction – Industrial areas are not permitted.

Existing Peat Extraction – Industrial areas may be recognized subject to the following Development Criteria:

- a) All requirements of the Conservation Authority, including the requirement to obtain a Permit from the Conservation Authority, must be satisfactorily addressed;
- b) The applicant shall submit a Site Plan, subject to Site Plan Approval under the Planning Act. The Site Plan shall address the following matters: setbacks to public roads, setbacks to adjacent properties, setbacks to significant natural heritage features, processing areas, administration areas, buildings/structures, internal parking and roads, landscaping (including tree screens), rehabilitated end use. Any buildings shall be appropriately located outside of wetland areas and subject to permit from the Conservation Authority;
- c) All requirements of the municipal road authorities, including haul routes, access to public roads, maintenance of public roads. If requested, the proponent shall complete a Traffic/Road Impact Study to address matters such as maintenance or road improvements to the public road system;
- d) If extraction and/or processing facilities are located within 150 m of a sensitive receptor, a Noise Impact Study is required to determine whether or not provincial guidelines can be satisfied;
- e) If extraction and/or processing facilities are located within 150 m of a sensitive receptor, a Dust Impact Study is required to ensure that dust and air pollution generated from the site are controlled and within the parameters established by the Ministry of the Environment;
- f) If requested, an Environmental Impact Study to ensure that there will be no negative impacts on natural features or their ecological functions;
- g) If extraction and/or processing facilities are located in a Prime Agricultural Area on prime agricultural land and/or within 500 m of an agricultural operation, an Agricultural Impact Study is required. The Agricultural Impact Study will address how Prime Agricultural Lands and agricultural operations are protected for long-term use for agriculture;

- h) A Cultural Heritage Resource Study to determine if there are any known significant archaeological resources on the subject property and the potential of the site to have heritage resources;
- i) If requested, a Hydrogeological Study to ensure that sensitive surface water features, sensitive ground water features (and their hydrologic functions) are protected, improved or restored;
- j) If any of the peat extraction areas are on lands outside of lands regulated by the Conservation Authority, then the applicant shall comply with the Township's site alteration by-law.

Should the applicant have prepared an Environmental Impact Study or Hydrogeological Study as part of a related Permit application to the Conservation Authority, these reports may be used by the applicant to satisfy part of the documentation requirement set out above.

3.11.5 Zoning

Existing Peat Extraction – Industrial areas recognized by Official Plan Amendment will be zoned specifically in the Zoning By-law.

Council shall consider, amongst other matters, the following in dealing with an application for a Zoning By-law Amendment to permit an existing Peat Extraction – Industrial Area:

- a) Hours of operation;
- b) Haul routes, frequency of travel, improvements to the public road system, and maintenance of the public road system;
- c) Rehabilitation of the site after extraction ceases on the subject property;
- d) Impacts on the natural environment (including natural heritage features, surface and ground water system);
- e) Site Plan to address the details of the operation including processing areas, buildings, landscaping and drainage; and
- f) A Development Agreement.

Council may consider passing a Zoning by-law using the Holding Provision under Section 36 of the Planning Act to ensure that these aforementioned matters are addressed to the satisfaction of the Council.

