

SOUTH CLAIR ROAD NEIGHBOURHOOD ASSOCIATION

December 10, 2021

Guelph City Hall
1 Carden St
Guelph, Ontario
N1H 3A1

Attention: Mayor Cam Guthrie and Members of Council

RE: Public Meeting - Shaping Guelph Official Plan Update
South Clair Road Neighbourhood Association

The South Clair Road Neighbourhood Association (Area 1 of Rolling Hills) retained a lawyer to provide legal advice with respect to the restrictive covenant issue. A summary of these findings is outlined below;

- The restrictive covenants commenced to be registered on individual lots in 1987 when Rolling Hills was located within the Township of Puslinch and the County of Wellington. It was not until 1993 that Rolling Hills was annexed into the City of Guelph.
- There is no consistency with respect to the restrictive covenants registered on the Rolling Hills lots. There are at least 3 different versions of the restrictive covenants and many Rolling Hills lots have no restrictive covenant registered at all on their lot.
- Restrictive covenants may only be enforced by another landowner specifically benefitting from the restrictive covenant through a court challenge. There is no consistency in the wording of the restrictive covenants with respect to which other lots benefit and may, therefore, enforce the restrictive covenants.
- Some of the restrictive covenants benefit only the developer Armel. If Armel does not retain an ownership in Rolling Hills they do not retain a benefit.
- Restrictive covenants are not enforceable by a municipality and do not bind a decision-making authority when considering a planning decision. Restrictive covenants do not hinder a Council's decision-making discretion. If they did, this could lead to potential abuse and a lack of natural justice in the public planning process.
- Some of the restrictive covenants permit 2 horses to be kept on the lots. Some of the restrictive covenants prohibit street lights to be installed. Some restrictive covenants appear to not have been carried forward in the deeds of subsequent purchasers.
- Some of the restrictive covenants refer to "not further subdividing the lots", however, the wording does not speak to an apartment or townhouse condominium being developed that would not require the lots to be further subdivided.

The OMB decision (now OLT) related to 331 Clair Road East dated August 19, 2015 states that:

"the owners of two of the neighbouring properties adjacent to the subject property, within Rolling Hills (including Ms. Riley), expressed interest early in the application process in severing their properties at 287 Clair Road East and 1 Kilkenny Place in order to add lands to the Appellant's proposed development." (page 21)

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*“The City of Guelph provided the Board with several past decisions in which the Board declined to consider restrictive covenants. In Gammon v. Kingston (City), 2005 Carswell Ont 5101, at para. 6, the Board found it did not have jurisdiction to interpret restrictive covenants and that the tests set out in the Planning Act were most relevant to the decision before it. With respect to an agreement containing restrictive covenants in Nash v. Guelph (City) Committee of Adjustment, 2006 Carswell Ont 4819, **the Board found, at para. 31, that “it does not have jurisdiction to make a finding on the status and enforceability of this agreement but rather it is for a civil court of competent jurisdiction.” The Board has reached a similar conclusion in relation to the restrictive covenants that have been raised as an issue in this case. The Board finds that the existence of a restrictive covenant is not an appropriate planning consideration in deciding the appeals before it. As noted earlier in this decision, the Board’s task is to determine whether or not the proposed development complies with the applicable local and provincial planning policies and instruments.**” (page 27)*

In conclusion, restrictive covenants are not an appropriate planning consideration when deciding on the Shaping Guelph Official Plan update.

Yours truly,

 **James Nagy** 12/13/21

James Nagy
Kilkenny Place

cc: Krista Walkey, Chief Planner for the City of Guelph