

**SUMMER VILLAGE OF BIRCHCLIFF  
SUBDIVISION AND DEVELOPMENT APPEAL BOARD  
FEBRUARY 13, 2025  
RECORD OF HEARING AND DECISION**

<b>PRESENT</b>	Chair:	Roger Dufresne
	Member-at-Large:	Karen McCaffery
	Member-at-Large:	Jim Freake
	Development Officer:	Kara Hubbard
	SDAB Counsel:	Janice Agrios, K.C. via Zoom Brian Marback via Zoom
	Recording Secretary:	Teri Musseau
	Appellant(s):	Marj Brewin Dan Brewin Bev Jones
	Applicant(s):	Devon Bellavance Katrina Bellavance Brian Engel, Lakeview Contracting
	Gallery:	Connon Brewin Lorne Therriault

**CALL TO ORDER** Chair Dufresne called the hearing to order at 10:00 a.m. Introductions of the Board members, appellants, applicants, and staff were made.

**PURPOSE OF HEARING** An appeal was received on January 20, 2025, appealing the issuance of a development permit for escarpment stabilization by the Municipal Planning Commission on December 12, 2024, for the property located at 113 Birchcliff Road, in the Summer Village of Birchcliff.

**PRELIMINARY ISSUES** There were no preliminary issues or questions of jurisdiction presented by either the appellant or the development authority.

**OBJECTIONS TO MEMBERS OF THE APPEAL BOARD** Members of the Subdivision and Development Appeal Board were asked if they felt they should disqualify themselves from hearing the appeal before them and no one felt they needed to disqualify themselves.

The members of the Subdivision and Development Appeal Board were asked if they had sought, been given or reviewed any evidence prior to the hearing.

Other than the agenda package that was sent to members a few days prior to the hearing, none of the members had sought, been given or reviewed any evidence prior to the hearing.

The Appellants were asked if they had any objection to any of the members of the Subdivision and Development Appeal Board present from hearing the case. They had no objection to any of the members hearing the case.

**HEARING PROCEDURES** Chair Dufresne reviewed the procedures to be followed for the hearing. No questions or concerns were raised by anyone with the process as outlined.

**DEVELOPMENT  
PRESENTATION**

Kara Hubbard, Development Officer provided the Subdivision and Development Appeal Board with the background of the appeal.

The permit in question allows for modification of the escarpment for replanting after unauthorized vegetation removal. Applicants were required to apply for remediation as it is not an option for the property owners to leave the escarpment area as is current. A development permit application was required to be approved by the Municipal Planning Commission, as a variance was required to complete any work on the escarpment area.

Upon discovering the work had taken place, a stop order had been issued which required a report from an engineer stating the dwelling was still safe to proceed. A geotechnical report was required by the Development Officer to accompany the application to remediate the escarpment area. Verification of the escarpment stability was essential since the removal of vegetation could impact the stability of the escarpment.

The geotechnical report provided addressed the factors of safety and included the developers proposed plan to revegetate to mitigate erosion and bank failure. The report stated, "*the removal of vegetation will increase surface erosion and can reduce the stability of the slope in the future.*" Proper erosion measures needed to be taken to prevent erosion and maintain the slope stability. It further went on to discuss the factor of safety which indicates whether unstable slopes are found at the time of investigation. As indicated, the factors of safety that were recorded exceeded the minimum required of a stable slope. The report continued by providing recommendations on how to maintain the factor of safety including the proposal of the developer to revegetate, add erosion matting, and complete remediation. This information was provided to the Municipal Planning Commission at their meeting.

Generally, if lakeside escarpment development is going to take place, it is done in concurrence with the dwelling, however, in this scenario, plans for future potential stair access had not been finalized but the applicants wished to proceed with the construction of the dwelling. In Ms. Hubbard's opinion, the dwelling development did not require any alterations or plans to the escarpment area.

Ms. Hubbard was aware of the concerns of the adjacent landowners regarding what had taken place to the escarpment and how this might impact the integrity of the escarpment in the future. It was thought that through a remediation application, concerns would be alleviated. As a visual guide for the adjacent landowners, the applicant provided a sketch showing the gradual slope away from abutting properties.

Ms. Hubbard noted, during the application process, the impact on adjacent landowners was considered as part of her review.

In the absence of dwelling development permit issued documents, there is no overall site plan for the property that showed setbacks and identified the escarpment line. Ms. Hubbard felt confident in her understanding of the proposed escarpment change and imposed a condition for requirement of verification upon commencement of development through a final real property report that indicated the grades, and line of escarpment.

Ms. Hubbard understands how the appellants might find the application difficult to understand without the provided measurements shown on a site plan. The Municipal Planning Commission added a condition in the approved development permit for information to be verified via a real property report.

**APPELLANT  
PRESENTATION**

Mr. Brewin spoke on behalf of Marj Brewin.

Mr. Brewin provided the history of the family property noting it has been in his family for over 80 years. The Brewins are concerned with the clearing that has occurred on the neighboring property and want to ensure steps are taken to prevent erosion of the escarpment which could affect future structures and create future problems.

The clearing of the escarpment has already occurred. The remediation application is incomplete and the information provided does not show the end goal. The reference points listed in the application will move once construction begins and there is no timing on how construction will occur in the application permit. It is important to protect the bank at the bottom by the water. The application for development is vague and allows for the project to be self-directed. The application does not provide fixed reference points and lacks information.

Over time the appellants have witnessed bank erosion from water and ice smashing into the bank and washing it away. There is tremendous pressure on the bank from the lake which is not always as low as it was this past summer. The proposed 2:1 slope of the escarpment as it approaches the 111 Birchcliff Road property will result in their property being artificially higher than the neighboring property. This will put additional pressure on the bank, and they question how run off will be diverted from their property. Their lot will inevitably drain onto 113 Birchcliff Road and they are concerned with liability going forward as this practice is in contravention of the requirements for drainage in the Land Use Bylaw.

The silt fence and keyway cut will weaken the escarpment. If the bank is cut away and replaced with different material the lip of the escarpment will be weakened. The application does not address how the 200 cubic years of material will be removed from the site. Further information and/or reports need to be provided to include the impact to surrounding properties and the environment. Approval of the development permit will set a bad precedent for future developments.

**QUESTIONS  
FROM BOARD**

Questions were asked from the Board members to the Appellants and the Summer Village for clarity.

**APPLICANT  
PRESENTATION**

Mrs. Bellavance addressed the Board.

She noted they want to be good neighbours and gave background on how they came to purchase the property. Their priority is for the bank to be safe and stable while providing access to the lake.

Mrs. Bellavance explained that the removal of the vegetation from the escarpment was not intentional and happened due to a miscommunication between themselves and their contractor. The

contractor was provided with plans. On the plans a red line was drawn indicating the escarpment area. Trees the Bellavance's wished to keep in the front yard were marked. Nothing was marked on the plans for the escarpment as there were no trees on the escarpment.

Upon discovering the vegetation was removed, Lakeview Contracting was contacted about remediation options. Since removal of the vegetation from the escarpment there has been no movement to the escarpment. A required geotechnical report by the summer village was obtained from SmithDow with recommendations for the remediation of the slope. The remediation included coco matting and pole planting methods to re-vegetate the slope, mitigate erosion, and bank failure. The plan included a re-graded 30-degree angle slope with a layer of topsoil, boreal grass seed and the installation of an erosion control matting. Native plantings would be planted across the matting (estimated 250 plantings) with a silt fence along the top of the escarpment area.

The proposed development is intended to stabilize the escarpment. The Bellavance's noted they had nothing to gain by removing the vegetation and would actually lose yard space. It is their intention to install stairs in the future but that is not their concern at present and is not part of this application.

**QUESTIONS  
FROM BOARD**

Questions were asked from the Board members to the Applicants and the Summer Village for clarity.

**IN FAVOUR OF  
THE APPEAL**

A written submission was received from Joanne Bjornson in support of the appeal.

No one spoke in favour of the appeal.

**AGAINST THE  
APPEAL**

There were no written submissions received in opposition to the appeal.

No one spoke in opposition to the appeal.

**DEVELOPMENT  
OFFICER  
SUMMARY**

Ms. Hubbard had nothing further to add as she believed all her information had already been provided.

**SUMMARY  
FROM  
APPLICANT**

Mr. Bellevance noted the drainage plan was provided with the application for the residence. The toe of the escarpment is part of the discussion for remediation and will be included in the application to Alberta Environment. The remediation plan as a whole is not something they wanted to do and is just another huge hiccup that must be dealt with. The proposed work is what was suggested by the engineers and all materials are to engineer standards.

Mr. Engel added that he has done other projects in other summer villages for the applicants and can speak to their character. He believes consultation with the neighbours would be beneficial. Everything proposed to be undertaken is based on the engineer's recommendations, which is why they hired a professional. There will

be minimal disturbance to the escarpment.

**SUMMARY  
FROM  
APPELLANT**

Mr. Brewin stated they do not want to impede their neighbours from enjoying their property. The 2:1 slope may be wider than the actual site. The Smith Dow report states the safety factor of the bank in its current state has been met. The plan needs to deal with the base of the escarpment. The engineering report from SmithDow refers to the safety factor being 1.5, which is the current state. Before the development permit is granted, a complete application needs to be provided by the applicants

**ADDITIONAL  
MATTERS**

Brian Engel from Lakeview Contracting stated everything under the red line in the drawings is sand stone that has been eroded. The engineer feels the bank is stable in its current condition. There is nothing more they can do so it will remain as current. In the future, the shoreline will be armored with riprap to stop erosion.

**OPPORTUNITY  
FOR A FAIR  
HEARING**

Chair Dufresne asked Mr. Brewin & Mrs. Brewin if they felt they had an opportunity to state their case. They acknowledged they had.

Chair Dufresne asked if they felt the Board had all the information it needed to make its decision. The Board acknowledged they had.

**HEARING  
CLOSED**

Chair Dufresne thanked everyone for their attendance and respectful presentations. A written decision of the Board will be made within 15 days. The hearing was declared closed at 11:16 a.m. No further submissions will be entertained by the board.

**DECISION**

The appeal is allowed in part. The Board approves development permit, but varies the conditions as follows:

(a) Condition 7 is replaced with the following:

*A completions deposit of \$5,000.00 or 150% of the estimated cost to complete the development, whichever is greater, shall be required to ensure development is completed in accordance with the approved development permit.*

(b) Condition 9 is replaced with the following:

*Land located below the top of the bank/land with slope areas of gradient 15% or more shall be retained in a natural state with all areas to remain as-is. There shall be no regrading of the escarpment area.*

(c) Condition 11 is removed.

(d) Condition 12 is removed.

(e) Condition 14 is removed.

(f) Condition 15 is replaced with the following:

*At all times, proper erosion measures shall be undertaken, under the supervision of and as recommended by the*

*geotechnical engineer, to the satisfaction of the Development Officer.*

(g) Condition 17 is removed.

In all other respects, the conditions set out in the development permit approved by the MPC shall remain in effect.

## REASONS

1. The stop order issued to the Applicant required them to obtain an engineering report and to apply for a development permit for escarpment stabilization following the removal of vegetation from the escarpment.
2. The SmithDow report defines a long-term stable slope as requiring a calculated safety factor of at least 1.5 for structures at or near the slope. The slope stability assessments at this property, per the SmithDow report, indicate that the minimum safety factor of 1.5 is exceeded in all samples.
3. As such, the long-term stability of the escarpment can be maintained in its present condition, provided that it is revegetated, and adequate erosion control measures are implemented.

4. Section 6.3.4 of the MDP provides that:

While recognizing that remedial actions may be necessary from time to time, the Summer Village still strongly desires that banks abutting the shoreline remain as natural as possible to retain natural ecosystems....

5. Section 4(1)(5) of the LUB provides that:

Landscaping, Environmental Conservation and Development

The following standard of landscaping shall be required for all areas of a parcel not covered by buildings, driveways, storage and display areas:

- (a) The conservation of existing trees and/or shrubs to the maximum extent possible;
  - (b) The retention, in their natural state, of: ...
    - (iv) Escarpment or slope areas with a gradient of fifteen (15) percent or greater; and
    - (v) Land located below the top of the bank of any water body or water course.
6. Section 4(5)(2)(a) of the LUB provides that:

When remedial actions are required on the escarpment, an engineered report shall be required to provide evidence that such actions are necessary. Remedial actions must preserve the natural surroundings while improving bank stability. (emphasis added)

7. The stated goals and objectives of the MDP and the LUB are to preserve the natural surroundings and retain escarpment areas in their natural state to the extent possible. Remedial actions may be approved where necessary.

8. Based on the evidence, the Board is not convinced that regrading of the escarpment is necessary. The report prepared by SmithDow considered the regrading and proposed stair design, which is not part of this application. Remediation of the vegetation removal does not require alternations to the grade of the escarpment.
9. Further, the Board is of the view that there is insufficient information in the application and the development permit approved by the MPC to support granting a variance to allow for regrading of the escarpment area. The Board does not have sufficient information to determine whether regrading of the escarpment area would unduly interfere with the amenities of the neighbourhood, or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land. In particular, the information relating to the proposed development does not adequately address the impacts on the adjacent properties.

**DATED AT THE TOWN OF SYLVAN LAKE THIS 13<sup>TH</sup> DAY OF  
FEBRUARY 2025.**

**THE SUMMER VILLAGE OF  
BIRCHCLIFF SUBDIVISION AND  
DEVELOPMENT APPEAL BOARD**

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**Roger Dufresne  
SDAB Chair**