



**Tiny**  
TOWNSHIP OF / CANTON DE

THIS ITEM WENT

APR 09 2018

TO COMMITTEE  
OF THE WHOLE

**PLANNING & DEVELOPMENT REPORT PD-027-18**

**TO:** Mayor Cornell and Members of Council

**FROM:** Shawn Persaud, Director of Planning & Development

**DATE:** April 9, 2018

**RE:** Matter/Application: OMB Appeal/Official Plan Amendment and  
Zoning By-law Amendment  
Owner(s)/Applicant(s): CRH Canada Group Inc.  
Legal Description: North Part Lot 80, Concession 1 O.S.  
(Appendix 1)  
Municipal Address: 2 Darby Road  
File: '18/L01 (DS #59312) & '18/L01 (DS #59313)  
Roll No. 1-029-00

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**RECOMMENDATION:**

It is recommended that, if the Ontario Municipal Board (OMB) appeal proceeds to a hearing, Council direct staff to take an active role, which will include retaining the services of the Township Lawyer (Barriston LLP), Engineering Consultant (R.J. Burnside & Associates) and Land Use Planner (TBD).

**BACKGROUND:**

On March 9, 2012, Mr. Les Selby, Les C. Selby Consulting Services, on behalf of K.J. Beamish Construction Co. Limited (Beamish) submitted two applications under the *Planning Act*: an Official Plan Amendment application and a Zoning By-law Amendment application.

The following studies/reports were submitted in support of the applications:

- Summary Statement Report, dated November 28, 2011, prepared by Dennis C. Simmons Development and Land Management Consulting Services.
- Environmental Impact Statement and Natural Environment Level 1 and 2 Technical Report, dated September 20, 2011, prepared by The Lindsay Environmental Group.
- Stage 1 and 2 Archaeological Assessment Report, dated May 2011, prepared by The Central Archaeology Group Inc. and letter dated June 24, 2011 from

the Ministry of Tourism and Culture stating that the Ministry concurs with the recommendations of the report that there are no further archaeological concerns for the subject property.

- Hydrogeological Assessment, dated April 12, 2011, prepared by Alpha Environmental Services Inc. (Mr. Ross Campbell).
- Acoustic Assessment Report, dated July 2011, prepared by F. H. Theakston Environmental Control Inc.
- Planning Report, dated February 2012, prepared by Les C. Selby Consulting Services.

On March 26<sup>th</sup>, 2012, Council approved Motion #174/12 deeming the applications to be complete and directing staff to circulate the Notice of Application as per the requirements of the *Planning Act*.

The supporting studies/reports were provided to R.J. Burnside & Associates Ltd. (Burnside), Township Engineering Consultant and the Severn Sound Environmental Association (SSEA), Township Environmental Consultant for peer review.

Through the peer review process, a number of amendments were made to the proposed development, including scaling back the excavation area from the significant woodland on the west side of the property below the ridge and adding additional tree planting to the rehabilitation plan of Beamish's existing gravel pit (Teedon Pit).

On December 8<sup>th</sup>, 2014, following the peer review process, Council approved Motion #602/14 directing staff to circulate the Notice of Public Meeting as per the requirements of the *Planning Act*.

On January 26<sup>th</sup>, 2015, a Public Meeting was held and a number of concerns were raised by the public, including the increased amount of aggregate washing and potential negative effects on the quality and quantity of the aquifer, which would impact the residential wells in the area. At the end of the Public Meeting, the representatives from Beamish were requested to address the concerns raised by the public prior to a second Public Meeting being scheduled.

On March 23<sup>rd</sup>, 2015, the Township received a letter from Dennis C. Simmons, Development and Land Management Consulting Services, dated March 16<sup>th</sup>, 2015 on behalf of Beamish requesting review and comment on a proposed site plan amendment application under the *Aggregate Resources Act* (ARA) for the existing gravel pit located at 40 Darby Road. The most significant amendment was the introduction of a wash plant area. Beamish had a Permit to Take Water from the Ministry of the Environment and Climate Change (MOECC), however, did not have formal approval from the Ministry of Natural Resources and Forestry (MNRF) to operate the wash plant. The Township is only a commenting agency for a Site Plan Amendment application under the ARA for an existing gravel pit operation and the MNRF is the approval authority. This letter was



included on the April 13<sup>th</sup>, 2015 Council Agenda (Correspondence II Section) for information.

On April 17<sup>th</sup>, 2015, the Township provided a letter to the MNRF providing comments on the proposed site plan amendment and specifically noted the applicable Township Official Plan policies relative to water resource management and the concerns raised by the residents in the area at the Public Meeting held on January 26<sup>th</sup>, 2015 and attached a copy of the approved Planning Public Meeting minutes.

In June 2015, formal well water interference complaints were made to the MOECC from area residents. It is noted that the area residents retained Mr. Wilf Ruland, P. Geo. to prepare a report to support their complaints to the MOECC. The report was entitled "Report on Hydrogeological Impacts Caused by Aggregate Washing at the Teedon Pit near Waverley, Ontario" dated October 20, 2015.

In November 2015, the MOECC issued letters to the complainants stating that the water well impacts are not due to the water takings associated with the permit from Beamish's existing gravel pit and that the well water issues are due to poor well construction.

On February 26, 2016, the Township provided additional comments to the MNRF on the Site Plan Amendment application under the ARA (proposed wash plant). These additional comments prepared by Burnside (letter dated February 24<sup>th</sup>) recommended to the MNRF that the following be undertaken as part of their approval process:

- The current conditions of nearby domestic wells should be established, including the well depth and condition of the casing/screen, and the well yield and general water quality. The work should be completed by the proponent using an independent qualified consultant.
- The monitoring network at the Teedon Pit should be expanded to include a staff gauge in the wash pond, a nested well with screens completed at a variety of depths (to monitor change in gradients during use of the wash pond), along with a number of wells completed in the aquifer(s) that are used by domestic wells in the area. A professional geoscientist (or equivalent) should be present during the drilling of the wells to describe the geology and select the intervals for monitoring well completion.

On April 15<sup>th</sup>, 2016, the Township provided a second letter to the MNRF prepared by Burnside confirming that, after reviewing additional information, Condition 2 of their previous letter is still applicable.

On November 30<sup>th</sup>, 2016, the MNRF issued a letter confirming that the Beamish site plan amendment was approved, including the introduction of a wash plant. It is noted that the MNRF did not include the Township's recommended conditions in the amended site plans.

On March 23<sup>th</sup>, 2017, Township staff and Members of Council along with representatives from Burnside and the SSEA met with Provincial staff from the MNRF to discuss the process for the Teedon Pit Site Plan Amendment (wash plant) application and approval. Minutes of this meeting were prepared and were included on the May 29<sup>th</sup>, 2017 Council Agenda.

On April 19<sup>th</sup>, 2017, Township staff, along with representatives from Burnside, met with Provincial staff from the MOECC and the MNRF and representatives from Beamish to discuss the outstanding groundwater issues. Beamish was to review comments received at the meeting and respond to the Township and Burnside. No comments were provided to the Township.

In the summer of 2017, K.J. Beamish Construction Company Ltd. was purchased by CRH Canada Group Inc. (CRH).

On February 15<sup>th</sup>, 2018, the Township provided comments on a Permit to Take Water application. The comments were provided to the Township by Burnside and reiterated the comments provided to the MNRF.

There has been minimal communication to date between CRH and Township staff relative to the planning applications. Staff were not prepared to bring a report to Council supporting a second Public Meeting until CRH was able to satisfy Burnside relative to the groundwater monitoring to ensure that there is no impact on the aquifer and neighbouring private wells.

On March 29<sup>th</sup>, 2018, the Township received an Ontario Municipal Board (OMB) appeal from Blake, Cassels & Graydon LLP on behalf of CRH (the Appellant) (Appendix 2). The nature of the appeal, as noted in the cover letter, states that CRH is appealing to the OMB on the basis of Council's refusal to make a decision on the Official Plan Amendment application within 180 days of the making of the application and Council's refusal to make a decision on the Zoning By-law Amendment application within 120 days of the making of the application. In addition, as noted in the cover letter, CRH is exercising its rights to appeal as it exists in order to proceed under the existing (prior to April 3<sup>rd</sup>, 2018) statutes, regulations and rules regarding timing, procedures and framework for determining appeals on land use planning matters.

## **ANALYSIS:**

### **Township Position**

Considering that the applications constitute a major development with significant interest from the public, there is a Township interest in taking an active role at the OMB. Staff would recommend that the Township participate with respect to a potential OMB hearing. The Appellant has indicated in the Appellant Form that they believe that the matter would not benefit from mediation.



### Legal Counsel

The Township's legal firm regarding these types of matters has historically been Barriston LLP. If Council chooses to take a proactive role in the OMB hearing, it is recommended that Barriston LLP be retained to represent the Township.

### Outside Consulting Assistance

Staff will require the assistance of Burnside considering their involvement through the application process. In addition, staff may also require the assistance of a Land Use Planning consultant due to the technical nature of the application.

### Planning Act Requirements

The *Planning Act* (Section 22(9)) requires the Township to compile a "Record" that includes the prescribed information and material as outlined by the OMB within 15 days after the notice is filed, which in this case is April 13<sup>th</sup>, 2018. Due to this timeline, staff are recommending that Council give direction, through the approval of a Council Motion, as outlined in this Report, at the Council Meeting on April 9<sup>th</sup>, 2018. This will ensure that the Township complies with the timeline requirements of the *Planning Act* to forward the appeal to the OMB.

### **FINANCIAL IMPLICATIONS:**

If Council directs staff to take a proactive role at the OMB hearing, there will be significant costs associated with retaining a Solicitor, Engineering Consultant, and possibly a Land Use Planning Consultant and in staff time preparing for the hearing. It is anticipated that the hearing would be scheduled for at least one (1) week. The Appellant has estimated ten (10) days for a hearing in the Appellant Form. The costs to defend the Appeal will depend on the length of the hearing and the amount of preparation time required.

### **RELATIONSHIP TO STRATEGIC PLAN:**

- Deliver Efficient and Exceptional Municipal Services
- Healthy Environment and Sustainable Community Planning

### **CONCLUSION:**

It is recommended that, if the Ontario Municipal Board (OMB) appeal proceeds to a hearing, Council direct staff to take an active role, which will include retaining the services of the Township Lawyer (Barriston LLP), Engineering Consultant (R.J. Burnside & Associates) and Land Use Planner (TBD).

Respectfully,



Report prepared and submitted by:


Shawn Persaud, BA, MCIP, RPP  
Director of Planning and Development

Financial Implications Reviewed by:



Doug Taylor, Director of Finance and  
Administration/Treasurer

Report approved by:



Doug Luker, CAO

Attachments:

Appendix 1: Subject Property Map (Township Owned Lands)  
Appendix 2: Notice of Appeal Cover Letter



Scale: 1:20,000


0 95 190 380 570 760 950 Meters


Coordinate System: NAD 1983 UTM Zone 17N  
 Projection: Transverse Mercator  
 Datum: North American 1983  
 False Easting: 500,000.0000  
 False Northing: 0.0000  
 Central Meridian: -81.0000  
 Scale Factor: 0.9996  
 Latitude Of Origin: 0.0000  
 Units: Meter

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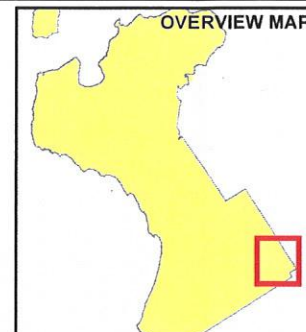


**Map Legend**

 Subject Property

 Parcel Fabric

\*All drawings are representations and not guaranteed for accuracy







## Appendix 2

Blake, Cassels & Graydon LLP  
Barristers & Solicitors  
Patent & Trade-mark Agents  
199 Bay Street  
Suite 4000, Commerce Court West  
Toronto ON M5L 1A9 Canada  
Tel: 416-863-2400 Fax: 416-863-2653

Jonathan W. Kahn

Dir: 416-863-3868

jonathan.kahn@blakes.com

Reference: 12573/

March 29, 2018

### VIA MESSENGER

Township of Tiny  
Clerk's Department  
130 Balm Beach Road West  
Tiny, Ontario  
L0L 2J0



### Re: Notice of Appeal of Official Plan and Zoning By-law Amendment Applications

**Owner/Applicant:** CRH Canada Group Inc. (formerly owned by and application made by K.J. Beamish Construction Co. Limited)  
**Legal Description:** North Part Lot 80, Concession 1 O.S.  
**Municipal address:** 2 Darby Road  
**File:** '12/D09' (DS #36243) & '12/D14' (DS #36242) – Roll #1-029-00

Dear Sir or Madam:

We are the lawyers for CRH Canada Group Inc. ("CRH"). CRH is the owner of the above-noted property (the "**Subject Property**"), which it purchased from K.J. Beamish Construction Co. Limited, and which is the subject of the above-noted applications for official plan and zoning by-law amendment (the "**Applications**").

On behalf of CRH, we hereby appeal the Applications to the Ontario Municipal Board pursuant to sections 22(7) and 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended.

### The Applications

The Applications seek to permit the expansion of an existing CRH gravel pit, located on the property known as Part Lots 79 and 80, Concession 1 O.S. (40 Darby Road). The Applications seek to permit the expansion of this gravel pit northward onto the Subject Property.

The intent of the official plan amendment application is to re-designate the subject property from the 'Rural', 'Environmental Protection II', and 'Mineral Aggregate Resource II' designations to the 'Mineral Aggregate Resources I' designation.

The intent of the zoning by-law amendment application is to re-zone the subject property from the Rural (RU) Zone to the Mineral Aggregate (MAR) Zone under Zoning By-law 06-001 as amended and from the Rural (A) Zone and Holding Low Hazard (OS4) Zone to the Extractive Industrial (M5) Zone under Zoning By-law 30-77 as amended.

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### Reasons for the Appeal

The Applications were received and deemed complete by the Township of Tiny Council on March 26, 2012, further to which a Notice of Complete Application was sent on April 4, 2012 in respect of the Applications.

Further to the Applications being deemed complete, certain studies were commissioned and provided for peer review to Township of Tiny engineering consultants R.J. Burnside & Associates and environmental consultants Severn Sound Environmental Association (the "**Consultants**"). Certain revisions were made to the proposed operational and rehabilitation plans in response to comments by the Consultants. Following these revisions, the Consultants have confirmed that their concerns are satisfactorily addressed.

A Notice of Public Meeting was issued for the Applications for Monday, January 26, 2015, and, in accordance with the requirements of the *Planning Act*, this meeting took place.

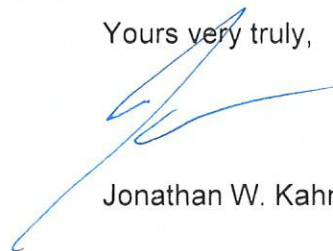
However, to date, no decision has been made by the Township of Tiny Council as to the Applications. In this respect, pursuant to sections 22(7) and 34(11) of the *Planning Act*, CRH is appealing to the Ontario Municipal Board on the basis of the Township of Tiny Council's refusal to make a decision on the official plan amendment application with 180 days of the making of the application, and Council's refusal or neglect to make a decision on the zoning by-law amendment application within 120 days of the making of the application.

CRH is exercising its rights to appeal under the *Planning Act* as it exists as of today's date, in order to proceed under the currently-in-force statute, regulations, and rules regarding timing, procedures and framework for determining appeals on land use planning matters.

Should you have any questions or require additional information or documentation in order to constitute this notice of appeal under sections 22(7) and 34(11), please do not hesitate to contact the undersigned.

Enclosed please find two cheques each in the amount of \$300, payable to the Minister Finance, in respect of the notice of appeal for the Applications.

Yours very truly,



Jonathan W. Kahn

JWK/lpi  
Encl.

c: Brittny Rabinovitch

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