Lesley Gibbons

From: Joanne Noble [redacted]
Sent: November 20, 2025 9:16 AM
To: Tharini Prakash
Subject: Re: DVP- 137 Saddlehorn Dr. Project # 12025.030 DVP

Follow Up Flag: Follow up
Flag Status: Flagged

I am writing as a nearby resident to express that I DO NOT support the Development Variance Permit application for 137 Saddlehorn Drive. When developing our properties, we ALL have been required to follow the SH4 zoning bylaws and setback requirements. Approving a variance for structures placed at a 0 (zero) metre setback, would set a concerning precedent for future developments and or improvements to all our properties in the neighborhood, also it is my understanding that the owners of 137 Saddlehorn received compensation for the non-compliance.

Regards,
Dave & Joanne Noble
[redacted]

Feedback Form

Regional District of Okanagan-Similkameen
101 Martin Street, Penticton, BC, V2A-5J9
Tel: 250-492-0237 / Email: planning@rdos.bc.ca

TO: Regional District of Okanagan-Similkameen **FILE NO.:** I2025.030-DVP

FROM: Name: Christopher & Jennifer Mark
(please print)

Street Address: [redacted]

RE: **Development Variance Permit (DVP) Application**
137 Saddlehorn Drive, Electoral Area "I"

My comments / concerns are:

☐ I do support the proposed variances at **137 Saddlehorn Drive.**

☒ I do not support the proposed variances at **137 Saddlehorn Drive.**

Please provide any comments you wish the Board to consider:

*I am writing as a nearby resident to express that I **do not support the Development Variance Permit application for 137 Saddlehorn Drive**. We fully oppose this and think it should be immediately rejected for numerous reasons. This variance should not be approved and would negatively impact both our neighborhood.*

Feedback Forms must be be submitted to the RDOS office by **December 5, 2025**.
All representations, including names, will be made public if and when they are included in the Board Agenda.

Feedback Form

Regional District of Okanagan-Similkameen
101 Martin Street, Penticton, BC, V2A-5J9
Tel: 250-492-0237 / Email: planning@rdos.bc.ca

TO: Regional District of Okanagan-Similkameen **FILE NO.:** I2025.030-DVP

FROM: Name: Diana & David Mark
(please print)

Street Address: [redacted]

RE: **Development Variance Permit (DVP) Application**
137 Saddlehorn Drive, Electoral Area "I"

My comments / concerns are:

☐ I do support the proposed variances at **137 Saddlehorn Drive.**

☒ I do not support the proposed variances at **137 Saddlehorn Drive.**

Please provide any comments you wish the Board to consider:

*I am writing as a nearby resident to express that I **do not support the Development Variance Permit application for 137 Saddlehorn Drive**. When developing our properties, we have all been required to follow the SH4 zoning bylaws and setback requirements. Approving a variance for structures placed at a zero-metre setback would set a concerning precedent and undermine confidence in fair and consistent enforcement of the bylaws.*

Three years ago my husband and I built our own new home at [redacted] and complied with all bylaws, particularly setbacks in respect of the bylaws as well as out of respect for our neighbors.

It is our understanding that the owners of 137 Saddlehorn were compensated 1-2 years ago through a claim against their title insurance provider. The title insurance provider already PAID for them to move or alter the buildings to comply with required setbacks. They received the funds but did not complete the work. I am very frustrated that they did not use the money for the purpose the funds were provided for, and that they are asking again for special treatment.

I'm sure you're well aware that there have been many ongoing issues with the owners of 137 Saddlehorn, which has had an ongoing negative impact on our small community.

Feedback Forms must be be submitted to the RDOS office by **December 5, 2025**.
All representations, including names, will be made public if and when they are included in the Board Agenda.

Lesley Gibbons

From: Dan Esau [redacted]
Sent: November 21, 2025 7:21 AM
To: Tharini Prakash
Cc: Tamara Semple
Subject: Proposed Variance

Follow Up Flag: Follow up
Flag Status: Flagged

You don't often get email from [redacted] Learn why this is important

Re: DVP - 137 Saddlehorn Dr. Project No. 12025.030-DVP

To whom it may concern,

My name is Daniel Esau. My wife and I live at [redacted] and share the same access to our properties with the petitioners. We are strongly opposed to the variance application for a variety of reasons and do not support it in any way.

Daniel and Shirley Esau

Feedback Form

Regional District of Okanagan-Similkameen
101 Martin Street, Penticton, BC, V2A-5J9
Tel: 250-492-0237 / Email: planning@rdos.bc.ca

TO: Regional District of Okanagan-Similkameen **FILE NO.:** I2025.030-DVP

FROM: Name: ____Jim & Linda Semple_____
(please print)

Street Address: [redacted] Drive_____

RE: **Development Variance Permit (DVP) Application**
137 Saddlehorn Drive, Electoral Area "I"

My comments / concerns are:

☐ I do support the proposed variances at **137 Saddlehorn Drive.**

☒ I do not support the proposed variances at **137 Saddlehorn Drive.**

Please provide any comments you wish the Board to consider:

_____I am writing to express my opposition to the variance request for 137 Saddlehorn Drive. As I understand it, property owners in the Kitley Lake Estates development are required to comply with SH4 setback requirements. Given that the owners of 137 Saddlehorn Drive have received compensation from their property insurance to cover the costs of relocating their barn and hay shed to be compliant with setback requirements, they should undertake to do so.
Prior to purchasing [redacted] in 2014, where my wife and I still live, we owned and resided at [redacted] (2009 – 2012), which is directly across the road from 137 Saddlehorn Drive. We experienced all residents of Saddlehorn Drive respecting the property and privacy of their neighbours, including between ourselves and the previous owners of 137 Saddlehorn Drive. There existed mutual respect between our homes and activities. Though the buildings were not compliant with SH4 setback rules, trespassing and misuse were not an issue. There were no trespassing concerns. That changed when 137 Saddlehorn Drive came under new ownership, with the new owners ignoring property lines and openly trespassing, and conducting their horse related business on the easement that is owned by the residents and owners of 141 Saddlehorn Drive. Enforcing the setback requirements as set out in SH4 would make trespassing on 141 Saddlehorn property unnecessary and unlikely, as setback requirements were originally designed to do.
In summary, we do not support the variance request for 137 Saddlehorn Drive.

Sincerely,

Linda and Jim Semple

Feedback Forms must be be submitted to the RDOS office by **December 5, 2025**.
All representations, including names, will be made public if and when they are included in the Board Agenda.

Lesley Gibbons

From: Jamie Brem [redacted]
Sent: November 30, 2025 7:11 PM
To: Planning
Subject: Variance being proposed at 137 Saddlehorn Drive Kaleden

Some people who received this message don't often get email from [redacted] Learn why this is important

To whom this may concern,

We are writing to express our objection to the variance being proposed for 137 Saddlehorn Drive.

The requested variance does not align with the established zoning requirements for this area. Our primary concern is that the reduced setback fails to meet the intent of these regulations, which are in place to preserve privacy and maintain consistent standards within the neighborhood. Granting this variance would undermine those protections.

For these reasons, we strongly oppose the approval of the variance and respectfully request that the standard zoning setback requirements be upheld.

If you have any questions or require further information, please feel free to contact us.

Sincerely,

Mark and Jamie Brem

Lesley Gibbons

From: Dayna Terry [redacted]
Sent: November 30, 2025 7:06 PM
To: Planning
Subject: DVP application - 137 Saddlehorn Drive

[Some people who received this message don't often get email from [redacted] Learn why this is important at https://aka.ms/LearnAboutSenderIdentification]

Hello,

We are writing to formally disagree and object to the variance being proposed for the property at 137 Saddlehorn Drive.

The requested variance does not align with the established zoning requirements for this neighbourhood. Previous granted variances have first hand affected our own property negatively.

Our specific concern with the reduction of required setback is that it does not meet the intent of the zoning regulations that govern this area. These zoning requirements exist to preserve consistency, safety and privacy. Granting approval for this application undermines those standards.

Based on our above stated concern, we strongly oppose approval of the variance and ask that the standard zoning setback requirements be upheld.

Brandon Amos & Dayna Terry
Property owners- [redacted]

Lesley Gibbons

From: Tamara Semple [redacted]
Sent: December 1, 2025 7:44 AM
To: Planning
Cc: Tharini Prakash
Subject: Feedback for DVP Application 12025.030-DVP
Attachments: RDOS Aerial with Environmental Boundary.png; RDOS without Environmental Boundary.png; RDOS Map Environmentally Sensitive Area (1).png; Screen Shot 2025-11-18 at 9.36.57 PM.png; Notice of Civil Claim Chicago Title (2) (1).pdf; Response to Civil Claim Chicago Title(1).pdf; Feedback-Form.pdf

Thank you for the opportunity to provide feedback regarding the development variance application for 137 Saddlehorn Drive. We, Dennis Wiren and Tamara Semple, own and reside at [redacted] and we do not support the proposed variance. We oppose this application as our property is directly and adversely affected by both the placement and use of these structures. Our property adjoins the applicants' and the non-compliant structures at issue in this application are located along our shared property line.

Background

The structures at issue are a chicken coop, a horse stable/barn and a hayshed. To the best of our knowledge, none of these buildings were permitted at the time they were built. All of these buildings are situated at the front boundary of our property, meaning that the issues they create are essentially happening in our front yard. Though an easement exists over our land for limited access purposes, it has been chronically misused because of the building placement. The easement permits only ingress, egress, and regress, but the location of the structures results in daily misuse for parking, gatherings, non-compliant business activity, and general operations.

The applicants' horse stable/barn, in particular, is the biggest concern. Not only is it built directly on the property line, its main access points open onto our property. Consequently, every time the applicants, their guests, workers or their customers enter or exit the stable, they trespass onto our land. This design makes unlawful use of our property a structural inevitability rather than an isolated occurrence. If these buildings are permitted to remain, the problems will persist and burden any present or future owners of either property.

Not a Minor Variance

We disagree with the applicants' characterization of the variance as minor. The applicants are seeking a complete elimination of the required setbacks, which would otherwise be a **minimum** of 4.5 metres. Considering the setback for an animal shelter is 15 metres and the applicants are asking for 0 it is entirely inaccurate to say it is minor in nature. In addition granting this variance would be granting a change in land use which is not permitted according to RDOS guidelines and the land use that would be changed would be **ours and not the applicants.**

We also disagree with the assertion in the applicants' rationale that this variance has "no impact on the character of the surrounding neighbourhood". We regularly experience the offenses mentioned above as well as noise and odour from the animal shelters, nuisance activity (including loose animals, parking, gathering and business use), and boundary confusion as workers, guests and clients are regularly accessing the barns on their own. The siting of these buildings directly undermines the intent and purpose of the setback requirements.

Neighbouring properties, including newly developed parcels, have complied fully with RDOS setback requirements, maintaining a consistent pattern of development. Structures placed directly on a property line at 0 metres fundamentally alter neighbourhood character, diminish privacy, and create boundary confusion.

Given the complete lack of setbacks, these buildings have created and continue to create severe and unnecessary conflict.

Applicants' Non-Disclosure

In their rationale, the applicants emphasize the financial detriment "strict compliance" would impose on them. Respectfully, it appears the applicants have omitted material information on this point. Please find enclosed the applicant's own notice of civil claim against their title insurer and the response to that claim from the insurance company, Chicago Title (retrieved from BC Court Services Online).

Part 1, paragraph 14 discloses that they have:
1. Applied for coverage for these same non-compliant buildings;
2. Had their claim approved;
3. Received a quote for barn removal ($30,870);
4. Received an estimate of their actual loss ($132,000); and
5. Been offered full compensation (total: $162,870).

In the response from the title insurer, Division 2, line #5 it states, "**On May 13th, 2024, Chicago Title delivered the Payment to the plaintiffs"** confirming that not only was the compensation above offered, it was accepted.

Granting this variance would allow the applicants to receive double recovery: first,monetary compensation from their insurer for the very problem they now ask RDOS to excuse; and second, relief from compliance with zoning bylaws. As the insurer has already approved the claim offered and delivered compensation, we say this application should be denied.

Please note that these documents are publicly available at BC Court Services online and should remain before the Board.

Lack of Hardship/Physical or Legal Constraints

On the issue of hardship, the applicants state that they do not have a physical location on their parcel to relocate the buildings. Again, this is inaccurate. As you can see in the attached photos taken from mapping from the RDOS site there are several large locations where the structures could be placed in full compliance with SH4 setback requirements and are outside of the environmentally sensitive area highlighted in the darker perimeter. Their decision not to remedy the issue, despite an offer of significant compensation, reflects personal choice, not hardship.

Similarly, the applicants raise the detriment their horses will suffer if their application is denied. However, the applicants continued to acquire animals even after learning in 2021 that the buildings were not compliant, and as recently as this summer (see attached photo) after the RDOS advised them that the buildings needed to be addressed. Expanding animal activity under these circumstances cannot form the basis of a hardship claim.

Lastly, the applicants raise property value as a consideration. If their value is to be considered, then the impact on ours must also be acknowledged. The placement of these buildings and the resulting daily activity on our land diminish our privacy, interfere with the full use of our property, and negatively affect its marketability. Setback requirements exist to prevent exactly this type of impact on neighbouring properties, and granting the variance would protect the applicants' property value at the expense of ours.

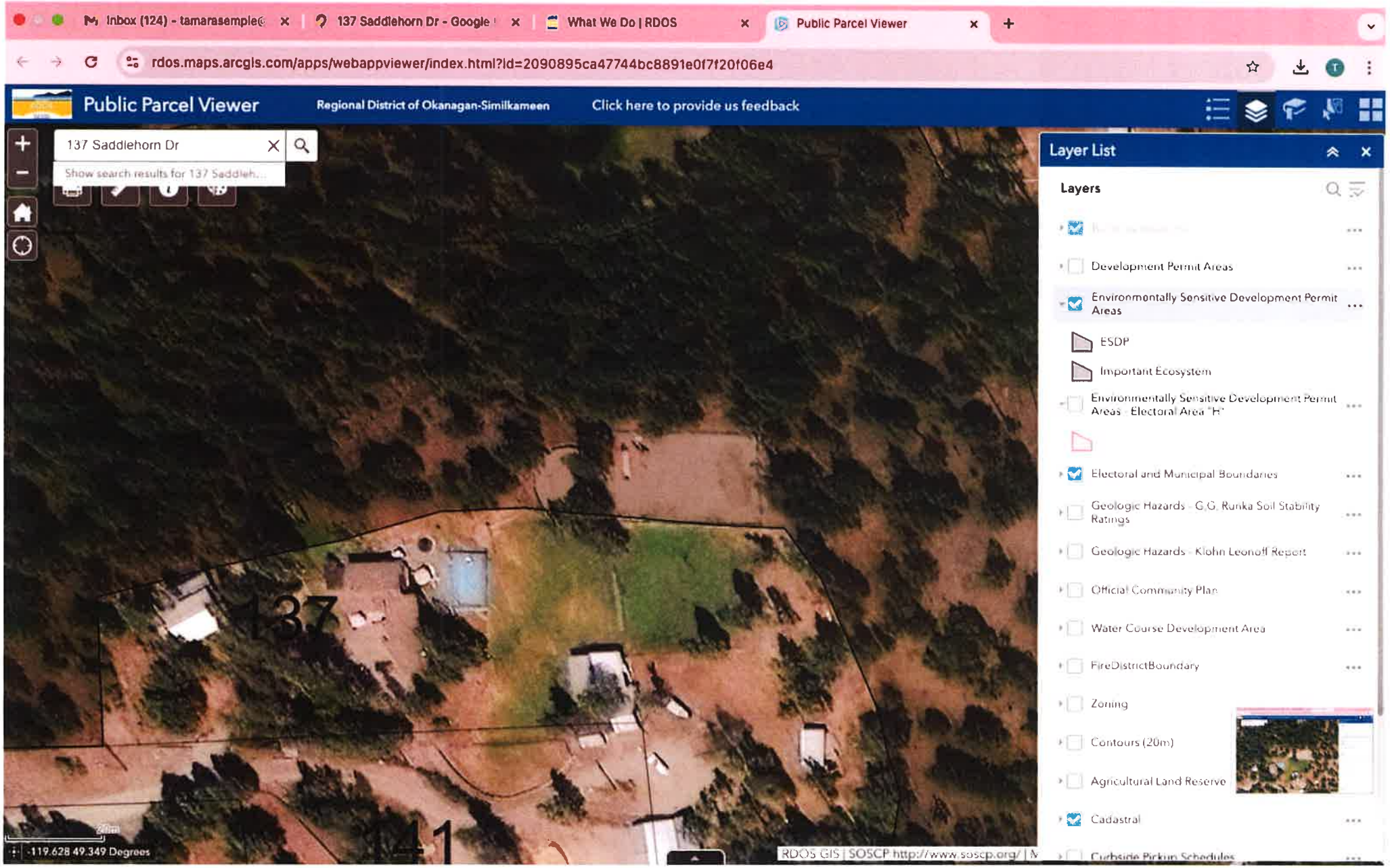
Conclusion

In summary, a development variance permit should not be granted where:
- The structures were built without permits;
- The variance represents complete elimination of required setbacks;
- The siting creates inevitable and persistent trespass and conflict;
- The applicants have already been offered and delivered compensation for removal;
- No physical nor legal constraint prevents compliant relocation; and
- Granting the variance would result in double recovery.

We respectfully request that RDOS deny this application and require strict compliance with zoning regulations as the above demonstrate that it is entirely possible to do so.

Attached to this submission are photographs and supporting documentation referenced in the above letter.

Tamara Semple and Dennis Wiren


Inbox (124) - tamarasemple@
137 Saddlehorn Dr - Google
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Public Parcel Viewer
rdos.maps.arcgis.com/apps/webappviewer/index.html?id=2090895ca47744bc8891e0f7f20f06e4
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Layers
Development Permit Areas
Environmentally Sensitive Development Permit Areas
ESDP
Important Ecosystem
Environmentally Sensitive Development Permit Areas - Electoral Area "H"
Electoral and Municipal Boundaries
Geologic Hazards - G.G. Runka Soil Stability Ratings
Geologic Hazards - Klohn Leonoff Report
Official Community Plan
Water Course Development Area
FireDistrictBoundary
Zoning
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Agricultural Land Reserve
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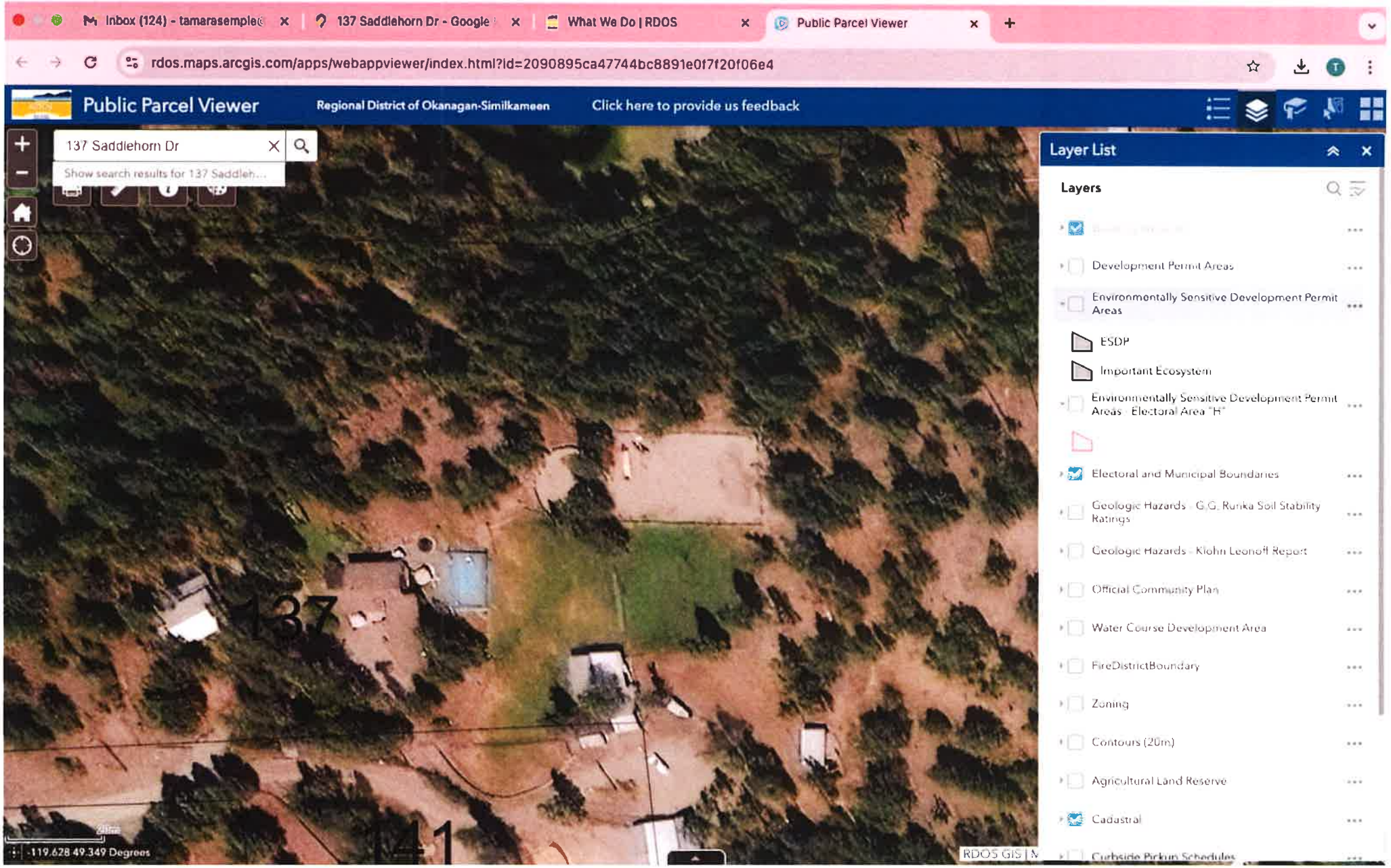
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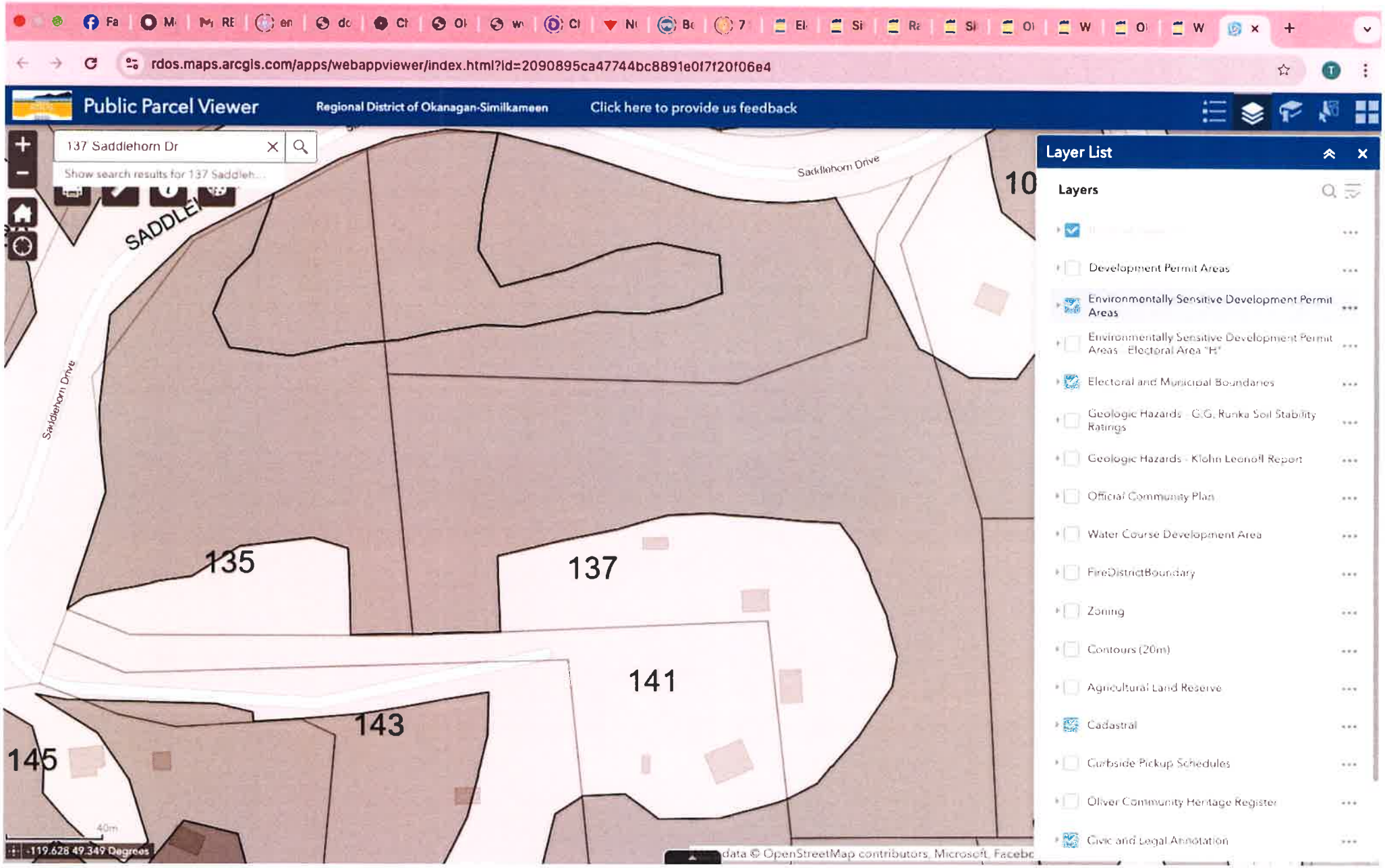
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Contours (20m)
Agricultural Land Reserve
Cadastral
Curbside Pickup Schedules
Oliver Community Heritage Register
Civic and Legal Annotation

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graystarfarms

youreonlygreatalways • 9 to 5 - Y.O.G.A. Remix - Dolly Parton

graystarfarms Hey friends, meet Phoenix, the newest addition to our herd!

This adorable 2-year-old mini-horse was rescued from a friend in the Chilcotin. After a tough start, Phoenix is now thriving and getting ready for a meaningful life.

Stay tuned for updates on her journey, why she's here, and the special role she'll play in our healing herd.

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.
.

#wellnessfarm #healingwithhorses #rescuehorses #minihorse #minihorses #therapeuticequine #herd #herdynamics #integration #newestmember #okanaganbc

21w

[redacted]

21w 1 like Reply

View replies (1)

[redacted]

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Liked by

June 23

NO. Court File No. NEW-S-S-254290
NEW WESTMINTER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

DARREN GREGORY MACLELLAN AND TRACY LEE GRAY

PLAINTIFFS

AND:

CHICAGO TITLE INSURANCE COMPANY

DEFENDANT

NOTICE OF CIVIL CLAIM

This action has been started by the Plaintiff(s) for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

(a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and

(b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

(a) file a response to the civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and

(b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim descried below.

Time for response to civil claim

A response to civil claim must be filed and served on the plaintiff(s),

(a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,

(b) if you were served with the notice of civil claim anywhere in the United States of America, within 35 days after that service,

(c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or,

(d) if the time for response to civil claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFF

Part 1: STATEMENT OF FACTS

1. The Plaintiff, Darren Gregory Maclellan, is a businessman and has an address for service in these proceedings c/o McQuarrie Hunter LLP 1500 - 13450 102nd Avenue, in the City of Surrey, in the Province of British Columbia.

2. The Plaintiff, Tracy Lee Gray, is a businesswoman and has an address for service in these proceedings c/o McQuarrie Hunter LLP 1500 - 13450 102nd Avenue , in the City of Surrey, in the Province of British Columbia.

   (collectively the "**Plaintiffs**")

3. The Defendant, Chicago Title Insurance Company is a company registered as an extra-provincial company under the laws of British Columbia, with an attorney within British Columbia c/o BHT Management Inc. Suite 1800 510 West Georgia St, in the City of Vancouver, in the Province of British Columbia. (the "**Defendant**")

4. The Plaintiffs are the owners of a property located at 137 Saddlehorn Drive, in the City of Kaleden, British Columbia and legally described as follows:

   PID: 025 505 645
   LOT A SECTION 10 TOWNSHIP 88 SIMILKAMEEN DIVISION YALE DISTRICT PLAN KAP2013 EXCEPT PLAN EPP103243

   (the "**Property**")

5. By a contract of insurance described as a Title Insurance Policy, issued on September 1, 2021, made between the Plaintiffs and the Defendant, and in consideration of the premiums duly paid by the Plaintiffs, the Defendant agreed to insure the Property under Insurance Policy Number RO-1034733-A6DEE (the "**Policy**") to insure the Property.

The Purchase of the Property

6. By a contract of purchase and sale dated January 25, 2021 (the "**Purchase Contract**"), the Plaintiffs purchased the Property from the previous owners, Bruce Wallace Ramage and Lorna Mae Ramage (the "**Previous Owners**").

7. Prior to the Purchase Contract, the Plaintiffs attended the Property to ensure they were aware of the property lines.

8. The Previous Owners made various representations to the Plaintiffs, *inter alia* that:

    a. They built the residence and all outbuildings on the Property;

    b. They Subdivided the Property from a larger parcel of land;

    c. Confirmed the property lines of the Property;

    d. That the then-existing fencing marked the majority of the property lines;

    e. Other property lines ran with the telephone poles, running "pole to pole" down the middle of the driveway shared with neighbours' property and over to a corner of one of the outbuildings; and

    f. The Property included a chicken coop, a horse stable and a barn.

9. After completing the Purchase Contract and taking possession of the Property, the Plaintiffs discovered that:

    a. the chicken coop, horse stable, barn and the fencing represented as being on the Property in fact encroached on the neighbouring property;

    (the "**Encroachment**")

    b. when the Previous Owners listed the Property for sale the owners of the neighbouring property approached the Previous Owners with respect to adjusting the fence to properly indicate the property lines;

    c. as time passed and the fence was not properly adjusted, the owners of the neighbouring property followed up with the Previous Owners and were advised by the Previous Owners that they were making every potential purchaser aware of where the correct property lines were;

    d. on or about June 2, 2020, the owners of the neighbouring property had the corner where the Property and the neighbouring property met surveyed, which survey the Previous Owners were aware of and they therefore knew, or ought to have known, that the property lines were not as they had represented to the Plaintiffs; and

    e. the Previous Owners removed the stakes placed into the ground by the surveyor that had been commissioned by the owners of the neighbouring property.

    (the "**False Representations**")

10. On August 25, 2023, the Plaintiffs commenced an action against the Previous Owners in Supreme Court of British Columbia, New Westminster Registry No. S-250562.

Insurance Policy

11. At all material times the Plaintiffs were the registered owners of the Property.

12. As a result of the False Representations, the Plaintiffs have suffered and continue to suffer damage, loss and expense.

13. Once the Plaintiffs were made aware of the False Representations, the Plaintiffs submitted a proof of claim to the Defendant under claim No. 938585.

14. By letter dated May 6, 2024, the Defendant provided the Plaintiffs a determination letter, providing that:

"... the Company accepted coverage for the encroachments of a chicken coop, horse stable and barn onto adjoining land (the "Encroachments"). You were additionally advised that the Company was evaluating its options to resolve this claim according to the terms, exclusions, and conditions of the Policy.

Please refer to the following Policy's Condition:

6. LIMITATION OF OUR LIABILITY

...

(c) 1. If we remove the cause of the claim with reasonable diligence after receiving notice of it, all our obligations for the claim end, including any obligation for loss You had while we were removing the cause of the claim.

The Company received and approved a quate from Square Foot Construction to remove the shed and resolve the claim in the amount of $30,870.00 CAD... By paying the cost of removal, it removes the cause of the claim.

Notwithstanding the above, a third-party appraiser was retained to evaluate the Insureds' 'Actual Loss,' as defined... by the Policy, which was determined to be $132,000.00... ***Based on the foregoing, the Company respectfully elects to pay the Insureds the amount of $162,870.00 CAD in full resolution of this claim.***"

(the "**Exclusion Clause**")

15. By letters dated May 15, 2024 and June 6, 2024, the Plaintiffs wrote to the Defendant advising that the payment of $162,870 is not accepted as full resolution of the Claim and that it was a partial payment.

16. The Defendant has failed to consider the whole of the Exclusion Clause in its determination of coverage for the Encroachment.

17. Section 6 (c)(2) provides that:

"Regardless of 6(c)(1) above, if You cannot use the Land because of a claim covered by this Policy:

a. You may rent a reasonably equivalent substitute residence and we will repay You for the actual rent You pay, until the earlier of:

i. The cause of the claim is removed; or

ii. We pay You the amount required by this Policy.

b. We will pay reasonable costs You pay to relocate any personal property You have the right to remove from the Land, including transportation of that personal property for up to fifty (50) kilometers from the Land and repair any damage to that personal property because of the relation. The amount We will pay You under this paragraph is limited to the value of the personal property before You relocate it."

18. Land is defined as:
... land described or referred to in Schedule A, and improvements affixed thereto which by law constitute real property... This definition does not limit the coverage contained in Covered Risks...22..."

19. The Policy provides coverage for risks including but not limited to the Plaintiffs being:

22. "...forced to remove or remedy... [their] existing structures, or any part of them... because:

a) They encroach onto adjoining land or onto an Easement, even if the Easement is excepted in Schedule B;

b) They violate a covenant, condition or restriction affecting [their] Land, even if the covenant, condition or restriction is excepted in Schedule B;

20. The Plaintiffs continue to suffer loss/expense respecting the Encroachment and the Defendants wrongful determination of covered risks under the Policy.

21. By its claim for subrogation, the Defendant has commenced an action against the Previous Owners on September 1, 2023 in the Supreme Court of British Columbia, New Westminster Registry, Court Action No. S250632.

Part 2: RELIEF SOUGHT

1. The Plaintiff Claims from the Defendant:

(a) General Damages;

(b) Special Damages;

(c) Costs;

(d) Interest pursuant to the *Court Order Interest Act*, R.S.B.C. 996 c. 79:

(e) Such further and other relief as to the Honourable Court may seem just.

Part 3: LEGAL BASIS

1. By a contract of insurance described as a Title Insurance effective September 1, 2021, made between the Plaintiffs and the Defendant, and in consideration of the premiums duly paid by the Plaintiffs, the Defendant agreed to insure the Property's title under Insurance Policy No. RO-1034733-A6DEE.
2. Pursuant to the Policy, the Defendant agreed to indemnify the Plaintiffs for, *inter alia*, any Encroachments to the Land.
3. The Exclusion Clause does not limit the Plaintiffs Claim as suggested by the Defendant.
4. The False Representations have cause great loss and expense to the Plaintiffs and the Defendant has breached the terms and conditions of the Policy of insurance by failing to provide indemnity under the Policy.
5. The refusal by the Defendant to pay insurance proceeds due and owing under the Policy amounts to a breach of contract.
6. As a result of the said breach of contract and denial of the claim, the Plaintiffs have suffered loss and damage.
7. As a result of the said breach of contract and denial of the claim, the Plaintiffs have suffered and will continue to suffer financial and emotional hardship.

Plaintiff's Address for service:	McQuarrie Hunter LLP 1500 – 13450 102nd Ave Surrey, BC V3T 5X3 T. 604-581-7001
Fax number address for service (if any):	604-581-7110
E-mail address for service (if any):	salimirzaee@mcquarrie.com
Place of Trial:	New Westminster, British Columbia
The address of the registry is:	651 Carnarvon Street, Begbie Square New Westminster, BC V3M 1C9

Date: July 15, 2024

Signature of Lawyer for Plaintiffs
SEPIDEH ALIMIRZAEE

Rule 7-1(11) of the Supreme Court Rules states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
(a) prepare a list of documents in Form 22 that lists

(f) All documents that are or have been in the parties possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and

(ii) all other documents to which the party intends to refer at trial, and

(b) Serve the list on all parties of record.

APPENDIX

[*The following information is provided for data collection purposes only and is of no legal effect.*]

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

1. Breach of Contract and breach of duty of care.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:
- ☐ a motor vehicle accident
- ☐ medical malpractice
- ☐ another cause

A dispute concerning:
- ☐ contaminated sites
- ☐ construction defects
- ☐ real property (real estate)
- ☐ personal property
- ☐ the provision of goods and services or other general commercial matter
- ☐ investment losses
- ☐ the lending of money
- ☐ an employment relationship
- ☐ a will or other issues concerning the probate of an estate
- ☒ a matter not listed here

Part 3: THIS CLAIM INVOLVES

- ☐ a class action
- ☐ maritime law
- ☐ aboriginal law
- ☐ constitutional law

☐ conflicts of law
☒ none of the above
☐ do not know

Part 4

[If an enactment is being relied on, specify. Do not list more than 3 enactments.]

1. *Insurance Act*, R.S.B.C. 2012

No. 254290
New Westminster Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

DARREN GREGORY MACLELLAN and TRACY LEE GRAY

PLAINTIFFS

AND:

CHICAGO TITLE INSURANCE COMPANY

DEFENDANT

RESPONSE TO CIVIL CLAIM

Filed by: Chicago Title Insurance Company

("Chicago Title")

Part 1: RESPONSE TO NOTICE OF CIVIL CLAIM FACTS

Division 1 – Defendant's Response to Facts

1. The facts alleged in paragraphs 1, 2, 3, 4, 5, 6, 10, 11, 14, 15, 17, 18 and 21 of Part 1 of the notice of civil claim are admitted.

2. The facts alleged in paragraphs 12, 16, 19 and 20 of Part 1 of the notice of civil claim are denied.

3. The facts alleged in paragraphs 7, 8, 9, and 13 of Part 1 of the notice of civil claim are outside the knowledge of Chicago Title.

Division 2 – Defendant's Version of Facts

1. In or about August 2022, the plaintiffs as insureds under title insurance policy number RO-1034733-A6DEE issued by Chicago Title on September 1, 2021 (the "Policy"), delivered to Chicago Title a Notice of Claim (the "Claim").

2. In the Claim, the plaintiffs state that certain assets or structures, being a portion of a driveway, a barn, a chicken coop and a horse pasture, which they had understood to be located on their Property (as defined in the Notice of Civil Claim) were encroaching on the neighbouring property.

3. On May 6, 2024, Chicago Title wrote to the plaintiffs to advise that it agreed to pay them the amount of $162,870.00 in full resolution of their Claim pursuant to the Policy (the "Payment").

4. The Payment was determined based on quotes received and appraisals commissioned by Chicago Title.

5. On May 13, 2024, Chicago Title delivered the Payment to the plaintiffs.

6. The Payment comprised consideration equal to:

   (a) the sum of $30,870.00 to demolish and remove the barn as quoted by a qualified contractor retained by the plaintiffs; and

   (b) the sum of $132,000 being the diminution in value of the Property as appraised and being the difference between (a) the fair market value of the Property assuming no encroachment issues, and (b) the fair market value of the Property without the chicken coop, horse stable and barn and representing the plaintiffs' Actual Loss as defined in the Policy.

7. Subsection 6(c)1 of the Policy Conditions states:

   "If we remove the cause of the claim with reasonable diligence after receiving notice of it, all of our obligations for the claim end, including any obligation for loss You had while we were removing the cause of the claim."

8. In making a payment of $30,870.00 Chicago Title removed the cause of the Claim, and accordingly all of Chicago Title's obligation for the Claim were at an end, including any loss the plaintiffs incurred while Chicago Title was removing the cause of the Claim.

9. Despite the express limitation of liability resulting from a payment set out in Section 6 (c) (1), and the discharge of that liability by payment in full thereunder of funds sufficient to remove the cause of the Claim, Chicago Title paid additional monies to the plaintiffs under the Policy.

10. Subsection 1(a) of the Policy Conditions states:

> "Actual Loss": the difference between the value of the insured estate as insured and the value of the insured estate or interest subject to the defect, lien or encumbrance insured against by this policy. The date used to assess the Actual Loss will be the date the claim was made by You, unless otherwise stipulated in the Conditions of this policy.

11. In making a payment of $132,000.00, and notwithstanding paying to the plaintiffs monies sufficient to remove the Claim, Chicago Title did include in the Payment monies representing the plaintiffs' Actual Loss.

12. In making a Payment in the total amount of $162,870.00, Chicago Title both removed the cause of the Claim and paid the plaintiffs' Actual Loss.

13. In answer to paragraph 16 of the Notice of Civil Claim, Chicago Title denies that it failed to consider the whole or any portion of the Policy.

14. In further answer to paragraph 17 of the Notice of Civil Claim, Chicago Title admits the facts alleged therein save and except that subsection 6(c)(2) of the Policy uses the word "relocate" rather than "relate" in the third line from the bottom. Moreover, the plaintiffs could use the Property and did not, or did not need to, rent a substitute residence and/or relocate personal property and no claim was made to Chicago Title for same.

15. In answer to paragraph 20 of the Notice of Civil Claim, Chicago Title denies that following the making of the Payment the plaintiffs continued or continue to suffer insured loss or expense respecting the Encroachment (as defined in the Notice of Civil Claim).

16. In making the Payment, Chicago Title met all of its obligations under the Policy.

Division 3 - Additional Facts

1. Nil

Part 2: RESPONSE TO RELIEF SOUGHT

1. Chicago Title consents to the granting of the relief sought in none paragraphs of Part 2 of the notice of civil claim.

2. Chicago Title opposes the granting of the relief sought in paragraph 1 of Part 2 of the notice of civil claim.

3. Chicago Title takes no position on the granting of the relief sought in none paragraphs of Part 2 of the notice of civil claim.

Part 3: LEGAL BASIS

1. Chicago Title did not breach the Policy.

2. Chicago Title did not deny the Claim of the plaintiffs, or any claim properly made under the Policy.

3. Chicago Title has made payment to the plaintiffs of all sums due and owing under the Policy.

4. The plaintiffs have not suffered loss or damage as a result of a breach of the Policy by Chicago Title, which is denied.

5. The plaintiffs have not suffered financial or emotional hardship as a result of a breach of the Policy by Chicago Title, which is denied.

6. Chicago Title will rely on the rules of contractual interpretation.

Defendant's address for service:

MacKenzie Fujisawa LLP
1600 – 1095 West Pender Street
Vancouver, BC V6E 2M6

Attn: Brian J. Konst

Fax number address for service (if any): 604 685 6494
E-mail address for service (if any): To both bkonst@macfuj.com and dyuen@macfuj.com

Date: October 10, 2024

Signature of lawyer for the defendant
Chicago Title Insurance Company,
BRIAN J. KONST

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(b) serve the list on all parties of record.

Feedback Form

Regional District of Okanagan-Similkameen
101 Martin Street, Penticton, BC, V2A-5J9
Tel: 250-492-0237 / Email: planning@rdos.bc.ca

TO: Regional District of Okanagan-Similkameen **FILE NO.:** I2025.030-DVP

FROM: Name: Tamara Semple And Dennis Wiren

(please print)

Street Address: [redacted]

RE: Development Variance Permit (DVP) Application
137 Saddlehorn Drive, Electoral Area "I"

My comments / concerns are:

I do support the proposed variances at **137 Saddlehorn Drive.**

X I do not support the proposed variances at **137 Saddlehorn Drive.**

Please provide any comments you wish the Board to consider:

Please see our rationale in the following email.

Feedback Forms must be be submitted to the RDOS office by **December 5, 2025**.
All representations, including names, will be made public if and when they are included in the Board Agenda.

Lesley Gibbons

From: Evan Phillips [redacted]
Sent: December 4, 2025 2:25 PM
To: Tharini Prakash
Subject: Feedback Concerning - FILE NO I2025.030-DVP
Attachments: DVP 137 Saddlehorn Drive, Electoral Area "I"- I2025.030-DVP.pdf; Feedback-Form3 (5) .docx

[redacted] You don't often get email from [redacted] Learn why this is important

Hello

Please accept the attached PDF as my Feedback for RDOS file No. I2025.030-DVP, Development Variance Permit (DVP) Application, 137 Saddlehorn Drive, Electoral Area "I"

I have also attached the completed Feedback Form should information be required as part of its format.

Please let me know if I am missing anything or need to address a prescribed format to be included in matters of this application.

Respectfully,

Evan Phillips
[redacted]

Please note while previous email addresses are still forwarded, my primary email is [redacted] *Â Thank you for updating my contact information to reflect this Â permanent change.*

Feedback Form

Regional District of Okanagan-Similkameen
101 Martin Street, Penticton, BC, V2A-5J9
Tel: 250-492-0237 / Email: planning@rdos.bc.ca

TO: Regional District of Okanagan-Similkameen **FILE NO.:** I2025.030-DVP

FROM: Name: Evan Phillips
(please print)

Street Address: [redacted]

RE: **Development Variance Permit (DVP) Application**
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☐ I do support the proposed variances at **137 Saddlehorn Drive.**

X I do not support the proposed variances at **137 Saddlehorn Drive.**

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PLEASE SEE THE ATTACHED DOCUMENT

THANK YOU

Feedback Forms must be be submitted to the RDOS office by **December 5, 2025**.
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Attention: RDOS BOARD OF VARIANCE

DECEMBER 4, 2025

RE: CURRENT DEVELOPMENT VARIANCE APPLICATION I2025.030-DVP, 137 SADDLEHORN DRIVE, ELIMINATION OF INTERIOR YARD SETBACK (FROM 15M TO 0M)

Pursuant to application DVP-12025.030, 137 SADDLEHORN DRIVE, a request to eliminate zoning requirements for interior parcel line set back existing non-conforming structures (from 15m to 0m)

I strongly object to the application under consideration for which a decision to support the application would in essence exempt three structures from conforming to Zoning Bylaw 15.4.5(c)(iii).

General
By granting this application, the Board would subject the neighbouring property of 141 Saddlehorn Drive to live with the intrusions, risks and stresses they have endured over the years, and of which have intensified dramatically since the Applicants purchased the property a few years ago.

Potential Effect on Other Jurisdictional Interests And Agencies
The decision to allow no setbacks could have effect on various overlapping interests and jurisdictions such as the Province of BC and applicable Crown agencies.

The Ministry of Forest and the BC Wildfire Service have garnered heightened media attention recently for their commitment and initiatives that target rural property owners and work to limit the spread of wildfire from property to property by avoiding exactly what the Applicant wants for the exclusive benefit of themselves. Fire events have come close to Saddlehorn even as recently as this year.

Other jurisdictional interests and Crown agencies that are directly affected, whether now or in the future, include the Province of BC., Fortis BC, Shaw, TELUS and the Ministry of Transportation. And while these jurisdictions and agents might not have explicit opposition to this application, it is not unreasonable to assume that should one of these structures be involved in an incident by which damage has occurred to the infrastructure in part of whole, that these agencies are charged to maintain, a careful review of the reasons for judgement would be scrutinized. And it will be the taxpayer who will pay if anything, but clear and extenuating circumstances justify not just a relaxation of the

standards, but reasons so compelling they warrant the elimination of the standards. As a resident of Area I, I cannot see anything in this application that warrants that risk.

Fire Considerations
The risks of fire are greater than they ever have been. Wildfire guidelines and best practices aside, the BC Building Code and RDOS Planning plays a key role in limiting distances for combustible structures and unprotected openings to prevent the spread of fire from on property to another.

Additional challenges for rural properties are fire response times. This should be cause for greater onus to maintain the bylaws pertaining to interior parcel setbacks as they and certainly should dissuade the consideration of eliminating the setbacks of structures all together by allowing them 0m to property line such as this application requests.

Because these structures were built without permit, they were consequently built without inspections - inspections that ultimately work to ensure both occupant health and safety and the safety of those surrounding properties. Inspections ensure that critical things are done right like making sure electrical wiring is up to code and doesn't present a risk of fire, or that the building won't collapse in next 100-year wind event, which are not uncommon in that area.

Structural Considerations
A structural failure from the pole barn type building. The structure is not built to BC Building Code. High winds regularly occur in the area as do heavy snowfall events leading to forces acting on the building that could very conceivably cause it to collapse.

The elimination of setbacks would fail to respect the adjacent property owners' basic right to a safe and secure enjoyment of their property. The exposure to risk of structural collapse and resulting damage to the adjacent property and its occupants must be weighed as part of the decision to approve zero clearances. And so avalanche from snow falling from roofs. Whose liability would it be if a building fell onto a vehicle, or a pet, or a person…? I don't great confidence in these two neighbours reaching an amicable and fair resolution about a windshield that was cracked as result of ice and snow falling from the neighbour's roof…

By permitting anything other than strict compliance to the zoning, the Board would subject the neighbouring property of 141 Saddleorn Drive to real and imminent risk of damage associated with the non-compliant and somewhat dilapidated structure.

Visual Encumbrance
The photo clearly shows the imposing structure directly on their property line and prevents whatever natural and aesthetic values the neighbours would have otherwise.

Water Erosion
Roof water that falls directly onto the neighbour's (141 Saddlehorn) property can be caused for erosion over time. . RDOS planning does not permit this, nor does the BC Building Code. The neighbouring property should not be made to suffer whatever erosion, that may result in the future from a neighbouring structure.

Pests
Common problems of any rural property barn or livestock shed include pests such as raccoon, weasel, mice and rats. Opportunists, rodents and weasels are attracted to and live in barnyard structures and livestock shelters. Zero clearance for these buildings means zero clearance for the associated pests that inhabit them.

Access to Buildings
Access to and from the shelter and the horse barn necessitates leaving the 137 property and entering the Easement on 141 Saddlehorn. The conditions also necessitate this when completing periodic maintenance and repair of these structures.

Activities in and around the building when in use must also be considered. And again, in this case, they would (and do currently) on the Easement located on 141 Saddlehorn. It's important to note here that the owners of 137 not only occupy this area as justified by the location of the buildings, they also have claimed excusive rights to use this area.

Other Locations for Buildings
The applicant claims relocating the structures is impossible due to a variety of vague reasons including that of topography. I can state with certainty, having specific knowledge of the property, that topographically, along with the other ambiguous claims of the Applicant such as legality and (physical?), are without merit.

I see nothing that would prevent the relocation of any of these structures, nor would it render their 8-acre property incapable of housing livestock, feed facilities and stables to adequately care for the livestock. And, to draw attention back to the applicant's photo, I will remind the Board the feed storage barn shows them to contain no feed. It shows they contain only an RV and a horse trailer.

Financial Hardship Consideration

The Applicant's claim of hardship citing financial impacts of a resale devaluation of $550,000, should they be required to relocate the structures is conjecture. In fact, I would argue that just the removal of the dilapidated structures would improve the value of the property, not devalue it.

As a contractor who knows those structures and that parcel of land, I have trouble coming to the same numbers they represent for replacement values, even if demolition was included.

I do know that despite the fact the structures remain, the Applicant has received significant compensation from their insurers under their title insurance for the explicit purposes of their removal. I'm not sure if those funds have been calculated into the hardship claims the Applicant warrants under this claim.

Entitlement to Exclusive Use of Your Neighbours Property?

The Applicant's made no mention in their application that to access the structures that would be permitted under this application necessitate leaving their own property and entering onto the property of 141 Saddlehorn Drive and have represented in aggressive Spartan-like resolve that because there is an Easement (meant for 141 property access and utilities), they have not only the right to access, but because they carry out a business involving horse and that where the horse tack room is....they have exclusive use and right to occupy the 141 Saddlehorn Easement. I jest using "a Spartan-like resolve", but the truth of the matter is that on several occasions the 141 owners (please forgive the shortened form) where physically threatened on their own land. The RCMP were called (on several occasions) and while sympathetic eventually chose to decline from getting involved, suggesting that the matter best be solved in civil court....

The owners of 141 wanted to pursue more amenable solutions in hopes maybe one day they could work towards resolving disputes and live on their property peacefully and without the angst of even seeing their neighbours now causes. The 141 property owners resolve has allowed them to be mature enough to avoid the invitations of physical violence and verbal abuse. But in doing so they have essentially been forced off a portion of their own land their own land. Yet through applications like this, they seem to be actively pursuing something in writing they can use as proof they have the (only?) right to be there.

What Caused All this in the First Place?
The previous owner! It was he who built the structures illegally and it was he who purportedly mislead the Applicant's to believe what they were purchasing was his to sell… why should any of this be the owners of 141 Saddlehorn Dr consequence?

The previous owner of 137 Saddlehorn developed his property, built the house and all the structures (along with the ones pertaining to this matter) and he managed to get away with it in cloak of darkness for a while. I was always aware of conflicts there but wasn't privy to any of the specifics, but there was always conflict surrounding the 137 owners use of the barn and tack area (years and years).

Questionable Motivation and Intent
The rationale provided by the Applicant on their application is questionable. Their claims of hardship surround their own exclusive financial benefits while never once acknowledging a single impact to their neighbours.

The Applicant has somehow managed to get a significant sum of money for the removal of the structures and still pursues keeping them. They make claims of needing these buildings exactly as they are and exactly where they are because they cannot work anywhere else on their 8-acre property. I'm a builder and I know this to be false.

I own horses, have chickens and raise turkeys. And, I would gladly offer to board their horses while building while rebuilding their structures for the money they've cited in their application; heck I'll even consider a 10% discount for all their troubles. I respect the Board and their ability to see beyond those who will say whatever it takes to get what they want.

The fact is the Applicant is clearly pursuing any option available to them that will result in the higher profitability in the sale of their property. And it seems they aren't too concerned about who that may affect because, as they state in their previous TUP application, as soon as there's a resolution in the Civil case we will sell and move out of the Okanagan. Now I don't like to hear that, but when I do, it tells me that they don't have to face the consequences of those trampling in their haste to get what they want. We used to call them bullies in school. I don't purport to know the Applicant and I have no desire to. I've heard from several people how they choose to conduct themselves. And to each their own. But when I see people taking adsvantage of others or bullying people, I'll make lots of time for them. I have a problem when I see good people getting bullied and I won't stand by and watch.

The actions of the Applicant since occupying the property continue to be what can only be characterized as nefarious and hostile. Some of their actions have even been cause for the 141 Saddlehorn property owners to become concerned about their own physical safety, and the safety of their property.

Community Values Over Individual Gain

As a contractor I'm regularly approached by property owners with projects goals that contravene either building codes or bylaws. Some are completely aware of conflicts while others are not. Long ago I made the conscious decision not to work without permits or complete work that falls short of codes that dictate what equate to the lowest quality of work accepted by codes that govern.

In my quest to pursue better than the worst allowable methods of construction I pursued knowledge and understanding of the intent and objectives that are the framework behind which codes and laws govern building. I felt that if I understood the reasons for the framework and laws, I could help guide my customers towards mutually successful projects that the community would support and that did not create problems for my customers in the future.

After more than 18 years of working hard to maintain trust between my customers, municipalities, and building professionals aligned in this thinking, I have grown intolerant of those who always seem to be working with a license or without a permit on projects that fall short of the lowest standards. It is even more frustrating to learn of decisions that perpetuate that behavior and entice others to follow riding on the coattails of those who choose to work within the framework that supports the interest of the whole community and not just the interests of a few individuals.

When decisions are made that allow practices to occur or to remain that do not meet codes, laws or standards, it undermines the effort of all those that strive to uphold those basic frameworks and standards. I can't imagine how hard it must be for a building official to explain why it is ok for his neighbour to have the very same condition they are requesting and why it is completely unacceptable for him; or how it makes those in planning or compliance jobs harder when they encounter similar circumstances.

I understand and support the need for flexibility when extenuating circumstances warrant a relaxation either based on site specific constraints or conditions or when compelling circumstances make it impossible or reasonable to comply. But that is not what we are dealing with under this application.

Ignorance of an Issue Does Not Excuse the Owner of the Need to Correct it

Like so many things, the process of purchasing a property can hold many pitfalls and circumstances that buyers would be blind to and that could hold grave consequences should they follow through with that purchase. Such is the case of industrial properties where the discovery of contaminated soil leaching into nearby creek becomes the burden of the purchaser upon discovery. The laws are clear. You buy it, you own it, so buyer beware...

Similarly, where we understand it is unacceptable for the purchaser to claim that it's too cost prohibitive to mitigate the damage caused by the oil spill leaching into a nearby creek or that somehow it becomes the problem of the fish that rely on that creek for their survival, the neighbours of a non-compliant structure that poses risks and negative affect should not be the ones that are burdened with its condition nor should the purchaser be excused from bringing the condition to compliance based on reasons without extraordinary and compelling circumstance.

In this case, the Applicant chose for whatever reason chose not to exercise due diligence of obtaining a survey confirming the property lot lines, or requesting a search of non-compliance, both of which are common practices when purchasing a property.

The Applicant simply took the word of the seller apparent in their claim, *"they were misled by the seller"*. I believe the matter before the RDOS Board of Variance should proceed no further than that admission.

However unfortunate, the Applicant's failure to exercise due diligence in the purchase should not become the problem of neighbouring properties nor should it mean that those neighbouring properties must accept anything less than that which they wold otherwise have the lawful right.

Whatever costs or hardship the purchaser is subject to in order to bring conditions of their property into compliance with the law, is a matter the purchaser can pursue with the seller in civil court. In this case the Applicant is looking to circumvent civil processes which are in place for exactly this circumstance and instead requests the RDOS Board of Variance for an outcome that continues non-compliant conditions to their benefit and clear to the detriment of their neighbours.

Not only will a decision by the Board to allow the continuation of these non-compliant structures negate the purpose and intent of setback bylaws and expose the 141 property owners to the various risks and hazards outline above, it also and importantly disregards the neighbouring property owner's entitlement to otherwise realize the full

enjoyment and benefits of their property. It sets a dangerous and avoidable precedent that compels others to disregard laws and codes and makes those that work within those laws bitter, witnessing the success of those who do not.

Thank you for your consideration of the concerned outlined above.
With respect and courtesy,

Evan Phillips