



THE CORPORATION OF THE CITY OF VERNON

MATTERS REFERRED

October 26, 2020

A. AGENDA CHANGES:

A. SEE ITEM – 6. B. (i) Public Input for Development Variance Permit Application #DVP00499

- Email from Pushor Mitchell LLP dated October 26, 2020 on behalf of their clients, Heather and Matthew Blaeser
- Letter from Matthew and Heather Blaeser dated October 26, 2020

B. NEW ITEM – 11. A. (ix) New Business Correspondence – O’Keefe Ranch Request for Letters of Support

C. NEW ITEM – 12. A. (vi) Legislative Matters – Memo dated October 23, 2020 from the Economic Development Planner re: 6309, 6321 and 6335 Okanagan Landing Road Rezoning Amendment Bylaw Number 5837, 2020

A) *‘THAT Council **rescind** First and Second Readings for Bylaw #5837, “6309, 6321 and 6335 Okanagan Landing Road Rezoning Amendment Bylaw Number 5837, 2020” – a bylaw to rezone lands from I2: Airport Residential and RR: Rural Residential to RH1: Low-Rise Apartment Residential.’*

B) *‘THAT Bylaw #5837, “6309, 6321 and 6335 Okanagan Landing Road Rezoning Amendment Bylaw Number 5837, 2020” be amended to reflect properties at 6321 and 6335 Okanagan Landing Road are currently zoned RR: Rural Residential versus I2 – Airport Industrial.’*

*AND FURTHER, that Bylaw #5837, “6309, 6321 and 6335 Okanagan Landing Road Rezoning Amendment Bylaw Number 5837, 2020” – a bylaw to rezone lands from RR: Rural Residential to RH1: Low-Rise Apartment Residential, be **read a first and second time, as amended;***

*AND FURTHER, that Council re-confirms the Public Hearing for Bylaw #5837, “6309, 6321 and 6335 Okanagan Landing Road Rezoning Amendment Bylaw Number 5837, 2020”, scheduled for **5:30 pm, Monday, November 9, 2020** in the Recreation Centre Auditorium, 3310 37th Avenue.’*

B. DECLASSIFIED MOTIONS FROM THE IN-CAMERA MEETING HELD OCTOBER 26, 2020:

**LICENCE GIRL GUIDES
– CLUBHOUSE
STORAGE AT
MACDONALD PARK
(6140-20)**

'THAT Council direct Administration to enter into a licence agreement with the Girl Guides of Vernon, for the approximately 320 square foot storage area and bathrooms on the ground floor of the former soccer clubhouse at MacDonald Park, for a three year term commencing November 1, 2020, for a fee of \$250 per year plus the estimated cost of electricity and the Girl Guides will maintain \$3M in liability insurance'

**LEASE SCHOOL
DISTRICT NO. 22 –
FORMER SOCCER
CLUBHOUS AT
MACDONALD PARK
(6140-20)**

'THAT Council direct Administration to lease to School District 22 the approximately 1,700 square foot former soccer clubhouse at MacDonald Park, for an initial term of five years commencing on November 1, 2020, with a gross monthly rent of \$365.67 from November 1, 2020 to February 28, 2021 and annual gross rent of \$14,564 for the balance of the initial term, SD22 will maintain \$5M in liability insurance and the lease will include two five year renewal options'

**VERNON VOLUNTEER
FIREFIGHTERS
ASSOCIATION
AGREEMENT RENEWAL
(7010-03)**

'THAT Council authorize the Chief Administrative Officer to execute an agreement for a five (5) year term, presented as attachment one (1) to the report titled Vernon Volunteer Firefighters Association Agreement Renewal, dated October 14, 2020 and respectfully submitted by the Director of Vernon Fire Rescue Services (VFRS)'

PUSHOR MITCHELL LLP
LAWYERS

Our File: JAB/69402.001

Jeremy A. Burgess' Direct Line: (250) 869-1156
Sachelle's Direct Line: (250) 869-1129

October 26, 2020

Via E-mail: PHearings@vernon.ca

CITY OF VERNON
3400 30th Street
Vernon, BC V1T 5E6

Attention: Corporate Officer

Dear Sir/Madame:

RE: Development Variance Permit Application #00499 for Lot 27, Plan KAS1975, District Lot 6, ODYD (156 Sunset Boulevard) ("156 Sunset")

We are counsel for Heather Jean Blaeser and Matthew David Blaeser, the owners of the lands and premises municipally described as 160 Sunset Boulevard, Vernon, BC ("160 Sunset"). We write on behalf of our clients in opposition of Development Variance Permit Application #00499 (the "Application"). 160 Sunset's western boundary is shared with 156 Sunset's eastern boundary (the "Shared Boundary").

To our clients' knowledge, [REDACTED] the registered owner of 156 Sunset, obtained plans for the construction of tiered retaining walls that ostensibly would have complied with the requirements of s. 6.5 of the City of Vernon's Zoning Bylaw #5000 (the "Bylaw"). Rather than following such plans, [REDACTED] constructed a retaining wall which breached the Bylaw including by being an excessive height (the "Nonconforming Wall"). The Application seeks to reduce the permissible distance between retaining walls and does so without addressing concerns with the Nonconforming Wall.

The Nonconforming Wall was erected approximately 1m from the Shared Boundary with the toe of its footings being approximately 61cm closer to the Shared Boundary. The Nonconforming Wall was erected in knowing and intentional breach of the Bylaw. The Nonconforming Wall presents an immediate danger and hazard to the owners and occupants of 160 Sunset, being constructed in excess of the height allowed by the Bylaw, having its footings insufficiently buried, being constructed contrary to ordinary practices in British Columbia and potentially being in violation of the *Building Code*.

On or about 17/Jul/2020, the City of Vernon issued a Stop Work Order related to construction of the Nonconforming Wall being in breach of the Bylaw (the "Stop Work Order"). Prior to bylaw officers attending 156 Sunset in relation to the pending Stop Work Order, [REDACTED] made attempts to hide the footings for the Nonconforming Wall with loose material. Pictures of state of the Nonconforming Wall at the time bylaw officers attended to in related to the Stop Work Order are appended hereto as **Schedule "1"**.

After the Stop Work Order was issued, in further knowing and intentional breach of the Bylaw and the Stop Work Order, work continued at 156 Sunset including on the Nonconforming Wall. Enclosed herewith as **Schedule "2"** are pictures of the Nonconforming Wall taken on 21/Oct/2020 which may be compared to those pictures in Schedule "1".

The applicable considerations for the Application are spelled out in s. 542 of the *Local Government Act*, R.S.B.C. 2015, c. 1 as follows:

- the Application can only be granted if it is found that undue hardship would be suffered by the [REDACTED] being required to comply with the Bylaw;
- the Application must not be granted if granting the Application would result in *any* of the following:
 - inappropriate development of 156 Sunset;
 - the use and enjoyment of 160 Sunset being substantially affected; or
 - the intent of the Bylaw being defeated.

In our respectful view, each of the above factors favour denying the Application.

It does not lie with [REDACTED] to allege *undue* hardship; he is the author of any hardship he might suffer. [REDACTED] had plans available to him to construct retaining walls which complied with the Bylaw, was aware of the Bylaw and elected to construct the Nonconforming Wall in breach of the Bylaw and continue such construction in breach of the Stop Work Order. The Application could have been pursued prior to the construction of the Nonconforming Wall. There was no urgent need to construct the Nonconforming Wall.

The Application would result in inappropriate development of 156 Sunset. In our respectful view, the Bylaw was intended to prevent the construction of large, obstructing walls constructed without proper engineering and which devalue and threaten neighbouring properties their occupants. Reducing the spacing between retaining walls does not address the danger and inappropriate nature of the Nonconforming Wall.

The proposed variance negatively and substantially affects the adjacent property, 160 Sunset. If the Application is granted, it will not address the improper and inappropriate construction of the Nonconforming Wall or the deleterious effects it has on 160 Sunset.

To approve the Application is to reward [REDACTED] for intentionally flouting and breaching the Bylaw and Stop Work Order while punishing our clients for asking that the Bylaw be complied with.

In further support of our clients' positions, we include herewith the 24/Oct/2020 report of Willerton Engineering Ltd. which raises further concerns with the Nonconforming Wall and the Application including concerns with the Nonconforming Wall's construction methodology and safety and concerns with the accuracy of materials submitted in support of the Application. Our clients rely on said report as being accurate and that its conclusions speak for themselves. The Application does not address the concerns raised by the report.

Yours truly,

PUSHOR MITCHELL LLP

Per:

JEREMY A. BURGESS

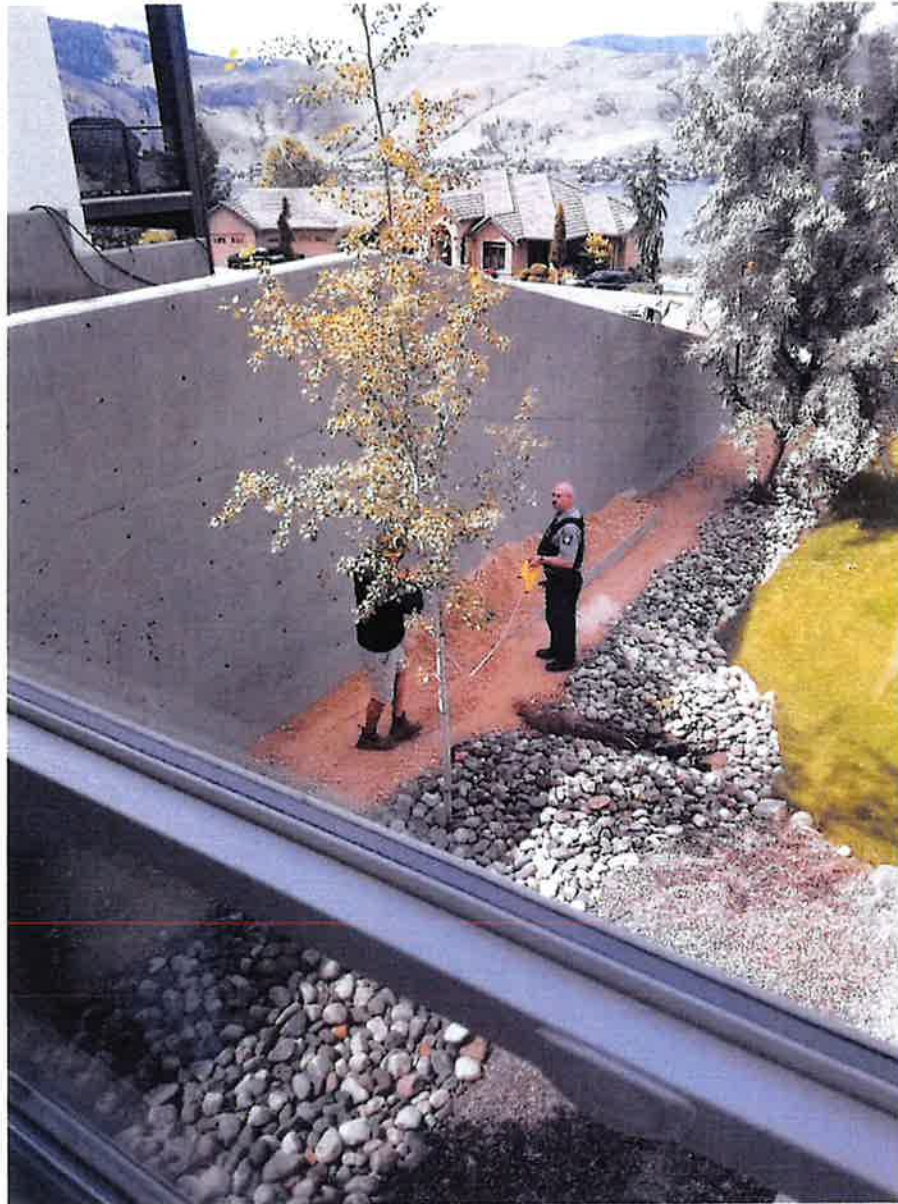
JAB/sjw

Encls.

Cc client



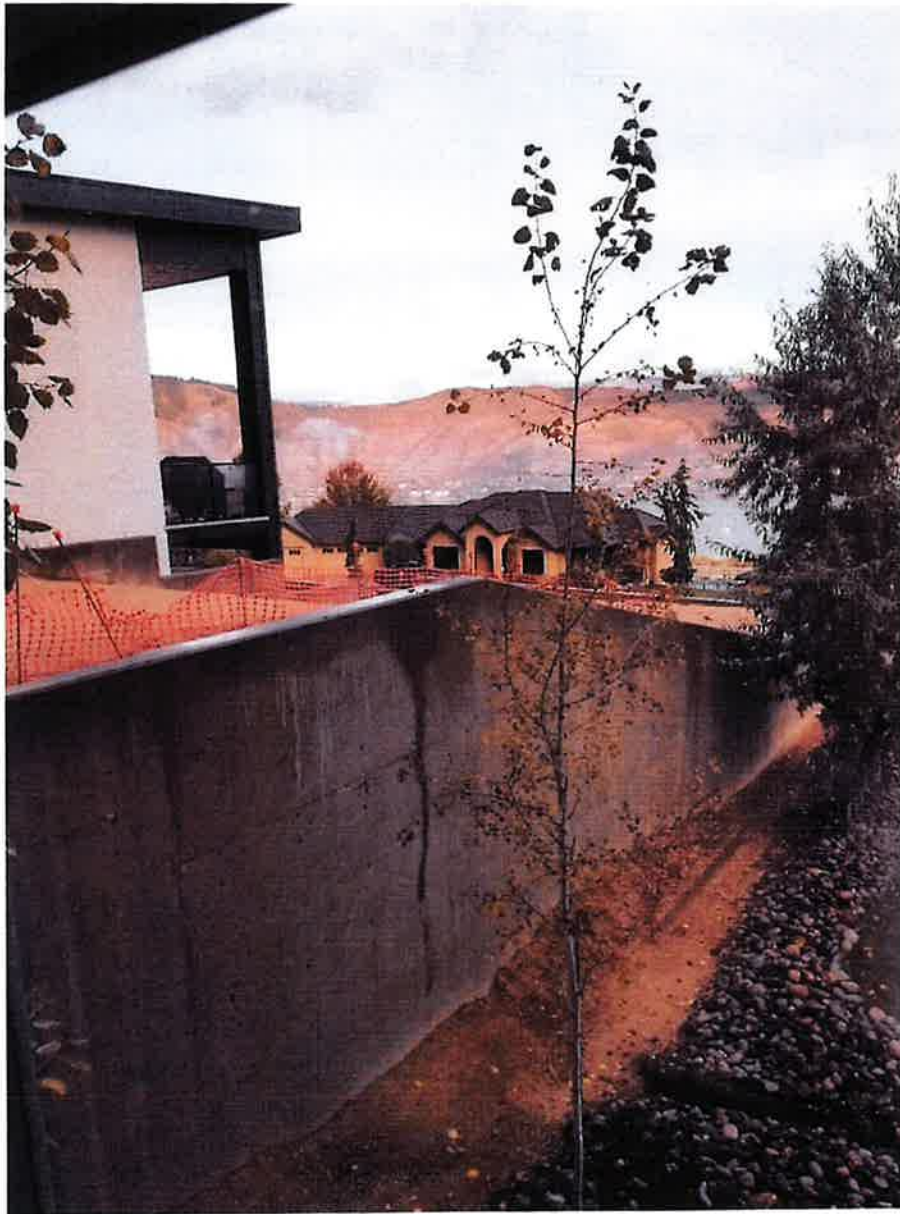
Schedule "1"






Schedule "2"









 <p>WILLERTON ENGINEERING 4408 28 Street Vernon, BC V1T 7P5 250-542-5434</p>	Project Name:	Blaeser Residence	Job Ref.	20-287
	Section	Structural Assessment	Sheet no.	Page 1 of 4
				Date

Background:

Christina Willerton of Willerton Engineering (WE) attended a residence at 160 Sunset Boulevard, Vernon, BC at the request of Heather and Matt Blaeser (the Clients) on Oct 21, 2020. The Clients are requesting an assessment of their neighbour's existing retaining wall.

This report is limited to components that were visible at the time of the site consultation and information provided by the Clients.

Observations and Discussion:


Per the Clients, the retaining wall was constructed in 2020. WE was supplied with a copy of the "neighbour letter" advising of the Development Variance Permit (DVP) Application #00499. This letter included a survey of the wall with respect to the wall location and height as well as 5 cross sections illustrating the proposed final retaining wall layouts. The provided documents confirm that the retaining wall was engineered; however, the engineered drawings of the retaining wall were not made available to WE.

At the time of WE's site visit, some amount of backfill had been placed against the lower (Client's) side; however, some sections of the footing were still exposed. The stem of the retaining wall is 8" wide along most of the wall; however, it has been thickened to 10" along the taller sections of wall. In general, the toe of the foundation wall appears to extend 24" from the exposed face of the retaining wall. The wall appeared plumb and relatively free of cracks. Some minor shrinkage cracking was observed.

Per the provided survey, the face of the retaining wall is located 1.00m (3'-3 3/8") to 1.04m (3'-4 15/16") from the property line.

At the site visit, WE took measurements along the wall length for comparison. Refer to Figure 1. All length measurements are estimated to be within a foot of accuracy. All height measurements are estimated to be within two inches of accuracy. A panoramic photo of the retaining wall for comparison has been included. Refer to Figure 2.

When compared to the 5 cross sections in the DVP application, it appears the surveyed heights are measured from the top of footing to the top of wall. WE has taken a copy of Sections B, C and D from the DVP application and added a 24" wide toe/footing and soil hatching to the cross section. The heel length and footing depth are unknown to WE and generically illustrated. Refer to Figures 3, 4 and 5.

 WILLERTON ENGINEERING 4408 28 Street Vernon, BC V1T 7P5 250-542-5434	Project Name:	Blaeser Residence	Job Ref.	20-287
	Section	Structural Assessment	Sheet no.	Page 2 of 4
				Date

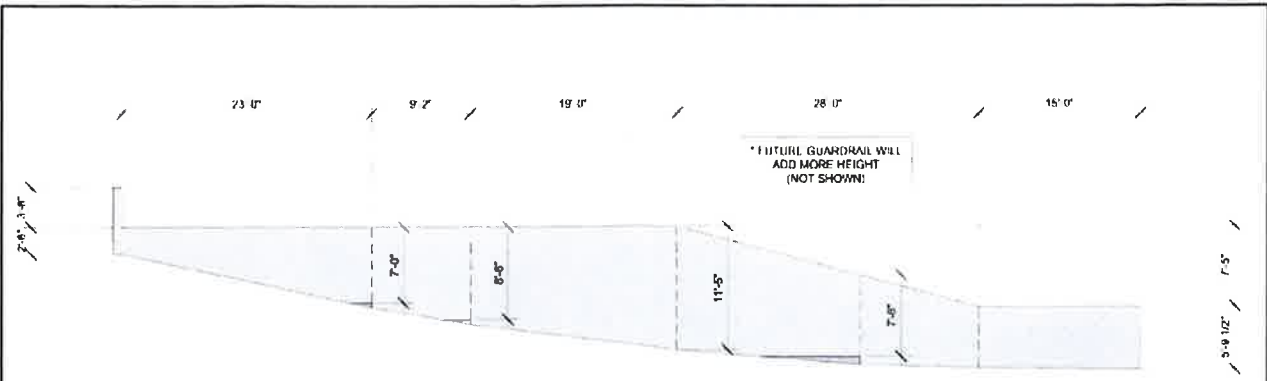


Figure 1: WE site measurements of the retaining wall



Figure 2: WE site photo of the retaining wall

Project Name:	Blaeser Residence	Job Ref.	20-287
Section	Structural Assessment	Sheet no.	Page 3 of 4
		Date	Oct 24, 2020

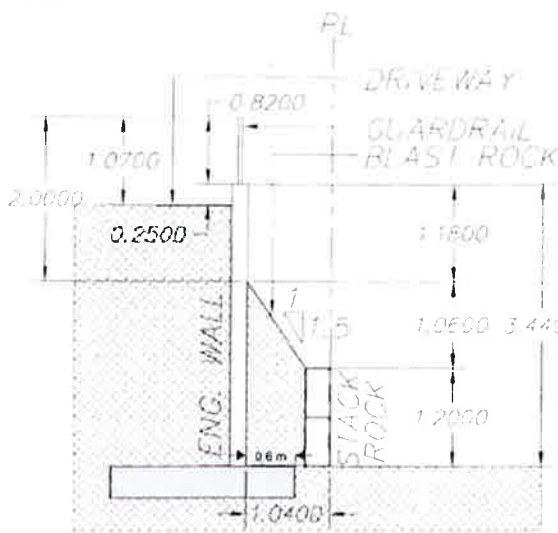


Figure 3: Section B

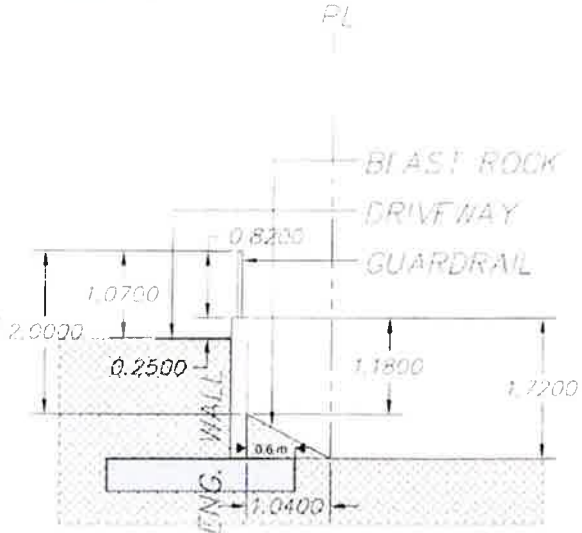


Figure 4: Section C

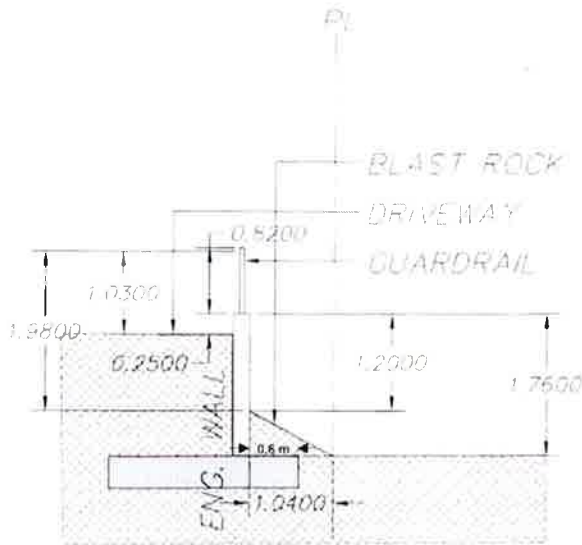



Figure 5: Section D

Traditionally, a cantilevered concrete retaining wall footing would be installed below frost depth, unless a geotechnical engineer verified the footing was located on non-frost susceptible material. Additionally, burying the footing helps to stop the wall from sliding.

 WILLERTON ENGINEERING 4408 28 Street Vernon, BC V1T 7P5 250-542-5434	Project Name:	Blaeser Residence	Job Ref.	20-287
	Section	Structural Assessment	Sheet no.	Page 4 of 4
				Date

Conclusions:

The proposed solutions illustrated in Sections B, C and D may not be structurally suitable to restrain the installed retaining wall from sliding if the wall was not designed with a shear key or alternate form of lateral restraint. The design engineer for the retaining wall should be given the opportunity to review and confirm that the proposed solution structurally meets requirements for sliding and frost protection.

WE's comments are based on the information provided to WE and observations made during the site consultation. Should new information become available or any discrepancies from this report noted, WE should be given an opportunity to review and provide additional comments. Please do not hesitate to contact us with any questions or concerns.

Sincerely,



Christina Willerton, P. Eng. 2020-10-24
 Willerton Engineering Ltd.



Dear Council,

First, thank you all for dedicating your time and efforts to the advancement of our city. We recognize the many hours you spend in support of your community and know it isn't being done for reasons of financial compensation. Thank you very much.

In regards to the variance being proposed at 156 Sunset Blvd, please note that the most important thing council needs to recognize today is the applicant for the variance would not be standing before you had they adhered to their original plans and abided by the city's building bylaws from the start of their build. There is clear and concrete evidence documenting their knowledge of needing to step back their retaining wall to comply with Landscaping Bylaw #5000. They were aware this bylaw existed and they flagrantly flouted the need to respect it. Please see attached "Schedule A," a thread of two emails that were forwarded to us in the spring from the KAS1975 Strata President, W. Symington.

In addition to going ahead and building a giant wall that does not meet building bylaws, it is also clear based on the engineering report conducted by Willerton Engineering that the wall is unsafe. Consequently, this could pose a serious risk to our well-being as well as adversely affecting our property value. Note that despite receiving a Stop Work Order demand in mid-July, they continued to backfill the driveway to the point of making the garage accessible. They were permitted to continue work on the front and rear walls, but not the non-conforming wall. We have photos and videos that evidence them ignoring the SWO.

Council, we ask you to please recognize that Dwell and the owners of 156 Sunset Blvd are not innocently standing before you asking for permission for a variance. They are standing before you guiltily begging for forgiveness for intentionally disobeying a rule of which they were conscious. Please, do not be fooled. Everton homes is an experienced, knowledgeable builder. Darrin Collie of Dwell Design Studio is an experienced architect. This is not an accident. This is an attempt to cover up poor planning on a home that has been built like a rancher but instead has been constructed on a walk up lot. The letter in "Schedule A" clearly evidences that point. Everton and Dwell are supposed to be industry professionals and they should know better.

Thank you for your time and consideration.

Sincerely,

Matthew and Heather Blaeser
160 Sunset Blvd
Vernon, BC

SCHEDULE A)

Matt Blaeser <matt@aldebaranhomes.com>

Fri, Apr 24,
1:18 PM

to me

From: [redacted]
Sent: January 6, 2020 11:35 AM
To: Matt Blaeser <matt@aldebaranhomes.com>
Subject: Fwd: 156 Sunset - Compliance and Plan Approval

Additional information

Sent from my iPad

Begin forwarded message:

From: Darrin Collie <[redacted]>
Date: January 6, 2020 at 11:13:50 AM PST
To: [redacted]
Cc: "Rhys March, BBA, CPA, CGA" <RhysMarch@rolceinvestments.com>
Subject: 156 Sunset - Compliance and Plan Approval

Hi Wayne and Rhys,

The owners of 156 Sunset are working with me to arrive at a solution that meets the intent of the guidelines.

From our discussion support can be given to the approval of the current plan due to:

- 1) the front of the exposed pool wall will comply with the retaining wall set back and landscaping plan (stepped retaining with planting to give depth and colour variation)
- 2) the side of the pool wall with a stair case will not have 1.2 m step down wall but it will be concealed by year round landscaping; trees and shrubs to screen the over-height cover (right front to side of the pool retention)
- 3) the exterior wall of the driveway does not comply with the 1.2 m step down or the natural buffer setback (2.5m). They could use a stack wall to achieve the 1.2m height and stepping requirement or blast rock on the slope at 2:1 slope; however, they want to use a stack system that is irrigated and is planted to create a green slope. They are concerned with the look for the

neighbours and want it to blend in and soften the retaining of the bank. This system is tighter than the other options and would allow for the neighbours trees on the propertyline to remain undisturbed (some trees may be inside the property line but this system will allow the drip line of the trees to stay exposed).

The intention is to have a full plan for the landscaping/details before the plans are approved. The client is looking for endorsement of the new stack retaining system (brochure photos sent previously – Trexiana – FlexMSE.com).

Thank you,

Darrin Collie
Dwell Design Studio
T. [250.550.7476](tel:250.550.7476)
E. dwell@telus.net
W. darrincollie.houzz.com

2013 Gold Tommie Award with Doering Building Group "Best Urban Infill/Commercial"
2013 Silver Tommie Award with Doering Building Group "Best Commercial/Retail"
2013 SICA Award of Excellence with Doering Building Group "Office"
2014 Gold Tommie Award with Everton Ridge Homes "Best Show Home Under \$500K"
2016 SICA Award of Excellence with Heartwood Homes "Office"

On Jan 3, 2020, at 1:59 PM, Darrin Collie <darrincollie@outlook.com> wrote:

Hi Wayne and Rhys,

I have been working with Garth from Everton Ridge and the [REDACTED] to bring them into compliance with the proposed pool and the driveway. The plan submitted previously did not comply and was missing key information. I am now satisfied that the infinity edge pool can be worked into the hillside with a mix of retaining walls and landscape so that it presents well to the streetscape all year round. The [REDACTED] are on board to make this happen and want to come into the strata favourably. The pool would be located to the right of the house so that it gets sun and view. The retaining at the rear will not exceed 1.2m and the front edge will be stepped and partially screened with planters/planting and low planting at the base.

The last hurdle I see is the driveway. Having the garage at the upper level without the plan being worked out has been challenging. Everton Ridge has proposed a series of stepped planters on the inside edge of the driveway that can work to achieve the slope. On the exterior side they have 28.5' from the garage face to the property line. They are proposing a 22' wide landing area at the top, then the retaining system below that will be 8' high and 2' deep (4" to 6" rows stepped back

½” per row) for 30’ of length (dropping down after and just at this height where the garage doors are) and set in 4.5’ (1.37m) from the property line. The wall will be planted and offer a nicer look than the stack block walls used currently in the development. I need your endorsement for the setback to the wall from the property line and the height. They could do blast rock in this area as well but want a softer look to the neighbour. The wall is irrigated every 3 rows with drip lines to keep it green. The neighbour has trees planted on the property line and inside the [REDACTED] lot that have drip lines at 1.2m inside the property. The 4.5’ offset would allow the trees to be retained and should keep them viable and healthy. Once they get past the driveway landing area the height will drop for the retaining system and push farther into the lot.

Please let me know your thoughts?

Thank you,

Darrin Collie
Dwell Design Studio
T. [250.550.7476](tel:250.550.7476)
E. dwell@telus.net
W. darrincollie.houzz.com

<image001.jpg>

2013 Gold Tommie Award with Doering Building Group "Best Urban Infill/Commercial"
2013 Silver Tommie Award with Doering Building Group "Best Commercial/Retail"
2013 SICA Award of Excellence with Doering Building Group "Office"
2014 Gold Tommie Award with Everton Ridge Homes "Best Show Home Under \$500K"
2016 SICA Award of Excellence with Heartwood Homes "Office"

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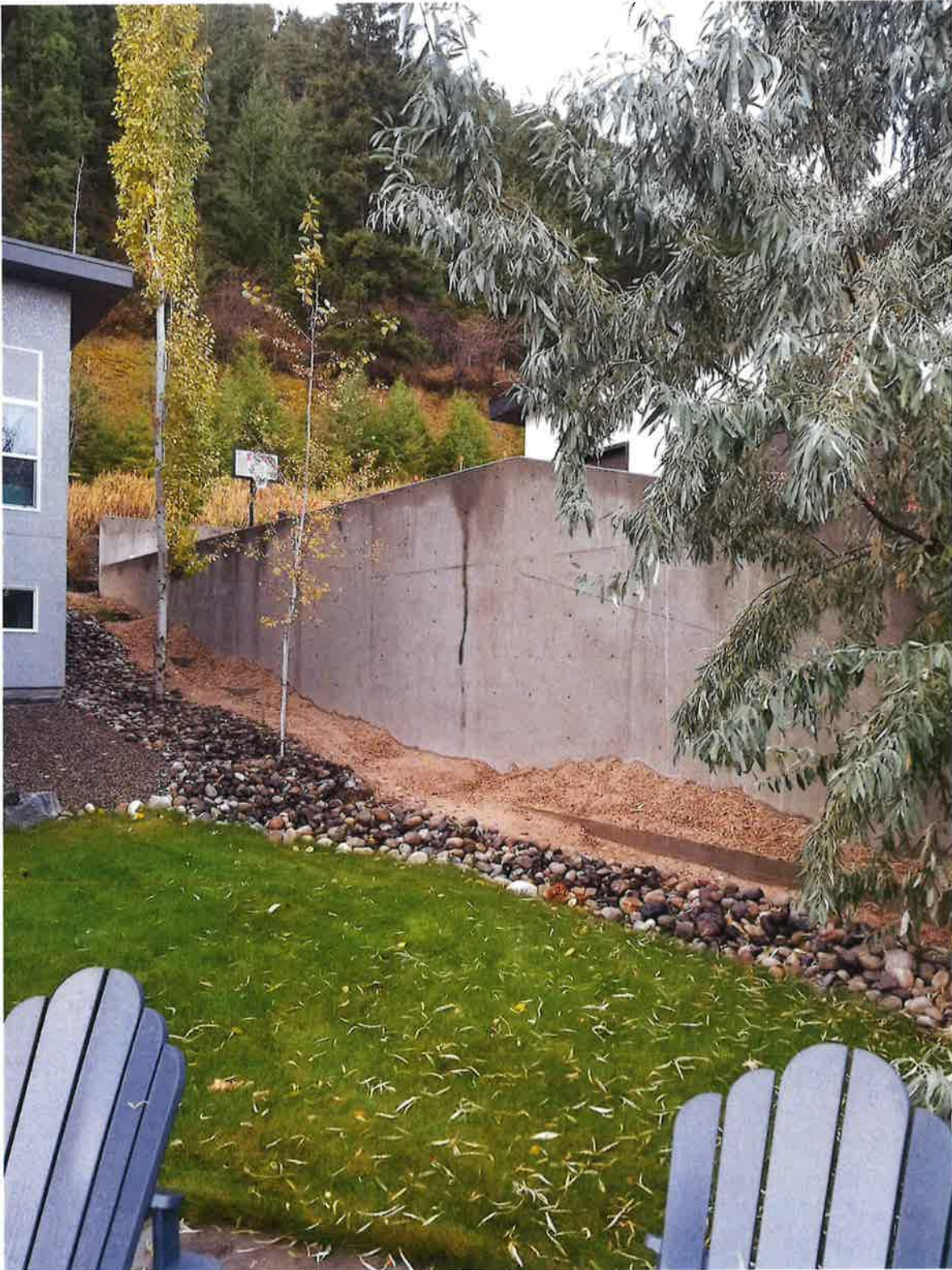
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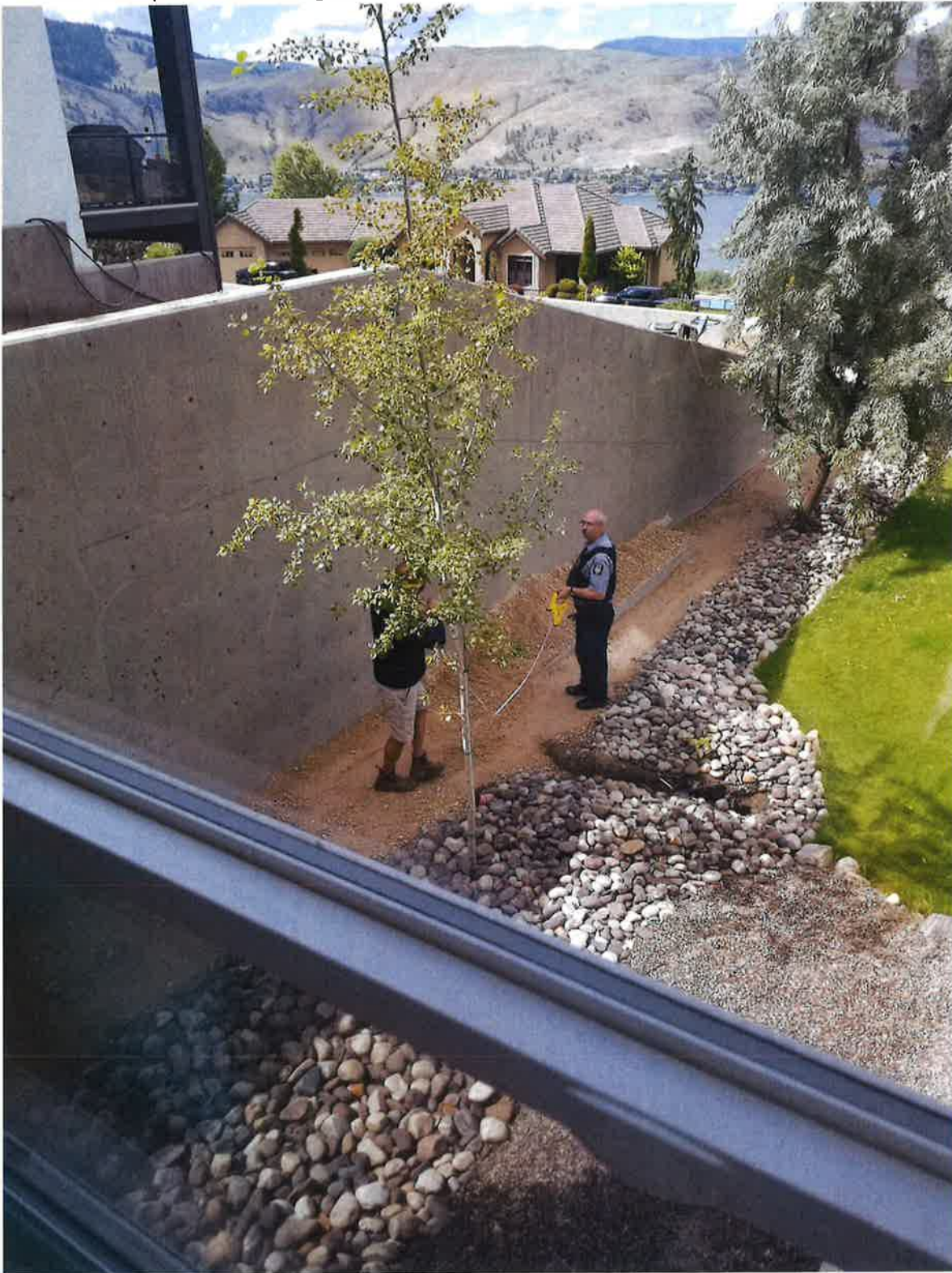


**Shows the footings exposed

**shows the sheers size of the wall and exposed footings in several areas



****Shows the stop work order being issued.**



**Shows the volume of backfill required for them to access their garage constructed on a walk up lot.

