



LPAT Day 26 – July 9, 2019

Day 26 is done. The Hearing is done. Another full house listening, captivated by the final arguments by David Germain and Chris Barnett. It was a satisfying moment – 7 years of work concluded. We will forward the written arguments as soon as we have them in hand.

The essence of the arguments, in short – quotes from Chris Barnett: “This Hearing is not a design charrette;”^{*} and “Scrutiny Reveals All.” ^{*}(A **design charrette** is a short, collaborative meeting during which members of a team quickly collaborate and sketch **designs** to explore and share a broad diversity of **design** ideas.)

Both David Germain and Chris Barnett took photos of the tent/speaker installation outside – they had never seen such strong and consistent community support and involvement.

IMPORTANT HOUSEKEEPING UPDATES:

These daily jottings are all posted at www.hiddenquarry.ca/omb

Session Content (This is report from our Facebook page, a play-by-play transcribed simultaneously by the amazing Harry Wilson. In this case any inaccuracies or opinions are Harry’s, not CRC’s!! These daily journals are all on the CRC website www.hiddenquarry.ca/OMB)

9:30 AM: Halton's David Germain resumed his summative argument, continuing to highlight shortcomings of the Site Plan that JDCL espouses as the panacea for all HQ concerns. In addition to items that have yet to be included, he again stressed that even their appearance on the plan is no guarantee they will be acted on. He also noted that JDCL's lack of access to, or desire to gain access to, adjacent lands and waters in order to monitor conditions there, is a fundamental flaw in the company's application. He then focused on specific site plan failures such as water quality trigger levels, especially within Brydson Creek, and the problems inherent in a lack of specific analysis and timeliness not provided by an annual report.

In closing, Mr. Germain argued that the HQ application should be rejected because of the significant, ongoing deficiencies in the company plan. Should the OMB decide to approve the application, he asked that the approval be contingent upon appropriate measures to guarantee that all site plan monitoring and other measures will be acted on.

GET legal counsel Eileen Costello followed Halton at the podium. She stressed that GET was entirely within its rights to oppose the application AND not present evidence at the hearings. She rejected outright the suggestion that somehow GET's opposition was without substance.

Finally, **CRC counsel Chris Barnett** took the podium at 10:15 am. He began by echoing Halton's concern with the narrow scope of JDCL's studies and the deficiencies Mr. Germain identified. He then targeted the fact that the company has had 20 years (JDCL's claim) to get their case ready, but they are still trying to get things done correctly "on the fly". He then questioned the credibility of JDCL's promise to get things right in the future, in light of the company's failures to get things right in the past 20 years.

One by one, Barnett identified the HQ application failures: a gross under estimation of groundwater drawdown levels north of the quarry property, errors in noise assessments, moving goalposts in natural heritage protection, an agricultural impact assessment that failed to include input from even one area farm operation, the company's failure to engage with the community or give any weight to the community's concerns. He then reflected on the applicant's tendency to *ad hominem* attacks on individuals whose evidence (Ground Penetrating Radar, Groundwater Modelling, etc) worked against company assurances that everything would be fine. Mr. Barnett took issue with the applicant's tendency to quick dismissal of errors in its studies as opposed to a recognition of errors and subsequent corrective measures. He defended the professional integrity of Watson's GPR work, that there is a fracture in the bedrock that serves as a conduit for groundwater upwelling and that the visual evidence of this as supplied by Dr. DeGrandis must be given credit.

11:15AM: Barnett's summative argument, part 2. CRC counsel took issue with JDCL's suggestion that hydrogeologist Garry Hunter's work was amateurish, the work of a "self-taught part-timer". He pointed to Hunter's work on the Oak Ridges Moraine for the Province, to his acknowledgement of Denhoed's good work while courteously pointing the way to improvements (such as a simplified monitoring structure), and the contrast in his professional approach to those taken by some other expert witnesses.

A bell-ringer: Barnett said that one thing these hearings has reconfirmed is that close scrutiny reveals all, the good and the bad, in equal light. These hearings have certainly revealed a startling number of deficiencies in the HQ application, with more being revealed frequently throughout the hearings. Excellent work has also been recognized.

He then challenged the notion that the lands that would be lost to the quarry process are of little significance. Wildlife, forests, endangered species habitat, native flora, water courses across the surface, reptiles, all of these, and the communities that value them highly, are anything but insignificant. Importantly, he noted again the applicant's tendency to "cherry-pick" evidence that supports their case while ignoring or dismissing evidence and its sources when not supportive.

Blasting, including flyrock concerns, and the evidence of JDCL's experts from ExploTech, were given close attention, especially the calculation of safe blasting setbacks which are seemingly not in compliance with current formulae by a factor of 4. Current standards suggest a setback of 500 m as opposed to JDCL's 125 m.

He then reflected on the unacceptability of JDCL's agricultural impact and noise impact studies and suggested they are so fundamentally flawed that the Chair should give them little to no consideration when making his decision. He also noted that local residents picked up on errors and omissions in company studies that expert witnesses missed, an indicator of the

degree of resident engagement in the application process and an argument for their voice being given importance in deliberations on the HQ application.

After touching on the cultural heritage and visual impacts of a quarry in the midst of this rural and small village locale, he then turned to Mark Dorfman's planning report which acknowledged, for the first time in all expert testimonies, the importance of aggregate in balance with the importance of resident and community concerns. In particular, he stressed that only Dorfman had spoken to the importance of giving resident and local business concerns significant attention, something he said was sadly lacking in JDCL's approach to building its case. He also spoke to the need for seismic testing of the bedrock before blasting begins to serve as a baseline so that resident interests are not at risk during the first actual blasts, and listed additional "musts" for the company to undertake before the issuing of a licence to extract.

In conclusion, Mr. Barnett referred to the foolishness of establishing a quarry in the heart of a groundwater recharge/discharge area as an indicator of the misguided, too limited and erroneous approach of JDCL. With all of the evidence presented in mind, he asked for an unequivocal rejection of the application.

Fireworks ensued when JDCL counsel D. White asked for a full day for his Reply (to Arguments), citing the 17 witnesses he wanted to address. Both Barnett and Germain rose in objection, stating that JDCL had known for months the list of witnesses that would be giving testimony and that the arguments raised could not have been a surprise to Mr. White. The Chair said he was not surprised by anything in the arguments and agreed that JDCL should not have been surprised either. That full-day idea did not fly; the hearing broke for lunch at 12:30 and would reconvene at 2:30 to hear White's Reply.

2:30 PM: At 2:30, Mr. White began his Reply to opposing summative arguments by claiming that Halton & CRC are wrong in suggesting provincial policy statements require attention be paid to off-site lands. He reiterated his contention that there is no provincial requirement to evaluate off-site physiological features. This stance by the proponent is what Chris Barnett identified as a fundamental flaw in the application. Mr. White then read from provincial guidelines that support company positions on acceptable (125 m) distances for blasting, sensitive receptors such as buildings and other natural or man-made features.

Mr. White then turned to Wellington submissions, claiming that the County's hydrogeological concerns have been addressed by changes within the HQ Site Plan. In essence, Mr. White attempted to reassure the Chair that JDCL has worked with other parties to the application to address their concerns. An objection from Mr. Ciccone, that the reiteration of the points already covered in detail in testimony and cross was not appropriate within the context of Reply, was upheld by the Chair.

Undeterred, Mr. White turned to a discussion of the "Y" intersection in Acton, to which Mr. Germain objected as it was a topic that had already been discussed in detail. When questioned by the Chair, Mr. White continued to argue that the safety issue had not been addressed during testimony whereas Germain argued the question had been raised in the arguments in chief. The Chair allowed for a bit of discussion, but asked White to limit his reply to a general review as opposed to detailed discussion about which the Chair had already made copious notes. White then reiterated that he knows of no road use agreements imposed on any truck operators and that any such structure would be prejudicial to James Dick. Again, Mr. Germain objected to the attempt to introduce new argument in a Reply. The Chair advised Mr. White that the Tribunal was aware of the issue and as the document JDCL wanted to review was already in evidence that he would look at it, but would not entertain analysis of it in Reply.

Mr. White continued with a rebuttal of opposition claims that many issues had not been addressed. He referred to a number of points, including an assumption as to why Dr. Frind did not give witness (specifically, that a point he made in his written testimony might work against the CRC case). Mr. Barnett addressed the reason yesterday, stating that having Frind reiterate what had already been presented in testimony by other hydrogeologists would have been a waste of time. (Professor Frind was in attendance today – interested to the end! – It is to be hoped that Mr. Tousaw will carefully read his thoughtful and expert witness statement!)

Mr. White is clearly comfortable with the effectiveness of the provisions of the Site Plan as he reiterated that JDCL would immediately cease all quarry activities upon a monitoring trigger point having been reached. (Halton & CRC argued the opposite, given JDCL's spotty record in getting things right, even with 20 years of preparation time).

After a final clarification on the effectiveness of the berm and tree line screen, Mr. White retired from the podium.

The OMB Chair, Mr. Scott Tousaw, then thanked all parties, including the attending galleries, for their interest and exemplary decorum during the 26 days of testimony. He thanked all counsel, the expert witnesses and citizen participants for helping him understand the nuances of the Hidden Quarry case and promised to give all the time needed to make an informed decision. Mr. Tousaw then declared the proceedings closed at 3:48 pm.

Editor's Note: It was particularly heartening to see our own "Aquaman" Rand Peter and his mom Sarah Smith in the gallery today, a "Water Warrior" to the end. His answer to one post-hearing question convinced me this 11-year-old was as insightful and attuned as ever to the HQ debate.

When will a decision be handed down by Mr. Tousaw? While any time is possible, experience suggests not to expect one until the Fall.

Mr. Tousaw gave us a glimpse of his workload (both literal and figurative):

26 days, 41 witnesses, 30 experts, 171 exhibits, 180 pages of his own notes. (Some exhibits are hundreds of pages long.)

Until then, CRC will stay on the job beginning with a Board Meeting tomorrow (Wed) evening.