

**Local Planning Appeal Tribunal**  
Tribunal d'appel de l'aménagement  
local



**ISSUE DATE:** November 16, 2018

**CASE NO(S):** PL171093

The Ontario Municipal Board (the "OMB") is continued under the name Local Planning Appeal Tribunal (the "Tribunal"), and any reference to the Ontario Municipal Board or Board in any publication of the Tribunal is deemed to be a reference to the Tribunal.

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

Applicant and Appellant:	St. Marys Cement Inc. (Canada)
Subject:	Request to amend the Official Plan - Failure of the County of Brant to adopt the requested amendment
Existing Designation:	Agricultural
Proposed Designated:	Resource Development
Purpose:	To permit a resource development land use (i.e. gravel pit)
Property Address/Description:	468 & 473 Bishopsgate Rd
Municipality:	County of Brant
Approval Authority File No.:	OPA-F12-RA
OMB Case No.:	PL171093
OMB File No.:	PL171093
OMB Case Name:	St. Marys Cement Inc. (Canada) v. Brant (County)

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

Applicant and Appellant:	St. Marys Cement Inc. (Canada)
Subject:	Application to amend Zoning By-law No. 61-16 - Neglect of the County of Brant to make a decision
Existing Zoning:	Agricultural Zone (A)
Proposed Zoning:	Resource Extraction (EX)
Purpose:	To permit a resource development land use (i.e. gravel pit)
Property Address/Description:	468 & 473 Bishopsgate Rd

Municipality: County of Brant  
 Municipality File No.: ZBA24-12-RA  
 OMB Case No.: PL171093  
 OMB File No.: PL171094

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

Referred by: Sharon Rew  
 Objector: Cathy & Tom Austin  
 Objector: Karen & Bruce Bell  
 Objector: Joe DaCosta  
 Objector: Kim & Floyd Davis; and others  
 Applicant: St. Mary's Cement Inc. (Canada)  
 Subject: Application for a Class A licence for the removal of aggregate

Property Address/Description: 468 & 473 Bishopsgate Rd  
 Municipality: County of Brant  
 OMB Case No.: PL171093  
 OMB File No.: MM180008

**Heard:** October 11, 2018 in Paris, Ontario

**APPEARANCES:**

**Parties**

**Counsel**

St. Marys Cement Inc. (Canada) ("St. Marys") D.S. White

County of Brant (the "County") J. Meader

Ministry of Natural Resources and Forestry ("MNRF") S. Zhai

**Objectors**

Kim Davis Self-represented

Karen Innes Self-represented

**MEMORANDUM OF ORAL DECISION DELIVERED BY S. JACOBS ON  
 OCTOBER 11, 2018 AND ORDER OF THE TRIBUNAL**

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[1] St. Marys made applications to the County for an Official Plan Amendment (“OPA”) and Zoning By-law Amendment (“ZBA”) to allow for an aggregate extraction operation at its property located at 468 and 473 Bishopsgate Road in the County of Brant. The County failed to make a decision on the OPA and ZBA within the applicable statutory timeframes, and St. Marys appealed to the Local Planning Appeal Tribunal (the “Tribunal”) under s. 22(7) and s. 34(11) of the *Planning Act*. The Tribunal also has before it the referral of St. Marys application for a licence, pursuant to s. 11(5) of the *Aggregate Resources Act* (the “ARA”), from MNRF.

[2] This was the first prehearing conference (“PHC”) in these matters. The parties requested, on consent, that the OPA, ZBA, and licence referral be consolidated pursuant to Rule 16 of the Tribunal’s *Rules of Practice and Procedure*. The Tribunal granted this request and orders that these three matters are to be consolidated.

[3] Several individuals attended the PHC and requested participant status. Tom Malder requested participant status, however noted that he is in the process of incorporating a community association. Once the association is incorporated, he indicated that it will be seeking party status. Counsel for the parties did not object to this request, and Mr. White further indicated that St. Marys would consent to a future request for party status by the association, and would work with the association on modification of the Issues List, if necessary. The Tribunal directed Mr. Malden to advise the Tribunal and the parties once the association is incorporated. At that time, the Tribunal will schedule a telephone conference call (“TCC”) with the parties to handle the association’s request for party status and any requests for modifications to the Issues List.

[4] In addition, the Tribunal granted participant status to Heather and Spencer Von Woheren and Dries Keizer. Kim Davis and Karen Innes also requested participant status, however, the Tribunal noted that they are listed as objectors to the license, and are therefore parties pursuant to the ARA. Upon questioning by the Tribunal, it became clear that both Ms. Davis and Ms. Innes intend to be part of the community association

that is currently being organized, and that they intend to have the association represent them at the hearing.

[5] Mr. White advised that he and counsel for the County had prepared a draft Procedural Order (“PO”) including an Issues List. While he was not aware that MNRF would be attending the PHC, he and Ms. Zhai had an opportunity to discuss the concerns of MNRF. They indicated that MNRF raised one additional issue for the Issues List, with respect to the *Endangered Species Act*, and that they are optimistic that this issue may be resolved prior to the hearing. The parties modified the draft Issues List to include MNRF’s issue; they then submitted the finalized PO subsequent to the PHC, and it is included here as Attachment 1.

[6] The parties agreed, given the Issues List, that a three week hearing will be required. The Tribunal concurs that the extent of the issues and number of expert witnesses to be called make this a reasonable estimate.

[7] Based on the discussions during the PHC, the Tribunal orders that the hearing will commence on **Monday, January 27, 2020 at 10:30 a.m.** for three weeks at:

**Council Chambers  
Municipal Building (Brant)  
7 Broadway Street West, Paris  
Brant, Ontario**

The Tribunal will not sit on February 10, 2020, due to a scheduled professional development day. No further notice of the hearing is required.

[8] The Tribunal further orders that the PO included as Attachment 1 to this Order shall be in full force and effect for the purposes of governing the required procedure leading up to and including the hearing scheduled to commence on January 27, 2020.

[9] Mr. Malden is directed to advise the Tribunal and the parties once the association has been incorporated as to whether it: (1) intends to proceed with a request for party status; and (2) requests any modifications to the Issues List. Mr. Malden should

correspond with John Norris, the Tribunal's Case Coordinator at 416-326-6798 or [John.Norris2@ontario.ca](mailto:John.Norris2@ontario.ca). The Tribunal will then proceed to schedule a second PHC by telephone conference call.

[10] This panel is not seized.

*"S. Jacobs"*

S. JACOBS  
MEMBER

If there is an attachment referred to in this document,  
please visit [www.elto.gov.on.ca](http://www.elto.gov.on.ca) to view the attachment in PDF format.

**Local Planning Appeal Tribunal**

A constituent tribunal of Environment and Land Tribunals Ontario  
Website: [www.elto.gov.on.ca](http://www.elto.gov.on.ca) Telephone: 416-212-6349 Toll Free: 1-866-448-2248

# ATTACHMENT 1

## LOCAL PLANNING APPEAL TRIBUNAL

ISSUE DATE:

CASE NO(S). PL171093

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

Applicant and Appellant: St. Marys Cement Inc. (Canada)  
Subject: Request to amend the Official Plan - Failure of the County of Brant to adopt the requested amendment  
Existing Designation: Agricultural  
Proposed Designated: Resource Development  
Purpose: To permit a resource development land use (i.e. gravel pit)  
Property Address/Description: 468 & 473 Bishopsgate Rd  
Municipality: County of Brant  
Approval Authority File No.: OPA-F12-RA  
OMB Case No.: PL171093  
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OMB Case Name: St. Marys Cement Inc. (Canada) v. Brant (County)

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

Applicant and Appellant: St. Marys Cement Inc. (Canada)  
Subject: Application to amend Zoning By-law No. 61-16 - Neglect of the County of Brant to make a decision  
Existing Zoning: Agricultural Zone (A)  
Proposed Zoning: Resource Extraction (EX)  
Purpose: To permit a resource development land use (i.e. gravel pit)  
Property Address/Description: 468 & 473 Bishopsgate Rd  
Municipality: County of Brant  
Municipality File No.: ZBA24-12-RA  
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Referred by: Sharon Rew  
Objector: Cathy & Tom Austin  
Objector: Karen & Bruce Bell  
Objector: Joe DaCosta  
Objector: Kim & Floyd Davis; and others  
Applicant: St. Mary's Cement Inc. (Canada)  
Subject: Application for a Class A licence for the removal of aggregate  
Property Address/Description: 468 & 473 Bishopsgate Rd  
Municipality: County of Brant  
OMB Case No.: PL171093  
OMB File No.: MM180008

## PROCEDURAL ORDER

1. The Tribunal may vary or add to these rules at any time, either on request or as it sees fit. It may alter this Order by an oral ruling, or by another written Order.

### **Organization of the Hearing**

2. The hearing will begin on Monday, January 27, 2020 at 10:30 a.m. at the Municipal Building, Council Chambers, 7 Broadway Street West, Paris in the County of Brant, in the Province of Ontario.
3. The length of the hearing will be about 15 days.
4. The parties and participants identified at the prehearing conference are set out in Schedule "A".
5. The Issues are set out on Schedule "B".

There will be no changes to this list unless the Tribunal permits, and a party who asks for changes may have costs awarded against it.

6. Any person intending to participate in the hearing should provide a telephone number to the Tribunal as soon as possible (*preferably before the prehearing conference.*) Any such person who will be retaining a representative should advise the other parties and the Tribunal of the representative's name, address and phone number as soon as possible.

### **Requirements Before the Hearing**

7. Expert witnesses in the same field shall have a meeting before the hearing to try to resolve or reduce the issues for the hearing. The experts must prepare a list of agreed facts and the remaining issues to be addressed at the hearing, and provide this list to all of the parties and the municipal Clerk.
8. A party who intends to call witnesses, whether by summons or not, shall provide to the Tribunal, the other parties and to the Clerk a list of the witnesses and the order in which they will be called. This list must be delivered on or before September 30, 2019.
9. An expert witness shall prepare an expert witness statement, which shall list any reports prepared by the expert, or any other reports or documents to be relied on at the hearing. Copies of this must be provided as in section [12]. Instead of a witness statement, the expert may file his or her entire report if it contains the required information. If this is not done, the Tribunal may refuse to hear the expert's testimony.
10. A [witness] [participant] must provide to the Tribunal and the parties a [witness] [participant] statement on or before October 31, 2019, or the witness or participant may not give oral evidence at the hearing.

11. Expert witnesses who are under summons but not paid to produce a report do not have to file an expert witness statement; but the party calling them must file a brief outline of the expert's evidence, as in section [12].
12. On or before October 31, 2019, the parties shall provide copies of their [witness and] expert witness statements to the other parties and to the Clerk of the municipality.
13. On or before November 29, 2019, the parties shall provide copies of their visual evidence to all of the other parties. If a model will be used, all parties must have a reasonable opportunity to view it before the hearing.
14. Parties may provide to all other parties and file with the Clerk a written response to any written evidence on or before November 29, 2019 after the evidence is received.
15. A person wishing to change written evidence, including witness statements, must make a written motion to the Tribunal.  
  
*(see Rule 10 of the Tribunal's Rules with respect to Motions, which requires that the moving party provide copies of the motion to all other parties 15 days before the Tribunal hears the motion.)*
16. A party who provides a witness' written evidence to the other parties must have the witness attend the hearing to give oral evidence, unless the party notifies the Tribunal at least 7 days before the hearing that the written evidence is not part of their record.
17. Documents may be delivered by personal delivery, facsimile or registered or certified mail, or otherwise as the Tribunal may direct. The delivery of documents by fax shall be governed by the Tribunal's Rules (Rule 7) on this subject. Material delivered by mail shall be deemed to have been received five business days after the date of registration or certification.
18. No adjournments or delays will be granted before or during the hearing except for serious hardship or illness. The Tribunal's Rule 17 applies to such requests.

**This Member is [not] seized.**

**So orders the Tribunal.**

BEFORE:

Name of Member



Date:

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Tribunal Registrar



### **Purpose of the Procedural Order and Meaning of Terms**

The Tribunal recommends that the parties **meet to discuss this sample Order before the prehearing conference** to try to identify the issues and the process that they want the Tribunal to order following the conference. The Tribunal will hear the parties' comments about the contents of the Order at the conference.

Prehearing conferences usually take place only where the hearing is expected to be long and complicated. If you are not represented by a lawyer, you should prepare by obtaining the Guide to the Local Planning Appeal Tribunal, and the Tribunal's Rules, from the Tribunal Information Office, 15th Floor, 655 Bay Street, Toronto, M5G 1E5, 416-327-6800, or from the Tribunal website at <http://elto.gov.on.ca/tribunals>.

#### **Meaning of terms used in the Procedural Order:**

**Party** is an individual or corporation permitted by the Tribunal to participate fully in the hearing by receiving copies of written evidence, presenting witnesses, cross-examining the witnesses of the other parties, and making submissions on all of the evidence. If an **unincorporated group** wishes to become a party, it must appoint one person to speak for it, and that person must accept the other responsibilities of a party as set out in the Order. Parties do not have to be represented by a lawyer, and may have an agent speak for them. The agent must have written authorisation from the party.

**NOTE** that a person who wishes to become a party before or at the hearing, and who did not request this at the prehearing conference, must ask the Tribunal to permit this.

**Participant** is an individual, group or corporation, whether represented by a lawyer or not, who may attend only part of the proceeding but who makes a statement to the Tribunal on all or some of the issues in the hearing. Such persons may also be identified at the start of the hearing. The Tribunal will set the time for hearing this statement. **NOTE** that such persons will likely not receive notice of a mediation or conference calls on procedural issues. They also cannot ask for costs, or review of a decision as parties can. If a participant does not attend the hearing and only files a written statement, the Tribunal will not give it the same attention or weight as submissions made orally. The reason is that parties cannot ask further questions of a person if they merely file material and do not attend.

**Written and Visual Evidence:** **Written evidence** includes all written material, reports, studies, documents, letters and witness statements which a party or participant intends to present as evidence at the hearing. These must have pages numbered consecutively throughout the entire document, even if there are tabs or dividers in the material. **Visual evidence** includes photographs, maps, videos, models, and overlays which a party or participant intends to present as evidence at the hearing.

**Witness Statements:** A **witness statement** is a short written outline of the person's background, experience and interest in the matter; a list of the issues which he or she will discuss and the witness' opinions on those issues; and a list of reports that the witness will rely on at the hearing. An **expert witness statement** should include his or her (1) name and address, (2) qualifications, (3) a list of the issues he or she will address, (4) the witness'

opinions on those issues and the complete reasons for the opinions and (5) a list of reports that the witness will rely on at the hearing. A **participant statement** is a short written outline of the person's or group's background, experience and interest in the matter; a list of the issues which the

*participant will address and a short outline of the evidence on those issues; and a list of reports, if any, which the participant will refer to at the hearing.*

**Additional Information**

**Summons:** *A party must ask a Tribunal Member or the senior staff of the Tribunal to issue a summons. This request must be made before the time that the list of witnesses is provided to the Tribunal and the parties. (See Rule 13 on the summons procedure.) If the Tribunal requests it, an affidavit must be provided indicating how the witness' evidence is relevant to the hearing. If the Tribunal is not satisfied from the affidavit, it will require that a motion be heard to decide whether the witness should be summoned.*

**The order of examination of witnesses:** *is usually direct examination, cross-examination and re-examination in the following way:*

*direct examination by the party presenting the witness;*

*direct examination by any party of similar interest, in the manner determined by the Tribunal;*

*cross-examination by parties of opposite interest;*

*re-examination by the party presenting the witness; or*

*another order of examination mutually agreed among the parties or directed by the Tribunal.*

**SCHEDULE "A"**

## Parties:

<b>No.</b>	<b>Name</b>	<b>Counsel / Representative*</b>
1.	St. Marys Cement Inc. (Canada)	David S. White, Q.C. Devry Smith Frank LLP 100-95 Barber Greene Road Toronto, ON M3C 3E9 Tel: 416-449-1400 ext. 3330 E-mail: david.white@devrylaw.ca
2.	County of Brant	Jennifer Meader Turkstra Mazza Associates 15 Bold Street Hamilton, ON L8P 1T3 Tel: 905-529-3476 ext. 274 E-mail: jmeader@tmalaw.ca
3.	Ministry of Natural Resources & Forestry ("MNR")	Sunny Zhai Counsel, Legal Services Branch Ministry of Natural Resources and Forestry 99 Wellesley Street West Whitney Block Room 3420 Toronto, ON M7A 1W3 Phone: (416) 314-2018 E-mail: sunny.zhai@ontario.ca
4.	Kim Davis and Floyd Davis	davisfuels@execnlink.com kimfit@live.com 519-717-5516 Self-represented
5.	Karen Innes	Innes96ke@sympatico.ca 519-449-2223 Self-represented

## Participants:

<b>No.</b>	<b>Name</b>	<b>Email and Phone No.</b>
1.	Tom Malden (HCA)	E-mail: Drtom.mvm@gmail.com 519-449-1070 Self-represented

<b>No.</b>	<b>Name</b>	<b>Email and Phone No.</b>
2.	John Stys	stys@sympatico.ca 519-756-4602
3.	Dave Miller	jedamiller@sympatico.ca 519-449-1240
4.	Heather Von Woheren Spencer Von Woheren	Hed.spen.24@gmail.ca 519-449-1768
5.	Dries Keizer	drieskeizer@hotmail.com 226-227-1329

## **SCHEDULE “B”**

### **ISSUES LIST**

#### **County of Brant**

##### Planning

1. Is the Application consistent with the Provincial Policy Statement, 2014, particularly the policies dealing with Natural Heritage (2.1), Water (2.2), Agriculture (2.3), and Mineral Aggregate Resources (2.5)?
2. Does the Application conform to the Growth Plan for the Greater Golden Horseshoe, 2017, particularly policies in section 2.2.1 Mineral Aggregate Resources?
3. Does the Application conform to the County of Brant Official Plan, particularly the Mineral Aggregate Resources policies 2.3.4.2 b), c), e), and f)?
4. Is the proposed haul route for the operation of the aggregate pit appropriate and does it represent good planning?
5. Is the Application premature until an Aggregate Assessment has been undertaken?
6. Is it appropriate and does it constitute good planning to allow extraction below the water table, particularly if it will lead to loss of farmland?
7. What are the nuisance impacts (i.e., noise, dust/air quality, vibration, traffic) on surrounding land uses and the requirements for appropriate mitigation?
8. Are all municipal requirements addressed through the Aggregate Resources Act application?

##### Natural Heritage

9. Have the potential impacts on natural heritage features been adequately assessed and what design and mitigation measures, monitoring, and enforcement should be imposed?

##### Hydrogeological Assessment

10. Has it been demonstrated that there will be no adverse impacts on surface water or groundwater resources, including private wells?

##### Traffic/Haul Route

11. Does the proposed mineral aggregate operation result in any unacceptable traffic and transportation impacts? If so, should the application be approved and what, if any, mitigation measures, monitoring, and enforcement should be imposed?

12. Has the haul route been sufficiently studied and adequately assessed, and if so is it appropriate in terms of:
  - a. safety;
  - b. impacts on road maintenance;
  - c. noise impacts;
  - d. compatibility with the character of the urban areas along the haul route;
  - e. social impacts;
  - f. geometrics;
  - g. roadway operations and future growth conditions; and
  - h. consideration of alternate routes

MNRF

13. What is the potential impact of the proposed aggregate operations on endangered species and its habitat and will it be sufficiently mitigated?