

Local Planning Appeal Tribunal File No: \_\_\_\_\_

### **Notice of Appeal**

The Trout Lake Campers' Association ("TLCA") is appealing the Lakehead Rural Planning Board's ("LRPB") zoning by-law amendment 004-2018 pursuant to subsection 34(19) of the *Planning Act*, RSO 1990, c P13 ("*Planning Act*").

Ontario's land use planning regime focuses on balance between competing land uses. The LRPB's decision unduly narrows the scope of a planning decision by focusing solely on the provisions in the planning framework which promote aggregate development, and improperly delegates consideration of planning considerations, including serious environmental concerns, to the Ministry of Natural Resources and Forestry as part of a future *Aggregate Resources Act*, RSO 1990, c A8 ("*ARA*") licensing decision.

The By-law fails to consider the details of this particular proposed aggregate development, the adequacy of the studies submitted in support of the application, and the local planning context.

The LRPB failed to consider the provisions of the planning framework which promote environmental protection and consider the social impacts of competing land uses, alongside aggregate development, and the evidence relating to those planning considerations.

The grounds of appeal are:

1. The By-law is inconsistent with the *Provincial Policy Statement, 2014* ("*PPS*"), which requires consideration of the environmental, social and economic impacts of competing land uses. The LRPB improperly focused solely on provisions that support aggregate development.
2. The By-law fails to conform with or conflicts with the *Growth Plan for Northern Ontario, 2011* ("*Growth Plan*"), which stresses balance between competing land uses. The By-law was passed pursuant to provisions which promote aggregate development, and no consideration was given to provisions which support other land uses and considerations.
3. The By-law fails to conform with the Official Plan for the Townships of Gorham, Ware, and the Dawson Road Lots, Lots 1-20 Concession A and B, East of the Kaministiquia River ("*Official Plan*"), which requires the details of the proposed aggregate development, its impact on other competing land uses, and environmental protection be considered before a zoning by-law amendment can be approved.

## **Background**

### **Parties**

(i) *Trout Lake Campers' Association*

TLCA is an incorporated non-profit group.

Its members have lived and camped on properties bordering Trout Lake since 1929.

TLCA members own properties that abut the proposed pit. Their properties are located in a zone designated Lake Residential.

(ii) *Lempiala Sand & Gravel Limited*

Lempiala Sand & Gravel Limited (“Lempiala”) is the proponent of the proposed aggregate extraction and processing operation.

Lempiala applied to the LRPB on December 5, 2016 to amend the zoning by-law to re-zone Parcel 8755, Section TBF, Part Broken Lot 18, Concession 7, Gorham Township (as in LPA33239, excepting Parts 1, 2 and 3 on Reference Plan of Survey 55R-1816 & Unit 1 Plan D-72), in the District of Thunder Bay” (“the parcel”) from “rural” to “extractive industrial” zone.

(iii) *Standing*

TLCA has standing to appeal pursuant to paragraph 34(19)(2) of the *Planning Act*.

Members of TLCA made oral and written submissions concerning the environmental and social impacts of the proposed zoning by-law amendment at the public meeting held by the LRPB for this application and at other regular meetings of the LRPB.

### **Lakehead Rural Planning Board's decision**

(i) *Lakehead Rural Planning Board's review*

The LRPB is designated as an approval authority pursuant to the *Planning Act* for the unorganized townships of Gorham, Ware, and a portion of the Dawson Road Lots.

The LRPB held a public meeting to consider Lempiala's application on March 30, 2017.

Lempiala presented four studies in support of its application at a regular meeting of the LRPB on April 5, 2018: (1) Air Quality Assessment, dated October 10, 2017 (which may be in draft), (2) Groundwater Summary Statement, dated December 20, 2017, (3) Natural Environment Level 1 Assessment, dated February 1, 2018, and (4) Noise Assessment, dated October 31, 2017.

The LRPB's planner considered Lempiala's studies in his report.

The LRPB initially refused to provide Lempiala's studies to the public, however it provided the studies to the public for review on April 11, 2018.

The LRPB held several other regular meetings where members of the public, including members of the TLCA, made deputations and filed further written submissions to express their opposition to the application. TLCA raised concerns about the potential adverse impacts of the proposed aggregate development on their properties and the surrounding environment, including impacts from noise, dust, contamination of lakes and drinking water wells, impacts on wetlands, impacts on fisheries in the McIntyre River and Trout Lake, increases in traffic, property devaluation, and aesthetics.

TLCA also filed two expert reports from Anthony Usher and Dr. Robert Foster.

Anthony Usher, an urban planner, emphasized that the LRPB must determine whether the planning criteria are met, highlighted provisions in the *PPS, Growth Plan* and *Official Plan* that had not been considered but which speak to TLCA's concerns, and found that LRPB did not have enough information to determine whether the proposed aggregate operation and adjacent Lake Residential uses are compatible.

Dr. Robert Foster conducted a peer review of Lempiala's Natural Environment (NEL) 1 Assessment and found:

- The black spruce swamp to the south of the site is part of the larger Lappe Wetland Complex along the McIntyre River, which was recently evaluated as provincially significant. The draft evaluation is in the process of being approved by MNR. A 120 metre buffer is typically used when discussing provincially significant wetlands.
- The list of species at risk whose range potentially includes the Trout Lake aggregate site is incomplete and out of date. The timing of the survey to detect species at risk was inappropriate.
- The MNR process for identifying and confirming significant wildlife habitat does not appear to have been followed.
- A level II report is required since both the McIntyre River and Trout Lake are fish habitat within the 120 metres adjacent to the site.
- Completion of additional fieldwork and a revised Level 1 report is recommended to better assess if significant natural values are present.

*(ii) LRPB Decision*

On June 7, 2018, the LRPB passed a resolution to amend the zoning by-law, and determined that it did not need to consider the social, economic and environmental impacts of its decision:

f) The Provincial Policy Statement 2014 also provides, in Section 2.5.2.2, that “extraction shall be undertaken in a manner which minimizes social, economic and environmental impacts”. This direction relates to the operation of the extraction process; and not to the locations in which mineral aggregates exist. The regulation of the operation of mineral aggregate facilities is the purview of the MNRF under the Aggregate Resources Act, R.S.O. 1990, c. A.8, as amended, and not the purview of the LRPB.

...

j) The regulatory framework for mineral aggregate operations outside of the Planning Act is the more appropriate venue to consider the “minimization of social, economic and environmental impacts” of mineral aggregate operations under Section 2.5.2.2 of the Provincial Policy Statement.

The LRPB passed By-law 004-2018 on July 5, 2018, which amends the Zoning Schedule for Gorham for the parcel from rural to extractive industrial.

The Notice of Decision is dated August 9, 2018.

The LRPB did not consider the inter-relationships between the social, economic and environmental aspects of the planning framework or the local context of its decision. The decision does not explain how the TLCA’s expert reports, TLCA’s written and oral submissions, or any other submissions affected the decision.

### **Reasons for the Appeal**

#### ***The 1982 Ontario Municipal Board decision***

The Ontario Municipal Board previously held a hearing and denied a Lempiala application for a zoning by-law amendment for aggregate extraction and processing on this parcel in 1982.

The OMB noted that there were well over 300 objectors and no public support for the proposal.

TLCA opposed that application for reasons substantially similar to those raised in opposition to this application, including concerns about the impacts of the proposed

development on water, wells, wetlands, recreational property use, noise, dust, and other environmental and social considerations.

The OMB denied the application for the following reasons:

- Even with a 1,555 foot berm, the noise from the operation would exceed Ministry of the Environment Guidelines.
- There was a dispute about whether the property was designated as rural in the 1972 Official Plan. If it was, the applicable setbacks were: 50 feet from an adjacent property line, 200 feet from any public street or highway, and 1,000 feet from a designated residential area.
- The OMB was concerned that the conditions and requirements in the Official Plan could not be enforced.

Although Lempiala's application is substantially similar to its earlier application, the LRPB has refused to consider the OMB's decision or TLCA's concerns about the potential environmental, social or economic impacts of the development that will be raised if the application is allowed to proceed.

**The By-law fails to consider the totality of the planning principles applicable in this case, in particular the environmental and social impacts of the decision.**

- (i) *Provincial Policy Statement, 2014*

The By-law is inconsistent with the *PPS*.

The *PPS* creates a broad framework for planning in Ontario which balances the economic, social and environmental aspects of planning as well as competing land uses. It must be read as a whole.

The LRPB failed to consider the provisions of the *PPS* which promote environmental protection and sustainability, including sections 1.1.1(c), 1.1.6, 1.2.6.1, 2.1, and 2.2.

The By-law was passed without consideration of section 2.5.2.2 of the *PPS*, which requires that extraction be undertaken "in a manner which minimizes social, economic and environmental impacts". The LRPB improperly found that the Ministry of Natural Resources and Forestry would consider this planning provision outside of the *Planning Act* regime as part of a future *Aggregate Resources Act*, RSO 1990 licence application.

The LRPB failed to consider evidence relating to environmental protection and environmental impacts from the proposed pit, including TLCA's expert peer review of Lempiala's Level 1 Natural Environment study, and TLCA's submissions on the adverse impacts of Lempiala's proposed development on fisheries in Trout Lake and McIntyre River, dust, groundwater, wells, and wetlands. The LRPB has also failed to consider concerns raised about site remediation.

The LRPB failed to consider evidence about the social impacts from the proposed pit, including TLCA's submissions on the adverse impacts of Lempiala's proposed development on nearby property owners from noise, aesthetics, property devaluation, and traffic.

(ii) *Growth Plan for Northern Ontario, 2011*

The By-law fails to conform with or conflicts with the *Growth Plan*. The By-law failed to consider any provisions of the plan, or any evidence, which relate to environmental or social impacts of the proposed by-law amendment.

The LRPB failed to consider the *Growth Plan* provisions which stress community planning and which balance the equally important priorities of human, economic and environmental health, including in sections 1.2 and 6.2.2.

(iii) *Official Plan for the Townships of Gorham, Ware, and the Dawson Road Lots, Lots 1-20 Concession A and B, East of the Kaministiquia River.*

The By-law does not conform with the Official Plan.

The LRPB did not consider whether the proposed pit is compatible with the surrounding sensitive land uses in the Lake Residential zone around Trout Lake under sections 2.7.1 and 3.2.5 of the Official Plan, or whether the proposed pit is appropriate for the site.

The By-law does not consider whether environmental or social impacts of the proposed development can be minimized and the integrity of the ecosystem protected. The LRPB failed to consider the provisions of the Official Plan which support environmental protection, recreation, the rural quality of life, the health, safety, convenience and welfare of residents, and all evidence relevant to these determinations, including sections 1.2.3(b), 1.2.3(d), 1.3.1, 1.3.3, 1.3.4, 1.11.5, 2.1.2, 2.17.1, 2.17.3, 2.17.8, 2.17.12, 2.17.14, 2.17.18, 3.1.2, and 3.2.3.

The By-law does not consider Trout Lake's designation as a fishery in the Official Plan. Sections 2.17.12 and 2.17.14 of the Official Plan provide that development can only be permitted in accordance with federal and provincial requirements in fish habitat, which has not yet been considered.

Section 3.2.9 of the Official Plan requires detailed consideration of the proposed aggregate pit operations, including compatibility with surrounding land uses, adequate buffering, hours of operation, setbacks, storm water management, existing and anticipated final grades of excavation, access and egress, haulage routes, traffic, and site rehabilitation. None of these factors have been considered by the LRPB, and this section only applies to the part of the parcel identified as an Aggregate Resource Area.

The LRPB did not consider that part of the parcel was identified as Use Limitations.

**Remedy**

TLCA requests that the Local Planning Appeal Tribunal grant its appeal, quashing By-law 004-2018 and returning it to the LRPB to consider the environmental, social and economic impacts of the application in accordance with the requirements of the *PPS*, the Growth Plan, and the Official Plan.