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DECISION/ORDER NO:

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Ontario

Ontario Municipal Board

Commission des affaires municipales de l'Ontario

PL041170

Diane Griffiths, Sylvia Seufert, Mike Seufert and the Concerned Calabogie Citizens Association have appealed to the Ontario Municipal Board under subsection 17(36) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from a decision of the Minister of Municipal Affairs and Housing to approve Proposed Amendment No. 2 to the Official Plan for the County of Renfrew Ministry File No. 47-OP-0142-0002
OMB File No. O050176

The Concerned Calabogie Citizens Association has appealed to the Ontario Municipal Board under subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, against Zoning By-law 24-2004 of the Township of Greater Madawaska
OMB File No. R040255

The Concerned Calabogie Citizens Association has appealed to the Ontario Municipal Board under subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, against Zoning By-law 25-2004 of the Township of Greater Madawaska
OMB File No. R040256

APPEARANCES:

Parties

Counsel*/Agent

Concerned Calabogie Citizens

R. Chiarelli

Township of Greater Madawaska
The County of Renfrew

P. S. Mirsky*

Track Corp Canada Inc.

Gregory Meeds*

DECISION DELIVERED BY D. L. GATES AND ORDER OF THE BOARD

The Proposal

In August of 2003, Track Corp Canada Inc. ("the proponent") made official plan and zoning applications to develop approximately 250 acres about 3 miles east of the Hamlet of Calabogie for "a road course teaching facility to rent". The proposal has become more intensive to include automobile racing. The current proposal is for a national level club course. It will host driving schools, host lapping days for car clubs,

corporations, and individuals, and could serve as a testing facility for car manufacturers, race teams, and automobile journalists. "There will also be some motorcycles." No other uses are proposed.

The Councils of the Township of Greater Madawaska and Renfrew County eventually supported the automobile racing track facility and respectively passed and approved the required Official Plan Amendment and Zoning Amendment.

The municipalities took care in considering these applications. Reports from both their own planner and the applicant's planner were received, their recommendations accepted and acted upon. Both planners recommended in favour and both testified at this hearing in support of these applications. A detailed noise report, a drainage report and plan and a traffic study were completed to the Township's satisfaction.

In addition, the Township executed a comprehensive site plan agreement, passed a noise/licensing by-law, and reached a written understanding with the applicant respecting noise through an innovative Noise Protocol.

The chief issue for the only remaining Appellant, the Concerned Calabogie Citizen's Association (The "Concerned Citizens"), an incorporated ratepayers association of approximately 100 members, is noise.

Context

The Board cannot conceive of a use more at odds with the community into which it is to be inserted. Yet the proponent's case has many merits notwithstanding. However, due to its potential of being a nuisance to the community as a whole, some ability for the community to monitor and have some control over the track's use and the resulting noise, is necessary, both now and into the future, for these two conflicting uses to coexist.

Undoubtedly Calabogie must be one of the quietest places in southern Ontario (within 60 minutes of a major population centre, Ottawa). A number of concerned residents stated that they moved to Calabogie for the peace and tranquility of the area. That is not to say that the area is totally without noise in that County Roads 508 and 511 intersect at Calabogie. Chainsaws, lawnmowers, and motorcycles interrupt the

tranquility on occasion. The residents were not concerned about these noises because they are intermittent and infrequent.

The residents' complaint about the motor track was that the noise, which they might hear, would not be intermittent, or infrequent, and might exceed Ministry of Environment (MOE) guidelines. They were also concerned about noises emanating from the track resulting from special events or noises emanating from the track, which may be a nuisance to them but might not exceed MOE guidelines.

The principals of the track corporation are well known in the community; people who live in the community and have a stake in it. They appear to be well liked and respected. No one disputes their bona fides.

These entrepreneurs are investing \$5 million to create a 5 km long, 12 m wide paved and closed racing track which will incorporate the existing rolling terrain for excitement and interest and the existing walls of a depleted gravel pit for sound attenuation. At the same time the track is proposed to utilize the existing natural contours including a land ridge to the North West that should provide sound attenuation for some of the dwellings fronting on County Road 508 and backing on the Madawaska River. Within the track property extensive berms up to 15 m high are to be provided for sound attenuation to the South East residences on Stones Lake.

The track is intended to be raced in one direction and may be temporarily barricaded so as to permit two shorter courses to be operated simultaneously. Spectator events are not permitted.

An extensive forested area 300 m wide around the entire track is to be permanently maintained under the site plan agreement and sound monitoring is also to be provided pursuant to a noise protocol. The track operator will reforest, presumably with smaller trees, any vegetation removed to permit the extraction of aggregates within 300 m of the track.

The Company has purchased another 950 heavily wooded acres immediately around the track property ostensibly for sound mitigation. The facility is buffered by dense forest and partially screened by hilly terrain. The proponent's noise consultant

testified that the dense forest would only reduce noise by five dBA. The track is not visible to any neighbor.

The track lands together with the additional 950 acres owned by the proponent around the track lands include aggregate resources that are currently being mined or are intended to be mined in the future. No other evidence was heard by the Board as to what the proponent's plans might be for the additional 950 acres, although the Board heard evidence that some of this land had recently been logged and could be used for aggregate extraction. The Board was not made aware of any binding commitment that these additional lands would be retained in their natural state so as to buffer the noise from the track. The Board also heard evidence that one of the track principals had made inquiries to the Township about subdividing some lands he owns adjacent to the 950 acre parcel.

The Board heard evidence that the company that holds the gravel pit license has the same principals as Track Corp.

The gravel extracted from the track lands is to be used in the building of the track. Upon complete depletion of the extraction resources near the track, the depleted area will be decommissioned, deleted from the aggregate removal license, and rehabilitated. The portion of the track lands that are not decommissioned and some of the larger parcel surrounding it will continue to be mined.

The Board heard no evidence of noise complaints arising from the gravel extraction operations.

In an area where tourism plays such an important role, the local business community excitedly anticipates the building of the track. While the area attracts tourists in the summer (swimming, fishing, boating, camping) and in the winter (downhill skiing, cross-country skiing, ice fishing and snowmobiling), the spring and fall are slow seasons. Local business proprietors stated that the track would help in these periods as well and provide another tourist attraction with wide appeal to other tourists who might not be attracted to the area solely for its natural beauty. Other business owners testified that the track would benefit their enterprises from the spin-off business.

A number of the younger business people testified in favor of the track, noting the decline in school enrollment and the lack of youth in the community. These younger entrepreneurs believed the track would be an attraction for a younger population and would give the community some hope for a more prosperous future, hence encouraging youth to remain there. The 2001 Census showed that the median age of the population in the Township was 48.9 years compared to 37.2 years average in Ontario as a whole. The total population for the Township was 2290.

Not all business owners supported the track. Moya Brakele believed her bed-and-breakfast business about 1.7 km from the track was threatened. She testified that her business was dependent on the tranquility and natural beauty of the area, and noise from cars in the background will hurt her business. Similarly Sister Elizabeth Berrigan runs Stillpoint House of Prayer, which is based on total serenity and respite from big city stress. She believes her business (about 7-8km to the north of the track and which is not buffered except for trees and distance) will be completely destroyed by the background noise of automobiles ever present.

Of the 16 residents who gave evidence against the track use, perhaps no better statement of the residents' concerns was made to the Board than by Diane Griffiths. She testified that:

"... What has not been accounted for in all the modeling is the human factor. The subjective effect on a living, breathing human being has been taken out of the equation. The human experience has been eliminated and reduced to a point of reception, a location on a map, a site a specified number of meters from a building.

The reality is that people listening to the noise are receptors and the effects of the noise and the impact that noise will have, cannot be reduced to a concept on a piece of paper...

The point I'm trying to make is this: people in the range of impact of this facility are currently experiencing quality of sound and life that they will not be experiencing if this development goes through. Even by meeting the MOE guidelines, they will be subject to an inherently different kind of noise that what they are used to over protracted periods of time and it will impact them."

Many of the Concerned Citizens were older and had lived in the community for many years and like it the way it is. Many others specifically sought out Calabogie as a

rural oasis to retire to or cottage at, and did not want to see the very thing that made it so attractive, its peace and tranquility, spoiled.

Provincial Policy Statement (PPS)

The planners for the municipalities and the proponent both found conformity with the 1997 PPS because they saw the use as a resource-based recreational activity permitted within “rural areas”. The planner for the Concerned Citizens did not agree that the use was resource-based. On this issue the Board agrees with the municipal planner that the use is resource-based in that it utilizes the natural terrain of the area to provide for an interesting and challenging course in the same manner as ski hills provide resource based recreation.

The planner for the Concerned Citizens raised other issues arising from the PPS. For instance, in her opinion, policy 1.1.1 (f) required development, that raised public health concerns should be avoided. She concluded that because noise levels may well exceed MOE guidelines (e.g. during special events) the proposal ought not to be permitted to proceed. Furthermore she stated in her witness statement that, “although it may stimulate some economic growth, it does not protect public health because of the potential obnoxious noise caused from the use.” A noise expert called by the Concerned Citizens linked noise with human health.

The municipal and proponent planners took the position that because MOE guidelines would be met; public health was no longer a concern. The municipal planner conceded that if the MOE guidelines were exceeded health could be a concern.

The Concerned Citizens planner also opined on the complex interrelationship among environmental, economic and social factors in land use planning. She stated that in her opinion the proposal does not conform because it does not recognize this complex interrelationship and sacrifices the environment and health of residents for economic growth. The other planners testified, or implied in their testimony, that the balancing of these factors by the municipality was entirely appropriate.

The Board does not agree with the Concerned Citizens planner that the track should not be permitted because it jeopardizes the extraction of aggregates from the property by deleting the extraction use from the property. In fact, all of the evidence

suggested that the extraction use, which was intermittent, would continue just as it did before the track was proposed.

No issue respecting the track was raised by MNR at this hearing regarding the continuation of the extraction of aggregates. Based on the evidence given by the MNR representative at this hearing, the aggregate extraction will continue as either a legal, or a legal non-conforming use, in areas still licensed for this use, and that this result is satisfactory to MNR.

Official Plan

The planner for the County of Renfrew and the Township of Madawaska reviewed the Official Plan policies, particularly the purpose and objectives of the Plan. He indicated the County Official Plan functions like a local Official Plan with the Provincial Policy Statements operating as an upper tier Plan. The first three objectives of the OP are particularly noteworthy:

- 1.3 (1) To maintain and enhance the quality of the natural, built and human environments in the County,
- (2) To strengthen and diversify the County's economic base within municipal servicing limitations,
- (3) To facilitate compatibility between land uses and to provide policies to guide the establishment of uses in an integrated manner,...

In his opinion these objectives and the others of the official plan are met because the track has no adverse visual impact since it cannot be seen by neighbors, nor will it exceed MOE noise guidelines and is therefore acceptable from a noise standpoint. It enhances the human environment and strengthens the County's economic base by promoting tourism and assisting the local economic viability of this area.

This position is to be contrasted with the conclusion drawn by the Concerned Citizens planner. She stated "these objectives express the desire to maintain and enhance the quality of the environment in the County, with a holistic consideration of natural, built and human environment. There is also a desire to strengthen and diversify the economic base of the County, provided that new uses can be integrated into the existing fabric of the community. These objectives reveal a desire for balance so that

not just one of the ingredients that contributed to quality of life (e.g. economic) overrides all other considerations in determining the future for the County.” The Board finds that the all-embracing approach used by the Concerned Citizens planner is more consistent with the intent of the Official Plan.

All the planners also directed the Board to the General Development Policies of the Plan and in particular Section 2(4) entitled “Commercial, Industrial and Institutional Uses”, that states:

“The following provisions shall apply to the establishment of any commercial, industrial or institutional use:

- (d) buffering, including minimum separation distances, shall be provided in accordance with the relevant Section(s) of this Plan, to ensure that any negative impacts upon adjoining lands are mitigated.
- (e) no use shall be permitted which is an obnoxious trade... or which is obnoxious by reason of the emission of odor, dust, smoke, noise or vibrations;”

The planner for the Concerned Citizens in particular relied on 2(4)(e) of the Official Plan. Her opinion was that its provisions went beyond just meeting MOE guidelines. Conversely, the municipalities’ planner’s opinion was that compliance with the MOE guidelines ensured compliance with this section.

The Board notes that at the time the Renfrew Official Plan was passed, the Municipal Act provided that:

“210. By-laws may be passed by the councils of local municipalities:

138. For prohibiting or regulating, within the municipality or within any defined area or areas thereof, the ringing of bells, the blowing of horns, shouting and unusual noises, or noises likely to disturb the inhabitants.”

The Board finds that other requirements in addition to meeting MOE guidelines are intended for this community (i.e. a subjective noise evaluation). The Board notes that MOE guidelines are based on objective criteria. Guidelines do not have the force and effect of a regulation or statute.

The provisions in Section 2(4) of the OP are cumulative and all must be met. The specific reference to the MOE guidelines in Section 2(3) and elsewhere in the OP is more directed to buffering and mitigation, and together with Section 2(4)(d) should not be interpreted as the sole criteria in judging the acceptability of this use respecting the noise issue.

The amendment to the Official Plan proposed by the proponents of this development, designates the track lands as rural with a further special designation, which permits the track use only.

The Board was directed by all 3 planners to the rural sections of the Official Plan particularly the objectives:

“5.2(1) to preserve the open space, rural character, topography and landscape of the Rural area.”

Permitted uses within this designation include agricultural, forestry, low-density residential, commercial, industrial, recreational, and conservation uses subject to the location and development criteria specified in Section 2 of this plan.

Section 5.3(5) provides that recreational or open space uses, or tourism-related development such as theme parks are permitted and may be expanded provided that the reasonably anticipated effects of development on rural and recreational characteristics, and on natural features and functions are assessed in accordance with the terms of Section 2.2(24) of this plan, where appropriate and are acceptable. It should be noted that this Section is subject to the General Policies for Development already referred to above.

Insofar as the track lands contain no provincially significant wetlands or natural heritage features, the municipal planner concluded that an EIS (Environmental Impact Study) under Section 2.2(24) was not required. The Board concurs.

Finally, the Board was referred to Section 5.4 Special Policy Exceptions. In the Township of Greater Madawaska, in considering a zoning amendment, Council shall consider in addition to the criteria outlined in subsection 5.3(5) the following:

- (a) the impact on the environment;...

- (f) the impact on surrounding land uses;

Also, very detailed policies were set out for Calabogie Peaks Resort in Section 5.4(a) 5. The planner for the Concerned Citizens suggested that a similarly detailed provision like the one for Calabogie Peaks should have been enacted for this use. The planner for the Township informed the Board that the Peaks special section resulted from a settlement and is not appropriate in this instance principally because all of necessary studies have been completed and servicing is not an issue. The Board agrees that this application does not require the same provisions as for Calabogie Peaks Resort.

Because this use is to be serviced privately, seating within the track is to be limited to 125 persons and Wilson Farm Road is to be extended and improved solely at the proponent's expense; no servicing issues were identified under the OP.

The principal difference between the testimony for the municipalities' and proponent's planner and the planner for the Concerned Citizens relating to noise is as follows; the Concerned Citizens planner relied on many of the above quoted sections of the Plan to support her contention that the Plan envisions a serene environment in greater Madawaska and provides protection by prohibiting obnoxious noises. This witness concluded that the track use is incompatible in this context and should not be permitted.

The proponent's and the municipalities' planners testified that the proposal meets the MOE guidelines most applicable to this use, that in their opinions the proponent has done everything necessary to buffer the use and has implemented operational controls to the satisfaction of the municipality.

The Township has guaranteed the construction of the buffer and the completion of required infrastructure by executing a site plan agreement with the proponent, having it registered on title, completing a Noise Protocol and Noise/Licensing By-law. For all of these reasons the two planners (one for the municipalities and one for the proponent) believe that the applications comply with the OP for the County of Renfrew, conform to the relevant policy statements and constitute good planning.

The planner for the Concerned Citizens testified that because the site plan agreement requires no financial securities for noise reduction measures, there is no guarantee the berm/buffers will ever be built or reforestation will ever occur. The lack of financial guarantees for these items is of concern to the Board.

Minister of Municipal Affairs and Housing

On October 17, 2005, the Minister modified OPA #2 as passed by the County of Renfrew. The amendments all appear to be directed towards the noise issue. For example, the amendment added the following sentence: "amplified speakers shall not be permitted."

Also, the following paragraph was added:

"It is recognized that there are significant and unique noise issues related to the operation of the motor sport track which could have impacts on the surrounding community. In order to mitigate these impacts Council shall consider the use of noise control measures that can include but not necessarily be limited to:

- i) the implementing Zoning By-law that would limit the use of the site to a single motor sport track with limited accessory facilities and establish appropriate setbacks and buffering provisions;
- ii) the use of the Site Plan Control in full with the implementing Zoning By-law to specifically define the final location of the track, and the requirement for physical structures (buffering) to dampen noise;
- iii) the implementation of a Noise By-law that would contain specific provisions to control noise-generating activities at the track;
- iv) the use of a Licensing By-law for the implementation of a Noise Plan that would include the requirement for annual monitoring of the racetrack operation to ensure that noise levels from racing are consistently below established maximum levels. The Licensing By-law could also include conditions that would limit hours and days of motor racing, allow for municipal on-site monitoring, and other items that would reduce off-site noise impacts."

Therefore, as of October 2005, and after virtually all of the noise studies were completed, the Minister himself still recognized that the operation of the racetrack **could** have impacts on the surrounding community. The Board questions the advisability of permitting this use outright, especially when the Minister considered that elaborate operational controls may be necessary to mitigate the noise.

Noise By-law and Protocol

The Board is commenting on the Noise and Licensing By-law and Noise Protocol because the Minister has recognized in the OP that these instruments may be necessary to mitigate track noise.

The Concerned Citizens suggested that the municipality should have enacted a comprehensive Licensing By-law. The municipality included within its Noise By-law, provisions which might otherwise have been found in a Licensing By-law. For instance the by-law permits the issuance of special occasion permits. The Board finds that the municipality has not erred by combining both licensing provisions and noise provisions in one by-law.

The Board was concerned about the municipality's apparent secondary role in complaint resolution resulting from the Noise By-law and Noise Protocol as described by the Township's new Chief Administrative Officer. It would appear that the Township intends to direct most complaints to the track and to strongly encourage that the complainant, deal directly with the track operator. The Board realizes that the municipality has not relinquished its right to prosecute. The Board agrees with the municipality that mutual cooperation is usually far superior to other compliance tools.

However the Board also agrees with the Concerned Citizens that the complaint process has shortcomings. Enforcement measures should ensure complaint anonymity, assuage fear of reprisals, and not discourage the making of complaints by implementing a policy requiring that the complainant deal directly with the track operator who may be responsible for the noise in the first place.

The Board also questions the advisability of the incorporation of MOE Guidelines into the Township's Noise By-law and not including an unqualified general prohibition against disturbing noises. In fact, the Madawaska Noise By-law did include the following:

"2.01. No person shall make or permit any unusual noise likely to disturb the inhabitants....."

Unfortunately for the inhabitants, this prohibition is qualified by the following:

"For the purposes of this section a noise is unusual if it is a noise which would not reasonably be anticipated. Where this by-law sets a specific noise limit for a

specific type of activity [e.g. 65 dBALmax for this track use], the specific noise limit shall apply to that activity.”

The Protocol is essentially a written agreement between the Township and the proponent as to how noise will be measured and monitored at the track. There is no legal means by which it can be made binding on successive owners.

The Noise/Licensing By-law and the noise protocol were not appealed to this Board for review (nor could they be) but do play a role in the overall noise issue. For instance the Noise By-law provides that the municipality can shut down the use for MOE guideline breaches. Land use is normally regulated by zoning by-laws.

Unlike most other uses permitted in zoning by-laws, the Board finds that the track use is dependent on operational controls to accomplish satisfactory noise reduction. Even the Minister recognized that distance, trees, and berms may not be sufficient. If planning controls were in themselves sufficient, why did the Minister amend the plan to provide for additional controls, and why did the municipality enact other controls? If the municipality was being extra cautious, why not continue that cautious approach with respect to the rezoning, and pass a temporary zoning by-law?

Noise Study

In order to understand the noise issue better, the municipality required the proponents to complete a thorough noise report. This was completed in September 2003 and concluded that the track could meet the applicable MOE noise guidelines, provided operational controls were implemented.

In order to meet MOE guidelines the consultant recommended the installation of berms of various sizes within the track property at various locations. He also recommended that a noise protocol be developed and implemented by the facility operator. He stated that the accuracy of the results and the subsequent compliance with the MOE noise standards depended in part on *the actual use of vehicles with specific sound emission levels that do not exceed the planned limits*. Similarly it is clear from his evidence that compliance with MOE guidelines was also dependent on the number of vehicles operating simultaneously on the track and the time of day. MOE guidelines are less tolerant of noise in the evening hours.

68 residences are located within 2 km of the track mainly along the Madawaska River to the Northwest fronting onto County Road 508 and backing onto the River and eventually the track, and to the Southwest along the shore of Stones Lake. 129 dwellings are located within 2.5 km of the track. Thus roughly 15% of the entire population of the township is located within 2.5 km of the track.

Residences fronting along County Road 508 and County Road 511 had their existing sound levels monitored adjacent to these roads. The proponent's noise consultant took ambient noise readings on July 23, 2003 between 4:00 and 7:40 p.m., in order to characterize the noise environment as urban (Class 2) or rural (Class 1). In non-expert terminology, the consultant concluded that the areas along the County roads had a semi-urban noise character (Class 2) while the areas for which he took sound readings further away from the County roads he classified as rural (Stones Lake).

The Board understands that these readings were taken about 45 unobstructed (i.e. by buildings) meters back from the County roads. There were no readings taken in the rear yard amenity space behind the residences. The Board also heard Concerned Citizens complaints that these readings were taken during the summer months at the time that each road would likely have the most traffic. They felt that the readings overstated the ambient or background noise. The Board agrees and is convinced that in the rear yard amenity area of the residences backing onto the Madawaska River (and ultimately the track), the current ambient noise levels would approach the 31 dBA found adjacent to the residences in the rural Stones Lake area.

The noise consultant for the proponent testified that the readings were done so as to determine the background or ambient noise character of the area. He indicated that because he chose the most conservative approach by using the absolute lowest ambient noise levels recognized by MOE guidelines, 45 dBA leq, the residents were placing too much significance upon these readings.

Many residents suggested that because the ambient noise was so low, 31 dBA leq in one instance, that the noise from the track would be annoying and obnoxious to them even if the track met MOE guidelines. The proponent's consultant, well respected in his field, is confident that the track can meet MOE guidelines. He testified that he was very conservative in his approach on a number of instances and that the noise from the track will likely be less than predicted in the study. One example was that base

grade elevations on the lands adjacent to the track were assumed to be equal to the nearby track segment elevation. The proponent and municipalities relied upon his advice.

To be cautious, the Township retained another noise expert to peer-review the noise study. This dissatisfied the Concerned Citizens because they felt that the Township should have engaged its own independent noise consultant and completed its own full and complete noise report. This no doubt would have given the Concerned Citizens greater comfort. Insofar as the peer-reviewer was limited by the nature of his retainer, he relied on the background information and the running of the model completed by the proponent's consultant.

Under oath, the noise peer-reviewer stated that the guidelines used were for a single source industrial use and that there was no specific MOE guideline for an automobile racing track. Because of the way the witness interjected this information which seemed out of context with the generally supportive evidence (in favour of the track) the peer-reviewer provided, the Board was left with the impression that while these guidelines were reasonable on the whole, the witness was not totally satisfied that the MOE criteria were entirely adequate for a track use in Madawaska.

The Concerned Citizens also retained a third noise expert. His qualifications as an expert witness were challenged on the very day he was called to give evidence. The proponent provided evidence that the witness was not in good standing with his professional association because, being retired, he had not paid his dues. The proponent could have raised this issue at a prehearing conference, which occurred in the week before the hearing but chose not to do so. When the witness provided his report and research to the Concerned Citizens he was in good standing and the Concerned Citizens were not aware of this issue until immediately before he was to be called to give his evidence. This witness has previously been qualified as an expert witness by the Board, holds a Ph.D. in acoustical engineering, and has taught acoustical engineering at the university level for many years. In these circumstances the Board accepted this witness as an expert acoustical engineer who was qualified to give professional opinion evidence at this hearing.

The Concerned Citizens' expert gave evidence primarily respecting an automobile track in Quebec. Because of the many potential differences in the tracks

pointed out by the cross-examination of this witness and the lack of information the witness had as to what he was listening to in Quebec (for example the number of cars, the type of cars, track width, the terrain differences) the Board gave no weight to this part of his evidence.

Under summons, the Concerned Citizens called an experienced MOE engineer. He has worked for many years with MOE reviewing noise reports and similar documents and providing comments.

In June 2005 this witness commented in writing to this proposal as follows; "... assuming the correctness of all of the assumptions and calculations in the study, as well as conscientious development and application of a Calabogie Motorsport's Park (CMP) operational noise control plan, that normal (as opposed to "special") events at CMP might be able to be carried out in compliance with the provincial noise guidelines..."

Mr. Mirski, legal counsel for the municipalities, asked the MOE engineer whether public health concerns were addressed if MOE noise guidelines were met. The witness responded that the MOE guidelines deal with adverse effects. He went on to say that the MOE guidelines will not please 100% of people 100% of the time, considering the highly diverse sets of circumstances across the Province, but the guidelines are the "best the Ministry can do".

Even though this witness's testimony was generally supportive of this project and the MOE guidelines, he did not leave the Board confident that the guidelines would be satisfactory in protecting the public in Calabogie under these circumstances.

After hearing all of the evidence, the Board concludes that the track will likely meet MOE guidelines on most occasions. The natural vegetation, elevations and the proposed buffering will probably assist. However, because of ongoing logging and the presence of lakes and hilly terrain nearby, and the necessity for operational controls, it is difficult to predict with any degree of certainty that the track will always meet the guidelines.

The Board reiterates that MOE guidelines are only guidelines. Given the valley location and the rocky terrain, this may be one of the rare cases where the guidelines as applied fail to adequately protect the public. For example, an obnoxious noise such as

an automobile backfiring may not exceed MOE guidelines because the guidelines generally average noise ratings over a given time.

The contractual guarantees provided in the noise protocol including operational monitoring, will also assist on the few occasions where there are excesses. Under the protocol, vehicles are to be tested before they use the track and will not be permitted entry if they are excessively noisy. Similarly, the track will provide continual monitoring and if complaints are made the track officials will be able to pinpoint the offending vehicle and stop and prevent it from using the facility. Noise from the track may be permitted to exceed MOE guidelines, but only under a special event permit.

Under the Township's Noise/Licensing By-law, amendments were made at the request of the Minister of Municipal Affairs and Housing to permit occasional excesses of MOE guidelines for special events. Details of the types of special events were left to the local municipality to decide.

The Concerned Citizens complained that the operators of the track could have four special events per year where the maximum noise permitted would be 65 dBALmax, each event lasting four days, effectively ruining each long weekend in the cottage season. Marc Steenbakkers, one of the principals of the proponent testified that the track would not be seeking any special event permits. While this statement is reassuring, there is no binding contract to prevent a change of position in the future by the proponents of their successors.

Temporary Zoning Approval

In the end, the issue comes down to whether the municipality has balanced the environmental, social and economic interests appropriately or have the economic interests prevailed to the detriment of the other interests as the Concerned Citizens suggest.

In considering this issue the Board was asked by the planner for the Concerned Citizens to amend the proposed zoning amendment so as to be temporary and in force for one year, as permitted by Section 34 and Section 39 of the *Planning Act*. She indicated that Section 39 had been effectively used for sports tracks in at least two other municipalities in Ontario. The rationale was that this would allow Council to “review the appropriateness of the use on an ongoing basis in light of actual operational impacts”.

Legal counsel did not challenge or question the Board's authority to amend the By-law in this way.

The other planners suggested such a recommendation was inappropriate for this capital-intensive use, which was not intended to be temporary in nature. They provided a release, Exhibit 27, which was circulated from the Ministry of Municipal Affairs and Housing when the *Planning Act* was amended in 1983. At p.8, it provided:

“Temporary use by-laws are intended to allow land and buildings to be zoned for temporary uses for renewable periods of up to 3 years. Temporary use by-laws are not intended to be used as a holding mechanism, nor as an interim control measure. In other words, [they are] not meant to be used in a way that will prevent the use of land for some purpose. Rather, temporary use by-laws provide a positive way to zone lands where it is known that a specific use is appropriate for the short term.”

The three-year temporary by-law period is the same length of time as the maximum period a person can hold a permit to operate a track at this location pursuant to the Madawaska Noise By-law (Section 5.02(a)). If a person does not hold a permit under the Noise By-law, he is prohibited from operating a track. It makes no sense to the Board to endorse a permanent zoning by-law for only one use, the track, when the operator may possibly not continue to hold a permit for longer than 3 years, under the Noise By-law. If the operator failed to obtain an extension of his permit under the noise by-law, the effect of a permanent zoning amendment and the Noise By-law would be that the property could not be used for any legal use.

Nothing in this Provincial release, or in the *Planning Act* supports a capital-investment criterion nor gives any guidance as to what the lowest investment level should be. Here, the cumulative capital invested in the 129 properties and businesses within 2.5 km. of the track site is many times the amount the proponent intends to invest in the track based on property value alone.

Under cross-examination the proponent's planner also stated that a temporary use by-law wasn't necessary because the Township could shut the use down by court order under the Noise By-law if it repeatedly operated in excess of MOE guidelines. Obviously, such a legal process, as opposed to simply not re-passing the temporary use by-law, and renewing the track permit under the Noise By-law, would be very expensive and time-consuming for the municipality.

The Board heard evidence that the applicants had purchased an additional 950 acres around the track lands. The Board heard evidence that the track lands had been partially cleared for the track and the track had been partially constructed so as to allow noise readings to be taken. Two motorized dirt bikes had been driven around the track to provide noise readings. The Board heard that one section of the track had been moved under the direction of MNR to avoid a locally significant wetland.

Considering the investment made to date with no approvals in place, including the purchase of 1200 acres, the clearing of the land the track is to be built on, the rough-grading of the track, and the construction of many of the berms, the added investment required to pave the track and paddock areas would not seem to be that onerous, even for a temporary use operating under a renewable three year permit under the Noise By-law.

The Board heard no evidence to suggest that there would be a financial hardship or that it would be onerous in any way to the proponents if the by-law were for a temporary period. The proponents always knew that this was one of the Concerned Citizens alternative positions.

The Board heard evidence from the MNR field representative that a temporary by-law was objectionable to MNR because the decommissioning of the spent gravel pit could not be adequately provided for. If a permanent by-law was in place, decommissioning was to be completed by the building of the track. Insofar as the Board understands that the site plan agreement was unsecured except for public road improvements, the Board does not understand how a permanent by-law could be acceptable to MNR when a temporary by-law would not be. Despite assurances and all the evidence to the contrary, the Township and the Province can never be sure if the current principals of the track or if other owners will be operating the track one, five, or ten years from now. If the Board dismissed the appeals there is no financial guarantee that the site plan will be completed as agreed upon by the current principals.

Ultimately, the MNR witness stated that the MNR would modify its position to accommodate the Board's decision.

It is the Board's opinion that decommissioning of the spent gravel pit should be secured whether the by-law is temporary or permanent. The decommissioning may be different depending on how long the track operates.

In all of the circumstances here, the Board will amend the both the Official Plan and Zoning Amendment so as to permit a temporary zoning for a three-year period, and appeals are allowed to the extent necessary to permit these amendments. The Board finds that with the Board's amendments, the OPA conforms with the Official Plan, and the By-law implements it for the reasons given by the planners' for the municipalities and proponent, provided that the track is operated so as not to disturb the inhabitants of Madawaska. This may necessitate the operation of fewer vehicles on the track at one time, or other operational or physical changes to the track property.

In coming to the conclusion that a temporary Zoning By-law is advisable, the Board should not be seen as being critical of either Municipal Council in coming to the conclusions they reached. The Provincial Policy Statements and the Renfrew Official Plan require a fine balance of the environmental, social and economic factors in arriving at planning decisions. The Board finds in favor of a more holistic and cautious approach toward balancing these factors in the pristine Ottawa Valley area of Calabogie.

The Board believes a cautious approach is justified here because of the hilly terrain, including lakes and rivers around the site and the pristine environment. These result in very low ambient sound readings, far below the lowest base level recognized by MOE guidelines as a starting point for analysis. Included in the ambient noise level in Calabogie would be the rustle of leaves and waves on a lake. These sounds may create the same decibel reading on a noise meter as an automobile on a track 3 km. away, but the perceived noise (subjective) of the automobile will be much different because of its annoying characteristics.

Other factors such as the lack of site plan financial securities, and the lack of commitment respecting the retention and use of the lands beyond track lands that are also owned by the proponent, also concerned the Board. These uncertainties could undermine the track's ability to meet MOE guidelines.

The Board agrees with the balanced approach taken by the Concerned Citizens planner and her interpretation of the County's OP which led her to recommend a temporary by-law. The Board finds in the circumstances here that an operational analysis of the track noise is warranted, and should be based on subjective observations.

The municipality's sole reliance on the MOE guidelines to protect the public, its reliance on MNR to protect locally significant wetlands, and its reliance on the operator to self-police track operations all taken together concerned the Board.

Finally, the fact that the Municipality, the Ministry of Environment, the Minister of Municipal Affairs and Housing, and the proponent's own acoustical engineer concluded that the use itself required or may require extensive operational controls, suggests a cautious approach is appropriate.

The Board finds the use of temporary by-laws appropriate for uses which require operational agreements in order to ensure continued compliance with the Official Plan.

Attached to this decision, as Appendices 1 and 2, are the amendments to the Official Plan Amendment and Zoning By-law respectively. The Board assumes that if the By-law is not extended, the zoning would revert to permit the uses previously permitted, or the aggregate use would be legal nonconforming, and could continue on the property where licensed.

It is so ordered.

"D. L. Gates"

D. L. GATES
MEMBER

Appendix 1

Official Plan Amendment # 2, to the County of Renfrew official plan is amended by:

1. Deleting paragraph 1 of Part B as amended by the Minister which read; “Notwithstanding any policies of the Plan to the contrary, for those lands designated Rural-Exception Five on the Land Use Schedules and located in Part of Lots 13, 14 and 15, Concession VIII, Township of Greater Madawaska (formerly Township of Bagot) a closed motor sport track shall be the only permitted use.”
2. Substituting for paragraph 1 the following; Notwithstanding any policies of the Plan to the contrary, for those lands designated Rural-Exception Five on the Land Use Schedules and located in Part of Lots 13, 14 and 15, Concession VIII, Township of Greater Madawaska (formerly Township of Bagot) which is outer limit 300 m offset from the edge of the track as shown on the final approved site plan of the Calabogie Motorsports Part, dated June 28, 2004 and which is scheduled B1 to the site plan agreement that is registered on title as RE28403, a closed motor sport track shall be the only permitted use. This use may be implemented by a temporary use by-law passed under Sections 34 and 39 of the *Planning Act*.”
3. Deleting the second last sentence of paragraph 2 of Part B as amended by the Minister which read; “Seating areas for spectators shall be limited to facilities for no more than 125 spectators.”
4. Substituting for the second last sentence of paragraph 2 of Part B as Minister of following; Seating areas for spectators on the entire site shall be limited to one or more structures with a combined total of seating capacity of not more than 125 persons.”

Appendix 2

Amend Bylaw 24-2004 as follows:

1. Amend the first recital to read; "Pursuant to Section 34 and 39 of the *Planning Act*, the Township of Greater Madawaska hereby enacts as follows:"
2. Amend the first paragraph of Section 1(e)(o) to read; "Notwithstanding Section 19 .1(a) and (b) of this by-law to the contrary, for those lands described as part of Lots 13, 14 and 15 Concession VIII, geographic Township of Bagot and more particularly described as the outer limit 300 m offset from the edge of the track as shown on the final approved site plan of the Calabogie Motorsports Part, dated June 28, 2004 and which is scheduled B1 to the site plan agreement that is registered on title as RE28403, and delineated as Rural-Exception Fifteen (RU-E15) on Schedule "A" to this by-law, a motor sport track shall be the only permitted use. This use shall be permitted for a period of three years from the date of the Ontario Municipal Board's order respecting this by-law."
3. Amend the final sentence of the second paragraph of Section 1(e)(o) to read; "Seating areas for spectators on the entire site shall be limited to one or more structures with a combined total seating capacity of not more than 125 persons."
4. Amend paragraph 3 of the By-law to read; "This Bylaw shall come into force and take effect on the date the Ontario Municipal Board issues its order and shall remain in effect for three years."
5. Renumbered the Bylaw sections such that Section 1(e) becomes 1(d).