

Dear Counsel,

Re: Hearing - Notice of Intent to Cancel Permit- Conservation Halton Permit No. 5927  
DECISION AND REASONS

Further to the oral decision of the Tribunal of November 17,2022, please find below the Decision and Reasons of the Conservation Halton Board with respect to the above referenced matter.

Adriana Ingrid Birza

Board Secretary

Conservation Halton  
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**Re: Hearing - Notice of Intent to Cancel Permit- Conservation Halton Permit No. 5927**

**DATE OF HEARING:** November 17, 2022

**DATE OF ISSUANCE OF DECISION:** November 24, 2022

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### **Decision and Reasons**

This hearing arises from a notice given by Conservation Halton staff (“CH Staff”) that it intends to cancel Conservation Halton Permit No. 5927 (“Permit 5927”) which was granted to Ivan Rudyk and Shelly Young (the “Permit Holders”) with respect to their property at 835 Spring Gardens Road in Burlington (the “Subject Property”). The hearing is being conducted by the Conservation Halton Board pursuant to section 8 of Ontario Regulation 162/06 under the *Conservation Authorities Act* (the “Regulation”).

This hearing was originally scheduled for November 10, 2022 but was adjourned on consent of both parties to November 17, 2022.

### **Information Presented to the Board**

Prior to the hearing, extensive written materials were filed with the Board by both the Permit Holders and CH staff (collectively referred to herein as the “parties”). The CH staff materials included a staff report which outlined the background to the matter and Staff’s rationale for seeking to cancel the permit, as well as 13 figures and 14 exhibits documenting the application process and the construction that has occurred on the Subject Property since the issuance of Permit 5927. The Permit Holders materials include the affidavit of Shelley Young together with 21 exhibits including documentation on the permitting process and communications between the Permit Holders and CH staff before and after the issuance of Permit 5927 as well as a geotechnical report prepared for the Permit Holders dated October 26, 2022. Taken together, this material provided a comprehensive understanding of the permitting process including the proposed project for which the permit was sought, and the construction undertaken by the Permit Holders following issuance of Permit 5927.

Prior to the commencement of the hearing, the Board was advised by the parties that they had reached an agreement on the issuance of a new permit (“Permit 8350”), which has now been issued by CH, and which covers all of the works which were approved under Permit 5927.

At the hearing, the Board received oral presentations, together with a slide presentation, on behalf of CH staff from Barbara Veale, CH Senior Director, Watershed Strategies and Climate Change, Kellie McCormack, Director, Planning and Regulation.

On behalf of the Permit Holders, the Board received oral submissions and a slide presentation from Arkadi Bouchelev, counsel for the Permit Holders. Mr. Bouchelev spoke to the affidavit of Ms. Young and its exhibits. Each party was given a full opportunity to ask questions of the other party's presenters following each of its respective presentations.

### **Board Findings**

The Board's role in this matter is prescribed by section 8 of the Regulation.

Section 8 (1) of the Regulation states:

*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.*

Section 8(2) states:

*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.*

Based on this, the Board's role in the hearing on this matter is to determine whether or not the Permit Holders have shown cause why Permit 5927 should not be cancelled.

The Board has carefully considered the materials and oral presentations, and responses to questions, provided on behalf of each of the parties. Based on this, the Board makes the following findings:

- The Applicant applied and submitted plans for, and Permit 5927 gave permission for, the following works entirely within an area that is subject to Conservation Halton permitting requirements under the Regulation:

“...a two storey addition to the side yard and a rear cantilevered balcony along with an on-grade patio. Also to include a covered front porch”
- The scope of works carried out on the Subject Property was different in scope from the works applied for and includes substantial works that were not included in the scope of the original permit. This includes the demolition and reconstruction of the entire existing dwelling on the Subject Property.

- The conditions of permission granted in this case were not met because the works constructed are substantially different from, and beyond the scope of, the plans approved, and the permission granted, by Permit 5927.

On behalf of the Permit Holders, Mr. Bouchelev submitted that the cancellation of Permit 5927 is now “moot”, given the issuance of Permit 8350. In the Board’s view, the issuance of Permit 8350 supports a decision to cancel Permit 5927: the cancellation is a sound administrative step that removes any doubt about the permit that governs the works that are being carried out on the Subject Property going forward.

The Board was also advised that construction activities at the Subject Property are also the subject of other legal proceedings including civil proceedings involving the Permit Holders’ contractor and CH and criminal proceedings brought by CH under the Provincial Offences Act. For clarity, the Board’s decision in this matter is a ruling on the narrow issue of whether or not Permit 5927 should be cancelled. It is no way intended to be a ruling on the conduct of the Permit Holders in this matter, or any other matters that are the subject of other legal proceedings.

### **Decision**

Overall, the Board finds that the Permit Holders have not shown cause why Permit 5927 should not be cancelled, and therefore confirms the cancellation of Permit 5927.

### **Conservation Halton Board**

***Per :***

Mayor Gordon Krantz  
Councillor Allen Elgar  
Councillor Cathy Duddeck  
Councillor Rory Nissan  
Councillor David Gittings  
Hamza Ansari  
Jean Williams  
Jim Sweetlove  
Mike Cluett  
Stephen Gilmour  
Zeeshan Hamid  
Chair, Gerry Smallegange