

Further Background to this Situation (Joe Doyle 11 Nov 05)

On November 3rd 2005, there was an unexpected adjournment of a scheduled three week public hearing by the Ontario Municipal Board (OMB Case #Z050019 and #M050016) into an appeal to allow establishment and on-going operation of a new rock on rural property near Pen Lake and neighbouring residences. The site (#2480 Highway 60, or Pt. Lot 18, Con 14, Franklin) was acquired by a company (#1497039 Ontario Ltd. aka Kris House) in November 2001.

This temporary postponement resulted from a shared recognition (among all interests present) that there was no basis in law for a conclusive decision. That is, the OMB determined that it lacked jurisdiction (or authority to interpret and apply the law) in one major and crucial aspect of this case.

In simple terms, as I understand it, the appeal had two aspects: one relating to the necessary re-zoning, and a second relating to the mandatory site plan agreement. The jurisdictional issue affects only the re-zoning aspect. Briefly, to outline what apparently produced this extremely unusual situation:

On November 4th, 2003 The Township of Lake of Bays (through elected Council, supported by its planning staff recommendation, and under the authority of the Municipal Act and the Planning Act, as well as local By-Laws and Official Plans) voted unanimously to deny the applicants proposal for re-zoning of this property and its related site plan proposal (which would be the control mechanism for any quarry operation). This was the first proposal for a new quarry within the Township of Lake of Bays under its new Official Plan and its Comprehensive Zoning By-Law (which dated from 1986, and included provisions dealing with "Pits and Quarries"). Unlike much of the province, District of Muskoka generally, and Lake of Bays Township in particular, are not governed by provisions of the Ontario Aggregate Resources Act.

At the time of this quarry decision by the Township, its Comprehensive Zoning By-Law had been under extensive draft revision and review for several years at least, but was not yet enacted. So, this proposal for re-zoning (filed in April 2003, and its subsequent rejection in November 2003) was based on the Zoning By-Laws in place since 1986.

More than a year after this quarry rejection by Council, in December of 2004 the provisions of the new Comprehensive Zoning By-Law (2004-181) were adopted by the Township, replacing the previous

1986 document. However, a number of contentious provisions in the new Zoning By-Law were immediately appealed to the OMB, and those issues were not resolved until August 2005.

I am uncertain what those provisions under appeal were, or by whom. Also, it is unclear (to me at least) what the status of this new Zoning By-Law was during the lengthy period of this appeal process (which I understand lasted well beyond a year and a half).

During this critical period, in February 2005 (some 16 months after Council's strong rejection) the applicant filed his appeal of the Township's quarry decision to the OMB.

The OMB is the appropriate body (administrative tribunal with final authority for review of such matters in Ontario under the Ontario Municipal Board Act). The appeal as filed correctly cited the decision of Council and the applicable 1986 Zoning By-Law.

At that time, however, the appeal(s) relating to enactment of the new 2004 Zoning By-Law were en route to the OMB as well. These were finally decided in August 2005 (prior to the October 31st 2005 start of hearings into quarry appeal, but after the June 2005 Pre-Hearing). As a result of the August OMB hearings, all provisions of the new Zoning By-Law took effect immediately and retro-actively to December 2004. This in itself, as I understand it, is highly unusual since no phasing or transition period was provided. The result was in effect to wipe out the former 1986 Zoning By-law. In effect, this meant the quarry appeal in February 2005 (of Council's 2003 decision) had no legal basis in regard to re-zoning, and therefore there was no jurisdictional support for the OMB hearing into this critical aspect. Imperfect as it may be, that is my understanding of the mechanism behind the situation we now find ourselves.

The result is that the whole process must begin anew. The quarry applicant is expected to prepare a completely new re-zoning application for a quarry under the terms of the new Comprehensive Zoning By-Law. Once submitted, it is expected that this will go to Council for a decision and if rejected, it is expected the quarry proponent will immediately appeal to the OMB and a hearing to determine this and the related issues will again be scheduled. Several months (at least) will likely pass before such hearings resume. Meanwhile, the OMB and the Chairperson conducting this appeal remains "seized" of the matter, and all evidence presented to date remains part of the record. That is my understanding of the situation at the moment.