

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: November 28, 2024

CASE NO(S).:

OLT-22-003971

OLT-24-000987

PROCEEDING COMMENCED UNDER subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant/Appellant: V. B. Sand & Gravel Ltd.
Subject: Application to amend the Zoning By-law –
Refusal or neglect to make a decision
Description: to permit a proposed extraction operation
Reference Number: ACW Z07-21
Property Address: Concession 2 Eastern Division, Part Lots 14
and 15, RP 22R6090 Part 1 RP 22R6857 Parts
1 to 3
Municipality/UT: Ashfield-Colborne-Wawanosh/Huron
OLT Case No.: OLT-22-003971
OLT Lead Case No.: OLT-22-003971
OLT Case Name: Lobo Sand and Gravel v. Ashfield-Colborne-
Wawanosh (Township)

PROCEEDING COMMENCED UNDER subsection 11(5) of the *Aggregate Resources Act*, R.S.O. 1990, c. A.8

Applicant: V. B. Sand & Gravel Ltd.
Objector: Alphonse Meloche
Objector: Ann Silversides
Objector: B. H Yael
Objector: Chelsey Wheeler
Objector: Donna and Bill Crawford
Objector: Dorta Nierzwicka
Objector: Dr. Erin Campos
Objector: Elizabeth Garrett
Objector: Elizabeth Van Den Broeck
Objector: Eva Mackey

Objector: Friends of Ball's Bridge and Little Lakes
 Objector: Gina McDonnell and Bob Riehl
 Objector: Gord Garland
 Objector: James Roy
 Objector: James Wheeler
 Objector: Jennifer Morris
 Objector: Jenny Jeffrey
 Objector: Kathy Young
 Objector: Keara Campos
 Objector: L.M. Russell
 Objector: Marian and Mike Durst
 Objector: Mary Gregg
 Objector: HMK in right of Ontario as represented by the
 Ministry of Natural Resources
 Objector: Rebecca Garrett
 Objector: Richard Vernon
 Objector: Robert Campos
 Objector: Sally Vernon
 Objector: Scott Profit
 Objector: Stephen Campos
 Objector: Susan and David Gloucher
 Objector: Wendy Hoernig
 Objector: William and Maxine Seers
 Subject: Aggregates Resources Act referral of
 objection(s)
 Description: Little Lakes Road Gravel Pit
 Reference Number: 626525
 Property Address: (Lots 14 and 15, Concession 2, Geographic
 Township of Colborne Township of Ashfield-
 Colborne-Wawanosh, County of Huron)
 Municipality/UT: Ashfield-Colborne-Wawanosh/Huron
 OLT Case No.: OLT-24-000987
 OLT Lead Case No.: OLT-24-000987
 OLT Case Name: Lobo Sand and Gravel v. Ontario (Ministry of
 Natural Resources)

Heard: November 20, 2024 by Video Hearing

APPEARANCES:

<u>Parties</u>	<u>Counsel*/Representative</u>
VB Sand & Gravel Ltd.	Marc Kemerer* (<i>in absentia</i>) Mary Flynn-Guglietti*
Township of Ashfield-Colborne-Wawanosh	Michael van Bodegom* Siraj Syed*
Friends of Ball's Bridge and Little Lakes	David Donnelly*
Ministry of Natural Resources	Sarah Dalton* Zachary D'Onofrio*
Eva Mackey	Self-represented
Gina McDonnell	Self-represented
James Roy	Self-represented
Jennifer Morris	Self-represented
Kathy Young	Self-represented
Mary Gregg	Self-represented
Rebecca Garrett	Self-represented

**MEMORANDUM OF ORAL DECISION DELIVERED BY S. BOBKA AND C. HARDY
ON NOVEMBER 20, 2024 AND ORDER OF THE TRIBUNAL**

INTRODUCTION AND BACKGROUND

[1] This was the fourth Case Management Conference ("CMC") for an appeal filed by VB Sand & Gravel Ltd. ("Appellant") (formerly 1142059 Ontario Limited o/a Lobo Sand and Gravel) under section 34(11) of the *Planning Act* ("PA") regarding an application for a Zoning By-law Amendment ("ZBA") for which no decision was rendered

within the prescribed timeline by the Township of Ashfield-Colborne-Wawanosh (“Township”).

[2] The purpose of the ZBA is to permit a proposed extraction operation located on the Appellant’s property, which is legally described as Concession 2 Eastern Division, Part Lots 14 and 15, RP 2246090 Part 1 RP 22R6857 Parts 1 to 3 (“Subject Property”).

[3] This was also the first CMC for a referral pursuant to section 11(5) of the *Aggregate Resources Act* (“ARA”) by the Ministry of Natural Resources (“MNR”) of an application by the Appellant for a Licence for a Class A Pit Below Water.

[4] Previous CMCs for the PA appeal were held on:

- i. September 22, 2022;
- ii. September 25, 2023; and
- iii. January 17, 2024.

[5] At the first CMC for the PA matter, the Friends of Ball’s Bridge and Little Lakes (“FOBLL”) was granted Party status, Michael Gregg and Gordon Garland were granted Participant status, and a 10-day merit Hearing was scheduled for September 2023. It was also noted in that Decision that any Party could request a subsequent CMC to consider consolidation once it was determined whether MNR would refer the ARA matter to the Tribunal. Unfortunately, the ARA matter was not referred to the Tribunal before the start of the scheduled merit Hearing as anticipated, and the second CMC resulted in an adjournment as the Parties appeared to agree that consolidation of the PA matter and the ARA matter would be appropriate once the referral was made to the Tribunal.

[6] At the third CMC, the ARA matter remained pending due to an issue regarding the duty to consult. The Appellant asked that hearing dates be set for the PA matter, while the Township and FOBBLL submitted that consolidating the PA matter with the ARA matter would be more efficient and cost-effective for all. The Tribunal determined that “one application is reliant on the other...” and adjourned the PA matter *sine die* until the ARA referral was determined.

[7] At the outset of the current CMC, Counsel for FOBBLL, Mr. Donnelly, clarified that he now also represented many of the Objectors in the ARA matter, and was in the process of determining whether the remaining Objectors wished to “shelter” under FOBBLL in the interest of efficiency, given the similarities in the concerns raised. Additionally, at the outset of this CMC, Ms. Flynn-Guglietti clarified that she was attending the CMC in Mr. Kemerer’s absence, however, she was not co-Counsel for the Appellant.

NOTICE

[8] The Tribunal received two Affidavits of Service regarding this CMC, both sworn by Jocelyn Lee, and marked the Affidavit of Service for the PA matter as **Exhibit 1** and the Affidavit of Service for the ARA matter as **Exhibit 2**.

[9] Counsel for MNR stated that they had no concerns relating to the statutory requirement for notice but highlighted that one Objector (Richard and Sally Vernon) had sold their property, which is adjacent to the Subject Property. After a brief discussion, it was agreed that the Appellant would advise the new owner of the PA appeal and ARA referral, and if the new owner was interested in participating in the matters, the Tribunal's *Rules of Practice and Procedure* would enable it to substitute the new owner for Richard and Sally Vernon.

[10] Upon review, and with no additional concerns raised by the Parties, the Tribunal determined that proper notice of this CMC had been provided for both the PA and ARA matters, and that no further notice will be required.

MOTION TO CONSOLIDATE

[11] On November 5, 2024, the Appellant brought a motion to consolidate the PA matter and the ARA matter (“Motion to Consolidate”).

[12] The Tribunal marked the Affidavit of Service sworn by Jocelyn Lee, relating to the Motion to Consolidate, as **Exhibit 3**, and the Supplemental Affidavit of Service sworn by Jocelyn Lee, relating to the Motion to Consolidate, as **Exhibit 4**. The Tribunal also marked the Motion Record as **Exhibit 5**.

[13] No responding motion materials were filed and at this CMC the Township, FOBBLL, and the MNR all confirmed their consent to consolidate the matters.

[14] Mr. Donnelly explained that, should the motion to consolidate be granted, he would propose a separate motion at a later date for substitution of Parties to “gather up” any interested Objectors, along with FOBBLL, under one umbrella. He maintained that this would streamline the proceedings at a merit Hearing.

[15] Based on the Appellant’s written submissions, as well as the oral submissions of Counsel for the Parties, the Tribunal granted the requested relief and consolidated the matters pursuant to Rule 16.1 of the Tribunal’s *Rules of Practice and Procedure*.

[16] The Tribunal was persuaded that consolidation of the matters would provide more efficiencies than hearing the matters together. The matters involve the same property and have common, intertwined issues, which will involve hearing evidence from the same witnesses. Consolidation will offer the best opportunity for a fair, just,

expeditious, and cost-effective resolution of these matters, and will avoid potential predetermination of issues and/or inconsistent findings in separate proceedings.

CASE MANAGEMENT CONFERENCE

Party Status

[17] The Objectors to the ARA matter are automatically Parties in respect of the hearing of the ARA matter, and now, in light of the consolidation, the Objectors are Parties to the hearing of the PA matter as well.

[18] Many of the Objectors to the ARA matter were in attendance at the CMC. The Tribunal provided a brief overview of the responsibilities of a Party in a Tribunal hearing. When canvassed, no one indicated that they would be seeking other representation, nor that they would be representing themselves.

Settlement Opportunities

[19] The Tribunal highlighted the availability of Tribunal-led mediation and advised the Parties to contact the Case Coordinator should they wish to begin the intake process. Counsel for the Appellant and the Township remained open to settlement discussions but were not optimistic given the strong opposition to the proposal. Mr. Donnelly advised that he required additional time to determine his clients' positions in terms of potential settlement discussions. Counsel for MNR advised that there had been conversations with the Appellant regarding the required setback, and those discussions were ongoing.

Procedural Order and Issues List

[20] In advance of the CMC, the Appellant provided the Tribunal with a draft Procedural Order (“PO”), including a draft Issues List. The Tribunal also received an additional draft Issues List from FOBBLL. The Tribunal directed minor modifications regarding numbering and duplication, as well as the consideration of the new Provincial Planning Statement, 2024, which came into force on October 20, 2024.

[21] Ms. Flynn-Guglietti highlighted the additional issues, specifically traffic, air quality and dust, and noise, listed in the FOBBLL version of the Issues List. She sought clarification as to whether FOBBLL intended to call witnesses to speak to these issues. Mr. Donnelly confirmed that the issues being raised by FOBBLL were expert-driven and that he would indeed be calling witnesses.

[22] A discussion ensued regarding the length and timing of the merit Hearing. It was confirmed that:

- i. the Appellant intends to call six witnesses (to speak to planning, natural heritage, noise, air, traffic, and hydrogeology);
- ii. the Township intends to call one planning witness;
- iii. FOBBLL intends to call six witnesses (to speak to planning, natural heritage, noise, air, traffic, and hydrogeology), as well as two lay witnesses; and
- iv. MNR intends to call one witness (to speak to the setback issue).

[23] The Parties agreed that 10 to 12 hearing days would be appropriate for the consolidated appeals. The Tribunal queried whether that would be sufficient to hear from all the witnesses. Mr. Donnelly advised that he did not anticipate spending an

extended time with the two lay witnesses, and Mr. van Bodegum indicated that he anticipated the time required for his witness would be fairly brief.

Next Steps

[24] Upon consideration, the Tribunal scheduled a 13-day merit Hearing to proceed by video on **Wednesday, July 2, 2025 at 10 a.m.**, through to **Friday, July 18, 2025**.

[25] Parties, Participants, and Observers are asked to log in to the event at least **15 minutes** before it begins to test their video and audio connections:

GoTo Meeting: <https://global.gotomeeting.com/join/914098901>

Access code: 914-098-901

[26] Parties and Participants are asked to access and set up the application well in advance of the event to avoid unnecessary delay. The desktop application can be downloaded at [GoTo Meeting](#) or a web application is available:

<https://app.gotomeeting.com/home.html>

[27] Persons who experience technical difficulties accessing the GoTo Meeting application or who only wish to listen to the event can connect to it by calling in to an audio-only telephone line: **+1 (647) 497-9373 or (toll free) 1-888-299-1889**. The access code is: **914-098-901**.

[28] Individuals are directed to connect to the event on the assigned date at the correct time. It is the responsibility of the persons participating in the event to ensure that they are properly connected at the correct time. Questions prior to the event may be directed to the Tribunal's Case Coordinator.

[29] The Tribunal reminds the Parties that they are expected to work together to reduce the length of the Hearing, if possible, by resolving or scoping issues, and to notify the Tribunal at the earliest opportunity if any hearing days can be released.

[30] At the close of the CMC, Counsel for the Township and MNR confirmed that should FOBLL subsequently bring forward a motion to substitute, as discussed, neither would oppose such a motion. As noted above, Ms. Flynn-Guglietti was appearing on behalf of Mr. Kemerer, but not as co-Counsel, and as such, could not confirm whether the Appellant would oppose such a motion.

[31] The Tribunal also directed that:

- i. Counsel for the Appellant advise the Tribunal and Mr. Donnelly if they intend to oppose a motion to substitute, as discussed in paragraph [14] above, on or before **Friday, November 22, 2024**;
- ii. Mr. Donnelly advise the Tribunal and the Parties on or before **Wednesday, December 4, 2024**, of any Objectors who wish to be part of the FOBLL group, as well as any who do not (or whom he could not reach); and
- iii. Counsel for all Parties work together to provide a final, revised PO, including an Issues List, to the Tribunal for review and approval on or before **Wednesday, December 18, 2024**;

ORDER**[32] THE TRIBUNAL ORDERS THAT:**

- i. OLT Case File Nos. OLT-22-003971 and OLT-24-000987 shall be consolidated;
- ii. a merit Hearing has been scheduled, as described in paragraph [24] above; and
- iii. the directives as outlined in paragraph [31] above be adhered to.

[33] The Panel is not seized on these matters and there will be no further notice.

“S. Bobka”

S. BOBKA
MEMBER

“C. Hardy”

C. HARDY
VICE-CHAIR

Ontario Land Tribunal

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The Conservation Review Board, the Environmental Review Tribunal, the Local Planning Appeal Tribunal and the Mining and Lands Tribunal are amalgamated and continued as the Ontario Land Tribunal (“Tribunal”). Any reference to the preceding tribunals or the former Ontario Municipal Board is deemed to be a reference to the Tribunal.