

REVISED**“REGARDING THE APPLICATION OF THE GIBRALTAR SAND AND GRAVEL COMPANY FOR AMENDMENTS TO THE TOWN OF THE BLUE MOUNTAIN OFFICIAL PLAN AND ZONING POLICY**

Council of The Corporation The Town of The Blue Mountains
 Town Hall, Council Chambers
 32 Mill Street, Thornbury, ON

Dear Corrina Giles, Town Clerk:

My name is Donald H. Avery. I am a retired professor from Western University, who is actively involved in researching and writing about important environmental issues.¹ During the past three years I have submitted several briefs about local ecological and governance concerns that included the status of the Len Gertler Memorial Loree Forest Park (2015),² and the relationship between the Niagara Escarpment and the Town of the Blue Mountains (2016).³ⁱ Similar methodologies were utilized in the preparation of this document which provides a multi-dimensional critique of the application for the proposed expansion of the former Conn Pit (now 2223117 Ontario Inc.- Gibraltar Sand and Gravel), which requires an amendment to the Official Plan and Zoning By-Law Amendment of the Town of the Blue Mountains (ToBM). It is also my intention to present a summary of these arguments, in cooperation with members of the Friends of the Pretty River Valley Provincial Park, at the 4 April 2018 meeting of the Council of the Whole.

In terms of context, I am aware that the Planning Department of the County of Grey on 8 March submitted a report to the Committee of the Whole (PDR-12-18) which recommended that the application of the Gibraltar Sand and Gravel company be accepted. As a result, the Grey Committee of the Whole passed Amendment 135 “to re-designate the subject lands to the ‘Mineral Resource Extraction...while remaining in the ‘Rural’ designation ...and that a by-law to adopt the County Official Plan Amendment be prepared for consideration by County Council.” It is also my understanding that the Planning Department of the Town of the Blue Mountains will submit a positive endorsement of the application of the Gibraltar Pit. However, when I submitted this brief on Tuesday 27 March this report was still not available.

In my opinion, there are a number of reasons why the Council of the Town of the Blue Mountains should reject the Gibraltar Sand and Gravel application. First and foremost this site is dangerously close to the boundaries of the 808 hectare Pretty River Valley provincial park

¹ I am presently working on a scholarly book entitled "Contested Landscapes: The Ontario Niagara Escarpment and Environmental Politics since 1967." I have previously published seven specialized studies and texts.

² Donald Avery, "Regarding the Use of the Road Allowance at the Len Gertler Memorial Loree Forst," (8 October 2015).

³ Donald Avery, “Reflections on the Proposals to Expand the Niagara Escarpment Plan Area: An Open Letter to the Council of the Town of the Blue Mountains.” (17 October 2016: Blue Mountain Watershed Trust Foundation).

which is one of the jewels of the Niagara Escarpment Biosphere Reserve system. The fact that approximately 1,085 residents of the Georgian Triangle signed a petition opposing this expansion also demonstrates the widespread local opposition to this ill-advised venture. Second, there are powerful historical and contemporary arguments against aggregate companies operating within close proximity to lands designated Escarpment Natural--which is the present situation facing the Pretty River Valley provincial park. Third, the information about the past and present performance of the Gibraltar Pit operation remains unclear. For example, there is only limited information (most being submitted by paid consultants), that would answer the following important questions: Why should this application be considered as an expansion when it should be regarded as an entirely new operation? Are there past complaints about dust, noise, road safety that should be considered? Have the hydrology/ water level issues raised by Grey Sauble Conservation been resolved? What is the record of Gibraltar Pit in adopting and implementing progressive rehabilitation programs for their site? Finally, Council should consider the long term implications of encouraging an industry based on the extraction of a non-renewable resource with a terrible track record. In contrast, as Friends of the Pretty River Valley have demonstrated, proximity to the Pretty River Valley provincial park has enhanced the life style of residents of the ToBM, and for visitors who are attracted by its ecotourism opportunities.

PART ONE: BACKGROUND INFORMATION AND CURRENT ISSUES

Adopting measures for the protection of the Pretty River Valley provincial park were an important priority for the famous 1967 report on the Niagara Escarpment by Professor Len Gertler and his associates. In particular, they emphasized the sense of urgency in preserving this "unique, highly valuable and many dimensional character of the Niagara Escarpment as a natural parkland corridor in the rapidly urbanizing belt of Ontario," while reserving special praise for the Georgina Bay parkland areas which "contains some of the most striking scenery along the escarpment including Pretty River, the Blue Mountains, Beaver and Bighead Valleys." ⁴ Significantly, the government of John Robarts and the two opposition parties (Liberals & NDP) strongly endorsed the project of creating a special protected land use area as was evident in 1973 with the passage of the Niagara Escarpment Planning and Development Act. This holistic principle was emphasized in the stated Purpose of the Act: "to provide for the maintenance of the Niagara Escarpment **and land in its vicinity** substantially as a continuous natural environment and to ensure that only such development occurs as is compatible with that natural environment."

Prior to the passage of the 1985 Niagara Escarpment Planning Act, the original lands allocated to the NEP were reduced by almost 63 %. As a result, with the passage of the 1985 legislation responsibility for protecting escarpment lands was shared by the Niagara Escarpment Commission, and the adjacent municipalities (now 22), with the highest percentage of these

⁴ *Niagara Escarpment Study: conservation and recreation reports*. Niagara Escarpment Study Group (Toronto: 1968), Chapter Five 84-90.

detached lands located in Grey County. Another major change occurred in 1990 with the establishment of the UNESCO Niagara Escarpment Biosphere Reserve, primarily based on the core escarpment natural and protection designated areas, and the system of parks and open spaces. Pretty River Valley provincial park has been an integral part of this system. It should also be noted that the criteria for the Niagara Escarpment Biosphere Reserve regards Areas of Natural and Scientific Interest (ANSI's) within the escarpment as having special importance because of their educational and natural heritage values.

What are the 'lessons of this background study for the Gibraltar Pit Project?

1/ Protective System: Since the terms of the NEPDA call for "the maintenance of the Niagara Escarpment and **land in its vicinity**" land use planning in the Town of the Blue Mountains will include the Niagara Escarpment Commission in some cases.

All municipalities should avoid policies that would have a detrimental impact on the Niagara Escarpment Park and Open Area System.

2/Debates about the inclusion in the Niagara Escarpment Area: The protest in Grey County about the original Niagara Escarpment Plan (1978-79) are well known. Equally important, however, were the actions of landowner groups such as the Beaver Valley Heritage Society during the period 1980-85 both in opposing inappropriate development such as the Epping Commons resort project, and in insisting that their land be included in the Escarpment Natural designation under the NEP. This pro-NEC stance remains an important part of the Grey County environmental political debate.

In July 2015 the Niagara Escarpment Commission circulated a discussion paper that proposed a major shift of land (32,559 hectares) from Grey County into the Niagara Escarpment Plan Area as part of the provincial goal of expanding the entire Greenbelt system, and provide protection for specifically designated sensitive lands.⁵ This initiative was rejected by most Grey County municipalities on the grounds that their planning departments were already committed to the principle "that these lands would be developed in a sustainable and appropriate manner." ⁶ This commitment to the stewardship of Niagara Escarpment lands was also discussed in the 3 October 2016 report by the Planning staff of the Town of the Blue Mountains which challenged the arguments for NEP expansion.⁷

PART TWO: MONITORING THE ONTARIO AGGREGATE INDUSTRY

Concern over the threat of aggregate pits and quarries has been a major issue in Niagara Escarpment regions since the 1960's. These debates were particularly pronounced during the period 2012 and 2017 when there were a series of public hearings about unacceptable practices

⁵ Niagara Escarpment Commission discussion paper: "Additions to the Niagara Escarpment Area," 15 July, 2015.

⁶ Grey County Planning Report PDR-PDD-35-16 (Randy Scherzer Report), 15 September 2015.

⁷ Town of the Blue Mountains Staff Report (PDS-16-120), 3 October 2016.

by the industry, and how these problems could be rectified.⁸ In addition, at its September 2014 meeting in Collingwood the Niagara Escarpment Commission passed a motion that temporarily excluded all new aggregate licenses from the Niagara Escarpment for environmental reasons. The final version of the revised Aggregate Resource Act "A Blueprint for Change," was approved by the legislature in 2016. A number of proposed reforms emerged from this extended review process:

- 1/ poorly researched applications should be rejected for aggregate licences since they could become a source of negative impacts for generations to come;
- 2/ all licences should require companies to adopt policies for the timely termination of mineral aggregate operations (sun-set clause);
- 3/ progressive rehabilitation measures should begin while the site is in operation, and should be required to restore the original ecological condition;
- 4/ Aggregate extraction mining below the water-line should not be allowed unless there is conclusive scientific information that perpetual engineering water management problems will not be required either during mining operations, or in the rehabilitation stage;
- 5/ the cumulative effect of aggregate mining on certain regions should be taken into account when considering new aggregate licences.

PART THREE:

COMMENTS ON REPORTS SUBMITTED TO THE GREY COUNTY COMMITTEE ON THE WHOLE 8 MARCH 2018

On 8 March Mr. Brian Zeman, representing the Gibraltar Sand and Gravel, presented the company's case at the meeting of the Committee of the Whole (County of Grey), and claimed there were no substantial reasons why the request for an Official Plan Amendment should not be granted. Not surprisingly, the company brief failed to deal with the environmental context of the proposed pit expansion-- such as close proximity to the Pretty River provincial park and the impact on local homeowners.

The Grey County Planning Department Report PDR-CW-12-18 (8 March) basically endorsed the Gibraltar Pit project except for its insistence on the following mitigating measures—a future noise audit; a modest increase in tree plantings and treed setbacks; provision for perimeter berming; and the monitoring of neighboring wells in terms of the quality and quantity of water. On the other hand, there is no discussion of the impact of this project on the Pretty River Valley provincial park given its popularity as a local recreational facility and with ecotourist visitors. Even more surprising is the lack of appreciation of why over one thousand residents of the

⁸ See Report on the Review of the Aggregate Resources Act (October, 2013); Report on the Standing Committee on General Government's Report on the Review of the Aggregate Act (GR-ARA), February 2014;

Georgian Triangle signed an petition opposing the Gibraltar Pit project which was submitted to the Town of Blue Mountain Council in October 2016, and featured in the forthcoming presentation by Mr. Ian Sinclair.

Staff Report PDR 12-18 also demonstrates an unfortunate tendency to discount the importance of the 35 individual letters that local landowners submitted to the Clerk of the Town of the Blue Mountains: instead of trying to see patterns of individual and collective concerns, these complaints were lumped together as a kind of nuisance grab-bag. Apparently, Grey planners were only interested in the official endorsement provided by the six listed agencies and organizations--that included the Niagara Escarpment Commission, the Grey Sauble Conservation Authority, and the Planning Department of the Town of the Blue Mountains.

Another dimension of this uncritical approach is revealed by the transcript of the 8 March Council meeting— when Grey Planners appear willing to accept Mr. Zeman’s assertions “that progressive rehabilitation is taking place on the existing pit and that although extraction is below the water table there is no dewatering on site.” Yet significantly, on 14 May 2016 Grey Sauble Conservation experts had recommended that the company should revise its aggregate extraction strategy: "we do not see the need to extract below the water table and recommend that all extraction occur above the estimated high water table elevation 500 meters...[which] will provide better opportunity for a diversity of habitats upon final rehabilitation of the existing and proposed pits."⁹ While this guideline was subsequently revised in January 2018 on the recommendation of the Ministry of the Environment and Climate Change, this important MOEC document is strangely missing from the two staff reports.

PART FOUR:

COMMENTS ON THE REPORT BY THE TOWN OF THE BLUE MOUNTAINS PLANNING DEPARTMENT

(ADDED AFTER 28 MARCH WHEN REPORT WAS AVAILABLE)

OBSERVATIONS AND QUESTIONS ABOUT ToBM STAFF REPORT PDS 18.18 (OPA and Zoning By=Law Amendment (Gibraltar Pit Expansion) for the lands known as North Part of Lot 6, Concession 4, RP16R9097, Town of The Blue Mountains).

1/The discussion about the response of Grey Sauble Conservation and the Niagara Escarpment Commission towards the application is misleading. In the case of Grey Sauble there is no mention of their concerns about Gibraltar's intention to extract aggregate below the water line (previously cited). Also important is the NEC letter of 12 April 2016 that warned against

⁹ Andrew Sorensen, Environmental Planning Coordinator, Grey Sauble Conservation to Corrina Giles, 14 May 2016.

removing significant woodlands from the site because of the negative impact on "sensitive bird species."

2/The Planning Report cites eight specific complaints towards the Gibraltar project. In reality, there were many more including the need to consider the Gibraltar Pit within the context of the revised Aggregate Resource Act (2016) and the revised Niagara Escarpment Plan (2017); along with the warning that this expansion will discourage the region's evolving ecotourist industry.

3/"**The new pit would not increase...truck traffic as a result of the expansion.**" (12) But is this true? After reading the specific complaints included in PDS 18.18, I was shocked that so many homeowners in this region have to endure on a regular basis t heavily loaded gravel trucks "racing to get to their destination" every three to five minutes.

4/ Why is there no information about the background of the Gibraltar/Conn Pit operation? After all, it is important to know when the extraction of sand and gravel began. Was the operation continuous, or were there periods of non-production? If the latter is the case, should this application be considered as an expansion, or as an entirely new pit?

5/ According to PDS 18.18 Gibraltar Sand and Gravel is primarily committed "**to extract aggregate material to use in the local area for construction projects.**" (7) Is there evidence to support this contention? And, why is it important? Surely there are alternative suppliers of sand and gravel in the ToBM who are not located in this environmentally sensitive area.

6/ According to this report, Town planners attempted "**to provide for an appropriate balance of interests in this case.**" (12) In what ways were the concerns of groups such as the *Friends of the Pretty River Valley* taken into account?

7/ "**The area is a known gravel resource area with other operations in proximity.**" (12) While the ToBM planners might view this as an asset, there is an alternative interpretation: namely that this concentration of aggregate activity has many negative cumulative impacts. Evidence of this phenomena was provided during the lengthy hearings of the Ontario Standing Committee on the Aggregate Resource Act (2012-13), by organizations such as Gravel Watch Ontario., and by independent scientific studies.

8/"**The below water level nature of this pit will mean that there will be a pond on the property after the use has discontinued.**" (12) Will this pond support aquatic life? Will it be suitable for water-sport activity, with beaches available for safe access? Or will it be another example of the aggregate industry dumping a lifeless and forbidding pond/lake on the provincial landscape?

9/"**The Zoning By-law amendment proposes to rezone a portion of the site to the Extractive Industrial (m4) zone.**" Does that mean that a broad range of recycling activity, including the

production of asphalt, could take place at this location? Even worse, could the company in the future use the depleted pit as a land-fill site?

10/" **As much of the site as possible will be rehabilitated by establishing or restoring natural self-sustaining vegetation.** (11) There is no evidence that Gibraltar has developed progressive rehabilitation programs that meet contemporary standards appropriate for Niagara Escarpment communities such as the Town of The Blue Mountains. Indeed, it doesn't even meet the proposed industry guidelines proposed by Cornerstone Standards Council, a combined industry/environmental consortium.

RECOMMENDATIONS: The application by Gibraltar Sand and Gravel for an amendment to the Official Plan and a Zoning amendment should be rejected for four major reasons:

1. The company's plans for expanding its operation represents a severe threat to the well-being of the Pretty River Valley Provincial Park.
2. The ToBM has the obligation and mandate to preserve and protect portions of the Niagara Escarpment, otherwise these areas should be added to the Niagara Escarpment Plan Area as proposed in the 2015 NEC discussion paper.
3. The Town of the Blue Mountains should be gradually transforming Gibraltar Pit region, with its unhealthy concentration of aggregate operations, into a 'green' ecotourist corridor. Changing lands categorized as Rural into Mineral Resource Extraction prevents this necessary transition.
4. Another challenge facing the Town of the Blue Mountains are its responsibilities under Bill 139, Building Better Communities & Conserving Watersheds Act, notably "to give communities a strong voice in land use planning."¹⁰ The Conn Pit controversy provides an excellent test of this principle given the future role of the Local Planning Appeal Tribunal.

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¹⁰ .Memorandum Michael Benner, Director of Planning and Development Service, 21 February 2018.