

OMB Hearing: FACT-MB Inc. Contribution

Introduction:

The decision by Board Chair Marc Denhez is very favourable to the whole community of McNab/Braeside. We want to commend this Council in supporting the previous Council's decision to deny a permanent asphalt plant in the Braeside Quarry, which I know everyone will agree is *the key issue in this whole application*. But what was also important was that this Council, unlike the previous one recognized the need for proper setbacks to the quarry operation in By-law 2015-03. This meant that we were on the same side as the Township, at the hearing, as the Chair clearly stated in his decision. Our legal counsel and experts worked closely together as a team towards exactly the same goals. Janet Bradley also wished to change the zoning so that the wildlife and wildlife habitat were protected, a goal FACT had always supported. Protecting the wildlife protects the ridge from even further quarry expansion and subsequently the water beneath.

Because Council only came to power in December 2014, there was very little time for Council to budget or prepare for a month long hearing or obtain all the expert opinion needed to defend Council's decisions. Because of Janet Bradley's very considerable skills as a litigator and her long experience and reputation at OMB, the Township was in good hands. And without doubt she made the most of the planning argument.

Because Council was very busy with other affairs, it was not possible for all of you to attend the hearing. But it was obvious to those people from the community who did attend day after day, that Ms. Bradley depended on our team to present evidence to refute Miller experts who over and over said that all Ministry requirements were met, there would be no emissions of noise or odour to bother neighbours, no blasting damage, no risk to our water, no problems whatsoever.

These key issues were addressed by our legal team and team of experts. Our lawyers showed the mistakes in the testimony of Miller experts. Those experts simply looked unprepared and inept under our legal scrutiny. Our lawyers were able to show the Chair what was misleading, inaccurate and just plain wrong. And when our experts spoke, the Chair listened.

Dr. Cole, our emissions expert with an international reputation, said that the Miller Air Emission Study was the worst he'd ever read! He pointed out key components that should have been in the study but were not. If he had not been there, those errors and omissions would have gone unchallenged. To quote the Chair, "Counsel for FACT-MB called this one of the 'fundamental deficiencies' of the applicant's paper trail." {p. 42, (185)}

Wilf Ruland, our hydrogeologist, said that the asphalt plant was the 'crunch issue' in this case; {p. 52, (234)} the danger of water contamination was just too great. He showed the Chair how the Miller experts had deliberately submitted test figures claiming the temporary asphalt plant had caused no effects on surface water, figures that had no relevance or truth. To quote the Chair, "FACT-MB criticized the applicant's water analyses. It called for a further water balance, and also expressed concerns about

wetlands both on-site and nearby.” {p.19, (88)} *This was the most important issue to the most people on this ridge. If people have no water, or if it is contaminated, they have nothing!*

What is not obvious in the Board decision, but only mentioned, is the fact that Wilf Ruland obtained many water concessions and compromises from Miller experts long *before* the hearing even started! Wilf Ruland has such a reputation that experts don't want to go up against him in a hearing setting as they invariably look bad. So they were able to work out deals with him *in advance*. He had worked hard to protect and monitor our wetlands so that the recharge area for our groundwater aquifers was protected. {p. 52, (234)}

Dr. Sam Kiger was our blasting expert with once again, an international reputation. He supported the Township position of increasing the buffer zone so that there would be 300 m from property lines to the quarry expansion. He gave irrefutable evidence that blasting as close as Miller wanted to eventually come to neighbours' property would cause damage over time. The evidence was very important to the Golf Club Rd. residents as the Miller blasting expert had said there would be no problem whatsoever, even coming much closer than 300 m to people's houses.

But without a doubt, there were two things that influenced the Chair's decision over everything else, and they ***affected the two biggest issues in the hearing, the asphalt plant and the setbacks. These were the two court decisions. These were entirely FACT evidence.***

People heard the Chair say more than once, 'No one wants a quarry; no one wants an asphalt plant; these cases are a dime a dozen. But this case is different. There is a court decision declaring the temporary asphalt plant in this quarry a nuisance; I *have* to listen to that.' He also stated in his decision, "The previous asphalt plant had not only been provincially licenced, it had been farther from dwellings, yet the court still found it to constitute nuisance." {p. 45, (197)}

One crucial result of the asphalt plant court case and appeal was the classification of the neighbourhood by both the trial judge and the appeal judge. They stated that the "character of the neighbourhood"..... (was) "much more residential than commercial." {p. 13, (61)} The reason the Chair was able to disallow the asphalt plant was because the area was clearly more residential than rural.

Relating to the buffer distance and the Township By-law of 300 m to property line, the chair again stated that the court decision on the blasting accidents was something he could not ignore.

FACT lay witnesses opened the Chair's eyes to Miller's callous indifference to neighbours' complaints. Night time noise, odour, dust, blasting – complainants were all sent form letters while their complaints went ignored. The Chair made repeated reference in his decision to the wording in the Miller form letters. His sarcasm showed his disgust for Miller's total disregard for the people of the neighbourhood.

It was FACT witnesses and legal counsel that brought all of this crucial evidence before the Board. The Chair's decision reflects that evidence; his decision states that clearly. People who were witnesses at the hearing, made statements as participants in the evening, or who attended the hearing day after day

were, with few exceptions, FACT members. In other words the people of the neighbourhood who influenced the Chair were FACT people.

The Chair stated that his decision must be supported by law, essential so that his decision could not be appealed. He spent a great deal of time referring to the Official Plan, the Planning Act, the PPS and other OMB decisions because if his decision is to stand against a Miller appeal he *must do that!* But he made his choices based on testimony he heard and read.

In conclusion, we have to say again that we are very happy with this OMB decision, after nearly ten years of opposition to this expansion. We are also happy that you, as our new Council worked towards the same goals that we had. Because we had been opposing this application for so many years we had the expert opinion to convince the Board Chair that there was no place for this industrialization in a rural residential community. We would ask that Council reimburse us for our costs to hire these experts, as this ruling benefits the whole community.

FACT-MB Inc.