

In 1998 the Ontario Municipal Board required a warning clause about the fully approved shale quarry adjacent to the proposed subdivision.

It is interesting that Forterra mentions this 'warning clause' stipulation since it is our understanding that it goes way beyond the Hanson Brick / Forterra remit and refers to a November 20th, 1998 Residential Subdivision Agreement between The Regional Municipality of Halton and Jannock Limited – Jannock, the landowner at that time, applied for the Westhaven Subdivision Approval (note the development was subsequently sold to Branthaven).

FACT – THE TITLE - The Subdivision Agreement was a 24-page convoluted document containing information that was largely relevant to the landowner (Jannock) and the home builder (Branthaven) and contained material that was basically 'technical' in nature and of little concern to the casual reader – for example, it included sections for Industrial Services, Payment of Development, Construction, Engineering, etc. Suffice to say it was a document that was intended for the 'builder / contractor' and certainly not a document meant for the 'public'.

Buried deep in this 24-page document (in fact, on the 23rd page) was the following:

Warning Clause

6. The following warning clause shall be registered on title and included in all development agreements and Offers of Sale and Purchase or Lease of all lots:

"The purchaser/tenants acknowledge the presence of a future extractive industrial land use to the west and that extraction may take place during the daytime only."

FACT – THE WARNING - As you can see it was dictated to Jannock by the Regional Municipality of Halton that a warning clause with respect to the quarry expansion **MUST** be registered on Title "... **and included in all development agreements and Offers of Sale and Purchase or Lease on all Lots**".

The intent of this warning was to advise any new homeowners as to the 'presence of a future extractive industrial land' – euphemism for quarry. In other words, if you were to purchase a house on Westhaven Drive it was to be made **VERY** clear to the potential purchaser that there was an quarry in the offing – quite ironic, if quarry owners / operators are seen as such Good Neighbors and so desirable, why would there need to be a Warning Clause?

As the initiator of this 'warning' clause one would assume that the Regional Municipality of Halton and the City of Burlington was responsible (legally and morally to their constituency) for ensuring that the 'warning' directive was performed in a **forthright and transparent manner**. **HOWEVER**, this was NOT to be the case for all homebuyers. The 'warning' compliance was, in our view, questionably achieved by including the 24-page Subdivision Agreement with the warning hidden in a subparagraph on the 23rd page! It is our contention that this 'devious' approach taken by Jannock / Branthaven and presumably approved and endorsed by the City did not meet the intent of the Regional directive and certainly made it extremely unlikely for future homeowners to discover the potential quarry expansion during a due diligence process – which, in retrospect, may have been their intent!

NOTE: *we are currently considering our legal position with respect to the Title issue and if you are a Westhaven Drive homeowner and you were NOT made aware of the potential quarry expansion either by the Real Estate Agent or by your lawyer or were given inaccurate information by the City please the TEC so that we can present you with our status and options – this is an independent legal directive.*

Another mandate of the Subdivision Agreement was the successful acceptance of a Noise and Dust Study for the proposed East Cell quarry development - these were submitted by SS Wilson and AGRA respectively. Suffice to say it is our view that these studies, conducted some 20 years ago, were, totally theoretical using, by today's standards, outdated modeling techniques and were 'fed' incomplete, poorly guesstimated, and, in some cases, missing data.

We also point out that a quarry extension 'warning clause' similar to the one directed by the Regional Municipality of Halton was also stipulated in the SS Wilson Noise Study since there was a real concern expressed by the consultant that the conditions of noise acceptability due to the closeness of the East Cell operation to the Westhaven Drive property line could **not** be met.

It is also of considerable concern that, to our knowledge, the Regional Municipality of Halton did NOT stipulate, as part of the Subdivision Agreement, that there should also be an environmental impact study including archaeological finds and endangered species – fauna and flora - on the 40-acre forested area that will be clear cut to make way for the proposed East Cell quarry. This is especially 'noteworthy' since there is well documented evidence of endangered species in the immediate area surrounding the proposed quarry expansion – the closing of King Road for the annual Jefferson salamander migration being one example. In fact, we know of NO official environmental study that has EVER been performed and published on ANY of the land that is now part of the original North Aldershot quarry!

Because of the many 'question marks' on the previous studies the TEC has asked Forterra for permission to have independent experts conduct their own environmental study (endangered species, hydrological, archaeological, etc.). Unfortunately, access to the subject land was flatly refused by Forterra – again another BIG 'question mark' with respect to the 'Good Neighbor' persona that the quarry owners / operators seem determined, for some intangible reason, determined to perpetuate yet don't seem to live up to!