

**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

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  
Proposed Zoning: Extractive Industrial Zone and Environmental  
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

**FINAL SUBMISSIONS ON BEHALF OF THE COUNTY OF WELLINGTON**

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## A. INTRODUCTION

On May 21, 2019, legal counsel on behalf of the County of Wellington (the “**County**”) made an opening statement to the Local Planning Appeal Tribunal (the “**Tribunal**” or “**LPAT**”) regarding this matter. In its opening the County indicated that it was concerned with two issues on the issues list: Issues 60 and 61. The County’s concerns as they relate to Issue 60 (relating to significant woodlands) were addressed through the June 28, 2019 Site Plans. The County’s concerns as they relate to Issue 61 (hydrogeology) have mostly but not entirely been addressed through the June 28, 2019 site plans.

As not all of the County’s concerns have been addressed through the most recent Site Plans, the County respectfully submits if the Tribunal decides to allow the approvals sought by the applicant, conditions be added to any such approvals as set out in Section I of these submissions below.

## B. ORDER REQUESTED

The County respectfully requests that if the Tribunal determines that it is appropriate that the proposed Hidden Quarry be approved, the Tribunal issue an Order to direct the Minister to include the conditions requested below in Section I on approval in addition to the conditions set out in the June 28, 2019 Site Plan and Notes.

## C. THE MATTERS BEFORE THE LOCAL PLANNING APPEAL TRIBUNAL

JDCL owns land in the Township of Guelph Eramosa (the “**Township**”). JDCL seeks to establish an aggregate extraction operation on this property. In furtherance of this plan JDCL has applied for a mineral aggregate license under the *Aggregate Resources Act*, RSO 1990 c A8 (the “**ARA**”). Further, JDCL has applied for the required County Official Plan amendment (the “**OPA**”) and the required Township Zoning By-law amendment (the “**ZBA**”) pursuant to the *Planning Act*, RSO 1990, c P13 (the “**Planning Act**”). The proposed quarry is known as the “**Hidden Quarry**”.

As noted in the Style of Cause in these submissions, there are three related files before the Tribunal in this hearing:

1. JDCL has appealed the failure of the County to announce a decision regarding JDCL’s proposed Official Plan Amendment (number OP-2016-09), pursuant to section 17(40) of the Planning Act;
2. JDCL has appealed the refusal or neglect of the Township to make a decision regarding JDCL’s proposed Zoning By-law Amendment (number ZBA 06/16), pursuant to section 34(11) of the Planning Act to rezone the property from its existing zoning of Agricultural Zone and Environmental Protection Zone to Extractive Industrial Zone and

Environmental Protection Zone in order to permit the proposed Hidden Quarry; and,

3. The Minister of Natural Resources has referred to the Tribunal JDCL's application for new license for the subject lands pursuant to section 11(5) of the Aggregate Resources Act.

## **D. THE APPLICABLE STATUTORY AND POLICY PROVISIONS**

### **Applicable Legislative Framework**

JDCL is asking the Tribunal to exercise its jurisdiction under both the Planning Act and the ARA.

In terms of the issues of concern to the County, the key aspects of the applicable legislative framework are as follows:

#### Aggregate Resources Act

The Board's jurisdiction on a licence application is established by sections 11 and 12 of the ARA. Section 11(8) sets out the Tribunal's powers as follows:

#### ***Powers of Local Planning Appeal Tribunal***

*(8) The following rules apply if an application is referred to the Local Planning Appeal Tribunal:*

- 1. The Local Planning Appeal Tribunal 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 Local Planning Appeal Tribunal, but the Minister may refuse to impose an additional condition specified by the Local Planning Appeal Tribunal if he or she is of the opinion that the condition is not consistent with the purposes of this Act.*
- 2. The Local Planning Appeal Tribunal may hold a hearing and direct the Minister to refuse to issue the licence.*
- 3. If the Local Planning Appeal Tribunal is of the opinion that an objection referred to it is not made in good faith, is frivolous or vexatious, or is made only for the purpose of delay, the Local Planning Appeal Tribunal may, without holding a hearing, on its own initiative or on a party's motion, refuse to consider the objection. If consideration of all the objections referred to the Local Planning Appeal Tribunal in connection with an application is refused in this way, the Local Planning Appeal Tribunal may direct the Minister to issue the licence subject to the prescribed conditions.*
- 4. If all of the parties to a hearing, other than the applicant, withdraw before the commencement of the hearing, the Local Planning Appeal Tribunal may refer the*

*application back to the Minister and the Minister shall decide whether to issue or refuse to issue the licence.*

Section 11(15) of the ARA provides that there is no petition or review available from the Tribunal's decision on a licence application:

***No petition or review***

*(15) Section 35 of the Local Planning Appeal Tribunal Act, 2017 and section 21.2 of the Statutory Powers Procedure Act do not apply to an order or decision of the Local Planning Appeal Tribunal under this section.*

Section 12 of the ARA states the matters that the Tribunal "shall have regard to" in making its decision on a license application:

***Matters to be considered by Minister***

*12 (1) In considering whether a licence should be issued or refused, the Minister or the Local Planning Appeal Tribunal, 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.*

***Annual compliance reports***

*(2) Despite clause (1) (j), the Minister or the Local Planning Appeal Tribunal shall not have regard to a contravention of this Act or the regulations that was disclosed by the applicant in a compliance report made under section 15.1 or 40.1 if,*

- (a) the contravention was not discovered by an inspector before the applicant submitted the compliance report; and*
- (b) the applicant complied with clause 15.1 (5) (a) or 40.1 (5) (a), as the case may be, in respect of the contravention.*

## Planning Act

The Tribunal derives its jurisdiction regarding the OPA generally from sections 17 and 22 of the Planning Act. The Tribunal is empowered to approve all or part of the proposed OPA; make modifications to all or part of the proposed OPA and approve it as modified or refused to approve all or part of the proposed OPA.

The Tribunal derives its jurisdiction regarding the ZBA generally from section 34 of the Planning Act. The Tribunal is empowered to dismiss the ZBA or to allow the appeal in whole or in part; repeal the portion of the by-law that is under appeal in whole or in part; amend the portion of the by-law that is under appeal in whole or in part; or to direct the municipal council to repeal or amend the portion of the by-law that is under appeal in whole or in part, in accordance with the Tribunal's order

## **Applicable Policy Framework**

The *Provincial Policy Statement*, 2014 (the "PPS") applies to the proposal for the Hidden Quarry.

### **E. THE COUNTY'S ROLE, REVIEW AND POSITION ON THE PROPOSAL**

The County's Official Plan ("County OP") requires an OPA from JDCL in order to allow the Hidden Quarry proposal to proceed.

JDCL submitted a letter to the County on October 24, 2016 with its application for an OPA. The OPA Application Form was received by the County on October 25, 2015. A draft OPA was received by the County, dated November 28, 2016. A Notice of Complete Application was issued December 9, 2016. The County did not issue a decision on this application.

The county received a Notice of Appeal from JDCL on June 9, 2017.

### **F. ISSUES RAISED BY THE COUNTY OF WELLINGTON**

On May 2, 2019 a procedural order was issued from the Tribunal that included an issues list. From this issues list, the County is exclusively concerned with issues 60 and 61 which related to conformity with the County OP. These two issues are reproduced below:

*60. Would approval of the proposed quarry conform to section 5.5.4 (Greenlands) of the County of Wellington Official Plan and in particular:*

*a. Has an adequate assessment and analysis been carried out to demonstrate that the Significant Woodlands on the subject property or their ecological functions,*

*including the protection of significant wildlife habitat, will not be negatively impacted by the proposed quarry development; and*

*b. Has adequate mitigation and tree compensation been provided through the proposed progressive and final rehabilitation plan, to achieve a net gain in ecological function for the Significant Woodlands on the subject property.*

**61. Would approval of the proposed quarry conform to section 4.9.7 (Paris and Galt Moraine Policy Area) of the County of Wellington Official Plan and in particular:**

*a. Has it been demonstrated that pre-quarrying water levels and water quality will be maintained in the wetland and surface water features on in the vicinity of the subject property?*

*b. Are the monitoring programs, and the trigger levels and contingency measures for water levels and water quality, adequate to ensure the protection of private water supply wells, wetlands and surface water features and associated fish habitat on, and in the vicinity of the subject property?*

## **G. THE EVIDENCE AND SUBMISSIONS ON COUNTY ISSUES**

### **1. Issue 60 on the Issues List: Significant Woodlands**

The County submitted the witness statement of David Stephenson as Exhibit 56 in order to address Issue 60 on the Issues List.

The County's concerns regarding this issue has been resolved through the reply witness statement of Greg Scheifele, a witness called by JDCL to address natural environment issues, subject to changes being implemented in accordance with an updated site plan.

The May 5, 2019, June 5, 2019 and June 28, 2019 Site Plans all address the County's concerns regarding Issue 60.

### **2. Issue 61 on the Issues List: Hydrogeology**

The County also brought evidence relating to Issue 61 on the Issues List. The County's evidence on the technical aspects of this issue was given by Mr. David Hopkins who was qualified as an expert in hydrogeology. Mr. Hopkins was retained to undertake an expert peer review of the Hidden Quarry application. Mr. Hopkins provided expert evidence to the Tribunal during the Tribunal hearing on June 12, 2019. His witness statement is contained in Exhibit 57.

It is respectfully submitted that it is in the public interest to have technically well informed municipal decisions on aggregate applications and for the Tribunal to have the benefit of

independent comprehensive expert peer reviews provided in evidence, in fulfilling its mandate relating to aggregate applications. In this case, it is submitted that the peer review of the Hidden Quarry application technical materials that were conducted by Mr. Hopkins was comprehensive and technically sophisticated, fair and balanced in its criticisms and considerably assisted the public planning process of evaluating the Hidden Quarry proposal.

Mr. Hopkins outlined his qualifications and expertise with respect to the Hidden Quarry proposal in paragraphs 1-6 of his witness statement as follows:

- Mr. Hopkins is a hydrogeologist with R.J. Burnside & Associates Limited (Burnside). Burnside is a consulting company of engineers and environmental scientists that specialize in providing consulting services to a range of clients both domestically and internationally.
- Burnside has provided consulting services to municipal and land development groups since its inception in 1970. Mr. Hopkins has been with the firm since 1993 and has been a practicing hydrogeologist since 1988.
- Mr. Hopkins holds a Bachelor of Science in Earth Sciences from the University of Waterloo and is a full member of the Association of Professional Geoscientists of Ontario.
- Mr. Hopkins has extensive experience in hydrogeological assessments and water supply investigations. He provides consultation on design, implementation and interpretation of groundwater and surface water monitoring programs for various municipal well fields, landfills and industrial facilities. He also provides municipal peer review services on hydrogeologic applications for numerous municipalities in Ontario.

Mr. Hopkins' evidence on Issue 61 of the Issues List is addressed in paragraphs 12-36 of his witness statement, being Exhibit 57. Many of the issues raised by Mr. Hopkins in his witness statement have been addressed by the June 28, 2019 Site Plan and Notes. The following paragraphs of Mr. Hopkins' witness statement have not yet been fully addressed by JDCL:

...

*19. There is one area of the Subject Property (Drainage Area D1, Figure 3.4 Harden 2012 Report) that potentially has runoff onto the property to the east. Also, there is a portion of Drainage Area D2 that potentially has runoff into Tributary B. This will also be captured in the quarry.*

*20. It appears that downward movement of water into the bedrock at M20 is prevented by the silty layers described in the borehole logs. Once these are removed during the extraction process there is the potential for radial flow from off site into the bedrock ponds that could impact overburden water levels in the nearby wetlands. Further analysis is required to assess this issue.*

...

22. Based on the foregoing, in my opinion, before a determination can be made on the hydrogeological impacts on the proposed quarry operation on wetland features in the northeast corner of the proposed quarry, it is necessary to present information and analysis on the following:

a. How overburden removal, and revised predictions of greater drawdown in this area of the Subject Property will impact water levels in the nearby Allen Wetland and the northeast wetland, including a discussion of the potential connection between water levels in the Allen wetland, the Northeast wetland and M20;

...

c. Quantification of the potential impacts of altering drainage features D1 and D2.

...

24. Harden indicates that there will be increased flow to Brydson Spring from the ponds created by the quarry operations. This is based on water levels in the ponds once extraction is finished. There will be some lag time between extraction of bedrock and a return of water levels to pre-extraction levels. During this time groundwater flow in the bedrock from the Subject Property may be reduced which could impact Brydson Spring. There is currently a monitoring program at the Subject Property that includes bedrock wells and measurement of discharge at the Brydson spring.

25. The contribution of water from the bedrock beneath the quarry site to Brydson Spring has not been quantified.

26. In order to ensure that there are no impacts to Bryden Spring as a consequence of quarrying operations, the following requirements will need to be put in place:

a. Data from the pre-approval monitoring program will need to be assessed to develop an understanding of the relationship between bedrock water levels at the Subject Property and discharge to the spring;

b. Trigger parameters for bedrock water levels in on-site wells ("trigger levels") will need to be established based on the relationship between water levels and groundwater discharge in the spring; and

c. The site plan notes should include a requirement that when water levels are below the triggers levels, the required action will be taken to reduce or stop quarry operations until water levels in the bedrock return to pre-extraction levels.

...

37. In summary, based on my review of the available information, I have reached the following conclusions. In order to confirm that there will be no adverse impacts on surface water and groundwater resources in the vicinity of the proposed Hidden Quarry the following additional analysis is required:

*a. Additional information on overburden water levels and their relationship to wetland features near the northeast corner of the Subject Property (see paragraph 22 above);*

*b. Additional assessment and monitoring contingency requirements to address potential impacts to Brydson Spring (see paragraph 26 above);*

...

The County makes the following submissions relating to Issue 61 on the Issues List:

1. With respect to paragraphs 19 to 22 of Mr. Hopkins' witness statement, insufficient work has been done by JDCL in order to demonstrate that *"pre-quarrying water levels and water quality will be maintained in the wetland and surface water features on in the vicinity of the subject property"*.
2. The evidence of Mr. Stan Denhoed provided to the Tribunal on May 28 – 30 that no changes to the Brydson Spring are anticipated if historical water levels are maintained is a conclusion not based on sufficient data analysis.
3. As stated in the evidence of Mr. Denhoed during cross examination by Mr. Germain, Mr. Denhoed's conclusion that the water level in well M4 is correlated to the flow at the Brydson Spring is a conclusion based on 5 data points. As stated in the evidence of Mr. Hopkins, further data collection and analysis from the pre-approval monitoring program will need to be conducted in order to develop an understanding of the relationship between bedrock levels on the subject property and Brydson Spring water flow.
4. Once the relationship is established between bedrock water levels at the subject property and discharge to the Brydson Spring, trigger parameters for the bedrock water levels in on-site monitoring wells need to be established based on the relationship between water levels and groundwater discharge in the spring.
5. The Site Plan should be amended to include a requirement that when water levels are below the trigger levels, the required action will be to reduce or stop quarry operations consistent with section 3.1 of page 6 of 6 of the June 28, 2019 Site Plan.
6. A determination cannot be made on the hydrogeological impacts on the proposed quarry operation on wetland features in the northeast corner of the proposed quarry until additional studies are conducted to determine how overburden removal, and revised predictions of greater drawdown in the northeast corner of the proposed quarry will impact water levels in the nearby Allen Wetland and the northeast wetland, including a discussion of the potential connection between water levels in the Allen wetland, the Northeast wetland and M20; and the potential impacts of altering drainage features D1 and D2 can be quantified.
7. Overall it is the evidence of Mr. Hopkins that there is insufficient information regarding the impacts of the proposed Hidden Quarry on the surface water and groundwater

features northeast of the quarry, including the Allen wetland. Without further information, these impacts cannot be properly quantified and no conclusion can be drawn regarding the proposed quarry's conformity to section 4.9.7 of the County OP.

8. In order to ensure that the proposal conforms with section 4.9.7 of the County OP, the conditions in Section I below should be implemented as conditions of approval.

### 3. Official Plan Amendment

Should the Tribunal determine that it is appropriate to approve the OPA, the County respectfully submits that the proper format of that OPA is that of the April 25, 2019 draft OPA found in Exhibit 63.

## H. REQUESTED FINDINGS ON COUNTY ISSUES

### Issue 60 on the Issues List

*60. Would approval of the proposed quarry conform to section 5.5.4 (Greenlands) of the County of Wellington Official Plan and in particular:*

- a. Has an adequate assessment and analysis been carried out to demonstrate that the Significant Woodlands on the subject property or their ecological functions, including the protection of significant wildlife habitat, will not be negatively impacted by the proposed quarry development; and*
- b. Has adequate mitigation and tree compensation been provided through the proposed progressive and final rehabilitation plan, to achieve a net gain in ecological function for the Significant Woodlands on the subject property.*

Requested Findings: The County respectfully submits that the Tribunal find that the proposed Hidden Quarry does conform to section 5.5.4 of the County OP and satisfy issue 60 if the June 28, 2019 Site Plan and Notes are approved.

### Issue 61 on the Issues List

*61. Would approval of the proposed quarry conform to section 4.9.7 (Paris and Galt Moraine Policy Area) of the County of Wellington Official Plan and in particular:*

- a. Has it been demonstrated that pre-quarrying water levels and water quality will be maintained in the wetland and surface water features on in the vicinity of the subject property?*
- b. Are the monitoring programs, and the trigger levels and contingency measures for water levels and water quality, adequate to ensure the protection of private*

*water supply wells, wetlands and surface water features and associated fish habitat on, and in the vicinity of the subject property?*

**Requested Findings:** The County respectfully submits that the Tribunal find that the proposed Hidden Quarry proposal would conform to section 4.9.7 of the County OP as it relates to Issue **61 a** if the conditions set out in Section I below are implemented.

The County respectfully submits that the Tribunal find that the proposed Hidden Quarry proposal would conform to section 4.9.7 of the County OP as it relates to Issue **61 b** if the conditions set out in Section I below are implemented.

## **I. REQUESTED CONDITIONS IF APPROVAL IS GRANTED**

In the event that the Tribunal determines that it is appropriate that the proposed Hidden Quarry be approved, the County respectfully requests that the Tribunal direct the Minister to include the following requested conditions on the approval and/or to further amend the June 28, 2019 Site Plan and Notes such that they are consistent with the following requested conditions:

1. The County requests that the below amendments be made to the Site Plan and Notes be made based on the June 28, 2019 Site Plan. Should this be done, the County has no outstanding concerns relating to Issue 60 on the Issues List.
2. The County requests that the Site Plan and Notes be amended to require JDCL to provide further detail as to how it intends to establish the relationship between the bedrock water levels in wells near the southern boundary of the Hidden Quarry and the flow at Brydson Spring.
3. Further, the County requests that trigger levels established for bedrock water levels in on-site wells be established based on the relationship between water levels and groundwater discharge in the Brydson Spring and that when these trigger levels are breached, the required action will be follow the protocol as set out in section 3.1 on page 6 of 6 of the June 28, 2019 Site Plan.
4. The County requests that the Site Plan Notes be amended to require JDCL to install additional monitoring wells on lands to the North East of the property, subject to the consent of the landowners, in order to ensure there will be no negative impact to these areas.

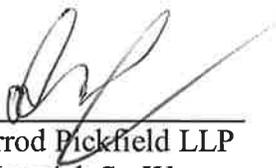
## **J. CONCLUSION**

As outlined in Section F, the County is exclusively concerned with Issues 60 and 61 on the Issues List. The County's concerns regarding Issue 60 have been addressed by JDCL through the

June 28, 2019 Site Plan and Notes. Many but not all of the County's concerns regarding Issue 61 have been addressed in the June 28, 2019 Site Plan. The County still has concerns regarding the proposal and requests that the conditions as set out in Section I above are implemented prior to approval.

For all of the above reasons, it is respectfully submitted on behalf of the County of Wellington that if the Hidden Quarry proposal is approved by the Tribunal, the conditions set out in Section I above be implemented.

All of which is respectfully submitted this 8<sup>th</sup> day of July, 2019.



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