

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: January 04, 2017

CASE NO(S): PL140201

PROCEEDING COMMENCED UNDER subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Applicant and Appellant: Giofam Investments Inc.
Subject: Request to amend the Official Plan - Failure of the City of Kawartha Lakes to adopt the requested amendment
Existing Designation: Rural
Proposed Designation: Pits and quarries
Purpose: To permit the use of the land for an 84 hectare quarry
Property Address: 657 Monck Road
Municipality: City of Kawartha Lakes
Approval Authority File No.: D01-16-174
OMB Case No.: PL140201
OMB File No.: PL140201
OMB Case Name: Giofam Investments Inc. v. Kawartha Lakes (City)

PROCEEDING COMMENCED UNDER subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Applicant and Appellant: Giofam Investments Inc.
Subject: Application to amend Zoning By-law No. 10-77 – Refusal or neglect of City of Kawartha Lakes to make a decision
Existing Zoning: Rural General (RG) Zone, Rural Residential (RR1) Zone, and Environmental Protection (EP) Zone
Proposed Zoning: General Industrial Exception (M2-1 Zone and Industrial Extractive Exception (M3-2) Zone
Purpose: To permit the use of the land for an 84 hectare quarry
Property Address: 657 Monck Road
Municipality: City of Kawartha Lakes
Municipal File No.: D06-26-036
OMB Case No.: PL140201
OMB File No.: PL140202

PROCEEDING COMMENCED UNDER subsection 11(5) of the *Aggregate Resources Act*, R.S.O. 1990, c. A.8, as amended

Referred by: Jane Ireland

Objector: Sally Peterson & Bryan Pearson & Family
 Objector: Martin Powell & Susan Bialy
 Objector: Chris & Wendy Bowes
 Objector: Jay & Kristina Brandes; and others
 Applicant: Giofam Investments Inc.
 Subject: Application for a Class A licence for the removal of
 aggregate
 Property Address: 657 Monck Road
 Municipality: City of Kawartha Lakes
 OMB Case No.: PL140201
 OMB File No.: MM140051

Heard: November 17 and 21, 2016 in Bobcaygeon, Ontario

APPEARANCES:

Parties

Counsel/Representative*

Giofam Investments Inc.	David White
City of Kawartha Lakes	Edward Veldboom
Dalton Wildlands Defence League	Sylvain Rouleau and Barnet Kussner
County of Simcoe	Marshal Green
Ministry of Natural Resources and Forestry	(did not appear)

Participants

Charles Scheffel	Self-represented
Linda Cahill	Self-represented
Karen Bellenie and Erwin Psotka	Erwin Psotka*

DECISION DELIVERED BY JUSTIN DUNCAN AND INTERIM ORDER OF THE BOARD

BACKGROUND

[1] This was a hearing involving appeals by Giofam Investments Inc. (“Giofam”) in regard to applications to the City of Kawartha Lakes (“City”) for Official Plan Amendments and associated Zoning By-law Amendment for lands located at 657 Monck Road (“Subject Lands”).

[2] Additionally, Giofam has applied for a Class “A” Below Water Extraction Aggregate License (“Aggregate Licence”) that would apply to 83.7 hectares (“ha”) of the Subject Lands. The Aggregate Licence applied for seeks an annual extraction of 200,000 tonnes of granite and related uses such as crushing, screening and storage of aggregate materials on the Subject Lands. Pursuant to s. 11(5) of the *Aggregate Resources Act*, the Ministry of Natural Resources and Forestry (the “MNR”) referred this application to the Board for a hearing to determine whether a licence should be issued on the Subject Lands, as there were a number of Objectors, including the MNR itself, with issues that Giofam was not able to resolve.

[3] The Subject Lands are 424.2 ha in total and are located in the former Township of Dalton, adjacent to the southwest corner of Queen Elizabeth II Wildlands Provincial Park, approximately 6 kilometers (“km”) east of the community of Sebright, and directly north of the intersection of Monck Road (also known as Kawartha Lakes Road 45) and Lake Dalrymple Road. There are concentrations of permanent and recreational residences in the area 2.5 km to the west at Young Lake and 5 km to the south at Dalrymple Lake. The Subject Lands are currently used as pasture and for private recreation.

[4] At the outset of the hearing, the Board was advised that the parties had reached a settlement of the appeal, save for a jurisdictional issue raised by the County of Simcoe in relation to the ability of the Board to impose a condition that would have the effect of requiring Giofam to pay costs related to the upgrading and maintenance of the portion of the haul route located west of the City and within the County of Simcoe. The County of Simcoe has not raised any other issues on the appeal and requested, by way of motion, that the Board provide directions as to how its issue will be addressed.

[5] The proposed Official Plan Amendments before the Board are intended to redesignate parts of the Subject Lands from “Rural” to “Pits and Quarries” and also “Environmental Protection” in the Victoria County Official Plan and to similarly amend the recently adopted City-wide Official Plan to redesignate parts of the Subject Lands from “Rural” to “Aggregate” and “Environmental Protection”.

[6] The proposed Zoning By-law Amendment is intended to, among other things, rezone parts of the Subject Lands from “Rural General (RG) Zone”, “Rural Residential (RR1) Zone”, and “Environmental Protection (EP) Zone” to “Rural General Exception Nine (RG-9) Zone” at the location of the proposed quarry entrance, “Industrial Extractive Exception Two (M3-2) Zone” at the location of aggregate extraction and “Industrial Extractive Exception Three (M3-3) Zone” at the location of operations incidental to extraction. The remainder of the Subject Property is to be zoned “Environmental Protection Exception One Wetlands and Habitat Protection (EP-1) Zone”, with the Zoning By-law Amendment reducing the number of permitted uses which would generally be permitted in the EP-1 zone.

[7] Giofam and the City entered into minutes of settlement, marked as Exhibit 20, which attaches the draft amendments to the Victoria County Official Plan and the City’s Official Plan, the draft Zoning By-law Amendment to the Township of Dalton Zoning By-law No. 10-77, a Haul Route Agreement, and a Licence of Occupation. Giofam and Dalton Wildlands Defence League also entered into minutes of settlement, marked as Exhibit 19, which similarly attach various documents, including the Official Plan Amendments and the Zoning By-law Amendment.

[8] Since the application for the planning instruments and the Aggregate Licence were filed, the extent of the proposed extraction area has been reduced from approximately 50 ha to 18.7 ha, and greater protection for natural features and species at risk has been implemented, as explained in further detail below.

[9] The Board first considers the evidence and submissions in relation to the Official Plan Amendments, Zoning By-law Amendment and the Aggregate Licence and then examines the County of Simcoe’s motion for directions in relation to its haul road issue.

EVIDENCE

[10] On consent of the parties, the Board heard expert planning evidence from Caitlyn Port, a registered professional planner, and expert transportation evidence from Scott Brumwell, professional engineer. Additionally, of the 21 participants identified during the first pre-hearing, including Objectors who decided to seek participant rather than maintain party status pursuant to s. 11(6) of the *Aggregate Resources Act*, Mr. Scheffel, Ms. Cahill and Ms. Bellenie provided evidence in opposition to the proposed quarry operation.

[11] Ms. Port explained that Giofam's Aggregate Licence was deemed complete in 2007 or 2008 and that Giofam's experts have continued to complete studies and update their work since that time, including to address the concerns of local residents and to address the issues raised in the witness statements filed by the experts of the other parties in late 2015. Ms. Port attached various technical expert reports to the document book filed as part of her evidence which the Board marked as Exhibit 13. These documents include:

- a. Stage 1 and 2 Archaeological Assessments;
- b. Geology and Resource Assessment;
- c. Natural Environment Report and 2015 Addendum;
- d. Traffic Impact Study;
- e. Blast Impact Analysis;
- f. Dust Management Plan;
- g. Updated Hydrogeological Evaluation and 2016 Addendum;
- h. Updated Performance Management Plan;
- i. Assessment of Wetlands on the Sebright Quarry Property; and
- j. Technical Background Report with 2015 and 2016 updates.

[12] Ms. Port also included the proposed Site Plans that will form part of the Aggregate Licence in Exhibit 13.

[13] Ms. Port explained that several species listed under the *Endangered Species Act* (“ESA”) were identified on the Subject Lands following the filing of the application for the Aggregate Licence and that extensive work was undertaken by Giofam experts and MNR staff, including additional natural heritage studies, to identify habitat for Blanding’s Turtle, Eastern Hog-nosed Snake and Eastern Whip-poor-will. The result of this work between 2011 and 2013 culminated in the area of extraction within the licence area being reduced significantly and MNR issuing a permitting under s. 17(2)(c) of the ESA for the remainder of the proposal in January 2013. The ESA permit contains conditions for the protection of these three species, including a requirement for the construction of permanent rigid exclusion fencing around the perimeter of the extraction area to ensure reptiles are unable to enter the quarry and another requiring that Giofam enhance habitat for Eastern Whip-poor-will at other locations on the Subject Lands in order to compensate for the loss of habitat for this species resulting from the quarry operations.

[14] Ms. Port explained that as a result of the work conducted for the ESA permit, that the aggregate extraction area was reduced by 53 per cent to 23.3 ha and that 49.5 ha of land within the licence boundary was to be protected as habitat for endangered species. In addition, she explained that the remaining 259 ha of the Subject Lands are also to be protected primarily for conservation uses.

[15] Ms. Port testified that the MNR withdrew its objection to the proposal in March 2015.

[16] Ms. Port then explained that following the exchange of witness statements by the parties and as part of the settlement discussions between them, additional field work was conducted in the summer of 2016 to delineate a wetland complex, referred to as the central wetland, located on the Subject Lands. Additional groundwater testing was also conducted. She explained that as a result of this work, Giofam updated the Natural Environment Report and Hydrogeological Evaluation in August 2016 and reduced the

area of aggregate extraction further, the intent being to ensure that the full extent of the wetland is protected from quarry operations. The resulting extraction area before the Board has now been reduced to 18.7 ha, the accessory use area reduced to 3.9 ha and the protected area within the licence boundary now being 61.1 ha.

[17] Ms. Port testified that the MNRF had requested that the licence area remain the same size throughout, despite the reduction of the extraction area, as the licence conditions afford greater and more permanent protection for natural features, including the central wetland, than what could be provided by the Official Plan Amendment designations or zoning.

[18] With regards to the quarry entrance, Ms. Port explained that original proposed quarry entrance was moved 1 km east at the request of the City and then, as a result of the identification of environmental features that would be impacted with an easterly entrance, it has now been reverted back to the original proposal.

[19] Ms. Port explained that the Official Plan Amendments sought on the appeal are identical and that Victoria County Official Plan will only remain in effect until the outstanding appeals from the recently passed City's Official Plan are resolved.

[20] In reviewing the proposed Official Plan Amendments, Zoning By-law Amendments and the Site Plans which will form part of the Aggregate Licence, Ms. Port was of the opinion that the proposal is consistent with the policies contained in Provincial Policy Statement ("PPS") and that the proposal has fully considered and addressed the applicable criteria contained in the *Aggregate Resources Act*. In particular, she opined that the proposal is consistent with policies and criteria directed at ensuring no development occurs in wetlands or in significant wildlife habitat, that land use compatibility has been ensured, that surface and ground water will be protected, that a supply of high quality aggregate will be made available to local and regional markets, that the proposal is located on a suitable haul route and that it will not significantly increase traffic, and that progressive and final rehabilitation have been fully considered and incorporated into the Site Plans.

[21] Ms. Port also explained that the Site Plans incorporate all recommendations from various expert reports in relation to the reduction of impacts in relation to noise, dust and blasting. She explained that a performance management plan, incorporated into the Site Plans, is intended to ensure that no adverse impacts accrue to ground or surface water.

[22] Ms. Port also opined that the proposal was consistent with the policies contained in the Victoria County and the City's Official Plans. In particular, she opined that the proposal will not interfere with agricultural activities in the area, and that as the quarry is to be located more than 500 metres ("m") from Monck Road, on which the Subject Lands have frontage, that it will not diminish the scenic beauty of the area.

[23] Ms. Port explained that as a result of the 2016 field work and reduction of the area of extraction, and as a result of the settlement agreements reached, the parties were able to address all outstanding issues that had been raised by the experts for the City and Dalton Wildlands Defence League.

[24] Ms. Port confirmed, upon being questioned by Mr. Green for the County of Simcoe, that three quarters of the haul route for the proposal is located in the County of Simcoe and one quarter within the City's municipal boundaries.

[25] In response to questioning by the Board, Ms. Port explained that the quarry will be located more than 500 m from Queen Elizabeth II Wildlands Provincial Park. She explained that Giofam has addressed the concerns raised by the Park Superintendent, including reducing hours of operation to limit impact on recreational users of the park, and that the Superintendent no longer has any concerns about the proposal. Ms. Port also explained, in response to Board questions, that the hydrogeological studies indicate that the only water anticipated in the quarry is to result from precipitation. She also explained that permits to take water still need to be obtained under the *Ontario Water Resources Act* for the proposed quarry but that the hydrogeological studies conducted by Giofam's experts were peer reviewed by the experts retained by the City and Dalton Wildlands Defence League and were circulated to the Ministry of the Environment and Climate Change. She explained that there remain no concerns about

the below-watertable extraction, largely as a result of studies indicating that extraction, although below the watertable, will not actually take place within the watertable.

[26] Mr. Brumwell testified that he had inspected the haul route and it was his professional opinion that it is in good condition and suitable to accept truck traffic associated with the proposal. He explained that safety issues raised by the participants in relation to sight lines and turning issues have been fully assessed and are adequate but additional safety measures will be created by Giofam in the form of an added turning lane for trucks turning left to enter the site from Monck Road and also an acceleration lane for trucks leaving the site. It was his opinion that these added road features that will be constructed at the cost of Giofam will add an additional layer of protection. In reply to evidence provided by the participants, Mr. Brumwell opined that Monck Road is not even close to its capacity for traffic volume and that one could triple traffic on the road. He explained that even if traffic were to triple in volume that such a volume would merely necessitate a turning lane to accommodate the quarry entrance, which Giofam has already proposed to construct.

[27] Mr. Scheffel objects to what he characterized as a last minute change to the entrance location for the quarry and the potential for safety issues as a result of a westerly entrance. Mr. Scheffel requested that additional notice be provided that highlights the fact that the quarry entrance has been altered as he is aware that members of the community had decided not to attend the hearing as they were satisfied with the easterly entrance. As part of his evidence, Mr. Scheffel provided a list of documents and communications regarding the quarry entrance since August 2016, the last being a letter dated October 24, 2016 from Giofam to local residents advising that the proposal had been altered to relocate the entrance to the west. Mr. Scheffel expressed the view that the safety concerns that existed when the City requested Giofam move the entrance east still remain and that Mr. Brumwell's report only assessed the road and intersection upgrades proposed and did not compare or assess the entrance options.

[28] Mr. Scheffel also explained that he had concerns about the protection of wetlands on the Subject Lands. He explained that Giofam's consultants, Riverstone

Environmental Solutions Inc., treated the wetlands as provincially significant. Mr. Scheffel expressed the view that an evaluation should be done to determine if they should be designated as such. He indicated that he is aware that there are at least eight species of special concern in these wetlands that require protection.

[29] Ms. Cahill owns a cottage on Young Lake. She objects to the location of an industrial operation in the middle of an area designated Environmental Protection and adjacent to the Queen Elizabeth II Wildlands Provincial Park. She explained that the park exists because of the distinctiveness of the area which extends to include the Subject Lands. It was also her view, as a resident in the area, that noise and pollution associated with the proposal are inconsistent with the rural and seasonal uses in the area. Ms. Cahill also raised the question of whether the wetlands on the Subject Lands were fully evaluated and whether they qualify as provincially significant or not. She also questioned why the wetlands were included within the quarry licence area and how long the operation will take place given that the area of extraction has now been reduced in size.

[30] On consent of the parties, Mr. Psocka was added as a participant in order to testify on behalf of Karen Bellamie and himself. He explained that the main issue for him is the safety of the currently proposed western quarry access and the proposed haul route. He explained that he views the traffic counts used by Mr. Brumwell as lower than what actually exists on the road and that he is aware of traffic fatalities between the quarry and Sebright. It was his view that adding large haul trucks along this route would add to the danger posed by this part of Monck Road. Mr. Psocka was of the view that additional passing lanes and restricting hours, traffic lights at major intersections and limiting hours of haulage to avoid school buses would assist to improve safety.

[31] Mr. Psocka also expressed the view that the potential for noise associated with the proposal has not been adequately assessed and that although the quarry will be located 500 m from the road, that there does not exist any vegetation on the Subject Lands that will properly screen operations from Monck Road. Mr. Psocka also expressed the view that the proposal will impact the value of his cottage located on Young Lake 4 km to the east. Mr. Psocka requested that the Board require Giofam to

update its traffic study, conduct a noise study, move the quarry access point, assess if the wetlands on the Subject Property are provincially significant and require additional public notice.

ANALYSIS AND FINDINGS OF THE BOARD

[32] In assessing the proposed Official Plan Amendments and the Zoning By-law Amendment, the Board is to consider whether the proposal is consistent with the policies of the PPS and conforms to the policies of the Growth Plan for the Greater Golden Horseshoe (“Growth Plan”). Additionally, the Board must consider whether the proposed planning instruments are consistent with the Official Plans generally.

[33] In assessing the application for the Aggregate Licence, the Board is to have regard to similar matters which are set out in s. 12 of the *Aggregate Resources Act*:

12. (1) In considering whether a licence should be issued or refused, the Minister or the Board, as the case may be, shall have regard to,

- (a) the effect of the operation of the pit or quarry on the environment;
- (b) the effect of the operation of the pit or quarry on nearby communities;
- (c) any comments provided by a municipality in which the site is located;
- (d) the suitability of the progressive rehabilitation and final rehabilitation plans for the site;
- (e) any possible effects on ground and surface water resources;
- (f) any possible effects of the operation of the pit or quarry on agricultural resources;
- (g) any planning and land use considerations;
- (h) the main haulage routes and proposed truck traffic to and from the site;
- (i) the quality and quantity of the aggregate on the site;

- (j) the applicant's history of compliance with this Act and the regulations, if a licence or permit has previously been issued to the applicant under this Act or a predecessor of this Act; and
- (k) such other matters as are considered appropriate.

[34] The Board has reviewed the evidence tendered on consent of the parties, including the various expert reports reproduced in Exhibit 13 and the settlement agreements reached, and has considered the evidence tendered by the participants in opposition to the proposal. Having fully considered this evidence, the Board finds that the proposed quarry, as revised pursuant to the settlement agreements, is consistent with the policies of the PPS and the two applicable Official Plans and conforms to the policies of the Growth Plan.

[35] The Board has also considered those matters set out in s. 12(1) of the *Aggregate Resources Act* and other requirements of the Act and its regulations and finds that, based on the revised proposal and the evidence heard, that the Site Plans and conditions therein have considered and addressed all necessary requirements.

[36] In considering the proposed quarry, the Board has considered the participants' concerns in depth while reviewing the evidence and makes the following observations.

[37] The concern was raised that the central wetland has not been identified as a provincially significant wetland. However, as noted by Ms. Port and Mr. Scheffel in their evidence, Giofam's consultant, Riverstone Environmental Solutions Inc., assessed the central wetland and provided recommendations with the assumption that it was in fact provincially significant. This assumption, in addition to the delineation work conducted over the summer of 2016, has led to the entire extent of the wetland being protected into the long-term in the Site Plans that will become part of the Aggregate Licence. As one of the purposes of designating a wetland as provincially significant is to ensure that such a wetland is adequately assessed and protected as part of a planning exercise, the Board heard no evidence as to what additional benefit would accrue from the central wetland being designated provincially significant in this context.

[38] Furthermore, in relation to the species of special concern located in the central wetland that were of concern to Mr. Scheffel, the Board notes that with the central wetland being protected, any species that rely upon the wetland will also be afforded long-term protection. Additionally, the Board finds that should any of these species venture from the wetland, mitigation measures in place, including exclusion fencing and monitoring, will serve to protect species from harm that may result from their entry into the active extraction areas.

[39] The Board notes that the terms of the ESA permit, which are incorporated by reference into the conditions of the Site Plans, require that the wetland be protected. As a result, the Board finds that both the Aggregate License and the ESA permit will have long-term protection in place for the central wetland.

[40] In relation to the quarry entrance, the Board finds that additional notice is unnecessary on this issue. The original proposal was for a westerly entrance location which was altered to a location approximately 1 km east at the request of the City. After discussions amongst the parties and consideration of potential natural environment impacts resulting from an easterly entrance, it was decided to revert back to the westerly option. Various public documentation, including the City's staff report, had been prepared based on the original western entrance option. Additionally, as Mr. Scheffel noted, correspondence was provided to interested members of the public in October 2016 by Giofam in anticipation of a western entrance being of concern, in order that individuals could decide whether to attend the hearing. Several participants have attended to speak to this very issue as a result. The Board finds that additional notice in this situation is unnecessary.

[41] Although Mr. Scheffel was correct in his evidence that Mr. Brumwell's report did not compare entrance options, his oral testimony considered the safety of the westerly entrance in comparison to the eastern entrance. The Board accepts the expert opinion provided by Mr. Brumwell that, despite the curvature and changing elevation of the road, sight lines are adequate at both entrance options and that the left turning and acceleration lanes will add a level of safety for vehicles using Monck Road. In relation to the requests of Mr. Psootka that Giofam update its traffic study and limit haul road

operations to specific times of the day, the Board is satisfied, based on the analysis and opinions of Mr. Brumwell, that both the quarry entrance and haul route are safe and adequate and that further study and conditions are unnecessary. The Board also notes loading and transportation of aggregate will not occur after 3 p.m. on Friday or on weekends or on holidays in direct response to public concerns about conflicts with weekend and holiday tourist traffic.

[42] With regards to the concern of Ms. Cahill that the proposed quarry is inconsistent with the rural and seasonal uses in the area, the Board notes that although there are rural properties and residences that begin approximately 500 m from the proposed operations, the closest concentration of seasonal properties is several kilometres away at Young Lake. It was Ms. Port's uncontradicted evidence that the proposal will not interfere with any agricultural uses in the area and the Board accepts this evidence. The Board also notes that the ESA permit and the Site Plans restrict operations to specific hours and times of year in order to reduce impacts on residents and species on the Subject Lands. The Site Plans also incorporate conditions arising from the Blast Impact Analysis, the Dust Management Plan and other technical studies that are intended to address dust, noise and other impacts to residents in the area.

[43] Although the Board recognizes that conditions will not eliminate noise impacts entirely, the Board finds that the Site Plans, and the underlying supporting documents, have addressed these matters and will require monitoring and modification of operations to alleviate any unanticipated impacts.

[44] The one outstanding issue, discussed below, is whether the Board should impose a condition relating to haul road upgrades and maintenance in the County of Simcoe. The County of Simcoe does not object generally to the approval of the Official Plan Amendments, the Zoning By-law Amendment or the Board directing that the Minister of Natural Resources and Forestry issue a licence subject to the Site Plans presented to the Board.

[45] As a result, the Board finds that, subject to resolution on the final issue raised by the County of Simcoe in relation to haul road upgrades and maintenance, the Board

finds that the Official Plan Amendments and the Zoning By-law Amendment should be approved. Additionally, the Board finds that, subject to the resolution of the issue raised by the County of Simcoe, that an order should be granted directing the Minister of Natural Resources and Forestry to issue a licence subject to the Site Plans presented to the Board.

COUNTY OF SIMCOE MOTION

[46] Finally, the Board heard part of a motion raised by the County of Simcoe in relation to its haul route issue. The only parties expressing an interest in this issue are Giofam and the County of Simcoe. The other parties indicated that they do not wish to join on this final issue.

[47] By way of summary, Mr. Green explained that as the host community which is a single-tier municipality, the City is currently entitled to receive 7.5 cents per tonne of aggregate removed as part of Giofam's operation through the Aggregate Resources Trust, a scheme set up under the *Aggregate Resources Act* and managed by the Ontario Aggregate Resources Corporation. However, despite the fact that the County of Simcoe is host to three-quarters of the haul route, it is not currently entitled to any funds from the Aggregate Resources Trust.

[48] The County of Simcoe's motion makes a phased request for relief. The first phase requests that the Board direct that additional notice be given to other municipalities that are similarly positioned as the County of Simcoe, acting as aggregate haul route for multiple aggregate operations located outside of their municipal boundaries, and potentially other quarry operators. The intent of the additional noticed sought by the County is to afford others an opportunity to seek status at the hearing specifically in relation to this haul road issue raised by the County of Simcoe. Mr. Green submitted that additional notice should be ordered by the Board in this situation as the issue will be of great interest to municipalities that are impacted by large volumes of haul routes for aggregate operations. The County of Simcoe has requested that the Board adjourn the hearing *sine die* so that the parties can determine the form of notice and the circulation list.

[49] The second phase of the County of Simcoe's motion would involve the presentation of evidence and legal submissions, which the County of Simcoe and Giofam believed could be completed in a day.

[50] On behalf of Giofam, Mr. White submitted that the issue raised by the County of Simcoe is no different than any other jurisdictional issue that comes before the Board. He also stressed that the Board's decisions are not binding in subsequent hearings of the Board. On this basis Mr. White submitted that additional notice should not be ordered.

[51] In considering the submissions of the parties in relation the County of Simcoe's motion for directions, the Board finds that additional notice should not be required. The Board is routinely called upon to determine jurisdictional issues in the course of its appeals and does not, in the normal course, order that broad notice be provided to other potentially impacted entities. The Board does not find anything special in these circumstances that would warrant such an order. Although the issue to be raised by the County of Simcoe may not have been considered by the Board previously, the Board finds that the parties are represented by highly experienced Counsel who are capable of representing the interests of both parties and the broader public interest on this issue.

[52] Based on the submissions of the parties, the Board finds that an additional day for the hearing of any evidence and legal submissions will be sufficient to determine this final issue. Arrangements may be made through the Board's case coordinator to find a date agreeable to Giofam and the County of Simcoe for this purpose. The Board may be spoken to by teleconference call if necessary however.

INTERIM ORDER

[53] The Board orders that the appeals are allowed in part and the Official Plan Amendments and Zoning By-law Amendment are approved, subject to the resolution of the haul road issue raised by the County of Simcoe.

[54] The Board further orders that the Minister of Natural Resources and Forestry is directed to issue a Class A license to Giofam, subject to the resolution of the haul road issue raised by the County of Simcoe.

[55] The Board will withhold its final order until the haul road issue raised by the County of Simcoe is resolved and the parties may arrange a hearing date for the hearing of evidence and submissions on this issue.

[56] The Board may be spoken to if necessary.

“Justin Duncan”

JUSTIN DUNCAN
MEMBER

If there is an attachment referred to in this document,
please visit www.elfto.gov.on.ca to view the attachment in PDF format.

Ontario Municipal Board

A constituent tribunal of Environment and Land Tribunals Ontario
Website: www.elfto.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248