

ISSUE DATE:

Nov. 19, 2010



PL091124

Ontario
Ontario Municipal Board
Commission des affaires municipales de l'Ontario

At the request of Linda and Brad Crigger, 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 B licence for the removal of aggregate from lands being composed of 180 Fieldside Road, in the Town of South Bruce Peninsula
OMB File No. M100014

Cathy and Syd Wilkie, and Heather and Meghan Wilkie (jointly) have 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 County of Bruce to approve Proposed Amendment No. 125 to the Official Plan for the County of Bruce
OMB File No. PL091124

Linda and Brad Crigger have 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 or neglect to enact a proposed amendment to the Official Plan for the Town of South Bruce Peninsula to redesignate land at 180 Fieldside Road from Agriculture, Rural Environmental-Hazards Lands Area and Potential Extractive to Agriculture, Rural, Environmental-Hazards Lands Area, Potential Extractive and Industrial Extractive to permit a Class B aggregate operation
Approval Authority File No. SBP OPA 23
OMB File No. PL100264

Linda and Brad Crigger have 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 122-2009 of the Town of South Bruce Peninsula to rezone lands respecting 180 Fieldside Road from RU1 and EH to RU1, EH and M2 to permit a Class B aggregate operation
OMB File No. PL100265

APPEARANCES:

Parties

Syd, Cathy and Heather Wilkie

Brad Crigger

Ministry of Natural Resources (Owen Sound
Area Office)

Counsel*Agent

M. Wilkie

E. Treslan* and R. Davidson

D. Munro

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

Through the Board's Pre-Hearing Conference process, a hearing on the merits of this referral and appeals was scheduled. Shortly prior to the hearing dates, the Board was advised that the Appellants Cathy, Syd, Heather and Meghan Wilkie had withdrawn their appeal and wished to remain in the proceedings as Participants. As such, a Telephone Conference Call ("TCC") hearing was arranged for the same time and date. Included in this TCC were:

- Mr. E. Treslan, counsel representing Brad and Linda Crigger
- Ron Davidson, Planner for the Criggers
- Brad Crigger, Appellant and Requester of Referral concerning the Aggregate Licence
- Dave Munro, Aggregate Technical Specialist for the Ministry of Natural Resources (Owen Sound Area Office)
- Meghan Wilkie, Spokesperson for the Wilkies
- Cathy and Syd Wilkie

The Criggers have requested the Minister of Natural Resources refer to this Board under ss. 11(5) of the *Aggregate Resources Act*, an application for a Class B licence for the removal of aggregate from lands at 180 Fieldside Road in the Town of South Bruce Peninsula ("the subject property"). The Criggers own this property and would like to commence aggregate operations on a portion of their property. A concern, which had been raised by the Wilkies, was the haul route. To address that concern along with other relevant planning and technical issues, the Criggers filed supporting material in advance of the TCC. The Board sworn Affidavits from Ron Davidson, a Land Use Planner, Kevin Bentley, an Engineer with particular expertise in transportation and employed by the Ministry of Transportation, and Brad McRoberts, currently the Manager of Special Capital Projects for the City of Owen Sound but at the time the applications were made, he was the Manager of Public Works at the Town of South Bruce ("the Town"). The evidence contained in the Affidavits supported the position of the Criggers and addressed the planning and transportation issues. Mr. Davidson's evidence indicated that the referral was filed because of the appeals, which had been launched. The evidence

containing the three Affidavits was not challenged and as such, was accepted by the Board as a basis for its decisions.

While Ms Wilkie expressed her and her family's concerns with the proposed aggregate operation, she did not proffer any expert evidence to challenge the statements contained in the Affidavits. She did express her own views as a layperson; however, those views are not sufficient to outweigh the opinion evidence of three experts. As such, the Board allows the appeals of Brad and Linda Crigger, will direct the Minister to issue a license pursuant to the referral, and due to the withdrawal of the Wilkies' joint appeal, will dismiss that appeal. The Board bases and relies upon the unrefuted expert evidence filed by Mr. Treslan on behalf of the Criggers.

Orders and Direction:

THEREFORE THE BOARD DIRECTS the Minister to issue the license.

FURTHER THE BOARD ORDERS that the Crigger appeal against By-Law 122-2009 of the Town of South Bruce Peninsula is allowed in part, and By-Law 122-2009 is amended as set out in Attachment 1 to this Order. The Town of South Bruce Peninsula shall assign a by-law number to this amendment. In all other respects, the Board Orders the appeal is dismissed;

AND FURTHER THE BOARD ORDERS that the Crigger appeal is allowed, and the Official Plan for the Town of South Bruce Peninsula is amended as set out in Attachment 2 to this Order (Amendment #23), and as amended is approved;

AND FURTHER THE BOARD ORDERS that the Wilkie joint appeal is dismissed and Amendment No. 125 to the Official Plan for the Town of South Bruce Peninsula is hereby approved.

These are the Board's Orders and Direction.

"J. V. Zuidema"

J. V. ZUIDEMA
VICE-CHAIR

ATTACHMENT 1

THE CORPORATION OF THE TOWN OF SOUTH BRUCE PENINSULA

BY-LAW NO. xx-2010

A By-Law To Amend Town of South Bruce Peninsula
Comprehensive Zoning By-Law 122-2009, As Amended,
Being The Zoning By-Law For The Town Of South Bruce
Peninsula

THE COUNCIL OF THE TOWN OF SOUTH BRUCE PENINSULA, PURSUANT TO
SECTION 34, 36 & 41 OF THE PLANNING ACT, R.S.O. 1990 ENACTS AS
FOLLOWS:

- 1) That Schedule 'A' to the Town of South Bruce Peninsula Comprehensive Zoning By-Law 122-2009 as amended, is hereby further amended by changing therein the zoning designation of 180 Fieldside Rd, Concession 1 Part Lot 4 and 5 (Amabel), Town of South Bruce Peninsula from "RU1 General Rural" and "EH Environmental Hazard" to "M2 Extractive Industrial" and "RU1 General Rural" and "EH Environmental Hazard" as shown on the Schedule 'A' attached hereto.
- 2) And that this By-law shall come into force and effect on the final passing thereof by the Council of the Town of South Bruce Peninsula, and to compliance with the provisions of the Planning Act, R.S.O. 1990, as amended.

READ a FIRST and SECOND time this _____ day of _____, 2010.

_____ MAYOR

_____ CLERK

READ a THIRD time and FINALLY PASSED this _____ day of _____, 2010.

_____ MAYOR

_____ CLERK



ATTACHMENT 2

THE CORPORATION OF THE TOWN OF SOUTH BRUCE PENINSULA

BY-LAW NUMBER xx-2010

**A By-Law To Adopt Official Plan Amendment No. 23 To
The Town Of South Bruce Peninsula Official Plan**

**THE COUNCIL OF THE TOWN OF SOUTH BRUCE PENINSULA PURSUANT TO
SECTION 17 OF THE PLANNING ACT, R.S.O. 1990 ENACTS AS FOLLOWS:**

- 1) That Amendment No. 23 to the Town of South Bruce Peninsula Official Plan, a copy of which is attached to and forms part of this By-law, is hereby adopted.
- 2) That the Clerk is hereby authorized to forward the amendment to the County of Bruce for approval as provided for under section 17 of the Planning Act, R.S.O. 1990.

READ a FIRST and SECOND time this day of March, 2010.

_____ **MAYOR**

_____ **CLERK**

READ a THIRD time and FINALLY PASSED this day of March, 2010.

_____ **MAYOR**

_____ **CLERK**

Details of the Amendment

The Town of South Bruce Peninsula Official Plan is hereby amended as follows:

- 1) *"Schedule 'A': Land Use" to the Town of South Bruce Peninsula is hereby amended by changing the designation of 180 Fieldside Rd, Concession 1 Part Lot 4 and 5 (Amabel), Town of South Bruce Peninsula from 'Agriculture', 'Rural', 'Environmental – Hazards Lands Area', and 'Potential Extractive' to 'Agriculture', 'Rural', 'Environmental – Hazards Lands Area', 'Potential Extractive' and 'Industrial Extractive'.*