



BUILDING CODE COMMISSION

IN THE MATTER OF Subsection 24(1) of the *Building Code Act*, S.O. 1992, c. 23, as amended.

AND IN THE MATTER OF Sentence 8.8.1.1.(1), Sentence 8.8.1.2.(1) and Clauses 8.8.1.2.(1)(a)(b)(c) and (d) of Regulation 332/12, as amended, (the "Building Code").

AND IN THE MATTER OF an application by David Ballentine, for the resolution of a dispute with Robert Farrow, Chief Building Official, to determine whether the proposal to install a composting toilet and a Class 5 sewage system on a vacant property to serve a future building, provides sufficiency of compliance with Sentence 8.8.1.1.(1), Sentence 8.8.1.2.(1) and Clauses 8.8.1.2.(1)(a)(b)(c) and (d) of the Building Code, at Island A 472 of the Township of the Archipelago, Ontario.

APPLICANT

Mr. David Ballentine
Owner
Nobel, Ontario

RESPONDENT

Mr. Robert Farrow
Chief Building Official
Township of the Archipelago, Ontario

PANEL

Ms. Judy Beauchamp
Mr. Michael Gooch
Mr. Alexander Campbell

PLACE

via video conference

DATE OF HEARING

February 3, 2022

DATE OF RULING

February 3, 2022

APPEARANCES

Mr. Ray Hachigan
Parry Sound, Ontario
Agent for the Applicant

Mr. Robert Farrow
Chief Building Official
Township of the Archipelago, Ontario
Designate for the Respondent

RULING

1. Particulars of Dispute

The Applicant has applied for an alternative solution building permit, under the Building Code Act, 1992, to install a Class 5 sewage system to service a proposed 225 m² seasonal dwelling with a composting toilet on an island located in a UNESCO site known as the Georgian Bay Biosphere.

The Respondent determined that the alternative solution does not achieve the level of performance required by the applicable prescriptive requirements under Division B of the Building Code.

Therefore, the dispute before the is Commission is whether the proposal to install a composting toilet and a Class 5 sewage system on a vacant property to serve a 225 m² seasonal dwelling, provides sufficiency of compliance with Sentence 8.8.1.1.(1), Sentence 8.8.1.2.(1) and Clauses 8.8.1.2.(1)(a)(b)(c) and (d) of the Building Code.

2. Provisions of the Building Code in Dispute

Division B, Article 8.8.1.1 Prohibited Installation

- (1) Except as provided in Article 8.8.1.2., a Class 5 sewage system shall not be installed.

Division B, Article 8.8.1.2 Acceptable Installation

- (1) A Class 5 sewage system may be installed in the following circumstances:
- (a) where the proposed use of the sewage system is for a temporary operation, excluding seasonal recreational use, not exceeding 12 months in duration,
 - (b) to remedy an unsafe sewage system where the remediation of the unsafe condition by the installation of a Class 4 sewage system is impracticable,
 - (c) to upgrade a sewage system serving an existing building, where upgrading through the use of a Class 4 sewage system is not possible due to lot size, site slope or clearance limitations, or
 - (d) as an interim measure for a lot or parcel of land until municipal sewers are available, provided that the municipality undertakes to ensure the continued operation of an approved hauled sewage system until the municipal sewers are available.
- (2) Where a Class 5 sewage system is installed, a written agreement for the disposal of sanitary sewage from the sewage system shall be entered into with a hauled sewage system operator.

3. Applicant's Position

The Applicant has submitted that the Island A 472 (also known as Double Island) in the Township of the Archipelago, Ontario is a residentially zoned property which is currently vacant, save for a small shed. The island currently has limited vegetation cover and limited soil cover. The island is U-Shaped with limited development area on one of the arms and a 225 m², 3 bedroom cottage has been proposed on the larger of the 2 arms. The Applicant's application for hearing shows a future bedroom outbuilding on the property on the small arm.

In a previous application, the Applicant submitted a building permit for a Class 2 (Leaching Pit) sewage system to deal with greywater generated on the property. This application was refused

on the basis that there was insufficient soil on the property to support the system. In response, the Applicant submitted the current application to use a Class 5 Sewage System (Holding Tank) for the collection, storage and periodic removal for disposal of all greywater. The applicant submits that this is a better option for the area as it removes the wastewater from the site for treatment and disposal and thus limits any contamination of the area waters.

With regards to sizing of the Class 5 Sewage System, the Applicant submits that by removing the toilet there is less sewage flow for the building and further, argues that there are no references in the Building Code to holding tanks which deal only with greywater.

4. Respondent's Position

The Respondent's position is that the use of a Class 5 sewage system at this location at this time is not in compliance with the intent and objectives of the Building Code. Specifically, the Building Code has very stringent requirements around when a Class 5 sewage system may be used.

The Respondent provided an explanation of why the proposed alternative solution is insufficient and referenced the Functional and Objective statements of the Building Code around their decision.

The Respondent identified that there is a concern that the future use of the property may be different than the current intended use. Some of the concerns include: the composting toilet could be removed and replaced with a standard toilet, a lack of maintenance may result in a problem with leakage, or that a lack of over-sight could result in a problem with the system that causes discharge from the tank unknowingly.

In addition, the Respondent identified that the Township is concerned that at some point in the future the permitted use of a Class 5 System at this time, would permit an enlargement of the building through Part 11 of the Code.

5. Commission Ruling

It is the decision of the Building Code Commission that the proposal to install a class 5 sewage system on a vacant lot to serve a future dwelling unit, does not provide sufficiency of compliance with Division B, Article 8.8.1.1. and Sentence 8.8.1.2.(1) of the Building Code at Island A 472 in the Township of the Archipelago, Ontario.

6. Reasons

i) **Article 8.8.1.1. Prohibited Installation** of Division B of the Building Code states:

(1) Except as provided in Article 8.8.1.2., a Class 5 sewage system shall not be installed.

Article 8.8.1.2. Acceptable Installation, of Division B of the Building Code states:

(1) A Class 5 sewage system may be installed in the following circumstances:

(a) where the proposed use of the sewage system is for a temporary operation, excluding seasonal recreational use, not exceeding 12 months in duration,

(b) to remedy an unsafe sewage system where the remediation of the unsafe condition by the installation of a Class 4 sewage system is impracticable,

(c) to upgrade a sewage system serving an existing building, where upgrading through the use of a Class 4 sewage system is not possible due to lot size, site slope or clearance limitations, or

(d) as an interim measure for a lot or parcel of land until municipal sewers are available, provided that the municipality undertakes to ensure the continued operation of an approved hauled sewage system until the municipal sewers are available.

The Commission heard that a permanent, seasonal dwelling is proposed on the subject property which is currently vacant. The Commission heard no evidence or testimony from the parties that any of the above permissible conditions set out in Article 8.8.1.2. have or could be met. Therefore, it is the Commission's opinion that the proposal to install a class 5 sewage system on this property does not provide sufficiency of compliance with Article 8.8.1.2. of Division B of the Building Code.

ii) The Applicant submitted that an Alternative Solution for the property was available through the use of a composting toilet and a Class 5 Sewage System for the greywater. The Commission was not provided with a full and complete analysis of the Alternative Solution with regards to the Building Code Functional and Objective statements. The limited analysis that was provided as evidence, however, suggests that the proposed Alternative Solution would not provide sufficiency of compliance with Sentences 8.8.1.1.(1) and 8.8.1.2.(1) of Division B of the Building Code. Therefore, it is the Commission's opinion that the proposal to install a class 5 sewage system on this property does not provide sufficiency of compliance with Article 8.8.1.2. of Division B of the Building Code.

iii) The Applicant's submission states that the proposed Alternative Solution is partially based on the fact that Building Code does not address the use of Class 5 Sewage System when only greywater is to be collected.

By definition of "Sanitary Sewage", the Building Code does not differentiate types of sewage and therefore, greywater is sanitary sewage. As a result, Sentence 8.8.1.2.(1) is applicable to the proposed Alternative Solution.

iv) The Commission found that the Alternative Solution as presented did not sufficiently demonstrate that the objectives and functional statements have been met and the required level of performance achieved. Therefore, it is the Commission's opinion that the proposal to install a class 5 sewage system on this property does not provide sufficiency of compliance with Article 8.8.1.2. of Division B of the Building Code.

It should be noted that this ruling is specific to the facts of this dispute and property and the above reasons should not be interpreted as precedent setting statements.

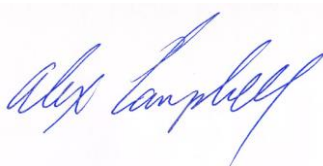
Dated at the City of Toronto this **3rd** day in the month of **February** in the year **2022** for application number **S-2021-16**.



Judy Beauchamp, Chair Designate



Michael Gooch



Alexander Campbell