

Ontario Municipal Board
Commission des affaires municipales
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ISSUE DATE: July 28, 2014

TOWNSHIP OF RAMARA

CASE NO(S): PL130873

NRK Holdings Inc. has appealed to the Ontario Municipal Board under subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's refusal to enact a proposed amendment to the Official Plan for the Township of Ramara to redesignate land legally described as Part of Lots 3 & 4, Concession C, Township of Ramara from Rural to Mineral Aggregate Extraction to permit the establishment of an aggregate operation and to provide a special policy to permit a soil remediation facility within part of the completed aggregate operation following extraction
(Approval Authority File No.OP-2/12)
OMB File No. PL130873

NRK Holdings Inc. 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 to enact a proposed amendment to Zoning By-law 2005.85 of the Township of Ramara to rezone lands legally described as Part of Lots 3 & 4, Concession C, Township of Ramara from Rural (RU) to Waste processing and Disposal Exception Number One – Holding (W1-(H)) to permit a soil remediation facility
OMB File No. PL130874

Heard:

July 16, 2014 in Brechin, Ontario

APPEARANCES:

Parties

Township of Ramara

NRK Holdings Inc.

Counsel

Edward Veldboom

Ronald K. Webb

**MEMORANDUM OF ORAL DECISION DELIVERED BY C. HEFFERON ON
JULY 16, 2014 AND ORDER OF THE BOARD**

BACKGROUND

[1] NRK Holdings Inc. ("NRK") owns a 20 hectare ("ha") property near County Road No. 169 in Ramara Township. The subject property is shown on a concept map entered into evidence as Exhibit 7.

[2] It sits on a large identified deposit of very high quality limestone. NRK received approval from the Township of Ramara ("Township") and the County of Simcoe ("County") to mine the limestone and to deliver it via an identified haul route along County Road No. 169.

[3] After mining out the first phase of the quarry, NRK proposes to construct a soil bioremediation facility in the 4.5 ha area of the quarry that will be mined out first. For efficiency and to minimize potential adverse impact, it is proposed that soils being hauled to and from the facility for bioremediation would use the same haul route as the trucks hauling limestone.

[4] NRK's applications to amend the Township of Ramara Official Plan ("OP") and to amend the Township of Ramara Zoning By-law No. 2005.85 ("By-law") to allow development of the proposed soil bioremediation facility were refused by the Council of the Township.

MATTER BEFORE THE BOARD

[5] NRK has applied for an amendment to the OP to re-designate a 4.5 ha area of the subject property from Mineral Aggregate Extraction to Rural Special Policy Area 9.4, 10.4 as depicted on Schedule A to Official Plan Amendment No. 16.

[6] NRK has also applied for an amendment to the By-law rezoning that 4.5 ha portion of the site (Schedule A, Map 7 of the By-law) from "Materials Aggregate Extraction No. 11" ("MAE-11") to a dual "MAE-11" and "Waste Processing and Disposal (W) Zone – 1" as shown on Schedule A to the amendment to the By-law.

PARTICIPANTS' POSITION

[7] The Board recognized the following members of the community as participants:

Joe Callaghan

Mary Holdershaw

Jennifer Fisher

Vana Schindler

Mike Harrington

Maurice McMillan

Melany Milligan

Donald McDonald

[8] The proposed soil bioremediation facility was also vigorously opposed by a number of residents of the area. The community voiced considerable concern about the transport of hazardous waste along the haul route past their homes and farms as well as toxic air and polluted water emissions from the proposed soil bioremediation facility.

[9] Some members of the community proposed that the appropriate location for such a facility would be the Ramara Industrial Park since it is south of the built up part of Brechin and trucks would not have to carry hazardous material from the GTA through town to the proposed soil bioremediation site and there would be less possibility of toxic emissions polluting important farmland and the clean water of the reportedly pristine Black River.

NRK'S POSITION

[10] NRK advised that the requested amendments to the OP and the By-law are the first phase of a multi-phase process under the *Environmental Assessment Act*. Licensing details for the soil bioremediation facility and its operation remain to be worked out between itself and the Provincial regulators. However, NRK contended that no hazardous materials (except hydrocarbons in soil) will be transported to or

processed at the site. NRK maintained that soil bioremediation is a natural microbial-based process open to the air. It is odourless and does not use external heat.

EVIDENCE AND FINDINGS

[11] At the commencement of the hearing, the parties informed the Board that a Settlement Agreement had been signed. The Minutes of Settlement ("Minutes") were entered into the evidence as Exhibit 1.

[12] The Board qualified Heather Sadler, a registered professional planner retained by NRK, to provide expert opinion evidence on land use planning.

[13] Ms. Sadler explained that in arriving at her land use planning opinion, she had reviewed the technical reports prepared for the application and confirmed that no hazardous materials will be transported to or from the site (except hydrocarbons in soil) and that there will be no hazardous air emissions or water leakage outside the contained "bathtub" of the excavated phase of the quarry.

[14] In response to questions from several members of the community, Ms. Sadler confirmed that as the quarry would produce dimension stone only (no aggregate) there would be very little, if any blasting. Industry practice is to minimize the use of blasting; any blasting that might occasionally take place would have to be of very low force so as not to damage the stone.

[15] She concluded from the technical reports that the quarry floor would be undamaged by cracks caused by the blasting and would therefore be impervious to any water used in the bioremediation process. As an extra precaution, she testified, NRK intended to lay a thick, impervious plastic cover over the floor of the part of the quarry to be used for the bioremediation facility. She could not provide any details on either the poly material to be used or its proposed thickness but explained that those details would be confirmed at the licensing stage.

[16] The Board accepts Ms. Sandler's un-contradicted evidence and finds that sufficient technical information is available to her to allow her to form an informed land use planning opinion. On the evidence, the Board finds that the proposed use does not now and will not in the future constitute an environmental hazard.

[17] Ms. Sandler then addressed a question raised by Donald McDonald, one of the participants, respecting re-locating the proposed soil bioremediation facility to the Ramara Industrial Park. She testified that the Industrial Park could not possibly provide the protection to the community and to the environment that the excavated portion of the limestone quarry basin can. The Board agrees.

[18] Ms. Sandler advised that OP policy requires an amendment to the OP and an amendment to the By-law to allow the proposed use. She explained that these instruments must be consistent with Provincial policy and conform to applicable County of Simcoe policy.

[19] The Board accepts Ms. Sandler's un-contradicted testimony and finds that the proposal is consistent with Provincial policy respecting the efficient management of waste materials so maximum protection to the natural environment is provided.

[20] The Board also accepts Ms. Sandler's un-contradicted testimony and finds that the NKR proposal is consistent with the County policy as set down in the County of Simcoe Official Plan respecting the efficient and environment-friendly management of waste materials.

CONCLUSION

[21] On the un-contradicted land use planning evidence of Ms. Sandler, the Board finds that the requested amendments represent good planning and have adequate regard to the Provincial interest as set down in s. 2.0 of the *Planning Act*.

[22] Accordingly, the Board accepted the Minutes.

ORDER

[23] The Board orders the appeal is allowed and that the OP is amended substantially in accordance with Exhibit 1, Schedule A which is appended as Attachment 1.

[24] The Board further orders that the By-law is amended substantially in accordance with Exhibit 1, Schedule B which is appended as Attachment 2.

"C. Hefferon"

C. HEFFERON
MEMBER

Ontario Municipal Board

A constituent tribunal of Environment and Land Tribunals Ontario

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ATTACHMENT1

PART B - THE AMENDMENT

All of the amendment entitled Part B - THE AMENDMENT consisting of the attached text and the schedule constitute Amendment No. 16 to the Official Plan of the Township of Ramara.

1. Schedule "A" entitled "Land Use Plan" is hereby amended by changing part of the existing Mineral Aggregate Extraction designation to Rural Special Policy Area 9.4.10.4. as depicted on Schedule "A" to this Amendment No. 16.
2. Section 9.4 RURAL of the Official Plan of the Township of Ramara is hereby amended by adding the following new section 9.4.10.4:

NRK Holdings Inc., Part of Lot 4, Concession C (Rama), (OPA No. 16)

Notwithstanding sections 6.4.2, 6.4.6 and 9.4.2 of this Plan, the only permitted uses of the lands shall be

- i. a "soil bio-remediation facility" and
- ii. any uses permitted by the MAE-11 Zone provided such uses are conducted in accordance with the provisions of such zone and a license issued pursuant to the Aggregate Resources Act.

For the purposes of this Special Policy 9.4.10.4, a:

"soil bio-remediation facility" shall mean the use of land, which may include buildings and/or structures, for the purpose of the collection, recycling, temporary storage, separation, processing and biological treatment of non-hazardous soils contaminated with petroleum hydro-carbons including works for the collection and treatment of on-site stormwater run-off and for which an Environmental Compliance Approval authorizing the use and operation of a Waste Disposal Site (soil transfer and processing) has been issued under Part V of the *Environmental Protection Act*.

The Zoning By-law amendment required to permit the *"soil bio-remediation facility"* shall be subject to holding provisions which preclude the lifting of the holding symbol until all of the foregoing have been satisfied:

- a. the quarry license applicable to the lands upon which the *"soil bio-remediation facility"* will be located has been surrendered by the owner or operator of the quarry pursuant to section 19 of the *Aggregate Resources Act*; and
- b. the owner of the lands upon which the *"soil bio-remediation facility"* will be located has entered into an agreement with the Township of Ramara

concerning the use, improvement and maintenance of Concession Road B-C and any financial requirements of the Township related thereto; and

- c. the owner has received site plan approval and entered into a site plan agreement addressing among other things, the management of storm water and site grading.
 - d. the Environmental Compliance Approval for a Waste Disposal Site (soil transfer and processing) has been issued under Part V of the *Environmental Protection Act*.
3. The zoning for the lands affected by this Rural Special Policy Area 9.4.10.4 shall be subject to the condition that upon the lifting of the "H" symbol in relation to the W-1 Zone, the MAE-11 Zone that also applies to the lands affected by this Rural Special Policy Area 9.4.10.4 shall be deemed to be repealed and of no further force and effect.
4. The Provisions of the Official Plan of the Township of Ramara as amended, shall apply in regard to the interpretation of the this Amendment.

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ATTACHMENT 2

1. That Schedule "A", Map F7, of Zoning Bylaw 2005.85 is hereby further amended by re-zoning the lands from "MAE-11" to a dual "MAE-11 Zone" and "Waste Processing and Disposal (W) Zone-1" as shown in the Schedule "A" to this by-law.
2. That section 20. (3) Special Provisions is amended by adding the following subsection:
 - a. "W-1-(H) (Map F7)
 - i. Notwithstanding subsection 20(1), the only permitted use of lands zoned W-1-(H) shall be a *soil bio-remediation facility* as defined herein. The land subject to the W-1-(H) is also subject to the MAE-11 Zone. All uses existing as on the date of the passing of this Bylaw and all uses permitted by the MAE-11 Zone shall be permitted in accordance with that zoning until such time as the "H" symbol has been lifted. Upon the lifting of the "H" symbol as provided for herein:
 1. the only permitted use shall be a *soil bio-remediation facility*; and
 2. the MAE-11 Zone shall be deemed to be repealed and of no further force and effect as it relates to lands subject the Rural Special Policy Area Designation 9.4.10.4.
 - ii. For purposes of subsection (1) of this Bylaw "*soil bio-remediation facility*" shall mean the use of land, which may include buildings and/or structures, for the purpose of the collection, recycling, temporary storage, separation, processing and biological treatment of non-hazardous soils contaminated with petroleum hydro-carbons including works for the collection and treatment of on-site stormwater run-off and for which an Environmental Compliance Approval authorizing the use and operation of a Waste Disposal Site (soil transfer and processing) has been issued under Part V of the *Environmental Protection Act*.
 - iii. The Holding symbol shall be removed by amendment to this Bylaw when the following conditions have been fulfilled to the satisfaction of the Township of Ramara:
 1. the quarry license applicable to the lands subject this zone has been surrendered by the owner or operator of the quarry pursuant to section 19 of the *Aggregate Resources Act*; and
 2. the owner of the lands subject to this zone has entered into an agreement with the Township of Ramara concerning the use, improvement and maintenance of Concession Road B-C and any financial requirements of the Township related thereto; and

3. received site plan approval and entered into a site plan agreement addressing among other things, the management of stormwater and site grading.

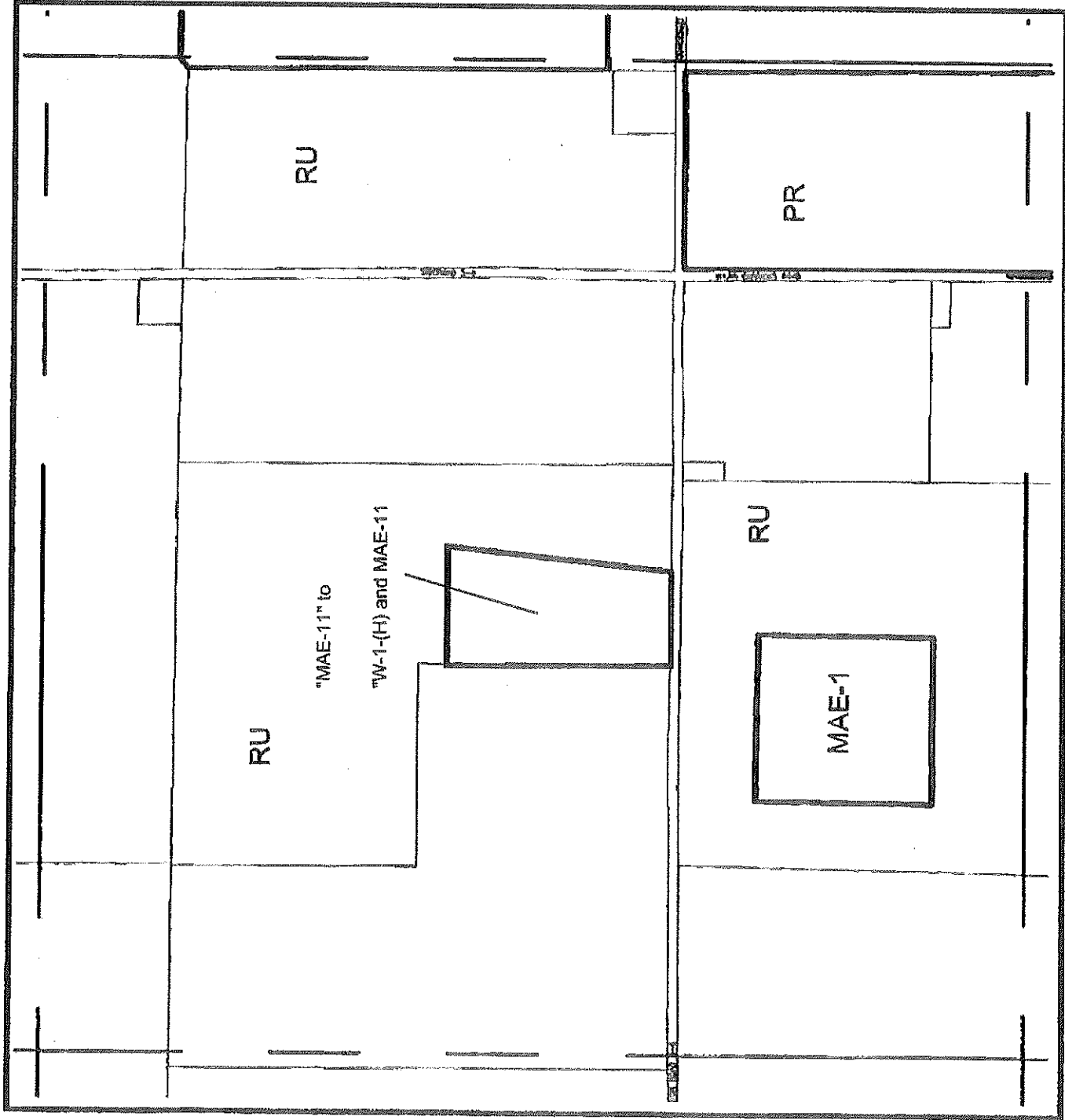
4. the Environmental Compliance Approval for a Waste Disposal Site (soil transfer and processing) has been issued under Part V of the Environmental Protection Act.

- iv. Subsection 20.(2) (f) of this Bylaw shall not apply to the operation of a soil bio-remediation facility provided that any Environmental Compliance Approval issued under the Environmental Protection Act establishes conditions for the establishment or expansion of sensitive land uses in the vicinity of the facility.

All other relevant provisions of this Bylaw shall apply."

3. That Schedule "A" attached, does and shall form part of this Bylaw.
4. That this Bylaw shall come into force and take effect on the date of the passing thereto, subject to the provisions of section 34 of the Planning Act, as amended.

BYLAW READ A FIRST, SECOND AND THIRD TIME AND PASSED THIS
DAY OF , 2014.



TOWNSHIP OF RAMARA
SCHEDULE "A"
TO BY-LAW 2005.85
Map F7

ZONES

- NAP Natural Area Protection
- AG Agriculture
- RU Rural
- ROR Rural and Countryside Residential
- VR Village Residential
- VC Village Commercial
- VID Village Industrial
- VIN Village Institutional
- H Hamlet
- SR Shoreline Residential
- IND Industrial
- DC Destination Commercial
- HC Highway Commercial
- MAE Mineral Aggregate Extraction
- W Waste Processing and Disposal
- AR Active Recreation
- PR Passive Recreation

IR Indian Reservation

— Municipal Boundary

• • • Wellhead Protection Area

Revision Date:

Scale: 1:12000

Mark L. Derynka, Planner

Ontario Municipal Board
Commission des affaires municipales
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ISSUE DATE: August 15, 2014 **TOWNSHIP OF RAMARA** **CASE NO(S):** PL130873

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APPEARANCES:

Parties

Township of Ramara

NRK Holdings Inc.

Counsel

Edward Veldboom

Ronald K. Webb

AMENDING DECISION OF THE BOARD DELIVERED BY C. HEFFERON

[1] In accordance with Rule 108 of the Board's *Rules of Practice and Procedure*, whereby the Board may at any time and without prior notice to the parties correct a technical or typographical error made in a decision or order, the Decision and Order issued on July 28, 2014, is hereby amended by correcting the legislation referenced in

the first sentence of paragraph 10 from the *Environmental Assessment Act* to the *Environmental Protection Act*.

[10] In all other respects, the Board's Decision and Order remains the same.

"C. Hefferon"

C. HEFFERON
MEMBER

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