

# Special Edition Stepping Stones



THE DUNTRON QUARRY EXPANSION NEWSLETTER

November 9, 2010

## Message from Walker Aggregates' Vice-President

Over the past two weeks, witnesses for the parties in support of Walker Aggregates' expanded Duntroum Quarry completed their testimony before the Consolidated Hearings Board reviewing the quarry expansion application. Those parties are Walker itself, the County of Simcoe and the Township of Clearview.

Witnesses for the opposing parties – the Niagara Escarpment Commission (NEC), Clearview Community Coalition (CCC) and Emelia Franks – also began their testimony.

Areas of focus included whether the proposed quarry lands contained any habitat for the threatened bobolink, and the road agreement Walker entered into with Simcoe County and Clearview Township.

The board also began to consider how best members of the public can present to the board later this month.

About 85 people submitted participant statements to the board by the October 22, 2010, registration deadline in order to make their views known and speak at the hearing November 23.

Chair Chris Conti expressed a concern about the time that would be required to hear from all the participants individually, wondering if there were a mechanism whereby all participants' concerns could be put forward without necessarily having everyone make a verbal presentation to the board.

The lawyers for Walker, the CCC and the NEC will be reporting back to the board their agreement and recommendation on how the public participation might proceed.

As always, please 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/duntroum-expansion.html>.

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

**Ken Lucyshyn**

## No Suitable Bobolink Habitat, Expert Biologist Testifies

An expert biologist for the Ministry of Natural Resources, who specialises in birds, told the Consolidated Hearings Board that he is of the opinion that there is no suitable habitat for the threatened bobolink bird species in the area that is proposed for an expanded Duntroum Quarry. Chris Risley testified under subpoena before the board.

Risley said he and two other ministry employees joined Walker's vice-president and two of the company's consultants for a tour of the site on October 1, 2010.

In taking the board through a report he prepared on October 8, he said he studied four areas of the site that might be considered potential bobolink habitat.

The bird had been sighted on the property during a study in 2003 but not in a subsequent study in 2005. Risley said the four areas of the site were either being actively farmed or had been fallow, and recently ploughed or mowed. He said that based on their small size, and the vegetation that was on or near the fields, he did not consider any of them to be bobolink habitat. "I am of the opinion that...in combination, the conditions are not suitable for bobolink," he told the board.

He said that the bird typically nests in hayfields, pastures, meadows and tall grasses – but not in fields with broadleaf plants or heavy thatch. Risley also

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noted that it prefers to nest in large areas, avoiding patches smaller than three to four hectares. The four Walker fields with vegetation that might be considered to support bobolink range from .86 to 2.4 hectares.

The bobolink became a “threatened” species under the province's Species at Risk Act in late September.

When asked by Niagara Escarpment Commission (NEC) lawyer Orlando Da Silva if he was aware that the habitat of the bird has some relevance to the hearing, Risley noted that “Normal farming activities are activities that are allowed on the landscape, unless someone is informed of the need to change their practices.” He went on to say it is up to the Ministry of Natural Resources to provide direction to landowners.

When asked by Da Silva if he had given thought to the possibility that bobolink habitat had been destroyed, Risley said “No. Some fields get ploughed and some remain fallow. That happens in thousands of fields across the province.”

After the completion of cross examination by Da Silva and the lawyer for the Clearview Community Coalition (CCC), David Donnelly, Walker lawyer Mary Bull asked Risley a few final questions.

Among them she asked if the Ministry of Natural Resources has issued a habitat protection order for the Walker property, to which he replied “No.”

The following week, lawyers for the NEC decided to drop issues they earlier raised about whether there might be bobolink habitat on the lands proposed for an expanded Duntroon Quarry. Orlando Da Silva said the NEC had “taken a good, hard look and considered the evidence.”

“We believe there is little to be gained in further exploring the bobolink evidence,” Da Silva went on to say.

The lawyer for the CCC, on the other hand, wanted to add to the bobolink issues list he had jointly prepared with the NEC lawyers. This request by David Donnelly was refused by the board. Chair Chris Conti said, “We're dealing with planning issues, not with any potential violations of the Endangered Species Act... The board will not make further changes to the issues regarding the bobolink at this time.”

In cross examining Walker's planning expert Brent Clarkson, Donnelly asked several questions about a meadow on the northwest section of the proposed quarry lands, and specifically when the meadow was ploughed for farm production. Clarkson said he was

aware that Walker's representatives had a discussion with a local farmer about ploughing the field at around the second week in September, but was not aware that the field was to be ploughed until after it had happened. “My client told me he was advised by his financial people to put the land into production to take advantage of tax provisions.”

Under further questioning Clarkson confirmed that as of September 28, 2010, when the bobolink was designated as being threatened, bobolink habitat must be protected. However, he did note that development and site alterations may be allowed on the habitat of threatened species, provided the proponent is able to secure a permit and demonstrate that the project provides an overall benefit to the species. Clarkson also noted the Ministry of Natural Resources is responsible for approving the significant habitat of an endangered or threatened species.

Donnelly asked whether the board should require the rehabilitation of the northwest field, should it approve the expanded quarry application. Clarkson replied, “No, there's no bobolink habitat there.”

On another day of testimony, Clearview Township's planning director said he supports an Adaptive Management Plan (AMP) for an expanded Duntroon Quarry, despite concerns expressed about the plan in a draft environmental peer review conducted for the Township. Under cross examination before the Consolidated Hearings Board, Michael Wynia told the board that the AMP has undergone revisions since the peer review and will be further revised before the Township signs off on the plan.

“The Township takes its role seriously to ensure the AMP does work as a tool,” he said. “It governs a range of monitoring and mitigating measures that can be employed.”

In testimony before the board several weeks ago, Walker's consultants testified that while they did not anticipate any environmental impacts resulting from an expanded quarry, the AMP has been prepared – with input from other agencies – to monitor any environmental impacts that may arise and detail steps to address them, including halting quarry operations if necessary.

Wynia told the board that such a plan works well with an interim land use of this nature, as opposed to a subdivision development, for example, which is permanent. “With a subdivision, once the houses are up, that's it,” he said, noting that little further action could be taken in this instance to address negative impacts.

In responding to questions from David Donnelly, Wynia admitted he had not undertaken an extensive review of the latest version of the AMP and did not intend to do so until a decision on the quarry application has been made by the board and agencies have provided further comments. "My preference is not to sign off until we have input from the conservation authorities and the Niagara Escarpment Commission."

The Grey Sauble Conservation Authority and the NEC have so far provided no comments on the AMP.

Donnelly also asked Wynia for his opinion of comments in a statement supplied to the hearing by Ontario's Environmental Commissioner, Gordon Miller, who is expected to testify at a later date. In his statement Miller makes allegations relating to compliance problems in the aggregate industry and also to problems with quarry rehabilitation.

Wynia noted that the commissioner's comments were broad based, and that he was not aware of any issues raised by the Ministry of the Environment about Walker's Duntroon Quarry. "Some operators are better than others," he said.

Other questions Donnelly posed included the level of protection that would be provided to a colony of American Hart's Tongue Fern that is located on the site, but would be kept out of the extraction area and protected by a 50-metre buffer.

Later, in his cross examination of Wynia, CCC lawyer David Donnelly said he is "very troubled with the role of the Ministry of Natural Resources" in the hearing.

Donnelly asked the Clearview planner a number of questions relating to the ministry's position and its Statement of Environmental Values on matters relating to the quarry expansion application.

Wynia said the ministry's environment values statement "has no bearing on municipal policies." He went on to note that ministry representatives reviewed and commented on the quarry application, and he said, "They are satisfied and have decided not to be a party [to the hearing.]"

On another point raised by Donnelly, Wynia dismissed the lawyer's suggestion that the Township should defer to the NEC on how best to protect the colony of American Hart's Tongue Fern on the proposed quarry site, suggesting that the NEC does not wish to see quarries within the Niagara Escarpment Plan areas. As an example of the NEC's position, he noted "They are not willing to discuss the Adaptive Management Plan, even on a without prejudice basis."

In responding to Donnelly about whether the Township has been working with the NEC in determining whether and how significant wildlife habitat would be protected, Wynia stated that "It was my general impression that it would not be fruitful."

Donnelly also questioned the planner on the value of the one cent per tonne monetary agreement that the Township will receive to acquire environmentally sensitive lands and plant trees if the quarry application proceeds. Wynia said this arrangement was negotiated with Walker, that the company is not now required to pay the Township for the aggregate trucked from its current Duntroon Quarry and that he was not aware of any other operator that has entered into such an arrangement with a municipality. He concluded that it was precedent setting and resulted in a substantial public benefit.

At the end of his cross examination, Donnelly asked Wynia about the agreement the Township had made with Walker to begin shipping aggregate at 5 a.m. on weekdays. Wynia replied that the company now has unrestricted hours, and he had consulted with Township staff about their experience with municipal projects that require aggregate "so they wouldn't be standing around waiting for a load of gravel to arrive." He also noted that other benefits of Clearview's agreement with Walker included a reduced speed limit on County Road 91 to 60 from 80 kilometres per hour, a lower number of total trucks on the road, and limits that have been set on the amount of aggregate that can be hauled.

Near the end of last week's testimony Clearview Township planner Jim Uram explained in detail how he believed the expanded quarry application conforms to the directions and policies of the Provincial Policy Statement, Niagara Escarpment Plan, and Clearview Township and Simcoe County official plans.

He also spoke about public meetings the Township held in January 2007 and February 2009 to obtain comments from the community about the proposed quarry expansion.

Uram maintains that a road settlement agreement – that would close a portion of County Road 91 – was negotiated with Simcoe County and Walker Aggregates in response to concerns that had been raised by nearby residents.

While Uram agreed that there was no public process made available surrounding the settlement itself, he said the agreement came about as a result of "certain issues raised by the public along the way..."

The settlement was in response to the public consultation that happened prior to it." Uram pointed to two public meetings held by the Township January 27, 2009, and October 20, 2009. He said issues that were raised such as truck traffic, noise and the need for roadway improvements were part of the impetus of the settlement.

The agreement calls for the downloading of County Road 91 from Duntroon to Grey County Road 31 to the Township from Simcoe County, with the portion from the Walker lands east to Grey County Road 31 closed and transferred to the company.

Under cross examination by Donnelly, Uram testified that he understood that the Niagara Escarpment Commission was invited to participate in the road settlement negotiations and that a delegation was made by Clearview representatives to Grey Highlands. He also said that the mayor and deputy mayor of Grey Highlands were aware of the pending agreement through their roles as members of Grey County Council.

When pressed by Donnelly about the process by which members of the public could comment on the road agreement, Uram noted that citizens have been able to make their views known through the Consolidated Hearings Board process, even though – as Clearview lawyer Ian Rowe noted – the agreement does not need to be endorsed by the board as part of its review of the quarry expansion application.

At the start of testimony by witnesses for the NEC, its hydrogeology consultant came out generally in support of the groundwater modeling put forward by Walker Aggregates' hydrogeology experts in their work on a proposed Duntroon Quarry expansion.

Chris Neville said the hydrogeology models that were used to predict groundwater draw downs were defensible when viewed at a broad scale. He did emphasize, however, that there was some uncertainty in the results.

"The fact is, in hydrogeology, there's always uncertainty," he said, and that groundwater models have limitations and should not be relied upon exclusively.

Neville noted that the existing Duntroon Quarry has produced draw downs in wells on a neighbouring property of two to three metres, with a slow progressive downward trend in water levels since monitoring began in the mid 1990s. He said he would anticipate a similar degree of draw down for the expanded quarry at the same distance away – 750 metres – and no draw downs at a 1,000-metre distance.

In his peer review, Neville generally agreed with the overall conclusions drawn by Walker's hydrogeologists. He did say that more detailed testing further out from the proposed expansion quarry would have assisted in the evaluation.

Neville's testimony also lent support to Walker's plan to monitor and plan for any unforeseen negative environmental impacts. He spoke to ongoing monitoring that would need to be carried out during quarrying operations, and his peer review report to the board stated, "In our opinion, it is essential that a comprehensive monitoring program be implemented as part of the adaptive management plan for any development."

As for the changes in ground water discharges to the nearby rivers and springs that may occur as a result of the quarry expansion, he said "Quarries don't consume a lot of water. There will be a change, but not a lot."

When asked by a member of the board if anything in Walker's hydrogeological modeling would cause him to "throw up a red flag," Neville responded, "No."