

**Ontario Municipal Board**  
Commission des affaires municipales  
de l'Ontario



**ISSUE DATE:** July 8, 2014

**CASE NO(S):** PL130823

**PROCEEDING COMMENCED UNDER** subsection 34(19) of the Planning Act, R.S.O. 1990,  
c. P.13, as amended

Appellant:	Township of Armour
Appellant:	Garry Sanderson
Appellant:	Glen Thompson
Appellant:	Paul Van Dam
Subject:	By-law No. 31-13
Municipality:	Township of Ryerson
OMB Case No.:	PL130823
OMB File No.:	PL130823

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

Referred by:	Ministry of Natural Resources
Objector:	Eleanor & Jim Armstrong
Objector:	Morley & Diana Bonazza
Objector:	Robert Farrar
Objector:	David & Terry Galey; and others
Applicant:	Glen Thompson
Subject:	Application for a Class A licence for the removal of aggregate
Property Address/Description:	Lots 4 & 5, Concession 6
Municipality:	Township of Ryerson
OMB Case No.:	PL130823
OMB File No.:	MM130073

Heard: June 26, 2014 in Toronto, Ontario by  
Telephone Conference Call

**APPEARANCES:**

**Parties**

Township of Ryerson

**Counsel\*/Representative**

R. van der Wijst\*

Glen Thompson	A. Anderson*
Pegg's Mountain Group Inc. Garry Sanderson	B. Leggett*
Ministry of Natural Resources	E. Kerr*, R. Doran*, S. Larson
Township of Armour	E. Veldboom*
Magnatewan First Nation	A. Laforge

**MEMORANDUM OF ORAL DECISION FROM A PREHEARING CONFERENCE  
HELD ON JUNE 26, 2014 DELIVERED BY M. C. DENHEZ AND ORDER OF  
THE BOARD**

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**INTRODUCTION**

[1] This was the second prehearing conference ("PHC") about the proposal, by Glen Thompson ("the applicant") to build a quarry in the Township of Ryerson ("the Township"). He had made a two-pronged application – one (under the *Planning Act*) for rezoning, and another (under the *Aggregates Resources Act*) for a Class A quarry licence. The Township Council agreed to rezone, though conditionally. There were appeals of that Zoning By-law to the Ontario Municipal Board ("the Board"). There was also a referral by the Minister of Natural Resources, to the Board, of the licence matter under the *Aggregates Resources Act*.

[2] There were clarifications concerning the identification of parties. The Board was advised that one of the project opponents, Garry Sanderson, was distinct from another opponent, Pegg's Mountain Group Inc., though they were both represented by the same counsel. Accordingly, they should be listed separately.

[3] The Board can now advise that it received a message from POWR MAG (Protectors of Wetlands & River MAG). That organization had obtained party status at the last PHC, but now said that it would henceforth proceed with participant status

instead.

[4] The next question was procedure. On discussion, it was agreed that the exchange of witness lists would occur by October 1, 2014. The exchange of expert witness statements would occur by December 15, 2014.

[5] The Parties expressed their commitment to holding a meeting of the experts between those two dates. The exact timing and logistics of that experts' meeting would be discussed by the parties among themselves.

[6] After some discussion, counsel for the applicant and the Township undertook to refine the wording of a final item proposed for the Issues List, pertaining to "limitations" which were considered by the Township Council.

[7] There was agreement on holding a further prehearing conference, via a teleconference in early January 2015.

[8] The Board disposes of the above matters as follows:

1. The Board recognizes Garry Sanderson as a party distinct from Pegg's Mountain Group Inc.
2. The Board notes that POWR MAG (Protectors of Wetlands & River MAG) is now a Participant, not a Party.
3. The Board's Procedural Order is attached at Attachment 1.
4. The Board fixes **Thursday, January 8, 2015, at 9 a.m. .**, for the next PHC in this matter, to provide an update on proceedings. The PHC shall be by Telephone Conference Call:

The parties shall call **(416) 212-8012** or Toll Free **1(866) 633-0848** at the

correct time. When prompted, they will enter the **code 4779874#** to be connected to the call. If assistance is required at any time, one may press '0' for the operator. Cellular telephones are not permitted for the call. It is the responsibility of the persons participating to ensure that they are properly connected to the call and at the correct time.

[9] No further notice will be given for the matters currently before the Board.

[10] This Member is not seized.

*"M. C. Denhez"*

M. C. DENHEZ  
MEMBER

**Ontario Municipal Board**

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

### ONTARIO MUNICIPAL BOARD

IN THE MATTER OF subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended,

Appellant:	Garry Sanderson
Appellant:	Glen Thompson
Appellant:	Township of Armour
Appellant:	Paul Van Dam
Subject:	By-law No. 31-13
Municipality:	Township of Ryerson
OMB Case No.:	PL130823
OMB File No.:	PL130823

IN THE MATTER OF subsection 11(5) of the *Aggregate Resources Act*, R.S.O. 1990, c. A.8, as amended,

Referred by:	Minister of Natural Resources
Objector:	Eleanor & Jim Armstrong
Objector:	Morley & Diana Bonazza
Objector:	Robert Farrar
Objector:	David & Terry Galey; and others
Applicant:	Glen Thompson
Subject:	Application for a Class A license for the removal of aggregate
Property address/Description:	Lots 4 & 5, Concession 6
Municipality:	Township of Ryerson
OMB Case No.:	PL130823
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### PROCEDURAL ORDER

1. The Board 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 Wednesday, February 18, 2015, at 10 a.m. in the Karl Crozier Room, Community Centre/Arena, 220 Centre Street, Burk's Falls, Ontario, P0A 1C0. The length of the hearing will be approximately 18 days.
3. A prehearing conference will be held on Thursday, January 8, 2015 at 9 a.m. by teleconference call.
4. In the event that the number of parties is reduced and/or issues are resolved, resulting in shorter hearing time requirements, the Board may be spoken to about earlier hearing dates, on request of any of the parties, on ten (10) days' notice to the parties, subject to the availability of the Board.
5. The parties and participants identified at the prehearing conference are listed in Attachment 1 to this Order.

6. The Issues are set out in the Issues List, attached as Attachment 2 to this Order. The relevance of any party's issues as set out in the Issues List is not being determined by their inclusion in the Issues List nor by the issuance of this Procedural Order. There will be no changes to this list unless the Board permits, and a party who asks for changes may have costs awarded against it.
7. Any person intending to participate in the hearing should provide a telephone number to the Board as soon as possible. Any such person who will be retaining a representative should advise the other parties and the Board of the representative's name, address, and phone number as soon as possible.

#### **Requirements Before the Hearing**

8. A party who intends to call witnesses, whether by summons or not, shall provide to the Board and the other parties, a list of witnesses, and the area of each witness' expertise, and the order in which they will be called. This list must be delivered on or before **October 1, 2014**.
9. An expert witness shall complete and sign Form 53 – Acknowledgement of Expert's Duty and shall attach it to his/her expert witness statement, failing which he/she shall not be permitted to testify.
10. Expert witnesses in the same field shall have a meeting before the hearing to try and 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.
11. 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 (13) of this Order. 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 Board may refuse to hear the expert's testimony.
12. A non-expert witness or participant must provide to the Board and the parties a participant statement at least 30 calendar days before the hearing, or the witness or participant may not give oral evidence at the hearing.
13. 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 sections (13) of this Order.
14. The parties shall provide copies of their expert witness statements to the other parties no later than **December 15, 2014**.
15. On or before 30 calendar days before the hearing, 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.
16. Parties may provide to all other parties and file with the Clerk a written response to any written evidence no later than 15 days in advance of the first day of the hearing.

17. A person wishing to change written evidence, including witness statements, must make a written motion to the Board (*see Rules 34 to 38, inclusive, of the Board's Rules, which require that the moving party provide copies of the motion to all other parties 10 days before the Board hears the motion*).
18. 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 Board at least 7 days before the hearing that the written evidence is not part of their record.
19. Documents may be delivered by e-mail to the party's representative, with a hard copy to follow by courier or ordinary mail. The delivery of documents by email or fax shall be governed by the Board's Rules 26 – 30 on this subject. Material delivered by mail shall be deemed to have been received five (5) business days after the date of registration or certification.
20. No adjournments or delays will be granted before or during the hearing except for serious hardship or illness. The Board's Rules 61 to 65 apply to such requests.

**This Member is not seized.**

**So Orders the Board.**

## ATTACHMENT 1

### List of Parties and Participants

#### Parties:

##### **Glen Thompson – Applicant/Appellant**

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**Magnetawan First Nation**

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**Participants**

**POWRMAG (Protectors of Wetlands & River Mag) Inc.**

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## ATTACHMENT 2

### Issues List

#### Zoning By-law 31-13 (“ZBL 31-13”)

##### Process

1. Was the passing of ZBL 31-13 premature and flawed? (PM)
2. Should additional studies have been required prior to deeming the application complete? (PM)
3. Did the technical studies provide sufficient information? (PM)
4. Should the technical studies have been peer-reviewed? (PM)
5. Have concerns of the public been adequately addressed? (PM)
6. Does the scope of ZBL 31-13 infringe on the jurisdiction of the Ministry of Natural Resources? (GT)
7. Can the Township require site plan control on lands to be zoned “EP” (i.e., no “development”)? (GT)
8. Can the Township require site plan control on lands subject to an ARA license? (GT)

##### Planning Considerations

9. Does ZBL 31-13 represent good planning?
10. Does ZBL 31-13 have regard for matters of provincial interest as required by the *Planning Act*?
11. Is ZBL 31-13 consistent with the PPS?
  - a. Specifically, does the type, quality, and quantity of the resource have the potential to address demand for aggregate? (PM)
12. Does ZBL 31-13 conform to the Township of Ryerson Official Plan?
13. Is it appropriate to zone this property “*Limited Impact* Extractive Industrial”? (GT)
14. Is it appropriate to restrict the operation to “*Limited Impact* explosives” only? (GT)
15. Has “*Limited Impact* explosives” been appropriately defined? (PM)
16. Is the land use compatible with the adjacent lands? (PM)
17. Will ZBL 31-13 result in negative social impacts such as aesthetics or views? (PM)
18. Does the *Aggregate Resources Act* limit the discretion of a municipality under s. 34 of the *Planning Act* to specify permitted uses? (RT)

19. Is it within the discretion of the municipality to include limitations in the definitions of permitted uses? (RT)

The Environmental Protection (EP) zone

20. Is the extent of the Environmental Protection zone appropriate? (GT)
21. Are the Environmental Protection Zone's permitted uses, prohibited uses, and site plan control provisions appropriate? (GT)
22. Is a Level I report required? (PM)
23. Are the environmental reports consistent with the PPS? (PM)
24. Was proper field study during the appropriate seasons undertaken? (PM)
25. Was air quality appropriately considered? (PM)
26. Was appropriate consideration given to endangered species? (PM)
27. Is the mitigation plan proposed by the MNR sufficient to address concerns for endangered or threatened species? (PM)

Removal of the 'H'

28. Are the conditions for removal of the 'H' appropriate? (GT)
- a. Is a road haulage agreement required with the Township of Armour and if so, what is the appropriate form of this agreement? (GT)
  - b. Is a road haulage agreement required with the Township of Ryerson and if so, what is the appropriate form of this agreement? (GT) (RT)

Traffic/Road

29. Is By-law 31-13 consistent with the Provincial Policy Statement 2014, and without limiting the foregoing, is it consistent with sections 1.1.1, 1.1.4.1, 1.1.5.5, 1.6.7.5, and 2.5.2.2? (AT)
30. Does By-law 31-13 have regard for matters of provincial interest set out in subsections 2(f) and (l) of the *Planning Act*? (AT)
31. Have the following been properly addressed: (PM)
- a. The surface standard for the proposed level of use and potential level of use;
  - b. Safety, including road alignment and sight triangles;
  - c. Ownership of the road;
  - d. Half loads;

- e. Seasonality and timing of use;
- f. Classification as a single-lane use road;
- g. Consistency with the PPS;
- h. Mitigation for the PSW;
- i. Corduroy road;
- j. Noise/dust impacts and mitigation;
- k. Width of road for pedestrians, cyclists, and access to residential lots;
- l. Staging areas;
- m. Survey of road;
- n. Tonnage fee;
- o. Alternate routes;
- p. Horizontal and vertical profiles;

#### **Noise**

- 32. Have the potential impacts of blasting been addressed appropriately? (PM)

#### **Vibration**

- 33. Were proper receptors identified, including the physical integrity? (PM)
- 34. Will vibrations be compliant with DFO guidelines? (PM)

#### **Blasting**

- 35. Is a blast impact analysis required? (PM)

#### **Aggregate Quality**

- 36. Has there been sufficient identification of the type, quality or quantity of the resource? (PM)
- 37. Does the aggregate type meet ARA standards? (PM)

#### **License for Aggregate Extraction**

#### **Hydrogeology**

- 38. Was proper methodology used to establish the ground water table elevation? (MNR) (PM)

39. Has hydrogeological study considered watershed impacts on PSWs and Magnetawan River?  
(PM)

40. Have pumping requirements, impacts and mitigation been appropriately addressed? (PM)

#### Environmental Concerns

41. Will the proposal have a negative impact on the quality of the water in the Magnetawan River?  
(MFN)

42. Will the proposal have a negative impact on the quality of fish and game along the river course, specifically Pickerel, Smelt, Lake Sturgeon, Blandings Turtle, Massasauga Rattlesnake, and Eastern Foxsnake? (MFN)

43. Has the Magnetawan First Nations been adequately consulted and its interests accommodated?  
(MFN)

#### Traffic/Road

44. Is the proposed haul route, which includes and/or utilizes roads under the jurisdiction of the Township of Armour, adequate (geometric design, structural integrity, driver safety, etc.) for the proposed use? If not should the Board direct the Minister to refuse to issue a license having regard to the requirements of section 12 of the *Aggregate Resources Act*? (AT)