

# Special Edition Stepping Stones



THE DUNTRON QUARRY EXPANSION NEWSLETTER

February 9, 2011

## Message from Walker Aggregates' Vice-President

Weeks 25 and 26 of the Consolidated Hearings Board review of Walker Aggregates' application for our Duntroon Quarry expansion focused on the start of the case for the Clearview Community Coalition (CCC). Testifying for the CCC were a field naturalist and a botanist, with highlights outlined in the story below.

Next up will be cross examination of the testimony provided earlier in the hearing by the visual expert for the Niagara Escarpment Commission, followed by a witness for the CCC who will give his opinion on the noise impacts of the quarry.

As always, we will keep our neighbours and friends updated on the developments of the hearing with

another special edition of Stepping Stones in two weeks. 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**

## CCC Opens its Case with Testimony About the Natural Environment

Week 25 of the Consolidated Hearings Board review of Walker Aggregates' application for an expanded Duntroon Quarry began as it has on several occasions over the past months, with lawyers representing the various parties arguing over what information should be allowed to be entered into evidence.

The proceedings began with one of the lawyers for the Clearview Community Coalition (CCC), David Donnelly, requesting that a new report, prepared by the group's field naturalist, be entered into evidence. Robert Bowles began working on a report on the distribution of the American Hart's Tongue Fern on the Niagara Escarpment last summer after hearing testimony from Walker's ecology expert last May.

Walker lawyer Mary Bull vehemently objected to the new report being entered into evidence on the eve of Bowles' testimony before the board, calling it "outrageous" and an "abuse of process." She said the report could have been presented at any time in the

past several months prior to today, with Bowles scheduled to testify tomorrow. Bull noted that there will be no opportunity for the Walker team to test new evidence about the fern "when there's a foot of snow on the ground."

Donnelly said Bowles "jumped in the fern mobile," last summer to personally investigate earlier testimony by Walker's ecologist about the local distribution of the American Hart's Tongue Fern, and then prepared his own report. He visited sites from early June through early September in gathering the information that formed the basis for the report.

Board chair Chris Conti wondered why the document was brought to the board's attention so late, noting "The report was presumably done several weeks ago."

Bull reminded the board that the CCC had asked for a fern expert to testify at the hearings since Bowles was not considered to be one.

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Among her other arguments, she noted that Walker agrees that the American Hart's Tongue Fern is considered significant wildlife habitat. "The real issue is not with the number of plants [on the expansion property], but whether the buffer is adequate to protect what's there."

Bull said if the board decides to allow the new report to be brought into evidence, Walker would like a number of conditions to be met, including receiving background documentation about the report, and a delay in cross examining Bowles in order to become familiar with this new evidence.

Donnelly countered by saying that if adding the new report results in a delay of cross examination, "then quite frankly, it's not worth it."

After two days of debate on the issue, the board ended up ruling that only a few pages of the report could be admitted – pages which include information already before the board.

Chair Conti questioned the relevance of the report on the local distribution of the American Hart's Tongue Fern, since all the parties agree that the plants on the Walker property constitute significant habitat and should be protected, and added, "The timing was totally inappropriate."

Once the decision was made, the CCC began its case in opposition to a proposed Duntroon Quarry expansion with its lawyer stating, "This is not the place for a new quarry."

In his opening remarks before the Consolidated Hearings Board, Donnelly said the CCC "is comprised of an extraordinary group of local citizens, concerned not only about their own quality of life, but the destruction of natural heritage features."

The application is laden with many complexities and challenges, he said, and wondered, "Can you destroy this part of the Niagara Escarpment, let [the excavation] fill up with water, and plant trees...and this can truly be called a net gain for the environment? The CCC says this claim cannot be borne out by the evidence."

When he opened his testimony as the CCC's first witness, Robert Bowles told the board the species inventory compiled by Walker Aggregates' ecology consultants for the proposed quarry expansion lands "has a lot of gaps."

He gave the opinion that further investigation was required. As an example, he said "common techniques were not employed to identify reptiles," including road investigations whereby naturalists examine "road kill" and species found crossing or near roadways. He said the Walker consultants' inventory only identified the common garter snake on the site, when he would have expected to find milk snakes based on habitat he observed, and milk snakes he identified on a nearby roadway and neighbouring property.

"Another species I'm concerned about is the snapping turtle," Bowles said noting that he observed a female snapping turtle laying eggs last spring along the north side of Grey County Road 31 about a kilometre east of the village of Rob Roy.

Bowles was also critical of the plant inventory that was compiled, stating that two plants on the inventory – the American Hazel and the Running Strawberry Bush – were probably added as a "misidentification." He told the board that these plants are normally found further south and, if they are on the quarry expansion lands, require protection because of their unusual occurrence.

As for the bird surveys that were undertaken, Bowles said, "I feel that more information could have been provided. Stantec didn't really build a strong foundation for the surveys," adding that two days of work is not sufficient on a property the size of the expansion lands.

Speaking to the 30-metre buffers planned by Walker to protect wetlands near the proposed quarry, Bowles said they are not adequate. He said research demonstrates at least 120 metres are required around amphibian pools to allow frogs and salamanders to travel to wooded uplands to forage and find protection.

As for the wooded uplands themselves, Bowles also expressed his opposition to Walker's plans to remove a part of the existing forest for the quarry expansion, and replace it with a larger reforested area nearby. He argued that the existing forest is just now "reaching its prime," and said, "It would take 30 to 40 years for the species to be able to use the reforested areas the way they do now." Overall, he said it will be 60 to 70 years before all animals that are using the existing forest will return to the reforested area.

Testifying about a colony of American Hart's Tongue Fern on the Walker site, Bowles said it is "a world class heritage feature," adding that "Everyone agrees it needs to be protected."

"In 25 years of field research on the Bruce Peninsula, I have never seen such a large, high-density colony."

Walker is proposing to retain the colony and protect it with a 50-metre buffer from the extraction area. The plant is considered a "species of special concern" in the province of Ontario.

In concluding his testimony in chief, Bowles said the quarry expansion proposal "gives rise to many concerns," and would result in negative impacts. "I don't believe that the mitigation – including the reforestation – will prevent these impacts from occurring."

During the subsequent cross examination by Walker lawyer Mary Bull, Bowles was often at a loss to explain the rationale behind many of the concerns he raised in his testimony about the effects of an expansion on wildlife features and functions.

She asked him what specific criteria he was referring to in his witness statement when he noted the proposed expansion lands should have an upgraded designation in the Niagara Escarpment Plan, from "escarpment rural" to "escarpment natural" or "escarpment protection." Bowles said the lands had many wildlife species and features that require special protection, but admitted "I can't give you specific areas in the Niagara Escarpment Plan."

He also admitted under cross examination that he did not take note of several wildlife features when he had an opportunity to tour the site last April, telling the board it was "a long day." He later conceded that the site tour began at 10 a.m. and concluded at 1 p.m.

Bull later asked Bowles if he had reviewed the academic research referenced in Walker's ecology consultant's plan to reforest a portion of the site, and Bowles said he did not. He also confirmed that he could not refer research to support his own position that the reforestation would likely not be successful, instead speaking to ecology tours he has conducted of woodlots.

When asked which woodlots he was referring to, Bowles said they were in Simcoe County, but noted, "I can't give you any specific locations at this time."

Other questions Bull asked related to the possibility of different species of snakes on the property, the length of time it takes for a reforested area to produce a canopy cover, wetlands that have been maintained near quarries, and the movement of frogs and salamanders between wetlands and woodlands.

Bowles continued to maintain that he had concerns about the effect the quarry expansion would have on wildlife and its habitat, even with the monitoring and mitigation measures being planned.

Following Bowles appearance on the stand, a botanist working for the CCC spoke to the reproduction and habitat of the American Hart's Tongue Fern.

Anton Reznicek, an evolutionary botanist and assistant director of the herbarium at the University of Michigan, provided the board with a tutorial on what he called the "almost science fiction-like" reproduction of ferns, with their spores that disperse to form tiny leaf-like "gametophytes," which in turn produce gametes (both sperm and eggs) that combine to create new plants.

In addition to speaking to the propagation of ferns in general he testified about the particular habitat of the American Hart's Tongue Fern. Reznicek visited the site last April and noted that the fern colony was "very impressive." "I was astounded at the number of plants that were at the site," he said.

He testified that in North America, known colonies of the ferns are primarily located along the Bruce Peninsula of the Niagara Escarpment, although there are some small occurrences in a handful of U.S. states.

He said that "not very much research is available on the American Hart's Tongue Fern." He said what is known is that the plants are typically found in limestone crevices, associated with mats of moss, and under canopies of deciduous forests in locations with very little leaf cover. He added that the fern needs an elevated humidity, wind protection and snow cover in the winter. The fern is an evergreen plant.

Reznicek explained that the fern is so particular about its habitat that botanists assign it a 10 out of 10 – a scale that ranks plants' habitat requirements, as compared to a ragweed plant for example, which will grow just about anywhere and is assigned a zero on the scale.

During cross examination, Walker lawyer Mary Bull challenged many of Reznicek's assertions including his testimony the quarry might result in increased wind and dust, decreased humidity and snow cover and other negative effects.

In one instance, Bull asked him how noise from the quarry would affect the ferns, one of the concerns he expressed in a witness statement to the Consolidated Hearings Board. "You've got me there," Reznicek replied. "I have no idea what I was thinking."

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Bull then asked how vibration – another area of concern – would affect the ferns. He responded that he felt that blasting and vibration might disrupt the rock structure under the ferns, but added that vibration was not an area in which he had experience.

Under repeated questioning from the Walker lawyer, Reznicek was forced to qualify much of his previous testimony, stating that he did not have enough information or expertise to make definitive statements about whether or how the fern colony might be affected by quarrying activity.

Reznicek maintained that a buffer of at least 100 metres from the extraction area would be required to protect the fern colony from any negative impacts from quarrying activity. He said he based that distance on a reference in the provincial Natural Heritage Reference Manual which states that such a buffer is needed to protect species that require interior forest habitat. Bull asked him the basis on which the manual determined such a distance was required for ferns, and took him to notations in the manual which indicated that the 100-metre distance was based on literature about birds and wetlands, and not the fern.

At cross examination, Bull asked Reznicek if he could contemplate any measures that might be undertaken to mitigate any negative effects the ferns would experience as a result of the proximity of a quarry's edge. Except for suggesting a planting of vegetation such as cedar trees – which he felt would not be effective – Reznicek did not identify any other measures.