

Submission to City Council on Dolime Pathway Agreement

By Hugh Whiteley July 19 2021

My Submission this evening is in two parts.

Part One is an email message I sent to all members of City Council which posed two questions regarding the validity of the actions Council proposes to take to implement the confidential agreement Council has made with River Valley Developments INC . I am expecting Council to require staff to present answers to these two questions.

My submission to City Council is that Step One Annexation is valid and should be proceeded with but steps two and three related to application for an MZO are rendered invalid by continued treatment of the agreement with RVD as confidential. To be valid any agreement City Council enters into must be presented in an open meeting of council and voted on after an opportunity for public comment.

Proceeding with the MZO request is not a valid action for City Council to take.

Part One

Greetings:

I attach for your consideration as part of the deliberations of City Council on the Dolime Pathway Agreement a letter from the Ontario Professional Planners Institute to Hon. Steve Clark, Minister of Municipal Affairs and Housing. This letter expresses grave concern, which I share, about the recent increase in the use of Minister's Zoning Orders.

I also attach a letter which I will be submitting to City Council at the meeting on July 19 expressing for a third time my continued deep concerns about process errors in the Dolime Pathway Agreement that I believe require the Agreement process to be paused.

While I submit that transparency requires a response from staff on all of the concerns I express in my letter, there are two of these concerns that are so basic that I believe an explanation from staff is mandatory as to why staff recommends the Agreement process proceed without correction of these two fundamental errors.

Concern One – Undertaking A Multi Million Dollar Project Without an Environmental Assessment

The Pathway Agreement commits the City to proceed with a multi million-dollar Pond Level Control project. All projects undertaken by the City must be approved by the Minister of Environment Conservation and Parks through successful submission of an Environmental Assessment for the project. The EA process leading to final approval of a preferred alternative must begin with the Minister's Approval of Terms of Reference for the EA, submitted to the Minister **before any work is done on EA.**

Q1 Why is the City proceeding to detailed design of the PLC project before the required EA process for this project has begun, in violation of the Environmental Assessment Act?

Concern Two – Making an Invalid Application for a Change in Designation for the Dolime Quarry.

The Dolime property is Designated in the Wellington County Official Plan as Prime Agriculture with some portions Core Greenland or Greenland. There is a Mineral Resource Aggregate Overlay that shows Sand and Gravel Resource of Primary and Secondary Significance and Selected Bedrock Resource Areas on the site. A licenced aggregate operation is listed for the site in Appendix 2 of the Wellington OP.

The City of Guelph is asking the Minister of Municipal Affairs and Housing to change this Designation in the Wellington County OP to the phrase “housing in principle”.

According to section 17 of the Planning Act the Minister of Municipal Affairs and Housing is the approval authority for the Official Plan for Wellington County. As the approval authority the Minister has the power to dictate what appears in the Official Plan. However, there is no provision in the Planning Act that describes how and why the Minister might exercise the power to amend an approved Official Plan in the absence of an Official Plan Amendment being requested by Wellington County using Section 21 of the Planning Act.

Section 47 of the Planning Act authorizes the Minister of Municipal Affairs and Housing to act in place of municipalities by using a Minister’s Zoning Order to impose final project specific zoning on properties. The Minister of Municipal Affairs and Housing, Hon Steve Clark, has stated that he will only use an MZO to approve applications made by developers for shovel ready projects. Both the Planning Act and the statements of Minister Clark make clear the MZO’s have nothing to do with Official Plan Amendments.

Q2 Why is the City of Guelph making an invalid request for an MZO for the Dolime Property rather than having Wellington County adopt an OP Amendment?

As a member of City Council committed to transparency in decision making can you give me your personal assurance that staff will provide complete and documented responses to the two above questions at the July 19 meeting of City Council?

If the questions are not clear or properly posed, I would welcome any questions or response you might want to share with me.

Best regards

Hugh Whiteley

Part Two

The Requirement for Transparency in Planning-Approval Procedures

The Purpose and Structure of the landuse Planning Process in Ontario

The Government of Ontario has the authority and responsibility for stewardship of all lands, public and private, within the Province. The Province exercises this authority and responsibility through a land use planning system led by provincial policy and specified in the Planning Act.

A purpose of the Planning Act is to provide for planning processes that are fair by making them open, accessible, timely and efficient. To achieve a fair open and accessible decision-making process the Planning Act contains measures and procedures for informing and obtaining the views of the public in respect of all steps in the decision-making process.

Under the Planning Act the Province has structured a landuse decision-making process that involves systematic consideration of what land uses are conducive to the betterment of the people and natural environment of Ontario. The structure chosen requires adoption of Official Plans to give broad direction on the types of land use to be assigned to various parcels of land and by implementation of Official Plans through adoption of Zoning by-laws to specify in detail what structures and what specific uses can be made of an individual parcel.

Under the Planning Act the Province has delegated much of the authority and responsibility for landuse decision-making to municipal councils. In Ontario it is municipalities that prepare Official Plans and approve Zoning By-laws. The Minister of Municipal Affairs and Housing retains the sole authority to approve Official Plans. Also, under Section 47 of the Planning Act, the Minister retains the authority to bypass public engagement and override municipal authority by imposing a zoning by-law through a Minister's Zoning Order.

Confidential Agreements not permitted by the Planning Act

In exercising the decision-making authority delegated to municipal Councils under the Planning Act Council is required to follow a fair open accessible process with procedures for informed public participation in the decision-making process. It is the City's role in planning approval to be an impartial judge of what land uses are most effective in securing the betterment of the people of Ontario and its environment.

Confidential agreements requiring Council to act as agents of a developer in an attempt to bypass all review and analysis steps and secure provincial approval of a landuse in the absence of analysis of need, costs or environmental impact is not allowed.

It was proper and appropriate for the City to enter into discussions with River Valley Development INC ,mediated by the ERT, to seek an agreement that would justify the City withdrawing its appeal of the permit to take water issued by the Minister of Environment Conservation and Parks. The without prejudice discussions under mediation are properly confidential.

The without prejudice confidential discussions involved only two parties – the City and the RVD. MECP was not included in the resolution discussions as these were unrelated to the PTTW. The mediated resolution discussions resulted in agreement on terms of an agreement. At this point the role of the mediator ceases.

The ERT, and MECP as a Party in the ERT Hearing, were informed by the City and by RVD that an agreement had been reached between the City and RVD on the basis of which the City was withdrawing Dolime Pathway at the Annexation step – which can proceed and bring the RVD Agreement to Council for debate and ratification once the terms of the agreement have been made public and shown to be legally valid.

The above description of the proceedings of the ERT hearing was provided to me by the MECP.

Missing Information to be provided by disclosure of the Dolime Agreement

The city has signed a confidential Agreement with River Valley Developments, the owner of the Dolime Quarry. Since the terms of the agreement are confidential, I can only speculate on what is contained. From statements made by City staff I understand that RVD have agreed to close the quarry at some future date in exchange for a guarantee from the City that the City will arrange approval of a large mixed-use development on the Quarry property. Until the settlement agreement is made public there is no information on the following issues:

1. When will excavation at the quarry cease and what will the configuration (depth of excavation) be at the time of closure?
2. Upon closure will the current rehabilitation plan be followed or will a new rehabilitation plan be established?
3. Has the City agreed to bear, in whole or in part, the capital and annual operating cost of rehabilitation of the quarry?
4. Has the City guaranteed approval of mixed-use residential use for the site by acting as agent for the developer in negotiations with the province to gain such approval?
5. Is the closure of the quarry conditional on final approval of a specific mixed use residential development?
6. Is there a commitment by the City to secure final approval and approve site plans by a specific date?

An additional important question is:

7. What are the estimated capital costs of providing municipal services to the mixed-use residential development approved in principle for the site?