

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



**ISSUE DATE:** July 24, 2017

**CASE NO(S):** PL140201

**PROCEEDING COMMENCED UNDER** subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Applicant and Appellant: Giofam Investments Inc.  
Subject: Request to amend the Official Plan - Failure of the City of Kawartha Lakes to adopt the requested amendment  
Existing Designation: Rural  
Proposed Designation: Pits and quarries  
Purpose: To permit the use of the land for an 84 hectare quarry  
Property Address: 657 Monck Road  
Municipality: City of Kawartha Lakes  
Approval Authority File No.: D01-16-174  
OMB Case No.: PL140201  
OMB File No.: PL140201  
OMB Case Name: Giofam Investments Inc. v. Kawartha Lakes (City)

**PROCEEDING COMMENCED UNDER** subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Applicant and Appellant: Giofam Investments Inc.  
Subject: Application to amend Zoning By-law No. 10-77 – Refusal or neglect of City of Kawartha Lakes to make a decision  
Existing Zoning: Rural General (RG) Zone, Rural Residential (RR1) Zone, and Environmental Protection (EP) Zone  
Proposed Zoning: General Industrial Exception (M2-1 Zone and Industrial Extractive Exception (M3-2) Zone  
Purpose: To permit the use of the land for an 84 hectare quarry  
Property Address: 657 Monck Road  
Municipality: City of Kawartha Lakes  
Municipal File No.: D06-26-036  
OMB Case No.: PL140201  
OMB File No.: PL140202

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

Referred by:	Jane Ireland
Objector:	Sally Peterson & Bryan Pearson & Family
Objector:	Martin Powell & Susan Bialy
Objector:	Chris & Wendy Bowes
Objector:	Jay & Kristina Brandes; and others
Applicant:	Giofam Investments Inc.
Subject:	Application for a Class A licence for the removal of aggregate
Property Address:	657 Monck Road
Municipality:	City of Kawartha Lakes
OMB Case No.:	PL140201
OMB File No.:	MM140051

**PROCEEDING COMMENCED UNDER** section 37 of the *Ontario Municipal Board Act*, R.S.O. 1990, c. O. 28, as amended, and Rule 34 of the Board's *Rules of Practice and Procedure*

Request by:	County of Simcoe
Request for:	Request for Directions

**Heard:** March 16, 2017 in Midhurst, Ontario

#### **APPEARANCES:**

##### **Parties**

##### **Counsel**

Giofam Investments Inc.	David White
City of Kawartha Lakes	(did not appear)
Dalton Wildlands Defence League	(did not appear)
County of Simcoe	Marshal Green
Ministry of Natural Resources and Forestry	(did not appear)

**DECISION DELIVERED BY JUSTIN DUNCAN AND SECOND INTERIM ORDER OF THE BOARD**

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## BACKGROUND

[1] The Board held a hearing on November 17 and 21, 2016 involving appeals by Giofam Investments Inc. (“Giofam”) in regard to applications to the City of Kawartha Lakes (“Kawartha Lakes” or “City”) for an Official Plan Amendment (“OPA”) and Zoning By-law Amendments (“ZBAs”) for lands located at 657 Monck Road in the City. The hearing also related to an application by Giofam for a Class “A” Below Water Extraction Aggregate License (“Aggregate Licence”) that the Minister of Natural Resources and Forestry (“Minister”) had referred to the Board pursuant to s. 11(5) of the *Aggregate Resources Act* (“ARA”).

[2] The parties had settled all issues on the appeal prior to the hearing in November 2016 save for a jurisdictional issue raised by the County of Simcoe (“County”). The County seeks to have the Board impose a condition of approval requiring Giofam to pay a portion of the maintenance and repair costs for that portion of the haul route located west of the municipal limits of the City and within the County.

[3] On January 4, 2017, the Board issued a decision and interim order allowing the appeal in part. The Board approved the Official Plan Amendments and the Zoning By-law Amendments and directed the Minister to issue the Aggregate License to Giofam, subject to the resolution of the haul road issue raised by the County. Final approval of these various instruments was withheld pending resolution of this issue. Additionally, the Board provided procedural directions for the hearing of the haul road issue.

[4] On March 16, 2017, the Board heard submissions by counsel for Giofam and counsel for the County in relation to whether the Board has jurisdiction to impose a condition requiring Giofam to pay costs related to the maintenance and repair of the haul route located in the County. The other parties advised that they did not wish to make submissions on this remaining issue.

## ISSUE

[5] The issue raised by the County comes before the Board as a novel one. The parties were unable to direct the Board to any decision of the Board where the issue raised has been addressed directly. Having considered the evidence and submissions of the parties, the Board finds that the issue raised by the County gives rise to three questions for the Board's determination as follows:

1. Does the Board have jurisdiction to impose a condition requiring Giofam to pay costs related to the maintenance and repair of those portions of the haul route located in the County?
2. If so, should the Board exercise its jurisdiction to impose such a condition?
3. If the Board does impose such a condition, what form should such a condition take and how are the costs to be determined?

## DISCUSSION, ANALYSIS AND FINDINGS

### *The Haul Route, Maintenance and Repairs*

[6] Trucks exiting Giofam's quarry will travel 6.5 kilometers ("km") along Kawartha Lakes Highway 45 within the City, at which point the road becomes Simcoe Road 45 and will be traveled for another 9.2 km. Trucks will then travel on County Road 69 for another 6.8 km, at which point they will use Provincial Highway 12. Trucks returning to the quarry will use the same route.

[7] It is uncontested that almost three quarters of the haul route for the quarry is proposed to be through the County (16 of 22.5 kilometers) before trucks reach Provincial Highway 12. Although those portions of the haul route in the County are currently in an adequate condition to accommodate trucks associated with Giofam's quarry, according to Giofam's traffic engineer, Scott Brumwell, the quarry will result in

an increase of 6 per cent in truck traffic on the haul route and these trucks will increase the wear and tear on roads.

[8] The County tendered evidence through the filing of two affidavits sworn by Paul Murphy, an engineering technician with the County. Mr. Murphy's affidavit evidence explains that Giofam's aggregate operation will necessitate use of the haul route for the life of the quarry, estimated to be 94 years. His affidavit evidence detailed a schedule for the maintenance and repairs that can be expected for the haul route during the period of Giofam's operations.

[9] Mr. Murphy's affidavit evidence also explains that although an increase of 6 per cent truck traffic is projected, this increase is of a very specific type of truck traffic. Mr. Murphy explains that this 6 per cent will consist of heavy trucks loaded with tonnes of material that will, in many cases, travel the roads during times of year when the roads are vulnerable to wear and tear. He also explains that it has been recognized in research conducted for Transport Canada that heavy truck such as these are typically responsible for 80.4 per cent of the maintenance and rehabilitation costs to rural municipal arterial road pavements. He explains that one and one-half times as many heavy trucks (a 150% increase) will be generated by the quarry as currently use the road, thereby increasing the need for maintenance.

[10] It is uncontested that the County will not receive any funding for road maintenance or repair through the Aggregate Resources Trust established under s. 6.1 of the ARA and ss. 2 and 3 of *Ontario Regulation 244/97* ("O. Reg. 244/97") as the quarry is not physically located within the borders of the County. Rather, Kawartha Lakes, as a single tier municipality, will receive 7.5 cents per tonne of aggregate removed for this purpose. Absent a voluntary contribution by Giofam or an order of this Board, the costs for maintenance and repairs for the haul route will be drawn from County general revenue.

[11] Here the County seeks what it characterizes as a fair and equitable contribution towards maintenance and repair necessitated by the quarry that is above what could be expected as a result of normal background traffic using the haul route.

[12] Giofam filed a solicitor's affidavit. The affidavit was akin to legal submissions directed to solely to the Board's jurisdiction to grant the relief requested by the County. The affidavit did not contradict the factual evidence filed by the County in the affidavits of Mr. Murphy.

**Issue 1 – Does the Board have jurisdiction to impose a condition requiring Giofam to pay costs related to the maintenance and repair of those portions of the haul route located in the County?**

[13] In considering this first issue, the Board considers the various submissions of the parties in relation to the Board's powers under the ARA, the *Ontario Municipal Board Act* and the *Planning Act* and their applicability in this context.

**a. *Aggregate Resources Act***

[14] The most relevant provisions of the ARA applicable in this context are ss. 11 and 12. Section 11 of the Act sets out the power of the Minister to refer an application for a licence to the Board, the power of the Board to hear applications for instruments under the *Planning Act* jointly with a referral under the ARA, and the power of the Board to direct the Minister to issue a licence subject to conditions. Section 11 provides in part:

**Referral to Board**

11.(5) The Minister may refer the application and any objections arising out of the notification and consultation procedures that are prescribed or set out in a custom plan to the Board for a hearing, and may direct that the Board shall determine only the issues specified in the referral.

...

**Joint hearing**

(7) The Board may consider an application and objections referred to the Board under subsection (5) and a related appeal to the Board under the *Planning Act* at the same hearing.

**Powers of Board**

(8) The following rules apply if an application is referred to the Board:

1. The Board may hold a hearing and direct the Minister to issue the licence subject to the prescribed conditions and to any additional conditions specified by the Board, but the Minister may refuse to impose an additional condition specified by the Board if he or she is of the opinion that the condition is not consistent with the purposes of this Act.

2. The Board may hold a hearing and direct the Minister to refuse to issue the licence.

...

4. If all of the parties to a hearing, other than the applicant, withdraw before the commencement of the hearing, the Board may refer the application back to the Minister and the Minister shall decide whether to issue or refuse to issue the licence.

[15] Section 12 of the ARA then goes on to set out those matters the Minister, or the Board upon referral under s. 11(5), is to have regard to in considering the licence application. The list of matters to be considered is broad and is not exhaustive:

**Matters to be considered by Minister**

12. (1) In considering whether a licence should be issued or refused, the Minister or the Board, as the case may be, shall have regard to,

(a) the effect of the operation of the pit or quarry on the environment;

(b) the effect of the operation of the pit or quarry on nearby communities;

(c) any comments provided by a municipality in which the site is located;

(d) the suitability of the progressive rehabilitation and final rehabilitation plans for the site;

(e) any possible effects on ground and surface water resources including on drinking water sources;

(f) any possible effects of the operation of the pit or quarry on agricultural resources;

(g) any planning and land use considerations;

(h) the main haulage routes and proposed truck traffic to and from the site;

(i) the quality and quantity of the aggregate on the site;

(j) the applicant's history of compliance with this Act and the regulations, if a licence or permit has previously been issued to the applicant under this Act or a predecessor of this Act; and

(k) such other matters as are considered appropriate.

[16] Subsection 12(1)(h) is particularly relevant in this context by requiring the Board to consider "the main haulage routes and proposed truck traffic to and from the site". The phrase "main haulage routes" is not defined in the ARA.

[17] Mr. White, counsel for Giofam, submitted that s. 12 directs that the Board is to have regard to the matters set out there but that once the Board is satisfied the haul route is safe and adequate, the licence is to issue and that is where the Board's powers end. It was his submission that the Board is not to consider anything other than the need for immediate improvements to the haul route.

[18] In reading the ARA as a whole, it is clear that the intent of the legislature was to confer broad discretion on the Board to consider the potential for adverse effects of a proposed quarry prior to making a decision on an application for a licence. In particular, no limitations are placed on the Board's examination of a haul route in s. 12(1)(h) other than a direction to focus on "main haulage routes".

[19] Section 13 (amendment of conditions of a licence), s. 16 (amendment of a site plan), s. 18 (transfer of a licence), and s. 20 (revocation of a licence) all contain similarly



broad language conferring broad discretion on the Board to resolve matters that come before it for resolution.

[20] The Board also makes note of the fact that the legislature recently amended the ARA through the *Aggregate Resources Modernization Act, 2017* that received royal assent on May 10, 2017. This legislation does not alter the Board's broad powers under the ARA.

[21] The Board has also considered whether O. Reg. 244/97 constrains or limits the Board's powers to consider issues relating to haul routes. Among other matters, O. Reg. 244/97 establishes the criteria for the collection and distribution of fees under the ARA. This is the route by which Kawartha Lakes, as a single tier municipality, becomes the recipient of 7.5 cents per tonne of aggregate removed. Nothing in the regulations specifically limits the ability of other municipalities to seek a condition of licence approval that would ensure the entire haul route is upgraded and maintained. Similarly, the regulations do not constrain or limit the powers of the Board set out in the ARA in any way.

[22] Mr. Green, counsel for the County, in requesting that the Board impose a condition on the licence requiring that an agreement be entered into between the County and Giofam, also referred the Board to policy documents developed by the Ministry of Natural Resources and Forestry ("MNRF") in relation to licencing and permitting under the ARA (Policy A.R. 4.00.02) which provide that conditions relating to haulage routes may be considered in some instances but that applicants should negotiate road use and maintenance matters with the appropriate road authority outside of the permitting process. Mr. Green directed the Board to the haul route agreement concluded between Kawartha Lakes and Giofam as appropriately implementing the MNRF policy direction. It is the County's request that the Board impose a condition of approval of the licence that Giofam enter into a similar agreement with the County.

**b. *Ontario Municipal Board Act***

[23] In addition to the specific powers of the Board established by the ARA, the *Ontario Municipal Board Act* (“OMB Act”) establishes the general powers of the Board. Mr. White submitted that the OMB Act is not particularly relevant to the Board’s assessment in this context. Mr. Green did not make any specific submissions in relation to the applicability of the OMB Act.

[24] The Board has considered the relevance of the general powers of the Board set out in the OMB Act in the context of the issue raised on this appeal. Section 36 of the OMB Act provides that the jurisdiction of the Board is exclusive. Additionally, s. 37 of the OMB Act establishes the general power of the Board to issue orders necessary to or incidental to the exercise of the powers conferred upon it under the OMB Act or any other Act, including the ARA, from which it derives power. Section 37 provides, in part:

**General jurisdiction and powers**

37. The Board has jurisdiction and power,

(a) to hear and determine all applications made, proceedings instituted and matters brought before it under this Act or any other general or special Act and for such purpose to make such orders, rules and regulations, give such directions, issue such certificates and otherwise do and perform all such acts, matters, deeds and things, as may be necessary or incidental to the exercise of the powers conferred upon the Board under such Act;

(b) to perform such other functions and duties as are now or hereafter conferred upon or assigned to the Board by statute or under statutory authority;

(c) to order and require or forbid, forthwith or within any specified time and in any manner prescribed by the Board, the doing of any act, matter or thing or the omission or abstention from doing or continuance of any act, matter or thing, which any person, firm, company, corporation or municipality is or may be required to do or omit to be done or to abstain from doing or continuing under this or any other general or special Act, or under any order of the Board or any regulation, rule, by-law or direction made or given under any such Act or order or under any agreement entered into by such person, firm, company, corporation or municipality;

...

[25] The Board finds that ss. 36 and 37 of the OMB Act mirror and reinforce the powers established by ss. 11(5) and 12(1) of the ARA in this context. Upon referral by the Minister of Giofam's ARA licence application to the Board, the Board's jurisdiction to consider and resolve issues relating to the main haul road to be used by Giofam crystallized and became exclusive.

**c. *Planning Act and Provincial Policy Statement, 2014***

[26] In his submissions, Mr. Green referenced s. 3 of the *Planning Act*. He submitted that s. 3 requires that the Board's decision on the licence be consistent with the Provincial Policy Statement, 2014 ("PPS"), including policy requiring consideration of social and economic impacts on municipalities.

[27] On the other hand, Mr. White submitted that ss. 17 and 34 of the *Planning Act*, applicable in the context of the OPA and the ZBAs before the Board, do not confer the power on the Board to require a condition that an agreement be concluded between the County and Giofam relating to the haul route.

[28] The Board has considered the language of the *Planning Act* and also the policies of the PPS. In the context of the referral of a licence and planning instruments outside of the municipal boundary of the County, the Board finds that it is unclear as to whether consistency with policies of the PPS is mandated by the *Planning Act*. It could very well be argued that licencing under the ARA and approval of planning instruments that necessitate the use of roads in the County could be characterized as a "planning matter" under s. 3(5) of the *Planning Act*, which necessitates consistency with the PPS. Militating in favour of such a finding is s. 12.1 of the ARA itself which prohibits the issuance of a quarry licence absent permissive municipal zoning.

[29] Assuming that consistency with the PPS is required in this context, the policies of the PPS articulate a public interest in ensuring both an adequate supply of aggregate resources (policy 2.5) but also the public interest in ensuring the resiliency of municipal infrastructure long term (for example, see: policies 1.1.1 and 1.1.4.1(e) and 1.1.5.5).

The Board also finds that a reading of the PPS strongly suggests that one of the intentions behind ensuring the resiliency of municipal infrastructure, including road systems, is to ensure that aggregate resources can be accessed over the long term.

[30] Overall therefore, the Board finds that the ARA requires it to have regard to the main haulage routes and proposed truck traffic to and from the Giofam quarry site and as part of that consideration, the Board has the power to direct a licensee to either conduct maintenance and repairs directly or to contribute towards the costs of a municipality to achieve this same result. Furthermore, as explained further below, the Board finds that its powers go beyond merely directing that a haul route is adequate at the time of licencing but that the haul route remain adequate during the lifetime of the operation.

**Issue 2 – Should the Board exercise its jurisdiction to impose a condition for haul road maintenance and repair?**

[31] Having determined that the Board has the jurisdiction to impose a condition relating to maintenance and repair of a haul route and that there is no basis to conclude that the Board’s jurisdiction is constrained by municipal boundaries in considering the “main haulage routes”, the next question for the Board’s determination is whether it is reasonable and in the public interest to impose such a condition in the circumstances of this case.

[32] As set out above, s. 12(1)(h) of the ARA is particularly relevant in this context by requiring the Board to consider “the main haulage routes and proposed truck traffic to and from the site”. Again, the phrase “main haulage routes” is not a defined term under the ARA. Based on the evidence filed at the hearing it appears undisputed that the “main haulage route” in this context is that route that haul trucks will use to and from Provincial highway 12.

[33] Mr. White submitted that it would be unfair to go beyond the host community in considering costs and that it may be that municipalities receiving deliveries could conceivably seek a levy from quarry operators. The Board finds that such a potential

outcome is limited not only by the language of the ARA which requires the Board to consider “the main haulage routes” but also by evidence tendered at any particular hearing relating to how a main haulage route should be defined.

[34] In this instance, the witness statement adopted at the hearing by Giofam’s traffic engineer, Mr. Brumwell, explains that but for local deliveries, the main haulage route is “City Road 45 – Monck Road, to and along Simcoe County Road 45, to and along Simcoe County Road 169, to and along Provincial Highway 12.” The evidence characterizing the main haulage route in this case is undisputed.

[35] Interestingly, Mr. Brumwell’s witness statement, filed by Giofam in support of the application for the licence, OPA and ZBAs, provides an opinion directly to the question of whether Giofam ought to bear the responsibility for maintenance and upgrades of the haul route. Mr. Brumwell opines that the cost for such works should be borne by all users of the road and the costs to be paid by Giofam should be directly proportionate to the daily traffic volume generated by Giofam’s operation compared to the total daily traffic volume on the roadway.

[36] In considering the evidence filed against the statutory duties and jurisdiction of the Board set out above, the Board views this situation as no different than one where upgrades are necessary to ensure an adequate haul route exists to accommodate a new proposed aggregate quarry. There would be no question that if road upgrades were necessary to ensure an adequate haul route that the Board would have the jurisdiction and power to impose a condition for the upgrading of such roads.

[37] The question here is whether it is also necessary and incidental to the Board’s powers to ensure that an adequate haul route exists for the lifetime of the proposed project by way of a condition requiring a contribution to maintenance and repair necessitated as a result of the use of the haul route by Giofam. The Board finds that the answer to this question must be in the affirmative. A project with a lifetime of approximately 94 years, using some of the heaviest vehicles on the road, will result in the need for increased maintenance and repair. It is reasonable and in the public

interest to ensure that Giofam contributes toward the maintenance and repair of these roads.

[38] Mr. White submitted that there is a myriad of truck traffic already using the County's roads that contribute to maintenance needs absent the requirement to directly contribute towards maintenance and repair costs. He also submitted that no evidence was submitted that gravel trucks do any more damage than other trucks operating under same axle weight limit regulations. However, the Board has no evidence before it to meaningfully assess the full suite of options available to the County to recover costs associated with other users of the road. Ultimately, the Board finds that it is unnecessary, in discharging its powers under the ARA, to assess the full suite of road access, cost recovery, and other road use issues in the County in order to find that a contribution to road maintenance is reasonable in these circumstances, particularly where the evidence is clear that Giofam's use of the haul road will necessitate increased maintenance and repair to ensure that an adequate haul route exists for the life of the project.

[39] Mr. White also submitted that Giofam's expert Mr. Brumwell had assessed a 6 per cent growth in truck traffic based on a worst case scenario and peak hour traffic. Mr. White submitted that the actual volume of traffic associated with the operation will be much less. The Board finds that this particular matter should go to the assessment of the extent of the contribution ought to be and not to the question of whether a condition ought to be imposed by the Board.

### **Issue 3 – What form should the condition take and how should costs be determined?**

[40] The final question for the Board's determination is what form the Board's condition should take and how costs should be determined. As part of this analysis, the question has been raised as to whether the Board has the power to order that an agreement be reached between the parties and whether the County even has the statutory authority to enter into an agreement with Giofam.

[41] The parties focused a great deal of their submissions on provisions of the *Municipal Act* and the question of whether the County has the authority to act through the passage of by-law to enter into an agreement with Giofam for the maintenance of the haul roads.

[42] Mr. White relied upon s. 394(1) of the *Municipal Act* that provides, in part:

394. (1) No fee or charge by-law shall impose a fee or charge that is based on, is in respect of or is computed by reference to,

(e) the generation, exploitation, extraction, harvesting, processing, renewal or transportation of natural resources.

[43] Mr. White submitted that s. 394(1)(e) prohibits the County from entering into an agreement as the County essentially seeks a tonnage fee here.

[44] Mr. Green submitted that the condition requested by the County cannot be characterized as a fee or charge that offends s. 394. He submitted that what is sought by the County should be dictated by a host of factors to ensure Giofam's contribution to maintenance costs is fair and equitable and reflects its contribution to wear and tear on the roads in the County. He submitted that this is not simply the number of trucks and tonnage of aggregate hauled.

[45] Mr. Green also made reference to the fact that the significant 2001 revisions to the *Municipal Act* confer broad authority on municipalities through ss. 8-12, including s. 9 which confers power of a natural person on the County. Mr. Green submitted that s. 9 permits the County to enter into an agreement for a contribution to maintenance and repair costs in this situation.

[46] Mr. Green also referenced the authority of the County, under s. 35 of the *Municipal Act* to restrict the common law right of passage on the County's roads. He submitted that such an approach in this situation would be draconian and the County would prefer not to exercise this authority to limit access to its road system by Giofam.

[47] In reviewing the *Municipal Act* provisions set out above, the Board finds that although there are certain limitations in the Act constraining the by-law making power of the County, there is nothing in the *Municipal Act* that specifically or necessarily constrains the powers of the Board that are otherwise established under the ARA and other legislation.

[48] The *Municipal Act* does not constrain the power of the Board to direct the Minister to issue a licence under the ARA, subject to a condition requiring upgrading and maintenance costs or the payment of reasonable costs which would achieve a similar effect. The question of whether the County has the power to enter a haul route agreement is secondary to this question. The Board finds that it has the power to impose a condition of licence and would necessarily have the power to fix a schedule for fees and maintenance costs.

[49] In reviewing the provisions of the *Municipal Act* however, the Board makes the following observations. Firstly, it is not clear that the Act operates to prohibit the County from entering into a haul route agreement in the context even where the Board finds that such an agreement is appropriate.

[50] Secondly, in order to adequately assess the legal authority for the passing of a by-law, it is normally necessary to have a specific by-law to consider. It is also within the jurisdiction of the Courts, and not the Board, to consider the legality of a by-law enacted under the *Municipal Act*.

[51] Thirdly, taking Giofam's argument to its logical conclusion would call into question the validity of the haul route agreement reached between Giofam and Kawartha Lakes and by extension, the interim order of January 4, 2017 issued by the Board on this appeal which was in part based on the evidence of an agreement reached between Giofam and Kawartha Lakes to ensure that the Kawartha Lakes portion of the haul route is adequate.



[52] Finally, the Board finds that it is unnecessary to make a specific finding on the authority of the County under the *Municipal Act* to enter into an agreement with Giofam or for the Board to require that such an agreement be reached. As set out above, the Board has found that it has the power to directly impose a condition of licence approval relating to ensuring that the costs of maintenance and repairs are shared by Giofam.

[53] The Board has the power to either require that Giofam undertake maintenance and repairs directly or contribute towards the maintenance costs incurred by the County to ensure that an adequate haul route exists. In the circumstances here, where Giofam's contribution should be for a portion of the overall maintenance costs of the haul route, it appears that it would be most efficient for Giofam to simply contribute a portion of maintenance costs assumed by the County.

[54] The evidence tendered by the County was clear and uncontested as to when costs would likely be incurred for road maintenance. However, what was not clear was what proportion of such costs Giofam ought to be responsible for and when such contributions should be made, whether periodically or otherwise. As requested by Mr. Green, the Board will withhold its final order for a period of six months for the County and Giofam to discuss the specific quantum and timing of contributions by Giofam to maintenance costs. Failing agreement between the parties on these matters, arrangements can be made through the Board's case coordinator for hearing dates to resolve the issue of quantum and timing of maintenance costs.

## **SECOND INTERIM ORDER OF THE BOARD**

[55] Further to the interim order of the Board dated January 4, 2017, the Board orders that as an additional condition of licence approval, Giofam is to contribute towards the costs of haul route maintenance and repair in the County of Simcoe resulting directly from its use of that haul route.

[56] The Board withholds its final order for a period of six months from the date of this order to allow the County and Giofam time to settle the issue of quantum and timing of payment of maintenance costs.

[57] Failing agreement between the parties, arrangements can be made through the Board's case coordinator for hearing dates to resolve the issue of quantum and timing of maintenance costs to be paid.

[58] I remain seized of this appeal.

*"Justin Duncan"*

JUSTIN DUNCAN  
MEMBER

If there is an attachment referred to in this document,  
please visit [www.elto.gov.on.ca](http://www.elto.gov.on.ca) to view the attachment in PDF format.

**Ontario Municipal Board**

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