



Steven C. Ferri*

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BY EMAIL (paul.demedeiros@ontario.ca)

November 7, 2024

Ontario Land Tribunal
655 Bay Street, Suite 1500
Toronto, ON M5G 1E5

Attn: Paul De Medeiros, Senior Planner

Dear Mr. De Medeiros,

RE: Request to Modify Conditions of Draft Plan Approval
Pursuant to Section 51(56.2) of the *Planning Act*
King's Bay Golf Club Limited
27 Stub Road, Kawartha Lakes, ON

We are the solicitors for King's Bay Golf Club Limited, ("**King's Bay**"), the owners of lands municipally known as 27 Stub Road, Kawartha Lakes, ON ("**Subject Lands**").

We write further to the Ontario Land Tribunal's ("**Tribunal**") Order dated July 4, 2024 ("**Order**") at paragraph 11, to request a two-day hearing event, the purpose of which is to hear a request from King's Bay for an amendment to Condition 73 of the approved Draft Plan of Subdivision pursuant to subsection 51(56.2) of the *Planning Act* and such other relief as counsel may advise.

Condition 73 reads as follows:

The Subdivision Agreement shall confirm that all Stormwater Management facilities have been sized to in all City of Kawartha Lakes, Kawartha Region Conservation Authority, and Ministry of the Environment, Conservation and Parks design elements/features in accordance with their standards and design criteria. At the time of detailed engineering design, should review of the Stormwater Management facility design show that the block has been undersized, the Subdivider shall revise the plan to increase the block size accordingly.



Background

Previous Appeal

King's Bay proposes to develop the Subject Lands with 46 single detached residential dwelling units, three open space blocks, and two open space/parkland blocks (the "**Proposed Development**").

To facilitate the Proposed Development, King's Bay submitted applications for an Official Plan Amendment ("**OPA**"), a Zoning By-law Amendment ("**ZBA**"), and a Draft Plan of Subdivision ("**DPS**") (collectively "**Applications**") to the City of Kawartha Lakes ("**City**") in December 2021.

On April 18, 2022, a Notice of Complete Application was issued by the City to King's Bay.

A statutory public meeting respecting the Applications was held on August 10, 2022.

On May 23, 2023, the Moving Party appealed the matter to the Ontario Land Tribunal pursuant to subsections 22(7), 34(11), and 51(34) of the *Planning Act*, for the failure of the City to make a decision within the requisite timeframe ("**Appeal**"). The City failed to send the appeal material to the Tribunal in the required timeframe and after over 70 days, and repeated follow up by King's Bay, the Tribunal received the appeal package. The Appeal was given the case number OLT-23-000815.

On July 4, 2024, the Tribunal issued the Order, approving a settlement between King's Bay and the City. Pursuant to the Order, the Tribunal allowed the appeals and amended the City's Official Plan and the Township of Mariposa By-law No. 94-07. The Tribunal also approved a Draft Plan of Subdivision dated December 20, 2021, subject to a number of conditions, and transferred the authority to clear the conditions of Draft Plan approval to the City, pursuant to section 51(56.1) of the Act. Further, the Order directs at paragraph 4 that:

"If there are any difficulties implementing any of the conditions of Draft Plan approval, or if any changes are required to be made to the Draft Plan, the Tribunal may be spoken to."

We write to the Tribunal as there are difficulties in implementing condition 73 of the Draft Plan approval.

Concept Plan and Lot Design

On November 15, 2023, the City was provided with a submission package of King's Bay's technical reports and drawings which informed both the City's position in the Appeal and the Tribunal's Order. This package contained the Conceptual Lot Layout (which was



requested by the City) dated October 12, 2023, which identified paired driveways at a separation distance that would require shared culverts (“**Concept Plan**”).

First Detailed Engineering Review

King’s Bay provided detailed engineering submissions on July 17, 2024.

On September 18, 2024, King’s Bay received the first detailed engineering review comments (“**First Review**”) from the City.

In the First Review, the City raised an issue pertaining to driveways culverts. At comment 30 (“**Comment 30**”), the City stated:

“Driveway culverts are not permitted to be shared (see Lots 3 & 4, 25 & 26, 42 & 43, etc.). Each driveway requires its own separate culvert to facilitate maintenance by the City.”

Despite the years that have elapsed since the submission of the Application, the review undertaken by the City during the hearing process, including in its preparation for and submission of witness statements, the City has never raised its concerns with the culvert placement and design inherent in Comment 30 (“**Culvert Concern**”) prior to the First Review - some 11 months from the date of provision of the Concept Plan.

King’s Bay provided clarification on its position to the City on September 24, 2024, and has had further communication(s) with the City since that date.

King’s Bay is now given to understand it is the City’s position that the current driveway and culvert configuration is in violation of Sections 11.3 and 11.5 of the City’s Infrastructure Guidelines - 2024 Roads (“**Guidelines**”).

King’s Bay, its technical consultants, and legal counsel, have all reviewed the Guidelines, including Sections 11.3 and 11.5. King’s Bay finds that nothing in the Guidelines supports the Culvert Concern nor explicitly states the purported requirement. In our respectful submission, Sections 11.3 and 11.5 of the Guidelines have no bearing on culvert location or stormwater management whatsoever. Rather, those sections address driveway design; the City has not indicated any specific concerns with driveway design in the First Review.

On September 27, 2024, King’s Bay provided the City with correspondence from Cosimo Costa at SCS Consulting Group Ltd., dated September 24, 2024, Ravi Patel of RN Design, dated September 25, 2024, and Mark Schollen of Schollen & Company Inc. These correspondences explained King’s Bay’s technical position as to the Culvert Concern. These letters are attached hereto as **Attachment “A”**.

Following this exchange of correspondence, representatives of King’s Bay and the City



met to discuss Comment 30 on October 10, 2024 (“**Meeting**”) and were unable to resolve the matter at that time.

King’s Bay then provided its legal position on the First Review to the City in a letter from its solicitors dated October 13, 2024. This letter is attached hereto as **Attachment “B”**.

Subsequent Communications

On October 16, 2024, King’s Bay received a response from Christina Sisson, Manager of Development Engineering at the City, stating that staff had been “directed to provide the following response” that “the proposal for shared culverts is not acceptable to the City”. Individual culverts are required for future operations and maintenance.”

On October 23, 2024, King’s Bay responded to Ms. Sisson’s email, reiterating its position, and requesting further technical details pertaining to the City’s concerns and advising that if the parties fail to address the matter, King’s Bay may refer the matter back to the Tribunal. King’s Bay also provided evidence that shared culverts exist in the adjacent subdivision.

On October 31, 2024, King’s Bay followed up with the City requesting a response. Later that day, Robyn Carlson, City Solicitor for the City, provided King’s Bay with responses from the City’s Development Engineering and Public Works departments (“**Carlson Correspondence**”). In the respectful view of King’s Bay, the Carlson Correspondence in no way provided meaningful clarification as to the nature of the Culvert Concern, and did not support the City’s position on same. On November 6, 2024, King’s Bay provided a letter from Mr. Cosimo Costa responding to the Carlson Correspondence, attached hereto as **Attachment “C”**. Mr. Costa notes therein that in his professional opinion:

1. The current culvert design is a matter of safety and improved hydraulic conductivity;
2. The current culvert design increases the effectiveness of the City’s stormwater conveyance;
3. That the statement that the proposed entrances do not conform with the City’s design standards is false;
4. That he does not expect any issues preventing the effective flushing and hydro vac cleaning of the proposed culverts; and,
5. That by reducing the amount of culvert ends, the overall potential for freezing, is ultimately reduced.

As discussed at the Meeting, and as supported by the written submissions of King’s Bay, the design, siting, and location of the proposed culverts is typical, meets or exceeds all applicable industry standards and best practices, and is appropriate for the development. It is not only appropriate for the development, but the design also actually increases efficiency and reduces the maintenance costs of the culverts.



This matter is of pressing importance, as the lots of the Proposed Development are currently for sale to the public in the existing lot design, as supported by the OLT approved Draft Plan of Subdivision and Concept Plan.

We note that on October 2nd, King's Bay wrote to City to inform them that the sales and marketing program was being launched on October 12th and invited the Mayor, Ward Councillor and CAO to attend. A link to the marketing material, including the subdivision concept plan with the shared driveways was enclosed.

The following response was received from the City's CAO:

...this is the second invitation you have sent me to attend an event associated with your Kings Bay Project. As in the past and currently, Geranium is actively advancing civil litigation against the City, and myself (personally), among others.

While this frivolous and troublesome action remains, please refrain from contacting me regarding events and/or this development project.

Relief Sought

Given the City's current position, it is our view that Condition 73 lacks sufficient clarity to ensure that it is appropriately implemented.

King's Bay is requesting that a two-day hearing event be scheduled where the Tribunal will consider King Bay's request for an amendment pursuant to subsection 51(56.2) of the *Planning Act* to Condition 73 of the approved Draft Plan of Subdivision, and such other relief as counsel may advise, to render said condition sufficiently clear to enable its appropriate implementation and to provide a clear mechanism for when and how the Condition 73 may be cleared. This request made pursuant to paragraph 4 of the Tribunal's Order in OLT-23-000815 issued July 4, 2024.

Should the Tribunal provide a date for the hearing event, our client will work with the City to arrange for the exchange of materials before the hearing date.

Should any additional information or clarification be required, please do not hesitate to contact the undersigned.

Yours truly,
LOOPSTRA NIXON LLP

Per: Steven C. Ferri



ATTACHMENT "A"

[See attached.]

Mr. Victor Szeghalmi
Geranium Corporation
3190 Steeles Avenue East, Suite 300
Markham, Ontario L3R 1G9

Dear Mr. Szeghalmi:

**Re: City 1st Submission Comments - Comment 30 - Driveway Culverts
King's Bay Golf Course
City of Kawartha Lakes, Ontario**

This letter is intended to provide a more in-depth response to Comment 30 of the City's 1st submission comments on the engineering drawings dated September 18, 2024. Comment 30 reads as follows:

30. *Driveway culverts are not permitted to be shared (see Lots 3 & 4, 25 & 26, 42 & 43, etc.). Each driveway requires its own culvert to facilitate maintenance by the City.*

In response to this comment, we wish to acknowledge the following:

- ➔ Nowhere throughout the City's Design Criteria, namely the Road Infrastructure Guidelines and the Storm and Stormwater Infrastructure Guidelines, does it state that each driveway must have its own culvert, nor is a maximum culvert length provided;
- ➔ We do not agree that maintenance is an issue due to the additional length as this would be shorter than a culvert at a road intersection and can therefore be easily maintained;
- ➔ Hydraulically, fewer longer culverts are superior to a greater number of shorter culverts – essentially the road's stormwater conveyance system is more effective with fewer longer culverts;
- ➔ If the culvert is separated into two separate culverts, there will be a 2.5 m gap between paired driveways where there is insufficient clearance to apply embankments to address the grade difference to the culvert invert. As a result, a retaining wall or amour stone will be required to address the grade difference which will cause an unsafe condition due to the abrupt change in grade. Effectively, there will be a hole between driveways which is hazardous to vehicles and pedestrians.

If there are any further questions or comments regarding our response, please feel free to contact us.

Regards,

SCS Consulting Group Ltd.



Cosimo Costa, P. Eng.
ccosta@scsconsultinggroup.com

SUBDIVISION OF PART OF BLOCKS 107, 108 & ALL OF BLOCKS 111, 113
AND 114
SEP – 25 – 2024
Wednesday

Justification Report

SUBDIVISION OF PART OF BLOCKS 107, 108 & ALL OF BLOCKS 111, 113
AND 114

The city of Kawartha Lakes commented on separating the driveway culverts in the proposed subdivision.

Comment: Driveway culverts are not permitted to be shared to facilitate maintenance

Justification:

Driveway locations have been designed and located in accordance with the approved spatial allowances per the approved zoning by-law and therefore should not be restricted to unpair the driveways and should be allowed to pair the driveways as per the design. Therefore, due to the proximity of the driveways, a single shared culvert is recommended where the driveways are paired.

We believe that the proposed driveway locations adhere to the approved Zoning By-law for the proposed subdivision and are in respect of the overall zoning by-law requirement and adjacent properties.

Regards,
Ravi patel, Development Manager
905-738-3177
8395 Jane Street, Suite 202, Vaughan.



September 24, 2024



Mr. Victor Szeghalmi, C.E.T.
Senior Project Manager, Land Development
Geranium
3190 Steeles Avenue east, Suite 300,
Markham, Ontario, L3R 1G9

Dear Victor,

Re: King's Bay Golf Club Limited (Geranium Homes), 27 Stub Road,
City of Kawartha lakes
Detailed Engineering Design Comments – First Submission
SCI Project No. 2021051

Further to your request, Schollen & Company Inc. (SCI) has reviewed the Detailed Engineering comments as noted above, in the context of Landscape Architecture/Urban Design objectives. The majority of the comments do not have implications on the landscape/streetscape, however Stormwater Management – Comment 30 warrants a response from SCI, as follows:

This comment discourages the installation of shared driveway culverts, promoting the installation of individual culverts for each driveway. It is our opinion that individual culverts that are located in close proximity are undesirable from an urban design perspective because the adjacent ends create a deep depression between the driveways which accumulates debris and is difficult for homeowners to maintain free of accumulated debris including leaves and litter. In addition, these deep depressions are difficult for homeowners to mow, resulting a lack of maintenance and the eventual growth of herbaceous and woody vegetation that can obstruct flow over the long term. From a safety perspective, two adjacent culverts result in the creation of a short segment of swale that is not readily perceptible for a driver who is turning into, or reversing out of the driveway, which could result in the vehicle inadvertently entering the swale. This situation is exacerbated during the winter when drifting snow fills the hollow created by the swale, obscuring the deep depression between the culverts from the view of drivers and pedestrians. A culvert that is shared between two adjacent driveways which are in close proximity to each other eliminates the intermediary depression, resulting in an improved aesthetic and mitigating the safety concerns as cited above.

Should you require further information or have any questions or concerns, please do not hesitate to contact the undersigned.

Yours very truly,

SCHOLLEN & Company Inc.

A handwritten signature in blue ink, appearing to read 'Mark Schollen', is written over a faint, light blue circular stamp or watermark.

Mark Schollen, BLA, OALA, FCCLA
Principal



ATTACHMENT “B”

[See attached.]



Steven C. Ferri*

*Steven C. Ferri Professional Corporation

Email: sferri@LN.law

Tel: 416-748-4752

BY EMAIL (csisson@kawarthalakes.ca)

October 13, 2024

City of Kawartha Lakes
P.O. Box 9000, 26 Francis Street
Lindsay, ON, K9V 5R8

Attn: Christina Sisson

Dear Ms. Sisson,

RE: King's Bay Golf Club Limited
Detailed Engineering Design – First Submission, dated September 18,
2024 - City Comment #30

We are the solicitors for King's Bay Golf Club Limited ("**King's Bay**").

In December 2021, King's Bay submitted applications for Official Plan Amendment, Zoning By-law Amendment, and Draft Plan of Subdivision to the City of Kawartha Lakes (collectively, the "**Application**"). In support of the Application, King's Bay submitted voluminous materials to the City.

As you are aware, the Application was appealed to the Ontario Land Tribunal ("**Tribunal**") in case OLT-23-000815. Through that process, the parties reached a settlement, which was ultimately approved by the Tribunal in its decision dated July 4, 2024 ("**Settlement Decision**"). I note that the approved Draft Plan of Subdivision shows the size, location, and configuration of the lots.

On November 15, 2023, the City was provided with a submission package of King's Bay's technical reports and drawings which informed both the City's position in the hearing and the Tribunal's Settlement Decision.

This package contained the Conceptual Lot Layout (which was requested by the City) dated October 12, 2023, which identified paired driveways at a separation distance that would require shared culverts ("**Concept Plan**").



The City has therefore had knowledge of King's Bay's proposed lot design since at least November 2023.

On September 18, 2024, King's Bay received the first detailed engineering review ("**First Review**") from the City of Kawartha Lakes ("**City**").

In the First Review, the City raised an issue pertaining to driveways and culverts at Comment 30 ("**Comment 30**"). Comment 30 states:

"Driveway culverts are not permitted to be shared (see Lots 3 & 4, 25 & 26, 42 & 43, etc.). Each driveway requires its own separate culvert to facilitate maintenance by the City."

King's Bay provided clarification on its position to the City on September 24, 2024, and has had further communication with the City since that date. King's Bay is now given to understand that the City believes that the current driveway and culvert configuration is in violation of Section 11.5 of the City's Infrastructure Guidelines - 2024 Roads ("**Guidelines**").

Representatives of King's Bay and the City met to discuss Comment 30 on October 10, 2024 ("**Meeting**").

Despite the years that have elapsed since the submission of the Application, the review undertaken by the City during the hearing process, including in its preparation for and submission of witness statements, the City has never raised its concerns with the culvert placement and design inherent in Comment 30 ("**Culvert Concern**") prior to the First Review - some 11 months from the date of provision of the Concept Plan.

The late raising of Comment 30 could now be construed as an action taken in bad faith for the purposes of delaying or frustrating development.

King's Bay, its technical consultants, and ourselves, have all had the opportunity to review the Guidelines, including Section 11.5. Our findings are shared and conclusive: nothing in the Guidelines supports the Culvert Concern nor explicitly states the purported requirement.

Even if such a requirement were found to exist within the Guidelines, it is well established in case law that guidelines are just that, guidelines, and should not be treated as determinative.

Further, as discussed at the Meeting, and as supported by the written submissions of King's Bay, the design, siting, and location of the culverts is typical, meets or exceeds all applicable industry standards and best practices, and is appropriate for the development.



It is not only appropriate for the development, the design actually increases efficiency and reduces the maintenance costs of the culverts.

We refer you to the correspondence from Cosimo Costa at SCS Consulting Group Ltd., dated September 24, 2024, Ravi Patel of RN Design, dated September 25, 2024, and Mark Schollen of Schollen & Company Inc., dated September 24, 2024, all of which were provided to you by Mr. Szeghalmi on September 27, 2024.

We ask that the City approve the current design as it relates to the location of driveways and culverts, either by finding that the design, siting, and location of the culverts and driveways are in satisfaction of the Guidelines or by waiving compliance with same.

Further, we write for the purposes of putting the City on notice that King's Bay will be going to market on the basis of the proposed lot configuration and the Concept Plan provided in November 2023.

Finally, we are also writing with the intention of avoiding further delay and litigation, including additional adjudication before the Tribunal.

Further to the City's request at the Meeting, we have provided an attachment from our client which satisfies the City's request for further information.

Yours truly,

LOOPSTRA NIXON LLP

Per: Steven C. Ferri



ATTACHMENT

Summary of Culvert lengths – July 2024 - 1st Submission Engineering Design Drawings

Single Driveway Culverts (450mm)

Lot	Street	Length (m)
1	Stub Road	10.0
2	Stub Road	10.0
5*	Street A	13.2
11	Street A	7.0
14	Southcrest Drive	10.0
19	Street B	10.0
20	Street B	10.2
27*	Street B	12.1
28	Street B	10.0
29	Street B	10.1
36	Southcrest Drive	10.0
37	Street C	11.4
44	Street C	10.0
45	Street C	10.0
46	Street C	10.0

(Shared) Double Driveway Culverts (450mm)

Lots	Street	Length (m)
3-4	Street A	21.5
6-7	Street A	15.7
9-10	Street A	16.1
12-13	Southcrest Drive	21.6
15-16	Southcrest Drive	21.5
21-22	Street B	20.0
23-24	Street B	15.5
25-26	Street B	15.5
30-31	Southcrest Drive	18.5
32-33	Southcrest Drive	15.5



34-35	Southcrest Drive	21.5
38-39	Street C	24.4
40-41	Street C	23.9
42-43	Street C	21.5

*Culverts extended to accommodate hydro transformer locations



ATTACHMENT "C"

[See attached.]

Mr. Victor Szeghalmi
Geranium Corporation
3190 Steeles Avenue East, Suite 300
Markham, Ontario L3R 1G9

Dear Mr. Szeghalmi:

Re: | **Response to City Solicitor's Comments on Combined Driveway Culverts
King's Bay Golf Course
City of Kawartha Lakes, Ontario**

In response to the City Solicitor's comments regarding our proposed design of combining driveway culverts where the driveways are paired, we provide the following information.

Solicitor Comment 1:

The entrance By-law states: "Access Design - All Access designs shall adhere to the City of Kawartha Lakes Design Standards or Ontario Provincial Standards where not clarified in the City standards."

SCS Response to Comment 1:

Nowhere in the City of Kawartha Lakes Design Standards does it prohibit combining driveway culverts.

As we noted in our September 24, 2024 letter, combining the culverts is a matter of safety, and improved hydraulic conductivity. From a hydraulic perspective, fewer longer culverts are superior to a greater number of shorter culverts – essentially the road's stormwater conveyance system is more effective with fewer longer culverts. Furthermore, in contrast to the surrounding existing residential units on Southcrest Drive and Crescent Moon Lane, our proposed culverts are larger, deeper, and the house sideyard setbacks smaller, all of which contribute to a greater grade difference between the driveway and the ditch that cannot be reconciled with a 3:1 (H:V) embankment (as was done for the existing residential area).

Our proposal to combine culverts where driveways are paired does not contravene any of the City's criteria, nor any of the Ontario Provincial Standards.

Solicitor Comment 2:

"Development Engineering can provide specifics identified within the CKL Infrastructure Guidelines (Section 11.3, Table 6, Section 11.5). The proposed entrances do not conform with CKL's current design standards and are not supported by Operations."

SCS Response to Comment 2:

The statement that the proposed entrances do not conform with the CKL's current design standards is false. The sections of the City's Infrastructure Guidelines referenced above, including Section 3.5 from the Lot Grading and Drainage Guidelines, all do not prohibit combined culverts for paired driveways. We respectfully request that the specific criteria or guideline that states this be provided.

Solicitor Comment 3:

"CKL maintains culverts with a vac truck and steamers (de-icers) to open flow when blocked by ice. This equipment loses effectiveness with increased culvert length."

SCS Response to Comment 3:

Based on our knowledge and understanding, de-icing is predominately only required at the ends of the culverts where they are subject to snow and ice build-up. Further, we note that culvert flushing and hydro vac operations remain effective at distances of 100 meters beyond the point of entry. All culverts proposed are significantly less than 100 meters and we do not expect any issues preventing the effective flushing and hydro vac cleaning of the culverts. Further, SCS Consulting maintains that by reducing the amount of culvert ends, the overall potential for freezing, is ultimately reduced.

If there are any further questions or comments regarding our response, please feel free to contact us.

Regards,

SCS Consulting Group Ltd.



Cosimo Costa, P. Eng.
ccosta@scsconsultinggroup.com

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