

Special Edition Stepping Stones



THE DUNTRON QUARRY EXPANSION NEWSLETTER

January 11, 2011

Message from Walker Aggregates' Vice-President

Happy New Year everyone! The proceedings of the Consolidated Hearings Board have started up again after finishing work for 2010 on December 16.

As we begin 2011, there will be periodic breaks in the hearing over the next few months. Since the proceedings are taking much longer than anticipated, scheduling issues are arising with some of the lawyers who had made other commitments for the coming months. It now looks as though the hearing will stretch into April, almost one year since the lawyers made opening statements in May 2010.

During the last two weeks of testimony in December, the Niagara Escarpment Commission's (NEC's) ecologist was under cross examination and its visual impact expert began her testimony. This testimony will

continue as we begin 2011 and be followed by witnesses for Emelia Franks and the Clearview Community Coalition, before the NEC resumes its case.

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/duntrou-expansion.html>.

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

Ken Lucyshyn

NEC Ecologist Defers Questions over Quarry Proposal to Planner

During cross examination over the last two weeks of testimony in 2010, the ecologist for the Niagara Escarpment Commission (NEC) repeatedly deferred to the commission's planner questions put to her by Walker Aggregates' lawyer.

Mary Bull asked if ecological background information – which Lisa Grbinicek noted in correspondence was required to properly assess Walker's quarry expansion application – was, in fact, ever requested of the company or its consultants. This included a consolidated list of species on the expansion site, a detailed characterization of the wetlands, more details of the proposed adaptive management plan and additional policy analysis, and a comprehensive analysis of proposed setbacks from nearby wetlands.

Grbinicek conceded that, although she indicated in correspondence to NEC planner Kathryn Pounder that such information was needed, she did not directly ask for it from Walker or its consultants. She said it was

the responsibility of Pounder to communicate with the Walker representatives, and she was unaware if this had occurred. Pounder will give testimony later in the hearing.

Bull then asked Grbinicek about a memo and summary report she had prepared that noted it was the responsibility of the Ministry of Natural Environment (MNR) to determine protection measures for butternut trees on the site. Bull wondered why in Grbinicek's subsequent ecological report she broke with her earlier opinion and stated that the proposed 25-metre buffer for the trees – which the MNR supports – is not appropriate.

"I am in disagreement with the MNR in this scenario," Grbinicek replied, noting that the butternuts would be placed in a "near island setting," isolated from the main woodlands, and with the potential for "severe micro-climate effects" from the lake that would result from the rehabilitated quarry.

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Bull questioned the ecologist's testimony about those potential extreme effects. Grbinicek conceded that she had no specific knowledge of effects one way or another, and said the proponent did not provide information on the issue.

Bull then produced a document, U.S. Department of Agriculture Management Guidelines, which noted that for butternuts to thrive in a forest they should be given a canopy opening of two to three times the height of surrounding dominant trees, to ensure they receive enough light. She asked Grbinicek if, by looking at aerial photography, she agreed that this condition did not now exist on the site. The NEC ecologist said she could not tell.

Grbinicek said she did agree with the reference in the guidelines which noted, "As intolerant trees begin to develop, room must be provided for them to grow into and stay in the upper canopy. Thus, over time, smaller openings must be enlarged or thinnings made."

A board member then asked Grbinicek, "Is there an obligation on the proponent to manage the butternut on the site under the Endangered Species Act?" She replied there is not.

Bull then asked Grbinicek a series of questions about her objections to Walker's reforestation plans for the site. Grbinicek confirmed she did not request in writing any additional information about the plan prior to preparing her report for the commission in which she opposed the reforestation plans. Under further questioning she then explained why the plan was different from a reforestation plan in the area in which she directly participated in 2001. Grbinicek said the plan she was involved with – along with the Nottawasaga Valley Conservation Authority – "was not a mitigation or net gain for a development."

She went on to say she had little recollection of that project. Bull asked that Grbinicek – who had earlier expressed concerns about the monitoring and maintenance plan for the Walker reforestation – produce details of the monitoring and maintenance plan for the reforestation project with which she was involved.

Bull also asked Grbinicek about her assertion that the tall goldenrod is an "uncommon characteristic" of the woodland on the site and would not be protected if the quarry expansion goes ahead. She asked where in the province's Natural Heritage Reference Manual it is mentioned that the plant is an uncommon characteristic. Grbinicek conceded it is not, but noted it is not unusual to go beyond the criteria outlined in the manual. Under further cross examination Grbinicek admitted that the tall goldenrods found on the quarry

site were not observed in areas that are planned for extraction.

Bull later moved on to question Grbinicek's testimony about protecting bird habitat in forested areas on the site. "Which bird...are you particularly concerned about?," she asked. "We have an objective to protect general wildlife habitat," Grbinicek answered.

One board member then queried the ecologist about the threshold for protecting species that are not endangered. "Is it the intent of the NEC to protect all habitat?," he wondered. "No sir," Grbinicek replied, "...there are layers of information that I apply."

Another board member asked, "So there's no guidance you can give us on what the NEC means by minimizing impacts? It's case by case?" Grbinicek said that this is generally so, and noted that the commission's planner Kathryn Pounder, would provide a more detailed explanation of this in her testimony.

During continued cross examination Grbinicek said she does not agree with parts of the provincial Natural Heritage Reference Manual (NHRM) which describe potential impacts from quarrying operations and how those impacts might be mitigated.

She told the board that in her opinion, "mitigation outlined in the NHRM should not be taken into account," for the Walker application and that she takes issue with a compensation or net gain approach to addressing the loss of wildlife features and functions that would result from the creation of the expanded quarry. "I have difficulty, not with the concept of mitigation, but with this application," she testified.

Board members asked her if she believes that provincial policy indicates there should be no negative impacts from a quarry, then why does the manual talk about potential impacts and mitigation? "Should we take this reference manual and discard it?," one board member asked.

Bull also posed a number of questions to Grbinicek about issues she had expressed relating to bird habitat on the site and the 50-metre buffer planned to protect a colony of American Hart's Tongue Fern from the proposed extraction area. Under questioning the ecologist conceded that the Ministry of Natural Resources did not have a problem with any loss of bird habitat or protection of the ferns, although she herself had concerns.

Relating to both the birds and the ferns, Grbinicek earlier testified about issues she had and the lack of information provided to address those concerns.

Bull asked whether she had ever contacted Walker's ecologist to discuss those concerns or obtain more information. Grbinicek conceded she did not.

After several days of testimony stating that the Niagara Escarpment Plan does not support compensation or net gain mitigation to address the loss of wildlife habitat on the escarpment, ecologist Grbinicek was asked to explain an instance when the Niagara Escarpment Commission did support such a mitigation measure.

Bull asked Grbinicek to explain a decision supported by the Niagara Escarpment Commission (NEC) staff and the commissioners themselves two years ago, in which Hydro One proposed compensation and a no net loss principle to mitigate potential negative impacts to habitat as a result of plans to install a new Bruce to Milton transmission line. Bull entered into evidence a letter Grbinicek herself had written which discussed the mitigation measures.

Grbinicek said this was "a very unique situation," with a decision to move the project forward to being made "at a higher provincial level," noting that the Ontario Power Authority wanted this project to proceed.

"I was looking to make the best of a bad situation," she added. "You would not see me providing this advice under regular circumstances."

Regarding the commission's decision to approve a development permit for the project, Bull then asked, "The commission can't approve something contrary to the Niagara Escarpment Plan, can it?" Grbinicek replied, "No," but added, "That doesn't mean it doesn't happen sometimes."

Bull also questioned Grbinicek on her earlier testimony in which she opposed the relocation of a man-made cow pond to another area on the Walker lands, as part of the quarry expansion plans. She asked if the NEC ecologist understood that the existing pond would not be removed until it was demonstrated that the new pond would be functional, including establishing native species vegetation and amphibian habitat. Grbinicek replied that she understood this.

Bull also asked Grbinicek why she never provided comments to Walker's ecologist about the plans to relocate the pond. Grbinicek said it was because the plans used a net gain or compensation approach, which the commission does not support.

After Grbinicek's cross examination, the landscape architect for the NEC began her testimony before the Consolidated Hearings Board.

Linda Laflamme conducted a visual assessment of the proposed Duntroon Quarry expansion and took exception to the conclusions drawn by the visual expert hired by Walker Aggregates.

Her first objection was with the characterization of the proposed quarry landscape by Walker's expert Ken Buck as being "not unique in this area." Laflamme told the board, "The NEP within its policies...does not seek to maintain only unique areas."

She then objected to Buck's assertion that "Pits and quarries are not uncommon in the rural landscape," saying the NEC's definition of "open landscape character" in the Niagara Escarpment Plan does not list quarries as part of rural features.

At this point, one board member asked Laflamme to confirm that there was no definition of man-made features in the open landscape character, which she did. He also wondered about the justification for such man-made features as churches and farm houses in rural areas.

Among her other points of disagreement with Walker's visual expert she took exception with his assertion that the "character of the landscape on County Road 91 has already been impacted by the existing Duntroon Quarry...[and] the proposed extraction area is therefore not inconsistent with the overall landscape character."

Laflamme told the board that "because an area has already experienced a negative impact, due to an existing use, is not a reason to allow more negative impact, but a reason to protect the landscape from additional impacts."

Another argument she made was that by removing landscape features to make way for a quarry – features such as fields, hedgerows and wooded areas – the opportunity to view them is lost.

Two board members then asked how the NEC can reconcile that its plan does allow for quarries to be located in rural areas. Laflamme said the commission might support a quarry that's of a different size, on a different site and that has different characteristics.