

**LOCAL PLANNING APPEAL TRIBUNAL**

**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: Minister of Natural Resources and Forestry  
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

**MOTION RECORD**  
**On behalf of CRC Rockwood Inc.**

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Lawyers for the County of Wellington

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Referred by: Minister of Natural Resources and Forestry  
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

Property Address/Description : aggregate  
Part Lot 1, Concession 6  
Municipality: Guelph Eramosa  
OMB Case No.: PL170688  
OMB File No.: MM150034

### **NOTICE OF MOTION**

CRC Rockwood Inc. will make a motion to the Local Planning Appeal Tribunal (the “Tribunal”) prior to the commencement of the hearing of this matter, on the 21st day of May, 2019, at 10:00 a.m., or as soon after that time as the motion can be heard, at the Municipal Building, 8348 Wellington Road #124, RR#1, Rockwood, Guelph-Eramosa, Ontario, N0B 2K0.

#### **THE MOTION IS FOR AN ORDER OF THE TRIBUNAL:**

- (a) That the following witnesses be prevented from giving evidence on the basis that their witness statements do not meet the requirement in LPAT’s Rules of Practice and Procedure to include the issues the expert will address, their opinions on these issues, the reasons that support their opinions and their conclusions:
- (i) Stan Denhoed;
  - (ii) Greg Scheifele;
  - (iii) Rob Cyr;
  - (iv) Dan Corkery;
  - (v) Brian Sulley; and
  - (vi) H. Robert Rimrott.
- (b) Leave not to file an affidavit in support of this motion, as all materials to be relied on are before the Tribunal;
- (c) Leave, if required, to abridge the time for service of this Motion

- (d) Such further and other relief as counsel may request and this Tribunal may permit.

## **THE GROUNDS FOR THE MOTION ARE:**

### **Overview**

1. Rule 7.04 of LPAT's Rules of Practice and Procedure states (in part):

The expert witness statement must contain:

- (a) an executed acknowledgment of expert's duty form (attached to these Rules) and expert's qualifications;
- (b) the issues the expert will address, their opinions on these issues, the reasons that support their opinions and 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 Tribunal.

2. The intent of this Rule is that all parties can clearly understand the nature of the evidence on the issues that is to be given, in order to properly prepare for the hearing. It is also to assist the Tribunal in understanding the nature of the evidence that is given.
3. Pursuant to the timeline agreed between the parties, on April 11, 2019, JDCL served material that included 17 document books that included the witness statements of their proposed witnesses. All of the witnesses at issue in this motion filed a statement that consisted of the following template statement:

*The evidence to be presented by [name of witness] will consist of a presentation and review of the following reports and documents:*

followed by a list of documents that the witness had reviewed and/or prepared.

4. The listed documents range from over 1500 pages (in the case of Stan Denhoed) to (in the case of Dan Corkery) a list of documents authored by others and a 2 page letter written by him which provides no insight whatsoever into the issues, his opinion on them or the reasons for that opinion.
5. Stan Denhoed has included data that he has produced in 2017-2019, with no analysis of that data or indication as to what he will say about it, or how it affect his opinion on the issues before the Tribunal.
6. It is not possible to discern Stan Denhoed's opinion on the issues before the Tribunal given the sheer volume of information he refers to. The opacity of his evidence is underscored by his Visual Evidence, which consists of 190 pages of hydrographs, well records, air photos, diagrams and charts, with no indication of what he will say about them. A proper and adequate witness statement would provide some indication of what he intends to refer to and most importantly his opinion on the issues and the reasons for his opinion. No such opinion is offered.
7. Some proposed witnesses, such as Messrs. Sulley and Rimrott, refer to reports that are a number of years old, and to the most recent version of the site plans for which approval is sought. No opinions have been provided with respect to the new site plans.

#### **Statutory Provisions and Rules Relied Upon**

8. Sections 31 and 32 of the *Local Planning Appeal Tribunal Act, 2017*, S.O. 2017, c. 23, Sched. 1;
9. Sections 15(3), 23(1) and 28 of the *Statutory Powers and Procedures Act*, R.S.O. 1990, c. S. 22;
10. The Tribunal's Rules of Practice and Procedure, and particularly Rule 7.04; and,
11. Such further and other grounds as counsel may advise and this Tribunal may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:**

1. The content of the Tribunal's file in this matter, particularly the material filed by JDCL.
2. The motion materials filed by Halton Region the Town of Halton Hills;
3. Such further and other material as counsel may advise and this Tribunal may permit.

May 6, 2019

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