

Councillor discusses gravel pits

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By ELEANOR TODD
Riddle: When is a gravel pit like an apple?
Answer: When a judge of the Supreme Court of Ontario says so, that's when!
Well, maybe the judge didn't put it in quite those words, but I'd like to try to explain what has been happening with respect to the gravel

industry in Uxbridge Township in the last few years, and when I've finished, perhaps you'll agree that apples and gravel pits have something in common after all.
Way back in the dark ages when I first moved into the area, gravel pits weren't considered to be much of a problem. In fact, if a neighbor was lucky enough to sell his white elephant of a farm for gravel, the rest of us were naturally a bit envious over the good price he got, but generally we were pleased and happy for him in his good fortune, and wondered if anyone else we knew would be so lucky.

But we weren't prepared for the fantastic expansion of the Metropolitan Toronto Area and its hitherto undreamed of demands for sand and gravel, or for our own urban-oriented population increase, and by the time Uxbridge Township residents realized that aggregate extraction was creating more problems than the few job opportunities it produced, the collective gravel producer foot was firmly wedged in Uxbridge Township's door. (Gravel producers today own approximately 5,000 Acres, which is close to one tenth of the former Uxbridge Township, and

last year were licensed to extract up to 10,780,000 tons of aggregate.)
Municipal Controls Through the Planning Act, the provincial government has empowered local municipalities to create planning policies by means of official plans, and to implement these policies with zoning designations established in accompanying land use or restricted area by-laws, so previous councils Uxbridge Township attempted to control the expansion of the gravel industry, and to minimize the problems it was creating, through zoning, Restricted Area By-Law 1517 was prepared in 1968, and an amending By-Law 1613 was prepared in 1972. (There have been subsequent amendments as well.)

By-Law 1613 was an attempt to catch up with the ever-expanding gravel industry. M3 areas (quarry industrial zone) were enlarged, and surrounding areas were zoned HM3 (holding zones

for gravel extraction). Agricultural areas known to be owned by gravel interests were zoned A3 to let prospective neighbors know that a gravel pit was a possibility of the future.

Also, through the Municipal Act, the provincial government has empowered local municipalities to regulate the carrying on and operations of pits and quarries, including setback requirements, safety regulations, and rehabilitative procedures, so in 1971, Uxbridge Township Council prepared and passed Regulatory By-Law 1590, and laid charges in 1972 against three of the gravel companies for contravention of various sections of both the Restricted Area By-Law and the Regulatory By-Law. Application for an injunction was prepared against Timber Brothers Sand and Gravel Ltd., and the other summary conviction charges were adjourned pending the results of the Timber Brothers case.

Resistance Needless to say, the gravel pit operators did not care to be hemmed in by such legislation, and they fought back in two ways. They defended the Timber Brothers Sand and Gravel Co. all the way to the Supreme Court of Canada. It took from 1972 to 1975, and while our by-laws were in contention, they were rendered quite ineffectual with respect to the gravel problem.

The gravel operators also lodged objections to the restricted area by-laws with the Ontario Municipal Board. At the O.M.B. Hearing held in Goodwood on Dec. 10, 1973, Uxbridge Township was given only temporary approval of the restricted area by-laws, and was instructed to go back and re-draw the various land use zones (particularly with respect to gravel) and to eliminate the A3 zoning category.

Since then Council has found it necessary to request several extensions to that temporary approval because, with the creation of Durham Region, and the amalgamation of Uxbridge Township with two other municipalities, Scott Township and the Town of Uxbridge in 1974, so many other problems were created that full attention could not be given to the land use map. The latest extension expires June 30 this year and we must have a new zoning map prepared.

Pits and Quarries Act Meanwhile, as if the poor beleaguered township wasn't already crippled under the weight of sufficient problems, in August of 1973 we came under the "protection" of the provincial Pits and Quarries Control Act. This should have been an advantage at a time when our own efforts at controlling pits and quarries were in contention in a court of law, but under the Act the pit operators were given licences to mine to the limits of their properties, even in the face of comments submitted by this township to the effect that only one of the 38 or 40 applications for licences (if my memory serves me correctly) completely conformed to our local zoning restrictions.

Some have thought that Uxbridge Township should have requested a formal hearing before the Ontario Municipal Board under Section 5 of the Pits and Quarries Control Act, but this section applies to new pits and quarries, and ours, with one possible exception, were pre-existing. And in order to object to that one possible exception, a township must have zoning by-laws in good standing. Ours of course, were under contention in a court of law with the Timber Brothers case.

In any event, some of the licences issued under the Pits and Quarries Control Act had the following appendix attached: "The location of the pit as described in this licence is exempted under authority of subsection 7(a) of Section 35 of the Planning Act R.S.O. 1970 Chapter 349, from any applicable restricted area by-law of the Township of Uxbridge."

The Apple Again Now, if you are still trying to muddle through all this with me, you are probably saying, "What's the use?" Or else you are saying, "They can't do that. There must be some way to fight this through, and what has all this got to do with an apple anyway? She said she'd explain why a gravel pit is like an apple!"

Actually, the apple comparison is not as frivolous as it seems. It explains why the gravel pit operators are legally mining to the limits of their properties, and why Uxbridge Township has no recourse now in law except to go ahead and zone the licenced properties either M3, or at best, HM3, and it stems from the judgement given in the Supreme Court of Ontario with respect to the Township of Uxbridge vs. Timber Brothers.

You may have read that Uxbridge Township won the case. Well, we did in so far as our right to enforce our Regulatory By-Law 1590 is con-

cerned. (And we can afford one full-time by-law enforcement officer and one part-time assistant to do it) But the judge also said that the digging and removal of gravel is not a "use" of land, and while the township has the power to prohibit the creation of new pits and quarries, its restricted area by-law cannot prohibit or regulate the operation of an existing quarry because it is not a land use.

You see it is like an apple. You can take the apple and stick gumdrops in it for eyes, a marshmallow for a nose, and arrange a row of raisins for teeth, and you are using the apple, but as soon as you bite into it you are consuming it. In the same way you can take a gravel pit, build a caretaker's house or an equipment storage shed in it and you are using the land, but take one bite out of it with a bulldozer and it amounts to LAND CONSUMPTION not LAND USE, and is therefore beyond the scope of any land use or restricted area by-law. The supreme court judge said it and we must abide by it. (Actually, the apple was our solicitor's idea)

Official Plans So where does that leave us now? Our solicitor advises that we can prohibit any new extractive activities with an amendment to our Official Plan. But as you are no doubt aware, Bill 162 which created the


Region of Durham dissolved all local planning areas and designated planning as a regional responsibility. Uxbridge Township is presently a temporary planning area only because of a resolution passed by Regional Council to provide for planning until such time as the Regional Official Plan is completed. We can take steps to amend our local Official Plan, but even more important is the manner in which gravel extraction is treated in the Regional Plan.

Regional planners have held many public meetings over the last several months to receive input into proposed policies for Durham Region. Their latest presentation, Discussion Paper No. 4, is the final document leading up to the proposed Official Plan itself, and they have been receiving briefs and delegations with requests for changes throughout the month of March. Several people, including myself, have requested changes with respect to the treatment of the Oak Ridges Moraine and the Prime Mineral Extractive Area designations in the Discussion Paper. Most of the former Township of Uxbridge is within the Oak Ridges Moraine with the exception of a rather large blob north and east of Goodwood (approximately 7,000 Acres)

(see PUBLIC, pg. 9)

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