

**TOWN OF OLDS  
SUBDIVISION AND DEVELOPMENT APPEAL BOARD  
BOARD ORDER 2013-02**

**IN THE MATTER OF the *Municipal Government Act*, R.S.A. 2000 Chapter M-26 (the "Act").**

**AND IN THE MATTER OF a development appeal lodged by S. Y & S. Restaurant Ltd. (the "Developer") respecting Development Permit Application 12-227.**

**BEFORE:**

1. Chairman Leonard Brandson
2. Councillor Murray Ball
3. Joe Overwater
4. Edie Connelley
5. Donald Dwyer

This is an appeal to the Town of Olds Subdivision and Development Appeal Board (the "SDAB") of a refusal of a development permit by the Town of Olds Municipal Planning Commission respecting a proposed parking lot development on Plan 1311439, Block 42, Lot 20 located at 5505 46 Street Olds, Alberta, T4H 1H5 (the "Lands") in the Town of Olds (the "Town").

The hearing of the appeal was convened by the SDAB on August 20, 2013, commencing at 9:00 a.m. in the Town of Olds Council Chambers. The SDAB gave careful consideration of all of the relevant evidence presented at the hearing and the issues arising therefrom.

**SDAB DECISION**

That a development permit for a parking lot development be APPROVED subject to the following conditions:

**General Conditions:**

1. This development permit is issued for the lands currently described as Lot 20 Block 42 Plan 1311439.
2. The development must be constructed in accordance with the approved plans and in accordance with the following requirements (see Note 1 below):
  - (a) A wood screen fence not less than 1.8 m in height nor greater than 2.0 m in height must be installed along the southern property line and along the easterly property line. Said fence is to be constructed of No. 1 Grade Cedar (See Note 2) and must not encroach into the lane; and
  - (b) The garbage enclosure, curbs to direct surface drainage, paving, landscaping as well as the retaining wall referenced on the Site Grading Plan and the Site Plan be provided in accordance with the approved plans.
3. The Applicant must obtain a Roadside Development Permit from Alberta Transportation and evidence of same must be provided to the Development Officer.
4. The following must be completed no later than **October 31, 2013**:
  - a) Construction of the east retaining wall from the southeast corner of the property to the northerly excavation point.
  - b) Fence to be construction along the east property line northward from the southeast corner to the termination point of the existing hedge currently along the northerly portion of the east property line. (See Note 1 below).
  - c) Construction of the south fence.
  - d) A revised Landscape Plan is to be submitted to the Development Authority for approval and is to include some form of aesthetic enhancement into the design/construction of the west facing retaining wall along the existing dwelling.



- e) A revised plan is to be submitted showing modifications to the driveway area addressing the concerns outlined by the Town, Alberta Transportation and the property owner. The primary concerns are related to the driveway width, the hedge to the west, the curb locations, possible reduction of a parking stall and the effects that this will have on the Landscape Plan.
- 5. The following must be completed no later than **June 30, 2014**:
    - a) Landscaping and plantings as per the approved Landscaping Plan, including the rehabilitation of the boulevard.
    - b) Paving of the parking lot and parking stall line markings including any other parking area markings required.
  - 6. Surface drainage must be managed so that it is directed to Highway 27 without impacting adjacent properties.
  - 7. Landscaping, including the boulevard treatment must be maintained for the life of the project. Any trees or shrubs shown on the site plan which die after completion of the project must be replaced on a continuing basis with trees and shrubs of a comparable species and size.
  - 8. The required fence must be maintained at all times to prevent vehicular access to the lane.
  - 9. All measures relating to barrier-free design of this project must be maintained and operable for the life of the building including those required by the Alberta Building Code.
  - 10. Security held by the Town to ensure completion of this project will not be returned until the development has been completed. (See Return of Performance Bond/ Security below).



**Note to the Applicant:**

1. A continuous fence is warranted along the east property line northward from the SE corner to the termination point of the existing hedge.
2. This fence was specified on the drawings submitted for DP11-081. See Genivar/Bearden Site Plan and Details for project 08-191 (101-13155) drawing A1.1 March 10, 11 (T. Bearden).

**Additional Responsibilities of the Developer:**

1. Weeping tile, roof drainage and surface drainage must not be directed or conveyed to the sanitary sewer.
2. It is the Developer's responsibility to:
  - a) Ensure that the terms and conditions of the Utility Excavation Permit are complied with;
  - b) To contact Alberta First Call at 1-800-242-3447 and obtain utility locates prior to commencing an excavation;
  - c) To contact Operational Services at 403-507-4833 at least *48 hours*:
    - i) prior to commencing an excavation for underground services, to arrange for a inspection of the sidewalk and boulevard; and
    - ii) prior to backfilling the excavation for the water and sewer connections, to arrange for an inspection of the connections. Note that the Performance Bond/ Security Deposit will not be returned if the water and sewer connections are not inspected prior to backfilling;
  - d) To ensure that the curb stops (i.e. water shut off valve) is properly installed and fully operational;

- e) To comply with the Alberta Building Code and obtain the necessary Electrical, Plumbing and Gas Permits. Contact D. R. Inspections and Permits Ltd. at 403-304-5182;
- f) To comply with Bylaws of the Town of Olds including the Land Use Bylaw No. 01-23, the Unsightly Premises and Snow Removal Bylaw No. 04-16 and the Traffic Bylaw 04-15. These Bylaws require in part:
  - i) Development sites must be kept tidy and clear from all debris and garbage;
  - ii) That construction rubbish, dirt, stones, old implements, automobiles, scrap iron or any other rubbish must not be allowed to accumulate so as to cause an unsightly condition, hazard or nuisance;
  - iii) That construction rubbish is not blown onto neighbouring parcels;
  - iv) That occupants/owners cut grass or weeds on their property, including town property adjacent to their premises, (i.e. sidewalks, boulevards and back alleys). Restricted and noxious weeds must be controlled in a manner as prescribed by the weed inspector;
  - v) That no person shall place or deposit any object, refuse, building or other materials, dumpsters, snow, earth, sand, gravel, sod, or any other matter onto a roadway, sidewalk, boulevard or median within the Town, excepting vehicles and materials for which specific permission has been granted by the Chief Administrative Officer; and
  - vi) No concrete may be placed in the gutter of a roadway.

#### **Return of Performance Bond/ Security**

Once the Building Inspector has determined that the building is suitable for occupancy the performance bond or other security will be returned on completion of the following to the satisfaction of the Development Authority:

1. Submission of the Request for Performance Bond. This form is available from Planning and Development. Please deliver, fax (403-556-4856) or email (planning@olds.ca) the completed form to Planning and Development;
2. Completion of the Development as approved including but not limited to fencing, curb and retaining wall installation, landscaping, parking lot paving and boulevard rehabilitation or reconstruction;
3. Proper installation of the curb stop and ensuring it is fully operational;
4. Confirmation that the sidewalk, curb, gutter, boulevard and curb stop have not been damaged. If any of these are damaged then repair or rehabilitation of same by the Developer is required. See Utility Excavation Permit's pre-excavation inspection of the sidewalk and boulevard; and
5. Proper installation of eaves troughs and, where applicable, the sump pump.

#### **BACKGROUND INFORMATION**

The Developer, S. Y & S. Restaurant Ltd., submitted a development permit application for the Lands to the Town of Olds Planning & Development Authority (the "Development Authority") on December 6, 2012 as Application No. 12-227 (the "Application"). The description of the proposed development contained in the Application was "Parking Lot Development."

The Application was circulated to internal departments, external agencies and nearby landowners and there were no objections from internal departments. Alberta Transportation advised that they had no objections but that a Roadside Development application would be required.

Two letters were received from adjacent landowners as well as verbal communications. The letters and verbal communications raised concerns regarding the completion of the privacy fence at the rear of the Lands and along the lane, the increase in traffic in the lane, a drainage

issue at the rear of the restaurant, and the need for more security around adjacent properties due to the operation of the restaurant.

On July 18, 2003, the Development Authority referred the Application to the Municipal Planning Commission for a decision. On July 23, 2013, the Town of Olds Manager of Planning advised the Developer that the Municipal Planning Commission refused the Application. The reasons for the refusal were as follows:

1. *Refused as paving a residential backyard and converting it to a commercial parking lot does not meet the criteria of the land use bylaw.*
2. *Certificate of Titles on two different parcels with different uses.*
3. *Traffic: the application did not deal with existing and potential concerns regarding access to and egress from the property onto Highway 27.*
4. *Parking: the parking arrangements as presented, whilst attempting to accommodate the residence and the resulting different elevations on the property, did not address existing parking confusion nor provide a satisfactory resolution to deal with possible impending problems created by additional tenants that may relocate to the property.*
5. *Visual impact: the application as presented did not deal effectively with the visual and physical impact of the residence remaining on the property whilst attempting to accommodate the parking area at the rear of the property. The application as presented is likely to have created an undesirable appearance and situation on the property itself as well as with the neighbourhood and neighbouring properties.*
6. *Safety of access.*
7. *Adequacy of parking given existing and proposed uses.*

*Note: It was also noted that as per the Bylaw, hard surfacing (i.e. concrete, pavement) of the parking area shall be required where a parking area enters a paved public road [Schedule B Section 3(1)(k)] and parking spaces shall be located on the same parcel as the use for which they are being provided [Schedule B Section 3(1)(j)].*

On August 6, 2013, the Developer submitted an appeal of the refusal to the SDAB.

## **SUMMARY OF THE PLANNING & DEVELOPMENT SUBMISSION**

Both verbally, and as outlined in the Development Authority's Request for Decision Report to the Municipal Planning Commission, the Development Officer explained that since 2011, there have been 3 development permit applications with respect to the Lands.

In 2011, the Lands were separated into two adjacent parcels of land with separate titles. At that time, one parcel was approved for a restaurant with a total of 174 person occupancy and 25 parking stalls (the "Cilantro Site"), while the adjacent parcel was used as a residential lot (the "Residential Lot"). The Town of Olds Land Use Bylaw 01-23 (the "LUB") requires that all Restaurants, lounges and taverns have a minimum of 1 parking stall per 4 seats; the 2011 development permit was approved with a parking relaxation from the 44 required parking stalls to 25.

After the 2011 approval, the Cilantro Site was excavated and the parking lot expanded into the Residential Lot next door. This expansion into the adjacent Residential Lot was constructed without the required development permit from the Town. The SDAB understands that this development permit Application was made to approve the parking lot expansion into the Residential Lot. According to the Development Officer, the Application raised a number of issues recognizing that the expansion of the parking lot and design changes affect both the Residential Lot and the Cilantro Site.

In his Report to the Municipal Planning Commission, the Development Officer recommended that the Commission approve the Application subject to the conditions identified in his Report. Despite this recommendation, the Municipal Planning Commission refused the Application.

The Development Officer explained in his submission to the SDAB that it was his understanding, when he appeared in front of the Municipal Planning Commission, that as of July 2013, the Cilantro Site and the Residential Lot were two separate titled lots. This concern was one of the reasons the Municipal Planning Commission refused the Application, as it was the Commission's position that the Developer could not meet the parking requirements of the LUB for the restaurant on the Cilantro Site by installing parking stalls on the Residential Lot.



In his submissions to the SDAB, the Development Officer confirmed that in fact, as of May 2013, the Cilantro Site and the Residential Lot had been consolidated into one title to create the Lands. According to the Development Officer, confusion regarding the titles at the Municipal Planning Commission meeting resulted in the Commission making its decision on incorrect facts.

In addition to the confusion regarding the consolidation of titles, the Municipal Planning Commission also addressed the possibility of having the house on the Residential Lot torn down. In his submission to the SDAB, the Development Officer stated that the house was considered a non-conforming use which could continue until the house is torn down.

The Development Officer closed his submission by summarizing the following concerns of the Development Authority with respect to the Application:

- *Parking lot needs to be paved.*
- *Legal land description would have to be changed on the DP because the lots have been consolidated.*
- *Functional access: a hedge to the west of the access point blocks site lines; how this access actually works is a concern. Island which defines the driveway throat is not built and maybe should not be built as per the plans. The larger the driveway, the larger the driveway throat required; vehicle speed in the parking lot is a concern.*
- *Residence: MPC has not requested removal of the house. The permit was approved without the removal of the house. A retaining wall against the east side of the property as well as one along the sides of the house is required for frost reasons. There is concern with keeping the house in good condition until it is moved. If a good retaining wall is requested, then it is suggested the house will be stay indefinitely.*

Finally, in his verbal submissions, the Development Officer noted that if the Application was approved, a meeting would likely be held with Alberta Transportation, the Town and the Developer to deal with outstanding issues with regards to access to the Lands. At this meeting, the Development Authority would request that consolidated access be made between the restaurant and the house on the Lands.

### **SUMMARY OF THE DEVELOPER'S SUBMISSION**

The Developer's written submission and verbal presentation in front of the SDAB were provided by Jenny Yee, a Director and Shareholder of the Developer. Ms. Yee submitted that contrary to the Municipal Planning Commission's finding, the titles for the Cilantro Site and the Residential Lot were consolidated on May 27, 2013. Ms. Yee provided both a Plan of Survey and a Certificate of Title evidencing the consolidation of the parcels which created the Lands. As a result of the consolidation, Ms. Yee submitted that there was no substantive reason for the Municipal Planning Commission's finding that the parking arrangement for the restaurant was unsatisfactory and confusing. By virtue of the consolidated parcel, Ms. Yee argued that the restaurant and the parking development should now be considered one contiguous and singular development.

Ms. Yee also submitted that the issues related to the completion of site development, including the erection of fencing, the installation of curbs and the paving were not substantive reasons to refuse the Application. She submitted that the site development was currently ongoing and that she was waiting for approval from the Development Authority before completing that work. Ms. Yee was generally in agreement that the conditions incorporated in the draft development permit, as submitted by the Development Authority to the Municipal Planning Commission, were proper and appropriate and that the Commission should not have refused the Application on these grounds.

In her verbal submissions, Ms. Yee argued that she lived in the house on the lands, and that she did not understand why it needed to be moved. She also commented that she did not agree that the house was considered an eyesore. Ms. Yee did acknowledge that a retaining wall and landscaping are required for the house and that both projects would be completed upon approval.

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## **REASONS FOR DECISION**

After having heard, reviewed and considered the details of the proposed development, the submissions of the Developer, and the submissions of the Development Authority, and after having reviewed and analyzed the documents submitted prior to the hearing and during the hearing as listed in Appendices "A" and "B", the SDAB is of the view that the proposed development is an appropriate land use and that the development permit Application should be approved subject to conditions.

### **Jurisdiction of the SDAB**

The Act provides the framework for the SDAB's authority:

Grounds for appeal

**685(1)** If a Development Authority

- (a) fails or refuses to issue a development permit to a person,
- (b) issues a development permit subject to conditions, or
- (c) issues an order under section 645,

the person applying for the permit or affected by the order under section 645 may appeal to the subdivision and development appeal board.

**686(1)** A development appeal to a subdivision and development appeal board is commenced by filing a notice of appeal, containing reasons, with the board within 14 days,

- (a) in the case of an appeal made by a person referred to in section 685(1), after
  - (i) the date on which the person is notified of the order or decision or the issuance of the development permit,

**687(3)** In determining an appeal, the subdivision and development appeal board

- (a) must act in accordance with any applicable ALSA regional plan;
- (a.1) must comply with the land use policies and statutory plans and, subject to clause (d), the land use bylaw in effect;

- (b) must have regard to but is not bound by the subdivision and development regulations;
- (c) may confirm, revoke or vary the order, decision or development permit or any condition attached to any of them or make or substitute an order, decision or permit of its own;
- (d) may make an order or decision or issue or confirm the issue of a development permit even through the proposed development does not comply with the land use bylaw if, in its opinion,
  - (i) the proposed development would not
    - (A) unduly interfere with the amenities of the neighbourhood, or
    - (B) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land,
  - and
  - (ii) the proposed development conforms with the use prescribed for that land or building in the land use bylaw.

### Planning Framework

#### *Land Use Bylaw*

The Lands are located within the Highway Commercial District (CH) pursuant to the Town of Olds Land Use Bylaw 01-23, as amended. Schedule C sets out the uses and regulations for the CH District. The general purpose of the District is:

To provide an area for commercial uses and other uses, herein listed, which are compatible with the area, adjacent to a major thoroughfare, which requires large open areas for parking by clientele, for display of merchandise, or both, which will create an attractive environment, primarily accessible to motor vehicles.

Parking Facilities and Dwelling unit for the occupancy of the owner operator or caretaker are listed as a discretionary uses within the CH District.

The SDAB considered the submissions put forward by the Developer and the Development Officer and determined that the proposed development is for a discretionary use within the CH District.

### Factors Considered

#### *Title Consolidation*

The SDAB accepts that the Cilantro Site and the Residential Lot have been consolidated as one lot with a legal description of Plan 1311439, Block 42, Lot 20.

#### *Site Development*

The SDAB is confident that the Developer wants to make the area around her home and business aesthetically pleasing, which includes the west and south retaining walls that are required to protect the house on the Lands from the effects of erosion and frost.

#### *The House*

As per Schedule C of the LUB, the house on the Lands is a discretionary use (Dwelling unit for the occupancy of the owner operator or caretaker) and does not need to be moved.

#### *Access*

The entrance point to the Lands is to be modified to the satisfaction of Alberta Transportation, the Development Authority and the Developer. The SDAB lacks the authority to comment on matters that Alberta Transportation regulate and relies on the comments of the Development Officer that a meeting will be held to address access concerns.

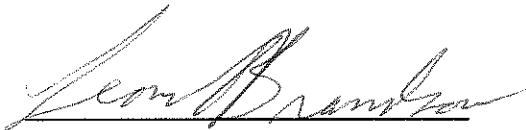
**CONCLUSION**

The SDAB appreciated the submissions made by all parties to this appeal.

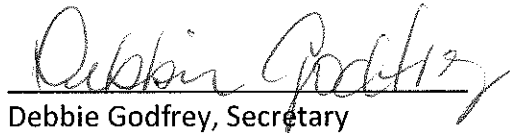
The Town may enforce the terms of the development permit.

Given the foregoing, the SDAB is of the view that the proposed development is an appropriate land use and that the Application should be approved subject to conditions.

DATED at the Town of Olds, in the Province of Alberta this 2nd day of September, 2013.



Leonard Brandson, Chair



Debbie Godfrey, Secretary

**NOTE:**

A decision of the Subdivision & Development Appeal Board is final and binding on all parties and persons subject only to an appeal on a question of law or jurisdiction pursuant to Section 688 of the *Municipal Government Act*, R.S.A. 2000, c. M-26, as amended. An application for leave to appeal must be made to a Justice of the Court of Appeal within 30 days after the issuance of the decision sought to be appealed, and notice of the application must be given to:

- (a) The Municipal Government Board or the subdivision and development appeal board,  
and
- (b) Any other person the judge directs.

**APPENDIX "A"**

This appendix contains the Minutes of the Hearing dated August 20, 2013 held at 9 a.m. in the Council Chambers, Town Office at 4512 46 Street, Olds, AB T4H 1R5.

Subdivision and Development Appeal Board Minutes  
Tuesday, August 20, 2013 at 9:00 a.m.  
Council Chambers, Town Office  
4512-46 Street, Olds AB

**Appeal of Development Permit DP12-227**

Subdivision and Development Appeal Board Members

Chairman Leonard Brandson,  
Councillor Murray Ball  
Joe Overwater  
Edie Connelley  
Donald Dwyer

Subdivision and Development Appeal Board Admin Support Staff

Debbie Godfrey, Secretary  
Kelly Eskeland, Recording Clerk

Development Officer

Werner Fischer, Manager of Planning

Members in the Gallery

Kari Idland, Planning Intern  
Dave Harris  
Jenny Yee, Appellant

1. **Reminder for all Attendees to sign in on the Signature Sheet**  
Secretary, Debbie Godfrey reminded all attendees in the gallery to sign in on the signature sheet.
2. **Call to Order**  
The hearing DP12-227 for the Subdivision and Development Appeal Board for Tuesday, August 20, 2013 was called to order by Chairman, Leonard Brandson at 9:02 a.m.
3. **Motion to Confirm the Record of Proceedings as set out in the Subdivision and Development Appeal Board Agenda for August 20, 2013.**

Debbie Godfrey provided procedural matters for this Subdivision and Development Appeal Board Hearing. A recording is being taken for the purpose of correctness of the written minutes. No written verbatim transcript of this hearing will be provided. The recorded transcript is only to provide if requested by a Court.

**Motion:** Moved by Edie Connelley that the record of proceedings for the August 20, 2013 DP12-227 Appeal Hearing be confirmed. Carried

4. **Outline the Nature of the Appeal**  
Secretary Godfrey reviewed the appeal letter for property 5505 - 46 Street, Olds, AB received from Jenny Yee. The appeal was received with the correct amount of money being \$240.00 and the appeal was filed within the required time frame. The reason for the appeal has been stated as Refusal of Development Permit DP12-227.  
Secretary Godfrey read the letter of appeal received.

VB



**5. Introduction of the Parties**

i. Appellant

Appellant Jenny Yee.

ii. Development Officer

Werner Fischer, Development Authority and Manager of Planning, Town of Olds

iii. Secretary

Debbie Godfrey

iv. Recording Clerk

Kelly Eskeland

**6. Ascertain that any party(s) that wish to speak be introduced and recorded.**

The Chairman called for any parties who wish to speak to identify themselves. There was no one that came forward indicating they wished to speak.

**7. Introduction of the Subdivision and Development Appeal Board Members**

The Chairman introduced the Board Members for the Subdivision and Development Appeal Board as Leonard Brandson, Chairman, Councillor Murray Ball, Joe Overwater, Edie Connelley, and Donald Dwyer.

**8. Objection to any Board Members Hearing this Appeal**

Each SDAB Board Member was asked if there was any objection or bias to them hearing this appeal. All five SDAB members declared that they have no bias in these proceedings. There were also no objections stated by the appellant or the development officer to the SDAB Members hearing this appeal.

**9. Outline and Confirm Procedures for the Hearing**

- a. Development Officer Presentation
- b. Appellant Presentation
- c. Board to hear from those affected persons in the audience
- d. Secretary to read submitted items

**Motion:** Moved by Councillor Murray Ball that the Subdivision and Development Appeal Board confirm the outline of procedures for the August 20, 2013 appeal DP12-227 hearing.

Carried

**10. Development Officer Presentation**

Werner Fischer, Manager of Planning, thanked the Board and made his verbal presentation to the Board.

VB

- Two development permits were taken to the Municipal Planning Commission (MPC) on July 18, 2013 concerning 5505 – 46 Street. One dealt with parking, garbage, etc., and the second permit was to authorize a drinking establishment on premises. The first permit was refused and the second one was approved. Conditions on site development such as curbs and fencing were dealt with under the second permit.
- In 2011, there was approval for a restaurant with a total of 174 person occupancy and 25 parking stalls. The property was excavated and the parking lot expanded into a residential lot next door. This allowed for extra parking for a total of 44 stalls and both lots were consolidated under one certificate of title. The number of parking stalls meets the requirements under the Land Use Bylaw.
- MPC refused the first permit. A meeting would have likely been held with AB Transportation, the Town and developer if the permit would have been approved at MPC. The meeting would have been to deal with outstanding issues with regards to the access. It would be requested that a consolidated access be made between the restaurant and the residence.
- Concerns include:
  - o Parking lot needs to be paved
  - o Legal land description would have to be changed on the DP because the lots have been consolidated.
  - o Functional access: a hedge to the west of the access point blocks site lines; how this access actually works is a concern. Island which defines the driveway throat is not built and maybe should not be built as per the plans. The larger the driveway, the larger the driveway throat required; vehicle speed in the parking lot is a concern.
  - o Residence: MPC has not requested removal of the house. The permit was approved without the removal of the house. A retaining wall against the east side of the property as well as one along the sides of the house is required for frost reasons. There is concern with keeping the house in good condition until it is moved. If a good retaining wall is requested, then it is suggested the house will be stay indefinitely.

Chairman, Leonard Brandson thanked Mr. Fischer for his presentation.

#### **11. Appellant Presentation**

Jenny Yee, Appellant, thanked the Board and provided a verbal presentation highlighted as follows:

- None of the outside curbing, parking and fencing is done due to a lot of confusion and not a lot of funds; she doesn't want to spend money and then to have to redo things. 80% of the curbing on the west and south sides has been completed. Fencing will begin this week on the south side. Does not want to start paving because the permit has not been approved and she doesn't want to start work and then have to take it out or redo it. She is waiting for today's decision before paving.
- Garbage enclosure was built and has to be redone because it was not done right. She wants to make sure she is doing the right thing the first time
- The residence mentioned is where the appellant lives and does not understand why the house should be moved. She does not agree with comments that the house is an eyesore. The house blocks a partial view from the restaurant, as owner she does not have a concern that the restaurant view is blocked.

- She advised that a retaining wall will be built for house – 6-7 feet to the basement foundation.
- She won't pay for paving until approval is given.
- The house will be kept, will build a retaining wall and do landscaping. This is her home.

The Appellant was thanked for her presentation.

**12. Call for those to Speak on the Appeal**

i. In Support of the Appeal

No one came forward to speak in support of the appeal.

ii. Opposed to the Appeal

No one came forward to speak in opposition of this appeal.

**13. Read Into Record Additional Information**

There has been no additional written information received for this appeal hearing.

**14. Subdivision and Development Appeal Board Questions**

i. To the Development Officer

- Q: Speed and access of vehicles entering and leaving is a concern? A: One thing to make the site better is to improve this access. It was not part of the original, but it has become apparent that speed is an issue. The hedge to the west blocks sight ability. The access will be addressed with Alberta Transportation and the appellant.
- Q: Is there a stop sign on site? A: Don't believe so, but it could be a beginning for the control.
- Q: Reference to the size of vehicles entering and leaving. A: The bylaw standards are minimum standards. It is tight to maneuver.
- Q: How were the extra parking stalls established? A: Initially there were 25 stalls for 174 seats. It became obvious that there was not enough parking. Asked for properties to be consolidated and based on the numbers. There are now 44 parking stalls on site that meet requirements of bylaw.
- Q: Is the fence along the laneway to prevent vehicles from exiting there? Is it under construction? A: There is a requirement to rebuild it under the other development permit.
- Q: Are there garbage pick-up issues? A: A front loading garbage container is needed with a 20 foot approach and can't load off the lane. Refer to page identified as 41.
- Q: What is the house on that property being used for? A: It is the residence of either the Yee's or staff.
- Q: Where is the issue of the retaining walls at? Is there a problem on east side of property? A: Unsure at this time. The application was refused and has not been dealt with. The construction of the retaining wall is essential. There will be erosion on that property. Usually the retaining wall is built first and then the fence.

- Q: If the corner island at the entry is moved over and one parking stall is lost, where will they regain the stall? A: It is hoped that when the house is moved, it would be regained. One stall for four seats is blended standard.
- Q: Instead of the island, could a speed bump be put in there? A: Would like to confirm that and could be a secondary consideration.
- Q: If the house is being used as a residence, is that a zoning issue? A: The house has been non-conforming use. The Municipal Government Act is clear that the date in the bylaw the building could continue to be used. If the building comes down, it cannot be rebuilt. Reading the bylaw, it does allow for a house on property if landlord, tenant is on property.
- Q: How did the confusion occur regarding titles? The date shows it was consolidated in May and 45 days later there was uncertainty A: There was no confusion, we were monitoring title searches – there was a misunderstanding. Was told the titles were in limbo and not consolidated two days prior to MPC.
- Q: When titles are consolidated, can they be split for zoning? A: Both properties are CH zoning.
- Q: Are these drawings the same as the approved drawings? Driveway in question. The bulb was never built. One plan that approves it and another set of plans. A: It would be beneficial if the drawings were modified to the satisfaction of the development officer. The QL performance bond had a four month trigger on this. We want a mechanism to encourage the landscaping and be certain that items on the drawings are approved and completed.

ii. To Appellant

The hearing was suspended while the recording tape was changed out at 9:49 a.m.

The hearing reconvened at 9:50 a.m.

- Q: What is your view on getting landscaping, etc.? Will it be done this fall or next spring? A: Would like to have it done as soon as approval and confirmation is received. Curbing is not done as it connects to the island and the retaining wall. Contact has been made for paving in the extra parking, but with the flood and availability of contractors, it is not done.
- Q: It is the understanding that the appellant agrees to put bulb out front. A: Yes.
- Q: At this point in planning, there are no plans for the house? A: The house will be there for a long time. Personal view – bought the land with house to live in it.
- Q: Concern with MPC for retaining wall visual. A: It will be concrete. Intention to landscape for visual appeal.

iii. To any other person

There were no questions directed to any other person.

**15. Other Questions**

i. Questions from the Audience for clarification of any other presenter

There were questions from the audience for clarification.

VB

**16. Final Comments**

i. Development Officer

Prior to MPC, the house was not looked at as being an issue. The Land Use Bylaw allows for it to be discretionary use and the house is a legitimate use and can be there.

ii. Appellant

There were no final comments from the Appellant.

iii. Other Person who has made a presentation

There were no final comments from the gallery.


**17. Chairman's Final Comments**

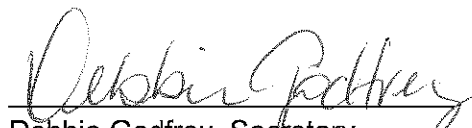
a. Fair Hearing

The Chairman asked both the appellant and the development officer if they believe they received a fair hearing to which both parties responded with yes.

b. Conclude Hearing

Chairman Brandson concluded the hearing at 9:59 a.m. He noted that the timeline for written decision is 15 days from the conclusion of hearing and that the timeline to file and serve an appeal to the Court of Appeal, on a question of law or jurisdiction, is 30 days after the issue of the Subdivision and Development Appeal Board decision.

  
Leonard Brandson, Chairman

  
Debbie Godfrey, Secretary

**APPENDIX "B"**

This appendix contains the information package of materials available for the General Public 5 days prior to the Hearing and maintained at the front counter at the Town of Olds Administration Office at 4512 46 Street, Olds, Alberta. This package contains 8 attachments including:

1. Notice of Subdivision and Development Appeal Board, Hearing Appeal of DP-227
2. Development Permit Application DP 12-227
3. Notice of Appeal from S.Y.&S. Restaurant Ltd. dated August 6, 2013
4. Official Receipt in the amount of \$240.00 with Description "SDAB Appeal 12-227" dated August 6, 2013.
5. Land Title Office: Plan 1311439, dated May 27, 2013
6. Notice of Decision from Town of Olds Manager of Planning dated July 23, 2013
7. Meeting Minute Excerpt from the Municipal Planning Commission dated July 18, 2013
8. Request for Decision from the Manager of Planning to the Municipal Development Commission dated July 18, 2013

# **Notice of Subdivision and Development Appeal Board**

## **Appeal DP12-227**

This is to notify that an Appeal has been made to the Subdivision and Development Appeal Board. The reason for the Appeal has been stated as Refusal of Development Permit Application DP12-227.

Development Permit Application No. 12-227 identifies the project location – Street Address as '5505-46 Street, Olds AB T4H 1H5' and, the description of the proposed development as 'Parking Lot Development'.

Legal Description of Land: Plan 1311439, Block 42, Lot 20 (dated May 27, 2013)

Civic Address: 5505-46 Street, Olds Alberta

To be heard, the Appeal has been scheduled as follows:

Date: **Tuesday, August 20, 2013**

Time: **9 a.m.**

Place: **Council Chambers  
Town of Olds Municipal Office  
4512 46 Street, Olds Alberta**

Any persons affected by the Development Permit Appeal have the right to present a written brief prior to the Appeal being heard and to be present and to be heard at the Appeal. Written briefs are to be addressed to the Subdivision & Development Appeal Board and should be received at the Town of Olds Municipal Office at 4512 46 Street, Olds Alberta by noon on Friday, August 16, 2013.

All relevant documents and materials respecting the appeal shall be available for public inspection at the Municipal Office, during normal office hours, until the date of the appeal hearing.

# DEVELOPMENT PERMIT APPLICATION



**Town of Olds**

4512 46 Street  
Olds AB T4H 1R5  
Main: 403.556.6981  
Fax: 403.507.4856

Planning & Development

DEC 06 2012

PLEASE PRINT

Appl. No. 12-227

Received

**This is NOT a Building Permit**

Name of APPLICANT <u>SYNS RESTAURANT LTD</u> <u>SADDY &amp; JENNY YEE</u>		Tel/ Cell <u>403-680-0977</u>	Fax <u>403-295-0889</u>
Address of APPLICANT <u>5505 - 46 STREET Olds</u>		Postal Code <u>T4H 1H5</u>	
E-mail <u>SYNSJI@GMAIL.COM</u>			
Name of REGISTERED OWNER <u>SYNS RESTAURANT LTD</u>		Tel/ Cell <u>403-680-0977</u>	Fax <u>403-295-0889</u>
Address of REGISTERED OWNER <u>128 - SANTANA MEWS NW CALGARY AB T2E 3A7</u>		Postal Code <u>T2E 3N7</u>	

## PROJECT INFORMATION

Processing of an application will NOT commence until all of the required items have been provided.

Project Location - Street Address <u>5505 - 46 STREET Olds AB T4H 1H5</u>			
Describe the Proposed Development:  <u>PARKING LOT Development</u>			
<u>May 27, 2013 LOT 6 &amp; 7 consolidation. Plan 1311439, LOT 20, BLK 4.</u>			
Legal Land Description:	Lot <u>7</u>	Block <u>42</u>	Plan <u>4774 FR.</u>
Parcel Type: <input type="checkbox"/> Interior <input type="checkbox"/> Corner		Parcel Area	Parcel Coverage
Existing Use of Land/Building:		Proposed Use of Land/Building:	
Setbacks: Front Yard	Side Yard	Side Yard	Rear Yard <u>5m</u>
Floor Area	Height of Building	Estimated Value of Project <u>5000</u>	
Estimated Commencement Date <u>ASAP</u>		Estimated Completion Date	

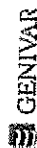
I hereby make application under the provisions of the Town of Olds Land Use Bylaw for a Development Permit in accordance with the plans and supporting information submitted herein and which form part of this application.

Signature of APPLICANT / AGENT

Date

Dec 6 - 2012





**PRELIMINARY**  
**NOT FOR CONSTRUCTION**

0124XVG1538 SY15

**Abstract**

800 261-5854

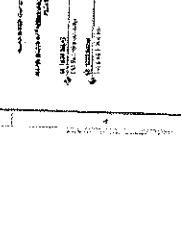
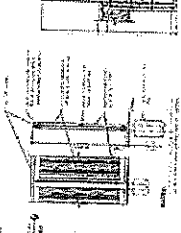
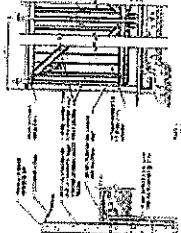
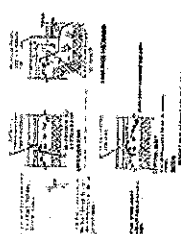
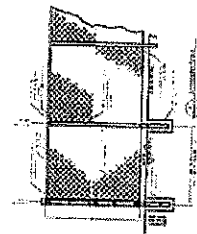
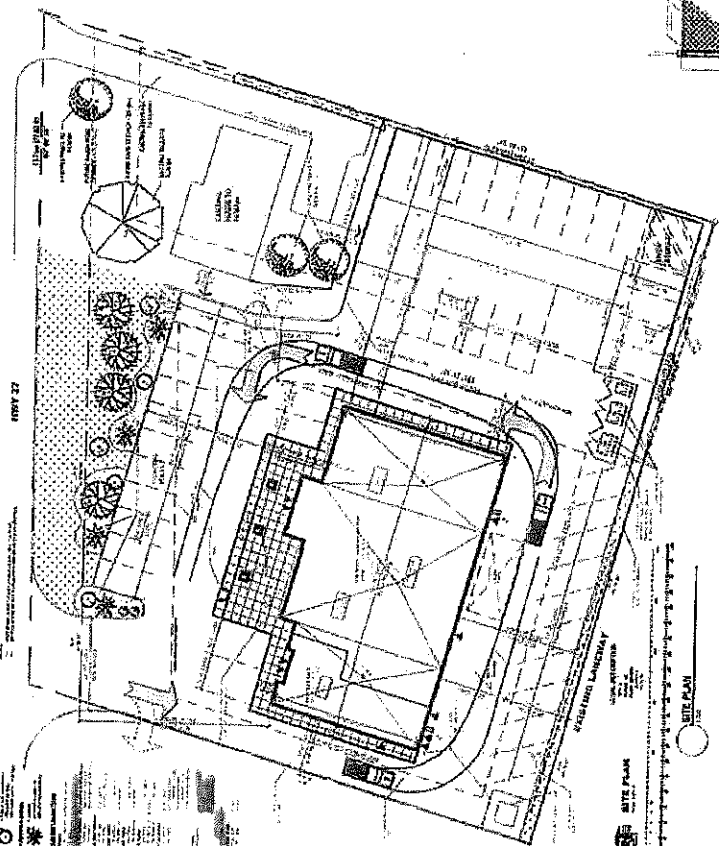
1000

175

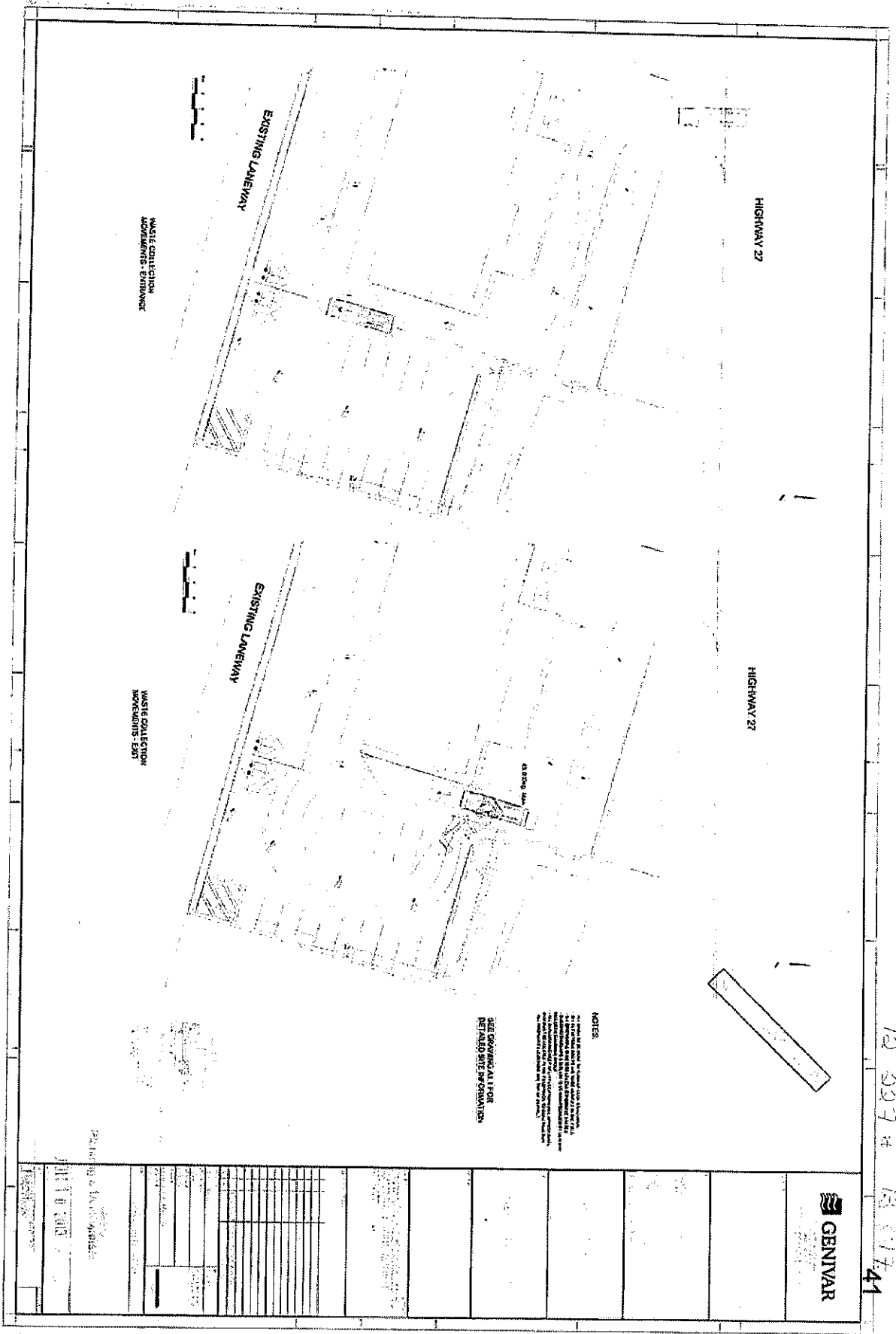
**QUESTIONS**

STRUCTURAL NOTES ARCHITECTURAL NOTES

ARCHITECTURAL NOTES

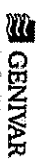


12 0274 13 0741



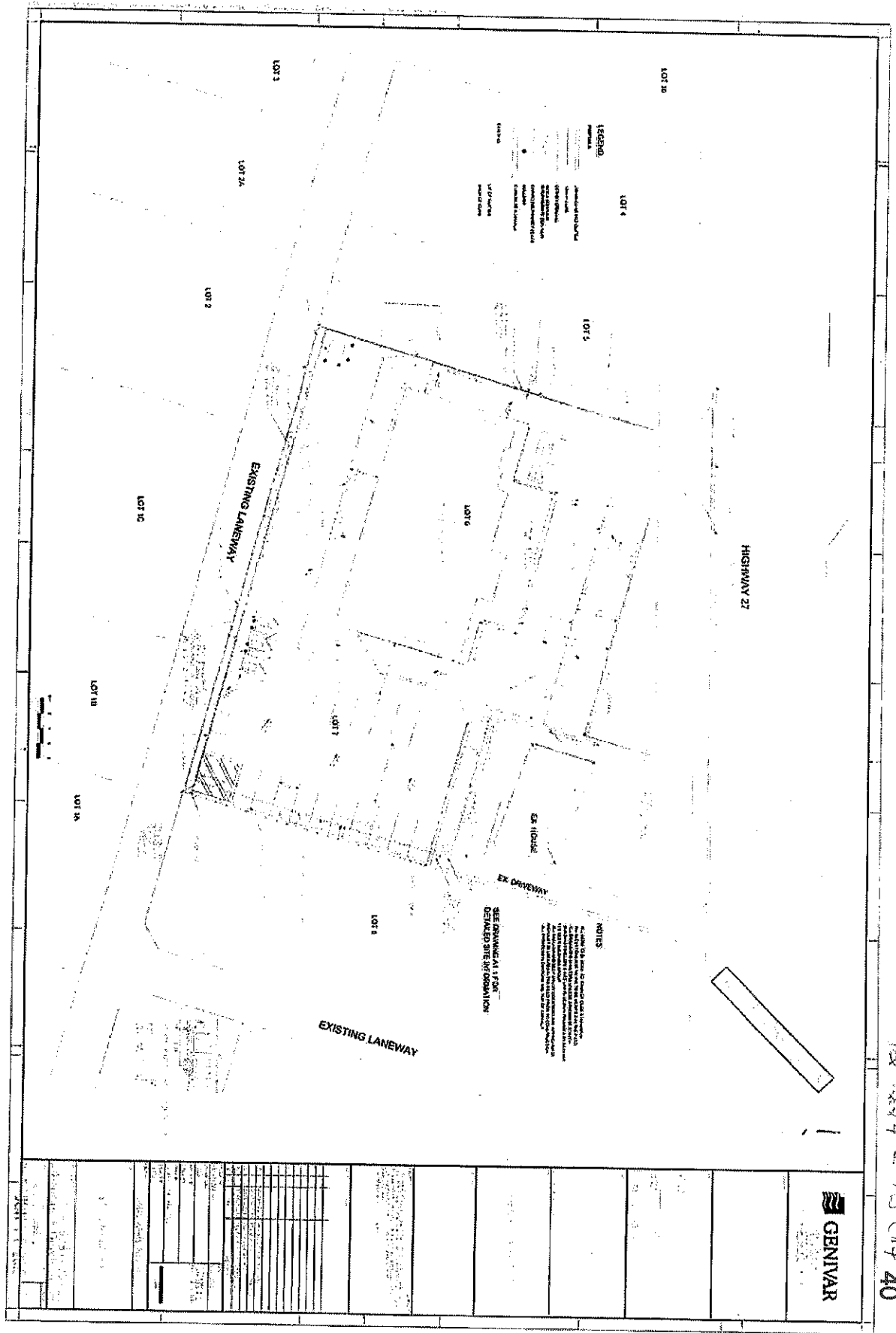
**NOTES:**  
 1. THE SITE IS TO BE DEVELOPED AS A WASTE COLLECTION AND RECYCLING CENTRE.  
 2. THE SITE IS TO BE DEVELOPED AS A WASTE COLLECTION AND RECYCLING CENTRE.  
 3. THE SITE IS TO BE DEVELOPED AS A WASTE COLLECTION AND RECYCLING CENTRE.  
 4. THE SITE IS TO BE DEVELOPED AS A WASTE COLLECTION AND RECYCLING CENTRE.  
 5. THE SITE IS TO BE DEVELOPED AS A WASTE COLLECTION AND RECYCLING CENTRE.

SEE DRAWING A11 FOR  
 DETAIL SITE INFORMATION



1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100
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12-227 & 13-City 40



**Notice of Appeal from S.Y.&S. Restaurant Ltd,  
dated August 6, 2013**

Dated: 06 August 2013

HAND DELIVERED

S.Y.& S. RESTAURANT LTD.

5505 – 46<sup>th</sup> Street

OLDS, Alberta T4H 1H5

TOWN OF OLDS

SUBDIVISION and DEVELOPMENT APPEAL BOARD

4512 – 46<sup>th</sup> Street

OLDS, Alberta T3H 1R5

RE: NOTICE OF APPEAL

Refusal of Development Permit Application DP12-227

For and on behalf of S.Y. & S. Restaurant Ltd., I herewith file the appeal of the decision to refuse the issuance of Development Permit DP 12-227. In accordance with the requirements of the Town's Rates ByLaw No. 01-06 Schedule G, I herewith tender a cheque in the amount of \$ 240.00 concurrent to the submissions herein.

REASONS for APPEAL:

1. Contrary to the assertions of the learned Municipal Planning Commission as at 23 July 2013, and the submissions of the Manager of Planning under the Request for Decision Report dated 18 July 013 the titles referred to have in fact been consolidated, and were in fact consolidated as at 27 May 2013 by way of Plan of Survey. Attached as Schedule 1 to this Notice of Appeal is a title evidencing said consolidation. Accordingly the parcel presents and is as one (1) parcel with no different use nor function;

RECEIVED  
AUG - 6 2013

2. Arising from the consolidated title/parcel, there is no substantive reason nor grounds for asserting that parking arrangements are either confusing or do not provide a satisfactory resolution to the use of the one (1) parcel. There is by virtue of the consolidated parcel a contiguous and singular development;
3. Arising from the consolidated title/parcel, there is more than adequate parking, and the assertions of shortage or insufficiency relative to parking are without substantive reason or grounds;
4. The recommendation of the Manager of Planning in final analysis under the Request for Decision Report dated 18 July 2013 was ignored or relegated without further inquiry or consideration;
5. There is and continues to be completion of site development, and the presence of the bond as per the requirements of the municipal authority. In particular and of note, the Applicant is directing for the erection of fencing as specified by the Manager of Planning, as well as the installation of curbs to the property as specified by the Manager of Planning. There was no substantive reason nor grounds for refusing the application on this basis;

6. The conditions incorporated into the draft Development Permit D 12-227 as submitted by the Manager of Planning under the Request for Decision Report dated 18 July 2013 are proper and appropriate for the application, and as such there were no substantive reason nor grounds for refusing the application.

All of which is respectfully submitted this 6 day of August, 2013.

S. Y. & S. RESTAURANT LTD.

Per: 

cc. LEE & KONG Law Firm, Calgary, Alberta, Attn: JSD Kong Esq.

SCHEDULE 1



LAND TITLE CERTIFICATE

S  
LINC                      SHORT LEGAL                      TITLE NUMBER  
0035 689 868            1311439;42;20            131 121 643

LEGAL DESCRIPTION  
PLAN 1311439  
BLOCK 42  
LOT 20  
EXCEPTING THEREOUT ALL MINES AND MINERALS

ESTATE: FEE SIMPLE  
ATS REFERENCE: 5;1;32;32;NW

MUNICIPALITY: TOWN OF OLDS

REFERENCE NUMBER: 951 289 181  
101 154 885

REGISTERED OWNER(S)				
REGISTRATION	DATE (DMY)	DOCUMENT TYPE	VALUE	CONSIDERATION
131 121 643	27/05/2013	PLAN OF SURVEY - NEW TITLE		

OWNERS

S. Y. & S. RESTAURANT LTD.  
OF 128 - SANTANA MEWS NW  
CALGARY  
ALBERTA T3K 3N7

ENCUMBRANCES, LIENS & INTERESTS

REGISTRATION		
NUMBER	DATE (D/M/Y)	PARTICULARS
121 124 778	24/05/2012	CAVEAT RE : AGREEMENT CHARGING LAND CAVEATOR - FORTISALBERTA INC. 320-17 AVE SW CALGARY ALBERTA T2S2V1 AGENT - GARRY SIMPSON " AFFECTS PART OF THIS TITLE "

( CONTINUED )



-----  
ENCUMBRANCES, LIENS & INTERESTS

PAGE 2  
# 131 121 643

REGISTRATION

NUMBER DATE (D/M/Y) PARTICULARS  
-----

121 156 825 25/06/2012 MORTGAGE  
MORTGAGEE - ALBERTA TREASURY BRANCHES.  
4905 - 50 AVE  
OLDS  
ALBERTA T4H1P5  
ORIGINAL PRINCIPAL AMOUNT: \$900,000

121 156 826 25/06/2012 CAVEAT  
RE : ASSIGNMENT OF RENTS AND LEASES  
CAVEATOR - ALBERTA TREASURY BRANCHES.  
OFFICE OF THE MANAGER  
4905 - 50 AVE  
OLDS  
ALBERTA T4H1P5  
AGENT - DELIN SHEEHAN-MILLANG

131 020 449 23/01/2013 AMENDING AGREEMENT  
AMOUNT: \$1,050,000  
AFFECTS INSTRUMENT: 121156825

TOTAL INSTRUMENTS: 004

THE REGISTRAR OF TITLES CERTIFIES THIS TO BE AN  
ACCURATE REPRODUCTION OF THE CERTIFICATE OF  
TITLE REPRESENTED HEREIN THIS 2 DAY OF AUGUST,  
2013 AT 09:49 A.M.

ORDER NUMBER: 24097016

CUSTOMER FILE NUMBER: S 12164



\*END OF CERTIFICATE\*

THIS ELECTRONICALLY TRANSMITTED LAND TITLES PRODUCT IS INTENDED  
FOR THE SOLE USE OF THE ORIGINAL PURCHASER, AND NONE OTHER,  
SUBJECT TO WHAT IS SET OUT IN THE PARAGRAPH BELOW.

THE ABOVE PROVISIONS DO NOT PROHIBIT THE ORIGINAL PURCHASER FROM  
INCLUDING THIS UNMODIFIED PRODUCT IN ANY REPORT, OPINION,  
APPRAISAL OR OTHER ADVICE PREPARED BY THE ORIGINAL PURCHASER AS  
PART OF THE ORIGINAL PURCHASER APPLYING PROFESSIONAL, CONSULTING  
OR TECHNICAL EXPERTISE FOR THE BENEFIT OF CLIENT(S).



**Town of Olds**

**4512 - 46 Street  
Olds, Alberta T4H 1R5**

Ph: (403) 556-6981

Fax: (403) 556-6537

**OFFICIAL RECEIPT**

SY & S RESTAURANT LTD  
128 SANTANA MEWS NW  
CALGARY AB T3K 3N7

GST Reg. #: R108128695  
Receipt #: 0423284  
Receipt Date: 2013/08/06  
Page: 1  
Received by: JJ

Account #	Description	Opening Balance	Payment	Amount Due
	SDAB APPEAL 12-227	240.00	240.00	.00

Tender Type & Description	Reference	Amount
CQ SY & S RESTAURANT LTD		240.00

Total Tax:	.00
Total Amount Paid:	240.00
- Tender Received:	240.00
= Change Given:	

**Please visit our Website at:**  
[www.olds.ca](http://www.olds.ca)

**Land Title Office: Plan 1311439**

**Consolidation of Lot 7, Block 42, Plan 4774 FR and Lot 6,  
Block 42, Plan 951 2962**

**Dated May 27, 2013**

PLAN NO. **1311439**  
MILE AGE RECORD  
ON **MAY 27, 2013**  
INSTANT NO. **131 121 648**  
**Dean Cantafio**  
414-575-5845

**OLDS, ALBERTA**

## Plan of Survey Showing CONSOLIDATION

LOT 7; BLOCK 42; PLAN 4774 FR AND  
LOT 6; BLOCK 42; PLAN 951 2962  
Within the  
N.W. 1/4 SEC. 32, TWP. 32, RGE. 1, W. 5thM

Scale 1 : 500

**MATHIEU M. BOURGEOIS, Alberta Land Surveyor,**  
**2013**

**Legend:**

[illegible][illegible]

Survey year



53RD AVENUE

53RD PRECINCT

53RD PRECINCT HOUSE

53RD PRECINCT OFFICE

5TH AVENUE

6TH AVENUE

1  
BLOCK 1  
W 42 ST

2  
BLOCK 2  
W 41 ST

3  
BLOCK 3  
W 40 ST

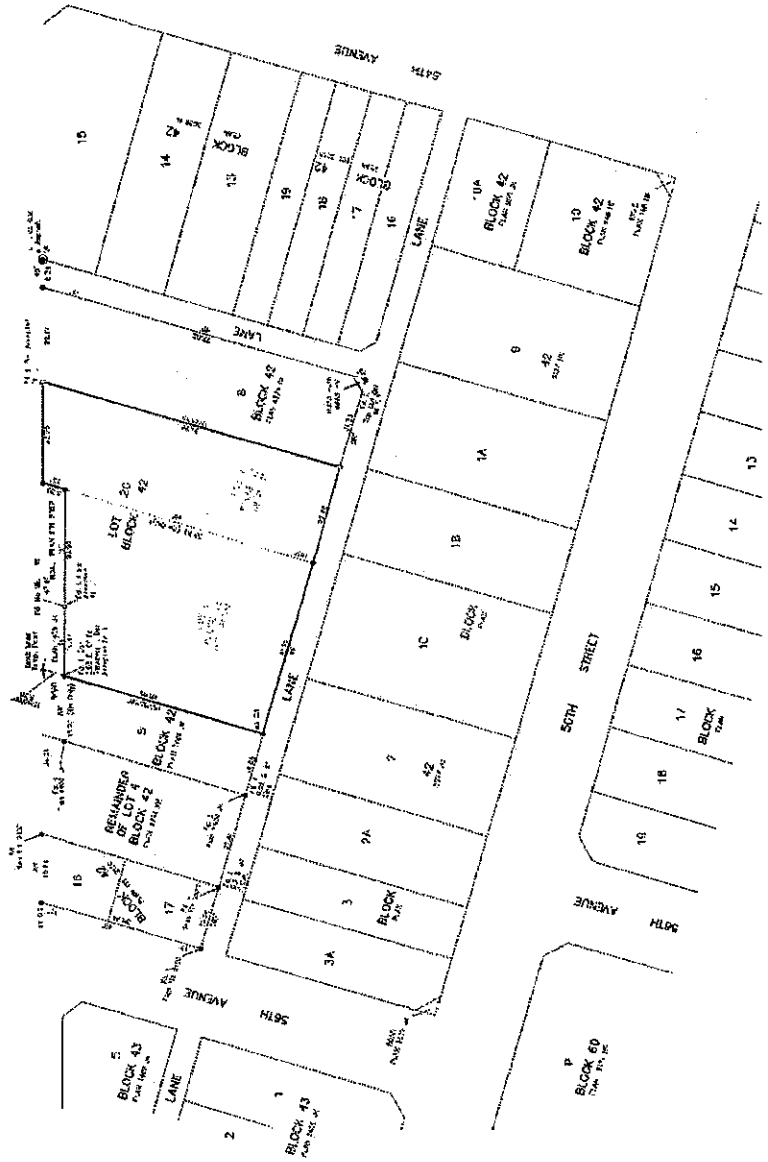
4  
BLOCK 4  
W 39 ST

5  
BLOCK 5  
W 38 ST

6  
BLOCK 6  
W 37 ST

R2 41-42 ST N.Y.C.

R2 37-38 ST N.Y.C.



5	4	3	2	1
	BLOCK PLAN		1 9160 GE	

[illegible]

**Notice of Decision – from Town of Olds Manager of Planning dated July 23, 2013**

**Meeting Minute Excerpt from the Municipal Planning Commission dated July 18, 2013**

**Request for Decision from the Manager of Planning to the Municipal Development Commission dated July 18, 2013**

# Town of Olds

**FILE COPY**

**HAND DELIVERED**

July 23, 2013

Jenny Yee  
SY & S Restaurant Ltd.  
5505 - 46 Street  
Olds Alberta  
T4H 1H5

Dear Mrs. Yee,

**Notice of Decision – Refusal of Development Permit Application DP12-227**

The above Development Permit Application for parking lot expansion, excavation, garbage enclosure relocation and related works was refused by the Municipal Planning Commission on July 18, 2013.

The reasons for the refusal are as follows:

- (1) Refused as paving a residential backyard and converting it to a commercial parking lot does not meet the criteria of the land use bylaw.
- (2) Certificate of Titles on two different parcels with different uses. (See Note below).
- (3) Traffic: the application did not deal with existing and potential concerns regarding access to and egress from the property onto Highway 27.
- (4) Parking: the parking arrangements as presented, whilst attempting to accommodate the residence and the resulting different elevations on the property, did not address existing parking confusion nor provide a satisfactory resolution to deal with possible impending problems created by additional tenants that may relocate to the property.
- (5) Visual impact: the application as presented did not deal effectively with the visual and physical impact of the residence remaining on the property whilst attempting to accommodate the parking area at the rear of the property. The application as presented is likely to have created an undesirable appearance and situation on the property itself as well as with the neighbourhood and neighbouring properties.
- (6) Safety of access.
- (7) Adequacy of parking given existing and proposed uses.

Note: It was also noted that as per the Bylaw, hard surfacing (i.e. concrete, pavement) of the parking area shall be required where a parking area enters a paved public road [Schedule B Section 3(1)(k)] and parking spaces shall be located on the same parcel as the use for which they are being provided [Schedule B Section 3(1)(j)].

Subsequent to the refusal of the application the Municipal Planning Commission passed the following motion:

*"That the Planning Staff work with the owners of the property to come up with an interim plan within 4 months for 5505 46 Street that works with Alberta Transportation requirements, works with the best interests of the community and can support continuation of the overall parking. That the consolidation of the property and removal of the existing house be reviewed with Alberta Transportation; the consolidated access issue and removal of the house may be an outcome or solutions may be provided by Alberta Transportation. If required an extension of time may be requested." [Note: 5505 46 Street is the site of the existing residence/ expanded parking lot].*

### **Appeal Procedure**

The decision to refuse the issuance of this development permit may be appealed to the Town of Olds Subdivision and Development Appeal Board in accordance with Section 2.7 of the Land Use Bylaw 01-23 which states: "An appeal of an order, a decision or a failure to make a decision of the development authority may be made in writing to the Subdivision and Development Appeal Board in accordance with the provisions set forth in the Subdivision and Development Appeal Board Bylaw."

Appeals must:

- a) be submitted to the Subdivision and Appeal Board within fourteen (14) days after the date on which the notice of issuance of the permit is given;
- b) include the reason(s) for the appeal; and
- c) be addressed to the Town Office to the attention of the Subdivision and Development Appeal Board. The fee for an appeal is \$240.00 in accordance with the Town's Rates Bylaw No. 01-06 Schedule G, as amended. This fee must be paid at the time the letter of appeal is submitted to the Town and prior to the expiration of the above referenced appeal period.

### **Concluding Remarks**

As noted you may appeal the refusal to the Subdivision and Development Appeal Board within 14 days of the date of this Notice.

The Municipal Planning Commission has directed Planning Staff work with you to come up with an interim plan within 4 months for 5505 46 Street that works with Alberta Transportation requirements and the best interests of the community. A Roadside Development Permit is required from Alberta Transportation.

Yours truly,



**Werner Fischer**

**Manager of Planning**

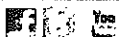
**Direct: 403.507.4805**

**Cell: 403.415.5176**

**Office: 403.556.6981**

**Town of Olds**

[www.olds.ca](http://www.olds.ca)



**4512 46 Street**

**Olds, AB T4H 1R5**



~~Moved by Councillor Wade Bearehell that the Municipal Planning approve Development Permit Application DP13-116 subject to the conditions listed in the attached draft Development Permit 13-116.  
Motion Carried 13-06~~

**4Fa) DP12-227  
Parking Lot Expansion and Garbage Reconfiguration  
5505 46 Street**

**Recommendation:**

That the Municipal Planning Commission approve Development Permit Application DP12-227 subject to the conditions identified in the attached draft Development Permit DP12-227.

**Discussion:**

Amendment to the number of persons for total occupancy, Request for Decision Report, 4Fa), page 35 of Agenda; the sentence should read:

The restaurant is licensed for a total occupancy of 174 persons, with seating for 69 patrons in the restaurant and 105 in the lounge.

Werner confirmed that staff did not ask the Developer to demolish the house on this lot. A retaining wall is needed to prevent erosion.

Consolidation of the properties is a condition of the permit.

The initial application proposed a 6 foot cedar fence at the rear of the property and is part of the Conditions for this application.

Staff noted that in addition to the written submissions four phone calls expressed concern about access to the lane and the need for a fence.

Property owner Jenny Yee spoke on behalf of the application: People are using the back of the property to exit into the lane and once the Town provides clear direction they will move ahead with conditions. The properties are being consolidated.

MPC members noted that this they had previously approved the development with a parking relaxation for 5509 & 5513. The owners went ahead and constructed parking on 5505 46 Street without a development permit application. This puts the Municipal Planning Commission in a position where a plan is required for the owners to identify what the property will be used for.

The access is dangerous due to the hedge to the West. The Town will look into this.

The entrance is tight for vehicles entering and leaving the property.

It was noted that a retaining wall around the house will not look good.

Werner noted that the original application was approved with 28 stalls with seating for 174 people. Currently there is a maximum of 25 stalls, 2 of which would be required for the office rental space. Parking in the rear of the property at 5505 46 Street was not approved as this was not part of the application for the restaurant and commercial space.

Moved by Councillor Wade Bearehell that the Municipal Planning Commission approve Development Permit Application DP12-227 subject to the conditions identified in the attached draft Development Permit DP12-227.

Motion Defeated 13-06

The reasons for refusal are as follows:

1. Refused as paving a residential backyard and converting it to a commercial parking lot does not meet the criteria of the land use bylaw.
2. Certificate of titles on two different parcels with different uses. (See Note below).

3. Traffic: the application did not deal with existing and potential concerns regarding access to and egress from the property onto Highway 27.
4. Parking: the parking arrangements as presented, whilst attempting to accommodate the residence and the resulting different elevations on the property, did not address existing parking confusion nor provide a satisfactory resolution to deal with possible impending problems created by additional tenants that may relocate to the property.
5. Visual impact: the application as presented did not deal effectively with the visual and physical impact of the residence remaining on the property whilst attempting to accommodate the parking area at the rear of the property. The application as presented is likely to have created an undesirable appearance and situation on the property itself as well as with the neighbourhood and neighbouring properties.
6. Safety of access.
7. Adequacy of parking given existing and proposed uses.

Note: It was also noted that as per the Bylaw, hard surfacing (i.e. concrete, pavement) of the parking area shall be required where a parking area enters a paved public road [Schedule B Section 3(1)(k)] and parking spaces shall be located on the same parcel as the use for which they are being provided [Schedule B Section 3(1)(j)].

Moved by Councillor Wade Bearchell that the Planning Staff work with the owners of the property to come up with an interim plan within 4 months for 5505 46 Street that works with Alberta Transportation requirements, works with the best interests of the community and can support continuation of the overall parking. That the consolidation of the property and removal of the existing house be reviewed with Alberta Transportation; the consolidated access issue and removal of the house may be an outcome or solutions may be provided by Alberta Transportation. If required an extension of time may be requested.

Technically with defeat of this motion the owners do not have the right to allow parking on this property. MPC does not want to impact the business and they would like to have a solution to this problem.

It would be beneficial to have a photo image of the property included in the report.

~~4Fb) DP13-017~~

~~**Addition of Drinking Establishment To An Existing Restaurant**  
**5509 & 5513 46 Street**~~

Recommendation:

That the Municipal Planning Commission approve Development Permit Application DP13-017 subject to the conditions identified in the attached draft Development Permit DP13-017.

Discussion:

Alberta Gaming & Liquor requires approval of the Municipality for issuance of a license.

This application is tied to the conditions of Item 4Fa.

Drainage is towards the back of the lot and into the lane. A curb would help deal with the drainage.

Moved by Mayor Judy Dahl that the Municipal Planning Commission approve Development Permit Application DP13-017 subject to the conditions identified in the attached draft Development Permit DP13-017, as amended: to delete condition of Development Permit DP13-017, Section (2):


This development permit is subject to the same conditions as Development Permit DP12-227 and subject to the same approved plans.

and further; that the fence along rear (south) property line and curb along rear (south) and curb along (west) property be installed; on or before October 31, 2013.

~~Motion Carried 13-07~~

## TOWN OF OLDS MUNICIPAL PLANNING COMMISSION

REQUEST FOR DECISION REPORT

Agenda Item No.	<b>4Fa</b>
Meeting:	Municipal Planning Commission
Date:	July 18, 2013
File No.:	DP12-227
Address:	5505, 5509 & 5513 46 Street
Legal Description:	Lot 7 Block 42 Plan 4774FR & Lot 6 Block 42 Plan 9512962
Designation:	Highway Commercial (CH)
Proposal:	Parking lot expansion, excavation, garbage enclosure relocation and related works
Originated By:	Werner Fischer, Manager of Planning
Manager of Planning Approval:	Director/ MPC Secretary Approval: 

**REVIEW OF DEVELOPMENT PERMIT APPLICATION**

Development Permit Application DP11-081 approved a "restaurant and commercial space" at 5509 and 5513 46 Street (Cilantro site). This property is described as Lot 6 Block 42 Plan 9512962 and is owned by S.Y. & S. Restaurant Ltd. The subject property (5505 46 Street) containing a residence and the expanded parking lot is also owned by S.Y. & S. Restaurant Ltd.

The restaurant is licensed for a total occupancy of 174 persons, with seating for 69 patrons in the restaurant and 105 in the lounge. Based on the latest site plan, the Cilantro site is capable of accommodating 25 parking stalls. Twenty-three parking stalls are available for the restaurant and lounge if 2 parking stalls are assigned to the leasable "commercial space".

The excavation and expansion of the parking lot in 2012 has raised a number of issues recognizing that the expansion of the parking lot and design changes affect both the subject property and the Cilantro site. Two key issues remain outstanding in addition to the matter addressed in the accompanying Development Permit (DP13-017).

#### 1. Consolidation of Titles

Additional parking is needed for the restaurant and lounge given the actual parking demand as well as the conditions of development approval. The Cilantro site provides 3 fewer parking stalls than anticipated in DP11-081. The expansion of the parking lot adds 19 parking stalls which increases the total available parking for the restaurant and lounge to 44 stalls. At present, the subject property and the Cilantro site are contained in separate Certificates of Title. Staff recommends that the two properties be consolidated either by Descriptive Plan or by Plan of Survey. This will ensure that the additional parking remains with the restaurant and lounge. Consolidation eliminates the risk that the parcels could be sold or otherwise transferred independently of one another. As currently designed the two properties function as one site given the location of the access, vehicle maneuvering, garbage enclosures and site drainage.

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## 2. Completion of Site Development

Site development on both properties needs to be completed. DP11-081 proposed a wooden fence along the rear property line together with some trees. The latter are not viable or appropriate given available space and overhead power lines. The latest plans propose a chain link fence with privacy slats. Given the size of the lounge, the existing development is predominantly a Drinking Establishment (as defined in the Land Use Bylaw) where minors are prohibited at all times by the license issued by the Alberta Gaming and Liquor Commission.

A Drinking Establishment is more likely to impact adjoining development than a licensed restaurant where minors are allowed at all times. A common issue is noise from the parking lot arising from arguments that have been taken outdoors at closing time, as the result of patrons being evicted from the premises or from other conflicts or circumstances. Staff believes that Cilantro's management has minimized this type of land use conflict with neighbors but management and ownership can change over time. Staff believes that a tightly spaced wooden fence would provide a measure of sound attenuation not provided by a chain link fence and recommends construction of a 1.8 m high wooden fence along the rear property line to prevent vehicular access to the lane. This fence should be continued along the east property line as currently there is no fence at this location. Curbs need to be installed along the southern and western property lines and a retaining wall needs to be constructed along the eastern property line and to separate the residence from the parking lot. This will serve to reduce erosion along this property line and may benefit the existing residence. The excavation of the site has reduced the amount of frost protection that is provided for the footings of the residence. The retaining wall will assist in retaining the remaining cover to avoid further erosion. This retaining wall warrants being constructed as part of this development, recognizing that the site drainage plan shows a "Conceptual 70.6 m Long Retaining Wall (Design by Others)" and the site plan shows an "Allan Block Retaining Wall as Required".

This application was circulated to internal departments, external agencies and nearby landowners. There were no objections from internal departments. Alberta Transportation advised that they had no objections but a Roadside Development Application is required.

Staff received two letters from adjacent landowners as well as verbal communications. One letter stated that our main concern is completion of the proposed 6 foot chain link privacy fence along the lane. Completion of this fence would prevent access to the lane and direct traffic to the designated access.

Key points from the second letter are as follows:

1. Traffic in the lane has increased since this establishment opened its doors.
2. It was understood from earlier plans that a high wood fence would be constructed around the property acting as somewhat of a sound barrier and deterrent for lane way traffic. To date this has not been completed and they are now proposing a chain link fence. We are not sure that this will give neighbours the satisfaction that a wood fence would. We had originally asked that a row of trees that were removed be replaced to make the property more aesthetically pleasing (to screen the rear wall of the building).
3. Fencing the existing utility pole into the property would make it more difficult to access our rear yard with our RV.
4. There is a drainage issue at the rear of the establishment (surface drainage onto the lane).
5. We were opposed to this restaurant and bar/lounge being located behind us. We have had to install a chain link fence and a security camera.

Verbal communications also requested fencing the site.

The Town holds a security in the amount of \$50,000 for completion of this project. This security will not be returned until the development is completed. Enforcement options are also available in the event that completion of the project does not proceed in a timely manner.

**RECOMMENDATION:** That the Municipal Planning Commission approve Development Permit Application DP12-227 subject to the conditions identified in the attached draft Development Permit.

Prepared By:



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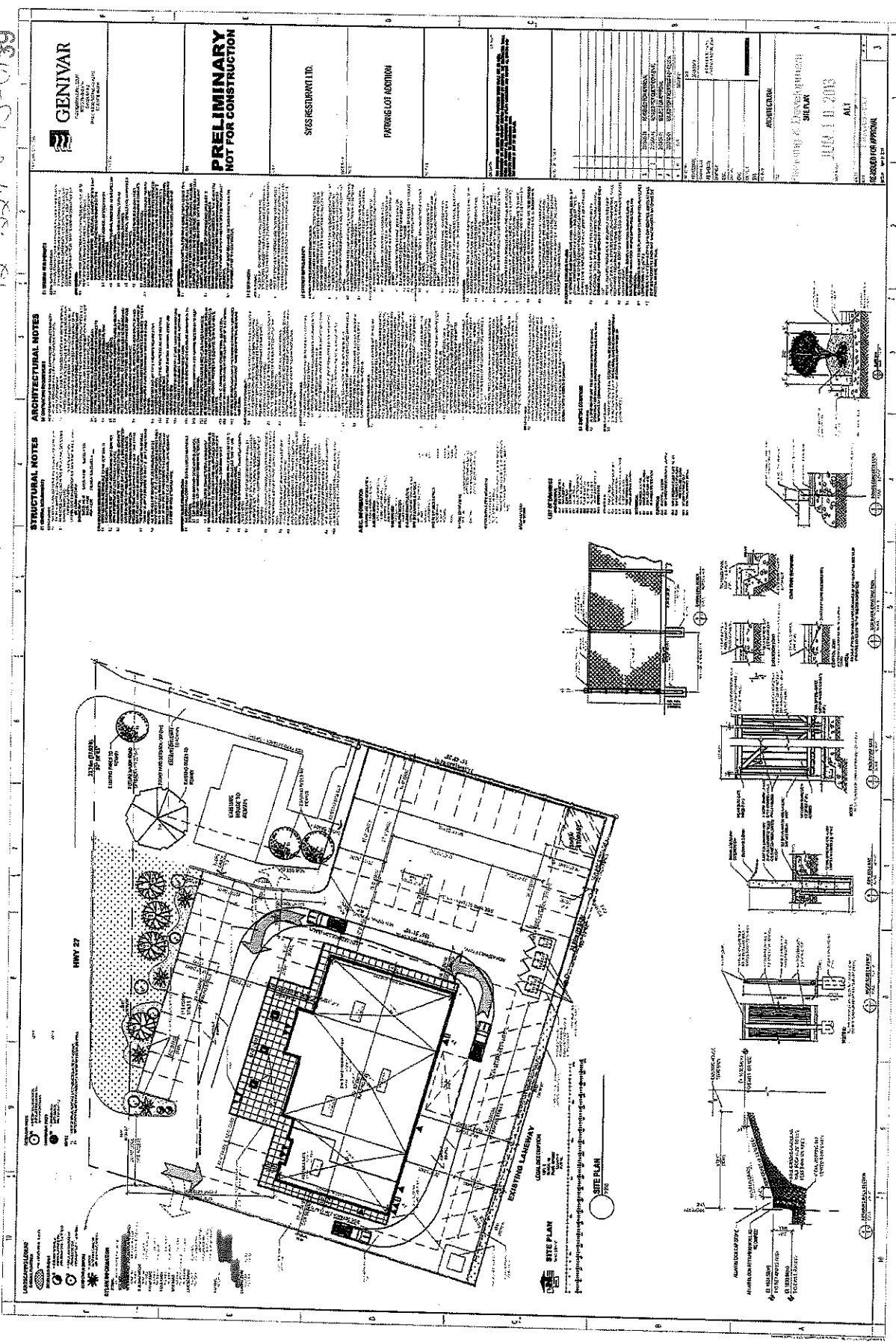
Werner Fischer  
Manager of Planning

**DEVELOPMENT PERMIT DP12-227****5505, 5509 & 5513 46 Street**

**Note: This is a 2008 airphoto. The Cilantro site has been redeveloped. The residence on the subject property remains.**



12-021 + 13-0139



GENIVAR

PRELIMINARY  
NOT FOR CONSTRUCTION

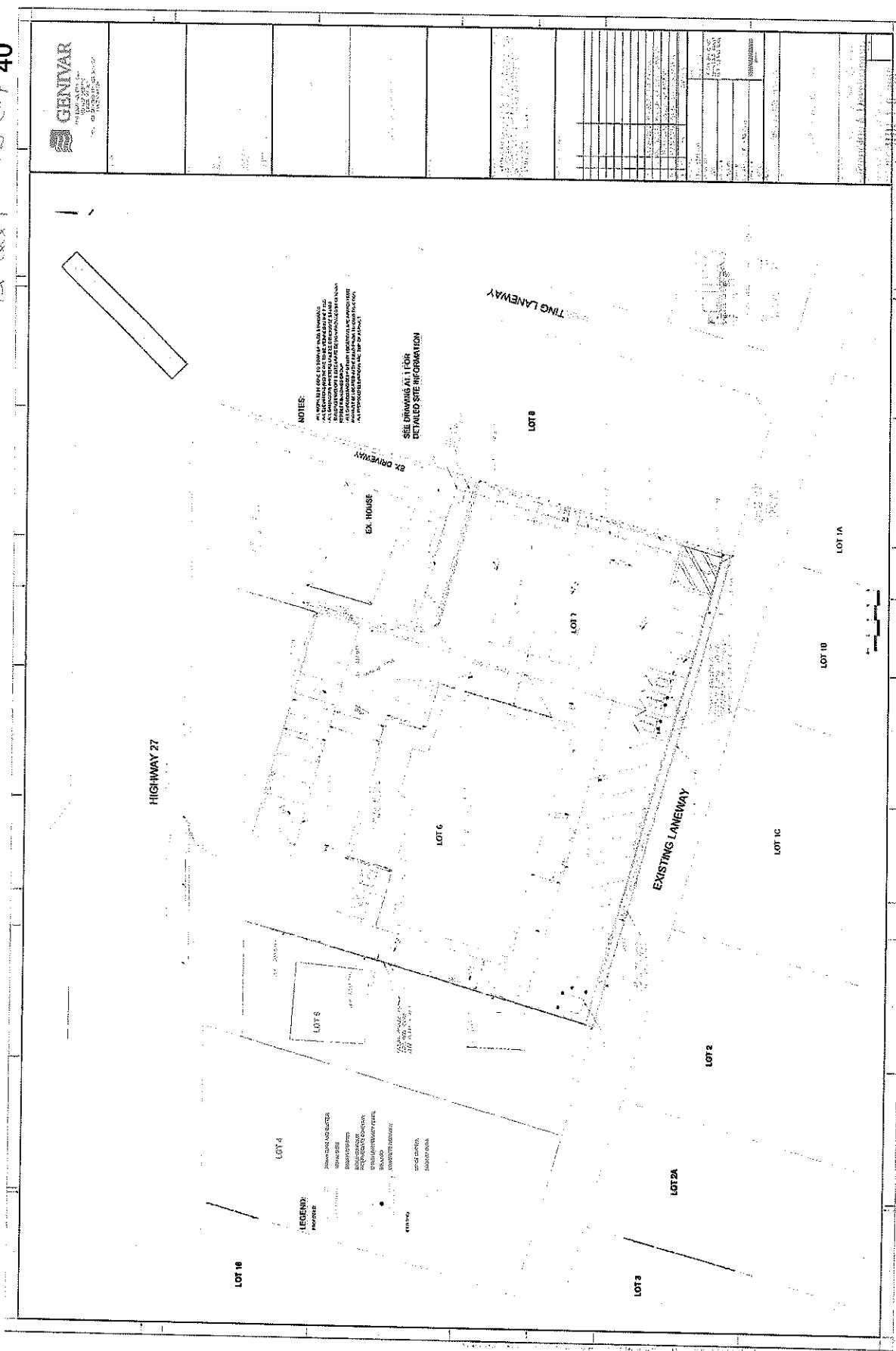
SIXES RESTAURANT LTD.

PARKING LOT ADDITION

Architectural  
SIXES  
JULY 10, 2013

REVISIONS

12-227 + 13-017 40





1956-57



5505, 5509 and 5513 46 Street  
 Lot 7 Block 42 Plan 4774FR &  
 Lot 6 Block 42 Plan 9512962

## Town of Olds

### DEVELOPMENT PERMIT DP12-227

#### Conditions of Development Permit DP12-227

- (1) This development permit is issued for the lands currently described as Lot 7 Block 42 Plan 4774FR and Lot 6 Block 42 Plan 9512962.
- (2) The development must be constructed in accordance with the approved plans (with notations – see attached) and in accordance with the following requirements (see Note 1 below):
  - (a) A wood screen fence not less than 1.8 m in height nor greater than 2.0 m in height must be installed along the southern property line and along the easterly property line. Said fence is to be constructed of No. 1 Grade Cedar (See Note 2) and must not encroach into the lane; and
  - (b) The garbage enclosure, curbs to direct surface drainage, paving, landscaping as well as the retaining wall referenced on the Site Grading Plan and the Site Plan be provided in accordance with the approved plans.
- (3) The Applicant obtain a Roadside Development Permit from Alberta Transportation and evidence of same be provided to the Development Officer.
- (4) The following must be completed no later than September 1, 2013:
  - (a) The consolidation of Lot 7 Block 42 Plan 4774FR and Lot 6 Block 42 Plan 9512962 either by Plan of Survey or by Descriptive Plan and that evidence of same be provided to the Development Officer; and
  - (b) The installation of the following: the fence along the south and east property lines, curbs, pavement, retaining wall, garbage enclosure and landscaping including the rehabilitation of the boulevard.
- (5) Surface drainage must be managed so that it is directed to Highway 27 without impacting adjacent properties.
- (6) Landscaping, including the boulevard treatment must be maintained for the life of the project. Any trees or shrubs shown on the site plan which die after completion of the project must be replaced on a continuing basis with trees and shrubs of a comparable species and size.
- (7) The required fence must be maintained at all times to prevent vehicular access to the lane.
- (8) All measures relating to barrier-free design of this project must be maintained and operable for the life of the building including those required by the Alberta Building Code.
- (9) Security held by the Town to ensure completion of this project will not be returned until the development has been completed. (See Return of Performance Bond/ Security below).

#### Note to the Applicant

- (1) The site plan shows an existing fence along the east property line but currently there is a partial stretch of fence at this location. A continuous fence is warranted. Note also that some of the "Bylaw Information" shown on the Site Plan is not consistent with the Land Use Bylaw or warrants updating. See notations on approved plans.
- (2) This fence was specified on the drawings submitted for DP11-081. See Genivar/ Bearden Site Plan and Details for project 08-191(101-13155) drawing A1.1 March 10, 11 (T. Bearden).

### Appeal Procedure

This Development Permit and any conditions of this Permit may be appealed to the Town of Olds Subdivision and Development Appeal Board in accordance with Section 2.7 of the Land Use Bylaw 01-23 which states: *"An appeal of an order, a decision or a failure to make a decision of the development authority may be made in writing to the Subdivision and Development Appeal Board in accordance with the provisions set forth in the Subdivision and Development Appeal Board Bylaw."*

Appeals must:

- a) be submitted to the Subdivision and Appeal Board within fourteen (14) days after the date on which the notice of issuance of the permit is given;
- b) include the reason(s) for the appeal; and
- c) be addressed to the Town Office to the attention of the Subdivision and Development Appeal Board. The fee for an appeal is \$240.00 in accordance with the Town's Rates Bylaw No. 01-06 Schedule G, as amended. This fee must be paid at the time the letter of appeal is submitted to the Town and prior to the expiration of the above referenced appeal period.

### Additional Responsibilities of the Developer

- (1) Weeping tile, roof drainage and surface drainage must not be directed or conveyed to the sanitary sewer.
- (2) It is the Developer's responsibility to:
  - a) Ensure that the terms and conditions of the Utility Excavation Permit are complied with;
  - b) To contact Alberta First Call at 1-800-242-3447 and obtain utility locates prior to commencing an excavation;
  - c) To contact Operational Services at 403-507-4833 at least **48 hours**:
    - (1) prior to commencing an excavation for underground services, to arrange for a inspection of the sidewalk and boulevard; and
    - (2) prior to backfilling the excavation for the water and sewer connections, to arrange for an inspection of the connections. Note that the Performance Bond/ Security Deposit will not be returned if the water and sewer connections are not inspected prior to backfilling;
  - d) To ensure that the curb stops (i.e. water shut off valve) is properly installed and fully operational;
  - e) To comply with the Alberta Building Code and obtain the necessary Electrical, Plumbing and Gas Permits. Contact D. R. Inspections and Permits Ltd. at 403-304-5182;
  - f) To comply with Bylaws of the Town of Olds including the Land Use Bylaw No. 01-23, the Unsightly Premises and Snow Removal Bylaw No. 04-16 and the Traffic Bylaw 04-15. These Bylaws require in part:
    - i) Development sites must be kept tidy and clear from all debris and garbage;
    - ii) That construction rubbish, dirt, stones, old implements, automobiles, scrap iron or any other rubbish must not be allowed to accumulate so as to cause an unsightly condition, hazard or nuisance;
    - iii) That construction rubbish is not blown onto neighboring parcels;
    - iv) That occupants/owners cut grass or weeds on their property, including town property adjacent to their premises, (i.e. sidewalks, boulevards and back alleys). Restricted and noxious weeds must be controlled in a manner as prescribed by the weed inspector;
    - v) That no person shall place or deposit any object, refuse, building or other materials, dumpsters, snow, earth, sand, gravel, sod, or any other matter onto a roadway, sidewalk, boulevard or median within the Town, excepting vehicles

- and materials for which specific permission has been granted by the Chief Administrative Officer; and
- vi) No concrete may be placed in the gutter of a roadway.

**Return of Performance Bond/ Security**

Once the Building Inspector has determined that the building is suitable for occupancy the performance bond or other security will be returned on completion of the following to the satisfaction of the Development Authority:

- (1) Submission of the Request for Performance Bond. This form is available from Planning and Development. Please deliver, fax (403-556-4856) or email ([planning@olds.ca](mailto:planning@olds.ca)) the completed form to Planning and Development;
- (2) Completion of the Development as approved including but not limited to fencing, curb and retaining wall installation, landscaping, parking lot paving and boulevard rehabilitation or reconstruction.
- (3) Proper installation of the curb stop and ensuring it is fully operational;
- (4) Confirmation that the sidewalk, curb, gutter, boulevard and curb stop have not been damaged. If any of these are damaged then repair or rehabilitation of same by the Developer is required. See Utility Excavation Permit's pre-excavation inspection of the sidewalk and boulevard; and
- (5) Proper installation of eaves troughs and, where applicable, the sump pump.

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Werner Fischer, Development Officer