

# THOMSON ROGERS

## LAWYERS

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### SENT BY Email ONLY

December 1, 2016

Mr. Larry Pevato  
Tri-County Aggregates Ltd.  
92 Kenhar Drive  
North York, Ontario  
M9L 1N2

Dear Mr. Pevato:

### **Township of East Garafraxa re Tri-County Aggregates Ltd. Our File No. 500180**

Further to our meeting of November 9, 2016 we are writing to set out various understandings discussed and arrived at during our meeting. In attendance at our meeting were the following: Mr. Sills and myself (Township solicitors); Ms. Stone, Township CAO, yourself, Mr. Della Fazia, Ms. Anonveva on behalf of Tri-County and your consultant/agent, Mr. Long. For ease of reference Ms. Stone, Mr. Sills and myself will be collectively referred to in this letter as the Township attendees.

We note that we also are the County solicitors on this matter and therefore have copied Mr. Burns at the County to keep him advised on the Road Work issues.

The purpose of our meeting was to discuss moving the Tri-County Pit proposal forward so that the Township development review team can prepare a recommendation report for Township Council for its consideration and determination. We note that the Township development review team and its various members (of which the Township solicitors and the Township CAO are members) recommend to Council – the ultimate decision on any Township matters is for Council.



### ***Resident Objections***

It was agreed that Mr. Feniak (Burnside/Township Engineer) and Mr. Stovel (Township aggregate consulting planner) – both of who are part of the Township development review team -- would meet and have discussions with the residents who had filed objection letters. Subsequently, we will advise Tri-County further regarding the outcome of those meetings.

Tri-County advised the Township attendees that the Kamphuis objection is in the process of being withdrawn. Please provide us with the written confirmation of this withdrawal when same is in hand.

Subsequent to our meeting, Mr. Long advised via email dated November 10, 2016 @ 10:14 a.m. that Tri-County had reached a private agreement with Victoria Meneses and her husband, Gary Brown. Therefore Mr. Long has further advised that they should not be considered as objecting.

### ***Draft Development Agreement***

#### ***(a) Aggregate Resources Act and the Development Agreement – Paragraphs 4 to 11***

Tri-County previously advised the Township that it had some concerns regarding these provisions. Subsequent to our meeting, I have reviewed those paragraphs in the draft Development Agreement provided to Tri-County. The paragraphs within that Agreement reflect the latest drafting on these issues, and do not replicate earlier drafting provided to the Greenwoods on its proposal. As such, those paragraphs remain current.

The purpose of paragraph 4 is to ensure that the contract between the Township/County and Tri-County is a good faith contract where each other is respecting the bargain made. The paragraph precludes Tri-County (or any subsequent owner) from arguing that section 66 of the *Aggregate Resources Act* can be used to read down part of the package agreed to between Tri-County and the Township.

The remaining paragraphs 5 to 11 basically are preconsultation and notice provisions so that the Township/County is aware of any proposed changes, and can object if they see fit including relying on the Development Agreement. It does not grant the Township/County a veto.

I would ask that Tri-County review these paragraphs again in light of these explanations.

***(b) Disturbed Area – Paragraph 14 of Draft Agreement***

Tri-County had requested 40 ha of Disturbed Area (as defined). Mr. Long directed us to page 44 of his report. Tri-County advised that its “ask” is amended to 32.2 ha as opposed to 40 ha. The Township attendees are having further discussions with the rest of the Township development review team on this “ask.”

***(c) Hours of Operation – Paragraph 17 of Draft Agreement***

It is the Township anticipation that the same hours of operation will be in place for Greenwood and Tri-County. We anticipate that Township Council will focus on hours of operation given resident concerns.

We understand that paragraph 17 of the draft development agreement is acceptable to Tri-County. That paragraph has loading and shipping from 6:00 a.m., and excavating, crushing and processing from 7:00 a.m. with a 6:00 p.m. shutdown for all activities for weekdays.

In the alternative, Tri-County is agreeable to a 7:00 a.m. to 7:00 p.m. scenario for weekdays.

The Saturday operation proposal was flagged by the Township attendees as being problematic. We understand that Tri-County’s request is for one or two times opening on a Saturday per year with the only activities proposed being loading and shipping (not excavating, crushing and/or processing). Tri-County indicated that proposed hours would be from 7:00 AM until 2:00 PM. If the Township agreed to allow very limited Saturday openings, Tri-County would be agreeable to the requirement to notify the Township and surrounding residents a minimum of 24 hours in advance (perhaps through use of a Liaison Committee with the residents). The Township would also retain discretion to deny Saturday operations if they were becoming problematic. We have taken this approach under advisement and will advise further in the near future.

Tri-County confirmed that the pit would be closed on all Sundays and Statutory/Civic Holidays.

***(d) Truck Queuing – paragraph 17 of Draft Agreement***

Paragraph 17 under hours has the sentence: “Trucks shall not be permitted to arrive, wait or otherwise idle on 17<sup>th</sup> Line prior to the opening of the Tri-County Pit.” We had discussions surrounding this sentence, and we were advised that it was not Tri-County’s intention to have trucks wait on the internal access route (in front of the gate) prior to opening. This is because Tri-County has advised that it (or associated companies) own the trucking fleet as opposed to it using contract trucking. As such, trucks arriving prior to opening are not anticipated to be an issue, whereas employees may be arriving in their cars prior to opening.

***(e) Fill Importation -- paragraph 18 of Draft Agreement***

The Township attendees emphasized the Township ongoing concerns relating to the importation of fill into the Township. Tri-County advised that there is a need to import topsoil for rehabilitation only as current volumes on the property are insufficient. No sand or other fill is to be imported as part of operations.

Tri-County has utilized a Fill Protocol elsewhere that it is prepared to abide by on this site. It was agreed that Mr. Long would re-send his fill calculations together with a copy of the referenced Fill Protocol to the Township for further review by the Township Development review team. We await their receipt.

***(f) Recycling -- paragraph 19 of Draft Agreement***

Tri-County advised that it is prepared to take recycling off the table unless it precludes MNRF licence approval. If MNRF proved to be difficult on this point, Tri-County is prepared to cooperate with the Township to strictly limit recycling and to have same subject to Township approval. As such, paragraph 19 of the draft development agreement is not at issue between the Township and Tri-County (unless MNRF makes it an issue in the licensing process).

***(g) Tri-County internal access route – paragraph 33 of Draft Agreement***

Tri-County confirmed that its internal access route off of 17<sup>th</sup> Line is proposed to be hard-surfaced (constructed with recycled asphalt and grindings). This confirmation was provided as part of our discussion on dust issues.

***(h) Road Work Provisions – paragraphs 34 to 57***

The Township attendees confirmed: i) that the Township had never agreed to a two third (Greenwood Construction)/one third (Tri-County) split for the costs of the Required Road Works as stated in Tri-County letter of May 3, 2016, and ii) that operations of the Tri-County Pit could not occur prior to the construction of the Required Road Works (see paragraph 51 of the draft development agreement).

At our meeting, it was agreed that one more effort would be made to reach agreement on the Required Road Works between Greenwood Construction and Tri-County. As a result, subsequent to our meeting, I have now been advised by Mr. White, solicitor for Greenwood Construction as follows:

Greenwood and Tri County have reached an agreement where they will share 50/50 the cost of the road improvements and have agreed that they want to do the work subject to Burnside approving the specs, the drawings and the work. It is likely that they will jointly build the road as soon as they both get approval. However provision will have to be built into the agreement to allow either one proceeding alone with the road improvements and the other contributing before it gets it licence. We should probably have 2 identical agreements. What are your thoughts.

I responded to Mr. White yesterday as follows:

David,

Thank you for your email. Both the Township and County are pleased that Tri County and Greenwood have agreed on cost sharing and have Burnside involvement. However, your email appears to contemplate that the works would not be tendered. As you know my instructions are that this will be a tendered project (on which Tri County and Greenwood are free to bid).

I will discuss your email with the Township and County and respond further in due course.

Jeff

Please confirm that Tri-County has agreed to the proposal sent by Mr. White as Greenwood's solicitor. Further, it had been our understanding that Tri-County had agreed to the Required Road Works being tendered. Is Tri-County now considering agreeing to a non-tendered proposal?

As I advised Mr. White in my email above, I am in the process of having discussions with Township/County and will advise further shortly. In the interim, I would ask that I receive confirmation regarding Tri-County position.

*(i) Complaint Protocol – Paragraph 64 and Schedule “D” of Draft Agreement*

The Township attendees requested that Tri-County develop one complaint protocol for all matters. Currently the noise and the dust complaint protocols are different. Once same is received we will have it reviewed by the Township development review team. We ask that the principles below be incorporated in that draft document.

We emphasized that the Township preference was for residents to be able to phone the cell phone of a senior person with Tri-County so that operational complaints can be addressed immediately. It was agreed that this was the most efficient and effective way to initially address any complaints. All complaints and Tri-County responses would be required to be logged. The log would be made available to the Township on request so that the Township could review same if the resident escalated his/her complaint(s) to the Township.

Tri-County suggested a Liaison Committee as an additional point of contact for surrounding residents. While the details of such a committee would need to be ironed out, the Township attendees viewed this as a positive suggestion.

Mr. Long advised that the noise matters had been resolved. Mr. Long has provided a follow up email regarding same on November 25, 2016 @ 3:37 p.m. The Township

development review team is in the process of reviewing same and will respond further in due course.

***Conclusion***

We trust the foregoing is satisfactory and we look forward to receipt of the additional information as identified in this letter.

Yours very truly,



**Jeffrey J. Wilker**

*Jeffrey Wilker Law Professional Corporation*

JJW/ggs

Enclosure

- cc: Sue Stone, CAO, Township of East Garafraxa
- cc: Christine Gervais, Township Planner
- cc: Dave Menary, Director of Public Works
- cc: Scott Burns, County Engineer and Director of Public Works,  
Dufferin County
- cc: Gord Feniak, R.J. Burnside & Associates
- cc: Rob Stovel, Stovel and Associates Inc.
- cc: Bob Long, Consultant to Tri-County