

The Corporation of the Municipality of Brockton



By-Law 2020-069

Being a By-Law to Authorize the Corporation of the Municipality of Brockton to Enter Into a Site Plan Agreement with SMURK Inc.

Whereas the *Municipal Act, 2001*, S.O. 2001, c. 25, Section 5(3), as amended provides that a municipal power, including a municipality's capacity rights, powers and privileges under section 9, shall be exercised by By-Law; and

And Whereas pursuant to Section 41, Subsection (7) of the *Planning Act R.S.O 1990, c. P.13* as amended, authorizes the Corporation to require the owner of subject lands to enter into an agreement with the Corporation formalizing the nature, scope and details of the development on said subject lands; and

And Whereas the Council of the Corporation of the Municipality of Brockton has been approached by SMURK Inc. to develop certain property within the limits of the Municipality of Brockton for purposes of erecting buildings; and

And Whereas the Corporation of the Municipality of Brockton enacted a Site Plan Control By-Law pursuant to the provision of Section 41, of the *Planning Act R.S.O, 1990, c. P.13* as amended and requires that all Owners of new structures including Garden Suites or additions to existing structures to be erected within the Municipality of Brockton, save and except single family residential and agricultural structures, be required to enter into a Site Plan Agreement with the Corporation that shall specify the details of the development;

Now Therefore the Council of The Corporation of the Municipality of Brockton enacts as follows:

- 1.0 That the Corporation enter into a Site Plan Agreement which shall detail certain terms and conditions of the proposed development by SMURK Inc. and this agreement, shall be attached hereto and marked as Schedule "A" and shall form an integral part of this by-law.
- 2.0 That the Mayor and Clerk are authorized to sign and execute the attached Site Plan Agreement, as well as any other related documentation on behalf of the Corporation, including the Acknowledgment & Direction required to register the Site Plan Agreement.
- 3.0 This By-Law shall come into full force and effect upon final passage.
- 4.0 This By-Law may be cited as the "Ballantyne (SMURK Inc.) Site Plan Agreement By-Law".

Read, Enacted, Signed and Sealed this 9th day of June, 2020.

Mayor – Chris Peabody

Clerk – Fiona Hamilton

Municipality of Brockton
Site Plan Agreement
(Outside of the East Ridge Business Park)

This Agreement made this 9th day of June, 2020 and referred to as the
“Ballantyne Smurk Site Plan Agreement”

Between:

SMURK Inc.
hereinafter referred to as the “Owner”

-and-

The Corporation of the Municipality of Brockton
hereinafter referred to as the “Corporation”

Whereas the Owner represents and warrants that it is or will be the Owner of the lands described in Schedule A attached hereto (hereinafter called the “subject lands”) which are affected by this Agreement;

And Whereas in this Agreement “Owner” includes any subsequent Owner of the aforementioned subject lands;

And Whereas the Corporation has enacted a Site Plan Control By-Law pursuant to the provision of Section 41, of *the Planning Act* R.S.O, 1990, c. P.13 as amended and the Corporation requires that all Owners of new structures including Garden Suites or additions to existing structures to be erected within the Municipality of Brockton, save and except single family residential and agricultural structures, be required to enter into a Site Plan Agreement with the Corporation that shall specify the details of the development;

And Whereas the Owner wishes to undertake a development on the said lands in accordance with a Site Plan attached as Schedule “B” hereto, hereinafter called the “Approved Site Plan”;

And Whereas subsection (7) of the said Section 41 authorizes the Corporation to require the Owner of the subject lands to enter into an Agreement with the Corporation;

And Whereas the covenants in this Agreement are binding upon the Owner and when registered on title are binding upon all successor’s on title;

And Whereas the Corporation is of the opinion that it would not be proper or in the public interest to permit development of the subject lands unless assurances are given by the Owner that matters referred to in this Agreement are carried out in the manner hereinafter set forth;

Now therefore this agreement witnesseth of lawful money of Canada now paid by the Owner to the Corporation, the receipt whereof is hereby acknowledged, the Owner covenants and agrees with the Corporation as follows:

1. Introduction

- 1.1. The Owner agrees to enter into a Site Plan Agreement with the Corporation, for the development of all buildings and structures located on the subject lands.
- 1.2. The Owner agrees to allow the Corporation **at the Owner’s expense** to register or deposit this Agreement in the Registry Office for the County of Bruce against the subject lands.
- 1.3. Nothing in this Agreement shall relieve the Owner from complying with any other applicable Municipal requirements or by-laws.
- 1.4. The Owner hereby grants to the Corporation, its servants, agents and contractors, a license to enter the subject lands for the purposes of inspection of the works on the subject lands or for any purpose pursuant to the rights of the Corporation under this Agreement.

2. Site Development

- 2.1 The Owner agrees to undertake development on the subject lands, at his sole expense, in conformity with the Approved Site Plan as detailed in Schedule "B" attached hereto.
- 2.2 The Owner agrees to restore the municipal streets, to current standards, which have been disturbed or damaged during the course of construction, to the satisfaction of the Corporation.

3. Landscaping

- 3.1 The Owner shall, at his own expense, install landscaping as indicated on the Approved Site Plan, within one (1) year of completion of the buildings.

4. Sewers

- 4.1 The Owner shall construct all drainage works and on site tertiary sewage treatment systems with phosphorus removal, as shown on the Approved Site Plan and in accordance with the requirements of the *Ontario Building Code*, 1992, S.O. 1992, c. 23 and any regulations thereunder, as amended.

5. Water

- 5.1 The Owner shall **at its expense** connect to the existing watermain. The location of this connection shall be located as approved by the Director of Operations for the Corporation of Brockton or designate, said connection to be **at the expense of the Owner**, subject to any required fees and in accordance with the servicing standards of the Corporation.
- 5.2 The parties hereto acknowledge that it is not the present intention of the Corporation to turn off the water at the watermain with respect to any existing private water service connections not utilized by the Owner; **Provided** however that the Corporation reserves the right at any time to turn off the water **at the cost of the Owner**. In the meantime, the Owner for and on behalf of itself and any future heirs, executors, administrators, and assigns and respective servants, workmen and agents, covenant and agree with the Corporation that they will not cause any damage directly or indirectly to any such unused watermain private service connections, including valve boxes and existing fire hydrants located on the subject lands of the Owner and in the event of any damage so caused by them or any of them, the **Owner shall bear the cost** of any repairs and/or replacements required by reason of such damage.

6. Hydro

- 6.1 The Owner shall contact Hydro One Networks for purposes of finalizing any arrangement with regard to hydro services for the subject lands. The Owner shall be responsible for providing verification, in writing, to the Corporation from Hydro One Networks that it has arranged for adequate and appropriate hydro services **at the Owner's expense** for the subject lands. The issuance of a building permit for the development shall be conditional upon this aforementioned verification.

7. Drainage

- 7.1 The Owner agrees that surface and roof drainage systems shall be designed and constructed to the satisfaction of the Corporation and as shown on the Approved Site Plan. Water shall not be directed onto any adjoining properties without the express approval of the so affected property owner within a registered drainage easement.

8. Lighting

- 8.1 The Owner agrees that all lighting shall be constructed as shown on the Approved Site Plan and shall be oriented and its intensity so controlled to prevent a glare on adjacent roadways and properties.

9. Maintenance

9.1 The Owner shall:

- a) Complete the works and other facilities required on the Approved Site Plan and this Agreement at its expense and to the satisfaction of the Corporation;

9.2 Without limiting the generality of paragraph 9.1 (b), the Owner shall:

- a) Maintain all hedges, trees, shrubs, and other ground cover in a healthy state;
- b) Keep any works and facilities shown on the plan with respect to landscaping in good repair; and
- c) Refrain from doing anything that will have a detrimental effect on adjoining properties.

10. Site Plan Inspection and Occupancy

10.1 The Owner agrees that prior to occupancy of the building, it shall request a Site Plan Inspection conducted by the Corporation. An agent or employee of the Corporation shall inspect the site and note any deficiency associated with the project that requires remedy prior to occupancy. The Corporation may permit occupancy if it is satisfied that the Owner demonstrates its intention to complete and repair any deficiencies identified in the Site Plan Inspection report.

11. Indemnity

11.1 The Owner will at all times indemnify and save harmless the Corporation of and from all losses, costs and damages which the Corporation may suffer or be put to, for or by reason of, or on account of, the construction, maintenance or existence of pavements, curbs, plantings, and other improvements upon the road allowances where the same are required by this Agreement to be provided at the expense of the Owner and such indemnity shall constitute a first lien and charge upon the subject lands, and shall be added to the assessment roll as unpaid taxes and may be collected in a similar manner as unpaid Municipal taxes.

11.2 This Agreement and the provisions hereof do not give to the Owner or any person acquiring an interest in said lands (each hereinafter in this paragraph called "such persons") any rights against the Corporation with respect to the failure of any such person to perform or fully perform any obligation under this Agreement, or the failure of the Corporation to force any such person to perform or fully perform any such obligations under this Agreement or the negligence of any such person in the performance of the said obligation. All facilities and matters required by this Agreement shall be provided by the Owner to the satisfaction of and at no expense to the Corporation, and shall be maintained to the satisfaction of the Corporation at the sole risk and expense of the Owner, and in default thereof and without limiting other remedies to the Corporation the provisions of Section 446 the *Municipal Act 2001*, S.O. 2001, c. 25 as amended, shall apply.

11.3 If any matter or thing required to be done by this Agreement is not done in accordance with the provisions of this Agreement and such default continues, in addition to other remedies available to it, the Corporation may direct that such matter or thing shall be done at the expense of the Owner, and the Corporation may recover at the expense incurred in doing it by action, the Owner hereby authorizes the Corporation to enter upon the said subject lands and do such matter or things.

12. Severability

12.1 The clauses of this Agreement shall be deemed independent and the striking down or invalidity of any one or more of the clauses does not invalidate this Agreement or the remaining clauses.

13. Additional Permits

13.1 The Owner acknowledges that the Corporation by approving the Site Plans, and entering into this Agreement, does not relieve the Owner from the requirements of obtaining any permit or license that may be required by the Corporation, the County of Bruce or any other agency, including any provincially appointed regulatory body or Ministry, before the proposed development can proceed.

14. Termination of Agreement

- 14.1 If this Agreement is terminated prior to the completion of construction, the Corporation is deemed to have withdrawn its consent to the proposed development and A Stop Work Order may be issued until the Owner has entered into a further Site Plan Agreement. No liability or other duty required of the Corporation under this Agreement shall be imposed on the Corporation should this Agreement be terminated. The Corporation is under no obligation to return any money paid under this Agreement.
- 14.2 Notwithstanding anything contained herein to the contrary, and subject to approval by the Corporation, if the Owner is delayed in substantially completing the construction of any work or facility required by this Agreement by any act beyond the Owner's reasonable control, the time for completion shall be extended by a period of time equal to such delay.

15. Estoppel

- 15.1 The Owner further covenants and agrees that it will not call into question directly or indirectly in any proceeding whatsoever in law or in equity or before any administrative tribunal, the right of the Corporation to enter into this Agreement and to enforce each and every term, covenant and condition herein contained, and this paragraph may be pleaded as an estoppel against the Owner in any such proceeding.

17. Notices

- 17.1 Any notices required or permitted to be given under this Agreement shall be in writing and may be served either personally or by mailing such notice by registered mail postage prepaid or if the postal service has been disrupted for any reason, by delivering such notice by a prepaid courier service as follows:

The Corporation of the Municipality of Brockton
c/o Clerk
100 Scott Street
P.O. Box 68
WALKERTON, Ontario
NOG 2V0

SMURK Inc.
58 Pintail Dr
ELMIRA, Ontario
N3B 3K9

- 17.2 If any notice is mailed by registered mail, postage prepaid or sent by prepaid courier service as aforesaid, it shall be deemed to have been received by the party to whom it was mailed or sent on the second day following the day upon which it was received by one of Her Majesty's post offices or delivered to the courier service unless the second day ends on a Saturday, Sunday or legal holiday, in which case those days are not included in computing the two day period. Either party may, by notice to the other, designate another address in Canada to which notices mailed or delivered more than ten (10) days thereafter shall be addressed.

18. Agreement Runs with Land

- 18.1 This Agreement shall enure to the benefit of the Corporation, its successors, its employees, its agents and assigns. The benefits and the burden of the covenants, agreements, conditions and undertakings herein contained shall run with the land and are binding upon the land and upon the Owner and its successors and assigns, and any future owner.

19. Municipal Expenses

- 19.1 The Owner shall pay to the Corporation an administration fee of \$114.00 plus the costs for all outside technical, professional and legal advice that the Corporation has incurred in order to approve the development covered by this agreement. These expenses do not include internal administrative or technical services rendered by full time municipal staff.

20. Gender and Number

20.1 In this Agreement, words importing the singular number include the plural and vice versa and words importing the masculine gender include the feminine and neuter genders.

Signed, Sealed and Delivered
In the Presence

Witness:_____

Owner SMURK Inc.

Date:_____

Per: _____
Chane Ballantyne
I have the authority to bind the corporation

The Corporation of the Municipality of Brockton

Per: _____
Chris Peabody – Mayor

Per: _____
Fiona Hamilton – Clerk

We have authority to bind the Corporation

Schedule A

The lands known as Assessment Roll Number 41 04 340 010 12006 and municipally known as 496 Lake Rosalind Road 4, Brockton and legally described as PT LT 68 CON NDR BRANT PT 2 & 3 3R1261; BROCKTON, bearing parcel identifier number 33194-0320 (LT).

Schedule B

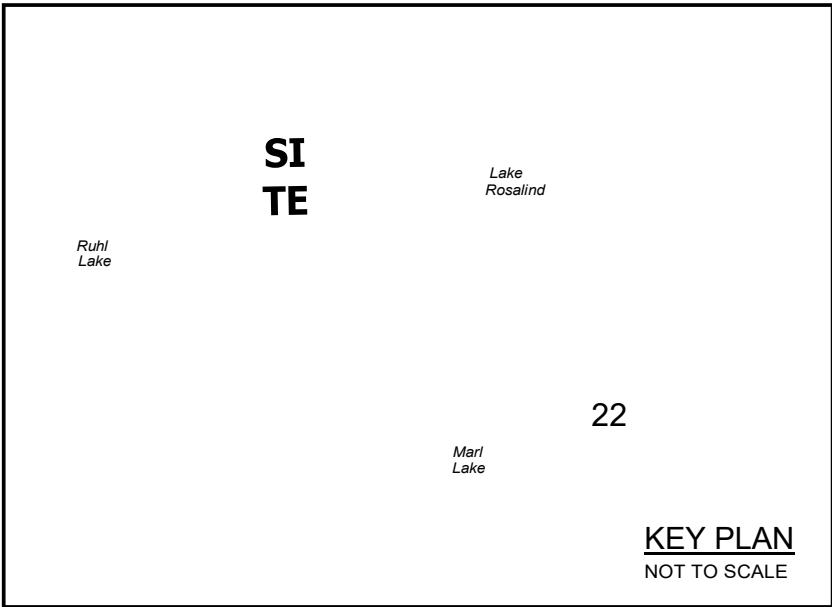
List of Plans

496 LAKE ROSALIND ROAD No. 4
MUNICIPALITY OF BROCKTON
COUNTY OF BRUCE

PROPOSED GRADING PLAN

By Cobide Engineering Inc. Drawing No. 01713-SP available to view at the Municipal Office.

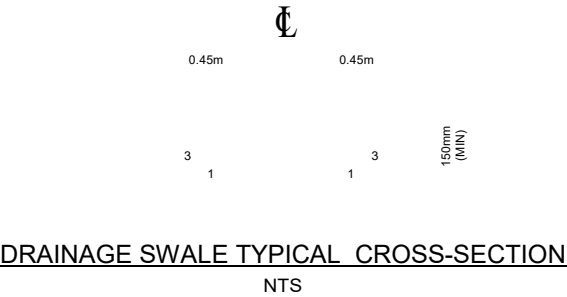
Schedule "B"



LEGEND	
-----	APPROXIMATE PROPERTY BOUNDARY
---	EXISTING STREET/PROPERTY LINES
---	EDGE OF EXISTING PAVEMENT
---	EDGE OF EXISTING GRAVEL
---	PROPOSED SWALE
---	EXISTING FENCE
---	EXISTING TREE LINE
---	EXISTING HYDRO GUY WIRE
---	EXISTING HYDRO POLE
---	EXISTING CABLE TV PEDESTAL
---	EXISTING TELEPHONE PEDESTAL
---	STANDARD IRON BAR
---	IRON BAR
---	EXISTING DECIDUOUS TREE AND DIAMETER
---	EXISTING CONIFEROUS TREE AND DIAMETER
---	BENCHMARK
---	REMOVAL
---	PROPOSED ELEVATION
---	EXISTING CONTOUR
---	SVCA HAZARD LINE
---	BUILDING SETBACK LINE

LOT STATISTICS:	
PART 1 PLAN 3R-10277	
OVERALL LOT AREA = 2559.54m²	
PROPOSED BUILDING ENVELOPE =176m² +/-	
PART 2 PLAN 3R-10277	
OVERALL LOT AREA = 2842.22m²	
PROPOSED BUILDING ENVELOPE =191m² +/-	

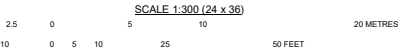
LR-10 ZONING PROVISIONS:	
MINIMUM FRONT YARD:	5.0m
MINIMUM INTERIOR SIDE YARD:	1.5m
MINIMUM EXTERIOR SIDE YARD:	6.0m
MINIMUM REAR YARD:	(AS PER SVCA)
MAXIMUM LOT COVERAGE:	15.0%



CAUTION:
THE POSITION OF POLE LINES, CONDUITS, WATERMAINS, SEWERS AND OTHER UNDERGROUND AND OVERGROUND UTILITIES AND STRUCTURES IS NOT NECESSARILY SHOWN ON THE DRAWINGS, AND, WHERE SHOWN, THE ACCURACY OF THE POSITION OF SUCH UTILITIES AND STRUCTURES IS NOT GUARANTEED. BEFORE STARTING WORK, THE CONTRACTOR SHALL INFORM HIMSELF OF THE EXACT LOCATION OF ALL SUCH UTILITIES AND STRUCTURES, AND SHALL ASSUME ALL LIABILITY FOR DAMAGE TO THEM.

Notes

1. COBIDE ENGINEERING INC. ASSUMES NO RESPONSIBILITY FOR BASEMENT CONDITIONS DUE TO GROUNDWATER.
2. ALL FOOTINGS ARE TO BE CONSTRUCTED TO NATIVE SOIL OR PLACED ON STRUCTURAL FILL.
3. GRADE TO ENSURE POSITIVE DRAINAGE AWAY FROM BUILDING.
4. THIS PLAN IS NOT TO BE USED FOR CONSTRUCTION UNLESS A SIGNED ENGINEER'S STAMP APPEARS HEREON.



Benchmark Information

BM1	SPIKE IN EAST FACE OF HYDRO POLE LOCATED IN THE EXISTING DRIVEWAY OF PART 2 OF THE PROPOSED SEVERANCE
ELEVATION	276.49m

1	MAY 28/20	SECOND SUBMISSION	SJC	SJC
0	MAY 8/20	PRELIMINARY SUBMISSION	SJC	SJC
No.	DATE	DESCRIPTION	BY	APPD
REVISION / ISSUE				

Seal not valid unless signed and dated

Title:
**496 LAKE ROSALIND ROAD No. 4
MUNICIPALITY OF BROCKTON
COUNTY OF BRUCE
PROPOSED GRADING PLAN**

Client:
CHANE BALLANTYNE

Design: - Scale: 1:300

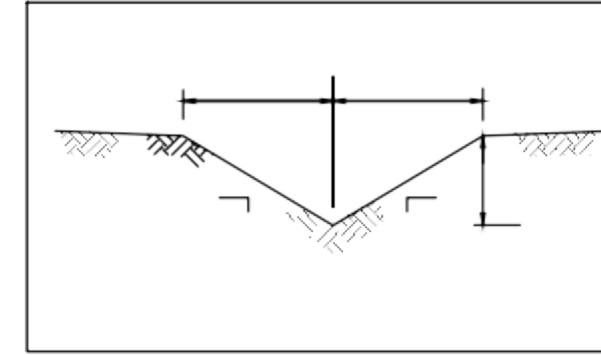
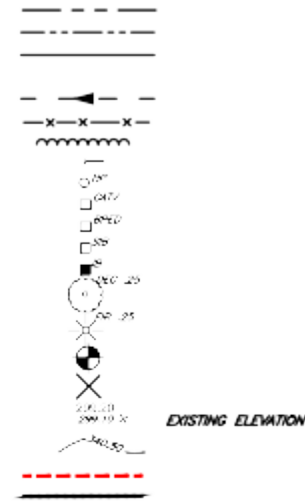
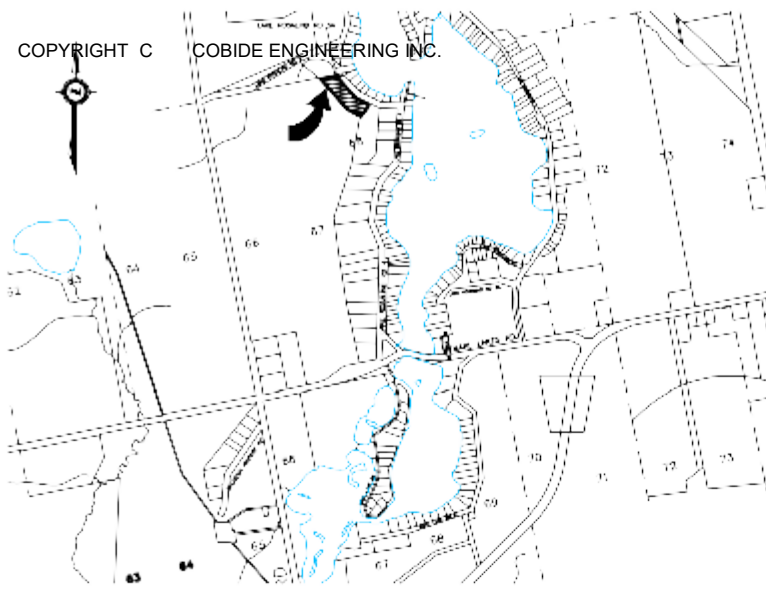
Drawn: BCD

Checked: SJC

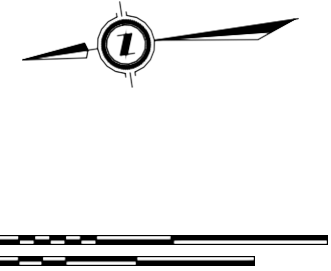
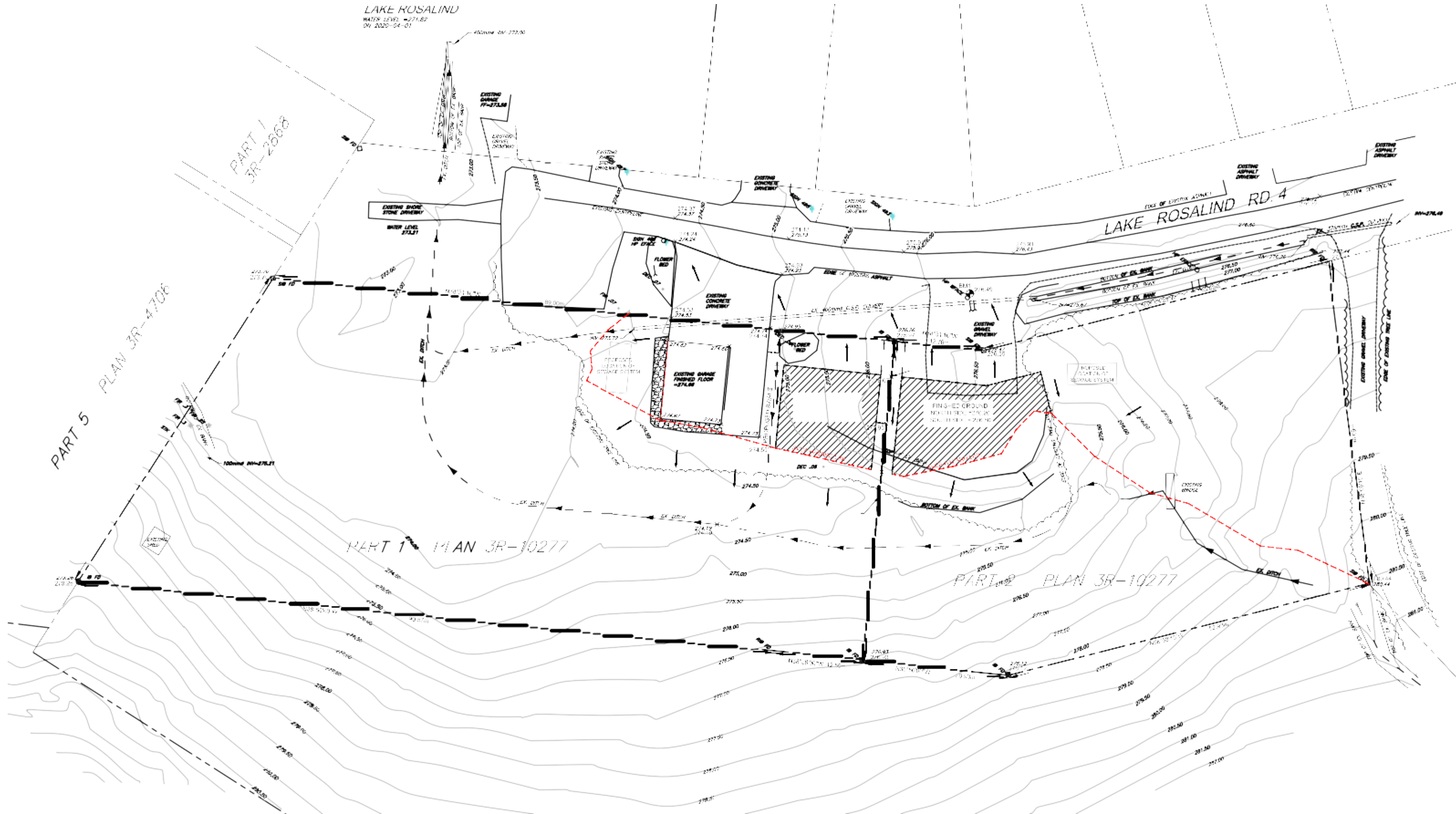
Date: APR 2020

Design Engineer

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LAKE ROSALIND
WATER LEVEL: 271.82
DN 2020-04-01



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