



DEVRY SMITH FRANK *LLP*
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BY E-MAIL

November 25, 2020

Ms. Brynn Nheiley
Manager of Development Planning
Department of City Building
City of Burlington
426 Brant Street P.O. Box 5013,
Burlington, ON L7R 3Z6
E-mail: Brynn.Nheiley@burlington.ca

Mr. Dan Tovey
Manager, Policy Planning
Planning Services
Region of Halton
1151 Bronte Road
Oakville, ON L6M 3L1
E-mail: Dan.Tovey@halton.ca

Kevin Arjoon, City Clerk
City of Burlington
Clerk's Department
426 Brant Street P.O. Box 5013,
Burlington, ON L7R 3Z6
E-mail: kevin.arjoon@burlington.ca

Dear Mr. Arjoon:

**Re: City of Burlington (the "City")
Proposed Official Plan (the "Proposed Plan")
Nelson Aggregate Co. ("Nelson") Comments**

We represent Nelson, the owner and operator of the Burlington Quarry (the "**Quarry**").

In April of this year Nelson filed an application (the "**Application**") to amend the in-force City Official Plan (2008) (the "**Current Plan**") to permit the expansion of the Quarry (the "**Expansion**"). The Application was deemed complete by the City on July 20, 2020 (see Attachment A).

Understanding that the Proposed Plan is being reviewed by Halton Region (the "**Region**"), we wrote to the Region on November 4, 2020 to request that the provisions of the Current Plan not be repealed as they apply to the Quarry (see Attachment B). Further to that letter, Nelson's planning firm, MHBC, spoke with staff from the Region and was advised that no significant changes to the aggregate policies were being considered in the modifications made by the Region.

Unfortunately, we now understand that the City intends to repeal the Current Plan in its entirety once the Proposed Plan is approved, as modified, by the Region. There are no transitional provisions in the Proposed Plan to protect the Application.

As the Application has been processed through the Current Plan we determined, through our discussions with the City solicitor, that Nelson would have to file an appeal over the lack of a transitional provision to ensure that the Application remains alive and avoid the procedural issue of Nelson seeking to amend a plan that is no longer in force. Nelson will thus have no choice but to appeal the Proposed Plan as it applies to the following properties:

- 2280 No. 2 Side Road;
- 2292 No. 2 Side Road;
- 2300 No. 2 Side Road;
- 2316 No. 2 Side Road;
- 2330 No. 2 Side Road;
- 5235 Cedar Springs Road; and
- 2433 No. 2 Side Road.

MHBC has reviewed both the Proposed Plan and the Region's proposed modifications to same. As a result of that review, Nelson requests that Regional and City planning consider the following prior to any approval of the Proposed Plan.

1. Schedule A, I, J and M (City System) identify components of the "Green System" or the City's "Natural Heritage System" on 5235 Cedar Springs Road. The Environmental Impact Statement prepared in support of the Expansion however confirms that portions of this property should not be included as part of the City's Natural Heritage System.
2. Schedule I, J and M (Land Use – Rural Area) include 5235 Cedar Springs Road in the "Agricultural Area" and "Agricultural Land Base". This property is not under cultivation. It is rather used as a golf course which was constructed on significantly disturbed on-site soils. The Agricultural Impact Assessment Statement prepared in support of the Expansion confirms that this property should not be included within the "Agricultural Area" and "Agricultural Land Base" designations.
3. Schedule I, Schedule I-3, J, M designates 2473 No. 2 Sideroad, owned by Nelson and adjacent to the southwest corner of the Quarry and the Mt. Nemo Settlement Area Boundary, as "Agricultural Area" outside of the Settlement Area Boundary. It should be included in the Mt. Nemo Settlement Boundary in accordance with Map 3 of the Niagara Escarpment Plan.
4. The Province has defined a natural heritage system that is applicable to the Niagara Escarpment Plan. Schedule M and other schedules should be updated to reflect this.
5. Section 2.2.1(c) and 2.2.3, 2.3.6 should include existing and identified mineral aggregate operations and areas in the Rural Area to be consistent with the Provincial Policy Statement (**PPS**).

6. Sections 2.2.3 and 9.3 of the Proposed Plan include policies related to the "Provincial Natural Heritage System" and the *Places to Grow Plan (2020)* (the "**Growth Plan**"). The Proposed Plan should make clear that the Growth Plan policies do not apply in the Niagara Escarpment Plan Area. They only apply outside of the Greenbelt Area, which includes the Niagara Escarpment Plan area.
7. As there is a "Greenbelt Plan Area", the "Greenbelt Area" should be a defined term in Chapter 13, to be consistent with the definition of such an area in the *Greenbelt Act, 2005*.
8. As per the Growth Plan, the Provincial Natural Heritage System cannot be included in the Proposed Plan as it has not yet been incorporated in the Region's Official Plan as part of the municipal comprehensive review that the Region is currently undertaking. The proposed City Natural Heritage System does not conform to the Growth Plan since it was not identified in the Current Plan.
9. To be consistent with the PPS, sections 3.5, 4.10.2(2) e) and other associated sections in the Proposed Plan should reference "significant" cultural heritage resources where the conservation of such resources is required.
10. Subsections 4.10.2(2) i) (iii) and (iv) are inconsistent with the PPS and the Niagara Escarpment Plan Escarpment Rural Area policies: mineral aggregate extraction is permitted within the habitat of endangered and threatened species provided it meets the criteria set out in the *Endangered Species Act*. Extraction is only prohibited within significant woodlands as defined by Province, not any criteria established in the Region and City Official Plans.
11. Section 4.10.2(2) j) (i) d) should also reference subsection 4.10.2(2) s) to make it clear that mineral aggregate operations are permitted within Prime Agricultural Areas to be consistent with Section 2.5.4.1 of the PPS. The PPS states that, in "prime agricultural areas, on prime agricultural land, extraction of mineral aggregates is permitted.....", subject to certain requirements.
12. Given the overlapping, and potentially conflicting, provincial policies that apply to City, section 4.10 should include a notwithstanding clause. This policy would then confirm that it is section 4.10 that applies when evaluating applications for new or expanded mineral aggregate operations in the context of land use compatibility, transportation, natural heritage, agriculture, water resources, and cultural heritage resources.
13. Section 9.1.1 of the Proposed Plan should have, as an objective, the protection and potential future use of identified aggregate resources areas in the Rural Area.
14. The definitions of Cultural Heritage Landscape, Interim Land Use, Sensitive Land Use, Significant, Significant Wetland, Significant Woodland, Groundwater Recharge Area in Chapter 13 should be revised to be consistent with the PPS or other applicable Provincial Plans.
15. Schedule O-2 identifies No. 2 Side Rd. as a "Rural Local" road. Table 1 should identify that a portion of No.2 Side Road is used as an approved truck route for the Quarry.

In conclusion we would ask that the City and the Region:

1. not repeal the Current Plan in its entirety, particularly as it applies to the properties identified above,
2. in the alternative, include transitional policies in the Proposed Plan which will protect the status of the Application; and
3. incorporate the modifications requested above in any approval/adoption of the Proposed Plan.

We would be grateful if you would please circulate this correspondence to the members of the City's Community Planning, Regulation and Mobility Committee in advance of the 26 November 2020 meeting and ensure that it forms part of the public record.

If you have any questions or require any additional information regarding the above, please contact myself or Marc Kemerer at Devry Smith Frank LLP.

Thank you in advance for your attention to this matter,

DEVRY SMITH FRANK *LLP*



David S. White, Q.C.
DSW/jrg

cc. Quinn Moyer, Nelson Aggregate Co.
Marc Kemerer, Devry Smith Frank LLP
Tecia White, Whitewater Hydrogeology
Brian Zeman, MHBC
Ministry of Municipal Affairs and Housing
Rick Reitmeier, Halton Region
Blake Hurley, City of Burlington

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905 220-4386

Brynn.nheiley@burlington.ca

July 20, 2020

Nelson Aggregate Co.
2433 No. 2 Sideroad
P.O. Box 1070
Burlington, ON
L7R 4L8

Dear: Quinn Moyer

SUBJECT:

File No's.: 505-04/20

Your applications to amend the Official Plan for Part of Lots 1 and 2, Concession 2 and Part of Lots 17 and 18 Concession 2 NDS (former geographic Township of Nelson) City of Burlington Ontario has now been deemed complete. Public and technical circulation of the above applications will commence within the next 30 days.

Burlington's Official Plan policy for a complete development application requires you to identify the property under application with a "Notice" sign. This sign must be posted on the subject property before the application is processed.

The notice sign should be located on the site on private property where it will have maximum exposure to the streets and will not obstruct the vision of motorists or pedestrians. The notice sign will be prepared by the City of Burlington, and you will be contacted by our Sign Shop when it is read to be picked up.

Please send us a letter of confirmation along with a photograph of the notice sign erected on the site, to ensure compliance with Council's policy.

Should you have any questions on the above, or require further information, please call me at (905) 220-4386.

Yours truly,

Brynn Nheiley MCIP, RPP
Manager – Development Planning

c.c. Brian Zeman, MHBC
Jamie Tellier, Interim Director of Community Planning
Joe Nethery, Manager, Community Planning, Halton Region
Kellie McCormack, Assoc. Director, Planning & Regulations, Conservation Halton
John Stuart, Senior Strategic Advisor, Niagara Escarpment Commission

"B"



DEVRY SMITH FRANK *LLP*
Lawyers & Mediators

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416.446.3329

BY E-MAIL

November 4, 2020

Our File No.: NELAG854

Region of Halton
1151 Bronte Road
Oakville, ON L6M 3L1

Attention: Curt Benson, Director of Planning
E-mail: curt.benson@halton.ca

Dear Mr. Benson:

**Re: City of Burlington (the "City") Official Plan (the "OP") Review
Nelson Aggregate Co. ("Nelson")
Burlington Quarry Expansion (the "Expansion")
Part Lot 1 and 2, Conc. 2 and Part Lot 17 and 18 (the "Subject Lands")**

We represent Nelson. The purpose of this letter is to ensure that, through the Region's review and approval of the City's adopted OP, the Region does not repeal the provisions of the existing City OP as they apply to the Subject Lands or to policy areas that would affect the Expansion.

By way of background, Nelson filed applications to amend both the Regional and the City's existing Official Plans in April 2020 to permit the Expansion. In the case of the City application, the amendment would re-designate the Subject Lands as Mineral Resource Extraction Area from Escarpment Rural Area. Having been in progress for a number of years, including through significant public consultation, it is crucial for Nelson that the application not be returned to square one through any changes to the OP, including by repealing the OP in its entirety, that would affect the Subject Lands and the processing of the Expansion. This would include changes to the Aggregate/Rural/Agricultural and Natural Heritage policies.

It is out of an abundance of caution that we make this request and further request that we be advised of any (a) changes to the above noted policy areas or the designation for the Subject Lands, and (b) decisions made by the Region with respect to the Official Plan.

We thank you in advance for your attention to these requests. Should you have any questions about them please do not hesitate to contact me.

Yours truly,

DEVRY SMITH FRANK *LLP*

A handwritten signature in black ink, appearing to read 'MK', with a horizontal line underneath.

Marc P. Kemerer

MPK/jrg

c.c. Quinn Moyer, Nelson Aggregate Co.

c.c. Brian Zeman, MHBC