

**ENVIRONMENT AND LAND TRIBUNALS ONTARIO
LOCAL PLANNING APPEAL TRIBUNAL**

PROCEEDING COMMENCED UNDER subsection 17(36) of the *Planning Act*,
R.S.O. 1990, c. P.13, as amended

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|-------------------------------|---------------------------------------|
| Applicant: | Freymond Lumber Ltd. |
| Appellant: | No Place for a Quarry Inc. |
| Subject: | County of Hastings OPA No. 18 |
| Property Address/Description: | Part of Lots 51, 52 of Concession WHR |
| Municipality: | Upper Tier of Hastings |
| Municipal File No.: | 12-OP-175106 |
| LPAT Case No.: | PL190595 |
| LPAT File No.: | PL190595 |

**WITNESS STATEMENT OF STEFAN SZCZERBAK, MCIP, RPP
PLANSCAPE INC.**

**Prepared for No Place for a Quarry Inc., James Cunningham and Alysha
Dominico**

PROFESSIONAL QUALIFICATIONS AND EXPERIENCE

1. I am a registered professional planner in the Province of Ontario and a full member of the Canadian Institute of Planners.
2. I have a Bachelor of Science (Agriculture) degree and a Master of Science degree in land use planning from the University of Guelph and 17 years of experience as a professional land use planner.
3. My *curriculum vitae* along with my signed Acknowledgment of Expert's Duty are attached as Appendix "A" & "B".
4. I am a Partner with Planscape Inc. ("**Planscape**"), a professional land use planning consulting firm, located in Bracebridge, Ontario. Planscape provides professional planning services to both private and public sector clients on a wide range of projects. A significant portion of my work focuses on the formulation and analysis of planning policies and regulations, including those related to residential and commercial development, particularly within the Muskoka and Parry Sound areas. I am also familiar with the Aggregate Resources Act (the "**ARA**") and the similarities to several typical planning principles including, but not limited to determining compatibility and assessment of possible impacts to the surrounding and immediate community. I am also familiar with the other applicable planning documents associated with making informed planning decisions, including the Provincial Policy Statement (PPS) and the Planning Act, as well as the relationship between Official Plans and Zoning By-laws.
5. I will give factual and opinion evidence at the hearing in the discipline of land use planning.
6. I have been qualified as a witness on land use planning matters before the former Ontario Municipal Board and the Local Planning Appeal Tribunal (the "**Tribunal**").

7. This Witness Statement has been prepared in furtherance of LPAT's hearing directions in this matter.

RETAINER

8. Planscape was retained by No Place for A Quarry Inc. (the "**Appellant**"), James Cunningham and Alysha Dominico as land use planners to provide planning advice on April 13, 2021, in relation to the subject appeal for the Official Plan Amendment (the "**OPA**") to the County of Hastings Official Plan and a concurrent Zoning By-law Amendment to the Comprehensive Zoning By-Lay (By-law No. 21-2012) for the Township of Faraday, and the applications submitted to permit a Category 2, Class A quarry (the "**Quarry Licence**") located at 2287 Bay Lake Road.
9. I understand the zoning amendment application is not part of this Hearing.
10. I was not involved in the preparation and submission of any material before or at any public/statutory meetings associated with these files.
11. After considering the relevant planning policies and the principles of good planning, I agreed that I could work with the appellant, supported several of their land-use related objections to the planning applications and decided to accept the retainer. I have been retained by the Appellant since that time to provide them with professional planning advice.

BACKGROUND

12. To effectively conduct an impartial planning analysis in response to the submitted planning applications to permit the quarry, I reviewed the applicable background information and had several discussions with the appellant.
13. Due to the limited timing of my retainer and the current COVID travel restrictions, a site visit and tour of the immediate community will be conducted in advance of the commencement of the Hearing. This may result in additional planning related opinions to those contained in this Witness Statement.
14. In addition to attending the area, and prior to the Hearing, I will attempt to contact the County Planner, Ministry of Natural Resources staff and the applicant's agent to discuss and gain a better understanding of the history of these applications.
15. The purpose of the application is to permit a Category 2, Class A quarry over a portion of the subject property located at 2287 Bay Lake Road.
16. The Enhanced Municipal Record contains the appropriate dates when the applications were submitted, the supporting technical reports, plan drawings, municipal reports, public meeting dates, minutes, decisions, and public correspondence.
17. In particular, the staff reports and supporting documentation include several maps of the surrounding area, including existing land uses, OP Designations, Zoning, and ariel photos.
18. I have reviewed all of the reports and technical documents submitted in support of the entire project.

HEARING ISSUES

19. Based on the background work outlined above and in reference to the applicable policy framework, the issue analysis is documented below.

20. In preparation for the Hearing, I have familiarized myself with the letters of concerns submitted as part of the application and those submitted by the registered and non-registered Participants, including those individuals forming part of the appellant.
21. In my assessment of the Issues, I conducted the following:
- A review of the current 2020 Provincial Policy Statement (the “**PPS**”) and the former 2007 & 2014 PPS’s;
 - A review of the current and in-effect 2018 Hastings County Official Plan (the “**OP**”) and the former 2009 OP;
 - A review of the correspondence submitted by the registered and non-registered participants;
 - A review of the Witness Statement prepared by Chris Helmer (the “**Helmer WS**”), dated May 12, 2021;
 - A review of the Witness Statement prepared by Andrew Gibson (the “**Gibson WS**”), dated May 17, 2021;
 - A review of the Witness Statement prepared by Dalila Giusti (the “**Giusti WS**”), dated May 17, 2021;
 - A review of the Witness Statement prepared by Dr. Richard Carmona (the “**Carmona WS**”), dated May 17, 2021;
 - A review of the Witness Statement prepared by Karl Konze (the “**Konze WS**”), dated May 17, 2021;
 - Corresponded with staff from the municipalities and various Provincial Ministries;
 - Personal Attendance of the site (to be completed prior to the hearing) and a review of the surrounding community; and
 - A review of several legal opinions and former Tribunal decisions with respect to quarry applications.
22. I will address **Issues 5 and 6** under the Aggregate Resources Act Issues, **Issues 7-20**, under the Planning Act Issues and provide my professional planning opinions and reasons behind this opinion for each issue.
23. I note a few typographical (numbering) errors under the Issues List. Corrections will be noted, where applicable.

PLANNING ANALYSIS

Aggregate Resources Act Issues

General Issues

- Issue 5.** Will the Proposed Development negatively impact land use compatibility, rural lands, and natural heritage features?
24. I have reviewed the registered Participant Statements and the Objection letters, in particular the Objection Letter of Alysha Dominico, dated May 7, 2021 and the Konze WS. I will rely on their concerns related to the negative impacts on the surrounding rural lands and lack of compatibility or the effect of the operation on the nearby community and natural heritage features.
- Issue 6.** Issues 8, 9, 12, 15, 16, 17, 18 and 19 may also be referred to regarding water/hydrogeology.
25. I have reviewed the Helmer WS and rely on their analysis and professional opinion related to water and hydrogeology.
26. Based on the following conclusion contained on Page 5 of the Helmer WS, “...it is suggested that approval of the proposed quarry project is premature”. Therefore,

a proper assessment in relation to Issues 8, 9, 12, 15, 16, 17, 18 and 19 cannot conclude that the proposal is consistent with the applicable PPS policies nor does it conform to the applicable Official Plan policies.

Planning Act Issues

PPS Issues

27. The 2014 PPS is no longer in effect and the OPA Application must be reviewed against the current 2020 PPS.

Issue 7. Is the Proposed Development consistent with Policy 1.1.4.1 (a) – Building upon rural character?

28. No, it is my opinion that the establishment of a new quarry, in this location is not consistent with Policy 1.1.4.1, as it was not consistent with either the 2014 or the 2020 PPS.

29. This policy direction recognizes the importance of a healthy, integrated, and viable rural area that builds upon the rural character and leverages current amenities and assets.

30. The Witness Statements and Letters of Objection raise significant concerns that approval of this application will not build upon the established rural character in this area.

31. Although the area has existing and historical commercial and industrial uses, it also has several existing sensitive uses that have coexisted with these current and historical uses.

32. In particular and located just outside of the 500 metre boundary from the proposed licenced area, a sensitive use (Grail Springs Retreat Centre for Wellbeing) has existed since 1999 and forms part of the rural character. This property is considered part of the immediate community.

33. This sensitive use adds to the promotion of a healthy, integrated, and viable rural area and careful consideration should have been given to the known and perceived impacts of the proposed quarry use on this, and the other surrounding existing uses in the immediate community, even those outside of the 500 metre boundary from the proposed licenced area.

34. When reviewing a new proposed resource extractive use (defined as a Major Facility under the PPS), Section 1.2.6 requires the consideration of compatibility between the proposed use and existing, sensitive land uses.

35. Section 1.2.6.1 requires major facilities shall be planned to avoid sensitive land uses. The policy also states that when avoidance is not possible, planning authorities shall protect existing or planned major facilities by ensuring a new proposal for a sensitive land use are only permitted under certain circumstances (Section 1.2.6.2). Since the planning authority allowed the rezoning to permit the Grail Springs use in 1999, the municipality would have had regard to these or a similar set of policy tests. As well, the current proposal must conform to this policy. Therefore, the current proposal may not be permitted to proceed, or may require additional mitigation.

36. In my opinion, those adverse impacts, described in the Carmona, Gibson, Giusti and Konze WS's will create an incompatible situation between the surrounding and established sensitive land uses in the immediate community.

- Issue 8.** Is the Proposed Development consistent with Policy 2.1.1 - Natural features and areas shall be protected for the long term?
- Issue 9.** Is the Proposed Development consistent with Policy 2.1.2 - ... Diversity and connectivity of natural features in an area, and the long-term ecological function and biodiversity of natural heritage systems, should be maintained, resorted or, where possible, improved, recognizing linkages between and among natural heritage features and areas, surface water features and ground water features?
- Issue 10.** Is the Proposed Development consistent with Policy 2.1.5 – Development and site alteration shall not be permitted in - (d) significant wildlife habitat - unless it has been demonstrated that there will be no negative impacts on the natural features or their ecological functions?
- Issue 11.** Is the Proposed Development consistent with Policy 2.1.7 - Development and site alteration shall not be permitted in habitat of endangered species and threatened species, except in accordance with provincial and federal requirements.
- Issue 12.** Is the Proposed Development consistent with Policy 2.1.8 - 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”?
37. I have reviewed and will rely on the expert opinions contained in the Helmer and Konze WS’s to address the aforementioned Issues and applicability to the relevant policy direction associated with water and hydrogeology.
38. However, of particular importance, the Introduction of Section 2.0 - Wise Use and Management of Resources reads:
- “Ontario’s long term prosperity, environmental health, and social well-being depend on conserving biodiversity, protecting the health of the Great lakes, and protecting natural heritage, water, agricultural, mineral and cultural heritage and archaeological resources for their economic, environmental and social benefits.”
39. This statement ensures other nearby economic and social benefits from existing uses must be carefully considered when reviewing an application to permit a new extractive designation and proposed major facility.
40. Based on a review of Section 2 of the PPS, in my opinion, the proposed OPA is not consistent with portions of this Section, namely the protection of existing economic, environmental health and social well-being.
- Issue 13.** Is the Proposed Development consistent with Policy 2.5.2.2 - Extractions shall be undertaken in a manner which minimizes social, economic and environmental impacts?

41. In addition to the identified policies in the Issues List, related to Natural Heritage features and their functions, it is equally important to consider the policy direction of Section 2.5. This Section provides the policy direction to protect known mineral aggregate resources and adjacent lands for long term use and identify deposits, where provincial information is available.
42. With the exception of identifying the amount of aggregate in this location, the application fails to provide an assessment of the social and economic impacts of the nearby sensitive uses.
43. The Helmer WS (pg. 4 & 5) also suggests the Hydrogeological Assessment (and peer review), contains several assumptions that "...a reduction in available recharge could reasonably be expected to result in negative impacts to groundwater resources". As a result, he suggests the application is premature as the environmental impacts were not properly assessed (similar Issue 6). The same technical argument in response to the environmental reports is found in the Konze WS.
44. In addition to this Policy direction, Section 2.5.2.4 provides wording to protect existing operations from the establishment of sensitive land uses that would preclude or hinder the expansion or continued use of these operations.
45. Section 2.5.2.5 also provides a series of policy tests when considering an application for a new operation in close proximity to existing development and activities which would preclude or hinder the establishment of these new operations. A review of the 1997 PPS reveals similar language that was considered by the Township of Faraday when they approved a site specific By-law (By-law 1999-0006) in 1999 to permit the Grail Springs Wellness Centre in its current location. As a result, the proposed application may be hindered or precluded in this location.
46. As well, many of the policy requirements under Section 2 (specifically Section 2.5) were not reviewed and did not provide a proper assessment. The same applies when reviewing the various policy tests against the supporting scientific assessments where the professionals (Konze & Helmer WS's) have noted several incorrect assumptions that lead to a question of prematurity. It is my opinion that the proposed development is not consistent to this policy direction.
47. To further understand the specific policy objective contained in **Issue 13**, it is important to understand the following applicable Economic Goals of the County (Section 2.3.1):
 - "To maximize the economic and employment potential of the County by:
 - a) Developing policies that enhance the primary resource capabilities of the County;
 - c) Promoting year-round tourist and recreational activities, and
 - d) Promoting sustainable development and resource use."
48. Other applicable Objectives that should be considered in this application, specifically related to the Grail Springs property, are those that support and encourage resort and tourism based economic development (Section 2.3.2), as follows:
 - "f) To encourage the continued operation and development of tourist related commercial establishments,
 - g) To ensure that the location of recreational uses optimizes the economic potential of the area.

- h) To encourage the provision of private tourist resorts and recreational uses which provide access to water bodies or other unique features where they are compatible with the conservation of these features and promote the Goals and Objectives of Section 2.4 of this Plan,
 - i) To encourage the provision of commercial establishments which cater to the needs of the travelling public,
 - k) To promote the tourist amenities and attributes of the County.”
49. The application has failed to recognize the policy direction in relation to the surrounding wellness centre property and the nearby waterfront residential development that contribute to the recreational economic opportunities in the nearby community. In my opinion, the OPA and supporting information to establish the quarry in this location does not conform to these equally important economic development Goals and Objectives of the County. It fails to recognize the surrounding businesses and their significant economic contributions to area.
 50. This opinion is also shared in many of the witness statements and letters of objection. This common opinion shared amongst these individuals is that the establishment of this quarry, in this location, will have detrimental impacts on the social, health and economic wellbeing of the surrounding rural community, specifically the surrounding business and sensitive land uses.
 51. Further, Section 2.3.2.b) provides an objective to safeguard resource reserves and existing resource-based industries by minimizing land use conflicts.
 52. Although the majority of the subject property was not included in the appropriate land use designation to protect the identified aggregate resource, it can be correctly identified as “adjacent lands”, as defined in the PPS. Regardless of this, the extractive reserve designation is located even closer to the sensitive lands uses and the nearby waterfront community.
 53. A review of the current 2013 OP Schedules has revealed that this Extractive Reserve is no longer located in this immediate area.
 54. The local municipality permitted the establishment of a new sensitive land use (Grail Springs) in close proximity to the subject lands. Approval of this application will have detrimental negative impacts (as described in the appellant’s Witness Statements and letters of concern) to this unique business. Therefore, approval of this application does not follow the intent of the other applicable Economic Goals and Objectives that relate to the recognition on an existing wellness centre and recreational uses that cater to the travelling public.
 55. However, the Township of Faraday permitted the establishment of a sensitive land use that essentially precluded (unless mitigated) this location from the establishment of a new extractive operation.

County of Hastings Official Plan Issues

- Issue 14.** Does the Proposed Development conform with Economic Objective 2.36.1 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?
56. It is my opinion that the proposed quarry application fails to recognize the other surrounding uses within the immediate area that also rely on the natural environment to conduct their businesses. This is a similar argument described under **Issue 13**. The application does not conform to this policy direction.

Issue 15. Does the Proposed Development conform with 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?

Issue 16. Does the Proposed Development conform with Environmental Protection Goal 2.4.1 b) To protect natural heritage feature, environmentally sensitive areas and areas of provincial significance from incompatible development?

Issue 17. Does the Proposed Development conform with Water Goal 2.6.1 a) To ensure that surface and groundwater quality and quantity are protected, conserved and managed in a sustainable fashion?

Issue 18. Does the Proposed Development conform with 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?

Issue 19. Does the Proposed Development conform with Water Objective 2.6.2 b) To discourage development which would impair surfaces or subsurface water quality and quantity?

57. I will rely on the expert opinion of the Helmer and Konze WS's in relation to the proper protection of the natural area features and their functions, including the protection of surface groundwater quality and quantity.

Issue 20. Does the Proposed Development conform with Policies 4.6.4.2 – 4.6.4.4 as the impacts intended to be studied and mitigated by requirements of those policies, inter alia, were inadequate or insufficient?

58. It is acknowledged that Policies 4.6.4.2 - 4.6.4.4 are not found in the 2009 OP. It would appear that the Policy reference contained in this Issue are those policies contained in the 2018 OP and titled "Planning Policies and Amendments to the Extraction Designation".

59. The policies contained in Sections 4.6.4.2 – 4.6.4.4 of the 2018 OP are similar to Policy 3.8.3 contained in the 2009 OP. These similar policies speak to the requirement of amendments to the Official Plan and the Zoning By-law for new extractive operations. It contains a list of specific requirements, including various site plans and technical reports.

60. The 2018 OP also contains a series of very important and applicable policies contained under Section 4.6 that follow the policies and opinions listed in this WS.

61. A review of Schedule OP-C in the 2018 OP does not show this area designated as an Extractive Reserve, which is different from the 2009 OP designations in this area.

62. The policy set contained in Section 4.6.3 Pattern of Development, contains similar policies that are found and reviewed in **Issue 13**.

63. Policies 4.6.3.3 – 4.6.3.4 provide policy direction to consider the possibility of establishing incompatible uses in and around either an existing extractive land use


or when establishing a new extractive land use. **Issues 7 & 13** contain my opinions related to compatibility.

64. As noted throughout this WS, the Township of Faraday permitted the establishment of a sensitive land use in close proximity to this site and it has essentially precluded (unless mitigated) this location from the establishment of a new extractive operation.
65. It is my opinion that the proposal does not conform to the general intent of the current and in-effect 2018 OP.

SUMMARY

66. In summary, it is my professional planning opinion that the proposed application seeking to amend the County Official Plan to establish a new quarry operation, not be upheld as the application:
 - a) is NOT Consistent with the 2020 Provincial Policy Statement;
 - b) does NOT conform to the 2009 & 2018 Official Plans of the County of Hastings; and
 - c) does NOT have appropriate regard to the matters set out in Sections 1, 2 of the Planning Act;
67. In my opinion this application does not represent good planning as the impacts of the proposed use will have significant negative impacts on the current economic, social and environmental fabric within the immediate community.

Dated at the Town of Bracebridge, May 18, 2021



Stefan Szczerbak, M.C.I.P., R.P.P.
Partner
Planscape, Inc.
104 Kimberley Avenue
Bracebridge, Ontario P1L 1Z8

APPENDIX A



Local Planning Appeal Tribunal
Tribunal d'appel de l'aménagement local

ACKNOWLEDGMENT OF EXPERT'S DUTY

| | |
|--------------------|---------------------|
| Case Number | Municipality |
| PL190595 | County of Hastings |

1. My name is Stefan Szczerbak. I live at the Town of Bracebridge in the District of Muskoka in the Province of Ontario.
2. I have been engaged by or on behalf of the No Place for a Quarry Inc. to provide evidence in relation to the above-noted LPAT proceeding.
3. I acknowledge that it is my duty to provide evidence in relation to this proceeding as follows:
 - a. to provide opinion evidence that is fair, objective and non-partisan;
 - b. to provide opinion evidence that is related only to matters that are within my area of expertise; and
 - c. to provide such additional assistance as the LPAT may reasonably require, to determine a matter in issue.
 - d. not to or seek or receive assistance or communication, except technical support, while under cross examination, through any means including any electronic means, from any third party, including but not limited to legal counsel or client.
4. I acknowledge that the duty referred to above prevails over any obligation which I may owe to any party by whom or on whose behalf I am engaged.

Date: May 17, 2021...


Signature

APPENDIX B

STEFAN SZCZERBAK (Sherbak), M.Sc, MCIP, RPP

Partner
PLANSCAPE INC.
Building Community Through Planning

EDUCATION

- University of Guelph, Guelph, Ontario 2001
Master of Science
- University of Guelph, Guelph, Ontario 1996
Honours Bachelor of Science (Agriculture)
Natural Resources Management
- Numerous Professional Development Courses

EMPLOYMENT EXPERIENCE

- Partner, PLANSCAPE INC. 2020 –
Building Community Through Planning
- Senior Planner, PLANSCAPE INC. 2016 -2019
Building Community Through Planning
- Manager of Planning Services 2012 - 2016
Township of Lake of Bays
- Manager of Planning Services 2004 - 2012
District of Muskoka
- Planner 2001 - 2004
Credit Valley Conservation Authority

PROFESSIONAL AFFILIATIONS

Mr. Szczerbak is a Full Member of the Canadian Institute of Planners (MCIP) and the Ontario Professional Planners Institute (RPP).

CAREER HISTORY

Mr. Szczerbak joined PLANSCAPE INC. in 2016 as a Senior Planner, bringing with him 15 years of progressive municipal planning experience in both rural and urban settings and at the local and regional levels. He also has 4 years of experience leading community economic development in a tourism-based, recreational/rural environment. He recently (2020) became a Partner and is leading Planscape Inc. into the next chapter of the company. He is a graduate of the University of Guelph with a Master of Science degree in Professional Rural Planning and Development.

Public Sector Planning: Mr. Szczerbak's experience in the municipal sector, both at the local and regional levels, has included progressive planner positions with the Township of Lake of Bays, the District of Muskoka and at the Credit Valley Conservation Authority (specifically for the Towns of Halton Hills, Orangeville, Mono and East Garafraxa). This involved the full range of municipal planning activities, from research and policy formulation to processing all types of development applications from Official Plan amendments and reviews, Community Planning Permits (formerly known as Development Permits) and minor variances to subdivisions for all aspects of development proposals, including major commercial and industrial developments.

As a former graduate from the University of Guelph, he has experience with addressing various rural and agricultural planning applications including the relationship of these uses to the natural features/functions and assessing compatibility between competing interests.

As the Manager of Planning Services for the Township of Lake of Bays and a member of the senior management team, he assumed full responsibility for supervising the Planning Department operations and coordinating and managing special corporate studies, including a successful 5-year review of the Township's Official Plan, Strategic Plan and the implementation of the first Development Permit By-law (Community Planning Permit) system in Ontario.

Since joining PLANSCAPE INC., Mr. Szczerbak continues to be involved in the public sector delivering strategic and land use planning advice to a number of municipalities and is involved with the Official Plan and Comprehensive Zoning By-law Reviews for various Towns and Townships together with Partners/Senior Associates in the company. He was directly involved with the creation of a Local Food Strategic Plan and a municipal Strategic Plan in Grey County and facilitated and provided planning advice for a contentious new pit/quarry application in the Township of the North Shore.

He has extensive experience representing municipalities in a variety of settings, liaising and facilitating communication with the general public, special interest groups and numerous provincial/federal representatives. He is also an educator and has led many presentations related to the use of Community Planning (Development) Permits.

Private Sector Planning: Mr. Szczerbak has experience providing private sector clients with valuable planning expertise pertaining to local level zoning amendments, minor variances, site plans, site evaluation reports, consents and plans of subdivisions and Official Plan amendments for a variety of development proposals. Specifically, he has been involved in providing planning support and obtaining municipal approvals for many recreational and commercial properties throughout the region. He has experience with planning applications and related policies for surplus farm dwellings and agricultural impact assessments.

Ontario Municipal Board/Local Planning Appeal Tribunal: Mr. Szczerbak has represented the Township of Lake of Bays, District of Muskoka, the Credit Valley Conservation Authority and several private clients on a variety of land use and planning appeals before the Tribunal, including several settlement agreements.