



Conservation Halton Hearing Board: Re: Permit No. 5927 - Intent to Cancel Permission

Conservation Halton
Zoom Meeting
Nov 17, 2022 1:30 PM - 4:30 PM EST

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NOTICE OF HEARING TO CANCEL PERMISSION

IN THE MATTER OF
The Conservation Authorities Act,
R.S.O. 1990, Chapter 27

AND IN THE MATTER OF Conservation Halton Permit #5927
Pursuant to Regulations made under
Section 28, Subsection 12 of the said Act and in accordance with
Ontario Regulation 162/06 Subsection 8.

TAKE NOTICE THAT The Halton Region Conservation Authority intends to cancel the permission granted to Ivan Rudyk and Shelley Young, **835 Spring Gardens Road, City of Burlington of the Regional Municipality of Halton under Permit #5927** for a “proposed 2-storey addition, rear balcony, covered front porch and an on-grade patio within the valley of Grindstone Creek” as it is of the opinion that the terms and conditions of the permit cannot be met, specifically condition 1. “That the work to be carried out in accordance with plans submitted on May 10th, 2018 and stamped APPROVED by: Cassandra Connolly, Regulations Officer” and more particularly that changes were made to the approved design or installation methods which were not submitted or reviewed and approved by Conservation Halton prior to their implementation as required.

TAKE NOTICE THAT you are invited to make a delegation at a hearing before the Board of Directors of The Halton Region Conservation Authority to show cause at the hearing why the permission should not be cancelled.

TAKE NOTICE THAT this hearing is governed by the provisions of the Statutory Powers Procedure Act. Under the Act, a witness is automatically afforded a protection that is similar to the protection of the Ontario Evidence Act. This means that the evidence that a witness gives may not be used in subsequent civil proceedings or in prosecutions against the witness under a Provincial Statute. It does not relieve the witness of the obligation of this oath since matters of perjury are not affected by the automatic affording of the protection. The significance is that the legislation is Provincial and cannot affect Federal matters. If a witness requires the protection of the Canada Evidence Act that protection must be obtained in the usual manner. The Ontario Statute requires the tribunal to draw this matter to the attention of the witness, as this tribunal has no knowledge of the affect of any evidence that a witness may give.

AND FURTHER TAKE NOTICE that The Halton Region Conservation Authority will provide you with at least five days notice of the date of the hearing and that if you do not attend at this Hearing, the Board of Directors of The Halton Region Conservation Authority may proceed in your absence, and you will not be entitled to any further notice in the proceedings.

DATED the 14 day of February 2022

Per: 
Hassaan Basit
President & CEO



905.336.1158
Fax: 905.336.7014
2596 Britannia Road West
Burlington, Ontario L7P 0G3
conservationhalton.ca

Protecting the Natural
Environment from
Lake to Escarpment

October 11, 2022

BY EMAIL

Bouchelev Law Professional Corporation
401 Bay Street, Suite 2112
Toronto ON M5H 2Y4

Attention: Arkadi Bouchelev.
Email: arkadi@bouchelevlaw.com

Counsel for the Permit Holders

Gardiner Roberts LLP
22 Adelaide St W, Suite, 3600,
Toronto, ON M5H 4E3

Attention: Kenneth Hull
Email: kjull@grllp.com

Counsel for the Conservation Halton (Staff)

Dear Counsel,

**Re: Hearing re: Notice of Intent to Cancel Permission – Conservation Permit No. 5927
Procedures – Hearing to Show Cause – Ontario Regulation 162/06, s. 8**

The purpose of this letter is to provide the parties to the above referenced hearing with direction with respect to the procedures to be followed at the hearing before the Board of Directors for the Halton Region Conservation Authority (the “Board”) to show cause why Permit No. 5927 should not be cancelled (the “Hearing”), pursuant to section 8 of Ontario Regulation 162/06 under the *Conservation Authorities Act*, R.S.O. 1990, c. 27 (“CAA”). This direction is being provided on behalf of the Board, who will be hearing this matter.

Permit No, 5927 was granted to Ivan and Rudyk and Shelly Young (the “Permit Holders”) with respect to 835 Spring Gardens Road, Burlington, Ontario. Notice of the Hearing was issued by the Halton Region Conservation Authority (“Conservation Halton”) and served on the Permit Holders on February 14, 2022.

The time and location for the Hearing are as follows:

Time: Thursday November 10, 2022, 9:00 am – 1:00 pm

Location: Virtual via Zoom - link to follow

As applicable, the Hearing will be conducted generally in accordance with the Conservation Halton *Hearing Procedures* (as amended) adopted by the Board under the authority of section 25.1 of the *Statutory Powers Procedures Act* (“*CH Hearing Procedures*”). A copy of these *Hearing Procedures* is attached

The following procedural directions are to be followed with respect to (1) Information Sharing Prior to the Hearing and (2) Hearing Procedures and time allocations for presentations and questioning.

Information Sharing Prior to Hearing

The Board directs as follows:

- By **Tuesday, November 1, 2022**, both the Conservation Halton Staff and the Permit Holder are to have served on each other via email and filed with the Board via email to the attention of Adriana Ingrid Birza, Board Secretary at abirza@hrca.on.ca all written information to be relied upon at the Hearing. Only information disclosed by this date should be presented at the Hearing. Specifically, no new technical information not provided by this date should be included in any slide presentations to be presented at the Hearing or at the Hearing itself.
- By **Tuesday, November 8, 2022**, both Conservation Halton Staff and the Permit Holder are to have served on each other via email and filed with the Board via email to the attention of the Adriana Ingrid Birza, Board Secretary at abirza@hrca.on.ca any slide presentations, in PowerPoint format, to be relied upon at the hearing.

Hearing Procedures/Time Allocations – Presentations and Questioning

Speaking time allocations are as follows:

- Board Chair Opening Remarks: **5 minutes**
- Presentation of Conservation Halton Staff’s Information: **maximum 30 minutes (total for all presenters)**
- Questions on behalf of Permit Holder: **20 minutes**
- Presentation of Permit Holder’s Information: **maximum 45 minutes (total for all presenters)**
- Questions on behalf of CH Staff: **20 minutes**
- Board’s Question: **20 minutes**

Both Conservation Halton Staff and the Permit Holder are directed to adhere strictly to these time limits. The presentation should summarize the written material submitted as the full written material will also be taken into consideration by the Board in making its decision. Please also note that pursuant to the *Statutory Powers Procedure Act*, the Board can limit questioning where it is satisfied that there has been full and fair disclosure of the facts presented.

Board Deliberations

Following completion of presentation of evidence and questioning, the Board will adjourn the Hearing and retire for deliberations. The Board may either reconvene on the same day or at some later date to advise of its decision and reasons.

Yours truly,

A handwritten signature in black ink, appearing to read 'Gerry Smallegange', written over a horizontal line.

Gerry Smallegange, Chair
Board of Directors, Halton Region Conservation Authority

HEARING PURSUANT TO SECTION 8 (1) OF ONTARIO REGULATION 162/06

**Cancellation of Conservation Halton Permit #5927
835 Spring Gardens Road, City of Burlington
CH File No.: A/18/B/50**

CONSERVATION HALTON STAFF SUBMISSION

November 10, 2022

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HEARING PURSUANT TO SECTION 8 (1) OF ONTARIO REGULATION 162/06

REPORT TO: Conservation Halton Hearing Board

REPORT NO: CHBD 06 22 01

FROM: Barbara Veale, Ph.D., MCIP, RPP
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Cassandra Connolly
Regulations Officer
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DATE: November 10, 2022

SUBJECT: Cancellation of Conservation Halton Permit #5927
835 Spring Gardens Road, City of Burlington
CH File No.: A/18/B/50

Recommendation

THAT the Conservation Halton Hearing Board **cancel Permit #5927 for a 2 storey addition, rear balcony, covered front porch, and an on-grade patio within the erosion hazard associated with Grindstone Creek at 835 Spring Gardens Road, City of Burlington, CH File No.: A/18/B/50, for the following reasons:**

- 1. The conditions of the permission have not been met; and**
- 2. The conditions of the permission cannot be met.**

Executive Summary

On May 28, 2018, Conservation Halton (CH) issued Permit #5927 for the construction of a minor addition to an existing dwelling, a rear balcony, covered front porch, and on-grade patio within the erosion hazard associated with Grindstone Creek at 835 Spring Gardens Road in the City of Burlington. However, contrary to the issued permission, the existing dwelling (to which the addition was to be attached) was substantially demolished and a new dwelling was found to be under construction without CH permission. A new permit application, with a geotechnical assessment, is required to ensure that the development

does not pose a risk to life or property, as this property is located within the erosion hazard of Grindstone Creek where there are known slope stability issues. **This Board Hearing is only for the cancellation of CH Permit #5927, as specified in Section 8 of Ontario Regulation 162/06 which deals solely with cancellation of permissions.**

Staff recommends that the CH Hearing Board cancel Permit #5927 for the following reasons:

1. The conditions of the permission have not been met because:

- i. The works were not carried out in accordance with the plans submitted and stamped approved as a condition of the permit. The existing dwelling was substantially demolished and was being reconstructed without proper authorizations. Permit #5927 only covers the construction of a minor addition to an existing dwelling, a rear balcony, covered front porch, and on-grade patio. Permission did not include the reconstruction of the main dwelling to which the approved addition was to be constructed.
- ii. CH staff that reviewed and approved the permit were not notified of any changes to the scope of the permit or the plans stamped approved, contrary to the stipulations of the Permit.
- iii. The information upon which Permit #5927 was approved was false and misleading.

2. The conditions of the permission cannot be met because:

- i. It is not possible to build an addition or attach porches or balconies to a structure which has been substantially demolished and/or to an unauthorized structure erected without proper permissions from either CH or the City of Burlington.

Report

Reason for CH Board Hearing

On May 28, 2018, Conservation Halton (CH) issued Permit #5927 for the construction of a minor addition to an existing dwelling (specifically an expansion of the existing single car garage with living space above), a rear balcony, covered front porch, and on-grade patio at 835 Spring Gardens Road, City of Burlington (Tab 1). Permit #5297 included a drawing, outlined in red by the applicants, showing the location and extent of the development. The drawing showed the existing dwelling and the development proposed to be added to the existing dwelling. However, contrary to the issued permission the existing dwelling was substantially demolished (i.e., down to the foundation) and a new dwelling was found to be under construction. The development found to be occurring was not authorized under Permit #5927 and is contrary to Section 2 of *Ontario Regulation 162/06*. Reconstruction and/or changes to size (including changes to building height) constitutes unauthorized development, as defined by section 28(25) of the *Conservation Authorities Act (CA Act)*.

In the opinion of CH staff, given that the works are beyond the scale/scope of what was approved under Permit #5927 and meet the definition of development under the *CA Act*, a new permit application, with a geotechnical assessment, is required to ensure that the development does not pose a risk to life or property. The property is located within the erosion hazard of Grindstone Creek valley where there are known slope stability issues. The need for a geotechnical assessment has been validated by an independent, geotechnical expert who has stated that the slope instability risk is “moderate potential” at the subject site (Tab 2).¹ A geotechnical assessment would, in part, provide recommendations to ensure the safety of the home and maintain slope stability at the site.

¹ This report was prepared for Conservation Halton subsequent to the issuance of the original permit, when it was discovered that the existing dwelling was substantially demolished (i.e., down to the foundation) and a new unauthorized dwelling was found to be under construction, which is contrary to Section 2 of Ontario Regulation 162/06.

CH staff notified the landowners that Permit #5927 was considered void because the conditions of Permit #5927 could not be met, as it is not possible to build an addition or attach porches or balconies to a structure which had been substantially demolished and/or to an unauthorized structure erected without proper permissions from either CH or the City of Burlington. CH's jurisdiction to void a permit was challenged and an application for declaratory relief and judicial review before the Superior Court of Ontario was ultimately referred to the Divisional Court. A Divisional Court hearing was held on December 13, 2021, and a decision was rendered on January 26, 2022. The Court did not grant the landowners' request for relief on declarations related to whether the works done on the property constituted development. However, the Court quashed CH's decision to void the permit without providing a show cause hearing thereby reinstating Permit #5297 (Tab 3). The Court ruled:

[57] In my view, the appropriate remedy in this case is to quash the Authority's decision. This means that the development permit originally issued by the Authority remains valid. It will be up to the Authority to decide whether to seek to cancel the permit and, if so, to do so in accordance with the procedure set out in section 8 of the O. Reg. 162/06.

Section 8 of *Ontario Regulation 162/06* states:

Cancellation of permission

8. (1) The Authority may cancel a permission granted under section 3 or 6 if it is of the opinion that the conditions of the permission have not been met. O. Reg. 162/06, s. 8 (1); O. Reg. 59/13, s. 6 (1).

(2) Before cancelling a permission, the Authority shall give a notice of intent to cancel to the holder of the permission indicating that the permission will be cancelled unless the holder shows cause at a hearing why the permission should not be cancelled. O. Reg. 162/06, s. 8 (2).

(3) Following the giving of the notice under subsection (2), the Authority shall give the holder at least five days notice of the date of the hearing. O. Reg. 162/06, s. 8 (3); O. Reg. 59/13, s. 6 (2).

Sections 3 (3) and 6 (3) of *Ontario Regulation 162/06* clearly state that CH employees designated by the Authority's executive committee (i.e., Board of Directors) may grant permissions for works in CH regulated areas. Section 10 of the regulation is also clear that the Authority may appoint officers (employees) to enforce the regulation. However, the regulation lacks clarity about how to cancel permissions in cases where the circumstances set out in an application fundamentally change (e.g., unauthorized works occur or where permits are issued based on false information) or where it is impossible to fulfill permit conditions.

Based on this lack of clarity and because CH's permit only authorized works for an addition and porches to an existing dwelling, as per the stamped and approved site plan, and not the construction of a new dwelling, a hearing was not offered on the grounds that the required conditions of development were impossible to fulfill. Instead, the applicants were offered, on multiple occasions, to work with CH through CH's Compliance Agreement process or to submit a new permit application, along with a geotechnical assessment and plans for the entire scope of development proposed, so that the landowners might be able to obtain all necessary approvals to move forward with their works. Staff's primary goal is to ensure that the long-term stability of the valley was maintained and that there is no risk to life or property damage resulting from development occurring on the site.

Despite the above, Permit #5927 was reinstated by the Divisional Court and it is now up to the CH Board to decide whether the permit should be cancelled, in accordance with the procedure set out in Section 8 of *Ontario Regulation 162/06*.

Delegated staff issued a notice of intent to cancel Permit #5927 on February 14, 2022 (Tab 4). The notice states that:

The Halton Region Conservation Authority intends to cancel the permission granted to Ivan Rudyk and Shelley Young, 835 Spring Gardens Road, City of Burlington of the Regional Municipality of Halton under Permit #5927 for a “proposed 2 storey addition, rear balcony, covered front porch and an on-grade patio within the valley of Grindstone Creek” as it is of the opinion that the terms and conditions of the permit cannot be met, specifically condition 1. “That the work to be carried out in accordance with plans submitted on May 10th, 2018, and stamped APPROVED by: Cassandra Connolly, Regulations Officer” and more particularly that changes were made to the approved design or installation methods which were not submitted or reviewed and approved by Conservation Halton prior to their implementation as required.

The applicants confirmed, through their legal counsel, that they were available for a special hearing of the CH Board on November 10, 2022 and were given more than five days notice of the date of the hearing, as required in the regulation. The applicants and their legal counsel have had CH’s draft report since April 2022.

Purpose of Hearing

This Board Hearing is only to determine whether CH Permit #5927 should be cancelled, as Section 8 of Ontario Regulation 162/06 solely deals with cancellation of permissions.

CH has not received a separate permit application with respect to the reconstruction of the existing dwelling or construction of a new dwelling. Should the applicants wish to submit a permit application for the construction of the dwelling, along with a geotechnical assessment, they would have rights to a Hearing before the CH Board if they had concerns with the conditions of a permit or if their application was recommended for refusal. However, that Hearing would be under Section 28(12) of the *Conservation Authorities Act*.

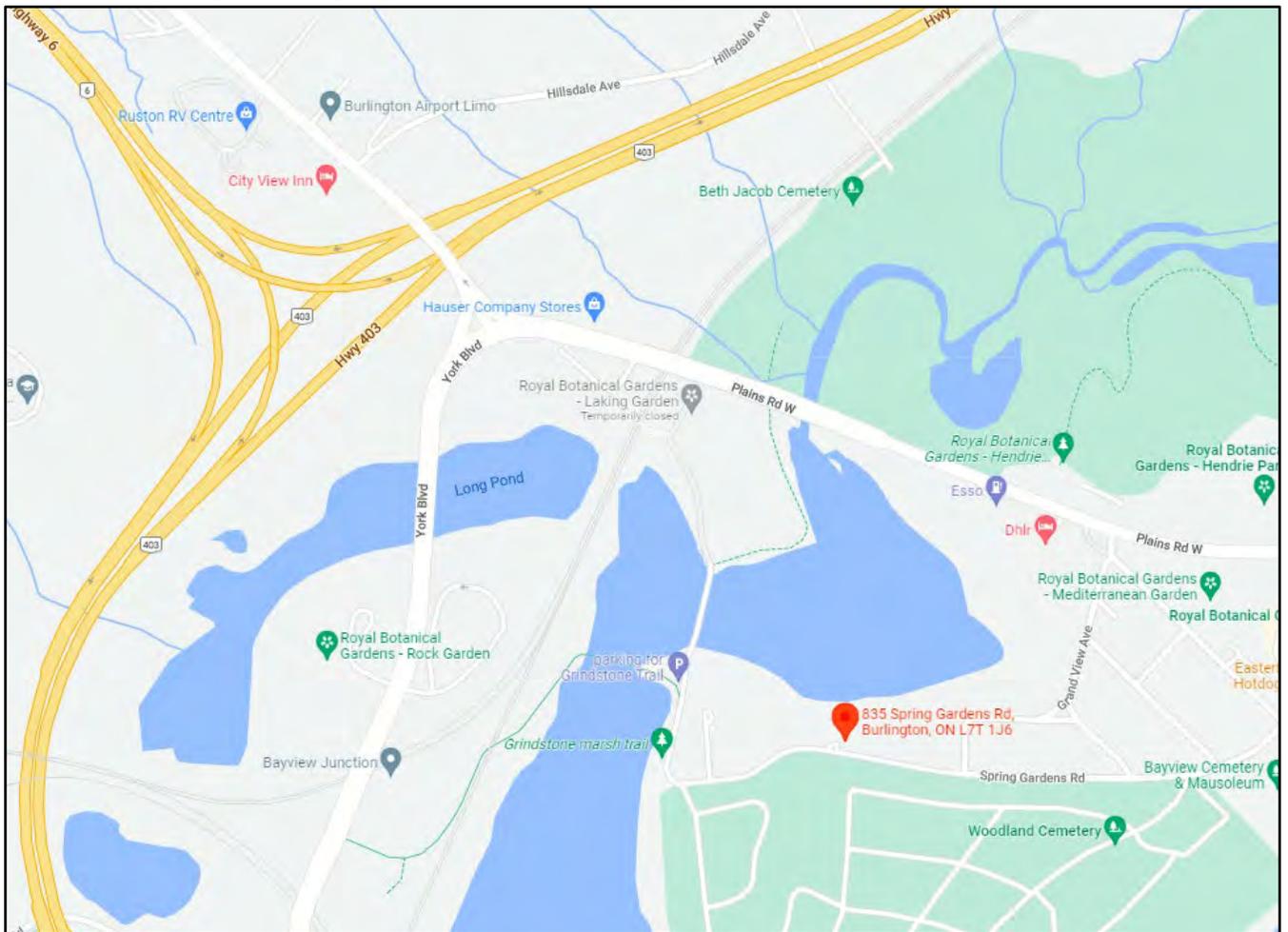
If the applicant’s submission for this Board Hearing includes a geotechnical assessment, staff is of the opinion that it is not relevant to the cancellation of the existing permit. This Hearing, under Section 8 of Ontario Regulation 162/06, is a procedural hearing only. Any new technical information submitted must be reviewed by qualified professionals (i.e., Conservation Halton’s geotechnical peer reviewer and staff), and new plans would also need to be submitted in support of a new permit application.

Background

Subject Property

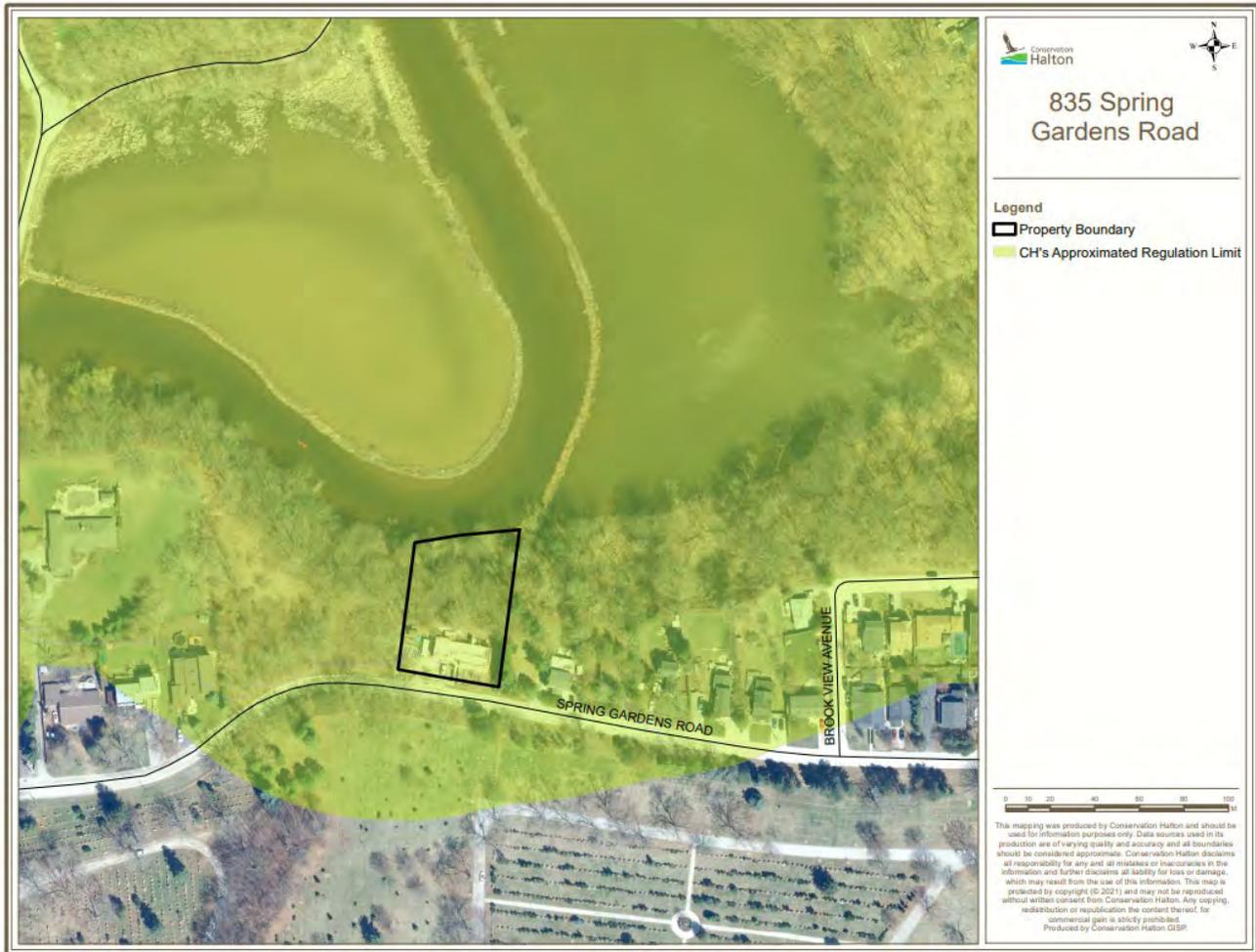
The subject property, 835 Spring Gardens Road, is located in the City of Burlington, north of Burlington Bay/Hamilton Harbour and south of Highway 403 (Figure 1).

Figure 1: Key Map – 835 Spring Gardens Road, Burlington



CH's Approximate Regulation Limit (ARL) mapping, which is available online and at CH's Administrative Office, shows that the entire property is located within CH's regulation limit (Figure 2).

Figure 2: CH's ARL Map – 835 Spring Gardens Road, Burlington



The subject property abuts Grindstone Creek and is located within the mapped erosion hazard associated with the valley of this watercourse. As such, the property is regulated by CH, pursuant to *Ontario Regulation 162/06*.

The subject property is in an area with known slope stability issues. From the rear of the dwelling to the toe of slope at the creek at this site, there is an approximately 25 metre elevation difference (about 82 feet). Figure 3 shows approximate contour information, at 1 metre intervals, and reveals the steepness of the valley slope. At its closest point, the rear of the dwelling was found to be approximately 6.5 metres (21 feet) from the physical top of bank in the rear yard. Figure 4 is a photo of the slope taken during a site visit in 2010 when a permit was applied for to replace a failing retaining wall with solid anchors and surficial treatment of the upper portion of the valley slope. Additional photos of the rear yard and slope can be found in Tab 5.

Figure 3 –Contour (1m) Information – 835 Spring Gardens Road, Burlington



Figure 4: Photo of slope at rear yard - 835 Spring Gardens Road, Burlington



Legislative, Regulatory & Policy Context

Section 28 (1) of the *Conservation Authorities Act* allows conservation authorities to make regulations in the area of its jurisdiction prohibiting development in hazardous lands. Development is defined in the *Conservation Authorities Act* as:

- a) the **construction, reconstruction**, erection or placing of a building or structure of any kind,
- b) **any change to a building or structure** that would have the effect of altering the use or potential use of the building or structure, **increasing the size** of the building or structure or increasing the number of dwelling units in the building or structure,
- c) site grading, or
- d) the temporary or permanent placing, dumping or removal of any material, originating on the site or elsewhere.[emphasis added]

CH administers *Ontario Regulation 162/06* which regulates development, interference with wetlands and watercourses, and interference with shorelines within CH's jurisdiction. The purpose of the regulation is to protect life and property from natural hazards such as flooding and erosion. If in the opinion of CH the control of flooding, erosion, pollution, conservation of land, and dynamic beaches are not affected, permission may be granted.

CH's Board of Directors has approved policies which outline the circumstances under which permission may be granted and that must be followed by CH staff when granting permission (*Policies and Guidelines for the Administration of Ontario Regulation 162/06 and Land Use Planning Document* (Revised November 26, 2020). If, after review, it is determined that the Board-approved policies can be met, staff that have been delegated approval authority by the CH Board may issue a permit.

CH's regulatory policies allow for the replacement of buildings or structures that already exist in a valley, as well as additions that are minor in nature, subject to criteria, including that a professional geotechnical engineer completes a geotechnical study to determine the risk of the proposed work (Policy 2.37.1). The geotechnical assessment is required to ensure the long-term stability of the valley wall is maintained and that no risk to life or property damage is anticipated. The geotechnical assessment may also make recommendations related to the construction of the dwelling (i.e., steps that can improve the long-term stability and safety of the home) to address the hazards.

Permission under Ontario Regulation 162/06 (CH Permit #5927)

On May 25, 2018, CH received payment and a fully signed Permit Application, for proposed development at 835 Spring Gardens Road, Burlington. The Application form, signed by Shelley Young and her agent Peter Vozikas of Empire Design, stated that "I/We, the undersigned, do solemnly declare that to the best of my/our knowledge and belief all of the above information is true". The signed application stated that the works included a two-storey addition to the side yard, rear cantilevered balcony, on-grade patio and covered front porch (Figure 5, Tab 6). Figure 6 shows an excerpt of the plan submitted as part of the permit application. The figure shows the proposed works highlighted in red, as well as the existing "1 story brick dwelling" as remaining (Tab 6). Given the minor scale and scope of the works proposed, and that staff understood that the main structure (i.e., existing dwelling) was to remain, a geotechnical assessment was not required, as it was not practical and unlikely that fundamental changes would be necessary for minor works (e.g., foundation upgrades, drainage/grading improvements).

Figure 5: Excerpt from signed CH Permit application

Description of Proposed Works: To propose a 2-storey addition to the side yard and a rear cantilevered balcony along with an on-grade patio. Also to include a covered front porch.

TERMS AND CONDITIONS

1. Permission granted by Conservation Halton cannot be transferred without prior written approval from Conservation Halton.
2. Approvals, permits, etc. may be required from other agencies prior to undertaking the work proposed. Conservation Halton permission does not exempt the applicant from complying with any or all other approvals, laws, statutes, ordinances, directive, regulations, etc., that may affect the property or the use of the same.
3. Conservation Halton may, at any time, withdraw any permission given if, in the opinion of Conservation Halton, the representations contained in the application for permission are not carried out or the conditions of the permit are not complied with.
4. If after a period of two (2) years from the date of the application, either 1) technical studies or information required to process the permit have not been submitted as requested, or 2) the permit application has been placed "on hold" pending other approvals and those other approvals have not yet been obtained, the application shall be considered to have been abandoned and Conservation Halton will close the file.

I/We, the undersigned, do solemnly declare that to the best of my/our knowledge and belief all of the above information is true.

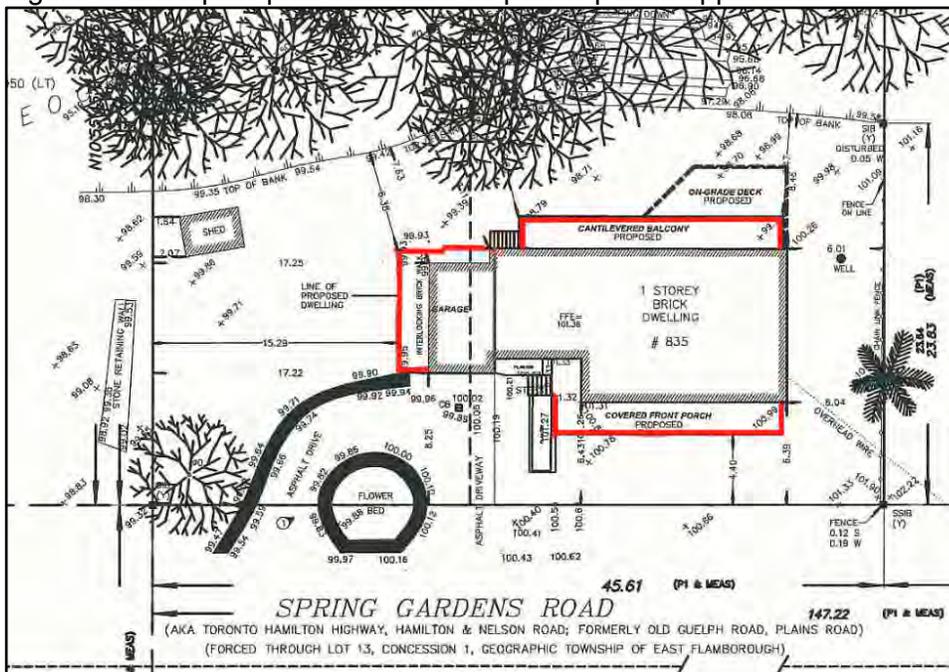
I/We acknowledge that authorized representatives of Conservation Halton may, at any time, enter into lands and buildings which are the subject of this Permit application in order to make any surveys, examinations, investigations, inspections or other arrangements which such representatives deem necessary.

I/We acknowledge that this information is collected to administer Ontario Regulation 162/06.

Signature of Owner: *A. Rudyk* Date: May 8, 2018
 Print Name: Ivan Rudyk Shelley Young

Signature of Agent: *P. Vozikas* Date: May 24, 2018
 Print Name: Peter Vozikas Agent to receive approved Drawings - 4 sets are required with submission

Figure 6: Excerpt of plan submitted as part of permit application



The general terms and conditions of a CH Permit are articulated on CH's permit application form. By signing a permit application, landowners and agents agree to the terms and conditions of a CH permission and declare that the information presented in the permit application is true. The terms and conditions included on CH's Permit Application form includes that CH may withdraw permission if the representations in the application are not carried out or the conditions of the permit are not complied with.

On May 28, 2018, Permit #5927 was issued for the construction of a minor addition to the existing dwelling (specifically a minor expansion to the existing single car garage with living space above), a rear balcony, covered front porch and on-grade patio. Figure 7 shows an excerpt from the approved permit and Figure 8 shows the stamped approved plan, which is part of the permit. The entire permit and permit cover letter are in Tab 1.

Figure 7: Excerpt from Permit #5927

Property Location: 835 Spring Gardens Road
in the (City, Town, Township) of: Burlington (Region/County) of: Halton

This permit is for the purpose of a proposed 2-storey addition, rear balcony, covered front porch and an on-grade patio within the valley of Grindstone Creek

This permit is issued on this 28th day of May, 2018 Expires: 28th day of May, 2020

And is subject to the following conditions:

1. That the work to be carried out in accordance with plans submitted on May 10th, 2018 and stamped APPROVED by: Cassandra Connolly, Regulations Officer
2. see reverse
3. **Conservation Halton is to be notified of the date of the commencement of construction. This permit (including drawings stamped approved by Conservation Halton) or a copy thereof, must be posted on the site and be available for inspection.**

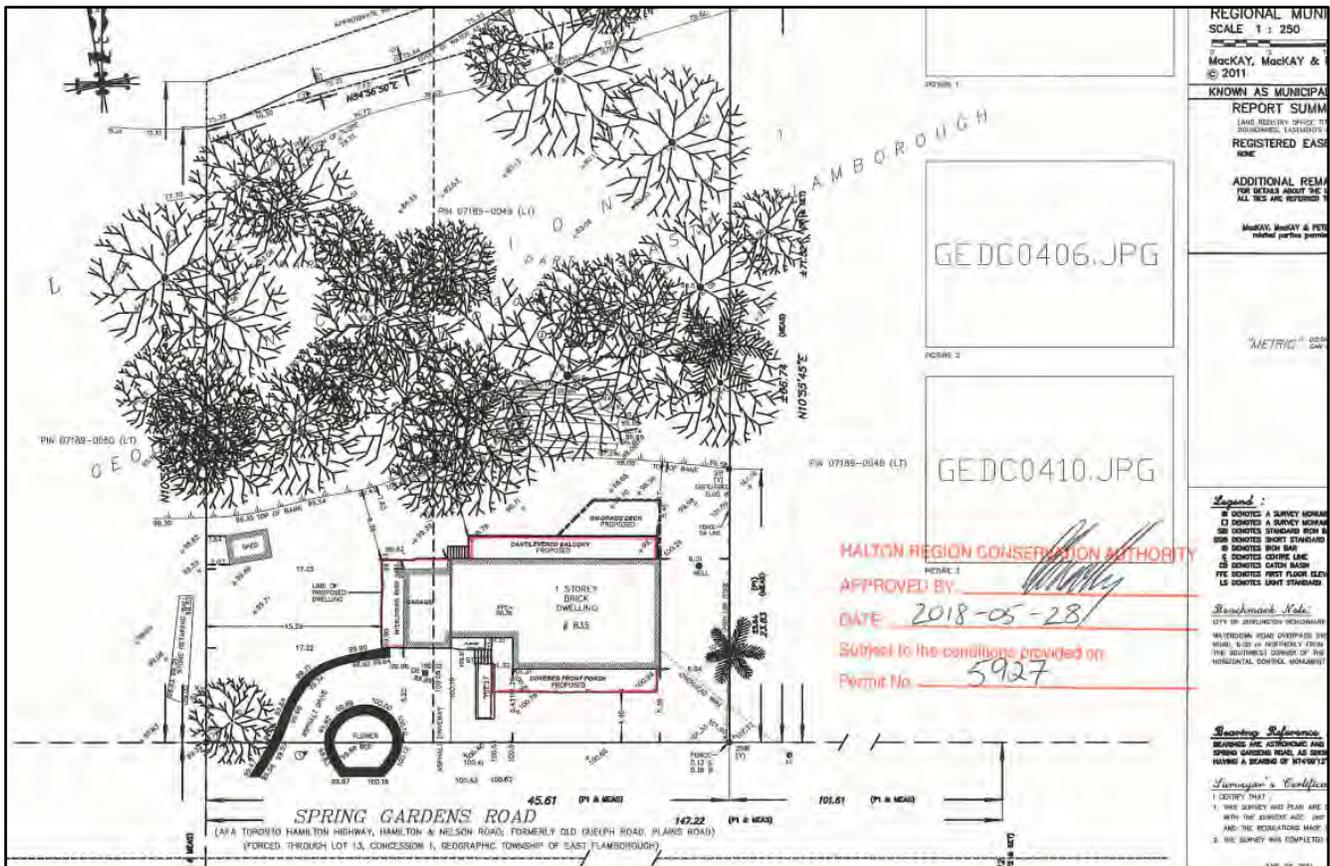
Conservation Halton may, at any time, withdraw any permission given under this regulation if, in the opinion of the Conservation Authority, the conditions of the permit are not complied with.

Authorized representatives of Conservation Halton may, at any time, enter lands and buildings, to make any surveys, examinations, investigations, and inspections to ensure that the works authorized by this Permit are being carried out in accordance with the terms of this Permit.

This permit does not preclude any approvals required by any other existing law and regulations.

Authorized by: Kellie McCormack on the 29 day of May '2018.
Kellie McCormack, MA, MCIP, RPP, Senior Manager, Development Planning

Figure 8: Excerpt of stamped, approved plan from Permit #5927



The permit cover letter states that any changes to the design or approved installation methods must be reviewed and approved by CH prior to installation and the permit states that the permission may be withdrawn if the conditions of the permit are not complied with.

Violation of Ontario Regulation 162/06 and Attempts to Resolve

On March 14, 2019, CH staff observed that the existing dwelling was demolished down to its foundation. The works occurring on site were beyond the scale and scope of what was approved under CH Permit #5927 and were therefore unauthorized by CH under Section 2 of *Ontario Regulation 162/06*. Figure 9 shows a picture of the original dwelling that was on the subject property. Photos of the demolition were posted on the homeowner's online blog where it was stated "goodbye old house" (Tab 12). CH was not advised at that time that the dwelling was to be substantially demolished. In the first picture below, the backhoe is demolishing a side of the existing dwelling that we understood would remain (Figure 10). The new addition was to be made on the garage side. Figures 11 and 12 show demolition of the entire dwelling. Figure 12 also shows new cinderblocks added to the existing foundation, which represents a change to the building height not authorized by CH or the City of Burlington. Had staff known that the existing house was to be substantially demolished, staff would have required that a geotechnical assessment be completed, and a new permit application submitted to include the reconstruction of the new dwelling.

Figure 9: Photo of original dwelling – 835 Spring Gardens Road, Burlington



Figure 10: Photo #1 of demolition from homeowners' blog



Figure 11: Photo #2 of demolition from homeowners' blog



Figure 12: Photo #3 of demolition from homeowners' blog



On March 20, 2019, the City of Burlington issued a Stop Work Order/ Order to Comply and, on March 26, 2019, CH issued a Violation Notice to the landowners of the subject property (Tab 7). The Violation Notice identified that the development occurring on site was beyond the scope of works originally approved and that additional technical information would be required (i.e., geotechnical assessment). The landowners were advised that although the works were unauthorized, CH staff was willing to work with them to bring the works into compliance through our Compliance Agreement process. Compliance Agreements allow Conservation Halton to work with a willing landowner to address violations. Once a Compliance Agreement is issued by CH, the owner would have the necessary approvals from CH.

From the time that the Violation Notice was issued, multiple attempts were made to resolve the issue and work with the landowners and their agent/contractor. CH staff met with the landowners' agent and contractor on April 3, 2019. Staff outlined CH's concerns with works occurring onsite without proper approvals, as well as what would be needed to bring the unauthorized development into compliance with CH Board-approved policies (e.g., geotechnical assessment, plans for the new dwelling). The contractor suggested that the south and east walls collapsed during construction and this necessitated reconstruction of the walls; however, CH was not contacted after this happened as is required as part of the permit. Moreover, no photographic evidence of this collapse has been presented. On April 4, 2019, CH staff sent a follow-up email to the landowners and their agent summarizing the meeting and next steps (Tab 8).

After that meeting, an additional meeting was booked for May 21, 2019, with senior CH staff and the landowners and their agent and contractor. However, this meeting was cancelled by the contractor around the same time that the City of Burlington rescinded their Order to Comply and Stop Work Order in the absence of consultation with CH. (As discussed below, that a second stop work order was subsequently issued by City of Burlington in September of 2019). CH did not receive notification from the proponents or City that the Orders had been rescinded.

On August 9, 2019, CH staff observed that works were taking place on the property despite not having a permit from CH, including a raised foundation, additional framing and an entire shingled roof over the structure (Figure 13). A letter was sent to the homeowners on August 22, 2019, to provide notice that

Permit #5927 was void, as the permit was for dwelling additions and was premised on the presence of the existing dwelling that had been demolished and is being rebuilt without proper permissions. The letter also advised the owners that CH wished to resolve the issue of unauthorized development and work with the landowners via CH's Compliance Agreement process (Tab 9).

Figure 13: Photo of house under construction without authorization



On September 6, 2019, CH staff sent a follow-up email to the landowners and their contractor. The landowners replied that they were willing to meet. CH staff and representatives from the City of Burlington agreed to meet with the landowners and their contractor on September 18, 2019; however, minutes before the meeting was scheduled to start, staff received an email from the landowners' legal counsel stating that the meeting should not take place. The City of Burlington issued a new Stop Work Order and Order to Comply on September 23, 2019, which is still in place.

CH continued to make offers to work with the landowners to resolve the issue of unauthorized development. The landowners did not agree to enter into a Compliance Agreement with CH and so an offer to submit a new permit application for the unauthorized works was provided. On December 18, 2019, CH's counsel sent a "With Prejudice" letter to counsel for the Applicants (Tab 10). This letter invited the Applicants to submit a permit application in relation to the new development and major renovation of the existing dwelling, as follows:

Halton Region Conservation Authority ("HRCA") requests that your clients submit a permit application with respect to the development currently underway on your client's property at 835 Spring Gardens Road. These works constitute development regulated pursuant to section 28 of the Conservation Authorities Act and Ontario Regulation 162/06 (the "Regulation"). The permit issued by HRCA on May 28, 2018 (Permit #5927) was not issued in contemplation of the current development, and does not apply to the current development. Accordingly, the current development has proceeded without permission and contrary to the Regulation.

On July 27, 2020, CH's counsel sent a further with prejudice letter to counsel for the Applicants (Tab 11). Counsel repeated the invitation by HRCA and explained that any appeal could be heard via Zoom hearings in light of the COVID-19 pandemic:

- (2) Despite the COVID 19 pandemic, Conservation Halton remains available to process a permit application in a relatively expeditious manner. We refer to the with prejudice offer to process a permit application in the December 18th letter sent to you (a copy of which is enclosed with this letter).
- (3) An advantage of the permit process is that should the parties disagree, there is a review and appeal process available under the Conservation Authorities Act. We wish to advise that the Board will hold Zoom hearings to ensure fair access to these review processes.

To date, the landowners have not agreed to submit a permit application for the unauthorized works.

CH has also now discovered that the information upon which Permit #5927 was obtained was misleading and that the intent all along was to demolish the existing dwelling and completely rebuild it. This was not disclosed to CH. A copy of the landowners' blog, the City Building Permit application, and contract between the contractor and landowners are attached to this report (Tab 12, Tab 13 & Tab 14). The landowners' blog includes photos and a description of the unauthorized works that were taking place on the subject property. Further, among other things, the City Building Permit application, submitted on August 24, 2018, states that the total value of the proposed works was estimated at \$100,000.00 and shows a different plan than what was submitted to CH. The contract between the landowners and contractor, signed by all parties March 29, 2018 (i.e., before the City Building Permit application was submitted and before the Conservation Halton application was submitted), outlines plans for substantial demolition, as well as a total contracted price of \$1,248,439.36 + tax.

Conclusions and Staff Recommendation

Based on the decision of the Divisional Court, CH Permit #5927 has been reinstated and it is now up to the CH Board to decide whether the permit should be cancelled.

CH Permit #5927 describes the approved works as:

“a proposed 2 storey addition, a rear balcony, covered front porch and an on-grade patio within the valley of Grindstone Creek.”

Condition #1 of CH Permit #5927 states:

“That the work to be carried out in accordance with plans submitted on May 10th, 2018 and stamped APPROVED by: Cassandra Connolly, Regulations Officer.”

Staff maintains that it is impossible to meet the conditions of CH Permit #5927 and, more specifically, that Condition #1 has not been met, as the permit was for additions to a dwelling that was demolished and is being rebuilt without proper authorizations. Moreover, the information upon which Permit #5927 was approved was false and misleading. The Applicants have pled in a Superior Court action that their builders and agents “Lifestyles, Baron, Inacio, Empire and Vozikas acted negligently and with reckless disregard for the financial risks to which they were exposing the Plaintiffs when they misrepresented the nature of the project to CH and failed to apply for the correct permit.”²

² Statement of Claim (Court File No. CV-21-00000909-0000) Electronically filed April 16, 2021, at para. 38.

Permission is required from CH for any development, as defined in the *Conservation Authorities Act*, in a regulated area. This includes reconstruction of a building or structure of any kind and/or any change to a building or structure that would have the effect of increasing the size.

CH has offered to work with the landowners through CH's Compliance Agreement process or to submit a permit application, along with a geotechnical assessment and plans for the entire scope of development, but the landowners have declined to submit a Permit or Compliance Agreement application. It is important that an application for permission be obtained with respect to past unauthorized construction and before any future reconstruction is undertaken, to prevent harm to persons and property before it can occur because of development. In staff opinion, a new permit application, with a geotechnical assessment, is necessary to ensure that the proposed redevelopment does not pose a risk to life or property, as this property is located within the erosion hazard of Grindstone Creek where there are known slope stability issues. The geotechnical assessment, in part, would provide recommendations to ensure the safety of the home and maintain slope stability at the site.

Should the landowners decide to submit a permit application for the construction of the dwelling, along with a geotechnical assessment, they would have rights to a Board Hearing if they had concerns with the conditions of a permit or if their application was recommended for refusal. However, that Hearing would be under Section 28(12) of the *Conservation Authorities Act*.

This Board Hearing is only for the cancellation of CH Permit #5927 because the conditions of the permit have not been met, as specified in Section 8 of Ontario Regulation 162/06 which deals solely with cancellation of permissions.

Staff recommends that the CH Hearing Board cancel Permit #5927 for a 2 storey addition, rear balcony, covered front porch, and on-grade patio within the erosion hazard associated with Grindstone Creek at 835 Spring Gardens Road, City of Burlington, CH File No.: A/18/B/50, for the following reasons:

1. The conditions of the permission have not been met because:

- i. The works were not carried out in accordance with the plans submitted and stamped approved as a condition of the permit. The existing dwelling was substantially demolished and was being reconstructed without proper authorizations. Permit #5927 only covers the construction of a minor addition to an existing dwelling, a rear balcony, covered front porch, and on-grade patio. Permission did not include the reconstruction of the main dwelling to which the approved addition was to be constructed.
- ii. CH staff that reviewed and approved the permit were not notified of any changes to the scope of the permit or the plans stamped approved, contrary to the stipulations of the Permit.
- iii. The information upon which Permit #5927 was approved was false and misleading.

2. The conditions of the permission cannot be met because:

- i. It is not possible to build an addition or attach porches or balconies to a structure which has been substantially demolished and/or to an unauthorized structure erected without proper permissions from either CH or the City of Burlington.

List of Figures

- Figure 1: Key Map – 835 Spring Gardens Road, Burlington
- Figure 2: CH's ARL Map – 835 Spring Gardens Road, Burlington
- Figure 3: Contour (1m) Information – 835 Spring Gardens Road, Burlington
- Figure 4: Photo of slope at rear yard at 835 Spring Gardens Road, Burlington
- Figure 5: Excerpt from signed, CH Permit application
- Figure 6: Excerpt of plan submitted as part of permit application
- Figure 7: Excerpt from Permit #5927
- Figure 8: Excerpt of stamped, approved plan from Permit #5927
- Figure 9: Photo of original dwelling – 835 Spring Gardens Road, Burlington
- Figure 10: Photo #1 of demolition from homeowners' blog
- Figure 11: Photo #2 of demolition from homeowners' blog
- Figure 12: Photo #3 of demolition from homeowners' blog
- Figure 13: Photo of house under construction

List of Exhibits

- Tab 1: CH Permit #5927 – May 28, 2018
- Tab 2: Billy Singh Affidavit
- Tab 3: Court decision
- Tab 4: CH Notice of Permit Cancellation
- Tab 5: Photos of rear yard and slope at 835 Spring Gardens Road, Burlington
- Tab 6: Signed permit application
- Tab 7: CH Violation Notice – March 26, 2019
- Tab 8: CH Email – April 4, 2019
- Tab 9: CH Letter – August 22, 2019
- Tab 10: Letter from CH's legal counsel – December 18, 2019
- Tab 11: Letter from CH's legal counsel – July 27, 2020
- Tab 12: Shelley Young's blog
- Tab 13: City of Burlington Building Permit
- Tab 14: Contract between landowners and contractor for dwelling reconstruction

Tab 1
CH Permit #5927 - May 28, 2018

May 28, 2018

Ivan Rudyk & Shelley Long
835 Spring Gardens Road
Burlington, Ontario
L7T 2J6

BY MAIL AND EMAIL

Dear Mr. Rudyk & Ms. Long:

**Re: Proposed 2-storey addition, rear balcony, covered front porch and on-grade patio within the valley of Grindstone Creek
835 Spring Gardens Road
City of Burlington
CH File: A/18/B/50**

Proposal

Please find enclosed **Permit No. 5927** issued in accordance with Ontario Regulation 162/06, for the above noted proposal.

Staff have reviewed the following files regarding the above noted proposal:

- *Surveyor's Real Property Report – redline revised by the applicant* prepared by Mackay Mackay & Peters June 8, 2011, received by Conservation Halton May 10, 2018, and stamped approved May 28, 2018.

The proposal includes the construction of a second storey, a rear cantilevered balcony and front covered porch additions to the existing dwelling, and to remove an existing deck to construct a new on-grade patio. The property is located adjacent to lands traversed by a tributary of Grindstone Creek and contains a portion of the flooding and erosion hazards associated with that watercourse. Specifically, the property is considered to be located entirely within the valley of Grindstone Creek. The property is also located adjacent to a wetland greater than 2 hectares in size. Conservation Halton (CH) regulates a distance of 15 metres from the greater of the flooding or erosion hazards associated with Grindstone Creek and 120 metres from the limit of wetlands which are greater than 2 hectares in size. CH staff attended the site May 23, 2018 to assess the top of bank erosion hazard associated with the valley in relation to the proposed development. Based on that site visit, staff is of the opinion that the proposal meets Policy 3.37.1 and Policy 3.37.2 of Conservation Halton's *Policies and Guidelines for the Administration of Ontario Regulation 162/06 and Land Use Planning Document*, Revised August 11, 2011.

Based on the above, this permit is approved with the following conditions:

- a. That disturbed areas be stabilized immediately following the completion of construction to the satisfaction of Conservation Halton.
- b. That effective sediment and erosion control measures be installed prior to starting work, maintained during construction and fully removed once all disturbed areas have been stabilized. That site conditions be monitored and that the sediment and erosion control measures be modified if site conditions warrant it.
- c. That excess fill (soil or otherwise) generated from the proposed works shall not be stockpiled or disposed of within any area regulated by Conservation Halton, pursuant to Ontario Regulation 162/06.

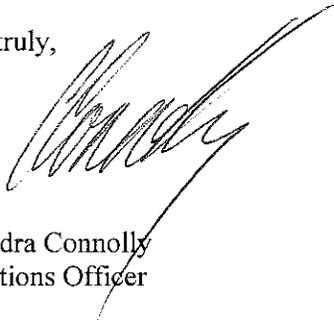
Please be sure that you read and understand all conditions listed on the enclosed Permit (and included below). Please also note that contravention of a Permit, or the terms and conditions of a Permit, is considered an offence under Section 28(16) of the *Conservation Authorities Act*. It is your responsibility to ensure that any person working under the authority of this Permit is familiar, and complies with, the terms and conditions.

Conservation Halton must be contacted a minimum of 48 hours prior to commencement of construction. This Permit or a copy thereof as well as all approved drawings must be available at the site. Any changes to the approved design or installation methods must be reviewed and approved by Conservation Halton staff prior to their implementation. This Permit is valid two years from the dated it is issued.

Please be advised that should you have any objection to any of the conditions of the permit, you are entitled to request a hearing before the Authority, in accordance with Section 28(12) of the Conservation Authorities Act. A written notice of your request for a hearing must be received by staff within 30 days of the date of this letter. Please note that if a hearing has been requested, this permit approval is withdrawn until such time as the hearing results have been finalized and commencement of any site alteration must not occur until the results of the Hearing are determined.

We trust the above is of assistance in this matter. Should you require further information, please contact staff at extension 2301.

Yours truly,

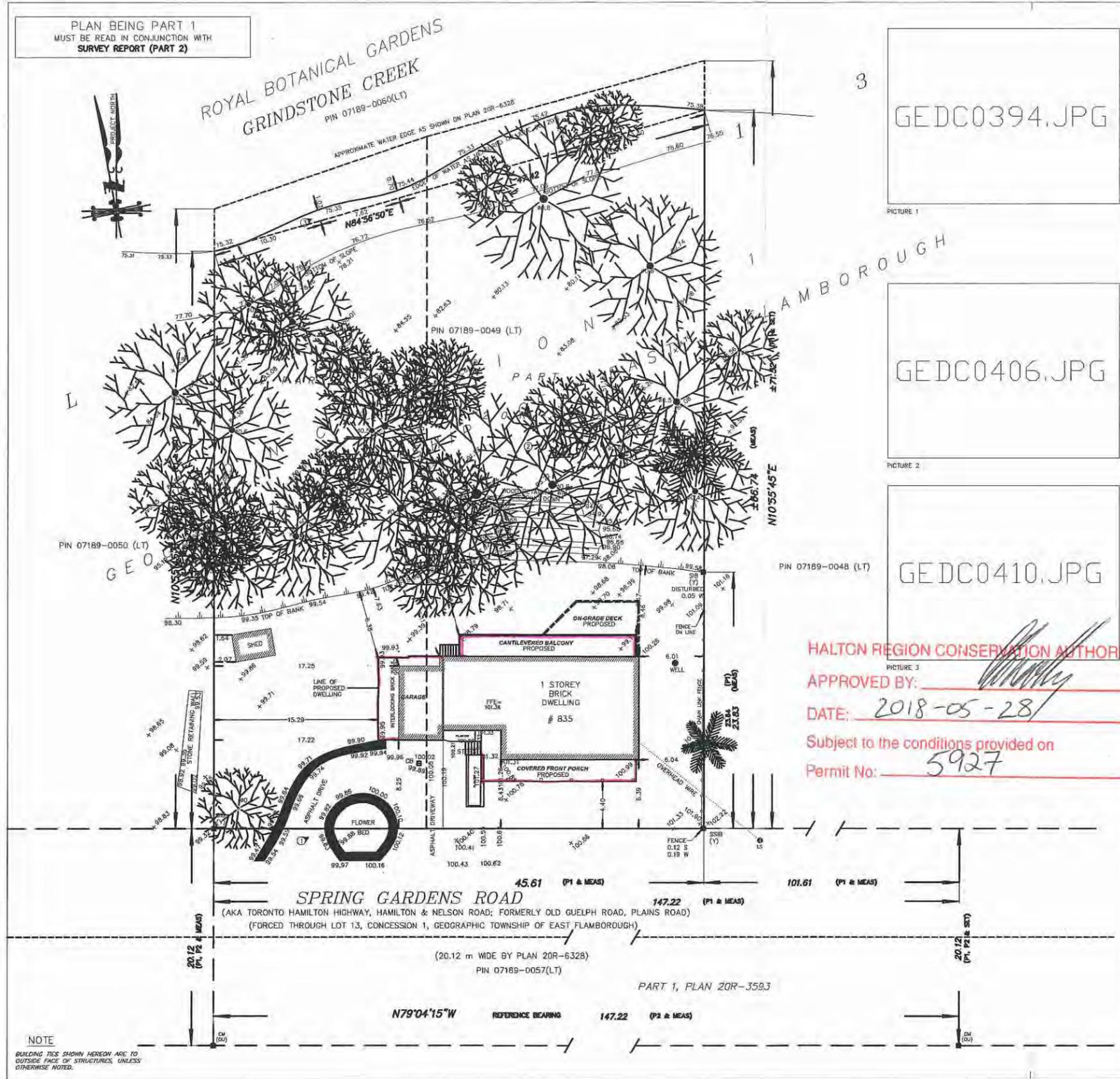


Cassandra Connolly
Regulations Officer

Encl. 1

Cc: Planning Department – City of Burlington (Permit and Drawings)
Peter Vozikas, Empire Design Company, Agent (Permit and Drawings by Email)

PLAN BEING PART 1
MUST BE READ IN CONJUNCTION WITH
SURVEY REPORT (PART 2)



HALTON REGION CONSERVATION AUTHORITY
APPROVED BY: *[Signature]*
DATE: 2018-05-28
Subject to the conditions provided on
Permit No: 5927

SURVEYOR'S REAL PROPERTY REPORT
WITH TOPOGRAPHIC INFORMATION
PLAN OF
**PART OF LOT 13
CONCESSION 1**
GEOGRAPHIC TOWNSHIP OF EAST FLAMBOROUGH
BEING IN THE
CITY OF BURLINGTON
REGIONAL MUNICIPALITY OF HALTON
SCALE 1 : 250
MackAY, MacKAY & PETERS LIMITED - ONTARIO LAND SURVEYORS
© 2011

KNOWN AS MUNICIPAL No. 835 SPRING GARDENS ROAD
REPORT SUMMARY (PART 2) (to be read in conjunction with Part 1)
LAND REGISTRY OFFICE TITLE INFORMATION ON SUBJECT PROPERTY INCLUDING
BOUNDARIES, EASEMENTS AND RIGHT OF WAYS - DATE JUNE 08, 2011.
REGISTERED EASEMENTS AND/OR RIGHTS-OF-WAY:
NONE
ADDITIONAL REMARKS:
FOR DETAILS ABOUT THE LOCATION OF THE FENCE AND FRONT INTERLOCKING WALKS SEE PLAN
ALL TIES ARE REFERRED TO PROJECT NORTH
Note:
MackAY, MacKAY & PETERS LIMITED grants IVAN RUDYK ("The Client(s)") their solicitor and other
related parties permission to use "Original Copies" of the Surveyor's Real Property Report in
transactions involving "The Client(s)".

"METRIC" DISTANCES SHOWN ON THIS PLAN ARE IN METRES AND
CAN BE CONVERTED TO FEET BY DIVIDING BY 0.3048

Legend:
■ DENOTES A SURVEY MONUMENT FOUND
□ DENOTES A SURVEY MONUMENT PLANTED
SB DENOTES STANDARD IRON BAR
SSB DENOTES SHORT STANDARD IRON BAR
IB DENOTES IRON BAR
CL DENOTES CENTRE LINE
CB DENOTES CATCH BASIN
FTE DENOTES FIRST FLOOR ELEVATION
LS DENOTES LIGHT STANDARD
DENOTES ROUND
WT DENOTES WITNESS MONUMENT
OC DENOTES CUT CROSS
CP DENOTES CONCRETE PIN
PIN DENOTES PROPERTY IDENTIFICATION NUMBER
(OU) DENOTES ORIGIN UNKNOWN
P1 DENOTES PLAN 20R-6328
P2 DENOTES PLAN 20R-3593

Benchmark Note:
CITY OF BURLINGTON BENCHMARK No. 33 ELEVATION = 116.441 METRES
WATERDOWN ROAD OVERPASS OVER HIGHWAY #403; TABLET IN THE TOP OF THE EAST SIDEWALK OF WATERDOWN
ROAD, 6.05 m NORTHERLY FROM THE SOUTHWEST CORNER OF THE ABUTMENT WALL AND 18.8 m NORTHERLY FROM
THE SOUTHWEST CORNER OF THE OVERPASS ABUTMENT OVER HIGHWAY #403, 0.2 m FROM THE CURB.
HORIZONTAL CONTROL MONUMENT D01643078

Bearing Reference:
BEARINGS ARE ASTROMOMIC AND ARE REFERRED TO THE SOUTHERLY LIMIT OF
SPRING GARDENS ROAD, AS SHOWN ON PLAN 20R-6328,
HAVING A BEARING OF N79°04'15"W.

Surveyor's Certificate:
I CERTIFY THAT:
1. THIS SURVEY AND PLAN ARE CORRECT AND IN ACCORDANCE
WITH THE SURVEYS ACT, THE SURVEYORS ACT AND THE LAND TITLES ACT
AND THE REGULATIONS MADE UNDER THEM.
2. THE SURVEY WAS COMPLETED ON THE 6th DAY OF JUNE, 2011.
JUNE 08, 2011
DATE

**MACKAY
MACKAY
& PETERS
LIMITED**
Established 1906
ONTARIO LAND SURVEYORS
3380 SOUTH SERVICE ROAD
BURLINGTON, ONTARIO L7N 3J5
PHONE: (905) 639-1375
FAX: (905) 333-9544
e-mail: halton@mmplimited.com
Records of Sewell & Sewell
and Yates & Yates LTD.
DRAWN BY: A.S.
PARTY CHIEF: J.M.
CHECKED BY: X
PROJECT NO.:
11-079



NOTE
BUILDING TIES SHOWN HEREON ARE TO
OUTSIDE FACE OF STRUCTURES, UNLESS
OTHERWISE NOTED.



2596 Britannia Road West
 Burlington, ON L7P 0G3
 Telephone: 905 336-1158 Fax: 905 336-6684

PERMIT #: 5927

FILE #: A/18/B/50

PERMIT

IN ACCORDANCE WITH SECTION 3 OF REGULATION 162/06, PERMISSION HAS BEEN GRANTED TO:

Owner's Name: Ivan Rudyk & Shelley Long Phone: 905-679-0706
 Mailing Address: 835 Spring Gardens Road, Burlington ON L7T 2J6
 Agent/Contractor: Empire Design Company Phone: 416-500-8989
5 North Ridge Crescent, Georgetown ON L7G 6E7

Property Location: 835 Spring Gardens Road
 in the (City, Town, Township) of: Burlington (Region/County) of: Halton

This permit is for the purpose of a proposed 2-storey addition, rear balcony, covered front porch and an on-grade patio within the valley of Grindstone Creek

This permit is issued on this 28th day of May, 2018 Expires: 28th day of May, 2020

And is subject to the following conditions:

1. That the work to be carried out in accordance with plans submitted on May 10th, 2018 and stamped APPROVED by: Cassandra Connolly, Regulations Officer
2. see reverse
3. **Conservation Halton is to be notified of the date of the commencement of construction. This permit (including drawings stamped approved by Conservation Halton) or a copy thereof, must be posted on the site and be available for inspection.**

Conservation Halton may, at any time, withdraw any permission given under this regulation if, in the opinion of the Conservation Authority, the conditions of the permit are not complied with.

Authorized representatives of Conservation Halton may, at any time, enter lands and buildings, to make any surveys, examinations, investigations, and inspections to ensure that the works authorized by this Permit are being carried out in accordance with the terms of this Permit.

This permit does not preclude any approvals required by any other existing law and regulations.

Authorized by: Kellie McCormack on the 29 day of May, 2018.
 Kellie McCormack, MA, MCIP, RPP, Senior Manager, Development Planning

1) WHITE: APPLICANT ORIGINAL COPY 2) GOLD: FILE COPY
 3) YELLOW: MUNICIPALITY COPY

2.

- a) That disturbed areas be stabilized immediately following the completion of construction to the satisfaction of Conservation Halton;
- b) That effective sediment and erosion control measures be installed prior to starting work, maintained during construction and fully removed once all disturbed areas have been stabilized. That site conditions be monitored and that the sediment and erosion control measures be modified if site conditions warrant it; and
- c) That excess fill (soil or otherwise) generated from the proposed works shall not be stockpiled or disposed of within any area regulated by Conservation Halton, pursuant to Ontario Regulation 162/06.

Tab 2
Billy Singh Affidavit

**ONTARIO
SUPERIOR COURT OF JUSTICE**

IVAN RUDYK and SHELLY YOUNG

Applicants

and

HALTON REGION CONSERVATION AUTHORITY

Respondent

STATEMENT OF BALWINDER SINGH

1. My name is Balwinder Singh. My address is 48 Ivy Lea Court, Brampton, in the Province of Ontario. My area of expertise is as follows: Geotechnical Engineering, Slope Stability and Erosion Risk Assessments, Slope Stabilization and Remediation, Construction Inspection and Testing.
2. My qualifications and employment and educational experiences in my area of expertise are as follows: Master of Applied Science, Civil Engineering, University of Waterloo, Ontario; working at Terraprobe Inc. as President Principal, Sr. Geotechnical Engineer and Head of Geotechnical Department at Brampton Head Office. Attached as **Exhibit "A"** is a copy of my curriculum vitae.
3. I have been engaged by Conservation Halton as an expert Geotechnical Engineer to provide an opinion regarding the subject construction at 835 Spring Gardens Road, Burlington. with respect to the stability and erosion risks of the valley slope situated to the north of the dwelling.
4. The instructions provided to me in relation to this proceeding were to provide geotechnical engineering review of the supplied information and commentary/ opinion pertaining to the geotechnical aspect of this case.
5. The opinion sought of me was in respect to the geotechnical considerations of this proceeding.

6. The scope of my assignment consisted of the following:
 - a. A geotechnical review of Lakeland Engineering Report, dated March 26, 2019
 - b. A geotechnical review of Toronto Inspection Report, dated November 20, 2019
 - c. A site visit conducted on December 17, 2020
7. I have given the acknowledgment of expert's duty in accordance with Form 53, attached as **Exhibit "B"**.
8. My report in this matter is attached as **Exhibit "C"**.

AFFIRMED by Balwinder Singh of the City of Brampton , in the Region of Peel, before me at the City of Toronto, in the Province of Ontario, on March 5, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits
(or as may be)

ELI BORDMAN

BALWINDER SINGH

This is Exhibit “A” referred to in the Affidavit of Balwinder Singh affirmed by Balwinder Singh of the City of Brampton, in the Regional Municipality of Peel, before me at the City of Toronto, in the Province of Ontario, on March 5, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Commissioner for Taking Affidavits (or as may be)

ELI BORDMAN

PROFESSIONAL EXPERTISE

- Geotechnical Engineering & Design
- Slope Stability & Streambank Erosion Studies
- Slope Stabilization & Rehabilitation
- Design & Evaluation of Retaining Walls
- Construction Project Management
- Shoreline Slope Risk Assessments
- Slope Stability Training Seminars to Conservation Authorities, Businesses, and Guest Lectures at University of Waterloo
- Construction Materials Engineering/Quality Control
- Earth Buildings & Land Development Projects
- Soil Retention Systems
- Construction Inspection & Supervision
- Peer Review and Expert Witness/Consultations
- Policy Development & Interpretation - Slopes & Valleys

EDUCATION

Master of Applied Science (M.A.Sc.),
University of Waterloo, 1996, Geotechnical and Geo-environmental Engineering

AFFILIATIONS

Registered Professional Engineer, Province of Ontario
Past Chair, Canadian Geotechnical Society, Southern Ontario Section, Toronto Group
Member Board of Directors and Regional Director, National Canadian Geotechnical Society

PRESENT RESPONSIBILITIES

Head of Geotechnical Department, Responsible for senior technical review and guidance, project management, administration of land development, slope stability, stream restoration and construction inspection and testing projects. Corporate direction, client relations and development

RELEVANT EXPERIENCE

➤ **POLICY DEVELOPMENT, INTERPRETATION, AND POLICY MANUAL PREPARATION**

Client: **Saugeen Valley Conservation Authority**
Development of Slope Stability Assessment Guidelines as a part of the Planning and Regulation Policy Manual

Client: **Ausable Bayfield Conservation Authority**
Development of Landowner Factsheet for Shoreline Slope Stability Risks and other Geotechnical Considerations

Client: **County of Elgin**
Geotechnical engineering considerations and input for the Elgin County Shoreline Management Plan and Policy update

Client: **Infrastructure Ontario**
Preparation of Infrastructure Ontario AFP (Civil Infrastructure Projects) Guidelines

➤ **EARTH DAMS, SLOPE STABILITY, STREAM RESTORATION AND OTHER PROJECTS**

Client: **City of Toronto c/o Aqufor Beech Ltd.**
Assignment: Geotechnical design and evaluation of flood protection berm/dyke and flood wall. Geotechnical investigation including location specific boreholes, modelling and analysis. Assessment of existing flood protection berm condition and provision of geotechnical engineering recommendation

B. (Billy) Singh, M.A.Sc., P. Eng.

Client: Pollutech EnviroQuatics Limited

Assignment: Geotechnical slope stability assessment of St. Clair river bed conditions (nearshore) for supplemental assessment to Dredge Feasibility Study, Sarnia

Client: Pollutech EnviroQuatics Limited

Assignment: Geotechnical Team Lead to investigate and provide recommendations for subsurface gas eruption at Indian Hills Golf Course, Lambton Shores

Client: City of Burlington

Assignment: Detailed design of armourstone retaining wall (about 6 m high) to replace a failed gabion retaining wall along Tuck Creek bank at Lake Ontario.

Client: Toronto & Region Conservation Authority

Assignment: Detailed design of Humber River erosion protection work with armourstone wall (about 6m high) and stabilization of the valley slope above.

Client: Toronto & Region Conservation Authority

Assignment: Amberlea Creek Erosion Control Project, detailed design of creek erosion protection work and stabilization of the valley slope.

Client: Town of Oakville

Assignment: Fourteen Mile Creek Erosion Control and Rehabilitation, detailed design of creek erosion protection work and stabilization of the valley slope.

Client: Credit Valley Conservation Authority

Assignment: Credit River Erosion Control and Slope Stabilization, detailed design of erosion protection work and slope stabilization.

Client: Ontario Ministry of Natural Resources (MNR)

Assignment: Preparation of the technical documents for "Accepted Geotechnical Practice for Design of Stable Slopes" subsequently included in the Great Lakes-St. Lawrence River Shoreline Policy.

Client: Toronto and Region Conservation Authority

Assignment: Detailed slope stability and erosion studies of the Lake Ontario Scarborough Bluffs. Delineation of Long-term Stable Slope Crest location and preparation of constraint mapping.

Client: County of Elgin

Assignment: Geotechnical engineering assessment of slope stability and erosion along the Lake Erie shoreline near Port Burwell. Slope mapping, slope stability analyses and erosion risk assessment and preparation of geotechnical report.

Client: City of Mississauga/Environ

Assignment: *Universal Drive Drainage Ditch*, The project included geotechnical investigation for the environmental remediation of the ditch slope and base, consisting of a detailed slope stability analysis based on a site specific borehole investigation, and geotechnical engineering recommendations for the long-term stable slope for the site condition. In addition, geotechnical engineering recommendations were provided for the site remediation works including excavation and backfill of the drainage ditch slopes, earth pressure design parameters, shallow ground water control, as well as the potential implications of the removal of the contaminated materials and vegetation on the stability of the ditch slopes, adjacent building foundations, underpinning and parking structures. The requirement of underpinning and shoring were evaluated and detailed design drawings were prepared for earthworks, backfilling, shoring and ground water control.



Client: City of Brampton

Assignment: *Brampton Works Operation Yard*, Geotechnical investigation involving significant earthworks, preparation of a Soil Management Plan for selection and sorting of the on-site impacted soils including disposal and on-site reuse of the soil, engineered fill design and construction, consultations, and inspection and testing services for the redevelopment of the City of Brampton Works Operation Yard.

Client: The Buffalo Group Developments Ltd.

Assignment: *Commercial Development*, Geotechnical investigation, subsurface soil characterization, and recommendations for alternate (shallow and deep) foundation options. The assignment included soil retention, retaining wall and excavation shoring recommendations, and inspection and testing services.

Client: Truscan Property Corporation/TD Bank Financial Group

Assignment: *TD Canada Trust Mississauga Headquarter*, Geotechnical investigation, design, consultations and Inspection & Testing services for Truscan Office Complex (TD Mississauga Headquarters). Earthworks, engineered fill design and construction, and foundation design recommendations.

Client: Chartwell Senior Housing/Spectrum Seniors Housing Development

Assignment: *Multi-storey Seniors Residence*, Geotechnical investigation, design, consultations and Inspection & Testing services for Greenway Retirement Community. The development consisted of a multi-storey building and townhouses. The property included significant amounts of impacted fill. Site cleanup was conducted using a stratified remediation approach.

Client: TACC

Assignment: *Nashville Residential Subdivision*, Geotechnical investigation, design, consultations and inspection & testing services for the Nashville Residential Subdivision consisting of about 900 residential lots. The site grading required significant earthworks including engineered fill construction. Recommendations for excavation and backfill, engineered and fill construction, groundwater control were provided.

CONTINUING EDUCATION

Construction Project Management

Design of Mechanically Stabilized Earth Structures, Retaining Walls

Slope Stability and Streambank Erosion, Slope Stabilization

Pavement Design and Asphalt Technology

Concrete Testing and Quality



This is Exhibit “B” referred to in the Affidavit of Balwinder Singh affirmed by Balwinder Singh of the City of Brampton, in the Regional Municipality of Peel, before me at the City of Toronto, in the Province of Ontario, on March 5, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Commissioner for Taking Affidavits (or as may be)

ELI BORDMAN

**ONTARIO
SUPERIOR COURT OF JUSTICE**

IN THE MATTER OF

B E T W E E N:

IVAN RUDYK and SHELLY YOUNG

Applicants

and

HALTON REGION CONSERVATION AUTHORITY

Respondent

APPLICATION UNDER Section 97 of the *Courts of Justice Act*, R.S.O. 1990, c.C43

ACKNOWLEDGMENT OF EXPERT'S DUTY

1. My name is Balwinder Singh. I live at the city of Brampton, in the Region of Peel.
2. I have been engaged by or on behalf of Halton Region Conservation Authority to provide evidence in relation to the above-noted court proceeding.
3. I acknowledge that it is my duty to provide evidence in relation to this proceeding as follows:
 - (a) to provide opinion evidence that is fair, objective and non-partisan;
 - (b) to provide opinion evidence that is related only to matters that are within my area of expertise; and
 - (c) to provide such additional assistance as the Court may reasonably require, to determine a matter in issue.
4. I acknowledge that the duty referred to above prevails over any obligation which I may owe to any party by whom or on whose behalf I am engaged.

Date _____

Signature

NOTE: This form must be attached to any expert report under subrules 53.03(1) or (2) and any opinion evidence provided by an expert witness on a motion or application.

This is Exhibit “C” referred to in the Affidavit of Balwinder Singh affirmed by Balwinder Singh of the City of Brampton, in the Regional Municipality of Peel, before me at the City of Toronto, in the Province of Ontario, on March 5, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Commissioner for Taking Affidavits (or as may be)

ELI BORDMAN

BACKGROUND

The subject property (835 Spring Gardens Road, Burlington, Ontario) is situated adjacent to lands traversed by a tributary of Grindstone Creek and the associated valley slope. The property is regulated by Conservation Halton as it contains a portion of the erosion hazard (slope instability and streambank erosion risk) associated with the watercourse and the valley slope. It is noted that Conservation Halton (CH) regulates a distance of 15 metres from the greater of the flooding or erosion hazards associated with Grindstone Creek and 120 metres from the limit of wetlands which are greater than 2 hectares in size.

SITE VISIT AND OBSERVATIONS

A site visit was carried out on December 17, 2020 to visually observe the current site conditions including the partially constructed house, tableland, valley slope and watercourse located below the slope. The following summarizes our understanding of the project background and provides salient observations:

- The Conservation Halton Permit No. 5927 permitted for a “proposed 2-storey addition, rear balcony, covered front porch and on-grade patio within the valley of Grindstone Creek”.
- In addition to the above works, the superstructure of the original one-storey structure was demolished and replaced with a new superstructure reportedly supported on the original foundation system (could not be confirmed), maintaining the same footprint.
- The visual observation indicated that two-storey addition to the garage at the west end had been constructed on a deep/pile foundation system.
- The house has been partially constructed and blocked off as the construction has ceased due to a work-stop order, therefore access to the interior of the partially built structure was not available.
- The height of the original exterior concrete 10” block foundation wall appeared to have been raised approximately by 3 new masonry block courses on the east and south walls (from 7’-1” tall to 9’-3” tall)¹.
- The north elevation includes a cantilevered deck, and a covered front porch on the south side.
- The rear (north) side of the dwelling (tableland) is followed by a steep slope (inclinations approaching 1 horiz. to 1 vert.) and height of about 20 m±.

¹ Lakeland Engineering Letter, dated March 26, 2019

- It is understood that an old timber retaining wall located within a portion of the slope behind the dwelling was previously replaced with a Filtrex/M Reinforced Severe Slope Stabilization System.
- The watercourse is located near the slope toe (apparently within 15 m of the slope toe).
- Based on visual observation (proximity of the watercourse and the slope configuration, i.e., height and inclination) the slope stability rating would likely classify the slope instability risk as “Moderate Potential” suggesting an investigation with site specific boreholes, piezometers, lab tests, surveying, and a detailed slope stability and streambank erosion risk report².

INFROMATION REVIEW AND COMMENTARY

As noted before, a geotechnical review of the following documents was carried out:

1. Lakeland Engineering Report, dated March 26, 2019
2. Toronto Inspection Report, dated November 20, 2019

Lakeland Engineering Report (March 26, 2019)

Lakeland Engineering was retained to review the existing exterior wall and foundation for the subject structure. The report, under the Observation sections includes the following (excerpts):

Observations:

Wall Heights

Existing exterior wall, see SK-1.

- *7'-1" tall, 10" concrete block foundation wall*
- *8'-0" tall, brick veneer wall w/2"x4" studs @ 16" o.c.*

Proposed exterior wall, see SK-1.

- *9'-3" tall, 10" concrete block foundation wall*
- *9'-0" tall, brick veneer wall w/2"x6" studs @ 16" o.c.*

² Table 8.1 - Slope Stability Rating Chart, Geotechnical Principles for Stable Slope: Ontario Ministry of Natural Resources

The contractor installed 3 courses of 10" concrete block to the existing foundation wall, see Figures 2-3, to achieve the proposed height of 9'-3".

The above excerpts indicate that the height increase of the foundation walls was planned likely to raise the basement ceiling. The additional height requiring installation of 3 additional courses would impart additional load on the building foundation thus altering the foundation pressure on foundation soil subgrade. The report in conclusion states that

“It is not structurally possible to leave the exterior wall(s), see A2-2 attached, since the foundation and exterior wall heights are to be raised”

It appears that the raising of the wall height was planned and in our understanding due to this height increase, leaving the exterior walls was not structurally possible (Lakeland, see above) and thus walls would needed to be demolished regardless. This addition would alter the original stress regime of the structure and pressure on the founding soils.

Toronto Inspection Ltd. Report (November 20, 2019)

Toronto Inspection Ltd, was retained to conduct a geotechnical review of project documents, conduct a site visit and provide a discussion and comments pertaining to the above matter. The letter states that

“Our purpose / scope of work was to visit the site to visually observe the current site condition, in relation to the previous site conditions, as inferred from the above documents, prior to the addition and renovation to the dwelling. The comments provided in the letter are based solely on the information provided by the client, Toronto Inspection Ltd. had not independently carried out a geotechnical investigation at the Site, and had not analysed the stability of the existing slope[...].” (Page 1, last paragraph)

“Toronto Inspection Ltd. had not conducted any geotechnical investigation at the Site for the proposed addition or renovations or for any slope stability analyses. Nor had Toronto Inspection Ltd., verified the exact location of the current wood framed superstructure in respect to the previous building envelope prior to start of the addition and renovation.” (Page 4, first paragraph)

“Conservation Halton Permit No. 5927 indicated that Conservation Halton Permitted for... Based on the construction materials and size of the one-storey wood framed dwelling in respect to the previous one-storey dwelling, it is unlikely that there will be an appreciable increase in bearing pressure on the soils underlying the existing foundation system.” (Page 4, second last paragraph)

The letter report in the end states that

“It is critical to note that Toronto Inspection Ltd.’s opinions expressed in this letter are solely based on.....Toronto Inspection Ltd. has not carried out any independent investigations / testing / analysis at the site to confirm the information provided. In addition, Toronto Inspection Ltd. does not take any responsibility for....these documents, provided by the client.”

Based on the geotechnical review of the above mentioned information, we note the following:

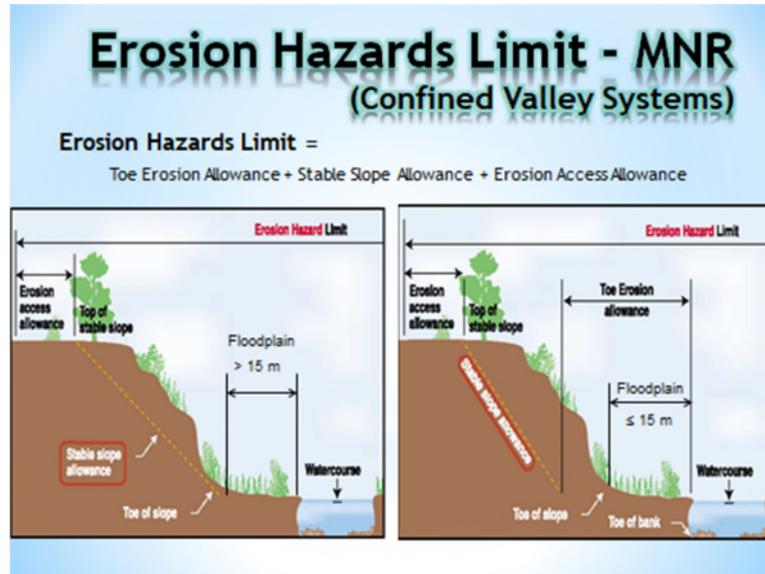
- The Conservation Halton Permit No. 5927 permitted for a “proposed 2-storey addition, rear balcony, covered front porch and on-grade patio within the valley of Grindstone Creek”. In addition to the above works, the superstructure of the original one-storey structure was been demolished and replaced with a new superstructure reportedly supported on the original foundation system (could not be confirmed), maintaining the same footprint.
- The height of the original exterior concrete 10” block foundation wall appeared to have been raised approximately by 3 new masonry block courses on the east and south walls (from 7’-1” tall to 9’-3” tall).
- The rear (north) side of the dwelling (tableland) is followed by a steep (inclinations approaching 1 horiz. to 1 vert.) and high (about 20 m±) slope.
- The watercourse is located near the slope toe (apparently within 15 m of the slope toe).
- Based on visual observation (proximity of the watercourse and the slope configuration, i.e., height and inclination) the slope stability rating would likely classify the slope instability risk as “Moderate Potential” suggesting an investigation with site specific boreholes, piezometers, lab tests, surveying, and a detailed slope stability and streambank erosion risk report.
- It appears that the raising the foundation wall height was planned and in our understanding due to this height increase, leaving the exterior walls was not structurally possible (Lakeland, see above) and thus walls would needed to be demolished regardless. This addition would alter the original stress regime of the structure and pressure on the founding soils.
- Toronto Inspection Ltd, report states that “Based on the construction materials and size of the one-storey wood framed dwelling in respect to the previous one-storey dwelling, it is unlikely that there will be an appreciable increase in bearing pressure on the soils underlying the existing foundation system.” However it does not provide any details to quantify the change in the pressure regime.

- Toronto Inspection Ltd. report states that
 - It had not independently carried out a geotechnical investigation at the Site, and had not analysed the stability of the existing slope[...].” (Page 1, last paragraph)
 - “Toronto Inspection Ltd. had not conducted any geotechnical investigation at the Site for the proposed addition or renovations or for any slope stability analyses. nor had Toronto Inspection Ltd., verified the exact location of the current wood framed superstructure in respect to the previous building envelope prior to start of the addition and renovation.”
 - Toronto Inspection Ltd. has not carried out any independent investigations / testing / analysis at the site to confirm the information provided.

- A slope stability and streambank erosion analysis for the valley slope was **not** carried out.

The site is located with the Conservation Halton regulated area. The dwelling is located within a relatively close proximity of the valley slope. The slope is significantly high and has a steep inclination. Further, a watercourse is located near the slope toe (appears to be within the 15 m of the slope toe. In light of the above, the following comments are provided:

1. The subject slope at this site is classified as a Confined Valley System with a watercourse at the slope toe.
2. Based on visual observation (proximity of the watercourse and the slope configuration, i.e., height and inclination) the slope stability rating would likely classify the slope instability risk as “Moderate Potential” suggesting an investigation with site specific boreholes, piezometers, lab tests, surveying, and a detailed slope stability and streambank erosion risk report.
3. Development near such valley systems requires establishment of the Long-Term Stable Slope Crest (LTSSC) location to determine Erosion Hazard Limit to direct development out of the hazard zone if possible, otherwise to implement such engineering measures as necessary to mitigate potential risk to persons and property.



The **Erosion Hazard Limit** is determined by applying **Toe Erosion Allowance** (based on the watercourse characteristics and proximity to the slope, the subsurface conditions comprising slope, and the bank erosion condition) plus **Stable Slope Allowance** (a setback line based on, including but not limited to, slope inclination, height, subsurface soil and groundwater) and an **Erosion Access Allowance**. These setbacks (as applicable) collectively establish the Erosion Hazard Limit for a Confined Valley System Slope such as the slope at this site.

In cases where there has been previous development on the site and where lot restrictions are such that this setback for proposed structure cannot be maintained, engineering measures are recommended based on a slope stability study to facilitate such development as needed which may include supporting portion of the structure located within the hazard zone on a deep foundation system (a deep foundation is a type of foundation system intended to transfer loads at deeper/intended/target depth(s) using foundation elements such as caissons, piles or possibly helical piles in this case) transferring the load below the Stable Slope Allowance setback line.

A study like such for this site would have likely required 2 to 3 boreholes and analysis with an approximate cost of about \$16 to 18k which would have established the LTSSC line and provided engineering measures to safely construct the structure if an encroachment was needed (due to space restrictions) within the erosion hazard limit.

We note that the Toronto Inspection Ltd. report does not address the main issue for this site that is to recommend necessary steps such as a slope stability study by advancing 2 or 3 boreholes and conduct analysis that would have provided an approach to safely construct the structure. The analysis in this case would have taken into consideration the watercourse characteristics such as its proximity to slope toe, degree of bank erosion, height and inclination of slope, groundwater condition, presence of fill materials etc. to establish the erosion hazard zone; and if adequate

setback for the structure could not be provided then this study would have recommended to safely construct this house using a deep foundation system to transfer load below the stable slope allowance line.

CONCLUSION

- Based on visual observation (proximity of the watercourse and the slope configuration, i.e., height and inclination) the slope stability rating would likely classify the slope instability risk as “Moderate Potential” suggesting an investigation with site specific boreholes, piezometers, lab tests, surveying, and a detailed slope stability and streambank erosion risk report³.
- It appears that the raising of the wall height was planned and in our understanding due to this height increase, leaving the exterior walls was not structurally possible (Lakeland, see above) and thus walls would needed to be demolished regardless. This addition would alter the original stress regime of the structure and pressure on the founding soils.
- In cases where there has been previous development on the site and where lot restrictions are such that this setback for proposed structure cannot be maintained, engineering measures are recommended based on a slope stability study to facilitate such development as needed which may include supporting portion of the structure located within the hazard zone on a deep foundation system transferring the load below the Stable Slope Allowance setback line.
- A study like such for this site would have likely required 2 to 3 boreholes and analysis with an approximate cost of about \$16 to 18k which would have established the LTSSC line and provided engineering measures to safely construct the structure if an encroachment was needed (due to space restrictions) within the erosion hazard limit.

³ Table 8.1 - Slope Stability Rating Chart, Geotechnical Principles for Stable Slope: Ontario Ministry of Natural Resources

Enclosure: Slope Stability Rating Chart

1.	SLOPE INCLINATION degrees	horiz. : vert.	Rating Value
a)	18 or less	3 : 1 or flatter	0
b)	18 - 26	2 : 1 to more than 3 : 1	6
c)	more than 26	steeper than 2 : 1	16
2.	SOIL STRATIGRAPHY		
a)	Shale, Limestone, Granite (Bedrock)		0
b)	Sand, Gravel		6
c)	Glacial Till		9
d)	Clay, Silt		12
e)	Fill		16
f)	Leda Clay		24
3.	SEEPAGE FROM SLOPE FACE		
a)	None or Near bottom only		0
b)	Near mid-slope only		6
c)	Near crest only or, From several levels		12
4.	SLOPE HEIGHT		
a)	2 m or less		0
b)	2.1 to 5 m		2
c)	5.1 to 10 m		4
d)	more than 10 m		8
5.	VEGETATION COVER ON SLOPE FACE		
a)	Well vegetated; heavy shrubs or forested with mature trees		0
b)	Light vegetation; Mostly grass, weeds, occasional trees, shrubs		4
c)	No vegetation, bare		8
6.	TABLE LAND DRAINAGE		
a)	Table land flat, no apparent drainage over slope		0
b)	Minor drainage over slope, no active erosion		2
c)	Drainage over slope, active erosion, gullies		4
7.	PROXIMITY OF WATERCOURSE TO SLOPE TOE		
a)	15 metres or more from slope toe		0
b)	Less than 15 metres from slope toe		6
8.	PREVIOUS LANDSLIDE ACTIVITY		
a)	No		0
b)	Yes		6
	SLOPE INSTABILITY RATING	RATING VALUES TOTAL	INVESTIGATION REQUIREMENTS
1.	Low potential	< 24	Site inspection only, confirmation, report letter.
2.	Slight potential	25-35	Site inspection and surveying, preliminary study, detailed report.
3.	Moderate potential	> 35	Boreholes, piezometers, lab tests, surveying, detailed report.
NOTES:	a) Choose only one from each category; compare total rating value with above requirements.		
	b) If there is a water body (stream, creek, river, pond, bay, lake) at the slope toe; the potential for toe erosion and undercutting should be evaluated in detail and, protection provided if required.		

Tab 3
Court Decision

ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

McWatt ACJ SCJ, Kristjanson and Favreau JJ.

BETWEEN:)
)
Ivan Rudyk and Shelley Young) Arkadi Bouchelev, for the Applicants
)
Applicants)
)
- and -)
)
Halton Region Conservation Authority) Kenneth Jull and Eliane Leal da Silva, for
) the Respondent
Respondent)
)
) **HEARD at Toronto (by videoconference):**
) December 15, 2021

Favreau J.

Overview

[1] The applicants, Ivan Rudyk and Shelley Young, seek an order quashing a decision made by the respondent, Halton Region Conservation Authority (the “Authority”), voiding a permit that would have allowed them to build an addition on their house. The applicants also seek extensive declaratory relief that would allow them to proceed with the project without further interference from the Authority.

[2] I am satisfied that the applicants are entitled to an order quashing the Authority’s decision. Section 8 of O. Reg. 162/06, which gives the Authority the power to cancel a permit, provides that permit holders are entitled to notice and a show cause hearing before a permit can be cancelled. The Regulation does not give the Authority the power to declare a permit “void” without a hearing. The Authority’s decision voiding the permit was both unreasonable and procedurally unfair. However, as discussed more fully below, it would not be appropriate for this Court to grant the broad declaratory relief sought by the applicants.

Statutory and regulatory authority of the Authority

[3] Before reviewing the background to the dispute between the parties, it is helpful to understand the Authority’s statutory and regulatory powers.

[4] The *Conservation Authorities Act*, R.S.O. 1990, c. C.27, provides for the establishment of conservation authorities in municipalities in Ontario. Section 28(1) of the Act gives conservation authorities the power to establish regulations addressing various matters, including “prohibiting, regulating or requiring the permission of the authority for development if, in the opinion of the authority, the control of flooding, erosion, dynamic beaches or pollution or the conservation of land may be affected by the development”.

[5] Section 28(25) of the *Act* defines “development”, which includes:

- (a) the construction, reconstruction, erection or placing of a building or structure of any kind,
- (b) any change to a building or structure that would have the effect of altering the use or potential use of the building or structure, increasing the size of the building or structure or increasing the number of dwelling units in the building or structure...

[6] In this case, the relevant regulation is O. Reg. 162/06, titled *Halton Conservation Authority: Regulation of Development, Interference with Wetlands and Alterations to Shorelands and Watercourses*.

[7] Section 2(1) of O. Reg. 162/06 prohibits developments in areas that may be affected by various events, including “erosion”.

[8] Section 3(1) of O. Reg. 162/02 gives the Authority the power to grant permission for development in the areas restricted by section 2(1), where the Authority is of the “opinion, the control of flooding erosion, dynamic beaches, pollution or the conservation of land will not be affected by the development”. Subsection (2) requires the Authority to give the permission in writing and subsection (4) provides that the Authority can designate one or more employees to exercise the powers under subsection (1).

[9] Section 8 of O. Reg. 162/02 addresses the cancellation of permits given under section 3(1), and requires notice and a show cause hearing:

- 8. (1) The Authority may cancel a permission granted under section 3 or 6 if it is of the opinion that the conditions of the permission have not been met.
- (2) Before cancelling a permission, the Authority shall give a notice of intent to cancel to the holder of the permission indicating that the permission will be cancelled unless the holder shows cause at a hearing why the permission should not be cancelled.
- (3) Following the giving of the notice under subsection (2), the Authority shall give the holder at least five days notice of the date of the hearing.

Background

The applicants' construction project

[10] The applicants own a bungalow, built in 1957, that backs onto a ravine in Burlington.

[11] The applicants decided to renovate their house, in part to make it more accessible for Ms. Young, who has health issues due to a car accident.

[12] The applicants hired Lifestyles by Barons ("Lifestyles") to renovate their house. In turn, Lifestyles retained Empire Design Company ("Empire") to prepare design drawings. As part of their contracts, Lifestyles and Empire were to apply for the necessary permits and approvals, including a minor variance from the City of Burlington's Committee, a building permit from the City of Burlington and a development permit from the Authority.

[13] Empire submitted the application for the development permit to the Authority in early May 2018. The application form described the project as a "2-storey addition to the side yard" and was categorized as an "alteration/addition to existing structure". With the application, Empire submitted a survey that labelled the bungalow as a "1 Storey Brick Dwelling". The Authority did not ask for drawings at the time of the application. However, one of the Authority's staff members visited the site before the permit was approved.

[14] The Authority issued the permit to the applicants on May 28, 2018. The permit was for a "proposed 2-storey addition, rear balcony, covered front porch and on-grade patio". The cover letter stated that the Authority had to approve any changes to the approved design.

[15] The applicants also obtained the other necessary approvals, including a building permit issued by the City of Burlington on November 1, 2018.

[16] In January 2019, Lifestyles began demolition work. The south and east walls were not meant to be part of the demolition. However, both walls partially collapsed when the roof to the building was removed.

[17] After the partial collapse of the two walls, an engineering firm retained by the applicants determined that the building was structurally unsound. Lifestyles demolished the remaining parts of the walls and rebuilt them in the same locations with new materials. The City of Burlington inspected and approved the rebuilt walls.

[18] On March 15, 2019, the Authority communicated with the City of Burlington stating that the Authority had not approved the work on the house. On March 20, 2019, the City issued a stop-work order and an order to comply to the applicants.

[19] On March 26, 2019, the Authority issued a Notice of Violation to the applicants. The Notice stated that the applicant had not obtained permissions to undertake "the full demolition and/or construction of an entire dwelling" and that they were in violation of section 2 of O. Reg. 162/06. The Notice encouraged the applicants to enter into a compliance agreement, including by obtaining a geotechnical assessment showing compliance with the Authority's Policy.

[20] On May 17, 2019, the City of Burlington lifted the stop work order and order to comply on the basis that the work had been required because the structure was unsafe. The City also stated that the applicants could commence construction work in compliance with their permits.

[21] The applicants resumed work on the house.

[22] However, on August 22, 2019, the Authority sent a letter to the applicants notifying them that the development permit it had issued was “void”. The Authority provided the following rationale for its decision:

The subject property is located within the erosion hazard associated with the valley of Grindstone Creek. It is also in an area with known slope instability issues. Given that the scale/scope of works has changed from what was originally permitted, a geotechnical assessment is required to ensure that the long-term stability of the valley wall is maintained and that there is no risk to life or property damage.

CH issued Permit #5927, on May 28, 2018, for the construction of a minor addition to the existing dwelling (specifically an expansion of the existing single car garage with living space above), a rear balcony, covered front porch and on-grade patio. However, since CH issued that permit, the existing dwelling was completely demolished and a new dwelling is now under construction. Consequently, the works occurring onsite are beyond the scope of what was approved under Permit #5927. The scale and scope of works currently underway would have required additional supporting information (i.e., geotechnical assessment). Accordingly, Permit #5927 is void, as it is not possible to permit an addition to a building that no longer exists.

[23] In its decision letter, the Authority referred to the process in section 8 of O. Reg. 162/06 for cancelling a permit. However, the Authority stated “[i]n our view, given that the permit is void, a hearing is not warranted, as the circumstances that were set out in the application for the permit have fundamentally changed”.

[24] The letter also requested that the applicants enter into a “compliance agreement” and that they pay a fee of \$3,200 “with a 100% surcharge”.

[25] The evidence from cross-examinations of the Authority’s affiant is that the decision to “void” the permit was not made or approved by the Authority’s Board. Rather, it was made by Authority employees.

[26] On September 23, 2019, the City of Burlington issued a stop work order to the applicants, requiring them to obtain approval from the Authority before proceeding any further with the work.

[27] In December 2019 and July 2020, the Authority sent “with prejudice” communications to the applicants, inviting them to submit a development permit application for a “new dwelling”.

Proceedings in the Superior Court

[28] The applicants initially brought an application in the Superior Court seeking extensive declaratory relief, including declarations that its construction project was not a “development” for the purpose of the *Conservations Authorities Act* and O. Reg. 162/06. In the alternative to the substantive declaratory relief sought, the applicants asked for a declaration that the voiding of the permit was *ultra vires* because the Authority failed to comply with the process in s. 8 of O. Reg. 162/06.

[29] For the purpose of the application, the parties prepared extensive affidavit evidence, including expert reports, and conducted cross-examinations.

[30] In a decision dated August 23, 2021, Sharma J. transferred the matter to the Divisional Court to be heard as an application for judicial review. He explained the basis for this decision as follows:

[The] factual allegations, as well as the legal issues on which the applicants seek orders, challenge the exercise of statutory power and decision-making by the respondent conferred upon it under the *Act* and O. Reg. 162/06. The declarations sought by the applicants call into question the authority of the respondent to regulate matters which the applicants say is not “development”, as well as the exercise of the respondent’s authority to cancel or void a permit previously issued. Whether that authority exists and whether it was exercised properly is what this entire application is about.

It is therefore a judicial review application challenging a statutory power or statutory power of decision. Section 2(1)2 of the *JRPA*, states that the court may, on an application for judicial review, grant relief by way of a declaration “in relation to the exercise, refusal to exercise or proposed exercise of a statutory power.” The court may also set aside a decision for error of law (s.2(2)), or where a decision is unauthorized or invalid (s.2(4)). These are the types of remedies the applicants seek. Section 6(1) of the *JRPA*, however, states that judicial review applications are to be made to the Divisional Court.

[31] As part of his decision, Sharma J. left the issue of costs of the application to the Divisional Court in the context of the application for judicial review

Other litigation

[32] The Authority has brought charges against the applicants under the *Provincial Offences Act*, R.S.O. 1990, c. P.33. In that context, the Authority obtained a search warrant in relation to the work on the property.

[33] On March 19, 2021, the applicants commenced a civil action against Lifestyles, Empire and others, seeking damages for negligence. In the statement of claim, the applicants allege that the plaintiffs misrepresented the nature of the project to the Authority.

Issues and analysis

[34] The applicants argue that the Authority has no jurisdiction over the work on their house other than the garage. They claim that the work they plan to do is on the existing footprint of the building and that this work thereby does not constitute a “development” as defined in the *Conservation Authorities Act*. They seek broad declaratory relief arising from this argument that would essentially allow them to proceed with the work without further interference by the Authority. In the alternative, the applicants challenge the Authority’s decision to “void” their development permit on the basis that the Authority did not have the jurisdiction to cancel the permit without following the process in section 8 of O. Reg. 162/06.

[35] For its part, the Authority argues that the application for judicial review should be dismissed on the basis that it is premature and/or moot, or on the basis that the applicants’ initial permit application was a “sham”. Essentially, these arguments turn on the Authority’s position that the project it approved is fundamentally different from the project the applicants are executing and the applicants therefore need a new permit to proceed with the project. From this perspective, the Authority argues that the application for judicial review has no utility because the crux of the issues between the parties is whether the applicants will be entitled to a development permit for their new project.

[36] In my view, the broad declaratory relief sought by the applicants is an overreach. It is not the role of the Divisional Court on an application for judicial review to grant broad declarations regarding the rights of a party under a statute. Rather, the Court reviews the decision of an administrative decision maker to determine whether the decision was reasonable and/or procedurally fair. The relief available flows from that determination. Accordingly, the role of the Court on this application for judicial review is to determine whether the decision of the Authority voiding the permit was unreasonable or procedurally unfair and, if so, what remedy to grant in the circumstances. As set out below, in my view, the Authority’s decision was both unreasonable and procedurally unfair. The appropriate remedy is to quash the decision. This means that the permit remains valid, but the Authority is not precluded from following the process set out in section 8 of O. Reg. 162/06 to give notice to the applicants that it intends to cancel the permit and to hold a show cause hearing.

[37] Insofar as the issues raised by the Authority are concerned, in my view they have no merit. They all presuppose that the Authority was entitled to “void” the development permit. However, as reviewed below, the Authority was not entitled to do so without following the process in section 8 of O. Reg. 162/06.

[38] Based on the issues as described above, the analysis below is organized as follows:

- a. Standard of review;
- b. Whether the decision to void the permit was unreasonable;
- c. Whether the decision to void the permit was procedurally unfair;
- d. Whether the application for judicial review should be dismissed on the basis that it is moot, premature and/or based on a sham; and

- e. The appropriate remedy.

Standard of review

[39] The standard of review to be applied to the substance of the Authority’s decision is reasonableness: *Laforme v. The Corporation of the Town of Bruce Peninsula*, 2021 ONSC 5287 at paras. 18-19.

[40] In accordance with the Supreme Court of Canada’s decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, at paras. 99-101, the principles to be applied in deciding whether a decision is reasonable include the following:

- a. Reasonableness is concerned with justification, transparency and intelligibility. A decision is unreasonable if it is internally incoherent or if it is untenable having regard to the relevant factual and legal constraints.
- b. The party challenging the decision has the burden of showing that it is unreasonable. A court should not set aside a decision based on minor flaws or peripheral shortcomings. To justify a finding of unreasonableness, the flaws or shortcomings must be sufficiently central or significant to the merits of the decision.
- c. The role of the court is to review the decision and not to decide the issue afresh. The focus of the reasonableness inquiry is therefore on the decision-making process and the outcome.

[41] There is no standard of review to be applied to the issue of procedural fairness. Rather, the Court is to determine whether the decision was procedurally fair having regard to the factors in *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817.

The Authority’s decision to “void” the permit was not reasonable

[42] The Authority’s decision to “void” the permit was not reasonable because it had no authority to cancel a development permit without following the process set out in section 8 of O. Reg. 162/06.

[43] In *Vavilov*, at para. 101, the Supreme Court held that one of the potential “fundamental flaws” in an administrative decision that would justify a court’s intervention is where the decision is “untenable in light of the ... legal restraints that bear on it”. Again, at para. 108, the Court emphasized that administrative decision makers are constrained by their constituting statutes and that any exercise of discretion “must ultimately comply ‘with the rationale and purview of the statutory scheme under which it is adopted.’”

[44] In this case, section 8 of O. Reg. 162/06 sets out the process for the Authority to cancel a development permit. It requires the Authority to give notice to the permit holder and to hold a show cause hearing. There is no provision in the *Conservation Authorities Act* or O. Reg. 162/06 that allows the Authority to “void” a permit without following this process. The Authority’s use of the word “void” is merely a matter of semantics. What the Authority did was cancel the applicant’s permit. In doing so, it was required to follow the process set out in the regulation.

[45] Another fundamental flaw in the Authority’s decision to cancel the permit without notice and a show cause hearing is that the O. Reg. 162/06 suggests that this is a decision that cannot be made by the Authority’s staff but that must be made by the Authority’s Board. Section 3(4) of O. Reg. 162/06 gives the Authority the ability to delegate to its employees the power to grant a permit. However, there is no such delegation in section 8 of O. Reg. 162/06. In this case, the decision was made by Authority staff members who, on the face of the regulation, did not have the authority to make such a decision.

[46] The Authority justified its decision to “void” the permit and forego the process set out in section 8 of O. Reg 162/06 on the basis that the applicants were building a new structure and “the circumstances that were set out in the application for the permit have fundamentally changed”. However, it is evident from the record and issues before us that there is a significant dispute between the parties about the scope of the original permit, and specifically the extent to which it allowed the applicants to add a second floor to parts of the building. The effect of the collapsed walls is an added complication that raises issues about whether rebuilding those walls amounts to a change in the scope of work that may justify canceling a permit pursuant to section 8(1) of O. Reg. 162/06. However, these are precisely the types of issues that should be addressed and resolved at a show cause hearing. The applicants should have an opportunity to put their evidence and arguments before the proper decision makers, after which the Authority can decide whether the permit should be cancelled or not.

[47] Through their extensive records, including expert evidence, the parties seemed to invite this Court to resolve the issue of whether the work on the building exceeded the scope of the original permit. I address this point more fully in the section dealing with remedy, however I wish to emphasize again that this is not the proper role of the Divisional Court on an application for judicial review. An application for judicial review is to be decided on the record before the original decision maker. Much of the parties’ evidence was developed for the application in the Superior Court and, ultimately, before this Court. The evidence may ultimately be relevant at a show cause hearing. But it is not the role of this Court to step into the shoes of the show cause decision makers, which are presumably members of the Authority’s Board, to make the decision they should have made if the proper process had been followed.

The Authority’s decision to “void” the permit was procedurally unfair

[48] The Authority’s decision to “void” the permit was procedurally unfair because the Authority did not follow the requirements in section 8 of O. Reg. 162/06 and because it did not follow the basic requirements of procedural fairness for cancelling a permit.

[49] As held in *Vavilov*, at para. 77, the content of the duty of procedural fairness is to be determined in accordance with the factors established by the Supreme Court in *Baker*. Those factors include “(1) the nature of the decision being made and the process followed in making it; (2) the nature of the statutory scheme; (3) the importance of the decision to the individual or individuals affected; (4) the legitimate expectations of the person challenging the decision; and (5) the choices of procedure made by the administrative decision maker itself”.

[50] In this case, as mentioned above, the regulatory scheme provided for notice and a show cause hearing. The Authority did not provide these procedural guardrails and the decision was procedurally unfair on that basis alone.

[51] In addition, in my view, even in the absence of such regulatory requirements, the Authority was still required to give the applicants notice and an opportunity to be heard. The applicants obtained a permit from the Authority to renovate their home. They embarked on the work and the authority cancelled their permit mid-work without notice and without an opportunity to be heard. The Authority's decision had a significant impact on the applicants' interests, including their financial interests. This is the type of decision that warrants at least some procedural safeguards. In this case, the Authority did not afford the applicants any such safeguards.

The application for judicial review should not be dismissed on the basis of prematurity or mootness or that the original application for a permit was a sham

[52] The Authority's arguments that the application for judicial review should be dismissed on these preliminary issues have no merit because they assume that the Authority was justified in declaring that the permit was "void".

[53] The doctrine of prematurity provides that, absent exceptional circumstances, on an application for judicial review, the Court should not intervene until the administrative proceedings have fully run their course: *Volochay v. College of Massage Therapists of Ontario*, 2012 ONCA 541. In this case, the Authority takes the position that, because the applicants are required to apply for a new permit given the change in the scope of work, it is premature for this Court to decide whether the Authority's decision was reasonable or procedurally unfair. This argument misconceives the doctrine of prematurity and the nature of the mischief in this case. As far as the applicants are concerned, the administrative proceedings are complete. They had a permit. The permit was voided without giving them an opportunity to participate in a show cause hearing. The Authority's position that the applicants can and should apply for a new permit assumes that the voiding of the original permit was justified. It was not justified in the absence of a show cause hearing. The doctrine of prematurity therefore has no application.

[54] The doctrine of mootness provides that, absent issues that engage the public interest, the court should not decide an issue that is no longer live between the parties: *Borowski v. Canada*, [1989] 1 S.C.R. 342. In this case, the Authority takes the position that the validity of the original permit is moot given the change in the scope of work. Again, the issue of whether there has been a change in the scope of work that would justify cancelling the permit is at the heart of the dispute between the parties. It is an issue that should have been decided at a show cause hearing. There is therefore no basis for dismissing the application for judicial review as moot.

[55] Finally, the Authority argues that the application for judicial review should be dismissed because the original application for a permit was a sham. The Authority argues that the permit was a sham because the applicants misrepresented the scope of the work they intended to do. Essentially, the Authority argues that, because judicial review is discretionary, the Court should decline to grant a remedy that would reward the applicants' alleged dishonesty. This argument again relies on the Authority's position that there is a difference between the scope of work represented in the permit application and the actual work the applicants have performed and intend

to perform. As already stated, this is at the heart of the dispute between the parties. Based on the record before the Court, it is far from obvious that the original permit application was a sham. There are several references to a two-storey addition and the precise scope of the work is evident from drawings provided to the Authority a few months after it issued the permit. There is no merit to the Authority's argument that the application should be dismissed on the basis that the original permit application was a sham.

[56] Ultimately, the Authority's arguments reviewed above highlight the misguided manner in which the Authority has dealt with the issues in this case. Section 8 of O. Reg. 162/06 provides a clear process for deciding whether a development permit should be cancelled on the basis that a permit holder has not complied with a condition in the permit. Rather than complying with this requirement, the Authority has persisted in avoiding this process by taking the position that the scope of work undertaken by the applicants was different from what they applied for. However, this is precisely the issue a show cause hearing is meant to address. Unfortunately, the Authority's persistent failure to abide by its procedural obligations has imposed significant costs and delays on all parties.

Appropriate remedy

[57] In my view, the appropriate remedy in this case is to quash the Authority's decision. This means that the development permit originally issued by the Authority remains valid. It will be up to the Authority to decide whether to seek to cancel the permit and, if so, to do so in accordance with the procedure set out in section 8 of the O. Reg. 162/06.

[58] As indicated above, both sides appear to invite this Court to decide whether the permit should be cancelled. The applicants argue that the work at issue is not a "development" within the meaning of the *Conservation Authorities Act* or that, even if it is, it falls within the scope of the original permit. They ask this Court to make declarations that would allow them to continue with the work without further interference from the Authority. For its part, as indicated above, the Authority seems to argue that it is self-evident that the work at issue is a development and that it is not within the scope of the original permit.

[59] In *Vavilov*, at para. 142, the Supreme Court stated that, as a general rule, courts should "respect the legislature's intention to entrust the matter to the administrative decision maker". The Court noted a few exceptions where it may be appropriate for courts to decide the issue; for example, where the result is inevitable or where there has been significant delay or there is urgency. In this case, the outcome is not inevitable. For example, the applicants have legitimate arguments regarding the original scope of the permit and the Authority may have legitimate concerns regarding whether the walls collapsing changed the scope of the work such that the permit should be cancelled and the applicants should be required to apply for a new permit. The parties' evidence and their arguments should form part of the record on a show cause hearing. This Court should not decide these issues as a matter of first impression.

[60] I appreciate that, from the applicants' perspective, there has been extensive delay in this matter. However, this is not sufficient to justify having this Court essentially conduct the show cause hearing. In addition, while most of the blame for the delay can be laid at the Authority's feet for consistently seeking to defend its position that it had authority to "void" the permit without a

show cause hearing, some of the delay is also attributable to the applicants for seeking to challenge the Authority's decision through an application for declaratory relief rather than through an application for judicial review. This outcome may cause further delay if the Authority chooses to pursue the cancellation of the permit. However, it will ensure that the decision is made following the proper process by decision-makers who have been entrusted by the legislature to decide the issues.

Costs

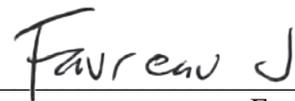
[61] As the successful parties, the applicants are entitled to their costs. The applicants seek costs on a partial indemnity basis in the amount of \$117, 482.87, all inclusive. This amount is far higher than the costs typically awarded by the Divisional Court for a hearing of this nature. However, if the respondents had been successful, they would have sought costs in the amount of \$289.417.59, which is close to three times the amount sought by the applicants.

[62] In my view costs of \$100,000, all inclusive, to the applicants is reasonable in the circumstances of this case. This amount accounts for the fact that the Authority was successful in its motion to move the application from the Superior Court to the Divisional Court, but nevertheless recognizes that the applicants have incurred significant costs due to Authority's failure to follow the process mandated by its own regulation.

Conclusion

[63] For the reasons above, the application for judicial review is granted. The decision of the Conservation Authority voiding he permit is quashed. The Conservation Authority is to pay costs of \$100,000 all inclusive to the applicants for the original application and the application for judicial review.

I agree



Favreau J.



McWatt A.C.J. S.C.J.

I agree



Kristjanson J.

Released: January 26, 2022

CITATION: Rudyk v. Halton Region Conservation Authority, 2022 ONSC 518
DIVISIONAL COURT FILE NO.: 779/21
DATE: 20220126

ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

McWatt ACJ SCJ, Kristjanson and Favreau JJ.

BETWEEN:

Ivan Rudyk and Shelley Young

Applicants

– and –

Halton Region Conservation Authority

Respondent

REASONS FOR JUDGMENT

FAVREAU J.

Released: January 26, 2022

Tab 4
CH Notice of Permit
Cancellation

NOTICE OF HEARING TO CANCEL PERMISSION

IN THE MATTER OF
The Conservation Authorities Act,
R.S.O. 1990, Chapter 27

AND IN THE MATTER OF Conservation Halton Permit #5927
Pursuant to Regulations made under
Section 28, Subsection 12 of the said Act and in accordance with
Ontario Regulation 162/06 Subsection 8.

TAKE NOTICE THAT The Halton Region Conservation Authority intends to cancel the permission granted to Ivan Rudyk and Shelley Young, **835 Spring Gardens Road, City of Burlington of the Regional Municipality of Halton under Permit #5927** for a “proposed 2-storey addition, rear balcony, covered front porch and an on-grade patio within the valley of Grindstone Creek” as it is of the opinion that the terms and conditions of the permit cannot be met, specifically condition 1. “That the work to be carried out in accordance with plans submitted on May 10th, 2018 and stamped APPROVED by: Cassandra Connolly, Regulations Officer” and more particularly that changes were made to the approved design or installation methods which were not submitted or reviewed and approved by Conservation Halton prior to their implementation as required.

TAKE NOTICE THAT you are invited to make a delegation at a hearing before the Board of Directors of The Halton Region Conservation Authority to show cause at the hearing why the permission should not be cancelled.

TAKE NOTICE THAT this hearing is governed by the provisions of the Statutory Powers Procedure Act. Under the Act, a witness is automatically afforded a protection that is similar to the protection of the Ontario Evidence Act. This means that the evidence that a witness gives may not be used in subsequent civil proceedings or in prosecutions against the witness under a Provincial Statute. It does not relieve the witness of the obligation of this oath since matters of perjury are not affected by the automatic affording of the protection. The significance is that the legislation is Provincial and cannot affect Federal matters. If a witness requires the protection of the Canada Evidence Act that protection must be obtained in the usual manner. The Ontario Statute requires the tribunal to draw this matter to the attention of the witness, as this tribunal has no knowledge of the affect of any evidence that a witness may give.

AND FURTHER TAKE NOTICE that should you wish to show cause at a hearing, you must advise the undersigned by [Date] after which The Halton Region Conservation Authority will provide you with at least five days notice of the date of the hearing.

DATED the 11th day of, February 2022

Per: 
Hassaan Basit
President & CEO

Tab 5
Photos of rear yard and slope
at 835 Spring Gardens Road,
Burlington











Tab 6
Signed permit application



Conservation Halton
2596 Britannia Road West
Burlington, ON L7P 0G3
(905) 336-1158



CH File No. PA/18/B/50
Permit No. 5927

REGION OF HALTON, CITY OF HAMILTON, REGION OF PEEL & COUNTY OF WELLINGTON

PERMIT APPLICATION FORM UNDER ONTARIO REGULATION 162/06

Please include three (3) copies of folded plans and supporting information
If the agent wishes to receive an approved set of drawings please submit four (4) copies

OWNERSHIP

(current mailing address)

Owner's Name: Ivan Rudyk & Shelley Long
Current Mailing Address: 835 Spring Gardens Road
City/Town: Burlington Postal Code: _____

Phone: 905-679-0706
E-mail: irudyk@outlook.com

In our effort of continuous improvement, please check this box if you consent to a customer satisfaction survey being emailed to you

AGENT

(only if applicable)

Company Name: Empire Design Company
Agent's Name: Peter Vozikas
Address: 5 North Ridge Crescent
City/Town: Georgetown Postal Code: L7G 6E7

Phone: 416-500-8989
E-mail: vozkkass@hotmail.com

In our effort of continuous improvement, please check this box if you consent to a customer satisfaction survey being emailed to you

LOCATION & DESCRIPTION OF DEVELOPMENT(S)/WORK(S) PROPOSED

Location of Property

Municipal Street Address: 835 Spring Gardens Road
City/Town: Burlington

The proposed development(s)/work(s) involves the following:

- (i) new structure (incl. public infrastructure) (ii) alteration/addition to existing structure
- (iii) grading/site alteration
- (iv) alter a watercourse/floodplain by constructing:
 - a pond a crossing drain or storm outfall
 - a dam a channel erosion protection
 - a diversion other (please specify): _____
- (v) alter Lake Ontario/Burlington Bay shoreline by:
 - a drain or storm outfall shoreline protection
 - other (please specify): _____

Description of Proposed Works: To propose a 2-storey addition to the side yard and a rear cantilevered balcony along with an on-grade patio.

TERMS AND CONDITIONS

1. Permission granted by Conservation Halton cannot be transferred without prior written approval from Conservation Halton.
2. Approvals, permits, etc. may be required from other agencies prior to undertaking the work proposed. Conservation Halton permission does not exempt the applicant from complying with any or all other approvals, laws, statues, ordinances, directive, regulations, etc., that may affect the property or the use of the same.
3. Conservation Halton may, at any time, withdraw any permission given if, in the opinion of Conservation Halton, the representations contained in the application for permission are not carried out or the conditions of the permit are not complied with.
4. If after a period of two (2) years from the date of the application, either 1) technical studies or information required to process the permit have not been submitted as requested, or 2) the permit application has been placed "on hold" pending other approvals and those other approvals have not yet been obtained, the application shall be considered to have been abandoned and Conservation Halton will close the file.

I/We, the undersigned, do solemnly declare that to the best of my/our knowledge and belief all of the above information is true.

I/We acknowledge that authorized representatives of Conservation Halton may, at any time, enter into lands and buildings which are the subject of this Permit application in order to make any surveys, examinations, investigations, inspections or other arrangements which such representatives deem necessary.

I/We acknowledge that this information is collected to administer Ontario Regulation 162/06.

Signature of Owner: *A. Rudyk Shelley Young*

Date: May 8, 2018

Print Name: Ivan Rudyk Shelley Young

Signature of Agent: _____

Date: _____

Print Name: _____

Agent to receive approved Drawings – 4 sets are required with submission

***Please note that owners signature above authorizes agent to work on their behalf.
Letters of Authorization from the Owner are not accepted***

Your privacy is important to us. If you have questions regarding our Privacy Policy, please ask a staff member.

FOR INTERNAL OFFICE USE ONLY

Pre-Application:

Complete Application: _____
(date application considered complete)

Minor (CALC)	<input checked="" type="checkbox"/>
Major (CALC)	<input type="checkbox"/>

Permit: Letter of Permission: No Objections:

Watershed/Shoreline GRINDSTONE

<u>Proposed Work(s)</u>	<u>Category and Type (Code)</u>	<u>Checked By</u>
<u>2nd + first floor addition.</u>	<u>P3a (for now)</u>	<u>[Signature]</u>
<u>cantilevered balcony</u>		

Related Files: _____

Total Fee: _____ Fee Received: _____ Balance Owning: TBD

UTM Coordinates: Northing 4, 793447 Easting 590608
(Referenced to NAD 83)

Tab 7
CH Violation Notice – March 26, 2019

March 26, 2019

Ivan Rudyk & Shelley Long
835 Spring Gardens Road
Burlington, Ontario L7T 1J6

**Re: Violation of Ontario Regulation 162/06
Development within the valley of Grindstone Creek
835 Spring Gardens Road
Grindstone Creek Watershed
CH File: V/19/B/04**

To Mr. Rudyk & Ms. Long:

This letter is to discuss a way forward in relation to development-related activity beyond the scope of works approved under Conservation Halton (CH) Permit #5927.

The subject property, 835 Spring Gardens Road, is adjacent to lands traversed by Grindstone Creek and contains the flooding and erosion hazards associated with that watercourse. Specifically, the property is considered to be located within the stable top of bank erosion hazard associated with valley of Grindstone Creek. CH regulates the stable top of bank plus a 15 metre regulatory allowance from its limits.

CH Policy Requirements

Development within the valley is subject to the following policies pursuant to Ontario Regulation 162/06:

3.37.2 Where buildings or structures (including private access roads) already exist on a *valley* wall or in a valley, replacement may be permitted subject to the following criteria [in part]:

- a) Best efforts must be undertaken to relocate the existing building or structure outside of the *valley* and associated regulated tableland area;
- b) The buildings or structures are of the same size and use, and contain the same number of *dwelling units*;
- c) The buildings or structures are located no further into the *valley* or closer to a *watercourse* than the existing building or structure; and...
- e) If the building or structure is located on a valley wall, a professional geotechnical engineer must complete a geotechnical study to determine the risk of the proposed work. The study will include an assessment of the stability of the *valley* wall, rate of erosion or recession of the *valley* wall, (over a 100 year period), access issues and an assessment of the construction and construction technique on the valley wall. The study must be carried out, at a minimum, in accordance with the

geotechnical documents referenced in Section 5. The design of any works must ensure that the long-term stability of the valley wall is maintained and that no risk to life or property damage is anticipated.

3.37.2 Where an existing building or structure already exists on a *valley* wall or in a valley, additions to the existing building or structure, *that are minor in nature*, may be permitted subject to the following criteria [in part]:

- a) The addition extends no further into the valley or closer to a *watercourse* than the existing building or structure;
- b) There is no change in land use and no increase in the number of *dwelling units*; and...
- d) If the building or structure is located on a valley wall, a professional geotechnical engineer must complete a geotechnical study to determine the risk of the proposed work. The study will include an assessment of the stability of the *valley* wall, rate of erosion or recession of the *valley* wall (over a 100 year period), access issues and an assessment of the construction and construction technique on the *valley* wall. The study must be carried out, at a minimum, in accordance with the documents referenced in Section 5. The design of any works must ensure that the long-term stability of the *valley* wall is maintained and that no risk to life or property damage is anticipated.

CH's records indicate that the works approved under Permit #5927 were limited to the construction of: a two-storey addition to the existing dwelling; a rear balcony; a covered front porch; and, an on-grade patio. Through the review and approval process for Permit #5927, CH staff was of the opinion that the proposed 2-storey addition to the existing dwelling was *minor* and, as the addition was extending no further into the valley or closer to a watercourse than the existing dwelling, CH Policy 3.37.2 was met. A geotechnical assessment/study was not required at that time.

Rather than the minor addition as initially proposed and approved, the entire dwelling has since been demolished and a new dwelling starting to be constructed. Permission was not obtained from this Authority to authorize the full demolition and/or construction of an entire dwelling within the regulated area. Had this extent of works been proposed at the application stage, additional technical information would have been required in support of the development to ensure that the required setbacks were achieved and applicable policies met.

In light of the above, the works are considered to be a violation of Section 2 of Ontario Regulation 162/06. Specifically, Section 2 of the Regulation states:

Development prohibited

2. (1) Subject to section 3, no person shall undertake development, or permit another person to undertake development in or on the areas within the jurisdiction of the Authority that are,
 - (b) river or stream valleys that have depressional features associated with a river or stream, whether or not they contain a watercourse, the limits of which are determined in accordance with the following rules:
 - (i) Where the river or stream valley is apparent and has stable slopes, the valley extends from the stable top of bank, plus an allowance not to exceed 15 metres, to a similar point on the opposite side; or,
 - (ii) Where the river or stream valley is apparent and has unstable slopes, the valley extends from the predicted long term stable slope projected from the existing stable slope or, if the toe of the slope is unstable, from the predicted location of the toe of slope as a result of stream erosion over a projected 100-year period, plus an allowance not to exceed 15 metres, to a similar point on the opposite side.

The purpose of this letter is to notify you of the following:

- (a) That, based on the information available, the works which have occurred to date exceed the scope of works approved under CH Permit #5927;
- (b) That the works which have occurred are violations of Section 28(16) the Conservation Authorities Act and the corresponding regulation, Ontario Regulation 162/06;
- (c) That the works, the complete demolition and proposed construction of a new dwelling within the valley of Grindstone Creek, requires additional technical information and review prior to confirming if the proposal meets Policy and could be supported by staff; and,
- (d) That CH staff is willing to work with you through our Compliance Agreement process to bring the violation into compliance.

Compliance Agreement Option

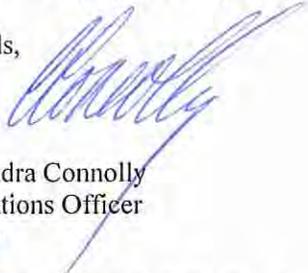
Compliance Agreements can be negotiated with willing landowners for violations which have the potential to meet CH policies and regulatory requirements. I have attached a Compliance Agreement application for you to read over and consider with your agents. CH hopes that there is a willingness to work with us and request that a formal Compliance Agreement Application be made to confirm such a willingness. As part of the Compliance Agreement, staff would require the following be submitted:

- 1) A complete and signed Compliance Agreement Application Form (attached);
- 2) A Geotechnical Assessment/Study, signed and sealed by a qualified Professional Engineer which meets the requirements of points e) and d) of Policies 3.37.1 and 3.37.2, respectively;
- 3) A Site Plan Drawing showing all existing (remaining, and removed/demolished) and proposed development footprints;
- 4) Detailed Elevation Drawings and Floor Plans of the proposed dwelling;
- 5) A complete and accurate *Construction Details Form for Permit Applications Submitted under Ontario Regulation 162/06* (attached); and,
- 6) A cheque in the amount of \$3,200.00 as per our current Fee Schedule category *Private Landowner – Intermediate* with a 100% surcharge applicable to Compliance Agreements.

These items should be submitted immediately to formalize the willingness to work with CH. Upon receipt of the technical information and drawings noted above, CH staff will conduct a formal review of the information provided to determine if the proposed works have the potential to meet CH Policy, and/or if the proposal will require revisions to meet CH policy and regulatory requirements.

If you have any questions, please contact the undersigned at extension 2301.

Regards,


Cassandra Connolly
Regulations Officer

CC/ 

Cc: Ivan Rudyk & Shelley Long, Owners, irudyk@outlook.com
Peter Vozikas, Empire Design Company, vozkkass@hotmail.com

Encl. Compliance Agreement Application
Construction Details Form for Permit Applications Submitted under Ontario Regulation 162/06

Conservation Halton File # V/19/B/04

This form must be completed in full and attached, along with any technical studies, engineering drawings, or other technical information which have been submitted to support your permit application. Re-submissions submitted without this form, when required, **will not be accepted.**

	Existing Ground Floor Area	Existing Total Floor Area	Floor Height of Storey	Proposed Ground Floor Area	Proposed Total Floor Area	Floor Height of Storey
Basement						
Main Floor incl. attached garage(s) and/or enclosed sunrooms						
Second Floor						
Loft						
Covered Porch (not enclosed)						
Accessory Building 1						
Accessory Building 2						

Where:

Ground Floor Area: the total exterior measurements of any building, including attached garages and enclosed decks/sunrooms.

Total Floor Area: the exterior measurements of the building and includes the total of the ground floor (as defined above), walkout/full basements, plus full or half second stories, etc.

Storey Height: measured as per current Ontario Building Code.

DECLARATION

I hereby declare that:

- a) the particulars provided on this re-submission form are true and correct;
- b) the re-submission is complete and all requirements, as specified in Conservation Halton's letter of response/requirement letter have been complied with; and
- c) the lead consultant has reviewed and coordinated the submission to ensure that all re-submission materials are consistent.

Signature of Applicant and/or authorized Agent: _____

Contact information

Address: _____

Telephone Number: _____

Email: _____

For Office Use Only
Date Received:
Signature:

TERMS AND CONDITIONS

1. This Compliance Agreement is voluntary and not required pursuant to any section of the Conservation Authorities Act or Ontario Regulation 162/06.
2. The intent of the Compliance Agreement is to provide the owner/agent with an opportunity to work with Conservation Halton staff to bring the property into compliance with the Conservation Authorities Act and Ontario Regulation 162/06 after unauthorized works have been started and/or completed.
3. Conservation Halton does not accept permit applications or issue permits under Section 3 or 6 of Ontario Regulation 162/06 once development works have been completed and/or started without approval of Conservation Halton. Please see Violation Notice describing unauthorized development.
4. Unauthorized development works are those as described and outlined in the attached Violation Notice. Additional unauthorized development works could constitute a new and separate offence.
5. Only development works that satisfy all the policy requirements of Conservation Halton will be permitted.
6. Proposed development works that have not been started and/or completed will require the owner/agent to apply for permission from Conservation Halton pursuant to section 3 or 6 of Ontario Regulation 162/06.
7. A Compliance Agreement fee is collected to address administration costs and is not an unauthorized development works authorization fee. All fees paid are non-refundable.
8. Approvals, permits, etc. may be required from other agencies prior to undertaking the Compliance work(s). Conservation Halton permission does not exempt the applicant from complying with any or all other approvals, laws, statues, ordinances, directive, regulations, etc., that may affect the property or the use of the same.
9. Conservation Halton retains the right to defer this matter at any time to the courts, if, in the opinion of Conservation Halton, the representations contained in the Compliance Agreement are not carried out as per submitted plans/drawings or the conditions of the Compliance Agreement are not complied with.
10. Conservation Halton encourages you to seek legal counsel in relation to this Compliance Agreement.

I/We, the undersigned, do solemnly declare that to the best of my/our knowledge and belief all of the above information is true.

I/We agree that in an effort to voluntarily mitigate the alleged violation of the Conservation Authorities Act and Ontario Regulation 162/06. I/We will complete all described Compliance works in the manner and time as prescribed by this Compliance Agreement. Failure to comply with the conditions of the Compliance agreement could result in fines not exceeding \$10,000 or to a term of imprisonment of not more than three months or an order requiring Compliance and removal of the unauthorized works.

I/We acknowledge that authorized representatives of Conservation Halton may, at any time, enter onto the lands which are described herein in order to make any surveys, examinations, investigations or inspections which are required for the purpose of ensuring that the works authorized by this Compliance Agreement are being carried out according to the terms of this Compliance Agreement.

I/We acknowledge that this information is collected to administer Ontario Regulation 162/06.

Signature of Owner(s): _____

Date: _____

Print Name: _____

Signature of Agent: _____

Date: _____

Print Name: _____

Please note that owner's signature above authorizes their agent to work on their behalf.

Your privacy is important to us. If you have questions regarding our Privacy Policy, please visit our website at www.conservationhalton.ca/privacy or ask a staff member.

Tab 8
CH Email – April 4, 2019

From: [Cassandra Connolly](mailto:Cassandra.Connolly)
To: vozkass@hotmail.com; gordon.baron@lbbdesigns.ca
Cc: [Kellie McCormack](mailto:Kellie.McCormack@irudyk.com); irudyk@outlook.com
Subject: 835 Spring Gardens Road - Meeting Summary and Next Steps
Date: April 4, 2019 2:05:00 PM

Good afternoon,

We appreciate your meeting with us yesterday afternoon at our Administration Office to discuss the property and steps forward. I wanted to follow-up on that meeting with a short summary of our discussion, and to clarify our requirements and next steps.

Conservation Halton issued Permit #5927 for the construction of an addition to the existing dwelling; a rear balcony; covered front porch; and on-grade patio. It was our understanding based on the information (Application Form and Site Plan Drawing) submitted at that time, that the addition to the dwelling was minor in nature, specifically an expansion of the existing single car garage with living space above. A geotechnical study/assessment was not required at that time based on the scope and scale of the work identified. It is staff's understanding that the home has now been demolished down to its foundation. This differs from the scope of works reviewed and approved.

As discussed in our meeting, Conservation Halton is unable to issue a Permit after-the-fact. In our effort to work with yourselves and the landowner through this process we have provided the Compliance Agreement Option. We would request the Agreement Application Form and fee identified in the Violation Notice provided to be submitted as soon as possible to confirm a willingness to work with us. A geotechnical study/assessment is also required to determine the risk of the proposed work and to make recommendations to mitigate those risks.

We understand the intent of the works onsite is ultimately to re-build within the footprint of the existing dwelling, in addition to the minor addition originally proposed through the Conservation Halton Permit and building permit. We do consider the works to be a reconstruction of a dwelling. Given that the scale/scope of works has changed, a geotechnical assessment is required to ensure the long-term safety of the home with respect to the erosion hazard associated with the valley. That geotechnical information may also make recommendations related to the construction of the dwelling (i.e. steps that can improve the long term safety of the home).

It is my understanding that Charles had forwarded you the contact information for the company who had completed geotechnical work for this site in the past. This information could potentially be updated and built upon to address our concerns; however, the scope of a new assessment would be confirmed by the geotechnical engineer on site. Should the engineer have any questions about what we require, please have them contact us in advance of undertaking any further studies. Once the geotechnical report has been submitted, we will work to review that document promptly.

I do advise that, following the review and approval of a geotechnical report, any recommendations made by that geotechnical report will need to be incorporated into the dwelling design drawings accordingly and those revised drawings would be stamped approved as part of the Compliance Agreement. Once the Compliance Agreement has been issued by CH, you would then move forward with any requirements and/or additional reviews required by the City of Burlington.

As the landowners were unable to attend the meeting I have Cc'd them on this correspondence so they are aware of the discussions, and the scope/steps moving forward.

Should anyone have any questions, please do not hesitate to contact me.

Regards,

Cassandra Connolly

Regulations Officer

Conservation Halton

2596 Britannia Road, Burlington, ON L7P 0G3

905-336-1158 ext. 2301 | cconnolly@hrca.on.ca

Tab 9
CH Letter – August 22, 2019



905.336.1158
Fax: 905.336.7014
2596 Britannia Road West
Burlington, Ontario L7P 0G3
conservationhalton.ca

Protecting the Natural
Environment from
Lake to Escarpment

August 22, 2019

Mr. Ivan Rudyk and Ms Shelley Long
835 Spring Gardens Road
Burlington, Ontario L7T 1J6

Re: Violation of Ontario Regulation 162/06 Permit #5927
835 Spring Gardens Road
Grindstone Creek Watershed
CH File: V/19/B/04

Dear Mr. Rudyk and Ms. Long:

This letter is to provide notice that the permit you received under Ontario Regulation 162/06 (Permit #5927) is void, as this permit was for dwelling additions and was premised on the presence of a dwelling that no longer exists. Further, we wish to follow-up on the Violation Notice that was sent to you on March 26, 2019 and subsequent email dated April 4, 2019.

The subject property is located within the erosion hazard associated with the valley of Grindstone Creek. It is also in an area with known slope instability issues. Given that the scale/scope of works has changed from what was originally permitted, a geotechnical assessment is required to ensure that the long-term stability of the valley wall is maintained and that there is no risk to life or property damage.

CH issued Permit #5927, on May 28, 2018, for the construction of a minor addition to the existing dwelling (specifically an expansion of the existing single car garage with living space above), a rear balcony, covered front porch and on-grade patio. However, since CH issued that permit, the existing dwelling was completely demolished and a new dwelling is now under construction. Consequently, the works occurring onsite are beyond the scope of what was approved under Permit #5927. The scale and scope of works currently underway would have required additional supporting information (i.e., geotechnical assessment). Accordingly, Permit #5927 is void, as it is not possible to permit an addition to a building that no longer exists.

The works occurring onsite are a violation of Section 2 of Ontario Regulation 162/06. A Violation Notice was issued on March 26, 2019 and in that Notice you were advised that:

- (a) the works that have occurred onsite (i.e., demolition and construction of a new dwelling within the erosion hazard associated with the valley of Grindstone Creek) exceed the scope of works approved under CH Permit #5927;
- (b) the works are violations of Section 28(16) the Conservation Authorities Act and Ontario Regulation 162/06;
- (c) additional technical information is required (i.e., geotechnical assessment) and must be reviewed by CH staff to confirm that the works can meet CH's policies; and
- (d) CH staff is willing to work with you to bring the violation into compliance through our Compliance Agreement process. (note: a Compliance Agreement application was attached to our March 26, 2019 letter)

CH's policies allow for the replacement of buildings or structures that already exist on a valley wall, as well as additions that are minor in nature, subject to a number of criteria, including that a professional geotechnical engineer completes a geotechnical study to determine the risk of the proposed work. The geotechnical assessment is required to ensure the long-term stability of the valley wall is maintained and that no risk to life or property damage is anticipated. The geotechnical assessment may also make recommendations related to the construction of the dwelling (i.e., steps that can improve the long-term safety of the home) to address the hazards.

CH staff met with your agent on April 3, 2019 and provided a follow-up email on April 4, 2019 to outline the above and to discuss a path forward. CH staff also provided comments to the City of Burlington regarding Minor Variance Application 540-02-A-036/09. In each of those communications, CH staff was clear that a geotechnical assessment was required and that the assessment, as well as plans for the new dwelling, would need to be reviewed and approved by CH as part of the Compliance Agreement.

Since that time, it has come to our attention that the City of Burlington provided clearance for works to occur on the site in advance of having CH's sign-off. We are working with City staff on this matter.

Given that conformity with CH's permit is not possible, Permit #5927 is void. Section 8 of Ontario Regulation 162/06 states:

Cancellation of permission

8. (1) The Authority may cancel a permission granted under section 3 or 6 if it is of the opinion that the conditions of the permission have not been met. O. Reg. 162/06, s. 8 (1); O. Reg. 59/13, s. 6 (1).

(2) Before cancelling a permission, the Authority shall give a notice of intent to cancel to the holder of the permission indicating that the permission will be cancelled unless the holder shows cause at a hearing why the permission should not be cancelled. O. Reg. 162/06, s. 8 (2).

(3) Following the giving of the notice under subsection (2), the Authority shall give the holder at least five days notice of the date of the hearing. O. Reg. 162/06, s. 8 (3); O. Reg. 59/13, s. 6 (2).

In our view, given that the permit is void, a hearing is not warranted, as the circumstances that were set out in the application for the permit have fundamentally changed.

CH is looking for your cooperation to resolve the matters outlined in this letter. Please provide written confirmation by September 6, 2019, that you are willing to enter into a Compliance Agreement with CH and that you will provide the items outlined in our March 26, 2019 letter, as well as incorporate any recommendations made by your geotechnical engineer into the site design. Once a Compliance Agreement has been issued by CH, you will have the necessary approvals from us to move forward with the City of Burlington.

If you have any questions, please contact the undersigned at extension 2228.

Regards,

A handwritten signature in black ink that reads "Kellie McCormack". The signature is written in a cursive, flowing style.

Kellie McCormack, MA, MCIP, RPP
Senior Manager, Planning and Regulations

Cc: Heather MacDonald and Nick Anastasopoulos, City of Burlington
Kenneth Jull, Gardiner Roberts LLP

Tab 10
Letter from CH's legal
counsel – December 18,
2019



Kenneth E. Jull
Direct Line: 416.865.2964
tduncan@grllp.com
File No.: 113702

December 18, 2019

With Prejudice

VIA EMAIL (arkadi@bouchelevlaw.com)

Bouchelev Law Professional Corporation
401 Bay Street, Suite 2112
Toronto ON M5H 2Y4

Attention: Arkadi Bouchelev

Dear Sir,

**Re: IVAN RUDYK et al. v. HALTON REGION CONSERVATION AUTHORITY
Court File No. CV-19-00627606-0000**

We write to follow up with you regarding your clients' application, commenced September 18, 2019.

Halton Region Conservation Authority ("HRCA") requests that your clients submit a permit application with respect to the development currently underway on your client's property at 835 Spring Gardens Road. These works constitute development regulated pursuant to section 28 of the *Conservation Authorities Act* and Ontario Regulation 162/06 (the "Regulation"). The permit issued by HRCA on May 28, 2018 (Permit #5927) was not issued in contemplation of the current development, and does not apply to the current development. Accordingly, the current development has proceeded without permission and contrary to the Regulation.

Should your clients proceed with an application for permission as described above, we note that this will include all appurtenant procedural rights as required by the *Conservation Authorities Act* and the Regulation.

Should your clients wish to proceed with their Superior Court application, we note that you have without justification brought this application outside Halton Region. The correct venue for this matter is clearly Halton and the proceeding should be so transferred. This should be achievable on consent with little complication or delay. Please advise if you will request that the Court transfer the application to Halton or if it will be necessary for the respondent to move for such transfer. Please be advised that if HRCA is forced to bring such motion to transfer it will seek its costs of so doing.

Once this matter is transferred, we would thereafter be pleased to further discuss an efficient and organized timetabling of the balance of the steps in the application and the scheduling of a hearing.

In the meantime, we trust that your client will continue to comply with the City of Burlington's Stop Work Order.

GARDINER ROBERTS LLP

Bay Adelaide Centre – East Tower
22 Adelaide Street West, Suite 3600
Toronto, Ontario M5H 4E3
Tel: 416.865.6600 Fax: 416.865.6636 www.grllp.com





Sincerely,

GARDINER ROBERTS LLP

A handwritten signature in blue ink, appearing to read 'K. Jull'.

Kenneth E. Jull

KJ/

c. T. Duncan

Tab 11
Letter from CH's legal counsel –
July 27, 2020



Kenneth E. Jull
Direct Line: 416.865.2964
kjull@grllp.com
File No.: 113702

July 27, 2020

VIA EMAIL (arkadi@bouchelevlaw.com)

Arkadi Bouchelev
Bouchelev Law Professional Corporation
401 Bay Street, Suite 2112
Toronto ON M5H 2Y4

Dear Sir,

**Re: IVAN RUDYK et al. v. HALTON REGION CONSERVATION AUTHORITY
Court File No. CV-19-00627606-0000**

Further to the vacating of the date of July 27th and while we wait for the delivery of your materials, there are three points that we want to make in the interim:

- (1) We have been asking for the Construction Plans that your clients refer to in their application for a long time. See the letter of January 6th that we sent to you (a copy is enclosed with this letter). We do not understand why these could not be forwarded now, before the rest of your materials are ready;
- (2) Despite the COVID 19 pandemic, Conservation Halton remains available to process a permit application in a relatively expeditious manner. We refer to the with prejudice offer to process a permit application in the December 18th letter sent to you (a copy of which is enclosed with this letter).
- (3) An advantage of the permit process is that should the parties disagree, there is a review and appeal process available under the Conservation Authorities Act. We wish to advise that the Board will hold Zoom hearings to ensure fair access to these review processes.

Sincerely,

GARDINER ROBERTS LLP

Kenneth E. Jull

KJ/ke
Enclosures

TORONTO: 1378872\1 (113702)

GARDINER ROBERTS LLP

Bay Adelaide Centre – East Tower
22 Adelaide Street West, Suite 3600
Toronto, Ontario M5H 4E3
Tel: 416.865.6600 Fax: 416.865.6636 www.grllp.com

Tab 12
Shelley Young's blog

Spring Gardens Retreat (<https://springgardensretreat.com/>)

MENU

[Home \(https://springgardensretreat.com\)](https://springgardensretreat.com/) > [Blog](#)

You are hereby ordered to correct the contraventions itemized below immediately.

Item	Reference	Description and location	Required action and compliance date
1.	B.C.A. 8. (13) "No person shall construct or demolish a building or cause a building to be constructed or demolished except in accordance with the plans, specifications, documents and any other information on the basis of which a permit was issued or any changes to them authorized by the chief building official."	Halton Conservation advised the Chief Building Official that CH Permit#5927 relating to bulding construction located at 835 Spring Gardens Rd. Burlington, Ontario has been cancelled.	Obtain Halton Conservation approval for construction works identified under Building Permit#18-020237-000-00-SO and Building Permit#18-020237-REV-01-SO immediately.

The inspection on or about September 23, 2019 at the above-referenced address found the following contravention(s) of the *Building Code Act, 1992* or the Building Code have not been rectified as required by the Order(s) indicated below:

Order to Comply number _____, dated September 23, 2019

You are hereby ordered to immediately cease construction and/or demolition as specified below:

Item	Details
1.	All construction and demolition related to permit number 18-020237 and permit number 18-020237-REV-01.

(<https://springgardensretreat.com/construction/conservation-halton-and-city-of-burlington-stealing-home-and-property-from-disabled-woman-and-her-husband/>)

Conservation Halton and City of Burlington stealing home and property from disabled woman and her husband (<https://springgardensretreat.com/constru>)

halton-and-city-of-burlington-stealing-home-and-property-from-disabled-woman-and-her-husband/)

Hi Folks,

So a month has passed since Conservation Halton revoked their permit – violating their own policies in doing so by a) not giving us any warning of their intent to revoke the permit b) denying us our right to an appeal, c) denying us the right to delegate to their Board of Directors (upon which the Mayor Marianne Meed Ward sits) and d) issuing an ultimatum that we must sign a compliance agreement – a legally binding agreement which implies that we have indeed broken the law (which we have not) and will agree to what ever terms Conservation Halton deems (without knowing ahead of time what those terms are).

Our **Ward Councillor Kelvin Galbraith** – who actually considered buying our home when it was up for sale in 2007 – can you imagine this happening to the **Councillor** and his family if he had purchased and renovated our home? NO neither can we! Anyway **Kelvin Galbraith** has expressed deep concern and regret over what has been done to us and has told us he is working to help us resolve the issue and get us back into our home. With his assistance, the Chief Building Official, **Nick Anastasopoulos**, who issued the first Stop Work Order back in March 2019 at the behest of Conservation Halton agreed to ‘thoroughly investigate’ our home renovation and concluded that the Stop Work Order was issued erroneously and that the renovation did indeed meet building code standards and that all permits and approvals were appropriate and sufficient for the work we were undertaking allowing us to resume renovations in May of 2019. Unfortunately today, September 25th, Chief Building Official, **Nick Anastasopoulos**, has done a complete reverse-flip by issuing another Stop Work Order and Order to Comply on our renovation, citing Conservation Halton’s revoked permit as the reason.

This is important to understand: Conservation Halton’s permit is not a construction permit – construction permits are issued by the City of Burlington. And Conservation Halton has NO AUTHORITY over the building code. Conservation Halton staff admit they know nothing about construction and can’t interpret the blueprints and other construction documents submitted with the permit application. Conservation Halton, legally has NO AUTHORITY over private property at all, but they regularly violate that limitation. So, Conservation Halton is completely over-stepping their mandate by interfering in a Building Code matter on private property!

We have no doubt that Chief Building Official, **Nick Anastasopoulos**, has done this at the request of **the Mayor** and Conservation Halton. **The Mayor**, whom we were told was disgusted with what is being done to us, has told us that our only option is to do exactly what Conservation Halton wants. **The Mayor** sits on the Board of Directors and thus directs Conservation Halton staff. **The Mayor**, as the head of the City of Burlington, partially funds Conservation Halton activities. Thus, **the Mayor** has the power to make all of this go away, but instead she has decided to join the victimizers and trample on our rights too.

We have our suspicions why the **Mayor** is opting to be combative —she is afraid that the truth about the City's role in all of this will come to the surface — please help us make sure that it does! You see a previous homeowner undertook a renovation of the home in the 1980's. We were unaware of this renovation until after the south and east wall of our home collapsed. This minor renovation transformed a previous front porch into living space by bringing the front walls of the home forward several feet. This renovation work was issued a permit by the City of Burlington and records show that a City building inspector passed the inspection of the work. However, the renovation work was not done to code and should never have passed. When these walls were put up, the builder did not put in any footings or underpinnings and neglected to install frost protection and water protection. Thus the walls were sitting in dirt, and held in place by the roof. Once the roof came off the walls were unstable and collapsed. Had the walls stayed standing, the Building Code Act requires them to be removed and re-erected according to code, which Lifestyles by Barons has done and this work was inspected by a City building inspector. It is the collapse of these two walls that has caused the issues with Conservation Halton, as there is a clause in their policy (policy is not law remember, it is a guideline only) that states that 2 of the 4 walls must remain in a renovation. **Thus, the City is completely responsible for the pre-condition that caused the walls to collapse.** Thus the City should be supporting us in our fight against Conservation Halton. But instead the Mayor is hoping that their mistake and their responsibility will somehow be over looked and forgotten. Let's not let that happen!

We've joined the **Ontario Landowners Association (OLA)**- a collection of property owners who are concerned about our shrinking property rights and the blatant, rampant, abuse of governments to curtail our full use and enjoyment of our private property and the rampant illegal expropriation of property (which is what Conservation Halton is essentially attempting to do to us). The **OLA** is very concerned about what is happening to us, especially since 80% of the homes in Aldershot are located along valley walls and watercourses – and thus at risk of Conservation Halton's bullish, over-reaching, heavy-handed interference. The **OLA** has asked us to share our story with our friends, family and neighbours – encouraging you to a) join the OLA b) request a Crown Patent for your lot and Concession (why that is important is too complicated to explain here) c) learn your rights and how to protect them from government bodies and their agencies d) call and

write the Mayor, your Ward Councillor, CH CAO Hasssan Basit, your MPP and MP complaining about the rampant abuses of Conservation Authorities over-reaching their authority and jurisdiction and trampling on private property rights and human rights.

We've retained a lawyer and file a legal action against Conservation Halton. We have yet to receive a reply from Conservation Halton.

As if that isn't enough, **our Builder**, who did a very good job of deceiving us for a very long time has also decided to make life miserable for us. We know now that they intentionally mislead us into doing a tear down-rebuild renovation even though we had asked for an internal remodeling initially. We warned them about our previous challenges dealing with Conservation Halton, but they assured us they could successfully navigate any issues encountered with the City or Conservation Halton. Our builder is frustrated – we understand that as we are too. However, we can't understand why Lifestyles by Barons President Gord Baron has decided that we are 100% responsible for everything that has gone wrong with this project. Somehow, in his mind, we are 100% responsible for the City delaying our permits until the end of 2018, somehow were are 100% responsible for the faulty renovation undertaken in the 1980s by a previous owner, unbeknownst to us, and now of course we are somehow 100% to blame for Conservation Halton revoking our permit.

Our struggles continue, and they are very dire. We know that Conservation Halton intends to condemn our home and make our property a worthless lot that no one can build on our use in any way. If they succeed, we will be homeless. If they succeed we will be penniless and destitute. If they succeed, my husband's CPA designation and livelihood could be jeopardized. Conseravation Halton and the City of Burlington can not be allowed to succeed. We need your help to ensure that they don't! **Please join your OLA, protect your own rights and stand up for ours by calling and writing your local representatives complaining about the pattern of abuse that is happening within the Conservation Authorities and the abuses of our human rights!**



(<https://springgardensretreat.com/construction/building-of-a-dream-out-with-the-old/>)

Building of a Dream: Out with the Old (<https://springgardensretreat.com/construction/building-of-a-dream-out-with-the-old/>)

In 2007, we purchased a house we didn't particularly love. Actually, it was a house we didn't really like very much at all. The house was old; built in the early 1950's. It was run down; the last remodel was a DIY project sometime in the 1980's when the addition was built onto the west side. There were a lot of DIY projects in the house that were poorly thought out and even more poorly executed. Like the ugly orange tile floor in the kitchen that was suspiciously missing in front of the kitchen sink and under the stove. Many things were broken or missing; we lost count of how many things we threw away and replaced. Some things never worked properly, even after repairs. Like the Bath Fitters insert that leaked water under the liner even after the company came to suck out the water and reseal the drain. The design and layout of the house made for horrible flow and function. No matter how you arranged the furniture, the living room was unwelcoming and dissected 4 ways by the flow of foot traffic to another room.

So why would we buy such a house, you may be wondering?

We bought the house because of the property it occupied. The property is a double-wide, wooded ravine lot overlooking Grindstone Creek that has a breath-taking view all year round. Although located within the city limits, everything about the place makes you feel like you are in the country, miles from civilization. And because the property is contained within the Hamilton-Halton Natural Heritage System envelop, our property will always remain a little piece of nature's Paradise!



We purchased our house in Paradise with plans to do extensive renovations – we dreamt about transforming the house into something more worthy of the property. Since then, we've been planning and saving. Though our savings kept taking hits from all the unavoidable repairs and replacements that kept cropping up. Like landscaping needed to remove the 4 foot berm in the front yard to stop the steady flow of run off seeping into our foundation. And replacing the back door that would blow open whenever a strong gust of wind hit from the north. And repairing the leaky roof after attempts at tarring and tarping didn't stop the rain from streaming into the kitchen. The list goes on and on.

This last year has been a whirlwind. We've worked through the design and permit phases with our builder. *Lifestyles by Barons* – a local, full design build company, with an impeccable reputation – created the perfect vision for our new home. After months and months, the City finally issued our permits. We packed and moved to a temporary home away from home. And we striped the old house, salvaging everything and anything that could be re-purposed or sold.

And now, after years of preparations and anticipation, it seems a bit surreal that our dream is going to finally come true. On January 22, 2019 construction began! Good Bye Old House!





(<https://springgardensretreat.com/construction/building-of-a-dream-the-key-to-success/>)

Building of a Dream 2: The Key to Success

(<https://springgardensretreat.com/construction/building-of-a-dream-the-key-to-success/>)

Our builder, *Lifestyles by Barons*, HATES to do winter construction. With the bad weather and worse luck we've had so far this year, we are starting to understand why! Since demolition in late January, Mother Nature has launched at us plummeting mercury, several feet of the snow and storms leaving thick coatings of ice on everything.

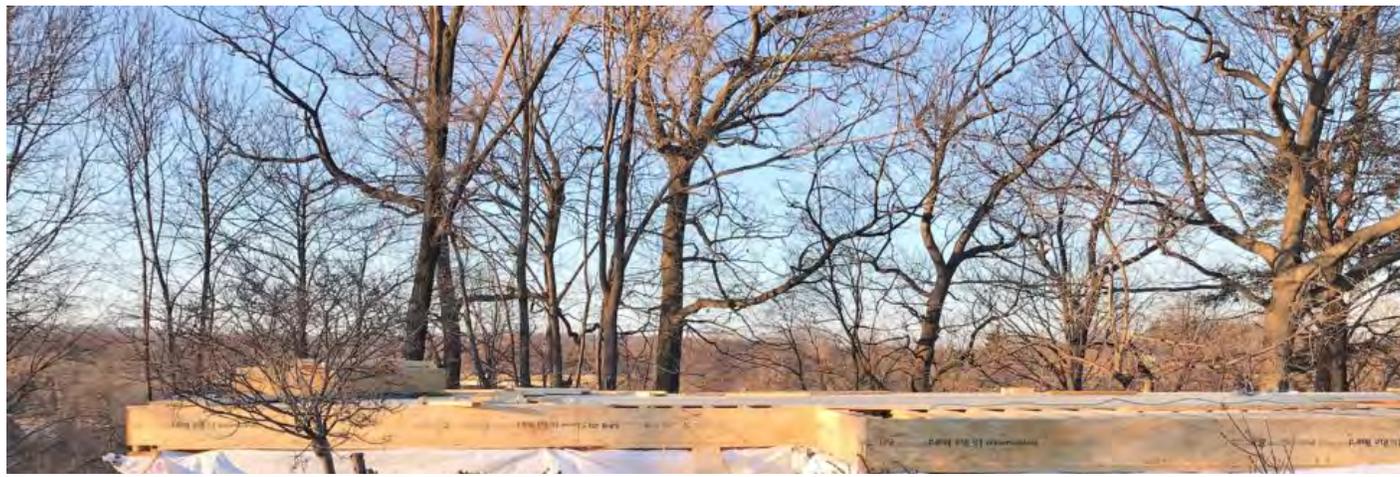


All of these weather elements not only make construction work challenging and unpleasant for the dedicated men and women affiliated with *Lifestyles by Barons*, but construction costs keep mounting as repeated snow removal, erecting temporary shelters and heating all become necessary add-ons.



Mother Nature has finally issued a brief reprieve from this a brutal winter. And our builder is taking full advantage of this change in weather, with multiple framing crews working 7 days a week trying to catch up.

Just as in life, the key to success in construction, lies in the creation of a solid foundation! Our foundation has been beefed up and the extra piers are in place! Framing the rest of the structure is progressing rapidly!



We are crossing our fingers and holding our breath, that Mother Nature will play nicely, at least until the roof is on to provide the job site with some protection from the elements.



(<https://springgardensretreat.com/construction/building-of-a-dream-3-great-buildings-come-from-great-people/>)

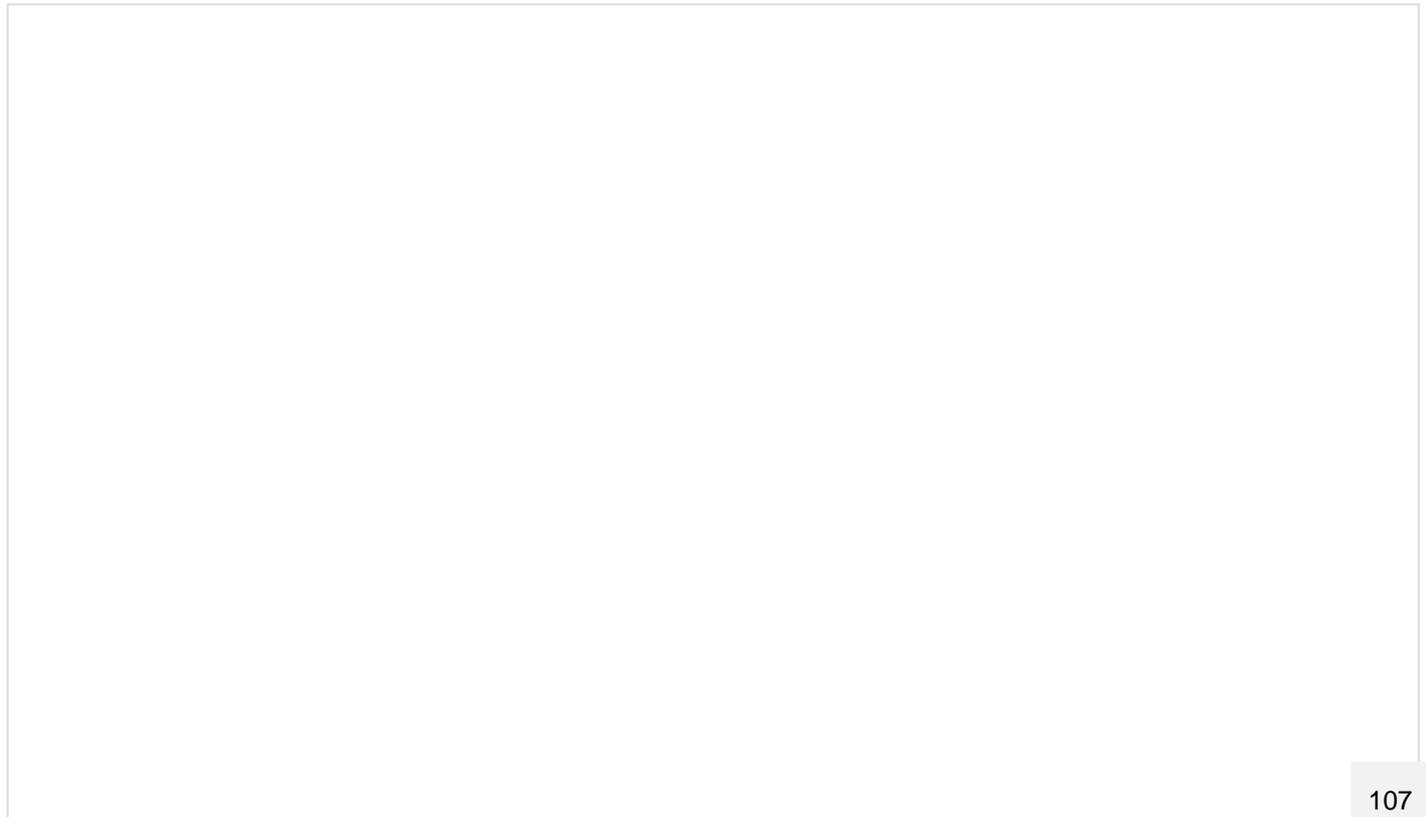
Building of a Dream 3: Great Buildings come from Great People (<https://springgardensretreat.com/construction-of-a-dream-3-great-buildings-come-from-great-people/>)

The *Lifestyles by Barons* crew have really been pulling out all the stops now that weather has turned nice. After months of frustration and agonizingly slow progress, things are finally speeding along. In just a matter of days, the new home is starting to take shape!

Just like our original home, this house will also be a bungalow back-split. The lower level walls are erected and the windows and doors are roughed in for the guest rooms that will be facing the breath-taking ravine view.

Heavy beams jutting out of the main level floor will support the new cantilevered balcony that will span the entire back of the house so that the view of Grindstone Creek can be enjoyed from almost every room in the house!

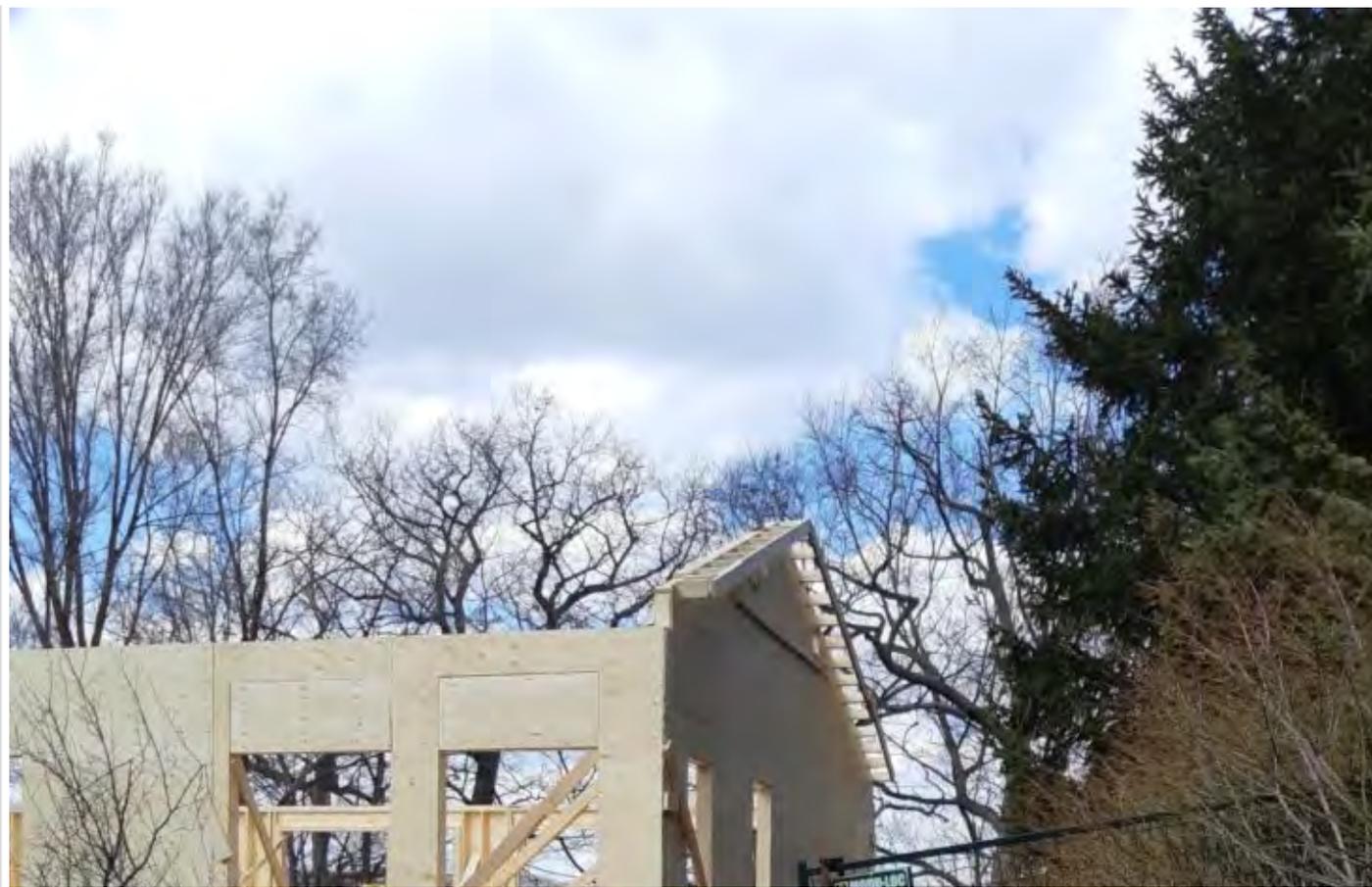
Even the double car garage is framed in!





Meanwhile on the front, street facing side of the home, walls are also starting to be put in place!





Can you believe the progress that this crew has made in just a few days?! At this rate, it won't be long before the roof trusses will be raised! Great work *Lifestyles by Barons!* It really does take great people to create great buildings!



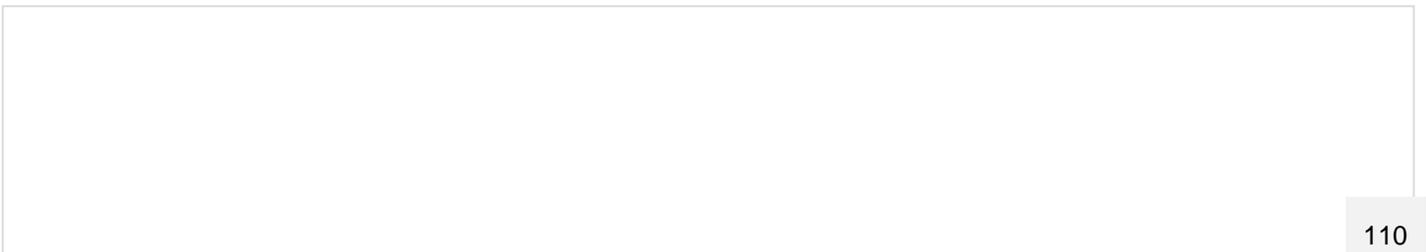
(<https://springgardensretreat.com/construction/building-of-a-dream-4-rising-like-a-pheonix/>)

Building of a Dream 4: Rising like a Pheonix

(<https://springgardensretreat.com/construction/building-of-a-dream-4-rising-like-a-pheonix/>)

How do I describe what it is like for us as we witness or long time dream come to life? You know that feeling you get when you are engrossed in a riveting movie or submerged in the pages of an alluring novel? Well, it is akin to that, only better – way better!

These last few weeks have been amazing for us to watch our dream home take shape. It has quite literally risen out of a pile of rubble and a few skids of lumber. Would it be going too far to use the metaphor of a phoenix rising out of the ashes? Yeah, that's probably going a bit too far, but you get the idea of how magical it has been!





After months of delays waiting for permits and variances to be issued, then more delays caused by horrible winter weather, we have been so grateful for good weather that has allowed for some progress this month! The crew has been working 7 days a week from sun up to sun down. And we couldn't be happier with the folks at *Lifestyles by Barons*. We know you will agree, just from the photos you see on this blog, they are really giving it their all, and then some!

The forecast for the coming week is warm weather and sunshine, which should bode well for continued progress.

But, just like any good movie or novel, there is an unexpected twist to the plot. It seems our project just can't shake the black cloud hovering overhead. Late Friday afternoon, we were notified that a Stop Work Order was issued and workers were pulled off the site. We don't have specifics yet and have been biting our nails all weekend. Whatever the issue is, we hope it can be resolved quickly and cheaply.

Stay tuned folks. This story is far from over!



(<https://springgardensretreat.com/construction/building-of-a-dream-5-it-has-been-58-days/>)

Building of a Dream 5: It has been 58 days

(<https://springgardensretreat.com/construction/building-of-a-dream-5-it-has-been-58-days/>)

It has been 58 days since the Stop Work Order was issued.

It has been 58 days filled with frustration, confusion, and dread.

It has been 58 days of emails, phone calls, meetings and fighting!

Yes, fighting! Fighting to salvage our home. Fighting to hang on to the life-savings we've invested in Spring Gardens Retreat. Fighting to avoid bankruptcy. Fighting to get our life back!

This fight we've taken on parallels in many ways the biblical tale of David and Goliath. Fortunately, our wonderful builder – *Lifestyles by Barons* – has stood by us, so we didn't have to face the giant in battle alone! The giant, in our version of this tale, is the local Conservation Authority, who has gone to extraordinary lengths to impede our progress and to derail our rebuild all together.

Armed with nothing more than a few fact-filled reports (our pebbles), our odds of defeating the giant were as slim as David's chances. David was armed with his sling-shot. We armed ourselves with political allies. Our pebbles were stealthily delivered by our compassionate Ward Councilor, who was enraged by the excessive red tape and the blatant disregard of the hardship we were being made to suffer by the Conservation Authority.

Each stone was launched with precision, but the impact of the first few stones didn't seem to even leave a dent. Through sheer determination, we kept slinging those pebbles, hoping against hope for a miracle. Exhausted, bruised and bloodied we watched the last pebble sail through the air. The trajectory promised it would also find it's mark. But would that pebble hit with enough impact to make the difference?

It has been 58 days of battle!

It has been a long, bloody battle. But now the battle has come to an end!

Just like David, we have emerged victorious! Against the odds, we've won the battle!

Our Goliath may be nursing battle scars for now, but there are no guarantees the giant won't return to torment us again. In the meantime, we will be collecting nicely balanced pebbles.

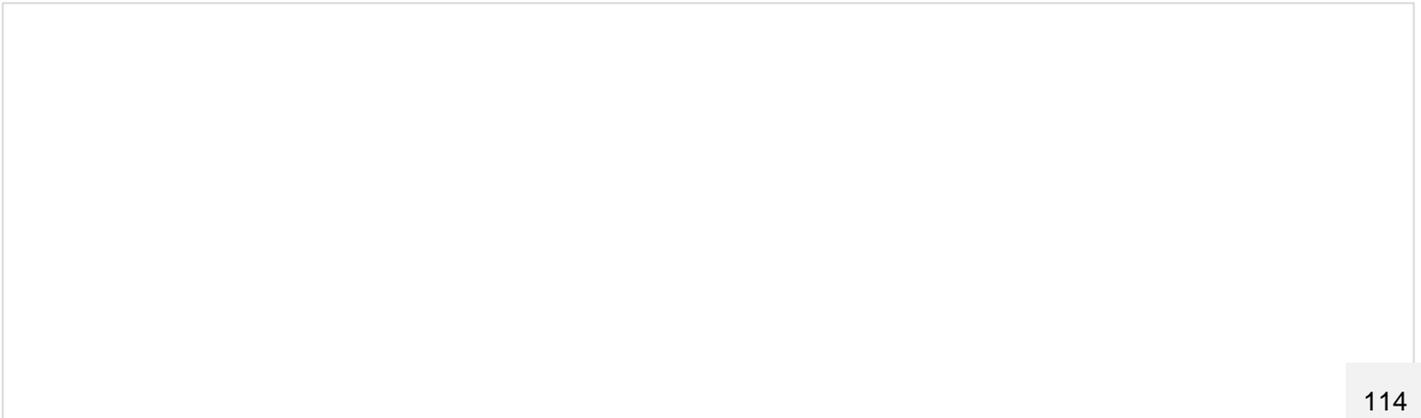


(<https://springgardensretreat.com/construction/building-of-a-dream-6-plodding-along/>)

Building of a Dream 6: Plodding Along (<https://springgardensretreat.com/construction/building-of-a-dream-6-plodding-along/>)

We are so thankful for being able to resume building of our dream home. We are so thankful for the talented, dedicated and compassionate builder *Lifestyles by Barons* who is making our dream a reality.

Yes, the fight with Conservation has left us all a bit battle weary. But, now that the dust of the battle field has settled, we are turning our attention to the future....looking forward to better days and construction progress!





Understandably, gearing back up to full crews, during prime construction season, takes some time and some creative scheduling.

But in the last week, skeleton crews have been on site. And we are seeing some progress from their hard work!

That roof beam is in place, ready for the rafters. Yeah!

Windows and doors are framed in. Yeah

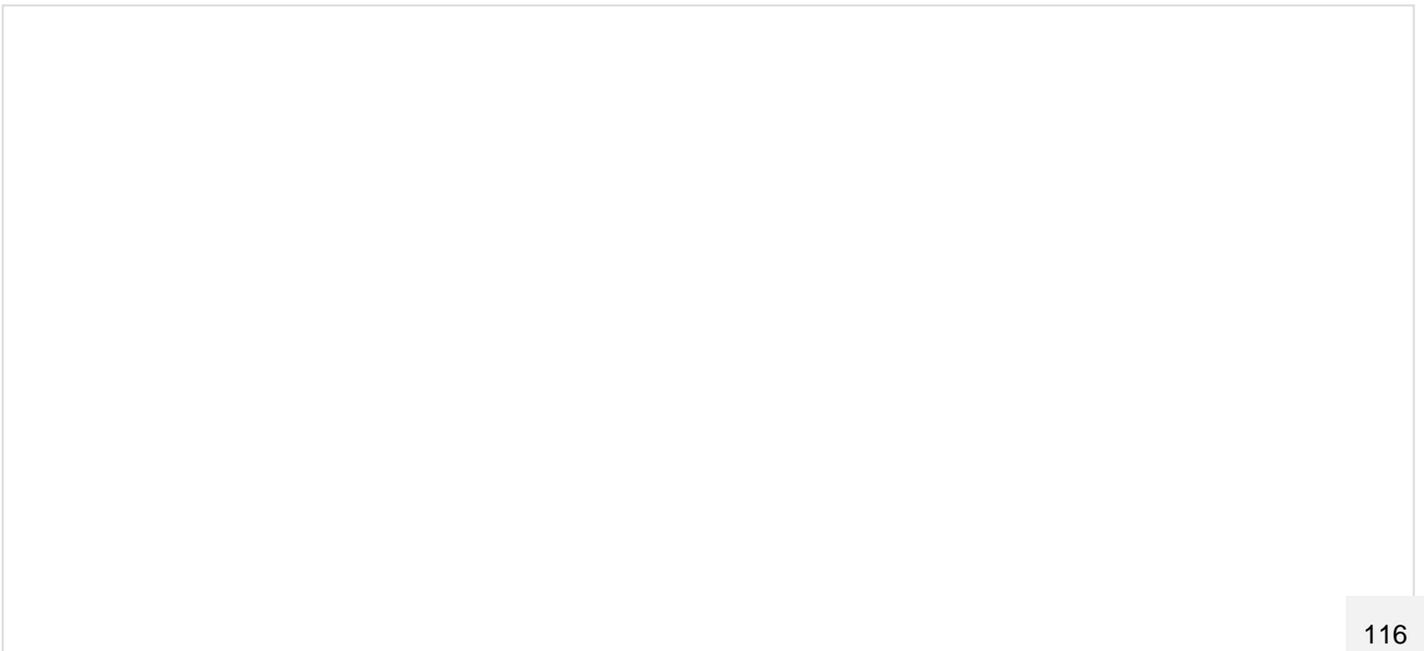
It won't be long before the roof is on, and windows are in, and doors open and close perfectly in their jams.



(<https://springgardensretreat.com/construction/building-of-a-dream-7-top-that/>)

Building Of A Dream 7: Top That! (<https://springgardensretreat.com/construction/building-of-a-dream-7-top-that/>)

We finally have a roof! And what a grand roof it is – perched a top our new home like a crown sits on a monarch's head!





To some it may just be a roof: But to us and our Builder *Lifestyles by Barons* this means the end of being at Mother Nature's mercy! Now the construction crews are protected from wind, scorching sun and rain! Which will hopefully enable us to play a little catch up with our production schedule.



With the roof in place, the exterior of the structure is finally taking shape.

You can begin to envision the grandeur of the street appeal.

Our new grand entrance already beckons visitors to step inside.

The new front porch already looks like an inviting place to sit and relax for a while.



The large exterior windows and doors hint at how well the home will be flooded with natural light. The design intentionally maximizes the enjoyment of our beautiful lot and surroundings.



(<https://springgardensretreat.com/construction/building-of-a-dream-8-an-inside-peek/>)

Building of a Dream 8: An Inside Peek (<https://springgardensretreat.com/construction/building-of-a-dream-8-an-inside-peek/>)



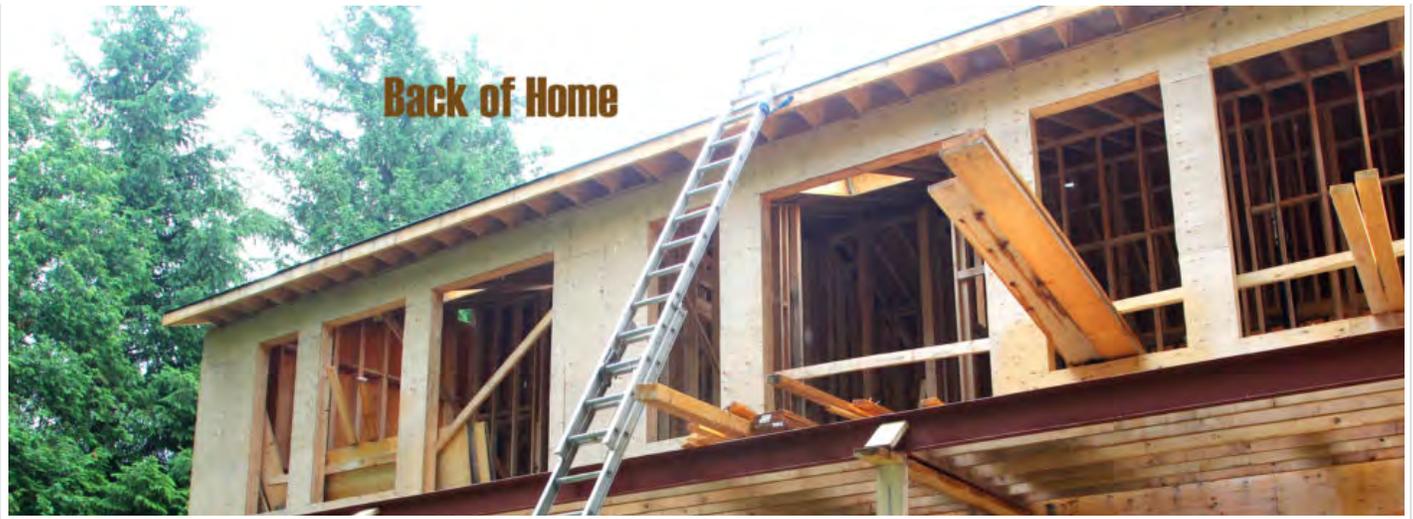
Can't you just picture it? Patio chairs, a few flower pots, cool drinks set the scene. Cheerful voices and gleeful laughter drift softly across a summer breeze. We can envision many, many mornings and evenings will pass under this roofed front porch!



Even without walls or windows, it doesn't take much imagination to envision how magnificent the first view of our home will be. Just inside the front door, visitors are greeted with a beautiful 3 sided fireplace, banked on each side by huge windows displaying Mother Nature's grandeur.



Widening the garage to two cars, means the room above the loft has doubled! Large windows front and back and 2 skylights will flood this space with natural light. At the same level as the tree canopy, this room is going to have a tree house feel!



Just because the back of the home is hidden from the street view, doesn't mean that the ravine facing side of the home lacks dazzle..... just look at this cantilevered balcony that runs the entire length of the home....which beckons

August 22, 2019

Mr. Ivan Rudyk and Ms Shelley Long
835 Spring Gardens Road
Burlington, Ontario L7T 1J6

Re: Violation of Ontario Regulation 162/06 Permit #5927
835 Spring Gardens Road
Grindstone Creek Watershed
CH File: V/19/B/04

Dear Mr. Rudyk and Ms. Long:

This letter is to provide notice that the permit you received under Ontario Regulation 162/06 (Permit #5927) is void, as this permit was for dwelling additions and was premised on the presence of a dwelling that no longer exists. Further, we wish to follow-up on the Violation Notice that was

(<https://springgardensretreat.com/construction/building-of-a-dream-9-the-nightmare-continues/>)

Building of a Dream 9: The Nightmare Continues

(<https://springgardensretreat.com/construction-of-a-dream-9-the-nightmare-continues/>)

As if we have not had enough challenges with the renovations of Spring Gardens Retreat, on Friday August 23rd, we were notified by email from Conservation Halton that our Conservation Permit had been revoked.

If you have been following this blog, you may have read post #5 about our troubles with Conservation Halton in the spring. The issue now is the same issue Conservation Halton had then, despite our ward Councillor, and the City of Burlington Chief Building Official ensuring us that we were not in violation of any building code or policy infraction and that the 'confusion' with Conservation Halton was cleared up. Well apparently not!

We have sought and retain legal council in the hopes of protecting ourselves and our assets. The lawyer tells us our case is strong: the facts are straight forward, we have abided by all policies and procedures, and we have done absolutely NOTHING WRONG. However, despite this the lawyer tells us we have a 50-50 chance of winning against Conservation Halton. And, even if we win, it could still loose our home, our property and every penny of our life savings. This is not an exaggeration – Conservation Halton is hell bent on condemning our property and leaving us homeless and destitute!

This has all come about due to incompetence, lack of government transparency, lack of government accountability, and abuse of government authority.

You see, a previous renovation was undertaken by a previous homeowner in 1984. Permits were sought and issued for this renovation. The renovation was inspected by the City of Burlington. Yet, the work done during that renovation did not meet the building code of 1984. During that renovation a portion of the front of the house was extended forward towards the road, without proper footings and underpinning. When the roof was removed from our home in January 2019, the sections of the walls involved in that previous renovation collapsed. Our builder contacted the building department immediately and followed the advice of the Building Inspector regarding how to address the compromised structure. The Building Inspector determined that the walls were unsafe and that if they had not collapsed on their own they would have had to be taken down and re-erected to meet today's building code. With full clearance and approval from the Building Inspector, our builder continued to make progress on our renovati

during the months of January and February, and most of March. Then Conservation Halton pressured the City to place a Stop Work Order on our project on March 20th, claiming that because the walls collapsed the renovations exceeded the scope of our permits and that we were in violation of the Building Code.

For those of you who are not aware, let us point out a few problems with this scenario.

1) Conservation Authorities are public bodies intended to SERVE their constituents, however, Conservation Authorities resist every effort to be accountable to their community.

2) Conservation Authorities are arms-length bodies of the Municipalities within which they are located (in other words, the municipalities fund Conservation Authorities and hold authority over them). Although Municipalities are in a legal position of influence and authority, most municipalities cower and succumb to the unreasonable and over-reaching demands of the Conservation Authorities, instead of standing up for and protecting the citizens both government bodies are instructed to serve.

3) Conservation Authorities HAVE NO AUTHORITY OR CONTROL OVER THE BUILDING CODE. It is a complete over-reach and abuse of authority for Conservation Halton to weigh in on a building code issue. It is completely inappropriate for Conservation Halton to determine if there are any building code infractions and it is a complete abuse of authority to pressure the municipality to issue a stop work order. The City of Burlington SHOULD NEVER HAVE ISSUED THE STOP WORK ORDER. After investigation, the Building Department determined that there was no violation, removed the inappropriate STOP WORK ORDER and declared that our permits and approvals were valid and sufficient. Once again, we were given the all clear to resume by the Building Department – the department with the rightful authority over the Building Code.

4) Conservation Halton's policy states that two original walls must remain intact during a renovation. This was our original intent and would have been how we executed the renovation had it not been for the faulty work and lack of any underpinnings or footings from the 1984 renovation. Clearly we are not at fault for the inadequate and unsafe work done almost 30 years prior to our purchasing the property. Clearly we had no way of knowing the walls would collapse. Clearly we had no intentions to circumvent Conservation Halton's policy. However, as it happens quite routinely, unexpected issues crop up when renovation. Yet, Conservation Halton refuses to be reasonable. Conservation Halton insists that we no longer qualify as a renovation and now must apply for a new permit as a brand new construction, as per their self-created policy. However, the law states that re-erecting a private home on the original foundation, which

is what we are undertaking, is most definitely a renovation. The conservation policy and the law are at odds. We are bound to follow the law, we are not bound to follow the contradictory, self-drafted conservation policy.

5) After investigating what was involved in applying to Conservation Halton for a Conservation Permit on a new construction, it was discovered that there is no way our home and property would meet the rigid, expensive and time-consuming criteria required by Conservation Halton. Despite this, Conservation Halton has been unwavering, insisting that our only course of action is to apply for (and ultimately be denied) for a new construction permit. Clearly we have decided not to take this futile and expensive route.

6) Conservation Halton had no issues or concerns with our renovation prior to the walls collapsing. And why would they? The construction has no negative impact on our property surrounding our home. The construction has ABSOLUTELY NO IMPACT on Conservation land or surrounding properties. The construction does not encroach on the ravine or Grindstone Creek. Our property is NOT A FLOOD RISK and the construction has no bearing on flooding. We have already invested a fortune on stabilizing the top of the bank for the next 100 years when replacing the retaining wall a few years ago. Thus the construction poses absolutely NO CONSERVATION RISK AT ALL. In fact we have been told by the builder, independent engineering companies and by the Building Department that the renovations to our home will actually place less of a load burden on the slope than prior to the renovations.

7) The recent development of the gas station, Tim Horton's drive through and convenience store on the corner of Plains Road and Botanical Drive was a brand new construction. This development, like our property is contained within the Natural Heritage System. The very same conservation policies and practices SHOULD have applied to this development as Conservation Halton insists be applied to our property. One could even argue that given the damaging excavation required to install the fuel holding tanks for the gas station, the damaging excavation required for the foundation of the building housing the convenience store and Tim Horton's that the policies and practices should be more rigorous than the re-erecting of a bungalow back-split private family dwelling on the original foundation. However, in reviewing publicly available documents, the application for the business development was held to a lesser standard. The development clearly does meet the policy criteria for a new build, yet Conservation Halton staff championed the application, recommending to the Board of Directors that an exemption be given to allow the application to proceed. Yet, we have been denied this opportunity to be considered for an exemption.

For 58 days we worked with Conservation Halton, the City of Burlington, our Builder and our Ward Councillor to resolve the issue. Just as we experienced several years ago when we replaced our retaining wall, we found Conservation Halton staff to be belligerent, demeaning, bullying, evasive, threatening and uncooperative. Escalating up the ranks of public servants in Conservation Halton did nothing to improve the situation. Middle and Upper Management were equally unreasonable and difficult. We were told we did not have the right to appeal Conservation Halton's decision. When we petitioned the Board of Directors for Conservation Halton, that also acts as the Appeal Board, our request was denied. Conservation Halton unilaterally acted as judge, jury and punisher all the while denying us any due process or recourse by stripping away our rights. We initially thought we had won the battle, but now it is clear that those 58 days of fighting was just a warm up for the real fight for our lives.

In speaking with the Ontario Landowners Association, we have learned that what is happening to us is NOT UNCOMMON. There are currently more than 200 homeowners within the municipalities contained within Halton Conservation's catchment area that are being held captive and victimized by Conservation Halton. These homeowners are faced with their homes being condemned by Conservation Halton and the City for various PERCEIVED Conservation infractions. NO ONE GIVES A SECOND THOUGHT TO THESE VICTIMIZED HOMEOWNERS. And it is not just Conservation Halton – many, many, many Conservation Authorities have gone rogue and are wreaking havoc and destroying the lives of homeowners. One of the most well-published cases is that of Gilmor vs Nottawasaga Valley Conservation Authority. After years of legal battles the Gilmors won at the provincial Divisional Court level. Unfortunately that decision was overturned by the Court of Appeal of Ontario. We were told this week that the Gilmors are now homeless and penniless. They are no longer able to continue their legal battle. Mrs Gilmor's health has suffered to the point of requiring hospitalization, while Mr Gilmor tries to survive living out of his truck.

We hope and pray for a positive outcome of this situation. We hope and pray we will not lose our entire life. We hope and pray that this will be resolved cheaply and quickly.

We hope and pray, that you never find yourself in a similar situation. And we encourage you to take action now to protect yourself and your loved ones from being victimized by local government. Join the Ontario Landowners Association. Call, write and post on social media to your local government representatives – your councillor, your MP and your MPP . Tell them that you are NOT OKAY with government bodies over reaching their authority, that you are NOT OKAY with government officials threatening and belittling citizens and other government employees, that you are NOT OKAY with your private land owner rights being taken away and denied on the whim of an overzealous public servant. Stand up for yourself NOW!

Given that conformity with CH's permit is not possible, Permit #5927 is void. Section 8 of Ontario Regulation 162/06 states:

Cancellation of permission

8. (1) The Authority may cancel a permission granted under section 3 or 6 if it is of the opinion that the conditions of the permission have not been met. O. Reg. 162/06, s. 8 (1); O. Reg. 59/13, s. 6 (1).

(2) Before cancelling a permission, the Authority shall give a notice of intent to cancel to the holder of the permission indicating that the permission will be cancelled unless the holder shows cause at a hearing why the permission should not be cancelled. O. Reg. 162/06, s. 8 (2).

2

PERMANENTLY ERASED. THANK YOU

(3) Following the giving of the notice under subsection (2), the Authority shall give the holder at least five days notice of the date of the hearing. O. Reg. 162/06, s. 8 (3); O. Reg. 59/13, s. 6 (2).

In our view, given that the permit is void, a hearing is not warranted, as the circumstances that were set out in the application for the permit have fundamentally changed.



RECENT POSTS

Conservation Halton and City of Burlington stealing home and property from disabled woman and her husband (<https://springgardensretreat.com/construction/conservation-halton-and-city-of-burlington-stealing-home-and-property-from-disabled-woman-and-her-husband/>)

Building of a Dream: Out with the Old

(<https://springgardensretreat.com/construction/building-of-a-dream-out-with-the-old/>)

Building of a Dream 2: The Key to Success

(<https://springgardensretreat.com/construction/building-of-a-dream-the-key-to-success/>)

Building of a Dream 3: Great Buildings come from Great People

(<https://springgardensretreat.com/construction/building-of-a-dream-3-great-buildings-come-from-great-people/>)

Building of a Dream 4: Rising like a Pheonix

(<https://springgardensretreat.com/construction/building-of-a-dream-4-rising-like-a-pheonix/>)

CATEGORIES

Construction (<https://springgardensretreat.com/category/construction/>)



Tab 13
City of Burlington Building Permit

BUILDING SERVICES DEPARTMENT

OTHER SINGLE DETACHED DWELLING PERMIT

Project Location: 835 Spring Gardens Rd. Burlington L7T 1J6
Legal Description: CON 1 EF PT LOT 13 RP 20R6328 PARTS 1,2
Zone: D
Building Type: Single Detached Dwelling
Description: Garage addition, with living space above, and interior renovations to

Permit #: **18 020237 000 00 SO**

Issued: November 1, 2018

Expiry:

Work Proposed: Addition

Applicant: Empire Design Company (Peter Vozikas)
5 North Ridge Cres. Georgetown ON L7G 6E7

(416) 500-8989

Owner:

Owner:

Payee: Lifestyles by Barons Inc.
60 Northridge Cres Halton Hills ON L7G 6E6

(905) 867-0077

SPECIAL NOTICE

1. Notify the Chief Building Official (CBO): It is the duty of the person to whom this permit has been issued to notify the CBO of the commencement of construction, readiness to occupy and at other stages of construction as per OBC, Div.C, 1.3.5. A minimum of two business days notice is required.

2. When requesting an inspection, please refer to the permit number at the top right of this page.

3. The permit documents and reviewed plans must be kept on site at all times during construction. This Permit Card must be posted and easily visible at the site of Construction/Demolition as per OBC, Div. C, 1.3.2.

4. Occupancy/Final Inspection: No person shall occupy or use, or permit to be occupied or used, any building or part thereof newly erected or installed until notice of the date of its completion is given to the CBO; and 1) an inspection is made pursuant to such notice, or 2) ten days have lapsed after service of the notice or after the date of completion, whichever occurs last, and subject to compliance first being made with any order made by an inspector.

5. Separate permits are required for building, demolition, plumbing, drains, heating, air-conditioning, fireplaces, chimneys, signs, portable signs, swimming pools or any other work not covered by or at variance with this permit.

6. Items not covered: This permit does not include any encroachments past the street line or any openings on the public road allowance. Curbs, sidewalks, roadways, etc. to be protected and kept clean to the satisfaction of the Engineering Department having jurisdiction.

7. Revocation of this permit: This permit may be revoked, in accordance with Section 8 of the BUILDING CODE ACT, including where the construction or demolition described is not seriously commenced within six months of issuance or where construction or demolition has been suspended for more than one year.

8. Line Locates: 1-800-400-2255.

Application for a Permit to Construct or Demolish

This form is authorized under subsection 8(1.1) of the *Building Code Act, 1992*

For use by Principal Authority			
Application number:	RECEIVED	Permit number (if different):	18-020237
Date received:	AUG 24 2018	Roll number:	
CITY OF BURLINGTON BUILDING DEPARTMENT			
Application submitted to: <u>BURLINGTON</u> <small>(Name of municipality, upper-tier municipality, board of health or conservation authority)</small>			
A. Project information			
Building number, street name		Unit number	Lot/con.
835 SPRING GARDENS ROAD			
Municipality	Postal code	Plan number/other description	
BURLINGTON			
Project value est. \$		Area of work (m ²)	
100,000		Gar.=25.48/2nd New=53.81 Bsmt Reno=154.32/1st Reno=154.32	
B. Purpose of application			
New construction		<input checked="" type="checkbox"/> Addition to an existing building <input checked="" type="checkbox"/> Alteration/repair <input type="checkbox"/> Demolition <input type="checkbox"/> Conditional Permit	
Proposed use of building		Current use of building	
Description of proposed work			
ADDITION TO GARAGE WITH FLOOR ABOVE & INTERIOR ALTERATIONS			
C. Applicant			
Applicant is:		<input type="checkbox"/> Owner or <input checked="" type="checkbox"/> Authorized agent of owner	
Last name	First name	Corporation or partnership	
VOZIKAS	PETER	EMPIRE DESIGN COMPANY	
Street address		Unit number	Lot/con.
5 NORTH RIDGE CRESCENT		—	
Municipality	Postal code	Province	E-mail
GEORGETOWN	L7G 6E7	ON	VOZKKASS@HOTMAIL.COM
Telephone number ()	Fax ()	Cell number (416) 500-8989	
D. Owner (if different from applicant)			
Last name	First name	Corporation or partnership	
██████████	██████████		
Street address		Unit number	Lot/con.
████████████████████			
Municipality	Postal code	Province	E-mail
██████████		██████████	██████████
Telephone number ()	Fax ()	Cell number ()	
()			

Application for a Permit to Construct or Demolish – Effective January 1, 2014

E. Builder (optional)				
Last name		First name	Corporation or partnership (if applicable)	
Street address			Unit number	Lot/con.
Municipality		Postal code	Province	E-mail
Telephone number ()		Fax ()		Cell number ()
F. Tarion Warranty Corporation (Ontario New Home Warranty Program)				
i. Is proposed construction for a new home as defined in the <i>Ontario New Home Warranties Plan Act</i> ? If no, go to section G.			Yes	No <input checked="" type="checkbox"/>
ii. Is registration required under the <i>Ontario New Home Warranties Plan Act</i> ?			Yes	No <input checked="" type="checkbox"/>
iii. If yes to (ii) provide registration number(s): _____				
G. Required Schedules				
i) Attach Schedule 1 for each individual who reviews and takes responsibility for design activities.				
ii) Attach Schedule 2 where application is to construct on-site, install or repair a sewage system.				
H. Completeness and compliance with applicable law				
i) This application meets all the requirements of clauses 1.3.1.3 (5) (a) to (d) of Division C of the Building Code (the application is made in the correct form and by the owner or authorized agent, all applicable fields have been completed on the application and required schedules, and all required schedules are submitted). Payment has been made of all fees that are required, under the applicable by-law, resolution or regulation made under clause 7(1)(c) of the <i>Building Code Act, 1992</i> , to be paid when the application is made.			Yes <input checked="" type="checkbox"/>	No
ii) This application is accompanied by the plans and specifications prescribed by the applicable by-law, resolution or regulation made under clause 7(1)(b) of the <i>Building Code Act, 1992</i> .			Yes <input checked="" type="checkbox"/>	No
iii) This application is accompanied by the information and documents prescribed by the applicable by-law, resolution or regulation made under clause 7(1)(b) of the <i>Building Code Act, 1992</i> which enable the chief building official to determine whether the proposed building, construction or demolition will contravene any applicable law.			Yes <input checked="" type="checkbox"/>	No
iv) The proposed building, construction or demolition will not contravene any applicable law.			Yes <input checked="" type="checkbox"/>	No
I. Declaration of applicant				
I, <u>PETER VOZIKAS</u> declare that: (print name)				
1. The information contained in this application, attached schedules, attached plans and specifications, and other attached documentation is true to the best of my knowledge.				
2. If the owner is a corporation or partnership, I have the authority to bind the corporation or partnership.				
August 24, 2018				
Date		Signature of applicant		

Personal information contained in this form and schedules is collected under the authority of subsection 8(1.1) of the *Building Code Act, 1992*, and will be used in the administration and enforcement of the *Building Code Act, 1992*. Questions about the collection of personal information may be addressed to: a) the Chief Building Official of the municipality or upper-tier municipality to which this application is being made, or, b) the inspector having the powers and duties of a chief building official in relation to sewage systems or plumbing for an upper-tier municipality, board of health or conservation authority to whom this application is made, or, c) Director, Building and Development Branch, Ministry of Municipal Affairs and Housing 777 Bay St., 2nd Floor. Toronto, M5G 2E5 (416) 585-6666.



Heat Recovery Ventilators shall be installed in accordance with Div B, 9.32.3.11. OBC 2012

Where a supply duct is located in a conditioned space, the ductwork shall be sealed to a Class C seal level in accordance with the SMACNA, "HVAC Duct Construction Standards-Metal and Flexible".

Residential Furnaces

A Furnace serving a dwelling unit shall be equipped with a brushless direct current motor as per OBC 12.3.1.5.

Where a supply or return duct is not protected by an insulated exterior wall or where the duct is exposed to an unheated space it shall be insulated to provide thermal resistance of not less than RSI 2.1 [R12].

All branch supply ducts for residential systems shall be equipped with volume control dampers at the boot to permit balancing or shall be fitted with a diffuser incorporating an adjustable and lockable volume control device which can be set in a fixed position.

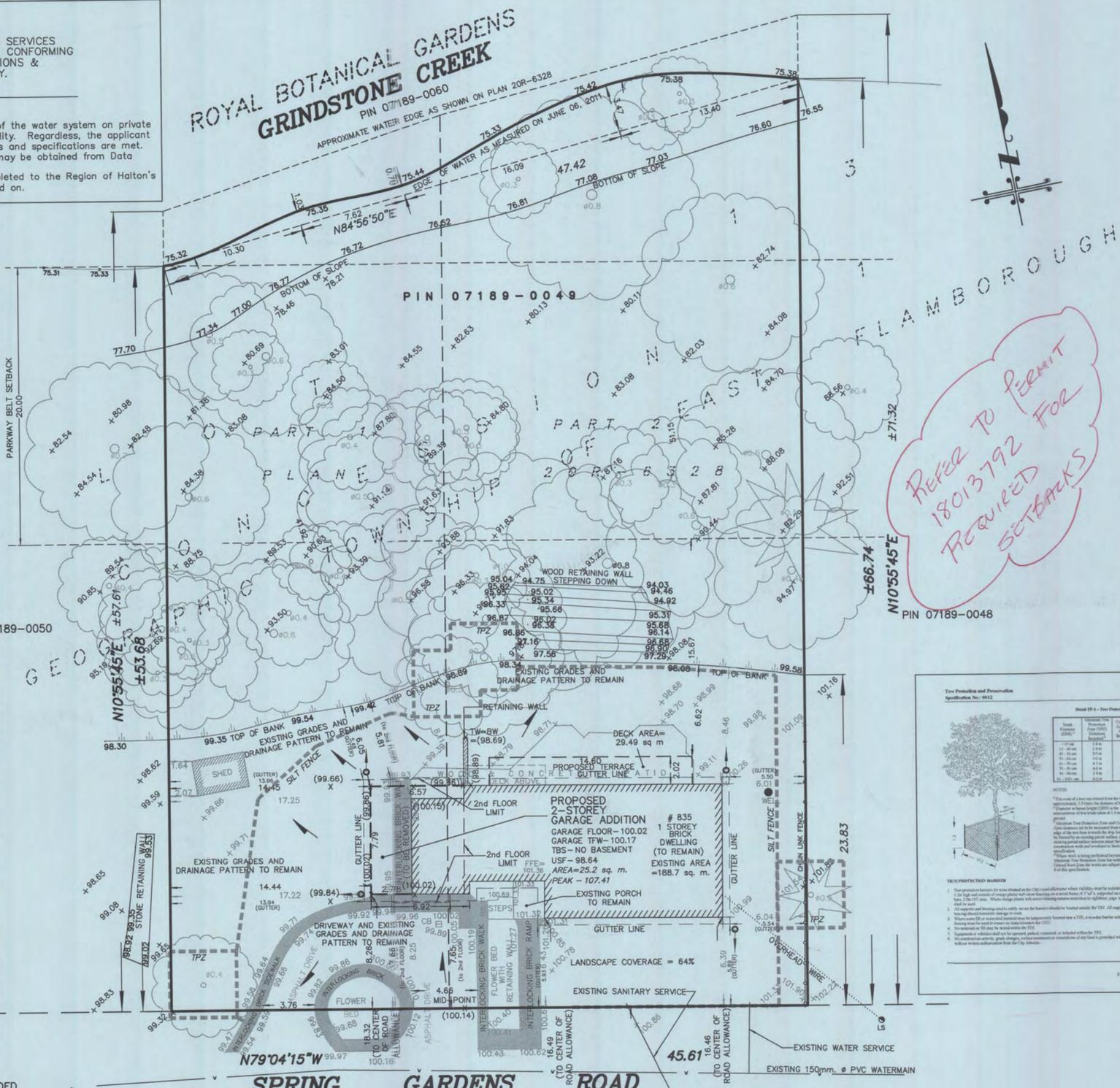
REGIONAL APPROVAL
 REGION DESIGN OF WATER &/OR WASTEWATER SERVICES APPROVED SUBJECT TO DETAIL CONSTRUCTION CONFORMING TO HALTON REGION STANDARDS & SPECIFICATIONS & LOCATION APPROVAL FROM AREA MUNICIPALITY.
 SIGNED: _____ DATED: _____
 INFRASTRUCTURE PLANNING & POLICY

The applicant should be aware that the approval of the water system on private property is the responsibility of the Local Municipality. Regardless, the applicant must ensure that the Region of Halton's standards and specifications are met. (The Water and Wastewater Linear Design Manual may be obtained from Data Management Group at 905-825-6032) Furthermore, all water quality tests must be completed to the Region of Halton's satisfaction, before the water supply can be turned on.

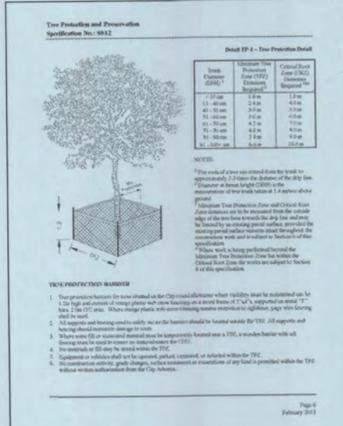
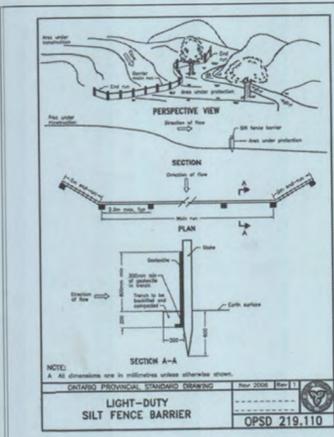
NOTE:
 PROPOSED TIES SHOWN HEREON ARE TO FOUNDATION ONLY. BUILDING DIMENSIONS WERE TAKEN FROM PLANS SUPPLIED BY THE CLIENT.
 EXISTING ELEVATIONS ARE GEODETIC AND ARE REFERRED TO THE SURVEY REAL PROPERTY REPORT ISSUED BY MACKAY, MACKAY & PETERS LIMITED, DRAWING No. 11-079, DATED JUNE 8, 2011.
 LOT GRADING SHALL MATCH WITH THE EXISTING DRAINAGE PATTERNS.
 SANITARY SEWER SERVICE CONNECTION MUST BE INSTALLED BEFORE BASEMENT EXCAVATION TO ENSURE SERVICING AT BASEMENT LEVEL.
 BUILDER TO VERIFY ALL EXISTING GRADES PRIOR TO CONSTRUCTION INCLUDING ROAD AND LOT LINE GRADES

NOTE:
 SLUMP PUMP AND DOWNSPOUTS TO DRAIN TO PERMEABLE SURFACE VIA SPLASH PADS

NOTE:
 DENOTES DIRECTION OF DRAINAGE
 DENOTES EXISTING ELEVATIONS
 DENOTES PROPOSED ELEVATIONS
 DENOTES HIGH POINT

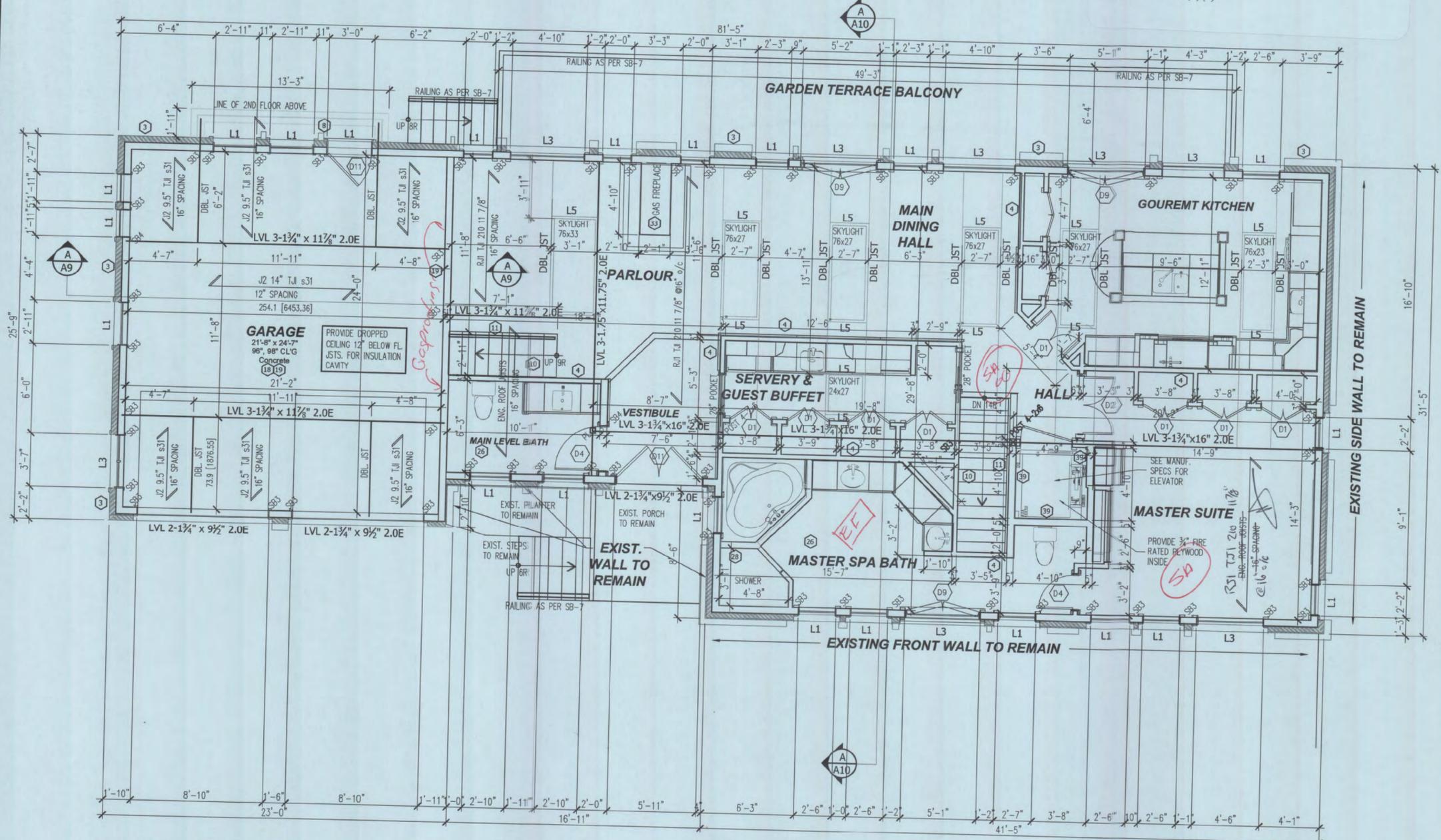


Refer to Permit 18013792 For Required Setbacks



REQUIRED BY ZONING - D (WITH MUNICIPAL WATER & SEWER)	PROVIDED
FRONT - 7.50 m	6.39 m (EXISTING) 8.28 (PROPOSED ADDITION)
REAR - 9.00 m	47.1± m (EXISTING) 40.2± m (PROPOSED ADDITION)
SIDE - 1.5 m West Side 1.5 m East Side	17.22 m West Side (EXISTING) 14.44 (PROPOSED ADDITION) 6.01 m East Side (EXISTING)
LOT	

9.5.2.3 Stud Wall Reinforcement
 (1) If wood wall studs or sheet steel wall studs enclose the main bathroom in a dwelling unit, reinforcement shall be installed to permit the future installation of the following,
 (a) For a water closet a grab bar described in Clauses 3.8.3.8.(3)(a) and a grab bar described in Clause 3.8.3.8.(3)(c)
 (b) For a shower a grab bar described in Clause 3.8.3.13.(2)(f), and
 (c) For a bathtub a grab bar described in Clause 3.8.3.13.(4)(c).



ALL CONSTRUCTION TO MEET ONTARIO BUILDING CODE REQUIREMENTS.

RECEIVED
 AUG 24 2018
 CITY OF BURLINGTON
 BUILDING DEPARTMENT



60 North Ridge Crescent
 Georgetown Ontario
 905-867-9777

The undersigned has reviewed and taken responsibility for this design, and has the qualifications as (either designer) and meets the requirements set out in the Ontario Building Code to be a designer.

Peter Vozikas
 Name
 2019
 18763.55

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 VOZIKAS@HOTMAIL.COM

PROJECT: MAJOR RENOVATION
 Additions and Renovations
 SHEET TITLE: GROUND FLOOR PLAN
 PROPERTY: 835 Spring Gardens Road
 SCALE: 3/16"=1'-0" DATE: JUN/2018
 DRAWN BY: PV CHECKED BY: PV
 PROJECT NO: SHEET NO: **A03**

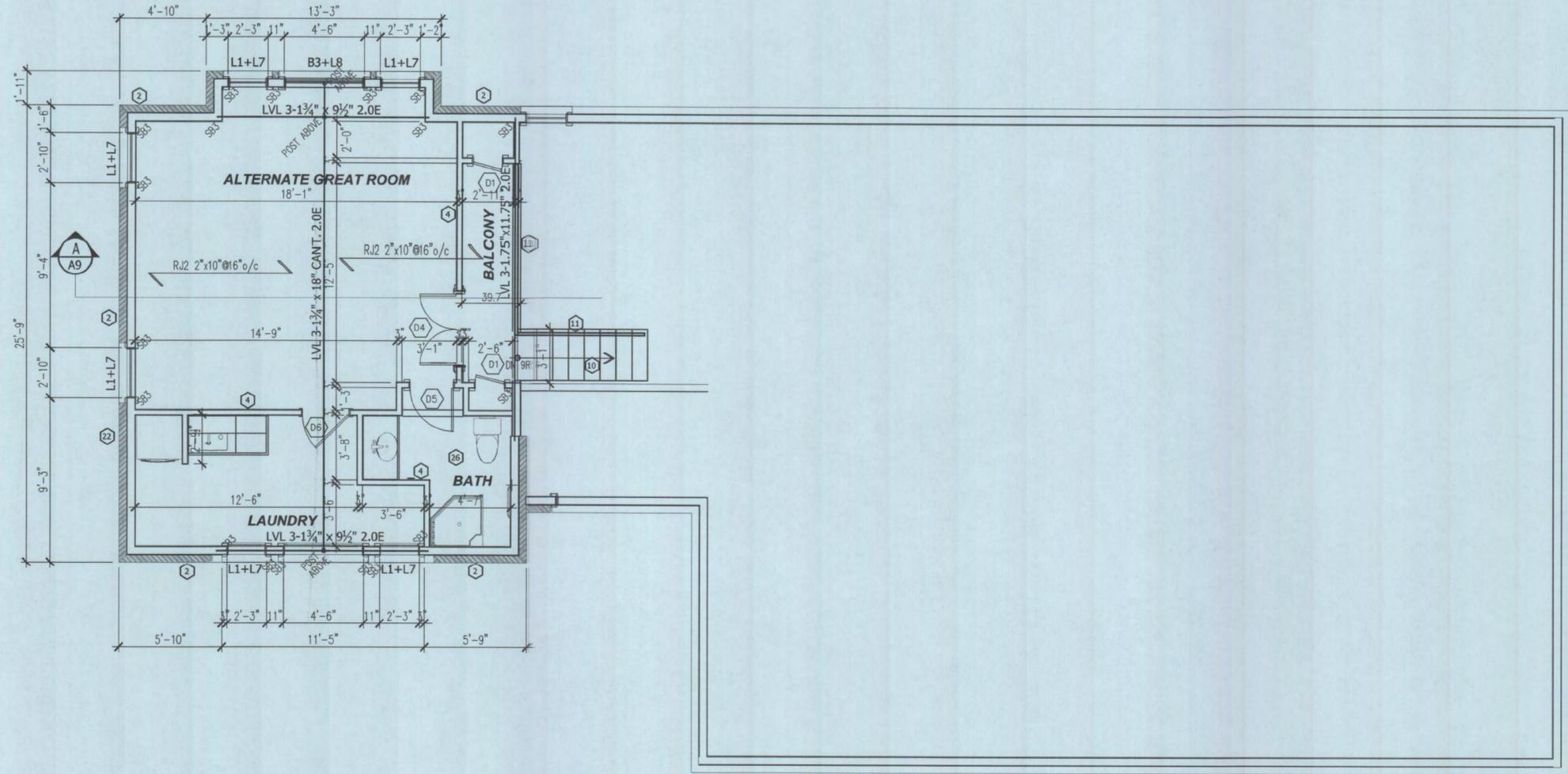
9.10.19. SMOKE ALARMS
 (1) Within dwelling units sufficient smoke alarms conforming to CAN/ULC-531 shall be installed so that
 (a) There is at least one smoke alarm on each storey, including basements, and
 (b) On any storey of a dwelling unit containing sleeping rooms, a smoke alarm is installed,
 (i) in each sleeping room, and
 (ii) in a location between the sleeping rooms and the remainder of the storey, and if the sleeping rooms are served by a hallway, the smoke alarm shall be located in the hallway
 (2) Smoke alarms shall have a visual signalling component conforming to the requirements in 18.5.3. of NFPA 72. The visual signalling component need not be integrated with the smoke alarm provided it is interconnected to it.
 INTERCONNECTED SMOKE ALARMS TO BE PERMANENTLY CONNECTED AND HAVE A BATTERY BACKUP AS PER OBC 9.10.19.4

CARBON MONOXIDE ALARMS (OBC 9.33.4)
 Where a fuel-burning appliance is installed in a suite of residential occupancy, a carbon monoxide alarm (CMA) shall be installed adjacent to each sleeping area in the suite. Where a fuel burning appliance is installed in a service room that is not in a suite of residential occupancy, a CMA shall be installed adjacent to each sleeping area in every suite of residential occupancy that is adjacent to the service room and in the service room.
 Where a storage garage is located in a building containing a residential occupancy, a CMA shall be installed adjacent to each sleeping area in every suite of residential occupancy that is adjacent to the storage garage. Where a storage garage serves only the dwelling unit to which it is attached or built in, a CMA shall be installed adjacent to each sleeping area in the dwelling unit.
 The CMA shall be permanently connected to an electrical circuit and shall have no disconnect switch between the over current device and the CMA. It shall be wired so that its activation will activate all carbon monoxide alarms within the suite of residential occupancy and be equipped with an alarm that is audible within bedrooms when the intervening doors are closed. They shall conform to:
 i) CAN/CGA-6.19, "Residential Carbon Monoxide Alarming Devices", or
 ii) UL 2034, "Single and Multiple Station Carbon Monoxide Alarms" and be mechanically fixed at the manufacturer's recommended height or on or near the ceiling.

Revision	01	PV	24/07/18
Revision	No.	By	DD/MM/YY

CONTRACTOR SHALL CHECK AND VERIFY ALL DIMENSIONS.
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 REVIEWED UNDER THE 2012 O.B.C. 

ALL CONSTRUCTION TO MEET ONTARIO BUILDING CODE REQUIREMENTS.



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 BUILDING DEPARTMENT




 60 North Ridge Crescent
 Georgetown Ontario
 905-867-9777

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 Required unless design is exempt under Sec. C-3.2.5. of the building code.
 Designed under 3.2.1.13(6)

Peter Vozikas
 Name  2019
 BCN

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 416-500-5989 VOZIKAS@GMAIL.COM

PROJECT:
MAJOR RENOVATION Additions and Renovations

SHEET TITLE:
SECOND FLOOR PLAN

PROPERTY:
835 Spring Gardens Road

SCALE: 3/16" = 1'-0" DATE: JUN/2018

DRAWN BY: PV CHECKED BY: PV

PROJECT NO: SHEET NO: **A04**

Revision	01	PV	24/07/18
Revision	No.	By	DD/MM/YY

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 REVIEWED UNDER THE O.B.C.

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 BUILDING DEPARTMENT

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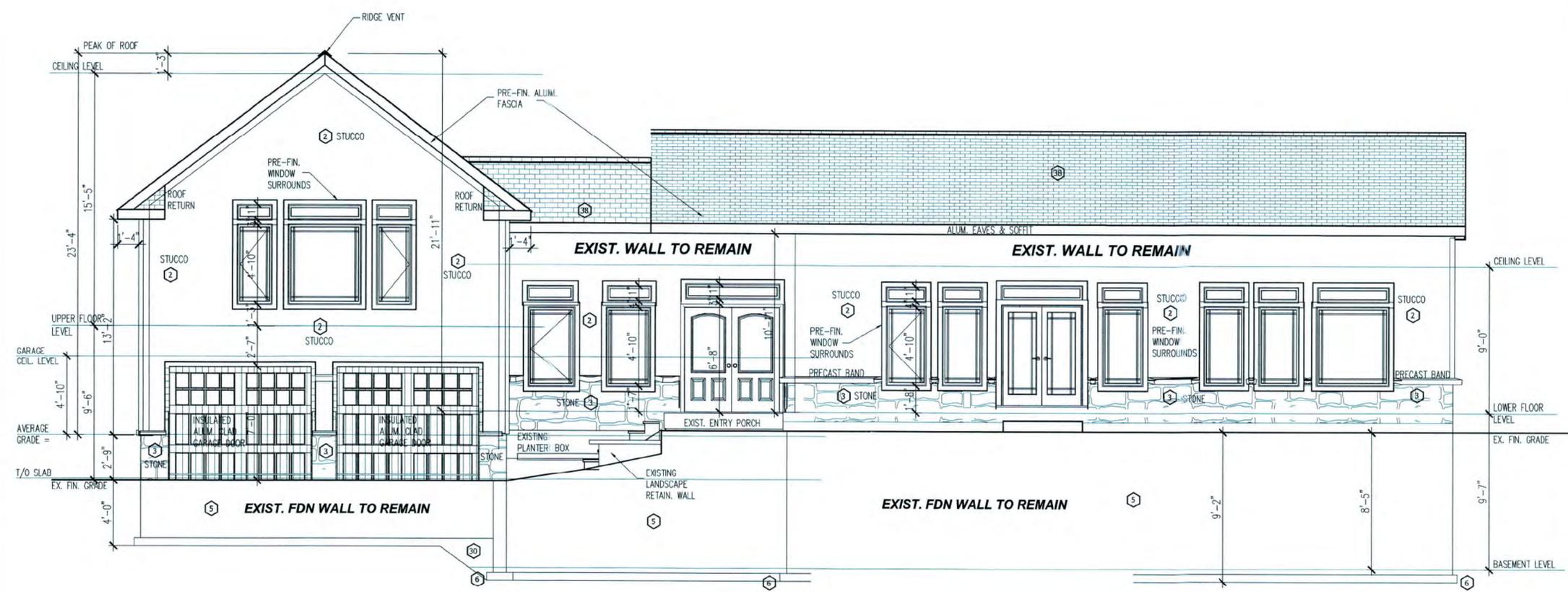


60 North Ridge Crescent
 Georgetown Ontario
 905-867-9777

The undersigned has reviewed and taken responsibility for this design, and has the qualifications as (other design) and meets the requirements set out in the Ontario Building Code to do so as a designer.
 Signature: Peter Vozikas
 Name: Peter Vozikas
 Date: 2018
 Scale: 3/16"

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PROJECT: MAJOR RENOVATION
 Additions and Renovations
 SHEET TITLE: FRONT ELEVATION
 PROPERTY: 835 Spring Gardens Road
 SCALE: 3/16"=1'-0" DATE: JUN/2018
 DRAWN BY: PV CHECKED BY: PV
 PROJECT NO: SHEET NO: **A06**



Revision	01	FV	24/07/18
Revision	No.	By	DD/MM/YY

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 REVIEWED UNDER THE O.B.C. 2012

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 Required unless design is exempt under Div. C-3.2.5. of the building code.
 Designed under 32.4.1.0(1)(a)

Peter Vozikas
 Name:  2019
 Date: DCN

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PROJECT: MAJOR RENOVATION
 Additions and Renovations

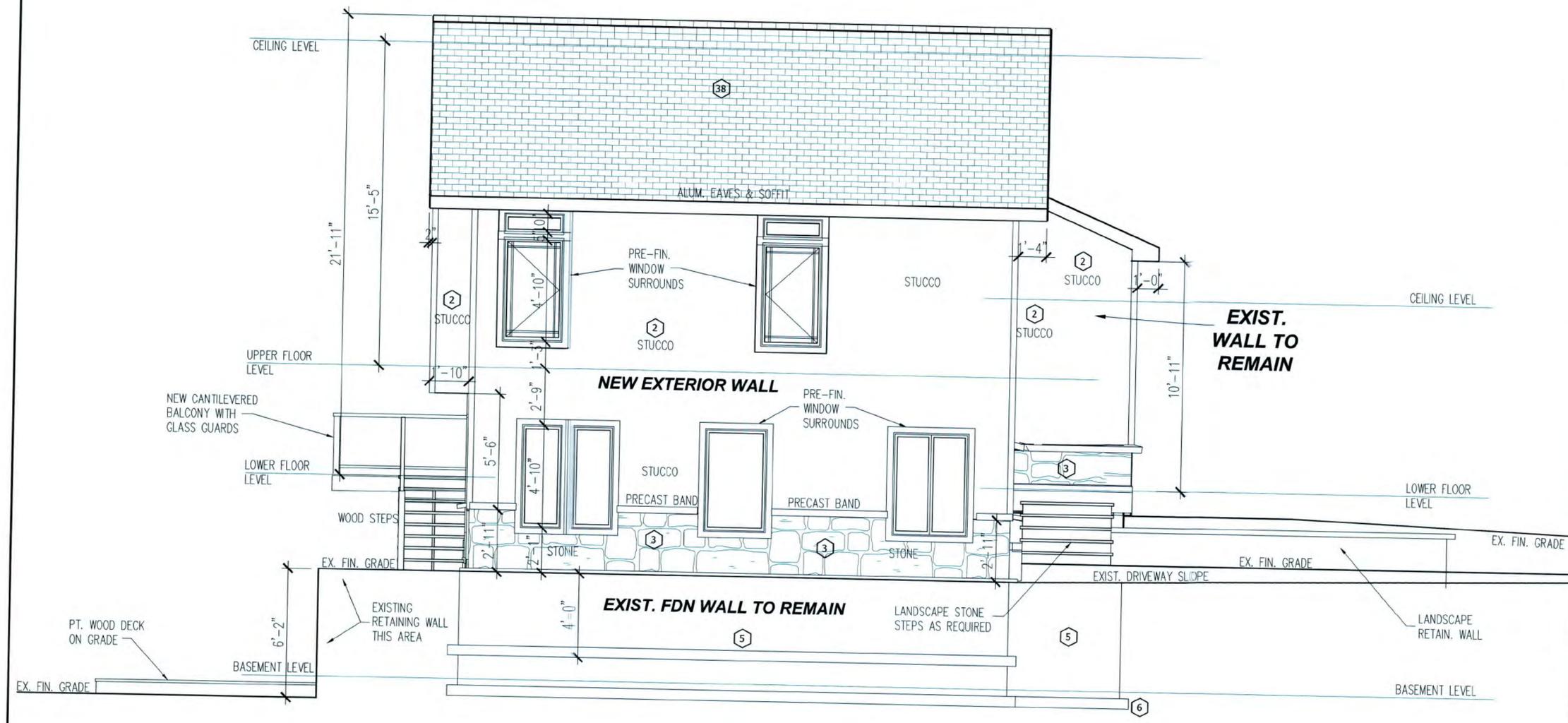
SHEET TITLE:
 LEFT ELEVATION

PROPERTY:
 835 Spring Gardens Road

SCALE: 1/4"=1'-0" DATE: JUN/2018

DRAWN BY: PV CHECKED BY: PV

PROJECT NO: SHEET NO: **A07**



Revision	01	PV	24/07/18
Revision	No.	By	DD/MM/YY

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BUILDING DEPARTMENT

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Georgetown Ontario
905-867-9777

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Required unless design is exempt under Div. C-32.5 of the building code.
Designed under 32.1.1.9.0

Peter Vorkas
None
Signature
2018
BCA

EMPIRE DESIGN COMPANY
PETER VORKAS
ARCHITECTURAL DESIGNS FOR:
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WWW.EMPIREDESIGNHOMES.COM
416-500-8889 VOZKASS@HOTMAIL.COM

PROJECT: MAJOR RENOVATION
Additions and Renovations

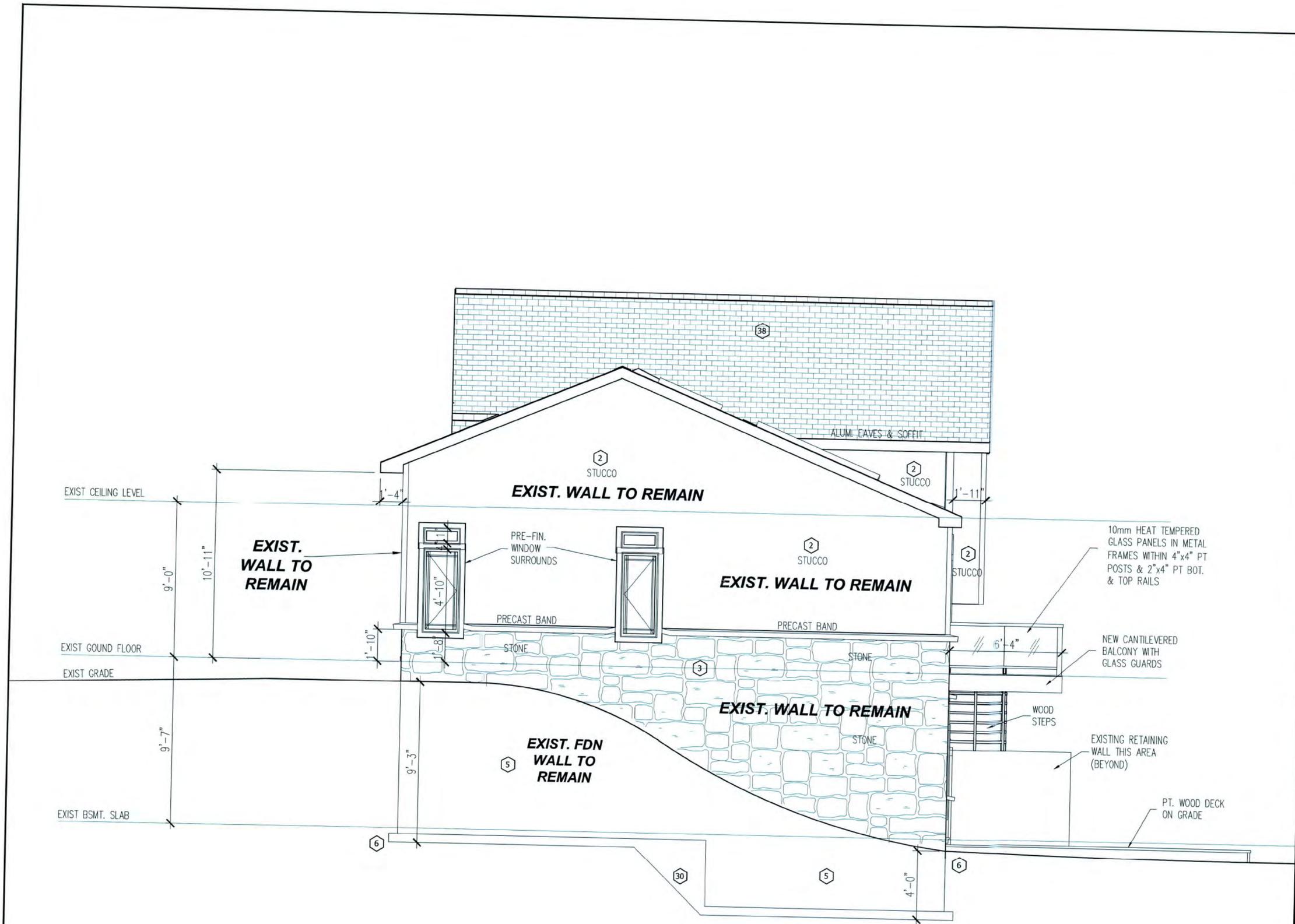
SHEET TITLE: RIGHT ELEVATION

PROPERTY: 835 Spring Gardens Road

SCALE: 1/4"=1'-0" DATE: JUN/2018

DRAWN BY: PV CHECKED BY: PV

PROJECT NO: SHEET NO: **A08**



STAIRS, RAMPS, HANDRAILS AND GUARDS TO COMPLY WITH 9.8.0.B.C.

	Max. (mm)	Min. (mm)
Rise	200	125
Run	355	210
Tread Depth	355	235
Handrail	985	800

Guards to be installed to comply with 9.8.8.O.B.C

Revision	01	PV	24/07/18
Revision	No.	By	DD/MM/YY

CONTRACTOR SHALL CHECK AND VERIFY ALL DIMENSIONS.
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 REVIEWED UNDER THE O.B.C.



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60 North Ridge Crescent
 Georgetown Ontario
 905-867-9777

The undersigned has reviewed and takes responsibility for this design and has the qualifications as (other designed) and meets the requirements set out in the Ontario Building Code to be a designer.
 Required unless design is exempt under Div. 2-122.5 of the building code.
 Designed under 32.4.1(3)(a)

Peter Vozikas
 Name Signature Date 2018 BCN



PROJECT: MAJOR RENOVATION
 Additions and Renovations

SHEET TITLE: REAR ELEVATION

PROPERTY: 836 Spring Gardens Road

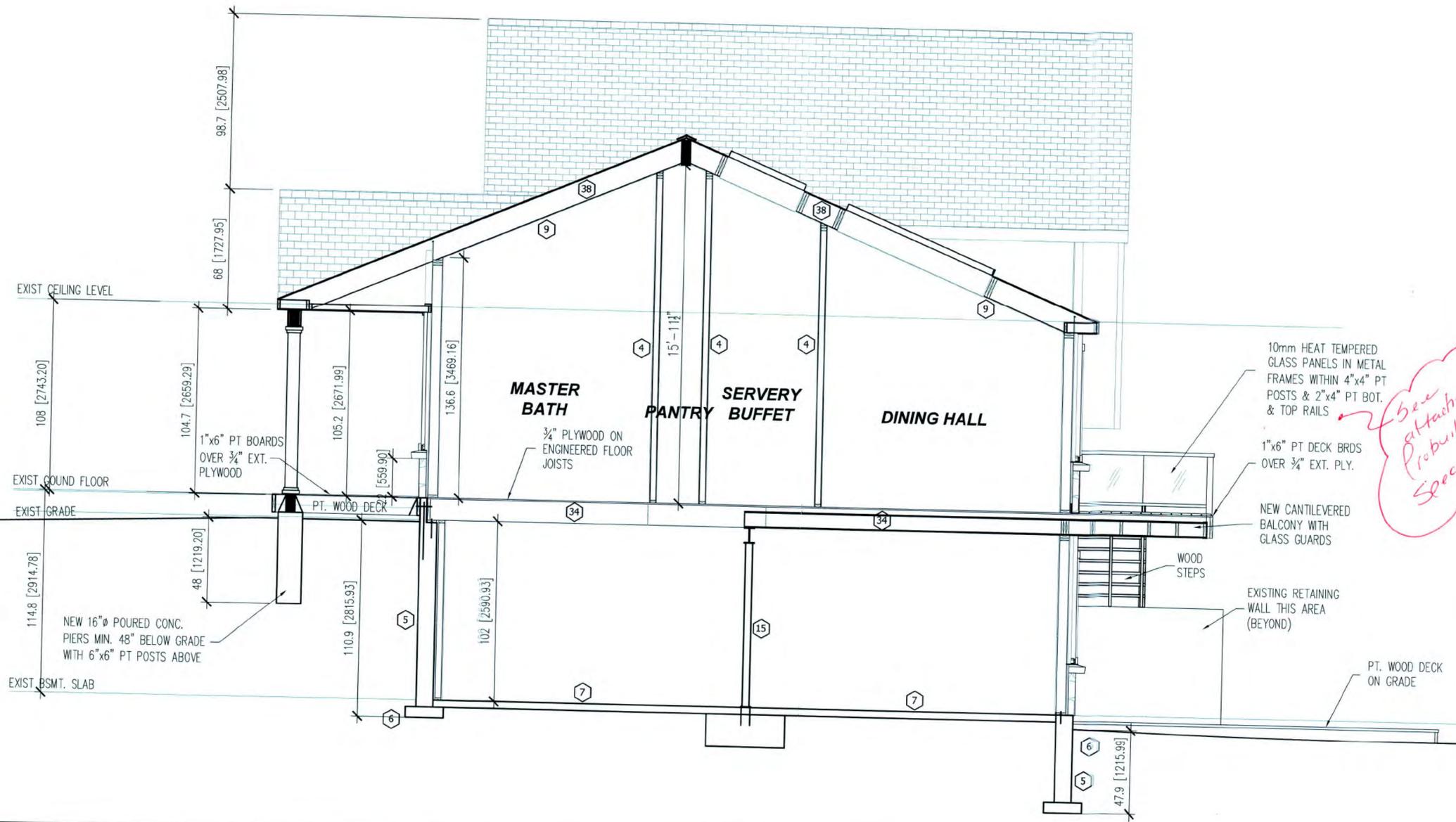
SCALE: 3/16"=1'-0" DATE: JUN/2018

DRAWN BY: PV CHECKED BY: PV

PROJECT NO: SHEET NO: A09

Revision	No.	By	DD/MM/YY

CONTRACTOR SHALL CHECK AND VERIFY ALL DIMENSIONS.
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 REVIEWED UNDER THE O.B.C.



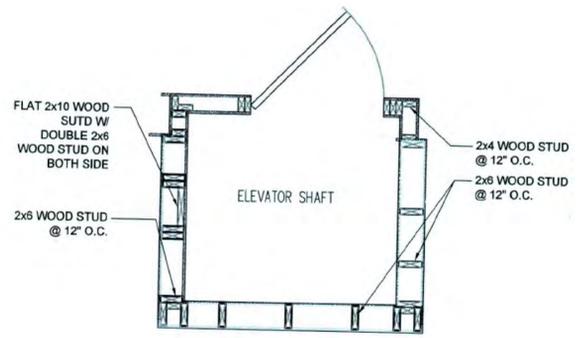
See attached Probuilt Specifications

ALL CONSTRUCTION TO MEET ONTARIO BUILDING CODE REQUIREMENTS.

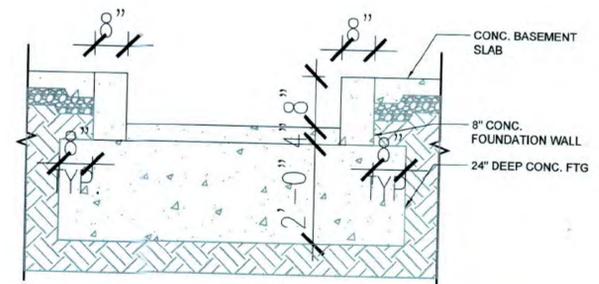
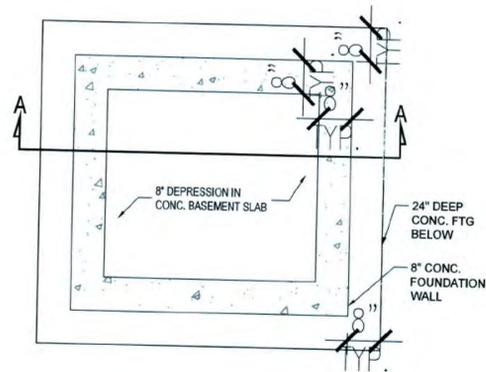


60 North Ridge Crescent
 Georgetown Ontario
 905-867-9777

The undersigned has reviewed and takes responsibility for this design, and has the qualifications as (other designer) and meets the requirements set out in the Ontario Building Code to be a designer.
 Signature: Peter Vozikas
 Date: 2019
 Title: Architect



ELEVATOR SHAFT DETAILS



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 CITY OF BURLINGTON
 BUILDING DEPARTMENT

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 PETER VOZIKAS
 ARCHITECTURAL DESIGNER FOR:
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PROJECT:	MAJOR RENOVATION Additions and Renovations		
SHEET TITLE:	CROSS SECTION-B		
PROPERTY:	835 Spring Gardens Road		
SCALE:	1/4" = 1'-0"	DATE:	JUN/2018
DRAWN BY:	PV	CHECKED BY:	PV
PROJECT NO.:		SHEET NO.:	A10

Revision	01	PV	24/07/18
Revision	No.	By	DD/MM/YY

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 REVIEWED UNDER THE O.B.C.

ALL CONSTRUCTION TO MEET ONTARIO BUILDING CODE REQUIREMENTS.

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 CITY OF BURLINGTON
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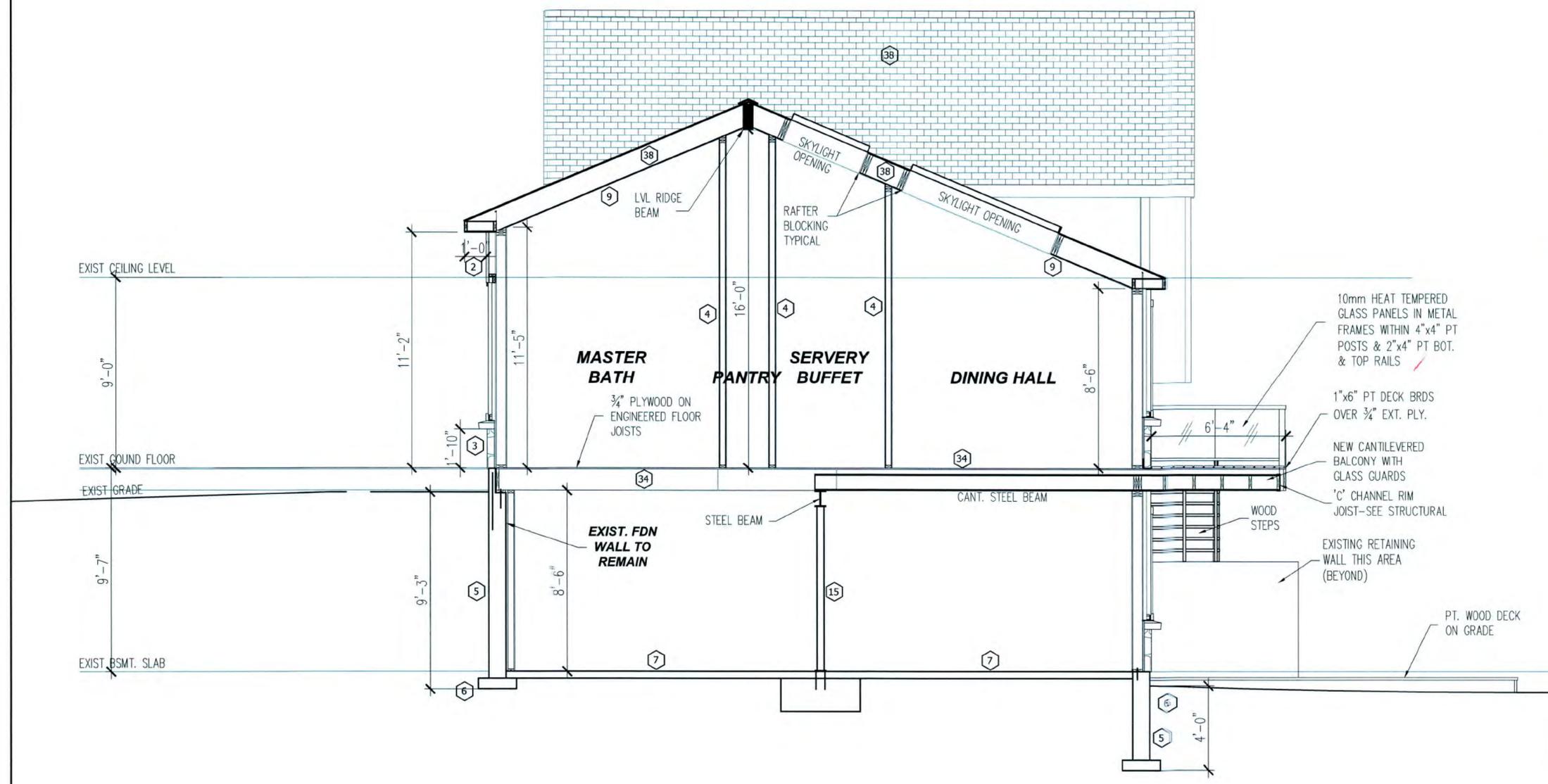


60 North Ridge Crescent
 Georgetown Ontario
 905-667-9777

The undersigned has reviewed and takes responsibility for this design, and has the qualifications as (other designer) and meets the requirements set out in the Ontario Building Code to be a designer.
 Peter Vozikas
 Name: [Signature] 2019
 BCN



PROJECT: **MAJOR RENOVATION Additions and Renovations**
 SHEET TITLE: **CROSS SECTION-B**
 PROPERTY: **835 Spring Gardens Road**
 SCALE: 1/4"=1'-0" DATE: JUN/2018
 DRAWN BY: PV CHECKED BY: PV
 PROJECT NO: SHEET NO: **A11**



INSULATION VALUES UPDATED AS PER JAN 1 2012 SB-12 UPDATE TO O.B.C. 2012

1. ROOF CONSTRUCTION

NO.210 (10.25kg/m²) ASPHALT SHINGLES, 10mm (3/8") PLYWOOD SHEATHING WITH "H" CLIPS, APPROVED WOOD TRUSSES @ 600mm (24") O.C. MAX. APPROVED FANES PROTECTION TO EXTEND 900mm (3'-0") FROM EDGE OF ROOF AND MIN. 300mm (12") SETBACK INNER FACE OF EXTERIOR WALL, 38x140 (2"x6") TRUSS BRACING @ 1830mm (6'-0") O.C. AT BOTTOM CHORD, PREFIN. ALUM. EAVESTROUGH, FASCIA, RVL. & VENTED SOFFIT, ATIC VENTILATION 1:300 OF INSULATED CEILING AREA WITH 50% AT EAVES.

2. FRAME WALL CONSTRUCTION (2"x6")

STUCCO OR SIDING AS PER ELEVATION, APPROVED SHEATHING PAPER, 9.5mm (3/8") EXT. TYPE SHEATHING, 38x140 (2"x6") STUDS @ 400mm (16") O.C., RSI 3.87 (R22) INSULATION AND APPROVED VAPOUR BARRIER AND APPROVED CONT. AIR BARRIER, 13mm (1/2") INT. DRYWALL FINISH.

2A. FRAME WALL CONSTRUCTION (2"x4")

SIDING AS PER ELEVATION, APPROVED SHEATHING PAPER, RSI 0.9 (R5) EXTERIOR RIGID INSUL. BOARD, 38x89 (2"x4") STUDS @ 400mm (16") O.C., WITH APPROVED DIAGONAL WALL BRACING, FOR LOAD BEARING WALLS SUPPORTING A SECOND FLOOR & A ROOF 38x89 (2"x4") STUDS @ 400mm (16") O.C. FOR LOAD BEARING WALLS SUPPORTING ROOF ONLY, WITH APPROVED DIAGONAL WALL BRACING, RSI 2.4 (R14) INSULATION AND APPROVED VAPOUR BARRIER AND APPROVED CONT. AIR BARRIER, 13mm (1/2") INT. DRYWALL FINISH.

3. BRICK VENEER CONSTRUCTION (2"x6")

90mm (4") FACE BRICK OR STONE 25mm (1") AIR SPACE, 22x180x0.76mm (7/8"x7"x0.03") GALVANIZED METAL TIES @ 400mm (16") O.C. HORIZONTAL 600mm (24") O.C. VERTICAL. APPROVED SHEATHING PAPER, 9.5mm (3/8") EXT. TYPE SHEATHING, 38x140 (2"x6") STUDS @ 406mm (16") O.C., RSI 3.87 (R22) INSULATION AND APPROVED VAPOUR BARRIER WITH APPROVED CONTIN. AIR BARRIER, 13mm (1/2") INT. DRYWALL FINISH. PROVIDE WEEP HOLES @ 800mm (32") O.C. BOTTOM COURSE AND OVER OPENINGS. PROVIDE BASE FLASHING UP MIN. 150mm (6") BEHIND BUILDING PAPER.

3A. BRICK VENEER CONSTRUCTION (2"x4")

90mm (4") FACE BRICK 25mm (1") AIR SPACE, 22x180x0.76mm (7/8"x7"x0.03") GALV. METAL TIES @ 400mm (16") O.C. HORIZONTAL 600mm (24") O.C. VERTICAL. APPROVED SHEATHING PAPER, RSI 0.9 (R5) EXT. RIGID INSUL. BOARD, 38x89 (2"x4") STUDS @ 400mm (16") O.C. W/ APPROVED DIAGONAL WALL BRACING, FOR LOAD BEARING WALLS SUPPORTING A ROOF & A SECOND 38x89 (2"x4") STUDS @ 406mm (16") O.C. W/ APPROVED DIAGONAL WALL BRACING, RSI 2.4 (R14) INSUL. AND APPROV. 6 mil. VAPOUR BARRIER W/ APPROVED CONT. AIR BARRIER, 13mm (1/2") INT. DRYWALL FINISH. PROVIDE WEEP HOLES @ 800mm (32") O.C. BOTTOM COURSE AND OVER OPENINGS. PROVIDE BASE FLASHING UP MIN. 150mm (6") BEHIND BUILDING PAPER.

4. INTERIOR STUD PARTITIONS

-BEARING PARTITIONS 38x89 (2"x4") @ 400mm (16") O.C. FOR 2 STOREYS AND 300mm (12") O.C. FOR 3 STOREYS, NON-BEARING PARTITIONS 38x89 (2"x4") @ 600mm (24") O.C. PROVIDE 38x89 (2"x4") BOTTOM PLATE AND 2/38x89 (2"x4") TOP PLATE, 13mm (1/2") INTERIOR DRYWALL BOTH SIDES OF STUD, PROVIDE 38x140 (2"x6") @ 406mm (16") O.C. STUDS/PLATES WHERE NOTED, NON BEARING PARTITIONS 38x89 (2"x4") OR 38x140 (2"x6") @ 406mm (16") O.C.

5. FOUNDATION WALL/FOOTINGS: -SEE OBC 9.15.3-

250mm (10") POURED CONC. FDN. WALL 32MPa WITH BITUMINOUS DAMPPROOFING AND DRAINAGE LAYER. DRAINAGE LAYER REQ. BASEMENT INSUL. MUST EXTEND FULL HEIGHT OF FND. WALL GRADE. MAXIMUM POUR HEIGHT 2390 (7'-10") ON 500x200 (22"x8") CONTIN. REIN. CONC. FTG. BRACE FOUNDATION WALL PRIOR TO BACKFILLING. ALL FOOTINGS SHALL REST ON NATURAL UNDISTURBED SOIL.

6. 100mm (4") DIA. WEEPING TILE 150mm (6") CRUSHED STONE OVER AND AROUND WEEPING TILES.

7. BASEMENT SLAB

80mm (3") MIN. 32MPa CONC. SLAB ON 100mm (4") COARSE GRANULAR FILL, OR 20MPa (2900psi) CONC. WITH DAMPPROOFING BELOW SLAB.

FALSE DORMER NOTE:
VEENER TO BE 2" THICK, ADHERED THIN VEENER INSTALLED AS PER MANUFACTURER SPECS (OR LESS) OR CONTACT TACOMA FOR STEEL FRAMING SPEC PRIOR TO CONSTRUCTION

ROOF TRUSS DESIGN NOTE:
FOR PART 4 ROOF TRUSSES REQUIRING WEB LATERAL BRACING, TRUSS MANUFACTURER IS TO DESIGN T-BRACING INSTEAD OF WEB LATERALS

8. EXPOSED FLOOR TO EXTERIOR

PROVIDE RSI 5.46 (R31) INSULATION, APPROVED VAPOUR BARRIER AND CONTINUOUS AIR BARRIER, FINISHED SOFFIT.

9. RSI 8.81 (R50) ROOF INSULATION AND APPROVED VAPOUR BARRIER, 18mm (5/8") INT. DRYWALL FINISH OR APPROVED EQUAL.

10. ALL STAIRS/EXTERIOR STAIRS -OBC 9.8.-

MAX. RISE = 200 (7-7/8")
MIN. RUN = 210 (8-1/4")
MIN. TREAD = 235 (9-1/4")
MAX. NOSING = 25 (1")
MIN. HEADROOM = 1950 (6'-5")
RAIL @ LANDING = 900 (2'-11")
RAIL @ STAIR = 800 (2'-8")
MIN. STAIR WIDTH = 860 (2'-10")
FOR CURVED STAIRS
MIN. AVG. RUN = 150 (6")
MIN. RUN = 200 (8")

11. FINISHED RAILING ON PICKETS SPACED MAXIMUM 100mm (4") BETWEEN PICKETS. GUARDS -OBC 9.8.8.

INTERIOR GUARDS: 900mm (2'-11") MIN.
EXTERIOR GUARDS: 1070mm (3'-6") MIN.

12. 38x89 (2"x4") SILL PLATE WITH 13mm (1/2") DIA. ANCHOR BOLTS 200mm (8") LONG, EMBEDDED MIN. 100mm (4") INTO CONC. @ 2400mm (7'-10") O.C., CAULKING OR 25 (1") MIN MINERAL WOOL BETWEEN PLATE AND TOP OF FDN. WALL. USE NON-SHRINK GROUT TO LEVEL SILL PLATE WHEN REQUIRED.

13. RSI 2.11 (R12) INSULATION BLANKET OR BATTES WITH 38x89 (2"x4") STUD WALL, AND APPROVED VAPOUR BARRIER FULL HEIGHT GRADE DAMPPROOF W/ BLDG. PAPER BETWEEN THE FDN. WALL AND INSUL. UP TO GRADE LEVEL.

14. not used

15. STEEL BASEMENT COLUMN (SEE O.B.C. 9.17.3.4)

90mm (3-1/2") DIA. SINGLE TUB. ADJUSTABLE STL. COL. CONFORMING TO CAN/COSB-7.2M, AND W/ 150x150x9.5 (6"x6"x3/8") STL. PL. TOP & BOTTOM. 1219x1219x410 (48"x48"x16") CONC. FTG. 15MPa ON UNDISTURBED SOIL.

15A. STEEL BASEMENT COLUMN (SEE O.B.C. 9.17.3.4)

90mm (3-1/2") DIA. x 4.78mm (188) NON-ADJUSTABLE STL. COL. W/ 150x150x9.5 (6"x6"x3/8") STL. TOP & BOTTOM PLATE ON 1120x1120x510 (44"x44"x20") CONC. FOOTING 15MPa ON UNDISTURBED SOIL.

15B. STEEL COLUMN (SEE O.B.C. 9.17.3.4)

90mm (3-1/2") DIA. x 4.78mm (188) NON-ADJUSTABLE STL. COLUMN WITH 150x150x9.5 (6"x6"x3/8") STEEL TOP & BOTTOM PLATE. BASE PLATE 120x250x12.5 (4 1/2"x10"x1/2") WITH 2-12mm DIA. x 300mm LONG x50mm HOOK ANCHORS (2-1/2"x12"x2") FIELD WELD COLUMN TO BASE PLATE.

15C. STEEL COLUMN (SEE O.B.C. 9.17.3.4)

3-1/2" φ x 0.138" WALL THICKNESS ADJUSTABLE COLUMN 15" x 5" x 1/4" H - PLATE 6"x6"x5/16" BASE PLATE ON FTG. 42"x42"x18" CONC. FTG. (15MPa) ON NAT. UNDISTURBED SOIL.

16. BEAM POCKET OR 200x250 (8"x10") POURED CONCRETE NIB WALLS. MINIMUM BEARING 90mm (3-1/2").

17. 19x84 (1"x3") CONTINUOUS WOOD STRAPPING BOTH SIDES OF STEEL BEAM.

18. GARAGE SLAB: 100mm (4") 32MPa (4640psi) CONC. SLAB WITH 5-8% AIR ENTRAINMENT (ON OPT. 100 (4") COARSE GRANULAR FILL WITH COMPACTED SUB-BASE OR COMPACTED NATIVE FILL. SLOPE TO FRONT AT 1% MIN.

19. 13mm (1/2") GYPSUM BD. ON WALL AND CEILING, RSI 5.46 (R31) IN CEILING. TAPE AND SEAL & STRUCTURALLY SUPPORT ALL JOINTS. IN ORDER TO BE GAS TIGHT.

20. DOOR AND FRAME GASPROOFED. DOOR EQUIPPED WITH SELF CLOSING DEVICE AND WEATHERSTRIPPING.

21. PRECAST CONCRETE STEP OR WD. STEP WHERE NOT EXPOSED TO WEATHER. MAX. RISE 200mm (7-7/8"); MINIMUM TREAD 250mm (9-1/2").

22. CAPPED DRYER EXHAUST VENTED TO EXTERIOR. DUCTS SHALL CONFORM TO O.B.C. PART 6.

23. ATTIC ACCESS HATCH 500x700 (20"x28") WITH WEATHERSTRIPPING. RSI 8.81 (R50) RIGID INSULATION BACKING.

24. FIREPLACE CHIMNEYS -OBC 9.21.-

TOP OF FIREPLACE CHIMNEY SHALL BE 915mm (3'-0") ABOVE THE HIGHEST POINT AT WHICH IT COMES IN CONTACT WITH THE ROOF AND 810mm (2'-0") ABOVE THE ROOF SURFACE WITHIN A HORIZ. DISTANCE OF 3050mm (10'-0") FROM THE CHIMNEY.

25. LINEN CLOSET 4 SHELVES MIN. 350mm (14") DEEP.

26. MECHANICAL EXHAUST FAN, VENTED TO EXTERIOR, TO PROVIDE AT LEAST ONE AIR CHANGE PER HOUR. PROVIDE DUCT SCREEN AS PER O.B.C. 9.32.3.12

27. STEEL BEARING PLATE FOR MASONRY WALLS

280x280x16 (11"x11"x5/8") STL. PLATE FOR STL BEAMS AND 280x280x12 (11"x11"x1/2") STL. PLATE FOR WOOD BEAMS BEARING ON CONC. BLK. PARTYWALL, ANCHORED W/ 2-19mm (3/4") x200mm (8") LONG GALV. ANCHORS WITHIN SLOUT BLOCK COURSE. LEVEL WITH NON-SHRINK GROUT. OR

SOLID WOOD BEARING FOR WOOD STUD WALLS

SOLID BEARING TO BE AT LEAST AS WIDE AS THE SUPPORTED MEMBER. SOLID WOOD BEARING COMPRISED OF BUILT-UP WOOD STUDS TO BE CONSTRUCTED IN ACCORDANCE WITH OBC 9.17.4.2 (2).

28. STUD WALL REINFORCEMENT 9.5.2.3.

PROVIDE WOOD BLOCKING REINFORCEMENT TO STUD WALLS FOR FUTURE GRAB BAR INSTALLATION IN MAIN BATHROOM, 840-920mm (33"-36") A.F.F. BEHIND TOILET. 850mm (33") A.F.F. ON THE WALL OPPOSITE THE ENTRANCE TO THE BATHTUB OR SHOWER

29. 3-38x89 (3-2"x4") BUILT-UP-POST WITH DAMPPROOFING MATERIAL WRAPPED AT THE END OF POST ANCHORED TO 610x610x300 (24"x24"x12") CONCRETE FOOTING.

30. STEP FOOTINGS: MIN. HORIZ. STEP = 600mm (23 5/8"). MAX. VERT. STEP = 600mm (23 5/8") FOR FIRM SOILS.

31. MIN. 100mm (4") CONCRETE SLAB ON GRADE ON 100mm (4") COARSE GRANULAR FILL. REINFORCED W/ 6x6-W2.9W2.9 MESH PLACED NEAR MID-DEPTH OF SLAB. CONC. STRENGTH 32 MPa (4640 psi) WITH 5-8% AIR ENTRAINMENT ON COMPACTED SUB-GRADE.

32. DIRECT VENT FURNACE TERMINAL MIN. 900mm (36") FROM A GAS REGULATOR. MIN. 300mm (12") ABOVE FIN. GRADE, FROM ALL OPENINGS, EXHAUST & INTAKE VENTS, HRY INTAKE TO BE A MIN. OF 1830mm (6'-0") FROM ALL EXHAUST TERMINALS. REFER TO GAS UTILIZATION CODE.

33. DIRECT VENT GAS FIREPLACE. VENT TO BE A MINIMUM 300mm (12") FROM ANY OPENING AND ABOVE FIN. GRADE. REFER TO GAS UTILIZATION CODE.

34. SUBFLOOR, JOIST STRAPPING AND BRIDGING

-3/4" T & G SUBFLOOR ON WOOD FLOOR JOISTS. FOR CERAMIC TILE APPLICATION (* SEE OBC 9.30.6. *)
6mm (1/4") PANEL TYPE UNDERLAY UNDER RESILIENT & PARQUET FLOORING. (-* SEE OBC 9.23.9.4 *)
ALL JOISTS TO BE BRIDGED WITH 38x38 (2"x2") CROSS BRACING OR SOLID BLOCKING @ 2100mm (6'-11") O.C. MAX. ALL JOISTS TO BE STRAPPED WITH 19x64 (1"x3") @ 2100mm (6'-11") O.C. UNLESS A PANEL TYPE CEILING FINISH IS APPLIED.

35. EXPOSED BUILDING FACE -OBC 9.10.14.5-

EXTERIOR WALLS TO HAVE A FIRE RESISTANCE RATING OF NOT LESS THAN 45 min. WHERE LIMITING DISTANCE IS LESS THAN 1.2M (3'-11"). WHERE THE LIMITING DISTANCE IS LESS THAN 600mm (1'-11") THE EXPOSING FACE SHALL BE CLAD IN NON-COMBUSTIBLE MATERIAL.

36. COLD CELLAR PORCH SLAB

FOR MAX. 2500 mm (8'-3") PORCH DEPTH, 130mm (5") 32MPa (4640psi) CONC. SLAB WITH 5-8% AIR ENTRAINMENT. REINF. WITH 10M BARS @ 200mm (8") O.C. EACH WAY IN BOTTOM THIRD OF SLAB, 610x610 (24"x24") DOWELS @ 600mm (24") O.C., ANCHORED IN PERIMETER FDN. WALLS. SLOPE SLAB MIN. 1.0% FROM DOOR. PROVIDE (17) LINTELS OVER CELLAR DOOR.

37. THE FDN. WALL SHALL NOT BE REDUCED TO LESS THAN 90mm (3-1/2") THICK TO A MAX. DEPTH OF 600mm (24") AND SHALL BE TIED TO THE FACING MATERIAL WITH METAL TIES SPACED 200mm (8") O.C. VERTICALLY AND 900mm (36") O.C. HORIZONTALLY. FILL SPACE BETWEEN WALL AND FACING SOLID WITH MORTAR.

38. CONVENTIONAL ROOF FRAMING

38x190 (2"x8") RAFTERS @ 400mm (16") O.C., 38x310 (2"x12") RIDGE BOARD, 38x89 (2"x4") COLLAR TIES AT MIDSPANS. CEILING JOISTS TO BE 38x140 (2"x6") @ 400mm (16") O.C. FOR MAX. 2830mm (9'-3") SPAN & 38x140 (2"x6") @ 400 (16") O.C. FOR MAX. 4450mm (14'-7") SPAN. RAFTERS FOR BUILT-UP ROOF TO BE 38x89 (2"x4") @ 600mm (24") O.C. WITH A 38x89 (2"x4") CENTRE POST TO THE TRUSS BELOW, LATERALLY BRACED @ 1800mm (6'-0") O.C. VERTICALLY.

LEGEND

FD	FLOOR DRAIN
DJ	DOUBLE JOIST
TJ	TRIPLE JOIST
LVL	LAMINATED VENEER LUMBER
PL	POINT LOAD FROM ABOVE
P.T.	PRESSURE TREATED LUMBER
G.T.	GIRDER TRUSS BY ROOF TRUSS MANUF.
R.R.	ROOF RAFTERS
C.J.	CEILING JOISTS

WOOD LINTELS AND BUILT-UP WOOD BEAMS

L1A	2/38 x 140 (2/2" x 6") SPR.#2
L1	2/38 x 184 (2/2" x 8") SPR.#2
B1	3/38 x 184 (3/2" x 8") SPR.#2
B2	4/38 x 184 (4/2" x 8") SPR.#2
L3	2/38 x 235 (2/2" x 10") SPR.#2
L3	3/38 x 235 (3/2" x 10") SPR.#2
B4	4/38 x 235 (4/2" x 10") SPR.#2
B5	2/38 x 286 (2/2" x 12") SPR.#2
L5	3/38 x 286 (3/2" x 12") SPR.#2
B6	4/38 x 286 (4/2" x 12") SPR.#2

LOOSE STEEL LINTELS

L7	90 x 90 x 6.0L (3-1/2" x 3-1/2" x 1/4"L)
L8	90 x 90 x 8.0L (3-1/2" x 3-1/2" x 5/16"L)
L9	100 x 90 x 8.0L (4" x 3-1/2" x 5/16"L)
L10	125 x 90 x 8.0L (5" x 3-1/2" x 5/16"L)
L11	125 x 90 x 10.0L (5" x 3-1/2" x 3/8"L)
L12	150 x 100 x 10.0L (6" x 4" x 3/8"L)

LAMINATED VENEER LUMBER (LVL) BEAMS

LVL1	2-1 3/4"x7 1/4" (2-45x184)
LVL2	3-1 3/4"x7 1/4" (3-45x184)
LVL3	4-1 3/4"x7 1/4" (4-45x184)
LVL4	2-1 3/4"x9 1/2" (2-45x240)
LVL5	3-1 3/4"x9 1/2" (3-45x240)
LVL6	4-1 3/4"x9 1/2" (4-45x240)
LVL7	3-1 3/4"x11 7/8" (3-45x302)
LVL8	4-1 3/4"x11 7/8" (4-45x302)
LVL9	3-1 3/4"x14" (3-45x355)
LVL10	4-1 3/4"x14" (4-45x355)

NOTE:
ALL CONSTRUCTION SHALL CONFORM TO THE ONTARIO BUILDING CODE (O.B.C.) AND OTHER APPLICABLE CODES AND AUTHORITIES HAVING JURISDICTION. UNLESS NOTED OTHERWISE, THE CODE REFERENCE ARE FROM 2012 O.B.C. REG 332/12, DIVISION B, PART 9.

NOTE:
PROVIDE 3-2x6 POST BELOW ALL GIRDER TRUSSES (U.N.O.)
NOTE:
CODE REFERENCES REFER TO O.B.C. 2012 DIVISION B

VENT NOTE:
ROOF TO BE VENTED TO 50% OF INSULATED ATTIC AREA - AT LEAST 50% OF VENT AREA IN THE SOFFIT - NO MORE THAN 50% OF THE REQUIRED ROOF VENT AREA AS ROOF RIDGE VENTS

VENT NOTE:
ROOF AREA - 4716 SQFT. @ 15.3 (13.5/2=7.6 OR MIN. 8 ROOF VENTS)

NOTE:
REFER TO TRUSS LAYOUT BY WATERFORD ROOF TRUSS LTD. DATED MARCH 13, 2017 FOR TRUSS SPANS AND EXACT GIRDER LOCATIONS

NOTES:
PROVIDE FIRE SEPARATION IN ATTIC SPACE. NO SPACE CAN BE LARGER THAN 3230. SQFT.

39. TWO STOREY VOLUME SPACES

-FOR A MAXIMUM 5490 mm (18'-0") HEIGHT, PROVIDE 2-38x140 (2"x6") SPR.#2 CONTR. STUDS @ 300mm (12") O.C. FOR BRICK AND 400mm (16") O.C. FOR SOING C/W 9.6 (3/8") THICK EXT. PLYWOOD SHEATHING. PROVIDE SOLID WOOD BLOCKING BETWEEN WOOD STUDS @ 1220 mm (4'-0") O.C. VERTICALLY.

-FOR HORIZ. DISTANCES NOT EXCEEDING 2900 mm (9'-6"), PROVIDE 38x140 (2"x6") STUDS @ 400 (16") O.C. WITH CONTINUOUS 2-38x140 (2"x6") TOP PLATE + 1-38x140 (1-2"x6") BOTTOM PLATE & MINIMUM OF 3-38x184 (3-2"x6") CONT. HEADER AT GRND. CEILING LEVEL TOE-NAILED & GLUED AT TOP, BOTTOM PLATES AND HEADERS.

SMOKE ALARM (REFER TO OBC 9.10.19)

PROVIDE 1 PER FLOOR, NEAR THE STAIRS CONNECTING THE FLOOR LEVEL AND ONE PER SLEEPING ROOM. ALARMS TO BE CONNECTED TO AN ELECTRICAL CIRCUIT AND INTERCONNECTED TO ACTIVATE ALL ALARMS IF 1 SOUNDS.

CARBON MONOXIDE DETECTOR (OBC 9.33.4)

* CHECK LOCAL BYLAWS FOR REQUIREMENTS *

SB= SOLID WOOD BEARING

SB2 - 2 MEMBER BUILT-UP STUD
SB3 - 3 MEMBER BUILT-UP STUD
SB4 - 4 MEMBER BUILT-UP STUD
SBFA - SOLID BEARING FROM ABOVE CARRY POST AND BLOCKING THROUGH FLOOR ASSEMBLY

SOLID BEARING POSTS TO BE MADE UP OF THE SAME SIZE OF STUD IN WALL IT IS LOCATED, OR MIN 2"x4" FOR ROOF POSTS. EACH PLY TO BE TIED TOGETHER AS PER 9.17.4.2(2) AND 9.23.10.7. DV. B. O.B.C.

WINDOWS:

1) MINIMUM BEDROOM WINDOW -OBC 9.9.10.-

AT LEAST ONE BEDROOM WINDOW ON A GIVEN FLOOR IS TO HAVE MIN. 0.35m² UNOBSTRUCTED GLAZED OR OPENABLE AREA WITH MIN. CLEAR WIDTH OF 380mm (15-3/4").

2) WINDOW GUARDS -OBC 9.8.8.1.-

A GUARD IS REQUIRED WHERE THE TOP OF THE WINDOW SILL IS LOCATED LESS THAN 480mm (1'-7") ABOVE FIN. FLOOR AND THE DISTANCE FROM THE FIN. FLOOR TO THE ADJACENT GRADE IS GREATER THAN 1800mm (5'-11").

3) WINDOW OVER STAIRS & LANDINGS -OBC 9.8.8.1.-

A GUARD IS REQUIRED WHERE THE TOP OF THE WINDOW SILL IS LOCATED LESS THAN 900mm (2'-11") ABOVE THE SURFACE OF THE TREAD, RAMP OR LANDING

NOTE:

MECHANICAL VENTILATION IS REQUIRED TO PROVIDE 0.3 AIR CHANGES PER HOUR AVERAGED OVER 24 HOURS. SEE MECHANICAL DRAWINGS.

LUMBER:

1) ALL LUMBER SHALL BE SPRUCE NO.2 GRADE, UNLESS NOTED OTHERWISE.
2) STUDS SHALL BE STUD GRADE SPRUCE, UNLESS NOTED OTHERWISE.
3) LUMBER EXPOSED TO THE EXTERIOR TO BE SPRUCE NO. 2 GRADE PRESSURE TREATED OR CEDAR, UNLESS NOTED OTHERWISE.

4) ALL LAMINATED VENEER LUMBER (L.V.L.) BEAMS, GIRDER TRUSSES, AND METAL HANGER CONNECTIONS SUPPORTING ROOF FRAMING TO BE DESIGNED & CERTIFIED BY TRUSS MANUFACTURER.

5) LVL BEAMS SHALL BE 2.0E WS MICRO-LAM LVL (Fb=2800psi,MIN.) OR EQUIVALENT. NAIL EACH PLY OF LVL WITH 89mm (3 1/2") LONG COMMON WIRE NAILS @ 300mm (12") O.C. STAGGERED IN 2 ROWS FOR 184,240 & 300mm (7 1/4", 9 1/2", 11 7/8") DEPTHS AND STAGGERED IN 3 ROWS FOR GREATER DEPTHS AND FOR 4 PLY MEMBERS ADD 13mm (1/2") DIA. GALV. BOLTS BOLTED AT MID-DEPTH OF BEAM @ 915mm (3'-0") O.C.

6) PROVIDE TOP MOUNT BEAM HANGERS TYPE "SCL" MANUFACTURED BY MGA CONNECTOR LTD. TEL. (905) 642-3175 OR EQUAL FOR ALL LVL BEAM TO BEAM CONNECTIONS UNLESS NOTED OTHERWISE.

7) JOIST HANGERS: PROVIDE METAL HANGERS FOR ALL JOISTS AND BUILT-UP WOOD MEMBERS INTERSECTING FLUSH BUILT-UP WOOD MEMBERS.

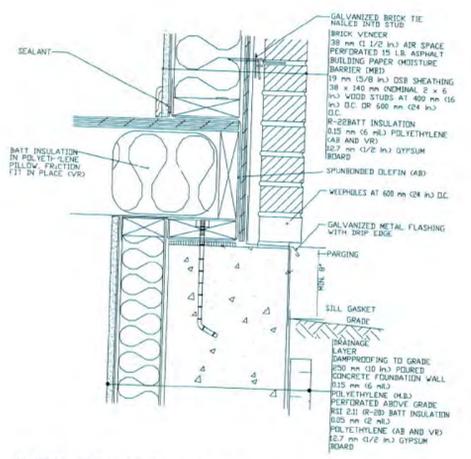
8) WOOD FRAMING NOT TREATED WITH A WOOD PRESERVATIVE, IN CONTACT WITH CONCRETE, SHALL BE SEPARATED FROM THE CONC. BY AT LEAST 2 mil. POLYETHYLENE FILM, No.30 (45lbs.), ROLL ROOFING OR OTHER DAMPPROOFING MATERIAL, EXCEPT WHERE THE WOOD MEMBER IS AT LEAST 150mm (6") ABOVE THE GROUND.

9) TERMITES & DECAY PROTECTION

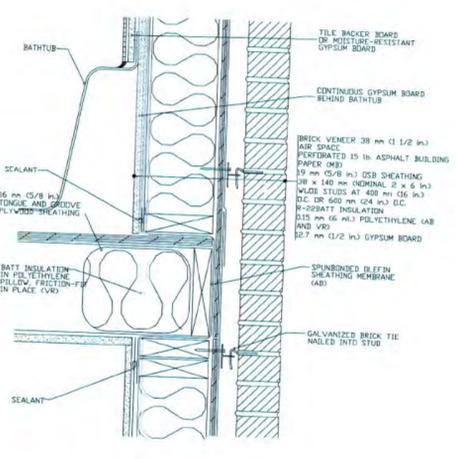
IN LOCATIONS WHERE TERMITES ARE KNOWN TO OCCUR, CLEARANCE BETWEEN STRUCTURAL WOOD ELEMENTS AND THE FINISHED GROUND LEVEL DIRECTLY BELOW THEM SHALL BE NOT LESS THAN 450mm (17 3/4") AND ALL SIDES OF SUPPORTING ELEMENTS SHALL BE VISIBLE TO INSPECTION.
STRUCTURAL WOOD ELEMENTS, SUPPORTED BY WOOD ELEMENTS IN CONTACT WITH THE GROUND OR OVER EXPOSED BARE SOIL

Revision	No.	By	DD/MM/YY

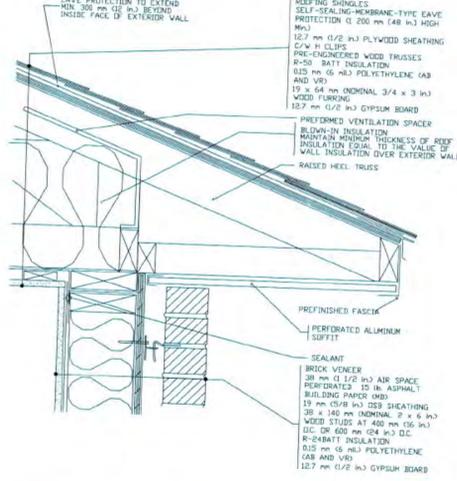
CONTRACTOR SHALL CHECK AND VERIFY ALL DIMENSIONS.
 ANY DISCREPANCIES ARE TO BE REPORTED TO THE DESIGNER PRIOR TO COMMENCEMENT OF WORK. UNDER NO CIRCUMSTANCES SHALL THE CONTRACTOR OR SUBCONTRACTOR PROCEED IN UNCERTAINTY.
 REVIEWED UNDER THE O.B.C.



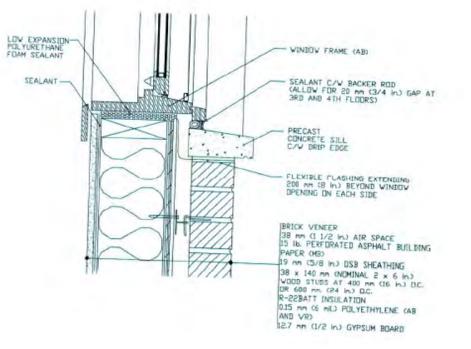
VENEER WALL AT FOUNDATION



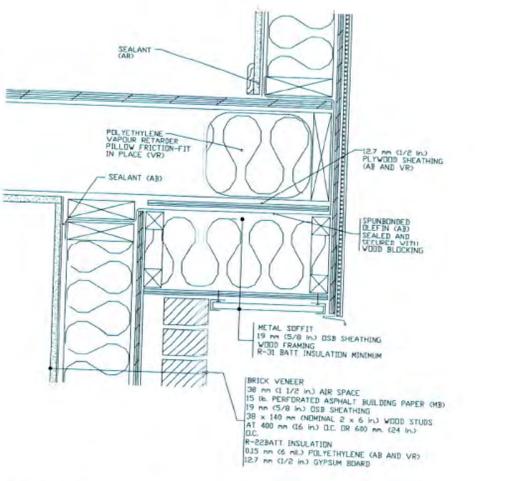
VENEER WALL AT HEADER [D3]



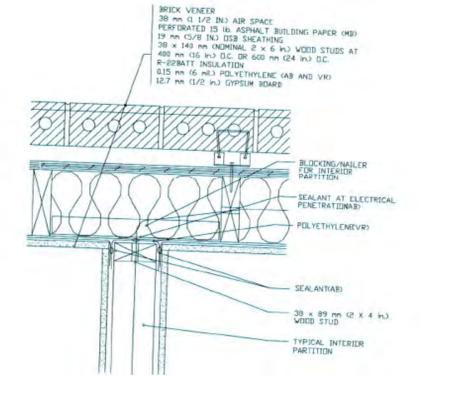
VENEER WALL AT ROOF [D5]



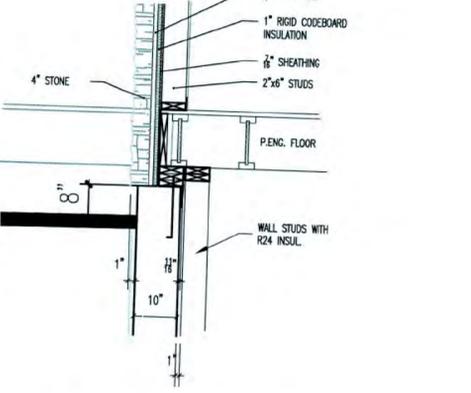
WINDOW OPENING



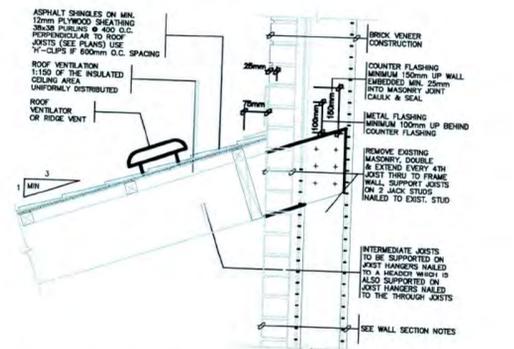
CANTILEVERED FLOOR



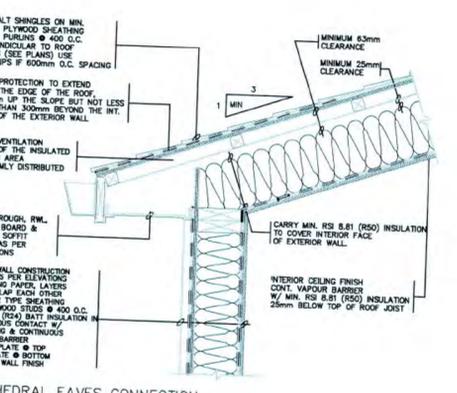
INTERIOR PARTITION, HORIZONTAL SECTION



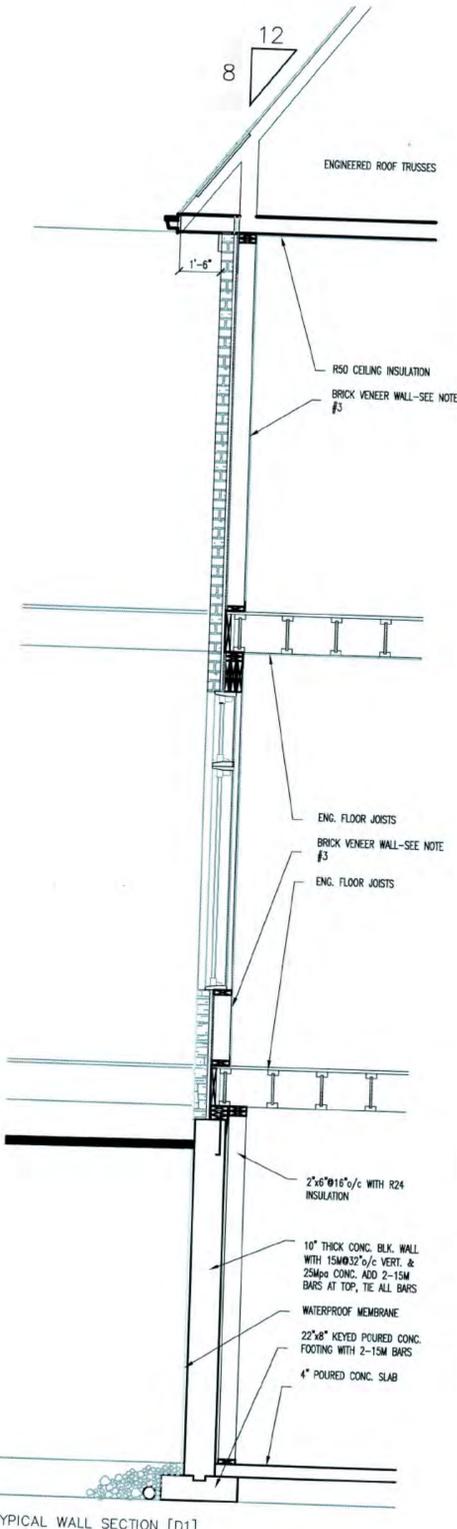
VENEER WALL AT FDN CONNECTION [D4]



RAFTER CONNECTION TO BRICK VENEER [D2]



CATHEDRAL EAVES CONNECTION



TYPICAL WALL SECTION [D1]

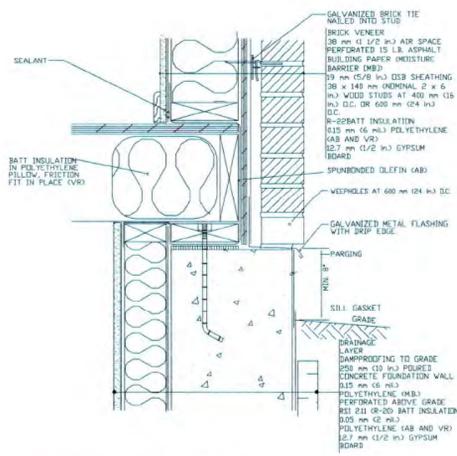
The undersigned has reviewed and takes responsibility for this design, and has the qualifications as (other designer) and meets the requirements set out in the Ontario Building Code for a designer.
 Peter Vozikas 2019
 None None

EMPIRE DESIGN COMPANY
 PETER VOZIKAS
 ARCHITECTURAL DESIGNS FOR:
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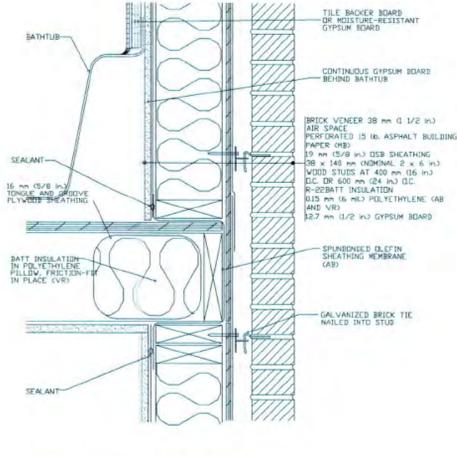
PROJECT: MAJOR RENOVATION Additions and Renovations
 SHEET TITLE: DETAILS
 PROPERTY: 835 Spring Gardens Road
 SCALE: NTS DATE: JUN/2018
 DRAWN BY: PV CHECKED BY: PV
 PROJECT NO: SHEET NO: A12

ALL CONSTRUCTION TO MEET ONTARIO BUILDING CODE REQUIREMENTS.

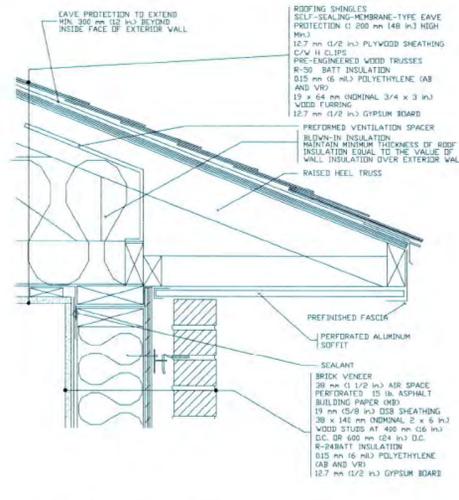
RECEIVED
 OCT 18 2018
 CITY OF BURLINGTON BUILDING DEPARTMENT



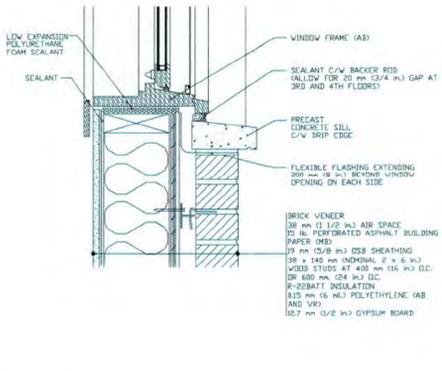
VENEER WALL AT FOUNDATION



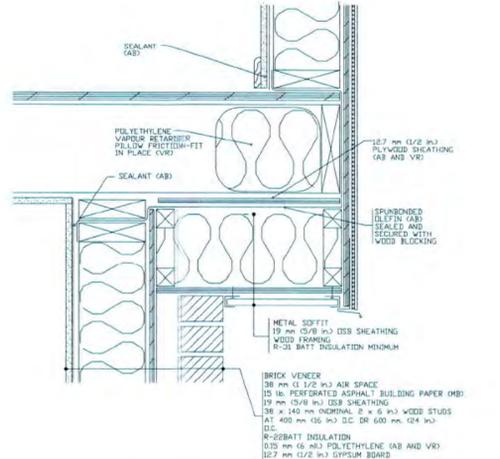
VENEER WALL AT HEADER [D3]



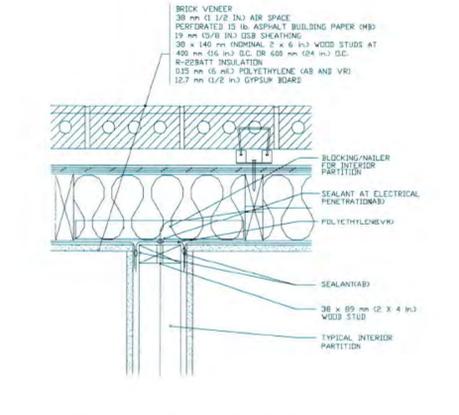
VENEER WALL AT ROOF [D5]



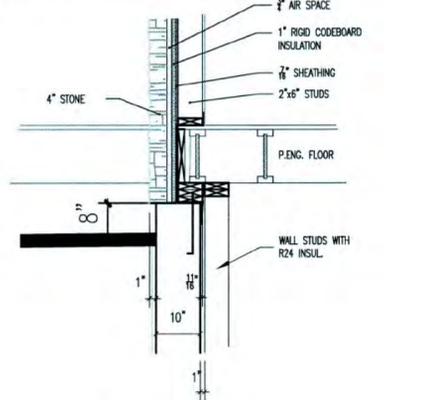
WINDOW OPENING



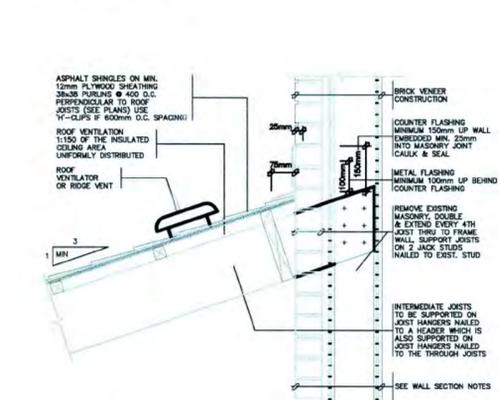
CANTILEVERED FLOOR



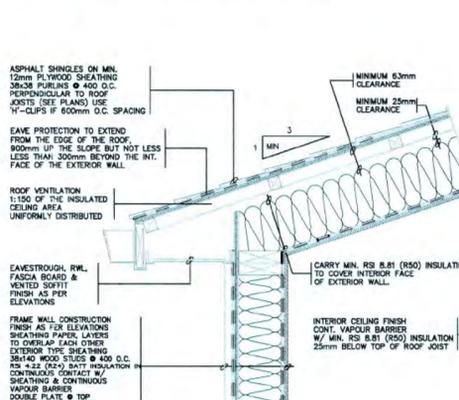
INTERIOR PARTITION, HORIZONTAL SECTION



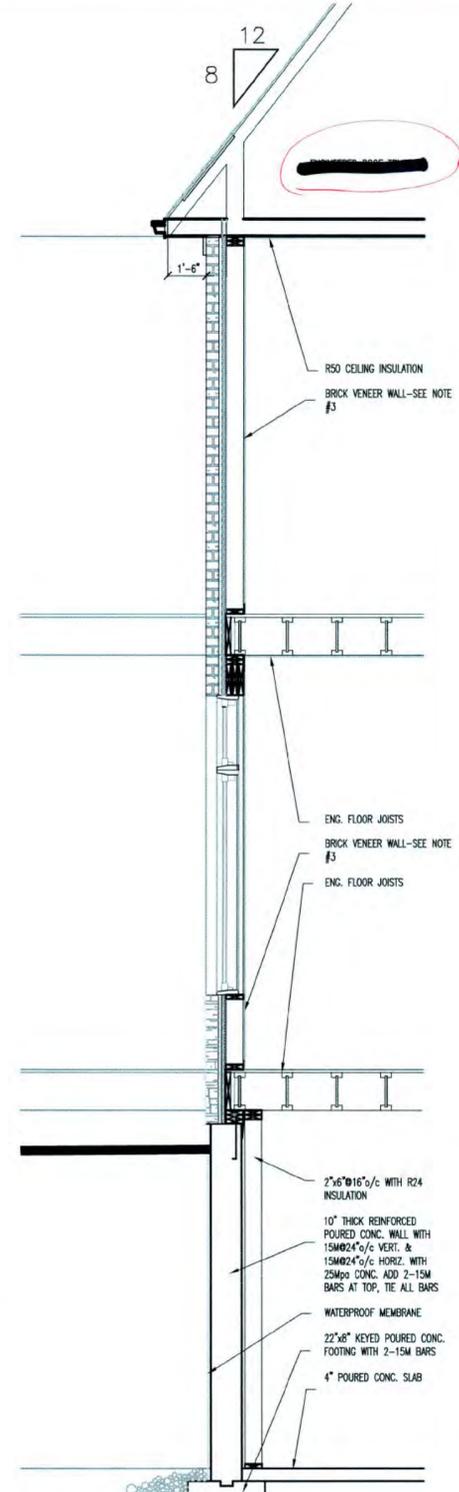
VENEER WALL AT FDN CONNECTION [D4]



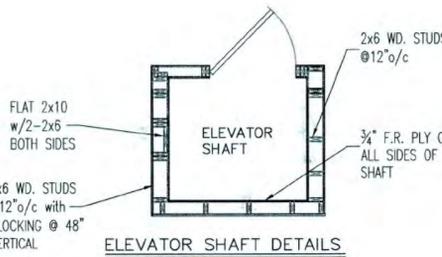
RAFTER CONNECTION TO BRICK VENEER [D2]



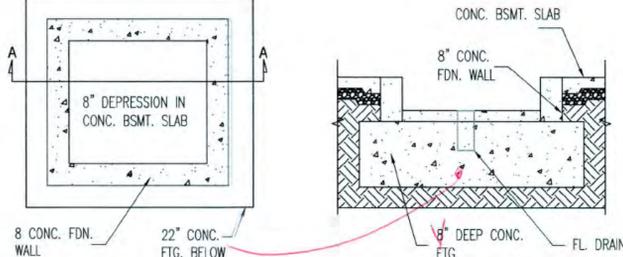
CATHEDRAL EAVES CONNECTION (FOR EAVES ONLY)



TYPICAL WALL SECTION [D1]



ELEVATOR SHAFT DETAILS



8" CONC. FDN. WALL

22" CONC. FTG. BELOW

8" DEEP CONC. FTG.

Revision	No.	By	DD/MM/YY

CONTRACTOR SHALL CHECK AND VERIFY ALL DIMENSIONS. ANY DISCREPANCIES ARE TO BE REPORTED TO THE DESIGNER PRIOR TO COMMENCEMENT OF WORK. UNDER NO CIRCUMSTANCES SHALL THE CONTRACTOR OR SUBCONTRACTOR PROCEED IN UNCERTAINTY. 2012 REVIEWED UNDER THE O.B.C.



The undersigned has reviewed and takes responsibility for this design, and has the qualifications as (other designer) and meets the requirements set out in the Ontario Building Code to be a designer. Designation Information Required unless design is exempt under Div. D-3.2.5. of the building code. Designed under 3.1.4. (3.04) Peter Vozzias 2009 Name Date BCN

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PROJECT: MAJOR RENOVATION Additions and Renovations

SHEET TITLE: DETAILS

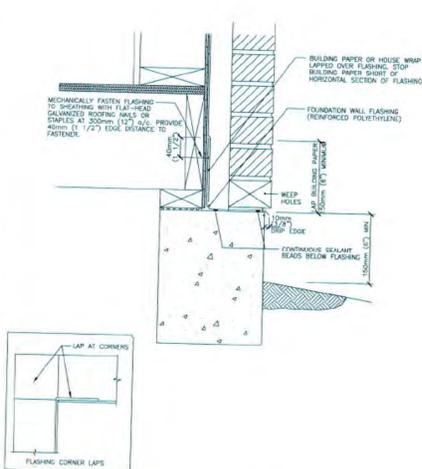
PROPERTY: 835 Spring Gardens Road

SCALE: NTS DATE: JUN/2018

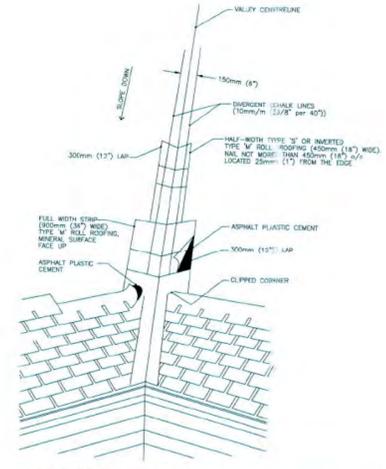
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PROJECT NO: SHEET NO: **A13**

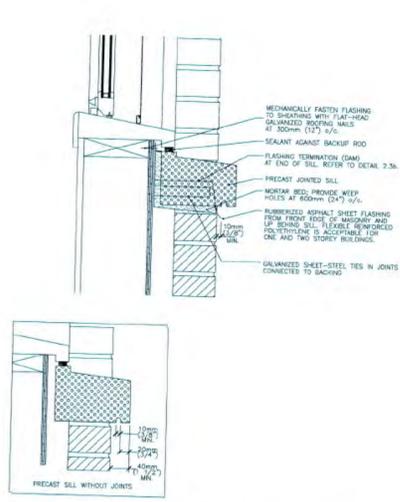




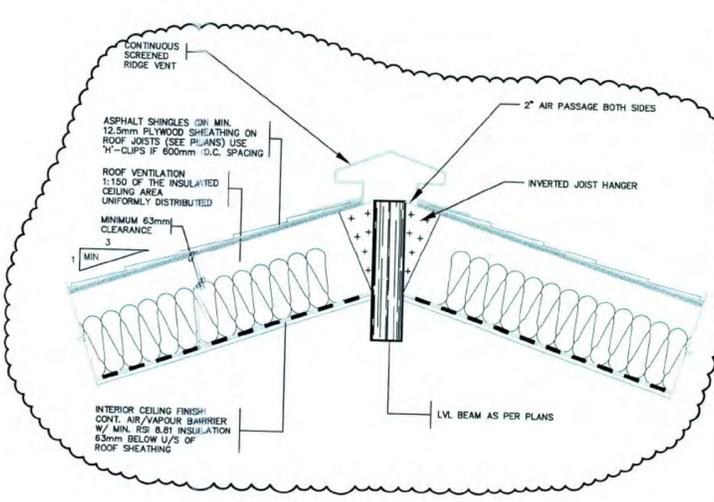
FOUNDATION WALL - BRICK VENEER



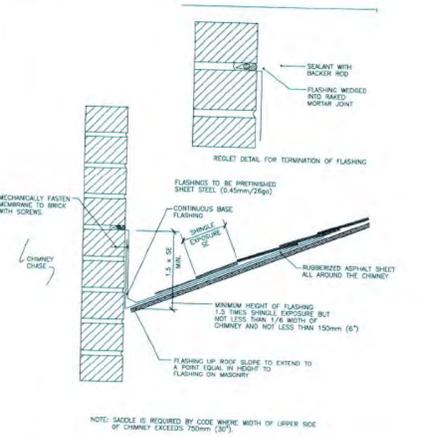
OPEN VALLEY - ASPHALT SHINGLE ROOF



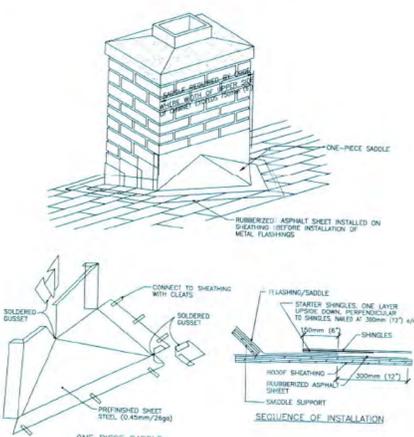
PRECAST WINDOW SILL - WOOD-FRAME WALL



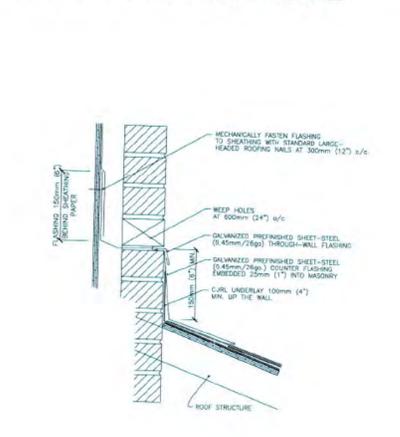
RAFTER TO RIDGE CONNECTION [D7]



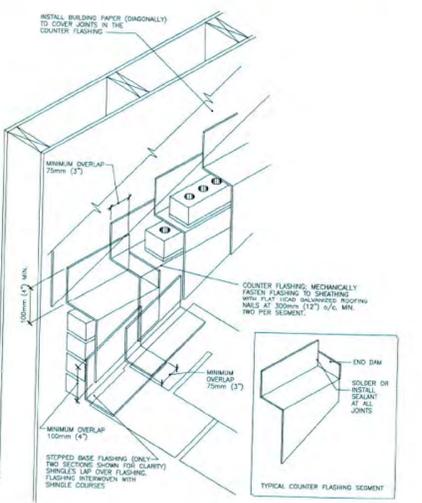
ROOF PENETRATIONS - UPPER SIDE OF CHIMNEY



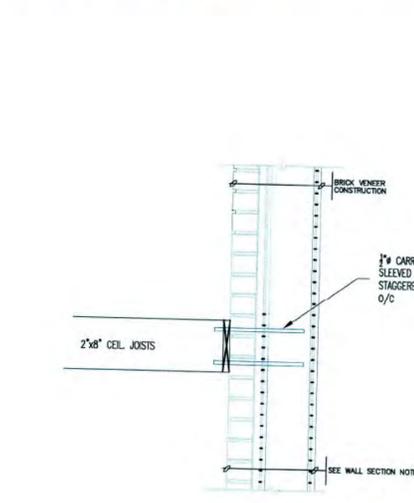
ROOF PENETRATIONS - CHIMNEY



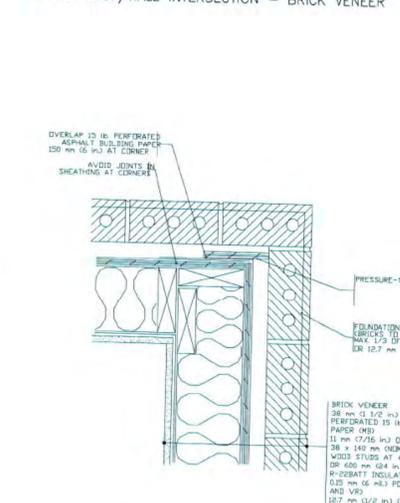
SLOPED ROOF/WALL INTERSECTION - BRICK VENEER



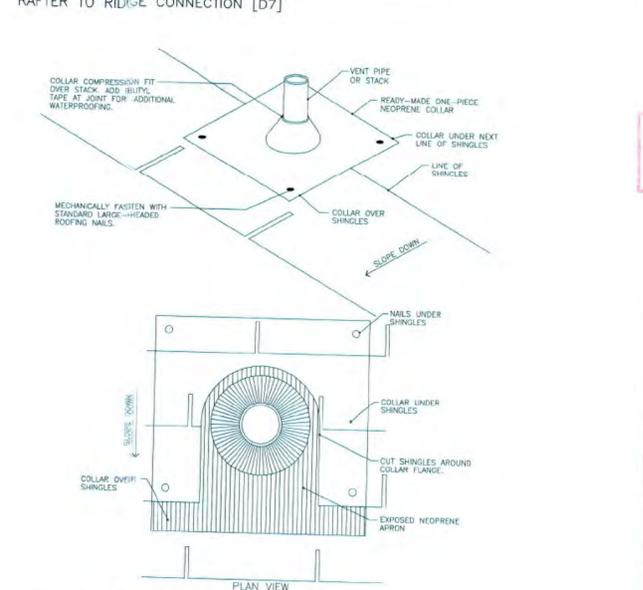
SLOPED ROOF/WALL INTERSECTION - WOOD-FRAME



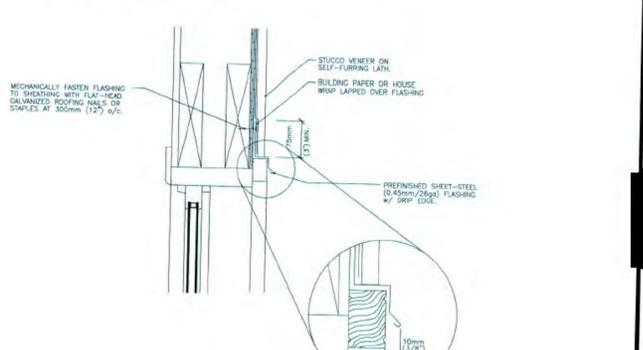
CEILING JOISTS AT PORCH TO WALL [D3]



CORNER STUD CONNECTION



ROOF PENETRATIONS - PREFABRICATED VENT/PIPE FLASHING - SHINGLE ROOF



WINDOW/DOOR HEAD - STUCCO VENEER

Revision	No.	By	DD/MM/YY

CONTRACTOR SHALL CHECK AND VERIFY ALL DIMENSIONS. ANY DISCREPANCIES ARE TO BE REPORTED TO THE DESIGNER PRIOR TO COMMENCEMENT OF WORK. UNDER NO CIRCUMSTANCES SHALL THE CONTRACTOR OR SUBCONTRACTOR PROCEED IN UNCERTAINTY. REVIEWED UNDER THE O.B.C.

ALL CONSTRUCTION TO MEET ONTARIO BUILDING CODE REQUIREMENTS.



60 North Ridge Crescent
Georgetown Ontario
905-867-9777

The undersigned has reviewed and takes responsibility for this design, and has the qualifications as (other designer) and meets the requirements set out in the Ontario Building Code to be a designer.

Required unless design is exempt under the O-3.2.2.5 of the building code. Designated under 3.2.1.1 (3.2.1)

Qualification Information
WWW.EMPIREDESIGNHOMES.COM
416-500-8989 VOZKAS@HOTMAIL.COM

Peter Vozikas
Name
2019
BUN

EMPIRE DESIGN COMPANY
PETER VOZIKAS
ARCHITECTURAL DESIGNS FOR LUXURY RESIDENTIAL & COMMERCIAL SPACE
WWW.EMPIREDESIGNHOMES.COM
416-500-8989 VOZKAS@HOTMAIL.COM

PROJECT: MAJOR RENOVATION Additions and Renovations

SHEET TITLE: DETAILS

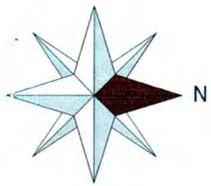
PROPERTY: 835 Spring Gardens Road

SCALE: NTS DATE: JUN/2018

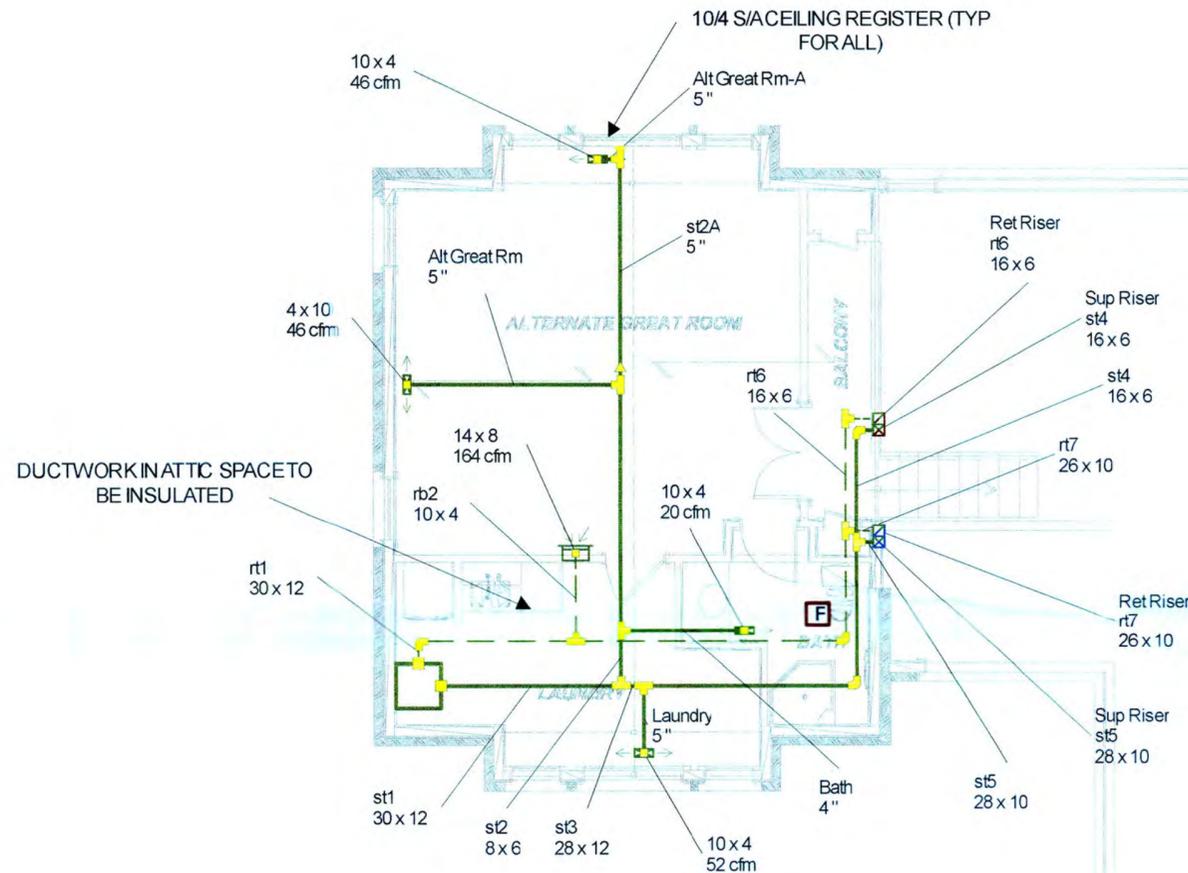
DRAWN BY: PV CHECKED BY: PV

PROJECT NO: SHEET NO: A14





2nd Fl



DUCTWORK IN ATTIC SPACE TO BE INSULATED

www.electsaf.com
 1-877-372-7233
 1-800-667-4278
 PHONE
 FAX
 ELECTRICAL SAFETY AUTHORITY
 CUSTOMER SERVICE CENTRE
 FOR MORE INFORMATION PLEASE CALL:
 THE ELECTRICAL SAFETY AUTHORITY. SEPARATE
 INSPECTION APPLICATIONS (PERMITS) MUST BE FILED.

ALL ELECTRICAL WIRING MUST BE INSPECTED BY
 THE ELECTRICAL SAFETY AUTHORITY. SEPARATE
 INSPECTION APPLICATIONS (PERMITS) MUST BE FILED.
 FOR MORE INFORMATION PLEASE CALL:
 ELECTRICAL SAFETY AUTHORITY
 CUSTOMER SERVICE CENTRE
 PHONE 1-877-372-7233
 FAX 1-800-667-4278
 www.electsaf.com

CITY OF BURLINGTON
BUILDING SERVICES DEPARTMENT
REVIEWED
FOR PERMIT ISSUANCE

DATE *Oct 31, 2018*

PERMIT NUMBER *18020237*

EXAM *[Signature]* ISSUED BY *[Signature]*

ALL CONSTRUCTION TO MEET ONTARIO BUILDING CODE REQUIREMENTS.

RECEIVED
 OCT 18 2018
 CITY OF BURLINGTON
 BUILDING DEPARTMENT

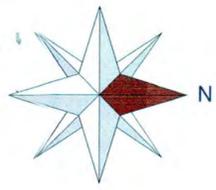


Job #: 18-136
Performed by W. Koza for:
 835 Spring Gardens Rd
 Burlington, ON

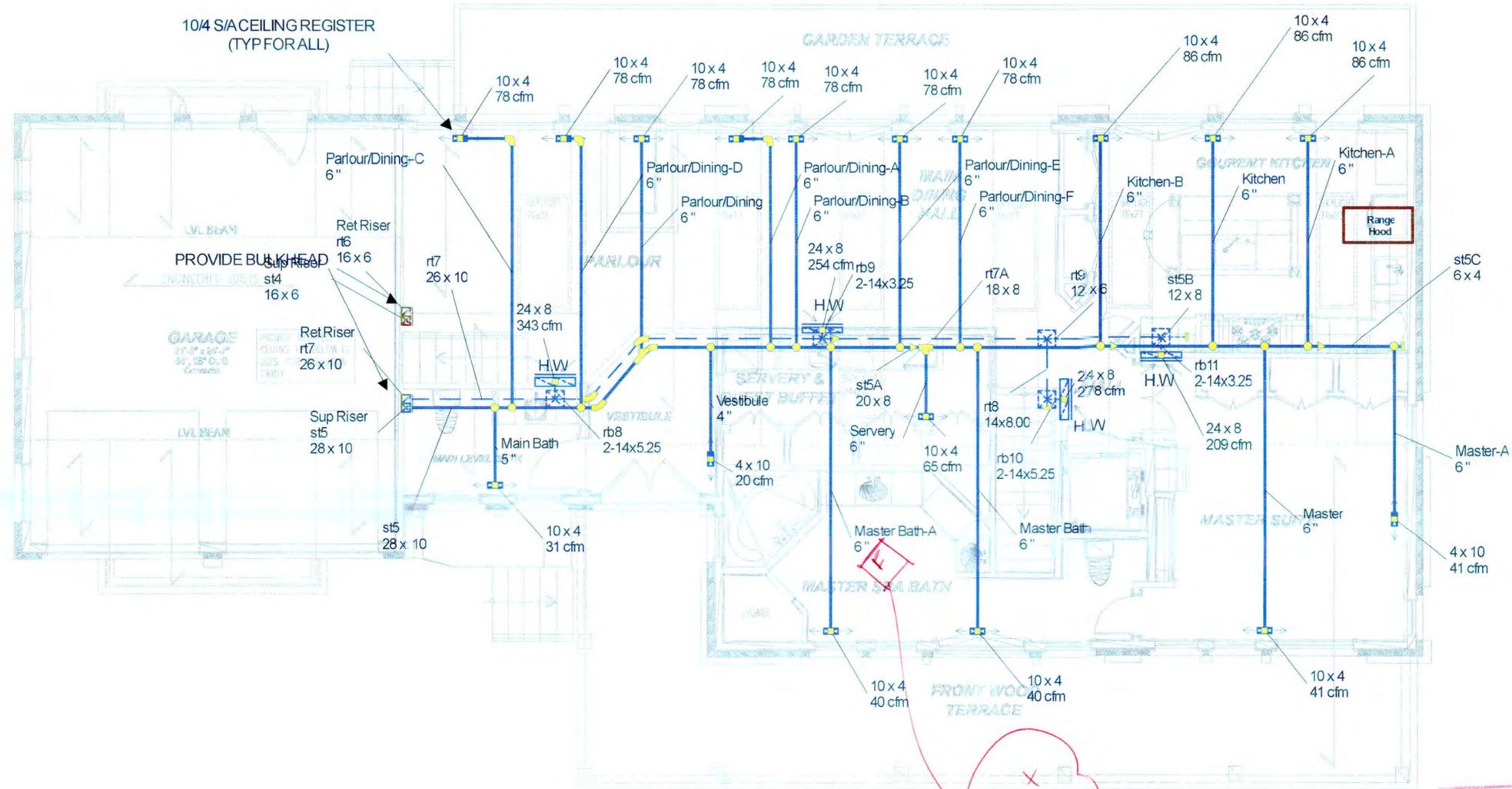
Lakeland Engineering
 1100 Sutton Drive
 Burlington, On
 Phone: 905-332-8888
 info@lakelandengineering.ca

FILE

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 Page 1
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Main FI



ALL CONSTRUCTION TO MEET ONTARIO BUILDING CODE REQUIREMENTS.

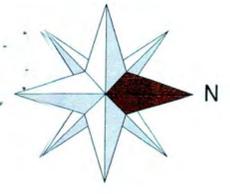
RECEIVED
OCT 18 2018
CITY OF BURLINGTON
BUILDING DEPARTMENT



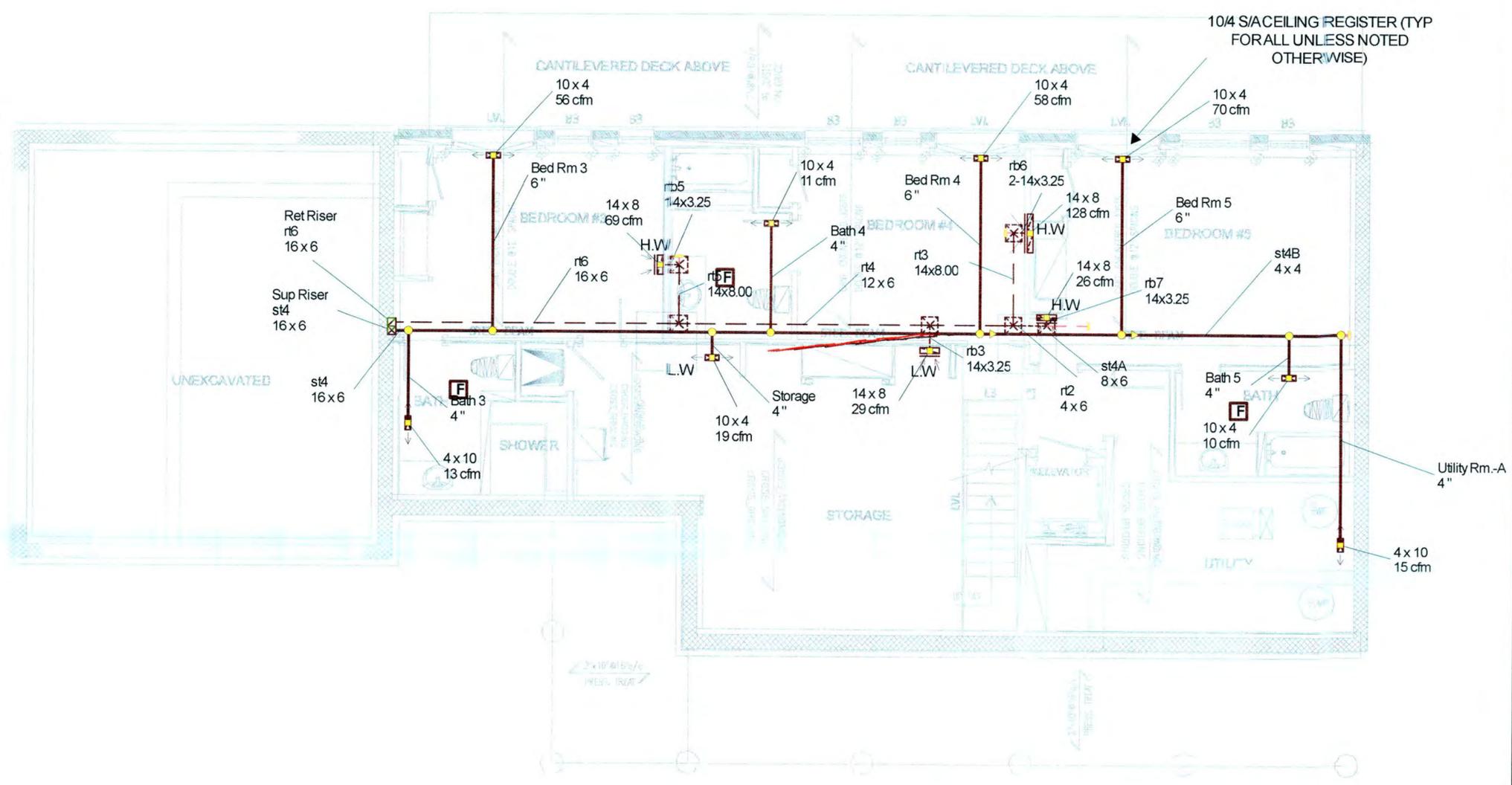
Job #: 18-136
Performed by W. Koza for:
 835 Spring Gardens Rd
 Burlington, ON

Lakeland Engineering
 1100 Sutton Drive
 Burlington, On
 Phone: 905-332-8888
 info@lakelandengineering.ca

Scale: 3/16" = 1'0"
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 Right-Suite@ Universal 2018
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 2018-Aug-24 09:14:04
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Basement



LEGEND			
	Furnace		Trunk Fitting
	Return Grill		Return Boot
	Supply Register		Double Wall Return Grill
	Supply Boot		Single Wall Return Grill
	Wall Supply Register		Top Takeoff
	Return Air Cutout		Single Line Reducer
	Supply Riser Round		Supply Riser Square/Rectangular
	Supply Duct Single Line		Return Duct Single Line
5"	Round Branch Notation	14x3.25	Return stud Cavity Notation
10 x 4 00cfm	Register Notation, size and Air Flow	8 x 8	Trunk Size Notation

H.W - High wall grille/diffuser

L.W - Low wall grille/diffuser

AH c/w "Lifebreath 95 Max" HRV to be installed as per manufacturers instructions

ALL CONSTRUCTION TO MEET ONTARIO BUILDING CODE REQUIREMENTS.

RECEIVED
OCT 18 2018
CITY OF BURLINGTON
BUILDING DEPARTMENT



Job #: 18-136
Performed by W. Koza for:

835 Spring Gardens Rd
Burlington, ON

Lakeland Engineering

1100 Sutton Drive
Burlington, On
Phone: 905-332-8888
info@lakelandengineering.ca

Scale: 3/16" = 1'0"
Page 3
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2018-Aug-24 09:14:09
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Permit Number:

1 8 0 2 0 2 3 7

S O



Applicant:

Empire Design Company

Permit Address:

835 Spring Gardens Rd. Burlington

Notice of inspection at each construction stage

The permit holder shall notify the Chief Building Official of each stage of construction for which a mandatory notice is required under Div.C, 1.3.5.1 of the 2012 Ontario Building Code. The permit holder shall provide the notice of completion as prescribed by Section 11 of the Act, or where occupancy is required prior to completion, notice of inspection to ensure compliance with Section 11 of the Act and Div. C, 1.3.3.1 of the 2012 OBC.

To book your inspections please call your inspector directly using the inspector's call number provided. We will make every attempt to meet your inspection request, however, we cannot guarantee arrival times. Reviewed permit drawings **must be on site.**

CALL FOR INSPECTIONS AT THESE CONSTRUCTION STAGES

Building/HVAC (Heating/Ventilating/Air Conditioning)

INSPECTION

- Commencement of Construction
- Construct Footings
- Foundation Prior to Backfill
- Framing & HVAC
- Insulation/Vapour Barriers
- Air Barrier
- Fire Separations
- Fireplaces & Chimneys
- Completion of Interior Finishes
- HVAC Equipment
- Pool – Deck/Dressing Rooms
- Pool – Emergency Stop System
- Occupancy
- Final

HVAC Only (Heating/Ventilating/Air Conditioning)

- Commencement of Construction
- Rough In
- Insulation/Vapour Barrier
- Air Barrier System
- Fire Separations
- Masonry Fireplace & Chimney
- Factory Built Fireplace & Chimney
- Solid Fuel Appliance & Chimney
- Occupancy
- Final

Plumbing

INSPECTION

- Commencement of Construction
- Sewers & Drains
- Water Service Pipes
- Fire Service Mains
- Water Distribution
- Drainage & Venting Systems
- Fixtures/Appliances
- Plumbing Outside a Structure
- Pool - Suction/Gravity Outlets/Piping
- Pool - Circulation/Recirculation Completion
- Occupancy
- Final

Septic

INSPECTION

- Septic - Readiness to Construct
- Septic - Prior to Backfill
- Septic - Final

Prescribed Inspection Timeframes (OBC Div. C, Article 1.3.5.3.)

(1) Except as provided in Sentence (2), an *inspector* shall, not later than two days after receipt of a notice given, undertake a site inspection of the *building* to which the notice relates.

(2) Where a notice is given, an *inspector* shall, not later than five days after receipt of the notice, undertake a site inspection of the *sewage system* to which the notice relates.

(3) When undertaking an inspection required under Sentence (1) or (2), the *inspector* may consider reports concerning whether the *building* or a part of the *building* complies with the Act or the Ontario Building Code.

(4) The time periods referred to in Sentences (1) and (2) shall begin on the day following the day on which the notice is given.

(5) The time periods referred to in Sentences (1) and (2) shall not include Saturdays, holidays and all other days when the offices of the *principal authority* are not open for the transaction of business with the public.

NOTE: Section 13.(6) Order to Uncover of the Building Code Act states as follows:

"A Chief Building Official or registered code agency who has reason to believe that part of the building that is covered or enclosed has not been constructed in compliance with this Act or the Building Code may order the persons responsible for the construction, to uncover the part at their own expense for the purpose of an inspection."

REMEMBER TO CALL FOR INSPECTIONS

ALL CONSTRUCTION TO MEET THE REQUIREMENTS OF THE 2012 ONTARIO BUILDING CODE AS AMENDED

1. **Occupancy** of a newly erected building or building addition is not permitted until the Planning and Building Department – Building Division is notified and an occupancy inspection is conducted. Occupancy is also not permitted until compliance is made with any order issued by an Inspector.
2. Provide **foundation drainage** in accordance with **Div. B, 9.14.**
3. All **plumbing** to meet the requirements of **Div.B, Part 7.**
4. **Energy Efficiency Design** shall conform to **Div. B, 12.2.1.1.**
5. **Foam plastic insulation** is to be protected internally or with another approved interior wall or ceiling finish material. **Div. B, 9.10.17.10**
6. **Smoke alarms** shall be provided on each *floor level* and each sleeping room. Smoke alarms shall be hard-wired and have a battery backup capable of powering the alarms for seven days followed by a 4 minute alarm. **Div.B, 9.10.19**
7. **Masonry veneer** to be tied to frame wall with not less than .76 mm thick, 22 mm (7/8") - wide corrosion resistant straps spaced in accordance with **Div. B, Table 9.20.9.5** and shaped to provide a key with the mortar.
8. **Attic and roof spaces** to be vented as per **Div. B, 9.19.1.2.**
 - (a) One square foot free unobstructed vent area for each 300 square feet of insulated ceiling area for roof slopes equal to and/or exceeding 2 in 12.
 - (b) One square foot free unobstructed vent area for each 150 square feet of insulated ceiling area for roof slopes less than 2 in 12 or in roofs that are constructed with roof joists.
9. All **exterior doors** to be RSI 0.7 (R-4) or greater, where a storm door is not provided. Performance of windows, doors, and skylights as per **Div.B, 9.7.3.** Doors to comply with **Div. B, 9.7.5.2, "Resistance to Forced Entry"**. Windows to comply to **Div.B, 9.7.5.3. and** within 2m (6'7") of adjacent ground level, shall conform to requirements for resistance to forced entry as outlined in AAMA/WDMA/CSA-A440.
10. **Openable Window** - Every floor level containing bedrooms shall be provided with at least one outside window that can be opened from the inside without the use of tools and each such window shall provide an individual, unobstructed, open portion having a minimum area of 0.35m² (3.77 ft.²) and having no dimensions less than 380 mm (15 ins.). Except for basement and floor areas where a door on the same floor level as the bedroom provides direct access to the exterior, the maximum sill height shall be 1000mm (3'-3") above the floor.
11. **Factory-built fireplaces** and their installation shall conform to CAN/ULC-S610-M, "Factory Built Fireplaces" **Div.B, 9.22.8.1.**
12. **Solid fuel burning appliances** and equipment and their installations shall conform to CSA B365, "Installation Code for Solid-Fuel Burning Appliances and Equipment".
13. **Fireplace inserts and hearth mounted stoves** vented through the throat of a fireplace shall conform to ULC-S628, "Fireplace Inserts" and shall be installed in conformance with CSA B365, "Installation Code for Solid-Fuel Burning Appliances and Equipment" **Div.B, 9.22.10**
14. Gas fireplaces shall comply with the Natural gas and propane installation code.
15. Steel liners for fireplaces shall conform to CAN/ULC-S639M, Steel Liner Assemblies for Solid-Fuel Burning Masonry Fireplaces", and shall be installed in accordance with the installation instructions in that standard. **Div.B, 9.22.2.3.**
16. Joists or beams may be supported on masonry walls which enclose chimney flues provided the *combustible* members are separated from the flue by a minimum of 290 mm (11-3/8") of solid masonry. **Div.B, 9.21.5.3.(1)**
17. **Exterior foundation walls** shall extend not less than 150mm (5 7/8") above finished ground level.**Div.B, 9.15.4.6.(1)**
18. **Private Sewage Systems** - The design, construction, operation and maintenance of a private sewage system is to meet the requirement of Div. B, Part 8.
19. Maximum water consumption for waterclosets per flush cycle in Group C occupancy as per **Div.B, Table 7.6.4.2.B (4.8litres)**

Feb5/13

BUILDING SERVICES DEPARTMENT

OTHER SINGLE DETACHED DWELLING PERMIT

Project Location: 835 Spring Gardens Rd. Burlington L7T 1J6
Legal Description: CON 1 EF PT LOT 13 RP 20R6328 PARTS 1,2
Zone: D
Building Type: Single Detached Dwelling
Description: Revision to permit to add new covered front porch and bump out box

Permit #: **18 020237 REV 01 SO**

Issued: March 1, 2019

Expiry:

Work Proposed: Addition

Applicant: Empire Design Company (Peter Vozikas)
5 North Ridge Cres. Georgetown ON L7G 6E7

(416) 500-8989

Owner: [REDACTED]

Owner: [REDACTED]

Payee: Lifestyles by Barons Inc.
60 Northridge Cres Halton Hills ON L7G 6E6

(905) 867-0077

SPECIAL NOTICE

1. Notify the Chief Building Official (CBO): It is the duty of the person to whom this permit has been issued to notify the CBO of the commencement of construction, readiness to occupy and at other stages of construction as per OBC, Div.C, 1.3.5. A minimum of two business days notice is required.

2. When requesting an inspection, please refer to the permit number at the top right of this page.

3. The permit documents and reviewed plans must be kept on site at all times during construction. This Permit Card must be posted and easily visible at the site of Construction/Demolition as per OBC, Div. C, 1.3.2.

4. Occupancy/Final Inspection: No person shall occupy or use, or permit to be occupied or used, any building or part thereof newly erected or installed until notice of the date of its completion is given to the CBO; and 1) an inspection is made pursuant to such notice, or 2) ten days have lapsed after service of the notice or after the date of completion, whichever occurs last, and subject to compliance first being made with any order made by an inspector.

5. Separate permits are required for building, demolition, plumbing, drains, heating, air-conditioning, fireplaces, chimneys, signs, portable signs, swimming pools or any other work not covered by or at variance with this permit.

6. Items not covered: This permit does not include any encroachments past the street line or any openings on the public road allowance. Curbs, sidewalks, roadways, etc. to be protected and kept clean to the satisfaction of the Engineering Department having jurisdiction.

7. Revocation of this permit: This permit may be revoked, in accordance with Section 8 of the BUILDING CODE ACT, including where the construction or demolition described is not seriously commenced within six months of issuance or where construction or demolition has been suspended for more than one year.

8. Line Locates: 1-800-400-2255.

Application for a Permit to Construct or Demolish

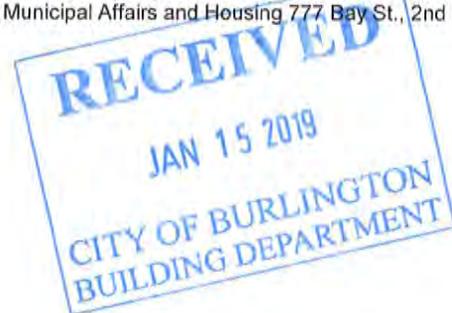
This form is authorized under subsection 8(1.1) of the *Building Code Act, 1992*

For use by Principal Authority			
Application number: 18020237		Permit number (if different):	
Date received:		Roll number:	
Application submitted to: City of Burlington <small>(Name of municipality, upper-tier municipality, board of health or conservation authority)</small>			
A. Project information			
Building number, street name 835 SPRING GARDENS DR		Unit number	Lot/con.
Municipality BURLINGTON	Postal code	Plan number/other description	
Project value est. \$ 5000.-		Area of work (m ²) 1.6 + (25.87 porch)	
B. Purpose of application			
<input type="checkbox"/> New construction <input type="checkbox"/> Addition to an existing building <input checked="" type="checkbox"/> Alteration/repair <input type="checkbox"/> Demolition <input type="checkbox"/> Conditional Permit			
Proposed use of building RES		Current use of building RES	
Description of proposed work REVISION TO ADD NEW COV. FRONT PORCH + BUMP OUT BOX BAY WINDOW ABOVE GARAGE + INCREASE LENGTH OF REAR DOOR TO MATCH SITE PLAN			
C. Applicant			
Applicant is: <input type="checkbox"/> Owner or		<input checked="" type="checkbox"/> Authorized agent of owner	
Last name VOZIKAS	First name PETER	Corporation or partnership EMPIRE DESIGN	
Street address 5 NORTH RIDGE CREW		Unit number	Lot/con.
Municipality GARGOYLEEN	Postal code L7G 6E7	Province ON	E-mail VOZIKAS@HOTMAIL.COM
Telephone number ()		Fax ()	Cell number (416) 500-8989
D. Owner (if different from applicant)			
Last name		Corporation or partnership	
Street address		Unit number	Lot/con.
Municipality	Postal code	Province	E-mail
Telephone number ()		Fax ()	Cell number ()



E. Builder (optional)			
Last name	First name	Corporation or partnership (if applicable)	
Street address		Unit number	Lot/con.
Municipality	Postal code	Province	E-mail
Telephone number ()	Fax ()	Cell number ()	
F. Tarion Warranty Corporation (Ontario New Home Warranty Program)			
i. Is proposed construction for a new home as defined in the <i>Ontario New Home Warranties Plan Act</i> ? If no, go to section G.		<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
ii. Is registration required under the <i>Ontario New Home Warranties Plan Act</i> ?		<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
iii. If yes to (ii) provide registration number(s): _____			
G. Required Schedules			
i) Attach Schedule 1 for each individual who reviews and takes responsibility for design activities.			
ii) Attach Schedule 2 where application is to construct on-site, install or repair a sewage system.			
H. Completeness and compliance with applicable law			
i) This application meets all the requirements of clauses 1.3.1.3 (5) (a) to (d) of Division C of the Building Code (the application is made in the correct form and by the owner or authorized agent, all applicable fields have been completed on the application and required schedules, and all required schedules are submitted). Payment has been made of all fees that are required, under the applicable by-law, resolution or regulation made under clause 7(1)(c) of the <i>Building Code Act, 1992</i> , to be paid when the application is made.		<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
ii) This application is accompanied by the plans and specifications prescribed by the applicable by-law, resolution or regulation made under clause 7(1)(b) of the <i>Building Code Act, 1992</i> .		<input type="checkbox"/> Yes	<input type="checkbox"/> No
iii) This application is accompanied by the information and documents prescribed by the applicable by-law, resolution or regulation made under clause 7(1)(b) of the <i>Building Code Act, 1992</i> which enable the chief building official to determine whether the proposed building, construction or demolition will contravene any applicable law.		<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
iv) The proposed building, construction or demolition will not contravene any applicable law.		<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
I. Declaration of applicant			
I, <u>Peter Voruzas</u> (print name)		declare that:	
1. The information contained in this application, attached schedules, attached plans and specifications, and other attached documentation is true to the best of my knowledge.			
2. If the owner is a corporation or partnership, I have the authority to bind the corporation or partnership.			
<u>Jan. 15 / 2019</u> Date		<u>[Signature]</u> Signature of applicant	

Personal information contained in this form and schedules is collected under the authority of subsection 8(1.1) of the *Building Code Act, 1992*, and will be used in the administration and enforcement of the *Building Code Act, 1992*. Questions about the collection of personal information may be addressed to: a) the Chief Building Official of the municipality or upper-tier municipality to which this application is being made, or, b) the inspector having the powers and duties of a chief building official in relation to sewage systems or plumbing for an upper-tier municipality, board of health or conservation authority to whom this application is made, or, c) Director, Building and Development Branch, Ministry of Municipal Affairs and Housing 777 Bay St., 2nd Floor. Toronto, M5G 2E5 (416) 585-6666.



Permit Number:

1 8 0 2 0 2 3 7

S O



Applicant:

Empire Design Company

Permit Address:

835 Spring Gardens Rd.
Burlington

Notice of inspection at each construction stage

The permit holder shall notify the Chief Building Official of each stage of construction for which a mandatory notice is required under Div.C, 1.3.5.1 of the 2012 Ontario Building Code. The permit holder shall provide the notice of completion as prescribed by Section 11 of the Act, or where occupancy is required prior to completion, notice of inspection to ensure compliance with Section 11 of the Act and Div. C, 1.3.3.1 of the 2012 OBC. To book your inspections please call your inspector directly using the inspector's call number provided. We will make every attempt to meet your inspection request, however, we cannot guarantee arrival times. Reviewed permit drawings must be on site.

CALL FOR INSPECTIONS AT THESE CONSTRUCTION STAGES

Building/HVAC (Heating/Ventilating/Air Conditioning)

INSPECTION

- Commencement of Construction
- Construct Footings
- Foundation Prior to Backfill
- Framing & HVAC
- Insulation/Vapour Barriers
- Air Barrier
- Fire Separations
- Fireplaces & Chimneys
- Completion of Interior Finishes
- HVAC Equipment
- Pool – Deck/Dressing Rooms
- Pool – Emergency Stop System
- Occupancy
- Final

HVAC Only (Heating/Ventilating/Air Conditioning)

- Commencement of Construction
- Rough In
- Insulation/Vapour Barrier
- Air Barrier System
- Fire Separations
- Masonry Fireplace & Chimney
- Factory Built Fireplace & Chimney
- Solid Fuel Appliance & Chimney
- Occupancy
- Final

Plumbing

INSPECTION

- Commencement of Construction
- Sewers & Drains
- Water Service Pipes
- Fire Service Mains
- Water Distribution
- Drainage & Venting Systems
- Fixtures/Appliances
- Plumbing Outside a Structure
- Pool - Suction/Gravity Outlets/Piping
- Pool - Circulation/Recirculation Completion
- Occupancy
- Final

Septic

INSPECTION

- Septic - Readiness to Construct
- Septic - Prior to Backfill
- Septic - Final

Prescribed Inspection Timeframes (OBC Div. C, Article 1.3.5.3.)

- (1) Except as provided in Sentence (2), an *inspector* shall, not later than two days after receipt of a notice given, undertake a site inspection of the *building* to which the notice relates.
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- (3) When undertaking an inspection required under Sentence (1) or (2), the *inspector* may consider reports concerning whether the *building* or a part of the *building* complies with the Act or the Ontario Building Code.
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"A Chief Building Official or registered code agency who has reason to believe that part of the building that is covered or enclosed has not been constructed in compliance with this Act or the Building Code may order the persons responsible for the construction, to uncover the part at their own expense for the purpose of an inspection."

REMEMBER TO CALL FOR INSPECTIONS

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3. All **plumbing** to meet the requirements of **Div.B, Part 7.**
4. **Energy Efficiency Design** shall conform to **Div. B, 12.2.1.1.**
5. **Foam plastic insulation** is to be protected internally or with another approved interior wall or ceiling finish material. **Div. B, 9.10.17.10**
6. **Smoke alarms** shall be provided on each *floor level* and each sleeping room. Smoke alarms shall be hard-wired and have a battery backup capable of powering the alarms for seven days followed by a 4 minute alarm. **Div.B, 9.10.19**
7. **Masonry veneer** to be tied to frame wall with not less than .76 mm thick, 22 mm (7/8") - wide corrosion resistant straps spaced in accordance with **Div. B, Table 9.20.9.5** and shaped to provide a key with the mortar.
8. **Attic and roof spaces** to be vented as per **Div. B, 9.19.1.2.**
 - (a) One square foot free unobstructed vent area for each 300 square feet of insulated ceiling area for roof slopes equal to and/or exceeding 2 in 12.
 - (b) One square foot free unobstructed vent area for each 150 square feet of insulated ceiling area for roof slopes less than 2 in 12 or in roofs that are constructed with roof joists.
9. All **exterior doors** to be RSI 0.7 (R-4) or greater, where a storm door is not provided. Performance of windows, doors, and skylights as per **Div.B, 9.7.3.** Doors to comply with **Div. B, 9.7.5.2,** "Resistance to Forced Entry". Windows to comply to **Div.B, 9.7.5.3.** and within 2m (6'7") of adjacent ground level, shall conform to requirements for resistance to forced entry as outlined in AAMA/WDMA/CSA-A440.
10. **Openable Window** - Every floor level containing bedrooms shall be provided with at least one outside window that can be opened from the inside without the use of tools and each such window shall provide an individual, unobstructed, open portion having a minimum area of 0.35m² (3.77 ft.²) and having no dimensions less than 380 mm (15 ins.). Except for basement and floor areas where a door on the same floor level as the bedroom provides direct access to the exterior, the maximum sill height shall be 1000mm (3'-3") above the floor.
11. **Factory-built fireplaces** and their installation shall conform to CAN/ULC-S610-M, "Factory Built Fireplaces" **Div.B, 9.22.8.1.**
12. **Solid fuel burning appliances** and equipment and their installations shall conform to CSA B365, "Installation Code for Solid-Fuel Burning Appliances and Equipment".
13. **Fireplace inserts and hearth mounted stoves** vented through the throat of a fireplace shall conform to ULC-S628, "Fireplace Inserts" and shall be installed in conformance with CSA B365, "Installation Code for Solid-Fuel Burning Appliances and Equipment" **Div.B, 9.22.10**
14. Gas fireplaces shall comply with the Natural gas and propane installation code.
15. Steel liners for fireplaces shall conform to CAN/ULC-S639M, Steel Liner Assemblies for Solid-Fuel Burning Masonry Fireplaces", and shall be installed in accordance with the installation instructions in that standard. **Div.B, 9.22.2.3.**
16. Joists or beams may be supported on masonry walls which enclose chimney flues provided the *combustible* members are separated from the flue by a minimum of 290 mm (11-3/8") of solid masonry. **Div.B, 9.21.5.3.(1)**
17. **Exterior foundation walls** shall extend not less than 150mm (5 7/8") above finished ground level.**Div.B, 9.15.4.6.(1)**
18. **Private Sewage Systems** - The design, construction, operation and maintenance of a private sewage system is to meet the requirements of Div. B, Part 8.
19. Maximum water consumption for waterclosets per flush cycle in Group C occupancy as per **Div.B, Table 7.6.4.2.B** (4.8litres)

Feb5/13

REGIONAL APPROVAL

REGION DESIGN OF WATER &/OR WASTEWATER SERVICES APPROVED SUBJECT TO DETAIL CONSTRUCTION CONFORMING TO HALTON REGION STANDARDS & SPECIFICATIONS & LOCATION APPROVAL FROM AREA MUNICIPALITY.

SIGNED: _____ DATED: _____
INFRASTRUCTURE PLANNING & POLICY

The applicant should be aware that the approval of the water system on private property is the responsibility of the Local Municipality. Regardless, the applicant must ensure that the Region of Halton's standards and specifications are met. (the Water and Wastewater Linear Design Manual may be obtained from Data Management Group at 905-825-6032) Furthermore, all water quality tests must be completed to the Region of Halton's satisfaction, before the water supply can be turned on.

NOTE:

PROPOSED TIES SHOWN HEREON ARE TO FOUNDATION ONLY. BUILDING DIMENSIONS WERE TAKEN FROM PLANS SUPPLIED BY THE CLIENT.

EXISTING ELEVATIONS ARE GEODETIC AND ARE REFERRED TO THE SURVEY REAL PROPERTY REPORT ISSUED BY MACKAY, MACKAY & PETERS LIMITED, DRAWING No. 11-079, DATED JUNE 8, 2011.

LOT GRADING SHALL MATCH WITH THE EXISTING DRAINAGE PATTERNS.

SANITARY SEWER SERVICE CONNECTION MUST BE INSTALLED BEFORE BASEMENT EXCAVATION TO ENSURE SERVICING AT BASEMENT LEVEL.

BUILDER TO VERIFY ALL EXISTING GRADES PRIOR TO CONSTRUCTION INCLUDING ROAD AND LOT LINE GRADES.

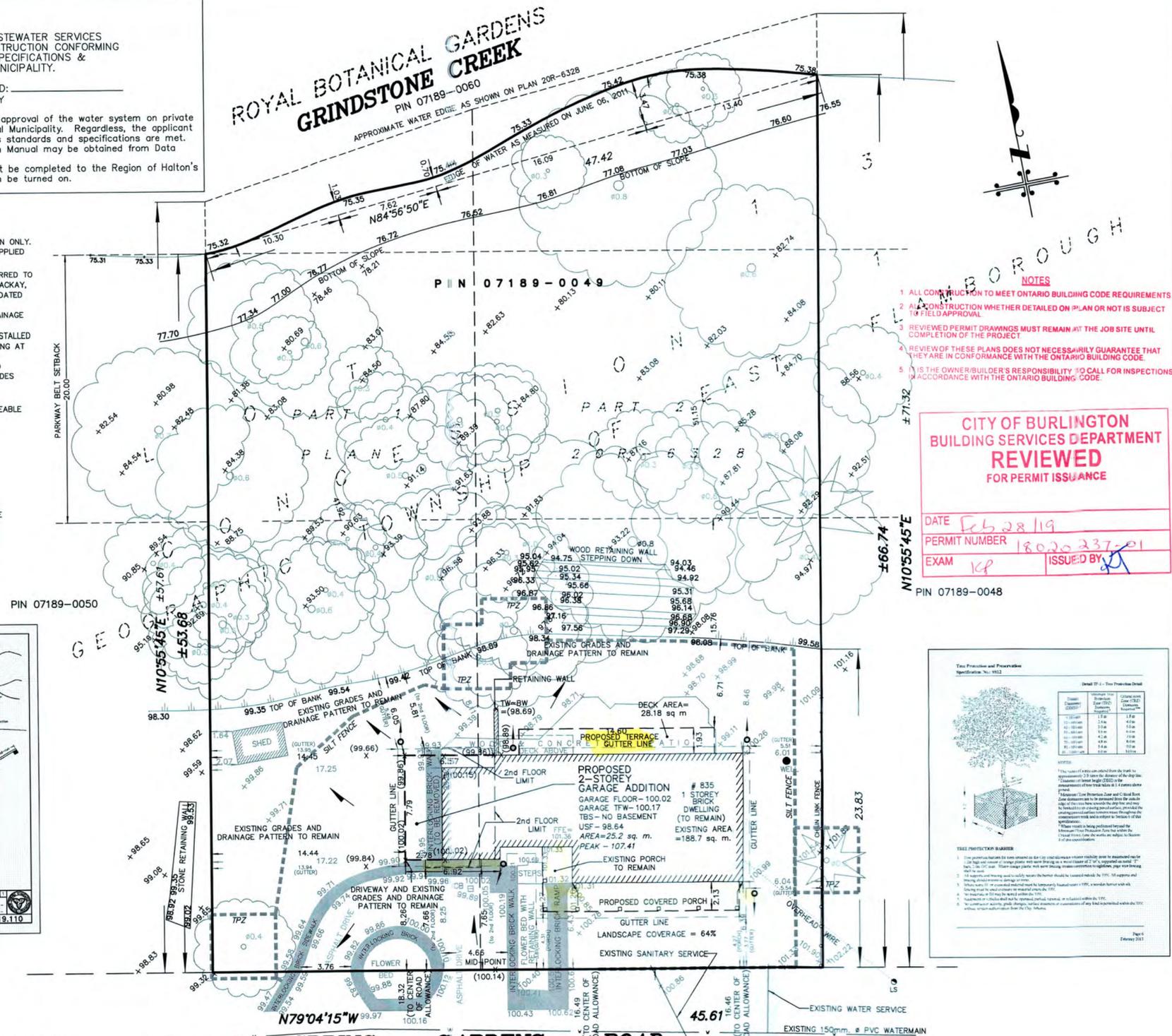
NOTE:

SUMP PUMP AND DOWNSPOUTS TO DRAIN TO PERMEABLE SURFACE VIA SPLASH PADS

NOTE:

XXXXX DENOTES DIRECTION OF DRAINAGE
XXXXX DENOTES EXISTING ELEVATIONS
XXXXX DENOTES PROPOSED ELEVATIONS
HP DENOTES HIGH POINT

ROYAL BOTANICAL GARDENS
GRINDSTONE CREEK
PIN 07189-0060
APPROXIMATE WATER EDGE AS SHOWN ON PLAN 20R-6328



- NOTES
1. ALL CONSTRUCTION TO MEET ONTARIO BUILDING CODE REQUIREMENTS.
 2. ALL CONSTRUCTION WHETHER DETAILED ON PLAN OR NOT IS SUBJECT TO FIELD APPROVAL.
 3. REVIEWED PERMIT DRAWINGS MUST REMAIN AT THE JOB SITE UNTIL COMPLETION OF THE PROJECT.
 4. REVIEW OF THESE PLANS DOES NOT NECESSARILY GUARANTEE THAT THEY ARE IN CONFORMANCE WITH THE ONTARIO BUILDING CODE.
 5. IT IS THE OWNER/BUILDER'S RESPONSIBILITY TO CALL FOR INSPECTIONS IN ACCORDANCE WITH THE ONTARIO BUILDING CODE.

CITY OF BURLINGTON
BUILDING SERVICES DEPARTMENT
REVIEWED
FOR PERMIT ISSUANCE

DATE Feb 28/19
PERMIT NUMBER 1802023701
EXAM ICP ISSUED BY [Signature]

ALL UNDERGROUND SERVICES MUST BE LOCATED BY CONTRACTOR PRIOR TO ANY CONSTRUCTION. CONTRACTOR MUST CHECK AND VERIFY ALL DIMENSIONS AND JOB CONDITIONS BEFORE PROCEEDING WITH WORK.

SITE PLAN FOR BUILDING PERMIT CLIENT :
835 SPRING GARDENS ROAD LIFESTYLES BY BARONS INC.

PART OF LOT 13
CONCESSION 1
GEOGRAPHIC TOWNSHIP OF EAST FLAMBOROUGH
BEING IN THE
CITY OF BURLINGTON
REGIONAL MUNICIPALITY OF HALTON
SCALE 1 : 250

MacKAY, MacKAY & PETERS LIMITED - ONTARIO LAND SURVEYORS
© 2018

"METRIC" DISTANCES SHOWN ON THIS PLAN ARE IN METRES AND CAN BE CONVERTED TO FEET BY DIVIDING BY 0.3048



KEYPLAN NOT TO SCALE

Benchmark Note:
CITY OF BURLINGTON BENCHMARK No. 35 ELEVATION = 116.441 METRES
WATERDOWN ROAD OVERPASS OVER HIGHWAY #403, TABLET IN THE TOP OF THE EAST SIDEWALK OF WATERDOWN ROAD, 6.05 m NORTHERLY FROM THE SOUTHWEST CORNER OF THE ADJUTMENT WALL AND 18.8 m NORTHERLY FROM THE SOUTHWEST CORNER OF THE OVERPASS ABUTMENT OVER HIGHWAY #403. 0.2 m FROM THE CURB.
HORIZONTAL CONTROL MONUMENT 001643678

Legend:
PIN DENOTES PROPERTY IDENTIFICATION NUMBER
(O) DENOTES ORIGIN UNKNOWN
C DENOTES CENTRE LINE
CB DENOTES CATCH BASIN
FFE DENOTES FIRST FLOOR ELEVATION
TFW DENOTES TOP OF FOUNDATION WALL
TBS DENOTES TOP OF BASEMENT SLAB
USF DENOTES UNDERSIDE OF FOOTING
LS DENOTES LIGHT STANDARD
N.T.S. DENOTES NOT TO SCALE
TPZ DENOTES TREE PROTECTION ZONE
○ DENOTES DOWNSPOUTS
○ DENOTES DECIDUOUS TREE SCALED TO CANOPY, TRUNK SIZE SHOWN IN METRES
○ DENOTES CONIFEROUS TREE SCALED TO CANOPY, TRUNK SIZE SHOWN IN METRES

Doing electrical work? A separate permit is required from the Electrical Safety Authority. Hiring someone to do electrical work? They must be a Licensed Electrical Contractor. It's the law.
For more information go to esasafe.com or call 1-877-372-7253

BUILDING TIES SHOWN HEREON ARE TO FOUNDATION UNLESS OTHERWISE NOTED

CAUTION : THIS IS NOT AN ORIGINAL COPY UNLESS EMBOSSED WITH SEAL .
CAUTION : THIS IS NOT A PLAN OF SURVEY AND SHALL NOT BE USED FOR TRANSACTION OR MORTGAGE PURPOSES .

ALL CONSTRUCTION TO MEET ONTARIO BUILDING CODE REQUIREMENTS.		STAMP	
RECEIVED		CITY OF BURLINGTON BUILDING DEPARTMENT	
4	SEPT. 12, 2018		REVISED AS PER ARCHITECT-ADDED FRONT PORCH
3	JULY 25, 2018		REVISED AS PER ARCHITECT
2	JULY 16, 2018		REVISED AS PER ARCHITECT
1	JULY 6, 2018	PREPARED SITE PLAN	
No.	DATE	REVISIONS	

MACKAY MACKAY & PETERS LIMITED
Established 1906

ONTARIO LAND SURVEYORS
3380 SOUTH SERVICE ROAD
BURLINGTON, ONTARIO L7N 3J5
PHONE: (905) 639-1375
FAX: (905) 333-9544
e-mail: halton@mmplimited.com
Records of Sewell & Sewell and Yates & Yates LTD.

CAD FILE: E:\(20) HALTON(TWP) FLAMBOROUGH EAST\CON 1\LOT 13\18-167\18-167-SP.DWG	DRAWN BY: M.S.	PARTY CHIEF: N/A	CHECKED BY: K.J.D.	PROJECT No. 18-167-SP	DWG. No. 1
--	----------------	------------------	--------------------	-----------------------	------------

REQUIRED BY ZONING - D (WITH MUNICIPAL WATER & SEWER)	PROVIDED
FRONT - 7.50 m	6.39 m (EXISTING) 8.26 (PROPOSED ADDITION)
REAR - 9.00 m	47.1± m (EXISTING) 40.2± m (PROPOSED ADDITION)
SIDE - 1.5 m West Side 1.5 m East Side	17.22 m West Side (EXISTING) 14.44 (PROPOSED ADDITION) 6.01 m East Side (EXISTING)
LOT FRONTAGE - 18.00 m	45.61 m
BUILDING HEIGHT - MAX 11.00 m	7.27 m (PROPOSED ADDITION) - MEASURED FROM FIXED GRADE
HEIGHT FROM EXISTING CEILING TO ADDITION PEAK=3.93m. (MAXIMUM PERMITTED=4.5m)	2744.7 sq.m.
LOT AREA - 550 sq.m.	188.7 sq.m. (EXISTING) 9.5 sq.m. (EXISTING SHED) 25.2 sq.m. (PROPOSED ADDITION)
BUILDING AREA -	8.1%
TOTAL BUILDING AREA = 188.7+9.5+25.2=223.4 sq. m.	
COVERAGE (including accessory buildings)	
No. OF STOREYS - 1 (EXISTING)	
No. OF STOREYS - 2 (PROPOSED GARAGE ADDITION)	
FRONT YARD AREA = 308.72 sq. m.	
HARD LANDSCAPE AREA = 146.20 sq. m.	
EXIST. DECK AREA = 7.89 sq. m.	
PROP. DECK AREA = 20.29 sq. m.	
TOTAL DECK AREA = 28.18 sq. m.	

SPRING GARDENS ROAD
(AKA TORONTO HAMILTON HIGHWAY, HAMILTON & NELSON ROAD; FORMERLY OLD GUELPH ROAD, PLAINS ROAD)
(FORCED THROUGH LOT 13, CONCESSION 1, GEOGRAPHIC TOWNSHIP OF EAST FLAMBOROUGH)

CAUTION
UTILITIES AND SERVICES SHOWN ON THIS SKETCH ARE APPROXIMATE AND MUST BE VERIFIED BEFORE CONSTRUCTION

SURVEYOR'S CERTIFICATE

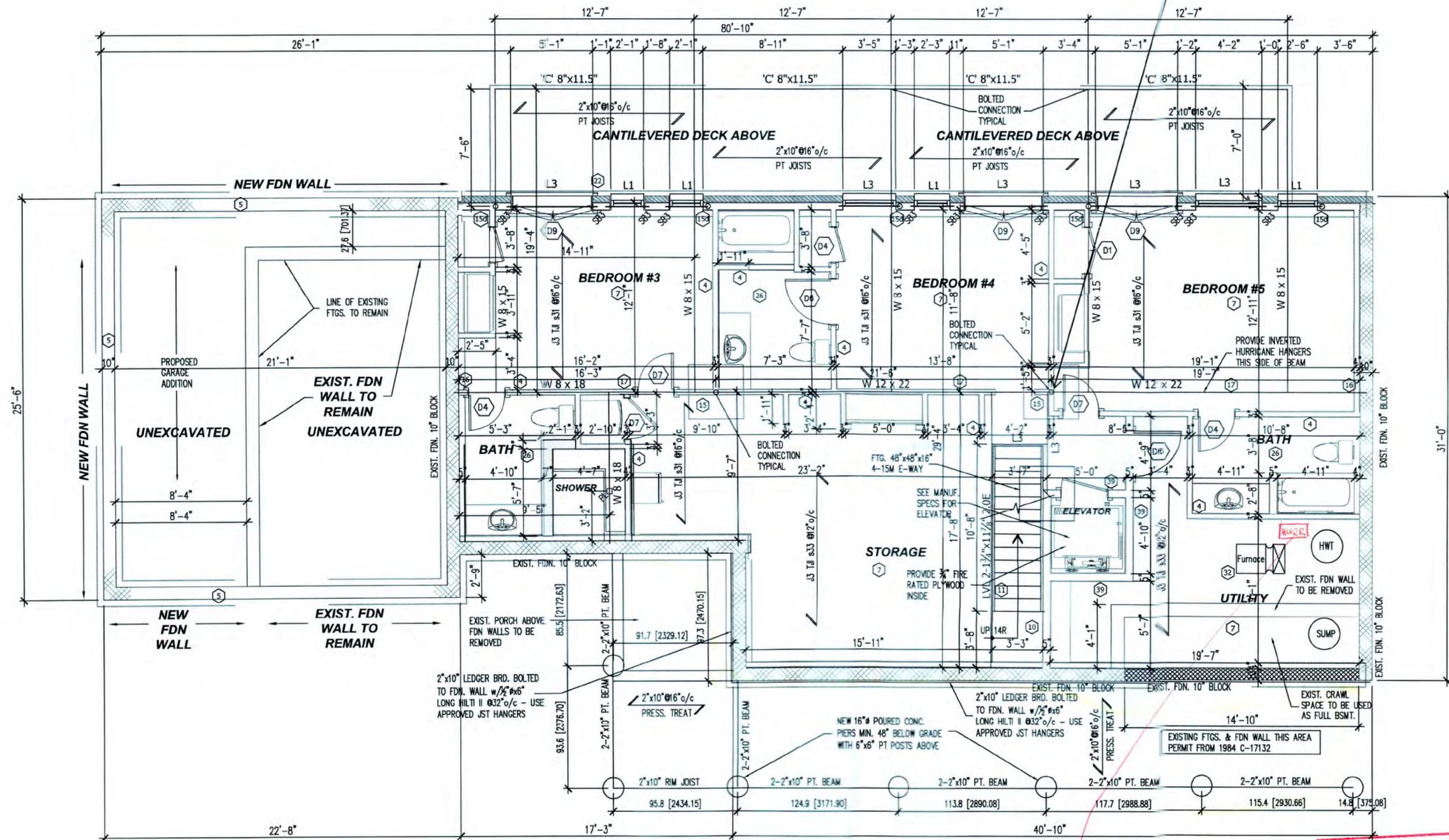
1. BOUNDARY DIMENSIONS SHOWN HEREON ARE DERIVED FROM THE SURVEYOR'S REAL PROPERTY REPORT BY MACKAY, MACKAY & PETERS LIMITED, PROJECT No.11-079, DATED JUNE 8, 2011.
2. WE HAVE REVIEWED THE PLANS FOR CONSTRUCTION OF A 2 STOREY ADDITION LOCATED AT 835 SPRING GARDENS ROAD AND CERTIFY THAT THE GRADING SHOWN HEREON IS COMPATIBLE WITH THE ADJACENT PROPERTIES AND EXISTING MUNICIPAL SERVICES.

MACKAY, MACKAY & PETERS LIMITED
SEPTEMBER 12, 2018
DATE
PER: ROSS A. CLARKE, O.L.S.

Revision	Front Porch & Bay 02	PV	09/09/18
Revision	D1	PV	24/07/18
Revision	No.	By	DD/MM/YY

CONTRACTOR SHALL CHECK AND VERIFY ALL DIMENSIONS.
 ANY DISCREPANCIES ARE TO BE REPORTED TO THE DESIGNER PRIOR TO COMMENCEMENT OF WORK. UNDER NO CIRCUMSTANCES SHALL THE CONTRACTOR OR SUBCONTRACTOR PROCEED IN UNCERTAINTY.
 REVIEWED UNDER THE 2016 O.B.C.

CONTRACTOR TO PROVIDE SHOP DRAWINGS FOR ALL STEEL CONNECTIONS.
 DRAWINGS MUST BE STAMPED BY AN ONTARIO REGISTERED PROFESSIONAL ENGINEER.



STRUCTURAL REVIEW ONLY



60 North Ridge Crescent
 Georgetown Ontario
 905-867-9777

The undersigned has reviewed and taken responsibility for this design, and has the qualifications as (other designer) and meets the requirements set out in the Ontario Building Code to be a designer.
 Qualification Information
 Required unless design is exempt under the C-323.2 of the building code.
 Designed under 324.1.03(4)

Peter Vozikas
 Name Signature
 10/6/2018
 Date



PROJECT: MAJOR RENOVATION
 Additions and Renovations

SHEET TITLE: BASEMENT FLOOR PLAN

PROPERTY: 835 Spring Gardens Road

SCALE: 3/16"=1'-0" DATE: JUN/2018

DRAWN BY: PV CHECKED BY: PV

PROJECT NO: SHEET NO: **A02**

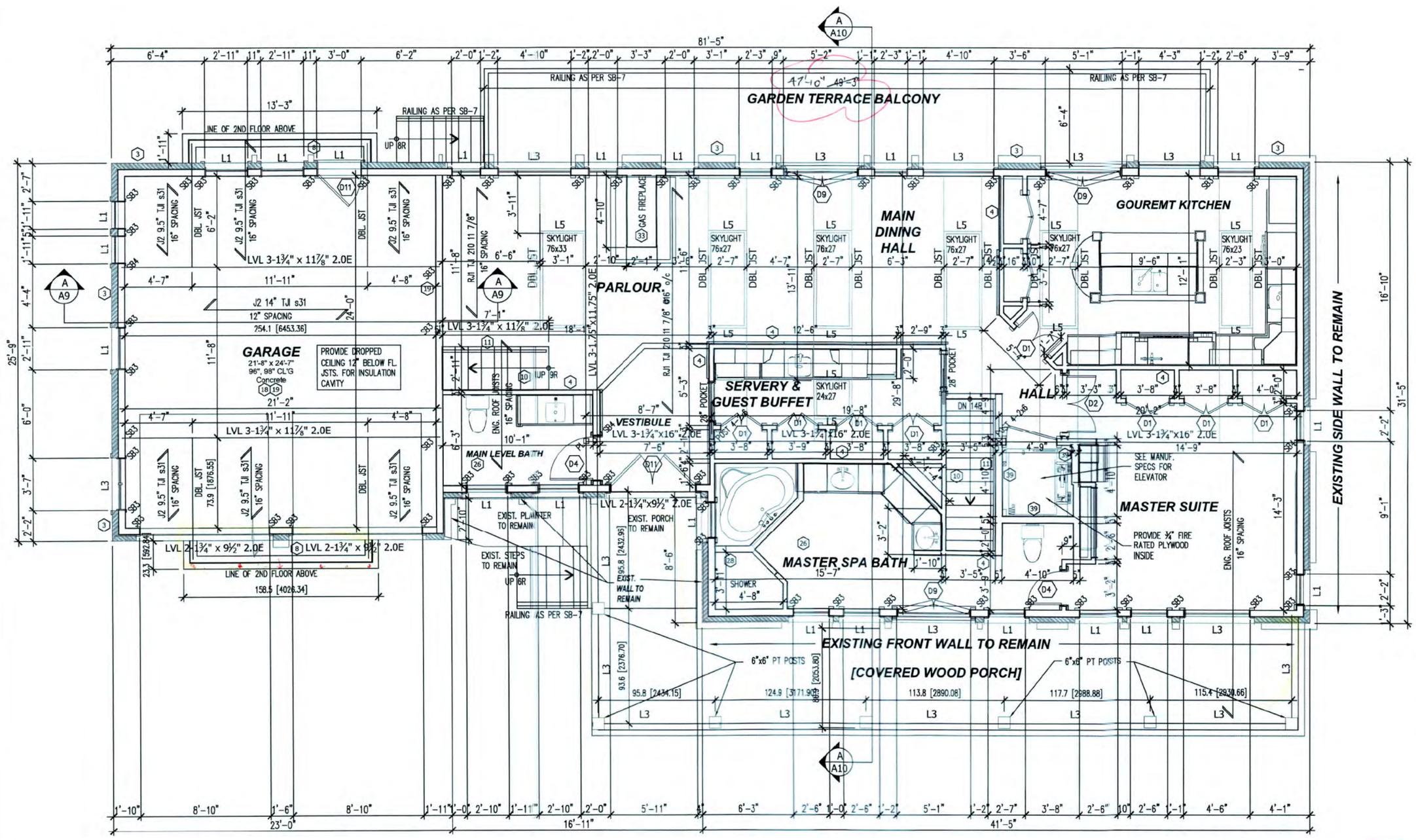
SB-12, 3.1.1.12. Drain Water Heat Recovery

A drain water heat recovery unit shall be installed

- to receive drain water from all showers or at least two showers where there are two or more showers in a dwelling unit.
- in an upright position that does not diverge more than 5 degrees from the vertical
- in a position such that the cold water inlet connection is at the bottom of the unit downstream of a water softener where a water softener is installed, and
- in a conditioned space or on the warm side of the dewpoint of the wall assembly.

Revision	Front Porch & Bay	02	PV	09/09/18
Revision		01	PV	24/07/18
Revision		No.	By	DD/MM/YY

CONTRACTOR SHALL CHECK AND VERIFY ALL DIMENSIONS.
 ANY DISCREPANCIES ARE TO BE REPORTED TO THE DESIGNER PRIOR TO COMMENCEMENT OF WORK. UNDER NO CIRCUMSTANCES SHALL THE CONTRACTOR OR SUBCONTRACTOR PROCEED IN UNCERTAINTY.
 REVIEWED UNDER THE 2016 O.B.C.



STRUCTURAL REVIEW ONLY



60 North Ridge Crescent
 Georgetown Ontario
 905-867-9777

The undersigned has retained and takes responsibility for this design, and has the qualifications as (other design) and meets the requirements set out in the Ontario Building Code to be a designer.
 Required unless design is exempt under Div. 6-3.2.5. of the building code. Designed under 3.2.1.1.3.1.0
 Peter Vozikas
 Name Signature
 102645 80919
 PCH

ALL CONSTRUCTION TO MEET ONTARIO BUILDING CODE REQUIREMENTS.

RECEIVED
 JAN 15 2019
 CITY OF BURLINGTON
 BUILDING DEPARTMENT

EMPIRE DESIGN COMPANY
 PETER VOZIKAS
 ARCHITECTURAL DESIGNS FOR:
 LUXURY RESIDENTIAL & COMMERCIAL SPACE
 WWW.EMPIREDESIGNHOMES.COM
 416-500-8989 VOZIKAS@HOTMAIL.COM

PROJECT:
 MAJOR RENOVATION
 Additions and Renovations

SHEET TITLE:
 GROUND FLOOR PLAN

PROPERTY:
 835 Spring Gardens Road

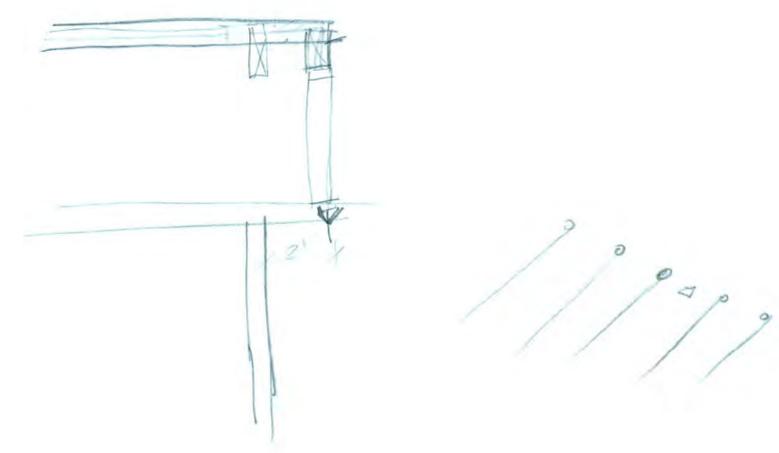
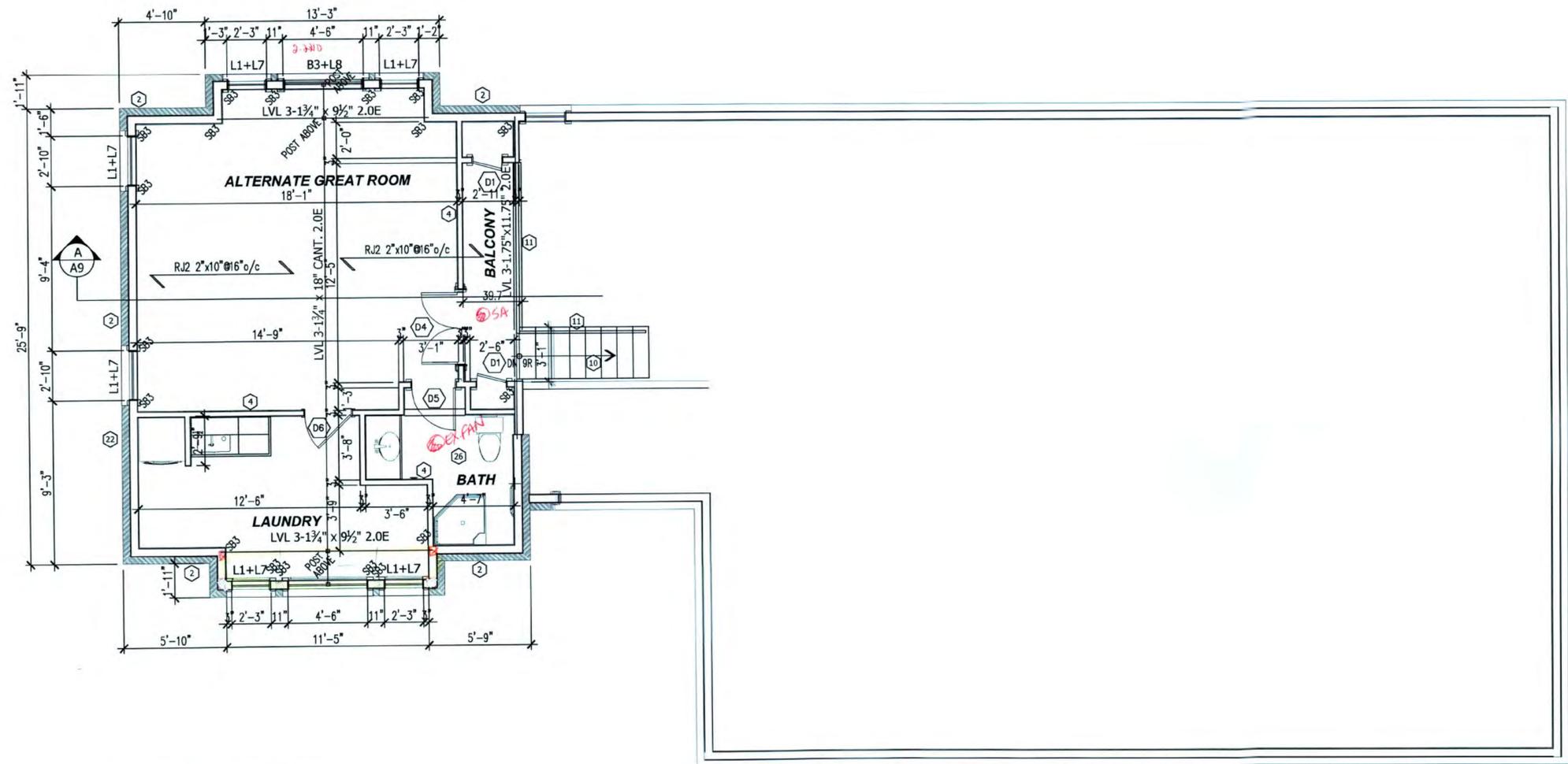
SCALE: 3/16"=1'-0" DATE: JUN/2018

DRAWN BY: PV CHECKED BY: PV

PROJECT NO: SHEET NO: **A03**

Revision	Front Porch & Bay	02	PV	09/09/18
Revision		01	PV	24/07/18
Revision		No.	By	DD/MM/YY

CONTRACTOR SHALL CHECK AND VERIFY ALL DIMENSIONS.
 ANY DISCREPANCIES ARE TO BE REPORTED TO THE DESIGNER PRIOR TO COMMENCEMENT OF WORK. UNDER NO CIRCUMSTANCES SHALL THE CONTRACTOR OR SUBCONTRACTOR PROCEED IN UNCERTAINTY.
 REVIEWED UNDER THE 2016 O.B.C.



STRUCTURAL REVIEW ONLY



60 North Ridge Crescent
 Georgetown Ontario
 905-867-9777

The undersigned has reviewed and taken responsibility for this design, and has the qualifications as (other designer) and meets the requirements set out in the Ontario Building Code to be a designer.
 Signature: Peter Vozzias
 Name: Peter Vozzias
 Date: 09/18

ALL CONSTRUCTION TO MEET ONTARIO BUILDING CODE REQUIREMENTS.

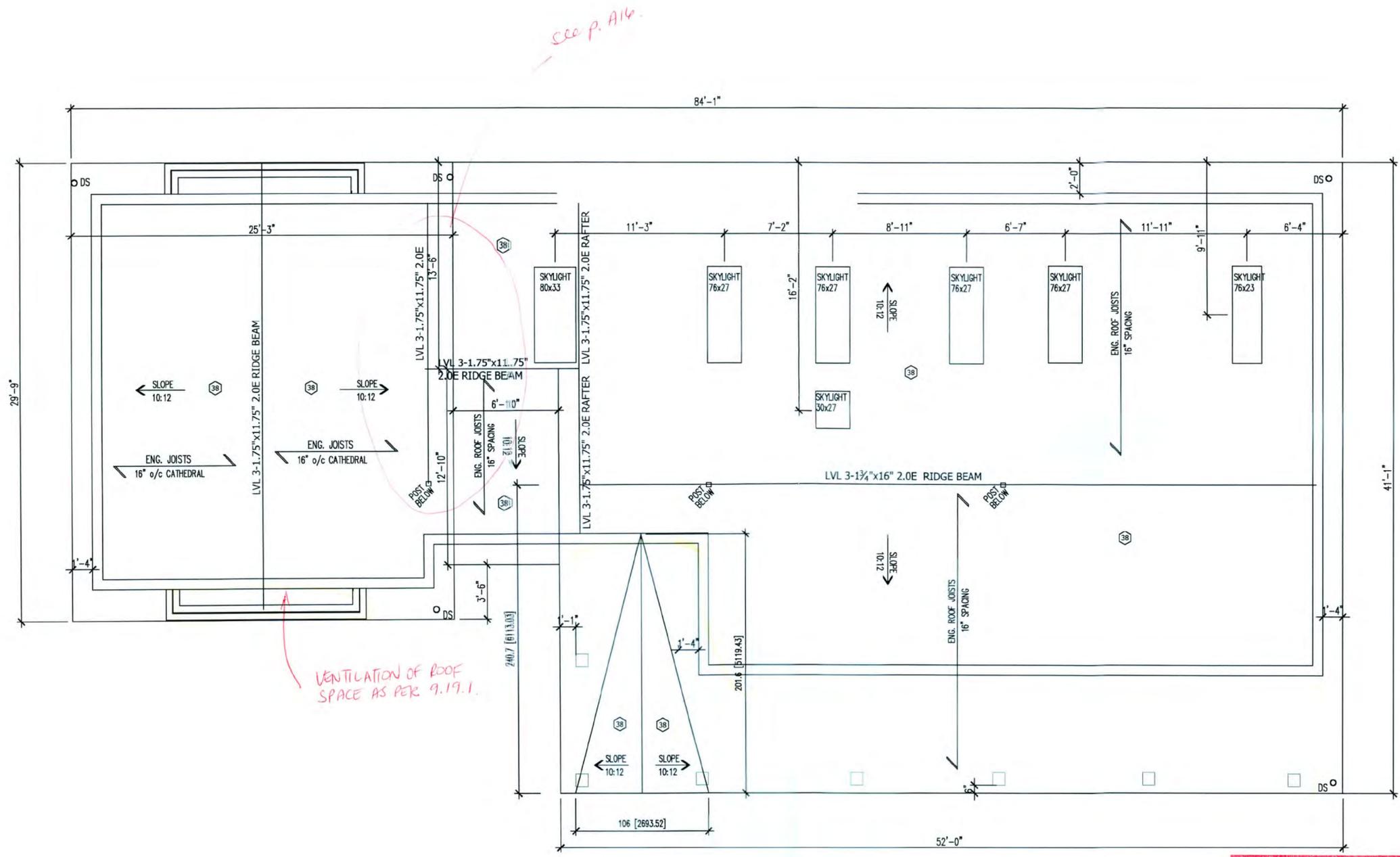
RECEIVED
 JAN 15 2018
 CITY OF BURLINGTON
 BUILDING DEPARTMENT

EMPIRE DESIGN COMPANY
 PETER VOZZIAS
 ARCHITECTURAL DESIGNS FOR LUXURY RESIDENTIAL & COMMERCIAL SPACE
 416-500-8088 VOZZIASS@HOTMAIL.COM

PROJECT: MAJOR RENOVATION Additions and Renovations
 SHEET TITLE: SECOND FLOOR PLAN
 PROPERTY: 835 Spring Gardens Road
 SCALE: 3/16" = 1'-0" DATE: JUN/2018
 DRAWN BY: PV CHECKED BY: PV
 PROJECT NO: SHEET NO: **A04**

Revision	Front Porch & Bay	OZ	PV	09/09/18
Revision		01	PV	24/07/18
Revision		No.	By	DD/MM/YY

CONTRACTOR SHALL CHECK AND VERIFY ALL DIMENSIONS.
 ANY DISCREPANCIES ARE TO BE REPORTED TO THE DESIGNER PRIOR TO COMMENCEMENT OF WORK. UNDER NO CIRCUMSTANCES SHALL THE CONTRACTOR OR SUBCONTRACTOR PROCEED IN UNCERTAINTY.
 REVIEWED UNDER THE 2016 O.B.C.



STRUCTURAL REVIEW ONLY



60 North Ridge Crescent
 Georgetown Ontario
 905-867-9777

The undersigned has reviewed and taken responsibility for this drawing, and has the qualifications (either designed) and made the requirements set out in the Ontario Building Code to be a designer.

Qualification Information
 Required unless design is exempt under the C-3.2.2.5 of the building code. (Design under 3.2.1.1.03.04)

Peter Vozikas
 Name Signature 10605 2018 BCI

OWNER:
 [Redacted]



PROJECT: MAJOR RENOVATION Additions and Renovations
 SHEET TITLE: ROOF PLAN
 PROPERTY: 835 Spring Gardens Road
 SCALE: 1/4" = 1'-0" DATE: JUN/2018
 DRAWN BY: PV CHECKED BY: PV
 PROJECT NO: SHEET NO: A05

ALL CONSTRUCTION TO MEET ONTARIO BUILDING CODE REQUIREMENTS.

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 CITY OF BURLINGTON
 BUILDING DEPARTMENT

Revision	Front Porch & Bay	02	PV	09/09/18
Revision		01	PV	24/07/18
Revision		No.	By	DD/MM/YY

CONTRACTOR SHALL CHECK AND VERIFY ALL DIMENSIONS.
 ANY DISCREPANCIES ARE TO BE REPORTED TO THE DESIGNER PRIOR TO COMMENCEMENT OF WORK. UNDER NO CIRCUMSTANCES SHALL THE CONTRACTOR OR SUBCONTRACTOR PROCEED IN UNCERTAINTY.
 REVIEWED UNDER THE 2016 O.B.C.

STRUCTURAL REVIEW ONLY



60 North Ridge Crescent
 Georgetown Ontario
 905-867-9777

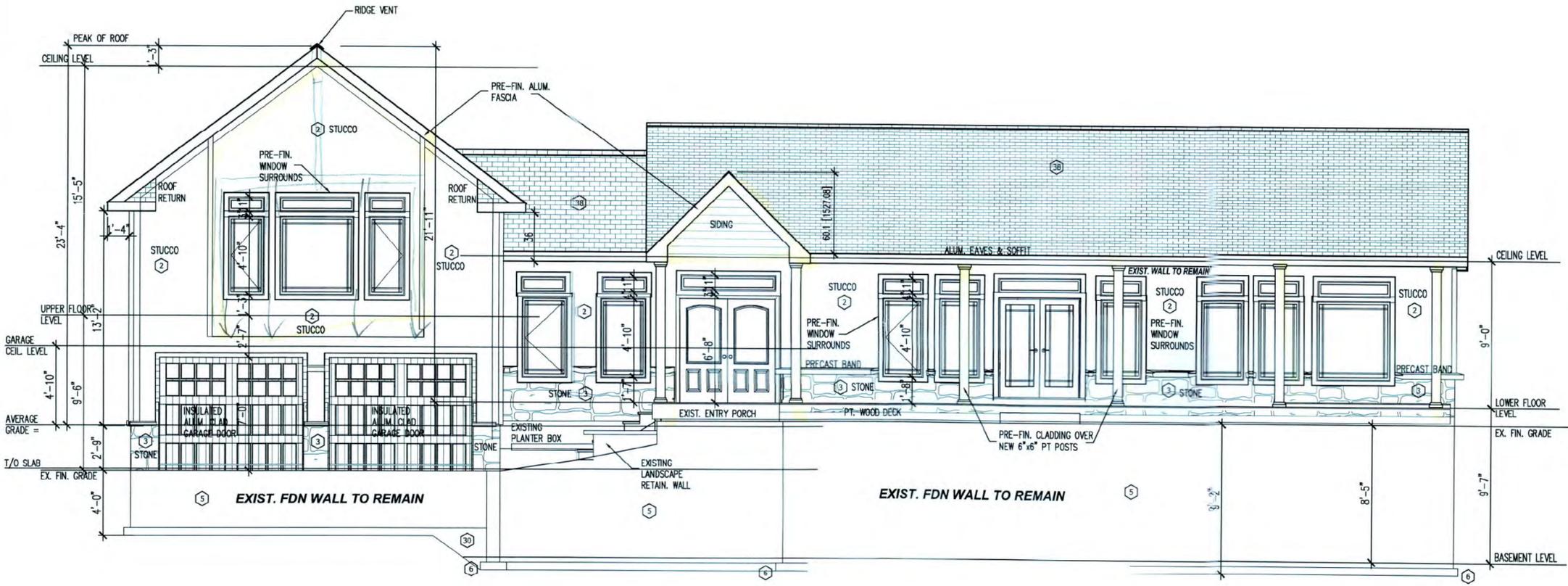
The undersigned has reviewed and takes responsibility for this design, and has the qualifications as (other designer) and meets the requirements set out in the Ontario Building Code to be a designer.
 Qualified Information:
 Required unless design is exempt under O.C. 3-2.2.2. of the building code.
 Designed under 3.2A.1(2)(a)
 Peter Vozniak
 Name Signature Date 10/16/18
 BOM



PROJECT:	MAJOR RENOVATION Additions and Renovations		
SHEET TITLE:	FRONT ELEVATION		
PROPERTY:	835 Spring Gardens Road		
SCALE:	3/16"=1'-0"	DATE:	JUN/2018
DRAWN BY:	PV	CHECKED BY:	PV
PROJECT NO:		SHEET NO:	A06

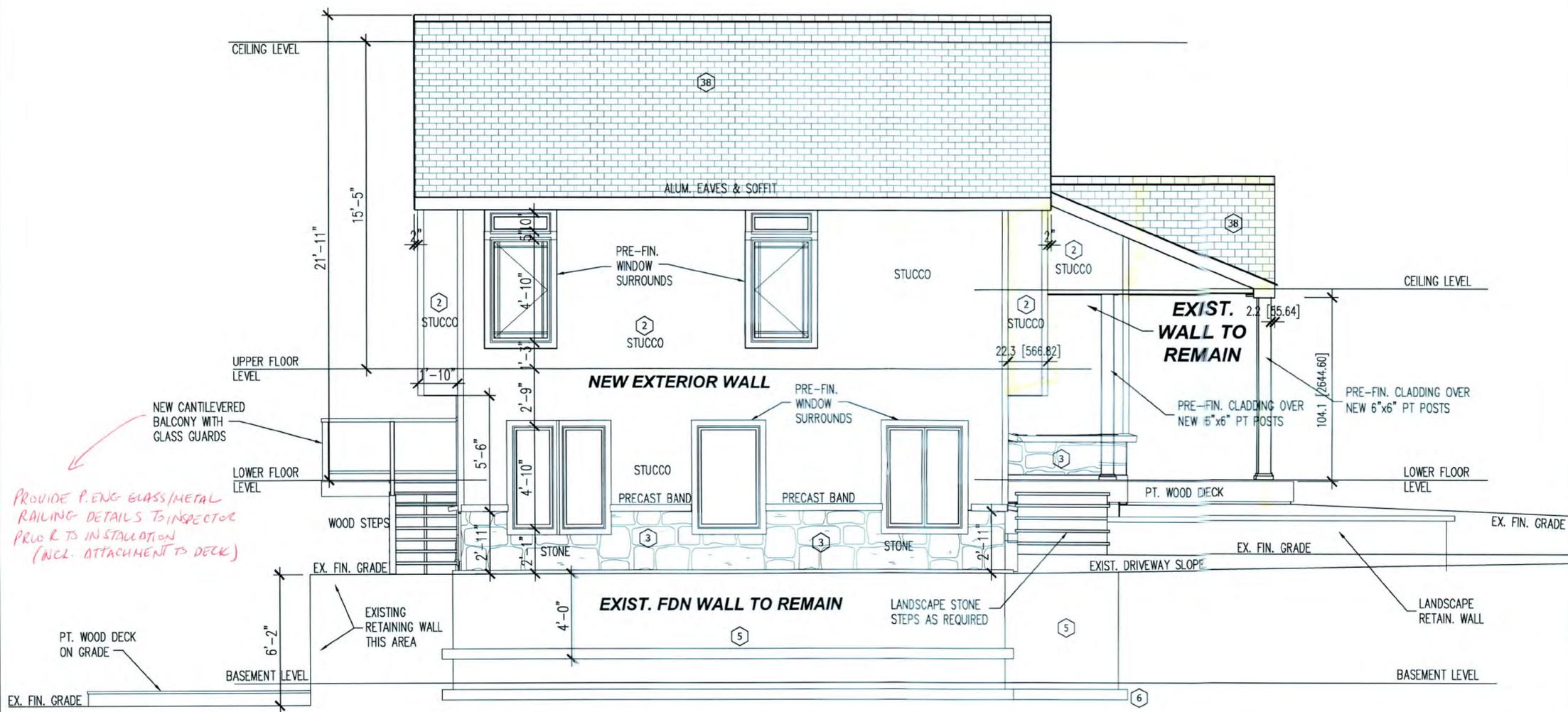
ALL CONSTRUCTION TO MEET ONTARIO BUILDING CODE REQUIREMENTS.

RECEIVED
 JAN 15 2019
 CITY OF BURLINGTON
 BUILDING DEPARTMENT



Revision	Front Porch & Bay	02	PV	09/09/18
Revision		01	PV	24/07/18
Revision		No.	By	DD/MM/YY

CONTRACTOR SHALL CHECK AND VERIFY ALL DIMENSIONS.
 ANY DISCREPANCIES ARE TO BE REPORTED TO THE DESIGNER PRIOR TO COMMENCEMENT OF WORK. UNDER NO CIRCUMSTANCES SHALL THE CONTRACTOR OR SUBCONTRACTOR PROCEED IN UNCERTAINTY.
 REVIEWED UNDER THE 2016 O.B.C.



STRUCTURAL REVIEW ONLY



60 North Ridge Crescent
 Georgetown Ontario
 905-867-9777

The undersigned has reviewed and takes responsibility for this design, and has the qualifications as (other designer) and meets the requirements set out in the Ontario Building Code to be a designer.
 Required unless design is exempt under the O-32.5.5 of the building code.
 Designated under 3.5.1.1 (5)(6)
 Peter Vozikas
 Name Signature Date 10/6/2018

EMPIRE DESIGN COMPANY
 PETER VOZIKAS
 ARCHITECTURAL DESIGNS FOR:
 LUXURY RESIDENTIAL & COMMERCIAL SPACE
 WWW.EMPIREDESIGNCOMPANY.COM
 416-500-8888 VOZIKAS@HOTMAIL.COM

PROJECT: MAJOR RENOVATION Additions and Renovations

SHEET TITLE: LEFT ELEVATION

PROPERTY: 835 Spring Gardens Road

SCALE: 1/4"=1'-0" DATE: JUN/2018

DRAWN BY: PV CHECKED BY: PV

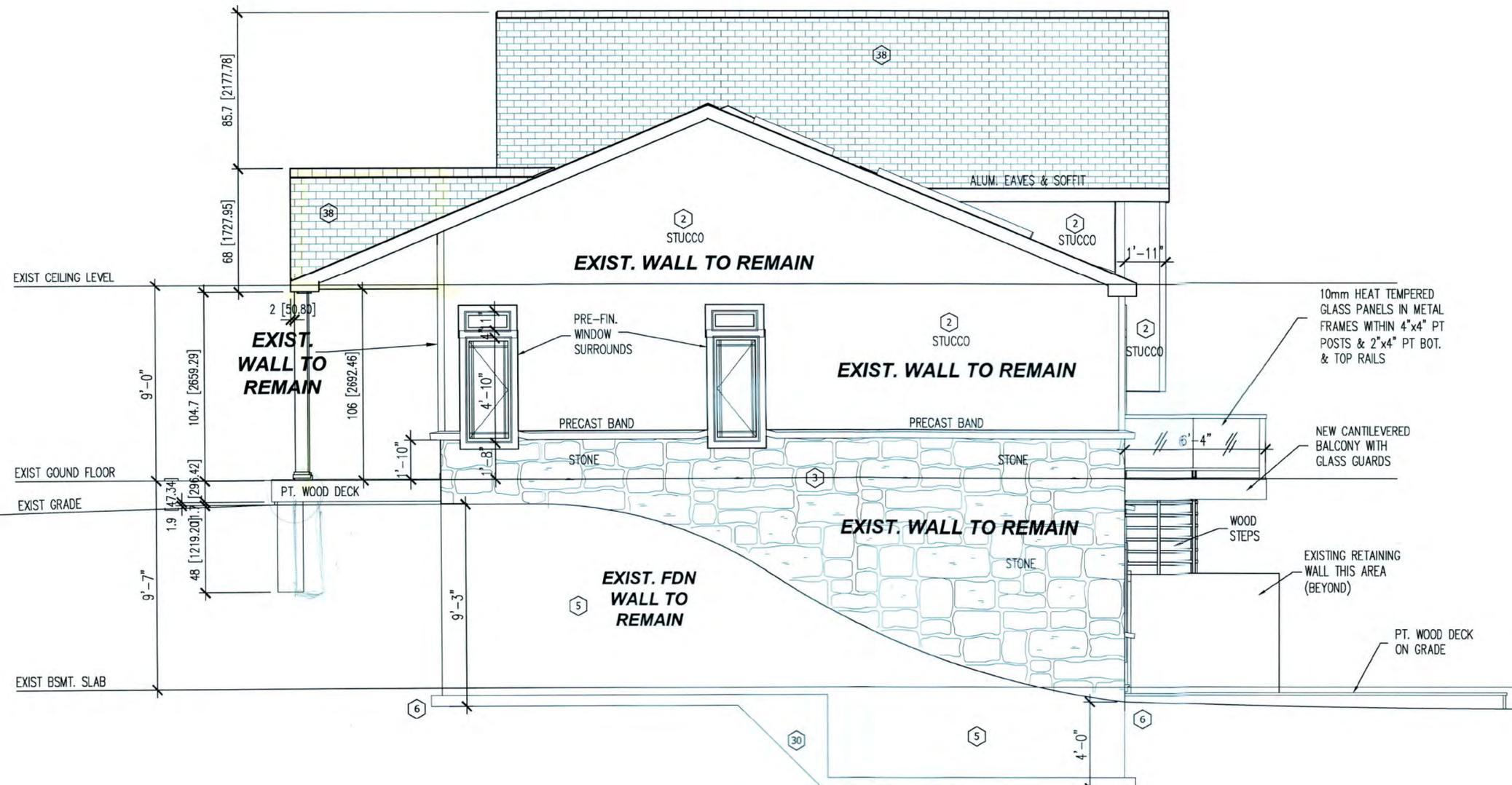
PROJECT NO: SHEET NO: **A07**

ALL CONSTRUCTION TO MEET ONTARIO BUILDING CODE REQUIREMENTS.

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 JAN 15 2019
 CITY OF BURLINGTON
 BUILDING DEPARTMENT

Revision	Front Porch & Bay	02	PV	06/09/18
Revision		01	PV	24/07/18
Revision		No.	By	DD/MM/YY

CONTRACTOR SHALL CHECK AND VERIFY ALL DIMENSIONS.
 ANY DISCREPANCIES ARE TO BE REPORTED TO THE DESIGNER PRIOR TO COMMENCEMENT OF WORK. UNDER NO CIRCUMSTANCES SHALL THE CONTRACTOR OR SUBCONTRACTOR PROCEED IN UNCERTAINTY.
 REVIEWED UNDER THE 2016 O.B.C.



STRUCTURAL REVIEW ONLY



60 North Ridge Crescent
 Georgetown Ontario
 905-867-9777

The undersigned has reviewed and takes responsibility for this design, and has the qualifications as (other designer) and meets the requirements set out in the Ontario Building Code to be a designer.
 Required unless design is exempt under the O-3.2.5. of the building code. Designed under 3.2.4.1.03.04
 Peter Vozikas
 Name Signature Date 10/6/18

OWNER:

EMPIRE DESIGN COMPANY
 PETER VOZIKAS
 ARCHITECTURAL DESIGNS FOR:
 LUXURY RESIDENTIAL & COMMERCIAL SPACE
 WWW.EMPIREDESIGNHOMES.COM
 416-500-8989 VOZIKAS@HOTMAIL.COM

PROJECT: MAJOR RENOVATION Additions and Renovations

SHEET TITLE: RIGHT ELEVATION

PROPERTY: 835 Spring Gardens Road

SCALE: 1/4"=1'-0" DATE: JUN/2018

DRAWN BY: PV CHECKED BY: PV

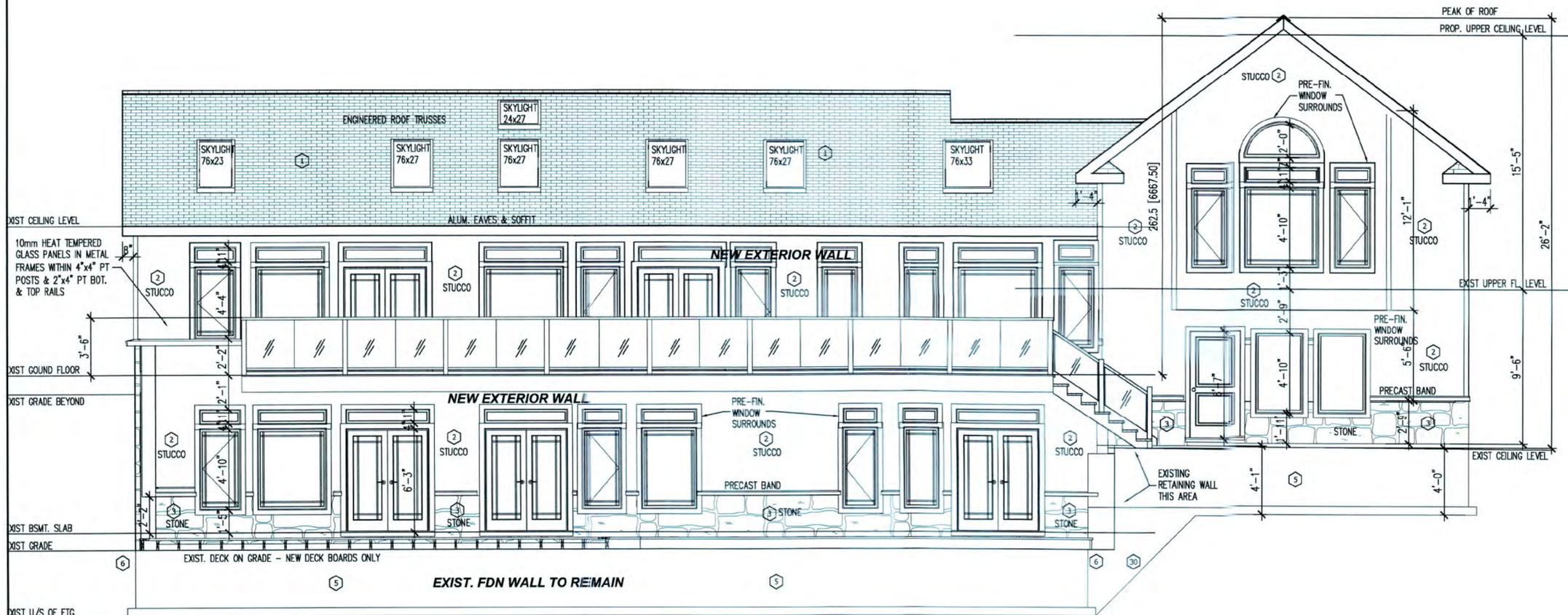
PROJECT NO: SHEET NO: **A08**

ALL CONSTRUCTION TO MEET ONTARIO BUILDING CODE REQUIREMENTS.

RECEIVED
 JAN 15 2018
 CITY OF BURLINGTON
 BUILDING DEPARTMENT

Revision	Front Porch & Bay 02	PV	08/09/18
Revision	01	PV	24/07/18
Revision	No.	By	DD/MM/YY

CONTRACTOR SHALL CHECK AND VERIFY ALL DIMENSIONS.
 ANY DISCREPANCIES ARE TO BE REPORTED TO THE DESIGNER PRIOR TO COMMENCEMENT OF WORK UNDER NO CIRCUMSTANCES SHALL THE CONTRACTOR OR SUBCONTRACTOR PROCEED IN UNCERTAINTY.
 REVIEWED UNDER THE 2016 O.B.C.



STRUCTURAL REVIEW ONLY



60 North Ridge Crescent
 Georgetown Ontario
 905-867-9777

The undersigned has reviewed and takes responsibility for the design and for the construction of (other designs) and made the requirements set out in the Ontario Building Code to be a designer.
 Qualification Information:
 Required unless design is exempt under the O.B.C. of the building code.
 Designated under: 32-A.1.03.04
 Peter Vozdvas
 Name Signature
 166605
 20079
 BCN

ALL CONSTRUCTION TO MEET ONTARIO BUILDING CODE REQUIREMENTS.

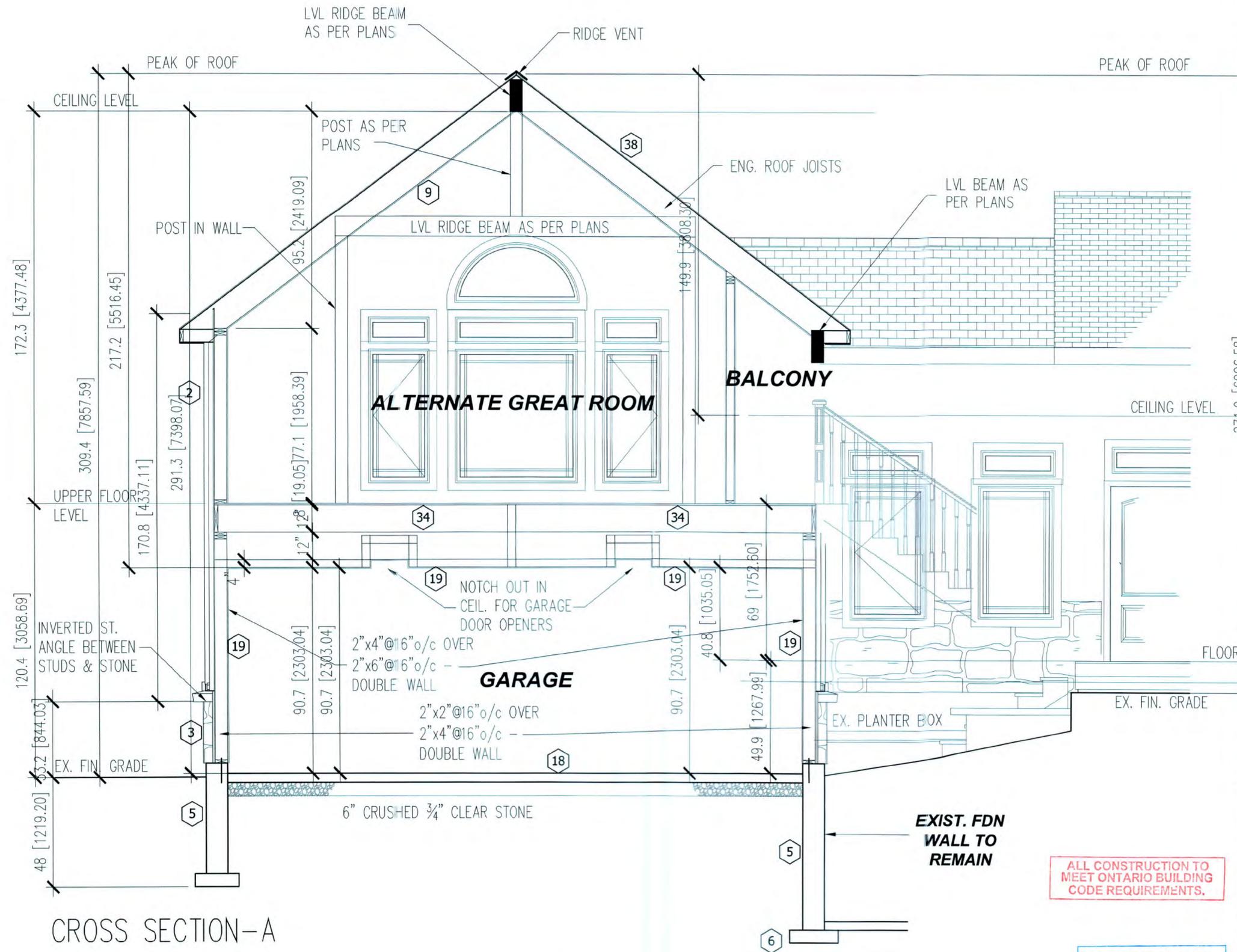
RECEIVED
 JAN 15 2019
 CITY OF BURLINGTON
 BUILDING DEPARTMENT

EMPIRE DESIGN COMPANY
 PETER VOZDVAS
 ARCHITECTURAL DESIGNS FOR:
 LUXURY RESIDENTIAL & COMMERCIAL SPACE
 WWW.EMPIREDESIGNHOMES.COM
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PROJECT: MAJOR RENOVATION Additions and Renovations
 SHEET TITLE: REAR ELEVATION
 PROPERTY: 835 Spring Gardens Road
 SCALE: 3/16"=1'-0" DATE: JUN/2018
 DRAWN BY: PV CHECKED BY: PV
 PROJECT NO: SHEET NO: **A09**

Revision	Front Porch & Bay	02	PV	09/09/18
Revision		01	PV	24/07/18
Revision		No.	By	DD/MM/YY

CONTRACTOR SHALL CHECK AND VERIFY ALL DIMENSIONS.
 ANY DISCREPANCIES ARE TO BE REPORTED TO THE DESIGNER PRIOR TO COMMENCEMENT OF WORK. UNDER NO CIRCUMSTANCES SHALL THE CONTRACTOR OR SUBCONTRACTOR PROCEED IN UNCERTAINTY.
 REVIEWED UNDER THE 2016 O.B.C.



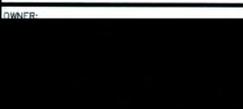
STRUCTURAL REVIEW ONLY



60 North Ridge Crescent
 Georgetown Ontario
 905-867-9777

The undersigned has reviewed and taken responsibility for this design, and for the qualifications of other designers and meets the requirements set out in the Ontario Building Code to be a designer.
 Qualification Information
 Required unless design is exempt under the C-3.2.5. of the building code. Designed under: 3241-03/09

Peter Vozikas 2019
 Name Signature BOB



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PROJECT: MAJOR RENOVATION Additions and Renovations

SHEET TITLE: CROSS SECTION-A

PROPERTY: 835 Spring Gardens Road

SCALE: 1/4"=1'-0" DATE: JUN/2018

DRAWN BY: PV CHECKED BY: PV

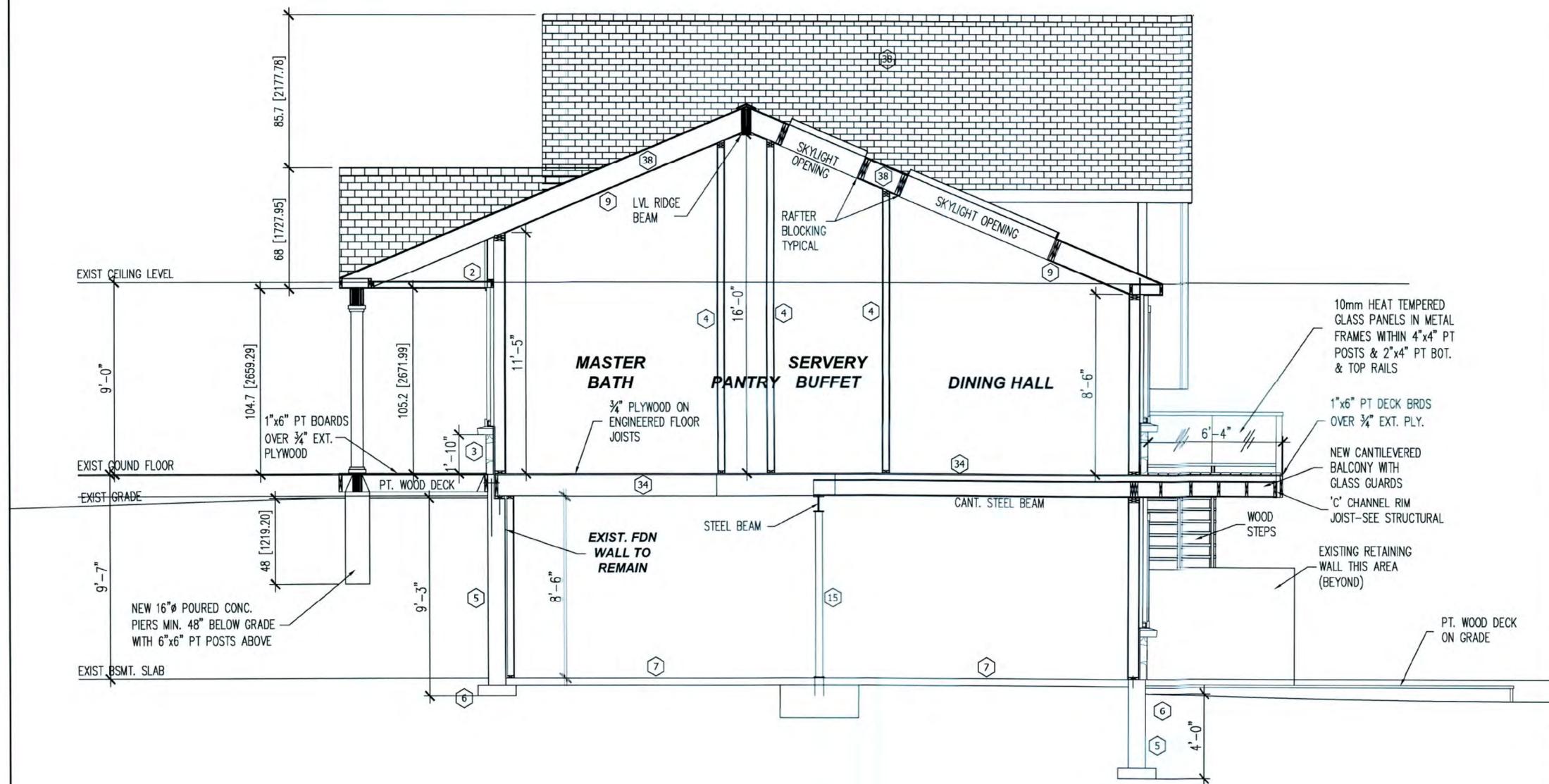
PROJECT NO: SHEET NO: **A10**

ALL CONSTRUCTION TO MEET ONTARIO BUILDING CODE REQUIREMENTS.

RECEIVED
 FEB 21 2019
 CITY OF BURLINGTON BUILDING DEPARTMENT

Revision	Front Porch & Bay 02	PV	08/09/18
Revision	01	PV	24/07/18
Revision	No.	By	DD/MM/YY

CONTRACTOR SHALL CHECK AND VERIFY ALL DIMENSIONS.
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 REVIEWED UNDER THE 2016 O.B.C.



STRUCTURAL REVIEW ONLY



60 North Ridge Crescent
 Georgetown Ontario
 905-867-9777

The undersigned has reviewed and taken responsibility for this design, and has the qualifications as (other designer) and meets the requirements set out in the Ontario Building Code to be a designer.
 Qualification Information
 Required unless design is exempt under Div. C-323.5 of the building code. Designed under 33A.1.9(10)
 Peter Vozikas
 Name
 10/6/2018
 2018
 SOB

OWNER:

EMPIRE DESIGN COMPANY
 PETER VOZIKAS
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ALL CONSTRUCTION TO MEET ONTARIO BUILDING CODE REQUIREMENTS.

RECEIVED
 JAN 15 2019
 CITY OF BURLINGTON
 BUILDING DEPARTMENT

PROJECT:	MAJOR RENOVATION Additions and Renovations
SHEET TITLE:	CROSS SECTION-B
PROPERTY:	835 Spring Gardens Road
SCALE:	1/4" = 1'-0"
DATE:	JUN/2018
DRAWN BY:	PV
CHECKED BY:	PV
PROJECT NO:	
SHEET NO:	A11

INSULATION VALUES UPDATED AS PER JAN 1 2012 SB-12 UPDATE TO O.B.C. 2012

1. ROOF CONSTRUCTION

N.D.210 (10.25kg/m2) ASPHALT SHINGLES, 10mm (3/8") PLYWOOD SHEATHING WITH 1" CLS. APPROVED WOOD TRUSSES @ 600mm (24") O.C. MAX. APPROVED EAVES PROTECTION TO EXTEND 900mm (3'-0") FROM EDGE OF ROOF AND MIN. 300mm (12") BEYOND INNER FACE OF EXTERIOR WALL, 38x89 (2"x4") TRUSS BRACING @ 1830mm (6'-0") O.C. AT BOTTOM CHORD, PREFAB. ALUM. EXISTING, FASCIA, RAIL & VENTED SOFFIT, ATTIC VENTILATION 1:300 OF INSULATED CEILING AREA WITH 50% AT EAVES.

2. FRAME WALL CONSTRUCTION (2"x6")

STUCCO OR SIDING AS PER ELEVATION, APPROVED SHEATHING PAPER, 9.5mm (3/8") EXT. TYPE SHEATHING, 38x140 (2"x6") STUDS @ 400mm (16") O.C., RSI 3.87 (R22) INSULATION AND APPROVED VAPOUR BARRIER AND APPROVED CONT. AIR BARRIER, 13mm (1/2") INT. DRYWALL FINISH.

2A. FRAME WALL CONSTRUCTION (2"x4")

SIDING AS PER ELEVATION, APPROVED SHEATHING PAPER, RSI 0.9 (R5) EXTERIOR RIGID INSUL. BOARD, 38x89 (2"x4") STUDS @ 400mm (16") O.C., WITH APPROVED DIAGONAL WALL BRACING, FOR LOAD BEARING WALLS SUPPORTING A SECOND FLOOR & A ROOF 38x89 (2"x4") STUDS @ 400mm (16") O.C. FOR LOAD BEARING WALLS SUPPORTING ROOF ONLY, WITH APPROVED DIAGONAL WALL BRACING, RSI 2.4 (R14) INSULATION AND APPROVED VAPOUR BARRIER AND APPROVED CONT. AIR BARRIER, 13mm (1/2") INT. DRYWALL FINISH.

3. BRICK VENEER CONSTRUCTION (2"x6")

90mm (4") FACE BRICK OR STONE 25mm (1") AIR SPACE, 22x180x0.76mm (7/8"x7"x0.03") GALVANIZED METAL TIES @ 400mm (16") O.C. HORIZONTAL 900mm (2'4") O.C. VERTICAL APPROVED SHEATHING PAPER, 9.5mm (3/8") EXT. TYPE SHEATHING, 38x140 (2"x6") STUDS @ 406mm (16") O.C., RSI 3.87 (R22) INSULATION AND APPROVED VAPOUR BARRIER WITH APPROVED CONT. AIR BARRIER, 13mm (1/2") INT. DRYWALL FINISH, PROVIDE WEEP HOLES @ 800mm (32") O.C. BOTTOM COURSE AND OVER OPENINGS, PROVIDE BASE FLASHING UP MIN. 150mm (6") BEHIND BUILDING PAPER.

3A. BRICK VENEER CONSTRUCTION (2"x4")

90mm (4") FACE BRICK 25mm (1") AIR SPACE, 22x180x0.76mm (7/8"x7"x0.03") GALV. METAL TIES @ 400mm (16") O.C. HORIZONTAL 600mm (2'0") O.C. VERTICAL APPROVED SHEATHING PAPER, RSI 0.9 (R5) EXT. RIGID INSUL. BOARD, 38x89 (2"x4") STUDS @ 400mm (16") O.C. W/ APPROVED DIAGONAL WALL BRACING, FOR LOAD BEARING WALLS SUPPORTING A ROOF & A SECOND 38x89 (2"x4") STUDS @ 406mm (16") O.C. W/ APPROVED DIAGONAL WALL BRACING, RSI 2.4 (R14) INSUL. AND APPROV'D VAPOUR BARRIER W/ APPROVED CONT. AIR BARRIER, 13mm (1/2") INT. DRYWALL FINISH, PROVIDE WEEP HOLES @ 800mm (32") O.C. BOTTOM COURSE AND OVER OPENINGS, PROVIDE BASE FLASHING UP MIN. 150mm (6") BEHIND BUILDING PAPER.

4. INTERIOR STUD PARTITIONS

-BEARING PARTITIONS 38x89 (2"x4") @ 400mm (16") O.C. FOR 2 STOREYS AND 300mm (12") O.C. FOR 3 STOREYS, NON-BEARING PARTITIONS 38x89 (2"x4") @ 600mm (24") O.C. PROVIDE 38x89 (2"x4") BOTTOM PLATE AND 2/38x89 (2"x4") TOP PLATE, 13mm (1/2") INTERIOR DRYWALL BOTH SIDES OF STUD, PROVIDE 38x140 (2"x6") @ 406mm (16") O.C. STUDS/PLATES WHERE NOTED, NON BEARING PARTITIONS 38x89 (2"x4") OR 38x140 (2"x6") @ 406mm (16") O.C.

5. FOUNDATION WALL/FOOTINGS: -SEE OBC 9.15.3-

250mm (10") POURED CONC. FDN. WALL 32MPa WITH BITUMINOUS DAMPPROOFING AND DRAINAGE LAYER, DRAINAGE LAYER RES. BASEMENT INSUL. MUST EXTEND FULL HEIGHT OF FDN. WALL, GRADE, MAXIMUM POUR HEIGHT 2.90 (7'-10") ON 500x200 (2'x36") CONT. KEYED CONC. FTG. BASE FOUNDATION WALL PRIOR TO BACKFILLING. ALL FOOTINGS SHALL REST ON NATURAL UNDISTURBED SOIL.

6. 100mm (4") DIA. WEEPING TILE 150mm (6") CRUSHED STONE OVER AND AROUND WEEPING TILES.

7. BASEMENT SLAB

80mm (3") MIN. 32MPa CONC. SLAB ON 100mm (4") COARSE GRANULAR FILL, OR 20MPa (2900psi) CONC. WITH DAMPPROOFING BELOW SLAB.

FALSE DORMER NOTE: VENEER TO BE 2" THICK, ADHERED THIN VENEER INSTALLED AS PER MANUFACTURER SPEC (OR LESS) OR CONTACT TACOMA FOR STEEL FRAMING SPEC PRIOR TO CONSTRUCTION

ROOF TRUSS DESIGN NOTE: FOR PART 4 ROOF TRUSSES REQUIRING WEB LATERAL BRACING, TRUSS MANUFACTURER IS TO DESIGN T-BRACING INSTEAD OF WEB LATERALS

8. EXPOSED FLOOR TO EXTERIOR

PROVIDE RSI 5.46 (R31) INSULATION, APPROVED VAPOUR BARRIER AND CONTINUOUS AIR BARRIER, FINISHED SOFFIT.

9. RSI 8.81 (R50) ROOF INSULATION AND APPROVED VAPOUR BARRIER, 16mm (5/8") INT. DRYWALL FINISH OR APPROVED EQUAL.

10. ALL STAIRS/EXTERIOR STAIRS -OBC 9.8.-

MAX. RISE = 200 (7-7/8") MIN. RUN = 210 (8-1/4") MIN. TREAD = 235 (9-1/4") MAX. NOSING = 25 (1") MIN. HEADROOM = 1950 (6'-5") RAIL @ LANDING = 900 (2'-11") RAIL @ STAIR = 800 (2'-8") MIN. STAIR WIDTH = 860 (2'-10") FOR CURVED STAIRS MIN. AVG. RUN = 150 (6") MIN. RUN = 200 (8")

11. FINISHED RAILING ON PICKETS SPACED MAXIMUM 100mm (4") BETWEEN PICKETS. GUARDS -OBC 9.8.B.

INTERIOR GUARDS: 900mm (2'-11") MIN. EXTERIOR GUARDS: 1070mm (3'-5") MIN.

12. 38x89 (2"x4") SILL PLATE WITH 13mm (1/2") DIA. ANCHOR BOLTS 200mm (8") LONG, EMBEDDED MIN. 100mm (4") INTO CONC. @ 2400mm (7'-10") O.C., CALULING OR 25 (1") MIN MINERAL WOOL BETWEEN PLATE AND TOP OF FDTN. WALL. USE NON-SHRINK GROUT TO LEVEL SILL PLATE WHEN REQUIRED.

13. RSI 2.11 (R12) INSULATION BLANKET OR BATTS WITH 38x89 (2"x4") STUD WALL, AND APPROVED VAPOUR BARRIER FULL HEIGHT GRADE DAMPPROOF W/ BLDG. PAPER BETWEEN THE FDTN. WALL AND INSUL. UP TO GRADE LEVEL.

14. not used

15. STEEL BASEMENT COLUMN (SEE O.B.C. 9.17.3.4)

90mm (3-1/2") DIA. SINGLE TUBE ADJUSTABLE STL. COL. CONFORMING TO CAN/CGSB-7.2M. AND W/ 150x150x9.5 (6"x6"x3/8") STL. TOP & BOTTOM. 1219x1219x410 (48"x48"x16") CONC. FTG. 15MPa ON UNDISTURBED SOIL.

15A. STEEL BASEMENT COLUMN (SEE O.B.C. 9.17.3.4)

90mm (3-1/2") DIA. x 4.78mm (188) NON-ADJUSTABLE STL. COL. W/ 150x150x9.5 (6"x6"x3/8") STL. TOP & BOTTOM PLATE ON 1120x1120x510 (44"x44"x20") CONC. FOOTING 15MPa ON UNDISTURBED SOIL.

15B. STEEL COLUMN (SEE O.B.C. 9.17.3.4)

90mm (3-1/2") DIA. x 4.78mm (188) NON-ADJUSTABLE STL. COLUMN WITH 150x150x9.5 (6"x6"x3/8") STEEL TOP & BOTTOM PLATE. BASE PLATE 120x250x12.5 (4 1/2"x10"x1/2") WITH 2-12mm DIA. x 300mm LONG x50mm HOOK ANCHORS (2-1/2"x12"x2") FIELD WELD COLUMN TO BASE PLATE.

15D. STEEL COLUMN (SEE O.B.C. 9.17.3.4)

3-1/2" x 3-1/2" x 0.138" WALL THICKNESS ADJUSTABLE COLUMN 15" x 5" x 1/4" H - PLATE 6"x6"x5/16" BASE PLATE ON FTG. 42"x42"x18" CONC. FTG. (15MPa) ON NAT. UNDISTURBED SOIL.

16. BEAM POCKET OR 200x250 (8"x10") POURED CONCRETE NIB WALLS. MINIMUM BEARING 90mm (3-1/2").

17. 19x64 (1"x3") CONTINUOUS WOOD STRAPPING BOTH SIDES OF STEEL BEAM.

18. GARAGE SLAB: 100mm (4") 32MPa (4640psi) CONC. SLAB WITH 5-8% AIR ENTRAINMENT ON OPT. 100 (4") COARSE GRANULAR FILL WITH COMPACTED SUB-BASE OR COMPACTED NATIVE FILL. SLOPE TO FRONT AT 1% MIN.

19. 13mm (1/2") GYPSUM BD. ON WALL AND CEILING BETWEEN HOUSE AND GARAGE, RSI 4.23 (R24) IN WALLS, RSI 5.46 (R31) IN CEILING. TAPE AND SEAL & STRUCTURALLY SUPPORT ALL JOINTS, IN ORDER TO BE GAS TIGHT.

20. DOOR AND FRAME GASPROOFED. DOOR EQUIPPED WITH SELF CLOSING DEVICE AND WEATHERSTRIPPING.

21. PRECAST CONCRETE STEP OR WD. STEP WHERE NOT EXPOSED TO WEATHER. MAX. RISE 200mm (7-7/8"); MINIMUM TREAD 250mm (9-1/2").

22. CAPPED DRYER EXHAUST VENTED TO EXTERIOR. DUCTS SHALL CONFORM TO O.B.C. PART 6

23. ATTIC ACCESS HATCH 500x700 (20"x28") WITH WEATHERSTRIPPING. RSI 8.81 (R50) RIGID INSULATION BACKING.

24. FIREPLACE CHIMNEYS -OBC 9.21.-

TOP OF FIREPLACE CHIMNEY SHALL BE 915mm (3'-0") ABOVE THE HIGHEST POINT AT WHICH IT COMES IN CONTACT WITH THE ROOF AND 810mm (2'-0") ABOVE THE ROOF SURFACE WITHIN A HORIZ. DISTANCE OF 3050mm (10'-0") FROM THE CHIMNEY.

25. LINEN CLOSET 4 SHELVES MIN. 350mm (14") DEEP.

26. MECHANICAL EXHAUST FAN, VENTED TO EXTERIOR TO PROVIDE AT LEAST ONE AIR CHANGE PER HOUR. PROVIDE DUCT SCREEN AS PER O.B.C. 9.32.3.12

27. STEEL BEARING PLATE FOR MASONRY WALLS

280x280x16 (11"x11"x5/8") STL. PLATE FOR STL. BEAMS AND 280x280x12 (11"x11"x1/2") STL. PLATE FOR WOOD BEAMS BEARING ON CONC. BLK. PARTYWALL, ANCHORED W/ 2-19mm (3/4") x200mm (8") LONG GALV. ANCHORS WITHIN SOLID BLOCK COURSE. LEVEL WITH NON-SHRINK GROUT.

28. SOLID WOOD BEARING FOR WOOD STUD WALLS

SOLID BEARING TO BE AT LEAST AS WIDE AS THE SUPPORTED MEMBER. SOLID WOOD BEARING COMPRISED OF BUILT-UP WOOD STUDS TO BE CONSTRUCTED IN ACCORDANCE WITH OBC. 9.17.4.2 (2).

28. STUD WALL REINFORCEMENT 9.5.2.3.

PROVIDE WOOD BLOCKING REINFORCEMENT TO STUD WALLS FOR FUTURE GRAB BAR INSTALLATION IN MAIN BATHROOM, 840-920mm (33"-38") A.F.F. BEHIND TOILET, 850mm (33") A.F.F. ON THE WALL OPPOSITE THE ENTRANCE TO THE BATHUB OR SHOWER

29. 3-38x89 (3-2"x4") BUILT-UP-POST WITH DAMPPROOFING MATERIAL WRAPPED AT THE END OF POST ANCHORED TO 610x610x300 (24"x24"x12") CONCRETE FOOTING.

30. STEP FOOTINGS: MIN. HORIZ. STEP = 600mm (23 5/8"). MAX. VERT. STEP = 600mm (23 5/8") FOR FIRM SOILS.

31. MIN. 100mm (4") CONCRETE SLAB ON GRADE ON 100mm (4") COARSE GRANULAR FILL. REINFORCED W/ 6x6-W2.9xW2.9 MESH PLACED NEAR MID-DEPTH OF SLAB. CONC. STRENGTH 32 MPa (4640 psi) WITH 5-8% AIR ENTRAINMENT ON COMPACTED SUB-GRADE.

32. DIRECT VENT FURNACE TERMINAL MIN. 900mm (36") FROM A GAS REGULATOR. MIN. 300mm (12") ABOVE FIN. GRADE, FROM ALL OPENINGS, EXHAUST & INTAKE VENTS. HRV INTAKE TO BE A MIN. OF 1830mm (6'-0") FROM ALL EXHAUST TERMINALS. REFER TO GAS UTILIZATION CODE.

33. DIRECT VENT GAS FIREPLACE. VENT TO BE A MINIMUM 300mm (12") FROM ANY OPENING AND ABOVE FIN. GRADE. REFER TO GAS UTILIZATION CODE.

34. SUBFLOOR, JOIST STRAPPING AND BRIDGING

-3/4" T & G SUBFLOOR ON WOOD FLOOR JOISTS. FOR CERAMIC TILE APPLICATION (4" SEE OBC 9.30.6. *) 8mm (1/4") PANEL TYPE UNDERLAY UNDER RESILIENT OR PARQUET FLOORING. (-4" SEE OBC 9.23.9.4 *) ALL JOISTS TO BE BRIDGED WITH 38x38 (2"x2") CROSS BRACING OR SOLID BLOCKING @ 2100mm (6'-11") O.C. MAX. ALL JOISTS TO BE STRAPPED WITH 19x64 (1"x3") @ 2100mm (6'-11") O.C. UNLESS A PANEL TYPE CEILING FINISH IS APPLIED.

NOTE: ALL CONSTRUCTION SHALL CONFORM TO THE ONTARIO BUILDING CODE (O.B.C.) AND OTHER APPLICABLE CODES AND AUTHORITIES HAVING JURISDICTION. UNLESS NOTED OTHERWISE, THE CODE REFERENCE ARE FROM 2012 O.B.C. REG 332/12, DIVISION B, PART 9.

NOTE: PROVIDE 3-2X6 POST BELOW ALL GIRDER TRUSSES (U.N.O) NOTE: CODE REFERENCES REFER TO O.B.C 2012 DIVISION B

VENT NOTE: ROOF TO BE VENTED TO 50% OF INSULATED ATTIC AREA AT LEAST 50% OF VENT AREA IN THE SOFFIT - NO MORE THAN 50% OF THE REQUIRED ROOF VENT AREA AS ROOF OR RIDGE VENTS

NOTE: PROVIDE FIRE SEPARATION IN ATTIC SPACE. NO SPACE CAN BE LARGER THAN 3230. SOFT.

35. EXPOSED BUILDING FACE -OBC 9.10.14.5-

EXTERIOR WALLS TO HAVE A FIRE RESISTANCE RATING OF NOT LESS THAN 45 min. WHERE LIMITING DISTANCE IS LESS THAN 1.2M (3'-11"). WHERE THE LIMITING DISTANCE IS LESS THAN 600mm (1'-11") THE EXPOSING FACE SHALL BE CLAD IN NON-COMBUSTIBLE MATERIAL.

36. COLD CELLAR PORCH SLAB

FOR MAX. 2500 mm (8'-3") PORCH DEPTH, 130mm (5") 32MPa (4640psi) CONC. SLAB WITH 5-8% AIR ENTRAINMENT, REINF. WITH 10M BARS @ 200mm (8") O.C. EACH WAY IN BOTTOM THIRD OF SLAB, 610x610 (24"x24") DOWELS @ 600mm (24") O.C., ANCHORED IN PERIMETER FDTN. WALLS. SLOPE SLAB MIN. 1.0% FROM DOOR. PROVIDE (L7) UNTELS OVER CELLAR DOOR.

37. THE FDTN. WALL SHALL NOT BE REDUCED TO LESS THAN 90mm (3-1/2") THICK TO A MAX. DEPTH OF 600mm (2'-0") AND SHALL BE TIED TO THE FACING MATERIAL WITH METAL TIES SPACED 200mm (8") O.C. VERTICALLY AND 900mm (36") O.C. HORIZONTALLY. FILL SPACE BETWEEN WALL AND FACING SOLID WITH MORTAR.

38. CONVENTIONAL ROOF FRAMING

38x190 (2"x8") RAFTERS @ 400mm (16") O.C., 38x310 (2"x12") RIDGE BOARD, 38x89 (2"x4") COLLAR TIES AT MIDSPANS, CEILING JOISTS TO BE 38x140 (2"x6") @ 400mm (16") O.C. FOR MAX. 2830mm (9'-3") SPAN & 38x140 (2"x6") @ 400 (16") O.C. FOR MAX. 4450mm (14'-7") SPAN. RAFTERS FOR BUILT-UP ROOF TO BE 38x89 (2"x4") @ 600mm (24") O.C. WITH A 38x89 (2"x4") CENTRE POST TO THE TRUSS BELOW, LATERALLY BRACED @ 1800mm (6'-0") O.C. VERTICALLY.

LEGEND

Table with 2 columns: Symbol and Description. Symbols include FD (Floor Drain), DJ (Double Joist), TJ (Triple Joist), LVL (Laminated Veneer Lumber), PL (Point Load from Above), P.T. (Pressure Treated Lumber), G.T. (Girder Truss by Roof Truss Manuf.), R.R. (Roof Rafters), C.J. (Ceiling Joists).

WOOD LINTELS AND BUILT-UP WOOD BEAMS

Table with 2 columns: Lumber Type and Dimensions. Includes L1A, L1, B1, B2, L3, B3, B4, L5, B5, B6, L7, L8, L9, L10, L11, L12.

LOOSE STEEL LINTELS

Table with 2 columns: Lumber Type and Dimensions. Includes L7, L8, L9, L10, L11, L12.

LAMINATED VENEER LUMBER (LVL) BEAMS

Table with 2 columns: Lumber Type and Dimensions. Includes LVL1, LVL2, LVL3, LVL4, LVL5, LVL6, LVL7, LVL8, LVL9, LVL10.

39. TWO STOREY VOLUME SPACES

-FOR A MAXIMUM 5400 mm (18'-0") HEIGHT, PROVIDE 2-38x140 (2'-2"x6") SPR.#2 CONTIN. STUDS @ 300mm (12") O.C. FOR BRICK AND 400mm (16") O.C. FOR SIDING C/W 9.6 (3/8") THICK EXT. PLYWOOD SHEATHING. PROVIDE SOLID WOOD BLOCKING BETWEEN WOOD STUDS @ 1220 mm (4'-0") O.C. VERTICALLY.

-FOR HORIZ. DISTANCES NOT EXCEEDING 2900 mm (9'-6"), PROVIDE 38x140 (2"x6") STUDS @ 400 (16") O.C. WITH CONTINUOUS 2-38x140 (2'-2"x6") TOP PLATE + 1-38x140 (1'-2"x6") BOTTOM PLATE & MINIMUM OF 3-38x140 (3'-2"x8") CONT. HEADER AT GRND. CEILING LEVEL TOE-NAILED & GLUED AT TOP, BOTTOM PLATES AND HEADERS.

SMOKE ALARM (REFER TO OBC 9.10.19)

PROVIDE 1 PER FLOOR, NEAR THE STAIRS CONNECTING THE FLOOR LEVEL AND ONE PER SLEEPING ROOM. ALARMS TO BE CONNECTED TO AN ELECTRICAL CIRCUIT AND INTERCONNECTED TO ACTIVATE ALL ALARMS IF 1 SOUNDS.

CARBON MONOXIDE DETECTOR (OBC 9.33.4)

* CHECK LOCAL BYLAWS FOR REQUIREMENTS *

SB= SOLID WOOD BEARING

SB2 - 2 MEMBER BUILT-UP STUD SB3 - 3 MEMBER BUILT-UP STUD SB4 - 4 MEMBER BUILT-UP STUD SBFA - SOLID BEARING FROM ABOVE CARRY POST AND BLOCKING THROUGH FLOOR ASSEMBLY SOLID BEARING POSTS TO BE MADE UP OF THE SAME SIZE OF STUD IN WALL IT IS LOCATED, (OR MIN 2"x4" FOR ROOF POSTS, EACH PLY TO BE TIED TOGETHER AS PER 9.17.4.2(2) AND 9.23.10.7. DV. B. O.B.C.

WINDOWS:

- 1) MINIMUM BEDROOM WINDOW -OBC 9.9.10.- AT LEAST ONE BEDROOM WINDOW ON A GIVEN FLOOR IS TO HAVE MIN. 0.35m2 UNOBSTRUCTED GLAZED OR OPENABLE AREA WITH MIN. CLEAR WIDTH OF 380mm (1'-3").
- 2) WINDOW GUARDS -OBC 9.8.8.1.- A GUARD IS REQUIRED WHERE THE TOP OF THE WINDOW SILL IS LOCATED LESS THAN 480mm (1'-7") ABOVE FIN. FLOOR AND THE DISTANCE FROM THE FIN. FLOOR TO THE ADJACENT GRADE IS GREATER THAN 180mm (5'-11").
- 3) WINDOW OVER STAIRS & LANDINGS -OBC 9.8.8.1.- A GUARD IS REQUIRED WHERE THE TOP OF THE WINDOW SILL IS LOCATED LESS THAN 900mm (2'-11") ABOVE THE SURFACE OF THE TREAD, RAMP OR LANDING.

NOTE:

MECHANICAL VENTILATION IS REQUIRED TO PROVIDE 0.3 AIR CHANGES PER HOUR AVERAGED OVER 24 HOURS. SEE MECHANICAL DRAWINGS.

LUMBER:

- 1) ALL LUMBER SHALL BE SPRUCE NO.2 GRADE, UNLESS NOTED OTHERWISE.
- 2) STUDS SHALL BE STUD GRADE SPRUCE, UNLESS NOTED OTHERWISE.
- 3) LUMBER EXPOSED TO THE EXTERIOR TO BE SPRUCE NO. 2 GRADE PRESSURE TREATED OR CEDAR, UNLESS NOTED OTHERWISE.
- 4) ALL LAMINATED VENEER LUMBER (L.V.L.) BEAMS, GIRDER TRUSSES, AND METAL HANGER CONNECTIONS SUPPORTING ROOF FRAMING TO BE DESIGNED & CERTIFIED BY TRUSS MANUFACTURER.
- 5) LVL BEAMS SHALL BE 2.0E WS MICRO-LAM LVL (Fb=2800psi MIN.) OR EQUIVALENT. NAIL EACH PLY OF LVL WITH 89mm (3 1/2") LONG COMMON WIRE NAILS @ 300mm (12") O.C. STAGGERED IN 2 ROWS FOR 184,240 & 300mm (7 1/4" & 11 7/8") DEPTHS AND STAGGERED IN 3 ROWS FOR GREATER DEPTHS AND FOR 4 PLY MEMBERS ADD 13mm (1/2") DIA. GALV. BOLTS BOLTED AT MID-DEPTH OF BEAM @ 915mm (3'-0") O.C.
- 6) PROVIDE TOP MOUNT BEAM HANGERS TYPE "SCL" MANUFACTURED BY MGA CONNECTOR LTD. TEL. (905) 642-3175 OR EQUAL FOR ALL LVL BEAM TO BEAM CONNECTIONS UNLESS NOTED OTHERWISE.
- 7) JOIST HANGERS: PROVIDE METAL HANGERS FOR ALL JOISTS AND BUILT-UP WOOD MEMBERS INTERSECTING FLUSH BUILT-UP WOOD MEMBERS.
- 8) WOOD FRAMING NOT TREATED WITH A WOOD PRESERVATIVE, IN CONTACT WITH CONCRETE, SHALL BE SEPARATED FROM THE CONC. BY AT LEAST 2 MIL. POLYETHYLENE FILM, No.50 (45lbs) ROLL ROOFING OR OTHER DAMPPROOFING MATERIAL, EXCEPT WHERE THE WOOD MEMBER IS AT LEAST 150mm (6") ABOVE THE GROUND.
- 9) TERMITES & DECAY PROTECTION IN LOCATIONS WHERE TERMITES ARE KNOWN TO OCCUR, CLEARANCE BETWEEN STRUCTURAL WOOD ELEMENTS AND THE FINISHED GROUND LEVEL DIRECTLY BELOW THEM SHALL BE NOT LESS THAN 450mm (17 3/4") AND ALL SIDES OF SUPPORTING ELEMENTS SHALL BE VISIBLE TO INSPECTION. STRUCTURAL WOOD ELEMENTS, SUPPORTED BY WOOD ELEMENTS IN CONTACT WITH THE GROUND OR OVER EXPOSED BARE SOIL SHALL BE PRESSURE TREATED WITH CHEMICAL THAT IS TOXIC TO TERMITES.

STEEL:

- 1) STRUCTURAL STEEL SHALL CONFORM TO CAN/CSA-G40-21 GRADE 300W. HOLLOW STRUCTURAL SECTIONS SHALL CONFORM TO CAN/CSA-G40-21 GRADE 350W CLASS "H".
- 2) REINFORCING STEEL SHALL CONFORM TO CSA-G30-18M GRADE 400R.

NOTE:

PLEASE REFER TO TRUSS LAYOUT AND PACKAGE DETAILS FOR TRUSS DETAILS, HHEEL HEIGHTS, NOTES AND UPLIFT CLIPS

D1 18"x96"x1.5" [L.H.S.]

D2 24"x96"x1.5" [L.H.S.]

D3 26"x96"x1.5" [L.H.S.]

D4 28"x96"x1.5" [L.H.S.]

D5 30"x96"x1.5" [L.H.S.]

D6 32"x96"x1.5" [L.H.S.]

D7 34"x96"x1.5" [L.H.S.]

D8 36"x96"x1.5" [L.H.S.]

D9 30"x96"x 2" [E.H.M.]

D10 32"x96"x 2" [E.H.M.]

D11 34"x96"x 2" [E.H.M.]

D12 36"x96"x 2" [E.H.M.]

D13 36"x96"x 2" [E.H.M.] SELF-CLOSER

D14 (42"x120"x 2" [SOLID WD.] CUSTOM SIZE & MATERIAL

-SLIDING PATIO DOORS = 72"x96"

-POCKET DOORS AS LABELLED ON PLAN

Revision table with columns: No., By, DD/MM/YY

CONTRACTOR SHALL CHECK AND VERIFY ALL DIMENSIONS. ANY DISCREPANCIES ARE TO BE REPORTED TO THE DESIGNER PRIOR TO COMMENCEMENT OF WORK. UNDER NO CIRCUMSTANCES SHALL THE CONTRACTOR OR SUBCONTRACTOR PROCEED IN UNCERTAINTY. REVIEWED UNDER THE 2016 O.B.C.

STRUCTURAL REVIEW ONLY



60 North Ridge Crescent Georgetown Ontario 905-867-9777

The undersigned has reviewed and takes responsibility for this design, and has the qualifications of a Professional Engineer as required under the Ontario Building Code to be a designer.



PROJECT: MAJOR RENOVATION Additions and Renovations

SHEET TITLE: GENOTES

PROPERTY: 835 Spring Gardens Road

SCALE: NTS DATE: JUN/2018

DRAWN BY: PV CHECKED BY: PV

PROJECT NO: SHEET NO: A12



Revision	No.	By	DD/MM/YY

CONTRACTOR SHALL CHECK AND VERIFY ALL DIMENSIONS.
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 REVIEWED UNDER THE 2016 O.B.C.

STRUCTURAL REVIEW ONLY



The undersigned has reviewed and taken responsibility for this design, and has the qualifications as (other designer) and meets the requirements set out in the Ontario Building Code to be a designer.
 Required unless design is exempt under Div. C-3.2.5. of the building code. Design under 3.2.1.15.1(6)
 Peter Vozikas
 Name: Signature: 10665
 Date: 2018-06-08



PROJECT: MAJOR RENOVATION
 Additions and Renovations

SHEET TITLE: DETAILS

PROPERTY: 835 Spring Gardens Road

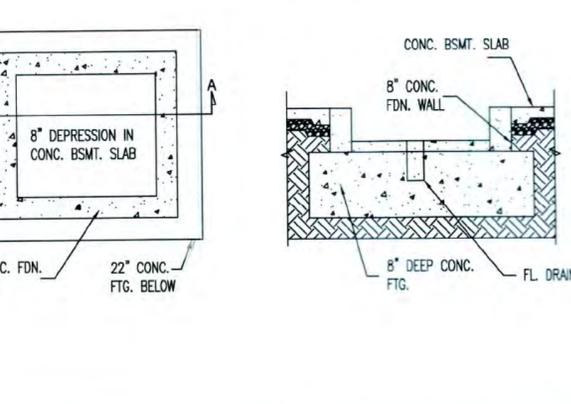
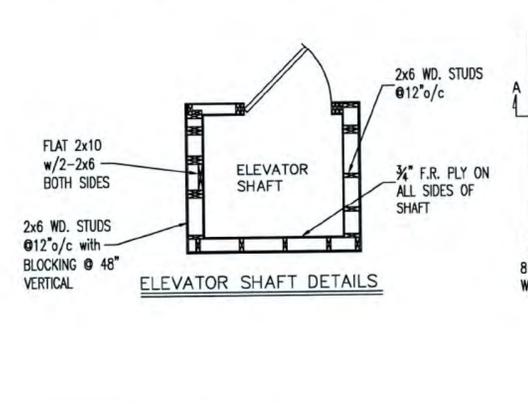
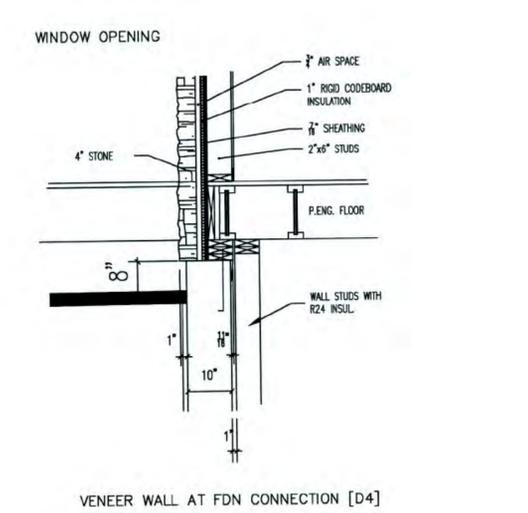
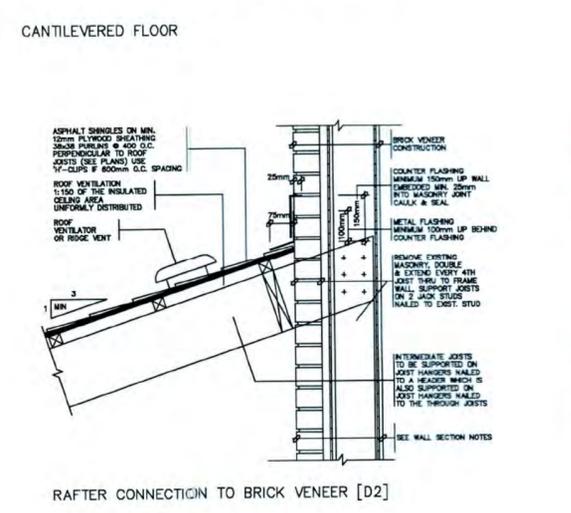
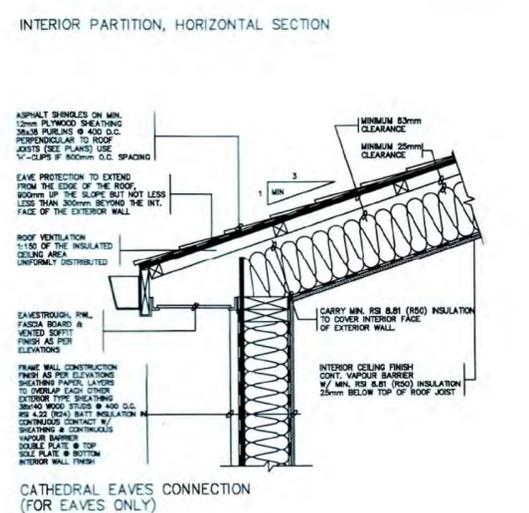
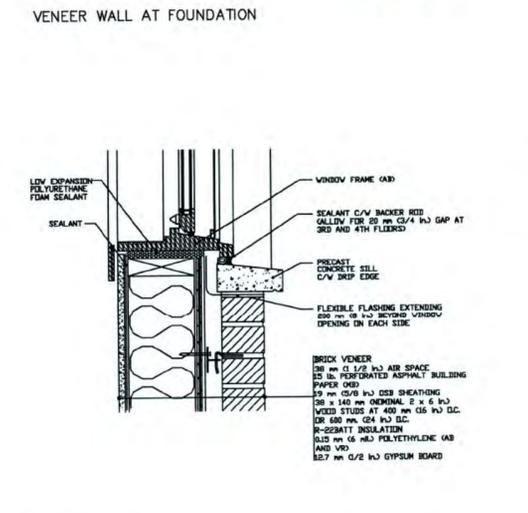
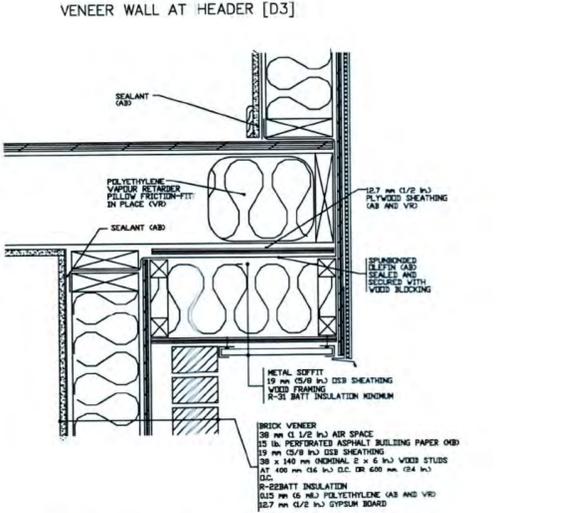
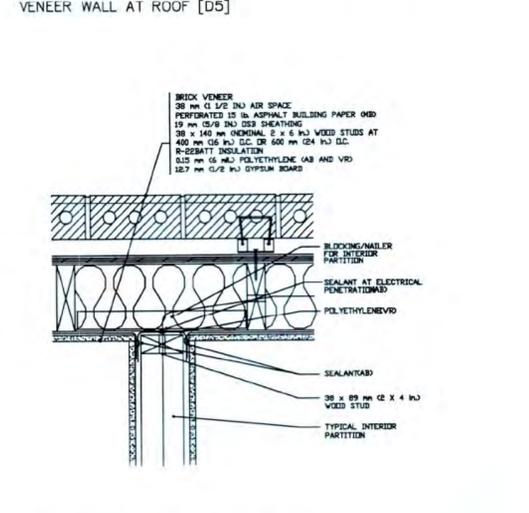
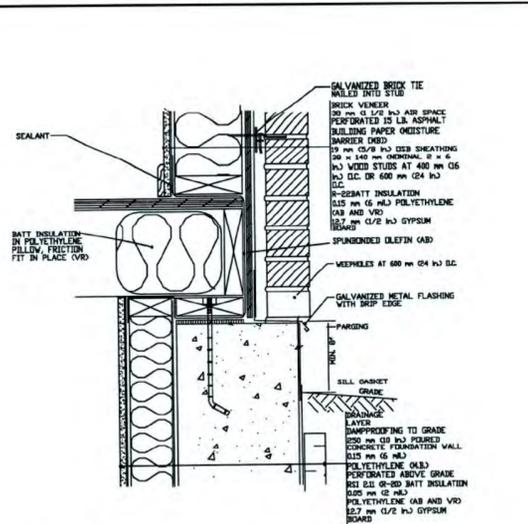
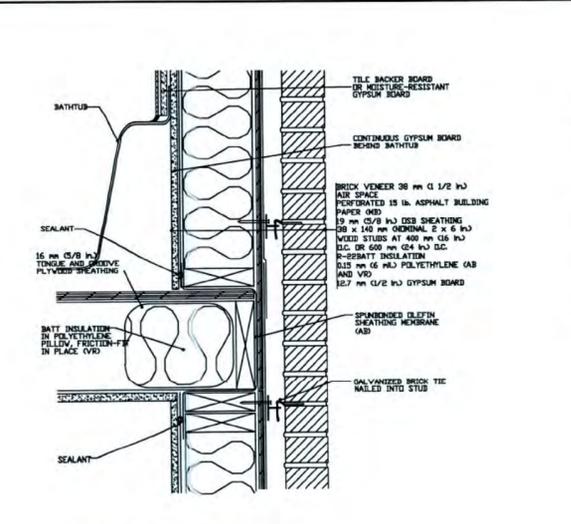
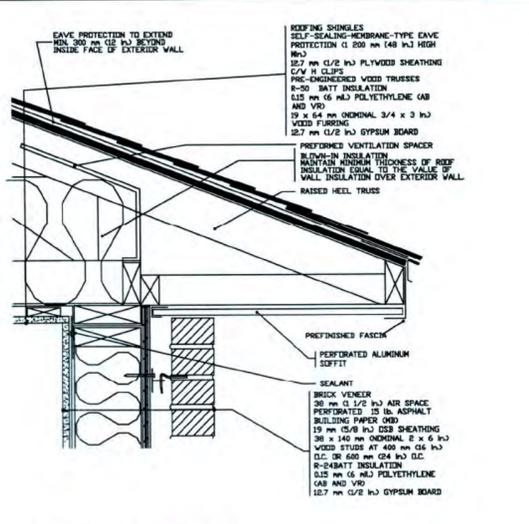
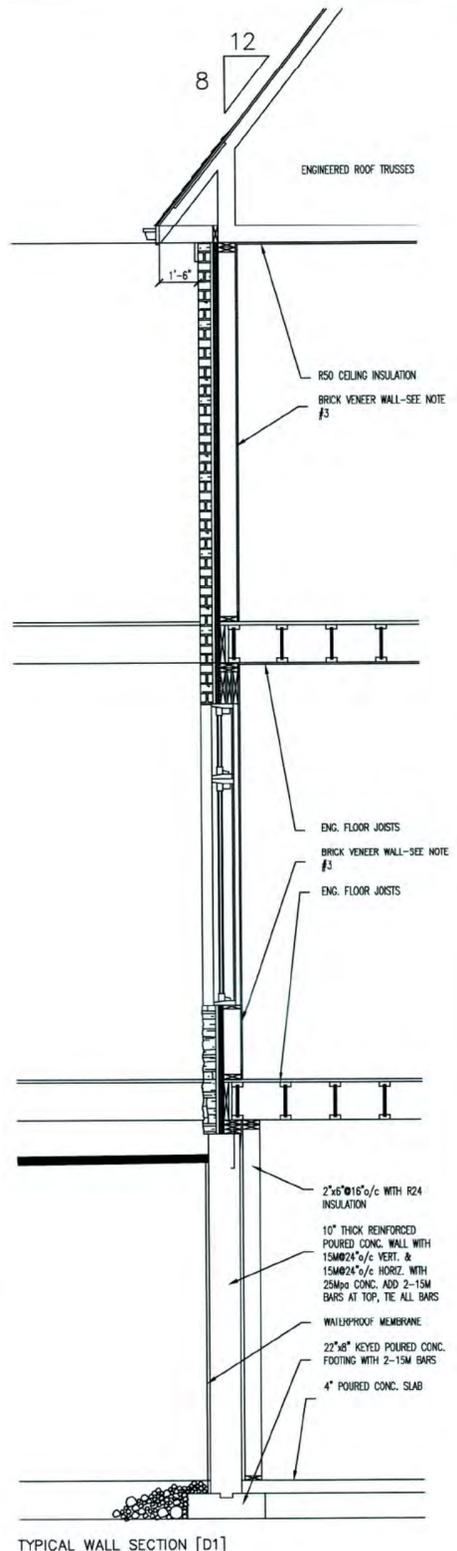
SCALE: NTS DATE: JUN/2018

DRAWN BY: PV CHECKED BY: PV

PROJECT NO: SHEET NO: **A13**

ALL CONSTRUCTION TO MEET ONTARIO BUILDING CODE REQUIREMENTS.

RECEIVED
 JAN 15 2018
 CITY OF BURLINGTON
 BUILDING DEPARTMENT



Revision	No.	By	DD/MM/YY

CONTRACTOR SHALL CHECK AND VERIFY ALL DIMENSIONS.
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 REVIEWED UNDER THE 2016 O.B.C.

STRUCTURAL REVIEW ONLY



60 North Ridge Crescent
 Georgetown Ontario
 905-867-9777

The undersigned has retained and takes responsibility for this design, and has the qualifications as (other designed) and made the requirements set out in the Ontario Building Code to be a designer.
 Qualification Information
 Required unless design is exempt under Div. C-3.2.2. of the building code.
 Designated under 1324.1.03(5)
 Peter Vozikas
 Name Signature
 2008-2016
 ICN

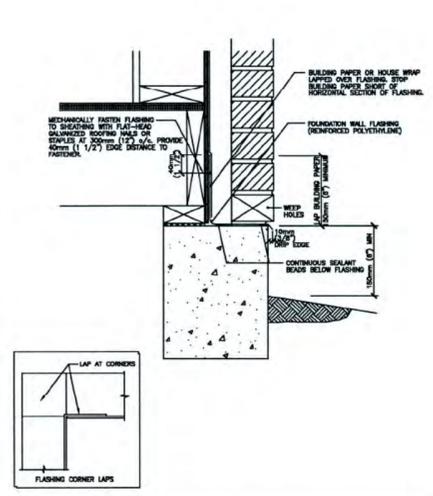
OWNER:



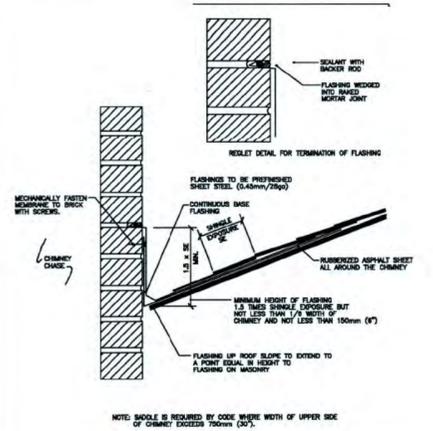
PROJECT: MAJOR RENOVATION
 Additions and Renovations

SHEET TITLE: DETAILS

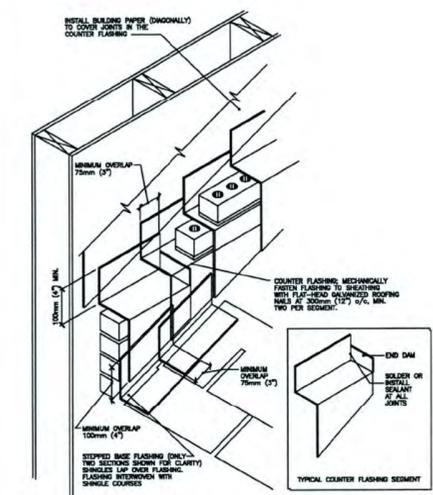
PROPERTY: 835 Spring Gardens Road
 SCALE: NTS DATE: JUN/2018
 DRAWN BY: PV CHECKED BY: PV
 PROJECT NO: SHEET NO: **A14**



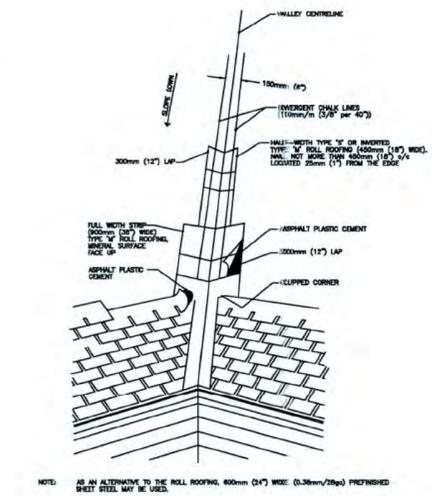
FOUNDATION WALL - BRICK VENEER



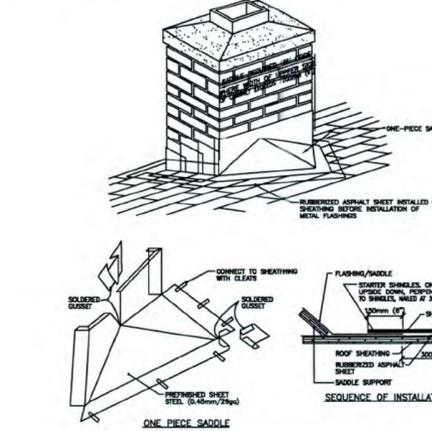
ROOF PENETRATIONS - UPPER SIDE OF CHIMNEY



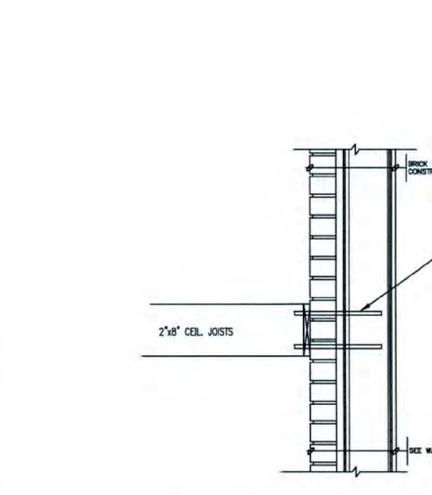
SLOPED ROOF/WALL INTERSECTION - WOOD-FRAME



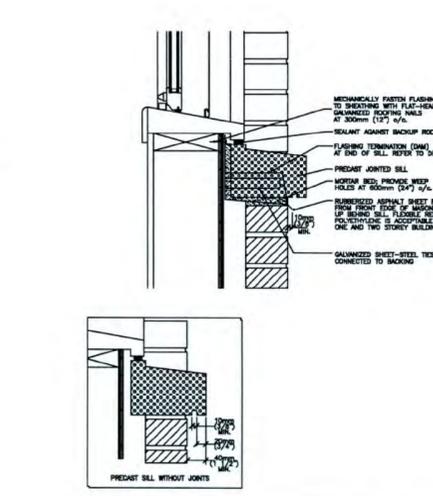
OPEN VALLEY - ASPHALT SHINGLE ROOF



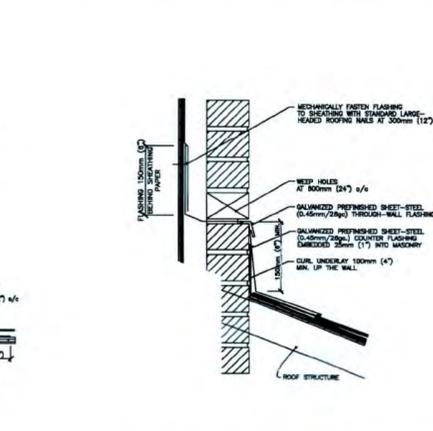
ROOF PENETRATIONS - CHIMNEY



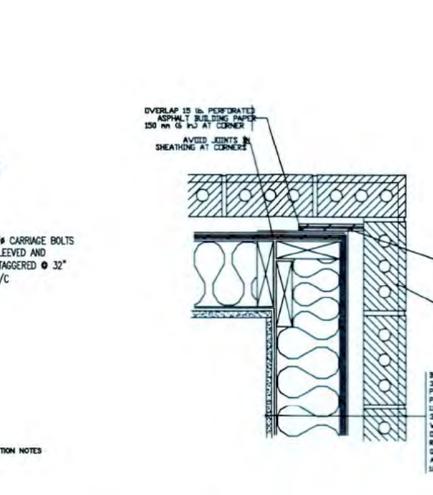
CEILING JOISTS AT PORCH TO WALL [D3]



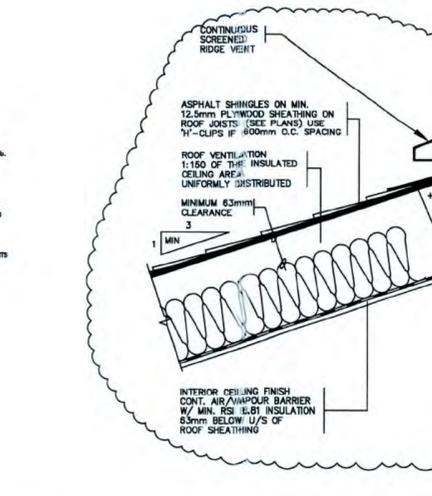
PRECAST WINDOW SILL - WOOD-FRAME WALL



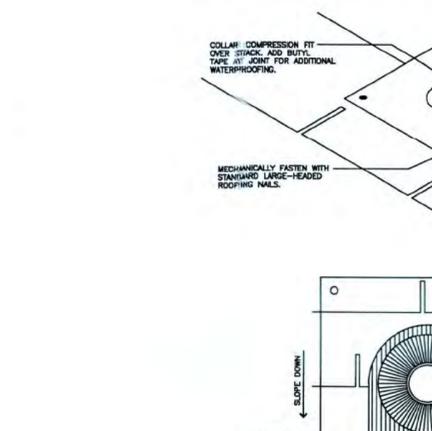
SLOPED ROOF/WALL INTERSECTION - BRICK VENEER



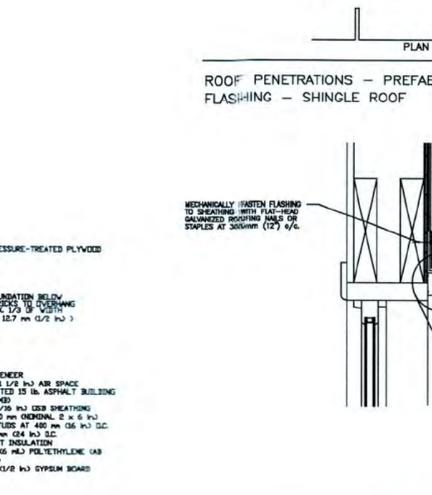
CORNER STUD CONNECTION



RAFTER TO RIDGE CONNECTION [D7]

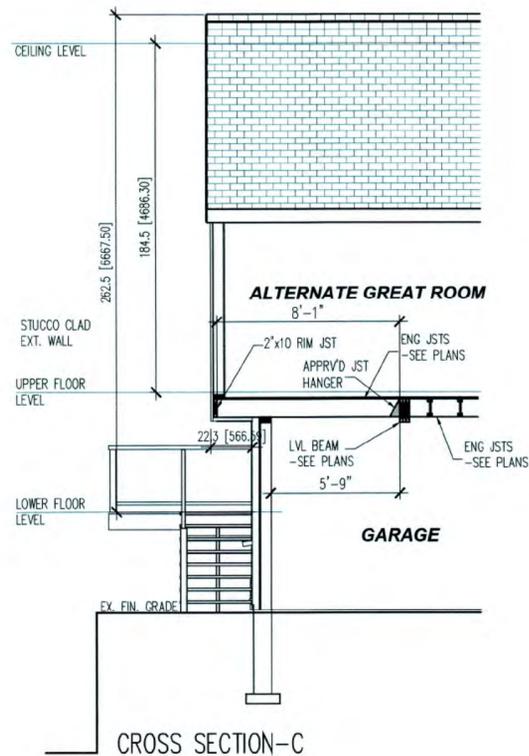
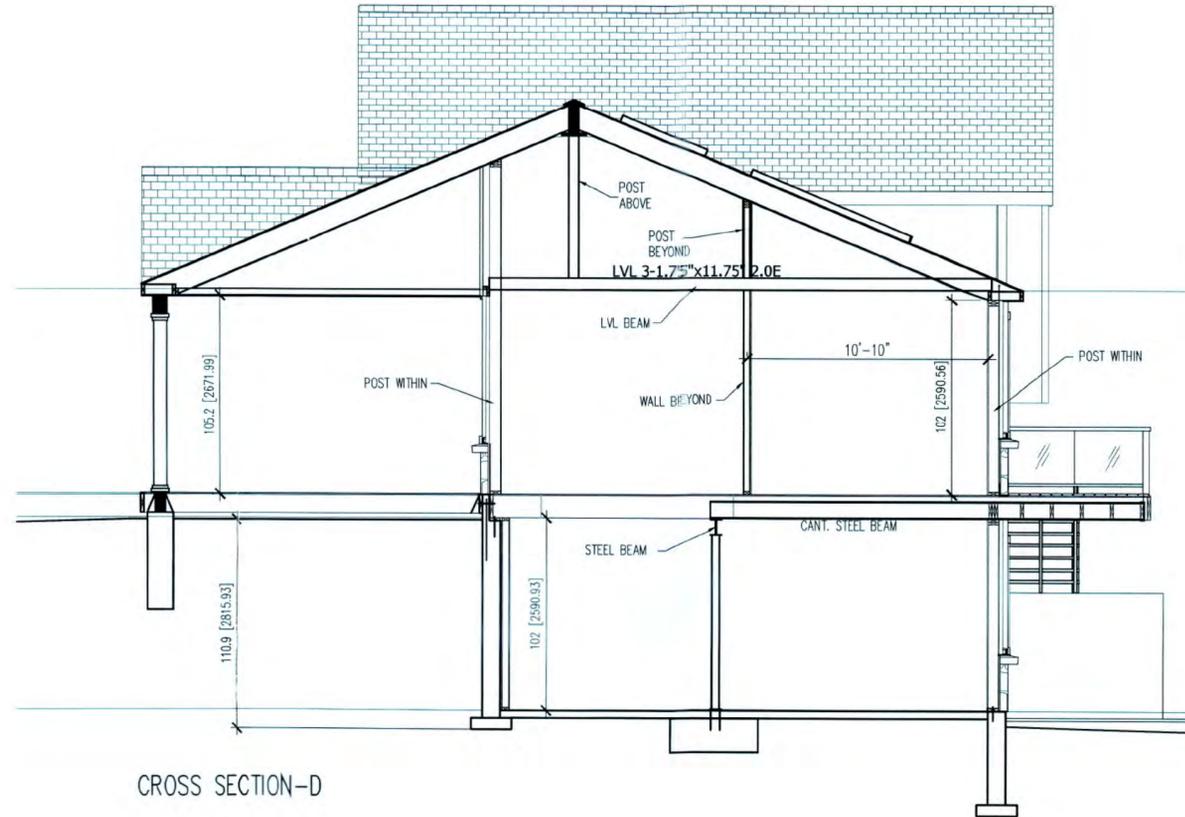
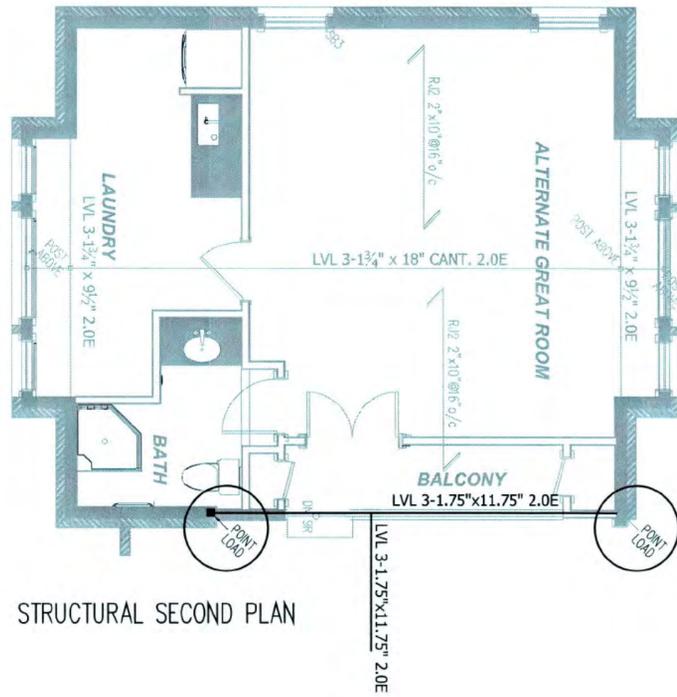


ROOF PENETRATIONS - PREFABRICATED VENT/PIPE FLASHING - SHINGLE ROOF



WINDOW/DOOR HEAD - STONE VENEER





ALL CONSTRUCTION TO MEET ONTARIO BUILDING CODE REQUIREMENTS.

RECEIVED
FEB 21 2019
CITY OF BURLINGTON
BUILDING DEPARTMENT

Revision	No.	By	DD/MM/YY

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REVIEWED UNDER THE 2016 O.B.C.

STRUCTURAL REVIEW ONLY

LICENCED PROFESSIONAL ENGINEER
02/19/2019
SP
PROVINCE OF ONTARIO

LB

60 North Ridge Crescent
Georgetown Ontario
905-867-9777

The undersigned has reviewed and takes responsibility for this design, and has the qualifications (as either designed) and meets the requirements set out in the Ontario Building Code to be a designer.

Qualification Information:
Required unless design is exempt under R.C. 3.2.2.2 of the building code.
Designed under 3.2.4.1.(3).(6)

Peter Vozikas 2019
Name Signature BOB

OWNER:

[Redacted]

EMPIRE DESIGN COMPANY
ARCHITECTURAL DESIGNS FOR LUXURY RESIDENTIAL & COMMERCIAL SPACE
416-500-8989
VGOZKASS@HOTMAIL.COM

PROJECT: MAJOR RENOVATION Additions and Renovations

SHEET TITLE: PARTIAL PLAN AND CROSS SECTIONS

PROPERTY: 835 Spring Gardens Road

SCALE: 3/16" = 1'-0" DATE: JAN/2019

DRAWN BY: PV CHECKED BY: PV
PROJECT NO: SHEET NO: **A16**

Tab 14
Contract between landowners and
contractor for dwelling reconstruction

DATE OF AGREEMENT: March 29, 2018

AGREEMENT BETWEEN CONTRACTOR AND OWNER(S)

Contractor: Lifestyles by Barons Inc. ("We", "Us" and "Our")
60 North Ridge Crescent, Halton Hills, ON L7G 6E6
T 905.872.4777 F 905.877.5586 email: info@lifestylesbybarons.com
HST Registration # 844465369RT0001

AND

Owner(s): Ivan Rudyk & Shelley Young ("You", "Your" and "Yourself")
Address: 835 Spring Gardens Rd., Burlington, Ontario L7T 1J6
Phone Res: 905-679-0706 Mobile:
Home email: irudyk@outlook.com Home email: youngshelley11@gmail.com

You and We agree that:

1. THE CONTRACT DOCUMENTS ARE:

- This Agreement;
- The Statement of Work attached as Schedule "A"
- Any Additional documents signed by both You and Us during the course of this contract, including amendments to the Agreement and Change Orders

2. DESCRIPTION OF WORK

We will supply all the materials, obtain, and perform all the work (the "Work") described in the Contract Documents on the Premises, subject to the following: where certain materials specified in the Statement of Work are not available, We reserve the right to substitute materials of equal or greater quality, at Our option and expense. On major finishing item we will review in advance with client. Any such substitutions DO NOT constitute a Change in the Work.

3. SCHEDULE

BD
2019
AR
We shall commence the Work on or before September 1st, ~~2019~~ *2016* subject to securing permits with the City of Burlington and obtain Substantial Performance of the Work on or before August 1st ~~2020~~ *2018*. Substantial Performance means that the Work is at least 97% completed and the home is ready for use or is being used for the purpose intended. Substantial Performance is further defined to reflect return of keys to homeowner and full owner occupancy meeting all regulatory standards for occupancy. At 97% completion Your one-year warranty will commence and will also address and close on mutually agreed deficiencies during this period. We will close on a final mutually agreed deficiency list one week prior to occupancy. At the time of Substantial Performance You and We will jointly prepare a list (the "Punch List") of those portions of the Work that We need to complete and/or touch-up and We will return the keys to You. We will complete the items on the Punch List, and any other items mutually agreed to on this final list, in accordance with good residential construction practise. The timing of commencement and completion of the Work is subject to change due to written changes to the Contract Documents, to verbal instructions made to accommodate You, to unforeseen structural or system problems, or for reasons beyond Our reasonable control (i.e., without limitation, delay in receiving fixtures and finishes, delays caused by requests by the city, labour disputes, lack of supply materials, fire, natural disaster, injunction, or other judicial process)

2016 *BD* *AR*

1 of 5

AR



Lifestyles arons

4. PRICE AND TERMS OF PAYMENT

- (a) The Contract Price shall be a stipulated lump sum 1,260,939.36 plus HST less half of Your CAD fees \$9000.00, less 100% of Your consult fees \$500.00 and less 100% of your schedule A fee \$3000.00 prior to tax which is an effective credit of \$12,500.00 resulting in a revised contract price of 1,248,439.36 * plus HST. HST is not included in the Contract Price and shall be paid on each payment extra to the Contract Price. The Contract Price includes the cost of all labour and the cost of the materials described in Schedule "A" – the Statement of Work. This master agreement goes to significant levels to include a finishing details and will have the same finishing elements as a custom Lifestyles tour home, as such We do not anticipate significant additional finishing elements and or associated costs.
- (b) Payments shall be due on the due date of respective invoice and payable as follows:

For labour and materials identified in Schedule "A" – the Statement of Work

Payment Schedule

1. Signing of Contract (7%) This Payment is due on signing of the contract. ** We immediately place our resources on formal submission processes to secure permits.	\$ 87,390.76 + HST
2. 35 business days prior to commencement of Project (30%) This payment allows for important items such as cabinets, flooring, plumbing fixture, natural stone, lighting fixture and appliances and crucial early order items to be order to ensure timelines.	\$ 374,531.81 + HST
3. Demolition begins (10%) This payment is due upon commencement of Demolition of items set forth in the schedule "A"	\$ 124,843.93 + HST
4. On Commencement of framing (7%)	\$ 87,390.76 + HST
5. On Commencement of Key city inspection (10%) This payment is due on the site being ready to proceed to, HVAC, electrical, and plumbing inspections.	\$ 124,843.93 + HST
6. City has now signed off on all key inspections including now insulation and we are now aloud to move to commencement of boarding. (5%)	\$ 62,421.97 + HST
7. Flooring phase begins (7%) This payment is due upon material being on site to allow commencement of flooring work.	\$ 87,390.76 + HST
8. On Commencement of Painting (3%)	\$ 37,453.18 + HST
9. Cabinets to client drive (15%) This payment is due upon arrival of new custom cabinetries to client drive.	\$ 187,265.90 + HST
10. Appliances to drive (3%)	\$ 37,453.18 + HST
11. 97% Completion (3%) This payment is due at 97% completion. 97% completion is defined as when owner's occupancy is available, and keys have been returned. Please note standard deficiencies are to be expected and a final list will be mutual agreed and documented 1 week prior to occupancy and remediated within the 1 year allotted warranty time frame which begins at completion of 97%.	\$ 37,453.18 + HST

Total Contracted Price 1,248,439.36 + TAXES

- (c) Interest of 21.0999 % per annum shall be charged on overdue payments. Accounts are due on the due date on the respective invoice.
- (d) Payment for Change Orders are due immediately upon signing of Change Order.

- * IT DOES NOT INCLUDE THE PURCHASE COST OF OWNER-SELECTED ITEMS AND FINISHES THAT ARE NOT INCLUDED IN THIS CONTRACT AND YET TO BE DETERMINED ("TBD"). THEIR COST IS HIGHLY VARIABLE AND DEPENDS SOLELY ON WHAT YOU CHOOSE. This master agreement goes to very significant levels to include finishing details in ("Schedule A")
- ** Line item one locks in our office and build resources to your home and is a non-refundable amount in the event of a cancellation.
- *** We will commence our deficiency work on receipt of 97% payment, associated payment identified in line 11 above.

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The Contract Price does include only for specific Lifestyles labour resources time, to act as your agent to work with third parties to facilitate securing permits. However discretionary fees levied on this project, your home or property associated in securing government permit fees, such as but not limited to third party reports to develop permit submission, permit documentation fees, BCIN review fees, HVAC, layout fees, engineering fees, city specific submission fees, inspection fees third party reports requested by the municipality and or security deposits We may incur on Your behalf when acting as your authorized representative are the responsibility of the home owner and will be deducted from your retainer. At time of signing we will require a \$10,000 retainer for these third party costs to allow our resources to commence work on your behalf and distribute on your behalf to reduce delays in submission and the build effort. Any funds left in the account will be returned and deducted from your final bill on completion. It is the responsibility of the client to maintain at all times a minimum balance of \$5000 in the account after initial retainer is received. Lifestyles will provide all third party receipts and advise if the retainer account falls below \$5000. Related to third party reports and permit fees we will not mark up any of these reports and simply pay on your behalf.

5. CHANGES IN WORK

The Contract Price is for the specific Work set out in the Contract Documents. Many factors may require changes in the scope of work – for example but not limited to unanticipated site conditions discovered during construction, additional work to satisfy regulatory authorities, and any changes You request or We agree to. All are considered an extra to the Contract and are not included in the Contract Price or in the schedule for Substantial Performance.

All changes in the Work will be evidenced by a written "Change Order" signed or initialled by both You and Us or other amending agreement, in writing, that sets out the impact on Contract Price and the date of Substantial Performance.

6. STANDARDS OF WORK

We will supply all labour, materials, and supervision to complete the Work in accordance with the Contract Documents, and undertake all work diligently in a good and workmanlike manner, in accordance with good quality residential standards and in compliance with the Ontario Building Code and all other relevant building codes of authorities having jurisdiction.

7. CONSTRUCTION SITE RULES

Occupational Health and Safety regulations and good residential construction practices require ALL construction at the construction site to be performed through Us under this Agreement. You agree that You will not make any arrangement with any third party to perform construction work related to Our Work except through Us. In particular, You agree that You will not make any arrangement with any third party, including Our subcontractors and employees, to perform construction work at the construction site.

To ensure clear lines of communications, You agree that You will communicate only with Our Head Office and Our designated project representative, whom We will identify in writing to You in a memorandum forming part of the Contract Documents.

Fulfilment of Our occupational health and safety obligations requires Us to restrict access to the construction site. You are not permitted at the construction site during business hours unless You make an appointment with Us in advance. While at the construction site, you must wear whatever safety equipment, such as hardhat and boots, We deem necessary and allow Yourself to be accompanied by one of Our representatives.

Any entry of the construction site after business hours is at Your own risk. We are not responsible for any loss or injury You may suffer, howsoever arising. Moreover, if You enter the construction site after business hours, You are responsible for any loss, physical harm or damage to property at the construction site that may occur after business hours.

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Our scope of work does not include storing, covering, or moving any of Your property at the construction site. You are responsible for this. We are not liable for any damage to Your property at the construction site.

8. CLEANUP

Upon completion of the Work, We will remove all equipment, materials, hoardings, fencing, rubbish, and similar materials incidental to the Work and leave the Premises in a reasonably clean condition which is defined as swept clean and fit for use.

9. WARRANTY

During the one-year period following the date of Substantial Performance, We will correct at Our own expense any defect in the Work due to faulty materials and/or workmanship that we have mutually agreed to during the course of the build. Our final punch list which we will address will be documented and agreed to approximately one week prior to occupancy and will be completed no later than one year from the date of Substantial Performance.

Our warranty does not cover equipment or supplies that come with their own warranties from the manufacturer or supplier; however We will convey to You any warranties We obtain from manufacturers or suppliers on particular materials, products, or systems.

There are no other warranties, express or implied, statutory or otherwise.

We are not responsible for any consequential loss.

10. LIABILITY INSURANCE

We will take all reasonable precautions to protect the Work and Your property from damage during the performance of Our Work.

We will provide and maintain at Our expense, \$5,000,000.00 in insurance against claims made for damages for personal injury or property damage by reason of anything done or not done by Us, Our employees or agents, in connection with the performance of the Work.

You will take reasonable measures to provide a work area free of household personal belongings, obstructions and items and to remove Your property and items from locations where they may be subject to damage. We are not responsible for loss or damage to any of Your property or items if You have not taken such reasonable precautions.

11. COMPLIANCE WITH WORKERS' COMPENSATION AND OTHER LAWS

We will comply with all laws, ordinances, rules, regulations, codes and orders that relate to the preservation of public health or construction safety in force during the performance of the Work.

12. DEFAULT

If either party:

- (a) becomes bankrupt or makes a general assignment for the benefit of its creditors, or if a receiver is appointed; or
- (b) fails to perform any of its obligations under this Agreement in accordance with its terms and has not corrected the default within 7 days of written notice from the other party requiring it to do so –

then the other party may exercise whatever rights are applicable in the circumstances under the law of equity and/or contract, such as to cease work, claim damages for breach of contract, terminate the Agreement, or treat the Agreement as repudiated forthwith and exercise whatever rights are applicable in the circumstances under the law of contract and/or equity.



Lifestyles

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13. FORCE MAJEURE

If Our Work cannot be performed as a result of force majeure, such as a court order, war, natural disaster, or other major event outside the parties' control, which continues for 30 days, at the end of such 30 day period either party may treat the Agreement at an end, upon written notice to the other party, subject to an accounting made as of the date of such notice.

14. AUTHORIZATION TO ACT AS OWNER'S REPRESENTATIVE

You hereby authorize Us to act as Your representative in obtaining all necessary building permits, regulatory approvals and inspections necessary to perform The Work.

15. SIGNAGE

You will permit Us to erect a sign on the Premises during the Work, and for 30 days after Substantial Performance. As discussed, We have been highly aggressive on pricing and well under market pricing based on the Tour of Home Program, where key manufacturers are partnering by utilizing some of their marketing dollars and, in turn, giving us extensive discounts based on the understanding of extensive marketing collateral that they will be receiving, and showcasing their products in the optimum environment. Without a question We believe this will be another stunning total home transformation added to our legacy spanning over 25 years of what Lifestyles consistently delivers to its client and another flagship home. As a formal tour home we have already shared our drawings and undertakings with key manufacturers and have secured much better product pricing and upgrading to higher-end products from key manufacturers. As part of this agreement it is understood by all parties that We will be conducting 3 to 5 tour dates and all parties are now contracted to fulfil, similar to the ones You have attended in Spring ~~2021~~ ²⁰²². Typically, our tour days have two showings each. We will only run a 4th or 5th tour date if registration numbers warrant. Based on registrations We will confirm dates well in advance of tours. This agreement further authorizes Lifestyles by Barons Inc. to stage the residence if necessary and you agree to move personal effects/pictures, furniture elements, etc., at direction by the professional stagers we will hire. Lifestyles by Barons will pay the stager for actual set up fees of the staging elements coming into the home. You also agree for still photography, and filming for possible TV spots of Your residence during various stages of completion including after occupancy and if We elect to, create a virtual tour which digitally captures the quality of work and materials delivered to Your home, on completion of the project, for marketing purposes. Failure to deliver as agree will result in a \$200,000.00 fine to you.

AR
BR
BY

THIS Agreement shall supersede all prior communications and agreements and there are no other terms, representations, or warranties outside of this Agreement.

Signed this 29th day of March 2018.

at 60 North Ridge Cres. Halton Hills, Ontario L7G 6E6

(Exact address where contract is signed)

By Lifestyles by Barons Inc. per:

(Contractor)

Name and Position: Gordon V Baron - President

(I have authority to bind the corporation)

Signing by Owner(s),

A. Rudyk

(Owner)

Ivan Rudyk

(Print name)

Shelley Young

(Owner)

Shelley Young

(Print name)

Gordon V Baron

(Witness)

Rick Inacio - Executive VP of Sales

(Print name)

Rick Inacio

(Witness)

Rick Inacio - Executive VP of Sales

(Print name)



Spring Gardens

Statement of Work for Entire Home Renovation (Schedule "A")

FINAL Last Updated March 29, 2018

Demolition

Please note that issues may be uncovered during the demolition process. Lifestyles, in an attempt to keep costs down, does not pad quote for elements that cannot be accurately projected without opening space, such as, but not limited to HVAC, plumbing, electrical and structural loads. As such we cannot be liable for such elements for remediating or correcting hidden elements that are specific to your home. As example but not limited to, bulkhead configuration, structural load issues impacting ceiling and wall placement can only be determined once drywall or impediments have been removed and all structural addressed, which can change configuration, cost and/or design. As such these elements are not in scope and if applicable and identified, will be handled through the change order process and will seek authorization by the homeowner prior to proceeding. In an effort to keep costs down we will try to modify design/framing to work around hidden structural, electrical, plumbing, hvac elements, which may not always be possible during construction phase, as our first approach we will try to find cost effective approach that could change concept designs and or seek client direction if it involves a change in scope of work and handle through change order process.

DM1

Lifestyles will provide all demolition labor associated with the home as required. From a costing perspective our costing at this point must be based on assumption of not moving hazardous materials into landfills and or putting our resources at risk, from a costing perspective. Contract costing is based on the assumption that we are not dealing with hazardous materials. Clearly as part of the permit process we may have to prove that we are not moving dangerous products directly into landfills and/or placing our workers or subs in a health risk, as it relates to our demo undertakings for the effective areas in your home. If third party are required due to hazardous health risk and land fill file compliance issues and or reports are required to satisfy the ministry this will be handled via a change order.

DM2

We anticipate the demolition efforts to be very extensive, in many cases taking the structure directly back to the original bsmt walls.

DM3

We will be working extensively around all sides of the home exterior with equipment and scaffolding and we cannot warranty existing plants, stone works, walkway, patio, drive etc., from shifting cracking or other damage. We will take reasonable steps to safeguard where possible but just due to the extensive decommission efforts are ability to protect will be very limited. We have no way of knowing how surfaces were constructed originally or how solid the foundations are for them. Budget for modifications, enhancement repairs and/or changes to landscaping, walkways, patio, drives, etc., are not part of our budget and currently not in our scope of work.



DM4

Clearly way forward for extensive decommissioning and demolition efforts will have to be site determined but our initial high-level assumptions and costing are based on the following preexisting site conditions:

- Site access will be challenging
- Likely will have conservation issues that will restrict some types of machinery on back of property
- Existing landscaping is very problematic with heavy equipment that will be required and in no way can be effectively safeguard.
- We may have to utilize a high reach excavator, which allows us to site in fewer locations to access the remaining structure and work around possible slope stability issues.
- Some of our machinery is very heavy around 40 tones as such clearly expect possible compression issues that clearly will not be under our control.

DM5

As it relates to the main outdoor extensive deck living area on the front of the home it will require extensive footings which is covered off in our schedule A and associated budget. Size of footings will be highly dictated by the permit process and review by the city of Burlington. We are not anticipating an invasive dig and once again this process will be highly influenced by direction from the city. We have not budgeted at this time once again for any landscaping and stone repairs for this property and where these critical footings will be going as we have no idea how invasive the scope is at this time. These loads will be significant to address snow loads and also the main roof on the front of the home. We will take all reasonable efforts to only open as much of the existing landscaping and or stonework as just required for the footings, to satisfy city review and inspection process. Any corrections to landscaping we have had in the past we have had great success with and very positive client feedback. We will ensure to seek your direction with any corrective steps and repairs and handle via change order if you elect to engage Lifestyles to do potential repairs to hard surface, sod and/or landscape plant materials and or sod.

DM6

For your consideration dependent on how deep we are requested by the city of Burlington to dig, due to natural settling, it is strongly suggested that you do not make corrections to patio, walkway and associated landscape either by us or a third party, until ideally, at least 1 year has passed, and more ideally two full years have passed from time of construction effort being completed to allow proper settling to occur dependent on how invasive footing have to be. Clearly this can only be forecasted after permit process.

DM7

As it relates to pergola structure over hot tub area. We will physically move this structure to a safer location on the site. We can in no way take accountability for its condition and or warrantee it. Typically, it can be problematic on finishing and structure when forced to move these structures once erected, as we will be required to do so.



- DM8 As it relates to the hot tub, not ideal that this is already in place prior to addressing the home ideally these elements would have been after the home. We will cover over this hot tub in plywood and once again will make reasonable efforts to protect but once again can in no way be liable for damages and or corrections.
- DM9 Note each jurisdiction decommission of essential surface, gas, electric, water will vary from municipality as such we cannot forecast with any accuracy. These charges will be handled via change order.
- DM10 Clearly this scope of work includes extensive demo and rebuild of the home. If you have any special plant materials it is strongly suggested that you relocated away from the construction site or at minimum far away from construction vehicle pathways. Our Senior site lead would be happy to give direction on your possible efforts to best possible relocated for temporary relocation of any key plant materials that you are wishing to save.
- DM11 One of the most significant challenges is to come up with a scope of work that holds onto the integrity of the design meeting manufacturing incentives while meeting client budget demands which are very real on this project. This can be a very difficult balancing act. You have asked for some items to be include for costing but simply some of these elements are impossible to cost until we are on site and fully demoed and we can determine the necessary corrective steps. As example and not limited to there is a pre-condition on site with water is pooling near the garage and drains appear to be none functional. We have a lot of experience addressing these items, but each client home will have its unique circumstances that will impact costs. This is an excellent example of an item that we clearly can only determine corrective steps on until site is truly opened. As such this document goes into extensive details on only the items that are within our scope of work and our control that we have been able to assign costs to.
- DM12 This scope of work includes removal of all the structure fixtures walls floors, ceilings, doors, plumbing, electrical on all levels, appliances of the home based on the assumption above. We do understand that some of the elements related to tying into the new radiant heat technology will be possibly connecting into existing systems and or possibly existing equipment. This has to be entirely engineered with third party reports as such will be addressed based on site conditions and what existing equipment if any can be utilized and handled via change order.
- DM13 Note if possible the intention is to safe new windows on the front of the home and deploy into main level of the garage. As client provided we cannot offer any warrantee on condition of product and installed at owner risk to product.



DM14

Note as discussed, the bin cost as discussed is incremental and clearly variable. As a full design build company, we do benefit from much better bin rates than standard retail costs. Some client do request that we put a bin on site prior to demolition while you are still in the home to ease emptying the home. As it is the client responsibility to leave the home clear of personal belongings etc, this option is available to you kindly advise our customer care centre well in advance. Clearly the bin cost is handled via change order process with a 10% upcharge on our cost

Framing

F1

Please note the scope of work related to framing is subject to change based on a huge number of elements clearly beyond our control. Clearly cad has technical limitations and is only design to show approximate flow, clearly it is impossible to actually show the exact fireplace fixture etc., in our concept drawings. This schedule actually provides detail exhibits of the real elements that have been budgeted for installation. Further the concept drawings structural are just that concept drawings which show potential for the home. Clearly client budget and City review by all the governing bodies can change many elements of the design which is clearly not in Lifestyles control in any capacity. This agreement goes into significant detail on what we are hoping to deliver, which assumes all governing bodies sign off on elements. Once again changes to concept design can happen on some levels and are to be anticipated. On a positive note our historical review from client is that our end delivery is often better than even the concept drawings.

F2

Supply and install framing for new entry and vestibule entry. Kindly [see pages 68](#) of concept book for approximate configuration.

F3

Supply and install framing for powder room and plant ledge. Kindly [see pages 68](#) of concept book for approximate configuration.

F4

Supply and install framing for new larger window package in parlor area. Kindly [see pages 69, 70, 74 & 75](#) of concept book for approximate configuration.

F5

Supply and install custom framing for custom soffit detail over vanity area in powder room. Kindly [see pages 71](#) of concept book for approximate configuration.

F6

Supply and install framing for oversized window package in powder room and associated transom package on door entry. Kindly [see pages 72](#) of concept book for approximate configuration.

F7

Supply and install custom framing to support oversized servery / cloak room with entry off vestibule and associated custom transom over door, kindly [see pages 73](#) of concept book for approximate framing scope.



F8 Supply and install framing to support balcony of new third level. Note stack wash and dryer being removed from balcony as such this balcony has actually got larger as such modified from concept design at client request, kindly [see pages 75 & 85](#) of concept book for approximate framing scope, & [exhibit 1 to 4](#) for approximate configuration.

F9 Supply and install framing for oversized window package support grand dining area. Kindly [see page 84 & 86](#) of concept book for approximate framing scope.

F10 Supply and install framing for patio sliding door solution not as shown in concept books. Kindly [see page 84 & 86](#). Due to client budget requirements trying to find ways to keep design intact while cutting costs. There is a significant different in design elements and costing between sliding doors and garden doors with hidden screen. *For your consideration we can put back garden doors, with hidden screen and upgraded hardware* this is one element that we suggest you at least consider and we can handle via the change order method

F11 Supply and install framing for new Gourmet Kitchen kindly [see page 87 to 90](#), for approximate configuration.

F12 Supply and install framing for oversized window package support Gourmet Kitchen area. Kindly [see page 87 & 88](#) of concept book for approximate framing scope.

F13 Supply and install framing for patio sliding door solution not as shown in concept books for Gourmet Kitchen. Kindly [see page 88](#). Due to client budget requirements trying to find ways to keep design intact while cutting costs. There is a significant different in design elements and costing between sliding doors and garden doors with hidden screen. *For your consideration we can put back garden doors, with hidden screen and upgraded hardware* this is one element that we suggest you at least consider and we can handle via the change order method. Note as you are not moving forward with balcony in original scope of work we have allocated budgeted for an oversized window package running along Gourmet Kitchen Area, not sliders or garden doors, *please advise as your intent*. Do not want to bog down permit submission due to conservation issues related to balcony as such suggesting we address balcony issues on a separate permit submission will have to access best way forward once we have your direction on this project and can then work with permit resources to determine best way forward.

F14 Supply and install extensive framing to support double pantry configuration off main Gourmet Kitchen, kindly [see page 90](#).

F15 Supply and install as per client request change in configuration door going into kitchen exact configuration will have to be site determined will need to resize cabinet designs from concept renders to allow for this requested change, kindly [see exhibit 46](#).



F16

Supply and install framing for oversized window package support Master suite bedroom section on main level. Kindly [see page 34, 35 & 91](#) of concept book for approximate framing scope.

F17

F18

Supply and install framing for double door entry into master suite with window transom. Kindly [see page 41](#) of concept book for approximate framing scope.

F19

Supply and install framing for triple closet configuration in master suite. Kindly [see page 34](#) of concept book for approximate framing scope.

F20

Supply and install custom gable configuration to support custom built in to right of fireplace. Kindly [see page 92](#) of concept book for approximate framing scope.

F21

Supply and install framing to support custom fireplace for new liner fireplace. Kindly [see page 92](#) of concept book for approximate framing scope. Currently we are budgeting for dry wall configuration behind floating shelves. Please note **stone package can be added behind floating shelves with light plane** kindly advise and we can handle via change order. Note for your reference we have a very similar installation in the Pamona master bedroom, kindly refer to our web site for possible visuals.

F22

Supply and install framing for new entry into Master Spa Bath with associated window transom over the door. Kindly [see page 92](#) of concept book for approximate framing scope.

F23

Supply and install framing for new elevator shaft. Kindly [see page 93](#) of concept book for rough approximate framing scope. Note toilet location as well as storage space on walk out level behind elevator may be less than concept drawings due to possible expansion of elevator shaft. We are framing and costing to a base model elevator upgrade options are available for size and functionality based on actual physical sizes that are available and will be site determined. Costing is further based on dry basement with no additional drain requirements for elevator, we will have to access based onsite conditions, during demolition phase and if any additional steps are required handle via change order.

F24

Supply and install framing for upgraded garden doors with hidden screens that recess into framing. Kindly [see page 95](#) of concept book for approximate framing scope.

F25

As this is the front of the home we really needed to rule out 100% the concept of sliding doors. This door package will be further upgraded to custom door hardware to tie into front main doors.

Supply and install extensive framing for oversized window package supporting the main Spa Bath. Kindly [see page 95](#) of concept book for approximate framing scope.



F26

F27 Supply and install custom framing to support upgraded vanity and makeup area with additional built in storage. Kindly [see page 37, 94 & 95](#) of concept book for approximate framing scope.

F28 Supply and install custom framing for display valance running over custom vanity and makeup area. Kindly [see page 94 & 95](#) of concept book for approximate framing scope.

F29 Supply and install framing for walk in shower. Kindly [see page 38](#) of concept book for approximate framing scope.

F30 Supply and install framing for corner roman tub. *Note this tub can be further upgraded with various option including jets etc.* If you have any interest, please advise our customer care center very early on in project and we can address through change order process at your direction. Kindly [see page 38](#) of concept book for approximate framing scope.

F31 Supply and install framing for an oversized Servery with pass through design with double entry and associated transoms over both entry doors. Kindly [see page 39, 40, 96 & 97](#) of concept book for approximate framing scope. As per our understanding for budget client consideration issues you at this time do not want the tower with built in appliances in this space. As such we will be resizing this space to remove the cooking tower. This will result in the upper portion of the servery being entirely upper cabinets with a mixture of glass cabinets and closed cabinets. If you have any possible intentions of *adding back built in coffee machines, 2nd ovens, warming drawers and or changing one of the under counter fridges to a dishwasher which really could make sense and transition this space into a fully functional almost 2nd kitchen*, please advise our customer care center well prior to us moving into custom cabinet production stages, and we can handle via the change order method.

F32 Supply and install framing for new stair case transition between main level and upper walk out level. We anticipate sizing could adjust from concept designs based on exact custom elevator requirements. Kindly [see page 99 & 103](#) of concept book for approximate framing scope.

F33 Supply and install framing for new client main lounge and theater area. Kindly [see page 99 to 103](#) of concept book for approximate framing scope.

F34 Supply and install framing for new liner fireplace. Kindly [see page 99 to 103](#) of concept book for approximate framing scope.

Supply and install framing for two gable walls on the right and left of the fireplace for custom display area. Note on costing we are going to remove the matching wood tops on the ceiling and replace with dry wall solution to help on costing. With this design change recommending that we utilize slightly higher cabinet solids materials shown on [see page 99 to 103](#).



F35

From a framing perspective unclear on sizing of your existing dry bar. Clearly our solution will really act as an entertainment area and really increases the usability of this lower level space and is also designed to support the hidden washer and dryers as this would be an ideal place to act as a fully functional laundry for your clients with extensive area to fold cloths etc for your guests. *Currently we have removed associated base cabinets and upper cabinets and hidden dishwasher.* If there is any consideration of putting this back into scope, please advise and we can address via change order.

F36

F37

As it relates to the third master spa suite provide framing for bedroom area and entry door with light transom. Kindly [see page 104](#) of concept book for approximate framing scope.

F38

Supply and install framing for oversized window package for third master Spa Suite. Kindly [see page 105](#) of concept book for approximate framing scope.

F39

Supply and install framing for slider for third master Spa Suite. Kindly [see page 105](#). *For your consideration we can put back garden doors, with hidden screen and upgraded hardware* and handle via the change order method at your direction.

F40

Supply and install framing to support single closet configuration. Kindly [see page 48 to 49](#) of concept book for approximate framing scope.

F41

Supply and install framing for custom liner fireplace installation. Kindly [see page 48 to 49](#) of concept book for approximate framing scope.

F42

Supply and install framing to support entry into Third master Spa Suite with associated window transom. Kindly [see page 49 to 50](#) of concept book for approximate framing scope.

F43

Note framing requirements have change slightly in some the baths as we have moved some of the guest suites to furniture quality free standing units versus built in cabinets to save on costs and counter surface costs as such holding onto the overall design but utilizing different cabinet / counter configuration to try and find some cost savings. As such will not require gable wall on entry into bath as shown on [page 50 to 51](#) of concept book for approximate framing scope.

F44

Supply and install custom soffit framing over general sink area. Kindly [see page 50](#) of concept book for approximate framing scope.

F45

Supply and install custom framing for oversized shower. Kindly [see page 106 to 108](#) of concept book for approximate framing scope.

F46

Supply and install custom framing for oversized "L" bench in Shower. Kindly [see page 108](#) of concept book for approximate framing scope.



Supply and install custom soffit detail outline shower to support glass package.

F47

F48

As it relates to the Fourth master accessible suite provide framing for bedroom area and entry door with light transom. Note sizing for this door is sized to allow wheel chair access. Kindly [see page 53](#) of concept book for approximate framing scope.

F49

Supply and install framing for oversize window package overlooking gardens. Kindly [see page 110](#) of concept book for approximate framing scope.

F50

Supply and install framing for slider for fourth master Suite. Kindly [see page 54 & 110](#). *For your consideration we can put back garden doors, with hidden screen and upgraded hardware* and handle via the change order method at your direction.

F51

Supply and install framing for single closet to support this suite. Kindly [see page 53 & 54](#) of concept book for approximate framing scope.

F52

Supply and install framing for single passage door going into bath that will be sized for wheel chair access.

F53

Supply and install framing to support gable between sink area and walk in shower area. Kindly [see page 55 & 56](#) of concept book for approximate framing scope. Note we may end up pulling back gable wall to allow greater accessibility into shower. Exact configuration will be accessed based on available room on site.

F54

As it relates to vanity area intent is to have two stacks of drawers and no cabinet under the sink. To maximize accessibility, we will be supplying a vesale unit that will site on the counter. Please keep in mind there will still have to be plumbing under the sink that will now all be exposed but will help accessibility.

F55

Supply and install custom soffit detail over sink area to provide the space with a more finished look.

F56

As it relates to the Fifth master suite. Supply and install framing for passage door entry with custom transom over the door. Kindly [see page 57 & 59](#) of concept book for approximate framing scope.

F57

Supply and install extensive framing for fireplace installation. Kindly [see page 58 & 59](#) of concept book for approximate framing scope.

F58

Supply and install framing for double door closet configuration if physical space will allow for this. This suite has been designed a bit more around family suite. Kindly [see page 58](#) of concept book for approximate framing scope.

Supply and install framing for passage door and associated window transom leading to bath. Kindly [see page 59](#) of concept book for approximate framing scope.



F59

Supply and install framing for bath installation. Dependent on how much room can be redeployed by furnace room we will as requested attempt to make this room larger if physical space will allow for it. Currently the design allows for a very functional bath. Kindly [see page 60](#) of concept book for approximate framing scope.

F60

F61

Framing will be sized to support a slide in vanity solution not as shown on concept renderings.

F62

Supply and install framing to support interior balcony, kindly [see new exhibit 1 to 4](#) that capture new concept design.

F63

Supply and install framing to support double door entry into third level great room. Kindly [see new exhibit 5 & 6](#) that capture concept design

F64

Supply and install framing to support Linen closet to just outside double door to left of entry when going up the stairs.

F65

Supply and install framing for extensive enlarged window package of third level great room that is enlarged over previous concept designs. Kindly [see new exhibit 5 & 7](#) that capture concept design.

F66

Supply and install side window in new great room on 3rd level. Kindly [see new exhibit 8](#) that capture concept design

F67

Supply and install passage door to new Stain glass work area and laundry.

F68

Supply and install gable wall to support stack washer and dryer. Kindly [see new exhibit 9](#) that capture concept design

F69

Note due to budget constraints we are designing the window bench to be none functional. Supply and install framing for dry wall solution with paint grade top not as shown in concept renderings. Kindly [see new exhibit 10](#) that capture concept design

F70

Supply and install extensive window package to support Stain glass work area and Laundry. Kindly [see new exhibit 11](#) that capture concept design

Supply and install framing for new bath. Framing to support simple slide in shower, slide in vanity and toilet. Of the stain glass work area and associated Laundry. Kindly [see new 9 to 11](#) that capture concept design



F71

Please note the actual ridge heights of the entire main level and third level with associated cathedrals will be heavily controlled by city review, structural engineering requirements and without a question impact actual associated pitch of the interior ceilings running through both level. Please note city review process and final sign off by the city of Burlington with all structural inputs and engineering review will dictate exact final configuration. Once again, the concept drawings are only to show you concept in simple terms (this is a cathedral ceiling as example in that area) please expect differences from concept drawings. As stated spanning over 25 years are client have consistently said our end products is even nicer than CAD drawings but without a question there will be variance from concept to final build without a question.

F72

Please note ideally, we would have wanted to flood the ceilings of this home with sky lights. Having said that we are doing our best to manage some very real budget realities you have asked us to work within very specific numbers, as such we have adjusted our framing efforts and associated budgets to two operational sky lights. One in 3rd level great room and one in the dining hall closets to main hall leading to the walk out level. If you would like to *reintroduce any additional sky lights*, please advise well prior to framing stage and our customer care center can handle via change order.

F73

F74

Supply and install framing to support over the front Terrace. Note this roof structure has an extensive overhang as always exact configuration and sizing subject to engineering review and all municipality sign offs.

F75

We did provide client with three concepts designs for this roof structure. Kindly [see page 123 & 124](#) of concept book for approximate framing scope of the design we understand that you have closed on.

Supply and install covered over Cathedral entry. Exact configuration will be directed by city and engineering review and there could be modifications from concept drawings, kindly [see exhibit 123 & 124](#). From a finishing perspective and budget review we are currently budgeting for underside of cathedral and ceiling running over the entire front terrace to match the aluminum soffits and fascia. Please note this line item has no impact of city review relating to fascia. *For your consideration you could consider for the front entry and terrace ceiling possibly upgrading these two ceilings to a finished wood product.* Kindly check our web site for many examples. Most recent homes that you have seen would include Pomona and Shady lawn that both upgraded away from aluminum to a dressier product. At your direction we could handle through change order process. If you have any interest in changing these surfaces, please advise well before moving into exterior work. Note the cathedral over front entry in engineering review will likely require a center beam running between the two columns at the base of the cathedral not exactly as drawn. There are many options to dress this beam and could be handle via change order if required. There is also the likely requirement for more main posts to sign down along the front terrace if so they will be covered in master agreement.



F76

Supply and install very large terrace formal deck running across the front of the home following an “L” configuration. Exact sizing will be determined by permit review and associated setbacks. There will be extensive footing to address weight loads tied to the roof and associated snow loads that tie into main home. There will be also extensive footing and framing to support extensive framing requirements for oversize terrace deck. This line item supplies and installs framing made out of wood. On completion we will then clad based on our selection the entire deck surface on the front in a composite material to vastly reduce maintenance and provide a permit solution which will be highly usable and provide strong street appeal.

F77

Supply and install one Romeo and Juliet simple rail solutions on door leading off the dining hall. We are recommending and adjusted our budget so the kitchen doors at this time be transitioned to oversized window package. Note clearly, we will require permits to supply and install the two-level deck solution. Putting this outdoor living structure through on the original permit could very much jeopardize securing the permit in time for our availability of our next and only spot for 2019 currently available, which is Sept / Oct of 2019. In addition, adding this outdoor living structure into the budget immediately will only add further financial pressures. Technically this outdoor living solution subject to securing permits could be done when there is less cash flow pressures and technically done at any time. As such based on our conversations to date we have not included this in our scope of work and or budget.

Exterior Finishing

EF1

Note the entire exterior will be complete redone with a new exterior insulation package and extensive stucco package.

EF2

To add more detail, we will be utilizing upgraded stucco casings in a different colour than the main stucco.

EF3

Where load will allow we will be replacing all window sills with an upgraded Indian Limestone sill package which is much more durable than cement and/or brick sills, which adds to the custom executive finishing touches we are known for.

EF4

Please note the home has a completely new aluminum soffit, fascia and eaves package. We will be closing on exact colour package, which will tie to our overall colour pallets, when closer to installation time frames and once again, guide you to ensure it ties to overall design flow of the house. If you have an interest in eaves guards please advise well in advance, as much more cost effective to install this system with new eaves versus adding after the fact and can be facilitated through change order process.



Lifestyles Barons

Supply and install a stone veneer package, specific stile and budget to be selected based on builder selection presented.

EF6

Supply and install complete shingle roof package, specific stile and budget to be selected based on builder selection presented, upgrades are available if selected.

Wood Flooring

FL1

Supply and install _vinyle tiles as shown at décor centre _ flooring on entire main floor and lower level except entry vestibule, bathrooms, laundry, room over garage and lower level stock room.

Initials _____

FL2

Supply and install _vinyle tiles as shown at décor centre _ flooring to alternate great room stain glass room / laundry and balcony.

Stone Flooring and Walls

ST1

Supply and install _Same stone as shown at Lifestyles décor centre, loft level, in larger format_ stone on front entry VESTIBULE.

Initials _____

ST2

Supply and install _ Same stone as shown at Lifestyles décor centre, loft level, in larger format_ to the POWDER ROOM floor.

Initials _____

ST3

Supply and install _ Same stone as shown at Lifestyles décor centre, loft level, in larger format_ stone on SERVERY feature walls.

Initials _____

ST4

Optionally we can *supply and install* _ Same stone as shown at Lifestyles décor centre, loft level, in larger format _ *rising onto walls similar to concept drawings in SPA BATH wall to just under custom stone rails and or possible "J" modelling detail which will fall just under the custom counter tops. If any interest, we can handle this via change order kindly advise our customer care centre as to your direction*

Initials _____

ST5

Supply and install _ Same stone as shown at Lifestyles décor centre, loft level, in larger format_ to SPA BATH shower walls and ceiling working around custom stone soffit in shower.

Initials _____

ST6

Supply and install _Pebble in Ivory Blend colour in SPA BATH shower floor.

ST7

Supply and install _Pebble in Ivory Blend as accent stone in SPA BATH shower walls.

ST8

Supply and install stone rails to frame accent pebble installation in SPA BATH shower.

ST9



a full design & build
Company

Lifestyles B by Barons

Supply and install _ Same stone as shown at Lifestyles décor centre, loft level, in larger format _ stone in BATH over garage, on the floor.

ST10

Supply and install Noble Grey Light stone in 3rd SPA BATH shower walls.

ST11

Supply and install Noble Grey Light stone in 3rd SPA BATH shower floor.

ST12

ST13

Supply and install _ Same stone as shown at Lifestyles décor centre, loft level, in larger format _ stone in 4th BATH floor.

ST14

Supply and install _ Same stone as shown at Lifestyles décor centre, loft level, in larger format _ stone in 5th BATH floor.

ST15

Supply and install _ Same stone as shown at Lifestyles décor centre, loft level, in larger format _ stone in 5th BATH tub walls.

ST16

Optionally install Vertigo Split Random stone to feature wall in master bedroom kindly [see page 34, 35 & 92](#) of concept book for approximate concept of impact of adding stone. If you have any interest in *adding stone and lighting to this feature wall* kindly advise customer care centre and will can possibly handle via change order. For real life example of this installation kindly refer to Pomona Master bedroom for end product delivered.

Wall Boarding

WB1

Supply and install drywall for affected areas within the scope of the demo area and area highlighted in framing section. All Demo areas, as it relates to wallboard areas, is defined to include areas covered off in the framing section where we are physically taking down a wall or doing extensive structural changes only.

WB2

ALL NEW DRYWALL TAPED WITH 2 to 3 COATS FOR SMOOTH FINISH. Drywall by nature is never 100% free of imperfections due to existing framing and natural crowns in studding. Lifestyles will provide industry acceptable standards. Kindly refer to our web site for examples of the quality of our work under the virtual tour section. Drywall efforts will be contained to newly renovated areas that have been identified under framing section. We do anticipate extensive dry wall efforts due to the scope of work on all three levels.



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Insulation

- IN1 All exterior walls deviated by renovation efforts will be insulated to meet and/or exceed the Ontario Building Code act and be fully inspected.
- IN2 As it relates to all the exterior walls as defined by the demo and framing section of this agreement, we will be installing a VERY enhanced insulation package to all the walls, which will be based on spray insulation versus a bat insulation. This insulation is far superior for this type of installation than bat and will perform to much better insulation standards than just bat insulation. This is another element that really separates your home and transitions it to an executive custom-built home versus subdivision builder solutions.
- IN3 As it relates to the cathedral ceiling on main level and third level, we are not clear if the roof will be bat insulation and/or sprayed. This decision point is very influenced by the city review and structural engineering review. Regardless, it is in budget. Please be assured we will be in full compliance of their direction we are requested to follow related to the insulation approach.
- IN4 To improve the insulation quality of the area over the new garage we will be adding additional, likely spray insulation to the ceiling of the garage.
- IN5 Currently the garage walls are not in our insulation schedule. If you would like to add *garage walls to our insulation program* we can handle via change order. Please advise our office in any interest.

Fireplace

- F1 Supply and install 1 Direct Vent 3-sided Fireplace which will support the entry, Parlour, Dining Room and upper balcony. This model has been upgraded to feature ceramic glass with a louverless clean-face front and is further upgraded with variable blower package. This unit has been further upgraded with a Porcelain Liner. This unit provides an expansive view from all three sides, and has been upgraded with a contemporary glass kit, stone, and light kits. This unit features the Signature Command System, with touch screen hand held transmitter with on off, Hi, Med Low flame adjustment, 6 hour countdown timer, thermostat with smart mode option 3 level blower, and assent light dimming capabilities. This unit also allows you to light the pilot and control a 3-step flame adjustment or switch to smart mode, which is remotely, thermostatically controlled and automatically modulates the fireplace to its most comfortable and efficient position. kindly see exhibit 12-1 Note this exhibit shows a two sided unit, your unit is the three sided unit.



Lifestyles Barons

Please note that no cost has been assigned to you for this unit and simply transfer from our décor centre to your home, we have only assigned labour costs to install unit.

F2

Supply and install 1 Direct Vent linear Fireplace for Master Bedroom. This model features ceramic glass with a louverless clean-face front and is further upgraded with variable blower package. An accent dimmable lighting package is included and controlled by a remote command system which also allows you to light the pilot and control a 3-step flame adjustment or switch to smart mode, which is remotely, thermostatically controlled and automatically modulates the fireplace to its most comfortable and efficient position. To further enhance the over finishing of this unit we are supplying and installing a glass and natural stone kit. Kindly [see exhibit 12-2](#)

F3

Three of the same units as above will also be provided for the lower level. Due to identified client budget concerns we have eliminated the blower packages. This is not a high cost unit and does tend to make the units more efficient. If you would like to *consider adding blower packages to any of these units* please advise our customer care center and we can handle through the change order method. One for the Main Lounge area, one for the 3rd master spa suite and one for the 5th master suite. If you want to add blower to any of them would be wise to condier main lounge / theater area.

F4

Note, the manufacturer does have an optional hand-crafted log set that can be added to this fireplace. No two log sets are identical as done by hand. If you would like this element, please advise well in advance and our customer care center can advise as to costing implications and manage through the change order process.

F5

Note for these Linear fireplace as we have shown you at our décor center have a new **heat recovery system** that allows you to redeploy up to 50 percent of the heat generated to another room and/or level. Potentially we could drive a portion of the heat generated in master suite down to the main lounge/theater area which would allow you to enjoy your unit in your own private area for greater periods of time while being very efficient with energy utilization. Please advise if any interest and we could handle via change order method.

Cabinets

Custom Cabinet configuration and sizing may vary from the colour concept renderings, as structural changes and other impediments may not allow for exact layout as shown due to final on-site measurements after framing changes etc.

C1

Supply and install kitchen MAPLE custom cabinets in Winter finish and Berkley style.

Initials _____

C2

Supply and install kitchen island MAPLE custom cabinets in Thunder finish and Berkley style.

Initials _____



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C3 Supply and install decorative hardware and matching appliances pulls for kitchen and kitchen island. Client has selected the following: _____
To be chosen by client from our selection board. (Other selections available in the form of a Change Order. Additional charges may apply).

Initials

C4 Supply and install Servery MAPLE custom cabinets in Thunder Black Glaze finish and Berkley style. This line item also supplies and installs custom wood surround packages for both custom beverage centers, which are to the right and left of the sink installation.

Initials

C5 Supply and install decorative hardware and matching appliances pulls for servery. Client has selected _____
To be chosen by client from our selection board. (Other selections available in the form of a Change Order. Additional charges may apply).

C6 Supply and install Powder Room MAPLE custom cabinets in Winter finish and Summit style.

Initials

C7 Supply and install decorative hardware for Powder Room. Client has selected _____
To be chosen by client from our selection board. (Other selections available in the form of a Change Order. Additional charges may apply).

Initials

C8 Supply and install in Master SPA Ensuite MAPLE cabinets in Portobello finish and Berkley style.

Initials

C9 Supply and install decorative hardware for Master SPA Ensuite. Client has selected _____
To be chosen by client from our standard selection board. (Other selections available in the form of a Change Order. Additional charges may apply).

Initials

C10 Supply and install Master Bedroom MAPLE media cabinets in Winter finish and Berkley style.

Initials

C11 Supply and install decorative hardware for Master Bedroom. Client has selected _____
To be chosen by client from our selection board. (Other selections available in the form of a Change Order. Additional charges may apply).

Initials

C12 Supply and install custom matching floating mantel in Winter finish and Berkley style.



Lifestyles B Barons

C13 Supply and install custom matching floating shelves in Winter finish and Berkley style, for feature wall in Master suite. _____
Initials _____

C14 Supply and install white Laundry cabinets. _____
Initials _____

C15 Supply and install decorative hardware for Laundry. Client has selected _____
Initials _____
(Other selections available in the form of a Change Order. Additional charges may apply)

C16 Supply and install 3rd Master Spa cabinets the following slide in unit, kindly see exhibit 13-4 the colour selected is White _____
Initials _____

C17 Supply and install decorative hardware for 3rd Master Spa. Client has selected _____
Initials _____
(Other selections available in the form of a Change Order. Additional charges may apply)

C18 Supply and install custom floating mantel over fireplace. This unit will be builder selected as not trying to any cabinets in this particular space. _____
Initials _____

C19 Supply and install 4th Master Spa MAPLE cabinets in Winter finish and Berkley style. _____
Initials _____

C20 Supply and install decorative hardware for 4th Master Spa. Client has selected _____
Initials _____
(Other selections available in the form of a Change Order. Additional charges may apply)

C21 Supply and install Lower level Media Cabinets MAPLE cabinets in Thunder finish and Berkley style. Note these cabinets will be higher than concept drawings. The soffit detail above the cabinets may be changed to drywall solution and will be site determined. Currently we have not budgeted for matching wood detail above. _____
Initials _____

C22 Supply and install decorative hardware for Lower Level Media Cabinets. Client has selected _____
Initials _____
(Other selections available in the form of a Change Order. Additional charges may apply)

C23 Supply and install custom matching floating mantel in Thunder finish and Berkley style for main lounge and theater area. _____
Initials _____



C24 Supply and install custom floating mantel over fireplace for bedroom 5. This unit will be build selected as not trying to any cabinets in this particular space.

C25 Supply and install 5th Master Spa cabinets the following slide in unit, kindly [see exhibit 14-4](#) the colour selected is Grey

C26 For the 6th bath on the 3rd level we will supply and install slide in unit, kindly [see exhibit 15-3](#) the colour selected is Grey

Millwork

T1 Supply and install upgraded 4" custom colonial poplar interior casings on all levels. This casing will also feature backbend along all casing. This is a very upgraded feature and tends to really add depth to doors and windows and truly picture frames the windows and doors and helps transition the home into an executive custom home. To see examples of this, refer to virtual tour of Lifestyles Web page.

T2 Supply and install 6" colonial poplar baseboards throughout main level, walk out level and 3rd level. Clearly the furnace room is not part of our finishing schedules on any components We will further update the baseboards by adding the matching doorstop along the base of the baseboards similar to the Lamoka tour home featured in the spring of 2016, kindly refer to our web page for visuals.

T3 Supply and install custom crown moldings to main level and lower level. Clearly certain areas as per design will not have crown details, shower are obvious examples, etc.

T4 Supply and install custom wainscoting package in vestibule, continuing up the staircase to the level above garage on the one wall wrapping around to back garden wall on balcony. Kindly [see pages 68 and 73](#) of your Concept book for approximate proposed configuration.

T5 Supply and install custom wainscoting package wrapping from vestibule servery around dining room, excluding the garden back wall as per concept drawings.

T6 Supply and install custom paint grade shelves in kitchen pantries that are to run floor to ceiling.



T7 All other closets will have a single rod for with one shelf above. If you would like any of the closets with double rod configuration we will address via Change Order.

Doors

D1 Supply and install 43 new interior hollow-core doors, on the main and lower levels with custom upgraded handles. All doors will feature upgraded lever package. Kindly [see exhibits 16 & 17](#). Client has elected _17B_ for door hardware throughout. Note doors can be upgraded to **solid doors** please advise customer care centre and this can be handled via change order if interest. Closets utilize dummy levered doors, balance of doors to have passage upgraded lever package. Bathrooms and master bedroom to have upgraded lever handle with privacy lock as well.

Initials _____

D2 Note currently door package off kitchen has been replaced with enlarged window package not as per concept drawings.

D3 Supply and install sliders off main dining hall, *you could upgrade to garden double doors with hidden screen package* from dining room to back deck, if interested this can be handled via change order.

D4 Supply and install garden double doors with hidden screen package from Master Bedroom Spa to deck. These doors will feature double exterior hardware package Kindly [see exhibit 17](#). You have closed on 2 as a place holder for this schedule.

D5 Front entry door is a steel core upgraded custom door installation. Kindly [see exhibit 18](#). *Some of our clients have opted for stainable fiberglass multi locking doors that give the beauty of a wood looking door without all the associated maintenance.* If you have any consideration for this type of a door we could work this through the change order process and has no impact on permit submission.

D6 Supply and install standard solid steel side panel garage door if grade permits from the back of the garage.

D7 Supply and install 3 sliding exterior doors (1 for each lower level bedroom).



could upgrade to garden double doors with hidden screen package from each room to the future back deck, if interested this can be handled via change order.

D8

Supply and install two new insulated steel garage doors. *Some of our clients have opted to upgrade to stainable fiberglass garage doors that give the beauty of a wood looking door without all the associated maintenance.* If you have any consideration for this type of a door we could work this through the change order process and has no impact on permit submission. Kindly [see exhibit 18.](#)

Electrical

ALL HOME ELECTRICAL WILL BE UPDATED TO MEET OR EXCEED CURRENT E.S.A STANDARDS

(Please note our electrical resources are strictly fully licensed and insured)

ALSO NOTE THAT IF A NEW ELECTRICAL PANNEL IS REQUIRED AND OR INSIGNIFICANT POWER IS PHYSICALLY RUN TO YOUR RESEIDENCE A CHANGE ORDER WILL BE ISSUED AS THIS IS NOT PART OF OUR SCOPE OF WORK AND WE DO NOT PAD OUR QUOTES.

E1

Supply and install 37 pot lights throughout main and walk out level, and exterior. Our units are fully CSA approved and are not Big Box solutions. If you would *like additional pot lights* they can be added at an incremental fee through a Change Order.

E2

Supply and install all required switches and wiring in all renovated areas to support code and power sources. Switch locations to be determined on site in the areas that are being renovated as required and as per Code. Please note actual location of associated light plan and switches is highly influenced by code requirements.

AS IT RELATES TO THE VESTIBULE

E3

Supply and install power sources wired as a single for chandelier on entry. Units to be controlled by a decor switch.

E4

Supply and install power source for wall sconce as a single unit on entry. Unit to be controlled by a decor switch.

AS IT RELATES TO THE POWDER ROOM

E5

Supply and install a power source wired as a single unit floating on mirror. Units to be controlled by a dimmable switch.



BILD

Supply and install GFI power supply at counter height on wall adjacent to entry.

E7

Supply and install new power source for Bath exhaust.

AS IT RELATES TO THE PARLOUR

E8

Supply and install power source for ceiling fan with integrated light that will have its own new power source with reinforced box controlled via single pole switch and controlled by a single pole switch.

E9

Supply and install new power source for fireplace in Great Room to support electrical ignition, blower package and interior lighting package.

E10

Supply and install from overall count 2 recessed ceiling pots, which will be wired as a single unit and act as accent wall lighting for wall against garage and parlour area. Units to be wired as a unit and controlled by a single pole décor switch and centrally located.

AS IT RELATES TO THE DINING ROOM

E11

Supply and install from overall count 6 recessed ceiling pots, which will be wired as a single unit and act as task lighting running as a modified "U" working approximately around the exterior of the servery along main dining room main traffic area ending in the transition hall way area. Units will be controlled by three-way switch near front of the home to the left of the servery entry at front of the home and also controlled off main hall on the opposite entry of the servery exist in the hall area.

E12

Supply and install two chandelier power outlets in dining room that will have their own new power source with reinforced box and also be dimmable and controlled centrally.

E13

Supply and install power source for three wall sconces wired as a single unit to support main dining hall. Approximate configuration to follow concept drawings based on site conditions. Units will all be wired as a unit and centrally controlled by a single décor switch.



E14 AS IT RELATES TO THE GOURMET KITCHEN

E15 Supply and install power source for three pendants running over island configuration in GOURMET KITCHEN. Units will be wired as a unit, dimmable and centrally controlled on entrance into kitchen.

Supply and install two power supplies on the island.

E16

E17 As it relates to GOURMET KITCHEN supply and install power source to support new kitchen exhaust.

E18 Supply and install multiple power sources for hidden upper cabinet accent lighting in GOURMET KITCHEN. This electrical plan will have multiple drops and work across all built-ins and any upper cabinets including the mantel configuration. This line item also addresses supplying and doing custom carpentry work to install lighting solutions. These units to be controlled by a single pole switch and wired as a unit.

E19

E20 Supply and install multiple power sources to support under-counter task lighting in GOURMET KITCHEN following a "L" configuration. This line item also addresses supplying and doing custom carpentry work to installing lighting solutions. These units to be controlled by a single pole switch. Clearly the mantel configuration will have its own under counter task lighting tied to the custom exhaust unit.

E21

E22 Supply and install multiple power sources to support in-cabinet lighting in GOURMET KITCHEN on second tier cabinets. This line item also addresses supplying and doing custom carpentry work to installing lighting solutions. These units to be controlled by a single pole switch.

E23

E24 Supply and install power source to support ignition for gas cook top in GOURMET KITCHEN.

E25

E26 Supply and install power source to support hidden dishwasher to **left/right** of sink on island configuration, client has select **_Right_** of sink.

E27

E28 Supply and install power source to support built-in fridge in GOURMET KITCHEN.

E29

E30 Supply and install power source to support custom combination wall-oven configuration in GOURMET KITCHEN.

E31

E32 As an option *supply and install power source for warming drawer* under built-in ovens

E33

E34 Supply and install from overall count 2 recessed ceiling pots, which will be wired as a single unit over custom pantry acting as task lighting and controlled by a single pole decorative switch and centrally located.

E35



E27

Supply and install from overall count 6 recessed ceiling pots, which will be wired as a single unit acting as floor lighting, following an "L" configuration controlled by a single décor switch and centrally controlled

Supply and install from overall count 3 recessed ceiling pots, which will be wired as a single unit acting as assent lighting over custom bench area, controlled by a single décor switch and centrally located.

E28

AS IT RELATES TO THE MAIN SERVERY/CLOAK ROOM

Supply and install power source for **BEVERAGE CENTRE** in the MAIN SERVERY area. *Note currently we have budgeted for stainless steel units that do not have the custom wood surrounds and are different units that will not accept wood panels.* If you would prefer to more closely follow concept design on this element please advise very early on for cost implications and potentially could be handled via the change order process.

E29

Supply and install power source for **WINE CENTER** in SERVERY. *Note currently we have budgeted for stainless steel units that do not have the custom wood surrounds and are different units that will not accept wood panels.* If you would prefer to more closely follow concept design on this element, please advise very early on for cost implications and potentially could be handled via the change order process. One of these units could be switched over to a dishwasher with virtually little to no cost difference. Please advise our Customer Care Center and we can handle via change order.

E30

Note if you do not change one of these units to a dishwasher which we would strongly recommend based on this home being also utilized for business, many of our clients elect to run with both beverage centers versus separate beverage and wine centers. There is no real difference in costs, just need to establish rate up at the beginning to ensure correct units sized and order. We can discuss and show you the different configuration at our décor center during the contract presentation for your direction. Client has selected to run with a Dishwasher configuration.

E31

As discussed previously we will be modifying our concept drawers for the servery to remove the tower for associated built-in appliances for oven, coffee machines, warmer drawers, to try and provide some budget relief. If you have *any consideration to make this area a fully functional servery* we will need to revise our electrical scope of work and cabinet design back to closer to concept designs. Please advise very early on as this will be impacting multiple disciplines and will be addressed via change order at your direction.

E32

Supply and install multiple power sources for hidden in-cabinet under lighting for upper cabinets in SERVERY. All glass door front units on either side of the sink will



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have hidden up lighting in the cabinet which is very dramatic. The cabinets will be further upgraded with glass shelves. To complete this space, we will also run power down to the wine rack and have accent lighting custom recessed into the top of the unit and all three locations will be wired as one feature element. This line item also addresses supplying and doing custom carpentry work to install lighting solutions. These units to be controlled by a single pole switch.

E33

Supply and install multiple power sources for hidden upper cabinet accent lighting in SERVERY. These units are to be controlled by a single pole switch and wired as a unit.

E34

Supply and install multiple power sources to support under-counter task lighting in the SERVERY. These units to be controlled by a single pole switch.

E35

E36

Supply and install three drops for ceiling hugging fixtures in the Servery to be wired as a unit and controlled via a two-way switch on either end of the servery.

Optional for the cloak closets *you could add closets lights that are trigger when one of the doors is opened* for each closet.

E37

AS IT RELATES TO MASTER BEDROOM

Supply and install power source for ceiling fan with integrated light in Bedroom that will have its own new power source with reinforced box controlled via single pole switch and controlled by a single pole switch.

E38

Supply and install new power source for fireplace in Master Bedroom to support electrical ignition, blower package and interior lighting package.

E39

Run power source to support TV over fireplace in Master Bedroom. This line item also addresses associated cable outlets and associated conduit running to custom cabinets for client provided electronics.

E40

Optionally you could add *accent lighting to custom shelves* in the feature wall to the right of the fireplace.

E41

AS IT RELATES TO YOUR SPA BATH

Supply and install power run to three ceiling hugging modified pot lights, not recessed, working through the Spa bath as task lighting. Please note for all pot lights that are installed in all areas with vaulted ceilings, we may have to modify the pot lights to a semi recessed unit as shown in our loft display area just outside of the print area. This decision will be site made based on actual insulation method signed



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E42 on on by the city and available spacing and be determined by Lifestyles. We cannot tell you the exact unit for any of these fixtures working in any of the cathedral ceilings

Supply and install power source for feature light over tub area controlled by a single décor switch centrally located.

E43

E44

Supply and install power source for two sconces floating on mirror in the vanity area controlled on the gable wall on entry to vanity area from toilet area.

E45

Supply and install two new GFI power sources for vanity area. First plug to be recessed into side of cabinet gable to service makup area. The 2nd GFI will be located in gable wall between Roman tub and vanity also at counter height.

E46

Supply and install new power source for Ensuite exhaust. This unit to be controlled by single pole switch and décor switch grouped with GFI plug in gable wall between tub and vanity.

E47

Supply and install new power source for Ensuite Shower marine light in shower. Single décor switch to control unit to be group with GFI installed in gable wall between sink and Roman tub servicing vanity area.

Run three power supply for custom down lighting built in soffits running over two sinks and makeup area drawing from the overall count. Wire all units as a single unit and act as task lighting recessed into custom valance detail. These units will be wired as a unit and controlled by a single décor switch that is controlled by switch on gable wall closest to smallest sink vanity area. By design trying to work to ensure no plugs in mirror between shower and custom vanity.

E48

AS IT RELATES TO 3rd MASTER SPA SUITE

E49

Supply and install power source for ceiling fan with integrated light in Bedroom that will have its own new power source with reinforced box controlled via single pole switch and controlled by a single pole switch.

Supply and install power for fireplace.

E50

AS IT RELATES TO MAIN STAIRCASE

Supply and install power source for ceiling fixture over main staircase. This light fixture to be controlled by a three-way décor switch from upper landing and bsmt



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E51 AS IT RELATES TO 3RD MASTER SUITE

E52 Supply and install power source for ceiling fan with light package in Bedroom that will have its own new power source with reinforced box controlled via single pole switch and controlled by a single pole switch.

Supply and install power source for fireplace.

E53 AS IT RELATES TO 3RD MASTER SPA BATH

E54 Supply and install power source controlled by décor switch for wall sconce floating on mirror controlled on entry.

E55 Supply and install power source for ceiling hugger fixture in ceiling controlled by décor switch on entry.

E56 Supply and install new GFI power source on exterior wall at counter height.

E57 Supply and install power supply to the ceiling for exhaust fan which will be controlled centrally on entry to Spa bath.

E58 Supply and install marine tub light controlled by a single pole switch for shower controlled by a single décor switch that is centrally located and controlled on entry to Spa Bath.

As an option can supply a *steam generator which includes light therapy, aroma therapy, sound therapy and visual screen therapy.* This unit is on display and was shown to you at our décor center in the main bath which is the smaller of the units. This unit could be set up potentially so it is password protected and only paying guests could utilize entire unit with all features. If you have any interest, we would have to run very different electrical service to this bath and would need your direction very early in the build and could facilitate through the change order process.

E59 AS IT RELATES TO 4TH MASTER SUITE

E60 Supply and install power source for ceiling fan with integrated light in Bedroom that will have its own new power source with reinforced box controlled via single pole switch and controlled by a single pole switch.

Supply and install power source for fireplace.



E61 AS IT RELATES TO 4TH MASTER BATH

E62 Supply and install power source controlled by décor switch for wall sconce floating on mirror controlled on entry.

Supply and install power source for ceiling hugger fixture in ceiling controlled by décor switch on entry.

E63

E64

Supply and install new GFI power source on exterior wall at counter height.

E65

Supply and install power supply to the ceiling for exhaust fan which will be controlled centrally on entry to bath.

Supply and install marine tub light controlled by a single pole switch for shower controlled by a single décor switch that is centrally located and controlled on entry to Spa Bath.

E66

AS IT RELATES TO 5TH MASTER SUITE

E67

Supply and install power source for ceiling fan with integrated light in Bedroom that will have its own new power source with reinforced box controlled via single pole switch and controlled by a single pole switch.

Supply and install power for fireplace.

E68

AS IT RELATES TO 5TH MASTER BATH

E69

Supply and install power source controlled by décor switch for wall sconce floating on mirror controlled on entry.

E70

Supply and install power source for ceiling hugger fixture in ceiling controlled by décor switch on entry.

E71

Supply and install new GFI power source on exterior wall at counter height.

E72

Supply and install power supply to the ceiling for exhaust fan which will be controlled centrally on entry to bath.

Supply and install marine tub light controlled by a single pole switch for shower controlled by a single décor switch that is centrally located and controlled on entry to Spa Bath.



AS IT RELATES TO BALCONY

Supply and install power supply for wall sconce to the right of the double doors when facing these doors from main level. This wall sconce to be wired as a single unit and controlled by three-way switch. Switches to be centrally located one on main level and one on upper level.

E74

AS IT RELATES TO 2ND GREAT ROOM ON THIRD LEVEL

Supply and install power source for ceiling fan with integrated light in Bedroom that will have its own new power source with reinforced box controlled via single pole switch and controlled by a single pole switch.

E75

AS IT RELATES TO BOTH LAUNDRIES

E76

We have no understanding as to the type of *laundry machines* you may or may not currently own, or the vintage of the machines.

E77

Do not understand if they are gas and or electric

E78

Do not understand if they are front loading or not, clearly for our designs to function they must be stackable and front loading.

E79

As such have not *allocated funds for running gas lines to these units*.

E80

We have not budgeted for possibly replacement units for both Laundry.

E81

Without a question front loading gas machines for dry purposes are by far the most cost-effective unit and for washing purposes front loading is the most effective and causes the least amount of wear and tear on your cloths.

E82

Please advise our Customer Care Centre so we can determine the most effective way forward and handle via change order.

E83

Supply and install two ceiling hugger fixtures wired as a unit and controlled by a single pole décor switch on entry.

E84

Supply and install two power sources for wall sconces to frame either side of the window bench, wired as a unit and controlled by a single pole switch on entry.

Supply and install new GFI power source at counter height to support laundry area.



E85

AS IT RELATES TO 6TH BATH LOCATED ON THIRD LEVEL

Supply and install power source controlled by décor switch for wall sconce floating on mirror controlled on entry.

E86

E87

Supply and install power source for ceiling hugger fixture in ceiling controlled by décor switch on entry.

E88

Supply and install new GFI power source on exterior front wall at counter height.

E89

Supply and install power supply to the ceiling for exhaust fan which will be controlled centrally on entry to bath.

E90

AS IT RELATES TO GARAGE

Supply and install power for overhead utility light controlled by a single pole switch.

Supply and install power for future garage door openers. Please advise if you would like us to supply and install *two new garage door openers* with the two garage doors already covered in your schedule A and we can handle via change order.

AS IT RELATES TO THE EXTERIOR

E91

Supply and run power to exterior front to support three pot lights coming from overall count, that will be wired all together and function as a single unit. Current configuration is based on one unit on side of entry (spa bath wall), one left of master suite double door and associated window, and one between two garage doors. A single décor switch located on entry of home will control units.

E92

Supply and install exterior switch power plug to support seasonal holiday applications on far-right side of the home when facing the home from the street side.

E93

To enhance the street appeal of the home and rear of home there will be a soffit lighting package that will work around the exterior of the home in key areas. Supply and run power to exterior front to support three pot lights coming from overall count, that will be wired all together and function as a single unit. The first area will be two pots in soffit on either side of window over garage and a third pot in soffit on side of garage. All three units will be wired as a unit and centrally controlled by single décor switch on main entry of home.



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- E94 Supply and install from overall count 3 recessed ceiling pots, which will be wired as a single unit recessed into soffit working across front terrace of the house and controlled by a single décor switch on entry.
- E95 Supply and run power to exterior rear to support five pot lights coming from overall count, that will be wired all together and function as a single unit. All five units will be wired as a unit and centrally controlled by single décor switch likely located near exterior doors off the on main dining hall area.
- E96 Supply and install power supply for coach light off bedroom three controlled by single pole décor switch in bedroom three.
- E97 Supply and install power supply for coach light off bedroom four controlled by single pole décor switch in bedroom four.
- E98 Supply and install power supply for coach light off bedroom five controlled by single pole décor switch in bedroom five.
- E99 Supply a install a continuous power external power plug on inside wall of garage closest to main home near front right door.
- E100 Supply and install a continuous external power plug on center of home when facing back of home.
- E101 Supply and install one exterior power plug at back rear left corner on side of home for future possible accent lighting and or holiday lighting application. This plug is to be switch and controlled on main level.
- E102 Supply and install six cable jack one to support each of the 5 bedrooms and one to support home theater. Exact location to be site determined.
- E103 Supply and install one phone jack in Gourmet Kitchen at counter height.
- E104 Supply and install one phone jack in bsmt. Ideally this would be *installed at counter height where bar servery was proposed*. Approximate location cannot be estimated at this time until we know client direction if we are providing a bar servery or not.

Painting

- P1 Includes supply and installation of paint with 1 coat primer and 2 coats of Benjamin Moore paint on ceiling, walls, doors, casing and baseboards. The framing section of this agreement defines areas to be included in our painting schedules. In concept, covers entire three levels, clearly furnace room is not in our finishing schedules.



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specific rooms and 1 trim colour that addresses baseboards, doorstops, casing and wainscoting on the two floors and the addition. Ceilings throughout the house are standard Benjamin Moore ceiling white. If required, additional colours are charged at \$150 per colour, per room and are applied and addressed by standard change order procedure.

Plumbing

As per Lifestyles quality standards any new installation will only be done by our licensed plumber fully inspected and will all feature independent quality shut offs.

- PLM 1 Supply and install new grey water plumbing to support SERVERY
- PLM 2 Supply and install new water lines to support SERVERY
- PLM 3 Supply and install new grey water lines and associated drains for Kitchen island sink.
- PLM 4 Supply and install new water lines to Service Kitchen Island sink.
- PLM 5 Supply and install new drain for dishwasher in Gourmet Kitchen.
- PLM 6 Supply and install water lines to service dishwasher in Gourmet Kitchen.
- PLM 7 Supply and install new grey water lines and associated drains for 2nd Gourmey Kitchen 2nd sink
- PLM 8 Supply and install new water lines to service 2nd kitchen sink.
- PLM 9 Optionally you can **add a pot filler**. This is a very upgraded unit and unfortunately is tied typically to very upgraded manufacturing costs. Typically, this is not even an option for us as most time these lines would be forced to go up on an exterior wall which is now a code violation. In your case being an inside wall, this is clearly an option for you. Clearly if you go this approach we would have to reselect balance of fixture for kitchen to match and adjust through the change order process.
- PLM 10 Supply and install water supplies for fridge/icemaker, if applicable, based on appliance package selected for GOURMET KITCHEN.
- PLM 11 Supply and install new grey water line and associated drain for powder room.
- PLM 12 Supply and install new water lines to service powder room.
- PLM 13 Supply and install grey water lines to support Powder Room and associated cold water feed.



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- PLM 14 Supply and install two drains for Vanity sink for Spa Bath
- PLM 15 Supply and install two sets of water lines for both Spa Bath sinks.
- PLM 16 Supply and install drain for Spa Bath Shower.
- PLM 17 Supply and install water lines for Spa Bath Shower
- PLM 18 Supply and install drain for Roman tub please note this tub can be *upgraded to Jacuzzi tub* if this is a consideration electrical scope of work will have to be adjusted please advise prior to framing stage and once again can be handle via a change order at your direction.
- PLM 19 Supply and install water lines for Roman tub area.
- PLM 20 Supply and install new drain for Sink in Laundry room on third level.
- PLM 21 Supply and install water lines to service sink area in Laundry Room on third level.
- PLM 22 Supply and install drain for vanity over garage, sink on third level.
- PLM 23 Supply and install water lines for bath over garage, vanity sink.
- PLM 24 Supply and install drain for bath for slide in shower over garage on third level.
- PLM 25 Supply and install water line for bath over garage, Shower
- PLM 26 Supply and install grey water line for bath over garage, toilet.
- PLM 27 Supply and install cold water feed for bath over garage, toilet.
- PLM 28 Supply and install drain for Vanity sink for 3rd Master Spa bath
- PLM 29 Supply and install water lines for Vanity in 3rd Master Spa Bath
- PLM 30 Supply and install drain for 3rd Master Spa walk in Shower.
- PLM 31 Supply and install water lines for 3rd Master Spa Shower
- PLM 32 Supply and install grey water line for 3rd Master Spa Bath toilet.
- PLM 33 Supply and install cold water feed for 3rd Master Spa toilet.
- PLM 34 Supply and install drain for Vanity sink for 4th Master bath.



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- PLM 35 Supply and install water lines for Vanity in 4th Master Bath.
- PLM 36 Supply and install drain for 4th Master Bath walk in Shower.
- PLM 37 Supply and install water lines for 4th Master Bath Spa Shower
- PLM 38 Supply and install grey water line for 4th Master Bath toilet.
- PLM 39 Supply and install cold water feed for 4th Master Bath toilet.
- PLM 40 Supply and install drain for Vanity sink for 5th Master bath.
- PLM 41 Supply and install water lines for Vanity in 5th Master Bath.
- PLM 42 Supply and install drain for 5th Master Bath Tub.
- PLM 43 Supply and install water lines for 5th Master Bath Tub.
- PLM 44 Supply and install grey water line for 5th Master Bath toilet.
- PLM 45 Supply and install cold water feed for 5th Master Bath toilet.
- PLM 46 Supply and install water lines for Lower Level Client Laundry closet.
- PLM 47 Supply and install grey water line for Lower Level Client Laundry closet.
- PLM 48 Supply and install water lines for Lower Level Bar (supplied by client).
- PLM 49 Supply and install grey water line for Lower Level Bar (supplied by client). Note our original **bar servery design** is by far more functional for clients for entertaining and for dual purposes of supporting client laundry, we would suggest at least escivating bsmt floor for panisula configuration and cap at this time for possiable original design work. Please advise if any interest in **running grey water to original bar design** and we can be handled via change odder As discussed advise if we should be looking at this very early on as it will impact excavation efforts.
- PLM 50 Note this scope of work has budgeted for extensive digging up of bsmt floor for three baths as well as the one sink. Our costing is based on the assumption of a dry basement on no water regress into building envelope.
- PLM 51 Ensure two exterior house bibs are in service to support main level of the home one on front likely in garage and one likely on the back left side closets to rear garden when facing back of the home. Exact locations are to be site determined. We will utilize frost-free service if physically possible.

PLM 52 Please note in general terms until entirely gutting we are not clear how sig will be tying into existing services. Clearly those demarcation points and associated



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connections will be site determined and fully inspected by the city of Oakville.

PLM 53

We will supply and install shut off where possible for all hot and cold lines for all sinks and toilet area.

Plumbing Fixtures

Powder Room – Kindly see Exhibits 19-20

FX1 Sink - Client has selected 26.

Initials _____

FX2 Toilet - Client has selected 20.

Initials _____

FX3 Faucet - Client has selected 20.

Initials _____

FX4 Accessories: Towel Bar, paper holder- Client has selected 20.

Initials _____

Servery

FX5 Servery features BLANCO Silgranit undermount bar sink.
Client has selected 21 - 5. Kindly see Exhibit 21-5,6

Initials _____

Or

BLANCO stainless steel sink.

FX6 Servery features a faucet as selected by client
NIL. Kindly see Exhibit 21-1,2,3,4

Kitchen



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FX7 Kitchen Faucet - Client has selected 22 - 5. [Kindly see Exhibit 22](#)

FX8 Kitchen BLANCO for the main sink Silgranit 1 ¾ bowl undermount sink.) These feature scratch, chip and stain resistance, heat resistance up to 280°C and colour fade proof. Client has selected 23 a - 4. [Kindly see Exhibit 23a-23b](#)

Or

BLANCO stainless steel sink.

FX9 Kitchen BLANCO for smaller 2nd under mount sink These feature scratch, chip and stain resistance, heat resistance up to 280°C and colour fade proof. Client has selected 23 a – 5 with built in under counter drying rack actual sizing of drying rack will be adjusted to meet site conditions and may vary from sizing at décor centre. [Kindly see Exhibit 23a](#)

Or

BLANCO stainless steel sink.

Master Spa Bath – Kindly see Exhibits 24-25

FX10 Two Sinks- Client has selected 24.

Initials _____

FX11 Two Faucets - Client has selected 24.

Initials _____

FX12 Toilet - Client has selected 24.

Initials _____

FX13 Shower trim - Client has selected 24.

Initials _____

FX14 Tub Faucet – Client has selected 24.

Initials _____

FX15 Accessories: Towel bar, paper holder, robe hook, towel ring. Client has selected 24.

FX16 Supply and install hand shower in shower.

FX17 Supply and install hand shower for tub.

FX18 Supply and install Roman corner tub

3rd Master Spa Suite – Kindly see Exhibit 13



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FX19 Sink is included with vanity solution

FX20 Toilet - Client has selected 13.

Initials _____

FX19 Faucet - Client has selected 13.

Initials _____

FX20 Shower Trim - Client has selected 13.

Initials _____

FX21 Accessories: Towel Bar, paper holder, robe hook - Client has selected 13.

4th Master Suite – Kindly see Exhibit 26

FX22 Sink - Client has selected 26.

Initials _____

FX23 Toilet - Client has selected 26.

Initials _____

FX24 Faucet - Client has selected 26.

FX25 Shower Trim - Client has selected 26.

Initials _____

FX26 Accessories: Towel Bar, paper holder, robe hook - Client has selected 26.

Initials _____

FX27 Supply and install slide in accessible walk in shower unit.

5th Master Suite – Kindly see Exhibit 14

FX28 Sink is included with vanity solution.

FX29 Toilet - Client has selected 14.

Initials _____



FX30 Faucet - Client has selected 14.

Initials

FX31 Standard Tub and Tub Trim - Client has selected 14.

Initials

FX32 Accessories: Towel Bar, paper holder, robe hook - Client has selected 14.

Bath 6th above the garage – Kindly see Exhibit 15 Client selected brush Nickel

FX33 Sink is included with vanity solution

FX34 Toilet - Client has selected 15.

Initials

FX35 Faucet - Client has selected 15.

FX36 Shower Kit - May not be exactly as shown in Exhibit 15. Subject to change based on availability.

Initials

FX37 Accessories: Towel Bar, paper holder, robe hook - Client has selected 15.

Initials

Laundry above garage– Kindly see Exhibit 27

FX38 Supply and install Tub.

Initials

FX39 Supply and install laundry faucet.

Initials

HVAC

HVAC1 Supply and install venting for kitchen exhaust fan and associated structural work in routing line and associated masonry work for new termination on exterior of home.

HVAC2 Supply and install venting for Powder Room exhaust fan and associated structural work in routing line and associated masonry work for new termination on exterior of home.

HVAC3 Supply and install venting for Spa Bath exhaust fan and associated work in routing line for termination.



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HVAC5

Supply and install venting for 3rd master spa exhaust fan and associated work in routing line and associated roof termination.

Supply and install venting for 4th master bath exhaust fan and associated work in routing line and associated roof termination.

HVAC6

Supply and install venting for 5th master bath exhaust fan and associated work in routing line and associated roof termination.

HVAC7

Supply and install venting for 6th master bath exhaust fan and associated work in routing line and associated roof termination.

HVAC8

Please note all of our exhaust are not the builder grade units and much more efficient and much quieter.

HVAC9

Supply and install venting for fireplace in main floor Parlour with associated new termination on exterior

HVAC10

Supply and install venting for fireplace in main lounge and theater with associated new termination on exterior

HVAC11

Supply and install venting for fireplace in master bedroom with associated new termination on exterior.

HVAC12

Supply and install venting for fireplace in 3rd bedroom with associated new termination on exterior.

HVAC13

Supply and install venting for fireplace in 5th bedroom with associated new termination on exterior.

HVAC14

Note for all fireplace there are very specific safety codes that must be met and distance limitations for exhausting purposes. Concept drawings, as all elements from window configuration to bulk heads, will be adjusted to ensure full compliance and sign off from all regulatory bodies having jurisdiction over the site.

HVAC15

Supply and install venting for Laundry room one with associated new termination on exterior.

HVAC16

Supply and install venting for laundry room two with associated new termination on exterior.

HVAC17

Please be advised the city of Burlington will request for an independent loss study which is very standard in the industry to confirm if the vintage of the furnace



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that is currently supporting your home (client supplied) has the capacity to support the additional square footage we are adding. We will advise as to results and whether it is sufficient or supplementary steps should be taken at this point or additional equipment is required. This clause was assuming forced air solution.

HVAC18

As discussed, we understand you want a radiant heating solution for your home. Same principal applies until we have an engineering report done independently on the home and demo well under way we have no concept of what components can be reused for the radiant heating solution and impossible to quote at this time with any degree of accuracy.

HVAC19

As discussed due to budget pressure we are strongly not recommending the warm board technology.

HVAC20

What we would strongly recommend is a self-leveling over-pour for radiant floor heating. This type of technology is very effective in offering affordable and dependable means to efficiently and evenly heat a room.

HVAC21

For purposes of this scope of work the *heating, cooling and domestic hot water* component cannot with any accuracy be mapped out at this stage. We will work through best course forward during the permit preparation stages and during the demolition stages when resources are on site can physically inspect and present options for your approval and handle all components related these elements through the change order process.

Countertops

CT1

Granite and other stone countertop solutions have extensive ranges in price points; we have removed this line item in totality from the master agreement and will be handled through a Change Order. Lifestyles will book an appointment with one of our preferred Quarries and work with you in selecting a granite solution that meets your specific needs.

CT2

Note one of the reasons we have change cabinets in spa bath three, bath five and six is these units are very cost effective and already have the counter tops included reducing some of the hard surface stone products that will be required.

Lighting

LF1

Ceiling chandelier chosen entry vestibule: [Kindly see Exhibit 28](#)

Initials _____

LF2

Wall sconce chosen work around vestibule, dining hall, and upper balcony (FIVE UNITS): Client has selected 3b. [Kindly see Exhibit 29a](#)



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LF3 Two Lighting Option chosen for Dining Room:
[Kindly see Exhibit 29b](#)

LF4 Fan light chosen for Parlour: Client has selected
[Kindly see Exhibit 30](#)

Initials

LF5 Lighting Option chosen for Kitchen: Client has selected 4.
[Kindly see Exhibit 30B](#)

Initials

LF6 Lighting Option chosen for Powder Room: Client has selected 20.
[Kindly see Exhibits 19-20](#)

LF7 Lighting Fan Option chosen for Master Bedroom: Client has selected 1.
[Kindly see Exhibit 31](#)

LF8 Lighting Option chosen for over the tub in Master Spa Bath: Client has selected 24.
[Kindly see Exhibits 24-25](#)

Initials

LF9 Lighting wall sconce (TWO) Option chosen for Master Spa Bath: Client has selected 24.
[Kindly see Exhibits 24-25](#)

Initials

LF10 Lighting chosen for 3rd Master Spa Bath: Client has selected 13.
[Kindly see Exhibit 13](#)

LF11 Lighting chosen for 3rd Master Bedroom: Client has selected 1.
[Kindly see Exhibit 32](#)

Initials

LF12 Lighting chosen for 4th Master Bath: Client has selected 15.
[Kindly see Exhibit 15](#)

LF13 Lighting chosen for 4th Master Bedroom: Client has selected 1.
[Kindly see Exhibit 32](#)

LF14 Lighting chosen for 5th Master Bath: Client has selected 14-8.
[Kindly see Exhibit 14](#)

LF15 Lighting chosen for 5th Master Bedroom: Client has selected 1.
[Kindly see Exhibit 32](#)



LF16 Lighting Option chosen for Main Lounge wall sconces (THREE UNITS): Client has selected 3b.

[Kindly see Exhibit 29a](#)

LF17 Lighting Option chosen for staircase. Client has selected 33.

[Kindly see Exhibit 33](#)

LF18 Lighting Option chosen for exterior light wall sconces (SIX UNITS) and chandelier for front porch vault. Client has selected _____.

[Kindly see Exhibit 34](#)

Appliances

APP1 Cooktop – 36 Bosch” . [Kindly see Exhibit 35](#)

Initials _____

APP2 Fridge – Thermador 36” counter depth, freezer bottom French door. This unit is a very upgraded fridge and was scheduled to be put into our décor centre. Due to permit delays we were unable to take shipment of this display unit as such you have benefited by us deep discounted the cost of the unit due to erosion of the mftg waranttee, simply to move the unit off our books th [Kindly see Exhibit 36](#)

Initials _____

APP3 Dishwasher – Bosch Tall Tub - [Kindly see Exhibit 37](#)

Initials _____

APP4 Exhaust hood - [Kindly see Exhibit 38](#)

Initials _____

APP5 Wall ovens – Bosch dual convection delivers unsurpassed flexibility and control. [Kindly see Exhibit 39](#)

Initials _____

APP6 Supply and Install 2 Beverage Centers. - [Kindly see Exhibit 40](#)
(client has chosen to go with 1 beverage center and one dishwasher in server)

Initials _____

Windows

W1 What is key to this overall design for this residence is opening the home to the lot. It is very rare that we are able to open a home to this extent due to typical set back issues and associated fire spread zoning rules. Clearly our window submission will still have to be approved by the city of Burlington, both from a structural standpoint and zoning perspective, as such conditional on city sign off. The extensive window package being proposed will likely be one of the most dramatic elements in this overall design and will very positively influence resale value and without a question the enjoyment of your guests linking the outdoor living design to the home as well.



In this schedule we cover the home with double pane window installations. We do

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have the option of upgrading the windows with other options available from *triple pane window installation that dramatically improves insulation value and also noise transfer*. They are other further enhancement related to sun block, low-e etc. The cost is typically relatively low based on what is received in energy costs and comfort dependent on what options you select. If you have any interest in **options related to the extensive window package**, please advise very early in this project and we can present options for your consideration and possibly handle through a change order process if requested to do so.

- W3 Please note this schedule goes to significant effort to itemize as best as possible proposed window package for this home which is very extensive, however, final permit submission and formal sign off by the city will finalize exact configuration and sizing. With full demo services completed, venting efforts which will be extensive with number of fireplaces, physical loads and structure all addressed it is possible we will make some modifications to window plans either sizing them up or down or relocating and in some remote cases, forced to delete windows due to zoning and/or structural sign off. Please note we will do our best to keep to original design but once again must be in full compliance with all structural and city requirements directly controlled by the city of Burlington that can only be 100% accurate forecasted, once we have gone through the various logical steps.
- W4 Supply and install two skylights, one in third level and one in dining hall. Note the unit size and location will be heavily influenced by framing requirements and accessed during the framing stage.
- W5 Note these units have been further upgraded to all the units to be operational and provide key ventilation.
- W6 These units have also been further upgraded to feature rain sensors that will allow the units to automatically close if you forget to close the unit and rain should set in.
- W7 From a design perspective was hoping to put more sky lights in. Please note these unit can be added rate up to the framing stage. If any **interest in adding more sky lights**, please advise and we can handle via the change order process.
- W8 We do have the option off adding solar blinds directly into the sky lights to help manage heat gain and loss. If any interest in the **solar blinds and window treatments** that are available directly from the manufacturer our resources can walk you through the options at our décor center and if interested handle via the change order process.

Masonry/ Stucco

- M1 Supply and install large cultured stone package working around base of new home and proposed two car addition. Cultured stone option will be based of sample we provide you. Our design team will work with you to ensure all components installation well.



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Supply and install large custom cut banding stone package. Please note for budgeting purposes we will be utilizing a large component of natural Indian lime stone working around the entire exterior of your home for banding purposes separating the culture stone product from the stucco detail. A recent home that has a similar configuration that you have seen is the Shady Lawn site that will be touring Spring of 2019

M3

This scope of work supplies and install an extensive stucco package with upgraded casing stucco package. Our designs further upgrade finish typically by not doing the exterior all in one colour as such the body of the home and upgraded casing package are typically done in two colours versus the standard one.

M4

To further upgrade the street appeal of the house you will notice that the stucco package on the house is typically a much more course application than the stucco applications we picture frame all the doors and windows to. Once again add a more custom finish and appeal to the exterior of the home

Staircase

ST1

This statement of work addresses completely replacing the staircase.

ST2

Currently this home has a builder grade staircase with associated pickets, main posts and handrails. The current staircase is entirely stained and as such tends to absorb light and is typical builder quality. The staircase is central to the home and also a key design element.

ST3

Our scope of work includes the riser to be painted and treads stained with main posts stained, pickets painted once again to reflect light and handrails and nosing all stained.

ST4

Ideally based on this being a focal point in the home we would suggest and have budgeted to replace this staircase from bsmt to main and main to upper.

ST5

We have budgeted for an upgraded picket package as well which would all be professional factory finished in the same Benjamin moore colour as the trim colour closed on for the home.

ST6

The treads, nosing, main posts and handrails will be stained on site. Please be advised in our staining schedules we by design do not try to match identically the floor installation. We have learned it is much better to work to have the custom staining done to reflect a tone on tone versus try to have match identically to the hardwood floor installations. Ideally it is recommended that the main stairs and painting of run from bsmt to main level be done only when renovations in that area



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are complete.

ST7

The pickets will be entirely factory finished at time of installation with a piano quality finish. Please note during the installation a surgical nail gun must be used to attach pickets to configuration and will be manually touched up on site. There will be a slight imperfection to the factory finish but entirely necessary and provides a much superior solution to having pickets painted manually on prem. [Kindly see Exhibit 41](#)

ST8

Client has selected [Glass Panels](#).

Elevator

EL1

This elevator's unique door system allows for maximum flexibility. Coupled with the convenience of a sliding door system on the elevator car, and manually operated swing doors on the landings, it provides the best of both worlds.

Preserve your design elements and privacy, while maintaining maximum use of your home. Gently disguised into the natural structure of your home, guests will never even know it's there. [Kindly see Exhibit 42](#)

EL2

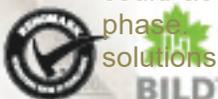
Special Features

- Automatic Sliding Doors on Cab
- Infrared Safety Light Curtain for Added Safety
- Seamless integration into any home
- Custom cab sizes – Maximum flexibility
- Two speed hydraulic valve for soft start and stop
- Load capacities up to 1,500 lbs (where permitted by Code)
- 3-Year Limited Factory Parts Warranty

Miscellaneous

Misc1

From a central vac perspective we offer the traditional vac solution and since your home is actually considered a new home, we can actually run the central vac solution directly hidden into the structure. We were not clear as to which solution set you were going to be standardizing on for this home **as such have not included it in our costing** and will address via change order. Please note in the last few years there has been vast improvements to this technology *offering retractable hidden vacuuming solutions that recess direct into the structure of the home*. Clearly these units are at a different price point but tend to be much more powerful and offer much more functionality. In the past one of the greatest problems with traditional central vac solutions was storage of the cleaning hoses and physically carrying them from level to level. With new construction only, we entirely open the structure as such we could access if this solution could be physically built into your home after the demo phase. This newer technology also offers independent stand alone grading solutions, which we can also demo at our décor centre for your consideration. We



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have not had an opportunity review this technology with you in any detail. Please advise our resources if you have any interest in either of the central vac solution technology prior to closing in the structure and we could handle through the change order process.

Misc2 Note that we do not keep on re-drawing rooms for the purposes of the schedules. Finished home is based on what is included in this schedule, as selected by client and not on what is included in the original renderings or subsequent ones. This schedule supersedes other drawings and previous client discussions and has gone into significant effort and detail to cover what our collective scope of work is as we understand it, based on what we have been advised to deliver and is budgeted for.

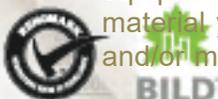
Misc3 Lifestyles will provide all labor associated with demolition as detailed in the demolition section as required. Lifestyles will facilitate waste removal services via a third-party handling service and transfer the entire fees with a 10% incremental handling fee which will be facilitated via Change Orders and due upon receipt. Lifestyles have forged preferred relationships with highly reputable waste management services that safely dispose of waste materials and whose fee structures are below consumer industry standards.

Misc4 Mirrors will be installed in all bathrooms. Standard full frameless mirrors that will rise from counter top or backsplash to ceiling or crown.

Misc5 From a costing perspective this schedule A also assumes that you had adequate services physically coming and leaving the residence for this new scope of work such as water, hydro, gas and grey water. Clearly we have no knowledge on your personal property and how existing service are run or not run and costing is based on no need to be corrected and or modified by Lifestyles.

Misc6 Related to landscaping and existing walkways, porches, drives walkways, flowerbeds, trees, new lawns and plant materials, etc., our learning is that typically home owners need to see the finished product, window locations etc., and have the home completed prior to making decision on exterior landscaping requirements as such we do not even attempt to try and address a complete landscaping package and or repairs until the project is complete. In addition, when excavation has occurred it is highly recommended to delay drive repairs, walk way repairs etc., until complete settling has occurred which is ideally a two-year window.

Misc7 We cannot warrantee any existing walkways, drives (from any damage), landscaping elements/plants and/or sod. There will be extensive man power and very heavy equipment on site physically removing almost the entire home. If you have any plant material you wish to safe guard we would strongly suggest that is be design off site and or move out of extensive vehicle traffic that is anticipated on this site. Our site



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resource would be happy to make recommendations on where items could be relocated to during this undertaking.

Misc8 We have not allocated any budgets for exterior landscaping undertakings at this time. We have had great feedback on work we have undertaken on behalf of our clients related to walks ways, drives and landscaping over the years and can certainly work on this if requested.

Misc9 One smoke and carb detector hard wired as a unit has been accounted for each level with battery backup.

Misc10 The safety board also requires now that we also wire one fire detector into each bedroom and wire back to main units so all units will operate as a unity. This line item addresses the associated labour and material costs to ensure we are in full compliance and grant occupancy by the city of Burlington.

Misc11 Kindly see Exhibits 43 to 48 which captures our conceptual understanding of the basic concept floor layout that you are asking us to work with for the purposes of securing permits from the City of Burlington, clearly as discussed there can be changes to these concept drawings based on structural, zoning and all other governing bodies.

Misc12 There will be a basic Cement pad added in the new garage floor addition. Please note that this cement pad will be tying into an existing garage floor and will not connect perfectly.

Misc13 Please note in our schedule of work we have gone to significant efforts to map out possible locations for fixtures, and switch locations. Ultimately site conditions and structure on site can cause locations to be changed to meet regulatory requirements and/or for simple better application and flow of the space. Final configuration off all elements will be ultimately site confirmed and without a question can and will change from concept designs as we have to work under local builder code and all governing bodies that have a legal jurisdiction over the property. The lifestyles team is about continual improvement. We have consistently been told by our clients that our end delivery is in fact better than our concept renderings which is not typical in the industry. We look forward to a successful build!





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conservationhalton.ca

Protecting the Natural
 Environment from
 Lake to Escarpment

May 28, 2018

Ivan Rudyk & Shelley Long
 835 Spring Gardens Road
 Burlington, Ontario
 L7T 2J6

BY MAIL AND EMAIL

Dear Mr. Rudyk & Ms. Long:

**Re: Proposed 2-storey addition, rear balcony, covered front porch and on-grade patio within the valley of Grindstone Creek
 835 Spring Gardens Road
 City of Burlington
 CH File: A/18/B/50**

Proposal

Please find enclosed **Permit No. 5927** issued in accordance with Ontario Regulation 162/06, for the above noted proposal.

Staff have reviewed the following files regarding the above noted proposal:

- *Surveyor's Real Property Report – redline revised by the applicant* prepared by Mackay Mackay & Peters June 8, 2011, received by Conservation Halton May 10, 2018, and stamped approved May 28, 2018.

The proposal includes the construction of a second storey, a rear cantilevered balcony and front covered porch additions to the existing dwelling, and to remove an existing deck to construct a new on-grade patio. The property is located adjacent to lands traversed by a tributary of Grindstone Creek and contains a portion of the flooding and erosion hazards associated with that watercourse. Specifically, the property is considered to be located entirely within the valley of Grindstone Creek. The property is also located adjacent to a wetland greater than 2 hectares in size. Conservation Halton (CH) regulates a distance of 15 metres from the greater of the flooding or erosion hazards associated with Grindstone Creek and 120 metres from the limit of wetlands which are greater than 2 hectares in size. CH staff attended the site May 23, 2018 to assess the top of bank erosion hazard associated with the valley in relation to the proposed development. Based on that site visit, staff is of the opinion that the proposal meets Policy 3.37.1 and Policy 3.37.2 of Conservation Halton's *Policies and Guidelines for the Administration of Ontario Regulation 162/06 and Land Use Planning Document*, Revised August 11, 2011.

Based on the above, this permit is approved with the following conditions:

- a. That disturbed areas be stabilized immediately following the completion of construction to the satisfaction of Conservation Halton.
- b. That effective sediment and erosion control measures be installed prior to starting work, maintained during construction and fully removed once all disturbed areas have been stabilized. That site conditions be monitored and that the sediment and erosion control measures be modified if site conditions warrant it.
- c. That excess fill (soil or otherwise) generated from the proposed works shall not be stockpiled or disposed of within any area regulated by Conservation Halton, pursuant to Ontario Regulation 162/06.

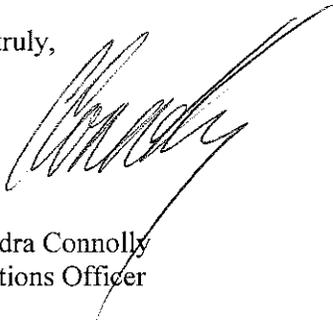
Please be sure that you read and understand all conditions listed on the enclosed Permit (and included below). Please also note that contravention of a Permit, or the terms and conditions of a Permit, is considered an offence under Section 28(16) of the *Conservation Authorities Act*. It is your responsibility to ensure that any person working under the authority of this Permit is familiar, and complies with, the terms and conditions.

Conservation Halton must be contacted a minimum of 48 hours prior to commencement of construction. This Permit or a copy thereof as well as all approved drawings must be available at the site. Any changes to the approved design or installation methods must be reviewed and approved by Conservation Halton staff prior to their implementation. This Permit is valid two years from the dated it is issued.

Please be advised that should you have any objection to any of the conditions of the permit, you are entitled to request a hearing before the Authority, in accordance with Section 28(12) of the *Conservation Authorities Act*. A written notice of your request for a hearing must be received by staff within 30 days of the date of this letter. Please note that if a hearing has been requested, this permit approval is withdrawn until such time as the hearing results have been finalized and commencement of any site alteration must not occur until the results of the Hearing are determined.

We trust the above is of assistance in this matter. Should you require further information, please contact staff at extension 2301.

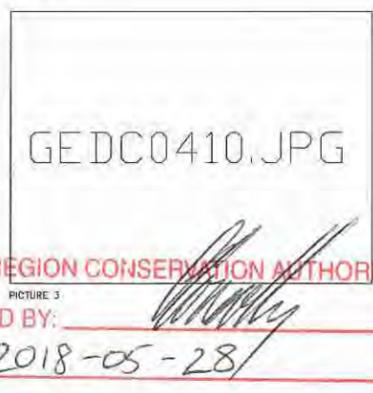
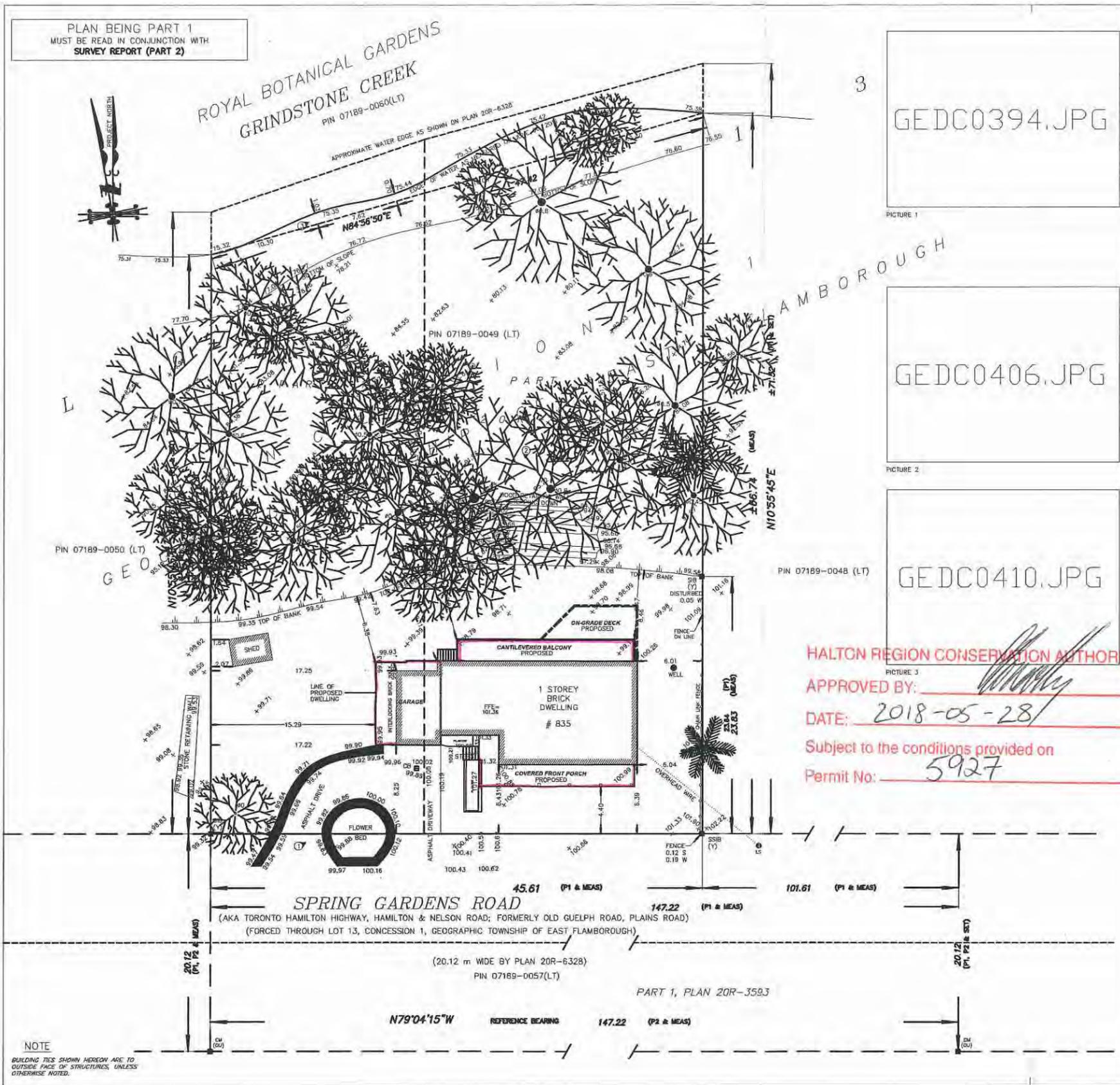
Yours truly,



Cassandra Connolly
Regulations Officer

Encl. 1

Cc: Planning Department – City of Burlington (Permit and Drawings)
Peter Vozikas, Empire Design Company, Agent (Permit and Drawings by Email)



HALTON REGION CONSERVATION AUTHORITY
 APPROVED BY: *[Signature]*
 DATE: 2018-05-28
 Subject to the conditions provided on
 Permit No: 5927

PLAN BEING PART 1
 MUST BE READ IN CONJUNCTION WITH
 SURVEY REPORT (PART 2)

SURVEYOR'S REAL PROPERTY REPORT
 WITH TOPOGRAPHIC INFORMATION
 PLAN OF
PART OF LOT 13
 CONCESSION 1
 GEOGRAPHIC TOWNSHIP OF EAST FLAMBOROUGH
 BEING IN THE
CITY OF BURLINGTON
 REGIONAL MUNICIPALITY OF HALTON
 SCALE 1 : 250

MackAY, MacKAY & PETERS LIMITED - ONTARIO LAND SURVEYORS
 © 2011

KNOWN AS MUNICIPAL No. 835 SPRING GARDENS ROAD

REPORT SUMMARY (PART 2) (to be read in conjunction with Part 1)

LAND REGISTRY OFFICE TITLE INFORMATION ON SUBJECT PROPERTY INCLUDING BOUNDARIES, EASEMENTS AND RIGHT OF WAYS - DATE JUNE 08, 2011.

REGISTERED EASEMENTS AND/OR RIGHTS-OF-WAY:
 NONE

ADDITIONAL REMARKS:
 FOR DETAILS ABOUT THE LOCATION OF THE FENCE AND FRONT INTERLOCKING WALKS SEE PLAN ALL TIES ARE REFERRED TO PROJECT NORTH

Note:
 MacKAY, MacKAY & PETERS LIMITED grants IVAN RUDYK ("The Client(s)") their solicitor and other related parties permission to use "Original Copies" of the Surveyor's Real Property Report in transactions involving "The Client(s)".

"METRIC" DISTANCES SHOWN ON THIS PLAN ARE IN METRES AND CAN BE CONVERTED TO FEET BY DIVIDING BY 0.3048

Legend:

■ DENOTES A SURVEY MONUMENT FOUND	# DENOTES ROUND
□ DENOTES A SURVEY MONUMENT PLANTED	WT DENOTES WITNESS MONUMENT
SB DENOTES STANDARD IRON BAR	CC DENOTES CUT CROSS
SSB DENOTES SHORT STANDARD IRON BAR	CP DENOTES CONCRETE PIN
IB DENOTES IRON BAR	PN DENOTES PROPERTY IDENTIFICATION NUMBER
C DENOTES CENTRE LINE	(OU) DENOTES ORIGIN UNBORN
CB DENOTES CATCH BASIN	P1 DENOTES PLAN 20R-6328
FTE DENOTES FIRST FLOOR ELEVATION	P2 DENOTES PLAN 20R-3593
LS DENOTES LIGHT STANDARD	

Benchmark Note:
 CITY OF BURLINGTON BENCHMARK No. 33 ELEVATION = 116.441 METRES
 WATERDOWN ROAD OVERPASS OVER HIGHWAY #403; TABLET IN THE TOP OF THE EAST SIDEWALK OF WATERDOWN ROAD, 6.05 m NORTHERLY FROM THE SOUTHWEST CORNER OF THE ABUTMENT WALL AND 18.8 m NORTHERLY FROM THE SOUTHWEST CORNER OF THE OVERPASS ABUTMENT OVER HIGHWAY #403, 0.2 m FROM THE CURB. HORIZONTAL CONTROL MONUMENT D01843078

Bearing Reference:
 BEARINGS ARE ASTROMONIC AND ARE REFERRED TO THE SOUTHERLY LIMIT OF SPRING GARDENS ROAD, AS SHOWN ON PLAN 20R-6328, HAVING A BEARING OF N74°08'15" E.

Surveyor's Certificate:
 I CERTIFY THAT:
 1. THIS SURVEY AND PLAN ARE CORRECT AND IN ACCORDANCE WITH THE SURVEYS ACT, THE SURVEYORS ACT AND THE LAND TITLES ACT AND THE REGULATIONS MADE UNDER THEM.
 2. THE SURVEY WAS COMPLETED ON THE 6th DAY OF JUNE, 2011.

JUNE 08, 2011
 DATE

MACKAY MACKAY & PETERS LIMITED
 Established 1906

ONTARIO LAND SURVEYORS
 3380 SOUTH SERVICE ROAD
 BURLINGTON, ONTARIO L7N 3J5
 PHONE: (905) 639-1375
 FAX: (905) 333-9544
 e-mail: halton@mmplimited.com
 Records of Sewell & Sewell and Yates & Yates LTD.

DRAWN BY:	A.S.
PARTY CHIEF:	J.M.
CHECKED BY:	X
PROJECT NO.:	11-079



NOTE
 BUILDING TIES SHOWN HEREON ARE TO OUTSIDE FACE OF STRUCTURES, UNLESS OTHERWISE NOTED.

IN THE MATTER OF The *Conservation Authorities Act*, R.S.O. 1990, Chapter 27

AND IN THE MATTER OF Conservation Halton Permit #5927 Pursuant to Regulations made under Section 28, Subsection 12 of the said Act and in accordance with Ontario Regulation 162/06 Subsection 8.

B E T W E E N :

IVAN RUDYK and SHELLEY YOUNG

Applicants

and

HALTON REGION CONSERVATION AUTHORITY

Respondent

**AFFIDAVIT OF SHELLEY YOUNG
(Affirmed November 1, 2022)**

I, SHELLEY YOUNG, of the City of Burlington, in the Province of Ontario, MAKE OATH AND SAY:

1. I am one of the Applicants in this proceeding and as such I have knowledge of the matters herein deposed of. Where matters are stated as being based on information and belief, I have stated the source of my information and the fact of my belief.
2. In or about 2007, my husband, Ivan Rudyk (“Ivan”), and I purchased the property known municipally as 835 Spring Gardens Road, Burlington, Ontario, L7T 1J6 (“Subject Property”).
3. The Subject Property consist of a double residential lot with a bungalow back-split single-family dwelling backing on a ravine (“Dwelling”).
4. According to Municipal Property Assessment Corporation (“MPAC”) records, the Dwelling was originally built in 1957.

5. Attached hereto and marked as **Exhibit A**” to this my Affidavit is a true copy of the MPAC records pertaining to the Subject Property.

Replacement of the Retaining Wall

6. In or about 2011, Ivan and I decided to replace the existing, rotting ‘railway tie’ retaining wall atop the ravine on the North side of the Subject Property (“Retaining Wall”) with a vegetated reinforced slope system, also known as ‘the living wall’ solution (“Living Wall”), with the aim of stabilizing the slope.

7. The decision to utilize the Living Wall solution was made after Halton Region Conservational Authority (“Conservation Halton”) refused to allow us to replace the existing Retaining Wall with a new ‘railway tie’ wall, which Conservation Halton claimed would not meet their ‘100-year solution’ requirements.

8. Ivan and I hired LVM Inc., a large engineering firm with expertise in slope stabilization works, to conduct a full geotechnical investigation of the ravine slope at the Subject Property.

9. We also hired Organic Express Inc., a company specializing in sediment and erosion control, to implement the Living Wall using ‘manta ray’ anchors, Filtrex erosion and sediment control products, and live staking and seed mixture.

10. Attached hereto and marked as **Exhibit “B”** to this my Affidavit is a true copy of the proposal prepared by Organic Express Inc. that includes the geotechnical assessment prepared by LVM Inc., submitted to Conservation Halton in connection with the permit application for the Living Wall project.

11. In or about February of 2014, after a lengthy approval process and multiple revisions to the original proposal, Conservation Halton was finally satisfied that the Living Wall met their ‘100-year solution’ criteria and issued a permit.

12. Attached hereto and marked as **Exhibit “C”** to this my Affidavit is a true copy of the 2014 permit issued by Conservation Halton in connection with the Living Wall project, together with Conservation Halton’s correspondence pertaining to the approval process.

13. In or about July 2014, the Retaining Wall was removed and replaced with the Living Wall. To my surprise, Conservation Halton staff did not visit the Subject Property even once to inspect the progress or final results of the project. I took that to mean that Conservation Halton had no concerns about slope stability and safety at the Subject Property.

Renovation of the Dwelling

14. In or about late 2017, Ivan and I decided to renovate and modernize the Dwelling (“Renovation Project”). One of the aims of the Renovation Project was to make the residence more physically accessible, as I have health problems stemming from a serious car accident that I was involved in several year ago.

15. Another reason for the Renovation Project was the presence of toxic mould discovered at the Dwelling.

16. Attached hereto and marked as **Exhibit “D”** to this my Affidavit is a true copy of the environmental investigation report prepared by Robert P. Steller, a certified Building Biology Environmental Consultant and Inspector, on October 10, 2017.

17. In or about March of 2018, Ivan and I hired a professional builder, Lifestyles by Barons (“Lifestyles”), to carry out the Renovation Project. As our agent, Lifestyles hired the Empire Design Company (“Empire”) to prepare design drawings and other materials necessary for the approval process.

18. Lifestyles and Empire obtained various permits and approvals in connection with the Renovation Project, including a minor variance from the City of Burlington’s Committee of Adjustments, a development permit from Conservation Halton (“Conservation Permit”), and a building permit from the City of Burlington (“Building Permit”).

19. Attached hereto and marked as **Exhibit “E”** to this my Affidavit is a true copy of the Conservation Permit.

20. Attached hereto and marked as **Exhibit “F”** to this my Affidavit is a true copy of the Building Permit.

21. As part of the permit review process, on or about May 23, 2018, Conservation Halton Regulations Officer, Cassandra Connelly (“Ms. Connelly”), briefly visited the Subject Property. I was present during Ms. Connelly’s visit, which lasted approximately five minutes. Ms. Connelly did not inspect the ravine side of the Subject Property. During this visit, Ms. Connelly verbally approved the Construction Project. Later that day, Ms. Connelly sent me an email confirming approval of the Renovation Project conditional upon payment of an application fee and stating that Conservation Halton had no concerns about the proposed renovation.

22. Attached hereto and marked as **Exhibit “G”** to this my Affidavit is a true copy of Ms. Connelly’s May 23, 2018 email.

23. As I understood it, the various permits and approvals obtained by Lifestyles allowed for our home to be renovated on the existing foundation and within the existing building footprint, to expand the single-car garage into a two-car garage, to increase the height of the building, and to add a 2-storey addition.

24. Lifestyles hired professional designers and engineers to prepare the necessary design drawings, which were ultimately accepted by the City of Burlington (“Design Drawings”). Ivan and I were not directly involved in the process of obtaining permits, having outsourced this task to professionals.

25. Attached hereto and marked as **Exhibit “H”** to this my Affidavit is a true copy of the Design Drawings.

26. The Design Drawings contemplated keeping the existing South and East exterior walls of the Dwelling (“South and East Walls”) as a cost-saving measure.

Collapse of the South and East Walls

27. In or about January of 2019, Lifestyles proceeded with the demolition stage of the Renovation Project. Although I was not personally present when it happened, it was

explained to me by Gordon Baron (“Mr. Baron”), the president of Lifestyles, that the South and East Walls partially collapsed as soon as the roof was removed. It was further explained to me by Mr. Baron that the collapse was a result of the South and East Walls resting against framing that had rotted out at the base due to inadequately designed footings, which lacked underpinnings and water/frost protection, and were apparently installed in the 1980’s as part of an earlier renovation of the Subject Property by its previous owners (“1980’s Renovation”).

28. Prior to the commencement of the Renovation Project, I had no knowledge of the 1980’s Renovation or the deficiencies relating to it. Ivan and I purchased the Subject Property approximately two decades after the 1980’s Renovation had been undertaken.

29. Attached hereto and marked as **Exhibit “I”** to this my Affidavit is a true copy of the building permit in connection with the 1980’s renovation obtained from the City of Burlington building department in September of 2020.

30. I was informed by Mr. Baron that Lakeland Engineering, the engineering firm that reviewed and stamped the Design Drawings for the Renovation project, investigated the collapse of the South and East Walls and determined that the construction site had become structurally unsafe and required immediate attention. I was further informed by Mr. Baron that Lifestyles had no choice but to demolish what was left of the South and East Walls and rebuild them with new materials.

31. Mr. Baron also informed me that the new walls were constructed in a way that is functionally identical to the old South and East Walls and that they were built in the same location without increasing the building footprint or living space as directed by the City of Burlington. Given this information, I had no reason to suspect that there would be any issues with the Renovation Project going forward.

First Stop Work Order/Order to Comply

32. To my surprise, on or about March 20, 2019, the City of Burlington issued a stop work order (“First Stop Work Order”) and an order to comply (“First Order to Comply”) in connection with the work taking place at the Subject Property. As I subsequently learned

from my discussions with Mr. Baron, the orders were made after the City of Burlington received a complaint from Conservation Halton alleging that Ivan and I were in breach of the terms of the Building Permit.

33. Attached hereto and marked as **Exhibit “J”** to this my Affidavit are true copies of the First Stop Work Order and First Order to Comply.

34. Conservation Halton did not contact either Ivan or myself regarding their concerns prior to making their complaint to the City of Burlington.

35. On or about March 26, 2019, Conservation Halton issued a notice of violation accusing Ivan and I of being in violation of s. 2 of *Ontario Regulation 162/06* by demolishing the Dwelling and constructing a new structure in its place.

36. Attached hereto and marked as **Exhibit “K”** to this my Affidavit is a true copy of the March 26, 2019 letter from Conservation Halton.

37. Contrary to Conservation Halton’s allegations, Ivan and I did not demolish the Dwelling and build a new structure in its place. As explained in this my Affidavit, the South and East Walls partially collapsed once the roof was removed.

38. On April 4, 2019, Ms. Connelly sent an email to Mr. Baron outlining Conservation Halton’s position and demands.

39. Attached hereto and marked as **Exhibit “L”** to this my Affidavit is a true copy of the April 4, 2019 email from Ms. Connelly to Mr. Baron.

40. Following the issuances of the First Stop Work Order and the First Order to Comply, Mr. Baron and Sanjay Patel (“Mr. Patel”) of Lakeland Engineering engaged in discussions with the City of Burlington regarding the status of the Renovation Project. On May 17, 2019, the Chief Building Official of the City of Burlington, Nick Anastapolous (“Mr. Anastapolous”), formally rescinded the First Stop Work Order after making a finding that the partially collapsed South and East Walls were unsafe and had to be removed and replaced.

41. Attached hereto and marked as **Exhibit “M”** to this my Affidavit is a true copy of the May 17, 2019 email from Mr. Anastasopoulos advising that the Stop Work Order was being rescinded following discussions with Mr. Baron and Mr. Patel and that construction could commence in accordance with the terms of the Building Permit.

42. I am advised by Mr. Baron and verily believe that Conservation Halton was informed of the Chief Building Official’s decision.

43. Attached hereto and marked as **Exhibit “N”** to this my Affidavit is a true copy of the August 12, 2019 email from the office of the Chief Building Official to Conservation Halton confirming that that we were permitted to remove the existing building walls for safety reasons and to continue building in accordance with the approved plans.

44. Following the rescission of the First Stop Work Order, construction at the Subject Property was resumed.

Revocation of the Conservation Permit and Second Stop Work Order/Order to Comply

45. On August 22, 2019, approximately three months after the resumption on the Renovation Project, Conservation Halton issued a letter signed by Kellie McCormack, Senior Manager, Planning and Regulations (“Ms. McCormack”), stating that the Conservation Permit was void effective immediately.

46. Attached hereto and marked as **Exhibit “O”** to this my Affidavit is a true copy of Ms. McCormack’s August 22, 2019 letter.

47. I was dumbfounded to learn that Conservation Halton was revoking the Conservation Permit. It was my understanding that Conservation Halton’s March 26, 2019 notice of violation was overruled by the Chief Building Official and that Ivan and I were given the green light to continue with the Renovation Project. Construction at the Subject Property was resumed in good faith, based on the understanding that all issues relating to the collapse of the South and East Walls had been completely resolved. Conservation Halton did not contact Ivan or myself to discuss their concerns prior to issuing the August 22, 2019 letter.

48. Ms. McCormack's letter acknowledged that s. 8 of *Ontario Regulation 162/06* required Conservation Halton to give advance notice of its intent to cancel the Conservation Permit and to conduct a hearing during which Ivan and I would have the opportunity to show cause as to why the Conservation Permit should not be cancelled. Nevertheless, Ms. McCormack concluded that, in her view, a hearing is "not warranted" in the circumstances of this case. In effect, Conservation Halton has decided to arbitrarily deny Ivan and I the procedural rights afforded to us by s. 8 of *Ontario Regulation 162/06*.

49. In her August 22, 2019 letter, Ms. McCormack also demands that Ivan and I enter into a "voluntary compliance agreement" acknowledging that we violated the terms of the *Conservation Authorities Act* and *Ontario Regulation 162/06* ("Compliance Agreement"). The compliance agreement forwarded for our signature was blank, with no terms or conditions specified.

Attempts to resolve matters out of Court

50. Following the issuance of the August 22, 2019 letter, Mr. Baron reached out to Conservation Halton on our behalf in an effort to resolve the dispute. However, Conservation Halton did not appear interested in a practical resolution at that time. On September 17, 2019 Barbara Veale, Director of Planning and Watershed Management at Conservation Halton ("Ms. Veale"), sent an email to Mr. Baron repeating Conservation Halton's earlier demands.

51. In her September 17, 2019 email, Ms. Veale demands that Ivan and I enter into a compliance agreement with unspecified terms and apply for a new development permit. Attached hereto and marked as **Exhibit "P"** to this my Affidavit is a true copy of Ms. Veale's September 17, 2019 email.

52. I had serious reservations about Conservation Halton's proposal, in particular the demand that Ivan and I admit to various legal violations. I strongly disagree with the assertion that Ivan and I have violated the terms of the *Conservation Authorities Act* and/or *Regulation 162/06*. In addition, I was concerned that by "admitting" to the various violations suggested by Conservation Halton, Ivan and I would be exposing ourselves to quasi-criminal liability under the *Provincial Offences Act*.

53. It turns out that my concerns about self-incrimination were well-founded. Conservation Halton eventually charged Ivan and I with various offences (more than two years after the events in question). Those matters are still ongoing. Ivan and I have denied all liability and vigorously defending against Conservation Halton's allegations. Had we signed the compliance agreement that Conservation Halton wanted us to sign, I have no doubt that our "admissions" would have been used against us as evidence of our guilt.

54. I also note that there is no legal requirement for a property owner to enter into a compliance agreement. In fact, the Compliance Agreement notes this very fact at paragraph 1 of the section called "Terms and Conditions". And yet, Conservation Halton made it clear that they would not work with us without the signed Compliance Agreement.

55. I was also concerned about Conservation Halton's demand that Ivan and I apply for a new construction permit. We are doing a renovation on an existing foundation, not building a brand-new house. It is my understanding that a new development would never be allowed on our lot. By agreeing to apply for a "new development", Ivan and I would be severally prejudicing our application.

Legal proceedings

56. Because of Conservation Halton's refusal to work with us, Ivan and I had no choice but to commence a legal proceeding against Conservation Halton. On January 26, 2022, the Divisional Court ruled that Conservation Halton's revocation of the Conservation Permit without a hearing was illegal. The Divisional Court reversed the said revocation and restored the Conservation Permit.

57. The Divisional Court also awarded us \$100,000 in legal costs. In making this very substantial costs award, the Divisional Court cited the fact that Conservation Halton's actions were both "unreasonable and procedurally unfair."

58. Attached hereto and marked as **Exhibit "Q"** to this my Affidavit is a true copy of the January 26, 2022 decisions of the Divisional Court.

59. Conservation Halton attempted to appeal the aforesaid costs award but its appeal was denied. Conservation Halton was ordered to pay an additional \$5,000.00 in costs by the Court of Appeal.

60. Attached hereto and marked as **Exhibit “R”** to this my Affidavit is a true copy of the June 6, 2022 decisions of the Court of Appeal dismissing Conservation Halton’s motion for leave to appeal.

61. I understand that in addition to paying our legal costs, Conservation Halton has incurred significant legal costs in connection with fees payable to their own counsel. The costs outline submitted to the Divisional Court by Conservation Halton in December of 2021 suggests that Conservation Halton’s legal fees and disbursements at that time were \$432,655,38. That does not include costs in connection with the subsequent attempted appeal or the provincial Offences Act proceedings commenced by Conservation Halton.

62. Attached hereto and marked as **Exhibit “S”** to this my Affidavit is a true copy of the costs outline submitted to the Divisional Court by Conservation Halton.

The Instant Proceeding

63. Following the Divisional Court’s ruling, Conservation Halton issued a notice of hearing to cancel the Conservation Permit in accordance with the relevant regulation. Attached hereto and marked as **Exhibit “T”** to this my Affidavit is a true copy of the Notice of Hearing to cancel Permission.

64. Ivan and I have retained a geotechnical engineering firm, Toronto Inspection, to prepare a geotechnical report addressing slope stability at the construction (“Geotechnical Report”). This report was commissioned specifically at the request of Conservation Halton, who has taken the position that a geotechnical report was required given the nature and scope of the construction project.

65. Toronto Inspection has recently completed the Geotechnical Report. I am advised by Shan Goel (“Goel”), the engineer who is responsible for the Geotechnical Report, that it was prepared in cooperation with and was peer reviewed by Billy Singh (“Mr. Singh”), an

independent engineer with Terraprobe Inc., who had been retained by Conservation Halton specifically for this project. I am further advised by Mr. Goel that Mr. Singh has approved the final version of the Geotechnical Report.

66. Attached hereto and marked as **Exhibit “U”** to this my Affidavit is a true copy of the Geotechnical Report.

67. I note that Section 6 of the Geotechnical Report contains a recommendation that helical piles be installed to support the north perimeter wall. The Geotechnical Report further concludes that subject the aforesaid recommendation, the proposed house can safely remain in its current location.

68. Ivan and I accept Toronto Inspection’s recommendations with respect to the installation of helical piles to support the northern perimeter wall and agree to install them in the event the said recommendation is made a condition of the Conservation Permit.

69. I understand that other than the installation of helical piles, there are no remaining technical issues precluding construction in accordance with the already-approved building drawings.

70. I make this Affidavit in connection with the upcoming November 1, 2022 hearing and for no other or improper purpose.

Affirmed remotely)
at the City of Burlington)
in the Province of Ontario)
before me at the City of Toronto)
in the Province of Ontario)
on November 1, 2022)
in accordance with O. Reg 431/20,)
Administering Oath or)
Declaration Remotely)


Shelley Young



Arkadi Bouchelev
Commissioner for Taking Oaths, etc.

Exhibits Index

1. **Exhibit “A”** – MPAC records pertaining to the Subject Property
2. **Exhibit “B”** – proposal prepared by Organic Express Inc. (includes geotechnical assessment prepared by LVM Inc.) in connection with the “Living Wall project
3. **Exhibit “C”** –2014 permit issued by Conservation Halton in connection with the Living Wall project (including correspondence pertaining to the approval process)
4. **Exhibit “D”** – environmental investigation report
5. **Exhibit “E”** – Conservation Permit
6. **Exhibit “F”** – Building Permit
7. **Exhibit “G”** – Ms. Connelly’s May 23, 2018 email
8. **Exhibit “H”** – Design Drawings
9. **Exhibit “I”** – building permit in connection with the 1980’s renovation
10. **Exhibit “J”** – First Stop Work Order and First Order to Comply
11. **Exhibit “K”** – March 26, 2019 letter from Conservation Halton
12. **Exhibit “L”** – April 4, 2019 email from Ms. Connelly to Mr. Baron
13. **Exhibit “M”** – May 17, 2019 email from the CBO advising that construction could commence in accordance with the terms of the Building Permit
14. **Exhibit “N”** – August 12, 2019 email from the office of the CBO confirming that the Applicants were permitted to remove the existing building walls for safety reasons and to continue building in accordance with the approved plans
15. **Exhibit “O”** – Ms. McCormack’s August 22, 2019 letter
16. **Exhibit “P”** – Ms. Veale’s September 17, 2019 email
17. **Exhibit “Q”** – January 26, 2022 decisions of the Divisional Court
18. **Exhibit “R”** – June 6, 2022 decisions of the Court of Appeal dismissing Conservation Halton’s motion for leave to appeal
19. **Exhibit “S”** – costs outline submitted to the Divisional Court by Conservation Halton
20. **Exhibit “T”** – Notice of Hearing to Cancel Permission
21. **Exhibit “U”** – Geotechnical Report

This is **Exhibit “A”** referred to in the Affidavit of Shelley Young, affirmed before me this 1st day of November, 2022.

A handwritten signature in black ink that reads "A. Bouchard" with a checkmark-like flourish at the end.

A Commissioner for taking affidavits

Issue Date:
June 27, 2016

Property Assessment Notice

For the 2017 to 2020
property taxation years



YOUNG SHELLEY JEAN
RUDYK IVAN ANTHONY
835 SPRING GARDENS RD
BURLINGTON ON L7T 1J6

THIS IS NOT A TAX BILL.

The Municipal Property Assessment Corporation (MPAC) is responsible for assessing more than five million properties in Ontario in compliance with the *Assessment Act* and regulations set by the Government of Ontario.

MPAC's updated value of your property is \$821,000

Account information:

Roll Number	24 02 010 104 10200 0000
AboutMyProperty™ Access Key	F009F 68B13 9BABB
Your property's location and description	835 SPRING GARDENS RD CON 1 EF PT LOT 13 RP 20R6328 PARTS 1,2
Municipality	BURLINGTON CITY
School support	English-Public

Assessment overview:

MPAC's assessed value of your property as of January 1, 2016	\$821,000
MPAC's assessed value of your property as of January 1, 2012	\$556,000
Between 2012 and 2016 , your property's assessed value changed by	\$265,000

If you disagree with MPAC's assessment or classification, you can file a Request for Reconsideration and MPAC will review your assessment.

How will my municipality use MPAC's property assessment?

Under the phase-in provision in the *Assessment Act*, an increase in assessed value is introduced gradually. A decrease in assessed value will be introduced immediately. The January 1, 2016 assessed value and classification of your property will be used as the basis for calculating your 2017 to 2020 property taxes, as illustrated below.

Property

Classification: Residential

Tax Year	Assessed Value	Request for Reconsideration Deadline
2016	\$556,000	
2017	\$622,250	October 25, 2016
2018	\$688,500	March 31, 2018
2019	\$754,750	March 31, 2019
2020	\$821,000	March 31, 2020

To learn more about how your property was assessed, see the information on page two of this Notice. For more information on the Request for Reconsideration process, market trends in your area, property assessment and taxation, visit www.aboutmyproperty.ca.

**This Property Assessment
Notice has important
information for you as a
property owner.**

Please review it and file it
away for your records.

No action is required

unless you disagree with
your assessment.

CONTACT US

1 866 296-MPAC (6722)
TTY 1 877 889-MPAC (6722)
Monday to Friday
8 a.m. to 5 p.m.

If you have accessibility
needs, please call us for
assistance.

www.aboutmyproperty.ca

About My
Property.ca

How does MPAC assess my property?

Roll Number:	24 02 010 104 10200 0000
Property summary:	
Property type	Single Family Detached
Property information	Frontage: 149.00 feet Depth: 229.00 feet Lot area: 34,121.00 square feet
Building - exterior square footage	2,155 square feet
Year of construction	1957

For residential properties, there are **five major factors** that generally account for 85% of your property value.

-  Location
-  Age of the property, adjusted for any major renovations or additions
-  Lot dimensions
-  Quality of construction
-  Living area

To establish your property's assessed value, MPAC analyzes property sales in your area. This method, called Current Value Assessment, is used by most assessment jurisdictions in North America. MPAC's assessments and data are also used by banks, insurance companies and the real estate industry.

Have questions about your assessment?

Log on to AboutMyProperty™ to learn more...

Visit www.aboutmyproperty.ca to learn more about how your property was assessed, see the information we have on file, as well as compare it to others in your neighbourhood. Still not sure about your property's assessed value? You have the option to file a Request for Reconsideration. Your deadline to file a Request for Reconsideration is on page one of this Notice.

Log on to www.aboutmyproperty.ca with your Roll Number and Access Key. These are found on page one of this Notice.

Still have questions?

We're here to help. Contact us and one of our property assessment experts will help guide you through your Notice. Have a question about your property taxes? Contact your municipality for assistance.



Ontario's property assessment system



The Municipal Property Assessment Corporation

determines Current Value Assessments and classifications for all properties in Ontario.



Municipalities

determine revenue requirements, set municipal tax rates and collect property taxes to pay for your municipal services.

These services may include:



Police and fire protection



Roads, sidewalks and public transit



Waste management



Parks and leisure facilities



The Provincial Government passes legislation, sets assessment policies and

determines education tax rates. The Province also operates an independent assessment appeal tribunal – the Assessment Review Board (ARB).



The Ontario Property Taxpayer

This is **Exhibit “B”** referred to in the Affidavit of Shelley Young, affirmed before me this 1st day of November, 2022.

A handwritten signature in black ink that reads "A. Bouchard" with a checkmark-like flourish at the end.

A Commissioner for taking affidavits



Private Residence of Mr. Ivan Rudyk

**Proposed Retaining Wall Replacement
835 Spring Gardens Road,
Burlington, ON**

**Submission and Design By: Organic Express Inc.
Geotechnical Report and Drawings By: LVM**

Date: June 07, 2013



324 Governor's Rd. East, RR#1 Paris Ont. N3L 3E1
P: (519) 720-0890 F: (519) 720-0891
www.organic-express.ca / info@organic-express.ca

Private Residence

835 Spring Gardens Road
Burlington, ON
L7T 1J6

Date: June 07, 2013

Attn: Mr. Ivan Rudyk

**Re: Proposed Retaining Wall Replacement
835 Spring Gardens Road,
Burlington, ON**

Please accept the following as a proposal for the Retaining Wall Replacement at the residence of Mr. Ivan Rudyk located at 835 Spring Gardens Road, Burlington. The works required are for the removal and replacement of the existing timber slope stabilization system with a Filtrexx™ Reinforced Severe Slope Stabilization System. This proposal is based on the design by Organic Express Inc. and the geotechnical report and associated plans prepared by LVM. All proposed works to be carried out in accordance with the instructions laid out by LVM and the "Greater Golden Horseshoe Area Conservation Authorities' Erosion and Sediment Control Guidelines".

If you have any questions or concerns, please contact the undersigned.

Organic Express Inc.
Miles Torch, C.E.T., CISEC



Please find the following documentation that forms the complete proposal:

Section 1:	
LVM Reinforced Slope Detail Drawings - 11x17	2 pages
Section 2:	
LVM Geotechnical Investigation Report	16 pages
Section 3:	
Filtrexx™ Severe Slope Stabilization Standard Specifications	10 pages
Section 4:	
Filtrexx™ GrowthMedia Blanket™ Specifications (ESC Guidelines)	4 pages
Section 5:	
Filtrexx™ SiltSoxx™ Specifications (ESC Guidelines)	4 pages
Section 6:	
Manta Ray Soil Anchor Standard Specifications	3 pages

Section 1:

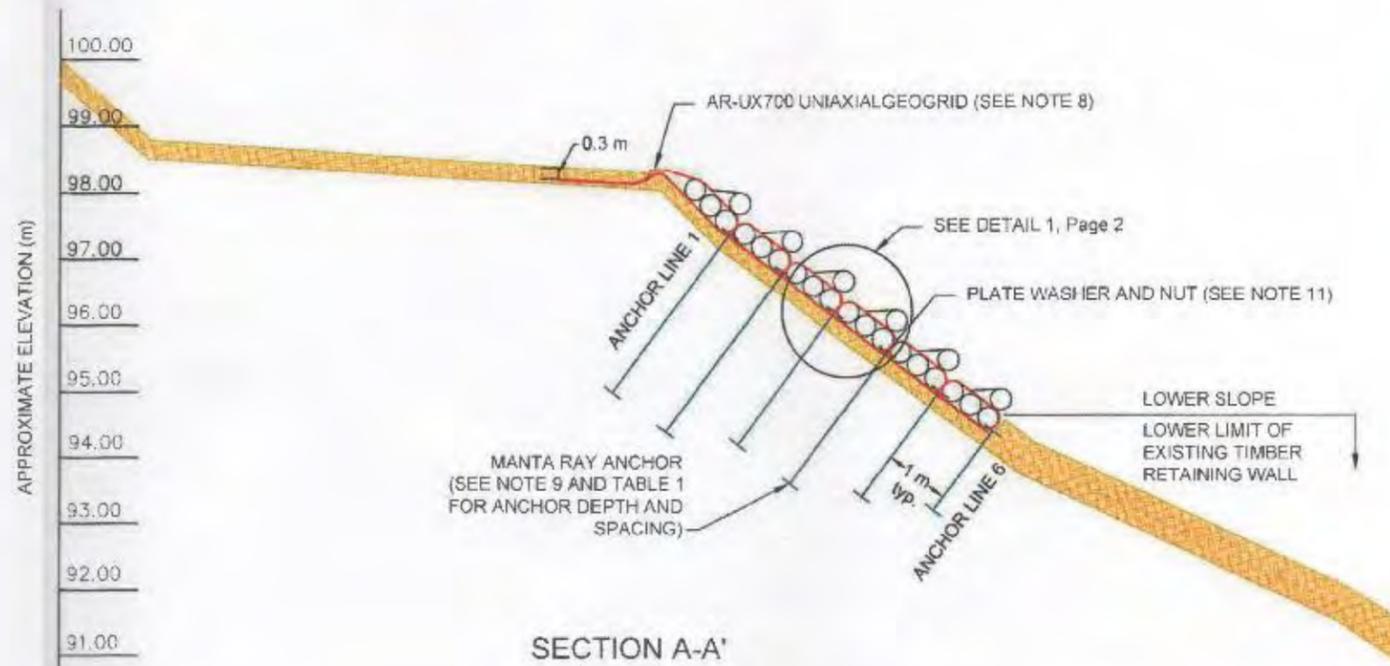
LVM Reinforced Slope Detail Drawings - 11x17

2 pages

TABLE 1

ANCHOR LINE	ANCHOR TYPE	MINIMUM ANCHOR LENGTH (m)	ANCHOR SPACING ALONG SLOPE (m)	MINIMUM LOADING AT PROOF TEST (KN)*
1	MR2	3.0	3.0	40
2	MR2	3.0	2.5	40
3	MR2	2.5	2.0	40
4	MR2	2.5	1.5	40
5	MR2	2.0	1.5	40
6	MR2	1.5	1.0	40

* Note Proof Test to Load Indicated and hold for one minute with less than 12 mm of movement.



SECTION A-A'



PLAN VIEW - EXISTING



REV	Y-M-D DATE	DESCRIPTION	Prepared By	Checked By
01	2013-05-28	Section changed to match Drawing 2 Revision 01	EC	JD
00	2013-05-01	Issued for construction	EC	JD
0B	2013-02-15	Issued for record review	EC	JD
0A	2013-02-13	Issued for review	EC	JD

ISSUES / REVISIONS

ALL DIMENSIONS MUST BE TAKEN AND CHECKED BEFORE BEGINNING THE WORKS

Project
Geotechnical Slope Investigation Slope Repairs
 833 Spring Gardens Road, Burlington, Ontario

Title
REINFORCED SLOPE DETAIL

LVM LVM inc.
 231. St. Jago Street East
 Kitchener/Ontario N2K 2Y5
 Telephone: 519.341.1111
 Fax: 519.741.5122

Prepared: A.Higgins
 Drawn: A.Higgins
 Checked: J.Dietz

Discipline: GEOTECHNICAL
 Scale: VARIES
 Date: 2013-03-12

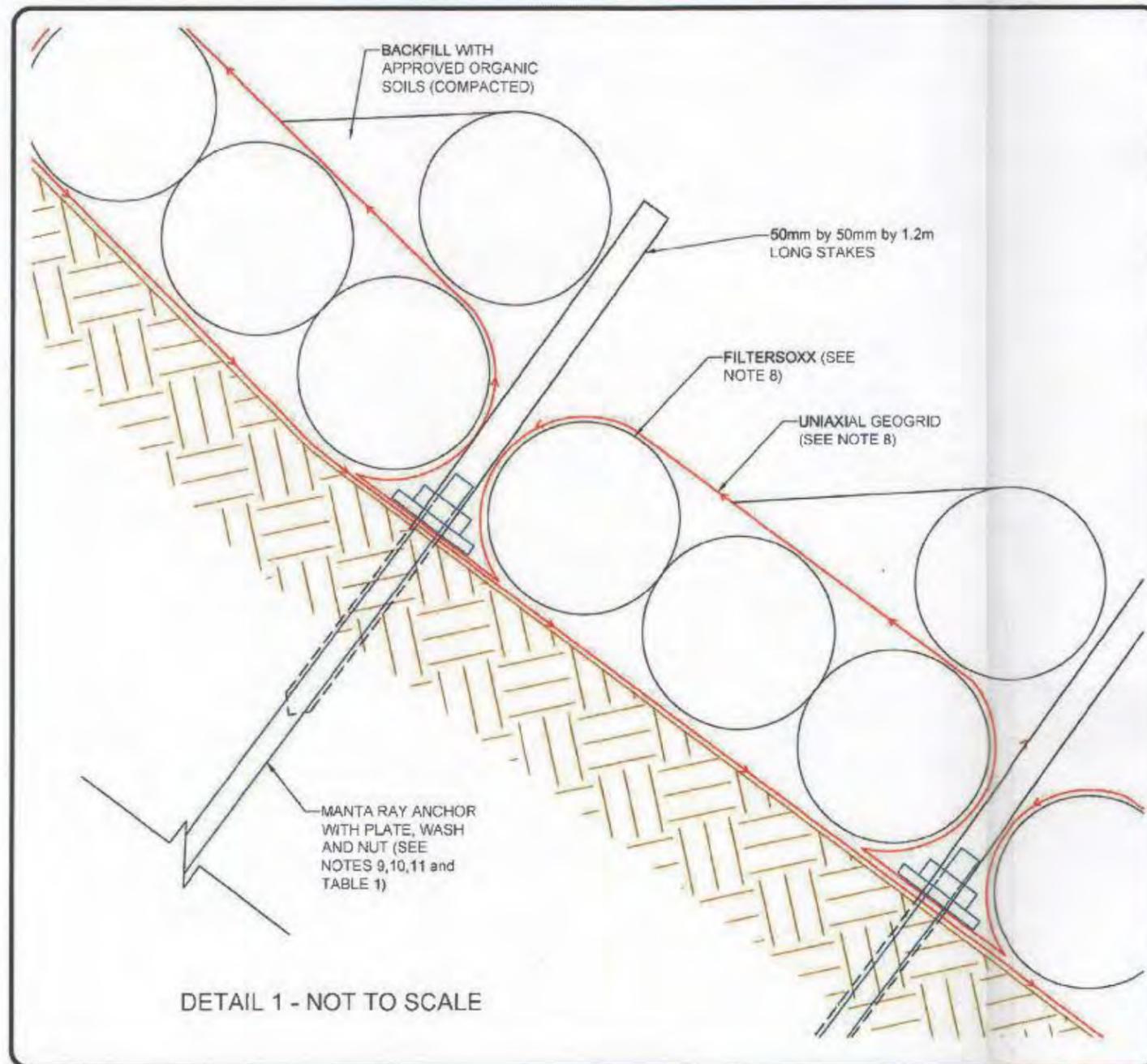
Project manager
J.Dietz
 Sequence no.
 01 of 02

M. Dept. Project
160 B-0001158-2

Disc. Dwg. no. Rev.
GE 001 01

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10 cm
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DETAIL 1 - NOT TO SCALE

NOTES:

1. LOADS: The following loads and soil parameters were assumed for the design of the reinforced slope
 - a) Uniform distributed load of 4.8 kPa
 - b) loose sand $\Phi = 28^\circ$, $\gamma = 18 \text{ kN/m}^3$, $c = 0 \text{ kPa}$
 - c) compact gravel $\Phi = 32^\circ$, $\gamma = 21 \text{ kN/m}^3$, $c = 0 \text{ kPa}$
2. GLOBAL STABILITY: The reinforced slope has been designed for a factor of safety against global instability of 1.3.
3. LOWER SLOPE: The design of the reinforced slope is only for the portion of slope currently occupied by a timber retaining wall. Stability of the slope below the timber retaining wall has not been investigated. Instabilities existing in the lower slope may adversely affect the stability of this reinforced slope design.
4. Prior to the start of work, contractor is to ensure there are no services or buried structures that will be affected by installation of anchors.
5. Ensure all stormwater is directed away from proposed reinforced slope during timber retaining wall removal and reinforced slope construction.
6. Existing timber retaining wall to be removed such that no soil or wall material will fall down the lower slope.
7. Where required to re-establish grades following timber wall removal and prior to anchor installation, place sand in maximum 300 mm thick lifts compacted to at least 95% Standard Proctor Maximum dry density (SPMDD).
8. Place AR-UX700 uniaxial geogrid (or approved equivalent) anchored at top of slope. Place Multifilament HDPP Fitrex Filtersox, 300 mm diameter (seeded) and 50 mm by 50 mm by 1.2 m long stakes. Wrap uniaxial geogrid back up slope and anchor every third row of Filtersox. Filtersox placement to meet Fitrex specifications.
9. Install Manta Ray anchors at locations and to depth and proof loads indicated in Section A-A' and Table 1. Bar to be #6 Grade 75 All-Thread Rebar (ASTM A615).
10. Contractor to familiarize self with Manufacturer's recommendations for installation and geotechnical report for site. It is noted that cobbles or boulders may be present in native soil that may require pre-augering for anchor installation or installation of additional anchors to compensate for any not achieving the minimum anchor length noted in Table 1.
11. Steel plate to be S1K round. Plate dimensions to be at least 150 mm by 500 mm with centre hole sized for bar noted in Note 9. Long direction of plate parallel to Filtersox rows. Couplers and nuts to be sized for bar noted in Note 9 (ASTM A108). Washer to be suitable sized (ASTM F436).
12. The following items must be inspected and approved by geotechnical engineer during construction:
 - Compaction level of any fill placed
 - Type of anchor, bar, plate, washer, and nut
 - Type of geogrid and Filtersox
 - Overlap of adjacent sheets (if relevant)
 - Installed length of anchors
 - Proof load of each anchor
13. Bank to be live staked after initial establishment of vegetation.



01	2013-05-17	Revised Geogrid Location	EC	JD
02	2013-05-01	Issued for construction	EC	JD
03	2013-02-15	Issued for second review	EC	JD
04	2013-02-12	Issued for review	EC	JD
REV	V - M - D DATE	DESCRIPTION	Prepared By	Checked By
ISSUES / REVISIONS				
ALL DIMENSIONS MUST BE TAKEN AND CHECKED BEFORE BEGINNING THE WORKS				

Project

**Geotechnical Slope Investigation
Slope Repairs**

835 Spring Gardens Road, Burlington, Ontario

Title

REINFORCED SLOPE DETAIL

LVM L.V.M. inc.
151, Bridge Street East
Kitchener, Ontario N3K 2V3
Telephone: 519 741 1313
Fax: 519 741 5422

Prepared: A.Higgins
Drawn: A.Higgins
Checked: J.Dietz

Discipline: GEOTECHNICAL
Scale: N.T.S.
Date: 2013-05-15

Project manager: J.Dietz
Sequence no.: 02 of 02

Disc: 160
Project: B-0001158-2
Disc: GE
Dwg no.: 00201

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Section 2:

LVM Geotechnical Investigation Report

16 pages

Mr. Ivan Rudyk

**Slope Repairs
835 Spring Gardens Road
Burlington, Ontario**

Geotechnical Investigation Report

Date: June 22, 2012

Ref. N°: 160-B-0001158-1-GE-R-0001-00

LVM

Mr. Ivan Rudyk

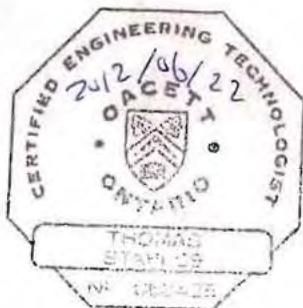
Slope Repairs
835 Spring Gardens Road
Burlington, Ontario

Geotechnical Investigation Report



Prepared by :

Vanessa Marshall, P.Eng.
Project Engineer



Reviewed by :

Thom Staples, C.E.T.
Team Leader, Brantford Operations

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2 INVESTIGATION PROCEDURE	2
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Property and Confidentiality

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Test results mentioned herein are only valid for the sample(s) stated in this report.

LVM inc.'s subcontractors who may have accomplished work either on site or in laboratory are duly qualified as stated in our Quality Manual's procurement procedure. Should you require any further information, please contact your Project Manager."

Client:

Mr. Ivan Rudyk
835 Spring Gardens Road
Burlington, Ontario L7T 1J6

REVISION AND PUBLICATION REGISTER		
Revision N°	Date	Modification And/Or Publication Details
00	2012-06-22	Report Issued

DISTRIBUTION	
2 electronic copies	Mr. Ivan Rudyk and Mr. Mile Torch
1 copy	Mr. Ivan Rudyk
1 copy	Organic Express Inc., Mr. Mile Torch
1 original	File

jmp



INTRODUCTION

LVM inc. is pleased to provide this report with the results of the recently completed geotechnical investigation for the proposed vegetated reinforced slope system. This work was authorized on May 3, 2012, by Mr. Ivan Rudyk following submission of a fee proposal.

It is understood that a vegetated reinforced earth slope is to be constructed at 835 Spring Garden Road in Burlington, Ontario. The purpose of the current investigation was to determine the subsurface soil and groundwater conditions in the area of the proposed vegetated reinforced earth slope and provide geotechnical information for design of the system.

1 GENERAL INFORMATION

The existing slope is approximately 12 m long and 22 m in height, and is over-steepened at approximately 1 horizontal to 1 vertical. The existing upper slope is currently constructed with a timber retaining wall, and it is understood that this retaining wall is to be replaced with a reinforced earth slope system.

2 INVESTIGATION PROCEDURE

2.1 FIELDWORK

The fieldwork for this investigation was carried out on May 29, 2012 and involved the drilling of one borehole (Borehole BH-01-12) to a depth of 9.6 m at the location shown on the appended Site Plan, Drawing 1. The borehole was advanced with a Geoprobe 7822DT supplied and operated by Aardvark Drilling Inc.

Soil samples were recovered from the borehole at regular 0.75 and 1.50 m depth intervals using a 50 mm outside diameter split spoon sampler in accordance with the Standard Penetration Test (SPT) procedure. The SPT N-values recorded are plotted on the appended borehole log.

Groundwater observations were carried out in the open borehole during and upon completion of drilling. The observations are summarized on the borehole log.

The borehole was backfilled with bentonite in accordance with RRO 1990 Regulation 903 as amended to Ontario Regulation 128/03 under the Ontario Water Resource Act.

The fieldwork was observed throughout by a member of our engineering staff who documented the drilling and sampling procedures; recorded the results of the SPT testing; documented the soil stratigraphies; monitored the groundwater conditions; and cared for the recovered soil samples.

The ground surface elevation was surveyed by LVM. The borehole was located relative to existing site features and property lines. The ground surface elevation is referred to the following temporary benchmark (TBM) as provided by the client:

TBM: Top of interlocking brick patio at northwest corner of existing house, at the location shown on Drawing 2.

Elevation: 99.93 m (assumed local datum)

All soil samples secured during this investigation were returned to our laboratory for visual examination, as well as moisture content tests; the results of which are plotted on the borehole log.

The soil samples will be stored for a period of three months from the date of sampling. After this time, they will be discarded unless prior arrangements have been made for longer storage.

3 SUMMARIZED CONDITIONS

3.1 SUBSURFACE SOIL CONDITIONS

We refer to the appended borehole log for soil descriptions and stratigraphies; results of the SPT testing; moisture content profiles; and groundwater measurements. The subsurface stratigraphy at the site generally comprises topsoil overlying native granular deposits of sand and sand and gravel. Descriptions of the various soil deposits encountered are provided in the following paragraphs.

Topsoil was encountered surficially in the borehole and is 300 mm thick. The topsoil generally comprises dark brown silt that was moist at the time of sampling.

Granular soils with a varying amount of gravel are the major soil deposit encountered at the site. The granular deposit varies in composition from sand with trace silt to sand and gravel with trace silt. A layer of silt was encountered at a depth of 5 m in the borehole and is 1.4 m thick. The upper 1.5 m of the granular deposit is very loose near the ground surface based on an SPT N-value of 2 blows per 300 mm penetration of a split spoon sampler. The granular deposit has a compact to dense relative density below 1.5 m, based on SPT N-values of 14 to 43 blows per 300 mm. Moisture contents in the granular deposit range from 5 to 12% indicating damp to moist conditions.

3.2 GROUNDWATER

Groundwater observations and measurements are summarized on the appended borehole log. No free groundwater was encountered in the open borehole indicating the stabilized groundwater table is below the depth of exploration, greater than 9.6 m below existing grades.

4 DISCUSSION AND RECOMMENDATIONS

It is understood that the existing slope at 835 Spring Gardens Road in Burlington is to be reconstructed using vegetated slope stabilization technology. The soils encountered at the site generally comprise granular material which range in gradation from sand with trace silt to sand and gravel with trace silt.

The soils encountered at the site would be classified as Type 3 soils and excavations for construction of the vegetated soil slope should be cut at maximum 1 horizontal to 1 vertical from the base of the excavation based on the current Occupational Health and Safety Act and Regulations for Construction Projects. No free groundwater was encountered at the site, and any surficial water runoff should be redirected away from open excavations.

It is understood that the slope will be stabilized using duckbill anchors and geogrid with a vegetated filtersoxx facia. Any surficial topsoil should be removed from below the proposed slope reinforcement, and the reinforcement founded on native granular material. The soil would be classified as a "medium dense coarse sand and sandy gravel" for design of the anchoring system as per the tables in Manta Ray Mechanical Soil Anchors Brochure. It should be noted that the soil encountered in the upper 1.5 m of the borehole would be classified as "loose fine sand" as per the tables.

The following soil properties may be used in the design of the system.

Table 1 Onsite Soil Properties

GRANULAR DEPOSIT	
Bulk Unit Weight (kN/m ³)	21
Angle of Internal Friction (ϕ)	28°

Table 2 Earth Pressure Coefficients

EARTH PRESSURE COEFFICIENTS	FOR ALL SOIL TYPES
Passive (K_p)	2.77
Active (K_a)	0.36
At-Rest (K_0)	0.53

5 STATEMENT OF LIMITATIONS

The geotechnical recommendations provided in this report are applicable only to the project described in the text and then only if constructed substantially in accordance with the details stated in this report. Since all details of the design may not be known at the time of report preparation, we recommend that we be retained during the final design stage to verify that the geotechnical recommendations have been correctly interpreted in the design. We also recommend that we be retained during construction to confirm that the subsurface conditions do not deviate materially from those encountered in the test pits and to ensure that our recommendations are properly understood.

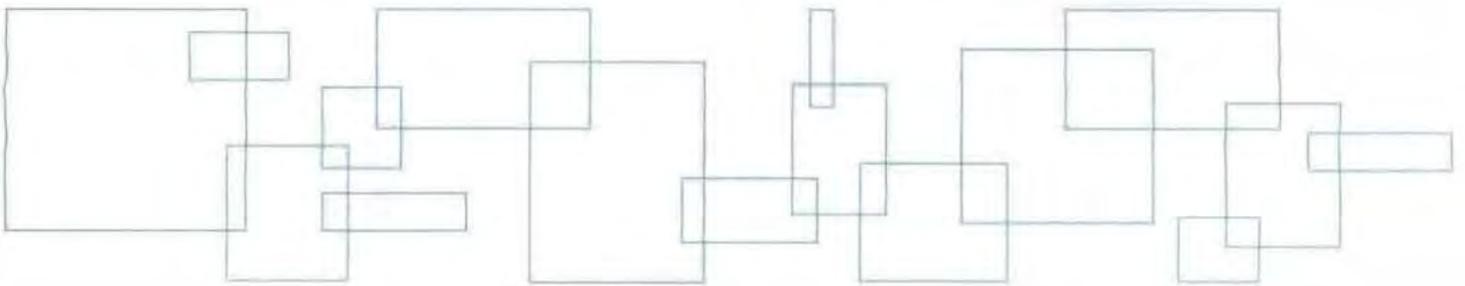
The geotechnical recommendations provided in this report are applicable only to the project described in the text and are intended for the use of the project designer. They are not intended as specifications or instructions to contractors. Any use which a contractor makes of this report, or decisions made based on it, are the responsibility of the contractor. The contractor must also accept the responsibility for means and methods of construction, seek additional information if required, and draw their own conclusions as to how the subsurface conditions may affect them.



It is important to note that the geotechnical investigation involves a limited sampling of the site gathered at specific test hole locations and the conclusions in this report are based on this information gathered. The subsurface conditions between and beyond the test pits will differ from those encountered at the test holes. Should subsurface conditions be encountered which differ materially from those indicated at the test holes, we request that we be notified in order to assess the additional information and determine whether or not changes should be made as a result of the conditions.

Appendix 1 Borehole Logs

List of Abbreviations
Borehole BH-01-12



171
LIST OF ABBREVIATIONS

The abbreviations commonly employed on the borehole logs, on the figures, and in the text of the report, are as follows:

Sample Types		Soil Tests and Properties	
AS	auger sample	SPT	Standard Penetration Test
CS	chunk sample	UC	unconfined compression
RC	rock core	FV	field vane test
SS	split spoon	ϕ	angle of internal friction
TW	thin-walled, open	γ	unit weight
WS	wash sample	w_p	plastic limit
		w	water content
		w_l	liquid limit
		I_L	liquidity index
		I_p	plasticity index
		PP	pocket penetrometer

Penetration Resistances	
Dynamic Penetration Resistance	The number of blows by a 63.5 kg (140 lb.) hammer dropped 0.76 m (30 in.) required to drive a 50 mm (2 in.) diameter 60° cone a distance 0.30 m (12 in.). The cone is attached to 'A' size drill rods and casing is not used.
Standard Penetration Resistance, N (ASTM D1586)	The number of blows by a 63.5 kg. (140 lb.) hammer dropped 0.76 m (30 in.) required to drive a standard split spoon sampler 0.30 m (12 in.)
WH	sampler advanced by static weight of hammer
PH	sampler advanced by hydraulic pressure
PM	sampler advanced by manual pressure

Soil Description		
Cohesionless Soils	SPT N-Value	D_r (%)
Relative Density (D_r)	(blows per 0.30 m)	
Very Loose	0 to 4	0 to 20
Loose	4 to 10	20 to 40
Compact	10 to 30	40 to 60
Dense	30 to 50	60 to 80
Very Dense	over 50	80 to 100
Cohesive Soils	Undrained Shear Strength (C_u)	
Consistency	kPa	psf
Very Soft	less than 12	less than 250
Soft	12 to 25	250 to 500
Firm	25 to 50	500 to 1000
Stiff	50 to 100	1000 to 2000
Very Stiff	100 to 200	2000 to 4000
Hard	over 200	over 4000
DTPL	Drier than plastic limit	
APL	About plastic limit	
WTPL	Wetter than plastic limit	



Ground Elevation: 98.65 m

Borehole Number: BH-01-12

Job N°: B-0001158-1

Drill Date: 2012-05-29

Field Tech: L. Roberts

Drill Method: Geoprobe

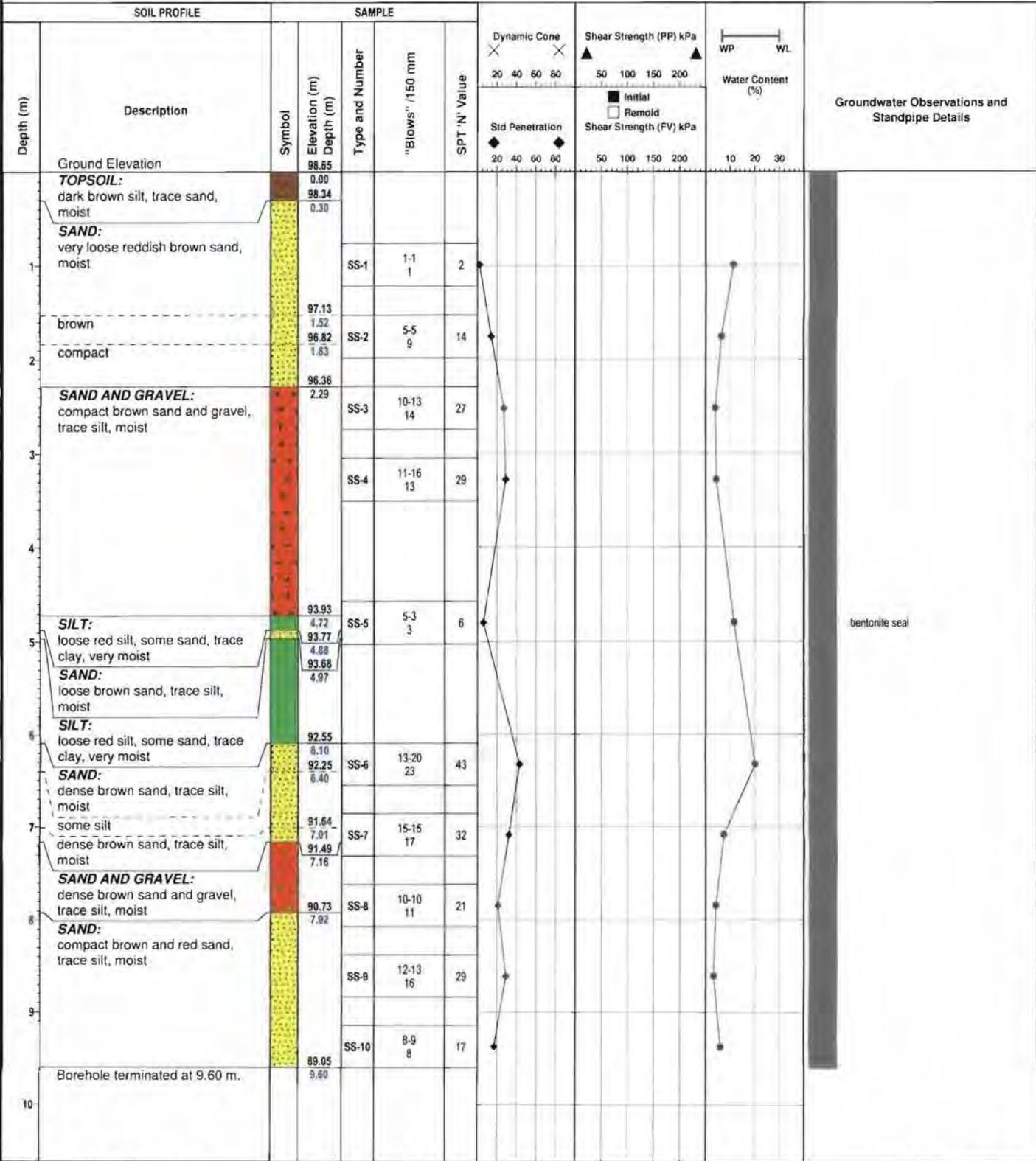
Project: Geotechnical Investigation - Slope Repairs

Location: 835 Spring Gardens Road, Burlington, Ontario

X:\S\W\lvm_ontario\log\Borehole_Log_LVM_Ontario_NEW.sty - Printed: 2012-06-08 10h

Vertical Scale = 1 : 80.0

EO-09-Ge-72 R.1 18.02.2011



Reviewed by: V. Marshall

Drafted by: K. Staples

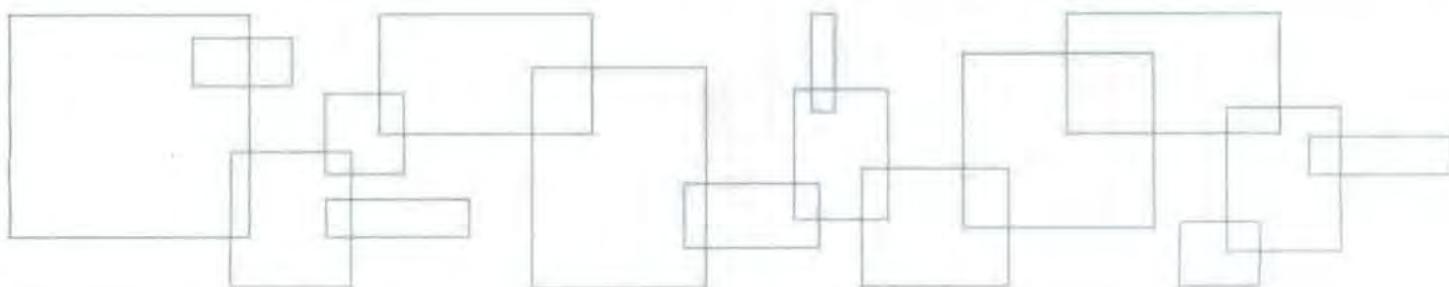
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Notes:

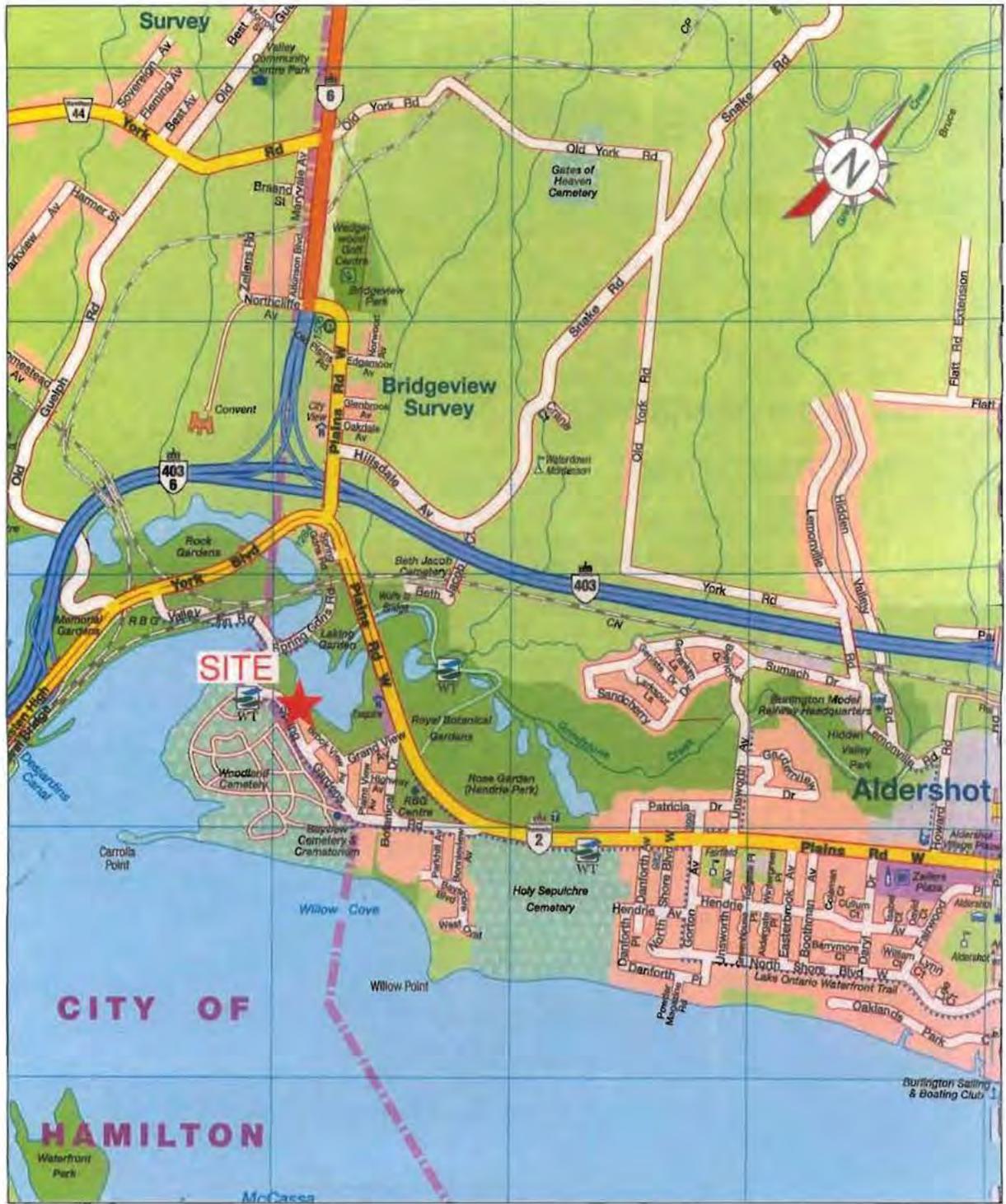
Appendix 2 Drawings

Drawing 1: Location Plan

Drawing 2: Site Plan



10 cm
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3
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NOTES :

1-REFERENCE : MAPART PUBLISHING, Golden Horseshoe Street Atlas, Pages 474 and 468



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Project

GEOTECHNICAL SLOPE INVESTIGATION - SLOPE REPAIRS

835 Spring Gardens Road, Burlington, Ontario

Title

LOCATION PLAN

LVM

LVM inc.

353, Bridge Street East
Kitchener (Ontario) N2K 2Y5
Telephone : 519.741.1313
Fax : 519.741.5422

Prepared **K. Staples**

Drawn **K. Staples**

Checked **V. Marshall**

Discipline **Geotechnical**

Scale **1 : 25,000**

Date **2012-06-21**

Project manager

V. Marshall

Sequence no.

01 of 02

M. dept. Project

160

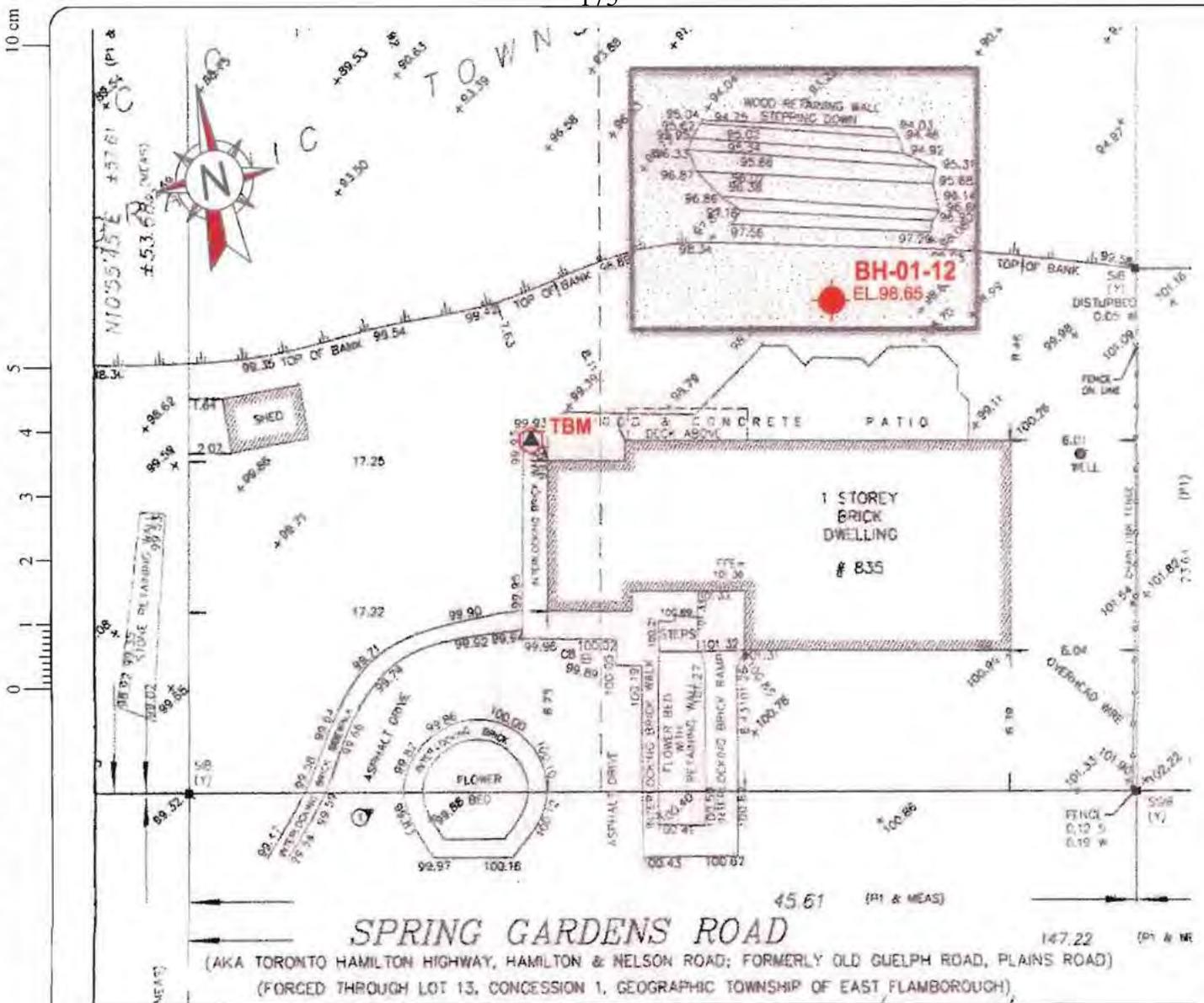
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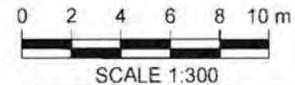


LEGEND :

-  BOREHOLE LOCATION
- EL. 98.65** GROUND SURFACE ELEVATION (m)
-  **TBM** TEMPORARY BENCHMARK

NOTES :

- 1-REFERENCE : Base drawing provided by client.
- 2-TEMPORARY BENCHMARK : Top of interlocking brick patio at northwest corner of existing house as shown. Elevation : 99.93 m (geodetic)
- 3-Drawing scale may be distorted due to file conversion and/or copying. Measurements taken from the drawing must be verified in the field.



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Project

GEOTECHNICAL SLOPE INVESTIGATION - SLOPE REPAIRS

835 Spring Gardens Road, Burlington, Ontario

Title

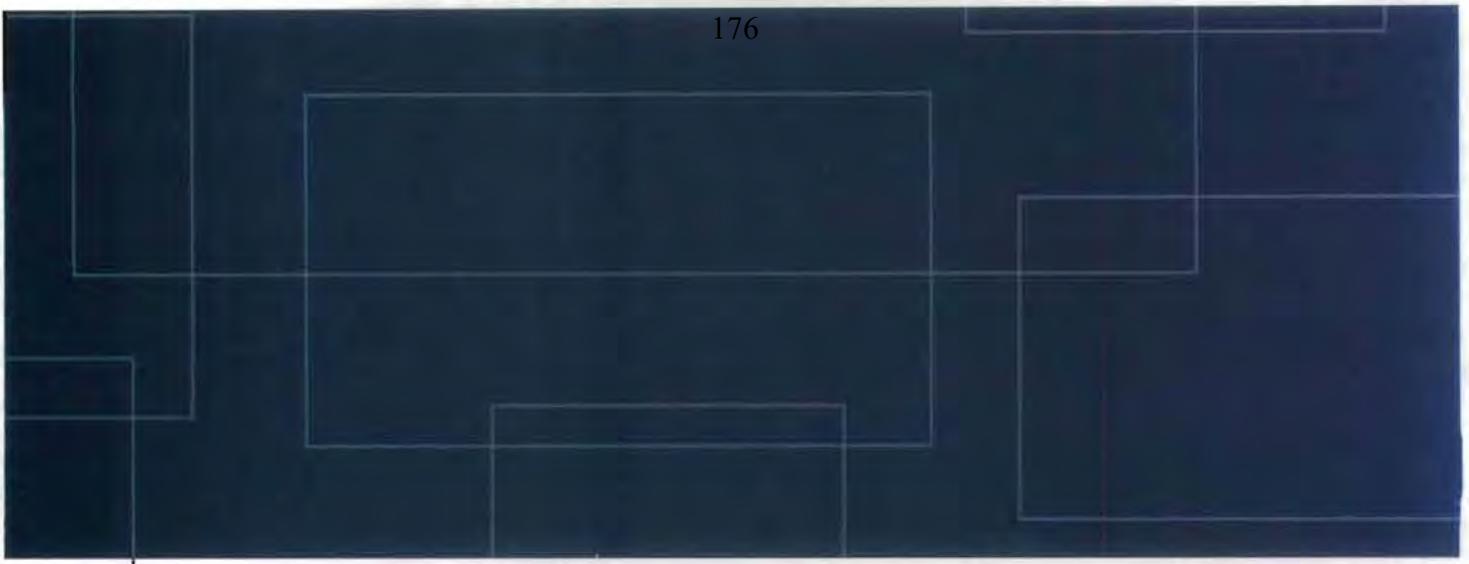
SITE PLAN

LVM

LVM inc.
 353, Bridge Street East
 Kitchener (Ontario) N2K 2Y5
 Telephone : 519.741.1313
 Fax : 519.741.5422

Prepared K. Staples	Discipline Geotechnical	Project manager V. Marshall
Drawn K. Staples	Scale 1 : 300	Sequence no. 02 of 02
Checked V. Marshall	Date 2012-06-21	

M. dept. 160	Project B-0001158-1	Disc. GE Dwg no. 269 Rev. 10
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LVM

Section 3:

Filtrexx™ Severe Slope Stabilization Standard Specifications

10 pages

Filtrex[®] Severe Slope Stabilization

Vegetated Slope Stabilization Technology

PURPOSE & DESCRIPTION

Filtrex[®] Severe slope stabilization is a system that allows for the stabilization of eroded or damaged slopes while creating attractive vegetated landscapes without the use of hard materials such as concrete and steel. Through the use of Filtrex[®] FilterSoxx[™], the Severe slope stabilization system provides superior soil retention and erosion protection while providing an optimum environment for vegetation establishment.

APPLICATION

Before commencing construction of the Severe slope stabilization, it is recommended that the specification guidelines and standard drawings found in this document be reviewed and that any site documentation and engineering documents be consulted. A decision must be made as to whether the wall will be a 'critical' application or 'non-critical' structure which will fall under basic design and construction guidelines. Encountering any of the following will require an engineer's review of the site



Caption Please

and site-specific design prior to construction of a Filtrex[®] Severe slope stabilization:

- Projected wall height exceeds 6 ft (1.8 m) depending on cut/slope situation and local jurisdiction requirements.
- The Severe slope stabilization is to be built on unstable soils such as clays or organic materials.
- There is a possibility of hydrostatic loading or erosion from wave action, drainage or site runoff.
- Loading conditions from slopes or structures on or behind the wall will be exerted on the Severe slope stabilization.
- Geogrid or other mechanical stabilization devices will be incorporated into the Severe slope stabilization.

Constructing a Filtrex[®] Severe slope stabilization involves stacking Filtrex[®] FilterSoxx[™] on top of one another in a recessed fashion on steep slopes to near vertical situations. When required, a variety of grades of geogrid are seamlessly incorporated into the system giving it added structural support and integrity to meet specific environmental and site requirements.

Although the central focus of the Severe slope stabilization system is to stabilize earth and reduce erosion, the secondary objective is to provide for the establishment and sustainability of vegetation and an aesthetic landscape feature. This goal is evidenced through the design and function of the wall fascia of Filtrex[®] FilterSoxx[™] as well as the GrowingMedia[™] that fills the wall fascia.

The Filtrex[®] Severe slope stabilization can be used for a wide variety of non-structural applications including:

- Steep Slope Stabilization

- Streambank Stabilization
- Pond bank stabilization
- Slip Repairs
- Culvert Headwalls
- Bridge Abutments
- Dikes/Berm
- Flood Protection

ADVANTAGES AND DISADVANTAGES

Advantages

The Severe slope stabilization system offers many advantages including:

- Lightweight components
- Highly efficient, certified installation
- No footing or leveling pad required
- Seed injection into FilterSoxx™
- Filtrex® GrowingMedia™
- Easily reinforced for severe applications
- Improved drainage/reduction of hydrostatic pressure
- Customizable vegetation with plants, plugs, live stakes or seed.
- Concrete footings are not required
- Severe slope stabilization may assist in qualification for LEED® Green Building Rating and Certification credits under LEED® New Construction 2.2. Awarded credits may be possible from SS Prerequisite 1, SS Credit 5.1, SS Credit 6.1, SS Credit 6.2, SS Credit 7.1, WE Credit 1.1, WE Credit 1.2, MR Credit 4.1, MR Credit 4.2, MR Credit 5.1, MR Credit 5.2, and MR Credit 6.

Note: LEED® is an independent program offered through the US Green Building Council. LEED® credits are determined on a per project basis by an independent auditing committee. Filtrex® neither

guarantees nor assures LEED® credits from the use of its products.

Disadvantages

- If Severe slope stabilization does not use Filtrex® GrowingMedia™, performance may be diminished.
- If not installed correctly, maintained or used for a purpose or intention that does not meet specifications, performance may be diminished.
- If vegetation does not establish or cover density is low, performance may be diminished.
- Severe slope stabilization should not be the only form of site or watershed storm water management.
- Severe slope stabilization may need to be reseeded or live stakes replaced if establishment is poor.
- Severe slope stabilization performance may be lower prior to vegetation establishment and maturity.
- Severe slope stabilization installation is a land disturbing activity and can increase sediment loading to surface waters if appropriate sediment control measures are not established during construction phase.
- Severe slope stabilization should not be used on bank and shoreline slopes greater than ¼:1
- Severe slope stabilization should not be used on banks where mowing will be performed to maintain vegetation.

MATERIAL SPECIFICATIONS

Filtrex® Severe slope stabilization is comprised of 4 primary components; Filtrex® FilterSoxx™ fascia, Filtrex® GrowingMedia™, geogrid or other anchoring system, and vegetation. These components work together to establish a stabilization system of reinforced vegetation. For Design drawing details of the Severe slope stabilization system see Figures 9.1 and 9.2

Filtrex® FilterSoxx™

The FilterSoxx™ is the tubular mesh netting material specifically designed to retain Filtrex® GrowingMedia™, seed and other materials. This finished product, stacked during construction, promotes healthy vegetation growth. Moisture flows freely to both reduce hydrostatic pressure and increase drainage of subsurface moisture to the vegetated fascia. The openings in FilterSoxx™ are such that they allow for root growth while retaining GrowingMedia™ for healthy vegetation.

ADVANTAGES			
	LOW	MED	HIGH
Installation Difficulty			✓
Soil Retention Ability			✓
Vegetation Establishment			✓
Aesthetic Quality			✓
Aesthetic Quality			✓
Drainage			✓

Filtrexx® Soxx™ wall fascia units are available in diameters of 8 in (200mm), 12 in (300mm), 18 in (450mm) and 24 in (600mm) in and are constructed of a variety of materials and characteristics (see Table 9.1). The specific size of the Soxx™ for each site will vary based on intended height of the application, intended batter (backfill), and spacing of geogrid or any other anchoring/tieback system. Generally speaking, Soxx™ will decrease in diameter from the base of the wall to the top, creating a firm footer for the wall while decreasing the load of the successive layers.

Soxx™ are installed in continuous sections, reducing the number of breaks in the system that might occur compared to other block structures. These continuous sections allow the Filtrexx® FilterSoxx™ fascia to act as a solid, seamless beam across the slope, further distributing any acting pressures.

GrowingMedia™ Characteristics

Filtrexx® Severe slope stabilization uses only Filtrexx® GrowingMedia™ which is a composted material that is specifically designed for stability within the system and establishment and sustainability of vegetation growth. Filtrexx® GrowingMedia™ can be third party tested and certified to meet minimum performance criteria defined by Filtrexx® International. Performance parameters include: percent cover of vegetation, water holding capacity, pH, organic matter, soluble salts, moisture content, biological stability, maturity bioassay, percent inert material, bulk density and particle size distribution. For information on the physical, chemical, and biological properties of Filtrexx® GrowingMedia™ refer to Filtrexx® GrowingMedia™ Specifications in Appendix 5.26.

Geogrid Reinforcement

Geogrid is a commonly used component for soil stabilization. Severe slope stabilization may be installed using a variety of brands of geogrid to meet the requirements of the project engineer. In non load-bearing situations, Filtrexx® LockDown™ Netting is recommended to increase the structural integrity of the Severe slope stabilization application. Filtrexx® LockDown™ Netting has numerous characteristics which lends itself to benefit the Severe slope stabilization application. See Table 9.2 and Section 3.0. When utilizing a geogrid with Severe slope stabilization, a wrap is recommended for every one or two courses. Therefore, as geogrid spacing varies for application to application, FilterSoxx™

wall fascia size (8 in or 200mm to 24 in or 600mm) is adjusted to meet the grid-spacing requirements as determined by the site engineer. Table 9.3 provides sample recommendations to assist the site engineer in grid-spacing requirements by wall fascia size. For structural retaining walls, see section 2.10. Severe slope stabilization is not intended to be used for structural applications.

Vegetation Choices

- Turf/Forage Grasses
- Groundcovers
- Live Shrub Cuttings
- Native species
- Vines etc.

Methods for Establishing Vegetation

- GrowingMedia™ incorporated with seed
- Live Staking
- Broadcast seeding
- Plugs

Vegetation Selection

When selecting vegetation for Severe slope stabilization the following should be considered:

- Degree of maintenance required. In general, low maintenance species are desirable.
- Drought resistance
- Freeze tolerance
- Aesthetics
- Degree of Slope



Note: If in doubt regarding vegetation, Filtrexx® International, LLC should be consulted.

INSTALLATION

1. Filtrexx® Severe slope stabilization shall meet Filtrexx® Severe slope stabilization Specifications and use Filtrexx® GrowingMedia™.
2. Contractor is required to be a Filtrexx® Certified™ Installer as determined by Filtrexx® International, LLC (440-926-2607 or visit website at www.filtrexx.com). Certification shall be considered current if appropriate identification is shown during time of bid or at time of application (current list can be found at www.filtrexx.com). Look for the Filtrexx® Certified™ Installer Seal.

Required Tools & Materials

- Safety Equipment



- Rappelling gear/rope tie offs
- Shovel(s)
- Laser level (or hand level)
- Tape Measure
- String Line
- Marking Paint
- Pneumatic blower unit
- Seed blending capability
- Filler cone for filling FilterSoxx™ wall fascia

Materials:

- Approved Filtrexx® FilterSoxx™
- Approved Filtrexx® GrowingMedia™
- Tie-wraps (8 in or 200mm)
- Sod staples (8 in or 200mm)
- 2 in x 2 in x 24 in (50mm x 50mm x 600mm) wood stakes

Site Preparation

Prior to construction of Severe slope stabilization some preparation of the project area may be necessary. The project area must be clear of rock and debris that could prevent good ground contact or potentially damage the FilterSoxx™. During installation, care should be taken not to disturb excessive areas that will then need to be revegetated. In many cases, the FilterSoxx™ may be installed around existing vegetation and land features which will increase the integrity of the system. It is recommended that an experienced installer be consulted prior to working around questionable terrain (see Image 3).

Drainage

Unlike impermeable, hard-faced walls, a drainage zone behind the face of the Severe slope stabilization may not be required. This is because the FilterSoxx™ fascia is highly permeable. This permeability greatly reduces hydrostatic pressure and facilitates hydration of the GrowingMedia™ and fascia vegetation. Where increased drainage is desired or in high-flow areas, stone may be added in addition to the GrowingMedia™ in the first and/or second FilterSoxx™ course to enhance the movement of interflow, subsurface flow and/or runoff. Additional drainage systems may be installed behind the wall. It is recommended that drainage requirements be addressed by a geotechnical engineer and/or hydrologist on a site-by-site basis.

Installation of Base Course

After initial site preparation, construction of the wall may begin. If utilizing a geogrid reinforcement or Filtrexx® LockDown™ Netting, begin by laying

the geogrid or LockDown™ Netting across the base of the wall on contour where the first course of the FilterSoxx™ is to be installed. Place the geogrid or LockDown™ Netting so that it extends sufficiently upslope to be anchored but be sure to leave sufficient material to wrap around the FilterSoxx™ to anchor into the soil above (see Image 4).

After a work plan is reached between the blower truck operator and wall installation team, the base course may be installed. The desired seed mix and/or additives should also be installed in the Seed Injection Unit(s) or otherwise premixed with the GrowingMedia™ (see Image 5).

After the base course of FilterSoxx™ is installed, the LockDown™ Netting may be wrapped around the FilterSoxx™ and stapled with standard sod staples (see Image 6).

Where needed, backfill may be placed either pneumatically or with heavy equipment. (see Image 7).

Installation of Successive Courses

Successive courses will be set upon previous courses in a batter prescribed by the site engineer (1H:2V Typ). Continue placing FilterSoxx™, and backfill as needed. The weight of successive layers will slightly compact the FilterSoxx™. Walking along the courses of FilterSoxx™ or tamping them will ensure consistent settlement as well (see Image 8).

Capping

A number of options exist for capping Severe slope stabilization. In any case, it is important that the geogrid or LockDown™ Netting is sufficiently buried below finished grade. In most cases a single FilterSoxx™ can be placed at the top of the wall and backfilled with topsoil or Filtrexx® GrowingMedia™. An application of a Filtrexx® Storm water blanket will connect the system with existing vegetation and help to reduce run-on/runoff volume and velocity flowing to the Severe slope stabilization system (see Image 9).

INSPECTION

Field reviews to ensure seed and/or plant establishment should occur at regular intervals after seeding or planting to assure germination and/or coverage of the wall system.

At six months if complete coverage has not occurred it is recommended that reseeded or remedial planting be preformed.

MAINTENANCE

The Severe slope stabilization system requires very little maintenance providing appropriate vegetation

types are selected and drainage is addressed during the design and build stages. In arid climates or for use during the establishment stages, low volume, low pressure drip tape may be installed as part of the Severe slope stabilization system to ensure hydration to the vegetation. For complete information on irrigation systems, refer to *Filtrexx*[®] Support Practices[™] in section 3.0. For specific maintenance requirements in your area please contact *Filtrexx*[®] International, LLC.

METHOD OF MEASUREMENT

Filtrexx[®] Severe slope stabilization shall be itemized as 'Supply and Installation of *Filtrexx*[®] Severe slope stabilization'. Bid prices shall be based on a per ft² or m² of fascia and shall include the supply and installation of the following:

- *FilterSoxx*[™] filled with *Filtrexx*[®] *GrowingMedia*[™] and vegetated with site specific seed or plantings.
- *Filtrexx*[®] *LockDown*[™] Netting wrap or equal as approved by site engineer.
- *GrowingMedia*[™] / aggregate/soil backfill as needed.
- *Filtrexx*[®] Compost Storm water blanket around extremities of system.

Engineer shall notify *Filtrexx*[®] of location, description, and details of project prior to the bidding process so that *Filtrexx*[®] can provide design aid and technical support.

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ADDITIONAL INFORMATION

For other references on this topic, including trade magazine and press coverage, visit the Filtrexx® Website at: <http://www.filtrexx.com/resourcespress.htm>.

For research reports not included in the Appendix, visit: <http://www.filtrexx.com/resourcesreports.htm>.

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See website or call for complete list of international installers

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TABLES & FIGURES:

Table 9.1. Filtrex® FilterSoxx™ Material Specifications.

Material Type	3 mil HDPE	5 mil HDPE	5 mil HDPE	Multi-Filament Polypropylene (MFPP)	Multi-Filament Polypropylene "SafetySoxx"™
Material Characteristic	Photodegradable	Photodegradable	Biodegradable	Photodegradable	Photodegradable
Design Diameters*	5 in (125mm), 8 in (200mm), 12 in (300mm), 18 in (400mm)	5 in (125mm), 8 in (200mm), 12 in (300mm), 18 in (400mm), 24 in (600mm), 32 in (800mm)	8 in (200mm), 12 in (300mm), 18 in (400mm), 24 in (600mm), 32 in (800mm)	8 in (200mm), 9 in (225mm), 12 in (300mm), 18 in (400mm), 24 in (600mm), 32 in (800mm)	8 in (200mm), 9 in (225mm), 12 in (300mm), 18 in (400mm), 24 in (600mm), 32 in (800mm)
Mesh Opening	3/8 in (10mm)	3/8 in (10mm)	3/8 in (10mm)	3/8 in (10mm)	1/8 in (3mm)
Tensile Strength	ND	26 psi (1.83 kg/cm ²)	26 psi (1.83 kg/cm ²)	44 psi (3.09 kg/cm ²)	202 psi (14.2 kg/cm ²)**
% Original Strength from Ultraviolet Exposure (ASTM G-155)	23% at 1000 hr	23% at 1000 hr	ND	100% at 1000 hr	100% at 1000 hr
Functional Longevity**/ Project Duration	6 mo-2 yr	9 mo-3 yr	6-12 months	1-4 yr	2-5 yr

* Tested at Texas Transportation Institute/Texas A&M University (ASTM 5035-95).

** Functional Longevity based on continual UV exposure without vegetation. Once vegetation is established longevity of the system is greatly increased.



Table 9.2. Characteristics of Filtrexx® LockDown™ Netting.

Support Practice	LockDown™ Netting	LockDown™ Netting	LockDown™ Netting	Testing Lab
Purpose	Increase stabilization/ erosion control of Slope protection	Increase stabilization/ erosion control of Slope protection	Increase stabilization/ erosion control of Slope protection	
Description	Improves performance and allowable slope steepness	Improves performance and allowable slope steepness	Improves performance and allowable slope steepness	
Material Description	5 mm multifilament polypropylene	5 mm monofilament HDPE	2 mm chain woven 20/2 cotton	
Mesh Description	¾ in (19mm) openings	¾ in (19mm) openings	9/16 (14 mm) x 1 in (25mm) openings	
Color	Black	Green	White	
Tensile Strength (ASTM 5035-95)*	32.8 lbs/in2* (2.3 kg/cm2)	1.2 lbs/in2 (0.08 kg/cm2)	Unknown/Low	Texas Transportation Institute TX A&M.*
Elongation (% relative) (ASTM 5035-95)*	46.5	ND	ND	Texas Transportation Institute TX A&M.*
Functional Longevity	1 – 4 yr	6 mo – 3 yr.	2 mo.	Filtrexx International Field Lab
Roll Size (w x l)	30 ft (9m) x 375 ft (114m)	30 ft (9m) x 375 ft (114m)	28 in (700mm) x 3300 ft (1006m), 40 in (1m) x 3300 ft (1006m), 96 in (2.4 m) x 3300 ft (1006m)	
Application Method	Stapled to soil/ Slope protection applied on top	Stapled to soil/ Slope protection applied on top	Stapled to soil/ Slope protection applied on top	

Table 9.3. Severe Slope Stabilization FilterSoxx™ Wall Fascia Sizing.

Prescribed vertical geogrid spacing as per Engineer		FilterSoxx™ wall fascia diameter	
inches	mm	inches	mm
8	200	12	300
9	225	12	300
12	300	18	450
18	450	24	600
24	600	30	750

Figure 9.1. Engineering Design for Filtrexx® Severe Slope Stabilization

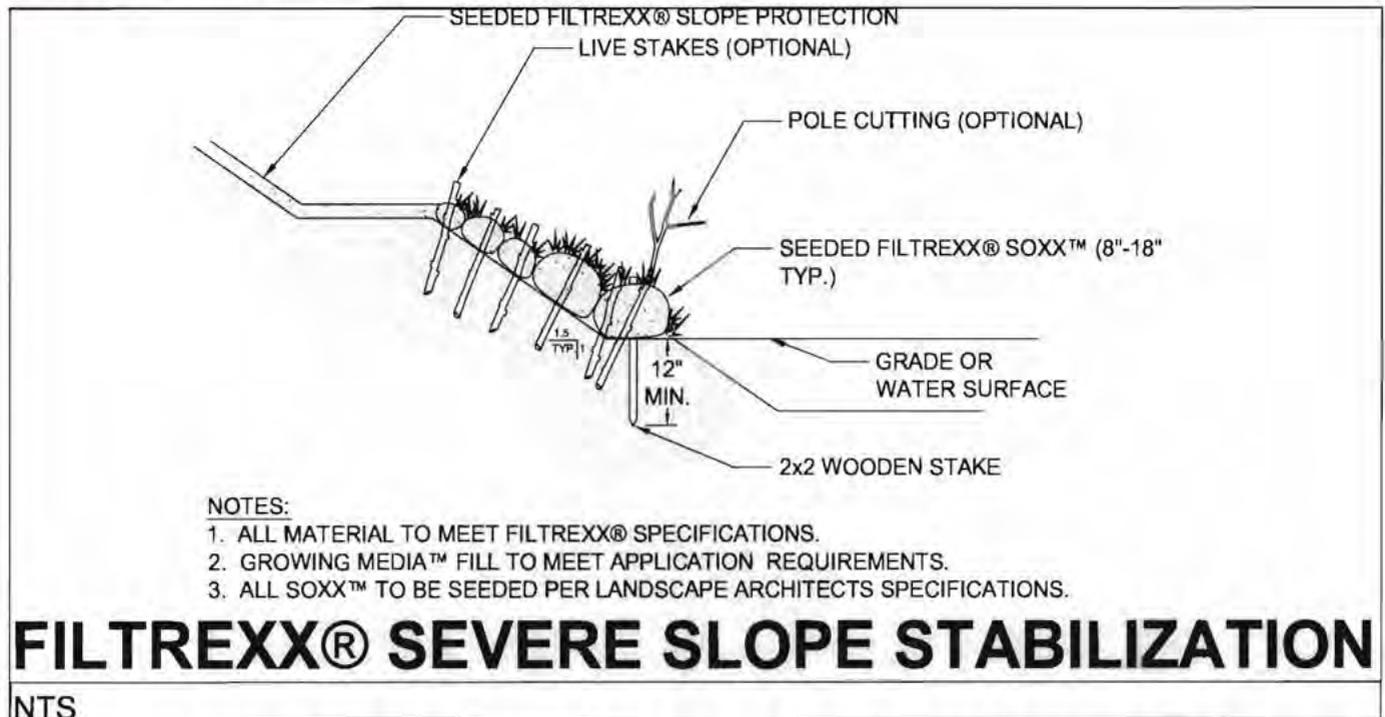
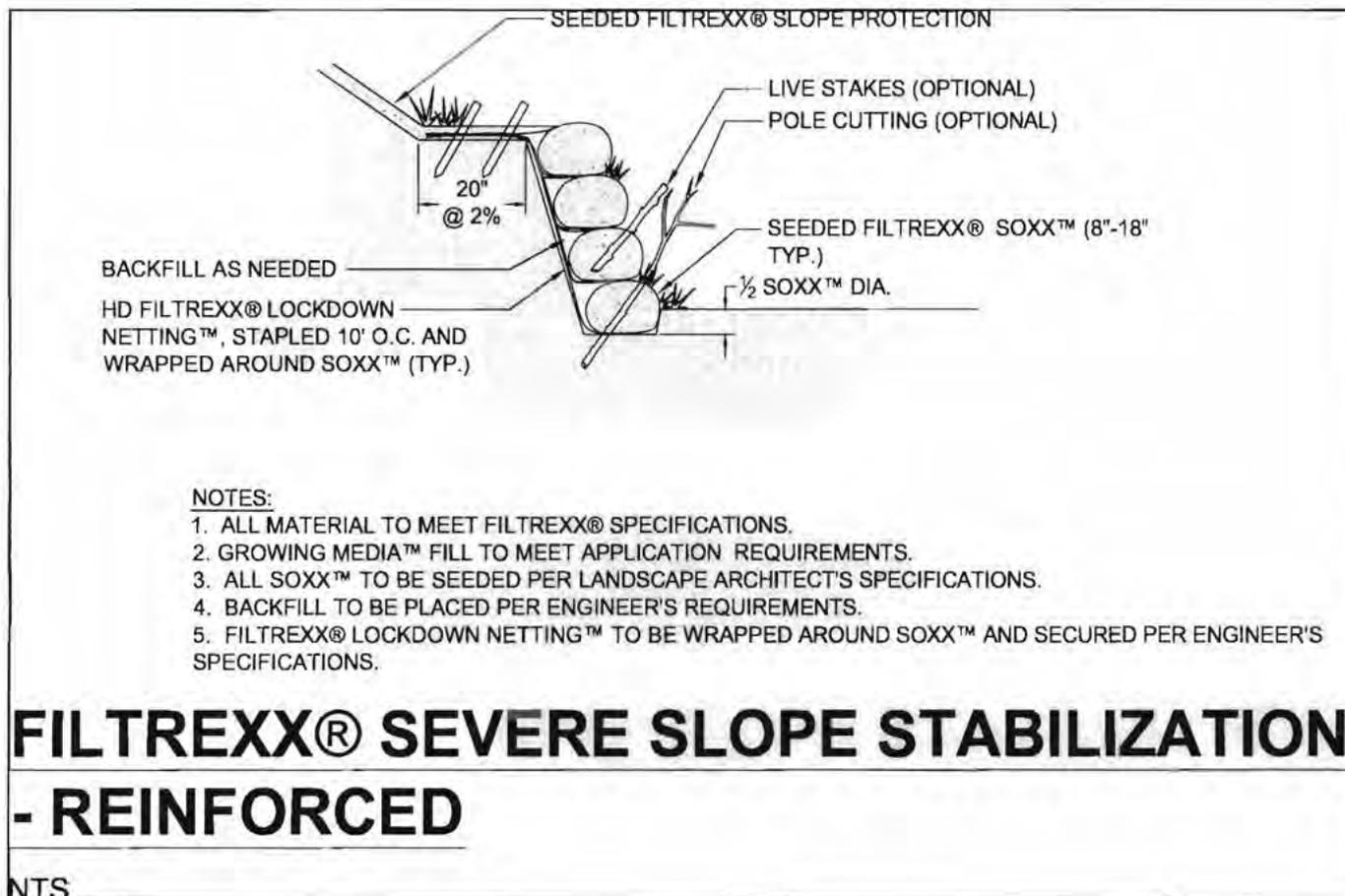


Figure 9.2. Engineering Design Drawing for Filtrexx Severe Slope Stabilization





Section 4:

**FiltrexTM GrowthMedia BlanketTM Specifications
(ESC Guidelines)**

4 pages

GROWTH MEDIA EROSION CONTROL BLANKETS

DEFINITION & PURPOSE

Growth media erosion control blankets are applications of growth media derived from composted materials applied with a pneumatic blower device or equivalent that help to reduce or prevent erosion on slopes in a living or non-living form. Growth media erosion control blankets prevent erosion by covering the exposed soil surfaces and keeping the water flowing on/within the materials. Growth media erosion control blankets also help increase infiltration and retention of rainwater, which aids in vegetation establishment and storm water management.

APPLICATION

Growth media erosion control blankets are to be used on exposed soil areas either for temporary or long-term protection against erosion. Growth media erosion control blankets may be used in place of other traditional blanket technology (e.g. geotextiles) with similar or superior results. Growth media erosion control blankets are especially effective on extreme slopes of 3:1 to 1:1 or greater and for situations where many other erosion control tools do not work. Growth media used in the blanket also has the ability to bind various contaminants contained in runoff.

DESIGN CONSIDERATIONS

- For most applications, it is important to apply Growth media erosion control blankets at about a 25mm-100mm depth; however, this may vary depending on slope and size of the drainage area. Growth media meeting or exceeding the specification attached is predictably successful at reducing or eliminating erosion.
- Growth media erosion control blankets are normally installed using a pneumatic blower device or 'blower truck'. This equipment must be used to comply with this specification and the vehicles must have a calibrated seeder attachment for 'living blanket' applications that require seeding. Alternate seeding mechanisms may be used, including blending seed into the growth media evenly prior to application with the blower trucks.
- There are no major limitations to the use of Growth media erosion control blankets, if installed properly. However, when slopes exceed 2:1, care should be taken to make sure the depth of the blanket is at least 50mm. If slopes approach 1:1, an additional 25mm to 50mm should be added to make the blankets a total of 75mm to 100mm depth. The Engineer may also require additional LockDown™ netting be placed over the blankets and stapled into the soil for further protection against sheer strength of underlying soil or movement of Growth media during severe storm events.
- It is imperative at all times that Growth media erosion control blankets are 'lapped' over the top of the shoulder of the slope they are applied to. A minimum overlap of 1m to 3m is suggested in order to make sure water runs on top of the GrowthMedia™ blanket, not under it. If the Growth media erosion control

blankets are not installed properly and water is allowed to get under the Growth media blanket at the top of the slope, rills may form and the slopes will have to be repaired.

- Growth Media is derived from composted materials and shall be weed free and derived from a well-decomposed source of organic matter. The growth media shall be produced using an aerobic composting process meeting or exceeding, M.O.E. 101, C.C.M.E. Type "A" and Type "AA" regulations, and Compost Quality Alliance Program (C.Q.A.) including time and temperature data indicating effective weed seed, pathogen and insect larvae kill. The growth media shall be free of any refuse, contaminants or other materials toxic to plant growth. Non-composted products will not be accepted. Test methods for the items below should follow USCC TMECC guidelines for laboratory procedures:
 - PH – 5.0-8.0 in accordance with TMECC 04.11-A, "Electrometric pH Determinations for Compost"
 - Non seeded Growth media erosion control blankets: Particle size – 100% passing a 50mm sieve, 99% passing a 25mm sieve, minimum of 90% passing a 18.25mm sieve in accordance with TMECC 02.02-B, "Sample Sieving for Aggregate Size Classification".
 - For seeded Growth media erosion control blankets, seed should be incorporated at the time of application in the entire depth of the Growth media blanket, at rates per unit area as acceptable to the engineer. The following particle sizes shall also be followed: 100% passing a 50mm sieve, 99% passing a 25mm sieve, minimum of 60% passing a 12.5mm sieve. All other testing parameters remain the same.
 - Moisture content of less than 60% in accordance with standardized test methods for moisture determination.
 - Material shall be relatively free (<1% by dry weight) of inert or foreign man made materials.
 - A sample shall be submitted to the engineer for approval prior to being used and must be a certified Filtrex growing media which also complies with all local, provincial and federal regulations.
 - Installer is required to be a certified as determined by Filtrex Canada Inc. Certification shall be considered current if appropriate identification is shown during time of bid or at time of application.

INSTALLATION AND MAINTENANCE CONSIDERATION

- Description: This work shall consist of furnishing, installing, maintaining and seeding a water permeable Growth media erosion control blanket to reduce soil erosion and sediment by preventing soil particles from water moving off site into adjacent waterways or storm water drainage systems.

- Growth media erosion control blankets should be inspected weekly and after all rainfall and/or snowmelt events to make sure they hold and are protecting the soil adequately. In cases where minor rills form, they should be repaired immediately by blowing more product onto the slopes and into the rills and compacting the area with foot traffic and a Siltsoxx™ or berm may be required to slow water down to sheet flow.
- Growth media erosion control blankets will be placed at locations indicated on plans as directed by the Engineer. Unless otherwise specified, Growth media erosion control blankets should be installed at a minimum depth of 25mm. Consult with the manufacturer for the depth requirements. Depth requirements are also listed in Figure below.
- Growth media erosion control blankets may be seeded at time of installation for establishment of permanent vegetation. The Engineer will specify seed requirements. Growth media erosion control blankets are not to be used in direct flow situations or in runoff channels.
- See attached schematic for Growth Media Erosion Control Blanket Installation.
- If required, combining Growth media erosion control blankets with SiltSoxx™ or Filter Berms may offer additional protection from slopes that have heavy run-on water. In these situations, SiltSoxx™, Filter Berms and Growth media erosion control blankets may be used in combination.

SLOPE	A	B
	4" (100mm)	3" (75mm)
	3" (75mm)	2" (50mm)
	2" (50mm)	
	1" (25mm)	

OPTION A - FILTREXX™ COMPOST BLANKET - SEE SPEC.

OPTION B - FILTREXX™ COMPOST BLANKET WITH LOCK DOWN NETTING - SEE SPEC.

FILTREXX™ CANADA			
<small>334 COVENTRY RD. EAST PARIS, ONTARIO CANADA N3L 3C1 519-354-8286</small>			
FILTREXX™ INTERNATIONAL			
<small>20481 GRANITE EASTERN RD. GRANTON, OH USA 43084 440-926-8041</small>			
COMPOSITE BLANKET TABLE			
DATE:	R.D.S.	SCALE:	4/15
DRAWN:	R.D.S.	DATE:	2.8.15
BY:	T.J.T.	REV. NO.	
DATE:			17

- The installer shall maintain the Growth media erosion Control Blanket in a functional condition at all times and it shall be inspected weekly and after all rainfall and/or snowmelt events.
- The Growth media erosion Control Blanket will be seeded on site, at rates and seed types as determined by the Engineer or the Conservation Authority.
- Installer shall provide the Engineer with proof that (e.g. a 50mm) GrowthMedia™ erosion Control Blanket has been applied. This rate equals approximately 510 cubic meters per hectare. Contractor will supply ample evidence showing this amount of material has been effectively placed (e.g. truck load tickets, depth to be measured at time of application by site inspector).



Section 5:

**FiltrexTM SiltSoxxTM Specifications
(ESC Guidelines)**

4 pages

SILTSOXX™ FOR PERIMETER EROSION CONTROL

DEFINITION & PURPOSE

Siltsoxx™ is a sediment-trapping device using filter media materials applied with a pneumatic blower device or equivalent. Siltsoxx™ trap sediment by filtering the water passing through the Siltsoxx™ also allowing water to pond, creating a settling of solids behind Siltsoxx™.

APPLICATION

Siltsoxx™ is to be used in any area requiring sediment control to keep runoff in the form of sheet flow. The use of Siltsoxx™ apply to areas of high sheet erosion, on steep slopes up to and exceeding a 2:1 slope, and in other disturbed areas of construction sites requiring sediment control. Siltsoxx™ may also be used in sensitive environmental areas, where migration of aquatic life is impeded by the use of other sediment controls. Filter Media used in Silt Soxx™ also has the ability to bind various contaminants contained in runoff.

DESIGN CONSIDERATION

The sedimentation removal process associated with Siltsoxx™ involves both filtering and deposition from settling. This is different than other methods using only ponding for deposition of sediment. Ponding occurs when water flowing to the Siltsoxx™ accumulates faster than it can flow through the SiltSoxx™. However, installation technique is important for them to work effectively.

For most applications, standard Siltsoxx™ size for perimeter control is 30mm

- **Level Contour:** Place Siltsoxx™ on level contours to assist in dissipating flow into sheet flow rather than concentrated flows. Do not construct Siltsoxx™ that concentrate runoff or channel water. Sheet flow of water should be perpendicular to the Siltsoxx™ at impact and relatively un-concentrated.
- **Flat Slopes:** When possible, place Siltsoxx™ at a 1.5m or greater distance away from the toe of the slopes in order for the water coming from the slopes to maximize space available for sediment deposit. When this 1.5m distance is not available due to construction restrictions, a second Siltsoxx™ may be required (see drainage area chart below).
- **Flow around ends:** In order to prevent water from flowing around the ends, Siltsoxx™ must be constructed with the ends pointing upslope so they are at a higher elevation.
- **Vegetation:** For permanent areas, seeded Siltsoxx™ allows vegetation to be established directly in the Soxx and immediately in front and back of the Soxx at a distance of 1.5m. Vegetation on and around the Siltsoxx™ will assist in slowing down water for filtration. The option of adding vegetation will be at the discretion

of the Engineer and Conservation Authority. No other soil amendments or fertilizer are required for vegetation establishment.

**Siltsoxx™ - Maximum Drainage Area
Based on Slope and Slope Length**

	Slope	Slope Length (linear meters)	SiltSoxx™ Required (diameter)
0%-2%	Flatter than 50:1	76.2m	30cm
2%-10%	50:1-10:1	38.1m	30cm
10%-20%	10:1-5:1	30.48m	30cm
20%-33%	3:1-2:1	15.24m	45cm
>50%	>2:1	7.62m	45cm

- Siltsoxx™ should be installed parallel to the base of the slope or other affected area. In extreme conditions (e.g. 2:1 slopes), a second Siltsoxx™ shall be constructed at the top of the slope. (Consult with manufacture for details).
- If the Siltsoxx™ is to be left as a permanent filter or part of the natural landscape, it may be seeded at time of installation for establishment of permanent vegetation. The Engineer will specify seed requirements in conjunction with Conservation Authority.

Dispersing flow:

Sheet flow and runoff should not exceed height of Siltsoxx™ capacity in most storm events. If overflow of the Siltsoxx™ is a possibility, larger SiltSoxx™ should be constructed.

- Siltsoxx™ shall either be made on site or delivered to the jobsite using Siltsoxx™ materials in a 5 mil monofilament or heavy duty multifilament continuous, tubular, HDPE 9.38mm knitted mesh netting material, filled with filtermedia passing the requirements for filtermedia products as outlined in specs.
- Standard Siltsoxx™ color coding systems include Yellow and Black 20.cm, Orange and Black 30cm, or Red and Black 45cm striped mesh netting with 9.38mm mesh openings.

INSTALLATION & MAINTENANCE CONSIDERATIONS

- This work shall consist of furnishing, installing, maintaining and dispersing (if needed) a water permeable filtermedia Siltsoxx™ to contain soil erosion and sediment by removing soil particles from water moving off site into adjacent waterways or storm water drainage systems.
- The installer shall remove sediments collected at the base of the Siltsoxx™ when they reach 1/2 of the exposed height of the Siltsoxx™, or as directed by the Engineer.

- Siltsoxx™ should be inspected weekly and after all rainfall and/or snowmelt events to make sure they hold their shape and are producing adequate flow through. For purposes of longer-term sediment control objectives, Siltsoxx™ can be seeded at the time of installation to create an additional vegetative filtering component.
- When construction is completed on site, the Siltsoxx™ may be dispersed with a loader, rake, bulldozer or other device to be incorporated in the soil or left on top of the soil for final seeding to occur. The mesh netting material will be disposed of in normal trash container or removed by the Installer.

Specifications for FilterMedia Derived from Composted Products.

- Filtermedia derived from Compost used for Siltsoxx™ shall be weed free and derived from a well-decomposed source of organic matter. The compost shall be produced using an aerobic composting process meeting or exceeding , M.O.E. 101, C.C.M.E. Type "A" and Type "AA" regulations, and Compost Quality Alliance Program (C.Q.A.) including time and temperature data indicating effective weed seed, pathogen and insect larvae kill. The compost shall be free of any refuse, contaminants or other materials toxic to plant growth. Non-composted products will not be accepted. Test methods for the items below should follow USCC TMECC guidelines for laboratory procedures:
 - PH – 5.0-8.0 in accordance with TMECC 04.11-A, "Electrometric pH Determinations for Compost"
 - Particle size – 99% passing a 50mm sieve and a minimum of 70% greater than the 9.38mm sieve, in accordance with TMECC 02.02-B, "Sample Sieving for Aggregate Size Classification". (In the field, the product commonly requested is between 25mm and 50mm particle size.)
 - Moisture content of less than 60% in accordance with standardized test methods for moisture determination.
 - Material shall be relatively free (<1% by dry weight) of inert or foreign man made materials.
 - A sample shall be submitted to the engineer for approval prior to being used and must be a certified Filtrex media which also complies with all local, provincial and federal regulations.
 - Installer is required to be certified as determined by Filtrex Canada Inc. Certification shall be considered current if appropriate identification is shown during time of bid or at time of application.

Example of Silt Soxx for Perimeter Control.





Section 6:

Manta Ray Soil Anchor Standard Specifications

3 pages

Manta Ray Mechanical Soil Anchors

[Manta Ray
Information](#)

[Parts &
Accessories](#)

[Manta Ray
Installation](#)

[Case
Histories](#)

[Corrosion
Protection](#)



Manta Ray and Stingray earth anchors are driven tipping plate soil anchors dependant on soil strenght for reaction of tensile loads. Manta Ray anchors have working loads up to 20 kips, and Stingray anchors have working loads up to 50 kips. After driving the anchor to the required depth, the driving tool (called drive steel) is removed. The anchor is then tipped and proof tested with Williams Anchor Locking Kit from its edgewise-driving position to present its bearing area to the soil. This is called "load locking" and provides an immediate proof test of each anchor.



Manta Ray and Stingray anchors offer many significant advantages:

- Fast, easy installation
- Immediate proof test results
- No grout
- Inexpensive installation equipment
- Environmentally friendly
- No drilling required
- Superior Holding Capacity
- Anchors for a wide range of soils & applications



Sting Ray Anchor



The simple, effective and low cost Manta Ray and Stingray anchor system represents a major breakthrough in "anchoring technology" with a multitude of uses in the utility, civil engineering and construction markets for:

- Utility Poles
- Retaining Walls
- Sheet Piles
- Seawalls
- Pipelines
- Erosion Control
- Underwater Applications
- Blockwalls
- Scaffolding

There are eight Manta Ray Anchors and three Stingray Anchors with light to heavy duty holding capacities. Shown to the left are six different Manta Ray anchor heads. All anchors are made of galvanized ductile iron, can be driven with the drive steel set (except the MR-88 & M-68) and can be tested to the desired holding capacity with the load locker.

The anchors are designed to utilize solid steel rods as load carrying members.



MR-SR



MR-1



MR-2



MR-3



MR-4



MR-88

Manta Ray & Stingray Anchor Structural Properties

Anchor	Structural Safety Factor 2:1	Recommended Anchor Rod		Weight Per Each
		Part Number & Diameter**	Part Number	
MR-68	2.5 kips (11 kN)	3/8" - 16 UNC (10 mm)	B8S-03	1 lbs. (0.45 kg)
MR-88	5 kips (22 kN)	1/2" - 13 UNC (12 mm)	B8S-04	2.2 lbs. (1 kg)
MR-4	8.5 kips (36 kN)	3/4" (20 mm)	R61-06	4.7 lbs. (2.1 kg)
MR-3	10 kips (45 kN)	3/4" (20 mm)	R61-06	6 lbs. (2.7 kg)
MR-2	20 kips (89 kN)	3/4" (20 mm)	R61-06	10 lbs. (4.5 kg)
MR-1	20 kips (89 kN)	3/4" (20 mm)	R61-06	12 lbs. (5.4 kg)
MR-SR	20 kips (89 kN)	3/4" (20 mm)	R61-06	21 lbs. (9.5 kg)
MK-B	20 kips (89 kN)	3/4" (20 mm)	R61-06	85 lbs. (38.5)
Sting Ray	Safety Factor	Part Number	Working Load	Weight
SR-1	45.5 kips (198 kN)	1-1/8" (28 mm)	R61-09	47 lbs. (21.3 kg)
SR-2	50 kips (223 kN)	1-1/8" (28 mm)	R61-09	66 lbs. (30 kg)
SR-3	50 kips (223 kN)	1-1/8" (28 mm)	R61-09	91 lbs. (41.2)

Williams Anchor Rods are fully threaded and can be field cut and coupled.

**Anchor Rod Lengths: R61-06 & R61-09 up to 50 feet uncoated. B8S-03 & B8S-04 up to 20 feet
Recommend: Galvanized rods should be cut to size prior to galvanizing to insure good nut fit.

Manta Ray Anchor Holding Capacities in Listed Soils

Common Soil Type Description	Typical Blow Count "N" Per ASTM-D1586	MR-68	MR-88	MR-4	MR-3	MR-2	MR-1	MR-SR	MK-B
Peat, Organic Silts; Inundates Silts, Fly Ash	0 - 5	N.A.	0.2-0.9 kips (.9-4 kN) (4,5)	0.3-1.5 kips (1.3-7 kN) (4,6)	0.8-3 kips (3.5-13 kN) (4,6)	2-5 kips (9-22 kN) (4,6)	3-8 kips (13-37 kN) (4,6)	4-12 kips (18-53 kN) (4,6)	6-16 kips (27-71 kN) (4,6)
Loose fine Sand; Alluvium; Soft-Firm Clays; Varied Clays; Fills	4 - 8	0.4-8 (1.8-3.5 kN) (4,8)	0.9-1.5 kips (4-7 kN) (4,6)	1.5-2.5 kips (7-11 kN) (4,6)	3-5 kips (13-22 kN) (4,6)	5-8 kips (22-36 kN) (4,6)	8-12 kips (36-53 kN) (4,6)	9-14 kips (40-62 kN) (4,6)	13-20 kips (58-89 kN) (4,6)
Loose to Medium Dense Fine to Coarse Sand; Firm to Stiff Clays and Silts	7 - 14	0.75-1.25 kips (3.5-6 kN) (4)	1.5-2.5 kips (7-11 kN) (4)	2.5-4 kips (11-18 kN) (4)	5-8 kips (22-36 kN) (4)	7-10 kips (31-44 kN) (4)	10-15 kips (44-67 kN) (4)	14-18 kips (62-80 kN) (4)	20 kips (89 kN) (4)
Medium Dense Coarse Sand and Sandy Gravel; Stiff to very Stiff Silts and Clays	14 - 25	1-1.5 kips (5-7 kN) (4)	2-3 kips (9-13 kN) (4)	3.5-4.5 kips (16-20 kN) (4)	7-9 kips (31-40 kN) (4)	9-12 kips (40-53 kN) (4)	15-20 kips (67-89 kN) (4)	18-20 kips (80-89 kN) (4)	20 kips (89 kN) (2,4)
Medium Dense Sandy Gravel; Very Stiff to Hard Silts and Clays	24 - 40	1.5-2 kips (7-9 kN) (4)	3-4 kips (13-18 kN) (4)	4.5-8 kips (20-25 kN) (4)	9-10 kips (40-45 kN) (4)	12-18 kips (53-80 kN) (4)	18-20 kips (80-89 kN) (2,4)	20 kips (89 kN) (2,4)	20 kips (89 kN) (2,4)
Dense Clays, Sands and Gravel; Hard Silts and Clays	35 - 50	2-2.5 kips (9-11 kN) (4)	4-5 kips (18-22 kN) (4)	6-8.5 kips (27-36 kN) (4)	10 kips (45 kN) (2,4)	15-20 kips (67-89 kN) (2,4)	20 kips (89 kN) (2,4)	20 kips (89 kN) (2,3,4)	20 kips (89 kN) (1,3)
Dense Fine Sand; Very hard Silts and Clays	45 - 60	2.5 kips (11 kN) (2,3,4)	5 kips (22 kN) (2,3,4)	8.5 kips (36 kN) (2,3,4)	10 kips (45 kN) (2,3,4)	20 kips (89 kN) (2,4)	20 kips (89 kN) (1,3,4)	20 kips (89 kN) (1,3)	20 kips (89 kN) (1,3,5)
Very Dense and/or Cemented Sands; Coarse Gravel and Cobbles	60 - 100+	2.5 kips (11 kN) (1,3)	5 kips (22 kN) (1,3)	8.5 kips (36 kN) (1,3)	10 kips (45 kN) (1,3)	20 kips (89 kN) (1,3,4)	20 kips (89 kN) (1,3)	20 kips (89 kN) (1,3,5)	20 kips (89 kN) (1,3,5)

- 1 - Drilled hole required to install.
 - 2 - Installation may be difficult. Pilot hole may be required.
 - 3 - Holding capacity limited by working load of anchors
 - 4 - Holding capacity limited by soil failure.
 - 5 - Not recommended in these soils.
 - 6 - Wide variation in soil properties reduces prediction accuracy.
- Pre-constructed field test recommended.
Minimum 2:1 Safety Factor Recommended
* Use this chart for estimation only.
* True capacity must be tested with anchor locker.

Stingray Anchor Holding Capacities in Listed Soils

Common Soil Type Description	Typical Blow Count "N" Per ASTM-D1586	SR-1	SR-2	SR-3
Peat, Organic Silts; Inundates Silts, Fly Ash	0 - 5	N.A.	N.A.	N.A.
Loose fine Sand; Alluvium; Soft-Firm Clays; Varied Clays; Fills	4 - 8	13-19 kips (58-82 kN) (4,6)	19-28 kips (85-125 kN) (4,6)	24-37 kips (107-165 kN) (4,6)
Loose to Medium Dense Fine to Coarse Sand; Firm to Stiff Clays and Silts	7 - 14	16-24 kips (72-107 kN) (4)	27-36 kips (120-160 kN) (4)	37-48 kips (165-214 kN) (4)
Medium Dense Coarse Sand and Sandy Gravel; Stiff to very Stiff Silts and Clays	14 - 25	24-32 kips (107-142 kN) (4)	31-48 kips (138-214 kN) (4)	48-50 kips (214-253 kN) (4)
Medium Dense Sandy Gravel; Very Stiff to Hard Silts and Clays	24 - 40	29-41 kips (129-182 kN) (4)	46-50 kips (205-223 kN) (4)	50 kips (253 kN) (4)
Dense Clays, Sands and Gravel; Hard Silts and Clays	35 - 50	39-45.5 kips (173-198 kN) (4)	50 kips (253 kN) (2,4)	50 kips (253 kN) (2,3,4)
Dense Fine Sand; Very hard Silts and Clays	45 - 60	45.5 kips (198 kN) (2,4)	50 kips (253 kN) (2,4)	50 kips (253 kN) (2,3)
Very Dense and/or Cemented Sands; Coarse Gravel and Cobbles	60 - 100+	45.5 kips (198 kN) (1,3)	50 kips (253 kN) (1,3)	50 kips (253 kN) (1,3,5)

- 1 - Drilled hole required to install.
 - 2 - Installation may be difficult. Pilot hole may be required.
 - 3 - Holding capacity limited by working load of anchors
 - 4 - Holding capacity limited by soil failure.
 - 5 - Not recommended in these soils.
 - 6 - Wide variation in soil properties reduces prediction accuracy.
- Pre-constructed field test recommended.
Minimum 2:1 Safety Factor Recommended
* Use this chart for estimation only.
* True capacity must be tested with anchor locker.

Invoice



KINDLY SEND YOUR PAYMENT TO :
 Accounts receivable department
 1200 boul. St-Martin ouest, Bureau 300
 Laval QC H7S 2E4

LVM INC.
 353 Bridge Street East
 Kitchener ON N2K 2Y5
 519 741-1313

Ivan Rudyk
 835 Spring Gardens Road
 Burlington ON L7T 1J6

Invoice no : 900067638
 Date : 23/04/2013
 Period from :
 Project no : B0001158-20
 For information : Jeff Dietz
 Your references :

Attention of : M. Ivan Rudyk
 cc :
 Project : Slope Repairs

CURRENT

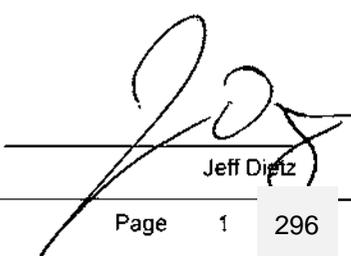
Professional fees 2,250.00
 Reinforced Slope Design

Sub-total : 2,250.00

HST 13 % 292.50

Total (CAD) : 2,542.50
 =====

Billing Agent : Samantha Labonté


 Jeff Dietz

GST / HST no. : R883425423

PST no. : 1022025950

Page 1 296

PAYMENT TERMS NET 30 DAYS

Invoice

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Accounts receivable department
1200 boul. St-Martin ouest, Bureau 300
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LVM INC.
353 Bridge Street East
Kitchener ON N2K 2Y5
519 741-1313

Ivan Rudyk
 835 Spring Gardens Road
 Burlington ON L7T 1J6

Invoice no : 900020195
 Date : 10/07/2012
 Period from : 2012-05-03 to 2012-06-30
 Project no : B0001158-000010
 For information : Vanessa Marshall
 Your references :

Attention of : Mr Ivan Rudyk
 cc :
 Project : Slope Repairs

	<u>CURRENT</u>
Professional fees Geotechnical Investigation	3,800.00
Sub-total :	<u>3,800.00</u>
HST 13 %	<u>494.00</u>
Total (CAD) :	<u><u>4,294.00</u></u>

Proposal # 12-0167-01-160

Vanessa Marshall

Mr. Ivan Rudyk

**Slope Repairs
835 Spring Gardens Road
Burlington, Ontario**

Geotechnical Investigation Report

Date: June 22, 2012

Ref. N°: 160-B-0001158-1-GE-R-0001-00



Mr. Ivan Rudyk

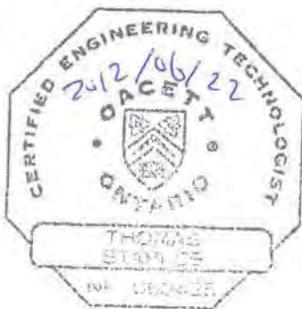
**Slope Repairs
835 Spring Gardens Road
Burlington, Ontario**

Geotechnical Investigation Report



Prepared by :

Vanessa Marshall, P.Eng.
Project Engineer



Reviewed by :

Thom Staples, C.E.T.
Team Leader, Brantford Operations

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Test results mentioned herein are only valid for the sample(s) stated in this report.

LVM inc.'s subcontractors who may have accomplished work either on site or in laboratory are duly qualified as stated in our Quality Manual's procurement procedure. Should you require any further information, please contact your Project Manager."

Client:

Mr. Ivan Rudyk
835 Spring Gardens Road
Burlington, Ontario L7T 1J6

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Revision N°	Date	Modification And/Or Publication Details
00	2012-06-22	Report Issued

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jmp

INTRODUCTION

LVM inc. is pleased to provide this report with the results of the recently completed geotechnical investigation for the proposed vegetated reinforced slope system. This work was authorized on May 3, 2012, by Mr. Ivan Rudyk following submission of a fee proposal.

It is understood that a vegetated reinforced earth slope is to be constructed at 835 Spring Garden Road in Burlington, Ontario. The purpose of the current investigation was to determine the subsurface soil and groundwater conditions in the area of the proposed vegetated reinforced earth slope and provide geotechnical information for design of the system.

1 GENERAL INFORMATION

The existing slope is approximately 12 m long and 22 m in height, and is over-steepened at approximately 1 horizontal to 1 vertical. The existing upper slope is currently constructed with a timber retaining wall, and it is understood that this retaining wall is to be replaced with a reinforced earth slope system.

2 INVESTIGATION PROCEDURE

2.1 FIELDWORK

The fieldwork for this investigation was carried out on May 29, 2012 and involved the drilling of one borehole (Borehole BH-01-12) to a depth of 9.6 m at the location shown on the appended Site Plan, Drawing 1. The borehole was advanced with a Geoprobe 7822DT supplied and operated by Aardvark Drilling Inc.

Soil samples were recovered from the borehole at regular 0.75 and 1.50 m depth intervals using a 50 mm outside diameter split spoon sampler in accordance with the Standard Penetration Test (SPT) procedure. The SPT N-values recorded are plotted on the appended borehole log.

Groundwater observations were carried out in the open borehole during and upon completion of drilling. The observations are summarized on the borehole log.

The borehole was backfilled with bentonite in accordance with RRO 1990 Regulation 903 as amended to Ontario Regulation 128/03 under the Ontario Water Resource Act.

The fieldwork was observed throughout by a member of our engineering staff who documented the drilling and sampling procedures; recorded the results of the SPT testing; documented the soil stratigraphies; monitored the groundwater conditions; and cared for the recovered soil samples.

The ground surface elevation was surveyed by LVM. The borehole was located relative to existing site features and property lines. The ground surface elevation is referred to the following temporary benchmark (TBM) as provided by the client:

TBM: Top of interlocking brick patio at northwest corner of existing house, at the location shown on Drawing 2.

Elevation: 99.93 m (assumed local datum)

All soil samples secured during this investigation were returned to our laboratory for visual examination, as well as moisture content tests; the results of which are plotted on the borehole log.

The soil samples will be stored for a period of three months from the date of sampling. After this time, they will be discarded unless prior arrangements have been made for longer storage.

3 SUMMARIZED CONDITIONS

3.1 SUBSURFACE SOIL CONDITIONS

We refer to the appended borehole log for soil descriptions and stratigraphies; results of the SPT testing; moisture content profiles; and groundwater measurements. The subsurface stratigraphy at the site generally comprises topsoil overlying native granular deposits of sand and sand and gravel. Descriptions of the various soil deposits encountered are provided in the following paragraphs.

Topsoil was encountered surficially in the borehole and is 300 mm thick. The topsoil generally comprises dark brown silt that was moist at the time of sampling.

Granular soils with a varying amount of gravel are the major soil deposit encountered at the site. The granular deposit varies in composition from sand with trace silt to sand and gravel with trace silt. A layer of silt was encountered at a depth of 5 m in the borehole and is 1.4 m thick. The upper 1.5 m of the granular deposit is very loose near the ground surface based on an SPT N-value of 2 blows per 300 mm penetration of a split spoon sampler. The granular deposit has a compact to dense relative density below 1.5 m, based on SPT N-values of 14 to 43 blows per 300 mm. Moisture contents in the granular deposit range from 5 to 12% indicating damp to moist conditions.

3.2 GROUNDWATER

Groundwater observations and measurements are summarized on the appended borehole log. No free groundwater was encountered in the open borehole indicating the stabilized groundwater table is below the depth of exploration, greater than 9.6 m below existing grades.

4 DISCUSSION AND RECOMMENDATIONS

It is understood that the existing slope at 835 Spring Gardens Road in Burlington is to be reconstructed using vegetated slope stabilization technology. The soils encountered at the site generally comprise granular material which range in gradation from sand with trace silt to sand and gravel with trace silt.

The soils encountered at the site would be classified as Type 3 soils and excavations for construction of the vegetated soil slope should be cut at maximum 1 horizontal to 1 vertical from the base of the excavation based on the current Occupational Health and Safety Act and Regulations for Construction Projects. No free groundwater was encountered at the site; and any surficial water runoff should be redirected away from open excavations.

It is understood that the slope will be stabilized using duckbill anchors and geogrid with a vegetated filtersoxx facia. Any surficial topsoil should be removed from below the proposed slope reinforcement, and the reinforcement founded on native granular material. The soil would be classified as a “medium dense coarse sand and sandy gravel” for design of the anchoring system as per the tables in Manta Ray Mechanical Soil Anchors Brochure. It should be noted that the soil encountered in the upper 1.5 m of the borehole would be classified as “loose fine sand” as per the tables.

The following soil properties may be used in the design of the system.

Table 1 Onsite Soil Properties

	GRANULAR DEPOSIT
Bulk Unit Weight (kN/m ³)	21
Angle of Internal Friction (ϕ)	28°

Table 2 Earth Pressure Coefficients

EARTH PRESSURE COEFFICIENTS	FOR ALL SOIL TYPES
Passive (K_p)	2.77
Active (K_a)	0.36
At-Rest (K_0)	0.53

5 STATEMENT OF LIMITATIONS

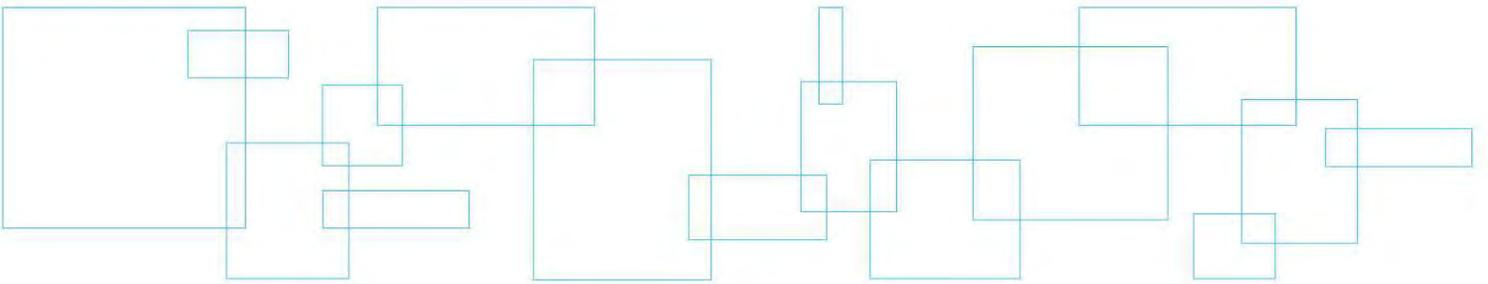
The geotechnical recommendations provided in this report are applicable only to the project described in the text and then only if constructed substantially in accordance with the details stated in this report. Since all details of the design may not be known at the time of report preparation, we recommend that we be retained during the final design stage to verify that the geotechnical recommendations have been correctly interpreted in the design. We also recommend that we be retained during construction to confirm that the subsurface conditions do not deviate materially from those encountered in the test pits and to ensure that our recommendations are properly understood.

The geotechnical recommendations provided in this report are applicable only to the project described in the text and are intended for the use of the project designer. They are not intended as specifications or instructions to contractors. Any use which a contractor makes of this report, or decisions made based on it, are the responsibility of the contractor. The contractor must also accept the responsibility for means and methods of construction, seek additional information if required, and draw their own conclusions as to how the subsurface conditions may affect them.

It is important to note that the geotechnical investigation involves a limited sampling of the site gathered at specific test hole locations and the conclusions in this report are based on this information gathered. The subsurface conditions between and beyond the test pits will differ from those encountered at the test holes. Should subsurface conditions be encountered which differ materially from those indicated at the test holes, we request that we be notified in order to assess the additional information and determine whether or not changes should be made as a result of the conditions.

Appendix 1 Borehole Logs

List of Abbreviations
Borehole BH-01-12



214
LIST OF ABBREVIATIONS

The abbreviations commonly employed on the borehole logs, on the figures, and in the text of the report, are as follows:

Sample Types		Soil Tests and Properties	
AS	auger sample	SPT	Standard Penetration Test
CS	chunk sample	UC	unconfined compression
RC	rock core	FV	field vane test
SS	split spoon	ϕ	angle of internal friction
TW	thin-walled, open	γ	unit weight
WS	wash sample	w_p	plastic limit
		w	water content
		w_l	liquid limit
		I_L	liquidity index
		I_p	plasticity index
		PP	pocket penetrometer

Penetration Resistances	
Dynamic Penetration Resistance	The number of blows by a 63.5 kg (140 lb.) hammer dropped 0.76 m (30 in.) required to drive a 50 mm (2 in.) diameter 60° cone a distance 0.30 m (12 in.). The cone is attached to 'A' size drill rods and casing is not used.
Standard Penetration Resistance, N (ASTM D1586)	The number of blows by a 63.5 kg. (140 lb.) hammer dropped 0.76 m (30 in.) required to drive a standard split spoon sampler 0.30 m (12 in.)
WH	sampler advanced by static weight of hammer
PH	sampler advanced by hydraulic pressure
PM	sampler advanced by manual pressure

Soil Description		
Cohesionless Soils	SPT N-Value	D_r (%)
Relative Density (D_r)	(blows per 0.30 m)	
Very Loose	0 to 4	0 to 20
Loose	4 to 10	20 to 40
Compact	10 to 30	40 to 60
Dense	30 to 50	60 to 80
Very Dense	over 50	80 to 100
Cohesive Soils	Undrained Shear Strength (C_u)	
Consistency	kPa	psf
Very Soft	less than 12	less than 250
Soft	12 to 25	250 to 500
Firm	25 to 50	500 to 1000
Stiff	50 to 100	1000 to 2000
Very Stiff	100 to 200	2000 to 4000
Hard	over 200	over 4000
DTPL	Drier than plastic limit	
APL	About plastic limit	
WTPL	Wetter than plastic limit	



Ground Elevation: 98.65 m

Borehole Number: BH-01-12

Job N°: B-0001158-1

Drill Date: 2012-05-29

Field Tech: L. Roberts

Drill Method: Geoprobe

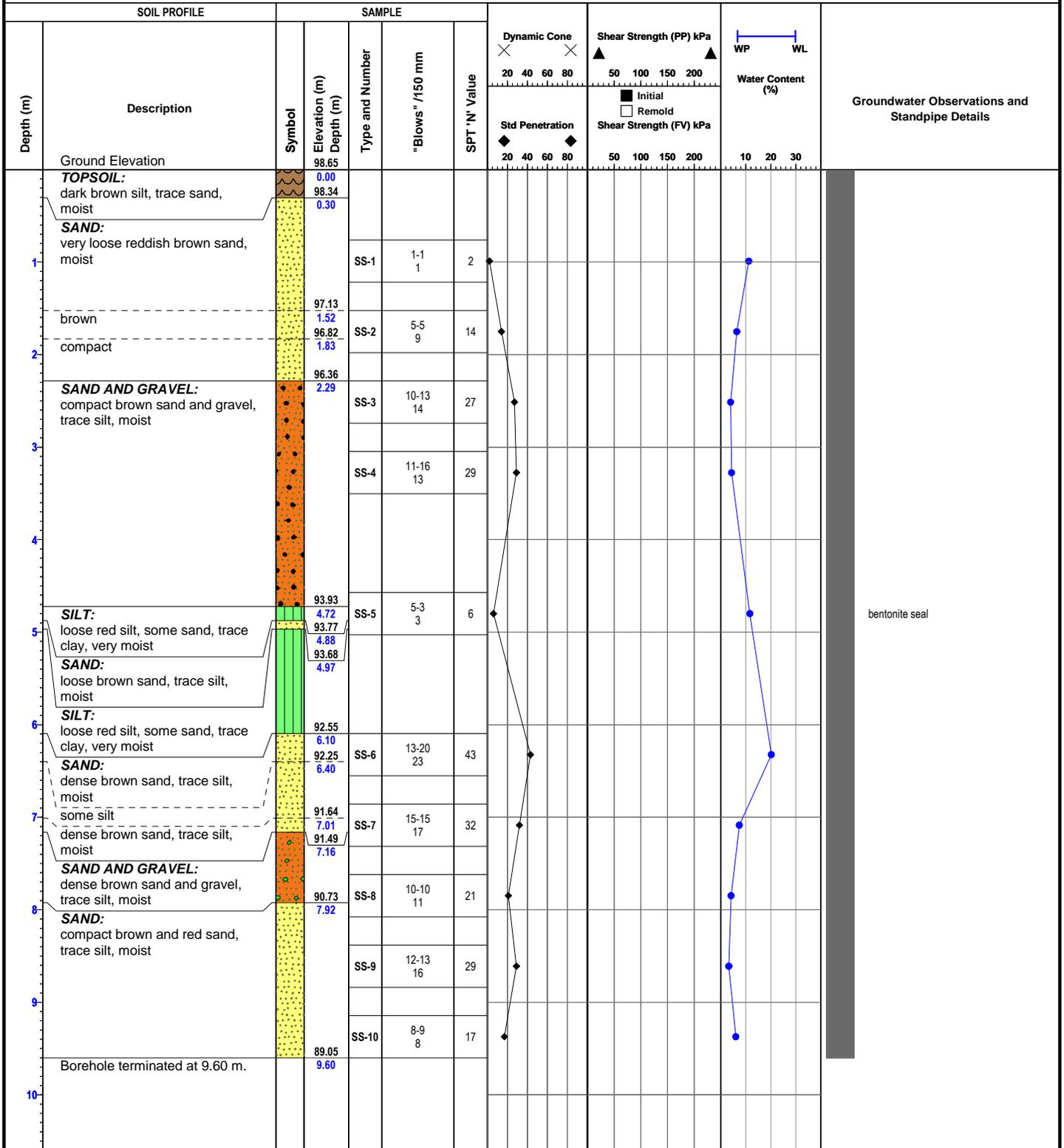
Project: Geotechnical Investigation - Slope Repairs

Location: 835 Spring Gardens Road, Burlington, Ontario

X:\Style_LVM_Ontario\LogBorehole_Log_LVM_Ontario_NEW.sty-Printed: 2012-06-08 10h

Vertical Scale = 1 : 60.0

EQ-09-Ge-72 R.1 18.02.2011



bentonite seal

Reviewed by: V. Marshall

Drafted by: K. Staples

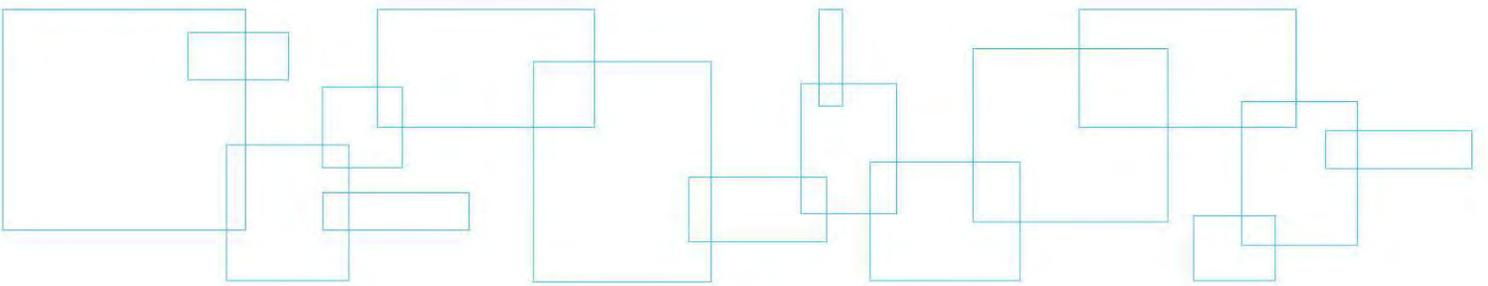
Sheet: 1 of 1

Notes:

Appendix 2 Drawings

Drawing 1: Location Plan

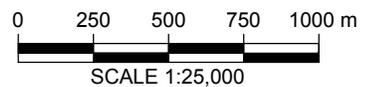
Drawing 2: Site Plan





NOTES :

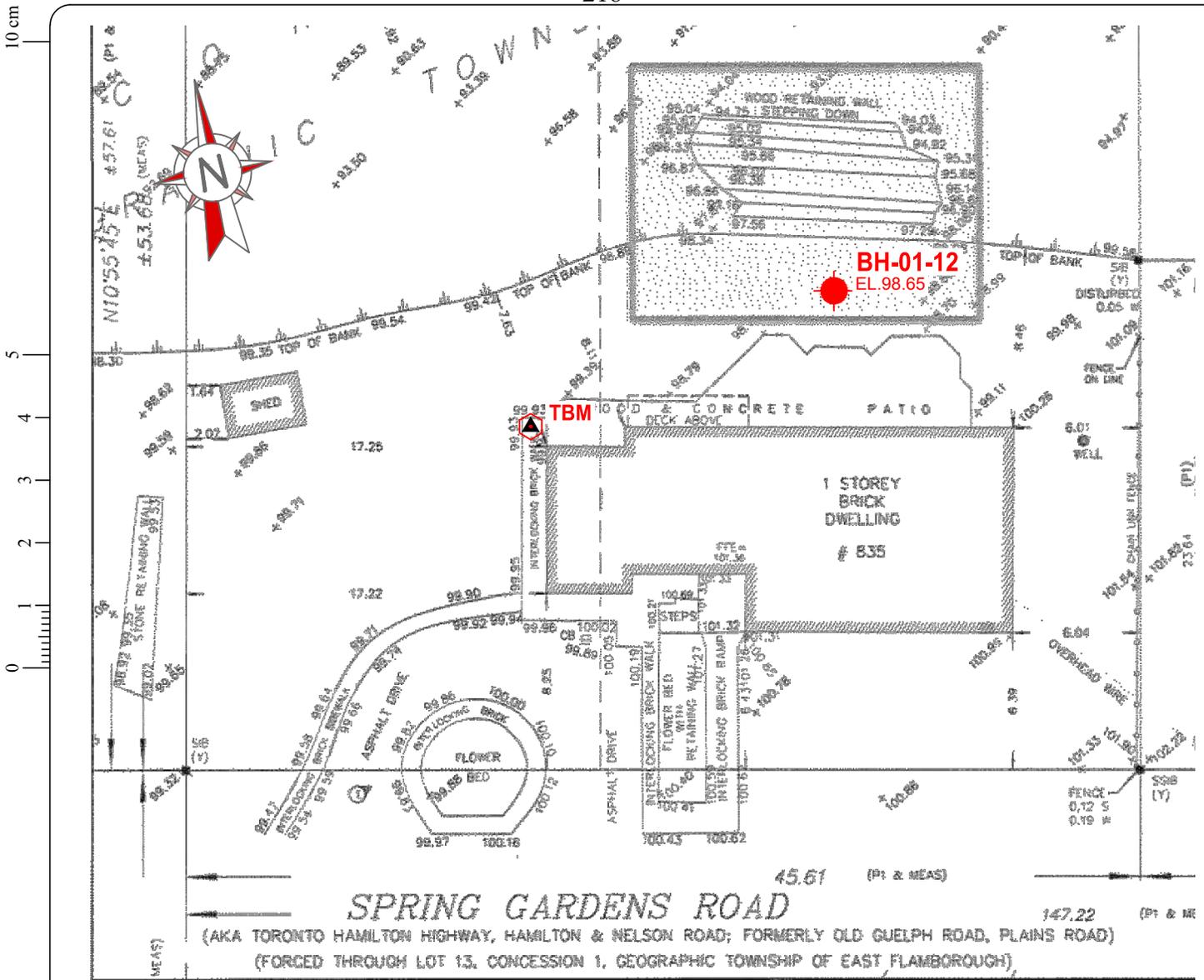
1-REFERENCE : MAPART PUBLISHING, Golden Horseshoe Street Atlas, Pages 474 and 468



G:\1160\B0001158\ZS_CAD\B-0001158-1-DWG001.DWG

Project	<h2 style="margin: 0;">GEOTECHNICAL SLOPE INVESTIGATION - SLOPE REPAIRS</h2> <p style="margin: 5px 0 0 0;">835 Spring Gardens Road, Burlington, Ontario</p>
Title	<h3 style="margin: 0;">LOCATION PLAN</h3>

		<p style="margin: 0;">LVM inc.</p> <p style="margin: 0; font-size: small;">353, Bridge Street East Kitchener (Ontario) N2K 2Y5 Telephone : 519.741.1313 Fax : 519.741.5422</p>
Prepared K. Staples	Discipline Geotechnical	Project manager V. Marshall
Drawn K. Staples	Scale 1 : 25,000	Sequence no. 01 of 02
Checked V. Marshall	Date 2012-06-21	
M. dept. 160	Project B-0001158-1	Disc. Drawn Rev. GE 311 0



LEGEND :



BOREHOLE LOCATION

EL. 98.65

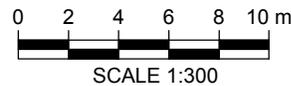
GROUND SURFACE ELEVATION (m)



TEMPORARY BENCHMARK

NOTES :

- 1-REFERENCE : Base drawing provided by client.
- 2-TEMPORARY BENCHMARK : Top of interlocking brick patio at northwest corner of existing house as shown. Elevation : 99.93 m (geodetic)
- 3-Drawing scale may be distorted due to file conversion and/or copying. Measurements taken from the drawing must be verified in the field.



G:\1160\B0001158\ZS_CAD\B-0001158-1-DWG002.DWG

Project

GEOTECHNICAL SLOPE INVESTIGATION - SLOPE REPAIRS

835 Spring Gardens Road, Burlington, Ontario

Title

SITE PLAN



LVM inc.

353, Bridge Street East
Kitchener (Ontario) N2K 2Y5
Telephone : 519.741.1313
Fax : 519.741.5422

Prepared **K. Staples**

Drawn **K. Staples**

Checked **V. Marshall**

Discipline **Geotechnical**

Scale **1 : 300**

Date **2012-06-21**

Project manager

V. Marshall

Sequence no.

02 of 02

M. dept.

160

Project

B-0001158-1

Disc.

GE

Drawn

312

Rev.

0

Invoice To:
Ivan Rudyk
835 Spring Gardens Road
Burlington, ON,
L7T 1J6

Invoice No. 110791

Invoice Date: 06/09/2011

Job Ref: 11-079

Attention: Ivan Rudyk
Your Account is Due Now.

RE: **835 Spring Gardens Road, Partial Lot: 13, CONCESSION 1E1F**
Municipality: CITY OF BURLINGTON

Surveyor's Real Property Report with elevations, our work included Land Registry Office search, research, field attendance, drafting, calculations and OLS checking and supervision.

Quote	2250.00
Disbursements	\$107.00

Sub-Total	\$2,357.00
LESS	\$0.00
13% HST	\$306.41
	<hr/>
Total Due Upon Receipt	\$2,663.41

We Accept VISA & Mastercard

2% interest per month will be charged on outstanding accounts.

HST#R103436515

Associate Company
**CLARKE
SURVEYORS
INCORPORATED**
Windsor, Ontario

Ontario Land Information Professionals

ROSS A. CLARKE, O.L.S. President
DASHA PAGE, O.L.S.
J. DAVID PETERS, O.L.S. (Retired)

Survey Records of J. W. TYRELL • JAMES J. MACKAY • ERNEST G. MACKAY • JOHN T. PETERS
YATES & YATES LTD • SEWELL & SEWELL

MACKAY MACKAY & PETERS

L I M I T E D

Land Information Managers
Land Surveyors & Mappers
Established 1906

3380 South Service Road
Burlington, Ontario L7N 3J5
Phone: 905-639-1375
Fax: 905-333-9544
Hamilton: 905-525-7471
email: halton@mmplimited.com

CONFIRMATION ORDER

Ivan Rudyk
835 Spring Gardens Road
Burlington, ON
L7T 1J6

Job #: **11-079**
Date: 04/27/2011
Client Phone #: 905-523-0000X274
Client E-Mail: irudyk@taylorleibow.com

Attention: Ivan Rudyk

Further to your instructions we will commence survey work at the herein referenced site. Further details of the project are listed below.

ADDRESS & LEGAL DESCRIPTION

835 Spring Gardens Road, Partial Lot: 13, CONCESSION 1EF, Municipality: CITY OF BURLINGTON, Pin: 07189-0060

DESCRIPTION OF PROJECT

Further to my conversation with Patrick Cannon at Terraprobe, I am pleased to submit this price proposal for survey work necessary to satisfy Conservation Halton requirements at 835 Spring Gardens Road in Burlington. The scope of work would include the following:

- Land Registry Office search, research and office preparation
- Field attendance to retrace boundary limits, verify or set survey monuments at front corners, locate existing dwelling and any other structures, top of bank, toe of slope, edge/shoreline of Grindstone Creek, grade elevations from toe of slope to edge of creek, substantial trees on subject property (0.3m Ø and larger), detail existing curb wall/erosion protection and elevations below, general spot elevations on the property to show exiting drainage
- Preparation of SRPR (A Surveyor's Real Property Report) illustrating the boundaries, LRO information, and measured features
- existing elevations will be referenced to geodetic datum
- Paper copies and AutoCAD file will be supplied
- Completion time – 3 working weeks

PRICING: \$2250.00+ HST(+ disbursements, i.e. materials, fuel surcharge, etc.)

- Travel time to and from a job site for an hourly assessed job will be charged at regular hourly rates.
- Where applicable, price quotes are based upon office records only. Should unforeseen circumstances arise following our first field visit, we will not exceed this amount without obtaining your consent. Due date is based upon weather conditions (where applicable).
- All invoice are due prior to release of plans or on site following the completion of field work if no plan is required.
- Invoices must be paid in full prior to deposit of the plan in the Land Registry Office.
- An amount no greater than 3 copies of a plan will be supplied to a non account MacKay & Peters client at the time of job completion. Additional copy requests after a plan has been deposited and the job completed are applicable for all clients, both non account and account clients. *All non account clients must pay upon additional plan pickup and account customers will be billed monthly.*
- **NOTE: Topographic plans include digital format. For a legal survey digital format is NOT included with the final plan. A digital plan can be purchased at the time of confirmation of order for an additional cost of \$250.00 + HST OR for \$400.00 + HST at any time following the completion of the project provided that the plan is available in a digital format.**
- Additional copy charges are as follows: 8" x 14"..... 0.20 each; 11" x 17".... 0.35 each; Over 11" x 17" ... 0.35/sq. ft.
- Interest of 2% per month will be charged on outstanding accounts. For your convenience we also accept Visa.
- Survey to be performed in accordance with above instructions. *The client agrees that the copyright of all plans and surveys is retained by MacKay, MacKay & Peters Limited.*

MACKAY, MACKAY & PETERS LIMITED
DASHA PAGE, O.L.S.
MANAGER

Job No: **11-079**

I authorize MacKay, MacKay & Peters Limited to proceed with this project as described in the confirmation letter dated 27-Apr-11, re Job No. **11-079**

Disclaimer Regarding Underground Services:

Should this survey project include the setting of survey iron bars and/or wood stakes up to 4 feet long on and along the subject property, it is the responsibility of the undersigned to mark all existing private underground pipes and/or lines (i.e. sprinkler systems, hydro and water to out buildings) on the subject property and along boundary limits of the subject property to avoid possible damage. MacKay, MacKay & Peters Limited will not be held responsible for any damages to any private underground pipes and/or lines not marked on the ground prior to field attendance. We shall be arranging locates for underground public utilities and unless no monuments are being set **we shall not** begin our field work until that has been completed.

NOTE: IN THE CASE WHERE A PLAN IS BEING PREPARED FOR A CLIENT, PLEASE NOTE THAT THE ACTUAL "DUE DATE" FOR DELIVERY OF PLAN TO THE CLIENT IS 2 TO 3 WEEKS FROM THE DATE THE AUTHORIZATION FORM IS RECEIVED IN OUR OFFICE. PLEASE ALLOW AT LEAST 4 WORKING DAYS IF RETURNING THIS FORM VIA MAIL. IF THE COMPLETED WORK IS REQUIRED PRIOR TO THE STATED TIMEFRAME, SPECIAL ARRANGEMENTS CAN BE MADE WITH THE OFFICE ONTARIO LAND SURVEYOR. See "Confirmation Order" for your particular due date.

Date

Signature

Please print your name

Company Name

Terms of Payment

PO#

By signing and returning this form you accept responsibility of payment for this project \$2250.00 + HST (+disbursements, I.E. material, fuel surcharge, etc)

The form must be signed by the party to be invoiced not by the agent acting on behalf of the party.

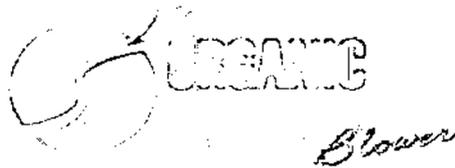
NOTE: For all non-account clients with respect to staking of property boundaries ... charges for field time, transportation and materials must be paid to our field crew on site at the completion of their work. Should the client not be home during this time to provide payment a **VISA & M/C #** must be supplied with this authorization form in order that payment can be received for the work performed. The client will be contacted to authorize any amounts being charged to their card prior to processing. All invoices must be paid prior to release or deposit of plans.

VISA & M/C Account #: ____ / ____ / ____ / ____

Expiry Date: ____ / ____

Name on the Card: _____

*****Fax Authorization Form Back to 905-333-9544*****



324 Governor's Rd. East, RR#1 Paris Ont. N3L 3E1
 P: (519) 720-0890 F: (519) 720-0891
 www.organic-express.ca / info@organic-express.ca

Residential

Attn: Ivan Rudyk

Date: February 17, 2011

No. of Pages: 1

Phone: ()

Fax: ()

Re: 835 Spring Gardens Road, Burlington

We are pleased to quote you on the above mentioned project:

Item 1) Filtrexx Severe Slope Stabilization

Supply and install Filtrexx™ Severe Slope Stabilization System. This system includes: 18" Filtrexx™ SiltSoxx™ filled with GrowthMedia™ injected with a Native Wildflower for Partial Shade Seed Mix and cover crop injected throughout; Geo-grid Reinforcement, Earth Anchor System, and Live Staking. This includes:

- Excavation and removal of the existing timber wall system.
- Grading slope to approximately 1:1.
- Any disturbed areas to be restored using a Filtrexx GrowthMedia Blanket.

Approx. Slope Face 12m x 8m.....\$38,620.00/LS

Item 2) Filtrexx™ GrowthMedia™ Blanket

Supply and install Filtrexx™ GrowthMedia™ Blanket with Native Wildflower for Partial Shade Seed Mix and cover crop injected throughout. This item is recommended for the areas on the slope below the proposed slope repair to provide a layer of organics for erosion control and vegetation establishment.

Approx. 50mm Depth (2").....\$4,208.00/LS

****This quote is preliminary based on site conditions during the site visit on Dec. 17, 2011. A soil report completed by an approved engineer is required before a finalized price can be quoted.**

Conditions:

- All permits to be supplied by others.
- Site to be watered and maintained by others as required.
- Payment upon completion
- HST extra.
- Access to be provided during construction
- Depth to be measured at time of application.
- Quote open for acceptance for of 60 days.

Please call if you have any questions.

Organic Express Inc.
 Miles Torch C.E.T., CISEC

Certified Filtrexx™ Installer

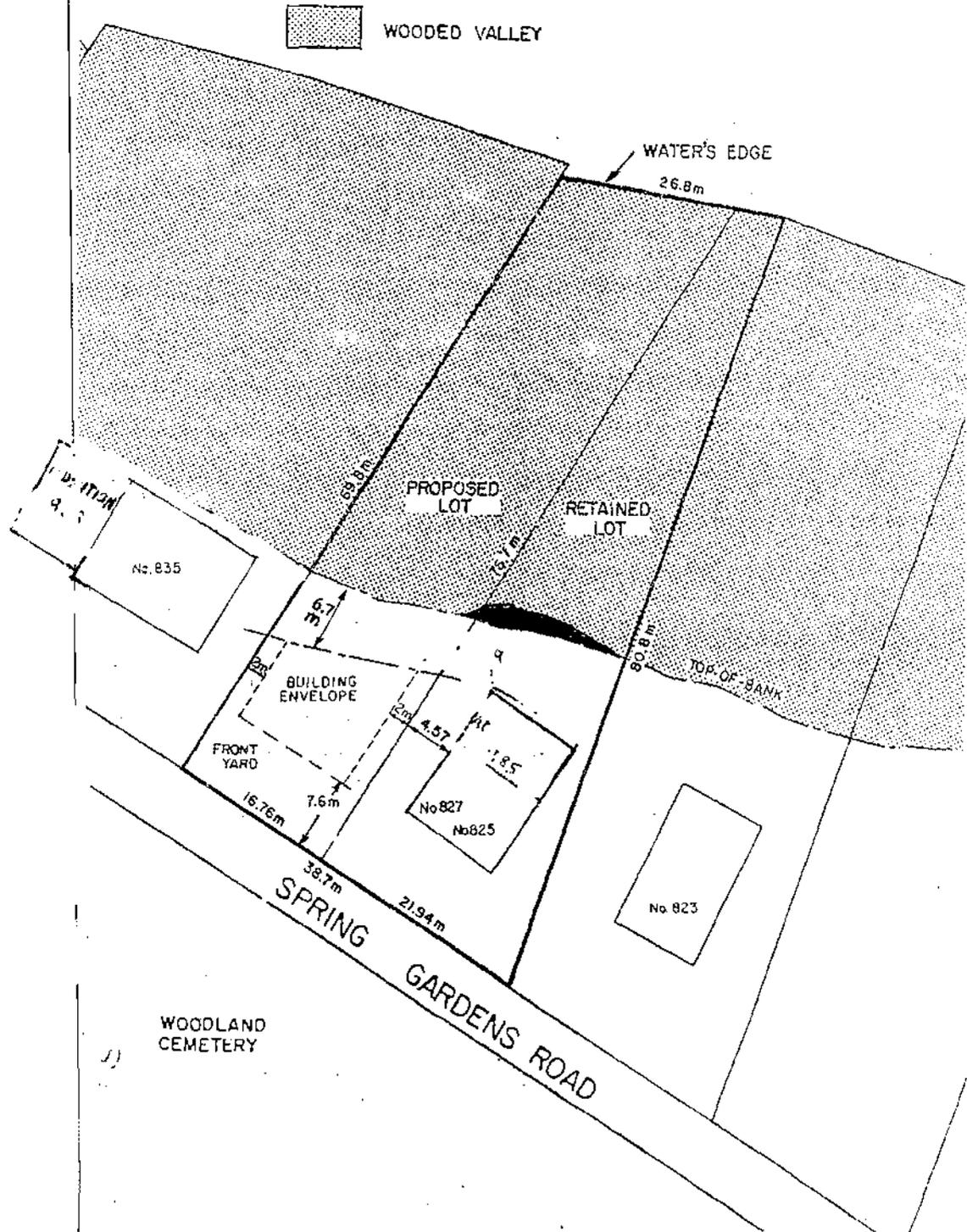


Sketch No.2 DETAIL SKETCH

Proposed amendment to the Parkway Belt Regulations
to sever a 1170 m² parcel for the construction of
a single family dwelling - Aldo Statti,
827 Spring Garden Road

File No.: 550-02-10/89

(COUNCIL RECOMMENDED)



DATE: JUNE 26/90

SCALE: 1:500



Burlington Planning Department



 PROTECTING THE NATURAL ENVIRONMENT FROM LAKE TO ESCARPMENT

2596 Britannia Road West
 Burlington ON L7P 0G3
 905.336.1158 Fax 905.336.7014
 conservationhalton.ca

December 20, 2010

Mr. Ivan Rudyk and Ms. Shelley Young
 835 Spring Gardens Road
 Burlington, ON
 L7T 1J6

Dear Mr. Rudyk and Ms. Young:

Re: **Proposed replacement of an existing retaining wall in the Grindstone Creek Valley**
835 Spring Gardens Road
Part Lot 13, Concession I (E. Flamborough)
City of Hamilton

Proposals

The proposed works involves the replacement of an approximately 10 metre high retaining wall within an approximately 13 metre high valley wall.

Ontario Regulation 162/06

An existing retaining wall at 835 Spring Gardens Road is constructed within a steep valley slope immediately adjacent the Grindstone Creek. Conservation Halton regulates hazardous lands associated with watercourses, valleylands, wetlands and shorelines, as well as the lands adjacent to those hazards. Please be advised that development, including grading, filling, or the construction of structures, within Conservation Halton's regulated area, requires permission pursuant to Ontario Regulation 162/06. Please visit www.conservationhalton.on.ca for a copy of Ontario Regulation 162/06 and the related policy document (*Policies, Procedures and Guidelines for the Administration of Ontario Regulation 162/06*).

Comments on Policy

Replacement of the retaining wall at 835 Spring Gardens Road would be subject to Policies 3.4.2.1, and 3.37.1 within Conservation Halton's *Policies, Procedures and Guidelines for the Administration of Ontario Regulation 162/06*. The relevant aspects of these Policies are provided below:

Policy 3.4 Slopes & Slope Stability

3.4.2 Stable Top of Bank (Valleylands and Shoreline)

3.4.2.1 Valleylands

The stable top of bank is to be established by a professional, geotechnical engineer utilizing the guidelines and manuals outlined in Section 5, to the satisfaction of Conservation Halton staff. Where no

geotechnical assessment has been undertaken, a minimum 8 to 15 metre toe erosion allowance (depending on soil type) and 3:1 stable slope allowance will be utilized. In addition to the requirements outlined in Section 5, the geotechnical assessment must take into consideration, and make recommendations pertaining to: construction equipment/access; limit of work area; vegetation protection; sediment and erosion controls; drainage; etc.

3.37 Existing Valley Development

3.37.1 Where buildings or structures (including private access roads) already exist on a valley wall or in a valley, replacement may be permitted subject to the following criteria:

- b) The building or structures are of the same size and use, and contain the same number of dwelling units;
- c) The building or structures are located no further into the valley or closer to a watercourse than the existing building or structure;
- e) If the building or structure is located on a valley wall, a professional geotechnical engineer must complete a geotechnical study to determine the risk of the proposed work. The study will include an assessment of the stability of the valley wall, rate of erosion or recession of the valley wall, (over a 100 year period), access issues and an assessment of the construction and construction technique on the valley wall. The study must be carried out, at a minimum, in accordance with the geotechnical documents referenced in Section 5. The design of any works must ensure that the long-term stability of the valley wall is maintained and that no risk to life or property damage is anticipated.

Staff appreciate your desire to improve the safety and stability of your property and will work with you to fulfill that goal. However, after visiting the site on December 15, 2010, staff are concerned with the substantial grade differential and stability concerns that will need to be overcome. To support the works that you have discussed, we will require that some restoration occur to ensure the long-term stability of the valley affecting your property. As such, the following information will be required in support of the proposed works:

1. The Permit fee of \$630, paid to Conservation Halton;
2. A Geotechnical Assessment, signed and sealed by a qualified Professional Engineer, completed in accordance with the Ministry of Natural Resources document "*Understanding Natural Hazard and Technical Guide for River and Stream Systems: Erosion Hazard Limit*" and all other applicable geotechnical standards/criteria. The report must be based on an updated topographical survey at a scale of 1:300 or better, prepared by a registered Ontario Land Surveyor (OLS) or Professional Engineer (P.Eng.). The Report is to include, but not limited to, the following information (to be provided by your Engineer):
 - a. Recommendations for the proposed replacement of the retaining wall. Any proposal must ensure the long-term stability of the valley wall is maintained during and after construction and that no risk to life or property damage is anticipated.
 - b. Design details, including depth of embedment, buttressing gradient, drainage and fine migration protection must be provided. In addition, Factor of Safety analysis for bearing capacity, overturning, and sliding must be provided.

- c. Construction details including the impacts of construction on the valley slope stability, sediment and erosion controls, limit of work area delineation, and staging and phasing.
3. Plan view drawings of all proposed works. Drawings should clearly illustrate how the proposed works relate to the property boundaries/adjacent properties, existing structures, and applicable natural hazards (i.e. stable and physical top of bank, toe of valley slope, and watercourse).
4. Profile and cross-sectional view(s) to clearly illustrate the proposed works.
5. Structural design drawings for the proposed retaining wall. Staff require that the design drawings be based on a strict adherence to the recommendation provided in the Geotechnical Assessment Report and must be signed and sealed by a Professional Geotechnical Engineer or Professional Structural Engineer.
6. Detailed grading plans illustrating existing and proposed conditions. Drawings should clearly delineate the limit of work/disturbance area. All vegetation removal should be identified.
7. Construction details regarding staging, phasing, sediment and erosion measures, equipment, materials, access to and from the work area. See *Erosion and Sediment Guidelines for Urban Construction* prepared by the Greater Golden Horseshoe Area Conservation Authorities for additional guidance (www.sustainabletechnologies.ca)

In Summary

Staff recognize that the objective of your proposal is to improve the safety and stability of your property and are not opposed to the project in principle. However, to support development at this particular site will require three sets of drawings that address points 1-7 above. Please note that some of the information listed above is technical and may require that your Engineer and/or contractor contact Conservation Halton to discuss.

We trust the above is of assistance. Please contact the undersigned at extension 276 to discuss questions you have related to development at your property.

Yours truly,



Charles Priddle
Watershed Permit Analyst



Cc: Colleen Lavender, Watershed Stewardship Technician

This is **Exhibit “C”** referred to in the Affidavit of Shelley Young, affirmed before me this 1st day of November, 2022.

A handwritten signature in black ink that reads "A. Bouchard" with a checkmark-like flourish at the end.

A Commissioner for taking affidavits



Conservation
Halton

905.336.1158
Fax: 905.336.7014
2596 Britannia Road West
Burlington, Ontario L7P 0G3
conservationhalton.ca

Protecting the Natural
Environment from
Lake to Escarpment

February 14, 2014

Mr. Ivan Rudyk and Ms. Shelley Young
835 Spring Gardens Road
Burlington, ON
L7T 1J6

Dear Mr. Rudyk and Ms. Young:

**Re: Proposed replacement of an existing retaining wall in the Grindstone Creek Valley
835 Spring Gardens Road
City of Burlington
CH File: A/10/B/91**

Please find enclosed **Permit No. 4513** issued in accordance with Ontario Regulation 162/06, for the above noted proposal.

Staff have reviewed the following regarding the above noted proposal:

- *Set of Two Drawings in Support of Development at 835 Spring Gardens Road*, Prepared by LVM Inc., Stamped and Signed by J.W. Dietz (P.Eng.), Stamped Approved February 14, 2014.
- *Revised Seed Mix, 835 Spring Gardens Road*, Prepared by Organic Express, Received February 14, 2014, Stamped Approved February 14, 2014.

The applicant is proposing to replace an existing retaining wall that is within the upper portion of the valley associated with Grindstone Creek. Please be advised that the proposed works meet Policy 3.37.1 of Conservation Halton's *Policies and Procedures for the Administration of Ontario Regulation 162/06 and Land Use Planning Document*, August 11, 2011.

Based on the above, this permit is approved with the following conditions:

- a. That disturbed areas be stabilized immediately following the completion of construction to the satisfaction of Conservation Halton.
- b. That effective sediment and erosion control measures be installed prior to starting work, maintained during construction and fully removed once all disturbed areas have been stabilized. That site conditions be monitored and that the sediment and erosion control measures be modified if site conditions warrant it.
- c. That excess fill (soil or otherwise) generated from the proposed works shall not be stockpiled or disposed of within any area regulated by Conservation Halton, pursuant to Ontario Regulation 162/06.

Please be sure that you read and understand all conditions listed on the enclosed Permit (and included below). Please also note that contravention of a Permit, or the terms and conditions of a Permit, is considered an offence under Section 28(16) of the *Conservation Authorities Act*. It is your responsibility to ensure that any person working under the authority of this Permit is familiar, and complies with, the terms and conditions.

Conservation Halton must be contacted a minimum of 48 hours prior to commencement of construction. This Permit or a copy thereof as well as all approved drawings must be available at the site. Any changes to the approved design or installation methods must be reviewed and approved by Conservation Halton staff prior to their implementation. This Permit is valid two years from the dated it is issued.

Please be advised that should you have any objection to any of the conditions of the permit, you are entitled to request a hearing before the Authority, in accordance with Section 28(12) of the Conservation Authorities Act. A written notice of your request for a hearing must be received by staff within 30 days of the date of this letter. Please note that if a hearing has been requested, this permit approval is withdrawn until such time as the hearing results have been finalized and commencement of any site alteration must not occur until the results of the Hearing are determined.

We trust the above is of assistance in this matter. Should you require further information, please contact Charles Priddle, Coordinator, Regulations Program, at extension 2276.

Sincerely,



Barbara Veale, PHD, MCIP, RPP
Manager, Planning & Regulations

Encl. 2

Cc: Corina Rose, Planning Department, City of Burlington (Permit and Drawings)



2596 Britannia Road West
 Burlington, ON L7P 0G3
 Telephone: 905 336-1158 Fax: 905 336-6684

PERMIT #: 4513

FILE #: A/10/B/91

PERMIT

IN ACCORDANCE WITH SECTION 3 OF REGULATION 162/06, PERMISSION HAS BEEN GRANTED TO:

Owner's Name: Ivan Rudyk & Shelley Young Phone: 905-529-5856
 Mailing Address: 835 Spring Gardens Rd., Burlington ON, L7T 1J6
 Agent/Contractor: Same as above Phone:

Property Location: 835 Spring Gardens Road
 in the (City, Town, Township) of: Burlington (Region/County) of: Halton

This permit is for the purpose of Proposed replacement of an existing retaining wall in the Grindstone Creek Valley.

This permit is issued on this 18th day of February, 2014 Expires: 18th day of February, 2016

And is subject to the following conditions:

1. That the work to be carried out in accordance with plans submitted on February 14th, 2014 and stamped APPROVED by: Charles Priddle, Coordinator, Regulations Program
2. See reverse.
3. **Conservation Halton is to be notified of the date of the commencement of construction. This permit (including drawings stamped approved by Conservation Halton) or a copy thereof, must be posted on the site and be available for inspection.**

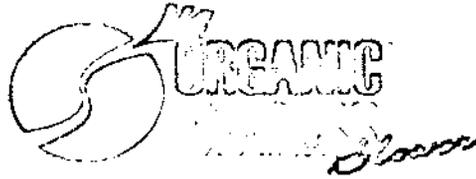
Conservation Halton may, at any time, withdraw any permission given under this regulation if, in the opinion of the Conservation Authority, the conditions of the permit are not complied with.

This permit does not preclude any approvals required by any other existing law and regulations.

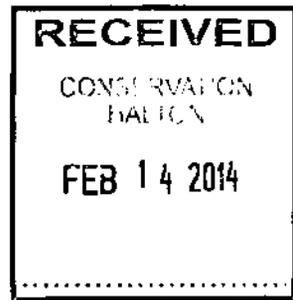
Authorized by: Barbara Veale on the 18th day of February 2014.
 Barbara Veale, Manager, Planning and Regulation Services

1) WHITE: APPLICANT ORIGINAL COPY 2) GREEN: REGULATION OFFICER COPY
 3) YELLOW: MUNICIPALITY COPY 4) GOLD: FILE COPY

- 2.
- a) That disturbed areas be stabilized immediately following the completion of construction to the satisfaction of Conservation Halton;
 - b) That effective sediment and erosion control measures be installed prior to starting work, maintained during construction and fully removed once all disturbed areas have been stabilized. That site conditions be monitored and that the sediment and erosion control measures be modified if site conditions warrant it; and
 - c) That excess fill (soil or otherwise) generated from the proposed works shall not be stockpiled or disposed of within any area regulated by Conservation Halton, pursuant to Ontario Regulation 162/06.



324 Governor's Rd. East, RR#1 Paris Ont. N3L 3E1
 P: (519) 720-0890 F: (519) 720-0891
 www.organic-express.ca / info@organic-express.ca



Conservation Halton
 2596 Britannia Road West,
 Burlington, ON
 L7P 0G3

Date: January 20, 2014

Attn: Charles Priddle

Re: 835 Spring Gardens Road, Burlington – Revised Seed Mix

The following is to address the letter dated January 9, 2014 regarding the proposed seed mix for the retaining wall replacement at 835 Spring Gardens Road in Burlington.

1) Revised Seed Mix

Please accept the following seed mix that addresses the points 1-3 regarding the native species, botanical names and cover crop. Additionally the cover crop will be revised to be 100% Annual Oats (*Avena sativa*). However, if there is another acceptable annual cover crop that can be recommended by Conservation Halton, I would like to consider it to diversify the cover crop used for quick vegetation establishment.

Percentage	Variety (Latin)	Variety (Common)
20.00	<i>Rudbeckia hirta</i>	Black Eyed Susan
1.00	<i>Asclepias tuberosa</i>	Butterfly Weed
30.00	<i>Poa palustris</i>	Fowl Bluegrass/Meadowgrass
5.00	<i>Penstemon digitalis</i>	Foxglove/Beardtongue
15.00	<i>Coreopsis lanceolata</i>	Lance Leaf Coreopsis
10.00	<i>Schizachyrium scoparium</i>	Little Bluestem
2.00	<i>Aster novae-angliae</i>	New England Aster
2.00	<i>Monarda fistulosa</i>	Wild Bergamot
7.00	<i>Cornus racemosa</i>	Grey Dogwood
8.00	<i>Rhus typhina</i>	Staghorn Sumac

If you have any questions or concerns, please contact the undersigned.

Organic Express Inc.

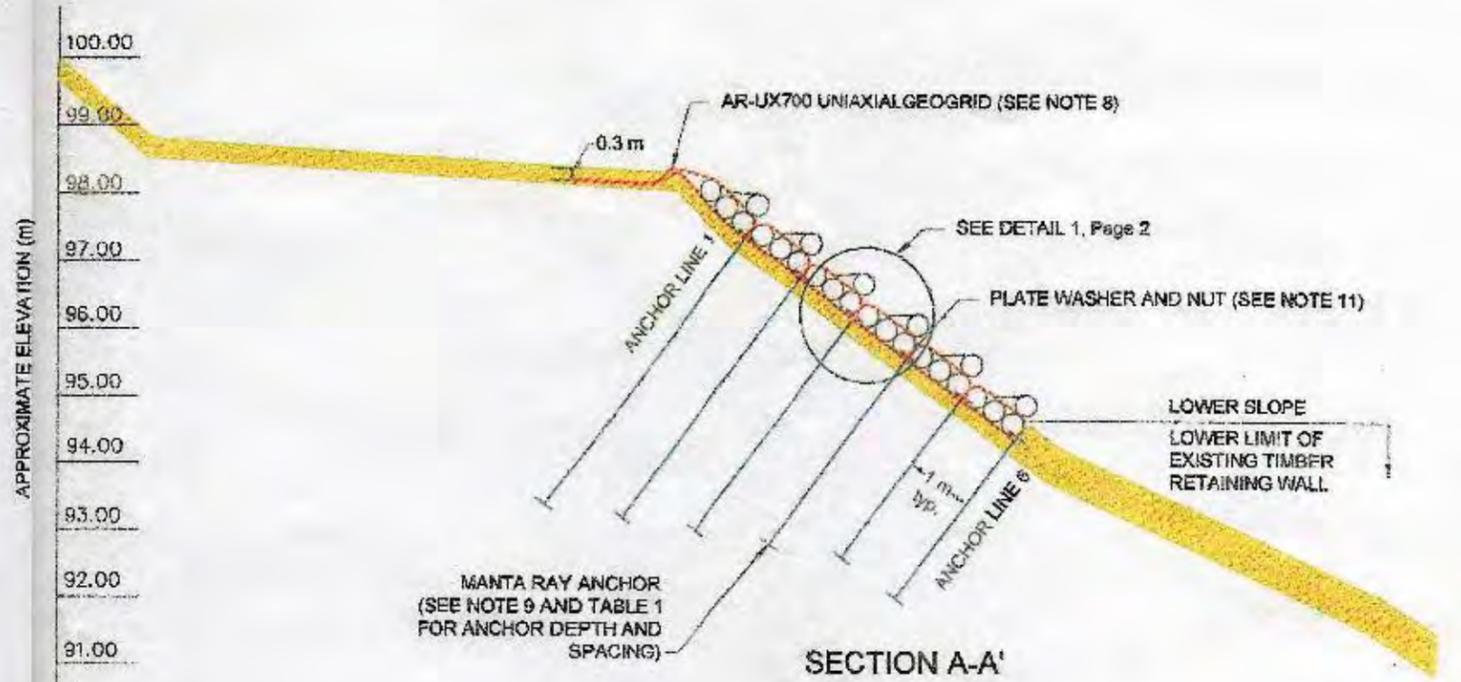

 Miles Torch, C.E.T., CISEC

HALTON REGION CONSERVATION AUTHORITY
 APPROVED BY: Charles Priddle
 DATE: Feb 14/14
 Subject to the conditions provided on
 Permit No: 4513

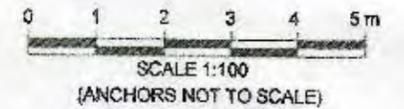
TABLE 1

ANCHOR LINE	ANCHOR TYPE	MINIMUM ANCHOR LENGTH (m)	ANCHOR SPACING ALONG SLOPE (m)	MINIMUM LOADING AT PROOF TEST (KN)*
1	MR2	5.0	3.0	40
2	MR2	4.5	2.5	40
3	MR2	4.0	2.0	40
4	MR2	3.5	1.5	40
5	MR2	3.0	1.5	40
6	MR2	3.0	1.0	40

* Note Proof Test to Load Indicated and hold for one minute with less than 12 mm of movement.



HALTON REGION CONSERVATION AUTHORITY
 APPROVED BY: Charly P. dech
 DATE: Feb 14/14
 Subject to the conditions provided on
 Permit No: 4513



REV	DATE	DESCRIPTION	Prepared By	Checked By
01	2013-09-10	Anchor length and FC6 changed	SC	JD
02	2013-05-28	Section changed to match Drawing 2 Revision 01	EC	JD
03	2013-05-01	Issued for construction	EC	JD
04	2013-07-15	Issued for second review	DC	JL
0A	2013-02-13	Issued for review	EC	JD

ISSUES / REVISIONS

ALL DIMENSIONS MUST BE IN METERS AND EXPRESSED BEFORE BEGINNING THE WORKS

RECEIVED

CONSERVATION HALTON

Project: **Geotechnical Slope Investigation Slope Repairs**
 625 Spring Gardens Road, Burlington, Ontario

Title: **REINFORCED SLOPE DETAIL**

LVM FEB 14 2014 LVM inc.
 753, Bridge Street, East
 Kitchener (Ontario) N2B 2Y5
 Telephone: 519 741 1713
 Fax: 519 741 3422

Prepared: A.Higgins
 Drawn: A.Higgins
 Checked: J.Dietz

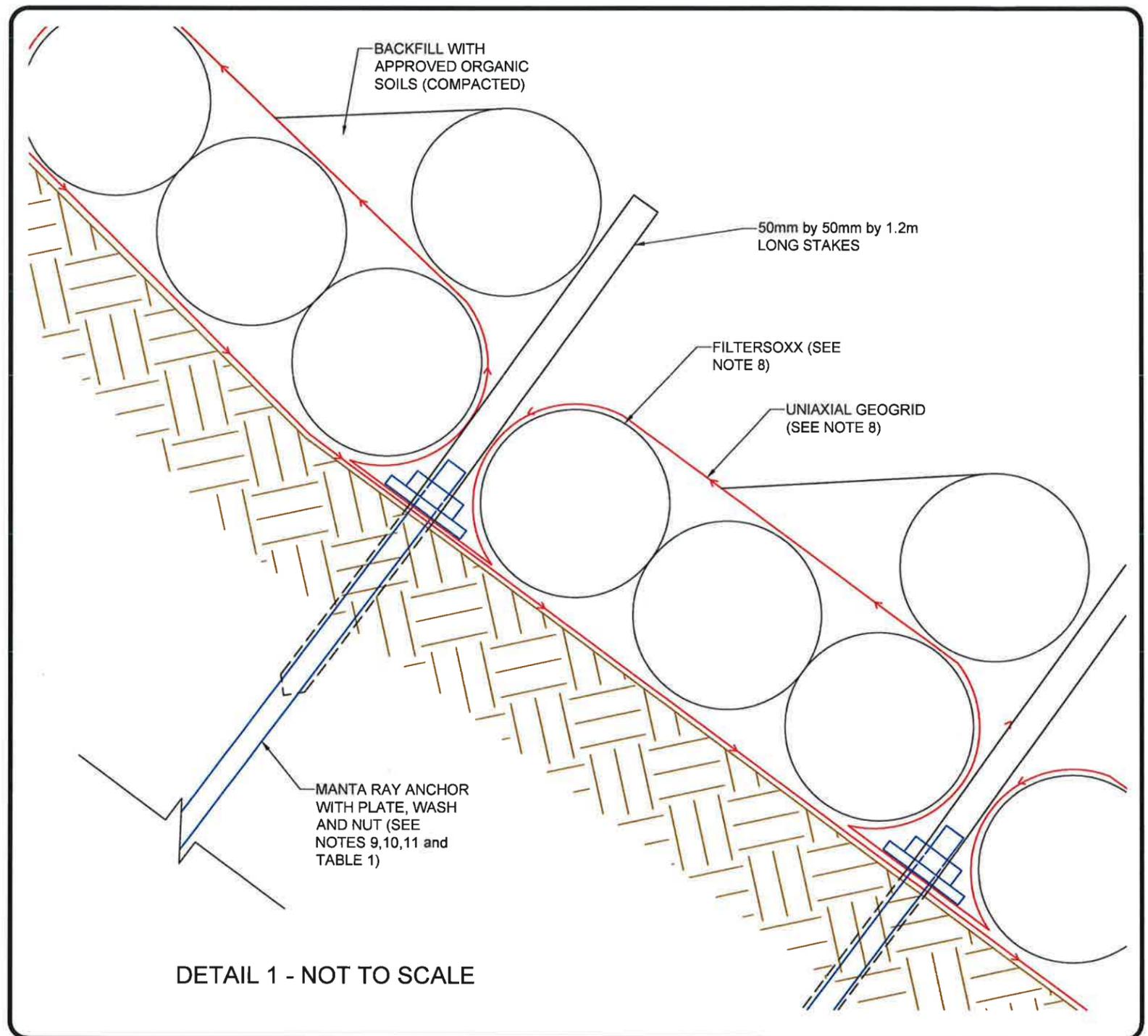
Discipline: GEOTECHNICAL
 Scale: VARIES
 Date: 2013-03-12

J.Dietz
 Sequence no. 01 of 02

Disc: **GE 001 02**

G:\160\B0001158\25 CAD\218-0001158-2\DWG\001.DWG

10 cm
5
4
3
2
1
0



DETAIL 1 - NOT TO SCALE

NOTES:

1. LOADS: The following loads and soil parameters were assumed for the design of the reinforced slope
 - a) Uniform distributed load of 4.8 kPa
 - b) loose sand $\phi = 28^\circ$, $\gamma = 18 \text{ kN/m}^3$, $c = 0 \text{ kPa}$
 - c) compact gravel $\phi = 32^\circ$, $\gamma = 21 \text{ kN/m}^3$, $c = 0 \text{ kPa}$
2. GLOBAL STABILITY: The reinforced slope has been designed for a factor of safety against global instability of 1.5.
3. LOWER SLOPE: The design of the reinforced slope is only for the portion of slope currently occupied by a timber retaining wall. Stability of the slope below the timber retaining wall has not been investigated. Instabilities existing in the lower slope may adversely affect the stability of this reinforced slope design.
4. Prior to the start of work, contractor is to ensure there are no services or buried structures that will be affected by installation of anchors.
5. Ensure all stormwater is directed away from proposed reinforced slope during timber retaining wall removal and reinforced slope construction.
6. Existing timber retaining wall to be removed such that no soil or wall material will fall down the lower slope.
7. Where required to re-establish grades following timber wall removal and prior to anchor installation, place sand in maximum 300 mm thick lifts compacted to at least 95% Standard Proctor Maximum dry density (SPMDD).
8. Place AR-UX700 uniaxial geogrid (or approved equivalent) anchored at top of slope. Place Multifilament HDPP Filtrexx Filtersoxx, 300 mm diameter (seeded) and 50 mm by 50 mm by 1.2 m long stakes. Wrap uniaxial geogrid back up slope and anchor every third row of Filtersoxx. Filtersoxx placement to meet Filtrexx specifications.
9. Install Manta Ray anchors at locations and to depth and proof loads indicated in Section A-A' and Table 1. Bar to be #6 Grade 75 All-Thread Rebar (ASTM A615).
10. Contractor to familiarize self with Manufacturer's recommendations for installation and geotechnical report for site. It is noted that cobbles or boulders may be present in native soil that may require pre-augering for anchor installation or installation of additional anchors to compensate for any not achieving the minimum anchor length noted in Table 1.
11. Steel plate to be S1K round. Plate dimensions to be at least 150 mm by 500 mm with centre hole sized for bar noted in Note 9. Long direction of plate parallel to Filtersoxx rows. Couplers and nuts to be sized for bar noted in Note 9 (ASTM A108). Washer to be suitable sized (ASTM F436).
12. The following items must be inspected and approved by geotechnical engineer during construction:
 - Compaction level of any fill placed
 - Type of anchor, bar, plate, washer, and nut
 - Type of geogrid and Filtersoxx
 - Overlap of adjacent sheets (if relevant)
 - Installed length of anchors
 - Proof load of each anchor
13. Bank to be live staked after initial establishment of vegetation.



REV	Y - M - D DATE	DESCRIPTION	Prepared By	Checked By
02	2013-09-10	Anchor length and FOS changed	EC	JD
01	2013-05-17	Revised Geogrid Location	EC	JD
00	2013-05-01	Issued for construction	EC	JD
0B	2013-02-15	Issued for second review	EC	JD
0A	2013-02-15	Issued for review	EC	JD

ISSUES / REVISIONS

ALL DIMENSIONS MUST BE TAKEN AND CHECKED BEFORE BEGINNING THE WORKS

Project

Geotechnical Slope Investigation Slope Repairs

835 Spring Gardens Road, Burlington, Ontario

Title

REINFORCED SLOPE DETAIL

LVM

LVM inc.
353, Bridge Street East
Kitchener (Ontario) N2K 2Y5
Telephone : 519.741.1313
Fax : 519.741.5422

Prepared A.Higgins	Discipline GEOTECHNICAL	Project manager J.Dietz
Drawn A.Higgins	Scale N.T.S.	Sequence no. 02 of 02
Checked J.Dietz	Date 2013-05-15	

M. dept.	Project	Disc.	Dwg no.	Rev.
160	B-0001158-2	GE	329	02

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905.336.1158
 Fax: 905.336.7014
 2596 Britannia Road West
 Burlington, Ontario L7P 0G3
conservationhalton.ca

Protecting the Natural
 Environment from
 Lake to Escarpment

January 9, 2014

Mr. Ivan Rudyk and Ms. Shelley Young
 835 Spring Gardens Road
 Burlington, ON, L7T 1J6

Dear Mr. Rudyk and Ms. Young:

**Re: Proposed replacement of an existing retaining wall in the Grindstone Creek Valley
 835 Spring Gardens Road
 City of Burlington
 CH File: A/10/B/91**

Staff have reviewed the letter submitted by Organic Express, dated December 2013, in response to Conservation Halton's letter dated September 4, 2013. Staff appreciates Organic Expresses' letter and, as a result of that letter, can state that only a few items need to be addressed prior to issuing a Permit pursuant to Ontario Regulation 162/06. Please provide revised drawings addressing the following:

1. The OSC #8120 seed mix contains *Poa compressa* which is not a locally native species. Only locally native species are supported by staff within areas regulated by Conservation Halton. Please remove this species from the seed mix or substitute with a locally native species.
2. Staff require the botanical names for the dogwood, willow and sumac shrub seed be included prior to issuing a Permit in order to ensure that locally native species are used.
3. Recent research indicates that Annual Rye (*Lolium multiflorum*) can inhibit the growth of other species thereby hindering the establishment of native vegetation. Staff therefore recommends that it not be used as a nurse crop. Annual Oats (*Avena sativa*) is acceptable.

Conservation Halton would also suggest that more frequent monitoring and maintenance may be required in case of drought conditions during the period of groundcover establishment.

In Summary

Staff recognize that the objective of your proposal is to improve the safety and stability of your property and are not opposed to the project in principle. Once points 1 – 3 are addressed staff believe that Conservation Halton will be in a position to release a Permit pursuant to Ontario Regulation 162/06.

We trust the above is of assistance. Please contact the undersigned at extension 2276 to discuss questions you have related to development at your property.

Yours truly,

Charles Priddle, Ph.D.
 Coordinator, Regulations Program



905.336.1158
 Fax: 905.336.7014
 2596 Britannia Road West
 Burlington, Ontario L7P 0G3
conservationhalton.ca

Protecting the Natural
 Environment from
 Lake to Escarpment

September 4, 2013

Mr. Ivan Rudyk and Ms. Shelley Young
 835 Spring Gardens Road
 Burlington, ON
 L7T 1J6

Dear Mr. Rudyk and Ms. Young:

**Re: Proposed replacement of an existing retaining wall in the Grindstone Creek Valley
 835 Spring Gardens Road
 City of Burlington
 CH File: A/10/B/91**

Proposals

The proposed works involves the replacement of an approximately 10 metre high retaining wall within the valley wall associated with the main branch of Grindstone Creek.

Ontario Regulation 162/06

An existing retaining wall at 835 Spring Gardens Road is constructed within a steep valley slope immediately adjacent the Grindstone Creek. Conservation Halton regulates hazardous lands associated with watercourses, valleylands, wetlands and shorelines, as well as the lands adjacent to those hazards. Please be advised that development, including grading, filling, or the construction of structures, within Conservation Halton's regulated area, requires permission pursuant to Ontario Regulation 162/06. Please visit www.conservationhalton.on.ca for a copy of Ontario Regulation 162/06 and the related policy document (*Policies, Procedures and Guidelines for the Administration of Ontario Regulation 162/06*).

Comments on Submission

After receiving your revised application on June 20, 2013, staff (C. Priddle and E. Sapozhnikova) visited the site to discuss the proposed works. Staff would like to reiterate that we appreciate your desire to improve the safety and stability of your property and will work with you to fulfill that goal. However, staff remain concerned with the substantial grade differential and stability concerns that will need to be overcome and require the following information be submitted to confirm that the control or erosion and conservation of land have been addressed:

1. Please provide written confirmation from a geotechnical engineer:
 - a. That works proposed on the upper portion of the slope are sufficient and that the condition of the slope does not require an extension of the work (e.g. to the toe of slope);
 - b. That the global stability of the proposed system will have a minimum Factor of Safety of 1.5. Please note that the existing / proposed inclinations of the slope, as well as the soil characteristics, must be incorporated into the analysis. Please also confirm the method utilized for the Factor of Safety evaluation; and,

c. That no analysis of Factor of Safety for sliding or overturning is required for the proposed system.

- tree -
circumference
at base level
indicated on
land survey
which is in the
application
• smallest diameter
measured was
30cm
2. Staff require a tree inventory be completed including species, size, location, biological condition (noting potential stresses), presence of rare or significant species, etc. All species greater than 15cm diameter at breast height (dbh) must be illustrated on the plans. Please note that Conservation Halton staff request a replacement rate of 3:1 for any tree > 15cm dbh which is removed.
 3. Please provide details as to tree protection that will be installed before construction commences. This protection is to remain in place until after all construction works have been completed. At a minimum, these measures include fencing that is measured from the dripline of the tree plus a minimum of 1 metre, consisting of posts and t-bars with paige wire fencing and filter cloth as per Conservation Halton's *Landscaping and Tree Preservation Guidelines*. To avoid confusion, the limits of the tree protection zones and tree protection details should be clearly and accurately shown on site drawings.
 4. Staff require a list of seed mix (including botanical names) to review for stabilizing all disturbed areas upon completion of work. Please note that any seeding or plant material must contain only locally native, non-invasive species. Please refer to the Conservation Halton *Landscaping and Tree Preservation Guidelines* for a list of these species, available online at: <http://www.hrca.on.ca/ShowCategory.cfm?subCatID=1168>.

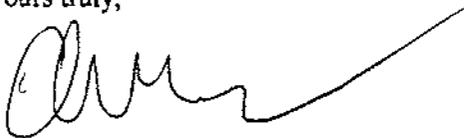
Conservation Halton would also like to make you aware that the works should adhere to the *Migratory Birds Convention Act*. Should vegetation removal be required within the core breeding bird season (May 1st to July 31st), consultation with Environment Canada - Canadian Wildlife Services should be completed.

In Summary

Staff recognize that the objective of your proposal is to improve the safety and stability of your property and are not opposed to the project in principle. However, to support development at this particular site will require a revised submission that addresses points 1-4 above.

We trust the above is of assistance. Please contact the undersigned at extension 276 to discuss questions you have related to development at your property.

Yours truly,



Charles Priddle, Ph.D.
Watershed Permit Analyst

This is **Exhibit “D”** referred to in the Affidavit of Shelley Young, affirmed before me this 1st day of November, 2022.

A handwritten signature in black ink that reads "A. Bouchard" with a stylized flourish at the end.

A Commissioner for taking affidavits

Breathing Easy Building Biology

Environmental Services operated by 8547408 Canada Inc.

10 Louisa Street East Thornbury, ON N0H 2P0 Tel. 519 599 1111

www.breathing-easy.net e-mail breathingeasy@bellnet.ca

Environmental Investigation Report



Prepared for

Ivan and Shelly Rudyk
835 Spring Garden Road
Aldershot, ON

October 10, 2017

Summary

The information in this report is confidential and will not be shared with anyone except the Client. The results relate only to the items and areas tested and include lab reports from third party companies. The discussions in this report are based only on single, one time, results and may not be repeatable if conditions in the home change or if samples are collected during a different time of day or season. This report presents the findings of a certified Building Biologist. It represents your road map to a healthier indoor environment. BreathingEasy's approach to acceptable and health supporting Indoor Air Quality is based on the reaction of the human body to its individual environment. Government and Industry based exposure limits and guidelines may not be adequate to ensure health supporting work or living environments and therefore BreathingEasy regards complaints of building occupants as serious. BreathingEasy uses the Calgary Health Unit Guidelines for reoccupation of buildings. This standard uses numerical values to determine whether given spaces are fit for human occupancy. This report is written in a way that it can be understood by persons not familiar with complicated microbiology and building science matters. BreathingEasy is not qualified to nor will it give medical advice. For medical advice please contact a medical doctor or health care professional who is familiar with environmental exposure issues. This report may however contain important information about possible toxin production of moulds. Information about the deterioration of building materials due to microbial growth and evidence of the reason why mould grows may also be included. For more details some information of moulds and mycotoxins found in your building is provided in the APPENDIX of this report. We encourage the Client to read all of this report because it provides vital information about the individual situation in your building. This report will be discussed with you and details will be explained. Some recommendations are provided in the individual sections.

BreathingEasy was retained by Ivan and Shelly Rudyk to carry out an Environmental Building Investigation of a residential building municipally addressed as 835 Spring Garden Road, Aldershot, ON. The site visit, inspection and sampling works were conducted on October 10, 2017. The purpose of the investigation was to determine the presence of environmental contaminants and conditions which could be adverse to human health.

General Information about Mould and Mycotoxins produced by Mould

There are 4 critical requirements for mold growth – available mould spores, available mould food, appropriate temperatures and considerable moisture. Mould growing indoors can be a big problem because it grows on different materials and ***subsequently changes its toxin production***. A prevalent problem in buildings is appropriate moisture control. Any subsurface structure is subject to elevated moisture levels from the ground. Inadequate protection from this moisture is the leading cause of mould problems in basements and crawlspaces.

Moulds can produce other *secondary metabolites* such as antibiotics and mycotoxins. Antibiotics are isolated from mould (and some bacterial) cultures and some of their bacteriotoxic or bacteriostatic properties are exploited medicinally to combat infections.

Mycotoxins are also products of *secondary* metabolism of moulds. They are not essential to maintaining the life of the mould cell in a primary way, such as obtaining energy or synthesizing structural components, informational molecules or enzymes. They are products whose function seems to be to give moulds a competitive advantage over other mold species and bacteria. Mycotoxins are nearly all cytotoxic, disrupting various cellular structures such as membranes, and interfering with vital cellular processes such as protein, RNA and DNA synthesis. **They are also toxic to the cells of higher plants and animals, including humans.**

Mycotoxins vary in specificity and potency for their target cells, cell structures or cell processes by species and strain of the mold that produces them. Higher organisms are not specifically targeted by mycotoxins, but seem to be caught in the crossfire of the biochemical warfare among mould species and moulds and bacteria vying for the same ecological niche.

Microbial Growth and Airborne Spore Count Concentrations

After evaluation of all observations and findings from the site visit, inspection and analytical programs conducted, BreathingEasy concludes that there is evidence of sources of microbial contamination inside the building due to microbial growth, which may be hazardous to the health of persons utilizing the premises. Please note that low spore count concentrations, in the air in other parts of the building, do not mean the absence of potentially hidden or concealed areas of contamination. Hidden mould growth is suspected inside all cavities of the foundation walls and under flooring such as carpeting in the basement. A fungal anomaly exists in the basement.

Non viable spore count concentrations

Elevated spore count concentrations of **Cladosporium** type spores were found in the basement air samples. Further **Stachybotrys** spores, although minimal in number, were found present in the basement air sample. Most mould species, including Stachybotrys and Cladosporium need elevated moisture conditions and can be viewed as indicator moulds for ongoing or chronic moisture problems in buildings and therefore their presence should be taken seriously. Additionally, elevated moisture conditions have been observed in the basement. See page 11, 12 and 13.

There are no definite numbers for allowable mould spores in indoor spaces in Ontario. Health Canada does not have any numerical exposure limits for mould. Since individuals have different sensitivities, it is not possible to establish “safe” limits for airborne mould spore concentrations. Health Canada recommends removing any visible mould found growing indoors and fixing the underlying moisture problem. Standard industry practice suggests that certain moulds, such as pathogenic moulds, should be absent from indoor air. **Even negligible amounts of certain moulds found in indoor air samples can indicate a hidden mould problem within a certain area, which could pose a potential future health risk.**

Mycotoxin production associated with mould *genuses* found. (This is general information, please consult with a doctor who is familiar with the exposure to mycotoxins)

Cladosporium → *cladosporin, emodin*

Stachybotrys → *griseofulvin, trichothecenes (isosatratoxin, roridin, satratoxin, trichodermol trichoverrol)*

Viable (living spores) and identification to species level (general information please consult with a doctor who is familiar with the exposure to mycotoxins)

Samples include living spores only. This method allows the identification to species level and provides vital information about the production of toxic substances known as mycotoxins. **Aspergillus versicolor**, **Aspergillus niger**, **Botrytis cinerea**, **Cladosporium cladosporioides**, **Cladosporium herbarum**, **Curvularia lunata**, **Penicillium aurantiogriseum**, **Penicillium corylophilum**, **Penicillium variable**, **Sporothrix** were found present in the air samples. For details refer to the original Certificate of Analysis.

Potential production of mycotoxins and health impact (general information please seek the advice from a doctor who is familiar with the exposure to mycotoxins)

Aspergillus versicolor	→ <i>sterigmatocystin (B2 carcinogen), aspercoclorin, averufin, versicolorin, nidulotoxin, cyclopiazonic acid</i>
Aspergillus niger	→ <i>ochratoxin A, fumonisin B₂</i>
Botrytis cinerea	→ <i>oxalic acid, wall degrading enzymes (plant pathogen)</i>
Cladosporium cladosporioides	→ <i>prolonged exposure can elicit chronic allergies and asthma</i>
Cladosporium herbarum	→ <i>causative agent of allergies, pathogenic to immune compromised People</i>
Curvularia lunata	→ <i>flaviolin and 2-hydroxyjuglone</i>
Epicoccum nigrum	→ <i>allergies</i>
Penicillium aurantiogriseum	→ <i>chaetoglobosin A</i>
Penicillium corylophilum	→ <i>sesquiterpene phomenone, meroterpenoids citreohybridonol and andrastin A, koniginin A, E and G</i>
Penicillium variable	→ <i>rugulovasine A and rugulovasine B</i>
Sporothrix	→ <i>potentially pathogenic</i>

An ATP (Adenosine Tri Phosphate) showed positive results in three locations of the basement. For details see pages 8, 16 and 17.

A condition 3 (mould growth) is suspected in the cavities of all foundation walls, under carpets and floor mats in the basement and may also exist in other concealed areas of the basement. A condition 3 means that mould is either actively growing or has grown at some point and is now dormant. Dormant mould is still toxic. Mould often grows in cycles from dormancy to active growth depending on moisture availability. Active microbial contamination/biofilm has been found in the basement. A condition 2 (airborne spores) exists in the basement. A condition 2 means that mould spores are either in the air (airborne) or have settled on contents and therefore contents in the basement should be considered as contaminated with mould spores. Those spores can become airborne in massive numbers upon disturbance and become adverse to human health.

Recommendations: Professional microbial decontamination and bio remediation in the basement. We are happy to explain details about nontoxic bioremediation on the basis of an enzymatic metabolic process. Discuss this report with your doctor.

Radon gas concentration

A preliminary indicative Radon gas exposure test revealed elevated gas concentrations in the building. Health Canada recommends long term testing for 3 - 6 months. This may not be practical if a microbial contamination problem exists as well. A 72 hour minimum radon laboratory test is strongly recommended. Please ask for details.

Relative Humidity

Relative Humidity levels were found to be between 53.1 and 69.9 %. The average Relative Humidity outdoors was measured at 65.6 %. The Relative Humidity for a typical occupied indoor environment should generally be between 30 and 50 % RH. Most national and international guidelines are in agreement with those recommendations. The Relative Humidity should never exceed 60 % due to potential condensation issues and the risk of microbial growth. If suspended particulate matter concentrations are properly controlled, low Relative Humidity levels assist in the human body's dehumidification process. The lung is the body's largest dehumidification organ. As a general rule the higher the Relative and Specific Humidity levels are in a given space, the more the lung is inhibited in doing its vital job of dehumidifying the body. Maintaining Relative Humidity levels below 40 % RH in room air is recommended. Vapour barriers trap high humidity levels inside the basement wall cavities. Remediation should be discussed.

Room temperature

The indoor temperature ranged from 20.1 to 24.0 °C and the average outdoor temperature was 23.8 °C. National and international recommendations for comfort range in building environments are 21 to 25 °C for building occupants. Temperature preferences are, however, very personal but the conditions found in the building should satisfy the majority of occupants.

Psychrometric Conditions, Moisture Content and Risk of Microbial Growth

The Psychrometric conditions in the basement **did support and promote** microbial growth at the time of the assessment. The moisture content of building materials inside the wall cavities in the basement were elevated and **did support** microbial growth at the time of the assessment.

TVOC levels (Volatile Organic Compounds)

Total Volatile Organic Compound (TVOC) levels were found to be between **< 5** parts per billion (ppb) in air. The highest concentration was found under the sink in the master bedroom on suite bathroom Health Canada advises that TVOC concentrations of 0.3 to 3.0 mg/m³ (**160 to 1.600** ppb as measured by ppbRAE) TVOC may result in complaints of odour, irritation, and discomfort if combined with other indoor stressors such as poor thermal comfort. The wide variety of chemicals in modern buildings, as well as individual susceptibility, are complicating factors. Further, a potentially toxic impact of chemicals to the occupants is unknown at this time.

No recommendations are given at this point.

Mass Spectrometry and Open Characterization of Volatile Organic Compounds in Air

Volatile organic compounds (VOCs) belong to a broad scale of chemicals with high production levels all over the world and widespread application in industry and workplaces. They cover a broad spectrum of chemical classes with different physiochemical and biological properties. Because of their volatility, VOCs can easily disperse in air and chemical exposure through inhalation is the most prominent route, although other pathways such as ingestion and dermal absorption are possible. Since many different airborne organics can be present at the same time, exposure is characterized by the simultaneous contact with these chemicals. VOCs in indoor air are also associated with increased rate of asthma and

chronic bronchitis. Other common observed signs of volatile organics exposure include eye, nose and throat irritation, headache, nausea, dizziness, and allergic skin reaction.

Odour Complaints

Unpleasant odours resulting from some airborne compounds have been recognized as warning signs of potential health risks. Some odours irritate the lower respiratory tract and can trigger asthma episodes. However, some compounds possess very low odour thresholds (ppt to ppb range) and can cause objectionable smells at low concentrations. It is now known that odour sensations in the environment can cause health symptoms that are primarily dependant on individual and environmental factors.

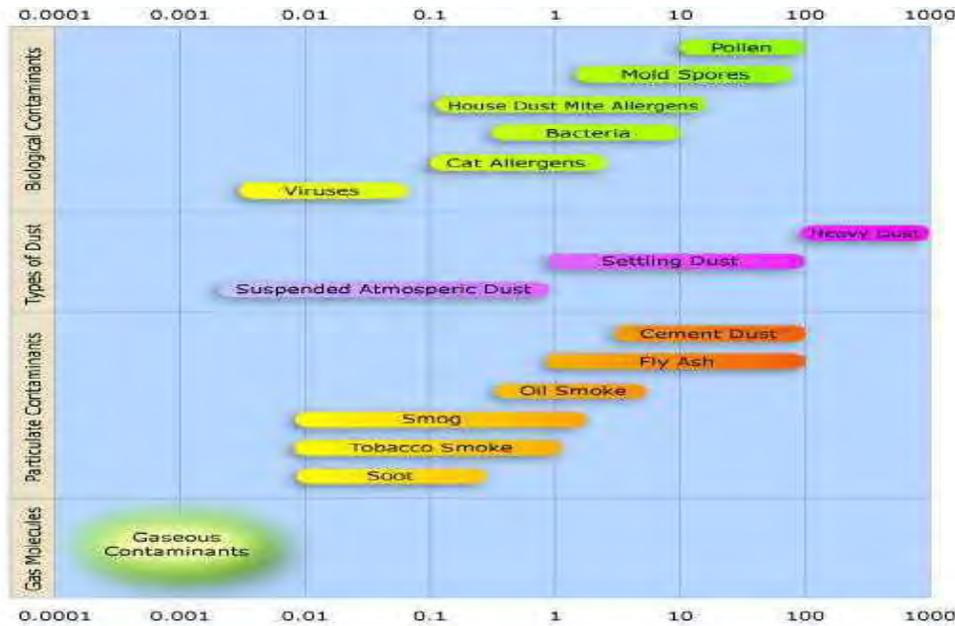
Laboratory Analysis

Most analyses carried out by analytical laboratories mainly address a list of target compounds, which are expected to be present due to their potential usage at the site, or in compliance to government regulations. However, in situations where health and odour complaints are of concern, traditional target compound analyses are ineffective in locating the culprits, often missing the compounds responsible for such complaints. In many cases, the complexity of VOCs emanating from various industrial processes or unexpected indoor sources cannot be resolved using conventional target compound analysis. To understand what airborne organics are present in a given environment, a broader picture of the workplace or indoor air is necessary, which will help to elucidate the identities and the respective levels of odorous or hazardous chemicals.

Our Testing Laboratory offers Open Characterization analysis with the option of interpretation of results for indoor and workplace air to address many cases of VOC-related air quality complaints. The recognition of unusual VOC patterns, presence of odorous compounds, chemical reactions and product emissions are all part of our laboratories extensive expertise in this type of analysis.

Open Characterization analysis includes determination of many major volatile organic compounds, summation of VOCs, identification of relevant sources, odour description, exposure limits, and interpretation of results. Other relevant information, such as odour threshold limits and health effects can be requested. The specialized investigative analytical services provide in-depth analytical assessments that identify potential sources of VOCs and help to resolve air quality issues.

Particulate Matter/Aerosolized Dust



A 6 channel laser particle counter was employed to assess suspended particle concentrations in the range 0.3 micrometres to > 10 micrometers. Household dust is made up of skin, dander, dust mites, fabric fibers, pollen, insect fragments, mould spores and building material (asbestos, fiberglass) particulate. Carpeting cannot be effectively cleaned. Avoid steam-cleaning carpets since this can lead to mould growth if the moisture is not completely removed. The carpet and padding fibers may break down releasing more VOC's like benzene or formaldehyde.

It should be noted that **mould spores** range in the sizes approximately from 2 micrometers to 25 micrometers. The table provided on page 15 shows these ranges. [BreathingEasy](#) uses the analysis of suspended particles to guide the laboratory sampling program. A laser particle counter is not a mould detection instrument but provides valuable information about problematic areas in a building. It is also used to assess the general air quality regarding aerosolized particulate matter.

Suspended particles in the building were found to be elevated to extremely elevated. For details see page 15.

Table 1 Standard physical characteristics

Characteristic	Units	Adult	Teen	Child	Small Child	Infant
Age	years	20 to 70	12 to 19	5 to 11	0.5 to 4	0 to 0.5
Bodyweight	kilograms	70	57	27	13	6
Breathing	cubic metres per day	23	21	12	5	2
Drinking water	litres per day	1.5	1.3	0.9	0.8	0.75
Dust Ingestion	grams per day	0.02	0.02	0.035	0.05	0.035
Time outdoor	% of 24 hours	6.25	6.25	8.2	8.2	8.2
Time indoors	% of 24 hours	93.75	93.75	91.8	91.8	91.8

The table above shows that an adult breathes approximately 23 cubic meters or 812.24 cubic feet per day hence spore counts and particle counts can be multiplied by the number of hours spent in the building.

Adenosine Tri Phosphate Testing

The **ATP test** is a process of rapidly measuring actively growing microorganisms through detection of adenosine triphosphate, or ATP. ATP is a molecule found in and around living cells, and as such it gives a direct measure of biological concentration and health. ATP is quantified by measuring the light produced through its reaction with the naturally occurring firefly enzyme luciferase using a luminometer. The amount of light produced is directly proportional to the amount of living organisms present in the sample. ATP testing can detect living microorganisms, biofilm, bio fouling and bio corrosion. Bio film is a protective layer created by micro organisms to insure survival under difficult circumstances. Bio corrosion is able to affect and destroy cementitious and mineral based materials such as concrete, concrete block brick etc. Bio corrosion can even affect and damage metal. For details refer to page 16 and 17.

Carbon Dioxide

The concentration of Carbon Dioxide indoors varies according to location, occupancy, and time of day, tending to increase during the day. Typical office levels are in the range of 600 – 800 ppm. ASHRAE Standard 62 – 1989, *Ventilation for Acceptable Indoor Air Quality*, recommends a minimum ventilation rate of 10 L/s per person to ensure good IAQ in the office, using the ventilation rate procedure. The ASHRAE standard also provides an alternative performance method, the IAQ procedure, which uses guidelines for acceptable concentrations of certain contaminants as a means of achieving good IAQ. For normal occupancy and activities, this minimum outdoor ventilation rate of 10 L/s per person would result in a Carbon Dioxide concentration of 850 ppm at steady state conditions in the occupied space. At the time of the assessment the CO₂ levels in the building were found to be between 1756 ppm and 1953 ppm. Enhancing fresh air intake in should be promoted. An ERV air exchange system is recommended.

We trust you find the enclosed in order. Should you have any questions or concerns, please do not hesitate to contact our office.

Respectfully submitted,



8547408 Canada Inc.

Per **Robert Steller**

Robert Steller, President, BBEC, BBEI, EE, CMR, IEP, CRMT, EMRS

Analytical Data

Temperature and Relative Humidity conditions at the time of testing			
	Description/Location	Relative Humidity %	Temperature °C
	Outside	65.6	23.8
	Main floor	53.1 – 64.1	21.9 – 24.0
	Kitchen	63.6	24
	Sewing room	64.1	23.2
	Basement	55.0 – 63.6	20.1 – 22.4
	Basement rental BR	63.6	21.1
	Basement guest BR	57.1	22.4
	Basement rental closet	69.0	18.1

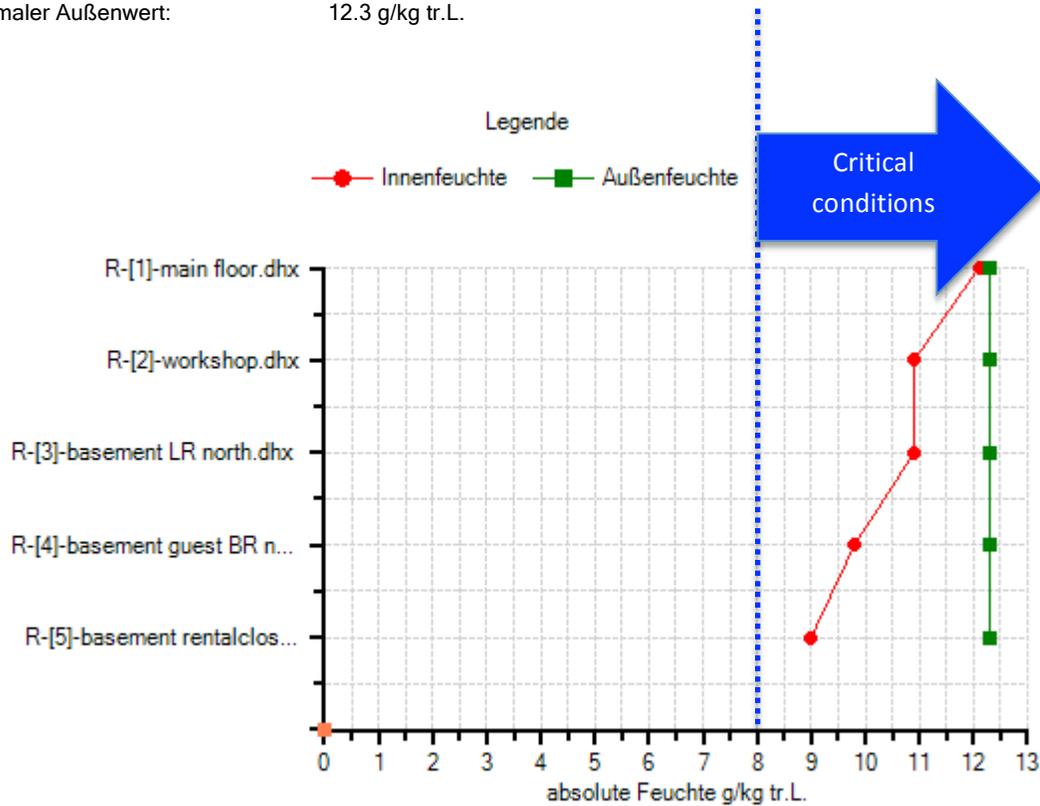
Psychrometric conditions at the time of testing – fields marked red show critical conditions					
	Description/Location	Surface Temperature °C	Dew Point °C	Specific Humidity g/kg dry air	"aw" activity of water
	Outside		17	12.3	0.83 – 1.00
	Main floor	20	16.8	12.1	0.82
	Basement rental closet	16.6	12.3	9	0.76
	Workshop SE corner	17.5	15.2	10.9	0.80
	Basement LR north	19.2	15.2	10.9	0.77
	Basement guest BR north	19.2	13.5	9.8	0.70

The Psychrometric conditions in the basement **did promote and support** microbial growth at the time of the assessment. Moisture conditions in the basement **did support** microbial growth.

Moisture Profile

16/11/2017 2:32:56 PM

Maximale Differenz der Innenfeuchte: 3.1 g/kg tr.L.
 Maximaler Außenwert: 12.3 g/kg tr.L.



Nr.	Room	ta °C	rFa. %	xa*	ti °C	rFi. %	xi*
R01	main floor	23.8	65.6	12.3	24	64.1	12.1
R02	workshop	23.8	65.6	12.3	22.4	63.6	10.9
R03	basement LR nor	23.8	65.6	12.3	22.4	63.6	10.9
R04	basement guest	23.8	65.6	12.3	22.4	57.1	9.8
R05	basement rental	23.8	65.6	12.3	18.1	69	9

Luftdruck
 Luftdruck: 1000 hPa

* g/kg tr.L.

Alle Angaben ohne Gewähr

The moisture Profile shows extreme Specific Humidity conditions inside the building which fully supported microbial growth at the time of the assessment. Specific Humidity defines the available free water necessary for microbial growth and must not be confused with Relative Humidity

Moisture Content

Moisture Content of Building Materials			
Location	Photograph	MC %	Evaluation
Basement south foundation wall		61.5 points scan type	Elevated Support of microbial growth possible
Basement under flooring		49.3 points scan type	Elevated Support of microbial growth possible
Basement under carpet		38.0 points scan type	Elevated Support of microbial growth possible

Moisture Content

Moisture Content of Building Materials			
Location	Photograph	MC %	Evaluation
Basement workshop under floor mat	 A photograph of a green and orange moisture meter (model BM250) lying on a light-colored carpet. The digital display shows a reading of 17.6% and 68.5°F. A black probe is connected to the meter. A timestamp in the bottom right corner reads "10/15/2017 17:46".		Elevated Support of microbial growth possible
Basement rental bedroom north cavity	 A photograph of the same moisture meter on a carpet. The digital display shows a reading of 15.2% and 65.3°F. A hand is visible on the left side of the frame. A timestamp in the bottom right corner reads "10/19/2017 15:51".		Elevated Support of microbial growth possible
Rental bedroom east foundation cavity	 A photograph of the moisture meter on a carpet. The digital display shows a reading of 17.7% and 67.0°F. A hand is visible on the right side of the frame. A timestamp in the bottom right corner reads "10/19/2017 17:58".		Elevated Support of microbial growth possible

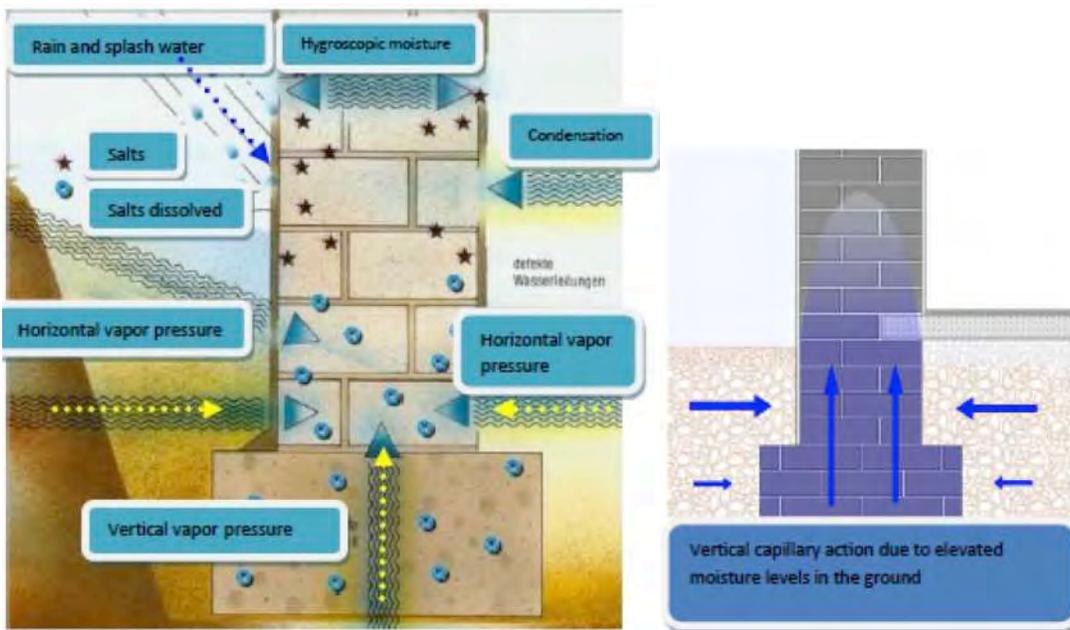
Moisture Content

Moisture Content of Building Materials			
Location	Photograph	MC %	Evaluation
Basement living room interior cavity			Elevated Support of microbial growth possible
Basement living room north foundation cavity			Elevated Support of microbial growth possible

6.4 Explanation of Psychrometric and Moisture Conditions (in layman terms)

Psychrometric conditions are a combination of outdoor temperature, outdoor Relative Humidity, indoor temperature, indoor Relative Humidity and surface temperatures of walls, building materials and other materials like furniture. By measuring the indoor temperature, Relative Humidity and surface temperature, three important calculations can be made: Dew point, Specific or Absolute Humidity and “aw” or activity of water. In the field of microbiology, the activity of water is used to predict and determine the risk of microbial and mould growth i.e. will a given space promote and support microbial growth. For example, the indoor temperature is **20° Celsius**, the Relative Humidity is **60 %** and the surface temperature i.e. of a foundation wall in a crawlspace/ basement or on a poorly insulated exterior wall is **15° Celsius**, the “activity of water” on a given material with **15 ° Celsius** would be **0.82 or 82 %**. Although the Relative Humidity in the building is only **60 %**, the water activity on a cold wall would be 82 or 82 %. This condition would support and promote microbial growth. **As one can see, a leak or flood is not necessary to create a mould problem.** Hence, the Relative Humidity or recommendations to keep the Relative Humidity between **40% and 60 % cannot** be used to avoid mould problems.

In order to avoid microbial and mould growth problems the Psychrometric Conditions have to be non supportive. North American Building Codes and building practices do not take Psychrometric Conditions into account. Basements and crawlspaces are notorious problem areas. A below grade concrete or cement block wall will most likely have critical surface temperatures. Even before the **dew point** is reached, **capillary condensation** can occur and cause problems. Capillary condensation means that water becomes liquid on or in a wall **below** the **saturated vapor pressure**. Two other common problems are humidity or moisture penetration of hygroscopic building envelope walls such as concrete or concrete block and vertical wicking also based on capillary action.



Particulate matter

Laser particle counts in comparison to samples taken from the outdoor air expressed in micrometers and per cubic foot
Please note that laser particle counts are used to evaluate the general air quality, the following numbers do not represent mould spore concentrations. Mould spore are however included in those numbers among other particles

Room description		outside	Main floor						
<div style="border: 1px solid black; border-radius: 10px; padding: 5px; background-color: #f08080;"> A significant elevation is considered above 50% of outdoor counts </div>			Kitchen	MB	Sewing room	MB bath	Ivan's change room	Bath hall	Dining room
		TVOC	< 5 ppb						
		CO ₂	1900	1896	1898		1953		1921
0.3	685,515	457010	169390	141010	147240	119330	135700	133210	126040
0.5	45,165	30110	29970	17400	19370	15050	18320	19030	14330
1.0	9,120	6080	14760	6910	8160	5830	8270	8820	5350
2.5	3,480	2320	6680	2680	3250	2390	4040	3860	1880
5.0	990	660	2950	970	1230	930	1740	1741	650
10.0	180	120	1170	380	600	520	1000	760	310
Specific comments: Fields marked yellow = elevated Fields marked red = significant elevation extreme elevation									
Room description		outside	Main floor				Basement		
<div style="border: 1px solid black; border-radius: 10px; padding: 5px; background-color: #f08080;"> A significant elevation is considered above 50% of outdoor counts </div>			LR	Office	BR guest	LR	Rental BR	Workshop	Bath
		TVOC	< 5 ppb						
		CO ₂	1871	1956	1891	1825	1756		1886
0.3	685,515	457010	128190	116070	136660	124520	131130	98710	106060
0.5	45,165	30110	13840	14530	14170	16400	11720	8160	15860
1.0	9,120	6080	5160	6310	5230	8380	3120	2380	8700
2.5	3,480	2320	1870	2930	2310	4580	780	800	5240
5.0	990	660	530	1520	940	1820	160	350	2700
10.0	180	120	140	940	380	820	60	220	1180
Specific comments: Fields marked yellow = elevated Fields marked red = significant elevation extreme elevation									
Room description		outside	Basement		Basement wall cavities				
<div style="border: 1px solid black; border-radius: 10px; padding: 5px; background-color: #f08080;"> A significant elevation is considered above 50% of outdoor counts </div>			Kitchen	Rental BR closet N	Rental BR closet N foundation cavity	Rental BR easy founvdation cavity	LR N foundation cavity wood paneling	LR interior wall cavity	Guest BR N foundation cavity
		TVOC	< 5 ppb						
		CO ₂	1890						
0.3	685,515	457010	113690	123340					
0.5	45,165	30110	20000	17630					
1.0	9,120	6080	11700	9220					
2.5	3,480	2320	6930	5110	41533	231520	598690	38520	258112
5.0	990	660	3060	2290	25800	102560	236800	20040	58500
10.0	180	120	1180	1020	20466	68880	226418	14520	32812
Specific comments: Fields marked yellow = elevated Fields marked red = significant elevation extreme elevation									

Analytical Data

Adenosine Tri Phosphate ATP –RLU > 50 RLU indicates contamination with microbial growth or bio film			
	Description/Location	Contamination yes / no	RLU
Basement living room		Yes LR north foundation cavity	4187
Basement		Borderline Under cabinet workshop	39

Analytical Data

Adenosine Tri Phosphate ATP –RLU > 50 RLU indicates contamination with microbial growth or bio film			
	Description/Location	Contamination yes / no	RLU
Basement		Yes Under carpet	4045



Laboratory Analysis Report

To:

Robert Steller
Breathing Easy
10 Louisa Street
P.O. Box 775
Thornbury, Ontario
N0H 2P0

EMC LAB REPORT NUMBER: 63963
Job/Project Name: Ivan Rydyk, 835 Spring Gardens Rd.
Job/Project No: **No. of Samples:** 6
Sample Type: Allergenco-D **Date Received:** Oct 11/17
Analysis Method(s): Fungal Spore Counting
Date Analyzed: Oct 16/17 **Date Reported:** Oct 16/17
Analyst: Weizhong Liu, Ph.D., *Mycologist*
Approved By: Fajun Chen, Ph.D., *Principal Mycologist*

Client's Sample ID	2129586			2130515			2129574			2130514			2129605		
EMC Lab Sample No.	280597			280598			280599			280600			280601		
Sampling Date	Oct 10/17			Oct 10/17			Oct 10/17			Oct 10/17			Oct 10/17		
Description/Location	Outside			MB			Basement LR			Main floor LR			Kitchen main floor		
Air Volume (m ³)	0.075			0.075			0.075			0.075			0.075		
Fungal Spores	raw ct.	%	spores/m ³	raw ct.	%	spores/m ³	raw ct.	%	spores/m ³	raw ct.	%	spores/m ³	raw ct.	%	spores/m ³
<i>Alternaria</i>	26	1	347	3	5	40	5	1	67						
<i>Arthrinium</i>															
Ascospores	181	4	2413	11	20	147	2	1	27						
<i>Aspergillus/Penicillium</i> type	6	0	80	5	9	67	2	1	27	7	20	93	2	6	27
Basidiospores	97	2	1293	3	5	40	1	0	13	1	3	13	2	6	27
<i>Cercospora</i>	3	0	40												
<i>Chaetomium</i>															
<i>Cladosporium</i>	1500	34	20000	14	25	187	320	89	4267	15	43	200	21	62	280
Colorless	2500	57	33333	7	13	93	22	6	293	8	23	107	5	15	67
<i>Curvularia</i>							1	0	13						
<i>Drechslera/Bipolaris</i> group															
<i>Epicoccum</i>	19	0	253				1	0	13				1	3	13
<i>Fusarium</i>	1	0	13												
<i>Oidium</i>	1	0	13												
<i>Pithomyces</i>	1	0	13												
<i>Polythrincium</i>															
Rusts	5	0	67	6	11	80	3	1	40	2	6	27	2	6	27
Smuts, <i>Periconia</i> , Myxomycetes	31	1	413	7	13	93	2	1	27	2	6	27	1	3	13
<i>Stachybotrys</i>															
<i>Ulocladium</i>															
Unidentified spores															
Number of spores/sample	4371			56			359			35			34		
Fungal fragments (0-3 +)	0+			0+			0+			0+			0+		
Non-fungal material (0-3 +)	2+			2+			2+			2+			2+		
TOTAL SPORES/M³	58,280			747			4,787			467			453		

Note:

- Aspergillus/Penicillium* type spores may include those of *Acremonium*, *Paecilomyces*, *Trichoderma* and others.
- A scale of 0+ to 3+ (indicating increasing amount) is used to rate abundance of fungal fragments and non-fungal material, with 3+ indicating the most abundance.
- The presence of a large amount of dust debris may obscure some spores to be counted. Spore counts from samples with 3+ non-fungal material and/or 3+ fungal material may be treated as under-counts.
- Unidentified spores are those lacking distinguishable characteristics for correct identification. Colorless are colorless spores lacking distinguishable characteristics.
- These results are only related to the sample(s) analyzed.



Laboratory Analysis Report

EMC LAB REPORT NUMBER: 63963

Client's Job/Project Name: Ivan Rydyk, 835 Spring Gardens Rd.

Analyst: Weizhong Liu, Ph.D., Mycologist

Client's Sample ID	2129611														
EMC Lab Sample No.	280602														
Sampling Date	Oct 10/17														
Description/Location	Basement north cavity														
Air Volume (m ³)	0.075														
Fungal Spores	raw ct.	%	spores/m ³	raw ct.	%	spores/m ³	raw ct.	%	spores/m ³	raw ct.	%	spores/m ³	raw ct.	%	spores/m ³
<i>Alternaria</i>	6	3	80												
<i>Arthrinium</i>															
Ascospores	1	0	13												
<i>Aspergillus/Penicillium</i> type	8	4	107												
Basidiospores	5	2	67												
<i>Cercospora</i>															
<i>Chaetomium</i>															
<i>Cladosporium</i>	112	55	1493												
Colorless	41	20	547												
<i>Curvularia</i>	2	1	27												
<i>Drechslera/Bipolaris</i> group															
<i>Epicoccum</i>	4	2	53												
<i>Fusarium</i>	1	0	13												
<i>Oidium</i>															
<i>Pithomyces</i>	3	1	40												
<i>Polythrincium</i>															
Rusts	11	5	147												
Smuts, <i>Periconia</i> , Myxomycetes	8	4	107												
<i>Stachybotrys</i>	1	0	13												
<i>Ulocladium</i>															
Unidentified spores															
Number of spores/sample	203														
Fungal fragments (0-3 +)	0+														
Non-fungal material (0-3 +)	3+														
TOTAL SPORES/M³	2,707														

Note:

1. *Aspergillus/Penicillium* type spores may include those of *Acremonium*, *Paecilomyces*, *Trichoderma* and others.
2. A scale of 0 + to 3 + (indicating increasing amount) is used to rate abundance of fungal fragments and non-fungal material, with 3+ indicating the most abundance.
3. The presence of a large amount of dust debris may obscure some spores to be counted. Spore counts from samples with 3 + non-fungal material and/or 3 + fungal material may be treated as under-counts.
4. Unidentified spores are those lacking distinguishable characteristics for correct identification. Colorless are colorless spores lacking distinguishable characteristics.
5. These results are only related to the sample(s) analyzed.



Laboratory Analysis Report

To:

Robert Steller
Breathing Easy
10 Louisa Street
P.O. Box 775
Thornbury, Ontario
N0H 2P0

EMC LAB REPORT NUMBER: 63964
Job/Project Name: Ivan Rudyk, 835 Spring Gardens Rd., Aldershot
Job/Project No: **No. of Samples:** 5
Sample Type: Andersen **Date Received:** Oct 11/17
Analysis Method(s): Quantification and Identification to Species
Date Analyzed: Oct 30/17 **Date Reported:** Oct 30/17
Analyst: Fajun Chen, Ph.D., *Principal Mycologist*

Client's Sample ID	101017-1			101017-2			101017-3			101017-4			101017-5		
EMC Lab Sample No.	280603			280604			280605			280606			280607		
Sampling Date	Oct 10/17			Oct 10/17			Oct 10/17			Oct 10/17			Oct 10/17		
Description/Location	Outside			Basement LR			Kitchen			MB			LR		
Air Volume (m ³)	0.1415			0.1415			0.1415			0.1415			0.1415		
Fungal Name	CFU	%	CFU/m ³	CFU	%	CFU/m ³	CFU	%	CFU/m ³	CFU	%	CFU/m ³	CFU	%	CFU/m ³
<i>Acremonium fusidioides</i>	1	1	7	1	1	7							1	3	7
<i>Alternaria alternata</i>	5	3	35	3	2	21	3	10	21				1	3	7
<i>Aspergillus niger</i>				1	1	7									
<i>Aspergillus versicolor</i>										1	6	7			
<i>Botrytis cinerea</i>							1	3	7						
<i>Cladosporium cladosporioides</i>							15	50	106	7	39	49	14	48	99
<i>Cladosporium herbarum</i>							5	17	35	3	17	21	5	17	35
<i>Cladosporium</i> spp *	150	92	1060	130	90	919									
<i>Curvularia lunata</i>							1	3	7						
<i>Epicoccum nigrum</i>				3	2	21	1	3	7	2	11	14			
<i>Fusarium semitactum</i>	2	1	14	2	1	14									
<i>Fusarium sporotrichioides</i>	1	1	7	1	1	7									
<i>Penicillium aurantiogriseum</i>										1	6	7			
<i>Penicillium corylophilum</i>													1	3	7
<i>Penicillium variabile</i>										1	6	7			
<i>Penicillium</i> spp													2	7	14
<i>Pithomyces chartarum</i>	1	1	7	1	1	7	1	3	7	1	6	7			
<i>Sporothrix</i> sp										1	6	7			
Non-sporulating isolates	3	2	21	2	1	14	3	10	21	1	6	7	5	17	35
Number of CFU/sample	163			144			30			18			29		
Detection Limit (CFU/M ³)	7			7			7			7			7		
Correction factor	209.4			178.5			31.2			18.4			30.1		
TOTAL CFU/M³	1480			1261			220			130			213		

Note:

1. CFU = Colony Forming Unit
2. Non-sporulating isolates are those failing to produce spores when identification is performed.
3. These results are only related to the sample(s) analyzed.

* *Cladosporium* spp may include *Cladosporium cladosporioides* and *Cladosporium herbarum*.

Limitations

The information in this report is confidential and will not be shared with anyone except the Client. The results relate only to the items tested and include lab reports from third party companies. The discussions in this report are based only on single hot (one time) results and may not be repeatable if conditions in the home change or if samples are collected during a different time of day or season.

Although we hope the included recommendations will lead to a healthier life, BreathingEasy, and its representatives shall have no liability with respect to the recommendations made, actions taken or courses of conduct implemented based on the results. Breathing Easy shall not be liable with respect to the test results for incidental or consequential damages; lost profits or revenues to the fullest extent such liability may be disclaimed by law. In no event shall Breathing Easy's liability exceed the amount paid to Breathing Easy by the client. © Copyright by Breathing Easy. All rights reserved.

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General Assessment Limitations

Work performed by BreathingEasy was conducted in accordance with generally accepted engineering or scientific practices current in this geographical area at the time the work was performed. The Client acknowledges that subsurface and concealed conditions may vary from those encountered inspected. The work was limited to those areas of concern identified by the Client or outlined in our proposal. Other areas of concerns may exist but were not investigated within the scope of this assignment. BreathingEasy could only comment on the conditions observed on the date the assessment was performed.

The information, observations as well as instrument survey methodology and laboratory sampling methodology, contained within this report are based on visual assessment of the readily accessible interior surfaces of the subject building or area. The results of the assessment and this report apply only to conditions at the time and date of the assessment. Environmental pollution levels may be significantly higher or lower at different times other than the date and time of the assessment. All problem areas may not be identified and hidden or developing problems may be missed. Absolutely no warranties or guarantees are either expressed implied or intended by the agreement executed with the Client. The assessment is not an insurance policy. The Client hereby releases Breathing Easy, its directors, employees and contractors from any and all liability. BreathingEasy makes no other representations whatsoever, including those concerning the legal significance of its findings, or as to other legal matters mentioned in this report, including, but not limited to, ownership of any property, or the application of any law to the facts set forth herein. With respect to regulatory compliance issues, regulatory statutes are subject to interpretations and these interpretations may change over time and we undertake no, and expressly disclaim, obligation to advise the Client of such change. BreathingEasy accepts no responsibility for consequential financial effects on transactions or property values, or requirements for follow-up actions and cost.

APPENDIX A – Excerpt from Calgary Health Unit Guidelines

Fungal Air Testing, Investigation and Reporting Requirements for Residential Marijuana Grow Operations
Subject to Change without Notice

July 2007 Revision

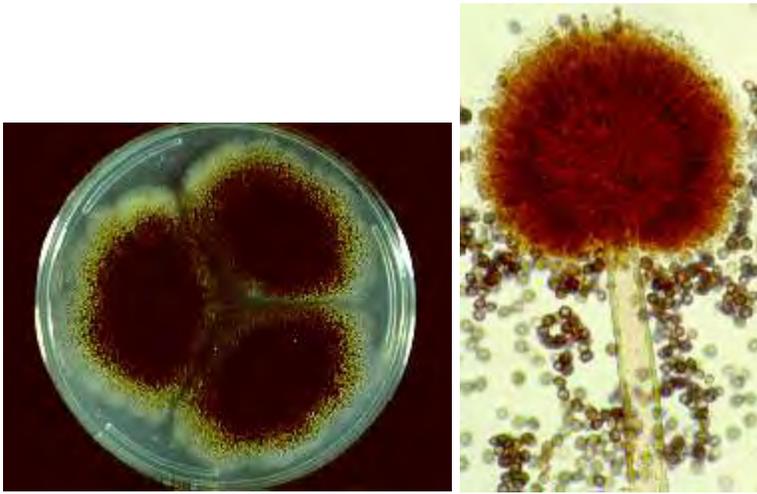
Table 2: Acceptable Fungal Indoor Air Quality Criteria for Remediated Marijuana Grow Houses.

- Failure of any one indoor mould to satisfy the criteria for any one sample is an unacceptable result for that sample.

For Each Individual Mould Species/Genus in Each Sample	Acceptable Indoor Criteria for Each Mould Detected in a Sample at the Genus and/or Species Level	
	Viability Fungi – Species Level	Total Fungal Particulates – Genus Level
	Cfu/m ³ per species isolate per sample	Counts/m ³ per genus isolate per sample
NON ATTIC SPACES		
For Aspergillus & Penicillium measured together (Total Fungal Particulates Sampling Only)	-	≤ 200 or (200 + 2x outdoor) or the measured maximum ¹
Each Indicator Mould (see Table 1)	≤ 50 or (50 + 2x outdoor) or the maximum measured	≤ 100 or (100 + 2x outdoor) or the measured maximum ¹
Cladosporium species (non indicator)	≤ 150 or (150 + 3x outdoor) or the measured maximum or Statistical Test of Significance ²	≤ 300 or (300 + 3x outdoor) or the measured maximum or Statistical Test of Significance ²
Alternaria species (non indicator)	≤ 50 or (50 + 3x outdoor) or the measured maximum or Statistical Test of Significance ²	≤ 100 or (100 + 3x outdoor) or the measured maximum or Statistical Test of Significance ^{1,2}
Each Non Indicator Mould	≤ 50 or (50 + 2x outdoor) or the measured maximum or Statistical Test of Significance ²	≤ 100 or (100 + 2x outdoor) or the measured maximum or Statistical Test of Significance ^{1,2}
ATTICS		
Attics - For Aspergillus & Penicillium measured together (Total Fungal Particulates Sampling Only)	-	≤ 400 or (400 + 2x outdoor) or the measured maximum ^{1,3}
Attics – Each Indicator Mould	≤ 100 or (100 + 2x outdoor) ³ or the measured maximum	≤ 200 or (200 + 2x outdoor) or the measured maximum ^{1,3}
Attics - Cladosporium species (non indicator)	≤ 300 or (300 + 5x outdoor) or the measured maximum or Statistical Test of Significance ^{3,4}	≤ 600 or (600 + 5x outdoor) or the measured maximum or Statistical Test of Significance ^{1,3,4}
Attics - Alternaria species (non indicator)	≤ 100 or (100 + 5x outdoor) or the measured maximum or Statistical Test of Significance ^{2,3}	≤ 200 or (200 + 5x outdoor) or the measured maximum or Statistical Test of Significance ^{1,2,3}
Attics – Each Non Indicator Mould	≤ 100 or (100 + 3x outdoor) or the measured maximum or Statistical Test of Significance ^{2,3}	≤ 200 or (200 + 3x outdoor) or the measured maximum or Statistical Test of Significance ^{1,2,3}

APPENDIX B – Mould types found in the Building

Aspergillus niger



On Czapek dox agar, colonies consist of a compact white or yellow basal felt covered by a dense layer of dark-brown to black conidial heads. Conidial heads are large (up to 3 mm x 15-20 µm in diameter), globose, dark brown, becoming radiate and tending to split into several loose columns with age. Conidiophores are smooth-walled, hyaline or turning dark towards the vesicle. Conidial heads are biseriate with the phialides borne on brown, often septate metulae. Conidia are globose to subglobose (3.5-5.0 µm in diameter), dark brown to black and rough-walled. RG-1 organism.

Clinical significance:

Aspergillus niger is one of the most common and easily identifiable species of the genus *Aspergillus*, with its white to yellow mat later bearing black conidia. This is the third most common species associated with invasive pulmonary aspergillosis. It is also often a causative agent of aspergilloma and is the most frequently encountered agent of otomycosis. *A. niger* may also be a common laboratory contaminant.

Two of the mycotoxins commonly associated with maize are **fumonisin**s and **ochratoxin A**. *Aspergillus niger* is a known producer of **ochratoxin A** and is easily found in maize. Recently, however, *A. niger* has been reported to produce as well **fumonisin**s, mainly **fumonisin B₂**.

Aspergillus versicolor

Health Effects

The toxins produced can cause diarrhea and upset stomach. It is reported to be a kidney and liver carcinogen. On building material, strains of *A. versicolor* produce the toxic class 2A carcinogenic sterigmatocystin.

Growth Media

It is commonly found in soil, hay, cotton, and dairy products.

Potential Opportunist or Pathogen

This species is only occasionally pathogenic (26).

Potential Toxin Production

It can produce a mycotoxin sterigmatocystin and cyclopiaxonic acid (5).

Spore Size

Conidia dimensions 2 - 3.5 microns (5).

Water Activity

0.78 (5).

Aspergillus versicolor is presumed to be of concern, because it belongs to the most frequently occurring species found in damp indoor environments (19, 27) and is known to be the major producer of the hepatotoxic and carcinogenic mycotoxin sterigmatocystin (2, 5). In a study of water-damaged building materials, analyses of wallpaper and fiberglass wallpaper naturally contaminated with *A. versicolor* revealed sterigmatocystin and 5-methoxysterigmatocystin

Sterigmatocystin is closely related to aflatoxin mycotoxins and is a precursor of aflatoxin biosynthesis. Sterigmatocystin is carcinogenic in mice (pulmonary adenocarcinomas) and rats (hepatocellular carcinomas at milligram doses of sterigmatocystin per animal per day for 1 year) following oral administration (21) and is classified as an International Agency for Research on Cancer class 2B carcinogen (i.e., as possibly carcinogenic to humans)

Botrytis cinerea: the cause of grey mould disease.

Williamson B1, Tudzynski B, Tudzynski P, van Kan JA.

Author information

Abstract

INTRODUCTION:

Botrytis cinerea (teleomorph: *Botryotinia fuckeliana*) is an airborne plant pathogen with a necrotrophic lifestyle attacking over 200 crop hosts worldwide. Although there are fungicides for its control, many classes of fungicides have failed due to its genetic plasticity. It has become an important model for molecular study of necrotrophic fungi.

TAXONOMY:

Kingdom: Fungi, phylum: Ascomycota, subphylum: Pezizomycotina, class: Leotiomycetes, order: Helotiales, family: Sclerotiniaceae, genus: *Botryotinia*.

HOST RANGE AND SYMPTOMS:

Over 200 mainly dicotyledonous plant species, including important protein, oil, fibre and horticultural crops, are affected in temperate and subtropical regions. It can cause soft rotting of all aerial plant parts, and rotting of vegetables, fruits and flowers post-harvest to produce prolific grey conidiophores and (macro)conidia typical of the disease.

PATHOGENICITY:

B. cinerea produces a range of cell-wall-degrading enzymes, toxins and other low-molecular-weight compounds such as oxalic acid. New evidence suggests that the pathogen triggers the host to induce programmed cell death as an attack strategy. Resistance: There are few examples of robust genetic host resistance, but recent work has identified quantitative trait loci in tomato that offer new approaches for stable polygenic resistance in future.

Cladosporium: A Trigger for Asthmatic Attacks

Cladosporium, a well known trigger for asthmatic attacks, is one of the most widespread molds.

It includes about 40 species naturally found in soil, on decaying plant material and as plant pathogens. Several studies conducted in Europe and North America have shown that *Cladosporium* spores are present in the outdoor environment throughout the year.

Species of *Cladosporium* are not human pathogens except in some cases of immuno-compromised patients. However, *Cladosporium* species have the ability to trigger allergic reactions to sensitive individuals. **Prolonged exposure** to elevated spore concentrations can elicit chronic allergy and asthma.

Cladosporium cladosporioides. A cosmopolitan species which has been isolated from meat, soil, air, textiles and paint.

Individuals may react at lower concentrations depending on their sensitivity. Spores from these [types of mold](#) are formed in simple or branched loose chains. They vary greatly in size (5-40 x 3-13 µm) and shape (ovoid, lemon-shaped, oblong, spherical). They are easily detected in spore traps, although small single celled spores may be easily mistaken for spores of other molds. Only the small sized spores (about 0.6% of total airborne spores of *Cladosporium*) can penetrate into the terminal bronchi and alveoli in humans.

The Allergens of *Cladosporium herbarum* and *Alternaria alternata*

Department of Genetics and General Biology, University of Salzburg, Salzburg, Austria

The two mold species *Cladosporium herbarum* and *Alternaria alternata* are important causes of allergies. Before 1990 little was known about the relevant allergens of these two worldwide-occurring fungi.

Both molds are important sources of allergens for mold-allergic patients (perhaps after *Aspergillus fumigatus* [1]) and are not pathogens except, as reported in recent years, for a minority of immuno-compromised patients

[Return to index](#)

Curvularia sp.

Mitosporic fungus. Hyphomycetes. Teleomorph (sexual state): Cochliobolus (Ascomycete).

Distribution	Where Found	Mode of Dissemination
Ubiquitous; cosmopolitan. More commonly found in tropical, subtropical regions. Approx. 30 species.	Plant debris, soil, facultative plant pathogens of tropical or subtropical plants./span>	Dry spore. Wind.
Allergen	Potential Opportunist or Pathogen	Potential Toxin Production
Common. Type I allergies (hay fever, asthma). Other: A relatively common cause of allergic fungal sinusitis.	Occasionally a cause of onychomycosis, ocular keratitis, sinusitis, mycetoma, pneumonia, endocarditis, cerebral abscess, and disseminated infection. Most cases are from immunocompromised patients.	Not known.
Growth Indoors	Industrial Uses	Other Comments
Yes, on a variety of substrates.	Not known.	None.
Characteristics: Growth/Culture	Notes on Spore Trap Recognition	Notes on Tape Lift Recognition
Grows well on general fungal media; most isolates need "light/dark cycling" for sporulation. Colonies are shades of gray to brown.	Distinctive; large second or center cell gives conidia pronounced curved shape. Conidia from species with less pronounced curve may be misidentified. Some Drechslera spores are similar.	Distinctive, readily identifiable on tape lifts.
Definitions References Commentary		

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Last Updated: November 30, 2010

Epicoccum

Epicoccum nigrum

Epicoccum nigrum is a saprophytic mould with a worldwide distribution.

It is common on senescent and dead plant and soil. It has also been isolated from wood pulp, canvas, cotton, and a wide variety of stored foods. Indoors it is found in floor, carpet and mattress dust, hospital air, and exposed acrylic paint.

Health Effects Associated With *Epicoccum nigrum*

Epicoccum nigrum poses inhalation health risks to persons with weak immune systems. However this **commonly found type of mould** poses no known dermal inoculation health risk.

Cladosporium sp.

Mitosporic fungus. Hyphomycetes. Teleomorphs (sexual state): *Mycosphaerella*, *Venturia* (Ascomycetes).

Distribution	Where Found	Mode of Dissemination
Ubiquitous; cosmopolitan. Approx. 28-40 species. One of the most common genera, worldwide.	Soil of many different types, plant litter, plant pathogen, leaf surfaces, old or decayed plants. /span>	Dry spore (formed in very fragile chains, easily dispersed). Wind.
Allergen	Potential Opportunist or Pathogen	Potential Toxin Production
Common and important allergen. Type I allergies (hay fever, asthma). Type III hypersensitivity pneumonitis: Hot tub lung, Moldy wall hypersensitivity.	Generally, non-pathogenic. One species, <i>Cladosporium carrionii</i> , is an agent of chromoblastomycosis in subtropical and tropical regions (grows at 35-37°C).	Cladosporin, emodin. (Neither are highly toxic.)
Growth Indoors	Industrial Uses	Other Comments
Widespread, on many substrates, including textiles, wood, moist window sills. Grows at 0°C, and so is associated with refrigerated foods. Aw=0.85-0.88 (minimum for various species).	<i>C. herbarum</i> produces enzymes which are used in the transformation of steroid intermediates such as pregnenolone and progesterone, biologically important hormones used in the industrial production of oral contraceptives.	G.S. deHoog & J. Guarro have placed species associated with human infection in a new genus <i>Cladophialophora</i> , i.e. <i>Cladophialophora carrionii</i> , <i>C. bantiana</i> . Older medical texts refer to this fungus by its former name <i>Hormodendron</i> species.

Cladosporium spp.

These genera of mold are pigmented dark green to black in the front, and black on the reverse with a velvety to powdery texture. One of the most commonly isolated from indoor and outdoor air, *Cladosporium spp.* are found on decaying plants, woody plants, food, straw, soil, paint, textiles, and the surface of fiberglass duct liner in the interior of supply ducts.

There are over 30 species in the *Cladosporium* genus. The most common are *C. elatum*, *C. herbarum*, *C. sphaerospermum*, and *C. cladosporioides*. These fungi are the causative agents of skin lesions, keratitis, nail fungus, sinusitis, asthma, and pulmonary infections. Acute symptoms of exposure to *Cladosporium* are edema and bronchospasms, and chronic exposure may lead to pulmonary emphysema.

Penicillium aurantiogriseum

Several strains of the genus *Penicillium* isolated from swabs from uranium miners working environment were screened for production of known mycotoxins; and embryotoxicity of chloroform extracts from the isolates was investigated in chick embryos. *Penicillium aurantiogriseum* was found to produce **chaetoglobosin A**. ED₅₀ of this mycotoxin for 2-, 3- and 4-day-old chick embryos was found 0.040 (0.031–0.052), 0.074 (0.051–0.107), and 0.180 (0.113–0.229) µg/embryo, respectively. The effect was purely embryo-lethal with no signs of teratogenicity recorded. This is the first report on the isolation of chaetoglobosin A from the genus *Penicillium*.

Penicillium corylophilum

Indoor exposure to the spores and mycelial fragments of fungi that grow on damp building materials can result in increased non-atopic asthma and upper respiratory disease. The mechanism appears to involve exposure to low doses of fungal metabolites. *Penicillium corylophilum* is surprisingly common in damp buildings in USA, Canada and western Europe. We examined isolates of *P. corylophilum* geographically distributed across Canada in the first comprehensive study of secondary metabolites of this fungus. The sesquiterpene phomenone, the meroterpenoids citreohybridonol and andrastin A, koningin A, E and G, three new alpha pyrones and four new isochromans were identified from extracts of culture filtrates. This is the first report of koninginins, meroterpenoids and alpha pyrones from *P. corylophilum*. These secondary metabolite data support the removal of *P. corylophilum* from *Penicillium* section Citrina and suggest that further taxonomic studies are required on this species.

Penicillium variable

is an **anamorph** species of the genus of *Penicillium* which has been isolated from permafrost deposits.^{[1][2][3][4]} *Penicillium variable* produces **rugulovasine A** and **rugulovasine B**^[4] This species occurs on wheat, flour, maize, rice, and barley, and it is also very common in indoor environments.[†]

Sporothrix

is a ubiquitous **genus** of soil-dwelling **fungus** discovered by Schenck in 1898^[1] and studied in more detail by Hektoen and Perkins.^[2] The first described and best known species is *Sporothrix schenckii*, the causative agent of rose handler's disease.^[3] New environmental^[4] and pathogenic^{[5][6]} species have been discovered with the potential for more to be found as molecular techniques advance.

Stachybotrys sp.

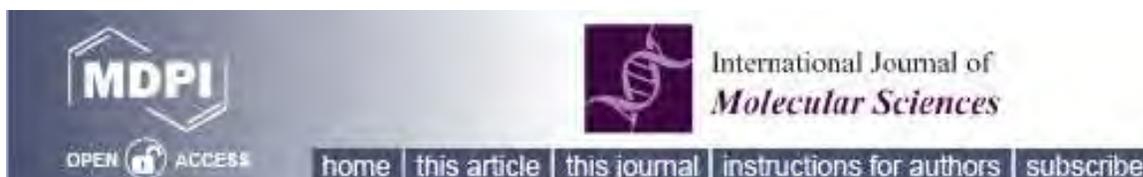
Description and Natural Habitats

Stachybotrys is a filamentous fungus occasionally isolated as a contaminant from nature and indoor environments. The geographic distribution of *Stachybotrys* is wide. It has been isolated from contaminated grains, tobacco, insulator foams, indoor air, and water-damaged buildings. *Stachybotrys* produces trichothecene mycotoxins known as satratoxins. These toxins may lead to pathological changes in animal and human tissues [787, 1415].

Pathogenicity and Clinical Significance

Similar to various genera of filamentous fungi, *Stachybotrys* produces trichothecene **mycotoxins**, the satratoxins. Trichothecenes are potent inhibitors of DNA, RNA, and protein synthesis. They modulate inflammatory reactions and alter alveolar surfactant phospholipid concentrations. These toxins may be acquired by ingestion of food products contaminated with the fungus or experimentally, via direct inhalation of the spores [100, 340, 1116, 1648, 1804, 1805, 2034, 2183, 2266, 2269]. In addition to its mycotoxins, *Stachybotrys* produces an hemolysin, stachylysin, which lyses sheep erythrocytes. The existence of the mycotoxin, as well as the stachylysin, has been demonstrated in some strains [2183, 2319, 2320, 2321].

Stachybotrys has interested health care workers for two reasons. The first is its possible role in development of **sick building syndrome**. *Stachybotrys* is one of the contaminants inhabiting buildings with major problems in mechanical system design, construction, and operational strategies, leading to excess indoor moisture. However, *Stachybotrys* is only one of the fungal genera isolated in these buildings and in fact it is less common and in lesser amounts compared to other mould genera. *Aspergillus*, *Penicillium*, *Alternaria*, and *Cladosporium* spp. are more frequently isolated under these settings. Also, the definition and diagnosis of sick building syndrome is unclear and even more importantly, sick building syndrome may result from several chemical and physical factors as well as biological factors, including moulds. These ideas suggest the possibility that *Stachybotrys* may play a role in development of sick building syndrome, but most probably together with other factors [471, 2254].



Mycotoxin Detection in Human Samples from Patients Exposed to Environmental Molds

[Dennis G. Hooper](#),^{1,*} [Vincent E. Bolton](#),¹ [Frederick T. Guilford](#),² and [David C. Straus](#)³

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US National Library of Medicine National Institutes of Health

The goal of this study was to determine if selected mycotoxins (trichothecenes, aflatoxins, and ochratoxins) could be extracted and identified in human tissue and body fluids from patients exposed to toxin producing molds in their environment. Human urine and methanol extracted tissues and sputum were examined. Trichothecenes were tested using competitive ELISA techniques. Aflatoxins B1, B2, G1, and G2, and ochratoxin A were tested by using immunoaffinity columns and fluorometry. Test sensitivity and specificity were determined. Levels of detection for the various mycotoxins varied from 0.2 ppb for trichothecenes, 1.0 ppb for aflatoxins, and 2.0 ppb for ochratoxins. Trichothecene levels varied in urine, sputum, and tissue biopsies (lung, liver, brain) from undetectable (<0.2 ppb) to levels up to 18 ppb. Aflatoxin levels from the same types of tissues varied from 1.0 to 5.0 ppb. Ochratoxins isolated in the same type of tissues varied from 2.0 ppb to > 10.0 ppb. Negative control patients had no detectable mycotoxins in their tissues or fluids. These data show that mycotoxins can be detected in body fluids and human tissue from patients exposed to mycotoxin

producing molds in the environment, and demonstrate which human tissues or fluids are the most likely to yield positive results.

Keywords: Aflatoxin, ochratoxin, trichothecene, human samples

[Go to:](#)

1. Introduction

Over the past 15–20 years, toxic mold exposure has become hazardous and frequent [1]. Scientific and medical literature has increased the awareness of mycotoxin producing fungi as possible pathogens in human disease [2,3]. After hurricane Katrina, the Center for Disease Control (CDC) issued new revised warnings as to the severe health effects of mycotoxin producing mold exposure [4]. Until now, there has been no readily available test to clinicians for helping establish the diagnosis of infections or illness due to toxin producing mold exposure. Currently, tests such as a sandwich enzyme linked immunosorbant assay (ELISA) test for antibodies to *Aspergillus* and polymerase chain reaction (PCR) for the detection of mold DNA in human specimens have been limited to clinical research investigating mold infections in immune-compromised patients (cancer, HIV, etc) [5,6]. There is a need to know not only if mycotoxin-producing molds are in the patient's environment, but if these molds and their toxins are present in the patient, which could potentially be causing their medical problems.

Immunology tests such as competitive ELISA and immunoabsorbant (IA) columns utilize the concept of antigen-antibody reactions to capture and identify the antigen (a specific mycotoxin) by spectroscopy or fluorometry [7,8] and make it possible for the instant detection of mycotoxins from toxin producing or infectious molds.

Other work has demonstrated that mycotoxins can be detected in human sera [9–13] and in animal tissue [14]. Recently, work in China has been presented showing that plasma levels of aflatoxin B1 can be found in

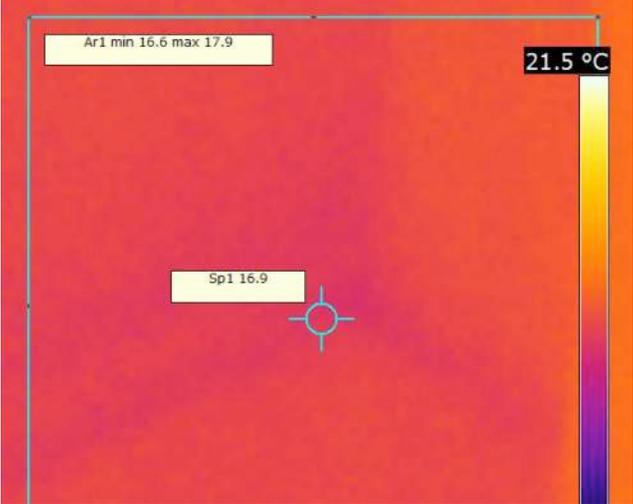
adolescents, which may impose substantial risk for hepatocarcinogenesis in adulthood [15]. Also, Tang [16] demonstrated that aflatoxin B1 can be determined in the serum. Ochratoxin A can also be measured in urine [17]. Additionally, trichothecenes can be found in urine [18]. However, our study is the first to examine large numbers of body fluids and tissue for the presence of mycotoxins in patients who have knowingly been exposed to environmental toxin producing molds. The findings presented in this study may also be helpful in identifying which tissues and/or fluids may be best for examination when trying to identify specific mycotoxins.

This study demonstrates that ELISA plates and IA columns can be adapted for human testing to evaluate the presence of mycotoxins. The mycotoxins studied were the aflatoxins, ochratoxins, and macrocyclic trichothecenes [19]. Validations were conducted in a CLIA (Clinical Laboratory Improvement Act of 1988) certified lab on patients with known exposure to mycotoxins or environmental molds and patients with no known exposure to the same. We demonstrate that competitive ELISA tests and IA columns can be used to evaluate tissues and fluids from patients who have been exposed to mycotoxin producing molds in the environment. The mycotoxin detection assays utilized specific mycotoxins to generate a qualitative determination of the presence or absence of fungal mycotoxins in clinical fluid and tissue.

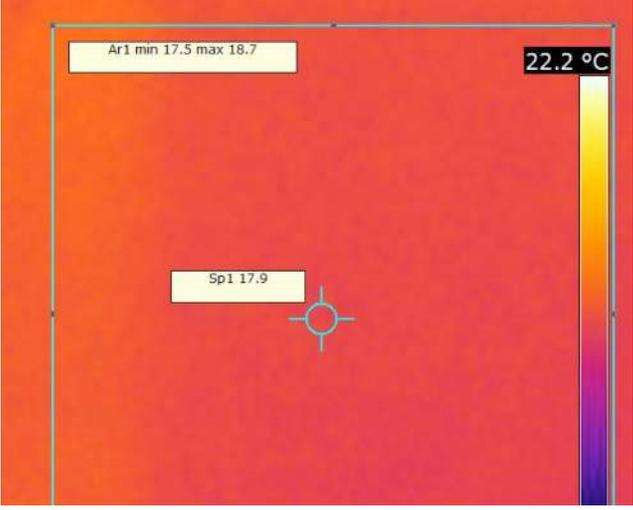
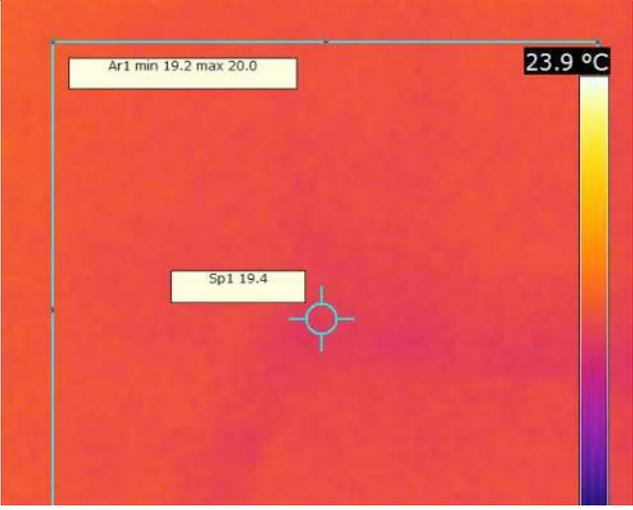
4. Conclusions

Mycotoxins, specifically trichothecenes, aflatoxins, and ochratoxins, can be detected in human tissue and body fluids in patients who have been exposed to toxin producing molds in their environment. The toxins can be best determined in urine as a screening qualitative test which can assist the physician to determine what the best mode of therapy would be.

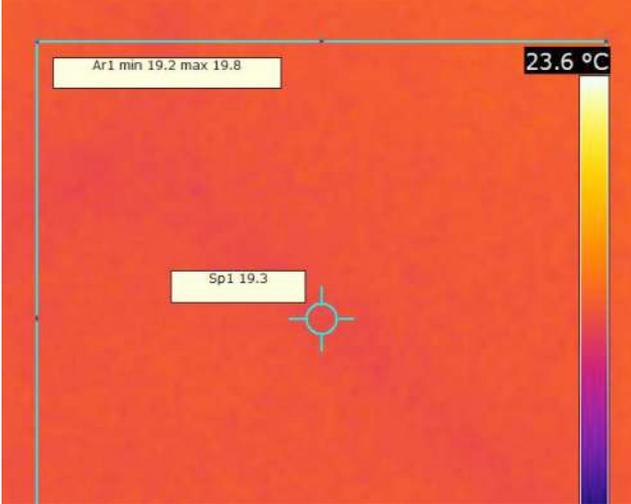
APPENDIX C - Photographs

Location	Photograph		
Basement rental BR closet			
1624 thermal anomaly			
Workshop SE corner			

APPENDIX C - Photographs

Location	Photograph		
1625 thermal anomaly			
Basement living room north			
1626 thermal anomaly			

APPENDIX C - Photographs

Location	Photograph		
<p>Basement guest bedroom north</p>			
<p>1627 thermal anomaly</p>			
<p>Elevated humidity in the basement closet</p>			

This is **Exhibit “E”** referred to in the Affidavit of Shelley Young, affirmed before me this 1st day of November, 2022.

A handwritten signature in black ink that reads "A. Bouchard" with a checkmark-like flourish at the end.

A Commissioner for taking affidavits



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 Burlington, Ontario L7P 0G3
conservationhalton.ca

Protecting the Natural
 Environment from
 Lake to Escarpment

May 28, 2018

Ivan Rudyk & Shelley Long
 835 Spring Gardens Road
 Burlington, Ontario
 L7T 2J6

BY MAIL AND EMAIL

Dear Mr. Rudyk & Ms. Long:

**Re: Proposed 2-storey addition, rear balcony, covered front porch and on-grade patio within the valley of Grindstone Creek
 835 Spring Gardens Road
 City of Burlington
 CH File: A/18/B/50**

Proposal

Please find enclosed **Permit No. 5927** issued in accordance with Ontario Regulation 162/06, for the above noted proposal.

Staff have reviewed the following files regarding the above noted proposal:

- *Surveyor's Real Property Report – redline revised by the applicant* prepared by Mackay Mackay & Peters June 8, 2011, received by Conservation Halton May 10, 2018, and stamped approved May 28, 2018.

The proposal includes the construction of a second storey, a rear cantilevered balcony and front covered porch additions to the existing dwelling, and to remove an existing deck to construct a new on-grade patio. The property is located adjacent to lands traversed by a tributary of Grindstone Creek and contains a portion of the flooding and erosion hazards associated with that watercourse. Specifically, the property is considered to be located entirely within the valley of Grindstone Creek. The property is also located adjacent to a wetland greater than 2 hectares in size. Conservation Halton (CH) regulates a distance of 15 metres from the greater of the flooding or erosion hazards associated with Grindstone Creek and 120 metres from the limit of wetlands which are greater than 2 hectares in size. CH staff attended the site May 23, 2018 to assess the top of bank erosion hazard associated with the valley in relation to the proposed development. Based on that site visit, staff is of the opinion that the proposal meets Policy 3.37.1 and Policy 3.37.2 of Conservation Halton's *Policies and Guidelines for the Administration of Ontario Regulation 162/06 and Land Use Planning Document*, Revised August 11, 2011.

Based on the above, this permit is approved with the following conditions:

- a. That disturbed areas be stabilized immediately following the completion of construction to the satisfaction of Conservation Halton.
- b. That effective sediment and erosion control measures be installed prior to starting work, maintained during construction and fully removed once all disturbed areas have been stabilized. That site conditions be monitored and that the sediment and erosion control measures be modified if site conditions warrant it.
- c. That excess fill (soil or otherwise) generated from the proposed works shall not be stockpiled or disposed of within any area regulated by Conservation Halton, pursuant to Ontario Regulation 162/06.

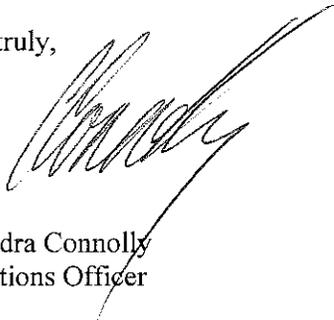
Please be sure that you read and understand all conditions listed on the enclosed Permit (and included below). Please also note that contravention of a Permit, or the terms and conditions of a Permit, is considered an offence under Section 28(16) of the *Conservation Authorities Act*. It is your responsibility to ensure that any person working under the authority of this Permit is familiar, and complies with, the terms and conditions.

Conservation Halton must be contacted a minimum of 48 hours prior to commencement of construction. This Permit or a copy thereof as well as all approved drawings must be available at the site. Any changes to the approved design or installation methods must be reviewed and approved by Conservation Halton staff prior to their implementation. This Permit is valid two years from the dated it is issued.

Please be advised that should you have any objection to any of the conditions of the permit, you are entitled to request a hearing before the Authority, in accordance with Section 28(12) of the Conservation Authorities Act. A written notice of your request for a hearing must be received by staff within 30 days of the date of this letter. Please note that if a hearing has been requested, this permit approval is withdrawn until such time as the hearing results have been finalized and commencement of any site alteration must not occur until the results of the Hearing are determined.

We trust the above is of assistance in this matter. Should you require further information, please contact staff at extension 2301.

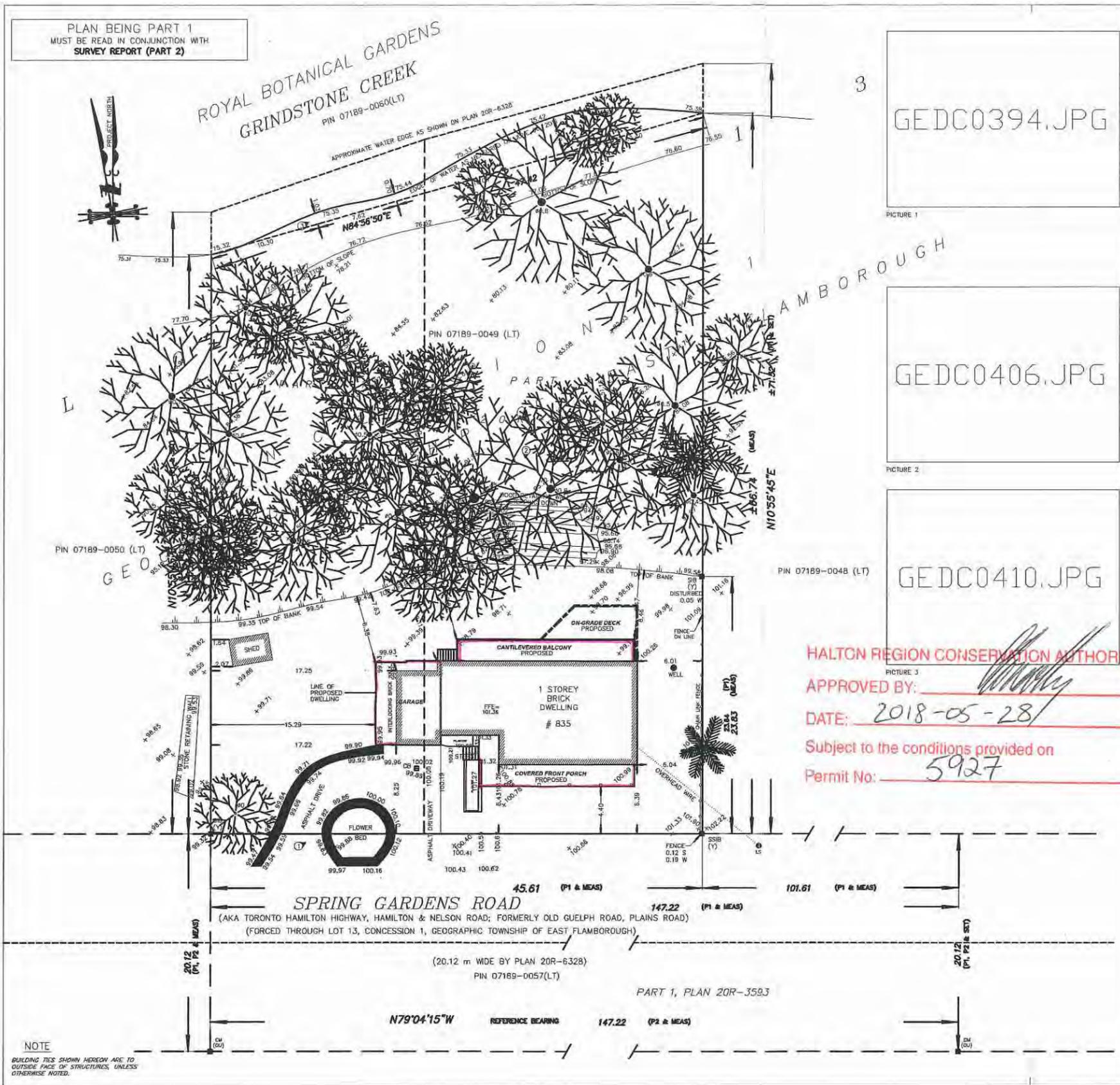
Yours truly,



Cassandra Connolly
Regulations Officer

Encl. 1

Cc: Planning Department – City of Burlington (Permit and Drawings)
Peter Vozikas, Empire Design Company, Agent (Permit and Drawings by Email)



SURVEYOR'S REAL PROPERTY REPORT
WITH TOPOGRAPHIC INFORMATION
PLAN OF
**PART OF LOT 13
CONCESSION 1**
GEOGRAPHIC TOWNSHIP OF EAST FLAMBOROUGH
BEING IN THE
CITY OF BURLINGTON
REGIONAL MUNICIPALITY OF HALTON
SCALE 1 : 250

0 5 10 20 metres

MackAY, MacKAY & PETERS LIMITED - ONTARIO LAND SURVEYORS
© 2011

KNOWN AS MUNICIPAL No. 835 SPRING GARDENS ROAD

REPORT SUMMARY (PART 2) (to be read in conjunction with Part 1)

LAND REGISTRY OFFICE TITLE INFORMATION ON SUBJECT PROPERTY INCLUDING
BOUNDARIES, EASEMENTS AND RIGHT OF WAYS - DATE JUNE 08, 2011.

REGISTERED EASEMENTS AND/OR RIGHTS-OF-WAY:
NONE

ADDITIONAL REMARKS:
FOR DETAILS ABOUT THE LOCATION OF THE FENCE AND FRONT INTERLOCKING WALKS SEE PLAN
ALL TIES ARE REFERRED TO PROJECT NORTH

Note:
MackAY, MacKAY & PETERS LIMITED grants IVAN RUDYK ("The Client(s)") their solicitor and other
related parties permission to use "Original Copies" of the Surveyor's Real Property Report in
transactions involving "The Client(s)".

"METRIC" DISTANCES SHOWN ON THIS PLAN ARE IN METRES AND
CAN BE CONVERTED TO FEET BY DIVIDING BY 0.3048

Legend:

■ DENOTES A SURVEY MONUMENT FOUND	# DENOTES ROUND
□ DENOTES A SURVEY MONUMENT PLANTED	WT DENOTES WITNESS MONUMENT
SB DENOTES STANDARD IRON BAR	CC DENOTES CUT CROSS
SSB DENOTES SHORT STANDARD IRON BAR	CP DENOTES CONCRETE PIN
IB DENOTES IRON BAR	PN DENOTES PROPERTY IDENTIFICATION NUMBER
C DENOTES CENTRE LINE	(OU) DENOTES ORIGIN UNKNOWN
CB DENOTES CATCH BASIN	P1 DENOTES PLAN 20R-6328
FTE DENOTES FIRST FLOOR ELEVATION	P2 DENOTES PLAN 20R-3593
LS DENOTES LIGHT STANDARD	

Benchmark Note:
CITY OF BURLINGTON BENCHMARK No. 33 ELEVATION = 116.441 METRES
WATERDOWN ROAD OVERPASS OVER HIGHWAY #403; TABLET IN THE TOP OF THE EAST SIDEWALK OF WATERDOWN
ROAD, 6.05 m NORTHERLY FROM THE SOUTHWEST CORNER OF THE ABUTMENT WALL AND 18.8 m NORTHERLY FROM
THE SOUTHWEST CORNER OF THE OVERPASS ABUTMENT OVER HIGHWAY #403, 0.2 m FROM THE CURB.
HORIZONTAL CONTROL MONUMENT D01643078

Bearing Reference:
BEARINGS ARE ASTROMOMIC AND ARE REFERRED TO THE SOUTHERLY LIMIT OF
SPRING GARDENS ROAD, AS SHOWN ON PLAN 20R-6328,
HAVING A BEARING OF N79°08'15" E.

Surveyor's Certificate:
I CERTIFY THAT:
1. THIS SURVEY AND PLAN ARE CORRECT AND IN ACCORDANCE
WITH THE SURVEYS ACT, THE SURVEYORS ACT AND THE LAND TITLES ACT
AND THE REGULATIONS MADE UNDER THEM.
2. THE SURVEY WAS COMPLETED ON THE 6th DAY OF JUNE, 2011.

JUNE 08, 2011
DATE

MACKAY
MACKAY
& PETERS
LIMITED
Established 1906

ONTARIO LAND SURVEYORS
3380 SOUTH SERVICE ROAD
BURLINGTON, ONTARIO L7N 3J5
PHONE: (905) 639-1375
FAX: (905) 333-9544
e-mail: halton@mmplimited.com
Records of Sewell & Sewell
and Yates & Yates LTD.

DRAWN BY:	A.S.
PARTY CHIEF:	J.M.
CHECKED BY:	X
PROJECT NO.:	11-079





2596 Britannia Road West
 Burlington, ON L7P 0G3
 Telephone: 905 336-1158 Fax: 905 336-6684

PERMIT #: 5927

FILE #: A/18/B/50

PERMIT

IN ACCORDANCE WITH SECTION 3 OF REGULATION 162/06, PERMISSION HAS BEEN GRANTED TO:

Owner's Name: Ivan Rudyk & Shelley Long Phone: 905-679-0706
 Mailing Address: 835 Spring Gardens Road, Burlington ON L7T 2J6
 Agent/Contractor: Empire Design Company Phone: 416-500-8989
5 North Ridge Crescent, Georgetown ON L7G 6E7

Property Location: 835 Spring Gardens Road

in the (City, Town, Township) of: Burlington

(Region/County) of: Halton

This permit is for the purpose of a proposed 2-storey addition, rear balcony, covered front porch and an on-grade patio within the valley of Grindstone Creek

This permit is issued on this 28th day of May, 2018

Expires: 28th day of May, 2020

And is subject to the following conditions:

1. That the work to be carried out in accordance with plans submitted on May 10th, 2018 and stamped APPROVED by: Cassandra Connolly, Regulations Officer
2. see reverse
3. **Conservation Halton is to be notified of the date of the commencement of construction. This permit (including drawings stamped approved by Conservation Halton) or a copy thereof, must be posted on the site and be available for inspection.**

Conservation Halton may, at any time, withdraw any permission given under this regulation if, in the opinion of the Conservation Authority, the conditions of the permit are not complied with.

Authorized representatives of Conservation Halton may, at any time, enter lands and buildings, to make any surveys, examinations, investigations, and inspections to ensure that the works authorized by this Permit are being carried out in accordance with the terms of this Permit.

This permit does not preclude any approvals required by any other existing law and regulations.

Authorized by: Kellie McCormack on the 29 day of May, 2018.
 Kellie McCormack, MA, MCIP, RPP, Senior Manager, Development Planning

1) WHITE: APPLICANT ORIGINAL COPY 2) GOLD: FILE COPY
 3) YELLOW: MUNICIPALITY COPY

2.

- a) That disturbed areas be stabilized immediately following the completion of construction to the satisfaction of Conservation Halton;
- b) That effective sediment and erosion control measures be installed prior to starting work, maintained during construction and fully removed once all disturbed areas have been stabilized. That site conditions be monitored and that the sediment and erosion control measures be modified if site conditions warrant it; and
- c) That excess fill (soil or otherwise) generated from the proposed works shall not be stockpiled or disposed of within any area regulated by Conservation Halton, pursuant to Ontario Regulation 162/06.

This is **Exhibit “F”** referred to in the Affidavit of Shelley Young, affirmed before me this 1st day of November, 2022.

A handwritten signature in black ink that reads "A. Bouchard" with a checkmark-like flourish at the end.

A Commissioner for taking affidavits

BUILDING SERVICES DEPARTMENT

OTHER SINGLE DETACHED DWELLING PERMIT

Project Location: 835 Spring Gardens Rd. Burlington L7T 1J6
 Legal Description: CON 1 EF PT LOT 13 RP 20R6328 PARTS 1,2
 Zone: D
 Building Type: Single Detached Dwelling
 Description: Garage addition, with living space above, and interior renovations to t

Permit #: **18 020237 000 00 SO**

Issued: November 1, 2018

Expiry:

Work Proposed: Addition

Applicant: Empire Design Company (Peter Vozikas)

5 North Ridge Cres. Georgetown ON L7G 6E7

(416) 500-8989

Owner: Ivan Anthony Rudyk

835 Spring Gardens Rd. Burlington ON L7T 1J6

Owner: Shelley Jean Young

835 Spring Gardens Rd. Burlington ON L7T 1J6

Payee: Lifestyles by Barons Inc.

60 Northridge Cres Halton Hills ON L7G 6E6

(905) 867-0077

**TO BOOK YOUR INSPECTIONS
PLEASE CALL:
BUILDING INSPECTOR
Matthew Bowlby
(905) 971-1881**

**THIS PERMIT CARD MUST BE
POSTED & EASILY VISIBLE ON SITE
OF CONSTRUCTION/DEMOLITION
AS PER OBC DIV C 1.3.2.1.(1)**

SPECIAL NOTICE

1. Notify the Chief Building Official (CBO): It is the duty of the person to whom this permit has been issued to notify the CBO of the commencement of construction, readiness to occupy and at other stages of construction as per OBC, Div.C, 1.3.5. A minimum of two business days notice is required.

2. When requesting an inspection, please refer to the permit number at the top right of this page.

3. The permit documents and reviewed plans must be kept on site at all times during construction. This Permit Card must be posted and easily visible at the site of Construction/Demolition as per OBC, Div. C, 1.3.2.

4. Occupancy/Final Inspection: No person shall occupy or use, or permit to be occupied or used, any building or part thereof newly erected or installed until notice of the date of its completion is given to the CBO; and 1) an inspection is made pursuant to such notice, or 2) ten days have lapsed after service of the notice or after the date of completion, whichever occurs last, and subject to compliance first being made with any order made by an inspector.

5. Separate permits are required for building, demolition, plumbing, drains, heating, air-conditioning, fireplaces, chimneys, signs, portable signs, swimming pools or any other work not covered by or at variance with this permit.

6. Items not covered: This permit does not include any encroachments past the street line or any openings on the public road allowance. Curbs, sidewalks, roadways, etc. to be protected and kept clean to the satisfaction of the Engineering Department having jurisdiction.

7. Revocation of this permit: This permit may be revoked, in accordance with Section 8 of the BUILDING CODE ACT, including where the construction or demolition described is not seriously commenced within six months of issuance or where construction or demolition has been suspended for more than one year.

8. Line Locates: 1-800-400-2255.

BUILDING SERVICES DEPARTMENT

OTHER SINGLE DETACHED DWELLING PERMIT

Project Location: 835 Spring Gardens Rd. Burlington L7T 1J6	Permit #: 18 020237 000 00 SO
Legal Description: CON 1 EF PT LOT 13 RP 20R6328 PARTS 1,2	Issued: November 1, 2018
Zone: D	Expiry:
Building Type: Single Detached Dwelling	Work Proposed: Addition
Description: Garage addition, with living space above, and interior renovations to	

Applicant: Empire Design Company (Peter Vozikas)	
5 North Ridge Cres. Georgetown ON L7G 6E7	(416) 500-8989
Owner: Ivan Anthony Rudyk	
835 Spring Gardens Rd. Burlington ON L7T 1J6	
Owner: Shelley Jean Young	
835 Spring Gardens Rd. Burlington ON L7T 1J6	
Payee: Lifestyles by Barons Inc.	
60 Northridge Cres Halton Hills ON L7G 6E6	(905) 867-0077

SPECIAL NOTICE

1. Notify the Chief Building Official (CBO): It is the duty of the person to whom this permit has been issued to notify the CBO of the commencement of construction, readiness to occupy and at other stages of construction as per OBC, Div.C, 1.3.5. A minimum of two business days notice is required.
2. When requesting an inspection, please refer to the permit number at the top right of this page.
3. The permit documents and reviewed plans must be kept on site at all times during construction. This Permit Card must be posted and easily visible at the site of Construction/Demolition as per OBC, Div. C, 1.3.2.
4. Occupancy/Final Inspection: No person shall occupy or use, or permit to be occupied or used, any building or part thereof newly erected or installed until notice of the date of its completion is given to the CBO; and 1) an inspection is made pursuant to such notice, or 2) ten days have lapsed after service of the notice or after the date of completion, whichever occurs last, and subject to compliance first being made with any order made by an inspector.
5. Separate permits are required for building, demolition, plumbing, drains, heating, air-conditioning, fireplaces, chimneys, signs, portable signs, swimming pools or any other work not covered by or at variance with this permit.
6. Items not covered: This permit does not include any encroachments past the street line or any openings on the public road allowance. Curbs, sidewalks, roadways, etc. to be protected and kept clean to the satisfaction of the Engineering Department having jurisdiction.
7. Revocation of this permit: This permit may be revoked, in accordance with Section 8 of the BUILDING CODE ACT, including where the construction or demolition described is not seriously commenced within six months of issuance or where construction or demolition has been suspended for more than one year.
8. Line Locates: 1-800-400-2255.

This is **Exhibit “G”** referred to in the Affidavit of Shelley Young, affirmed before me this 1st day of November, 2022.

A handwritten signature in black ink that reads "A. Bouchard" with a stylized flourish at the end.

A Commissioner for taking affidavits

From: Cassandra Connolly <cconnolly@hrca.on.ca>
Sent: Wednesday, May 23, 2018 11:10:57 AM
To: I Rudyk
Cc: Michelle Caissie; vozkkass@hotmail.com
Subject: RE: 835 Spring Garden Road - Conservation Halton Site Visit Required

Hi Shelley,

It was great to meet you this morning and discuss the development you are proposing at 835 Spring Gardens Road, Burlington. As mentioned on site, we have no concerns with the 2-storey addition, balcony, and patio you are proposing.

In returning to the office, I do notice that we have not yet received payment for the administrative and review fees associated with a CH Permit. Prior to the issuance of your Permit, payment is required.

Please provide a cheque in the amount of \$475.00 to our Administration Office, or contact Michelle Caissie at 905-336-1158 extension 2227 to provide payment by credit card over the phone. Once payment has been provided, your application will be deemed complete and will be issued promptly.

Regards,

Cassandra Connolly
Regulations Officer

Conservation Halton
2596 Britannia Road West, Burlington, ON L7P 0G3
905-336-1158 ext. 2301 | cconnolly@hrca.on.ca

This is **Exhibit “H”** referred to in the Affidavit of Shelley Young, affirmed before me this 1st day of November, 2022.

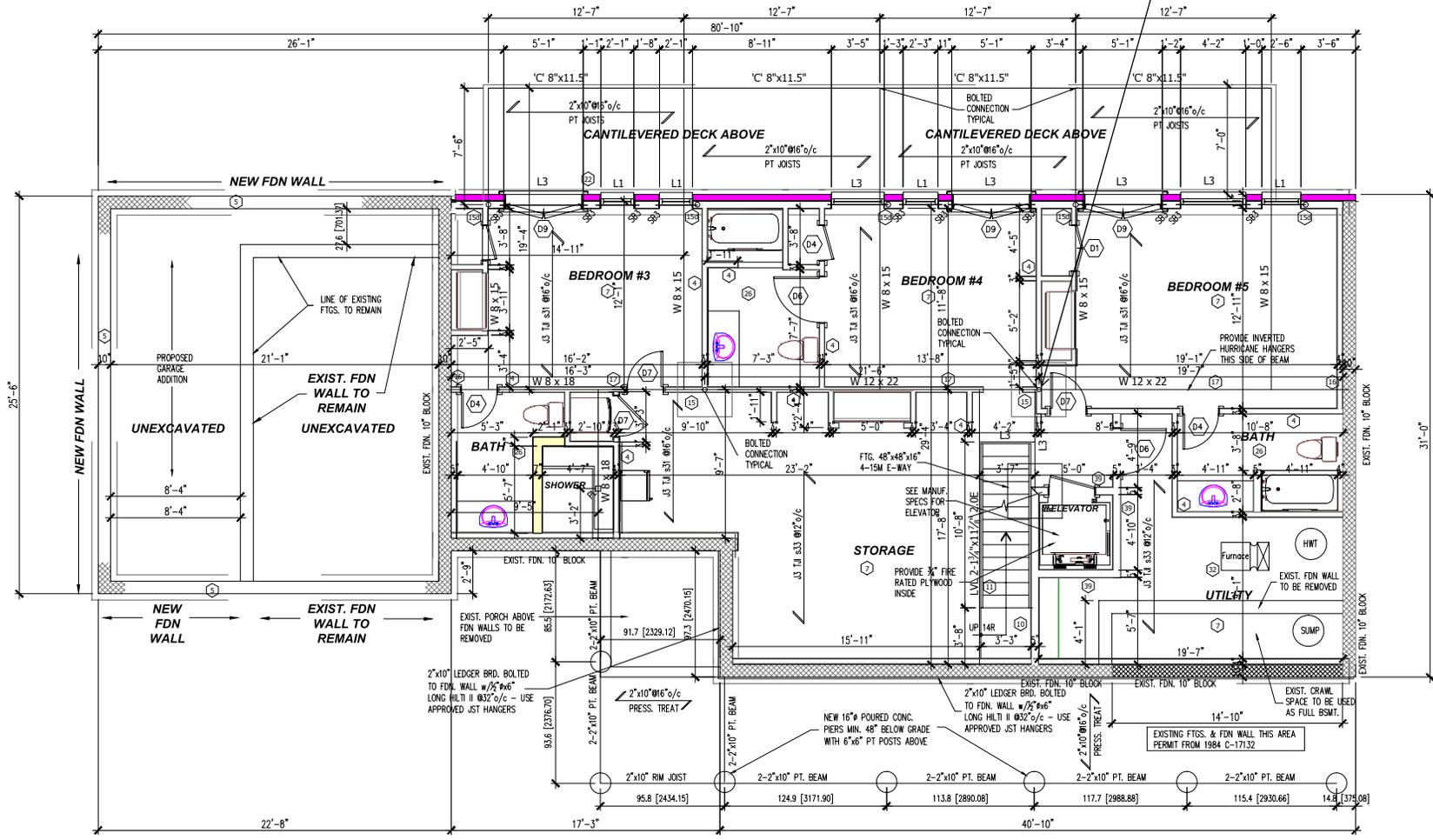
A handwritten signature in black ink that reads "A. Bouchard". The signature is written in a cursive style with a prominent flourish at the end.

A Commissioner for taking affidavits

Revision	Front Porch & Bay 02	PV	09/09/18
Revision		01	24/07/18
Revision		02	05/06/17

CONTRACTOR SHALL CHECK AND VERIFY ALL DIMENSIONS.
 ANY DISCREPANCIES ARE TO BE REPORTED TO THE DESIGNER PRIOR TO COMMENCEMENT OF WORK. UNDER NO CIRCUMSTANCES SHALL THE CONTRACTOR OR SUBCONTRACTOR PROCEED IN UNCERTAINTY.
 REVIEWED UNDER THE 2016 O.B.C.

CONTRACTOR TO PROVIDE SHOP DRAWINGS FOR ALL STEEL CONNECTIONS.
 DRAWINGS MUST BE STAMPED BY AN ONTARIO REGISTERED PROFESSIONAL ENGINEER.



STRUCTURAL REVIEW ONLY



60 North Ridge Crescent
 Georgetown Ontario
 905-867-9777

The undersigned has reviewed and taken responsibility for this design and has the qualifications to do so. I understand and accept the requirements set out in the Ontario Building Code to be a designer.
 Registered design: 14 April 2008, O.C. 3225, of the building code, signed under S24.1(3)(2)

Name	Signature	BCR
Peter Vozkias		

OWNER:
Rudyk/Long Residence
 835 Spring Gdns. Road
 Burlington Ontario



PROJECT:
 MAJOR RENOVATION
 Additions and Renovations

SHEET TITLE:
 BASEMENT FLOOR PLAN

PROPERTY:
 835 Spring Gardens Road

SCALE:
 3/16"=1'-0"

DATE:
 JUN/2018

DRAWN BY:
 PV

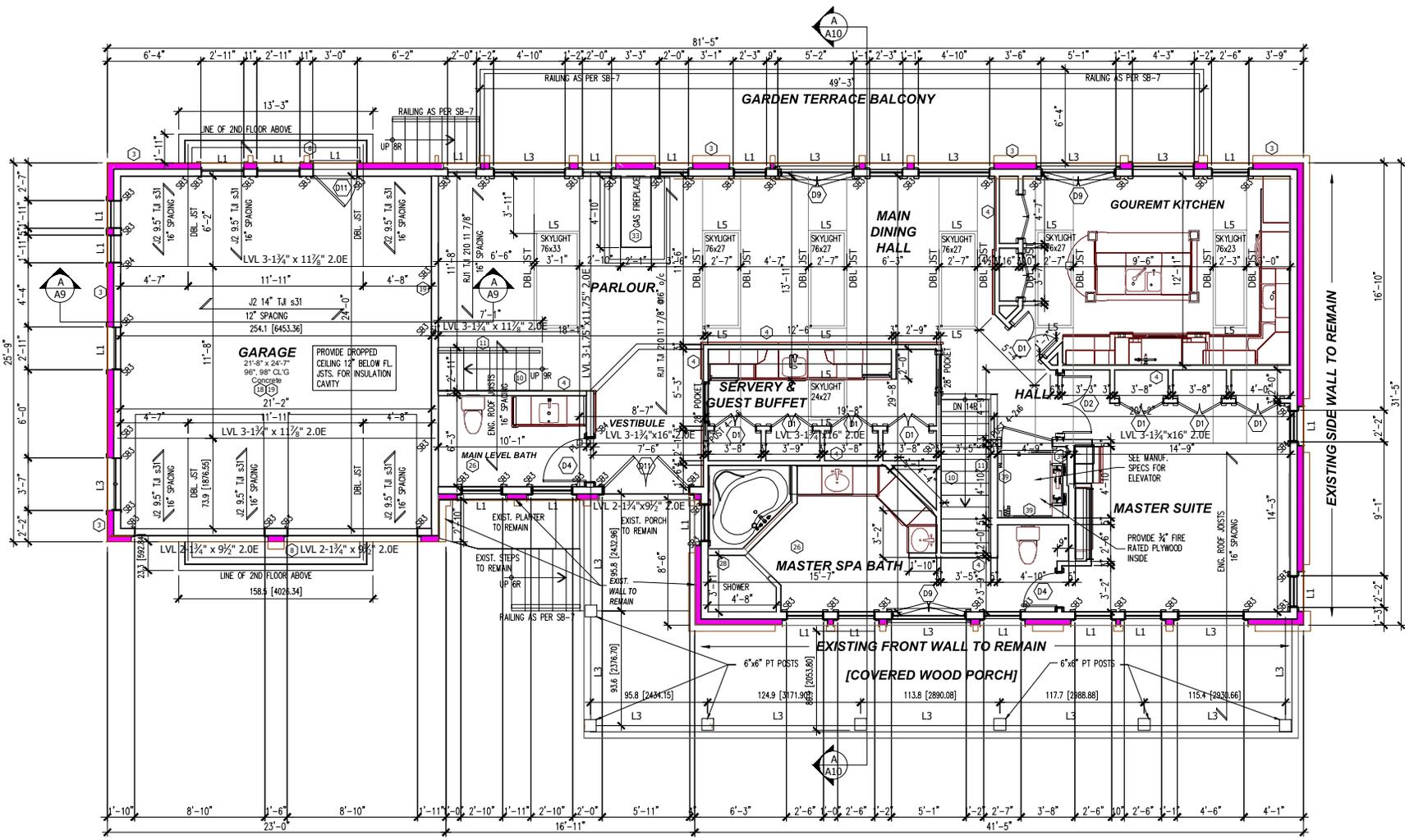
PROJECT NO:
 383

BY:
 PV

ID:
 A02

Revision	Front Porch & Bay 02	PV	09/09/18
Revision	01	PV	24/07/18
Revision		By	ED/MM/YY

CONTRACTOR SHALL CHECK AND VERIFY ALL DIMENSIONS.
 ANY DISCREPANCIES ARE TO BE REPORTED TO THE DESIGNER PRIOR TO COMMENCEMENT OF WORK. UNDER NO CIRCUMSTANCES SHALL THE CONTRACTOR OR SUBCONTRACTOR PROCEED IN UNCERTAINTY.
 REVIEWED UNDER THE 2016 O.B.C.



STRUCTURAL REVIEW ONLY



60 North Ridge Crescent
 Georgetown Ontario
 905-867-9777

The undersigned has reviewed and taken responsibility for this design, and has the qualifications as either designed and sealed the requirements set out in the Ontario Building Code to be a designer.
 Printed when design is complete under 90, C-13.2.2 of the building code. Expiry date 12/31/2018

Peter Vokas 2019
 Name Signature WS

OWNER:
Rudyk/Long Residence
 835 Spring Gdns. Road
 Burlington Ontario

EMPIRE DESIGN COMPANY
 PETER VOKAS
 ARCHITECTURAL DESIGN FOR:
 LUXURY RESIDENTIAL & COMMERCIAL SPACE
 WWW.EMPIREDESIGNCOMPANY.COM
 416-500-8989 VOKAS@HOTMAIL.COM

PROJECT: MAJOR RENOVATION Additions and Renovations

SHEET TITLE: GROUND FLOOR PLAN

PROPERTY: 835 Spring Gardens Road

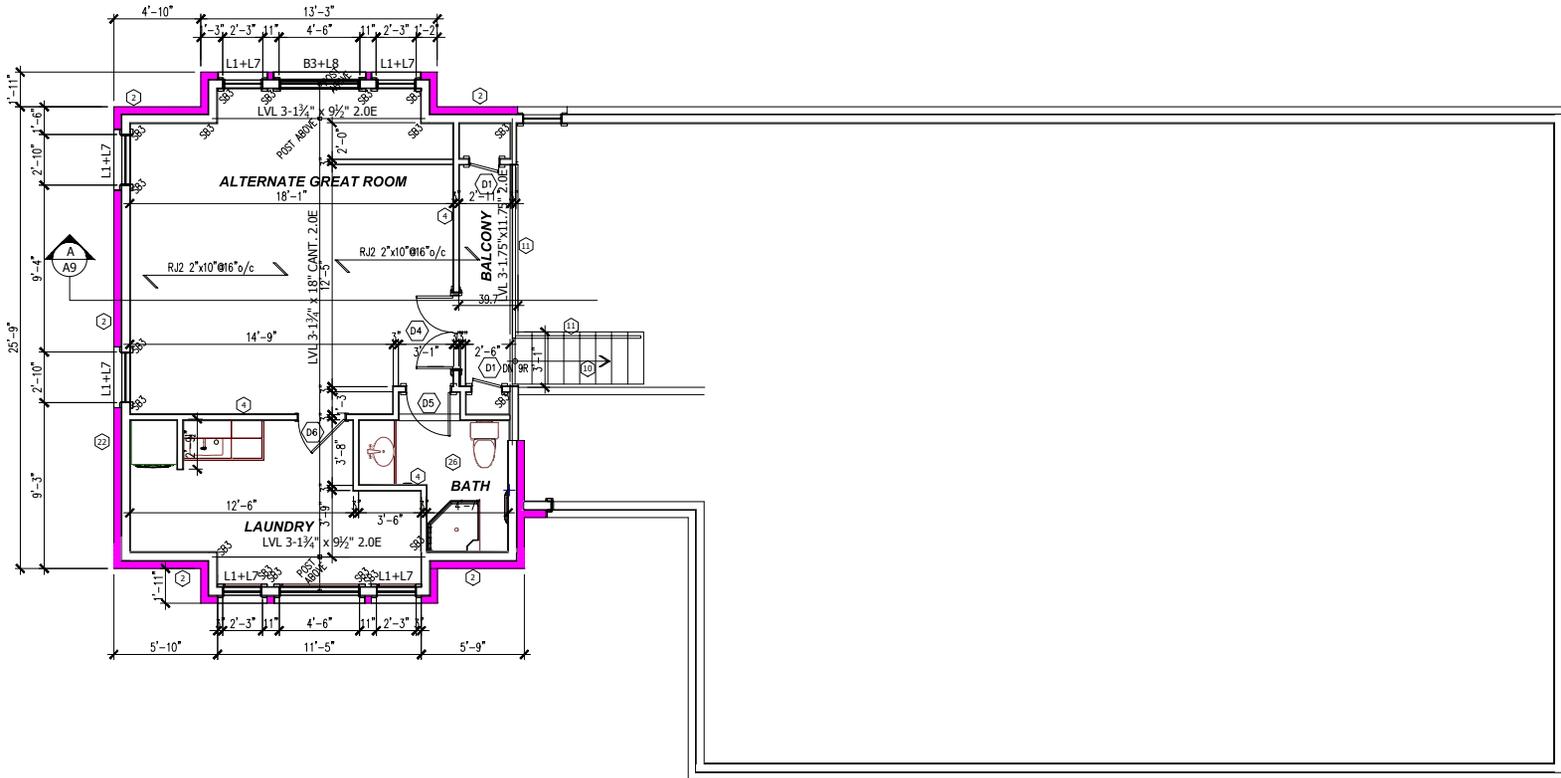
SCALE: 3/16"=1'-0" **384** 8

DRAWN BY: pv

PROJECT NO: **A03**

Revision	Front Porch & Bay	02	PV	09/09/18
Revision		01	PV	24/07/18
Revision			By	ED/MM/YY

CONTRACTOR SHALL CHECK AND VERIFY ALL DIMENSIONS.
 ANY DISCREPANCIES ARE TO BE REPORTED TO THE DESIGNER PRIOR TO COMMENCEMENT OF WORK. UNDER NO CIRCUMSTANCES SHALL THE CONTRACTOR OR SUBCONTRACTOR PROCEED IN UNCERTAINTY.
 REVIEWED UNDER THE 2016 O.B.C.



STRUCTURAL REVIEW ONLY



60 North Ridge Crescent
 Georgetown Ontario
 905-867-9777

The undersigned has reviewed and takes responsibility for this design, and has the qualifications as either designed and sealed the requirements set out in the Ontario Building Code to be a designer.
 Required where design is exempt under 91, C-3.2.2. of the building code. Designed under 3.2.4.(1)(b)

Peter Vokas 2019
 Name Signature

OWNER:
Rudyk/Long Residence
 835 Spring Gdns. Road
 Burlington Ontario



PROJECT:
MAJOR RENOVATION
 Additions and Renovations

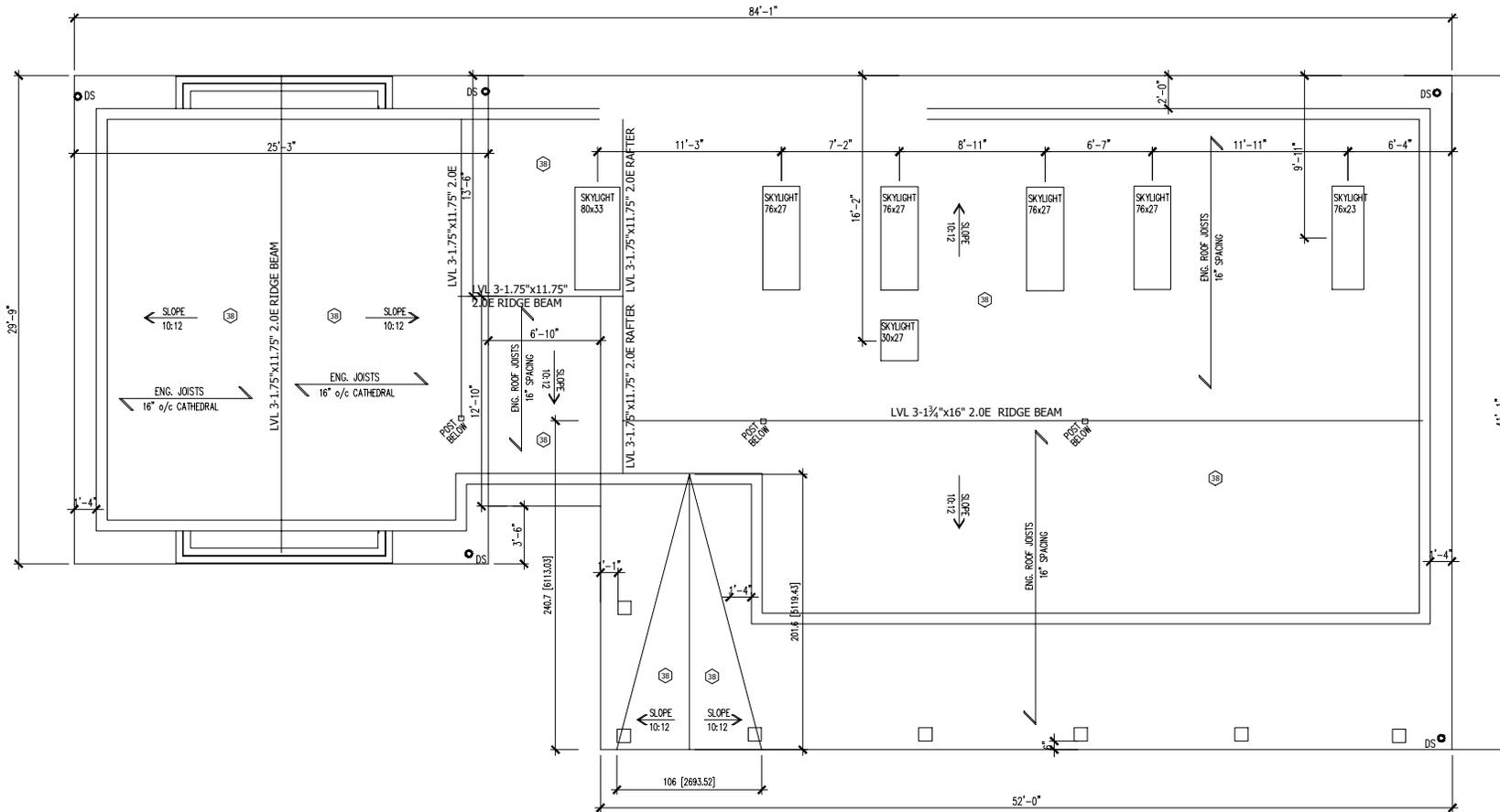
SHEET TITLE:
SECOND FLOOR PLAN

PROPERTY:
 835 Spring Gardens Road

SCALE:
 3/16"=1'-0" **385** 8

DRAWN BY:
 pv

PROJECT NO:
A04



Revision	Front Porch & Bay 02	PV	09/09/18
Revision	01	PV	24/07/18
Revision	No.	By	ES/MM/YY

CONTRACTOR SHALL CHECK AND VERIFY ALL DIMENSIONS.
 ANY DISCREPANCIES ARE TO BE REPORTED TO THE DESIGNER PRIOR TO COMMENCEMENT OF WORK. UNDER NO CIRCUMSTANCES SHALL THE CONTRACTOR OR SUBCONTRACTOR PROCEED IN UNCERTAINTY.
 REVIEWED UNDER THE 2016 O.B.C.

STRUCTURAL REVIEW ONLY



60 North Ridge Crescent
 Georgetown Ontario
 905-867-9777

The undersigned has reviewed and taken responsibility for this design, and has the qualifications as (other design) and meets the requirements set out in the Ontario Building Code to be a designer.
 Required when design is exempt under O.C. 3.3.2.2. of the building code. Issued under S.S.A.(03/08)

Peer/Youkas Name Signature 2019

OWNER:
Rudyk/Long Residence
 835 Spring Gdns. Road
 Burlington Ontario



PROJECT: MAJOR RENOVATION Additions and Renovations

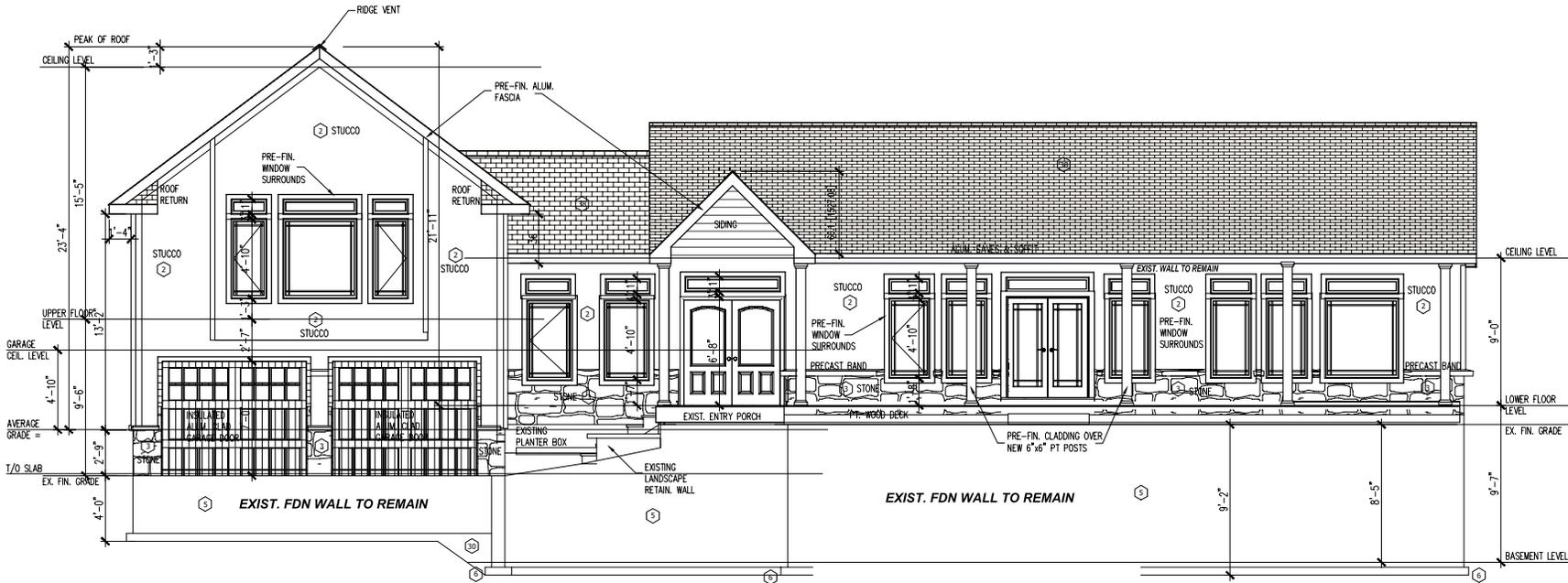
SHEET TITLE: ROOF PLAN

PROPERTY: 835 Spring Gardens Road

SCALE: 1/4"=1'-0" **386**

DRAWN BY: PV

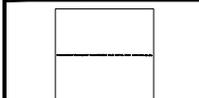
PROJECT NO: **A05**



Revision	Front Porch & Bay 02	PV	09/09/18
Revision	01	PV	24/07/18
Revision	No.	By	ED/MM/YY

CONTRACTOR SHALL CHECK AND VERIFY ALL DIMENSIONS.
 ANY DISCREPANCIES ARE TO BE REPORTED TO THE DESIGNER PRIOR TO COMMENCEMENT OF WORK. UNDER NO CIRCUMSTANCES SHALL THE CONTRACTOR OR SUBCONTRACTOR PROCEED IN UNCERTAINTY.
 REVIEWED UNDER THE 2016 O.B.C.

STRUCTURAL REVIEW ONLY



60 North Ridge Crescent
 Georgetown Ontario
 905-867-9777

The undersigned has reviewed and takes responsibility for this design, and has the qualifications as (other design) and meets the requirements set out in the Ontario Building Code to be a designer.
 Required when design is exempt under Div. C-3.32A of the building code. Issued under 1.2.4.1(10/04)

Peter Vozikas 2019
 Name Signature WS

OWNER:
Rudyk/Long Residence
 835 Spring Gdns. Road
 Burlington Ontario

EMPIRE DESIGN COMPANY
 PETER VOZIKAS
 ARCHITECTURAL DESIGN FOR:
 LUXURY RESIDENTIAL & COMMERCIAL SPACE
 WWW.EMPIREDESIGNHOMES.COM
 416-500-8989 VOZIKAS@HOTMAIL.COM

PROJECT: MAJOR RENOVATION
 Additions and Renovations

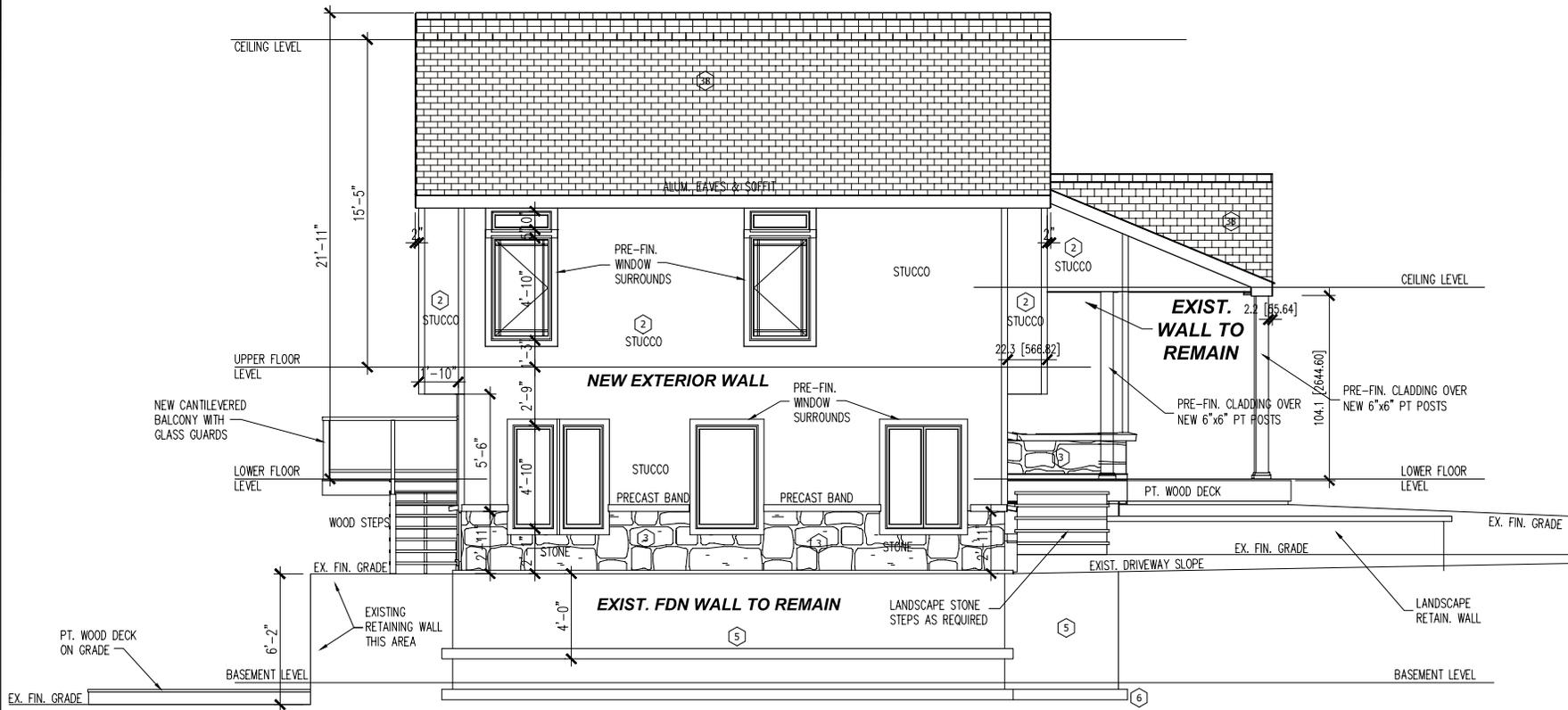
SHEET TITLE:
 FRONT ELEVATION

PROPERTY:
 835 Spring Gardens Road

SCALE:
 3/16"=1'-0" **387** 8

DRAWN BY:
 PV

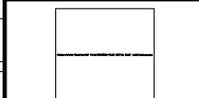
PROJECT NO:
A06



Revision	Front Porch & Bay	02	PV	09/09/18
Revision		01	PV	24/07/18
Revision			By	05/MM/YY

CONTRACTOR SHALL CHECK AND VERIFY ALL DIMENSIONS.
 ANY DISCREPANCIES ARE TO BE REPORTED TO THE DESIGNER PRIOR TO COMMENCEMENT OF WORK. UNDER NO CIRCUMSTANCES SHALL THE CONTRACTOR OR SUBCONTRACTOR PROCEED IN UNCERTAINTY.
 REVIEWED UNDER THE 2016 O.B.C.

STRUCTURAL REVIEW ONLY



60 North Ridge Crescent
 Georgetown Ontario
 905-867-9777

The undersigned has reviewed and taken responsibility for this design, and has the qualifications as (other design) and meets the requirements set out in the Ontario Building Code to be a designer.
 Signed under 3.2.4.1(2)(b)

Peter Vokas 2019
 Name Signature WS

OWNER:
Rudyk/Long Residence
 835 Spring Gdns. Road
 Burlington Ontario



PROJECT: MAJOR RENOVATION
 Additions and Renovations

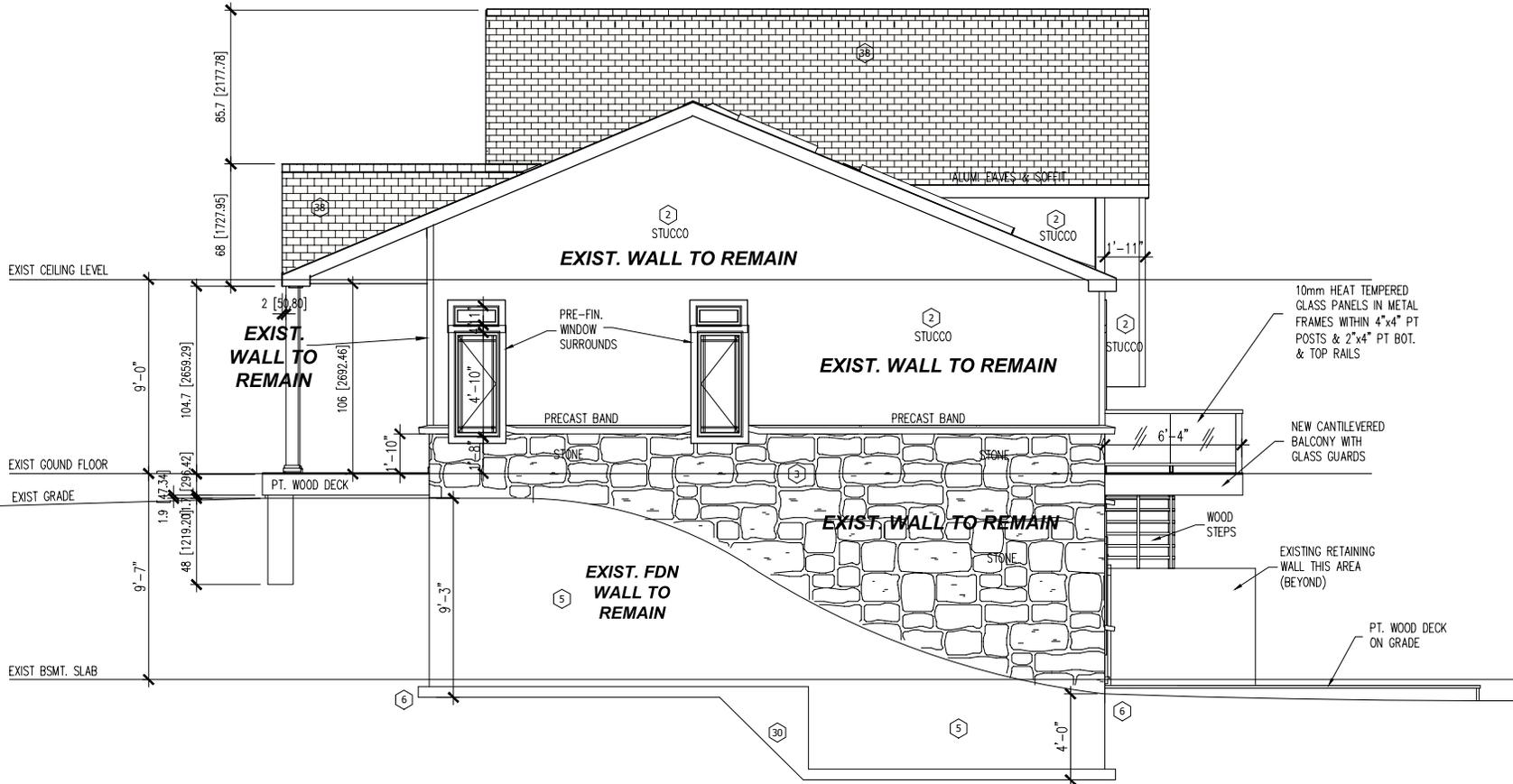
SHEET TITLE:
 LEFT ELEVATION

PROPERTY:
 835 Spring Gardens Road

SCALE:
 1/4"=1'-0" **388** 8

DRAWN BY:
 pv

PROJECT NO:
A07



Revision	Front Porch & Bay 02	PV	09/09/18
Revision	01	PV	24/07/18
Revision	No.	By	ED/MA/YY

CONTRACTOR SHALL CHECK AND VERIFY ALL DIMENSIONS.
 ANY DISCREPANCIES ARE TO BE REPORTED TO THE DESIGNER PRIOR TO COMMENCEMENT OF WORK. UNDER NO CIRCUMSTANCES SHALL THE CONTRACTOR OR SUBCONTRACTOR PROCEED IN UNCERTAINTY.
 REVIEWED UNDER THE 2016 O.B.C.

STRUCTURAL REVIEW ONLY



60 North Ridge Crescent
 Georgetown Ontario
 905-867-9777

The undersigned has read and taken responsibility for the design, and has the qualifications as (other design) and meets the requirements set out in the Ontario Building Code to be a designer.
 Required when design is exempt under O.B.C. 3.2.2.2. of the building code. Issued under S.S.A.1(2)(b)

Peter Vozikas 2019
 Name Signature MS

OWNER:
Rudyk/Long Residence
 835 Spring Gdns. Road
 Burlington Ontario



PROJECT:
MAJOR RENOVATION
 Additions and Renovations

SHEET TITLE:
RIGHT ELEVATION

PROPERTY:
 835 Spring Gardens Road

SCALE:
 1/4"=1'-0" **389** 8

DRAWN BY:
 PV

PROJECT NO:
A08

Revision	Front Porch & Bay 02	PV	09/09/18
Revision	01	PV	24/07/18
Revision	No.	By	05/04/17

CONTRACTOR SHALL CHECK AND VERIFY ALL DIMENSIONS.
 ANY DISCREPANCIES ARE TO BE REPORTED TO THE DESIGNER PRIOR TO COMMENCEMENT OF WORK. UNDER NO CIRCUMSTANCES SHALL THE CONTRACTOR OR SUBCONTRACTOR PROCEED IN UNCERTAINTY.
 REVIEWED UNDER THE 2016 O.B.C.



STRUCTURAL REVIEW ONLY



60 North Ridge Crescent
 Georgetown Ontario
 905-867-9777

The undersigned has reviewed and takes responsibility for this design, and has the qualifications as (other design) and meets the requirements set out in the Ontario Building Code to be a designer.
 Required where design is exempt under O.C. 3.3.26. of the building code. Issued under 3.3.1(1)(1)(b)

Peter Vorkas 2019
 Name Signature MS

OWNER:
Rudyk/Long Residence
 835 Spring Gdns. Road
 Burlington Ontario



PROJECT:
MAJOR RENOVATION
 Additions and Renovations

SHEET TITLE:
REAR ELEVATION

PROPERTY:
 835 Spring Gardens Road

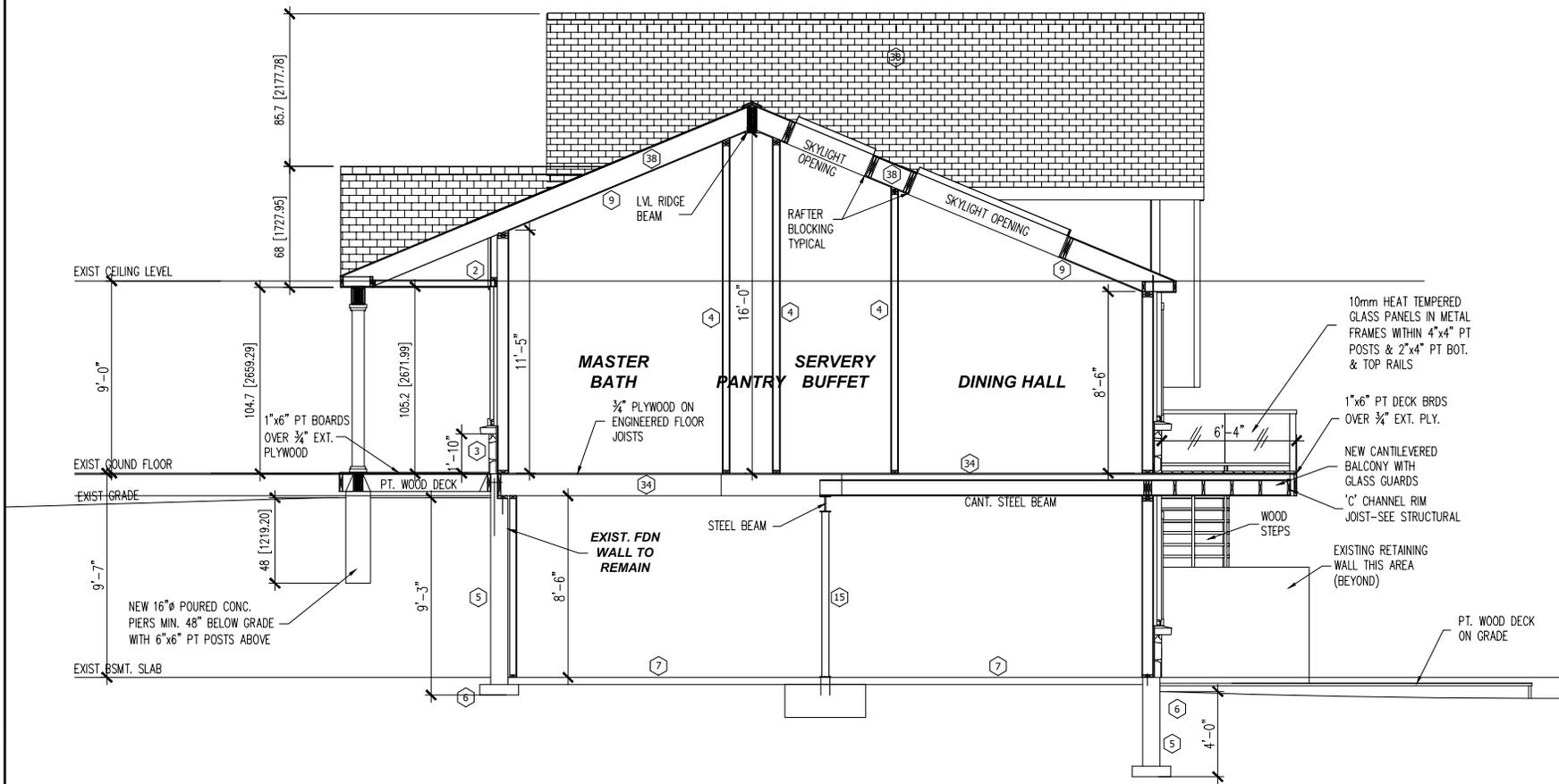
SCALE:
 3/16"=1'-0" **390** 8

DRAWN BY:
 PV

PROJECT NO:
A09

Revision	Front Porch & Bay	02	PV	09/09/18
Revision		01	PV	24/07/18
Revision		No.	By	05/04/17

CONTRACTOR SHALL CHECK AND VERIFY ALL DIMENSIONS.
 ANY DISCREPANCIES ARE TO BE REPORTED TO THE DESIGNER PRIOR TO COMMENCEMENT OF WORK. UNDER NO CIRCUMSTANCES SHALL THE CONTRACTOR OR SUBCONTRACTOR PROCEED IN UNCERTAINTY.
 REVIEWED UNDER THE 2016 O.B.C.



STRUCTURAL REVIEW ONLY



60 North Ridge Crescent
 Georgetown Ontario
 905-867-9777

The undersigned has reviewed and taken responsibility for this design, and has the qualifications as (other designed) and meets the requirements set out in the Ontario Building Code to be a designer.
 Required where design is exempt under the O.B.C. of the building code. Issued under S.S.A.(05/08)

Peter Vozkias 2019
 Name Signature

OWNER:
Rudyk/Long Residence
 835 Spring Gdns. Road
 Burlington Ontario



PROJECT:
 MAJOR RENOVATION
 Additions and Renovations

SHEET TITLE:
 CROSS SECTION-B

PROPERTY:
 835 Spring Gardens Road

SCALE:
 1/4"=1'-0" **392** 8

DRAWN BY:
 PV

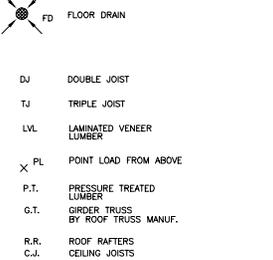
PROJECT NO.:
A11

INSULATION VALUES UPDATED AS PER JAN 1 2012 SB-12 UPDATE TO O.B.C. 2012

- 1. **ROOF CONSTRUCTION (2"x6")**
NO.210 (10.25kg/m²) ASPHALT SHINGLES, 10mm (3/8") PLYWOOD SHEATHING WITH 1" CLIPS APPROVED WOOD TRUSSES @ 600mm (24") O.C. MIN. APPROVED EAVES PROTECTION TO EXTEND 900mm (3'-0") FROM EDGE OF ROOF AND MIN. 300mm (1'-0") BEYOND INNER FACE OF EXTERIOR WALL, 38x140 (2"x6") TRUSS BRACING @ 1830mm (6'-0") O.C. AT BOTTOM CHORD. PRETENS. ALUM. WEAVERBAR, 100% GA. & WEAVERBAR, 100% GA. INSULATED CEILING AREA WITH SOX AT EAVES.
- 2. **FRAME WALL CONSTRUCTION (2"x6")**
STUCCO OR SIDING AS PER ELEVATION. APPROVED SHEATHING PAPER, 9.5mm (3/8") EXT. TYPE SHEATHING, 38x140 (2"x6") STUDS @ 400mm (16") O.C. RSI 3.87 (R22) INSULATION AND APPROVED VAPOUR BARRIER AND APPROVED CONT. AIR BARRIER, 13mm (1/2") INT. DRYWALL FINISH.
- 2A. **FRAME WALL CONSTRUCTION (2"x4")**
SIDING AS PER ELEVATION. APPROVED SHEATHING PAPER, RSI 0.9 (R5) EXTERIOR ROOF INSUL. BOARD, 38x140 (2"x4") STUDS @ 400mm (16") O.C. WITH APPROVED DIAGONAL WALL BRACING. FOR LOAD BEARING WALLS SUPPORTING A SECOND FLOOR & ROOF 38x140 (2"x4") STUDS @ 400mm (16") O.C. FOR LOAD BEARING WALLS SUPPORTING ROOF ONLY, WITH APPROVED DIAGONAL WALL BRACING, RSI 2.4 (R14) INSULATION AND APPROVED VAPOUR BARRIER AND APPROVED CONT. AIR BARRIER, 13mm (1/2") INT. DRYWALL FINISH.
- 3. **BRICK VENEER CONSTRUCTION (2"x6")**
90mm (4") FACE BRICK OR STONE 25mm (1") AIR SPACE, 22x180x0.76mm (7/8"x7"x0.03") GALVANIZED METAL TIES @ 400mm (16") O.C. HORIZONTAL, 600mm (24") O.C. VERTICAL. APPROVED SHEATHING PAPER, 9.5mm (3/8") EXT. TYPE SHEATHING, 38x140 (2"x6") STUDS @ 400mm (16") O.C. RSI 3.87 (R22) INSULATION AND APPROVED VAPOUR BARRIER WITH APPROVED CONT. AIR BARRIER, 13mm (1/2") INT. DRYWALL FINISH. PROVIDE WEEP HOLES @ 800mm (32") O.C. BOTTOM COURSE AND OVER OPENING. PROVIDE BASE FLASHING UP MIN. 150mm (6") BEHND BUILDING PAPER.
- 3A. **BRICK VENEER CONSTRUCTION (2"x4")**
90mm (4") FACE BRICK 25mm (1") AIR SPACE, 22x180x0.76mm (7/8"x7"x0.03") GALV. METAL TIES @ 400mm (16") O.C. HORIZONTAL, 600mm (24") O.C. VERTICAL. APPROVED SHEATHING PAPER, RSI 0.9 (R5) EXT. ROOF INSUL. BOARD, 38x140 (2"x4") STUDS @ 400mm (16") O.C. W/ APPROVED DIAGONAL WALL BRACING. FOR LOAD BEARING WALLS SUPPORTING A ROOF & A SECOND 38x89 (2"x4") STUDS @ 400mm (16") O.C. W/ APPROVED DIAGONAL WALL BRACING, RSI 2.4 (R14) INSUL. AND APPROV 6 mL VAPOUR BARRIER W/ APPROVED CONT. AIR BARRIER, 13mm (1/2") INT. DRYWALL FINISH. PROVIDE WEEP HOLES @ 800mm (32") O.C. BOTTOM COURSE AND OVER OPENINGS. PROVIDE BASE FLASHING UP MIN. 150mm (6") BEHND BUILDING PAPER.
- 4. **INTERIOR STUD PARTITIONS**
-BEARING PARTITIONS 38x89 (2"x4") @ 400mm (16") O.C. FOR 2 STOREYS AND 300mm (12") O.C. FOR 3 STOREYS. NON-BEARING PARTITIONS 38x89 (2"x4") @ 600mm (24") O.C. PROVIDE 38x89 (2"x4") BOTTOM PLATE AND 238x89 (2"x4") TOP PLATE, 13mm (1/2") INTERIOR DRYWALL BOTH SIDES OF STUD, PROVIDE 38x140 (2"x6") 406mm (16") O.C. STUDS/PLATES WHERE NOTED. NON-BEARING PARTITIONS 38x89 (2"x4") OR 38x140 (2"x6") @ 400mm (16") O.C.
- 5. **FOUNDATION WALL/FOOTINGS: -SEE OBC 9.15.3-**
250mm (10") THICK CON. FDN. WALL WITH BROADENED DAMPROOFING AND DRAINAGE LAYER. DRAINAGE LAYER BEHND INSUL. MUST EXTEND FULL HEIGHT OF FDN. WALL. GRADE. MAINTAIN FOUR DEPT 230 (9"-10") ON 500x20 (2"x8") CONCRETE KEED CON. F.T.C. BRACE FOUNDATION WALL PRIOR TO BACKFILLING. ALL FOOTINGS SHALL REST ON UNDISTURBED SOIL.
- 6. 100mm (4") DIA. WEEPING TILE, 150mm (6") GRADED STONE OVER AND AROUND WEEPING TILES.
- 7. **BASEMENT SLAB**
80mm (3") MIN. 32MPa CONG. SLAB ON 100mm (4") COARSE GRANULAR FILL OR 200MPa (2900psi) CONG. WITH DAMPROOFING BELOW SLAB.
- 8. **FALSE DORMER NOTE:**
VENEER TO BE 2" THICK, ADHERED THIN VENEER INSTALLED AS PER MANUFACTURER SPECS (OR LESS) OR CONTACT TACOMA FOR STEEL FRAMING SPEC PRIOR TO CONSTRUCTION.
- 8. **FALSE DORMER - STRUCTURAL NOTE:**
1. BUILD DORMER WITH 2X6 WALLS, ADN2X8 STICK FRAMED ROOF. PROPOSED DOWN ONTO TRUSS TOP CHORDS @ 2"-0" O.C. SUCH THAT THE DORMER WEIGHT IS EVENLY SPREAD OUT ONTO TRUSSES.
2. DORMER WEIGHT IS .35kPa WHICH IS WITHIN THE ALLOWANCE FOR THE TRUSS DEAD LOAD
3. SPECIAL TRUSS ANALYSIS IS NOT REQUIRED FROM THE MANUFACTURER

- 9. RSI 8.81 (R50) ROOF INSULATION AND APPROVED 6 MIL VAPOUR BARRIER, 16mm (5/8") INT. DRYWALL FINISH OR APPROVED EQUAL.
- 10. **ALL STAIRS/EXTERIOR STAIRS -OBC 9.8.1-**
MAX. RISE = 200 (7-7/8")
MIN. RUN = 210 (8-1/4")
MIN. TREAD = 235 (9-1/4")
MAX. NOSING = 25 (1")
MIN. HEADROOM = 1950 (6'-5")
RAIL @ LANDING = 900 (2'-11")
RAIL @ STAIR = 800 (2'-8")
MIN. STAIR WIDTH = 860 (2'-10")
EQV. CURVED STAIRS
MIN. AVG. RUN = 150 (6")
MIN. RUN = 200 (8")
- 11. FINISHED RAILING ON PICKETS SPACING MAXIMUM 100mm (4") BETWEEN PICKETS. GUARDS -OBC 9.8.8.
INTERIOR GUARDS: 900mm (2'-11") MIN. EXTERIOR GUARDS: 1070mm (3'-6") MIN.
- 12. 38x89 (2"x4") SILL PLATE WITH 13mm (1/2") DIA. ANCHOR BOLTS 200mm (8") ON CONC. EMBEDDED MIN. 100mm (4") INTO CONC. @ 2400mm (7'-10") O.C., CAULKING OR 25 (1") MIN MINERAL WOOL BETWEEN PLATE AND TOP OF FDN. WALL. USE NON-SHRINK GROUT TO LEVEL SILL PLATE WHEN REQUIRED.
- 13. RSI 2.11 (R12) INSULATION BLANKET OR BATTS WITH 38x89 (2"x4") STUD WALL AND APPROVED VAPOUR BARRIER FULL HEIGHT AND GRADE DAMPROOF W/ BLDG. PAPER BETWEEN THE FDN. WALL AND INSUL. UP TO GRADE LEVEL.
- 14. not used
- 15. **STEEL BASEMENT COLUMN (SEE O.B.C. 9.17.3.4)**
90mm (3-1/2") DIA. SINGLE TUBE ADJUSTABLE STL. COL. CONFORMING TO CAN/C589-7.216, AND W/ 150x150x9.5 (6"x6"x3/8") STL. PL. TOP AND BOTTOM, 1219x1219x140 (48"x48"x16") CONG. FTG. 15MPa ON UNDISTURBED SOIL.
- 15A. **STEEL BASEMENT COLUMN (SEE O.B.C. 9.17.3.4)**
90mm (3-1/2") DIA. x 4.78mm (1/88") NON-ADJUSTABLE STL. COL. W/ 150x150x9.5 (6"x6"x3/8") STL. TOP AND BOTTOM PLATE ON 1120x1120x510 (44"x44"x207") CONG. FOOTING 15MPa ON UNDISTURBED SOIL.
- 16. BEAM POCKET OR 200x250 (8"x10") POURED CONCRETE NIB WALLS. MINIMUM BEARING 90mm (3-1/2").
- 17. 19x64 (1"x3") CONTINUOUS WOOD STRAPPING BOTH SIDES OF STEEL BEAM.
- 18. **GARAGE SLAB:** 100mm (4") 32MPa (4640psi) CONG. SLAB WITH 5-8% AIR ENTRAINMENT ON OPT. 100 (4") COARSE GRANULAR FILL WITH COMPACTED SUB-FRASE OR COMPACTED NATIVE FILL. SLOPE TO BEAT AT 1% MIN.
- 19. 13mm (1/2") GYPSUM BD. ON WALL AND CEILING BETWEEN HOUSE AND GARAGE, RSI 4.23 (R24) IN WALLS, RSI 5.46 (R31) IN CEILING. TAPE AND SEAL & STRUCTURALLY SUPPORT ALL JOINTS. IN ORDER TO BE GAS TIGHT.
- 20. DOOR AND FRAME GASPROOF. DOOR EQUIPPED WITH SELF CLOSING DEVICE AND WEATHERSTRIPPING.
- 21. PRECAST CONCRETE STEP OR WD. STEP WHERE NOT EXPOSED TO WEATHER. MAX. RISE 200mm (7-7/8"). MIN. RUN 210mm (8-1/4").
- 22. CAPPED DRYER EXHAUST VENTED TO EXTERIOR. DUCTS SHALL CONFORM TO O.B.C. PART 6
- 23. ATTIC ACCESS HATCH 500x700 (20"x28") WITH WEATHERSTRIPPING. RSI 8.81 (R50) RIGID INSULATION BACKING.
- 24. **FIREPLACE CHIMNEYS -OBC 9.21-**
TOP OF FIREPLACE CHIMNEY SHALL BE 915mm (3'-0") ABOVE THE HIGHEST POINT AT WHICH IT COMES IN CONTACT WITH THE ROOF AND 610mm (2'-0") ABOVE THE ROOF SURFACE WITHIN A HORIZ. DISTANCE OF 3050mm (10'-0") FROM THE CHIMNEY.
- 25. LINEN CLOSET 4 SHELVES MIN. 350mm (14") DEEP.
- 26. MECHANICAL EXHAUST FAN, VENTED TO EXTERIOR. TO PROVIDE AT LEAST ONE AIR CHANGE PER HOUR. PROVIDE DUCT SEALS AS PER O.B.C. 9.32.3.12
- 27. **STEEL BEARING PLATE FOR MASONRY WALLS**
280x280x16 (11"x11"x5/8") STL. PLATE FOR STL BEAMS AND 280x280x12 (11"x11"x1/2") STL. PLATE FOR WOOD BEAMS BEARING ON CONC. BLK. PARTIALLY ANCHORED W/ 2-19mm (3/4") x200mm (8") LONG GALV. ANCHORS WITH SPLIT BLOCK COURSE. LEVEL WITH NON-SHRINK GROUT.
- 28. **STUD WALL REINFORCEMENT 9.5.2.3**
PROVIDE WOOD BLOCKING REINFORCEMENT TO STUD WALLS FOR FUTURE GRAB BAR INSTALLATION IN MAIN BATHROOM, 840-920mm (33"-36") A.F.F. BEHND TOILET, 850mm (33") A.F.F. ON THE WALL OPPOSITE THE ENTRANCE TO THE BATHUB OR SHOWER
- 29. 3-38x89 (3-2"x4") BUILT-UP-POST WITH DAMPROOFING MATERIAL WRAPPED AT THE END OF POST ANCHORED TO 610x610x300 (24"x24"x12") CONCRETE FOOTING.
- 30. STEP FOOTINGS: MIN. HORIZ. STEP = 600mm (23 5/8"), MAX. VERT. STEP = 600mm (23 5/8") FOR FIRM SOILS.
- 31. MIN. 100mm (4") CONCRETE SLAB ON GRADE ON 100mm (4") COARSE GRANULAR FILL. REINFORCED W/ 5x6-W2.9W2.9 MESH PLACING NEAR MID-DEPTH OF SLAB. CONG. STRENGTH 32 MPa (4640 psi) WITH 5-8% AIR ENTRAINMENT ON COMPACTED SUB-GRADE.
- 32. DIRECT VENT FURNACE TERMINAL MIN. 900mm (36") FROM A GAS REGULATOR. MIN. 300mm (12") ABOVE FIN. GRADE. FROM ALL OPENINGS, EXHAUST & INTAKE VENTS. HWY INTAKE TO BE A MIN. OF 1830mm (6'-0") FROM ALL EXHAUST TERMINALS. REFER TO GAS UTILIZATION CODE.
- 33. DIRECT VENT GAS FIREPLACE. VENT TO BE A MINIMUM 300mm (12") FROM ANY OPENING AND ABOVE FIN. GRADE. REFER TO GAS UTILIZATION CODE.
- 34. **SUBFLOOR JOIST STRAPPING AND BRIDGING**
-3/4" T & G SUBFLOOR ON WOOD FLOOR JOISTS. FOR CERAMIC TILE APPLICATION (* SEE OBC 9.30.6.4)
6mm (1/4") PANEL, TYPE UNDERLAY UNDER RESILIENT & PARQUET FLOORING. (- * SEE OBC 9.23.9.4)
ALL JOISTS TO BE BRIDGED WITH 38x38 (2"x2") CROSS BRACING OR SOLID BLOCKING @ 2100mm (8'-11") O.C. MAX. ALL JOISTS TO BE AND AS STRAPPED WITH 19x64 (1"x3") @ 2100mm (6'-11") O.C. UNLESS A PANEL TYPE CEILING FINISH IS APPLIED.

LEGEND



- 35. **EXPOSED BUILDING FACE -OBC 9.10.14.4-**
EXTERIOR WALLS TO HAVE A FIRE RESISTANCE RATING OF NOT LESS THAN 45 MIN. WHERE LIMITING DISTANCE IS LESS THAN 1.2M (3'-11"). WHERE THE LIMITING DISTANCE IS LESS THAN 600mm (1'-11") THE EXPOSING FACE SHALL BE CLAD IN NON-COMBUSTIBLE MATERIAL.
- 36. **COLD CLER. FORCH SLAB**
FOR MAX. 2500 mm (8'-3") PORCH DEPTH, 130mm (5") 32MPa (4640psi) CONG. SLAB WITH 5-8% AIR ENTRAINMENT. REINF. WITH 10M BARS @ 200mm (8") O.C. EACH WAY IN BOTTOM THIRD OF SLAB, 610x610 (24"x24") DOWELS @ 600mm (24") O.C. ANCHORED IN PERIMETER FDN. WALLS. SLOPE SLAB MIN. 1.0% FROM DOOR. PROVIDE (4") LINTELS OVER CELLAR DOOR.
- 37. THE FDN. WALL SHALL NOT BE REDUCED TO LESS THAN 90mm (3-1/2") THICK TO A MAX. DEPTH OF 600mm (24") AND SHALL BE TIED TO THE FACING MATERIAL WITH METAL TIES SPACED 200mm (8") O.C. VERTICALLY AND 900mm (36") O.C. HORIZONTALLY. FILL SPACE BETWEEN WALL AND FACING SOLID WITH MORTAR.
- 38. **CONVENTIONAL ROOF FRAMING**
38x190 (2"x8") RAFTERS @ 400mm (16" O.C.), 38x310 (2"x12") RIDGE BOARD, 38x89 (2"x4") CONG. TIES AT MIDSPAN. CEILING JOISTS TO BE 38x140 (2"x6") @ 400mm (16") O.C. FOR MAX. 2830mm (9'-3") SPAN & 38x140 (2"x6") @ 400 (16") O.C. FOR MAX. 4450mm (14'-7") SPAN. RAFTERS FOR BUILT-UP ROOF TO BE 38x89 (2"x4") @ 600mm (24") O.C. WITH A 38x89 (2"x4") CENTRE POST TO THE TRUSS BELOW (167") O.C. OR 1800mm (6'-0") O.C. VERTICALLY.
- 39. **TWO STOREY VOLUME SPACES**
-FOR A MAXIMUM 5400 mm (18'-0") HEIGHT, PROVIDE 2-38x140 (2-2"x6") SPRUCE COMMON STUDS @ 300mm (12") O.C. FOR BRICK AND 400mm (16") O.C. FOR SOING C/W 9/8 (3/8") THICK EXT. PLYWOOD SHEATHING. PROVIDE SOLID WOOD BRACING BETWEEN WOOD STUDS @ 1200 mm (4'-0") O.C. VERTICALLY.
-FOR HORIZ. DISTANCES NOT EXCEEDING 2900 mm (9'-4"), PROVIDE 38x140 (2"x6") STUDS @ 400 (16") O.C. WITH CONTINUOUS 2-38x140 (2-2"x6") TOP PLATE + 1-38x140 (1-2"x6") BOTTOM PLATE & MINIMUM OF 3-38x140 (1-2"x6") CONT. HEADER AT GRADE. CEILING LITE. TOE-NAIL & GUELD AT TOP, BOTTOM PLATES AND HEADERS.
-SMOKE ALARM (REFER TO OBC 9.10.19)
-PROVIDE 1 PER FLOOR, NEAR THE STAIRS CONNECTING THE FLOOR LEVEL AND ONE PER SLEEPING ROOM. ALARMS TO BE CONNECTED TO AN ELECTRICAL CIRCUIT AND INTERCONNECTED TO ACTIVATE ALL ALARMS IF 1 SOUNDS.
-CARBON MONOXIDE DETECTOR (OBC 9.33.4)
- CHECK LOCAL BYLAWS FOR REQUIREMENTS *
SB = SOLID WOOD BEARING
SB2 = 2 MEMBER BUILT-UP STUD
SB3 = 3 MEMBER BUILT-UP STUD
SB4 = 4 MEMBER BUILT-UP STUD
SBFA = SOLID BEARING FROM ABOVE CARRY POST AND BLOCKING THROUGH FLOOR ASSEMBLY
SOLID BEARING POSTS TO BE MADE UP OF THE SAME SIZE OF STUD IN WALL IT IS LOCATED. (OR MIN 2"x4" FOR ROOF POSTS, EACH PLY TO BE TIED TOGETHER AS PER 9.17.4.2) AND 823.107. DN. B. O.B.C.
WINDOWS:
1) **MINIMUM BEDROOM WINDOW -OBC 9.9.10-**
AT LEAST ONE BEDROOM WINDOW ON AN OPEN FLOOR IS TO HAVE MIN. 0.30m² UNOBSTRUCTED GLAZED OR OPENABLE AREA WITH MIN. CLEAR WIDTH OF 380mm (1'-3").
2) **WINDOW GUARDS -OBC 9.8.8.1-**
A GUARD IS REQUIRED WHERE THE TOP OF THE WINDOW SILL IS LOCATED LESS THAN 480mm (1'-7") ABOVE FIN. FLOOR AND THE DISTANCE FROM THE FIN. FLOOR TO THE ADJACENT GRADE IS GREATER THAN 180mm (5'-11").
3) **WINDOW OVER STAIRS & LANDINGS -OBC 9.8.8.1-**
A GUARD IS REQUIRED WHERE THE TOP OF THE WINDOW SILL IS LOCATED LESS THAN 480mm (1'-7") ABOVE THE SURFACE OF THE TREAD, RAMP OR LANDING.
MECHANICAL VENTILATION IS REQUIRED TO PROVIDE 0.3 AIR CHANGES PER HOUR AVERAGED OVER 24 HOURS. SEE MECHANICAL DRAWINGS.
LUMBER:
1) ALL LUMBER SHALL BE SPRUCE NO.2 GRADE, UNLESS NOTED OTHERWISE.
2) STUDS SHALL BE STUD GRADE SPRUCE, UNLESS NOTED OTHERWISE.
3) LUMBER EXPOSED TO THE EXTERIOR TO BE SPRUCE NO. 2 GRADE PRESSURE TREATED OR CEDAR, UNLESS NOTED OTHERWISE.
4) ALL LAMINATED VENEER LUMBER (L.V.L.) BEAMS, GIRDER TRUSSES, AND METAL HANGER CONNECTIONS SUPPORTING ROOF FRAMING TO BE DESIGNED & CERTIFIED BY TRUSS MANUFACTURER.
5) LVL BEAMS SHALL BE 2.0E W/ MICRO-LAM LVL (Fw=280qpa/Min.) OR EQUIVALENT, NAIL EACH PLY OF LVL WITH 89mm (3 1/2") LONG COMMON WIRE NAILS @ 300mm (12") O.C. STAGGERED IN 2 ROWS FOR 18x240 & 300mm (7 1/4") 9 1/2", 11 7/8") DEPTHS AND STAGGERED IN 3 ROWS FOR GREATER DEPTHS AND FOR 4 PLY MEMBERS ADD 13mm (1/2") DIA. GALV. BOLTS BOLTED AT MID-DEPTH OF BEAM @ 915mm (3'-0") O.C.
6) PROVIDE TOP MOUNT BEAM HANGERS TYPE "SCL" MANUFACTURED BY MGA CONNECTOR LTD. Tel. (905) 642-3175 OR EQUAL FOR ALL LVL BEAM TO BEAM CONNECTIONS UNLESS NOTED OTHERWISE.
7) JOIST HANGERS: PROVIDE METAL HANGERS FOR ALL JOISTS AND BUILT-UP WOOD MEMBERS INTERSECTING FLUSH BUILT-UP WOOD MEMBERS.
8) WOOD FRAMING NOT TREATED WITH A WOOD PRESERVATIVE, IN CONTACT WITH CONCRETE, SHALL BE SEPARATED FROM THE CONG. BY AT LEAST 2 MIL. POLYETHYLENE FILM, No.50 (45mil.) ROLL ROOFING OR OTHER DAMPROOFING MATERIAL, EXCEPT WHERE THE WOOD MEMBER IS AT LEAST 150mm (6") ABOVE THE GROUND.
9) TERMITES & DECAY PROTECTION
IN LOCATIONS WHERE TERMITES ARE KNOWN TO OCCUR, CLEARANCE BETWEEN STRUCTURAL WOOD ELEMENTS AND THE FINISHED GRADE DIRECTLY BELOW THEM SHALL BE NOT LESS THAN 450mm (17 3/4") AND ALL SIDES OF SUPPORTING ELEMENTS SHALL BE VISIBLE TO INSPECTION.
STRUCTURAL WOOD ELEMENTS, SUPPORTED BY WOOD ELEMENTS IN CONTACT WITH THE GROUND OR OVER EXPOSED BARE SOIL SHALL BE PRESSURE TREATED WITH CHEMICAL THAT IS TOXIC TO TERMITES
STEEL:
1) STRUCTURAL STEEL SHALL CONFORM TO CAN/CSA-G40-21 GRADE 300W. HOLLOW STRUCTURAL SECTIONS SHALL CONFORM TO CAN/CSA-G40-21 GRADE 350W CLASS "H".
2) REINFORCING STEEL SHALL CONFORM TO CSA-G30-18M GRADE 400R.

Revision No. By: 05/04/11

CONTRACTOR SHALL CHECK AND VERIFY ALL DIMENSIONS. ANY DISCREPANCIES ARE TO BE REPORTED TO THE DESIGNER PRIOR TO COMMENCEMENT OF WORK. UNDER NO CIRCUMSTANCES SHALL THE CONTRACTOR OR SUBCONTRACTOR PROCEED IN UNCERTAINTY.

REVIEWED UNDER THE 2010 O.B.C.

STRUCTURAL REVIEW ONLY

01/15/2019
S.P.A.I.
LICENSED PROFESSIONAL ENGINEER
PROVINCE OF ONTARIO

60 North Ridge Crescent
Georgetown Ontario
905-867-9777

The undersigned has reviewed and taken responsibility for this design, and has the qualifications (as listed below) and meets the requirements of all the Ontario Building Code to be a designer.

Required when design is exempt under the O.B.C. of the building code. Exempt under section 1.5.1(5.6)

File Number: 2019
Name: Sridharan
System: R2R

OWNER:
Rudyk/Lons Residence
835 Spring Gardens Road
Burlington Ontario

EMPIRE DESIGN COMPANY
VETERAN OWNED
ARCHITECTURAL SERVICES FOR LUXURY RESIDENTIAL & COMMERCIAL SPACE
WWW.EMPIREDESIGNCOMPANY.COM
416-500-8689 VOXNAS@HOTMAIL.COM

PROJECT:
MAJOR RENOVATION
Additions and Renovations

SHEET TITLE:
GENOTES

PROPERTY:
835 Spring Gardens Road

SCALE:
NTS 393 8

DRAWN BY:
pv

PROJECT NO.:

A12

This is **Exhibit “I”** referred to in the Affidavit of Shelley Young, affirmed before me this 1st day of November, 2022.

A handwritten signature in black ink that reads "A. Bouchard" with a checkmark-like flourish at the end.

A Commissioner for taking affidavits



RECEIVED
CITY OF BURLINGTON

SEP 14 1984

DEPARTMENT OF
BUILDING SERVICES

CORPORATION OF THE CITY OF BURLINGTON
BUILDING SERVICES DEPARTMENT

426 BRANT STREET
BURLINGTON, ONTARIO
L7R 3Z6

FILE No. 1705
DEPOSIT \$ 323 ⁰⁰
RECEIPT # 00734
HUDAC #

RECEIVED
CITY OF BURLINGTON

SEP 14 1984

DEPARTMENT OF
BUILDING SERVICES

Two Copies of Plans, Specifications and 4 Site Plans MUST be submitted with this Application.
This Application must be TYPED or filled in BLOCK LETTERS IN INK. One copy to be sworn to by APPLICANT if required.

APPLICATION FOR PERMIT TO
(State type, size and nature of construction)

BRICK ADDITION, 12x21 WITH ATTACHED BRICK GARAGE 12x21'
LIBRARY ABOVE GARAGE, 12x21' FINISHED BASEMENT.
RESIDENTIAL DWELLING, SINGLE FAMILY
Burlington, Sept 13th 1984

TO THE BUILDING COMMISSIONER:

The undersigned hereby applies for a permit to Build according to the plans, specifications and block plan herewith submitted, and agrees to comply with all By-laws and City regulations, it being expressly understood that the issuing of a permit does not relieve the applicant from complying with all said By-laws and City regulations, though not called for in the specifications or shown on plans submitted, the applicant further agrees that if a permit is revoked for any cause or irregularity or non-conformance of the said By-laws or regulations, that in consideration of the issuing of the permit all claims are waived therefrom against the corporation of the City of Burlington.

- * 1. Owner of the Property: [Redacted]
Address: 835 SPRINGGARDENS RD, BURL Phone: [Redacted]
- 2. Architect's Name: JOHN HARDWIG
Address: [Redacted] Phone: [Redacted]
- 3. Contractor's Name: K.G. BAIRD
Address: 611 Baystone, Burlington Phone: 521-2767
- 4. Applicant's Name: [Redacted]
Address: 835 SPRINGGARDENS RD, BURL Phone: [Redacted]
- 5. Purpose of Building: Residential, Single family dwelling
- 6. Survey: 1982 Plan No. 645 Lot No. 13 Zoned Parkway
Street, Highway, Concession: 835 SPRING GARDENS RD, BURLINGTON on NORTH SIDE
Between: [Redacted] and [Redacted]
- 7. Height above grade: [Redacted] Stories
- 8. Enclosing Walls (Materials): BRICK
- 9. Will Building be erected on solid ground: YES Filled ground: NO
- 10. Probable value exclusive of land: \$ 37,000

PROVINCE OF ONTARIO REGION OF HALTON IN THE MATTER OF By-law 56-1976 and 57-1976 and amendments and The Building Code Act, 1974 and amendments, for regulating the erection of and to provide for the safety of buildings in the City of Burlington in the Region of Halton,
TO WIT AND IN THE MATTER OF application for a permit under the provisions of those by-law and Act.

I, [Redacted] of BURLINGTON in the Regional Municipality/County of HALTON do solemnly declare.
1. THAT I am the owner/authorized agent of the owner named in the application for a permit hereto attached.
2. THAT the various answers made to the questions enumerated in the said application are true and made with a full knowledge of the circumstances connected with the same.
3. THAT the Plans and Specifications submitted are prepared for the construction or alteration of the building or buildings described.
4. THAT the Site Plans submitted correctly sets out the dimensions and area of the lands described in the said application, and the relation of the location of the proposed building to the street line and party lines.
5. THAT I know no reason why the permit should not be granted to me in pursuance of the said application.
AND I make this Solemn Declaration conscientiously believing it to be true, and knowing it is of the same force and effect as if made under oath and by virtue of "The Canada Evidence Act".

DECLARED before me at the City of Burlington, in the Regional Municipality of Halton this 13th day of SEPTEMBER in the year of our Lord 1984.

A Commissioner, Etc.

C 17132

BUILDING PERMIT

CITY OF BURLINGTON

DEPARTMENT OF BUILDING SERVICES

THE BUILDING CODE ACT, 1974, ONTARIO REGULATION 563/83, AS AMENDED

P.O. BOX 5013
426 BRANT STREET
BURLINGTON, ONTARIO L7R 3Z8
PHONE (416) 335-7731

C 17132

FILE NO. 1705/84

LTT 156

HAS BEEN GRANTED TO

[REDACTED]

835 SPRING GARDENS ROAD, BURLINGTON, [REDACTED]

APPLICANT OR OWNER

ADDRESS

PHONE

CONTRACTOR: K.S. PAIRD, 611 BAYSHORE, BURLINGTON,

521-2167

ADDRESS

PHONE

(*FEES PAID BY)

DESCRIPTION OF BUILDING OR STRUCTURE

TO CONSTRUCT AN ADDITION 12' X 21' WITH ATTACHED GARAGE 12' X 21'

LOCATION

835 SPRING GARDENS ROAD,

LOT

CONFESSION OR PLAN

STREET

LTT 156

VALUE OF WORK	BUILDING PERMIT FEE	PLANNING PERMIT FEE	CONCRETE PERMIT FEE	STORM DRAIN FEE	HEATING PERMIT FEE	TOTAL FEES RECEIVED
87,500.00	323.00				13.00	336.00
CAPITAL CONTRIBUTION	CAPITAL CONTRIBUTION	CURB BOND DEPOSIT	CURB CUTS	CURB RETURN	CULVERT CHARGE	
CITY	REGION					

DATE OF ISSUE

OCTOBER 10, 1984

Wm. W. HEWITSON FENG
CHIEF BUILDING OFFICIAL

PER *L. Paired*

BUILDING PERMIT

CITY OF BURLINGTON

DEPARTMENT OF BUILDING SERVICES

THE BUILDING CODE ACT, 1974, ONTARIO REGULATION 583/83, AS AMENDED

P.O. BOX 5013
425 BRANT STREET
BURLINGTON, ONTARIO L7R 3Z6
PHONE (416) 335-7731

C 17132

FILE NO 1705/84

LTT 156

HAS BEEN GRANTED TO

APPLICANT OR OWNER

ADDRESS

PHONE

CONTRACTOR:

K.B. BAIRD, 611 BAYSHORE, BURLINGTON,

521-2767

ADDRESS

PHONE

(*FEES PAID BY)

DESCRIPTION OF BUILDING OR STRUCTURE

TO CONSTRUCT AN ADDITION 18' X 21' WITH ATTACHED GARAGE 12' X 21'

LOCATION

835 SPRING GARDENS ROAD,

LOT

CONCESSION OR PLAN

STREET

VALUE OF WORK 37,000.00	BUILDING PERMIT FEE 323.00	PLUMBING PERMIT FEE	SANITARY DRAIN FEE	STORM DRAIN FEE	HEATING PERMIT FEE 30.00	TOTAL FEES RECEIVED 356.00
CAPITAL CONTRIBUTION CITY	CAPITAL CONTRIBUTION REGION	CURB BOND DEPOSIT	CURB CUTS	CURB RETURNS	CULVERT CHARGE	

DATE OF ISSUE

OCTOBER 10, 1984

WM. W. HEWITSON P. ENG
CHIEF BUILDING OFFICIAL

PER

[Signature]

INSPECTIONS AND JOB HISTORY

DRAIN INFORMATION

SANITARY SIZE _____ TYPE _____

STORM SIZE _____ TYPE _____

DATE	INSPECTOR	REMARKS
Nov. 14 '84	JTH	Excavations - remove rubble & excavate to solid bearing
Nov 14 '84	JTH	Excavations OK, Forms OK, work of course placing in progress
Jan 3 '85	JTH	Forming - install collar ties to eaves level ceiling 2. provide support for formwork cable overhead 3. nail bracing 4. provide anchor bolts to bearing partition
Jan 16 '85	JTH	Items 1, 3, 4 completed - insulation in place
6 Jan Feb '85	JTH	Excavations to determine - spot prepared to line of existing
22 Feb '85	JTH	Forming - provide post on reinforcement supported angle 2"x10 beam at exterior wall
22 Feb '85	JTH	Builder says steel angle installed as reinforcement
22 Mar '85	JTH	Spoke to Owner - details requested from inspection of existing curb wall & new foundation and brick veneer

INSPECTOR'S COPY

INSPECTIONS & JOB HISTORY (Continued)

DATE.	INSPECTOR.	REMARKS.
<u>8355 Rolling Gardens</u>		
12 Apr '80	JTD	- REBARs FOUNDATIONS FOR NEW OCCUPANCY VENTED AT 200K - UNDERPINNING REQUIRED AT 2 LOCATIONS. BALANCE REQUIRES ADDITIONAL WORK OF REPAIRS TO BE PROVIDED AGAINST EXISTING.
21 Oct '80	JTD	- REPAIRS NOT OCCUPIED
21 Jan '81	JTD	REPAIRS OCCUPIED
21 Feb '81	JTD	LATER REPAIRS
21 Jan '81	JTD	REPAIRS
Jan 11/86	JTD	ORDER NO. FINAL ISSUED.
Jan 12/86	JTD	<p>Occupied at time of inspection</p> <ul style="list-style-type: none"> ✓ 1. provide temporary seal of window ✓ 2. provide P.D.C. detector to lower floors ✓ 3. provide board & seal of front entry stair ✓ 4. Cash payroll to complete gas repairs <p>Notes - extra work/repairs furnished to complete.</p> <p>- items 2 provided - 2 inspections not required</p>
Nov 20/87	JTD	Items to be completed require Dec 15/87
Feb 2/88	JTD	<p>Change to alarm company by telephone</p> <p>Pay off insurance call</p>
Feb 9/88	JTD	Order to comply issued re stair occupancy items
Mar 1/88	JTD	<p>Appointee to see conditions on site</p> <p>at 7:00 - 8:00 - 3/15</p>

BUILDING PERMIT

CITY OF BURLINGTON

DEPARTMENT OF BUILDING

THE BUILDING CODE ACT, 1974, ONTARIO REGULATION 581/82 AS AMENDED

P.O. BOX 5019

420 BRIANT STRE

BURLINGTON, ONTARIO

PHONE (416) 335-7

C 17132

FILE NO 1705/84

HAS BEEN GRANTED TO [REDACTED] 835 SPRING GARDENS ROAD, BURLINGT

CONTRACTOR I.G. BAIRD, 611 BAYSHORE, BURLINGTON, ADDRESS 521-2757

DESCRIPTION OF BUILDING OR STRUCTURE
TO CONSTRUCT AN ADDITION 18' x 21' WITH ATTACHED GARAGE 12' x 21'

LOCATION [REDACTED] 835 SPRING GARDENS ROAD

VALUE OF WORK	PLUMBING PERMIT FEE	ELECTRICAL PERMIT FEE	MECHANICAL PERMIT FEE	SEWER PERMIT FEE	WATER PERMIT FEE
37,000.00	323.00				
CAPITAL CONTRIBUTION	CAPITAL CONTRIBUTION	CAPITAL CONTRIBUTION	CAPITAL CONTRIBUTION	CAPITAL CONTRIBUTION	CAPITAL CONTRIBUTION
CITY	CITY	CITY	CITY	CITY	CITY

DATE OF ISSUE OCTOBER 10, 1984

SPECIAL NOTICE
INSPECTIONS AND JOB HISTORY

JAN 15/85 Rm - INSULATION APPROVED (DOUBLE R20 IN ATTIC)
 HEATING NOT TOUCHED IN - (WILL CALL)
 JAN 23/85 Rm HEATING ROUGHING APPROV
 FEB 20/85 Rm GARAGE INSULATION
 June 17/86 JAA Heating and Piped. OK

APPLICATION FOR HEATING & COOLING EQUIPMENT INSTALLATIONS

Receipt # 01028

Deposit \$ 33.00

RECEIVED CITY OF BURLINGTON SEP 24 DEPARTMENT OF BUILDING SERVICES

The Corporation of the City of Burlington

City Hall: 425 Brant Street, Burlington, Ontario, Canada Mailing Address: P.O. Box 5013, Burlington, Ontario, Canada L7R 3Z6

Telephone: 335-7731 /Permit #

File No.: LOT# 13 PLAN 645

Building Services

- 1. STREET ADDRESS 235 SPRING GARDENS RD
- 2. OWNER/CONTRACTOR [REDACTED] ADDRESS 235 SPRING GARDENS RD PHONE# [REDACTED]
- 3. APPLICANT [REDACTED] ADDRESS 235 SPRING GARDENS RD PHONE# [REDACTED]
- 4. HEATING CONTRACTOR LINCOLNVAIRE ADDRESS 326 HILTON DR STONEY CREEK PHONE# 545-4112
- 5. TYPE OF BUILDING Apartment Building NEW EXISTING
- 6. TYPE OF INSTALLATION:

<input checked="" type="checkbox"/> FORCED AIR	<input type="checkbox"/> STEAM HEAT	<input type="checkbox"/> HOT WATER
<input type="checkbox"/> SPACE HEATER	<input type="checkbox"/> CONVERSION BURNER	<input type="checkbox"/> HOT WATER HEATER
<input type="checkbox"/> HEAT PUMP	<input type="checkbox"/> ELECTRIC FURNACE	<input type="checkbox"/> AIR CONDITIONING UNIT
<input type="checkbox"/> OTHER		

C 17132

- 7. MAKE NEW YORK MODEL P9UED 16 INPUT 120,000 BTU BONNETT RATING 98,450
- 8. REPLACING: MAKE FERRONS MORSE MODEL FM 26 106 INPUT 75,000
- 9. FUEL TO BE USED: COAL OIL GAS ELECTRIC OTHER
- 10. CHIMNEY SIZE _____ CONSTRUCTION Brick CONDITION Good
- 11. Upon completion will system function properly to all parts of the Building? YES
If not, why? _____

12. For residential construction, HEAT LOSS & HEATING GAIN CALCULATIONS and DUCT DESIGN must be submitted on a proper worksheet, as per 9.34.2.1 of the Ontario Building Code.

Heat Loss Calculations by: LINCOLNVAIRE Address: 326 HILTON DR STONEY CREEK

13. For Commercial/Industrial/Institutional construction, 2 copies of Working Drawings & related specifications must be submitted.

I, [REDACTED] of the City of Burlington, in the Region of _____, Do Solemnly Declare:
(a) That I am (the authorized agent of the owner) (the owner) named in the application;
(b) That the various answers made to the questions enumerated in the said application are true and made with a full knowledge of the circumstances connected with the same.

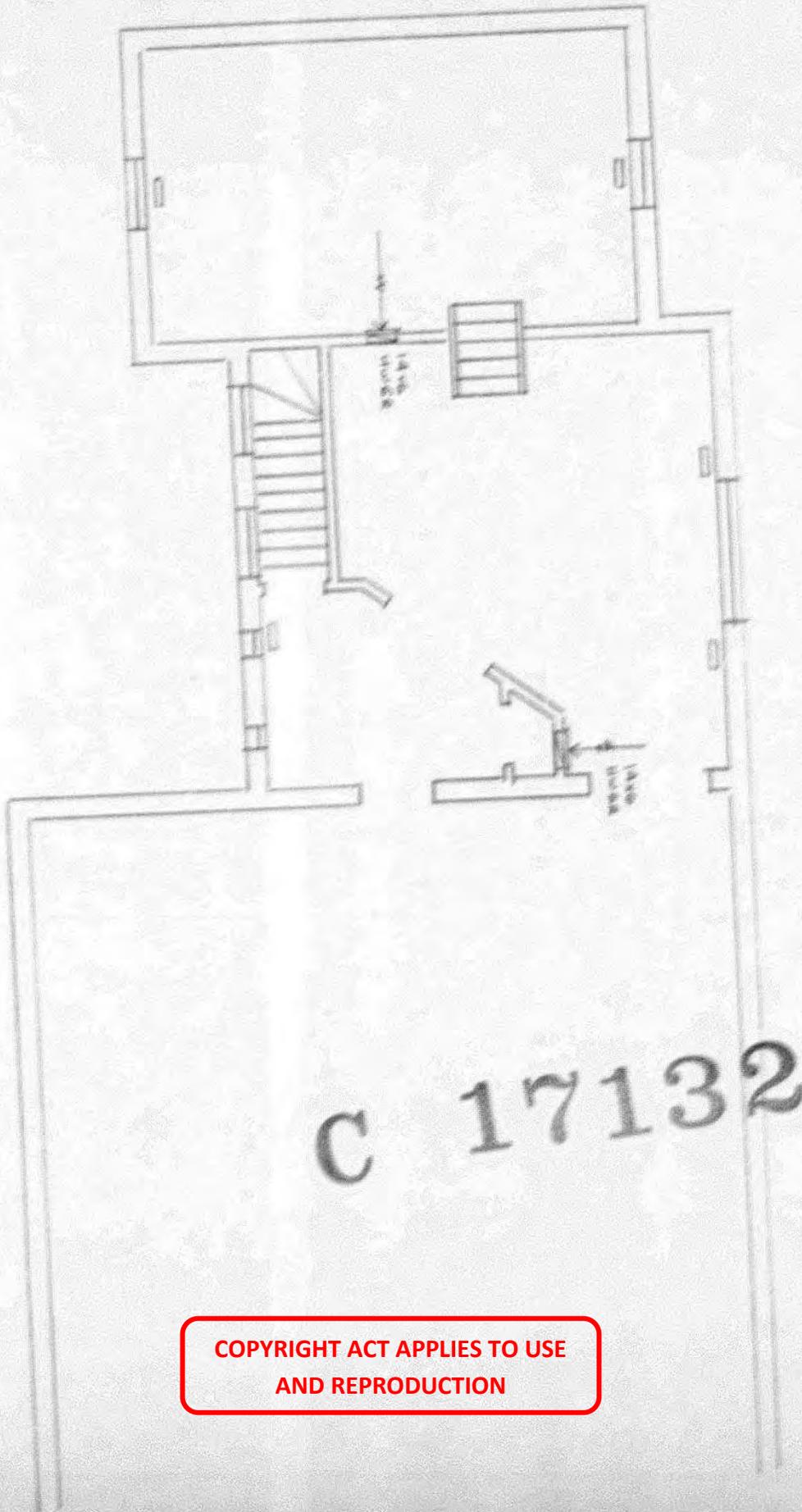
[REDACTED] / 235 SPRING GARDENS RD, UNIT 123/9/84
Address. Date.

ESTIMATED VALUE: \$ 1100 PERMIT FEE: 33.00 INSTALLER'S LICENCE# _____
PERMIT# 17132 PERMIT ISSUED BY: [Signature] DATE: Oct 15 1984

LINCOLNAIRE
HEATING & AIR CONDITIONING LTD.
305 HILTON DRIVE
STONEY CREEK, ONTARIO L8E 2N3

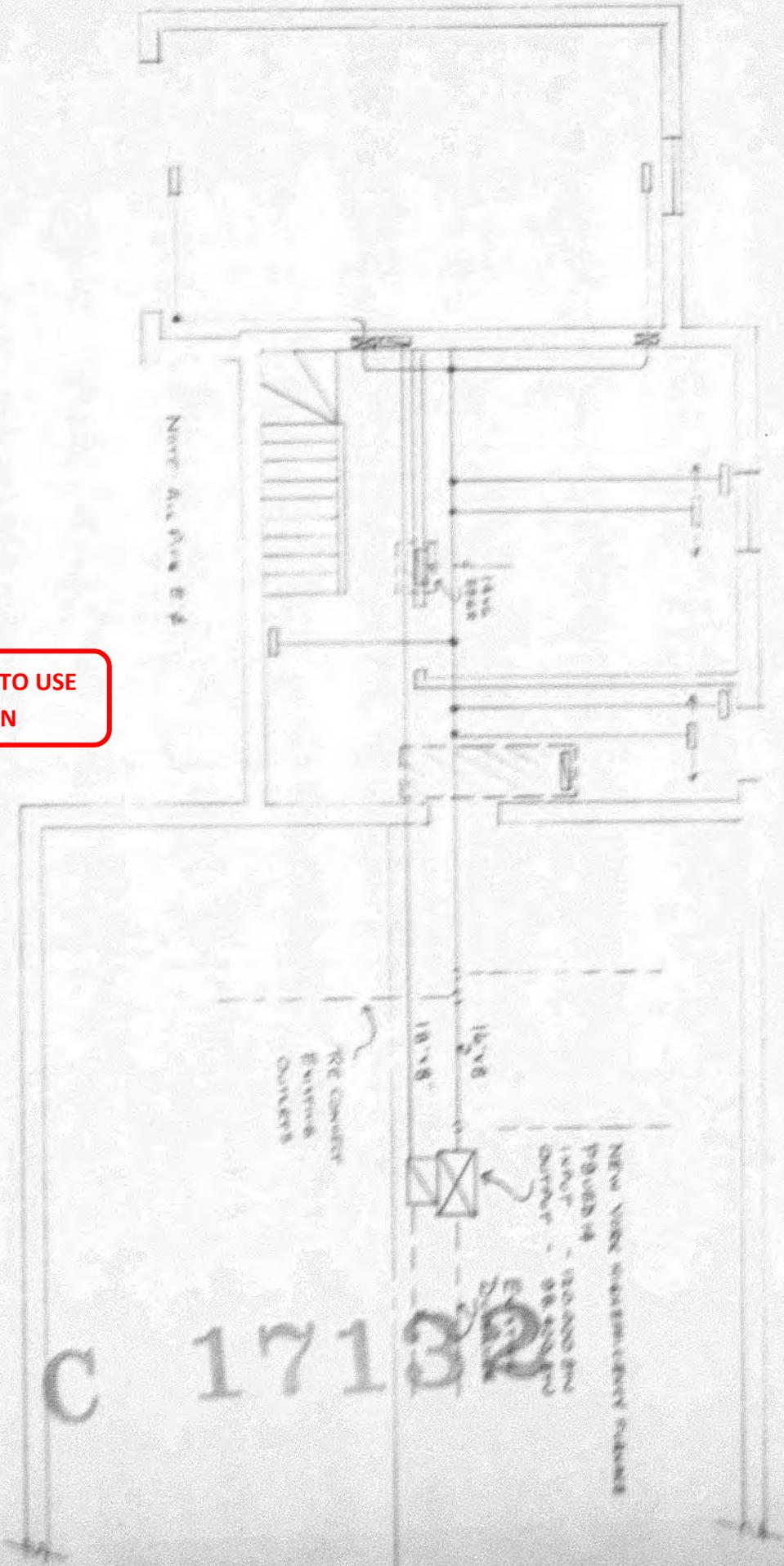
RECEIVED
CITY OF BRIMMINGTON
SEP 24 1984
DEPARTMENT OF
BUILDING SERVICES

34-1136



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AND REPRODUCTION

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 CITY OF BURLINGTON
 SEP 24 1884
 DEPARTMENT OF
 BUILDING SERVICES

64-113A

C 17132

Residential Heat Loss and/or Heat Gain Construction Data

BY _____

CONSTRUCTION: WALL _____

WINDOWS _____

ROOF _____

BASEMENT HEIGHT: ABOVE GRADE _____

BELOW GRADE _____

DESIGN TEMP. 61°F

NOTE: For concrete floor on ground or fill at grade level, use length of exposed edge. For air walls, floor use area.

1. ROOM USE	2. ROOM NO. & FLOOR OR STOREY		3. RUNNING FT. EXPOSED WALL		4. ROOM SIZE		FACTORY OR MANUAL NO.	MULT.	AREA CHASE VOL.	BTU/WATT LOSS									
	M	F.T.	M	F.T.	M	F.T.													M
GROSS EXPOSED WALLS	A								1244		204		300		230		174		230
	B																		
	C																		
	D																		
WINDOWS & GLASS DOORS	A	3C	90								20	180	20	180	25	130	21	200	
	B	9a	100								53	450							
	C	8b	150																
	D	4b	65																
NET EXPOSED WALLS OR PARTITION	A	10d	5						70	350	165	715	24	1820					
	B	10a/b	8																
	C	13f	5																
	D																		
CEILINGS	A	14H	22						110	242	250	503	224	625					
	B																		
FLOORS	A	19	2																
	B	17a	3																
INFILTRATION																			
CRACK AIR CHANGE																			
VENTILATION EXHAUST FRESH AIR																			
11 SUB-TOTAL ROOM BTU ON WATTS LOSS																			
12 ALLOWANCE*																			
13 TOTAL ROOM BTU-WATTS LOSS																			
14 PEOPLE & APPLIANCES																			
15 SENSIBLE GAIN OF STRUCTURE																			
16 TOTAL GAIN + SENSIBLE L.L.S																			
17 OTHER EQUIP. (REFRIG. PLUM)																			
18 THE SUM OF ALL THE ROOM BTU ON WATTS LOSS OR GAIN IS THE TOTAL BUILDING BTU - WATTS *																			
19 RADIATION																			

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RECEIVED
 DEPARTMENT OF
 BUILDING SERVICES
 SEP 24 1964

MODEL CORRECTED TO * _____

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AND REPRODUCTION**

759 Spring Garden Rd

HALTON REGION CONSERVATION AUTHORITY

APPROVED BY Shelly Antos

DATE July 24/84

SUBJECT TO THE FOLLOWING CONDITIONS:

PROPOSED
LAND
SEVERANCE

AREA = 12,350 SQ. FT.
= 1.47 AC.

REMAINING AREA
= 17,710 SQ. FT.
= 2.02 AC.

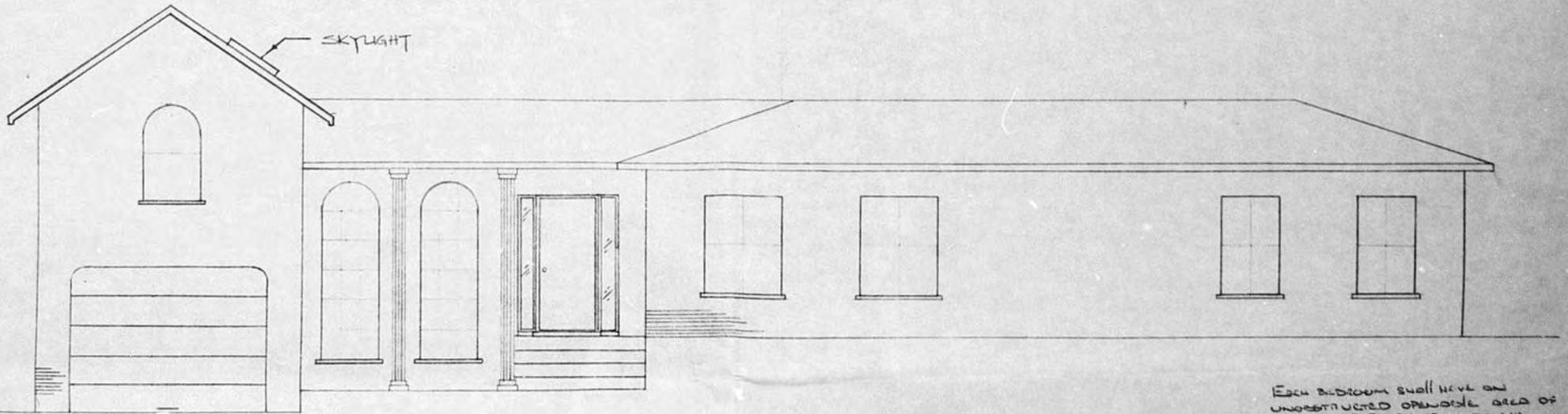
addition
18' 2"
9' Hatched
Bench
12' 8"

Garden
Rd.
Road

Spring Garden Road

YATES & S

312 Spring Garden Road
278-6181



FRONT ELEVATION
SCALE 1/4" = 1'-0"

Each bedroom shall have an UNOBSTRUCTED OPENABLE AREA OF AT LEAST 3.76 SQ. FT. WITH NO DIMENSIONS LESS THAN 17".

All CONNECTIONS TO EXISTING TO FIELD APPROVAL.

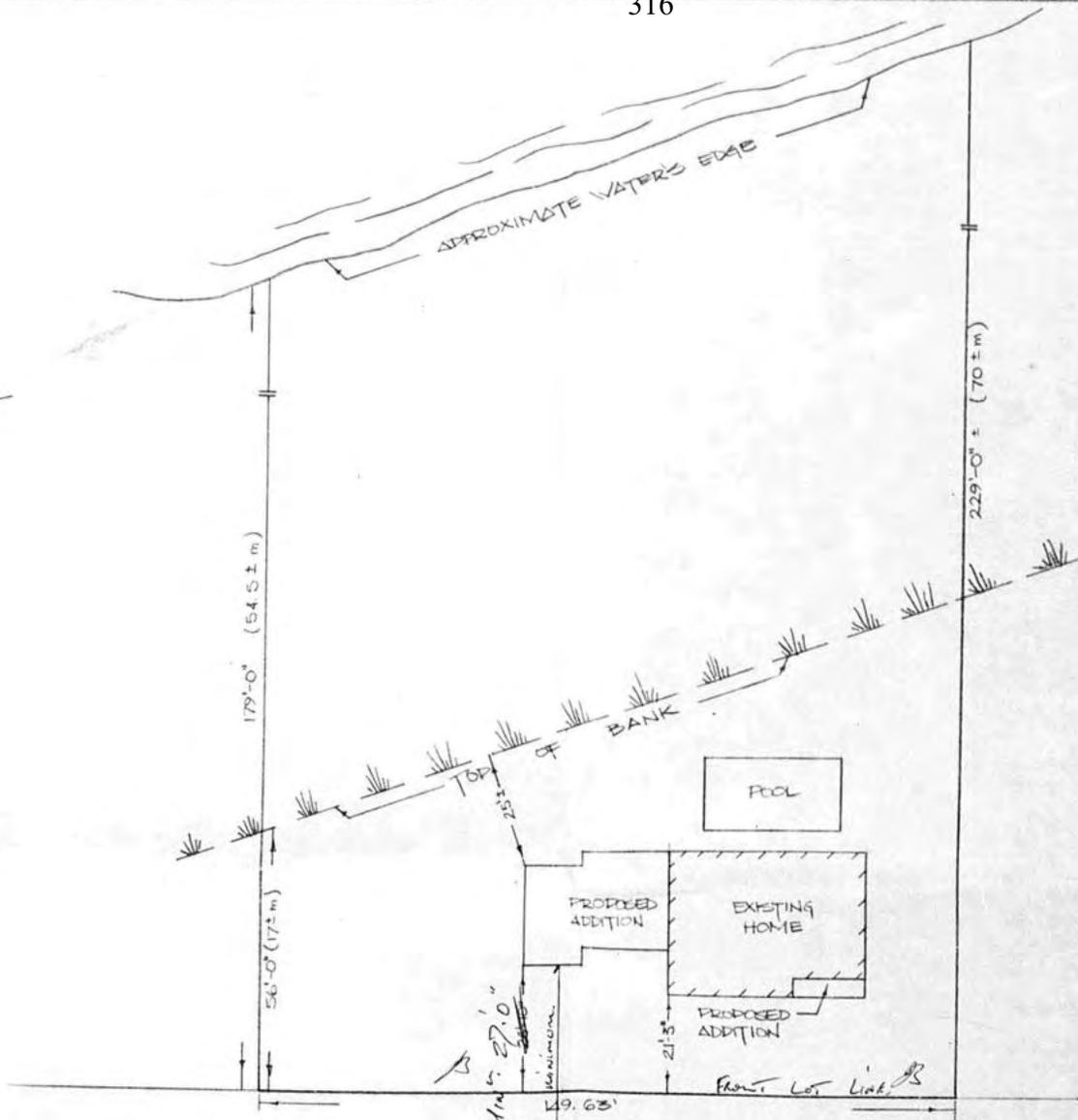
C 17132

PROPOSED RESIDENCE
PT. LOT 13, CON. 1
SPRING GARDENS ROAD
BURLINGTON.

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AND REPRODUCTION**

All construction, whether detailed on plan or not, is subject to field approval.

ALL CONSTRUCTION TO MEET ONTARIO CODE REQUIREMENTS



LOT PLAN
SCALE 1" = 20'

All construction, whether detailed on plan or not, is subject to final approval.

ALL CONSTRUCTION TO MEET ONTARIO BUILDING CODE REQUIREMENTS.

SEE GENERAL NOTES AND INSPECTION SHEET ATTACHED.

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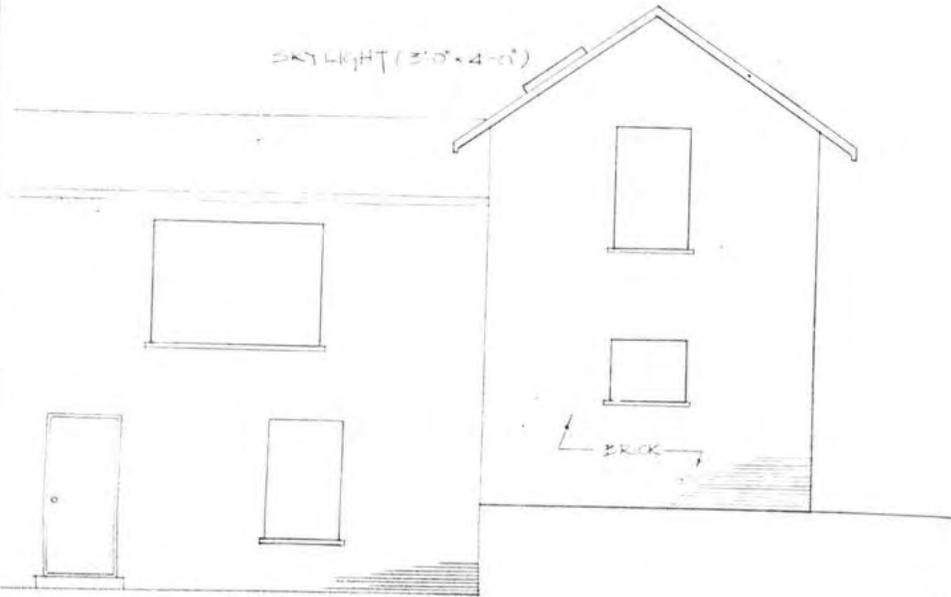
SPRING GARDEN ROAD
Road - *Circle Link*

CITY OF BURLINGTON
SITE PLAN & ZONING
APPROVED FOR DETAIL
SHOWN
DEPARTMENT OF
BUILDING SERVICES
PER: *[Signature]*
DATE: *Oct 9/07*

PROPOSED RESIDENCE
PT. LOT 13, CON. 1
SPRING GARDEN RD.
BURLINGTON

C 17132

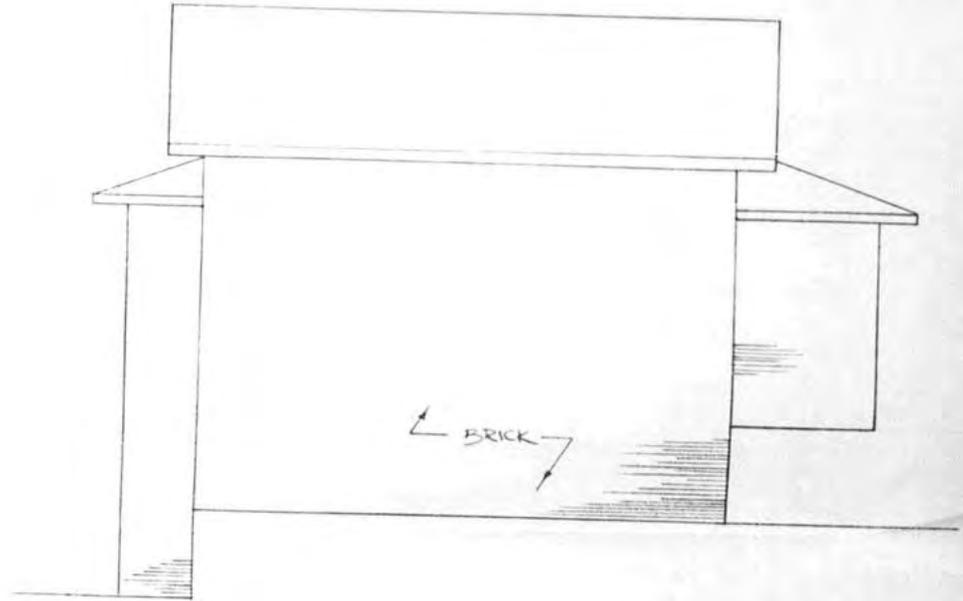
SKYLIGHT (3'-0" x 4'-0")



FOOTINGS TO HOLD MIN. 4' FLUSH COVER
FOOTINGS TO STEP DOWN TO EXISTING
FOOTING LEVEL. MAX. 2' VERT STEP.

REAR ELEVATION

SCALE 1/4" = 1'-0"



LEFT ELEVATION **C 17132**

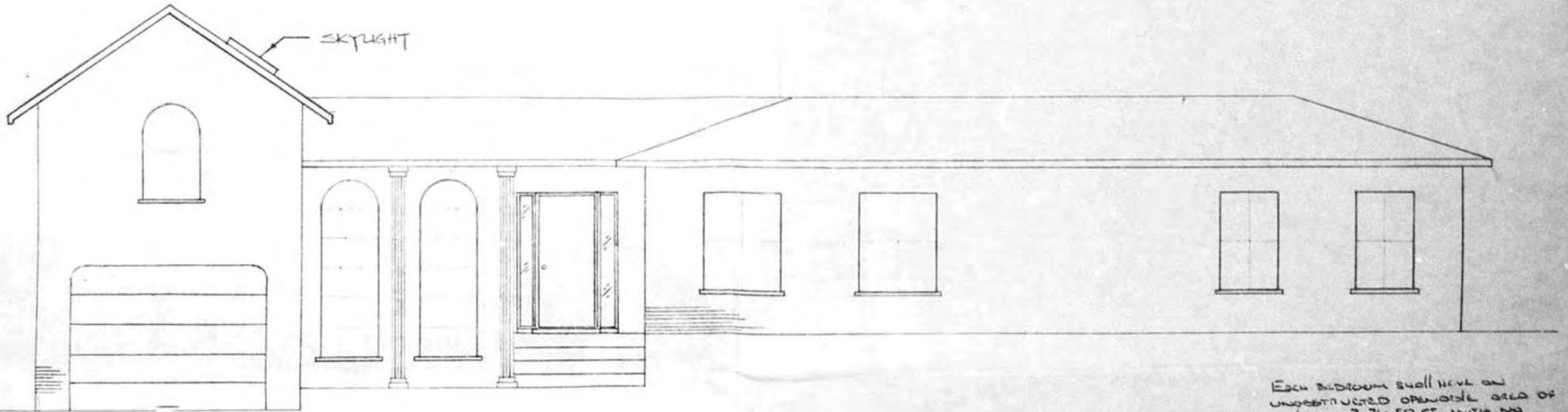
SCALE 1/4" = 1'-0"

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AND REPRODUCTION**

PROPOSED RESIDENCE
PT. LOT 13, CON. 1
SPRING GARDENS RD
BURLINGTON

All construction, whether detailed on plan or
not, is subject to field approval.

ALL CONSTRUCTION TO
MEET ONTARIO BUILDING
CODE REQUIREMENTS.



FRONT ELEVATION
SCALE 1/4" = 1'-0"

Each bedroom shall have an UNRESTRICTED OPENABLE AREA OF AT LEAST 3.76 SQ. FT. WITH NO DIMENSIONS LESS THAN 18".

All CONNECTIONS TO EXISTING TO FIND APPROVAL.

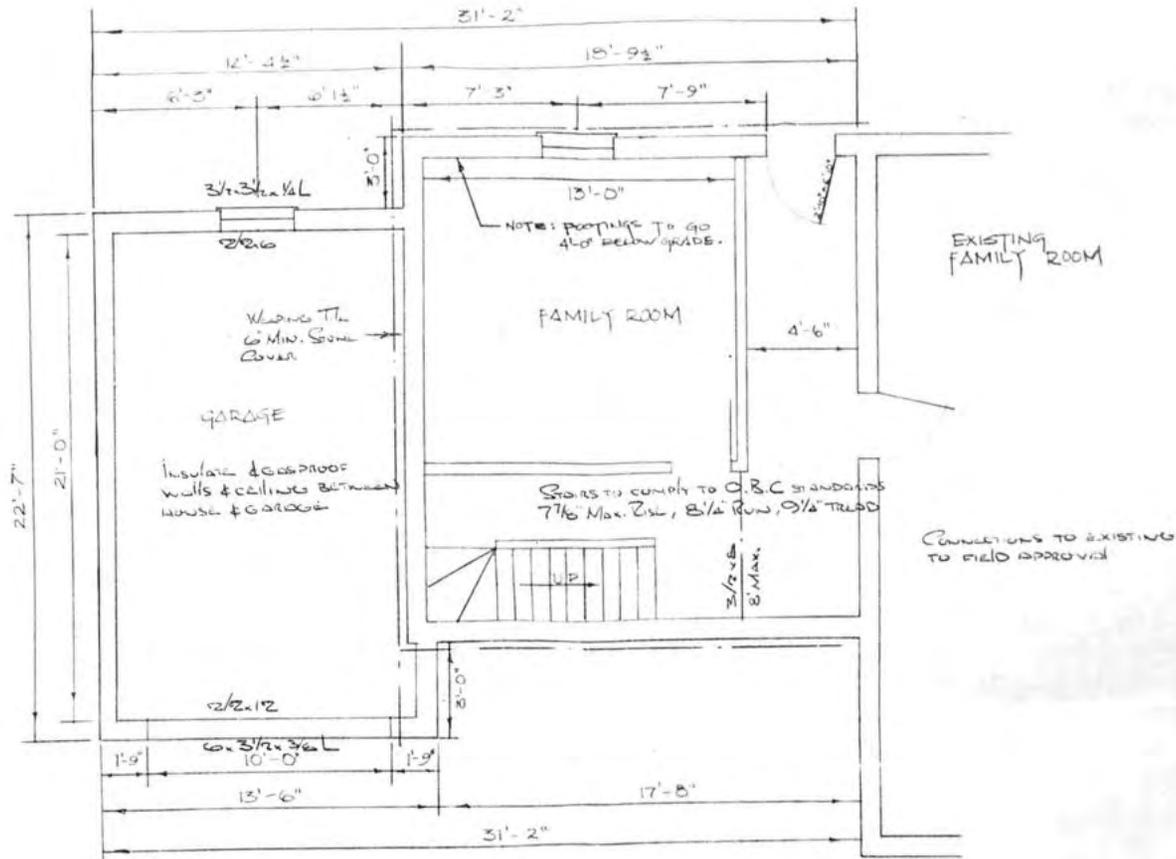
C 17132

PROPOSED RESIDENCE
PT. LOT 13, CON. 1
SPRING GARDENS ROAD
BURLINGTON.

All construction, whether detailed on plan or not, is subject to field approval.

ALL CONSTRUCTION TO MEET ONTARIO BUILDING CODE REQUIREMENTS.

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FOUNDATION PLAN
SCALE 1/4" = 1'-0"

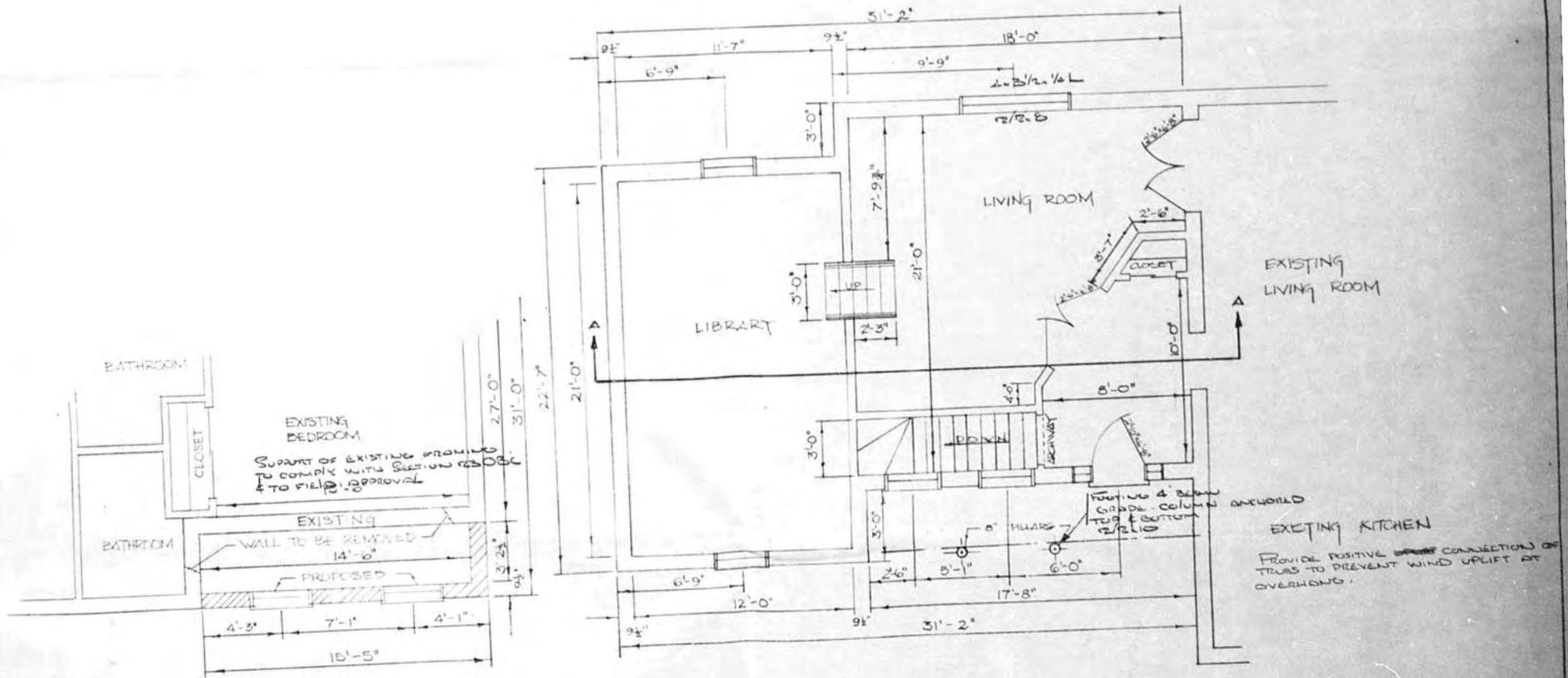
C 17132

PROPOSED RESIDENCE
PT. LOT 13, CON. 1
SPRING GARDENS RD
BURLINGTON

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All construction, whether detailed on plan or not, is subject to field approval.

ALL CONSTRUCTION TO MEET ONTARIO BUILDING CODE REQUIREMENTS



BEDROOM EXTENSION
SCALE 1/4" = 1'-0"

FLOOR PLAN
SCALE 1/4" = 1'-0"

C 17132

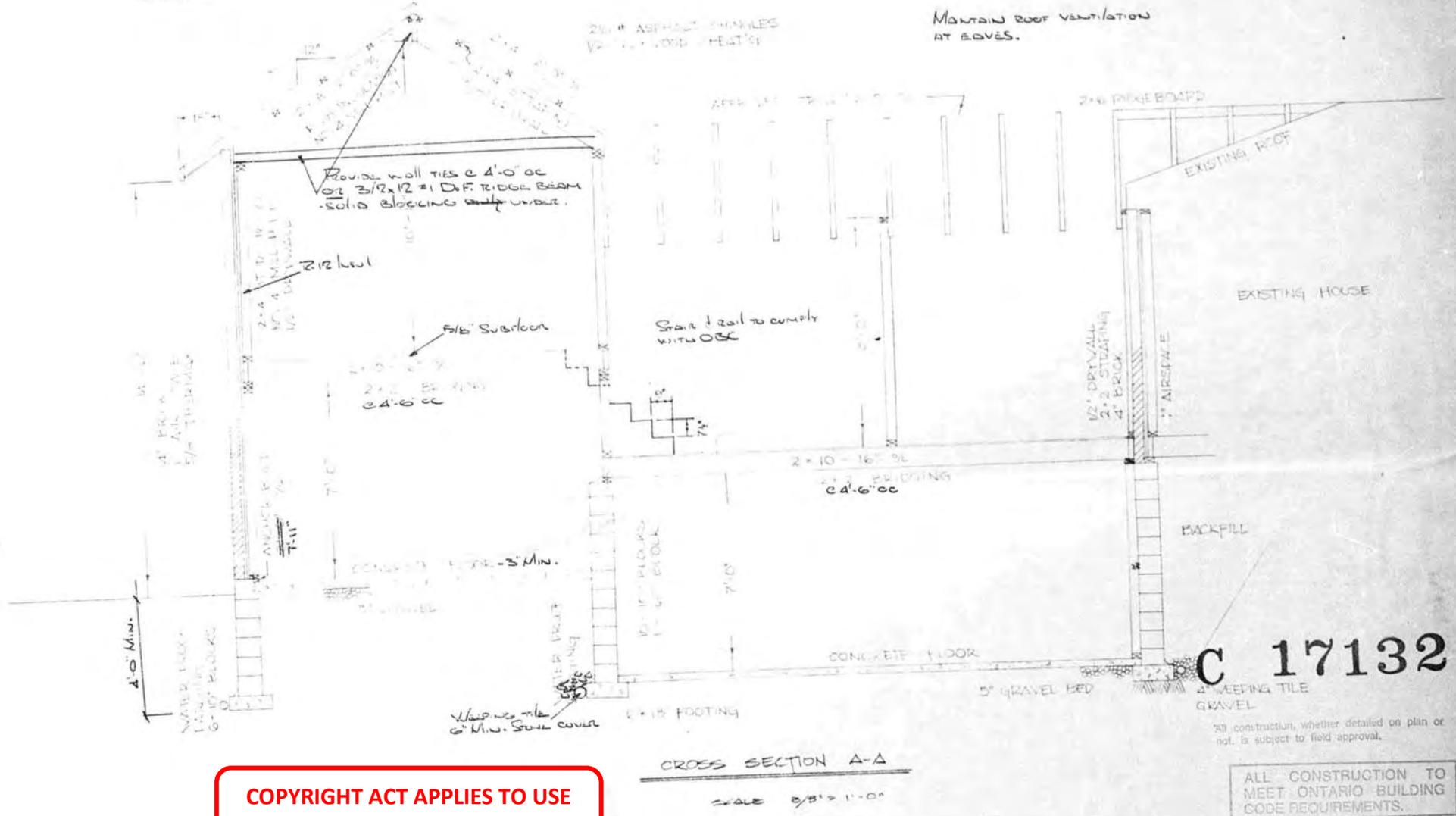
PROPOSED RESIDENCE
PT. LOT 13, CON. 1
SPRING GARDENS RD
BURLINGTON

All construction, whether detailed on plan or not, is subject to field approval.

ALL CONSTRUCTION TO MEET ONTARIO BUILDING CODE REQUIREMENTS

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- VENT ROOF 1/300 OF INSULATED CEILING AREA.
- CATHEDRAL ROOF TO BE VENTED AT 1/150 OF INSULATED CEILING AREA.



MAINTAIN ROOF VENTILATION AT EAVES.

CROSS SECTION A-A

SCALE 3/8" = 1'-0"

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C 17132

All construction, whether detailed on plan or not, is subject to field approval.

ALL CONSTRUCTION TO MEET ONTARIO BUILDING CODE REQUIREMENTS.

PROPOSED RESIDENCE
PT. LOT 13, CON. 1
SPRING GARDEN RD
BURLINGTON

This is **Exhibit “J”** referred to in the Affidavit of Shelley Young, affirmed before me this 1st day of November, 2022.

A handwritten signature in black ink that reads "A. Bouchard" with a stylized flourish at the end.

A Commissioner for taking affidavits

Stop Work Order

Pursuant to Subsection 14(1) of the *Building Code Act, 1992*

Order Number: (optional) _____

Date Order issued: March 20, 2019

Address to which Order applies:

835 Spring Gardens Rd.
Burlington, ON

Application/Permit Number: 20 19 004709

Order issued to:

1. Ivan Anthony Rudyk
- 835 SPRING GARDENS RD., BURLINGTON ON L7T 1J6
2. Shelley Jean Young
- 835 SPRING GARDENS RD., BURLINGTON ON L7T 1J6

3. Lifestyles by Barons Inc.
- 60 NORTHRIDGE CRES., HALTON HILLS, ON L7G 6E6
- 4.

The inspection on or about March 18, 2019 at the above-referenced address found the following contravention(s) of the *Building Code Act, 1992* or the Building Code have not been rectified as required by the Order(s) indicated below:

Order to Comply number _____, dated March 20, 2019

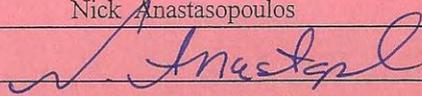
You are hereby ordered to immediately cease construction and/or demolition as specified below:

Item	Details
1.	All construction and demolition related to permit number 18-020237 and permit number 18-020237-REV-01.

Order issued by:

Name Nick Anastasopoulos

BCIN 15076

Signature 

Telephone no. _____

Contact name (optional) Matthew Bowlby

Contact tel. number (optional) 905.971.1881

Note:

- It is illegal to obstruct the visibility of a posted Order. It is also illegal to remove a posted Order unless authorized by an inspector or Registered Code Agency. [*Building Code Act, 1992 s. 20*]
- An Order may be appealed to the Superior Court of Justice. [*Building Code Act, 1992 s. 25*]. It may also be appealed to the Building Code Commission concerning the sufficiency of compliance with the technical requirements of the Building Code. [*Building Code Act, 1992 s. 24*]
- Failure to comply with this Order is an offence which could result in a fine. [*Building Code Act, 1992 s.36*]
- When a Stop Work Order is issued, no person shall perform any act in the construction or demolition of the building in respect of which the Order is made other than work necessary to carry out an Order to Comply, the Order Not to Cover, or an Order to Uncover. [*Building Code Act, 1992 s. 14*]

Order to Comply

Pursuant to Subsection 12(2) of the *Building Code Act, 1992*

Order Number: (optional) 19- 004709

Date Order issued: March 20, 2019

Address to which Order applies:

835 Spring Gardens Rd.

Burlington, ON

Application/Permit Number: **18-020237**

18-020237-REV-01

Order issued to (name and address):

1. Ivan Anthony Rudyk
- 835 SPRING GARDENS RD., BURLINGTON ON L7T 1J6

3. Lifestyles by Barons Inc.
- 60 NORTHRIDGE CRES., HALTON HILLS, ON L7G 6E6

2. Shelley Jean Young
- 835 SPRING GARDENS RD., BURLINGTON ON L7T 1J6

4

The inspection on or about March 18, 2019 at the above-referenced address found the following contravention(s) of the Building Code or the *Building Code Act, 1992*.

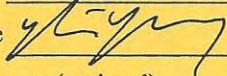
You are hereby ordered to correct the contraventions itemized below by May 20, 2019.

Item	Reference	Description and location	Required action and compliance date
1.	B.C.A. 8. (13)	Demolition of South and East superstructure walls without permit approval. Building permit was issued for the existing South and East superstructure walls to remain intact. Therefore, the construction is not in conformance with approved building permit plans for 835 Spring Gardens Rd. Burlington, ON. " No person shall construct or demolish a building or cause a building to be constructed or demolished except in accordance with the plans, specifications, documents and any other information on the basis of which a permit was issued or any changes to them authorized by the chief building official."	Obtain approvals and permits from the following Applicable Agencies: - Halton Conservation. - City of Burlington, Committee of Adjustment. - City of Burlington, Zoning Division. - City of Burlington, Building Section (building permit).

Order issued by:

Name Matthew Bowlby

BCIN 44478

Signature 

Telephone no. 905.971.1881

Contact name (optional) _____

Contact tel. number (optional) _____

Note:

- It is illegal to obstruct the visibility of a posted Order. It is also illegal to remove a posted Order unless authorized by an inspector or Registered Code Agency. [*Building Code Act, 1992* s. 20]
- An Order may be appealed to the Superior Court of Justice. [*Building Code Act, 1992* s. 25]. It may also be appealed to the Building Code Commission concerning the sufficiency of compliance with the technical requirements of the Building Code. [*Building Code Act, 1992* s. 24]
- Failure to comply with this Order could result in a Stop Work Order. [*Building Code Act, 1992* s. 14]
- Failure to comply with this Order is an offence which could result in a fine. [*Building Code Act, 1992* s.36]
- No construction affected by this Order is to be covered until inspected and approved. [*Building Code Act, 1992* s.13]

This is **Exhibit “K”** referred to in the Affidavit of Shelley Young, affirmed before me this 1st day of November, 2022.

A handwritten signature in black ink that reads "A. Bouchard" with a stylized flourish at the end.

A Commissioner for taking affidavits



905.336.1158
 Fax: 905.336.7014
 2596 Britannia Road West
 Burlington, Ontario L7P 0G3
conservationhalton.ca

Protecting the Natural
 Environment from
 Lake to Escarpment

March 26, 2019

Ivan Rudyk & Shelley Long
 835 Spring Gardens Road
 Burlington, Ontario L7T 1J6

**Re: Violation of Ontario Regulation 162/06
 Development within the valley of Grindstone Creek
 835 Spring Gardens Road
 Grindstone Creek Watershed
 CH File: V/19/B/04**

To Mr. Rudyk & Ms. Long:

This letter is to discuss a way forward in relation to development-related activity beyond the scope of works approved under Conservation Halton (CH) Permit #5927.

The subject property, 835 Spring Gardens Road, is adjacent to lands traversed by Grindstone Creek and contains the flooding and erosion hazards associated with that watercourse. Specifically, the property is considered to be located within the stable top of bank erosion hazard associated with valley of Grindstone Creek. CH regulates the stable top of bank plus a 15 metre regulatory allowance from its limits.

CH Policy Requirements

Development within the valley is subject to the following policies pursuant to Ontario Regulation 162/06:

3.37.2 Where buildings or structures (including private access roads) already exist on a *valley* wall or in a valley, replacement may be permitted subject to the following criteria [in part]:

- a) Best efforts must be undertaken to relocate the existing building or structure outside of the *valley* and associated regulated tableland area;
- b) The buildings or structures are of the same size and use, and contain the same number of *dwelling units*;
- c) The buildings or structures are located no further into the *valley* or closer to a *watercourse* than the existing building or structure; and...
- e) If the building or structure is located on a valley wall, a professional geotechnical engineer must complete a geotechnical study to determine the risk of the proposed work. The study will include an assessment of the stability of the *valley* wall, rate of erosion or recession of the *valley* wall, (over a 100 year period), access issues and an assessment of the construction and construction technique on the valley wall. The study must be carried out, at a minimum, in accordance with the

geotechnical documents referenced in Section 5. The design of any works must ensure that the long-term stability of the valley wall is maintained and that no risk to life or property damage is anticipated.

3.37.2 Where an existing building or structure already exists on a *valley* wall or in a valley, additions to the existing building or structure, *that are minor in nature*, may be permitted subject to the following criteria [in part]:

- a) The addition extends no further into the valley or closer to a *watercourse* than the existing building or structure;
- b) There is no change in land use and no increase in the number of *dwelling units*; and...
- d) If the building or structure is located on a valley wall, a professional geotechnical engineer must complete a geotechnical study to determine the risk of the proposed work. The study will include an assessment of the stability of the *valley* wall, rate of erosion or recession of the *valley* wall (over a 100 year period), access issues and an assessment of the construction and construction technique on the *valley* wall. The study must be carried out, at a minimum, in accordance with the documents referenced in Section 5. The design of any works must ensure that the long-term stability of the *valley* wall is maintained and that no risk to life or property damage is anticipated.

CH's records indicate that the works approved under Permit #5927 were limited to the construction of: a two-storey addition to the existing dwelling; a rear balcony; a covered front porch; and, an on-grade patio. Through the review and approval process for Permit #5927, CH staff was of the opinion that the proposed 2-storey addition to the existing dwelling was *minor* and, as the addition was extending no further into the valley or closer to a watercourse than the existing dwelling, CH Policy 3.37.2 was met. A geotechnical assessment/study was not required at that time.

Rather than the minor addition as initially proposed and approved, the entire dwelling has since been demolished and a new dwelling starting to be constructed. Permission was not obtained from this Authority to authorize the full demolition and/or construction of an entire dwelling within the regulated area. Had this extent of works been proposed at the application stage, additional technical information would have been required in support of the development to ensure that the required setbacks were achieved and applicable policies met.

In light of the above, the works are considered to be a violation of Section 2 of Ontario Regulation 162/06. Specifically, Section 2 of the Regulation states:

Development prohibited

2. (1) Subject to section 3, no person shall undertake development, or permit another person to undertake development in or on the areas within the jurisdiction of the Authority that are,
 - (b) river or stream valleys that have depressional features associated with a river or stream, whether or not they contain a watercourse, the limits of which are determined in accordance with the following rules:
 - (i) Where the river or stream valley is apparent and has stable slopes, the valley extends from the stable top of bank, plus an allowance not to exceed 15 metres, to a similar point on the opposite side; or,
 - (ii) Where the river or stream valley is apparent and has unstable slopes, the valley extends from the predicted long term stable slope projected from the existing stable slope or, if the toe of the slope is unstable, from the predicted location of the toe of slope as a result of stream erosion over a projected 100-year period, plus an allowance not to exceed 15 metres, to a similar point on the opposite side.

The purpose of this letter is to notify you of the following:

- (a) That, based on the information available, the works which have occurred to date exceed the scope of works approved under CH Permit #5927;
- (b) That the works which have occurred are violations of Section 28(16) the Conservation Authorities Act and the corresponding regulation, Ontario Regulation 162/06;
- (c) That the works, the complete demolition and proposed construction of a new dwelling within the valley of Grindstone Creek, requires additional technical information and review prior to confirming if the proposal meets Policy and could be supported by staff; and,
- (d) That CH staff is willing to work with you through our Compliance Agreement process to bring the violation into compliance.

Compliance Agreement Option

Compliance Agreements can be negotiated with willing landowners for violations which have the potential to meet CH policies and regulatory requirements. I have attached a Compliance Agreement application for you to read over and consider with your agents. CH hopes that there is a willingness to work with us and request that a formal Compliance Agreement Application be made to confirm such a willingness. As part of the Compliance Agreement, staff would require the following be submitted:

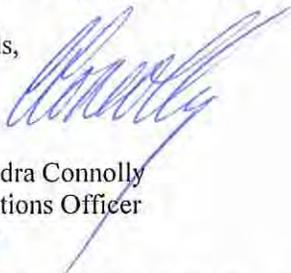
- 1) A complete and signed Compliance Agreement Application Form (attached);
- 2) A Geotechnical Assessment/Study, signed and sealed by a qualified Professional Engineer which meets the requirements of points e) and d) of Policies 3.37.1 and 3.37.2, respectively;
- 3) A Site Plan Drawing showing all existing (remaining, and removed/demolished) and proposed development footprints;
- 4) Detailed Elevation Drawings and Floor Plans of the proposed dwelling;
- 5) A complete and accurate *Construction Details Form for Permit Applications Submitted under Ontario Regulation 162/06* (attached); and,
- 6) A cheque in the amount of \$3,200.00 as per our current Fee Schedule category *Private Landowner – Intermediate* with a 100% surcharge applicable to Compliance Agreements.

These items should be submitted immediately to formalize the willingness to work with CH. Upon receipt of the technical information and drawings noted above, CH staff will conduct a formal review of the information provided to determine if the proposed works have the potential to meet CH Policy, and/or if the proposal will require revisions to meet CH policy and regulatory requirements.

If you have any questions, please contact the undersigned at extension 2301.

Regards,

Cassandra Connolly
Regulations Officer

CC/ 

Cc: Ivan Rudyk & Shelley Long, Owners, irudyk@outlook.com
Peter Vozikas, Empire Design Company, vozkkass@hotmail.com

Encl. Compliance Agreement Application
Construction Details Form for Permit Applications Submitted under Ontario Regulation 162/06



**Construction Details Form For Permit Applications
Submitted Under Ontario Regulation 162/06**

Conservation Halton File # V/19/B/04

This form must be completed in full and attached, along with any technical studies, engineering drawings, or other technical information which have been submitted to support your permit application. Re-submissions submitted without this form, when required, **will not be accepted.**

	Existing Ground Floor Area	Existing Total Floor Area	Floor Height of Storey	Proposed Ground Floor Area	Proposed Total Floor Area	Floor Height of Storey
Basement						
Main Floor incl. attached garage(s) and/or enclosed sunrooms						
Second Floor						
Loft						
Covered Porch (not enclosed)						
Accessory Building 1						
Accessory Building 2						

Where:

Ground Floor Area: the total exterior measurements of any building, including attached garages and enclosed decks/sunrooms.

Total Floor Area: the exterior measurements of the building and includes the total of the ground floor (as defined above), walkout/full basements, plus full or half second stories, etc.

Storey Height: measured as per current Ontario Building Code.

DECLARATION

I hereby declare that:

- the particulars provided on this re-submission form are true and correct;
- the re-submission is complete and all requirements, as specified in Conservation Halton's letter of response/requirement letter have been complied with; and
- the lead consultant has reviewed and coordinated the submission to ensure that all re-submission materials are consistent.

Signature of Applicant and/or authorized Agent: _____

Contact information

Address: _____

Telephone Number: _____

Email: _____

For Office Use Only
Date Received:
Signature:



Conservation
Halton

2596 Britannia Road West
Burlington, ON L7P 0G3
(905) 336-1158 Fax (905) 336-6684

COMPLIANCE AGREEMENT APPLICATION

OWNERSHIP

Owner's Name: _____ Phone: _____

Address: _____ Fax: _____

City/Town: _____ Postal Code: _____ E-mail: _____

AGENT/CONTRACTOR

Company Name: _____ Phone: _____

Agent's Name: _____ Fax: _____

Address: _____ E-mail: _____

City/Town: _____ Postal Code: _____

TO BE FILLED OUT BY CONSERVATION HALTON STAFF

Location & Description of Compliance Work(s)

Location of Property:

Lot(s): _____ Concession(s): _____ Watershed/Shoreline: _____
(incl. Twp)

Municipal Street Address: _____

City/Town: _____ Property Roll No.: _____

Description of Compliance work(s):

Your privacy is important to us. If you have questions regarding our Privacy Policy, please visit our website at www.conservationhalton.ca/privacy or ask a staff member.

TERMS AND CONDITIONS

1. This Compliance Agreement is voluntary and not required pursuant to any section of the Conservation Authorities Act or Ontario Regulation 162/06.
2. The intent of the Compliance Agreement is to provide the owner/agent with an opportunity to work with Conservation Halton staff to bring the property into compliance with the Conservation Authorities Act and Ontario Regulation 162/06 after unauthorized works have been started and/or completed.
3. Conservation Halton does not accept permit applications or issue permits under Section 3 or 6 of Ontario Regulation 162/06 once development works have been completed and/or started without approval of Conservation Halton. Please see Violation Notice describing unauthorized development.
4. Unauthorized development works are those as described and outlined in the attached Violation Notice. Additional unauthorized development works could constitute a new and separate offence.
5. Only development works that satisfy all the policy requirements of Conservation Halton will be permitted.
6. Proposed development works that have not been started and/or completed will require the owner/agent to apply for permission from Conservation Halton pursuant to section 3 or 6 of Ontario Regulation 162/06.
7. A Compliance Agreement fee is collected to address administration costs and is not an unauthorized development works authorization fee. All fees paid are non-refundable.
8. Approvals, permits, etc. may be required from other agencies prior to undertaking the Compliance work(s). Conservation Halton permission does not exempt the applicant from complying with any or all other approvals, laws, statues, ordinances, directive, regulations, etc., that may affect the property or the use of the same.
9. Conservation Halton retains the right to defer this matter at any time to the courts, if, in the opinion of Conservation Halton, the representations contained in the Compliance Agreement are not carried out as per submitted plans/drawings or the conditions of the Compliance Agreement are not complied with.
10. Conservation Halton encourages you to seek legal counsel in relation to this Compliance Agreement.

I/We, the undersigned, do solemnly declare that to the best of my/our knowledge and belief all of the above information is true.

I/We agree that in an effort to voluntarily mitigate the alleged violation of the Conservation Authorities Act and Ontario Regulation 162/06. I/We will complete all described Compliance works in the manner and time as prescribed by this Compliance Agreement. Failure to comply with the conditions of the Compliance agreement could result in fines not exceeding \$10,000 or to a term of imprisonment of not more than three months or an order requiring Compliance and removal of the unauthorized works.

I/We acknowledge that authorized representatives of Conservation Halton may, at any time, enter onto the lands which are described herein in order to make any surveys, examinations, investigations or inspections which are required for the purpose of ensuring that the works authorized by this Compliance Agreement are being carried out according to the terms of this Compliance Agreement.

I/We acknowledge that this information is collected to administer Ontario Regulation 162/06.

Signature of Owner(s): _____

Date: _____

Print Name: _____

Signature of Agent: _____

Date: _____

Print Name: _____

Please note that owner's signature above authorizes their agent to work on their behalf.

Your privacy is important to us. If you have questions regarding our Privacy Policy, please visit our website at www.conservationhalton.ca/privacy or ask a staff member.

This is **Exhibit “L”** referred to in the Affidavit of Shelley Young, affirmed before me this 1st day of November, 2022.

A handwritten signature in black ink that reads "A. Bouchard" with a checkmark-like flourish at the end.

A Commissioner for taking affidavits

From: Cassandra Connolly <cconnolly@hrca.on.ca>
Sent: Thursday, April 4, 2019 2:05:35 PM
To: vozkkass@hotmail.com; gordon.baron@lbbdesigns.ca
Cc: Kellie McCormack; irudyk@outlook.com
Subject: 835 Spring Gardens Road - Meeting Summary and Next Steps

Good afternoon,

We appreciate your meeting with us yesterday afternoon at our Administration Office to discuss the property and steps forward. I wanted to follow-up on that meeting with a short summary of our discussion, and to clarify our requirements and next steps.

Conservation Halton issued Permit #5927 for the construction of an addition to the existing dwelling; a rear balcony; covered front porch; and on-grade patio. It was our understanding based on the information (Application Form and Site Plan Drawing) submitted at that time, that the addition to the dwelling was minor in nature, specifically an expansion of the existing single car garage with living space above. A geotechnical study/assessment was not required at that time based on the scope and scale of the work identified. It is staff's understanding that the home has now been demolished down to its foundation. This differs from the scope of works reviewed and approved.

As discussed in our meeting, Conservation Halton is unable to issue a Permit after-the-fact. In our effort to work with yourselves and the landowner through this process we have provided the Compliance Agreement Option. We would request the Agreement Application Form and fee identified in the Violation Notice provided to be submitted as soon as possible to confirm a willingness to work with us. A geotechnical study/assessment is also required to determine the risk of the proposed work and to make recommendations to mitigate those risks.

We understand the intent of the works onsite is ultimately to re-build within the footprint of the existing dwelling, in addition to the minor addition originally proposed through the Conservation Halton Permit and building permit. We do consider the works to be a reconstruction of a dwelling. Given that the scale/scope of works has changed, a geotechnical assessment is required to ensure the long-term safety of the home with respect to the erosion hazard associated with the valley. That geotechnical information may also make recommendations related to the construction of the dwelling (i.e. steps that can improve the long term safety of the home).

It is my understanding that Charles had forwarded you the contact information for the company who had completed geotechnical work for this site in the past. This information could potentially be updated and built upon to address our concerns; however, the scope of a new assessment would be confirmed by the geotechnical engineer on site. Should the engineer have any questions about what we require, please have them contact us in advance of undertaking any further studies. Once the geotechnical report has been submitted, we will work to review that document promptly.

I do advise that, following the review and approval of a geotechnical report, any recommendations made by that geotechnical report will need to be incorporated into the dwelling design drawings accordingly and those revised drawings would be stamped approved as part of the Compliance Agreement. Once the Compliance Agreement has been issued by CH, you would then move forward with any requirements and/or additional reviews required by the City of Burlington.

As the landowners were unable to attend the meeting I have Cc'd them on this correspondence so they are aware of the discussions, and the scope/steps moving forward.

Should anyone have any questions, please do not hesitate to contact me.

Regards,

Cassandra Connolly
Regulations Officer

Conservation Halton
2596 Britannia Road, Burlington, ON L7P 0G3
905-336-1158 ext. 2301 | cconnolly@hrca.on.ca

This is **Exhibit “M”** referred to in the Affidavit of Shelley Young, affirmed before me this 1st day of November, 2022.

A handwritten signature in black ink that reads "A. Bouchard" with a checkmark-like flourish at the end.

A Commissioner for taking affidavits

 RE: 835 Spring Gardens - Unsafe Engineers Report



Anastasopoulos, Nick <Nick.Anastasopoulos@burlington.ca>

To: 'Chris Bava'; RILEY; 'Sanjay Patel'; Gordon Baron

Cc: Anastasopoulos, Nick; Murphy, Jackie; Galbraith, Kelvin; Bowlby, Matthew; Peterson, Rick; MacDonald, Heather; Nheiley, Brynn; Kade, Silvina; Vassalli, Tina

On: Friday, May 17, 2019 at 3:46 PM

[Hide Details](#)

Hi Chris/Gordon

Further to my conversation with Mr. Sanjay Patel and the engineer report dated May 17, 2019 as the Chief Building Official the following determination is being made. It has been determined that the existing structure was unsafe as per the Ontario Building Code section 15.9. and needed to be removed.

As Matt Bowlby is currently out of the office the orders that were issued will be rescinded upon his return to the office on May 27th, 2019. In the meantime please consider these orders rescinded in nature and commence construction in line with your issued permits and approvals as they meet all *applicable law* under the Building Code Act.

Should you require any inspections over the next week please touch base with Rick Peterson (905-638-5771) in Matt's absence.

Regards

Nick Anastasopoulos, P.Eng.
Chief Building Official | Manager of Building Permit Services
Department of City Building | Building Section
#Build2Code #BuildBetterBuildSafe

P. 905 335 7731, ext 7619 | F. 905 335 7876 | E. nick.anastasopoulos@burlington.ca
 Address 426 Brant Street P.O. Box 5013, Burlington, Ontario, L7R 3Z6
 City of Burlington | www.burlington.ca



 Please consider the environment before printing this e-mail.

This is **Exhibit “N”** referred to in the Affidavit of Shelley Young, affirmed before me this 1st day of November, 2022.

A handwritten signature in black ink that reads "A. Bouchard" with a stylized flourish at the end.

A Commissioner for taking affidavits

Cassandra

From: Murphy, Jackie <Jackie.Murphy@burlington.ca>
Sent: August 12, 2019 12:03 PM
To: Cassandra Connolly <cconnolly@hrca.on.ca>
Cc: Bowlby, Matthew <Matthew.Bowlby@burlington.ca>; Anastasopoulos, Nick <Nick.Anastasopoulos@burlington.ca>
Subject: FW: 835 Spring Gardens - Unsafe Engineers Report

Hi Cassandra,

As you will see in the email below (highlighted) dated May 17, 2019 from our Chief Building Official, Nick Anastasopoulos, it was his determination the house at the above address was in an unsafe condition and the removal of existing walls and rebuilding of the home was necessary to ensure unsafe hazards were eliminated. Based on Nick's decision, the owner and contractor were permitted to continue to build in accordance with the approved permit plans. Our issued Orders have since been rescinded and we continue to monitor the work via building inspections at each stage of construction. As there is no OBC violations/contraventions we are not pursuing any further enforcement.

I'm assuming this decision was not conveyed to you as per your email below, so I'm sorry if there was a miscommunication that occurred.

Feel free to contact me should you have additional questions/concerns.

Regards,

Jackie Murphy, CBCO
Deputy Chief Building Official | Supervisor of Building Inspections
Department of City Building | Building Section

P. 905 335 7731, ext 7637 | F. 905 335 7876 | E. jackie.murphy@burlington.ca
Address 426 Brant Street P.O. Box 5013, Burlington, Ontario, L7R 3Z6
City of Burlington | www.burlington.ca



 Please consider the environment before printing this e-mail.

From: Cassandra Connolly <cconnolly@hrca.on.ca>
Sent: Friday, August 09, 2019 2:38 PM
To: Bowlby, Matthew <Matthew.Bowlby@burlington.ca>
Cc: Murphy, Jackie <Jackie.Murphy@burlington.ca>
Subject: 835 Spring Gardens Road

This is **Exhibit “O”** referred to in the Affidavit of Shelley Young, affirmed before me this 1st day of November, 2022.

A handwritten signature in black ink that reads "A. Bouchard" followed by a checkmark-like flourish.

A Commissioner for taking affidavits



905.336.1158
 Fax: 905.336.7014
 2596 Britannia Road West
 Burlington, Ontario L7P 0G3
conservationhalton.ca

Protecting the Natural
 Environment from
 Lake to Escarpment

August 22, 2019

Mr. Ivan Rudyk and Ms Shelley Long
 835 Spring Gardens Road
 Burlington, Ontario L7T 1J6

Re: Violation of Ontario Regulation 162/06 Permit #5927
835 Spring Gardens Road
Grindstone Creek Watershed
CH File: V/19/B/04

Dear Mr. Rudyk and Ms. Long:

This letter is to provide notice that the permit you received under Ontario Regulation 162/06 (Permit #5927) is void, as this permit was for dwelling additions and was premised on the presence of a dwelling that no longer exists. Further, we wish to follow-up on the Violation Notice that was sent to you on March 26, 2019 and subsequent email dated April 4, 2019.

The subject property is located within the erosion hazard associated with the valley of Grindstone Creek. It is also in an area with known slope instability issues. Given that the scale/scope of works has changed from what was originally permitted, a geotechnical assessment is required to ensure that the long-term stability of the valley wall is maintained and that there is no risk to life or property damage.

CH issued Permit #5927, on May 28, 2018, for the construction of a minor addition to the existing dwelling (specifically an expansion of the existing single car garage with living space above), a rear balcony, covered front porch and on-grade patio. However, since CH issued that permit, the existing dwelling was completely demolished and a new dwelling is now under construction. Consequently, the works occurring onsite are beyond the scope of what was approved under Permit #5927. The scale and scope of works currently underway would have required additional supporting information (i.e., geotechnical assessment). Accordingly, Permit #5927 is void, as it is not possible to permit an addition to a building that no longer exists.

The works occurring onsite are a violation of Section 2 of Ontario Regulation 162/06. A Violation Notice was issued on March 26, 2019 and in that Notice you were advised that:

- (a) the works that have occurred onsite (i.e., demolition and construction of a new dwelling within the erosion hazard associated with the valley of Grindstone Creek) exceed the scope of works approved under CH Permit #5927;
- (b) the works are violations of Section 28(16) the Conservation Authorities Act and Ontario Regulation 162/06;
- (c) additional technical information is required (i.e., geotechnical assessment) and must be reviewed by CH staff to confirm that the works can meet CH's policies; and
- (d) CH staff is willing to work with you to bring the violation into compliance through our Compliance Agreement process. (note: a Compliance Agreement application was attached to our March 26, 2019 letter)

CH's policies allow for the replacement of buildings or structures that already exist on a valley wall, as well as additions that are minor in nature, subject to a number of criteria, including that a professional geotechnical engineer completes a geotechnical study to determine the risk of the proposed work. The geotechnical assessment is required to ensure the long-term stability of the valley wall is maintained and that no risk to life or property damage is anticipated. The geotechnical assessment may also make recommendations related to the construction of the dwelling (i.e., steps that can improve the long-term safety of the home) to address the hazards.

CH staff met with your agent on April 3, 2019 and provided a follow-up email on April 4, 2019 to outline the above and to discuss a path forward. CH staff also provided comments to the City of Burlington regarding Minor Variance Application 540-02-A-036/09. In each of those communications, CH staff was clear that a geotechnical assessment was required and that the assessment, as well as plans for the new dwelling, would need to be reviewed and approved by CH as part of the Compliance Agreement.

Since that time, it has come to our attention that the City of Burlington provided clearance for works to occur on the site in advance of having CH's sign-off. We are working with City staff on this matter.

Given that conformity with CH's permit is not possible, Permit #5927 is void. Section 8 of Ontario Regulation 162/06 states:

Cancellation of permission

8. (1) The Authority may cancel a permission granted under section 3 or 6 if it is of the opinion that the conditions of the permission have not been met. O. Reg. 162/06, s. 8 (1); O. Reg. 59/13, s. 6 (1).

(2) Before cancelling a permission, the Authority shall give a notice of intent to cancel to the holder of the permission indicating that the permission will be cancelled unless the holder shows cause at a hearing why the permission should not be cancelled. O. Reg. 162/06, s. 8 (2).

(3) Following the giving of the notice under subsection (2), the Authority shall give the holder at least five days notice of the date of the hearing. O. Reg. 162/06, s. 8 (3); O. Reg. 59/13, s. 6 (2).

In our view, given that the permit is void, a hearing is not warranted, as the circumstances that were set out in the application for the permit have fundamentally changed.

CH is looking for your cooperation to resolve the matters outlined in this letter. Please provide written confirmation by September 6, 2019, that you are willing to enter into a Compliance Agreement with CH and that you will provide the items outlined in our March 26, 2019 letter, as well as incorporate any recommendations made by your geotechnical engineer into the site design. Once a Compliance Agreement has been issued by CH, you will have the necessary approvals from us to move forward with the City of Burlington.

If you have any questions, please contact the undersigned at extension 2228.

Regards,

A handwritten signature in cursive script that reads "Kellie McCormack".

Kellie McCormack, MA, MCIP, RPP
Senior Manager, Planning and Regulations

Cc: Heather MacDonald and Nick Anastasopoulos, City of Burlington
Kenneth Jull, Gardiner Roberts LLP

This is **Exhibit “P”** referred to in the Affidavit of Shelley Young, affirmed before me this 1st day of November, 2022.

A handwritten signature in black ink that reads "A. Bouchard" with a checkmark-like flourish at the end.

A Commissioner for taking affidavits

From: Barb Veale

Sent: September 17, 2019 11:53 AM

To: gordon.baron@lbbdesigns.ca <gordon.baron@lbbdesigns.ca>

Cc: Kellie McCormack <kmccormack@hrca.on.ca>; Hassaan Basit <hbasit@hrca.on.ca>; Mayor Marianne Meed Ward <marianne.meedward@burlington.ca>; Kelvin.Galbraith@burlington.ca <Kelvin.Galbraith@burlington.ca>; Nick.Anastasopoulos@burlington.ca <Nick.Anastasopoulos@burlington.ca>; rdon.baron@lbbdesigns.ca <gordon.baron@lbbdesigns.ca>; jrudyk@outlook.com <jrudyk@outlook.com>

>

Subject: 835 Spring Gardens Road

Dear Mr. Baron,

There has been quite a bit of correspondence regarding the status of approvals at 835 Spring Gardens Road. Much of the information is incorrect and misleading. In an effort to clarify the process moving forward, it is important that all parties involved meet so that we can continue move the file as expeditiously as possible.

From Conservation Halton's (CH's) perspective, it is our responsibility as the regulatory agency to ensure that any redevelopment within a hazard area is properly constructed such that there is minimum risk to life and property. As you know, the permit issued by CH on May 28, 2018 was for a minor addition to the existing dwelling, plus an expansion to the existing garage, a rear balcony, covered front porch and an on-grade patio. Since that permit was issued, the existing dwelling was completely demolished and construction on a new dwelling was started.

Once CH staff became aware of this, it was indicated to the landowners and agents that the property was in violation of Ontario Regulation 162/06. CH is concerned that the adjacent bank of Grindstone Creek may be unstable and may present a substantial risk to the stability of the slope and the construction of the new dwelling.

Moving forward, CH has offered repeatedly to meet with the landowners and their consultants to talk about next steps (e.g., the meeting that was cancelled by Lifestyle by Barons on May 17, 2019). In order for CH to issue a permit for the new dwelling a geotechnical assessment must be submitted with an application for a compliance agreement. After the compliance agreement is signed, CH will allow the landowner to resume building, once the City of Burlington has reinstated a building permit.

To this end, Mayor Meed Ward has recommended setting up a meeting with all parties. She indicated that, *"I believe a meeting with all parties present at the same time, to hear the same information, is critical. That would include: CBO (Nick), CH (Barb and Kellie), Kelvin & myself, homeowners, and anyone they wish to bring (builder/architect)"* and suggested some times (between 2:30 and 3:30 p.m. today, 5 p.m. today or tomorrow, Wed., at 4:30 p.m.).

We look forward to meeting with all concerned parties in order to clarify requirements, correct misinformation, and move forward with the file as quickly as possible.

Yours very truly,

Barbara Veale PhD, MCIP, RPP
Director, Planning and Watershed Management

Conservation Halton
2596 Britannia Road West, Burlington, ON L7P 0G3
905.336.1158 ext. 2273 | Fax 905.336.6684 | bveale@hrca.on.ca
conservationhalton.ca

Thank you for thinking about the environment before printing this e-mail. If you are not an intended recipient, you must not disclose, copy, or distribute its contents or use them in any way. Please advise the sender immediately and delete this e-mail.

This is **Exhibit “Q”** referred to in the Affidavit of Shelley Young, affirmed before me this 1st day of November, 2022.

A handwritten signature in black ink that reads "A. Bouchard" with a stylized flourish at the end.

A Commissioner for taking affidavits

ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

McWatt ACJ SCJ, Kristjanson and Favreau JJ.

BETWEEN:)	
)	
Ivan Rudyk and Shelley Young)	Arkadi Bouchelev, for the Applicants
)	
Applicants)	
)	
– and –)	
)	
Halton Region Conservation Authority)	Kenneth Jull and Eliane Leal da Silva, for the Respondent
)	
Respondent)	
)	
)	HEARD at Toronto (by videoconference):
)	December 15, 2021

Favreau J.

Overview

[1] The applicants, Ivan Rudyk and Shelley Young, seek an order quashing a decision made by the respondent, Halton Region Conservation Authority (the “Authority”), voiding a permit that would have allowed them to build an addition on their house. The applicants also seek extensive declaratory relief that would allow them to proceed with the project without further interference from the Authority.

[2] I am satisfied that the applicants are entitled to an order quashing the Authority’s decision. Section 8 of O. Reg. 162/06, which gives the Authority the power to cancel a permit, provides that permit holders are entitled to notice and a show cause hearing before a permit can be cancelled. The Regulation does not give the Authority the power to declare a permit “void” without a hearing. The Authority’s decision voiding the permit was both unreasonable and procedurally unfair. However, as discussed more fully below, it would not be appropriate for this Court to grant the broad declaratory relief sought by the applicants.

Statutory and regulatory authority of the Authority

[3] Before reviewing the background to the dispute between the parties, it is helpful to understand the Authority’s statutory and regulatory powers.

[4] The *Conservation Authorities Act*, R.S.O. 1990, c. C.27, provides for the establishment of conservation authorities in municipalities in Ontario. Section 28(1) of the Act gives conservation authorities the power to establish regulations addressing various matters, including “prohibiting, regulating or requiring the permission of the authority for development if, in the opinion of the authority, the control of flooding, erosion, dynamic beaches or pollution or the conservation of land may be affected by the development”.

[5] Section 28(25) of the *Act* defines “development”, which includes:

- (a) the construction, reconstruction, erection or placing of a building or structure of any kind,
- (b) any change to a building or structure that would have the effect of altering the use or potential use of the building or structure, increasing the size of the building or structure or increasing the number of dwelling units in the building or structure...

[6] In this case, the relevant regulation is O. Reg. 162/06, titled *Halton Conservation Authority: Regulation of Development, Interference with Wetlands and Alterations to Shorelands and Watercourses*.

[7] Section 2(1) of O. Reg. 162/06 prohibits developments in areas that may be affected by various events, including “erosion”.

[8] Section 3(1) of O. Reg. 162/02 gives the Authority the power to grant permission for development in the areas restricted by section 2(1), where the Authority is of the “opinion, the control of flooding erosion, dynamic beaches, pollution or the conservation of land will not be affected by the development”. Subsection (2) requires the Authority to give the permission in writing and subsection (4) provides that the Authority can designate one or more employees to exercise the powers under subsection (1).

[9] Section 8 of O. Reg. 162/02 addresses the cancellation of permits given under section 3(1), and requires notice and a show cause hearing:

- 8. (1) The Authority may cancel a permission granted under section 3 or 6 if it is of the opinion that the conditions of the permission have not been met.
- (2) Before cancelling a permission, the Authority shall give a notice of intent to cancel to the holder of the permission indicating that the permission will be cancelled unless the holder shows cause at a hearing why the permission should not be cancelled.
- (3) Following the giving of the notice under subsection (2), the Authority shall give the holder at least five days notice of the date of the hearing.

Background

The applicants' construction project

[10] The applicants own a bungalow, built in 1957, that backs onto a ravine in Burlington.

[11] The applicants decided to renovate their house, in part to make it more accessible for Ms. Young, who has health issues due to a car accident.

[12] The applicants hired Lifestyles by Barons ("Lifestyles") to renovate their house. In turn, Lifestyles retained Empire Design Company ("Empire") to prepare design drawings. As part of their contracts, Lifestyles and Empire were to apply for the necessary permits and approvals, including a minor variance from the City of Burlington's Committee, a building permit from the City of Burlington and a development permit from the Authority.

[13] Empire submitted the application for the development permit to the Authority in early May 2018. The application form described the project as a "2-storey addition to the side yard" and was categorized as an "alteration/addition to existing structure". With the application, Empire submitted a survey that labelled the bungalow as a "1 Storey Brick Dwelling". The Authority did not ask for drawings at the time of the application. However, one of the Authority's staff members visited the site before the permit was approved.

[14] The Authority issued the permit to the applicants on May 28, 2018. The permit was for a "proposed 2-storey addition, rear balcony, covered front porch and on-grade patio". The cover letter stated that the Authority had to approve any changes to the approved design.

[15] The applicants also obtained the other necessary approvals, including a building permit issued by the City of Burlington on November 1, 2018.

[16] In January 2019, Lifestyles began demolition work. The south and east walls were not meant to be part of the demolition. However, both walls partially collapsed when the roof to the building was removed.

[17] After the partial collapse of the two walls, an engineering firm retained by the applicants determined that the building was structurally unsound. Lifestyles demolished the remaining parts of the walls and rebuilt them in the same locations with new materials. The City of Burlington inspected and approved the rebuilt walls.

[18] On March 15, 2019, the Authority communicated with the City of Burlington stating that the Authority had not approved the work on the house. On March 20, 2019, the City issued a stop-work order and an order to comply to the applicants.

[19] On March 26, 2019, the Authority issued a Notice of Violation to the applicants. The Notice stated that the applicant had not obtained permissions to undertake "the full demolition and/or construction of an entire dwelling" and that they were in violation of section 2 of O. Reg. 162/06. The Notice encouraged the applicants to enter into a compliance agreement, including by obtaining a geotechnical assessment showing compliance with the Authority's Policy.

[20] On May 17, 2019, the City of Burlington lifted the stop work order and order to comply on the basis that the work had been required because the structure was unsafe. The City also stated that the applicants could commence construction work in compliance with their permits.

[21] The applicants resumed work on the house.

[22] However, on August 22, 2019, the Authority sent a letter to the applicants notifying them that the development permit it had issued was “void”. The Authority provided the following rationale for its decision:

The subject property is located within the erosion hazard associated with the valley of Grindstone Creek. It is also in an area with known slope instability issues. Given that the scale/scope of works has changed from what was originally permitted, a geotechnical assessment is required to ensure that the long-term stability of the valley wall is maintained and that there is no risk to life or property damage.

CH issued Permit #5927, on May 28, 2018, for the construction of a minor addition to the existing dwelling (specifically an expansion of the existing single car garage with living space above), a rear balcony, covered front porch and on-grade patio. However, since CH issued that permit, the existing dwelling was completely demolished and a new dwelling is now under construction. Consequently, the works occurring onsite are beyond the scope of what was approved under Permit #5927. The scale and scope of works currently underway would have required additional supporting information (i.e., geotechnical assessment). Accordingly, Permit #5927 is void, as it is not possible to permit an addition to a building that no longer exists.

[23] In its decision letter, the Authority referred to the process in section 8 of O. Reg. 162/06 for cancelling a permit. However, the Authority stated “[i]n our view, given that the permit is void, a hearing is not warranted, as the circumstances that were set out in the application for the permit have fundamentally changed”.

[24] The letter also requested that the applicants enter into a “compliance agreement” and that they pay a fee of \$3,200 “with a 100% surcharge”.

[25] The evidence from cross-examinations of the Authority’s affiant is that the decision to “void” the permit was not made or approved by the Authority’s Board. Rather, it was made by Authority employees.

[26] On September 23, 2019, the City of Burlington issued a stop work order to the applicants, requiring them to obtain approval from the Authority before proceeding any further with the work.

[27] In December 2019 and July 2020, the Authority sent “with prejudice” communications to the applicants, inviting them to submit a development permit application for a “new dwelling”.

Proceedings in the Superior Court

[28] The applicants initially brought an application in the Superior Court seeking extensive declaratory relief, including declarations that its construction project was not a “development” for the purpose of the *Conservations Authorities Act* and O. Reg. 162/06. In the alternative to the substantive declaratory relief sought, the applicants asked for a declaration that the voiding of the permit was *ultra vires* because the Authority failed to comply with the process in s. 8 of O. Reg. 162/06.

[29] For the purpose of the application, the parties prepared extensive affidavit evidence, including expert reports, and conducted cross-examinations.

[30] In a decision dated August 23, 2021, Sharma J. transferred the matter to the Divisional Court to be heard as an application for judicial review. He explained the basis for this decision as follows:

[The] factual allegations, as well as the legal issues on which the applicants seek orders, challenge the exercise of statutory power and decision-making by the respondent conferred upon it under the *Act* and O. Reg. 162/06. The declarations sought by the applicants call into question the authority of the respondent to regulate matters which the applicants say is not “development”, as well as the exercise of the respondent’s authority to cancel or void a permit previously issued. Whether that authority exists and whether it was exercised properly is what this entire application is about.

It is therefore a judicial review application challenging a statutory power or statutory power of decision. Section 2(1)2 of the *JRPA*, states that the court may, on an application for judicial review, grant relief by way of a declaration “in relation to the exercise, refusal to exercise or proposed exercise of a statutory power.” The court may also set aside a decision for error of law (s.2(2)), or where a decision is unauthorized or invalid (s.2(4)). These are the types of remedies the applicants seek. Section 6(1) of the *JRPA*, however, states that judicial review applications are to be made to the Divisional Court.

[31] As part of his decision, Sharma J. left the issue of costs of the application to the Divisional Court in the context of the application for judicial review

Other litigation

[32] The Authority has brought charges against the applicants under the *Provincial Offences Act*, R.S.O. 1990, c. P.33. In that context, the Authority obtained a search warrant in relation to the work on the property.

[33] On March 19, 2021, the applicants commenced a civil action against Lifestyles, Empire and others, seeking damages for negligence. In the statement of claim, the applicants allege that the plaintiffs misrepresented the nature of the project to the Authority.

Issues and analysis

[34] The applicants argue that the Authority has no jurisdiction over the work on their house other than the garage. They claim that the work they plan to do is on the existing footprint of the building and that this work thereby does not constitute a “development” as defined in the *Conservation Authorities Act*. They seek broad declaratory relief arising from this argument that would essentially allow them to proceed with the work without further interference by the Authority. In the alternative, the applicants challenge the Authority’s decision to “void” their development permit on the basis that the Authority did not have the jurisdiction to cancel the permit without following the process in section 8 of O. Reg. 162/06.

[35] For its part, the Authority argues that the application for judicial review should be dismissed on the basis that it is premature and/or moot, or on the basis that the applicants’ initial permit application was a “sham”. Essentially, these arguments turn on the Authority’s position that the project it approved is fundamentally different from the project the applicants are executing and the applicants therefore need a new permit to proceed with the project. From this perspective, the Authority argues that the application for judicial review has no utility because the crux of the issues between the parties is whether the applicants will be entitled to a development permit for their new project.

[36] In my view, the broad declaratory relief sought by the applicants is an overreach. It is not the role of the Divisional Court on an application for judicial review to grant broad declarations regarding the rights of a party under a statute. Rather, the Court reviews the decision of an administrative decision maker to determine whether the decision was reasonable and/or procedurally fair. The relief available flows from that determination. Accordingly, the role of the Court on this application for judicial review is to determine whether the decision of the Authority voiding the permit was unreasonable or procedurally unfair and, if so, what remedy to grant in the circumstances. As set out below, in my view, the Authority’s decision was both unreasonable and procedurally unfair. The appropriate remedy is to quash the decision. This means that the permit remains valid, but the Authority is not precluded from following the process set out in section 8 of O. Reg. 162/06 to give notice to the applicants that it intends to cancel the permit and to hold a show cause hearing.

[37] Insofar as the issues raised by the Authority are concerned, in my view they have no merit. They all presuppose that the Authority was entitled to “void” the development permit. However, as reviewed below, the Authority was not entitled to do so without following the process in section 8 of O. Reg. 162/06.

[38] Based on the issues as described above, the analysis below is organized as follows:

- a. Standard of review;
- b. Whether the decision to void the permit was unreasonable;
- c. Whether the decision to void the permit was procedurally unfair;
- d. Whether the application for judicial review should be dismissed on the basis that it is moot, premature and/or based on a sham; and

- e. The appropriate remedy.

Standard of review

[39] The standard of review to be applied to the substance of the Authority’s decision is reasonableness: *Laforme v. The Corporation of the Town of Bruce Peninsula*, 2021 ONSC 5287 at paras. 18-19.

[40] In accordance with the Supreme Court of Canada’s decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, at paras. 99-101, the principles to be applied in deciding whether a decision is reasonable include the following:

- a. Reasonableness is concerned with justification, transparency and intelligibility. A decision is unreasonable if it is internally incoherent or if it is untenable having regard to the relevant factual and legal constraints.
- b. The party challenging the decision has the burden of showing that it is unreasonable. A court should not set aside a decision based on minor flaws or peripheral shortcomings. To justify a finding of unreasonableness, the flaws or shortcomings must be sufficiently central or significant to the merits of the decision.
- c. The role of the court is to review the decision and not to decide the issue afresh. The focus of the reasonableness inquiry is therefore on the decision-making process and the outcome.

[41] There is no standard of review to be applied to the issue of procedural fairness. Rather, the Court is to determine whether the decision was procedurally fair having regard to the factors in *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817.

The Authority’s decision to “void” the permit was not reasonable

[42] The Authority’s decision to “void” the permit was not reasonable because it had no authority to cancel a development permit without following the process set out in section 8 of O. Reg. 162/06.

[43] In *Vavilov*, at para. 101, the Supreme Court held that one of the potential “fundamental flaws” in an administrative decision that would justify a court’s intervention is where the decision is “untenable in light of the ... legal restraints that bear on it”. Again, at para. 108, the Court emphasized that administrative decision makers are constrained by their constituting statutes and that any exercise of discretion “must ultimately comply ‘with the rationale and purview of the statutory scheme under which it is adopted.’”

[44] In this case, section 8 of O. Reg. 162/06 sets out the process for the Authority to cancel a development permit. It requires the Authority to give notice to the permit holder and to hold a show cause hearing. There is no provision in the *Conservation Authorities Act* or O. Reg. 162/06 that allows the Authority to “void” a permit without following this process. The Authority’s use of the word “void” is merely a matter of semantics. What the Authority did was cancel the applicant’s permit. In doing so, it was required to follow the process set out in the regulation.

[45] Another fundamental flaw in the Authority’s decision to cancel the permit without notice and a show cause hearing is that the O. Reg. 162/06 suggests that this is a decision that cannot be made by the Authority’s staff but that must be made by the Authority’s Board. Section 3(4) of O. Reg. 162/06 gives the Authority the ability to delegate to its employees the power to grant a permit. However, there is no such delegation in section 8 of O. Reg. 162/06. In this case, the decision was made by Authority staff members who, on the face of the regulation, did not have the authority to make such a decision.

[46] The Authority justified its decision to “void” the permit and forego the process set out in section 8 of O. Reg 162/06 on the basis that the applicants were building a new structure and “the circumstances that were set out in the application for the permit have fundamentally changed”. However, it is evident from the record and issues before us that there is a significant dispute between the parties about the scope of the original permit, and specifically the extent to which it allowed the applicants to add a second floor to parts of the building. The effect of the collapsed walls is an added complication that raises issues about whether rebuilding those walls amounts to a change in the scope of work that may justify canceling a permit pursuant to section 8(1) of O. Reg. 162/06. However, these are precisely the types of issues that should be addressed and resolved at a show cause hearing. The applicants should have an opportunity to put their evidence and arguments before the proper decision makers, after which the Authority can decide whether the permit should be cancelled or not.

[47] Through their extensive records, including expert evidence, the parties seemed to invite this Court to resolve the issue of whether the work on the building exceeded the scope of the original permit. I address this point more fully in the section dealing with remedy, however I wish to emphasize again that this is not the proper role of the Divisional Court on an application for judicial review. An application for judicial review is to be decided on the record before the original decision maker. Much of the parties’ evidence was developed for the application in the Superior Court and, ultimately, before this Court. The evidence may ultimately be relevant at a show cause hearing. But it is not the role of this Court to step into the shoes of the show cause decision makers, which are presumably members of the Authority’s Board, to make the decision they should have made if the proper process had been followed.

The Authority’s decision to “void” the permit was procedurally unfair

[48] The Authority’s decision to “void” the permit was procedurally unfair because the Authority did not follow the requirements in section 8 of O. Reg. 162/06 and because it did not follow the basic requirements of procedural fairness for cancelling a permit.

[49] As held in *Vavilov*, at para. 77, the content of the duty of procedural fairness is to be determined in accordance with the factors established by the Supreme Court in *Baker*. Those factors include “(1) the nature of the decision being made and the process followed in making it; (2) the nature of the statutory scheme; (3) the importance of the decision to the individual or individuals affected; (4) the legitimate expectations of the person challenging the decision; and (5) the choices of procedure made by the administrative decision maker itself”.

[50] In this case, as mentioned above, the regulatory scheme provided for notice and a show cause hearing. The Authority did not provide these procedural guardrails and the decision was procedurally unfair on that basis alone.

[51] In addition, in my view, even in the absence of such regulatory requirements, the Authority was still required to give the applicants notice and an opportunity to be heard. The applicants obtained a permit from the Authority to renovate their home. They embarked on the work and the authority cancelled their permit mid-work without notice and without an opportunity to be heard. The Authority's decision had a significant impact on the applicants' interests, including their financial interests. This is the type of decision that warrants at least some procedural safeguards. In this case, the Authority did not afford the applicants any such safeguards.

The application for judicial review should not be dismissed on the basis of prematurity or mootness or that the original application for a permit was a sham

[52] The Authority's arguments that the application for judicial review should be dismissed on these preliminary issues have no merit because they assume that the Authority was justified in declaring that the permit was "void".

[53] The doctrine of prematurity provides that, absent exceptional circumstances, on an application for judicial review, the Court should not intervene until the administrative proceedings have fully run their course: *Volochay v. College of Massage Therapists of Ontario*, 2012 ONCA 541. In this case, the Authority takes the position that, because the applicants are required to apply for a new permit given the change in the scope of work, it is premature for this Court to decide whether the Authority's decision was reasonable or procedurally unfair. This argument misconceives the doctrine of prematurity and the nature of the mischief in this case. As far as the applicants are concerned, the administrative proceedings are complete. They had a permit. The permit was voided without giving them an opportunity to participate in a show cause hearing. The Authority's position that the applicants can and should apply for a new permit assumes that the voiding of the original permit was justified. It was not justified in the absence of a show cause hearing. The doctrine of prematurity therefore has no application.

[54] The doctrine of mootness provides that, absent issues that engage the public interest, the court should not decide an issue that is no longer live between the parties: *Borowski v. Canada*, [1989] 1 S.C.R. 342. In this case, the Authority takes the position that the validity of the original permit is moot given the change in the scope of work. Again, the issue of whether there has been a change in the scope of work that would justify cancelling the permit is at the heart of the dispute between the parties. It is an issue that should have been decided at a show cause hearing. There is therefore no basis for dismissing the application for judicial review as moot.

[55] Finally, the Authority argues that the application for judicial review should be dismissed because the original application for a permit was a sham. The Authority argues that the permit was a sham because the applicants misrepresented the scope of the work they intended to do. Essentially, the Authority argues that, because judicial review is discretionary, the Court should decline to grant a remedy that would reward the applicants' alleged dishonesty. This argument again relies on the Authority's position that there is a difference between the scope of work represented in the permit application and the actual work the applicants have performed and intend

to perform. As already stated, this is at the heart of the dispute between the parties. Based on the record before the Court, it is far from obvious that the original permit application was a sham. There are several references to a two-storey addition and the precise scope of the work is evident from drawings provided to the Authority a few months after it issued the permit. There is no merit to the Authority's argument that the application should be dismissed on the basis that the original permit application was a sham.

[56] Ultimately, the Authority's arguments reviewed above highlight the misguided manner in which the Authority has dealt with the issues in this case. Section 8 of O. Reg. 162/06 provides a clear process for deciding whether a development permit should be cancelled on the basis that a permit holder has not complied with a condition in the permit. Rather than complying with this requirement, the Authority has persisted in avoiding this process by taking the position that the scope of work undertaken by the applicants was different from what they applied for. However, this is precisely the issue a show cause hearing is meant to address. Unfortunately, the Authority's persistent failure to abide by its procedural obligations has imposed significant costs and delays on all parties.

Appropriate remedy

[57] In my view, the appropriate remedy in this case is to quash the Authority's decision. This means that the development permit originally issued by the Authority remains valid. It will be up to the Authority to decide whether to seek to cancel the permit and, if so, to do so in accordance with the procedure set out in section 8 of the O. Reg. 162/06.

[58] As indicated above, both sides appear to invite this Court to decide whether the permit should be cancelled. The applicants argue that the work at issue is not a "development" within the meaning of the *Conservation Authorities Act* or that, even if it is, it falls within the scope of the original permit. They ask this Court to make declarations that would allow them to continue with the work without further interference from the Authority. For its part, as indicated above, the Authority seems to argue that it is self-evident that the work at issue is a development and that it is not within the scope of the original permit.

[59] In *Vavilov*, at para. 142, the Supreme Court stated that, as a general rule, courts should "respect the legislature's intention to entrust the matter to the administrative decision maker". The Court noted a few exceptions where it may be appropriate for courts to decide the issue; for example, where the result is inevitable or where there has been significant delay or there is urgency. In this case, the outcome is not inevitable. For example, the applicants have legitimate arguments regarding the original scope of the permit and the Authority may have legitimate concerns regarding whether the walls collapsing changed the scope of the work such that the permit should be cancelled and the applicants should be required to apply for a new permit. The parties' evidence and their arguments should form part of the record on a show cause hearing. This Court should not decide these issues as a matter of first impression.

[60] I appreciate that, from the applicants' perspective, there has been extensive delay in this matter. However, this is not sufficient to justify having this Court essentially conduct the show cause hearing. In addition, while most of the blame for the delay can be laid at the Authority's feet for consistently seeking to defend its position that it had authority to "void" the permit without a

show cause hearing, some of the delay is also attributable to the applicants for seeking to challenge the Authority's decision through an application for declaratory relief rather than through an application for judicial review. This outcome may cause further delay if the Authority chooses to pursue the cancellation of the permit. However, it will ensure that the decision is made following the proper process by decision-makers who have been entrusted by the legislature to decide the issues.

Costs

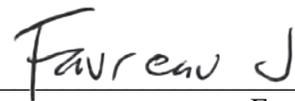
[61] As the successful parties, the applicants are entitled to their costs. The applicants seek costs on a partial indemnity basis in the amount of \$117, 482.87, all inclusive. This amount is far higher than the costs typically awarded by the Divisional Court for a hearing of this nature. However, if the respondents had been successful, they would have sought costs in the amount of \$289.417.59, which is close to three times the amount sought by the applicants.

[62] In my view costs of \$100,000, all inclusive, to the applicants is reasonable in the circumstances of this case. This amount accounts for the fact that the Authority was successful in its motion to move the application from the Superior Court to the Divisional Court, but nevertheless recognizes that the applicants have incurred significant costs due to Authority's failure to follow the process mandated by its own regulation.

Conclusion

[63] For the reasons above, the application for judicial review is granted. The decision of the Conservation Authority voiding he permit is quashed. The Conservation Authority is to pay costs of \$100,000 all inclusive to the applicants for the original application and the application for judicial review.

I agree



Favreau J.



McWatt A.C.J. S.C.J.

I agree



Kristjanson J.

Released: January 26, 2022

CITATION: Rudyk v. Halton Region Conservation Authority, 2022 ONSC 518
DIVISIONAL COURT FILE NO.: 779/21
DATE: 20220126

ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

McWatt ACJ SCJ, Kristjanson and Favreau JJ.

BETWEEN:

Ivan Rudyk and Shelley Young

Applicants

– and –

Halton Region Conservation Authority

Respondent

REASONS FOR JUDGMENT

FAVREAU J.

Released: January 26, 2022

This is **Exhibit “R”** referred to in the Affidavit of Shelley Young, affirmed before me this 1st day of November, 2022.

A handwritten signature in black ink that reads "A. Bouchard" with a stylized flourish at the end.

A Commissioner for taking affidavits

COURT OF APPEAL FOR ONTARIO

BEFORE: TULLOCH, LAUWERS AND
PACIOCCO JJ.A.

DATE: JUNE 6, 2022

DISPOSITION OF COURT HEARING:



COURT FILE NO.: M53197

TITLE OF PROCEEDING: Rudyk, Ivan et
al. v. Halton Region Conservation Authority

The application for leave to appeal is dismissed.

Costs payable to the respondent in the amount of \$5,000.

Tulloch J.A.

Plauwers J.A.

Pacocco J.A.

This is **Exhibit “S”** referred to in the Affidavit of Shelley Young, affirmed before me this 1st day of November, 2022.

A handwritten signature in black ink that reads "A. Bouchard" with a checkmark-like flourish at the end.

A Commissioner for taking affidavits

**ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT**

B E T W E E N:

IVAN RUDYK and SHELLEY YOUNG

Applicants

and

HALTON REGION CONSERVATION AUTHORITY

Respondent

APPLICATION UNDER Section 97 of the Courts of Justice Act, R.S.O. 1990, c. C.43 and Sections 2 and 6 of the Judicial Review Procedure Act, R.S.O. 1990, c. J.1

COSTS OUTLINE OF THE RESPONDENT, HALTON REGION CONSERVATION AUTHORITY

Part 1 - Fees

The Respondent, Halton Region Conservation Authority, provides the following outline of the costs it will seek if successful:

SUBSTANTIAL INDEMNITY

Substantial Indemnity Fees (as detailed below)	\$358,335.50
Disbursements and HST (as detailed below)	\$74,319.88
TOTAL	\$432,655.38

PARTIAL INDEMNITY

Partial Indemnity Fees (as detailed below)	\$239,541.00
Disbursements and HST (as detailed below)	\$58,876.59
TOTAL	\$298,417.59

The following points are made in support of the costs sought with reference to the factors set out in subrule 57.01(1):

The amount claimed and the amount recovered in the proceeding

The complexity of the proceeding

The importance of the issues

The conduct of any party that tended to shorten or to lengthen unnecessarily the duration of the proceeding

Whether any steps in the proceedings were improper, vexatious or unnecessary or taken through negligence, mistake or excessive caution

Please refer to the Decision of the Honourable Justice Sharma, dated August 23, 2021

A party's denial of or refusal to admit anything that should have been admitted

The experience of the party's lawyers:

Kenneth Jull - Called to the Bar 1984
Tim Duncan - Called to the Bar 2012
Jonathan Nehmetallah - Called to the Bar 2017
Ian Spiegel - Called to the Bar 2020
Eliane Leal da Silva - Called to the Bar 2021
Eli Bordman, called the Bar in 2021

The hours spent, the rates sought for costs and the rate actually charged by the party's lawyer:

PREMATURITY MOTION

INCLUDING: All communications with the Court; All communications with client; All communications with Counsel; Prepare, serve and file Notice of Motion; Prepare, serve and file Fresh as Amended Notice of Motion; Prepare, serve and file Motion Record; Receive and review Responding Motion Record; Prepare to attend and argue motion, in accordance with the Order of Justice Vella, dated April 30, 2021.

Solicitor/Law Clerk/ Student-at-law	Time (hrs)	Billable Rate	SI Rate	SI Fees	PI Rate	PI Fees
Kenneth Jull	18.6	\$400	\$360	\$6,696.00	\$240.00	\$4,464.00
Jonathan Nehmetallah	22.8	\$220	\$200	\$4,560.00	\$130.00	\$2,964.00
Eliane Leal da Silva	7.4	\$200	\$180	\$1,332.00	\$120.00	\$888.00
Eli Bordman (Student at Law)	4.0	\$180	\$80	\$320.00	\$60.00	\$240.00
Neesa Craven (Law Clerk)	4.6	\$220	\$80	\$368.00	\$60.00	\$276.00
SUBTOTAL				\$13,276.00		\$8,832.00

APPLICATION BEFORE JUSTICE SHARMA

INCLUDING: All communications with the Court; All communications with client; All communications with expert, Terraprobe and the review of all reports; Receive and review expert reports of the Applicants; All communications with Counsel; Prepare for and attend before Justice Vella, April 30, 2021 re: timetable; Receive and review the Application Record, Supplementary Application Record, Second Supplementary Application Record, Factum, Brief of Authorities, and Expert Reports of the Applicants; Prepare the Affidavits of Barbara Veale, Charles Priddle, Billy Singh, Cassandra Connolly, and Kelly McCormack; Prepare, serve and file Responding Application Record, Supplementary Application Record, Factum, Brief of Authorities, and Compendium of Key Documents; Draft Willsay Statements; Prepare to attend and argue application in accordance with the Order of Justice Vella, dated April 30, 2021; Attendance before Justice Sharma on August 23, 2021.

APPLICATION FOR JUDICIAL REVIEW

INCLUDING: Attend Case Conference before Justice Corbett on August 25, 2021; Receive and review Factum and Reply Factum of the Applicants; Prepare Factum, Book of Authorities and Compendium for Oral Argument of the Respondents on the Application for Judicial Review; Prepare Cost Outline; Prepare to attend and argue the Application for Judicial Review.

Solicitor/Law Clerk/	Time	Billable	SI	SI	PI	PI
Kenneth Jull	709.7	\$400	\$360	\$255,492.00	\$240.00	\$170,328.00
Tim Duncan	65.5	\$250	\$225	\$14,737.50	\$150.00	\$9,825.00
Jonathan Nehmetallah	12.5	\$220	\$200	\$2,500.00	\$130.00	\$1,625.00
Ian Spiegel	28.7	\$200	\$180	\$5,166.00	\$120.00	\$3,444.00
Eliane Leal da Silva	125.7	\$200	\$180	\$22,626.00	\$120.00	\$15,084.00
Eli Boardman	6.7	\$200	\$180	\$1,206.00	\$120.00	\$804.00
Eli Bordman (Student at Law)	92.5	\$180	\$80	\$7,400.00	\$60.00	\$5,550.00
Neesa Craven (Law Clerk)	29.1	\$220	\$80	\$2,328.00	\$60.00	\$1,746.00
Attendance Fee: Kenneth Jull	7.0	\$400	\$360	\$2,520.00	\$240.00	\$1,680.00
SUBTOTAL				\$313,975.50		\$210,086.00

CROSS-EXAMINATIONS - APPLICATION

INCLUDING: All communications with counsel regarding scheduling of cross-examination dates and service of notices; All communications and meetings with client; Review the Application Record, Supplementary Application Record, Second Supplementary Application Record; Prepare for, attend and conduct cross-examinations and Rule 39.03 Examination of the Applicant, Ivan Rudyk; Review transcripts of cross-examinations; Receive and review the Answers to Undertakings of Shelley Young; Prepare Answers to Undertakings of Kellie McCormack and Charles Priddle.

Solicitor/Law Clerk/	Time	Billable	SI	SI	PI	PI
Kenneth Jull	103.5	\$400	\$360	\$37,260.00	\$240.00	\$24,840.00
Jonathan Nehmetallah	35.5	\$220	\$200	\$7,100.00	\$130.00	\$4,615.00
SUBTOTAL				\$44,360.00		\$29,455.00

FEES SUBTOTAL**(A) \$358,335.50****(B) \$239,541.00**

Specify the rate being charged to the client for each person identified in column 2. If there is a contingency fee arrangement, state the rate that would have been charged absent such an arrangement.

Any other material relevant to the question of costs

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Part 2 - Disbursements

Tariff / Description	Amount	HST
(22) PAID TO SUPERIOR COURT		
To file Motion Record (Prematurity Motion)	\$320.00	\$0.00
(24) PAID TO OFFICIAL EXAMINER		
March 12, 2021: Attendance, Oath, Return, Certificate - Shelley Young and Ivan Rudyk	\$694.00	\$90.22
March 15, 2021: Transcript of the Cross-Examination of Shelley Young	\$486.20	\$63.21
March 15, 2021: Transcript of the Rule 39.03 Examination of Ivan Rudyk	\$614.95	\$79.94
May 4, 2021: Attendance, Oath, Return, Certificate - Shelley Young	\$682.00	\$88.66
May 10, 2021: Attendance, Oath, Return, Certificate - Gordon Baron	\$682.00	\$88.66
May 13, 2021: Transcript, Second Copy: Cassandra Connolly	\$214.75	\$27.92
May 17, 2021: Transcript, Second Copy: Kellie McCormack	\$256.75	\$33.38
May 18, 2021: Transcript, First Copy: Shelley Young	\$940.62	\$122.28
May 25, 2021: Transcript, First Copy: Shan Goel	\$668.35	\$86.89
June 14, 2021: Transcript, First and Second Copy: Gordon Baron	\$1,939.60	\$252.15
(26) PAID TO EXPERT		
December 31, 2020: Paid to Terraprobe Limited	\$4,552.50	\$591.83
April 26, 2021: Paid to Terraprobe Limited	\$1,200.00	\$156.00
April 26, 2021: Paid to Terraprobe Limited	\$2,500.00	\$325.00
August 12, 2021: Paid to Terraprobe Limited	\$3,000.00	\$390.00
September 16, 2021: Paid to Terraprobe Limited	\$2,200.00	\$286.00
(35) OTHER NECESSARY DISBURSEMENTS FOR THE CONDUCT OF THE PROCEEDING		
Paid for miscellaneous digital imaging (printing, copying, scanning)	\$262.00	\$34.06
Paid for Transaction Levy Surcharge	\$100.00	\$13.00
Paid for Litigation Support	\$70.00	\$9.10
Paid for Telephone	\$49.46	\$6.43
Paid for Legal Process Servers	\$199.50	\$25.94
Paid for searches (miscellaneous)	\$43.00	\$5.59
Paid for Westlaw/eCarswell	\$2,906.50	\$377.85
SUBTOTAL (C) & (D)	\$24,582.18	\$3,154.08

(36) HST PAYABLE ON FEES AND TAXABLE DISBURSEMENTS

Disbursements - see Subtotal (B)	\$3,154.08
Fees: SUBSTANTIAL INDEMNITY	\$46,583.62
Fees: PARTIAL INDEMNITY	\$31,140.33

TOTAL DISBURSEMENTS AND HST (SUBSTANTIAL INDEMNITY)	\$74,319.88
TOTAL DISBURSEMENTS AND HST (PARTIAL INDEMNITY)	\$58,876.59

LAWYER'S CERTIFICATE

I CERTIFY that the hours claimed have been spent, that the rates shown are correct and that each disbursement

Date: December 13, 2021



Kenneth Jull

**ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT**

PROCEEDING COMMENCED AT TORONTO

COSTS OUTLINE

GARDINER ROBERTS LLP

Lawyers
Bay Adelaide Centre, East Tower
22 Adelaide Street West, Suite 3600
Toronto ON M5H 4E3

Kenneth Jull (23748N)

Tel: (416) 865-2964
kjull@grllp.com

Tel: (416) 865-6600

Lawyers for the Respondent,
Halton Region Conservation Authority

Email for parties served:

Arkadi Bouchelev: arkadi@bouchelevlaw.com

RCP-F 4C (September 1, 2020)

This is **Exhibit “T”** referred to in the Affidavit of Shelley Young, affirmed before me this 1st day of November, 2022.

A handwritten signature in black ink that reads "A. Bouchard" with a checkmark-like flourish at the end.

A Commissioner for taking affidavits

NOTICE OF HEARING TO CANCEL PERMISSION

IN THE MATTER OF
The Conservation Authorities Act,
R.S.O. 1990, Chapter 27

AND IN THE MATTER OF Conservation Halton Permit #5927
Pursuant to Regulations made under
Section 28, Subsection 12 of the said Act and in accordance with
Ontario Regulation 162/06 Subsection 8.

TAKE NOTICE THAT The Halton Region Conservation Authority intends to cancel the permission granted to Ivan Rudyk and Shelley Young, **835 Spring Gardens Road, City of Burlington of the Regional Municipality of Halton under Permit #5927** for a “proposed 2-storey addition, rear balcony, covered front porch and an on-grade patio within the valley of Grindstone Creek” as it is of the opinion that the terms and conditions of the permit cannot be met, specifically condition 1. “That the work to be carried out in accordance with plans submitted on May 10th, 2018 and stamped APPROVED by: Cassandra Connolly, Regulations Officer” and more particularly that changes were made to the approved design or installation methods which were not submitted or reviewed and approved by Conservation Halton prior to their implementation as required.

TAKE NOTICE THAT you are invited to make a delegation at a hearing before the Board of Directors of The Halton Region Conservation Authority to show cause at the hearing why the permission should not be cancelled.

TAKE NOTICE THAT this hearing is governed by the provisions of the Statutory Powers Procedure Act. Under the Act, a witness is automatically afforded a protection that is similar to the protection of the Ontario Evidence Act. This means that the evidence that a witness gives may not be used in subsequent civil proceedings or in prosecutions against the witness under a Provincial Statute. It does not relieve the witness of the obligation of this oath since matters of perjury are not affected by the automatic affording of the protection. The significance is that the legislation is Provincial and cannot affect Federal matters. If a witness requires the protection of the Canada Evidence Act that protection must be obtained in the usual manner. The Ontario Statute requires the tribunal to draw this matter to the attention of the witness, as this tribunal has no knowledge of the affect of any evidence that a witness may give.

AND FURTHER TAKE NOTICE that The Halton Region Conservation Authority will provide you with at least five days notice of the date of the hearing and that if you do not attend at this Hearing, the Board of Directors of The Halton Region Conservation Authority may proceed in your absence, and you will not be entitled to any further notice in the proceedings.

DATED the 14 day of February 2022

Per: 
Hassaan Basit
President & CEO

This is **Exhibit “U”** referred to in the Affidavit of Shelley Young, affirmed before me this 1st day of November, 2022.

A handwritten signature in black ink that reads "A. Bouchard" with a checkmark-like flourish at the end.

A Commissioner for taking affidavits

**GEOTECHNICAL INVESTIGATION
AND SLOPE STABILITY ANALYSIS
835 SPRING GARDENS ROAD
BURLINGTON, ONTARIO**

**REPORT NO.: 5121-22-GC
REPORT DATE: OCTOBER 26, 2022**

**PREPARED FOR
SHELLEY YOUNG AND IVAN RUDYK
835 SPRING GARDENS ROAD
BURLINGTON, ONTARIO
L7T 2J6**

110 KONRAD CRESCENT, UNIT 16, MARKHAM, ONTARIO L3R 9X2
TEL.: 905-940-8509 FAX: 905-940-8192

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Gradation Curve

Slope Stability Analysis

Figure No. 1

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APPENDICES

Topographic Survey

Site Photographs

Appendix A

Appendix B

1.0 INTRODUCTION

Toronto Inspection Ltd. was retained by Shelley Young and Ivan Rudyk (hereinafter described as “the Client”) to conduct a geotechnical investigation for the proposed house renovation at a property located at 835 Spring Gardens Road in Burlington, Ontario (hereinafter described as “the Site”). The Site is located above a slope and waterway and a slope assessment is required to determine the long term stable top of slope.

The purpose of the investigation was to determine the subsoil and groundwater conditions for the slope stability analysis to determine the location of the long term stable top of slope.

This report is provided on the basis of the above terms of reference and on an assumption that the design of the structure will be in accordance with the applicable building codes and standards. If there are any changes in the design features relevant to the geotechnical analysis, our office should be consulted to review the design and to confirm the recommendations and comments provided in the report.

2.0 SITE CONDITION

The Site is located on the north side of Spring Gardens Road, approximately 500m west of Botanical Drive and 400m south of Plains Road West in Burlington, Ontario. The Site consists of a table land at the south portion and a wooded slope at the north portion. The Site is currently occupied by a dwelling that is still under construction, with a walkout basement on the north side. The property is located to the south of a tributary of Grindstone Creek.

3.0 INVESTIGATION PROCEDURE

The field work for the investigation was carried out on May 12 and 13, 2022, and consisted of drilling three sampled boreholes (22BH-1 to 22BH-3), extending to depths of between 1.8m and 26.4m from grade.

Borehole 22BH-1 was advanced using a truck mounted drill rig, equipped with continuous flight hollow stem augers and sampling rods, supplied and operated by a specialist drilling contractor. Soil samples were retrieved from the borehole at 0.76m intervals for the top 3.5m, and at 1.5m to 3.0m intervals thereafter, using a split spoon sampler in conjunction with Standard Penetration Tests using a driving energy of 475 joules (350 ft-lbs). Boreholes 22BH-2 and 22BH-3 were advanced by manually driving a standard spoon sampler at 0.6m intervals using a 70lb hammer. The number of blows to advance the sampler were recorded and are shown on the borehole log as equivalent N- values.

The soil samples were identified and logged in the field and were carefully bagged for later visual identification and laboratory testing, including moisture content determination and grain size analysis.

Groundwater observations were made in the boreholes during and upon the completion of drilling. Borehole 22BH-1 was completed as a monitoring well to determine the current static groundwater condition. The symbol (MW) beside the borehole identification number, indicates a monitoring well. The groundwater records are presented in the borehole logs.

The borehole locations, established in the field by our site personnel, are shown on the appended Borehole and Monitoring Well Location Plan, Drawing No. 1.

The ground elevations at the borehole locations were interpolated from the spot elevations shown on the “Site Plan for Building Permit, 835 Spring Gardens Road, Part of Lot 13 Concession 1, Geographic Township of East Flamborough, Being in the City of Burlington, Regional Municipality of Halton”, prepared by McKay, MacKay & Peters Limited, dated September 12, 2018, provided to our office by the Client.

4.0 SUMMARIZED SUBSURFACE CONDITIONS

Reference is made to the appended Borehole and Monitoring Well Location Plan (Drawing No. 1) and Log of Boreholes (Drawing Nos. 2 to 4) for details of field work, including soil classification, inferred stratigraphy, and groundwater observations.

The subsoil, below the pavement and topsoil at the borehole locations, consisted of layer of fill, underlain by native sand and clayey silt deposits. Brief descriptions of the subsurface materials, encountered at the borehole locations, are as follows:

4.1 Surface Course

A pavement consisting of 75mm thick asphalt on a 60mm thick granular base was contacted at the ground surface at the location of Borehole 22BH-1. A surficial layer of topsoil, 100mm to 150mm thick, was contacted at the ground surface at the locations of Boreholes 22BH-2 and 22BH-3.

4.2 Fill

Underlying the pavement and topsoil, a layer of fill was encountered at the borehole locations. The fill consisted of dark brown to brown sand with traces of topsoil and gravel, and extended to depths of between 0.3m and 1.8m from grade.

Based on the Standard Penetration N-values of 4 to 11 blows for a penetration of 300mm, the fill is considered to be in a loose to compact condition.

The in-situ moisture content of the soil samples retrieved from the fill ranged from 4% to 11%, indicating moist conditions.

4.3 Upper Sand

A native deposit of sand was contacted below the fill at the borehole locations at depths of between 0.3m and 1.8m from grade. This deposit consisted of fine to medium grained sand, trace silt or gravel. Boreholes 22BH-2 and 22BH-3 were terminated in the upper sand at a depth of 1.8m to 3.6m from grade. The upper sand deposit extended to a depth of 16.4m from grade at the location of Borehole 22BH-1.

Based on the Standard Penetration N-values of 6 to 75 blows for a penetration of 300mm, the relative density of the upper sand was loose to very dense. It is our opinion that the localized loose layer of the deposit at a depth of about 6m could be

due to loosening of the non-cohesive soil by the groundwater pressure during the drilling and sampling operations and may not be representative of the true relative density of the deposit at that depth.

The in-situ moisture content of the soil samples retrieved from the upper sand deposit ranged from 2% to 22%, indicating moist to wet conditions.

4.4 Clayey Silt

A deposit of clayey silt was contacted below the upper sand at a depth of 16.4m from grade at the location of Borehole 22BH-1. This deposit contained thin seams of silt, and extended to a depth of 18.3m from grade.

Based on the Standard Penetration N-value of 17 blows for a penetration of 300mm, the consistency of the clayey silt was very stiff.

The in-situ moisture content of the soil sample retrieved from the clayey silt was 28%, indicating a wet condition.

4.5 Lower Sand

A lower deposit of sand was contacted below the clayey silt at the location of Borehole 22BH-1 at a depth of 18.3m from grade. This deposit consisted of fine to medium grained sand, trace to some silt. Seams of silt were encountered within the lower sand at a depth of between 22.6m and 25.0m from grade. Borehole 22BH-1 was terminated in the lower sand at a depth of 26.4m from grade.

Based on the Standard Penetration N-values of 18 to more than 100 blows for a penetration of 300mm, the relative density of the lower sand was compact to very dense.

The in-situ moisture content of the soil samples retrieved from the lower sand deposit ranged from 12% to 22%, indicating moist to wet conditions.

Grain size analysis was conducted on a sample of the lower sand deposit, obtained from Borehole 22BH-1 sample SS18, at a depth of 22.9m, using both mechanical sieves and hydrometer. The grain size distribution is shown on the appended Figure No. 1.

4.4 Groundwater

A free water surface was encountered in Borehole 22BH-1 at a depth of 19.8m from grade upon completion of drilling. Boreholes 22BH-2 and 22BH-3 were dry on completion of drilling.

The ground water level in the monitoring well was measured on June 9, 2022, and the findings are follows:

Well ID	Ground Elevation (m)	Well Depth	Groundwater Depth and Elevation	
			Depth	Elevation (m)
22BH-1(MW)	99.89m	25.91m	22.07m	77.82m

Based on the field measurements, the observations during drilling and the moisture content profiles of the retrieved soil samples, it is our opinion that the groundwater table is located at a depth of 22m at the front of the house, and this is expected to dip down under the slope and merge with the water level of the creek/pond below. Seasonal fluctuations in the ground water level are to be expected. A perched water condition may occur on top of the clayey silt till deposit.

5.0 SLOPE ASSESSMENT

The house is located above a slope and waterway with the jurisdiction of Conservation Halton, and slope assessment to determine the location of the long term stable top of slope is required. The location of the long term stable top of slope is to be shown on the site plan.

5.1 Description of the Slope

The topographic survey plan of the Site is shown in Appendix A. The survey plan shows the existing top and bottom of slope, and indicates that the north facing slope is between 21m and 22.4m high, and inclined generally at between 1.2H:1V and 1.4H:1V, with localized steeper and shallower slopes.

A site visit was conducted by a representative from *Toronto Inspection Ltd.* on June 24, 2021, and photographs taken during the site visit are shown in Appendix B. A wooded slope was located along the north of the site. Generally the trees were upright, with some uprooted trees and approximately 20% of trees had their root systems visible. At a localized area of the slope toe towards the west a mature tree was observed to be leaning approximately 45° to the horizontal, with surficial erosion observed around this area. This indicates that some slope movement has been occurring in this area. Surface cover/vegetation along the slope was marginal, with some saplings and vegetation observed throughout the slope. No erosion gullies were evident during our assessment. No tension cracks were observed along the tableland nor was any seepage of water noted along the slope profile during our inspection.

It is our understanding that an approximately 12m x 8m face of the upper slope on the east side (below the house area) was fitted with a Filtrexx Severe Slope Stabilization System, which used 12" Filtrexx SiltSoxx, filled with GrowthMedia, which was injected with a Specified Native Seed Mix and cover crop throughout.

The tableland above the slope was generally flat, and was occupied by a one storey dwelling that is still under construction. The dwelling was located at least 8m from the top of the slope. It is our understanding that the superstructure of the previous one-storey dwelling had been removed and replaced with a one-storey wood framed superstructure on the existing foundation system, within the same footprint and was of the same size and use as the previous structure.

5.2 Toe Erosion Allowance

At the time of the site visit the floodplain between the water's edge and the toe of the slope was well vegetated. Based on the field observations, no sign of active toe erosion due to the watercourse was evident. Based on borehole findings, the native soil structure at the toe of the slope is likely to be a very dense sand with some silt.

With reference to *Natural Hazards Training Manual, Provincial Policy Statement, Public Health and safety, Policies 3.1, Version 1.0, Ontario Ministry of Natural Resources*, for a watercourse within 15m from the toe of the slope, where the native soil structure is sand or silt, where no evidence of active erosion is observed, and the waterway has a bankfull width of 5m to 30m, as is the case for the Site, the applicable toe erosion allowance is 5.0m.

The floodplain below the Site is between 6m and 13m wide. Since the toe erosion is less than the width of the floodplain, a toe erosion allowance is not required in the delineation of the erosion hazard.

5.3 Stable Slope Allowance

The stable slope allowance was determined using geotechnical slope stability analysis. To carry out the analysis, a geological profile was developed along three cross sections, Section A, Section B and Section C, as shown in Figure No. 1. The boreholes indicated that the slope geology is comprised of a thin surficial layer of fill, underlain by compact to dense upper sand deposit, followed by a layer of very stiff clayey silt, then a lower deposit of generally dense to very dense lower sand deposit that extended below the bottom of the slope.

The soil parameters, used in the computerized Morgenstern-Price method, as shown on the upper right corner of the slope sections, were as follows:

SOIL TYPE	Unit Weight γ (kN/m ³)	Effective Cohesion C' (kPa)	Angle of Internal Friction, ϕ' (deg)
Fill	19	0	28
Upper Sand	20	0	38
Clayey Silt	19	12	30
Dense Lower Sand	21	0	40
Very Dense Lower Sand	21	0	40
A geodetic groundwater elevation of 77.8m at the front of the house was assumed.			

It is noted that above soil parameters are consistent with the parameters given in Tables 2.4 to 2.6 of the *Geotechnical Principles of Stable Slopes (MNR, November*

1998). The surcharge from the house has been modelled as 0.65m (26 inches) wide strip footings with a bearing pressure of 100 kPa at elevation 98.64m

The analyses were carried out using the commercial slope program Slope/W by Geo Studio 2020. This limit equilibrium slope stability analysis program calculates the Factor of Safety (FOS) against potential slope slides of different slope configurations using the assessed soil and groundwater parameters. The FOS is the factor by which the soil strength must be reduced in order to bring the slope into a state of limit equilibrium (or pending failure) along a given slip surface.

The slope stability was analyzed for the three cross sections under existing conditions, and using hypothetical slope inclinations under normal ground water conditions and under seasonal high ground water conditions (ground water table located 2m to 3m below grade). A hypothetical slope inclination of 1.75H:1V was used in the analysis. A minimum FOS of 1.5 was used for normal ground water conditions, and a minimum FOS of 1.3 was used for seasonal high ground water conditions.

The results of the analyses are shown in Figures 2 to 10. Figure Nos. 2, 3 and 4 show the existing condition of the slope and the location of the critical slip surface or the slope failure with the lowest FOS. The critical slip surface has an FOS of just above 1.0, which indicates that the assumed soil parameters are valid.

For the analyses using the hypothetical slope inclination, the results are shown in Figure Nos. 5 and 6 for Section A, Figure Nos. 7 and 8 for Section B, and Figure Nos. 9 and 10 for Section C.

Based on the findings, the stable slope inclination of 1:75H:1V or flatter is stable under both normal and seasonal ground water levels for all of the three cross sections. In the light of these findings the location of the stable slope allowance (stable top of slope) was determined using an inclination of 1.75H:1V or flatter.

5.4 Long Term Stable Top of Slope

With reference to the *Natural Hazards Training Manual*, the location of the long term stable top of slope is determined by adding the toe erosion allowance landward of the stable slope allowance.

Since a toe erosion allowance is not required, the Long Term Stable Top of Slope Line (LTSTS Line) is the same as the line of the stable top of slope (stable slope allowance). The LTSTS Line is shown in Drawing No. 5.

5.5 Erosion Access Allowance

The purpose of the erosion access allowance is to provide access to the slope in the case of emergency maintenance, repairs or other considerations are required in the future. Conservation Halton sets its own criteria for this allowance. However, in a built up environment, such as the case for this Site, the erosion access allowance should be based on site specific conditions.

6.0 CONCLUSION & RECOMMENDATIONS

To establish the Long Term Stable Top of Slope (LTSTOS), and the minimum setback of the proposed development, we have used the following criteria:

- i. Stable slope allowance (1.75H:1V or flatter)
- ii. Toe erosion allowance of 0m

The LTSTS Line is located along the north building line of the house and cuts through the middle of the garage. In view of this, we recommend that the house foundation within the LTSTS Line be extended deeper to keep it safely below the stable slope inclination and maintain the required frost cover. The most economical way to achieve this will be to support the north perimeter wall foundations on helical piles.

We note that the entire garage foundation is already supported on helical piles therefore the most economical way to achieve this will be to support the north perimeter wall foundations on helical piles.

The helical piles should be designed by an experienced geotechnical engineer, based on the soil strata, building loads, spacing etc.

It should be noted that the governing factor for the performance of helical piles is ensuring the design torque has been achieved at or below the design depths. The installation of the helical piles, during the construction phase, must be reviewed by a geotechnical technician from *Toronto Inspection Ltd.*, on a full time basis to ensure the design torque has been reached for each pile. In the event that the design torque cannot be realized, additional piles may have to be added, at the discretion of the geotechnical engineer.

All footings and/or grade beams over the piles, exposed to freeze and thaw cycles should be founded at a minimum depth of 1.2 m below the outside grade.

Subject to our above recommendations, the proposed house can remain its current location.

6.1 Erosion and Construction Control

The vegetation aids in improving slope stability against shallow failures by increasing the apparent cohesion within the surficial soils. The vegetation on the slope should, therefore, be maintained. To minimize slope surface erosion, concentrated run-off should be diverted away from the slope, however sheet flow may be acceptable.



Toronto Inspection Ltd.

During construction, all heavy equipment, construction materials and soil stockpiles should be located a minimum of 3m away from the slope. The disturbed ground surface from the construction works should be protected from erosion with sodding or hardscaping, or similar means, as soon as possible after construction.



**GEOTECHNICAL INVESTIGATION
AND SLOPE STABILITY ANALYSIS
835 SPRING GARDENS ROAD
BURLINGTON, ONTARIO**

**REPORT NO.: 5121-22-GC
REPORT DATE: OCTOBER 26, 2022**

**PREPARED FOR
SHELLEY YOUNG AND IVAN RUDYK
835 SPRING GARDENS ROAD
BURLINGTON, ONTARIO
L7T 2J6**

110 KONRAD CRESCENT, UNIT 16, MARKHAM, ONTARIO L3R 9X2
TEL.: 905-940-8509 FAX: 905-940-8192

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Borehole Location Plan

Borehole Logs

Long Term Stable Top of Slope

Drawing No. 1

Drawing Nos. 2 to 4

Drawing No. 5

FIGURES

Gradation Curve

Slope Stability Analysis

Figure No. 1

Figure Nos. 2 to 10

APPENDICES

Topographic Survey

Site Photographs

Appendix A

Appendix B

1.0 INTRODUCTION

Toronto Inspection Ltd. was retained by Shelley Young and Ivan Rudyk (hereinafter described as “the Client”) to conduct a geotechnical investigation for the proposed house renovation at a property located at 835 Spring Gardens Road in Burlington, Ontario (hereinafter described as “the Site”). The Site is located above a slope and waterway and a slope assessment is required to determine the long term stable top of slope.

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2.0 SITE CONDITION

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4.2 Fill

Underlying the pavement and topsoil, a layer of fill was encountered at the borehole locations. The fill consisted of dark brown to brown sand with traces of topsoil and gravel, and extended to depths of between 0.3m and 1.8m from grade.

Based on the Standard Penetration N-values of 4 to 11 blows for a penetration of 300mm, the fill is considered to be in a loose to compact condition.

The in-situ moisture content of the soil samples retrieved from the fill ranged from 4% to 11%, indicating moist conditions.

4.3 Upper Sand

A native deposit of sand was contacted below the fill at the borehole locations at depths of between 0.3m and 1.8m from grade. This deposit consisted of fine to medium grained sand, trace silt or gravel. Boreholes 22BH-2 and 22BH-3 were terminated in the upper sand at a depth of 1.8m to 3.6m from grade. The upper sand deposit extended to a depth of 16.4m from grade at the location of Borehole 22BH-1.

Based on the Standard Penetration N-values of 6 to 75 blows for a penetration of 300mm, the relative density of the upper sand was loose to very dense. It is our opinion that the localized loose layer of the deposit at a depth of about 6m could be

due to loosening of the non-cohesive soil by the groundwater pressure during the drilling and sampling operations and may not be representative of the true relative density of the deposit at that depth.

The in-situ moisture content of the soil samples retrieved from the upper sand deposit ranged from 2% to 22%, indicating moist to wet conditions.

4.4 Clayey Silt

A deposit of clayey silt was contacted below the upper sand at a depth of 16.4m from grade at the location of Borehole 22BH-1. This deposit contained thin seams of silt, and extended to a depth of 18.3m from grade.

Based on the Standard Penetration N-value of 17 blows for a penetration of 300mm, the consistency of the clayey silt was very stiff.

The in-situ moisture content of the soil sample retrieved from the clayey silt was 28%, indicating a wet condition.

4.5 Lower Sand

A lower deposit of sand was contacted below the clayey silt at the location of Borehole 22BH-1 at a depth of 18.3m from grade. This deposit consisted of fine to medium grained sand, trace to some silt. Seams of silt were encountered within the lower sand at a depth of between 22.6m and 25.0m from grade. Borehole 22BH-1 was terminated in the lower sand at a depth of 26.4m from grade.

Based on the Standard Penetration N-values of 18 to more than 100 blows for a penetration of 300mm, the relative density of the lower sand was compact to very dense.

The in-situ moisture content of the soil samples retrieved from the lower sand deposit ranged from 12% to 22%, indicating moist to wet conditions.

Grain size analysis was conducted on a sample of the lower sand deposit, obtained from Borehole 22BH-1 sample SS18, at a depth of 22.9m, using both mechanical sieves and hydrometer. The grain size distribution is shown on the appended Figure No. 1.

4.4 Groundwater

A free water surface was encountered in Borehole 22BH-1 at a depth of 19.8m from grade upon completion of drilling. Boreholes 22BH-2 and 22BH-3 were dry on completion of drilling.

The ground water level in the monitoring well was measured on June 9, 2022, and the findings are follows:

Well ID	Ground Elevation (m)	Well Depth	Groundwater Depth and Elevation	
			Depth	Elevation (m)
22BH-1(MW)	99.89m	25.91m	22.07m	77.82m

Based on the field measurements, the observations during drilling and the moisture content profiles of the retrieved soil samples, it is our opinion that the groundwater table is located at a depth of 22m at the front of the house, and this is expected to dip down under the slope and merge with the water level of the creek/pond below. Seasonal fluctuations in the ground water level are to be expected. A perched water condition may occur on top of the clayey silt till deposit.

5.0 SLOPE ASSESSMENT

The house is located above a slope and waterway with the jurisdiction of Conservation Halton, and slope assessment to determine the location of the long term stable top of slope is required. The location of the long term stable top of slope is to be shown on the site plan.

5.1 Description of the Slope

The topographic survey plan of the Site is shown in Appendix A. The survey plan shows the existing top and bottom of slope, and indicates that the north facing slope is between 21m and 22.4m high, and inclined generally at between 1.2H:1V and 1.4H:1V, with localized steeper and shallower slopes.

A site visit was conducted by a representative from *Toronto Inspection Ltd.* on June 24, 2021, and photographs taken during the site visit are shown in Appendix B. A wooded slope was located along the north of the site. Generally the trees were upright, with some uprooted trees and approximately 20% of trees had their root systems visible. At a localized area of the slope toe towards the west a mature tree was observed to be leaning approximately 45° to the horizontal, with surficial erosion observed around this area. This indicates that some slope movement has been occurring in this area. Surface cover/vegetation along the slope was marginal, with some saplings and vegetation observed throughout the slope. No erosion gullies were evident during our assessment. No tension cracks were observed along the tableland nor was any seepage of water noted along the slope profile during our inspection.

It is our understanding that an approximately 12m x 8m face of the upper slope on the east side (below the house area) was fitted with a Filtrexx Severe Slope Stabilization System, which used 12" Filtrexx SiltSoxx, filled with GrowthMedia, which was injected with a Specified Native Seed Mix and cover crop throughout.

The tableland above the slope was generally flat, and was occupied by a one storey dwelling that is still under construction. The dwelling was located at least 8m from the top of the slope. It is our understanding that the superstructure of the previous one-storey dwelling had been removed and replaced with a one-storey wood framed superstructure on the existing foundation system, within the same footprint and was of the same size and use as the previous structure.

5.2 Toe Erosion Allowance

At the time of the site visit the floodplain between the water's edge and the toe of the slope was well vegetated. Based on the field observations, no sign of active toe erosion due to the watercourse was evident. Based on borehole findings, the native soil structure at the toe of the slope is likely to be a very dense sand with some silt.

With reference to *Natural Hazards Training Manual, Provincial Policy Statement, Public Health and safety, Policies 3.1, Version 1.0, Ontario Ministry of Natural Resources*, for a watercourse within 15m from the toe of the slope, where the native soil structure is sand or silt, where no evidence of active erosion is observed, and the waterway has a bankfull width of 5m to 30m, as is the case for the Site, the applicable toe erosion allowance is 5.0m.

The floodplain below the Site is between 6m and 13m wide. Since the toe erosion is less than the width of the floodplain, a toe erosion allowance is not required in the delineation of the erosion hazard.

5.3 Stable Slope Allowance

The stable slope allowance was determined using geotechnical slope stability analysis. To carry out the analysis, a geological profile was developed along three cross sections, Section A, Section B and Section C, as shown in Figure No. 1. The boreholes indicated that the slope geology is comprised of a thin surficial layer of fill, underlain by compact to dense upper sand deposit, followed by a layer of very stiff clayey silt, then a lower deposit of generally dense to very dense lower sand deposit that extended below the bottom of the slope.

The soil parameters, used in the computerized Morgenstern-Price method, as shown on the upper right corner of the slope sections, were as follows:

SOIL TYPE	Unit Weight γ (kN/m ³)	Effective Cohesion C' (kPa)	Angle of Internal Friction, ϕ' (deg)
Fill	19	0	28
Upper Sand	20	0	38
Clayey Silt	19	12	30
Dense Lower Sand	21	0	40
Very Dense Lower Sand	21	0	40
A geodetic groundwater elevation of 77.8m at the front of the house was assumed.			

It is noted that above soil parameters are consistent with the parameters given in Tables 2.4 to 2.6 of the *Geotechnical Principles of Stable Slopes (MNR, November*

1998). The surcharge from the house has been modelled as 0.65m (26 inches) wide strip footings with a bearing pressure of 100 kPa at elevation 98.64m

The analyses were carried out using the commercial slope program Slope/W by Geo Studio 2020. This limit equilibrium slope stability analysis program calculates the Factor of Safety (FOS) against potential slope slides of different slope configurations using the assessed soil and groundwater parameters. The FOS is the factor by which the soil strength must be reduced in order to bring the slope into a state of limit equilibrium (or pending failure) along a given slip surface.

The slope stability was analyzed for the three cross sections under existing conditions, and using hypothetical slope inclinations under normal ground water conditions and under seasonal high ground water conditions (ground water table located 2m to 3m below grade). A hypothetical slope inclination of 1.75H:1V was used in the analysis. A minimum FOS of 1.5 was used for normal ground water conditions, and a minimum FOS of 1.3 was used for seasonal high ground water conditions.

The results of the analyses are shown in Figures 2 to 10. Figure Nos. 2, 3 and 4 show the existing condition of the slope and the location of the critical slip surface or the slope failure with the lowest FOS. The critical slip surface has an FOS of just above 1.0, which indicates that the assumed soil parameters are valid.

For the analyses using the hypothetical slope inclination, the results are shown in Figure Nos. 5 and 6 for Section A, Figure Nos. 7 and 8 for Section B, and Figure Nos. 9 and 10 for Section C.

Based on the findings, the stable slope inclination of 1:75H:1V or flatter is stable under both normal and seasonal ground water levels for all of the three cross sections. In the light of these findings the location of the stable slope allowance (stable top of slope) was determined using an inclination of 1.75H:1V or flatter.

5.4 Long Term Stable Top of Slope

With reference to the *Natural Hazards Training Manual*, the location of the long term stable top of slope is determined by adding the toe erosion allowance landward of the stable slope allowance.

Since a toe erosion allowance is not required, the Long Term Stable Top of Slope Line (LTSTS Line) is the same as the line of the stable top of slope (stable slope allowance). The LTSTS Line is shown in Drawing No. 5.

5.5 Erosion Access Allowance

The purpose of the erosion access allowance is to provide access to the slope in the case of emergency maintenance, repairs or other considerations are required in the future. Conservation Halton sets its own criteria for this allowance. However, in a built up environment, such as the case for this Site, the erosion access allowance should be based on site specific conditions.

6.0 CONCLUSION & RECOMMENDATIONS

To establish the Long Term Stable Top of Slope (LTSTOS), and the minimum setback of the proposed development, we have used the following criteria:

- i. Stable slope allowance (1.75H:1V or flatter)
- ii. Toe erosion allowance of 0m

The LTSTS Line is located along the north building line of the house and cuts through the middle of the garage. In view of this, we recommend that the house foundation within the LTSTS Line be extended deeper to keep it safely below the stable slope inclination and maintain the required frost cover. The most economical way to achieve this will be to support the north perimeter wall foundations on helical piles.

We note that the entire garage foundation is already supported on helical piles therefore the most economical way to achieve this will be to support the north perimeter wall foundations on helical piles.

The helical piles should be designed by an experienced geotechnical engineer, based on the soil strata, building loads, spacing etc.

It should be noted that the governing factor for the performance of helical piles is ensuring the design torque has been achieved at or below the design depths. The installation of the helical piles, during the construction phase, must be reviewed by a geotechnical technician from *Toronto Inspection Ltd.*, on a full time basis to ensure the design torque has been reached for each pile. In the event that the design torque cannot be realized, additional piles may have to be added, at the discretion of the geotechnical engineer.

All footings and/or grade beams over the piles, exposed to freeze and thaw cycles should be founded at a minimum depth of 1.2 m below the outside grade.

Subject to our above recommendations, the proposed house can remain its current location.

6.1 Erosion and Construction Control

The vegetation aids in improving slope stability against shallow failures by increasing the apparent cohesion within the surficial soils. The vegetation on the slope should, therefore, be maintained. To minimize slope surface erosion, concentrated run-off should be diverted away from the slope, however sheet flow may be acceptable.



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During construction, all heavy equipment, construction materials and soil stockpiles should be located a minimum of 3m away from the slope. The disturbed ground surface from the construction works should be protected from erosion with sodding or hardscaping, or similar means, as soon as possible after construction.

7.0 GENERAL STATEMENT OF LIMITATION

The comments and recommendations presented in this report are based on the subsoil and ground water conditions encountered at the borehole locations indicated in the borehole location plan, and are intended for the guidance of the design engineer. Although we consider this report to be representative of the subsurface conditions at the subject property, the soil and the ground water conditions between and beyond the borehole locations may differ from those encountered at the time of our investigation and may become apparent during construction. Any contractor bidding on, or undertaking the works, should decide on their own investigation and interpretations of the groundwater and the soil conditions between the borehole locations.

Any use and / or the interpretation of the data presented in this report, and any decisions made on it by the third party are responsibility of the third parties. The responsibility of *Toronto Inspection Ltd.* is limited to the accurate interpretation of the soil and ground water conditions prevailing in the locations investigated and accepts no responsibility for the loss of time and damages, if any, suffered by the third party as a result of decisions or actions based on this report.

Any legal actions arising directly or indirectly from this work and/or *Toronto Inspection Ltd.*'s performance of the services shall be filed no longer than two years from the date of *Toronto Inspection Ltd.*'s substantial completion of the services. *Toronto Inspection Ltd.* shall not be responsible to the client for lost revenues, loss of profits, cost of content, claims of customers, or other special indirect, consequential or punitive damages.

To the fullest extent permitted by law, the client's maximum aggregate recovery against *Toronto Inspection Ltd.*, its directors, employees, sub-contractors and representatives, for any and all claims by clients for all causes including, but not limited to, claims of breach of contract, breach of warranty and /or negligence, shall be the amount of the fee paid to *Toronto Inspection Ltd.* for its professional services rendered under the agreement with respect to the particular site which is the subject of the claim by the client.

Yours very truly,
TORONTO INSPECTION LTD.



Shan Goel, P. Eng
Project Manager



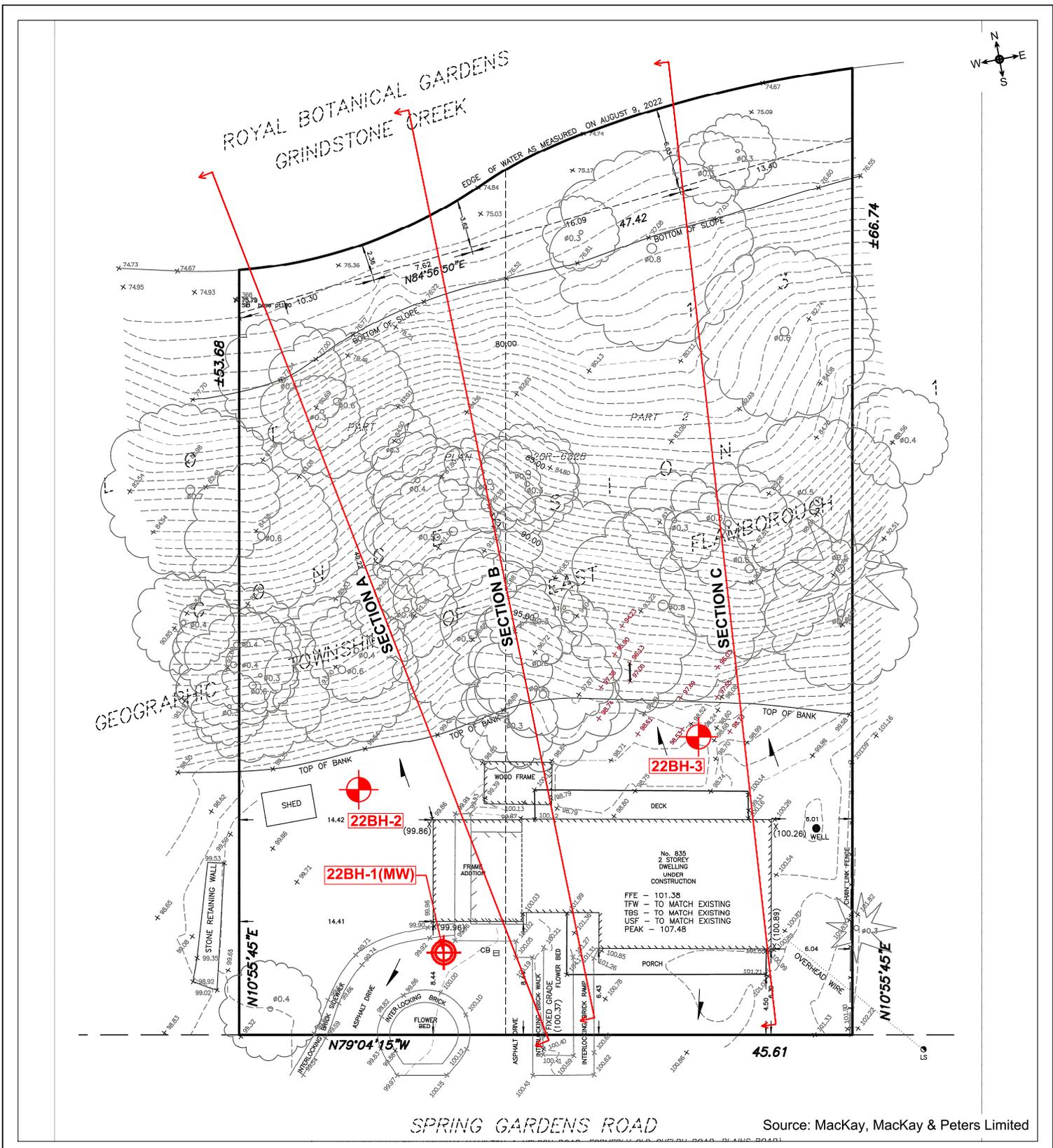
Rene Quiambao, P. Eng.
Senior Engineer

Drawings

Borehole Location Plan

Borehole Logs

Long Term Stable Top of Slope



LEGEND:



Borehole and Monitoring Well Location



Cross Section Lines

Scale



TorontoInspection LTD
GEO-ENVIRONMENTAL CONSULTANTS

110 Konrad Crescent, Unit 16, Markham, Ontario L3R 9X2

Tel: 905-940 8509 Fax: 905-940 8192

Email: TIL@torontoinspection.com

TITLE: Borehole and Monitoring Well Location Plan

LOCATION: 835 Spring Gardens Road, Burlington, Ontario

PROJECT NO.: 5121-22-GC

DATE: October 2022

DRAWING NO.

Date Drilled: 5/12/22

Auger Sample



Headspace Reading (ppm)



Drill Type: Track mounted drill rig

SPT (N) Value



Natural Moisture



Datum: Geodetic

Dynamic Cone Test



Plastic and Liquid Limit



Shelby Tube



Unconfined Compression



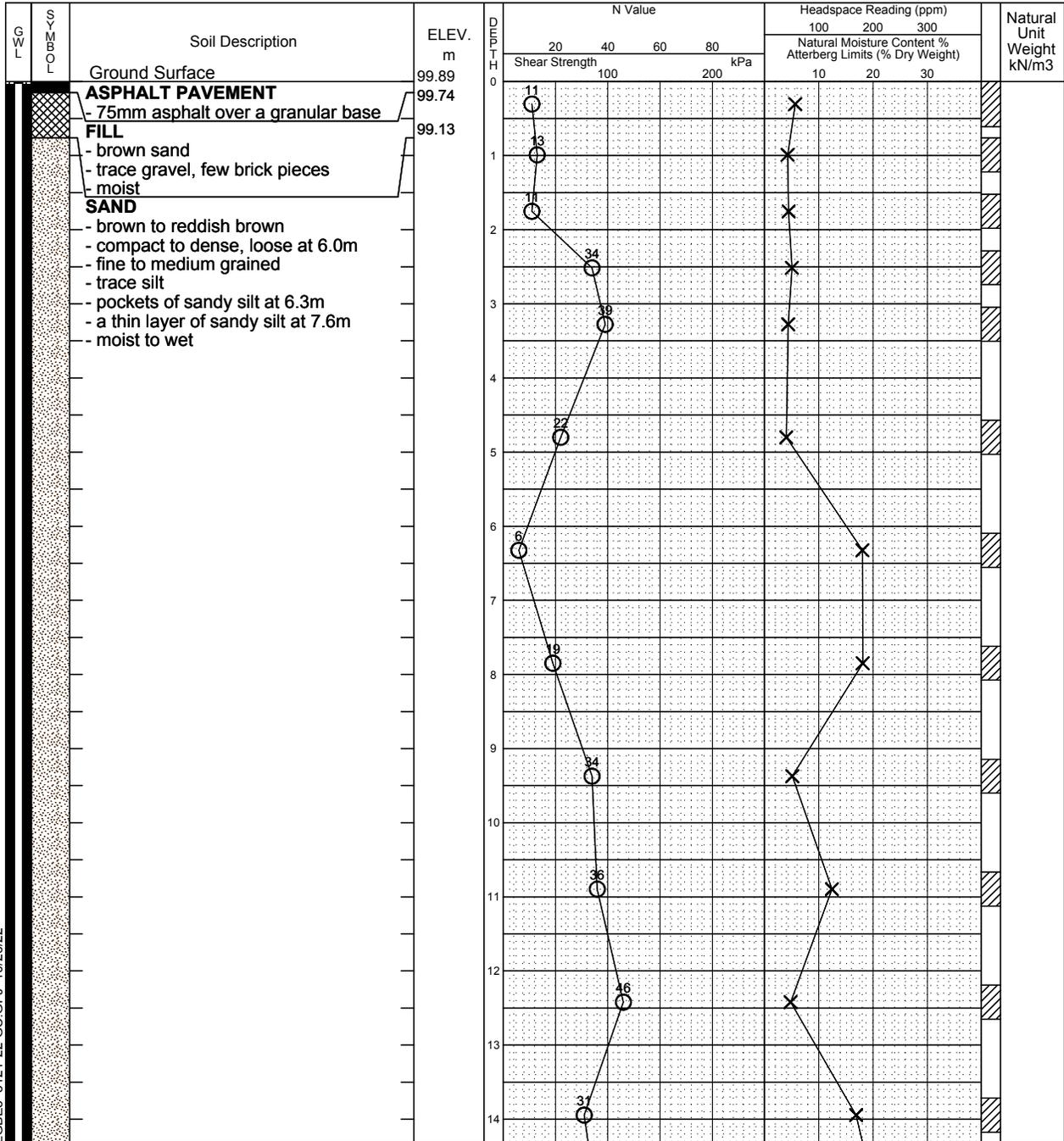
Field Vane Test



% Strain at Failure



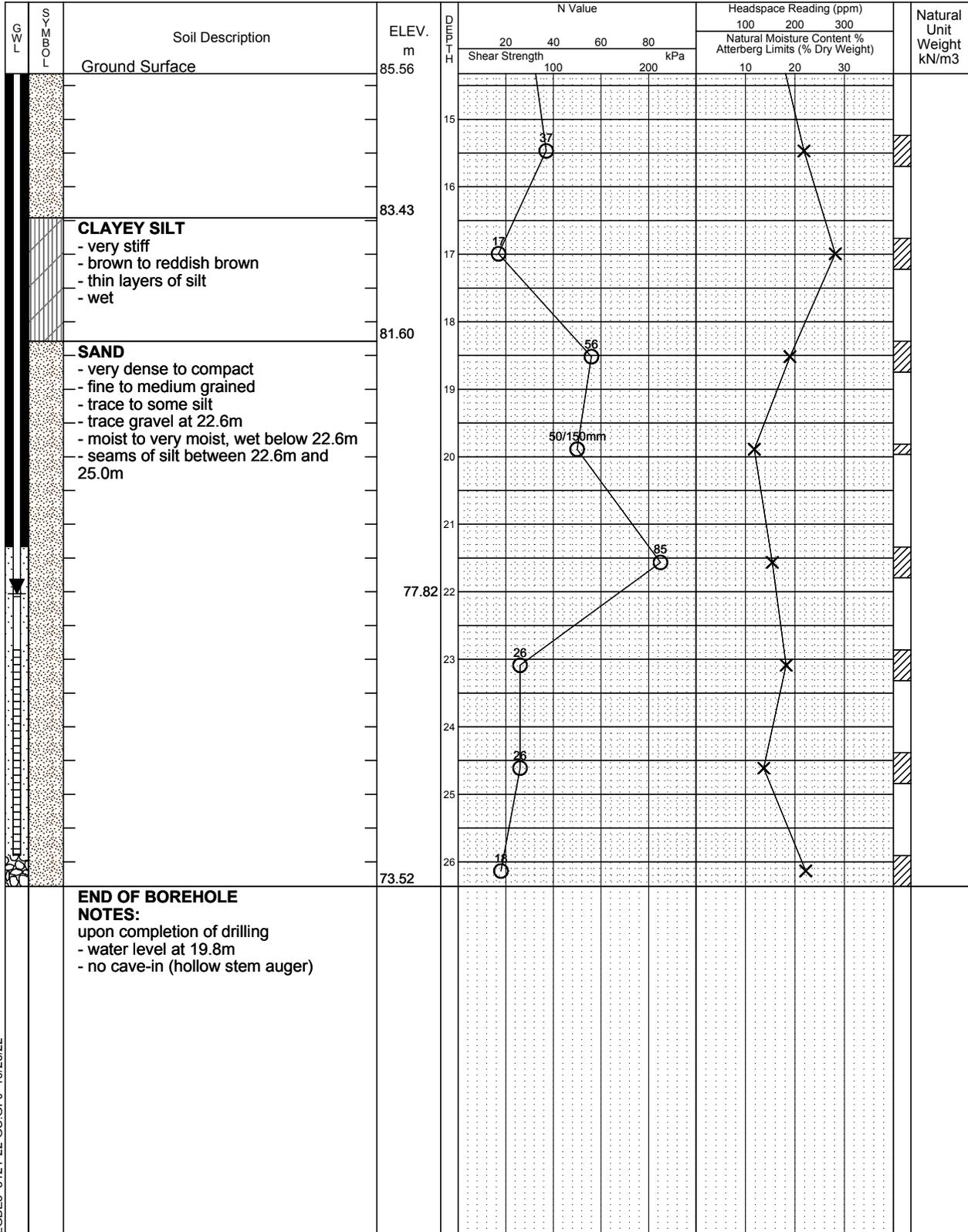
Penetrometer



LGBE3 5121-22-GC.GPJ 10/26/22

Continued Next Page

NOTE: THE BOREHOLE DATA NEEDS INTERPRETATION ASSISTANCE BY TORONTO INSPECTION LTD. BEFORE USE BY OTHERS



LGBE3 5121-22-GC.GPJ 10/26/22

NOTE: THE BOREHOLE DATA NEEDS INTERPRETATION ASSISTANCE BY TORONTO INSPECTION LTD. BEFORE USE BY OTHERS

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Time	Water Level (m)	Depth to Cave (m)
Jan. 9, 2022	22.07m	

Date Drilled: 5/13/22

Auger Sample



Headspace Reading (ppm)



Drill Type: Manual

SPT (N) Value



Natural Moisture



Datum: Geodetic

Dynamic Cone Test



Plastic and Liquid Limit



Shelby Tube



Unconfined Compression



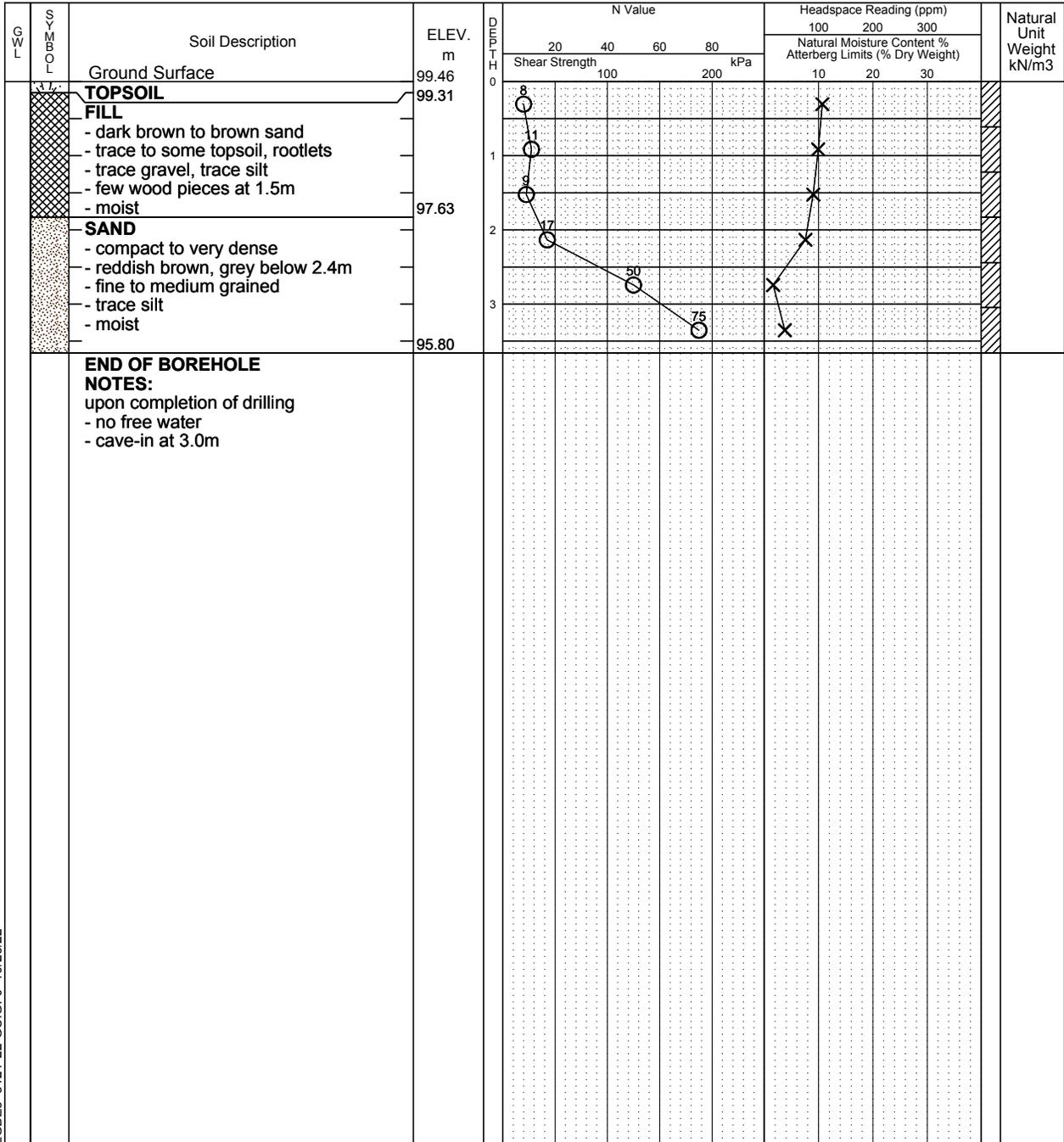
Field Vane Test



% Strain at Failure



Penetrometer



LGBE3 5121-22-GC.GPJ 10/26/22

NOTE: THE BOREHOLE DATA NEEDS INTERPRETATION ASSISTANCE BY TORONTO INSPECTION LTD. BEFORE USE BY OTHERS

Toronto Inspection Ltd.

Time	Water Level (m)	Depth to Cave (m)

Project No. 5121-22-GC

Log of Borehole 22BH-3

Dwg No. 4

Project: Geotechnical Investigation

Sheet No. 1 of 1

Location: 835 Spring Gardens, Burlington, Ontario

Date Drilled: 5/13/22

Auger Sample



Headspace Reading (ppm)



Drill Type: Manual

SPT (N) Value



Natural Moisture



Datum: Geodetic

Dynamic Cone Test



Plastic and Liquid Limit



Shelby Tube



Unconfined Compression



Field Vane Test



% Strain at Failure



Penetrometer



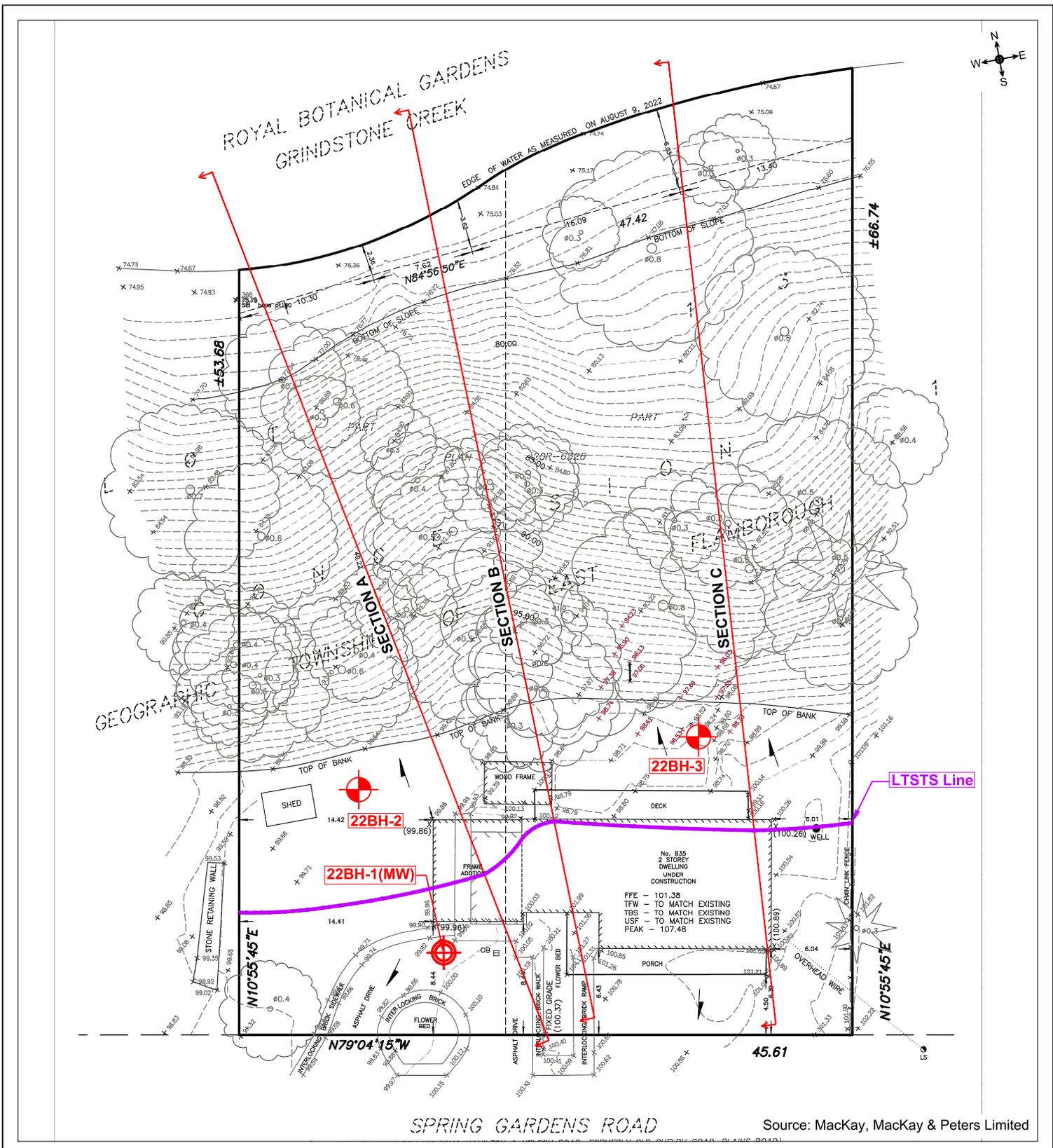
G W L	Soil Description	ELEV. m	D I P T H m	N Value				Headspace Reading (ppm)			Natural Unit Weight kN/m ³
				Shear Strength kPa				100	200	300	
				20	40	60	80	Natural Moisture Content % Atterberg Limits (% Dry Weight)			
	Ground Surface	98.64	0								
	TOPSOIL	98.54									
	FILL	98.33									
	- brown sand										
	- trace gravel, trace rootlets										
	- moist										
	SAND										
	- compact to dense, grey										
	- fine to medium grained										
	- trace gravel										
	- moist										
	END OF BOREHOLE	96.81									
	NOTES:										
	upon completion of drilling										
	- no free water										

LGBE3 5121-22-GC.GPJ 10/26/22

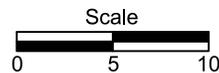
NOTE: THE BOREHOLE DATA NEEDS INTERPRETATION ASSISTANCE BY TORONTO INSPECTION LTD. BEFORE USE BY OTHERS

Toronto Inspection Ltd.

Time	Water Level (m)	Depth to Cave (m)



LEGEND:  Borehole and Monitoring Well Location  Long Term Stable Top of Slope Line
 Cross Section Lines

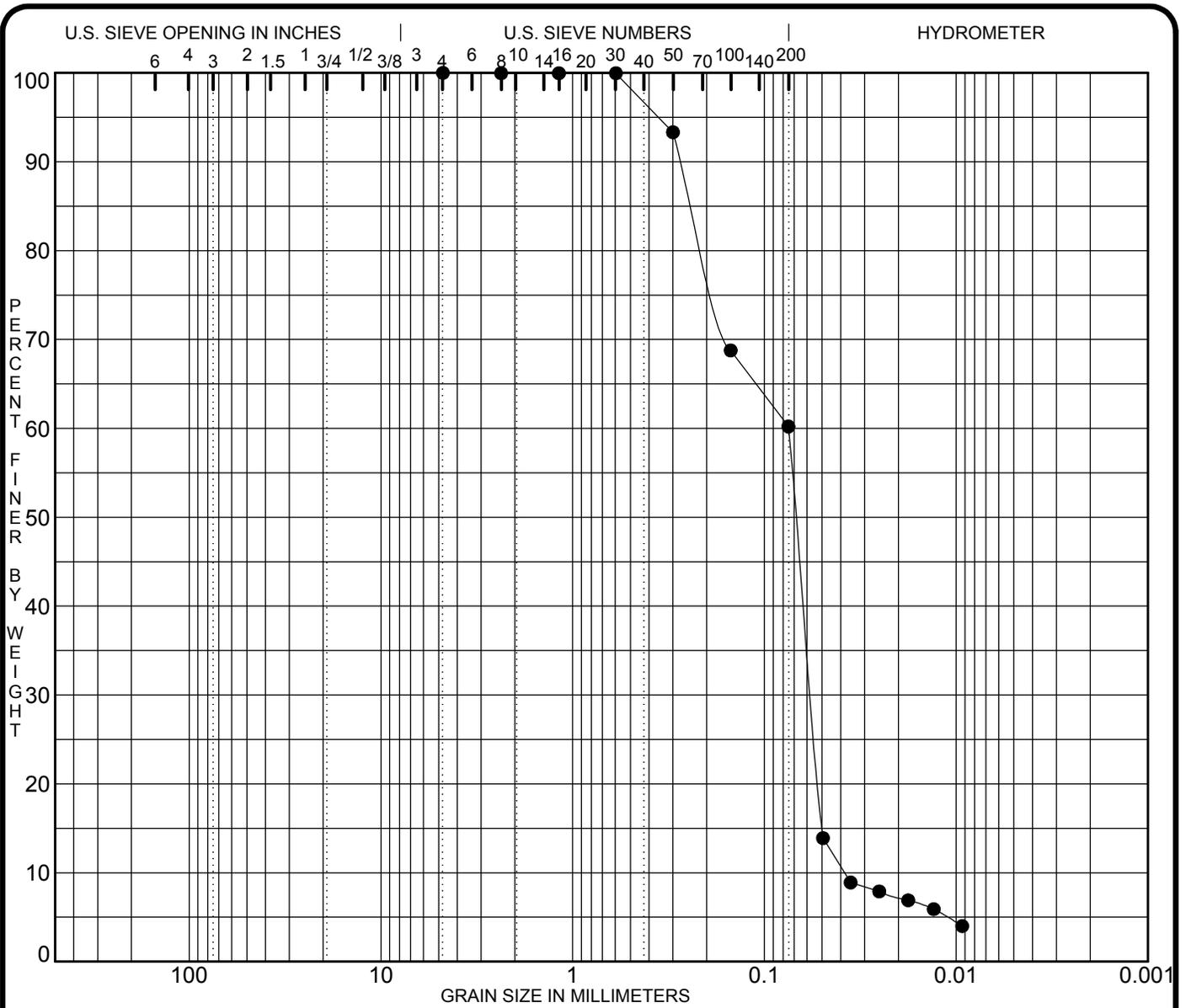


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 Tel: 905-940 8509 Fax: 905-940 8192
 Email: TIL@torontoinspection.com

TITLE:	Long Term Stable Top of Slope		
LOCATION:	835 Spring Gardens Road, Burlington, Ontario		
PROJECT NO.:	5121-22-GC	DATE:	October 2022
DRAWING NO.	498		

Figures

Gradation Curve Slope Stability Analysis

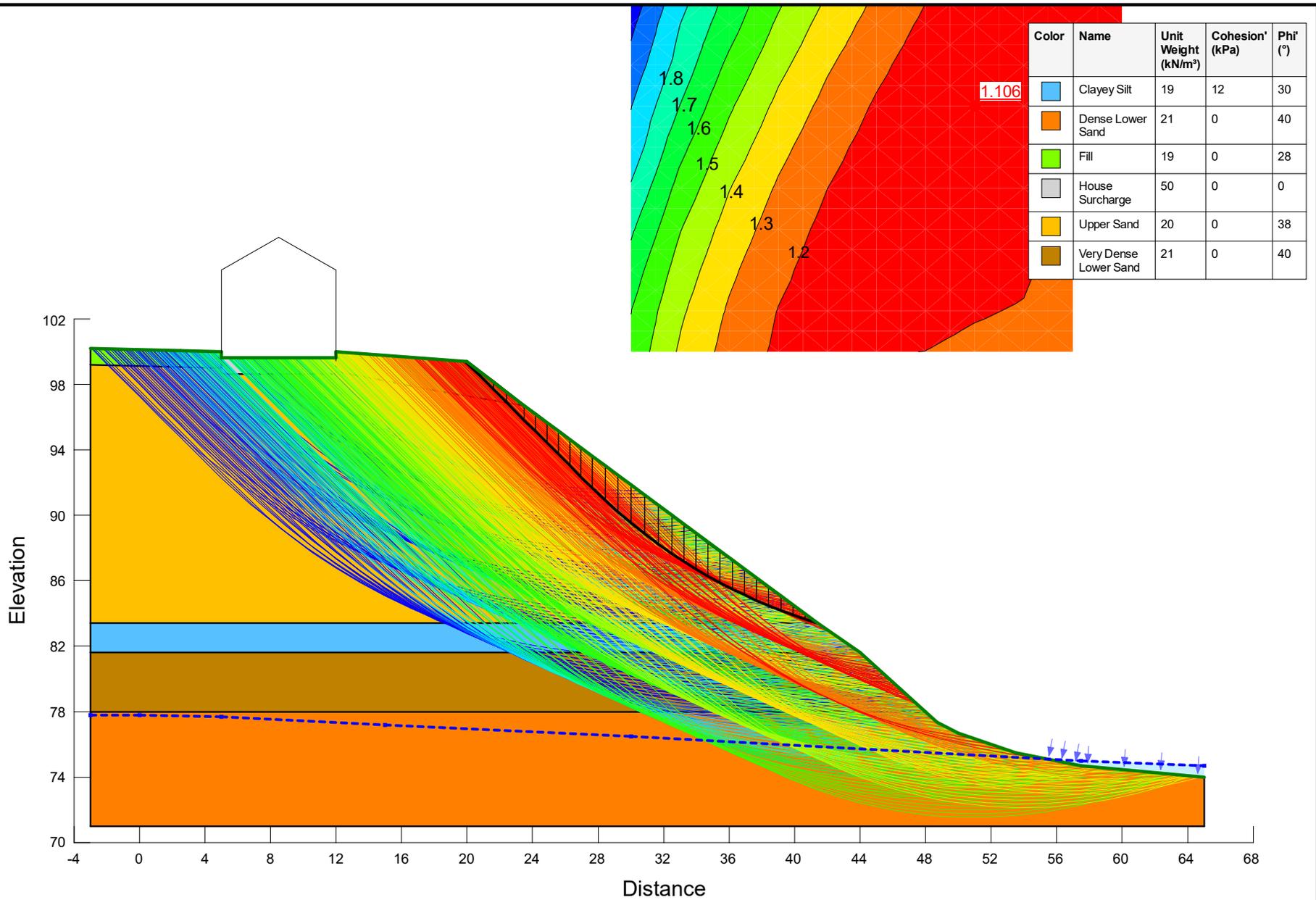


COBBLES	GRAVEL		SAND			SILT OR CLAY
	coarse	fine	coarse	medium	fine	

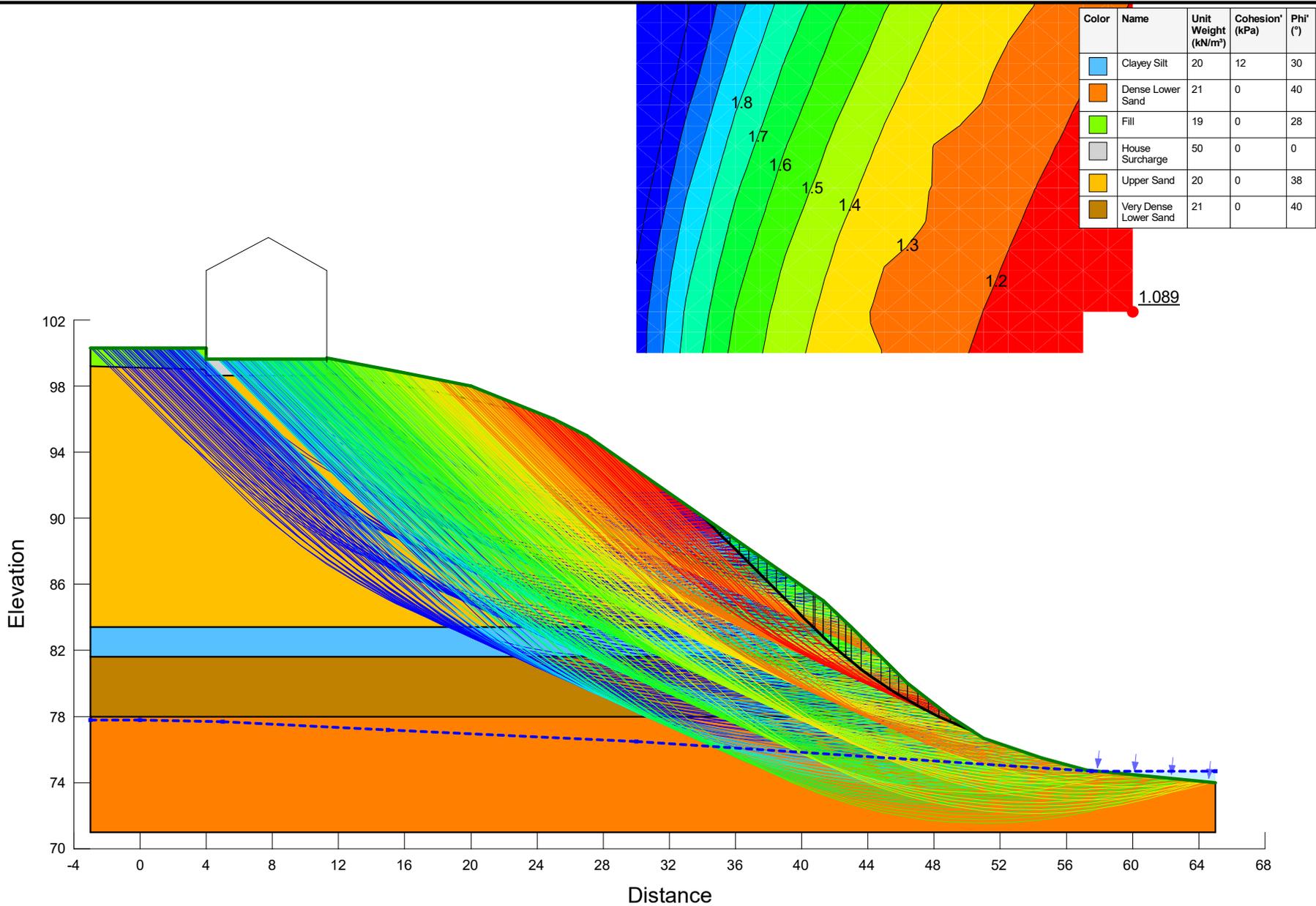
Specimen Identification	Classification					MC%	LL	PL	PI	Cc	Cu
● 22BH-1 (MW)22.9										1.14	2.0
Specimen Identification	D100	D60	D30	D10	%Gravel	%Sand	%Silt	%Clay			
● 22BH-1 (MW)22.9	4.75	0.07	0.057	0.0382	0.0	39.8	60.2				

PROJECT **Geotechnical Investigation - 385 Spring Gardens Road, Burlington, Ontario** JOB NO. **5121-22-GC** DATE **6/1/22**

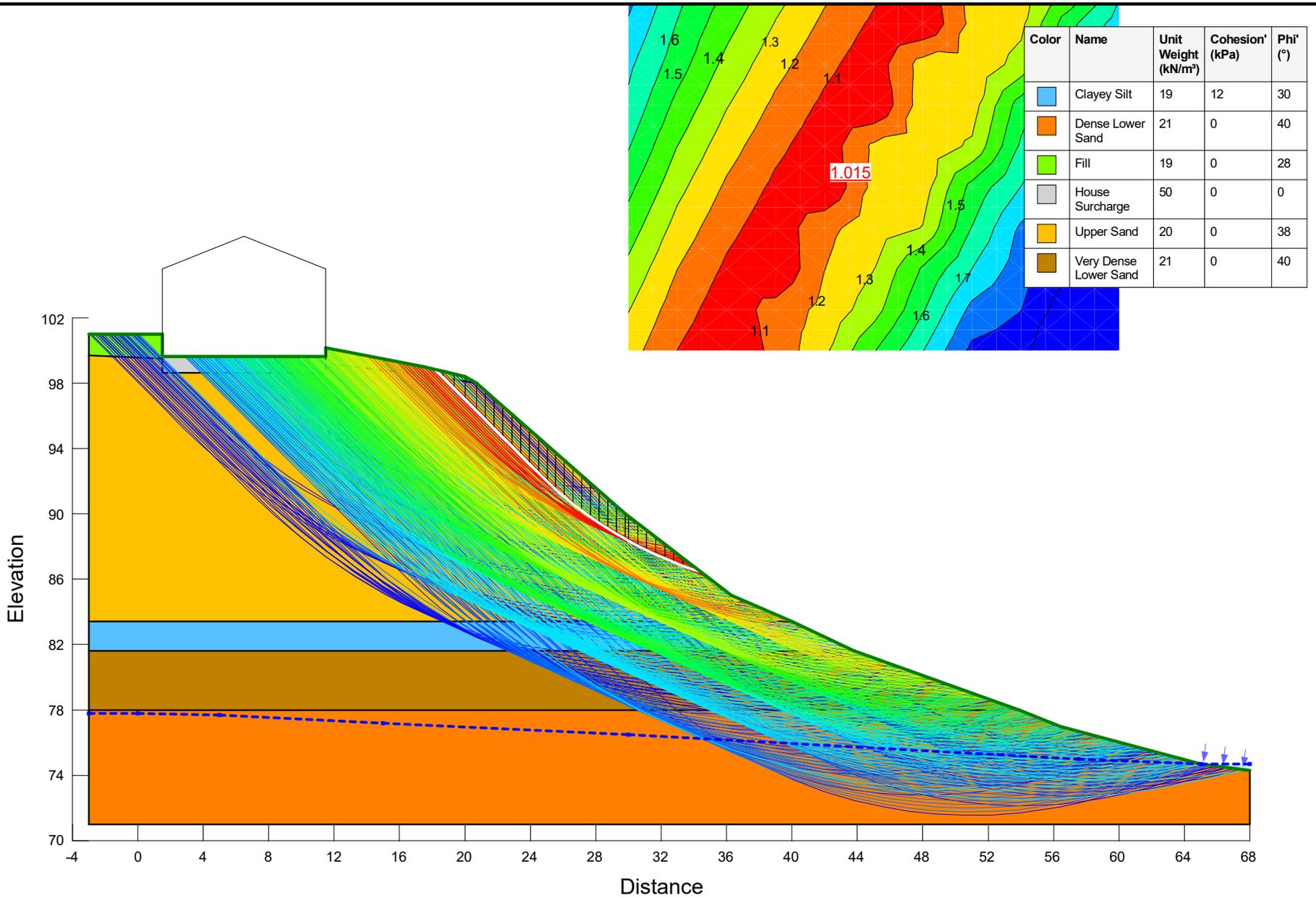
GRADATION CURVES
Toronto Inspection Ltd. **FIGURE NO.1**



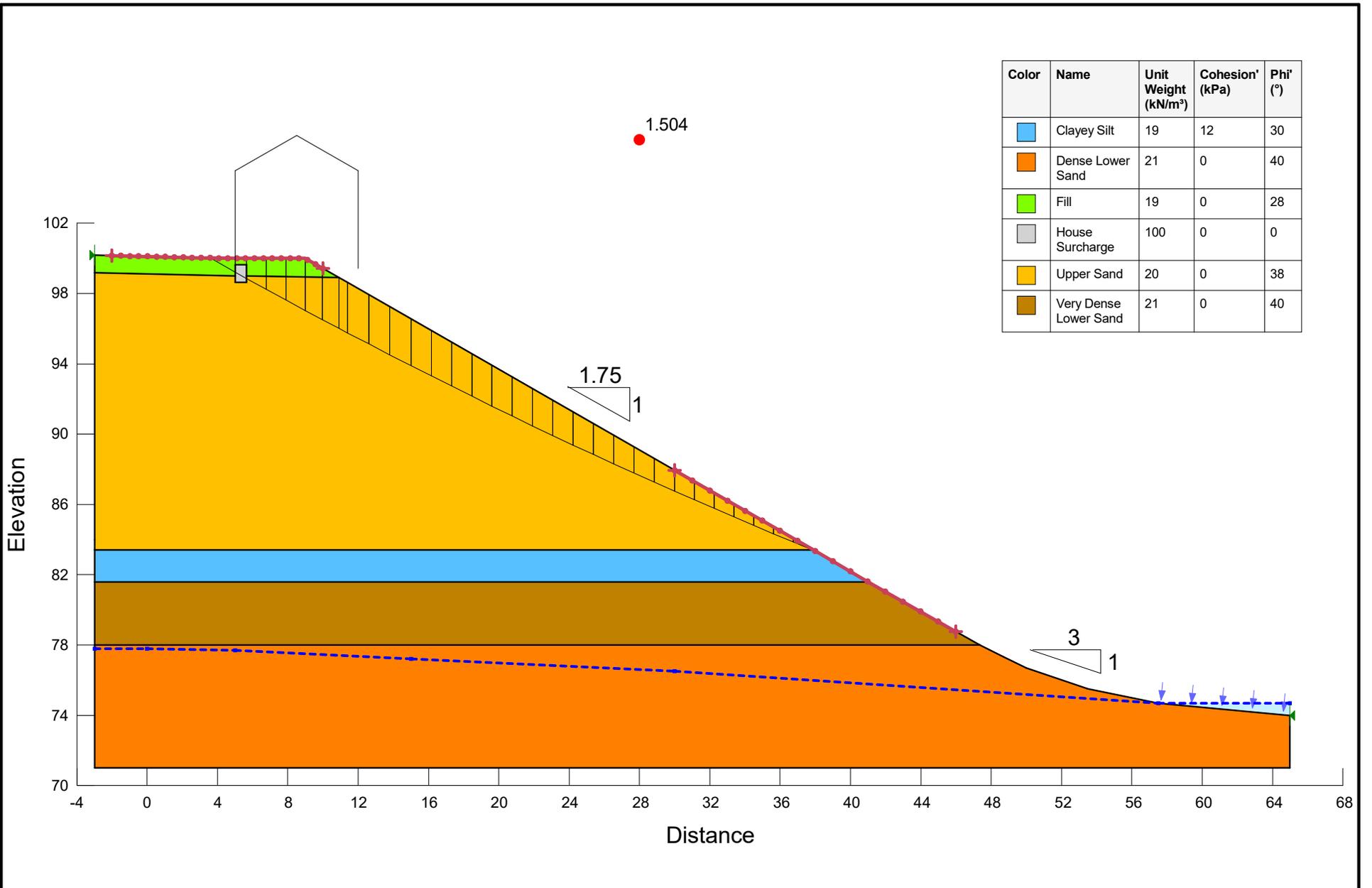
SLOPE/W Analysis PN5121 835 Spring Gardens Road, Burlington
 Section Anexis.gsz Section A existing, normal GW condition
 2022-09-23 Figure No. 2 1:333



SLOPE/W Analysis PN5121 835 Spring Gardens Road, Burlington
 Section Bnexis.gsz Section B existing, normal GW condition
 2022-09-23 Figure No. 3 1:333

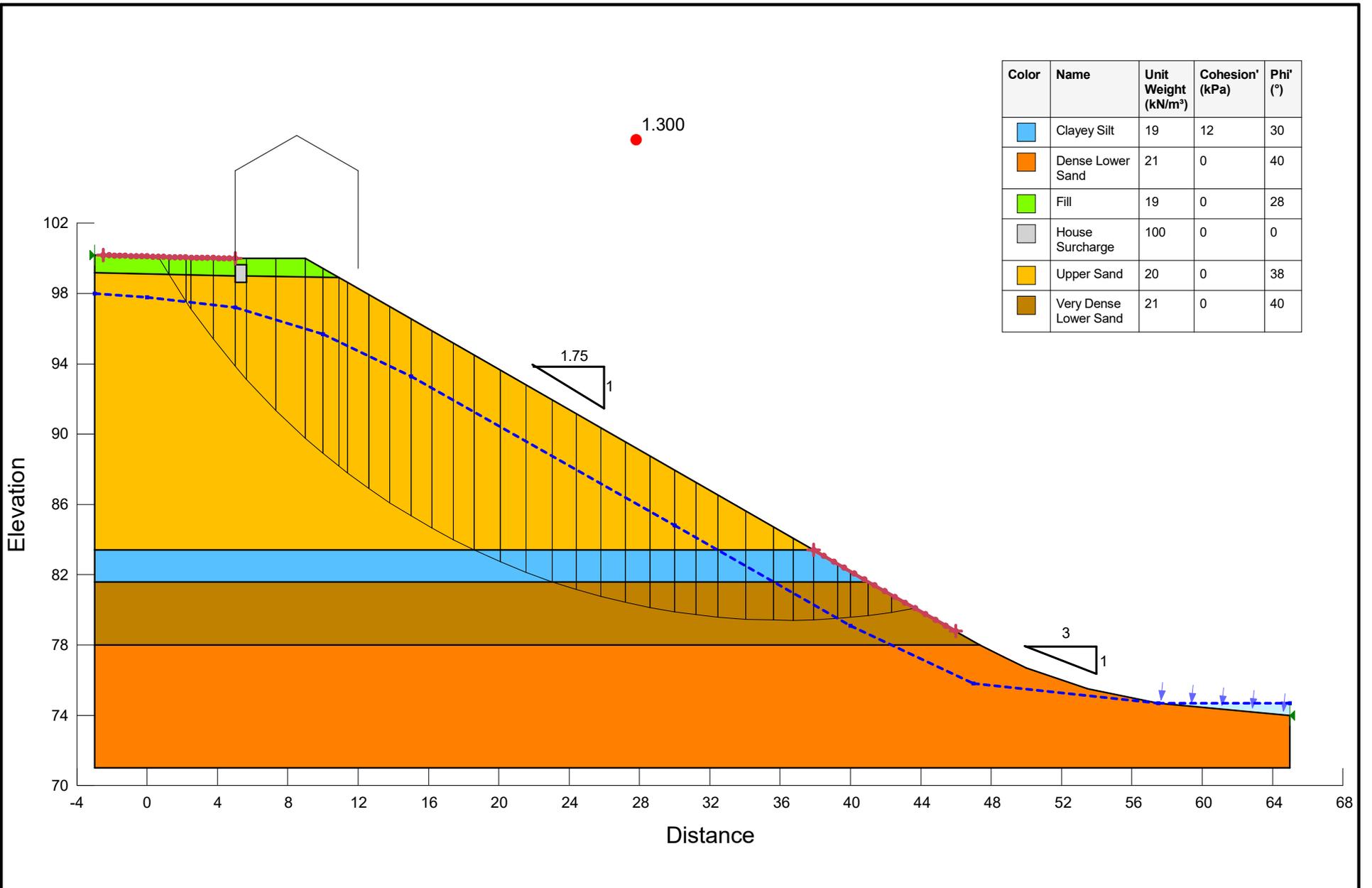


SLOPE/W Analysis PN5121 835 Spring Gardens Road, Burlington
 Section Cnexis.gsz Section C existing, normal GW condition
 2022-10-18 Figure No. 4 1:333



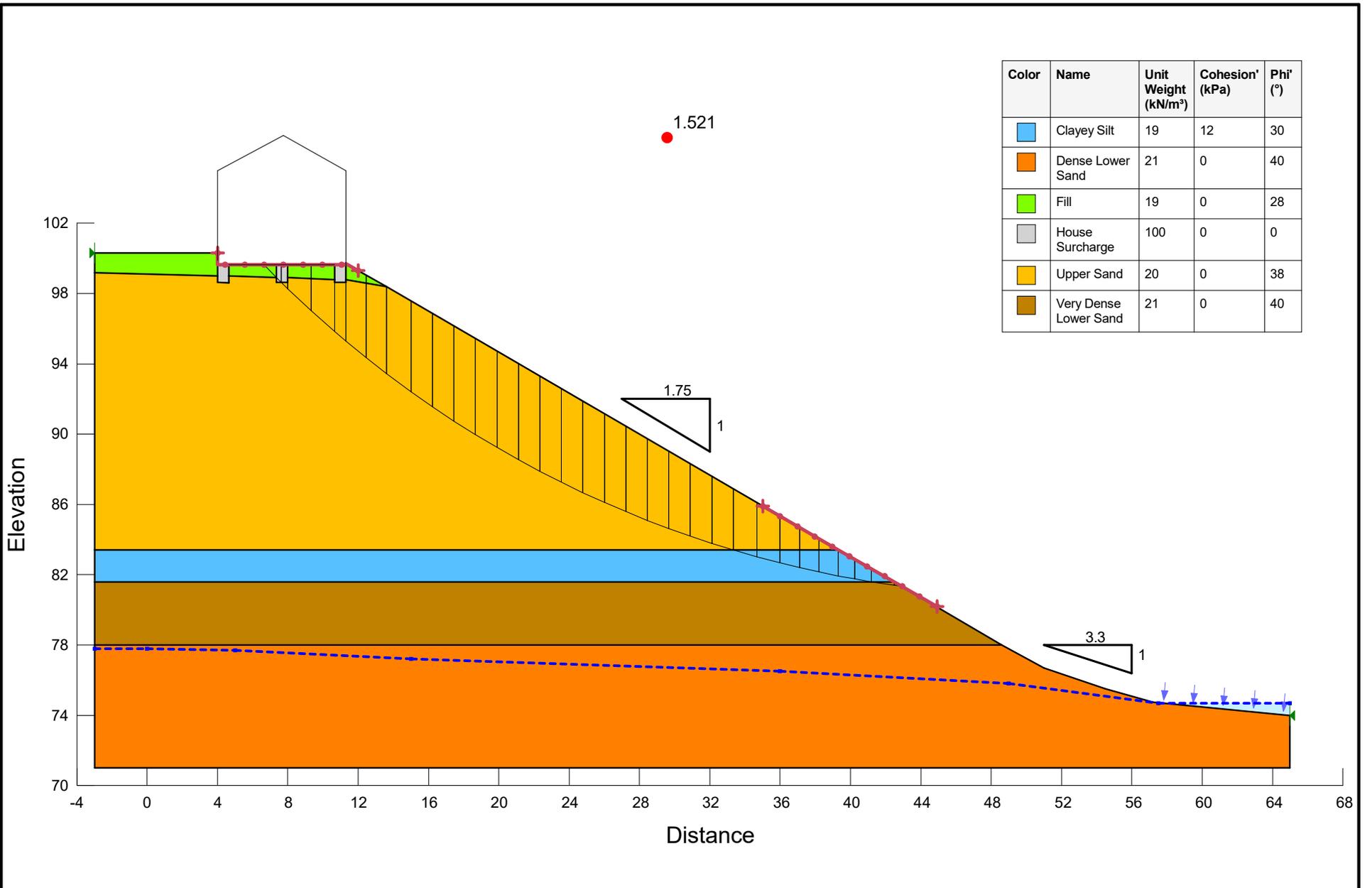
Color	Name	Unit Weight (kN/m ³)	Cohesion' (kPa)	Phi' (°)
Blue	Clayey Silt	19	12	30
Orange	Dense Lower Sand	21	0	40
Green	Fill	19	0	28
Grey	House Surcharge	100	0	0
Yellow	Upper Sand	20	0	38
Brown	Very Dense Lower Sand	21	0	40

SLOPE/W Analysis PN5121 835 Spring Gardens Road, Burlington
 Section A175nr.gsz Section A 1.75H:1V inclination @normal GWL
 2022-09-19 Figure No. 5 1:304



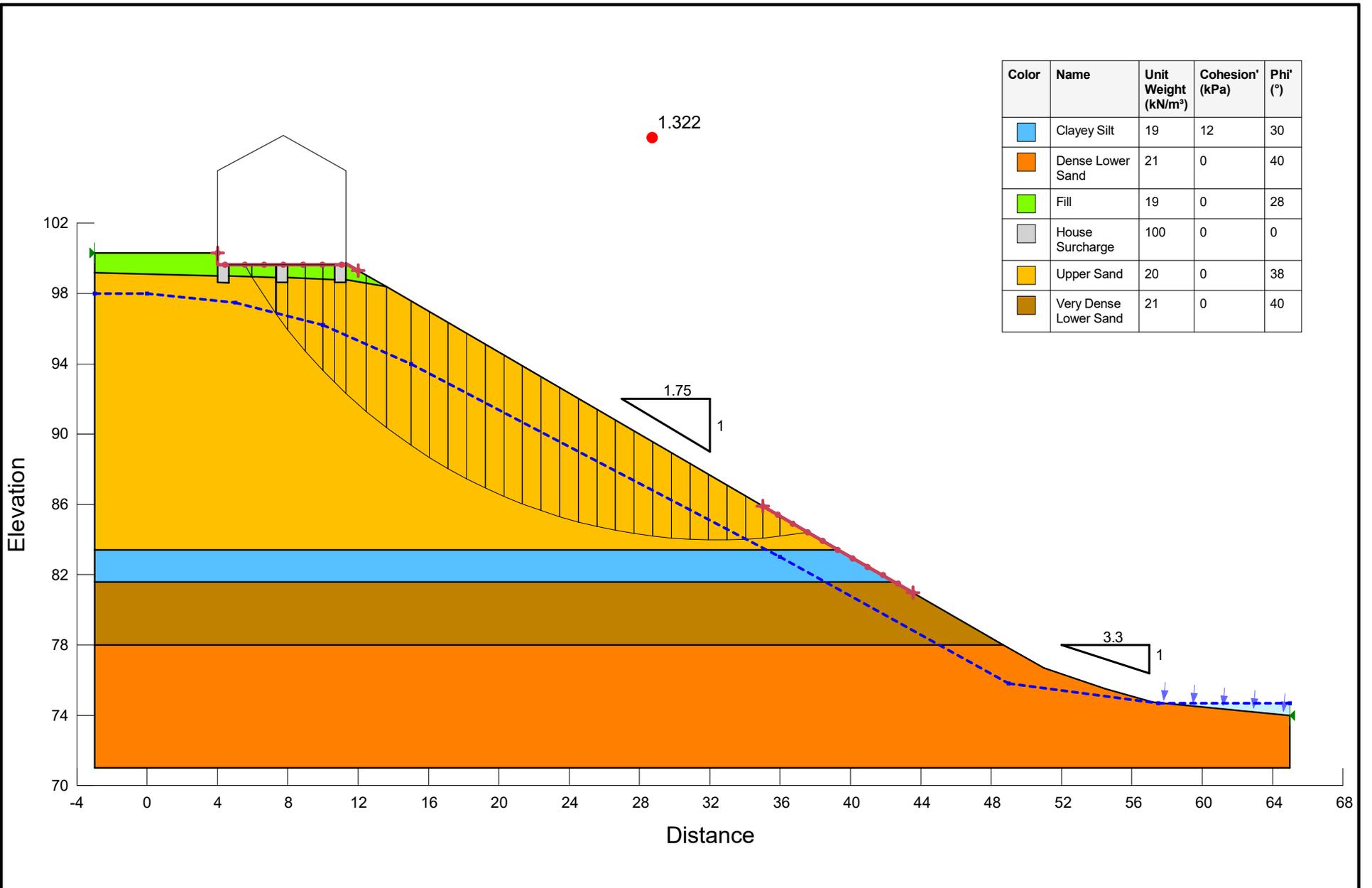
Color	Name	Unit Weight (kN/m ³)	Cohesion' (kPa)	Phi' (°)
Light Blue	Clayey Silt	19	12	30
Orange	Dense Lower Sand	21	0	40
Light Green	Fill	19	0	28
Grey	House Surcharge	100	0	0
Yellow	Upper Sand	20	0	38
Brown	Very Dense Lower Sand	21	0	40

SLOPE/W Analysis PN5121 835 Spring Gardens Road, Burlington
 Section A175hr.gsz Section A 1.75H:1V inclination @ high GWL
 2022-09-19 Figure No. 6 1:304



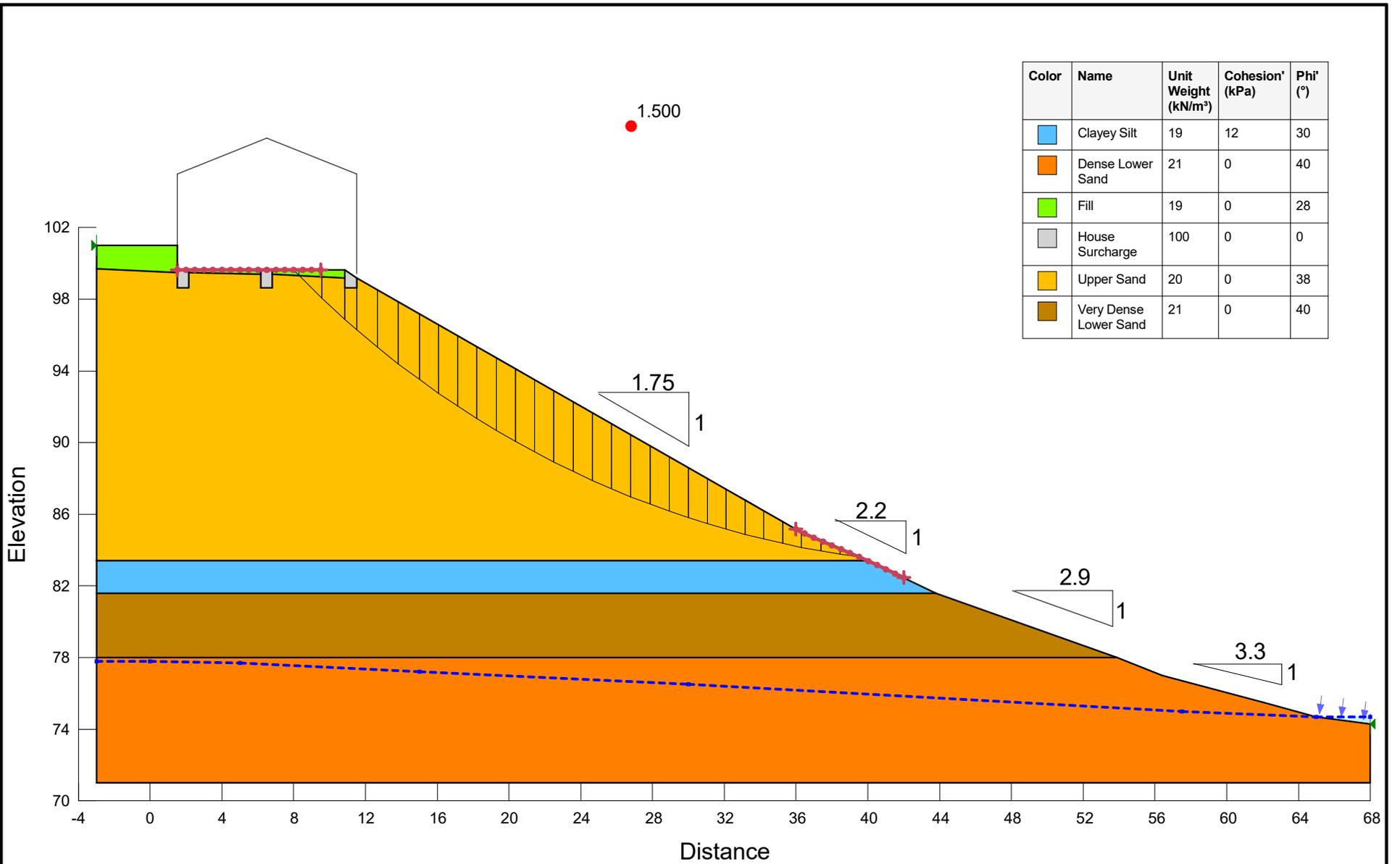
Color	Name	Unit Weight (kN/m ³)	Cohesion' (kPa)	Phi' (°)
Blue	Clayey Silt	19	12	30
Orange	Dense Lower Sand	21	0	40
Green	Fill	19	0	28
Grey	House Surcharge	100	0	0
Yellow	Upper Sand	20	0	38
Brown	Very Dense Lower Sand	21	0	40

SLOPE/W Analysis PN5121 835 Spring Gardens Road, Burlington
 Section B175nr.gsz Section B 1.75H:1V inclination @normal GWL
 2022-10-18 Figure No. 7 1:304



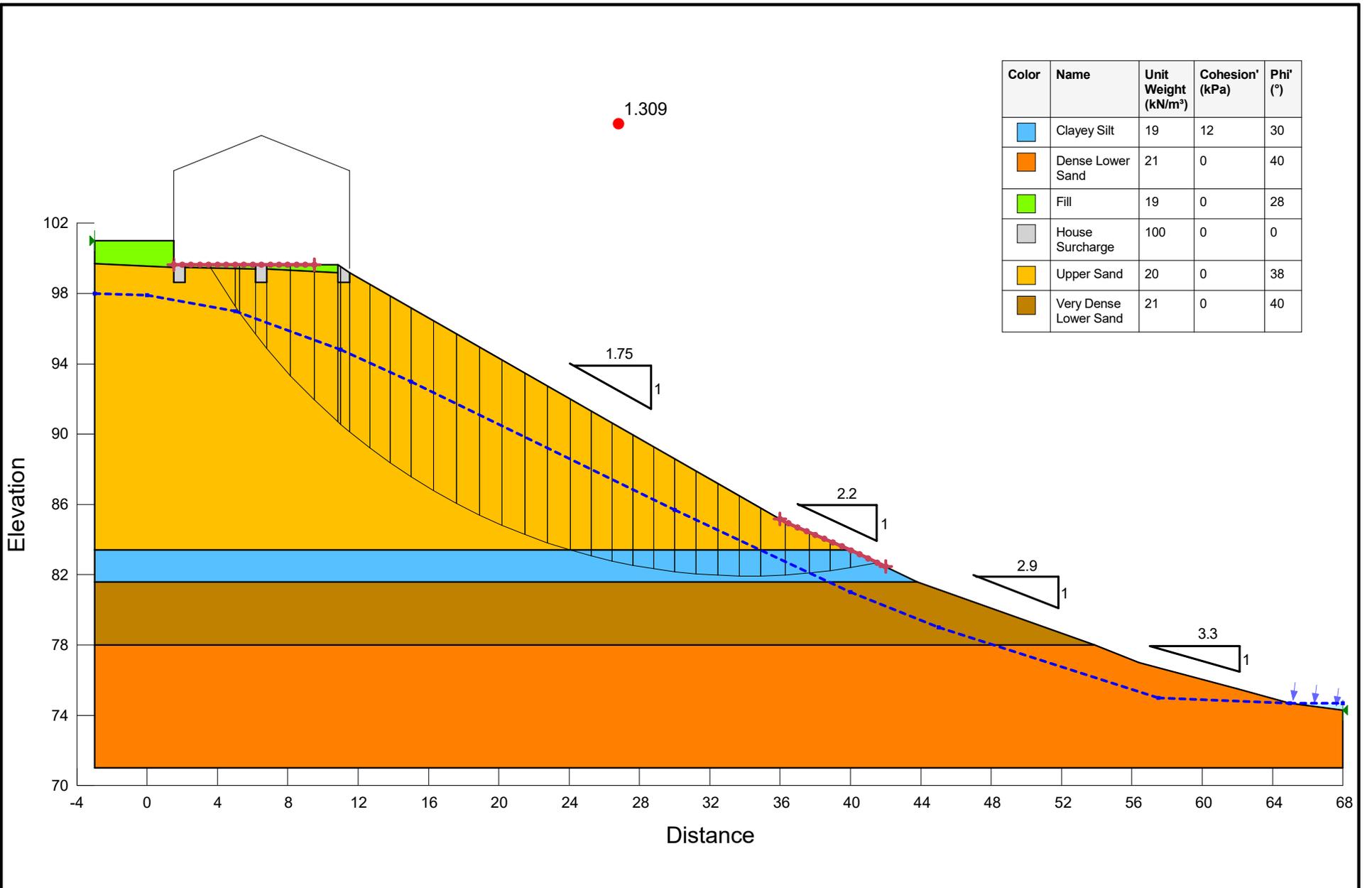
Color	Name	Unit Weight (kN/m ³)	Cohesion' (kPa)	Phi' (°)
Light Blue	Clayey Silt	19	12	30
Orange	Dense Lower Sand	21	0	40
Green	Fill	19	0	28
Grey	House Surcharge	100	0	0
Yellow	Upper Sand	20	0	38
Brown	Very Dense Lower Sand	21	0	40

SLOPE/W Analysis PN5121 835 Spring Gardens Road, Burlington
 Section B175hr.gsz Section B 1.75 inclination @ high GWL
 2022-09-26 Figure No. 8 1:304



Color	Name	Unit Weight (kN/m ³)	Cohesion' (kPa)	Phi' (°)
Blue	Clayey Silt	19	12	30
Orange	Dense Lower Sand	21	0	40
Green	Fill	19	0	28
Grey	House Surcharge	100	0	0
Yellow	Upper Sand	20	0	38
Brown	Very Dense Lower Sand	21	0	40

SLOPE/W Analysis PN5121 835 Spring Gardens Road, Burlington
 Section C175nr.gsz Section C 1.75H:1V inclination @ normal GWL
 2022-09-19 Figure No. 9 1:304



Color	Name	Unit Weight (kN/m ³)	Cohesion' (kPa)	Phi' (°)
Blue	Clayey Silt	19	12	30
Orange	Dense Lower Sand	21	0	40
Green	Fill	19	0	28
Grey	House Surcharge	100	0	0
Yellow	Upper Sand	20	0	38
Brown	Very Dense Lower Sand	21	0	40

SLOPE/W Analysis PN5121 835 Spring Gardens Road, Burlington
 Section C175hr.gsz Section C 1.75H:1V inclination @high GWL
 2022-09-19 Figure No.. 10 1:304



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Appendices

Topographic Survey Site Photographs

Site Photographs - 835 Spring Gardens Road, Burlington, Ontario



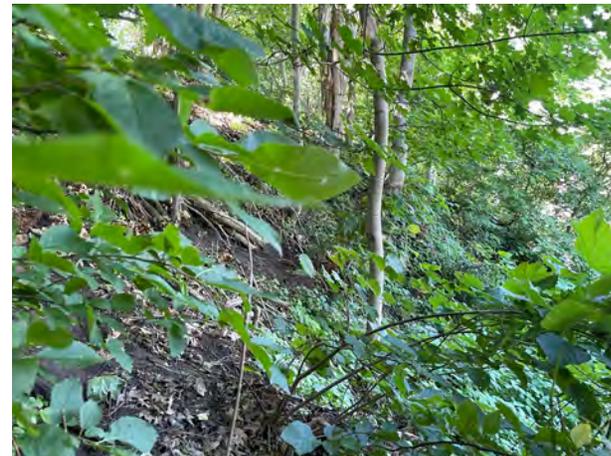
View of Tableland Looking West



View of Top of Slope Looking North East



View of Top of Slope Looking North West



View of Upper Portion of Slope Looking West

Site Photographs - 835 Spring Gardens Road, Burlington, Ontario



View of Upper Portion of Slope Looking South From Lower Portion of Slope



View of Mid Portion of Slope Looking NorthWest



View of Mid Portion of Slope Looking West



View of Mid Portion of Slope Looking South West

Site Photographs - 835 Spring Gardens Road, Burlington, Ontario



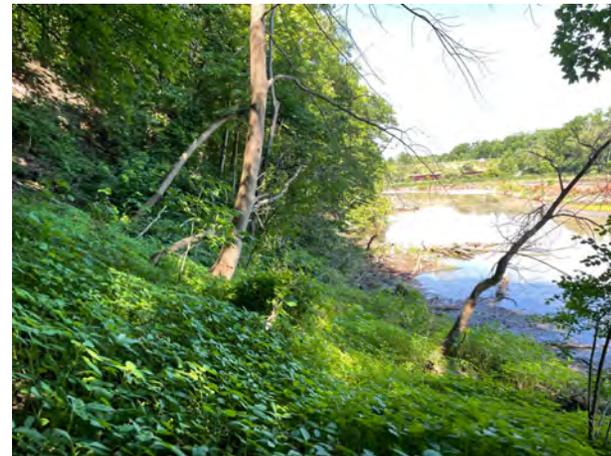
View of Tilted Tree and Surficial Erosion



View of Lower Portion of Slope Looking East



View of Lower Portion of Slope Looking North



View of Lower Portion of Slope Looking West

Site Photographs - 835 Spring Gardens Road, Burlington, Ontario



View of Toe of Slope Looking East

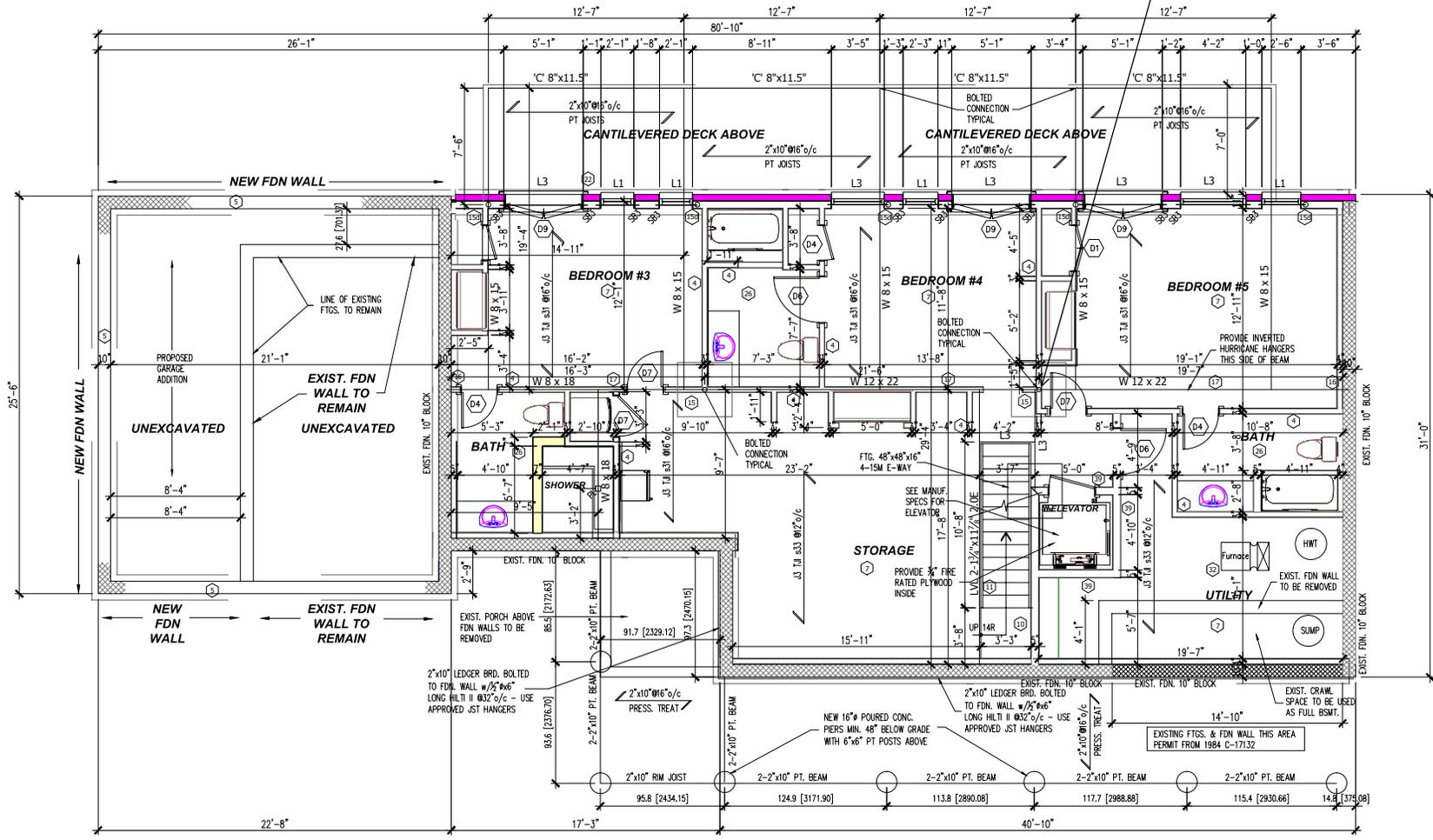


View of Watercourse from Toe of Slope

Revision	Front Porch & Bay 02	PV	09/09/18
Revision		01	24/07/18
Revision		02	05/06/17

CONTRACTOR SHALL CHECK AND VERIFY ALL DIMENSIONS.
 ANY DISCREPANCIES ARE TO BE REPORTED TO THE DESIGNER PRIOR TO COMMENCEMENT OF WORK. UNDER NO CIRCUMSTANCES SHALL THE CONTRACTOR OR SUBCONTRACTOR PROCEED IN UNCERTAINTY.
 REVIEWED UNDER THE 2016 O.B.C.

CONTRACTOR TO PROVIDE SHOP DRAWINGS FOR ALL STEEL CONNECTIONS.
 DRAWINGS MUST BE STAMPED BY AN ONTARIO REGISTERED PROFESSIONAL ENGINEER.



STRUCTURAL REVIEW ONLY



60 North Ridge Crescent
 Georgetown Ontario
 905-867-9777

The undersigned has reviewed and taken responsibility for this design and has the qualifications to do so. I have read and accept the requirements set out in the Ontario Building Code to be a designer.
 Registered under the Professional Engineers Act, R.S.O. 1990, c. 19, s. 22.1 of the building code.
 Issued under S.E.A.10328

Name	Signature	BCR
Peter Vozzias		2019

OWNER:
Rudyk/Long Residence
 835 Spring Gdns. Road
 Burlington Ontario



PROJECT:
 MAJOR RENOVATION
 Additions and Renovations

SHEET TITLE:
 BASEMENT FLOOR PLAN

PROPERTY:
 835 Spring Gardens Road

SCALE:
 3/16"=1'-0"

DATE:
 JUN/2018

DRAWN BY:
 PV

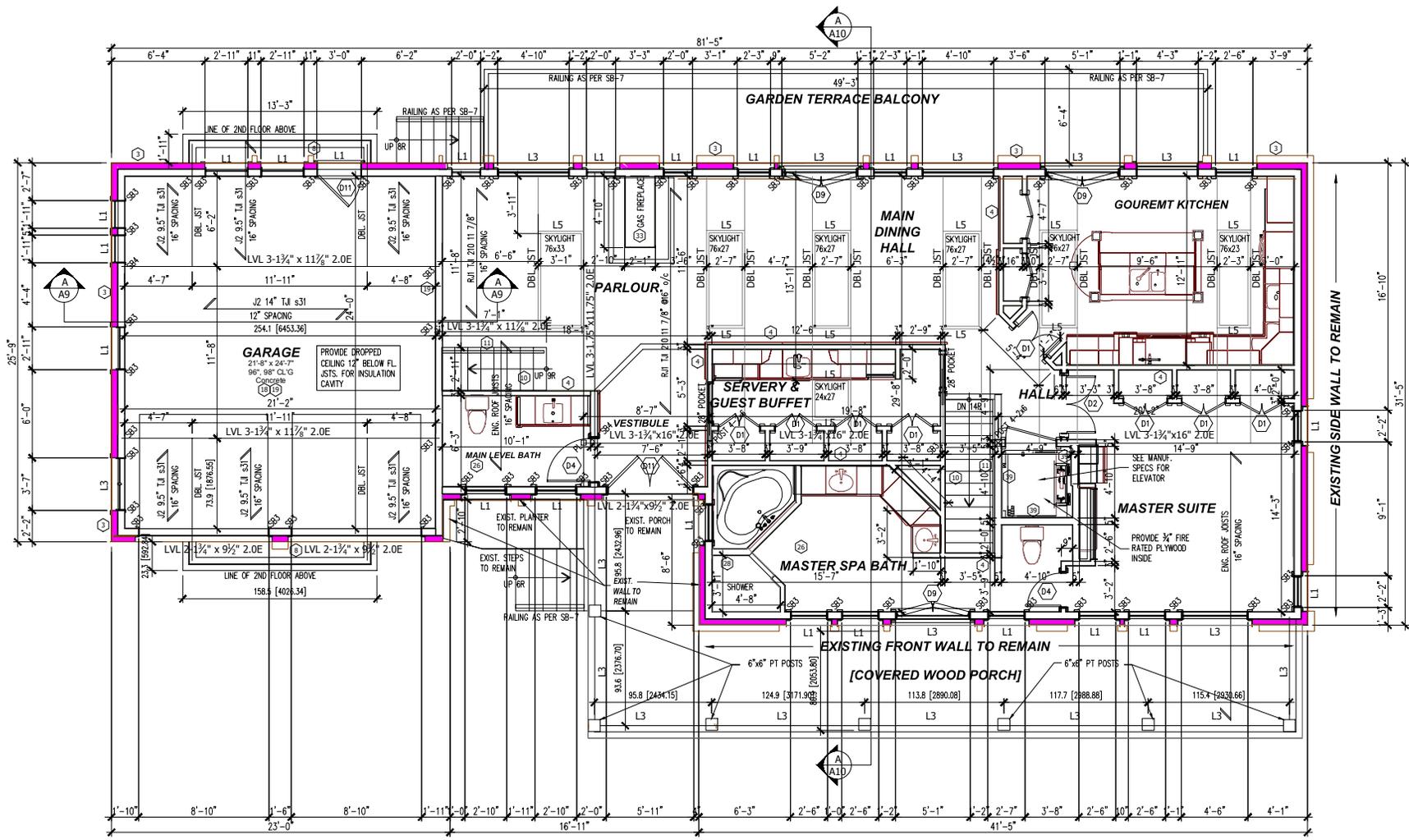
PROJECT NO:
 516

BY:
 PV

ID:
 A02

Revision	Front Porch & Bay 02	PV	09/09/18
Revision	01	PV	24/07/18
Revision		By	ED/MM/YY

CONTRACTOR SHALL CHECK AND VERIFY ALL DIMENSIONS.
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 REVIEWED UNDER THE 2016 O.B.C.



STRUCTURAL REVIEW ONLY



60 North Ridge Crescent
 Georgetown Ontario
 905-867-9777

The undersigned has reviewed and taken responsibility for this design, and has the qualifications as either designed and sealed the requirements set out in the Ontario Building Code to be a designer.
 Printed when design is complete under 90, C-13.2.2 of the building code. Expiry under 13.41(03/08)

Peter Vokas 2019
 Name Signature WS

OWNER:
Rudyk/Long Residence
 835 Spring Gdns. Road
 Burlington Ontario

EMPIRE DESIGN COMPANY
 PETER VOKAS
 ARCHITECTURAL DESIGNER FOR:
 LUXURY RESIDENTIAL & COMMERCIAL SPACE
 WWW.EMPIREDESIGNCOMPANY.COM
 416-500-8889 VOKAS@HOTMAIL.COM

PROJECT: MAJOR RENOVATION Additions and Renovations

SHEET TITLE: GROUND FLOOR PLAN

PROPERTY: 835 Spring Gardens Road

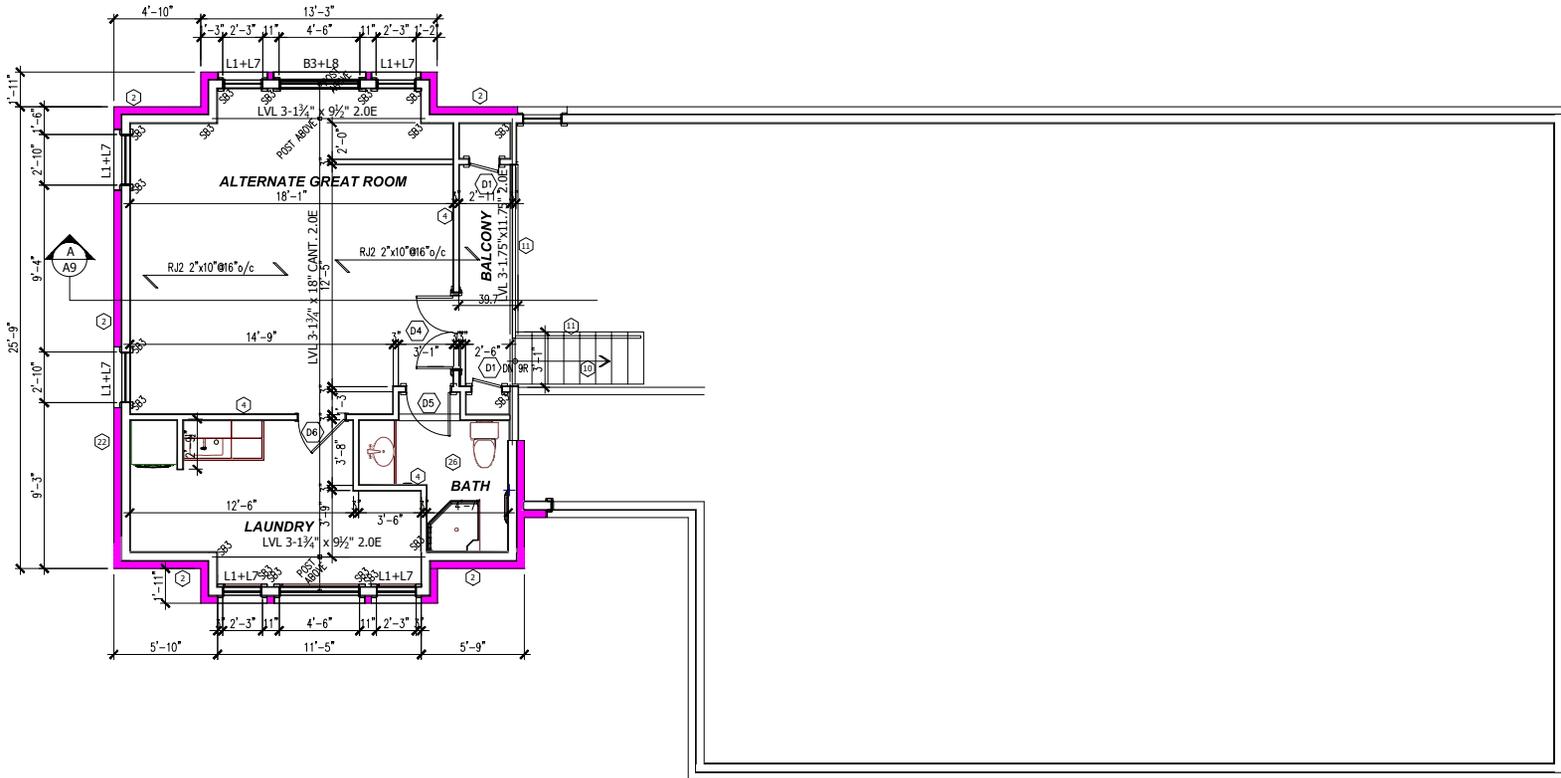
SCALE: 3/16"=1'-0" **517** 8

DRAWN BY: pv

PROJECT NO: **A03**

Revision	Front Porch & Bay	02	PV	09/09/18
Revision		01	PV	24/07/18
Revision		No.	By	ED/MM/YY

CONTRACTOR SHALL CHECK AND VERIFY ALL DIMENSIONS.
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 REVIEWED UNDER THE 2016 O.B.C.



STRUCTURAL REVIEW ONLY



60 North Ridge Crescent
 Georgetown Ontario
 905-867-9777

The undersigned has reviewed and takes responsibility for this design, and has the qualifications as either designed and sealed the requirements set out in the Ontario Building Code to be a designer.
 Required where design is exempt under 91, C-3.2.2. of the building code. Designed under 3.2.4.(1)(b)

Peter Vokas 2019
 Name Signature

OWNER:
Rudyk/Long Residence
 835 Spring Gdns. Road
 Burlington Ontario



PROJECT:
MAJOR RENOVATION
 Additions and Renovations

SHEET TITLE:
SECOND FLOOR PLAN

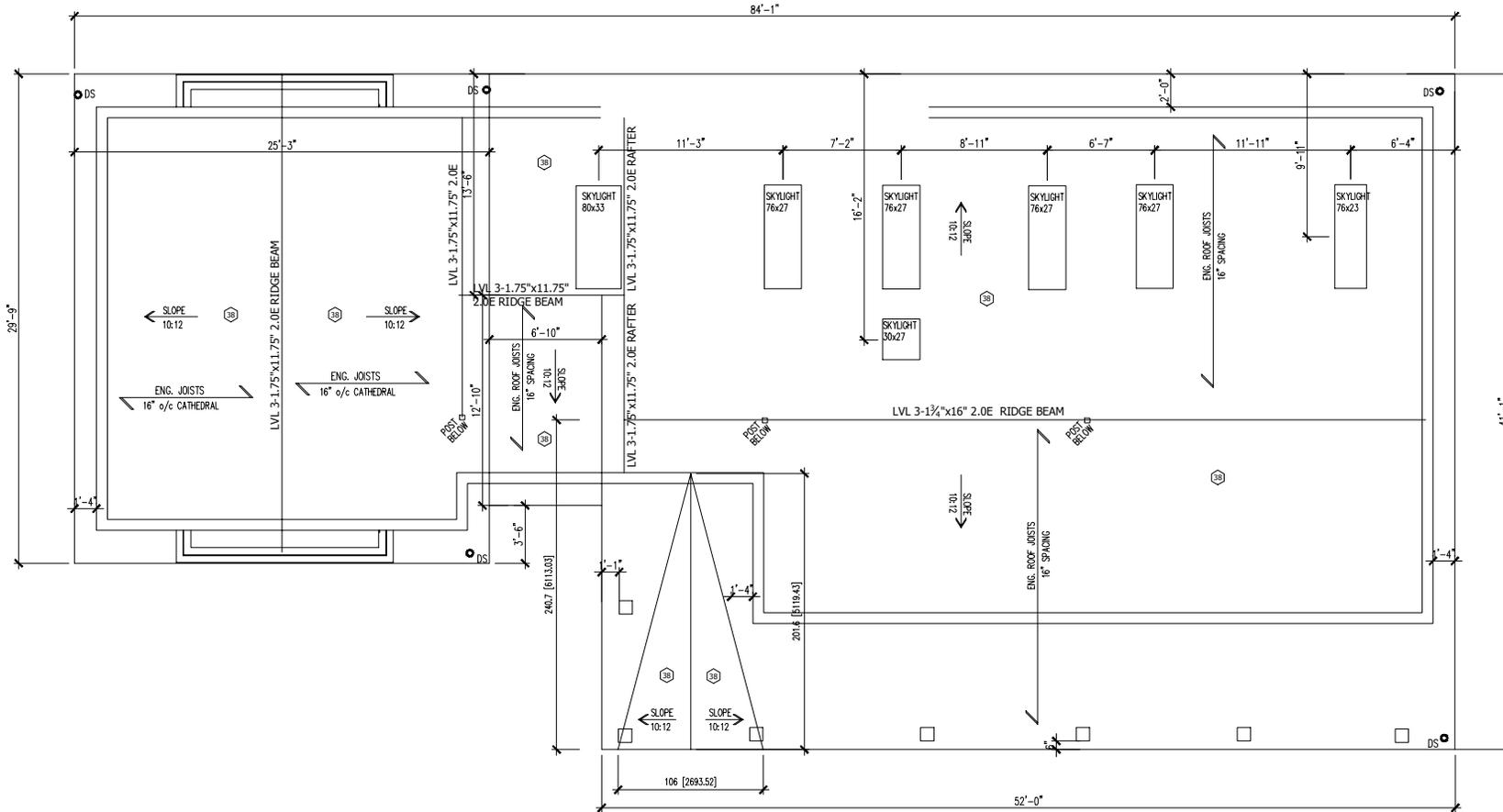
PROPERTY:
 835 Spring Gardens Road

SCALE:
 3/16"=1'-0" **518** 8

DRAWN BY:
 pv

PROJECT NO.:

A04



Revision	Front Porch & Bay 02	PV	09/09/18
Revision	01	PV	24/07/18
Revision	No.	By	ES/MM/YY

CONTRACTOR SHALL CHECK AND VERIFY ALL DIMENSIONS.
 ANY DISCREPANCIES ARE TO BE REPORTED TO THE DESIGNER PRIOR TO COMMENCEMENT OF WORK. UNDER NO CIRCUMSTANCES SHALL THE CONTRACTOR OR SUBCONTRACTOR PROCEED IN UNCERTAINTY.
 REVIEWED UNDER THE 2016 O.B.C.

STRUCTURAL REVIEW ONLY



60 North Ridge Crescent
 Georgetown Ontario
 905-867-9777

The undersigned has reviewed and takes responsibility for this design, and has the qualifications as (other design) and meets the requirements set out in the Ontario Building Code to be a designer.
 Required where design is exempt under Div. C-3.2.2. of the building code. Issued under S.S.A.(03/08)

Peer/Verify Name Signature Year

OWNER:
Rudyk/Long Residence
 835 Spring Gdns. Road
 Burlington Ontario



PROJECT: MAJOR RENOVATION Additions and Renovations

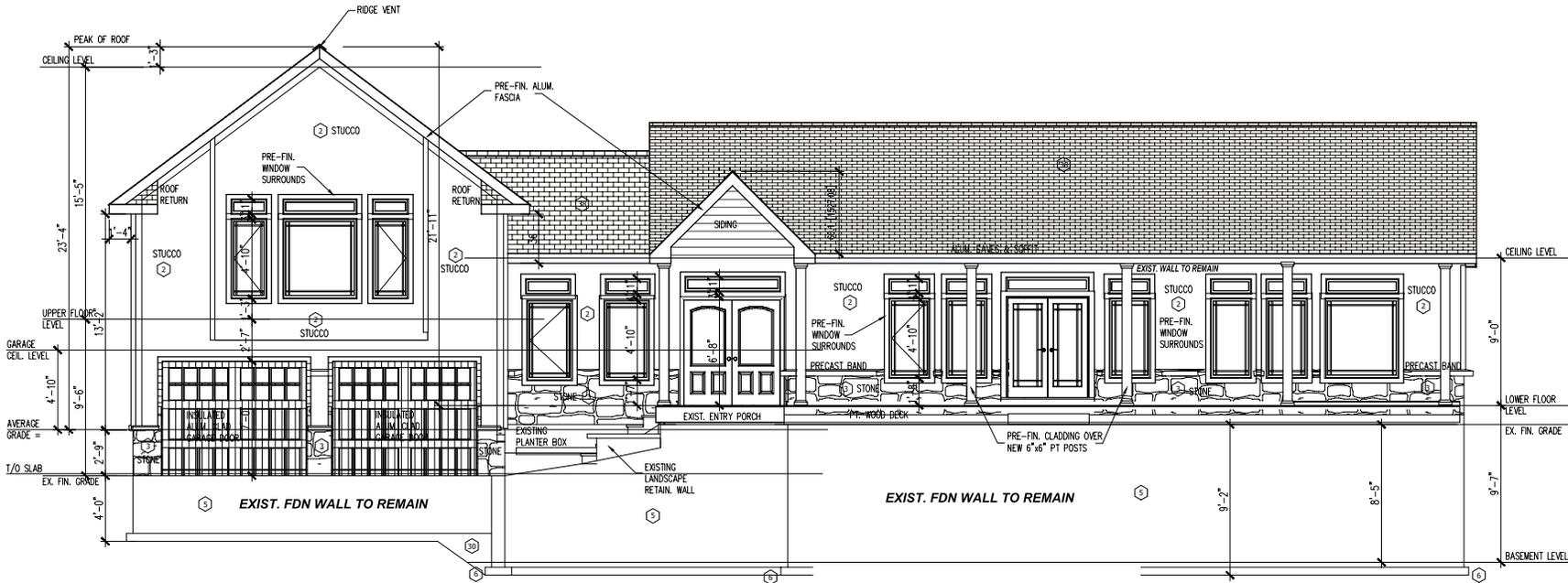
SHEET TITLE: ROOF PLAN

PROPERTY: 835 Spring Gardens Road

SCALE: 1/4"=1'-0" **519** 8

DRAWN BY: PV

PROJECT NO: **A05**



Revision	Front Porch & Bay 02	PV	09/09/18
Revision	01	PV	24/07/18
Revision	No.	By	ED/MM/YY

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 REVIEWED UNDER THE 2016 O.B.C.

STRUCTURAL REVIEW ONLY



60 North Ridge Crescent
 Georgetown Ontario
 905-867-9777

The undersigned has reviewed and takes responsibility for this design, and has the qualifications as either designer and meets the requirements set out in the Ontario Building Code to be a designer.
 Required when design is exempt under Div. C-3.32A of the building code. Issued under 3.2.4.1(3)(a)

Peter Vozikas 2019
 Name Signature WS

OWNER:
Rudyk/Long Residence
 835 Spring Gdns. Road
 Burlington Ontario

EMPIRE DESIGN COMPANY
 PETER VOZIKAS
 ARCHITECTURAL DESIGN FOR:
 LUXURY RESIDENTIAL & COMMERCIAL SPACE
 WWW.EMPIREDESIGNHOMES.COM
 416-500-8889 VOZIKAS@HOTMAIL.COM

PROJECT: **MAJOR RENOVATION Additions and Renovations**

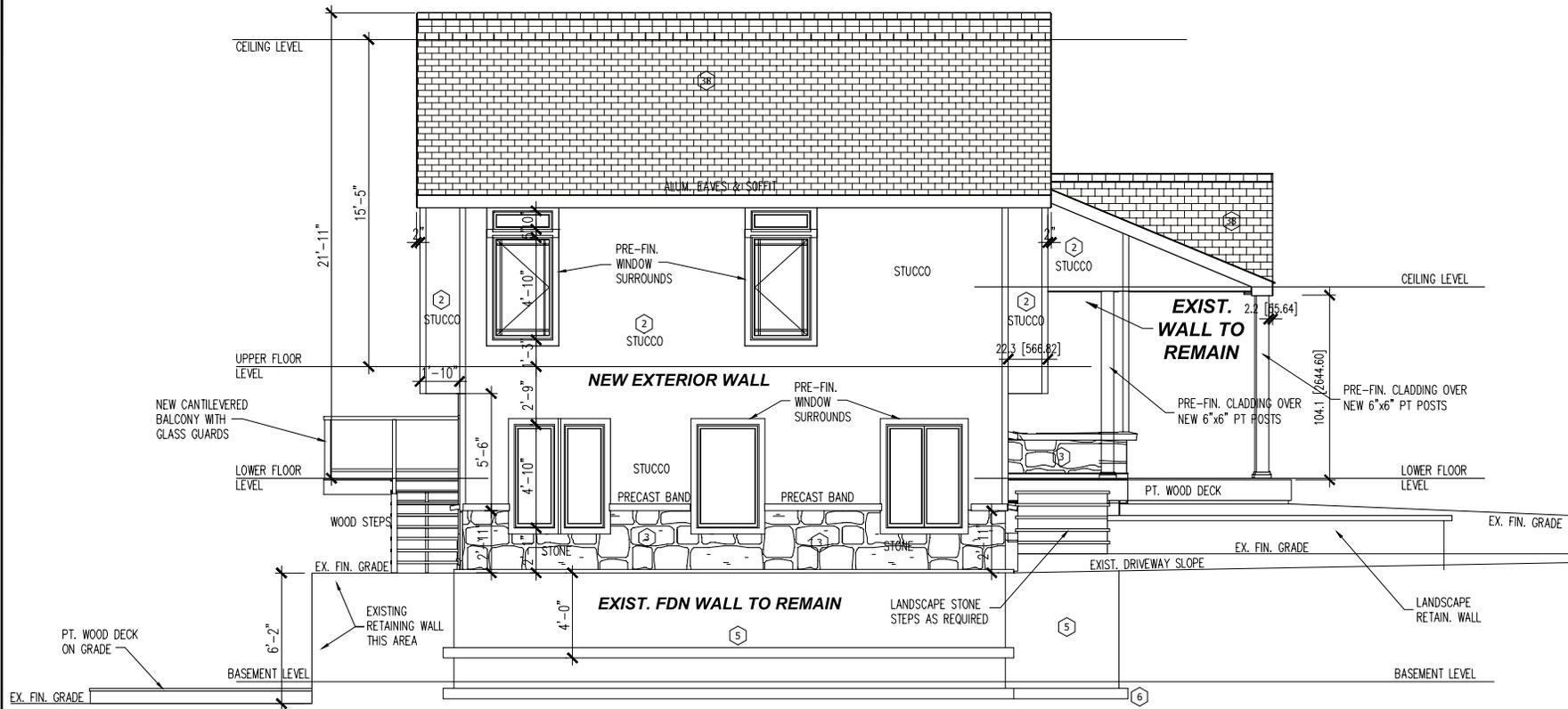
SHEET TITLE: **FRONT ELEVATION**

PROPERTY: **835 Spring Gardens Road**

SCALE: **3/16"=1'-0"** **520** 8

DRAWN BY: **PV**

PROJECT NO: **A06**



Revision	Front Porch & Bay	02	PV	09/09/18
Revision		01	PV	24/07/18
Revision			By	25/04/17

CONTRACTOR SHALL CHECK AND VERIFY ALL DIMENSIONS.

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REVIEWED UNDER THE 2016 O.B.C.

STRUCTURAL REVIEW ONLY



60 North Ridge Crescent
Georgetown Ontario
905-867-9777

The undersigned has reviewed and takes responsibility for this design, and has the qualifications as (other design) and meets the requirements set out in the Ontario Building Code to be a designer.

Required when design is exempt under Div. C-3.326 of the building code. Exempt under 3.3.4.1(2)(b)

Peter Vokas 2019
Name Signature WS

OWNER:
Rudyk/Long Residence
835 Spring Gdns. Road
Burlington Ontario



PROJECT: MAJOR RENOVATION
Additions and Renovations

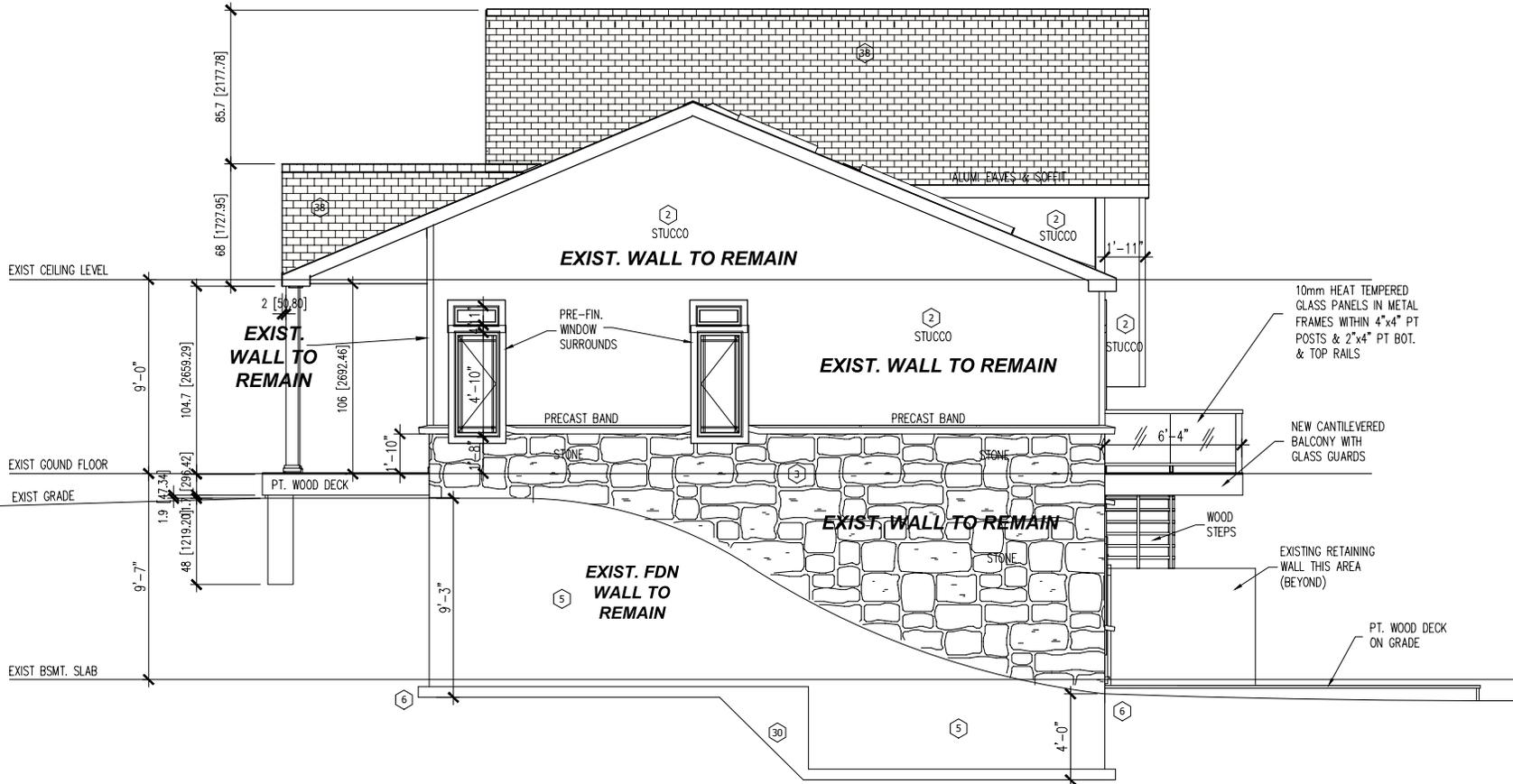
SHEET TITLE:
LEFT ELEVATION

PROPERTY:
835 Spring Gardens Road

SCALE:
1/4"=1'-0" 521 8

DRAWN BY:
pv

PROJECT NO:
A07



Revision	Front Porch & Bay 02	PV	09/09/18
Revision	01	PV	24/07/18
Revision	No.	By	ED/MA/YY

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 REVIEWED UNDER THE 2016 O.B.C.

STRUCTURAL REVIEW ONLY



60 North Ridge Crescent
 Georgetown Ontario
 905-867-9777

The undersigned has read and taken responsibility for the design, and has the qualifications as (other design) and meets the requirements set out in the Ontario Building Code to be a designer.
 Required when design is exempt under O.B.C. 3.2.2.2. of the building code. Issued under 3.8.1.0(1)(b)

Peter Vozikas 2019
 Name Signature MS

OWNER:
Rudyk/Long Residence
 835 Spring Gdns. Road
 Burlington Ontario



PROJECT:
MAJOR RENOVATION
 Additions and Renovations

SHEET TITLE:
RIGHT ELEVATION

PROPERTY:
 835 Spring Gardens Road

SCALE:
 1/4"=1'-0" **522** 8

DRAWN BY:
 PV

PROJECT NO:
A08

Revision	Front Porch & Bay 02	PV	09/09/18
Revision	01	PV	24/07/18
Revision	No.	By	05/04/17

CONTRACTOR SHALL CHECK AND VERIFY ALL DIMENSIONS.
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 REVIEWED UNDER THE 2016 O.B.C.



STRUCTURAL REVIEW ONLY



60 North Ridge Crescent
 Georgetown Ontario
 905-867-9777

The undersigned has reviewed and taken responsibility for this design, and has the qualifications as (other design) and meets the requirements set out in the Ontario Building Code to be a designer.
 Required where design is exempt under O.C. 3.3.26. of the building code. Issued under 3.3.1(1)(1)(b)

Peter Voskas 2019
 Name Signature WS

OWNER:
Rudyk/Long Residence
 835 Spring Gdns. Road
 Burlington Ontario



PROJECT:
MAJOR RENOVATION
 Additions and Renovations

SHEET TITLE:
REAR ELEVATION

PROPERTY:
 835 Spring Gardens Road

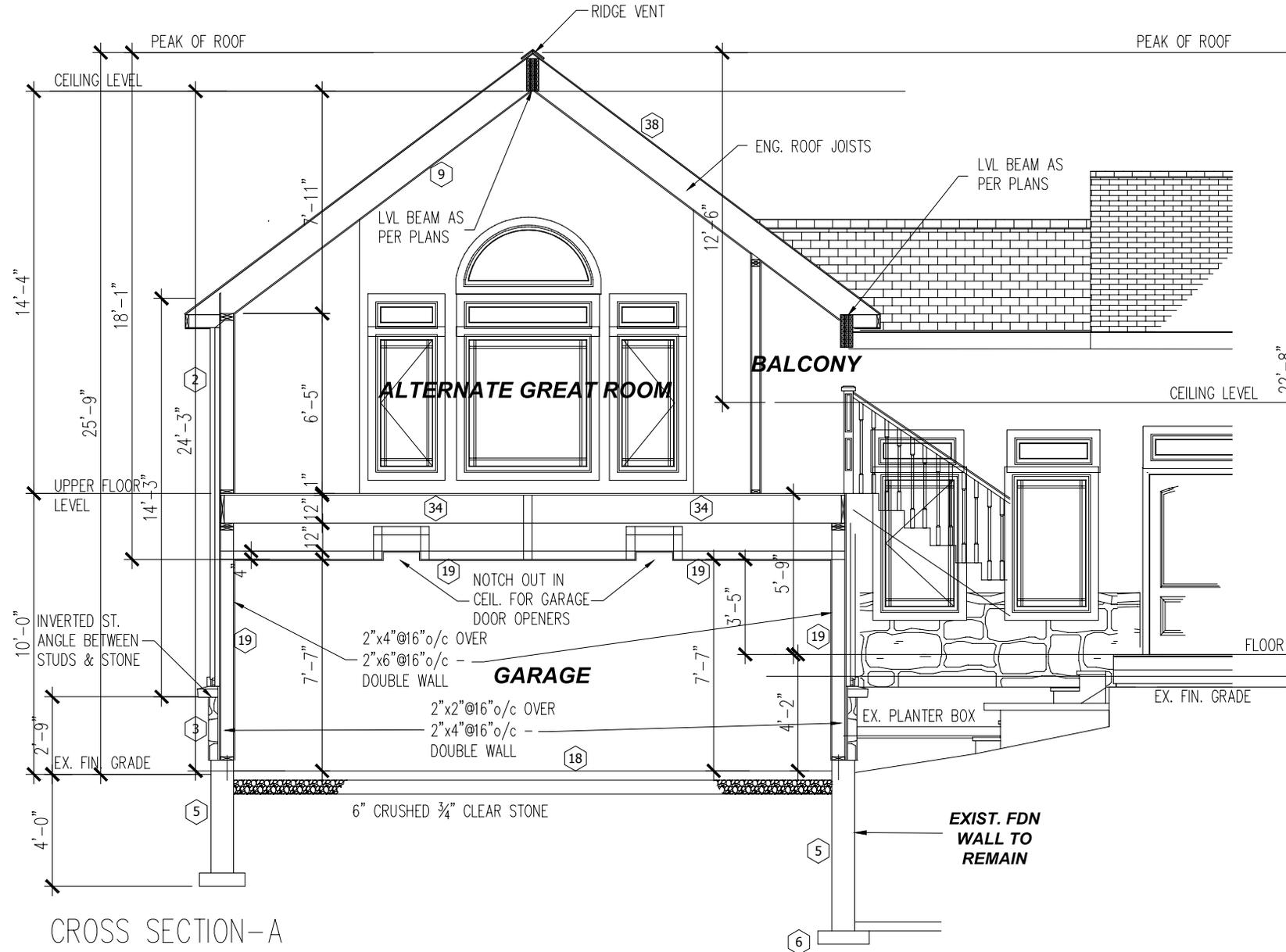
SCALE:
 3/16"=1'-0" **523** 8

DRAWN BY:
 PV

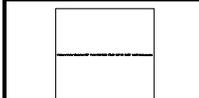
PROJECT NO:
A09

Revision	Front Porch & Bay	02	PV	09/09/18
Revision		01	PV	24/07/18
Revision			By	25/MMA/YY

CONTRACTOR SHALL CHECK AND VERIFY ALL DIMENSIONS.
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 REVIEWED UNDER THE 2016 O.B.C.



STRUCTURAL REVIEW ONLY



60 North Ridge Crescent
 Georgetown Ontario
 905-867-9777

The undersigned has reviewed and taken responsibility for this design, and has the qualifications or other design and meets the requirements set out in the Ontario Building Code to be a designer.
 Project when design is exempt under O.C. 3.2.2. of the building code. Exempt under 3.2.4.(1)(a)

Peter Vozzias 2019
 Name Signature WS

OWNER:
Rudyk/Long Residence
 835 Spring Gdns. Road
 Burlington Ontario



PROJECT:
MAJOR RENOVATION
 Additions and Renovations

SHEET TITLE:
CROSS SECTION-A

PROPERTY:
 835 Spring Gardens Road

SCALE:
 1/4"=1'-0" **524** 8

DRAWN BY:
 pv

PROJECT NO:
A10

INSULATION VALUES UPDATED AS PER JAN 1 2012 SB-12 UPDATE TO O.B.C. 2012

- 1. ROOF CONSTRUCTION (2"x6")
 - NO.210 (10.25kg/m²) ASPHALT SHINGLES, 10mm (3/8") PLYWOOD SHEATHING WITH 1" CLIPS APPROVED WOOD TRUSSES @ 600mm (24") O.C. MIN. APPROVED EAVES PROTECTION TO EXTEND 900mm (3'-4") FROM EDGE OF ROOF AND MIN. 300mm (1'-0") BEYOND INNER FACE OF EXTERIOR WALL, 38x140 (2"x6") TRUSS BRACING @ 1830mm (6'-0") O.C. AT BOTTOM COURSE. PRETIN. ALUM. WEAVERBAR, 1500mm (5'-0") WIDE. INSULATED CEILING AREA WITH SOX AT EAVES.
- 2. FRAME WALL CONSTRUCTION (2"x6")
 - STUCCO OR SIDING AS PER ELEVATION. APPROVED SHEATHING PAPER, 9.5mm (3/8") EXT. TYPE SHEATHING, 38x140 (2"x6") STUDS @ 400mm (16") O.C. RSI 3.87 (R22) INSULATION AND APPROVED VAPOUR BARRIER AND APPROVED CONT. AIR BARRIER, 13mm (1/2") INT. DRYWALL FINISH.
- 2A. FRAME WALL CONSTRUCTION (2"x4")
 - SIDING AS PER ELEVATION. APPROVED SHEATHING PAPER, RSI 0.9 (EXTERIOR ROOF INSUL. BOARD, 38x90 (2"x4") STUDS @ 400mm (16") O.C. WITH APPROVED DIAGONAL WALL BRACING, FOR LOAD BEARING WALLS SUPPORTING A SECOND FLOOR & ROOF. 38x140 (2"x6") STUDS @ 400mm (16") O.C. FOR LOAD BEARING WALLS SUPPORTING ROOF ONLY, WITH APPROVED DIAGONAL WALL BRACING, RSI 2.4 (R14) INSULATION AND APPROVED VAPOUR BARRIER AND APPROVED CONT. AIR BARRIER, 13mm (1/2") INT. DRYWALL FINISH.
- 3. BRICK VENEER CONSTRUCTION (2"x6")
 - 90mm (4") FACE BRICK OR STONE 25mm (1") AIR SPACE, 22x180x0.76mm (7/8"x7"x0.03") GALVANIZED METAL TIES @ 400mm (16") O.C. HORIZONTAL, 600mm (24") O.C. VERTICAL. APPROVED SHEATHING PAPER, 9.5mm (3/8") EXT. TYPE SHEATHING, 38x140 (2"x6") STUDS @ 400mm (16") O.C. RSI 3.87 (R22) INSULATION AND APPROVED VAPOUR BARRIER WITH APPROVED CONT. AIR BARRIER, 13mm (1/2") INT. DRYWALL FINISH. PROVIDE WEEP HOLES @ 800mm (32") O.C. BOTTOM COURSE AND OVER OPENING. PROVIDE BASE FLASHING UP MIN. 150mm (6") BEHND BUILDING PAPER.
- 3A. BRICK VENEER CONSTRUCTION (2"x4")
 - 90mm (4") FACE BRICK 25mm (1") AIR SPACE, 22x180x0.76mm (7/8"x7"x0.03") GALV. METAL TIES @ 400mm (16") O.C. HORIZONTAL, 600mm (24") O.C. VERTICAL. APPROVED SHEATHING PAPER, RSI 0.9 (EXTERIOR ROOF INSUL. BOARD, 38x90 (2"x4") STUDS @ 400mm (16") O.C. WITH APPROVED DIAGONAL WALL BRACING, FOR LOAD BEARING WALLS SUPPORTING A ROOF & A SECOND 38x90 (2"x4") STUDS @ 400mm (16") O.C. STUCCO/PLASTER WALL BRACING, RSI 2.4 (R14) INSUL. AND APPROV. 6 mL VAPOUR BARRIER W/ APPROVED CONT. AIR BARRIER, 13mm (1/2") INT. DRYWALL FINISH. PROVIDE WEEP HOLES @ 800mm (32") O.C. BOTTOM COURSE AND OVER OPENINGS. PROVIDE BASE FLASHING UP MIN. 150mm (6") BEHND BUILDING PAPER.
- 4. INTERIOR STUD PARTITIONS
 - BEARING PARTITIONS 38x89 (2"x4") @ 400mm (16") O.C. FOR 2 STOREYS AND 300mm (12") O.C. FOR 3 STOREYS. NON-BEARING PARTITIONS 38x89 (2"x4") @ 600mm (24") O.C. PROVIDE 38x89 (2"x4") BOTTOM PLATE AND 238x89 (2"x4") TOP PLATE, 13mm (1/2") INTERIOR DRYWALL BOTH SIDES OF STUD, PROVIDE 38x140 (2"x6") @ 400mm (16") O.C. STUDS/PLATES WHERE NOTED. NON-BEARING PARTITIONS 38x89 (2"x4") OR 38x140 (2"x6") @ 400mm (16") O.C.
- 5. FOUNDATION WALL/FOOTINGS: -SEE OBC 9.15.3-
 - 250mm (10") THICK CON. FDN. WALL WITH BITUMINOUS DAMPROOFING AND DRAINAGE LAYER. DRAINAGE LAYER BEHND INSUL. MUST EXTEND FULL HEIGHT OF FDN. WALL. MAXIMUM POUR HEIGHT 2300 (7'-10") ON 50000 (2250) CONT. KEED CON. F.T.C. BRACE FOUNDATION WALL PRIOR TO BACKFILLING. ALL FOOTINGS SHALL REST ON UNDISTURBED SOIL.
- 6. 100mm (4") DIA. WEEPING TILE, 150mm (6") GRADED STONE OVER AND AROUND WEEPING TILES.
- 7. BASEMENT SLAB
 - 80mm (3") MIN. 32MPa CONG. SLAB ON 100mm (4") COARSE GRANULAR FILL OR 200MPa (2900psi) CONG. WITH DAMPROOFING BELOW SLAB.

- 19. 13mm (1/2") GYPSUM BD. ON WALL AND CEILING BETWEEN HOUSE AND GARAGE, RSI 4.23 (R24) IN WALLS, RSI 5.46 (R31) IN CEILING. TAPE AND SEAL & STRUCTURALLY SUPPORT ALL JOINTS. IN ORDER TO BE GAS TIGHT.
- 20. DOOR AND FRAME GASPROOF. DOOR EQUIPPED WITH SELF CLOSING DEVICE AND WEATHERSTRIP.
- 21. PRECAST CONCRETE STEP OR WD. STEP WHERE NOT EXPOSED TO WEATHER. MAX. RISE 200mm (7-7/8"). MIN. RUN @ 1:10 (2500mm-1-1/2").
- 22. CAPPED DRYER EXHAUST VENTED TO EXTERIOR. DUCTS SHALL CONFORM TO O.B.C. PART 6.
- 23. ATTIC ACCESS HATCH 500x700 (20"x28") WITH WEATHERSTRIPPING. RSI 8.81 (R50) RIGID INSULATION BACKING.
- 24. FIREPLACE CHIMNEYS - OBC 9.21-
 - TOP OF FIREPLACE CHIMNEY SHALL BE 915mm (3'-0") ABOVE THE HIGHEST POINT AT WHICH IT COMES IN CONTACT WITH THE ROOF AND 610mm (2'-0") ABOVE THE ROOF SURFACE WITHIN A HORIZ. DISTANCE OF 3050mm (10'-0") FROM THE CHIMNEY.
- 25. LINEN CLOSET 4 SHELVES MIN. 350mm (14") DEEP.
- 26. MECHANICAL EXHAUST FAN, VENTED TO EXTERIOR. TO PROVIDE AT LEAST ONE AIR CHANGE PER HOUR. PROVIDE DUCT SEALS AS PER O.B.C. 9.32.3.12.
- 27. STEEL BEARING PLATE FOR MASONRY WALLS
 - 280x280x16 (11"x11"x5/8") STL. PLATE FOR STL BEAMS AND 280x280x12 (11"x11"x1/2") STL. PLATE FOR WOOD BEAMS BEARING ON CONG. BLK. PARTIALLY ANCHORED W/ 2-19mm (3/4") x200mm (8") LONG GALV. ANCHORS WITH SLOTTED BLOCK COURSE. LEVEL WITH NON-SHRINK GROUT.
- 28. STUD WALL REINFORCEMENT 9.5.2.3
 - PROVIDE WOOD BLOCKING REINFORCEMENT TO STUD WALLS FOR FUTURE GRAB BAR INSTALLATION IN MAIN BATHROOM, 840-920mm (33"-36") A.F.F. BEHND TOILET, 850mm (33") A.F.F. ON THE WALL OPPOSITE THE ENTRANCE TO THE BATHUB OR SHOWER.
- 29. 3-38x89 (3-2"x4") BUILT-UP-POST WITH DAMPROOFING MATERIAL WRAPPED AT THE END OF POST ANCHORED AT 610x610x300 (24"x24"x12") CONCRETE FOOTING.
 - STEP FOOTINGS: MIN. HORIZ. STEP = 600mm (23 5/8"). MAX. VERT. STEP = 600mm (23 5/8") FOR FIRM SOILS.
- 30. MIN. 100mm (4") CONCRETE SLAB ON GRADE ON 100mm (4") COARSE GRANULAR FILL. REINFORCED W/ 5x6-W2.9Wx20 MESH PLATE NEAR MID-DEPTH OF SLAB. CONG. STRENGTH 32 MPa (4640 psi) WITH 5-8% AIR ENTRAINMENT ON COMPACTED SUB-GRADE.
- 31. DIRECT VENT FURNACE TERMINAL MIN. 900mm (36") FROM A GAS REGULATOR. MIN. 300mm (12") ABOVE FIN. GRADE. FROM ALL OPENINGS, EXHAUST & INTAKE VENTS. HWY INTAKE TO BE A MIN. OF 1830mm (6'-0") FROM ALL EXHAUST TERMINALS. REFER TO GAS UTILIZATION CODE.
- 32. DIRECT VENT GAS FIREPLACE. VENT TO BE A MINIMUM 300mm (12") FROM ANY OPENING AND ABOVE FIN. GRADE. REFER TO GAS UTILIZATION CODE.
- 33. SUBFLOOR JOIST STRAPPING AND BRIDGING
 - 3/4" T & G SUBFLOOR ON WOOD FLOOR JOISTS. FOR CERAMIC TILE APPLICATION (* SEE OBC 9.30.6.4)
 - 6mm (1/4") PANEL. TYPE UNDERLAY UNDER RESILIENT & PARQUET FLOORING. (-* SEE OBC 9.23.9.4)
- 34. GARAGE SLAB: 100mm (4") 32MPa (4640psi) CONG. SLAB WITH 5-8% AIR ENTRAINMENT ON OPT. 100 (4") COARSE GRANULAR FILL WITH COMPACTED SUB-FRASE OR COMPACTED NATIVE FILL. SLOPE TO BEAT AT 1% MIN.

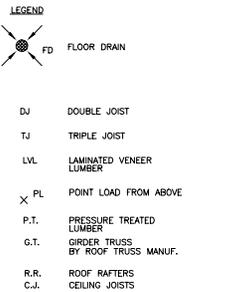
- 35. EXPOSED BUILDING FACE - OBC 9.10.14.4-
 - EXTERIOR WALLS TO HAVE A FIRE RESISTANCE RATING OF NOT LESS THAN 45 min. WHERE LIMITING DISTANCE IS LESS THAN 1.2M (3'-11"). WHERE THE LIMITING DISTANCE IS LESS THAN 600mm (1'-11") THE EXPOSING FACE SHALL BE CLAD IN NON-COMBUSTIBLE MATERIAL.
- 36. COLD CLER. FORCH SLAB
 - FOR MAX. 2500 mm (8'-3") PORCH DEPTH, 130mm (5") 32MPa (4640psi) CONG. SLAB WITH 5-8% AIR ENTRAINMENT. REINF. WITH 10M BARS @ 200mm (8") O.C. EACH WAY IN BOTTOM THIRD OF SLAB, 610x610 (24"x24") DOWELS @ 600mm (24") O.C. ANCHORED IN PERIMETER FDN. WALLS. SLOPE SLAB MIN. 1.0% FROM DOOR. PROVIDE (1") LINTELS OVER CELLAR DOOR.
- 37. THE FDN. WALL SHALL NOT BE REDUCED TO LESS THAN 90mm (3-1/2") THICK TO A MAX. DEPTH OF 600mm (24") AND SHALL BE TIED TO THE FACING MATERIAL WITH METAL TIES SPACED 200mm (8") O.C. VERTICALLY AND 900mm (36") O.C. HORIZONTALLY. FILL SPACE BETWEEN WALL AND FACING SOIL WITH MORTAR.
- 38. CONVENTIONAL ROOF FRAMING
 - 38x190 (2"x8") RAFTERS @ 400mm (16" O.C.), 38x310 (2"x12") RIDGE BOARD, 38x89 (2"x4") CONG. TIES AT MIDSPAN. CEILING JOISTS TO BE 38x140 (2"x6") @ 400mm (16") O.C. FOR MAX. 2830mm (9'-3") SPAN & 38x140 (2"x6") @ 400 (16") O.C. FOR MAX. 4450mm (14'-7") SPAN. RAFTERS FOR BUILT-UP ROOF TO BE 38x89 (2"x4") @ 600mm (24") O.C. WITH A 38x89 (2"x4") CENTRE POST TO THE TRUSS BELOW, (16") O.C. HORIZONTALLY @ 1800mm (6'-0") O.C. VERTICALLY.

- 39. TWO STOREY VOLUME SPACES
 - FOR A MAXIMUM 5400 mm (18'-0") HEIGHT, PROVIDE 2-38x140 (2-2"x6") SPRUCE COMMON STUDS @ 300mm (12") O.C. FOR BRCK AND 400mm (16") O.C. FOR SOING C/R 9/8 (3/8") THICK EXT. FLOWED SHEATHING. PROVIDE SOLID WOOD BRACING BETWEEN WOOD STUDS @ 1200 mm (4'-0") O.C. VERTICALLY.
 - FOR HORIZ. DISTANCES NOT EXCEEDING 2900 mm (9'-4"), PROVIDE 38x140 (2"x6") STUDS @ 400 (16") O.C. WITH CONTINUOUS 2-38x140 (2-2"x6") TOP PLATE + 1-38x140 (1-2"x6") BOTTOM PLATE & MINIMUM OF 3-38x140 (1-2"x6") CONT. HEADER AT GRADE. CEILING LEVEL. TAIL-MADE & GUEED AT TOP, BOTTOM PLATES AND HEADERS.
- SMOKE ALARM (REFER TO OBC 9.10.19)
 - PROVIDE 1 PER FLOOR, NEAR THE STAIRS CONNECTING THE FLOOR LEVEL AND ONE PER SLEEPING ROOM. ALARMS TO BE CONNECTED TO AN ELECTRICAL CIRCUIT AND INTERCONNECTED TO ACTIVATE ALL ALARMS IF 1 SOUNDS.
- CARBON MONOXIDE DETECTOR (OBC 9.33.4)
 - * CHECK LOCAL BYLAWS FOR REQUIREMENTS *
- SB - SOLID WOOD BEARING
 - SB2 - 2 MEMBER BUILT-UP STUD
 - SB3 - 3 MEMBER BUILT-UP STUD
 - SB4 - 4 MEMBER BUILT-UP STUD
 - SB4A - SOLID BEARING FROM ABOVE CARRY POST AND BLOCKING THROUGH FLOOR ASSEMBLY
- SOLID BEARING POSTS TO BE MADE UP OF THE SAME SIZE OF STUD IN WALL IT IS LOADED. (OR MIN 2"x4" FOR ROOF POSTS, EACH PLY TO BE TIED TOGETHER AS PER 9.17.4.2) AND 823.107. DN. B. O.B.C.

- WINDOWS:
 - 1) MINIMUM BEDROOM WINDOW - OBC 9.9.10.-
 - AT LEAST ONE BEDROOM WINDOW ON AN OPEN FLOOR IS TO HAVE MIN. 0.30m² UNOBTSTRUCTED GLAZED OR OPENABLE AREA WITH MIN. CLEAR WIDTH OF 380mm (1'-3").
 - 2) WINDOW GUARDS - OBC 9.8.8.1.-
 - A GUARD IS REQUIRED WHERE THE TOP OF THE WINDOW SILL IS LOCATED LESS THAN 480mm (1'-7") ABOVE FIN. FLOOR AND THE DISTANCE FROM THE FIN. FLOOR TO THE ADJACENT GRADE IS GREATER THAN 180mm (5'-11").
 - 3) WINDOW OVER STAIRS & LANDINGS - OBC 9.8.8.1.-
 - A GUARD IS REQUIRED WHERE THE TOP OF THE WINDOW SILL IS LOCATED LESS THAN 480mm (1'-7") ABOVE THE SURFACE OF THE TREAD, RAMP OR LANDING.

- MECHANICAL VENTILATION IS REQUIRED TO PROVIDE 0.3 AIR CHANGES PER HOUR AVERAGED OVER 24 HOURS. SEE MECHANICAL DRAWINGS.
- LUMBER:
 - 1) ALL LUMBER SHALL BE SPRUCE NO.2 GRADE, UNLESS NOTED OTHERWISE.
 - 2) STUDS SHALL BE STUD GRADE SPRUCE, UNLESS NOTED OTHERWISE.
 - 3) LUMBER EXPOSED TO THE EXTERIOR TO BE SPRUCE NO. 2 GRADE PRESSURE TREATED OR CEDAR, UNLESS NOTED OTHERWISE.
- 4) ALL LAMINATED VENEER LUMBER (L.V.L.) BEAMS, GIRDER TRUSSES, AND METAL HANGER CONNECTIONS SUPPORTING ROOF FRAMING TO BE DESIGNED & CERTIFIED BY TRUSS MANUFACTURER.
- 5) LVL BEAMS SHALL BE 2.0E W/ MICRO-LAM LVL (Fw=280qpa/Min.) OR EQUIVALENT, NAIL EACH PLY OF LVL WITH 89mm (3 1/2") LONG COMMON WIRE NAILS @ 300mm (12") O.C. STAGGERED IN 2 ROWS FOR 18x240 & 300mm (7 1/4") 9 1/2" (11 7/8") DEPTHS AND STAGGERED IN 3 ROWS FOR GREATER DEPTHS AND FOR 4 PLY MEMBERS ADD 13mm (1/2") DIA. GALV. BOLTS BOLTED AT MID-DEPTH OF BEAM @ 915mm (3'-0") O.C.
- 6) PROVIDE TOP MOUNT BEAM HANGERS TYPE "SCL" MANUFACTURED BY MGA CONNECTOR LTD. Tel. (905) 642-3175 OR EQUAL FOR ALL LVL BEAM TO BEAM CONNECTIONS UNLESS NOTED OTHERWISE.
- 7) JOIST HANGERS: PROVIDE METAL HANGERS FOR ALL JOISTS AND BUILT-UP WOOD MEMBERS INTERSECTING FLUSH BUILT-UP WOOD MEMBERS.
- 8) WOOD FRAMING NOT TREATED WITH A WOOD PRESERVATIVE, IN CONTACT WITH CONCRETE, SHALL BE SEPARATED FROM THE CONG. BY AT LEAST 2 mil. POLYETHYLENE FILM, No.50 (45mil.) ROLL ROOFING OR OTHER DAMPROOFING MATERIAL, EXCEPT WHERE THE WOOD MEMBER IS AT LEAST 150mm (6") ABOVE THE GROUND.
- 9) TERMITES & DECAY PROTECTION
 - IN LOCATIONS WHERE TERMITES ARE KNOWN TO OCCUR, CLEARANCE BETWEEN STRUCTURAL WOOD ELEMENTS AND THE FINISHED GROUND LEVEL DIRECTLY BELOW THEM SHALL BE NOT LESS THAN 450mm (17 3/4") AND ALL SIDES OF SUPPORTING ELEMENTS SHALL BE VISIBLE TO INSPECTION.
 - STRUCTURAL WOOD ELEMENTS, SUPPORTED BY WOOD ELEMENTS IN CONTACT WITH THE GROUND OR OVER EXPOSED BARE SOIL SHALL BE PRESSURE TREATED WITH CHEMICAL THAT IS TOXIC TO TERMITES

- STEEL:
 - 1) STRUCTURAL STEEL SHALL CONFORM TO CAN/CSA-G40-21 GRADE 300W. HOLLOW STRUCTURAL SECTIONS SHALL CONFORM TO CAN/CSA-G40-21 GRADE 350W CLASS "H".
 - 2) REINFORCING STEEL SHALL CONFORM TO CSA-G30-18M GRADE 400R.



WOOD LINTELS AND BUILT-UP WOOD BEAMS	
L1A	2/38 x 140 (2/2" x 6") SPR.#2
B1	2/38 x 184 (2/2" x 8") SPR.#2
B1	3/38 x 184 (3/2" x 8") SPR.#2
B2	4/38 x 184 (4/2" x 8") SPR.#2
L3	2/38 x 235 (2/2" x 10") SPR.#2
B3	3/38 x 235 (3/2" x 10") SPR.#2
B4	4/38 x 235 (4/2" x 10") SPR.#2
L5	2/38 x 286 (2/2" x 12") SPR.#2
B5	3/38 x 286 (3/2" x 12") SPR.#2
B6	4/38 x 286 (4/2" x 12") SPR.#2

LAMINATED VENEER LUMBER (L.V.L.) BEAMS	
L1A	2-1 3/4"x7 1/4" (2-45x184)
L1B	3-1 3/4"x7 1/4" (3-45x184)
L2	4-1 3/4"x7 1/4" (4-45x184)
L3	2-1 3/4"x9 1/2" (2-45x240)
L4	3-1 3/4"x9 1/2" (3-45x240)
L5	4-1 3/4"x9 1/2" (4-45x240)
L6	3-1 3/4"x11 7/8" (3-45x302)
L7	4-1 3/4"x11 7/8" (4-45x302)
L8	3-1 3/4"x11 7/8" (3-45x355)
L9	4-1 3/4"x11 7/8" (4-45x355)

- NOTE: ALL CONSTRUCTION SHALL CONFORM TO THE ONTARIO BUILDING CODE (O.B.C.) AND OTHER APPLICABLE CODES AND AUTHORITIES HAVING JURISDICTION.
- NOTE: REFER TO TRUSS LAYOUT BY WATFORD ROOF TRUSS LTD. DATED MARCH 15, 2017 FOR TRUSS SPANS AND EXACT ORDER LOCATIONS.
- NOTE: PROVIDE FIRE SEPARATION IN ATTIC SPACE. NO SPACE CAN BE LARGER THAN 3230.

FALSE DORMER NOTE:
VENEER TO BE 2" THICK, ADHERED THIN VENEER INSTALLED AS PER MANUFACTURER SPECS (OR LESS) OR CONTACT TACOMA FOR STEEL FRAMING SPEC PRIOR TO CONSTRUCTION

FALSE DORMER - STRUCTURAL NOTE:
1. BUILD DORMER WITH 2X6 WALLS, ADN2X8 STICK FRAMED ROOF, PROPPED DOWN ONTO TRUSS TOP CHORDS @ 2'-0" O.C. SUCH THAT THE DORMER WEIGHT IS EVENLY SPREAD OUT ONTO TRUSSES.

ROOF TRUSS DESIGN NOTE:
FOR PART 4 ROOF TRUSSES REQUIRING WEB LATERAL BRACING, TRUSS MANUFACTURER IS TO DESIGN T-BRACING IN CONTACT WITH WEB LATERALS

2. DORMER WEIGHT IS .35kPa WHICH IS WITHIN THE ALLOWANCE FOR THE TRUSS DEAD LOAD

3. SPECIAL TRUSS ANALYSIS IS NOT REQUIRED FROM THE MANUFACTURER

NOTE:
ALL CONSTRUCTION SHALL CONFORM TO THE ONTARIO BUILDING CODE (O.B.C.) AND OTHER APPLICABLE CODES AND AUTHORITIES HAVING JURISDICTION.

NOTE:
PROVIDE 3-2X6 POST BELOW ALL GIRDER TRUSSES (N.O.U.)

NOTE:
CODE REFERENCES REFER TO O.B.C. 2012 DIVISION B

VENT NOTE:
ROOF TO BE VENTED TO 1/2 OF INSULATED ATTIC AREA - 3% OF VENT AREA IN THE SPACE 100 MORE THAN 50% OF THE REQUIRED ROOF AREA AS ROOF OR RIDGE VENTS

VENT NOTE:
ROOF AREA-4716 SQFT. @ 38x15.3 (13.5/2=7.6 OR MIN. 8 ROOF VENTS)

Revision No. By: 05/04/2017

CONTRACTOR SHALL CHECK AND VERIFY ALL DIMENSIONS

ANY DISCREPANCIES ARE TO BE REPORTED TO THE DESIGNER PRIOR TO COMMENCEMENT OF WORK. UNDER NO CIRCUMSTANCES SHALL THE CONTRACTOR OR SUBCONTRACTOR PROCEED IN UNCERTAINTY.

REVIEWED UNDER THE 2016 O.B.C.

STRUCTURAL REVIEW ONLY

60 North Ridge Crescent
Georgetown Ontario
905-867-9777

The undersigned has reviewed and taken responsibility for this design, and has the qualifications (as stated herein) and meets the requirements of all the Ontario Building Code to be a designer.

Required when design is exempt under the O.B.C. of the building code. Exempt under S.31(6.1)

File Number: 2019
Name: Sridhar
System: R28

OWNER:
Rudyk/Long Residence
835 Spring Gdns. Road
Burlington Ontario

EMPIRE DESIGN COMPANY
1167 WESTERN AVE.
ARCHITECTURAL SERVICES FOR LUXURY RESIDENTIAL & COMMERCIAL SPACE
WWW.EMPIREDESIGNCOMPANY.COM
416-500-8689 VOXKASS@HOTMAIL.COM

PROJECT:
MAJOR RENOVATION
Additions and Renovations

SHEET TITLE:
GENOTES

PROPERTY:
835 Spring Gardens Road

SCALE:
NTS 526 8

DRAWN BY:
pv

PROJECT NO.:

A12

ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

McWatt ACJ SCJ, Kristjanson and Favreau JJ.

BETWEEN:)
)
Ivan Rudyk and Shelley Young) Arkadi Bouchelev, for the Applicants
)
Applicants)
)
– and –)
)
Halton Region Conservation Authority) Kenneth Jull and Eliane Leal da Silva, for
) the Respondent
Respondent)
)
) **HEARD at Toronto (by videoconference):**
) December 15, 2021

Favreau J.

Overview

[1] The applicants, Ivan Rudyk and Shelley Young, seek an order quashing a decision made by the respondent, Halton Region Conservation Authority (the “Authority”), voiding a permit that would have allowed them to build an addition on their house. The applicants also seek extensive declaratory relief that would allow them to proceed with the project without further interference from the Authority.

[2] I am satisfied that the applicants are entitled to an order quashing the Authority’s decision. Section 8 of O. Reg. 162/06, which gives the Authority the power to cancel a permit, provides that permit holders are entitled to notice and a show cause hearing before a permit can be cancelled. The Regulation does not give the Authority the power to declare a permit “void” without a hearing. The Authority’s decision voiding the permit was both unreasonable and procedurally unfair. However, as discussed more fully below, it would not be appropriate for this Court to grant the broad declaratory relief sought by the applicants.

Statutory and regulatory authority of the Authority

[3] Before reviewing the background to the dispute between the parties, it is helpful to understand the Authority’s statutory and regulatory powers.

[4] The *Conservation Authorities Act*, R.S.O. 1990, c. C.27, provides for the establishment of conservation authorities in municipalities in Ontario. Section 28(1) of the Act gives conservation authorities the power to establish regulations addressing various matters, including “prohibiting, regulating or requiring the permission of the authority for development if, in the opinion of the authority, the control of flooding, erosion, dynamic beaches or pollution or the conservation of land may be affected by the development”.

[5] Section 28(25) of the *Act* defines “development”, which includes:

- (a) the construction, reconstruction, erection or placing of a building or structure of any kind,
- (b) any change to a building or structure that would have the effect of altering the use or potential use of the building or structure, increasing the size of the building or structure or increasing the number of dwelling units in the building or structure...

[6] In this case, the relevant regulation is O. Reg. 162/06, titled *Halton Conservation Authority: Regulation of Development, Interference with Wetlands and Alterations to Shorelands and Watercourses*.

[7] Section 2(1) of O. Reg. 162/06 prohibits developments in areas that may be affected by various events, including “erosion”.

[8] Section 3(1) of O. Reg. 162/02 gives the Authority the power to grant permission for development in the areas restricted by section 2(1), where the Authority is of the “opinion, the control of flooding erosion, dynamic beaches, pollution or the conservation of land will not be affected by the development”. Subsection (2) requires the Authority to give the permission in writing and subsection (4) provides that the Authority can designate one or more employees to exercise the powers under subsection (1).

[9] Section 8 of O. Reg. 162/02 addresses the cancellation of permits given under section 3(1), and requires notice and a show cause hearing:

8. (1) The Authority may cancel a permission granted under section 3 or 6 if it is of the opinion that the conditions of the permission have not been met.
- (2) Before cancelling a permission, the Authority shall give a notice of intent to cancel to the holder of the permission indicating that the permission will be cancelled unless the holder shows cause at a hearing why the permission should not be cancelled.
- (3) Following the giving of the notice under subsection (2), the Authority shall give the holder at least five days notice of the date of the hearing.

Background

The applicants' construction project

[10] The applicants own a bungalow, built in 1957, that backs onto a ravine in Burlington.

[11] The applicants decided to renovate their house, in part to make it more accessible for Ms. Young, who has health issues due to a car accident.

[12] The applicants hired Lifestyles by Barons ("Lifestyles") to renovate their house. In turn, Lifestyles retained Empire Design Company ("Empire") to prepare design drawings. As part of their contracts, Lifestyles and Empire were to apply for the necessary permits and approvals, including a minor variance from the City of Burlington's Committee, a building permit from the City of Burlington and a development permit from the Authority.

[13] Empire submitted the application for the development permit to the Authority in early May 2018. The application form described the project as a "2-storey addition to the side yard" and was categorized as an "alteration/addition to existing structure". With the application, Empire submitted a survey that labelled the bungalow as a "1 Storey Brick Dwelling". The Authority did not ask for drawings at the time of the application. However, one of the Authority's staff members visited the site before the permit was approved.

[14] The Authority issued the permit to the applicants on May 28, 2018. The permit was for a "proposed 2-storey addition, rear balcony, covered front porch and on-grade patio". The cover letter stated that the Authority had to approve any changes to the approved design.

[15] The applicants also obtained the other necessary approvals, including a building permit issued by the City of Burlington on November 1, 2018.

[16] In January 2019, Lifestyles began demolition work. The south and east walls were not meant to be part of the demolition. However, both walls partially collapsed when the roof to the building was removed.

[17] After the partial collapse of the two walls, an engineering firm retained by the applicants determined that the building was structurally unsound. Lifestyles demolished the remaining parts of the walls and rebuilt them in the same locations with new materials. The City of Burlington inspected and approved the rebuilt walls.

[18] On March 15, 2019, the Authority communicated with the City of Burlington stating that the Authority had not approved the work on the house. On March 20, 2019, the City issued a stop-work order and an order to comply to the applicants.

[19] On March 26, 2019, the Authority issued a Notice of Violation to the applicants. The Notice stated that the applicant had not obtained permissions to undertake "the full demolition and/or construction of an entire dwelling" and that they were in violation of section 2 of O. Reg. 162/06. The Notice encouraged the applicants to enter into a compliance agreement, including by obtaining a geotechnical assessment showing compliance with the Authority's Policy.

[20] On May 17, 2019, the City of Burlington lifted the stop work order and order to comply on the basis that the work had been required because the structure was unsafe. The City also stated that the applicants could commence construction work in compliance with their permits.

[21] The applicants resumed work on the house.

[22] However, on August 22, 2019, the Authority sent a letter to the applicants notifying them that the development permit it had issued was “void”. The Authority provided the following rationale for its decision:

The subject property is located within the erosion hazard associated with the valley of Grindstone Creek. It is also in an area with known slope instability issues. Given that the scale/scope of works has changed from what was originally permitted, a geotechnical assessment is required to ensure that the long-term stability of the valley wall is maintained and that there is no risk to life or property damage.

CH issued Permit #5927, on May 28, 2018, for the construction of a minor addition to the existing dwelling (specifically an expansion of the existing single car garage with living space above), a rear balcony, covered front porch and on-grade patio. However, since CH issued that permit, the existing dwelling was completely demolished and a new dwelling is now under construction. Consequently, the works occurring onsite are beyond the scope of what was approved under Permit #5927. The scale and scope of works currently underway would have required additional supporting information (i.e., geotechnical assessment). Accordingly, Permit #5927 is void, as it is not possible to permit an addition to a building that no longer exists.

[23] In its decision letter, the Authority referred to the process in section 8 of O. Reg. 162/06 for cancelling a permit. However, the Authority stated “[i]n our view, given that the permit is void, a hearing is not warranted, as the circumstances that were set out in the application for the permit have fundamentally changed”.

[24] The letter also requested that the applicants enter into a “compliance agreement” and that they pay a fee of \$3,200 “with a 100% surcharge”.

[25] The evidence from cross-examinations of the Authority’s affiant is that the decision to “void” the permit was not made or approved by the Authority’s Board. Rather, it was made by Authority employees.

[26] On September 23, 2019, the City of Burlington issued a stop work order to the applicants, requiring them to obtain approval from the Authority before proceeding any further with the work.

[27] In December 2019 and July 2020, the Authority sent “with prejudice” communications to the applicants, inviting them to submit a development permit application for a “new dwelling”.

Proceedings in the Superior Court

[28] The applicants initially brought an application in the Superior Court seeking extensive declaratory relief, including declarations that its construction project was not a “development” for the purpose of the *Conservations Authorities Act* and O. Reg. 162/06. In the alternative to the substantive declaratory relief sought, the applicants asked for a declaration that the voiding of the permit was *ultra vires* because the Authority failed to comply with the process in s. 8 of O. Reg. 162/06.

[29] For the purpose of the application, the parties prepared extensive affidavit evidence, including expert reports, and conducted cross-examinations.

[30] In a decision dated August 23, 2021, Sharma J. transferred the matter to the Divisional Court to be heard as an application for judicial review. He explained the basis for this decision as follows:

[The] factual allegations, as well as the legal issues on which the applicants seek orders, challenge the exercise of statutory power and decision-making by the respondent conferred upon it under the *Act* and O. Reg. 162/06. The declarations sought by the applicants call into question the authority of the respondent to regulate matters which the applicants say is not “development”, as well as the exercise of the respondent’s authority to cancel or void a permit previously issued. Whether that authority exists and whether it was exercised properly is what this entire application is about.

It is therefore a judicial review application challenging a statutory power or statutory power of decision. Section 2(1)2 of the *JRPA*, states that the court may, on an application for judicial review, grant relief by way of a declaration “in relation to the exercise, refusal to exercise or proposed exercise of a statutory power.” The court may also set aside a decision for error of law (s.2(2)), or where a decision is unauthorized or invalid (s.2(4)). These are the types of remedies the applicants seek. Section 6(1) of the *JRPA*, however, states that judicial review applications are to be made to the Divisional Court.

[31] As part of his decision, Sharma J. left the issue of costs of the application to the Divisional Court in the context of the application for judicial review

Other litigation

[32] The Authority has brought charges against the applicants under the *Provincial Offences Act*, R.S.O. 1990, c. P.33. In that context, the Authority obtained a search warrant in relation to the work on the property.

[33] On March 19, 2021, the applicants commenced a civil action against Lifestyles, Empire and others, seeking damages for negligence. In the statement of claim, the applicants allege that the plaintiffs misrepresented the nature of the project to the Authority.

Issues and analysis

[34] The applicants argue that the Authority has no jurisdiction over the work on their house other than the garage. They claim that the work they plan to do is on the existing footprint of the building and that this work thereby does not constitute a “development” as defined in the *Conservation Authorities Act*. They seek broad declaratory relief arising from this argument that would essentially allow them to proceed with the work without further interference by the Authority. In the alternative, the applicants challenge the Authority’s decision to “void” their development permit on the basis that the Authority did not have the jurisdiction to cancel the permit without following the process in section 8 of O. Reg. 162/06.

[35] For its part, the Authority argues that the application for judicial review should be dismissed on the basis that it is premature and/or moot, or on the basis that the applicants’ initial permit application was a “sham”. Essentially, these arguments turn on the Authority’s position that the project it approved is fundamentally different from the project the applicants are executing and the applicants therefore need a new permit to proceed with the project. From this perspective, the Authority argues that the application for judicial review has no utility because the crux of the issues between the parties is whether the applicants will be entitled to a development permit for their new project.

[36] In my view, the broad declaratory relief sought by the applicants is an overreach. It is not the role of the Divisional Court on an application for judicial review to grant broad declarations regarding the rights of a party under a statute. Rather, the Court reviews the decision of an administrative decision maker to determine whether the decision was reasonable and/or procedurally fair. The relief available flows from that determination. Accordingly, the role of the Court on this application for judicial review is to determine whether the decision of the Authority voiding the permit was unreasonable or procedurally unfair and, if so, what remedy to grant in the circumstances. As set out below, in my view, the Authority’s decision was both unreasonable and procedurally unfair. The appropriate remedy is to quash the decision. This means that the permit remains valid, but the Authority is not precluded from following the process set out in section 8 of O. Reg. 162/06 to give notice to the applicants that it intends to cancel the permit and to hold a show cause hearing.

[37] Insofar as the issues raised by the Authority are concerned, in my view they have no merit. They all presuppose that the Authority was entitled to “void” the development permit. However, as reviewed below, the Authority was not entitled to do so without following the process in section 8 of O. Reg. 162/06.

[38] Based on the issues as described above, the analysis below is organized as follows:

- a. Standard of review;
- b. Whether the decision to void the permit was unreasonable;
- c. Whether the decision to void the permit was procedurally unfair;
- d. Whether the application for judicial review should be dismissed on the basis that it is moot, premature and/or based on a sham; and

- e. The appropriate remedy.

Standard of review

[39] The standard of review to be applied to the substance of the Authority's decision is reasonableness: *Laforme v. The Corporation of the Town of Bruce Peninsula*, 2021 ONSC 5287 at paras. 18-19.

[40] In accordance with the Supreme Court of Canada's decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, at paras. 99-101, the principles to be applied in deciding whether a decision is reasonable include the following:

- a. Reasonableness is concerned with justification, transparency and intelligibility. A decision is unreasonable if it is internally incoherent or if it is untenable having regard to the relevant factual and legal constraints.
- b. The party challenging the decision has the burden of showing that it is unreasonable. A court should not set aside a decision based on minor flaws or peripheral shortcomings. To justify a finding of unreasonableness, the flaws or shortcomings must be sufficiently central or significant to the merits of the decision.
- c. The role of the court is to review the decision and not to decide the issue afresh. The focus of the reasonableness inquiry is therefore on the decision-making process and the outcome.

[41] There is no standard of review to be applied to the issue of procedural fairness. Rather, the Court is to determine whether the decision was procedurally fair having regard to the factors in *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817.

The Authority's decision to "void" the permit was not reasonable

[42] The Authority's decision to "void" the permit was not reasonable because it had no authority to cancel a development permit without following the process set out in section 8 of O. Reg. 162/06.

[43] In *Vavilov*, at para. 101, the Supreme Court held that one of the potential "fundamental flaws" in an administrative decision that would justify a court's intervention is where the decision is "untenable in light of the ... legal restraints that bear on it". Again, at para. 108, the Court emphasized that administrative decision makers are constrained by their constituting statutes and that any exercise of discretion "must ultimately comply 'with the rationale and purview of the statutory scheme under which it is adopted.'"

[44] In this case, section 8 of O. Reg. 162/06 sets out the process for the Authority to cancel a development permit. It requires the Authority to give notice to the permit holder and to hold a show cause hearing. There is no provision in the *Conservation Authorities Act* or O. Reg. 162/06 that allows the Authority to "void" a permit without following this process. The Authority's use of the word "void" is merely a matter of semantics. What the Authority did was cancel the applicant's permit. In doing so, it was required to follow the process set out in the regulation.

[45] Another fundamental flaw in the Authority’s decision to cancel the permit without notice and a show cause hearing is that the O. Reg. 162/06 suggests that this is a decision that cannot be made by the Authority’s staff but that must be made by the Authority’s Board. Section 3(4) of O. Reg. 162/06 gives the Authority the ability to delegate to its employees the power to grant a permit. However, there is no such delegation in section 8 of O. Reg. 162/06. In this case, the decision was made by Authority staff members who, on the face of the regulation, did not have the authority to make such a decision.

[46] The Authority justified its decision to “void” the permit and forego the process set out in section 8 of O. Reg 162/06 on the basis that the applicants were building a new structure and “the circumstances that were set out in the application for the permit have fundamentally changed”. However, it is evident from the record and issues before us that there is a significant dispute between the parties about the scope of the original permit, and specifically the extent to which it allowed the applicants to add a second floor to parts of the building. The effect of the collapsed walls is an added complication that raises issues about whether rebuilding those walls amounts to a change in the scope of work that may justify canceling a permit pursuant to section 8(1) of O. Reg. 162/06. However, these are precisely the types of issues that should be addressed and resolved at a show cause hearing. The applicants should have an opportunity to put their evidence and arguments before the proper decision makers, after which the Authority can decide whether the permit should be cancelled or not.

[47] Through their extensive records, including expert evidence, the parties seemed to invite this Court to resolve the issue of whether the work on the building exceeded the scope of the original permit. I address this point more fully in the section dealing with remedy, however I wish to emphasize again that this is not the proper role of the Divisional Court on an application for judicial review. An application for judicial review is to be decided on the record before the original decision maker. Much of the parties’ evidence was developed for the application in the Superior Court and, ultimately, before this Court. The evidence may ultimately be relevant at a show cause hearing. But it is not the role of this Court to step into the shoes of the show cause decision makers, which are presumably members of the Authority’s Board, to make the decision they should have made if the proper process had been followed.

The Authority’s decision to “void” the permit was procedurally unfair

[48] The Authority’s decision to “void” the permit was procedurally unfair because the Authority did not follow the requirements in section 8 of O. Reg. 162/06 and because it did not follow the basic requirements of procedural fairness for cancelling a permit.

[49] As held in *Vavilov*, at para. 77, the content of the duty of procedural fairness is to be determined in accordance with the factors established by the Supreme Court in *Baker*. Those factors include “(1) the nature of the decision being made and the process followed in making it; (2) the nature of the statutory scheme; (3) the importance of the decision to the individual or individuals affected; (4) the legitimate expectations of the person challenging the decision; and (5) the choices of procedure made by the administrative decision maker itself”.

[50] In this case, as mentioned above, the regulatory scheme provided for notice and a show cause hearing. The Authority did not provide these procedural guardrails and the decision was procedurally unfair on that basis alone.

[51] In addition, in my view, even in the absence of such regulatory requirements, the Authority was still required to give the applicants notice and an opportunity to be heard. The applicants obtained a permit from the Authority to renovate their home. They embarked on the work and the authority cancelled their permit mid-work without notice and without an opportunity to be heard. The Authority's decision had a significant impact on the applicants' interests, including their financial interests. This is the type of decision that warrants at least some procedural safeguards. In this case, the Authority did not afford the applicants any such safeguards.

The application for judicial review should not be dismissed on the basis of prematurity or mootness or that the original application for a permit was a sham

[52] The Authority's arguments that the application for judicial review should be dismissed on these preliminary issues have no merit because they assume that the Authority was justified in declaring that the permit was "void".

[53] The doctrine of prematurity provides that, absent exceptional circumstances, on an application for judicial review, the Court should not intervene until the administrative proceedings have fully run their course: *Volochay v. College of Massage Therapists of Ontario*, 2012 ONCA 541. In this case, the Authority takes the position that, because the applicants are required to apply for a new permit given the change in the scope of work, it is premature for this Court to decide whether the Authority's decision was reasonable or procedurally unfair. This argument misconceives the doctrine of prematurity and the nature of the mischief in this case. As far as the applicants are concerned, the administrative proceedings are complete. They had a permit. The permit was voided without giving them an opportunity to participate in a show cause hearing. The Authority's position that the applicants can and should apply for a new permit assumes that the voiding of the original permit was justified. It was not justified in the absence of a show cause hearing. The doctrine of prematurity therefore has no application.

[54] The doctrine of mootness provides that, absent issues that engage the public interest, the court should not decide an issue that is no longer live between the parties: *Borowski v. Canada*, [1989] 1 S.C.R. 342. In this case, the Authority takes the position that the validity of the original permit is moot given the change in the scope of work. Again, the issue of whether there has been a change in the scope of work that would justify cancelling the permit is at the heart of the dispute between the parties. It is an issue that should have been decided at a show cause hearing. There is therefore no basis for dismissing the application for judicial review as moot.

[55] Finally, the Authority argues that the application for judicial review should be dismissed because the original application for a permit was a sham. The Authority argues that the permit was a sham because the applicants misrepresented the scope of the work they intended to do. Essentially, the Authority argues that, because judicial review is discretionary, the Court should decline to grant a remedy that would reward the applicants' alleged dishonesty. This argument again relies on the Authority's position that there is a difference between the scope of work represented in the permit application and the actual work the applicants have performed and intend

to perform. As already stated, this is at the heart of the dispute between the parties. Based on the record before the Court, it is far from obvious that the original permit application was a sham. There are several references to a two-storey addition and the precise scope of the work is evident from drawings provided to the Authority a few months after it issued the permit. There is no merit to the Authority's argument that the application should be dismissed on the basis that the original permit application was a sham.

[56] Ultimately, the Authority's arguments reviewed above highlight the misguided manner in which the Authority has dealt with the issues in this case. Section 8 of O. Reg. 162/06 provides a clear process for deciding whether a development permit should be cancelled on the basis that a permit holder has not complied with a condition in the permit. Rather than complying with this requirement, the Authority has persisted in avoiding this process by taking the position that the scope of work undertaken by the applicants was different from what they applied for. However, this is precisely the issue a show cause hearing is meant to address. Unfortunately, the Authority's persistent failure to abide by its procedural obligations has imposed significant costs and delays on all parties.

Appropriate remedy

[57] In my view, the appropriate remedy in this case is to quash the Authority's decision. This means that the development permit originally issued by the Authority remains valid. It will be up to the Authority to decide whether to seek to cancel the permit and, if so, to do so in accordance with the procedure set out in section 8 of the O. Reg. 162/06.

[58] As indicated above, both sides appear to invite this Court to decide whether the permit should be cancelled. The applicants argue that the work at issue is not a "development" within the meaning of the *Conservation Authorities Act* or that, even if it is, it falls within the scope of the original permit. They ask this Court to make declarations that would allow them to continue with the work without further interference from the Authority. For its part, as indicated above, the Authority seems to argue that it is self-evident that the work at issue is a development and that it is not within the scope of the original permit.

[59] In *Vavilov*, at para. 142, the Supreme Court stated that, as a general rule, courts should "respect the legislature's intention to entrust the matter to the administrative decision maker". The Court noted a few exceptions where it may be appropriate for courts to decide the issue; for example, where the result is inevitable or where there has been significant delay or there is urgency. In this case, the outcome is not inevitable. For example, the applicants have legitimate arguments regarding the original scope of the permit and the Authority may have legitimate concerns regarding whether the walls collapsing changed the scope of the work such that the permit should be cancelled and the applicants should be required to apply for a new permit. The parties' evidence and their arguments should form part of the record on a show cause hearing. This Court should not decide these issues as a matter of first impression.

[60] I appreciate that, from the applicants' perspective, there has been extensive delay in this matter. However, this is not sufficient to justify having this Court essentially conduct the show cause hearing. In addition, while most of the blame for the delay can be laid at the Authority's feet for consistently seeking to defend its position that it had authority to "void" the permit without a

show cause hearing, some of the delay is also attributable to the applicants for seeking to challenge the Authority's decision through an application for declaratory relief rather than through an application for judicial review. This outcome may cause further delay if the Authority chooses to pursue the cancellation of the permit. However, it will ensure that the decision is made following the proper process by decision-makers who have been entrusted by the legislature to decide the issues.

Costs

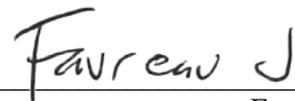
[61] As the successful parties, the applicants are entitled to their costs. The applicants seek costs on a partial indemnity basis in the amount of \$117, 482.87, all inclusive. This amount is far higher than the costs typically awarded by the Divisional Court for a hearing of this nature. However, if the respondents had been successful, they would have sought costs in the amount of \$289.417.59, which is close to three times the amount sought by the applicants.

[62] In my view costs of \$100,000, all inclusive, to the applicants is reasonable in the circumstances of this case. This amount accounts for the fact that the Authority was successful in its motion to move the application from the Superior Court to the Divisional Court, but nevertheless recognizes that the applicants have incurred significant costs due to Authority's failure to follow the process mandated by its own regulation.

Conclusion

[63] For the reasons above, the application for judicial review is granted. The decision of the Conservation Authority voiding he permit is quashed. The Conservation Authority is to pay costs of \$100,000 all inclusive to the applicants for the original application and the application for judicial review.

I agree



Favreau J.



McWatt A.C.J. S.C.J.

I agree



Kristjanson J.

Released: January 26, 2022

CITATION: Rudyk v. Halton Region Conservation Authority, 2022 ONSC 518
DIVISIONAL COURT FILE NO.: 779/21
DATE: 20220126

ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

McWatt ACJ SCJ, Kristjanson and Favreau JJ.

BETWEEN:

Ivan Rudyk and Shelley Young

Applicants

– and –

Halton Region Conservation Authority

Respondent

REASONS FOR JUDGMENT

FAVREAU J.

Released: January 26, 2022

COURT OF APPEAL FOR ONTARIO

BEFORE: TULLOCH, LAUWERS AND
PACIOCCO JJ.A.

DATE: JUNE 6, 2022

DISPOSITION OF COURT HEARING:



COURT FILE NO.: M53197

TITLE OF PROCEEDING: Rudyk, Ivan et
al. v. Halton Region Conservation Authority

The application for leave to appeal is dismissed.

Costs payable to the respondent in the amount of \$5,000.

Tulloch J.A.

Plauwers J.A.

Paciocco J.A.

IN THE MATTER OF The *Conservation Authorities Act*, R.S.O. 1990, Chapter 27

AND IN THE MATTER OF Conservation Halton Permit #5927 Pursuant to Regulations made under Section 28, Subsection 12 of the said Act and in accordance with Ontario Regulation 162/06 Subsection 8.

B E T W E E N :

IVAN RUDYK and SHELLEY YOUNG

Applicants

and

HALTON REGION CONSERVATION AUTHORITY

Respondent

**AFFIDAVIT OF SHELLEY YOUNG
(Affirmed November 1, 2022)**

CROSS-EXAMINATION TRANSCRIPTS

1. Transcript of the cross-examination of Kellie McCormack March 10, 2021
2. Transcript of the cross-examination of Balwinder Singh April 21, 2021
3. Transcript of the cross-examination of Cassandra Connolly April 23, 2021
4. Transcript of the cross-examination of Kellie McCormack April 28, 2021
5. Transcript of the cross-examination of Charles Priddle Aril 29, 2021
6. Transcript of the cross-examination of Barbara Veale April 30, 2021

TAB 1

ONTARIO
SUPERIOR COURT OF JUSTICE

(APPLICATION UNDER Section 97 of the Courts of Justice Act,
R.S.O. 1990, C.C.43)

KP/ck

B E T W E E N:

IVAN RUDYK and SHELLEY YOUNG

Applicants

- and -

HALTON REGION CONSERVATION AUTHORITY

Respondent

- - - - -

This is the Examination Under Rule 39.03 of KELLIE
McCORMACK, taken via videoconference at the offices of
VICTORY VERBATIM REPORTING SERVICES, Suite 900, 222 Bay
Street, Toronto-Dominion Centre, Toronto, Ontario, on the
10th day of March, 2021.

- - - - -

APPEARANCES:

ARKADI BOUCHELEV

-- for the Applicants

KENNETH E. JULL

-- for the Respondent

JONATHAN NEHMETALLAH

ALSO PRESENT:

Ivan Rudyk

Shelley Young

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KELLIE McCORMACK, affirmed	
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1 --- upon convening at 10:00 a.m.

2 --- upon commencing at 10:00 a.m.

3

4 KELLIE McCORMACK, affirmed

5 EXAMINATION BY MR. BOUCHELEV:

6 1. MR. BOUCHELEV: Now, just before we
7 begin, a question for you, Mr. Jull. Now,
8 you said that you are here in your capacity
9 as counsel for Conservation Halton. So,
10 you are not acting as counsel for Ms.
11 McCormack for the purposes of this
12 examination?

13 MR. JULL: That is correct. I am
14 counsel for Halton Region Conservation
15 Authority, which employs Ms. McCormack, but
16 I am not Ms. McCormack's personal counsel
17 in this matter.

18

19 BY MR. BOUCHELEV:

20 2. Q. Okay. Now, Ms. McCormack, good
21 morning.

22 A. Good morning.

23 3. Q. Okay, now, can you state your full
24 name for the record, please?

25 A. My name is Kellie Lynn McCormack.

1 4. MR. BOUCHELEV: And, Ms. McCormack, I am
2 going to show you a document that is
3 contained in the responding motion record
4 filed by my client. I am going to mark
5 that whole motion record as Exhibit 1 to
6 this examination.

7

8 --- EXHIBIT NO. 1: Applicants' responding motion
9 record, dated March 5, 2021

10

11 BY MR. BOUCHELEV:

12 5. Q. And do you happen to have a copy of
13 this document?

14 A. Which document is it that you are
15 referring to?

16 6. Q. I am talking about the complete
17 responding motion record of the applicants, dated
18 March 5, 2021.

19 A. I do not have it in front of me, no.

20 7. Q. Okay, that's fine. So, then, I will
21 direct you to the section that I want to take you
22 to, and I will ask you if you have that in front of
23 you. So, Exhibit L to the affidavit of my client,
24 dated March 5, 2021, contains a copy of your letter,
25 dated August 22, 2019. The letter is three pages

1 long. Do you have a copy of that document?

2 A. I do.

3 8. Q. All right, now, I am going to ask
4 you to look...

5 MR. JULL: And, for the record, I just
6 want to say, Ms. McCormack has attached
7 that letter as an exhibit to her affidavit,
8 which has been filed in the main fact
9 affidavits, as filed by Conservation Halton
10 in this matter. That affidavit...

11 9. MR. BOUCHELEV: Right, but...

12 MR. JULL: Just let me finish. For the
13 record, that affidavit was not filed in
14 support of the prematurity motion, which is
15 what we are dealing with at this moment.
16 But, for the record, I want it to be clear
17 that that letter is also attached to an
18 affidavit filed by Ms. McCormack in this
19 proceeding.

20 10. MR. BOUCHELEV: And that's fine, but, as
21 you mentioned, this is not a
22 cross-examination on Ms. McCormack's
23 affidavit. This is not an examination in
24 connection with the application. This is
25 solely a cross-examination for the purposes

1 of the upcoming motion, and we will reserve
2 the right to cross-examine Ms. McCormack on
3 her affidavit, including the letter
4 attached to it, for the purposes of the
5 application itself. Okay, so...

6 MR. JULL: And, so, let me just say, for
7 the record, pursuant to the decision in
8 Canada (Commissioner of Competition) v.
9 Rogers Communications, 2011, O.N.S.C
10 7254...

11 11. MR. BOUCHELEV: Counsel, this is not a
12 place to make legal arguments. If you want
13 to make that argument in the future, that's
14 fine.

15 MR. JULL: All right, look, if you are
16 not going to let me make my legal
17 objection, we are going to shut this down
18 right now. I might stop it right now
19 and...

20 12. MR. BOUCHELEV: Well, first...

21 MR. JULL: ...you can go get a ruling.

22 13. MR. BOUCHELEV: Well, first of all, you
23 are not here as a lawyer for this witness,
24 okay. So, you are not here...you can't
25 even make any objections. You are not her

1 counsel. I am not examining your client
2 right now. So, you are here as a
3 spectator; okay? So, secondly, you are
4 wasting time by...

5 MR. JULL: All right, stop right there.
6 Stop right there. If that is your
7 position, that I can't make legal
8 objection, this is ending. We are not
9 going to do this.

10 14. MR. BOUCHELEV: Well, okay, so, that's
11 what...

12 MR. JULL: I am going to refuse that
13 these proceedings continue, and you can
14 bring whatever motion you want. I am not
15 subjecting my client's representative to a
16 cross-examination, where she has no legal
17 representation. And, if that's your
18 position, then we are not continuing this.

19 15. MR. BOUCHELEV: That's why I asked you,
20 when we started this examination, if you
21 are acting as her counsel, and you said,
22 "No". So, make up your mind. Either you
23 are her lawyer or you are not her lawyer.
24 You can't have it both ways.

25 MR. JULL: Look, I have said on the

1 record, we would make Ms. McCormack
2 available for cross-examination on her
3 affidavit, which was filed by Halton Region
4 Conservation Authority. Now, if it's your
5 intention to use these proceedings in an
6 abusive fashion, to try to expose this
7 witness to questions, where she doesn't
8 have the right to get legal advice, then I
9 am going to say this has to be stopped.
10 She has to be, then, given her opportunity
11 to go get counsel, because I am not going
12 to allow an employee of Conservation Halton
13 to be subjected to a no-holds-barred, what
14 I believe to be an abusive examination,
15 when you have the right to cross-examine
16 her on her affidavit, and, for the record,
17 which I offered you that right, even though
18 we did not rely on that affidavit in the
19 prematurity motion. For the record, I
20 offered you the opportunity to do that
21 cross-examination. You have chosen,
22 contrary to the Rule in Canada
23 (Commissioner of Competition) v. Rogers
24 Communication, to proceed with Rule 39.03
25 and, it is very clear to me, in an abusive

1 fashion. And, so, in my view, we are going
2 to stop this proceeding now. Ms. McCormack
3 can go and get separate counsel, if that is
4 how you want to proceed, and you can bring
5 whatever motion you wish.

6 16. MR. BOUCHELEV: Are you finished?

7 MR. JULL: Yes.

8 17. MR. BOUCHELEV: Any other cases you want
9 to put on the record?

10 MR. JULL: No, that suffices.

11 18. MR. BOUCHELEV: Okay. Now, a couple of
12 points. If you, again, accuse me of abuse
13 of process...you haven't even heard a
14 single question that I am about to ask this
15 witness. You have already accused me of
16 abuse of process three times just this
17 morning. You do it one more time, and this
18 will be dealt with in a different forum; do
19 you understand that?

20 MR. JULL: I don't know what you are
21 threatening me with, but...

22 19. MR. BOUCHELEV: Okay, well, I am warning
23 you.

24 MR. JULL: ...maybe you can put it on
25 the record as to what forum you are

1 threatening me with.

2 20. MR. BOUCHELEV: I am warning you. You
3 should read the Rules of Professional
4 Conduct about making spurious allegations
5 about other counsel, and govern yourself
6 accordingly. That is what I am saying to
7 you. Secondly, I asked you this morning if
8 you are counsel for this witness. I have
9 no problem with you being counsel for this
10 witness. You said you were not. This
11 witness is here under subpoena. If she
12 doesn't remain here to answer questions,
13 then she will be...we will bring a
14 proceeding for contempt of court; okay?
15 That's my second point. Third, I want to
16 move on with this examination, and I don't
17 want you to cite...to make any legal
18 arguments with me. This is not the forum
19 for making legal arguments. You can make
20 the arguments before the judge. I don't
21 want you to give me full citations for
22 cases. We can deal with that outside of
23 this proceeding, and I don't want to
24 pollute the transcript with unnecessary
25 comments; okay?

1 BY MR. BOUCHELEV:

2 21. Q. Now, Ms. McCormack, I am going to
3 ask you to look at Exhibit L, which is your August
4 22, 2019 letter. And, again, let me be clear, I am
5 not here to examine you on any affidavit that you
6 swore in connection with the application. My
7 clients reserve the right to conduct a separate
8 examination on that affidavit. You are simply here
9 because you are the person who wrote this letter,
10 and your evidence is necessary for the upcoming
11 motion. I would like you to look at the last page,
12 at page 3 of your letter. Can you confirm that this
13 is your signature?

14 A. Yes.

15 22. Q. Can you confirm that you wrote this
16 letter?

17 A. Yes.

18 23. Q. Okay. Now, your title here is,
19 "Senior manager, planning and regulations". Was
20 that your position at the time when you wrote that
21 letter?

22 A. That was my position at the time,
23 yes.

24 24. Q. Okay, and what does that position
25 entail, like, just very briefly?

1 A. That position, I am responsible for
2 the planning and regulations team at Conservation
3 Halton, which means I am responsible for a team of
4 planners and regulations officers, as well as
5 technical staff, including engineers and ecologists,
6 and we are responsible for implementing Conservation
7 Halton's regulation, Ontario Regulation 162/06, as
8 well as planning matters, that we have service
9 agreements with our municipal partners.

10 25. Q. Okay, Ms. McCormack, are you an
11 engineer?

12 A. No, I am not an engineer. I am a
13 registered professional planner.

14 26. Q. Okay. Are you familiar with basic
15 construction concepts, including the requirements of
16 the Building Code?

17 A. I am not a Building Code expert. I
18 am a registered professional planner.

19 27. Q. Okay, but are you...you know, just
20 in general terms, are you familiar with
21 construction? Do you have any working knowledge of
22 construction?

23 A. I have, you know, a number of years
24 of experience working from a planning perspective,
25 and reviewing planning applications and permit

1 applications, which is involved with these
2 applications.

3 28. Q. Okay, but I would suggest to you,
4 you would know that a building, a residential home,
5 usually includes a foundation and walls and a roof.
6 You are familiar with that; right?

7 A. That is correct.

8 29. Q. Okay, and are you familiar with the
9 Regulation 162/06?

10 A. Yes, I am.

11 30. Q. And are you familiar with the
12 Conservation Authorities Act?

13 A. Yes, I am.

14 31. Q. Okay, and would you agree with me
15 that interpreting the regulation and the Act is part
16 of your job?

17 A. Yes.

18 32. Q. Okay. Now, just, again, looking at
19 your position, you are a senior manager of planning
20 and regulations. Who is your immediate...who was
21 your immediate supervisor at the time? Was it Barb
22 Veale?

23 A. Yes. My position title has changed
24 to associate director, planning and regulations, but
25 my reporting, I still report to Ms. Barbara Veale,

1 and she is the director of planning and watershed
2 management.

3 33. Q. Okay, and her superior is Mr.
4 Hassaan Basit; correct?

5 A. Yes. He is our CEO.

6 34. Q. Okay, now, Ms. McCormack, can you
7 please tell me, why did you sent this letter on
8 August 22, 2019?

9 A. Well, there are a few key reasons
10 why this letter was sent. The first was really to
11 give notice that the permit that we had issued to
12 the applicants, it was permit 5927, I believe, was
13 void. And the reason it was void was because that
14 permit was premised on the presence of a dwelling
15 that existed, but it would be impossible to
16 implement what the permit was for. The permit was
17 for an addition to a garage. So, a minor addition
18 to a garage, was well as some porches and an
19 on-grade patio, but after that, when that letter was
20 sent, we had discovered, a few months prior, that
21 the entire dwelling had been demolished.

22 And, so, it was impossible to actually
23 carry out or fulfil that permit, because it's
24 impossible to build an addition, or to put a porch
25 to a building that no longer exists. So, it was to

1 notify the applicant that the permit was void, but
2 it was also to highlight that we were willing to
3 work with the applicant through what we have called
4 as a compliance agreement. And it was also to ask
5 whether the homeowners, the applicants, would be
6 willing to work with Conservation Halton.

7 35. Q. Okay, so, let's look at some of the
8 things that are mentioned in your letter. So, if
9 you look at the first page, if you look at the third
10 paragraph...

11 MR. JULL: No, this is not...stop here.
12 Is this an exhibit?

13 36. MR. BOUCHELEV: Pardon me?

14 MR. JULL: Is this an exhibit?

15 37. MR. BOUCHELEV: Yes. The motion record
16 is an...

17 MR. JULL: Was it marked as an exhibit?

18 38. MR. BOUCHELEV: The responding motion
19 record is an exhibit, and the letter is
20 Exhibit L to the affidavit of my client,
21 which is part of the motion record.

22
23 BY MR. BOUCHELEV:

24 39. Q. Now, Ms. McCormack, if you look at
25 the third paragraph, you say here that the building

1 is completely demolished; correct?

2 A. Right.

3 40. Q. You say...this is the second
4 sentence in the third paragraph:

5 "...However, since CH issued that permit,
6 the existing dwelling was completely
7 demolished..."

8 How did you know that the building was completely
9 demolished?

10 A. As I mentioned, I am responsible
11 now, as the associate director, but even then, as
12 the senior manager of planning and regulations...I
13 oversee a team of professionals, and some of them
14 being regulations officers, as well as engineers.
15 And our...one of my staff members had driven by the
16 site, and had observed that the building was being
17 demolished, and that reconstruction had started.

18 41. Q. Okay, and who is that person who did
19 that?

20 A. Her name is Cassandra Connelly.

21 42. Q. And is she the one who told you that
22 the building had been completely demolished?

23 A. Yes.

24 43. Q. And those were her words,
25 "completely demolished"; right?

1 A. We also had photographs of the
2 building being demolished, as well as pictures of
3 the reconstruction that had started.

4 44. Q. Okay, and you say you have
5 photographs of the building being demolished. Do
6 you have any photographs showing that the foundation
7 was being demolished?

8 A. No, but if I could refer to an
9 exhibit in my affidavit. I do have an exhibit in my
10 affidavit that shows a picture of the building being
11 demolished.

12 45. Q. Right, we have seen the pictures,
13 but the question is, do you have a picture showing
14 the foundation being demolished?

15 A. No, I do not have a picture of the
16 foundations being demolished, but I do have pictures
17 of the dwelling being demolished.

18 46. Q. Okay, and you have agreed with me,
19 previously, that a building includes the foundation;
20 correct?

21 A. It includes a foundation, yes.

22 47. Q. Right, so, if the foundation to a
23 building is not demolished, then the building cannot
24 be said to be completely demolished?

25 A. I think it could be said to say that

1 it is being demolished.

2 48. Q. But not completely demolished;
3 correct? Because a complete demolition would
4 include, by definition, the removal of the
5 foundation?

6 A. Generally, when you consider a
7 building being completely demolished, it means that
8 you can no longer see it from the road, is an easy
9 way to explain that.

10 49. Q. And you will agree with me that the
11 foundation to this particular building was never
12 demolished?

13 A. I can't say for sure whether the
14 foundation was demolished. What I can say is that,
15 you know, in conversations that we had with the
16 applicants' contractor, that there had been walls
17 that had been crumbled. That was something that had
18 been relayed to us. So, to me, that starts to
19 indicate that the foundation had challenges, as
20 well.

21 50. Q. Okay, so, we will go back to this in
22 a moment, but just to clarify. So, you say that you
23 cannot say whether or not the foundation has been
24 demolished. Why is that? Did you not...did no one
25 from Conservation Halton inspect the property to see

1 what's going on with the foundation?

2 A. As I mentioned, my team member,
3 Cassandra Connelly, had done a...you know, had
4 driven by and had noticed that the building was
5 being demolished, and that was what was relayed to
6 me, as her senior manager.

7 51. Q. Okay, but, you know, just to be
8 fair, and to be clear, she did not observe the
9 foundation being demolished; correct?

10 A. I can't speak to that. You would
11 have to ask Ms. Connelly.

12 52. Q. Okay, and you will agree with me
13 that Conservation Halton has no evidence that the
14 foundation of the building was removed?

15 MR. JULL: I am going to stop right
16 there. Hang on. You can't ask this
17 witness to bind Conservation Halton. She
18 is here as a witness. She is not here, as
19 you have pointed out, as a representative
20 of Conservation Halton, and you can't ask
21 her a question with respect to Conservation
22 Halton's position.

/R

23 53. MR. BOUCHELEV: Well, I am asking her
24 this question because she, Ms. McCormack,
25 keeps referring to members of her team.

1 BY MR. BOUCHELEV:

2 54. Q. But let me rephrase. You have no
3 evidence that the foundation to that building was
4 ever demolished; is that correct?

5 A. I have some evidence that there were
6 walls that were starting to crumble.

7 55. Q. That's not my question, Ms.
8 McCormack. My question is about the foundation.

9 A. I can't speak to the foundation.

10 56. Q. Okay, so, in other words, you have
11 no evidence that the foundation was demolished;
12 correct?

13 A. I guess not.

14 57. Q. Okay. Now, you mentioned the
15 contractor for my client telling you that the walls
16 had crumbled; is that accurate?

17 A. That's accurate.

18 58. Q. And what is the name of the
19 contractor?

20 A. There were two representatives that
21 we were...that we had met with previously, one being
22 Peter Vozikas, the other being Gordon Baron.

23 59. Q. Okay, and which one of them told you
24 that the walls had crumbled?

25 A. It was Mr. Baron.

1 60. Q. Okay, and, you know, to the best of
2 your recollection, what specifically did he say
3 about the walls crumbling?

4 A. That they had fallen down when the
5 building was being taken down, demolished.

6 61. Q. When they were removing the roof,
7 the walls collapsed; is that what he told you?

8 A. That was part of what he told us,
9 yes.

10 62. Q. Okay, and he told you that the walls
11 collapsed because of a structural problem with the
12 walls, not because they were intentionally taken
13 down; correct?

14 A. That's what he told us. However,
15 you know, since that time, we have got more
16 indication, to be clear, that there was probably
17 more to it, and that the permit that we had issued
18 was approved, or was issued on false information,
19 and that...and, so, I am not convinced, at this
20 point in time, that it was just a matter of the
21 walls falling down. There seems to be more evidence
22 or information that has come to light that those
23 walls were intentionally going to be coming down,
24 they might not have just fallen down.

25 63. Q. Okay, now, also in paragraph 3 of

1 your letter, you say that...this is the last
2 sentence, or the second last sentence:

3 "...The scale and scope of works currently
4 underway would have required additional
5 supporting information, i.e. geotechnical
6 assessment..."

7 Now, you would agree with me that there is nothing
8 either in the Conservation Authorities Act or in
9 Regulation 162/06 that would require my clients to
10 provide a geotechnical assessment; correct?

11 A. No, I disagree. It is very clear in
12 our Act, in terms of the requirements for permits
13 and what needs to be submitted. It includes a
14 complete application signed by the homeowners. It
15 lists that you need to have a site plan showing the
16 works that are proposed. It also has an item listed
17 in there for technical studies that may be required.
18 And I would say that the geotechnical study
19 absolutely falls under those technical, other
20 technical studies.

21 64. Q. Okay, so, when you say under "our
22 Act", you are referring to the Conservation
23 Authorities Act; right?

24 A. That's right.

25 65. Q. Okay, and which section of the

1 Conservation Authorities Act sets out the
2 requirements that you have just told me about?

3 A. I will just have to look it up.

4 66. Q. That's fine.

5 A. Or it could be pulled up, if that
6 would be helpful.

7 67. Q. Do you want me to...are you asking
8 me to pull up the Act and share it on my screen with
9 you?

10 A. Well, if you are asking me to refer
11 to the actual section, then it would be helpful to.

12 68. Q. Yes, I can do that. I mean, it may
13 be easier for you to just open it on your computer,
14 because then you can scroll through it yourself, but
15 if you cannot do that, then I can try to share it.

16 A. I wasn't prepared...unfortunately,
17 you know, this wasn't laid out as something
18 that...you hadn't laid out what it was that you
19 wanted me to bring with me to this, so I...you will
20 just have to excuse me. It might take a couple of
21 minutes.

22 69. Q. That's okay. We have time, so don't
23 worry about that.

24 A. Okay, I am sorry. So, I have got it
25 and, I am sorry, I should have referenced Ontario

1 Regulation 162/06.

2 70. Q. Okay.

3 A. So, if you look at section 4 of the
4 Ontario Regulation 162/06...

5 71. Q. Okay.

6 A. ...it speaks to:
7 "...A signed application for permission to
8 undertake development shall be filed with
9 the Authority and shall contain the
10 following information: Four copies of a
11 plan showing the type and location of the
12 proposed development, the proposed use of
13 the buildings and structures following the
14 completion of the development, the start
15 and completion dates of the development,
16 the elevations of existing buildings, if
17 any, and grades and the proposed elevations
18 of the buildings and grades after
19 development, drainage details before and
20 after the development, a complete
21 description of the type of fill proposed to
22 be placed or dumped and, finally, such
23 other technical studies or plans as the
24 Authority may request..."

25 72. Q. Okay, so, again, no specific

1 reference to a geotechnical assessment; correct?

2 A. I would say that a geotechnical
3 assessment falls under number 7, which is, "Such
4 other technical studies or plans as the Authority
5 may request".

6 73. Q. I see, okay. And you will agree
7 with me that there is nothing in the Conservation
8 Authorities Act, not the Regulations, but the Act
9 itself, that refers to a geotechnical assessment;
10 correct?

11 A. The Act sets out that Authorities
12 may create regulations that would be approved by the
13 Minister. Our regulation at Conservation Halton is
14 Ontario Regulation 162/06, and that regulation
15 outlines the requirements for permission in areas
16 that are regulated by Conservation Halton.

17 74. Q. Okay, and, Ms. McCormack, do you
18 think that it's important to follow the requirements
19 that are set out in Regulation 162/06?

20 A. Yes, I do.

21 75. Q. Is it mandatory?

22 A. Yes, I do think it is.

23 76. Q. So, if Regulation 162/06 says that
24 something has to be done, it's not optional, it must
25 be done; is that correct?

1 A. Yes.

2 77. Q. Okay. And, now, if you look at the
3 second page of your report, at the bottom, here you
4 cite another section of the Regulation, section 8;
5 right?

6 A. Yes.

7 78. Q. Okay. Now, you will agree with me
8 that section 8 requires Conservation Halton to give
9 notice of intent to cancel a permit, and then to
10 schedule a hearing on at least five days notice to
11 the homeowners?

12 A. I agree, that's what that says.

13 79. Q. Okay, and this was not done in this
14 particular case; correct?

15 A. I think there is a couple of
16 important distinctions on this. There is a couple
17 of things I...I think that...

18 80. Q. But before you go there...and I will
19 give you the opportunity to provide a full answer,
20 but I just want to be clear that there was no
21 intention to cancel the permit that was issued, and
22 no hearing was scheduled; correct?

23 A. There is an important distinction.
24 The permit was not cancelled. The permit was
25 considered void. And, so, there is a distinction

1 here that I would like to clarify. So, a
2 cancellation of a permit, generally, that section of
3 our regulation means when a permit conditions can't
4 be met, or they haven't been met, and we have tried
5 numerous times with an applicant to meet the
6 conditions, and then they get the opportunity, or if
7 new technical information comes to light, you know,
8 a study comes in and it reveals that, you know, in
9 the middle of construction there could be
10 catastrophic impacts for public health and safety.
11 When a permit...you know, the reason it was
12 considered void here was, as I mentioned at the
13 beginning, it was impossible to fulfil, or carry
14 out, this permit.

15 The permit was for a minor addition. It
16 was for porches. And, as soon as the building was
17 gone, you know, the main part of the building was
18 gone, it would be impossible to do that. The
19 applicant has had, you know...if I could point to
20 exhibits. I know my colleague, Barbara Veale, has
21 some exhibits in her affidavit that highlight that
22 we have given opportunities to the applicants, that
23 they can go before our board for a hearing, however,
24 it has to be...

25 81. Q. And we'll...right.

1 A. ...it has to be for the right thing,
2 and the right thing would be a permit application
3 for the entire structure, plus the additions and
4 porches that would have been proposed.

5 82. Q. Okay. So, again, going back to my
6 question. There was no notice of intent to cancel
7 issued; correct?

8 A. As I mentioned, the permit was not
9 cancelled, because it was considered void.

10 83. Q. Okay. So, no notice of intent to
11 cancel was issued; right?

12 A. The permit wasn't cancelled, it was
13 considered void. So, there is a distinction there.

14 84. Q. Okay. I understand that this is
15 your position. All I am asking for is...it's a
16 factual question. It is either "yes" or "no". Did
17 you issue...did Conservation Halton issue a notice
18 of intent or no?

19 A. No, because the permit wasn't
20 cancelled.

21 85. Q. Okay, now...and there was no hearing
22 scheduled; correct?

23 A. Because the permit wasn't cancelled.
24 If the permit was cancelled, they would have a right
25 to a hearing. However...

1 86. Q. Okay.

2 A. ...as I mentioned...

3 87. Q. No, no, I understand. I am not
4 asking for your position. I am just trying to
5 establish that, as a fact, there was no hearing
6 scheduled, and I think you have answered that.
7 Thank you. So, you said that the permit was not
8 cancelled, instead it became void; right?

9 A. M'hmm.

10 88. Q. Okay. And, sorry, just say "yes" or
11 "no", because I am not sure if the reporter can
12 catch when you say "m'hmm". Sometimes it
13 doesn't...it's not reflected on the transcript. So,
14 let me ask the question again. So, you say that the
15 permit was not cancelled, it became void; correct?

16 A. That's correct.

17 89. Q. Okay. Can you cite me the section
18 of Regulation 162/06 that allows the Conservation
19 Authority to void the permit, as opposed to
20 cancelling it?

21 A. No, there is no section.

22 90. Q. Okay. So, there is nothing either
23 in the Act, in the Conservation Authorities Act, or
24 in the Regulation that says that a permit can become
25 void; correct?

1 A. There are sections in the Act and in
2 our regulation that allow for a hearing, and those
3 are things that we have laid out to the applicant a
4 number of times. As I mentioned, you know, if I
5 could point to some other exhibits, you know. The
6 applicants have been invited to submit a permit
7 application, and that would be their opportunity to
8 get a hearing before our board. You have to have a
9 right application in front of you to go to the board
10 and, without a proper application, you can't bet
11 before our hearing board. They need...

12 91. Q. Okay, but, Ms. McCormack, with
13 respect, you are not really answering my question,
14 though. My question was, do you agree with me that
15 there is nothing in the Regulation or in the Act
16 that says that the permit can become void; correct?

17 MR. JULL: I am going to stop here.
18 That is a legal question. This witness is
19 here...
/R

20 92. MR. BOUCHELEV: Well, but...

21 MR. JULL: Just let me...look, that's a
22 legal question, involving a legal
23 interpretation of the Act. This witness is
24 not a lawyer. You can't ask her questions
25 involving...and asking for a legal

1 interpretation of the Conservation
2 Authorities Act.

3 93. MR. BOUCHELEV: Ms. McCormack testified
4 earlier this morning that part of her job
5 is interpreting the Conservation
6 Authorities Act and the Regulation. This
7 is why I am asking this question.

8 MR. JULL: Right, but the way you are
9 framing the question is in a legal way.
10 She can answer...

11 94. MR. BOUCHELEV: No, it's not.

12 MR. JULL: ...answer in her personal
13 capacity as to what she...how she views the
14 Act, but you can't ask her for a legal
15 conclusion.

16
17 BY MR. BOUCHELEV:

18 95. Q. To your knowledge, Ms. McCormack,
19 are there any provisions in the Conservation
20 Authorities Act or in the Regulation that talk about
21 a permit becoming void?

22 A. There are no provisions.

23 96. Q. Okay. Now, so, it would be fair to
24 say that, when you decided that the permit has
25 become void, that was your opinion; correct?

1 A. Yes, however, I would say that it
2 wasn't done in isolation. As I mentioned, I report
3 to Barbara Veale, you know, and so this was a
4 decision that we made on behalf of the Authority.

5 97. Q. Okay. And, so, who made that
6 decision? Was it Barbara Veale who made the
7 decision, ultimately?

8 A. We both did. We both made the...I
9 signed the letter, but it was done in consultation
10 with her.

11 98. Q. Was it approved by Mr. Basit, the
12 CEO?

13 A. No, I do not believe so.

14 99. Q. Now, if you look at the top of the
15 third page of your letter, the second paragraph
16 states, "In our view". So, by "our view" you mean
17 the view of yourself and Ms. Veale; correct?

18 A. And on behalf of the Conservation
19 Halton.

20 100. Q. Okay. Now, I understand that your
21 view is that you don't have to call a hearing
22 because it's...the permit has become void, but you
23 will agree with me that, if a hearing was, in fact,
24 called under Section 8 of the Regulation, then the
25 homeowner would have been allowed to present

1 evidence at that hearing?

2 A. The hearing, it wouldn't...we
3 wouldn't have a proper application in front of the
4 board, and that was the entire premise, or the
5 entire idea behind this letter, and considering the
6 permit void. It was impossible to fulfil what the
7 permit was for. The building was gone, so it's
8 impossible to put an addition on a structure that no
9 longer exists.

10 If the applicants wanted a hearing, we have
11 invited them...you know, we have a couple of letters
12 on record, inviting the applicants to submit a
13 permit application. They could submit it with the
14 proper house drawings, with the studies that they've
15 even done to date, that they submitted through this
16 process, and they could have submitted it to staff.
17 We would not be able to support it and, at that
18 point, they could request a hearing before our
19 board, and they could plead their case, or make
20 their case in front of our board, with a proper
21 application. The challenge...

22 101. Q. Okay, but...

23 A. ...they didn't have a proper
24 application...

25 102. Q. Okay, no, I understand. I

1 understand that this is your position, but what I am
2 asking you is that, under section 8...have you ever
3 participated in a hearing under section 8?

4 A. No, but I have participated in other
5 hearings.

6 103. Q. Okay, but under section 8...and, I
7 mean, the section is in your...an excerpt from that
8 section is in your letter. Subsection 2 states
9 that:

10 "...Before cancelling a permission, the
11 Authority shall give notice of intent to
12 cancel to the holder of the permission,
13 indicating the permission will be
14 cancelled..."

15 And then subsection 3 states that:

16 "...Following the giving of the notice
17 under subsection 2, the Authority shall
18 give the holder at least five days notice
19 of the date of the hearing..."

20 And, so, my question to you is, if there was such a
21 hearing, I submit to you that the homeowner would
22 have the opportunity to argue why the permit should
23 not be revoked; correct?

24 A. It would be impossible to fulfil the
25 permit. I think that's what I keep going back to,

1 because the permit wouldn't have...you can't...we
2 couldn't even fulfil the permit, and that's why it
3 was impossible to do that. You know, whenever there
4 is a change to a permit, you know, if something
5 changes, then we need to know about it, and we could
6 have revised our permit.

7 104. Q. But that, Ms. McCormack, is...that,
8 you know, could be true, but that's a decision that
9 the board could have made at the hearing, under
10 section 8. You could have made your submissions to
11 the board that, you know, the permit cannot be
12 fulfilled, and the homeowner could argue that the
13 permit should not be revoked, and the board would
14 have been able to make that decision; correct?

15 A. Again, I go back to it would be
16 impossible...our board has to have the right
17 application in front of them in order to hear, and
18 to have the proper information in front of them. If
19 they received a permit application, then they could
20 speak to the entire permit application, for the
21 entire dwelling.

22 105. Q. And you say that you didn't have the
23 right application. That's the decision that you and
24 Ms. Veale made, not the board; correct?

25 A. Well, we've notified the applicants

1 on a couple of occasions, or a number of occasions,
2 that they are welcome to submit a permit
3 application, and...

4 106. Q. Ms. McCormack, I don't...I hate to
5 interrupt you, but this is not my question. My
6 question is, the decision that you did not have the
7 right application was a decision that you and Ms.
8 Veale made; right?

9 A. I think it's fair to say that the
10 applicant had been put on notice that there were
11 additional pieces that were required, since they
12 received a violation notice.

13 107. Q. That is not responsive to my
14 question. The decision that it was not the right
15 application was a decision made by you and by Ms.
16 Veale; right?

17 A. That the permit was considered void.

18 108. Q. Okay.

19 A. The other pieces of information had
20 been raised a number of times...

21 109. Q. Okay, so, the board never looked
22 at...

23 A. ...to help satisfy...

24 110. Q. Yes. The board never looked at the
25 existing application and made the decision that it

1 was void or that it was not the right application;
2 correct?

3 A. Correct.

4 111. Q. Okay, and that is the decision that
5 you and Ms. Veale made without the board; correct?

6 A. Correct, however, I guess I
7 would...you know, to further explain that, the
8 applicant had been put on notice, you know, for
9 months prior to that, that, you know, there was a
10 violation of our regulation, that there were pieces
11 of information that we needed in order to bring the
12 application into compliance with our regulation and
13 our policies. And, so, they were given that
14 opportunity to bring their application into
15 compliance with our regulation. And, you know,
16 there were numerous attempts to try to resolve these
17 matters through that mechanism, and we had little
18 success getting the applicant to take those
19 measures, so that we could avoid getting to the
20 point of needing to void the permit. That was...it
21 was the last ditch point, at that point.

22 112. Q. Okay, well, that's a good segue to
23 my next question. Now, you mentioned previous
24 correspondence from Conservation Halton. So, what I
25 will do now is I will take you to Exhibit I to the

1 March 5 affidavit of Ms. Young. And this is a
2 letter, dated March 26, 2019. Do you happen to have
3 a copy of that letter?

4 A. I will have to find it.

5 113. Q. If you want, I can share it on my
6 screen with you.

7 A. Sure. I do now have it in front of
8 me, if you are referring...

9 114. Q. Oh, you do have it? Okay. So,
10 this...

11 A. March 26? Just so we can confirm,
12 March 26, 2019?

13 115. Q. Right, and it's a letter that is
14 three pages long. It is signed by Cassandra
15 Connelly.

16 A. That's right.

17 116. Q. And it also has a construction
18 details form for permit applications attached.

19 A. The compliance agreement form, you
20 mean?

21 117. Q. Well, there is the compliance
22 agreement form, and then there is the construction
23 details form. Perhaps it's easier if I just share
24 it with you. So, this is the letter itself, right,
25 March 26?

1 A. Yes.

2 118. Q. Okay. It's three pages long. Then
3 there is the construction details form. Do you have
4 that, as well?

5 A. I do.

6 119. Q. Okay. And then there is the
7 compliance agreement application, which is three
8 pages long; right?

9 A. That's right.

10 120. Q. Okay. So, you agree that this is
11 the letter and the package that was sent to my
12 client on March 26, 2019?

13 A. That's correct.

14 121. Q. Okay. So, this letter is signed by
15 Cassandra Connelly. Were you involved in the
16 preparation of this letter?

17 A. No. How these letters work...again,
18 you know, my role is to oversee a large team.
19 Cassandra Connelly reports to Charles Priddle, and
20 Charles Priddle reports to me.

21 122. Q. Okay, and can you look at...so, the
22 compliance agreement application, that is three
23 pages long. Now, this is the compliance agreement
24 that Conservation Halton wanted my client to enter
25 into; correct?

1 A. That is correct.

2 123. Q. Okay. And, to enter into the
3 compliance agreement, my client would have to sign
4 this form and send it back to Conservation Halton;
5 right?

6 A. That is correct.

7 124. Q. And the signature page is the second
8 page, under "Terms and Conditions"; correct?

9 A. That's correct.

10 125. Q. And then, if you look at the third
11 page, where it says...well, actually, no, sorry,
12 it's on the first page. If you see the "Description
13 of Compliance Work", that section is blank; correct?

14 A. That's correct.

15 126. Q. Okay. So, my clients, then, would
16 be signing this agreement, and then the "Description
17 Compliance Work" is something that would be filled
18 out by staff at a later date; correct?

19 A. That's correct.

20 127. Q. Okay. And you will agree with me
21 that my clients were never provided with the copy of
22 this compliance agreement that actually had the
23 description of compliance work section filled out;
24 right?

25 A. The description of the works, that's

1 what we would need to see the plans from your client
2 first, to have a better understanding of the
3 magnitude or the scale and scope of the works that
4 were being contemplated, or that were being carried
5 out on the property. So, without those plans first,
6 seeing what works were happening, we wouldn't be
7 able to fill that part out, of the compliance form.
8 So, we need those plans from your clients, or the
9 applicants, first.

10 128. Q. Okay. And, so, you know, to
11 continue the process of...so, well, let me
12 backtrack. So, what you wanted my client to do is
13 you wanted my client to make a new application for
14 construction of a new home; correct?

15 A. Correct.

16 129. Q. And, to do that, my clients would
17 first have to sign this compliance agreement
18 application; correct?

19 A. Well, I think there is an important
20 distinction, and it is quite clear on our compliance
21 agreement application form, on page 2, that it is
22 voluntary. But the intention behind these
23 compliance agreements is so that we don't have to go
24 down the heavy-handed enforcement route, or to go
25 down the violation path. It's to try to work with

1 an applicant to bring their works into compliance
2 with our regulatory policies and our regulation.
3 It's intended...you know, and we've had great
4 success with this at Conservation Halton. It
5 avoids...we can't issue permits after the fact.
6 And, so, it avoids us having to go down a path
7 of...you know, like I said, a heavy-handed
8 enforcement path.

9 It's that we are willing to work with an
10 applicant, let's see what needs to be done.
11 Sometimes there is additional pieces of information
12 that need to be submitted. In this case, it would
13 be a geotechnical assessment, but they are...and if
14 those pieces are submitted, and all of the proper
15 plans, then we are in a position to support it and
16 say that the application now meets our regulatory
17 policies and our regulation, and that's the
18 intention.

19 130. Q. Okay. So, to go through that
20 process that you have just described, to resubmit,
21 or to submit a new application for a new
22 construction home, my clients would first have to
23 sign this compliance agreement application; correct?

24 A. They can, and that was...you know,
25 it's to help applicants, more than anything.

1 131. Q. Okay, but what I am saying is, if
2 they didn't sign this compliance agreement
3 application form, then Conservation Halton would not
4 have accepted a new application, and then you would
5 have proceeded through the...I guess, by charging my
6 client with a provincial offence; right?

7 A. No, I would not say that.

8 MR. JULL: The witness can't answer that
9 question. That is a legal question, number
10 one. Number two, it's a question asking
11 for what Conservation Halton would do. We
12 have been over this again and again and
13 again. You are examining this witness in
14 her personal capacity, not as a
15 representative of Conservation Halton. You
16 can't ask that question.

/R

17 132. MR. BOUCHELEV: Well, I am asking her in
18 her personal capacity, but I am asking her
19 in connection with work functions that she
20 was performing as a manager at Conservation
21 Halton.

22

23 BY MR. BOUCHELEV:

24 133. Q. So, the question that, you know, Ms.
25 McCormack...and I am not sure why we are having

1 difficulty with this. I am just trying to establish
2 that, you know, the signing of the compliance
3 agreement application was the first step that my
4 clients would have to take to submit an application
5 for a new construction permit.

6 A. That is one path. We have also
7 invited...you know, since that time, we have also
8 invited the applicants to submit a permit, a new
9 permit application, as well. So, the compliance
10 path is generally a lot easier, you know. It goes
11 through pretty...you know, we work with applicants.
12 There is a little bit of, you know, view that
13 happens, back and forth, and then you get a
14 compliance agreement, which is like a permit from
15 Conservation Halton saying that the works now meet
16 our regulatory policies, rather than...

17 134. Q. Okay. Right. So, just a second.
18 So, you say that you have also made a proposal
19 to...or an offer to submit a new application. What
20 are you referring to? I didn't see that in your
21 letter.

22 A. So, if I could raise...in Ms.
23 Veale's affidavit, she has two letters attached as
24 exhibits, that are with prejudice letters that
25 invite the applicants to submit...I believe they are

1 Exhibit V and Exhibit W of Ms. Veale's affidavit.

2 135. Q. Okay, so, just a second. Let me
3 open it. Okay, so, you are referring to Exhibit V
4 of Ms. Veale's affidavit?

5 A. I believe it's V. I don't have it
6 right in front of me. There were two with prejudice
7 letters.

8 136. Q. Are they letters from counsel, or
9 are they letters from Conservation Halton?

10 A. Counsel.

11 MR. JULL: Yes, they are letters...I
12 mean, I signed them, so I am going to jump
13 in on this. The first letter is Exhibit V
14 to Barb Veale's affidavit. In terms of the
15 PDF, it's very close to the very end.

16 137. MR. BOUCHELEV: Yes, no, I got it. I
17 see it, yes.

18 MR. JULL: All right. And then the
19 second one is W, which is the July 27 with
20 prejudice letter.

21

22 BY MR. BOUCHELEV:

23 138. Q. Okay, so, you are referring, then,
24 to letters that Conservation Halton's counsel sent
25 to my clients after this proceeding has commenced;

1 right?

2 A. That's correct.

3 139. Q. Okay, so, this is what you mean by
4 the second option?

5 A. Yes, yes.

6 140. Q. Okay, so, the second option was to
7 make a new application, but this second option was
8 never communicated to my client before they started
9 the civil proceeding; correct?

10 A. That's correct, however, if I can
11 explain further. The challenge has been, you
12 know...and this is all laid out in my affidavit.
13 The challenge has been that, since that March 2019
14 violation letter went out, there have been multiple
15 attempts to speak with the homeowners. We had a
16 meeting in April, April 3, I believe, of 2019, after
17 that letter was sent out, you know, hoping to speak
18 to the homeowners, so that we could explain, you
19 know, and probably take some of the...maybe some of
20 the angst out of what the intention was behind these
21 letters, but we haven't had that opportunity to meet
22 with...we didn't have that opportunity to meet with
23 your clients, even though they were invited to
24 attend those meetings.

25 141. Q. Okay. So, can I ask you, on that

1 point...so, you say that my client was invited to
2 attend the meetings. Have you ever spoken...have
3 you ever called either Ivan Rudyk or Shelley Young?

4 A. I have sent message...we have sent
5 messages. They were sent directly the letter. They
6 were sent an e-mail to attend the April 3 meeting.
7 We were actually...

8 142. Q. Are you aware of the fact that it
9 was sent to an incorrect address, and that the e-
10 mail bounced?

11 A. I can't speak to that.

12 143. Q. So, other than sending one e-mail in
13 connection with a meeting that was to happen in
14 April, did you send any other e-mails to either of
15 my clients?

16 A. Again, if you look at my affidavit,
17 there were e-mails where the homeowners had
18 requested a meeting with my director and my CEO, to
19 meet with them. So, they were given the option to
20 meet with my director and my CEO in, I believe it
21 was May. There was a meeting set up, May or June, I
22 would have to look back, and those...

23 144. Q. Are you talking about e-mails from
24 the...sorry, go ahead.

25 A. And, so, the homeowners had e-

1 mailed, to request a meeting with, as I mentioned,
2 my director and my CEO. And, so, those were
3 responded to from our CEO's office, and...but again,
4 those meetings were cancelled, but not on
5 Conservation Halton's side of things.

6 145. Q. Were those meetings requested by the
7 homeowners or by the builder, by Mr. Baron?

8 A. I would have to look back at the e-
9 mail chain, which they are marked as exhibits in my
10 affidavit.

11 146. Q. Okay, so, you don't know...just
12 sitting here today, you don't know if those e-mails
13 were actually from my clients or from the builder;
14 right?

15 A. If you give me a couple of minutes,
16 I can take a look.

17 147. Q. Okay, we can do that. And, just
18 before you do that, you will agree with me that you
19 never directly e-mailed or called my client to
20 discuss any of the issues in connection with this
21 house, after March 26, 2019?

22 A. I e-mailed your client on September
23 6, as a follow-up to my August 29 letter, and that
24 September 6 e-mail, I received a response from Mr.
25 Rudyk, saying that he would be getting back to me,

1 because I did say that I wanted to try to work
2 through these matters with him. So, I did receive a
3 response from Mr. Rudyk in September.

4 148. Q. Okay, well, we will have a look at
5 that in a moment, but, yes, if you want to take a
6 moment and look at your affidavit, and then maybe
7 you can tell me what you are referring to.

8 A. Sure. I just found it. One of
9 the...and I will look through all of them, but, just
10 quickly looking at it, Exhibit P of my affidavit.

11 149. Q. Okay, just bear with me for a
12 moment. One second. Okay, so, we are looking at
13 your affidavit. And which exhibit, again?

14 A. So, if you look at Exhibit P.

15 150. Q. Yes.

16 A. Ms. Young has written to Niamh
17 Buckley, who is our administrative support for our
18 CEO's office, and Ms. Buckley replied back to Ms.
19 Young. So, that was one e-mail. And then,
20 following that, Exhibit Q, I believe, in my
21 affidavit. Then we had correspondence with the
22 agent, Mr. Baron, and Mr. Vozikas, regarding a
23 meeting between the agents and the applicants, who
24 thought the meeting was cancelled, again, from
25 Conservation Halton's side.

1 151. Q. Okay. And, now, if you...just, I
2 want to take you back to the letter, your letter of
3 August 22, 2019. If you look at the last page, you
4 will see that, again, the last paragraph there:

5 "...CH is looking for your cooperation to
6 resolve the matters outlined in this
7 letter. Please provide written
8 confirmation by September 6, 2019 that you
9 are willing to enter into a compliance
10 agreement with CH, and that you will
11 provide the items outlined in our March 26,
12 2019 letter, as well as incorporate any
13 recommendations made by your geotechnical
14 engineer into the design..."

15 So, you will agree with me that this letter does not
16 give any second option, it just tells my clients
17 that they have to sign the compliance agreement
18 form, and proceed on that basis?

19 A. That was the option that was
20 presented. In general, we don't get pushback on
21 that, because it's the easiest path for someone to
22 obtain approval from Conservation Halton.

23 152. Q. And it was the only option that was
24 presented at that time; right?

25 A. I am sorry, I missed that.

1 153. Q. You said it was an option, but it
2 was the only option that was presented?

3 A. That's correct.

4 154. Q. So, as part of the compliance
5 process, my clients, in addition to signing the
6 compliance agreement, they would have to apply for a
7 new construction; correct?

8 A. The compliance application, if all
9 of the pieces were submitted that needs to be, so a
10 plan showing the entire scope of the works, plus
11 that geotechnical assessment and those other pieces,
12 if those were submitted and, you know, they were
13 satisfactory, then that compliance agreement, if it
14 was, you know...if it then demonstrated that our
15 regulatory policies had been met, that compliance
16 agreement serves as our permission.

17 155. Q. Okay, but what I am getting at is,
18 you know, you said that the original permit became
19 void; right?

20 A. That's right. So, as part of the
21 compliance process, they would have to apply for a
22 new permit; correct?

23 156. Q. The compliance process would take
24 the pieces that they had gotten approval for, so the
25 porches and the addition, plus the new house that

1 was being constructed, and all of those pieces, and
2 look at it holistically.

3 157. Q. Okay, but they would be, you know,
4 applying for the construction of a new home;
5 correct?

6 A. That's correct.

7 158. Q. So, they would not be applying...if
8 they wanted to apply for an addition or renovation,
9 that type of permit would not be accepted; correct?

10 A. The permit would be for development,
11 and development under the CH Act includes
12 construction, it includes reconstruction. It speaks
13 to increasing the size of a building. So,
14 development, that's...permission is needed for any
15 type of development in Conservation Halton's
16 regulated area, and the definition for development
17 includes construction and reconstruction, and
18 increasing a building size.

19 159. Q. Okay, I am going to take you to
20 Exhibit R to the affidavit of Ms. Young, sworn March
21 5.

22 A. Again, I don't have that in front of
23 me.

24 160. Q. Right, no, fair enough. I will
25 share it on my screen. Now, Ms. McCormack, do you

1 agree with me that this is a blank permit
2 application form from Conservation Halton?

3 A. That is correct.

4 161. Q. Okay. And now, if you look at the
5 bottom of the first page, you have different
6 categories for the proposed development. There is a
7 category for a new structure; do you see that?

8 A. M'hmm.

9 162. Q. Right?

10 A. M'hmm.

11 163. Q. Sorry, don't say "m'hmm". Just say
12 "yes" or "no".

13 A. Sorry, yes.

14 164. Q. Okay, that's fine. The only reason,
15 I am not nitpicking, is just the transcript may not
16 pick up your response, so just...

17 A. That's fair.

18 165. Q. Yes. Okay, so, new structure is one
19 option. Alteration, addition to an existing
20 structure is a different type of development; right?

21 A. That's right.

22 166. Q. Okay, so, as part of the compliance
23 process, you wanted them to apply for number 1, new
24 structure?

25 A. I guess it could fit under both

1 categories.

2 167. Q. Okay, what's the second category?
3 Alteration?

4 A. New structure and alteration
5 addition, but, generally, we considered that a new
6 structure. It was a reconstruction of an existing
7 dwelling.

8 168. Q. Okay, so, are you telling me that if
9 my clients now apply for an alteration addition,
10 that this is something that they would have been
11 allowed to do?

12 A. Today, we would want to see it
13 listed as a new structure.

14 169. Q. Okay. And, at the time, in March
15 2019, you would have also wanted it to be listed as
16 a new structure; right?

17 A. We would call it a reconstruction.
18 So, in the description of the works, we would look
19 at what was proposed, and we would...we would
20 probably call it a reconstruction, or construction
21 of a new dwelling.

22 170. Q. Okay, so, it would still be under
23 number 1, new structure?

24 A. Yes.

25 171. Q. Okay. So, the position hasn't

1 changed between now and August of 2019; correct?

2 A. That's correct.

3 172. Q. Okay. And you will agree with me
4 that the requirements under the new structure
5 category are different than if you are applying for
6 an alteration or addition to an existing structure?

7 A. I am not sure I understand the
8 question.

9 173. Q. Okay, well, what's the point of
10 having two different categories?

11 A. The addition is when, substantially,
12 a building is staying in place, and there is pieces
13 added to it.

14 174. Q. Okay, but what I am saying is that
15 the requirements, in terms of the kind of documents
16 that the client would have to provide, the
17 engineering reports, the factor of safety
18 requirements, they are different for a new
19 structure, as opposed to an alteration or addition
20 to an existing structure; correct?

21 A. It depends on the magnitude of the
22 works, the scale and the scope of the works. And,
23 you know, if a brand new, or a reconstruction of a
24 structure is happening, that's when the scope of
25 works would be considered big enough, or large

1 enough that, yes, there might be different technical
2 requirements than if the scope of the works is
3 limited, or smaller, I guess, for lack of better
4 words.

5 175. Q. Okay. So, you say that it depends
6 on the scope, but there is no bright line that says,
7 you know, "This is the kind of scope where one set
8 of requirements applies, this is the scope where a
9 different set of requirements applies"? It is
10 subjective, to some extent?

11 A. Well, it is based on professional
12 opinion. And also, you know, bearing in mind, I
13 guess, the impact, and how big the works are. So,
14 you know, for example, porches, we did not require a
15 geotechnical assessment, because, as far as we knew,
16 it was a front porch, a rear porch, and a minor
17 addition to a garage. The whole house, as far as we
18 knew, was not being taken down to the bones, I
19 guess, if you will. And, so, there would...it just
20 wasn't...it might have been costly, given the scale
21 of the works.

22 However, we know that a building is being
23 largely, you know, reconstructed, there is
24 opportunity, perhaps, in areas where there is known
25 issues, there is opportunity to mitigate any

1 possible issues. And, I guess, that goes back to
2 the crux of what our concerns are for this
3 particular property, and it always has been, is that
4 it's an area with known slope stability issues. And
5 so, you know, as soon as the magnitude of the works
6 was different than what we had been advised, then we
7 want to know that there is going to be no risk to
8 the life, or to property, resulting from these
9 works. And so, you know, that's where different
10 technical studies would be asked, and it's just
11 purely so that if there is any potential mitigation
12 measures that can protect that structure, we want to
13 make sure that they were implemented.

14 176. Q. But, I guess, what I am trying to
15 understand is, there are two different sets of
16 requirements for new construction homes and homes
17 that are existing structures that are being altered
18 in some way; right? So, for example, for a new
19 structure, you would always require a geotechnical
20 report; right?

21 A. Or largely reconstructed. If you
22 are bringing it down to the bones, then, yes, that
23 is, again, an opportunity to make sure that you
24 understand the potential risk.

25 177. Q. Okay, so, for a new structure, you

1 always require a geotechnical report; correct?

2 A. We would always require it where the
3 slope, you know, it would be a substantial slope,
4 you know, and where there is an erosion hazard. If
5 there was no erosion hazard, we wouldn't.

6 178. Q. Right. And, for a new construction,
7 you would require a...again, in situations where
8 there is an erosion hazard, you would require a
9 factor of safety at 1.5; correct?

10 A. That's what we generally strive to,
11 if there is no existing development or dwelling on a
12 site.

13 179. Q. Okay, and it was your position, in
14 August, that the building was completely demolished,
15 and that there was no existing development on the
16 site; correct?

17 A. Yes, that the building was
18 demolished.

19 180. Q. Okay, so, my clients would have to
20 meet the factor of safety of 1.5?

21 A. I guess I would like to say to that,
22 this is something that we have put out there a
23 number of times. You know, there is a difference
24 between a vacant lot and a lot that has existing
25 development or existing dwelling on it. You know,

1 as we put forward in our March, I believe, 2019
2 letter, as we put forward in an e-mail, and we
3 communicated with the landowners' agents, we were
4 willing to work with the applicant and an engineer
5 that they retained. And again, we never had the
6 opportunity to have, you know, our technical team
7 talk to their technical team, to say, "Okay, what
8 could work, or what's feasible for this particular
9 property?"

10 And, so, you know, if it was possible
11 to...if it was not possible to achieve the 1.5, and
12 I don't know, because we haven't seen any bore
13 holes, we haven't seen a geotechnical assessment,
14 but if a study came back by a professional engineer,
15 and they said that, and they said, "We can only
16 meet, I don't know, 1.4, but if you do X, Y, and Z,
17 it might help mitigate any potential issues", we
18 would be open to that, but we just haven't had that
19 opportunity to take a look at, or to have that
20 conversation from technical person to technical
21 person.

22 181. Q. Okay. And, so, but your position in
23 August of 2019 was that there was no existing
24 development, which is why you say the permit was
25 void; right?

1 A. I am not sure I follow that.

2 182. Q. Well, you said that the building had
3 been completely demolished; right?

4 A. But there was still existing...it
5 would still have...there has always been a house on
6 it. It's not a vacant lot, with nothing that ever
7 existed on the site. You know, I am, kind of...I
8 guess, we are talking in greenfield scenarios, where
9 there has never been or never...yes, there never has
10 been a structure on a particular site. This is
11 different, in that there was a structure on the
12 site, and there is, you know, a partially
13 constructed structure there right now.

14 183. Q. Okay, and you will agree that all of
15 what you are telling me, this is, kind of, you know,
16 your, I guess, Conservation Halton's informal
17 policies? It's not actually set out in the
18 Regulation?

19 MR. JULL: Well, again, look, this
20 witness cannot speak to Conservation
21 Halton. She is here in her individual
22 capacity. She can speak about her
23 understanding, but she cannot bind, and her
24 answers cannot bind Conservation Halton.

/R
25

1 BY MR. BOUCHELEV:

2 184. Q. Okay, in your understanding, is
3 there an actual written policy that Conservation
4 Halton says, that sets out this distinction between
5 greenfield development and other lots that have an
6 existing structure?

7 A. If you...I would have to pull it up,
8 but in our...in Conservation Halton's regulatory
9 policies, it speaks to existing valley development.
10 And, so, it speaks to, there is existing development
11 in a valley, which this is, then there is
12 opportunity for a structure to be redeveloped,
13 subject to a number of conditions, and the
14 conditions...one of the conditions is that a
15 geotechnical assessment be submitted. So, yes, we
16 do have regulatory policies that allow for
17 development in the valley.

18 185. Q. And have you ever communicated to my
19 client which factor of safety Conservation Halton
20 was going to accept?

21 A. So, as I mentioned, we had invited
22 the applicants to attend that April 3, 2019 meeting.
23 At that meeting we had with Mr. Vozikas, sorry, it
24 was myself, Charles Priddle, our manager of our
25 regulations program, Cassandra Connelly, our

1 regulations officer, Mr. Baron attended, as well as
2 Mr. Vozikas. And, at that point in time, we had
3 advised, "Is it our hope that you can achieve the
4 1.5? Yes. However, we want to have a conversation
5 with your engineer", or the applicants' engineer, to
6 see what would be feasible.

7 186. Q. Okay, so, let me just be very clear
8 as to what my question is. Did you ever give my
9 client any hard number, other than 1.5? Did you
10 say, "We will accept 1.4 or 1.3 or 0.7"? Did you
11 give any specific number to my client or their
12 representatives, other than 1.5?

13 A. No, because we needed...a qualified
14 engineer needs to do the analysis, to see what is
15 even feasible for that site. We didn't give a
16 number that was an absolute. It was that, we need
17 this analysis done first, to tell us what is even
18 possible at this particular location.

19 187. Q. Okay, so, first, you want my clients
20 to do the analysis, and then you will decide if the
21 factor of safety is acceptable; right?

22 A. We wanted your...the applicants'
23 engineer to chat with our technical people to see
24 what would be feasible. So, it was a conversation
25 first, based on technical expertise, to see what

1 would be feasible for this particular...

2 188. Q. Okay, but that's not really
3 responsive to my question; right? You wanted to see
4 a factor of safety from the engineer, and then you
5 were going to decide if that was going to be
6 acceptable; right?

7 A. I don't believe we put a number in
8 writing. Did we say, in conversation, at the April
9 meeting, that, you know, this is what we strive for?
10 Yes, but it wasn't given as an absolute. It was a,
11 you know, "This is what we would normally be looking
12 for". Again, it's that conversation, it's an
13 iterative conversation between technical
14 professionals that normally happens.

15 189. Q. Okay, so, if my clients were to get
16 a report that says the factor of safety is 1.4,
17 there is no guarantee that you would accept that;
18 right?

19 A. Well, I guess, there could be very
20 well be that we would accept it, I guess, is a good
21 way to put it, you know.

22 190. Q. But there is no...you can't...you
23 know, sitting here today, you can't say, "If you
24 have a report that says 1.4, we will accept"?

25 A. We would be looking for...I guess

1 the most important thing out of a geotechnical
2 assessment is, yes, understanding that factor of
3 safety is important, but the most important thing
4 is, are there any measures that could be
5 implemented, mitigation measures, that could help
6 protect either the slope stability or to protect the
7 house, and are there any feasible, you know, easily
8 implemented measures that...and that's what the
9 geotechnical assessment would do. It would provide
10 recommendations about the measures that could be
11 taken to help mitigate any potential issues.

12 191. Q. Okay, but my question is, so, if,
13 let's say, my clients get a report like that, and,
14 you know, it sets out the factor of safety, sets out
15 the engineer's conditions, you are under no
16 obligation to accept it? You can still say, "No,
17 this is not to our satisfaction"; right?

18 A. I would like to think we are more
19 reasonable than that. If there were measures, you
20 know, implemented, or there were efforts made to do
21 the best that they could for the site.

22 192. Q. Okay, well, you like to think that,
23 but there is no obligation. You can't, sitting
24 here, guarantee that you will accept whatever the
25 engineer proposes; right?

1 A. I can't guarantee...

2 MR. JULL: Well, again, this is a legal
3 position. This is a legal question with
4 respect to the position that Conservation
5 Halton may take. The witness can only say
6 what she, in her personal capacity, would
7 view it as. She cannot...because you have
8 set it up as a Rule 39.03 examination, she
9 cannot bind Conservation Halton with her
10 answers.
/R

11

12 BY MR. BOUCHELEV:

13 193. Q. Okay, so, the...the bottom line, I
14 think, Ms. McCormack, you know, we can all agree on
15 this, that, at the end of the day, an engineering
16 report, any engineering report that my clients would
17 provide is still subject to your approval; right?

18 A. I guess, there is a few pieces to
19 that. Our staff would review it. If it is deemed
20 acceptable, then...and it demonstrated that our
21 regulatory policies have been met, then staff could
22 approve the application. If the report was deemed
23 unacceptable, and we can't support the application,
24 well, then, that would be the opportunity for your
25 clients to ask for a hearing before our board, for a

1 decision on the matter.

2 And so, then, that would be the opportunity
3 for the applicants to say, you know...staff would
4 say, "We don't support this technical study, and we
5 don't support the application". The applicants
6 could go before the board and say, "Well, these are
7 the reasons why we think it is", and then our board
8 of directors, or... who would be a hearing board, at
9 that point, the hearing board would make a decision,
10 and they could go either way. They could say, "We
11 agree with staff", or they could say, "We agree with
12 the applicants". And, if they disagree with the
13 applicants, well, then, there is still another
14 opportunity to appeal that decision, and that would
15 go to...well, it's changing, but Mining and Lands
16 Commission, Mining and Lands Tribunal, LPAT, but
17 there would be another tribunal that could...the
18 applicants could plead their case in front of.

19 194. Q. Okay, now, I would like you to go
20 back to Exhibit I to my client's affidavit, and that
21 is a copy of the compliance agreement application.
22 If you can look at the compliance agreement
23 application.

24 A. Okay.

25 195. Q. Okay. Now, if you look at the

1 second page, under "Terms and Conditions", it says:
2 "...The intent of the compliance agreement
3 is to provide the owner/agent with an
4 opportunity to work with Conservation staff
5 to bring the property into compliance with
6 the Conservation Authorities Act and
7 Ontario Regulation 162/06, after
8 unauthorized works have been started and/or
9 completed..."

10 So, by signing this agreement, my clients would be
11 acknowledging that they have conducted an
12 unauthorized development; right?

13 A. That's right.

14 196. Q. And they would be admitting that
15 they have committed an offence under the Provincial
16 Offences Act; correct?

17 A. They would be admitting that they
18 had done works without the proper permission from
19 Conservation Halton, yes.

20 197. Q. Which, to your knowledge, is
21 contrary to the Provincial Offences Act and the
22 Conservation Authorities Act; correct?

23 A. It would be contrary, yes.

24 198. Q. And they could be charged with a
25 provincial offence for doing that; correct?

1 A. Well, that's not the intention with
2 these compliance agreements. Again, the
3 intention...

4 199. Q. Well, hold on a second. We will go
5 into the intention, but...

6 MR. JULL: Let the witness finish. Let
7 the witness finish her answer. You asked a
8 question. You asked a question about the
9 intent of this agreement. Your question
10 was framed in a very wide way. She is
11 entitled to answer this.

12

13 BY MR. BOUCHELEV:

14 200. Q. We will go to the intent. Just,
15 before we go there...and I will give you the
16 opportunity to do that, as well. I just want you to
17 answer whether or not my clients could be charged
18 with a provincial offence in connection with the
19 unauthorized development. Is that a possibility?

20 A. It wouldn't be as a result of
21 signing this form. Your clients would be charged,
22 or applicants could be charged if they do works that
23 are contrary to our regulation, and if they are
24 doing works for what they didn't receive permission
25 for. It's not for signing a compliance agreement.

1 201. Q. Okay. So, you were going to talk
2 about the intent of the compliance agreement. So,
3 go ahead. I want to give you the opportunity.

4 A. Yes. I think our compliance
5 agreement form is quite clear. It really is to try
6 and allow an applicant that has done works...and
7 sometimes they are done by mistake, sometimes they
8 are done intentionally, but it's to give someone an
9 opportunity to work with us to fix, or address,
10 works that had been done without the proper
11 permission. So, the intention is really to try to
12 work with someone to let...for lack of better words,
13 it's kind of a permit after the fact, but we do that
14 officially, but it's to help us say, "You know what?
15 Now we need all of the pieces that should have been
16 submitted in the first place. We are satisfied that
17 our policies actually can be met. And, so, now
18 these works are deemed to meet our policies, and
19 that the proper permissions for these works are now
20 in place".

21 202. Q. Okay, but you will agree with me
22 that, you know, just because my clients enter into
23 this compliance agreement, that doesn't necessarily
24 prevent them from being charged with provincial
25 offences; correct?

1 A. If all of the pieces had been
2 submitted that we had mentioned, as far as a
3 geotechnical assessment, whether, you know...a
4 geotechnical assessment, the proper site plans and
5 plans, and...then there is a very good likelihood
6 that permission would have been granted.

7 203. Q. Okay, but, again, I am just saying
8 that, by virtue of signing this compliance
9 agreement, my clients are not shielding themselves
10 from being charged with a provincial offence. They
11 are two separate processes. They could sign this
12 agreement, then they could still end up being
13 charged with a provincial offence; right?

14 A. If applicants work with us in good
15 faith to carry out a compliance agreement, and they
16 are working with us, we don't go down the charging
17 path. It is rare.

18 204. Q. But you could? There is nothing in
19 this agreement that prevents you from doing that, if
20 you want to?

21 MR. JULL: Again, I am going to stop
22 this. This agreement has 11...10 terms and
23 conditions. Now, we can get into a legal
24 interpretation of what it means. This
25 witness is not a lawyer, and she is not in

1 a position to give you an answer to a
2 hypothetical question about what the legal
3 impact of this agreement is. I think you
4 have got your answer. You can't ask any
5 more from this witness.

/R

6 205. MR. BOUCHELEV: Well...

7 MR. JULL: And you certainly can't ask
8 her to bind Conservation Halton as to the
9 interpretation of a Conservation Halton
10 agreement with 10 terms.

11 206. MR. BOUCHELEV: I am only asking for her
12 understanding, Mr. Jull.

13

14 BY MR. BOUCHELEV:

15 207. Q. Now, if you look at the first
16 section under, "Terms and Conditions", Ms.
17 McCormack, you say that:

18 "...This compliance agreement is voluntary,
19 and not required pursuant to any section of
20 the Conservation Authorities Act or Ontario
21 Regulation 162/06..."

22 Correct?

23 A. That's correct. That's what it
24 says.

25 208. Q. Okay. So, who came up with the idea

1 of this compliance agreement? Who created it?

2 A. I cannot speak to that, because it
3 was created before my time at Conservation Halton.

4 209. Q. Okay. And you will agree with me
5 that there is nothing in this agreement that says,
6 "If you sign this agreement, we are not going to
7 charge you"; correct?

8 A. I can't see it.

9 210. Q. Okay. And you will see, in fact,
10 there is some bold text towards the bottom of the
11 second page:

12 "...I/we agree that in an effort to
13 voluntarily mitigate the alleged violation
14 of the Conservation Authorities Act and
15 Ontario Regulation 162/06, I/we will
16 complete all described compliance work in
17 the manner and time as prescribed by this
18 compliance agreement. Failure to comply
19 with the conditions of the compliance
20 agreement could result in fines not
21 exceeding 10,000, or a term of imprisonment
22 of not more than three months..."

23 Right?

24 A. That is correct.

25 211. Q. So, if my clients entered into this

1 compliance agreement, and they didn't comply with
2 the terms that the Conservation Authorities would
3 set out, then they could be charged and, therefore,
4 could be liable for a fine or imprisonment; right?

5 A. Yes, however, it still goes back to
6 the violation in the first place, whether the
7 agreement is signed or not. That could very well be
8 the case, regardless. Again, that's not generally
9 what happens.

10 212. Q. And, by signing the agreement, my
11 clients are acknowledging that they have committed a
12 violation; right?

13 A. They are willing to work with us to
14 resolve the violation.

15 213. Q. Okay. Now, are you aware of the
16 fact that Conservation Halton is currently in the
17 process of bringing charges against my client under
18 the Provincial Offences Act?

19 A. Yes, I am aware.

20 214. Q. And do you know when the intent to
21 charge my client was formulated?

22 MR. JULL: I am going to object to that
23 question. This witness cannot answer on
24 behalf of the intent of Conservation
25 Halton.

/R

1 220. MR. BOUCHELEV: Well, yes, there is,
2 because I want...

3 MR. JULL: There is no point. Why are
4 you asking a question that there is no
5 point to? Because she cannot bind
6 Conservation Halton in any answer with
7 respect to this point.

8 221. MR. BOUCHELEV: Well, that's your
9 opinion, that there is no point. I
10 disagree.

11

12 BY MR. BOUCHELEV:

13 222. Q. All I am asking for, Ms. McCormack,
14 do you know when the decision to charge my client
15 was made; yes or no?

16 A. Yes.

17 223. Q. Okay, and when was that?

18 MR. JULL: I am going to object. That
19 is a matter of legal privilege. I, as the
20 lawyer who prosecutes on behalf of
21 Conservation Halton, act in conjunction
22 with my client to make these decisions.
23 You are asking a question that is subject
24 to legal privilege, and I am instructing
25 the witness not to answer this. Do not

1 answer this question.
/R

2

3 BY MR. BOUCHELEV:

4 224. Q. Okay, I will ask another question.
5 Who made the decision to charge my client? Do you
6 know the name of the person who is ultimately
7 responsible for that decision?

8 MR. JULL: Do not answer the question.
/R

9 225. MR. BOUCHELEV: Okay, and on what basis
10 are you objecting?

11 MR. JULL: It is legal privilege. This
12 is legal privilege. You cannot go behind
13 the decisions that are made with respect to
14 prosecuting in this matter. You cannot do
15 that, unless this witness is the actual
16 informant, and even then, I think, you
17 couldn't ask the question. So, the answer
18 is, you cannot ask the question. If you
19 want to bring a motion to compel her to
20 answer this question, go ahead and try.

21 226. MR. BOUCHELEV: Well, Counsel, there is
22 no such thing as legal privilege. There is
23 solicitor/client privilege. So, I am not
24 sure how this would fall under
25 solicitor/client privilege.

1 MR. JULL: Because you are asking a
2 question about a charging decision that is
3 made by Conservation Halton, not this
4 witness. And that decision is made in
5 conjunction with my legal advice, as a
6 prosecutor.

7 227. MR. BOUCHELEV: Well, I am not asking
8 her about your legal advice. I am just
9 asking, you know, when the decision to
10 charge my client was made.

11 MR. JULL: It's not a relevant...first
12 off, it's not relevant, and, secondly, it's
13 privileged.

14 228. MR. BOUCHELEV: Well, it is highly
15 relevant. It's one of the most relevant
16 issues in this whole proceeding, on your
17 motion.

18 MR. JULL: You can ask those questions
19 of the informant, yes. The
20 informant...that's a different issue. You
21 cannot ask those questions. And, even
22 then, it's not...it's a privileged decision
23 about internal decision making, about when
24 those decisions were made. That is a
25 privileged matter.

1 229. MR. BOUCHELEV: Well, I don't see how
2 that is privileged, but okay. We might
3 have to deal with it in another forum.
4 Just give me one moment.

5

6 BY MR. BOUCHELEV:

7 230. Q. Now, just one other thing, Ms.
8 McCormack. I am going to take you, again, to the
9 letter of August 22, 2019, and the last page refers
10 to...you say, "In our view", and we have established
11 that, when you say "in our view", you mean yourself
12 and Ms. Veale, as well as Conservation Halton, in
13 general. Now, I would like you to produce your
14 internal e-mails between you and Ms. Veale and other
15 Conservation Halton staff, in connection with the
16 decision that led to the issuance of this letter.

17 MR. JULL: Counsel, first off, you know
18 that, on a cross-examination, it's not a
19 discovery, and you are not entitled to
20 discovery. You can ask for that
21 information, if you wish, to me, and I will
22 consider, as counsel, the request, and I
23 may very well provide that, unless it's
24 privileged. You can't ask this witness...

/R

25 231. MR. BOUCHELEV: Well...

1 MR. JULL: You cannot ask this witness
2 to produce internal correspondence from
3 Conservation Halton that is subject to
4 Freedom of Information legislation. If you
5 wish for evidence such as that, you can
6 write to me, you can ask for it, and we
7 will take it under consideration.

8 232. MR. BOUCHELEV: Well, Counsel, I can ask
9 this...we are in the middle of a legal
10 proceeding. The same rules that would
11 apply to Freedom of Information would not
12 apply here, because these are decisions
13 that relate to this specific case. We are
14 not talking about communications about some
15 other unrelated third parties, or their
16 properties. So, I am not sure what
17 relevance...

18 MR. JULL: No, this witness, in her
19 personal capacity, does not have the power
20 to override the Freedom of Information Act.
21 I am sorry, but she doesn't, and you can't
22 ask her that.

23 233. MR. BOUCHELEV: I disagree. So, is that
24 a refusal?

25 MR. JULL: That's a refusal.

1 234. MR. BOUCHELEV: Okay, and on what basis?

2 MR. JULL: I have said it again and
3 again and again. Number one, this witness
4 is here in her personal capacity, not on
5 behalf of Conservation Halton. Number two,
6 the Freedom of Information Act applies.
7 Number three, it is potentially subject to
8 legal privilege and/or litigation
9 privilege, depending on the nature of the
10 correspondence. Those are three good
11 reasons why you can't ask this witness.
12 You can, if you wish, put in a request to
13 me, as counsel on behalf of Conservation
14 Authority, and we will consider it.

15 235. MR. BOUCHELEV: Well, no, I am also
16 entitled to ask this question on an
17 examination, and I am entitled to ask the
18 witness to produce documents, and the
19 litigation privilege...

20 MR. JULL: Give me some
21 authority...where is...

22 236. MR. BOUCHELEV: Well, just let me...

23 MR. JULL: ...your authority that
24 says...

25 237. MR. BOUCHELEV: Don't interrupt.

1 MR. JULL: ...you can...

2 238. MR. BOUCHELEV: Don't...

3 MR. JULL: Listen...

4 239. MR. BOUCHELEV: No, I...look, no, no,
5 no, wait. I didn't interrupt you, so don't
6 interrupt me; okay? So, litigation
7 privilege does not apply, because there was
8 no litigation in August of 2019.

9 Solicitor/client privilege does not apply,
10 because I am not asking this witness to
11 produce any communications with her
12 counsel. I am only asking for
13 correspondence with Ms. Veale and other
14 members of Conservation Halton. The
15 Freedom of Information Act does not apply,
16 because we are asking for documents that
17 relate to my clients' property; okay? So,
18 anyway, this is my position. I don't
19 intend to argue this now. We may have to
20 address that in a different forum, or I can
21 ask the court to draw an adverse inference.

22

23 BY MR. BOUCHELEV:

24 240. Q. But my question for you, Ms.
25 McCormack, do you still have e-mails from 2019?

1 A. In general or specific...

2 241. Q. Yes.

3 A. Yes.

4 242. Q. So, if there were some e-mails that
5 you exchanged with, let's say, Barb Veale or someone
6 else at Conservation Halton, in 2019, you would be
7 able to locate them; correct?

8 A. Yes.

9 243. Q. Okay. Without telling me, because
10 this is...your counsel is objecting, but without
11 telling me what those e-mails are, did you have any
12 e-mails with Ms. Veale, prior to writing this August
13 22 letter, relevant to the issues described in the
14 letter?

15 A. Yes.

16 244. MR. BOUCHELEV: Okay, so, Counsel, these
17 are the e-mails with Barb Veale and others
18 at Conservation Halton that I would like to
19 see.

20 MR. JULL: Well, firstly, your
21 examination did not ask this...your notice
22 of summons did not ask this witness to come
23 with any documents, number one. Number
24 two, you can't compel, on a
25 cross-examination, a freewheeling access to

1 documents. The proper procedure would have
2 been to cross-examine this witness under
3 her affidavit, on behalf of Conservation
4 Authority, but you chose not to do that.
5 And, number four...

6 245. MR. BOUCHELEV: Yes, Counsel, I can ask
7 the same questions of Ms. Veale, as well.

8 MR. JULL: Number four, at this time,
9 for the record, I can indicate that I was
10 giving legal advice, and I am not waiving,
11 and I am not waiving that advice, and that
12 correspondence may contain reference to
13 that legal advice, and I am asserting
14 solicitor/client privilege over
15 correspondence. Until I have had a chance
16 to review it and determine whether or not
17 it is privileged, the witness will not
18 produce it.

19 246. MR. BOUCHELEV: Well, but that's a
20 different response. So, are you telling me
21 that you will look at the documents and
22 produce them, if there is no claim of
23 solicitor/client privilege?

24 MR. JULL: Yes, if those documents are
25 not subject to legal privilege, and they

1 don't refer to advice given by me, I would
2 have no objection to those produced,
3 subject to the Freedom of Information Act.

4 247. MR. BOUCHELEV: Okay.

5 MR. JULL: Keep in mind, you are asking
6 this witness in her personal capacity. She
7 may not have the power to give you
8 documents from her employer. You just
9 can't ask a witness...if you just subpoena
10 a witness from IBM, and ask them, "Produce
11 the information that you produced to the
12 CEO", they may not have the legal authority
13 to even provide that to you. Because you
14 subpoenaed her in her personal capacity,
15 she would have to go to her employer, the
16 Conservation Authority, and say, "I have
17 been asked to produce this. Can I produce
18 this?", and, if she gets permission to
19 produce it, subject to Freedom of
20 Information legislation, and if there is no
21 privilege, then she can produce it.

22 248. MR. BOUCHELEV: Okay, so, just so that
23 we have it clear on the record, what you
24 are giving me is an undertaking to go back
25 and ask Conservation Halton...

1 MR. JULL: I am not giving you an
2 undertaking, because I am not counsel for
3 this witness.

4 249. MR. BOUCHELEV: I thought you were. Why
5 are you making objections, then?

6 MR. JULL: I am here protecting the
7 Conservation Authority Act, Conservation
8 Authority, which is my client, and I am not
9 counsel to this witness, and I have said
10 throughout that. You are asking...

11 250. MR. BOUCHELEV: I am not sure about
12 that.

13 MR. JULL: You are asking questions of
14 this witness that are beyond her scope to
15 answer, because she is here in her personal
16 capacity, and I am saying, on behalf of
17 Conservation Halton, you cannot ask her
18 those questions. My position is as counsel
19 for Conservation Halton, and that's why I
20 am here.

21 251. MR. BOUCHELEV: Okay, well, Mr. Jull,
22 like I said, you can't have your cake and
23 eat it too. You have made various
24 objections. You objected to questions on
25 the basis of relevance. You can't sit here

1 and say, "I am not counsel for this
2 witness" and, at the same time, act as her
3 counsel. You know, you can't suck and blow
4 at the same time, as they say. So...

5 MR. JULL: Well, we will have to agree
6 to disagree. At no time, Counsel, before
7 this examination did you indicate that you
8 were asking me to respond as this witness'
9 personal counsel. I came, today,
10 understanding that she was being subpoenaed
11 on behalf of Conservation Authority, and
12 that she would be the representative of
13 Conservation Authority, and I commenced
14 this with indicating that I thought...and I
15 indicated that the Rule 39.03 procedure is
16 improper. Now, that is the position I am
17 taking. We can agree to disagree, and we
18 can argue it in the appropriate forum.

19 252. MR. BOUCHELEV: Okay, that's fine. And
20 if you can just give me one moment. I
21 think we are almost done here. Okay, Ms.
22 McCormack, those are all the questions that
23 I have for you. Thank you.

24 THE DEPONENT: Thank you.
25

1 258. MR. BOUCHELEV: And the third exhibit,
2 Exhibit 3, is going to be the respondent's
3 motion record, which is also dated February
4 5, 2021. And that's it.

5 MR. JULL: That's fine.

6

7 --- EXHIBIT NO. 2: Responding application record, dated
8 February 5, 2021

9

10 --- EXHIBIT NO. 3: Respondent's motion record, dated
11 March 5, 2021

12

13 --- upon adjourning at 12:00 p.m.

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REPORTER'S NOTE:

Please be advised that any undertakings, objections, under advisements and refusals are provided as a service to all counsel, for their guidance only, and do not purport to be legally binding or necessarily accurate and are not binding upon Victory Verbatim Reporting Services Inc.

I hereby certify the foregoing to be a true and accurate transcription of the above noted proceedings held before me on the 10th DAY OF MARCH, 2021 and taken to the best of my skill, ability and understanding.

Correct:

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} Certified
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Reporter

} Keri Powers
} Verbatim

TAB 2

Court File No. CV-19-00627606-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

(APPLICATION UNDER Section 97 of the *Courts of Justice Act*, R.S.O. 1990, C.C.43)

TR/asb

B E T W E E N:

IVAN RUDYK and SHELLEY YOUNG

Applicants

- and -

HALTON REGION CONSERVATION AUTHORITY

Respondent

- - - - -

This is the Cross-Examination for Discovery of BALWINDER SINGH, on his Affidavit sworn the 5th day of March, 2021, taken via videoconference at the offices of VICTORY VERBATIM REPORTING SERVICES INC., 222 Bay Street, Suite 900, Ernst & Young Tower, Toronto-Dominion Centre, Toronto, Ontario, on the 21st day of April, 2021.

- - - - -

A P P E A R A N C E S:

ARKADI BOUCHELEV -- for the Applicants

KENNETH E. JULL -- for the Respondent

ALSO PRESENT:
Shelley Young
Ivan Rudyk

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1 --- upon convening at 10:00 a.m.

2 --- upon commencing at 10:05 a.m.

3

4 BALWINDER SINGH, affirmed

5 CROSS-EXAMINATION BY MR. BOUCHELEV:

6 1. Q. Mr. Singh, good morning.

7 A. Morning, Mr. Bouchelev, how are
8 you doing?

9 2. Q. I am well, thank you, how are
10 you?

11 A. Good. Can we have quick round of
12 introduction?

13 3. Q. I don't think that would be
14 necessary. I mean, you are the only one who will
15 be giving evidence today, and I am the only one
16 who will be asking questions. And unless there
17 is an objection from your counsel, but everyone
18 else is here just as either an employee of the
19 reporting service or as an observer, in the case
20 of my clients.

21 A. That's fine. Whatever pleases
22 you, I have no problem.

23 4. Q. Okay.

24 MR. JULL: I have no objection, so we
25 can proceed. Thank you.

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BY MR. BOUCHELEV:

5. Q. Okay. Excellent. Now, Mr. Singh, I am not sure if you have done an examination like this before, I am assuming you have?

A. Yes, yes, not on videoconference but live, yes.

6. Q. Okay. All right. Well, the process is going to be the same. I am going to ask you a question. If for some reason, you know, you are not sure what the question is or if there is a technical issue, you can't hear me well, then by all means ask me to repeat or clarify the question. And yes, and just for the record, Mr. Singh, can you please state your full name?

A. Yes, my name is Balwinder Singh, B-A-L-W-I-N-D-E-R, S-I-N-G-H.

7. Q. Okay. Very well. And Mr. Singh, can you please confirm that you affirmed to tell the truth today?

A. Sorry, can you repeat, please?

8. Q. Yes. Just confirm for the record that you have made a solemn affirmation to tell

1 the truth.

2 A. That is correct, yes. I confirm.

3 9. Q. Okay. Excellent. Now, so you
4 are an engineer, correct?

5 A. That is correct.

6 10. Q. And what kind of an engineer are
7 you? Are you a structural engineer?

8 A. No, I am a geotechnical engineer.

9 11. Q. Okay. And just very briefly,
10 what is a geotechnical engineer? What does that
11 imply?

12 A. Yes. So, geotechnical
13 engineering is a specialized branch of civil
14 engineering that primarily deals with ground
15 engineering, with respect to foundation, ground
16 characterization ground strength, stability of
17 slope erosion of slopes, stability of any
18 structure and how the ground is going to react to
19 that, and other associated issues and components
20 like earthquake engineering and stuff.

21 12. Q. Okay.

22 A. So it's basically a branch of
23 civil engineering, more tailored towards the
24 ground engineering.

25 13. Q. Okay. Now, and Mr. Singh, so you

1 are here as a witness on behalf of Conservation
2 Halton, correct?

3 A. That is correct.

4 14. Q. Okay. And when were you retained
5 by Conservation Halton?

6 A. I do not recall exact date of my
7 retainer. Perhaps Ken can help me on that. It
8 was in the summer of last year, around summer of
9 last year. If you need an exact date, I can pull
10 it out, my retainer, and I can give you that
11 date.

12 15. Q. Okay. No, I think we are fine.
13 So the summer of 2020. And what was the purpose
14 of your retainer at that time?

15 A. At that time, and this time, to
16 my understanding, the purpose of retainer was
17 still the same. Some reports that were provided
18 to me to review and provide my professional
19 opinion regarding the work that has been done
20 pertaining to the geotechnical engineering and
21 slope stability aspect of this project. To
22 review that, provide my professional opinion
23 about that. If the work is adequate or what
24 other work that could have been done, if
25 necessary.

1 16. Q. Okay. Now, did you attend the
2 property 35 Spring Gardens at any point?

3 A. I did. I went to a site meeting
4 for that property, yes.

5 17. Q. Okay. And when did that site
6 meeting take place?

7 A. Yes, let me quickly check my date
8 here. I think it was 17th of December, but I
9 just want to double-check. Yes, December 17th,
10 2020.

11 18. Q. Okay. December 17th. And again,
12 just what was the purpose of that site meeting?

13 A. The purpose of the site meeting
14 was to have a visual assessment of the property
15 and to get familiarized with the current
16 situation. And it is important from the overall
17 perspective that the existing site conditions are
18 observed. So, site visit is kind of a critical
19 component to any of the opinion that a
20 professional would give, especially in terms of
21 when issues are related to slope stability and
22 erosion.

23 19. Q. Okay.

24 A. There are various aspects that
25 needed to be seen and a visual inspection is a

1 fine way to do that.

2 20. Q. All right. So, essentially you
3 went there to do a visual inspection?

4 A. I'm sorry, I'm...the volume is a
5 bit low, let me try to raise it up here a bit.
6 Can you please repeat that again?

7 21. Q. Yes. So, the...in a nutshell the
8 purpose of the site meeting was for you to
9 conduct a visual inspection?

10 A. The purpose of the meeting was to
11 get familiarized with the property in its current
12 state through a visual observation.

13 22. Q. Okay.

14 A. And get that information and
15 apply it as necessary.

16 23. Q. Okay. Now, Mr. Singh, were the
17 homeowners present at the time when you attended
18 the property for a site visit?

19 A. I do not recall and I do not
20 recognize homeowners. There were a few people
21 who were asking us at that time, "Do you have a
22 valid permit to enter"? There were people who
23 were videotaping us, but I...unfortunately I
24 cannot answer they were homeowners or not,
25 because I have never met them. And nobody

1 actually identified, that I recall, themselves.

2 24. Q. Okay. Now, would it be fair to
3 say that you didn't ask the homeowners for
4 permission to visit the property?

5 A. I personally did not. My
6 understanding is, Ken can further elaborate on
7 that, I think the permission was obtained. As
8 far as I know, there was a permission that
9 conservation authority people had with them when
10 we visited to the site.

11 25. Q. So, you were told by Conservation
12 Halton that the homeowners consented to the
13 inspection?

14 A. I do not recall that conversation
15 at all in particular. Basically I was told that
16 we have this inspection and we have permission to
17 enter or we have permission to go to the site.

18 26. Q. And who told you that?

19 A. Who told me that?

20 27. Q. Yes.

21 A. I do not recall. I think
22 probably perhaps it was Ken that advised me that
23 we had permission to go to site.

24 28. Q. Were you aware of any search
25 warrants in connection with the property?

1 A. I do recall word "search
2 warrant", that we do have warrant...search
3 warrant to enter the property, yes.

4 29. Q. Okay. Are you involved as a
5 witness in a provincial offences case involving
6 my clients?

7 A. Involving your clients?

8 30. Q. Yes.

9 MR. JULL: I'm just going to
10 interject at this point. The question
11 is perhaps a little premature in that
12 although charges have been laid, as you
13 are aware, the matter has not proceeded
14 beyond that. There has been no
15 disclosure and, in fact, the process has
16 not issued yet, it's still with the
17 court. I think the question is a bit
18 premature, Mr. Bouchelev. I certainly
19 can indicate that it is...in the
20 process, going forward, in the
21 regulatory charges, it is quite likely
22 that Mr. Singh would be a witness. I
23 would anticipate he would be a witness,
24 but it is premature at this point
25 because we haven't formally provided our

1 disclosure package or any materials for
2 that process.

3 31. MR. BOUCHELEV: Okay. Well, first of
4 all...right. Well, Mr. Jull, first of
5 all I am not aware of any charges being
6 laid because I'm not involved in this
7 process. As far as I know my clients
8 were not served with any summons.

9 MR. JULL: Well, Mr. Bouchelev, let
10 me...can I just clarify that? I want
11 this clear on the record. I have sent
12 you an email and I'm happy to send it to
13 you again, but I have sent you an email
14 indicating that the charges have been
15 laid. That the justice has accepted the
16 charges and the process has not been
17 issued. If you would like, I will send
18 that email to you again, but clearly I
19 had indicated that to you.

20 32. MR. BOUCHELEV: Well, I don't need
21 the same email again, I'm just telling
22 you that my clients have not been served
23 with any summons or have been given any
24 indication of, you know, of an actual
25 ongoing process. Other than your email,

1 we don't have anything. But let's leave
2 that aside.

3 MR. JULL: Fair enough. And I think
4 we can just leave it at that.

5

6 BY MR. BOUCHELEV:

7 33. Q. Yes. So, Mr. Singh, what I'm
8 asking you, I guess, is this, were you told that
9 your assistance will be necessary in connection
10 with this provincial offences prosecution?

11 A. I will not be able to comment on
12 the legality of this provincial offences issue.
13 I am not familiar with that. I was retained to
14 provide a professional opinion on the matter from
15 the geotechnical engineering perspective.

16 34. Q. Okay. But would it be fair to
17 say that you were told that this opinion would be
18 in connection with a lawsuit?

19 A. This opinion is in connection
20 with a lawsuit? Yes. I am aware that there is a
21 lawsuit that is going on and that's what I was
22 retained for, to provide my opinion
23 regarding...pertaining to that matter.

24 35. Q. Okay. And just so we are clear,
25 the matter that we are referring to is the

1 application by my clients against Conservation
2 Halton, correct? And the matter in which you
3 swore your affidavit?

4 A. It's the matter which is noted on
5 my affidavit.

6 36. Q. Yes. So maybe let's just look at
7 your affidavit for a moment.

8 A. Sure.

9 37. Q. So, if you will go to the first
10 page of your affidavit, which is called
11 "Statement of Balwinder Singh" and you see the
12 court file number and the title of proceedings.
13 You see my clients as the applicants and Halton
14 Region Conservation Authority as the respondent,
15 right?

16 A. Correct.

17 38. Q. Okay. So this is the legal
18 proceeding in connection with which you were
19 retained, correct?

20 A. Okay.

21 39. Q. Yes or no?

22 A. Can you please state that again?

23 40. Q. Yes. So this is the legal
24 proceeding in connection with which you were
25 retained, correct?

1 A. This is my understanding, yes.

2 41. Q. Okay. Sorry, just give me one
3 second. And it would be fair to say that it was
4 explained to you that the purpose of your
5 attendance on December the 17th was to collect
6 information for use in a future affidavit in this
7 proceeding?

8 A. It is fair to say that I was told
9 to attend this site visit to collect necessary
10 data and information pertaining to the opinion
11 that I am going to give regarding the slope
12 stability and other issues for the project.

13 42. Q. In connection with this legal
14 proceeding?

15 A. Which is stated on my affidavit.

16 43. Q. Okay. But you weren't asked to
17 provide, you know, an opinion in general? You
18 were asked to provide an opinion in connection
19 with this legal proceeding, correct?

20 A. The opinion was...the retainer
21 was pertaining to this case, that is correct.

22 44. Q. Okay. Right. That's...I just
23 wanted to clarify that, thank you.

24 A. Sure.

25 45. Q. And you mentioned that when you

1 attended there were people there asking you if
2 you have permission to attend?

3 A. Not to me specifically. I was
4 never part of that conversation. It was the
5 people from Conservation Halton that were
6 communicating with them.

7 46. Q. Okay. So, someone was asking
8 those people if they had permission to attend,
9 right?

10 A. I do not fully recall, but there
11 was a communication between them that "Are you
12 entering the property?", and discussion on those
13 lines. And it was a person from Conservation
14 Halton which was basically a little bit step away
15 from us when he was discussing that, and we were
16 standing little far away.

17 47. Q. Okay. All right. And it would
18 be fair to say that you did not have any
19 interactions with the homeowners at any point,
20 right? You had no discussions or communications
21 with them?

22 A. Yes. No verbal communication
23 that occurred between me and...as I said before,
24 I do not know if those people are homeowners or
25 not, so the individuals who were there and asking

1 and having discussion with Conservation Halton, I
2 did not have any direct communication with them.

3 48. Q. Right. And what I'm asking is
4 just in general, not at the time of the
5 attendance, but prior to the attendance you did
6 not have any discussions with the homeowners or
7 any communications with the homeowners?

8 A. Not that I recall.

9 49. Q. Okay. Right. Now, when you
10 attended the property on December the 17th, how
11 much time did you spend there, approximately?

12 A. Approximately, I was not timing
13 myself, but we were there for a good hour. Hour
14 and a half.

15 50. Q. Okay. And what were you doing
16 there for an hour or hour and a half?

17 A. The purpose was to familiarize
18 with the site, its surrounding, the condition
19 site was at, the prevailing conditions at that
20 time. Specifically, I was more looking towards
21 the...from the slope perspective, so I went back,
22 take some visual observations of the slope and
23 just to relate how things are on the...based on
24 the provided information and how things were on
25 the site. So, what...

1 51. Q. Okay.

2 A. ...I was doing was simply
3 observing the site conditions pertaining to the
4 information I needed to collect.

5 52. Q. Okay. Did you take any
6 measurements?

7 A. No, I did not take any
8 measurements.

9 53. Q. Okay. Did you make any notes?

10 A. I made some notes on the papers I
11 had with me from the drawings, I had some brief
12 notes made.

13 54. Q. And what did you note? Like,
14 what was the purpose of taking those notes?

15 A. Well, it's because there were
16 some drawings that were shown with respect to the
17 previous application and what was supposed to be
18 constructed there from the Conservation Halton
19 perspective. And my notes were mostly related to
20 the slope in terms of visual inspection and how
21 the slope actually appears on-site and how it may
22 have any implications on the opinion that I was
23 going to give.

24 55. Q. Okay. And so who provided the
25 drawing to you? You mentioned that you were

1 making some notes on a drawing that was provided
2 to you, right?

3 A. Yes. The drawing was basically
4 part of the...who provided me that? It came
5 through my counsel.

6 56. Q. I see. Mr. Jull, Conservation
7 Halton's counsel?

8 A. M'hmm.

9 57. Q. Right?

10 A. Yes.

11 58. MR. BOUCHELEV: Okay. And Mr. Jull,
12 I would like you to produce a copy of
13 those notes.

14 MR. JULL: So, I'm not opposed to
15 that. I'm wondering, Mr. Bouchelev,
16 if...in order to make this process more
17 efficient, I'm wondering if it might be
18 sensible if we could take a short break,
19 Mr. Singh could see if he could access
20 the notes electronically and send them
21 to you so you would have them now. I'm
22 happy to provide them afterwards, it's
23 up to you. But given that we are on a
24 pretty tight timetable I'm trying to
25 avoid, you know, the necessity of a

1 reattendance if possible.

2 59. MR. BOUCHELEV: Right. Well, this is
3 what I would suggest then. When we take
4 the morning break perhaps Mr. Singh
5 could see if he can access his notes.
6 And if he cannot do it today then you
7 will give me an undertaking to produce
8 the notes. But if he can provide them
9 today then we will look at them today,
10 is that fine with you?

11 MR. JULL: Yes, that's fine. I'm
12 happy to go...to proceed in that way.
13 So, Mr. Singh, when we take our break,
14 which we will so that people can have a
15 coffee and those kind of things, if you
16 can look to see if you've got those
17 notes anywhere handy. If they can be
18 sent electronically, if you send them to
19 me, I will then provide them to Mr.
20 Bouchelev. If you are not able to find
21 those notes this morning, then we will
22 I'm certainly happy to provide an
23 undertaking to provide those notes at a
24 later date when you can find them.

25 60. MR. BOUCHELEV: Okay. Thank you.

1 That works for me.

2

3 BY MR. BOUCHELEV:

4 61. Q. Now, Mr. Singh, did you take any
5 photographs at the time of your visit?

6 A. No, the photographs were taken by
7 Conservation Halton. So they were taking
8 photographs at that time.

9 62. Q. Okay. And just you mentioned
10 Conservation Halton, so at the time of your visit
11 there were Conservation Halton staff there as
12 well, correct?

13 A. That is correct.

14 63. Q. Okay. And I would suggest to
15 you, and again you may not remember, so I don't
16 want you to guess, but if you do know, that the
17 persons who attended from Conservation Halton
18 were Charles Priddle?

19 A. That is correct.

20 64. Q. Right?

21 A. Yes.

22 65. Q. Cassandra Connolly?

23 A. Yes. Yes, that name sounds
24 familiar, yes.

25 66. Q. Okay. Kellie McCormack?

1 A. Yes.

2 67. Q. And Barbara Veale?

3 A. I think we were three people or
4 four. I could not recall the fourth person's
5 name.

6 68. Q. Okay. No, that's fair enough.
7 So, would it be fair to say that most of the one
8 or the one and a half hour that you spent at the
9 property was you discussing the site and the site
10 conditions with Conservation Halton staff?

11 A. Not necessarily discussing with
12 them, I was basically visualizing and observing
13 for myself.

14 69. Q. Okay. And then taking notes?

15 A. Yes. And basically trying to
16 make sense of things with respect to how this
17 current situation and the slope situation may
18 pertain to the overall assessment or the opinion
19 I was going to provide.

20 70. Q. Okay. Now, would it be fair to
21 say that as part...it was not part of your
22 retainer to prepare a geotechnical assessment?

23 A. Part of my retainer, to my
24 recollection, was to review and provide opinion
25 on the information that was provided and not to

1 take an independent geotechnical investigation
2 for the site.

3 71. Q. Right. So, and what that means,
4 you know, it wasn't...you weren't asked to take
5 any measurements and provide an opinion based on,
6 you know, based on measurements and data, you
7 were asked to review certain documents and
8 provide your opinion on those documents, correct?

9 A. So, measurements is probably not
10 the correct word. In the context I am
11 understanding this, when you do a geotechnical
12 investigation you are retained to do the actual
13 modelling, analysis based on the survey
14 information that is provided to you. So that was
15 not the purpose of my retainer. My retainer was
16 to review the information provided, do a visual
17 inspection and provide my opinion based on that.

18 72. Q. Okay. And...

19 A. On those reports.

20 73. Q. Right. Now, so I'm looking at
21 your report and it's not entirely clear to me
22 what information was provided to you other than
23 the two engineering reports, one from Toronto
24 Inspection and one from Lakeland Engineering. So
25 other than those two, were you provided with any

1 other information?

2 A. I was provided with some of those
3 plans. And some information was provided within
4 these reports. From the technical perspective
5 these are the two reports that I recall and I
6 reviewed.

7 74. Q. Okay. When you say that you were
8 provided with some plans, what do you mean by
9 that? What plans?

10 A. Some background information. I
11 recall there was a permit from Conservation
12 Halton that was included in the information that
13 stated the original permit that was allowed or
14 that was provided by Conservation Halton for the
15 intended work as they understood at that time.

16 75. Q. Okay. All right. So you were
17 provided with Conservation Halton permit 5297,
18 which you...or I should say 5927, which you have
19 referred to at page 10 of your report. Anything
20 else other than that permit and the two
21 engineering reports?

22 A. I have to go back and take a look
23 what other information was provided. There were
24 some affidavits and some other information that
25 is provided. My understanding is that we are

1 discussing from the technical perspective, and
2 these are the two reports mostly that I looked
3 from my technical perspective of review.

4 76. Q. Okay. And as part of your work
5 on this file did you have any correspondence with
6 Conservation Halton or with Conservation Halton's
7 counsel?

8 A. I had...

9 MR. JULI: Counsel, I'm just going to
10 interrupt here. I'm not sure what the
11 purpose of that question is. Certainly
12 with respect to conversations with
13 counsel you are well aware the cases
14 have a very robust protection for
15 communications between a lawyer and an
16 expert. So I'm not really sure where
17 you are going with these questions.

18 77. MR. BOUCHELEV: I'm actually aware
19 of...and I will be happy to provide you
20 with references later if you would like.
21 I am aware of cases, including from the
22 Court of Appeal, that say that
23 communications between counsel and an
24 expert witness are producible. I am
25 also...you know, communications between

1 Conservation Halton and Mr. Singh would
2 not be privileged. So, I think I am
3 entitled to see what those
4 communications are, what instructions
5 were given, what information was
6 provided. So, as an undertaking I would
7 like you to produce all communications
8 between your client and Mr. Singh, and
9 also yourself and Mr. Singh.

10 MR. JULL: Well, I'm not going to
11 give a blatant...a blanket undertaking.
12 I can certainly indicate my
13 understanding of the law in the Court of
14 Appeal going back to Moore and most
15 recently by Justice Perell in a case
16 called Simons v. Canada (2018), make it
17 very clear that consultation and
18 collaboration between counsel and
19 experts is essential and that
20 consultation is protected and it's a
21 litigation privilege as well as a
22 solicitor/client privilege that protects
23 communications from disclosure, between
24 counsel and the expert. So, I'm not
25 prepared to give that undertaking and I

1 don't think in law you have any basis
2 for it.

3 Having said all of that, I do think
4 it's quite appropriate for you to ask,
5 if you wish to see certainly what
6 reports or materials were provided to
7 Mr. Singh, that seems to me to be quite
8 fair and appropriate. And I would be
9 prepared to provide you with a listing
10 of the materials that were provided to
11 Mr. Singh for the purposes of him
12 developing his opinion.

13 78. MR. BOUCHELEV: Okay. So let's do
14 it...we will mark this as a refusal and
15 I'm just going to ask several questions
16 and just tell me if they are refusals or
17 not.

18
19 BY MR. BOUCHELEV:

20 79. Q. So, just as a preliminary
21 question, Mr. Singh, can you confirm that you
22 have had written communications with Conservation
23 Halton with respect to this matter?

24 A. I had communication with
25 Conservation Halton.

1 80. MR. BOUCHELEV: Okay. Mr. Jull, I
2 would like for you to provide copies of
3 communications between Mr. Singh and
4 Conservation Halton.

5 MR. JULL: Well, all right, first
6 off, this isn't as you know a discovery,
7 this is a cross-examination on an
8 affidavit and that's...

9 81. MR. BOUCHELEV: This is an expert
10 witness.

11 MR. JULL: Well, that's true, but
12 it's still a cross-examination. Under
13 the case of Rothmans, as set out by
14 Justice Perell, cross-examination is not
15 a substitute for discovery.

16 82. MR. BOUCHELEV: Well, I think, Mr.
17 Jull...

18 MR. JULL: Having said that, you
19 know, your request is very wide. But
20 can you restate it again so that I
21 understand it, what you are asking for?

22 83. MR. BOUCHELEV: I'm asking for
23 communications between Mr. Singh and
24 Conservation Halton that relate to this
25 matter.

1 MR. JULL: All right. Well, I don't
2 think that's unreasonable. It's going
3 to take some time obviously to look for
4 those materials, but I am prepared to
5 provide an undertaking to provide
6 materials that were provided by
7 Conservation Halton to Mr. Singh.

8 84. MR. BOUCHELEV: Well, I'm asking not
9 just for materials but for
10 communications as well. If there are
11 emails or letters, I want copies of
12 those too.

13 MR. JULL: Well, it strikes me that
14 that may be covered by litigation
15 privilege.

16 85. MR. BOUCHELEV: I don't think so.
17 This is an expert witness who was given
18 instructions. Anyways, I mean, just...I
19 don't...

20 MR. JULL: But I am...

21 86. MR. BOUCHELEV: Just hold on. Just
22 wait a second. Wait a second. So, I
23 don't...because we have a limited amount
24 of time for this examination I don't
25 want to spend a lot of time arguing now,

1 so just, you know, give me a refusal, an
2 undertaking or an under advisement. If
3 you want to talk about it, we can talk
4 about it later. You can refuse it and I
5 will ask the court to draw an adverse
6 inference. You can provide it. You can
7 take it under advisement and think about
8 it, it's up to you. But let's just, you
9 know, not engage in a lengthy discussion
10 now and just, you know, proceed with the
11 examination.

12 MR. JULL: Yes. I'm just going to
13 say this, I am prepared to provide the
14 undertaking. It may take some time to
15 gather that material, but I am prepared
16 to provide an undertaking to provide
17 materials that were sent to and from
18 Conservation Halton, between
19 Conservation Halton and Mr. Singh for
20 the purposes of the preparation of his
21 report.

22 87. MR. BOUCHELEV: Okay. And that
23 includes letters and emails themselves,
24 correct?

25 MR. JULL: Yes. That's fine. I

1 agree.

2 88. MR. BOUCHELEV: Okay. And when you
3 say for the purposes of the preparation
4 of this report, I would say that any
5 communications between Conservation
6 Halton staff and Mr. Singh would be for
7 the purposes of preparing this report.
8 I mean, if he is retained on another
9 matter that doesn't involve my clients,
10 that's a separate...I mean, obviously I
11 don't care about that, but anything
12 that...

13 MR. JULL: That's right.

14 89. MR. BOUCHELEV: ...pertains to this
15 file.

16 MR. JULL: That's all I was
17 indicating.

18 90. MR. BOUCHELEV: Yes.

19 MR. JULL: I'm not trying to parse
20 down the materials with respect to this
21 file.

22
23 BY MR. BOUCHELEV:

24 91. Q. Okay. All right. Good. So,
25 okay, Mr. Singh, did you have any communications

1 with Mr. Jull or other Conservation Halton
2 counsel in connection with this case?

3 MR. JULL: I'm going to object to
4 that. That is...those communications
5 and consultations are privileged and
6 they are protected by various cases, as
7 I have said, and I won't...as you say,
8 if you don't want to get into a legal
9 debate, I will indicate just for the
10 record, however, the case is Simons v.
11 Canada (Minister of Public Safety and
12 Correctional Service) a decision of
13 Justice Perell dated June 5th, 2018 at
14 2018 ONSC 3741, sets out the law in this
15 area.

16 92. MR. BOUCHELEV: Okay.

17 MR. JULL: So we are objecting to
18 that.

/R

19 93. MR. BOUCHELEV: All right.

20
21 BY MR. BOUCHELEV:

22 94. Q. And my next question, which I'm
23 sure you will object to, is I am asking Mr. Singh
24 to produce all communications between him and
25 Conservation Halton's counsel in connection with

1 the preparation of his report. Including any
2 instructions given.

3 MR. JULL: Okay. Well, let me think
4 about that. It is such a wide ask. I
5 am prepared to disclose to you the
6 initial retainer agreement
7 between...signed by me and Mr. Singh so
8 you can understand what the scope of the
9 retainer was. I'm happy to produce
10 that. What I'm not U/T
11 prepared to produce is subsequent
12 discussion and emails between myself and
13 Mr. Singh, which are important so that I
14 can explain to him the extent of his
15 duties and obligations and to clarify
16 assumptions in his opinion. But I'm
17 happy to provide to you the initial
18 retaining letter. /R

19 95. MR. BOUCHELEV: Okay. So you are
20 providing the retaining letter, but any
21 other communications in connection with
22 the preparation of the report, you are
23 not providing?

24 MR. JULL: Correct.

25 96. MR. BOUCHELEV: Okay. All right. So

1 we can mark it as an undertaking to
2 produce the initial retainer letter and
3 a refusal to produce other
4 correspondence?

5 MR. JULL: Correct.
6

7 BY MR. BOUCHELEV:

8 97. Q. Now, can you look at paragraph 10
9 of your...and I'm referring to...sorry, I should
10 say page 10. And the pages in your affidavit are
11 not numbered, Mr. Singh, but if you just go
12 through the PDF pages or numbering on the PDF,
13 that will be the 10th page in the PDF document.
14 And it starts with the section called
15 "Background".

16 A. Yes, I am here.

17 98. Q. Okay. Now, the last...I'm
18 reading from the first paragraph, second...or I
19 should say last sentence of the first paragraph,
20 "...It is noted that Conservation Halton
21 (CH) regulates a distance of 15 metres
22 from the greater of the flooding or
23 erosion hazards associated with the
24 Grindstone Creek and 120 metres from the
25 limit of wetlands, which are greater

1 than 3 hectares in size..."

2 Now, you have mentioned that you didn't take any
3 measurements. So would it be fair to say that
4 you do not independently know whether the
5 property is within the 15 metre distance from the
6 flooding or erosion hazard?

7 A. No, I'm pretty certain about it
8 because I did not take measurements but the
9 survey plans are available for the property that
10 were basically part of the review. And they
11 there also included in the previous reports and
12 15 metres from the erosion hazard? The house in
13 itself right now from the existing top of slope
14 is hardly more than 15 metres or even less than
15 15 metres. So with respect to the erosion hazard
16 it is pretty clear to me that the property and
17 the property limit that goes all the way to the
18 water course, is within the erosion hazard.

19 99. Q. And which...and that is based on
20 the survey?

21 A. Yes, this is based on the...some
22 of the property information that has been
23 provided.

24 100. Q. And what is that property
25 information that was provided that indicates

1 this?

2 A. These are the...as I said,
3 previous surveys that have been provided. There
4 are some other affidavit information that has
5 some of these property survey information. And
6 the property extends all the way to the water
7 course.

8 101. Q. Okay. And would it be fair to
9 say that this survey is not mentioned in your
10 report?

11 A. All this background information
12 is...some of this information is already included
13 in these reports and some of those information
14 was provided to me. And when I am mentioning
15 these reports, these reports are basically the
16 technical components that I am commenting on.

17 102. Q. Okay.

18 A. These surveys and other
19 information is the background information that
20 has been utilized in these reports. And from my
21 visual assessment, I am pretty sure that the site
22 is within the erosion hazard.

23 103. Q. Okay. When you say "these
24 reports" just so that we are clear, you are
25 referring to the Lakeland Engineering report and

1 the Toronto Inspection report?

2 A. Yes, these two reports are the
3 primary reports that I am commenting on.

4 104. Q. Okay.

5 A. But mostly Toronto Inspection
6 because that deals with the geotechnical
7 component. Lakeland is more structural oriented.

8 105. Q. Okay. So if a survey is included
9 in one of those reports, then it is your
10 assumption that the survey is accurate?

11 A. If a survey is done by an Ontario
12 land surveyor, I don't think there is an room for
13 an assumption there.

14 106. Q. Okay. But you...I guess what I'm
15 asking you...what I'm asking is that whatever
16 survey you looked at, you know, you just assumed
17 that it is accurate. You don't independently
18 know whether or not the information in the survey
19 is correct?

20 A. This is how engineering
21 assessments work. If you are provided with a
22 survey that is done by an Ontario land surveyor,
23 for example...

24 107. Q. M'hmm.

25 A. ...the background information,

1 you...those are done by the individual
2 professionals. And as I said here, my retainer
3 was to review the information, not independently
4 confirm information.

5 108. Q. Okay. All right. But all I'm
6 trying to establish, Mr. Singh, is that the
7 survey, whatever survey you have looked at, you
8 don't know who prepared it, you just assumed that
9 it's an accurate survey, is that fair?

10 A. I can go back and take a look who
11 prepared it and what those site plans are, and
12 then I can comment on that.

13 109. Q. Okay. But you know, the
14 surveyor, you didn't speak with the surveyor, you
15 didn't take any steps, for example, to verify
16 that the person is indeed a surveyor, you just
17 looked at a survey that was given to you and you
18 assumed that it was correct?

19 MR. JULL: I'm just going to
20 interject here for a moment, not by way
21 of an objection but a clarification. I
22 think it would help the witness to be
23 more specific about the exact survey
24 that you are referring to. And this may
25 connect to Mr. Singh looking for the

1 notes that he has on the diagrams that
2 were provided to him. I think it would
3 be very helpful if you could ask the
4 witness or put or show him that specific
5 survey that you are asking questions
6 about.

7 110. MR. BOUCHELEV: Well, Mr. Jull,
8 the...his report does not refer to any
9 survey and I certainly would not know
10 which survey was provided to him, so I
11 can't do that.

12
13 BY MR. BOUCHELEV:

14 111. Q. But I will...let me ask you, Mr.
15 Singh, the following: Now, you have...if you go
16 to...again, we are still on the same page, under
17 the section called, "Site visit and observation",
18 you refer to Conservation Halton permit number
19 5927 and that it permitted for a proposed two-
20 storey addition, rear balcony, covered front
21 porch and on-grade patio within the valley of
22 Grindstone Creek. Were you provided with a copy
23 of Conservation Halton permit 5927?

24 A. Let me check that. So this
25 permit was appended to Toronto Inspection &

1 Testing report.

2 112. Q. Okay.

3 A. And the figure that I was
4 referring to is also included in that. And this
5 survey was done by Mackay Mackay & Peters
6 Limited, which, to my understanding, are Ontario
7 land surveyors. And I will never object to the
8 accuracy of that, of professional...the way they
9 do the work.

10 113. Q. Right. Okay. So just hold on a
11 second, let me open the document that you are
12 looking at. Okay. So just for the record, do
13 you have a copy of...Mr. Singh, of the
14 application record that was filed by my clients?

15 A. I do not recall that right now.
16 I have to go back and look into this.

17 114. Q. Okay. So you are looking at the
18 Toronto Inspection report, is it part of a larger
19 document or is it just the stand-alone document
20 that you have?

21 A. I'm looking at the document
22 that's provided to me, stating "Supplementary
23 Application Record".

24 115. Q. Okay. You are looking at the
25 Supplementary Application Record?

1 A. That is correct.

2 116. Q. And which tab in the
3 Supplementary Application Record is the...are you
4 referring to Exhibit A in that?

5 A. I actually separately downloaded
6 for this communication...for this cross-
7 examination today, so I actually downloaded that
8 onto a separate folder on my computer.

9 117. Q. Okay.

10 A. So it is called Supplementary
11 Application Record. And if I recall correctly,
12 it was a stand-alone document that was...the way
13 it was provided to me.

14 118. MR. BOUCHELEV: Okay. Now Counsel,
15 can we just agree to streamline this
16 that the document that we are all
17 looking at is Exhibit A to the affidavit
18 of Shan Goel dated December 4, 2020?

19 MR. JULL: Yes, I would...I think
20 that sounds right. Yes, I think it
21 would assist us all if you would share
22 the screen...

23 119. MR. BOUCHELEV: Sure.

24 MR. JULL: ...with that document so
25 we can all just look at it and we all

1 know what we are talking about. That
2 sounds right to me.

3 120. MR. BOUCHELEV: Sure, I can do that.

4 MR. JULL: Very good. That's very
5 helpful.

6
7 BY MR. BOUCHELEV:

8 121. Q. Okay. Now Mr. Singh, this is the
9 Toronto Inspection report that you are referring
10 to, correct?

11 A. Well, I think let's start from
12 the top and so I can orient myself, because these
13 are just some excerpts from that document.

14 122. Q. No, no, of course. I can't have
15 the whole document on the screen, but this is the
16 first page, right, this is the Toronto Inspection
17 report dated November 20th, 2019.

18 A. Your screen is cut off, I can't
19 even see the beginning of the report.

20 123. Q. Can you see it now?

21 A. No, you need to scroll up...the
22 screen I'm seeing is basically a split screen
23 with two different pages that are being shown at
24 the same time to me. And the front page is the
25 top page...that appears to be top page is cut.

1 124. Q. I think that's just the way your
2 Zoom is configured, no?

3 A. I'm not a computer expert and I
4 cannot comment on that, but this is how it is
5 being appeared on my computer.

6 125. Q. Okay. Just a second. Just a
7 second.

8 MR. JULL: Just let me make a
9 suggestion. I think what some
10 times...yes, it just...if you increase
11 the size...

12 126. MR. BOUCHELEV: Okay.

13 MR. JULL: ...of that...that helps,
14 yes.

15 THE DEPONENT: Yes.

16 127. MR. BOUCHELEV: Okay.

17 THE DEPONENT: Scroll a little bit
18 upper. Go a little bit...yes. So I
19 think it's...Zoom is pretty friendly
20 now, I guess, it's the same Zoom, but it
21 says "Toronto Inspection & Testing
22 report", and yes, that's what I'm
23 seeing.

24 128. MR. BOUCHELEV: M'hmm.

25 THE DEPONENT: Hopefully I learn a

1 little bit more about Zoom today from
2 you. Great. Thanks.

3
4 BY MR. BOUCHELEV:

5 129. Q. Okay. All right. Now that
6 is...so this is the report that you are looking
7 at and this is the report that you had referred
8 to in your affidavit, correct?

9 A. This is the report I referred,
10 yes, that is correct.

11 130. Q. Okay. Now, so you mentioned that
12 there is a survey, and let me just scroll to the
13 survey. Is this the survey that you are talking
14 about?

15 A. That is correct. And if you go
16 the right-hand corner at the bottom.

17 131. Q. M'hmm.

18 A. Go a little bit down for me,
19 please, thank you so very much. It says, "MacKay
20 MacKay & Peters Limited, Ontario Land Surveyors".

21 132. Q. Right. Now...

22 A. So they are as professional as
23 any other professional is and I do respect their
24 profession and I would...I have to make no
25 assumption that this survey is correct or I have

1 to do second measurements to verify their survey
2 information.

3 133. Q. Okay. Now, I am taking you to
4 the...do you see the letter from Conservation
5 Halton dated May 28th, 2018? And for the record,
6 this is on...we are still in Exhibit A to the
7 affidavit of Mr. Goel, this is page 13 of that
8 Supplementary Application Record. Mr. Singh, you
9 see the letter that I am referring to?

10 A. That is correct. Yes, I can see
11 this, yes.

12 134. Q. Okay. And so, and then I'm going
13 to scroll on to the next page where there is a
14 continuation of this letter, and then third page,
15 which is the survey and page 4, which is permit
16 5927, correct?

17 A. Yes.

18 135. Q. Okay. Now, so this is the permit
19 5927 that you referred to in your affidavit and
20 report, correct?

21 A. Yes.

22 136. Q. Okay. And you have reviewed this
23 permit, including the survey, prior to preparing
24 your affidavit, correct?

25 A. Yes, I read this permit, yes.

1 137. Q. Okay. Now, so the survey that we
2 were just looking at, you will agree with me that
3 a survey is a very different document from design
4 drawings, correct?

5 A. A survey could be part of the
6 design drawing as its base information as a site
7 plan.

8 138. Q. Okay. So a survey could be part
9 of the design drawings, but you will agree with
10 me that the survey does not have the detailed
11 information that design drawings contain.

12 A. Yes, so this survey is not the
13 detailed design drawing.

14 139. Q. Okay.

15 A. For the project.

16 140. Q. Okay. And if you want to build a
17 house you would have to provide detailed design
18 drawings in much more detail than what's
19 contained in this survey, correct?

20 A. I think this is more a planning
21 question and I'm more a geotechnical engineer.
22 So, I don't know if I can appropriately answer
23 that question.

24 141. Q. Well, but you may be a
25 geotechnical engineer, but in general you know

1 what design drawings are, correct?

2 A. Which I already answered,
3 respectfully.

4 142. Q. Okay. And the purpose of design
5 drawings is to...one of the purposes I would
6 suggest to you is to obtain building permits,
7 correct?

8 A. That's more like planning and
9 approvals. I generally do not get into that; my
10 work is limited to provide the technical
11 background information then it goes to architects
12 or the people who are going to obtain the
13 permits, and they submit necessary information
14 for that.

15 143. Q. Okay. So you are telling me that
16 you have no idea whether or not design drawings
17 have to be submitted to obtain a building permit?

18 A. I did not say that. There could
19 be a requirement for that and there is probably
20 requirements for that. All I'm trying to say is
21 that...

22 144. Q. M'hmm.

23 A. ...my work is related more to
24 the...preparation of the background reports...

25 145. Q. Okay.

1 A. ...that may be used for the
2 building permit.

3 146. Q. Okay. Now, so this survey that
4 we are looking at that is contained as part of
5 the conservation permit, you will agree with me
6 that this survey was provided to Conservation
7 Halton on behalf of my clients as part of the
8 permit application process, correct?

9 A. I cannot confirm the background,
10 if the client provided or somebody else on their
11 behalf provided.

12 147. Q. Okay. But it was provided either
13 by the homeowner or on behalf of the homeowner,
14 obviously?

15 A. The Conservation Halton is more
16 appropriate party to answer that question.

17 148. Q. Okay. Did Conservation Halton in
18 your discussions with them explain to you who
19 prepared this survey or who provided this survey?

20 A. Who prepared this survey is
21 already noted at the bottom, it's the Ontario
22 land surveyor who prepared this survey. Who
23 provided this survey, I did not have any
24 discussions with them.

25 149. Q. Okay. Now, if you...I'm going to

1 zoom in and you are welcome to follow along on
2 the shared screen, of if it's easier you can look
3 at your version of the document. But what I
4 would suggest to you is that what this survey
5 shows is that there will be an addition of a
6 cantilevered balcony, correct?

7 A. Cantilevered balcony proposed,
8 yes.

9 150. Q. Okay. There will be an addition
10 of a covered front porch?

11 A. Proposed, yes.

12 151. Q. Okay. And there will also be an
13 expansion of the garage, correct?

14 A. Yes.

15 152. Q. Okay. What this survey does not
16 show is whether any of the existing walls would
17 be removed or if they will remain intact,
18 correct?

19 A. Well, if I have to interpret
20 that, I would interpret that these are the areas
21 that are proposed and the rest of the structure
22 remains intact.

23 153. Q. And where does it say on the
24 survey that the rest of the structure will remain
25 intact?

1 A. So, I don't think survey is
2 intended to state that.

3 154. Q. Okay. And...

4 A. And this is more the
5 interpretation and the communication between the
6 proponent and the Conservation Halton or with
7 regulatory agency that would decide that.

8 155. Q. And the...

9 A. And the survey is not intended or
10 the surveyor is not intended to...not the
11 document that is going to show or state that it
12 is going to remain intact.

13 156. Q. Okay.

14 A. This is my personal understanding
15 of looking at this. These are the things that
16 are being proposed. And the rest of the
17 structure, if I'm reading this, based on the way
18 I read the drawings and conventionally, these are
19 the three areas that are going to be under some
20 sort of revision to the building.

21 157. Q. Okay. And now, to get that kind
22 of granular information on which building walls
23 are going to remain and which are going to be
24 demolished, you have to look at the design
25 drawings for that, correct?

1 A. Yes, in order to take a detailed
2 look what is going to be constructed and how it's
3 going to be constructed, should be part of
4 another document.

5 158. Q. Okay. And like, so for example,
6 if you look at the garage you can see that, you
7 know, to expand the garage you have to build two
8 new walls. But this survey does not indicate
9 that the existing garage walls are going to be
10 taken down, correct?

11 A. So, this existing...from my
12 understanding, this survey is basically telling
13 where the proposed additions are, not the
14 methodology of the construction.

15 159. Q. I see. Okay. And we already
16 established that we need to look at the design
17 drawings for that. Now, what is a cantilevered
18 balcony, do you know what that is?

19 A. Cantilevered balcony, to my
20 understanding, a cantilever is a structure that
21 comes out of a structure at a certain height and
22 is not supported below. It, in simple words,
23 hangs out of the original structure.

24 160. Q. So, if it's not supported below
25 how is it supported?

1 A. So, this is more a structural
2 design issue. It typically supported by
3 structural elements that provide support for this
4 hanging portion from within the building itself
5 or the main structure itself.

6 161. Q. Okay. And if the structure...if
7 you have an existing wall that doesn't have the
8 structural elements to support the cantilevered
9 balcony, then the structural elements would have
10 to be added, correct?

11 A. I cannot answer that question,
12 I'm not a structural engineer.

13 162. Q. Okay. So even in general you
14 don't have knowledge of these matters?

15 A. I am not here to provide general
16 information. I am more here to provide specific
17 geotechnical and slope stability related opinion.

18 163. Q. Okay. And it would be fair to
19 say that...okay, well, actually let me rephrase
20 that. So, now you will agree with me by looking
21 at this survey that the structure or the project
22 that is being proposed is within the original
23 footprint with the exception of, you know, the
24 three elements that we have discussed, which is
25 expanding the garage, adding a covered front

1 porch and the cantilevered balcony, right?

2 A. That is correct. The three
3 reddish lines are the new additions that are
4 proposed.

5 164. Q. Okay. Now, when you attended the
6 property on December the 17th, 2020, was the
7 structure that you observed within the footprint
8 that is indicated on this survey?

9 A. I did not verify or did the
10 measurements to state one way or the other.

11 165. Q. Okay. So you have no information
12 to suggest that it is not within this footprint,
13 correct?

14 A. I have no information to suggest
15 either it is or it is not. The best way to
16 approach that would be a surveyor go out and do a
17 new survey and compare that with the original
18 survey.

19 166. Q. Okay. And would it be fair to
20 say that you haven't done...taken any steps to
21 verify if the building is within the original
22 footprint, right?

23 A. I personally, as a geotechnical
24 engineer, my retainer is to review that, and I'm
25 not a surveyor to provide that information.

1 167. Q. Okay. And now you have reviewed
2 the affidavit of...or I should say the
3 engineering report of Lakeland Engineering dated
4 March 26th, 2019, correct?

5 A. Yes.

6 168. Q. And you have relied on the
7 conclusions or the statements in the Lakeland
8 Engineering report to make conclusions in your
9 own report, correct?

10 A. I have taken excerpts from that
11 report, yes.

12 169. Q. And by way of an example, if you
13 look at paragraph...at page 10 of your report,
14 there is a...you are citing the Lakeland
15 Engineering report for the proposition that the
16 height of the original exterior concrete block
17 foundation was raised, right? That information
18 comes from the Lakeland report?

19 A. That is correct.

20 170. Q. Okay.

21 A. And also from the photographs
22 that's included in Toronto Inspection & Testing
23 report. And also from my visual assessment.

24 171. Q. Okay. So would it be fair to say
25 that you believe that the Lakeland Engineering

1 report is accurate and correct?

2 A. It is signed and stamped by a
3 professional engineer. I would take it as
4 factual information.

5 172. Q. Okay. That's fair enough. And
6 then if you go to...sorry, just let me find the
7 correct page. Now, I'm going to show you a copy
8 of the Lakeland Engineering report that is
9 contained in Exhibit W of the Affidavit of
10 Charles Priddle. And you...I will just ask you
11 to confirm that this is the same report that you
12 referenced in your report? Okay, does that look
13 familiar?

14 A. March 26th, 2019, yes.

15 173. Q. Okay. And now, if you look at
16 page 295 of that...of the record, and this is the
17 second page of the report, page 95(sic) of the
18 respondent's record, I should say, it states that
19 the house footprint remains the same. So, would
20 you agree with me that this is a report prepared
21 by a professional engineer and that you have no
22 reason to doubt that this conclusion is correct?

23 A. Well, that's their conclusion. I
24 would...if I have to independently certify that,
25 I will take my own necessary steps to certify it.

1 So, based on this, that is his conclusion and I
2 am here to just to review and take this
3 information and provide my comments. So it's
4 not...

5 174. Q. Well...

6 A. If I am asked as a professional
7 to certify that if the house footprint is on the
8 same footprint, existing and proposed, the best
9 way, in my opinion, I maintain a surveyor should
10 certify that.

11 175. Q. Well, I'm not asking you to
12 certify, I'm just asking you because you are
13 relying on Lakeland's report to conclude that the
14 foundation walls were raised. And you didn't
15 independently certify that, correct?

16 A. I am taking that information and
17 I also saw photographs with respect to that, and
18 I also visited the site and observed the
19 additional blocks that were placed.

20 176. Q. Okay.

21 A. So, there was some supplementary
22 information with respect to that component.

23 177. Q. Well, what I'm asking you is
24 that, you know, this is a report prepared by a
25 professional engineer. You relied on that report

1 in your own report and one of the conclusions of
2 the report is that the house footprint remains
3 the same. What I'm asking you is that, you know,
4 sitting here today, you have no reason to doubt
5 the accuracy of this conclusion, correct?

6 A. Well, I have no reason to doubt
7 or confirm the statement. I am taking this
8 information as an information and I am not
9 certifying or providing my confirmation on any of
10 this information that has been provided by a
11 structural engineer.

12 178. Q. Okay.

13 A. The house footprint remains the
14 same to my knowledge. Neither a geotechnical
15 engineer nor a structural engineer can
16 independently confirm that, it should be
17 confirmed by an Ontario land surveyor.

18 179. Q. Okay. And the same applies to
19 your opinion about the foundation wall being
20 raised, right? You can't independently confirm
21 that, you are just basing that on someone else's
22 opinion?

23 A. As I said, there are some
24 corresponding and additional information on that.
25 I also visited the site where the new blocks are

1 visible. The Toronto Inspection report, for
2 example, has some photographs, and those are
3 labelling those. So, that information, I also
4 visited the site myself and noted the additional
5 blocks.

6 180. Q. And how do you know that they
7 were the additional blocks?

8 A. The colour difference is quite
9 obvious.

10 181. Q. Okay.

11 A. And the material...yes.

12 182. Q. But it would be fair to say that
13 you don't know if these new blocks replaced
14 existing blocks or if they were added on top of
15 the existing...of a lower existing foundation,
16 correct?

17 A. Sorry, you need to...can you
18 please repeat that?

19 183. Q. Yes. So you say that there is a
20 colour difference between the foundation blocks?

21 A. Yes, the material...yes. Yes.

22 184. Q. So, it's possible that there was
23 an older block that was replaced by a new block,
24 correct?

25 A. Not to my observation. It

1 doesn't look like because there are...this can be
2 seen from the level of the wall.

3 185. Q. So, how do you know that there
4 wasn't another block that was replaced by a new
5 block? Keeping in mind that you are not a
6 structural engineer.

7 A. Yes, for looking at the new
8 blocks, it's not a structural...this is an
9 observational issue. It's not a structural
10 engineer issue.

11 186. Q. Well, it's possible that there
12 was...that the new blocks simply replaced the old
13 blocks that were already in place?

14 A. Anything could be possible. All
15 I can basically state that to my observation,
16 which is consistent with the statement Lakeland
17 made, which is consistent with the information
18 Toronto Inspection & Testing is confirming, I am
19 of the opinion that there are three new blocks.
20 Additional courses were laid.

21 187. Q. Now, I'm going to ask you to look
22 at paragraph...or I should say page 11 of your
23 report.

24 A. Page 11 of PDF. So that starts
25 with...

1 188. Q. Yes.

2 A. Can you orient me on the page?

3 189. Q. Yes, the pages are not numbered,
4 but the page 11 of your report starts with a
5 bullet point that says, "It is understood that an
6 old timber retaining wall"...

7 A. Yes, yes, I got it. Yes.

8 190. Q. All right.

9 A. That one is the PDF page, yes,
10 correct.

11 191. Q. That's right, yes. So, now...so
12 you are talking about a Filtrexx M reinforced
13 severe slope stabilization system, what is that?

14 A. So, to my understanding, the
15 upper portion of the slope, there used to be a
16 retaining wall and that retaining wall needed to
17 be replaced and a previous work was taken to
18 replace that retaining wall with a Filtrexx M
19 reinforced slope stabilization system, because
20 that retaining wall was removed and replaced
21 with...when you are removing the retaining wall
22 you need...retaining wall provides additional
23 support to the area behind it, so when you are
24 replacing it, you need to replace it with some
25 other product.

1 192. Q. Okay.

2 A. So, this is...Filtrexx is a
3 product that, to my understanding, is a
4 proprietary product that was used.

5 193. Q. Okay.

6 A. For replacing the retaining wall.

7 194. Q. Okay. And how do you know all of
8 this information about the retaining...the old
9 retaining wall being replaced by this Filtrexx M
10 slope stabilization system?

11 A. Well, this information is part of
12 the information...affidavit that were provided to
13 me.

14 195. Q. Part of what affidavit?

15 A. I think this affidavit
16 comes...this information comes from Charles
17 Priddle's affidavit.

18 196. Q. Okay. Have you had a discussion
19 with Charles Priddle about this?

20 A. About the project?

21 197. Q. Yes, about the retaining wall
22 replacement project back in...

23 A. Not specifically for this, no.

24 198. Q. But you had some discussion with
25 Charles Priddle, right?

1 A. Yes, I had discussion about this
2 project, yes.

3 199. Q. Okay. And what did you talk
4 about?

5 A. Specifically with respect to how
6 the permit was issued, how it is being
7 constructed right now, the way it is constructed
8 and how the...you know, there is no geotechnical
9 investigation, that has not been completed.
10 Discussion on those lines. What, in my opinion,
11 needed to be done. So, general...

12 200. Q. Okay.

13 A. ...discussion about the project.

14 201. Q. Okay. But what about...I'm
15 talking about...more about the project to replace
16 the retaining wall, which took place a number of
17 years ago. So, did you have a discussion about
18 that with Charles Priddle?

19 A. Not that I recall, no.

20 202. Q. So, you just simply...that's the
21 information you read in his affidavit?

22 A. Yes, that's the information that
23 is provided by...within that affidavit, yes.

24 203. Q. All right. Okay. Now, when
25 you...if you want to replace a retaining wall,

1 are you required to submit any kind of studies?
2 Is there any engineering...like, a geotechnical
3 report that one has to prepare to determine slope
4 stability?

5 A. Depending on the details of the
6 project and it's mostly on the conservation
7 authority that is reviewing the application. If
8 it's a small retaining wall for landscaping
9 purposes, perhaps not. If it's a...considered in
10 their opinion to be a structure that needed
11 further information and the background
12 information, they would ask for that.

13 204. Q. Okay. And based on your review
14 of Mr. Priddle's affidavit, you know that there
15 was a geotechnical assessment provided in
16 connection with that retaining wall, right?

17 A. There was a geotechnical report
18 provided, yes.

19 205. Q. Okay. And did you read that
20 geotechnical report?

21 A. Yes.

22 206. Q. Okay. So, let me just take you
23 to that report. Do you have...can you access it
24 or do you want me to share it on the screen for
25 you?

1 A. Perhaps we should share for the
2 benefit of everybody.

3 207. Q. That's fine. Okay. So first I
4 am showing you Exhibit N to Mr. Priddle's
5 affidavit, so that is a letter that was sent by
6 Mr. Priddle to my clients. Have you reviewed
7 this letter when you were looking at Mr.
8 Priddle's affidavit?

9 A. This is a very big document. I
10 did not...do not recall the specifics of this. I
11 did read few pages that were pertinent to my
12 statement.

13 208. Q. Okay. Now, if you look at...I'm
14 looking at page 201 of the respondent's record,
15 and you...and this is part of the letter. One of
16 the things that Mr. Priddle is asking...you can
17 see, is a geotechnical assessment signed and
18 sealed by a qualified professional engineer, do
19 you see that?

20 A. Yes.

21 209. Q. Okay. And then you will see that
22 there are a number of criteria that...a number of
23 subjects that this report would have to address,
24 recommendations for proposed replacement of the
25 retaining wall, design details, plan, new

1 drawings. Like, a number of different criteria,
2 correct?

3 A. So, these are all pertaining to
4 the retaining wall replacement only, which was...
5 existed on the top of the slope. So, all those
6 requirements are for that retaining wall
7 replacement.

8 210. Q. Okay. So these are all the
9 requirements that Conservation Halton made at the
10 time when this...when this retaining wall
11 replacement project was taking place, right?

12 A. It appears so.

13 211. Q. Okay. Now, then I'm going to
14 take you to Exhibit O. Actually, sorry, just
15 give me one second. No, Exhibit P, which is the
16 geotechnical assessment, correct?

17 A. Organic Express, I don't know if
18 it is a geotechnical report. This is
19 proprietary information. I don't know
20 who...okay, so this has been reviewed and stamped
21 by a professional engineer, okay.

22 212. Q. Right. And I'm talking now...I
23 am taking you to the page that is the
24 geotechnical slope investigation of LDM, right?

25 A. Okay.

1 213. Q. And you have reviewed this
2 report, correct?

3 A. Yes.

4 214. Q. Okay.

5 A. I have this information, yes.

6 215. Q. Now, so to prepare a geotechnical
7 report of this nature, is there any measurements,
8 any boreholes that would have to be...any samples
9 that would have to be taken? What is the
10 process? What is the technical process that goes
11 into the preparation of this kind of report?

12 A. The technical process for this,
13 ideally, there has to be a borehole catered to
14 the specific purpose. Now, this appears to me to
15 be specific to the retaining wall replacement,
16 not anything else. And if you can zoom in on
17 point number 3 here, under "Notes".

18 216. Q. Yes.

19 A. Thank you so very much. It says,
20 "lower slope".

21 "...The design of the reinforced slope
22 is only for the portion of slope
23 currently occupied by a timber retaining
24 wall. Stability of the slope below the
25 timber retaining wall has not been

1 investigated. Instability existing to
2 the lower slope may adversely affect the
3 stability of the reinforced slope
4 design..."

5 So this document and all this work was
6 specifically undertaken to replace the timber
7 retaining wall, nothing else, the way I read it.

8 217. Q. Okay. And now you have not done
9 any investigation in respect of the lower portion
10 of the slope, is that correct?

11 A. Yes, I have not done any
12 independent investigation on this project.

13 218. Q. Okay.

14 A. I'm just working as a review
15 capacity.

16 219. Q. Right. And then if we go back to
17 your report, this is on the page 11 of the PDF
18 file. You say that,

19 "...Based on visual observation,
20 proximity to the water course and the
21 slope configuration (i.e., height and
22 inclination) the slope stability rating
23 would likely classify the slope
24 instability risk as moderate
25 potential..."

1 Now, so as you say here, this is just based on
2 visual observation and not based on any technical
3 analysis that you have conducted, correct?

4 A. Actually, let's go back. Try to
5 understand the process here because we are
6 talking about two different things all together,
7 and perhaps confusing and trying to relate one to
8 the other. The work that was done for the
9 retaining wall is specific for the retaining
10 wall. And there was an old timber retaining
11 wall, to my understanding, that was failing.
12 Needed to be replaced. A local borehole was done
13 for that purpose. A limited design, the way I
14 see it, was produced with some caveats, stating
15 that this is only for the upper slope, upper
16 retaining wall portion. Lower slope has not been
17 investigated. Any instability in the lower slope
18 would undermine and jeopardize the work that has
19 been on the top.

20 So, that is the part that we have
21 discussed so far. The part that you are coming
22 to now is a totally different component from
23 engineering perspective. The slope rating chart
24 is to assess based on the MNR guidelines with
25 respect to the overall slope and any future

1 structures, if they will be exposed to any safety
2 hazard with respect to structures or with
3 occupants. So, these are two discrete, different
4 things that we are discussing.

5 220. Q. Okay.

6 A. And I just wanted to make sure
7 that we are not confusing ourselves to
8 interrelate the two to extrapolate information
9 from one part to the other.

10 221. Q. Okay. But what my question is,
11 I'm talking about your assessment of moderate
12 potential risk with respect to the project that
13 is taking place right now, and you say that it is
14 based on visual observation. So, all I want to
15 do is I want to clarify on the record that your
16 opinion that the slope stability rating would
17 likely classify the slope instability risk as
18 moderate potential, that opinion is based on
19 visual observation, it's not based on any data or
20 analysis, correct?

21 A. So, slope stability rating chart
22 is the first step which is intended as a visual
23 observation basis to establish if further work is
24 required or not.

25 222. Q. And the...

1 A. So the slope rating
2 chart...sorry, go ahead.

3 223. Q. Yes, but the question is
4 perhaps...you know, I'm just asking you a simple
5 question. Your opinion, with respect to the
6 moderate potential instability risk is based just
7 on visual observations and nothing else, correct?

8 A. As I stated, the simple question
9 needs some background with respect to how this
10 thing is done. So, this part, this first part,
11 that as per the MNR guidelines, a professional
12 needs to establish based on visual observation,
13 where the slope stands. And depending on those,
14 the slope can be characterized in three different
15 categories. And depending on those categories,
16 the next steps are to be followed.

17 224. Q. What are the next steps?

18 A. Next steps, for example in
19 moderate, for the moderate potential, if you go
20 down to the rating chart I included in my
21 affidavit and my report, the last page is slope
22 rating chart. Perhaps you want to share that?

23 225. Q. Well, no, no, I just...I don't
24 want to look at the chart I just want you to, you
25 know, in general, explain what the next step is

1 after doing the visual observation.

2 A. Well, I think it would have been
3 helpful, but if you do not want to produce it on
4 the screen, that's fine. I can read it. So,
5 basically one is low potential and second is
6 slight potential, and third one is moderate
7 potential. Moderate potential then recommends
8 the boreholes should be done, piezometers should
9 be done, lab tests should be done, surveying
10 should be done and a detailed report should be
11 prepared.

12 226. Q. Okay. Now, I am looking at your
13 report and you say, and I quote,

14 "...The slope stability rating would
15 likely classify the slope instability
16 risk as moderate potential..."

17 So, when you say "likely" it doesn't sound
18 conclusive. It says it will likely be moderate
19 but it could be something else, correct?

20 A. So, as I said here, my retainer
21 is not to provide a slope stability analysis
22 here, but I have done the rating chart, I can
23 produce that to you and I can facilitate that,
24 that it's more than 35.

25 227. Q. Okay. And so what I'm asking,

1 I'm just asking you about the report, okay? So
2 your report is based on visual observation,
3 correct? You did not take any analysis. You did
4 not take any samples, you just did...you
5 conducted the visual observation, that's it?
6 That's where you stopped?

7 A. So, my retainer is to review the
8 information, have a visual assessment of the
9 property, review the information, provide the
10 comments. If the work that has been done is
11 significant and supportive enough to conclude
12 without a doubt that the new house or the
13 structure, rebuild whatever you want to call it,
14 is...can be safely built and there is no safety
15 hazard to the occupants or to the structures.
16 So, my retainer is to provide comment on that,
17 not...or provide opinion on that. If I am asked
18 to do a detailed investigation I can certainly
19 provide that information at a later...

20 228. Q. Okay. And you were not asked to
21 provide a detailed investigation, correct?

22 A. My retainer is not to do the
23 detailed investigation on this site.

24 229. Q. Okay.

25 A. But point out if the work that

1 has been done is adequate and supportive enough
2 with respect to the overall safety of the
3 occupants and the structure located on the
4 tableland in the proximity of this relatively
5 steep and high slope.

6 230. Q. And it is not part of your
7 retainer to conduct a technical analysis,
8 correct?

9 A. Yes, retainer does not include a
10 modelling or any technical analysis, but provide
11 a professional opinion based on my experience
12 and...in this field. To comment if the work has
13 been done is adequate or not. And can this be
14 supported based on the available information that
15 there is no hazard and there is no safety
16 concerns to the occupants and the structure.

17 231. Q. Okay. So perhaps we will take
18 the morning break now. We can take 15 minutes.
19 And Mr. Singh, if you can take this opportunity
20 to find the notes that you have made during the
21 site visit and if you can share them with us,
22 that would be great.

23 A. I will try to search for that and
24 I will quickly do my break first and I will try
25 to search as quickly as possible. Whatever I

1 find, we do otherwise I will provide you later.

2 232. Q. Okay.

3 MR. JULL: I am just wondering, maybe
4 we can take just five extra minutes to
5 give Mr. Singh a little bit of extra
6 time. Maybe 20 minutes?

7 233. MR. BOUCHELEV: Okay. That's fine.
8 So we will be back at 5 to 12.

9 MR. JULL: All right. That makes
10 sense.

11

12 --- upon recessing at 11:32 a.m.

13 --- A BRIEF RECESS

14 --- upon resuming at 11:58 a.m.

15

16 BALWINDER SINGH, resumed

17 CONTINUED CROSS-EXAMINATION BY MR. BOUCHELEV:

18 234. MR. BOUCHELEV: So, Mr. Jull, as we
19 discussed during the off the record
20 discussion, it looks like Mr. Singh was
21 unable to find the notes that I asked
22 him about this morning. So, in light of
23 that, do I have your undertaking to
24 locate and provide the notes to me?

25 MR. JULL: Yes. I will provide that

1 undertaking. And also, subject to Mr.
2 Singh's schedule, I am not objecting to
3 a short reattendance for you to ask any
4 questions that you have arising from
5 those notes. I just ask that you let us
6 know as soon as you can when that might
7 occur so that we can schedule it.

U/T

8 235. MR. BOUCHELEV: Okay. Well, that
9 sounds reasonable. I mean, I will have
10 a look at the notes and then I will make
11 the decision whether or not a
12 reattendance is needed and I will let
13 you know.

14 MR. JULL: Yes. And I know we have
15 some time. We are trying to...of
16 course, we would want to do that before
17 my examinations start, but they don't
18 start until, I think, until May
19 [inaudible]. So, we do have a...

20 236. MR. BOUCHELEV: Right.

21 MR. JULL: We do have a little bit of
22 time to play with, and of course we
23 wouldn't need a whole day or anything
24 like that. So, let us know.

25 237. MR. BOUCHELEV: No.

1 MR. JULL: Let us know as soon as you
2 can so that Mr. Singh can make sure he
3 is available on that notice.

4 238. MR. BOUCHELEV: Okay. All right.

5

6 BY MR. BOUCHELEV:

7 239. Q. Okay. Mr. Singh, just going back
8 to a subject that we have discussed before the
9 morning break, so you mentioned you were looking
10 at the foundation and that's how you were able to
11 determine that there were some new concrete
12 blocks on top of the older foundation, right?

13 A. M'hmm.

14 240. Q. And just for the record say yes
15 instead of m'hmm because the record may not be
16 able to pick that up.

17 A. Yes.

18 241. Q. Okay. And so the foundation was
19 visible at the time of your visit?

20 A. Foundation was not visible.
21 Foundation is something below grade. Foundation
22 wall was visible.

23 242. Q. Okay. Well, the foundation walls
24 are part of the foundation, are they not?

25 A. Foundation wall and foundation

1 are two different things, and that's why they are
2 named differently.

3 243. Q. Well, there is a footing and then
4 there is the foundation wall, what else are you
5 referring to?

6 A. So, a foundation is something
7 that goes below the ground. Foundation wall
8 is...that rests on the foundation and then comes
9 up above grade.

10 244. Q. Okay. So, okay, so let's use the
11 term "foundation walls". The foundation walls
12 were visible at the time of your inspection,
13 correct?

14 A. From the outside only for
15 whatever extent that was visible.

16 245. Q. Okay.

17 A. Inside of the house was not
18 accessible, it was...

19 246. Q. Okay. But from your inspection
20 from the outside you could see that the original
21 foundation walls remained in place and that there
22 was, perhaps in some areas, a few new blocks
23 added to the original foundation walls?

24 A. So, walls is plural...

25 247. Q. Okay.

1 A. ...and that goes in for more than
2 one wall.

3 248.

Q. Okay.

4 A. The front is...there was a porch
5 that was under construction. So that portion was
6 not really accessible. If we take north on the
7 creek side, then the west side is the...was the
8 new wall as was permitted under the Conservation
9 Halton permit. So, the original wall could not
10 be seen. On the rear side, it was all new
11 framing from the ground up that mostly, from my
12 recollection, was wood frame. So, there is no
13 foundation wall on the north side that could be
14 seen from outside. There was the east wall that
15 was partially...because the grade outside and the
16 grade inside are different. So a portion of the
17 east wall was visible, and a portion of the
18 northeast portion of the north wall was visible.

19 249.

Q. Okay. And the portions that were
20 visible, you could see the original foundation
21 wall, right?

22 A. The portion that were visible,
23 the wall was visible in that area. If that was
24 original foundation wall or if it is a new
25 foundation wall, that I cannot comment. The

1 material that was used, that the wall was there,
2 there appeared to be two different kinds of
3 materials. One seems to be the older blocks, one
4 new blocks.

5 250. Q. And the new block is on top of
6 the older block?

7 A. Yes, that's what my recollection
8 is.

9 251. Q. Okay. I'm going to take you to
10 paragraph...or I should say page 13 of your
11 report, PDF page 13. There is a bullet point
12 here that says,

13 "...The water course is located near the
14 slope toe, apparently within 15 metres
15 of the slope toe..."

16 Now, when you say "apparently within 15 metres",
17 is that...sounds like you are not sure?

18 A. Well, all it states that looking
19 from the visual observation. When I say it's
20 within 15 metres, I will have a survey to support
21 it or a measurement to support it. As I said, my
22 retainer here is to take a look visually and
23 comment.

24 252. Q. Okay.

25 A. So, it appears to me that it's

1 258. Q. Okay. And now, based on the
2 information that you have...that you currently
3 have, you cannot conclude that the project in its
4 current state has increased the erosion risk at
5 that site, correct?

6 A. Sorry, increased what, sorry?

7 259. Q. The erosion hazard.

8 A. The project has increased the
9 erosion hazard?

10 260. Q. So you...

11 A. Because I...

12 261. Q. No, no, hold on, let me just
13 restate. And I want you, because, you know, I
14 want you to hear...to be able to hear what I'm
15 asking you, so are you still having a problem
16 with the volume or can you hear me okay now?

17 A. No, it's low volume but I can
18 hear you.

19 262. Q. Okay.

20 A. Yes.

21 263. Q. So, the question is, based on the
22 information that you have, you cannot conclude
23 that the project has adversely affected the
24 erosion hazard at the property?

25 A. Based on the information I have,

1 I cannot even conclude that the erosion hazard
2 has already been established by these reports.
3 So, I don't see in these reports any statement or
4 any analysis supporting that the house, all the
5 additional work that has been done, is safe and
6 outside of the erosion hazard.

7 264. Q. Okay. So what...I think what you
8 are trying to say is based on the information
9 that you have, you cannot conclude...make any
10 conclusions one way or the other about the
11 erosion hazard at the property?

12 A. No, if there is no detailed
13 investigation available for the site, preliminary
14 erosion hazard is established by conservation
15 authority based on the MNR guidelines, taking toe
16 erosion allowance laws as well as stability
17 setback allowance, and that line is already
18 intersecting or going beyond the house.

19 265. Q. Okay.

20 A. So, in lack of a specific study,
21 we are already within the erosion hazard based on
22 the established generic guidelines of the
23 Ministry of Natural Resources.

24 266. Q. Okay. Now, can you conclude
25 based on the information that you have, that this

1 project, as it is today in its...in the state
2 that you observed on December 17th, 2020, that it
3 poses anymore erosion risk than the original
4 structure back before the project was commenced?

5 A. I need to do additional analysis
6 to state that.

7 267. Q. Okay.

8 A. Because the report that has been
9 provided, I think they were supposed to be having
10 some comments regarding the real matter here.
11 And the report seems to be totally silent about
12 that.

13 268. Q. Okay, so...

14 A. Nowhere report states...let
15 me...can I finish? No, sorry, sir, go ahead
16 please.

17 269. Q. Yes. No, I just wanted to
18 clarify. So you said without additional analysis
19 you cannot make that conclusion, that's what you
20 said, right?

21 A. What I'm saying is that based on
22 the information that we have as per the MNR
23 guidelines, the property is within erosion hazard
24 and so is structure. It's incumbent basically to
25 have further analysis done to state that the

1 property the way it is in the structure the way
2 it is, or the changes that have been made to the
3 structure are not increasing any risk, if there
4 was any risk. And if there is any risk, what the
5 increase in the risk is. And the reports that
6 have been provided are totally silent about that.

7 270. Q. Okay.

8 A. They don't even talk about...they
9 do say there is no appreciable increase, no
10 quantification. At the same time they don't even
11 make a simple statement that, you know, this
12 insignificant increase or unappreciable increase
13 is not going to impact slope. So the report is
14 totally quiet about it.

15 271. Q. Okay. So the question is...my
16 question is very simple. Based on the
17 information that you have right now, you cannot
18 say that the development has...or the project, I
19 should say, has increased the risk?

20 A. The simple question...the simple
21 answer to simple question is. Based on the
22 available information, which is the information
23 we have right now and the generic guidelines that
24 are applicable in case of a site specific
25 detailed study, house is in erosion hazard.

1 272. Q. Okay. That's not my question, so
2 listen carefully, please. The question is, based
3 on the information that you have, based on the
4 information that you have today, you cannot say
5 that the project has increased the risk compared
6 to the building that existed before the project
7 was commenced?

8 A. Okay. Let me rephrase my answer.
9 Based on the information which I have and based
10 on the applicable guidelines, the way they need
11 to be applied in case of a site specific study,
12 the structure is within the erosion hazard. Has
13 this new construction increased it or did not
14 increase it? A detailed investigation should
15 have been done to quantify that.

16 273. Q. Okay. And you haven't done that
17 detailed investigation?

18 A. My retainer is to provide
19 comments to...if the work that has been done has
20 been adequate to prove and to establish if the
21 work and the structure is safe for occupants and
22 the structure, and it's not...

23 274. Q. And...

24 A. ...there is no safety hazards.

25 275. Q. And you have not, as part of your

1 retainer, you have not done that investigation,
2 correct?

3 A. My retainer is to review and
4 provide comments if this information is adequate
5 or not for the intended purpose that has been
6 under construction right now.

7 276. Q. Okay. But you are not answering
8 my question. The question is, as part of your
9 retainer, you have not conducted the
10 investigation, correct?

11 A. I humbly can submit one more
12 time, I have done...I have repeated this many
13 times, my retainer did not include a detailed
14 investigation.

15 277. Q. Okay.

16 A. My retainer included only to
17 review and comment on the adequacy of the
18 information or the work that has been undertaken.
19 Does that substantiate that the house and the
20 occupants are safe, and they do not fall within
21 safety hazard.

22 278. Q. Okay. Now, so thank you for that
23 clarification. Now, just again, just so that the
24 record is clear, and make sure that there is no
25 confusion here. You talked about the, you know,

1 the building being within the erosion hazard
2 zone, right?

3 A. Based on the generic guidelines
4 and lack of site specific study which is totally
5 absent on this site, the building is within the
6 erosion hazard.

7 279. Q. Okay. Now, the original
8 structure that existed before the project began
9 was also within the erosion hazard, correct?

10 A. It appears so, yes.

11 280. Q. Okay. Now, based on the
12 information that you have today, you cannot
13 conclude that the new structure or the modified
14 structure has...poses any more risk than the
15 original structure, correct?

16 A. As I said, there is no
17 quantification even from the reports that have
18 been provided by the proponents here, to give any
19 quantification of what is the increase. It says
20 there is no appreciable increase. What is the
21 increase? No quantification. Engineering is a
22 science, not general comments. And no
23 further...no modelling, no quantification. And
24 it was their duty to state that, okay, this is
25 the percentage, for example, of increase. Here

1 is the modelling to prove that this increase is
2 not creating additional stresses on the slope to
3 further jeopardize the stability of the slope.

4 281. Q. Well, but you say that
5 engineering is a science, but you'll, you know,
6 you will concede that some of the statements in
7 your own report, are based on approximations and
8 on estimates and on assumptions, right?

9 A. You need to understand, Mr.
10 Bouchelev, that my report is not a detailed
11 investigation. My report is a review comment.
12 And there is a difference between when you are
13 producing a detailed report, doing the modelling
14 and providing a comment. I am not providing a
15 comment the way Toronto Inspection was supposed
16 to provide about the impact of this increase on
17 the slope. So, my report is not an analysis-
18 based investigation. My report is a commentary
19 on the adequacy of the work. Did that
20 substantiate that the building is safe for
21 occupants and structure or not?

22 282. Q. Okay. Just give me one second.
23 And I'm going to take you now to the last section
24 of your report, this is the section called
25 "Conclusion" on page 16. And here you say,

1 "...Based on visual observation,
2 proximity to the water course and the
3 slope configuration (i.e., height and
4 inclination), the slope stability rating
5 would likely classify the slope
6 instability risk as moderate
7 potential..."

8 Again, you use...you qualify your opinion by
9 saying "likely". So, you don't...it sounds like
10 you are not 100 percent certain that this is a
11 moderate potential risk situation, right?

12 A. I think we discussed this before
13 and I thank you for providing me this opportunity
14 again, to explain this. My role here, as an
15 engineer, is not to provide a parabola analysis.
16 I have documentation that proves in my opinion
17 that it is moderate slope stability
18 characterization, moderate potential. I can
19 provide that. I did not include this in the
20 report because my mandate is limited on
21 commenting and not ascertaining and/or certifying
22 what basically the risks are here.

23 283. Q. Well, I'm just...you know, you
24 use the word "likely" and, you know, when I see
25 the word "likely" it means, you know, less than

1 certain. It means "probably", correct?

2 A. "Likely" is a word that is very
3 much based on context. "Likely" is also that I
4 am not including my analysis in this case because
5 that's not my retainer and that's why I'm using
6 the word "likely" because if I am going to say is
7 moderate potential, as a prudent engineer I will
8 include that information so nobody can go take a
9 look and say, "Well, what you are saying that and
10 where is the proof?"

11 284. MR. BOUCHELEV: Okay. Well, I think
12 this is actually all of the questions
13 that I have for you, Mr. Singh. We
14 will...I will have to wait and see what
15 your notes are to determine if we need
16 to, you know, reconvene to ask you some
17 questions arising out of those notes.
18 And also subject to undertakings and
19 refusals then we are adjourning this
20 cross-examination.

21 THE DEPONENT: Okay.

22 MR. JULL: Thank you, Mr. Bouchelev.
23 As I said, we will undertake...because
24 we have the afternoon, we will start
25 that process right away, looking for

1 those materials, I won't delay. And we
2 will get those materials to you as soon
3 as we can. And then you can make a
4 decision, as I said, about a
5 reattendance. As I say, I am happy to
6 have Mr. Singh come back, if you wish,
7 as long as it is at a time that is
8 available to him.

9 285. MR. BOUCHELEV: Okay. Very well.

10
11 --- upon adjourning at 12:20 p.m.

12

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TAB 3

Court File No. CV-19-00627606-0000
ONTARIO
SUPERIOR COURT OF JUSTICE
(APPLICATION UNDER Section 97 of the
Courts of Justice Act, R.S.O. 1990, C.C.43)

BP/jlk

B E T W E E N:

IVAN RUDYK and SHELLEY YOUNG

Applicants

- and -

HALTON REGION CONSERVATION AUTHORITY

Respondent

- - - - -

This the Cross-Examination of CASSANDRA NICOLE CONNOLLY,
on her Affidavit sworn the 4th day of February, 2021, taken
via videoconference at the offices VICTORY VERBATIM
REPORTING SERVICES INC., Toronto-Dominion Centre, Suite 900,
222 Bay Street, Toronto, Ontario, on the 23rd day of April,
2021.

- - - - -

APPEARANCES:

ARKADI BOUCHELEV

-- for the Applicants

KENNETH JULI

-- for the Respondent

ELIANE LEAL da SILVA

ALSO PRESENT:

Ivan Rudyk

Shelley Young

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1 - upon convening at 10:00 a.m.

2 --- upon commencing at 10:20 a.m.

3

4 CASSANDRA NICOLE CONNOLLY, affirmed

5 CROSS-EXAMINATION BY MR. BOUCHELEV:

6 1. Q. Ms. Connolly, good morning.

7 A. Good morning.

8 2. Q. Can I ask you to state your full
9 name for the record?

10 A. Yes. It's Cassandra Nicole
11 Connolly.

12 3. Q. Okay. For the record, can you
13 confirm that you have been affirmed to tell the
14 truth today?

15 A. I have been, yes.

16 4. Q. Okay. Thank you. Just a couple of
17 questions about your position at Conservation
18 Halton. So according to your affidavit, you are a
19 regulations officer and a provincial offences
20 officer, correct?

21 A. Yes.

22 5. Q. Did you hold the same position in
23 2019...in 2018?

24 A. Yes. Yes, I did.

25 6. Q. Okay. All right. And so, what is a

1 regulations officer? What does that entail?

2 A. So my position with Conservation
3 Halton is the administration and review of
4 applications made under our regulation 162.06, and
5 the compliance and enforcement matters under that
6 regulation, as well.

7 7. Q. Okay. Now, the compliance and
8 enforcement, is that the provincial offences officer
9 part of your job?

10 A. It is, yes.

11 8. Q. Okay. Just, again, very briefly,
12 what does that mean, compliance enforcement?

13 A. So if works are done either without
14 a permit or against the terms or conditions of an
15 issued permit and it is a violation of our
16 regulation, that's when the compliance enforcement
17 piece comes into play, to bring the site back into
18 compliance, whatever that means, for a given site.

19 9. Q. Right. Then, whomever is not in
20 compliance may be charged with a provincial offence,
21 correct?

22 A. Potentially.

23 10. Q. That's part of your job, as well, to
24 facilitate that process?

25 A. Yes, it is.

1 11. Q. Okay. Thanks. Now, how long have
2 you been working with Conservation Halton?

3 A. I joined Conservation Halton in
4 November of 2014.

5 12. Q. Okay. Did you work for any
6 conservation authority prior to that?

7 A. I did not. No, I worked for the
8 Niagara Escarpment Commission.

9 13. Q. I see, okay. For how long,
10 approximately?

11 A. With the NEC?

12 14. Q. Yes.

13 A. I worked there for approximately
14 four months as a student just out of university.

15 15. Q. I see.

16 A. And then, I joined Conservation
17 Halton since then.

18 16. Q. Okay. All right. Who is your
19 immediate supervisor at Conservation Halton?

20 A. Charles Priddle.

21 17. Q. Okay. Was it the same in 2018 and
22 2019?

23 A. It was, yes.

24 18. Q. Okay. Thanks. You were the person
25 who was responsible for reviewing the application

1 submitted by my clients in connection with 835
2 Spring Gardens, correct?

3 A. Yes, I was. I'm the regulations
4 officer for Hamilton/Burlington, and was at the
5 time, as well.

6 19. Q. Okay. Thank you. You were also the
7 person who issued permit number 5297?

8 A. Yes. So I did the issuing and the
9 write-up of the permit letter, along with its review
10 and, then the final sign-off of the permit was, at
11 the time, manager, Kellie McCormack.

12 20. Q. Okay. So the manager had to approve
13 the issuance of the permit?

14 A. Yes. As a regulations officer, we
15 don't have signing authority on the permits
16 themselves, we just leave the file up to that point
17 and have the sign-off made by management.

18 21. Q. Okay. But the actual review of the
19 documents in making sure that a permit can be
20 issued, that's your responsibility?

21 A. Yes. My responsibility, along with
22 technical staff, when required.

23 22. Q. Okay. Was there any technical staff
24 involved in the issuance of this permit?

25 A. In the issuance, no. In the

1 discussions leading to the issuance, engineering
2 staff were involved.

3 23. Q. Okay. Can you tell me the name of
4 the engineer who was involved?

5 A. Sure. It was Allan Newell.

6 24. Q. Just for the record...

7 MR. JULL: I am going to drop in here
8 for a second, not to put an objection, but
9 Ms. Connolly, I didn't hear the last name
10 very clearly and I'm wondering if the
11 reporter got it, as well, so, perhaps, you
12 can just say the full name a little slower
13 and maybe even spell it for the court
14 reporter.

15 THE DEPONENT: Sure. It's Allan Newell
16 and, the last name, I believe, is spelled
17 N-E-W-E-L-L.

18 MR. JULL: Thank you.

19

20 BY MR. BOUCHELEV:

21 25. Q. Okay. What kind of an engineer is
22 he, is he a structural engineer, or...

23 A. I can't speak to his background or
24 his credentials. He does work in our engineering
25 department and he's the engineering staff that's

1 involved in applications that we see. And his
2 reviews are signed off by his superior.

3 26. Q. Okay. And who is his superior?

4 A. His superior at the time, I believe,
5 was Janette Brenner.

6 27. Q. She is an engineer, as well?

7 A. She is. Yes, I believe.

8 28. Q. Okay. Do you know if she is a
9 geotechnical engineer, or a structural engineer?

10 A. I can't speak to her credentials
11 either.

12 29. Q. All right. Now, you visited the
13 property at 835 Spring Gardens. And just for
14 convenience, when I use the term "property" during
15 this cross-examination, I will be referring to 835
16 Spring Gardens, so I won't be talking about any
17 other property.

18 So when you visited the property, it was on
19 May 23rd, I believe, right, of 2018?

20 A. Yes, that's correct.

21 30. Q. Was that the only time that you
22 visited the property?

23 A. That was the first time I had
24 visited the property...

25 31. Q. Okay. And when was...

1 A. ...as part of the application.

2 32. Q. Okay, thanks. When was the second
3 time?

4 A. The second time I was on the
5 physical property would have been through the
6 execution of the search warrant. Between those two
7 occurrences, I only ever saw the property from the
8 road.

9 33. Q. Okay. We will talk about the search
10 warrant later, but...

11 A. Sure.

12 34. Q. ...after the site visit on May 23rd,
13 2018, as you said, there were no subsequent visits
14 until that point. Did you have any discussions with
15 the homeowners at the time of the site visit?

16 A. I believe we interacted briefly,
17 just as I was about to leave the site, but I did...

18 35. Q. Okay.

19 A. ...attend the site and kind of
20 walked the back of the property and took some photos
21 that are in my affidavit, along with some follow-up
22 site visit notes, if you wanted to open those up,
23 but I did consider the drawing that I had as part of
24 that permit application, walked the property and,
25 then we had a brief exchange before my leaving the

1 site.

2 36. Q. Okay. Other than that brief
3 exchange, did you ever have any discussions with the
4 homeowners, either in person or by phone, regarding
5 this property?

6 A. Before the site visit? Sorry.

7 37. Q. Well, either before or after.

8 A. Sure. So I reached out via e-mail
9 to confirm my permission to access the site for that
10 site visit. We had that brief interaction while I
11 was on-site and, then I followed up with the
12 homeowner by e-mail following that site visit.

13 38. Q. Okay. Will it be fair to say that
14 was the extent of your discussions with the
15 homeowners?

16 A. Yes.

17 39. Q. Okay. All right. Now, I would like
18 to take you to paragraph 3 of your affidavit,
19 please.

20 A. Sure. Can you bring that up?

21 40. Q. Yes, I can. It will actually be
22 more convenient if you could open the document
23 separately, but if you can't do that, then I will
24 share it with you.

25 A. I do have a hard copy in front of

1 me, as well, if you would like me to open that?

2 41. Q. Yes, if you don't mind.

3 A. Sure.

4 42. Q. That will be a little bit easier for
5 you.

6 A. Paragraph?

7 43. Q. Paragraph 3.

8 A. Okay.

9 44. Q. Okay. So at paragraph 3 you say
10 that you talked about the approximate regulation
11 limit, right?

12 A. Yes.

13 45. Q. Okay. So the word "approximate"
14 implies that it is not the exact regulation limit,
15 correct?

16 A. That is true. It's based on the
17 best available information, but we do have the
18 option of potential to refine where those lines are,
19 either through site visits or technical studies. It
20 is, kind of, just a guidance of which properties are
21 regulated or not.

22 46. Q. Okay. But you don't have the exact
23 regulation limit for this particular property, would
24 that be fair to say?

25 A. We did not receive the geotechnical

1 information, so we do not have exact delineation.
2 The red line in my affidavit on the area I'm mapping
3 there, I think it's Exhibit B, does show, kind of,
4 where those coloured lines are, and it does show
5 that red line extending almost to Spring Gardens
6 Road, if I am not mistaken.

7 47. Q. Okay. Great. Now, I am going to
8 ask you to look at paragraph 6. I just have a few
9 questions about your initial interaction with Peter
10 Vozikas. So Peter Vozikas, we can all agree, was a
11 representative of Empire Design Company, and he was
12 acting as the agent for the homeowners in connection
13 with the permit application, right?

14 A. Yes, he was identified as the agent.

15 48. Q. Right. So on May 19th, did he just
16 walk in and ask to speak to someone, or did he make
17 an appointment? What's the background to that
18 visit, if you know?

19 A. Sure. So...

20 MR. JULL: Can I just interrupt for a
21 second, Mr. Bouchelev? Again, not by way
22 of objection, but way of clarification. I
23 believe you asked the question, on May 19th
24 and, I think the affidavit says on May 9th.
25 I just want to make sure that you meant May

1 9th or May 19th?

2 49. MR. BOUCHELEV: I think I said May 9th.

3 If I misspoke...

4 MR. JULL: Okay.

5 50. MR. BOUCHELEV: ...I apologize.

6 MR. JULL: I may have misheard you.

7 That's the problem with Zoom. I thought

8 you said May 19th, so if you said May 9th,

9 that's great. Sorry for that.

10 51. MR. BOUCHELEV: Yes. Okay. No problem.

11 I think there's no dispute that it happened

12 on May 9th.

13

14 BY MR. BOUCHELEV:

15 52. Q. So, again, going back to my

16 question. Do you know what the background for that

17 visit was? Did he make an appointment? Did he

18 simply walk in and ask to speak to conservation

19 staff?

20 A. Yes. So in my affidavit that Ken

21 referenced, we do have a general inquiry sheet

22 filled out as one of the appendices. That was

23 filled out by Peter. And those forms are associated

24 with the walk-in process that we offered when the

25 administration office is open, and it was, kind of,

1 like, open time slots of when people with general
2 inquiries, or making an application could just come
3 in and see whichever staff was available at the
4 time.

5 53. Q. Okay. So, at that point, he walked
6 in. He didn't have a prior appointment with you, he
7 was just directed to whomever was available at that
8 time?

9 A. Right.

10 54. Q. Okay.

11 A. The walk-in staff member.

12 55. Q. Do you remember, did he simply fill
13 out the form, or did you have a conversation with
14 him, did he ask any questions?

15 A. So I wasn't the walk-in staff member
16 at the time, and I did not receive his form, and I'm
17 not sure how the process went of him filling that
18 out.

19 56. Q. I see. So you weren't involved in
20 that initial walk-in, but the file, after it was
21 filled out, the file was assigned to you?

22 A. Right. So if we could bring up that
23 walk-in sheet that's in my affidavit, on the second
24 page or the back page of it, it's filled out by my
25 colleague and that's who would have been the walk-in

1 staff receiving that information from him that day.

2 57. Q. I see, okay. Give me one second.

3 So you are referring to Exhibit C of your affidavit,
4 right, the general inquiry report?

5 A. Yes.

6 58. Q. Okay.

7 A. Yes. So that's filled out as part
8 of that walk-in service.

9 59. Q. Okay. And you...

10 A. So that form...

11 60. Q. Yes. Sorry, go ahead.

12 A. I was going to say that form,
13 whoever is coming in for the inquiry, fills out
14 their information, a general description of why they
15 are there, or the question that they have and, then
16 they meet with that staff and hand the information
17 in that they have brought. So you can see there
18 he's filled out all his information there, he's
19 clicked off "Consulted Agent" and he has put in a
20 description that says, "Side Yard Addition and
21 Deck".

22 61. Q. Okay. I am just going to take you
23 to the second page of that form. This is the
24 section that says, "For Office Use Only". I'm
25 assuming it's not your handwriting, this is the

1 handwriting of one of your associates?

2 A. Yes.

3 62. Q. Okay. But, I think, we can all read
4 what it says. It says:

5 "...Provide the permit application for two-
6 storey addition and balcony..."

7 A. M'hmm.

8 63. Q. Then it says:

9 "...E-mailed Cassandra previously..."

10 A. M'hmm.

11 64. Q. Do you recall receiving a prior e-
12 mail from Mr. Vozikas?

13 A. No, I do not have...I could not find
14 an e-mail previously before this date from Peter
15 about this property.

16 65. Q. Okay. Then it says and, again,
17 correct me if I'm reading this incorrectly, but I
18 think it says:

19 "...Can provide full-sized drawings or PDF
20 of drawings, if required. Asked that
21 Cassandra would follow up if any
22 [something] need additional information,
23 and for the fee associated, and the
24 permit..."

25 Then there is an e-mail at vozikas@hotmail.com. So

1 there is a reference here to Mr. Vozikas saying that
2 he will provide "full-sized drawings or PDF, if
3 required". Did you request, at any point, that Mr.
4 Vozikas provide the drawings to you?

5 A. I did not. So the drawing that was
6 submitted was the one attached to the issued permits
7 and the site plan, and it was an 8 1/2 x 11 sheet.
8 We don't always request full-sized drawings if we
9 don't need it to be to scale necessarily. So I
10 didn't need a full-sized survey at the time for the
11 application.

12 66. Q. Did you request...or maybe, we can
13 deal with that later. Sorry, just give me one
14 second. I am going to ask you go to paragraph 8 of
15 your affidavit.

16 A. Okay.

17 67. Q. Now, at paragraph 8, you say that:
18 "...[You] became aware of certain
19 information by looking at the Statement of
20 Claim issued by Lifestyles by Barons..."

21 A. Yes.

22 68. Q. Can you tell me where you obtained a
23 copy of that Statement of Claim?

24 A. Through the lawful execution of a
25 search warrant.

1 69. Q. Okay. So it was provided to you by
2 Lifestyles, or you obtained it from their computers?

3 A. Correct. Through the search
4 warrant.

5 70. Q. Okay. I appreciate that you are not
6 a lawyer, but I think you would agree with me that
7 just because something is alleged on the Statement
8 of Claim, doesn't necessarily mean that it's true,
9 correct, it's just an allegation?

10 A. I just included the information that
11 was revealed through the search warrant, in my
12 affidavit.

13 71. Q. No, no, I understand, but you will
14 agree with me that just because Lifestyles says
15 something in their Statement of Claim, doesn't
16 automatically mean that the statements are accurate,
17 correct?

18 A. I do believe that there's also an
19 agreement in my affidavit between Lifestyles and the
20 landowner that also has the same information, or
21 related information to it, as well.

22 72. Q. But, as a general principle, you
23 will agree with me that just because something is
24 alleged in a Statement of Claim, does not make it
25 true?

1 A. Just because it's alleged, does not
2 make it true, correct.

3 73. Q. Okay. Now, I'm going to take you to
4 paragraph 9. Here at paragraph 9, you say that:

5 "...On May 18, HRCA received a permit
6 application submission from Mr. Vozikas..."

7 Was it filed in person?

8 A. That I do not know.

9 74. Q. Do you remember if on that day you
10 met with Mr. Vozikas and reviewed his application?

11 A. I do not believe I did. There would
12 have been another general inquiry form, I would
13 assume. We do date stamp "Received" on the
14 applications that we have incoming. Whether it's
15 hard copy or by e-mail, they are stamped the same
16 way. So I don't recall how this one was submitted.

17 75. Q. Okay. This application is of
18 Exhibit E of your affidavit. Can you go there now?

19 A. Sure. This is the application form.

20 76. Q. Yes. So this is the application
21 form that has a "Received" stamp at the top with a
22 May 10th, 2018 date?

23 A. M'hmm.

24 77. Q. Okay. Now, if you go to the section
25 called "Internal Use Only", which is the third page

1 of that application, it says, "For Internal Office
2 Use Only" and it has some handwriting, right?

3 A. Yes.

4 78. Q. Is that your handwriting?

5 A. It is, yes. Those are filled out by
6 the file managers to make the file, to make the
7 permit application file.

8 79. Q. Okay. In the top right it says,
9 "Minor CALC". What does that mean?

10 A. Those are the timelines by the CALC
11 chapter, so Conversation Ontario Guides, or the CALC
12 chapter guides on how long applications should take,
13 based on if they are minor or major. So we just
14 check off generally how it's going to be tracked in
15 the background.

16 80. Q. Okay. So in terms of timelines,
17 this was considered a minor application?

18 A. It was, yes.

19 81. Q. You know, this is perhaps, my lack
20 of knowledge of conservation procedures, but what
21 does CALC stand for?

22 A. I don't know what the acronym stands
23 for, to be honest. I know that in her affidavit,
24 Barb Veale talks a lot about the process and the
25 timelines behind it, so she may be better to answer

1 that question. I am not sure what the acronym
2 stands for.

3 82. Q. Okay. But do you know what it is in
4 general? What is CALC?

5 A. It is the timelines that guide how
6 long applications should take by an authority to
7 review, based on if they are minor or major, and
8 those timelines do differ from something like our
9 fee schedule which dictates minor or major.

10 83. Q. So is it just internal policies and
11 procedures that Conservation Halton has, or is it
12 based on regulations?

13 A. It's based on the Act, I believe.

14 84. Q. Okay.

15 A. It's not a Conservation Halton
16 timeline, it's an overarching timeline of the
17 Conservation Authority.

18 85. Q. Okay. Now, you see that under,
19 "Proposed Works" you have written:

20 "...Second, plus first floor addition..."

21 A. M'hmm.

22 86. Q. So there were proposed additions to
23 both the second and the first floor?

24 A. Yes.

25 87. Q. Okay. What does "P3A (for now)"

1 mean? What does that mean?

2 A. So that's...

3 88. Q. Under category...

4 A. Yes. So that's the category in our
5 fee schedules. They are associated with kind of a
6 code that our finance department uses. So "P" just
7 means, "private landowner". And the "3A" means
8 "minor". "(For now)", is a reminder to myself that
9 should technical studies be required, it may not
10 remain as a minor application under the fee
11 schedule.

12 89. Q. Okay. So the minor and major refers
13 to the fee schedule. Depending on whether it's
14 minor or major, a different fee would apply?

15 A. No. So the CALC chapter, that's in
16 the top corner of the application, it's not directly
17 associated with the fee schedule minor and major.
18 They are different.

19 90. Q. Okay. So the minor and major CALC
20 refers to the timeline, but there is also minor and
21 major in terms of the fee schedule?

22 A. Correct.

23 91. Q. Okay. Now, under "Proposed Works"
24 you see it says:

25 "...cantilevered balcony..."

1 A. Yes.

2 92. Q. What's a cantilevered balcony?

3 A. It would be a second storey balcony
4 or deck, second storey deck.

5 93. Q. Okay. Just, you know, in general,
6 how would that second storey balcony be supported?

7 A. It would be constructed and attached
8 to the dwelling, but there are different ways to
9 construct them. It really comes down to the
10 contractor and how they are going to build that
11 structure.

12 94. Q. Okay. All right. Now, I am going
13 to ask you to go to paragraph 12 of your affidavit
14 now. At paragraph 12, you are talking about the
15 site visit that you had on May 23rd. You have told
16 me previously that you had a brief interaction with
17 the homeowners at that time. Do you recall if you
18 spoke to both of them, or to just one of the
19 homeowners?

20 A. I believe I only met Shelley that
21 morning.

22 95. Q. Okay. Did you ask her any questions
23 about the project?

24 A. I don't recall.

25 96. Q. Okay. Do you remember,

1 approximately, how long the site visit lasted at
2 that time?

3 A. I am not sure how long the site
4 visit was time-wise. I arrived to the site. I had
5 the drawings with me. I walked the property down
6 the side and around the back, and took the photos
7 that are attached to my affidavit. If you wanted to
8 look at that exhibit, there are my site visit notes
9 with the photos I took while on-site, attached.
10 Then I left the site.

11 97. Q. Okay. We will look at the notes in
12 a moment, but if I suggested to you that the visit
13 was fairly brief, somewhere around five to ten
14 minutes, would that be fair?

15 A. It could be fair. If I could expand
16 on that a little bit. So, obviously, before the
17 site visit was organized with the landowner, I had
18 the application, and I had some photos also that
19 were provided to our office of parts of the
20 property. And then, we do consider our approximate
21 regulation limit mapping, kind of, before we set up
22 those site visits. We did have background
23 information before my attending the site. I just
24 wanted to ground-truth our mapping and take a few
25 more photos that weren't included in that original

1 information provided to me.

2 98. Q. Okay. All right, that's fair
3 enough. Let's look then at your site visit notes
4 which are at Exhibit F to your affidavit.

5 A. Sure. Could you bring those up?

6 99. Q. Yes, I can do that. Okay. So this
7 is your Exhibit F, "Site Inspection Sheet". And,
8 again, I am going to assume that this is all your
9 handwriting?

10 A. Yes, it is.

11 100. Q. Then I am going to take you to the
12 second page. And at the top you see there is a
13 note:

14 "...No concern from ENG..."

15 Which I take it is short for engineering?

16 A. Yes.

17 101. Q. Okay. What did you mean by that?

18 A. So that's a note that we would make
19 following a site visit. If engineering staff needed
20 to see some more information, we would put that in
21 the notes there. What this note means is that
22 through some kind of conversation with engineering
23 staff, with the proposed works that were understood
24 to be happening, they did not have a concern from an
25 engineering perspective and they didn't require any

1 further information.

2 The follow-up note, along the same lines is
3 saying, because of the steepness of the slope, any
4 future development, or anything above and beyond
5 what our current understanding is, may require
6 additional information from engineering.

7 102. Q. Okay. And so, the engineer that you
8 are referring to is the gentleman that you mentioned
9 before. I'm sorry, I forgot his last name.

10 A. Newell. Allan Newell.

11 103. Q. Allan Newell?

12 A. Yes.

13 104. Q. So he reviewed the permit
14 application submitted by Mr. Vozikas, correct?

15 A. So he likely would have looked at
16 the site plan submitted and the photos taken on-
17 site, along, again, with our approximate regulation
18 limit mapping, and the information available through
19 that. So in, again, one of my exhibits, it does
20 show the contour information. That's the kind of
21 thing that engineering would look at in order to
22 make a comment like, "No concerns" were mentioned
23 here.

24 105. Q. Okay. So that's what they usually
25 look at, but it would be fair to say that in this

1 particular instance, you do not know exactly what he
2 was looking at, you're just assuming based on your
3 previous experience?

4 A. So through the review of an
5 application, we do work closely with engineering
6 staff. They do look at things like the site plan,
7 the application form which describes the scope of
8 work, our mapping, and any photos taken on-site.

9 106. Q. Okay. You used the term, "site
10 plan". By site plan, are you referring to the
11 survey?

12 A. Yes. The site plan...sorry...yes,
13 the site plan or the survey. The drawing that was
14 submitted as part of an application shows existing
15 and proposed.

16 107. Q. Okay. We will look at that survey
17 in a few minutes, but going back to your field
18 notes. Do you know if Mr. Newell has any notes in
19 connection with his review of this application?

20 A. I would not know that. I will say
21 that a lot of our meetings when the office is open
22 and during this time, they were conversations we
23 just had in meeting rooms, fairly informally. We
24 don't always get formal memos from engineering
25 staff. I'm not sure what Allan has on this folder,

1 but this would be considered part of his memo, or
2 our conversation summary.

3 108. MR. BOUCHELEV: Counsel, perhaps, by way
4 of an undertaking, can you check if there
5 are any notes prepared by any engineers, or
6 if there are any memos or communications
7 with engineering staff concerning this
8 development and this project, and if you
9 do, to produce them?

10 MR. JULL: Yes, I would be happy to
11 give that undertaking.

U/T

12 109. MR. BOUCHELEV: Okay. Thank you.

13

14 BY MR. BOUCHELEV:

15 110. Q. I am just looking at the second
16 point in your "Comment" section here. It says:
17 "...Slope is very steep, but no geotech
18 current proposal..."

19 By "geotech" you mean a geotechnical assessment,
20 correct?

21 A. Yes, correct.

22 111. Q. Okay. And current proposal:

23 "...Any future DEV..."

24 I'm assuming that stands for development?

25 A. Yes, development.

1 112. Q. And,
2 "...development/larger additions would most
3 likely require..."

4 I am going to the previous page, which is the first
5 page of the site inspection sheet. Under,
6 "Additional Information" there is a note here:

7 "...Entire property within valley proposed
8 addition and side is no closer than the
9 existing cantilevered deck over existing
10 patio..."

11 I am just going to take you to the photographs. Can
12 you show me which of these photographs shows an
13 existing cantilevered deck?

14 A. Sure. If you could continue to
15 scroll.

16 113. Q. That's the last photograph.

17 A. So I actually believe...it's not in
18 my site visit photos. I believe it's in the photos
19 that were submitted by Peter. You can see the deck
20 that I'm referring to. So in the exhibit with the
21 walk-in sheet.

22 114. Q. Can you help me? Which exhibit is
23 that in your affidavit?

24 A. It should be C.

25 115. Q. Exhibit C. Okay.

1 A. Yes. So you can see it in that
2 first photo there, but I believe if you continue to
3 scroll there's, kind of, a more backed up photo that
4 shows it in full.

5 116. Q. Are you talking about the first
6 picture here?

7 A. Yes. You can see part of it in that
8 photo, so it is that wooden second storey deck in
9 the top left.

10 117. Q. Okay.

11 A. And if you scroll down, I believe
12 you can see it in its entirety in a different photo.
13 Just right there.

14 118. Q. Okay. So this is the balcony that
15 you're referring to, right?

16 A. Right.

17 119. Q. Okay. Now, just going back to
18 Exhibit F and your note about the steepness of the
19 slope.

20 A. M'hmm.

21 120. Q. You will agree with me that what is
22 being proposed or, at least, your understanding of
23 what was being proposed at the time, was that there
24 would be some additions made to the building,
25 correct?

1 A. Correct. If we could bring up the
2 site plan...or the site drawing, sorry, that was
3 approved with the permit, it was actually
4 highlighted, the areas of where that minor addition
5 was to be.

6 121. Q. Okay.

7 A. If you could bring that up, I can...

8 122. Q. Sure, I can do that.

9 A. There is a few pictures. I believe
10 the permit is J.

11 123. Q. Yes, it is J. You're right. Okay.
12 You referred to it as the site plan, but I think we
13 can both agree, this is really a survey prepared by
14 Mackay, Mackay & Peters, correct?

15 A. Yes, it is a site...yes, it is a
16 survey.

17 124. Q. Okay. I am just going to blow it up
18 so we can see the structure. I see that there are
19 some sections highlighted with a pink marker, is
20 that what you're referring to?

21 A. Yes. So they were highlighted in
22 red pen, or some kind of red implement, but it does
23 highlight the sections. So there's a cantilevered
24 balcony that's proposed, highlighted in red there.
25 And then, if we bring our attention to the side

1 garage, there is a highlight and it says, "minor
2 proposed" and that's where the bump-out of the
3 garage with the second storey above it was proposed
4 to be, or understood to be.

5 125. Q. Okay. Do you know who made these
6 highlights? Was it you, or was it submitted this
7 way by Mr. Vozikas?

8 A. It was submitted that way to us.

9 126. Q. Okay. So according to this, there
10 would be a covered front porch where it was non-
11 existent before, correct? Or was there a front
12 porch and it just simply wasn't covered?

13 A. If we could...I don't recall if
14 there was an existing front porch extension on the
15 home, but it was highlighted as something that would
16 be new, either extended or not. Similar to the way
17 the cantilevered balcony proposed is at the rear of
18 the house. It doesn't show the existing one that
19 was there, but it does show the extent of what's
20 being proposed there.

21 127. Q. Okay. If we look at the garage,
22 according to this survey, it appears that the garage
23 is going to be larger on the first floor, correct?

24 A. Yes, but the...

25 128. Q. Sorry. The garage is, obviously,

1 just on the first level, so the garage itself is
2 going to be enlarged and then there is going to be a
3 second storey addition on the top of the garage?

4 A. Yes. So the application form said a
5 two-storey addition. I believe the existing garage
6 did have a partial second storey above it, so this
7 would be extending that on the main floor and
8 building it up as a second storey addition on that
9 side, as well.

10 129. Q. Okay. So then, the extension would
11 extend not just over the garage, but over a portion
12 of the building itself?

13 A. Not to my understanding. So the
14 area in red, was my understanding, to be the bump-
15 out with a second storey addition. The one-storey
16 brick dwelling on this drawing was not highlighted
17 in red and it was not understood to be part of the
18 application in any way.

19 130. Q. Okay. You will agree with me that
20 the extension of the garage, the addition of the
21 second-storey addition, that would create
22 additional...well, it would increase the weight on
23 the building and it would increase the pressure on
24 the slope, correct?

25 A. I'm not an engineer. I wouldn't be

1 able to speak to pressure on the slope.

2 131. Q. You're not an engineer, but as a
3 conservation officer, I mean, I think it's a matter
4 of common sense that to build a larger building is
5 going to be heavier, correct?

6 A. Potentially. I think it would come
7 down to construction methods.

8 132. Q. Okay. But if the existing building
9 is going to remain and you are just going to add an
10 addition, by definition, you are going to increase
11 the weight?

12 A. Potentially.

13 133. Q. Okay. So, nonetheless, Conservation
14 Halton did not have any concern about additional
15 pressure on the slope in connection with this
16 proposal, right?

17 A. Right. So from a policy
18 perspective, it was considered a minor addition,
19 being the bump-out to the side and that small beam
20 flush with the back. It was a minor addition and we
21 felt that it was unreasonable at the time, to ask
22 for anything further and it wasn't necessary at the
23 time. Given the minor nature of the addition, the
24 fact that there was already a balcony at the back, a
25 covered porch at the front, we were kind of working

1 within the parameters of what we considered minor.

2 134. Q. Okay. So whether or not a
3 geotechnical study is required, is a policy
4 decision, would that be fair to say?

5 A. It is one of the criterias to meet
6 our policies for value.

7 135. Q. Okay. Now, since we are looking at
8 this survey, you will agree with me that a survey is
9 not the same thing as a detailed design drawing,
10 correct?

11 A. It is not, no. It could be
12 different.

13 136. Q. And the difference, I would suggest
14 to you, is that design drawings would contain
15 detailed information about the structure, while this
16 survey does not contain such detailed information?

17 A. Correct. These are not detailed
18 design drawings. This is a site survey showing the
19 extent of proposed works.

20 137. Q. Okay. Would it be fair to say that
21 Conservation Halton did not request design drawings
22 in connection with this project, correct?

23 A. Correct.

24 138. Q. So if I look at the garage portion
25 of this survey, you would see that there are three

1 pink lines that indicate the bump-out of the garage,
2 right?

3 A. Yes.

4 139. Q. There's nothing in this survey that
5 indicates that the existing garage walls are going
6 to be demolished, correct?

7 A. Correct.

8 140. Q. But as a matter of common sense, I
9 think we can all agree that you are going to remove
10 the old garage walls if you are going to bump-out
11 the garage?

12 A. Yes.

13 141. Q. Okay. And you will also agree with
14 me that this survey does not show whether any of the
15 other existing walls are going to remain, or to be
16 removed, correct?

17 A. Correct.

18 142. Q. To get that information, you would
19 have to look at the detailed design drawings,
20 correct?

21 A. Yes. So I was going off the
22 information identified by the applicants and the
23 agent on their form, speaking to the scope of
24 proposed works, as well as the areas here that were
25 highlighted of where those works were to occur.

1 143. Q. Now, did you have any discussions
2 with the homeowners, or with Mr. Vozikas as to how
3 the cantilevered balcony is going to be attached to
4 the building?

5 A. I did not, no.

6 144. Q. Okay. I would suggest to you that
7 the cantilevered balcony, one of the ways of
8 attaching it to the building would be to attach it
9 to the north wall?

10 A. Yes, it is one of the ways that
11 these could be constructed.

12 145. Q. Okay. To do that, you would have to
13 either reinforce that wall or to build a new wall
14 that has structural supports for the cantilevered
15 balcony, correct?

16 A. That is one of the ways. We do
17 issue several applications, or issue several permits
18 for structures like second storey balconies, and
19 they are attached to the dwelling with no need to
20 remove exterior walls.

21 146. Q. Okay. Can you say that again? So
22 there is a separate permit application for that type
23 of balcony?

24 A. No. I'm saying, we have reviewed
25 and issued approvals in the past for cantilevered or

1 second storey balconies, and the need to remove
2 exterior walls to do so is not necessary.

3 147. Q. Okay. But in this particular
4 instance, there is no indication as to which method
5 would be used to construct the balcony, right?

6 A. Right, there's no indication.

7 148. Q. Okay. Again, I apologize if I have
8 asked this question before, but you are not aware of
9 any requests that Conservation Halton made of the
10 engineer or the homeowner about the method of
11 construction for the balcony, right?

12 A. I did not make any requests about
13 construction methods.

14 149. Q. Okay. Are you aware of anyone else
15 at Conservation Halton making such a request?

16 A. I am not aware of anyone making that
17 request.

18 150. Q. Okay. Fair enough. I am going to
19 take you to paragraph 18 of your affidavit now.
20 Now, at paragraph 18, you are discussing some
21 information that you learned from the execution of
22 the search warrant on Lifestyles?

23 A. Yes.

24 151. Q. Can you tell me why a search warrant
25 was being executed on them?

1 A. He was the contractor in the
2 application and we wanted to find out information
3 that was not available to us, that would be
4 pertinent for this case.

5 152. Q. Okay. "Pertinent to this case",
6 meaning the application that my clients brought
7 against Conservation Halton?

8 A. Yes.

9 153. Q. Okay. Do you know if Lifestyles, or
10 anyone associated with Lifestyles, has been charged
11 under the Provincial Offences Act?

12 A. They have not been charged.

13 154. Q. Is there an intention to charge
14 them?

15 MR. JULL: I'm going to object. That
16 is an issue that is subject to
17 prosecutorial discretion, and that's a
18 privileged matter at this point.

/R

19

20 BY MR. BOUCHELEV:

21 155. Q. Was Peter Vozikas and Empire Design
22 Company, were they charged with any provincial
23 offences?

24 A. Yes, they were.

25 156. MR. BOUCHELEV: Now, at paragraph 18,

1 you are referring to certain documents from
2 Lifestyles that were obtained as part of
3 the execution of the search warrant.

4 Counsel, by way of an undertaking, I would
5 like you to provide all documents that you
6 have obtained through the execution of
7 search warrants against both Mr. Vozikas
8 and against Lifestyles.

9 MR. JULL: That's a tricky question, so
10 let me try to address that as best I can.
11 We have not received full documents because
12 of the assertion of privilege by counsel
13 for Lifestyles By Barons and Gordon Baron,
14 so we are still in the process of dealing
15 with those issues.

16 I can indicate that there will be
17 disclosure, in the normal course, with
18 respect to your clients, Mr. Rudyk and Ms.
19 Young. There will be a disclosure package
20 prepared in the regulatory proceedings.

21 I can also indicate that it is my
22 intention to forward to you any documents
23 from the search warrant that I intend to,
24 in fairness, to put to your clients in
25 cross-examination. There aren't many, but

1 I will be forwarding those in the very near
2 future.

3 At this point, it's not possible for
4 us to provide a fulsome disclosure package
5 with respect to what we have obtained in
6 the warrant, because that is still an
7 ongoing process.

8 157. MR. BOUCHELEV: Well, just a couple of
9 points in response, Mr. Jull. First of
10 all, I hope that you will provide me with
11 the documents that you want to put to my
12 clients' witnesses on cross-examination,
13 well in advance, so that we can prepare and
14 review them, so that none of the documents
15 are a surprise to us.

16 MR. JULL: Absolutely. I am preparing
17 something, so I agree. Don't worry, I am
18 not going to send them the night before, I
19 am going to try to provide those to you
20 early next week, which is a week in advance
21 of any cross-examinations of your
22 witnesses.

U/T

23 158. MR. BOUCHELEV: Right. Now, you
24 mentioned that Lifestyles' lawyers have
25 asserted privileges. As far as I know, if

1 you are executing a search warrant, there
2 is no privilege claimed, you are simply
3 searching and seizing any documents that
4 are authorized by the Court. I'm a bit
5 confused here. Was there a search warrant?
6 Was there an execution of the search
7 warrant?

8 MR. JULL: Well, let me try to, as I
9 best I can, explain to you what the process
10 was. In the execution of the search
11 warrant, we retained a forensic firm,
12 Deloitte Touche. Deloitte Touche seized
13 the computer hard drives, so they actually
14 seized the computers from Lifestyles By
15 Barons.

16 With respect to Empire, there is
17 also a warrant, but there was no hard drive
18 because Mr. Vozikas used the cloud, as it
19 were, for his correspondence.

20 The hard drive was imaged, then we
21 returned the computer to Lifestyles By
22 Barons. Counsel for Lifestyles By Barons
23 has asserted various privileges, including
24 solicitor/client privilege, as well as
25 litigation privilege. At this point, we

1 are at a bit of a standstill, if I could
2 call it that.

3 As you know, these issues where
4 solicitor/client privilege are asserted,
5 can be determined by a Court. The Court
6 can make an ultimate decision as to whether
7 or not the privilege has been properly
8 asserted. We are still in the process of
9 dealing with that issue and, it may be that
10 this has to go to a Court. We, at this
11 point, don't know whether or not that is
12 going to be required. But, just for the
13 record, I can assure you that there are
14 many categories of documents that we have
15 been explicitly told and, to give you an
16 example, we have screenshots of folders
17 and, we have been told by counsel that we
18 are not allowed to access, nor is Deloitte
19 allowed to access certain categories of
20 folders with respect to the computer.

21 So there's a number of areas where
22 we simply don't have those documents.

23 159. MR. BOUCHELEV: Okay. But the documents
24 that you do have, will you agree to provide
25 them?

1 MR. JULL: Well...

2 160. MR. BOUCHELEV: Because you have
3 provided some. You created a couple of
4 documents as part of this affidavit, so I'm
5 not quite sure why the others cannot be
6 provided?

7 MR. JULL: Well, I have some concerns
8 with respect to full provision. First off,
9 these documents involve people other than
10 your clients, they involve other
11 defendants, and they are provided pursuant
12 to a search warrant, and there are
13 disclosure obligations, as you know, in
14 criminal matters. Disclosure itself, is
15 subject to privilege.

16 I would have to think about this,
17 but I'm not sure that I'm actually even at
18 liberty to provide you documents, certainly
19 with respect to Lifestyles By Barons, or
20 Empire. I could attempt to find documents
21 that are only relevant to your clients. I
22 have to say, from my cursory review so far,
23 that's going to be very difficult, because
24 some of those documents are documents that
25 involve both your clients and Lifestyles By

1 Barons. It may not be within my
2 prerogative, frankly, to provide those
3 documents to you if they involve other
4 parties, but...

5 161. MR. BOUCHELEV: Well, just...

6 MR. JULI: I am certainly prepared, as
7 I say, to provide to you documents. Now...

8 162. MR. BOUCHELEV: Sorry, can I just
9 interject for a second? I just want to be
10 clear. I am not asking you for disclosure
11 in the provincial offences case that your
12 client looks like it's building against my
13 clients. I'm asking, in the context of
14 this application, for documents that may
15 very well be relevant to this civil
16 application. So, you know, the fact that
17 someone else is asserting privilege, I
18 mean, that has nothing to do with this
19 application.

20 Now, you know, there is the deemed
21 undertaking rule that will, of course
22 apply. And if there is some concerns
23 about the document you can ask for it, you
24 know, we can talk about a sealing order.
25 You know, we don't have to do it on the

1 record, we can talk about it after, but I
2 just want to see the documents that you
3 seized in the execution of the search
4 warrants because you have included some of
5 them. You haven't included all of them,
6 and I want to see those documents because
7 they may be relevant to the civil
8 applications.

9 So what I would suggest, if you want
10 to take that under advisement, we can
11 discuss it later off the record if you
12 would like?

13 MR. JULL: Well, I guess I have two
14 issues. I am prepared to provide you
15 copies of the documents that I have where
16 no privilege is asserted and where your
17 clients are involved. If there are
18 documents where your clients are not
19 involved, obviously, that's a different
20 issue. But I am prepared to provide you
21 documents that I have seen, that I have,
22 that are not privileged and that relate to
23 your clients. The...

U/T

24 163. MR. BOUCHELEV: Well, can I...

25 MR. JULL: Just so I can finish my

1 comments. There may be, because there is
2 some volume here, there's maybe some time
3 that it takes us to put together the full
4 package. And let me be very clear, your
5 clients will be receiving that full package
6 as part of the disclosure package in the
7 regulatory proceedings. But I will do my
8 best to provide you as many documents that
9 I have that are relevant to your clients,
10 that are not privileged.

11 164. MR. BOUCHELEV: When you say "relevant",
12 I mean, just because a document may not
13 contain my client's name and, it could be a
14 document, like, communication, for example,
15 that doesn't involve my client, doesn't
16 mean that it's not relevant to the civil
17 applications. I mean, if a document is an
18 e-mail on which my client is copied, then I
19 am not particularly interested in those e-
20 mails because my clients would already have
21 them to begin with. I am interested in
22 documents that were seized in connection
23 with the search warrant, because they may
24 be relevant to this application. And I'm
25 asking in respect of Mr. Vozikas and also

1 in respect of Lifestyles.

2 MR. JULL: I just don't think those are
3 documents that I am allowed to disclose to
4 you. For example, I don't think I'm at
5 liberty...

6 165. MR. BOUCHELEV: Why? I mean...

7 MR. JULL: I don't think I am at
8 liberty...well, I will have to take that
9 under advisement. I will have to look at
10 the law on this, because I don't think I am
11 at liberty. You could seek an order from
12 the Court under the Wagg motion, but I
13 believe that I am not at liberty to
14 disclose to you a third party...

15 166. MR. BOUCHELEV: But, you already have.

16 MR. JULL: ...evidence that I have
17 obtained in a search warrant from another
18 party that is not before the Court in these
19 proceedings. So Empire and Vozikas, for
20 example, they are not parties to these
21 proceedings, nor is Barons. And as such, I
22 will take it under advisement, but my
23 understanding of the law, pursuant to the
24 Wagg motion...set out in Wagg, is that I am
25 actually not at liberty to provide this.

1 Now, if you want to bring a Wagg
2 motion to seek production of what I have
3 from those parties, that would be the
4 appropriate thing for you to do. I am
5 prepared to provide to you documents that I
6 have that are pertaining to your clients
7 specifically, because that is relative to
8 your clients, and they are going to be
9 getting those documents, in any event,
10 pursuant to the disclosure process. But I
11 can't provide you documents that are not
12 relevant to your clients, that are relevant
13 to third parties, unless you bring a Wagg
14 motion.

U/A

15 167. MR. BOUCHELEV: When you say not
16 relevant to my clients, they are relevant
17 to my clients because they are relevant to
18 the application. Just because they don't
19 include my clients, doesn't mean that they
20 are not relevant. And you have already
21 disclosed a whole bunch of different
22 documents from Empire and from Lifestyles
23 that you obtained in the course of the
24 search warrant. You have attached a number
25 of these documents as exhibits to various

1 affidavits.

2 And my view is you can't pick and
3 choose and say, "You know what, we will
4 disclose some of them, we won't disclose
5 others". So the same concern about the
6 Wagg motion that you are expressing now,
7 presumably you had before and you have
8 decided to disclose a number of
9 documents...

10 MR. JULL: No, that's not correct. The
11 documents that I have disclosed...

12 168. MR. BOUCHELEV: E-mails between
13 Lifestyles and Empire, for example, you
14 disclosed...

15 MR. JULL: No. Let me finish. First
16 off, we have very few documents, if any,
17 from Empire. Secondly, we don't have e-
18 mails to or from your clients, because
19 privilege has been asserted over them. So
20 I want to be very clear about what we don't
21 have at this point. Thirdly, what I have
22 disclosed, and I was very careful about
23 this and we filed them as part of the
24 affidavits, were documents that
25 specifically referred to your client.

1 Let me say this again. What I am
2 objecting to is if, and I don't know, I
3 will have to go back and look at, but if
4 there are documents in the search warrant
5 that are only relevant, for example, to
6 Lifestyles By Barons and they don't have
7 any reference to your file, whatever those
8 documents may be, then those documents
9 would not be producible because they don't
10 refer to your client and they would have,
11 arguably, no relevance to the application
12 because they don't involve your client.

13 169. MR. BOUCHELEV: Can I just clarify?

14 MR. JULL: Let me just give you an
15 example.

16 170. MR. BOUCHELEV: Again, just...

17 MR. JULL: I will give you a simple
18 example.

19 171. MR. BOUCHELEV: Give me one, just...

20 MR. JULL: Suppose...if you don't want
21 to let me finish, that's fine, cut me off.

22 172. MR. BOUCHELEV: No, no, no. I'm not
23 arguing with you, I am just trying to
24 understand what you are telling me, okay?
25 So, I think what you are saying is that you

1 obtained some documents from Lifestyles
2 that have nothing to do with 835 Spring
3 Gardens, you are not going to produce, and
4 that's fine, I don't care about, you know,
5 documents you have from Lifestyles that are
6 unrelated to this project. All I am
7 looking for is documents that relate to 835
8 Spring Gardens.

9 MR. JULL: Right. Thank you for that.
10 Right. So to the extent that these
11 documents pertain to 835 Spring Gardens, I
12 am prepared to produce those.

U/T

13 173. MR. BOUCHELEV: Okay. Good. Then I
14 have that undertaking. Thank you.

15 MR. JULL: The only other caveat that I
16 would make, is that this is a large number
17 of documents, so this isn't going to happen
18 overnight, this will take a little bit of
19 time, but we will work on it as
20 expeditiously as we can.

21 174. MR. BOUCHELEV: Okay, thanks, and I
22 appreciate that.

23

24 BY MR. BOUCHELEV:

25 175. Q. Ms. Connolly, thank you for your

1 patience. We will now go back to your cross-
2 examination. If you can go to paragraph 19 of your
3 affidavit, please.

4 A. Okay.

5 176. Q. Now, at paragraph 19 you say that:
6 "...Vozikas, Rudyk and Young did not
7 disclose the intention to demolish the
8 existing house, a scope of work which had
9 been formalized in the landowner's
10 agreement with Lifestyles in March 2018..."

11 Now, would it be fair to say that you never asked
12 either my clients, or Mr. Vozikas what kind of
13 demolition they were going to undertake?

14 A. I did not ask that question
15 specifically, but if we could refer back to the
16 application form that was submitted and signed by
17 the landowners and their agent, it does say,
18 "proposed addition". Addition would be to an
19 existing dwelling. You can't have an addition to
20 something that doesn't exist, and that was our
21 concern at the end of the day. But I didn't ask for
22 demolition information, because I was of the
23 understanding that it was to remain as is, aside
24 from what would be needed for that small area that
25 was highlighted on the drawing given to me.

1 177. Q. Okay. But there was, obviously,
2 going to be some demolition in connection with the
3 existing garage, right?

4 A. Right.

5 178. Q. Okay. Now, if you can go to
6 paragraph 25 of your affidavit, please.

7 A. M'hmm.

8 179. Q. Okay. At paragraph 25, you say
9 that:

10 "...HRCA was kept in the dark about the
11 true intentions of the applicants when they
12 applied for a permit..."

13 A. M'hmm.

14 180. Q. But you would agree with me that
15 Conservation Halton was not kept in the dark,
16 because you had information that was forwarded to
17 you by the City of Burlington in connection with the
18 zoning application by my clients, right?

19 A. The minor variance application?

20 181. Q. Well, I will take you...this is...do
21 you have a copy of Mr. Priddle's affidavit?

22 A. I do not have that in front of me,
23 no.

24 182. Q. Okay. Did you get a chance to
25 review it before this cross-examination?

1 A. I am aware...yes. So I am aware
2 that the property was subject to minor variance
3 applications through the City. Myself, as a
4 regulations officer, I'm not the staff who reviews
5 the comments on those minor variance applications,
6 that is our planning analyst.

7 183. Q. Okay. Now, I'm just going to take
8 you to Mr. Priddle's affidavit. Bear with me for a
9 second. Okay. I will start with paragraph 73:

10 "...On or about November 12th, 2018,
11 Conservation Halton received the minor
12 variance circulation from the City of
13 Burlington, for which the owners of 835
14 Spring Gardens Road were requesting
15 variances associated with the front yard
16 setback..."

17 So that is the minor variance circulation that you
18 were referring to, right?

19 A. Yes.

20 184. Q. Okay. And these are always provided
21 anytime someone applies for a minor variance, a copy
22 of the application would be sent to Conservation
23 Halton, right?

24 A. If it is a regulated property, we do
25 receive the circulation of the application, yes.

1 185. Q. Right. Now, at paragraph 78 of Mr.
2 Priddle's affidavit he states:

3 "...Included in that minor variance
4 submission by the City of Burlington, was
5 drawings A02 to A11 prepared by Empire
6 Design Company, last revised, September
7 9th, 2018, received by CH November 12th,
8 2018..."

9 Then the drawings are attached as Exhibit U. Now,
10 I'm just going to take you to Exhibit U. Have you
11 seen these drawings before?

12 A. I have seen them before. I can't
13 comment on if I saw them at the time.

14 186. Q. And when you say at the time, you
15 mean at the time when the application was made?

16 A. Right. I'm not involved in the
17 review of the minor variance application. Like I
18 said, that is the role with the planning analyst.

19 187. Q. Okay. You don't remember if you
20 looked at them, or you are just telling me that you
21 didn't look at them because that's not your
22 function?

23 A. I wouldn't have reviewed them,
24 because the minor variance application was not my
25 file.

1 188. Q. Okay. The person who was reviewing
2 the minor variance application, I believe her first
3 name was Ola, right?

4 A. Correct.

5 189. Q. Did you have any discussions with
6 her about this file?

7 A. I don't recall. What I can say in a
8 review of minor variance applications...so I will
9 kind of take a step back for a moment. Before I was
10 a regulations officer with Conservation Halton, I
11 was an environmental planning analyst, so Ola's
12 previous role. When we receive minor variance
13 applications from the City, the cover sheet of that
14 application does speak to specific variances that
15 are being requested for exemption, if you will, or
16 for modification of whatever the zoning bylaw is.
17 So I just caught it briefly when you scrolling
18 through Charles' affidavit, but it did speak to
19 front yard setbacks being the variance that was
20 being requested at the time, so that's where, for
21 the most part, the review of an application like
22 this would have been focused, is on the variances
23 being requested.

24 190. Q. Do you recall having any discussions
25 with Ola about this minor variance application?

1 A. I do not recall.

2 191. Q. Okay. So it's possible that you had
3 some, but you don't remember, right?

4 A. It is possible. Again, through the
5 review of an application like this, we would pull up
6 something like previous permits issued on the
7 property. So the permit that I have issued would be
8 in our records and would be available and you can
9 see the approved works and the drawing that was
10 stamped approved at the time. Again, this minor
11 variance, just from the dates that you showed
12 previously, these drawings were dated after the
13 issuance of our permit.

14 192. Q. Right, but there may have been an
15 earlier version of these drawings, as well, right?

16 A. Potentially.

17 193. Q. Okay. Now, I am going to go back to
18 your affidavit. I'm going to ask you to look at
19 paragraph 26.

20 A. Okay.

21 194. Q. So at paragraph 26, you say that:
22 "...On March 14, 2019 at 10:00 a.m., myself
23 and a member of HRCA technical staff were
24 in the area of the subject property and
25 noticed construction..."

1 Then you say that:

2 "...From the public road allowance, I
3 observed the existing dwelling of 835
4 Spring Gardens, within the City of
5 Burlington, had been demolished, with
6 construction of a new structure being
7 initiated..."

8 When you say that you observed the existing dwelling
9 being demolished, I would suggest to you that you
10 couldn't see whether the foundation was demolished,
11 correct?

12 A. The paragraph says "had been
13 demolished", so I didn't see active demolition works
14 happening.

15 195. Q. Okay.

16 A. It was gone, so the majority of the
17 framing of the house was gone. So if we want to
18 bring up the photos in my affidavit in the exhibit
19 that I had taken the following day, I think that
20 would be helpful to show what...

21 196. Q. Right. And I...

22 A. ...I saw there.

23 197. Q. ...have seen those photos, but my
24 question is, from observing the property on that
25 day, you couldn't tell whether the foundation had

1 been demolished, correct?

2 A. I could not see that, no, but I
3 could tell extensive removals had taken place.
4 Again, if you want to bring up those photos, I think
5 it may be helpful.

6 198. Q. Okay. Which exhibit do you want me
7 to look at?

8 A. It would be my site photos from the
9 following day, so March 15th, I believe. I'm not
10 positive on the exact exhibit.

11 MR. JULL: I think it's Exhibit N,
12 according to your affidavit.

13 THE DEPONENT: Thank you.

14

15 BY MR. BOUCHELEV:

16 199. Q. Okay. Exhibit N, I will just share
17 the screen with you. Okay. So these are the
18 photographs that you are referring to?

19 A. Yes.

20 200. Q. Okay. So there's one, two, three,
21 four, five, six, seven, eight, nine photographs.
22 You will agree with me that none of those
23 photographs show whether or not the old foundation
24 had been removed, correct?

25 A. They do not, no.

1 201. Q. Okay. And just by visual
2 observation, you could not have possibly known
3 whether or not the existing foundation remained in
4 place, or was replaced with a new foundation,
5 correct?

6 A. Not from the observations that I
7 made that day, no.

8 202. Q. Okay. And I would suggest to you
9 that Conservation Halton does not have any
10 information indicating that the existing foundation
11 had been removed, correct?

12 A. I believe we do have information
13 that there was portions of the foundation that were
14 replaced or removed.

15 203. Q. What are you referring to? Can you
16 help me with that?

17 A. Sure. I don't believe it's in my
18 affidavit, I believe it's either in Charles' or
19 Kellie's, but there is a report that was provided to
20 our office that speaks to the crumbling of portions
21 of the home.

22 204. Q. You're talking about...

23 A. And I believe...

24 205. Q. Yes. No, go ahead.

25 A. I was just going to say, I believe

1 in the affidavit of the technical expert, it does
2 also speak to foundation works that had happened.

3 206. Q. You're talking about the two
4 engineering reports, right?

5 A. Yes. I believe in the affidavit of
6 Billy Singh, it speaks to foundation works that had
7 happened.

8 207. Q. Right. In his affidavit, Billy
9 Singh said that there had been some blocks that have
10 been added to the existing foundation, correct?

11 A. Right.

12 208. Q. But there is no evidence that the
13 existing foundation was removed, correct?

14 A. Not to my knowledge, no.

15 209. MR. BOUCHELEV: Okay. I am just going
16 to go back to the survey that we were
17 looking at before, which I think is at
18 Exhibit J. Yes. Actually, I think now
19 before we go there, perhaps, now would be a
20 good time to take a morning break.

21

22 --- upon recessing at 11:37 a.m.

23 --- A BRIEF RECESS

24 --- upon resuming at 11:47 a.m.

25

1 CASSANDRA NICOLE CONNOLLY, resumed

2 CONTINUED CROSS-EXAMINATION BY MR. BOUCHELEV:

3 210. Q. Ms. Connolly, just before the
4 morning break, I was looking at paragraph 26 of your
5 affidavit. I am just going to go back there. We
6 also looked at some photographs that you had taken
7 on the day when you drove by the property. Now...

8 A. The following day.

9 211. Q. Right, the following day. Now, if
10 you look at paragraph 27, you say that:

11 "...On March 14, 2019, I returned to the
12 office and reviewed the permit. And from
13 the review, I confirmed that the full
14 demolition of the dwelling at the subject
15 property was not approved and that
16 permission was not obtained to authorize
17 the full demolition, or construction..."

18 Now, would it be fair to say that from the
19 observations that you have made driving by, you
20 couldn't tell whether the building was intentionally
21 demolished, or had collapsed, right?

22 A. I could not tell at that point what
23 had happened, but what I did observe is that the
24 majority of the structure had been removed and was
25 being reconstructed.

1 212. Q. When you say it was removed, what I
2 think you mean is that the old structure wasn't
3 there, but you couldn't tell if it had collapsed as
4 a result of, you know, some events that took place
5 or whether it was intentionally demolished by the
6 builder, correct?

7 A. I could not confirm how it got to
8 that point. That is correct.

9 213. Q. Right. Okay. Now, I am going to
10 take you to paragraph 37 of your affidavit. On
11 March 26th, 2019, you issued a notice of violation,
12 correct?

13 A. Correct.

14 214. Q. What is a notice of violation?

15 A. So it is formal correspondence from
16 myself to the landowners, to bring awareness to the
17 works that are ongoing on-site. In this case, that
18 were beyond the scope of works that were approved
19 under their permit. And it also outlines the steps,
20 or the options available to the landlord to bring
21 the site back into compliance with us.

22 215. Q. Okay. A notice of violation is not
23 the same thing as a revocation of a permit, correct?

24 A. It is not the same, no.

25 216. Q. So at that point, the permit was not

1 yet revoked, correct?

2 A. The permit itself was not revoked,
3 no, but the landowner at that time was aware that
4 the works on-site did not have approval for the
5 correct scope.

6 217. Q. Right. And the revocation of the
7 permit happened several months later in May of 2019,
8 right?

9 A. I believe Kellie and Barb Veale
10 speak to that in their affidavits, about the
11 voiding, or the permit being void, rather than
12 revoked, due to the circumstances...

13 218. Q. Right.

14 A. ...that happened.

15 219. Q. I said May, I think the date on that
16 letter is August the 22nd.

17 A. Right. The letter issued by Kellie.

18 220. Q. Right. Okay. We will look at that
19 letter, but in your letter, so I am referring to the
20 March 26th, 2019 letter that contained the notice of
21 violation...

22 A. Sure. Could you bring that up, if
23 you can?

24 221. Q. Yes, sure. So this is Exhibit S to
25 your affidavit. If you look at the last page of the

1 letter, there is a section called "Compliance
2 Agreement Option", right?

3 A. Right.

4 222. Q. You say here that:

5 "...CH hopes that there is a willingness to
6 work with us and requests a formal
7 compliance agreement application be made to
8 confirm such a willingness..."

9 So effectively by signing the compliance agreement
10 application, that would be an indication on the part
11 of the homeowner that they are willing to work with
12 Conservation Halton, right?

13 A. Right. To bring the site back into
14 compliance for the correct scope of works.

15 223. Q. Right. And, conversely, if the
16 homeowner refuses to sign the compliance agreement
17 application, that would be an indication that they
18 are not willing to work with Conservation Halton?

19 A. That is correct. I mean, we offer
20 that as an alternative to going through the formal
21 enforcement, or the legal enforcement route. It is
22 a voluntary application process and it is what we
23 offer to landowners when we think there's a clear
24 path forward that doesn't necessarily need to end
25 with charges being laid.

1 224. Q. Okay. So, basically, there are two
2 options, right, either you sign the compliance
3 agreement application and go through the compliance
4 process, or if you do not, then you go through the
5 formal enforcement process which is charges under
6 the Provincial Offences Act?

7 A. It's not a clear divide there. The
8 compliance agreement application, and submitting
9 such an application to us, doesn't mean that you
10 won't be charged. It is just entered into that we
11 can work and make steps to move forward. It's not a
12 one or the other, it's not a, "Sign this application
13 and you won't be charged" type of promise.

14 225. Q. Okay. That's fair enough. So,
15 basically, you could sign this compliance agreement
16 and you could still be charged if Conservation
17 Halton decides that it's appropriate to do so?

18 A. Right. So I do have a statute of
19 limitations that we're dealing with here, so while
20 the compliance agreement is an option to work with
21 us, there is still kind of that time stamp on it
22 where decisions do need to be made if we are getting
23 closer towards that limitation period.

24 226. Q. Right.

25 A. So in the case of this application,

1 the compliance agreement was offered to the
2 landowners in this letter, and this was the first
3 time it was offered to them, and I believe it was
4 raised a couple more times after that. But it was
5 our first effort in making those strides into
6 bringing the property into compliance within that
7 time frame on that limitation.

8 227. Q. Okay. Let's look at the compliance
9 agreement application itself. There is a section
10 here that says:

11 "...To be filled out by Conservation Halton
12 staff..."

13 Do you see that?

14 A. Yes.

15 228. Q. Then there's a subsection called,
16 "Description of Compliance Work"...

17 A. Right.

18 229. Q. ...and it's blank, correct?

19 A. Right. Yes, that's correct.

20 230. Q. Right. So what the homeowner would
21 have to do is, they would have to sign this blank
22 form and then the description of compliance work
23 would later be filled out by Conservation Halton
24 staff, right?

25 A. So that section is to be filled out

1 by Conservation Halton staff. A lot of the times
2 for applications like this there's kind of two
3 different approaches to it, or two different
4 options, depending upon what's happened at the site.
5 In some cases, we are already aware of what that
6 compliance or restoration work entails, so the
7 landowner will get that section filled out, and that
8 is kind of what we and the proponent come to an
9 agreement on.

10 In this case, and kind of as spelled out in
11 the letter itself, I'm not sure what those
12 compliance works mean, because we are asking for
13 additional technical information that is ultimately
14 going to guide what it takes to bring the site into
15 compliance here. So while yes, the landowners did
16 receive a blank application form, through an
17 application like this, we work with the landowners
18 to figure out what it is that's required to bring
19 the site into compliance and what goes into that
20 box, if you will.

21 231. Q. Right. Just going back to your
22 letter.

23 A. M'hmm.

24 232. Q. So one of the things that you're
25 asking for is a complete and signed compliance

1 agreement application form attached...

2 A. Right.

3 233. Q. ...right? Then going back to my
4 earlier question, the homeowners would have signed
5 this blank form and, then through the process, to be
6 completed later, there would be a description of
7 compliance work that would be filled in by
8 Conservation Halton staff, right?

9 A. Right. And that's what the
10 compliance agreement itself oath would spell out.
11 What steps does the owner actually need to take, or
12 what drawings need to be fulfilled in order to bring
13 the site back into compliance through that
14 agreement.

15 234. Q. Right. If the homeowner does not
16 comply with the steps that are described in the
17 section called, "Description of Compliance Work"
18 then he would effectively be in violation of the
19 compliance agreement, right?

20 A. He wouldn't necessarily be in
21 violation of the compliance agreement, it's just the
22 agreement wouldn't be fulfilled and that's when we
23 start to get down to where that statute of
24 limitations falls. If I'm within that time period
25 and the site still hasn't been brought into

1 compliance, then I do have to make considerations
2 for, are charges going to be laid here?

3 What I will say, is we really do kind of
4 work towards compliance and restoration through
5 agreements like this when there are violation files
6 that have happened. And whether knowingly or
7 unknowingly, most of the time, through these
8 applications, we do come to an agreement with the
9 landowner of what needs to occur, and these
10 agreements are issued and the landowner does receive
11 kind of a formal notice that the violation is closed
12 and we will take no further action.

13 235. Q. Okay. But if the remediation or,
14 you know, compliance work that is set out in the
15 agreement has not been completed then, ultimately,
16 what could happen is the homeowner would still be
17 charged under the Provincial Offences Act, right?

18 A. Correct.

19 236. Q. Then the compliance agreement could
20 be introduced as evidence in the provincial offences
21 proceeding, correct?

22 A. It would show that we were trying to
23 work with the landowner. There was that initial
24 willingness to do so, and somewhere along the lines
25 there was a disconnect and the property was never

1 brought into compliance, or the works never happened
2 that needed to bring the property into compliance.

3 237. Q. Right. But the agreement itself
4 could be introduced as evidence in that provincial
5 offences case, right?

6 A. It would depend on what type of
7 information was submitted as part of that compliance
8 application. Like I said before, when we do offer
9 these voluntary compliance restoration agreement
10 applications, they do, the majority of the time, and
11 in my time working at Conservation Halton as a
12 regulations officer, I have never been in the
13 situation where compliance hasn't been fulfilled as
14 part of one of these agreements, so it's hard for me
15 to say what could or could not happen, but it
16 could...charges could be laid as a result, even if
17 one of these are signed.

18 238. Q. Okay. Right. I'm looking at the
19 terms and conditions of the compliance agreement,
20 and there is Section 2 which says:

21 "...The intent of the compliance agreement
22 is to provide the owner/agent with an
23 opportunity to work with Conservation
24 Halton staff to bring the property into
25 compliance with the Conservation

1 Authorities Act under regulation 162.06
2 after un authorized works have been started
3 and/or completed..."

4 So would it be fair to say that by signing this
5 compliance agreement, the homeowner would be
6 acknowledging that they have violated the terms of
7 the Conservation Authorities Act and the regulation,
8 right?

9 A. Right. And that they are willing to
10 work with us to take the necessary steps to bring it
11 into compliance. But, yes, it does require
12 acknowledgement that what happened on the site went
13 above and beyond the approvals that were issued.

14 239. Q. Okay. Now, I'm going to take you to
15 Exhibit T, which is the e-mail to which your letter
16 was attached. And here you say:

17 "...With this letter, CH has provided the
18 compliance agreement option and the list of
19 requirements to be submitted as part of
20 that agreement application for staff review
21 and consideration..."

22 What are you referring to by list of requirements?
23 What does that mean?

24 A. So in the violation notice it listed
25 out what would be required as part of that

1 application, so it would highlight that the
2 geotechnical assessment was one of them. There was
3 a list of other items that needed to be submitted as
4 part of that compliance agreement application
5 package.

6 240. Q. Okay. So would it be fair to say
7 that your e-mail and the letter attached to it, I am
8 talking about the March 27th e-mail and the March
9 26th letter, does not provide any options other than
10 the compliance agreement?

11 A. So that is the option that we
12 provide to staff when works have already been
13 initiated or started on-site, or if it's above and
14 beyond approvals that are on-site. So that is the
15 only option here provided. The other option being,
16 again, the laying of charges. So this is...

17 241. Q. Okay.

18 A. ...the only option I have available.
19 And I will say have available, being as soon as
20 works have started that go above and beyond
21 approvals, or simply don't have the proper approvals
22 in place. I am unable to issue a permit application
23 for that, and that's why the compliance agreement
24 option is what we offer to landowners as kind of the
25 next step.

1 242. Q. Okay. I think you misspoke.
2 Before, you said that the compliance agreement
3 option is offered to staff. I think you meant
4 offered to landowners, right?

5 A. Yes, sorry, by staff to landowners.
6 Yes.

7 243. Q. Right. Okay. No problem. I just
8 wanted the record to be clear on that point. Okay.
9 Now, I am going to go back to Exhibit S, which is
10 your letter. Looking at the last page, there is one
11 of the six requirements under the compliance
12 agreement option. Number 3 is:

13 "...A site plan drawing showing all
14 existing, remaining and removed/demolished
15 and proposed development footprints..."

16 A. M'hmm.

17 244. Q. Now, what is a footprint?

18 A. So essentially, what we are asking
19 for there, what I'm asking for there, I am just
20 going off of what I saw from the road on March 14th
21 and 15th, right, and the photos that I took that
22 day. What I was trying to get at here, I had no
23 idea what was constructed on that site. All I know
24 is, from what I saw, it was above what I had
25 permitted, and I was looking for information to see

1 what exactly had happened here, and what was
2 existing and what's currently there now. That's
3 what I was trying to show...or trying to ask for in
4 asking for that proposed development footprint. I
5 needed an understanding of what was happening on
6 that site.

7 245. Q. Right. I am going to take you to
8 the survey in Exhibit J again. By footprint you
9 mean the footprint of the structure, correct?

10 A. Correct.

11 246. Q. So if we look at the survey, the
12 footprint that was approved is the existing
13 dwelling, plus the bump-out of the garage,
14 cantilevered balcony of the covered front porch,
15 right?

16 A. Right.

17 247. Q. Does Conservation Halton have any
18 information to suggest that the building that is
19 there now is outside of this footprint?

20 A. I believe that there was information
21 provided in one of the engineering reports and I
22 believe Billy Singh might speak to it in his
23 affidavit, about the footprint of the structure. At
24 the time that the letter went out, I just knew that
25 development was happening on-site and needed a

1 better idea of it holistically what was going on
2 there, so that's the type of drawing that I had
3 asked for.

4 248. Q. No, no, and I appreciate that. You
5 know, I understand what you were asking for. I am
6 just asking you now, as a representative of
7 Conservation Halton, does Conservation Halton have
8 any information that the structure that is there
9 right now today, was built outside of this
10 footprint?

11 A. We haven't received an application
12 in showing the current structure that's there now,
13 or...

14 249. Q. Yes.

15 A. ...any geotechnical information.

16 250. Q. Right. And independently, you
17 haven't taken any measurements, correct?

18 A. Measurements of the footprint of
19 what's there now?

20 251. Q. Yes.

21 A. I did not, no.

22 252. Q. Okay. So would it be fair to say
23 that right now, Conservation Halton does not know
24 one way or the other whether it's within the
25 existing footprint?

1 A. Correct.

2 253. Q. Okay. Now, I am going to take you
3 to paragraph 39 of your affidavit.

4 A. Okay.

5 254. Q. Now, here you are discussing a
6 meeting that took place on April 3rd, 2019, right?

7 A. Yes.

8 255. Q. And this is a meeting that you
9 attended, as well as Kellie McCormack, Charles
10 Priddle and Mr. Vozikas and Mr. Baron, as well. You
11 say in your affidavit that:

12 "...HRCA were not informed of the landowner
13 absence until the arrival of Vozikas and
14 Baron..."

15 Did you invite the homeowners to attend this
16 meeting?

17 A. They were invited to that meeting,
18 yes.

19 256. Q. By you?

20 A. Not by myself, it was either Charles
21 or Kellie. I'm not sure which one organized that
22 meeting.

23 257. Q. Okay. How do you know that they
24 were invited?

25 A. I was of the understanding leading

1 up to that meeting...until the moment that Vozikas
2 and Baron had arrived and informed us they weren't
3 coming, I was of the understanding that the
4 landowners were to be in attendance at the meeting,
5 and that was the main point of setting up this
6 meeting, was to have that face-to-face conversation
7 with the landowner and talk about next steps.

8 258. Q. Okay. But you don't know whether
9 someone from Conservation Halton actually reached
10 out to the homeowners, it was just your
11 understanding that they would be there, correct?

12 A. Yes. I'm not the one who sent the
13 invitation e-mail, so...but, again, I was of the
14 understanding that it was the landowners that were
15 supposed to be in attendance, as well.

16 259. Q. Okay. And so, the landowners were
17 not in attendance, but the meeting took place in
18 their absence, right?

19 A. Correct.

20 260. Q. Okay. Do you recall how long the
21 meeting took, approximately?

22 A. I don't recall how long the meeting
23 was, no.

24 261. Q. Do you recall if it was, like, a
25 very short meeting, like, five, ten minutes, or a

1 very long meeting, like, two hours, or something in
2 between?

3 A. Probably, something in between. It
4 definitely wasn't as short as five to ten minutes.
5 And in my e-mail the following day, I do kind of
6 summarize everything that we had talked about, and
7 there was a lot of discussion that happened. It
8 wasn't a short meeting by any means.

9 262. Q. So if I said that it took about an
10 hour, would that be fair?

11 A. It would be fair. That's between
12 the two time frames that you provided here.

13 263. Q. Right. Okay. So there is an e-mail
14 that you sent afterwards which provides a brief
15 summary of the some of the things that were
16 discussed at that meeting. Now, would you agree
17 with me that at some point that meeting became very
18 contentious? And by that, I mean that there were
19 arguments, voices were raised, and so on?

20 A. I don't remember specific details
21 about voices being raised. I mean, at the end of
22 the day, it is a violation file and we are coming at
23 it as a regulatory authority. And as an agent and
24 as a contractor who are involved in that violation,
25 there are going to be different feelings that are

1 happening. We are trying to explain our perspective
2 and their perspective, and trying to come to an
3 agreement there. So I wouldn't say that it went
4 above and beyond any type of arguments, or yelling
5 matches. It was a discussion on our end of what
6 needed to happen, and our perspective of what was
7 happening here and, then listening to theirs, as
8 well.

9 264. Q. Okay. Do you recall Mr. Priddle
10 telling Mr. Baron that he could have him charged
11 with a provincial offence?

12 A. We would have mentioned that that
13 was an option as a result of the violation. It is a
14 truthful statement.

15 265. Q. And that it could result in Mr.
16 Baron's incarceration?

17 A. I don't recall that being said. I
18 can't speak to the words of Charles Priddle, but I
19 don't recall that being said.

20 266. Q. Okay. So you don't recall, meaning
21 it may have been said, or it may not have been said,
22 you just don't remember, right?

23 A. They weren't my words.

24 267. Q. No, I'm not suggesting they were
25 your words, I'm just seeing if you can remember what

1 Mr. Priddle said.

2 A. I don't recall a statement like that
3 being made during that meeting.

4 268. Q. Okay. At the end of that meeting,
5 was there any kind of an understanding reached, was
6 there any agreement that there would be a subsequent
7 meeting? How did you end that meeting?

8 A. Well, we ended the meeting on the
9 premise that we would put together a summary e-mail,
10 especially because the landowners didn't attend the
11 meeting. We wanted to keep them involved and, kind
12 of, give them information of what was discussed
13 there. So the summary e-mail followed April 4th for
14 me and that was really the action item on our end.

15 The other action item was Charles following
16 up with the previous engineering information. So
17 the landowners did undertake a certain level of
18 engineering work back in, I believe, 2010 or 2011,
19 and Charles speaks to this in his affidavit, but
20 there was some technical work that was done then.
21 And one of the other action items from that meeting
22 was Charles providing that to Vozikas, Baron and the
23 landowners, so that they could kind of get the ball
24 rolling on getting that technical information that
25 we had requested together.

1 269. Q. Okay. Then if you look at Exhibit U
2 of your affidavit, and I will put it on the screen
3 for you, this is the e-mail that you have sent the
4 following day, right?

5 A. M'hmm.

6 270. Q. After sending this e-mail, did you
7 take any other steps to follow up with either the
8 homeowners or their agents about the progress of
9 this matter?

10 A. Immediately after this e-mail, no.
11 So this e-mail was provided to them, along with
12 follow-up information from Charles. And it would be
13 my understanding they would take that back and start
14 to do that technical work.

15 271. Q. Okay. Then would it be fair to say
16 that you didn't have any contact with the homeowners
17 or their agents until May of that year when you
18 found out that construction had been resumed?

19 A. That is correct.

20 272. Q. Okay. Now, I'm just going to look
21 at the paragraph that I have highlighted here on the
22 screen:

23 "...We understand the intent of the works
24 on-site is ultimately to rebuild within the
25 footprint of the existing dwelling, in

1 addition to the minor addition originally
2 proposed through the Conservation Halton
3 permit and building permit. We do consider
4 the works to be a deconstruction of a
5 dwelling. Given that the scale of scope of
6 works has changed, a geotechnical
7 assessment is required to ensure the long-
8 term safety of the home with respect to the
9 erosion hazard associated with the valley.
10 That geotechnical information may also make
11 recommendations related to the construction
12 of the dwelling, i.e., steps that can
13 improve the long-term safety of the
14 home..."

15 I just want to unpack that a little bit. Would it
16 be fair to say that if the homeowners did nothing
17 with their home, if they just continued living there
18 without undertaking this renovation project, they
19 wouldn't have to provide the geotechnical
20 assessment, they wouldn't have to, you know, show
21 long-term safety of the home, they could just
22 continue living there, correct?

23 A. With no development being proposed
24 or undertaken?

25 273. Q. That's right.

1 A. Correct.

2 274. Q. Then if they wanted to stay within
3 the same footprint, but they wanted to replace the
4 walls and the roof of their home, then they would
5 have to provide the geotechnical report, correct?

6 A. Correct. So through the
7 reconstruction of the home, we ask for those
8 geotechnical reports. One, to assess the site in
9 its current conditions and, two, those reports do
10 make recommendations for increasing the safety of a
11 home through the reconstruction. So when the home
12 is there and existing, we don't have these
13 requirements until development is proposed and,
14 depending on the scale and scope of works and what's
15 reasonable to be undertaken through certain
16 development, we do take those recommendations from
17 the geotechnical information to be incorporated into
18 the new construction.

19 275. Q. Okay. So would it be fair to say
20 that if the homeowner wants to rebuild or do a major
21 renovation, they would have to make the home safer
22 than it was before the rebuild and the renovation,
23 right?

24 A. Correct.

25 276. Q. Now, a geotechnical assessment, in

1 your understanding, what is a geotechnical
2 assessment?

3 A. So the engineer would either go on-
4 site, or whatever they feel they need to do given a
5 site. They have certain criteria they have to
6 fulfill and I can't necessary speak to that, but
7 they do their assessment and they determine the
8 current state of the site and kind of confirm where
9 stable would be on-site for certain factors, or by
10 certain factors. Then they take those...that
11 information of current conditions, assess what's
12 going to be happening at the site here and they can
13 make recommendations accordingly to be incorporated
14 to best address the hazards that are present.

15 277. Q. Okay. And one of the purposes of a
16 geotechnical assessment is to show if there's a
17 stable slope, right?

18 A. Right.

19 278. Q. And there is a certain factor, what
20 is called, "factor of safety" that Conservation
21 Halton uses to determine if the slope is considered
22 to be stable, right?

23 A. Right. So, generally, it's
24 actually, I believe, dictated by the Ministry of
25 Natural Resources and Forestry in their hazard

1 guidelines, but they do speak to suitable or
2 appropriate factors of safety given certain types of
3 development. So for residential development, that
4 target is that 1.5.

5 279. Q. Okay. So 1.5...if there is a
6 proposed development, or a proposed reconstruction,
7 or renovation and the geotechnical report comes back
8 and says that it's less than 1.5, then it would not
9 be approved, correct?

10 A. So the geotechnical assessment could
11 come out and say that something doesn't meet that
12 1.5, but that's where those recommendations come
13 into play of what can be done here to bring it up to
14 that 1.5, or what can be done here to get it as
15 close as possible to that 1.5. So we always want to
16 make a situation improved, we definitely don't want
17 to make it worse, but there are steps that can be
18 taken and, that's really where that geotechnical
19 assessment comes into play of where we can go from
20 where we are now?

21 280. Q. Okay. You said that the
22 geotechnical assessment would show recommendations
23 how, you know, you get to 1.5, or as close to 1.5 as
24 possible. Now, is there a cut-off, like, is it 1.4,
25 1.3? What is the minimum factor of safety that

1 Conservation Halton would accept?

2 A. I can't speak to that, that would be
3 part of the technical staff determination and
4 reveal.

5 281. Q. Okay, but is there a policy that
6 says, you know, "We won't accept anything less than
7 1.3, 1.4, 1.2" or whatever the case may be?

8 A. No, that's not...it's not a specific
9 number in our policy. If we want to go back...and I
10 think it's written in that...in my violation notice.
11 I kind of put the policies in there. But it speaks
12 more to just assessing the risk. We don't look for
13 specific numbers. Obviously, the 1.5 is a guideline
14 for the residential development, but we really do
15 have to consider it on a case-by-case basis of
16 what's there now. Are we making it better, are we
17 making it worse, and what demonstrates best efforts
18 to address this hazard from a risk perspective?

19 282. Q. Okay. And so, would it be fair to
20 say that really it's the discretion of the technical
21 staff whether or not a particular development that
22 doesn't meet 1.5 would be approved?

23 A. Technical staff would be reviewing
24 the information submitted from the geotechnical
25 assessment and determining the level of risk there.

1 283. Q. Okay. And what level of risk would
2 be acceptable, correct?

3 A. Again, it's...yes, and what level of
4 risk, but, again, it's not necessarily a prescribed
5 number that we require people to hit necessarily.

6 284. Q. Okay.

7 A. It really depends on the site.

8 285. Q. So what happens if, for example, you
9 get a geotechnical assessment that says it's not
10 1.5, it's less than 1.5 and there is really nothing
11 that can be done to improve the on-site conditions?
12 That could result in the application simply being
13 dismissed, correct?

14 A. So an application can't necessarily
15 be dismissed. It either...if it meets policies and
16 staff can consider that it does meet those policies,
17 then we would issue whatever the applicable approval
18 is. If it's something that doesn't meet the word of
19 the policy, then the applicant has the option to
20 bring that to the board of directors. At the staff
21 level, we can only work with the board approved
22 policies. Anything beyond that scope, it does go to
23 the board.

24 286. Q. Right. And so, if it goes to the
25 board, that means that the staff are recommending

1 against the proposal, right?

2 A. Not necessarily. So an application
3 can be brought to the Board with either a
4 recommendation for approval, or recommendation for
5 denial, based on the merits of the information
6 submitted.

7 287. Q. Okay. And one of the things you
8 have mentioned is that an engineer doing the
9 geotechnical assessment could make certain
10 recommendations on how to improve safety, right?
11 And you would expect the homeowner to follow those
12 recommendations?

13 A. Yes. So those recommendations would
14 be carried over into the detailed design drawings
15 for whatever is being proposed there and, they would
16 be stamped and signed by the engineer saying that
17 they need the specifications, or they need the
18 recommendations from the supporting technical work.

19 288. Q. Now, some of these recommendations
20 could be extremely expensive, right? Like
21 engineering work could potentially be in the
22 hundreds of thousands?

23 A. I'm not sure of the cost of some of
24 these measures. They can range. I mean, in
25 geotechnical assessments, we have seen

1 recommendations as simple as modifying site grading
2 to the latter end, where it's more helical piles to
3 find out, or to make sure that you're in stable
4 soils. I can't speak to anything in between, I'm
5 not a geotechnical engineer, but we do sometimes see
6 a range of different mitigation measures that can be
7 implemented. And sometimes it's a combination of
8 one, two, or three of those.

9 289. Q. Okay. But in terms of potential
10 cost, like you mentioned helical piles and, again, I
11 am not an engineer, I'm not entirely familiar with
12 the process, but it sounds like it's something that
13 would cost the homeowner a lot of money to
14 implement?

15 A. I'm not sure of the cost of those
16 implementations. A geotechnical engineer might, a
17 contractor likely would, as well.

18 290. Q. Okay. So would it be fair to say
19 that when a recommendation is made by the engineer,
20 that Conservation Halton doesn't really look at the
21 cost. If it's...you know, it doesn't really matter
22 if it's \$1,000 or a million, if it's a
23 recommendation, then that's what the homeowner has
24 to implement?

25 A. We do look at what's reasonable and

1 what's feasible for a given site. And, again, a lot
2 of times when we get these geotechnical assessments,
3 it's not just one recommended implementation that's
4 the be all, end all. There is sometimes a range of
5 options here and we really do look to see what's
6 reasonable and which ones can be implemented
7 reasonably on a given site.

8 291. Q. Would you be able to tell me what
9 would be considered reasonable for this property?

10 A. I'm not able to do so because I
11 don't know what those recommendations are. We never
12 received the geotechnical information.

13 292. Q. If let's say the homeowner, you
14 know, goes with the compliance agreement option and
15 provides a geotechnical report and the geotechnical
16 report shows a certain factor of safety and makes
17 certain recommendations, ultimately, there is still
18 no guarantee that, you know, staff would recommend
19 that proposal, right? You could look at it and say,
20 "Well, it doesn't meet policy" or "It's not
21 appropriate for this site" and you could still
22 refuse to recommend?

23 A. So we would need to consider the
24 information that's given to us. Again, it's hard to
25 discuss options when we don't have that supporting

1 technical information in front of us. I believe,
2 and Kellie and Barb's affidavits can speak a little
3 bit more to this directly, but the option of
4 submitting a permit application for the construction
5 of a new home was offered to the landowners and,
6 that would have allowed them if there, for some
7 reason, wasn't something that met the word of the
8 policy or met the policy and staff couldn't support
9 it at our level, submitting that permit application
10 gave the landowner the opportunity to bring their
11 application to the board of directors. And that
12 was, kind of, a way for us to keep that door open of
13 looking at options here.

14 293. Q. Right, but I guess my question is,
15 even if the homeowner decides to go with the
16 compliance agreement, through the compliance
17 agreement process, there is no guarantee ultimately
18 that a permit would be issued, there is still a
19 possibility that it would not be, correct?

20 A. So if we're going through the
21 compliance agreement application, a permit isn't
22 what's going to be issued, the compliance agreement
23 would be issued. Again, I can't speak to whether or
24 not that is possible without having that information
25 that was requested for our review.

1 294. Q. Right. I'm asking more generally.
2 You know, a homeowner could sign the compliance
3 agreement application form and go through the
4 compliance process and, ultimately, their proposed
5 inspection could still be denied, correct? It's not
6 like, by signing a compliance agreement,
7 Conservation Halton is guaranteeing that something
8 ultimately would be approved?

9 A. Right. The compliance agreement
10 does just speak to what needs to happen here to
11 bring the site to compliance. And, again, we
12 provided the option to apply for that permit to give
13 the landowner more options and have the ability, if
14 necessary, to bring their application to the Board
15 for consideration. So that door was open for the
16 landowners.

17 295. Q. Right. When you say that you
18 provided an option to apply for a new permit, you're
19 talking about after this litigation had commenced,
20 right, you are not talking prior to this application
21 being issued?

22 A. So the letter that I issued was
23 specific to the compliance agreement process. It's
24 my understanding that in meetings that happened
25 later on down the road, that option for a permit

1 application was discussed, but I was not at that
2 meeting and I can't speak directly to the time of
3 when that happened.

4 296. Q. Which meeting are you referring to?

5 A. I believe there was a meeting that
6 took place and the landowners were there and
7 management was there in attendance, as well. But
8 the permit application option was offered to the
9 landowner.

10 297. Q. Just to be clear, are you referring
11 to the meeting where legal counsel was also present?

12 A. I'm not sure. I just know that I
13 was not involved, but the permit application process
14 was offered to the landowner.

15 298. Q. And you don't know if that meeting
16 happened before or after this legal proceeding had
17 been commenced, right?

18 A. I'm not positive when the meeting
19 was.

20 299. Q. Okay. All right. Right. And this
21 is not a trick question, I just want to make sure
22 that I don't misunderstand your evidence. If
23 someone goes through...let's leave the new permit
24 application out of it for a second. We are just
25 talking about the compliance agreement process. So

1 just because someone fills out a compliance
2 agreement application form, doesn't mean that that
3 person will end up with his development being
4 approved, right? It's just the start of a process
5 that could lead to approval, or it could lead to
6 denial, correct?

7 A. Correct.

8 300. Q. Now, I want to take you to paragraph
9 52 of your affidavit. So at paragraph 52, you refer
10 to Exhibit ZA, which is a letter from Ms. McCormack,
11 so I will put it up on the screen now. Now, you
12 mentioned in your affidavit that you received this
13 letter because you were copied on an e-mail that
14 attached it, right?

15 A. Right.

16 301. Q. Were you involved in the preparation
17 of this letter?

18 A. I was not involved in the
19 preparation of the letter, no.

20 302. Q. Were you consulted with respect to
21 the...let me rephrase that. Did you know that this
22 letter was going out before you received it?

23 A. I was aware that we were looking at
24 issuing a letter, yes.

25 303. Q. Okay. Did you have a general

1 discussion with Ms. McCormack about what is going to
2 be in this letter?

3 A. The general premise of the letter I
4 was aware of. Yes, I would have had conversations
5 about it.

6 304. Q. That a letter would go out informing
7 the client that the permit is void, right?

8 A. Right.

9 305. Q. Okay. I'm going to take you to the
10 second page of the letter. I'm reading from the
11 second paragraph from the bottom:

12 "...Given that conformity with CH's permit
13 is not possible, permit 5927 void, Section
14 8 of Ontario regulation 162.06 states..."

15 Then Section 8 is quoted. Then:

16 "...And I will review, given that the
17 permit is void, a hearing is not warranted
18 as the circumstances that were set out in
19 the application of the permit have
20 fundamentally changed..."

21 Now, at the time when this letter went out, were you
22 aware of the requirements set out in Section 8 of
23 regulation 162.06?

24 A. Yes.

25 306. Q. Okay. And you were aware that if a

1 permit is cancelled, there has to be a hearing,
2 correct?

3 A. Correct.

4 307. Q. And the hearing would be before the
5 Board?

6 A. Yes.

7 308. Q. Okay. Then if the Board rules
8 against the homeowner and the permit is cancelled,
9 then the homeowner would be able to appeal the
10 decision, correct?

11 A. Correct.

12 309. Q. However, if there is no hearing and
13 no decision to cancel, then no appeal would be
14 possible, correct?

15 A. Correct. So in this case the permit
16 was void, it wasn't cancelled, because the
17 parameters of the permit could not be fulfilled. An
18 addition to a structure that no longer existed,
19 could not be fulfilled, so it was a void, it wasn't
20 a cancellation of the permit and, that's the message
21 of the letter.

22 310. Q. Are you aware of any section of the
23 regulation of the Conservation Authorities Act that
24 permits you to void a permit?

25 A. I'm not, no.

1 311. MR. BOUCHELEV: Okay. Well, Mr. Jull, I
2 think we should take a short...well, if
3 someone wants a longer lunch break, I am
4 fine with that, as well, but I would
5 suggest about half an hour. I need to
6 speak to my clients. I may have a couple
7 more questions for Ms. Connolly afterwards,
8 but other than that, I think we will be
9 done quickly after the lunch break.

10

11 --- upon recessing at 12:40 p.m.

12 --- A LUNCHEON RECESS

13 --- upon resuming at 1:10 p.m.

14

15 CASSANDRA NICOLE CONNOLLY, resumed

16 CONTINUED CROSS-EXAMINATION BY MR. BOUCHELEV:

17 312. Q. Ms. Connolly, just before the lunch
18 break, you were telling me about a meeting that you
19 were not present for, but in your understanding, it
20 was a meeting attended by the homeowners and
21 Conservation Halton staff. And, again, you are not
22 sure when the meeting took place, but it's your
23 understanding that during the meeting a suggestion
24 was made that the homeowners could simply apply for
25 a new construction permit, right?

1 A. That is an option available, yes.

2 313. Q. Now, if they were applying for a new
3 construction permit, they would be applying as if
4 this was a vacant lot, right?

5 A. No. So it's a reconstruction of a
6 dwelling. It doesn't mean that the lot is starting
7 as vacant, it's just beyond what we can consider to
8 be an addition.

9 314. Q. Okay. Are you saying that there are
10 two different processes for a reconstruction and a
11 new construction?

12 A. No. The permit application process
13 is the same, it's just what we ask for as part of
14 that application we differ, depending on the scope
15 of works.

16 315. Q. Okay. And the criteria are the
17 same, as well?

18 A. The policies are the same, the
19 criteria isn't. What we may ask for, would differ.

20 316. Q. Yes, I think the policy is a better
21 word. The policies would be the same, regardless of
22 whether it's a reconstruction, or a construction of
23 a home on a vacant lot, right?

24 A. Right. It would be the existing
25 value development policy.

1 317. Q. Right. Construction within an
2 erosion hazard runs against the provincial policy,
3 right?

4 A. Unless it meets our policy under
5 Ontario Regulation 162.06.

6 318. Q. Okay.

7 A. So the idea is, in meeting our
8 policy, you are meeting the intent of the Act in the
9 provincial policy statement.

10 319. Q. Okay. But, in general, provincial
11 policy states that:

12 "...Development within a plot zone, or
13 erosion hazard zone is discouraged..."

14 Right?

15 A. New development. For vacant lots,
16 if you will. New development being vacant lots. We
17 don't have a policy that would allow for entirely
18 new development within a hazard.

19 320. Q. Okay. Regardless of whether it's a
20 new construction, or a reconstruction, the factor of
21 safety will be the same, correct?

22 A. The target that we spoke about
23 earlier.

24 321. Q. Yes, the 1.5?

25 A. Correct.

1 322. Q. And if the project is classified as
2 a renovation, then there is no target for factor of
3 safety, correct?

4 A. Well, I would need more information
5 on what a renovation would entail.

6 323. Q. Okay. Well, perhaps you can help me
7 with that. Are there any different categories of
8 renovations that require different types of
9 applications?

10 A. So, again, the application itself is
11 the same. I guess the biggest difference for this
12 property, the permit that was issued was for an
13 addition to an existing structure. What we are
14 seeing with a reconstruction is the majority, or
15 extensive demolition has happened and the dwelling
16 is being reconstructed, so there is that difference.
17 The permit that was issued was for an addition to a
18 structure that no longer existed.

19 324. Q. Okay. Maybe there is more, but
20 there is two that I am aware of. There's the minor
21 and the major category, right?

22 A. I guess, which category? Are we
23 talking back about the fee schedule categories, or
24 what categories? I guess, I don't understand the
25 question fully.

1 325. Q. Okay. Other than the fee schedule
2 categories, are there other types of categories? I
3 was assuming that, you know, they're just different
4 categories and different categories have different
5 fees. So, I guess, yes, I am referring to the fee
6 schedule category.

7 A. So they are somewhat tied together.
8 For what we consider to be minor works, like the
9 initial permit application, it was that P3A category
10 that we talked about which is private landowner
11 minor. When they start to get into applications
12 where the scope of works is a little bit broader,
13 for something like a reconstruction, then this is,
14 again, where it ties back to that internal sheet
15 that I filled out for the application that we looked
16 at earlier in my affidavit where I kind of...in
17 brackets I have, "(For now)" or a comment similar to
18 "(For now)". So if technical information is
19 required given the larger scope or scale of works,
20 that's when we start to get into things like an
21 intermediate fee schedule, so a higher fee because a
22 technical review is involved.

23 326. Q. Okay. And so, the P3A, as you said,
24 is the code for a private landowner minor project.
25 If it's something that is more involved, like a

1 reconstruction, is there a code for that for a
2 private landowner?

3 A. So that one would...I mean, the
4 codes have changed since that time, and I can't
5 remember specifically what the code was at the time,
6 but if it was a scope of work, like, a
7 reconstruction of a home, it would...also requires a
8 geotechnical assessment, it would fall under private
9 landowner intermediate, for example, and that
10 intermediate speaks to the fact that technical
11 information is required as part of that application.

12 327. Q. Okay. And for something less minor,
13 there is no requirement for technical information
14 such as a geotechnical report, right? For the P3A.

15 A. Right. There's no technical
16 information that's required as part of an
17 application for that scale or scope.

18 328. Q. Okay. Is there a bright line
19 between what's considered, you know, a minor and a
20 major project?

21 A. Typically, it really depends on
22 what's being done. So for the example of the works
23 that was highlighted in the stamped approved
24 drawing, the portion of red that was highlighted as
25 being added, versus the portion that was not

1 identified as being removed, was considered to be
2 minor in relation to what was happening.

3 If we see, for example, a structure brought
4 all the way down to its foundation, that's extensive
5 demolition due to removal works and, at that point,
6 when you are, kind of, starting from that framework,
7 you do have options to look, or do have the
8 potential to look for options to better address
9 those hazards and, it really depends on what's being
10 removed versus what's being replaced, and where the
11 opportunities to make the situation better can be
12 implemented.

13 329. Q. Okay. Right. But, I guess what I
14 am trying to determine is, how does Conservation
15 Halton decide whether a particular project is
16 classified as minor, that doesn't require technical
17 information, or major, that does? Is there, like, a
18 set criteria saying, for example, "If you're adding
19 a garage and a second storey addition, that's minor.
20 If you are adding a garage and a second storey
21 addition and maybe, you are adding a covered deck,
22 that would be considered major"? Like, are there
23 certain criterias, almost like a checklist that you
24 go through and you decide whether or not something
25 is minor or major, or is it more or less

1 discretionary, in the discretion of the technical
2 staff?

3 A. So the policies that are applicable
4 for valley development, speak to minor in nature.
5 And what that typically means, or what we typically
6 look for is anything around or under 50 percent is
7 considered to be minor, especially for an addition.
8 We do issue permits that specifically say, for
9 example, "Reconstruction and expansion" and what
10 that means is the house is being, for the most part,
11 demolished, reconstructed and will be a little bit
12 bigger. So we have different wording, but the
13 policy does speak to minor and major and, give or
14 take, it's about that 50 percent range.

15 330. Q. And so, just to clarify something.
16 So when you say policy, you're referring to the
17 internal Conservation Halton policy?

18 A. Right. So the policies that are
19 quoted in that violation notice, the existing value
20 development policies, when you read them, if you
21 want to bring it up, it might be helpful, but it
22 does speak to minor and major, and the wording is
23 italicized.

24 331. Q. And it would say that less than 50
25 percent is considered minor?

1 A. So it doesn't have that number
2 specific to valley policies. Generally, that's how
3 that policy is applied across the regulation's
4 officers. That's how the policy is interpreted and
5 complied or considered.

6 332. Q. Okay. So what would be considered
7 50 percent? Like, if you have four walls and you
8 are keeping two walls, that would be considered 50
9 percent?

10 A. No. So we do work a little bit
11 differently than the Building Code in that way. For
12 us it's more about what's staying, versus what's
13 remaining. So the understanding when I got that
14 permit application was that it was that garage bump-
15 out with the addition above it, with the remainder
16 of the dwelling to remain. That was minor because
17 the work was really, based on my understanding,
18 focused on that side of the home only, being an
19 addition to the rest of the dwelling that was to
20 remain.

21 333. Q. Right. No, and I understand that
22 you considered that minor. I'm just trying to...and
23 you will have to excuse me because I'm not that
24 familiar with your policies, but I'm trying to
25 understand, how do you decide what constitutes 50

1 percent of a house, right, because a house would
2 have different components? There would be
3 foundation, the walls, the roof, the garage. Like,
4 how do you decide whether, you know, a demolition is
5 under 50 percent, or over 50 percent?

6 A. So it's not even just about
7 demolition, it's also about the size of the
8 addition. So, for example, if there's...I'm just
9 going to use simple numbers. If there's a 100
10 square metre home existing, and an application comes
11 in to add an extra 1,000 square feet on top of that,
12 that's not a minor addition when you consider the
13 size, or what is existing. So even through
14 constructing a new structure of that size, we would
15 look for options to better address the hazards where
16 we can. It's really in comparison of what's being
17 proposed here, what's being either removed or
18 reconstructed and, how can we make the situation
19 more safe for the landowner and for the property.

20 334. Q. Right, but I'm talking more in terms
21 of reconstruction than an addition.

22 A. M'hmm.

23 335. Q. If you are doing a reconstruction, a
24 partial reconstruction of an existing home, if you
25 are reconstructing less than 50 percent, that would

1 be classified as minor, right?

2 A. Right.

3 336. Q. So by way of an example, let's say
4 you are not adding an addition, you are keeping the
5 existing foundation, you are keeping two existing
6 walls, we are going to replace two other walls,
7 would that be considered minor?

8 A. So I will just clarify that there
9 are two different policies that apply for valley.
10 One is the reconstruction of existing and, the
11 second policy is to allow for minor additions of 50
12 percent. I do want to make that distinction. There
13 is a difference and we can, in some cases, apply
14 both policies if there is a reconstruction plus that
15 addition, as well.

16 337. Q. Okay. But the 50 percent applies to
17 both policies, right?

18 A. A reconstruction would be of the
19 same size. The 50 percent is speaking to that
20 potential for additional space policy.

21 338. Q. Okay. But if you're doing a
22 reconstruction, a reconstruction could be minor, or
23 it could be major, as well, right?

24 A. Yes.

25 339. Q. And different policies and criteria

1 and different technical information would be
2 requested depending on whether it's minor or major?

3 A. Right. Depending on what options
4 may be available to, again, better address the
5 hazards...

6 340. Q. Right.

7 A. ...depending on the type of
8 renovation, or the type of reconstruction being
9 proposed.

10 341. Q. Okay. So in any reconstruction that
11 is less than 50 percent of the existing structure,
12 is classified as minor?

13 A. No. Sorry, that's where I wanted to
14 make that distinction. The 50 percent we were
15 talking about is on that addition policy.

16 342. Q. Okay. Is there a percentage rule
17 that applies to reconstruction, as well, in terms of
18 helping you determine if it's major or minor?

19 A. No, not necessarily. It's more
20 about what type of reconstruction is happening and,
21 again, what types of recommendations can be
22 implemented in that reconstruction, if any,
23 depending on what's happening there.

24 343. Q. So, basically, it's the discretion
25 of Conservation Halton's staff to decide if a

1 particular reconstruction requires a geotechnical
2 study or not, right?

3 A. Right. To the review staff, which
4 would include engineering staff and, not relevant to
5 this case, but also ecology staff. We do have
6 technical staff that review applications and try to
7 consider and be reasonable on what's happening on
8 the site and where can we address things, if
9 possible.

10 344. Q. Now, is there a general rule, or a
11 general policy that you're keeping, you know, two
12 out of four existing walls, then that may be
13 classified as a minor renovation that doesn't
14 require a geotechnical study?

15 A. There's no definition for us based
16 on which walls are remaining.

17 345. Q. Now, we also talked about safety and
18 factors of safety and I just want to put something
19 to you and ask you if you agree with this. So right
20 now...and I'm talking about the structure that is in
21 place today, compared to the structure that was in
22 place prior to 2019, right? Now, it would be fair
23 to say that you have no information that would
24 suggest that the structure that is now today, is
25 less safe than the structure that was there before,

1 correct?

2 A. I would leave that determination to
3 the geotechnical engineer.

4 346. Q. But does Conservation Halton have
5 any information currently that would suggest that
6 the structure is less safe than it was before the
7 project?

8 A. Not to my knowledge. We were not
9 submitted with up-to-date geotechnical information
10 with respect to the slope stability. It was part of
11 an application.

12 347. Q. And Conservation Halton itself has
13 not done a geotechnical assessment, correct?

14 A. We have not, no. We are a review
15 agency, so we would not conduct that type of
16 assessment on our own.

17 348. Q. You also mentioned this morning
18 something about a limitations date for bringing
19 forth charges under the Provincial Offences Act.
20 What is considered the limitations period in this
21 case?

22 A. My period is two years from the date
23 that I found the violation.

24 349. Q. Which is March...

25 A. It would be...yes, it would be the

1 March 14th date of when I did the original drive-by
2 and the records check at our office.

3 350. MR. BOUCHELEV: Okay. Thank you. Mr.
4 Jull, subject to the undertakings and
5 refusals and, I think you may have taken
6 something under advisement, as well, but
7 subject to that, I think we are done here.

8 MR. JULL: Okay. I don't have any
9 questions by way of re-examination, so
10 thank you for that, and my associate,
11 Eliane hopefully took some good notes about
12 the undertakings. As I said, we'll do the
13 best we can to get that material to you in
14 a timely way, and that concludes today.
15 Thank you.

16 351. MR. BOUCHELEV: Great. Thank you, Ms.
17 Connolly.

18
19 --- upon adjourning at 1:30 p.m.

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REPORTER'S NOTE:

Please be advised that any undertakings, objections, under advisements and refusals are provided as a service to all counsel for their guidance only, and do not purport to be legally binding or necessarily accurate, and are not binding upon Victory Verbatim Reporting Services Inc.

I hereby certify the foregoing to be a true and accurate transcription of the above-noted proceedings held before me on the 23rd DAY OF APRIL, 2021, and taken to the best of my skill, ability and understanding.

)
) Certified Correct:
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) Bruce Porter
) Verbatim Reporter

TAB 4

ONTARIO
SUPERIOR COURT OF JUSTICE
(APPLICATION UNDER Section 97 of the Courts of Justice Act,
R.S.O. 1990, C.C.43)

GV/fm

B E T W E E N:

IVAN RUDYK and SHELLEY YOUNG

Applicants

- and -

HALTON REGION CONSERVATION AUTHORITY

Respondent

- - - - -

This is the Cross-Examination of KELLIE LYNN McCORMACK,
on her affidavit sworn the 4th day of February, 2021, taken
via videoconference at the offices of VICTORY VERBATIM
REPORTING SERVICES, Suite 900, 222 Bay Street, Toronto,
Ontario, on the 28th day of April, 2021.

- - - - -

APPEARANCES:

ARKADI BOUCHELEV

-- for the Applicants

KENNETH JULL

-- for the Respondent

Also Present:

Ivan Rudyk

Shelley Young

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1 --- upon convening at 10:00 a.m.

2 --- upon commencing at 10:07 a.m.

3

4 KELLIE LYNN McCORMACK, affirmed

5 CROSS-EXAMINATION BY MR. BOUCHELEV:

6 1. Q. Before we begin with the
7 cross-examination of Ms. McCormack, Mr. Jull, I just
8 want you to confirm that we have agreed that the
9 transcript from the previous cross-examination on
10 Ms. McCormack...of Ms. McCormack, we have agreed
11 that this transcript will be used as transcript for
12 the purposes of the application.

13 MR. JULL: Yes, Mr. Bouchelev. Thank
14 you for sending the revised document that
15 you sent me. We have sent that out, and so
16 I have agreed to that. And hopefully
17 you'll be able to correct a few minor
18 grammatical things that I sent and we can
19 file that document. But that's for another
20 discussion.

21 2. MR. BOUCHELEV: Right. Okay, thank you
22 for that. And we also agree that the
23 answers given by Ms. McCormack in the
24 previous examination were answers given on
25 behalf of Conservation Halton, not just in

1 her personal capacity, correct?

2 MR. JULL: No, we are not going to have
3 an agreement on that because you recall
4 that was an examination under Rule 39, and
5 I was not attending on that as her personal
6 counsel. So, we did get into a bit of a
7 debate about that. So, my recollection is
8 that you were asking her questions in her
9 personal capacity.

10 3. MR. BOUCHELEV: Right. But I guess what
11 I am asking you is now that you are...that
12 she is being examined as a representative
13 of Conservation Halton, I think it wouldn't
14 make sense for me to simply ask the same
15 questions again to her as a representative
16 of Conservation Halton. So, to streamline
17 things and hopefully finish the examination
18 earlier today, can we not just agree that
19 the answers that she had previously given
20 were on behalf of Conservation Halton? I
21 mean, any knowledge that she would have
22 that is relevant to this matter would be as
23 a representative of Conservation Halton, in
24 any event. She would not have, I would
25 think, any knowledge independent of her

1 position.

2 MR. JULL: So, why don't we do this?

3 Because, I agree, it makes sense to

4 streamline it. Rather than it being

5 revisionals history about what happened on

6 that day, I'm certainly prepared today for

7 the purposes of today to say that the

8 answers that she gave on that day, I'm

9 prepared to concede will apply today, and

10 bind Conservation Halton.

11 4. MR. BOUCHELEV: Okay.

12 MR. JULL: So, hopefully that will help

13 you and streamline today. So, I think we

14 are going to the same point, just slightly

15 different directions.

16 5. MR. BOUCHELEV: Yes. Okay, no, I think

17 we are on the same page. That is fine.

18 Okay, so, let's move onto the

19 cross-examination of Ms. McCormack then.

20

21 BY MR. BOUCHELEV:

22 6. Q. Ms. McCormack, good morning.

23 A. Good morning.

24 7. Q. Can you just state your full name

25 for the record?

1 A. Sure. It's Kellie Lynn McCormack.

2 8. Q. And can you please confirm that you
3 have been affirmed to tell the truth today?

4 A. I have, yes.

5 9. Q. Okay, thank you. Now, I'm going to
6 ask you some questions about the affidavit you swore
7 on February the 4th. And if you can go...do you
8 have a copy of that affidavit with you?

9 A. I do.

10 10. Q. Can you please go to paragraph 23 of
11 the affidavit?

12 A. Yes.

13 11. Q. Okay. And now at paragraph 23,
14 there is some discussion about a blog of Ms. Young,
15 a personal blog. And there is, some, I guess,
16 excerpts from that blog attached at Exhibit K to
17 your affidavit; correct?

18 A. That's correct.

19 12. Q. And I'm just wondering, where did
20 you obtain a copy of that blog?

21 A. This would have been through the
22 research we would have done after discovering that
23 the works that had taken place on the property were
24 not in keeping with the permit that Conservation
25 Halton had issued.

1 13. Q. Okay. And now, so at paragraph 23,
2 you say that,

3 "...The homeowner, Ms. Shelley Young,
4 stated in her online blog, would 'Goodbye
5 old house', and present the pictures of the
6 demolition of the dwelling..."

7 Now, you would agree with me that nowhere in that
8 blog does Ms. Young say that they were planning to
9 do a complete demolition of the home, correct?

10 A. I will take a look at the blog again
11 just to refresh my memory, but it does speak to the
12 house going down.

13 14. Q. Okay. So, maybe you can review the
14 blog again and just point me at the specific
15 language that you are referring to.

16 A. There were multiple blogs, and this
17 is one of the pieces that we had. If you go
18 to...I'm in Exhibit K.

19 15. Q. Yes?

20 A. There are a few sections that I can
21 point you to.

22 16. Q. Okay.

23 A. So, if you look at, I guess it would
24 be...I'm not sure what page it is...6 of 34, there
25 is a number in the bottom right-hand corner.

1 17. Q. Yes, I'm there.

2 A. It speaks about plans to do
3 extensive renovations.

4 18. Q. Okay.

5 A. It speaks to runoffs seeping into
6 the foundation. It speaks to...if you flip over a
7 couple of pages...or, sorry, the next page, on 7 of
8 34.

9 19. Q. Yes?

10 A. It says,

11 "...Goodbye old house..."

12 The very last couple of words on page 7. And it
13 says,

14 "...Construction begins..."

15 If you go to the following page, page 8 of 34, it
16 speaks to the demolition in late January.

17 20. Q. I'm sorry, where does it say that?

18 A. So, page 8 of 34?

19 21. Q. Right.

20 A. "...Since demolition in late
21 January..."

22 22. Q. Okay.

23 A. And then it goes on about "mother
24 nature". And I could keep looking through, if you
25 would like.

1 23. Q. Well, the question...my question was
2 that...you know, my proposition to you was that
3 nowhere in this blog does Ms. Young say that the
4 homeowners were planning to completely demolish the
5 house, correct?

6 A. It speaks about demolishing the
7 house, or the house being demolished.

8 24. Q. Well, that could be...

9 A. Those pictures.

10 25. Q. But that could be a reference to
11 partial demolition. So, the question is, there is
12 nothing in the blog that says that the house will be
13 completely demolished, right?

14 A. I think the pictures show, when you
15 say "completely demolished", from our perspective,
16 if you're looking at it from the road, as I believe
17 I have mentioned in my last cross-examination, I
18 think it's fair to say that if you're looking at a
19 property from the road, or you're looking at it from
20 the side, if you can't see any building above grade
21 any longer, it's fair to say that it is completely
22 demolished.

23 26. Q. Okay. But I think you are evading
24 my question, or rather, answering a different
25 question, Ms. McCormack. I've asked you a very

1 specific question. I've asked you, can you point me
2 to anywhere in this blog where Ms. Young states that
3 they were planning to completely demolish the house?

4 A. No, but there are pictures that show
5 the dwelling completely demolished.

6 27. Q. Okay. And you don't know if that
7 demolition was intentional, or if it was a result of
8 a partial collapse of the structure, correct?

9 A. Well, we have heard that, in part,
10 it was related to a collapse of the structure, but
11 we also have information to suggest that it was
12 planned from the beginning.

13 28. Q. Thanks. And by "information", you
14 are referring to the agreement between my clients
15 and Lifestyles, is that what you are referring to?

16 A. That's correct.

17 29. Q. And we will look at that in a
18 moment. But the blog itself, you will agree with
19 me, and I think you have already agreed, it doesn't
20 say that they were planning to completely demolish
21 the house?

22 A. No, but it does show pictures of the
23 dwelling completely demolished.

24 30. Q. Right. And you also took me to page
25 6 of 34, where Ms. Young talks about an extensive

1 renovation. That the plan, in fact, was to do an
2 extensive renovation of the property, correct?

3 A. That's correct.

4 31. Q. And an extensive renovation is not
5 the same thing as a complete demolition and
6 construction of a new home, correct?

7 A. No. I would say it could be. An
8 extensive renovation could be completely demolishing
9 a dwelling, it could be a partial demolition of a
10 dwelling. An extensive renovation, I would say, is
11 anything where major walls are coming down.

12 32. Q. Now, if someone wanted to replace
13 the foundation as well, would that still be
14 considered an extensive renovation?

15 A. I would consider that, yes.

16 33. Q. Okay. So, you can basically
17 completely remove everything, including the
18 foundation, build a brand new home, and that would
19 be considered an extensive renovation, right?

20 A. I don't know if I would consider
21 that...it could be extensive renovation, it could be
22 a complete new dwelling. I guess it depends how you
23 look at it.

24 34. Q. Okay. And now, a paragraph...I'm
25 going to go back to paragraph 24 of your affidavit.

1 So, paragraph 24, you say that the pictures show a
2 backhoe demolishing the house; correct?

3 A. That's correct.

4 35. Q. And this is, again, this is in
5 Exhibit K. Just show me which picture in Exhibit K
6 shows the backhoe completely demolishing the house.

7 A. So, as I mentioned, there were
8 multiple versions of the blog...my understanding is
9 that there were multiple versions. And this
10 particular version of the blog did not have that
11 picture in it.

12 36. Q. Okay. And you didn't include the
13 picture showing the backhoe demolishing the blog in
14 your affidavit, right?

15 A. I put the picture into my affidavit
16 after paragraph 23.

17 37. Q. Okay. So, if I go back to your
18 affidavit and I look at paragraph 23, you're saying
19 that the picture immediately after paragraph 23
20 shows a backhoe demolishing the building?

21 A. That's correct. If you look to the
22 right side of the picture...

23 38. Q. M'hmm.

24 A. ...you can see that it would be the
25 east side of the dwelling is being demolished.

1 39. Q. And how can you tell from this
2 picture if it is being demolished, or if the backhoe
3 was simply cleaning up debris following a collapse?

4 A. Because the roof is no longer there
5 and you can start to see some of the cave-in of the
6 dwelling. It is kind of in the centre of the
7 picture. I could also point you to some additional
8 photos that were in the blog, in Exhibit K.

9 40. Q. Okay.

10 A. If you look at page 7 of 34, that
11 also shows more than just the roof coming off of the
12 dwelling. That particular photo. And if you
13 compare the photo on page 5, which showed the
14 original dwelling, with the picture that I put in my
15 affidavit after paragraph 3, you can see there is
16 the entire main part that juts out of the existing
17 dwelling, it is no longer in that photo. The one
18 that is in paragraph 23.

19 41. Q. And...

20 A. And...

21 42. Q. Yes, go ahead.

22 A. If I could add, the challenge...and
23 as I mentioned in my affidavit with this, is that
24 the permit application that we received, and the
25 permit that we issued, it was for a minor garage

1 addition and front and rear porches. And so, if the
2 works were in keeping with the permit that we had
3 approved and what was applied for, then the
4 demolition...there would be no works occurring on
5 the east side of the house. It would have, for our
6 understanding, what we were looking for, it would
7 have only been demolition that would have occurred
8 on the west side, or the garage side, of the house,
9 which is still standing in the photo that I included
10 in my affidavit.

11 43. Q. Okay. And so now I'm going to take
12 you to Exhibit K. So, there is the photograph that
13 you referred to at Exhibit K, is on page 7 of 34,
14 correct?

15 A. That's correct.

16 44. Q. Okay. Now, you see that there
17 are...well, first of all, do you see the wall on the
18 right-hand side?

19 A. Yes.

20 45. Q. Which...in terms of east, north,
21 west, and south, do you know which wall this is?

22 A. I would assume that is the east
23 side.

24 46. Q. Okay.

25 A. But, regardless, I guess I would go

1 back to we didn't anticipate any of these walls
2 coming down at all, based on the permit we had
3 issued.

4 47. Q. But Ms. McCormack, that wasn't my
5 question though. So, please just answer my
6 questions specifically. So, the east wall...you can
7 see the east wall still standing in this picture,
8 correct?

9 A. I believe so.

10 48. Q. Okay. And also, in this picture,
11 you cannot see the backhoe actually demolishing
12 anything. You can see the backhoe standing in the
13 picture, but you cannot see what it is doing, right?

14 A. No. I can surmise that the reason
15 this machinery was here was to take down the
16 building.

17 49. Q. Okay. So, in other words, it is
18 your assumption that it was taking down the
19 building, correct?

20 A. Yes.

21 50. Q. Okay. And again, going to page 8 of
22 your affidavit, after paragraph 23, the picture that
23 is inserted after paragraph 23 of your affidavit,
24 there is...do you see the wall to the right of the
25 backhoe...of the John Deere?

1 A. Yes.

2 51. Q. Okay. And can you identify...do you
3 know what that wall is?

4 A. Yes. If you look at page 5 of 34 in
5 the blog, Exhibit K, the wall of the bigger bricks
6 you can see in the middle of the photo...

7 52. Q. Right.

8 A. ...to the left of the John Deere,
9 that appears to be the very centre of the building
10 to the...I guess, to the right of the front door.

11 53. Q. Okay.

12 A. That would be the same.

13 54. Q. And again, in this picture, you see
14 the backhoe, but you do not see the backhoe actually
15 demolishing the building, correct? Not from this
16 picture?

17 A. Correct. But I assume that because
18 a large machine is on the property and you can see
19 part of the dwelling down, that that machinery was
20 there to take down the building as opposed to it
21 happening through other means.

22 55. Q. Now, I'm going to take you to
23 paragraph 37 of your affidavit. So, at paragraph 37
24 you talk about a permit that my clients previously
25 obtained back in February of 2014, for a proposed

1 replacement of an existing retaining wall, correct?

2 A. That's correct.

3 56. Q. And the permit itself is at Exhibit
4 N to your affidavit?

5 A. That's right.

6 57. Q. So, were you involved in that permit
7 application?

8 A. No, I was not.

9 58. Q. Okay. Were you, at that time in
10 2014, did you work for Conservation Halton?

11 A. No, I did not.

12 59. Q. Okay. But did you, in preparation
13 of your affidavit, did you review the materials and
14 did you familiarize yourself with what that
15 application was about?

16 A. I reviewed the permit application.
17 Do I know it extensively? No, because I was not
18 involved in the permit. I was not with Conservation
19 Halton at that point in time.

20 60. Q. Okay. That's fair enough. But, you
21 do know that that there was an old timber retaining
22 wall that my clients wanted to replace, correct?

23 A. That's correct.

24 61. Q. And the...Conservation Halton did
25 not allow them to replace the timber retaining wall

1 with a new, similar timber retaining wall; is that
2 right?

3 A. I can't speak to the specifics of
4 why they landed on what particular type of retaining
5 wall over others, given that it wasn't there.

6 62. Q. Okay. So, if I suggested to you
7 that the vegetative wall, which was ultimately
8 applied was at the request of Conservation Halton,
9 would you be able to confirm that, or you don't
10 know?

11 A. I would have to look at the records.

12 63. Q. Okay. And are you, in general,
13 familiar with this technique of using vegetation to
14 reinforce the slope as opposed to building a
15 retaining wall...like, a physical retaining wall?

16 A. I'm not an engineer, so I can't
17 speak to that. I can give you a high level
18 overview, but that's...I'm not an engineer. I'm a
19 professional planner.

20 64. Q. Okay, so can you give me the high
21 level overview, then?

22 A. Often times vegetative walls are
23 used because we know that bioengineering...and I
24 guess that's the best way to use and the terminology
25 that is used, can often be as strong or stronger

1 than human-made structures. And the point is to
2 have natural vegetative slopes, you want to have
3 them stabilized in a way that will work for the long
4 term. Bioengineering...using biomaterial, trees,
5 and whatnot, help...roots help reinforce the
6 stability of the slope. They help mimic what a lot
7 of times natural systems would have for stabilizing.
8 So, that's often why that technique is used.

9 65. Q. Okay. And would you agree with me
10 that using a vegetative retaining wall is a more
11 expensive technique than building a timber wall,
12 like the one that my clients had before?

13 A. I wouldn't know.

14 66. Q. Okay. And is that because you are
15 not familiar with this particular type of retaining
16 wall, or is that because just simply that cost is
17 not a factor when determining the reinforcement
18 techniques that are used?

19 A. I'm not a contractor, so I'm not
20 aware of the costs of building those structures.

21 67. Q. Okay. So, if I suggested to you
22 that, you know, something like that or, rather, that
23 particular vegetative wall cost my clients nearly
24 \$200,000 to implement, would that number surprise
25 you?

1 A. No, it would not.

2 68. Q. Okay. So, you know, from your
3 experience, that is somewhere in the range of what
4 that would cost?

5 A. I can tell you that we see slope
6 stability works across the watershed, the
7 waterfront, and it is not unusual for these things
8 to be in the tens of thousands, or beyond, cost
9 range, from what we hear.

10 69. Q. Okay. Now, I'm going to ask you
11 about paragraph 38 of your affidavit. So, at
12 paragraph 38, you talk about a meeting that took
13 place on April 3rd, 2019, right?

14 A. That's correct.

15 70. Q. Now, you were present, Cassandra
16 Connolly was present, and Charles Priddle was
17 present as well, correct?

18 A. That's correct.

19 71. Q. Okay. Do you have a good
20 recollection of what happened at that meeting?

21 A. I do.

22 72. Q. Okay. And do you remember how long
23 the meeting took, approximately?

24 A. I would say it was probably at least
25 an hour.

1 73. Q. Okay. And what was the subject of
2 discussion at that time?

3 A. The email that we provided on April
4 the 4th, and I believe that is an exhibit in my
5 package as well. It's Exhibit O.

6 74. Q. It's Exhibit...yes.

7 A. That's a good summary of the meeting
8 and everything that occurred. At a high level, the
9 key point of the discussion from our perspective was
10 to make the agent, the owner, aware that the works
11 had occurred, they were not in keeping with the
12 permit that we had issued, that there was a way
13 that...a path forward, and that we wanted to work
14 with the applicant to fix things, but it would
15 require some additional work on the applicant's
16 behalf so that we could confirm that the slope was
17 stable. And we provided an overview of the next
18 steps, the key pieces of information that we needed
19 to move forward.

20 75. Q. Okay. And when you refer about...I
21 think you said the agent of the applicants, right?

22 A. Yes.

23 76. Q. And that would be Mr. Baron and Mr.
24 Vozikas?

25 A. No. I would say...if I can point

1 you to an exhibit in my affidavit?

2 77. Q. Okay.

3 A. If you look at Exhibit E?

4 78. Q. Yes.

5 A. It's a permit application. The
6 listed owner and the listed agent. So, the owners
7 names are Ivan Rudyk and Shelley...well, it's listed
8 as "Long", but I assume that is a mistake; it should
9 be Young. And the agent is Empire Design, and Peter
10 Vozikas. And both of them have signed...or all of
11 them had signed the back of the permit application.
12 In my experience, I have never seen that a client
13 would be anyone other than the owners who are listed
14 on a permit application. And so I think the
15 assumption that the client would be Mr. Baron...I
16 don't know where we would get that, because, at that
17 point in time, Mr. Baron wasn't even a known figure
18 in our mind. We had only been dealing with Mr.
19 Vozikas.

20 79. Q. Okay. But you will agree with me
21 that the homeowners were not present at that
22 meeting, right?

23 A. No, but we had requested that they
24 be present.

25 80. Q. Okay. And you made that request to

1 whom?

2 A. To Mr. Vozikas.

3 81. Q. Okay. And what did Mr.

4 Vozikas...did he respond to that request?

5 A. Yes, he said his clients would be
6 there.

7 82. Q. Did he say his "clients" or his
8 "client"? Single or plural?

9 A. I would have to double-check on
10 that.

11 83. Q. Sorry, and where would you double
12 check? Is there a document attached?

13 A. Yes. Let me take a look. I believe
14 it is Exhibit M.

15 84. Q. Is that Exhibit M, the email...

16 A. Yes.

17 85. Q. ...from Mr. Vozikas to you on March
18 29, 2019?

19 A. That's correct. So, if you look at
20 Exhibit M, the email, March 29th. It says,

21 "...Yes, April 3rd at 2 p.m. will work just
22 fine. Myself and my client will attend..."

23 And at that point in time, we had the permit

24 application that had Mr. Rudyk's name and Ms.

25 Young's name on it, and Mr. Vozikas. There was no

1 mention of Mr. Baron anywhere. And I have never, in
2 my experience...and it's going to almost 20 years at
3 this point in time, had a client be anyone other
4 than who would be listed on a permit application.

5 86. Q. Okay. But at the meeting, you
6 understood that by "client", Mr. Vozikas was, in
7 fact, referring to the builder, Mr. Baron, right?
8 Because he was there and the homeowners were not?

9 A. No, we did not. We still...I would
10 assume, and I think it's a fair assumption, that the
11 client would refer to the homeowners, since Mr.
12 Vozikas signed the application as the agent, and the
13 homeowners were listed. So, that was the
14 assumption, that "clients" meant the homeowners who
15 were listed on the permit application.

16 87. Q. Okay. But the meeting took place,
17 you know, notwithstanding the fact that the
18 homeowners were there, correct?

19 A. That's correct.

20 88. Q. Okay.

21 A. There was an agent there.

22 89. Q. And was an explanation given to you
23 why the homeowners were not present?

24 A. Not that I can recall.

25 90. Q. Okay. And now when you told Mr.

1 Vozikas and Mr. Baron, you know, about the path
2 forward, how did they respond to that proposal?

3 A. I mean, Mr. Vozikas, I don't
4 remember him saying a lot. Mr. Baron tried to
5 explain the position and talked about the walls
6 collapsing. We even outlined that we knew that
7 there had been some past work...I mean, the whole
8 crux of this thing is that this was an area with
9 known slope stability issues. The Grindstone Creek
10 is a very steep valley system, and so that's been
11 the crux of this whole thing, more than anything, is
12 you know, as soon as we found out that works were
13 going on beyond what we had approved, our concern
14 was to make sure that whatever was happening and
15 then whatever would proceed moving forward, didn't
16 put the property at risk, didn't exacerbate any
17 slope stability issues in the area. So, that was
18 something that we absolutely conveyed. We said that
19 we knew that there was some work that had been done
20 through a past permit application, and...

21 91. Q. But Ms. McCormack...sorry, I don't
22 want to interrupt you. But my question was about
23 Mr. Gordon's response, not about what you conveyed
24 to him. So, other than saying that the walls had
25 collapsed, do you know anything else that he...do

1 you remember anything else that he said?

2 A. He said that he was going to have to
3 look into the...retaining an engineer and see what
4 that would be. And we had mentioned to him that he
5 could, as starting point, use the geotechnical work
6 that had been done previously through the past
7 permit applications. So, it was in his court to do
8 some additional work. And not just his court, Mr.
9 Vozikas' as well.

10 92. Q. Okay. And did you ask Mr. Baron
11 why...I mean, it was your position that the
12 construction that took place was not authorized by
13 Conservation Halton, correct?

14 A. That's correct.

15 93. Q. And did you ask him why he started
16 building something that, in your view, was not
17 authorized by the permit?

18 A. There...I don't know if we asked
19 them why, or if he just told us. Again, it came
20 back to that the walls were crumbling when they
21 started to do some of the work.

22 94. Q. Okay. Did he tell you that the plan
23 originally was to keep the two walls and then
24 replace the other two walls?

25 A. Did he...just so I understand, do

1 you mean he told us originally? You mean, at the
2 meeting? Because we had no correspondence with Mr.
3 Baron before that meeting.

4 95. Q. Yes. All the questions that I'm
5 asking you are about discussions that took place at
6 the meeting itself. So, at the meeting itself, did
7 Mr. Baron tell you, you know, the plan was to keep
8 two existing walls and the foundation, and then, you
9 know, replace everything else?

10 A. I can't recall what exactly he said
11 was going to be...what I can recall is that we were
12 very pointed in terms of bringing out the permit
13 application. I remember pulling out the permit
14 application, and saying, "We understand...we
15 empathize that if this is the case, if things
16 started to crumble when you were doing your
17 work...this is ultimately what you got the permit
18 for. So, we have to fix that you don't have the
19 permissions for the works that are now taking place,
20 regardless of how it happened, whether it was
21 already determined before, that these extensive
22 works...the demolition was going going to happen
23 before we got the permit application, or whether it
24 happened as happenstance, regardless, it was works
25 beyond what we had approved." And we were...we

1 pointed out the permit application and showed that
2 at the meeting.

3 96. Q. Okay. And do you recall there being
4 a discussion about potential charges under the
5 Provincial Offences Act?

6 A. The discussion was around that we
7 don't want to go down that path. The discussion was
8 that we have a process at Conservation Halton for
9 trying to remedy works that have occurred without
10 our authorization, and that is to go through the
11 compliance agreement path. And it is, you know, as
12 I have mentioned before, it is a voluntary process.
13 But it is to avoid having to go down the path of
14 charges. And that is what we were trying to convey
15 to Mr. Baron and Mr. Vozikas at that meeting.

16 97. Q. And you told them that if the other
17 alternative would be the alternative to the
18 compliance process would be, the compliance
19 agreement process, to have Mr. Vozikas, Mr. Baron,
20 and the homeowners charged under the Provincial
21 Offences Act, right?

22 A. We said that there are different
23 paths that we could do, but that was what we wanted
24 to avoid happening.

25 98. Q. Okay. And who said that? Did you

1 say that or did Mr. Priddle say that?

2 A. Mr. Priddle explained that these are
3 the paths, and this is the whole point of the
4 compliance agreement, is to avoid going down a
5 litigious or heavy-handed approach.

6 99. Q. And Mr. Priddle also explained that
7 if this path was not chosen, there would be
8 potential fines and imprisonment, correct?

9 A. I don't recall that at all.

10 100. Q. Okay. Did Mr. Priddle say that
11 there were...that if that path was not chosen, then
12 there would be charges filed against the homeowners
13 and the agents?

14 MR. JULI: Mr. Bouchelev, you just froze
15 for a minute. I don't know that it was
16 just me, or that it was anybody else. But
17 I just didn't quite hear your last
18 question. I don't know if that was just me
19 or anybody else had that.

20 101. MR. BOUCHELEV: Okay. Well, I'm happy
21 to repeat my question.

22
23 BY MR. BOUCHELEV:

24 102. Q. Ms. McCormack, do you agree that Mr.
25 Priddle explained that if the compliance agreement

1 path was not chosen, then Conservation Halton would
2 bring charges under the Provincial Offences Act?

3 A. I don't think it was that explicit.
4 It was, "We want to go down the compliance agreement
5 path. We don't want to go down the heavy handed
6 path of laying charges. That is not ideal for
7 anyone."

8 103. Q. Okay. But it was implied that if
9 the compliance agreement path is not chosen, then,
10 you know, the other alternative is the, what you
11 call the "heavy-handed" approach, right?

12 A. But it wasn't set...it was laying
13 out the different paths to solve this. And it
14 wasn't intended in a threatening way or anything
15 like that.

16 104. Q. Okay. But the two paths that were
17 laid out were the compliance agreement or charges
18 under the Provincial Offences Act? Those are the
19 two paths that were explained, correct?

20 A. It was just outlining the different
21 ways to resolve a violation.

22 105. Q. But those were the only two ways...

23 A. It was explicitly clear that we did
24 not want to go down that path, that we wanted to
25 work with the applicants to try to resolve this.

1 106. Q. No, I understand that. But those
2 were the only two options presented, correct?

3 A. I believe so.

4 107. Q. All right. Now, paragraph 39 to
5 your affidavit, if you can go there please?

6 A. Okay. So, at paragraph 39, you talk
7 about the homeowners making a request to make a
8 delegation to Conservation Halton's board, right?

9 A. That's correct.

10 108. Q. And just...you know, just so that we
11 are clear, what is a delegation to Conservation
12 Halton's board?

13 A. A delegation means that you request
14 to make a presentation and speak to the Board of
15 Directors at a board meeting.

16 109. Q. Okay. And such requests can
17 normally be made by, essentially, any property owner
18 that has concerns about their property, right?

19 A. The challenge with this one, and I
20 put it in my affidavit, was that there was an
21 outstanding violation.

22 110. Q. Okay. Well, let's look at Exhibit P
23 of your affidavit, which attaches the email from
24 Niamh Buckley to Shelly Young and several others.
25 Now, just...again, so we are clear, who is Niamh

1 Buckley?

2 A. She is the administrative assistant
3 to the CEO's office.

4 111. Q. Okay. And the CEO at the time was
5 Mr. Hassaan Basit, correct?

6 A. That's correct.

7 112. Q. And now, have you had a discussion
8 with Mr. Buckley about this request for a delegation
9 that was made by Ms. Young?

10 A. Yes, we would have...she would have
11 asked us if we had any knowledge about it. We would
12 have had to provide her with some information to let
13 her know whether it was or was not appropriate for
14 the homeowners to make a delegation to our board.

15 113. Q. I see. Okay. And you told Ms.
16 Buckley that it was not appropriate, correct?

17 A. Yes, myself and...yes.

18 114. Q. Okay. And sorry, you said yourself
19 and who else?

20 A. Ms. Veale...Ms. Barbara Veale.

21 115. Q. Okay. So, it was like a meeting
22 between you, Ms. Veale, and Ms. Buckley where this
23 discussion took place?

24 A. It could have been a meeting,
25 or...yes, a conversation, you know, coming to our

1 office.

2 116. Q. Okay. And now if you look at the
3 email itself, it says,

4 "...Legal counsel has advised Conservation
5 Halton that a delegation before the Board
6 of Directors at this time is inappropriate,
7 as this is a legal matter..."

8 So, is that what you told Ms. Buckley, that it would
9 be inappropriate to have a delegation because this
10 was a legal matter?

11 A. That...yes, there was an outstanding
12 violation.

13 117. Q. So, what exactly is meant by "legal
14 matter" in this context?

15 A. In this context, it would mean that
16 there was a violation notice that had been issued to
17 the homeowners. And the reason that, you know, it
18 would be inappropriate is if the homeowners...if it
19 ever came to a hearing, they could prejudice...could
20 be prejudiced with any...the Board, sorry, I should
21 say the Board could be prejudiced with having had a
22 previous presentation or a delegation from
23 homeowners or applicants ahead of time. So, it's to
24 protect both homeowners, land owners, but also, you
25 know, staff to make sure that the board is not going

1 to be listening to something and then biasing any
2 future opinion on a future decision that they may
3 need to make.

4 118. Q. But the same logic would apply to
5 any delegation, regardless of whether or not there
6 is a violation, right?

7 A. That's correct for...when there is
8 an active application or there's an act of
9 violation. Whenever we have an active permit
10 application, we do not...we take the same position
11 to applicants that, you know, it's not appropriate
12 to delegate before our board if...unless there is no
13 active application or violation, or if you're at the
14 point where you would be having a hearing before the
15 board.

16 119. Q. Okay. And I would suggest that the
17 legal matter at this point is the pending charges
18 under the Provincial Offences Act, correct?

19 A. No. I would say it is because a
20 violation had been...at that point in time it was
21 not contemplating the charges, it was dealing with
22 and trying to resolve the violation.

23 120. Q. Okay. And when were the charges
24 first contemplated?

25 A. I can't say exactly when that would

1 have been contemplated. What I do know is that we
2 had wanted to try to resolve this through other
3 means besides going down that path for a couple of
4 years at this point in time.

5 121. Q. So, do you know when the intent to
6 charge my client was formulated?

7 A. I can't say the exact time. I do
8 know that we are getting close to the statute of
9 limitations, the two-year window. And so that
10 knowing that we haven't been in a position to
11 resolve this, as we had hoped, we wanted to keep the
12 window of time open to try to resolve it before
13 going down that path, but our window for laying
14 charges; is drawing to a close.

15 122. Q. But laying charges is not...even if
16 there is no agreement between you and my clients,
17 laying charges is not the only option that is
18 available to you, right?

19 A. No. We have also given another
20 option over the last year or so, I would say,
21 year-an-a-half.

22 123. Q. And I should say "legal option".
23 I'm not talking about any negotiations. I'm talking
24 about legal options. You could bring a civil
25 injunction, for example, and request the removal of

1 the home, right?

2 A. I can't speak to the legal aspects
3 of what could be done. I know we have offered
4 another path which could be through, you know, fine,
5 if your clients are not interested in entering into
6 the compliance agreement, they could submit a fresh
7 permit application. And those were through with
8 prejudice letters. And I believe I can find them,
9 but they are the letters sent...and they are, I
10 believe, in Ms. Young's affidavit, as well, December
11 2019, and again in July 2020, we did extend the
12 offer to have the applicants put in a permit
13 application for the works, and we go through that
14 path. And if they wanted a hearing, or to delegate
15 before the board at that point, that could be the
16 path.

17 124. Q. Right. And I think...and we may
18 have touched on this during your previous
19 cross-examination, but that option was only
20 communicated to my clients after this application
21 was commenced, right?

22 A. After this civil...

23 125. Q. Yes, the civil application was
24 commenced.

25 A. That's correct.

1 126. Q. In other words, you know, that
2 option was not presented until my clients sued
3 Conservation Halton?

4 A. We still had the compliance path.
5 So, the compliance path, quite honestly...

6 127. Q. No, no. I'm not talking...sorry,
7 I'm not talking about the compliance path. I'm
8 talking about this other option that you have
9 presented of submitting a new application. That
10 option was not presented until my clients sued
11 Conservation Halton, right?

12 A. Well, what I would say to that is
13 that...

14 128. Q. First of all, is it a...

15 A. Wait...

16 129. Q. ...yes or a no? Is that a correct
17 proposition, that this option was not presented to
18 my clients until they sued Conservation Halton?

19 A. No, I think there is more to it.
20 That option was presented when it was clear that
21 your clients were not interested in entering into a
22 compliance agreement...into our compliance agreement
23 process. So, you know, we were trying to think
24 about, okay, how do we meet in the middle? So,
25 that's why that was offered.

1 130. Q. Okay. But the first time this
2 option was presented is in a letter from your
3 counsel in December of 2019, correct?

4 A. I believe so, yes.

5 131. Q. Right. And that was two
6 months...or, I should say, three months,
7 approximately, after the application was commenced,
8 correct?

9 A. I think...what I would say is that
10 we had tried on a number of occasions to meet with
11 the homeowners so that we could talk about this and
12 try to determine a path forward. And we didn't have
13 a lot of success with connecting with the homeowners
14 on this, you know. Even after my August 22nd, 2019
15 letter was sent out...

16 132. Q. Well, but Ms. McCormack, but that
17 doesn't really answer my question, which is quite
18 simple, that this option was not presented until
19 after the application...the civil application was
20 commenced, correct?

21 A. It may have been offered if we had
22 had a chance to speak with the homeowners before
23 lawyers got involved.

24 133. Q. But it was not offered, correct?

25 A. We don't know, because we

1 couldn't...we didn't get that opportunity to have
2 that conversation. But yes...

3 134. Q. But you...

4 A. ...correct, it was not presented
5 before then.

6 135. Q. Okay. And you could have presented
7 it by way of sending a letter to my client, right?

8 A. We needed to have that conversation
9 with your client. And we just didn't get that
10 opportunity until this was launched.

11 136. Q. And so, again, going back to my
12 previous question, you know, just for the record
13 again, what is your position at Conservation Halton?

14 A. I'm the associate director of
15 planning and regulations.

16 137. Q. Right. And you are involved in
17 compliance or enforcement, I suppose, of actions
18 that are...

19 A. I oversee the regulations team. And
20 the regulations teams is involved directly with the
21 compliance end of our business.

22 138. Q. Okay. And you're aware of the fact
23 that one of the options that was available to
24 Conservation Halton, instead of charging my clients
25 under the Provincial Offences Act, you could have

1 brought a civil application or an injunction
2 enjoining any ongoing construction, right?

3 A. I can't speak to those different
4 legal paths.

5 139. Q. Okay. That's fine. But can you
6 tell me when...and you know, and when...I'm talking
7 about a specific time frame, when Conservation
8 Halton formulated the intent to charge my clients
9 with a provincial offense?

10 A. As I mentioned, I can't pinpoint an
11 exact date. But what I can say is, you know, as the
12 two-year statute of limitations grew closer, that's
13 when we needed to start thinking about what our
14 options were.

15 140. Q. And now, so, this letter from Ms.
16 Buckley refers to legal counsel giving advice to
17 Conservation Halton, right?

18 A. That's correct.

19 141. Q. Now, Mr. Jull...and this is a
20 question to you as well, but I'm going to ask for a
21 copy of any letter or email provided by legal
22 counsel in respect of this matter. And it's my view
23 that privilege has been waived because this email
24 specifically refers to this advice.

25 MR. JULL: I want to just speak to that

1 for a moment. Again, I apologize. For
2 whatever reason, it may be my internet, you
3 just froze there for a very short period of
4 time. So, I'm just going to ask you, Mr.
5 Bouchelev, if you could ask that question
6 again? I apologize, but...I may have to
7 sign in and sign out again. Maybe I'll do
8 that at the break, but maybe if you can
9 just repeat the question?

10 142. MR. BOUCHELEV: Yes, so, at Exhibit P to
11 Ms. McCormack's affidavit, there is an
12 email from Niamh Buckley to Shelly Young.
13 And the email says that,
14 "...Legal counsel has advised Conservation
15 Halton that a delegation before the Board
16 of Directors at this time is inappropriate,
17 as this is a legal matter..."
18 So, I want a copy of this communication
19 from legal counsel, and my position is that
20 solicitor-client privilege has been waived
21 because Mr. (sic) Buckley has revealed the
22 nature of the legal advice that was given.
23 MR. JULL: So, I disagree with that
24 position. First off, it's not Mr. Buckley,
25 it's "Ms.". It's a woman.

1 143. MR. BOUCHELEV: Okay.

2 MR. JULL: Secondly, I disagree. There
3 is no waiver of solicitor-client privilege
4 by the simple reference to the fact that a
5 client has received some legal advice. So,
6 that would be a refusal.

7 144. MR. BOUCHELEV: Well, it's not a simple
8 reference. It also discloses what the
9 legal advice was.

10 MR. JULL: I don't think...I don't
11 agree. And again, it's a refusal.
/R

12 145. MR. BOUCHELEV: Okay. We will mark that
13 as a refusal.

14
15 BY MR. BOUCHELEV:

16 146. Q. And Ms. McCormack, have you had any
17 emails or discussions with other Conservation Halton
18 staff regarding this delegation request?

19 A. I can't recall. If it was, it would
20 have been with the CAO office, but...

21 147. Q. Okay.

22 A. ...the CAO office.

23 148. MR. BOUCHELEV: And Counsel, I would
24 like copies of emails between Ms. McCormack
25 and anyone else at Conservation Halton,

1 including the CAO's office regarding this
2 delegation request.

3 MR. JULL: I am prepared to provide that
4 undertaking with the caveat that if the
5 correspondence involves legal advice from
6 myself or Gardiner Roberts, that would be
7 covered by privilege. But, other than
8 that,
9 I am happy to provide an undertaking.

U/T

10 149. MR. BOUCHELEV: Okay. All right. Thank
11 you.

12

13 BY MR. BOUCHELEV:

14 150. Q. Now, Ms. McCormack, I'm going to
15 take you to paragraph 42 of your affidavit.

16 A. Okay.

17 151. Q. Okay. So, at paragraph 42 you
18 describe the email on May 17th, 2019, sent by Chris
19 Bava from Lifestyles by Barons. And that email is
20 attached at Exhibit S, and it refers to Mr. Bava
21 advising that the meeting scheduled for May 21st
22 would be cancelled, right?

23 A. That's correct.

24 152. Q. And did you...I see you are not
25 copied on this email. But were you aware of this

1 email at the time? Was it forwarded to you?

2 A. I don't know if it was forwarded to
3 me or communicated to me.

4 153. Q. Okay. But around that time you
5 became aware that the meeting had been cancelled,
6 right?

7 A. That's correct.

8 154. Q. Okay. And did you take any steps to
9 follow up with Lifestyles by Barons or Mr. Vozikas
10 and ask why the meeting was being cancelled?

11 A. No, we did not.

12 155. Q. Okay. And following this
13 cancellation of the meeting, did you take any other
14 steps to contact the homeowners or their agents to
15 see what was going on with the project?

16 A. Well, Conservation Halton did not
17 request the meeting. It was Lifestyles, I believe,
18 that had...or Mr. Vozikas who had requested the
19 meeting in the first place. So, you know, we get
20 lots of meeting requests. And, you know, if the
21 meeting is cancelled by the person who asked for the
22 meeting, it's...we don't follow up on every single
23 request to ask why.

24 156. Q. But, in general, not just in
25 connection with the meeting, but did you have any

1 discussions following that cancellation about the
2 status of the construction project?

3 A. The only thing that we probably
4 assumed was that the agents and the applicants were
5 working to pull together the pieces that we had
6 requested in that April meeting?

7 157. Q. And so, in other words, you did not
8 have any discussions, right?

9 A. Discussions? I'm sorry, if you can
10 just clarify, discussions with who?

11 158. Q. Well, any kind of discussions with
12 either the homeowners, Lifestyles by Barons, or Mr.
13 Vozikas?

14 A. Following that, I do not believe so.
15 I personally did not.

16 159. Q. Okay. And you're not aware of any
17 anyone else at Conservation Halton having such
18 discussions, right?

19 A. I'm not aware, but I can't say for
20 certain.

21 160. Q. Okay. Now, if you go to paragraph
22 48 of your affidavit, you talk about the letter that
23 you sent, which was dated August 22nd, 2019, right?

24 A. That's correct.

25 161. Q. And you have previously told me at

1 your last examination that the decision to send this
2 letter was a joint decision made by you and Ms.
3 Veale, right?

4 A. That's correct.

5 162. Q. And did you consult with anyone else
6 prior to sending or prior to finalizing that letter?

7 A. Internally...internal staff, do you
8 mean?

9 163. Q. Yes.

10 A. It would have been also the...to get
11 a better understanding of the particulars of the
12 situation, it would have been with Mr. Priddle and
13 Ms. Connolly, as well.

14 164. Q. Okay. And anyone else that you can
15 think of?

16 A. Not that I can think of.

17 165. Q. What about externally, did you
18 consult with anyone other than Conservation Halton
19 staff?

20 A. We had conversations with...or we
21 reached out to the City to find out if they had
22 rescinded the stop work order.

23 166. Q. Okay. And other than that, no
24 external consultations, correct?

25 A. I'm not clear. Are you asking from

1 a legal perspective?

2 167. Q. Well, I mean, I don't want you
3 to...if you received legal advice, I don't want you
4 to disclose what the legal advice was. But let's
5 just...again, without revealing what the advice may
6 have been, did you obtain legal advice?

7 A. We did obtain legal advice, yes.

8 168. Q. Okay. So, other than the City and
9 your lawyers, did you consult with anyone else
10 externally on this, before finalizing this letter?

11 A. No.

12 169. Q. Okay. And so I would like you to
13 produce your internal communications within
14 Conservation Halton that were...that pertained to,
15 you know, to this letter of August 22, 2019. So,
16 just to be clear, I'm asking for any emails or other
17 written communication between Conservation Halton
18 staff in connection with the subject matter of this
19 letter.

20 MR. JULL: We will provide that
21 undertaking.

U/T

22 170. MR. BOUCHELEV: Okay, thank you.

23

24 BY MR. BOUCHELEV:

25 171. Q. Now, paragraph 52, can you please

1 look at paragraph 52 to your affidavit?

2 A. Sure.

3 172. Q. You refer to the email from Mayor
4 Meed Ward requesting a meeting with the homeowners
5 on the following day, September 18, 2019, right?

6 A. That's correct.

7 173. Q. And you will agree that, you know,
8 this meeting was requested on fairly short notice,
9 it would have been the following day?

10 A. That's correct.

11 174. Q. And if we look at Exhibit Y, there
12 is no indication there that the homeowners were
13 actually available the following day, right?

14 A. Not in that email, no.

15 175. Q. Okay. And there is...well, are
16 there any emails that indicate that the homeowners
17 would be available on the 18th for a meeting?

18 A. My understanding is that there is
19 another email. I believe it is in my Exhibit Z, I
20 believe. And it's also in Ms. Young's affidavit,
21 her Exhibit V, there are email exchanges between Mr.
22 Baron and Ms. Veale. And I believe they were
23 talking about the meeting of September 18th, and
24 that Ms. Young did receive copies of those.

25 176. Q. Okay, but which...you say it's in

1 Exhibit Z. Which email are you referring to?

2 A. So, there is the email from Mr.
3 Baron. He talks about being present at the...on
4 Wednesday, September 18th.

5 177. Q. Okay. So, this is the email from
6 Mr. Baron to Barb Veale on September 17th, 2019,
7 right?

8 A. That's correct. And he does go on
9 to say later that he is going to reach out to the
10 clients to see if they were available.

11 178. Q. Okay.

12 A. And Ms. Young's affidavit says
13 that...I believe, in her paragraph 75, she said that
14 there was no point in them attending.

15 179. Q. I'm sorry, which...I lost you there
16 for a second. So, paragraph 75 of Ms. Young's
17 affidavit?

18 A. Yes, I believe so. I can
19 double-check that. Paragraph 75 of the October
20 affidavit, she said there was no point in having the
21 meeting.

22 180. Q. So you're referring to paragraph 75
23 of Ms. Young's affidavit, which states that,
24 "...In light of the unreasonable position
25 taken by Conservation Halton, and in light

1 of Mayor Meed Ward's earlier email about
2 having no legal authority to direct
3 Conservation Halton, Ivan and I felt that
4 there was no point in having a meeting with
5 Mayor Meed Ward..."

6 A. That's correct.

7 181. Q. That's what you were referring to,
8 right?

9 A. That's correct.

10 182. Q. Right. But there is no email
11 communications or anything else that you're aware of
12 that indicates that the homeowners were available on
13 that particular day, correct?

14 A. No. I mean, generally, it would be
15 the agent that would have to advise their client or,
16 you know, whoever is sending the emails. I presume
17 they were going to let the homeowners know.

18 183. Q. Okay. And so in the email of the
19 previous day, which we just looked at at Exhibit Z
20 of your affidavit, Mr. Baron says that he is
21 available, but he also says at the bottom of that
22 letter,

23 "...We have already reached out to the
24 client requesting if they can be available
25 for 4:30 p.m. tomorrow as very short notice

1 to pull all resources today, as you
2 requested..."

3 Do you see that? This is the last page of Mr.
4 Baron's email.

5 A. Yes, I see that. yes.

6 184. Q. Right. And then he also states,
7 "...We have a very clear understanding of
8 the matter, and are contracted as the
9 client's agent as such, due to the urgency
10 of the client could not be at the meeting
11 tomorrow, we request that we still meet..."

12 So, Mr. Baron advised you that the client may or may
13 not be available due to the urgent nature of the
14 request. But he...and he asked to meet even if the
15 homeowner would not be present, right?

16 A. That's correct.

17 185. Q. Okay. So, it would be fair to say
18 that Conservation Halton was prepared to meet even
19 in the client's absence, right?

20 A. We...you know, we had strongly
21 advised that we didn't know until our ride down to
22 the meeting, we were getting emails about that...I
23 believe it was from yourself, saying that we were
24 not to meet with Mr. Baron on his own, that they
25 wanted legal counsel there. So, we didn't have

1 confirmation that the homeowners wouldn't be
2 attending until our drive from Conservation Halton's
3 office to the City Hall, that the meeting would be
4 cancelled. So, you know...

5 186. Q. Okay, but you...

6 A. ...we arrived at City Hall and were
7 finding out the information the same time as City
8 staff.

9 187. Q. Okay, but it would be fair to say
10 that you were never told by anyone that the
11 homeowners would be attending that meeting?

12 A. Not until we received that email
13 just before the meeting was to take place, from, I
14 believe it was yourself.

15 188. Q. No, no. I think you are...perhaps
16 you didn't hear my question. So, you were never
17 told at any point that the homeowners will be
18 attending the meeting?

19 A. There was only a day in between the
20 emails that Mr. Baron said he would check with his
21 clients, but that they might not be able to, because
22 it was a last minute meeting. It was a last minute
23 meeting for us as well, quite frankly. And so, you
24 know, I assume in those 24 hours between...you know,
25 when Mr. Baron sent his email and when the meeting

1 was scheduled to take place, that is when we would
2 find out. We wouldn't find out substantially in
3 advance, given that there was only about a day or so
4 between when Mr. Baron wrote to when the meeting was
5 scheduled for. And like I said, you know, as soon
6 as we found out from yourself that we weren't to
7 meet with Mr. Baron, none of us did. Mr. Baron
8 still wanted to meet with us and all of...you know,
9 and he showed up for the meeting, and it was news to
10 him that he wasn't going to be able to meet with us.

11 189. Q. Okay. And just to be clear, you
12 know, I read that part of your affidavit, I'm not
13 doubting the fact that you didn't meet with him. I
14 just want to be clear that there were no...you know,
15 going into that meeting, you had no confirmation
16 from Mr. Baron or anyone else that the homeowners
17 would be present, right?

18 A. Not at that time.

19 190. Q. Okay. And now, if you look at
20 Exhibit Z to your affidavit, after the email from
21 Mr. Baron that we have just looked at, there is also
22 an email from Barb Veale on September 17th, 2019, at
23 11:53 a.m. Do you see that?

24 A. I see it.

25 191. Q. Okay. If you look at the paragraph

1 at the bottom of page 1017 of that record, there is
2 a paragraph that starts with, "Moving forward", and
3 the second sentence states,

4 "...In order for CH to issue a permit for a
5 new dwelling, a geotechnical assessment
6 must be submitted with an application for a
7 compliance agreement..."

8 So, you would agree with me that, at that point,
9 Conservation Halton's position was that in order for
10 the project to continue, the clients would have to
11 enter into a compliance agreement?

12 A. In order for them to have permission
13 to do the works that they were doing, they would
14 need to identify what works they were doing, sign
15 the compliance agreement, and do the geotechnical
16 assessment.

17 192. Q. Okay. And that was the only option
18 that was presented in the September the 17th email,
19 correct?

20 A. That's correct.

21 193. Q. Now, did you or anyone else at
22 Conservation Halton have any emails with the Mayor
23 of the Mayor's office in connection with this
24 cancelled meeting on which my clients were not
25 copied?

1 A. I would have to check through my
2 email records.

3 194. Q. Okay. And Mr. Jull, I would like an
4 undertaking to produce all communications between
5 Conservation Halton and the Mayor's office, and
6 also, I guess, the Chief Building Official's office,
7 because I believe that he was also invited to that
8 meeting, in connection with this meeting. And Mr.
9 Jull, you are muted, so we can't hear you. Mr.
10 Jull, you're...

11 MR. JULL: Sorry, I was trying to stay
12 mute to keep background noise out. So,
13 thank you. I am prepared to give that
14 undertaking. Just to be precise, it's
15 specifically to produce all communication
16 between Conservation Halton and the Mayor's
17 office and Chief Building Official in
18 respect of the meeting dated...and just
19 give me the date, that would be
20 September...is it September 18th? Is that
21 the meeting date?

22 195. MR. BOUCHELEV: Yes, it was planned for
23 September the 18th.

24 MR. JULL: All right. That is fine. We
25 will give that undertaking. September

1
U/T

18th, 2019.

2 196.

MR. BOUCHELEV: Right. And also, to
expand on that, I would...

3

4

MR. JULL: Oh, I'm sorry. Is
that...sorry, it's September 18th, 2019?
Not 2018, 2019.

5

6

7

197.

MR. BOUCHELEV: Yes.

8

MR. JULL: Thank you.

9

198.

MR. BOUCHELEV: And so I would also like
to expand on that, and just ask for any
communications with the Chief Building
Official and the Mayor's office, to the
extent that it hasn't already been
disclosed in the affidavit, obviously, that
pertain to 835 Spring Gardens.

10

11

12

13

14

15

16

MR. JULL: Well, this isn't a discovery.

17

This is a cross-examination. I think

18

that's a very wide ask, and I think what I

19

would ask you to do is, as we go through,

20

if you have specific requests that pertain

21

to the affidavit, that is acceptable as

22

clearly your last one was. But I'm

23

not...this isn't, as you know, the case law

24

is very clear that cross-examinations on an

25

application is...this is not a discovery

1 process. We haven't filed every piece of
2 correspondence in schedules, either
3 Schedules A or B. And I'm going to refuse
4 to give such a wide undertaking. That
5 would take, potentially, a great deal of
6 time to gather that material.

7 199. MR. BOUCHELEV: Well, I mean, an
8 application...there is, of course, no
9 discovery process on an application, but it
10 is also not a motion, it's a hearing on the
11 merits of the case. So, I would say the
12 documents that are relevant to the merits
13 of the application would be...it's
14 something that we can request.

15

16 BY MR. BOUCHELEV:

17 200. Q. But Ms. McCormack, let me ask you
18 this: So, are you aware of any communications
19 between Conservation Halton and the Mayor's office
20 in respect of 835 Spring Gardens?

21 A. I would have to look through my
22 records. There may have been some communication, but
23 I would have to look through my records for...to see
24 exactly what was there.

25 201. Q. Okay. But you would agree with me

1 that those communications probably were not
2 extensive?

3 A. No, they wouldn't be extremely
4 extensive, no.

5 202. Q. Okay. So, Counsel, since there
6 is...it doesn't sound like this would be an
7 extensive undertaking, can you reconsider your
8 position and see if you will produce all
9 communications that pertain to 835 Spring Gardens?

10 MR. JULL: Given what Ms. McCormack has
11 just said, we will certainly undertake to
12 make reasonable efforts to obtain the
13 correspondence, generally speaking, between
14 Conservation Halton and the City with
15 respect to 835 Spring Gardens.

U/T

16 203. MR. BOUCHELEV: And same would apply to
17 the Chief Building Official, right?

18 MR. JULL: Correct.

19 204. MR. BOUCHELEV: When you say "City",
20 that includes the Mayor's office and the
21 Chief Building Official?

22 MR. JULL: Fair enough.

23 205. MR. BOUCHELEV: Okay.

24

25 BY MR. BOUCHELEV:

1 206. Q. Now, Ms. McCormack, can you look at
2 paragraph 69 of your affidavit? You say at
3 paragraph 69 that,

4 "...The homeowners and Lifestyles entered
5 into an agreement to demolish the house..."

6 And I would suggest to you that that agreement
7 doesn't say that they...that the house would be
8 completely demolished, correct?

9 A. No. If I...if you want to go to the
10 agreement, I have to double-check. I believe it
11 is...I will have to double-check what exhibit that
12 agreement is. Exhibit H.

13 207. Q. Okay, and which section of that
14 agreement are you referring to?

15 A. So, if you go to Schedule A of the
16 agreement?

17 208. Q. Okay.

18 A. DM2. So, first off, I guess, the
19 first part of Schedule A is all about demolition
20 that needs to happen.

21 209. Q. Right.

22 A. And if you go to DM2, it says,
23 "...We anticipate demolition efforts to be
24 very extensive, in many cases, taking the
25 structure directly back to the original

1 basement walls..."

2 210. Q. Okay. And so what that says is that
3 they just made extensive renovations, that in many
4 cases, may be taking the structure down to the
5 original basement walls. But it doesn't say that
6 the building will be completely demolished, correct?

7 A. But the permit that they received
8 from us was for a minor addition to the garage, a
9 front porch, a rear porch, and an on grade patio.
10 So, extensive...it's...demolition efforts...so, any
11 demolition back to the original basement walls is
12 way beyond what our permit was for. The permit, as
13 I mentioned...you know, if there was going to be any
14 minor taking down, it would be on the west side of
15 the building, the garage side of the building. So,
16 quite...

17 211. Q. And I understand that it is your
18 position that the work was not done in accordance
19 with what, you know, your permit allows. But the
20 question is simply this: The agreement between my
21 client and Mr. Baron does not say that the building
22 will be completely demolished, fair?

23 A. It says,
24 "...demolition efforts will be very
25 extensive, back to the original basement

1 walls..."

2 212. Q. "...in many cases..."

3 A. Yes, but to..

4 213. Q. Not in every case?

5 A. Extensive demolition.

6 214. Q. Okay, but extensive demolition...you

7 can have extensive demolition...it's not saying

8 extensive demolition is not the same thing as saying

9 complete demolition, you would agree with that?

10 A. I think it's a bit of semantics

11 here. You know, "extensive demolition" can mean

12 completely demolished. It could mean, you know, 80

13 percent demolished. I don't know. I think it's...I

14 think we are...

15 215. Q. It could mean 50 percent demolished?

16 A. I don't know. I don't

17 the..."extensive", to me, means it's not...you know,

18 it's coming down substantially, and that's what we

19 saw. Again, it goes back to, we didn't know

20 anything was going to be demolished. And this

21 agreement was signed in March of 2018. That wasn't

22 revealed to us when we received the permit

23 application in May, and when we issued the permit at

24 the end of May. So, regardless, I guess my position

25 is that any demolition is beyond what we had...any

1 demolition is beyond what we had approved as part of
2 our permit.

3 216. Q. You're saying that the approval that
4 you have provided did not allow for any demolition
5 of any kind?

6 A. We would have assumed that there may
7 have been some walls coming down on the west side by
8 the garage, where the minor addition was proposed.

9 217. Q. Okay.

10 A. We would not have accepted the rest
11 of the dwelling to be touched in the way that it had
12 been.

13 218. Q. Okay. So, some demolition was, in
14 fact, approved, correct?

15 A. The minor addition to the garage.

16 219. Q. Which would necessitate some
17 demolition of existing wall structures, right?

18 A. But if you go back to my affidavit
19 and the pictures that are included as exhibits, it
20 shows that the rest of the building is being taken
21 down, and that is beyond what we had approved.

22 220. Q. Okay, but all I'm trying to
23 establish is that some demolition was approved.

24 A. We would have assumed that if you're
25 putting in an addition to a garage to expand it,

1 that you would have had to take down that west wall,
2 because that is...there was a small area that was to
3 be expanded to the west. So, the only, only area
4 where we would have expected to see any demolition
5 would have been the west garage wall. So, the
6 furthest west part of the structure. That would be
7 the only area where we would have expected to see
8 walls coming down.

9 221. Q. And so, again, going back to DM2,
10 which is the section of the Schedule A that we have
11 just looked at, it would be fair to say that, you
12 know, when you say that "very extensive demolition"
13 means, you know, complete demolition of the house,
14 that is just your interpretation of what, I guess,
15 would be meant by the term "extensive demolition"?
16 You don't know for a fact that there was an
17 agreement to completely demolish the existing
18 structure, right?

19 A. Not sure I'm following.

20 222. Q. Well, the question is this: You
21 don't know whether or not there was an agreement
22 between my clients and Lifestyles to completely
23 demolish the structure, it's just an assumption on
24 your part based on, you know, the language in this
25 agreement?

1 A. Well, I think the language in this
2 agreement, for sure, when you look at...even the
3 Lakeland report that was prepared after March or
4 January, I would have to double-check...of 2019.
5 The Lakeland report, it speaks to that the height of
6 the basement walls was to be raised. So, to me,
7 again, that was already planned because it was quite
8 clear in that document that the walls needed to
9 change.

10 223. Q. And...

11 A. Yes, I believe it says...the
12 Lakeland reports says,
13 "...Not structurally possible to leave the
14 exterior walls since the foundation and
15 exterior wall heights are to be raised..."

16 224. Q. And did you ever have any
17 discussions with Lakeland Engineering about that
18 report?

19 A. No, I did not.

20 225. Q. Okay. And so you never reached out
21 to them to ask for clarification as to what that
22 meant, correct?

23 A. No, I did not.

24 226. Q. All right. Now, I'm going to show
25 you...well, first of all, let me ask you this. So,

1 you were aware with the...you have seen the
2 application which contained the survey that was
3 stamped as "Approved" by Conservation Halton, right?

4 A. The approved permit drawing?

5 227. Q. Yes.

6 A. That's correct.

7 228. Q. You're familiar with that document,
8 right?

9 A. Yes. It's...is it Exhibit E or F?

10 229. Q. Right. So, this is Exhibit F to
11 your affidavit. And now, if you look at the survey,
12 and if you look at the building itself, you will
13 agree with me that it shows the footprint of the
14 building that is going to be slightly expanded to
15 include an addition to the garage, the covered front
16 porch and the cantilevered balcony, right?

17 A. That's correct. So, the area
18 highlighted in red on that drawing came from the
19 applicants, and that was to highlight the areas to
20 change.

21 230. Q. And when you say "from the
22 applicants", you mean it was submitted by the
23 applicants' agent, Mr. Vozikas, right?

24 A. I assume that the agent is working
25 on the applicants' behalf.

1 231. Q. Okay. And do you have any evidence
2 that the structure that exists on this property
3 today is outside of the footprint that was approved
4 as part of this application?

5 A. Well, the drawing that we approved
6 is quite clear, that the...

7 232. Q. I'm only talking about footprint,
8 though. I'm not talking about the structure itself.
9 I'm only talking about footprint. Do you have any
10 evidence that the building is outside of this
11 proposed footprint?

12 A. I don't have any evidence, no.

13 233. Q. Okay. And you attended the property
14 in December of 2020, correct?

15 A. That's correct.

16 234. Q. And would it be fair to say that at
17 the time, you did not make any measurements of the
18 footprint of the structure that existed there at
19 that time, right?

20 A. The focus...well, first off, it did
21 appear to be on the existing footprint, save and
22 except the garage bump out. So, that was reflected
23 on site. What we did take measurements of was the
24 distance between the rear of the dwelling and the
25 physical top of bank.

1 235. Q. Okay. So, that's fine. But it
2 would be fair to say that at the time of the visit,
3 you had no concerns that the building was outside of
4 the existing footprint, except for the bump out of
5 the garage, which was approved, right?

6 A. Conservation Halton, you know, it's
7 not outside of the footprint, but that still doesn't
8 resolve that we gave a permit for a garage addition,
9 a couple of porches, and we did not give a permit
10 for a rebuild of a house.

11 236. Q. No, I understand your position. Ms.
12 McCormack...

13 A. Whether it is on the...

14 237. Q. Yes.

15 A. ...footprint of not, whether it is
16 on the same footprint of not.

17 238. Q. Okay.

18 A. Even staying on the same footprint
19 still would have required permission from
20 Conservation Halton. And our definition for
21 development under the Conservation Authorities Act
22 is quite clear. It's construction, it's
23 reconstruction, it's changing to a building, the
24 size of a building, and all of those works,
25 whether...you know, raising the height of a

1 building, regardless of whether you stay on the same
2 footprint or not, it meets the definition of
3 development under the Conservation Authorities Act.

4 239. Q. Okay. Now, are you familiar with a
5 person by the name of Ola Panczyk?

6 A. Yes.

7 240. Q. And who is that?

8 A. She is a planner at Conservation
9 Halton.

10 241. Q. Okay.

11 A. A planning analyst.

12 242. Q. And does she report to you?

13 A. At the time, she reported to Mr.
14 Priddle, and Mr. Priddle reports to me. Now she
15 reports to the manager of environmental planning,
16 who reports to me.

17 243. Q. Okay. And you are aware of the fact
18 that Ms. Panczyk attended the hearing of the minor
19 variance application in connection with this
20 property, right?

21 A. Yes, there were two minor variances.
22 Which one do you mean?

23 244. Q. I'm talking about the one in 2018.

24 A. That's correct. I'm aware now.

25 245. Q. And prior to that hearing, the City

1 provided Conservation Halton with the application
2 for a minor variance, which included detailed design
3 drawings, correct?

4 A. Yes. The variance was for relief
5 from front yard setbacks and, I believe, a roof over
6 the porch.

7 246. Q. Okay. And I'm not sure if it's in
8 your affidavit, but it is in the affidavit of Mr.
9 Priddle at Exhibit S, that the drawings themselves
10 are attached, right?

11 A. Yes. I would have to pull it up.
12 It's not in my affidavit.

13 247. Q. Okay. But you're aware of the
14 drawings that I am referring to, right?

15 A. I can pull them up. I don't have
16 them in front of me.

17 248. Q. Okay, sure. If you can open Exhibit
18 S to Mr. Priddle's affidavit?

19 A. Exhibit S?

20 249. Q. Yes.

21 A. It's taking some time to load. I'm
22 going to have to try reopening it.

23 250. Q. You know what, I can share it on the
24 screen. It'll make things easier.

25 A. Okay, sure.

1 251. Q. So, at Exhibit S you see the permit.
2 Let me just make sure I'm on the right place. No,
3 sorry, this is not Exhibit S, this is Exhibit U,
4 which has the drawings. These are...you're familiar
5 with these drawings, right?

6 A. I took a look at them after...or
7 more recently.

8 252. Q. Okay. So, and you also saw one of
9 the drawings, it's labelled "A09", which shows that
10 the north and the west walls are going to be
11 removed, correct?

12 A. I can see that now.

13 253. Q. Okay. And you will agree that these
14 drawings were provided to Conservation Halton back
15 in 2018 by the City?

16 A. Yes. I can confirm that the City
17 circulated that as part of the minor variance. I
18 think an important distinction, though, here, is
19 that when Conservation Halton reviews these things
20 in the capacity, you know, from a planning capacity,
21 that is a very different role than us in our
22 regulatory approval capacity. So, you know, when
23 our planners, our planning staff, are reviewing a
24 minor variance application, what we are looking at
25 is, okay, what is this application for? It's for

1 relief from the zoning by-law in terms of front yard
2 set backs, and is for a roof over a porch. And so
3 we are giving comments on that, we are giving advice
4 to the City. It's not giving our approval. Our
5 permit application, our permit that we issued is
6 quite clear that any changes to what you got
7 approved for from Conservation Halton...so, very
8 different process. The minor variances is the
9 City's process. The CH permit is through our
10 regulatory process. And that is, you know, us
11 giving some comments on the minor variance is
12 different than us saying, "Yes, we approve, you
13 know, you changing the height and taking down walls
14 and going beyond what CH issued a permit for". So,
15 they are two different things.

16 254. Q. Okay. Now, you will agree with me
17 that Ms. Panczyk reviewed these drawings as part of
18 the application that she was reviewing, right?

19 A. That's correct.

20 255. Q. And other than Ms. Panczyk, do you
21 know who else reviewed the application? The minor
22 variance application?

23 A. Ms. Panczyk would have done the bulk
24 of the review, and it would have been signed off by
25 Mr. Priddle at that point in time.

1 256. Q. Okay. Now, do you know if Mr.
2 Priddle reviewed the minor variance application, or
3 did he just sign off on it without reviewing it?

4 A. I can't say for sure. You would
5 have to ask him.

6 257. Q. Okay. Now, but you did not review
7 the drawings yourself, right?

8 A. No, I did not.

9 258. Q. And did you sign off on...well,
10 first of all, let's look at the letter than is
11 contained at Exhibit T of Mr. Priddle's affidavit,
12 which I am showing you right now. And you will see
13 this is a letter dated November 22nd, 2018. It
14 states,

15 "...Conservation Halton staff has reviewed
16 the above-noted application as per our
17 responsibilities under Ontario regulation
18 on 162/06..."

19 And a number of comments are provided. And on the
20 next page, under "Recommendation", it says,

21 "...CH has no objection to the approval of
22 this minor variance application..."

23 Do you see that?

24 A. Yes, but the approval...we had no
25 objection to the approval of the variance. The

1 variance is for setbacks.

2 259. Q. Right.

3 A. And for a front porch. It's not
4 for...it's not a building permit. Just like the
5 minor variance, if the City approves a minor
6 variance, it doesn't mean they have a City building
7 permit. There is still...

8 260. Q. Okay.

9 A. ...other pieces. So, I think...I
10 don't want to confuse...a minor variance is for
11 relief from the zoning by-law. And so this is
12 asking for an exception, a minor variance to the
13 zoning by-law. It doesn't mean that they have
14 CH's...a CH permit approval. It doesn't mean that
15 they have a City of Burlington permit. It's a
16 variance...it's a planning piece. It's not a
17 regulatory approval.

18 261. Q. Right. And before this letter was
19 sent out on November 22nd, 2018...now, I see that
20 letter is signed by Ms. Panczyk, and you said that
21 it would have had to be approved by Mr. Priddle,
22 right?

23 A. Yes, so, his initials are at the
24 bottom. If you see the "CP"

25 262. Q. I see. Did you also approve this

1 letter?

2 A. No, we received hundreds of these
3 sorts of applications per year, and it...that's the
4 responsibility of the manager, not me as the
5 associate director.

6 263. Q. Okay. So, what I think you're
7 telling me is this is kind of like, below your level
8 of responsibility. These types of applications do
9 not get to your level, right?

10 A. That's correct.

11 264. Q. Okay.

12 265. MR. BOUCHELEV: Okay. I think now would
13 be a good time to take the morning break.
14 It's almost 11:50 now. Perhaps we can be
15 back at 12:05.

16 MR. JULL: That works for me.

17 266. MR. BOUCHELEV: Okay.

18
19 --- upon recessing at 11:48 a.m.

20 --- A BRIEF RECESS

21 --- upon resuming at 12:08 p.m.

22
23 KELLIE LYNN McCORMACK, resumed

24 CONTINUED CROSS-EXAMINATION BY MR. BOUCHELEV:

25 267. Q. Okay, let's go back on the record.

1 Now, Ms. McCormack, throughout this examination, and
2 in your affidavit, you basically indicated that, at
3 different points in time, different options were
4 presented to my clients. One of the options was
5 signing the compliance agreement. Another option
6 which was advanced after the commencement of this
7 legal proceeding is basically starting from scratch
8 and filing an application for a new construction
9 permit, right?

10 A. Yes. There has been a couple of, I
11 guess, offers of trying to work with the applicant.
12 Exploring different paths to work with the
13 applicant, yes.

14 268. Q. Okay. And you would agree with me
15 that neither of these two options would guarantee
16 that the applicant would be allowed to construct a
17 dwelling on their property, right?

18 A. I guess we could say there is
19 absolutely no guarantee, but there is a strong
20 likelihood that your clients would have received a
21 permit from us had they submitted all of the pieces
22 that we had asked.

23 269. Q. Okay. And "all of the pieces that
24 you have asked" is what, the compliance agreement
25 and the geotechnical survey?

1 A. There would be...there are two
2 pieces. Depending on which path, if they were
3 willing to work with us through a compliance
4 agreement, it would have been the signed compliance
5 agreement form. If they didn't want to go that
6 path, it would have been a signed permit application
7 form. And then, yes, you're right, a geotechnical
8 assessment is what we were looking for and asking
9 for.

10 270. Q. And how can you say that there would
11 be a strong likelihood of approval, without knowing
12 what the geotechnical assessment would say?

13 A. I can't say 100 percent for certain,
14 but what I can say is that, you know, we have issued
15 permits across our jurisdiction, across our
16 watershed, in hazardous areas, in known erosion
17 hazards. And the reason we can issue those is
18 because an application is supported by a
19 geotechnical assessment. And the geotechnical
20 assessment not only tells us where the long-term
21 stable slope line is, but it also often provides
22 recommendations on what can be done if slope
23 stability is determined to be a concern. It also
24 comes up with recommendations on how any potential
25 issues can be mitigated, whether it be mitigated

1 through structural design of the dwelling, or
2 whether it be slope remediation works.

3 271. Q. Okay, but these mitigation
4 techniques, or mitigation suggestions, they are
5 still subject to your policy, correct? So, in other
6 words, if a mitigation solution was proposed that
7 was deemed to be against policy, it would not be
8 accepted, right?

9 A. I'm sorry? The policy that we
10 have...our regulatory policy is that if you are
11 developing in a valley, if you're developing in an
12 erosion hazard, it has to meet a number of criteria.
13 And one of the criteria that is listed in the
14 conditions that we would be able to issue permission
15 for development in these hazard lands is the
16 submission of a geotechnical assessment.

17 272. Q. Okay.

18 A. And the geotechnical assessment
19 would come up with recommendations about what could
20 be done. Without the geotechnical, you know,
21 recommendations that could come forward would
22 be...could be a whole gamut. They could be
23 extremely extensive, or they could be relatively
24 minor mitigation methods. We don't even know. Or
25 the geotechnical assessment for this site could have

1 come back and said, "You know what? Slope stability
2 isn't a concern." We don't know. But without doing
3 that work, you know, the borehole work that was
4 done, there wasn't any of those pieces to tell us,
5 a), how stable is the slope in the first place, and
6 b), if it's not stable, what measures can be taken
7 to try to protect the proposed dwelling?

8 273. Q. Okay. But, again, my question
9 is...so, I'm talking about the recommendations that,
10 you know, you expect would be made in the
11 geotechnical assessment. So, these recommendations,
12 as you said, they can be extensive, they can be
13 limited in scope. There may be different, you know,
14 techniques that are proposed by the engineer,
15 correct?

16 A. That's correct.

17 274. Q. And you are under no obligation to
18 accept those recommendations. You could say, for
19 example, "Oh, we don't like this recommendation
20 because it goes against our policies"?

21 A. Our policy is that they have to
22 submit a geotechnical assessment...it doesn't
23 [inaudible] the whole gamut of mitigation
24 recommendations that are possible. So, just to be
25 clear, our policy is that you're building in these

1 erosion hazards, you need to submit a geotechnical
2 assessment and the geotechnical assessment outlines
3 different measures. Now, I guess...

4 275. Q. Well, let me just give you a
5 specific example. So, you know, when my clients
6 wanted to replace the retaining wall in 2014, they
7 wanted to replace it with a similar, you know,
8 timber retaining wall. But you told them...and by
9 "you", I mean Conservation Halton...told them, "No,
10 replacing a timber wall with another timber wall is
11 against our policies. You have to do something
12 else", right?

13 A. I can't speak to that exact
14 application and what...there are also policies in
15 our policy document for slope stability works that
16 would be different than what...a dwelling. So, you
17 know, I don't want to confuse the requirements for
18 doing remediation works in hazard areas is different
19 than if you are putting a dwelling in. You know, we
20 are going to recommend when we do this for regional
21 infrastructure, you know, try to use bioengineering
22 methods where possible when you have to do slope
23 stability work. So, there are different
24 requirements depending on the nature of the
25 development, the nature of the work.

1 276. Q. Right. But ultimately, the nature
2 of the work would still...is subject to your
3 policies, and whether or not a particular building
4 method or mitigation technique meets your policies?

5 A. Well, what...I guess...

6 277. Q. Is that accurate, or no? Can you
7 just answer that...

8 A. No, it's...

9 278. Q. ...specific question?

10 A. It's not accurate. So, what we
11 would do is would be we would review the study, the
12 assessment. So, we would review the geotechnical
13 assessment, and our technical experts would either
14 agree with that assessment or not agree with that
15 assessment.

16 279. Q. Okay.

17 A. But, ultimately, the person who is
18 writing the assessment, who drafts the report, or
19 the study, that's why we ask for it to be stamped by
20 a professional engineer. So, your clients'
21 engineer, if they retained an engineer, they would
22 be stamping this to say, "I certify that these
23 recommendations, or this particular recommendation
24 that we are putting forward is reasonable, it's
25 feasible, and it'll do the job that it needs to do

1 to fix whatever issue it's doing."

2 280. Q. Okay, but...

3 A. We would be looking for...

4 281. Q. Right. But even if the study is
5 actually stamped by the engineer who signs off on
6 the recommendations, it is still possible that your
7 staff would look at it and say, "No, we are not
8 going to approve it", right?

9 A. Our staff, or if we retained a
10 technical expert. That's right. We could review
11 it, and we could disagree with the professional
12 recommendation. But again, you know, that's where
13 a conversation would happen, from engineer to
14 engineer.

15 282. Q. Right. So, if an engineer provides
16 an assessment, and he recommends that you do x, y,
17 and z, that's, you know...just the fact that the
18 engineer made that suggestion is no guarantee that
19 Conservation Halton is going to agree with that and
20 allow the homeowner to do x, y, and z, right?

21 A. There is no guarantee, but there is
22 also, again, you know, in all of the approvals we do
23 across our jurisdiction, it's rare that we don't
24 come up to a resolution.

25 283. Q. And, well, you say that it's rare,

1 but it happens, right?

2 A. It happens, but we do hundreds of
3 approvals every year, and we rarely find ourselves
4 in a situation where we are disagreeing, or that an
5 application would go sideways.

6 284. Q. Okay. And again, going back to my
7 earlier question, when you say that, you know, there
8 is a strong likelihood that this would have been
9 approved, you can't really make that suggestion
10 until you see, you know...without having seen an
11 environmental...sorry, a geotechnical assessment,
12 right?

13 A. That's correct.

14 285. Q. Without seeing that, you can't..

15 A. That's correct.

16 286. Q. ...comment on whether there is a
17 high likelihood, a low likelihood, a medium
18 likelihood. That is just guessing on your part?

19 A. Based on experience. But you're
20 right. Can I say for sure? No. But can I say that
21 I think that there was a path forward? That's my
22 strong suspicion on this one.

23 287. Q. Right, and, I mean I don't think
24 this is in dispute, but just so we are clear,
25 Conservation Halton itself has not done any

1 geotechnical assessment in connection with this
2 property, right?

3 A. This...we did retain...a
4 geotechnical has been retained to provide some peer
5 review advice, and did do a cursory review of the
6 site, and what work would need to be done to do a
7 proper geotechnical assessment for this area.

8 288. Q. Okay. You are talking about the
9 report by Mr. Singh, correct?

10 A. That's correct.

11 289. Q. Okay. Which is a peer review, but
12 which is not a geotechnical assessment in and of
13 itself, right?

14 A. That's correct.

15 290. Q. And other than that report of Mr.
16 Singh, you have not done any other assessment or any
17 other study in connection with this property, right?

18 A. No, but it's an area that, you know,
19 we have had other permit applications across the
20 Grindstone Creek valley system. And so, in this
21 area, there are numerous geotechnical assessments
22 that would have been submitted, you know, for
23 developments over the years. And so it's an area
24 that we know there is an erosion risk.

25 291. Q. Right. And now Mr. Jull, this is a

1 question for you. One of my previous requests for
2 an undertaking was for communications with the City.
3 And we have agreed that that would include the
4 Mayor's office and also the Chief Building Official.
5 I would like to add to that any correspondence with
6 Councillor Galbraith, who was the councillor for my
7 clients' ward at the time. Can we add that to the
8 undertaking?

9 MR. JULL: I don't see why not.
10 And...unless Ms. McCormack tells me this
11 would be onerous and unreasonable, it
12 sounds like it is something we could
13 identify. Ms. McCormack, can you jump in?
14 Is that possible to do?

15 THE DEPONENT: Yes, that's possible.
16 Yes.

17 MR. JULL: So, you want an addition for
18 any correspondence with...just so I get
19 this right...Councillor Galbraith; is that
20 correct?

21 292. MR. BOUCHELEV: Yes, Councillor
22 Galbraith or his office.

23 MR. JULL: Okay.

24 293. MR. BOUCHELEV: I'm not sure if he is
25 personally communicating or if he has

1 assistants, but...

2 MR. JULL: No, that's fair enough.

3 Sure, that's fine.
U/T

4 294. MR. BOUCHELEV: Yes. Okay. Well, and
5 actually, subject to the undertakings and
6 refusals, I think we are done with this
7 examination.

8 MR. JULL: I just have one question in
9 re-examination, if I might.

10 295. MR. BOUCHELEV: Sure.

11

12 RE-EXAMINATION BY MR. JULL:

13 296. Q. Ms. McCormack, my re-examination is
14 about something that we talked...that Mr. Bouchelev
15 asked you about very recently. So, Mr. Bouchelev,
16 just a few moments ago posed the following question:
17 "If an engineer provides an assessment, and says, x,
18 y, z, that is no guarantee that Conservation Halton
19 will approve of this?" Do you recall that question?

20 A. Yes.

21 297. Q. And my question in re-examination
22 is, what happens is Conservation Halton does not
23 make an approval, or does not approve? What is the
24 process that would then apply?

25 A. So, if we were to receive either a

1 permit application with the geotechnical assessment,
2 and we did not agree with the findings, then the
3 applicants would have the right...so, staff would
4 review it. They would say this doesn't meet
5 Conservation Halton's requirements that staff is
6 able to issue a permit on.

7 If it meets our policies directly,
8 Conservation Halton's staff, or a number of us, have
9 the delegated authority by the Board to issue a
10 permission. If it doesn't, then we can...the
11 applicants have the right to request a hearing.

12 So, if that would be the case, staff would
13 bring forward a recommendation to our Board of
14 Directors saying it can't meet our policies, it
15 hasn't met the tests laid out in the Conservation
16 Authorities Act, that it would not impact the
17 control of erosion, in this particular, instance we
18 would make a recommendation that the Board not
19 support the application. Our hearing Board could
20 decide to either approve the application, despite
21 what staff's recommendation is the applicants would
22 plead their case and give their reasons why they
23 think it would be appropriate for our Board to issue
24 a permission. The Board would make a decision, if
25 they approved it, they would have their permit. If

1 the Board denied their request, then they still
2 have...the applicants would still have an
3 opportunity to appeal that decision to the Mining
4 and Lands Tribunal.

5 298. Q. And just one more question by way of
6 a follow-up to that. My friend asked you a number
7 of questions about the requirement or a policy for a
8 geotechnical assessment. Would it be possible for
9 the applicants to put in a permit application
10 without providing a geotechnical assessment?

11 A. They could. It's not ideal because,
12 again, we would be going forward to our Board to
13 say, "It's an incomplete application, we can't make
14 a proper recommendation on this." Ideally they
15 submit something, but I guess, ultimately, they
16 could submit what has been done to date, the Toronto
17 Inspection Report, they could include that. Our
18 team would review that and we would say it is not
19 sufficient. And, again, we would make a
20 recommendation to the hearing Board, and the
21 applicants could make their case to the hearing
22 Board.

23 MR. JULL: Thank you. Those are all my
24 questions in re-examination.

25

1 --- upon adjourning at 12:25 p.m.

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REPORTER'S NOTE:

Please be advised that any undertakings,
advisements and refusals are provided as a service
their guidance only, and do not purport to be
necessarily accurate and are not binding upon
Reporting Services Inc.

I hereby certify the foregoing to be a true
transcription of the above-noted proceedings held
28th DAY OF APRIL, 2021, and taken to the best of my
ability and understanding.

}
} Certified
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} Greg Vaughan
} Verbatim

TAB 5

Court File No. CV-19-00627606-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

(APPLICATION UNDER Section 97 of the *Courts of Justice Act*, R.S.O. 1990, C.C.43)

TH/asb

B E T W E E N:

IVAN RUDYK and SHELLEY YOUNG

Applicants

- and -

HALTON REGION CONSERVATION AUTHORITY

Respondent

- - - - -

This is the Cross-Examination of CHARLES PRIDDLE, on his Affidavit sworn the 14th day of February, 2021, taken via videoconference at the offices of VICTORY VERBATIM REPORTING SERVICES INC., 222 Bay Street, Suite 900, Ernst & Young Tower, Toronto-Dominion Centre, Toronto, Ontario, on the 29th day of April, 2021.

- - - - -

A P P E A R A N C E S:

ARKADI BOUCHELEV -- for the Applicants

KENNETH E. JULL -- for the Respondent

ALSO PRESENT:

Shelly Young
Ivan Rudyk

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1 --- upon convening at 10:00 a.m.

2 --- upon commencing at 10:10 a.m.

3

4 CHARLES PRIDDLE, affirmed

5 CROSS-EXAMINATION BY MR. BOUCHELEV:

6 1. Q. Mr. Priddle, good morning.

7 A. Morning.

8 2. Q. Can you please state your full
9 name for the record?

10 A. Charles Burton Priddle.

11 3. Q. And can you confirm that you have
12 been affirmed to tell the truth today?

13 A. I can, yes.

14 4. Q. Okay. Now, Mr. Priddle, what is
15 your position at Conservation Halton?

16 A. I am manager of the regulations
17 program.

18 5. Q. Okay. And did you hold the same
19 position in 2018?

20 A. In 2018 I was manager of the
21 regulations program. At one point it was called
22 coordinator. I'm not sure if that was 2018 or
23 '17, it's the same position, they just changed
24 the title from coordinator to manager.

25 6. Q. Okay. So basically it's the same

1 position today as it was back then, it's just a
2 different name?

3 A. Yes, no change in roles or
4 responsibilities.

5 7. Q. Okay. All right. And so, as I
6 understand it, there are a number of people at
7 Conservation Halton that reported to you,
8 correct?

9 A. That's correct, yes.

10 8. Q. And that Cassandra Connolly would
11 be one of them?

12 A. She is one, yes.

13 9. Q. And she was back in 2018, as
14 well, right?

15 A. Yes, she was.

16 10. Q. And same for a person named Ola
17 Panczyk, I think is the correct way to pronounce
18 her last name?

19 A. Ola Panczyk, yes, she reported to
20 me then, yes.

21 11. Q. Okay. All right. Now, I'm going
22 to ask you to look at Exhibit B of your
23 affidavit. And just let me know...well, let me
24 know when you are there.

25 A. Yes, it's digital, so it just

1 takes me a moment. Yes, I got it.

2 12. Q. Okay. Now, so if you look at the
3 first page you will see at the top it says,
4 "Received Conservation Halton May 10, 2018", so
5 this is a copy of a permit application that was
6 submitted by the homeowner's agent, Mr. Vozikas
7 as on May 10th, correct?

8 A. Correct.

9 13. Q. Okay. And if you look at the
10 second page there is a description of proposed
11 work to propose a two-storey addition to the side
12 yard and the rear cantilevered balcony along with
13 an on grade patio. Also to include a covered
14 front porch. Now, as I understand it, Ms.
15 Connolly was the person who was responsible for
16 reviewing this application, correct?

17 A. She was a project manager, yes.

18 14. Q. Okay. But ultimate approval was
19 up to you, right, as her boss?

20 A. The actual permit will be signed
21 by my director, but I would have to make sure
22 that I can initial it. I don't actually have
23 signing authority, but I do review her work and
24 initial off on it, yes.

25 15. Q. Okay. And sorry, who is your

1 director who has ultimate signing authority?

2 A. Kellie McCormack, she is
3 associate director. I think she had a different
4 title back in 2018, no?

5 16. Q. Okay. All right. So, would it
6 be fair to say that you reviewed all of the
7 materials that were provided in connection with
8 this application?

9 A. I wouldn't have reviewed all of
10 the materials because I don't get down to the
11 nitty gritty, that would be up to Cassandra. But
12 she would make me...give me basically the
13 overview, the summary and explain why she is
14 comfortable saying that things do or don't meet
15 policy.

16 17. Q. All right. Now, and you see the
17 term "cantilevered balcony" in the application.
18 Do you know what that is?

19 A. I do, yes.

20 18. Q. And what is a cantilevered
21 balcony?

22 A. It's a balcony that sticks out
23 from a house. Either attached to the further
24 house or jammed into the house so that it comes
25 out from the main floor above grade.

1 19. Q. Okay. And would it be fair to
2 say that it's a type of balcony that essentially
3 protrudes from the face of the building without
4 any supports other than being affixed to the face
5 of the building itself?

6 A. Yes, it's usually affixed to the
7 face of the building.

8 20. Q. Okay. And you would agree with
9 me that if you...if there is a wall or a part of
10 the building that does not have a balcony
11 attached to it and you are going to attach a
12 cantilevered balcony to it, there is usually
13 structural reinforcement would be needed for that
14 wall?

15 A. Yes, so often its lag bolted to
16 the face of the building. Depending on the size,
17 yes, it has to be anchored depending on the size
18 of it in different manners, yes.

19 21. Q. Okay. And sometimes you may have
20 to replace the wall itself if the existing wall
21 is not structurally, I guess, solid enough to
22 support a cantilevered balcony?

23 A. Yes, that's one thing that can
24 happen.

25 22. Q. Okay. And now there is also a

1 mention of the expansion of the garage and
2 addition of a second storey on top of it, right?

3 A. Correct, yes.

4 23. Q. And do you know what materials
5 were being proposed for the construction of this
6 addition and the expansion of the garage?

7 A. I don't know.

8 24. Q. Okay. And what about the size?
9 Do you know what size was being proposed for the,
10 you know, expansion of the garage and the
11 addition...I mean, in terms of square feet?

12 A. I know that from the drawings
13 that showed me how much it protruded to
14 the...looking at the house to the left into the
15 back. So I would have known the change in
16 footprint.

17 25. Q. Sorry, you would have known or
18 you wouldn't have known?

19 A. I would have seen it on the
20 drawings.

21 26. Q. Okay.

22 A. So, I'm not saying I specifically
23 measured it out, but it would have been visible
24 on the site plan how far they planned to expand
25 out to the side and to the rear.

1 27. Q. Okay. And by "the drawing" you
2 are referring to the survey, right, that was
3 filed as part...with this application?

4 A. The site plan, yes.

5 28. Q. Correct. And let's just look at
6 that site plan or survey. This is Exhibit C to
7 your affidavit; can you just go there for a
8 second?

9 A. Yes.

10 29. Q. Okay. Now, you refer to it as a
11 site plan, but you would agree with me that this
12 document is a survey that was prepared by McKay
13 McKay & Peters back in 2011 and that it...this is
14 essentially what the document is?

15 A. I would have to disagree there.
16 I mean, a survey is the background of it. But
17 what we are looking at is actually called a site
18 plan, so it's the proposed works. We do require
19 it to be on a survey, but McKay McKay & Peters
20 wouldn't have been able to survey the outline of
21 the buildings because that's the site plan or
22 what's proposed. So the survey is a large part
23 of it, but the site plan has additional
24 information put on top of the survey.

25 30. Q. Okay. And so, I think to be

1 fair, that this is a survey and there is some, I
2 guess, an additional drawing on it showing the
3 expanded footprint, that's what you mean by the
4 site plan, right?

5 A. Correct.

6 31. Q. Okay. And how do you, by looking
7 at this document, how do you determine what the
8 size of the addition is going to be?

9 A. Well, in this case, Cassandra had
10 them outlined in red where work was occurring.
11 And we can see the existing garage, so that's
12 what McKay McKay & Peters would have surveyed.
13 So they surveyed what was on-site. And then what
14 is proposed, so where work is going to occur was
15 done in red. So it says, "line of proposed
16 dwelling". So I can see that it's bumping out
17 slightly at the back of the garage and slightly
18 to the side of the garage. So, that shows me the
19 extent of where works are occurring and how much
20 bigger that garage would have been.

21 32. Q. But, this is just, you know,
22 merely visual approximation, right? Like, there
23 is no actual measurements here showing what
24 the...measuring the size of the bump out.

25 A. Well, there is. It's going to be

1 exactly 6.38 metres from the top of bank, which
2 is a pretty specific measurement. So, that would
3 mean that on-site I should be able, after its
4 constructed, to specifically go to the centimetre
5 as to where it was to be built. So that is quite
6 a succinct measurement. So what they proposed is
7 to come out to that point, which is 6.38 metres
8 from the top of bank.

9 33. Q. Okay. And so you mentioned
10 something about the outline in red being done by
11 Cassandra Connolly?

12 A. Well no, she asked the owners to
13 put on the drawing where work is occurring. So
14 although it says...where it says "proposed works"
15 and then we confirmed where works were proposed
16 by having them draw on red to distinguish what is
17 proposed from what was already there as part of
18 the survey that was done in 2011.

19 34. Q. Okay. When you say that she
20 asked the owners to make this drawing, are you
21 saying that she specifically asked Mr. Rudyk and
22 Ms. Young to do that, or are you referring to
23 their agent?

24 A. Now, for that you would have to
25 ask Cassandra, but it is my understanding from

1 what Cassandra told me that the proposed works
2 are what is shown in red.

3 35. Q. Okay. But you don't know whether
4 this...you are not suggesting that this drawing
5 was actually done by the homeowners, right?

6 A. No, I can't say that.

7 36. Q. Okay. All right. And so now can
8 you...are you able to tell from this drawing or
9 from the rest of the application how much
10 additional weight the bump out and the second
11 storey addition would add to the building?

12 A. No, I'm not.

13 37. Q. Okay. And I think you would
14 agree with me that, by definition, because you
15 are increasing, you know, the size of a portion
16 of the home and adding an addition, there would
17 be some additional load on the slope, correct?

18 A. I would agree there is additional
19 weight to the building. The extent to which that
20 creates a load on the slope is not really for me
21 to say. But there will be additional weight in
22 the building, yes.

23 38. Q. Okay. So it will create some
24 additional load, but you are...you can't comment
25 on what that additional load would be, right?

1 A. Well, what I'm saying is you are
2 actually talking about load on the slope. What I
3 can say is that from a rational standpoint,
4 knowing construction, the building will be
5 heavier because of the amount of material in the
6 building. The load and the impacts on that, or
7 the load on the slope, that's really up to
8 someone beyond my expertise.

9 39. Q. Well, again, from, you know, just
10 from a common sense standpoint, a heavier
11 building would have more load than a lighter
12 building, would it not?

13 A. Yes, on the ground. So straight
14 down, so heavier. Whether or not that has a load
15 on the slope, because I believe when you first
16 said you said "load on the slope", which makes me
17 a little concerned, because that's different than
18 being heavier. So, "load on the" slope is
19 whether or not it actually is impacting the
20 slope. I can say it's heavier, absolutely.

21 40. Q. So you are saying that a heavier
22 building does not, by definition, create
23 additional load on the slope?

24 A. It creates additional load, but
25 this building is 6.38 metres from the physical

1 slope. So, what I'm saying is, I can say it's
2 heavier and it creates additional load. The word
3 "slope" to me, makes me a little nervous, because
4 that's a little beyond the expertise of what I
5 can say. I can say that it's a heavier building,
6 yes.

7 41. Q. Okay. And I think I have asked
8 you this before and you said that you cannot
9 comment on how much heavier the building would
10 become as a result of this alteration, right?

11 A. I can't, no.

12 42. Q. But at the time when this
13 application was approved, you had no concerns
14 about this addition creating a problem for slope
15 stability, correct?

16 A. No, it was...I mean, we do try to
17 be as reasonable as possible. We do look at kind
18 of the scope and scale of a project. Given that
19 it's that far away and that small a piece with
20 only a second floor on that part, I mean, we
21 would have had internal discussions with water
22 resource engineering. I believe Alan would have
23 been there. But because it's so small, no.
24 Being reasonable and flexible as possible, we did
25 not believe there was concern. So, because the

1 scale was so small, we didn't believe there was
2 concern, no.

3 43. Q. And I would also suggest that you
4 didn't have concerns because there were some
5 works done in the past to reinforce that slope,
6 most recently in 2014, correct?

7 A. Well, that's not correct. One of
8 the problems with the slope work that was done
9 was it was really only the top of the slope. So,
10 there wasn't a full slope consideration, so I do
11 agree that there was some surface works done to
12 fix the top end of the slope. But when we look
13 at slope stability, that work had nothing to do
14 with the full slope. So, from actual slope
15 works, I would have to say the work that was done
16 was really only addressing surface at the very
17 top of the slope. So a very small portion of the
18 slope, yes.

19 44. Q. Okay. And we are still looking
20 at Exhibit C, which is the survey. Now, you will
21 agree with me that this document does not show
22 the detailed design of the building, correct?

23 A. That's correct.

24 45. Q. And to get that information, you
25 would have to go to the design drawings, correct?

1 A. That's correct.

2 46. Q. Okay. And it would be fair to
3 say that when this application was made by my
4 clients' agent, you did not ask...when I say
5 "you" I mean Conservation Halton in general...did
6 not ask for design drawings in connection with
7 this building, right?

8 A. That's correct.

9 47. Q. Okay. But you did have the
10 opportunity to ask for them if you wanted to,
11 right?

12 A. We did, yes.

13 48. Q. Okay. Now, can you go to,
14 please, paragraph 12 of your affidavit?

15 A. Okay.

16 49. Q. Okay. So at paragraph 12...well
17 actually, before we go to paragraph 12, my
18 apologies, can we go back to Exhibit C again for
19 a moment?

20 A. Sure.

21 50. Q. Okay. So, if you look at the
22 garage bump out, you can see this drawing says
23 that, you know, it shows that there will be
24 expansion of the garage footprint, correct?

25 A. That's correct.

1 51. Q. But it doesn't say that the
2 existing garage walls are going to be removed,
3 correct?

4 A. Just being a reasonable person
5 knowing how construction works, you would have to
6 assume that at least the roof and the walls were
7 coming down.

8 52. Q. Okay. And but you will agree
9 with me that, you know, this drawing does not,
10 you know, without making assumptions, does not
11 assist someone reviewing it with respect to, you
12 know, which walls are going to remain in place
13 and which walls are going to be removed?

14 A. I wouldn't agree with you,
15 because if this is going to be a garage, I don't
16 think you are leaving a concrete wall in the
17 middle of it, it makes it very...it's not
18 functional. We would have to assume that the
19 garage will end up empty. In order to have a
20 second storey the roof will be removed. So, I
21 wouldn't say it's an assumption, it's how it has
22 to occur to create a garage bump out with a
23 second storey addition.

24 53. Q. Well, I hear what you are saying
25 in terms of, you know, a reasonable person would

1 have to assume, but it's still maybe a reasonable
2 assumption, but it's still an assumption. You
3 can't conclude...make that conclusion, just by
4 looking at the drawing itself, right?

5 A. I would actually take you to the
6 "description of works", as well, in Appendix B.

7 54. Q. No, no, I understand that. But
8 I'm just looking at the, you know, at the site
9 plan and the survey itself without looking at the
10 description of the work. All I'm proposing to
11 you is that by looking at this picture you cannot
12 say without making assumptions, which walls are
13 going to remain and which walls are going to be
14 taken down?

15 A. What I would say is I don't know
16 the details of all the work that is going to
17 occur, but I do know that they are going to have
18 a garage that goes to the outside of that bump
19 out. And I know they are going to have a second
20 storey on top. And I had assumed...I would leave
21 it up to people to make...basically, it's going
22 to be a garage with a second storey.

23 55. Q. Okay.

24 A. So it's going to have...so, do I
25 know the details of that? No. But I know this

1 garage is coming down and I know that it's going
2 to be replaced with a second storey on top.

3 56. Q. And again, to get those details,
4 you would have to look at the detailed design
5 drawings, correct?

6 A. To get the minute details, so
7 yes. So like I would expect if you were
8 reviewing it for building code and need those
9 details, yes, you would ask for those.

10 57. Q. But, again, you would agree with
11 me that by looking at this drawing, there is
12 nothing in the drawing itself that indicates
13 which walls are going to be removed, right?

14 A. All I can say is, if they are
15 building a second storey garage, I am assuming
16 that everything of the existing garage is coming
17 down. But I don't know the exact details of how
18 that's getting attached to the house and what
19 entrances and that sort of thing.

20 58. Q. Right. Because the details,
21 including which walls are being removed, are not
22 part of the drawing itself, right?

23 A. What I can say is that when I saw
24 this, and from our review, we do assume that that
25 entire garage is being removed.

1 59. Q. Okay. But that's not really my
2 question. But my question is, is there any
3 information in the drawing itself showing which
4 walls are going to be removed?

5 A. And I...

6 60. Q. Yes or no.

7 A. It is not a yes or no question.
8 I think what you have to do is you do have to
9 respect we have done this for a number of years
10 and we do have a professional opinion on
11 reviewing. So I have been reviewing drawings
12 like this since 2008. By just reviewing and
13 being...and knowing that a new garage is going
14 there, I can tell you that the exterior walls in
15 the back, the side and the front are being
16 removed. Do I know exactly how it's being
17 attached to the house on that side? No, I don't.
18 But if you are building a garage within that bump
19 out, and I know that it...you're right, it
20 doesn't exactly show that on the drawing. But,
21 as professionals doing this, I can tell you that
22 that garage is being removed and if I didn't
23 think so, I would ask why this drawing made no
24 sense. And the other thing is we don't look at
25 this in its own, we do consider the description

1 of works and a garage bump out, I mean, to me
2 means you are taking away a wall to bump it out.
3 And a second storey addition means the roof is
4 gone because you are building something on top of
5 it.

6 61. Q. Okay. But the description of
7 works does not use that term, "garage bump out",
8 that's your own terminology, correct?

9 A. Correct.

10 62. Q. Because the description of
11 proposed work is actually to propose a two storey
12 addition for the side yard and the rear
13 cantilevered balcony. There is no mention of the
14 garage bump out, correct?

15 A. So, and again, this is where we
16 do combine the description of works with the
17 drawings. So I do know there is a two storey
18 addition, and the site plan shows me a bump out.

19 63. Q. Okay. And okay, where in this
20 going do you suggest a two storey addition was
21 being proposed?

22 A. So, given the works that are to
23 occur where the red lines are outlined in works
24 to occur, I would assume it's over the garage
25 because that is the area where works are

1 occurring that includes, like, the building
2 portion of the structure.

3 64. Q. Okay. But the red lines are
4 also, you know, essentially outlined the northern
5 and the southern parts of the building, correct?

6 A. I did not think they...it is not
7 reasonable to assume or believe that they are
8 putting a second storey addition above a
9 cantilevered deck or a front porch.

10 65. Q. Okay. But did you specifically
11 ask the homeowners or the agent where the second
12 storey addition was going?

13 A. That would be...Cassandra would
14 have had that discussion on-site in terms of the
15 review, but, again, I know it's not shown on the
16 drawings, but as a reasonable and rational
17 review, from when I look at it, that's the only
18 reasonable place to put a second storey. And
19 Cassandra would be the reviewer, so you...it
20 would be up to her to have that discussion with
21 the owners and the applicants.

22 66. Q. Okay. And by "Cassandra", I
23 assume you are referring to Cassandra Connolly,
24 right?

25 A. That's correct.

1 at 835 Spring Gardens. U/T

2 72. MR. BOUCHELEV: And also as part of
3 that, where the location of the second
4 storey addition is going to be, right?

5 MR. JULL: Correct. U/T

6 73. MR. BOUCHELEV: Okay.

7

8 BY MR. BOUCHELEV:

9 74. Q. And now, Mr. Priddle, so you
10 would agree with me that the site plan and
11 the...contained on the survey shows, you know, an
12 extension to the footprint of the existing home,
13 right?

14 A. Yes, around the garage it does.

15 75. Q. Well, also in the front where
16 there is a covered front porch, right?

17 A. Yes. So, covered front porch...I
18 should say, when we consider homes, covered front
19 porch, cantilevered decks, we consider
20 accessories, so we wouldn't call it home
21 footprint per se, but it is an extended footprint
22 to the development area.

23 76. Q. Okay. And you have visited the
24 property recently, right? In December of last
25 year?

1 A. That's correct, yes.

2 77. Q. Okay. Do you agree that the
3 structure that you observed at the time of your
4 visit was within the footprint described in this
5 site plan?

6 A. I didn't specifically measure it
7 out. Footprint, yes, probably.

8 78. Q. Okay. So you didn't make
9 specific measurements, but, based on visual
10 inspection, it appears to be within the
11 footprint, right?

12 A. Yes, it appears to be, yes.

13 79. Q. Okay. And okay, so now I'm going
14 to ask you to go to paragraph 12 of your
15 affidavit. Now, here at paragraph 12 you say
16 that the plan for the demolition of the structure
17 was not shared with Conservation Halton. Did you
18 at any point ask the homeowners or their agents
19 for the demolition plans?

20 A. Given that we did not know that
21 those were in existence, no, we had no way of
22 knowing that they had such demolition plans.

23 80. Q. But you knew that there would be
24 some demolition to destroy the old garage, for
25 one thing?

1 A. So the one thing is I don't know
2 how it's being done or when, but I knew the
3 garage was being demolished, yes.

4 81. Q. Okay. But, again, you didn't ask
5 for demolition plans, correct?

6 A. Correct.

7 82. Q. And so, if they weren't asked for
8 demolition plans, how would my clients know that
9 they have to provide demolition plans to
10 Conservation Halton?

11 A. So, I'm not saying they do need
12 to provide demolition plans, but if we knew the
13 extent of demolition occurring was as great as it
14 was to be, it may be something we asked. So what
15 we do is I don't mind asking for more information
16 than is necessary. Homeowners go through a lot
17 getting permits, so when we look for technical
18 information and requirements we do our best to
19 ask for the information necessary to do our job
20 but not create a lot of paperwork and a lot of
21 hassle for the owners.

22 In this case, because all we were told
23 was being demolished was a small garage, it
24 really wasn't a significant concern to me. It's
25 not something I needed to review in detail. Now,

1 had I known that such a significant portion of
2 the house was coming down so close to the slope,
3 I may have asked for demolition plans. But,
4 without being told that, with just that little
5 garage being demolished, I didn't think it was
6 necessary.

7 83. Q. Well, if you looked at the, you
8 know, at the drawing in Exhibit C, you would
9 agree with me that the garage is, you know, about
10 as close to the slope as the rest of the
11 building, right?

12 A. That's correct.

13 84. Q. So, demolition of the garage
14 would, in fact, be taking place close to the
15 slope?

16 A. Yes.

17 85. Q. Okay. Now, paragraph 16 of your
18 affidavit, you say here that, "In
19 particular"...this is the fourth sentence in that
20 paragraph,

21 "...In particular, had I known that the
22 demolition efforts were to be very
23 extensive in many cases stating the
24 structure directly back to the original
25 basement walls. This would have

1 confirmed the importance of a
2 geotechnical assessment..."

3 A. That's correct.

4 86. Q. Now, did you, as part of the
5 application process, did you have any...did you
6 personally have any discussion with Mr. Vazikas,
7 who was my client's agent?

8 A. Not until...did I personally talk
9 to Mr. Vazikas? I don't think we did, me
10 personally, until the April meeting, after the
11 violation.

12 87. Q. Okay. And I think you are
13 referring to the April 3rd, 2019 meeting, right?

14 A. Correct. I may have had
15 conversations with Mr. Vozikas before, but not
16 that I remember.

17 88. Q. In connection with this project
18 or in connection with other projects?

19 A. Either/or, it's difficult...I
20 mean, he does have a design company, so maybe
21 likely with other projects. I don't think I did
22 with this project.

23 89. Q. Okay. And what about the
24 homeowners, did you speak to them at any point
25 about this project?

1 A. About this project? No. I had
2 spoken to them in the past.

3 90. Q. Okay. And "in the past", you are
4 referring to the permit that they obtained in
5 2014 for a retaining wall, right?

6 A. That's correct.

7 91. Q. Okay. And so, would it be fair
8 to say that in the course of this application
9 process, I'm talking about the 2018 application
10 process, you had no discussions with the
11 homeowners or their agents about, you know, their
12 plans for this renovation?

13 A. That's correct. It was not my
14 file, so I would not have had a direct contact.

15 92. Q. Okay. Now, paragraph 17 you talk
16 about some potential, I guess, some potential
17 work that can be done to improve slope stability.
18 You give some examples, like, subterranean work,
19 grading and draining improvements, foundation
20 work, and so on, right?

21 A. Yes.

22 93. Q. Now, you will agree with me that
23 potentially this is a very expensive process?

24 A. Potentially, I have to agree, it
25 can run a whole spectrum.

1 94. Q. It could be in the hundreds of
2 thousands of dollars?

3 A. Or it could be under 10,000, we
4 don't know. We don't have that information.

5 95. Q. Okay. But, you know, it could be
6 in the hundreds of thousands from your
7 experience?

8 A. That would surprise me.

9 96. Q. What would...

10 A. But I guess it would surprise me
11 to be that high, I don't think I have seen it
12 that high. But yes, it is possible.

13 97. Q. Okay.

14 A. In cases like this, we...I mean,
15 we usually look for options on what is reasonable
16 and what is feasible. And yes, you can always do
17 the Cadillac version. You can spend a million
18 dollars if you want, but that's not reasonable.
19 So what we do is we generally work with
20 geotechnical engineers and say, given the
21 situation and what we are dealing with, what
22 options do we have? What can we do for this site
23 and how can we be fair?

24 98. Q. So it's interesting you said, you
25 know, you can always do the Cadillac version,

1 which would be, you know, a million dollars. Is
2 there a price gap on what's considered
3 reasonable? Like, in other words, you know, if
4 it's under 100,000 it's reasonable, if it's
5 above, it's not reasonable?

6 A. I don't go by price gap I go
7 whether or not I think the people and property
8 are safe.

9 99. Q. Okay.

10 A. So, to tell you the truth, if you
11 can get this done for \$5,000 and confirm to me
12 that the house is at no greater risk and it isn't
13 going to...we are not going to lose value or, god
14 forbid, life, I am happy with \$5,000. But if you
15 have to spend \$30,000, \$40,000, and you still
16 can't tell me that this home is safe or these
17 people are safe, then I'm not happy with that. I
18 need to know that the safety of the home and the
19 stability of the slope are addressed. If that
20 can be done for \$5,000, I'm happy with that. If
21 it can't be done for \$30,000, I'm not happy with
22 that.

23 100. Q. Okay. So in other words, cost is
24 not really a factor that is taken into account
25 when determining what work needs to be done,

1 right?

2 A. Human and property safety is.

3 101. Q. Okay. But cost is not?

4 A. I am concerned with safety.

5 102. Q. Okay. And so, if there is a
6 geotechnical assessment that is done and, you
7 know, the engineer proposes certain measures,
8 it's still up to Conservation Halton staff to
9 approve them and to determine whether or not the
10 proposal is appropriate for this particular
11 location, right?

12 A. That is correct.

13 103. Q. So, just because, you know, an
14 engineer signs off on a proposal, that, in and of
15 itself, doesn't mean that Conservation Halton
16 will accept it?

17 A. I would say we have the authority
18 to accept it or not. I don't know of any
19 circumstance where I have had a geotechnical
20 engineer saying, "This is safe. This will
21 improve a situation". I can't see where we would
22 not accept that. But you are correct in that we
23 have the ability...well, the final say accept it
24 is with us, but why we wouldn't do that if we
25 have a qualified engineer who we asked you to

1 hire saying it is safe, I can't see why we
2 wouldn't.

3 104. Q. If you have a qualified engineer
4 that you hire?

5 A. No, if we have asked for this
6 professional to tell us what will make this
7 property safe and appropriate and it does address
8 our concerns as we have laid out and as we have
9 worked through with them, I don't know why we
10 would ever say no. If it's met our requirements.
11 If we said, "This is what you need to show" and
12 they, as a professional say, "Well, that's what I
13 have shown". So, yes, we would have to approve
14 it. I don't know why we wouldn't though.

15 105. Q. Well, but you could see a
16 situation where, you know, an engineer proposes
17 something, but it doesn't meet your approval,
18 right?

19 A. If that happened I would be
20 concerned about what they have done from a
21 professional standpoint. Because if they have
22 done what we have asked and met our standards, I
23 mean, I guess you are right, but it seems quite
24 odd that an engineer would propose something and
25 stamp and sign it as a professional engineer that

1 wouldn't be acceptable by us.

2 106. Q. So well, I mean, I'm not
3 necessarily suggesting that, I'm just trying to
4 understand the process. So you would make...you
5 would set a standard. You would tell the
6 engineer, you know, what has to be, like, what
7 criteria have to be met and they would have to,
8 you know, make a proposal as to how that can be
9 met, right?

10 A. Yes. And I would say there is a
11 bit of nuance to that. I mean, I'm not a
12 geotechnical engineer. In fact, we don't have a
13 geotechnical engineer at Conservation Halton.
14 What we can say is, "Here is our ideal". So
15 ideally, we would love to see this thing with no
16 chance of any this, that or the other thing, but,
17 if a geotechnical engineer came back and said,
18 "Listen, this house is going to be safe, it is
19 going to be in a situation that is better than
20 existing", then we would have to seriously
21 consider that. And if that is the best that can
22 be done and it does address a control of erosion
23 concern, I mean, there are times where absolute
24 standards can't be met, and that's why you need
25 that geotechnical engineer to provide the options

1 and discuss with us what's reasonable, what's
2 rational, what can we do to get a person a home
3 here that's safe and a situation that me, as a
4 Conservation Halton staff and not an engineer,
5 are comfortable saying that I am able to sign off
6 on this permit.

7 107. Q. Okay. But the engineer's
8 proposal would still have to meet Conservation
9 Halton's policies, right?

10 A. Well, the policies, no. It would
11 have to meet our technical review. I apply the
12 policies as I see as appropriate. But what they
13 would have to do is demonstrate to me that from a
14 professional standards they have given the best
15 engineering advice and that is considered as part
16 of the permit review.

17 108. Q. Okay. Sorry, just give me one
18 moment. Now, can you look at paragraph 22 of
19 your affidavit, please?

20 A. Yes, one second. Yes.

21 109. Q. Okay. Now, okay, so at paragraph
22 there is some discussion of...you say here
23 that, "Had you known that one exterior wall was
24 going to be reconstructed, you would have
25 required a structural engineer to confirm that

1 the removal of one wall can be done without
2 additional structural changes that would result
3 in the project being...becoming a
4 reconstruction." So, is there a bright line
5 between, you know, a situation where the project
6 is considered a reconstruction and where it is
7 considered to be a renovation or something less
8 than a reconstruction?

9 A. No. I mean, we have to look at
10 the scale and scope and reasons for what's
11 happening. We do try to be as reasonable as
12 possible. So, in this case, let's say I'm
13 saying, well, one wall is being removed. An
14 exterior wall. Well, as someone reviewing this,
15 I say, "That's odd, why would you remove one
16 wall?" Now, there is reasons for that. Now, if
17 there are rational reasons, let's say it had
18 not...it's the last wall in the house that had
19 knob and tube wiring or fungus or something where
20 this one wall has to be removed, again, for
21 safety reasons. Well, then maybe that's rational
22 and I take that into consideration, okay. So,
23 this wall needs to be removed for safety reasons
24 to meet Code. Let's say the building department
25 of the City says, "Can you let these guys remove

1 this wall, it's got all sorts of bad wiring?" If
2 it's just being removed for removed sakes, then
3 I'm getting a little concerned as to why that is
4 occurring. And I'm not saying it's a
5 reconstruction yet, but I want to know why. Why
6 are you removing one wall? It seems odd to me.
7 So, if there is a rational reason the wall has to
8 be removed, okay, I can live with that. But it's
9 kind of this give and take. But now the scale of
10 the project is kind of getting larger than we
11 understand, so I want some clarification. So if
12 a structural engineer says "It's rotten, like, we
13 are concerned that the main beams in here are
14 going to fall away", okay, have you checked the
15 other walls? Are we sure this isn't going to
16 creep in...because the scale keeps getting bigger
17 and I'm getting a little concerned. So, as a
18 structural engineer, can you check the other
19 walls and make sure that we are not dealing with
20 something where I might ask for more information.
21 So, because we try to avoid surprises. We try to
22 avoid the scope and scale of a project getting
23 out of hand and becoming something we weren't
24 expecting.

25 110.

 Q. Okay. And so you would agree

1 with me that whether or not, you know, the
2 project is classified as a reconstruction is, you
3 know, to some extent, at your discretion?

4 A. I would say it is done in
5 consideration of all of the facts, but it's also
6 done in discussion where the applicants and their
7 agents. So we work together to see what is
8 reasonable.

9 111. Q. Okay.

10 A. But, at the end of the day,
11 whether or not it's a reconstruction would be
12 something we would probably make the final
13 decision on, yes.

14 112. Q. Okay. Now, so at paragraph 23
15 you say that, "If there is a reconstruction,
16 slope stability issues have to be addressed.
17 Failure to do so would leave the home at a
18 greater risk to slope failure and loss of
19 property and potential loss of the home". Now,
20 do you have any evidence that the structure that
21 is in place today poses any more risk to slope
22 stability or, you know, the potential...or to
23 property, than the structure that was there
24 before the project began?

25 A. We have been asking for that

1 evidence. That's what we need the geotechnical
2 assessment for. That's what we need. I don't
3 know and I hope there is not. But that is the
4 evidence I need to see if we can move forward
5 with this. So, is it posing more risk to the
6 slope? I don't know, because I need a
7 geotechnical engineer to take a look and tell me
8 if it is.

9 113. Q. Okay. But Conservation Halton,
10 itself, does not have this information?

11 A. No, we do not have a geotechnical
12 assessment of the slope.

13 114. Q. Okay. Or any other information
14 that would suggest that the new structure created
15 additional risk, correct?

16 A. Well no, I can tell you that I do
17 know that the basement walls and the main walls
18 are taller. I'm getting concerned. So, I'm
19 starting to get concerned here that, as you said
20 before, if you add more, you are adding weight.
21 And now we are doing it across the whole
22 structure. So my understanding is the basement
23 has gone up, like, a foot, the main floor has
24 gone up a foot. So I'm starting again, the scale
25 is creeping up and I'm getting a little more

1 nervous because there's just...it's nicking away
2 at my level of concern, so it's not just the
3 garage. Now the basement has gone up, the main
4 floor has gone up. So, I have more concern.
5 Evidence...I think that's evidence that I
6 shouldn't be concerned, but then that's why we
7 asked for the geotechnical assessment.

8 115. Q. Well, I'm just, you know, I find
9 it interesting. So, when they were expanding the
10 garage, adding a second storey addition, you
11 know, there is no concern about additional load.
12 Now that the basement walls are a foot taller,
13 all of a sudden there is concern. It just seems
14 a little inconsistent to me.

15 A. No, it's very consistent. If I
16 can take you again to my Appendix C, and that
17 site plan.

18 116. Q. M'hmm.

19 A. So, what we do is we do again, we
20 look at the scope and the scale of the project
21 and we try to be reasonable and rational. And we
22 do have engineers on staff, an engineering staff.
23 So what we take and we look at this and we say,
24 "Well, how big is this garage?" It's not even a
25 quarter of the house. So, we are now...we look

1 at them. We do, like, a risk assessment. We
2 deal in risk. Is adding a second floor to this
3 going to add weight? There is going to be weight
4 in the house, but it's a small portion of the
5 building. Now the scale keeps changing. Now the
6 whole thing is getting torn down and we are
7 adding another foot to both floors across the
8 entire structure. So, as the scale goes up, the
9 concern goes up. So, were we able to sign off on
10 just the garage? Yes. And we did that in
11 discussions. It is discussed and discussed.
12 Because I don't want to make people spend a lot
13 of money on technical studies until such time as
14 we feel they are needed. So we rationally,
15 reasonably looked at the scope. The bigger it
16 gets the more we ask for, and this became a lot
17 bigger than we understood was happening. So,
18 once you start removing...I'm not sure. I don't
19 have the percentages, but the home compared to
20 the garage, just the amount of structure that is
21 being reconstructed and rebuilt and raised is so
22 significant compared to what we knew, now I'm
23 concerned.

24 117. Q. Okay. And so you mentioned risk
25 assessment, what kind of risk assessment did you

1 do back in 2018 when this application was first
2 proposed?

3 A. We basically looked at it with
4 technical staff and our combined experience and
5 tried to see what was reasonable for individual
6 landowners. So, some of these things are done by
7 experience and common sense. They are done with
8 engineering technicians and planners and
9 regulations officers. I do not want to make
10 every person...individual landowners that live
11 besides a slope do a geotechnical assessment, if
12 I can avoid it. So, an engineering technologist
13 looks at a regulations officer and the manager of
14 the engineering signs off on their memo, and
15 Cassandra talks to me and we say, "In this
16 circumstance, with just the garage work, it's not
17 reasonable to require such because the scope is
18 so small it's a risk assessment". We don't see
19 this as being a control of erosion issue or a
20 concern.

21 118. Q. Okay. So I think what you are
22 saying is that it was done in an informal
23 fashion. Just based on your experience, you
24 looked at it and you said, okay, this doesn't
25 look like something that would require a

1 geotechnical study, right?

2 A. Yes. And more than that, I know
3 what it takes to kind of address these concerns,
4 as I said in paragraph 12, or whatever, with
5 drainage and slope. I didn't want to make what
6 appears to be a small project become bigger,
7 because I know what...that a geotech may require
8 things that are beyond a small...like, a small
9 addition at a house.

10 119. Q. Right. And Mr. Priddle, do you
11 know who the chief building official of the City
12 of Burlington is?

13 A. Right now I'm not actually sure,
14 no.

15 120. Q. Okay. But, at the time, it was
16 Nick, and I believe his last name is
17 Anastasopoulos. You are familiar with him,
18 correct?

19 A. Yes.

20 121. Q. And you know that he issued a
21 building permit for the work that was done by my
22 clients?

23 A. He issued the building permit?

24 122. Q. Yes.

25 A. Or he just revoked the stop work

1 order? Because I thought the building permit
2 would have been done through the building permit.
3 You may be right.

4 123. Q. Well, the chief building official
5 issues the building permit, right?

6 A. Okay, yes. So, he would have
7 issued the building permit.

8 124. Q. Okay. And then so, and you are
9 aware that after your initial notice of violation
10 was issued in March of 2019, the chief building
11 official issued a stop work order, correct?

12 A. Correct.

13 125. Q. Okay. And then in May of 2019,
14 the chief building official revoked the...or I
15 should say, withdrew the stop work order and
16 allowed construction to continue, correct?

17 A. Yes, I was made aware of that.

18 126. Q. Okay. And did you personally
19 have discussions with the chief building official
20 about this situation?

21 A. Me personally? No.

22 127. Q. Okay. Did anyone else from
23 Conservation Halton have such discussions?

24 A. I believe so.

25 128. Q. Do you know who that might be?

1 A. I had assumed Cassandra did. And
2 after that I know there were meetings with senior
3 staff, I assume, perhaps, Kellie McCormack or
4 Barb Veale would have, or they might have had it
5 with their counterparts to have a word with Nick,
6 but I wasn't privy to those conversations
7 directly.

8 129. Q. Okay. Do you know if there are
9 any email communications or notes in connection
10 with those meetings?

11 A. I'm sure there are.

12 130. MR. BOUCHELEV: And, Counsel, can I
13 have an undertaking to look for them and
14 provide them to me?

15 MR. JULL: Yes. We will provide an
16 undertaking to find and provide email
17 communications between staff at
18 Conservation Halton and the...I just
19 want to be clear on this, the chief
20 building official of the City of
21 Burlington with respect to 835 Spring
22 Gardens.

U/T

23 131. MR. BOUCHELEV: Okay. Thank you.
24 Now, and just to be clear, I'm looking
25 for, you know, there may be emails or

1 other written communications like
2 letters. And if there were in person
3 meetings and discussions or telephone
4 discussions and someone made notes in
5 connection with the discussions, then I
6 would be interested in that too.

7 MR. JULL: I'm prepared to provide
8 that undertaking. So, it would include
9 communications which may be by email but
10 also by letter or memos of meetings that
11 occurred.

U/T

12 132. MR. BOUCHELEV: Right. Okay. And I
13 mean, that goes without saying, but you
14 know, things like faxes would be part of
15 that too.

16 MR. JULL: Does anybody use fax
17 anymore? If they do, then we will
18 provide it.

19 133. MR. BOUCHELEV: Well, I actually I
20 received the fax a few days ago, so back
21 in 2018, I guess some communications
22 were still by fax...or 2019.

23
24 BY MR. BOUCHELEV:

25 134. Q. But anyways, so Mr. Priddle, you

1 would agree with me that, you know, as part of
2 his work, the chief building official also looks
3 at safety when deciding whether or not to
4 issue...yes, to issue a building permit or to
5 allow work to continue, right?

6 A. It's interesting. They do look
7 at it through a different lenses. So, they would
8 look at the building code safety. They wouldn't
9 look at, necessarily slope stability. They have
10 their legislation and purview and we have ours,
11 so it probably wouldn't even be a consideration
12 for Nick.

13 135. Q. Okay. So, are you sure that they
14 don't look at slope stability, soil stability
15 issues?

16 A. No, I'm not sure of that.

17 136. Q. Okay.

18 A. But I know that it's something we
19 would regulate. So I don't know that they
20 didn't. I can't say what they did or didn't do,
21 but...

22 137. Q. Okay. So, I'm just wondering, so
23 you obviously became aware at some point, you
24 know, after May of 2019, that, you know,
25 notwithstanding your notice of violation, the

1 chief building official allowed construction to
2 continue, right?

3 A. Not my building official, the
4 City of Burlington's, yes.

5 138. Q. Pardon me?

6 A. I said...I thought you said "your
7 building official", but it was the City of
8 Burlington's building official.

9 139. Q. I think I may have said chief
10 building official, maybe I misspoke.

11 A. Okay.

12 140. Q. Yes.

13 A. No, that's fine.

14 141. Q. Okay. But you were aware that
15 the chief building official, you know, allowed
16 construction to continue despite the fact that
17 there was still an active notice of violation,
18 right?

19 A. We found that out when we
20 discovered it, yes.

21 142. Q. And so even though, you know,
22 Cassandra Connolly may have been the project
23 manager, you were her boss, correct, at the time?

24 A. Correct.

25 143. Q. And you didn't feel it was

1 necessary for you to speak to the chief building
2 official and find out what is going on?

3 A. Cassandra did. I think it
4 escalated rather quickly. So, when Cassandra and
5 Alan discovered that the house had been
6 demolished they did contact the chief building
7 inspector and then they made me aware. So,
8 Cassandra spoke to the chief building inspector,
9 or at least the building department, I'm not sure
10 who at the time. From that, it did escalate
11 rather quickly because we were concerned with it.

12 144. Q. Okay. And was an explanation
13 provided to you why the building...the stop work
14 order was revoked and construction was allowed to
15 continue?

16 A. From what I understand, and again
17 it wasn't provided to me directly, but it was
18 understood that the building code was met,
19 therefore the stop work order was revoked.

20 145. Q. Okay.

21 A. And I will say that we did
22 disagree with that, because, as applicable law,
23 our approval is required for a municipal
24 approval.

25 146. Q. Okay. But you are...personally

1 did not have any discussions about that issue?

2 A. With Nick? No.

3 147. Q. Okay. Or anyone at the building
4 department?

5 A. Personally, no.

6 148. Q. Okay. Do you know if there were
7 discussions with the building department about
8 safety issues?

9 A. I don't know that.

10 149. Q. Okay.

11 A. We would have made...I know that
12 we would have expressly given our concerns with
13 safety issues. I can't say directly with the
14 building department...a lot of this went directly
15 to senior staff, so I know Kellie McCormack,
16 perhaps Barbara Veale, would have had those
17 discussions with senior staff at the City
18 discussing how we did have safety concerns.

19 150. Q. Okay. Now, I'm going to ask you
20 to go to paragraph 25 of your affidavit...sorry,
21 paragraph 35.

22 A. I apologize if I'm shivering a
23 little, it's cold down here. Yes?

24 151. Q. Okay. So, in paragraph 35 you
25 are talking here about the stable top of bank and

1 the erosion hazard. Now so, I just want to make
2 sure I understand this correctly. So, if you are
3 within the stable slope boundary, then you are
4 outside of the erosion hazard zone, right?

5 A. If you are inside the stable
6 slope?

7 152. Q. Yes.

8 A. No, you are in a valley. You
9 are...if you are between the creek and the stable
10 top of bank you are 100 percent within the
11 erosion hazard.

12 153. Q. Okay. So then, if you are
13 outside of that boundary, then you are not in the
14 erosion hazard?

15 A. If you are beyond the stable top
16 of bank you are outside of the erosion hazard,
17 yes.

18 154. Q. Okay. Now, and it would be fair
19 to say that in respect of this property you do
20 not know where the stable slope of bank...stable
21 top of bank is?

22 A. We have to assume it's where ARL
23 shows it is, which is our approximate mapping
24 online. So, without any studies we consider it
25 to be where our computer modelling shows it, and

1 that's in our mapping. So, I think it's imbedded
2 right within my affidavit on page...no, it's a
3 Appendix 1, so we do have our approximate
4 regulation on the mapping. And then on page 4 of
5 my affidavit, what we have on that is a red line.
6 Now, what that is is a computer-generated stable
7 top of bank. So, basically, without any
8 technical information using conservative, but
9 parameters of slope stability, that's the stable
10 top of bank, unless someone like a geotechnical
11 engineer refines it. So, until we know better,
12 that's the stable top of bank as we understand
13 it, maybe.

14 155. Q. Okay. And you used the term
15 "ARL", which I think stands for Approximate
16 Regulation Limit, right?

17 A. That's correct.

18 156. Q. Okay. And you said that that is
19 based on computer modelling, right?

20 A. Right. So what it would do is
21 look at the height of the slope, apply a
22 conservative stable slope inclination to that,
23 add a total erosion allowance, and put that
24 stable top of bank where it is, and I agree it is
25 a conservative line.

1 157. Q. Okay. Well, what does that mean,
2 "conservative"?

3 A. So, for example, in our
4 watershed, we consider all soils stable at a
5 three horizontal to one vertical slope. So for
6 every one metre you go up you go inland three
7 metres. So, this will apply three to one across
8 the property. So we have a 20 metre slope here,
9 that's going to be 60 metres right off the hop.
10 Total erosion loss will also be added. Total
11 erosion is how much the creek is expected to eat
12 away at the bottom of the creek. It probably
13 added a conservative number there too. Probably
14 initially, I don't know, eight metres. So, this
15 line is conservative because it's, kind of, at
16 worst case scenario. It's a precautionary
17 principle.

18 158. Q. Okay. So I think what you mean
19 is that, you know, it...like you said, it's the
20 worst case scenario. The actual erosion hazard
21 is probably closer to the slope than what the map
22 would indicate, right?

23 A. It will be closer to the slope
24 than what the map shows, yes.

25 159. Q. Okay. And the approximate

1 regulation limit, it doesn't take things like
2 soil quality into account, right?

3 A. Correct.

4 160. Q. Okay. I'm going to take you to
5 paragraph 49 of your affidavit now. Now, so
6 here...yes, so here you refer to the site visit
7 that was back in...sorry, just give me one
8 second. Sorry, I may have given you the
9 incorrect paragraph reference, just bear with me
10 for a second.

11 A. Actually, I do have one
12 correction to make to something I said
13 previously. The erosion hazard is actually six
14 metres beyond the stable top of bank, I'm
15 forgetting my technical guidelines. So the
16 stable top of bank is where the slope is
17 expected. It could erode back. There's also six
18 metres added in many of the technical guidelines,
19 and I think it's actually mentioned within our
20 policies and it is. Six metres added on to that
21 is for an erosion excess. So that is...six
22 metres is also added to the stable top of bank to
23 consider it a complete hazard. We are not used
24 to...I mean, the actual where the slope could
25 erode to stable top but there is a six-metre

1 access, is often considered within the hazard as
2 well.

3 161. Q. And where does...

4 A. I will always remember that.

5 162. Q. Okay. And where does that six-
6 metre figure come from? Like, where can it be
7 found?

8 A. So, it is within our policies
9 that talks about the definition of the hazard.
10 It's also within the provincial policy statement
11 when we talk about the extent of hazard. So, if
12 you look at the definitions...and I don't have
13 this on me, unfortunately...but it's in the
14 definitions of the hazard and both our policies
15 and in the provincial policy statement. So, I
16 just remember that because I do remember that
17 we...sorry, I misspoke before.

18 163. Q. So, you are saying that it is in
19 the provincial policies statement and in your
20 policies in Conservation Halton policies?

21 A. It's in our policies. It's
22 also...it's either in the technical guidelines of
23 the PPS itself. I can't remember which...I can
24 find it if you would like.

25 164. Q. Yes, if you don't mind, maybe we

1 can do it by way of an undertaking if you could
2 tell me where I can find that six-metre figure?

3 MR. JULL: We would be happy to
4 provide that undertaking.

U/T

5 THE DEPONENT: Yes, no problem.

6 165. MR. BOUCHELEV: Sure. Okay.

7

8 BY MR. BOUCHELEV:

9 166. Q. Now, yes, so going back to
10 paragraph 49, so you are referring to here, the
11 site visit notes that...showing that you
12 specifically recall that there was discussion
13 regarding what could be done at this site in the
14 future and that any work would be dependent on
15 the location of the stable top of bank as
16 determined by a geotechnical engineer. Now, so
17 these notes are from a site visit in 2010, right?

18 A. Yes.

19 167. Q. And the discussion there was
20 about future work in connection with the
21 retaining wall, right?

22 A. Well, we were talking about the
23 retaining wall, but I do remember that site visit
24 about discussing, like, future plans on the
25 property as well.

1 168. Q. Okay. But if...so, looking at
2 Exhibit M, if you can go there for a second. And
3 I think that the notes that you are referring to
4 are on the second page of that exhibit, right?

5 A. Yes.

6 169. Q. Okay. And so you say here,
7 "...Talked about the possibility of
8 replacing the retaining wall that is
9 approximately 40 feet tall..."

10 And then, the second paragraph stated it would
11 have to be designed not to go further into the
12 valley. And sorry, there is...oh, I see, the
13 reference to the geotechnical assessment is in
14 the first paragraph, third line,

15 "...If a geotechnical engineer
16 determines that this will be stable to
17 MNR standards..."

18 So here, in this context, you are talking about
19 the requirement for a geotechnical assessment in
20 connection with replacing the retaining wall,
21 right?

22 A. That's correct, yes.

23 170. Q. So there is no discussion at this
24 point that a geotechnical assessment would be
25 needed if they wanted to, you know, do something

1 with the house itself, right?

2 A. So, if you look at the second
3 paragraph,

4 "...Also discussed what they could do to
5 the rear of their yard, which would
6 appear to not include the addition of
7 any structures, but perhaps the
8 replacement of their current deck. That
9 will be dependent on location of a
10 stable top of bank..."

11 So they would have needed a geotech to replace
12 the rear deck, potentially.

13 171. Q. Well, but this is not
14 what...sorry, go ahead, yes.

15 A. So, yes, because they
16 discussed...they were talking about replacing the
17 rear deck and things and I did say that that will
18 be dependent on the stable top of bank and that's
19 determined through the geotechnical assessment.

20 172. Q. Well, but just looking at your
21 note, it doesn't say that, you know, replacing
22 the deck requires a geotechnical assessment, it
23 just says

24 "...Also discussed what they could do to
25 the rear of their yard, which would

1 appear to not include the addition of
2 any structures, but perhaps the
3 replacement of their current deck. That
4 will be dependent on the location of the
5 stable top of bank. Suggested that
6 prior to them doing any more work they
7 wait for a letter from myself that would
8 outline what would be required in the
9 application..."

10 Right? So that doesn't...you know, there is no
11 discussion that the deck itself would require a
12 geotechnical assessment.

13 A. But knowing where the stable top
14 of bank is required.

15 173. Q. Okay. And, like, I would suggest
16 to you that the owners themselves do not, you
17 know, cannot necessarily connect the dots that
18 way. Maybe in your mind, you know, knowing where
19 the stable top is requires a geotechnical
20 assessment, but a layperson may not know that.

21 A. So I disagree, because if you
22 read the last sentence of the first paragraph
23 they already talked to Terraprobe a few years ago
24 and it appears as though they were aware of what
25 this could take. So, Terraprobe is a very

1 reputable geotechnical firm. So they have
2 already talked to geotechnical engineers, so I
3 wouldn't say they're a layperson. They have gone
4 quite well out of their way to know what's
5 involved in slope stability and knowing
6 geotechnical information.

7 174. Q. So, I guess what I'm trying to
8 understand is, so you are saying that, if they
9 wanted to put a deck at the rear of the property,
10 they would need a geotechnical assessment, right?

11 A. So, I will say I don't know if
12 they would need that. At the time, in 2010, by
13 myself, I was probably being cautious with what I
14 said, because I didn't know what was being
15 proposed. But they may require a geotechnical
16 assessment. I would review what is being
17 proposed for a deck replacement and they...the
18 need for it on what's proposed.

19 175. Q. Yes. And the reason why I'm
20 confused, it just seems to me that, if you don't
21 need a geotechnical assessment to bump out the
22 garage and put a second storey addition, why
23 would you need one for a deck?

24 A. And again, I don't know that it
25 was needed, because I haven't seen what they were

1 proposing as a deck. So let's say the deck was a
2 like-for-like, just wood or just brick, I
3 probably wouldn't require it. But without
4 knowing what's being proposed for the scope and
5 scale of works, incautious on what might be
6 required, because a geotech may be required. And
7 I would make the determination through a review
8 of what's submitted to me. So, if I see that the
9 deck is made of five-tonne armour or stones that
10 are very decorative with water features, maybe.
11 Maybe I talk to engineering and they say, "This
12 is a lot of weight, we are going to need a
13 geotech. This is more than your average like-
14 for-like deck".

15 176. Q. So, you...

16 A. Again, it's scope and scale. We
17 need the technical information to make an
18 assessment to know that we are comfortable saying
19 that this meets the control of erosion. The
20 bigger the scope and scale of a project, the more
21 technical information we need to be comfortable
22 with that decision.

23 177. Q. Right. And would it be fair to
24 say that when my clients applied to expand the
25 garage and add a second storey addition, you

1 didn't ask what materials...what building
2 materials they would be using for that, right?

3 A. That's correct. I mean, again,
4 it is a consideration of what's occurring. It is
5 a garage with a second storey addition. Just
6 having worked in this industry for so long we
7 assume that it's not going to be cast iron, the
8 entire thing. So it's not...we do our best to
9 make a rational decision and not require studies
10 that are...that can be costly and timely, until
11 such time as we cross that sort of threshold of
12 not being able to sign off on it with our
13 professional experience.

14 178. Q. Well, I mean, asking someone what
15 material you are going to use, would not require
16 a study. It's just a simple question.

17 A. If that question was something I
18 needed answered, I would have asked that
19 question.

20 179. Q. Okay. Now, can you look at
21 paragraph 56? Now, so at paragraph 56 you
22 discuss a factor of safety of 1.5 for new
23 habitable homes.

24 A. That's right.

25 180. Q. So, do you consider the structure

1 that is in place right now to be a new habitable
2 home?

3 A. So, this is an interesting
4 question. There is two different kinds of new
5 homes. So, there is a new home on an empty lot.
6 So, there is absolutely nothing in existence and
7 you have options, that's going to need 1.5. I do
8 consider this the reconstruction of an existing
9 home. So, it's a new home, but it's a
10 reconstruction, which means we have a little bit
11 more flexibility because I have to appreciate the
12 fact that there was a home there and there isn't
13 the option to move it outside the property
14 limits.

15 181. Q. Okay. And when you say that
16 there is a little bit of flexibility, what do you
17 mean by that? What is a little bit of
18 flexibility?

19 A. So, to me, a little bit of
20 flexibility means that they may not be able to
21 get the factor...give 1.5, because it is a
22 confined lot. But I have to appreciate a home
23 was there. So, as long as I'm comfortable that
24 it's not more risk than it was prior to
25 reconstruction and that it's not at more risk and

1 not an immediate risk.

2 182. Q. Okay. And so, what is the
3 minimum factor of safety that Conservation Halton
4 would assume for...would accept for
5 reconstruction of a home?

6 A. That would be done in discussion
7 with the geotechnical engineer to see what is
8 reasonable. So, just a little bit on factor
9 safety. And again, I will preface this by saying
10 I'm not a geotechnical engineer. One to one is
11 when stress...when gravity and resistance equal.
12 So, anything below 1 is assumed to fail. So, if
13 you are at 1 or lower we can't support it because
14 it's going to likely fall down the hill. Now,
15 for new development, we do look at 1.5, because
16 1.5 is safe. But we actually...if you're doing
17 trails or accessory structures, we will allow
18 1.3.

19 183. Q. Okay.

20 A. If you can't do any better...so,
21 but let's say this house is at...let's say it's
22 at 1.2, right now. So it's beyond 1. Now, the
23 geotechnical engineer says, "I can get it above
24 1.2 but only at 1.3", it's an improvement. I
25 would probably look at that and take that into

1 consideration as to whether or not we can approve
2 this.

3 184. Q. Okay. And I think, you know you
4 say you will probably take that into
5 consideration and then decide if you would
6 approve it. So, it doesn't mean that you would
7 approve it, it just means that you will look at
8 it, right?

9 A. But this is why we need a
10 geotechnical engineer, because I can ask him or
11 her, "Is this safe? Is this the best we can do?
12 Is this reasonable?" I need that expertise to
13 make me comfortable. I'm not a geotechnical
14 engineer, so yes, I take that into consideration,
15 but I take that into a lot of consideration.

16 185. Q. Okay. But...okay. And what if
17 the geotechnical engineer, you know, says it's at
18 1.2, but there is, you know, nothing that you can
19 do to increase that?

20 A. But it's not going to get any
21 worse.

22 186. Q. But it's not going to get any
23 worse.

24 A. And a geotechnical engineer said,
25 "This is the best that we can do".

1 187. Q. Yes.

2 A. Then I have to consider that.

3 188. Q. Do you have to accept it?

4 A. I can't say that. I don't know
5 what they are saying. But if that is the best
6 that they can do, it's not at greater risk than
7 existing, and it's not an immediate risk, I don't
8 have to accept it, but I don't see why I
9 wouldn't.

10 189. Q. But it's possible that you
11 wouldn't, right?

12 A. Of course it is, because that's
13 how a permit review process works. What I'm
14 saying is, why the hell would I do that? And if
15 I do say that I don't accept it, then ask the
16 board of directors why I'm not accepting it.
17 Because I'm not the one...I can't deny the
18 permit. Kellie can't deny a permit, only the
19 board of directors can deny a permit. So if you
20 have done your best and it's not immediately a
21 risk, I don't say no. I say, "I don't think this
22 is a good idea" and the board of directors can
23 make the decision for me or for the applicant.

24 190. Q. Right.

25 A. I can't deny a permit.

1 191. Q. No, no, that's fair enough. But
2 what could happen is you look at it, you say,
3 well, it's at 1.2, it doesn't meet our, you know,
4 typical criteria. The engineer says there is
5 nothing you can do to improve it, so we are not
6 going to recommend it and we are going to...when
7 the applicant makes submissions to the board we
8 are going to say that we are not in favour,
9 that's what happened, right?

10 A. Right. But that would be one
11 tough board meeting for me because if I have a
12 very qualified engineer saying they have done the
13 best that they can, it's not an immediate risk, I
14 just...you are correct. I can say we are not
15 accepting that, but the board of directors has to
16 deny it.

17 192. Q. Okay.

18 A. I don't know why I would...I
19 mean, if we have a reputable engineer saying,
20 this is the best they can do, it's not an
21 immediate risk, I mean, yes, you are correct.
22 And in fact, even if I were to approve it and say
23 that I think this is something we can approve, I
24 will probably still go to the board in support,
25 but explain they have...we have been given the

1 information that this is the best that they can
2 do and it's not an immediate risk. But I think
3 it is important to note that I can't deny a
4 permit and Kellie can't deny a permit.

5 193. Q. No, no, and I understand that.
6 But what you can do is you can go to the board
7 and you can say that staff is against the
8 proposal.

9 A. But then the applicants can show
10 that they have done the best that they can, they
11 have hired the appropriate professionals and they
12 have done everything they can, and then it's up
13 to the board.

14 194. Q. Right. And it's discretionary,
15 it's not something that the board would have to
16 approve. The board could look at it and say,
17 "Well, that's against our policies, we are not
18 going to approve this", correct?

19 A. It's not against our policies per
20 se. Like, it's not...I mean, it does say that
21 you have to address the control of erosion, but
22 the policy says and you can reconstruct a home
23 within a valley, it even says you can do a minor
24 and major addition, providing the control of
25 erosion is addressed as determined by a

1 geotechnical engineer. So, the policy actually
2 supports it being done.

3 195. Q. So, control of erosion I
4 understand is that you don't make the erosion
5 hazard worse, right?

6 A. Well, there's a couple of things.
7 You either don't make it worse or you don't put
8 more things already at risk. So, there is a
9 risk. So you don't make that worse and you don't
10 put more things in areas already at risk.

11 196. Q. Right.

12 A. So if this is already going to
13 erode away, and you put a...if you have a
14 \$400,000 house that's already at risk and you put
15 a million dollar house, that's a control of an
16 erosion issue too because you have just increased
17 the amount of damage done by that erosion. So,
18 as I said, let's say the factor of safety is
19 under 1, then everything that gets built there is
20 at risk.

21 197. Q. Okay, but, if it's over 1, then
22 there is no additional risk?

23 A. There is additional risk because,
24 again, that 1.5, like, 1 is when the forces are
25 equal. It's not expected to collapse. But the

1 way the factor of safety works is you start
2 adding variables. Things you don't know. Things
3 you can't control. Maybe total erosion is
4 greater than expected. Maybe groundwater is
5 higher. Maybe there is this, maybe there is
6 that. And that's why we add those factors of
7 safety because, for example, accessory
8 structures, I'm less worried about them getting
9 damaged. Once you start putting people in
10 structures, we really do try to get that higher
11 factor of safety. I really...I am concerned
12 about putting residential dwellings in areas
13 where people are. So I do try to get a higher
14 factor of safety when people's lives are at risk.

15 198. Q. Okay. And by "higher factor of
16 safety", you mean higher factor of safety than
17 currently exists?

18 A. I would just say higher in
19 general. I mean, if it's currently...like, if
20 they have a Geotech say the current factor of
21 safety is 1.6, well, then go ahead, I'm fine.
22 But if it's...I would say I always try to get it
23 higher when people's lives are at risk because
24 I'm sort of mandated to look into safety of
25 people and property. So that is why we do try to

1 add that higher factor of safety when we are
2 talking about habitable developments.

3 199. Q. Okay. So, if there is a, you
4 know, habitable development and you would
5 want...and it's within the erosion hazard zone,
6 you basically want the developer to improve the
7 factor of safety, right?

8 A. Or if it's already safe, I would
9 want them to at least maintain the level of
10 safety.

11 200. Q. Okay. So if it's over 1.5, you
12 want them to maintain the level of safety, if
13 it's under 1.5, you want them to improve it,
14 right?

15 A. If they can. At least not make
16 it worse.

17 201. Q. Okay. So, going back to
18 paragraph 56, now you say that, you know, the
19 usual factor of safety is 1.5, but that you can
20 accept a lower factor of safety provided all
21 reasonable efforts are made to improve the
22 situation. So, what do you mean by "all
23 reasonable efforts"?

24 A. Well, that's something we work
25 through with the geotechnical engineer. So,

1 let's say, and these are just examples, there is
2 no set checklist, but if a geotechnical engineer,
3 he or she, says, "Well, you know what, we can do
4 the Cadillac. We can bang the foundation down 20
5 feet, it's going to cost a million dollars but it
6 will get to 1.5", I'm like, "What else we got?"
7 He says or she says, "You know what, we can
8 improve drainage just by regrading this so there
9 is no point source drainage, or we can do a
10 little two protection or we can plant trees,
11 something like that". It won't give you 1.5, but
12 it will get you to 1.4. Well, then I would look
13 at it and I'm like, "Who's building is this?" If
14 it's a private residential owner, I can't
15 reasonably expect them to spend a million
16 dollars. But if they can do those little things
17 and they can work it up to 1.4, 1.3, that's
18 reasonable. I am accepting of that and I do it
19 in consultation with our engineering department
20 saying, "Is this reasonable given the scope and
21 scale of the work and the applicant?"

22 202. Q. Okay. So, does cost...so you are
23 saying that cost is taking into account as part
24 of this process?

25 A. I would say that in discussions

1 with the geotechnical engineer, the applicants
2 and their agents, we do try to find what's
3 reasonable. And yes, I would say cost does play
4 into it, but safety is first.

5 203. Q. Okay. So if, you know, if the
6 engineer says, "You know what, we can get to 1.3,
7 you know, doing X, and X is going to cost
8 \$10,000, or we can get to 1.4 and we can do Y and
9 Y is going to cost \$300,000", are you going to go
10 with X or with Y?

11 A. Again, that's done in discussion
12 with the owners, the applicants. We look at the
13 scope and the scale of the project. For example,
14 if it's a single residential dwelling and it's a
15 \$400,000 project, I may take that into
16 consideration over it's a \$12 million project for
17 multi-residential. So, it's not a question of is
18 it X or is it Y? It's done in discussion with
19 the applicant, their agent and the geotechnical
20 engineer. We really do try to find what meets
21 our key concerns but is still reasonable for the
22 applicant.

23 204. Q. But what I think you are saying
24 is that there are no fixed criteria, it's really
25 all at your discretion, right?

1 A. It's not really at our
2 discretion. I mean, we could be the big bully.
3 We could be we the "We demand 1.5," but we don't
4 want to do that, that's not reasonable, it's not
5 fair. It's not...

6 205. Q. Well, no, no, I'm not saying you
7 are a bully or you are saying that some...would
8 ask for something that is unreasonable, but what
9 I'm saying is that it's at your discretion. It's
10 up to you. You can make, you know, you have your
11 demands. Maybe they are reasonable. Maybe they
12 are not reasonable. That's a matter of opinion
13 whether or not something is reasonable, right?

14 A. And what I'd say is there is a
15 process to disagree with me. There is a board of
16 directors and they are...and I do believe that we
17 do our best to be reasonable. And yes, it's
18 subjective. But that's why we have those
19 discussions and that's why there are those
20 processes. So, for example, if you don't like
21 the conditions I have laid out in front of you,
22 or if you don't like what I'm asking for, there
23 is even a process for that. You are allowed to
24 discuss. Even if you don't like the fee I
25 charge, there is even a process to argue that

1 right up to my CEO. And if you don't like what I
2 have asked for and if you think I'm unreasonable,
3 then there are people you can ask and you can
4 say, "Your staff member is saying this is
5 required and that's required". And if someone of
6 more seniority than me agrees with you, I'm fine
7 with that.

8 206. Q. Okay. And if you have issued a
9 permit and you have become of the view that, you
10 know, the work that was done is outside of the
11 scope of the permit, there is a process for
12 revoking that permit as well, right?

13 A. Well, what I think you are
14 talking about is there is a process for
15 cancelling a permit.

16 207. Q. Right.

17 A. And, in this case, they just
18 simply didn't have a permit for what they were
19 doing.

20 208. Q. Okay.

21 A. There was no permit in place for
22 reconstructing this house.

23 209. Q. Okay. And, well, there was a
24 permit in place for...

25 A. Not for rebuilding this entire

1 house there wasn't.

2 210. Q. Okay. But there was, you know,
3 there was a permit in place. Permit 5279, right?

4 A. And that permit was for works
5 that could no longer possibly be done without a
6 different permit.

7 211. Q. Okay. Is that...does that
8 permit...is that permit still in effect or has it
9 been cancelled?

10 A. It's simply not possible to do.
11 It just simply is irrelevant to the situation.

12 212. Q. Is that for...

13 A. The owner's voided it by creating
14 a situation whereby it cannot be fulfilled per
15 its conditions.

16 213. Q. Is that permit still in effect,
17 or has it been cancelled?

18 A. We haven't cancelled the permit.

19 214. Q. So, the permit is still
20 effective, right? Under that permit the owners
21 are still allowed to do the work that is
22 authorized by the permit?

23 A. Well, they can't, it's
24 impossible. So what I'm saying is, in order to
25 do the work of that permit, you need our permit

1 to do...reconstruct the house first. You can't
2 cantilever a deck to a house that does not exist.

3 215. Q. So what is the status of the
4 permit?

5 A. Well, the status of the permit is
6 it is actually not a possible construction to do.
7 So, in order to do the work that was approved on
8 that permit, you are required to get a permit.
9 That one is just void because it's asking for an
10 addition to a house that doesn't exist.

11 216. Q. Right. And you could have gone
12 to the board under the section of...under the
13 provisions of your regulation and you could have
14 advised the board,

15 "...Look, the house doesn't exist
16 anymore, you know, this permit should
17 not be...this permit should not be valid
18 anymore..."

19 And the homeowner may have made a counterargument
20 and the board would have made that decision,
21 right?

22 A. Yes, I think, in this, it is a
23 different case because it's not that they...they
24 were completely doing works outside of what the
25 permit is. So, what we are saying is, you don't

1 have a permit at all for the works being done.
2 There actually is no permit for the works that
3 were being done.

4 217. Q. And how did you reach that
5 conclusion?

6 A. So, the works that were done were
7 for an addition to an existing house and a
8 cantilevered deck to an existing house. Once I
9 saw pictures that there was...the house had been
10 demolished, I realized they did not have
11 permission to demolish and reconstruct the house.

12 218. Q. Okay. But that is your opinion?
13 That's not the opinion of the board, correct?

14 A. That's my opinion and it's what
15 happened.

16 219. Q. Okay.

17 A. The house was demolished to the
18 foundation.

19 220. Q. Okay. Did you have any
20 discussions with any of your superiors, like Ms.
21 McCormack or Ms. Veale, about how to handle this
22 situation?

23 A. We would have, yes, Cassandra and
24 Alan saw that the house had been demolished to
25 its foundation. They made me aware and I said, I

1 confirmed that, from what I see, this is the
2 reconstruction of a residence, because it's been
3 demolished. So, we would have written a
4 violation notice and, at that point, I would have
5 made Kellie McCormack aware of what happened.

6 221. Q. Did you have any discussion with
7 her about going to the board under the provisions
8 of the applicable regulation to cancel the
9 permit?

10 A. My opinion is what had been done
11 was a violation because they didn't have a permit
12 to reconstruct a home.

13 222. Q. Well, but that's not my question.
14 Did you have a...my question is, did you have a
15 discussion with your superiors about going to the
16 board and following the procedures set out in the
17 regulation for cancelling the permit?

18 A. That would have been done with
19 Kellie and probably legal counsel. My opinion
20 was that...my concern was more of the violation
21 occurring, and that was the work that was done
22 that was not approved.

23 223. Q. So, I understand that. My
24 question is simple, did you have discussions with
25 any of your superiors about going to the board

1 and following the process set out in the
2 regulation for cancelling the permit?

3 A. Given that we didn't cancel the
4 permit, we did discuss how to move forward given
5 the works were done completely outside of what
6 was approved. If you actually look at our permit
7 application, or the permit itself, I'm just
8 trying to think of what...because on our permit,
9 which is...sorry, I don't know what...

10 224. Q. Well, we don't need to look at
11 the permit because I'm simply asking you about
12 the discussions that you had. I'm asking you,
13 did you have a discussion with your superiors
14 about going to the board and following the
15 requirement of the regulation?

16 A. We would have had those
17 discussions as to how to proceed, yes.

18 225. Q. Okay. And that was...that issue
19 was specifically discussed, right, "Do we go to
20 the board and cancel the permit or do we just
21 write a letter saying the permit is void?"

22 A. I'm not sure the extent of
23 discussions I had without counsel present.

24 226. Q. I'm sorry, what do you mean by
25 that?

1 A. I mean we were in a difficult
2 situation because the owners had committed a
3 violation. They were doing work completely
4 unrelated to the permit. So they were doing
5 development under our Act in a regulated area
6 that no approvals were given before. And we were
7 trying to figure out...so yes, we would have had
8 discussions, "How do we address this?" Like,
9 they obviously don't have approval for this.
10 Like, there was no approval for the work being
11 done. So, it's interesting, because they kind of
12 voided their own department. It's like, well, I
13 can't get a permission in my house to change this
14 window and rip the roof off until I have a
15 permission. So, we would have had discussions as
16 to the process of "Should we go to the board?"
17 "Should we void?" "Should we just press
18 charges?" Yes.

19 227. Q. Okay. And so do you recall when
20 that discussion took place?

21 A. I don't know.

22 228. Q. Was it...well, can you find out?

23 A. I can look through my notes.

24 229. Q. So you have notes pertaining to
25 those discussions?

1 A. I have no idea at this moment.

2 230. Q. Do you have any notes with you
3 today?

4 A. Yes, I have my notes.

5 231. Q. Okay. And what do those notes
6 pertain to?

7 A. Seriously? I have all...like, I
8 have my files here.

9 232. Q. Okay.

10 A. I can...if you want we can
11 get...like, it would take me some time to find
12 what you are looking for because that's not
13 something that was in my affidavit, or anything,
14 so I would have to look through my files.

15 233. Q. And are they contemporaneous
16 notes or notes that you have done later?

17 A. If I were looking for that, I
18 would probably look for sort of emails and
19 things. Once I got to discuss about whether to
20 go to the board or not, I can't tell you if I was
21 in the meetings, but there was...the meetings
22 with senior staff.

23 234. Q. Okay. So there were meetings
24 with senior staff and there was discussion about
25 going to the board?

1 A. I have to assume so, but as I
2 don't think I was directly involved. Like, I'm
3 saying that because I don't remember being
4 specifically involved, but I would have to assume
5 I had the discussions on how to proceed.

6 235. Q. Okay. But do you remember
7 yourself being part of those discussions?

8 A. No, I don't.

9 236. Q. Okay. But it's possible that you
10 were and you just don't recall, right?

11 A. That's correct. That's why I
12 don't want to say I wasn't involved.

13 237. Q. Right.

14 A. But I will look.

15 238. Q. So, and you say you have your
16 file with you, can you help me, I mean, what else
17 is in your file? There are maybe some emails you
18 said, right?

19 A. Well, I have had access to my
20 emails and my affidavit. Well, like, your
21 client's affidavit.

22 239. Q. Okay. When you go to meetings do
23 you, you know, is it your practice to take notes
24 of what happens at the meeting?

25 A. Depends on the level of the

1 meeting. So, if I'm meeting with one of my staff
2 for a half-hour discussion, maybe not. If it's
3 on a file like this, I generally would, yes. Or,
4 if one of us is taking notes, we confirm who is
5 taking notes or there will be followup after.

6 240. Q. Okay. But, even if, you know, if
7 you are meeting with your staff and then, you
8 know, it's not you but the other staff member who
9 is taking notes, you would still have a copy of
10 that in your file, right?

11 A. Yes, usually.

12 241. MR. BOUCHELEV: Okay. Now, Mr. Jull,
13 I would like to get all notes that are
14 in Mr. Priddle's files in connection
15 with this property. And I should say,
16 starting with 2018. I'm not so
17 interested in what happened, you know,
18 prior to that.

19 MR. JULL: Okay. I want to be clear
20 about what you are asking for. So, I
21 need...I am prepared to provide an
22 undertaking but I need some start and
23 end dates here to be clear because,
24 otherwise, this could be a huge request.
25 And as you know, Mr. Bouchelev, this is

1 not a discovery but it is a cross-
2 examination. Having said that, I want
3 to accommodate you to the extent that I
4 can.

5 242. MR. BOUCHELEV: Okay.

6 MR. JULL: So, you are asking
7 because, as you know, Mr. Priddle kept
8 notes all the way back to 2010,
9 potentially with respect to the
10 retaining wall. So, can we, first off,
11 arrive at a start date that you are
12 requesting his notes for?

13 243. MR. BOUCHELEV: Sure, May 10, 2018.

14 MR. JULL: Okay. So, May 10th, 2018,
15 that is reasonable. And the end date
16 that you are looking at? I would assume
17 obviously anything pre-litigation...

18 244. MR. BOUCHELEV: Well, I would...

19 MR. JULL: ...before you commenced
20 your application?

21 245. MR. BOUCHELEV: Well, I would say
22 before the Notice of Application was
23 served on Conservation Halton.

24 MR. JULL: So that it would be in
25 September of 2019.

1 246. MR. BOUCHELEV: Right. But, you
2 know, to the extent there are
3 communications after that date that are
4 not litigation privileged, I would like
5 them as well.

6 MR. JULL: Okay, well that's a
7 different...that's a totally different
8 issue. That is going to require a lot
9 more time to sift through as to what's
10 privileged, what's not, that requires us
11 filing a Schedule A and Schedule B.

12 With respect, I think that's a
13 discovery. So, I'm prepared to give you
14 an undertaking to provide Mr. Priddle's
15 notes from the period of May 10th, 2018
16 to September of 2019 with the caveat
17 that, if those notes contain
18 communications with myself or about
19 communications or legal advice, that
20 those will be redacted. I am not
21 prepared to...I'm not prepared to U/T
22 provide an undertaking post...or notes
23 post-September of 2019, and, to that
24 extent, you can consider that a refusal. /R

25 247. MR. BOUCHELEV: Okay. Now, I would

1 also ask, in addition to notes, which
2 may be, you know, handwritten notes,
3 memos or in whichever form notes are
4 taken, I would also like communications,
5 you know, written communications between
6 Mr. Priddle and other members of
7 Conservation Halton with respect to the
8 subject property. And again, I will ask
9 for the same timeline starting with May
10 10th, 2018.

11 MR. JULL: Well, I believe that we
12 have already given that undertaking.

13 248. MR. BOUCHELEV: Oh, if you have, then
14 I apologize. But the...

15 MR. JULL: So, but again, to the
16 extent, Mr. Bouchelev, that this...I
17 think in the prior undertaking we
18 weren't quite as precise about the
19 timing. So, I'm certainly prepared to
20 give you the same undertaking I gave
21 before with the same time frame that we
22 have just talked about, if that helps
23 refine it, if it widens it then I'm
24 prepared to live by that too. So,
25 that's fine.

U/T

1 249. MR. BOUCHELEV: Okay. And just one
2 other thing just to make sure that we
3 are not missing anything. Mr. Priddle
4 said that there may have been meetings
5 or communications between, you know,
6 other, I guess more senior Conservation
7 Halton staff to which he may or may not
8 have been privy, he doesn't remember at
9 this time. So, I would like all notes
10 and communications, specifically in
11 respect of the issue of, you know, how
12 to deal with this alleged violation, you
13 know, the discussions of whether or not
14 they should go to the board, the permit
15 should be considered void...so, anything
16 relating to those discussions or, yes,
17 anything related to this discussions.

18 MR. JULL: Again, I'm prepared to
19 provide that undertaking with the same
20 caveat that to the extent that those
21 materials may contain reference to legal
22 advice, that the legal advice will be
23 either redacted or if the email itself
24 really is reflective of legal advice,
25 then I'm not going to produce that.

U/T

1 250. MR. BOUCHELEV: Okay. No, I
2 understand. And I, you know, I'm not
3 asking you to produce privileged
4 information. Okay. Well, I think maybe
5 now would be a good time to take a
6 morning break. So, maybe we can take 15
7 minutes and be back at, I guess, 12:07.

8

9 --- upon recessing at 11:52 a.m.

10 --- A BRIEF RECESS

11 --- upon resuming at 12:11 p.m.

12

13 CHARLES PRIDDLE, resumed

14 CONTINUED CROSS-EXAMINATION BY MR. BOUCHELEV:

15 251. Q. Okay. Now, Mr. Priddle, just
16 going back to what we were discussing prior to
17 the morning break, now, are you familiar with
18 Section 8 of regulation 162/08?

19 A. I don't have the numbers off my
20 head.

21 252. Q. Yes, it's the section that deals
22 with the cancellation of a permit.

23 A. Yes.

24 253. Q. Okay. Have you ever been
25 involved in a hearing, you know, resulting from

1 the cancellation of a permit?

2 A. I don't believe so.

3 254. Q. Okay. So, you have never had a
4 situation where Conservation Halton cancelled a
5 permit?

6 A. I have never been involved with a
7 cancelled permit. We must have at some point,
8 but I have never been involved with a cancelled
9 permit to date.

10 255. Q. And again, by, you know, I'm
11 obviously not asking for an exact figure, but do
12 you know approximately how many development
13 permit applications Conservation Halton receives
14 on an annual basis?

15 A. Like...

16 256. Q. Are there any statistics?

17 A. Yes, it's near 500.

18 257. Q. Okay.

19 A. It obviously goes up and down,
20 but it's close to 500.

21 258. Q. And okay, so I'm going to take
22 you to paragraph 73 of your affidavit now.

23 A. Yes.

24 259. Q. Now, so at paragraph 3 you are
25 talking about a minor variance circulation from

1 the City of Burlington. So as I understand it,
2 anytime anyone makes a minor variance
3 application, if it concerns, you know, an area
4 that the City believes is under your
5 jurisdiction, they would circulate it to you,
6 correct?

7 A. That's correct, yes.

8 260. Q. And you would get the complete
9 application, including any plans that are filed
10 as part of the application?

11 A. I believe so, yes.

12 261. Q. Okay. Now, in this case, did you
13 personally review the circulation that
14 Conservation Halton received from the City?

15 A. No, I would have only reviewed
16 the letter that Ola wrote.

17 262. Q. Okay. And did you have any
18 discussion with Ola about the minor variance
19 application?

20 A. I would have, yes.

21 263. Q. Okay. And do you have any notes
22 or emails in connection with that discussion?

23 A. Just a minute. Sorry, this is
24 the second minor variance, correct?

25 264. Q. No, that...I believe that is the

1 first one.

2 A. Okay, the front yard setback one?

3 265. Q. I think there was...the second
4 one was in 2019.

5 A. Okay. The first one...I would
6 probably not have notes, no. I probably would
7 have just reviewed the letter.

8 266. Q. Okay. And then the letter is at
9 Exhibit T, correct?

10 A. That's correct.

11 267. Q. Okay. And the letter states that
12 Conservation Halton has no concerns about the
13 application?

14 A. About the variance.

15 268. Q. Right, about the variance
16 application.

17 A. About the variance request, if
18 that's correct.

19 269. Q. Okay. And that...and you
20 reviewed this letter and you approved it before
21 it went out, correct?

22 A. I initialled it, yes.

23 270. Q. Okay. I'm sorry, I didn't quite
24 catch that, can you say that again?

25 A. I initialled it, which means I

1 signed off on it.

2 271. Q. Okay. But you wouldn't initial
3 it without reviewing it?

4 A. The letter, correct.

5 272. Q. Okay. So, you also mentioned in
6 your affidavit that there was some engineering
7 drawing that were circulated as part of this
8 circulation, showing the design details of the
9 house.

10 A. That's correct, yes.

11 273. Q. And I take it you personally did
12 not review them?

13 A. No, I mean, when it's only for a
14 front yard setback, and that's all that's
15 proposed, I, literally just want to know that the
16 front yard setback is in keeping...

17 274. Q. Do you know if Ola has reviewed
18 the engineering variance?

19 A. She would have probably only
20 looked at the primary setback aspects, that's
21 really all the minor variance was for. So, the
22 minor variance was for just, "Are you concerned
23 with this front yard setback?" So, she would not
24 have reviewed the engineering drawings and
25 details. That wasn't the role or the position,

1 it was to discuss the minor variance as stated.

2 275. Q. Okay. But it sounds like you are
3 guessing. You don't know if she reviewed the
4 drawings or not, right?

5 A. It would surprise me if she did,
6 as it was not necessary for the task at hand.

7 276. Q. Okay. And what...so Ola, what
8 was her position at Conservation Halton at the
9 time?

10 A. Well, she was an environmental
11 planning analyst.

12 277. Q. Okay. Does she have the
13 technical expertise to review engineering
14 drawings?

15 MR. JULL: Can I just interrupt here
16 for a minute just on a point of
17 clarification? I want to be very clear
18 about this. I don't recall there being
19 engineering drawings, I recall there
20 being design drawings. Like, are you,
21 Mr. Bouchelev, are you referring
22 to...can you be very specific? If you
23 are going to refer to engineering
24 drawings, can you help us understand why
25 you are describing them as "engineering

1 drawings"?

2 278. MR. BOUCHELEV: I think that I may
3 have used that term interchangeably. I
4 am referring to the design drawings that
5 were submitted as a part of the
6 circulation received by Conservation
7 Halton.

8 MR. JULL: All right. And so these
9 drawings, and I'm not suggesting
10 evidence here, but these drawings would
11 be, for example, drawings that were
12 attached...I think there are some
13 attached to Mr. Priddle's affidavit.

14 279. MR. BOUCHELEV: Yes.

15 MR. JULL: Okay. Thank you. That's
16 helpful, thank you.

17 280. MR. BOUCHELEV: Right.

18 MR. JULL: I appreciate that.

19

20 BY MR. BOUCHELEV:

21 281. Q. Right. So, Mr. Priddle, I think
22 your answer was no, that Ola does not have the
23 technical expertise to review design drawings,
24 correct?

25 A. So, what her role was in this was

1 to review the planning aspects of it.

2 282. Q. Okay.

3 A. And Ola is not an engineer. So
4 the City does provide us everything. That's not
5 necessarily what they are asking us to review.
6 So, I don't know...a minor variance is when you
7 do little changes from the by-law. So what Ola
8 has been asked to comment on is, are you okay
9 with the setback from the front yard? So, she
10 would have reviewed it, looking at to make sure
11 that we were okay with these specific...a front
12 yard setback of 3.7 metres.

13 283. Q. Okay.

14 A. And then she says here,
15 "...Roof overhanging steps and
16 renovations to the existing front
17 porch..."

18 So, given that the front porch is to remain
19 existing, she would have been just making sure we
20 aren't concerned with that 3.7 metres. But she
21 is not an engineer, she's in...she's a planner
22 now, actually.

23 284. Q. Okay. But I think the answer to
24 my question was that she does not have the
25 technical expertise to review design drawings,

1 right?

2 A. Design drawings she could
3 probably review. Engineering drawings, no.

4 285. Q. Well, what's the difference?

5 A. She's not an engineer. So,
6 engineer drawings, by reviewing, I mean, it's a
7 weird phrase you have used because I'm not sure
8 what you mean by it. Do you mean review it in
9 terms of ensure that they are appropriately
10 engineered structurally, or from our level of
11 concern? So, when you...

12 286. Q. From your level of concern.

13 A. I don't know. If she had
14 reviewed the permit? She might have had to
15 review them. In this case, because she wasn't in
16 a position to review them, at that time if it was
17 one that required a review of design drawings she
18 probably would have asked me at that time.

19 287. Q. She would have asked you at that
20 time?

21 A. Yes, because, in this case, given
22 we are not reviewing the design, we are doing a
23 minor variance for a front yard setback, it was
24 the front yard setback from a planning standpoint
25 that she was reviewing it for. So, the design

1 drawings were not specifically relevant.

2 288. Q. Okay, but what I'm trying to
3 understand is this, you get a circulation. There
4 are certain documents enclosed in that
5 circulation, including design drawings. Someone
6 has to look at those...at the design drawings to
7 decide, you know, whether or not, you know, that
8 is something that you are concerned about or not
9 concerned about, right?

10 A. No. So, what a minor variance
11 is, is you are asking, can you please look at the
12 minor variance? So, for example, this would have
13 also gone to the forester, but I'm sure he didn't
14 check the electrical, because that's not the role
15 for this application. So the question is, are
16 you okay that the front yard setback to an
17 existing overhanging front porch? So yes, we are
18 provided all sorts of information, but we haven't
19 been asked to review design drawings because,
20 from our understanding, they haven't changed,
21 because this is a minor variance application for
22 a front yard setback.

23 289. Q. Sorry, that they haven't changed
24 from what?

25 A. Like, our understanding is there

1 is no work proposed at the house, because this is
2 just looking at the minor variance. So, for
3 example, we have different roles. We are a
4 permissy agency, and that's what the permit is
5 for. This is just...

6 290. Q. But...

7 A. ...a comment on and a minor
8 variance.

9 291. Q. But Mr. Priddle, if there is no
10 work proposed in respect of the building, why
11 would design drawings be attached to the minor
12 variance application?

13 A. Because the City includes
14 everything. They don't want to pick and choose
15 who gets what, because it's just easier. So,
16 minor variances go to all sorts of agencies. And
17 everybody gets the entire package. We would have
18 got...so, minor variances goes to engineering,
19 urban design, planning, forestry, Conservation
20 Halton. So there would be things like urban
21 design drawings that might be included, and we
22 were going to look at those. So you look at what
23 the minor variance is for, it's for a front yard
24 setback to an existing front porch. Does that
25 minor variance cause you concern? So, it is

1 again a question of scope and scale. They send
2 the whole package to everyone and we try to look
3 at what we are asked to do, and what we need to,
4 relevant to that.

5 So, in this case, Ola would have looked
6 at, is the front yard setback okay? So where it
7 might have been different...if, all of a sudden,
8 the permit said it was six metres and now
9 it's...or two metres and now it's 3.7, we might
10 have wondered why it's different. But you really
11 have to focus on that aspect. So it's a minor
12 variance applicant. There is no...

13 292. Q. Okay. And would you agree with
14 me that Ola, in addition to reviewing the...or at
15 least it sounds like she didn't review the
16 complete circulation, she only reviewed portions
17 of it, right? To the best of your knowledge?

18 A. What is necessary for a minor
19 variance for a 3.7 metre setback, yes.

20 293. Q. But she was also present for the
21 hearing of the minor variance application itself,
22 right?

23 A. Present for the hearing?

24 294. Q. Yes.

25 A. No.

1 295. Q. She was not?

2 A. I don't think so. We usually
3 don't attend the City committee.

4 296. Q. Okay, but...

5 A. There are times we have been
6 asked to attend, but in a general code of
7 practice, no we don't attend those meetings.

8 297. Q. Okay. But in this particular
9 instance you don't know if she attended, right?

10 A. I don't know. But our general
11 practice is we don't unless we either have
12 concerns or we are requested by either the
13 applicant or the City.

14 298. Q. Okay. Now, so I'm going to take
15 you to paragraph 80 of your affidavit now, where
16 you say that,

17 "...In reviewing the application for a
18 front yard setback, staff did not
19 appreciate that the drawings provided
20 included drawings A09, which confirmed
21 the new exterior wall to the rear of the
22 home..."

23 Now, when you refer to staff that reviewed the
24 application, who are you referring to, other than
25 Ola Panczyk?

1 A. It would be primarily Ola.

2 299. Q. Okay. Did anyone else review the
3 application?

4 A. They wouldn't have, no.

5 300. Q. Okay. So, I'm going to take you
6 to paragraph 88 now. So you say here that you
7 believe that the works that have occurred at 835
8 Spring Gardens do have the potential to meet
9 policy, correct?

10 A. Correct.

11 301. Q. But you are not certain. You are
12 saying that, you know, there is a potential,
13 doesn't mean that they meet policy?

14 A. Correct. I need a geotechnical
15 engineer to say the house is safe.

16 302. Q. But a geotechnical engineer does
17 not actually say a house is safe, they just
18 provide a certain analysis...

19 A. I need the geotechnical engineer
20 to say the slope beneath the house won't fail.

21 303. Q. So, if I give you a letter from a
22 geotechnical engineer that says the, you know,
23 exactly that, the slope beneath the house will
24 not fail, you will accept that?

25 A. I would want to talk to her

1 geotechnical engineer about terms of reference.
2 So we know we are getting a standard level of
3 review. So, for example, there is charts. So I
4 want to know that, given the height and steepness
5 of the slope and the area we are in, we do agree
6 at(sic) the study that is being done. A letter,
7 I have very big concerns. It might be something
8 I would want peer-reviewed because it's a 20-
9 metre slope at 1 to 1 with a creek at the bottom.
10 I would say I want to first talk to a
11 geotechnical engineer to be sure we understand
12 expectations and results of what is going to
13 happen as part of this study.

14 304. Q. Okay. So what you are telling me
15 is that...I think what you are really looking for
16 is you are looking for an engineer to do a study,
17 then you will review it and then you will decide
18 if it meets policy?

19 A. I think step one would be, I am
20 looking for a meeting with an engineer to discuss
21 steps forward. What do we need as part of a
22 study? We really needed that consultation to
23 make sure that what we get addresses our concerns
24 because, again, we want to agree on a level of
25 study that needs to be done to be sure that we

1 don't send it back multiple times, because I
2 don't want homeowners to have to revise studies.
3 So the first thing I would be looking for is a
4 consultation with their engineer.

5 305. Q. Okay. So then...so you would
6 have a consultation with the engineer and you
7 would basically tell the engineer what, you know,
8 what your requirements are?

9 A. He would tell me, or she, would
10 tell me what's possible at this slope and what
11 could be required. So he or she knows what can
12 be done, what has to be done and tells me their
13 idea given it's a private landowner, and we
14 discuss how to move forward. So, we don't
15 dictate to them. They, as a professional, gives
16 us the options and we describe what's reasonable
17 and then we would probably talk with the owners
18 saying, "Given all the options and the
19 different...all the other considerations, here is
20 what we think is reasonable, do you agree?"

21 306. Q. Okay. So basically Conservation
22 Halton makes the decision on what's reasonable,
23 ultimately?

24 A. Again, you keep trying to say
25 that we are dictating, and we're really not. It

1 is a consultation. And again, if the landowner
2 things that I am being too strict, well, then
3 there are methods to say, "This is too much. We
4 think that the expectations and the requirements
5 of this application are too stringent". And even
6 that level can be argued above me. We don't
7 dictate. It is done in consultation. I would
8 say that the engineer probably has as much
9 influence on that decision as I do.

10 307. Q. Well, I think you are putting
11 words in my mouth, because you are, you know,
12 reframing the question that I have asked of you.
13 I am not talking about the appeal, the ultimate
14 appeal to the board or the hearing before the
15 board. What I am simply asking is this, you
16 know, at the initial level when, you know, when a
17 decision is made as to whether or not this is
18 going to be approved by staff, ultimately it's
19 the decision of Conservation Halton whether or
20 not the proposal is reasonable, correct?

21 A. That's correct.

22 308. Q. Okay. Now, so one of the things
23 that we have talked about is, you know, the
24 geotechnical assessment report and, you know, the
25 different values that it could show, the factor

1 of safety, and so on. I mean, you know, let's
2 say you get a report that shows a factor of
3 safety of 1.5, which is your minimum, you would
4 agree with me that, you know, even a geotechnical
5 assessment is, at some level, you know, an
6 approximation of risk? Just because you get 1.5,
7 doesn't mean that the slope, you know, that there
8 is a guarantee that the slope will not collapse,
9 it's just based on the, you know, best available
10 data. You know, that's what the...it appears to
11 be safe, correct?

12 A. That's how science works. We
13 take the best available information and, yes,
14 that's how science works.

15 309. Q. Right. And I mean, there is no
16 guarantees, when it comes to things like this,
17 but based, you know, you just have to, you know,
18 assume that, you know, the model is going to be
19 accurate.

20 A. Well, I use multiple models and
21 that's why we look for higher factors of safety.
22 So what the geotechnical engineer would do is
23 say, "You are safe. The more variables that we
24 had, the more confident we are that you are
25 safe". So, to get to 1.2 we have added these

1 variables. We add more to get to 1.3. We add
2 more to get to 1.5. So, the more variables, the
3 more likely it is to be safe. But, I can't tell
4 you that lightning is not going to strike a big
5 tree on a neighbouring property and pull a whole
6 slope down. So, yes, you are absolutely right,
7 there are variables that cannot be assessed.
8 There are acts of nature that can't be assessed.
9 Slope stability could be effected by someone
10 running off the road and ramming their van down
11 the hill and knocking out all of the vegetation.
12 That's going to be hard to know is going to
13 occur. But looking at all of the reasonable
14 options, we will have the soil, we will have the
15 groundwater, we will have the vegetation, we will
16 have the creek. You start taking these variables
17 out. So you have done the best you can to find
18 that level of safety. But you are correct, there
19 are variables we cannot guess.

20 310. Q. Okay. And now, so I'm going to
21 take you to Exhibit A of your affidavit. And so
22 Exhibit A is the application that was received on
23 May the 10th and ultimately approved. So you see
24 that the proposal is...to propose a two storey
25 addition of the side yard and the rear

1 cantilevered balcony along with an on grade
2 patio.

3 A. This would be at Exhibit B?

4 311. Q. No...yes, you are right, it is
5 Exhibit B, my apologies.

6 A. Yes.

7 312. Q. Right. So a patio was approved
8 on the property, correct?

9 A. On grade patio, yes.

10 313. Q. Okay. As opposed to what? Is
11 there some other type of patio that can be
12 contemplated?

13 A. Sure. There is anything from
14 Venkin(phon.) to...so, on grade just means it is
15 going to end up with the same elevation as the
16 ground, so.

17 314. Q. I see. Okay. And that...having
18 that patio did not require a geotechnical
19 assessment, right?

20 A. We didn't think it was required,
21 especially if you were turning grades, no.

22 315. Q. Okay. And if you look at the
23 first page of Exhibit B, you will see, you know,
24 there is towards the bottom of the page, the
25 proposed development works involves the

1 following, and there is several categories,
2 right?

3 A. Yes.

4 316. Q. Where you could put your
5 checkmark. Now, "new structure including public
6 infrastructure", what does that category
7 correspond to?

8 A. So, there was going to be a
9 structure there that isn't there now. Either new
10 or replaced or whatever. So...

11 317. Q. Okay.

12 A. ...like a human made something is
13 going to be there.

14 318. Q. Okay. Then there is a "grading
15 site alteration", which is another option.

16 A. M'hmm.

17 319. Q. And then there is, "alteration
18 addition to existing structure", correct?

19 A. Correct.

20 320. Q. Okay. There are a number of
21 other options. And you will agree with me that
22 there is no option for reconstruction here?

23 A. Well, it's combined. So it's a
24 new structure and it's alteration addition. You
25 are altering it. You are rebuilding it. So, I

1 would say that would be one and two.

2 321. Q. So, you are building a new
3 structure while at the same time you are doing an
4 alteration to the existing structure?

5 A. So, you are rebuilding this
6 structure. So, to alter it, I mean, there are
7 portions of it left, the foundation. But you are
8 fundamentally rebuilding a home. But there are
9 still portions that are left, so yes, altering a
10 structure to the point of it being a
11 reconstruction. So, I would say it's a new house
12 on an altered foundation.

13 322. Q. And now so my understanding, and
14 maybe I was wrong, that "new structure including
15 public infrastructure" section refers to when you
16 have a greenfield development where you are
17 building something where no dwelling had existed
18 before?

19 A. That's not how we interpret it,
20 no. New development maybe considered that. So,
21 from a planning perspective, new development
22 when, like, an empty field to a subdivision, from
23 our point, "new structure" means the structure
24 that's there is either new or not the one that
25 was there before.

1 323. Q. Okay. But if you have a, you
2 know, you will agree with me that foundation is
3 part of the structure, right?

4 A. Yes, a small part of it, but it's
5 part of it.

6 324. Q. Okay. And you also agree that
7 this building that is in place right now was
8 built on an existing foundation?

9 A. Yes, the new house is on top of
10 the old foundation.

11 325. Q. Okay. So, it's not really a new
12 structure that they are building, yet they are,
13 you know, utilizing a portion of the existing
14 structure, the foundation?

15 A. It is a new house.

16 326. Q. But it is not a new structure?

17 A. It is a new structure. It's on
18 top of an old foundation and an old structure,
19 but...

20 327. Q. Okay.

21 A. ...those walls and that roof are
22 not the walls and the roof that were there before
23 it was demolished.

24 328. Q. And if you are building a new
25 garage in place of an old garage, is that also a

1 new structure?

2 A. It's a reconstruction of a
3 garage, yes.

4 329. Q. Okay. But so, in this case, the
5 homeowner applied for, you know, to build a new
6 garage, but they weren't required to apply under
7 a new structure, correct?

8 A. Yes, I mean, quite frankly, it's
9 something we probably could have ticked.

10 330. Q. I'm sorry, quite frankly it's
11 what?

12 A. We could have ticked that off.

13 331. Q. Okay. But that wasn't ticked
14 off?

15 A. Correct. Put it this way, if I
16 go outside and there is only four tires in the
17 driveway, my car has been stolen. Part of my car
18 is there, but my car is not there.

19 332. Q. Well, I will give you a different
20 analogy. Let's say your car is involved in a
21 major crash and you take it to a body shop and,
22 you know, they take a smoldering wreck and they
23 repair it to a point where it looks brand new, do
24 you have a new car or do you have a car that's
25 been repaired?

1 A. Is it the same steel and the same
2 seats and the same...because usually what they
3 say is, we will give you a new car, same kind,
4 but this has been demolished.

5 333. Q. Well, in this case...I guess what
6 I'm proposing to you is that the two are mutually
7 exclusive. You can't at the same time build a
8 new structure and alter an existing structure,
9 it's either one or the other.

10 A. No, I completely disagree. I
11 would say that once the main floor and top floor
12 are gone, the house is gone. Yes, you have the
13 foundation of a house, but you don't have a
14 house. So, you have demolished the home, you
15 have only left the foundation, so you are
16 reconstructing a house on top of an existing
17 foundation.

18 334. Q. Okay. And now is there...I'm
19 just looking at this form, is there...this is
20 something that's filled out by the homeowner, or
21 by the agent, not by Conservation Halton, this
22 section that has different checkmarks, right?

23 A. That's correct.

24 335. Q. Okay. And is there any
25 explanation here as to what you need to check off

1 if you have a reconstruction?

2 A. No, there isn't. We really
3 promote preconsultation, and we can walk through
4 the project and see what's relevant so we can
5 tick off what happened. In this case, I don't
6 believe there was preconsultation, we just got
7 the application.

8 336. Q. I see. Okay. And now, so if you
9 have an application that is just for an
10 alteration or addition to an existing structure,
11 doesn't involve construction of a new structure,
12 that is a type of application that would not
13 require a geotechnical assessment, right?

14 A. It might. It really depends on
15 the scope and the scale and the extent of hazard.

16 337. Q. Okay. So is...

17 A. So, we don't base the need for a
18 geotech on the type of development, I base it on
19 the scale of work occurring within hazardous
20 lands or adjacent to hazardous lands.

21 338. Q. Okay. So, if it's an alteration
22 or addition to an existing structure, it may or
23 may not require a geotechnical study, depending
24 on, you know, basically on Conservation Halton's
25 opinion, right?

1 A. Based on the extent of the hazard
2 and the risk to the property, yes.

3 339. Q. Okay. But, if it is a new
4 structure, then it would always require a
5 geotechnical assessment, right?

6 A. No, same rules. It depends on
7 the extent of the hazard and the amount of risk.
8 So let's say it was in the regulated area, but
9 across the street, I wouldn't have required a
10 geotechnical assessment because, from a rational
11 looking at it, it's across the street. It's
12 still in the regulated area, but because it's...

13 340. Q. What...

14 A. ...far enough from the slope. So
15 we look at how close it is, how steep the slope
16 is, whether or not it's an addition or
17 reconstruction, I'm more worried about the safety
18 or development at the end of the day.

19 341. Q. But, if it was across the street,
20 it would not be in the regulated area, right?

21 A. It is according to the ARL, but
22 they would have the option to do a geotechnical
23 assessment to refine that stable top of bank and
24 determine whether or not they are, in fact,
25 regulated. I don't want to make them get that

1 geotechnical assessment. I can say I can give
2 you a permit using our ARL because it's
3 precautionary and it's really (inaudible).

4 342. Q. But maybe...I know what you told
5 me that it's six metres from the stable top of
6 bank.

7 A. That's correct. And without a
8 geotechnical assessment, we are using that ARL.
9 And if I can refer you to the ARL, the red line,
10 using those conservative parameters, is in the
11 road.

12 343. Q. Okay.

13 A. So, we have a regulated area here
14 that, unless we have those refinements by a
15 geotechnical assessment, goes well beyond this
16 property.

17 344. Q. Okay. But you can say that if it
18 was across the street, you know, it would be open
19 to you to say, "No, I don't need a geotechnical
20 report", even if you are building a new house?

21 A. That's correct. I think it's
22 reasonable to say that that is far enough from
23 the slope that we believe safety concerns are
24 addressed.

25 345. Q. Okay.

1 A. I mean, I will say it is up to
2 our discretion, but we use our discretion to try
3 to avoid making people do onerous studies and pay
4 money. We could say anything in the regulated
5 area adjacent to a slope we should get a
6 geotechnical assessment, but we don't find that
7 is reasonable. So, when you say "What requires a
8 geotechnical assessment?" What we say is, "Well,
9 if it's near a steep slope", we have to start
10 with, "There is potential you could have a
11 geotechnical assessment." And then we start
12 looking, "Well, are we dealing with a habitable
13 space or a patio? Are we dealing with a steep
14 slope or a gradual slope?" And we try to make
15 it...I really don't like asking people to spend a
16 lot of money to do these technical studies, but
17 if it comes down to the safety of their
18 development and, quite frankly, the safety of
19 themselves, I do err on the side of caution.

20 346. Q. And now I'm going to take you to
21 paragraph 95 of your affidavit now.

22 A. Yes.

23 347. Q. And so at paragraph 95 you are
24 taking about a meeting that took place on April
25 9...April 3rd, 2019. And do you recall

1 approximately how long that meeting was?

2 A. Well, it wasn't very long. I
3 would say less than an hour.

4 348. Q. Okay. And what was the subject
5 matter of, you know, what was the subject of
6 discussion at the meeting?

7 A. That was a meeting where
8 Cassandra and myself and Kellie had brought
9 the...Mr. Vozikas and Mr. Baron. We had
10 requested that the landowners be there, they
11 weren't present...be present so we could discuss
12 our concerns with the violation and the works
13 occurring without permits and go over options to
14 see how we could get it so that we could move
15 towards an approval at this site.

16 349. Q. Okay. And I think you said in
17 your affidavit that Mr. Baron was doing all of
18 the...or most of the talking, right, on behalf of
19 the...well, I mean, there were two of them, Mr.
20 Vozikas and, Mr. Baron, but Mr. Baron did most of
21 the talking?

22 A. From their side, yes.

23 350. Q. Okay. And do you...like, what
24 was he talking about? What was he saying?

25 A. He was talking a lot about how

1 the walls collapsed, they had building code
2 issues and discussing that we don't do building
3 permits and more that...discussing how it had all
4 collapsed and they had to keep building.

5 351. Q. Okay. So, he told you that he
6 has to keep building?

7 A. Yes, because our point was, even
8 if that had happened, why wasn't there any calls
9 made to any of the approval agencies, because we
10 were quite surprised that he was saying "It
11 collapsed and we had to keep going", when, as an
12 approval agency, we weren't made aware that there
13 was a collapse.

14 352. Q. Okay. So, are you saying that
15 Conservation...if there is a collapse
16 Conservation Halton would have to be made, you
17 know, be apprised of that?

18 A. What I'm saying is, if your...if
19 something occurs where...that fundamentally
20 changes what you are permitted to do and it's
21 right on our permit application and in the permit
22 saying that if there is fundamental changes and
23 if you actually look at our permit, which
24 is...it's in my affidavit...on the actual permit
25 it says that, if there are changes to the permit,

1 they need to be reviewed and approved by
2 Conservation Halton. So, it's not necessarily
3 just a collapse, but if something occurs that
4 changes what you are doing, compared to what has
5 been approved, yes, you will have to come back to
6 us and get that approval.

7 353. Q. And when Mr. Baron told you that
8 he has to keep building, you replied and said
9 that if he does continue building he will be
10 charged with a provincial offence, right?

11 A. I said that's an option, yes.

12 354. Q. Okay. And that, you know, he
13 could get fined and incarcerated, correct?

14 A. I don't remember saying
15 incarcerated. I do often say that there is that
16 in the Conservation Authorities Act, usually when
17 asked. But one of the reasons for this meeting
18 is we really wanted to go over the options
19 available to avoid that.

20 355. Q. Do you agree that the meeting
21 became very contentious?

22 A. Yes, I would say that.

23 356. Q. Okay. And essentially
24 people...voices were raised, people were, you
25 know, yelling at each other?

1 A. No, I disagree with that. It was
2 very hard to get a word in with Mr. Baron
3 speaking. We did our best to go through the
4 process, but I wouldn't say anyone was yelling at
5 each other, no.

6 357. Q. Okay. So then why do you say
7 that it was contentious? Just explain, please.

8 A. I think there was a lack of
9 understanding with the goal of the meeting. Mr.
10 Baron was very forceful on what had to happen and
11 building code and we were trying to explain that
12 that's not really why we were here. And we were
13 trying to bring it around to options available to
14 move forward.

15 358. Q. Okay. And well, what are the
16 options that were presented in terms of moving
17 forward?

18 A. There is the compliance
19 agreement. So, looking at what technical studies
20 would be needed to confirm whether or not what
21 has been built can keep going. So, we don't do
22 permits after the fact, in most cases.
23 Compliance agreement is our way to avoid going
24 enforcement, to avoid charges. We don't like
25 doing that if we can find a way around it. So,

1 the discussion is usually started with a
2 compliance agreement and where you work with us
3 to see how we can get this back towards an
4 approval.

5 359. Q. Okay. And what was...other than
6 the compliance agreement, were there any other
7 options presented?

8 A. No. Without the landowner it is
9 hard to do more than that because they have to be
10 the sign-off on that. We were surprised they
11 didn't come because it really is, as a landowner,
12 their move to make a decision on that. But
13 generally after compliance it's...I mean, we
14 always have the options to press charges and we
15 don't like doing that. We really do want to work
16 with applicants to bring these back on track. So
17 that's our first option to provide them.

18 360. Q. Okay. So I guess that would have
19 been the second option that was presented, right?
20 The compliance agreement being one and charges
21 under the provincial offences being the second
22 option?

23 A. I wouldn't say that was
24 specifically presented. The fact of the matter
25 is, it is an option that's there. It's not

1 something we like doing, but once you have
2 committed an infraction of the regulation, it's
3 there. And we do have to make applicants aware
4 of that. But the fact is we try to avoid that.
5 So, I would say we present that compliance
6 agreement option because we are willing to work
7 with people and we don't like pressing charges.
8 But that option is there. That's legislatively
9 there.

10 361. Q. Okay. So, my plan was to take a
11 lunch break at 1:00. I think I'm almost done
12 though. So what I propose we do is instead of
13 taking the lunch break we will take about 15
14 minutes, I just need to review my notes and then
15 I may have a couple of other questions for you,
16 Mr. Priddle, and then we will be done, okay? Is
17 that okay with everyone?

18 A. Sure.

19 MR. JULL: That works for me.

20 362. MR. BOUCHELEV: Okay.

21
22 --- upon recessing at 12:52 p.m.

23 --- A LUNCHEON RECESS

24 --- upon resuming at 1:11 p.m.

25

1 CHARLES PRIDDLE, resumed

2 CONTINUED CROSS-EXAMINATION BY MR. BOUCHELEV:

3 363. Q. Mr. Priddle, can I ask you to
4 look at paragraph 117 of your affidavit, please?

5 A. Yes.

6 364. Q. Okay. Just give me one second.
7 Okay, so at 117 you are discussing some meetings
8 in August and September with senior staff at
9 Conservation Halton and the City of Burlington,
10 you did not attend those meetings. Now, those
11 are the meetings that I think you told me about
12 where one of the things that Conservation Halton
13 was looking at is whether, you know, you should
14 go to the board or whether you should do
15 something else, right?

16 A. Well, I don't know. When they
17 were talking to the City of Burlington, I don't
18 know exactly the discussions that occurred.

19 365. Q. Are you talking about...so these
20 meetings in August and September, are you talking
21 about meetings with the City of Burlington or
22 were there meetings by senior staff that were
23 also just internal Conservation Halton meetings?

24 A. This is when...so, I believe the
25 applicants went to councillors and the mayor and

1 that sort of thing. So it was senior staff at
2 Conservation Halton speaking to senior staff at
3 the City of Burlington.

4 366. MR. BOUCHELEV: Okay. And Mr. Jull,
5 to the extent that there are any notes
6 or memos or communications in respect of
7 these meetings, I would like to get
8 them.

9 MR. JULL: So again, just to be
10 clear, I am prepared to provide the
11 undertaking. I just want to be clear
12 that...so, you are looking for notes. I
13 guess really two notes here: notes
14 internally about meetings and notes to
15 and from the City of Burlington, is that
16 fair?

17 367. MR. BOUCHELEV: Yes. Like, I mean,
18 any kind of notes that may exist in
19 connection with these meetings and, you
20 know, that's one component.

21 MR. JULL: The only thing...yes,
22 thank you. And the only thing I
23 would...I know this flows from an
24 undertaking that we provided yesterday
25 during the examination of Ms.

1 McCormack...

2 368. MR. BOUCHELEV: Right.

3 MR. JULL: ...and the only thing I
4 would say is, and it was brought to my
5 attention, that the mayor may assert
6 some sort of privilege, so I will have
7 to take that, if that occurs, I will
8 have to advise you of that. I am
9 prepared to provide the undertaking of
10 whatever we can provide you. U/A

11 369. MR. BOUCHELEV: I mean, I'm not sure
12 how the mayor can assert...

13 MR. JULL: Yes, look, I don't want to
14 get into a debate here about it. I'm
15 not counsel for the mayor, I'm just
16 indicating and obviously if there is
17 communications between lawyers, but I
18 don't believe there were. So, I
19 certainly...I don't believe there was
20 any correspondence. I certainly didn't
21 have any correspondence with...at that
22 time with the City of Burlington. So, I
23 don't think we are going to have that
24 issue. I'm just flagging it as
25 something that if the mayor takes a

1 position that they are not prepared to
2 produce it, that may be an issue that I
3 have to raise. But we will meet that
4 when it comes.

5 370. MR. BOUCHELEV: Okay. Yes, and I'm
6 not aware of any privilege other than
7 litigation or solicitor/client privilege
8 that can be raised. And obviously that
9 wouldn't apply to the mayor unless there
10 are any communications between the mayor
11 and her lawyers, which...

12 MR. JULL: That's right. And
13 that's...

14 371. MR. BOUCHELEV: That's something we
15 are not looking for.

16 MR. JULL: But that's right, Rob.
17 So, I agree. In principle I agree with
18 you that there is no privilege unless
19 those communications may be between or
20 involving their solicitor. So that's
21 really what I'm flagging here, that's
22 all. So, I am prepared to provide the
23 undertaking with...and again, with
24 respect to timing, just so it leads back
25 into Mr. Priddle's affidavit,

1 specifically we are looking for
2 correspondence in and around the time of
3 August and September as he is referred
4 to in his affidavit.

5 372. MR. BOUCHELEV: Yes, right. And, I
6 mean, they are in connection with
7 meetings that took place, you know, in
8 September or October. You know, I mean
9 sorry, in August and September. And if
10 there is an email from late July that
11 relates to an upcoming meeting or
12 something like that or an email from...

13 MR. JULL: Sure. I am not going
14 to...I won't cut it off on July 31st or
15 October 1st. But generally, that's the
16 period where...to keep this
17 manageable...

18 373. MR. BOUCHELEV: Right. Right.

19 MR. JULL: ...I am going to look for.

20 374. MR. BOUCHELEV: Okay.

21 MR. JULL: Yes.

U/T

22
23 BY MR. BOUCHELEV:

24 375. Q. And now...so, Mr. Priddle, I you
25 know, I appreciate the fact that you weren't

1 present for those meetings, but do you know what
2 came out of them? Was there some kind of an
3 understanding that was reached between
4 Conservation Halton and the City of Burlington?

5 A. An understanding? The only thing
6 I know is basically when it ended up coming out
7 in formal correspondence that would have been
8 received by the applicants. And I don't know
9 what they talked about in those meetings
10 specifically.

11 376. Q. So you weren't briefed on what
12 the meetings were about or what happened at the
13 meetings?

14 A. I mean, not specifically. I know
15 of decisions that were made that we did get legal
16 counsel to later send with prejudice letters.
17 But I wasn't in those meetings, so I can't really
18 speak...

19 377. Q. Okay.

20 A. ...to what had occurred.

21 378. Q. Okay. So you say that the...you
22 know, the decisions that were made, like, what
23 decisions were made at those meetings?

24 A. Well, I mean, again, it wasn't my
25 file, so it was Cassandra's file and it went to

1 senior staff. So, during this time...so the next
2 time I was formally brought in I had not been in
3 those conversations but there was with prejudice
4 letters sent near the end of the year from legal
5 counsel giving options. In between...

6 379. Q. Sure, and...

7 A. You really have to speak to those
8 that were at the meeting.

9 380. Q. No, no, you know, I will take you
10 to the letters from counsel in a moment, but I
11 just want your understanding of what decisions
12 were made at the meetings.

13 A. I don't know of specific
14 decisions. I think it was more discussing
15 concerns from each agency to make sure everyone
16 was understanding of the situation.

17 381. Q. Okay. And now if you look at
18 paragraph 122, there is some...is this the with
19 prejudice letters from counsel that you are
20 referring to the one, from December 18th, 2019
21 and then at paragraph 123 there is a reference to
22 another letter on July 27th, 2020?

23 A. Yes. So here is where it was
24 offered to allow for a permit application in the
25 first one.

1 382. Q. Okay. Okay. And you will agree
2 with me that these letters were sent out after
3 this litigation had already commenced, right?

4 A. I believe so, yes.

5 383. Q. Yes. And then did the offer to
6 submit a new application was not made before the
7 commencement of this application, right?

8 A. Not that I'm aware of.

9 384. Q. Okay. And so, so the proposal as
10 I understand it is that the applicant simply
11 apply, you know, for a new construction permit,
12 right?

13 A. Yes, so that a new permit be
14 submitted.

15 385. Q. Okay. And if you look at Exhibit
16 A to your...or Exhibit B to your affidavit. So,
17 this is the type of permit application form that
18 they would have to fill out if they were to
19 submit a new application, right?

20 A. That's correct.

21 386. Q. And on the proposed development
22 and works they would have to select new
23 structure, correct?

24 A. Well, it would be to complete the
25 reconstruction of a two storey dwelling.

1 387. Q. Okay. But of the checkmarks that
2 are the bottom of the first page, which one would
3 they have to select?

4 A. Probably one and two again. One
5 and two this time.

6 388. Q. Okay. And just going back to
7 what you said, that to your knowledge there was
8 no suggestion that the applicants should submit a
9 new application before the commencement of this
10 litigation. So, before this litigation was
11 commenced you were willing to work with the
12 applicants within the confines of the existing
13 application, right?

14 A. There was the compliance
15 agreement offer. So, prior to this they were
16 offered the ability to apply for a compliance
17 agreement, because we really did want to get this
18 project moving and find a way to approve it.

19 389. Q. And...

20 A. There was not a willingness to do
21 this. So then eventually we also allowed for a
22 permit application. But they were offered that
23 compliance agreement option, which is an
24 application as well, to bring it into compliance
25 and complete the work.

1 390. Q. Well, but the compliance
2 agreement application does not require them to
3 apply for a new permit, right?

4 A. The compliance agreement is in
5 place of a permit. Because the work has already
6 occurred, we are basically saying that these are
7 the works that you do to bring what you have
8 already done into compliance.

9 391. Q. Okay. But they don't have to
10 fill out a new permit application form is what
11 I'm asking.

12 A. You have to fill out a compliance
13 application form.

14 392. Q. Right. And you don't have to
15 fill out a new permit application form?

16 A. No, you have to fill out an
17 application form, it's just a different form.

18 393. Q. Okay. And you have to fill out a
19 compliance agreement application form, right?

20 A. Correct.

21 394. Q. You do not have to fill out a new
22 permit application form, right?

23 A. Correct. What I'm saying is, you
24 make it sound as though there is no application
25 form. There is, it's just a compliance

1 application versus a permit application. But you
2 still have to apply to complete the work.

3 395. Q. Okay. No, I understand what you
4 are saying, it's a different application. Now,
5 just again, going back to Exhibit B for a second,
6 I see that there are, you know, again there are
7 different checkmarks for a new structure,
8 alteration to existing structure. I'm just
9 wondering, is this form, is it a form that
10 Conservation Halton uses, or is that like, a
11 standardized form for...used by all Conservation
12 Authorities, do you know?

13 A. This is specific to Conservation
14 Halton. Some of them are very similar.

15 396. Q. Okay.

16 A. But we are...it's kind of like a
17 building permit for cities look different. Ours
18 is specific to Conservation Halton.

19 397. Q. Okay. And I see that this form
20 is effective March 8th, 2018. I take it that's
21 the, you know, the most recent update of this
22 form?

23 A. I think it's new now. It gets
24 updated pretty much yearly.

25 398. Q. I see. Okay. So, you know,

1 like, how, I guess...like, how do you decide that
2 these are the various checkmarked boxed
3 categories that are going to be on this form? Is
4 it based on policies? Is it based on, you know,
5 like some kind of internal procedure? How do you
6 decide that these are the different categories of
7 a development that you are going to have to have?

8 A. We generally ask for a pre-
9 consultation with the owners or they just submit
10 it with what they have checked. And we are
11 either comfortable with what they have checked,
12 or we walk through it with them.

13 399. Q. No, and I'm sorry, maybe the way
14 I'm asking the question is not clear, but like,
15 for example, you have here, you know, one, new
16 structure, two alteration addition, three,
17 grading site alteration. The design of the form
18 itself, is it based on internal policies? Is it
19 based on some kind of guidelines? How did you
20 design this form?

21 A. I don't know, I didn't design it.

22 400. Q. Okay. And do you know who
23 designed it?

24 A. I don't. I interpret it. So
25 what I do is I consider what is being done, look

1 at what they have checked and I either say, "I'm
2 uncomfortable that that's what's being done" or
3 "Given what you have proposed, I suggest we need
4 other things on here". So for example, if they
5 have checked a pond, I would say, "I don't think
6 what you are building is a pond". So, it's not a
7 black and white, this is exactly where it is. We
8 go through the checkmarks and see what is being
9 done and we see what they are proposing.

10 Generally we talk to them and quite often we fill
11 it out with them.

12 401. Q. Okay. And do you know if that
13 happened in this case? If someone talked to Mr.
14 Vozikas and helped him fill out this form?

15 A. I don't believe so, but I don't
16 know specifically.

17 402. Q. And why do you say that you don't
18 believe so?

19 A. Well, I think it came in with it
20 just being filled out. I do know that Cassandra
21 got back to him because I don't believe...someone
22 hadn't signed it. It was either him or the
23 owners, I can't remember which, but we do require
24 anyone that wants...we do require the owners to
25 sign it and anyone that wants correspondence as

1 an agent to sign it. So, I know it was sent back
2 for that.

3 403. MR. BOUCHELEV: Okay. Well, subject
4 to undertakings and refusals, I think we
5 are done with this examination. So,
6 thank you very much, Mr. Priddle.

7

8 --- upon adjourning at 1:27 p.m.

9

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REPORTER'S NOTE:

Please be advised that any undertakings, objections, under advisements and refusals are provided as a service to all counsel, for their guidance only, and do not purport to be legally binding or necessarily accurate and are not binding upon Victory Verbatim Reporting Services Inc.

I hereby certify the foregoing to be a true and accurate transcription of the above-noted proceedings held before me on the **29th DAY OF APRIL, 2021**, and taken to the best of my skill, ability and understanding.

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) **Certified Correct:**
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) **Tajian Hossain**
) Verbatim Reporter

TAB 6

Court File No. CV-19-00627606-0000
ONTARIO
SUPERIOR COURT OF JUSTICE
(APPLICATION UNDER Section 97 of the Courts of Justice Act,
R.S.O. 1990, C.C43)

MH/sp

B E T W E E N:

IVAN RUDYK and SHELLEY YOUNG

Applicants

- and -

HALTON REGION CONSERVATION AUTHORITY

Respondent

This is the Cross-Examination of BARBARA VEALE, on her Affidavit sworn the 5th day of February, 2021, held via videoconference at the Offices of VICTORY VERBATIM REPORTING SERVICES, Suite 900, 222 Bay Street, Toronto-Dominion Centre, Toronto, Ontario, on the 30th day of April, 2021.

A P P E A R A N C E S:

ARKADI BOUCHELEV

--- for the Applicants

KENNETH JULL

--- for the Respondent

ALSO PRESENT:

Ivan Rudyk

Shelly Young

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1 --- upon convening at 10:00 a.m.

2 --- upon commencing at 10:04 a.m.

3

4 BARBARA VEALE, affirmed

5 EXAMINATION BY MR. BOUCHELEV:

6

7 1. Q. State your full name.

8 A. Okay, my full name is Barbara Jane
9 Veale.

10 2. Q. Again, can you please confirm for
11 the record that you have been affirmed to tell the
12 truth today?

13 A. I certainly have.

14 3. Q. Okay. Now, Ms. Veale, what is your
15 position at Conversation Halton?

16 A. I am the director of planning and
17 watershed management for Conservation Halton.

18 4. Q. Okay, and did you have the same
19 position and title in 2018 and 2019?

20 A. Correct.

21 5. Q. Okay. Just briefly, what does that
22 entail? What is part of your job?

23 A. I have three sections that report to
24 me. One is planning and regulations. One is
25 science and partnerships, which is ecological

1 monitoring and stewardship, and the Hamilton Harbor
2 rep, and the third is watershed planning and source
3 water protection.

4 6. Q. All right.

5 A. So I have about 50 staff altogether.

6 7. Q. Okay, and who do you report to?

7 A. I report to the president and CEO of
8 Conservation Halton, Mr. Hassaan Basit.

9 8. Q. Okay. I'm going to ask you
10 to...we're going to look at some sections of your
11 affidavit. If you can go to paragraph 12 of your
12 affidavit, please?

13 A. Yes.

14 9. Q. Okay. So at paragraph 12 you are
15 talking about the Statement of Claim that was filed
16 in connection...by Lifestyles by Barons in
17 connection with a lawsuit against my clients in the
18 U.S.A., that you have obtained this claim as part of
19 the execution of the search warrant, right?

20 A. Correct.

21 10. Q. Now, would it be fair to say that
22 you personally have no idea whether the statements
23 and allegations in that Statement of Claim are
24 accurate?

25 A. I only have what is in front of me,

1 yes.

2 11. Q. Okay, but as a general proposition,
3 you agree that, you know, statements in a Statement
4 of Claim are allegations. They are not facts that
5 have been proven?

6 A. Well, I think that we have got other
7 information that will corroborate some of the
8 information in here. So I don't think I can make a
9 general statement like that. So I think I have to
10 take a look at the rest of the material, and it
11 depends on what it is that you're...which particular
12 facts you're asking.

13 12. Q. Okay. So I'll give you an example.
14 There is reference in the Statement of Claim and
15 elsewhere in your affidavit to an agreement that was
16 signed or allegedly signed between my clients and
17 Lifestyles by Barons. You don't know whether such
18 an agreement was actually signed, right?

19 A. I have a statement of work, which is
20 tab number F, which was signed by the applicants.

21 13. Q. And how do you know that it was
22 signed by the applicants?

23 A. I believe that the signature is on
24 there.

25 14. Q. Okay. Ms. Veale, are you suggesting

1 that you're a signature expert, you know for certain
2 this is my clients' signature or is that an
3 assumption?

4 A. Of course not. I'm not an expert
5 in...I can only go with what materials we have got.

6 15. Q. Right, but I guess what I'm saying
7 is that you don't know if that agreement is genuine,
8 if it was actually signed by my clients, right?

9 A. And I don't know that it isn't.

10 16. Q. Right. So that's what I'm getting
11 at. The information that you have, there is some
12 allegations that have been made, but you know, none
13 of this has been adjudicated, and you don't know if
14 there is allegations made in the claim of Lifestyles
15 by Baron are accurate and correct?

16 A. For the whole part, I would agree
17 with that statement.

18 17. Q. Okay. Now, at paragraph 13...so in
19 paragraph 13 you describe a document attached as
20 Exhibit E to your affidavit, which is a copy of the
21 contract that was allegedly entered into. Now, you
22 got that as part of the search warrant as well,
23 right?

24 A. I'm just checking paragraph 13.
25 Just bear with me for a second. Okay. Yes, so that

1 would be tab E.

2 18. Q. Okay. Now, did you obtain
3 permission from any party to use that document in
4 this proceeding?

5 MR. JULL: I'm not sure...I'm just going
6 to jump in here. I'm not sure what the
7 nature of the question is. These are
8 documents obtained pursuant to a search
9 warrant.

10 19. MR. BOUCHELEV: Well, the question is...

11 MR. JULL: So we had a court order to
12 obtain the documents. We didn't need
13 permission from anybody and the...you may
14 recall, Mr. Bouchelev, that at an earlier
15 stage in these proceedings there was some
16 discussion about whether or not we had to
17 bring a Wagg motion.

18 Justice Vella indicated that there
19 was no necessity to bring a Wagg motion,
20 that if the parties wanted to strike, they
21 could move to strike.

22 20. MR. BOUCHELEV: Well, I don't agree that
23 this is what Justice Vella said. I do
24 recall, you know, you contemplating
25 bringing a Wagg motion. My understanding

1 is that such a motion was never brought,
2 correct?

3 MR. JULL: Correct. So we can
4 agree...you know, I don't want to get into
5 a legal debate, but I'm certainly...I'll
6 certainly...Ms. Veale can answer the
7 question, but it's in the context of...I
8 just want to indicate that this document,
9 amongst some others, was obtained through
10 the process of a court authorized search
11 warrant. That's all.

12 21. MR. BOUCHELEV: Okay, so...

13 MR. JULL: Maybe you could re-ask the
14 question and she can answer it.

15

16 BY MR. BOUCHELEV:

17 22. Q. Yes. So let me reframe the
18 question. So did any of the parties against whom
19 search warrants were executed in connection with
20 this matter, did any of these parties provide you
21 with consent for the use of the documents obtained
22 as part of the search warrant execution in this
23 civil application?

24 So in other words, did the parties against
25 whom the search warrant was executed, did they

1 provide their consent for the use of the documents
2 that were seized...for the use of those documents in
3 this civil proceeding?

4 A. I believe my legal counsel has
5 answered that question. It's a legal question and
6 we obtained the information through a legal search
7 warrant.

8 23. Q. Sure, but that's not my question.
9 Forget about the search warrant, for example. I
10 mean, we're not going to, you know, debate now
11 whether or not, you know...what the legal
12 ramifications of that are.

13 I'm just simply asking you this: did
14 Lifestyles by Barons consent to the use of those
15 documents in this civil proceeding?

16 A. Well, again, I am not sure how to
17 answer that because it was obtained as part of a
18 legal search warrant, and therefore, you know, I
19 assume that it's true and valid, because we obtained
20 it in a legal manner.

21 24. Q. Yes, but you obtained those
22 documents for use in a different proceeding, right?
23 You obtained those documents so that they can be
24 used in the provincial offences case.

25 MR. JULL: Well, again, we're getting

1 into a debate here that I believe was...and
2 we're going to have to agree to disagree
3 about what Justice Vella said, but my
4 understanding was what Justice Vella said,
5 and I think is correct, is there was no
6 need for me to bring a Wagg motion because
7 we received these materials pursuant to a
8 search warrant.

9 Now, if you, as counsel, or anybody
10 else or any of the other parties wanted to
11 make a motion to strike the reference in
12 the affidavits to those materials, you were
13 free and are free now to do so. I would
14 have thought you would have to do it before
15 the cross-examinations.

16 There has been no motion made to
17 strike any of the materials that have been
18 filed that have been served, so
19 accordingly, the materials are there. They
20 are pursuant to a validly executed search
21 warrant, we have filed them, and there is
22 no motion to strike.

23 25. MR. BOUCHELEV: Well, again, I disagree
24 with what you say Justice Vella said about
25 this particular issue. We're not going to

1 get in a debate on this point, but the
2 question is...well, first of all, Ms.
3 Veale, did you...when you were...when you
4 applied for and when you executed the
5 search warrant, you were present during the
6 execution of the search warrant, right?

7 THE DEPONENT: No, I was not.

8

9 BY MR. BOUCHELEV:

10 26. Q. You were not, okay, but you were
11 involved in the process of applying for a search
12 warrant, right?

13 A. I knew that the search warrant was
14 being applied for, but I wasn't involved in it
15 directly.

16 27. Q. But at a high level, you approved
17 the application for a search warrant, right?

18 A. I did.

19 28. Q. Okay.

20 A. Upon advice, yes.

21 29. Q. Right. So was the purpose of the
22 search warrant to get documents so that they could
23 be used in the provincial offences case or so that
24 they could be used in the civil proceeding or both?

25 A. It was so that we could use it in

1 the civil proceeding.

2 30. Q. Okay. So now my other question for
3 you, then, is did you at any point ask Mr. Baron or
4 anyone else from Lifestyles by Baron if the
5 documents seized as part of the search warrant could
6 be used in this proceeding or did you just, you
7 know, think it wouldn't be necessary to get his
8 consent?

9 A. You're asking if I personally asked
10 for his consent to use the materials?

11 31. Q. Not you, personally, but your
12 organization.

13 MR. JULL: I can answer that
14 for...that's basically a legal question.
15 Without getting into discussions with other
16 parties that would be privileged, I
17 certainly can indicate that we have not
18 explicitly received consent, and certainly
19 not explicitly received consent from other
20 parties such as Lifestyles by Baron to
21 introduce these materials into the civil
22 proceeding.

23 32. MR. BOUCHELEV: Okay, that's all I was
24 asking.

25 THE DEPONENT: Okay.

1 BY MR. BOUCHELEV:

2 33. Q. So and the same applies to Mr.
3 Vozikas and his company and my clients obviously,
4 correct?

5 MR. JULL: Correct.

6 34. MR. BOUCHELEV: Okay.

7

8 BY MR. BOUCHELEV:

9 35. Q. Now, I'm going to take you to
10 paragraph 14 of your affidavit, Ms. Veale. So you
11 say here in the last sentence:

12 "...In essence, this was a plan to build a
13 new house on the original basement
14 walls..."

15 So you will agree with me that the structure that is
16 in place right now was built on original basement
17 walls, correct?

18 A. I don't believe that they are,
19 because there were additional concrete blocks added
20 to the basement walls. So there are portions of
21 that basement wall that are not original.

22 36. Q. But they were...okay, but so let's
23 assume for a second that that is correct, but the
24 blocks that you're referring to are on top of the
25 existing blocks, correct?

1 A. Correct.

2 37. Q. So the original foundation was not
3 removed or replaced, but it may have been added to?

4 A. Correct.

5 38. Q. And the footprint has not changed,
6 correct?

7 A. The footprint has changed where
8 there is the bump-out, but that was approved by
9 permit.

10 39. Q. Okay. Now, I'm going to take you to
11 paragraph 17 of your affidavit, and paragraph 17 has
12 a picture or a drawing inserted below it. So I'm
13 going to ask you about that as well.

14 Now you're saying in paragraph 17 that
15 this drawing has...or that the application made no
16 suggestion that any of the walls were going to be
17 altered, right?

18 A. Correct.

19 40. Q. So then if no walls are going to be
20 altered, how are you going to enter the newly bumped
21 out garage, if you are going to have the old garage
22 walls inside the newly expanded garage?

23 A. No, what this drawing shows is that
24 there is a new cantilevered balcony. There is a new
25 covered front porch and there is a bump-out, or what

1 I would call a bump-out, of the garage.

2 Obviously there would be new walls
3 required for that portion of the...it's a small
4 addition to the side, to the west side, of the
5 house, and that was all approved by permit when we
6 originally got the permit application.

7 41. Q. Okay.

8 A. I believe that was in March of 2018
9 or May of 2018.

10 42. Q. Okay, and I'm just going to share my
11 copy of the affidavit on the screen so that you can
12 follow my cursor here.

13 A. Yes.

14 43. Q. So the bump-out of the garage is
15 right here, right?

16 A. Correct.

17 44. Q. It's on the west and north side,
18 correct?

19 A. Correct.

20 45. Q. Okay. So you're saying that
21 according to this diagram, these are going to be the
22 new garage walls, right?

23 A. Correct.

24 46. Q. Okay. Just so I understand, the
25 existing walls, the old garage walls, they are going

1 to remain in place, as well, right?

2 A. Correct. Well, no, no, because that
3 doesn't make sense at all.

4 47. Q. Okay, but there is nothing...I am
5 just looking at this diagram. There is nothing here
6 indicating that the old garage is going to be
7 removed.

8 A. I think the...I have to go back to
9 what the permit says, and the permit says a small
10 addition to the garage, a deck and a balcony, and
11 that is what was approved.

12 48. Q. Okay. So just by looking at this
13 picture, you cannot tell whether or not these walls
14 are going to be removed, right? You have to look at
15 other documents?

16 A. With the outline, we would
17 absolutely see that those walls would have to be
18 removed in order to be able to make that diagram
19 make sense.

20 49. Q. Okay, but the diagram, itself, does
21 not show which walls are going to be removed and
22 which walls are going to remain?

23 A. It does show which ones are going to
24 be new, and that's the pink line.

25 50. Q. No, no, I didn't say new. I said it

1 doesn't say which walls are going to remain and
2 which walls are going to be removed, correct?

3 A. No, it does not.

4 51. Q. Okay. Now, if you look at...I'll
5 take you now to paragraph 18 of your affidavit.
6 Now, you say here that the applicants never applied
7 to increase the dwelling height, correct?

8 A. Correct.

9 52. Q. But how can that be when the permit
10 application was for, you know, a second storey
11 addition among other things?

12 A. Okay. So let's be clear here. The
13 permit was for a second floor addition to the
14 garage.

15 53. Q. Okay.

16 A. It was for a cantilevered balcony
17 and it was for a covered front porch. That was it.

18 54. Q. Okay, but adding a...

19 A. There was no indication that there
20 would be any other work on that house in the permit
21 application, period.

22 55. Q. But adding a second storey addition,
23 by definition, increases height, does it not?

24 A. On that one wing of the house over
25 the garage, correct.

1 56. Q. And Conservation Halton was willing
2 to permit a garage bump-out and second storey
3 addition without a geotechnical assessment, right?

4 A. Correct.

5 57. Q. And you would agree with me that,
6 you know, looking at this survey, the second storey
7 addition and the bump-out would be about six metres
8 away from the slope or just over five metres? It's
9 a little bit hard to read.

10 A. It looks like the edge would be 7.3
11 from the top of bank.

12 58. Q. Okay, 7.3 metres, okay. So there
13 was no concern at that time that adding the
14 suggestion would create an issue for slopes to deal
15 with, correct?

16 A. At this point in time, looking at
17 it, this addition was considered to be very minor,
18 and at that point in time, we could approve it
19 according to our policies.

20 59. Q. So whether or not something is
21 considered minor is a matter of policy?

22 A. Yes, it is.

23 60. Q. Is there kind of a bright line that
24 divides, like, this is minor, this is major, or is
25 that discretionary?

1 A. The information that we have
2 from...or the guidance that we have from the
3 Ministry of Natural Resources and Forestry in the
4 technical guidelines, they would consider anything
5 that was more than 50 percent of the original as
6 being new construction.

7 For us, we look at it from the point of
8 view of the risk involved. So you could have a
9 small addition, and the risk could be larger, or you
10 could have a large addition and the risk could be
11 smaller.

12 So we use...we follow our policies, and in
13 this case the existing structure, as far as we knew,
14 was remaining and staying exactly the same. The
15 only difference was with the garage, and that was
16 considered to be minor in its nature.

17 61. Q. Okay. So you mentioned the MNR
18 guidelines, and that MNR guidelines say that
19 anything that is over 50 percent is new
20 construction. So...

21 A. That's the guidance that we have.

22 62. Q. Okay. So meaning that if it's less
23 than 50 percent, it's considered a minor...

24 A. Not necessarily, no.

25 63. Q. Okay.

1 A. If I may take you to our policy
2 document, there is a definition of minor addition,
3 which is attached to our policy document.

4 64. Q. And where would I find that in your
5 affidavit?

6 A. Okay, it would be tab C, page 91.

7 65. Q. Page...you're referring to page
8 numbers at the bottom of the page, right?

9 A. Yes, minor additions, and I just
10 want to make sure because we have got minor
11 additions for shorelines and we have got...I just
12 need to make sure that this is...there is a
13 definition of major additions on the same page,
14 which speaks to erosion hazards.

15 So as it relates to development within the
16 shoreline flooding hazard means construction that is
17 greater than 50 percent of the foundation area of
18 the existing structure and as it relates to...that's
19 shoreline...sorry.

20 66. Q. I'm sorry. I'm not sure what you
21 mean. I was looking at page 91. There is a
22 definition of...

23 A. We were looking at page 91, and the
24 definition of major addition.

25 67. Q. Right.

1 A. But that is specific to shoreline
2 erosion and flooding hazards. So in this case, it
3 would not be applicable, and I do think what I need
4 to do is to go back to the original policy for
5 major...for development on steep slopes, which would
6 be in...it would be in the same document, and then
7 we can go back to the definitions. Just bear with
8 me for a second here. I had all of these marked.

9 Okay. So on page 44 of tab C, we have got
10 section 2.37.2.

11 68. Q. Okay, I'm there.

12 A. Okay, so:

13 "...Where an existing building or structure
14 already exists on a valley wall or in a
15 valley, additions to the existing building
16 or structure that are minor in nature may
17 be permitted subject to the following
18 criteria..."

19 And then there are four criteria there that...I
20 mean, perhaps if you could bring that up, then we
21 could take a look at it and go through that.

22 69. Q. Yes, I can do that, but I mean, we
23 both have the document in front of us. So we can
24 just...I don't need to share the screen. We're
25 looking at the same thing.

1 A. I would prefer if we could share the
2 screen, thank you.

3 70. Q. Give me one moment. I just want to
4 read this section first. Okay, so this section
5 applies to the policies for development in the
6 erosion hazard?

7 A. Yes, it does.

8 71. Q. Okay, and is there a section here
9 that deals with reconstruction of a home as opposed
10 to an addition?

11 A. Well, reconstruction of a home would
12 be considered to be development and these policies
13 would apply generally to development.

14 72. Q. Okay, but you know, you'll agree
15 with me that greenfield development is different
16 from reconstructing a home that already exists,
17 right?

18 A. Absolutely.

19 73. Q. Okay. So what I'm asking for is
20 there a specific policy that applies to a
21 reconstruction of a home?

22 A. This is the policy, 2.37, that would
23 apply to that, because we're looking at our
24 definition of development, Mr. Bouchelev. We're
25 looking at what the Conservation Authority Act

1 considers as development, and that would be
2 construction, reconstruction, additions and so on
3 with respect to any development within any regulated
4 area.

5 74. Q. Okay. So section 2.37 applies to
6 development in general, which you include
7 reconstruction in that definition, but there is no
8 specific section that deals with reconstruction.
9 It's just part of the, you know, broader category of
10 development, right?

11 A. That would be correct. We talk
12 about development within minor valley systems and we
13 talk about development within major valley systems.

14 75. Q. Okay.

15 A. And so that's how we divide it out.
16 If you go back to the preamble on page 41, I think
17 that clarifies what the policies are meant to apply
18 to.

19 76. Q. Okay. Is there any...so this is
20 what we're looking at, this policy document. This
21 is the...this is not the provincial policy, right.
22 This is just your internal Conservation Halton
23 policy statement?

24 A. It's not just internal. This is
25 approved by our Board of Directors.

1 77. Q. Okay.

2 A. So it's board-approved policies, and
3 basically what this allows us to do, if I could
4 elaborate a little bit on this, is...

5 78. Q. Well, just before you do
6 that...wait, wait. Just before you go there, I just
7 want to establish that these are Conservation Halton
8 policies. These are not provincial policies, right?

9 A. These complement provincial
10 policies, but these are...and this is what I wanted
11 to explain. Basically if you come to us for a
12 permit and you follow our policies and our
13 professional staff are satisfied that those policies
14 have been met, and those policies have been approved
15 by our board, then we can issue permits without
16 having to go to the board for their approval.

17 79. Q. Okay.

18 A. So that's the whole reason why these
19 documents are here in the first place, so it allows
20 us to be able to expedite permissions that meet the
21 policy of the conservation authority.

22 80. Q. Okay, and Ms. Veale...

23 A. Every conservation authority, if I
24 may, every conservation authority in Ontario is
25 required to have a set of policies so that we're

1 transparent and we can let our landowners know how
2 we make our decisions.

3 81. Q. Okay. Well, Ms. Veale, I don't want
4 to interrupt you, but I also think we should set
5 some ground rules here, okay. This is my cross-
6 examination of you on your affidavit. I want you to
7 answer the questions that I am asking you, instead
8 of giving a speech on things that I haven't asked
9 you about.

10 My question was very simple, and this will
11 make this examination go much quicker and we will be
12 done much faster than if we just go off tangent.
13 All I asked you was whether these are provincial
14 policies or whether these were Conservation Halton
15 policies, and I think your answer is that these are
16 Conservation Halton policies, correct?

17 A. Correct.

18 82. Q. Okay. These are policies that...you
19 know, other conservation authorities have their own
20 policies. This is just the policy specific to your
21 conservation authority, right?

22 A. These are our policies relative to
23 Ontario regulation 162.06, correct.

24 83. Q. Okay. Other than these policies, do
25 you have any other policies that specifically deal

1 with reconstruction of an existing home?

2 A. These are our policies. This is
3 what we follow.

4 84. Q. Okay. So there are no other
5 policies relating to the construction...specifically
6 relating to the construction of an existing home?

7 A. For the purpose of administering our
8 regulation, no.

9 85. Q. Okay. So how about in general, do
10 you have any policies that specifically deal with
11 the construction of an existing home?

12 A. I'm not sure what you're asking me
13 for. We have got our regulation. We have got our
14 legislation which outlines the framework, and then
15 we have got our policies that we use to help us
16 determine whether or not in the opinion of
17 Conservation Halton the control of flooding,
18 erosion, pollution, conservation of land and dynamic
19 beaches have been met.

20 86. Q. So this is the only policy document
21 that Conservation Halton uses, other than, you know,
22 what you have said, which is the Provincial Policy
23 Statement, the regulation and the Act, itself,
24 right?

25 A. Correct.

1 87. Q. Okay. Does this policy document
2 that is contained in Exhibit C have any sections
3 that specifically deal with major renovations?

4 A. What do you mean by "major
5 renovations"?

6 88. Q. Okay, well, let me ask you that
7 question. Your permit application form contains a
8 category called "major renovation", right?

9 A. I would have to go back and take a
10 look at it.

11 89. Q. Okay. Well, we'll...yes, we can do
12 that. Just give me one second. I don't think it's
13 attached to your affidavit, but if you look at the
14 affidavit of Charles Priddle, and if you look at
15 Exhibit B to that affidavit...

16 A. And I don't have that in front of
17 me. So you'll have to...

18 90. Q. Yes, okay. I'm sorry, it's not
19 called "major renovation". It's called
20 "alteration/..." Wait, sorry, that's not the right
21 document. No, my apologies, I was wrong. The
22 document does not have that category.

23 So going back to Exhibit C of your
24 affidavit, and that is the policy statement, is
25 there a section that specifically deals with

1 renovations of any kind?

2 A. Okay, I'm going to...I'm trying to
3 answer your question. I'm sorry, I'm not lecturing
4 or giving you a story here, but...pardon me, but I
5 have to go back, Mr. Bouchelev, to our definition of
6 "development".

7 So we would have policies that...and
8 actually I think perhaps what we could do is go back
9 to the actual regulation because that's what we have
10 to really develop our policies around, and that is
11 on tab B, and...actually...it's actually the
12 Conservation Authorities Act.

13 Mr. Jull, do we have a copy of the
14 Conservation Authorities Act in any of the
15 affidavits for the definition of "development"?

16 MR. JULL: That's a good question. I'm
17 not sure whether we have actually appended
18 the Act itself. I know there is in some of
19 the affidavits, perhaps even yours, an
20 excerpt from the definitions section in the
21 Act, section 28(25).

22 Now, Mr. Bouchelev, would you be
23 okay, if we...I can call up the
24 Conservation Authorities Act so the witness
25 can see it or you could, so she can see it.

1 91. MR. BOUCHELEV: Yes.

2 MR. JULL: I think you have to do it, I
3 think unless you give me power to share.

4 So would you do that, please? Thank you.

5 THE DEPONENT: Okay, thank you, thank
6 you.

7

8 BY MR. BOUCHELEV:

9 92. Q. I'll just make sure. One second.

10 A. Okay, so...

11 93. Q. Just bear with me for a second. I
12 think you're talking about section 28, subsection...

13 A. Yes, actually you have got it right
14 there.

15 94. Q. ...25 definitions, yes.

16 A. Right. So if I can just provide
17 some context, our policies would apply to all of
18 these areas that are regulated under the
19 Conservation Authorities Act, and would also apply
20 to those elements that are defined as development.

21 So you can see:

22 "...construction, reconstruction, erection
23 or placing of a building or structure of
24 any kind, plus any change to a building or
25 structure that would have the effect of

1 altering the use or potential use of the
2 structure, increasing the size of the
3 building or increasing the number of
4 dwelling units..."

5 And then:

6 "...site grading and temporary or permanent
7 placement and dumping or removal of
8 fill..."

9 So when we go back to the definition of
10 "development" renovation may be part of B, and our
11 policies would speak to a change in the size of the
12 dwelling unit or the number of dwelling units, but
13 again, depending on what you mean by "major
14 renovation", if we consider it construction,
15 reconstruction, erection or placement of a building
16 or structure, then we would have our policies
17 applying to that definition of development.

18 So if it's internal renovation that does
19 not increase the size, the number of dwelling units
20 and nothing is changing within the building itself,
21 then a permit is not required.

22 However, if there is any change, including
23 walls, foundations, then a permit would be required.

24 95. Q. So now my question was...and I
25 wasn't talking about major renovations. I was

1 talking about renovations in general. My question
2 was simply this. Is there a section in your policy
3 document that specifically talks about renovations,
4 not in the context of development in general, but
5 specifically deals with renovations?

6 A. No, because that would be
7 irrelevant.

8 96. Q. Okay. Now, I'm going to go back to
9 paragraph 18 of your affidavit. At your paragraph
10 18 you say that the application that was submitted
11 in 2018, that it met appropriate policies, right?

12 A. Yes, it did.

13 97. Q. And when you say "appropriate
14 policies" you are referring to Conservation Halton
15 policies that we just looked at as part of Exhibit
16 C, correct?

17 A. Correct.

18 98. Q. Now, I'm going to show you a
19 document that I have e-mailed your counsel this
20 morning. I don't know if you had a chance to look
21 at it. If you haven't, I'll give you a moment to
22 review it. This is...I'm just going to put it up on
23 the screen now. Okay. Have you seen this letter
24 before?

25 A. I have.

1 99. Q. Okay. So we can agree that this is
2 a letter dated August 16th, 2019 from the Minister
3 of the Environment, Jeff Yurek?

4 A. That's what it says, yes.

5 100. Q. Okay, and you saw this letter before
6 today, correct?

7 A. Correct.

8 101. Q. And so there is a...sorry, just bear
9 with me for a second. Now, you will see that the
10 second paragraph from the bottom states:

11 "...In the meantime, I request that you
12 review and consider your own conservation
13 authority's activities and begin
14 preparations and planning to wind down
15 those activities that fall outside the
16 scope of your quarter mandate. I also
17 encourage you to refrain from developing
18 new policies that are not aligned with your
19 mandate or with provincial policies.
20 Finally, I ask while undergoing this review
21 and updating the legislation and
22 regulations, that you do not proceed with
23 any increase to your fees or levies..."

24 Now, this letter is dated August 16, 2019, which is
25 around the same time that Ms. McCormack's August

1 22nd, 2019 letter went out, right?

2 A. I'm just checking here. So which
3 letter are you referring to?

4 102. Q. The letter of Kellie McCormack,
5 August 22nd, 2019.

6 A. Yes, okay, August 22nd, I can agree
7 to that, yes.

8 103. Q. So were there any changes to
9 Conservation Halton policies that were made as a
10 result of this August 16 letter from the Minister?

11 A. No, there were not. I would like to
12 perhaps comment on the letter itself, because as you
13 know, there was a lot of concern that was brought up
14 with this letter, and the Minister did soften the
15 approach certainly, and that is what instigated, I
16 think, a lot of the work that was done between
17 August of 2019 and December, 2020, when changes to
18 the Conservation Authorities Act were made.

19 So unfortunately this letter was very
20 vague, unclear, and conservation authorities did
21 not...were not given the opportunity, at this point
22 in time, to be able to have discussions with the
23 Minister in terms of what he actually meant by what
24 the letter said.

25 So there were discussions subsequent to

1 the letter that resulted in ultimately a new
2 Conservation Authorities Act on December the 8th,
3 2020.

4 So what I'm saying is that this letter was
5 not a decree. It came out, and then there was lots
6 of discussion afterwards. So I wanted to put that
7 letter in that context, but there were no changes to
8 our policy.

9 To go back to your question, there were no
10 changes to our policies made.

11 104. Q. And I'm going to take you to
12 paragraph 19 of your affidavit now. So at paragraph
13 19 you say that you were kept in the dark about the
14 true intentions of the applicants.

15 Now, if you go to paragraph 25 your
16 affidavit, you're also talking about the documents
17 that were provided to you by the City of Burlington
18 as part of the minor variance application that was
19 applied for in connection with this property, right?

20 MR. JULL: I'm sorry, Mr. Bouchelev.
21 This is a point of clarification. Which
22 paragraph are you asking the witness about,
23 25?

24 105. MR. BOUCHELEV: Yes, 25.

25 MR. JULL: Okay, because that refers to

1 the diagrams that were provided as an
2 exhibit to Mr. Baron's affidavit.

3 106. MR. BOUCHELEV: No, I...yes, but if you
4 look at the heading on top of paragraph 25
5 it says:

6 "...October, 2018 a different set of
7 plans is submitted for the City of
8 Burlington..."

9 So I just want to be clear is that
10 the...well, I don't it's controversial. I
11 think, you know, we have discussed this on
12 other cross-examinations as well.

13 MR. JULL: I didn't want to object, and
14 it's not an objection. I heard you say
15 "FOI", and that's what confused me, because
16 paragraph 25 is referring to the diagrams
17 that are attached to Mr. Baron's affidavit.
18 That's all. So please ask your question
19 again. I didn't want to interrupt you.

20 107. MR. BOUCHELEV: No, I don't think I said
21 "FOI".

22 MR. JULL: I'm sorry, I must have
23 misheard you, okay.

24 108. MR. BOUCHELEV: Okay.

25

1 BY MR. BOUCHELEV:

2 109. Q. So Ms. Veale, the drawings that you
3 are referring to at paragraph 21, these are the
4 drawings that were submitted as part of the minor
5 variance application, right?

6 A. Correct. So that would have been
7 2018, August and October.

8 110. Q. Right, and these...so these
9 drawings, as part of that minor variance
10 application, were provided to Conservation Halton
11 staff?

12 A. Okay, now just a second. Let's go
13 back to the timelines, because I want to check and
14 make sure here. So we did not receive anything on a
15 minor variance until November. I think the point
16 here is that it's clear from those drawings that
17 there was to be a replacement of a wall in the back
18 of the house, on the north facing side, which was
19 not part of the permit application that came to us
20 in the spring or in May of 2018.

21 So somewhere between May and November
22 there had been a decision made to take down the
23 existing wall along the back, and that was not
24 something that was part of our permit application.

25 111. Q. Okay.

1 A. That was submitted in May.

2 112. Q. Okay, but Conservation Halton became
3 aware of the fact that one of the walls was going to
4 be replaced in November of 2018, right?

5 A. I think I was pretty clear in my
6 affidavit that we received a minor variance
7 application from the City of Burlington. That minor
8 variance application was for a reduction in the
9 setback to allow the front porch to be replaced, and
10 the setback was from a certain distance that was
11 further away from the road. I think it was six
12 point something metres to three point something
13 metres.

14 So that was the intent of the minor
15 variance, and there were drawings, and on drawing
16 A09 it did in fine print say that the existing wall
17 was going to be removed, and that was missed in our
18 review, but that does not negate the fact that the
19 landowner should have come to us and said that was a
20 change from the permit that they applied for.

21 So it's like saying, you know, "I have got
22 a ticket to a train to go to destination C and I'm
23 in A, and so I'm on the train, paid for the ticket.
24 I get to destination B and decide I'm going to go to
25 destination C, and I'm going to use my ticket for

1 destination B, and try to get on the train to go to
2 C. Maybe they won't notice. So I get on the train
3 to go to C, and the conductor lets me on because I
4 show him my ticket, and the ticket looks the same,
5 and then when the conductor comes to check the
6 ticket it says, 'You're going to destination C, not
7 to destination B'."

8 So at that point in time, if you're riding
9 that train, you can't go back to destination B
10 because you're on a different train. You're going
11 to C, and that train, from B to C, never goes back
12 to destination A.

13 So you need to pay. You need to pay your
14 fee and...

15 113. Q. I'm not...

16 A. ...this is exactly what I'm saying
17 here, that just because we missed that little
18 drawing for a process that is not related to our
19 regulation process doesn't mean that you get away
20 with it.

21 114. Q. Okay. Well, I'm not sure I
22 understand your train analogy, but I think what
23 you're telling me is that, you know, when the minor
24 variance documents, including the design drawings,
25 were reviewed, back in November of 2018, whoever was

1 reviewing them, you know, maybe missed and didn't
2 notice that particular drawing that showed that one
3 of the walls was going to be removed, correct?

4 A. She did not see that, but at that
5 point in time, as I said, that doesn't abrogate the
6 landowners from coming back and letting Conservation
7 Halton know that their plans had changed, and
8 that's...you have got a different process.

9 You have got a municipal planning process,
10 apart from a permit process, and the expectation,
11 and it's stated clearly on our permit, that any
12 changes that would be made after the permit was
13 approved should be discussed with the conservation
14 authority.

15 So the fact that they went to another
16 agency and we missed something in drawing 9 out of
17 11 associated with an approval that wasn't our
18 approval doesn't abrogate the responsibility of the
19 landowners to come to us.

20 115. Q. Okay. So as part of the application
21 process to your agency back in May of 2018, did your
22 agency request a copy of the design drawings?

23 A. I don't know. I can't answer that.
24 We only have what is given to us as part of the
25 application. Those are what are stamped, and we

1 would have...if there had been other design
2 drawings, they should have been incorporated into
3 that permit application.

4 116. Q. So you have no idea whether
5 Conservation Halton staff requested a copy of the
6 design drawings, correct?

7 A. Why would they request a copy of
8 design drawings they didn't know existed? We have
9 to give the benefit of the doubt to the applicant to
10 say, "We need the survey. We need to know what your
11 plans are. You need to tell us upfront what you are
12 planning to do, so that we can then do a review of
13 your application."

14 If I hide something from you, and I
15 withdraw or I don't include pieces of information
16 that you know are pertinent or salient to the permit
17 application, how do we know what we don't know?

18 We have to have some trust in the
19 applicant that they are giving us the proper
20 materials for us to be able to make a decision.

21 117. Q. Were you personally involved in that
22 permit application for permit 5279?

23 A. I was not personally involved, and
24 as a matter of fact, I was off of work from
25 beginning of July until October that year with a hip

1 operation.

2 118. Q. Okay. So you do not know...you have
3 no direct knowledge of any discussions that took
4 place between my client's agent who made the
5 application on their behalf and your staff, correct?

6 A. I have no personal knowledge or
7 direct knowledge of what happened. I do have
8 briefing notes and so on of what happened.

9 119. Q. So any information that you would
10 have would be based on what Cassandra Connelly told
11 you, who was dealing with that application at that
12 time, right?

13 A. I would have my staff, yes, fill me
14 in on what had happened, yes.

15 120. Q. Okay, but she was the only person
16 dealing with that application, right? She was the,
17 you know, officer in charge of...

18 A. She would have been the file manager
19 and she reports to Charles who reports to Kellie.

20 121. Q. Okay. Now, I'm going to take you to
21 paragraph 40 of your affidavit. So there is a
22 discussion here about a blog.

23 A. Correct.

24 122. Q. And so where did you get a copy of
25 this blog?

1 A. I believe someone downloaded it from
2 our staff, yes.

3 123. Q. Okay.

4 A. A publicly available piece of
5 information.

6 124. Q. And do you know where they
7 downloaded it from?

8 A. I'm not very technically inclined,
9 Mr. Bouchelev. I don't know.

10 125. Q. Okay. Do you know who wrote this
11 blog?

12 A. I assume that it was Ms. Young who
13 wrote that blog.

14 126. Q. You assume, but I don't want you to
15 assume. I'm asking you if you know who wrote this
16 blog.

17 A. Well, I think it's pretty clear
18 because it's written in the first person.

19 127. Q. Yes.

20 A. Are you suggesting that somebody
21 else wrote the blog?

22 128. Q. I'm not suggesting anything.
23 It's...I'm just asking you if you know who wrote the
24 blog, and I think the answer is no, you don't.

25 A. You're answering for me.

1 129. Q. Well, then I want your answer.

2 A. Well, when there are things like:

3 "...We have joined the Ontario Landowners

4 Association. Our ward councillor, Kelvin

5 Galbraith considered buying our home at 835

6 Spring Gardens..."

7 I don't think it's a big leap to know that this was

8 written by the landowners.

9 130. Q. Okay, so you are making that

10 assumption, but you don't know...you don't

11 have...you know, you can't...other than the

12 assumption that you made from the...

13 A. "...Our struggles continue and they

14 are very..."

15 131. Q. Well, hold on, no, no. Ms. Veale,

16 you have to wait for me to finish my question before

17 you start to answer.

18 A. I'm sorry.

19 132. Q. Okay.

20 A. I'm sorry. Please continue.

21 133. Q. So what you're doing now is you're

22 making assumptions, but you don't have...you don't

23 specifically know who wrote this blog, right?

24 A. I would...I can read what I can

25 read. I don't...

1 134. Q. Do you know who wrote this blog?

2 A. I do not...I do not have a signature
3 on the blog, but I don't know who else would be
4 writing a blog about "our home" other than the
5 landowners.

6 135. Q. Okay, so I think I have your answer,
7 that you have made an assumption but you do not know
8 who wrote the blog.

9 Do you know if the information contained
10 in that blog is accurate?

11 A. I would say no, the information is
12 full of mistruths and is very misleading, but the
13 pictures I don't think lie. So there are lots of
14 pictures there that illustrate the construction.

15 If somebody else took those pictures, then
16 they were either trespassing on private property or
17 they were associated with the development of the
18 house itself.

19 136. Q. I'll take you to paragraph 41 of
20 your affidavit now, and there is a picture in that,
21 inserted just below that paragraph, right?

22 A. Correct.

23 137. Q. Now, you say that this picture shows
24 the house being completely demolished.

25 A. Yes.

1 138. Q. Completely demolished. Well,
2 looking at that picture I can see at least two walls
3 that are still standing.

4 A. I certainly can't see two walls
5 still standing, and as a matter of fact, if you go
6 back to the blog, there is a picture there of...

7 139. Q. I'm not interested in the blog. I'm
8 interested in this picture. So you say that this
9 picture shows that the house is completely
10 demolished. I would suggest to you that it's
11 still...it shows...

12 A. It's 95 percent demolished then. If
13 we want to be specific, I would look at that and say
14 there is not a lot left but a bunch of rubble, and
15 maybe a couple of freestanding pieces that obviously
16 haven't come down yet.

17 140. Q. Okay. So if you look behind the
18 excavator, you can see that there is a wall
19 standing, right?

20 A. Part of a wall perhaps. I can't
21 attest that it's an entire wall. I can't see it.

22 141. Q. Okay. To the right of the
23 excavator, there is also a wall, correct?

24 A. I do not see a wall.

25 142. Q. Okay. Well, I'll share the screen

1 with you, and I'll use my cursor. So do you see
2 this where my cursor is on the right-hand side?

3 A. I can't make out whether that's a
4 wall or whether it's a piece of rubble. I really
5 can't. I'm sorry.

6 143. Q. Right.

7 A. I can't with any certainty say
8 that's a wall.

9 144. Q. Because the picture does not show
10 the entire area where the building is located,
11 right?

12 A. No, you cannot see the entire area
13 where the building would have been located.

14 145. Q. Right. So by looking at this
15 picture, you cannot possibly conclude that the
16 building has been completely demolished, correct?

17 A. However, I would like to say...

18 146. Q. No, just answer my question first.

19 A. This picture does not show an entire
20 demolition. It shows it probably, as I said, 90
21 percent demolished.

22 147. Q. And how do you arrive at that
23 number, 90 percent?

24 A. I think we're splitting hairs here.
25 Obviously there is a front end loader in there that

1 is taking down the house. It is not completed,
2 obviously, because if I do look at the blog, I have
3 got a picture there that shows the entire thing came
4 down.

5 So we know that, and so this shows it in
6 progress, and it's probably 80 to...you know, 80
7 percent anyway, and I'm just...I am looking at it
8 and saying there is no front wall. There is very
9 little side walls and there is a lot of rubble on
10 the bottom, and it's in the process of being
11 demolished.

12 So I'm not sure what else you're trying to
13 get me to say here.

14 148. Q. Well, I would suggest to you you
15 can't tell from this picture if the excavator is
16 doing demolition or cleaning up debris.

17 A. There are sufficient pictures in the
18 information that has been provided through the
19 affidavits to show exactly what happened, and that
20 was that the exterior walls were all taken down.
21 The foundation was changed and increased in height
22 and a new building was framed on the existing
23 foundation as strengthened and renovated and
24 heightened. So we know that.

25 149. Q. Now can you go to paragraph 43 of

1 your affidavit, please? Now here you say that:

2 "...The Conservation Authorities Act
3 creates an ex-ante permit requirement to
4 prevent harm to persons and property before
5 it can occur as a result of development..."

6 So what does that mean "an ex-ante permit
7 requirement"?

8 A. It means that you have to come to us
9 for a permit prior to doing the work.

10 150. Q. Okay, and which section of the
11 Conservation Authorities Act are you citing?

12 A. Okay, so I mean, we go back to the
13 definition of development, saying that you need
14 permission to develop. It doesn't say if you have
15 already developed, then you need permission. It
16 says you need permission to develop, and why would
17 you got through having to present all of the
18 materials and to demonstrate to us if you can just
19 go ahead and build and then ask for forgiveness
20 afterwards.

21 151. Q. Okay, so...

22 A. So in order...

23 152. Q. Yes, Ms. Veale, what I would like to
24 do is, I would like...you know, instead of talking
25 in general terms, I would like you to point me to

1 the specific provision of the Conservation
2 Authorities Act that you say creates this ex-ante
3 requirement.

4 A. Okay. So in this case I'm going to
5 take you to the regulation itself.

6 153. Q. Well, let's first look at the
7 Conservation Authorities Act. Then we'll look at
8 the regulation.

9 A. Okay, so...

10 154. Q. Is there any...

11 A. You will have to bring up the Act so
12 that we can take a look at it again...

13 155. Q. Well, the Act...

14 A. ...and we will have to go to section
15 28 in order for me to be able to respond because I
16 don't have it in front of me.

17 156. Q. Okay. So would you be able to pull
18 it up on your computer?

19 A. Me?

20 157. Q. Yes.

21 A. I think it would probably be quicker
22 if Mr. Jull did because I'm on my personal computer.

23 158. Q. Well, can you go to Google and
24 search for Conservation Authorities Act?

25 A. I could, sure.

1 159. Q. Okay, so why don't you do that?
2 Okay, so the first entry that you get when doing the
3 Google search should be the Act, itself. Do you see
4 that?

5 A. I'm just getting there. Okay, so
6 I...yes, I have it.

7 160. Q. Okay, so this is the Act. If you
8 can tell me which section of the Act you're
9 referring to, and then we can bring it up on the
10 screen so we're all...

11 A. It would be...okay, so it's section
12 28 of the Conservation Authorities Act.

13 161. Q. Okay. Any particular subsection,
14 because that section is quite long?

15 A. Okay, I think we really have to go
16 through that section because it sets out the
17 permissions required.

18 162. Q. Okay, and keep in mind I'm
19 asking...keep in mind my specific question, right.
20 I'm asking which section of the Act you say creates
21 the ex-ante requirement.

22 A. Okay. So we have got section 28
23 that says:

24 "...Permissions are required from the
25 conservation authority for..."

1 Certain activities within regulated areas, and then
2 the process of how that permission would be given is
3 in the regulation 162.06. So depending on what part
4 of the process you're asking about, I would say that
5 the regulation, 162.06, lays out clearly that you're
6 required to come to the conservation authority for
7 permission prior to doing the work.

8 163. Q. Okay. So I think what you're
9 telling me is this ex-ante requirement is not set
10 out in the Act, itself, but it's set out in the
11 regulations, right?

12 A. Well, it's set up in the Act to say
13 that permission is required, definitely.

14 164. Q. Okay, which section of the Act are
15 you referring to?

16 A. Section 28.

17 165. Q. Okay.

18 A. Then it would be section 1.
19 I'm...okay, so section 28.1.

20 166. Q. It says:
21 "...Subject to the approval of the
22 Minister, an authority may make regulations
23 applicable in the area under its
24 jurisdiction..."

25 A. Yes.

1 167. Q. Okay. So that doesn't talk about
2 the ex-ante requirement.

3 A. Okay. So then if we go to the
4 regulation, itself, it talks...

5 168. Q. Okay, so let's do that. So let's go
6 to the regulations. Okay, which section of the
7 regulation am I looking at?

8 A. Okay. So if you look at section 3?

9 169. Q. Okay.

10 A. That's where the process of
11 obtaining permission starts.

12 170. Q. Okay.

13 A. So section 3, section 4.

14 171. Q. Okay, and where does it talk about
15 the ex-ante requirement?

16 A. Okay, so it does say that:
17 "...The authority may grant permission in
18 or on areas described. If it is..."

19 172. Q. Wait a second, wait a second. You
20 have to...I just want to make sure that the
21 transcript is clear. So if you start reading, you
22 have to tell me the section and subsection you are
23 reading from.

24 A. Okay. So we're at section 3.1.

25 173. Q. Okay.

1 A. It says:
2 "...The authority may grant permission for
3 development in or on the areas described in
4 subsection 2.1 if, in its opinion, the
5 control of flooding, erosion, dynamic
6 beaches, pollution or the conservation of
7 land will not be affected by
8 development..."

9 174. Q. Okay.

10 A. And that particular section goes on
11 to say:

12 "...Permission will be given in writing..."

13 175. Q. Okay.

14 A. And that, you know, powers can be
15 delegated and how long we can grant the permission,
16 and then it talks to those requirements that need to
17 be submitted.

18 176. Q. Sure, but the question is where does
19 it talk about the ex-ante requirement?

20 A. Well, that's certainly a legal term,
21 and how can we grant permission for something that
22 has already happened?

23 177. Q. Well, it is a Latin term, and I
24 agree with you that ex-ante means before. So I'm
25 just trying to see where in this regulation does it

1 say that you cannot grant permission for a
2 development that has already been commenced. Where
3 does it say that, you know, you can only grant the
4 permit if the application was made before the
5 development started?

6 A. I really do think that we are
7 getting into an interpretation of the legislation,
8 which goes beyond my expertise, and I know that
9 there is case law out there around stale dated
10 permits and so on, but I am not in a situation to be
11 able to answer that. So...

12 178. Q. So wait a second. Are you saying
13 that's not...that interpreting the regulation in the
14 Conservation Authorities Act and the provincial
15 policy is not part of your job function?

16 A. Interpretation is, but this is a
17 legal interpretation that you're asking me to
18 respond to, and I'm not a lawyer.

19 179. Q. Sure, but I'm not suggesting...

20 A. This is the sort of thing that we
21 would be going to our legal counsel for advice on.

22 180. Q. Okay, but any kind of interpretation
23 of a regulation is legal interpretation, correct?

24 A. This tells us what the process is.

25 181. Q. Okay, and I would suggest to you

1 that nowhere...

2 A. What I'm saying is if you go through
3 that process, common sense tells me that you would
4 have to provide the materials to us in order for us
5 to make a decision on whether or not the particular
6 development is going to be a risk to life and
7 property.

8 182. Q. Okay, so...

9 A. That is before a permit is granted.
10 That's my interpretation, Mr. Bouchelev.

11 183. Q. Okay. So your opinion and your
12 interpretation is based on common sense, not on the
13 specific language of the regulation, correct?

14 A. It is based on 43 years of practice
15 in the conservation authority world, and my
16 professional opinion.

17 184. Q. Okay. You couldn't point any
18 section in this regulation that says that you cannot
19 issue a permit after the fact, correct?

20 A. There is nothing in here that says
21 that, but there is nothing in here that says that
22 you can't...that you can. So it's silent on it, and
23 as I said, this whole matter has been the subject of
24 case law, and that gets beyond what I can answer.

25 185. Q. Right. Now, let's go to paragraph

1 48 of your affidavit now. So here you talk about
2 the compliance agreement option, right?

3 A. Yes.

4 186. Q. Okay, and the last sentence of
5 paragraph 48 states:

6 "...Such an agreement gives staff the
7 option to support works that are already in
8 progress and that they have the potential
9 to meet policy and receive a permit if the
10 landowners had submitted a permit
11 application prior to initiating
12 development..."

13 So this allows you to...this compliance agreement
14 option, as you call it, allows you to approve a
15 development after it had already been commenced,
16 right?

17 A. Provided that it would have been
18 approved before it started.

19 187. Q. Okay, and where in the regulation or
20 in the Conservation Authorities Act can I find the
21 provision that authorizes the use of this compliance
22 agreement option?

23 A. Again, it's silent on this option.

24 188. Q. So the...

25 A. Again, it...go ahead.

1 189. Q. Just a second. Let me pose my
2 question first. So the compliance agreement is
3 something that Conservation Halton devised
4 independent of the Conservation Authorities Act and
5 the regulation, correct?

6 A. In our opinion, it still meets the
7 intent of the Conservation Authorities Act. There
8 are different ways that conservation authorities
9 deal with development that has happened after the
10 fact.

11 Some issue stale dated permits or what
12 they would call a permission. For us, the
13 compliance agreement really is a stale dated permit,
14 and it is agreement...an agreement or a permission
15 after the fact. That is true.

16 However, one of the practicalities that we
17 have is that we do not want to take landowners to
18 court. We do not want to lay charges, and if we
19 have got a willing landowner who is willing to bring
20 and can bring their development into compliance with
21 our policies, then we will do that for the sake of
22 both the agency and the landowner, bring it into
23 compliance. They are able to do what they wanted to
24 do in the first place, or with conditions, and then
25 it's done.

1 There is no need to go to court. That,
2 sir, is the practical nature of compliance and
3 restoration agreements, that is to bring violations
4 or alleged violations into compliance without having
5 to go through the courts, and it's always done on a
6 willing seller...or a willing landowner basis,
7 always.

8 If we have got unwilling landowners,
9 that's when we have to take a different route.

10 190. Q. Okay. Now I want to take you to the
11 compliance agreement itself. You have to give me a
12 moment. I'm trying to see where it is. I don't
13 think it's in your affidavit.

14 MR. JULL: Mr. Bouchelev, I think...I'm
15 going off my memory, too. I think it might
16 be in either Cassandra Connelly's affidavit
17 or Kellie McCormack's. Just going off my
18 memory, I...

19 191. MR. BOUCHELEV: Yes, I think you're
20 probably right about that. So just give me
21 one moment. Yes, so it is Exhibit L to Ms.
22 Connelly's affidavit.

23
24 BY MR. BOUCHELEV:

25 192. Q. Do you have a copy of her affidavit

1 with you or do you want me to share it on the
2 screen?

3 A. I do not have a copy of her
4 affidavit.

5 193. Q. All right, I will share it on the
6 screen then.

7 A. I have only got so much room on my
8 desk.

9 194. Q. Okay. Now, you agree with me that
10 this is the compliance agreement application?

11 A. Correct.

12 195. Q. Okay, and I'm just trying to
13 understand, you know, where this document
14 originated, like, who prepared or who, I guess,
15 designed this compliance agreement application.

16 A. It would have been pulled together
17 with direction and advice from legal counsel by our
18 regulations team.

19 196. Q. Okay, and do you know when this
20 compliance agreement application first started being
21 used?

22 A. I think probably around 2015, 2016
23 perhaps.

24 197. Q. Okay. So this is...I think it would
25 be fair to say that this is not something that is

1 mandated by the government. It's something that you
2 designed internally?

3 A. It is a permission. It's a form
4 that gives the landowner permission. The
5 regulation...the legislation does not tell us what
6 form the permission needs to be in. We have permit
7 forms. We have letters of permission that we write
8 up for very minor things, and we have got the
9 compliance and restoration agreement.

10 It is up to the conservation authority to
11 develop their own documents. We do not have a
12 standard document across Ontario for permissions.

13 198. Q. Okay. Now, I'm going to ask you to
14 go to paragraph 70 of your affidavit.

15 A. Okay.

16 199. Q. Okay, so now at paragraph 70 you
17 talk about a letter dated August 23, 2019 that was
18 signed by Kellie McCormack, right?

19 A. Correct.

20 200. Q. And Kellie McCormack reports to you?

21 A. Correct.

22 201. Q. Okay, and you will agree with me
23 that you and Ms. McCormack prepared this letter
24 together?

25 A. I do not recall preparing this

1 letter at all. I mean, I knew it was being
2 prepared. I probably looked at it, but I didn't
3 have...I didn't have any involvement in the
4 preparation of the letter.

5 202. Q. So you didn't meet with Ms.
6 McCormack and discuss what is going to go into this
7 letter?

8 A. I met with her and discussed it, but
9 I did not craft the letter. That's what I thought
10 you were asking.

11 203. Q. Well, I think what you're saying is
12 that you didn't type it up yourself, right?

13 A. No, and I didn't craft it myself
14 either. I didn't draw it up myself.

15 204. Q. Okay, but you had discussions with
16 Ms. McCormack as to what is going to be put in that
17 letter?

18 A. We had discussions about how we
19 would approach this, yes.

20 205. Q. Okay. Mr. Priddle testified
21 yesterday that there were some high level meetings
22 that he was not party to, by "high level" meaning,
23 you know, people above his level at Conservation
24 Halton, in August of 2019, and the purpose of those
25 meetings was to decide what to do with this

1 particular situation, right?

2 A. The particular...what we were going
3 to do with the situation after we had discovered
4 that the structure had been totally demolished in
5 discussion with legal counsel.

6 206. Q. Okay. So I don't want you to, you
7 know, go into your discussion with legal counsel.

8 A. No.

9 207. Q. But I want you to tell me if...so
10 you had discussions with other Conservation Halton
11 staff in August of 2019, right, about this
12 situation?

13 A. Kellie and I probably were the only
14 ones that talked about this.

15 208. Q. Okay. What about Mr. Basit, was he
16 involved in these discussions?

17 A. He would have known what we were
18 doing, yes.

19 209. Q. So he would have known or did he
20 know?

21 A. I thought you would ask me this
22 question in our...Mr. Bouchelev, but I have no
23 written...nothing in writing, but we would not do
24 something like this without talking to him.

25 210. Q. Well, the reason why I...you know,

1 I'm not being...I'm not trying to nitpick, but when
2 you say, "He would have known," that implies an
3 assumption. That implies you think he knew but you
4 don't know.

5 A. Well, he would have been made aware
6 of the action that we were contemplating with the
7 advice of counsel.

8 211. Q. So he would have been aware or he
9 was made aware?

10 A. He was made aware. He was made
11 aware.

12 212. Q. Okay, by you, correct?

13 A. Yes.

14 213. Q. Okay, but you're saying that he was
15 not part of these discussions?

16 A. He wouldn't have been part of the
17 discussion with legal counsel, no.

18 214. Q. Well, I'm talking about your
19 discussion with Ms. McCormack.

20 A. Well...no, he wouldn't have been
21 part of those discussions.

22 215. Q. He wouldn't have or he wasn't?

23 A. We would have discussed it amongst
24 the two of us, and then we would have talked to him
25 about it, and with advice from legal counsel.

1 216. Q. Okay, when you say "would have",
2 that means you're assuming. It means that you don't
3 know.

4 A. No, no, I don't mean I'm...no. We
5 did do it. We did it.

6 217. Q. Okay. So you...

7 A. We talked to together. We went...we
8 talked with the CIO and we took the action that we
9 took.

10 218. Q. Okay. So you and Ms. McCormack
11 talked it out between the two of you. Then you
12 spoke to Mr. Basit and then you took the actions
13 that you took?

14 A. With the advice of legal counsel.

15 219. Q. Okay, so one of the things that you
16 and Ms. McCormack discussed is whether or not you
17 are going to go to the board, whether or not you
18 were going to cancel the permit, and then, you know,
19 go to the board for a hearing on the cancellation,
20 or if you're just going to declare that the permit
21 is void, correct?

22 A. I think we were just looking at what
23 do we do now that we know that the house has been
24 demolished, because there is no way that the
25 conditions that were in the original permit could be

1 met. That was the discussion that we had. So then
2 the question...

3 220. Q. Okay, but that doesn't answer my
4 question, though.

5 A. You're putting words in my mouth,
6 and I'm trying to describe to you what the substance
7 of our conversation was.

8 221. Q. But my question wasn't...but Ms.
9 Veale, I want you to answer the specific question
10 that I'm asking you, and not just give me, you know,
11 the general substance of the discussion. I have
12 asked you something very specific.

13 MR. JULI: Why don't you just restate
14 the question? I think that would be
15 helpful. Could you restate the question?

16
17 BY MR. BOUCHELEV:

18 222. Q. Yes, the question is specifically
19 did you have a discussion with Ms. McCormack about
20 cancelling the permit pursuant to section 8 of
21 regulation 162.08? That's my question.

22 A. I don't know that we ever even
23 talked about cancelling a permit that...for which
24 you couldn't...you could never meet. That
25 was...that was the substance of our discussion. We

1 didn't really talk about whether or not we would
2 cancel a permit. We talked about how we would deal
3 with a situation that didn't seem to fit
4 cancellation of a permit. That's what I recall.

5 223. Q. Okay. So who made the decision that
6 the situation did not fit the cancellation of a
7 permit?

8 A. As I said, a decision was made after
9 dialogue with our legal counsel.

10 224. Q. But who ultimately made that
11 decision?

12 A. I would have made that decision.

13 225. Q. So again, you would have made or you
14 did make?

15 A. Pardon me, it's my...I had...I made
16 the decision.

17 226. Q. Okay. Again, I'm not trying to
18 nitpick but it's important to be precise, right.

19 A. I understand. I guess I have a
20 proclivity to say "would have" when I mean "will",
21 so...

22 227. Q. It's not just you, Ms. Veale. A lot
23 of people say that, and again, in normal
24 conversation that doesn't pose an issue but we're
25 trying to be precise as to what happened. So...

1 A. I understand.

2 228. MR. BOUCHELEV: Yes, okay, well, I think
3 that now may be a good time to take the
4 morning break, if maybe we can come back in
5 about 15 minutes. So let's come back at
6 five minutes to 12.

7 MR. JULI: That's good.

8

9 --- upon recessing at 11:35 a.m.

10 --- A BRIEF RECESS

11 --- upon resuming at 11:55 a.m.

12

13 BARBARA VEALE, resumed

14 CONTINUED EXAMINATION BY MR. BOUCHELEV:

15

16 229. Q. Now, Ms. Veale, just before the
17 morning break you told me that you ultimately made
18 the decision that the criteria for cancellation were
19 not met in respect of permit 5297, correct? Sorry,
20 is that correct?

21 A. Correct. Sorry.

22 230. Q. So then you agree with me that
23 permit 5297 was never cancelled?

24 A. It wasn't cancelled using the
25 cancellation. It was voided because the actual work

1 that was done could never, ever meet the conditions
2 of the original permit. So in fact, you have got a
3 permit that doesn't exist, because you can't build
4 on to something that is no longer there. So the
5 permit itself is no longer valid because it's...you
6 can't do something that the permit was for.

7 231. Q. It's no longer valid in the opinion
8 of Conservation Halton staff, correct?

9 A. Yes, in our opinion it does not meet
10 the requirements of a cancellation even.

11 232. Q. Okay, but this decision was not made
12 by the board. It was made by the staff, correct,
13 that the permit is no longer valid?

14 A. I would have to go back and check
15 for sure before I answer that with any degree of
16 certainty because I believe we would have certainly
17 informed the board, but I would have to check on
18 that.

19 233. Q. Did the board...do you know, was
20 there a formal decision made by the board, saying
21 that, "This is permit is no longer valid"?

22 A. I do not believe that there was a
23 formal...there was not a motion passed at the board.

24 234. Q. Okay. So in other words, no
25 decision made by the board, correct, and no hearing?

1 A. There was no decision and there was
2 no hearing, correct.

3 235. Q. Okay. Now, I'm going to take you to
4 Exhibit V of Ms. McCormack's affidavit, which is the
5 August 22nd letter that we were talking about. I'll
6 just...you know, I don't know if you have a copy of
7 it. So I'll just share it with you.

8 A. I don't have one handy, no.

9 236. Q. Okay. So this is the August 22nd
10 letter, and it has Ms. McCormack's signature at the
11 bottom, and you told me that you were not involved
12 in crafting this letter but you saw it, and I would
13 suggest that before it was sent out you approved it,
14 correct?

15 A. I do not need to approve all of the
16 correspondence that goes out. I would have approved
17 the fact that the correspondence was going out, and
18 in that case, it would be...was going to be sent.

19 237. Q. Okay, but did you review this letter
20 and approve it before it was sent out?

21 A. I don't believe so.

22 238. Q. But I guess what you're telling me
23 is that you approved the decision to send...

24 A. Correct.

25 239. Q. ...the correspondence? Okay. I'm

1 just wondering why can't Ms. McCormack send
2 correspondence to the applicants without your
3 approval?

4 A. Why can she send it?

5 240. Q. Yes, why can't she sent it without
6 your approval?

7 A. She can send correspondence without
8 my approval, but because she reports to me, she
9 would inform me particularly of this type of
10 correspondence that would go out and we would
11 discuss it before it was sent.

12 241. Q. Okay, so that's what happened here.
13 So you discussed this correspondence before it was
14 sent, and you all agreed that this is going to be
15 the course of action?

16 A. Correct.

17 242. Q. Okay. I'm going to take you to
18 paragraph 73 of your affidavit now. At paragraph 73
19 you refer to Exhibit U. Maybe if we can look at
20 Exhibit U, that's the letter or report from Toronto
21 inspection, right?

22 A. Correct.

23 243. Q. Okay. Where did you get a copy of
24 this report originally, or I should say who did you
25 get a copy of this report from initially? Was it

1 provided to you by Mr. Baron?

2 A. I don't think I can answer that.

3 What paragraph are we on, 73?

4 244. Q. Seventy-three.

5 A. Okay, so it says here that it was
6 from Gordon Baron's affidavit, Exhibit L or Exhibit
7 U is attached to Exhibit L of Gordon Baron's
8 affidavit.

9 245. Q. No, it says that this report is
10 attached also to his affidavit. I'm just wondering
11 if Mr. Baron or his company provided this report to
12 you even before he swore the affidavit.

13 A. I am not aware of any correspondence
14 that we have received from Mr. Baron, particularly
15 this report.

16 246. Q. Now, I'm going to take you to
17 Exhibit X of your affidavit, which is a, I guess,
18 chart that you prepared outlining different steps in
19 the application process, right?

20 A. Correct.

21 247. Q. And is this a chart that you
22 prepared yourself?

23 A. Yes, I did.

24 248. Q. Okay. It looks very thorough.
25 There are many different steps that, you know, could

1 potentially apply, but I want to ask you
2 specifically about...okay, so let me just...maybe
3 I'll share it on the screen and it will be easier.
4 You can just follow my cursor in terms of which
5 portion of the chart I am referring to.

6 Okay, so you see the section here that
7 there is a rectangle in the middle that says:

8 "...Application deemed complete..."

9 A. Correct.

10 249. Q. Okay. So if application is deemed
11 complete, then staff would review the application,
12 right?

13 A. Correct.

14 250. Q. And if the application is deemed
15 incomplete, you see the box on the left-hand side?

16 A. Correct.

17 251. Q. Then you provide comments to the
18 applicant and the applicant has to file a revised
19 submission, right?

20 A. Correct.

21 252. Q. Okay. Now, who makes the decision
22 whether or not the application is complete? Is it
23 Conservation Halton staff?

24 A. The Conservation Halton staff would
25 deem it complete, correct.

1 253. Q. Or deem it incomplete?

2 A. Or deem it incomplete, yes.

3 254. Q. Okay, and fair to say that the board
4 is not involved in this process at all?

5 A. The board is not involved.

6 255. Q. Okay. Now, so what happens if staff
7 decides that the application is incomplete and the
8 applicant disagrees with that decision? Can they go
9 directly to the board with an incomplete
10 application?

11 A. What would have to happen, and if we
12 met a stalemate in a situation where the application
13 was deemed complete before we...

14 256. Q. Incomplete?

15 A. Incomplete, sorry. Before we could
16 make an application...we would really try to avoid
17 that. We try to work with the applicant, but if at
18 insistence they would like to have a hearing, they
19 could have a hearing.

20 257. Q. Okay, but that is not what this
21 chart shows. The charts shows that if the
22 application was deemed incomplete, then they have to
23 file the revised submission?

24 A. Yes, and that's the way it works
25 in...as I said, I have got 43 years of experience.

1 I have never, ever, ever seen an application go to
2 the board for a decision without all of the
3 technical information that's required, because they
4 have to make their decision based on the five tests
5 for development, again the control of flooding,
6 erosion, conservation of the land.

7 If we do not have the technical materials
8 to be able to make that decision, then what would
9 happen is that the board would probably deny the
10 application and tell the applicant to resubmit. It
11 becomes redundant to actually go to a hearing if you
12 haven't submitted all of your technical documents.

13 258. Q. Okay.

14 A. Now, if the applicant insists, then
15 there are appeal processes to the Mining and Lands
16 Tribunal currently. So they could have that
17 discussion about the amount of technical work that
18 needs to be done in order to be able to make a
19 decision with the Mining and Lands Tribunal.

20 259. Q. So are you saying that even before a
21 hearing at the board, they can appeal directly to
22 the Mining and Lands Tribunal?

23 A. No, not directly to the Mining and
24 Lands Tribunal. They would have to come to our
25 board.

1 260. Q. But to come to your board, they
2 would have to file a complete application?

3 A. If they feel that they have filed a
4 complete application and we feel that we still need
5 technical information as part of the complete
6 application, as far as I'm concerned, a hearing in
7 front of the board is premature.

8 However, if the applicant insisted on
9 doing that, then I think that we would have a
10 hearing in front of the board. The bottom line is
11 if the technical information was insufficient or
12 incomplete, the...ultimately it would end up in
13 appeal with the Mining and Lands Tribunal, and to
14 me, it's premature because the technical information
15 needs to be submitted.

16 261. Q. Okay.

17 A. And if you go back to the
18 regulation, it says of the things that are required
19 in order to be able to assess a permit application,
20 that other technical studies, as needed, are
21 required, and our professional staff make the
22 determination of what those technical studies are in
23 order for us to be able to demonstrate the policies
24 of the conservation authority are met.

25 262. Q. Okay. So you said that if the

1 applicant insisted on going before the board with
2 what you would deem an incomplete application, then
3 you think that there would be a hearing. You said
4 you think. Is that because something like this has
5 never happened?

6 A. In my experience, Mr. Bouchelev, it
7 has not happened, at least in the two conservation
8 authorities that I have been associated with.

9 263. Q. Okay. So does Conservation Halton
10 have a formal policy that would allow an applicant
11 whose application was rejected as incomplete to go
12 and have a hearing before the board?

13 A. We have no policy in place.

14 264. Q. And now I'm going to take you to
15 paragraph 93 of your affidavit. Okay, so at
16 paragraph 93 you say that:

17 "...On December the 17th a lawfully
18 executed search warrant was carried out on
19 the subject property. Below is a picture
20 of the new dwelling taken on that date..."

21 So did you take this picture?

22 A. No, I did not.

23 265. Q. Do you know who took the picture?

24 A. No, I don't.

25 266. Q. Okay. Were you present...

1 A. It may have been clarified in
2 another affidavit, but I don't know who took the
3 picture.

4 267. Q. Okay.

5 A. It would have been...it would have
6 been either Charles or Cassandra.

7 268. Q. That's okay. If you don't know, I
8 don't want you to guess. Now, were you present at
9 the property during the execution of the search
10 warrant?

11 A. No, I was not.

12 269. Q. Okay, and do you know who attended?

13 A. It would have been Cassie and
14 Charles. That would have been...

15 270. Q. Cassie, is that Cassandra?

16 A. Cassandra Connelly and Charles
17 Priddle.

18 271. Q. Okay. Now paragraph 93 you say:
19 "...It can be seen from the picture that
20 the dwelling has been boarded up and is
21 protected from the elements..."

22 Now, it's fair to say that you didn't go there. You
23 didn't, you know, do a walk-through. You didn't do
24 a detailed inspection of whether or not the building
25 is protected from the elements, right?

1 A. I did not.

2 272. Q. Okay. Are you suggesting that, you
3 know, boarding it up and putting some, you know,
4 wrapping paper on it would completely protect a
5 structure like this from exposure to the elements?

6 A. It would certainly protect it from
7 any major damage from the elements. I can't...

8 273. Q. Okay, and that...

9 A. If they are incomplete, it would be.

10 274. Q. And what is that opinion based on,
11 that it would be protected from any major damage?
12 What is your area of expertise that would allow you
13 to reach this conclusion?

14 A. My areas of expertise is looking at
15 what the picture is showing me, which means it's
16 secured. There is a fence. There is a no
17 trespassing sign there, and that all of the
18 openings, the apertures of the building, have been
19 sealed. That's what I see.

20 275. Q. Okay. I'm just trying to understand
21 how you can make the conclusion that doing this
22 would prevent any major damage. Are you an
23 engineer?

24 A. I am not an engineer. I am not.

25 276. Q. Now, isn't...okay, so let me ask you

1 something else then. Now, if you look at...let me
2 rephrase that.

3 One of the things that Mr. Priddle told me
4 during my cross-examination of him yesterday is that
5 one of the areas of concern for Conservation Halton
6 is preventing damage to property. Is that a fair
7 assessment?

8 A. To protect damage against hazard
9 risk.

10 277. Q. Okay, but to prevent damage to
11 people and to property?

12 A. From flooding and erosion and
13 natural processes, correct, as long as they are
14 hazards.

15 278. Q. Okay. So would you agree with me
16 that it would be...well, let me ask you this. Is
17 Conservation Halton at all concerned about potential
18 damage to this structure that exists at the property
19 today?

20 A. As it exists?

21 279. Q. Yes.

22 A. Can you rephrase that question? I'm
23 not sure what you're asking me.

24 280. Q. Yes. I'm asking you if Conservation
25 Halton has any concern about damage to this existing

1 structure?

2 A. Not...we do have problems with the
3 risk that this structure is under, because it hasn't
4 gone through the proper review to make sure that
5 it's not going to collapse or have a problem with
6 stability because of the slope.

7 If you're asking me whether or not we have
8 concerns about the elements getting in and damaging
9 what is already there, certainly there is nothing
10 that says we can't negotiate...if there were a
11 problem, and we have not heard that there is a
12 problem with what is there being compromised, then
13 we could have that discussion, because we certainly
14 don't want to see things deteriorate.

15 281. Q. Okay, so...

16 A. But there has been no discussion but
17 in answer to your question, yes, we do have a
18 concern, and yes, it has to do with the erosion
19 hazard on the property, and it has to do with the
20 house itself and it is fully framed now, actually,
21 being in jeopardy or compromised for stability.

22 282. Q. All right. So you would agree with
23 me that, you know, it would be best for everyone
24 involved if this...you know, if the issues relating
25 to this property were resolved as quickly as

1 possible?

2 A. Absolutely. I agree 100 percent
3 with that.

4 283. Q. And you would agree with me that if,
5 you know, a resolution cannot be negotiated, that it
6 would be in everyone's best interest that the issue
7 be adjudicated as quickly as possible?

8 A. Yes, I do.

9 284. Q. Okay. You will agree with me that
10 some...you know, it's generally...you know,
11 regardless of the erosion hazard, it's generally not
12 a good idea to have a structure like this that is
13 uninsured where, you know, there could be potential
14 vandalism and other things, you know, relating to
15 any empty, vacant, incomplete structure?

16 MR. JULL: Mr. Bouchelev, just as a
17 point of clarification, I just want to
18 clarify something. Is that a hypothetical
19 question, if is uninsured, or are you
20 stating to the witness that as a fact there
21 is no insurance on this property?

22 285. MR. BOUCHELEV: Well, I'm...it's a
23 hypothetical because I'm not...you know, I
24 can't give evidence, as you know.

25 MR. JULL: Right. So I just

1 don't...your question suggested that as a
2 fact this was uninsured. So I think if
3 you're not prepared to say that, then I
4 think you should rephrase your question as
5 a hypothetical.

6 286. MR. BOUCHELEV: Well, actually just give
7 me one moment before I do that. I just
8 want to check something. Can we go off the
9 record for a moment?

10 MR. JULL: Sure.

11

12 --- DISCUSSION OFF THE RECORD

13

14 BY MR. BOUCHELEV:

15 287. Q. Okay, now, Ms. Veale, you will agree
16 with me that it is not a good idea to have an
17 incomplete structure like this standing for a long
18 period of time, because of potential vandalism for
19 example?

20 A. As you can see from a couple of the
21 attachments to my affidavit, mainly we have got
22 V...sorry, we have got W, and we have got...there
23 were two letters that we sent through our legal
24 counsel, one in December and one again last August,
25 offering to negotiate something because we realized

1 that the landowners really have been out of home,
2 house and home, for the last two years, and we have
3 always been trying to negotiate something with them
4 to get them back into their home as quickly as
5 possible.

6 288. Q. Okay. So I think that, in general,
7 you agree with me that, you know, there is a risk of
8 vandalism and it's not a good idea for a structure
9 to be sitting like that?

10 A. Right, I would agree.

11 289. Q. Okay. Now, can you look at
12 paragraph 94 of your affidavit, please?

13 A. Yes.

14 290. Q. Okay. So at paragraph 94 you are
15 talking about engineering fees and you are saying
16 that engineering fees vary. Now, you will agree
17 with me that engineering fees, you know, like you
18 say, vary, they could potentially be in the tens or
19 sometimes hundreds of thousands of dollars.

20 A. In terms of what we're asking the
21 landowners to do, it would be a matter of hiring a
22 geotechnical engineer and dropping a few boreholes,
23 which I understand would be in the order of 16 to 18
24 thousand dollars.

25 291. Q. Okay.

1 A. That, to me, is a small investment
2 to ensure the safety of the home and the folks that
3 live within it. So I think that in terms of where a
4 cost might be accrued would be in whatever remedial
5 measures might be necessary in order to stabilize
6 the home, and I think as we have indicated, that we
7 would consider that, along with the cost and what
8 would be reasonable for the landowner to ensure a
9 level of safety, as well as ensure that it's a
10 reasonable cost for them.

11 So we always try to be reasonable with
12 landowners.

13 292. Q. So what is considered reasonable?
14 Can we put a number? Like, you know, if it costs
15 less than \$50,000 it's reasonable, more than 50,000
16 it's unreasonable? Can we put a dollar figure on
17 it?

18 A. No, I think that's a very difficult
19 question for me to answer because it depends on the
20 value of the home. It depends on the ability of the
21 applicants to be able to pay and it depends on the
22 risk level that is associated with that particular
23 structure.

24 So there is no yes or no or cutoff, you
25 know, 50,000 or whatever. It would have to be based

1 on the individual situation on that property.

2 293. Q. Okay. So potentially, you know,
3 reasonable mitigation could potentially cost them
4 hundreds of thousands. You'll agree with that?

5 A. It potentially could be as little as
6 20.

7 294. Q. But could potentially be in the
8 hundreds of thousands?

9 A. I don't know. I'm not an engineer,
10 as you pointed out before. So I can't answer that
11 question. We don't know. We're uncertain.

12 295. Q. Well, it's interesting because you
13 feel comfortable giving me the lower limit, saying
14 it could be as little as 20, but when I ask you,
15 "Could it be in the hundreds of thousands?" you're
16 telling me, "I can't comment. I'm not an engineer."

17 A. If I can separate out what I was
18 referring to, I was referring to the cost of the
19 boreholes, not the cost of the remedial measures,
20 right.

21 296. Q. Okay.

22 A. I know that the cost of doing a
23 borehole is in around the...the area that I
24 specified, so you know, between 16, 18, 20 thousand
25 dollars to do that work, and to have a professional

1 engineer to come in and do that. Because...

2 297. Q. Now, if you look...

3 A. ...we're uncertain...because we're
4 uncertain of what remedial measures are needed and
5 what the level of risk actually is until that work
6 is done, we have no idea...we're very uncertain as
7 to what the remedial action might be.

8 You might not have to do anything. You
9 might have to just direct all of your drainage from
10 the roof on to the road, and that might be good
11 enough, or you might have to do something else. We
12 just don't know, and that's the point.

13 298. Q. Okay, and at paragraph 97 you say
14 that:

15 "...Revisions may have to be made to the
16 proposed work as a result of the technical
17 information submitted e.g. geotechnical
18 assessment, to ensure the control of
19 erosion is not affected and that the safety
20 of life and property minimized to the
21 extent possible. Some revisions we might
22 expect to see that would be considered
23 reasonable might include subterranean
24 drainage, grading considerations to avoid
25 source erosion, use of such things as

1 deeper foundations and potentially some
2 slope work to ensure more long-term
3 stability..."

4 So these specific mitigation techniques that you
5 describe at paragraph 97, do you know what the cost
6 of those mitigation techniques is going to be?

7 A. Those are provided as examples. It
8 could be one of those. It could be all of those.
9 It could be some of those or it could be a remedial
10 measure that isn't even stated in this.

11 So all we did is...all I did was indicate
12 that these are the types of things that in our
13 experience could be requested as part of a permit
14 condition to ensure the safety and stability of the
15 structure.

16 299. Q. Okay, and with respect...

17 A. So I don't even want to hazard a
18 guess at how much it would cost because it is
19 irrelevant. We don't know. We just don't know what
20 the requirement is.

21 300. Q. So the cost is irrelevant to whether
22 or not the step is considered reasonable, correct?

23 A. No, I...you asked me how much it
24 would cost if someone had to do all of that work,
25 and what I said is that we don't know how much work

1 would be required. So the cost of doing whatever
2 needs to be done in this situation is undetermined.

3 Again, without knowing what...you know, if
4 you're asking me a general question about how much
5 it would cost for anybody to do that, I don't...I
6 don't have a permit in front of me and I don't have
7 the technical information in front of me to be able
8 to answer that question.

9 301. Q. Okay. Well, I'm asking you...you
10 know, these are specific examples that you cited,
11 and I recognize that you said that there could be
12 other things, but I just want to focus on the
13 specific examples that you gave, right, because
14 presumably you cited them because these are the
15 types of mitigations that are often done in the
16 erosion hazard zone, right?

17 A. They would be things that would have
18 been associated with dealing with stability issues,
19 yes.

20 302. Q. Okay. So for example, subterranean
21 drainage, can you give me a range of what the cost
22 of that mitigation might be?

23 A. No, I cannot.

24 303. Q. How about...

25 A. It is up the individual...it depends

1 on the individual circumstance and the problems and
2 the soils and all the rest of it. So those folks
3 that would estimate the cost would have to be the
4 experts that do that type of work.

5 304. Q. And I would say that from your
6 experience these, you know, mitigation techniques
7 done in the erosion hazard zone, you know, can run
8 into the hundreds of thousands of dollars, right?

9 A. It depends on whether you're
10 building a large retaining wall or directing
11 drainage from your house to the road. You know, I
12 can't give you a range for any of these because it
13 depends on the individual circumstances.

14 305. Q. But from your experience, when we
15 are dealing with, you know, mitigation of the
16 erosion hazard zone, you know, from your experience
17 the overall cost of the mitigation could be in the
18 hundreds of thousands, right?

19 A. Or it could be as little as...you
20 know, for this situation, it could be as little as
21 20. So...

22 306. Q. Okay, but it could be in the
23 hundreds of thousands, correct?

24 A. I don't know. I don't know. I
25 can't...

1 307. Q. Have you ever had a situation at
2 Conservation Halton where the cost of mitigation was
3 over 100,000?

4 A. The only ones that I am aware of,
5 Mr. Bouchelev, are along the shoreline and that is
6 where there is flood and erosion mitigation to
7 protect the shoreline from flooding and erosion.
8 There may be large costs with large revetment works,
9 but those are usually along a river, but they're
10 usually municipality led.

11 308. Q. Well, if I suggested to you...are
12 you aware of the work that my clients have done to
13 reinforce the slope back in 2014?

14 A. I am aware that they put in some
15 retaining walls, yes, I am.

16 309. Q. So if I told you that the cost of
17 that project was approximately 200,000, would that
18 surprise you?

19 A. I'm not an engineer. They would
20 have had to do whatever they needed to do to protect
21 that slope, and that tells me that that slope is
22 very unstable, if they had to invest that kind of
23 dollar in keeping that slope stable at that point,
24 and that's just the surficial erosion, and here
25 we're talking about...we're talking about potential

1 erosion that is a slippage or at the toe of the
2 slope. I don't know. I just don't know.

3 310. Q. So in other words, you don't know
4 anything about the cost of these mitigation
5 techniques. Is that a fair assessment?

6 A. I don't know about the cost of
7 putting all of those mitigations together, and
8 assuming that that is what these landowners would
9 need to have. I don't know what is required. I
10 don't know what...whether anything is required or a
11 little bit.

12 That's why we want the technical
13 assessment, so that that can tell us what needs to
14 be done in order to keep the house safe and to
15 protect the investment, the substantial investment,
16 that the landowners are making in the rebuild.

17 311. Q. And now, Ms. Veale, are you...you
18 know who Peter Vozikas is, correct?

19 A. Yes, I do.

20 312. Q. Okay, and has Mr. Vozikas been
21 charged with a provincial offence by Conservation
22 Halton?

23 A. I believe he has, yes.

24 313. Q. So can you tell me what exactly is
25 the charge against him?

1 A. I don't have that information in
2 front of me. I would have to take a look at what we
3 have put in as the information.

4 314. MR. BOUCHELEV: Counsel, maybe by way of
5 an undertaking could you provide me a copy
6 of the information sworn in connection with
7 Mr. Vozikas?

8 MR. JULL: I'm happy to do that. I
9 believe I have actually done it, but I
10 may...I know I have sent you information
11 with respect to your clients. It may be
12 that I didn't send the charge with respect
13 to Mr. Vozikas, so I will give you that
14 undertaking.

U/T

15 315. MR. BOUCHELEV: Okay. Mr. Jull, when we
16 spoke about this, I think, during last
17 week's examinations, I have asked whether
18 or not Mr. Baron or anyone from Lifestyles
19 by Baron's was charged, and the answer at
20 the time was no. Is the answer still no or
21 have they been charged now?

22 MR. JULL: The answer is still no, they
23 have not been charged as of today's date.

24 316. MR. BOUCHELEV: Okay. Has there been
25 any agreement entered into between

1 Conservation Halton and Mr. Baron or
2 Lifestyles by Baron's?

3 MR. JULL: I can answer that on behalf
4 of Conservation Halton. The answer is no.

5 317. MR. BOUCHELEV: Okay. If any agreement
6 is made, will you let me know?

7 MR. JULL: Of course, I would let you
8 know. I would give you that undertaking to
9 let you know if there is any sort of
10 agreement entered into, and that would, of
11 course, should that occur, be part of
12 normal disclosure in terms of certainly the
13 criminal law process, but I will give you
14 the undertaking.

U/T

15 If there is an agreement entered
16 into, I will advise you that an agreement
17 has been entered into. I would have to
18 take it under consideration as to the
19 extent which I can provide the extent of
20 the agreement, but my general policy as a
21 prosecutor in that area is to be
22 transparent.

23 So for example, if there was what is
24 commonly called a deferred prosecution
25 agreement, that would be something that

1 would be public.

2 318. MR. BOUCHELEV: Right. I mean, I...it
3 may be relevant to this proceeding as well,
4 and I think you understand why I'm asking
5 for this undertaking.

6 MR. JULL: And perhaps we could go off
7 the record and discuss this perhaps at the
8 end of today's session.

9 319. MR. BOUCHELEV: Sure, yes, we can do
10 that.

11 MR. JULL: All right.

12 320. MR. BOUCHELEV: Okay.

13

14 BY MR. BOUCHELEV:

15 321. Q. Now, Ms. Veale, now I want you to
16 look at the notice of motion that Conservation
17 Halton filed, and this is with respect to the
18 prematurity motion that will be heard at the same
19 time as the application itself. Do you have a copy
20 of that notice of motion or do you want me to put it
21 up on the screen?

22 A. I would really appreciate you
23 putting it up because I don't have that handy at
24 all.

25 322. Q. Sure.

1 MR. JULL: Mr. Bouchelev, could you put
2 on the screen the notice of motion that we
3 just filed with schedule A?

4 323. MR. BOUCHELEV: Yes, that's the one I'm
5 going to put up.

6 MR. JULL: Thank you.

7

8 BY MR. BOUCHELEV:

9 324. Q. Okay. So Ms. Veale, if you
10 look...have you seen this notice of motion before?

11 A. Yes, I do have a copy of it. It has
12 been a while since I have looked at it, though.

13 325. Q. Okay. So in your notice of motion,
14 you essentially say that my clients' application is
15 premature. Are you suggesting that every type of
16 relief that my client is asking for is premature or
17 just certain aspects of the application are
18 premature?

19 A. So if you can point out to me where
20 that statement is made?

21 326. Q. Yes, I can in a moment.

22 A. That's better. Thank you.

23 327. Q. Yes. Sorry, just give me one
24 moment. Well, so if we look at paragraph 17:

25 "...The doctrine of prematurity prevents

1 fragmentation of the administrative process
2 and piecemeal court proceedings, eliminates
3 the large costs and delays associated with
4 premature forays to court and avoids the
5 wait associated with hearing an
6 interlocutory judicial review, when the
7 application for judicial review may succeed
8 at the end of the administrative process
9 anyway. Until the applicants have
10 exhausted the..."

11 This is paragraph 18:

12 "...Until the applicants have exhausted the
13 administrative avenues open to them, which
14 is to submit a new permit application and
15 avail themselves of any reviews and
16 appeals, if necessary, the application is
17 premature and without jurisdiction..."

18 So the question you...and let me know if you don't
19 understand the question, but the question is are you
20 saying that the entirety of my clients' application
21 is premature or that only certain aspects of the
22 application are premature?

23 A. Okay, let me perhaps answer it this
24 way. We have never said that we would not entertain
25 a further permit. What we have said is that the

1 permit for the work that was undertaken...the work
2 that was proposed to have been undertaken could no
3 longer be met because it wasn't an addition. It was
4 a redevelopment from the foundation up, and actually
5 part of the foundation as well.

6 So we would invite a new application
7 before...we would invite a new application with the
8 technical information. We would sit down with the
9 applicants, work through what was going to be safe
10 and reasonable, and at that point in time, I...

11 328. Q. Ms. Veale, I don't want to interrupt
12 you, but you're not really responding to the
13 question that I have asked. So I'm not sure if you
14 understand what I'm asking, so...

15 MR. JULL: I think, Mr. Bouchelev, it's
16 really...we're starting to get into some
17 legal analysis here. I'm not objecting,
18 but you know, the witness can only go so
19 far. She is not a lawyer. So you know,
20 she can certainly indicate what the
21 position of Conservation Halton is with
22 respect to why we say you're premature
23 without pursuing the administrative avenues
24 that are open.

25 329. MR. BOUCHELEV: Okay.

1 MR. JULL: And I think the witness is
2 trying to explain those to you.

3 330. MR. BOUCHELEV: So maybe I'll ask this
4 question to you, Mr. Jull, as Conservation
5 Halton's legal counsel. Is it your
6 client's position that the entirety of the
7 application is premature or that only
8 certain heads of relief that are being
9 requested are premature?

10 MR. JULL: So I'm happy to provide that
11 answer. Our position is the entire
12 application is premature.

13 331. MR. BOUCHELEV: Okay. So declaratory
14 relief, that is premature?

15 MR. JULL: Yes.

16 332. MR. BOUCHELEV: Okay. Thanks, that
17 answers my question. Okay, so what I
18 suggest we do...I need to speak to my
19 clients. I don't anticipate having many
20 more questions for Ms. Veale. So instead
21 of taking the lunch break, maybe we can
22 take about 15 minutes, come back at one
23 o'clock, and then I may have a few more
24 questions and then we'll be done for today.

25 MR. JULL: That makes sense to me. Ms.

1 Veale, is that okay for you?

2 THE WITNESS: That's fine, thanks.

3 333. MR. BOUCHELEV: Okay, so let's do that,
4 and let's come back at one o'clock.

5 MR. JULL: Okay, very good.

6

7 --- upon recessing at 12:45 p.m.

8 --- A BRIEF RECESS

9 --- upon resuming at 1:00 p.m.

10

11 BARBARA VEALE, resumed

12 CONTINUED CROSS-EXAMINATION BY MR. BOUCHELEV:

13

14 334. Q. Ms. Veale, just before the break we
15 were looking at the chart that you have attached as
16 Exhibit X to your affidavit. Can you go there
17 again, please?

18 A. Certainly.

19 335. Q. So is this chart something that you
20 have prepared for this proceeding or does it exist
21 as part of a, I guess, some kind of a procedural
22 manual at Conservation Halton?

23 A. It actually exists as a procedural
24 guidance for our staff.

25 336. Q. So staff would have to follow the

1 steps outlined in this chart, right, when reviewing
2 a permit application?

3 A. That's what they would be expected
4 to follow, yes.

5 337. Q. Okay, and is it mandatory or
6 optional to follow all these different steps?

7 A. You actually would follow the steps
8 that needed to be followed. You can see the dotted
9 lines. What we have tried to convey here is that
10 the dotted lines would be steps that may or may not
11 have to happen depending on the nature of the
12 application.

13 338. Q. Okay, and the solid lines, if you
14 look to the bottom right, the solid line indicates
15 mandatory procedure, correct?

16 A. Yes, yes, it does.

17 339. Q. So preconsultation with staff is a
18 mandatory process?

19 A. Well, we really strongly
20 encourage...I mean, it's not mandatory. It's just
21 what we would expect, right. So when we ask people
22 to preconsult, we strongly encourage it. We want
23 people to come and talk to us before they submit a
24 permit.

25 Folks could submit a permit without a

1 preapplication, but it usually delays because it
2 means that we have to go back and speak to them
3 anyway because they probably need to add something
4 to their package.

5 340. Q. So then, you know, even though this
6 chart, you know, says that certain things are
7 mandatory procedure, in reality some of these things
8 are not mandatory, even though they are, you know,
9 within solid lines?

10 A. They are expectations of how the
11 process would actually unfold for our staff. It was
12 an internal document for our staff, and just to
13 outline the steps that people would want to follow,
14 so you know, if you check our website it talks about
15 preconsultation. If you check our brochures it
16 talks about preconsultation. So we strongly,
17 strongly encourage people to do that. We can't make
18 them do preconsultation, but we encourage them.

19 341. Q. But what about other steps that are
20 identified as mandatory procedure, are they really
21 mandatory or is there some flexibility there as
22 well?

23 A. In terms of what the mandatory
24 procedure is, I would take you back to the
25 regulation itself, because that outlines all of the

1 mandatory things that must be done.

2 So this is an outline of what the
3 expectation would be of staff. The solid lines are
4 what we would expect would have to happen for most
5 applications. The dotted lines are what might have
6 to happen, but it's a guide. It's a guide for them
7 to follow when they're reviewing applications.

8 342. Q. Do you know if there was a
9 preconsultation meeting with staff in this
10 particular application?

11 A. I don't believe that there was, but
12 I would have to go back and check, because as I
13 said, I did not really become involved in this
14 process until after I returned to the office after
15 having short-term leave.

16 343. Q. Okay, and who was it...just while
17 you were away, who was, you know, acting in your
18 capacity?

19 A. Kellie McCormack would have been
20 acting in my capacity.

21 344. Q. Okay. You know, just in general,
22 what is the purpose of the preconsultation meeting?

23 A. Okay, so the purpose of the
24 preconsultation meeting is really to meet with the
25 landowners to talk about what regulations apply to

1 their property, to talk about what studies may be
2 required for what they want to do, to talk about
3 their proposal and what studies might be required.

4 Sometimes they want to talk about how long
5 it's going to take and the timeline. Sometimes
6 people just want to know what the process is, you
7 know, "What are the different steps that you take
8 for us get our approvals?" and it really is to help
9 folks understand the process and understand what we
10 require.

11 So we walk through those steps with
12 landowners.

13 345. Q. So that would be a meeting involving
14 the landowner and...is it, like, a committee that
15 they meet with or just a single staff member? Like,
16 who would be attending a preconsultation on the
17 Conservation Halton side?

18 A. Well, it would depend on the actual
19 application. So typically what we would do, if it's
20 a landowner application, it's site specific, then
21 the preconsultation would be with the file manager.
22 If it's something that is associated with a large
23 development with a lot of technical requirements and
24 consultants and so on, then we would bring all of
25 those folks together to discuss those technical

1 requirements.

2 346. Q. So the process is the...the
3 preconsultation takes place...well, let me put it
4 this way. So the...in this particular instance you
5 said that you don't know if there was a
6 preconsultation, right?

7 A. Correct.

8 347. Q. Do you know...

9 A. I don't think there was, but I could
10 be wrong.

11 348. Q. Do you know if the homeowners were
12 invited to attend a preconsultation?

13 A. I said I didn't know whether a
14 preconsultation was held. I don't know how we
15 received the application. I know that we received
16 the application and it went through a process, and
17 certainly on a minor application, which we would
18 have considered this to be, it's more a process of
19 making sure that our policies are being met based on
20 the information that we have received from the
21 applicant.

22 So in some cases, if it's a minor
23 application, we turn it around very quickly, there
24 is no need for a preconsultation because they end up
25 getting their permit very quickly.

1 349. Q. Now is it a different form that has
2 to be filled out for a minor application as opposed
3 to a major application or is it the same form?

4 A. No, it would be the same form.

5 350. Q. Okay.

6 A. We had a...until Covid hit, we had a
7 walk-in counter, that people come in and talk to our
8 staff. We were available, you know, during business
9 hours for sure, but we are also available on the
10 phone, and there is also an e-mail if people want
11 just to send an e-mail.

12 The onus is on the applicant to contact us
13 if they're thinking of doing something in a
14 regulated area.

15 351. Q. Once staff receive a completed
16 application form, they would essentially look at it
17 and decide whether or not it's something that would
18 be considered minor or major, correct?

19 A. Yes, they would go through the
20 process. They would look at the information that
21 was included. They would look at, "Now, do we have
22 enough information to be able to process this?"
23 They would acknowledge receipt of the application,
24 and then process it if they didn't have any
25 questions.

1 352. Q. Okay. Now, one of the things that I
2 asked you before the break was about the meetings
3 that took place in August and September of 2019, and
4 Mr. Jull, I have asked as part of a request for an
5 undertaking yesterday during Mr. Priddle's cross-
6 examination to provide any notes, memos or
7 correspondence that may be relating to those
8 meetings.

9 You granted me that undertaking. So I'm
10 not going to ask for it again, but I just wanted to
11 clarify that anything, you know, pertaining to Ms.
12 Veale is part of that undertaking and we would like
13 to see that.

14 MR. JULL: Right, understood and I
15 agree. It was my understanding of that
16 undertaking that that would include Ms.
17 Veale, but for clarity, clearly I will give
18 that undertaking that I gave during Mr.
19 Priddle's examination with the same time
20 parameters and indicate that any notes,
21 memos, et cetera that Ms. Veale would have
22 been involved in, subject to the same
23 caveat about not producing legal advice or
24 memos where legal advice was provided, that
25 will apply.

U/T

1 353. MR. BOUCHELEV: Right. Well, in that
2 case, subject to the undertakings and
3 refusals, although I don't remember if
4 there were any refusals, but subject to
5 those, we are done with this examination.
6 Thank you.

7 MR. JULL: I don't think there were any
8 refusals. I have two questions by way of
9 re-examination, so I'll be brief.

10

11 RE-EXAMINATION BY MR. JULL:

12

13 354. Q. Ms. Veale, my friend asked you
14 specifically some questions about a document that
15 was contained in tab C of your affidavit with
16 respect to section 2.37 of the policy that was
17 located at page 44, and you indicated in answer to
18 one of the questions...you indicated that you would
19 prefer to refer to the document if you could, and
20 then my friend went on to do some other things or
21 ask some other questions. I would like to just ask
22 you if you could turn to that section that is at tab
23 C, page 44 of your affidavit, if you could just tell
24 us what it was you wanted to say with reference to
25 that document.

1 A. Okay, so on page 44, policy 2.372,
2 it indicates that:
3 "...where an existing building or structure
4 already exists on a valley wall or in a
5 valley, additions that are minor in
6 nature..."

7 So we were talking about the definition of "major"
8 and "minor", but this is minor in nature, and my
9 answer to the question is that it's decided on a
10 case by case basis through our technical expertise
11 whether it's minor in nature.

12 So it's usually reflected in the risk
13 of...the hazard risk that's associated with the
14 property.

15 355. Q. Okay, thank you. The other question
16 I had was my friend showed you the picture that...of
17 the house with the backhoe and asked you a number of
18 questions about that picture, and he suggested to
19 you...well, I want to put the question to you.
20 There is a number of questions, but he...at one
21 point you said in response to a number of his
22 questions about that picture in your affidavit, you
23 said, "I would like you to see another picture." Do
24 you remember giving that answer?

25 A. Correct, I was referring to the blog

1 that...

2 356. Q. And I'm just going to ask you to
3 please refer to the picture that you wanted to refer
4 to and comment about what it is you wanted to say
5 about that picture.

6 A. Okay, I would like to refer to...I
7 don't have any page numbers, but it is part of the
8 blog on tab L, and it's page 8, I believe, 8 of 34,
9 and we were having a discussion about whether or not
10 the entire structure...

11 357. Q. I'm just going to stop you there for
12 one minute, just so my friend has it. Do you have
13 the picture in front of you, Mr. Bouchelev, that Ms.
14 Veale is referring to? I just want to make sure
15 we're all on the same page here.

16 MR. BOUCHELEV: Yes, yes, page 8 of 34.

17
18 BY MR. JULL:

19 358. Q. Okay, thank you. Please go ahead.

20 A. Sorry, do you want...

21 359. Q. Sorry, I am just looking at...just
22 so I'm clear, because I have got Exhibit L and there
23 is...at the bottom there is 7 of 34. There is a
24 picture with a John Deere, and then 8 out of 34
25 there is a picture of what appears to be a

1 construction wood structure.

2 A. Yes, I did want to take your
3 attention to 8 of 34.

4 360. Q. Okay, thank you.

5 A. Which clearly shows that all of the
6 walls to the building or structure were removed, and
7 that framing was beginning on the foundation and
8 that this was a new build, and as a matter of fact,
9 on the page before that, 734, it says:

10 "...On January 22nd, 2019 construction
11 began. Good bye old house..."

12 361. MR. JULL: Okay, thank you. Those are
13 all of my questions by way of re-
14 examination. So I think this does conclude
15 this.

16 Mr. Bouchelev, I mentioned I wanted
17 to speak to you very briefly off the
18 record, so...

19

20 --- DISCUSSION OFF THE RECORD

21

22 MR. BOUCHELEV: Okay, so just before we
23 go off the record, I want to make the two
24 documents that I showed this witness as
25 exhibits, which I forgot to do during the

1 cross-examination itself.

2 362. MR. JULL: I don't have any objection.

3 MR. BOUCHELEV: Right. So Exhibit 1
4 will be the letter from the Minister of the
5 Environment.

6

7 --- EXHIBIT NO. 1: Letter from Jeff Yurek, Minister of
8 the Environment, dated August 16,
9 2019

10

11 MR. BOUCHELEV: Exhibit 2 will be the
12 notice of motion that was served by the
13 respondent.

14

15 --- EXHIBIT NO. 2: Notice of Motion served by the
16 respondent, dated April 24, 2021

17

18 MR. BOUCHELEV: We can go off the record
19 now. This will conclude today.

20

21 --- upon adjourning at 1:30 p.m.

INDEX OF EXHIBITS

EXHIBIT NO.	DESCRIPTION	PAGE NO.
1.	Letter from Jeff Yurek, Minister of the Environment, dated August 16, 2019	111
2.	Notice of Motion served by the respondent, dated April 24, 2021	111

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SUPREME COURT OF CANADA

CITATION: Annapolis Group Inc.
v. Halifax Regional Municipality,
2022 SCC 36

APPEAL HEARD: February 16,
2022

JUDGMENT RENDERED:
October 21, 2022

DOCKET: 39594

BETWEEN:

Annapolis Group Inc.
Appellant

and

Halifax Regional Municipality
Respondent

- and -

**Attorney General of Canada, Attorney General of Ontario, Attorney General
of Nova Scotia, Attorney General of British Columbia, Canadian Constitution
Foundation, Ontario Landowners Association, Canadian Home Builders'
Association and Ecojustice Canada Society**
Interveners

CORAM: Wagner C.J. and Moldaver, Karakatsanis, Côté, Brown, Rowe, Martin,
Kasirer and Jamal JJ.

JOINT REASONS FOR JUDGMENT: Côté and Brown JJ. (Wagner C.J. and Moldaver and Rowe JJ.
(paras. 1 to 80) concurring)

JOINT DISSENTING Kasirer and Jamal JJ. (Karakatsanis and Martin JJ. concurring)

REASONS:

(paras. 81 to 153)

NOTE: This document is subject to editorial revision before its reproduction in final form in the *Canada Supreme Court Reports*.

Annapolis Group Inc.

Appellant

v.

Halifax Regional Municipality

Respondent

and

**Attorney General of Canada,
Attorney General of Ontario,
Attorney General of Nova Scotia,
Attorney General of British Columbia,
Canadian Constitution Foundation,
Ontario Landowners Association,
Canadian Home Builders' Association and
Ecojustice Canada Society**

Interveners

Indexed as: Annapolis Group Inc. v. Halifax Regional Municipality

2022 SCC 36

File No.: 39594.

2022: February 16; 2022: October 21.

Present: Wagner C.J. and Moldaver, Karakatsanis, Côté, Brown, Rowe, Martin, Kasirer
and Jamal JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR NOVA SCOTIA

Expropriation — State regulation of land use — Constructive taking of private property by public authority — Land owner suing municipality and alleging that municipality’s regulatory measures have deprived it of all reasonable or economic uses of its land, resulting in constructive taking without compensation — Whether acquisition of beneficial interest in property under constructive taking test requires land to actually be taken from owner and acquired by public authority — Whether intention of public authority relevant to analysis of constructive taking claim.

Over time from the 1950s, Annapolis acquired 965 acres of land (the “Lands”) with the intention of eventually securing enhanced development rights and reselling it. In 2006, Halifax adopted a planning strategy to guide land development in the municipality, including the Lands, over a 25-year period. The strategy reserved a portion of the Lands for possible future inclusion in a regional park. It also zoned the Lands as “Urban Settlement”, which denotes an area where urban forms of development may occur and as “Urban Reserve”, which identifies land that could be developed beyond the 25-year horizon. These designations contemplate future service development, but for serviced development to occur on the Lands, Halifax must adopt a resolution authorizing it. Beginning in 2007, Annapolis made several attempts to develop the Lands. Ultimately, by resolution in 2016, Halifax refused to initiate the secondary planning process, and Annapolis sued, alleging a constructive taking, misfeasance in public office, and unjust enrichment. With respect to the constructive taking claim, Annapolis contends that Halifax’s regulatory measures have deprived it

of all reasonable or economic uses of the Lands, resulting in a constructive taking without compensation.

Halifax sought summary dismissal of Annapolis’ constructive taking claim. The motion judge dismissed Halifax’s motion, finding that Annapolis’ constructive taking claim raised vast genuine issues of material fact requiring a trial. On appeal by Halifax, the Court of Appeal held that Annapolis’ constructive taking claim did not have a reasonable chance of successfully establishing, as required by *Canadian Pacific Railway Co. v. Vancouver (City)*, 2006 SCC 5, [2006] 1 S.C.R. 227 (“*CPR*”), an acquisition by Halifax of a beneficial interest in the Lands or flowing from the Lands — which necessitated that the Lands actually be taken from Annapolis and acquired by Halifax — and the removal of all reasonable uses of the Lands. It was also of the view that Halifax’s intended use for the Lands was not relevant to the constructive taking analysis. The Court of Appeal struck the claim.

Held (Karakatsanis, Martin, Kasirer and Jamal JJ. dissenting): The appeal should be allowed and the order of the motion judge restored.

Per Wagner C.J. and Moldaver, **Côté**, **Brown** and Rowe JJ.: The Court of Appeal erred in holding that an “acquisition of a beneficial interest” under the constructive taking test established by the Court in *CPR* requires land to actually be taken from an owner and acquired by the state. A “beneficial interest” is to be broadly understood as an “advantage”; as such, the interest acquired by the state can fall short of an actual acquisition by the state. Further, the Court of Appeal erred in holding that

evidence of the state’s intended use of the impugned land is irrelevant to a claim for constructive taking. There are genuine issues of material fact arising from Annapolis’ constructive taking claim to be tried. It should therefore be allowed to proceed to trial.

Constructive taking is the preferable term for expropriation through regulation as it more accurately captures the nature of the state action at issue and the effect on the landowner. A “taking” is a forcible acquisition by the Crown of privately owned property for public purposes. It may take the form of a constructive taking (effective appropriation of private property by a public authority exercising its regulatory powers), or a *de jure* taking (formal expropriation), by (in the case of land) taking title. Not every instance of regulating the use of property amounts to a constructive taking. Governments and municipalities holding delegated provincial regulatory authority validly regulate land in the public interest without effecting “takings”, properly understood. The line between a valid regulation and a constructive taking is crossed where the effect of the regulatory activity deprives a claimant of the use and enjoyment of its property in a substantial and unreasonable way, or effectively confiscates the property.

The test to show a constructive taking is that stated by *CPR*, properly understood. The test provides that the reviewing court must decide: (1) whether the public authority has acquired a beneficial interest in the property or flowing from it (i.e. an advantage); and (2) whether the state action has removed all reasonable uses of the property. The jurisprudence, upon which the *CPR* test was expressly stated as resting,

supports an understanding of “beneficial interest” as concerned with the effect of a regulatory measure on the landowner, and not with whether a proprietary interest was actually acquired by the government. That same jurisprudence supports the view that “beneficial interest” refers not to actual acquisition of the equity that rests with the beneficial owner of property, connoting rights of use and enjoyment, but to an advantage flowing to the state. To require actual acquisition would collapse the distinction between constructive (*de facto*) and *de jure* takings — a distinction which *CPR* explicitly preserves. If a constructive taking requires an actual taking, then it is no longer constructive. Furthermore, interpreting “beneficial interest” broadly (as meaning a benefit or an advantage accruing to the state) ensures *CPR*’s coherence with previous jurisprudence, which did not understand “benefits” in the strict equitable sense of that term. *CPR* merely sought to affirm, and not alter, the law of constructive takings.

This interpretation is supported by the wording under the first part of the *CPR* test: “a beneficial interest in the property or flowing from it”. An interest flowing from the property affirms that a “beneficial interest” can be more broadly understood as an advantage, and need not be an actual acquisition. Such an interpretation gives effect to the Court’s acknowledgement of a common law right to compensation where the two-part *CPR* test is satisfied. It accords with imperatives of justice and fairness, which underpin the Court’s assessment of expropriation claims, and remedies situations where cases do not neatly fit within the expropriation legislative framework. As the test focusses on effects and advantages, substance and not form is to prevail. A court deciding whether a regulatory measure effects a constructive taking must

undertake a realistic appraisal of matters in the context of the specific case, including but not limited to (a) the nature of the government action, notice to the owner of the restrictions at the time the property was acquired, and whether the government measures restrict the uses of the property in a manner consistent with the owner's reasonable expectations; (b) the nature of the land and its historical or current uses; and (c) the substance of the alleged advantage.

The public authority's intention is not an element of the test for constructive taking at common law. The mischief addressed by the doctrine is one of advantages and effects, not that a public authority acted in bad faith or with an otherwise ulterior motive. However, intention can be relevant to the inquiry. The underlying objective pursued by a public authority may provide supporting evidence for a constructive expropriation claim, but it is neither necessary nor sufficient. The assessment of intent has proved to be helpful in distinguishing between mere regulations in the public interest and takings requiring compensation at common law. What ultimately matters, however, irrespective of matters of intent, is whether the state-imposed restrictions on the property conferred an advantage on the state that effectively amounts to a taking.

In the instant case, the motion judge's legal conclusions that (1) a constructive taking need only have the effect of defeating the landowner's reasonable use of land; and (2) the state's intent may be relevant in assessing whether all reasonable uses of the land has been removed, were legally correct. The Court of

Appeal did not identify any legal error or patent injustice that would justify interfering with the motion judge's decision to dismiss Halifax's summary judgment motion on the basis of the existing triable issues. Two disputed factual issues are particularly material to the *CPR* test. First, it is disputed whether Halifax is promoting the Lands as a public park; this is material because, if proven, it would tend to support Annapolis' claim that Halifax acquired a beneficial interest in the Lands. Preserving a park in its natural state may constitute an advantage accruing to the state, thus satisfying the "acquisition" element of *CPR*. Second, it is disputed whether Halifax, by allegedly treating the Lands as a public park, has eliminated all uses of the Lands except service development, which is conditional upon the approval of Annapolis' secondary planning applications. This is material because, if proven, it may arguably support Annapolis' claim that it has lost all reasonable uses of its property. If Annapolis can prove at trial that Halifax is unlikely to ever grant a secondary planning approval, this is clearly material to its constructive taking claim, as all reasonable uses of the land may be shown to have been eliminated where a permit needed to make reasonable use of the land is refused, such that the state has effectively taken away all rights of ownership.

Per Karakatsanis, Martin, **Kasirer** and **Jamal JJ.** (dissenting): The appeal should be dismissed. There is disagreement with the majority's proposed changes to the *CPR* precedent and with how the majority applies the law in the instant case. Partial summary judgment dismissing Annapolis' *de facto* taking claim was properly granted as that claim has no real chance of success.

First, there is disagreement with the majority’s view that the first element of the *CPR* test, which requires “an acquisition of a beneficial interest in the property or flowing from it”, should be replaced with the much broader notion of an advantage, whether or not a proprietary interest was actually acquired by the government. Instead, the Court should retain the *CPR* test for a *de facto* taking, which insists that a proprietary interest be acquired. *CPR* and the authorities it cited show there is no *de facto* taking unless there is both acquisition of a beneficial interest in the property or flowing from it and a removal of all reasonable uses of the property. The interest must be proprietary — not merely an advantage — and the acquisition must correspond to the deprivation. The majority has provided no basis for the Court to depart from the acquisition requirement as framed in *CPR*. The majority does not suggest that such a departure from precedent is needed to keep the common law in step with the evolution of society, to clarify a legal principle, or to resolve any inconsistency in the law, which are some of the usual grounds justifying evolution of the common law. To the contrary, courts in common law Canada have applied the *CPR* test without difficulty, and no court has expressed concerns that the test is unworkable or unnecessarily complex. *CPR* is settled law and there is no reason to change it. Furthermore, the majority’s reformulation of the acquisition requirement and departure from *CPR* as precedent has significant ramifications. It dramatically expands the potential liability of municipalities engaged in land use regulation in the public interest and throws into question the settled law that a refusal to up-zone (i.e., re-zoning to enlarge the permissible uses of land) is not a *de facto* taking.

Second, there is disagreement with the majority's view that a public authority's intention is a material fact in a claim for a *de facto* taking. This is also an unwarranted departure from *CPR* and the Court's prior jurisprudence. Intention is not an element of the test for a *de facto* or constructive taking; it is equally not a material fact supporting such a claim. Although the public authority's intention may provide narrative background or context or may be relevant to an administrative law claim that its actions were *ultra vires* as having an improper purpose or being in bad faith, it is not relevant to a *de facto* taking claim, which is concerned with the effect of the public authority's actions, not with its intention.

In the instant case, there is no material fact in dispute on either branch of the *CPR* test for a *de facto* taking. Firstly, Halifax has acquired no beneficial interest in the Lands or flowing from them. It has simply refused to up-zone the Lands. Neither Halifax's 2016 municipal resolution refusing to up-zone the Lands nor Halifax's alleged acts of encouraging the public to trespass raises any genuine issue of material fact that Halifax has acquired a beneficial interest in the Lands or flowing from them. The municipal resolution merely preserved the *status quo* by refusing to allow lands that have always been vacant and treed and situated next to a protected wilderness area to be developed into serviced residential communities. Halifax's adoption of a municipal resolution refusing to up-zone the Lands also cannot be a basis for a *de facto* taking claim because the resolution did not result in Halifax acquiring any proprietary interest in the Lands. Moreover, a public authority does not and cannot acquire a proprietary interest by encouraging others to trespass.

Secondly, the uncontradicted evidence is that Annapolis has been deprived of no reasonable uses, let alone all reasonable uses, of the Lands. The zoning and uses of the Lands remain entirely unchanged. The Lands remain vacant and treed, just as they have been since Annapolis acquired them. Annapolis has the same rights with respect to the Lands that it had prior to Halifax's resolution in 2016. Halifax's refusal to up-zone the Lands in 2016 thus did not deprive Annapolis of any reasonable uses of the Lands. It simply disappointed Annapolis' hope of developing them. More importantly, even if Annapolis could somehow show that Halifax will never up-zone the Lands, that could not establish that Annapolis has lost all reasonable uses of the Lands. The Lands have never been used for serviced development, they have always been vacant and treed. The majority's assertion amounts to saying that a refusal to up-zone vacant land can give rise to a *de facto* taking merely if all potential reasonable uses are prohibited. That would upset the settled law reflected in the jurisprudence, and it would eliminate Halifax's statutory and common law protection from liability for refusing to up-zone. Removal of all reasonable uses of the land must be assessed in relation to both its potential uses as well as the nature of the land and the range of reasonable uses to which it has actually been put.

Cases Cited

By Côté and Brown JJ.

Applied: *Canadian Pacific Railway Co. v. Vancouver (City)*, 2006 SCC 5, [2006] 1 S.C.R. 227; **considered:** *The Queen in Right of the Province of British*

Columbia v. Tener, [1985] 1 S.C.R. 533; *Mariner Real Estate Ltd. v. Nova Scotia (Attorney General)*, 1999 NSCA 98, 177 D.L.R. (4th) 696; *Lynch v. St. John's (City)*, 2016 NLCA 35, 400 D.L.R. (4th) 62; *Manitoba Fisheries Ltd. v. The Queen*, [1979] 1 S.C.R. 101; *Montréal (Ville) v. Benjamin* (2004), 86 L.C.R. 161; **referred to:** *Lorraine (Ville) v. 2646-8926 Québec inc.*, 2018 SCC 35, [2018] 2 S.C.R. 577; *Hryniak v. Mauldin*, 2014 SCC 7, [2014] 1 S.C.R. 87; *Toronto (City) v. Ontario (Attorney General)*, 2021 SCC 34; *Compliance Coal Corporation v. British Columbia (Environmental Assessment Office)*, 2020 BCSC 621, 13 L.C.R. (2d) 215; *Sun Construction Company Limited v. Conception Bay South (Town)*, 2019 NLSC 102, 87 M.P.L.R. (5th) 256; *Genevieve Holdings Ltd. v. Kamloops (City)* (1988), 42 M.P.L.R. 171; *Steer Holdings Ltd. v. Manitoba*, [1992] 2 W.W.R. 558, aff'd (1992), 99 D.L.R. (4th) 61; *Purchase v. Terrace (City)* (1995), 26 M.P.L.R. (2d) 126; *Harvard Investments Ltd. v. Winnipeg (City)* (1995), 129 D.L.R. (4th) 557; *Attorney-General v. De Keyser's Royal Hotel*, [1920] A.C. 508; *London and North Western Railway Co. v. Evans*, [1893] 1 Ch. 16; *Belfast Corporation v. O.D. Cars Ltd.*, [1960] A.C. 490; *Ulster Transport Authority v. James Brown & Sons, Ltd.*, [1953] N.I. 79; *Farber v. Royal Trust Co.*, [1997] 1 S.C.R. 846; *C.M. Callow Inc. v. Zollinger*, 2020 SCC 45; *Ville de Léry v. Procureure générale du Québec*, 2019 QCCA 1375, 12 L.C.R. (2d) 132; *Ville de La Prairie v. 9255-2504 Québec inc.*, 2020 QCCS 307, 2020 CarswellQue 2737; *Spénard v. Salaberry-de-Valleyfield (Cité de)*, [1983] C.S. 725; *Dupras v. Ville de Mascouche*, 2022 QCCA 350, aff'd in part 2020 QCCS 2538, 15 L.C.R. (2d) 262; *Wallot v. Québec (Ville)*, 2011 QCCA 1165, 24 Admin. L.R. (5th) 306; *Municipalité de Saint-Colomban v. Boutique de golf Gilles Gareau inc.*, 2019 QCCA 1402, 12

L.C.R. (2d) 313; *Meadowbrook Groupe Pacific inc. v. Ville de Montréal*, 2019 QCCA 2037, 2019 CarswellQue 12262; *Ville de Québec v. Rivard*, 2020 QCCA 146, 15 L.C.R. (2d) 242; *Ville de Saint-Rémi v. 9120-4883 Québec inc.*, 2021 QCCA 630; *Bhasin v. Hrynew*, 2014 SCC 71, [2014] 3 S.C.R. 494; *Coady v. Burton Canada Co.*, 2013 NSCA 95, 365 D.L.R. (4th) 172; *Shannex Inc. v. Dora Construction Ltd.*, 2016 NSCA 89, 58 C.L.R. (4th) 1.

By Kasirer and Jamal JJ. (dissenting)

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APPEAL from a judgment of the Nova Scotia Court of Appeal (Beveridge, Farrar and Derrick JJ.A.), 2021 NSCA 3, 17 L.C.R. (2d) 21, 455 D.L.R. (4th) 349, 8 M.P.L.R. (6th) 165, [2021] N.S.J. No. 4 (QL), 2021 CarswellNS 4 (WL), setting aside a decision of Chipman J., 2019 NSSC 341, 17 L.C.R. (2d) 1, [2019] N.S.J. No. 491 (QL), 2019 CarswellNS 817 (WL). Appeal allowed, Karakatsanis, Martin, Kasirer and Jamal JJ. dissenting.

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The judgment of Wagner C.J. and Moldaver, Côté, Brown and Rowe JJ. was delivered by

CÔTÉ AND BROWN JJ. —

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I. <u>Overview</u>	

[1] This appeal calls upon the Court to clarify the circumstances in which state regulation of land use may effect a *de facto* or (as we will refer to it) “constructive” taking of private property.

[2] The appellant, Annapolis Group Inc., contends that the respondent, Halifax Regional Municipality, improperly used its regulatory powers to effectively seize Annapolis’ land for use as a public park without compensation. Halifax says that Annapolis’ claim is a veiled attempt to make taxpayers foot the bill for a decades-long development gamble. It sought summary dismissal of this part of Annapolis’ claim, while permitting other claims (for misfeasance in public office and unjust enrichment) to proceed to trial.

[3] Although unsuccessful at first instance, Halifax persuaded the Nova Scotia Court of Appeal that it should apply this Court’s judgment in *Canadian Pacific Railway Co. v. Vancouver (City)*, 2006 SCC 5, [2006] 1 S.C.R. 227 (“CPR”), to strike that claim.

Annapolis asks this Court to restore its claim in respect of the alleged constructive taking and allow it to proceed to trial.

[4] We would allow Annapolis’ appeal. The Court of Appeal, in our respectful view, misapplied *CPR* and summary judgment principles. Read in harmony with the jurisprudence upon which it was decided, *CPR* signifies that a constructive taking occurs where: (1) a beneficial interest — understood as an advantage — in respect of private property accrues to the state, which may arise where the use of such property is regulated in a manner that permits its enjoyment as a public resource; and (2) the impugned regulatory measure removes all reasonable uses of the private property at issue. Further, the Court of Appeal erred by holding that Halifax’s intention is irrelevant to applying the second part of that analysis. This leaves genuine issues of material fact arising from Annapolis’ claim to be tried. Annapolis is entitled to adduce evidence at trial to show that, by holding Annapolis’ land out as a public park, Halifax has acquired a beneficial interest therein; and that, because Halifax is unlikely to ever lift zoning restrictions constraining the development of Annapolis’ land, Annapolis has lost all reasonable uses of its property. Further, and in support of the latter proposition, Annapolis may adduce evidence of Halifax’s intention in not doing so.

II. Factual Background

[5] Over time from the 1950s, Annapolis acquired the subject property, comprising 965 acres of land (“Annapolis Lands” or “Lands”), with the intention of eventually securing enhanced development rights and reselling it.

[6] In 2006, Halifax adopted the Regional Municipal Planning Strategy, a guide for land development in the municipality, including the Annapolis Lands, over a 25-year period. While the Planning Strategy reserved a portion of the Annapolis Lands for possible future inclusion in a regional park, it also zoned the Lands as “Urban Settlement” and “Urban Reserve”. Urban Settlement denotes an area where urban forms of development may occur. Urban Reserve identifies land that could be developed beyond the 25-year horizon. These designations thus contemplate — but do not permit — future residential serviced development. For serviced development to occur on the Annapolis Lands, Halifax must adopt a resolution authorizing a “secondary planning process” and an amendment to the applicable land use by-law. The applicable by-law is the *Halifax Mainland Land Use By-Law*, also adopted in 2006.

[7] In 2014, Halifax adopted a revised version of the Planning Strategy. The Urban Settlement and Urban Reserve designations were maintained, and thus the zoning of the Annapolis Lands did not change, and has not changed since 2006. Nor were the conceptual boundaries for the potential park altered.

[8] Beginning in 2007, Annapolis made several attempts to develop the Lands. Ultimately, by resolution dated September 6, 2016, Halifax refused to initiate the secondary planning process, and Annapolis sued, alleging a constructive taking, misfeasance in public office, and unjust enrichment.

[9] At issue in this appeal is Annapolis’ allegation of a constructive taking. Specifically, Annapolis says that Halifax’s regulatory measures have deprived it of all

reasonable or economic uses of its land, resulting in a constructive taking without compensation, contrary to ss. 65 and 237 of the *Halifax Regional Municipality Charter*, S.N.S. 2008, c. 39, and ss. 6 and 24 of the *Expropriation Act*, R.S.N.S. 1989, c. 156. It alleges in particular that Halifax has acquired a beneficial interest in the Lands by exercising dominion over them so as to effectively create a public park at Annapolis' expense. According to Annapolis, members of the public hike, cycle, canoe, camp, and swim on the Lands, are encouraged to do so by Halifax, and Halifax financially supports organizations that also encourage people to use the Lands as a park. Further, signs posted on the Lands allegedly depict the municipality's logo and phone number, and a media article quotes a municipal employee referred to as "the city staffer overseeing the park's creation".

[10] On March 11, 2019, Halifax moved for partial summary judgment of Annapolis' claim, pursuant to r. 13 of the *Nova Scotia Civil Procedure Rules*. In its motion, Halifax sought the dismissal of Annapolis' constructive taking claim and urged the motion judge to find that, as a matter of law, a constructive taking cannot result from Halifax refusing to amend the Planning Strategy and associated land use by-laws. Annapolis resisted the motion, arguing that its claim raises genuine issues of material fact requiring a trial.

III. Judicial History

A. *Supreme Court of Nova Scotia, 2019 NSSC 341, 17 L.C.R. (2d) 1 (Chipman J.)*

[11] The motion judge dismissed Halifax’s partial summary judgment motion. He agreed with Annapolis that its constructive taking claim raised “vast” genuine issues of material fact requiring a trial, including:

- (a) whether Halifax had erected signage on the Lands depicting Halifax’s logo on various trails;
- (b) whether a Halifax employee had been “overseeing the park’s creation”;
- (c) whether the Lands would be treated as development lands and not parklands;
- (d) the existence of clauses in the Planning Strategy that mandate consideration of policy concepts without committing Council to adopt the policy, and clauses discussing an urban settlement designation boundary;
- (e) discovery evidence to the effect that Halifax had decided that the Annapolis Lands would be treated as development lands, not parklands; and
- (f) correspondence between counsel, including letters containing Halifax’s denial of Annapolis’ allegations.

[12] The motion judge also identified a triable issue in affidavit evidence suggesting the possibility of an ulterior motive on Halifax’s part — specifically, to reserve part of the Annapolis Lands for a public park. In this regard, he relied on *Lorraine (Ville) v. 2646-8926 Québec inc.*, 2018 SCC 35, [2018] 2 S.C.R. 577, which involved a claim under Quebec’s *Expropriation Act*, CQLR, c. E-24. In *Lorraine*, this Court affirmed that, where property is expropriated outside a legislative framework for an ulterior motive (such as to avoid paying an indemnity), a “disguised” expropriation occurs. In the motion judge’s view, disguised expropriation under the law of Quebec may be equated to constructive expropriation as that concept was understood by this Court in *The Queen in Right of the Province of British Columbia v. Tener*, [1985] 1 S.C.R. 533.

[13] In light of the foregoing, the motion judge concluded Annapolis’ constructive taking claim should proceed to trial. Expropriation cases, he said, are fact-specific and offer different scenarios in which a constructive taking claim may succeed, and this case is no different. He added that the facts material to the constructive taking claim were “sufficiently interwoven” with Annapolis’ two other causes of action, such that “to deny Annapolis’ right to pursue this claim would not appreciably shorten pre-trial procedures or the trial” (para. 44). Thus he did not find the proportionality principle, as described in *Hryniak v. Mauldin*, 2014 SCC 7, [2014] 1 S.C.R. 87, to support granting summary judgment.

B. *Nova Scotia Court of Appeal, 2021 NSCA 3, 455 D.L.R. (4th) 349 (Beveridge, Farrar and Derrick J.J.A.)*

[14] The Court of Appeal held that Annapolis’ constructive taking claim did not have a reasonable chance of successfully establishing, as *CPR* requires, an acquisition by Halifax of a beneficial interest in the Annapolis Lands or flowing from the Lands, and the removal of all reasonable uses of the Lands. Citing *Mariner Real Estate Ltd. v. Nova Scotia (Attorney General)*, 1999 NSCA 98, 177 D.L.R. (4th) 696, it held that limiting the use of land or reducing its value through regulation is insufficient. For Halifax to acquire a “beneficial interest” in the Annapolis Lands, land “must actually be taken” from Annapolis and acquired by Halifax (para. 71). This did not occur. Even had Halifax placed signage on the property to encourage its use by the public, this would, at most, have constituted a trespass by those using the lands. Annapolis has the same rights with respect to the Lands under the Planning Strategy that it has had for years. Nothing has changed. Nor, in the Court of Appeal’s view, would adopting a development plan constitute a taking. It simply allows a municipality to set future development goals and to ensure land will be developed (or not) accordingly.

[15] Finally, it said, Halifax’s intended use for the Lands is not relevant to the constructive taking analysis. Improper motive is not proof of a constructive taking, and *Lorraine* does not dictate a contrary conclusion.

IV. Issues

[16] The foregoing account presents the issues to be decided:

- (a) Did the Court of Appeal err in holding that an “acquisition of a beneficial interest” under the constructive taking test established by this Court in *CPR* requires land to “actually be taken” from an owner and acquired by the state? If not, should the *CPR* test be revisited?
- (b) Did the Court of Appeal err in holding that evidence of the state’s intended use of the impugned land is irrelevant to a claim for constructive taking?

V. Analysis

A. *Overview of the Law of Takings*

[17] It is useful to begin with a brief overview of the law of takings. Given the facts of this appeal, our focus is on expropriation through regulation — which, again, we refer to as a “constructive taking” in preference to other commonly applied terms such as “*de facto*” or “regulatory taking”, as in our view it more accurately captures the nature of the state action at issue and the effect on the landowner (see e.g., M. Lavoie, “Canadian Common Law and Civil Law Approaches to Constructive Takings: A Comparative Economic Perspective” (2010), 42 *Ottawa L. Rev.* 229).

[18] A “taking” is a “forcible acquisition by the Crown of privately owned property . . . for public purposes” (K. Horsman and G. Morley, eds., *Government*

Liability: Law and Practice (loose-leaf), at § 5:1). It may take the form of a constructive taking (effective appropriation of private property by a public authority exercising its regulatory powers), or a *de jure* taking (formal expropriation), by (in the case of land) taking title.

[19] To be clear, not every instance of regulating the use of property amounts to a constructive taking. Governments and municipalities holding delegated provincial regulatory authority (*Toronto (City) v. Ontario (Attorney General)*, 2021 SCC 34, at para. 2) validly regulate land in the public interest without effecting “takings”, properly understood (see *Compliance Coal Corporation v. British Columbia (Environmental Assessment Office)*, 2020 BCSC 621, 13 L.C.R. (2d) 215, at para. 91). The line between a valid regulation and a constructive taking is crossed where the *effect* of the regulatory activity deprives a claimant of the use and enjoyment of its property in a substantial and unreasonable way, or effectively confiscates the property (Horsman and Morley, at § 5:2). Put simply, “in order for a Crown measure to effect a constructive taking of property, private rights in the property must be virtually abolished, leaving the plaintiff with ‘no reasonable use’ of the property” (Horsman and Morley, at § 5:13 (emphasis added)).

[20] A series of lower court judgments affirm that, in general, Canadian courts require a “total loss of the plaintiff’s interest in property for the Crown’s action to constitute a taking” (Horsman and Morley, at § 5:13; see also *Lynch v. St. John’s (City)*, 2016 NLCA 35, 400 D.L.R. (4th) 62; *Sun Construction Company Limited v.*

Conception Bay South (Town), 2019 NLSC 102, 87 M.P.L.R. (5th) 256). Courts have, therefore, dismissed claims for compensation where the regulation left the owner *some* reasonable use for the property (*Genevieve Holdings Ltd. v. Kamloops (City)* (1988), 42 M.P.L.R. 171 (B.C. Co. Ct.); *Steer Holdings Ltd. v. Manitoba*, [1992] 2 W.W.R. 558 (Man. Q.B.), aff'd (1992), 99 D.L.R. (4th) 61 (Man. C.A.); *Purchase v. Terrace (City)* (1995), 26 M.P.L.R. (2d) 126 (B.C.S.C.); *Harvard Investments Ltd. v. Winnipeg (City)* (1995), 129 D.L.R. (4th) 557 (Man. C.A.)).

[21] At common law, taking of property by the state must be authorized by law, and triggers a presumptive right to compensation which can be displaced only by clear statutory language showing a contrary intention — that is, an intention *not* to compensate (see P. A. Warchuk, “Rethinking Compensation for Expropriation” (2015), 48 *U.B.C. L. Rev.* 655, at pp. 656 and 678-81). This was recognized in *Attorney-General v. De Keyser’s Royal Hotel*, [1920] A.C. 508 (H.L.), wherein Lord Atkinson stated: “The recognized rule for the construction of statutes is that, unless the words of the statute clearly so demand, a statute is not to be construed so as to take away the property of a subject without compensation” (p. 542). Explaining the rule’s rationale, His Lordship cited to *London and North Western Railway Co. v. Evans*, [1893] 1 Ch. 16 (C.A.), at p. 28, per Bowen L.J., saying, at p. 542:

The Legislature cannot fairly be supposed to intend, in the absence of clear words shewing such intention, that one man’s property shall be confiscated for the benefit of others, or of the public, without any compensation being provided for him in respect of what is taken compulsorily from him. Parliament in its omnipotence can, of course, override or disregard this

ordinary principle . . . if it sees fit to do so, but, it is not likely that it will be found disregarding it, without plain expressions of such a purpose.

Lord Parmoor agreed with Lord Atkinson that this rule was “well-established” and that “justice requires that statutes should not be construed to enable the land of a particular individual to be confiscated without payment”, absent clear words to the contrary (*De Keyser’s Royal Hotel*, at pp. 576 and 579).

[22] It is important to stress that the rule contemplates that governments have the power to immunize themselves from liability to pay compensation for a taking. While, as we explain, we do not “expand” that liability but merely affirm it, the point is that governments may effect takings without paying compensation, so long as the enabling statute clearly expresses that intention. Notably, in *CPR*, the legislation at issue — the *Vancouver Charter*, S.B.C. 1953, c. 55 — immunized the City from compensating landowners for any loss as a result of the restrictions on land development and use (*CPR*, at paras. 12, 19 and 36-37). From the standpoint of government, the exigencies of the rule are modest and easily satisfied.

[23] This Court first applied the rule in *De Keyser’s Royal Hotel* in *Manitoba Fisheries Ltd. v. The Queen*, [1979] 1 S.C.R. 101. Ritchie J., for the Court, cited this passage from Lord Radcliffe’s speech in *Belfast Corporation v. O.D. Cars Ltd.*, [1960] A.C. 490 (H.L. (N.I.)), at p. 523, at p. 110, with approval:

On the one hand, there would be the general principle, accepted by the legislature and scrupulously defended by the courts, that the title to

property or the enjoyment of its possession was not to be compulsorily acquired from a subject unless full compensation was afforded in its place. Acquisition of title or possession was “taking.” Aspects of this principle are found in the rules of statutory interpretation devised by the courts, which required the presence of the most explicit words before an acquisition could be held to be sanctioned by an Act of Parliament without full compensation being provided, or imported an intention to give compensation and machinery for assessing it into any Act of Parliament that did not positively exclude it. This vigilance to see that the subject’s rights to property were protected, so far as was consistent with the requirements of expropriation of what was previously enjoyed in specie, was regarded as an important guarantee of individual liberty. It would be a mistake to look on it as representing any conflict between the legislature and the courts. The principle was, generally speaking, common to both.

[24] That the rule in *De Keyser’s Royal Hotel* is one of common law answers Halifax’s submission that interpreting the protection narrowly against uncompensated takings avoids “creat[ing] a common law back door to constitutionalizing rights which were excluded deliberately from the *Charter*” (R.F., at paras. 108-09). It is, of course, true that the framers of our Constitution did not include the protection of property rights in the *Canadian Charter of Rights and Freedoms* (see Warchuk, at pp. 658-59). But the *Charter* is not, and never has been, the sole source of Canadians’ rights against the state; in particular, the common law also affords protections of individual liberty. Nor is the *scope* of common law rights dependent on whether such rights are also entrenched in the *Charter*. While this follows as a matter of logic, s. 26 of the *Charter* itself affirms that “[t]he guarantee in this Charter of certain rights and freedoms shall not be construed as denying the existence of any other rights or freedoms that exist in Canada.”

[25] This legal backdrop brings us to *CPR*, and its elaboration of the common law rule in the form of a two-part test for showing a constructive taking: “. . . (1) an acquisition of a beneficial interest in the property or flowing from it, and (2) removal of all reasonable uses of the property . . .” (para. 30 (emphasis added), citing *Mariner*, at p. 716; *Manitoba Fisheries*; *Tener*). The issues present in this appeal require us to consider the meaning of a “beneficial interest in the property or flowing from it” under the first part of that test. In bringing greater clarity to this aspect of the *CPR* test, we do not change the doctrine of constructive takings, but simply apply it to the facts of the present dispute. As we will explain, the Court in *CPR* did not use “beneficial interest” in the technical sense that it carries in the domain of equity. Rather, a “beneficial interest” is to be more broadly understood as an “advantage” — hence the Court’s coupling of “beneficial interest” with the phrase “or flowing from [the property]”. Clearly, if the interest acquired by the state can be one which *flows from* the property, what must be shown by the property owner can fall short of an *actual* acquisition by the state.

[26] Further, we must also decide the relevance, if any, under the second part of the test of the public authority’s intended use of the land.

B. “*Beneficial Interest*”

[27] The Court of Appeal, it will be recalled, held that the first part of the test stated in *CPR* — the “acquisition of a beneficial interest in the property or flowing from it” — requires Annapolis to show that Halifax *actually acquired* the Lands. Deciding

whether this is so requires that we give meaning to the expression “beneficial interest”, as it was used in *CPR*. In our view, that meaning is best appreciated by considering the authorities upon which *CPR* relied in stating that condition, and especially this Court’s decisions in *Manitoba Fisheries* and *Tener*. As we will explain, doing so reveals that actual acquisition is not necessary; rather, the obtaining by Halifax of an *advantage* in respect of the Lands suffices.

(1) *Manitoba Fisheries*

[28] Manitoba Fisheries Ltd. was a private commercial fishery. In 1969, Parliament enacted the *Freshwater Fish Marketing Act*, R.S.C. 1970, c. F-13, which granted a federal Crown corporation a commercial monopoly on the export of fish from Manitoba, and delegated power to the corporation to grant licenses to private enterprises like Manitoba Fisheries to continue operating notwithstanding the Act. Manitoba Fisheries did not receive such a license, and eventually the constraints of the Act put Manitoba Fisheries out of business. In such circumstances, the Act required the federal government to transfer funds to the Province of Manitoba, which would then compensate affected businesses, such as Manitoba Fisheries. Manitoba, however, refused to compensate Manitoba Fisheries (pp. 103-5).

[29] Significantly, the monopoly created by the Act conferred an economic advantage upon the state, but not an *actual acquisition* of property. It is true that, relying on *Ulster Transport Authority v. James Brown & Sons, Ltd.*, [1953] N.I. 79 (C.A.), Ritchie J. held that Manitoba Fisheries’ loss of goodwill deprived the company of

property that was acquired by the corporation (p. 110). But this rested on his view that the government had acquired *an advantage* through the acquisition of a statutory monopoly that entitled it to *benefits* that would otherwise have flowed to the company. This interpretation is made plain in Ritchie J.’s conclusion that “[goodwill] is the whole advantage, whatever it may be, of the reputation and connection of the firm”, and that the monopoly “completely extinguished” the appellant’s goodwill, leaving customers with no choice but to do business with the corporation (p. 107 (emphasis added)). In other words, the monopoly created by the Act restricted competition in the industry, thereby allowing the state to acquire all of the advantage that Manitoba Fisheries had previously enjoyed on the basis of its reputation and connections.

[30] Just as significantly, the Court was also concerned about the *effect* of the taking on the property holder. That effect — the loss of the business — was regarded as a taking or acquiring of Manitoba Fisheries’ business by the state (p. 118). A persuasive consideration for Ritchie J. was that, “[u]ntil the creation of the Corporation by the Act, persons wishing to purchase freshwater fish from Manitoba could purchase such fish from [Manitoba Fisheries] or other firms in the industry. After the creation of the Corporation such purchases could be made only from the Corporation or its agents” (p. 109). This led him to conclude: “Once it is accepted that the loss of the goodwill of the appellant’s business which was brought about by the Act and by the setting up of the Corporation was a loss of property and that the same goodwill was by statutory compulsion acquired by the federal authority, it seems to me to follow that the appellant was deprived of property which was acquired by the Crown” (p. 110).

[31] That the Court in *Manitoba Fisheries* ascribed significance to the *effects* on the property holder is underscored by Ritchie J.’s reliance on *Ulster Transport Authority*. The relevant passage cited Lord MacDermott’s observations in that case:

We are not dealing here with a “mere” prohibition or with a prohibition which is essentially regulatory in character. We are dealing with what I have held to be, according to the intention of the Legislature, a device for diverting a definite part of the business of furniture removers and storers from the respondents and others to the appellants. If that is right, the result must be the same whether section 5(1) of the Act of 1920 sounds in pith and substance or in effect or partly in one and partly in the other. Wherever else a prohibition directed to other ends might lead, the relevant prohibition cannot but constitute a taking if my views as to its effect and underlying intention are correct. [Emphasis added.]

(*Ulster Transport Authority*, at p. 116, as cited in *Manitoba Fisheries*, at p. 111.)

Adopting the reasoning in *Ulster Transport Authority*, Ritchie J. concluded that the impugned regulation “had the effect of depriving the appellant of its goodwill as a going concern and consequently rendering its physical assets virtually useless and that the goodwill so taken away constitutes property of the appellant for the loss of which no compensation whatever has been paid” (p. 118 (emphasis added)).

(2) *Tener*

[32] The Court in *Tener*, as in *Manitoba Fisheries*, also focussed on the *effect* of a regulatory measure and the *advantage* acquired therefrom by the government. The Teners were the registered holders of mineral claims on lands later included in a provincial park. The Province of British Columbia imposed increasingly onerous

conditions governing the exploitation of natural resources in the park, until the Teners were informed that no new exploration or development would be permitted, thus denying them the possibility of exploiting their mineral claims (pp. 536-38 and 552). The central issue on appeal to this Court was whether the Teners were entitled to compensation under the relevant legislation.

[33] In finding for the Teners, Estey J., for the majority, revealed his concern that the regulation had the *effect* of (or, as he put it, “amount[ed] to”) securing an *advantage* by confining all reasonable uses of the property to the Province’s preferred use as a provincial park. As Estey J. explained, while there had been “no regulation *qua* minerals which reduced the value of these minerals or the opportunity of the respondents to remove them”, the “denial of access to these lands occurred under the *Park Act* and amounts to a recovery by the Crown of a part of the right granted to the respondents in 1937” (p. 563 (emphasis added)).

[34] Thus Estey J.’s analysis in *Tener* adhered closely to that in *Manitoba Fisheries*. The Teners retained their mineral rights. In securing the advantage of preserving “qualities perceived as being desirable for public parks” (p. 564) by regulating away the Teners’ ability to exercise those rights, the Province had *effectively* “recover[ed] [. . .] the right granted to the [Teners]” (p. 563).

[35] Wilson J., concurring in the result, focussed on the nature of the Teners’ interest. She described that interest as “in the nature of a profit à prendre comprising both the mineral claims and the surface rights necessary for their enjoyment” (p. 540).

But the Province could not take the actual *profit à prendre*, being a registrable interest under British Columbia’s land registry system, without *actually* taking actual title. Hence Wilson J.’s emphasis that the holder of a *profit à prendre* “owns . . . mineral claims and the right to exploit them through the process of severance” (p. 541 (emphasis added; emphasis in original deleted)). So understood, the interest held by the Teners had not been actually acquired, since the Province did not itself obtain a right of exploitation. What the Province *did* acquire by preventing the Teners from exploiting their mineral rights was *an advantage* — specifically, preserving the land as a provincial park in the public interest.

[36] That the Province need not to have been shown to have *actually acquired* a *proprietary interest* for the Teners to establish a constructive taking, and that the focus is instead on *the effect* on the landowner of the advantage gained by the land use regulation, is highlighted by Wilson J.’s reasons:

In my view, this is a case of expropriation under s. 11(c) of the *Park Act* to which the *Highways Act* applies. I reach this conclusion on the basis that the absolute denial of the right to go on the land and sever the minerals so as to make them their own deprives the respondents of their profit à prendre. Their interest is nothing without the right to exploit it. The minerals *in situ* do not belong to them. Severance and the right of severance is of the essence of their interest.

. . .

While the grant or refusal of a licence or permit may constitute mere regulation in some instances, it cannot be viewed as mere regulation when it has the effect of defeating the respondents’ entire interest in the land. Without access the respondents cannot enjoy the mineral claims granted to them in the only way they can be enjoyed, namely by the exploitation of the minerals. [Emphasis added; p. 550.]

[37] We note that Wilson J. expressly rejected the Crown’s submission that “it is not enough to show that what the Crown did prevented the respondents from realizing on their interest or rendered it worthless” (p. 551). Instead, the Teners had to show “that the Crown has appropriated their interest to itself, that the interest which previously belonged to the respondents now belongs to the Crown” (p. 551).

(3) Defining the Nature of a “Beneficial Interest”

[38] In our view, the foregoing jurisprudence — upon which the *CPR* test was expressly stated as resting — supports an understanding of “beneficial interest” as concerned with the *effect* of a regulatory measure on the landowner, and not with whether a proprietary interest was actually acquired by the government. Conversely, that same jurisprudence supports the view that “beneficial interest”, as that term appears in the first part of the test stated in *CPR*, refers *not* to actual acquisition of the equity that rests with the beneficial owner of property connoting rights of use and enjoyment, but to an “advantage” flowing to the state. We say this for two reasons.

[39] First, to require actual acquisition would collapse the distinction between constructive (*de facto*) and *de jure* takings — a distinction which *CPR* explicitly preserves (paras. 30-37). Simply put, if a constructive taking requires an *actual* taking, then it is no longer constructive. It follows that the Court of Appeal’s requirement of an actual acquisition of the Annapolis Lands cannot be necessary to satisfy the *CPR* test for a constructive taking.

[40] Secondly, interpreting “beneficial interest” broadly (as meaning a benefit or advantage accruing to the state) ensures *CPR*’s coherence to *Manitoba Fisheries* and *Tener*, neither of which understood “benefits” in the strict equitable sense of that term. Again, the references to those authorities in *CPR* demonstrate that *CPR* merely sought to affirm, and not to alter, our law of constructive takings. This interpretation is supported by the explicit wording under the first part of the *CPR* test: “. . . a beneficial interest in the property or flowing from it . . .” (para. 30 (emphasis added)). An interest flowing from the property affirms that a “beneficial interest” can be more broadly understood as an advantage, and need not be an actual acquisition.

[41] To be clear, we are not “depart[ing] from precedent” (para. 111), as our colleagues contend. We aim to illuminate *CPR*, not overrule it. Our colleagues say that courts “have applied the *CPR* test without difficulty” (para. 112). With respect, this misses the point. The key question is whether the lower courts have applied the *CPR* test *correctly*. In our respectful view, many of them have not. Indeed, the Court of Appeal itself misapprehended the law in this case, by asserting that *CPR* requires an *actual* expropriation to establish a constructive taking. As we have explained, and as the authorities confirm, *CPR* — properly understood — trains the court’s eye on whether a public authority has derived an advantage, in *effect*, from private property, not on whether it has formally acquired a proprietary interest in the land. To hold otherwise would be to erase the long-standing distinction between *de jure* and *de facto* expropriation from Canadian law.

[42] As a final observation, we acknowledge that, in addition to *Manitoba Fisheries* and *Tener*, the Court in *CPR* also cited to *Mariner*. But this does not affect our analysis. *Mariner* concerned the Province of Nova Scotia’s designation of privately owned land as a beach under a provincial statute that subjected it to stringent conservation regulations. When the Minister refused the respondents’ applications to build homes on the land, they sought a declaration that the Crown had expropriated their lands, entitling them to compensation. Cromwell J.A. (as he then was), writing for the Nova Scotia Court of Appeal, held that the respondents’ loss of economic value did not amount to an advantage acquired by the provincial authority (see generally *Mariner*, at pp. 713-16).

[43] *Mariner* illustrates that regulation alone will not satisfy the test for a constructive taking; there must be something more “beyond drastically limiting use or reducing the value of the owner’s property” (p. 716). When this threshold is crossed — that is, where all reasonable uses have been removed — a regulation may be, “in effect, confiscation” (p. 727 (emphasis added)). To be clear, *Mariner* does not stray from focussing on both the *effect* of the taking and the *advantage* acquired by the government, as required by this Court’s jurisprudence and affirmed in the test set out in *CPR*. Rather, and consistent with both *Manitoba Fisheries* and *Tener*, *Mariner* asked whether the *effect* of the regulation was to remove an interest in land (*Mariner*, at p. 722, referring to *Tener*).

(4) Conclusion on “Beneficial Interest”

[44] In sum, we affirm that the test to show a constructive taking is that stated by *CPR*, properly understood. The reviewing court must decide: (1) whether the public authority has acquired a beneficial interest in the property or flowing from it (i.e. an advantage); and (2) whether the state action has removed all reasonable uses of the property. This gives effect to this Court’s acknowledgement of a common law right to compensation where the two-part *CPR* test is satisfied. It accords with imperatives of justice and fairness, which underpin the court’s assessment of expropriation claims, and remedies situations where cases do not neatly fit within the expropriation legislative framework and would otherwise “fall between the cracks” (Warchuk, at pp. 686 and 690).

[45] To this, we would add that, because the test focusses on *effects* and *advantages*, substance and not form is to prevail. A court deciding whether a regulatory measure effects a constructive taking must undertake a realistic appraisal of matters in the context of the specific case, including but not limited to:

- (a) The nature of the government action (i.e., whether it targets a specific owner or more generally advances an important public policy objective), notice to the owner of the restrictions at the time the property was acquired, and whether the government measures restrict the uses of the property in a manner consistent with the owner’s reasonable expectations;

- (b) The nature of the land and its historical or current uses. Where, for example, the land is undeveloped, the prohibition of all *potential* reasonable uses may amount to a constructive taking. That said, a mere reduction in land value due to land use regulation, on its own, would not suffice; and
- (c) The substance of the alleged advantage. The case law reveals that an advantage may take various forms. For example, permanent or indefinite denial of access to the property or the government’s permanent or indefinite occupation of the property would constitute a taking (*Sun Construction*, at para. 15). Likewise, regulations that leave a rights holder with only notional use of the land, deprived of all economic value, would satisfy the test. It could also include confining the uses of private land to public purposes, such as conservation, recreation, or institutional uses such as parks, schools, or municipal buildings.

C. *Disguised Expropriation in Quebec Civil Law*

[46] The parties and several interveners invoked civil law authorities in this appeal. The conceptual similarities between the common law doctrine of constructive takings and the civil law doctrine of disguised expropriation have been highlighted by some authors (Lavoie, at pp. 241-45; M.-A. LeChasseur, “L’expropriation *de facto* au Canada et la transcendance des solidarités”, in *Service de la qualité de la profession du*

Barreau du Québec, vol. 509, *Développements récents en droit municipal* (2022), 71; Y. Emerich, *Droit commun des biens: perspective transsystémique* (2017), at pp. 225-27 and 235-37). We refer to civil law principles “for the purpose of explanation and illustration”, bearing in mind that Quebec precedents serve as persuasive, rather than binding, authority (*Farber v. Royal Trust Co.*, [1997] 1 S.C.R. 846, at para. 32; see also *C.M. Callow Inc. v. Zollinger*, 2020 SCC 45, at para. 58). To be clear, our analysis does not disregard the distinct features of the respective doctrines from either legal tradition (*Callow*, at para. 158, per Brown J., concurring).

[47] The doctrine of disguised expropriation in Quebec civil law is founded upon art. 952 of the *Civil Code of Québec* (“C.C.Q.”): “No owner may be compelled to transfer his ownership except by expropriation according to law for public utility and in return for a just and prior indemnity.” Article 952 establishes a presumption against uncompensated expropriation by the state, as does the common law through the rule in *De Keyser’s Royal Hotel*, as we have explained (P.-A. Côté, in collaboration with S. Beaulac and M. Devinat, *The Interpretation of Legislation in Canada* (4th ed. 2011), at pp. 511-13). In the context of municipal regulations, an owner subject to disguised expropriation may challenge the validity or operability of the bylaw under administrative law principles or, alternatively, claim an indemnity for disguised expropriation under art. 952 (*Lorraine*, at para. 2; S. Pelletier and F. Côté, “Développements récents en matière d’expropriation déguisée: distinction entre les recours en nullité, en dommages pour responsabilité extracontractuelle d’un organisme public et en expropriation déguisée”, in *Service de la qualité de la profession du*

Barreau du Québec, vol. 468, *Développements récents en droit de l'environnement* (2019), 303).

[48] Quebec courts have recognized that art. 952 *C.C.Q.* establishes a no-fault liability scheme for disguised expropriation, in contrast to administrative law challenges to the validity of a bylaw based on the municipality's improper motive (see *Ville de Léry v. Procureure générale du Québec*, 2019 QCCA 1375, at para. 17; *Montréal (Ville) v. Benjamin*, 2004 CanLII 44591 (Que. C.A.), at para. 57; *Ville de La Prairie v. 9255-2504 Québec inc.*, 2020 QCCS 307, 2020 CarswellQue 2737 (WL), at para. 29; *Spénard v. Salaberry-de-Valleyfield (Cité de)*, [1983] C.S. 725). It is now well established in the jurisprudence on disguised expropriation that the criterion applicable to such claims is whether the state action [TRANSLATION] “remov[es] all reasonable uses of the immovable” (*Dupras v. Ville de Mascouche*, 2022 QCCA 350, at para. 27 (CanLII); see also *Wallot v. Québec (Ville)*, 2011 QCCA 1165, 24 Admin. L.R. (5th) 306, at para. 42; *Municipalité de Saint-Colomban v. Boutique de golf Gilles Gareau inc.*, 2019 QCCA 1402, at para. 64; *Meadowbrook Groupe Pacific inc. v. Ville de Montréal*, 2019 QCCA 2037, 2019 CarswellQue 12262 (WL), at para. 29; *Ville de Québec v. Rivard*, 2020 QCCA 146, at para. 64; *Ville de Saint-Rémi v. 9120-4883 Québec inc.*, 2021 QCCA 630, at para. 25 (CanLII)). For this reason, disguised expropriation under art. 952 *C.C.Q.* requires no element analogous to the “acquisition” branch of the *CPR* test. A bylaw that removes all reasonable uses of the property suffices, on its own, to effect a disguised expropriation in Quebec civil law.

[49] There are, however, exceptions that permit us to compare disguised expropriation to constructive takings at common law. The Quebec Court of Appeal’s decision in *Benjamin* provides one such example. In that case, the owner’s claim based on the decades-old bylaw was prescribed. But the Court of Appeal held that [TRANSLATION] “in the very particular circumstances of this case” (para. 62), the combination of zoning restrictions and the City’s use of the land as an extension of its park justified awarding an indemnity for disguised expropriation (paras. 65 and 82).

[50] The criteria applied by the Quebec Court of Appeal in *Benjamin* “pla[y] a functionally similar role” (*Bhasin v. Hrynew*, 2014 SCC 71, [2014] 3 S.C.R. 494, at para. 44) to the “deprivation” and “acquisition” requirements of the *CPR* test. Accordingly, and as we discuss below, we regard *Benjamin* and analogous Quebec cases as having persuasive authority in assessing constructive taking claims. These rulings, we emphasize, are useful for illustrative purposes only in applying the *CPR* test. In this case, we need not draw on Quebec authorities to fill a doctrinal gap in the common law or to modify or otherwise develop existing legal rules (*Callow*, at para. 123, per Brown J., concurring, and para. 191, per Côté J., dissenting).

D. *Intention*

[51] The courts below disagreed on whether the intention of a public authority is relevant to the analysis of constructive taking claims. The motion judge, at para. 35, cited this Court’s definition of disguised expropriation articulated in *Lorraine*, at para. 2, which included “an ulterior motive”, and concluded that this was equally

applicable to finding a constructive taking at common law (para. 36). The Court of Appeal, however, held that “[m]otive is not a material fact in the context of a [constructive] expropriation claim” (para. 82).

[52] Respectfully said, neither position is correct. The public authority’s intention is not an *element* of the test for constructive takings at common law. Again, the mischief addressed by the doctrine is one of advantage and effects, not that a public authority acted in bad faith or with an otherwise ulterior motive. Indeed, this Court held in *CPR* that, even if the City’s purpose were to “enable the inhabitants to use the corridor for walking and cycling,” its bylaw, *in effect*, neither encouraged trespassing nor prevented the historical and current use of the land (para. 33) and therefore could not be said to have deprived the landowner of all reasonable uses.

[53] This does not mean, however, that intention is *irrelevant* to the inquiry. Indeed, the case law we discuss below suggests that the objectives pursued by the state may be *some evidence of* constructive taking. Stated differently, the intention to take constructively, if proven by the claimant, may support a finding that the landowner has lost all reasonable uses of their land (inasmuch as a finding of this effect can be supported by evidence that such an effect was intended). But the absence of evidence of the state’s intention does not preclude a property holder’s claim. It follows that intent may constitute a “material fact” in the context of a constructive taking claim. We stress, however, that the focus of the inquiry must remain on *the effects* of state action.

[54] A brief review of the jurisprudence illustrates the supporting role of intention in assessing constructive taking claims. In *Manitoba Fisheries*, at p. 111, as we have already recalled, Ritchie J. endorsed a passage from *Ulster Transport Authority* highlighting the relevance of intention in constructive taking cases. The key portion of this passage merits repeating: “. . . the relevant prohibition cannot but constitute a taking if my views as to its effect and underlying intention are correct” (emphasis added). Thus the objective pursued by the state was considered (*Ulster Transport Authority*, at pp. 113 and 116; *Manitoba Fisheries*, at pp. 111-13) in distinguishing between a mere regulatory prohibition and the constructive taking of a business through the establishment of a public monopoly.

[55] Likewise, in *Lynch* — which Halifax acknowledges was correctly decided — the Court of Appeal of Newfoundland and Labrador treated the City’s intention in refusing to allow any development on the subject watershed land as germane to whether a constructive taking had occurred. In concluding it had, the court referred to the City’s express intention “to take away the Lynches’ right to appropriate the groundwater on their land” so as to secure the City’s “right to a continuous flow of uncontaminated groundwater downstream to [its] water facilities” (para. 60). Moreover, the City took the view that securing this objective required the prohibition of “all activity on the Lynch property” (para. 62). The City’s intention, as implemented by its officials, thus indicated that the land in issue had been constructively taken.

[56] The Quebec Court of Appeal’s decision in *Benjamin* further illustrates how intent may support a finding of a constructive taking. There, a zoning bylaw designated the claimant’s property as a “park”, and the City [TRANSLATION] “knowingly” used the land in issue as an extension of its own park for 14 years (para. 50). The City — inadvertently at first — installed a fence and lampposts and created a trail on the claimant’s land, which was effectively incorporated into an adjacent public park. The City then manifested its intention to achieve that very effect by refusing to remove the fence after receiving a demand letter from the claimant. On appeal, the City offered to remove the fence and lampposts, but only if the claimant accepted to adequately maintain his own land for *public* safety. The Court of Appeal characterized the City’s behaviour as an [TRANSLATION] “abuse of right” and underscored its lack of “goodwill” to either formally expropriate the claimant’s land or permit reasonable uses thereof (paras. 49, 54 and 59). The plans transparently set out by the City thus indicated that the claimant would continue to be deprived of all reasonable uses of his land indefinitely. In these circumstances, the City’s intent buttressed the finding of disguised expropriation arising from the bylaw and the persistent use of the claimant’s land.

[57] In short, the underlying objective pursued by a public authority may provide supporting evidence for a constructive taking claim. But it is neither necessary nor sufficient. The case law indicates that the assessment of intent has proved helpful in distinguishing between mere regulations in the public interest and takings requiring compensation at common law. What ultimately matters, however, *irrespective* of matters of intent, is whether the state-imposed restrictions on the property conferred an

advantage on the state that *effectively* amounts to a taking (*Tener*, at pp. 563-65, per Estey J., and pp. 551-52, per Wilson J.; *Manitoba Fisheries*, at p. 118).

E. *Application*

[58] The foregoing explains why, in our respectful view, the Court of Appeal erred by granting Halifax’s application for summary judgment dismissing Annapolis’ constructive taking claim. While the Court of Appeal saw “nothing on the facts . . . that could be remotely considered to be a taking of the Annapolis Lands and a corresponding deprivation of all reasonable uses of the lands” (para. 85), as we have explained, it is well-established in our law that zoning which effectively preserves private land as a public resource may constitute a “beneficial interest” flowing to the state, as contemplated in *CPR*, where it has the effect of removing all reasonable uses of that land. Further, we have already explained why the motion judge did not err by considering Halifax’s alleged intent with respect to the Annapolis Lands in his application of the *CPR* test.

[59] More specifically, we agree with the motion judge’s identification of the material facts to be determined (at paras. 25-26 and 36), arising from:

- September, 2019 correspondence between counsel demonstrating [Halifax]’s denial of the allegations in the amended Statement of Claim at paras. 20, 21, 61, 71 and 79. (exhibits EE and FF)
- Signage erected on Annapolis’ property depicting [Halifax]’s logo on various trails. (exhibits AA, BB and 1)

- December 18-23, 2008 The Coast article quoting [Halifax] employee Peter Bigelow “. . . the city staffer overseeing the park’s creation”. (exhibit U, p. 743 especially)
- Ms. Denty’s discovery evidence to the effect that when the 2006 [Planning Strategy] was finalized, the decision was made that Annapolis’ property would be treated as development lands, not parklands. (exhibit A, pp. 54, 55)
- [The Planning Strategy], clause 1.7.1 denoting what [Halifax] Council “shall consider”. “This ter[m] denotes the mandatory consideration of policy concepts but does not commit [Halifax] Council to the eventual adoption of policy in secondary planning strategies”. (exhibit D, p. 175)
- [The Planning Strategy], clause 3.1 and the discussion of “S-2” and S-3” the “Urban Settlement Designation Boundary”. (exhibit D, pp. 195, 196)

...

- Ms. Denty’s discovery evidence as per the transcript and the clarifications in [Halifax] counsel’s October 16, 2019 correspondence (exhibit C at p. 905 and exhibit A at pp. 859-860).

...

. . . Mr. Hattie’s affidavit[, elements of which] “point to the possibility of an ulterior motive” on the part of [Halifax].

[60] The importance of making findings on these points flows from the motion judge’s correct legal conclusions that (1) a constructive taking need only have the *effect* of defeating the landowner’s reasonable use of land; and (2) the state’s intent may be relevant in assessing whether all reasonable uses of land has been removed.

[61] The Court of Appeal did not identify any legal error or “patent injustice” that would justify interfering with the motion judge’s decision to dismiss Halifax’s summary judgment motion on the basis of the foregoing triable issues (*Coady v. Burton Canada Co.*, 2013 NSCA 95, 365 D.L.R. (4th) 172, at para. 19). At most, it can be said

that the Court of Appeal merely disagreed with the motion judge’s exercise of discretion. This does not provide a sufficient basis for appellate intervention.

[62] Further, the Court of Appeal erred in its r. 13.04 analysis. In *Shannex Inc. v. Dora Construction Ltd.*, 2016 NSCA 89, 58 C.L.R. (4th) 1, at para. 34, the Nova Scotia Court of Appeal set out a five-part sequential test on a r. 13.04 motion for summary judgment. The first part of the test asks whether the challenged pleading discloses a “genuine issue of material fact”, either pure or mixed with a question of law. If yes, it should not be determined by summary judgment.

[63] There was no need for the Court of Appeal to proceed beyond the first *Shannex* step. The motion judge correctly decided that Annapolis’ pleadings contain disputed material facts, mixed with questions of law, and the evidence before the motion judge failed to negate the existence of genuine issues of material fact for trial. We therefore see no basis on which to disturb the motion judge’s conclusion that Annapolis’ pleadings in support of its constructive taking claim disclose “vast issues of material fact to be determined” at trial (para. 25). Indeed, two disputed factual issues are particularly material to the *CPR* test.

(1) Halifax’s Alleged Acquisition of a Beneficial Interest in the Annapolis Lands

[64] First, it is disputed whether Halifax is promoting the Annapolis Lands as a public park, for instance by encouraging public use and holding them out as a park, as

Annapolis alleges. This disputed fact is material because, if proven, it would tend to support Annapolis' claim that Halifax acquired a "beneficial interest" in the Lands, as we have explained it. Preserving a park in its natural state may constitute an advantage accruing to the state, thus satisfying the "acquisition" element of *CPR*.

[65] To be clear, we reject the Court of Appeal's formalistic position that a public authority's alleged encouragement and financial support of trespass can never amount to an acquisition of a beneficial interest. Several cases support the proposition that whether a public authority treats private lands as an extension of a public park is a key factor in assessing the acquisition requirement. For instance, in *Benjamin*, the Quebec Court of Appeal found that the City of Montréal's knowing use of private land as a public park — entailing the installation of lampposts, a fence, and signage indicating the location of the "park" that included the subject lands — in conjunction with restrictive zoning, effectively constituted a "disguised expropriation" (paras. 65 and 82).

[66] Similarly, in *Dupras v. Ville de Mascouche*, 2020 QCCS 2538, the Quebec Superior Court held that the City had effectively expropriated the claimant's lands by subjecting them to "conservation" zoning and treating them as if they were part of a public park. Notably, the City had (1) marked off trails, (2) added signage with park maps covering the subject land, (3) encouraged the public to use the lands on the park, and (4) taken out insurance to cover public recreational activities on the land (see paras. 137-40). The Quebec Court of Appeal affirmed the Superior Court's reasoning

and dismissed the respondent city's cross-appeal on the finding of disguised expropriation (2022 QCCA 350, at paras. 27-40).

[67] A similar claim in *Steer Holdings* failed, but for reasons which distinguish it from the allegations here. In *Steer Holdings*, the Manitoba Court of Appeal held that no benefit was acquired where there was “no suggestion that people will be encouraged in any way to move from the nature park to the subject property” (p. 67). Moreover, the land was not adjacent to the provincial park. The Court of Appeal thus rejected the argument that the Province of Manitoba had effectively enlarged its park system.

[68] As we have explained, and as the cases confirm, the doctrine of constructive takings looks to the *effects* of state action; it does not require a formal acquisition of a proprietary interest by the state. The absence of such a proprietary interest does not preclude the argument that, *in effect*, Halifax has functionally treated the Annapolis Lands as if they were a park for the benefit of the public. If proven, this fact would support Annapolis' claim that Halifax acquired a beneficial interest in its property. It is, therefore, plainly material.

(2) Halifax's Alleged Removal of All Reasonable Uses of the Annapolis Lands

[69] Second, it is disputed whether Halifax, by allegedly treating the Annapolis Lands as a public park, has eliminated all uses of the Lands except serviced development, which is conditional upon the approval of Annapolis' secondary planning applications.

[70] This disputed fact is material because, if proven, it may arguably support Annapolis' claim that it has lost all reasonable uses of its property. This would leave Annapolis to shoulder the burden of holding the Lands as a public park indefinitely, while Halifax enjoys the advantage of having the Lands reserved for its own purposes without having to pay compensation. It is notable that the Court of Appeal, after observing that "Annapolis' reasonable uses of its lands have not changed", failed to identify a single reasonable possible use of the property (para. 92; see *Lynch*, at para. 63).

[71] Further, the Court of Appeal's reasoning — to which our colleagues subscribe — cuts against one of the core lessons from *Mariner*, being to look to "the actual application of the regulatory scheme as opposed simply to its potential for interference with the owner's activities" (p. 718 (emphasis added)). In concluding that there had been no taking in the present case, the Court of Appeal leaned heavily on the fact that the zoning rules had not changed, such that Annapolis' land use rights remained the same after the release of the 2006 Planning Strategy. But the Court of Appeal neglected to consider Halifax's *application* of the regulatory scheme as alleged by Annapolis. Indeed, *Manitoba Fisheries*, *Tener*, and *Mariner* all stand for the proposition that a regulation does not *per se* eliminate all reasonable uses of property where it provides a mechanism for permits, exemptions, or licenses to allow activities that are otherwise prohibited. In such cases, it is not the regulation alone that effects a constructive taking, but the *application* of that regulation to the land, including the manner in which the public authority *refuses* to grant the permit, exemption, or license

(see *Manitoba Fisheries*, at p. 103 (taking of the goodwill resulting from the refusal by the Crown corporation to grant a license or exemption for the export of fish); *Tener*, at pp. 564-65 (Crown’s notice denying a permit to conduct development work found to be an “expropriation” of the mineral rights)). In sum, “[w]hen . . . the claim is that the impact of a regulatory scheme has, in effect, taken away all rights of ownership, it is not the existence of the regulatory authority that is significant, but its actual application to the lands” (*Mariner*, at p. 729 (emphasis in original)). Therefore, the Court of Appeal erred in focussing solely on the “longstanding zoning *status quo* for the Lands” (R.F., at para. 18) since the passing of the *Halifax Mainland Land Use By-Law* in 2006.

[72] According to Annapolis, Halifax has repeatedly refused to initiate the secondary planning process which could lead to the re-zoning of the Annapolis Lands. If Annapolis can prove at trial that Halifax is unlikely to *ever* grant secondary planning approval, this is clearly material to its constructive taking claim. In our view, all reasonable uses of land may be shown to have been eliminated where a permit needed to make reasonable use of the land is refused, such that the state has effectively taken away all rights of ownership.

[73] We note our colleagues’ characterization of Halifax’s alleged conduct as a mere “refusal to up-zone” which did not affect the reasonable uses of the Annapolis Lands. Our colleagues say that Halifax’s alleged conduct “simply disappointed” Annapolis’ hopes of cashing in on a speculative investment (para. 145). For several reasons, we respectfully reject this view.

[74] First, Annapolis did not acquire the Lands as a “speculative bet” (para. 145). Annapolis acquired most of the Lands in 1956, slowly adding to its holdings over time. Crucially, Halifax did not regulate land use in the relevant area prior to 1982. In other words, nothing prevented Annapolis from developing the Lands when they were first acquired. The conduct alleged is therefore not a mere “refusal to up-zone”, as our colleagues say (para. 115). Annapolis originally had the right to use the Lands at its discretion. It now alleges that Halifax eliminated this right and thereby secured a public advantage without compensation.

[75] Secondly, and again with respect, our colleagues incorrectly characterize our position as an assertion that a “refusal to up-zone vacant land” is tantamount to a constructive taking (para. 151). A refusal to up-zone, standing alone, will not generally remove *all* reasonable uses of vacant land. As we have explained, Halifax’s alleged conduct in this case is more than a mere refusal to up-zone. Annapolis claims that Halifax has effectively transformed its Lands into a public park. We emphasize, however, that Halifax may defeat Annapolis’ constructive taking claim by showing a *single* reasonable use of the property.

[76] In this regard, it is telling that our colleagues do not identify *any* reasonable use of the Annapolis Lands. The mere (theoretical) possibility for Annapolis to lease the lands is not indicative of any reasonable use of the property — as our colleagues implicitly recognize in discussing *Benjamin*. As they acknowledge, the City in *Benjamin* “render[ed] any use of the land practically impossible” (para. 139), despite

the absence of any restrictions on leasing. In any event, it is not realistic to assert that Annapolis may lease lands which, according to its allegations, are already used as a public park by Halifax.

[77] Moreover, in most cases, a public authority will not benefit from a refusal to up-zone vacant land. As such, even if all reasonable uses of land are eliminated by a zoning refusal, the first element of the *CPR* test for a constructive taking would not ordinarily be met. Accordingly, we cannot agree with our colleagues that our approach “dramatically expands the potential liability of municipalities engaged in land use regulation” (para. 115). To the contrary, our approach is firmly rooted in the common law and does not encroach on the general rule that a refusal to up-zone does not itself effect a constructive taking.

[78] Lastly, we reiterate that provincial legislatures remain free, as they always have been, to “alter the common law” in respect of constructive takings (*CPR*, at para. 37, referring to the immunity conferred by s. 569 of the *Vancouver Charter*) — by, in this case, immunizing Halifax by statute from the obligation to pay compensation for taking private property in the public interest.

[79] In light of the foregoing, the Court of Appeal erred in striking Annapolis’ claim related to the alleged constructive taking. There are genuine issues of material fact to be tried.

VI. Disposition

[80] We would allow the appeal, set aside the Court of Appeal’s partial summary judgment order, and restore the motion judge’s order dismissing Halifax’s motion for partial summary judgment, with costs throughout. Annapolis’ claim against Halifax, in its entirety, may proceed to trial.

The reasons of Karakatsanis, Martin, Kasirer and Jamal JJ. were delivered by

KASIRER AND JAMAL JJ. —

I. Overview

[81] We have had the advantage of reading the reasons of our colleagues Côté and Brown JJ. With respect for their views, we conclude that the appeal should be dismissed.

[82] This Court summarized the test for a *de facto* (or constructive) taking at common law in its unanimous decision in *Canadian Pacific Railway Co. v. Vancouver (City)*, 2006 SCC 5, [2006] 1 S.C.R. 227 (“*CPR*”), at para. 30, per McLachlin C.J.:

For a *de facto* taking requiring compensation at common law, two requirements must be met: (1) an acquisition of a beneficial interest in the property or flowing from it, and (2) removal of all reasonable uses of the property (see *Mariner Real Estate Ltd. v. Nova Scotia (Attorney General)* (1999), 177 D.L.R. (4th) 696 (N.S.C.A.), at p. 716; *Manitoba Fisheries*

Ltd. v. The Queen, [1979] 1 S.C.R. 101; and *The Queen in Right of British Columbia v. Tener*, [1985] 1 S.C.R. 533).

[83] Annapolis Group Inc. has asked this Court to depart from this precedent. It urges the Court to allow its appeal from the order of the Nova Scotia Court of Appeal granting partial summary judgment dismissing its claim against Halifax Regional Municipality for a *de facto* taking of its lands. Annapolis invited — and needs — this Court to depart from *CPR* for its claim to proceed to trial.

[84] Our colleagues Côté and Brown JJ. have accepted Annapolis’ invitation and propose to change the *CPR* precedent in two respects. We respectfully disagree with the changes they propose and how they apply the law in this case.

[85] First, we disagree with our colleagues’ view that the first element of the *CPR* test — which requires “an acquisition of a beneficial interest in the property or flowing from it” — should be replaced with the much broader notion of an “advantage”, whether or not “a proprietary interest was actually acquired by the government” (see paras. 4, 25, 27, 38, 40 and 44-45). Our colleagues’ reformulation involves an unwarranted departure from *CPR* and significantly expands the potential liability of public authorities when regulating land use in the public interest. In our view, this Court should retain the *CPR* test for a *de facto* taking, which insists that a proprietary interest be acquired. Courts across common law Canada have applied this test without difficulty.

[86] Second, we disagree with our colleagues' view that a public authority's "intention" is a material fact in a claim for a *de facto* taking (para. 53). This is also an unwarranted departure from *CPR* and this Court's prior jurisprudence. The material facts for a *de facto* taking claim concern the *effects* of the public authority's regulatory activity, not its *intention*.

[87] Here, Annapolis' *de facto* taking claim arises from Halifax's refusal to "up-zone" (in French: "*procéder à un rezonage pour usage plus intensif*") land — to re-zone to enlarge the permissible uses of land, in this case so that Annapolis may commercially develop the land for housing — in connection with about 1,000 acres of vacant and treed land owned by Annapolis ("Annapolis Lands"). Annapolis' proposed use for commercial development is impermissible and has been impermissible for many years. Annapolis now alleges that a Halifax municipal council resolution in 2016 refusing to up-zone the land to permit development — a regular occurrence in municipalities across Canada — and Halifax's alleged acts of trespass in encouraging the public to hike, canoe, and swim on the lands, give rise to claims for *de facto* taking, abuse of public office, and unjust enrichment.

[88] The claims for abuse of public office and unjust enrichment are proceeding to trial, and, if the court finds Halifax liable, it may award a remedy. If Annapolis succeeds, it will be compensated for the harm occasioned by this conduct. But these matters are distinct from the question of whether Annapolis has alleged facts that would substantiate a claim for *de facto* taking under the applicable common law rules. The

only issue on this appeal is whether the claim for *de facto* taking should also proceed to trial.

[89] The Nova Scotia Supreme Court declined to grant partial summary judgment on the *de facto* taking claim because the law could change through “creative interpretations on what may constitute a taking” and because a public authority’s intention may be relevant to a *de facto* taking claim (2019 NSSC 341, 17 L.C.R. (2d) 1, paras. 42 and 36). The Nova Scotia Court of Appeal allowed the appeal and granted partial summary judgment (2021 NSCA 3, 455 D.L.R. (4th) 349). It ruled that the evidence on the motion, seen in light of *CPR* and prior jurisprudence, establish no material fact in dispute either that Halifax has acquired a proprietary interest or that Annapolis has lost all reasonable uses of its lands. The Court of Appeal also ruled that intention is not a material fact for a *de facto* taking claim.

[90] In our view, this appeal should be dismissed. There is no material fact in dispute on either branch of the *CPR* test for a *de facto* taking. First, Halifax has acquired no beneficial interest in the Annapolis Lands or flowing from them. It has simply refused to up-zone the lands. Second, the uncontradicted evidence is that Annapolis has been deprived of *no* reasonable uses — let alone *all* reasonable uses — of its lands. The zoning and uses of the Annapolis Lands remain entirely unchanged. The lands remain vacant and treed, just as they have been since Annapolis acquired them. Importantly, the Court of Appeal rightly recalled that pursuant to the judgment of this Court in *CPR*, a public authority’s improper motive is not a factor in the analysis and

cannot make up for a failure to establish the two settled requirements for a claim of *de facto* taking. Accordingly, partial summary judgment was properly granted dismissing the *de facto* taking claim as the claim has no real chance of success in law.

[91] Annapolis' core claim is that Halifax's refusal to up-zone its land to permit residential development, along with the fact that Halifax acted deliberately to secure the advantage of using the Annapolis Lands as a public park, constitutes a *de facto* taking. However, a refusal to up-zone, in the circumstances of this case, cannot establish a *de facto* taking unless this Court departs from the common law requirements that Halifax has acquired a beneficial interest involving the property and that Halifax has removed all reasonable uses of the property. We decline to alter the settled law to allow Annapolis to proceed with its claim. We are respectfully of the view that by acceding to Annapolis' plea to set aside this Court's decision in *CPR* as a governing precedent, our colleagues' opinion risks radically changing the complexion of municipal planning law by providing, in like up-zoning contexts, a windfall to developers who speculate at municipal taxpayers' expense.

II. Background

[92] We take no issue with our colleagues' summary of the factual background and the decisions below, but we wish to highlight the precise conduct of Halifax that Annapolis alleges constitutes a *de facto* taking: (1) refusing to up-zone the Annapolis Lands and to zone the lands as a park, and (2) encouraging the public to trespass.

[93] Between the 1950s and 2014, Annapolis, a real estate development company, acquired the Annapolis Lands, consisting of about 1,000 acres of vacant and treed land. Annapolis hoped to develop the lands into residential communities and to sell the development for a profit. The Annapolis Lands — which are still vacant and treed — are next to the Blue Mountain-Birch Cove Lakes Wilderness Area, a large wilderness area protected under the *Wilderness Areas Protection Act*, S.N.S. 1998, c. 27.

[94] In 2006, Halifax adopted a “Regional Municipal Planning Strategy” as a policy statement to guide land development in the municipality. This policy, essentially a vision statement of long-term property development in the municipality, was adopted under the *Municipal Government Act*, S.N.S. 1998, c. 18, and the *Halifax Regional Municipality Charter*, S.N.S. 2008, c. 39 (“*Halifax Charter*”). Both statutes require Halifax to put in place a municipal planning strategy containing “statements of policy” to “guide the development and management of the municipality”, including “the future use, management and development of lands within the municipality” (*Municipal Government Act*, ss. 212 to 214; *Halifax Charter*, ss. 227 to 229). Both statutes also expressly provide that “[t]he adoption of a municipal planning strategy does not commit the council to undertake any of the projects suggested in it” (*Municipal Government Act*, s. 217(2); *Halifax Charter*, s. 232(2) (emphasis added to both statutes)).

[95] Under Halifax’s 2006 Regional Municipal Planning Strategy, about a third of the Annapolis Lands are designated “Urban Settlement”, which means they could be developed for serviced residential communities within 25 years. The remaining two-thirds of the Annapolis Lands are designated “Urban Reserve”, which means they could be developed after 25 years. Serviced development on the Annapolis Lands cannot occur, however, unless Halifax adopts a municipal resolution authorizing a “secondary planning process” and amends its zoning by-law to allow residential development.

[96] Starting in 2007, Annapolis urged Halifax to take these legislative measures to permit Annapolis to build residential communities on the lands. Halifax has consistently refused to do so, preferring to maintain the *status quo*. In 2016, Halifax adopted a municipal resolution stating that it would not authorize a secondary planning process on the Annapolis Lands “at this time”.

[97] The 2016 municipal resolution refusing to up-zone the lands to permit development led to this litigation. In 2017, Annapolis sued Halifax for over \$120 million for the alleged *de facto* taking of its lands and for abuse of public office and unjust enrichment.

[98] Only the *de facto* taking claim is in issue on this appeal. Annapolis alleges that Halifax refused to up-zone the lands because it intends to use them for a park and that Halifax has encouraged the public to trespass on the lands to hike, canoe, and swim. Annapolis also claims that Halifax has refused to zone the lands as a park because it

would otherwise have a statutory obligation to buy the lands within a year (see *Municipal Government Act*, s. 222; *Halifax Charter*, s. 237). Annapolis’ key allegations of *de facto* taking are set out in its amended statement of claim, dated March 22, 2017, at paras. 111-12:

[Halifax] has *de facto* expropriated the Annapolis Lands for public use as a park. [Halifax] has delayed and obstructed all of Annapolis’ attempts to develop the Annapolis Lands, and likewise, has deliberately avoided expressly zoning the Annapolis Lands to avoid its compensation obligation. In doing so, it has obtained the use of the Annapolis Lands as a public park, and has deprived Annapolis of any use of the Annapolis Lands.

Indeed, [Halifax] encourages members of the public to use the Annapolis Lands as a park. In addition to a variety of other outdoor activities, members of the public hike, cycle, canoe, camp, and swim on the Annapolis Lands as if [Halifax] held the Annapolis Lands as a park.

(A.R., vol. I, at p. 146)

[99] As we will explain, none of these pleaded acts, alone or in combination, amount to a *de facto* taking.

III. Law

A. *This Court Should Not Depart From the CPR Test for De Facto Taking*

(1) Introduction

[100] Our colleagues state that the test for a *de facto* taking is set out in this Court’s decision in *CPR*, when “properly understood” (para. 44). Respectfully, our

colleagues then depart from *CPR* by inappropriately extending *CPR*'s acquisition requirement — that the public authority's regulatory actions result in the “acquisition of a beneficial interest in the property or flowing from it” — to encompass any “advantage” accruing to the public authority, whether or not what is acquired is proprietary and whether or not what is acquired corresponds to what is removed. Our colleagues depart from precedent and change the common law even though courts across common law Canada have applied *CPR* without difficulty and no court has expressed concern that the law is uncertain or unclear.

[101] Our colleagues derive this understanding of the acquisition requirement by parsing *CPR* and the authorities cited by McLachlin C.J., even though she referred to “a beneficial interest in the property or flowing from it” rather than a mere “advantage”. By stretching the acquisition requirement, our colleagues go some way towards endorsing Annapolis' request that this Court should “revisit the *CPR* test due to the confusion caused by the concept of ‘acquisition of a beneficial interest in property or flowing from it’” (A.F. in response to interveners, at para. 27). Annapolis urged this Court to abandon *CPR*'s acquisition requirement because it was “a new element”, “a departure from historical jurisprudence”, and “not a required part of the test” (A.F., at paras. 36, 45 and 52). According to Annapolis, “a taking does not require an acquisition” (A.F., at para. 59; see also para. 66).

[102] Annapolis cited, among other authorities, the views of several commentators in support of its position that “this Court's analysis in *CPR*, if taken

literally, effectively abolishes liability for *de facto* taking” (A.F., at para. 9; see also paras. 35 and 52). Annapolis asserted that *CPR* should be “confined to its facts” (A.F., at para. 36) and pointed to similar commentary suggesting that this Court was mistaken in including the acquisition of a beneficial interest as part of the test (A.F., at paras. 89-92). Annapolis further criticized *CPR* by submitting that *de facto* taking can be satisfied by government conduct without there necessarily having been an acquisition of anything (A.F., at para. 62).

[103] We respectfully disagree with our colleagues’ proposed departure from the acquisition requirement as framed in *CPR*. By subverting the acquisition requirement, our colleagues effectively accede to the request of the intervener the Canadian Constitution Foundation that this Court “revisit” the *CPR* test by focusing on “the effect of the government measure on the rights of the owner, not what was acquired by the government”, so that the acquisition requirement in *CPR* becomes “largely superfluous” (I.F., at paras. 6 and 9).

[104] As we explain below, under *CPR* and the cases it cited, there is a *de facto* taking only if there is both an acquisition and a corresponding deprivation of a proprietary interest removing all reasonable uses of the property. We also disagree with our colleagues’ claim, at para. 38, that the “beneficial interest” language of the acquisition requirement is concerned with the effect of a regulatory measure on the landowner and not with whether a proprietary interest was acquired by the public authority. While a *de facto* taking claim is concerned with the effect of a regulatory

measure on the landowner, that concern is reflected in the removal requirement. The removal requirement is distinct from the acquisition requirement, which focuses on whether the public authority acquired a proprietary interest. Moreover, contrary to Annapolis’ position, *CPR* maintains the distinction between *de jure* and *de facto* takings: a *de jure* taking involves the acquisition of legal title (such as when a public authority invokes the statutory expropriation framework), while a *de facto* taking involves the acquisition of a proprietary interest without legal title.

(2) *A De Facto Taking Requires the Acquisition of and a Corresponding Deprivation of a Proprietary Interest*

[105] *CPR* and the cases it cited — *Manitoba Fisheries Ltd. v. The Queen*, [1979] 1 S.C.R. 101, *The Queen in Right of the Province of British Columbia v. Tener*, [1985] 1 S.C.R. 533, and *Mariner Real Estate Ltd. v. Nova Scotia (Attorney General)*, 1999 NSCA 98, 177 D.L.R. (4th) 696 — illustrate how the test for a *de facto* taking should be applied. In two of these cases, the *de facto* taking claim was accepted (*Manitoba Fisheries* and *Tener*); in the other two cases, the claim was rejected (*Mariner* and *CPR*). We will briefly discuss each case.

(a) *Manitoba Fisheries*

[106] In *Manitoba Fisheries*, this Court held that federal legislation granting a fish export monopoly to a Crown corporation, which resulted in putting a private fish export company out of business, amounted to a *de facto* taking of the company’s

goodwill. The Court found that the company's goodwill was "property" (pp. 110 and 118). The legislation involved a *de facto* (but not a *de jure*) taking because it had "the effect" of depriving the company of its goodwill and transferring it to the Crown corporation (p. 118). The legislation resulted in the company losing all reasonable uses of its goodwill and caused the "obliteration" of its "entire business" (p. 115). The Court also emphasized the correspondence between the acquisition and the deprivation: the company's lost goodwill was "the same goodwill" that was "by statutory compulsion acquired by the federal authority"; the company was thus "deprived of property which was acquired by the Crown" (p. 110).

(b) *Tener*

[107] In *Tener*, this Court held that the Crown in right of British Columbia engaged in a *de facto* taking by refusing to grant park use permits to the owners of registered mineral claims within a provincial park. The effect of refusing the permits was that the mineral rights could not be exploited through extraction. Estey J., for the majority, determined that the Crown's actions deprived the owners of their ability to access and extract the minerals, a "right" and "property interest" the Crown had granted to them by giving them title to the mineral claims (pp. 553-54 and 556-57). The Crown had effectively recovered part of the property right by denying access (p. 563). The owners thus retained legal title to a property interest (the registered mineral claims), but that interest was rendered virtually useless. A *de facto* (but not a *de jure*) taking was made out. The mineral extraction right, though legally retained, was effectively

lost by the owners of the registered claims and effectively recovered by the Crown. The deprivation thus corresponded to the acquisition.

(c) *Mariner*

[108] In *Mariner*, the Nova Scotia Court of Appeal held that the province did not engage in a *de facto* taking of a claimant’s property on a provincial beach by refusing to allow the claimant to build single-family dwellings on the property. Cromwell J.A. (as he then was) affirmed that a *de facto* taking requires “an *acquisition* as well as a *deprivation*” (p. 732 (emphasis in original)). He stressed the proprietary nature of what must be acquired (pp. 730 and 732). Cromwell J.A. also highlighted that both *Tener* and *Manitoba Fisheries* required the acquisition to correspond to the deprivation: in *Tener*, “the Crown re-acquired in fact, though not in law, the mineral rights” (p. 731 (emphasis added)), while in *Manitoba Fisheries*, “[t]he crucial point . . . is that the asset which was, in effect, lost by [the private company] was the asset gained, in effect, by the new federal corporation” (p. 731 (emphasis added)). In *Mariner*, by contrast, there was no *de facto* taking. Cromwell J.A. held that the “the loss of economic value resulting from land use regulation is not a taking of land” (p. 700). The province had acquired nothing because of the regulatory designation of the property as a beach, and the claimant had not lost virtually all rights of ownership (p. 700). As Cromwell J.A. observed, “[i]n this country, extensive and restrictive land use regulation is the norm. Such regulation has, almost without exception, been found not to constitute compensable expropriation” (p. 713). He decided that, “what is, in form, regulation will

be held to be expropriation only when virtually all of the aggregated incidents of ownership have been taken away” (p. 717).

(d) *CPR*

[109] Finally, in *CPR*, this Court held that the City of Vancouver did not engage in a *de facto* taking of CPR’s land (a railway corridor) by enacting a by-law refusing to allow CPR to develop the land for residential and commercial uses. McLachlin C.J. determined that the City’s development freeze did not result in it acquiring any beneficial interest in CPR’s land; the freeze was simply an “assurance that the land will be used or developed in accordance with [the City’s] vision, without even precluding the historical or current use of the land” (para. 33). This was “not the sort of benefit” that could be construed as a taking (para. 33). Nor had the City removed all reasonable uses of CPR’s property, because CPR was not precluded from using the land to operate a railway — the only historical use — or from leasing the land or otherwise developing it as permitted by law (para. 34). Thus, CPR suffered no deprivation and the City enjoyed no acquisition. The claim for *de facto* taking failed.

(e) *Conclusion*

[110] *CPR* and the authorities it cited show there is no *de facto* taking unless there is both the acquisition of a beneficial interest in the property or flowing from it and a removal of all reasonable uses of the property. The interest must be proprietary — not merely an “advantage” — and the acquisition must correspond to

the deprivation. These requirements are confirmed by K. Horsman and G. Morley, eds., *Government Liability: Law and Practice* (loose-leaf), at § 5:1, which our colleagues rely on (at paras. 18-20): a “taking” is “the forcible acquisition by the Crown of privately owned property . . . for public purposes” (emphasis added). The authors also recognize that “[i]n takings law, only those rights that are proprietary and vested . . . are compensable” (§ 5:8) and that “Canadian law recognizes that governments have the ability to greatly restrict the potential uses of property without triggering a right to compensation” (§ 5:13).

(3) There Is No Basis to Change the Common Law

[111] We believe our colleagues have provided no basis for this Court to depart from the acquisition requirement as framed in *CPR*. They do not suggest that such a departure from precedent is needed to keep the common law in step with the evolution of society, to clarify a legal principle, or to resolve any inconsistency in the law, which are some of the usual grounds justifying evolution of the common law (see *Friedmann Equity Developments Inc. v. Final Note Ltd.*, 2000 SCC 34, [2000] 1 S.C.R. 842, at para. 42; *R. v. Salituro*, [1991] 3 S.C.R. 654, at pp. 668-69 and 679).

[112] To the contrary, courts in common law Canada have applied the *CPR* test without difficulty. No court has expressed any concern that the test is unworkable or unnecessarily complex (see British Columbia: *FortisBC Energy Inc. v. Surrey (City)*, 2013 BCSC 2382, 112 L.C.R. 89, at paras. 411 and 418-19; *Compliance Coal Corporation v. British Columbia (Environmental Assessment Office)*, 2020 BCSC 621,

13 L.C.R. (2d) 215, at paras. 92-101; Alberta: *Genesis Land Development Corp. v. Alberta*, 2009 ABQB 221, 471 A.R. 1, at paras. 127-29 and 141-42, aff'd 2010 ABCA 148, 477 A.R. 390; *Kalmring v. Alberta*, 2020 ABQB 81, 11 Alta. L.R. (7th) 177, at paras. 68 and 79-82; *Altius Royalty Corporation v. Alberta*, 2021 ABQB 3, 23 Alta. L.R. (7th) 105, at paras. 27 and 44-47, aff'd 2022 ABQB 255; Ontario: *Club Pro Adult Entertainment Inc. v. Ontario* (2006), 27 B.L.R. (4th) 227 (S.C.J.) (“*Club Pro (S.C.J.)*”), at paras. 77-78 and 82, rev'd in part on other grounds 2008 ONCA 158, 42 B.L.R. (4th) 47; *Railink Canada Ltd. v. Ontario* (2007), 95 L.C.R. 17 (S.C.J.), at para. 19; Nova Scotia: *Taylor v. Dairy Farmers of Nova Scotia*, 2010 NSSC 436, 298 N.S.R. (2d) 116, at paras. 74 and 82-85, aff'd 2012 NSCA 1, 311 N.S.R. (2d) 300; Newfoundland and Labrador: *Lynch v. St. John's (City)*, 2016 NLCA 35, 400 D.L.R. (4th) 62, at paras. 54-63; *Sun Construction Company Limited v. Conception Bay South (Town)*, 2019 NLSC 102, 87 M.P.L.R. (5th) 256, at paras. 13 and 15; *Gosse v. Conception Bay South (Town)*, 2021 NLCA 23, 16 L.C.R. (2d) 123, at paras. 30 and 46; *KMK Properties Inc. v. St. John's (City)*, 2021 NLSC 122, 19 M.P.L.R. (6th) 150, at paras. 18, 40 and 47-50; Federal Court: *Dennis v. Canada*, 2013 FC 1197, 114 L.C.R. 1, at paras. 21-24, aff'd 2014 FCA 232; *Calwell Fishing Ltd. v. Canada*, 2016 FC 312, at paras. 173 and 249-52 (CanLII); *Anglehart v. Canada*, 2016 FC 1159, [2017] 2 F.C.R. 74, at paras. 160-61, aff'd 2018 FCA 115, [2019] 1 F.C.R. 504; Yukon Territory: *Northern Cross (Yukon) Ltd. v. Yukon (Energy, Mines and Resources)*, 2021 YKSC 3, 16 L.C.R. (2d) 1, at paras. 285 and 309, rev'd in part on other grounds 2021 YKCA 6, 79 C.C.L.T. (4th) 179). Our colleagues do not suggest that lower courts have

applied the *CPR* test with difficulty but simply assert, without more, that “many” of these courts across Canada have applied the test incorrectly (para. 41).

[113] We also note that at least one court has declined to abandon *CPR*’s acquisition requirement as proposed by Annapolis here (*Altius Royalty Corporation v. Her Majesty the Queen in Right of Alberta*, 2022 ABQB 255, at para. 76 (CanLII)), while another has rejected the suggestion that *CPR* is inconsistent with *Tener* and *Manitoba Fisheries* and has affirmed that the “the law is very settled on this issue” (*Club Pro (S.C.J.)*, at para. 78, per Spies J.).

[114] This confirms, in our view, that *CPR* is settled law and that there is no reason to change it.

(4) Departing From *CPR* Will Expose Municipalities Across Canada to Significant Financial Liability in Regulating Land Use

[115] Our colleagues’ reformulation of the acquisition requirement and departure from *CPR* as precedent has significant ramifications. It dramatically expands the potential liability of municipalities engaged in land use regulation in the public interest and throws into question the settled law that a refusal to up-zone is not a *de facto* taking.

[116] For example, in *Tener*, at pp. 557 and 564, Estey J. affirmed that “[o]rdinarily, in this country, . . . compensation does not follow zoning either up or

down. . . . The imposition of zoning regulation and the regulation of activities on lands . . . add nothing to the value of public property.”

[117] Similarly, in *Mariner*, at pp. 713 and 734, Cromwell J.A. stated that “[i]t is settled law . . . that the regulation of land use which has the effect of decreasing the value of the land is not an expropriation. . . . [O]rdinarily compensation does not follow zoning either up or down. . . . Development freezes have consistently been held not to give rise to rights of compensation”.

[118] This settled law, which our colleagues propose now to set aside, was helpfully summarized by E. C. E. Todd in *The Law of Expropriation and Compensation in Canada* (2nd ed. 1992), at pp. 22-23:

By the imposition, removal or alteration of land use controls a public authority may dramatically increase, or decrease, the value of land by changing the permitted uses which may be made of it. In such a case, in the absence of express statutory provision to the contrary an owner is not entitled to compensation or any other remedy notwithstanding that subdivision approval or rezoning is refused or development is blocked or frozen pursuant to statutory planning powers in order, for example, to facilitate the future acquisition of the land for public purposes. [Footnotes omitted.]

See also S. E. Hamill, “Common Law Property Theory and Jurisprudence in Canada” (2015), 40 *Queen’s L.J.* 679, at p. 703 (“So long as the owner can continue to use their property as they always have, they cannot be considered to have suffered a legally recognizable loss”); S. M. Makuch, N. Craik and S. B. Leisk, *Canadian Municipal and Planning Law* (2nd ed. 2004), at p. 212 (“the courts would be well advised to remain

true to their traditional approach, which is in keeping with the general assumptions of no compensation for planning decisions and of allowing municipalities to allocate the benefits and burdens of planning”).

B. *Intention Is Not a Material Fact for a Claim of De Facto Taking*

[119] We are also of the respectful view that our colleagues further depart from precedent when they say that “intent may constitute a ‘material fact’ in the context of a constructive expropriation claim” (para. 53). This statement contradicts their affirmation that “[t]he public authority’s intention is not an *element* of the test for constructive takings at common law” (para. 52 (emphasis in original)) and that “the underlying objective pursued by a public authority . . . is neither necessary nor sufficient” (para. 57). In our view, intention is not an element of the test for a *de facto* or constructive taking; it is equally not a material fact supporting such a claim.

[120] Our colleagues seek to reconcile their inconsistent positions by saying that “the intention to take constructively, if proven by the claimant, may support a finding that the landowner has lost all reasonable uses of their land” (para. 53). Again, we disagree. Although the public authority’s intention may provide narrative background or context or may be relevant to an administrative law claim that its actions were *ultra vires* as having an improper purpose or being in bad faith (see *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2, [2012] 1 S.C.R. 5, at para. 28; *Mariner*, at pp. 717-18; *CPR*, at paras. 10-37), it is not relevant to a *de facto* taking claim, which is concerned with the effect of the public authority’s actions, not with its intention.

[121] On our reading, none of the three authorities cited by our colleagues support their position that intention is a material fact for a *de facto* taking claim. Our colleagues first rely, at para. 54, on *Ulster Transport Authority v. James Brown & Sons, Ltd.*, [1953] N.I. 79 (C.A.) (cited in *Manitoba Fisheries*), at pp. 113 and 116. But the issue in *Ulster* was whether legislation purporting to limit the business of furniture removers, properly interpreted, was *ultra vires* for effectively taking property without compensation, contrary to a statutory prohibition of such taking. The discussion of intention in *Ulster* concerned legislative intention, as objectively expressed, rather than the subjective intention or motive of the public authority responsible for the taking. MacDermott L.C.J. referred to “deliberate and intentional” drafting but asked what the “intention [of the legislation] was” and invoked the principle that “Parliament must be presumed to intend the necessary effect of its enactments” (p. 112). He added, at p. 114: “Whatever in fact [the Legislature’s] motives may have been, the intention of the Legislature, as gleaned from its terms, is what must guide the court”

[122] Second, our colleagues, at para. 55, rely on *Lynch*, at paras. 60 and 62, which considered whether the City of St. John’s refusal to permit development amounted to expropriation of the claimants’ property. The effect of the City’s action was to take away the claimants’ right to appropriate the groundwater from their property and to give the City a beneficial interest in the property, consisting of the right to a continuous flow of uncontaminated groundwater. The claimants’ property rights flowing from a Crown grant were thereby reduced. But neither the cited paragraphs nor the decision as a whole suggest that intention is a material fact for a *de facto* taking

claim. The case concerned the effect of the City’s actions that “purported” to remove the claimants’ right to appropriate groundwater on their land (para. 60).

[123] Finally, our colleagues, at para. 56, rely on *Montréal (Ville) v. Benjamin*, 2004 CanLII 44591 (Que. C.A.), which considered whether a zoning by-law and the City of Montréal’s actions in fencing off the owner’s land to include it within a public park amounted to “disguised expropriation” under Quebec civil law. Our colleagues write that the City “manifested its intention” by refusing to remove various structures on the claimant’s land and its “intent buttressed the finding of disguised expropriation”. But our colleagues’ reference to the “manifested” intention shows that the proper focus is on the effect, or intention as expressed, rather than intention itself. And any intention that “buttressed” a finding of disguised expropriation only confirmed such a prior finding; it did not help establish that finding. In our respectful view, *Benjamin* does not support the relevance of intention to a *de facto* taking claim.

[124] The mention of [TRANSLATION] “abuse of right” in *Benjamin* does not suggest otherwise. A “disguised expropriation” is in itself an abuse of power, because a municipal government that uses its regulatory power to deprive an owner of the enjoyment of their property acts in a manner inconsistent with the municipality’s delegated authority (*Lorraine (Ville) v. 2646-8926 Québec inc.*, 2018 SCC 35, [2018] 2 S.C.R. 577, at para. 27). This is how the expression “abuse of right”, mentioned in *Benjamin*, was used by the Court of Appeal of Quebec in *Lorraine* (2016 QCCA 1803, at para. 13) and has been subsequently interpreted (see *Pillenière, Simoneau v. Ville de*

Saint-Bruno-de-Montarville, 2021 QCCS 4031, 19 M.P.L.R. (6th) 275, at para. 112).

This analysis focuses on the effect of municipal action and does not suggest that intent or motive is required for a distinct cause of action seeking compensation for disguised expropriation.

[125] To the contrary, Quebec courts have expressly held that the public authority’s intention is irrelevant under the Quebec civil law of disguised expropriation. Disguised expropriation is based on art. 952 of the *Civil Code of Québec*, whose focus is the *effect* of the public authority’s actions. This was recently confirmed by the unanimous judgment of the Quebec Court of Appeal in *Dupras v. Ville de Mascouche*, 2022 QCCA 350, at para. 29 (CanLII):

[TRANSLATION] Moreover, the municipality’s good or bad faith — the wrongfulness of its conduct — is not relevant to the analysis; it is “the actual effect of the by-law” that matters. This is why, when the Supreme Court used the concept of abuse to characterize disguised expropriation, it referred to abuse of the power to regulate in order to proceed, *de facto*, with an expropriation of property without paying the indemnity required in particular by article 952 of the *Civil Code of Québec*. The validity of the by-law restricting land use therefore does not preclude the existence of disguised expropriation. [Emphasis added; footnotes omitted.]

[126] We also agree with the Nova Scotia Court of Appeal that this Court’s decision in *Lorraine*, at para. 2, does not support the motion judge’s view, at paras. 35-36, that Halifax’s alleged “ulterior motive” is relevant to the *de facto* taking claim. The Quebec Court of Appeal correctly explained the import of *Lorraine* in *Dupras* in the passage quoted above: “. . . when the Supreme Court used the concept of abuse to characterize disguised expropriation, it referred to abuse of the power to

regulate in order to proceed, *de facto*, with an expropriation of property without paying the indemnity required in particular by article 952 of the *Civil Code of Québec*". We accordingly disagree with the view of the motion judge and Annapolis that *Lorraine* supports the relevance of motive to a disguised expropriation claim — a view that even our colleagues refrain from endorsing.

[127] That said, we do not quarrel with our colleagues' general remarks, at paras. 47-48, on the Quebec law of disguised expropriation. We note, however, that while our colleagues describe disguised expropriation under art. 952 of the *Civil Code of Québec* as a "no-fault liability scheme", what the Quebec authorities mean by this is that fault, in the sense of bad faith, improper purpose, or improper motive, is not required. Nevertheless, the test for disguised expropriation remains extremely onerous: there must be an absolute negation of the exercise of the right of ownership, rendering its use impossible or equivalent to an actual confiscation of the property. As the Quebec Court of Appeal explained when referencing absence of fault in *Ville de Léry v. Procureure générale du Québec*, 2019 QCCA 1375, at para. 17:

[TRANSLATION] However, absence of fault in the development of government objectives does not mean that there is no legal relationship between the appellant and the respondent, if what it alleges is shown. In *Wallot v. Québec (Ville)* [2011 QCCA 1165, at paras. 45-47], this Court stated that for a by-law to be regarded as effecting disguised expropriation, it must amount to an absolute negation of the exercise of the right of ownership, i.e. render its use impossible, or be tantamount to an actual confiscation of the immovable. In such a case, the by-law that permits no uses by the owner on its land is not a zoning by-law but an expropriation. The question of the municipality's good or bad faith, or of its "fault", then becomes entirely secondary, if not irrelevant. [Emphasis added; footnote omitted.]

See also *Wallot v. Québec (Ville)*, 2011 QCCA 1165, 24 Admin. L.R. (5th) 306, at paras. 41-54; *Municipalité de Saint-Colomban v. Boutique de golf Gilles Gareau inc.*, 2019 QCCA 1402, at paras. 64-65; *Meadowbrook Groupe Pacific inc. v. Ville de Montréal*, 2019 QCCA 2037, 2019 CarswellQue 12262 (WL), at para. 29; *Ressources Strateco inc. v. Procureure générale du Québec*, 2020 QCCA 18, 32 C.E.L.R. (4th) 231, at paras. 113-14; *Ville de Québec v. Rivard*, 2020 QCCA 146, at paras. 64-65; *Ville de Saint-Rémi v. 9120-4883 Québec inc.*, 2021 QCCA 630, at paras. 25-26 (CanLII); *Dupras*, at paras. 27-29.

[128] Accordingly, the Quebec law of disguised expropriation does not support the relevance of motive or intention under the common law of *de facto* taking.

[129] We therefore agree with the conclusion of the Nova Scotia Court of Appeal, at para. 75, that the law of *de facto* taking is “clear and settled”: a public authority’s motive or intention is not a material fact for such a claim and “cannot compensate for the failure to establish the two required elements of *de facto* expropriation”.

[130] We will now apply *CPR* to the partial summary judgment motion at issue in this case.

IV. Application

A. *Introduction*

[131] In our view, the Nova Scotia Court of Appeal did not err in granting partial summary judgment. There is no genuine issue of material fact requiring a trial on either branch of the *de facto* taking test, *both* of which Annapolis must meet to succeed. We disagree with our colleagues’ conclusion, at para. 63, that there are “vast issues of material fact to be determined”, and also with their view, at para. 61, that the Court of Appeal “merely disagreed with the motion judge’s exercise of discretion”. Under the law enunciated in *CPR*, Annapolis’ *de facto* taking claim has no real chance of success and should be dismissed.

B. *The Summary Judgment Test in Nova Scotia*

[132] Summary judgment is available when there is no genuine issue for trial (*Hryniak v. Mauldin*, 2014 SCC 7, [2014] 1 S.C.R. 87, at para. 34). The test for summary judgment on evidence in an action under r. 13.04 of the *Nova Scotia Civil Procedure Rules* was addressed by the Nova Scotia Court of Appeal in *Shannex Inc. v. Dora Construction Ltd.*, 2016 NSCA 89, 58 C.L.R. (4th) 1, at para. 34. The Nova Scotia Court of Appeal held that r. 13.04 asks five sequential questions, only the first three of which are relevant here:

- First, does the pleading disclose a genuine issue of material fact — that is, one that would affect the result (either a pure question of fact or a question of mixed fact and law)? If the answer is “yes”, the issue should not be determined on summary

judgment. If the answer is “no”, the court proceeds to the second question.

- Second, does the pleading require the determination of a question of law (either a pure question of law or a question of mixed fact and law)? If the answers to the first and second questions are both “no”, summary judgment must issue. If the answers to the first and second questions are “no” and “yes”, respectively, leaving only an issue of law, then the court proceeds to the third question.
- Third, the court may grant or deny summary judgment in the exercise of its discretion. The court must ask whether the pleading has a real chance of success. If the answer is “no”, summary judgment must issue. If the answer is “yes”, the court considers whether to exercise its discretion to finally determine the issue of law.

[133] When the motion judge applies an incorrect legal principle or errs with regard to a purely legal question, the decision should be reviewed on a correctness standard (*Hryniak*, at para. 84).

[134] In our view, Halifax’s motion for partial summary judgment succeeds under r. 13.04 based on the third question in *Shannex*. We accept that there should be flexibility in allowing novel claims to either be determined on summary judgment or

proceed to trial (see *R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42, [2011] 3 S.C.R. 45, at para. 21; *Warman v. Law Society of Alberta*, 2015 ABCA 368, 609 A.R. 83, at para. 6; *Condominium Corp. No. 0321365 v. Cuthbert*, 2016 ABCA 46, 612 A.R. 284, at para. 35; *Rudichuk v. Genesis Land Development Corp.*, 2020 ABCA 42, 98 Alta. L.R. (6th) 339, at para. 35; *Wallbridge v. Brunning*, 2018 ONCA 363, 422 D.L.R. (4th) 305, at para. 26). In this case, however, Annapolis’ *de facto* taking claim has no real chance of success.

- (1) There Is No Genuine Issue of Material Fact That Halifax Has Acquired a Beneficial Interest in the Annapolis Lands or Flowing From Them, Either in Refusing to Up-Zone the Lands or by Allegedly Encouraging Trespass

[135] Neither Halifax’s 2016 municipal resolution refusing to up-zone the Annapolis Lands nor Halifax’s alleged acts of encouraging the public to trespass raises any genuine issue of material fact that Halifax has acquired a beneficial interest in the lands or flowing from them.

[136] The municipal resolution merely preserved the *status quo* by refusing to allow lands which have always been vacant and treed and situated next to a protected wilderness area to be developed into serviced residential communities. It is of no moment that the 2006 Regional Municipal Planning Strategy, as a statement of policy, stated that a possible future use of the Annapolis Lands included serviced residential development. Both the *Municipal Government Act* and the *Halifax Charter* confirm that “[t]he adoption of a municipal planning strategy does not commit the council to

undertake any of the projects suggested in it” (*Municipal Government Act*, s. 217(2); *Halifax Charter*, s. 232(2)).

[137] Halifax’s adoption of a municipal resolution refusing to up-zone the lands also cannot be a basis for a *de facto* taking claim because the resolution did not result in Halifax acquiring any proprietary interest in the lands. As this Court held in *CPR*, at para. 33, a mere assurance that land will be used or developed in accordance with a municipality’s vision, without precluding historical or current uses of the land, is “not the sort of benefit” that can meet the acquisition requirement. This is why the common law has consistently held that a refusal to up-zone is not actionable as a *de facto* taking. Our colleagues claim, at para. 64, that “[p]reserving a park in its natural state may constitute an advantage accruing to the state”, but this flouts *CPR*’s insistence that the public authority must have acquired a proprietary interest. A mere “advantage” does not suffice. Respectfully, our colleagues’ expansive approach to what constitutes a *de facto* taking departs from precedent and would result in *CPR* being decided differently.

[138] We also respectfully disagree with our colleagues’ suggestion, at para. 65, that Halifax’s alleged encouragement of trespass changes this conclusion. For example, at the hearing of the appeal, Annapolis insisted that Halifax has distributed promotional material encouraging people to hike at Fox Lake, which is within the Annapolis Lands. Annapolis claimed that this was an example of Halifax’s “use [of] the Annapolis Lands as a Regional Park” (outline of argument, at para. 5, in condensed book, at p. 2). We disagree. A public authority does not and cannot acquire a proprietary interest by

encouraging others to trespass. If these allegations were made out at trial, Halifax might well expose itself to liability on some other basis. But this allegation cannot ground a claim for a *de facto* taking.

[139] Annapolis’ position illustrates how incompatible the notion of an “advantage” proposed by our colleagues is with any proprietary interest. The only cases they rely on, at paras. 65-66, are the Quebec disguised expropriation cases of *Benjamin* and *Dupras*, but such reliance is misplaced. As *Dupras*, at para. 34, makes plain, and as our colleagues recognize, at para. 48, the acquisition requirement has no direct corollary under Quebec civil law (see M. A. LeChasseur, “L’expropriation *de facto* au Canada et la transcendance des solidarités”, in *Service de la qualité de la profession du Barreau du Québec*, vol. 509, *Développements récents en droit municipal* (2022), 71, at p. 172). *Benjamin* is also a markedly different case. In *Benjamin*, the City had passed zoning by-laws allowing only public uses of the owner’s land. It also took physical possession of the owner’s land by erecting a fence to transform the land into a park. There was both physical dispossession and the prior use of legislative power to render any use of the land practically impossible (*Benjamin*, at paras. 9, 11, 14 and 65; see also *Rivard*, at para. 66). This conduct is a far cry from the refusal to up-zone encountered in this appeal. The focus of *Benjamin* was on the change of regulation that took away the rights of the landowner, which is not the case here. Therefore, the findings of disguised expropriation in *Benjamin* and *Dupras* do not directly illuminate what can or cannot meet the acquisition requirement at common law.

[140] None of the allegedly “vast issues of material fact” listed by our colleagues, at para. 59, and the motion judge, at paras. 25-26 and 36, has any bearing on the *de facto* taking claim. To the extent that these facts help make Halifax liable for abuse of public office or unjust enrichment, an appropriate remedy can be awarded for those claims at trial. It bears noting that, as the Court of Appeal observed, at para. 83, if Halifax has acted for an improper purpose, Annapolis may succeed in its cause of action for abuse of public office. The Court of Appeal rightly relied on *Mariner*, at pp. 717-18, where Cromwell J.A. explained that administrative law claims for unlawful actions are distinct from compensatory claims for *de facto* taking. But these facts are not material facts in support of the *de facto* taking claim:

- Correspondence between counsel in which Halifax denies allegations in the amended statement of claim are not “material facts” in support of a *de facto* taking claim.
- Signage on Annapolis’ property depicting Halifax’s logo on various trails does not have the effect of Halifax acquiring any proprietary interest.
- A newspaper article quoting a Halifax employee does not support the claim that Halifax has acquired a proprietary interest in the Annapolis Lands. What a newspaper says, or quotes a Halifax employee as saying, does not affect this issue.

- Discovery evidence on whether the Annapolis Lands were to be treated as development lands, not parklands, under the 2006 Regional Municipal Planning Strategy is not a material fact in dispute. The Strategy speaks for itself. As a matter of law, it “does not commit the council to undertake any of the projects suggested in it” (*Municipal Government Act*, s. 217(2); *Halifax Charter*, s. 232(2)). The same applies to the next two bullets that our colleagues cite, relating to the Planning Strategy, clauses 1.7.1 and 3.1.
- Discovery evidence relating to the 2016 municipal council resolution, and later clarifications from counsel, has no bearing on whether Halifax acquired a proprietary interest in the Annapolis Lands. The pleaded allegation of *de facto* taking relies on the resolution itself, which, as already noted, merely preserved the *status quo*.
- Evidence of an alleged ulterior motive of Halifax is irrelevant to the *de facto* taking claim, as already explained above.

[141] There are thus no disputed material facts as to whether Halifax acquired a proprietary interest in the Annapolis Lands. No such interest was acquired. Halifax merely refused to up-zone the lands. Because these are not material facts, we

respectfully disagree with the motion judge, at para. 44, that the *de facto* taking claim may properly go to trial along with the balance of the matters in dispute.

(2) There Is No Genuine Issue of Material Fact That Halifax Has Deprived Annapolis of All Reasonable Uses of the Annapolis Lands

[142] Even if Annapolis could establish that Halifax has acquired a beneficial interest in the Annapolis Lands or flowing from them, it cannot meet the second requirement of the test for a *de facto* taking: there is no genuine issue of material fact that Halifax has deprived Annapolis of all reasonable uses of its lands. This in itself is fatal to Annapolis’ appeal given that the two requirements in *CPR* are cumulative.

[143] This second element of the *CPR* test must be assessed “not only in relation to the land’s potential highest and best use, but having regard to the nature of the land and the range of reasonable uses to which it has actually been put” (*CPR*, at para. 34, quoting *Mariner*, at p. 717). When “a regulatory regime is imposed on land, its *actual application* in the specific case must be examined, not the potential, but as yet unexploited, range of possible regulation” (*Mariner*, at p. 718 (underlining added)). Confinement to uneconomic uses is insufficient (*CPR*, at paras. 8 and 27-31). Loss of virtually all economic value is also insufficient (*Mariner*, at pp. 714 and 719-27).

[144] In *CPR*, for example, this Court held that the City of Vancouver’s by-law did not remove all reasonable uses of the property because it did not prevent the

landowner from using its land to operate a railway, the only use to which the land had ever been put during the history of the City (para. 34).

[145] The situation here is indistinguishable. As the Nova Scotia Court of Appeal noted, at para. 14, “[t]he zoning of the Annapolis Lands has not changed since the adoption of the Land Use By-law in 2006.” The court added: “Annapolis has the same rights with respect to its lands that it had prior to Council’s resolution on September 6, 2016. Nothing has changed” (para. 91). The lands were vacant and treed when Annapolis acquired them, and they remain vacant and treed. Halifax’s refusal to up-zone the lands in 2016 did not deprive Annapolis of any reasonable uses of its lands. It simply disappointed Annapolis’ hope of developing them. Annapolis speculated that, one day, it would have that right. The company made a bet and lost. There is no principled basis for saying that Halifax and its taxpayers now have to guarantee that speculative bet. We therefore agree with the submission of Halifax’s counsel, that “[Annapolis] bought barren land with no rights to do anything more than that. The municipality is not the guarantor of their land speculation” (transcript, at p. 79).

[146] Contrary to our colleagues’ suggestion at para. 72, Halifax has not taken Annapolis’ “right” to develop the lands. Annapolis claims that it had an unfettered right to develop the lands before they were first zoned in 1982. Yet Annapolis grounds its *de facto* taking claim in the proceedings before us in Halifax’s refusal to up-zone *in 2016* — which, as already noted, did not affect the zoning of the lands or Annapolis’ rights. Indeed, our colleagues acknowledge that *the zoning has not changed since 2006*

(para. 7). The potential permissible uses of the lands before 1982 are thus irrelevant to Annapolis' claim.

[147] We therefore agree with the Nova Scotia Court of Appeal, at para. 92: “. . . the lands and the reasonable uses to which Annapolis can put them remain exactly as they have been for many years”. This responds to our colleagues' criticism that the Court of Appeal “failed to identify a single reasonable possible use of the property” (para. 70; see also para. 74). The lands remain vacant and treed and are zoned exactly as before. Further, as counsel for Halifax conceded during oral argument, subject to the current zoning Annapolis can lease the lands (transcript, at p. 72), just as CPR could in *CPR* (*CPR*, at para. 34). We note, too, that confinement of the land to uneconomic uses does not in itself establish a *de facto* taking (see *CPR*, at paras. 8 and 34; *Horsman and Morley*, at § 5:13).

[148] In our respectful view, there is no basis in the record for our colleagues to assert that “it is disputed whether Halifax, by allegedly treating the Annapolis Lands as a public park, has eliminated all uses of the Lands except serviced development, which is conditional upon the approval of Annapolis' secondary planning applications” (para. 69 (emphasis added)). Halifax did not eliminate or remove any reasonable use of the property. It simply refused to up-zone the lands to allow for residential development.

[149] Our colleagues nevertheless claim, at para. 76, that “it is telling that [Kasirer and Jamal JJ.] do not identify *any* reasonable use of the Annapolis Lands”

(emphasis in original). Respectfully, this illustrates how our colleagues have changed the law. First, our colleagues evaluate the reasonable uses of the lands from the perspective of a commercial property developer, even though our law has never required that the “use” be confined to those of one class of landowner. Second, the removal requirement insists not merely that there be no reasonable uses, but also that they have been *removed by the public authority*. The issue is whether there has been a *de facto* taking *by the public authority*. Annapolis cannot show that Halifax removed any reasonable uses. Nor, in any event, is there any legal impediment to Annapolis leasing the lands.

[150] Our colleagues respond to the zoning and uses of the Annapolis Lands having not changed with the suggestion that this ignores “Halifax’s *application* of the regulatory scheme as alleged by Annapolis” (para. 71 (emphasis in original)). Our colleagues assert that “[i]f Annapolis can prove at trial that Halifax is unlikely to *ever* grant secondary planning approval, this is clearly material to its constructive taking claim” (para. 72 (emphasis in original)). We respectfully disagree. As a matter of proof, we do not see how Annapolis can prove a negative, particularly one involving a future fact.

[151] More importantly, even if Annapolis could somehow show that Halifax will never up-zone the lands, that could not establish that Annapolis has lost all reasonable uses of those lands. The lands have never been used for serviced development — they have always been vacant and treed. Our colleagues’ assertion

amounts to saying that a refusal to up-zone vacant land can give rise to a *de facto* taking merely if all “*potential* reasonable uses” are prohibited (para. 45 (emphasis in original)). That would upset the settled law reflected in *Manitoba Fisheries*, *Tener*, *Mariner*, and *CPR*, and it would eliminate Halifax’s statutory and common law protection from liability for refusing to up-zone. In *CPR*, this Court specifically noted that removal of all reasonable uses of the land must be assessed in relation to both its potential uses as well as the “nature of the land and the range of reasonable uses to which it has actually been put” (para. 34, quoting *Mariner*, at p. 717). That statement applies equally in this case.

C. *Conclusion*

[152] We conclude that there is no genuine issue of material fact that Halifax has acquired a beneficial interest in the Annapolis Lands or flowing from them or that Halifax has deprived Annapolis of all reasonable uses of its lands. In view of the settled law, the pleading of a *de facto* taking has no real chance of success. Like the Nova Scotia Court of Appeal, we would grant partial summary judgment dismissing the claim for *de facto* taking.

V. Disposition

[153] We would dismiss the appeal with costs throughout.

Appeal allowed with costs throughout, KARAKATSANIS, MARTIN, KASIRER and JAMAL JJ. dissenting.

Solicitors for the appellant: Lenczner Slaght, Toronto.

Solicitors for the respondent: McInnes Cooper, Halifax; Halifax Regional Municipality, Halifax.

Solicitor for the intervener the Attorney General of Canada: Attorney General of Canada, Winnipeg.

Solicitor for the intervener the Attorney General of Ontario: Attorney General of Ontario, Toronto.

Solicitor for the intervener the Attorney General of Nova Scotia: Attorney General of Nova Scotia, Halifax.

Solicitor for the intervener the Attorney General of British Columbia: Attorney General of British Columbia, Victoria.

Solicitors for the intervener the Canadian Constitution Foundation: Miller Thomson, Edmonton.

*Solicitors for the intervener the Ontario Landowners Association:
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Conservation Authorities Act

R.S.O. 1990, CHAPTER C.27

Consolidation Period: From October 1, 2021 to the e-Laws currency date.

Last amendment: 2021, c. 4, Sched. 6, s. 39.

Legislative History: [+]

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PART I
PURPOSE AND INTERPRETATION

Purpose

0.1 The purpose of this Act is to provide for the organization and delivery of programs and services that further the conservation, restoration, development and management of natural resources in watersheds in Ontario. 2017, c. 23, Sched. 4, s. 1.

Section Amendments with date in force (d/m/y) [+]

Definitions

1 In this Act,

“administration costs” means salaries and travelling expenses of members and employees of an authority, office rent, maintenance and purchase of office equipment, expenses connected with exhibits, visual equipment and printed matter for educational purposes, and all expenditures necessary for carrying out the objects of an authority other than capital expenses and maintenance costs of projects; (“frais d’administration”)

Note: On July 1, 2023, the day named by proclamation of the Lieutenant Governor, the definition of “administration costs” in section 1 of the Act is repealed. (See: 2017, c. 23, Sched. 4, s. 2 (1))

“advisory board” means an advisory board appointed by an authority; (“conseil consultatif”)

“authority” means a conservation authority established by or under this Act or a predecessor of this Act; (“office”)

“executive committee” means the executive committee appointed by an authority; (“comité de direction”)

“land” includes buildings and any estate, term, easement, right or interest in, to, over or affecting land; (“bien-fonds”)

“maintenance costs” means all expenditures required specifically in relation to the operation or maintenance of a project; (“frais d’entretien”)

Note: On July 1, 2023, the day named by proclamation of the Lieutenant Governor, the definition of “maintenance costs” in section 1 of the Act is repealed. (See: 2017, c. 23, Sched. 4, s. 2 (1))

“Minister” means the Minister of the Environment, Conservation and Parks or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; (“ministre”)

“municipality” means a local municipality, and includes a band under the *Indian Act* (Canada) that is permitted to control, manage and expend its revenue money under section 69 of that Act; (“municipalité”)

Note: On July 1, 2023, the day named by proclamation of the Lieutenant Governor, section 1 of the Act is amended by adding the following definition: (See: 2017, c. 23, Sched. 4, s. 2 (2))

“operating expenses” include,

- (a) salaries, per diems and travel expenses of employees and members of an authority,
- (b) rent and other office costs,
- (c) program expenses,
- (d) costs that are related to the operation or maintenance of a project, but not including the project’s capital costs, and
- (e) such other costs as may be prescribed by regulation; (“dépenses d’exploitation”)

“participating municipality” means a municipality that is designated by or under this Act as a participating municipality; (“municipalité participante”)

“project” means a work undertaken by an authority for the furtherance of its objects; (“projet”)

“watershed” means an area drained by a river and its tributaries. (“bassin hydrographique”) R.S.O. 1990, c. C.27, s. 1; 1996, c. 1, Sched. M, s. 40; 1998, c. 18, Sched. I, s. 1; 2002, c. 17, Sched. F, Table; 2019, c. 9, Sched. 2, s. 1.

Section Amendments with date in force (d/m/y) [+]

Existing aboriginal or treaty rights

1.1 For greater certainty, nothing in this Act shall be construed so as to abrogate or derogate from the protection provided for the existing aboriginal and treaty rights of the aboriginal peoples of Canada as recognized and affirmed in section 35 of the *Constitution Act, 1982*. 2020, c. 36, Sched. 6, s. 1.

Section Amendments with date in force (d/m/y) [+]

PART II ESTABLISHMENT OF CONSERVATION AUTHORITIES

Meeting to establish authority for watershed

2 (1) Where the councils of any two or more municipalities situate either wholly or partly within a watershed by resolution request the Minister to call a meeting for the establishment of an authority for the watershed or any defined part thereof, the Minister shall fix a time and place for such a meeting and shall forthwith notify the council of every municipality either wholly or partly within the watershed or part thereof. R.S.O. 1990, c. C.27, s. 2 (1).

Representatives at meeting

(2) The council of each municipality may appoint representatives to attend the meeting in the following numbers:

1. Where the population is 1,000,000 or more, seven representatives.
 - 1.1 Where the population is 500,000 or more but less than 1,000,000, six representatives.
 - 1.2 Where the population is 250,000 or more but less than 500,000, five representatives.
2. Where the population is 100,000 or more but less than 250,000, four representatives.
3. Where the population is 50,000 or more but less than 100,000, three representatives.
4. Where the population is 10,000 or more but less than 50,000, two representatives.
5. Where the population is less than 10,000, one representative. R.S.O. 1990, c. C.27, s. 2 (2); 2001, c. 9, Sched. K, s. 1 (1).

Authority of representatives

(3) The representatives so appointed have authority to vote and generally act on behalf of their respective municipalities at the meeting. R.S.O. 1990, c. C.27, s. 2 (3).

Quorum

(4) At any meeting called under this section, a quorum consists of two-thirds of the representatives that the municipalities notified are entitled to appoint. R.S.O. 1990, c. C.27, s. 2 (4); 2017, c. 23, Sched. 4, s. 4.

Section Amendments with date in force (d/m/y) [+]

Establishment, jurisdiction and initial financing

Establishment and jurisdiction of authority

3 (1) Upon receipt by the Minister of a resolution passed at a meeting held under section 2 and at which a quorum was present by not less than two-thirds of the representatives present thereat requesting the establishment of an authority, the Lieutenant Governor in Council may establish a conservation authority and designate the municipalities that are the participating municipalities and the area over which the authority has jurisdiction. R.S.O. 1990, c. C.27, s. 3 (1); 2017, c. 23, Sched. 4, s. 5 (1).

Where only part of municipality in watershed

(2) Where a municipality is only partly within the watershed, the Lieutenant Governor in Council may include the whole or that part of the municipality in the area over which the authority has jurisdiction. R.S.O. 1990, c. C.27, s. 3 (2).

Name of authority

(3) The name of each authority shall be determined by the Lieutenant Governor in Council and shall conclude with the words "conservation authority" in English and shall include the words "office de protection de la nature" in French. R.S.O. 1990, c. C.27, s. 3 (3).

Corporate body

(4) Every authority is a body corporate. R.S.O. 1990, c. C.27, s. 3 (4).

Borrowing power

(5) Every authority may, for its purposes, borrow on the promissory note of the authority such money as may be required until payment to the authority of any grants and of sums to be paid to the authority by the participating municipalities. R.S.O. 1990, c. C.27, s. 3 (5); 2017, c. 23, Sched. 4, s. 5 (2).

Section Amendments with date in force (d/m/y) [+]

Upper-tier municipalities

Regional municipalities to act in place of local municipalities

4 (1) An upper-tier municipality that was established as a regional municipality before the day subsection 6 (1) of Schedule 4 to the *Building Better Communities and Conserving Watersheds Act, 2017* comes into force,

(a) shall act in the place of the local municipalities within the regional municipality for the purpose of appointing representatives to attend a meeting for the establishment or enlargement of a conservation authority or the amalgamation of conservation authorities and for the purpose may appoint representatives in the numbers to which the local municipalities would otherwise have been entitled; and

(b) shall be a participating municipality in the place of such of the local municipalities within the regional municipality as are wholly or partly within the area under the jurisdiction of a conservation authority and shall appoint to each such authority the number of members to which the local municipalities would otherwise have been entitled as participating municipalities. R.S.O. 1990, c. C.27, s. 4 (1); 2017, c. 23, Sched. 4, s. 6 (1).

(2) REPEALED: 2017, c. 23, Sched. 4, s. 6 (2).

Section Amendments with date in force (d/m/y) [+]

Toronto and Region Conservation Authority

5 (1) The Metropolitan Toronto and Region Conservation Authority is continued under the name Toronto and Region Conservation Authority in English and Office de protection de la nature de Toronto et de la région in French, and has jurisdiction in all matters provided for in this Act over the area under its jurisdiction on December 31, 1990, as it may be altered under this Act. 1997, c. 26, Sched.

(2) Repealed: 2001, c. 9, Sched. K, s. 1 (2).

Designation of participating municipalities and area

(3) The Lieutenant Governor in Council may designate,

(a) the municipalities that are the participating municipalities of the Toronto and Region Conservation Authority; and

(b) the area over which the Toronto and Region Conservation Authority has jurisdiction. 1997, c. 26, Sched.

Members

(4) Despite subsections 14 (1), (2) and (5) but subject to subsection 14 (2.1), the number of members appointed to the Toronto and Region Conservation Authority by the City of Toronto shall, at all times, be equal to the total number of members appointed by the other participating municipalities. 1997, c. 26, Sched.; 2001, c. 9, Sched. K, s. 1 (3).

Section Amendments with date in force (d/m/y) [+]

Hamilton Region Conservation Authority

6 (1) The Hamilton Region Conservation Authority is continued under the name Hamilton Region Conservation Authority in English and Office de protection de la nature de la région de Hamilton in French, and has jurisdiction in all matters provided for in this Act over the area under its jurisdiction on the 31st day of December, 1990, as it may be altered under this Act. R.S.O. 1990, c. C.27, s. 6 (1).

(2) Repealed: 2001, c. 9, Sched. K, s. 1 (4).

Designation of participating municipalities and area

(3) The Lieutenant Governor in Council may designate the municipalities that are the participating municipalities of the Hamilton Region Conservation Authority and the area under its jurisdiction. R.S.O. 1990, c. C.27, s. 6 (3).

(4) Repealed: 2000, c. 5, s. 8.

Section Amendments with date in force (d/m/y) [+]

Grand River Conservation Authority

7 (1) The Grand River Conservation Authority is continued under the name Grand River Conservation Authority in English and Office de protection de la nature de la rivière Grand in French as a conservation authority under this Act. R.S.O. 1990, c. C.27, s. 7 (1).

Designation of participating municipalities and area

(2) The Lieutenant Governor in Council may designate the municipalities that are the participating municipalities of the Grand River Conservation Authority and the area over which it has jurisdiction. 2001, c. 9, Sched. K, s. 1 (5).

(3) Repealed: 2001, c. 9, Sched. K, s. 1 (5).

Section Amendments with date in force (d/m/y) [+]

Grouping of municipalities

8 The participating municipalities may designate any group of municipalities that shall be considered as one municipality for the purpose of appointing a member or members to a conservation authority and provide for the appointment of the member or members to be appointed by a group of municipalities. R.S.O. 1990, c. C.27, s. 8; 1998, c. 18, Sched. I, s. 2.

Section Amendments with date in force (d/m/y) [+]

Establishment of authority for two or more watersheds

9 Where the councils of any three municipalities situate either wholly or partly within the area comprising two or more watersheds by resolution request the Minister to call a meeting for the establishment of an authority for such watersheds or any defined parts thereof, the provisions of sections 2 and 3 apply with necessary modifications. R.S.O. 1990, c. C.27, s. 9.

PART III

ENLARGING AREAS OF JURISDICTION, AMALGAMATIONS AND DISSOLUTIONS

Enlargement of authority's area

10 (1) If an authority has been established, the council of a municipality that is completely or partly outside the jurisdiction of the authority may call a meeting to consider the enlargement of the area over which the authority has jurisdiction to include an area specified by the municipality. 1998, c. 18, Sched. I, s. 3 (1).

Notice of meeting

(1.1) Notice of the meeting shall be given to each participating municipality of the authority and to any municipality that is completely or partly within the area specified under subsection (1). 2017, c. 23, Sched. 4, s. 8.

Representatives

(2) Each municipality that receives notice of the meeting may appoint the number of representatives to attend the meeting that is determined in accordance with subsection 2 (2). 2017, c. 23, Sched. 4, s. 8.

Quorum

(3) At any meeting called under this section, a quorum consists of two-thirds of the representatives that the municipalities are entitled to appoint under subsection (2). 2017, c. 23, Sched. 4, s. 8.

Resolution

(4) At a meeting held under this section at which a quorum is present, a resolution may be passed to do all of the following:

1. Agree to enlarge the area over which the authority has jurisdiction.
2. Designate participating municipalities for the enlarged area.
3. Designate the enlarged area over which the authority has jurisdiction. 2017, c. 23, Sched. 4, s. 8.

Two-thirds majority vote

(5) A resolution described in subsection (4) shall be passed by a majority of at least two-thirds of the representatives present at the meeting. 2017, c. 23, Sched. 4, s. 8.

Resolution in effect

(6) A resolution described in subsection (4) takes effect on such terms as it may specify despite anything to the contrary in the order in council establishing the authority. 2017, c. 23, Sched. 4, s. 8.

Minister's copy

(7) The municipality that called a meeting under subsection (1) shall provide the Minister with a copy of any resolution described in subsection (4) passed at the meeting promptly after the resolution is passed. 2017, c. 23, Sched. 4, s. 8.

Section Amendments with date in force (d/m/y) [+]

Amalgamation of authorities

11 (1) If two or more authorities have been established for adjoining watersheds or parts thereof, one or more of the authorities or the council of a participating municipality of one of the authorities may call a meeting to consider the establishment of one authority to have jurisdiction over the areas that are under separate jurisdictions. 1998, c. 18, Sched. I, s. 4 (1); 2017, c. 23, Sched. 4, s. 9 (1).

Notice of meeting

(1.1) Notice of the meeting shall be given to each participating municipality of the relevant authorities. 2017, c. 23, Sched. 4, s. 9 (2).

Public notice

(1.2) The body or bodies that call a meeting under subsection (1) shall ensure that, at least 14 days before the meeting, notice of the meeting is,

- (a) published in a newspaper having general circulation in each participating municipality, including in the electronic version of the newspaper where available; or
- (b) if there is no newspaper of general circulation in a participating municipality, posted on a website maintained by the municipality and in at least one prominent place in the municipality. 2017, c. 23, Sched. 4, s. 9 (2).

Public representations

(1.3) No vote shall be taken on a resolution requesting amalgamation of the authorities unless members of the public have been given an opportunity at the meeting to make representations on the issue. 2017, c. 23, Sched. 4, s. 9 (2).

Representatives

(2) Each municipality that receives notice of the meeting may appoint the number of representatives to attend the meeting that is determined in accordance with subsection 2 (2). 2017, c. 23, Sched. 4, s. 9 (3).

Quorum

(3) At any meeting called under this section, a quorum consists of two-thirds of the representatives that the municipalities are entitled to appoint under subsection (2). 2017, c. 23, Sched. 4, s. 9 (3).

Resolution

(4) At a meeting held under this section at which a quorum is present, a resolution may be passed to do all of the following:

1. Establish a new authority that has jurisdiction over areas that previously were under the separate jurisdiction of the two or more existing authorities of the adjoining watersheds.
2. Dissolve the existing authorities.
3. Designate the participating municipalities for the new authority.
4. Designate the area over which the new authority has jurisdiction. 2017, c. 23, Sched. 4, s. 9 (4).

Two-thirds majority vote

(4.1) A resolution described in subsection (4) shall be passed by a majority of at least two-thirds of the representatives present at the meeting. 2017, c. 23, Sched. 4, s. 9 (4).

Approval by Minister

(4.2) The authorities or the municipality who called a meeting under subsection (1) shall submit the resolution passed in accordance with subsection (4.1) to the Minister for approval and the Minister may approve the resolution with such changes and on such terms and conditions as he or she considers appropriate. 2017, c. 23, Sched. 4, s. 9 (4).

Resolution in effect

(4.3) The resolution takes effect in accordance with the terms of the resolution and the Minister's approval. 2017, c. 23, Sched. 4, s. 9 (4).

Assets and liabilities of former authorities

(5) When the establishment of a new authority and the dissolution of the existing authorities take effect under subsection (4.3), all the assets and liabilities of the dissolved authorities vest in and become assets and liabilities of the new authority. R.S.O. 1990, c. C.27, s. 11 (5); 2017, c. 23, Sched. 4, s. 9 (5).

Section Amendments with date in force (d/m/y) [+]

12 Repealed: 1998, c. 18, Sched. I, s. 5.

Section Amendments with date in force (d/m/y) [+]

Participating municipalities following annexation, etc.

13 Where a new municipality is erected or two or more municipalities are amalgamated or any area is annexed to a municipality and any part of the resulting municipality is within the area over which an authority has jurisdiction, such resulting municipality shall be deemed to have been designated a participating municipality by the Lieutenant Governor in Council. R.S.O. 1990, c. C.27, s. 13.

Dissolution of authority

13.1 (1) An authority shall call a meeting of the members of the authority to consider the dissolution of the authority if, by resolution, the councils of two or more participating municipalities request the meeting. 1996, c. 1, Sched. M, s. 41.

Public notice

(1.1) The authority that calls a meeting under subsection (1) shall ensure that, at least 14 days before the meeting, notice of the meeting is,

- (a) published in a newspaper having general circulation in each participating municipality, including in the electronic version of the newspaper where available; or
- (b) if there is no newspaper of general circulation in a participating municipality, posted on a website maintained by the municipality and in at least one prominent place in the municipality. 2017, c. 23, Sched. 4, s. 10 (1).

Quorum

(2) Despite subsection 16 (2), a quorum at a meeting called under this section consists of two-thirds of the members of the authority. 1996, c. 1, Sched. M, s. 41; 2017, c. 23, Sched. 4, s. 10 (2).

(3), (4) REPEALED: 2017, c. 23, Sched. 4, s. 10 (3).

Public representations

(5) No vote shall be taken on a resolution requesting dissolution of the authority unless members of the public have been given an opportunity at the meeting to make representations on the issue. 1996, c. 1, Sched. M, s. 41.

Criteria for dissolution

(6) The Lieutenant Governor in Council may dissolve the authority, on such terms and conditions as the Lieutenant Governor in Council considers appropriate, if,

- (a) the Minister receives a resolution requesting the dissolution passed by at least two-thirds of the members of the authority present and entitled to vote at a meeting held under this section and at which a quorum was present;
- (b) the Minister is satisfied that acceptable provision has been made for future flood control and watershed interests and for the disposition of all assets and liabilities of the authority; and
- (c) the Minister is satisfied that acceptable provision has been made for future protection of drinking water sources. 1996, c. 1, Sched. M, s. 41; 2006, c. 22, s. 113 (1); 2019, c. 9, Sched. 2, s. 2.

(7) REPEALED: 2017, c. 23, Sched. 4, s. 10 (4).

Section Amendments with date in force (d/m/y) [+]**PART IV
MEMBERSHIP AND GOVERNANCE****Members of authority**

14 (1) Subject to subsection (3), members of an authority shall be appointed by the respective councils of the participating municipalities in the numbers set out in subsection 2 (2) for the appointment of representatives. 2017, c. 23, Sched. 4, s. 12 (1); 2020, c. 36, Sched. 6, s. 2 (1).

Members of council appointed

(1.1) When appointing members of an authority, the council of a participating municipality shall ensure that at least 70 per cent of its appointees are selected from among the members of the municipal council, subject to subsection (1.2). 2020, c. 36, Sched. 6, s. 2 (2).

Exception

(1.2) Upon application by a participating municipality, the Minister may grant permission to the municipality to select less than 70 per cent of its appointees to an authority from among the members of the municipal council, subject to such conditions or restrictions as the Minister considers appropriate. 2020, c. 36, Sched. 6, s. 2 (2).

Changes in number of members

(2) The total number of municipally appointed members of the authority and the number of municipal councillors that each participating municipality may appoint shall be adjusted as required to ensure compliance with subsection (1) if the municipalities that are participating municipalities change or the population of a participating municipality changes. 2001, c. 9, Sched. K, s. 1 (6); 2020, c. 36, Sched. 6, s. 2 (3).

Agreement on number of members

(2.1) Despite subsections (1), (2) and (5), the total number of members of the authority and the number of members that each participating municipality may appoint may be determined by an agreement that is confirmed by resolutions passed by the councils of all of the participating municipalities. 2001, c. 9, Sched. K, s. 1 (6).

Municipal agreement

(2.2) If the participating municipalities of an authority enter into an agreement with respect to the total number of municipally appointed members of the authority and the total number of members each municipality may appoint, the authority shall, within 60 days after the agreement is executed,

- (a) provide a copy of the agreement to the Minister; and
- (b) make the agreement available to the public by posting it on the authority's website and by any other means the authority considers appropriate. 2020, c. 36, Sched. 6, s. 2 (4).

Same, transition

(2.3) If an agreement referred to in subsection (2.2) is in force on the day subsection 2 (4) of Schedule 6 to the *Protect, Support and Recover from COVID-19 Act (Budget Measures), 2020* comes into force, the relevant authority shall provide a copy of the agreement to the Minister within 60 days after that day. 2020, c. 36, Sched. 6, s. 2 (4).

Qualification

(3) Every member of an authority shall be resident in a participating municipality in which the authority has jurisdiction. R.S.O. 1990, c. C.27, s. 14 (3).

Member from agricultural sector appointed

(4) In addition to the members of an authority appointed in accordance with subsections (1) to (2.1), an additional member may be appointed to the authority by the Minister as a representative of the agricultural sector. 2020, c. 36, Sched. 6, s. 2 (5).

Limitation on voting

(4.0.1) The member of an authority appointed under subsection (4) shall not vote on,

- (a) a resolution to enlarge an authority's area of jurisdiction that is presented at a meeting called under section 10;
- (b) a resolution to amalgamate an authority with another authority that is presented at a meeting called under section 11;
- (c) a resolution to dissolve the authority that is presented at a meeting called under section 13.1; or
- (d) a resolution relating to any budgetary matter that is presented at a meeting held under section 16. 2020, c. 36, Sched. 6, s. 2 (5).

Term

(4.1) A member shall be appointed for a term of up to four years, as may be determined by the council that appoints the member or, in the case of a member appointed under subsection (4), by the Minister. 2017, c. 23, Sched. 4, s. 12 (2); 2020, c. 36, Sched. 6, s. 2 (6).

Same

(4.2) A member's term begins at the first meeting of the authority after his or her appointment and expires immediately before the first meeting of the authority after the appointment of his or her replacement. 2017, c. 23, Sched. 4, s. 12 (2).

Replacement of member

(4.3) Despite subsections (4.1) and (4.2), a member may be replaced by the council of the participating municipality that appointed the member or, in the case of a member appointed under subsection (4), by the Minister. 2017, c. 23, Sched. 4, s. 12 (2); 2020, c. 36, Sched. 6, s. 2 (7).

Reappointment

(4.4) A member is eligible to be reappointed. 2017, c. 23, Sched. 4, s. 12 (2).

Where part of municipality in authority's area

(5) Where part only of a municipality is situated in an area over which an authority has jurisdiction, the number of members appointed for the municipality shall be based on the population of that part only of the municipality, and the population shall be deemed to be the same proportion of the total population of the whole municipality as the area of that part of the municipality is of the total area of the municipality. R.S.O. 1990, c. C.27, s. 14 (5).

(6) Repealed: 1996, c. 1, Sched. M, s. 42.

Section Amendments with date in force (d/m/y) [+]**14.1****Section Amendments with date in force (d/m/y) [+]****Meetings of authority**

15 (1) The first meeting of an authority shall be held at such time and place as may be determined by the Minister and, in each year thereafter, the authority shall hold at least one meeting before the 1st day of March and at least one meeting after the 1st day of July and such other meetings as it considers necessary to effectively conduct the affairs of the authority. R.S.O. 1990, c. C.27, s. 15 (1).

Copies of minutes to members

(2) Within 30 days after any meeting of an authority or of an executive committee, the secretary-treasurer of the authority shall send a copy of the minutes of the meeting to each member of the authority. R.S.O. 1990, c. C.27, s. 15 (2); 1998, c. 18, Sched. I, s. 7.

Agenda, minutes to be made public

(2.1) Subject to the *Municipal Freedom of Information and Protection of Privacy Act*, the authority shall,

- (a) make the agenda for a meeting of the authority or of its executive committee available to the public before the meeting takes place; and
- (b) make the minutes of a meeting of the authority or of its executive committee available to the public within 30 days after the meeting. 2020, c. 36, Sched. 6, s. 3.

Same

(2.2) An agenda for a meeting or its minutes that are to be made available to the public under subsection (2.1) shall be made available by posting them on the authority's website and by any other means the authority considers appropriate. 2020, c. 36, Sched. 6, s. 3.

Open meetings

(3) Every meeting held by the authority shall be open to the public, subject to such exceptions as may be specified in the by-laws of the authority. 2017, c. 23, Sched. 4, s. 13.

Section Amendments with date in force (d/m/y) [+]**Decision-making at meetings**

16 (1) Each member of an authority is entitled to one vote. 1998, c. 18, Sched. I, s. 8.

Quorum

(2) At any meeting of an authority, a quorum consists of one-half of the members appointed by the participating municipalities, except where there are fewer than six such members, in which case three such members constitute a quorum. R.S.O. 1990, c. C.27, s. 16 (2); 2006, c. 22, s. 113 (2).

Majority vote

(3) A majority vote of the members present at any meeting is required upon all matters coming before the meeting. R.S.O. 1990, c. C.27, s. 16 (3).

Section Amendments with date in force (d/m/y) [+]

Chair, vice-chair

17 (1) At the first meeting held in each year or at such other meeting as may be specified by the authority's by-laws, the authority shall appoint a chair and one or more vice-chairs from among the members of the authority. 1996, c. 1, Sched. M, s. 43; 2017, c. 23, Sched. 4, s. 14.

Term of chair, vice-chair

(1.1) A chair or vice-chair appointed under subsection (1) shall hold office for a term of one year and shall serve for no more than two consecutive terms. 2020, c. 36, Sched. 6, s. 4.

Representation from each municipality

(1.2) An authority in respect of which more than one participating municipality has been designated shall appoint chairs and vice-chairs from among the members appointed to the authority by each participating municipality on a rotating basis so as to ensure that a member appointed to the authority by a particular participating municipality cannot be appointed to succeed an outgoing chair or vice-chair appointed to the authority by the same participating municipality. 2020, c. 36, Sched. 6, s. 4.

Exception

(1.3) Despite subsections (1.1) and (1.2), upon application by an authority or a participating municipality, the Minister may grant permission to the authority or participating municipality to, subject to such conditions or restrictions as the Minister considers appropriate,

- (a) appoint a chair or vice-chair for a term of more than one year or to hold office for more than two consecutive terms; or
- (b) appoint as chair or vice-chair of the authority a member who was appointed to the authority by the same participating municipality that appointed the outgoing chair or vice-chair. 2020, c. 36, Sched. 6, s. 4.

Vacancy

(2) Subject to subsection (1), upon the death of the chair or a vice-chair, or upon the incapacity of the chair or a vice-chair to act, or upon the chair or a vice-chair ceasing to be a member of the authority, the remaining members may appoint a member to fill such vacancy. R.S.O. 1990, c. C.27, s. 17 (2).

Absence of chair and vice-chairs

(3) In the event of the absence of the chair and the vice-chairs from any meeting of an authority, the members present shall appoint an acting chair who, for the purposes of such meeting, has all the powers and shall perform all the duties of the chair. R.S.O. 1990, c. C.27, s. 17 (3).

Section Amendments with date in force (d/m/y) [+]

Employees and advisory boards

Employees

18 (1) An authority shall appoint a secretary-treasurer and may appoint such other employees as it considers necessary who shall hold office during the pleasure of the authority and shall receive such salary or other remuneration as the authority determines, payable out of the funds of the authority. R.S.O. 1990, c. C.27, s. 18 (1).

Advisory boards

(2) An authority shall establish such advisory boards as may be required by regulation and may establish such other advisory boards as it considers appropriate. 2017, c. 23, Sched. 4, s. 15.

Same

(3) An advisory board shall comply with any requirements that may be prescribed by regulation with respect to its composition, functions, powers, duties, activities and procedures. 2017, c. 23, Sched. 4, s. 15.

Section Amendments with date in force (d/m/y) [+]**Executive committee**

19 (1) The authority may appoint an executive committee from among the members of the authority. R.S.O. 1990, c. C.27, s. 19 (1).

Chair, vice-chair

(2) The chair and vice-chair of the authority shall be the chair and vice-chair of the executive committee. R.S.O. 1990, c. C.27, s. 19 (2).

(3) Repealed: 1998, c. 18, Sched. I, s. 9.

Section Amendments with date in force (d/m/y) [+]**By-laws**

19.1 (1) An authority may make by-laws,

- (a) respecting the meetings to be held by the authority, including providing for the calling of the meetings and the procedures to be followed at meetings, specifying which meetings, if any, may be closed to the public;
- (b) prescribing the powers and duties of the secretary-treasurer;
- (c) designating and empowering officers to sign contracts, agreements and other documents on behalf of the authority;
- (d) delegating all or any of its powers to the executive committee except,
 - (i) the termination of the services of the secretary-treasurer,
 - (ii) the power to raise money, and
 - (iii) the power to enter into contracts or agreements other than those contracts or agreements as are necessarily incidental to the works approved by the authority;
- (e) providing for the composition of its executive committee and for the establishment of other committees that it considers advisable and respecting any other matters relating to its governance;
- (f) respecting the roles and responsibilities of the members of the authority and of its officers and senior staff;
- (g) requiring accountability and transparency in the administration of the authority including,
 - (i) providing for the retention of records specified in the by-laws and for making the records available to the public,

(ii) establishing a code of conduct for the members of the authority, and

(iii) adopting conflict of interest guidelines for the members of the authority;

(h) respecting the management of the authority's financial affairs, including auditing and reporting on the authority's finances;

(i) respecting the by-law review required under subsection (3) and providing for the frequency of the reviews; and

(j) respecting such other matters as may be prescribed by regulation. 2017, c. 23, Sched. 4, s. 16.

Conflict with other laws

(2) If a by-law made by an authority conflicts with any provision of the *Municipal Conflict of Interest Act* or the *Municipal Freedom of Information and Protection of Privacy Act* or a provision of a regulation made under one of those Acts, the provision of the Act or regulation prevails. 2017, c. 23, Sched. 4, s. 16.

Periodic review of by-laws

(3) At such regular intervals as may be determined by by-law, an authority shall undertake a review of all of its by-laws to ensure, amongst other things, that the by-laws are in compliance with any Act referred to in subsection (2) or any other relevant law. 2017, c. 23, Sched. 4, s. 16.

By-laws available to public

(4) An authority shall make its by-laws available to the public in the manner it considers appropriate. 2017, c. 23, Sched. 4, s. 16.

Transition

(5) An authority shall make such by-laws under this section as are required for its proper administration,

(a) in the case of an authority that was established on or before the day section 16 of Schedule 4 to the *Building Better Communities and Conserving Watersheds Act, 2017* comes into force, within one year of that day; and

(b) in the case of an authority that is established after the day section 16 of Schedule 4 to the *Building Better Communities and Conserving Watersheds Act, 2017* comes into force, within one year of the day the authority is established. 2017, c. 23, Sched. 4, s. 16.

(6) REPEALED: 2020, c. 36, Sched. 6, s. 5.

Direction by Minister

(7) The Minister may give an authority a written direction to make or amend a by-law on any matter described in subsection (1), in accordance with the direction, within such period of time as may be specified in the direction. 2017, c. 23, Sched. 4, s. 16.

Compliance

(8) The authority that receives a direction under subsection (7) shall comply with the direction within the time specified in the direction. 2017, c. 23, Sched. 4, s. 16.

Regulation where failure to comply

(9) If an authority fails to adopt a by-law in accordance with the direction made under subsection (7), the Minister may make regulations in relation to the matters set out in the direction that are applicable in the area of jurisdiction of the authority. 2017, c. 23, Sched. 4, s. 16.

Same

(10) Any regulation made by the Minister under subsection (9) prevails over any conflicting by-law that the authority may have adopted. 2017, c. 23, Sched. 4, s. 16.

Section Amendments with date in force (d/m/y) [+]

PART V OBJECTS, POWERS AND DUTIES

Objects

20 (1) The objects of an authority are to provide, in the area over which it has jurisdiction,

- (a) the mandatory programs and services required under section 21.1;
- (b) any municipal programs and services that may be provided under section 21.1.1; and
- (c) any other programs or services that may be provided under section 21.1.2. 2020, c. 36, Sched. 6, s. 6 (1).

Same

(2) Subject to any other Act relating to gas or oil resources, authorities may enter into agreements to allow exploration, storage and extraction by others in order to share in the revenue from use of gas or oil resources owned by them if,

- (a) the use is compatible with the conservation, restoration, development and management of other natural resources; and
- (b) extraction occurs on land adjacent to, but not on, conservation authority land. 1998, c. 18, Sched. I, s. 10; 2020, c. 36, Sched. 6, s. 6 (2).

Section Amendments with date in force (d/m/y) [+]

Powers of authorities

21 (1) For the purposes of accomplishing its objects, an authority has power,

- (a) to research, study and investigate the watershed and to support the development and implementation of programs and services intended to further the purposes of this Act;
- (b) for any purpose necessary to any project under consideration or undertaken by the authority, to enter into and upon any land, with consent of the occupant or owner, and survey and take levels of it and make such borings or sink such trial pits as the authority considers necessary;
- (c) to acquire by purchase, lease or otherwise any land that it may require, and, subject to subsection (2), to sell, lease or otherwise dispose of land so acquired;
- (d) despite subsection (2), to lease for a term of five years or less land acquired by the authority;
- (e) to purchase or acquire any personal property that it may require and sell or otherwise deal therewith;
- (f) to enter into agreements for the purchase of materials, employment of labour and other purposes as may be necessary for the due carrying out of any project or to further the authority's objects;
- (g) to enter into agreements with owners of private lands to facilitate the due carrying out of any project;
- (h) to determine the proportion of the total benefit afforded to all the participating municipalities that is afforded to each of them;
- (i) to erect works and structures and create reservoirs by the construction of dams or otherwise;
- (j) to control the flow of surface waters in order to prevent floods or pollution or to reduce the adverse effects thereof;
- (k) to alter the course of any river, canal, brook, stream or watercourse, and divert or alter, as well temporarily as permanently, the course of any river, stream, road, street or way, or raise or sink its level in order to carry it over or under, on the level of or by the side of any work built or to be built by the authority, and to divert or alter the position of any water-pipe, gas-pipe, sewer, drain or any telegraph, telephone or electric wire or pole;
- (l) to use lands that are owned or controlled by the authority for purposes, not inconsistent with its objects, as it considers proper;

(m) to use lands owned or controlled by the authority for park or other recreational purposes, and to erect, or permit to be erected, buildings, booths and facilities for such purposes and to make charges for admission thereto and the use thereof;

(m.1) to charge fees for services approved by the Minister;

Note: On January 1, 2023, the day named by proclamation of the Lieutenant Governor, clause 21 (1) (m.1) of the Act is repealed. (See: 2017, c. 23, Sched. 4, s. 19 (3))

(n) to collaborate and enter into agreements with ministries and agencies of government, municipal councils and local boards and other organizations and individuals;

(o) to plant and produce trees on Crown lands with the consent of the Minister, and on other lands with the consent of the owner, for any purpose;

(p) REPEALED: 2020, c. 36, Sched. 6, s. 7 (4).

(q) generally to do all such acts as are necessary for the due carrying out of any project or as may be desirable to further the objects of the authority. R.S.O. 1990, c. C.27, s. 21; 1996, c. 1, Sched. M, s. 44 (1, 2); 1998, c. 18, Sched. I, s. 11; 2017, c. 23, Sched. 4, s. 19 (1, 2, 4, 5); 2020, c. 36, Sched. 6, s. 7.

Approval of Minister

(2) If the Minister has made a grant to an authority under section 39 in respect of land, the authority shall not sell, lease or otherwise dispose of the land under clause (1) (c) without the approval of the Minister except if,

(a) the disposition is for provincial or municipal infrastructure and utility purposes;

(b) the province, the provincial agency, board or commission affected by the disposition or the municipal government, agency, board or commission affected by the disposition has approved it; and

(c) the authority informs the Minister of the disposition. 2010, c. 16, Sched. 10, s. 1 (1).

Terms and conditions

(3) The Minister may impose terms and conditions on an approval given under subsection (2), including a condition that the authority pay a specified share of the proceeds of the disposition to the Minister. 1996, c. 1, Sched. M, s. 44 (3).

Section Amendments with date in force (d/m/y) [+]

Mandatory programs and services

21.1 (1) An authority shall provide the following programs or services within its area of jurisdiction:

1. Programs or services that meet any of the following descriptions and that have been prescribed by the regulations:

i. Programs and services related to the risk of natural hazards.

ii. Programs and services related to the conservation and management of lands owned or controlled by the authority, including any interests in land registered on title.

iii. Programs and services related to the authority's duties, functions and responsibilities as a source protection authority under the *Clean Water Act, 2006*.

iv. Programs and services related to the authority's duties, functions and responsibilities under an Act prescribed by the regulations.

2. Programs or services, other than programs or services described in paragraph 1, that have been prescribed by the regulations on or before the first anniversary of the day prescribed under clause 40 (3) (i). 2020, c. 36, Sched. 6, s. 8 (1).

Same, Lake Simcoe Region Conservation Authority

(2) In addition to the programs and services required to be provided under subsection (1), the Lake Simcoe Region Conservation Authority shall provide, within its area of jurisdiction, such programs and services as are prescribed by the regulations and are related to its duties, functions and responsibilities under the *Lake Simcoe Protection Act, 2008*. 2020, c. 36, Sched. 6, s. 8 (1).

Standards and requirements

(3) Programs and services required to be provided under subsections (1) and (2) shall be provided in accordance with such standards and requirements as may be set out in the regulations. 2020, c. 36, Sched. 6, s. 8 (1).

Section Amendments with date in force (d/m/y) [+]**Municipal programs and services**

21.1.1 (1) An authority may provide, within its area of jurisdiction, municipal programs and services that it agrees to provide on behalf of a municipality situated in whole or in part within its area of jurisdiction under a memorandum of understanding, or such other agreement as may be entered into with the municipality, in respect of the programs and services. 2020, c. 36, Sched. 6, s. 8 (1).

Memorandum, agreement available to public

(2) An authority shall make a memorandum of understanding or other agreement available to the public in such manner as may be determined in the memorandum or agreement. 2020, c. 36, Sched. 6, s. 8 (1).

Periodic review of memorandum, agreement

(3) An authority and a municipality who have entered into a memorandum of understanding or other agreement shall review the memorandum or agreement at such regular intervals as may be determined in the memorandum or agreement. 2020, c. 36, Sched. 6, s. 8 (1).

Terms and conditions

(4) Programs and services that an authority agrees to provide on behalf of a municipality shall be provided in accordance with,

- (a) the terms and conditions set out in the memorandum of understanding or agreement; and
- (b) such standards and requirements as may be prescribed. 2020, c. 36, Sched. 6, s. 8 (1).

Conflict

(5) If there is a conflict between the terms and conditions set out in the memorandum of understanding or agreement and the prescribed standard and requirements, the prescribed standards and requirements prevail. 2020, c. 36, Sched. 6, s. 8 (1).

Section Amendments with date in force (d/m/y) [+]**Other programs and services**

21.1.2 (1) In addition to programs and services described in sections 21.1 and 21.1.1, an authority may provide, within its area of jurisdiction, any other programs and services that it determines are advisable to further the purposes of this Act. 2020, c. 36, Sched. 6, s. 8 (1).

Agreement

(2) On and after the day prescribed by the regulations, if financing under section 25 or 27 by a participating municipality is necessary in order for an authority to provide a program or service authorized to be provided under subsection (1), the program or service shall not be provided by the authority unless an agreement that meets the following criteria has been entered into between the authority and the participating municipality in respect of the program or service:

1. The agreement must provide for the participating municipality to pay to the authority,
 - i. an apportioned amount under section 25 in connection with a project related to the program or service, or

- ii. an apportioned amount under section 27 in respect of the program or service.
2. The agreement must include provisions setting out the day on which the agreement terminates and a requirement that it be reviewed by the parties within the period specified in the regulations for the purpose of determining whether or not the agreement is to be renewed by the parties.
3. The agreement must meet such other requirements as may be prescribed by the regulations. See: 2020, c. 36, Sched. 6, s. 8 (2).

Terms and conditions

(3) Programs and services that an authority agrees to provide under an agreement described in subsection (2) shall be provided in accordance with,

- (a) such terms and conditions as may be set out in the agreement; and
- (b) such standards and requirements as may be prescribed. See: 2020, c. 36, Sched. 6, s. 8 (2).

Conflict

(4) If there is a conflict between the terms and conditions set out in an agreement described in subsection (2) and the prescribed standards and requirements, the prescribed standards and requirements prevail. See: 2020, c. 36, Sched. 6, s. 8 (2).

Section Amendments with date in force (d/m/y) [+]

Consultation

21.1.3 An authority shall carry out such consultations with respect to the programs and services it provides as may be required by regulation and shall do so in the manner specified by regulation. 2020, c. 36, Sched. 6, s. 8 (1).

Section Amendments with date in force (d/m/y) [+]

Transition plan re s. 21.1.2 (2)

21.1.4 (1) Every authority shall develop and implement a transition plan for the purpose of ensuring that it will be in compliance with subsection 21.1.2 (2) by the day prescribed by the regulations for the purpose of that subsection. 2020, c. 36, Sched. 6, s. 9.

Contents

(2) The transition plan shall address the following matters in accordance with the regulations:

1. Preparation by the authority of an inventory of the authority's programs and services.
2. Consultation by the authority with participating municipalities on the inventory of programs and services mentioned in paragraph 1.
3. If financing under section 25 or 27 by a participating municipality is necessary in order for the authority to provide a program or service authorized to be provided under subsection 21.1.2 (1), steps to be taken by the authority for the purposes of seeking to enter into an agreement with the participating municipality in respect of that program or service.
4. Such other matters as may be prescribed by the regulations. 2020, c. 36, Sched. 6, s. 9.

Section Amendments with date in force (d/m/y) [+]

Note: On January 1, 2023, the day named by proclamation of the Lieutenant Governor, the Act is amended by adding the following section: (See: 2017, c. 23, Sched. 4, s. 21)

Fees for programs and services

21.2 (1) The Minister may determine classes of programs and services in respect of which an authority may charge a fee. 2017, c. 23, Sched. 4, s. 21.

Publication of list

(2) The Minister shall publish the list of classes of programs and services in respect of which an authority may charge a fee in a policy document and distribute the document to each authority. 2017, c. 23, Sched. 4, s. 21.

Updating list

(3) If the Minister makes changes to the list of classes of programs and services in respect of which an authority may charge a fee, the Minister shall promptly update the policy document referred to in subsection (2) and distribute the new document to each authority. 2017, c. 23, Sched. 4, s. 21.

Where authority may charge fee

(4) An authority may charge a fee for a program or service that it provides only if it is set out on the list of classes of programs and services referred to in subsection (2). 2017, c. 23, Sched. 4, s. 21.

Amount of fee

(5) The amount of a fee charged by an authority for a program or service it provides shall be,

- (a) the amount prescribed by the regulations; or
- (b) if no amount is prescribed, the amount determined by the authority. 2017, c. 23, Sched. 4, s. 21.

Fee schedule

(6) Every authority shall prepare and maintain a fee schedule that sets out,

- (a) the list of programs and services that it provides and in respect of which it charges a fee; and
- (b) the amount of the fee charged for each program or service or the manner in which the fee is determined. 2017, c. 23, Sched. 4, s. 21.

Fee policy

(7) Every authority shall adopt a written policy with respect to the fees that it charges for the programs and services it provides, and the policy shall set out,

- (a) the fee schedule described in subsection (6);
- (b) the frequency within which the fee policy shall be reviewed by the authority under subsection (9);
- (c) the process for carrying out a review of the fee policy, including the rules for giving notice of the review and of any changes resulting from the review; and
- (d) the circumstances in which a person may request that the authority reconsider a fee that was charged to the person and the procedures applicable to the reconsideration. 2017, c. 23, Sched. 4, s. 21.

Fee policy to be made public

(8) Every authority shall make the fee policy available to the public in a manner it considers appropriate. 2017, c. 23, Sched. 4, s. 21.

Periodic review of fee policy

(9) At such regular intervals as may be determined by an authority, the authority shall undertake a review of its fee policy, including a review of the fees set out in the fee schedule. 2017, c. 23, Sched. 4, s. 21.

Notice of fee changes

(10) If, after a review of a fee policy or at any other time, an authority wishes to make a change to the list of fees set out in the fee schedule or to the amount of any fee or the manner in which a fee is determined, the authority shall give notice of the proposed change to the public in a manner it considers appropriate. 2017, c. 23, Sched. 4, s. 21.

Reconsideration of fee charged

(11) Any person who considers that the authority has charged a fee that is contrary to the fees set out in the fee schedule, or that the fee set out in the fee schedule is excessive in relation to the service or program for which it is charged, may apply to the authority in accordance with the procedures set out in the fee policy and request that it reconsider the fee that was charged. 2017, c. 23, Sched. 4, s. 21.

Powers of authority on reconsideration

(12) Upon reconsideration of a fee that was charged for a program or service provided by an authority, the authority may,

- (a) order the person to pay the fee in the amount originally charged;
- (b) vary the amount of the fee originally charged, as the authority considers appropriate; or
- (c) order that no fee be charged for the program or service. 2017, c. 23, Sched. 4, s. 21.

Note: On a day to be named by proclamation of the Lieutenant Governor, section 21.2 of the Act is amended by adding the following subsections: (See: 2020, c. 36, Sched. 6, s. 10)

Reconsideration of fees for permit applications

(13) If an authority receives a request for reconsideration of a fee charged for an application for a permit made under subsection 28.1 (2), the authority shall make its decision within 30 days after receiving the request. 2020, c. 36, Sched. 6, s. 10.

Appeal if no decision

(14) If an authority fails to reconsider a fee described in subsection (13) within 30 days of receiving the request for reconsideration, the person who made the request may appeal the amount of the fee directly to the Local Planning Appeal Tribunal. 2020, c. 36, Sched. 6, s. 10.

Payment of fee

(15) If, after reconsideration of a fee charged for an application for a permit made under subsection 28.1 (2), an authority orders a person to pay the fee under clause (12) (a) or (b), the person shall pay the fee in accordance with the order. 2020, c. 36, Sched. 6, s. 10.

Payment of fee under protest and appeal

(16) A person who pays a fee under subsection (15) may,

- (a) when paying the fee, indicate to the authority in writing that the fee is being paid under protest; and
- (b) within 30 days after payment of the fee, appeal the amount charged by the authority upon reconsideration to the Local Planning Appeal Tribunal. 2020, c. 36, Sched. 6, s. 10.

Appeal of fee in fee schedule

(17) For greater certainty, an appeal of the amount of a fee under subsection (14) or clause (16) (b) applies even if the amount charged was set out in the fee schedule prepared by the authority under subsection (6). 2020, c. 36, Sched. 6, s. 10.

Hearing

(18) The Local Planning Appeal Tribunal shall hear an appeal made under subsection (14) or clause (16) (b). 2020, c. 36, Sched. 6, s. 10.

Powers on appeal

(19) After hearing the appeal, the Local Planning Appeal Tribunal may,

- (a) dismiss the appeal;
- (b) vary the amount of the fee charged by the authority; or
- (c) order that no fee be charged. 2020, c. 36, Sched. 6, s. 10.

Refund

(20) If the Local Planning Appeal Tribunal makes an order under clause (19) (b) or (c), it may order that the authority provide a refund to the appellant in such amount as the Tribunal determines. 2020, c. 36, Sched. 6, s. 10.

Where dismissal required

(21) Despite subsection (19), the Local Planning Appeal Tribunal shall dismiss the appeal if it determines that the fee complies with a regulation made under clause 40 (3) (b). 2020, c. 36, Sched. 6, s. 10.

Note: On the later of the day section 2 of Schedule 6 to the *Accelerating Access to Justice Act, 2021* comes into force and the day section 10 of Schedule 6 to the *Protect, Support and Recover from COVID-19 Act (Budget Measures), 2020* comes into force, section 21.2 of the Act is amended by striking out “Local Planning Appeal Tribunal” wherever it appears and substituting in each case “Ontario Land Tribunal”. (See: 2021, c. 4, Sched. 6, s. 39 (1))

Section Amendments with date in force (d/m/y) [+]

Agreement re road

22 An authority and any municipality may enter into agreement for the construction or maintenance of a road or the reconstruction or maintenance of an existing road under the jurisdiction of the municipality for the purpose of providing access to lands of the authority used or to be used for park or recreational purposes. R.S.O. 1990, c. C.27, s. 22.

Minister’s powers

23 (1) Despite any powers conferred on an authority by this Act, the Minister may, when and for such periods as he or she considers necessary in the public interest,

- (a) require an authority to carry out flood control operations in a manner specified by the Minister;
- (b) require an authority to follow instructions issued by the Minister for the operation of one or more of the authority’s water control structures; or
- (c) take over the operation of one or more of an authority’s water control structures and require the authority to reimburse the Minister for any costs incurred by the Minister as a result. 1996, c. 1, Sched. M, s. 45.

Areas not under jurisdiction of authority

(2) Despite any powers conferred on the council of a municipality under this or any other Act, in an area that is not under the jurisdiction of an authority, the Minister may, when and for such periods as he or she considers necessary in the public interest,

- (a) require the council of a municipality to carry out flood control operations in a manner specified by the Minister;
- (b) require the council of a municipality to follow instructions issued by the Minister for the operation of one or more of the water control structures operated by the council; or
- (c) take over the operation of one or more of the water control structures operated by the council of a municipality and require the council to reimburse the Minister for any costs incurred by the Minister as a result. 1996, c. 1, Sched. M, s. 45.

Definition

(3) In subsection (2),

“municipality” includes an upper-tier municipality. 2002, c. 17, Sched. F, Table.

Section Amendments with date in force (d/m/y) [+]

Information required by Minister

23.1 (1) An authority shall provide the Minister with such information as the Minister may require in relation to its operations, including the programs and services it provides. 2017, c. 23, Sched. 4, s. 22.

Same

(2) The information shall be provided at the time and in the manner as the Minister may specify. 2017, c. 23, Sched. 4, s. 22.

Publication

(3) If directed by the Minister to do so, an authority shall publish all or such portion of the information provided to the Minister under subsection (1) and shall do so at the time and in the manner specified by the Minister. 2017, c. 23, Sched. 4, s. 22.

Investigator

(4) The Minister may, at any time, appoint one or more investigators to conduct an investigation of an authority's operations, including the programs and services it provides. 2019, c. 9, Sched. 2, s. 5.

Powers of investigator

(5) For the purposes of an investigation under subsection (4), an investigator may,

- (a) inquire into any or all of the authority's affairs, financial and otherwise;
- (b) require the production of any records that may relate to the authority's affairs;
- (c) inspect, examine, audit and copy anything required to be produced under clause (b);
- (d) conduct a financial audit of the authority's operations, including its programs and services; and
- (e) require any member of the authority and any other person to appear before the investigator and give evidence on oath about the authority's affairs. 2019, c. 9, Sched. 2, s. 5.

Application of *Public Inquiries Act, 2009*

(6) Section 33 of the *Public Inquiries Act, 2009* applies to an investigation under subsection (4). 2019, c. 9, Sched. 2, s. 5.

Report of investigator

(7) On completion of an investigation, an investigator shall report in writing to the Minister, who shall promptly transmit a copy of the report to the authority. 2019, c. 9, Sched. 2, s. 5.

Cost of investigation

(8) The Minister may require the authority to pay all or part of the cost of an investigation under subsection (4). 2019, c. 9, Sched. 2, s. 5.

Immunity for investigators

(9) No action or other proceeding shall be instituted against an investigator appointed under subsection (4) for any act done in good faith in the performance or intended performance of their duties under this Act or for any alleged neglect or default in the performance in good faith of their duties. 2020, c. 36, Sched. 6, s. 11.

Same

(10) Despite subsection 8 (3) of the *Crown Liability and Proceedings Act, 2019*, subsection (9) does not relieve the Crown of any liability to which it would otherwise be subject as a result of the actions of an investigator appointed under subsection (4). 2020, c. 36, Sched. 6, s. 11.

Section Amendments with date in force (d/m/y) [+]**Minister's order, etc.**

23.2 (1) If, after reviewing the report of an investigator made under subsection 23.1 (7), the Minister believes that an authority has failed, or is likely to fail, to comply with a provision of this Act or the regulations or of any other Act or regulation that applies to the authority, the Minister may,

- (a) order the authority to do or refrain from doing anything to avoid, prevent or remedy the non-compliance; or

(b) if the Minister believes it is advisable to do so, recommend to the Lieutenant Governor in Council that an administrator be appointed to take over the control and operation of the authority under section 23.3. 2020, c. 36, Sched. 6, s. 12.

Compliance with order

(2) An authority shall comply with an order made under clause (1) (a) within the time specified in the order. 2020, c. 36, Sched. 6, s. 12.

Public availability

(3) The Minister shall make every order made under clause (1) (a) available to the public in the manner the Minister considers appropriate. 2020, c. 36, Sched. 6, s. 12.

Section Amendments with date in force (d/m/y) [+]

Appointment of administrator

23.3 (1) If the Minister makes a recommendation under clause 23.2 (1) (b), the Lieutenant Governor in Council may make an order appointing an administrator to take over the control and operations of the authority, including the provision of programs and services that the authority provides. 2020, c. 36, Sched. 6, s. 12.

Powers of administrator

(2) The administrator may exercise all the powers and shall perform all the duties of the authority and of its members subject to such terms and conditions as may be specified in the appointment or by the Minister. 2020, c. 36, Sched. 6, s. 12.

Notice to authority

(3) The Minister shall ensure that a copy of an order under subsection (1) is delivered to the authority and to the participating municipalities as soon as is practical after it is made. 2020, c. 36, Sched. 6, s. 12.

Powers of Minister

(4) The Minister may issue directions to the administrator with regard to any matter within the jurisdiction of the administrator and the administrator shall carry out the directions. 2020, c. 36, Sched. 6, s. 12.

Immunity for administrator

(5) No action or other proceeding shall be instituted against an administrator appointed under subsection (1) for any act done in good faith in the performance or intended performance of their duties under this Act or for any alleged neglect or default in the performance in good faith of their duties. 2020, c. 36, Sched. 6, s. 12.

Same

(6) Despite subsection 8 (3) of the *Crown Liability and Proceedings Act, 2019*, subsection (5) does not relieve the Crown of any liability to which it would otherwise be subject as a result of the actions of an administrator appointed under subsection (1). 2020, c. 36, Sched. 6, s. 12.

Section Amendments with date in force (d/m/y) [+]

Projects of authority

24 (1) Before proceeding with a project, the authority shall file plans and a description with the Minister and obtain his or her approval in writing. 1996, c. 32, s. 66 (1).

(2) Repealed: 1996, c. 32, s. 66 (1).

Notice re raising of portion of cost

(3) When the statement of apportionment of the cost of any project requires a municipality to raise any portion of the cost in a subsequent year or years, the council shall, within thirty days after it receives the notice of apportionment, notify the authority in writing whether the portion of the cost will be provided by the issue of debentures or raised by taxation in the subsequent year or years.

R.S.O. 1990, c. C.27, s. 24 (3).

Time for notice where apportionment under review

(4) When a municipal council has, in accordance with subsection 25 (2), notified the Ontario Land Tribunal that it is dissatisfied with any apportionment, the time allowed for notifying the authority under subsection (3) shall be reckoned from the date of the order confirming or varying the apportionment. R.S.O. 1990, c. C.27, s. 24 (4); 2017, c. 23, Sched. 5, s. 20; 2021, c. 4, Sched. 6, s. 39 (2).

(5) Repealed: 1996, c. 32, s. 66 (2).

Approval of works on lakes or rivers

(6) Despite the *Lakes and Rivers Improvement Act*, a project for the construction of dams or other works on a lake or river that has been approved under this section does not require approval under that Act. R.S.O. 1990, c. C.27, s. 24 (6).

Application

(7) This section does not apply to a project unless the project involves money granted by the Minister under section 39. 1996, c. 1, Sched. M, s. 46.

Note: On July 1, 2023, the day named by proclamation of the Lieutenant Governor, section 24 of the Act is repealed and the following substituted: (See: 2017, c. 23, Sched. 4, s. 23)

Projects requiring approval

24 Before proceeding with a project that involves money granted by the Minister under section 39, the authority shall file plans and a description with the Minister and obtain his or her approval in writing. 2017, c. 23, Sched. 4, s. 23.

Section Amendments with date in force (d/m/y) [+]

Apportionment of benefit

25 (1) When an authority has determined the proportion of the total benefit of any project afforded to all the participating municipalities that is afforded to each of them, it shall cause a notice containing a statement of the apportionment to be sent to the council of each participating municipality by registered mail. R.S.O. 1990, c. C.27, s. 25 (1).

Review of apportionment by Tribunal

(2) Any municipal council that is dissatisfied with any apportionment may, within thirty days after it receives notice of the apportionment, notify the Ontario Land Tribunal and the authority in writing by registered mail that it applies for a review of the apportionment by the Ontario Land Tribunal. R.S.O. 1990, c. C.27, s. 25 (2); 2017, c. 23, Sched. 5, s. 21 (1); 2021, c. 4, Sched. 6, s. 39 (3).

Hearing

(3) Upon application, the Ontario Land Tribunal shall fix a date for the hearing of all interested parties and shall give all necessary directions for the hearing. R.S.O. 1990, c. C.27, s. 25 (3); 2017, c. 23, Sched. 5, s. 21 (2); 2021, c. 4, Sched. 6, s. 39 (3).

Powers of Tribunal on hearing

(4) The Ontario Land Tribunal has authority to take evidence and to confirm or vary the apportionment of the authority, and its decision is final and conclusive and is not open to appeal. R.S.O. 1990, c. C.27, s. 25 (4); 2017, c. 23, Sched. 5, s. 21 (2); 2021, c. 4, Sched. 6, s. 39 (4).

Variation of apportionment

(5) In the event of the authority varying any apportionment made by it, this section applies with necessary modifications. R.S.O. 1990, c. C.27, s. 25 (5).

Note: On July 1, 2023, the day named by proclamation of the Lieutenant Governor, section 25 of the Act is repealed and the following substituted: (See: 2017, c. 23, Sched. 4, s. 23)

Recovery of project capital costs

25 (1) An authority may, from time to time, determine the amount of capital costs to be incurred in connection with a project and apportion the capital costs to the participating municipalities in accordance with the regulations. 2017, c. 23, Sched. 4, s. 23.

Note: On July 1, 2023, the day named by proclamation of the Lieutenant Governor, section 25 of the Act is amended by adding the following subsections: (See: 2019, c. 9, Sched. 2, s. 6)

Limitation

(1.1) Subject to subsections (1.2) and (1.3), an authority shall not, on and after the day prescribed by the regulations, include in the apportionment any capital costs in connection with a project related to a program or service authorized to be provided under subsection 21.1.2 (1). 2019, c. 9, Sched. 2, s. 6.

Same

(1.2) An authority shall include in the apportionment of capital costs to a participating municipality any capital costs in connection with a project related to a program or service that has been identified in an agreement between the municipality and the authority as described in subsection 21.1.2 (2). 2019, c. 9, Sched. 2, s. 6.

Extension of time

(1.3) If the circumstances prescribed by the regulations apply in respect of an authority, a person designated by the Minister may, by written notice to the authority, specify that a later day than the day prescribed by the regulations under subsection (1.1) applies to the authority and if such a notice is issued, the prohibition set out in subsection (1.1) applies to the authority on and after the day set out in the notice. 2019, c. 9, Sched. 2, s. 6.

Notice of apportionment

(2) An authority shall send a notice of apportionment in writing to each participating municipality setting out the amount of the capital costs for a project that has been apportioned to the participating municipality. 2017, c. 23, Sched. 4, s. 23.

Payment of apportioned amount

(3) Each participating municipality shall pay to the authority the portion of the capital costs for a project that is specified in the notice of apportionment in accordance with the requirements set out in the notice and with this section. 2017, c. 23, Sched. 4, s. 23.

How money to be raised

(4) Each participating municipality may issue debentures to provide financing for the capital costs for a project of an authority. 2017, c. 23, Sched. 4, s. 23.

Where money raised over several years

(5) If the notice of apportionment requires a municipality to raise its portion of the capital costs for a project over a period of two or more years, the municipality shall, within 30 days of receiving the notice of apportionment, give the authority written notice of how it will pay its portion of the capital costs. 2017, c. 23, Sched. 4, s. 23.

Debt due

(6) The amount of the portion of the capital costs for a project that is specified in a notice of apportionment sent to a participating municipality is a debt due by the participating municipality to the authority and may be enforced by the authority as such. 2017, c. 23, Sched. 4, s. 23.

Section Amendments with date in force (d/m/y) [+]

Determination of capital expenditure

26 (1) An authority may, from time to time, determine what money will be required for capital expenditure in connection with any project. R.S.O. 1990, c. C.27, s. 26 (1).

Portion to be raised by participating municipalities

(2) The portion of the money so required that each participating municipality shall raise shall be in the same proportion as the benefit derived by each such municipality bears to the total benefit derived by all participating municipalities. R.S.O. 1990, c. C.27, s. 26 (2).

How money to be raised

(3) Upon notice in writing of the amount required to be raised, signed by the secretary-treasurer of the authority, each participating municipality shall raise by the issue of debentures or otherwise such money as may be required by the authority for capital expenditure. R.S.O. 1990, c. C.27, s. 26 (3); 1996, c. 32, s. 66 (3).

Enforcement of payment

(4) Subject to subsection (3), an authority may enforce payment against any participating municipality of the portion of the capital cost required to be raised by the municipality as a debt due by the municipality to the authority. R.S.O. 1990, c. C.27, s. 26 (4).

Where only part of municipality in area

(5) Where only a part of a participating municipality is situated in the area over which the authority has jurisdiction, the portion of the money required to be raised by that municipality for capital expenditure may be charged only against the rateable property in that part of the municipality. R.S.O. 1990, c. C.27, s. 26 (5).

(6) Repealed: 1994, c. 27, s. 127.

Note: On July 1, 2023, the day named by proclamation of the Lieutenant Governor, section 26 of the Act is repealed and the following substituted: (See: 2017, c. 23, Sched. 4, s. 23)

Review of apportionment of capital costs

26 (1) Any participating municipality that receives a notice of apportionment under section 25 may, within 30 days after receiving the notice of apportionment, apply to the Local Planning Appeal Tribunal, or to such other body as may be prescribed by regulation, for a review of the apportionment among the participating municipalities of the capital costs for the relevant project. 2017, c. 23, Sched. 4, s. 23; 2017, c. 23, Sched. 5, s. 22.

Same

(2) The participating municipality that makes an application under subsection (1) shall send a copy of the notice of application to the authority and to every other participating municipality of the authority. 2017, c. 23, Sched. 4, s. 23.

Hearing

(3) The Local Planning Appeal Tribunal, or such other body as may be prescribed by regulation, shall hold a hearing to reconsider the apportionment of capital costs among the participating municipalities, including considering whether the apportionment complies with section 25 and the regulations and whether the portion apportioned to the municipality is otherwise appropriate. 2017, c. 23, Sched. 4, s. 23; 2017, c. 23, Sched. 5, s. 22.

Parties

(4) The parties to the hearing are the applicant municipality, the authority, any other participating municipality of the authority that requests to be a party, and such other persons as the Local Planning Appeal Tribunal, or such other body as may be prescribed by regulation, may determine. 2017, c. 23, Sched. 4, s. 23; 2017, c. 23, Sched. 5, s. 22.

Requirement to pay costs stayed

(5) A participating municipality that makes an application under this section is not required to pay the portion of the capital costs that was apportioned to the municipality under the notice of apportionment until the determination of the application. 2017, c. 23, Sched. 4, s. 23.

Delay of notice

(6) A participating municipality that makes an application under this section is not required to give notice under subsection 25 (5) until 30 days after the final determination of the application. 2017, c. 23, Sched. 4, s. 23.

Powers on hearing

(7) Upon hearing an application under this section, the Local Planning Appeal Tribunal, or such other body as may be prescribed by regulation, may confirm or vary the apportionment of the capital costs by the authority among the participating municipalities. 2017, c. 23, Sched. 4, s. 23; 2017, c. 23, Sched. 5, s. 22.

Decision final

(8) A decision under subsection (7) is final. 2017, c. 23, Sched. 4, s. 23.

Note: On the later of the day section 2 of Schedule 6 to the *Accelerating Access to Justice Act, 2021* comes into force and the day section 23 of Schedule 4 to the *Building Better Communities and Conserving Watersheds Act, 2017* comes into force, section 26 of the Act, as re-enacted by section 23 of Schedule 4 to the *Building Better Communities and Conserving Watersheds Act, 2017*, is amended by striking out “Local Planning Appeal Tribunal” wherever it appears and substituting in each case “Ontario Land Tribunal”. (See: 2021, c. 4, Sched. 6, s. 39 (5))

Section Amendments with date in force (d/m/y) [+]

Maintenance and administration costs

27 (1) Repealed: 1997, c. 29, s. 54 (1).

Apportionment of maintenance costs

(2) Subject to the regulations made under subsection (16), after determining the approximate maintenance costs for the succeeding year, the authority shall apportion the costs to the participating municipalities according to the benefit derived or to be derived by each municipality, and the amount apportioned to each such municipality shall be levied against the municipality. R.S.O. 1990, c. C.27, s. 27 (2); 1996, c. 1, Sched. M, s. 47 (1).

Apportionment of administration costs

(3) Subject to the regulations made under subsection (16), after determining the approximate administration costs for the succeeding year, the authority shall apportion the costs to the participating municipalities and the amount apportioned to each such municipality shall be levied against the municipality. 1997, c. 29, s. 54 (2).

Minimum levy for administration costs

(4) Subject to the regulations made under subsection (16), an authority may establish a minimum sum that may be levied for administration costs by the authority against a participating municipality, and, where the amount apportioned to any municipality under subsection (3) is less than the minimum sum, the authority may levy the minimum sum against the municipality. R.S.O. 1990, c. C.27, s. 27 (4); 1996, c. 1, Sched. M, s. 47 (3).

Notice of apportionment

(5) The secretary-treasurer of the authority, forthwith after the amounts have been apportioned under subsections (2), (3) and (4), shall certify to the clerk of each participating municipality the total amount that has been levied under those subsections, and the amount shall be collected by the municipality in the same manner as municipal taxes for general purposes. R.S.O. 1990, c. C.27, s. 27 (5).

Levy where only part of municipality in area

(6) Where only a part of a participating municipality is situated in the area over which the authority has jurisdiction, the amount apportioned to that municipality may be charged only against the rateable property in that part of the municipality and shall be collected in the same manner as municipal taxes for general purposes. R.S.O. 1990, c. C.27, s. 27 (6).

Enforcement of payment

(7) An authority may enforce payment against any participating municipality of any portion of the maintenance costs or administration costs levied against the municipality as a debt due by the municipality to the authority. R.S.O. 1990, c. C.27, s. 27 (7).

Appeal

(8) A municipality against which a levy is made under this section may appeal the levy to the Ontario Land Tribunal. 1996, c. 1, Sched. M, s. 47 (4); 2017, c. 8, Sched. 17, s. 5 (1); 2021, c. 4, Sched. 6, s. 39 (6).

Time for appeal

(9) The appeal must be commenced within 30 days after the municipality receives notice of the levy from the authority. 1996, c. 1, Sched. M, s. 47 (4).

Parties

(10) The parties to the appeal are the municipality, the authority and any other person added as a party by the Tribunal. 1996, c. 1, Sched. M, s. 47 (4); 2017, c. 8, Sched. 17, s. 5 (2).

Compliance pending determination

(11) The municipality shall comply with the levy pending the determination of the appeal. 1996, c. 1, Sched. M, s. 47 (4).

Matters to be considered at hearing

(12) The Tribunal shall hold a hearing on the appeal and shall consider,

- (a) whether the levy complies with this section and the regulations made under subsection (16); and
- (b) whether the levy is otherwise appropriate. 1996, c. 1, Sched. M, s. 47 (4); 2017, c. 8, Sched. 17, s. 5 (2).

Powers of Tribunal

(13) The Tribunal may, by order, confirm, rescind or vary the amount of the levy and may order the authority or the municipality to pay any amount owing as a result. 1996, c. 1, Sched. M, s. 47 (4); 2017, c. 8, Sched. 17, s. 5 (2).

No appeal

(14) No appeal lies from the decision of the Tribunal. 1996, c. 1, Sched. M, s. 47 (4); 2017, c. 8, Sched. 17, s. 5 (2).

When subss. (8-14) begin to apply

(15) Subsections (8) to (14) do not apply until the first regulation made under subsection (16) comes into force. 1996, c. 1, Sched. M, s. 47 (4).

Regulations re levies

(16) The Lieutenant Governor in Council may make regulations governing the nature and amount of the levies made by authorities under this section, including regulations that restrict or prohibit the making of levies described in the regulations. 1996, c. 1, Sched. M, s. 47 (4).

Note: On July 1, 2023, the day named by proclamation of the Lieutenant Governor, section 27 of the Act is repealed and the following substituted: (See: 2017, c. 23, Sched. 4, s. 24 (1))

Recovery of operating expenses

27 (1) Every year an authority shall determine its operating expenses for the subsequent year and apportion those expenses to the participating municipalities in accordance with the regulations. 2017, c. 23, Sched. 4, s. 24 (1).

Note: On July 1, 2023, the day named by proclamation of the Lieutenant Governor, section 27 of the Act is amended by adding the following subsections: (See: 2019, c. 9, Sched. 2, s. 7 (1))

Limitation

(1.1) Subject to subsections (1.2) and (1.3), an authority shall not, on and after the day prescribed by the regulations, include in the apportionment any operating expenses related to a program or service authorized to be provided under subsection 21.1.2 (1). 2019, c. 9, Sched. 2, s. 7 (1).

Same

(1.2) An authority shall include in the apportionment of operating expenses to a participating municipality any operating expenses related to a program or service that has been identified in an agreement between the municipality and the authority as described in subsection 21.1.2 (2). 2019, c. 9, Sched. 2, s. 7 (1).

Extension of time

(1.3) If the circumstances prescribed by the regulations apply in respect of an authority, a person designated by the Minister may, by written notice to the authority, specify that a later day than the day prescribed by the regulations under subsection (1.1) applies to the authority and if such a notice is issued, the prohibition set out in subsection (1.1) applies to the authority on and after the day set out in the notice. 2019, c. 9, Sched. 2, s. 7 (1).

Fixed portion for some municipalities

(2) Despite subsection (1) and subject to the regulations, an authority may establish a fixed minimal amount as the portion of the authority's operating expenses that a participating municipality is required to pay each year, and may apportion that amount to the municipality instead of the portion determined under subsection (1) in any year in which the fixed minimal amount exceeds the portion determined under subsection (1). 2017, c. 23, Sched. 4, s. 24 (1).

Note: On July 1, 2023, the day named by proclamation of the Lieutenant Governor, subsection 27 (2) of the Act is amended by striking out “subsection (1)” wherever it appears and substituting in each case “subsections (1) and (1.1)”. (See: 2019, c. 9, Sched. 2, s. 7 (2))

Notice of apportionment

(3) An authority shall send a notice of apportionment in writing to each participating municipality setting out the amount of the operating expenses that has been apportioned to the participating municipality. 2017, c. 23, Sched. 4, s. 24 (1).

Payment of apportioned amount

(4) Each participating municipality shall pay to the authority the portion of the operating expenses that is specified in the notice of apportionment in accordance with the requirements set out in the notice and with this section. 2017, c. 23, Sched. 4, s. 24 (1).

Debt due

(5) The amount of the portion of the operating expenses specified in a notice of apportionment sent to a participating municipality is a debt due by the participating municipality to the authority and may be enforced by the authority as such. 2017, c. 23, Sched. 4, s. 24 (1).

Section Amendments with date in force (d/m/y) [+]

Review of apportionment of operating expenses

27.1 (1) Any participating municipality that receives a notice of apportionment under section 27 may, within 30 days of receiving the notice, apply to the Ontario Land Tribunal, or to such other body as may be prescribed by regulation, for a review of the apportionment of the operating expenses. 2017, c. 23, Sched. 4, s. 24 (1); 2021, c. 4, Sched. 6, s. 39 (7).

Same

(2) The participating municipality that makes an application under subsection (1) shall send a copy of the notice of application to the authority and to every other participating municipality of the authority. 2017, c. 23, Sched. 4, s. 24 (1).

Hearing

(3) The Ontario Land Tribunal, or such other body as may be prescribed by regulation, shall hold a hearing to reconsider the apportionment of the operating expenses, including considering whether the apportionment complies with section 27 and the regulations and whether the portion apportioned to the municipality is otherwise appropriate. 2017, c. 23, Sched. 4, s. 24 (1); 2021, c. 4, Sched. 6, s. 39 (7).

Parties

(4) The parties to the hearing are the applicant municipality, the authority, any other participating municipality of the authority that requests to be a party and such other persons as the Ontario Land Tribunal, or such other body as may be prescribed by regulation, may determine. 2017, c. 23, Sched. 4, s. 24 (1); 2021, c. 4, Sched. 6, s. 39 (7).

No stay

(5) The appellant municipality shall comply with the notice of apportionment pending the determination of the application. 2017, c. 23, Sched. 4, s. 24 (1).

Powers on hearing

(6) Upon hearing an application under this section, the Ontario Land Tribunal, or such other body as may be prescribed by regulation, may confirm or vary the apportionment of the operating expenses by the authority among the participating municipalities and may order participating municipalities to pay such portion of the operating expenses as it determines. 2017, c. 23, Sched. 4, s. 24 (1); 2021, c. 4, Sched. 6, s. 39 (7).

Decision final

(7) A decision under subsection (6) is final. 2017, c. 23, Sched. 4, s. 24 (1).

Section Amendments with date in force (d/m/y) [+]

Note: On July 1, 2023, the day named by proclamation of the Lieutenant Governor, the Act is amended by adding the following section: (See: 2019, c. 9, Sched. 2, s. 8 (1))

Other amounts owing to authority

Specified municipality

27.2 (1) In this section,

“specified municipality” means, when used in reference to an authority,

- (a) a municipality that is designated under the regulations made under the *Clean Water Act, 2006* as a participating municipality for the authority for the purposes of that Act but that is not one of the authority’s participating municipalities under this Act, or
- (b) a municipality that is designated under the regulations made under the *Lake Simcoe Protection Act, 2008* as a participating municipality for the Lake Simcoe Region Conservation Authority for the purposes of that Act but that is not one of the authority’s participating municipalities under this Act. 2019, c. 9, Sched. 2, s. 8 (1).

Determination of amounts owing by specified municipality

(2) An authority may, from time to time and in accordance with the regulations, determine the amounts owed by any of its specified municipalities in connection with the programs and services the authority provides in respect of the *Clean Water Act, 2006* and *Lake Simcoe Protection Act, 2008*. 2019, c. 9, Sched. 2, s. 8 (1).

Notice

(3) If the authority determines under subsection (2) that amounts are owing by any of its specified municipalities, the authority shall send a notice in writing to the specified municipality, setting out the amounts that the specified municipality owes to the authority. 2019, c. 9, Sched. 2, s. 8 (1).

Payment of amounts

(4) Subject to subsections (5) to (10), each specified municipality shall pay to the authority the amounts specified in the notice in accordance with the requirements set out in the notice. 2019, c. 9, Sched. 2, s. 8 (1).

Review of notice

(5) Any specified municipality that receives a notice under subsection (3) may, within 30 days after receiving the notice, apply to the Ontario Land Tribunal, or to such other body as may be prescribed by regulation, for a review of the amounts owing. 2019, c. 9, Sched. 2, s. 8 (1); 2021, c. 4, Sched. 6, s. 39 (9).

Same

(6) The specified municipality that makes an application under subsection (5) shall send a copy of the notice of application to the authority and to every other participating municipality and specified municipality of the authority. 2019, c. 9, Sched. 2, s. 8 (1).

Hearing

(7) The Ontario Land Tribunal, or such other body as may be prescribed by regulation, shall hold a hearing to reconsider the amounts owing, including considering whether the determination of the amounts owing was carried out in accordance with subsection (2). 2019, c. 9, Sched. 2, s. 8 (1); 2021, c. 4, Sched. 6, s. 39 (9).

Parties

(8) The parties to the hearing are the applicant municipality, the authority, any other participating municipality or specified municipality of the authority that requests to be a party and such other persons as the Ontario Land Tribunal, or such other body as may be prescribed by regulation, may determine. 2019, c. 9, Sched. 2, s. 8 (1); 2021, c. 4, Sched. 6, s. 39 (9).

Powers on hearing

(9) Upon hearing an application under this section, the Ontario Land Tribunal, or such other body as may be prescribed by regulation, may confirm or vary the amounts owing and may order the specified municipality to pay the amounts. 2019, c. 9, Sched. 2, s. 8 (1); 2021, c. 4, Sched. 6, s. 39 (9).

Decision final

(10) A decision under subsection (9) is final. 2019, c. 9, Sched. 2, s. 8 (1).

Debt due

(11) The amounts owed to the authority set out in a notice sent to a specified municipality or in an order under subsection (9), as the case may be, are a debt due by the specified municipality to the authority and may be enforced by the authority as such. 2019, c. 9, Sched. 2, s. 8 (1).

Section Amendments with date in force (d/m/y) [+]

Regulations by authority re area under its jurisdiction

28 (1) Subject to the approval of the Minister, an authority may make regulations applicable in the area under its jurisdiction,

- (a) restricting and regulating the use of water in or from rivers, streams, inland lakes, ponds, wetlands and natural or artificially constructed depressions in rivers or streams;
- (b) prohibiting, regulating or requiring the permission of the authority for straightening, changing, diverting or interfering in any way with the existing channel of a river, creek, stream or watercourse, or for changing or interfering in any way with a wetland;
- (c) prohibiting, regulating or requiring the permission of the authority for development if, in the opinion of the authority, the control of flooding, erosion, dynamic beaches or pollution or the conservation of land may be affected by the development;
- (d) providing for the appointment of officers to enforce any regulation made under this section or section 29;
- (e) providing for the appointment of persons to act as officers with all of the powers and duties of officers to enforce any regulation made under this section. 1998, c. 18, Sched. I, s. 12.

Delegation of powers

(2) A regulation made under subsection (1) may delegate any of the authority's powers or duties under the regulation to the authority's executive committee or to any other person or body, subject to any limitations and requirements that may be set out in the regulation. 1998, c. 18, Sched. I, s. 12.

Conditional permission

(3) A regulation made under clause (1) (b) or (c) may provide for permission to be granted subject to conditions and for the cancellation of the permission if conditions are not met. 1998, c. 18, Sched. I, s. 12.

References to maps

(4) A regulation made under subsection (1) may refer to any area affected by the regulation by reference to one or more maps that are filed at the head office of the authority and are available for public review during normal office business hours. 1998, c. 18, Sched. I, s. 12.

Minister's approval of development regulations

(5) The Minister shall not approve a regulation made under clause (1) (c) unless the regulation applies only to areas that are,

- (a) adjacent or close to the shoreline of the Great Lakes-St. Lawrence River System or to inland lakes that may be affected by flooding, erosion or dynamic beach hazards;
- (b) river or stream valleys;
- (c) hazardous lands;
- (d) wetlands; or
- (e) other areas where, in the opinion of the Minister, development should be prohibited or regulated or should require the permission of the authority. 1998, c. 18, Sched. I, s. 12.

Regulations by L.G. in C. governing content of authority's regulations

(6) The Lieutenant Governor in Council may make regulations governing the content of regulations made by authorities under subsection (1), including flood event standards and other standards that may be used, and setting out what must be included or excluded from regulations made by authorities under subsection (1). 1998, c. 18, Sched. I, s. 12.

Invalid regulation

(7) A regulation made by an authority under subsection (1) that does not conform with the requirements of a regulation made by the Lieutenant Governor in Council under subsection (6) is not valid. 1998, c. 18, Sched. I, s. 12.

Transition

(8) Subject to subsection (9), if a regulation is made by the Lieutenant Governor in Council under subsection (6), subsection (7) does not apply to a regulation that was previously made by an authority under subsection (1) until two years after the regulation made by the Lieutenant Governor in Council comes into force. 1998, c. 18, Sched. I, s. 12.

Same

(9) If a regulation made by the Lieutenant Governor in Council under subsection (6) is amended by an amending regulation, subsection (7) does not apply, in respect of the amendment, to a regulation that was made by an authority under subsection (1) before the amending regulation, until such time as may be specified in the amending regulation. 1998, c. 18, Sched. I, s. 12.

Exceptions

(10) No regulation made under subsection (1),

- (a) shall limit the use of water for domestic or livestock purposes;

- (b) shall interfere with any rights or powers conferred upon a municipality in respect of the use of water for municipal purposes;
- (c) shall interfere with any rights or powers of any board or commission that is performing its functions for or on behalf of the Government of Ontario; or
- (d) shall interfere with any rights or powers under the *Electricity Act, 1998* or the *Public Utilities Act, 1998*, c. 15, Sched. E, s. 3 (8); 1998, c. 18, Sched. I, s. 12.

Activities under the *Aggregate Resources Act*

(11) A requirement for permission of an authority in a regulation made under clause (1) (b) or (c) does not apply to an activity approved under the *Aggregate Resources Act* after the *Red Tape Reduction Act, 1998* received Royal Assent. 1998, c. 18, Sched. I, s. 12.

Right to hearing

(12) Permission required under a regulation made under clause (1) (b) or (c) shall not be refused or granted subject to conditions unless the person requesting the permission has been given the opportunity to require a hearing before the authority or, if the authority so directs, before the authority's executive committee. 1998, c. 18, Sched. I, s. 12.

Powers of authority

(13) After holding a hearing under subsection (12), the authority or executive committee, as the case may be, shall,

- (a) refuse the permission; or
- (b) grant the permission, with or without conditions. 1998, c. 18, Sched. I, s. 12.

Grounds for refusing permission

(13.1) If the permission that the person requests is for development related to a renewable energy project, as defined in subsection 2 (1) of the *Electricity Act, 1998*, the authority or executive committee, as the case may be,

- (a) shall not refuse the permission unless it is necessary to do so to control pollution, flooding, erosion or dynamic beaches; and
- (b) shall not impose conditions unless they relate to controlling pollution, flooding, erosion or dynamic beaches. 2009, c. 12, Sched. L, s. 2; 2018, c. 16, s. 3 (1).

Reasons for decision

(14) If the authority or its executive committee, after holding a hearing, refuses permission or grants permission subject to conditions, the authority or executive committee, as the case may be, shall give the person who requested permission written reasons for the decision. 1998, c. 18, Sched. I, s. 12.

Appeal

(15) A person who has been refused permission or who objects to conditions imposed on a permission may, within 30 days of receiving the reasons under subsection (14), appeal to the Ontario Land Tribunal, and the Tribunal may,

- (a) refuse the permission; or
- (b) grant the permission, with or without conditions. 1998, c. 18, Sched. I, s. 12; 2021, c. 4, Sched. 6, s. 39 (11).

Offence: contravening regulation

(16) Every person who contravenes a regulation made under subsection (1) or the terms and conditions of a permission of an authority in a regulation made under clause (1) (b) or (c) is guilty of an offence and on conviction is liable to a fine of not more than \$10,000 or to a term of imprisonment of not more than three months. 1998, c. 18, Sched. I, s. 12; 2010, c. 16, Sched. 10, s. 1 (2).

Limitation for proceeding

(16.1) A proceeding with respect to an offence under subsection (16) shall not be commenced more than two years from the earliest of the day on which evidence of the offence is discovered or first comes to the attention of officers appointed under clause (1) (d) or persons appointed under clause (1) (e). 2010, c. 16, Sched. 10, s. 1 (3).

Orders

(17) In addition to any other remedy or penalty provided by law, the court, upon making a conviction under subsection (16), may order the person convicted to,

- (a) remove, at that person's expense, any development within such reasonable time as the court orders; and
- (b) rehabilitate any watercourse or wetland in the manner and within the time the court orders. 1998, c. 18, Sched. I, s. 12.

Non-compliance with order

(18) If a person does not comply with an order made under subsection (17), the authority having jurisdiction may, in the case of a development, have it removed and, in the case of a watercourse or wetland, have it rehabilitated. 1998, c. 18, Sched. I, s. 12.

Liability for certain costs

(19) The person convicted is liable for the cost of a removal or rehabilitation under subsection (18) and the amount is recoverable by the authority by action in a court of competent jurisdiction. 1998, c. 18, Sched. I, s. 12.

Powers of entry

(20) An authority or an officer appointed under a regulation made under clause (1) (d) or (e) may enter private property, other than a dwelling or building, without the consent of the owner or occupier and without a warrant, if,

- (a) the entry is for the purpose of considering a request related to the property for permission that is required by a regulation made under clause (1) (b) or (c); or
- (b) the entry is for the purpose of enforcing a regulation made under clause (1) (a), (b) or (c) and the authority or officer has reasonable grounds to believe that a contravention of the regulation is causing or is likely to cause significant environmental damage and that the entry is required to prevent or reduce the damage. 1998, c. 18, Sched. I, s. 12.

Time of entry

(21) Subject to subsection (22), the power to enter property under subsection (20) may be exercised at any reasonable time. 1998, c. 18, Sched. I, s. 12.

Notice of entry

(22) The power to enter property under subsection (20) shall not be exercised unless,

- (a) the authority or officer has given reasonable notice of the entry to the owner of the property and, if the occupier of the property is not the owner, to the occupier of the property; or
- (b) the authority or officer has reasonable grounds to believe that significant environmental damage is likely to be caused during the time that would be required to give notice under clause (a). 1998, c. 18, Sched. I, s. 12.

No use of force

(23) Subsection (20) does not authorize the use of force. 1998, c. 18, Sched. I, s. 12.

Offence: obstruction

(24) Any person who prevents or obstructs an authority or officer from entering property under subsection (20) is guilty of an offence and on conviction is liable to a fine of not more than \$10,000. 1998, c. 18, Sched. I, s. 12.

Definitions

(25) In this section,

“development” means,

- (a) the construction, reconstruction, erection or placing of a building or structure of any kind,
- (b) any change to a building or structure that would have the effect of altering the use or potential use of the building or structure, increasing the size of the building or structure or increasing the number of dwelling units in the building or structure,
- (c) site grading, or
- (d) the temporary or permanent placing, dumping or removal of any material, originating on the site or elsewhere; (“aménagement”)

“hazardous land” means land that could be unsafe for development because of naturally occurring processes associated with flooding, erosion, dynamic beaches or unstable soil or bedrock; (“terrain dangereux”)

“pollution” means any deleterious physical substance or other contaminant that has the potential to be generated by development in an area to which a regulation made under clause (1) (c) applies; (“pollution”)

“watercourse” means an identifiable depression in the ground in which a flow of water regularly or continuously occurs; (“cours d’eau”)

“wetland” means land that,

- (a) is seasonally or permanently covered by shallow water or has a water table close to or at its surface,
- (b) directly contributes to the hydrological function of a watershed through connection with a surface watercourse,
- (c) has hydric soils, the formation of which has been caused by the presence of abundant water, and
- (d) has vegetation dominated by hydrophytic plants or water tolerant plants, the dominance of which has been favoured by the presence of abundant water,

but does not include periodically soaked or wet land that is used for agricultural purposes and no longer exhibits a wetland characteristic referred to in clause (c) or (d). (“terre marécageuse”) 1998, c. 18, Sched. I, s. 12.

Transition

(26) A regulation that was in force immediately before the day the *Red Tape Reduction Act, 1998* received Royal Assent and that was lawfully made under clause (1) (e) or (f) of this section as it read immediately before that day shall be deemed to have been lawfully made under clause (1) (c). 1998, c. 18, Sched. I, s. 12.

Note: On a day to be named by proclamation of the Lieutenant Governor, section 28 of the Act is repealed and the following substituted: (See: 2017, c. 23, Sched. 4, s. 25)

PART VI

REGULATION OF AREAS OVER WHICH AUTHORITIES HAVE JURISDICTION

Prohibited activities re watercourses, wetlands, etc.

28 (1) Subject to subsections (2), (3) and (4) and section 28.1, no person shall carry on the following activities, or permit another person to carry on the following activities, in the area of jurisdiction of an authority:

1. Activities to straighten, change, divert or interfere in any way with the existing channel of a river, creek, stream or watercourse or to change or interfere in any way with a wetland.
2. Development activities in areas that are within the authority’s area of jurisdiction and are,
 - i. hazardous lands,
 - ii. wetlands,
 - iii. river or stream valleys the limits of which shall be determined in accordance with the regulations,

- iv. areas that are adjacent or close to the shoreline of the Great Lakes-St. Lawrence River System or to an inland lake and that may be affected by flooding, erosion or dynamic beach hazards, such areas to be further determined or specified in accordance with the regulations, or
- v. other areas in which development should be prohibited or regulated, as may be determined by the regulations. 2017, c. 23, Sched. 4, s. 25.

Exception, aggregates

(2) The prohibitions in subsection (1) do not apply to an activity approved under the *Aggregate Resources Act* after December 18, 1998, the date the *Red Tape Reduction Act, 1998* received Royal Assent. 2017, c. 23, Sched. 4, s. 25.

Same, prescribed activities

(3) The prohibitions in subsection (1) do not apply to an activity or a type of activity that is prescribed by regulation and is carried out in accordance with the regulations. 2017, c. 23, Sched. 4, s. 25.

Same, prescribed areas

(4) The prohibitions in subsection (1) do not apply to any activity described in that subsection if it is carried out,

- (a) in an area that is within an authority's area of jurisdiction and specified in the regulations; and
- (b) in accordance with any conditions specified in the regulations. 2017, c. 23, Sched. 4, s. 25.

Definitions

(5) In this section,

“development activity” means a development activity as defined by regulation; (“activité d'aménagement”)

“hazardous land” means hazardous land as defined by regulation; (“terrain dangereux”)

“watercourse” means a watercourse as defined by regulation; (“cours d'eau”)

“wetland” means a wetland as defined by regulation. (“terre marécageuse”) 2017, c. 23, Sched. 4, s. 25.

Section Amendments with date in force (d/m/y) [+]

Permission for development, zoning order

28.0.1 (1) This section applies to any application submitted to an authority under a regulation made under subsection 28 (1) for permission to carry out all or part of a development project in the authority's area of jurisdiction if,

- (a) a zoning order has been made by the Minister of Municipal Affairs and Housing under section 47 of the *Planning Act* authorizing the development project under that Act;
- (b) the lands in the authority's area of jurisdiction on which the development project is to be carried out are not located in the Greenbelt Area designated under section 2 of the *Greenbelt Act, 2005*; and
- (c) such other requirements as may be prescribed are satisfied. 2020, c. 36, Sched. 6, s. 15 (1).

Definition

(2) In this section,

“development project” means a development project that includes any development as defined in subsection 28 (25) or any other act or activity that would be prohibited under this Act and the regulations unless permission to carry out the activity is granted by the affected authority. 2020, c. 36, Sched. 6, s. 15 (1).

Permission to be granted

(3) Subject to the regulations made under subsection (35), an authority that receives an application for permission to carry out all or part of a development project in the authority's area of jurisdiction shall grant the permission if all of the requirements in clauses (1) (a), (b) and (c) are satisfied. 2020, c. 36, Sched. 6, s. 15 (1).

Same

(4) For greater certainty, an authority shall not refuse to grant permission for a development project under subsection (3) despite,

- (a) anything in section 28 or in a regulation made under section 28; and
- (b) anything in subsection 3 (5) of the *Planning Act, 2020*, c. 36, Sched. 6, s. 15 (1).

Conditions prescribed by regulations

(5) A permission granted under this section is subject to such conditions as may be prescribed. 2020, c. 36, Sched. 6, s. 15 (1).

Conditions specified by authority

(6) Subject to subsection (7), an authority may attach conditions to the permission, including conditions to mitigate,

- (a) any effects the development project is likely to have on the control of flooding, erosion, dynamic beaches or pollution or the conservation of land;
- (b) any conditions or circumstances created by the development project that, in the event of a natural hazard, might jeopardize the health or safety of persons or result in the damage or destruction of property; or
- (c) any other matters that may be prescribed by regulation. 2020, c. 36, Sched. 6, s. 15 (1).

Hearing

(7) An authority shall not attach conditions to a permission unless the applicant for the permission has been given an opportunity to be heard by the authority. 2020, c. 36, Sched. 6, s. 15 (1).

Reasons for conditions

(8) If, after holding a hearing, an authority grants the permission subject to conditions, the authority shall give the holder of the permission written reasons for deciding to attach the conditions. 2020, c. 36, Sched. 6, s. 15 (1).

Request for Minister's review

(9) The holder of a permission who objects to the conditions proposed in the reasons given under subsection (8) may, within 15 days of the reasons being given, submit a request to the Minister for the Minister to review the proposed conditions, subject to the regulations. 2020, c. 36, Sched. 6, s. 15 (1).

Minister's review

(10) Within 30 days after receiving a request under subsection (9), the Minister shall reply to the request and indicate in writing to the holder of the permission and the authority whether or not the Minister intends to conduct a review of the authority's decision. Failure on the part of the Minister to reply to a request within the 30-day period is deemed to be an indication that the Minister does not intend to review the authority's decision. 2020, c. 36, Sched. 6, s. 15 (1).

Same

(11) If a reply given under subsection (10) indicates that the Minister intends to conduct a review, the Minister may in the reply require the holder of the permission and the authority to provide the Minister with such information as the Minister considers necessary to conduct the review. 2020, c. 36, Sched. 6, s. 15 (1).

Information

(12) The holder of the permission and the authority shall submit to the Minister such information as was specified in the reply given under subsection (10) within the time period specified in the reply. 2020, c. 36, Sched. 6, s. 15 (1).

Publication of notice of review

(13) The Minister shall publish on the Environmental Registry notice of the Minister's intention to review a decision made by an authority and shall do so within 30 days of giving a reply to that effect under subsection (10). 2020, c. 36, Sched. 6, s. 15 (1).

No hearing required

(14) The Minister is not required to hold a hearing while conducting a review of an authority's decision. 2020, c. 36, Sched. 6, s. 15 (1).

Conferring with persons, etc.

(15) Before making a decision with respect to a review, the Minister may confer with any person or body that the Minister considers may have an interest in the review. 2020, c. 36, Sched. 6, s. 15 (1).

Minister's decision

(16) After conducting a review of an authority's decision, the Minister may confirm or vary the conditions that the authority proposes to attach to a permission granted under this section, including removing conditions or requiring that such additional conditions be attached to the permission as the Minister considers appropriate. 2020, c. 36, Sched. 6, s. 15 (1).

Same

(17) In making a decision under subsection (16), the Minister shall consider,

- (a) effects the development project is likely to have on the control of flooding, erosion, dynamic beaches or pollution or the conservation of land;
- (b) conditions or circumstances created by the development project that, in the event of a natural hazard, might jeopardize the health or safety of persons or result in the damage or destruction of property; or
- (c) any other matters as may be prescribed by the regulations. 2020, c. 36, Sched. 6, s. 15 (1).

Decision final

(18) A decision made by the Minister under subsection (16) is final. 2020, c. 36, Sched. 6, s. 15 (1).

Appeal

(19) The holder of a permission who objects to the conditions proposed by an authority in the reasons given under subsection (8) may, within 90 days of the reasons being issued, appeal to the Ontario Land Tribunal to review the conditions if,

- (a) the holder of the permission has not submitted a request to the Minister to review the conditions under subsection (9); or
- (b) the holder of the permission has submitted a request to the Minister to review the conditions under subsection (9) and,
 - (i) 30 days have elapsed following the day the holder of the permission submitted the request and the Minister did not make a reply in accordance with subsection (10), or
 - (ii) the Minister made a reply in accordance with subsection (10) indicating that the Minister refused to conduct the review. 2020, c. 36, Sched. 6, s. 15 (1); 2021, c. 4, Sched. 6, s. 39 (12).

Same

(20) If the Minister indicates in a reply given under subsection (10) that the Minister intends to review an authority's decision and the Minister fails to make a decision within 90 days of giving the reply, the holder of the permission may, within the next 30 days, appeal the conditions proposed by the authority directly to the Ontario Land Tribunal. 2020, c. 36, Sched. 6, s. 15 (1); 2021, c. 4, Sched. 6, s. 39 (12).

Notice of appeal

(21) Notice of an appeal under subsection (19) or (20) shall be sent to the Ontario Land Tribunal and to the authority by registered mail. 2020, c. 36, Sched. 6, s. 15 (1); 2021, c. 4, Sched. 6, s. 39 (12).

Hearing by Tribunal

(22) The Ontario Land Tribunal shall fix a date for a hearing of an appeal under subsection (19) or (20), give notice to all interested parties and give all necessary direction for the hearing. 2020, c. 36, Sched. 6, s. 15 (1); 2021, c. 4, Sched. 6, s. 39 (12).

Powers of the Tribunal

(23) The Ontario Land Tribunal has authority to hear evidence and to confirm, vary, remove or add to the conditions attached to the permission as the Tribunal considers appropriate. 2020, c. 36, Sched. 6, s. 15 (1); 2021, c. 4, Sched. 6, s. 39 (12).

Agreement

(24) An authority that grants permission for a development project under this section shall enter into an agreement with respect to the development project with the holder of the permission and the authority and holder of the permission may agree to add a municipality or such other person or entity as they consider appropriate as parties to the agreement. 2020, c. 36, Sched. 6, s. 15 (1).

Content of agreement

(25) An agreement under subsection (24) shall set out actions or requirements that the holder of the permission must complete or satisfy in order to compensate for ecological impacts and any other impacts that may result from the development project. 2020, c. 36, Sched. 6, s. 15 (1).

Limitation on development

(26) No person shall begin a development project until an agreement required under subsection (24) has been entered into. 2020, c. 36, Sched. 6, s. 15 (1).

Period of validity of permission and extension

(27) A permission granted by an authority under this section may be granted for a period of time determined in accordance with the rules that apply to permissions granted by authority under a regulation made under subsection 28 (1) and may be extended in accordance with the rules for extending permission set out in those same regulations. 2020, c. 36, Sched. 6, s. 15 (1).

Offence

(28) A person is guilty of an offence if the person contravenes,

- (a) a condition of a permission granted under this section; or
- (b) subsection (26). 2020, c. 36, Sched. 6, s. 15 (1).

Penalty

(29) A person who commits an offence under subsection (28) is liable on conviction,

- (a) in the case of an individual,
 - (i) to a fine of not more than \$50,000 or to a term of imprisonment of not more than three months, or to both, and
 - (ii) to an additional fine of not more than \$10,000 for each day or part of a day on which the offence occurs or continues; and
- (b) in the case of a corporation,
 - (i) to a fine of not more than \$1,000,000, and
 - (ii) to an additional fine of not more than \$200,000 for each day or part of a day on which the offence occurs or continues. 2020, c. 36, Sched. 6, s. 15 (1).

Monetary benefit

(30) Despite the maximum fines set out in clauses (29) (a) and (b), a court that convicts a person of an offence under subsection (28) may increase the fine it imposes on the person by an amount equal to the amount of the monetary benefit that was acquired by the person, or that accrued to the person, as a result of the commission of the offence. 2020, c. 36, Sched. 6, s. 15 (1).

Rehabilitation orders

(31) In addition to any penalty under subsection (29) or any other remedy or penalty provided by law, the court, upon convicting a person of an offence under subsection (28), may order the convicted person to,

- (a) remove, at the convicted person's expense, any development within such reasonable time as the court orders; and
- (b) take such actions as the court directs, within the time the court may specify, to repair or rehabilitate the damage that results from or is in any way connected to the commission of the offence. 2020, c. 36, Sched. 6, s. 15 (1).

Non-compliance with order

(32) If a person does not comply with an order under subsection (31), the authority that issued the permission under this section may arrange for any removal, repair or rehabilitation that was required in the order. 2020, c. 36, Sched. 6, s. 15 (1).

Liability for certain costs

(33) The person to whom an order is made under subsection (31) is liable for the cost of any removal, repair or rehabilitation arranged by an authority under subsection (32), and the amount is recoverable by the authority by action in a court of competent jurisdiction. 2020, c. 36, Sched. 6, s. 15 (1).

Conflict

(34) If the conditions in a permission granted under this section conflict with the terms of a zoning order made under section 47 of the *Planning Act*, the terms of the zoning order shall prevail. 2020, c. 36, Sched. 6, s. 15 (1).

Regulations, Minister

(35) The Minister may make regulations,

- (a) prescribing requirements for the purposes of clause (1) (c);
- (b) governing permissions granted under this section including,
 - (i) requiring that the permission be granted within a specified time period after the application is submitted to the authority,
 - (ii) prescribing conditions for the purposes of subsection (5), and
 - (iii) prescribing matters for the purposes of clause (6) (c);
- (c) prescribing matters for the purposes of clause (17) (c);
- (d) governing agreements required under subsection (24) including,
 - (i) prescribing the content of the agreements, and
 - (ii) specifying the time within which agreements are to be concluded and signed;
- (e) exempting lands or development projects from this section or from a part of this section or the regulations made under this section, including from the requirement to enter into an agreement under subsection (24) or from including any provision of an agreement that is prescribed by a regulation under clause (d);
- (f) respecting anything that is necessary or advisable for the effective implementation or enforcement of this section. 2020, c. 36, Sched. 6, s. 15 (1).

Regulations, Lieutenant-Governor in Council

(36) The Lieutenant-Governor in Council may make regulations governing Minister's reviews requested under subsection (9) and appeals under subsections (19) and (20) and specifying circumstances in which a review may not be requested or an appeal may not be made. 2020, c. 36, Sched. 6, s. 15 (1).

General or particular

(37) A regulation made under subsection (35) or (36) may be general or particular in its application. 2020, c. 36, Sched. 6, s. 15 (1).

Transition

(38) This section applies to an application for permission to carry out a development project that was submitted to an authority before the day this section came into force if the conditions described in clauses (1) (a), (b) and (c) have been satisfied as of that day. 2020, c. 36, Sched. 6, s. 15 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, section 28.0.1 of the Act is repealed. (See: 2020, c. 36, Sched. 6, s. 15 (2))

Section Amendments with date in force (d/m/y) [+]

Permits

28.1 (1) An authority may issue a permit to a person to engage in an activity specified in the permit that would otherwise be prohibited by section 28, if, in the opinion of the authority,

- (a) the activity is not likely to affect the control of flooding, erosion, dynamic beaches or pollution or the conservation of land;
- (b) the activity is not likely to create conditions or circumstances that, in the event of a natural hazard, might jeopardize the health or safety of persons or result in the damage or destruction of property; and
- (c) any other requirements that may be prescribed by the regulations are met. 2017, c. 23, Sched. 4, s. 25.

Application for permit

(2) A person who wishes to engage in an activity that is prohibited under section 28 in an area situated in the jurisdiction of an authority may apply to the authority for a permit under this section. 2017, c. 23, Sched. 4, s. 25.

Same

(3) An application for a permit shall be made in accordance with the regulations and include such information as is required by regulation. 2017, c. 23, Sched. 4, s. 25.

Conditions

(4) Subject to subsection (5), an authority may issue a permit with or without conditions. 2017, c. 23, Sched. 4, s. 25.

Hearing

(5) An authority shall not refuse an application for a permit or attach conditions to a permit unless the applicant for the permit has been given an opportunity to be heard by the authority. 2017, c. 23, Sched. 4, s. 25.

Renewable energy projects

(6) In the case of an application for a permit to engage in development related to a renewable energy project as defined in subsection 2 (1) of the *Electricity Act, 1998*,

- (a) the authority shall not refuse the permit unless it is of the opinion that it is necessary to do so to control pollution, flooding, erosion or dynamic beaches; and
- (b) despite subsection (4), the authority shall not impose conditions on the permit unless the conditions relate to controlling pollution, flooding, erosion or dynamic beaches. 2017, c. 23, Sched. 4, s. 25; 2018, c. 16, s. 3 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, section 28.1 of the Act is amended by adding the following subsection: (See: 2020, c. 36, Sched. 6, s. 16 (1))

Definition, pollution

(6.1) In subsection (1) and (6),

“pollution” means pollution as defined by regulation. 2020, c. 36, Sched. 6, s. 16 (1).

Reasons for decision

(7) If the authority, after holding a hearing, refuses a permit or issues the permit subject to conditions, the authority shall give the applicant written reasons for the decision. 2017, c. 23, Sched. 4, s. 25.

Appeal

(8) An applicant who has been refused a permit or who objects to conditions imposed on a permit may, within 30 days of receiving the reasons under subsection (7), appeal to the Minister who may,

(a) refuse the permit; or

(b) order the authority to issue the permit, with or without conditions. 2017, c. 23, Sched. 4, s. 25.

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 28.1 (8) of the Act is repealed and the following substituted: (See: 2020, c. 36, Sched. 6, s. 16 (2))

Request for Minister’s review

(8) Subject to the regulations, where the authority refuses a permit or imposes any conditions on a permit to which the applicant objects, the applicant may, within 15 days of receiving reasons for the authority’s decision, submit a request to the Minister for the Minister to review the authority’s decision. 2020, c. 36, Sched. 6, s. 16 (2).

Definition

(9) In this section,

“pollution” means pollution as defined by regulation. 2017, c. 23, Sched. 4, s. 25.

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 28.1 (9) of the Act is repealed and the following substituted: (See: 2020, c. 36, Sched. 6, s. 16 (2))

Reply by Minister

(9) Within 30 days after receiving a request under subsection (8), the Minister shall reply to the request and indicate in writing to the applicant and the authority whether or not the Minister intends to conduct a review of the authority’s decision. Failure on the part of the Minister to reply to a request within the 30 day period is deemed to be an indication that the Minister does not intend to review the authority’s decision. 2020, c. 36, Sched. 6, s. 16 (2).

Same

(10) If a reply given under subsection (9) indicates that the Minister intends to conduct a review, the Minister may in the reply require the applicant and the authority to provide the Minister with such information as the Minister considers necessary to conduct the review. 2020, c. 36, Sched. 6, s. 16 (2).

Information

(11) The applicant and the authority shall submit to the Minister such information as was specified in the reply given under subsection (9) within the time period specified in the reply. 2020, c. 36, Sched. 6, s. 16 (2).

Publication of notice of review

(12) The Minister shall publish on the Environmental Registry notice of the Minister’s intention to review a decision made by an authority and shall do so within 30 days of giving a reply to that effect under subsection (9). 2020, c. 36, Sched. 6, s. 16 (2).

No hearing required

(13) The Minister is not required to hold a hearing while conducting a review of an authority's decision. 2020, c. 36, Sched. 6, s. 16 (2).

Conferring with persons, etc.

(14) Before making a decision with respect to a review, the Minister may confer with any person or body that the Minister considers may have an interest in the review. 2020, c. 36, Sched. 6, s. 16 (2).

Minister's decision

(15) After conducting a review of an authority's decision, the Minister may confirm or vary the authority's decision or make any decision that the Minister considers appropriate, including issuing the permit subject to conditions. 2020, c. 36, Sched. 6, s. 16 (2).

Same

(16) The Minister shall base any decision under subsection (15) on the criteria set out in clauses (1) (a), (b) and (c). 2020, c. 36, Sched. 6, s. 16 (2).

Reasons

(17) If, upon conducting a review of an authority's decision, the Minister decides to refuse to issue a permit or to issue a permit subject to conditions, the Minister shall give the applicant and the authority written reasons for the decision. 2020, c. 36, Sched. 6, s. 16 (2).

Copy to authority

(18) If the Minister issues a permit under subsection (15), the Minister shall give a copy of the permit to the authority within five days after the permit is issued. 2020, c. 36, Sched. 6, s. 16 (2).

Decision final

(19) A decision made by the Minister under subsection (15) is final. 2020, c. 36, Sched. 6, s. 16 (2).

Appeal to Tribunal

(20) Within 90 days after receiving the reasons for the authority's decision under subsection (7), the applicant may appeal the authority's decision to the Local Planning Appeal Tribunal, subject to subsection (21). 2020, c. 36, Sched. 6, s. 16 (2).

Exception

(21) An applicant who submitted a request under subsection (8) for the Minister to conduct a review of an authority's decision shall not appeal the decision to the Local Planning Appeal Tribunal under subsection (20) unless,

(a) the Minister's reply under subsection (9) indicated that the Minister refused to conduct the review; or

(b) 30 days have elapsed following the day the applicant submitted the request for a Minister's review and the Minister has not made a reply under subsection (9). 2020, c. 36, Sched. 6, s. 16 (2).

Appeal, no decision by authority

(22) If an application for a permit is made to the authority and the application complies with subsection (3), and if the authority fails to give the applicant notice of a decision with respect to the application within 120 days after the application is made, the applicant may appeal the application directly to the Local Planning Appeal Tribunal. 2020, c. 36, Sched. 6, s. 16 (2).

Appeal, no decision by Minister

(23) If the Minister indicates in a reply given under subsection (9) that the Minister intends to review an authority's decision and the Minister fails to make a decision within 90 days of giving the reply, the applicant may, within the next 30 days, appeal the authority's decision directly to the Local Planning Appeal Tribunal. 2020, c. 36, Sched. 6, s. 16 (2).

Notice of Appeal

(24) A notice of an appeal under subsection (20), (22) or (23) shall be sent to the Local Planning Appeal Tribunal and to the authority by registered mail. 2020, c. 36, Sched. 6, s. 16 (2).

Hearing by Tribunal

(25) The Local Planning Appeal Tribunal shall fix a date for a hearing of an appeal under subsection (20), (22) or (23), give notice to all interested parties and give all necessary direction for the hearing. 2020, c. 36, Sched. 6, s. 16 (2).

Powers of the Tribunal

(26) The Local Planning Appeal Tribunal has authority to take evidence, to refuse the permit or to order the authority to issue the permit, with or without conditions. 2020, c. 36, Sched. 6, s. 16 (2).

Note: On the later of the day section 2 of Schedule 6 to the *Accelerating Access to Justice Act, 2021* comes into force and the day subsection 16 (2) of Schedule 6 to the *Protect, Support and Recover from COVID-19 Act (Budget Measures), 2020* comes into force, section 28.1 of the Act is amended by striking out “Local Planning Appeal Tribunal” wherever it appears and substituting in each case “Ontario Land Tribunal”. (See: 2021, c. 4, Sched. 6, s. 39 (13))

Section Amendments with date in force (d/m/y) [+]

Note: On a day to be named by proclamation of the Lieutenant Governor, the Act is amended by adding the following sections: (See: 2020, c. 36, Sched. 6, s. 17)

Permits issued by Minister

Minister’s order

28.1.1 (1) Despite subsection 28.1 (1) and subject to the regulations, the Minister may, by order,

- (a) direct an authority not to issue a permit to a person who wishes to engage in a specified activity that, without the permit, would be prohibited under section 28 in the area of jurisdiction of the authority; or
- (b) direct the authorities that are specified in the order not to issue permits to persons who may wish to engage in a type or class of activity described in the order that, without the permit, would be prohibited under section 28 and to continue to refrain from doing so for such period as may be specified in the order. 2020, c. 36, Sched. 6, s. 17.

Minister’s power

(2) If an order is made under subsection (1), the Minister has the power to issue a permit to engage in any activity described in the order that would otherwise be prohibited under section 28 if, in the Minister’s opinion, the criteria described in clauses 28.1 (1) (a), (b) and (c) are satisfied. 2020, c. 36, Sched. 6, s. 17.

Same

(3) An order made under clause (1) (a) may be made either before or after an application for a permit has been submitted to the relevant authority. 2020, c. 36, Sched. 6, s. 17.

Same

(4) An order made under clause (1) (b) may provide that it applies to activities even if applications for permits have been submitted to the relevant authorities and decisions with respect to the applications are currently pending. 2020, c. 36, Sched. 6, s. 17.

Notice of order

(5) Notice of an order made under subsection (1) shall be,

- (a) given to every authority that is directed by the order not to issue one or more permits;
- (b) given to any person who submitted an application for the permits in question before the order was made where the application is still pending; and
- (c) posted on the Environmental Registry within 30 days of being made. 2020, c. 36, Sched. 6, s. 17.

Information forwarded to Minister

(6) If an application for a permit to engage in an activity is submitted to an authority under section 28.1 before the day an order is made under this section directing the authority to not issue such a permit,

- (a) the authority shall forward to the Minister all documents and information relating to the application that were submitted by the applicant and shall do so within the time period set out in the order, if any; and
- (b) the applicant shall forward to the Minister such further information as the Minister may specify in the order and shall do so within the time period set out in the order, if any. 2020, c. 36, Sched. 6, s. 17.

Application to Minister

(7) If an order is made under this section that prevents an authority from issuing a permit to engage in an activity in circumstances where an application for such a permit has not yet been submitted to the authority but may be submitted in the future,

- (a) any person who wishes to engage in the activity shall submit to the Minister,
 - (i) an application for a permit to do so that includes such information as may be specified in the regulation,
 - (ii) a fee in the same amount as the fee that the person would have paid to the authority had the application been submitted to the authority, and
 - (iii) any information that the Minister believes is necessary to make a determination with respect to the issuance of the permit and that may be specified in the order; and
- (b) if the authority receives an application for such a permit after the day the order is made, the authority shall direct the applicant to submit the application in accordance with clause (a). 2020, c. 36, Sched. 6, s. 17.

Conferring with persons, etc.

(8) Before making a decision with respect to an application for a permit, the Minister may confer with any person or body that the Minister considers may have an interest in the application. 2020, c. 36, Sched. 6, s. 17.

Conditions

(9) The Minister may issue a permit subject to such conditions as the Minister determines are appropriate. 2020, c. 36, Sched. 6, s. 17.

Reasons

(10) If the Minister refuses a permit or issues a permit subject to conditions, the Minister shall give the applicant written reasons for the decision and shall provide a copy of the reasons to the relevant authority. 2020, c. 36, Sched. 6, s. 17.

Copy to authority

(11) If the Minister issues a permit under this section, the Minister shall give a copy of the permit to the authority that has jurisdiction over the watershed for which the permit is valid within five days after the permit is issued. 2020, c. 36, Sched. 6, s. 17.

Decision final

(12) A decision made by the Minister with respect to an application for a permit is final. 2020, c. 36, Sched. 6, s. 17.

Appeal

(13) If an application for a permit is made or forwarded to the Minister under this section and the application complies with the requirements of subsection 28.1 (3) or clause (7) (a) of this section, as the case may be, and if the Minister fails to give the applicant notice of a decision with respect to the application within 90 days after the application is made, the applicant may appeal the application directly to the Local Planning Appeal Tribunal. 2020, c. 36, Sched. 6, s. 17.

Same

(14) Subsections 28.1 (24), (25) and (26) apply with necessary modifications to an appeal to the Local Planning Appeal Tribunal made under subsection (13). 2020, c. 36, Sched. 6, s. 17.

Note: On the later of the day section 2 of Schedule 6 to the *Accelerating Access to Justice Act, 2021* comes into force and the day section 17 of Schedule 6 to the *Protect, Support and Recover from COVID-19 Act (Budget Measures), 2020* comes into force, section 28.1.1 of the Act is amended by striking out “Local Planning Appeal Tribunal” wherever it appears and substituting in each case “Ontario Land Tribunal”. (See: 2021, c. 4, Sched. 6, s. 39 (14))

Section Amendments with date in force (d/m/y) [+]

Mandatory permits, zoning orders

28.1.2 (1) This section applies to any application submitted to an authority under section 28.1 for a permit to carry out a development project in the authority's area of jurisdiction if,

- (a) a zoning order has been made by the Minister of Municipal Affairs and Housing under section 47 of the *Planning Act* authorizing the development project under that Act;
- (b) the lands in the authority's area of jurisdiction on which the development project is to be carried out are not located in the Greenbelt Area designated under section 2 of the *Greenbelt Act, 2005*; and
- (c) such other requirements as may be prescribed are satisfied. 2020, c. 36, Sched. 6, s. 17.

Definition

(2) In this section,

“development project” means a development project that includes any development activity as defined in subsection 28 (5) and any other act or activity that, without a permit issued under this section or section 28.1, would be prohibited under section 28. 2020, c. 36, Sched. 6, s. 17.

Permit to be issued

(3) Subject to the regulations, an authority that receives an application for a permit to carry out a development project in the authority's area of jurisdiction shall issue the permit if all of the requirements in clauses (1) (a), (b) and (c) are satisfied. 2020, c. 36, Sched. 6, s. 17.

Same

(4) For greater certainty, an authority shall not refuse to issue a permit to carry out a development project under subsection (3) despite,

- (a) the prohibitions in subsection 28 (1) and the fact that the development project may not meet the criteria for issuing a permit under subsection 28.1 (1); and
- (b) anything in subsection 3 (5) of the *Planning Act*. 2020, c. 36, Sched. 6, s. 17.

Conditions prescribed by regulations

(5) A permission granted under this section is subject to such conditions as may be prescribed. 2020, c. 36, Sched. 6, s. 17.

Conditions specified by authority

(6) Subject to subsection (7), an authority may attach conditions to the permit, including conditions to mitigate,

- (a) any effects the development project is likely to have on the control of flooding, erosion, dynamic beaches or pollution or the conservation of land;
- (b) any conditions or circumstances created by the development project that, in the event of a natural hazard, might jeopardize the health or safety of persons or result in the damage or destruction of property; or
- (c) any other matters that may be prescribed by regulation. 2020, c. 36, Sched. 6, s. 17.

Hearing

(7) An authority shall not attach conditions to a permit unless the applicant for the permit has been given an opportunity to be heard by the authority. 2020, c. 36, Sched. 6, s. 17.

Reasons for conditions

(8) If, after holding a hearing, an authority issues a permit subject to conditions, the authority shall give the permit holder written reasons for deciding to attach the conditions. 2020, c. 36, Sched. 6, s. 17.

Request for Minister's review

(9) A permit holder who objects to the conditions proposed in the reasons given under subsection (8) may, within 15 days of the reasons being given, submit a request to the Minister for the Minister to review the proposed conditions, subject to the regulations. 2020, c. 36, Sched. 6, s. 17.

Minister's review

(10) Subsections 28.1 (9) to (14) apply with necessary modifications to a Minister's review conducted pursuant to a request made under subsection (9). 2020, c. 36, Sched. 6, s. 17.

Minister's decision

(11) After conducting a review of an authority's decision, the Minister may confirm or vary the conditions that the authority proposes to attach to a permit, including removing conditions or requiring that such additional conditions be attached to the permit as the Minister considers appropriate. 2020, c. 36, Sched. 6, s. 17.

Same

(12) In making a decision under subsection (11), the Minister shall consider,

- (a) effects the development project is likely to have on the control of flooding, erosion, dynamic beaches or pollution or the conservation of land;
- (b) conditions or circumstances created by the development project that, in the event of a natural hazard, might jeopardize the health or safety of persons or result in the damage or destruction of property; or
- (c) any other matters as may be prescribed by the regulations. 2020, c. 36, Sched. 6, s. 17.

Decision final

(13) A decision made by the Minister under subsection (11) is final. 2020, c. 36, Sched. 6, s. 17.

Appeal

(14) A permit holder who objects to the conditions proposed by an authority in the reasons given under subsection (8) may, within 90 days of the reasons being issued, appeal to the Local Planning Appeal Tribunal to review the conditions if,

- (a) the permit holder has not submitted a request under subsection (9) to the Minister to review the conditions; or
- (b) the permit holder has submitted a request to the Minister to review the conditions under subsection (9) and,
 - (i) 30 days have elapsed following the day the permit holder submitted the request and the Minister did not make a reply in accordance with subsection 28.1 (9), or
 - (ii) the Minister made a reply in accordance with subsection 28.1 (9) indicating that the Minister refused to conduct the review. 2020, c. 36, Sched. 6, s. 17.

Same

(15) If the Minister indicates in a reply given in accordance with subsection 28.1 (9) that the Minister intends to review an authority's decision and the Minister fails to make a decision within 90 days of giving the reply, the permit holder may, within the next 30 days, appeal the conditions proposed by the authority directly to the Local Planning Appeal Tribunal. 2020, c. 36, Sched. 6, s. 17.

Same

(16) Subsections 28.1 (24), (25) and (26) apply with necessary modifications to an appeal made under subsection (14) or (15). 2020, c. 36, Sched. 6, s. 17.

Agreement

(17) An authority that issues a permit to carry out a development project under this section shall enter into an agreement with respect to the development project with the permit holder and the authority and the permit holder may add a municipality or such other person or entity as they consider appropriate as parties to the agreement. 2020, c. 36, Sched. 6, s. 17.

Content of agreement

(18) An agreement under subsection (17) shall set out actions or requirements that the permit holder must complete or satisfy in order to compensate for ecological impacts and any other impacts that may result from the development project. 2020, c. 36, Sched. 6, s. 17.

Limitation on development

(19) No person shall begin a development project until an agreement required under subsection (17) has been entered into. 2020, c. 36, Sched. 6, s. 17.

Conflict

(20) If the conditions in a permit issued under this section conflict with the terms of a zoning order made under section 47 of the *Planning Act*, the terms of the zoning order shall prevail. 2020, c. 36, Sched. 6, s. 17.

Note: On the later of the day section 2 of Schedule 6 to the *Accelerating Access to Justice Act, 2021* comes into force and the day section 17 of Schedule 6 to the *Protect, Support and Recover from COVID-19 Act (Budget Measures), 2020* comes into force, section 28.1.2 of the Act is amended by striking out “Local Planning Appeal Tribunal” wherever it appears and substituting in each case “Ontario Land Tribunal”. (See: 2021, c. 4, Sched. 6, s. 39 (14))

Section Amendments with date in force (d/m/y) [+]

Period of validity

28.2 A permit shall be valid for a period to be determined in accordance with the regulations. 2017, c. 23, Sched. 4, s. 25.

Section Amendments with date in force (d/m/y) [+]

Cancellation of permits

28.3 (1) An authority may cancel a permit issued under section 28.1 if it is of the opinion that the conditions of the permit have not been met or that the circumstances that are prescribed by regulation exist. 2017, c. 23, Sched. 4, s. 25.

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 28.3 (1) of the Act is amended by striking out “section 28.1” and substituting “section 28.1 or 28.1.1”. (See: 2020, c. 36, Sched. 6, s. 18 (1))

Notice

(2) Before cancelling a permit, an authority shall give a notice of intent to cancel to the permit holder indicating that the permit will be cancelled on a date specified in the notice unless the holder requests a hearing under subsection (3). 2017, c. 23, Sched. 4, s. 25.

Request for hearing

(3) Within 15 days of receiving a notice of intent to cancel a permit from the authority, the permit holder may submit a written request for a hearing to the authority. 2017, c. 23, Sched. 4, s. 25.

Hearing

(4) The authority shall set a date for the hearing and hold the hearing within a reasonable time after receiving a request for a hearing. 2017, c. 23, Sched. 4, s. 25.

Power

(5) After a hearing, the authority may confirm, rescind or vary the decision to cancel a permit. 2017, c. 23, Sched. 4, s. 25.

Note: On a day to be named by proclamation of the Lieutenant Governor, section 28.3 of the Act is amended by adding the following subsections: (See: 2020, c. 36, Sched. 6, s. 18 (2))

Appeal

(6) If the authority confirms the cancellation of a permit or makes another order under subsection (5) to which the permit holder objects, the permit holder may, within 90 days of receiving notice of the authority’s decision, appeal the decision to the Local Planning Appeal Tribunal. 2020, c. 36, Sched. 6, s. 18 (2).

Same

(7) A notice of an appeal under subsection (6) shall be sent to the Local Planning Appeal Tribunal and to the authority by registered mail. 2020, c. 36, Sched. 6, s. 18 (2).

Hearing

(8) The Local Planning Appeal Tribunal shall fix a date for a hearing of an appeal under subsection (6), give notice to all interested parties and give all necessary direction for the hearing. 2020, c. 36, Sched. 6, s. 18 (2).

Powers of the Tribunal

(9) The Local Planning Appeal Tribunal has authority to take evidence, to confirm, rescind or vary the decision to cancel the permit, with or without conditions. 2020, c. 36, Sched. 6, s. 18 (2).

Note: On the later of the day section 2 of Schedule 6 to the *Accelerating Access to Justice Act, 2021* comes into force and the day subsection 18 (2) of Schedule 6 to the *Protect, Support and Recover from COVID-19 Act (Budget Measures), 2020* comes into force, section 28.3 of the Act is amended by striking out “Local Planning Appeal Tribunal” wherever it appears and substituting in each case “Ontario Land Tribunal”. (See: 2021, c. 4, Sched. 6, s. 39 (15))

Section Amendments with date in force (d/m/y) [+]

Delegation of power

28.4 An authority may delegate any of its powers relating to the issuance or cancellation of permits under this Act or the regulations, or to the holding of hearings in relation to the permits, to the authority’s executive committee or to any other person or body, subject to any limitations or requirements that may be prescribed by regulation. 2017, c. 23, Sched. 4, s. 25.

Section Amendments with date in force (d/m/y) [+]

Note: On a day to be named by proclamation of the Lieutenant Governor, the Act is amended by adding the following section: (See: 2017, c. 23, Sched. 4, s. 26)

Regulations: activities affecting natural resources

28.5 (1) The Lieutenant Governor in Council may make regulations with respect to activities that may impact the conservation, restoration, development or management of natural resources and that may be carried out in the areas of jurisdiction of authorities, including regulations,

- (a) identifying activities that have or may have an impact on the conservation, restoration, development or management of natural resources for the purposes of the regulation;
- (b) regulating those activities;
- (c) prohibiting those activities or requiring that a person obtain a permit from the relevant authority to engage in the activities in the authority’s area of jurisdiction. 2017, c. 23, Sched. 4, s. 26.

Same

(2) A regulation under clause (1) (c) that requires that a person obtain a permit from the relevant authority to engage in an activity described in subsection (1) may,

- (a) provide for applications to be made to an authority for the permit and specify the manner, content and form of the application;
- (b) provide for the issuance, expiration, renewal and cancellation of a permit;
- (c) require hearings in relation to any matter referred to in clauses (a) and (b) and specify the person before whom, or the body before which, the matter shall be heard, provide for notices and other procedural matters relating to the hearing and provide for an appeal from any decision. 2017, c. 23, Sched. 4, s. 26.

Same

(3) A regulation made under this section may be limited in its application to one or more authorities or activities. 2017, c. 23, Sched. 4, s. 26.

Section Amendments with date in force (d/m/y) [+]

Regulations by authority re lands owned by it

29 (1) An authority may make regulations applicable to lands owned by the authority,

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 29 (1) of the Act is amended by striking out the portion before clause (a) and substituting the following: (See: 2017, c. 23, Sched. 4, s. 27 (1))

Regulations: public use of authority's property

- (1) The Minister may make regulations with respect to land and other property owned by authorities including regulations,
- (a) regulating and governing the use by the public of the lands and the works, vehicles, boats, services and things of the authority;
 - (b) providing for the protection and preservation from damage of the property of the authority;
 - (c) prescribing fees for the occupation and use of lands and works, vehicles, boats, recreational facilities and services;
 - (d) prescribing permits designating privileges in connection with use of the lands or any part thereof and prescribing fees for permits;
 - (e) regulating and governing vehicular and pedestrian traffic and prohibiting the use of any class of vehicle or classes of vehicles;
 - (f) prohibiting or regulating and governing the erection, posting up or other display of notices, signs, sign boards and other advertising devices;
 - (g) prescribing terms and conditions under which horses, dogs and other animals may be allowed on the lands or any part thereof;
 - (h) subject to the *Forest Fires Prevention Act* and the regulations made thereunder, prohibiting or regulating and governing the use, setting and extinguishment of fires. R.S.O. 1990, c. C.27, s. 29 (1); 1998, c. 18, Sched. I, s. 13 (1).

Regulations by L.G. in C. governing content of authority's regulations

(1.1) The Lieutenant Governor in Council may make regulations governing the content of regulations made under subsection (1), including the standards that may be used, and setting out what must be included or excluded from regulations made under subsection (1). 1998, c. 18, Sched. I, s. 13 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 29 (1.1) of the Act is repealed. (See: 2017, c. 23, Sched. 4, s. 27 (2))

Invalid regulation

(1.2) A regulation made under subsection (1) that does not conform with the requirements of a regulation made under subsection (1.1) is not valid unless it has been approved by the Minister. 1998, c. 18, Sched. I, s. 13 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 29 (1.2) of the Act is repealed. (See: 2017, c. 23, Sched. 4, s. 27 (2))

Offence: contravening regulation

(2) Every person who contravenes any regulation made under this section is guilty of an offence and on conviction is liable to a fine of not more than \$1,000. R.S.O. 1990, c. C.27, s. 29 (2); 1998, c. 18, Sched. I, s. 13 (3).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 29 (2) of the Act is repealed and the following substituted: (See: 2017, c. 23, Sched. 4, s. 27 (2))

Same

(2) A regulation made under this section may be limited in its application to one or more authorities. 2017, c. 23, Sched. 4, s. 27 (2).

Section Amendments with date in force (d/m/y) [+]

30 REPEALED: 2017, c. 23, Sched. 4, s. 28.

Section Amendments with date in force (d/m/y) [+]

Restriction on entry

30.1 (1) An authority or an officer appointed under a regulation made under clause 28 (1) (d) or (e) shall not enter land without,

- (a) the consent of the owner of the land and, if the occupier of the land is not the owner, the consent of the occupier of the land; or
- (b) the authority of a warrant under the *Provincial Offences Act*. 1998, c. 18, Sched. I, s. 14.

Exceptions

(2) Subsection (1) does not apply to entry under clause 21 (1) (b) or subsection 28 (20). 1998, c. 18, Sched. I, s. 14.

Note: On a day to be named by proclamation of the Lieutenant Governor, section 30.1 of the Act is repealed and the following substituted: (See: 2017, c. 23, Sched. 4, s. 29)

PART VII ENFORCEMENT AND OFFENCES

Appointment of officers

30.1 An authority may appoint officers for the purposes of ensuring compliance with this Act and the regulations. 2017, c. 23, Sched. 4, s. 29.

Section Amendments with date in force (d/m/y) [+]

Entry without warrant

30.2 (1) An officer appointed by an authority under section 30.1 may, subject to subsections (2) and (3), enter any land situated in the authority's area of jurisdiction for the purposes of determining compliance with subsection 28 (1), a regulation made under subsection 28 (3) or section 28.5 or with the conditions of a permit issued under section 28.1 or under a regulation made under clause 28.5 (1) (c). 2017, c. 23, Sched. 4, s. 29.

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 30.2 (1) of the Act is repealed and the following substituted: (See: 2020, c. 36, Sched. 6, s. 19 (1))

Entry without warrant, permit application

(1) An officer appointed by an authority under section 30.1 may enter any land situated in the authority's area of jurisdiction, without a warrant and without the consent of the owner or occupier, if,

- (a) an application has been submitted under section 28.1 or 28.1.1 for a permit to engage in an activity with respect to the land;
- (b) the entry is for the purpose of determining whether to issue a permit; and
- (c) the officer has given reasonable notice of the entry to the owner or occupier of the property. 2020, c. 36, Sched. 6, s. 19 (1).

Entry without warrant, compliance

(1.1) An officer appointed by an authority under section 30.1 may enter any land situated in the authority's area of jurisdiction, without a warrant and without the consent of the owner or occupier, if,

- (a) the entry is for the purpose of ensuring compliance with subsection 28 (1) or 28.1.2 (19), a regulation made under section 28.5 or with the conditions of a permit issued under section 28.1, 28.1.1 or 28.1.2 or issued under a regulation made under clause 28.5 (1) (c);

- (b) the officer has reasonable grounds to believe that a contravention of a provision of the Act or a regulation referred to in clause (a) or of a condition of a permit referred to in clause (a) is causing or is likely to cause significant damage and,
- (i) the damage affects or is likely to affect the control of flooding, erosion, dynamic beaches or pollution or the conservation of land, or
 - (ii) in the event of a natural hazard, the damage will or is likely to create conditions or circumstances that might jeopardize the health and safety of persons or result in damage or destruction of property; and
- (c) the officer has reasonable grounds to believe that the entry is required to prevent or reduce the effects or risks described in clause (b). 2020, c. 36, Sched. 6, s. 19 (1).

No entry to buildings

(2) The power to enter land under subsection (1) does not authorize the entry into a dwelling or other building situated on the land. 2017, c. 23, Sched. 4, s. 29.

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 30.2 (2) of the Act is amended by striking out “subsection (1)” and substituting “subsection (1) or (1.1)”. (See: 2020, c. 36, Sched. 6, s. 19 (2))

Time of entry

(3) The power to enter land under subsection (1) may be exercised at any reasonable time. 2017, c. 23, Sched. 4, s. 29.

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 30.2 (3) of the Act is amended by striking out “subsection (1)” and substituting “subsection (1) or (1.1)”. (See: 2020, c. 36, Sched. 6, s. 19 (2))

Power upon entry

(4) An officer who enters land under subsection (1) may do any of the following things:

1. Inspect any thing that is relevant to the inspection.
2. Conduct any tests, take any measurements, take any specimens or samples, set up any equipment and make any photographic or other records that may be relevant to the inspection.
3. Ask any questions that are relevant to the inspection to the occupant of the land. 2017, c. 23, Sched. 4, s. 29.

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 30.2 (4) of the Act is amended by striking out “subsection (1)” and substituting “subsection (1) or (1.1)”. (See: 2020, c. 36, Sched. 6, s. 19 (2))

No use of force

(5) Subsection (1) does not authorize the use of force. 2017, c. 23, Sched. 4, s. 29.

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 30.2 (5) of the Act is amended by striking out “subsection (1)” and substituting “subsection (1) or (1.1)”. (See: 2020, c. 36, Sched. 6, s. 19 (2))

Experts, etc.

(6) An officer who enters land under this section may be accompanied and assisted by any person with such knowledge, skills or expertise as may be required for the purposes of the inspection. 2017, c. 23, Sched. 4, s. 29.

Section Amendments with date in force (d/m/y) [+]

Searches

Search with warrant

30.3 (1) An officer may obtain a search warrant under Part VIII of the *Provincial Offences Act* in respect of an offence under this Act. 2017, c. 23, Sched. 4, s. 29.

Assistance

(2) The search warrant may authorize any person specified in the warrant to accompany and assist the officer in the execution of the warrant. 2017, c. 23, Sched. 4, s. 29.

Search without warrant

(3) If an officer has reasonable grounds to believe that there is something on land that will afford evidence of an offence under this Act but that the time required to obtain a warrant would lead to the loss, removal or destruction of the evidence, the officer may, without warrant, enter and search the land. 2017, c. 23, Sched. 4, s. 29.

No entry to buildings

(4) The power to enter land under subsection (3) does not authorize the entry into a dwelling or other building situated on the land. 2017, c. 23, Sched. 4, s. 29.

Section Amendments with date in force (d/m/y) [+]

Stop order

30.4 (1) An officer appointed under section 30.1 may make an order requiring a person to stop engaging in or not to engage in an activity if the officer has reasonable grounds to believe that the person is engaging in the activity, has engaged in the activity or is about to engage in the activity and, as a result, is contravening,

- (a) subsection 28 (1) or a regulation made under subsection 28 (3) or under section 28.5; or
- (b) the conditions of a permit that was issued under section 28.1 or under a regulation made under clause 28.5 (1) (c). 2017, c. 23, Sched. 4, s. 29.

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 30.4 (1) of the Act is repealed and the following substituted: (See: 2020, c. 36, Sched. 6, s. 20 (1))

Stop order

(1) An officer appointed under section 30.1 may make an order requiring a person to stop engaging in or not to engage in an activity if the officer has reasonable grounds to believe that,

- (a) the person has engaged in, is engaging in or is about to engage in the activity and, as a result, is contravening or will contravene,
 - (i) subsection 28 (1) or 28.1.2 (19) or a regulation made under section 28.5, or
 - (ii) the conditions of a permit issued under section 28.1, 28.1.1 or 28.1.2 or issued under a regulation made under clause 28.5 (1) (c);
- (b) the activity has caused, is causing or is likely to cause significant damage and,
 - (i) the damage affects or is likely to affect the control of flooding, erosion, dynamic beaches or the pollution or the conservation of land, or
 - (ii) in the event of a natural hazard, the damage will or is likely to create conditions or circumstances that might jeopardize the health and safety of persons or result in damage or destruction of property; and
- (c) the order will prevent or reduce the damage described in clause (b). 2020, c. 36, Sched. 6, s. 20 (1).

Information to be included in order

(2) The order shall,

- (a) specify the provision that the officer believes is being, has been or is about to be contravened;
- (b) briefly describe the nature of the contravention and its location; and
- (c) state that a hearing on the order may be requested in accordance with this section. 2017, c. 23, Sched. 4, s. 29.

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 30.4 (2) of the Act is repealed and the following substituted: (See: 2020, c. 36, Sched. 6, s. 20 (1))

Information to be included in the order

(2) The order shall,

- (a) specify the provision that the officer believes is being or is about to be contravened;
- (b) briefly describe the nature of the contravention and its location;
- (c) briefly describe the nature of the damage being caused or likely to be caused by the activity; and
- (d) state that a hearing on the order may be requested in accordance with this section. 2020, c. 36, Sched. 6, s. 20 (1).

Service of order

(3) An order under this section shall be served personally or by registered mail addressed to the person against whom the order is made at the person's last known address. 2017, c. 23, Sched. 4, s. 29.

Registered mail

(4) An order served by registered mail shall be deemed to have been served on the fifth day after the day of mailing, unless the person served establishes that the person did not, acting in good faith, through absence, accident, illness or other cause beyond the person's control, receive the order until a later date. 2017, c. 23, Sched. 4, s. 29.

Effective date

(5) An order under this section takes effect when it is served, or at such later time as is specified in the order. 2017, c. 23, Sched. 4, s. 29.

Right to hearing

(6) A person who is served with an order under this section may request a hearing before the authority or, if the authority so directs, before the authority's executive committee by mailing or delivering to the authority, within 30 days after service of the order, a written request for a hearing that includes a statement of the reasons for requesting the hearing. 2017, c. 23, Sched. 4, s. 29.

Powers of authority

(7) After holding a hearing, the authority or executive committee, as the case may be, shall,

- (a) confirm the order;
- (b) amend the order; or
- (c) remove the order, with or without conditions. 2017, c. 23, Sched. 4, s. 29.

Reasons for decision

(8) The authority or executive committee, as the case may be, shall give the person who requested the hearing written reasons for the decision. 2017, c. 23, Sched. 4, s. 29.

Appeal

(9) Within 30 days after receiving the reasons mentioned in subsection (8), the person who requested the hearing may appeal to the Minister and, after reviewing the submissions, the Minister may,

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 30.4 (9) of the Act is amended by striking out the portion before clause (a) and substituting the following: (See: 2020, c. 36, Sched. 6, s. 20 (2))

Appeal

(9) Within 30 days after receiving the reasons in subsection (8), the person who requested the hearing may appeal to the Minister or to a body prescribed by the regulations and, after reviewing the submissions, the Minister or the prescribed body may,

- (a) confirm the order;
- (b) amend the order; or
- (c) remove the order, with or without conditions. 2017, c. 23, Sched. 4, s. 29.

Section Amendments with date in force (d/m/y) [+]

Offences

30.5 (1) Every person is guilty of an offence if he or she contravenes,

- (a) subsection 28 (1) or a regulation made under subsection 28 (3) or under section 28.5;
- (b) the conditions of a permit that was issued under section 28.1 or under a regulation made under clause 28.5 (1) (c); or
- (c) a stop order issued under section 30.4. 2017, c. 23, Sched. 4, s. 29.

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 30.5 (1) of the Act is repealed and the following substituted: (See: 2020, c. 36, Sched. 6, s. 21)

Offences

(1) Every person is guilty of an offence if the person contravenes,

- (a) subsection 28 (1) or 28.1.2 (19);
- (b) a regulation respecting activities permitted under subsection 28 (3) or (4) or a regulation made under section 28.5;
- (c) the conditions of a permit that was issued under section 28.1, 28.1.1 or 28.1.2 or under a regulation made under clause 28.5 (1) (c); or
- (d) a stop order issued under section 30.4. 2020, c. 36, Sched. 6, s. 21.

Penalty

(2) A person who commits an offence under subsection (1) is liable on conviction,

- (a) in the case of an individual,
 - (i) to a fine of not more than \$50,000 or to a term of imprisonment of not more than three months, or to both, and
 - (ii) to an additional fine of not more than \$10,000 for each day or part of a day on which the offence occurs or continues;and
- (b) in the case of a corporation,
 - (i) to a fine of not more than \$1,000,000, and
 - (ii) to an additional fine of not more than \$200,000 for each day or part of a day on which the offence occurs or continues.2017, c. 23, Sched. 4, s. 29.

Monetary benefit

(3) Despite the maximum fines set out in clauses (2) (a) and (b), a court that convicts a person of an offence under clause (1) (a) or (b) may increase the fine it imposes on the person by an amount equal to the amount of the monetary benefit that was acquired by the person, or that accrued to the person, as a result of the commission of the offence. 2017, c. 23, Sched. 4, s. 29.

Contravening s. 29 regulations

(4) Every person who contravenes a regulation made under section 29 is guilty of an offence and on conviction is liable to a fine of not more than \$1,000. 2017, c. 23, Sched. 4, s. 29.

Obstruction of officer

(5) Every person who prevents or obstructs an officer from entering land under section 30.2 or 30.3 is guilty of an offence and on conviction is liable to a fine of not more than \$10,000. 2017, c. 23, Sched. 4, s. 29.

Section Amendments with date in force (d/m/y) [+]

Limitation period

30.6 A proceeding shall not be commenced with respect to an offence under subsection 30.5 (1), (4) or (5) more than two years after the day on which the offence first comes to the attention of an officer appointed under section 30.1. 2017, c. 23, Sched. 4, s. 29.

Section Amendments with date in force (d/m/y) [+]

Rehabilitation orders

30.7 (1) In addition to any other remedy or penalty provided by law, the court, upon convicting a person of an offence under clause 30.5 (1) (a) or (b), may order the convicted person to,

- (a) remove, at the convicted person's expense, any development within such reasonable time as the court orders; and
- (b) take such actions as the court directs, within the time the court may specify, to repair or rehabilitate the damage that results from or is in any way connected to the commission of the offence. 2017, c. 23, Sched. 4, s. 29.

Non-compliance with order

(2) If a person does not comply with an order made under subsection (1), the authority having jurisdiction may arrange for any removal, repair or rehabilitation that was required of a person under subsection (1) to be carried out. 2017, c. 23, Sched. 4, s. 29.

Liability for certain costs

(3) The person to whom an order is made under subsection (1) is liable for the cost of any removal, repair or rehabilitation arranged by an authority under subsection (2), and the amount is recoverable by the authority by action in a court of competent jurisdiction. 2017, c. 23, Sched. 4, s. 29.

Section Amendments with date in force (d/m/y) [+]

PART VIII MATTERS RELATING TO LAND AND WATER USE

31 REPEALED: 2020, c. 36, Sched. 6, s. 22.

Section Amendments with date in force (d/m/y) [+]

Restrictions on projects

Crown land affected

32 (1) Where any land required for the carrying out of a project or a part thereof is Crown land, a plan and description of the land prepared and signed by an Ontario land surveyor and signed by the chair or vice-chair of the authority shall be deposited with the Minister, and the project or the part thereof shall not be proceeded with until the authority has received the approval in writing of the Minister. R.S.O. 1990, c. C.27, s. 32 (1).

Interference with public work

(2) Where a project or a part thereof may interfere with a public work of Ontario, the authority shall file with the Minister of Infrastructure a plan and description of the project or a part thereof together with a statement of the interference with the public work that may occur and a statement of the manner in which the authority proposes to remedy the interference, and the project or the part thereof shall not be proceeded with until the authority has received the approval in writing of the Minister of Infrastructure. R.S.O. 1990, c. C.27, s. 32 (2); 1998, c. 15, Sched. E, s. 3 (3); 2011, c. 9, Sched. 27, s. 22.

Interference with highway

(3) Where a project or a part thereof will interfere with a public road or highway, the authority shall file with the Minister of Transportation a plan and description of the project or a part thereof together with a statement of the interference with the public road or highway that will occur and a statement of the manner in which the authority proposes to remedy the interference, and the project or the part thereof shall not be proceeded with until the authority has received the approval in writing of the Minister of Transportation. R.S.O. 1990, c. C.27, s. 32 (3).

Costs, how to be borne

(4) The cost of rebuilding any road, highway, bridge, public work or any part thereof and the cost of any other work that any of the Ministers of the Crown may require to be done under this section shall be borne by the authority, except where an agreement providing for payment thereof in some other manner has been entered into with the Crown in right of Ontario. R.S.O. 1990, c. C.27, s. 32 (4); 1998, c. 15, Sched. E, s. 3 (4).

Section Amendments with date in force (d/m/y) [+]**Assessment of lands of authority**

33 (1) Land vested in an authority, except works erected by an authority for the purposes of a project, is taxable for municipal purposes by levy under section 312 of the *Municipal Act, 2001* or section 277 of the *City of Toronto Act, 2006*, as the case may be, upon the assessment and classification of such land determined in each year by the Municipal Property Assessment Corporation and the land shall be assessed under the *Assessment Act* as if the works erected by the authority on the land had not been erected. 1997, c. 5, s. 64 (1); 1997, c. 43, Sched. G, s. 19; 2001, c. 8, s. 203; 2002, c. 17, Sched. F, Table; 2006, c. 32, Sched. C, s. 8.

Assessment of rented property

(2) Despite subsection (1), section 18 of the *Assessment Act* applies with necessary modifications in respect of lands vested in an authority. R.S.O. 1990, c. C.27, s. 33 (2).

Notice

(3) The Municipal Property Assessment Corporation shall deliver or mail to each authority concerned and to the clerk of each municipality in which any of the land is situated a notice setting out the assessment and the classification of the land in the municipality. 1997, c. 5, s. 64 (2); 1997, c. 43, Sched. G, s. 19; 2001, c. 8, s. 203.

Reconsideration under *Assessment Act*

(4) The authority may request a reconsideration under section 39.1 of the *Assessment Act*. 1997, c. 5, s. 64 (3).

Appeal to the Assessment Review Board

(5) The authority or the municipality may appeal to the Assessment Review Board under section 40 of the *Assessment Act* and the last day for appealing is the day that is 90 days after the authority or the clerk of the municipality, as applicable, is notified. 2008, c. 7, Sched. A, s. 19.

***Assessment Act* to apply**

(6) The *Assessment Act* applies, with necessary modifications, with respect to a request for a reconsideration or an appeal. 2008, c. 7, Sched. A, s. 19.

(7) REPEALED: 1997, c. 5, s. 64 (3).

Assessment for next year's taxation

(8) The assessment of land under subsection (1) shall be determined by the Municipal Property Assessment Corporation in each year for the purpose of taxation in the following year. R.S.O. 1990, c. C.27, s. 33 (8); 1997, c. 5, s. 64 (4); 1997, c. 43, Sched. G, s. 19; 2001, c. 8, s. 203.

Section Amendments with date in force (d/m/y) [+]**Cemetery lands**

34 (1) Where the carrying out of a project will require the use of a cemetery or other place of interment of human remains, the authority shall acquire other suitable lands for the interment of the bodies contained in the cemetery or other place of interment. R.S.O. 1990, c. C.27, s. 34 (1).

Notice to plot owners

(2) The authority shall forward a notice to the owner of each lot in the cemetery or other place of interment, but, if the owner or the owner's whereabouts is unknown, the notice shall, wherever possible, be forwarded to some other person having an interest in the plot through relationship or otherwise to a deceased person buried therein. R.S.O. 1990, c. C.27, s. 34 (2).

Publication of notice

(3) The authority shall also cause a notice to be published once a week for at least three weeks in a newspaper having general circulation in the locality where the cemetery or other place of interment is located, which notice shall state,

- (a) that the cemetery or other place of interment has been acquired for the purposes of the authority;
- (b) that other land, describing it, has been acquired by the authority for the purpose of reintering the bodies;
- (c) that the authority will at its own expense proceed to remove the bodies from the cemetery or other place of interment to the lands acquired for reinterment at a time not less than one month after the forwarding or third publication of the notice, whichever is the later date; and
- (d) that the owner of any plot in the cemetery or other place of interment, or any other person with the approval of the authority, may cause any body interred in the cemetery or other place of interment to be removed to any other place of interment at the expense of the owner or person if the owner or person obtains permission from the authority and effects the removal within one month from the forwarding or insertion of the notice, whichever is the later date, or before such later date as the authority determines. R.S.O. 1990, c. C.27, s. 34 (3).

Removal of bodies

(4) The authority has full power to cause the removal of any body from the cemetery or place of interment to any lands acquired under subsection (1) despite any other Act and to authorize the removal by any other person of the body for reinterment in any other cemetery or place of interment. R.S.O. 1990, c. C.27, s. 34 (4).

Removal of headstones

(5) Where a body is removed and reinterred, any headstone or other stone shall be removed and re-erected at the place of reinterment. R.S.O. 1990, c. C.27, s. 34 (5).

Conveyance of lands for reinterment

(6) The authority shall render land, including fences and buildings, acquired for the reinterment of bodies, in a fit and proper condition and shall convey the land to the owner of the cemetery or other place of interment from which the bodies were removed. R.S.O. 1990, c. C.27, s. 34 (6).

Right to use water power

35 (1) The authority has the right to use any water power created upon lands vested in it for its own uses. 1998, c. 15, Sched. E, s. 3 (5).

(2) REPEALED: 2006, c. 3, Sched. D, s. 1.

Obligation to pay

(3) Any person using water power created upon authority lands shall pay to the authority an annual reasonable compensation for the use of the water power. 1998, c. 15, Sched. E, s. 3 (5).

Arbitration

(3.1) Where the authority and a person described in subsection (3) are unable to agree on the amount of the annual compensation, the matter shall be arbitrated under the *Arbitration Act, 1991*. 1998, c. 15, Sched. E, s. 3 (5).

Charge for power

(4) Subject to review by the Minister of Natural Resources, an authority shall charge persons who at the time of the establishment of the authority are, or thereafter become, users of power derived by them from the use of the waters of the watershed for any additional power generated from increased head or flow due to the works undertaken by the authority. R.S.O. 1990, c. C.27, s. 35 (4); 1998, c. 15, Sched. E, s. 3 (6).

When section not to apply

(5) This section does not apply to water power reserved to the Crown under the *Public Lands Act*. R.S.O. 1990, c. C.27, s. 35 (5).

Section Amendments with date in force (d/m/y) [+]

**PART IX
MISCELLANEOUS**

Assent of electors not necessary

36 Where by this Act any power is conferred or duty imposed upon a municipality, or the council of a municipality, including a power or duty to raise money, the power may be exercised and the duty shall be performed by the council of the municipality without the assent of the electors. R.S.O. 1990, c. C.27, s. 36.

Delegation

36.1 (1) The Minister may in writing delegate any of his or her powers or duties under this Act to an employee in the Ministry specified in the delegation, other than the power to make a regulation under this Act. 2020, c. 36, Sched. 6, s. 23.

Same

(2) A reference in this Act or the regulations to the Minister shall, for the purpose of a delegation under subsection (1), be deemed to be a reference to the delegate. 2020, c. 36, Sched. 6, s. 23.

Section Amendments with date in force (d/m/y) [+]

Spending by authority

37 All money that is paid to an authority for specified purposes under this Act may be spent by the authority as it considers proper. 2017, c. 23, Sched. 4, s. 32.

Section Amendments with date in force (d/m/y) [+]

Annual audit

38 (1) Every authority shall cause its accounts and transactions to be audited annually by a person licensed under the *Public Accounting Act, 2004* and shall ensure that the annual audit is prepared in accordance with generally accepted accounting principles for local governments recommended by the Public Sector Accounting Board of the Chartered Professional Accountants of Canada, as they exist from time to time. 2020, c. 36, Sched. 6, s. 24 (1).

Auditor

(2) No person shall be appointed as auditor of an authority who is or during the preceding year was a member of the authority or who has or during the preceding year had any direct or indirect interest in any contract or any employment with the authority other than for services within his or her professional capacity. R.S.O. 1990, c. C.27, s. 38 (2).

Auditor's report

(3) An authority shall, upon receipt of the auditor's report of the examination of its accounts and transactions, forthwith forward a copy of the report to each participating municipality and to the Minister. R.S.O. 1990, c. C.27, s. 38 (3).

Report made publicly available

(4) Within 60 days of receiving the auditor's report, an authority shall make the report available to the public on its website and by any other means that the authority considers appropriate. 2020, c. 36, Sched. 6, s. 24 (2).

Section Amendments with date in force (d/m/y) [+]

Grants

39 Grants may be made by the Minister to any authority out of the money appropriated therefor by the Legislature in accordance with such conditions and procedures as may be prescribed by the Lieutenant Governor in Council. R.S.O. 1990, c. C.27, s. 39.

Regulations, Lieutenant Governor in Council

40 (1) The Lieutenant Governor in Council may make regulations,

- (a) governing advisory boards established under subsection 18 (2), including requiring authorities to establish one or more advisory boards and prescribing requirements with respect to the composition, functions, powers, duties, activities and procedures of any advisory board that is established;
- (b) governing programs and services that authorities may provide including,
 - (i) prescribing mandatory programs and services for the purposes of subsections 21.1 (1) and (2),
 - (ii) prescribing Acts for the purposes of subparagraph 1 iv of subsections 21.1 (1), and
 - (iii) respecting standards and requirements applicable to programs and services for the purposes of subsection 21.1 (3);
- (c) governing the apportionment of an authority's capital costs in connection with a project for the purposes of section 25;
- (d) governing reviews under sections 26 and 27.1, including prescribing a body that may conduct such reviews instead of the Ontario Land Tribunal;
- (e) governing the apportionment of an authority's operating expenses for the purposes of section 27, prescribing expenses as operating expenses for the purposes of section 27, governing the amount that participating municipalities are required to pay under section 27, including the fixed amount that a participating municipality may be required to pay under subsection 27 (2), and restricting and prohibiting the apportionment of certain types of operating expenses;
- (f) governing budgetary matters relating to authorities including,
 - (i) prescribing matters as budgetary matters for the purposes of clause 14 (4.0.1) (d) and for the regulations,
 - (ii) respecting the process authorities must follow when preparing a budget and the consultations that are required, and
 - (iii) providing for rules and procedures governing meetings at which budgetary matters are discussed, including the quorum for such meetings and the rules respecting voting on budgetary matters, and providing for those rules and procedures to apply despite anything in section 16.
- (g) REPEALED: 2021, c. 4, Sched. 6, s. 39 (17).
- (h) governing Minister's reviews of decisions made by an authority to refuse to issue a permit or to issue permits subject to conditions that may be requested under subsection 28.1 (8), including prescribing circumstances under which reviews may or may not be requested or conducted;
- (i) governing transitional matters resulting from the implementation of Minister reviews requested under subsection 28.1 (8) and from the coming into force of section 28.1.1;

- (j) governing the issuance of permits by the Minister under section 28.1.1 including prescribing circumstances in which the Minister may or may not make an order under subsection 28.1.1 (1);
- (k) governing transitional matters relating to the repeal of section 28.0.1 by subsection 15 (2) of Schedule 6 of the *Protect, Support and Recover from COVID-19 Act (Budget Measures), 2020* and any permissions that were granted under that section prior to the repeal and the enactment of section 28.1.2;
- (l) governing Minister's reviews requested under subsection 28.1.2 (9) and appeals under subsections 28.1.2 (14) and (15) and specifying circumstances in which a review may not be requested or an appeal may not be made;
 - (m) prescribing a body for the purposes of subsection 30.4 (9);
- (n) defining any term that is used in this Act and that is not defined in this Act;
- (o) respecting anything that is necessary or advisable for the proper administration of this Act. 2020, c. 36, Sched. 6, s. 25 (1); 2021, c. 4, Sched. 6, s. 39 (16, 17).

Same

(2) The standards and requirements established for programs and services in a regulation made under clause (1) (b) may include standards and requirements to mitigate the impacts of climate change and provide for adaptation to a changing climate, including through increasing resiliency. 2020, c. 36, Sched. 6, s. 25 (1).

Regulations, Minister

(3) The Minister may make regulations,

- (a) prescribing matters that may be the subject of by-laws made under clause 19.1 (1) (j);
- (b) respecting the amount of any fee that may be charged by an authority in relation to a program or service, including determining the manner in which the fee is calculated;
- (c) respecting standards and requirements applicable to programs and services for the purposes of clause 21.1.1 (4) (b) and subsection 21.1.2 (2);
- (d) prescribing the period for the purposes of paragraph 2 of subsection 21.1.2 (2);
- (e) prescribing requirements for the purposes of paragraph 3 of subsection 21.1.2 (2);
- (f) governing consultations that an authority must carry out for the purposes of section 21.1.3;
- (g) governing the matters to be addressed in a transition plan under section 21.1.4 and prescribing additional matters to be addressed, including requiring the submission to the Ministry of the inventory mentioned in paragraph 1 of subsection 21.1.4 (2);
- (h) governing the information that authorities must provide to the Minister under section 23.1, including the publication of that information;
- (i) prescribing a day for the purposes of subsections 25 (1.1) and 27 (1.1);
- (j) prescribing circumstances for the purposes of subsections 25 (1.3) and 27 (1.3);
- (k) governing the determination of amounts owed under subsection 27.2 (2). 2020, c. 36, Sched. 6, s. 25 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, section 40 of the Act is amended by adding the following subsection: (See: 2020, c. 36, Sched. 6, s. 25 (2))

Minister's regulations, ss. 28 to 28.4

(4) The Minister may make regulations,

- (a) governing the prohibitions set out in section 28, including,
 - (i) prescribing the limits on river and stream valleys for the purposes of subparagraph 2 iii of subsection 28 (1),
 - (ii) determining or specifying areas for the purposes of subparagraph 2 iv of subsection 28 (1),

- (iii) determining or specifying areas in which development should be prohibited or regulated for the purposes of subparagraph 2 v of subsection 28 (1),
 - (iv) prescribing activities or types of activities to which the prohibitions set out in subsection 28 (1) do not apply and respecting the manner or circumstances in which the activities or types of activities may be carried out and any conditions or restrictions that apply to the activity or type of activity,
 - (v) prescribing areas in which the prohibitions set out in subsection 28 (1) do not apply and respecting the manner or circumstances in which the activities may be carried out in such areas, and any conditions or restrictions that apply to carrying out activities in such areas,
 - (vi) defining “development activity”, “hazardous land”, “watercourse” and “wetland” for the purposes of section 28;
- (b) governing applications for permits under section 28.1, the issuance of the permits and the power of authorities to refuse permits, including prescribing requirements that must be met for the issuance of permits under clause 28.1 (1) (c), conditions that may be attached to a permit or circumstances in which a permit may be cancelled under section 28.3 and respecting the period for which a permit is valid under section 28.2;
 - (c) defining “pollution” for the purposes of section 28.1;
 - (d) prescribing requirements for the purposes of clause 28.1.2 (1) (c);
 - (e) governing permits issued under section 28.1.2 including,
 - (i) requiring that permits be issued within a specified time period after the application for the permit is submitted to an authority,
 - (ii) prescribing conditions for the purposes of subsection 28.1.2 (5),
 - (iii) prescribing matters for the purposes of clause 28.1.2 (6) (c);
 - (f) prescribing matters for the purposes of clause 28.1.2 (12) (c);
 - (g) governing agreements required under subsection 28.1.2 (17) including,
 - (i) prescribing the content of the agreements,
 - (ii) specifying the time within which agreements are to be concluded and signed;
 - (h) exempting lands or development projects from section 28.1.2 or from a part of that section or the regulations made under that section, including from the requirement to enter into an agreement under subsection 28.1.2 (17) or from including any provision of an agreement that is prescribed by a regulation under clause (g);
 - (i) governing the delegation of powers by an authority under section 28.4 and prescribing any limitations or requirements related to the delegation;
 - (j) respecting anything necessary or advisable for the effective implementation or enforcement of sections 28 to 28.4. 2020, c. 36, Sched. 6, s. 25 (2).

General or particular

(5) A regulation made under this section may be general or particular in its application. 2020, c. 36, Sched. 6, s. 25 (3).

Section Amendments with date in force (d/m/y) [+]

Rolling incorporations

41 A regulation made under this Act that adopts a document by reference may adopt the document as it may be amended from time to time after the regulation is made. 2017, c. 23, Sched. 4, s. 34.

Section Amendments with date in force (d/m/y) [+]

Conservation Authorities Act
Loi sur les offices de protection de la nature

ONTARIO REGULATION 162/06

**HALTON REGION CONSERVATION AUTHORITY: REGULATION OF DEVELOPMENT,
INTERFERENCE WITH WETLANDS AND ALTERATIONS TO SHORELINES AND
WATERCOURSES**

Consolidation Period: From February 8, 2013 to the [e-Laws currency date](#).

Last amendment: 59/13.

Legislative History: 59/13.

This Regulation is made in English only.

Definition

1. In this Regulation,

“Authority” means the Halton Region Conservation Authority. O. Reg. 162/06, s. 1.

Development prohibited

2. (1) Subject to section 3, no person shall undertake development or permit another person to undertake development in or on the areas within the jurisdiction of the Authority that are,

(a) adjacent or close to the shoreline of the Great Lakes-St. Lawrence River System or to inland lakes that may be affected by flooding, erosion or dynamic beach hazards, including the area from the furthest offshore extent of the Authority’s boundary to the furthest landward extent of the aggregate of the following distances:

(i) the 100 Year flood level, plus an allowance of 15 metres for wave uprush and other water-related hazards,

(ii) the predicted long term stable slope projected from the existing stable toe of the slope or from the predicted location of the toe of the slope as that location may have shifted as a result of shoreline erosion over a 100-year period,

(iii) where a dynamic beach is associated with the waterfront lands, an allowance of 30 metres inland to accommodate dynamic beach movement, and

(iv) an allowance not to exceed 15 metres inland;

(b) river or stream valleys that have depressional features associated with a river or stream, whether or not they contain a watercourse, the limits of which are determined in accordance with the following rules:

(i) where the river or stream valley is apparent and has stable slopes, the valley extends from the stable top of bank, plus an allowance not to exceed 15 metres, to a similar point on the opposite side,

(ii) where the river or stream valley is apparent and has unstable slopes, the valley extends from the predicted long term stable slope projected from the existing stable slope or, if the toe of the slope is unstable, from the predicted location of the toe of the slope as a result of stream erosion over a projected 100-year period, plus an allowance not to exceed 15 metres, to a similar point on the opposite side,

(iii) where the river or stream valley is not apparent, the valley extends the greater of,

(A) the distance from a point outside the edge of the maximum extent of the flood plain under the applicable flood event standard, plus an allowance not to exceed 15 metres, to a similar point on the opposite side, and

(B) the distance from the predicted meander belt of a watercourse, expanded as required to convey the flood flows under the applicable flood event standard, plus an allowance not to exceed 15 metres, to a similar point on the opposite side;

(c) hazardous lands;

(d) wetlands; or

(e) other areas where development could interfere with the hydrologic function of a wetland, including areas within 120 metres of all provincially significant wetlands and wetlands greater than or equal to 2 hectares in size, and areas within 30 metres of wetlands less than 2 hectares in size. O. Reg. 162/06, s. 2 (1); O. Reg. 59/13, s. 1 (1).

(2) All areas within the jurisdiction of the Authority that are described in subsection (1) are delineated as the “Regulation Limit” shown on a series of maps filed at the head office of the Authority under the map title “Ontario Regulation 97/04: Regulation for Development, Interference with Wetlands and Alterations to Shorelines and Watercourses”. O. Reg. 59/13, s. 1 (2).

(3) If there is a conflict between the description of areas in subsection (1) and the areas as shown on the series of maps referred to in subsection (2), the description of areas in subsection (1) prevails. O. Reg. 59/13, s. 1 (2).

Permission to develop

3. (1) The Authority may grant permission for development in or on the areas described in subsection 2 (1) if, in its opinion, the control of flooding, erosion, dynamic beaches, pollution or the conservation of land will not be affected by the development. O. Reg. 162/06, s. 3 (1).

(2) The permission of the Authority shall be given in writing, with or without conditions. O. Reg. 162/06, s. 3 (2).

(3) Subject to subsection (4), the Authority’s executive committee, or one or more employees of the Authority that have been designated by the Authority for the purposes of this section, may exercise the powers and duties of the Authority under subsections (1) and (2) with respect to the granting of permissions for development in or on the areas described in subsection 2 (1). O. Reg. 59/13, s. 2.

(4) A designate under subsection (3) shall not grant a permission for development with a maximum period of validity of more than 24 months. O. Reg. 59/13, s. 2.

Application for permission

4. A signed application for permission to undertake development shall be filed with the Authority and shall contain the following information:

1. Four copies of a plan of the area showing the type and location of the proposed development.
2. The proposed use of the buildings and structures following completion of the development.
3. The start and completion dates of the development.
4. The elevations of existing buildings, if any, and grades and the proposed elevations of buildings and grades after the development.
5. Drainage details before and after the development.
6. A complete description of the type of fill proposed to be placed or dumped.
7. Such other technical studies or plans as the Authority may request. O. Reg. 162/06, s. 4; O. Reg. 59/13, s. 3.

Alterations prohibited

5. Subject to section 6, no person shall straighten, change, divert or interfere in any way with the existing channel of a river, creek, stream or watercourse or change or interfere in any way with a wetland. O. Reg. 162/06, s. 5.

Permission to alter

6. (1) The Authority may grant permission to straighten, change, divert or interfere with the existing channel of a river, creek, stream or watercourse or to change or interfere with a wetland. O. Reg. 162/06, s. 6 (1); O. Reg. 59/13, s. 4 (1).

(2) The permission of the Authority shall be given in writing, with or without conditions. O. Reg. 162/06, s. 6 (2).

(3) Subject to subsection (4), the Authority’s executive committee, or one or more employees of the Authority that have been designated by the Authority for the purposes of this section, may exercise the powers and duties of the Authority under subsections (1) and (2) with respect to the granting of permissions for alteration. O. Reg. 59/13, s. 4 (2).

(4) A designate under subsection (3) shall not grant a permission for alteration with a maximum period of validity of more than 24 months. O. Reg. 59/13, s. 4 (2).

Application for permission

7. A signed application for permission to straighten, change, divert or interfere with the existing channel of a river, creek, stream or watercourse or change or interfere with a wetland shall be filed with the Authority and shall contain the following information:

1. Four copies of a plan of the area showing plan view and cross-section details of the proposed alteration.
2. A description of the methods to be used in carrying out the alteration.
3. The start and completion dates of the alteration.
4. A statement of the purpose of the alteration.
5. Such other technical studies or plans as the Authority may request. O. Reg. 162/06, s. 7; O. Reg. 59/13, s. 5.

Cancellation of permission

8. (1) The Authority may cancel a permission granted under section 3 or 6 if it is of the opinion that the conditions of the permission have not been met. O. Reg. 162/06, s. 8 (1); O. Reg. 59/13, s. 6 (1).

(2) Before cancelling a permission, the Authority shall give a notice of intent to cancel to the holder of the permission indicating that the permission will be cancelled unless the holder shows cause at a hearing why the permission should not be cancelled. O. Reg. 162/06, s. 8 (2).

(3) Following the giving of the notice under subsection (2), the Authority shall give the holder at least five days notice of the date of the hearing. O. Reg. 162/06, s. 8 (3); O. Reg. 59/13, s. 6 (2).

Period of validity of permissions and extensions

9. (1) The maximum period, including an extension, for which a permission granted under section 3 or 6 may be valid is,

(a) 24 months, in the case of a permission granted for projects other than projects described in clause (b); and

(b) 60 months, in the case of a permission granted for,

(i) projects that, in the opinion of the Authority or its executive committee, cannot reasonably be completed within 24 months from the day the permission is granted, or

(ii) projects that require permits or approvals from other regulatory bodies that, in the opinion of the Authority or its executive committee, cannot reasonably be obtained within 24 months from the day permission is granted. O. Reg. 59/13, s. 7.

(2) The Authority or its executive committee may grant a permission for an initial period that is less than the applicable maximum period specified in subsection (1) if, in the opinion of the Authority or its executive committee, the project can be completed in a period that is less than the maximum period. O. Reg. 59/13, s. 7.

(3) If the Authority or its executive committee grants a permission under subsection (2) for an initial period that is less than the applicable maximum period of validity specified in subsection (1), the Authority or its executive committee may grant an extension of the permission if,

(a) the holder of the permission submits a written application for an extension to the Authority at least 60 days before the expiry of the permission;

(b) no extension of the permission has previously been granted; and

(c) the application sets out the reasons for which an extension is required and, in the opinion of the Authority or its executive committee, demonstrates that circumstances beyond the control of the holder of the permission will prevent completion of the project before the expiry of the permission. O. Reg. 59/13, s. 7.

(4) When granting an extension of a permission under subsection (3), the Authority or its executive committee may grant the extension for the period of time requested by the holder in the application or for such period of time as the Authority or its executive committee deems appropriate, as long as the total period of validity of the permission does not exceed the applicable maximum period specified in subsection (1). O. Reg. 59/13, s. 7.

(5) For the purposes of this section, the granting of an extension for a different period of time than the period of time requested does not constitute a refusal of an extension. O. Reg. 59/13, s. 7.

(6) The Authority or its executive committee may refuse an extension of a permission if it is of the opinion that the requirements of subsection (3) have not been met. O. Reg. 59/13, s. 7.

(7) Before refusing an extension of a permission, the Authority or its executive committee shall give notice of intent to refuse to the holder of the permission, indicating that the extension will be refused unless,

(a) the holder requires a hearing, which may be before the Authority or its executive committee, as the Authority directs; and

(b) at the hearing, the holder satisfies the Authority, or the Authority's executive committee, as the case may be,

(i) that the requirements of clauses (3) (a) and (b) have been met, and

(ii) that circumstances beyond the control of the holder will prevent completion of the project before the expiry of the permission. O. Reg. 59/13, s. 7.

(8) If the holder of the permission requires a hearing under subsection (7), the Authority or its executive committee shall give the holder at least five days notice of the date of the hearing. O. Reg. 59/13, s. 7.

(9) After holding a hearing under subsection (7), the Authority or its executive committee shall,

(a) refuse the extension; or

(b) grant an extension for such period of time as it deems appropriate, as long as the total period of validity of the permission does not exceed the applicable maximum period specified in subsection (1). O. Reg. 59/13, s. 7.

(10) Subject to subsection (11), one or more employees of the Authority that have been designated by the Authority for the purposes of this section may exercise the powers and duties of the Authority under subsections (2), (3) and (4), but not those under subsections (6), (7), (8) and (9). O. Reg. 59/13, s. 7.

(11) A designate under subsection (10) shall not grant an extension of a permission for any period that would result in the permission having a period of validity greater than 24 months. O. Reg. 59/13, s. 7.

Appointment of officers

10. The Authority may appoint officers to enforce this Regulation. O. Reg. 162/06, s. 10.

Flood event standards

11. The applicable flood event standards used to determine the maximum susceptibility to flooding of lands or areas within the watersheds in the area of jurisdiction of the Authority are the Hurricane Hazel Flood Event Standard, the 100 Year Flood Event Standard and the 100 year flood level plus wave uprush, described in Schedule 1. O. Reg. 162/06, s. 11.

12. REVOKED: O. Reg. 59/13, s. 8.

13. OMITTED (REVOKES OTHER REGULATIONS). O. Reg. 162/06, s. 13.

SCHEDULE 1

1. The Hurricane Hazel Flood Event Standard means a storm that produces over a 48-hour period,
 - (a) in a drainage area of 25 square kilometres or less, rainfall that has the distribution set out in Table 1; or
 - (b) in a drainage area of more than 25 square kilometres, rainfall such that the number of millimetres of rain referred to in each case in Table 1 shall be modified by the percentage amount shown in Column 2 of Table 2 opposite the size of the drainage area set out opposite thereto in Column 1 of Table 2.

TABLE 1

73 millimetres of rain in the first 36 hours
6 millimetres of rain in the 37th hour
4 millimetres of rain in the 38th hour
6 millimetres of rain in the 39th hour
13 millimetres of rain in the 40th hour
17 millimetres of rain in the 41st hour
13 millimetres of rain in the 42nd hour
23 millimetres of rain in the 43rd hour
13 millimetres of rain in the 44th hour
13 millimetres of rain in the 45th hour
53 millimetres of rain in the 46th hour
38 millimetres of rain in the 47th hour
13 millimetres of rain in the 48th hour

TABLE 2

Column 1	Column 2
Drainage Area (square kilometres)	Percentage
26 to 45 both inclusive	99.2
46 to 65 both inclusive	98.2
66 to 90 both inclusive	97.1
91 to 115 both inclusive	96.3
116 to 140 both inclusive	95.4
141 to 165 both inclusive	94.8
166 to 195 both inclusive	94.2
196 to 220 both inclusive	93.5
221 to 245 both inclusive	92.7
246 to 270 both inclusive	92.0
271 to 450 both inclusive	89.4
451 to 575 both inclusive	86.7
576 to 700 both inclusive	84.0
701 to 850 both inclusive	82.4
851 to 1000 both inclusive	80.8

1001 to 1200 both inclusive	79.3
1201 to 1500 both inclusive	76.6
1501 to 1700 both inclusive	74.4
1701 to 2000 both inclusive	73.3
2001 to 2200 both inclusive	71.7
2201 to 2500 both inclusive	70.2
2501 to 2700 both inclusive	69.0
2701 to 4500 both inclusive	64.4
4501 to 6000 both inclusive	61.4
6001 to 7000 both inclusive	58.9
7001 to 8000 both inclusive	57.4

2. The 100 Year Flood Event Standard means rainfall or snowmelt, or a combination of rainfall and snowmelt, producing at any location in a river, creek, stream or watercourse, a peak flow, that has a probability of occurrence of one per cent during any given year.

3. The 100 year flood level means the peak instantaneous still water level plus an allowance for wave uprush and other water-related hazards for Lake Ontario and Hamilton Harbour in the Great Lakes-St. Lawrence River System that has a probability of occurrence of one per cent during any given year.

O. Reg. 162/06, Sched. 1.

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