



March 19, 2019

*Sent via e-mail and hand delivered*

Justin Harrow  
Director of Planning  
County of Hastings  
235 Pinnacle Street, P.O. Bag 4400  
Belleville, ON K8N 3A9

Dear Mr. Harrow,

**Re: Township of Faraday Zoning By-law No. 4-2019  
County Official Plan Amendment  
Freymond Lumber Mill and Quarry  
2287 Bay Lake Road, Township of Faraday**

Donnelly Law is retained to represent No Place For A Quarry Inc. (“NPFAQ” or “Client”) in opposition to a potential Local Planning Appeal Tribunal (“LPAT”) hearing process with respect to the Freymond Lumber mill and quarry application for the property located at 2287 Bay Lake Road, Township of Faraday, Ontario (“Subject Lands”).

### **Brief Conclusion**

Serious and irreparable harm to the environment and property is predicted by qualified experts if this quarry is approved near Bancroft, Ontario. Drinking water and the aquifer that supports nearby, high quality lakes and outstanding recreational values are at risk from blasting. The safety “buffer” between residents and flying rock thrown off the quarry site by large blasts is inadequate, the proximity of the quarry to residents is described by one expert as “ridiculously close” and could cause damage to property, injuries and even fatalities.

Peer reviews of traffic safety, noise, archeological assessments and other potential impacts are insufficient – this is the responsibility of local and regional government – Faraday Township, Town of Bancroft and Hastings County.

After having fought some of the largest quarry battles in Ontario history, we are of the opinion proceeding to a vote today would be prejudicial to the majority of residents living near the proposed quarry, owning recreational property in the vicinity and to First Nations.

Adjourning this matter for several months to allow residents to assess this proposal properly would be the fair and wise choice of this Committee.

## **Background**

The Subject Lands consist of 33.3 ha of land located in Part of Lots 51, 52 of Concession WHR of the Township of Faraday. The quarry is proposed to take up a 27.7 hectare area around Bay Lake and Highway 62. Despite hearing numerous concerns from local residents, the quarry footprint has been reduced in area by only 10-percent since 2015.

The site is located within the rural area and is predominantly forested. The Subject Lands are part of a larger property parcel that includes an existing lumber yard and mill. Access to the proposed quarry will be from Bay Lake Road and Highway 62, through the lumber operation located to the south and east of the proposed quarry.

The surrounding area includes high quality natural heritage features such as spring fed lakes, wetlands, and forests. The haul route, which includes roads used daily by loaded school buses, has not been adequately studied.

On February 6, 2019 the Township of Faraday passed By-law No. 4-2019 to amend Comprehensive Zoning By-law 21-2012, which in effect rezones the Subject Lands from Rural (RU) Zone and Industrial (M) Zone to an Extractive Industrial Exception (MX-1) Zone to permit the quarry.

Today, March 19, 2019, the County of Hastings is considering Official Plan Amendment No.18, and if recommended by a vote of Councillors, would put into effect Zoning By-law No. 4-2019.

It is our recommendation that the County of Hastings engage experts to peer review the hydrogeology, ecology, blasting and flyrock, traffic safety and noise expert studies produced to date. The Township of Faraday failed residents – particularly traffic safety entering Bancroft - by not ensuring this information be produced before it voted to approve the quarry.

## Local Planning Appeal Tribunal – Appeal of Zoning By-law No. 4-2019

No Place For A Quarry Inc. submitted an appeal of the Faraday Council decision to the LPAT on February 27, 2019 in regard to the passing of the By-law.

NPFAQ retained a land use planner, Mr. Allan Ramsay, MCIP, RPP. Mr. Ramsay. Briefly, it is Mr. Ramsay's expert planning opinion that the application is not consistent with the Provincial Policy Statement, and does not respect the existing Official Plan, for the following reasons.

### **Reasons for this Committee to Adjourn**

Pursuant to Section 34(19.0.1) of the *Planning Act* a notice of appeal under subsection (19) must explain how the by-law is inconsistent with a policy statement issued under subsection 3 (1) of the *Planning Act*, fails to conform with or conflicts with a provincial plan or fails to conform with an applicable official plan.

#### ***(a) Consistency with the Provincial Policy Statement (PPS)***

ZBA 4-2019 is not consistent with all applicable policies of the PPS. The PPS provides policy direction on matters of Provincial interest related to land use planning and development. In the context of ZBA 4-2019 the key policy statements of the PPS address the Province's overall approach to land use compatibility between major facilities and sensitive land uses, the long term protection of rural lands and the protection of natural heritage features and mineral aggregate resources.

The quarry use permitted by the zoning by-law amendment falls within the PPS definition of Major Facilities. Under the PPS Major Facilities means:

“facilities which may require separation from sensitive land uses, including but not limited to airports, transportation infrastructure and corridors, *rail facilities, marine facilities*, sewage treatment facilities, *waste management systems*, oil and gas pipelines, industries, energy generation facilities and transmission systems, and resource extraction activities.” (Emphasis Added)

Section 1.2.6 of the PPS addresses land use compatibility and indicates that major facilities and sensitive land uses should be planned to ensure they are appropriately designed, buffered and/or separated from each other to prevent or mitigate adverse effects from odour, noise and other contaminants, minimize risk to public health and safety, and to ensure the long-term viability of major facilities. ZBA 4-2019 does not include sufficient measures to prevent or mitigate potential adverse effects with nearby sensitive land uses.

Furthermore, there has not been sufficient information made available to adequately identify or assess the potential adverse effects of the proposed quarry permitted by ZBA 4-2019.

Contrary to Policy 1.1.4.1 a) the quarry use permitted by ZBA 4-2019 detracts from the established rural character of the site and surrounding area. In the immediate vicinity of the Subject Lands are several rural residential properties, a cemetery, commercial uses and recreational uses. The area is best characterized by a series of high quality, spring-fed lakes with significant recreational and natural values.

Under Section 1.1.5.2 permitted uses on *rural lands* are limited to: a) the management or use of resources; b) resource-based recreational uses (including recreational dwellings); c) limited residential development; d) home occupations and home industries; e) cemeteries; and f) other rural land uses. While a quarry is a permitted use on rural lands, the proposed quarry operation does not effectively manage or use resources on the site.

Natural Heritage is addressed in Section 2.1 of the PPS. This section indicates “Natural features and areas shall be protected for the long term” (Section 2.1.1) and the “...diversity and connectivity of natural features in an area, and the long-term ecological function and biodiversity of natural heritage systems, should be maintained, restored or, where possible, improved, recognizing linkages between and among natural heritage features and areas, surface water features and ground water features” (Section 2.1.2).

Section 2.1.8 indicates “*Development and site alteration shall not be permitted on adjacent lands to the natural heritage features and areas identified in policies 2.1.4, 2.1.5, and 2.1.6 unless the ecological function of the adjacent lands has been evaluated and it has been demonstrated that there will be no negative impacts on the natural features or on their ecological functions*”.

The proposed setbacks and buffers in the proposed Zoning By-law Amendment are not consistent with sections 2.1.2, 2.1.5, 2.1.7 and 2.1.8 of the PPS. Section 2.5.2.2 states: “Extraction shall be undertaken in a manner which minimizes social, economic and environmental impacts”. The quarry use permitted by ZBA 4-2019 will adversely impact residents living in the immediate vicinity of the Subject Lands and will negatively affect natural features in the area.

In summary, the proposed zoning amendment to a quarry on the subject lands is not consistent with the PPS, specifically those provisions dealing with land use compatibility, rural lands and natural heritage features. The noise, dust, blasting and threats to groundwater integrity have not been adequately identified or mitigated.

**(b) Conformity with the County of Hastings Official Plan (the “County OP”)**

The applicant, Freymond Lumber Ltd., has made application to amend the County of Hastings Official Plan to redesignate the Subject Lands from “Rural” to “Extractive (Active)”. A public meeting to consider the proposed OPA is scheduled for March 19, 2019.

The rezoning of the subject lands are premature until such time as an Official Plan Amendment has been approved authorizing the proposed quarry use.

The Subject Lands are designated as “Rural” on Schedule “A5-1” of the County OP. Lands to the east, west and north are also designated as “Rural, while the lands immediately to the south are designated as “Extractive (Reserve)”.

The proposed ZBA 4-2019 does not conform with the following goals and objectives of the County OP as follows:

- (a) Settlement Goal 2.2.1 b): “To ensure that any conflicts with traditional rural activities may arise from rural residential developments is minimized”. The quarry use permitted by ZBA 4-2019 will contribute to, rather than minimize, land use conflicts that will arise do to the proximity of existing residential uses.
- (b) Economic Objective 2.3.1 a): “To ensure that the economic utilization of the natural resources by primary industry is achieved in a manner which preserves and rehabilitates the natural environment”. The quarry use permitted by ZBA 4-2019 neither preserves nor rehabilitates the natural environment found on the site.
- (c) Environmental Protection Goal 2.4.1 a): “To protect and preserve the County's natural heritage features, areas and related ecological functions, permitting only compatible uses that will not adversely affect them”. The quarry use permitted by ZBA 4-2019 neither protects nor preserves natural heritage features, areas and related functions found on site. The proposed quarry use is incompatible with the protection and preservation of natural heritage features.
- (d) Environmental Protection Goal 2.4.1 b): “To protect natural heritage feature, environmentally sensitive areas and areas of provincial significance from incompatible development”. The proposed quarry use will not protect natural heritage features found on the site.
- (e) Water Goal 2.6.1 a): “To ensure that surface and groundwater quality and quantity are protected, conserved and managed in a sustainable fashion”. The proposed quarry will adversely impact surface and groundwater quality and quantity in the area.
- (f) Water Goal 2.6.1 b): “To eliminate or minimize negative land use impacts on water recharge and discharge areas, ground water aquifers, producing wells,

stream base flow and drainage patterns”. The quarry use permitted by ZBA 4-2019 will create rather than minimize land use impacts on water resources.

- (g) Water Objective 2.6.2 b): “To discourage development which would impair surface or subsurface water quality and quantity”. The proposed quarry will adversely impact surface and groundwater quality and quantity in the area. The proposed Freymond Lumber Quarry is located in an area of ecological sensitivity. Groundwater is a major component of the water balance because the area contains a complex confined aquifer. The health of surrounding lakes and wetlands, including a Provincially Significant Wetland, is very likely to be dependent on the integrity of the local geological regime. Blasting is a significant concern. Spring-fed lakes, which are common in the area, are a result of geological processes that produce faults and fissures that allow confined groundwater to seep to the surface to create and maintain lakes.

Additional time is needed by residents to assess these important issues, as the residents appearing today will attest.

Acting on a request by a local resident, in late 2018, Mr. Ken Hill P.Eng. reviewed the Blast Impact Analysis (BIA) prepared by Explotech Engineering Ltd. (EE) for the proposed Freymond Quarry (FQ) dated December 13, 2016, which is a modification of the earlier BIA-FQ prepared by EE dated February 18, 2014.

In a third (revised) BIA-FQ by EE dated January 3, 2019, the subject of flyrock, which had been ignored in the two previous BIA-FQs, was addressed in detail. This most recent revision is the subject of Mr. Hill’s Technical Peer Review.

According to Mr. Hill, a recognized expert, it is clearly evident that EE made use of the Terrock report “Flyrock Control – By Chance Or By Design” and the formulae therein for their estimates of the range of flyrock. It is also evident that EE omitted important parts of the formulae dealing with essential provisions for safety clearance setbacks. The interpretation resulted in their recommendation for the provision of a safety clearance zone of only 94m, rather than 376m, had the author’s recommendation been followed.

In addition, according to Mr. Hill:

The consequence of the implementation of the setback of 94m could be in damages to property, injuries and even fatalities.

Any experienced open pit miner would know that 94m clearance from a blast with close to 100 pounds of explosives is ridiculously close. This statement is corroborated by three BIAs produced by EE which are briefly described at the end of this review including one in which the author of BIA-FQ was involved.

In other word, safety around the quarry is an outstanding issue of considerable concern.

Lastly, groundwater is integral to the surrounding ecosystem that includes wetlands and habitats for a number of species put at risk by the proposed quarry and blasting.

The proposed ZBA 4-2019 does not conform with the following policies of the County of Hasting Official Plan as follows:

- (a) The intent of the Rural Designation is to protect important natural resources wherever possible (3.3.2 a)). The quarry use permitted under ZBA 4-2019 will not result in the protection of the sites natural resources.
- (b) The proposed Mineral Extraction (MX-1) Zone is incompatible with the surrounding lands designated Rural. Within close proximity of the Subject Lands are several rural residential uses.
- (c) Policy 3.3.4 g) indicates forested lands will be protected from conflicting land uses. The quarry use permitted under ZBA 4-2019 does not conform to this policy. The protection of forested lands can not be achieved under the proposed quarry land use.

ZBA 4-2019 does not conform with the requirements of Section 3.8.7 dealing with the Zoning of “extraction sites”. This policy requires a setback for incompatible uses to be established within the Zoning by-law. The proposed setbacks of 30 m from a residential zoning boundary to an extraction area and 90 m from a residential zoning boundary to a processing area are insufficient and will lead to adverse impacts.

Based on the above, it is the opinion of Mr. Ramsay that the Zoning By-law 4-2019 does not conform with the above-noted policies of the County of Hastings Official Plan.

In conclusion, it is Mr. Ramsay’s opinion that the application does not have satisfactory regard for provisions under Section 2 of the *Planning Act*, R.S.O. 1990, c. P. 13, nor is it consistent with specific sections of the Provincial Policy Statement, 2014, and does not conform to the County of Hastings Official Plan.

No Place For A Quarry Inc. very much appreciates support from the community in assisting it demonstrate to the County of Hastings that these environmental and planning issues matter to the residents who have chosen to reside in the Township of Faraday, Bancroft and surrounding area. Experts are being enlisted to challenge many of the assumptions and conclusions concerning approval of the quarry.

Please do not hesitate to contact me at 416-572-0464, or by email to [david@donnellylaw.ca](mailto:david@donnellylaw.ca), cc'ing [alexandra@donnellylaw.ca](mailto:alexandra@donnellylaw.ca) should you have any questions or concerns.

Yours truly,

A handwritten signature in blue ink, appearing to read "D. R. Donnelly", with a long horizontal flourish underneath.

David R. Donnelly

cc. Client