

St. Marys tosses another rock

Seeks \$275m under NAFTA over scuttled quarry project

BY MATTHEW VAN DONGEN

At one time Graham Flint was convinced his quest to kill the Carlisle quarry would end at Hamilton city council.

Seven years later, a cement company is asking an international trade tribunal to weigh in on a controversial plan to dig up limestone in the Flamborough resident's backyard.

St. Marys Cement is poised to file a \$275-million arbitration claim against the federal government under the North American Free Trade Agreement, alleging the provincial Liberals scuttled the long-planned quarry for political reasons.

The company has also applied to Ontario's Superior Court of Justice for a judicial review of the province's handling of its quarry application, which calls for excavation of aggregate for concrete on about 67 hectares of land at the 11th Concession and Milborough Line.

The news rocked area residents who thought the quarry was dead, said Flint, whose land borders the 150-hectare property targeted for open-pit extraction.

"To be honest, I'm in shock. We've had our party already. We cut the cake," said Flint, a spokesperson for a community group opposed to the quarry.

"We've had several false feelings of success along the way. It's a shame (the company) won't take 'no' for an answer."

In a written statement, St. Marys president Richard Olsen said his company "regrets having to take these exceptional actions to assert

our rights."

He said the multinational is appealing to NAFTA and to Ontario court "to obtain a fair and impartial hearing" of the quarry application.

"We are confident that if the quarry application is assessed on its merits, it would be approved," Olsen wrote.

A NAFTA panel can order compensation, but not a change in laws or government decisions, said St. Marys Cement lawyer Barry Appleton.

A government facing a hefty compensation order, however, could change its policies or decisions to "minimize the damage," he added.

He suggested the Canadian government could face damages "much higher" than \$275 million.

"They (the provincial government) took away the fundamental due process rights of St. Marys," he said. "I don't think an international tribunal is going to be very happy about that type of process."

Ontario twice invoked unusual measures to stop the quarry.

The Liberal government issued a rare Ministerial Zoning Order in 2010 declaring the proposed quarry site must remain zoned "rural and conservation management," citing in particular the need to protect vulnerable groundwater and wetlands.

The company appealed to the Ontario Municipal Board.

Minister of Municipal Affairs and Housing Rick Bartolucci then declared a "provincial interest" in the land, giving Ontario the power to overrule any subsequent OMB de-



HAMILTON SPECTATOR FILE PHOTO

Graham Flint stands at 11th Concession East and Milborough Line.

cision.

The company's 15-page claim alleges Liberal Party insiders living in Flamborough used their influence to convince the government to "circumvent" the normal approval process and prevent an independent review of "outrageous government measures."

The allegations, which the provincial government denies, have yet to be proven in court.

Liberal MPP Ted McMeekin (Ancaster-Dundas-Flamborough-Westdale) called the allegations "the most bizarre example of conspiracy fiction I've ever seen."

McMeekin admitted "fighting hard" against the quarry, but noted politicians from other parties and levels of government, including provincial NDP Leader Andrea Horwath and Conservative federal MP David Sweet, also opposed the development.

Flint calls the company's claim "a huge insult" to countless community groups, agencies and watchdogs that voiced concerns about the proposed quarry, in-

cluding the province's Environmental Commissioner, the Hamilton public health department and the conservation authority.

"To ignore all of that and call it politics? That's incredibly unfair," he said.

Flamborough Councillor Judi Partridge called it a "slap in the face" to residents.

"To say that it was politics, not science, you have to wonder if they were at the same public meetings the rest of us were at," said Partridge, who added she is fielding constant calls from residents worried about what the NAFTA claim might mean.

"There was broad agreement this is just the worst place to put a quarry"

The federal government is "assessing" St. Marys' allegations and consulting with the province, said Caitlin Workman, a spokesperson for Foreign Affairs and International Trade Canada.

With files from Robert Berzic, Toronto Star