

**REQUEST FOR ONTARIO MUNICIPAL BOARD TO REVIEW AN OMB  
DECISION  
CASE NO. PL 151150  
January 26, 2018**

Concerned Citizens in Adjala/Tosorontio request a review of this decision based on the following, since the OMB-

- \* **Acted outside its jurisdiction:**
  - \* **Made a material error of fact or of law;**
  - \* **Heard false or misleading evidence that could have changed the decision;**
  - \* **Should consider new evidence not available at the time of the hearing that could have changed the decision.**
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1. The Board acted outside of its jurisdiction, made a material error of fact, and based its decision on misleading evidence, regarding the “newly created” site plan (development proposal) presented by Nelson Aggregates to the court on the second last day of the hearing (November 22nd, 2017) since it **has not been viewed** nor approved by “municipal governments, public agencies and commenting authorities.”

Reference: OMB decision, pg.7 *“[29] As a result of the amendments and modifications to the original application, at the hearing there were no municipal governments, public agencies and commenting authorities in opposition to the development proposal.”*

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2. The Board acted outside its jurisdiction and made a material error of fact in regard to the municipal drain on the proposed property. This should be considered as new evidence since it was never shown on the Nelson site plans. This drain is protected under the jurisdiction of the provincial Drainage Act. Owners of this drain have not been consulted regarding its proposed change or demise. This concern has not come to the attention of the municipal council which is a requirement of the act.

Reference: Pg 23, [103] [104], 31 [142]  
Reference: Drainage Act, R.S.O., 1990, CHAPTER D. 17  
(<https://www.ontario.ca/laws/statute/90d17>)

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3. The Board erred in law in relation to the issue of planning, including the application of the Provincial Policy Statement and relevant Official Plan. The Board did not take these errors in law into consideration in his decision.

-According to The Township of Adjala Tosorontio Official Plan Policy:

·“4.8.1.4 Any such applications for amendment to the Plan and the Zoning By-law shall be considered, provided that the information submitted by the applicant satisfies the Township and the neighbourhood property owners...” There were more than one hundred and fifty complaints from residents and none of the neighbourhood property owners are 'satisfied'.

Reference: OMB, Pg. 34-38

·“4.8.5.2 Prior to passing an amendment to the zoning by-law, the Township shall require a submission of a site plan and rehabilitation plan in accordance with the Aggregate Resources Act.” Where are the site and rehabilitation plans?

Reference: OMB, Pg. 34-38

·“4.8.7.1. An applicant who intends to operate an extractive operation is required to enter into a development agreement with the township...This agreement shall be entered into prior to Council passing the zoning bylaw...Such agreement shall include the following: The route to be used for haulage purposes and provisions for the adequate protection and continual maintenance of municipal and/or county roads...The provision to be made to guarantee groundwater reserves, water quality and the level of the water table,... landscaping...maintained to the satisfaction of the Township requirements...The hours of operation..., the protection of water courses, ditches, rivers and streams...” As of today, there is no development agreement.

Reference: OMB, Pg. 34-38

“4.8.4.2. A performance guarantee in a form and amount satisfactory to the Township to ensure that the operation and subsequent operators comply with the above provisions;” This did not occur.

Reference: OMB, Pg. 34-38

4. The board heard misleading evidence regarding the haul route traffic on County Rd 13, which will be both north and south of Side Road 5 due to infrastructure and up to 1400 homes eminently being built in Everett. There is no written guarantee that most of the truck traffic will only travel south to Highway 89. It is very questionable that trucks could actually pass each other on the bridges north of Side Road 5 on County Road 13.

*“[185] With regard to (b) the operation of the pit on nearby communities, the concerns of the residents relate to Everett which is located north on County Road 13 whereas the haul route is south on County Road No. 13 to Highway 89. The Board acknowledges there may be truck traffic of a local delivery nature, but the majority of all such truck traffic will be south on the haul route.”*

Reference: OMB, Pg. 39

Currently, Side Road 5 is in need of repair, needs to be widened to accommodate turning gravel trucks. And again, the haul route is also north on County Road 13.

*“[130] ...The County has no concerns with regard to the infrastructure: as the truck traffic would be on Side Road 5 for about 150 metres and then proceed south on County Road 13 to the Provincial Highway No. 89, all of which has appropriate capacity for the trucks.”*

Reference: OMB, Pg. 29

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5. The below quote is misleading evidence because the other local pits had sporadic usage and none had the status of a “below the established water table” pit. As well, consistently for the last 10 years, Somerville Nurseries has grown 20 million seedlings per year to supply the needs of the people of Ontario, therefore their concern for an adequate source of water.

*Pg. 40 “[190] With regard to (f) the possible effects of the operation of the pit on agricultural resources, the Board finds that there will be no significant impact. Somerville Nurseries Inc. owns lands north of the Boyne River and north and west of the Subject lands and as noted previously there have been eight other pit operations licensed in the immediate vicinity of the Subject Lands which have had no apparent impact on Somerville Nurseries Inc.”*

Reference: OMB, Pg. 40

6. The Board made a material error of fact and “heard” false evidence regarding Section 2 of the Development Agreement which states: The township is expected to establish a “Trust Account from the amount it receives from the Municipal Levy” to rebuild, maintain and repair Concession 5. This agreement has no stipulation regarding the financial involvement from Nelson Aggregates concerning the maintenance or rebuild of Side Road 5, part of the haul route.

*Pg. 40 “[192] With regard to (h) the main haulage routes and proposed truck traffic to and from the site, the County has an executed haul route agreement which sets out the haul route. The Township has a draft development agreement which would provide funding for the maintenance of Side Road No. 5.”*

7. The Board made a material error of fact regarding the Nelson Aggregates agreement with Adjala/Tosorontio October 10, 2017, 3.1, “The Operator shall contribute an amount **not to exceed \$100,000 in kind** consisting of aggregate and equipment/manpower toward the construction of the Trail.”

The Board stated: [168] Page 36 “Section 3.1 requires Nelson to contribute a **minimum of \$100,000.00** towards the construction of works of the Township’s choice.

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8. The Board heard false and misleading evidence when Nelson Aggregates stated in their documents that they have a sign off in approval from Hydro One. This “sign off” does not, in fact, exist.

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9. The Board should consider new evidence which was not available at the time of the hearing since unfortunately, with less than 24 hours notice the Nelson Aggregates’ lawyer cancelled the planned site visit for CCAT’s experts in July 2017 resulting in a missed opportunity to provide additional information that could support the premise that bobolinks nest on the entire property. CCAT appealed to the OMB for an adjournment in October 2017 until the climate was conducive for another site visit by experts, however this was ruled against by the OMB judge. This prevented the CCAT experts from evaluating the existence of a species protected under the Endangered Species Act.

Reference: OMB, Pg. 20 & 21