

**VERMONT SUPERIOR  
COURT  
ENVIRONMENTAL  
DIVISION**

HON. THOMAS S. DURKIN

HON. THOMAS G. WALSH

# INTRODUCTION

Judge Durkin

## Judges:

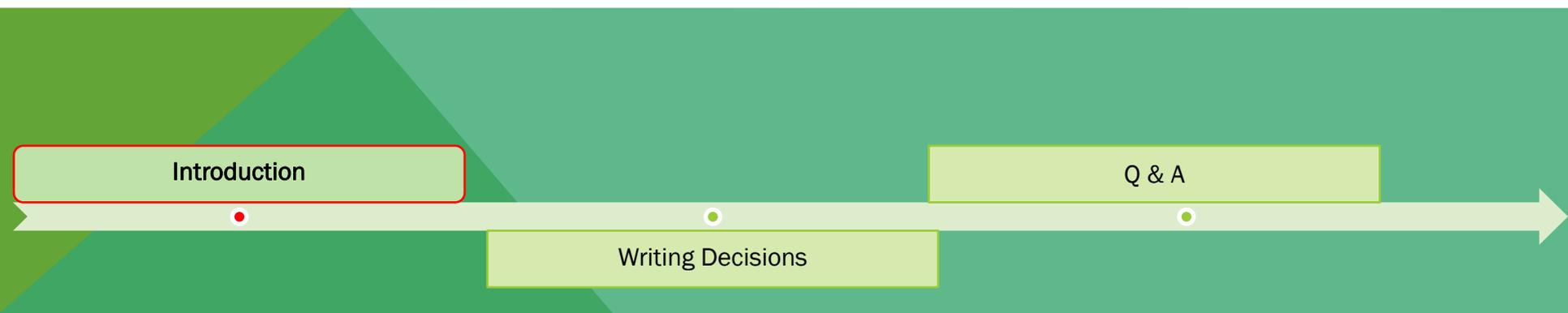
- Hon. Thomas Durkin
- Hon. Thomas Walsh

## Law Clerks

- Ben Civiletti
- Simonne Valcour

## Staff:

- Joanne Charbonneau, Clerk
- Jennifer Teske, Division Manager
- Diane Chamberlin, Docket Clerk



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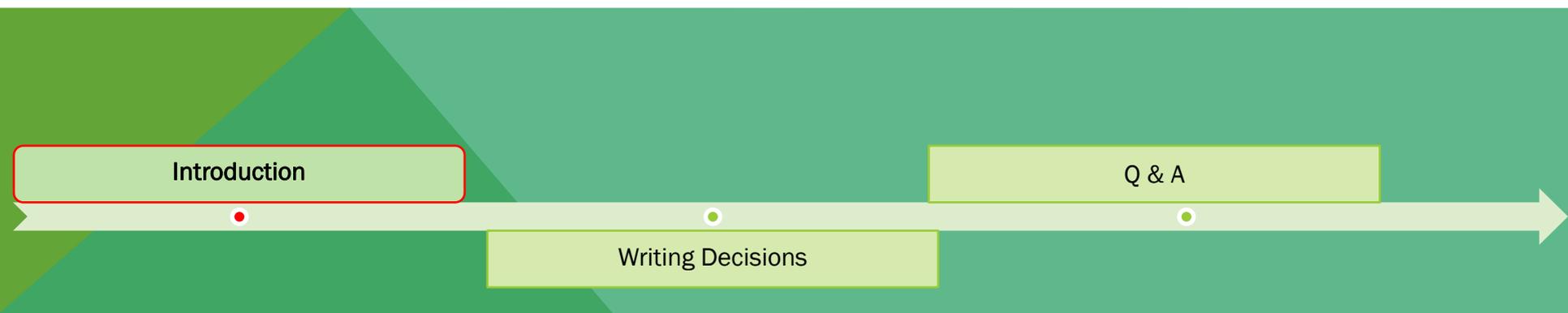
# INTRODUCTION

Judge Durkin

Vermont Superior Court: [www.vermontjudiciary.org](http://www.vermontjudiciary.org) (website has VT rules & statutes)

## Division Headquarters

- Costello Courthouse, 32 Cherry Street, 2<sup>nd</sup> Floor Suite 303  
Burlington, VT 05401
- 802-951-1740



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# PRESENTATION OUTLINE

Judge Walsh

- ❖ Covid-19 Courtroom Updates
- ❖ General Introduction to the Environmental Division
- ❖ Writing Decisions
  - De Novo Review
  - On-the-Record Review
- ❖ Q & A Discussion

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# COVID-19 UPDATES

Judge Walsh

## ❖ Administrative Order 49

- A State of Emergency was declared on March 16, 2020.
- As a result, the judiciary suspended most proceedings although the courts were “open.” Beginning June 2020, we began re-opening. Today, conferences, hearings, and trials are conducted as either telephonic or video remote proceedings.
- In-person proceedings with the Environmental Division remain suspended until at least January 1, 2021
- The full Order and other updates regarding the Coronavirus Disease 2019 (COVID-19) and court operations are available at: <https://www.vermontjudiciary.org/about-vermont-judiciary/covid-19-and-court-operations>

## ❖ Conferences & Trials

- Telephonic Status Conferences are conducted through Microsoft teams
- Remote trials will be conducted through Webex

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# THE ENVIRONMENTAL DIVISION

## ❖ Judge Durkin: Odyssey & Technological Updates

## ❖ Judge Walsh: Process

- De Novo Appeals
- On-the-Record Appeals
- Enforcement Actions
- Act 250 Appeals

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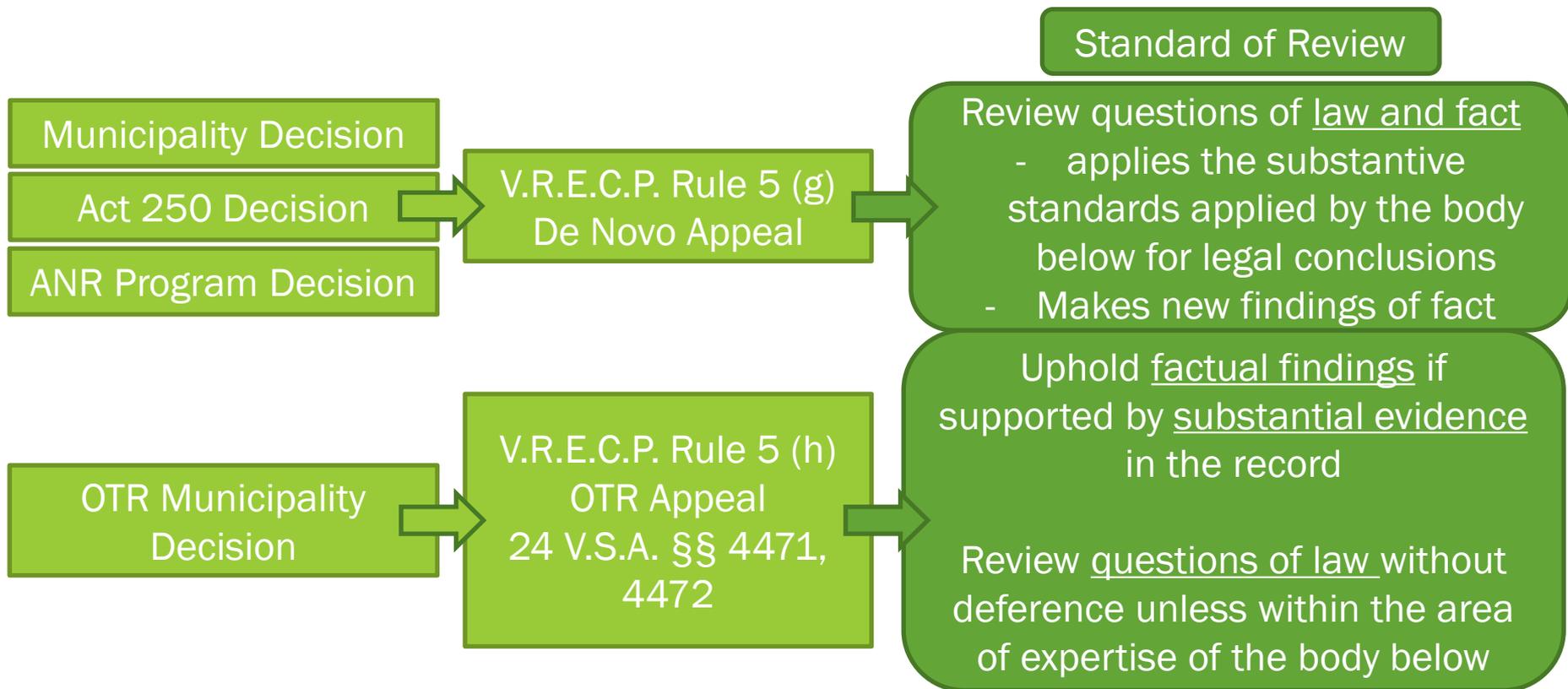
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# MUNICIPAL DECISION WRITING

SIMONNE VALCOUR &  
BEN CIVILETTI

# THE PROCESS: DE NOVO AND OTR



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# WRITING DECISIONS: STATUTORY REQUIREMENTS

## DE NOVO

### 24 V.S.A. § 4464(b)(1)

- Written decision (meeting minutes ok)
- Must include **factual basis** and **legal conclusions**

## ON THE RECORD

### MAPA

- OTR Towns have an obligation to adopt procedures to preserve a record and observe formal hearing protocols.

### 24 V.S.A. § 1209

- Written decision
- **Separately stated** findings of fact and conclusions of law

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# WRITING DECISIONS: ORGANIZATION

1. Introduce the parties and the issues
2. State what evidence was received
3. State the findings of fact (do not simply recite evidence)
4. State relevant provisions of the regs/bylaws
5. Apply the regs/bylaws to the facts
6. Clearly state the legal conclusion on each issue
7. Clearly state the ultimate action

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# WRITING DECISIONS: ORGANIZATION

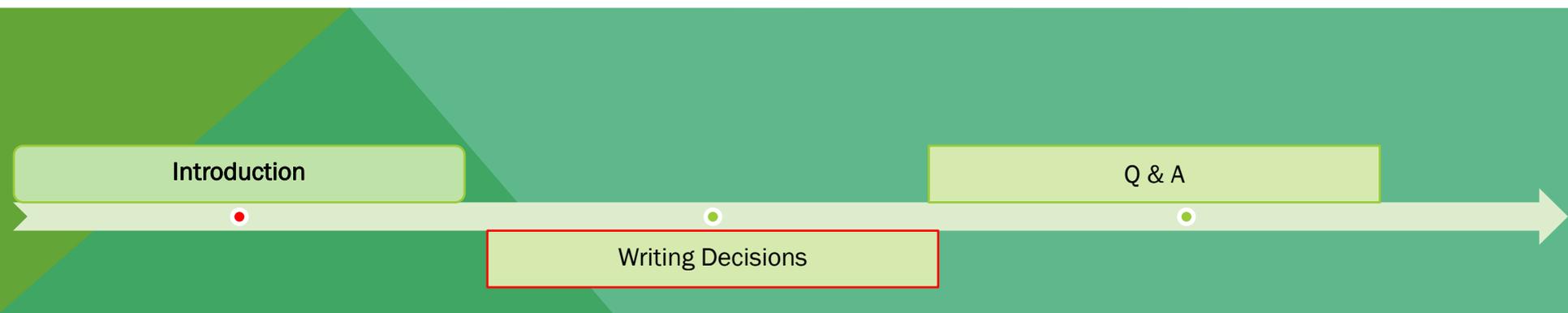
For steps 2 through 5

## OPTION 1: Global Organization

- Write all Findings of Fact, then the Conclusions of Law
- E.g., Environmental Division decisions

## OPTION 2: Issue-by-Issue:

- Discuss each issue separately under its own heading
- For each issue heading, write Findings of Fact followed by Conclusions of Law
- E.g., District Commission (Act 250) decisions



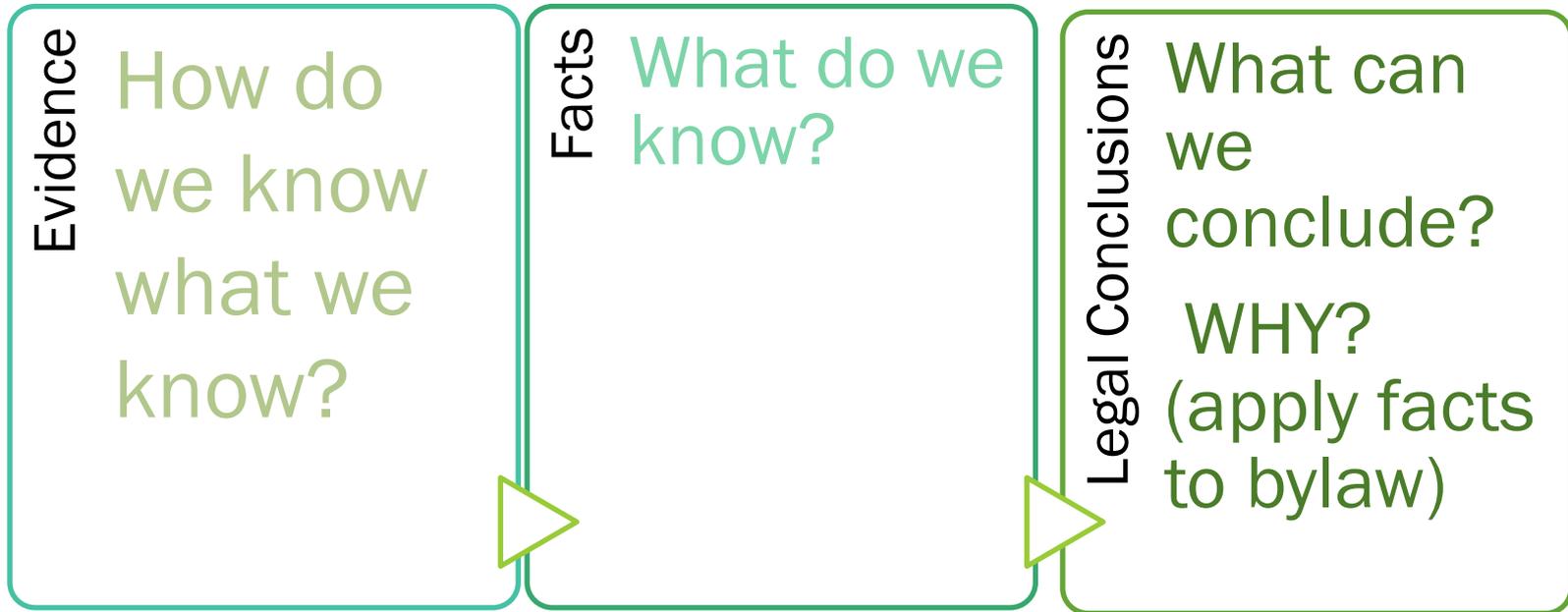
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# WRITING DECISIONS:

## EVIDENCE, FACTS, AND CONCLUSIONS OF LAW



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# EXAMPLE - BACKGROUND

**Project:** Applicant is seeking a conditional use approval for addition of a building on their property.

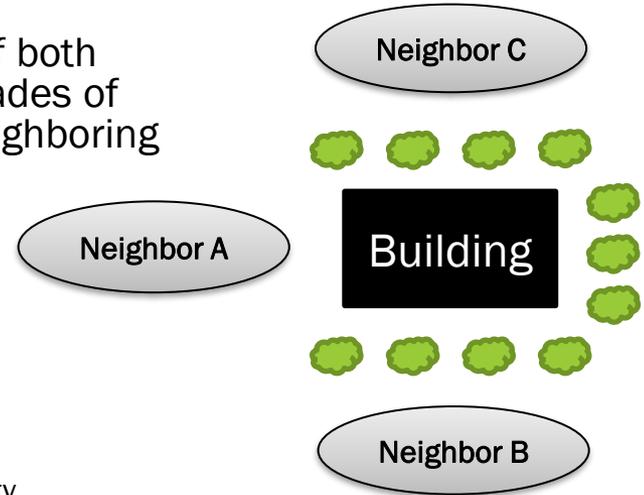
**Bylaw Landscaping Regulation:** Landscaping shall include a mix of both deciduous and evergreen trees, arranged to break up the facades of the buildings and reduce the visual impact as viewed from neighboring properties.”

## Application:

- Landscape Plan
- Site Plan
- Plant list, elevation drawings, Mock-ups of plant installation by S&B Inc. Engineers
- Locations of Neighboring properties & their respective views of the subject property

## Testimony :

- Westerly Neighbor A: “The building is too big and there is no proposed landscaping or trees .”
- Southerly Neighbor B: “The proposed trees provide adequate coverage to shield the building.”
- Northerly Neighbor C: “I won’t see the building at all with the proposed trees there.”



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# EXAMPLE – FINDINGS OF FACT

**Bylaw:** Landscaping Regulation : “Landscaping shall include a mix of **both deciduous and evergreen trees**, arranged to **break up the facades of the buildings** and **reduce the visual impact as viewed from neighboring properties**”

**Findings of Fact** related to the bylaw requirements:

- The Plant List includes 7 maple and 9 pine trees.
- The Landscaping Plan depicts trees placed evenly along the north, south, and east facing sides of the building.
- Mock-ups provided by S&B Inc. Engineer show the trees will reach the building roofline and screen a significant portion of the north, south, and east-facing sides of the building.
- There are three abutting properties with views of the proposed project. Neighbors B & C overlook the North and South sides of the property respectively. Neighbor A overlooks the west side of the property.
- The proposed trees provide visual screening of the building on the south, north, and east sides .
- The Landscaping plan provides no trees, and thus no screening, for the west side of the building.

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# EXAMPLE – CONCLUSIONS OF LAW

**Bylaw:** Landscaping Regulation : “Landscaping shall include a mix of **both deciduous and evergreen** trees, arranged to **break up the facades of the buildings** and **reduce the visual impact as viewed from neighboring properties**”

## Finding of Fact

The Plant List includes 7 maple trees and 9 pine trees.



## Sub-Conclusion of Law # 1

Applicants plans provide a mix of pine and maple trees. This satisfies the Bylaw requirement that applicant include both deciduous and evergreen trees.

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# EXAMPLE – CONCLUSIONS OF LAW

**Bylaw:** Landscaping Regulation : “Landscaping shall include a mix of **both deciduous and evergreen** trees, arranged to **break up the facades of the buildings** and **reduce the visual impact as viewed from neighboring properties**”

## Finding of Fact

- The Landscape plan spaces the trees out equally along the north, south, and east sides.
- The Mock-ups show visual screening of the north, south, and east sides of the building.



## Sub-Conclusion of Law # 2

While the spacing of trees proves adequate coverage to break up the the north, south, and east sides, the west side remains exposed and uninterrupted. Therefore, the westerly facade is not broken up by trees.

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# EXAMPLE – CONCLUSIONS OF LAW

**Bylaw:** Landscaping Regulation : “Landscaping shall include a mix of **both deciduous and evergreen** trees, arranged to **break up the facades of the buildings** and **reduce the visual impact as viewed from neighboring properties**”

## Finding of Fact

- Landscape Plan and Mock-up provide no west side landscaping.
- [Perhaps mention Neighbor A testimony that there is no screening on the west side.]
- Landscape Plan and Mock-up of trees screening the north, south, and east sides.



## Sub-Conclusion of Law # 3

On three sides, the screening provided by the proposed trees reduces the visual impact of the height and bulk of the building, however the westerly side remains exposed. Thus, Applicants have not reduced the visual impact with respect to the westerly side and Neighbor A’s view. The proposal does not comply with the Bylaw requirements.

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# EXAMPLE – CONCLUSIONS OF LAW

**Bylaw:** Landscaping Regulation : “Landscaping shall include a mix of **both deciduous and evergreen** trees, arranged to **break up the facades of the buildings** and **reduce the visual impact as viewed from neighboring properties**”

## Conclusion:

Incorporate the three sub-conclusions related to the bylaw requirements, then clearly conclude whether the application complies with the bylaw.

## Final Conclusion:

Because there is no screening or landscaping to break up the west-facing side of the building and the visual impact of the west-facing side has not been mitigated or reduced, as seen from Neighbor A’s property, the project as proposed does not comply with the bylaw. The application is denied.

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# EXAMPLE – APPROVING WITH CONDITIONS

**Bylaw:** Landscaping Regulation : “Landscaping shall include a mix of **both deciduous and evergreen** trees, arranged to **break up the facades of the buildings** and **reduce the visual impact as viewed from neighboring properties**”

## Adding a Condition:

However, adopting the landscaping design featured on the other sides of the building would adequately break up the facade and reduce the visual impact from neighbor A’s property. We will therefore approve the project on the condition that applicant replicates the landscaping used for the north, south, and east-facing sides of the building on the west-facing side.

## Example Condition Subsequent:

We approve this application on the condition that applicant submit a new landscaping plan in 2 weeks with tree plantings for the west-facing side.

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# QUESTION & ANSWER

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