

## Notice of Appeal to Tribunal from the Court of Revision

Drainage Act, R.S.O. 1990, c. D.17, subs. 54(1)

To: The Council of the Corporation of the Township \_\_\_\_\_ of Huron-Kinloss \_\_\_\_\_

Re: Bruce Beach Municipal Drain, Phase I \_\_\_\_\_  
(Name of Drain)

Take notice that I/we, appellant(s) to the Court of Revision, appeal to the Agriculture, Food and Rural Affairs Appeal Tribunal from (check one):

The decision of the Court of Revision dated 2021/08/10  
Date (yyyy/mm/dd)

The omission, neglect or refusal of the Court of Revision to hear or decide an appeal

Details of application and relief being sought from Tribunal (attach additional pages if needed):

Please see attached letter. Please direct all communications to the owners' counsel noted on the attached letter. \_\_\_\_\_

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### Property Owners Appealing to Tribunal

- Your municipal property tax bill will provide the property description and parcel roll number.
- In rural areas, the property description should be in the form of (part) lot and concession and civic address.
- In urban areas, the property description should be in the form of street address and lot and plan number, if available.
- If appealing to Tribunal regarding multiple properties, attach additional page with property information.

Property Description

98 Bruce Beach Road

Ward or Geographic Township

Huron Kinloss

Parcel Roll Number

8-113

If property is owned in partnership, all partners must be listed. If property is owned by a corporation, list the corporation's name and the name and corporate position of the authorized officer. Only the owner(s) of the property may appeal to the Tribunal.

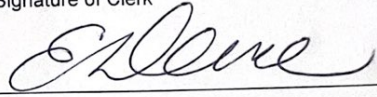
Select Ownership Type

Enter the mailing address and primary contact information of property owner below:

Last Name Gancevich		First Name Mark and Samira		Middle Initial
<b>Current Address</b>				
Unit Number	Street/Road Number 54	Street/Road Name Golf View Place		PO Box
City/Town Kitchener		Province Ontario	Postal Code N2M 2Y2	
Telephone Number	Cell Phone Number (Optional)	Email Address (Optional)		

To be completed by recipient municipality:

Notice filed this 26 day of August 20 21

Name of Clerk (Last Name, First Name) Dance, Emily	Signature of Clerk 
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**Timeline for Appeal:** This notice of appeal must be served within twenty-one days of the pronouncement of the decision of the court of revision. *Drainage Act*, R.S.O. 1990, c. D.17, subs. 54(1).



**Sent via email to: [edance@huronkinloss.com](mailto:edance@huronkinloss.com)**

August 26, 2021

Emily Dance  
Clerk  
Township of Huron-Kinloss  
21 Queen St.  
PO Box 130  
Ripley, ON N0G 2R0

Clerk  
Agriculture, Food and Rural Affairs Tribunal  
1 Stone Road West, 2nd Floor NW  
Guelph, ON K1G 4Y2

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File no. K0560263

Dear Ms. Dance:

**Re: Notice of Appeal under s. 54(1) of the Drainage Act  
Decision of the Court of Revision, August 10, 2021 - Bruce Beach Municipal Drain, Phase 1  
(the “Decision”)**

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We are the lawyers for Mark and Samira Gancevich, the owners of the property located at 98 Bruce Beach Road, roll number 8-113 (the “**Property**”). On behalf of our clients, please accept this letter and enclosures as a Notice of Appeal of the Decision pursuant to s. 54(1) of the *Drainage Act* RSO 1990, c. D.17.

Please forward this Notice of Appeal to the Clerk of the Agriculture, Food and Rural Affairs Tribunal (the “**Tribunal**”)

### **Background**

The Property is located along the shore of Lake Huron. It includes a private drainage system composed of a ditch and a 1200mm corrugated steel pipe culvert, draining into Lake Huron (the “**Gancevich Culvert**”). The Gancevich Culvert was installed by the previous owner of the Property as a result of municipal inaction in dealing with runoff from upland of the Property.

A system of private ditches, municipal ditches and municipal culverts – a 1500mm corrugated steel pipe through Lake Range Road and a 900mm high density polyethethylene pipe through Bruce Beach Road – collects stormwater runoff from a watershed area of approximately 210 acres upland of the Property. The municipal ditches and culverts (collectively the “**Township Drainage System**”) collect stormwater and direct it through the Gancevich Culvert into Lake Huron.

The Township Drainage System was constructed without any legal authority, and encroached onto the Property. Particularly, there was no *Drainage Act* approval, and neither our clients nor the previous owners of the Property have ever acquiesced to the Township's use of the Gancevich Culvert as an outlet for the Township Drainage System.

In recent years, the Gancevich Culvert has been unable to handle the increased volume of stormwater runoff caused by new developments and the tilling of farmers' fields along Lake Range Road. The Township has not adequately collected funds for stormwater management, nor has it taken appropriate measures to adequately deal with the flow of stormwater from these upland developments. The capacity of the Gancevich Culvert to handle runoff has been further compromised by the Township's failure to remove debris from the open swale prior to the crossing on Bruce Beach road and to provide necessary and routine maintenance upland, including failing to properly maintain roadside ditches.

The Township's failure has resulted in debris flowing downstream into the Gancevich Culvert, and our clients have consistently brought these issues to the Township's attention.

The Township's consistent and negligent failure to ensure that the Township Drainage System is properly designed and maintained clear of debris has, as the Township is aware, resulted in two separate major flooding events at the Property: on July 24, 2018, and again on August 20, 2020. Collectively, these two flooding events have caused hundreds of thousands of dollars in damage to the Property, including to: the main cottage; the garage; landscaping features; trees; a Sea-doo; and various other goods that had been stored outside within the washed out area.

## **The Decision**

On July 19, 2021, the Township of Huron-Kinloss (the "**Township**") passed By-law 2021-85, adopting the Headway Engineering Report to the Township of Huron Kinloss dated July 8, 2021 (the "**Report**"). Schedule "C" of the Report assessed a benefit of \$24,242 against the Property, notwithstanding that the sole benefit to be received by the Property is a remedy to years of Township negligence and mismanagement.

On July 30, 2021 our clients appealed the assessment against the Property in its entirety to the Court of Revision, seeking re-apportionment of the Property's share of the assessment to the Town. Notwithstanding this appeal, on August 10, 2021, the Court of Revision issued Notice of the Decision, approving the Report and its Schedule of Assessment. The Notice of Decision does not include any substantive reasons, and evidences a failure to properly consider our clients' arguments.

## **Reasons for Appeal**

Pursuant to s. 54(3) of the *Drainage Act*, an appeal under s. 54(1) is heard as a *de novo* hearing. In light of the above background, the reasons for appeal follow:

1. The Property does not contribute any flow to the watershed. Rather, it is only a recipient of upland flow, resulting from the intentional design of the Township Drainage System. The Property therefore does not receive a benefit within the meaning of the *Drainage Act*, which is defined as:

for benefit meaning I apprehend thereby the benefit conferred by the facility for the drainage of all lands within the area of the drainage work, which benefit would vary **according to the difference**

**of elevation of the respective lots-- the quantity of water to be drained from each--** the distance of the several lots from the drainage work-- and the like. [*emphasis added*] <sup>1</sup>

The Property is located at the lowest elevation, and contributes no water to the quantity being drained.

2. As a basic principle, the Courts have long recognized that the *Drainage Act* is remedial legislation, and should be given a liberal interpretation, with a view to serving its objectives consistent with the principles of natural justice.<sup>2</sup> The assessment is to fund works that will only remedy the consistent damage and flooding to the Property caused by the Township's mismanaged and negligent construction of the Township Drainage System, and its drainage through the Property without permission. To assess a cost to the Property for the mere cessation of nuisance and damage is not in keeping with the principles of natural justice.
3. In previous Ontario Drainage Referee cases, municipal "dereliction of duty" has been grounds to reduce the assessment against individual landowners and to increase the assessment against the municipality. In *Courtney v. Huron (Township)*, the municipality's permitting of the overdigging of a drain was found to constitute a dereliction of duty warranting such an increase.<sup>3</sup> In this case, the Township has plainly been derelict in its duty to:
  - a) ensure that sufficient infrastructure is in place to deal with the stormwater flow from increased development;
  - b) maintain that infrastructure in a proper manner free from debris and blockage; and
  - c) to not drain stormwater flow through the Gancevich Culvert without permission, particularly when the Township is aware that the Gancevich Culvert cannot adequately handle the flow.

Our clients ask that the charge of \$24,242 against the Property be struck from the Report, as our clients do not receive a benefit.

This appeal is based on the above reasons, as well as any other reasons that may be raised before the Tribunal by the appellants or their counsel. Our client requests that this hearing proceed in English, and that it be conducted electronically, pursuant to Rule 18 of the Tribunal's Rules of Procedure.

If you require further information, please contact the undersigned.

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<sup>1</sup> *Anderson v. Thurlow (Town)* 1968 ONDR 1.

<sup>2</sup> *McDougal et al vs. Harwich (Township)* [1945] OR 291 (ONCA); *Niagara Falls (City) v. Overmeyer* 1997 ONDR 1.

<sup>3</sup> *Courtney v. Huron (Township)* 1998 ONDR 5.

Sincerely,

*Roberto Aburto*

Roberto D. Aburto

RDA:jp