

Open Letter to Ottawa City Council – Feb. 6, 2021

Sent via E-mail and Registered Mail to City of Ottawa, Clerk's Office
Attn: Caitlin Salter-MacDonald, email Caitlin.Salter-MacDonald@ottawa.ca

Subject: Update + Outstanding Budget 2021 requests – Health and Safety Issues

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Dear City of Ottawa Councillors:

This is further to my Open Letter to you dated Oct. 30, 2020 (Appendix 1). I am not sure if you received that Open Letter, but I received an email response dated Nov. 24, 2020 to it from Mayor Watson (Appendix 2). We were disappointed and surprised that Mayor Watson simply provided Chief Building Official (CBO) Mr. Buck's response. (I had communicated with Mr. Buck numerous times before sending my Oct. 30, 2020 Open Letter to Ottawa City Council, with no meaningful results, which is why I elevated my concern to Ottawa City Council on Oct. 30, 2020.)

In my Oct. 30, 2020 Open Letter sent to you, I said:

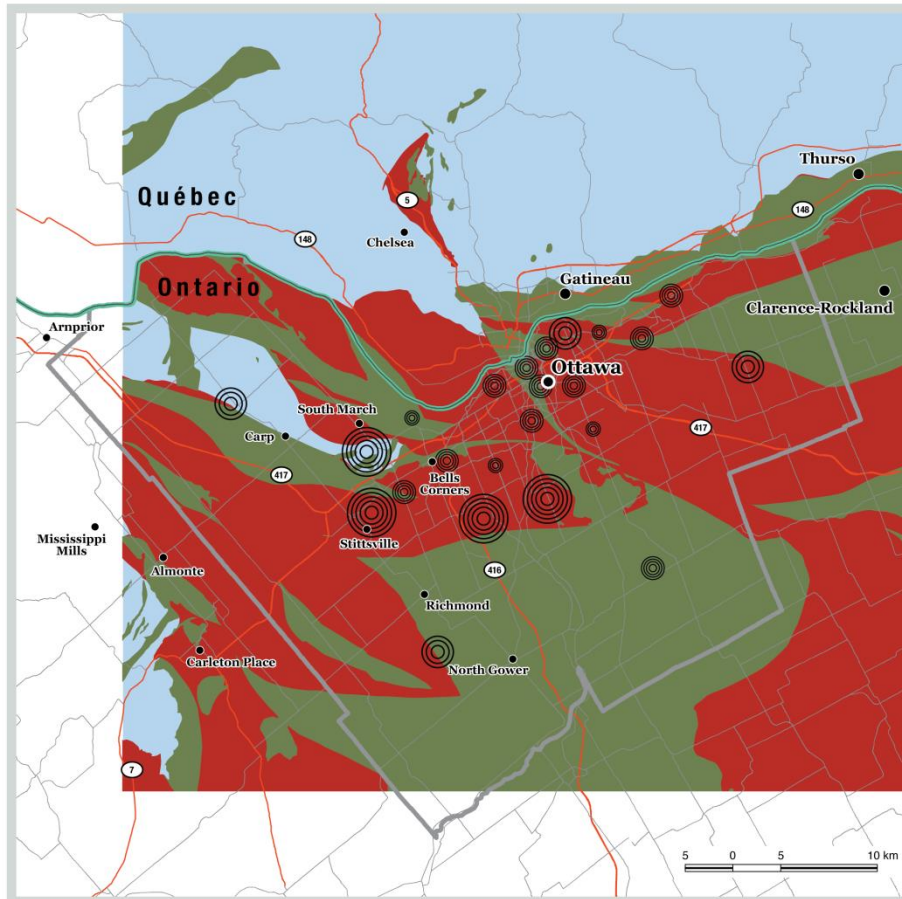
"...We are raising two specific health and safety related requests regarding the 2021 budget:

- 1. Ensure that all newly built homes are properly inspected and meet the Ontario Building Code (OBC) before the homeowners take possession.*
- 2. Ensure that the City of Ottawa determines if radon is known to be a problem in some or all of the municipality..."*

Further, CPBH volunteers made a presentation regarding these serious health and safety matters to the City of Ottawa's Planning Committee on Nov. 26, 2020. We have not yet had a response from the Planning Committee to our presentation.

The following is additional information since my Oct. 30, 2020 Open Letter to Ottawa City Council Members concerning radon:

- a) Here is a "potential radon map National Capital Region".



Radon Potential Map National Capital Region

Approximately 80% of the most densely populated areas of Canada fall within areas of elevated radon potential. The National Capital Region, including the City of Ottawa, is one of those population centres that fall within an area of radon concern.

This map is constructed using relevant published data sources, independent field work including analytical data acquisition, structural mapping, bedrock sampling, overburden and soil sampling, hydrology-aquifer geochemistry, seismic activity, airborne geological data, and available direct indoor radon measurements. All of this information is used to create a queryable illustrated database that can communicate radon risk information for all end users.

** Important: All dwellings need to be tested for radon as a wide spectrum of radon readings can occur in all three zones.*

In the National Capital Region map, the regions depicted reflect geologic conditions where higher radon readings might be found in Zone 1 versus Zone 2 and Zone 3 respectively.

Relative Radon Hazard*

- Zone 1 – High
- Zone 2 – Elevated
- Zone 3 – Guarded

Projected Population Growth Centres (2015-2021)

-  -2 to 1%
-  2 to 7%
-  9 to 12%
-  19 to 27%

- b) Here is a link to a video of a former City of Ottawa resident, "Janet", who previously resided in Rockcliffe Park. Janet was also diagnosed with lung cancer from excessive radon. <https://www.youtube.com/watch?v=7GD48B6Cvow>
- c) Here is a link to an article dated Nov. 23, 2020 article that refers to Mr. Randy Jost of Ottawa who was diagnosed with stage four lung cancer that was ultimately traced to excessive radon, i.e., radon levels that exceed the Health Canada recommended limit. <https://www.healthing.ca/diseases-and-conditions/cancer/lung-cancer/should-we-be-testing-our-homes-for-radon>

- d) On Dec. 4, 2020 I wrote to Councillor Sudds about the well-known excessive radon problems in parts of Kanata. I have followed up with Councillor Sudds, but I have not yet had a response from her.

- e) On Dec. 18, 2020 I received an email from Councillor Kitts about a Cardinal Creek Village homeowner who had radon test results of approximately 2,000 Bq/cubic metre (ten times the Health Canada guideline). Councillor Kitts responded:

*"...After your presentation at Planning Committee, I had requested a briefing from staff about the City of Ottawa's relationship to monitoring levels of radon. This week, I met with John Buck. A radon level that is 2000 Bq/cubic metre is alarming, and I would **strongly urge you** to request that the homeowner to contact me directly. I understand that you may not be in a position to share the address with me, but without that information, we are limited in how we can help. I will await further correspondence. Thank you for the work that you do..."*

On Dec. 21, 2020, with the homeowner's permission, I provided their name and email address to Councillor Kitts. We have followed up with Councillor Kitts but have had no further response.

- f) Here is a link to a Feb. 4, 2021 article in the Ottawa Citizen about an Ottawa resident who was diagnosed with lung cancer that came from "out of nowhere". Could this Ottawa resident's lung cancer have been caused by excessive radon?
<https://ottawacitizen.com/news/local-news/missing-cancer-cases-a-worrying-pandemic-trend>

For your convenience:

Here is the link with the Canadian Association of Radon Scientists and Technologies (CARST) email that was sent to Ontario municipalities in 2017.

<http://canadiansforproperlybuilt homes.com/wp-content/uploads/2020/11/2017-CARST-liability-letter-to-municipalities-final-may-30-no-fields.pdf>

Here is the link with the 2016 Legal opinion obtained by CARST. Mr. Buck, the City of Ottawa's CBO, has also confirmed that the City of Ottawa has received the radon-related legal opinion from 2016. <http://canadiansforproperlybuilt homes.com/wp-content/uploads/2020/11/2016-Radon-Letter-to-CARST-from-Fasken-Martineau-1-1.pdf>

The following is an excerpt of the email that CPBH received from the Ministry of Municipal Affairs and Housing dated Oct. 29, 2020, which I have shared with Mr. Buck:



"....It is a role of municipal building departments to determine if radon is known to be a problem in some or all of their municipality. This approach gives municipalities other than the three listed above, the discretion to use their local knowledge and experience to determine whether it is a problem in their area and therefore require compliance with the further measures against radon set out in SB-9. For example, the City of Guelph has determined that radon is known to be a problem and established a radon mitigation program that includes requirements for radon mitigation for new construction as set out in the Building Code..."

In the excerpt above from the Ministry, it refers to the City of Guelph's radon mitigation program. Kingston has implemented a similar radon mitigation model – information here: <https://www.cityofkingston.ca/resident/building-renovating/radon-gas-mitigation>

Yet, it appears that the City of Ottawa does not yet recognize a responsibility to inform itself, take action or enforce any measure by builders related to radon. Again, as one clear example, excessive radon in Kanata North has been well-recognized for some time. Former Councillor Wilkinson was very active on this issue, and the information at this link provides as an example of her important work: <https://www.scribd.com/document/105607195/2012-02-09-Column>.

Why have municipalities like Guelph and Kingston established radon mitigation programs, while the City of Ottawa continues to deny and deflect? Why is the City of Ottawa not carrying out its responsibilities as outlined by the Ministry?

The health and safety of residents of the City of Ottawa are obviously at stake here. We remain very concerned about how the City of Ottawa is handling its responsibilities in relation to municipal inspections during construction of newly built homes generally, as well as its responsibilities according to the Ministry of Municipal Affairs and Housing related to radon specifically.

We are again requesting your response to these important issues.

Yours truly,

Dr. Karen Somerville, C.Dir.
President

Founded in 2004, Canadians for Properly Built Homes (CPBH) is an independent, national, not for profit corporation dedicated to healthy, safe, durable, energy efficient residential housing for Canadians, and is the only organization of its kind in Canada. Working for consumer awareness and protection, CPBH is run by a volunteer Board of Directors and is supported by a volunteer Advisory Council of industry experts and other key stakeholders.

Appendix 1 - Open Letter to Ottawa City Council – Oct. 30, 2020

Sent via E-mail and Registered Mail to Mayor Jim Watson

Subject: Budget 2021 requests – Health and Safety Issues

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Dear City of Ottawa Councillors:

For more than 16 years, Canadians for Properly Built Homes (CPBH) has been asking the City of Ottawa to properly address its responsibilities concerning newly built homes. We regret to inform you that largely this has been met with silence, denial, excuses, and/or finger-pointing. It's time for that to change and we are requesting your support.

We hope that you are aware that main stream media has reported on a number of these issues over the decades. Here are two recent examples:

2018 – Ottawa Citizen – shortage of building inspectors

<https://ottawacitizen.com/news/local-news/reevely-ottawas-desperately-short-of-building-inspectors-after-deciding-to-cut-fees-rather-than-hire-building-inspectors>

2019 – CBC – Cardinal Creek Village

<https://www.cbc.ca/news/canada/ottawa/cardinal-creek-tarion-1.5252272?fbclid=IwAR17OXAPobgM3sTVyVC4JtV9PjBS1f5YsJ3xrLbkyle-mbtEwgksxOh7oa4>

We are raising two specific health and safety related requests regarding the 2021 budget:

1. Ensure that all newly built homes are properly inspected and meet the Ontario Building Code (OBC) before the homeowners take possession.
2. Ensure that the City of Ottawa determines if radon is known to be a problem in some or all of the municipality.

The following is a brief explanation regarding these two specific requests. If you have questions and/or would like additional information, please let me know.

1. Ensure that all newly built homes are properly inspected and meet the Ontario Building Code (OBC) before the homeowners take possession.

In 2002, former City of Ottawa Councillor Wendy Stewart initiated a Task Force regarding all of the OBC violations in a major housing development in her constituency, and one of her key findings for Code violations was a “building boom” and a lag time in the City being able to ensure it had sufficient inspectors on hand. In more recent years, City of Ottawa officials have

raised issues regarding the "grey tsunami" (i.e., retiring inspectors) and challenges in hiring qualified replacement inspectors. While the excuses from the City of Ottawa have changed somewhat over the years, the fact remains that the City of Ottawa continues not to consistently properly inspect during construction. It is unacceptable that the City of Ottawa continues to sign off on homes that have not been properly inspected.

In a recent discussion with John Buck, Acting Chief Building Official, in relation to sufficient qualified inspectors, I again raised the need for the City of Ottawa to conduct appropriate succession planning, rather than simply raising the same sorts of excuses year after year, while continuing to deliver newly built homes that do not meet the OBC. He seemed to agree that the City has options to ensure sufficient, qualified inspectors. With \$15.5 million in the Building Code Services Branch revenue stabilization fund as of Dec. 31, 2019, it appears that there are ample resources to do proper succession planning and ensure that qualified inspectors are in place to properly inspect homes during construction.

In 2005, former City of Ottawa Chief Building Official, Arlene Gregoire, said:

"...the Building Code's purpose... is to establish minimum standards for people to be able to survive in their homes...It's basic minimum standards...bare minimum...all building code deficiencies are considered serious..."

Further, there is the fact that new home buyers are paying for the required inspections through the cost of the building permit, passed on to them by the builder. The City of Ottawa is in effect selling the services to home buyers and not providing them. Some call this practice fraudulent, given that the City has not put enough qualified inspectors in place.

Given this situation, we are requesting that Ottawa City Council ensure that the City of Ottawa immediately takes steps to ensure that all newly built homes are properly inspected and ensure that the builder resolves any OBC violations before the closing of the home occurs.

2. Ensure that the City of Ottawa determines if radon is known to be a problem in some or all of the municipality and act promptly on that information.

According to Health Canada:

- Radon is the second leading cause of lung cancer in Canada and
- More than 3,000 people die from radon-induced lung cancer each year.

For your information, here is a link to a recent study from the University of Ottawa entitled "*How Ottawa-Gatineau Residents Perceive Radon Health Risks*"

<https://telfer.uottawa.ca/en/research/innovative-thinking/how-ottawa-gatineau-residents-perceive-radon-health-risks/>

Excessive radon has been recognized as an issue in a part of Kanata for some time now, and recently questions/issues have been raised by homeowners in a new community being developed in the east end of Ottawa.

I have had numerous communications with Mr. Buck, your Acting Chief Building Official, about what his department is doing about these radon issues. His main response has been to the effect that Ottawa is not one of the three municipalities identified in the Ontario Building Code related to excessive radon.

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On Oct. 29, 2020, CPBH received written confirmation from the Ministry of Municipal Affairs and Housing that:

"...It is a role of municipal building departments to determine if radon is known to be a problem in some or all of their municipality..."

Further, we are in receipt of a copy of a 2016 legal opinion from Fasken Martineau that was provided to the Canadian Association of Radon Scientists and Technologists (CARST) concerning its request for a legal opinion about some Ontario municipalities that may be issuing building permits in contravention of the Ontario Building Code Act. That legal opinion concluded:

"...In summary, municipalities and municipal officials bear a risk of liability for misapplying or not applying the Building Code. The most obvious way to limit the risk is for municipalities to comply with the Building Code's requirement that all wall, roof and floor assemblies in contact with the ground are constructed to resist the ingress of soil through the installation of a soil gas barrier, unless a permit applicant can "demonstrate that soil does not constitute a hazard.""

CARST advised that it forwarded this legal opinion via email to all municipalities in May 2017. Given this situation, we are requesting that Ottawa City Council ensure that the City of Ottawa immediately take steps to ensure that it is fulfilling its responsibilities related to radon.

Mayor Watson: We are requesting that you respond on behalf of Ottawa City Council to these two health and safety requests and the 2021 budget. We look forward to your response.

Yours truly,



Dr. Karen Somerville, PhD, C.Dir.
President

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Note: The Oct. 30, 2020 Open Letter may also be found at this link:

<http://canadiansforproperlybuihthomes.com/wp-content/uploads/2020/10/Oct.-30-2020-final-Ottawa-City-Council-2020-Budget.pdf>

Appendix 2 – e-mail received from Mayor J. Watson, Nov. 24, 2020

Dear Dr. Somerville,

I am writing to you today in response to your Open Letter to Ottawa City Council, dated October 30, 2020.

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The letter was forwarded to John Buck, Acting Chief Building Official, who has provided the following responses to your two requests:

1. Ensure that all newly built homes are properly inspected and meet the Ontario Building Code (OBC) before homeowners take possession.

The City of Ottawa's Building Code Services (BCS) service area enforces compliance to the Building Code Act (BCA), the OBC, and other applicable legislation (such as zoning, conservation authority, etc.) through its permit approvals and building inspections programs. Prior to permit issuance, each proposed home receives a review of the permit application for compliance. After permit issuance, each home's construction is inspected for compliance at key stages, in accordance with the BCA, OBC and the City's Building By-Law 2014-220. Both the permit approvals and building inspections programs are based on a rational sampling approach, meaning not every element of a new home is inspected throughout the construction process. The installations of roofing membranes and their flashings, for example, are not closely inspected as BCS Inspectors are not equipped with ladders to undertake detailed up-close inspections of these elements. A permit having been issued, or a home having been inspected at all key stages, is, thus, not a guarantee that all elements are 100% code compliant. It is the shared role of all involved in the construction of a building – designers, builders and subcontractors, manufacturers and City staff – to ensure construction is carried out in accordance with the BCA, OBC and other applicable legislation.

Although BCS has its challenges in recruiting qualified buildings officials, these challenges should not be misconstrued for building construction not being properly reviewed and inspected. BCS staff take great pride in their work, and qualified building officials review all plans and inspect all homes during construction. BCS is especially proud of its internship program – the foundation piece for its human resources strategic plan. BCS's multifaceted succession plan speaks, but is not limited, to attracting talent, training and developmental opportunities. While bridging the knowledge gap between a 30-year employee and a recently hired intern is justifiably challenging, BCS is confident it currently has adequate forces to position itself well in the future.

2. Ensure that the City of Ottawa determines if radon is known to be a problem in some or all of the municipality and act promptly on that information.

The OBC currently addresses mitigation of the ingress of soil gases, including radon, in new homes through multiple provisions and methods, which are reviewed by BCS permit approvals and building inspections staff.

Measures to control the ingress of soil gases are required except for where it can be demonstrated that soil gases do not constitute a hazard. Two such measures are a soil gas barrier or subfloor depressurization system, installed in accordance with MMAH Supplementary Standard SB-9. A typical soil gas barrier may be a sub-slab polyethylene sheet, with joints lapped not less than 300 mm, with all penetrations and the perimeter sealed with flexible sealant.

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In addition to specific soil gas mitigation, enhanced air barrier requirements and the requirement for a heat recovery ventilator in all new dwelling units have recently made their way into the OBC with the intent of limiting air movement, including that from the subgrade soil, into homes and providing frequent air exchange, thus reducing the potential for increased radon and soil gas concentration.

Although BCS confirms OBC compliance with respect to a new home's soil gas mitigation strategy, there may nonetheless be instances where 90-day testing post-occupancy reveals radon concentrations in excess of 200 Bq/m³. In such cases, the installation of an enhanced radon mitigation system is warrantable for 7 years through Tarion, Ontario's new home warranty program.

Should you have any further questions or concerns, please don't hesitate to follow up directly with John. He may be reached at 613-580-2424 ext 41487 or by email at john.buck2@ottawa.ca.

Sincerely,

Jim Watson
Mayor
City of Ottawa

JW/bp