

1 of 1 DOCUMENT

Case Name:

AAA Professional Self Storage Inc. v. Midland (Town)

Appellant: AAA Professional Self Storage Inc.

Subject: By-law No. 2013-42

Legislative Authority: Subsection 34(19)

of the Planning Act, R.S.O. 1990,

c. P.13, as amended

Municipality: Town of Midland

Appellant: AAA Professional Self Storage Inc.

Subject: Proposed Official Plan Amendment No. MD-OPA-1304

Legislative Authority: Subsection 17(36)

of the Planning Act, R.S.O. 1990,

c. P.13, as amended

Municipality: Town of Midland

[2014] O.M.B.D. No. 438

OMB Case No.: PL130804

OMB File Nos.: PL130804, PL131029

Ontario Municipal Board

Midland, Ontario

Panel: J.V. Zuidema, Vice Chair

Heard: May 27, 2014.

Oral decision: May 27, 2014.

Filed: June 16, 2014.

(18 paras.)

Appearances:

Recycling Specialities Inc.: C. Barnett, counsel.

AAA Professional Self Storage Inc.: H. Elston, counsel and A. Anderson, counsel.

Town of Midland: P. Peterson, counsel.

MEMORANDUM OF ORAL DECISION DELIVERED
BY J. V. ZUIDEMA ON MAY 27, 2014
AND ORDER OF THE BOARD

INTRODUCTION

1 This was a hearing in relation to appeals filed by AAA Professional Self Storage Inc. ("Appellant") against decisions on applications for an Official Plan Amendment ("OPA") and Zoning By-Law Amendment ("ZBA") filed by Recycling Specialities Inc. ("Applicant") in the Town of Midland ("Town").

2 The reader is directed to an earlier disposition of this Board differently constituted for some background on the applications and appeals. At the first Pre-Hearing Conference, parties and participants were identified and a procedural order was later put into place.

3 At the commencement of the hearing, the Board was advised that the parties had arrived at a resolution. Participants, John and Janice Todd, were present and gave evidence. Participant, L. Santis, did not appear.

4 Executed Minutes of Settlement were filed and Planner, Jamie Robinson, was called to testify to the settlement and the proposed planning instruments. He was qualified and accepted as an expert in land use planning.

5 I provided an oral decision at the conclusion of this hearing to allow the appeals in part so to give effect to the settlement reached. Specifically, I relied upon the only expert planning evidence provided to modify the proposed OPA and as modified, approve it as well as approve the proposed ZBA. For ease of reference, those two planning instruments are appended to this decision and marked as Attachments 1 and 2 respectively.

6 Mr. Robinson carefully reviewed the policy environment at the provincial, county and local levels to opine that the proposed draft instruments were consistent with and conformed to, as the case may be, to the 2014 Provincial Policy Statement, the Growth Plan, the County of Simcoe Official Plan and the Town's Official Plan.

7 He did make specific reference to those policies and provided his professional opinion on each. Those are contained in his Expert Summary Package which was filed as Exhibit 6. He opined that the OPA and ZBA represented good planning and recommended their approval.

8 He also reviewed the land use compatibility and referenced surrounding uses. In this regard, he made reference to aeriels and photographs which he took and obtained. These were all contained in the Document Brief filed as Exhibit 4.

9 He provided testimony to explain the history and geography of the subject property. An interesting aspect to this settlement was that the subject site before the Board was not the original site earmarked for a Recycling Facility. A location closer the Wye River near the Martyrs Shrine was the first proposed.

10 That location prompted responses and objections and with the assistance of the Town, the proposed facility was relocated. The settlement achieved involved an Agreement of Purchase and Sale for the original site, which Agreement was contingent on having the proposed OPA and ZBA for the subject property approved.

11 From Mr. Robinson's evidence, it was clear to me that the subject site is a much more suitable location for a Recycling Facility given the surrounding uses. For example, the Beamish Gravel Pit is located directly adjacent and there are other industrial-type uses nearby. Environmental features are not negatively impacted as a study to address natural features was properly completed.

12 Concerns raised by Mr. and Mrs. Todd were also addressed by Mr. Robinson. To provide them with assurance, reference was made to a Site Plan, which has been filed with the Town some two weeks ago.

13 That Site Plan is not before this Board but it does provide some details to address issues of visibility, water run-off and the location of warehouse and whether it would have 3 or 4 walls. Those concerns, along with the Todds' concern about the handling of asbestos were all adequately addressed through Mr. Robinson's testimony. He made specific reference to s. 17 of O. Reg. 347 under the *Environmental Protection Act* which speaks to the handling of asbestos.

14 Suffice it to say, the proposed recycling facility will not be handling hazardous or organic materials. This stipulation is clearly spelled out in the planning documents.

15 The Board congratulates the parties on achieving a satisfactory resolution of the matter.

ORDER

16 Therefore, the Board orders the appeals allowed in part and OPA 4 is modified and as modified, is hereby approved. It is appended to this decision and marked as "Attachment 1."

17 Further the Board orders that the ZBA for the Town is approved in the form as appended to this decision and marked as "Attachment 2."

18 In all other respects, the appeals are dismissed.

J.V. ZUIDEMA
VICE CHAIR

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"ATTACHMENT 1"

Town of Midland Official Plan Amendment No. 4

PART B -- THE AMENDMENT

INTRODUCTION

All of this part of the Amendment, entitled Part B -- The Amendment, consisting of the following text and attached map Schedule "A" constitutes Amendment No. 4 to the Official Plan for the Town of Midland.

DETAILS OF THE AMENDMENT

The Official Plan is amended as follows:

- (i) Schedule 'A', Land Use Concept to the Official Plan for the Town of Midland, is hereby amended by re-designating part of the lands described municipally as 1081 MacDonald Road and legally described as the North Part of Lot 99, Concession 1, in the geographic Township of Tay, Town of Midland, as shown on Schedule "A" to this Amendment, from the "ENVIRONMENTAL PROTECTION" designation to the "EMPLOYMENT AREAS" designation and the Special Policies reference designation.
- (ii) Section 3.1.6 Exceptions to Section 3.1 **Employment Areas** is hereby amended by inserting a new exception "3.1.6.1 1081 MacDonald Road" as follows:

"3.1.6.1 1081 MacDonald Road

For that part of the lands described municipally as 1081 MacDonald Road and legally described as part of the North Part of Lot 99, Concession 1, in the geographic Township of Tay, Town of Midland, as shown on Schedule "A" to this Amendment, the following additional polices shall apply to the development of a Private Materials Recovery and Reclamation Facility and Transfer Station:

- a. That the lands shall be appropriately zoned in the Town of

Midland Zoning By-law with appropriate regulations and performance standards with respect to the proposed Private Materials Recovery and Reclamation Facility and Transfer Station use.

- b. The policies and definitions of this Official Plan shall apply to specifically prohibit the disposal of wastes and the handling and storage of hazardous wastes, organic wastes (other than incidental wastes or wastes generated by the business operation) and liquid industrial wastes as part of the Private Materials Recovery and Reclamation Facility and Transfer Station use. An amendment to this Plan will be required to make any changes to the types of waste which are prohibited for handling or storage at the Private Materials Recovery and Reclamation Facility and Transfer Station on this site.

- c. Site Plan Control approval, in accordance with the policies contained in Section 8.8 Site Plan Control of this Plan, shall be required prior to the development of the site. In addition to the policies of this Plan and the requirements of Section 41 of the *Planning Act*, the Site Plan Application shall contain mitigation measures to reduce potential impacts on surrounding properties. Site design and approaches shall be proposed that will specifically assist with noise attenuation and dust mitigation. Mitigation measures shall include the following:
 - i. An average setback of 15 metres from the existing watercourse;

 - ii. Paving of traveled areas and parking stalls;

 - iii. Stormwater Management will be provided with a private onsite quantity and quality control pond designed in accordance with the MOE enhanced (Level 1) quality criteria and will provide quantity control up to the 100-year event;

- iv. Vegetative landscaping strips seeded with an appropriate native seed mix and planted with native tree and shrub species;
- v. Fencing or existing berms or a combinations thereof to screen the proposed development from land uses to the north and east;
- vi. Outdoor storage is limited to:
 - a. Machinery and equipment related to the primary use;
 - b. Material that is packaged, bailed or contained in trailers or bins;
- vii. Site maintenance requirements;
- d. The Town, through the appropriate regulatory tools including but not limited to Site Plan Agreements, Noise Bylaw, and by commenting on the required Environmental Compliance Approval, shall limit the hours of operation of the facility.

- (iii) Section 9 INTERPRETATION is hereby amended by adding a new subsection **9.4 Definitions** and adding a definition for a "Private Materials Recovery and Reclamation Facility and Transfer Station" as subsection 9.4.1:

"9.4 Definitions

For the purposes of the interpretation this Plan, the definitions in the *Planning Act, R.S.O. 1990*, the Provincial Policy Statement 2005, and other applicable Provincial Plans and Policies shall apply. In all other instances, terms shall be defined in accordance with their common usage and if necessary, reference to the Canadian Oxford Dictionary, 2nd Edition.

9.4.1 Private Materials Recovery and Reclamation Facility and Transfer

Station

*A Private Materials Recovery and Reclamation Facility and Transfer Station shall mean a waste material recovery and reclamation facility that shall include a specialized building that receives, separates and prepares recyclable materials for marketing to end-user manufacturers for reuse and a transfer station which is used for the temporary storage of waste materials for shipment and reuse or disposal off-site. The operation may include both indoor and outdoor storage, as well as a weight scale and station and an accessory office building. Outdoor storage is restricted to material that is packaged, bailed or contained in trailers or bins and to trucks and related equipment. A Private Materials Recovery and Reclamation Facility and Transfer Station shall not include the on-site disposal of waste materials and shall not include the receipt, handling or treatment of liquid industrial or hazardous waste as defined by the *Environmental Protection Act* and/or its regulations."*

IMPLEMENTATION AND INTERPRETATION

The provisions of the Official Plan for the Town of Midland, as amended from time to time, regarding the implementation and interpretation of the Plan shall apply in regard to this Amendment.

Schedule "A" - Amendment No. 4

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"ATTACHMENT 2"

THE CORPORATION OF THE TOWN OF MIDLAND

BY-LAW 2013-42

A By-law to rezone a portion of the property at 1081 MacDonald Road from Environmental Protection Zone -- EP and Industrial Zone with Holding "H" Symbol -- M1-H to Industrial Exception Zone with Holding "H" Symbol--M2-3-H

WHEREAS the Council of the Corporation of the Town of Midland passed Zoning Bylaw 2004-90, known as "The Zoning By-law of the Town of Midland", on the 22nd day of November, 2004, to regulate the development and use of lands within the Town of Midland; and,

WHEREAS the Council of the Corporation of the Town of Midland has received an application to Amend Zoning By-law 2004-90 and has approved the Application; and,

WHEREAS the Council of The Corporation of the Town of Midland now deems it expedient to amend Zoning By-law 2004-90, pursuant to the authority given to it under Section 34 of the *Planning Act*, R.S.O. 1990;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWN OF MIDLAND HEREBY ENACTS AS FOLLOWS:

1. That the lands described municipally as 1081 MacDonald Road and legally described as the North Part of Lot 99, Concession 1, in the geographic Township of Tay, Town of Midland, and identified in Schedule A attached hereto, are the subject of this By-law.
2. That the lands as described above and on Map 43 of Schedule "A" to By-law 2004- 90 and as shown on Schedule "A" attached hereto and forming part of this Bylaw, shall be rezoned from the **ENVIRONMENTAL PROTECTION ZONE -- EP** and the **INDUSTRIAL ZONE WITH HOLDING "H" SYMBOL -- M1-H** to the **INDUSTRIAL EXCEPTION ZONE WITH HOLDING "H" SYMBOL - M2-3-H**.
3. That Section **7.2.4 Zone Exceptions** of the **INDUSTRIAL ZONE -- M2**,

is hereby amended by inserting additional site-specific provisions to Zone Exception 3 in subclause 7.2.4.3, as follows:

"7.2.4.3 M2-3

Notwithstanding Section 7.2.2 the following additional use shall also be permitted on the lands zoned M2-3:

- a) "Private Materials Recovery and Reclamation Facility and Transfer Station"

Notwithstanding the provisions of Section 7.2.3, the following shall apply to the lands zoned M2-3:

- a) Minimum Lot Frontage: 41.0 m

Notwithstanding the provisions of Section 7.2.3.4, the following shall apply to the lands zoned M2-3:

Minimum Yard Setbacks

- a) Rear (West) 4.0 m
- b) Interior Side 3.0 m

Minimum Yard Setbacks to Recycling Warehouse:

- a) Interior side (North) 88.0 m

Minimum Yard Setbacks to Admin & Shop Structure

- a) Interior side (North) 37.0 m
- b) Interior side (East) 46.0 m

Outdoor Storage Area

- a) Minimum Setback from North interior Side Lot Line: 110m;
- b) This minimum setback does not apply to parking of vehicles, trucks and trailers.

Notwithstanding the definition for "Private Materials Recovery and Reclamation Facility and

Transfer Station" in Section 2:

- a) The site will only process, handle and store non-hazardous solid waste (including municipal, construction and demolition waste).
- b) Outdoor storage is restricted to material that is packaged, bailed or contained in trailers or bins; trucks and related equipment.
- c) Mechanical shredding, crushing of aggregate or grinding is not permitted;
- d) The temporary storage of non- recyclable materials for shipment and reuse or disposal off-site shall occur within the Recycling Warehouse;
- e) The receiving, separating and sorting of materials shall occur within the Recycling Warehouse.

In all other respects, the provisions of Section 7.2 apply.

4. That SECTION 3 GENERAL PROVISIONS is hereby amended by adding the following article 3.37.2 to Sub-section 3.37 HOLDING SYMBOL -- H following article 3.37.1:

"3.37.2 For the lands at 1081 MacDonald Road and Zoned M2-3-H, the requirement for removal of the Holding "H" Symbol shall be:

1. The approval of a Site Plan and Site Plan Agreement, pursuant to Section 41 of the Planning Act.
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5. That the By-law shall come into force and effect in accordance with the provisions of Section 34 of the Planning Act, R.S.O. 1990 and the regulations thereto.

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Schedule "A"
to By-law 2013-42

