

# St Jacobs Trail Neighbours' Concerns with Retaining Wall E behind Lots 1 - 7

# Agenda

- Background
  - Who we are
  - Why are we here
- Three Primary Areas of Concern
  1. Safety and Soundness of Retaining Wall E
    - To be addressed in due course (if needed)
  2. Liability
    - Clarifications required on who is responsible/liable for what
  3. Transparency/Communication
    - Urgency to communicate on liability concerns
- Recommendations

# Who we are

- Purchasers of Lots 1 to 7 in the St Jacobs Trail community (excluding Lot 2 which is still under development)

# Why we are here

- We are concerned about retaining wall E located at the back of our properties abutting the stormwater management pond within Block 54
- Retaining wall E quickly failed in the first year and incurred significant remediation, suggesting that the wall was poorly designed/constructed for the local soil conditions
- We are concerned with the Township's efforts to place the burden of responsibility for maintenance of this high risk, high cost community structure solely on the homeowners of Lots 1 - 7
- We seek a decision from the Council to have the Township assume full responsibility for retaining wall E and/or to communicate this to all purchasers and future purchasers as soon as possible

# 1. Safety and Soundness of Retaining Wall

- Retaining wall E had a catastrophic failure in Nov/Dec 2020
  - sagging (settlement) and outward moving (bowing)
  - Failure as a result of poor soil and ground water
  - Wall design assumed ground water below wall foundation
  - Ground water above wall foundation throughout lots 1-7 – only small section repaired
- Retaining wall E was repaired Dec 9 to 14, 2020
  - Wall E drainage tubes not installed until August 2021 – water permeating out wall May '22
  - Meritech/Township enacted monitoring program – inspection after 1 year
  - No inspection report submitted to Township as of April '22 (16 months after wall repair)

## 2. Liability for Retaining Wall

- Township viewpoint as communicated to us on May 3, 2022, Lots 1 – 7 own the portions of retaining wall E located on their properties. And as such, it is the owner of each individual property who is responsible for maintaining their piece of the retaining wall and all liability associated with it
- Home insurance does not cover retaining wall repairs that are caused by soil and water issues. This shows that this is not within the typical scope for a homeowner. If this was common, insurance companies would have developed coverage to provide a level of protection to mitigate the risks
- As will be shown, the Township's viewpoint above is inconsistent with the terms required by the Township and agreed to by all Purchasers via the Purchase and Sale Agreement

# 3. Transparency/Communication

## **Terms included in all Purchase and Sale Agreements for St Jacobs Trail Homes**

- The only reference to retaining walls in the entire ~85 page Purchase and Sale Agreement appears in Appendix “M” - Miscellaneous Covenants and Clauses Required by the Municipalities, Subdivision Agreements and Otherwise
- This Appendix contains various warning clauses such as:
  - The Purchasers of Lots 18 to 26 are advised and acknowledge that sound levels due to road traffic...
  - The Purchasers of Lots 1 to 17 are advised and acknowledge... a public trail system...
  - The Purchasers of Lots 18 to 26 and 32 to 45 are advised that due to its proximity to Arthur Street ... noise levels...
  - Prospective Purchasers of Lots 54 to 60 are advised that due to proximity of the adjacent salvage yard...
  - etc
- **Note that there is no similar warning clause about the risks of the retaining walls and responsibility to maintain them**

# Terms included in all Purchase and Sale Agreements for St Jacobs Trail Homes

- The only reference to retaining walls in the Purchase and Sale Agreement appears in clause 8 of Appendix M. It states,
- “The Purchaser agrees that it shall maintain all infiltration galleries, fencing and/or retaining walls that may be required for the appropriate development of their property in an acceptable state and in accordance with the Engineering and Planning Drawings, all to the satisfaction of the Township of Woolwich. The Purchaser further agrees not to impact the said infiltration galleries, fencing and/or retaining walls with buildings, structures or landscape features. The Purchaser agrees to obtain this covenant from a purchaser of the Property”



# What Clause 8 tells us

- Clause 8 does not say that property owners are responsible for maintaining retaining walls located on their own property. Clause 8 says that every purchaser who signed the Agreement (i.e the entire community) is responsible to maintain all infiltration galleries, fencing and retaining walls that **may be required for the development of their property**
- There is ambiguity in the bold phrase. Without the infiltration galleries, fencing and retaining walls, the community site plan could not have been developed as it was. Are all lots responsible to maintain the retaining walls? Another possibility is that lots 1 to 7 would still have been created without retaining walls, albeit in a slightly different location. And to accommodate this, some of the other lots in the development might have been modified or eliminated. Hence the burden of responsibility for the retaining walls could, in theory, rest with the owners of some other unknown lots and not at all with the owners of lots 1 to 7

# What Clause 8 tells us (continued)

- Additional ambiguities
  - If multiple lots required a particular retaining wall for their development, who is responsible to ensure that any maintenance work is done? How would differences of opinion be settled?
  - If multiple lots required a particular retaining wall for their development, what proportion of any expenses is to be borne by each purchaser? How would differences of opinion be settled?
  - What standard of maintenance is needed to comply with “**all to the satisfaction of the Township of Woolwich**”? How will disagreements be settled?

# Summary of Issues Related to Appendix M

- This Appendix contains numerous warning clauses to specific lots. There was an obvious opportunity to advise the purchasers of lots 1 to 7 of liabilities related to the retaining walls. The Township chose not to identify them
- Clause 8 was inserted into the Purchase and Sale Agreement at the direction of the Township. It is ambiguous. It is not possible to discern exactly which purchasers bear responsibility for the specified structures and in what proportions
- Clarification on the responsibility for all structures specified in Clause 8 is needed urgently. If not provided, the confusion will create discontent and disagreement within the neighbourhood, with most of the dissatisfaction directed at the Township for creating the situation

# Township Concern with Wall Integrity

- Grading approval letter to Bromberg ties private wall to Township surface works agreement (See Appendix Slide 15)
- Not standard practice for private property and implies Township responsibility and ownership
- Demonstrates Township's significant concern with wall integrity
- 2 Years or more of monitoring (warranty period) puts a black cloud over homeowners and impairs potential sale of property
- Additional conditions set in Township grading letter that were not communicated in purchase and sale agreement. Again potentially limits land use which reduces potential value
- Bromberg again did not communicate conditions set by Township to homeowners in their grading letter (See Appendix Slide 16). Reinforces disconnect between Township and Bromberg. General letter implies all homeowners have "same" responsible for all subdivision development infrastructure
- Township has obligation to audit their conditions and ensure details have been passed onto homeowners

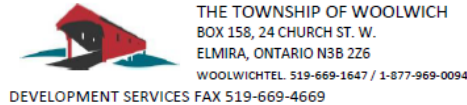
# Recommendation

- As shown, Appendix M in the Purchase and Sale Agreement and particularly Clause 8 contains significant ambiguities. It is not effective at passing liability for the retaining walls to the Purchasers
- Since nothing can be done without the Township's approval and since there is no clear onus of responsibility on any homeowner, and since the issue will fester unless addressed promptly, we recommend that the Township accept full responsibility for the maintenance of Wall E within the St Jacobs Trail community and/or communicate this to the purchasers expeditiously.

# Appendix



# Appendix – Township Grading Letter to Bromberg



## TOWNSHIP

March 25, 2022

Bromberg Homes  
44 Saltsman Drive, Unit 5  
Cambridge, ON  
N3H 4R7

### RE: Bromberg Homes Lot Grading Approval

Township staff completed final grading inspections and reviews for [REDACTED] within phase 1 of the Jacobs Trail subdivision in St. Jacobs as listed below. Final grading generally complies with the intent of the approved lot grading plan. Due to the proximity of the retaining wall and direct relation to lot grading for these lots final grading approval will be issued with the following notes:

- a. The certification of these lots shall not be construed as certification or acceptance of the privately owned rear retaining walls. The retaining walls are included in the subdivision agreement and will be considered for final acceptance once required acceptance documentation has been received to the satisfaction of the Township of Woolwich. The retaining wall maintenance period will end when final acceptance of surface works is issued for Phase 1 (provided no deficiencies).
- b. The addition of any future structures (additions, fences, decks, sheds, pools, etc.) in the rear yards shall consider the retaining wall and shall not impact the wall in any way.
- c. The Township of Woolwich shall not be held liable for any damage to, or maintenance required on the privately owned retaining walls.
- d. It is the owner's responsibility to ensure the retaining walls and fences are maintained in a safe and structurally sound manner.
- e. Pool permit applications shall be reviewed by Meritech Engineering and Chung & Vander Doelen Engineering Ltd. and written confirmation provided to the Township that the pool installation will not adversely impact the retaining wall in any way prior to the Township issuing an approved pool permit. The cost for this review shall be the responsibility of the property owner.



# Appendix – Bromberg Grading Letter Homeowners

