



LPAT Day 25 – July 8, 2019

Day 25 is done. JDCL's lawyer David White has made his final argument (although he has the right to respond to the other Parties' arguments at the end...) and David Germain is halfway through his Halton Region/Halton Hills argument. I have the privilege of lifting Harry Wilson's running Facebook commentary into this space today! Thanks Harry. We will circulate as soon as we have them in hand all arguments from all Parties so you can read them for yourselves! Maybe we should stage a public reading!!

IMPORTANT HOUSEKEEPING UPDATES:

1. **Tomorrow the session begins at 9:30. David Germain has another 30 – 45 minutes to go, and then it will be the turn of Chris Barnett for CRC!!**
2. **These daily jottings are all posted at www.hiddenquarry.ca/omb**

Session Content (This is report from our Facebook page, a play-by-play transcribed simultaneously by the amazing Harry Wilson. In this case any inaccuracies or opinions are Harry's, not CRC's!! These daily journals are all on the CRC website www.hiddenquarry.ca/OMB) **PLEASE READ MR. WHITE'S SUBMISSION CALMLY...THINGS GET BETTER WITH MR. GERMAIN!**

10 AM: Hearing has begun. GET, Milton, Halton, JDCL & CRC have given brief comments on procedural orders. **D. White** has begun his argument in favour of HQ, beginning with playing the "Ontario" card, that the province desperately needs the high-quality dolomite stone that is the foundation of our homes and communities... nothing new here. Sweetnam is nothing if not consistent in his messaging. White is also playing the "small family business just trying to compete with multinationals" card and has mentioned that JDCL has already been blocked by the OMB in the Bolton-area Rockport quarry case (CRC's lawyer Chris Barnett was part of the team that beat that application). Mr. Barnett is on his game today, already objecting to White attempting to bring forward new evidence in his summation. The OMB chair concurred.

Interesting note: JDCL claims Brydson Creek/Blue Springs would benefit from HQ because the quarry ponds there would regulate water flow. No mention of the shocks to the system of 20 years of dynamiting and upheavals to the water flows out of the site; Mr. White seemed to be referencing water conditions of a full quarry, after operations have ceased and damages to the fishery and aquatic corridor are all in the rear view mirror.

11 AM: First break, at the request of JDCL counsel D. White who appears to be suffering from a cold. Great turnout today, including Mayors Rick Bonnette (Halton Hills) and Chris White (Guelph Eramosa) and Milton Councillor Kristina Tesser-Derksen and past rep Cindy Lunau and Milton's Colin Best. Hope to see more residents here this afternoon; the sound system outside is working perfectly and all you need to join the garden party is a chair and refreshments.

11:20: As expected, JDCL has spent a great deal of time and energy attempting to discredit hydrogeologist G Hunter's work that poked huge holes in JDCL's studies: "flawed... misleading...incorrect...erroneous... fundamental errors". After denegrating Hunter's work and elevating JDCL's hydrogeology work, White then proceeded to call into question the Ground Penetrating Radar work done on the adjacent Walnut Hill Farm ponds, despite the fact that JDCL undertook no similar technology testing.

JDCL has once again amended their site plan, on the fly, to address opposition concerns; even as late as this morning they have agreed to construct a hydraulic barrier at the ne corner of their property and to test Brydson waters for dissolved oxygen and turbidity. They now say the company will cease all operations the moment they detect a water "trigger point" has been reached. These are all good things, but why only state them now? The company only acts when cornered. Also, does anyone really trust a JDCL promise to self-police and self-report in the absolute absence of provincial supervision of quarry operations? Despite the company's new-found environmental conscience, everyone knows what they want out of the HQ property.

One thing is certain; were it not for the penetrating studies conducted by CRC and the extraordinarily professional legal work of Halton & CRC lawyers, none - not one - of these improvements JDCL now promises to live by would have ever seen the light of day were it not for the strong opposition to HQ.

12 noon: Part 3 of JDCL summative argument: D White has left water behind and now turns his attention to traffic. Once again he suggests the OMB has no jurisdiction to make haul route decisions involving provincial highways. D Germain rose to state that White misrepresented his position on traffic and haul routes, an issue which he will address in his summary.

Very quickly now, White is ticking off the boxes: natural environment (birds & mammals - no problem), neighbouring lands, especially those south of 7 (not "contiguous" as Hwy 7 separates them, so therefore no problem), no fish in HQ tributaries even though they feed Brydson Creek which JDCL now says it will monitor (no problem), blasting processes are now specified on the site plan so therefore... no problem. Noise? No problem because JDCL will build berms 1m higher than originally proposed. Air quality, especially now that their expert has corrected errors in their studies as detected by Chris Barnett, equals no problem anymore. Heritage building damages? Nope. If cracks appear, blame it on the old mortar in those stone structures.

1:50 pm: He's back! And D. White's ticking of boxes continues, with some interesting takes on the evidence presented over the past 2 months. White says the HQ proposal was built to be consistent with the character of the community, despite Town Planner Dorfman's assertion that HQ would put a radically different face on the Rockwood & Halton areas.

Interesting that JDCL claims that the new & innovative subaqueous (underwater) blasting technique they propose to use at HQ, which the company believes will become the preferred industry standard going forward once proven to be successful at HQ, is a technique the company has "many years of experience" with. HUH? Many years does not equal new, unless one attempts to suggest dynamiting in a shallow pool on the bottom of a quarry floor like the Dolime Quarry in Guelph is the same as dynamiting under 23m of water.

White referred again to the Aggregate Resources Act that, in his opinion, gives provincial precedence to mining over municipal and residential interests. He then began a review of the new, improved, ever-evolving site plan. Mr. Tousaw immediately noticed that his copy (Burnett's & Germain's too) was missing highlighted info White began to identify. Now says hydraulic barrier along north

HQ property line will be continuous. JDCL will provide water purification equipment gratis to two close-by residential wells. More frequent water quality testing 2 years before and 1 year after operations begin. Water trigger levels to be established after 2 years of data collection. Immediate cessation of all operations as soon as JDCL monitoring of site waters surpass those trigger levels... are we all reassured? As Shakespeare wrote, "Fine words... But one may smile, and smile, and still be a villain".

Once more, White asserted that legislation leaves maintenance of and ownership of roads through towns in the hands of the municipality, leading to Mr. Tousaw asking for help in clarifying confusion brought about by his summary statements. Said that LPAT has to decide if it has jurisdiction over provincial highway rules.

White says JDCL has demonstrated a "high degree of cooperation" with the other parties to the hearing and continues to "accommodate to their requests". Fine words. Yes, the changes are appearing on the site plan. Forgive us for wondering if words are enough. At 2:45 pm, White asked for the OMB to approve the quarry application. Before he could leave the podium, Mr. Tousaw sought further clarification on the question of LPAT/OMB jurisdiction over highway regulations. Not sure that Mr. White's explanation dispelled Mr. Tousaw's confusion. By 2:50 pm, Mr. White thanked the Chair and retired from the podium.

Wellington lawyer Ciccone followed JDCL with suggestions for further improvements to the site plan, additional testing north of the HQ property, asked that the country's core Greenlands designation in the Official Plan be protected if the HQ property just north of #7 is reclassified as mineral extractive. As he said this, we remember White's assertion two weeks ago that all lands immediately south of #7 are available for mineral extraction as they are "unencumbered"

3:15 pm: Halton counsel David Germain took the podium and began with a review of the long, checkered, sometimes torturously-flawed application process. He began by recalling the Chair's request that all arguments should be issue-based and that the hearings would be focused on addressing those issues. He then launched into the issues Halton is still dissatisfied with.

He said that so much of the evidence undertaken by JDCL has been flawed that one must ask whether future work undertaken by the same party is likely to be any better. He then said JDCL has consistently avoided going into detail where possible and avoided dealing with issues if possible. He said that Mr. Tousaw, as Chair of this LPAT/OMB, must be satisfied that the application stands on solid ground, that he cannot defer to other parties where there is uncertainty and unresolved issues. Germain referred to JDCL's failed Rockport proposal as a case in point where the application was denied because the proponent did not convince the OMB of its security. Germain placed the onus directly on Tousaw. He also said case law clearly shows that monitoring criteria and mitigation efforts must be 100% complete and reassuring BEFORE an application can be approved. As an example, the water triggers remain incomplete in their scope, and that leaving items in JDCL's discretion is not sufficient in meeting his obligations.

He then took umbrage with White's assertion that the site plan has reflected all suggested changes, which is not the case. He identified 3 omissions and that the applicant is not bound by blasting criteria as JDCL has reserved discretion in blasting setbacks, etc.

He then turned to the question of the proposed haul route through Acton and refuted White's argument that JDCL could do as it wished because the haul route is the province's Hwy 7. He clarified that a road through town is not exclusively a provincial highway, that it has a dual function, that it must meet local needs. Therefore, White's argument that the OMB requiring a trucking agreement between municipality and company is not within its jurisdiction, is simply wrong and not helpful. He then outlined a framework for such an agreement that would address JDCL's concerns about not being put into a disadvantageous position with its competitors even as it addresses the municipality's concerns.

In essence, Mr. Germain sought to expand the areas of company responsibility, something JDCL would like to avoid (larger areas = more costs). He continued to argue that the municipality can pass a road use bylaw that does not have to be approved by the Province's Ministry of Transportation. Where Mr. White offered general argument, Germain referred to chapter and verse of case law and provincial regulation.

Further examples of the company failing to "dot all the i's and cross all the t's" included procedures to address faulty dynamite charges, refusing to accept that the lands under Hwy 7 are in fact a contiguous connections between HQ property and Nassagaweya/Halton, differences between blasting in a few feet of water in Dolime & HQ's 23m deep scenario, to say nothing of its connection to Brydson. He pointed out again and again questions that have not been addressed by the proponent. His bottom line: there are so many uncertainties remaining that approval of the HQ proposal is unacceptable and against OMB guiding principles.

Asked by the Chair if an application is denied in the 1st instance what should happen then, Mr. Germain reiterated the need to resolve all unresolved issues.

With that, the hearing adjourned. What a ringing note David Germain struck to end day's proceedings! He will finish his summative argument in the morning, with council Mr. Chris Barnett following him to podium. Today's resident turnout today very impressive indeed; let's make tomorrow fabulous.

Note: Harry Wilson has broken the 1-page rule. Good thing there's just one to go!



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