

Special Edition Stepping Stones



THE DUNTROON QUARRY EXPANSION NEWSLETTER

June 3, 2011

Message from Walker Aggregates' Vice-President

After 139 days of testimony over 13 months, the hearing into a proposed Duntroon Quarry expansion came to an end on Wednesday. Presented before the Consolidated Hearings Board were tens of thousands of pages of evidence, 389 additional exhibits and testimony from experts, participants and members of the public. The parties to the hearing were Walker Aggregates, Simcoe County, Clearview Township, the Niagara Escarpment Commission (NEC), Clearview Community Coalition (CCC) and quarry neighbour Emelia Franks. They each called expert witnesses in a range of disciplines – from traffic to blasting, hydrogeology, ecology, planning and others – to testify on their behalf. The board also received written and heard verbal submissions from such groups and individuals as the Environmental Commissioner of Ontario, agencies including the Nottawasaga Valley Conservation Authority, Walker employees, local businesses and residents living in the vicinity of the quarry.

Next in the hearing process is for written arguments to be presented to the board by Walker, the Township and

County by June 24, followed by arguments by the opposing parties due on July 15. Walker, the Township and County will then have an opportunity to present their reply arguments by July 29.

The board's ruling on the Duntroon Quarry expansion application is expected sometime this fall.

As always, we'll keep our neighbours and friends updated on the quarry expansion process. 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 Planner Questions Quarry Hours of Operation

In testifying before the Consolidated Hearings Board reviewing the Duntroon Quarry expansion application, the planner for Clearview Community Coalition (CCC) says the proposed hours of operation of an expanded Duntroon Quarry are "a great concern to my client."

Tony Usher told the board that although the existing Duntroon Quarry has unlimited hours of operation, it now runs from about 6 a.m. until 5 p.m. Mondays to Fridays, closing at 4 p.m. in the winter and a half hour earlier on Fridays year round. The proposed hours for the expanded quarry would permit shipping to begin

at 5 a.m. with processing operations running until midnight. On Saturdays shipping will begin at 6 a.m. with operations running until 3 p.m.

Usher said this represents an 80 per cent increase in hours for processing and other operations and a 25 per cent increase in shipping hours. He also expressed concern about the lighting required to run processing operations during the evening hours.

Usher also spoke to the property value protection plan Walker Aggregates is offering neighbours who own

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property adjacent to and across from the quarry property. He said that by offering this "insurance policy... Walker is acknowledging that its operations will affect neighbours to some extent, or are perceived to affect them."

He pointed to an agreement Walker made with a property owner on Sideroad 26/27 – who is neither an adjacent neighbour nor one who lives opposite the quarry – arguing the fact that this owner was offered property value protection suggests these neighbours will be facing significant impacts.

Earlier in his testimony Usher spoke to Walker's Adaptive Management Plan (AMP), which is intended to monitor and mitigate any unanticipated negative impacts of the expanded quarry operations.

"I don't take any issue with adaptive management approaches," he said, but noted he was not in favour of the Walker plan. He pointed to an AMP used at a quarry in Milton that he felt was more specific.

In particular, Usher said he is concerned that the local conservation authority would have an oversight role for the AMP when it is opposed to the Duntroon Quarry expansion.

On the topic of the mitigation plans for the project, Usher said, "The board will need to decide whether the proposed mitigation – some of which will also be rehabilitation under the Aggregate Resources Act – sufficiently ameliorates the negative impacts such that the 'no negative impacts' test is met." He added that, in his view, the mitigation proposed by Walker has not met that test.

Usher also told the board the closure of a portion of County Road 91 adjacent to the proposed Duntroon Quarry expansion lands is not in the public interest.

He attempted to introduce a chart explaining how he had come to his conclusion, based on his calculations of the value of the land and the up to \$7.5-million commitment Walker Aggregates has pledged for local road upgrades and in exchange for the partial road closure. Lawyers for Walker and the Township of Clearview objected to the introduction of these calculations, arguing that Usher is not an expert in property valuation, nor is he a traffic engineer.

Board chair Chris Conti agreed, and would not allow the chart to be entered into evidence. Usher then continued his testimony by suggesting that Walker was

given a gift of the closed road by the Township, since the company would have been required to pay for road improvements in any event, were the quarry expansion to proceed.

A particularly animated exchange was prompted by CCC lawyer David Donnelly suggesting that as a CCC witness, Usher was representing local citizens' interests.

"At the end of the day, this deal has to add up for the taxpayers, otherwise, we're going to argue, it's not in the public interest," Donnelly said.

Clearview lawyer Ian Rowe objected by noting that the elected Township Council, and not the CCC, represents the interests of local citizens.

Board chair Chris Conti also told Donnelly that "[Usher] is an expert planning witness and cannot act as an advocate for the CCC."

Later in his testimony Usher suggested that it is in the board's power – and it should consider – re-designating natural heritage features on the quarry expansion site from escarpment rural to escarpment natural or escarpment protection, under the Niagara Escarpment Plan.

"My recommendation is that a fresh interpretation of the intent of the plan is appropriate... and there is a case to be made for designating at least the woodland as escarpment natural or escarpment protection," he said.

One board member asked if Usher was aware of any instances where a Consolidated Hearings Board has done this, to which he replied, "No."

Another board member noted that the board had heard issues raised from the CCC witnesses about transparency and asked, "How is this fair to the person [with property] next door?... How can we [re-designate] the area of amendment without telling anybody?"

"I think that's a fair point," Usher answered.

The CCC planner wrapped up his testimony in chief by stating, "This proposal is deeply flawed." He said he therefore was not prepared to make recommendations on how the quarry expansion could proceed with any suggested revisions.

During cross examination, Usher was forced to defend his opposition to an expanded Duntroon Quarry as

lawyers for Walker Aggregates questioned the legitimacy and appropriateness of his testimony.

Usher was asked by lawyer Mary Bull about his testimony that the cumulative effects of the Duntroon Quarry expansion and a proposed MAQ quarry across County Road 31 were not adequately assessed, and that he partly relied on testimony from the hydrogeologist for the Niagara Escarpment Commission (NEC) to come to this conclusion.

Bull pointed to a sentence in the NEC hydrogeologist's peer review which stated, "We will... suggest that the treatment of the scenarios involving cumulative impacts is a particularly strong feature of the [Walker hydrogeologists'] analysis."

Usher then explained that he agreed that the cumulative impacts had been assessed, but that they had not been addressed. "I should have said addressed," he reiterated.

Bull then asked the planner about his allegations that the endangered butternut trees on the quarry expansion lands may not be adequately protected, noting that even though the trees themselves will be protected – with no extraction or site alteration permitted – there is no guarantee that other activities won't happen on the habitat, such as heavy equipment storage and stockpiling. She pointed to the quarry's site plan notes indicating the stockpiling would occur on the quarry floor and wondered how heavy equipment could be moved into the area.

"Why would Walker want to store heavy equipment in... a heavily treed area that is well above the quarry floor?," she asked.

"On the face of it I agree with you... it's not very logical," Usher answered.

He then stated, "You make regulations not just based on the current owner," adding that although Walker is known as a good operator, there might be a circumstance in future where another landowner might allow all-terrain vehicles to be driven on the site, and that provisions needed to be made to ensure such situations did not occur.

Bull then asked Usher why he did not suggest such provisions when Walker's planner asked for comments on the site plan notes in March of 2010.

Usher replied that the sides were far apart and he did

not think it appropriate to rewrite the site plan notes. "I confined myself with good housekeeping, non-contentious issues," he said.

Bull also grilled Usher on his fears that tree cutting might occur in the habitat of the butternut trees, noting that butternut health assessors have been advised that butternuts are shade intolerant, and that removing competition from other trees could have positive effects on the butternut.

Usher responded that he was unaware of the habitat requirement of the butternuts, and suggested wording on the site plan notes to address this concern.

Bull also questioned Usher on his testimony that the habitat of endangered and threatened species in the Niagara Escarpment Plan area should be designated as being in escarpment natural area – offering it the highest level of protection.

"So every time a new species was identified, the NEC would have to pass amendments?," she asked, noting that the Endangered Species Act already provides protection.

"Those things should be done," Usher answered.

Bull then asked, "What about when something is removed from the list [of endangered or threatened species]; another series of amendments would be required, correct?" Usher confirmed that this would be the case.

Another lawyer for Walker Aggregates, vigorously challenged Usher on his testimony that an expanded quarry would result in an 80 per cent increase in hours for aggregate processing and other operations, and a 25 per cent increase in shipping hours.

Fairbrother noted that Walker has unlimited hours of operation at its existing Duntroon Quarry and the proposed total hours of operation would actually decrease considerably at the expanded quarry. He asked Usher, "Just because you have proposed hours it doesn't mean you have to use those full hours, do you?"

"Of course," Usher responded. In defending his position, he said the proposed quarry expansion calls for hours of operation on Saturday, and testified that "for years and years" Walker has not operated on Saturdays.

"What enquiries did you make about this?," Fairbrother asked. He added that one of the CCC's own witnesses had testified that, on occasion, he observed Walker shipping on Saturdays.

"I didn't know that," Usher replied.

As for Usher's issue about the quarry operating in the evenings, Fairbrother then asked, "Would you accept as a general proposition that modern-day quarries work into the evenings to fulfill contracts?"

"It certainly happens, yes," Usher answered.

Fairbrother later asked the planner about his testimony that by offering nearby neighbours property value protection "Walker is acknowledging that its operations will affect neighbours to some extent, or are perceived to affect them."

The lawyer asked if it was not fair to consider that Walker was making the offer as a goodwill gesture, understanding it was unlikely that anyone would actually need to use the protection. Fairbrother then spoke to documentation before the board by a real estate appraisal expert hired by the CCC, who concluded there was no evidence that property values would decline as a result of the quarry expansion.

"I never said that property values would decline," Usher replied.

Mary Bull then asked Usher about his opinion that the Ministry of Natural Resources (MNR) does not endorse compensation or "net gain" approaches, which involve removing a natural feature and replacing it elsewhere. Walker plans to remove a woodland as part of its quarry expansion and reforest an adjacent area.

Over a strenuous objection by one of the lawyers for the CCC – which was overruled by the board – she introduced a letter from the MNR which indicated such an approach was deemed to be appropriate for a quarry application in the Waterloo region.

"I agree there is an element of compensation... It's a different situation," Usher said.

When asked by Bull to speak to the MNR's position on this quarry application in the Waterloo region, the planner responded, "I don't necessarily agree with this..."

After the NEC had completed its case, Walker brought

back some of its experts to provide reply witness testimony. This included two hydrogeologists who testified in response to the evidence given by hydrogeologists for the Niagara Escarpment Commission (NEC) and quarry neighbour Emelia Franks.

Andy Hims and Stephen Worthington, addressed concerns raised by Frank's hydrogeologist about a karst water feature across County Road 31 from the proposed quarry expansion, on the site of what is proposed to be the MAQ Quarry. In January, Wilf Ruland criticized the assessment of that feature and gave the opinion that the hydrogeology study done by Walker's experts required more work – specifically the hydrogeology of the overburden on top of the rock to be extracted, and the way in which the quarry might affect water flow to the Rob Roy 3 wetlands connected to the karst water feature.

Hims told the board that both Walker's and MAQ's water experts have been undertaking more study since Ruland raised his concerns, including installing monitoring stations in the Rob Roy 3 wetlands. He said the site plan for the Duntroon Quarry expansion has been amended to include those stations, and the ongoing monitoring of water features as part of the quarry's Adaptive Management Plan.

Hims also presented to the board the results of the most recent testing that was conducted.

"We fully expect the routine water management system... Will maintain the wetlands," he said, noting that once the quarry is operational water can be pumped into a culvert under County Road 31 towards the wetlands, if necessary.

"Water discharge will occur on a pro rata basis based on the area of the surface catchments that are removed," Hims said. "It continues to be my opinion that the expansion quarry can be extracted to its full capacity," adding there would not be negative impacts to location surface water features, the groundwater system or water-dependent, natural heritage features such as wetlands.

Hims went on to say that testing has confirmed there will be some leakage of water down through the soils of the nearby wetlands, but noted, "I'm confident that putting surface water into the wetlands will mitigate any leakage."

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Hims and Worthington were later cross examined by Demetrius Kappos, lawyer for the Niagara Escarpment Commission (NEC) and David Donnelly, lawyer for the Clearview Community Coalition (CCC).

They questioned the testimony on the karst feature on the MAQ property, the thoroughness of their work, buffer lands from the wetlands to the extraction area, and consultation with other hydrogeologists, among other things. They also asked questions relating to the site plan notes for the quarry expansion and the draft Adaptive Management Plan.

During the final day of testimony, Walker planner Brent Clarkson presented reply evidence in response to earlier testimony given by the parties opposing the quarry expansion. He provided the board with details on changes to the proposed site plan notes and development permit conditions made in response to questions from the board and comments from other witnesses.

He recommended the board approve amendments to the Niagara Escarpment Plan, and Township and County Official Plans to allow the quarry expansion to proceed. He also asked the board to approve a NEC development permit and direct the Minister of Natural Resources to issue Walker a quarry licence.

During cross examination, the NEC lawyer challenged the adequacy of the company's plans for the quarry expansion, including the site plan notes.

"This set of site plan notes is more comprehensive than anything I have ever seen," Clarkson replied. Demetrius Kappos then asked if this was reflective of the complexity of the site, to which the planner replied, "Not at all."

Kappos then asked why on the site plan notes there is not a specific reference to water monitoring on a wetland on an adjacent property, across County Road 31, or a reference to how mitigating any possible impacts will be coordinated with MAQ, the property owner. MAQ is proposing a quarry operation on its site.

"I'm not going to take a 100-page document [the Adaptive Management Plan] and put it in the site plan notes. That would just be ludicrous," Clarkson said.

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

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