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August 10, 2015

File 01207.00058

Clerk, City of Hamilton
Hamilton City Hall
71 Main Street West
Hamilton ON L8P 4Y5

Dear Sirs/Mesdames:

Re: City of Hamilton By-law 15-173

We are the solicitors for St. Mary's Cement Inc. (Canada), and its various related companies. Our client is the owner of approximately 530 acres of land, located north and west of Concession 11, and west of the Millborough Town Road, in what was the Township of Flamborough. Attached as schedule "A" is a sketch showing the location of our client's property in a more detailed way. The legal description of our client's property is set out in schedule "B".

Our client's property is affected by a Ministerial Zoning Order (O.Reg. 138/10), enacted under section 47 of the *Planning Act*. By virtue of a Deeming Order (O.Reg. 100/13), this Ministerial Zoning Order is deemed to be a by-law passed under section 34 of the *Planning Act* by the City of Hamilton. The MZO and the Deeming Order are still in effect. Copies of these orders are enclosed with this letter.

Our client's property is also affected by a Conservation Easement, which sets out detailed restrictions aimed at conserving all of a portion of the lands for the purposes described therein. A copy of this Conservation Easement, as registered, is also included with this letter.

Our client's principal interest is to ensure that the Official Plan policies and zoning provisions recently enacted by the City of Hamilton are consistent with the MZO and the Conservation Easement's restrictions, both in terms of their geographic application and in terms of the land use policies and zoning provisions. For obvious reasons, our client wishes to ensure that there is a consistency between all of the land use instruments that affect its lands.

On June 25, 2015, our client met with the City, including Councillor Partridge and Michael Kovacevic along with Graham Flint, of FORCE, to discuss these issues, and provide input into the City's proposed Official Plan policies and zoning regulations. Based on those discussions, it was our client's expectation that the City would defer the enactment of these policies and regulations as they may apply to our client's lands, to give these discussions a better opportunity of enacting consensus.

Unfortunately, that did not happen. On July 10, 2015, the City enacted By-law No. 15-173, to effect amendments to By-law No. 05-200, as well as By-law No. 15-172.

Our client is still in the process of reviewing By-law No. 15-173, to determine whether it is in fact consistent with the MZO and the Conservation Easement. It has concerns that they may not be, both in terms of their geographic extent, and in terms of the restrictions that they impose on our client's lands.

Our client does not believe that it makes sense to have inconsistent planning documents affecting its lands. This would not, in its opinion, constitute "good planning".

To afford our client a better opportunity to review the City's planning instruments, our client hereby appeals the City's enactment of By-law No. 15-173, which amends Zoning By-law 05-200, pursuant to section 34 of the *Planning Act*.

Enclosed, in addition to the documents referred to earlier, is our client's completed Form A1 and a cheque in the amount of \$125.00, made payable to the Minister of Finance.

We look forward to your acknowledgement of the receipt of this appeal, and to working with the City to (hopefully) resolve any possible issues and concerns that our client may uncover.

Yours truly,



John M. Buhlman

JMB
Enclosure



Environment and Land Tribunals Ontario
Ontario Municipal Board
 655 Bay Street, Suite 1500 Toronto, Ontario M5G 1E5
 TEL: (416) 212-6349 or Toll Free: 1-866-448-2248
 FAX: (416) 326-5370
 www.elto.gov.on.ca

**APPELLANT FORM (A1)
 PLANNING ACT**

**SUBMIT COMPLETED FORM
 TO MUNICIPALITY/APPROVAL AUTHORITY**

Date Stamp - Appeal Received by Municipality

OFFICE OF THE CITY CLERK

AUG 10 2015

Receipt Number (OMB Office Use Only)

Part 1: Appeal Type (Please check only one box)

| SUBJECT OF APPEAL | TYPE OF APPEAL | PLANNING ACT REFERENCE (SECTION) |
|--|---|----------------------------------|
| Minor Variance | <input type="checkbox"/> Appeal a decision | 45(12) |
| Consent/Severance | <input type="checkbox"/> Appeal a decision | 53(19) |
| | <input type="checkbox"/> Appeal conditions imposed | |
| | <input type="checkbox"/> Appeal changed conditions | 53(27) |
| | <input type="checkbox"/> Failed to make a decision on the application within 90 days | 53(14) |
| Zoning By-law or Zoning By-law Amendment | <input checked="" type="checkbox"/> Appeal the passing of a Zoning By-law | 34(19) |
| | <input type="checkbox"/> Application for an amendment to the Zoning By-law – failed to make a decision on the application within 120 days | 34(11) |
| | <input type="checkbox"/> Application for an amendment to the Zoning By-law – refused by the municipality | |
| Interim Control By-law | <input type="checkbox"/> Appeal the passing of an Interim Control By-law | 38(4) |
| Official Plan or Official Plan Amendment | <input checked="" type="checkbox"/> Appeal a decision | 17(24) or 17(36) |
| | <input type="checkbox"/> Failed to make a decision on the plan within 180 days | 17(40) |
| | <input type="checkbox"/> Application for an amendment to the Official Plan – failed to make a decision on the application within 180 days | 22(7) |
| | <input type="checkbox"/> Application for an amendment to the Official Plan – refused by the municipality | |
| Plan of Subdivision | <input type="checkbox"/> Appeal a decision | 51(39) |
| | <input type="checkbox"/> Appeal conditions imposed | 51(43) or 51(48) |
| | <input type="checkbox"/> Failed to make a decision on the application within 180 days | 51(34) |

Part 2: Location Information

353 11th Concession Road East, and other lands, as per Schedule "B" of the letter of August 10, 2015 (the "subject property")
 Address and/or Legal Description of property subject to the appeal:

Municipality/Upper tier: City of Hamilton

Part 3: Appellant Information

First Name: _____ Last Name: _____

St. Mary's Cement Inc. (Canada)
Company Name or Association Name (Association must be incorporated – include copy of letter of incorporation)

Professional Title (if applicable): _____

E-mail Address: _____
By providing an e-mail address you agree to receive communications from the OMB by e-mail.

Daytime Telephone #: _____ Alternate Telephone #: _____

Fax #: _____

Mailing Address: _____
Street Address Apt/Suite/Unit# City/Town

Province Country (if not Canada) Postal Code

Signature of Appellant: _____ Date: _____
(Signature not required if the appeal is submitted by a law office.)

Please note: You must notify the Ontario Municipal Board of any change of address or telephone number in writing. Please quote your OMB Reference Number(s) after they have been assigned.

Personal information requested on this form is collected under the provisions of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended, and the *Ontario Municipal Board Act*, R.S.O. 1990, c. O. 28 as amended. After an appeal is filed, all information relating to this appeal may become available to the public.

Part 4: Representative Information (if applicable)

I hereby authorize the named company and/or individual(s) to represent me:

First Name: John Buhlman or Chris Tzekas

Company Name: WeirFoulds LLP

Professional Title: Barristers and Solicitors

E-mail Address: jbuhlman@weirfoulds.com or ctzekas@weirfoulds.com
By providing an e-mail address you agree to receive communications from the OMB by e-mail.

Daytime Telephone #: 416.947.5070 or 416.947.5039 Alternate Telephone #: 416.365.1110

Fax #: 416.365.1876

Mailing Address: 66 Wellington Street West Suite 4100 Toronto
Street Address Apt/Suite/Unit# City/Town

Ontario M5K 1B7
Province Country (if not Canada) Postal Code

Signature of Appellant:  Date: August 10, 2015

Please note: If you are representing the appellant and are NOT a solicitor, please confirm that you have written authorization, as required by the Board's Rules of Practice and Procedure, to act on behalf of the appellant. Please confirm this by checking the box below.

I certify that I have written authorization from the appellant to act as a representative with respect to this appeal on his or her behalf and I understand that I may be asked to produce this authorization at any time.

Part 5: Language and Accessibility

Please choose preferred language: English French

We are committed to providing services as set out in the *Accessibility for Ontarians with Disabilities Act, 2005*. If you have any accessibility needs, please contact our Accessibility Coordinator as soon as possible.

Part 6: Appeal Specific Information

1. Provide specific information about what you are appealing. For example: Municipal File Number(s), By-law Number(s), Official Plan Number(s) or Subdivision Number(s):

(Please print)

By-law No. 15-173, enacted July 10, 2015, to amend Zoning By-law No. 05-200, as it affects the subject property.

2. Outline the nature of your appeal and the reasons for your appeal. Be specific and provide land-use planning reasons (for example: the specific provisions, sections and/or policies of the Official Plan or By-law which are the subject of your appeal - if applicable). **If more space is required, please continue in Part 9 or attach a separate page.

(Please print)

As per the letter dated August 10, 2015, from WeirFoulds, LLP.

THE FOLLOWING SECTIONS (a&b) APPLY ONLY TO APPEALS OF ZONING BY-LAW AMENDMENTS UNDER SECTION 34(11) OF THE *PLANNING ACT*.

a) **DATE APPLICATION SUBMITTED TO MUNICIPALITY:** _____
(If application submitted *before* January 1, 2007 please use the O1 'pre-Bill 51' form.)

b) Provide a brief explanatory note regarding the proposal, which includes the existing zoning category, desired zoning category, the purpose of the desired zoning by-law change, and a description of the lands under appeal:
**If more space is required, please continue in Part 9 or attach a separate page.

[Empty box for explanatory note]

Part 7: Related Matters (if known)

Are there other appeals not yet filed with the Municipality? YES NO

Are there other planning matters related to this appeal? YES NO
(For example: A consent application connected to a variance application)

If yes, please provide OMB Reference Number(s) and/or Municipal File Number(s) in the box below:

(Please print)

Related appeal of By-law No. 15-172, enacted July 10, 2015, to adopt and approve Official Plan Amendment No. 9 to the Rural Hamilton Official Plan, as it relates to the subject property.

