

**MUNICIPAL PLANNING COMMISSION AGENDA
SUMMER VILLAGE OF BIRCHCLIFF
SUMMER VILLAGES ADMINISTRATION OFFICE
APRIL 6, 2023 @ 1:00 P.M.**

- A. CALL TO ORDER**
- B. ADOPTION OF AGENDA**
- C. DEVELOPMENT ITEMS**
 - 1) 83 Birchcliff Road
- D. ADJOURNMENT**

Summer Village of Birchcliff – Municipal Planning Commission

Agenda Item

April 6, 2023

83 Birchcliff Road (Lot 4&5, Block 3, Plan 4486AX)

Development Permit Application

Background:

An application was submitted on behalf of the homeowner of 83 Birchcliff Road (Lot 4&5, Block 3, Plan 4486AX) in the Summer Village of Birchcliff for a u-shaped structure and stairs on the escarpment. This property is in the R1 District (Lakeshore Residential). The property currently has an open development permit for a dwelling and lakeside stairs.

Previously In June of 2021, the developers applied to the Municipal Planning Commission to obtain permission to renovate the existing boathouse, including structural alterations. This application was denied by the MPC. While the current boathouse could remain in it's current state as a non-conforming building, no structural alterations would be approved.

In October of 2021 a development permit was granted by the MPC for the construction of lakeside stairs and the refinishing of the exterior of the boathouse. The existing stairs were near the existing boathouse, and would be removed and replaced with a stone stairway to provide safe access to the lake. This permit was granted with the condition that there shall be no structural alteration to the existing boathouse.

On October 25, 2022 during an on site inspection to adjacent property, it was found that the boathouse had been entirely removed and was being reconstructed with a new concrete foundation. On October 28 of 2022 CAO Tanner Evans discussed the boathouse foundation with the developer and warned that a Stop Order would be forthcoming. Later that day it was discovered via visual inspection that concrete walls of the boathouse had been constructed.

On October 31, 2022 a Stop Order was issued for the property for breaching condition #10 of the lakeside stairs development permit. Specifically, structural alterations of the removal and rebuilding of the boathouse, which is contrary to Condition #10 of the development permit. *"There shall be no structural alterations to the existing boathouse"*.

The Stop Order requires the removal of the newly constructed boathouse walls (or "U-shaped structure). One condition of the Stop Order was that a signed and stamped

March 21, 2023

geotechnical report from a qualified engineer would be obtained, which would outline the geotechnical and structural steps that must be undertaken to stabilize the bank and the Lands for the required removal of the boathouse. This report found that the U-shaped structure is not required as a retaining structure for the stability of the bank, and the bank would be stable with properly compacted soil.

The Stop Order also included that by no later than March 15, 2023, a complete development permit application to the Municipality to must be submitted to undertake any work outlined in the Geotechnical Report as necessary, to stabilize the bank and the Lands after the removal of the unauthorized development.

The application proposed, is to keep the u-shaped structure that was recently constructed and add a staircase, which would be supported by the u-shaped structure. The stairs are proposed to be made of composite treads and match the u-shaped structure height of about 9'1". No grade changes to the escarpment would be made or further vegetation will be removed.

Discussion:

This application is before MPC for the following reasons:

- An accessory building on a parcel abutting the lake shall be situated so that it is located within the minimum rear yard of the parcel and is not closer to the front parcel boundary and the top of any escarpment area or high-water mark than the front wall of the main building, or 15m whichever is the least. The u-shaped structure is located within the front yard of the parcel, a variance is required.
- Land located below the top of the bank/top of the escarpment should be in a natural state, a variance is required.

Recommendation:

After reviewing the application, and all relevant planning documents, it is the recommendation of administration to deny the application for the u-shaped structure and stairs on the escarpment development. The engineer's report that was required by the Stop Order and provided with this application states that to maintain stability of the bank near the toe of the slope, the u-shaped structure and screw pile foundation are not required. The report outlines the requirements to match the surrounding slope conditions and compact the soil to ensure the factor of safety to the minimum 1.5.

The development permit for lakeside stairs was clear that no alterations were to be made to the boathouse. The Municipal Government Act states that a non-conforming building (which the boathouse was classified as) may be continued to be used, but the building may not be enlarged, added to, rebuilt or structurally altered except to make it a non-conforming building, for routine maintenance if the development authority considers it necessary, or in accordance with a land use bylaw that provides minor variance powers to the development authority for the purpose of the section. If a non-conforming building is damaged or destroyed to the extent of more than 75% of the value of the

March 21, 2023

building above its foundation, the building may not be repaired or rebuilt except in accordance with the land use bylaw.

The building was demolished and was in the process of rebuild without development approval and with the knowledge that it would have required approval. In accordance with the Land Use Bylaw regulations and the Municipal Government Act, the boathouse that has been removed shall not be rebuilt or be able to remain as is. The u-shaped structure should be removed in accordance with the Stop Order and the work shall take place as outlined in the report to fill in the bank to maintain the stability and prevent erosion, a new application shall be submitted to MPC for this as reflected in the Stop Order. As the boathouse is no longer on the property, in administrations opinion the stairs will not be required and a natural meandering path to the lake would be sufficient once the stabilization is complete.

Adjacent landowners have been notified and no response has been received.

Conditions:

If approved, Administration would recommend the following conditions:

- Completions Deposit of \$1,000.00.
- There shall be no further alterations to the u-shaped structure.
- Deep-rooted vegetation to be planted wherever possible around the u-shaped structure.
- All backfill material around the u-shaped structure and between all surrounding slopes must be fractured drain rock up to the final 300-millimeteres and capped with compacted clay. The fractured drain rock must be compacted in 300-millimeter lifts to at least 95% maximum density. The final 300 millimeters of compacted clay must be compacted to 92% Standard Proctor Maximum Dry Density. Compaction tests must be conducted on the drain rock and clay cap to confirm the minimum percentage of compaction has been achieved, by an engineer.
- Prior to the placement of the fractured drain rock, a layer of geotextile filter cloth must be placed beneath the drain rock and to completely wrap the drain rock on all sides and on top to prevent contamination by fine material and eroded soil material. The placement of the filter cloth has to be inspected and approved by an engineer.
- Development Permit #211294 Lakeside Stairs to be canceled.

Authorities:

For a discretionary use in any district:

- The Municipal Planning Commission may approve an application for a Development Permit:
 - With or without conditions;

March 21, 2023

- Based on the merits of the proposed development, including its relationship to any approved statutory plan, non-statutory plan, or approved policy, affecting the site;
- Where the proposed development conforms in every respect to this Land Use Bylaw; or
- May refuse an application for a development permit based on the merits of the proposed development, even though it meets the requirements of the Land Use Bylaw; or
- Subject to provisions of section 2.4 (2), the Municipal Planning Commission shall refuse an application for a development permit if the proposed development does not conform in every respect to the Land Use Bylaw.

The MPC may:

- Grant a variance to reduce the requirements of any use of the LUB and that use will be deemed to comply with LUB.
- Approve application even though the proposed development does not comply or is a non-conforming building if:
 - It would not unduly interfere with the amenities of the neighborhood, or
 - Materially interfere with or affect the use, enjoyment, or value of neighboring parcels of land, And
 - It conforms with the use prescribed for that land or building in the bylaw.
- Consider a Variance only where warranted by the merits or the proposed development and in response to irregular lot lines, parcel shapes or site characteristics which create difficulties in siting structures within the required setback or in meeting the usual bylaw requirements, except there shall be no variance for Parcel Coverage or Building Height.

Municipal Government Act Section 643, Non-Conforming Building:

- A non-conforming building may continue to be used but the building may not be enlarged, added to, rebuilt or structurally altered except:
 - (a) to make it a conforming building,
 - (b) for routine maintenance of the building, if the development authority considers it necessary, or
 - (c) in accordance with a land use bylaw that provides minor variance powers to the development authority for the purposes of this section.
- If a non-conforming building is damaged or destroyed to the extent of more than 75% of the value of the building above its foundation, the building may not be repaired or rebuilt except in accordance with the land use bylaw.

Decision:

In order to retain transparency of the Commission, Administration recommends one of the following:

March 21, 2023

1. Approve the application with or without conditions (*Section 642 of the MGA*), or
2. Deny the application stating reasons why (*Section 642(4) of the MGA*).

Planning & Development Summer Villages on Sylvan Lake

2 Erickson Drive
Sylvan Lake, AB

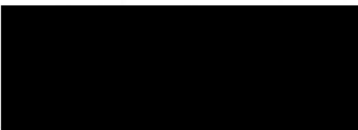
We are applying to keep the existing U-shaped structure at 83 Birchcliff Rd & add a staircase as per plans attached.

We believe the removal of the existing U-shaped structure will be damaging to the waterfront area and do not want to disturb the bank any further, the U-shaped structure could be left in place and backfilled allowing the stairs to be attached & for structure safety. It will appear to match the many retaining walls around the lake.

We have included the site plan, landscaping plan and stair details for your review.

**STOP ORDER*****Municipal Government Act, Section 645***

October 31, 2022

☐ Registered Mail☒ E-Mail:**Attention: Sorento Custom Homes Ltd.**

Dear Sorento Custom Homes Ltd.:

Re: Unauthorized Boathouse/Escarpment Development**Plan 4486AX, Block 3, Lot 4&5****83 Birchcliff Road, Summer Village of Birchcliff**

In my capacity as the Development Authority for the Summer Village of Birchcliff (the "Municipality"), I am hereby issuing this Stop Order pursuant to section 645 of the *Municipal Government Act* with respect to the lands legally described as:

PLAN 4486AX

BLOCK THREE (3)

LOT FOUR & FIVE (4&5)

EXCEPTING THEREOUT ALL MINES AND MINERALS.

(hereinafter referred to as the "Lands").

The Lands are in the R1 (Lakeshore Residential) District of the Municipality.

The Municipality's Land Use Bylaw No 170/13 (the "Land Use Bylaw") provides the following:

2.10(1)(a) Where the *Development Officer* finds that a *development* or *use* of land or *building* is not in accordance with Part 17 of the *Municipal Government Act*, the *Land Use Bylaw*, the Subdivision and Development Regulation, a *Development Permit* or subdivision approval, the *Development Officer* may, by notice in writing, order the *registered owner*, person in possession of the land of *buildings*, or the person responsible for the contravention or all of any of them to:

{B4903961.DOCX;1}

E-mail: information@sylvansummervillages.ca Website: www.sylvansummervillages.ca



Summer Villages Administration Office
 #2 Erickson Drive
 Sylvan Lake, AB T4S 1P5
 Ph: 887-2822

- (i) Stop the development or use of land or building in whole or in part as directed by the notice....

1(1)(b)(i)(ii) An *accessory building* on a *parcel* abutting Sylvan Lake or a *reserve parcel* abutting Sylvan Lake shall be situated so that:

- (i) It is located within the minimum *rear yard* of any *parcel*;
- (ii) It is not closer to the *front parcel boundary* and the top of any *escarpment* area or high water mark, as determined by the *Development Authority*, than the front wall of the *main building* or 15 m (49.21 ft.) whichever is the least.

2.2 All *development* undertaken in the *municipality* requires an approved *Development Permit* prior to commencement

1.3 “development” means:

- (a) An excavation or stockpile and the creation of either of them; or
- (b) A *building* or an addition to, or replacement or repair of a *building* and the construction or placing in, on, over or under land of any of them; or
- (c) A change of *use* of land or a *building* or an act done in relation to land or a *building* that results in or is likely to result in a change in the *use* of the land or *building*; or
- (d) A change in the intensity of use of land or a building or an act done in relation to land or a building that results in or is likely to result in a change in the intensity of use of the land or building”.....

The *Municipal Government Act* provides the following:

645(1) Despite section 545, if a development authority finds that a development, land use or use of a building is not in accordance with

- (a) this Part or a land use bylaw or regulations under this Part, or
- (b) a development permit or subdivision approval, the development authority may act under subsection (2).

(2) If subsection (1) applies, the development authority may, by written notice, order the owner, the person in possession of the land or building or the person responsible for the contravention, or any or all of them, to

- (a) stop the development or use of the land or building in whole or in part as directed by the notice,
- (b) demolish, remove or replace the development, or
- (c) carry out any other actions required by the notice so that the development or use of the land or building complies with this Part, the land use bylaw or regulations under this Part, a development permit or a subdivision approval, within the time set out in the notice.



(2.1) A notice referred to in subsection (2) must specify the date on which the order was made, must contain any other information required by the regulations and must be given or sent to the person or persons referred to in subsection (2) on the same day the decision is made.

(3) A person who receives a notice referred to in subsection (2) may appeal to the subdivision and development appeal board in accordance with section 685.

646(1) If a person fails or refuses to comply with an order directed to the person under section 645 or an order of a subdivision and development appeal board under section 687, the municipality may, in accordance with section 542, enter on the land or building and take any action necessary to carry out the order.

(2) A municipality may register a caveat under the *Land Titles Act* in respect of an order referred to in subsection (1) against the certificate of title for the land that is the subject of the order.

(3) If a municipality registers a caveat under subsection (2), the municipality must discharge the caveat when the order has been complied with.

On August 3, 2021, the Subdivision and Development Appeal Board upheld the decision of the Municipal Planning Commission to refuse to issue a development permit for escarpment work and boathouse repairs on the Lands. Although the boathouse on the Lands was not in compliance with Part 3, section 1 of the Land Use Bylaw, the boathouse was allowed to remain as a non-conforming building (the "Boathouse"). However, as a non-conforming building, the Boathouse cannot be enlarged, added to, rebuilt, or structurally altered pursuant to section 643(2) of the *Municipal Government Act* which provides:

A non-conforming building may continue to be used but the building may not be enlarged, added to, rebuilt or structurally altered except

- (a) To make it a non-conforming building,
 - (b) For routine maintenance of the building, if the development authority considers it necessary, or
 - (c) In accordance with a Land Use Bylaw that provides minor variance powers to the development authority for the purpose of this section.
- (6) If a non-conforming building is damaged or destroyed to the extent of more than 75% of the value of the building above its foundation, the building may not be repaired or rebuilt except in accordance with the Land Use Bylaw.

On October 21, 2021, the development authority issued a Development Permit #211294 (the "Development Permit") for the construction of lakeside stairs on the Lands with the following specific condition:



Summer Villages Administration Office
 #2 Erickson Drive
 Sylvan Lake, AB T4S 1P5
 Ph: 887-2822

Condition #10: There shall be no structural alteration to the existing boathouse.

In September 2022, Dan Daneault, Construction Manager of Sorento Custom Homes Ltd., came to the Summer Village office to seek clarification from me as to what was approved in the Development Permit. I noted that the Boathouse could not be altered pursuant to section 643(5) of the *Municipal Government Act* and Condition #10 of the Development Permit. Dan Daneault confirmed their understanding and advised he would send some photographs to me to show the intended Boathouse repairs. No photos or further communication was received.

On October 25, 2022, I was conducting a site inspection on an adjacent property to the Lands and found that the Boathouse had been disassembled, removed and was being re-constructed with a new foundation.

On October 28, 2022, Tanner Evans, Chief Administrative Officer for the Summer Village of Birchcliff, spoke to Mark Macleod of Sorento Custom Homes Ltd via email and on the phone. It was explained that the work being done on the Boathouse was in contravention of the Land Use Bylaw, and that a Stop Order would be issued. Upon a visual inspection of the property on October 28, 2022, after this conversation, it was found that new concrete walls of the Boathouse had been constructed.

Based on my review of the Development Permit, the Land Use Bylaw and the *Municipal Government Act*, I have determined that Condition #10 of the Development Permit has been breached. Specifically, the removal and rebuilding of the Boathouse is a structural alteration which is contrary to Condition #10 of the Development Permit. Furthermore, the structural alteration of the Boathouse means the Boathouse is no longer a non-conforming building pursuant to section 543 of the *Municipal Government Act*. The structural alterations mean the Boathouse is no longer a protected non-conforming building and is therefore in breach of Part 3, section 1 of the Land Use Bylaw which does not allow accessory buildings, like the Boathouse, in the front yard of these Lands. In addition, the alterations to the Boathouse appear to have resulted in significant bank alterations and the Municipality will require a geotechnical report to confirm the Lands and the dwelling on the Lands are safe.

Accordingly, you are hereby ordered to do the following:

- (1) Immediately stop all development on the Lands, including, but not limited to the removal, rebuilding, alteration, maintenance and construction of the Boathouse, the lakeside stairs and the dwelling on the Lands;
- (2) By no later than February 15, 2023, obtain a signed and stamped geotechnical report from a qualified engineer which outlines the geotechnical and structural steps that must be undertaken to stabilize the bank and the Lands given the unauthorized alterations to the

**Summer Villages Administration Office**

#2 Erickson Drive
Sylvan Lake, AB T4S 1P5
Ph: 887-2822

Boathouse and the required removal of the Boathouse (the "Geotechnical Report"), and provide a copy of the Geotechnical Report to the Municipality;

- (3) By no later than March 15, 2023, submit a complete development permit application to the Municipality to undertake any work outlined in the Geotechnical Report as necessary to stabilize the bank and the Lands;
- (4) Upon issuance of a development permit (whether upon application or on appeal), complete the work outlined in the development permit within the timeline set in the development permit.

You are hereby advised that you have the right to appeal this Order to the Subdivision and Development Appeal Board. If you wish to exercise this right, written notice of an appeal along with the appeal fee must be received by the Clerk of the Subdivision and Development Appeal Board within 21 days of the date of this Stop Order. The address for filing an appeal is:

Clerk, Subdivision and Development Appeal Board
Summer Village Administration Office
#2 Erickson Drive,
Sylvan Lake, AB T4S 1P5

Please be advised that the Municipality has the authority to enter onto the lands in accordance with Sections 542 and 646 of the *Municipal Government Act*, in the event that this Stop Order is not complied with within the time limit provided, to enter onto the Lands in accordance with Section 542 of the *Municipal Government Act* to take whatsoever actions are determined by the Municipality to bring the Lands into compliance, and may bring an Application in the Court of King's Bench of Alberta pursuant to Section 554 of the *Municipal Government Act* seeking a Permanent Injunction or other Orders necessary to authorize the proposed actions of the Municipality to rectify the contravention and to prohibit its reoccurrence.

Further, the Municipality has the authority to add the costs and expenses for carrying out this Stop Order to the tax roll for the Lands pursuant to Section 553(1)(h.1) of the *Municipal Government Act*.

Sincerely,

SUMMER VILLAGE OF BIRCHCLIFF

Kara Hubbard
Development Authority


SmithDow

Foundation and Geotechnical Engineering
Soil Investigation and Site Assessment
Slope Stability Reports
Environmental Audits
Material Testing: Soil, Asphalt, and Concrete

December 6, 2022

Sorento Custom Homes
Red Deer, Alberta

File #: 83 Birchcliff Road

Attn: Mark Macleod

Re: Proposed Site Work
83 Birchcliff Road
Summer Village of Birchcliff, Alberta

This letter is to outline the suggested site work required to prevent erosion and to maintain stability of the vertical bank near the toe of the slope if the u-shaped concrete structure and screw pile foundation are removed. The existing house foundation and proposed residential structure currently built is deemed stable with or without the u-shaped detached concrete structure. Below is our list of recommendation for this site to minimize slope toe erosion and to maintain minimum slope safety factor of 1.5.

- 1) After removal of the existing u-shaped structure and screw pile foundation, the specific plan is to extend the slope from the vertical slope cut area nearby to generally match the surrounding slope angle. The u-shaped building area subgrade soil where the screw piles are extracted must be properly re-compacted to a minimum of 92% Standard Proctor Maximum Dry Density (S.P.M.D.D).

Once tested for compaction and approved, any added soil to extend the slope from the vertical cut slope should be brought to grade in lifts between 250 to 300 millimeters. It should be moderately compacted to a minimum 92% (S.P.M.D.D). Compaction tests should be conducted during backfilling to verify that the minimum compacted effort has been achieved. The extended slope in that area should be properly graded as it is brought up after backfill and compaction operations to generally match the surrounding slope conditions (similar slope angle).

- 2) Any added compacted soil to extend the slope near the vertical cut slope will increase the slope factor of safety to at least 1.625, exceeding the minimum factor of safety of 1.5.

- 3) The newly constructed house foundation exposed to the winter elements should be properly insulated as a preventive measure to reduce the cold climate acting on the soil. The residential basement concrete slab and footing pad foundation soil should be checked for frost prior to placement of the concrete slab. Likely, the shallow footing pads are resting on frozen foundation soil at present and they will need to be reconstructed on unfrozen native soil.

Sincerely,

Smith Dow and Associates Ltd. (Red Deer)

Philip Kwong
Philip Kwong (P.Eng.)



DATE:	REVISION:

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83 BIRCHCLIFF RD
BIRCHCLIFF, AB

LOT:
BLOCK:
PLAN:

MAIN:
UPPER:
BASEMENT:
TOTAL:
GARAGE:
VERANDA:
REAR DECK:

CLIENT:

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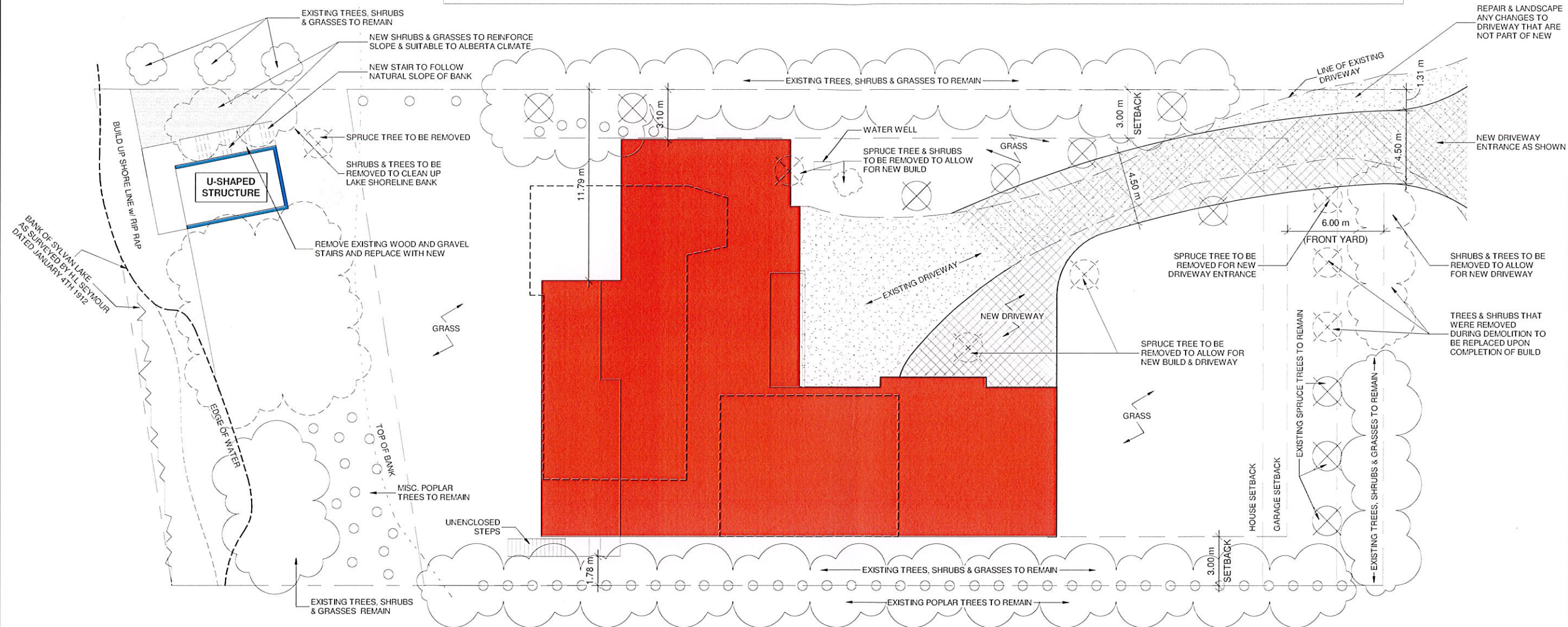
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PAGE: 2 OF: 2

ADDITIONAL LANDSCAPING NOTES:

- 4 SPRUCE TREES TO BE REMOVED FOR NEW HOUSE & DRIVEWAY RECONFIGURATION
- ALL POPLAR TREES TO REMAIN UNLESS IN NEW RETAINING WALL AREA
- ALL SHRUBS, MISC. TREES & GRASSES TO REMAIN EXCEPT FOR IN AREAS OF DRIVEWAY RECONFIGURATION & RETAINING WALL AREAS
- CUSTOMER WILL REPLACE 10 TREES AND 30 SHRUBS AFTER NEW HOUSE & RETAINING WALL IS COMPLETE



LEGEND

- EXISTING DWELLING
- NEW DWELLING
- EXISTING U-SHAPED STRUCTURE

LANDSCAPE LEGEND

- EXISTING SPRUCE TREES
- EXISTING SPRUCE TREES TO BE REMOVED
- EXISTING TREES, SHRUBS & GRASSES TO REMAIN
- EXISTING TREES, SHRUBS & GRASSES TO BE REMOVED
- MISC. POPLAR TREES TO REMAIN

SITE COVERAGE:

5,335 sq.ft. (HOUSE)
2,932.65 sq.ft. (DRIVEWAY)
750 sq.ft. (U-SHAPED STRUCTURE - incl. stairs & dock)
9,019.65 sq.ft. (TOTAL COVERAGE)
25,495.25 sq.ft. (TOTAL LOT)
35.37% (SITE COVERAGE)

****R1 ZONING - LAKESHORE RESIDENTIAL DISTRICT**

(Maximum Parcel Coverage: Fifty (50) percent, other fifty (50) percent shall remain as is or contain native grasses, trees, shrubs, or ornamental plantings, satisfactory to the Development Authority)



2 SITE PLAN - LANDSCAPE
3/64" = 1'-0"

#106, 179 CLEARVIEW DR.
RED DEER COUNTY
T4E 0A1
(403) 352.5222

DATE:	REVISION:

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83 BIRCHCLIFF RD
BIRCHCLIFF, AB

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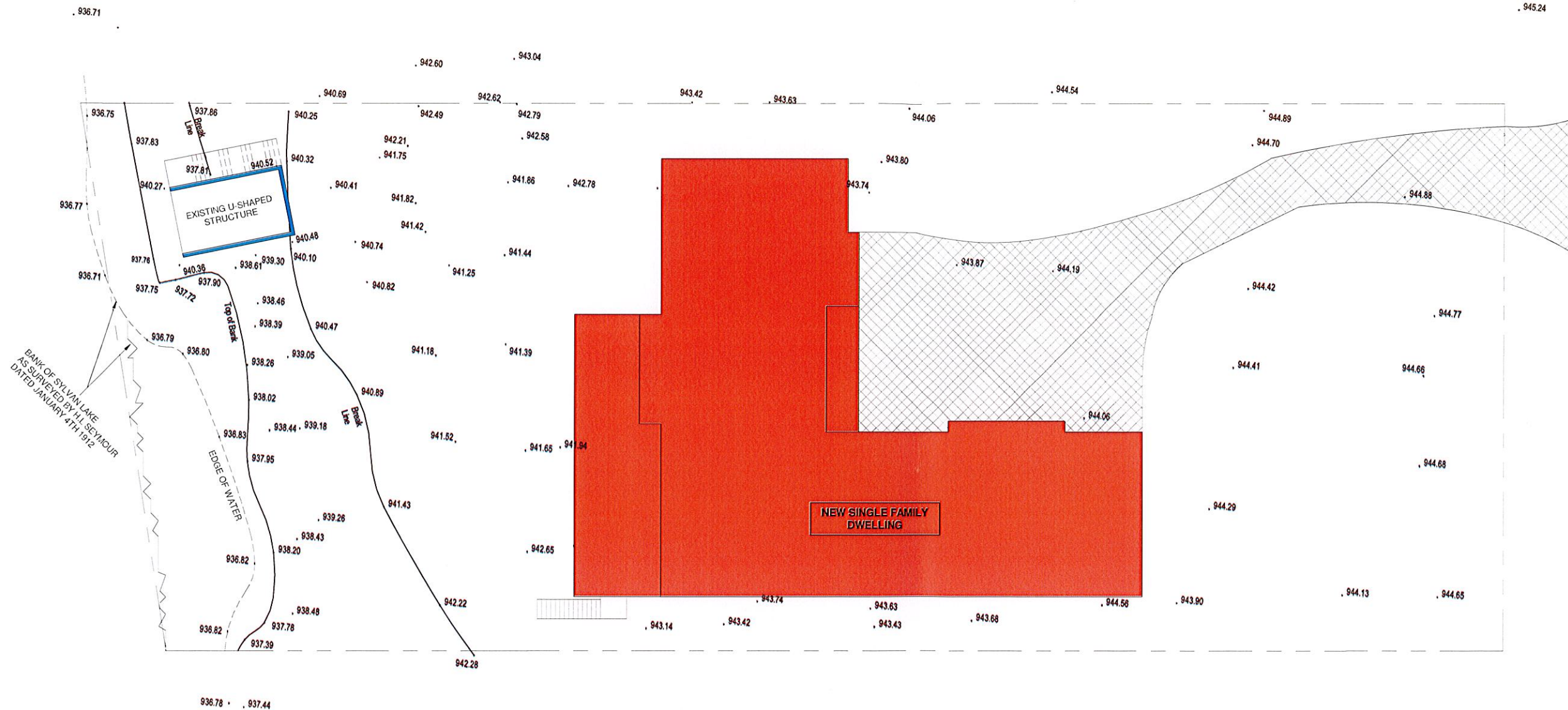
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3 GRADE PLAN
3/64" = 1'-0"



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83 BIRCHCLIFF RD

BIRCHCLIFF, AB

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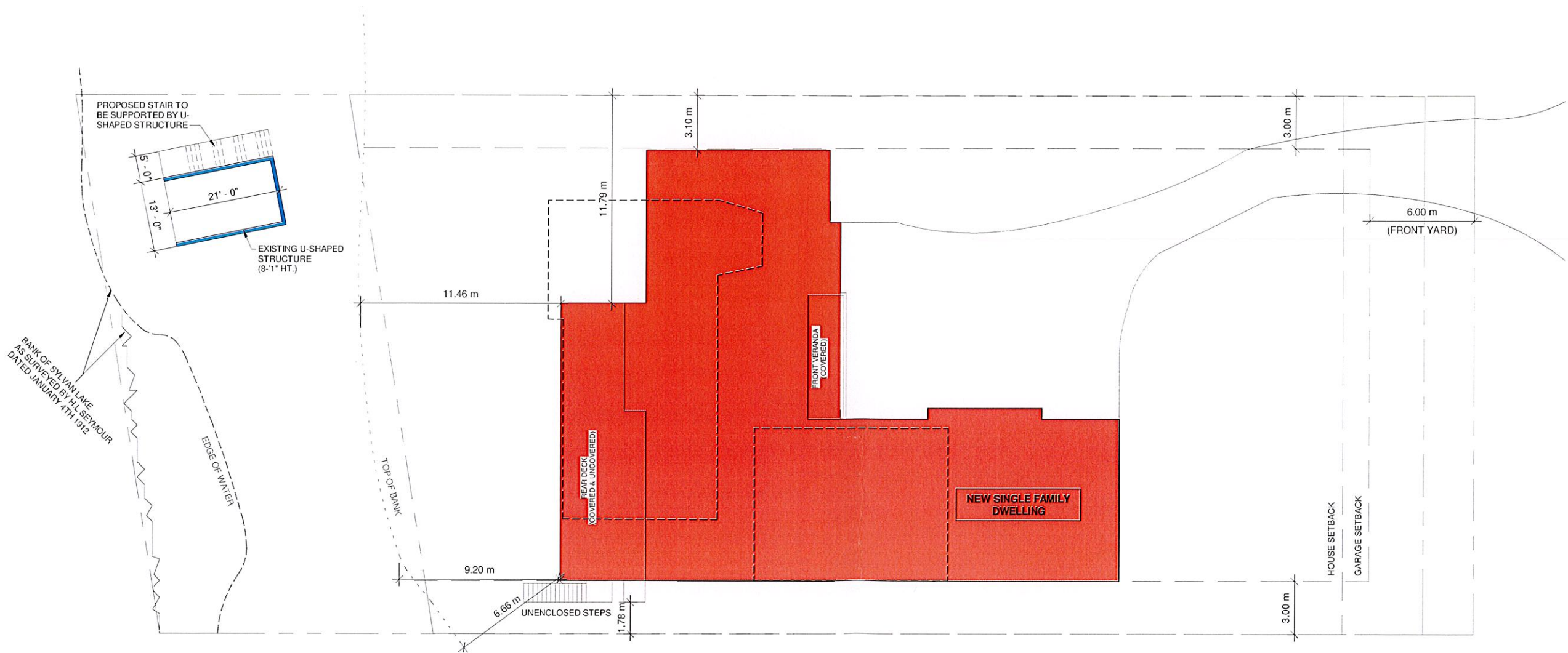
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83 BIRCHCLIFF RD

BIRCHCLIFF, AB

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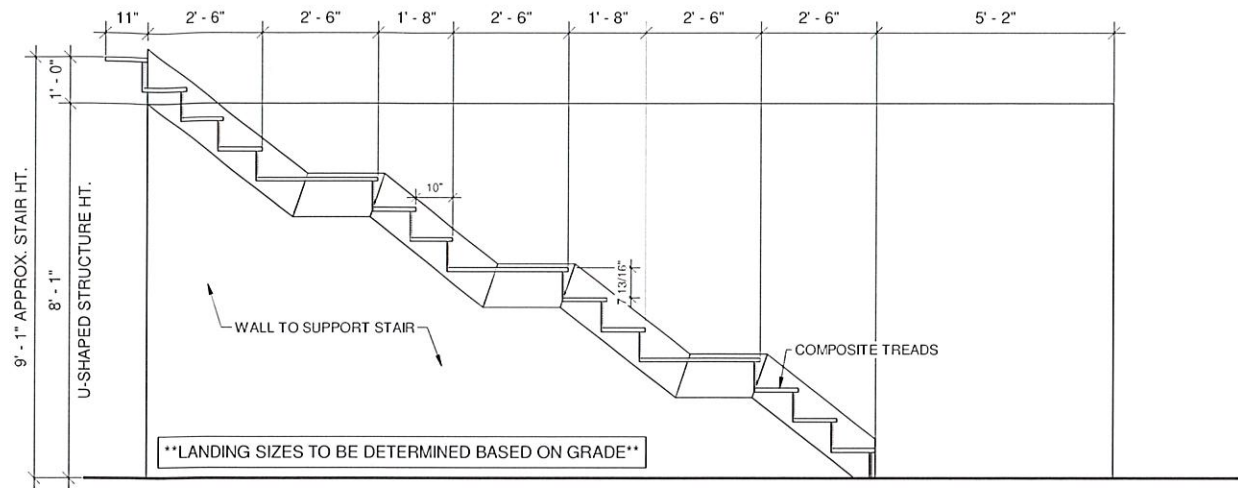
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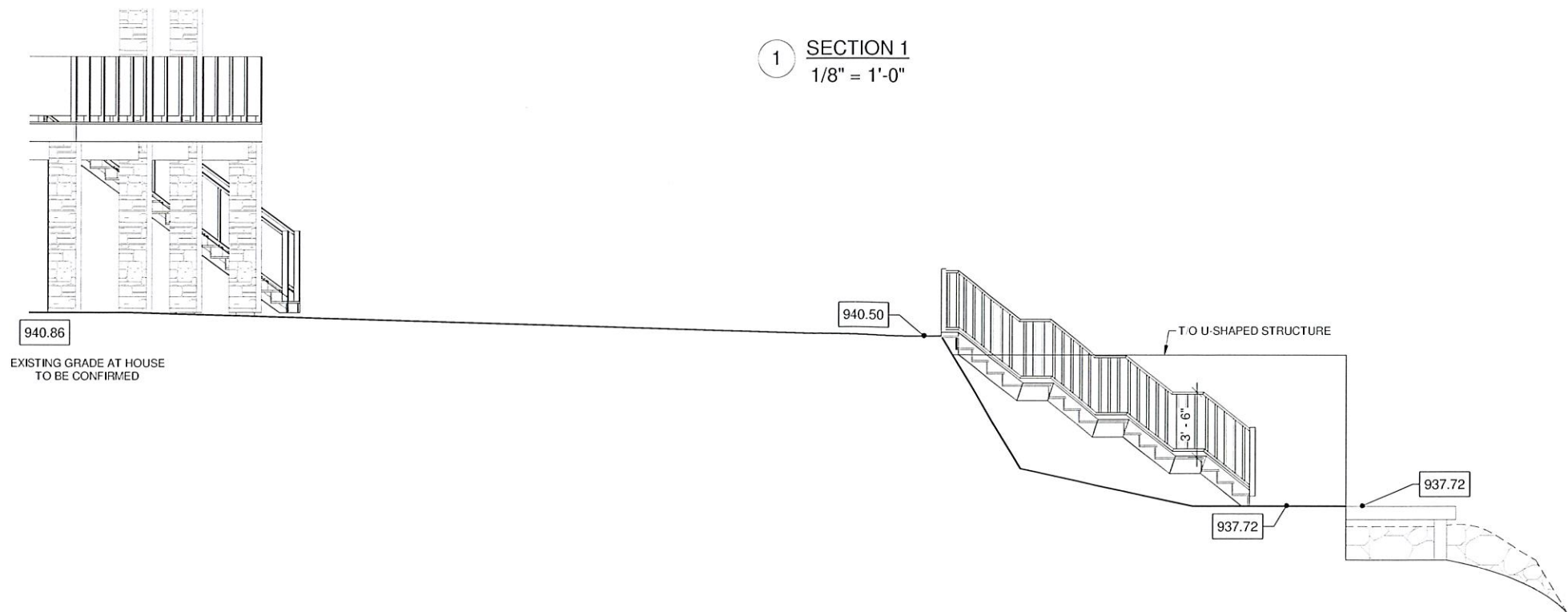
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2

STAIR SECTION

1/4" = 1'-0"



1

SECTION 1

1/8" = 1'-0"





C-1

Jan 30, 2023 at 11:22:58 AM
83 Birchcliff Rd
Birchcliff AB T4S 1R6
Canada





C-1

Jan 30, 2023 at 11:22:43 AM
83 Birchcliff Rd
Birchcliff AB T4S 1R6
Canada





C-1

Jan 30, 2023 at 11:21:45 AM

83 Birchcliff Rd

Birchcliff AB T4S 1R6

Canada

