

## House Quarry Application

### Township of Lake of Bays File: Z39/05

I act as independent planning consultant to the Peninsula Lake Association. As you know, the Association is one of a number of parties to the hearing before the Ontario Municipal Board concerning the proposed zoning by-law amendment and site plan respecting the House Quarry application. The portion of the hearing relating to the zoning appeal by Mr. House was dismissed by the OMB for jurisdictional reasons relating to the Township's previous comprehensive zoning by-law, which was repealed in its entirety prior to the OMB hearing. The balance of the hearing was adjourned by the OMB to provide an opportunity for Mr. House to make an application for an amendment to the Township of Lake of Bays Comprehensive Zoning Bylaw 04-181. My understanding is that if this new application is refused by Township Council like the previous one was, it will likely be appealed by Mr. House to the OMB, where it would be consolidated with the pending site plan appeal and the two matters would proceed together upon the resumption of the OMB hearing.

On November 4, 2003 I addressed Township Council during its consideration of Mr. House's previous zoning amendment application. That application was refused by Council at that time. Since then, there has been no substantive change in the proposed application which would cause me to revise my planning opinion. In my professional planning opinion, the House Quarry application does not conform to the governing policies of the Lake of Bays Official Plan, does not represent good planning for the site and the surrounding communities, and should be refused once again.

The current zoning amendment application proposes the establishment of three zones on the subject property. These can be characterized as follows:

- A stone quarry extraction area is located at the south end of the property on a treed slope facing Peninsula Lake. This slope is clearly visible from a large portion of the lake. Likewise, the area from which was cleared on the property back in 2001-2002, as part of the quarry operations which took place prior to the Township obtaining an injunction to stop the quarrying, is also visible from the lake;
- The bulk of the property is proposed to be re-zoned from Rural to Restricted Rural, with an accessory driveway / haul route for the proposed quarry;

- Two small portions of the property are proposed to be re-zoned to Environmental Protection to recognize unevaluated wetlands; and

- The rock splitting and processing area and landscaping business fronting onto Highway #60 are proposed to be zoned for Restricted Rural (with an exemption to permit rock processing and wholesaling of rock products).

The subject property is designated Rural and is located in the vicinity of numerous established rural residences and cottages on Peninsula Lake, as well as rural residences fronting along Highway #60 adjacent to the property. Immediately to the west of the property is a 192 acre historic farm which is home to horses, cattle, sheep, hens and turkeys. There are other quarry uses in the area, none of which are of recent vintage, and none of which have any noticeable impacts on their neighbours due to their location further away from the residential area and topography. It is acknowledged by all concerned that the proposed House quarry seeks to become the first new quarry operation to be permitted by the Township in this area in many decades.

Proposed setback dimensions are not shown on the zoning by-law schedules provided by the applicant. From my knowledge of the site plan application, it would appear that the setbacks to neighbouring rural residential properties range as low as 30 metres (100 feet). Approximate distances from the rock processing area to the neighbouring residential property are in the order of 70 metres (229 feet).

As you are aware, the Provincial Aggregate Resources Act does not apply within the Township of Lake of Bays. Accordingly, controls over the establishment, use and monitoring of quarries are the responsibility of the Township, to be regulated through zoning and site plan controls as well as the Township's Pits and Quarries By-law. As part of the review process for any proposed new quarry within the Township, an assessment must be made respecting the extent to which the application conforms or does not conform to the Official Plans of the Township and of the District of Muskoka.

In my professional opinion, the House Quarry application does not conform to either Official Plan, for the reasons that follow.

## **District of Muskoka Official Plan**

The District Official Plan contains clear policies to guide applicants and landowners to achieve compatibility between existing and new uses in the District of Muskoka. Key features of the rural and waterfront areas of the community are to be preserved.

The District Official Plan anticipates that aggregate uses may be located in the Rural area of the District, provided that they "should not conflict with the tourism base of Muskoka" (Policy E-3). Moreover, Policy E-12 states in part as follows:

*"stone quarrying shall not be permitted to occur where it would require the elimination of significant landscape features. Significant landscape features include any combination of topography and vegetation, which create scenic vistas vital to the tourism industry and will be defined through local policy."*

Policy E-16 of the District Official Plan sets out the requirements for a proposed new pit or quarry operation. The matters to be considered include: the appropriateness of the location; quality and quantity of the resources; location and size of stockpiles; and impacts on surrounding land uses, especially residential. These study requirements must be met to the satisfaction of the local municipality, with input from the District. To my knowledge, the submissions by the applicant to date have failed to satisfactorily address any of these matters and, in particular, the potential impacts on surrounding land uses, especially residential.

District Official Plan Policy F4 (in particular 4c) addresses the need to preserve scenic views, and Policy 4e) specifically addresses the waterfront landscape. To date, no information has been provided by the applicant to demonstrate conformity with these specific policies.

## **Lake of Bays Official Plan**

The Township's Official Plan contains numerous policies addressing proposed new quarry operations. For example, it stipulates that "resource industrial will only be permitted in a manner which will be environmentally sound and prevent land use conflicts" (Section F.20). The "matters to be addressed to the satisfaction of the Township" for a proposed new pit or quarry are found in Section F.28.

Section I of the Township's Official Plan expressly notes that resource related industries require a rural and remote location (Sections I.3 and I.12). In my professional opinion, given its proximity to existing established residential and farm uses, the site of the House Quarry application can in no way be characterized as "remote".

Sections D.2, D.128 and E.24 of the Township Official Plan set out overarching responsibilities for new development to prove their compatibility with existing land uses – especially established residential uses. While recognizing the need for industrial and aggregate uses in the Township, the Official Plan stipulates that the conservation of the natural environment will take precedence over development when the two are in conflict and where mitigation measures are unable to protect environmentally sensitive or significant features and functions. Moreover, noxious uses shall not be permitted without mitigation.

In addition to compatibility issues, the Township Official Plan contains clear policy direction emphasizing the need to preserve vistas and panoramas (Section D-9). Section D-10 further states that visual, vegetative impact should be minimal and that ridgelines and skylines should be protected.

Sections E.27 and E28 of the Township Official Plan address compatibility of new uses. E.27 states that:

*"new development or use of land will be compatible with:*

- a) the type and character of the area in which the use is being proposed, and
- b) other legal conforming land uses in the vicinity so as to ensure protection of public investment and the continued operation and expansion of such uses, where feasible and appropriate".

This policy contemplates the impact which an incompatible use can have on the ability of existing lands uses to continue to operate and to expand. This policy speaks to the concerns addressed by the Ministry of the Environment Land Use Compatibility Guidelines.

In summary, to date I have seen little from the applicant which demonstrates compliance with these and other applicable policies enshrined in the Township Official Plan.

### **Ministry of Environment Guidelines**

The Ministry of the Environment has two guidelines that are to be used by approval authorities (such as municipalities) when considering changes in land use, and particularly when determining the compatibility between different land uses - more specifically, between industrial and sensitive land uses such as residential. They are as follows: • D-1 Land Use Compatibility • D-6 Compatibility between Industrial Facilities and Sensitive Land Uses

By letter dated October 9, 2003 Mr. Frank Wilson, Director, Northern Region of the Ministry of the Environment (MOE), wrote the following to members of the Peninsula Lake Association:

“Since 1996, local planning authorities, such as municipalities or planning boards, have been delegated increased decision-making authority under the Planning Act. To assist these planning authorities in exercising their new decision-making responsibilities, provincial ministries have been transferring relevant data and information for their use, including the D Series Guidelines.

With respect to your question regarding rezoning applications to permit the development of new quarry operations, the MOE Procedure D-1-2 "Land Use Compatibility: Specific Applications" recommends that for new pits and quarry operations, the influence area is to be determined by appropriate studies (e.g., noise, dust, vibration, hydrogeological) carried out in support of the land use approvals. Under Municipal Plan Review, the approval authority is responsible for requesting these studies and determining the zone of influence. In organized areas, the approval authority rests with the municipality or planning board. In unorganized areas, the Ministry of Municipal Affairs and Housing in partnership with the MOE and the Ministry of Natural Resources is the approval authority.”

Ministry of Environment Land Use Guideline D-6 advises the Township to determine the minimum separation distance and potential area of influence for a Class III industrial use (such as a quarry) in the vicinity of sensitive land uses (such as homes and farms). It establishes the following parameters:

- 300 metres minimum separation distance to avoid incompatible uses; and,
- 1,000 metres potential area of influence for any adverse effects “to be identified, mitigation proposed and an assessment made on the acceptability of the proposal” (MOE, D-6, Appendix C).

It is noteworthy that these distances apply regardless of whether it is a new sensitive land use proposed in the vicinity of an existing Class III Industrial Use such as a quarry, or whether it is a new quarry proposed in the vicinity of existing sensitive land uses. As a matter of good planning, the primary consideration should be to minimize conflicts between incompatible land uses, regardless of which is exists and which is proposed.

The Ministry of the Environment also requires that the developer enter into a binding legal agreement for any mitigation prior to the approval of the use (Ministry of the Environment Guidelines D-1-1, D-6).

I would note that Section E.38 of the Lake of Bays Official Plan specifies that a 300 metre setback from a pit or a 500 metre setback from a quarry use is required, subject to studies, when considering new sensitive land uses. If a sensitive use is proposed to be located within the stated setbacks, then an “impact assessment” should be prepared to evaluate the presence and impact of any adverse effects. It appears that the intent of this policy is to be consistent with the Ministry of the Environment D-6 Guidelines. However, because Policy E.38 applies only where new sensitive land uses are proposed near an existing quarry, and not in the opposite scenario, in my opinion the policy is in fact inconsistent with the MOE Guidelines to that extent, and the Township’s Official Plan policy should be amended accordingly as soon as possible.

## **Noise Impacts**

Section E.32 of the Township Official Plan states that an acoustical study may be required to determine if provincial guidelines can be achieved for developments within 50 metres of a provincial highway or for stationary noise generators such as aggregate operations. The Lake of Bays Pits and Quarries By-law further states that noise "shall be controlled in accordance with applicable federal, provincial and local legislation" (Section 4.4).

The Environmental Protection Act defines "contaminant" as "any solid, liquid, gas, odour, heat, sound, vibration, radiation or combination of any of them resulting directly or indirectly from human activities that may cause an adverse effect". The Act stipulates that "no person shall discharge into the natural environment any contaminant, and no person responsible for a source of contaminant shall permit the discharge into the natural environment of any contaminant from the source of contaminant, in an amount, concentration or level in excess of that prescribed by the regulations."

The Ministry of the Environment Guideline entitled *LU-131 Noise Assessment Criteria in Land Use Planning*, which supports the D-1 Land Use Compatibility series of guidelines for planning sensitive of land uses near aggregate facilities, introduces three classes of sensitive land use. These are 1-urban, 2-mixture and 3-rural. The Ministry of the Environment Guideline entitled, *NPC-205 Sound Level Limits for Stationary Sources in Class 1 & 2 Areas, NPC-232 Sound Level Limits for Stationary Sources in Class 3 Areas and NPC-233 Information to be Submitted for Approval of Stationary Source of Sound are designed for use with the Guide for Applying for Approval (Air); Noise and Vibration*.

Adverse effects as defined in the Environmental Protection Act, means one or more of:

- impairment of the quality of the natural environment for any use that can be made of it;
- injury or damage to property or plant and animal life;
- harm or material discomfort to any person;

- an adverse effect on the health of any person;
- impairment of the safety of any person;
- rendering any property or plant or animal life unfit for use by humans;
- loss of enjoyment of normal use of property; and,
- interference with normal conduct of business.

The Environmental Protection Act states that Certificates of Approval are required for the following:

- Portable crusher (per O. Reg. 524/98, 13[iv]);
- Emissions from the extraction area (per clause 9 (1) (a) which states that without a Certificate of Approval, no person may, "construct, alter, extend or replace any plant, structure, equipment, apparatus, mechanism or thing that may discharge or from which may be discharged a contaminant into any part of the natural environment other than water";
- Any discharge of a contaminant to the environment that might cause an adverse effect. (Sub-section 14(1) states that "despite any other provision of this Act or the regulations, no person shall discharge a contaminant or cause or permit the discharge of a contaminant into the natural environment that causes or is likely to cause an adverse effect").

The Ministry of Environment Guidelines NPC-232 and NPC-205, Sound Level Limits for Stationary Sources (for both Rural and Urban areas) note that stationary sources of noise "encompass all the activities taking place within the property boundary of the facility".



In my opinion, the “processing operations” of this quarry must include the extraction area and its related truck haul route as well as the proposed stone cutting and stockpiling activities in the proposed Rural (Ru2-Eaa zone). Any consideration of setbacks should be based on the all parts of the property used for extractive or industrial purposes and these should be in accordance with the minimum standards established by the Ministry of Environment for such purposes.

In summary, to date insufficient information has been provided by the applicant to demonstrate how the proposed quarry operation addresses any of these Ministry of Environment Guidelines.

## Traffic

There are significant limitations on access to the subject property as noted by the applicant's own traffic information. The Skelton Brumwell & Associates Inc. report dated April 1, 2003 (pages 12-13) noted that the access to the subject property is deficient in regards to both minimum decision sight distances at 100 km/hour and the minimum sight distance for a left or right turning vehicle at 80 km/hour on Highway #60.

The report noted that the actual minimum decision sight distance at 100 km/hour is 300 metres while the desired minimum decision sight distance at 100 km/hour is 400 metres. Thus, the available sight decision distance is “below this limit”. The report noted that the desired minimum sight distance for a left or right turning vehicle to attain operating speed before being overtaken at 80 km/hour is 270 metres. However, the available or *actual* minimum sight distance is “below this requirement”. Nevertheless, the report concluded that since the “turning volume is so small relative to the background volume, the entrance location and sight distances are acceptable.”

In my opinion, without the “necessary physical improvements” to the access having been completed, it cannot be assumed that there will be minimal adverse impacts to traffic flows, road safety and sight distances as a result of quarrying and related operations at this site. The impact of the quarry and its associated operations must be assessed in light of the District of Muskoka policies for entrances on Highway #60 and the Ministry of Transportation requirements. Accordingly, in my opinion, the appropriate improvements to the site access based on a detailed transportation study with measurement of the impacts of the traffic on Highway #60 from the proposed operations must be completed and evaluated prior to any consideration of a change to the land use for the subject lands.

## Conclusions

For all of these reasons, it is my professional opinion that the proposal for the proposed House quarry zoning by-law amendment and the related site plan application continues not to represent good planning for the site and the surrounding community. The introduction of this proposed industrial land use would be incompatible with existing, established neighbouring land uses. Moreover, it has not been satisfactorily demonstrated by the applicant that the proposed quarrying, rock processing and wholesaling operations would result in minimal adverse impacts on the surrounding community.

Respectfully submitted,

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