

**- ADDENDUM -**  
**- GUELPH CITY COUNCIL MEETING -**  
**May 28, 2012**

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<b>DELEGATIONS</b>
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a) Building By-law Revisions, New Administration Fees and Annual Increase of Building Permit Fees (Clause 1 of the 5<sup>th</sup> Consent Report of Planning & Building, Engineering and Environment Committee):

- Ben Polley, Evolve Buildings Group Inc.

b) Sign By-law Variance for 45 Speedvale Avenue East (Clause 2 of the 5<sup>th</sup> Consent Report of Planning & Building, Engineering and Environment Committee):

- John Manera

c) Alcohol Sales at Hasting Stadium (Consent Report A-1):

- Brian Holstein
- Davy teBoekhorst, Coach of Guelph Royals
- Bear teBoekhorst, Coach of Guelph Royals

Correspondence:

- Darrell Kane
- George Kouvalis
- Neil Srivastava

**CONSENT REPORTS**

**a) Corporate Administration, Finance & Emergency Services Committee**

CAFE-1) 3-7 Gordon Street - Downtown Guelph Community Improvement Plan (DGCIP) Request and Development Charge (DC) Deferral Agreement

Correspondence:

- Dave Sills, President, Guelph Civic League

**b) Planning, Building, Engineering and Environment Committee**

PBEE-5) Class Environmental Assessment - Notice of Completion for

Silvercreek Parkway Improvements (from North of Paisley road to South of the CNR Secondary Line)

Correspondence:

- Steven A. Zadem, Aird & Berlis on behalf of Silvercreek Guelph Developments Limited

**c) Report of the Integrity Commissioner:**

Correspondence:

- Ken Spira, Guelph Waste Management Coalition Inc.

***"THAT By-law Numbers (2012)-19378 to (2012)-19402, inclusive, are hereby passed."***

**BY-LAWS**

<p>By-law Number (2012)-19399 Being a By-law to amend By-law Number (2002) – 17017 (add all-way stop signs at Laird Road at Hanlon Creek Boulevard/Cooper Drive in the All-way Stop Signs Schedule Schedule IX), and adopt Municipal Code Amendment #470, amending Chapter 301 of the Corporation of the City of Guelph’s Municipal Code.</p>	<p>To amend the Traffic By-law.</p>
<p>By-law Number (2012)-19400 A by-law to authorize the execution of an Agreement between Network Sewer and Watermain Ltd. and The Corporation of the City of Guelph. (Contract No. 2-003 for the installation of the 400 watermain extension from Clair Tower to the south end of Poppy Drive)</p>	<p>To execute Contract No. 2-003 for the installation of the 400 watermain extension from Clair Tower to the south end of Poppy Drive.</p>
<p>By-law Number (2012)-19401 A by-law to authorize the execution of an Agreement between Capital Paving Inc. and The Corporation of the City of Guelph (Contract 2-1207 for Victoria Road South Reconstruction).</p>	<p>To execute Contract 2-1207 for Victoria Road South Reconstruction.</p>
<p>By-law Number (2012)-19402 A by-law to confirm a meeting of Guelph City Council.</p>	<p>To confirm the proceedings of a meeting of Guelph City Council.</p>

Dear Madam Mayor, Councillor,

I have recently become aware of three new administrative fees that the City is considering adding under particular conditions to building permit applications and that are on the agenda for today's meeting.

One of the proposed fees gives me concern as it has incorrectly been reported in the media (Guelph Review, April 20, 2012) as being applied to applicants who do not follow "the rules." As such this fee has been included for consideration by Council as a package together with two other penalty fees, even though it will apply to applicants who are correctly following particular provisions of the Ontario Building Code.

Since at least one Councillor publicly stated similar views to that of the reporter (ibid)- that all of the proposed fees are avoidable if one doesn't break the rules - I am concerned that this incorrect characterization may be shared by additional members of Council.

Depending on the manner and rate at which this one proposed fee is to be calculated, it might have a direct negative impact on my clients, my business and my staff. It may similarly have an impact on other Guelph area businesses. It might even impact the desired uptake by Guelph homeowners of some of the very things that the City itself is promoting or demonstrating.

If this proposed fee is intended to be anything other than a nominal cost (the proposed fee structure is unknown to me at this time), please accept this as my strong objection to its inclusion with specific respect to its application to construction permits for Alternative Solutions for "Small Buildings" or "Part 9" of the Ontario Building Code.

## BACKGROUND

Two of the proposed fees relate to illegal or improper actions on the part of the property owner: 1) if a residence is occupied prior to receiving an occupancy permit and 2) if construction, demolition or change-of-use is commenced prior to receiving permit approval.

I commend the City for taking action to penalize those who willfully avoid the correct permit procedure. One can imagine substantive staff time being required for site investigation, physical testing, extra unplanned visits or other activities ordinarily avoidable with an applicant's timely building permits or occupancy requests. To this point, the cost burden for dealing with such improper activities is, to my knowledge, no different than if the offending party had applied when ordinarily required, meaning that there is no financial disincentive to avoiding the rules. Consequently the cost burden that the City incurs to deal with such rule breakers is recovered through the general revenues gathered through all permits; thus rule followers pay a small amount in each permit for the City's costs incurred by the rule breakers.

I am highly supportive of these two proposed penalty fees to ensure that those who do not follow the rules are singularly responsible for the extra costs incurred by the City to resolve the issue.

The third proposed fee is very different from the others. Rather than illegal or improper actions, it targets the actions specifically *required* in the Ontario Building Code for applications that include non-standardized components. Such an application is known as an “Alternative Solutions” addendum.

## ALTERNATIVE SOLUTIONS

The Ontario Building Code provides a choice of two standards by which a building permit application may seek to be reviewed in whole or in part: prescriptive or performance based.

The most common approach is the prescriptive standard. For this model, the Code provides hundreds of pages of descriptions detailing precisely what combination of materials may be combined in precisely what fashion in order to meet a goal, such as building a wall or framing a porch. Designers and municipal plans reviewers can equally consult the Code to confirm that the permit proposal meets the required parameters for the type of construction. The prescriptive approach itemizes what one may do and precisely how this *must* be performed.

This itemization includes numerous conventional options and possibilities, but it is of course not infinite. Nor is it always inclusive of less common, but no less effective building strategies, such as natural building methods.

There are therefore sometimes instances where a solution to a site- or design-specific challenge might be achieved with a combination of materials or methods that were not considered in the static, pre-written Code prescriptions. For such instances, the Code instead provides a second acceptable permit application approach: an “Alternative Solution” addendum.

Alternative Solutions are performance based rather than strictly prescriptive; that is, the application must demonstrate at least minimum equivalence to Code standards but by alternative means than those ordinarily prescribed. Alternative Solutions are the Code tool that allows for innovation on a single project-level without the need for government lobbying, massive R&D or product pre-approvals as otherwise only within the reach of major corporations. It provides builder-scale opportunity for construction innovation.

Opting to construct exterior walls with highly insulative, natural, human-healthy and environmentally preferable straw bales, rather than manufactured insulation and finishes, is one such instance where Alternative Solutions are an integral part of the building permit submission.

Alternative Solution applications are not a circumvention of the rules as characterized by reporter Aliya Kanani (Guelph Review, April 20, 2012) and similarly inferred by Councillor Guthrie (Ibid). Instead the Code expressly demands that all submissions that include a building element that is being satisfied through a performance standard rather than a prescriptive instruction, *must* include an Alternative Solution addendum.

## IMPACT ON EVOLVE BUILDERS GROUP INC

I founded Evolve Builders Group Inc in 2006 as a full service builder and renovator servicing the residential, retail commercial and light institutional market with people-and planet-friendly building solutions. Evolve's sister business, Harvest Homes was established in 2000 to provide strawbale wall systems to owner-builders and later to Evolve, if required. In the first eight years of existence, these operations doubled in size annually. Today we currently employ 15 full time individuals of which 13 live in Guelph and another five full time individuals through a joint venture in Orillia/Muskoka.

While I am uncertain of the rate structure intended for the proposed new Alternative Solutions fee (I am currently unable to locate the City's "Annual Report (No. 12-32) on 2011 Building Permit Fees, Costs and Building Stabilization Reserve Fund" in which I expect that this information is provided), I can say that any additional fee would represent a disincentive to our future clients to consider methods of construction that are beyond the conventional norms provided in the Code.

This is because the Alternative Solutions approach (quite appropriately) requires special supporting design details and documentation to demonstrate how the construction method or material meets or exceeds the basic Code requirement that it is to address. Such documentation must generally be prepared by an accepted authority, such as an engineer or building scientist. In the case of strawbale walls, the required professional review (which in our instance is performed by another Guelph employer – RJ Burnside Engineering's Guelph office which has developed a niche market specialty in strawbale structures) typically amounts to a couple or a few thousand dollars per project.

Typically, this building professional must also be hired to inspect and approve the work performed as having met the proposed alternative solution, *in lieu of* the same being inspected by the municipality as would otherwise be ordinary.

This is a required, though not inexpensive cost of doing business if opting to build using the Code's Alternative Solutions approach. The cost of these professional services alone however sometimes is sufficient to render the more people- or planet-friendly option too expensive when taking in to account other ordinary budget pressures as clients inevitably always face.

Adding a special municipal fee would as a minimum add another psychological barrier to the many already encountered by those who seek to stray from convention. At its worst – especially if established as flat rates or at punitive levels – this will further negatively alter the economics of such options to the point of threatening the desired work.

I am concerned will negatively affect the livelihoods of myself and all other employees. While admittedly few strawbale projects have been built to date in Guelph (two complete, two more currently on the drawing board), the fee will potentially affect several of Evolve's offerings: strawbale walls, adobe floors, green roofs, recycled denim insulation, recycled polyurethane insulation, rubble trench foundations, insulated/edge thickened slab-on-grade foundations, expanded uses for reclaimed greywater or rainwater etc.

I would also be in the particularly frustrating situation of being based and having the vast majority of our employees located in the one jurisdiction that adds a surcharge in order for us to perform our construction specialties while following the rules. Notwithstanding Councillor Guthrie's assertion the such a fee is "in line with all of our surrounding municipalities" (Guelph Review, April 20, 2012), I am not aware of a single instance where such a fee has ever been applied to our Alternative Solutions permit submissions anywhere in the province, including a recent application in the adjacent Guelph-Eramosa Township and previous applications nearby locations such as the Town of Erin, Township of Wellesley and City of Kitchener.

Ironically, the fee will also affect some programs and projects that have been encouraged, promoted or undertaken by the City itself (as I will describe below) and would thus seem at odds with other goals.

#### OTHER IMPACTS

I am concerned that such a fee may indeed later (assuming that they have not already, per above) be mimicked by neighbouring municipalities which would at that point begin to have potentially dramatic affect on portions of our business.

While very probably only a very small fraction of their own work, RJ Burnside Engineering's Guelph office invested in training and research to allow them to provide specialty design services to Evolve and strawbale home owner-builders across the province. If Evolve's work is negatively affected, so too will their own and thus the return on investment made in support of us may not be properly realized and the knowledge cluster that is being gathered in Guelph may be jeopardized.

There are also firms unrelated to Evolve who might be affected by the proposed fee. Our occasional competitor, Rockwood based energy efficient homebuilder Braden Homes sometimes engages in alternative designs and has constructed projects in the City and neighbouring jurisdictions that might in the future be affected.

Guelph's own Jessica Steinhauser of Stonehouse Pottery has developed a skill in constructing an historic special type of woodburning oven called a kachelofen. Jessica is becoming renowned in North America and is a leader in the revival of these extraordinarily efficient and beautiful devices. Yet, because they are not prescriptively included in the Ontario Building Code (nor are they produced by large manufacturers who might have had the capital to get them included within the prescriptive elements of the Code), she too would potentially face adding another fee to the already expensive, labour intensive venture which might threaten her nascent though expanding business. To my knowledge there are several such units in the City, including one at the home of Councillor Findlay that might have been impacted if this fee were previously in place.

## CITY'S OWN PRIORITIES MIGHT BE AFFECTED

The much celebrated and promoted rainwater harvesting system installed at the model "Green Home" (2009, Clair Road subdivision) by Reid's Heritage Homes included connections to a clothes washer. Such a use for rainwater is unfortunately not included (ie permitted) within the Code. The City was a research partner (together with Reid's, the University of Guelph, the Ontario Centres of Excellence and myself) on this project. For the average citizen to apply to do the same, an Alternative Solutions proposal would need to be made which would then attract the proposed new fee (with by the way, no certainty that it would be approved by the City). Even a nominal fee might be expected to substantially reduce the cost-benefit of the possible water savings at today's water rates and as such would be a deterrent to making such application.

Despite increasing commonality, green roofs – specifically their grow medium and its theoretical risk for fire spread and potential for wind blown objects such as the ballast stones – are actually not covered prescriptively in the Code. Consequently, even small green roofs such as that on my own addition (60 Manitoba Street), on the Mayor's house, and a host of other small structures would each incur the proposed fee in the future. Again depending on the rate structure, this may be the tipping point to dis-incent people from taking such proactive and beneficial measures to their homes.

Councillor Findlay's laudable project to utilize the farmhouse at the Northern Heights subdivision as a demonstration project could very easily see several non-standard features or techniques be proposed, as it is not uncommon when attempting to salvage, repair or restore heritage structures while updating them to meet modern expectations. Again then, some of the very techniques that might be demonstrated by the City to citizens on the one hand might be disincentivised on the other hand with additional fees.

## LIMITS TO MY OPPOSITION

I recognize that permit fees are collected on a net cost recover basis. As described above, I am in full support of user-pay penalty fees for those avoiding the rules. I also understand that that while Alternative Solutions applications are ordinary and required methods for proposing non-prescriptive solutions, they are by definition not going to be cookie cutter templates and can be expected to involve some additional time by City staff to review.

That said, the City's additional time and other burdens are minimized by the following (at least with respect to single family homes or other structures otherwise delineated as Small Buildings and/or Part 9 in the Code):

- Alternative Solution proposals include supporting documentation to clearly identify for the municipal plans reviewer, which specific Code references are being addressed by alternative means and how
- Said documentation is typically prepared by an appropriate building professional who applies their own professional stamp/seal to certify on the municipality's behalf that the proposed design meets or exceeds the Code
- The Professional generally must inspect on behalf of the municipality to assure adherence to the approved proposal instead of requiring direct inspection by municipal staff
- The Professional must carry errors and omissions insurance as part of their shared responsibility for the undertaking, a cost for risk ordinarily solely held by the municipality

To be clear, I could support a nominal fee for Alternative Solution Applications, in keeping with my view of the limited additional work required by staff (at least in the context of single family homes, additions and similar "small building" as otherwise covered in Part 9 of the Code – I defer to the City's judgement on what to do for those defined as "large buildings" in the Code, primarily in Parts 3 and 4).

I do however strongly object to the reported rationale (that it is targeting rule breakers) which, if the view is similarly held by Council or staff, concerns me that it may be used to inform the intended rate structure now and in to the future.

## CONCLUSION

In conclusion, my views are that:

- Alternative Solutions were reported (in one media source) as being a form of avoidance of the rules, which is factually incorrect
- Alternative Solutions applications are being targeted for additional fees together with two penalty type fees, giving impression of penalizing designers/builders who innovate
- Councillor Guthrie was reported as saying that the City is merely catching up to other local municipalities by adding such fees whereas I am unaware of any jurisdiction that in fact does presently charge extra for Alternative Solutions submissions (I would be curious to learn specifically where such fees are currently being applied)
- Alternative Solutions submissions are the *required* and ordinary manner for initial applications made with non-standard methods or materials to be considered
- Alternative Solutions submissions routinely require independent professional design and inspection at the applicant's sole expense
- Such activities reduce the municipal authority's role to that of administrator (instead of in detailed plans examiner and site inspector body) with respect to the Propose Alternative and extends some of the risk of liability to the professional instead of bearing it alone
- Depending on the intended fee calculation, the livelihoods of Evolve employees and owners might be affected as might other colleagues located in or near Guelph
- Uptake of particular strategies by citizens to meet some of the City's own priorities might be affected by the proposed new costs



I would propose the following for Council's consideration:

- Proceed with appropriate fees toward the two other activities addressed in the staff proposal
- For Alternative Solutions proposed within the context of applications made through Small Building/Part 9 of the Code, that the City either:
  - Forego the originally considered fees altogether to avoid disincentivizing innovation in projects that are due to scale, likely to be cost sensitive. I recognize that this infers that a very small portion of all permit fees thus be collected to offset the potential additional cost of administering these individual project needs though I expect that there are reasonably few such proposals made for Small Buildings/Part 9 so would expect the impact to be negligible/unnoticeable (I would be interested in knowing just how many such applications were made of this sort last year?), whereas the burden is high if placed on individual applicants who are simply following the rules;
  - OR
  - Apply a nominal fee that, perhaps \$80/project (rather than per Solution or "functional statement" which would likely become prohibitive even with a low per item fee) which is consistent with "Minor Alterations" or minimum building permit fee. This recognizes that there is some probable additional time associated with administering any application that isn't an ordinary cookie cutter template.
- For Alternative Solutions proposed within the context of applications made through Large Building/Parts 3 & 4 of the Code, that the City proceed with appropriate fees for cost recovery on average, as I note that such projects are typically much less price sensitive and the prospective staff time might be much greater

As I learned of the proposed new fees too late to make a delegation to Council during tonight's planned public meeting, please accept this submission as part of your due diligence. Please also note, that all of the opinions shared herein are mine alone and I do not purport to represent the other parties that I believe may similarly be affected by this proposal.

If you or staff have any questions, I would be very pleased to respond.

In advance, my thanks for your consideration.

Regards,

Ben Polley

Evolve Builders Group Inc  
Harvest Homes

Good morning,

I am sending this letter in support of the Guelph Royals' application to the city to serve alcohol at Royals baseball games this season.

The beer garden would be run by Bobby O'Briens, who have experience running similar events. The city has granted permits for alcohol sales to Ribfest, the Italian Festival, among others.

The Royals are locally owned and operated. They provide affordable family entertainment for the residents of Guelph.

I look forward to the council approving the Royals request.

Take care,

Darrell Kane  
Guelph, On

**From:** George Kouvalis

**Posted At:** May 28, 2012 11:45 AM

**Posted To:** ClerksDept

**Conversation:** Support of Beer Garden at Royals Games

**Subject:** Support of Beer Garden at Royals Games

Dear Blair,

I wish to confirm support of the staff's recommendation to allow the sale of beer, in a beer garden, at Guelph Royals baseball games.

Thank you for your time in this matter.

Cheers,

GK

Madame Mayor & Members of City Council

I grew up on London Road just minutes from Hastings Stadium. My parents ran the family photography business at the corner of London and Woolwich for 34 years before their retirement in 2007

My friends and I grew up watching baseball at the stadium. (ok we'll admit to hoping the fence occasionally to take a few swings on the big diamond as well) I became involved as a volunteer with the Royals and Jr. Royals in the summer of 1993 and the teams have become like my summer vacation ever since.

It's a rite of passage that my family and I look forward to each summer. I look forward to continuing this tradition with my almost 2 yr old son when he's older

This evening you are being asked to consider the Royals request to sell beer at their home games which I sincerely hope you will consider as the Royals need alternative funding sources in order to continue to be a part of the fabric of our community. Costs of running any sporting team are increasing year after year as I'm sure the council is well aware.

When was the last time you attended an event at the Sleeman Centre or River Run or else where and weren't presented the opportunity to purchase an alcoholic refreshment? As the old Blue Jay's song goes its dog, a drink and umpire's call. I trust council will make the right call this evening

Thank You for your kind consideration

Neil Srivastava

The Guelph Civic League supports intensification downtown when done in an appropriate manner.

As such, we support the applications for a Major Downtown Activation Grant and Development Charge Late Payment Agreement for the 3–7 Gordon Street project.

This project has many benefits, including a mid-rise (6-storey) form, mixed uses including street-level commercial and live-work housing, commuter bike parking and onsite car-share, energy-efficient design and appliances, a green-roof and solar electric generation, re-purposing of a heritage property, and affordable ownership given the variety of unit designs (studio to two bedroom). The proponents will also upgrade adjacent green public space.

We feel that due to its location, built form, and amenities, this project will contribute positively to the Downtown area, and enhance a walkable and vibrant neighbourhood.

We encourage Council to support the recommendations of staff and the CAFE Committee in this case.

Sincerely,

Dave Sills, President  
Guelph Civic League

# AIRD & BERLIS LLP

Barristers and Solicitors

Steven A. Zakem  
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May 25, 2012

File No. 94693

VIA EMAIL (clerks@guelph.ca)

Mayor and Members of Council  
City of Guelph  
City Hall, 1 Garden Street  
Guelph, ON N1H 3A1

Attention: Blair Labelle, City Clerk

Dear Mayor and Members of Council:

**Re: Class Environmental Assessment – Notice of Completion  
Silvercreek Parkway South Improvements  
Meeting of City Council – May 28, 2012**

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As Council is aware, we act on behalf of Silvercreek Guelph Developments Limited in respect of its lands at 35 and 40 Silvercreek Parkway South.

We have reviewed the May 22, 2012 Staff Report in connection with the Class Environmental Assessment. We have also become aware of a deputation by Armel Corporation (“Armel”) with respect to access to its property at Silvercreek Parkway and Paisley Road.

The issue of access to our client’s site by way of a grade separation at the CNR tracks and Silvercreek Parkway, as well as the potential traffic impact of the same, was one of the subjects of the 2009 Ontario Municipal Board (the “Board”) hearing in connection with the Silvercreek Junction lands. At that hearing, our client, the City and the Howitt Park Neighbourhood Residents Association jointly sought and obtained approval of a mixed-use development on the Silvercreek Junction lands.

Armel initially raised a number of traffic issues relating to the underpass but withdrew them all during the hearing. In so doing, the need for the underpass became uncontested, although it was understood that the exact design of the grade separation would be subject to a Class Environmental Assessment process.

May 25, 2012

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In its Decision, the Board found as follows:


It is clear that a grade separation crossing of the CNR tracks and Silvercreek Parkway is required to facilitate site access, regardless of the type of development at the site. The underpass has been identified in the City's OP for several years and its technical feasibility was described... Based on the evidence I am satisfied that the City and Silvercreek can reach a consensus with regard to their respective financial obligations and the underpass represents a public benefit.

The evidence at the hearing clearly indicated that access from Silvercreek Parkway to Armel's property at 580 Paisley Road would not be feasible. Instead, access would be effected from Paisley Road. This is entirely consistent with the conclusion on page 4 of the Staff Report.

We respectfully request that the Class Environmental Assessment process be completed at the earliest opportunity, so that the Silvercreek Junction development may proceed.

Yours truly,

**AIRD & BERLIS LLP**

  
Steven A. Zakem  
SAZ/TH/ly

c: Matthew West, Silvercreek Guelph Developments Limited  
Astrid J. Clos, Planning Consultant

12501587.1

# Guelph Waste Management Coalition Inc.



Mayor Farbridge and Members of Guelph City Council  
c/o City Clerks  
clerks@guelph.ca

May 28, 2012

Re: Integrity Commissioners Report

Dear Mayor Farbridge and members of Council,

Unfortunately I am unable to attend as a delegate at tonight's council meeting, however I would like this letter to be included for consideration. I have read the integrity commissioners report being presented to council tonight regarding the Freedom of Information Request (F.O.I.) from the Ministry of the Environment (M.O.E.) on the Air Facility Inspection Report for the Guelph Organic Waste Processing Facility that was requested by several councillors to see, yet declined by staff. The report indicates that city staff informed council that this report existed on April 5<sup>th</sup>, 2012. Yet as a resident of this city, not a city councillor, I was made aware of this final report on April 3<sup>rd</sup>, 2012 directly from the M.O.E.. I had already processed a F.O.I request on April 10<sup>th</sup> to obtain this same report before councillors Guthrie and 4 others requested it in the exact same manner as I. I believe that withholding documents that are already in the public realm from city councillors is totally unacceptable.

Yours Truly,

A handwritten signature in black ink, appearing to read 'K. Spira'.

Ken Spira (President)

Guelph Waste Management Coalition Inc.  
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