PRINCE EDWARD ISLAND
Regulatory & Appeals Commission
Commission de réglementation et d'appels
ÎLE-DU-PRINCE-ÉDOUARD

Notice of Planning Appeal

Sheila Scott

v.

City of Charlottetown

Commission Docket LA22003 and LA23001

In accordance with the *Planning Act,* Sheila Scott filed two appeals with the Commission appealing the decisions of the City of Charlottetown:

- The January 7, 2022, decision to issue Occupancy Permit issued for 11-13 Essex Crescent (Docket LA22003); and,
- The December 14, 2023, decision to issue Occupancy Permit for 23-25 Essex Crescent (Docket LA23001).

The appeal hearing will be held in the Commission's hearing room on October 27, 2026, at 9:30 a.m.

Audio Broadcast of Hearing

An audio broadcast of the hearing will be available on the Commission's website at:

Irac.pe.ca/hearings/public-hearing-schedule/

Inquiries may be directed to:
Michelle Walsh-Doucette
Commission Clerk
Prince Edward Island Regulatory & Appeals Commission
902-892-3501
Email**:** appealinquiries@irac.pe.ca

DATED: September 3, 2026

PRINCE EDWARD ISLAND
Regulatory & Appeals Commission
Commission de réglementation et d'appels
ÎLE-DU-PRINCE-ÉDOUARD

October 14, 2025

VIA EMAIL

Sheila Scott
118 Royalty Road
Charlottetown, PE C1E 3E1
Appellant
sheiladscott@hotmail.com and
jcgmann@hotmail.com

Maggie Hughes
Cox & Palmer
97 Queen Street, Suite 600
Charlottetown, PE C1A 4A9
Lawyer for the Respondent, City of Charlottetown
Maggie.Hughes@coxandpalmer.com

Prebilt Steel Ltd.
Duncan Shaw
423 Mount Edward Road
Charlottetown, PE C1E 2A1
Developer
duncan@prebiltsteel.com

RE: Dockets LA22003 and LA23001 – Sheila Scott v. City of Charlottetown

I am writing further to the most recent status update from the Appellant, received August 8, 2025, in respect of these appeal dockets. In that update, the Appellant advised as follows:

> The remaining issues are the dry wells not being dug out and this is the approved drainage plan. We were giving the neighbors the [spring] to dig out and the City was going to follow up with another letter if they have not been dug out. They have not been touched since first letter was delivered last fall.

In emails to Commission staff and the Appellant in December 2024, the City shared their position that the maintenance of the dry wells is beyond what they can control. However, in December 2024 the City sent letters to the property owners of 21 and 23 Essex Street, and spoke to each of them, to stress the importance of maintaining the drywells on their properties. The City's email of December 17, 2024, does indicate that Public Works can speak with property owners a second time if the owners fail to maintain the wells.

Considering that the remaining issue in respect of these appeal dockets is the maintenance of the dry wells on neighboring properties, it would seem that there is no further benefit to the parties to engage in continued mediation discussions.

Therefore, I am writing to ask that the Appellant advise the Commission as to her intention about proceeding with these appeals by **November 7, 2025**. If the Appellant elects not to withdraw the appeals by that date, the Commission will proceed to set the matters down for hearing.

Yours truly,

Jessica Gillis
General Counsel
Email: jgillis@irac.pe.ca

PRINCE EDWARD ISLAND
Regulatory & Appeals Commission
Commission de réglementation et d'appels
ÎLE-DU-PRINCE-ÉDOUARD

Michelle Walsh-Doucette
Commission Clerk
Email: mwalshdoucette@irac.pe.ca

September 3, 2026

VIA EMAIL

Sheila Scott
118 Royalty Road
Charlottetown, PE C1E 3E1
Appellant
sheiladscott@hotmail.com

Melanie McKenna
Cox & Palmer
97 Queen Street, Suite 600
Charlottetown, PE C1A 4A9
Lawyer for the Respondent, City of Charlottetown
mmckenna@coxandpalmer.com

Prebilt Steel Ltd.
Duncan Shaw
423 Mount Edward Road
Charlottetown, PE C1E 2A1
Developer
duncan@prebiltsteel.com

re: Dockets LA22003 and LA23001 – Sheila Scott v City of Charlottetown

The hearing of this matter has been scheduled for **October 27 and 28, 2026, at 9:30 am**. Further to the pre-hearing conference call that was held August 27, 2026, the following deadlines have been set by the Commission.

i. The City is to file the Record for Docket LA23001 ("Filed and Served") by **September 17, 2026, at 4:00 pm**.

ii. Any further supplementary documents or additions to the City's Record for Docket LA22003 must be filed with the Commission and served on the other parties ("Filed and Served") by **September 18, 2026, at 4:00 p.m.**

iii. If the Appellant intends to call an expert to give evidence, then the Appellant must provide the name of the expert and all supporting documentation as set out in Rule 58.1(a) through (f), to the Commission and all other parties, on or before **October 2, 2026, at 4:00 p.m**. Rule 59 applies to the testimony of any such expert before the Commission at the hearing. The expert is required to appear

before the Commission at the hearing, either in person or, if they reside outside of the Province of Prince Edward Island, via Zoom audio and video.

iv. Any amendments to the Notice of Appeal must be filed not later than **October 2, 2026, at 4:00 p.m**. and shall fully comply with the requirements set out in Rule 27.

v. All Other expert reports to be submitted by any of the parties must also comply with Rule 58.1 (a) through (f), and must be filed and served on or before **October 2, 2026, at 4:00 p.m**. Rule 59 also applies to their expert testimony before the Commission at the hearing. The expert is required to appear before the Commission at the hearing, either in person or, if they reside outside of the Province of Prince Edward Island, via Zoom audio and video.

vi. All witness lists and 'will-say' statements must be filed by all parties on or before **October 9, 2026, at 4:00 p.m.** No additional witnesses will be permitted to be called at the hearing after this deadline.

vii. The Appellant may prepare any further written submission addressing the grounds for the appeal and the reasons that the decision should be overturned and it must be filed and served on or before **October 9, 2026, at 4:00 p.m**.

viii. The Respondent and Developer may file written submissions in response and they must be filed and served on or before **October 16, 2026, at 4:00 p.m**.

ix. Any miscellaneous documents or exhibits not previously referred to shall be filed and served not later than **October 21, 2026, at 4:00 p.m**.

x. In the event that an expert witness elects to testify via Zoom audio and video, the Commission must be advised not later than **October 23, 2026, at 4:00 p.m**

Trusting this is satisfactory.

Yours truly,



Michelle Walsh-Doucette
Commission Clerk
Email: mwalshdoucette@irac.pe.ca

PRINCE EDWARD ISLAND
Regulatory & Appeals Commission
Commission de réglementation et d'appels
ÎLE-DU-PRINCE-ÉDOUARD

February 1, 2022

Via Email: sheiladscott@hotmail.com

Sheila Scott
118 Royalty Road
Charlottetown, PE C1E 3E1

Dear Ms. Scott:

RE: Appeal #LA22-03 – Sheila Scott v. City of Charlottetown

The Island Regulatory and Appeals Commission has received the Notice of Appeal that you filed against a decision of City of Charlottetown with respect to an occupancy permit issued for 11-13 Essex Crescent, being City of Charlottetown File No. 1127984.

The Commission has requested a copy of the file material from the City. A copy of the written material relevant to this appeal will be forwarded to you as soon as it is received.

Any questions or concerns can be directed to myself by telephone at 902-892-3501 or email at pjrafuse@irac.pe.ca

Yours truly,

Philip J. Rafuse
Appeals Administrator

PRINCE EDWARD ISLAND
Regulatory & Appeals Commission
Commission de réglementation et d'appels
ÎLE-DU-PRINCE-ÉDOUARD

February 1, 2022

VIA: Email: aforbes@charlottetown.ca

City of Charlottetown
Planning and Heritage Department
233 Queen Street
Charlottetown, PE C1A 4B9

Dear Sir:

RE: Appeal #LA22-03 – Sheila Scott v. City of Charlottetown

The Island Regulatory and Appeals Commission has received a Notice of Appeal from Sheila Scott against the January 7, 2022 decision of the City of Charlottetown with respect to an Occupancy Permit for 11-13 Essex Crescent, being City of Charlottetown file No. 1127984. I have enclosed a copy of the Notice of Appeal for your records.

Please forward a copy of all information in your file with respect to the above-noted decision to the Commission by Tuesday, March 1, 2022. This information will be added to the Commission's file and will be distributed to the Appellant. Also on that date, please file a written response to the Notice of Appeal. The City may raise issues involving jurisdiction or preliminary matters in addition to a clear but brief response to the appeal.

Any questions or concerns can be directed to myself by telephone at 902-892-3501 or email at pjrafuse@irac.pe.ca

Yours truly,

Philip J. Rafuse
Appeals Administrator
Enclosure

PRINCE EDWARD ISLAND
Regulatory & Appeals Commission
Commission de réglementation et d'appels
ÎLE-DU-PRINCE-ÉDOUARD

February 1, 2022
Via Email: duncan@prebiltsteel.com

Duncan Shaw (Prebilt)

Dear Mr. Shaw:

RE: Appeal #LA22-03 – Sheila Scott v. City of Charlottetown

The Island Regulatory and Appeals Commission has received a Notice of Appeal filed by Sheila Scott appealing the decision of the City of Charlottetown, with respect to an occupancy permit issued for 11-13 Essex Crescent, being City of Charlottetown File No. 1127984.

Enclosed please find all documentation received to-date by the Commission with respect to this Notice of Appeal.

Any questions or concerns can be directed to myself by telephone at 902-892-3501 or email at pjrafuse@irac.pe.ca

Yours truly,

Philip J. Rafuse
Appeals Administrator
Corporate Services and Appeals Division
Enclosure

PRINCE EDWARD ISLAND
Regulatory & Appeals Commission
Commission de réglementation et d'appels
ÎLE-DU-PRINCE-ÉDOUARD

October 9, 2026

VIA REGISTERED MAIL

Alet Graham
422 Kentyre Rd.
Harrington, PE
C1E 2S4

RE: Appeal LA22003 – Sheila Scott v. City of Charlottetown

Enclosed you will find a Notice of Hearing in respect of the above noted appeal docket from the Island Regulatory and Appeals Commission. You are being provided this Notice of Hearing as the property owner of 13 Essex Crescent, Charlottetown, PEI, in accordance with Rule 26(1)(c) of the Commission's Rules of Practice and Procedure, as the Commission had deemed it appropriate that you receive notice of this hearing.

The matter to be heard is an appeal of an occupancy permit issued by the City of Charlottetown on January 7, 2022, in respect of your property. The Developer of the property, Mullache Properties, is a party to this appeal.

As the owner(s) of the subject property the Commission wants to ensure you are aware of this proceeding and any resulting decision.

If you would like to receive further communications in respect of this matter we request that you please provide us with an email address.

Any questions can be directed to Michelle Walsh-Doucette by telephone at 902-892-3501 or email at mwalshdoucette@irac.pe.ca.

Michelle Walsh-Doucette
Commission Clerk
mwalshdoucette@irac.pe.ca

Enclosure

PRINCE EDWARD ISLAND
Regulatory & Appeals Commission
Commission de réglementation et d'appels
ÎLE-DU-PRINCE-ÉDOUARD

January 4, 2023

Via Email: sheiladscott@hotmail.com

Sheila Scott
118 Royalty Road
Charlottetown, PE C1E 3E1

Dear Ms. Scott:

RE: Appeal #LA23001 – Sheila Scott v. City of Charlottetown

The Prince Edward Island Regulatory and Appeals Commission has received the Notice of Appeal that you filed against a decision by the City of Charlottetown (File No. 21-318), with respect to the approval of Occupancy Permit 362-BLD-21, for PID 1016294, issued for 23-25 Essex Crescent (Lot 5B), Charlottetown, Prince Edward Island.

At your request, this appeal is being held in abeyance while mediation on LA22003 continues.

Any questions or concerns can be directed to myself by telephone at 902-892-3501 or email at pjrafuse@irac.pe.ca

Yours truly,

Philip J. Rafuse
Appeals Administrator

PRINCE EDWARD ISLAND
Regulatory & Appeals Commission
Commission de réglementation et d'appels
ÎLE-DU-PRINCE-ÉDOUARD

January 4, 2023

Via Email: aforbes@charlottetown.ca

City of Charlottetown
Planning and Heritage Department
233 Queen Street
Charlottetown, PE C1A 4B9

Dear Mr. Forbes:

RE: Appeal #LA23001 – Sheila Scott v. City of Charlottetown

The Prince Edward Island Regulatory and Appeals Commission has received a Notice of Appeal from Sheila Scott, against the December 14, 2022 decision by the City of Charlottetown (File No. 21-318), with respect to the approval of Occupancy Permit 362-BLD-21, for PID 1016294, issued for 23-25 Essex Crescent (Lot 5B), Charlottetown, Prince Edward Island. I have enclosed a copy of the Notice of Appeal for your records.

The Appellant has requested that this appeal be held in abeyance while mediation on the similar matter of LA22003 continues. It is my understanding that all parties agree to this abeyance. If you do not agree to the abeyance, please advise me.

The city is not required to provide a copy of the Record at this time. However, the city shall ensure that the information for the record is presented in the event the abeyance is lifted.

Any questions or concerns can be directed to myself by telephone at 902-892-3501 or email at pjrafuse@irac.pe.ca

Yours truly,

Philip J. Rafuse
Appeals Administrator
Enclosure
Copy to: David Hooley, K.C.-dhooley@cox&palmer.com

PRINCE EDWARD ISLAND
Regulatory & Appeals Commission
Commission de réglementation et d'appels
ÎLE-DU-PRINCE-ÉDOUARD

January 4, 2023

Via email: duncan@prebiltsteel.com

Prebilt Steel Ltd.
Attention: Duncan Shaw

Dear Mr. Shaw:

RE: Appeal #LA22021 – M. Lynn Murray v. City of Charlottetown

The Prince Edward Island Regulatory and Appeals Commission has received a Notice of Appeal filed by Sheila Scott, against the December 14, 2022 decision by the City of Charlottetown (File No. 21-318), with respect to the approval of Occupancy Permit 362-BLD-21, for PID 1016294, issued for 23-25 Essex Crescent (Lot 5B), Charlottetown, Prince Edward Island. I have enclosed a copy of the Notice of Appeal for your records.

Any construction or expenses, with regard to this proposal, incurred by the developer/owner after this date will be at their peril.

Enclosed please find all documentation received to-date by the Commission with respect to this Notice of Appeal.

This appeal is held in abeyance while mediation for LA22003 continues.

Any questions or concerns can be directed to myself by telephone at 902-892-3501 or email at pjrafuse@irac.pe.ca

Yours truly,

Philip J. Rafuse
Appeals Administrator

PRINCE EDWARD ISLAND
Regulatory & Appeals Commission
Commission de réglementation et d'appels
ÎLE-DU-PRINCE-ÉDOUARD

October 9, 2026

VIA REGISTERED MAIL

Punam Kishorbhai & Krishan Katariya
23 Essex Crescent
Charlottetown, PE
C1E 3J4

RE: Appeal LA23001 – Sheila Scott v. City of Charlottetown

Enclosed you will find a Notice of Hearing in respect of the above noted appeal docket from the Island Regulatory and Appeals Commission. You are being provided this Notice of Hearing as the property owner of 23-25 Essex Crescent, Charlottetown, PEI, in accordance with Rule 26(1)(c) of the Commission's Rules of Practice and Procedure, as the Commission had deemed it appropriate that you receive notice of this hearing.

The matter to be heard is an appeal of an occupancy permit issued by the City of Charlottetown on December 14, 2023, in respect of your property. The occupancy permit was issued to Mullache Properties, who is a party to this appeal.

As the owner(s) of the subject property the Commission wants to ensure you are aware of this proceeding and any resulting decision.

If you would like to receive further communications in respect of this matter we request that you please provide us with an email address.

Any questions can be directed to Michelle Walsh-Doucette by telephone at 902-892-3501 or email at mwalshdoucette@irac.pe.ca.

M. Walsh-Doucette

Michelle Walsh-Doucette
Commission Clerk
mwalshdoucette@irac.pe.ca

Enclosure

PRINCE EDWARD ISLAND
Regulatory & Appeals Commission
Commission de réglementation et d'appels
ÎLE-DU-PRINCE-ÉDOUARD

National Bank Tower
5th Floor, 134 Kent St.
P.O. Box 577, Charlottetown, PE C1A 7L1
Tel: 902-892-3501 / PEI toll free: 1-800-501-6268
Fax: 902-566-4076
appealinquiries@irac.pe.ca

Commission Case Number (Commission Office Use Only	Date Stamp Appeal Received by the Commission
	RECEIVED JAN 2 8 2022 The Island Regulatory and Appeals Commission

Notice of Appeal

(Pursuant to Section 28 of the Planning Act)

Under Section 28. (6) of the ***Planning Act***, the Appellant must, within seven days of filing an appeal with the Commission serve a copy of the notice of appeal on the municipal council or the Minister as the case may be. In addition, the Commission requires the Appellant to provide the Notice of Appeal to any parties directly affected by the Notice of Appeal on the same date the municipal council or Minister is notified.

Please review each section of the form carefully and fill out all relevant sections. Kindly note that if a Notice of Appeal is deficient it may not be accepted for filing.

Information on this Form is collected pursuant to the ***Planning Act*** and will be used by the Commission in processing this appeal. For additional information, contact the Commission at 902-892-3501 or by email at appealinquiries@irac.pe.ca.

Section 1 – Contact Information

NOTE: Fill out a separate contact information sheet for each individual appellant if applicable

Appellant Information			
Last Name: Scott		First Name: Shelia	
Company Name or Association Name (if applicable):			
Email address: sheiladscott@hotmail.com			
Daytime Telephone Number: 902-393-1620		Alternative Telephone Number:	
Mailing Address			
Unit Number:	Street Number: 118	Street Name: Royalty Road	P.O. Box:
City / Town / Community Charlottetown	Province: PE	Country Canada	Postal Code C1E 3E1
Signature of Appellant / Legal Counsel (if applicable): Sheila Scott			

Representative Information (If applicable)			
☐ I hereby authorize the named individual(s) to represent me.			
Last Name:		First Name:	
Company Name or Association Name (if applicable):			
Email address:			
Daytime Telephone Number:		Alternative Telephone Number:	
Mailing Address			
Unit Number:	Street Number:	Street Name:	P.O. Box:
City / Town / Community	Province:	Country	Postal Code
☐ I certify that I understand that my representative is not licensed under the *Legal Profession Act* and I have provided my written authorization (attached) to my representative to act on my behalf with respect to this matter. I understand that my representative may be asked to produce this authorization at any time.			
Signature of Appellant:			
Signature of Representative:			

Section 2 – Appeal Information

Appeal Reasons and Specific Information

Municipal Reference Number(s) (if applicable):

List the reasons for your appeal in accordance with the provisions of Section 28.(5) of the ***Planning Act*** (if more space is required, kindly fill out a separate sheet and attach it to this form):

We are appealing the Occupancy Permit issued for Civic # 11-13 Essex Crescent under City of Charlottetown File No. 1127984. The permit was issued January 7, 2022 for " Occupancy Permit: New Semi-detached dwelling"

The semi-detached dwellings on Lots 1B to 9B Essex Crescent are in various states of construction and the rain water from the development is flowing into our property and our neighbours and causing significant damage.

Under the various steps of the development process, the City is to ensure that excess waters are not to flow onto adjacent properties.

I have reached out to the City on numerous occasions and have received nothing to indicate that the storm water will not continue to flow into our lands.

We have been left with no alternative, other than to higher a professional to review the issues and provide advice, and to appeal of occupancy permit, that has been issued contrary to city bylaw 3.7 (Occupancy Permits)

We have attached a report prepared by David Morris, P.Eng, to assist in this matter.

Has a public meeting been held by the municipality? ☐ Yes ☒ No

Did you apply for a development permit, occupancy permit, subdivision approval, change of use amendment or bylaw amendment? ☐ Yes ☒ No

Oral / Written Submissions to Council

Did you make your opinion regarding this matter known to council / the Minister?

- ☒ Oral Submissions at a public meeting of council / the Minister? Emailed and phoned city
- ☐ Written Submissions to council
- ☐ Not Applicable

Related Matters

Are there other appeals not yet filed with the Commission?

☐ Yes ☒ No

Are there other matters related to this appeal? (For example: ***An Environmental Protection Act*** Appeal)

☐ Yes ☐ No

If yes, please provide the Commission Appeal Number(s) and / or Municipal File Number(s) and / or the Provincial File Number(s) or Court Docket Number(s) for the related matters:

Section 3 – Relief Sought

Relief Sought and Specific Information

List or describe the relief sought in accordance with the provisions of Section 28.(5) of the ***Planning Act*** (if more space is required, kindly fill out a separate sheet and attach it to this form):

1. The storm water from the Essex Crescent development be appropriately managed through engineered design drawings and construction to ensure that all waters from the development are directed to a storm water system within a public right of way.
2. The City of Charlottetown take appropriate measures during to ensure that precipitation that falls during the winter months will not back up and flood our basement, through temporary measures such as a swale or ditch.
3. The City of Charlottetown put in place a bylaw, policy or manual to manage storm water and in particular storm water from ne development.
4. The City of Charlottetown reinstate the provisions of the bylaw (September 2018) , regarding the grading of lots, and certification associated with the stage of development.,

I have reached out multiple times to the City calling and emailing everyone I could possibly call in the late fall (late November – December) seeking help with the flooding before snow came and the ground froze. I received no action or help to prevent or even reduce the flooding. It is clear to see that the water from the rear facing downspouts are running into my property (I have photos if needed). Nothing was done when it could have easily been done before the ground froze.

I am extremely worried about the now frozen ground, snow melting and spring rain contributing to more heavy flooding of my property from the Essex Drive properties. I am trying desperately to avoid my basement flooding from this water. I am asking that something also be done in the interim (until the long term solutions are done) to avoid this flooding and damage to my property and house.

I have lived here for 14 years, doesn't the city have a responsibility to ensure my home and largest financial asset not be damaged by new development they have approved?

This has been an extremely stressful time and it has costs me personally thousands of dollars already. Why are in a place where I as a homeowner, has to spend thousands of dollars and file appeals in order for the City to help me and avoid damage and flooding caused by a City approved development? How is that just or fair?

Section 4 – Declaration

Declaration		
I solemnly declare that all the statements and the information provided, as well as any supporting documents, are true, correct and complete. By signing this appeal form below, I consent to the collection of my personal information.		
Name of Appellant	**Signature of Appellant or Legal Counsel**	**Date (yyyy/mm/dd)**
Sheila Scott	Sheila Scott	2022/01/28
Name of Representative (if applicable)	**Signature of Representative**	**Date (yyyy/mm/dd)**

Personal information or documentation requested on this form is collected under the authority of the *Island Regulatory and Appeals Commission Act* and the legislation under which the proceeding is commenced. All information collected is included in the IRAC case file and the public record in this proceeding. In accordance with the ***Freedom of Information and Protection of Privacy Act*** , some of the information collected herein may be available to the public subject to exceptions.

Important: Under Section 28.(6) of the ***Planning Act***, the Appellant must, within seven days of filing an appeal with the Commission serve a copy of the notice of appeal on the municipal council, the Minister or the third party(ies) as the case may be. ***Service of the Notice of Appeal is the responsibility of the Appellant.***

January 27, 2022

Shelia Scott
118 Royalty Road
Charlottetown PE

RE: PROJECT 21185 | 118 Royalty Road | Surface Water Drainage

Dear Ms. Scott,

As per our meetings and correspondence we have undertaken a boundary survey to delimit the extents of your property at 118 Royalty Road, and a topographic survey and site analysis as part of a review for storm water management of your property and the associated watershed.

The management of storm water is a difficult task and is influenced by numerous variables that require assumption when modelling. Storm events can occur that fall outside the norm, and outside the parameters used to design the control of water and during these events flooding can occur.

While the Province maintains a manual of design guidelines that establishes the parameters to be used in the design for the management of storm water for land development within provincial jurisdiction, the City of Charlottetown (City) does not. Historically, however the city has required storm water infrastructure to be designed to a 1 in 10-year event plus 10%. This was an un-written rule.

Within the City Zoning and Development Bylaw, where a subdivision creates a new street, or more than 4 lots, a provision is provided for an overall surface water plan (46.3.7.). Amongst items required on to be shown on the plan are areas subject to flooding. The section of the bylaw however does not provide any guidance or parameters to be followed for design. The bylaw also stipulates a requirement for a surface drainage plan as part of the development permit submission. Under the City website section for "*Business and Development*" exists a heading entitled "Lot Grading Guidelines and Certificate", while documents are published within the section, the Manager for Planning and Development has stated that the documents are not referenced in the permitting process. They are however a document that can be applied for Best Management Practises (BMP) within the City.

Lacking a formal guideline within the City, our firm has adopted BMP's from other jurisdictions together with guidelines, set criteria and parameters for the development of Storm Water Management Plans, Subdivision Grading Control Plans, and Individual Lot Grading Plans.

Morris Geomatics & Engineering Ltd.
P.O. Box 21016
Charlottetown, PE, C1A 8Z3
eel: (902)-213-0487
email: info@morrisgeomatics.ca
morrisgeomatics.ca

Typically, when analyzing and designing where storm water issues exist, a review of current plans adopted by the jurisdiction would be used. Many times, an issue can be resolved with correction of a deficiency in the final as built when comparison is made to the approved design drawing. Numerous requests have been made to the city for record drawings to assist in the review, however the City has failed to provide any record, including the publically registered development agreement engineering drawing attachments. Where the city has failed to provide record drawings, we are left to rely on the current condition as observed in the field as the soul means of our review.

1.0 PRE-2018 DEVELOPMENT REVIEW

Prior to the first phase of Royalty Heights Subdivision (now known as Windsor Park), under Morris Land and Engineering Surveys, a comprehensive topographic survey and storm water analysis was carried out on the existing water shed including the improved lots on Royalty Road, Alderwood Avenue, Windsor Park, and the undeveloped lands now part of Mullache Properties Inc. (Mullache)

In the analysis pre-development, the lots fronting on Royalty Road situated between Alder brook Avenue and the extension of Upton Road had overland sheet flow through a low catchment area in the rear yard of 118 Royalty Road that was followed by a low catchment area in now under Essex Crescent. The low catchment area in the rear yard of 118 Royalty Road received no surface waters from the undeveloped lands of Mullache and during storm events would have released its waters into a lower catchment area within Essex Crescent, before flowing downhill to the creek.

It should be noted, that obstructing the existing sheet flow from the Royalty Road lots onto the undeveloped lands is within the rights of Mullache, however, Mullache and its successors is not provided with a right to release its waters onto the adjacent Royalty Road lots.

2.0 WINDSOR PARK PHASE III DEVELOPMENT

2.1 2020 SUBDIVISION APPROVAL

A Subdivision Road and Services Agreement (SRSA) was entered into between Mullache and the City on June 12,2020 and filed in the Land Registry Office (LRO) November 23, 2020, as Document 9664 that sets the requirements for the subdivision. Items of note:

1. Schedule "A" the Master Plan, being the Plan of Subdivision approved by the City of Charlottetown, June 2,2020 and filed in the LRO as Number 41983 depicts no drainage easements. Under the SRSA s.7c, the developer is required to submit drainage easements where

required. It would appear the developer did not foresee a need for any drainage easements along the southern boundary of the lots fronting on Essex Crescent.

2. Under the SRSA s. 10 b. appropriate siltation/ mulching measures are to be in place to avoid excess surface water run-off during this period". No erosion control measurements were found in place on the rear boundary of the lots fronting of Royalty Road. The plan set making up Schedule C" of the SRSA does not depict an Erosion and Sediment Control Plan, or a Storm Water Management Plan.

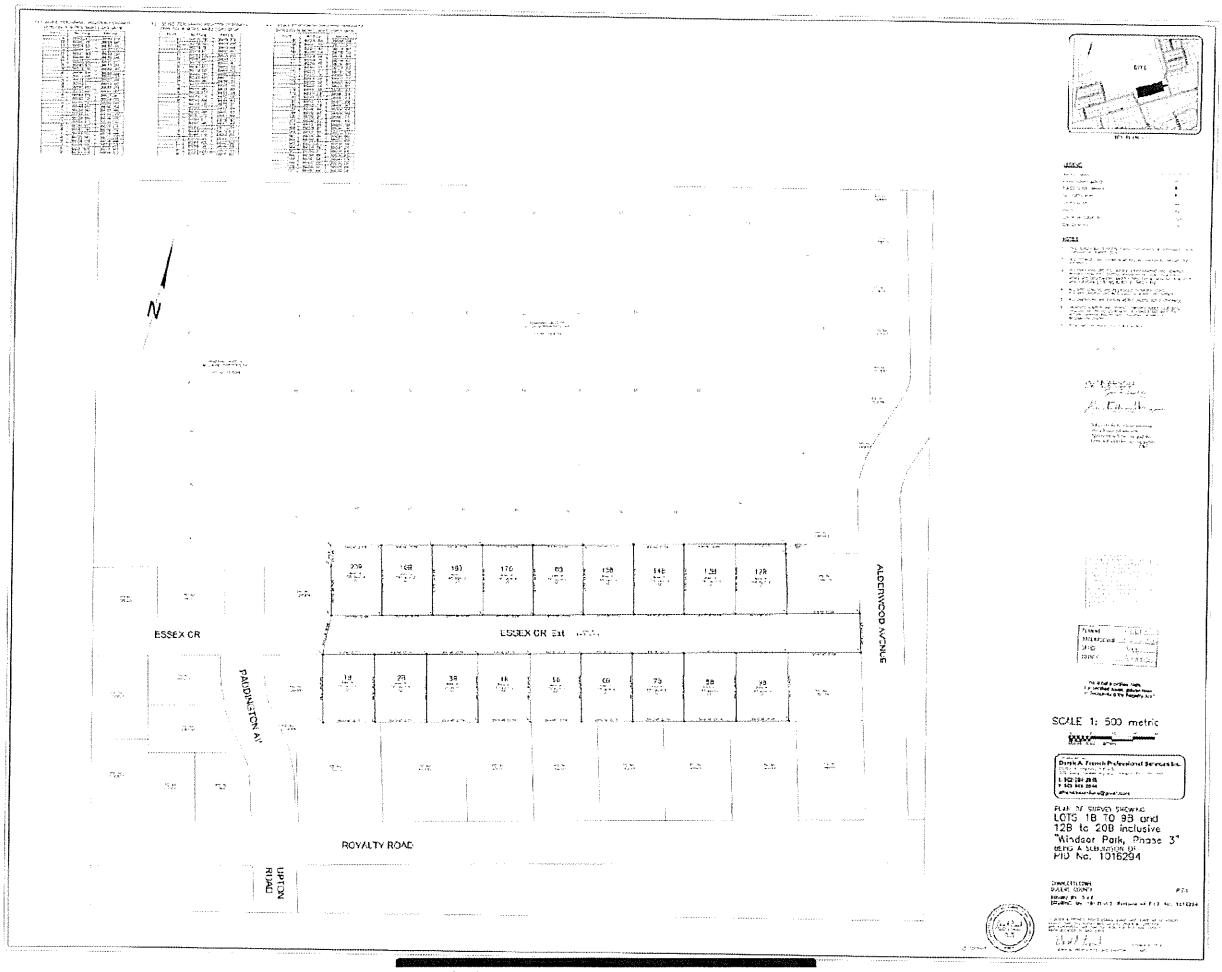


Figure 1 – Plan 41983. LRO, Windsor Park Subdivision Phase 3 dated October 9, 2019

2.2 INDIVIDUAL LOT GRADING PLANS

2.2.1 GRADE OF SITE REQUIREMENTS

Under the Charlottetown Zoning and Development Bylaw 3.3.5.c , a development permit requires

> *"a surface drainage plan showing existing and proposed Grade elevations and proposed drainage flow patterns in relation to adjacent properties"*

For an individual to review the relation of flow patterns and elevations on adjacent properties, it would imply that the information be shown on the plan for both properties.

Under the Charlottetown Zoning and Development Bylaw 3.3.14.d , the Development Officer shall give consideration to:

> *"the adequacy of storm water drainage systems, both surface and underground."*

Under the Charlottetown Zoning and Development Bylaw 6.4.1 , a Surface Drainage Plan shall be:

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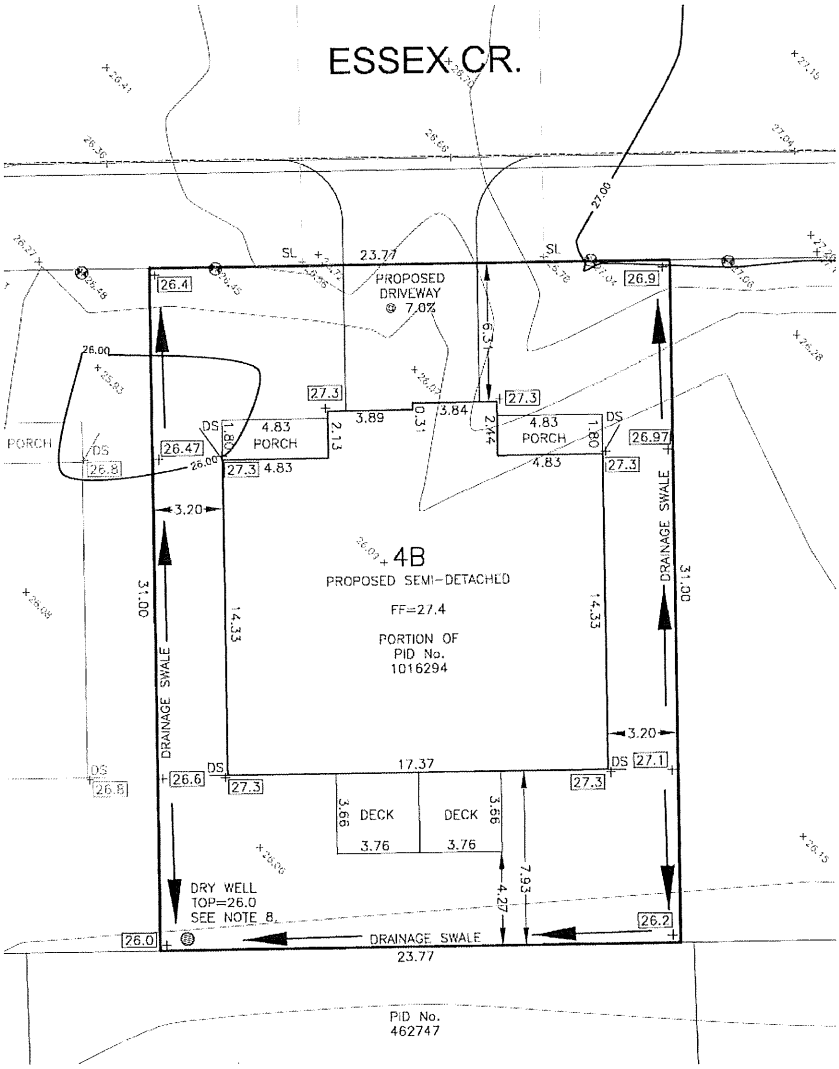


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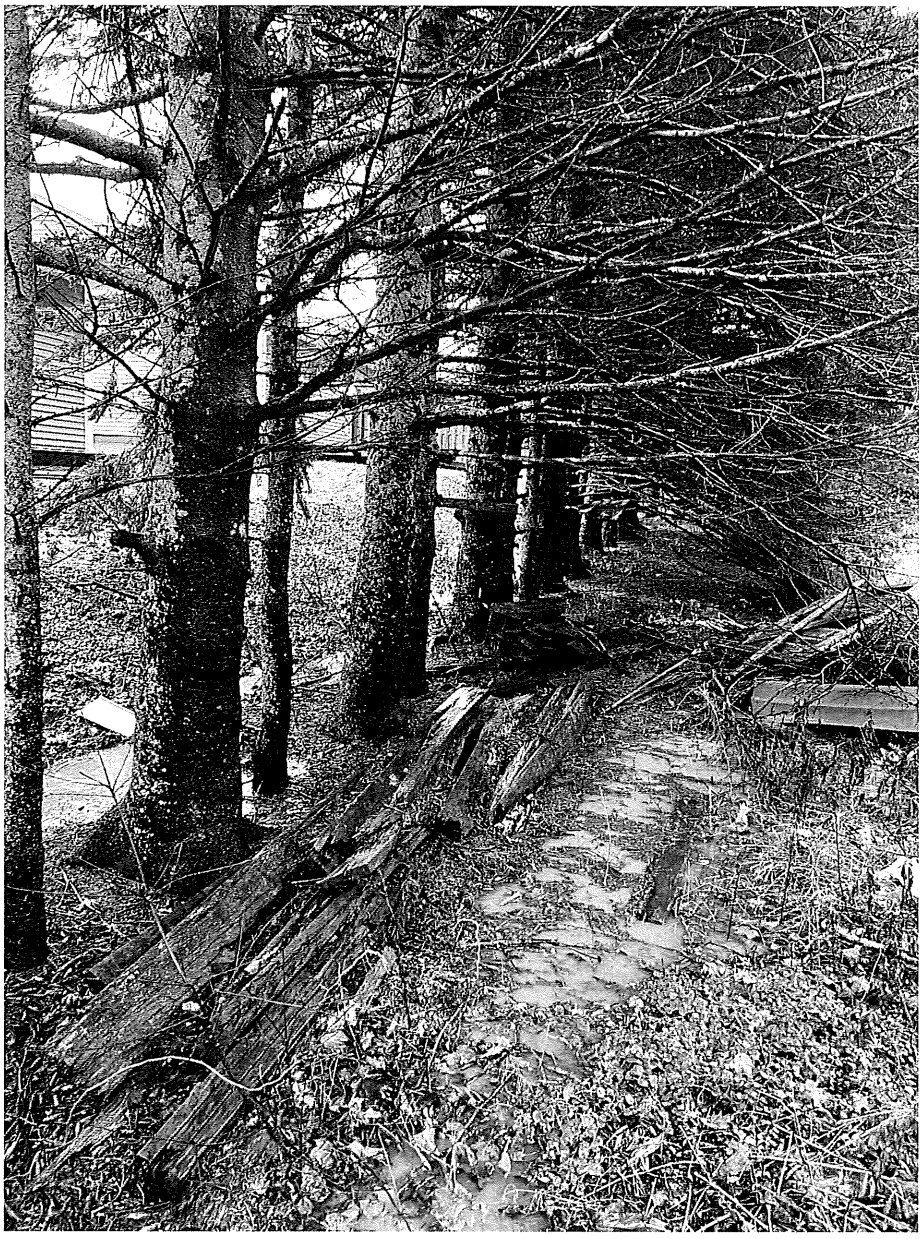


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Image of swale between Lot 3B and Lot 4B. Road is higher than swale, and water is flowing away from the road

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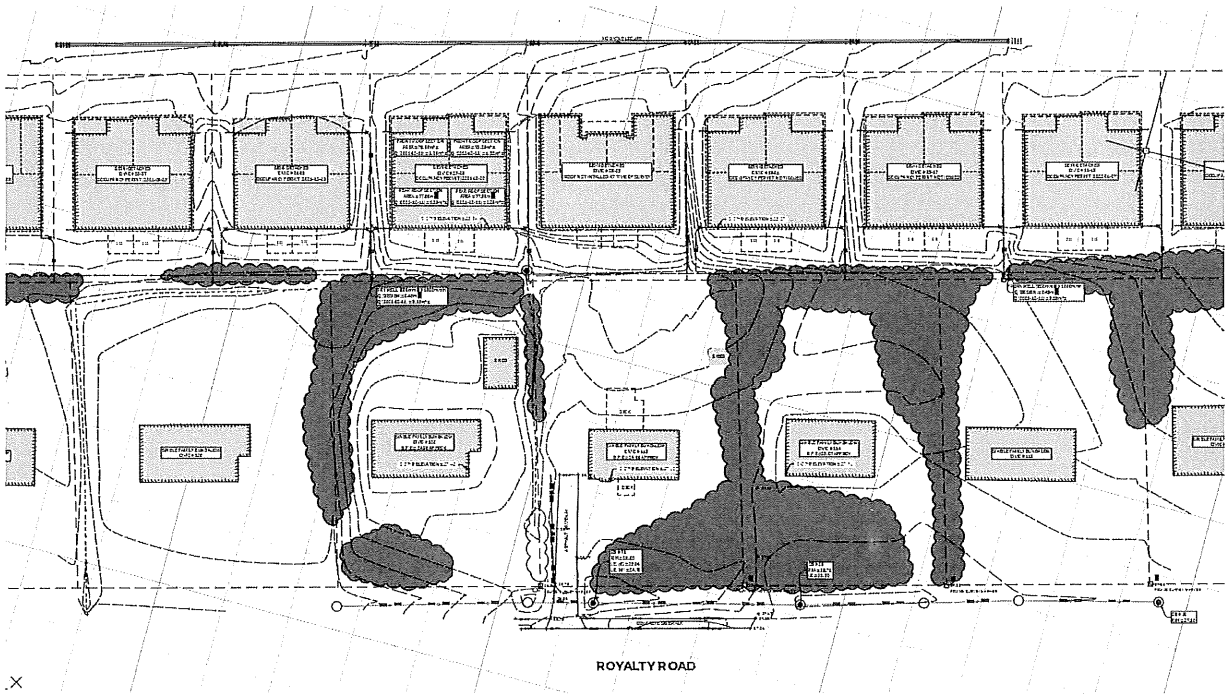


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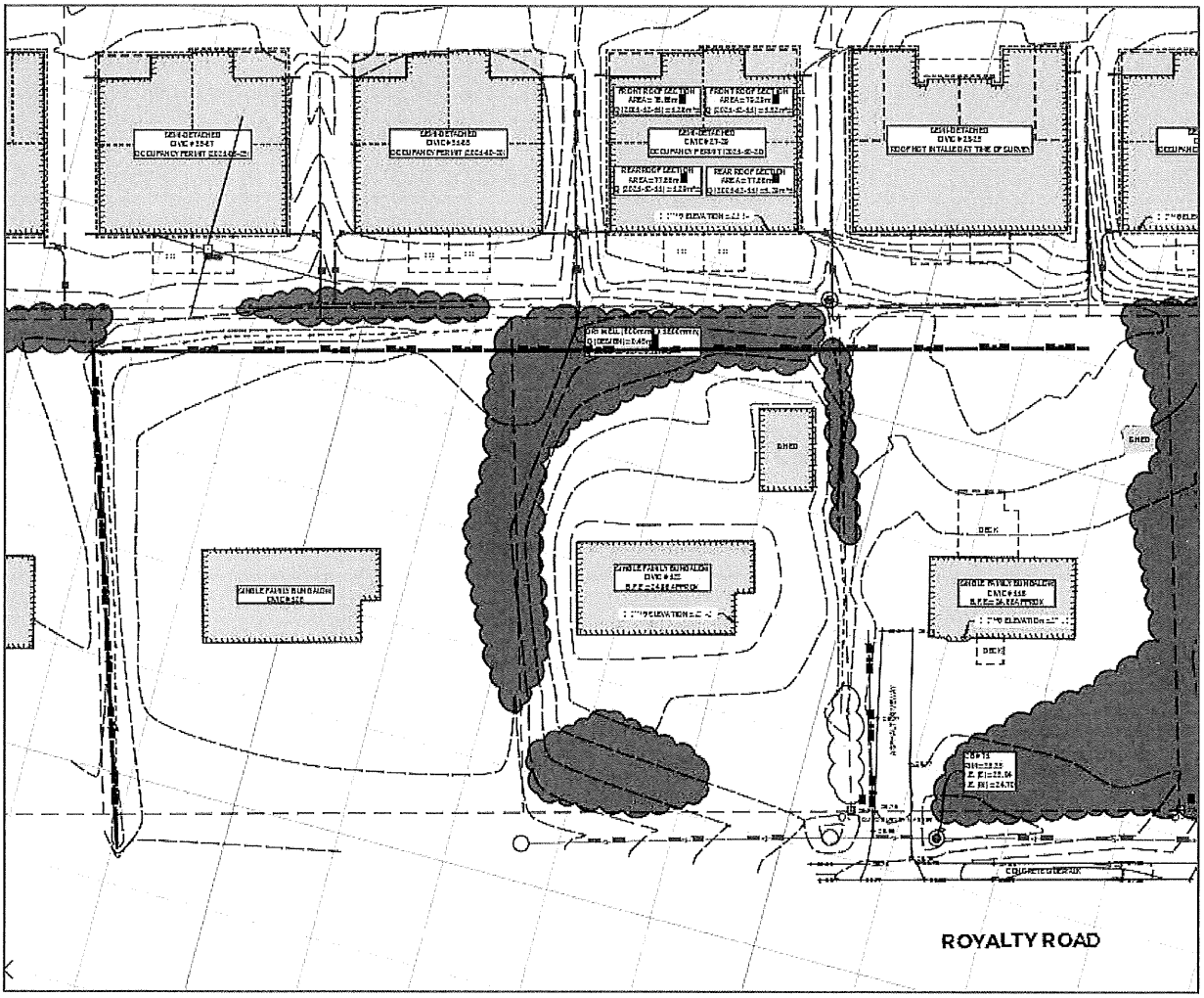
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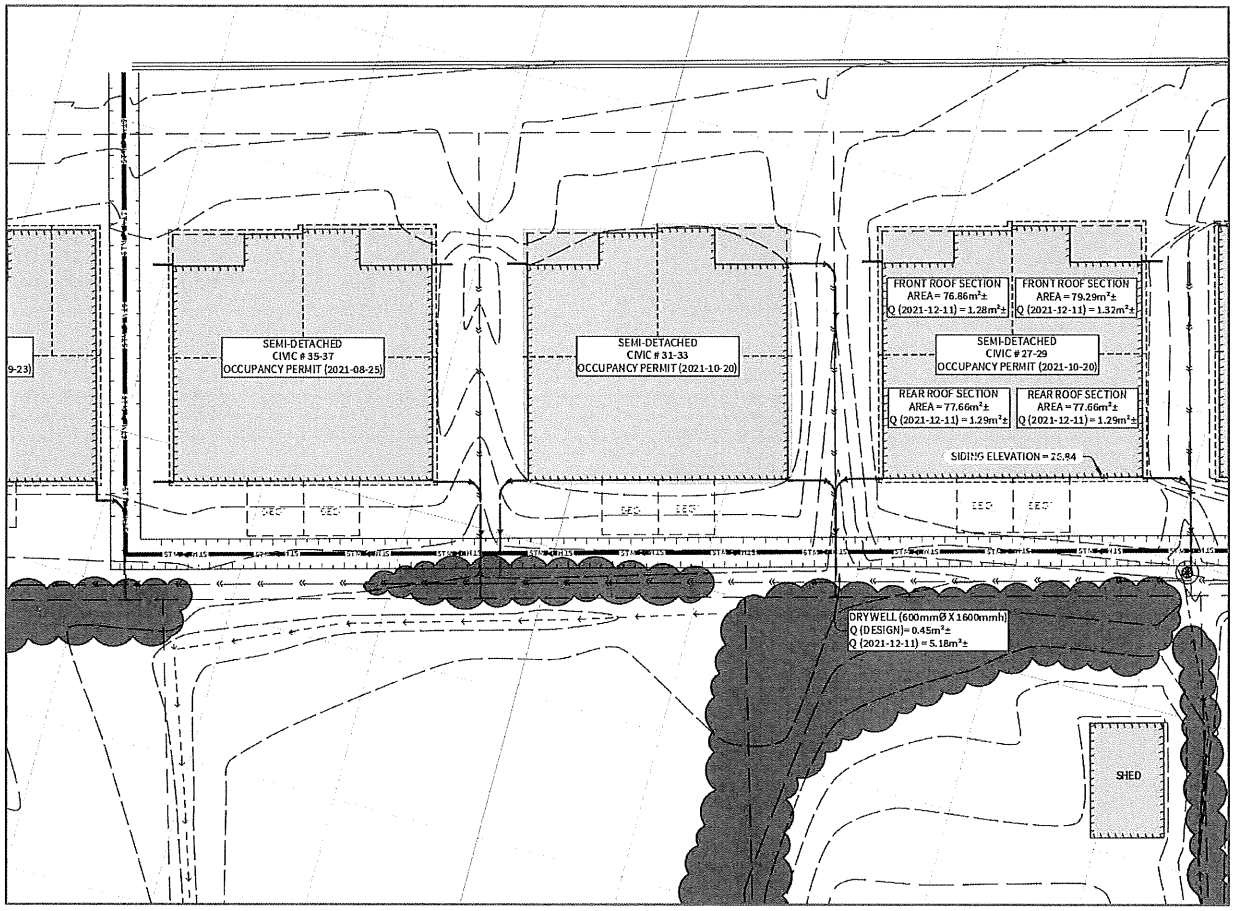
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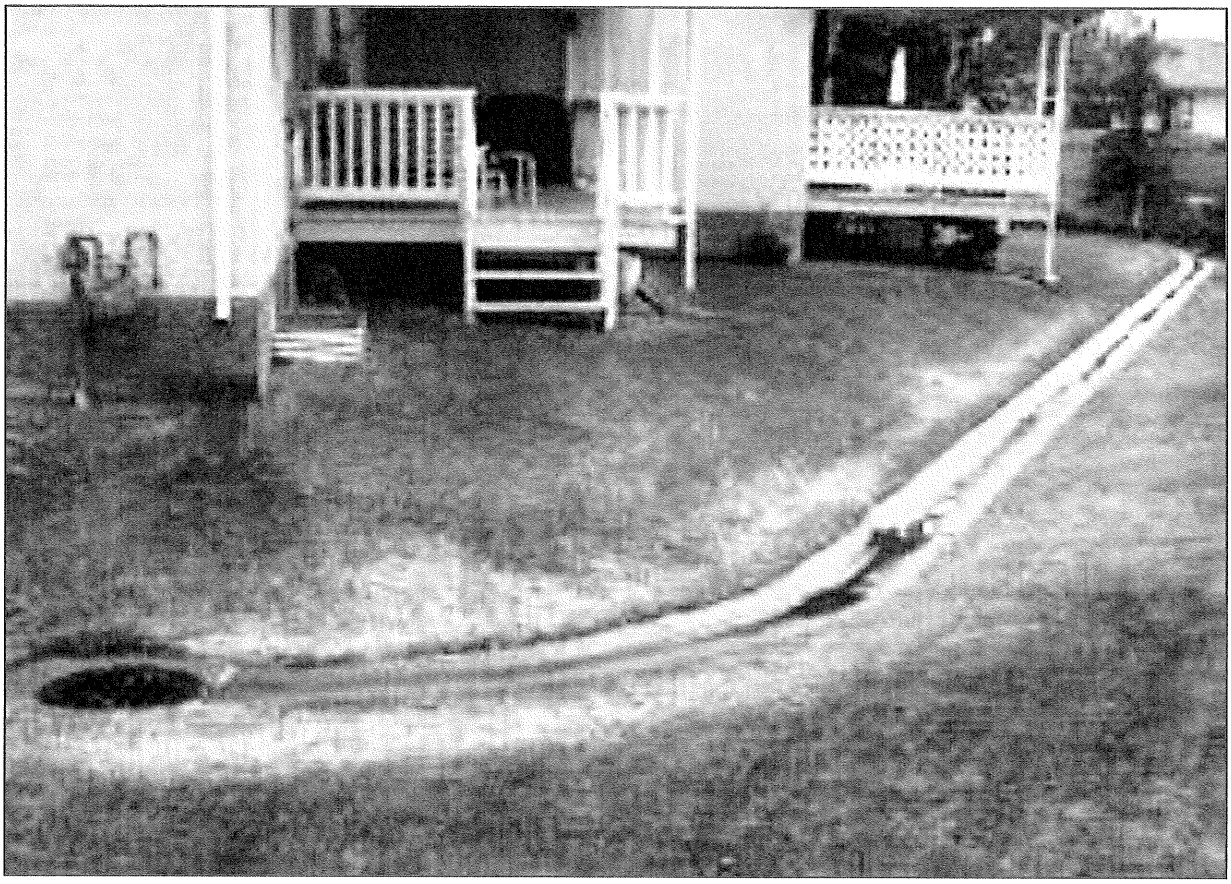
Significant grades occur of some lots. It would be suggested that the downspouts for the rear lots on Essex Drive be connect to the storm system underground to minimize surface erosion. Easements would be required.

3.2 CONCRETE SWALE AND WALL



Solution 2 would require the construction of a concrete swale along the rear boundary of the Lots 1B to 9B and then direct the water to Essex Crescent. Dependent on the grade from the topside of the slope a block wall may be required to build up the rear of the lot to accommodate swale

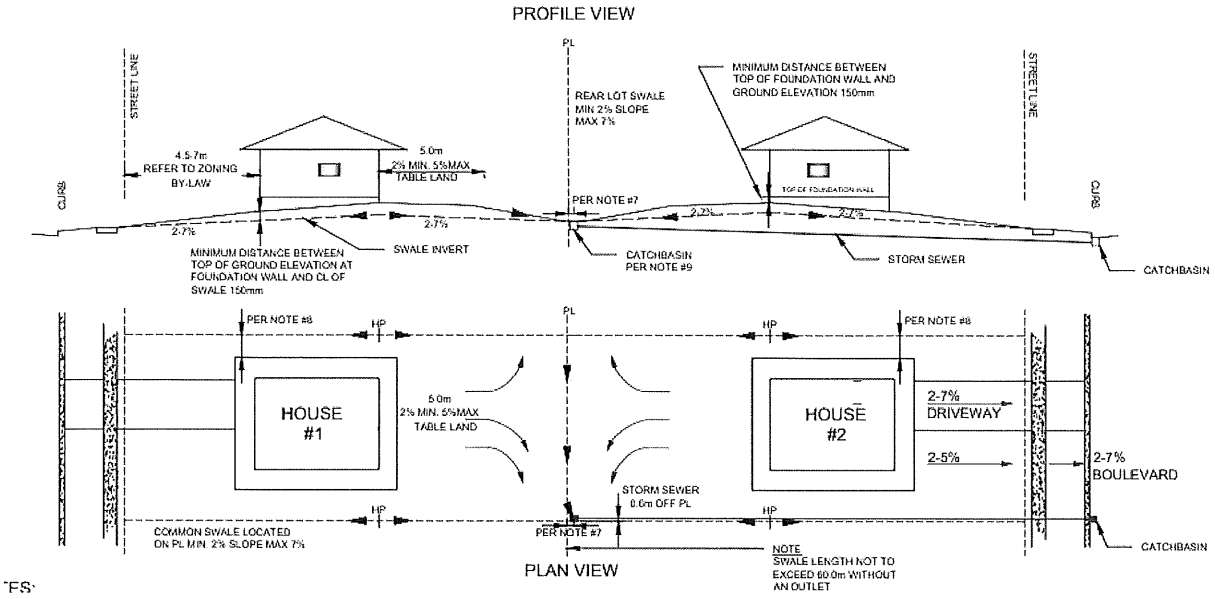
Easements would be required.



3.3 REAR YARD CATCH BASIN

Solution 3 would require the construction and installation of a rear yard catch basin, for every second lot with a properly constructed swale to direct the surface water to the catch basin. This system is limited by the depth of the storm system on Essex Crescent.

Of the three options, option 2 can be carried out with small equipment and is mostly a landscaping exercise to reshape the lots, rather than excavation for placement of pipe and structure.



4.0 CONCLUSIONS AND RECOMMENDATIONS

It is difficult to determine how occupancy permits have been approved with final as-built conditions exist contrary to approved design drawings for the subdivision and individual lot grading plans. The city would not allow a review of any approved document as part of our review for the failure. The facts however are clear.

1. The as-built elevation of Essex Crescent is higher than the rear boundary of the lots fronting on Royalty Road.

2. The as-built elevations created a barrier that eliminated the natural flow of surface water downhill. Water from the lots on Royalty Road, had no route to discharge in the event of a major storm.

3. The City of Charlottetown approved subdivision plans and engineering design drawings that created a barrier to the natural flow of surface water.

4. Mullache's surface water on the south side of Essex Crescent was deprived of a route to discharge from the lands and be appropriate managed and is now directed into the rear yards of the Royalty Road Lots.

5. As the lots were developed the natural area for surface waters to infiltrate into the ground were diminished. Impervious surfaces were increased resulting in more surface water.

6. Individual Lot grading certified drawings provided suggested that it was intended that all water from the impervious roof surface was to be directed to Essex Crescent.

7. As-built elevations and down spout locations indicate that surface water and water from the impervious roof surface was directed to the rear of the building lots and onto the Royalty Road Lots contrary to the design drawing. Occupancy Permits have been issued approving waters flowing onto adjacent lands contrary to the bylaw..

8. Photography indicates a catastrophic failure of the dry well system placed on each lot. Each dry well has a capacity 450 litres, and during the storm event of December 3, 2021 (a typical event) received a minimum of 2580 litres. Where the front downspouts discharged rearward, the volume was increased.

9. The City of Charlottetown approved the final grading plans and issued occupancy permits on lots that were clearly in non conformance with design drawing and directed surface water onto the Royalty Road Lots.

10. Design drawings provided to Morris were stamped by a Land Surveyor and not an Engineer. A land Surveyor is not qualified to design and underground storm water detention system such as a drywell.

A land Surveyors stamp is limited. Did the city approve surface drainage plans without an engineer's stamp, it would appear they did? I would think if such was the case that the city would ultimately be responsible for anything that happened as a result

.

Yours truly,

Morris Geomatics & Engineering Ltd.

David R. J. Morris, P.Eng, PEILS, CLS
President

RECEIVED
3:58 by email from Phil
JAN 03 2023
JM
The Island Regulatory and Appeals Commission

Notice of Appeal

(Pursuant to Section 28 of the *Planning Act*)

TO: **The Island Regulatory and Appeals Commission**
National Bank Tower, Suite 501, 134 Kent Street
P.O. Box 577, Charlottetown PE C1A 7L1
Telephone: 902-892-3501 Toll free: 1-800-501-6268
Fax: 902-566-4076 Website: www.irac.pe.ca

NOTE:
Appeal process is a public process.

TAKE NOTICE that I/we hereby appeal the decision made by the Minister responsible for the administration of various development regulations of the **Planning Act** or the Municipal Council of Charlottetown (name of City, Town or Community) on the 14 day of December, 2022, wherein the Minister/Comunity Council made a decision to approve an Occupancy Permit: New Semi-Detached Dwelling for 23-25 Essex Crescent (Lot 5B), File #21-318, PID 1016294, permit #362-BLD-21.

(attach a copy of the decision).

AND FURTHER TAKE NOTICE that, in accordance with the provisions of Section 28.(5) of the ***Planning Act,*** the grounds for this appeal are as follows: (use separate page(s) if necessary)
We are appealing the Occupancy Permit issued for Civic # 23-25 Essex Crescent (LOT 5B) under City of Charlottetown File No. 21-318. The permit was issued December 14, 2022 for "Occupancy Permit: New Semi-detached dwelling".The semi-detached dwellings on Lots 1B to 9B Essex Crescent are in various states of construction and the rain water from the development is flowing into our property and our neighbors and causing significant damage. See attached DOCUMENT 1

AND FURTHER TAKE NOTICE that, in accordance with the provisions of Section 28.(5) of the ***Planning Act,*** I/we seek the following relief: (use separate page(s) if necessary)
See attached DOCUMENT 2

EACH APPELLANT MUST COMPLETE THE FOLLOWING: (print separate sheets as necessary)

Name(s) of Appellant(s): Sheila Scott (Please Print)
Signature(s) of Appellant(s): Sheila Scott

Mailing Address: 118 Royalty Rd
City/Town: Charlottetown
Province: Charlottetown
Postal Code: C1E 3E1
Email Address: sheiladscott@hotmail.com
Telephone: 902-393-1620

Dated this 03 (day) **day of** Janruary (month), 2023 (year).

IMPORTANT

Under Section 28.(6) of the ***Planning Act***, the Appellant must, within seven days of filing an appeal with the Commission serve a copy of the notice of appeal on the municipal council or the Minister as the case may be.

Service of the Notice of Appeal is the responsibility of the Appellant

Information on this Form is collected pursuant to the ***Planning Act*** and will be used by the Commission **in processing this appeal. For additional information, contact the Commission at 902-892-3501 or by email at info@irac.pe.ca.**

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DOCUMENT 1

Under the various steps of the development process, the City is to ensure that excess waters are not to flow ontoadjacent properties. This issue has been on-going for over a year and no resolution has been found. The excess water from this development continues to flow onto my property.

We have been left with no alternative, other than to hire a professional to review the issues and provide advice,and to appeal of occupancy permit, that has been issued contrary to city bylaw 3.7 (Occupancy Permits).

We have attached a report prepared by David Morris, P.Eng, to assist in this matter.
I also have an appeal underway with IRAC for the same issue with 11-13 Essex Crescent.

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DOCUMENT 2

1. The storm water from the Essex Crescent development be appropriately managed through engineered design drawings and construction to ensure that all waters from the development are directed to a storm water system within a public right of way.
2. The City of Charlottetown take appropriate measures during to ensure that precipitation that falls during the winter months will not back up and flood our basement, through temporary measures such as a swale or ditch.
3. The City of Charlottetown put in place a bylaw, policy or manual to manage storm water and in particular storm water from ne development.
4. The City of Charlottetown reinstate the provisions of the bylaw (September 2018) , regarding the grading of lots, and certification associated with the stage of development.,

I have reached out multiple times to the City calling and emailing everyone I could possibly call in the late fall (late November – December) seeking help with the flooding before snow came and the ground froze. I received no action or help to prevent or even reduce the flooding. It is clear to see that the water from the rear facing downspouts are running into my property (I have photos if needed). Nothing was done when it could have easily been done before the ground froze.

I am extremely worried about the now frozen ground, snow melting and spring rain contributing to more heavy flooding of my property from the Essex Drive properties. I am trying desperately to avoid my basement flooding from this water. I am asking that a long term solution to avoid this flooding and damage to my property and house.

I have lived here for 14 years, doesn't the City have a responsibility to ensure my home and largest financial asset not be damaged by new development they have approved?

This has been an extremely stressful time and it has costs me personally thousands of dollars already. Why are we in a place where I as a homeowner, has to spend thousands of dollars and file appeals in order for the City to help me and avoid damage and flooding caused by a City approved development? How is that just or fair?

RECEIVED
3:58 by email from Phil
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JM
The Island Regulatory and Appeals Commission

January 27, 2022

Shelia Scott
118 Royalty Road
Charlottetown PE

RE: PROJECT 21185 | 118 Royalty Road | Surface Water Drainage

Dear Ms. Scott,

As per our meetings and correspondence we have undertaken a boundary survey to delimit the extents of your property at 118 Royalty Road, and a topographic survey and site analysis as part of a review for storm water management of your property and the associated watershed.

The management of storm water is a difficult task and is influenced by numerous variables that require assumption when modelling. Storm events can occur that fall outside the norm, and outside the parameters used to design the control of water and during these events flooding can occur.

While the Province maintains a manual of design guidelines that establishes the parameters to be used in the design for the management of storm water for land development within provincial jurisdiction, the City of Charlottetown (City) does not. Historically, however the city has required storm water infrastructure to be designed to a 1 in 10-year event plus 10%. This was an un-written rule.

Within the City Zoning and Development Bylaw, where a subdivision creates a new street, or more than 4 lots, a provision is provided for an overall surface water plan (46.3.7.). Amongst items required on to be shown on the plan are areas subject to flooding. The section of the bylaw however does not provide any guidance or parameters to be followed for design. The bylaw also stipulates a requirement for a surface drainage plan as part of the development permit submission. Under the City website section for "*Business and Development*" exists a heading entitled "Lot Grading Guidelines and Certificate", while documents are published within the section, the Manager for Planning and Development has stated that the documents are not referenced in the permitting process. They are however a document that can be applied for Best Management Practises (BMP) within the City.

Lacking a formal guideline within the City, our firm has adopted BMP's from other jurisdictions together with guidelines, set criteria and parameters for the development of Storm Water Management Plans, Subdivision Grading Control Plans, and Individual Lot Grading Plans.

Morris Geomatics & Engineering Ltd.
P.O. Box 21016
Charlottetown, PE, C1A 8Z3
eel: (902)-213-0487
email: info@morrisgeomatics.ca
morrisgeomatics.ca

Typically, when analyzing and designing where storm water issues exist, a review of current plans adopted by the jurisdiction would be used. Many times, an issue can be resolved with correction of a deficiency in the final as built when comparison is made to the approved design drawing. Numerous requests have been made to the city for record drawings to assist in the review, however the City has failed to provide any record, including the publically registered development agreement engineering drawing attachments. Where the city has failed to provide record drawings, we are left to rely on the current condition as observed in the field as the soul means of our review.

1.0 PRE-2018 DEVELOPMENT REVIEW

Prior to the first phase of Royalty Heights Subdivision (now known as Windsor Park), under Morris Land and Engineering Surveys, a comprehensive topographic survey and storm water analysis was carried out on the existing water shed including the improved lots on Royalty Road, Alderwood Avenue, Windsor Park, and the undeveloped lands now part of Mullache Properties Inc. (Mullache)

In the analysis pre-development, the lots fronting on Royalty Road situated between Alder brook Avenue and the extension of Upton Road had overland sheet flow through a low catchment area in the rear yard of 118 Royalty Road that was followed by a low catchment area in now under Essex Crescent. The low catchment area in the rear yard of 118 Royalty Road received no surface waters from the undeveloped lands of Mullache and during storm events would have released its waters into a lower catchment area within Essex Crescent, before flowing downhill to the creek.

It should be noted, that obstructing the existing sheet flow from the Royalty Road lots onto the undeveloped lands is within the rights of Mullache, however, Mullache and its successors is not provided with a right to release its waters onto the adjacent Royalty Road lots.

2.0 WINDSOR PARK PHASE III DEVELOPMENT

2.1 2020 SUBDIVISION APPROVAL

A Subdivision Road and Services Agreement (SRSA) was entered into between Mullache and the City on June 12,2020 and filed in the Land Registry Office (LRO) November 23, 2020, as Document 9664 that sets the requirements for the subdivision. Items of note:

1. Schedule "A" the Master Plan, being the Plan of Subdivision approved by the City of Charlottetown, June 2,2020 and filed in the LRO as Number 41983 depicts no drainage easements. Under the SRSA s.7c, the developer is required to submit drainage easements where

required. It would appear the developer did not foresee a need for any drainage easements along the southern boundary of the lots fronting on Essex Crescent.

2. Under the SRSA s. 10 b. appropriate siltation/ mulching measures are to be in place to avoid excess surface water run-off during this period". No erosion control measurements were found in place on the rear boundary of the lots fronting of Royalty Road. The plan set making up Schedule C" of the SRSA does not depict an Erosion and Sediment Control Plan, or a Storm Water Management Plan.

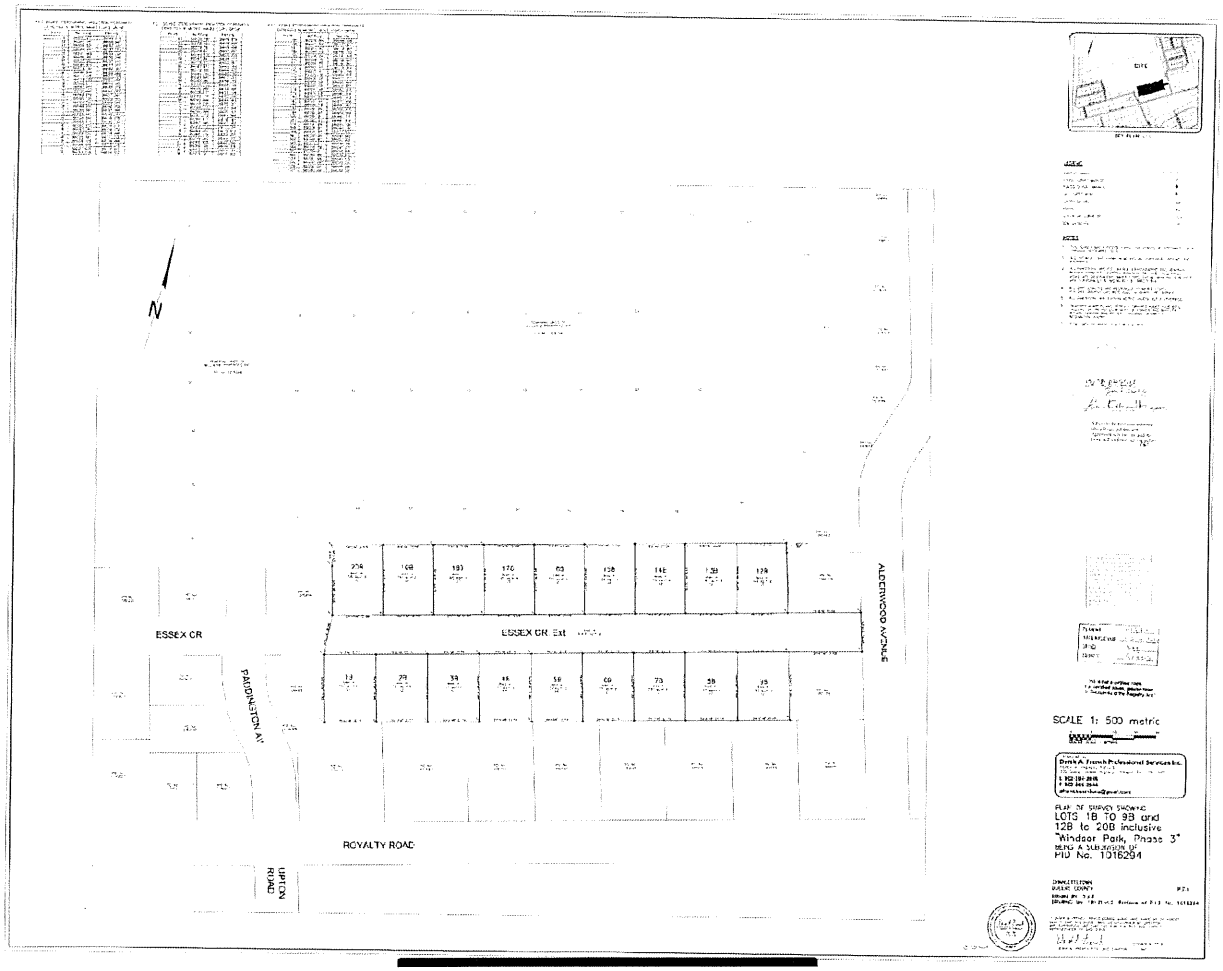


Figure 1 – Plan 41983. LRO, Windsor Park Subdivision Phase 3 dated October 9, 2019

2.2 INDIVIDUAL LOT GRADING PLANS

2.2.1 GRADE OF SITE REQUIREMENTS

Under the Charlottetown Zoning and Development Bylaw 3.3.5.c , a development permit requires

> *"a surface drainage plan showing existing and proposed Grade elevations and proposed drainage flow patterns in relation to adjacent properties"*

For an individual to review the relation of flow patterns and elevations on adjacent properties, it would imply that the information be shown on the plan for both properties.

Under the Charlottetown Zoning and Development Bylaw 3.3.14.d , the Development Officer shall give consideration to:

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Under the Charlottetown Zoning and Development Bylaw 6.4.1 , a Surface Drainage Plan shall be:

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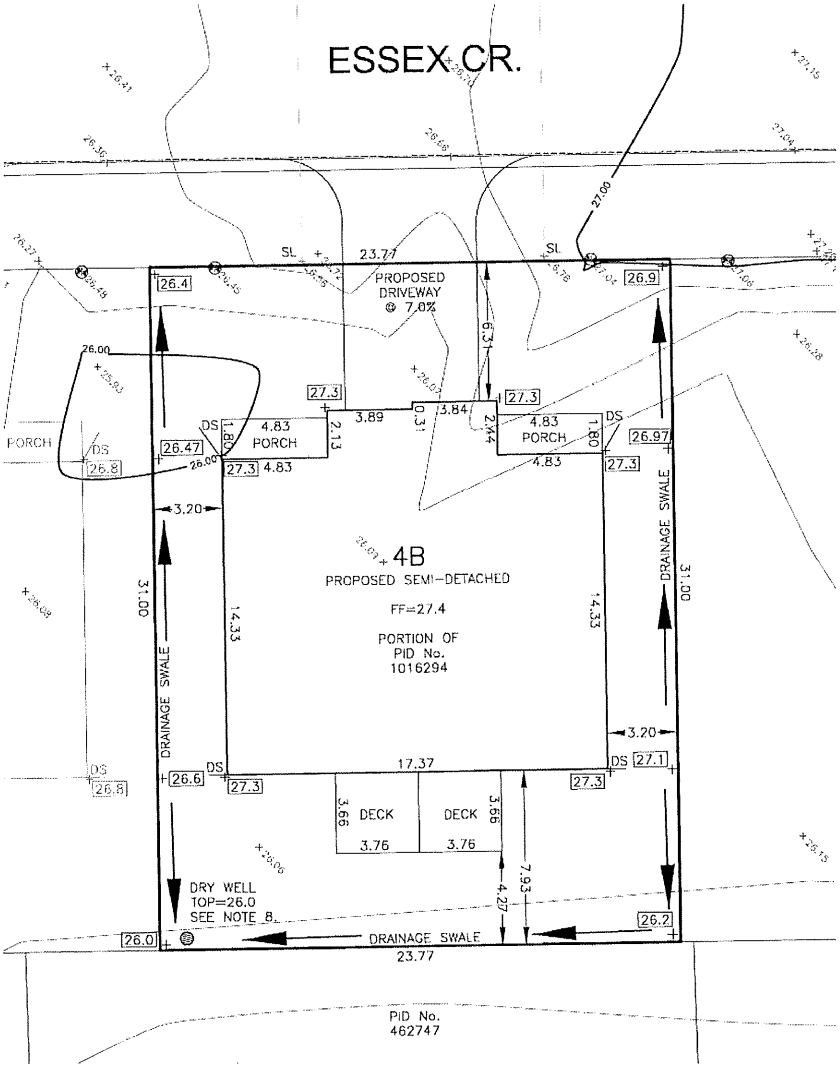


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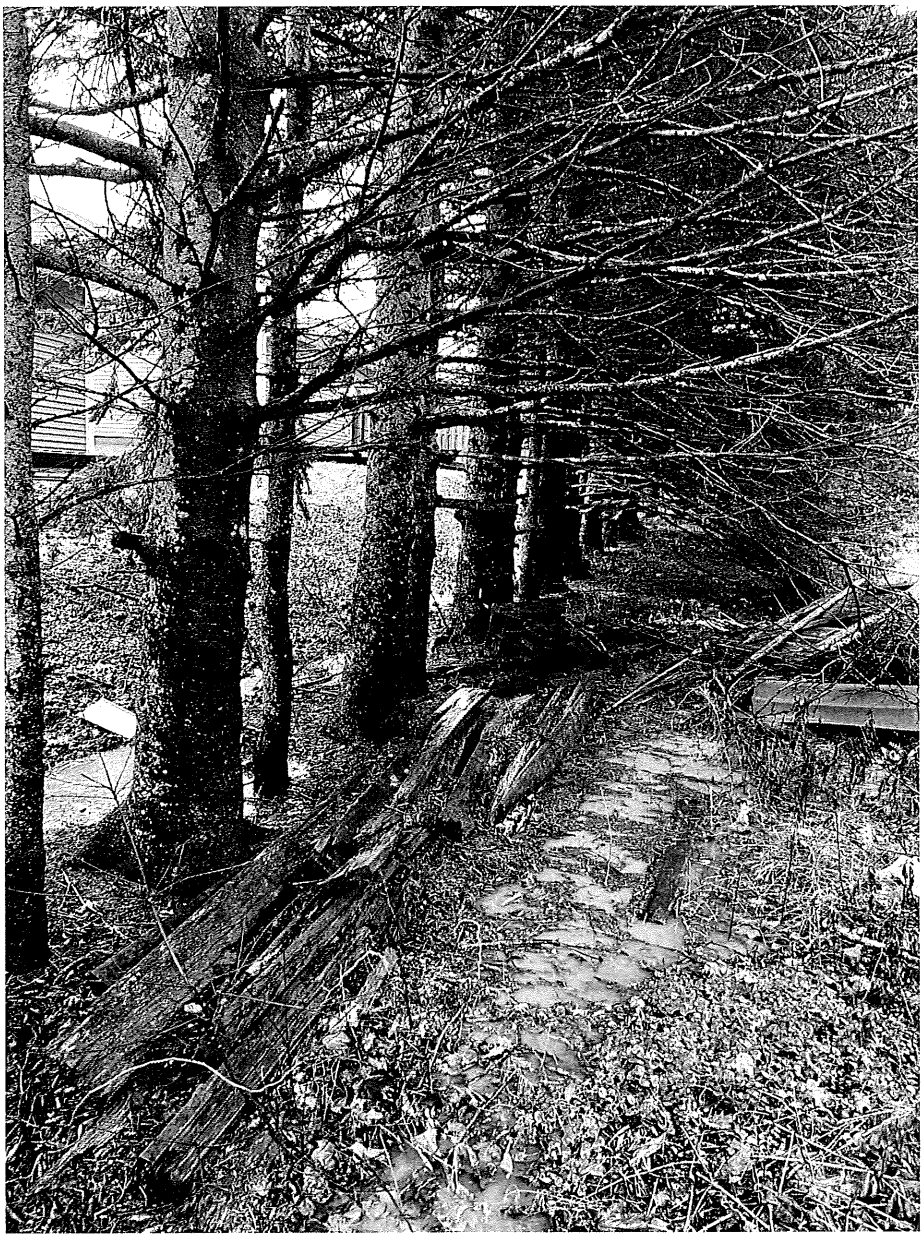


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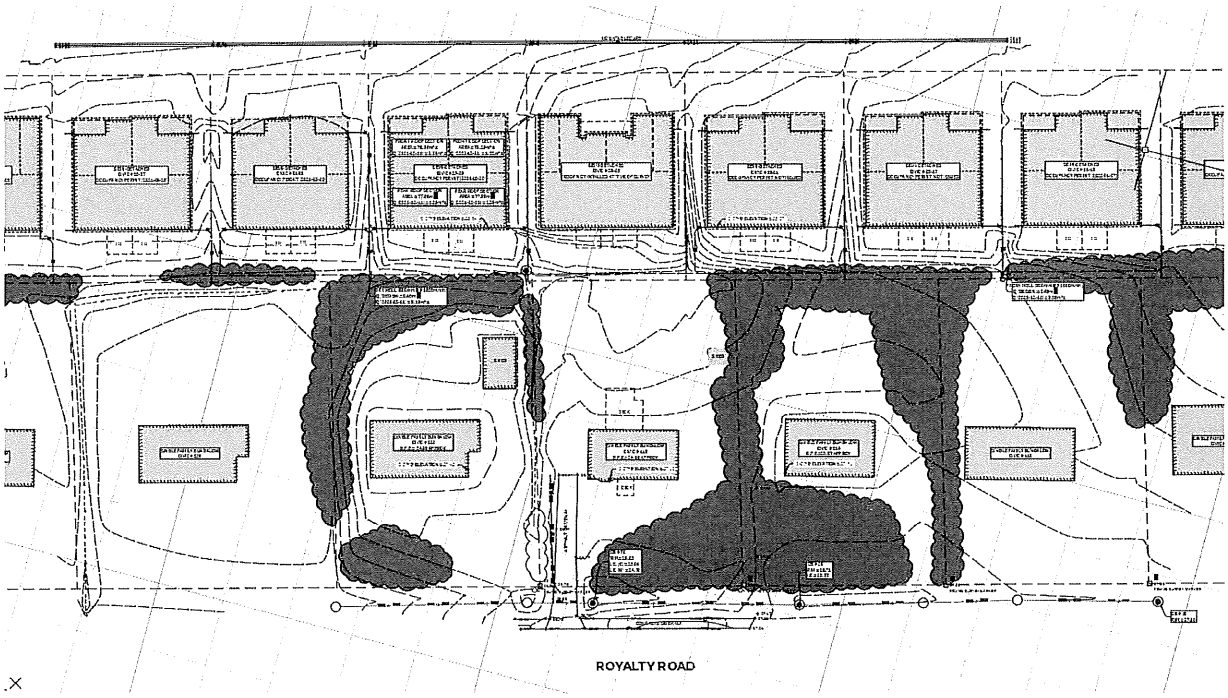


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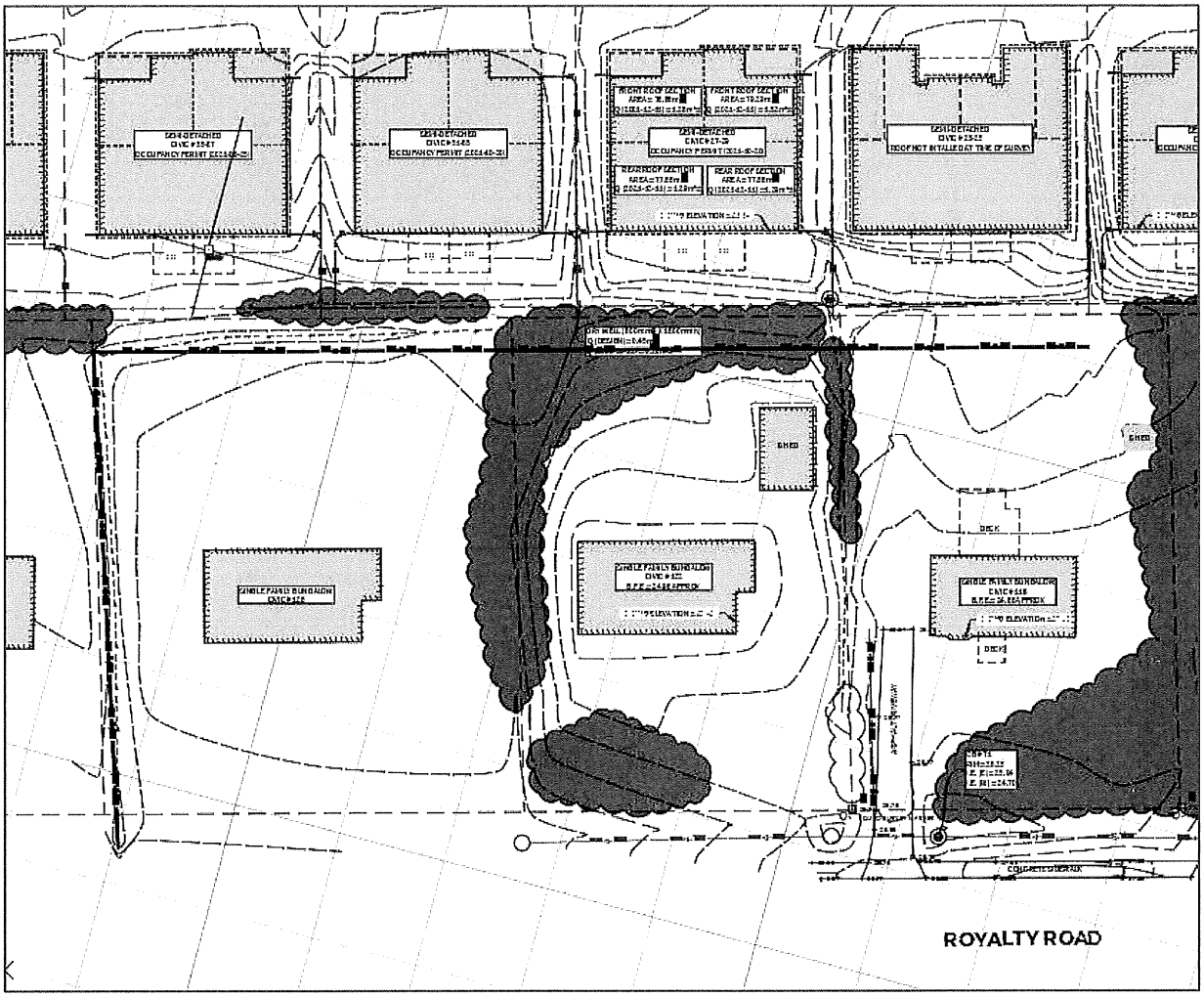
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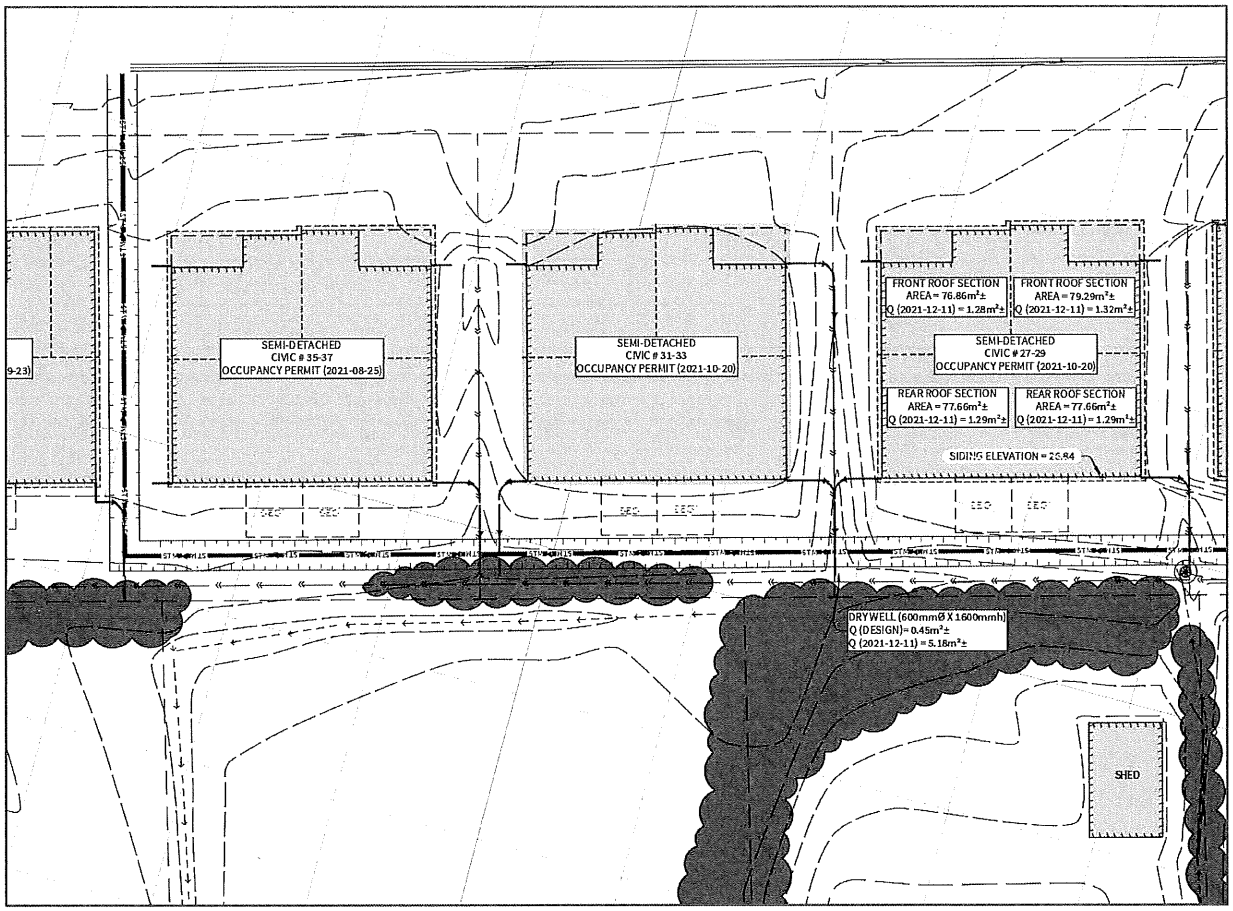
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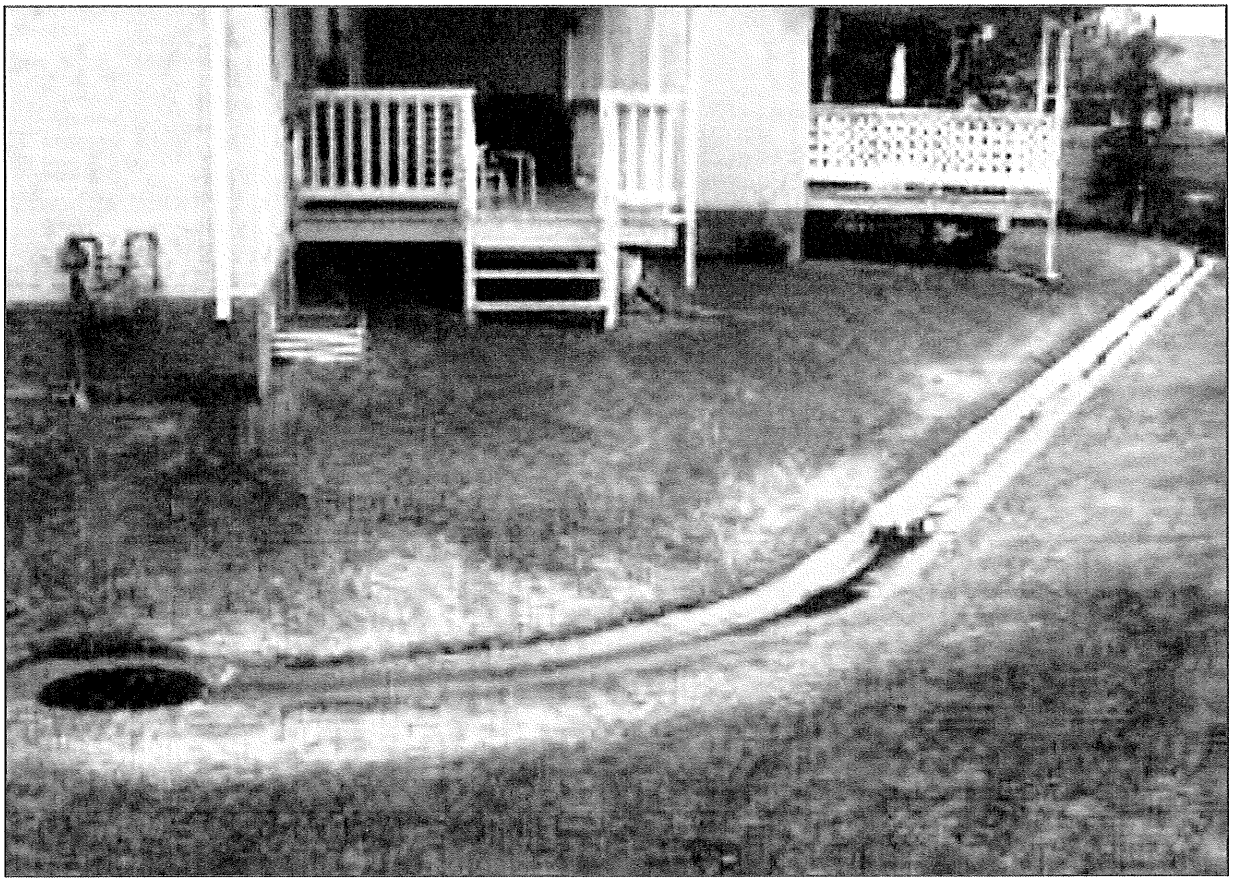
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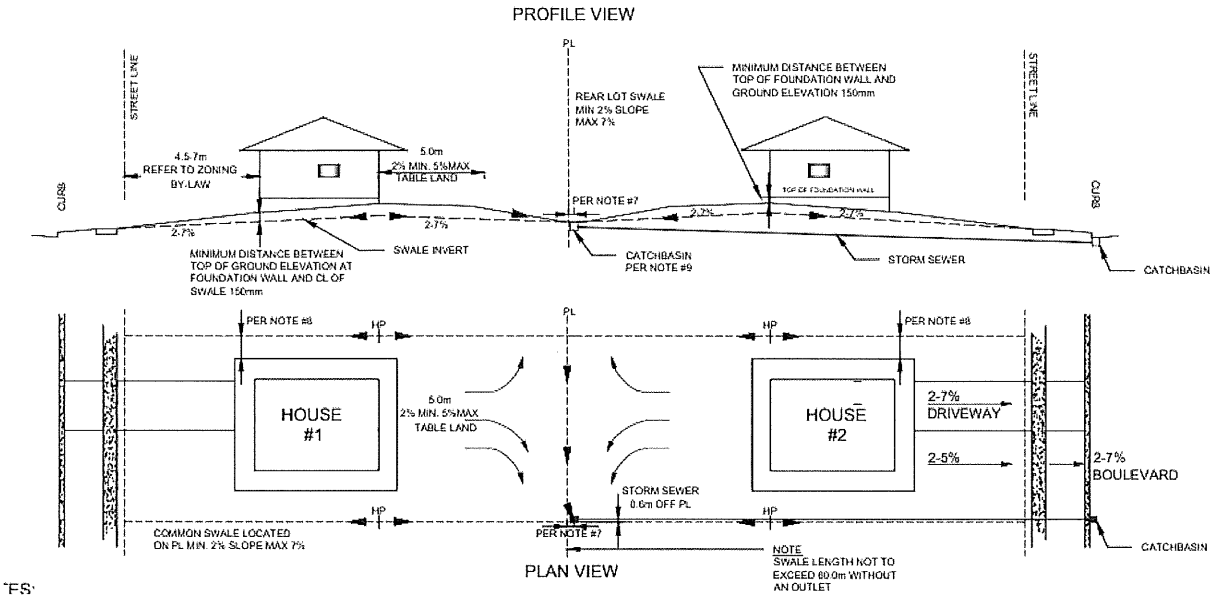
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Of the three options, option 2 can be carried out with small equipment and is mostly a landscaping exercise to reshape the lots, rather than excavation for placement of pipe and structure.



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It is difficult to determine how occupancy permits have been approved with final as-built conditions exist contrary to approved design drawings for the subdivision and individual lot grading plans. The city would not allow a review of any approved document as part of our review for the failure. The facts however are clear.

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2. The as-built elevations created a barrier that eliminated the natural flow of surface water downhill. Water from the lots on Royalty Road, had no route to discharge in the event of a major storm.

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5. As the lots were developed the natural area for surface waters to infiltrate into the ground were diminished. Impervious surfaces were increased resulting in more surface water.

6. Individual Lot grading certified drawings provided suggested that it was intended that all water from the impervious roof surface was to be directed to Essex Crescent.

7. As-built elevations and down spout locations indicate that surface water and water from the impervious roof surface was directed to the rear of the building lots and onto the Royalty Road Lots contrary to the design drawing. Occupancy Permits have been issued approving waters flowing onto adjacent lands contrary to the bylaw..

8. Photography indicates a catastrophic failure of the dry well system placed on each lot. Each dry well has a capacity 450 litres, and during the storm event of December 3, 2021 (a typical event) received a minimum of 2580 litres. Where the front downspouts discharged rearward, the volume was increased.

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.

Yours truly,

Morris Geomatics & Engineering Ltd.

David R. J. Morris, P.Eng, PEILS, CLS
President

January 27, 2022

Shelia Scott
118 Royalty Road
Charlottetown PE

RE: PROJECT 21185 | 118 Royalty Road | Surface Water Drainage

Dear Ms. Scott,

As per our meetings and correspondence we have undertaken a boundary survey to delimit the extents of your property at 118 Royalty Road, and a topographic survey and site analysis as part of a review for storm water management of your property and the associated watershed.

The management of storm water is a difficult task and is influenced by numerous variables that require assumption when modelling. Storm events can occur that fall outside the norm, and outside the parameters used to design the control of water and during these events flooding can occur.

While the Province maintains a manual of design guidelines that establishes the parameters to be used in the design for the management of storm water for land development within provincial jurisdiction, the City of Charlottetown (City) does not. Historically, however the city has required storm water infrastructure to be designed to a 1 in 10-year event plus 10%. This was an un-written rule.

Within the City Zoning and Development Bylaw, where a subdivision creates a new street, or more than 4 lots, a provision is provided for an overall surface water plan (46.3.7.). Amongst items required on to be shown on the plan are areas subject to flooding. The section of the bylaw however does not provide any guidance or parameters to be followed for design. The bylaw also stipulates a requirement for a surface drainage plan as part of the development permit submission. Under the City website section for "*Business and Development*" exists a heading entitled "Lot Grading Guidelines and Certificate", while documents are published within the section, the Manager for Planning and Development has stated that the documents are not referenced in the permitting process. They are however a document that can be applied for Best Management Practises (BMP) within the City.

Lacking a formal guideline within the City, our firm has adopted BMP's from other jurisdictions together with guidelines, set criteria and parameters for the development of Storm Water Management Plans, Subdivision Grading Control Plans, and Individual Lot Grading Plans.

Morris Geomatics & Engineering Ltd.
P.O. Box 21016
Charlottetown, PE, C1A 8Z3
eel: (902)-213-0487
email: info@morrisgeomatics.ca
morrisgeomatics.ca

Typically, when analyzing and designing where storm water issues exist, a review of current plans adopted by the jurisdiction would be used. Many times, an issue can be resolved with correction of a deficiency in the final as built when comparison is made to the approved design drawing. Numerous requests have been made to the city for record drawings to assist in the review, however the City has failed to provide any record, including the publically registered development agreement engineering drawing attachments. Where the city has failed to provide record drawings, we are left to rely on the current condition as observed in the field as the soul means of our review.

1.0 PRE-2018 DEVELOPMENT REVIEW

Prior to the first phase of Royalty Heights Subdivision (now known as Windsor Park), under Morris Land and Engineering Surveys, a comprehensive topographic survey and storm water analysis was carried out on the existing water shed including the improved lots on Royalty Road, Alderwood Avenue, Windsor Park, and the undeveloped lands now part of Mullache Properties Inc. (Mullache)

In the analysis pre-development, the lots fronting on Royalty Road situated between Alder brook Avenue and the extension of Upton Road had overland sheet flow through a low catchment area in the rear yard of 118 Royalty Road that was followed by a low catchment area in now under Essex Crescent. The low catchment area in the rear yard of 118 Royalty Road received no surface waters from the undeveloped lands of Mullache and during storm events would have released its waters into a lower catchment area within Essex Crescent, before flowing downhill to the creek.

It should be noted, that obstructing the existing sheet flow from the Royalty Road lots onto the undeveloped lands is within the rights of Mullache, however, Mullache and its successors is not provided with a right to release its waters onto the adjacent Royalty Road lots.

2.0 WINDSOR PARK PHASE III DEVELOPMENT

2.1 2020 SUBDIVISION APPROVAL

A Subdivision Road and Services Agreement (SRSA) was entered into between Mullache and the City on June 12,2020 and filed in the Land Registry Office (LRO) November 23, 2020, as Document 9664 that sets the requirements for the subdivision. Items of note:

1. Schedule “A” the Master Plan, being the Plan of Subdivision approved by the City of Charlottetown, June 2,2020 and filed in the LRO as Number 41983 depicts no drainage easements. Under the SRSA s.7c, the developer is required to submit drainage easements where

required. It would appear the developer did not foresee a need for any drainage easements along the southern boundary of the lots fronting on Essex Crescent.

2. Under the SRSA s. 10 b. appropriate siltation/ mulching measures are to be in place to avoid excess surface water run-off during this period". No erosion control measurements were found in place on the rear boundary of the lots fronting of Royalty Road. The plan set making up Schedule C" of the SRSA does not depict an Erosion and Sediment Control Plan, or a Storm Water Management Plan.

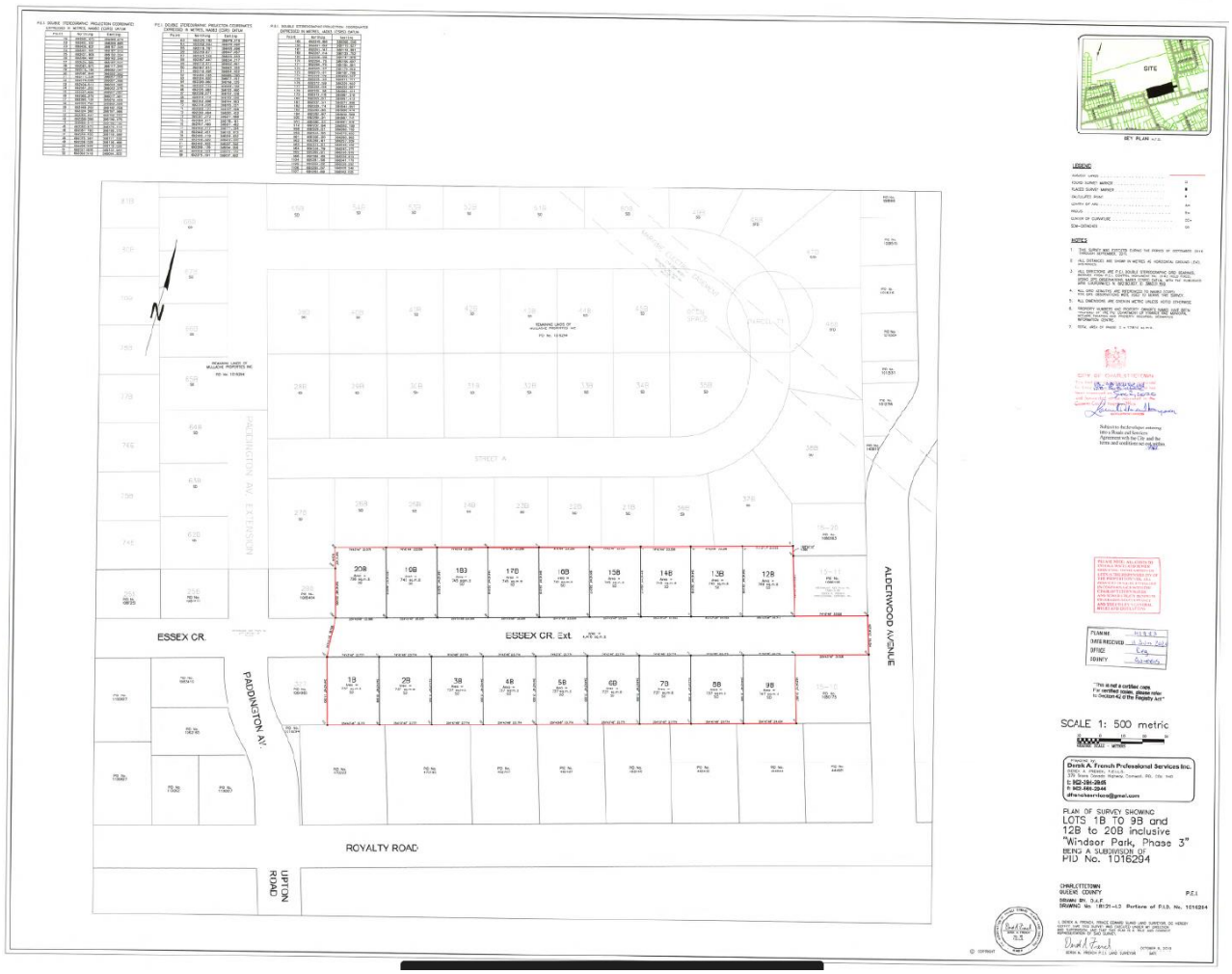


Figure 1 – Plan 41983. LRO, Windsor Park Subdivision Phase 3 dated October 9, 2019

2.2 INDIVIDUAL LOT GRADING PLANS

2.2.1 GRADE OF SITE REQUIREMENTS

Under the Charlottetown Zoning and Development Bylaw 3.3.5.c , a development permit requires

> *"a surface drainage plan showing existing and proposed Grade elevations and proposed drainage flow patterns in relation to adjacent properties"*

For an individual to review the relation of flow patterns and elevations on adjacent properties, it would imply that the information be shown on the plan for both properties.

Under the Charlottetown Zoning and Development Bylaw 3.3.14.d , the Development Officer shall give consideration to:

> *"the adequacy of storm water drainage systems, both surface and underground."*

Under the Charlottetown Zoning and Development Bylaw 6.4.1 , a Surface Drainage Plan shall be:

> "*Designed to ensure that surface water runoff on the Lot will not cause damage or water runoff onto the adjoining Lots; and*
>
> *Prepared by a qualified engineer or landscape architect."*

2.2.2 REVIEW OF DESIGN RECORDS

Morris was provided by the Mullache with three (3) design drawings for the proposed grading of Lot 4B, Lot 5B and Lot 6B, located directly behind 118 Royalty Road. It is assumed that similar procedures were carried out on other lots developed by Mullache (on Essex Crescent. Morris also received a final as-built for Lot 1B. Lots 4B through 5B are directly behind 118 Royalty Road.

Some comments on the French Plan 21046 for Lot 4B as certified February 23, 2021

- The grade break provided on the plan along each side boundary would suggest that the grade was designed to take all water from the roof via the down spouts to the front of the lot and to the street. This is good design considering road has been built higher than the rear boundary of the lots.
- A drainage swale is depicted along the rear boundary of the Lot and would take the surface water from the rear of the lot (not including the roof) to a dry well having a holding capacity of 0.45 cubic metres or 450 litres.
- Drainage patterns on adjacent lots are not provided for the approval authority's review
- Existing grades along the boundaries, and in particular the rear boundary is not provided.

- Note 8 on the plan for the design of the Dry well is contrary to BMP's in particular
    - 600mm of Class "A" gravel is to be placed in the bottom rather than washed stone. This would inhibit infiltration rates
    - And open grate is provided that will allow for surface sediment to flow into dry well and inhibit infiltration rates
    - Filter fabric is not mentioned as part of design.
- Proposed drainage swale to handle storm water discharge in times of heavy storms is not provided for in the design.
- The design drawing is sealed by a Land Surveyor and not a Professional Engineer or Architect as stipulated in the Bylaw. Note a Land Surveyors seal and certification is limited through the Land Surveyors Act, and does not include surface design.

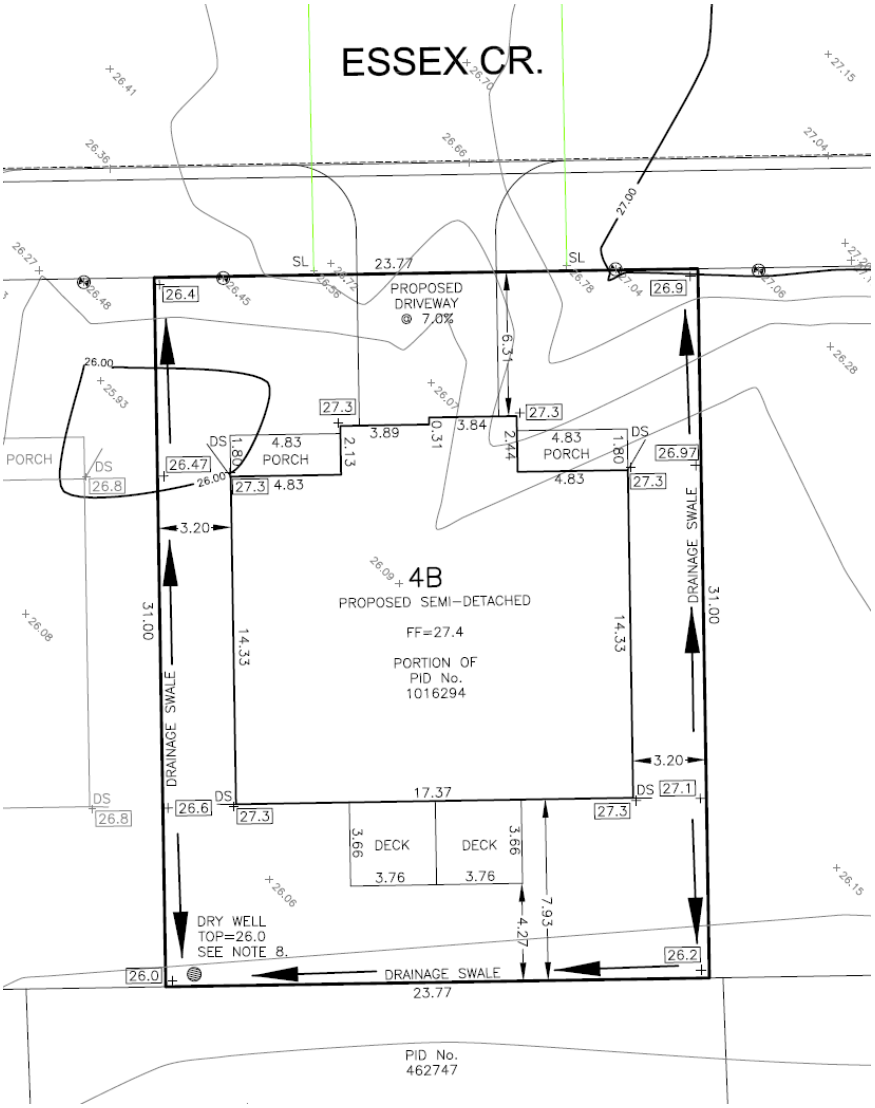


Figure 2- Portion of French Plan 21046, dated February 23, 2021

2.2.3 SITE INVESTIGATION

A Site survey and investigation was made of the properties on Royalty Road and Essex Crescent. A topographic survey was performed as well as a visual inspection of the properties. The following represents the results of the investigation.

- A typical rain event of 16mm/day was observed on December 3, 2021 This is not considered an extreme event.
- A review of the rear downspouts for the semi-detached dwellings on **all** Lots 1B to 9B Essex drive as constructed indicated that ½ the total roof structure for each building discharged to the rear of the property contrary to the design drawings as provided and contrary to Bylaw 6.4.1
- A review of the front downspouts for the semi-detached dwellings on Lots 2B thru 9B are directed to the sidelines, perpendicular with the side of the building. The grade on most of the Lots directs the water to the rear of the lots.
- The calculated roof discharge (rear only for the rain event of December 3, 2021 was 2.58 cubic metres or 2580 litres, well in excess of the 0.45 design capacity of the dry well.
- No surface route was provided to take the surcharge back to Essex Street and it flowed onto the lots fronting Royalty Road with no route of escape

Lot 1B, 2B, 3B, 4B and 9B, received an occupancy permit prior to the investigation taking place. As-built grading and downspout outlet are contrary to design drawings provided and a occupancy permit should not have been provided.

2.2.4 PHOTOGRAPHIC EVIDENCE OF GRADING FAILURE



Photo 1 Water flowing from Lot 6B onto PID 462440

Surface water flowing downslope through rear yard of PID 462440. Water originating from high lots on Essex Drive. Water collects in rear yard of PID 462457



Photo 2 Water Flowing from Lot 5B onto PID 462457



Photo 3 Division Line between Lot 4B and Lot 3B

Image of swale between Lot 3B and Lot 4B. Road is higher than swale, and water is flowing away from the road

Grading of Lot is contrary to Lot grading plan (See Figure 2), however an occupancy permit has been issued for each building.



Photo 4 Rear boundary of Lot 4B



Figure 3 As-found elevation plan with contours and drainage patterns

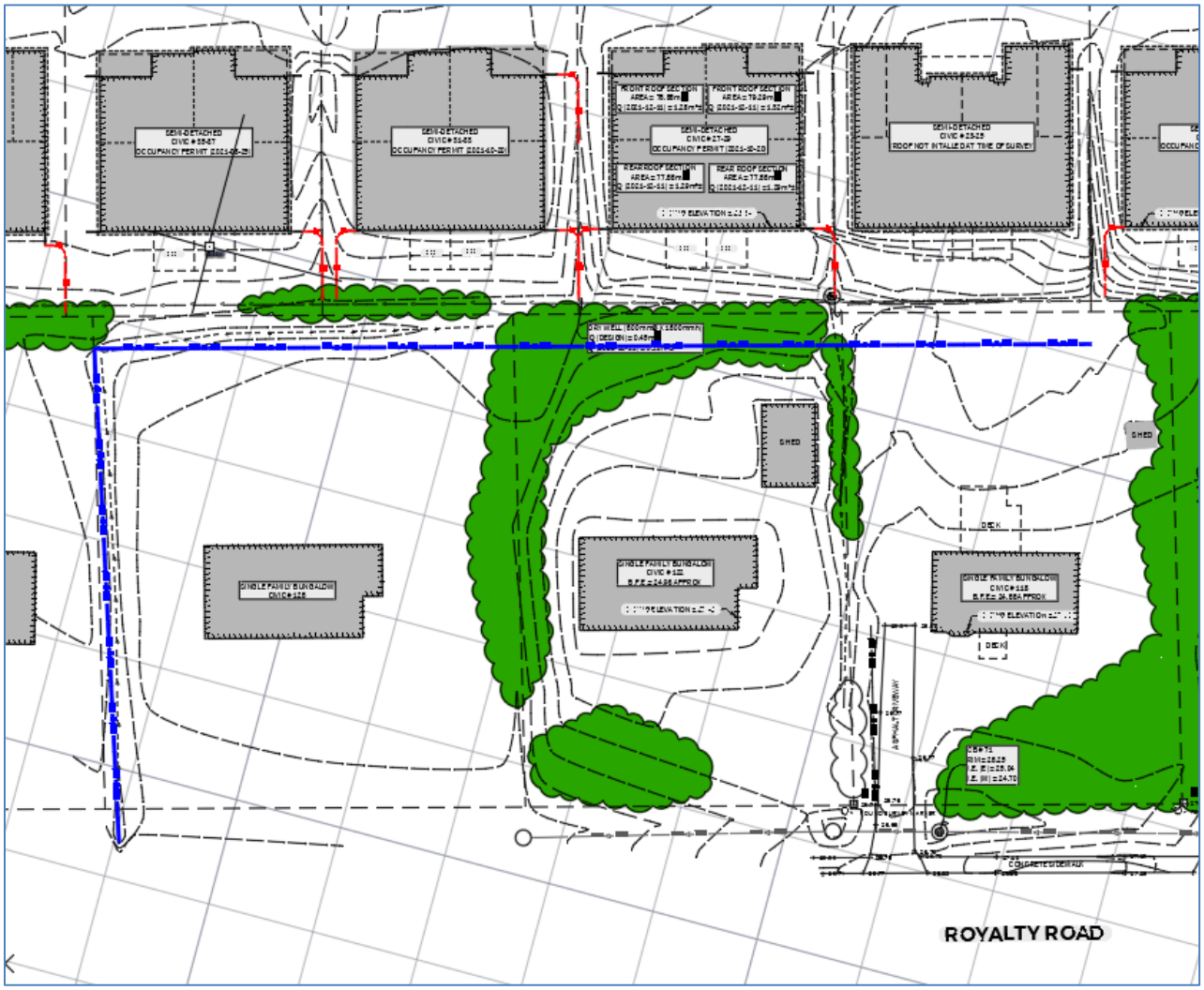
In the initial design and review process for the subdivision, it should have been observed that the rear of the properties being approved had an elevation below the final design of the road. The road and existing development created a barrier from which water could be free to flow ultimately to the creek at the bottom of the hill. No path was provided in the design to allow for the dispersal of surface waters during high storm events.

During the approval of the individual lot grading plans, the viability of dry wells should have been questioned. Best Management Practices, suggest creating dry wells, that can handle the largest of storms and that can disperse of the water collected, in no less than 72 hours. This requires proper analysis of soil for hydraulic capacity. Best Management Practices, also suggest providing g routes for the surcharge from the drywell to get to a storm system downhill. The individual plans provide no such mechanism.

3.0 SOLUTIONS

Upon review of the situation of the lands, 3 possible solutions exist to remove the excess surface waters from the area.

3.1 STORM SYSTEM TO ROYALTY ROAD



Solution 1 would consist of a piped storm system collecting water through catch-basins in the rear yards of the lots fronting on Royalty Roads. The system would consist of approximately 250 metres of storm pipe, collection tees and surface swales.

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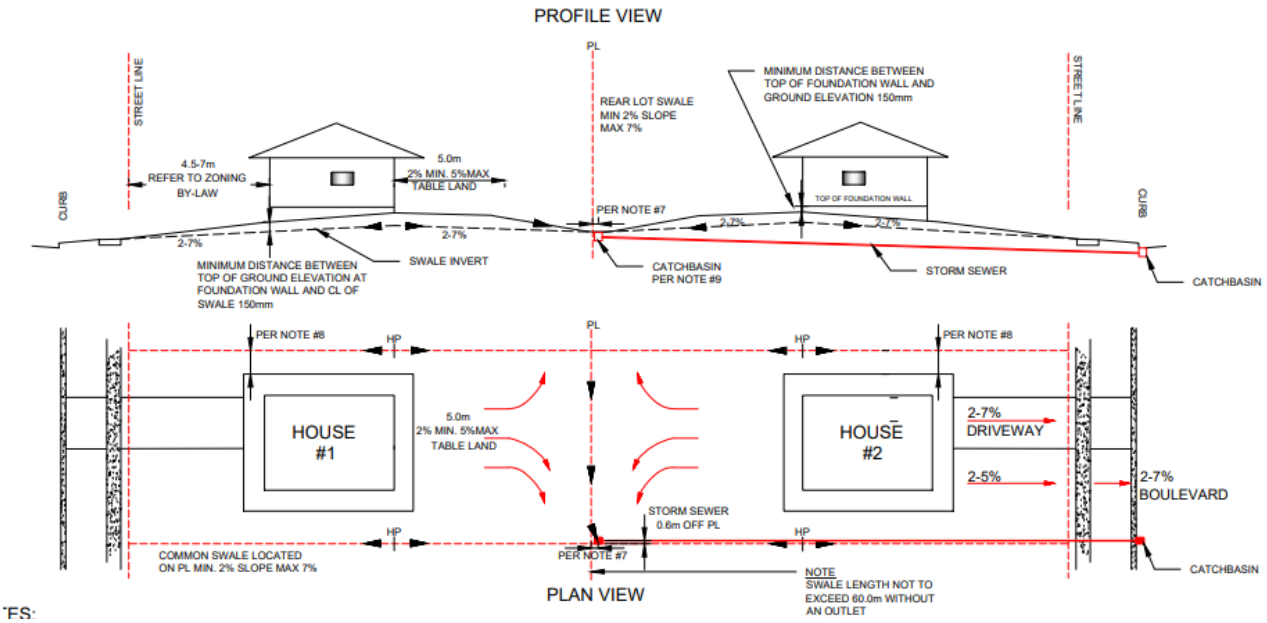
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Yours truly,
Morris Geomatics & Engineering Ltd.

David R. J. Morris, P.Eng, PEILS, CLS
President

COX & PALMER | coxandpalmerlaw.com

New Brunswick | Newfoundland and Labrador | Nova Scotia | Prince Edward Island

April 8, 2022

VIA HAND DELIVERY

The Island Regulatory & Appeals Commission
Attention: Philip Rafuse
National Bank Tower, Suite 501
134 Kent Street
Charlottetown, PEI
C1A 7L1

Dear Mr. Rafuse:

Re: **Sheila Scott v City of Charlottetown – Appeal LA22-03**

This letter is in response to your correspondence requesting the City of Charlottetown's (the "City") Record and Reply to the Notice of Appeal filed by Sheila Scott (the "Appellant") filed with the Island Regulatory and Appeals Commission (the "Commission") on February 1, 2022 (the "Appeal"). The City's Record was provided on April 30, 2022. Please accept this correspondence as the City's Reply to the Notice of Appeal.

The Appellant has appealed a decision of the City dated January 7, 2022 approving a request by the Applicant Developer, Prebilt Structures Ltd. (the "Applicant"), for issuance of an Occupancy Permit as it related to the development at 11-13 Essex Crescent (PID 1127984) (the "Property") of a Semi-Detached Residential dwelling (the "Permit") [Tab 10].

The Appellant has appealed the Permit for one primary reason being the water run-off from the Property onto her property and the properties of her neighbour. In support of the Appeal, the Appellant obtained the services of David R. J. Morris, P. Eng, PEILS, CLS, of Morris Geomatics and Engineering Ltd. [Tab 11].

The Property

For clarity, we have attached hereto an aerial map of Essex Crescent and Royalty Road to assist in better understanding the properties that we are addressing. We have reproduced a portion of this map herein:

David W. Hooley, Q.C. | Senior Counsel
Direct 902 629 3903 *Main* 902 628 1033 *Fax* 902 566 2639 *Email* dhooley@coxandpalmer.com
Dominion Building 97 Queen Street Suite 600 Charlottetown PEI C1A 4A9
Practicing as Professional Corporation

April 8, 2022



The Blue X marks the Appellant's property – 118 Royalty Road (the "Appellant's Property"), the Red X marks the Property – 11-13 Essex Crescent and the Black X marks the property directly abutting the Appellant's Property – 23-25 Essex (the "Abutting Property").

At **Tab 13** of the City's Record, there are various communications from the Appellant to the City regarding storm water runoff. Some of this correspondence can be found at pgs. 79-87, 90, 97, 107, 187, 199. This correspondence is in relation to the Appellant's Property and the Abutting Property, neither of which are the subject of this appeal. The picture is slightly dated as the Abutting Property currently has a building on it, but it is not at the occupancy stage and has not been issued an occupancy permit.

The City has never received a complaint about the Property and only became aware of any issue with the Property when the Notice of Appeal was filed by the Appellant. It appears that it is the Abutting Property that the Appellant has issues with. However, it is the Property that

is under appeal so the following comments are intended to address the Property and not the Abutting Property.

The Permit

The Permit was issued on January 7, 2022 in accordance with section 3.7 of the City's *Zoning & Development Bylaw* (the "Bylaw"). The City included three conditions that need to be satisfied by the Applicant. If the conditions are not satisfied, the City can revoke the Permit and the Applicant can be penalized under section 3.18 of the Bylaw. The conditions of the Permit are as follows:

1. The Final Drainage Plan and landscaping requirement shall be completed by no later than June 15, 2022.

2. The development deposit shall not be released until the Final Drainage Plan and landscaping requirements are completed.

3. Rough grading and appropriate siltation measures shall be installed to mitigate surface water runoff and erosion until final grading is complete.

The conditions, as is clearly shown, are intended to remedy the complaints that the Appellant takes issue with. The Applicant commenced construction in the fall of 2021 and did not substantially complete construction until January, 2022. In Prince Edward Island, fall and winter are wet seasons and some water runoff during construction is unavoidable. Hence, the City's requirement for satisfaction of the conditions of the Permit.

Section 6.4.3 of the Bylaw provides that surface drainage on a lot will be approved in two stages:

6.4.3 For any Development, the surface drainage on the Lot shall be approved in two stages:

a. Approval of the proposed Surface Drainage Plan at the time of the approval of the Building and/or Development Permit; and

b. Approval of the Final Grading Plan, which shall be submitted after the site grading portion of the Development has been completed

> and which shall be a condition of the approval of an Occupancy Permit, when applicable.

In this matter, the proposed surface drainage plan was received by the City on May 14, 2021 [Tab 3, pg. 4] in accordance with section 6.4.3(a) of the Bylaw. The Permit was then issued on January 7, 2022, a condition of which was completion of the Final Drainage Plan and landscaping on or before June 15, 2022, in accordance with section 6.4.3(b).

Section 6.4.4 of the Bylaw then provides as follows:

> 6.4.4 The Development Officer may waive the requirements for a Final Grading Plan as a condition of the final Occupancy Permit during winter months, provided the property has been rough Graded and appropriate siltation measures are in place to mitigate surface water run off or erosion during this period.

The intent behind this provision is to account for the weather in Prince Edward Island and the difficulties that developers/homeowners would face in seeking an occupancy permit during the winter months when the final grading has not been completed. In this matter, the Development Officer permitted the final grading to take place in the Spring (condition #1) provided rough grading and appropriate siltation measures were implemented (condition #3) to mitigate water runoff. Rough grading on the Property was completed and, as shown on the preliminary surface drainage plan, a dry well was installed. In addition to the dry well installation, a water pump was installed which, during periods of heavy rain, pumps water out of the dry well onto Essex Crescent, which is a public road.

As such, the City anticipates that when the weather permits, in the coming weeks, the Applicant to satisfy the conditions of the Permit – i.e. complete final grading, landscaping and adherence to the Final Drainage Plan – the water runoff from the Property will be resolved.

However, as stated, there is no water runoff onto the Appellant's Property from the Property, rather, *the Appellant's concern appears to be related to the Abutting Property, which is not the subject of this appeal.* Further, the City is of the view that the water runoff onto the Appellant's Property cannot be entirely attributed to the Abutting Property. The Appellant's Property is the lowest graded property in her neighbourhood. Before the Applicant commenced development of his subdivision, the Appellant's Property and her neighbours drained directly onto the Essex Crescent properties. Since development, water runoff onto the

Essex Crescent properties has slowed and as development continues, and eventually comes to an end, the City anticipates that water runoff will be properly managed and directed to the appropriate drainage systems.

The Report

The Appellants filed a Report with the Commission dated January 27, 2022, authored by David Morris, P. Eng, PELS, CLS, to address the surface water drainage on the Property (the "Report"). Similar to the issues outlined by the Appellant, the Report addresses the Appellant's Property and the properties on Essex Crescent that immediately abut her property. These properties are not the subject of this appeal.

The City intends to address the Report at the hearing of this matter. However, the City would like to reference a point made by Mr. Morris on page 2 of the Report. Mr. Morris states the City refused/failed to provide him with certain documents related to the development on Essex Crescent, including engineered drawings. To clarify, legally, the City has no authority to publicly disclose developer drawings or engineered drawings, such as surveys, site plans and surface drainage plans. These plans are not owned by the City – they are owned by their author – and can only be released directly by the author, through a FOIPP request - where permission from the author is required or through an appeal to the Commission where the City produces a record of their file.

Relief Sought by the Appellant

In her Notice of Appeal, the Appellant list the four pieces of relief she is seeking [Tab 11, pg. 42]. They are as follows:

1. The storm water from Essex Crescent development be appropriately managed through engineered design drawings and construction to ensure that all waters from the development are directed to a storm water system within a public right of way.

2. The City of Charlottetown take appropriate measures during to ensure that precipitation that falls during the winter months will not back up and flood our basement, through temporary measures such as a swale or ditch.

3. The City of Charlottetown put in place a bylaw, policy or manual to manage storm water and in particular storm water from new development.

4. The City of Charlottetown reinstate the provisions of the bylaw (September 2018), regarding the grading of lots, and certification associated with the stage of development.

The Commission is created by statute, meaning that the Commission's power and authority are defined by statute. As a result, the Commission does not have inherent jurisdiction over matters and must exercise only that authority and those powers conferred upon the Commission by the legislature[1].

The Commission's authority to hear and decide appeals of municipal decisions respecting land use is granted by the *Planning Act*, R.S.P.E.I. 1988, c P-8 (the "*Act*"). The City submits that while the Commission has the authority to hear and decide this matter, pursuant to sub-sections 28(1.1) (a)(i.l) and (8), much of he relief sought by the Appellant goes beyond the scope of the kind of Order the Commission would ordinarily issue. Generally speaking, the Commission may allow the appeal with or without conditions; or, dismiss the appeal. This case may lend itself to mediation which may in turn facilitate a more flexible outcome that is mutually amenable to the parties.

With respect to item (1), the City submits that the preliminary drainage plan [**Tab 3**], prepared by Derek A. French Professional Services Inc. was received by the City on May 14, 2021. The preliminary drainage plan shows the direction of drainage onto Essex Crescent and additionally, a dry well in the back left of the Property. The Final Drainage Plan (and landscaping) will be completed and submitted to the City on or before June 15, 2022. The Final Drainage Plan will be prepared by an engineer to ensure that all drainage from the Property is directed to the appropriate place.

With respect to item (2), condition #3 of the Permit, made pursuant to section 6.4.4 of the Bylaw, requires the Applicant to install rough grading and siltation measures to mitigate water runoff until such time as final drainage and landscaping can be completed. Rough grading, to the extent it could happen given the weather, has been done on the property and a dry well, along with a water pump connected to the drywell, was installed at the back of the property.

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[1] *629857 NB Inc. et al. v City of Charlottetown*, Order LA09-11, paras 14-15. (Appendix "A")

April 8, 2022

With respect to item (3), the City has a process for submission of grading plans as set out in 3.7 and 6.4 of the Bylaw. The City is guided by the Bylaw processes and adheres to it when processing applications involving storm water management and drainage. The City is always open to making improvements to its policies and bylaws where experience indicates changes are needed but making policy and bylaw changes are, respectfully, not ordinarily appropriate matters for an Order from the Commission in disposing of an individual appeal.

With respect to item (4), the City also requests further and better particulars of this claim for relief and reserves the right to respond to those particulars within a reasonable time. Exactly what provision were in the 2018 iteration of section 6.4 which the Appellant is referring to? The Bylaw, along with all other City bylaws, is an evolving document that is constantly subject to amendments to respond to experience and changes in processes, procedures, rules, regulations and advancements in the development/construction industry. The Bylaw amendments in 2018 were no different.

To reiterate, the City is of the view that the Commission does not have the authority, pursuant to the Commission's statutory authority, to order the City make amendments to their policies or bylaws[2].

In closing, the City anticipates that when the final grading and landscaping is completed on or before June 15th, the Appellant's concerns respecting storm water runoff will have been adequately addressed. The City suggest the appeal be placed in abeyance until we can determine if the Appellant's concerns have been adequately addressed by measures already in place.

Yours very truly,

for David W. Hooley, Q.C.

DWH/mm

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[2] The exception to this is when a particular bylaw amendment is under appeal. In that case, the Commission has the authority to uphold or deny a City amendment.

April 8, 2022

CC. Alex Forbes, Manager of Planning & Heritage Department
Scott Adams, Manager of Public Works Department
Duncan Shaw, Applicant
Sheila Scott, Appellant


AIDAN ST
ESSEX CR
ROYALTY RD
MEADOW LN
PADDINGTON AV
ALDERWOOD AV
1146265
1016294
1145689
1128180
1126440
1133420
1131119
1132976
1131374
1126614
1126630
1128040
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1080175
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388595
Meters

LA22003
LA23001

THE ISLAND REGULATORY AND APPEALS COMMISSION

IN THE MATTER OF appeals pursuant to s. 28 of the *Planning Act*, RSPEI 1988, c P-8 by Sheila Scott with respect to the issuance of Occupancy Permit 382-BLD-21 for PID 1127984, 11-13 Essex Crescent and Occupancy Permit 362-BLD-21 for PID 1016294, 23-25 Essex Crescent, Charlottetown, by the City of Charlottetown

WITNESS LIST & WILL SAY STATEMENTS

1. **David Gundrum** is the Manager of the Planning & Heritage Department for the City of Charlottetown. He will appear at the hearing of this matter and will speak to the requirements of the Zoning & Development Bylaw and background related to issuance of the Occupancy Permits.

2. **Ylber Gashi** is the Manager of Public Works for the City of Charlottetown. He will appear at the hearing of this matter and will speak to the process related to stormwater management.

DATED this 9th day of October, 2026

MELANIE MCKENNA
Cox & Palmer
97 Queen Street, Suite 600
Charlottetown, PE
Lawyer for the Respondent,
City of Charlottetown