

Issue Date:

**May 12, 2008**



PL050956

Ontario Municipal Board  
Commission des affaires municipales de l'Ontario

The Murray Group Limited has appealed to the Ontario Municipal Board under subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's refusal or neglect to enact a proposed amendment to Zoning By-law 96-07 of the Township of Centre Wellington to rezone lands respecting Part of Lots 2 and 3, Concession 3 EOGR, Park Lots 1, 2, 3, 8 and 9, Part of Park Lots 7, 10, 11 and 19, Part of Road Allowance, Plan 140, former Township of Pilkington, in the Township of Centre Wellington from Agricultural and Agricultural Exception to Extractive Industrial Exception to permit an aggregate extraction operation  
OMB File No. Z050130

At the request of The Murray Group Limited, the Minister of Natural Resources has referred to the Ontario Municipal Board under subsection 11(5) of the *Aggregate Resources Act*, R.S.O. 1990, c. A.8, as amended, an application for a Class A licence for the removal of aggregate from lands being composed of Part of Lots 2 and 3, Concession 3 EOGR, Park Lots 1, 2, 3, 8 and 9, Part of Park Lots 7, 10, 11 and 19, Part of Road Allowance, Plan 140, former Township of Pilkington, in the Township of Centre Wellington  
OMB File No. M060040

The Murray Group Limited has appealed to the Ontario Municipal Board under subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's refusal or neglect to enact a proposed amendment to Zoning By-law 96-07 of the Township of Centre Wellington to rezone lands municipally known as 7284 Wellington Road 21, Township of Centre Wellington from Agricultural and Agricultural Exception to Extractive Industrial Exception to permit an aggregate extraction operation  
OMB File No. Z060195

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OMB File No. M070036

**APPEARANCES:**

**Parties**

The Murray Group Limited

**Counsel**

J. Wilker, D. Germain

Dunnick Homes Ltd.	P. Pickfield
Dunmill Homes Inc.	
Pilkington East Residents' Association	S. O'Melia
Town of Centre Wellington	S. Jacobs, C. Acheson,
County of Wellington	S. Jacobs for D. Thomson

**Participants**

Kirk McElwain  
Jim Zimmerman  
Shaindel Zimmerman  
Mrs. Attard  
Julie Denny  
Renate Karger  
Chris Beresford

**DECISION DELIVERED BY J. ZUIDEMA AND ORDER OF THE BOARD**

The matters before the Board are:

1. a rezoning application for the Inverhaugh Pit, later referred to and hereinafter referred to as the "Devin Pit";
2. a licence and site plan under the *Aggregate Resources Act* (the "ARA") for the Devin Pit;
3. a rezoning application for the Inverhaven Pit, later referred to and hereinafter referred to as the "Cole Pit", and;
4. a license and site plan under the *ARA* for the Cole Pit.

After a number of Pre-Hearings, the issuance of a Procedural Order and a Motion, the hearing was scheduled for 25 days. At the outset of the hearing, the Board was advised that the parties were working towards a resolution and on consent, requested the matter be stood down for two weeks to facilitate continued negotiations and the finalization of the details of the site plans and proposed zoning amendments. The adjournment was granted and time was set aside to permit the participants to provide evidence. Participants who wished to provide such evidence were required to file a brief will-say statement in advance of their testimony.

When the hearing reconvened, the parties advised that they had reached a final settlement. On consent, Mr. Robert Stovel, qualified and accepted by the Board to provide expert opinion evidence in the areas of land-use planning and agrology, was called to provide such evidence on the proposed settlement and recommended it to this Board. The Board was advised that Mr. Stovel was also certified to prepare site plans under the *ARA*. He was the only expert and Planner called and his evidence was unchallenged.

**Process and Background:**

Mr. Stovel reviewed the process undertaken to achieve the proposed settlement. Over the past 6 months, technical reports had been prepared and peer-reviewed. The peer review process and the Board's Procedural Order necessitated the experts to meet that resulted in scoping of issues. Mr. Stovel testified that all the experts involved in the review process signed off on the settlement being presented to this Board. Specifically, Mr. Stovel testified that he had met with the Ministry of Natural Resources (MNR) aggregate specialist, Mr. James Williams, who reviewed the materials and was satisfied. Mr. Williams was in attendance for one of the days for this hearing and did identify himself, but did not testify.

Mr. Stovel identified that the two proposed pits would be located on the east and west sides of Wellington Road #21. A stone house that is to be preserved is located on the Inverhaven property. The Grand River flows through the municipality and is nearby.

The Grand River Conservation Authority was involved in the review process and was also satisfied.<sup>1</sup>

**Policy:**

Mr. Stovel outlined the policy environment that applied to the applications. For the Devin Pit, the 1996 Provincial Policy Statement (the “PPS”) was the operative document; for the Cole Pit it was the 2005 PPS. Mr. Stovel took the Board to sections 2.2.3 of the 1996 PPS and sections 2.1, 2.5, and 2.6 of the 2005 PPS. His opinion was that both versions of the provincial policy sought to ensure protection of the mineral aggregate resource and in fact, the policy regime found in the latter document was even more protective.

With respect to s. 2.1 Natural Heritage, Mr. Stovel testified that the agencies and Planners involved with the review process were satisfied that the proposal met the tests of the provincial policy in that the natural heritage features and functions were considered and protected.

Concerning s. 2.6, the Ministry of Culture had also provided comments and had no concerns with respect to archaeological studies.<sup>2</sup> Mr. Stovel recommended the settlement as, in his opinion, the Devin Pit application had regard and the Cole Pit application was consistent with the applicable policy statement.

Mr. Stovel testified with respect to the applicable provisions of the County Official Plan as no local official plan is in place. He specifically, addressed s. 6.6 Mineral Aggregate Area. Both proposed pits are located entirely within the Mineral Aggregate Area of the County Plan.<sup>3</sup> Mr. Stovel reviewed s. 6.6.5 which are the matters to be considered for new aggregate operations and opined that the criteria identified under subsections (a) to (i) were satisfied pursuant to the mitigation measures proposed through the site plans and specifically that:

- i) the rehabilitation plans would ensure agricultural capability is restored;

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<sup>1</sup> Their commenting letters were found at Exhibit 4, tab 29 and tab 57.

<sup>2</sup> see Exhibit 4, tabs 36, 37 and 58

<sup>3</sup> see Exhibit 5, tab 1 map 3 for the Cole Pit and Exhibit 6, tab 4, map 3 for the Devin Pit

- ii) access would be provided only along Wellington Road #21 which is a county road;
- iii) substantial hydrogeological investigation had been done which concluded there would be no impact to the ground or surface water; <sup>4</sup>
- iv) the site plans<sup>5</sup> had addressed such items as phasing, acoustic and dust mitigation, a vegetation management plan including the creation of berms and tree screening, a spills contingency plan, a ground water and wells monitoring program and operational concerns such as the type of equipment used and hours of operation;
- v) by reference to Exhibit 8, he outlined that haulage would be restricted to certain roads.

Mr. Stovel also testified regarding the proposed zoning by-laws<sup>6</sup> and opined that they conformed to the provisions of the County Plan, had regard or were consistent with, as the case may be, with the applicable PPS, represented good planning and were in the public interest. He recommended that the licenses should be approved as they complied with the provisions under the *ARA*. He recommended that this Board direct that these licenses should issue.

**Participants:**

A number of participants testified to object to the proposed pits and to the settlement. Each person brought forward important and personal concerns. Ms. Shaindel Zimmerman, an editor and artist, has lived in the area for approximately 37 years. She testified that she feared that wells would become contaminated as a result of the establishment of these pits. She also was concerned that the haul routes would have a negative impact on the artisan shops and small bed and breakfast establishments in the Elora area. She conceded that she had no technical or professional expertise to address issues of transportation or hydrogeology, and she was candid in admitting that she had not contacted representatives of the Town or the

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<sup>4</sup> reference to Exhibit 12

<sup>5</sup> see Exhibits 13(a) to (e) and 14(a) to (e)

<sup>6</sup> see Exhibit 15 for the Devin Pit and Exhibit 16 for the Cole Pit

Murray Group to obtain additional information following her review of the witness statements that had been filed through the hearing process.

Renate Karger also spoke against the proposed pits. She lives in the Kitchener/Waterloo area and has commuted to Elora for the past 15 years. Similar to Ms. Zimmerman's concerns, Ms. Karger was concerned about the potential negative impacts of noise, dust and the loss of visual character which might result from the establishment of the pits. She was also concerned with possible losses to the businesses in the Elora area. While she sits on the marketing committee for the Business Improvement Area, she indicated under cross-examination that she was testifying on her own behalf and had no resolution to appear on behalf of the BIA.

Julie Denny also testified. She runs a bed and breakfast establishment and moved to the area approximately 3 years ago. She was quite adamant that she did not want to see any trucks whatsoever driving through the village. For her, the trucks caused a disturbance through noise and pollution. She also was concerned about pedestrian safety as the routes taken by some trucks do not have sidewalks. She provided photographs which she had taken to illustrate her concerns.<sup>7</sup> Under cross-examination, she conceded that she had not looked at the traffic reports which had been filed by the proponent nor did she contact anyone to get further information as she had conducted her own independent research.

Jim Zimmerman testified. He filed a participant statement which he read into the record.<sup>8</sup> Under cross-examination he conceded that he had not reviewed the Issues List for the hearing. While agreeing that the legislation provides for a hearing process before this Board, he was not prepared to accept that the process was appropriate given the particular circumstances associated with these pits.

Kirk McElwain also made a presentation. Mr. McElwain moved to the area approximately 10 years ago. He currently sits as the Chair of the Economic Development Committee for the Township of Centre Wellington but was testifying on his own behalf. He conceded that he was not an expert in aggregate issues but believed

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<sup>7</sup> see Exhibits 20 and 21

<sup>8</sup> see Exhibit 24

that an approval of the pits would result in a violation of the *Environmental Protection Act*. His concerns reflected those presented by the previous participants.

**Board's Findings and Order:**

While the Board appreciates the concerns of the residents as voiced through the participants at this hearing, it cannot ignore the unchallenged expert evidence provided by Mr. Stovel, which evidence was presented on consent of the all the parties to this hearing. The Board accepts Mr. Stovel's opinion that the settlement as presented to this Board has regard to the 1996 PPS, is consistent with the 2005 PPS, conforms to the County Official Plan policies, represents good planning and is in the public interest.

Therefore, the Board directs the Minister to issue the licences for the Devin and Cole Pits in accordance with subsection 11(8)(1) of the *Aggregate Resources Act* subject to the prescribed conditions identified in the amended site plans which were filed as Exhibits 13(a) to (e) and 14(a) to (e) to this hearing.

Further, the Board orders that the appeals launched by The Murray Group Limited to this Board under subsection 34(11) of the *Planning Act* from Council's refusal or neglect to enact a proposed amendment to Zoning By-law 96-07 of the Township of Centre Wellington to rezone lands from Agricultural and Agricultural Exception to Extractive Industrial Exception to permit aggregate extraction operations referred to as the Devin Pit and the Cole Pit are allowed and By-law 96-07 is hereby amended in the manner set out in Exhibits 15 and 16 filed with this Board and attached to this Order as Attachments 1 and 2, respectively. The Board authorizes the municipal clerk to assign numbers to these by-laws for record keeping purposes.

This is the Order of the Board.

"J. Zuidema"

J. ZUIDEMA  
VICE CHAIR

## ATTACHMENT "1"

A by-law to amend By-law No. 96-07, the Zoning By-law of the former Township of Pilkington, to change the zoning of lands from "A1" to "EI-66", and from "A1-52" to "EI-67" in order to permit an aggregate extraction operation.

WHEREAS the Ontario Municipal Board deems it desirable to amend former Township of Pilkington By-law No. 96-07, as amended, pursuant to Section 34 of the Planning Act, R.S.O. 1990;

### NOW THEREFORE THE ONTARIO MUNICIPAL BOARD HEREBY ENACTS AS FOLLOWS:

1. Schedule "A" and Schedule "A" Map No. 4 to By-law No. 96-07 as amended is hereby further amended in accordance with the attached Schedule "A" which forms part of this by-law.
2. Section 17 Exception Zones of Township of Pilkington Zoning By-law No. 96-07, as amended, is hereby further amended by adding the following new Exceptions No. 66 and 67:

***EI-66 & EI-67*** *Notwithstanding anything else in this by-law to the contrary, In an EI-66 and an EI-67 Zone, the following provisions shall apply:*

#### Permitted Uses

1. Any use permitted by the A1 zone, except a single detached dwelling.
2. Any use permitted by the EI zone, except an aggregate transfer station and a licensed extractive quarry
3. Notwithstanding the foregoing, extraction of mineral aggregate resources shall not occur below any point which is 1.5 metres above the established (seasonally high) groundwater table.
4. The reprocessing of asphalt and concrete is permitted as an ancillary use to a licensed extractive pit while the site remains licensed.

#### Setbacks

*The provisions of Section 14.3 do not apply.*

#### Special Provisions Applying to the EI-67 Zone

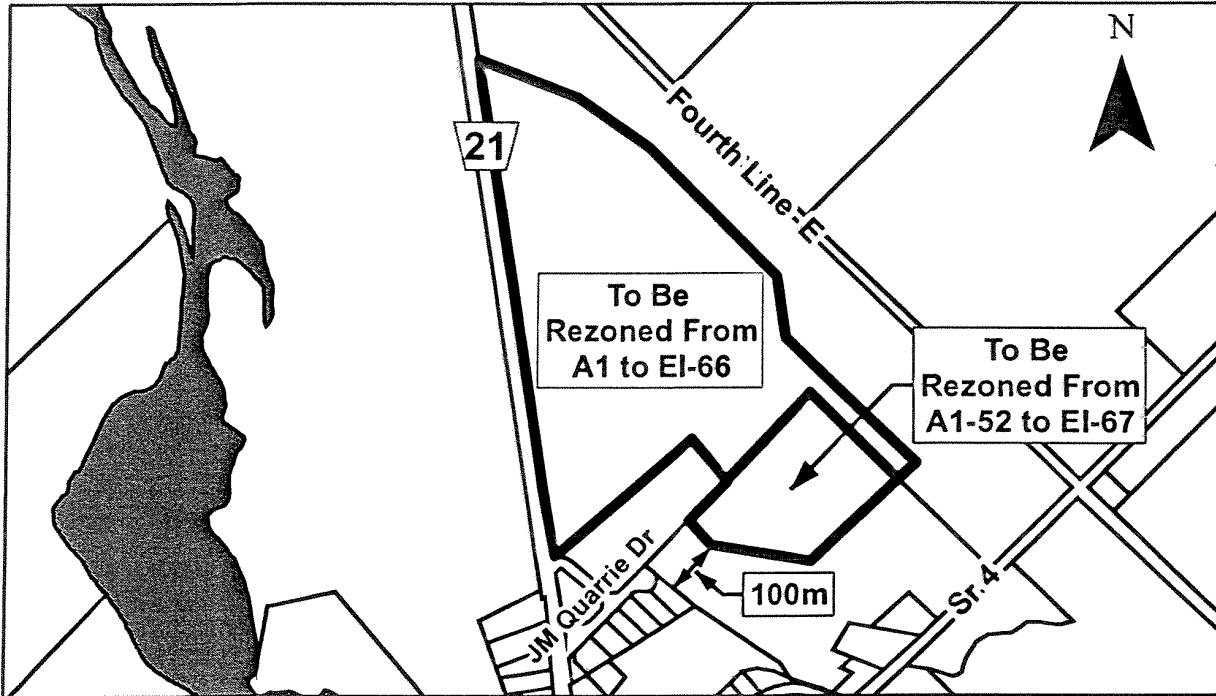
- i. *Notwithstanding the Permitted Uses set out in Item 2. above, within the area zoned EI-67 there shall be no processing of aggregate including crushing, screening or washing, and no loading or stockpiling of processed aggregate.*
- ii. *The use described in Item 4. is not permitted.*



3. All other applicable provisions of By-law No. 96-07 shall continue to apply to the land affected by this amendment.
4. This by-law shall come into effect on the date of final enactment pursuant to Section 34 of the Planning Act, R.S.O., 1990.

# SCHEDULE "A"

An Amendment to Township of Pilkington Zoning By-law  
No. 96-07 as amended



THIS IS SCHEDULE "A" TO AN AMENDMENT TO  
TOWNSHIP OF PILKINGTON BY-LAW NO. 96-07  
APPROVED BY ORDER OF THE ONTARIO MUNICIPAL  
BOARD

ATTACHMENT "2"

A by-law to amend By-law No. 96-07, the Zoning By-law of the former Township of Pilkington, to change the zoning of lands from "A1" to "EI-65".

WHEREAS the Ontario Municipal Board deems it desirable to amend former Township of Pilkington By-law No. 96-07, as amended, pursuant to Section 34 of the Planning Act, R.S.O. 1990;

NOW THEREFORE THE ONTARIO MUNICIPAL BOARD HEREBY ENACTS AS FOLLOWS:

1. Schedule "A" to By-law No. 96-07 as amended is hereby further amended in accordance with the attached Schedule "A" which forms part of this by-law.
2. Section 17 Exception Zones of Township of Pilkington Zoning By-law No. 96-07, as amended, is hereby further amended by adding the following new Exception No. 65:

*EI-65 Notwithstanding anything else in this by-law to the contrary, In an EI-65 Zone, the following provisions shall apply:*

Permitted Uses

1. Any use permitted by the A1 zone, except a single detached dwelling unit.
2. Any use permitted by the EI zone, except an aggregate transfer station and a licensed extractive quarry
3. Notwithstanding Item 1., a single detached dwelling existing on the date this by-law comes into effect.
4. Notwithstanding the foregoing, extraction of mineral aggregate resources shall not occur below any point which is 1.5 metres above the established (seasonally high) groundwater table.
5. The reprocessing of asphalt and concrete is permitted as an ancillary use to a licensed extractive pit while the site remains licensed.

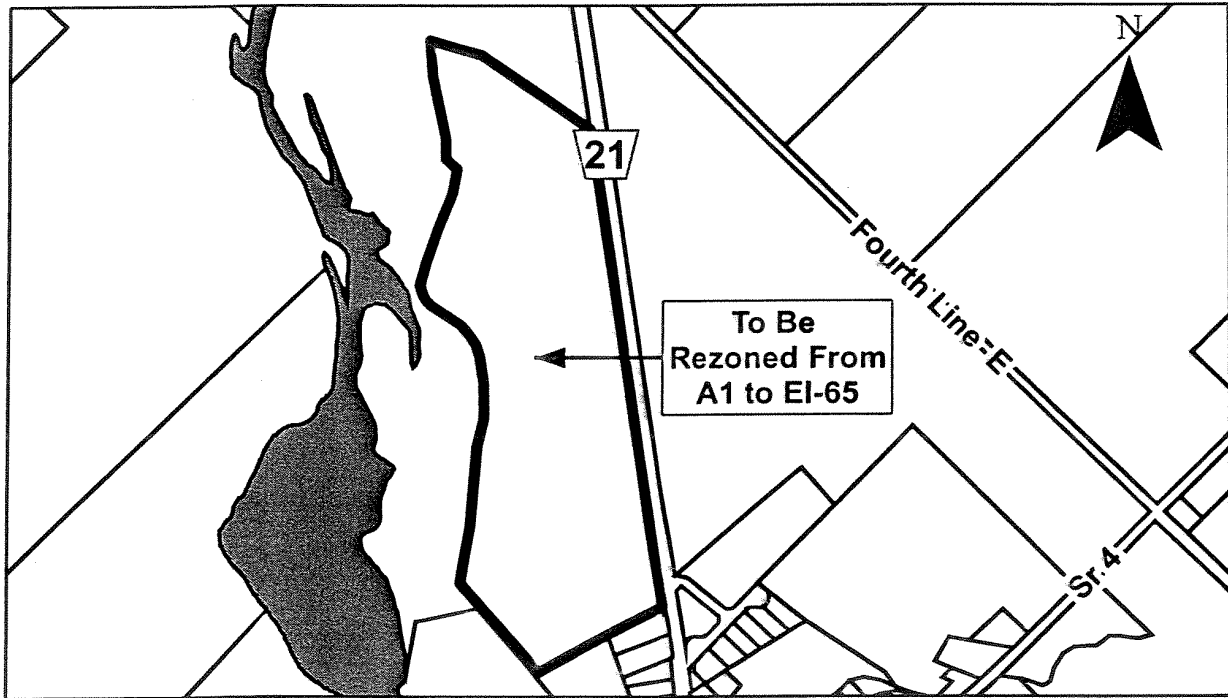
Setbacks

Section 14.3 does not apply, except:

- a) No excavation is permitted within 60 metres of the limits of an abutting separate lot that is zoned R1.
3. All other applicable provisions of By-law No. 96-07 shall continue to apply to the land affected by this amendment.
4. This by-law shall come into effect on the date of final enactment pursuant to Section 34 of the Planning Act, R.S.O., 1990.

# SCHEDULE "A"

An Amendment to Township of Pilkington Zoning By-law  
No. 96-07 as amended



THIS IS SCHEDULE "A" TO AN AMENDMENT TO  
TOWNSHIP OF PILKINGTON BY-LAW NO. 96-07  
APPROVED BY ORDER OF THE ONTARIO MUNICIPAL  
BOARD