



Tribunals Ontario

Assessment
Review Board

Tribunaux décisionnels Ontario

Commission de révision de
l'évaluation foncière

ISSUE DATE: March 29, 2021

FILE NO.: ID 167894

Assessed Person(s): See Schedule A attached
Appellant(s): County of Wellington
Respondent(s): Municipal Property Assessment Corporation Region 22
Respondent(s): Township of Puslinch, Town of Erin
Property Location(s): See Schedule A attached
Municipality(ies): Township of Puslinch, Town of Erin
Roll Number(s): See Schedule A attached
Appeal Number(s): See Schedule A attached
Taxation Year(s): See Schedule A attached
Hearing Event No.: 736172
Legislative Authority: Section 40 of the *Assessment Act*, R.S.O. 1990, c.A.31

APPEARANCES:

Parties

Counsel

County of Wellington

C. Kuehl, R. Shoom

Township of Puslinch and
Town of Erin

No one appeared

Municipal Property
Assessment Corporation

D. Mitchell, J. Barlow

CRH Canada Inc.

R. Minster, D. Rosman

St. Mary's Cement Inc. (Canada);
Capital Paving Inc; Preston Sand
and Gravel Company; 2416854
Ontario Inc.

J. Cowan

HEARD:

November 16 - 30, 2020 by video conference

ADJUDICATOR(S):

Dan Weagant, Member; Vincent Stabile, Member

INTERIM DECISION

OVERVIEW

[1] There are approximately 50 licensed gravel pits in the three southernmost municipalities of the County of Wellington (the “County”). The County disagreed with the assessments returned by the Municipal Property Assessment Corporation (“MPAC”) for the 2017 through 2020 taxation years for these gravel pits located in the Township of Puslinch (“Puslinch”), the Township of Guelph/Eramosa (“Guelph/Eramosa”) and the Town of Erin (“Erin”). The County subsequently appealed the values returned by MPAC on all of these properties to this Assessment Review Board (“Board”), as being too low.

[2] In collaboration with the property owners, operators, licensees and MPAC, the County agreed to prepare six of these appeals for hearing before the Board. These six representative properties are known as Dufferin Pit, Capital Pit, Roszell Pit No. 1, Roszell Pit No. 2, Neubauer Pit, and Hillsburgh/Huxley Pit (the “Subject Properties”).

Background

[3] In an effort to resolve outstanding appeals for the 2008, 2012 and 2016 assessment cycles, MPAC reached an agreement with the Ontario Stone, Sand and Gravel Association (“OSSGA”), and set the value of the land upon which gravel pits operate at the “Class 5 farmland rate”. The Class 5 farmland rate in the County is \$4,200.00 per acre. Class 5 is considered marginal land and was suggested by MPAC as representing the appropriate land value because it reflects the residual value of the land portion of gravel pits.

[4] MPAC also applied the Class 5 farmland rate to the land portion because it effectively ignores the value of the mineral aggregate material present. This is an important distinction as s. 3.20 of the *Assessment Act*, R.S.O. 1990, c. A.31 (“Act”) prescribes that mineral resources existing on, under or within land in Ontario are exempt from taxation.

[5] The agreement to apply the Class 5 farmland rate to gravel pits had its desired effect by settling the vast majority of appeals in the 2008 and 2012 current value

assessments (“CVAs”). However, the County argues that MPAC’s approach did not result in the correct current value of gravel pits in Puslinch, Guelph/Eramosa and Erin for the 2016 CVA. The County also argues that property classifications were not applied correctly by MPAC, in accordance with s. 6(2) O. Reg. 282/98 (the “Regulation”).

[6] In addition, the County argues that MPAC failed to recognize that these properties host industrial aggregate operations with rights to exploit or extract the minerals and submits that those rights enhance the value of those lands, distinct from the value of the minerals themselves and should therefore be reflected in their respective current values. The County referred to this as the “enterprise value” represented by land licensed under the *Aggregate Resources Act*, R.S.O. 1990, c. A.8 (“ARA”).

[7] The owners and operators of the Subject Properties agree with the approach taken by MPAC and believe that the resulting returned values for the 2016 CVA are correct.

Areas of Agreement

[8] In preliminary submissions, the Parties confirmed their agreement as follows:

- the only valuation methodology available is the cost approach;
- the highest and best use (“HABU”) of the Subject Properties is as a gravel pit, licensed under the ARA;
- the apportionment of value attributed to improvements on the Subject Properties is not under appeal;
- if the land portion of the Subject Properties is not in the Farm property class or the Industrial property class, by default it falls into the Residential property class; and

- the cost of licensing and zoning properties to permit gravel extraction is \$500,000 for a nominal, 100-acre property, or \$5,000 per acre.

Issues for the Hearing

[9] There are three main issues on these appeals:

1. the correct classification of the six Subject Properties. The Board must decide the correct interpretation of s. 6 of O. Reg 282/98, and particularly what lands are in the Industrial property class in accordance with that Regulation.
2. the correct current value of each of the Subject Properties; and
3. whether the correct current value determined is equitable with the assessments of similar properties in the vicinity.

[10] In these appeals, the Board is not required to apply its interpretation of s. 6 of the Regulation to the six Subject Properties. The Parties jointly submitted that they would apply the Board's decision and resolve the question of apportionment through the production of Minutes of Settlement.

Result

Issue 1 - Classification

[11] The Board finds that all the land within the licensed areas of the six Subject Properties is in the Residential property class, except:

- land that is being farmed and is eligible for the Farm Property Tax Class Program, as determined by the Agriculture, Farm and Rural Affairs Appeal Tribunal ("AFRAAT"). Such land is in the Farm property class;

- land that is occupied by berms as required by the subject license issued by the Ministry of Natural Resources and Forestry (“MNRF”). Such land is in the Industrial property class;
- land that is being excavated or extracted or land that has been excavated or extracted, but not yet rehabilitated. Such land is in the Industrial property class;
- land that is used for movement of machinery, vehicles, trucks, equipment, stackers, screening machinery, either mobile or stationary that is related to excavating, extracting, processing and stockpiling (the “activities”). Such land is in the Industrial property class;
- land that is used for processing of aggregate material that is extracted from the subject licensed area or that has been extracted from another property, including the area occupied by machinery related to washing or screening, either mobile or stationary, the areas of access to that machinery, the area comprised of ponds designated for settling, the area comprised of ponds used for the source of water for washing or any lands used by trucks and other vehicles involved in any of the activities. Such land is in the Industrial property class;
- roadways that are used at any time in connection with any of the activities, either exclusively or non-exclusively. Such land is in the Industrial property class; and,
- buildings, structures either permanently or temporarily on the property used partially or exclusively for or in connection with the activities. Such land is in the Industrial property class.

Issue 2 - Current Value

[12] The Board finds that the current value of the land portion of the licensed areas of the Subject Properties is \$15,080 per acre.

Issue 3 - Equitable Assessment

[13] The Board finds that there is no evidence that a reduction in the current value determined is necessary for it to reflect equitable assessment when reference is made to the assessments of similar properties in the vicinity.

ANALYSIS

Description of the Six Subject Properties

[14] All six Subject Properties under appeal are zoned for extractive industrial uses and are licensed properties under the ARA.

[15] Both the Dufferin Pit and Capital Pit are in Puslinch. Puslinch includes the largest concentration of industrial land use in the County, clustered around the area north of Highway 401 at the intersection of County Road 46 (known as Brock Road South). This area is identified in the County Official Plan as the Puslinch Economic Development Area ("PEDA"). The Official Plan recognizes the PEDA as an area of existing and future industrial and employment land use.

Dufferin Pit

[16] The Dufferin Pit property comprises a total of 97.97 acres, with frontage on County Road 46. The ARA license applies to 83 of those acres. The area not licensed during the years under appeal is 14.97 acres fronting on County Road 46. Access to the licensed area crosses this 14.97-acre portion before it reaches the east limit of the licensed lands.

[17] This unlicensed area includes the aforementioned access road and two ponds that are remnants of some previous use of that portion of the property, assumed by the Board to have been extractive in nature. These two ponds have distinct graded edges and are clearly man-made.

[18] The licensed area of the Dufferin Pit also has several ponds, including settling ponds used in conjunction with aggregate processing activities, and one pond used as a source of water for the washing portion of processing activities. The site was formerly the location of a concrete batching plant. The remnants of the building improvements connected to this concrete production process are still evident on the Dufferin Pit site, but that process was not occurring during the years under appeal. During the years under appeal, the site was used for the processing of aggregate material extracted from other sites, most notably a property known as "Aberfoyle Pit No. 2". When the Aberfoyle Pit No. 2 was licensed, it was restricted to extraction only, with processing of that material to occur at the Dufferin Pit property.

[19] The entire Dufferin Pit property is zoned Extractive Industrial, with the exception of the extreme northeast corner, comprising approximately half of the unlicensed portion, which is in an Open Space special provision zone.

Capital Pit

[20] The Capital Pit comprises 100 acres in total. The entire 100 acres are licensed under the ARA. For the years under appeal, an area of 16 acres, fronting on Concession Road 7, was zoned as Industrial. The remainder of the property was zoned Extractive Industrial. The site was not being extracted during the years under appeal but was used primarily for the stockpiling, mixing and processing of aggregate materials extracted from other properties. This material was used to support the needs of the owner's construction activities and to supply the on-site asphalt plant that occupies the area of the property in the Industrial zone.

[21] The Capital Pit property has areas of undisturbed land, land that has been extracted, but not rehabilitated, areas that have been disturbed but not yet extracted and several ponds resulting from previous extractive industrial activities.

Roszell Pits Nos. 1 and 2

[22] The Roszell Pits are in a rural area of Puslinch. The property on which Roszell Pit No. 1 operates was purchased for extractive purposes in 2007. Roszell Pit No. 2 was added to the licensed area of Roszell Pit No. 1 in 2017, creating a total licensed area of 143.8 acres.

[23] The Roszell Pits are used by the licensee to extract the aggregate resources present and to re-locate those resources to other processing sites. As a result, there are no mixing, batching or screening facilities located at the Roszell Pits. As the aggregate is extracted, it is either loaded directly onto trucks for transport or is stockpiled temporarily before it is loaded for transport.

[24] The Roszell Pits are zoned Extractive Industrial in the Puslinch zoning by-law. Both properties were actively extracted throughout the years under appeal.

Neubauer Pit

[25] The Neubauer Pit property is 100 acres in size; 70 acres of which are zoned Extractive Industrial. The 70 acres zoned Extractive Industrial are licensed under the ARA.

[26] During the years under appeal, the property was actively extracted with all the material extracted being moved to other properties for processing. Extracted material was either loaded directly onto trucks or was stockpiled temporarily before being loaded and transported.

Hillsburgh/Huxley Pit

[27] The Hillsburgh/Huxley Pit is located on Trafalgar Road North in Erin, approximately 40 kilometres northeast from the Highway 401 and Highway 6 interchange. It has direct access along Trafalgar Road North to the south and to markets in the Halton Region. It is an established gravel pit, with considerable amounts of disturbed land and active operations.

[28] It is comprised of a licensed area of 122.30 acres in the Extractive Industrial zone. The property also includes an additional 26.53 acres of unlicensed forested lands. The value or classification of these forested lands is not subject to the appeal.

Industrial Zoning

[29] The six Subject Properties are zoned by the local municipalities under an extractive-specific category of Industrial zoning.

[30] In Puslinch, the zone is EXI, Extractive Industrial. In Erin, the zone is M4 – Extractive Industrial. In both municipalities this extractive zone is applied only where properties are licensed for aggregate extraction under the ARA. These extractive industrial zones include regulations on use. Generally, permitted uses include the necessary excavation, extraction, stockpiling, storage and processing of aggregates and related materials generated from the Subject Property or from other sites. Some of the Subject Properties have special zoning regulations applied, based on the specific characteristics of the operations thereon.

Aggregate Licenses

[31] In Ontario, a license issued under the ARA is required for the extraction of aggregate resources from a property. The licensing process can be lengthy and detailed as it needs to address a wide range of potential issues related to the excavation, extraction, processing and delivery of sand and gravel. The licensing process is

administered by the MNRF and is a separate process from the zoning process. These two processes normally occur simultaneously.

[32] Aggregate licenses contain a number of conditions that are reflected in site plans that are appended to the licenses. The site plans govern the operation as the aggregate resources are extracted and as the required rehabilitation occurs.

Assessment Summary

[33] The following summarizes the six Subject Properties and their corresponding returned assessments for the years under appeal:

Property Name	Taxation Years	Total Assessment*
Dufferin Pit	2017 - 2020	\$1,478,000
Capital Pit	2017	\$2,555,000
	2018 - 2020	\$2,456,000
Roszell Pit No. 1	2017 - 2018	\$891,000
	2019 - 2020	\$919,000
Roszell Pit No. 2	2018 - 2020	\$1,029,000
Neubauer Pit	2018 - 2020	\$1,329,000
Hillsburgh/Huxley Pit	2017 - 2020	\$1,821,000

*Assessments shown include Land and Improvements. This table does not reflect apportionment where multiple property classes apply.

Issue 1 – Classification

[34] In order to make a determination on the correct classification of lands within the Subject Properties, the Board is guided by s. 6(2) of the Regulation. That section states:

- (2) The following are included in the industrial property class:
1. Land used to manufacture or transform electricity.
 2. For the 1998 and 1999 taxation years, land used for mining, quarrying, producing oil or gas or extracting anything from the earth.
 - 2.1 For the 2000 and subsequent taxation years, **land** used for mining, producing oil or gas or extracting anything from the earth. This paragraph does not apply to,
 - i. land that is licensed or required to be licensed under Part II of the *Aggregate Resources Act*, or
 - ii. land that would be required to be licensed under Part II the *Aggregate Resources Act* if the land were in a part of Ontario designated under section 5 of that Act.
 - 2.2 For the 2000 and subsequent taxation years, **the portion of**,
 - i. **land** that is licensed or required to be licensed under Part II of the *Aggregate Resources Act*, or
 - ii. land that would be required to be licensed under Part II of the *Aggregate Resources Act* if the land were in a part of Ontario designated under section 5 of that Act,

that is **used for**,

 - iii. **extracting anything from the earth,**
 - iv. **excavating,**
 - v. **processing extracted or excavated material,**
 - vi. **stockpiling extracted or excavated material, or**
 - vii. **stockpiling overburden.**
 - 2.3 For the 2000 and subsequent taxation years, roadways and structures on a **portion of land** that is licensed or required to be licensed under Part II of the *Aggregate Resources Act* if the roadway or structure is **used in connection with** an activity listed in paragraph 2.2. (Emphasis added)

Submissions

[35] Lengthy submissions were made relating to the language used in the Regulation, as amended for the 2000 and subsequent taxation years. That amendment distinguished classification for land that is licensed or required to be licensed under Part

II of the ARA. The focus in this hearing, therefore, relates to the language used in s. 6(2)2.2 and 2.3 since the Board is dealing with a valuation day of January 1, 2016 and all the lands under appeal are licensed under the ARA.

[36] The Parties submit that there are three legal interpretation issues before the Board:

1. the significance of the language difference between “**land**” (in s. 6(2)2.1) and “**the portion of land**” (in s. 6(2)2.2 - 2.3);
2. the significance of the language difference between “**used for**” (in s. 6(2)2.2) and “**used in connection with**” (in s. 6(2)2.3), in relation to the activities listed in those provisions; and
3. the interpretation of the **list of activities** in s. 6(2)2.2.
 - a. extracting anything from the earth,
 - b. excavating,
 - c. processing extracted or excavated material,
 - d. stockpiling extracted or excavated material, or
 - e. stockpiling overburden.

[37] The County submits that the six Subject Properties are incorrectly classified. It contends that all of the land licensed under the ARA should be classified in the Industrial property class.

[38] The County submits that, all activities listed in s. 6(2)2.2 of the Regulation should be interpreted as including the activities and land features that are integral to those activities, adding that this interpretation is consistent with the Parties’ agreement that setbacks with berms are correctly classified as Industrial because berms provide acoustic and visual separation from adjacent public and private lands and they provide land area for storage of material resulting from excavation.

[39] The County takes the following position on the three legal interpretation issues:

1. Sections 6(2)2.2 - 2.3 are applicable only to “the portion of land”, rather than simply “land”, because an ARA license provides a distinct boundary that permits a split classification on a parcel of land that is only partially licensed. Conversely, s. 6(2)2.1 applies to “land” because there is no such distinct boundary, with the result that only one classification should be applied to the full parcel.
2. The language of “used for” in s. 6(2)2.2 connotes an exclusive use requirement. This compares to “used in connection with”, which does not require exclusive use.
3. The activities listed in s. 6(2)2.2 are representative of the core activities involved in a gravel pit operation and are intended to cover all activities integral to that operation.

[40] The County submits that the language of “used in connection with” in s. 6(2)2.3 of the Regulation, in respect to roadways and structures on licensed land will be classified as Industrial if they are “used in connection with” extraction, excavation, or the other activities listed in s. 6(2)2.2. The County submits further that land or roadways may be used for multiple purposes, not exclusive to mining/extraction operations, and still attract an Industrial classification. As an example, the County proposed that a property on which there is both a gravel pit operation and a farm, a roadway or structure may be used for both purposes. and would still be considered to be “used in connection with” the activities listed in s. 6(2)2.2.

[41] Accordingly, the County submits that, the correct interpretation of s. 6(2)2.2 - 2.3 is that all licensed land, exclusively used for activities which are integral to a gravel pit operation, be classified as Industrial.

[42] The County therefore submits that in the broader legislative context, an interpretation that captures all activities and features integral to a gravel pit operation is consistent with the legislative purpose.

[43] The owners of the Subject Properties and MPAC submit that only certain portions of the licensed areas should be in the Industrial property class, and that the Regulation is specific about which activities are Industrial and which activities, by their omission, are not.

[44] The owners of the Subject Properties suggest that the phrase “used for”, as it appears in s. 6(2)2.2 of the Regulation, indicates that the activities which follow are to be read narrowly, such that only land specifically “in use” for the listed activities on the classification date would fall within the Industrial class.

[45] In summary, the owners’ and MPAC submit that only land specifically “in use” for the listed activities on the classification date would fall within the Industrial class. They further submit that roadways and structures should only be classified as Industrial when they are used in connection with the activities listed in the Regulation and further that they should only be included if that use occurs on the classification date.

Issue 1 - Findings

[46] It is important to understand the legislative framework and the special protection afforded to gravel pits in Ontario to determine the proper classification of gravel pit land intended by the legislature. In the 1998 and 1999 assessment years, the Regulation directed that all gravel pit lands in Ontario were classified as Industrial Lands. For the 2000 and subsequent taxation years the Regulation was amended, as set out above.

[47] All the Subject Properties are licensed lands under the provisions of the ARA. As a result, all the Subject Properties have rights and privileges as well as corresponding liabilities and obligations associated with those licenses.

[48] The key difference in the treatment of unlicensed and licensed lands is whether an industrial classification applies to the “land” (in the case of unlicensed properties), or “the portion of land” (in the case of licensed property).

[49] The principle of statutory interpretation is that the words of a statute are not to be read in isolation. They are to be read in their entire context and in their grammatical and ordinary sense, harmoniously with the scheme of the statute, the object of the statute, and the intention of the legislature. Further, statutes and their provisions are to be given such fair, large and liberal construction and interpretation as best ensures the attainment of their objectives.

[50] The license allows for preparation of the land for extraction and the extraction of the minerals on, in and under the land. Gravel pit owners incur the expense of securing the license, zoning and preparing the lands for extraction. They also have an obligation to pay The Ontario Aggregate Resources Corporation (“TOARC”) fees, while the property is under license. Further, there are ongoing obligations to progressively rehabilitate the lands and comply with the rehabilitation requirements of the license.

[51] If the extraction operation is part of a licensed area, the licensed area used for activities that are integral to the operation (i.e. used for processing, extracting, excavating, or stockpiling) would be classified as Industrial.

[52] The Act and Regulation do not contain definitions of any of the activities listed in s. 6(2)2.2, however the ARA does contain a definition of “excavate”:

“excavate” includes the preparation of land for excavation and removal of hills, sand dunes, knolls, stones and rocks other than metallic ores from the general surface of the ground.

[53] This definition makes clear that “excavate” is not meant to be interpreted narrowly; it is not limited only to actual excavation activity, but also incorporates the preparation of land for excavation, an integral first step to the excavation and aggregate extraction process as well as the making and placement of berms within setbacks, used for, or in connection with, excavation, extraction or created strictly in compliance with the license.

[54] Classification is determined based on the use of the land as of June 30 of the preceding year (s. 19.3 of the Act). A change in classification results from a change in

actual use. The Board finds that s. 6(2)2.2 should be interpreted to account for the dynamic nature of a mining operation, which includes gravel pits. As further explained below, the activities listed in s. 6(2)2.2 are all encompassing and not to be viewed as frozen in time. Unless and until a 'change in actual use' is determined, the classification does not change.

[55] The Parties have site plans approved as part of the licensing process. Further, MPAC has developed questionnaires submitted to the owners for completion, generally on a yearly basis. MPAC relies on the responses from the owners to determine the use(s) of the lands on the Classification day. The owners have an obligation to submit the reports and to be truthful, subject to penalties under s. 13(1)(2) of the Act.

[56] Section 6(2)2.2 lists the core activities of aggregate extraction operations: extraction, excavation, processing and stockpiling material, and stockpiling overburden. The County submits that this list is intended to encompass all activities and land features that are integral to a mining operation (such as a gravel pit).

[57] In summary, the Parties' submissions are as follows:

1. the County's submission is that "portion", as referred to in the Regulation, refers to that portion of the property that is licensed under the ARA; and
2. the owners and MPAC submit that "portion" is the portion of the licensed land that is used or used in connection with the five activities enumerated in the Regulation.

[58] Applying too broad of an interpretation, as submitted by the County, would be contrary to the intent of the Legislature. The Regulation was amended for the 2000 and subsequent taxation years to differentiate gravel pits from other Industrial lands. For prior taxation years, the Regulation directed a classification of Industrial. The County urges this Board to revert to the prior provisions.

[59] Accepting the owners' position to apply a narrow interpretation would require the Board to consider the listed activities in isolation. That approach does not recognize the dynamic nature of the mining operation and may result in some portions of the lands within the envelope of the license either not being captured in the correct classification or not classified at all. In the Board's view, that would be contrary to s. 3(1) of the Act, that all real property in Ontario is liable to assessment and taxation, subject to certain exemptions as prescribed by the Minister (s. 3(1)). If that was the intention of the Legislature, it would have so provided. It did not.

[60] Further, applying too narrow of an interpretation, as submitted by the owners and MPAC, would necessitate undue effort, checking and counter-checking of what 'activity' was occurring on what specific patch of land at a specific time (i.e. the classification date). This is not a realistic expectation to place on MPAC or the owners.

[61] Adopting the agreement of the parties, the Board finds that, in respect to the Subject Properties, land that is not in the Farm property class or in the Industrial property class, by default falls into the Residential property class.

[62] Applying the agreements of the parties, the principles set out above and considering the objective of the legislation, the Board finds that all the land within the licensed areas of the six Subject Properties is in the Residential property class, except:

- land that is being farmed and is eligible for the Farm Property Tax Class Program, as determined by AFRAAT. Such land is in the Farmland property class;
- land that is occupied by berms as required by the subject license issued by the MNRF. Such land is in the Industrial property class;
- land that is being excavated or extracted, or land that has been excavated or extracted, but not yet rehabilitated. Such land is in the Industrial property class;

- land that is used for movement of machinery, vehicles, trucks, equipment, stackers, screening machinery, either mobile or stationary that is related to excavating, extracting, processing and stockpiling. Such land is in the Industrial property class;
- land that is used for processing of aggregate material that is extracted from the subject licensed area or that has been extracted from another property, including the area of machinery related to washing or screening, either mobile or stationary, the areas of access to that machinery, the area comprised of ponds designated for settling, the area comprised of ponds used for the source of water for washing or any lands used by trucks and other vehicles involved in any of these activities. Such land is in the Industrial property class.
- roadways that are used at any time in connection with any of these activities, either exclusively or non-exclusively. Such land is in the Industrial property class.
- buildings, structures either permanently or temporarily on the property used partially or exclusively for, or in connection with, the activities above. Such land is in the Industrial property class.

Issue 2 – Correct Current Value

[63] MPAC's assessments of gravel pit properties are subject to provisions of the Act and its Regulations as well as the ARA. The Act exempts the aggregate/minerals extracted from taxation, pursuant to s. 3(1)20, and directs the classification of the lands upon which the gravel pits are established.

[64] The ARA provides for the licensing of aggregate extraction activities, the concurrent obligations to pay TOARC fees on the mineral extracted, rehabilitation of the extracted land and regulatory compliance in the operation of the license.

Valuation Methodology – Cost Approach

[65] All Parties submitted that the Income Approach was the most appropriate method of determining current value for gravel pits. However, in the absence of the requisite financial information from the owners, all Parties agreed to value the lands using the Cost Approach.

[66] The Cost Approach involves two steps. The first is to establish the depreciated replacement cost of any buildings or improvements upon the land. The second is to establish the value of the land portion of the property, based on its sale value, or if the Subject Property has not been sold, the sale values of comparable properties.

Dufferin Pit and Capital Pit

MPAC's Approach

[67] When determining the correct current value of gravel pits MPAC and the owners submit that the proper questions to consider are:

1. What is the correct current value of the subject property on January 1, 2016, considering the physical and legal state and condition?
2. What would the land sell for given its state and condition, if the value of the minerals and business enterprise are not considered? and
3. What is the value of the taxable components?

[68] MPAC submits that Class 5 farmland, at \$4,200 per acre, plus licensing and zoning costs of \$5,000 per acre is a reasonable land value. It also submits that the Class 5 farmland rate is appropriate because it reflects marginally productive farmland, which it submits, is the best characterization of farmland in a gravel pit setting.

[69] The owners agree with and support MPAC's position.

The County's Approach

[70] As a general proposition, the County submits that the central question to be determined is the value of vacant land available to be developed as a gravel pit. The County proposed to compare the Capital Pit and Dufferin Pit properties to other lands within the PEDAs. It submitted that Industrial zoned land in this area is the best indicator of land values for extractive industrial land. The Industrial zoning is distinct from the Extractive Industrial zone that applies to the licensed areas of the Dufferin Pit and Capital Pit properties.

[71] The County chose to compare the assessments returned by MPAC for these proposed comparable properties to the Dufferin Pit and Capital Pit properties, reasoning that since MPAC has the onus of determining the correct current value as returned on the roll, it was reasonable to adopt those assessments as correct current values.

[72] The County further submits that consideration should be given to the "locational value", since these two properties have easy access to Highway 401 and Highway 6, and that this locational value is a component of land sales that have occurred in the PEDAs.

[73] By applying the assessments of General Industrial Zoned properties within the PEDAs and considering the sale values of land in the area, the County submitted that the correct current value was approximately \$137,000 per acre for both the Dufferin Pit and Capital Pit properties because:

- when MPAC recognized the change in the zoning at the Capital Pit in 2019, it reassessed 15.96 acres from \$9,200 per acre (the formula rate) to \$137,000 per acre. The value of this land in the Industrial zone is not under appeal, as it is consistent with the value of Industrial land within the PEDAs;
- the Dufferin Pit is next to the Nestle site; the industrial lands of which are assessed at approximately \$103,000 and \$137,000 per acre;

- the Dufferin Pit is across from vacant commercial lands assessed at approximately \$81,800 per acre and the Maple Leaf Foods facility, the lands for which were purchased in 2012 at \$168,000 per acre;
- the Dufferin Pit is next to the CBM St. Mary's-Aberfoyle site; 33 acres of which were severed and sold in accordance with a joint venture agreement for \$136,000 per acre; and
- a small one-third acre of vacant land required for a road allowance and on which nothing could be built was recently sold by the Dufferin Pit to the County for almost \$35,000 per acre for the purposes of a municipal road widening.

[74] In summary, the County reasoned that when the range of sale values of vacant land available to be developed as a gravel pit in the PEDDA is considered along with the range of values demonstrated by the assessments of industrial land in that area, a value of \$137,000 per acre is the best indication of land value for the Dufferin Pit and Capital Pit properties.

Roszell Pits Nos. 1 and 2, Neubauer Pit and Hillsburgh/Huxley Pit

MPAC's Approach

[75] As stated, MPAC has applied the same \$9,200 per acre land value to these four gravel pit properties. In contrast, the County submits that MPAC's formula does not take locational influences into account and does not account for enterprise value.

The County's Approach

[76] The County submits that the assessed value is not equitable when compared to either general Industrial lands, (assessed at approximately \$137,000 per acre in the PEDDA area), unlicensed Conservation lands (assessed at approximately \$12,645 per acre) or Farmland assessed at approximately \$15,645 per acre.

[77] The County believes these comparisons are illustrative of the inconsistency of valuation of licensed gravel pits when comparisons are made to the value of other uses. Gravel pits, the County contends, have far more utility. Land that is licensed for gravel extraction has the opportunity to extract valuable resources, process those resources and sell them in the open market at a profit.

[78] By contrast, the County submits Conservation lands have essentially no commercial value but are assessed at a rate in Wellington County that is approximately 35% higher than licensed gravel pit properties. The County argues further that Farmland in the area, assessed at over \$15,000 per acre and while it is commercially productive, it has far less utility than gravel pits.

Findings on Issue 2 – Current Value

[79] None of the County's proposed comparable properties used were zoned Extractive Industrial, nor were they licensed as gravel pits. There was no planning evidence to suggest that the zoning or use of the subject lands changed as of January 1, 2016, being the valuation day. There was no planning evidence of any imminent change in zoning or in land use for any of the properties under appeal that would suggest a highest and best use other than a gravel pit.

[80] The Board does not accept the approach taken by the County because:

- current value should be based on sales (either of the subject, or of comparable properties);
- there was un-refuted testimony from the operators of the six Subject Properties' gravel pits indicating that any value based on General Industrial Zoning is far too high to represent the price they would pay (in accordance with the definition of current value) for land to be used for gravel extraction;
- gravel pits are unique in Ontario and through legislation they are set apart from other land uses by both the ARA, which bestows upon them rights and

obligations related to the specific use, as well as the Act which sets them apart with respect to valuation by distinguishing the value of the aggregate itself from the cost of the land. These are important distinctions and they do not apply to any other land use in the Province (including General Industrial use). Therefore, the only properties that can be reasonably compared, that share the uniqueness of gravel pits, are other gravel pits;

- none of the County's comparable properties used to compare with the Dufferin Pit and the Capital Pit were gravel pits. The proposed comparable properties were not "land with similar function and utility" to the six Subject Properties;
- the County urged the Board to consider 'locational value' and 'enterprise value' as separate components when determining current value.
- the Board finds that 'locational value' would be a consideration of the sale value. Therefore, it would not be appropriate to add as a separate component.
- as to 'enterprise value', the Board accepts and adopts MPAC's response that the Board is determining the value of land. Enterprise value is not land, therefore not a component to be considered; and
- the Board does not agree that the formula developed and adopted by MPAC is reasonable. This approach to assessment applies an agreed-to value, based on marginal farmland rates in the County. There was no evidence at the hearing to suggest only marginal farmland is purchased for the purpose of developing land as gravel pits. This approach does not demonstrate the values established in sales transactions for lands being developed for gravel pits, as required when applying the cost approach to value. Nor does it meet the definition of current value in the Act.

[81] The Parties collectively considered several land sales related to gravel pit operations. Almost all of these comparisons, however, failed to meet the specific approach being used to determine current value. That approach requires that the

proposed comparable sale be a property to be used for a licensed pit, subject to considerations related to licensing and zoning, while disregarding the value of the mineral assets in or under the land.

[82] The sole exception among the submitted proposed property sales is the “Capital purchase” in 2017. Capital leased that property and was committed to completing the excavation and rehabilitation of the excavated land by 2021, in accordance with the terms of the lease. Capital determined that it would be unable to meet the deadline. It therefore commenced discussions with the owner for the purchase of the lands. Approximately 4 acres remained to be extracted.

[83] The vendor and purchaser agreed on a purchase price of \$1.7 million for the 98.18-acre parcel.

[84] Capital had consulted a local Real Estate Agent for an opinion of value prior to the transaction and secured a written appraisal. The appraisal was based on the value of farmland plus a premium for “Royalties”, being the value of the un-excavated aggregate.

[85] \$240,000.00 of the purchase price was allocated to the value of the remaining, un-extracted aggregate. This reflects the best evidence of the mineral value portion of any property sale at the hearing.

[86] The Board finds that the Capital purchase is the best evidence of current value of the land to be applied to the six Subject Properties under appeal. The transaction was for a property licensed for a gravel pit. It also accounts for the value of the mineral existing, as allocated, and the value of improvements that are agreed to by the Parties.

[87] The Capital purchase resulted in a net purchase price for the land, as follows:

Purchase Price:	\$1,700,000
Less: "Royalty" (mineral) value (as allocated by Capital):	\$240,000
Less: MPAC assessed Improvement value (as agreed to by the parties):	\$460,253
Purchase price, net of mineral and improvements:	\$999,747
Divided by 98.18-acre lot size per acre: (excluding licensing / zoning costs)	\$10,080

[88] Consistent with the agreement among the Parties regarding licensing and zoning costs, the Board finds that \$5,000 per acre should be added to the \$10,080 per acre purchase price for a value of \$15,080 per acre, exclusive of the value of the improvements on the land and the value of the mineral in or under the land.

Issue 3 – Equitable Assessment

[89] In addition to determining current value, s. 44(3)(b) requires the Board to have reference to the assessments of similar properties in the vicinity of the six Subject Properties and if that reference indicates that the current per acre value determined for the six Subject Properties is too high, then the assessment must be reduced to be equitable with the assessments of those similar properties in the vicinity.

Findings on Issue 3 – Equitable Assessment

[90] In this case, none of the Parties advanced a case that any adjustment to a current value finding should be made on the basis of equity. The Board finds that there is no evidence before it that would support a reduction in the current value determined to reflect equitable assessment when reference is made to the assessments of similar properties in the vicinity.

CONCLUSION

Issue 1 - Classification and Apportionment

[91] The Board finds that all the land within the licensed areas of the six Subject Properties is in the Residential property class, except:

- land that is being farmed and is eligible for the Farm Property Tax Class Program, as determined by the Agriculture, Farm and Rural Affairs Appeal Tribunal (“AFRAAT”). Such land is in the Farm property class;
- land that is occupied by berms as required by the subject license issued by the Ministry of Natural Resources and Forestry (“MNRF”). Such land is in the Industrial property class;
- land that is being excavated or extracted or land that has been excavated or extracted, but not yet rehabilitated. Such land is in the Industrial property class;
- land that is used for movement of machinery, vehicles, trucks, equipment, stackers, screening machinery, either mobile or stationary that is related to excavating, extracting, processing and stockpiling (the “activities”). Such land is in the Industrial property class;
- land that is used for processing of aggregate material that is extracted from the subject licensed area or that has been extracted from another property, including the area occupied by machinery related to washing or screening, either mobile or stationary, the areas of access to that machinery, the area comprised of ponds designated for settling, the area comprised of ponds used for the source of water for washing or any lands used by trucks and other vehicles involved in any of the activities. Such land is in the Industrial property class;

- roadways that are used at any time in connection with any of the activities, either exclusively or non-exclusively. Such land is in the Industrial property class; and,
- buildings, structures either permanently or temporarily on the property used partially or exclusively for or in connection with the activities. Such land is in the Industrial property class.

Issue 2 - Current Value

[92] The Board finds that the current value of the land portion of the licensed areas of the six Subject Properties is \$15,080 per acre.

Issue 3 - Equitable Assessment

[93] The Board also finds that there is no evidence to support a reduction in the current value determined for the purposes of achieving equitable assessment when reference is made to the assessments of similar properties in the vicinity.

INTERIM ORDER

[94] Based on the value of \$15,080 per acre and the method of determining classification as stated, the Parties are directed to complete calculations of the current value of the six Subject Properties and their respective classification and apportionment by way of Minutes of Settlement for the taxation years 2017, 2018, 2019 and 2020.

[95] Taxation year 2021 has been added to the present cycle. Although appeals for the 2021 taxation year are not before the Board s. 40.(26) of the Act provides that the Appellant is deemed to have made the same appeal for the subsequent taxation year if the appeal is not finally disposed of before March 31 of the subsequent taxation year.

[96] This being an interim decision, it is anticipated that the appeals now before the Board will be finally disposed of after March 31, 2021. For that reason, this decision also applies to the 2021 taxation year.

[97] The Minutes of Settlement shall be produced and submitted in accordance with the Board's *Rules of Practice and Procedure*, as applicable, except that the time requirements indicated for drafting of the Minutes of Settlement shall begin on the date of the issuance of this Interim Decision.

[98] If the Parties are unable to settle the current value, classification and apportionment of any or all of the Subject Properties, the Board may re-convene the hearing to assist the Parties in determining these matters.

[99] This panel is seized.

"Dan Weagant"

DAN WEAGANT
MEMBER

"Vincent Stabile"

VINCENT STABILE
MEMBER

Assessment Review Board

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SCHEDULE A

Pit Name and Property Location	Roll Number	Appeal Number (Taxation Year)	Assessed Persons
Dufferin Pit (aka Aberfoyle No.1 Pit) CON 7 PT REAR LOTS 23 AND 24 Township of Puslinch	2301-000-006-12050-0000	3240344 (2017) 3311801 (2018) 3365607 (2019) 3409433 (2020)	CRH Canada Group Inc.
Capital Pit 4459 CONCESSION 7 CON 7 FRONT PT LOT 22 Township of Puslinch	2301-000-006-20500-0000	3240345 (2017) 3312122 (2018) 3365345 (2019) 3409631 (2020)	Capital Paving Inc.
Roszell Pit No. 1 6618 ROSZELL ROAD CON 4 FRONT PT LOT 2 PT RD Township of Puslinch	2301-000-001-09900-0000	3240311 (2017) 3311718 (2018) 3365555 (2019) 3409486 (2020)	Preston Sand and Gravel Company
Roszell Pit No. 2 6524 ROSZELL ROAD CON 3 REAR PT LOT 2 PT RD Township of Puslinch	2301-000-001-10000-0000	3286558 (2018) 3365656 (2019) 3409551 (2020)	2416854 Ontario Inc.
Neubauer Pit 7203 CONCESSION 2 CON 1 REAR LOT 27 Township of Puslinch	2301-000-004-12400-0000	3286564 (2018) 3365598 (2019) 3409561 (2020)	St. Mary's Cement Inc. (Canada)
Hillsburgh/Huxley Pit 6033 TRAFALGAR ROAD CON 8 W PT LOT 29 PT LOT 30 Town of Erin	2316-000-008-01800-0000	3240292 (2017) 3311827 (2018) 3365383 (2019) 3409413 (2020)	St. Mary's Cement Inc. (Canada)