

Special Edition Stepping Stones



THE DUNTROON QUARRY EXPANSION NEWSLETTER

April 6, 2011

Message from Walker Aggregates' Vice-President

Since our last special edition of Stepping Stones on March 10 there have been only just over two weeks of testimony before the Consolidated Hearings Board, which is reviewing our application for an expanded Duntroon Quarry. The hearing was suspended over March break, and only two days of testimony were presented last week due to scheduling conflicts.

This edition of the newsletter provides highlights of testimony by Ontario's Environmental Commissioner, Gord Miller, as well as that of lay witnesses from the Clearview Community Coalition. Also included is the start of testimony by the planner for the Niagara Escarpment Commission, Kathryn Pounder. Her testimony and cross examination are expected to last for the next three weeks.

The hearing is now scheduled to run to the end of May.

We will keep our neighbours and friends updated on the developments of the hearing with future special editions of Stepping Stones. Please feel free to contact me with any questions about the quarry expansion or the hearing process at 705-445-2300 extension 224, or in Niagara at 905-227-4142, or visit our website at <http://walkerind.com/walker-aggregates/duntroon-expansion.html>.

A handwritten signature in black ink, appearing to read "Ken Lucyshyn".

Ken Lucyshyn

Environmental Commissioner and CCC Witnesses Testify at Hearing

Ontario's Environmental Commissioner has expressed concerns about the capacity of the Ministry of Natural Resources to effectively monitor quarry operations.

"The number of aggregate inspectors...is totally inadequate," Gord Miller told the Consolidated Hearings Board, noting that inspectors are responsible for too many sites, and do not have the capacity to deal with the complex issues involved in monitoring and mitigating impacts of quarry operations.

"There needs to be people in the Ministry of Natural Resources and the Ministry of the Environment who can understand and make complex decisions," he said. "I see deficiencies in that regard."

Miller, whose job as Environmental Commissioner makes him the province's independent environmental watchdog, was testifying under summons for the Clearview Community Coalition (CCC).

When asked by CCC lawyer David Donnelly if it is essential to have "this quarry in this location," Miller replied that in his opinion, it was not. While he said that having quarries located close to their markets is a business consideration, there are many conflicting uses for land in southern Ontario and the close-to-market argument should not override matters of natural heritage.

Miller also told the board he was critical of the term "interim land use," when speaking of quarries and their subsequent rehabilitation. "It should not mean converted to something else," he said. "I think it misleads."

Walker is planning for an expanded Duntroon Quarry to fill up and become a lake once all the rock has been extracted.

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Under questioning from Donnelly, Miller said the lake “will be a limited function aquatic feature.”

As for the company's plans to reforest areas around the quarry to compensate for woodlands that will be lost, Miller said, “A planted forest is better than no planted forest, but it's not the same,” noting that it is very difficult to reproduce a forest on lands that have been farmed for several decades.

In speaking to quarry applications in general, the commissioner said the province has “competing paradigms in land use planning,” with a tension between how to treat the overall landscape and development plans for individual parcels of land. “My approach is to start with the landscape,” he said.

Despite concerns he previously expressed about the proposed quarry expansion, Miller conceded during cross examination by the lawyers for Walker Aggregates and Clearview Township, that he was not aware of the information that has been entered into evidence about the proposal before the Consolidated Hearings Board.

Except for his testimony under summons for the CCC and cross examination of that testimony, the commissioner has not attended the hearing, which began last May. Upon being asked by Walker lawyer Wayne Fairbrother if he was aware of all the technical information that had been put forward at the hearing by the expert consultants, Miller said he was not.

Miller also confirmed that, as the province's environmental watchdog, his views are not necessarily those of the provincial government.

A board member asked the commissioner about his earlier testimony that the Ministry of Natural Resources does not have the capacity to effectively monitor the environmental impacts of quarry operations, wondering, “Should no further [quarry] licenses be approved because of this?” Miller replied that, “No, there are areas where complex technical issues are not in play.”

Clearview lawyer Ian Rowe then took the commissioner to the Ministry of Natural Resources' State of the Aggregate Resource in Ontario Study (February 2010) which states, “Mineral aggregate deposits by their very nature are found in river valleys, outwash plains, glacial deposits and other geologic rock formations. These landforms also contain wetlands, woodlands, agriculture and water features.”

Miller said he agreed with that statement in the report.

After Miller left the hearing, a member of the CCC and former provincial Minister of Economic Development, Trade and Tourism in the Mike Harris government was put on the hot seat during cross examination of his earlier testimony opposing the Duntroon Quarry expansion proposal.

Ian Rowe was challenging the statements Bill Saunderson made when he provided arguments against the quarry expansion.

Among those statements, Saunderson said, “Heavy industrial plants – such as gravel quarries – do not belong in rural communities...Mineral extraction is an incompatible land use...”

Rowe put into evidence the Provincial Policy Statement (PPS) which was enacted by the Harris government during the time Saunderson was a cabinet minister. The PPS states “Rural areas will generally be the focus of resource activity, resource-based recreational activity and other rural land uses.” Under questioning, Saunderson agreed that he participated in the process to bring the PPS into law.

Rowe then asked whether, when he was in government, that government did anything to amend the Niagara Escarpment Plan to prevent aggregate activities, to which Saunderson replied it did not.

The Clearview lawyer later challenged Saunderson's assertions that a quarry expansion is incompatible with the growing tourism industry in the area. He pointed to letters entered into evidence from the nearby Highlands Nordic cross country ski operation, the Duntroon Highlands Golf Club and the Blue Mountains Bruce Trail Club which have indicated these operations have experienced no impacts from the existing Duntroon Quarry. Saunderson conceded that these organizations co-exist amicably with the quarry.

Rowe then questioned the assertion that a quarry operation would be incompatible with the region's fledgling wine industry. He introduced into evidence a letter from the Vineland Estates winery which is supportive of Walker Aggregates' adjacent quarry in the Niagara Region, and a letter from Grey County transportation director Gary Shaw which mentioned that the Georgian Hills Vineyards on Grey County Road 2 is on the haul route for a number of pits and quarries in the area.

Saunderson maintained that issues such as traffic from quarry operations would be detrimental to the local tourism industry and that a quarry is not appropriate at the proposed location. He said aggregates needed for local building activity could be trucked to the area from other parts of the province.

Another CCC member, Dick Corner, presented a litany of arguments against the proposed quarry expansion, from the possible negative impacts on streams to the road agreement Walker has reached with Clearview Township and Simcoe County, to the effects of the quarry expansion on tourism and real estate values.

Corner, a resident on Concession 10 north of the proposed quarry, was providing lay witness testimony before the Consolidated Hearings Board.

He said his experience operating rendering businesses has taught him about the environmental issues that some industries need to address, particularly when it comes to water issues.

When asked by CCC lawyer David Donnelly about the rendering business not being known as environmentally friendly, Corner responded, "These are different times, and you live and learn."

On the subject of the road agreement, he argued that the cost to Walker of the agreement and the \$208,000 in taxes and extraction fees it will pay the two municipalities per year, is not worth the cost. He claimed it will cost taxpayers \$65,650 per year just to maintain the section of County Road 91 from Duntroon to the proposed quarry expansion. He also claimed that Walker will likely eventually apply to mine the rock under the 1.4 kilometres of roadway that it will acquire, which he estimated would be worth \$200 million.

"As a taxpaying resident, I feel that we're going to get ripped off," he said.

When asked by Donnelly about the speed limit reduction planned for the road from 80 to 60 kilometres per hour from Duntroon to Concession 10, and to 40 kilometres per hour from the concession to the Walker lands, he argued that most drivers would ignore it. "You might as well nail those speed signs on the side of a barn for all the good they're going to do," he said.

On the subject of visitors to the township, Corner claimed that the existence of the quarry and the

resulting truck traffic will detract from tourism, and said for example that people will be afraid to bicycle on local roadways. He also argued that tourism provides many more local jobs in the area than the quarry expansion would, stating, "We are short of labour in this area."

"When tourists visit the area they leave their money, not a moonscape, as Walker proposes."

Corner also shared his view that real estate values would decline in the area as a result of the quarry.

He told the board that the CCC had raised some \$400,000 to fight the quarry expansion and provided as many experts to testify at the hearing as it could afford.

Corner summed up his testimony by stating, "The cost to both the community and the environment far exceeds the gain of mining at this location."

After the week-long March break in the hearing Corner was challenged about the CCC's allegation that it knew virtually nothing about the agreement whereby a portion of County Road 91 would be transferred to Walker Aggregates as part of negotiations for a Duntroon Quarry expansion.

During cross examination Ian Rowe asked Dick Corner about earlier testimony from another CCC member, Neil Lanz, who indicated that on February 25, 2010, the group made a "best guess" deputation about an in-camera matter before a Simcoe County Council meeting. Rowe asked if that were the case, then why did Corner ask about a transfer and closure of part of the road during a deputation to Clearview Council 24 days earlier.

Corner said he heard about the transfer through the rumour mill. When pressed by Rowe, he told the board "I don't know where I came up with that... I'm searching for how I found out about that."

Corner then said his deputation was actually written by another CCC member, Bruce Gillham, and that Rowe would have to ask Gillham about the source of the road closure information.

Rowe also challenged testimony that Corner made during his testimony in chief, including the amount of money that Walker would pay for road improvements around the proposed quarry. Under questioning, Corner conceded that the company would pay up to

\$7.5 million for road agreements, about \$200,000 over the life of the quarry to acquire land and plant trees, and would pay for a sidewalk and crosswalk in Duntroon.

Ruth Grier, a former Environment Minister in the Bob Rae NDP government, also took the stand for the CCC. She spoke of her work in championing environmental issues, including establishing a task force that led to the creation of the Environmental Bill of Rights. Her testimony ranged from her views that the Duntroon Quarry expansion does not meet the test of conformity within the Niagara Escarpment Plan, to her opinion that the ecosystem of the proposed Duntroon Quarry lands is connected to the ecosystem of the adjacent proposed MAQ quarry lands.

Grier said "The land that is being looked at here is too sensitive," and "There are other places [for quarries] with less environmental impact."

Grier also testified that the fact that the Niagara Escarpment Commission (NEC), two conservation authorities and the Blue Mountain Watershed Trust oppose the quarry expansion gives credence to the argument that the expansion should not proceed.

Board chair Chris Conti then enquired about correspondence from the Ministry of Natural Resources and the Ministry of the Environment indicating they were not opposed to the application. He asked, "What do you make of that?"

"Their review was, I think, fairly superficial and matter-of-fact...and based on information provided by the proponent," she responded, adding, "I don't think they know enough to have a major concern."

During cross examination of Grier's testimony, Ian Rowe challenged her track record in government when it came to allowing aggregate applications in the Niagara Escarpment Plan area. He asked if she is opposed to this, why the cabinet she was part of did not change the plan. Grier responded that the plan was under review at the time, and her government did place an 18-month moratorium on aggregate applications while a study was completed. She said the new government that followed then lifted the moratorium at the completion of the study.

Rowe then challenged some of the statements Grier provided in her witness statement and testimony to the board, including her statement that "the Niagara Escarpment Planning and Development Act is simply

about protection." He took her to wording in the act that mentions that the act provides a balance between sustainable development and protection.

Rowe asked Grier how much testimony she had heard from Walker experts. She replied that she had heard about a day of testimony from Walker's natural heritage consultant.

Walker lawyer Mary Bull later challenged Grier's criticisms about the value of adaptive management plans (AMPs) in providing protection for unanticipated negative environmental impacts. Grier had earlier testified about issues raised by the Niagara Escarpment Commission about the AMP at the Dufferin Aggregates' quarry near Acton. Bull asked Grier if she was aware that there is no AMP at the Dufferin Acton Quarry, to which she responded that she was not.

Allegations by the CCC about the lack of a public process over haul route issues were vigorously challenged at the hearing.

CCC co-treasurer and resident of County Road 91, Bruce Gillham, was testifying about noise and safety issues related to the haul route, as well as the road agreement.

Gillham said he only found out about the specifics of the quarry expansion from a neighbour in 2006, and not from Walker or Clearview Township. During cross examination, Walker lawyer Wayne Fairbrother directed Gillham to a sign-in sheet, indicating that he and his wife, CCC president Janet Gillham attended a public open house about the quarry expansion process hosted by Walker in November of 2005. As for his claim about a lack of public consultation on the haul route, Fairbrother pointed out that a public meeting was held under the Aggregate Resources Act in October of 2006, which neither Gillham or his wife attended. He also took Gillham to e-mail correspondence during the summer of 2009, where Walker had offered to arrange a meeting between the CCC and Simcoe County's transportation director – a meeting which the CCC declined.

Fairbrother asked Gillham if it was true that the CCC was not representative of all residents in the area, and he conceded it was not. He said that the CCC does not speak for residents in close proximity to the quarry. When the Walker lawyer asked whether some neighbourhood residents wanted a speed limit reduction along County Road 91 from 80 kilometres per hour to 60 – which is part of the road agreement –

Gillham said that was true for only a portion of the road at the western edge of the village of Duntroon. On questioning by a board member, he said the CCC has not taken a position about the proposed speed reduction along County Road 91.

"You said that [Township] council did not listen to the CCC," Fairbrother said. "But isn't it the case that they did listen but not agree?" Gillham replied that the impression he received from council members at a public meeting in October of 2009 was that they were not happy to have such a meeting, which was ordered by the Consolidated Hearings Board.

Earlier in his testimony Gillham told the board that in his opinion, "The noise and safety impacts of trucks along the haul route will increase significantly as a result of this quarry proposal, even with the [road] settlement agreement." He spoke to the steep slopes and hidden driveways along County Road 91, and suggested a better route might be along Grey County Road 31 with a bypass built around Singhampton, and then along Road 124 towards Duntroon.

"Permanently closing an access over the escarpment does not make sense," he maintained. Referring to Sideroad 26/27 he went on to say, "To replace it by upgrading a steep summer road through the escarpment does not make sense."

The NEC planner and senior strategic advisor, Kathryn Pounder was next to take the stand. She is the primary author of a staff report opposing the Duntroon Quarry expansion.

The report, which outlines the rationale for opposing Walker Aggregates' request to amend the Niagara Escarpment Plan and its request for a development permit, was supported by the commissioners themselves during a vote at a meeting in November of 2009. This followed an April 2008 staff letter to the Ministry of Natural Resources advising them that the NEC would be objecting to the application. The ministry itself is on the record as not being opposed to the quarry expansion.

Pounder told the board the Duntroon Quarry expansion file was originally being handled out of the NEC's Thornbury office, but was transferred to her in the Georgetown office in the fall of 2006. She said she brought on her own team of commission staff to work on the file.

As she began her testimony Pounder said she had

visited the quarry expansion site on five occasions, had reviewed almost all of the documentation relating to the quarry expansion and had attended all of the more than 100 days of testimony before the board so far.

She later undertook a detailed history of the Niagara Escarpment Plan and the history of the application process that's been underway for an expanded Duntroon Quarry.

Pounder told the board about a task force that was created by the provincial government in 1972 to "save" the Niagara Escarpment, and the subsequent passage in 1973 of the Niagara Escarpment Planning and Development Act. She then spoke to the establishment of the Niagara Escarpment Planning Area in 1974 and more work that was done before the Niagara Escarpment Plan itself was finally approved in 1985. "The intention was not to facilitate mineral resource extraction," she said.

She also recounted an effort undertaken by the Niagara Escarpment Commission in 1991 to eliminate mineral aggregate extraction from the plan area in general, a move that was ultimately rejected. The Niagara Escarpment Plan Area is smaller than the "planning area," which takes into account surrounding lands.

Pounder explained that the NEC has required that an amendment be sought for any new aggregate operation that proposed to extract more than 20,000 tonnes annually from what was designated Escarpment Rural land.

She told the board that the NEC received an application for the Duntroon Quarry expansion in 2005, and explained the NEC's process to review the application, undertake site tours, receive comments, coordinate a peer review, and plan and participate in meetings, among other things. By the fall of 2009, the preliminary work of the Consolidated Hearings Board was already underway, and the NEC had not yet taken a position on the application.

Pounder recounted the back-and-forth negotiations between representatives of Walker Aggregates and the NEC as concessions were made to address the commission's concerns. She also spoke to changes the NEC staff had made to the planned extraction and setback areas that were circulated for public comment – changes that Walker did not support.

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“As far as I understand it, there was never agreement between the proponent and the NEC,” she explained.

Pounder outlined the steps the NEC took in coming to its decision not to support an application to expand the Duntroon Quarry.

She explained that the initial comments from the Ministry of Natural Resources (MNR) in November 2006 in a letter indicated that “...it is our opinion that the applicant has not demonstrated that the proposal will result in no negative impacts to the identified natural heritage features and functions.”

She confirmed to the board that the MNR still had concerns about the quarry expansion when she presented her staff report about the application. The MNR subsequently withdrew its objections to the application.

In June 2009, Pounder testified that the NEC's Public Interest Advisory Committee recommended to the commission that the application not be approved.

She explained that staff had concerns about potential impacts to water, natural heritage features, cultural heritage features – including a local barn – wetlands, woodlands, the American Hart's Tongue Fern and a colony of butternut trees on the site.

She told the board that the applicant, “should not simply sculpt around the features to be protected,” in determining where the aggregates should be extracted. She argued that the entire site needs to be protected. “All unique ecological areas were not known when the [Niagara Escarpment] Plan was prepared,” she said, referring to the reason why the land proposed for the quarry expansion has not been designated as requiring a higher level of protection.

As for the road agreement to close a portion of County Road 91 and route traffic along a rebuilt Sideroad 26/27, she said, “Since we haven't seen a design of the road, it can't be concluded that an environmental assessment would be successful or a development permit obtained.”

She indicated that she was concerned that the rebuilding of Sideroad 26/27 might require a clearing

of vegetation and a widening of the road allowance which could result in a break in the contiguous forest which the road now passes through.

Among her final comments last week, Pounder maintained that the lake that will result from the rehabilitated quarry expansion will be an “artificial” feature, with only limited natural functions.

Her testimony and cross examination will continue over the next three weeks.

The Duntroon Quarry is operated by Walker Aggregates Inc., a division of Walker Industries.

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