

Special Edition Stepping Stones



THE DUNTROON QUARRY EXPANSION NEWSLETTER

October 12, 2010

Message from Walker Aggregates' Vice-President

The Consolidated Hearings Board review of our application for an expanded Duntroon Quarry resumed again on September 27 after a three-week break. The break came as a result of members of the board and lawyers for the involved parties having conflicts with their schedules.

The hearing is now taking place in a new location in Collingwood, in rented space at 49 Huron Street, Suite 1, near the intersection of Rodney Street and adjacent to the Sobeys' supermarket. The space that had been used in the Creemore Arena is no longer available with the approach of hockey and curling season, and the prior booking of some of the rooms.

Proceedings over the past two weeks have involved testimony and cross examination of Walker Aggregates' planning expert Brent Clarkson. The cross examination by the opposing parties will be followed by re-examination of Mr. Clarkson by Walker's lawyers.

Next up will be testimony from Clearview Township's noise, natural heritage, and planning experts. That will be followed by the planning expert for Simcoe County, after which time the Niagara Escarpment Commission will call witnesses to make its case in opposition to the quarry expansion.

The details of Mr. Clarkson's cross examination over

the past two weeks are outlined in this newsletter.

Some of the questioning of Mr. Clarkson relates to the fact that our Adaptive Management Plan (AMP) is in draft form and not finalized. We have determined that we cannot finalize the AMP until the board determines what the ultimate land use will be, once the expanded quarry is operational and rehabilitation gets underway.

The hearing is lasting much longer than anyone expected and, according to our most recent schedule, was planned to end on December 16. But we are already a week behind that schedule. We are hoping that we can at most, make up time, or at least, not fall further behind. Everyone on the Walker team is hoping the hearing will wrap up by the end of the year.

As always, please contact me with any questions 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

Walker's Planning Expert Testifies and Responds to Questioning

In a detailed and methodical manner, Walker Aggregates' planning expert has, over the past two weeks, been explaining point by point why the proposed Duntroon Quarry expansion meets all relevant criteria to proceed.

Brent Clarkson took the board through his reply witness statement, which was drafted in response to statements about the application submitted by

Kathryn Pounder, the planning expert for the Niagara Escarpment Commission (NEC), and other representatives of the NEC and the Clearview Community Coalition.

In one instance he noted that Ms. Pounder had cited one reason for her opposition as being that the Niagara Escarpment – where the proposed expanded quarry would be located – is designated by UNESCO as a World Biosphere Reserve. Mr. Clarkson said, "A world

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biosphere reserve is not a 'no touch zone'," when it comes to development. He shared with the board information from the UNESCO web site which notes that the functions of a biosphere reserve include development, as well as conservation.

Mr. Clarkson also disputed other rationalizations and interpretations Ms. Pounder had put forward in arguing that the quarry not be allowed to proceed.

In addition, Mr. Clarkson reviewed in considerable detail why the application is in accordance with the Official Plan of Clearview Township.

He explained why objections to the proposed quarry application were either dealt with or not valid, referring to government and agency regulations and policy statements to explain his opinions. As part of his testimony he took the board through the list of issues raised by the various parties and explained how Walker had either addressed the issues raised or had determined that they were not legitimate.

In one example, Mr. Clarkson told the board how Walker had responded to a concern raised by Ms. Pounder. She had stated that the treatment of the side slopes indicated on the proposed rehabilitation plan for the expanded quarry was inconsistent with the scenic values of the lands in the vicinity of the escarpment. Mr. Clarkson said that Walker had found that suggestion to be reasonable, and modified its rehabilitation plan accordingly by agreeing to undertake additional tree planting on the side slopes.

Mr. Clarkson also spoke to the company's plans to mitigate any possible impacts from the quarry by directing its experts to go above and beyond what was required by applicable legislation – including taking extra measures to protect the American Hart's Tongue Fern and butternut trees on the site – to create a net gain for the environment when the quarry is rehabilitated.

He concluded his evidence in chief by recommending to the board that it request the Minister of Natural Resources to issue a licence to allow the quarry expansion to proceed.

During cross examination, the lawyer for the NEC, Demetrius Kappos, asked Mr. Clarkson to acknowledge that although the NEC was not in favour of the Duntroon Quarry expansion, it has approved quarry applications on the escarpment. Mr. Clarkson agreed that this was the case.

Mr. Kappos then asked about his interpretation of sections of the Niagara Escarpment Plan which referred to maintaining and enhancing the environment.

Mr. Clarkson disagreed with Mr. Kappos' suggested meaning of the phrase, stating, "I don't interpret maintain and enhance to mean that you can't make any changes."

What constitutes the "natural system" in and around the proposed Duntroon Quarry expansion was a main topic on one day of last week's testimony. The bulk of that day's hearing was consumed with detailed cross examination by Mr. Kappos of Mr. Clarkson's interpretation of what constituted this natural system, and whether Walker's plans for the quarry and its rehabilitation would preserve environmental features.

Mr. Clarkson maintained that the Walker lands were part of the natural system, as are the wildlife features that comprise it. Mr. Kappos suggested that the quarry expansion would disturb wildlife and wildlife habitat as a result of the existence of the quarry itself and the accompanying reforestation plan. For his part, Mr. Clarkson stressed that the transition would provide habitat, albeit different habitat, for different species.

Kappos pointed to specific sections of the Niagara Escarpment Plan and the Provincial Policy Statement in his efforts to have Clarkson concede that the quarry application did not meet those regulations relating to preserving natural features.

"You have to read those policies in an integrated fashion," Clarkson replied. "You can't just cherry pick them. The objective... is to preserve as much as possible." He went on to say that if the regulations were viewed in isolation, there would be no provision for quarrying on the Niagara Escarpment.

The Niagara Escarpment Plan does allow for aggregate extraction in some areas of the escarpment.

The NEC lawyer spent a considerable amount of time asking Mr. Clarkson about significant natural heritage features at and around the proposed quarry site. Mr. Kappos asked Mr. Clarkson to agree that the designation of such features is not up to the Ministry of Natural Resources, but in the purview of the NEC and the local planning authority.

Mr. Clarkson responded, "Yes, and in the case of a dispute, the decision rests with the board."

Mr. Kappos then asked Mr. Clarkson why Walker chose to reduce the size of its licence area from its original plan in 2005.

Mr. Clarkson replied that, "The intent was that the entire expansion lands be included within the proposed Aggregate Resources Act license boundary to provide greater protection of sensitive natural heritage

features.” He explained that this way, details about protecting such features and about rehabilitation plans would be included as part of the quarry's site plan notes. He went on to say that Walker agreed to reduce the size of its licence area to address issues raised by the NEC.

Mr. Clarkson told the board that the American Hart's Tongue Fern would receive more than adequate protection in the company's plans to expand its Duntroon Quarry. When asked by Mr. Kappos why the area where the ferns are to be retained is within the expanded quarry license boundary, Mr. Clarkson reiterated that this would give the plants an added level of protection under the Aggregate Resources Act “including the one that invokes fear on the part of an operator, and that is losing his licence.”

The American Hart's Tongue Fern is designated as being of “special concern” in Ontario. A colony of the ferns on Walker's proposed Duntroon Quarry expansion lands is located within the proposed license area but in an area that will be protected from extraction by a 50-metre buffer.

Once Mr. Kappos completed his cross examination, the lawyer for the Clearview Community Coalition, David Donnelly, began his questioning of Clarkson. Mr. Donnelly's questions ranged from ones relating to Clarkson's experience with quarry applications to his views of what constituted a quarry expansion as opposed to a new quarry application and the market for the stone to be extracted.

In particular, he pressed the Walker planner on the agreement the company had made with Simcoe County and Clearview Township to close a portion of County Road 91 from County Road 31 to the eastern portion of the Walker property. When asked by Mr. Donnelly whose idea it was to close the road, Mr. Clarkson replied that it was the County of Simcoe which proposed the idea.

Mr. Donnelly also asked whether the road closure was part of Walker's open and transparent process during its seven years of work on the expanded quarry application. Mr. Clarkson maintained that the company was more open and transparent, and had engaged in more community consultation, than other proponents he has worked for. He further went on to say the settlement, including the road closure decision, needed

to be made by the County in a closed council session. This was because the quarry application was before a judicial body – the Consolidated Hearings Board – and the discussions therefore needed to be confidential.

Mr. Donnelly questioned Mr. Clarkson about the process by which the public was consulted in the road settlement agreements between Walker, Simcoe County and Clearview Township. He also raised questions suggesting that Walker might be interested in mining the section of the road allowance and setbacks along the section of County Road 91 that is proposed to be closed and will separate the existing and proposed expanded quarry.

Mr. Clarkson replied that if, at some point, Walker was interested in doing such a thing, it would require an entirely new set of study and approvals.

He also asked whether it is appropriate that the Adaptive Management Plan (AMP), designed to monitor and address any potential negative environmental impacts, is in draft form and would not be finalized until after the board makes its ruling on the expanded quarry application. Mr. Clarkson maintained it is, since the AMP is a tool to implement the monitoring and mitigation recommendations of Walker's consultants, and agencies could continue to make recommendations to the Ministry of Natural Resources about what is best to include in the plan.

Mr. Donnelly wrapped up his cross examination for the week by asking Mr. Clarkson about the financial security Walker would be required to post for monitoring and mitigation while the mined out quarry fills up with water. Mr. Clarkson responded that the Ministry of Natural Resources would be notified when monitors indicated potential issues and that funds would be made available for any necessary mitigation, if Walker was no longer around to undertake such mitigation.