



APPEAL HEARING

Monday, September 30, 2019

**Appeal of Site Alteration Committee decision dated July 18, 2019 regarding
Site Alteration Permit for the property known as 9268 Fifth Line, Halton Hills
(SA-18028)**

Minutes of the Appeal Hearing held on Monday, September 30, 2019, 6:35 p.m., in the Council Chambers, Town of Halton Hills, Town Hall, 1 Halton Hills Drive, Halton Hills.

Councillor B. Inglis chaired the Appeal Hearing.

Councillor B. Inglis advised the following:

This Appeal Hearing is being conducted pursuant to the provision of the *Statutory Powers Procedure Act* R.S.O. 1990, Chapter S.22 and the relevant provisions of Section 11 (10) of By-law 2017-0040, a by-law to prohibit or regulate Site Alterations within the Town of Halton Hills. This is considered an oral hearing and therefore is being held in an open session to the public.

The purpose of the hearing is to provide the appellant, Michael Van Dongen, and/or his representative an opportunity to appeal the decision of the Site Alteration Committee, regarding the denial of a Site Alteration Exemption, SA-18028 for the property known as 9268 Fifth Line, Halton Hills.

General Committee of Council will hear and consider all of the evidence presented, and pursuant to the Municipal Act, Statutory Powers Procedure Act and the Town of Halton Hills Site Alteration By-law 2017-0040 and will make a recommendation to uphold or vary the Site Alteration Committee's decision of July 18, 2019, that decision being to deny the requested Exemption to the Site Alteration By-law 2017-0040.

Council will then uphold or vary the recommendation of General Committee, and Council's determination shall be final and binding.

The appeal hearing will be conducted in the following manner:

General Committee will hear from the appellant and/or their representative. Evidence provided is to be clear, concise and non-repetitive. The Chair can use his discretion in posing speaking time limits, however normal practice is 10 minutes.

General Committee members may then ask questions of the appellant and/or their representative. General Committee members may also ask questions of Town staff or the Town's representative. The appellant or his representative will be given an opportunity to respond to any information that arises out of such questions.

Any written material provided by the appellant, and/or their representative, relevant to the subject matter will be received however Council may exclude any correspondence that is unduly repetitious.

After General Committee members have exhausted all questions the Chair will call for a motion to make a recommendation. Should General Committee choose the motion can be debated.

Upon final recommendation through an approved motion the appeal hearing will be deemed to be concluded.

Council will then uphold or vary the recommendation of the General Committee, in accordance with Section 11(10) of the Site Alteration By-law 2017-0040.

The Chair called upon the appellant Michael Van Dongen, or his representative to come forward to state the reason for the appeal and present evidence in support.

M. Van Dongen came forward and stated that he is one of the owners of Van Dongen Landscape and Nurseries located in Milton, ON. He requested an appeal to a decision of a land alteration permit at 9268 Fifth Line, Halton Hills.

He noted that in his industry it is common practice as nursery growers to prepare the land grading to have consistent slope for our nursery production. Since they operate mostly in the spring time and also during the season to keep the health of plants, this is a very common practice. When they purchased the farm they did something very similar to the east half of the property, today when you drive by it you will just see rows of trees. For the west part of their property they approached the land alteration committee as well as Conservation Halton back in 2017 to prepare engineered drawings and approval for something that will work for their farm operation as well as something that they will be able to farm on an ongoing basis after this adjustment to the land.

They currently hold both active permits with the Site Alteration By-law as well as with Conservation Halton for a bridge way that goes through Conservation Haltons regulated land. Three days after receiving the land alteration permit they had already arranged to speak to the Site Alteration Committee regarding an exemption for Schedule C Section 2 Item M Subsections 3 & 5. These Items pertain to loads per day as well as the time parameters.

The request that they made was in two parts, the first was the number of loads to have it increased from the set 100 loads per day to 200 loads per day but they also requested to have a shut down in case of 5 mm of rain versus the 25 mm of rain that is noted in the By-Law. They discussed how any amount of rain on the roads is a little more hazardous, so they thought they would have a little more activity when it was clear out, and have a more firm shutdown after just a little bit of rain. In their opinion and in their contractors opinion the roads will become just as muddy after any amount of rain regardless.

The second part of their request was the opening and closing times which at the time was a little bit more of a personal issue because at 8:30 a.m. when a grouping of trucks will arrive according to the By-law, happens to be exactly when his children get picked up for school, so he wanted to move that forward to avoid that overlap.

During that meeting of the Site Alteration Committee there was good debate both for and against it. He stated that his opinion of it, is that a lot of the concerns that came out of the discussion were about the number of trucks and the increased frequency of trucks and in the end the motion that was made by the Site Alteration Committee was to uphold the standard of the By-law.

Since that meeting he has learned a lot about excavating, contractors and source soil sites and he has learned that the construction industry gets started much sooner than 8:30 a.m. and that they are bypassing or side lining their site because they have better sites to deliver the soil to then theirs, in other municipalities. To give it some perspective he stated that has had four sites that have been reviewed by his engineers which is a process mandated by the permit, as well as the land alteration by-law, that have been approved by his engineers and also have been approved by Town staff and their resources, only again to be side lined to other sites in other municipalities.

This inability to receive soil is a detrimental issue to his operation. As farmers they plan to plant most of their crops in the spring and they have a large commitment to this land already for plants and trees for the spring of 2020. The options that have been presented to them from their contractors is to take a lower standard of soil. He stated that he can't speak all the way to the criteria by the Ministry of the Environment but from his understanding there are about 15 tables or levels of soil, in practice they are able to take the top 3 and as a personal owner of the property he wants to keep it at the highest level, and he doesn't want to make a compromise on that standard.

Mr. Van Dongen recognized that asking for an appeal to a decision made by a committee is a challenge and although he supports his initial request of both the 200 load exemption as well as extending the hours, at this time his appeal is really focused on the opening time rather than the loads.

Mr. Van Dongen stated that he understands that similar requests have been granted to similar sites in the area and quarries and they have taken this responsibility serious as well as being a community partner, He stated that he believes that they can be partners in the community and in fact by opening earlier they believe that from what they have observed and monitored of buses in the area they could probably be enhancing the safety or un-associating the bus frequency and their truck interaction. The request for 7:15 a.m. as an opening time is consistent with all the hours posted on haul routes and are also permitted hours in their agricultural operation. He believes that the By-law is an excellent product for this region and for the farmers and he believes the intention of the By-law is to support both of those. Mr. Van Dongen also believes that his request to open at 7:15 a.m. supports both of those.

The Chair asked General Committee members if there were any questions they wished to ask of the representative or Town staff. The following are questions asked by General Committee members and the responses:

Q. - Is the closing time to be changed as well?

Mr. Van Dongen responded that with his initial request to the Site Alteration Committee it was three things the load amount from 100 to 200, opening hours moved from 8:30 a.m. to 7:15 a.m. and to have the closing hours from 3:00 p.m. to 4:00 p.m., given the situation of not getting soil it is the 8:30 am moving to 7:15 am is imperative, the other two requests he can be happy to do without.

Q. - What time do your children get picked up by the school bus?

Mr. Van Dongen stated that his children get picked up after 8:30 a.m. So what happens for his children is that the trucks have already started and there is an initial banding that happens right at open and then after that they get spaced out. As of right now there is a band that starts at 8:30 a.m. literally when his children are getting on the bus.

Q. - There is someone who lives in your area whose children get picked up almost immediately near your property at 7:20 a.m. so if the time moved to 7:15 a.m., that banding of trucks would occur when other children are getting picked up. Can you comment?

Mr. Van Dongen responded that It is probably not something that can go any further but as kind of for interest sake they had someone park along the intersection of Fifth Line and 5 Side Road and monitored for two days every single bus that came by and the way they leave. The vast majority of the buses passed between 8:15 a.m. and 9:03 a.m., the first bus coming as early as 6:55 a.m.

He stated that he is not an expert on how excavators work, but from his experience if they opened at 7:15 a.m., typically they are in rotations of about 10 trucks and they would be gone by about 7:45 a.m. in a perfect world. If that is the case then there would actually be less interaction with buses than if they started after 8:30 a.m. with the similar philosophy if they take a similar time in and out.

Q. - How long is this operation going to continue on?

Mr. Van Dongen stated that they have a certain requirement of soil that they need, the actual number is 38,000 cubic metres, which if they run about 100 trucks a day is about 40 days of operation. He noted that this was certainly some of the debate that came up on the pro side during the Site Alteration Committee, that if they were able to increase that to 200 loads per day it could be shrunk down, minimizing the number of days for disruption as well, so that was the other reasoning to the 200 load request.

- Q. - Follow up to the preceding question as the member thought that this permit was for a year round operation. So you are looking for dispensation for this year for a maximum of say 60 days maximum starting in the spring is that correct?

Mr. Van Dongen responded that this request for the exemption is really just for this permit and once the farm is graded consistently, there is basically a valley that they are trying to eliminate and fill up, once this is accomplished they will close the permit and will never have to do this ever again.

Chair stated that he saw no further questions for the appellant and thanked Mr. Van Dongen.

Chair asked if Committee had any questions of staff. The following questions were asked:

- Q. - The delegation mentioned that in some of the other instances when we have allowed a variation on the time for them to operate would be the first one, just under what conditions they work would be my recollection is usually when there have been no bussing routes, or in the summertime when there has been no bussing (hours of operation). The second question is when we have done so for loads. So if staff can refresh my memory if I am correct on that.

S. Grace responded that on several Site Alteration Permits in the past the only exceptions that have been during non-school times particularly the summer, on two occasions the number of loads have been extended but again only in summertime.

- Q. - The issue of school bussing is one. Have we ever not discussed it on any application that we have ever had? If memory serves we have always discussed haul routes, soil conditions, school bussing are they not the standard items that we discuss on every application?

S. Grace stated that the Site Alteration By-law contains hours of operation and loads per day standards that were established when we were rewriting our by-law in consideration of school buses on our rural roads. The general consensus was 8:30 a.m. to 3:00 p.m. was generally clear from a school bus perspective and 100 loads from a nuisance perspective was determined to be an appropriate number. So if an applicant comes forward with a request for an exception to the By-law those are requesting exemptions to those two items contained in the by-law as a standard condition.

- Q. - It appears that the school bus timing on this particular road is different than what the by-law covers, buses are coming later than 8:30 a.m., seems to be it's a problem. Did anyone check the school bus schedules for this particular route when the decision was made?

S. Grace stated that, Mr. Van Dongen provided the schedule for the Catholic Elementary School, Sacre Coeur and those hours are pick up at 8:30 a.m. and a drop off at 4:31 p.m. When we found out that Mr. Van Dongen was coming back to request an exemption we did contact Halton Student Transportation Services which provided us with an email providing the hours of operation for both the public and catholic school boards in Halton

Hills. The bus stop times and bus routes travelling between Trafalgar Road and Fifth Line along Fifth Sideroad, we have buses picking up students starting at 7:35 am and continuing past 8:00 a.m. on a daily basis with regards to Fifth Sideroad between 10th line buses are picking up students between 7:15 a.m. up to and including 8:00 a.m. We have got three school boards responding and we seem to be clear after 8:30 a.m.

Q. - And yet Mr. Van Dongen's kids get picked up at 8:45 am?

S. Grace stated not according to the written information that we received. This is what he provided us.

Q. - I did have a resident on Fifth Line not far from the site and his pickup is 7:21 a.m. to go to Christ the King and the drop off is at 3:15 p.m. So it is very consistent with the questions that I was asking.

No response provided.

Q. - To the comment about buses and so forth, in my experience with kids and buses it is very precise when a kid is picked up on a bus at a particular stop and so the school boards have given ranges here 7:15 a.m. to 8:00 a.m., 7:35 a.m. to 8:00 a.m. I think for the purposes for this discussion I would have preferred to have some more specific information, because as the neighbour is being picked up at 7:21 a.m. that number I understand, but a range of 7:15 a.m. to 8:00 a.m., I don't think that is helpful for us when we are talking about pick-ups. So that is a comment that it makes it difficult for me personally to kind of sort through this.

No response provided.

Q. - I have another question about haul route times and other truck traffic that may be occurring on these roads. It was mentioned by the delegation that 7:00 a.m. is a time that normally haul routes are operating, is that something within your understanding as well?

S. Grace responded that with this particular application, the haul route is from Trafalgar Road west on 5 Side Road to the Fifth Line north to the address 9268 Fifth Line, the Fifth Line has a truck prohibition on. There has been an exemption granted by public works for this particular permit, as well as 5 Side Road has no heavy's. Trucks are permitted from 7:00 a.m. to 7:00 p.m. but no more than 5 tonnes per axle.

Q. - And what would be the weights that we would be talking about here?

S. Grace stated I am no expert but a tri-axle with 25000 pounds is over 5 tonnes per axle. It would be over a loaded dump truck is not permitted on 5 Side Road. An exemption has been offered and a dump truck driver must carry it or be subject to a fine by police if convicted.

Upon completion of questions the Chair called for a motion from the floor. The following motion was moved;

THAT General Committee of Council uphold the recommendation of the Site Alteration Committee, for the reasons given by the Committee as outlined in the Site Alteration Committee Minutes dated July 18, 2019. (Moved by: Councillor C. Somerville)

MOTION CARRIED

The Chair called the Appeal Hearing concluded at 7:03 p.m.

Rick Bonnette

MAYOR

Suzanne Jones

CLERK