

**Environment and Land Tribunals
Ontario**

Ontario Municipal Board

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**Tribunaux de l'environnement et de
l'aménagement du territoire Ontario**

Commission des affaires municipales
de l'Ontario

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PROCEEDING COMMENCED UNDER subsection 17(40) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: James Dick Construction Limited
Subject: Failure of the County of Wellington to announce a decision respecting Proposed Official Plan Amendment No. OP-2016-09
Municipality: County of Wellington
OMB Case No.: PL170688
OMB File No.: PL170688
OMB Case Name: James Dick Construction Limited v. Wellington (County)

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

Applicant and Appellant: James Dick Construction Limited
Subject: Application to amend Zoning By-law No. 40/2016 - Refusal or neglect of Township of Guelph/Eramosa failed to make a decision
Existing Zoning: Agricultural Zone and Environmental Protection Zone
Proposed Zoning: Extractive Industrial Zone and Environmental Protection Zone
Purpose: To permit a mineral aggregate extraction operation
Property Address/Description: 8532 Highway 7
Municipality: Guelph Eramosa
Municipality File No.: ZBA 06/16
OMB Case No.: PL170688
OMB File No.: PL170472

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

Referred by: Sharon Rew
Objector: Shirley Allen
Objector: Ron & Debbie Brennen
Objector: John & Ann Brophy
Objector: Dennis & Laura Campbell; and others
Applicant: James Dick Construction Limited
Subject: Application for a Class A licence for the removal of aggregate
Property Address/Description : Part Lot 1, Concession 6
Municipality: Guelph Eramosa
OMB Case No.: PL170688
OMB File No.: MM150034

NOTICE OF PREHEARING CONFERENCE

The Ontario Municipal Board will conduct a prehearing conference respecting this matter.

If you do not attend the prehearing conference, the Ontario Municipal Board may proceed in your absence and you will not be entitled to any further notice of these proceedings.

TIME AND PLACE OF PREHEARING CONFERENCE

A prehearing conference will be held

at: 10:00 AM

on: Thursday November 2, 2017

**at: Municipal Building
Council Chambers
8348 Wellington Road #124, RR #1
Rockwood
Guelph Eramosa, ON N0B 2K0**

The Board has set aside **1 day** for this conference.

PURPOSE OF PREHEARING CONFERENCE

The conference will deal with preliminary and procedural matters, including the following:

- **Identification of parties** - these persons have the right to participate throughout by presenting evidence, questioning witnesses, and making final arguments. In order for the Board to determine your status for the hearing, you or your representative should attend the prehearing conference and ask to be added as a party. Groups, whether incorporated or not, who wish to become parties should name a representative. Parties do not need to be represented by lawyers or agents.
- **Identification of participants** - persons who do not wish to participate throughout the hearing may attend the hearing and make a statement to the Board. Such persons should also attend the prehearing conference.
- **Identification of issues.**
- **Possibility of settlement of any or all of the issues** – the panel will explore with the parties whether the case before the Board and the issues in dispute are matters that may benefit from the assistance of a mediation meeting conducted by a Member of the Board. Mediation is a voluntary process of negotiation that encourages all sides in a dispute to get a better understanding of each other's positions and fully explore and consider options for a mutually acceptable settlement of all or some of the issues in dispute. The panel may direct, upon consent of the parties, that some or all of the issues in dispute proceed to mediation. Where mediation is directed, a different Member of the Board would conduct the mediation.
- **Start date of the hearing.**

- **Duration of the hearing.**
- **Directions for pre-filing of witness lists, expert witness statements and written evidence.**
- **The hearing of motions.**
- **Such further matters as the Board considers appropriate.**

Everyone present should come prepared to consider specific dates for proceedings in this matter.

EVIDENCE

Evidence or formal statements may also be heard at the prehearing conference in an attempt to settle the matters in dispute. Note that even if no settlement is reached the Board may make a final decision on the evidence it received.

All parties or their representatives should attend the prehearing conference.

Pour recevoir des services en français, veuillez communiquer avec la Division des audiences au (416) 212-6349, au moins 20 jours civils avant la date fixée pour l'audience.

We are committed to providing accessible 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. If you require documents in formats other than conventional print, or if you have specific accommodation needs, please let us know so we can make arrangements in advance. Please also identify any assistance you may require in the event of an emergency evacuation.

DATED at Toronto, this 29th day of August, 2017.

Mary Ann Hunwicks
Secretary

ONTARIO MUNICIPAL BOARD RULES ON ADJOURNMENTS

61. Hearing Dates Fixed Hearing events will take place on the date set unless the Board agrees to an adjournment.

62. Requests for Adjournment if All Parties Consent If all of the parties agree, they may make a written request to adjourn a hearing event. The request must include the reasons, a suggested new date, and the signed consents of all parties. However, the Board may require that the parties attend in person or convene an electronic hearing to request an adjournment, even if all of the parties consent.

63. Requests for Adjournment Without Consent If a party objects to an adjournment request, the party requesting the adjournment must bring a motion at least 10 days before the date set for the hearing event. If the reason for an adjournment arises less than 10 days before the date set for the hearing event, the party must give notice of the request to the Board and to the other parties and serve their motion materials as soon as possible. If the Board refuses to consider a late request, any motion for adjournment must be made in person, at the beginning of the hearing event.

64. Emergencies Only The Board will grant last minute adjournments only for unavoidable emergencies, such as illnesses, so close to the hearing date that another representative or witnesses cannot be obtained. The Board must be informed of these emergencies as soon as possible.

65. Powers of the Board upon Adjournment Request The Board may,

- (a) grant the request;
- (b) grant the request and fix a new date or, where appropriate, the Board will schedule a prehearing conference on the status of the matter;
- (c) grant a shorter adjournment than requested;
- (d) deny the request, even if all parties have consented;
- (e) direct that the hearing proceed as scheduled but with a different witness, or evidence on another issue;
- (f) grant an indefinite adjournment, if the request is made by the applicant or proponent and is accepted by the Board as reasonable and the Board finds no substantial prejudice to the other parties or to the Board's schedule. In this case the applicant or proponent must make a request that the hearing be rescheduled;
- (g) convert the scheduled date to a mediation or prehearing conference; or
- (h) make any other appropriate order.

August 11, 2008

SAMPLE PROCEDURAL ORDER

This is a sample of the procedural order that the Board issues for most matters (except expropriation applications) after holding a prehearing conference. An explanation of the terms used is found in the attachment to this sample order. The Board expects that the terms of the procedural order when issued will be met. If a party has not complied with a requirement of a procedural order, the Board will decide whether or not any part of or step in the proceeding, or any written or visual evidence or order is not valid as a result.

ONTARIO MUNICIPAL BOARD

PLXXXXX

PROCEDURAL ORDER

[Insert title of proceeding when procedural order is not attached to a Board Decision]

The Board orders that:

[1] The Board may vary or add to this Order at any time either on request or as it sees fit. It may amend this Order by an oral ruling or by another written Order.

Organization of the Hearing

[2] The hearing will begin on [day] [month] [year]... at ...a.m./p.m. atin the municipality of[Optional:...All parties and participants shall attend the first day of the hearing]

[3] The length of the hearing will bedays. The length of the hearing may be shortened as issues are resolved or settlement is achieved.

[4] The parties and participants identified at the prehearing conference are:
[Optional:...listed in Attachment 1 to this Order.]

[5] The Issues are: [Optional:... set out in the Issues List attached as Attachment 2.] There will be no changes to this list unless the Board permits it. A party who asks for changes may have costs awarded against it.

[6] [Optional] The order of evidence shall be: [Optional:...listed in Attachment 3 to this Order]. The Board may limit the amount of time allocated for opening statements, evidence in chief (including the qualification of witnesses), cross-examination, evidence in reply and final argument. The length of written argument, if any, may be limited either on consent or by Order of the Board.

Requirements Before the Hearing

[7] All parties and participants (or their representatives) shall provide a mailing address, email address, and telephone number to the Board. Any such person who retains a representative (legal counsel or agent) subsequent to the prehearing conference must advise the other parties and the Board of the representative's name, mailing address, email address and phone number.

[8] [Optional] A party who intends to call witnesses, whether by summons or not, shall provide to the Board, the other parties and to the municipal Clerk a list of the witnesses and the order in which they will be called. This list must be delivered at leastcalendar days before the hearing. For expert witnesses, a party is to include a copy of the curriculum vitae and the area of expertise in which the witness is proposed to be qualified.

[9] [Optional] Expert witnesses in the same field shall have a meeting before the hearing to try to 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.

[10] An expert witness shall prepare an expert witness statement, that shall include: an acknowledgement of expert's duty form, the area(s) of expertise, any reports prepared by the expert, and any other reports or documents to be relied on at the hearing. Copies of this must be provided as in section [13]. 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.

[11] [Optional] A [witness] [participant] must provide to the Board and the parties a [witness] [participant] statement at least calendar days before the hearing, or the witness or participant may not give oral evidence at the hearing.

[12] 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 and his or her area of expertise, as in section [13].

[13] On or before[a minimum of 30 calendar days before the hearing date], the parties shall provide copies of their [witness and] expert witness statements to the other parties [Optional and to the Clerk of] [Optional] The parties shall prepare a Joint Document Book to be filed with the Board on the first day of the hearing. A paper copy of any document proposed to be entered into evidence or relied upon shall be provided at the hearing unless ordered otherwise by the presiding Member.

[14] [Optional] On or before , the parties shall provide copies of their visual evidence to all of the other parties. If a model is proposed to be used the Board must be notified before the hearing. All parties must have a reasonable opportunity to view it before the hearing.

[15] Parties may provide to all other parties [Optional and to the Clerk of] a written response to any written evidence within 7 days after the evidence is received.

[16] A person wishing to change written evidence, including witness statements, must make a written motion to the Board in accordance with the Board's Rules [34 to 38].

[17] A party who provides the written evidence of a witness to the other parties must have that witness attend the hearing to give oral evidence, unless the Board and the parties are notified at least 7 days before the hearing that the written evidence is not part of their record.

[18] Documents may be delivered in person, by courier, by facsimile or registered or certified mail, [Optional:...by email] or otherwise as the Board may direct. The delivery of documents by fax and email shall be governed by the Board's Rules [26 – 31] on this subject. Material delivered by mail shall be deemed to have been received five business days after the date of registration or certification.

[19] 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.

Purpose of the Procedural Order and Meaning of Terms

Prehearing conferences usually take place only where the hearing is expected to be long and complicated. If you are not familiar with the hearing process you should prepare by obtaining the Guide to the Ontario Municipal Board, and the Board's Rules, from the Board Information Office, 15th Floor, 655 Bay Street, Toronto, M5G 1E5, 416-212-6349, or from the Board website at www.omb.gov.on.ca.

The parties should discuss the draft Procedural Order before the prehearing conference and identify the issues and the process they propose the Board order following the prehearing. The Board will hear submissions about the content of the Procedural Order at the prehearing.

Meaning of terms used in the Procedural Order:

***Party** is an individual or corporation permitted by the Board to participate fully in the hearing by receiving copies of written evidence, presenting witnesses, cross-examining the witnesses of the other parties, and making submissions on all of the evidence. If an **unincorporated group** wishes to become a party, it must appoint one person to speak for it, and that person will become the party and assume the responsibilities of a party as set out in the Procedural Order. Parties do not have to be represented by a lawyer, and may have an agent speak for them. The agent must have written authorisation from the party.*

***Participant** is an individual, group or corporation, whether represented by a lawyer or not, who may attend only part of the proceeding but who makes a statement to the Board on all or some of the issues in the hearing. At the hearing, a participant may be asked questions by the parties about their statements. Participants do not normally receive notice of a mediation or conference calls on procedural issues and cannot ask for costs, or review of a decision as parties can.*

***Written and Visual Evidence:** **Written evidence** includes all written material, reports, studies, documents, letters and witness statements which a party or participant intends to present as evidence at the hearing. These must have pages numbered consecutively throughout the entire document, even if there are tabs or dividers in the material. **Visual evidence** includes photographs, maps, videos, models, and overlays which a party or participant intends to present as evidence at the hearing. If a model forms part of the evidence, photographs of the model shall also be filed.*

Witness Statements:

*A **witness statement** or a **participant statement** is a short written outline of the person's or group's background, experience and interest in the matter; a list of the issues which he or she will discuss and the witness' or participant's position on those issues; and a list of reports that the witness or participant will rely on at the hearing.*

*An **expert witness statement** should include his or her (1) name and address, (2) qualifications, acknowledgement of the expert's duty, and specific area(s) of expertise, (3) a list of the issues to be addressed, (4) the witness' opinions on those issues and the complete reasons for the opinions and (5) a list of reports that the witness will rely on at the hearing.*

The Procedural Order will set out when and how witness statements are to be exchanged.

Additional Information

Summons: A party may ask the Board to issue a summons. This request must be made before the time that the list of witnesses is provided to the Board and the parties. (See Rules 45 and 46 on the summons procedure.) An affidavit may be requested indicating how the witness' evidence is relevant to the hearing. If the Board is not satisfied from the affidavit, it will require that a motion be heard to decide whether the witness should be summoned.

The order of examination of witnesses: is usually direct examination, cross-examination and re-examination in the following way:

direct examination by the party presenting the witness;

direct examination by any party of similar interest, in the manner determined by the Board;

cross-examination by parties of opposite interest;

re-examination by the party presenting the witness; or

another order of examination mutually agreed among the parties or directed by the Board.

Role of Participants: Participants are identified at the start of a prehearing or at the start of a hearing. Participant statements should be filed with the Board and the parties in accordance with the direction set out in the Board's Procedural Order. If a participant does not attend the hearing and only files a written statement, the Board may not give it the same attention or weight as submissions made orally. The reason is that parties cannot ask further questions of a person if they merely file the material and do not attend.

OCTOBER 20, 2014

ONTARIO MUNICIPAL BOARD RULES ON DOCUMENTS, EXHIBITS, FILING, SERVICE

18. Form of Documents Unless otherwise directed by the Board, every document filed or introduced by a party or participant in a proceeding shall be prepared on letter size paper (8 ½" x 11"), except for large documents such as plans or surveys, and shall have each page numbered consecutively, throughout the entire text and graphic content, even if there are dividers or tabs.

19. Other Exhibits Large graphic or other such types of visual evidence should not be glued to foam or other boards. They shall be on paper and be removed from the boards following the hearing event, and folded to 8 ½" x 11". Three-dimensional models must be photographed and the photographs must be introduced with the model. Visual evidence must be reviewed by the other parties before the hearing event or by an earlier date if set out in a procedural order.

20. Copies of Documents for Parties and Clerk A party who intends to introduce a document as evidence at a hearing event shall provide a copy of the document to all the parties, at the beginning of the proceeding or by an earlier date if set out in a procedural order. If the document is an official plan, those parts of the Plan to be referred to at the hearing event should be distributed to the parties, and a copy of the entire plan must be made available to the Board Member(s). If the Board orders that the clerk of the municipality keep copies of documents, they do not need to be certified copies, unless a party objects that they are not authentic copies.

21. Prefiling of Witness Statements and Reports If a hearing is expected to last more than 10 days, the Board may require that parties calling expert or professional witnesses serve on the other parties and file with the clerk of the municipality any experts witness statements and reports prepared for the hearing, at least 30 days in advance of the commencement of the hearing, unless otherwise directed by the Board. The Board may also make this prefiling order for hearings expected to last fewer than 10 days, at the request of a party. The expert witness statement must contain:

- (a) the expert's name, address and qualifications;
- (b) the issues the expert will address, their opinions on these issues, the reasons that support their opinions, their conclusions; and
- (c) a list of the reports or documents, whether prepared by the expert or by someone else, that the expert will refer to at the hearing.

The expert's complete report may be filed instead of this statement if it contains the required information.

An expert may not be permitted to testify if this statement or report is not served on all parties and filed with the Clerk of the municipality when so directed by the Board. Participants in the hearing wishing to examine expert witness statements and reports may do so at the Clerk's office.

21.01 Other Witnesses The Board may also require that a witness or a participant who is not presenting expert evidence provide a witness or participant statement. A witness or participant statement should contain (a) a short written outline of the person's background, experience, and interest in the matter, (b) a list of the issues that they will discuss, and (c) a list of reports that they will rely on at the hearing. A participant statement should also briefly outline the evidence to be presented. The Board may not allow the witness or participant to testify if this statement is required by the Board but is not provided to the other parties.

22. Amendment of Documents Documents filed with the Board can only be amended on the consent of the parties or by a Board Order. The Board may require that the person requesting an amendment do so by way of a motion under Rule 34.

23. Copies of Board Documents A person may examine any document filed with the Board and copy it after paying the Board's fee, unless a statute, a Court Order, a Board Order or these Rules provide otherwise.

24. Return of Exhibits Exhibits of all types introduced at a hearing will be kept for 180 days after the Board decision issues. The person introducing an exhibit may ask for its return after this time, and it may be given back if the Board agrees. If no such request is made, the exhibit becomes the property of the Board and may be archived.

25. Final Approval of Plans of Subdivision When a final plan is prepared for the Board's approval, the following wording shall be inserted on the original plan and copies:

This plan is approved by the Ontario Municipal Board under file [insert OMB case number] pursuant to the *Planning Act*, section _____.

Date **Secretary, Ontario Municipal Board**

DOCUMENT EXCHANGE

A document may be served on another party or participant by e-mail, fax or such other manner as may be directed by the Board.

26. Service by Fax or E-mail Where any document is required to be served or filed, including the one commencing a proceeding or a motion or providing notice, it shall be served by fax or e-mail (unless a statute or the Board requires another method of service) and shall be sent to:

- (a) the party's representative, if any;
- (b) where the party is an individual and is not represented, to that party directly, where that party has provided a fax number and/or an e-mail address;
- (c) where that party is a corporation and is not represented, to the corporation directly, to the attention of an individual with apparent authority to receive the document; or
- (d) where served on or filed with the Board, a local board or commission, or any department, ministry or agency of the federal, provincial or municipal government, to an individual with apparent authority to receive the document.

Subject to Rule 27, if a document is served by fax or e-mail, then service is effective on the date of service.

27. If Faxed or E-mailed After 4:30 p.m. Any document served by fax or e-mail after 4:30 p.m. is deemed to have been served on the next business day.

28. Permission to Fax if More Than 30 Pages If a document is more than 30 pages including the cover page, it may only be served by fax between 8:00 a.m. and 4.30 p.m. with the prior consent of the person receiving the document. If more than 30 pages, it cannot be served by fax at any time without prior permission.

29. Contents of Cover Page A fax cover page must include (a) the Board's case and file number, (b) the type of matter, (c) the municipality in which the matter arose, and (d) full identification of the sender and receiver.

30. Proof of Service by Fax or E-mail A confirmation printout received by the sender is proof of the full transmission and receipt of the fax or e-mail.

31. No Hard Copy Needed A hard copy of a faxed or e-mailed document need not be sent by another means of transmission unless requested, and may then be sent by ordinary mail.

August 11, 2008

ONTARIO MUNICIPAL BOARD RULES ON PREHEARING CONFERENCES

70. Prehearing Conference At the request of a party or on its own initiative, the Board may direct parties to participate in a prehearing conference, which can include settlement conferences, motions or preliminary hearing matters, in order to:

- (a) identify the parties and participants and determine the issues raised by the appeal;
- (b) identify facts or evidence the parties may agree upon or on which the Board may make a binding decision;
- (c) obtain admissions that may simplify the hearing;
- (d) provide directions for exchange of witness lists, expert statements and reports, for meetings of experts to address the disclosure of information, including the disclosure of the information that was not provided to the Municipality before Council made its decision that is the subject of the appeal, and for further disclosure where necessary;
- (e) discuss opportunities for settlement, including possible use of mediation or other dispute resolution processes;
- (f) fix a date and place for the hearing and estimate its length, and encourage the parties to agree upon the dates for any procedural steps;
- (g) discuss issues of confidentiality, including any need to hold a part of the hearing in the absence of the public or to seal documents;
- (h) address the production and cost sharing of joint document books; and
- (i) deal with any other matter that may assist in a fair, cost-effective, and expeditious resolution of the issues.

71. Sample Procedural Order and Meeting Before Prehearing Conference The Board may provide a sample procedural order to the parties before the prehearing conference. The parties are expected to meet before the prehearing conference to consider the matters set out in Rule 70 and present recommendations to the Board for the conduct of the hearing.

72. Serving Notice of a Conference The Board will give the applicant a Notice of Conference which provides the time and place of the prehearing conference. The applicant must serve this on those persons entitled to notice of the conference and provide an affidavit to the Board, at the conference, to prove service of the motion.

73. Board Member Presides The Chair will assign a Board Member to conduct the conference.

74. Public Attendance at a Prehearing A prehearing conference held in person will be open to the public. A prehearing conference held by electronic hearing will be open to the public where practical.

75. Conversion From One Procedure to Another The Board Member may, at any time, conduct a procedural discussion or a preliminary hearing and may convert from one to another. The Board will state in the notice of a prehearing conference that the parties are expected to arrive prepared for a procedural and settlement conference as well as a preliminary hearing, where evidence or formal statements may be heard. Even if no settlement is reached, the Board may proceed to make a final decision on any evidence received during the conference.

76. Results of Failure to Attend a Conference If a party fails to attend the conference in person or by authorized representative, the Board may proceed without that party. The non-attending party is not entitled to notice of subsequent hearing events in the proceedings.

77. Board Order Following The Member conducting the prehearing conference will issue an order that may decide any of the matters considered at the conference and provide procedural directions for any subsequent hearing event.

78. Hearing Member Bound The Member conducting the hearing or any subsequent hearing event is bound by the order resulting from the prehearing conference unless the Member is satisfied that there is good reason to vary the order.

79. **Methods of Holding Hearing Events** The Board may, in a proceeding, hold any or a combination of written, electronic or oral hearing events.

August 11, 2008