

**TOWN OF OLDS
SUBDIVISION AND DEVELOPMENT APPEAL BOARD
BOARD ORDER 2013-03**

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 Patricia Nugent (the "Developer")
respecting Development Permit Application 13-121.**

BEFORE:

**Leonard Brandson – Chairman
Murray Ball – Councillor
Debbie Bennett – Councillor and Vice-Chair
Joe Overwater
Edie Connelley
Donald Dwyer
Doreen Curniski**

This is an appeal to the Town of Olds Subdivision and Development Appeal Board (the "SDAB") of a refusal under section 684 of the Act by the Town of Olds Municipal Planning Commission respecting a development permit application for a fence and retaining wall built on lands legally described as Plan 7710679, Block 6, Lot 22 located at 101 Silverthorne Close (the "Lands") in the Town of Olds (the "Town").

The hearing of the appeal was convened by the SDAB on October 7, 2013, commencing at 2:00 p.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 the decision of the Municipal Planning Commission be upheld and the application for a development permit for the fence and retaining wall on the Lands be REFUSED.

BACKGROUND INFORMATION

The Developer, Ms. Patricia Nugent, submitted a development permit application for the Lands to the Town of Olds Planning & Development Authority on July 2, 2013 as Application No. 13-121 (the "Application"). The description of the proposed development contained in the application was "Retaining Wall and Fence" with the following details provided:

Build up the land grade on south side of house to make a functional area and create privacy from a busy Shannon Dr. Upon completion the grade level will stop from retaining wall towards the east front yard. Retaining wall has 2 timbers 20" in total holding inside grade. A fence built to the height 5' 9" at inside grade. With retaining wall and fence, the outside grade is 7'5".

At the time the application was submitted, the fence and retaining wall referenced within the Application were already constructed on the Lands in contravention of the Town of Olds Land Use Bylaw 01-23. After a complaint was received from an adjacent landowner, Ms. Nugent was informed by the Town that she must apply for the development permit for the fence and retaining wall already built, otherwise the development would be considered illegal.

According to the Application, the fence is built on top of a 20 inch retaining wall with the whole structure measuring 2.26 meters (7.4 ft.) high at the outside grade, and 1.75 meters (5.75 ft.) high at the inside grade. The Lands are a corner lot on the intersection where Shannon Drive and Silverthorn Road intersect.

The Application was circulated to Town departments and surrounding landowners to solicit comments. Two letters were received from surrounding landowners; one letter supported the Application and one objected to the Application. Further, 3 adjacent landowners called the Town's Development Authority to discuss the Application. The following comments were provided:

- *A question was raised about why the Town would consider a variance for fence heights when the rules are in place already and people should follow them; and*

- *A comment was made that the fence is unattractive and poses a safety issue due to reduced sight lines at the lane/Shannon Drive intersection.*

The Town's Development Authority also discussed the Application with Public Works which confirmed that the sight lines for vehicles approaching Shannon Drive are impeded by the height of the fence. As the Lands are a corner lot, the height of the fence at the Shannon Drive intersection exacerbates corner visibility because vehicles approaching the intersection are not able to safely see past it before advancing into the intersection. Public Works also advised that because the corner of the fence is all steel at the intersection, if a vehicle were to hit the steel corner of the fence, much more damage would be caused to the vehicle than if the fence were wood.

On August 15, 2013, the Development Authority referred the Application to the Municipal Planning Commission for a decision. At the August 15, 2013 meeting of the Municipal Planning Commission, the Commission was advised by a representative for the Developer that the Developer was out of the Province and a request was made to move the hearing to October. The Municipal Planning Commission felt that waiting until October to address the fence was too long due to safety concerns; therefore, the hearing was rescheduled for the August 29, 2013 meeting. The Application was considered by the Municipal Planning Commission on August 29, 2013 and on that same date, 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:

- a) The Land Use Bylaw requires fences, walls or other means of enclosure be less than 2 m (6.6 ft.) in the side and rear yards of parcels. The proposed 2.33 m (7.6 ft.) height of the fence and retaining wall exceeds the Land Use Bylaw requirement by 0.33 m (1ft.);*
- b) The height of the proposed fence poses a safety concern by reducing sight lines for vehicular traffic approaching Shannon Drive from the lane;*

- c) The design, character and appearance of the proposed fence height variance does not fit with the character of existing developments in the vicinity of the subject property; and*
- d) In review of the application, there is no valid reason to grant a variance for fence height in this situation.*

On September 12, 2013, the Developer submitted an appeal of the refusal to the SDAB.

SUMMARY OF THE PLANNING & DEVELOPMENT SUBMISSION

The Development Officer confirmed that the Application was for a development permit for a fence and retaining wall already constructed on the Lands. It was the Development Officer's understanding that the retaining wall and fence were built to make the Developer's steep sloping side yard usable and to provide privacy for the Lands from Shannon Drive.

The Development Officer explained that as per the Land Use Bylaw, the erection of any fence or wall above 1.0 meters (3.3 ft.) in front yards and 2.0 meters (6.56 ft.) in all other yards must have a development permit. The Developer was required to apply for a development permit because the fence and retaining wall on the Lands exceeded these heights. Although not specifically confirmed by either party, it is the SDAB's determination that as per the Land Use Bylaw, the fence and retaining wall are currently located within the side yard of the Lands; therefore, the retaining wall and fence must measure at a height of no more than 2.0 meters (6.56 ft.) to be exempt from requiring a development permit.

The Development Officer advised that Town staff had measured the height of the retaining wall and the fence and it was determined that they measured approximated 2.33 meters (7.6 ft.) from the outside grade which is 0.33 meters (1.0 foot) over the exemption requirements outlined within the Land Use Bylaw. The Development Officer stated that the retaining wall and fence are higher than those of adjacent properties and that there was insufficient evidence to support the claim that the side yard had a significant slope.

Further, as fences fall under the definition of "buildings" pursuant to the Land Use Bylaw, Section 1(2) of the Land Use Bylaw applies and requires that the design and character and appearance of buildings be acceptable to the Development Authority having regard to the character of existing development in the District, among other criteria. The Development Officer stated that the design of the retaining wall and fence distract from the residential character of the surrounding neighbourhood. The Development Officer further emphasized that the retaining wall and fence pose a safety concern by reducing sight lines for vehicular traffic approaching Shannon Drive. Photos of the Lands and the retaining wall and fence were provided for the SDAB to review.

During the Hearing, the Development Officer was asked questions regarding how the Town determined the grade for the measurement of the height of the retaining wall and fence. The Development Officer replied that there is no definition provided in the Land Use Bylaw regarding how grade is determined and therefore the Town makes a determination on a case by case basis. Where an original lot grade is available, that will be used, but for lands within an established neighbourhood, original lot grades are not available. In this situation, there was no original lot grade plan to go by; therefore, the retaining wall and fence were measured from the outside of the fence facing Shannon Drive to the top of the fence. Additionally, the property grade was used, not the street grade.

The Development Officer summarised the SDAB's options on the appeal as follows:

Recommendation 1: Refuse Development Permit Application DP 13-121 for the following reasons:

- a) The Land Use Bylaw requires fences, walls or other means of enclosure be less than 2 m (6.6 ft.) in the side and rear yards of parcels. The proposed 2.33 m (7.6 ft.) height of the fence and retaining wall exceeds the Land Use Bylaw requirement by 0.33 m (1ft.);*
- b) The height of the proposed fence poses a safety concern by reducing sight lines for vehicular traffic approaching Shannon Drive from the lane;*

- c) *The design, character and appearance of the proposed fence height variance does not fit with the character of existing developments in the vicinity of the subject property; and*
- d) *In review of the application, there is no valid reason to grant a variance for fence height in this situation.*

Recommendation 2: Direct the applicant to reduce the fence height to be in accordance with the Land Use Bylaw Requirement of 2 m (6.6 ft.) measured at the outside grade.

SUMMARY OF THE DEVELOPER'S SUBMISSION

The Developer provided both written and oral submissions for the appeal. The Developer stated that the grade is the biggest issue to determine as there is no definition provided within the Land Use Bylaw and therefore the grade is ambiguous and open to interpretation. The Developer gave examples from other municipalities with regards to how their land use bylaws address grading for the construction of fences and retaining walls. As the Land Use Bylaw does not state which grade the measurement of the fence should be taken from, the Developer argued that she is in compliance with the Land Use Bylaw.

The Developer also provided photos of other fences in her neighbourhood as well as fences with retaining walls and stated that it is hard to comply with something that is not defined. The Developer also provided examples of other unsafe sight lines included in the photos and stated that the Land Use Bylaw does not address height and sight line guidelines for safety.

With respect to the steel portion of the fence, the Developer provided photos of waste boxes and post office boxes that could be considered a safety concern as well. Regarding the design of the fence, the Developer stated that there are no architectural controls or guidelines in place for the neighbourhood and therefore she did not understand what the Town was using to determine that the fence does not fit the character of the area.

REASONS FOR DECISION

After having heard, reviewed and considered the details of the proposed development, the submissions of the Developer, the submissions of the Development Authority and the letters of adjacent landowners both in support of the development and against it, and after having reviewed and analyzed the documents submitted prior to the hearing and during the hearing as listed in Appendices "A", "B" and "C", the SDAB is of the view that the retaining wall and fence are a development which require a development permit.

The SDAB deemed there to be no valid reason to grant development permit 13-121 for the retaining wall and fence and therefore should be refused.

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.

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

A Building is defined within Section 1.3 of the Land Use Bylaw as including anything "constructed or placed on, in, over or under land but does not include a highway or road or a bridge forming part of a highway or public road."

A development is defined as:

(a) an excavation or stockpile and the creation of either of them, or

(b) a building or an addition to, or replacement or repair of a building and the construction or placing in, on, over or under land of any of them, or

(c) a change of use or land or a building or an act done in relation to land or a building that results in or is likely to result in a change in the use of the land or building, or

(d) a change in the intensity of use of land or a building or an act done in relation to land or a building that results in or is likely to result in a change in the intensity of use of the land or building;

Section 2.1 of the Land Use Bylaw provides that, except for those exceptions listed in Section 2.2, all developments within Town must obtain a development permit. Section 2.2(4) lists the following relevant exemption:

the erection or construction of gates, fences, walls or other means of enclosure less than 1 m (3.3 ft.) in height in front yards and less than 2 m (6.56 ft.) in other yards, and the maintenance, improvement and other alterations of any gates, fences, or walls or other means of enclosure provided that such development complies with all applicable provisions of Schedule B

The SDAB considered the submissions put forward by the Developer and the Development Officer and determined that the retaining wall and fence built on the Lands is a development which requires a development permit pursuant to the Land Use Bylaw.

Factors Considered

Height of Retaining Wall and Fence

The SDAB considered the submissions put forward by the Developer and the Development Officer and accepts the Development Officer's application of grade for the purposes of measuring the height of the retaining wall and fence. As the height of the retaining wall and fence is approximately 2.33 meters (7.6 ft.), the retaining wall and fence as built are 0.33 meters (1.0 ft.) above the maximum height allowable under the exemption listed in Section 2.2(4) of the Land Use Bylaw.

The SDAB accepts that the application of grade is determined on a case by case basis. For the purposes of this Application, the SDAB accepts that the outside grade is the appropriate grade to use for the height measurement of the retaining wall and fence.

Other Fences in the Neighbourhood

It is the SDAB's view that each application for a development permit should be considered on a case by case basis; the fact that development permits for other fences within the Developer's neighbourhood may have been approved by the Town is not determinative of the Board's decision regarding the Developer's current Application.

CONCLUSION

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

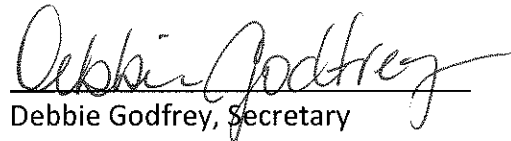
The Town may enforce the terms of this decision with respect to the retaining wall and fence already built on the Lands.

Given the foregoing, the SDAB is of the view that the retaining wall and fence are a development which requires a development permit pursuant to the Land Use Bylaw. The SDAB finds that the development permit application for the retaining wall and fence should be refused.

DATED at the Town of Olds, in the Province of Alberta this 21st day of October, 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 October 7th, 2013.

Subdivision and Development Appeal Board Minutes
Monday, October 7, 2013 at 2:00 p.m.
Council Chambers, Town Office
4512-46 Street, Olds AB

Appeal of Development Permit DP13-121

Subdivision and Development Appeal Board Members

Chairman Leonard Brandson,
Councillor Murray Ball
Councillor and Vice-Chair, Debbie Bennett
Joe Overwater
Edie Connelley
Donald Dwyer
Doreen Curniski

Subdivision and Development Appeal Board Admin Support Staff

Debbie Godfrey, Secretary
Kelly Eskeland, Recording Clerk

Development Officer

Jolene Tejkl, Development Officer, Parkland Community Planning Services

Gallery Attendance

Dave Harris
Natasha Sawatsky
Jes Herman
Pam Tager

1. **Reminder for all Attendees to sign in on the Signature Sheet**
Secretary, Debbie Godfrey stated that all attendees have signed in on the signature sheet.
2. **Call to Order**
The hearing DP13-121 for the Subdivision and Development Appeal Board for Monday, October 7, 2013 was called to order by Chairman, Leonard Brandson at 2:02 p.m.
3. **Motion to Confirm the Record of Proceedings as set out in the Subdivision and Development Appeal Board Agenda for October 7, 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 Debbie Bennett that the record of proceedings for the October 7, 2013 DP13-121 Appeal Hearing be confirmed. Carried

4. **Outline the Nature of the Appeal**
Secretary Godfrey reviewed the appeal letter for property 101 Silverthorn Close Olds, AB received from Patricia Nugent. The appeal was received with the correct

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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 DP13-121.

5. Introduction of the Parties

i. Appellant

Patricia Nugent, Appellant.

ii. Development Officer

Jolene Tejkl, Development Officer, Parkland Community Planning Services on behalf of the 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. Indicating they wished to speak was Patricia Nugent of 101 Silverthorn Close, Olds and Jolene Tejkl, Development Officer, Parkland Community Planning Services.

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, Councillor Debbie Bennett, Doreen Curniski 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 seven 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

10. Development Officer Presentation

Jolene Tejkl, Development Officer stated the Municipal Planning Commission refused the Development Permit Application for the following reasons:

- a) The Land Use Bylaw requires fences, walls or other means of enclosure to be less than 2 m in the side and rear yards of parcels. The proposed 2.33 m height of the fence and retaining wall exceeds the Land Use Bylaw requirement by .33 m;
- b) The height of the proposed fence poses a safety concern by reducing sight lines for vehicular traffic approaching Shannon Drive from the lane;

- c) The design, character and appearance of the proposed fence height variance does not fit with the character of existing developments in the vicinity of the subject property; and
- d) In review of the application, there is no valid reason to grant a variance for the fence height in this situation.

The Municipal Planning Commission also directed the applicant to reduce the fence height to be in accordance with the Land Use Bylaw requirement of 2 m measured from the outside grade.

Ms. Tejkl noted that staff measured the fence from the highest point from the lowest grade. Fences are considered buildings under the Land Use Bylaw and the Municipal Government Act and therefore, design character must be acceptable to the development authority.

Q: Did a neighbour express concern or did the planning authority? A: This came to staff by a filed complaint.

Q: What was the mechanism as to why the delay could not be provided to the appellant so she could be at the hearing? A: The Development Officer was under the impression that the delay did occur. The Appellant was out of town and someone attended on her behalf. The original meeting was August 19th and the Municipal Planning Commission set a new meeting for August 29th. The development authority was not present due to prior commitments.

Q: What is recognized at grade? A: Grade was measured at the point where the fence is the highest. From the outside of the fence facing Shannon Drive to the top of the fence, including retaining wall. It is the property grade, not the street grade.

Q: Is the fence on the property line? A: Cannot confirm as a request for a surveyor did not take place.

Q: Where is grade? Have to establish that first? A: There is not a definition in the Bylaw and is dealt with on a situational basis. In established development, there is not an original lot grade plan to go by.

Through discussion amongst the Board, it was determined that grade would be one of the factors the Board will discuss after the hearing. It will have to be entered into the consideration after the fact and deliberation of the facts presented will take place.

11. Appellant Presentation

Appellant Patricia Nugent pointed out that grade is the concern as the Bylaw does not define grade or fence and that the Bylaw is ambiguous and is open to interpretation. The Appellant gave examples from other municipalities with regards to their bylaws as it pertains to grade and fences with retaining walls.

The Appellant also provided photos of other fences in her area as well as fences with retaining walls and noted that it is hard to comply with something that is not defined.

Examples of other unsafe site lines were pointed out in photos. The Appellant asked where in the Bylaw does it refer to height and site lines guidelines for safety. The

Appellant also spoke with Waste Management who indicated there was not an issue, but the tree that is adjacent is.

In regards to the steel on the fence, the Appellant, through photos, pointed out waste boxes and post office boxes that could be a safety issue. In regards to the design of the fence, the town stated it does not fit the character. There are no architectural controls or guidelines in place for this area. What is the town using to define this?

The Appellant has collected a list and comments from her neighbours and was submitted.

The Appellant had asked Mr. Fischer, Manager of Planning, Town of Olds, about the grade and did not receive a reply. She did receive a phone call a couple of days later stating that there needs to be a permit application due to height restrictions measured from the outside.

Q: Do you believe you have the fence on your property line? A: Yes, the fence was being rebuilt.

Q: Do you propose to do something from where it finishes from eastern side to the house? A: Yes, there are plans to continue on with rocks and finish it off, but will not be continuing with the fence.

Q: Do you feel if determined, that lowering the fence will not fulfill the privacy wanted? A: Yes. There is a high point in the park across the street and people would be able to see in.

Q: Where did you bring in the dirt from? A: Brought in from a truck.

Q: Did you do anything as far as an entrance to the basement? A: The Appellant has a mother-in-law suite.

Q: Did you change grade level at house? A: No.

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

The Appellant handed in two pages of comments from neighbours with respect to the wall. In this document, there were no objections to this project, but appears to have 22 names in support.

14. Subdivision and Development Appeal Board Questions

- i. To the Development Officer
Questions to the Development Officer were covered under item 10.
- ii. To Appellant
Questions to the Appellant were covered under item 11.

- 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 no questions from the audience for clarification.


16. Final Comments

- i. Development Officer
Jolene Tejkl, Development Officer, provided final comments stating that grade is dealt with in specific matters. There is subjectivity in the Bylaw and is dealt with on a case by case basis. Looking at other municipal Land Use Bylaws does not occur as the development authority cannot speak as to the intent and further; photos of the area cannot be spoken on for the same reason. Each application is dealt with on its own merit. There was not a valid reason to grant the variance allowed under the Land Use Bylaw and as to the design character and appearance; it did not fit with existing. In regards to the safety aspect, the public brought up the concern and it was vetted with Public Works.
- 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 2:44 p.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.

Motion: Moved by Don Dwyer, seconded by Councillor Ball that the Appeal Hearing for October 7, 2013, hearing number DP13-121 be adjourned. Carried


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.

Subdivision and Development Appeal Board (SDAB)
Agenda
Monday, October 7, 2013 at 2 p.m.
Council Chambers, Town Offices
4512 46 Street, Olds AB

Appeal of Development Permit DP13-121

1. Reminder for all Attendees to sign in on the Signature Sheet.
2. Call to Order.
3. Confirm Proceedings as set out in this Agenda.
4. Outline the Nature of the Appeal.
5. Introduction of the Parties:
 - i. Appellant
 - ii. Development Officer
 - iii. Secretary
 - iv. Recording Clerk
6. Ascertain that any party(s) that wish to speak be introduced and recorded.
7. Introduction of the Subdivision and Development Appeal Board Members hearing appeal of Development Permit 13-121.
8. Objection to any Board Members Hearing this Appeal.
9. Outline and Confirm Procedures for the Hearing.
10. Development Officer Presentation.
11. Appellant Presentation.
12. Call for those to Speak on the Appeal:
 - i. In Support of the appeal
 - ii. Opposed to the appeal
13. Read Into Record Additional Information.

14. Subdivision and Development Appeal Board Questions:

- i. To the Development Officer
- ii. To Appellant
- iii. To any other person

15. Other Questions.

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

16. Final Comments:

- i. Development Officer
- ii. Appellant
- iii. Other Person who has made a presentation

17. Chairman's Final Comments:

- a. Fair hearing.
- b. Conclude hearing.
- c. Timeline for written decision is 15 days from the conclusion of hearing.
- d. 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.

Notice of Subdivision and Development Appeal Board

Appeal DP13-121

This is to notify that a request for appeal has been made to the Subdivision and Development Appeal Board. The reason for the Appeal is that the Municipal Planning Commission refused Development Permit Application DP13-121 for a retaining wall and fence.

Legal Description of Land: **LOT 22, BLOCK 6, PLAN 771 0679**

Civic Address: **101 SILVERTHORN CLOSE**

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

Date: **Monday, October 7, 2013**

Time: **2 p.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 **4:00 p.m. on Thursday October 3, 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

PLEASE PRINT

Appl. No. 13-121

This is NOT a Building Permit

Name of APPLICANT <i>PATRICIA NUGENT</i>	Tel/Cell <i>403 507-3401</i>	Fax
Address of APPLICANT <i>101 Silverthorn CL.</i>		Postal Code <i>T4H 1B2</i>
E-mail <i>nugenttricia@msn.com</i>		
Name of REGISTERED OWNER <i>"</i>	Tel/Cell	Fax
Address of REGISTERED OWNER		Postal Code

PROJECT INFORMATION

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

Project Location - Street Address <i>101 Silverthorn CL.</i>			
Describe the Proposed Development: <i>RETAINING WALL AND FENCE</i> <i>Build up the land grade on south side of house to make a functional area and create privacy from a busy STANNON DR. Upon completion the grade level will slope from retaining wall towards the east front yard. Retaining wall has 2 timbers 30" in total holding inside grade. A fence built to the height 5'9" at inside grade. With retaining wall and fence, the outside grade is 7'5"</i>			
Legal Land Description:	Lot	Block	Plan
Parcel Type:	<input type="checkbox"/> Interior <input checked="" 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
Floor Area	Height of Building	Estimated Value of Project	
Estimated Commencement Date		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.

Patricia Nugent
Signature of APPLICANT / AGENT

2/07/2013
Date

Note: Pgs 2-4 not submitted.



Town of Olds

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

Ph: (403) 556-6981
Fax: (403) 556-6537

OFFICIAL RECEIPT

NUGENT, PATRICIA
101 SILVERTHORN CL
OLDS AB T4H 1B2

GST Reg. #: R108128695
Receipt #: 0427217
Receipt Date: 2013/09/12
Page: 1
Received by: JJ

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

Tender Type & Description	Reference	Amount
CQ NUGENT, PATRICIA		240.00

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

Please visit our Website at:
www.olds.ca

SEP 11 2023

RE: PLANNING Commission Permit DP 13-121

Attention: Subdivision and Development Appeal Board.

I had no representation at the MPC meeting Aug 29 after being denied my request to have date moved forward so I could attend.

There are two interpretations of measured grade Bylaw 6(5A) #1(a). Mr Fischer's calculation of fence included a 20" retaining wall measured from outside grade. My interpretation of "the grade" is the measurement from my property grade. Therefore the fence measures 5'9". Other fences with retaining walls with the same VARIANCE have been allowed in town, one of which is a town counsellor. Another on town property with a height over 8' measured from street grade.

Since the Bylaw doesn't state which grade the measurement be taken from, I feel I am in compliance along with the other properties shown.

Yours Sincerely,
Patricia Fugent

101 Silverthorn Ct.

Olds. Ab.

TH 1B2

6(4) Dangerous Goods

Prior to making any decision on a development application that involves dangerous goods or development on adjacent land or in close proximity to any known dangerous goods, the development authority shall refer the development proposal to the appropriate regulatory authority for comments.

6(5) Mechanized Excavation, Stripping and Grading of Parcels

- (a) A temporary fence shall be erected around all excavations that, in the opinion of the development authority, may be hazardous to the public.
- (b) Where finished ground elevations are established, all grading shall comply therewith.
- (c) All parcels shall be graded to ensure that storm water is directed to a road without crossing adjacent land, except as permitted by the development authority.
- (d) All topsoil shall be retained on the parcel, except where it must be removed for building purposes.

6(5A) Fences and Screening

The Development Authority may require screening in the form of fences, hedges, landscaped berms or other means along the property lines of all commercial and industrial parcels where such property lines are adjacent to a residential use or are adjacent to lanes or roads that abut a neighbouring residential parcel. Commercial and Industrial parcels in this category shall abide by the following:

- (1) The maximum height of a fence as measured from grade shall be:
 - (a) 2 m (6.56 ft.) for that portion of the fence which ~~does~~ not extend beyond the front portion of the principal building, and
 - (b) 1 m (3.3 ft.) for that portion of the fence which extends beyond the front portion of the principal building.
- (2) Notwithstanding subsection (1) above, the Development Authority may approve a higher fence having regard to the location of fences in the surrounding area and the requirement for screening.
- (3) Barbed wire fences are not permitted in any district which abuts a Residential District.
- (4) Electrified fences are not permitted in any District unless they are contained within a non-electrified perimeter fence.
- (5) For open storage yards that are located adjacent to a non-industrial District, including by not limited to auto wrecking, industrial and commercial storage and similar uses, and where because of the height of materials stored, a screen planting would not be sufficient, a fence, earth berm or combination thereof, with sufficient height to substantially block the view of the stored materials at a

Received Oct 1, 2013
DB



**PARKLAND
COMMUNITY
PLANNING
SERVICES**

Unit B, 4730 Ross Street
Red Deer, Alberta, T4N 1X2
Phone: (403) 343-3394
FAX: (403) 346-1570
E-mail: pcps@pcps.ab.ca
www.pcps.ca

DATE: October 1, 2013

TO: Subdivision and Development Appeal Board

FROM: Jolene Tejkl, RPP MCIP, Development Officer

RE: DP 13-121 Appeal
101 Silverthorn Close
Lot 22 Block 6 Plan 771 0679

Background

Development Permit Application DP 13-121 for a retaining wall and fence located on 101 Silverthorn Close was refused by the Municipal Planning Commission (MPC) at a special meeting on August 29, 2013. In their decision, the MPC made the following two motions related to this application:

1. That the Municipal Planning Commission refuse the Development Permit Application DP 13-121 for the following reasons:
 - a) The Land Use Bylaw requires fences, walls or other means of enclosure be less than 2 m (5.6 ft.) in the side and rear yards of parcels. The proposed 2.33 m (7.6 ft.) height of the fence and retaining wall exceeds the Land Use Bylaw requirement by 0.33 m (1 ft.);
 - b) The height of the proposed fence poses a safety concern by reducing sight lines for vehicular traffic approaching Shannon Drive from the lane;
 - c) The design, character and appearance of the proposed fence height variance does not fit with the character of existing developments in the vicinity of the subject property; and
 - d) In review of the application, there is no valid reason to grant a variance for the fence height in this situation.
2. That the Municipal Planning Commission directs the applicant to reduce the fence height to be in accordance with the Land Use Bylaw requirement of 2 m (6.6 ft.) measured from the outside grade.

The decision letter provided to the applicant directed the fence height be modified to comply with the Land Use Bylaw no later than October 1, 2013.

Review of the Development Permit Application

Fences and walls (and other means of enclosures) less than 1 m (3.3 ft.) in height in front yards and 2 m (6.6 ft.) in height in all other yards are exempt from requiring a development permit provided that they do not exceed these heights. This application

was brought before the MPC because the retaining wall and fence that was built on the side yard adjacent to Shannon Drive and the rear yard on the subject property exceed these heights.

According to the application received, the retaining wall and fence constructed on top of it measures 2.26 m (7.4 ft.) from the outside grade. The applicant advised the retaining wall and fence were required to make their steeply sloping side yard usable and provide privacy from Shannon Drive.

The surrounding properties are all designated Low Density Residential District (R1) under the Town's Land Use Bylaw. Staff determined that the fence and retaining wall measured from the outside grade is 2.33 m (7.6 ft.), which is 0.33 m (1 ft.) over the allowable fence height for side and rear yards. The subject fence is higher than those of adjacent properties and there is insufficient evidence to support the claim that the side yard had a significant slope. Photos of the site inspection conducted on July 30, 2013 are provided below.



The photos above show Silverthorn Close with the subject property on the left.



The photo above shows the fence to the left in relation to existing developments on Silverthorn Close.



This photo illustrates the height of the fence and retaining wall at the lane and Shannon Drive intersection.



This photo shows the side yard adjacent to the lane with the subject fence to the right.



This photo is of the fence from the rear yard.



These two photos show the side yard slope that is being filled in to make the side yard more usable for the applicant.

The application for height variance was circulated to Town departments and surrounding landowners to solicit comments. Two letters were received from circulated landowners; one in support and one in objection to the height variance. Copies of the letters are attached. Two concerned residents called in to discuss the application; they provided the following comments for MPC's consideration:

- A question was raised about why the Town would consider a variance for fence heights when the rules are in place already and people should follow them.; and
- A comment was made that the fence is ugly and poses a safety issue due to reduced sight lines at the lane/Shannon Drive intersection.

Staff discussed the concerns about impeded sight lines where the lane intersects with Shannon Drive with Public Works. Public Works confirmed that the sight lines are impeded by the height of the fence and advised that the fence is approximately 2.44 m (8 ft.) at the road/sidewalk level, if not more. The height of the fence at the lane/Shannon Drive intersection exacerbates corner visibility because front wheels of a vehicle would be on the sidewalk before a driver could see passed it. Furthermore, the corner of the fence is all steel at the lane/road intersection; if a vehicle were to hit the steel corner of the fence, much more damage would occur than if the fence were wood.

Fences are considered "buildings" in the Land Use Bylaw (LUB). The LUB states that the design, character and appearance of buildings must be acceptable to the development authority having regard to the character of existing development in the District, amongst other criteria. The fence and retaining wall are significantly higher than other fences in the vicinity and in staff's opinion, distract from the residential character of the surrounding neighbourhood.

Staff recommendation to the MPC on DP 13-121 was as follows:

Recommendation 1: That the Municipal Planning Commission refuses Development Permit Application DP 13-121 for the following reasons:

1. The Land Use Bylaw requires fences, walls or other means of enclosure be less than 2 m (6.6 ft.) in the side and rear yards of parcels. The proposed 2.33 m (7.6 ft.) height of the fence and retaining wall exceeds the Land Use Bylaw requirement by 0.33 m (1 ft.);
2. The height of the proposed fence poses a safety concern by reducing sight lines for vehicular traffic approaching Shannon Drive from the lane;
3. The design, character and appearance of the proposed fence height variance does not fit with the character of existing developments in the vicinity of the subject property; and
4. In review of the application, there is no valid reason to grant a variance for fence height in this situation.

Recommendation 2: That the Municipal Planning Commission directs the applicant to reduce the fence height to be in accordance with the Land Use Bylaw requirement of 2 m (6.6 ft.) measured at the outside grade.

Prepared by:

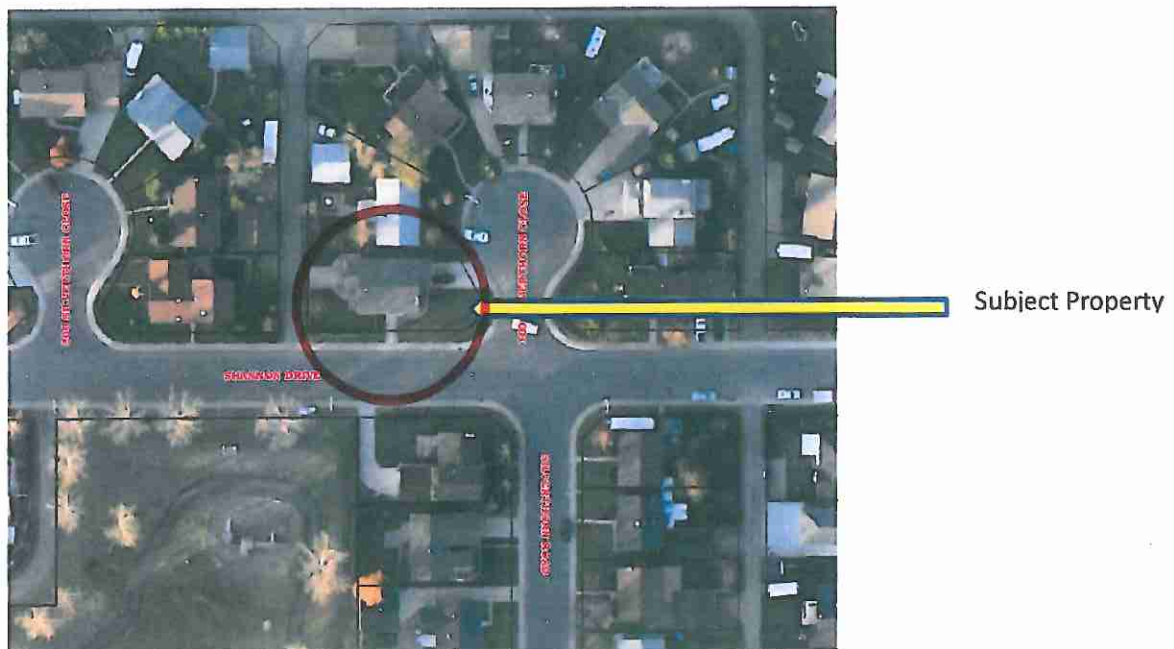
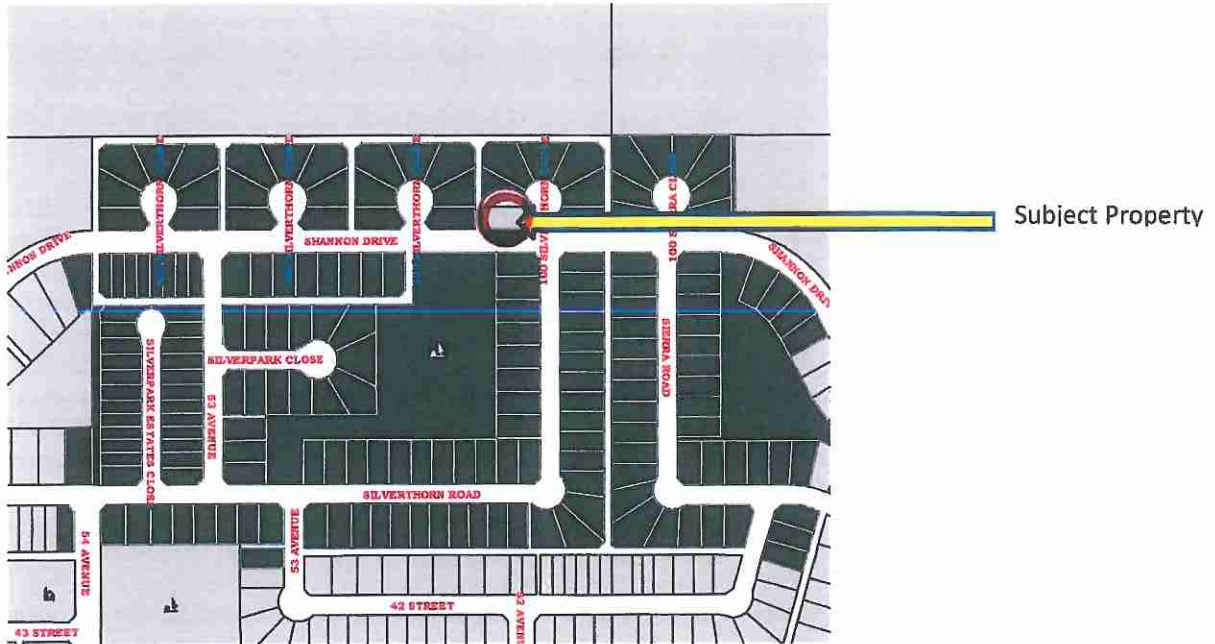


Jolene Tejkl, RPP MCIP, Development Officer

Attachments:

- Location Map
- Development Permit Application 12-131
- Email from applicant
- Email from applicant with photos
- Letter of support
- Letter of objection

Location Map



DEVELOPMENT PERMIT APPLICATION



Town of Olds

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

PLEASE PRINT

Appl. No. 13-121

This is NOT a Building Permit

Name of APPLICANT	Tel/Cell	Fax
Address of APPLICANT <u>101 Silverthorn CL.</u>		Postal Code <u>T4H 1B2</u>
E-mail		
Name of REGISTERED OWNER	Tel/Cell	Fax
Address of REGISTERED OWNER		Postal Code

PROJECT INFORMATION

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

Project Location - Street Address <u>101 Silverthorn CL.</u>			
Describe the Proposed Development: <u>RETAINING WALL AND FENCE</u> <u>Build up the land grade on south side of house to make a functional area and create privacy from a busy STANNON DR. Upon completion the grade level will stop from retaining wall towards the east front yard. Retaining wall has 3 timbers 30" in total holding inside grade. A fence built to the height 5'9" at inside grade. With retaining wall and fence, the outside grade is 7'5"</u>			
Legal Land Description:	Lot	Block	Plan
Parcel Type: <input type="checkbox"/> Interior <input checked="" 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
Floor Area	Height of Building	Estimated Value of Project	
Estimated Commencement Date		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

2/07/2013

Item 4B
Additional Information
Presented to MPC

From: [REDACTED]
Sent: Wednesday, August 28, 2013 11:17 AM
To: Planning Queries; Terry
Subject: RE: Re. Fence at 101 Silverthorn

Subject: Re. Fence at 101 Silverthorn
From: [REDACTED]
Date: Thu, 13 Jun 2013 06:32:56 -0600
CC: [REDACTED]
To: [REDACTED]

My south side yard was a unusable space with an extreme slope from house to side walk. In order to make use of this space I am in the process of landscaping. I built a 20" retaining wall, bringing the grade to a suitable level. The fence is built on top of wall at a height of 5'9". The measurement from inside grade upon completion will be well under the 6'5" max height. The measurement outside from grade is 7'5" at that point the grade continues to slope to side walk. Looking from the sidewalk or on the road you would be below the grade of the fence giving the illusion of a much higher fence. I will forward pictures of comparable fences and retaining walls built in old.

Patricia Nugent

Sent from my iPhone

Werner Fischer

Item 4B
Photos attached to this email presented

From:
Sent: Wednesday, August 28, 2013 8:17 PM
To:
Cc:
Subject: FW: pictures
Attachments: image(2).jpeg; photo(4).JPG; image.jpeg; IMG_9414.jpeg; photo(5).JPG

to MPC.

From:
Sent: August-28-13 8:13 PM
To:
Cc:
Subject: FW: pictures

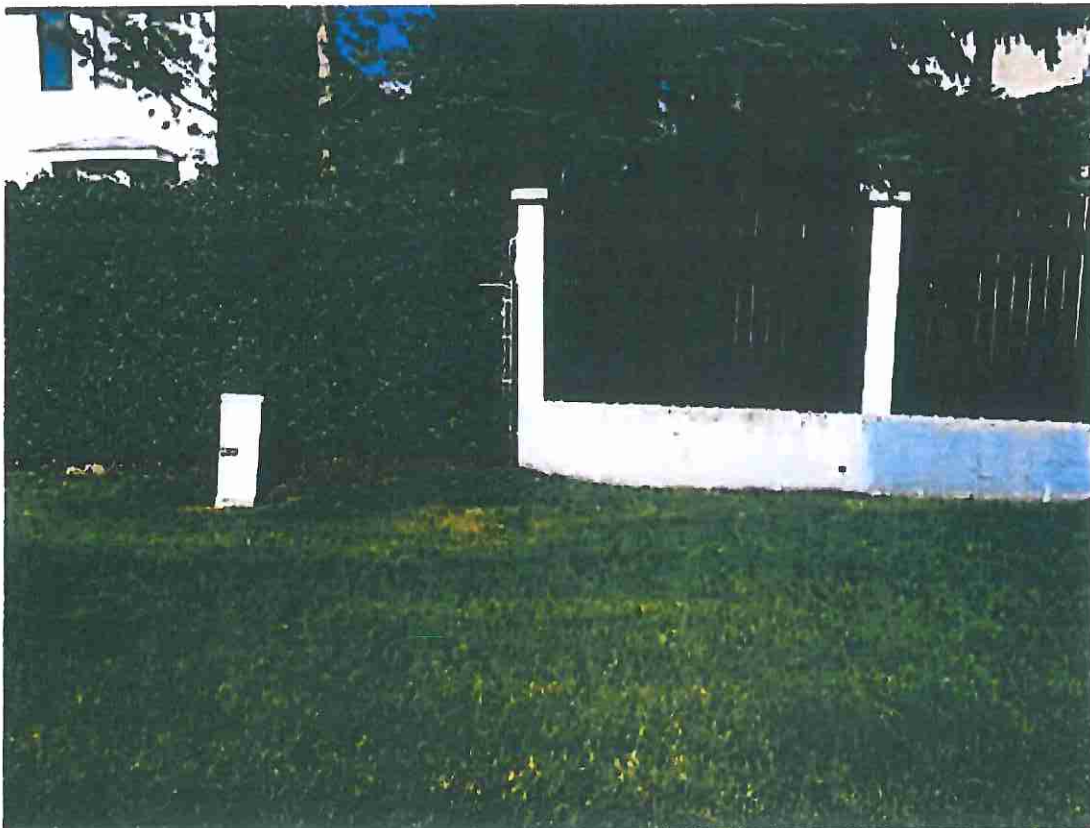
> Date: Wed, 28 Aug 2013 18:11:41 -0600
> Subject: Fence 101 Silverthorn Cl.
> To:
>
> To M.P.C.
>
> I write with reference to my request for a variance to construct a
> fence on my property located at 101 Silverthorn Cl.
>
> It is my understanding that a variance is not required if the fence is
> less than 2 meters in height, measured above grade. (schedule B, 6(5A)
> 1a)
>
> The inspector to whom I spoke, stated that he believed that the height
> above grade was in excess of 2 meters and therefore I should apply for
> a variance.
>
> The fence is well within my property line, and also well less than 2
> meters high when measured from the grade of my yard. Sight lines upon exiting alley
are no more impeded by my fence than the large tree adjacent to my property. As
shown in photo.
>
> As you may see from the accompanying photographs, this fence is not
> only more esthetically pleasing than most other constructions around
> town, but is also much shorter than others, some located on town
> property.

Patricia Nugent

PHOTOS RECEIVED FROM PAT NUGENT VIA EMAIL August 28, 2013

Item 4B
Additional Information









Jolene Tejkl

From:
Sent: July-22-13 6:43 PM
To: jtejkl@olds.ca
Subject: Height Variance For Retaining Wall and Fence at 101 Silverthorn Close

My name is resident of in Olds.
My husband and I have absolutely NO PROBLEMS with my neighbour at 101 Silverthorn Close's fence height.
Please add me to the list IN FAVOR of her fence.
Thank you

Town of Olds

Attention: Carol Jorgenson

Re: PROPOSAL: HEIGHT VARIANCE FOR RETAINING WALL AND
FENCE
FILE NO: DP13-121
LEGAL: LOT 22, BLOCK 6, PLAN 771-0679
CIVIC ADDRESS: 101 SILVERTHORN CLOSE
LAND USE DISTRICT: LOW DENSITY RESIDENTIAL (R1)

Dear Carol,

In your letter to me dated July 10, 2013, you indicate "The Applicant advises the fence measures 2.2 m (7 feet 5 inches)". This is an astonishing 11 inches above the maximum height allowed.. I will have to object to this height variance application. If this is allowed I could see other home owners wanting to build bigger fences spoiling the look of the area.

Out of interest, I measured the fence in two locations and it measures 92 inches (7 feet 8 inches) which is 1 foot 2 inches above the maximum height allowed. Maybe you should have a bylaw enforcement officer go measure the fence.

Yours sincerely

August 29, 2013

Patricia Nugent
101 Silverthorn Close
Olds AB
T4H 1B2

Dear Patricia Nugent,

Notice of Decision on Development Permit and Notification of Appeal Procedure

Development Permit Application DP 13-121 for a retaining wall and fence at the above address was refused by the Municipal Planning Commission at a Special Meeting of the Commission on August 29, 2013. At this meeting, the Commission passed the following two motions:

1. That the Municipal Planning Commission refuse Development Permit Application DP 13-121 for the following reasons:
 - a) The Land Use Bylaw requires fences, walls or other means of enclosure be less than 2 m (6.6 ft.) in the side and rear yards of parcels. The proposed 2.33 m (7.6 ft.) height of the fence and retaining wall exceeds the Land Use Bylaw requirement by 0.33 m (1 ft.);
 - b) The height of the proposed fence poses a safety concern by reducing sight lines for vehicular traffic approaching Shannon Drive from the lane;
 - c) The design, character and appearance of the proposed fence height variance does not fit with the character of existing developments in the vicinity of the subject property; and
 - d) In review of the application, there is no valid reason to grant a variance for fence height in this situation.
2. That the Municipal Planning Commission directs the applicant to reduce the fence height to be in accordance with the Land Use Bylaw requirement of 2 m (6.6 ft.) measured at the outside grade.

Given the above you are requested to modify the fence so that it complies with the Land Use Bylaw no later than October 1, 2013.

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 following the date of this notice;
- 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.

Yours truly,

COPY

Werner Fischer

Manager of Planning

Direct: 403.507.4805

Cell: 403.415.5176

Office: 403.556.6981



Town of Olds

www.olds.ca



4512 46 Street

Olds, AB T4H 1R5

**TOWN OF OLDS
MUNICIPAL PLANNING COMMISSION
REQUEST FOR DECISION REPORT**

MPC Aug 29 Special Meeting

Agenda Item No.:	4C
Meeting:	MUNICIPAL PLANNING COMMISSION
Meeting Date:	August 15, 2013
File No.:	DP 13-121
Civic Address:	101 Silverthorn Close
Legal Description:	Lot 22, Block 6, Plan 771 0679
Designation:	Low Density Residential District (R1)
Proposal:	Retaining wall and fence (Permitted use requiring variance)
Originated By:	Jolene Tejki
Manager of Planning Approval:	
Director/MPC Secretary Approval:	

REVIEW OF DEVELOPMENT PERMIT APPLICATION

Fences and walls (and other means of enclosures) less than 1 m (3.3 ft.) in height in front yards and 2 m (6.6 ft.) in height in all other yards are exempt from requiring a development permit provided that they do not exceed these heights. This application is before the Municipal Planning Commission because the retaining wall and fence currently under construction on the side yard adjacent to Shannon Drive and the rear yard on the subject property exceed these heights.

According to the application, the retaining wall and fence constructed on top of it measures 2.26 m (7.4 ft.) from the outside grade. The applicant advised the retaining wall and fence were required to make their steeply sloping side yard usable and provide privacy from Shannon Drive.

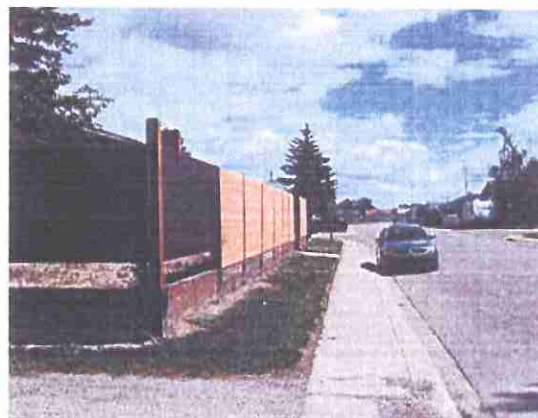
The surrounding properties are all designated Low Density Residential District (R1) under the Town's Land Use Bylaw. Staff determined that the fence and retaining wall measured from the outside grade is 2.33 m (7.6 ft.), which is 0.33 m (1 ft.) over the allowable fence height for side and rear yards. The subject fence is higher than those of adjacent properties and there is insufficient evidence to support the claim that the side yard had a significant slope. Photos of the site inspection conducted on July 30, 2013 are provided in the following pages.



The photos above show Silverthorn Close with the subject property on the left.



The photo above shows the fence to the left in relation to existing developments on Silverthorn Close.



This photo illustrates the height of the fence and retaining wall at the lane and Shannon Drive intersection.



This photo shows the side yard adjacent to the lane with the subject fence to the right.



This photo is of the fence from the rear yard.



These two photos show the side yard slope that is being filled in to make the side yard more usable for the applicant.

The application for height variance was circulated to Town departments and surrounding landowners to solicit comments. Two letters were received from circulated landowners; one in support and one in objection to the height variance. Copies of the letters are attached. At least 3 residents called in to discuss the application; they provided the following comments for MPC's consideration:

- A question was raised about why the Town would consider a variance for fence heights when the rules are in place already and people should follow them; and
- A comment was made that the fence is unattractive and poses a safety issue due to reduced sight lines at the lane/Shannon Drive intersection.

Staff discussed the concerns about impeded sight lines where the lane intersects with Shannon Drive with Public Works. Public Works confirmed that the sight lines are impeded by the height of the fence and advised that the fence is approximately 2.44 m (8 ft.) at the road/sidewalk level, if not more. The height of the fence at the lane/Shannon Drive intersection exacerbates corner visibility because front wheels of a vehicle would be on the sidewalk before a driver could see past it. Furthermore, the corner of the fence is all steel at the lane/road intersection; if a vehicle were to hit the steel corner of the fence, much more damage would occur than if the fence were wood.

Fences are considered "buildings" in the Land Use Bylaw (LUB). The LUB states that the design, character and appearance of buildings must be acceptable to the development authority having regard to the character of existing development in the District, amongst other criteria. The fence and retaining wall are significantly higher than other fences in the vicinity and in staff's opinion, distract from the residential character of the surrounding neighbourhood.

Recommendation 1: That the Municipal Planning Commission refuse Development Permit Application DP 13-121 for the following reasons:

1. The Land Use Bylaw requires fences, walls or other means of enclosure be less than 2 m (6.6 ft.) in the side and rear yards of parcels. The proposed 2.33 m (7.6 ft.) height of the fence and retaining wall exceeds the Land Use Bylaw requirement by 0.33 m (1 ft.);
2. The height of the proposed fence poses a safety concern by reducing sight lines for vehicular traffic approaching Shannon Drive from the lane;

3. The design, character and appearance of the proposed fence height variance does not fit with the character of existing developments in the vicinity of the subject property; and
4. In review of the application, there is no valid reason to grant a variance for fence height in this situation.

Recommendation 2: That the Municipal Planning Commission directs the applicant to reduce the fence height to be in accordance with the Land Use Bylaw requirement of 2 m (6.6 ft.) measured at the outside grade.

Prepared By:



Jolene Tejkl
Development Officer

DP13-121

101 Silverthorn Close



Town of Olds

Attention: Carol Jorgenson

Re: PROPOSAL: HEIGHT VARIANCE FOR RETAINING WALL AND
 FENCE
FILE NO: DP13-121
LEGAL: LOT 22, BLOCK 6, PLAN 771-0679
CIVIC ADDRESS: 101 SILVERTHORN CLOSE
LAND USE DISTRICT: LOW DENSITY RESIDENTIAL (R1)

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Jolene Tejkl

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Please add me to the list IN FAVOR of her fence.
Thank you

Item 4B
Additional Information
Presented to MPC

Karol Jorgensen

From: Patricia Nugent [nugenttricia@msn.com]
Sent: Wednesday, August 28, 2013 11:17 AM
To: Planning Queries; Terry
Subject: RE: Re. Fence at 101 Silverthorn

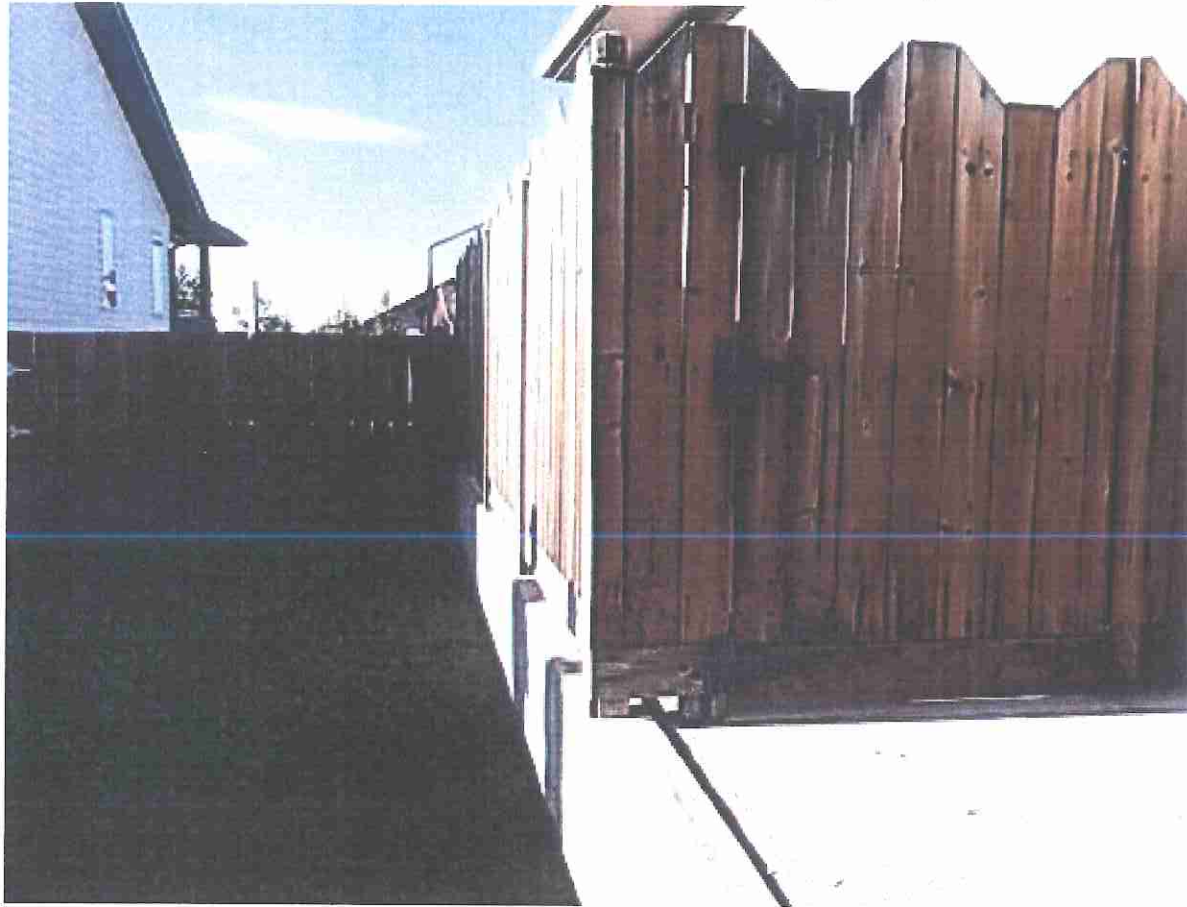
Subject: Re. Fence at 101 Silverthorn
From: nugenttricia@msn.com
Date: Thu, 13 Jun 2013 06:32:56 -0600
CC: nugenttricia@msn.com
To: planning@olds.ca

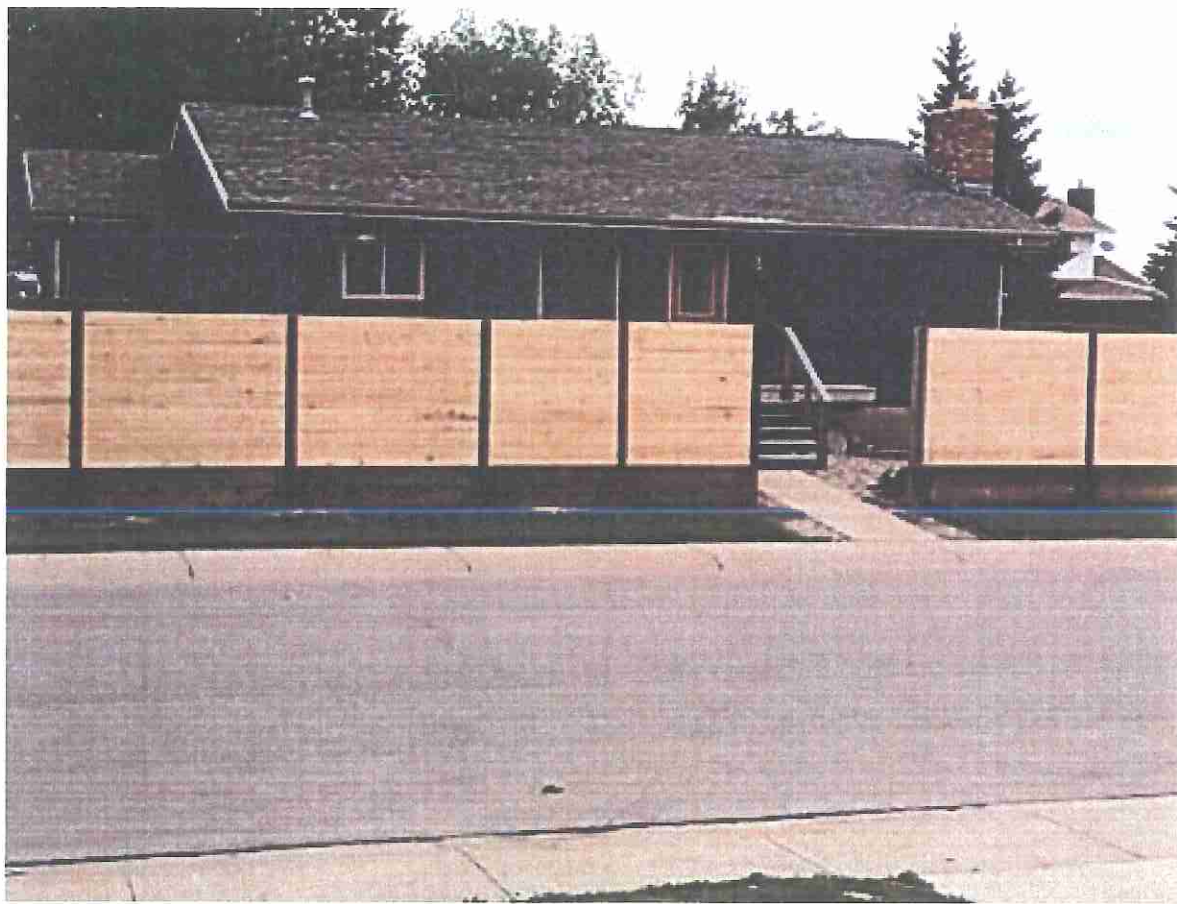
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Patricia Nugent

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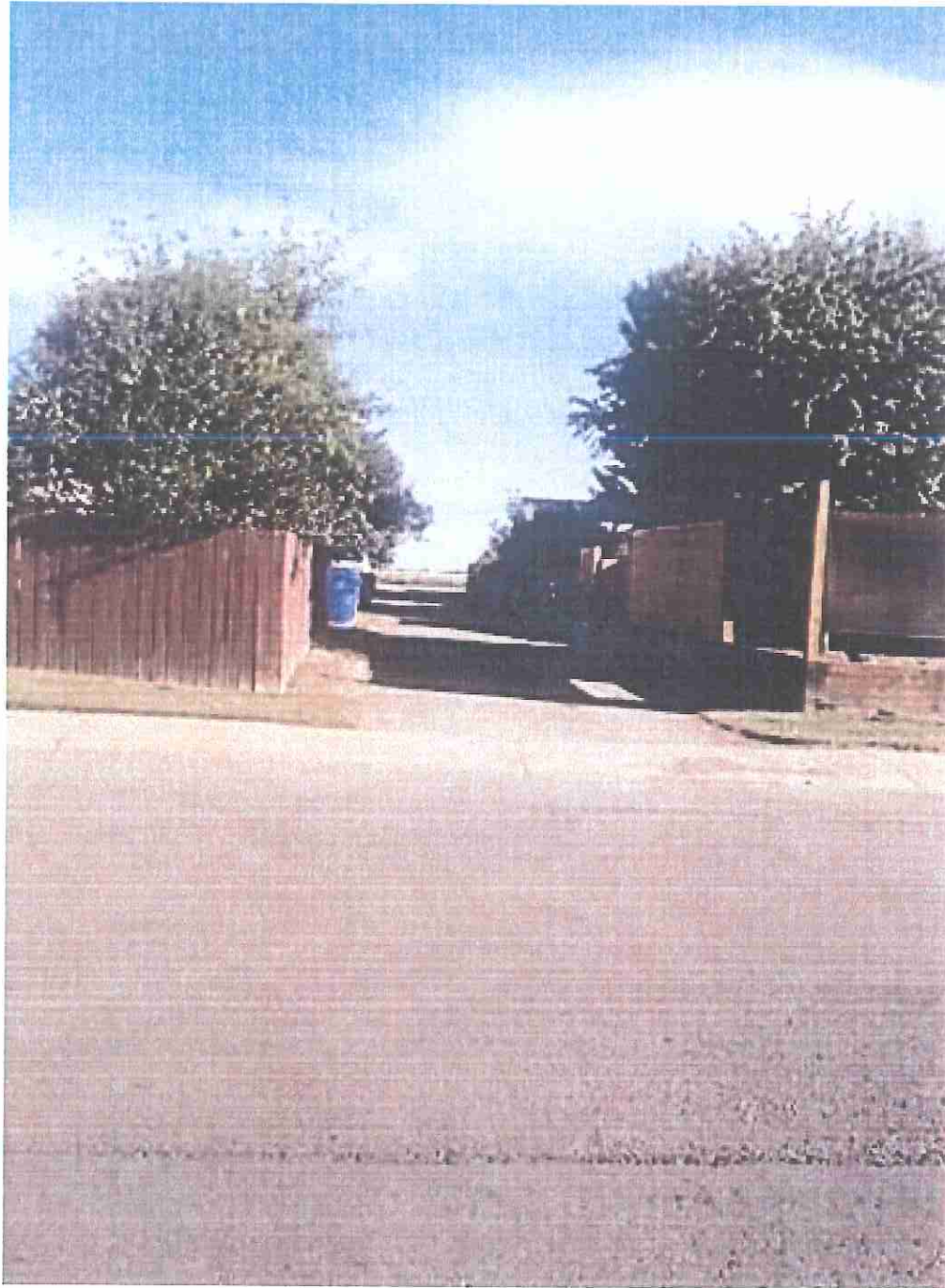
PHOTOS RECEIVED FROM PAT NUGENT VIA EMAIL August 28, 2013

Item 4B
Additional Information









Werner Fischer

Photos attached to this email presented

From: Norm McInnis
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To: Karol Jorgensen
Cc: Larry Wright; Werner Fischer
Subject: FW: pictures
Attachments: image(2).jpeg; photo(4).JPG; image.jpeg; IMG_9414.jpeg; photo(5).JPG

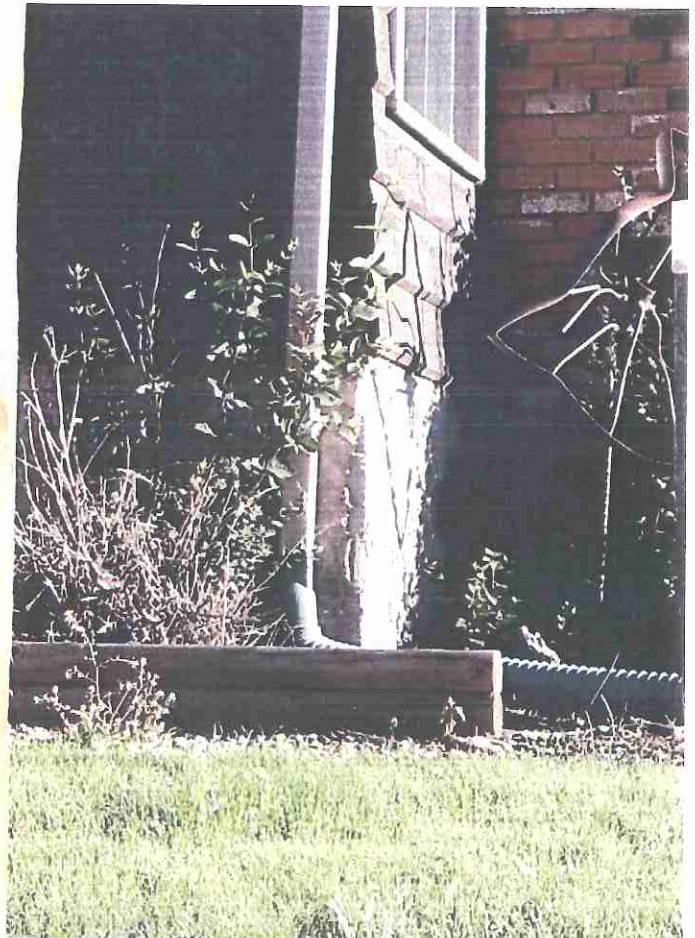
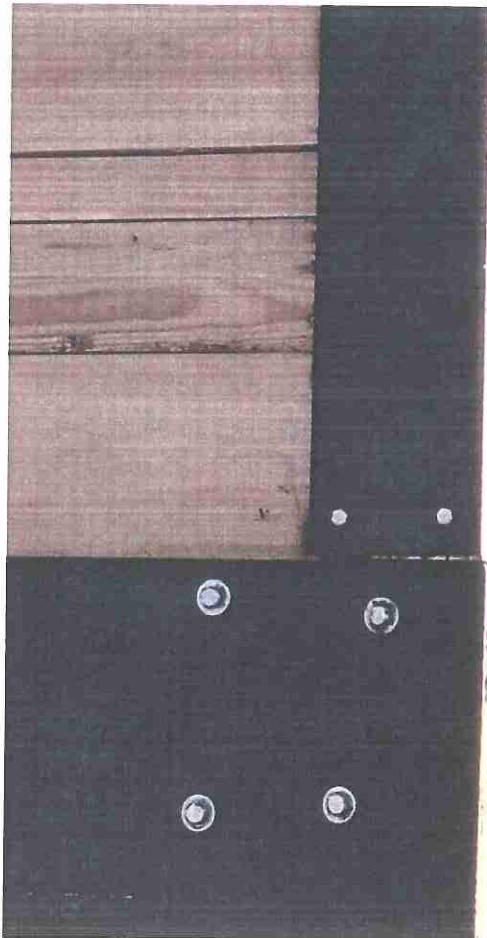
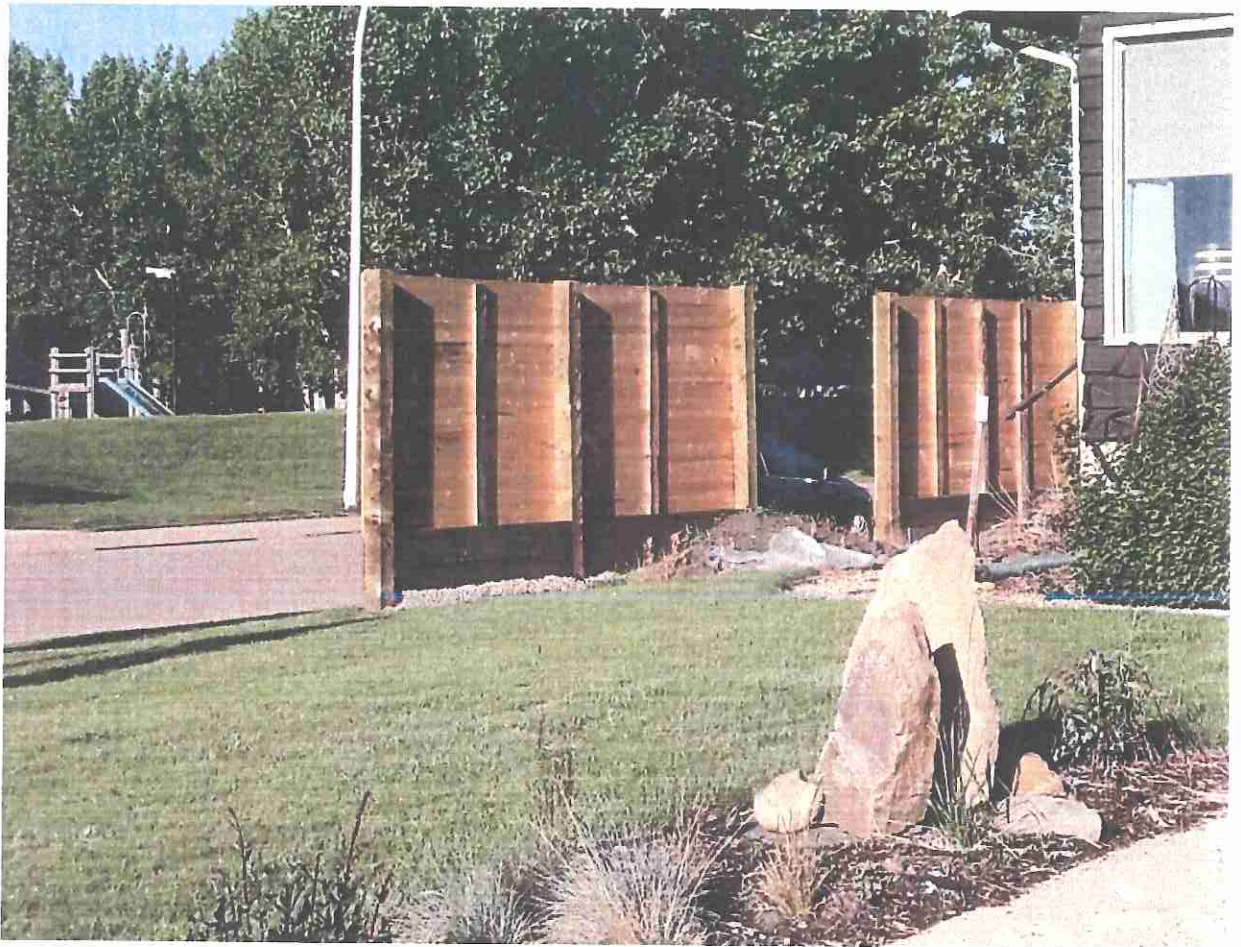
to MPC.

From: Patricia Nugent [<mailto:nugenttricia@msn.com>]
Sent: August-28-13 8:13 PM
To: Norm McInnis
Cc: Patricia Nugent
Subject: FW: pictures

> Date: Wed, 28 Aug 2013 18:11:41 -0600
> Subject: Fence 101 Silverthorn Cl.
> To: nugenttricia@msn.com
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> It is my understanding that a variance is not required if the fence is
> less than 2 meters in height, measured above grade. (schedule B, 6(5A)
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> above grade was in excess of 2 meters and therefore I should apply for
> a variance.
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> The fence is well within my property line, and also well less than 2
> meters high when measured from the grade of my yard. Sight lines upon exiting alley
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> As you may see from the accompanying photographs, this fence is not
> only more esthetically pleasing than most other constructions around
> town, but is also much shorter than others, some located on town
> property.

Patricia Nugent





~~Werner Fischer gave background information on the application. Cavalier Land has agreed to lower the height of the antenna to 30 meters. This was confirmed by Cody Greenough, Cavalier Land.~~

Larry Wright noted that the Town has a Municipal Access Bylaw - Accessing and Managing Municipal Rights-of-Way, Bylaw No. 2010-11.

Vehicle access to the property will be from the South side of the property.

Applicant Cody Greenough of Cavalier Land spoke on behalf of the application. With a decrease in height of the tower there is a possibility of a second tower in the future, depending on user complaints.

MPC Members noted that the Olds Fertilizer & Agri Services tower was higher than the proposed 30 meter tower. They also asked about the possibility of locating the antenna on an existing structure. Cody Greenough replied that in this circumstance there was no structure available.

Attendee Ellen Sych of 5809 Imperial Drive spoke:

Residents in her area who were concerned about the original application. Reducing the height from 90 meters to 30 meters is much more acceptable. There needs to be limitations on height of towers in the whole town. She asked that consideration be given for future applications as this application sets a precedent for towers to be near residences.

Moved by Ken Hunt that the Municipal Planning approve Development Permit Application DP13-092 subject to the conditions listed in the attached draft Development Permit DP13-092.

Motion Carried 13-23

~~Councillor Harper moved to the MPC Members area of Council Chambers.~~

4B) DP13-121

Height Variance for Retaining Wall and Fence 101 Silverthorn Close

Recommendation 1: That the Municipal Planning Commission refuse Development Permit Application DP13-121 subject to the conditions listed in the attached draft Development Permit DP13-121 for the following reasons:

1. The Land Use Bylaw requires fences, walls or other means of enclosure be less than 2 m (6.6 ft.) in the side and rear yards of parcels. The proposed 2.33 m (7.6 ft.) height of the fence and retaining wall exceeds the Land Use Bylaw requirement by 0.33 m (1 ft.);
2. The height of the proposed fence poses a safety concern by reducing sight lines for vehicular traffic approaching Shannon Drive from the lane;
3. The design, character and appearance of the proposed fence height variance does not fit with the character of existing developments in the vicinity of the subject property; and
4. In review of the application, there is no valid reason to grant a variance for fence height in this situation.

Recommendation 2: That the Municipal Planning Commission directs the applicant to reduce the fence height to be in accordance with the Land Use Bylaw requirement of 2 m (6.6 ft.) measured at the outside grade.

Discussion:

Werner Fischer gave background information on the application from the last meeting.

The email from the applicant received yesterday evening from CAO Norm McInnis was read; the picture of the alley at the entrance to Shannon Drive was shown. Site inspection pictures were shown. The applicant requested a variance.

Members discussion included concern with safety; and that the applicant was given time to appear on behalf of her application.

Moved by Councillor Harper that the Municipal Planning Commission directs the applicant to reduce the fence to the required height, measured at the outside grade.

Councillor Harper withdrew her motion.

Moved by Councillor Mary Jane Harper that the Municipal Planning Commission refuse Development Permit Application for the reasons stated in the Recommendation 1 of Development Permit DP13-121.

Motion Carried 13-24

Moved by Robert Clarke that the Municipal Planning Commission directs the applicant to reduce the fence to the required height, measured at the outside grade.

Motion Carried 13-25

5. ADJOURNMENT

The next regular MPC meeting will be Thursday, September 19, 2013 at 8:30 a.m. in Town of Olds Council Chambers.

Moved by Natasha Sawatzky at 8:50 a.m., that the meeting be adjourned.

Motion Carried 13-26

MAYOR JUDY DAHL
CHAIRPERSON

LARRY WRIGHT
SECRETARY TO THE COMMISSION

These minutes approved the

day of

2013.

**TOWN OF OLDS
MUNICIPAL PLANNING COMMISSION**

REQUEST FOR DECISION REPORT

Agenda Item No.:	4C
Meeting:	MUNICIPAL PLANNING COMMISSION
Meeting Date:	August 15, 2013
File No.:	DP 13-121
Civic Address:	101 Silverthorn Close
Legal Description:	Lot 22, Block 6, Plan 771 0679
Designation:	Low Density Residential District (R1)
Proposal:	Retaining wall and fence (Permitted use requiring variance)

Originated By: Jolene Tejkl

Manager of Planning Approval: 

Director/MPC Secretary Approval: 

REVIEW OF DEVELOPMENT PERMIT APPLICATION

Fences and walls (and other means of enclosures) less than 1 m (3.3 ft.) in height in front yards and 2 m (6.6 ft.) in height in all other yards are exempt from requiring a development permit provided that they do not exceed these heights. This application is before the Municipal Planning Commission because the retaining wall and fence currently under construction on the side yard adjacent to Shannon Drive and the rear yard on the subject property exceed these heights.

According to the application, the retaining wall and fence constructed on top of it measures 2.26 m (7.4 ft.) from the outside grade. The applicant advised the retaining wall and fence were required to make their steeply sloping side yard usable and provide privacy from Shannon Drive.

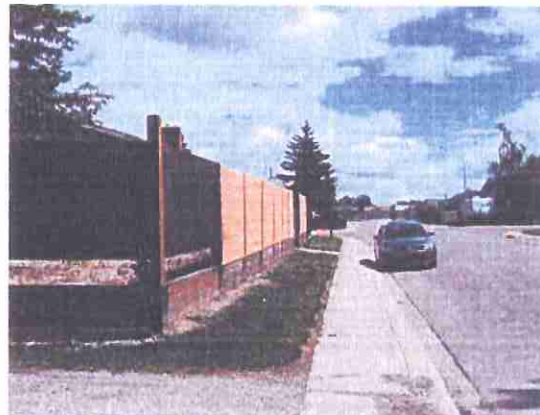
The surrounding properties are all designated Low Density Residential District (R1) under the Town's Land Use Bylaw. Staff determined that the fence and retaining wall measured from the outside grade is 2.33 m (7.6 ft.), which is 0.33 m (1 ft.) over the allowable fence height for side and rear yards. The subject fence is higher than those of adjacent properties and there is insufficient evidence to support the claim that the side yard had a significant slope. Photos of the site inspection conducted on July 30, 2013 are provided in the following pages.



The photos above show Silverthorn Close with the subject property on the left.



The photo above shows the fence to the left in relation to existing developments on Silverthorn Close.



This photo illustrates the height of the fence and retaining wall at the lane and Shannon Drive intersection.



This photo shows the side yard adjacent to the lane with the subject fence to the right.



This photo is of the fence from the rear yard.



These two photos show the side yard slope that is being filled in to make the side yard more usable for the applicant.

The application for height variance was circulated to Town departments and surrounding landowners to solicit comments. Two letters were received from circulated landowners; one in support and one in objection to the height variance. Copies of the letters are attached. At least 3 residents called in to discuss the application; they provided the following comments for MPC's consideration:

- A question was raised about why the Town would consider a variance for fence heights when the rules are in place already and people should follow them; and
- A comment was made that the fence is unattractive and poses a safety issue due to reduced sight lines at the lane/Shannon Drive intersection.

Staff discussed the concerns about impeded sight lines where the lane intersects with Shannon Drive with Public Works. Public Works confirmed that the sight lines are impeded by the height of the fence and advised that the fence is approximately 2.44 m (8 ft.) at the road/sidewalk level, if not more. The height of the fence at the lane/Shannon Drive intersection exacerbates corner visibility because front wheels of a vehicle would be on the sidewalk before a driver could see past it. Furthermore, the corner of the fence is all steel at the lane/road intersection; if a vehicle were to hit the steel corner of the fence, much more damage would occur than if the fence were wood.

Fences are considered "buildings" in the Land Use Bylaw (LUB). The LUB states that the design, character and appearance of buildings must be acceptable to the development authority having regard to the character of existing development in the District, amongst other criteria. The fence and retaining wall are significantly higher than other fences in the vicinity and in staff's opinion, distract from the residential character of the surrounding neighbourhood.

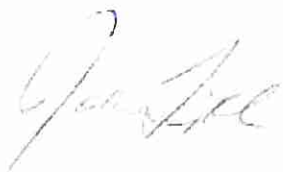
Recommendation 1: That the Municipal Planning Commission refuse Development Permit Application DP 13-121 for the following reasons:

1. The Land Use Bylaw requires fences, walls or other means of enclosure be less than 2 m (6.6 ft.) in the side and rear yards of parcels. The proposed 2.33 m (7.6 ft.) height of the fence and retaining wall exceeds the Land Use Bylaw requirement by 0.33 m (1 ft.);
2. The height of the proposed fence poses a safety concern by reducing sight lines for vehicular traffic approaching Shannon Drive from the lane;

3. The design, character and appearance of the proposed fence height variance does not fit with the character of existing developments in the vicinity of the subject property; and
4. In review of the application, there is no valid reason to grant a variance for fence height in this situation.

Recommendation 2: That the Municipal Planning Commission directs the applicant to reduce the fence height to be in accordance with the Land Use Bylaw requirement of 2 m (6.6 ft.) measured at the outside grade.

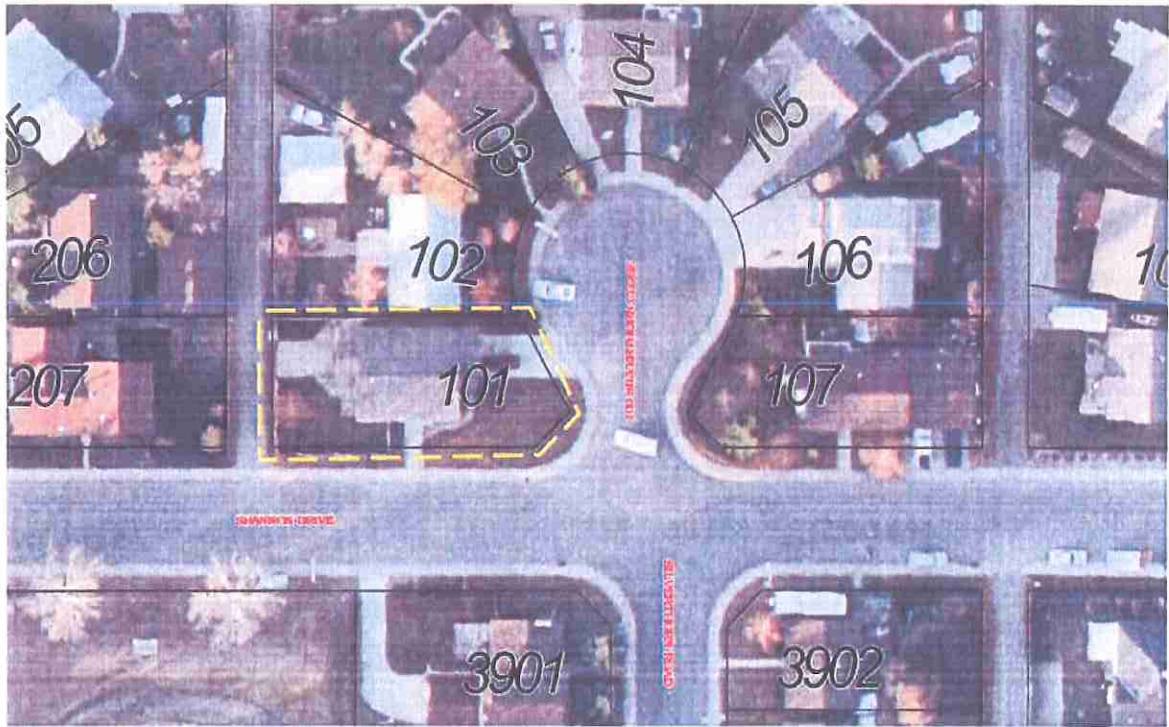
Prepared By:



Jolene Tejkl
Development Officer

DP13-121

101 Silverthorn Close



Town of Olds

Attention: Carol Jorgenson

Re: PROPOSAL: HEIGHT VARIANCE FOR RETAINING WALL AND
 FENCE
FILE NO: DP13-121
LEGAL: LOT 22, BLOCK 6, PLAN 771-0679
CIVIC ADDRESS: 101 SILVERTHORN CLOSE
LAND USE DISTRICT: LOW DENSITY RESIDENTIAL (R1)

Dear Carol,

In your letter to me dated July 10, 2013, you indicate "The Applicant advises the fence measures 2.2 m (7 feet 5 inches)". This is an astonishing 11 inches above the maximum height allowed.. I will have to object to this height variance application. If this is allowed I could see other home owners wanting to build bigger fences spoiling the look of the area.

Out of interest, I measured the fence in two locations and it measures 92 inches (7 feet 8 inches) which is 1 foot 2 inches above the maximum height allowed. Maybe you should have a bylaw enforcement officer go measure the fence.

Yours sincerely

Jolene Tejkl

From:
Sent: July-22-13 6:43 PM
To: jtejkl@olds.ca
Subject: Height Variance For Retaining Wall and Fence at 101 Silverthorn Close

My name is resident of in Olds.
My husband and I have absolutely NO PROBLEMS with my neighbour at 101 Silverthorn Close's fence height.
Please add me to the list IN FAVOR of her fence.
Thank you

~~Councillor Harper moved to the MPC Members area of Council Chambers.~~

4B) DP13-096

**Accessory Use: Coates Industries Inc.
4602 49 Street**

Recommendation:

That the Municipal Planning Commission approve Development Permit Application DP13-096 subject to the conditions identified in the attached draft Development Permit DP13-096.

Discussion:

Kari Idland noted that the owner of the business does not reside at this location, therefore this application does not meet the requirements of a Home Occupation. This application is consistent with the requirements for Accessory Use.

MPC Members noted that the rear parking is not hard surface as indicated in the report and asked that a friendly amendment be done to the report.

Werner Fischer verified that this application does not require the parking in the rear to be hard surface.

Kari Idland noted that parking supplied in the front and rear meets parking requirements.

Werner Fischer noted that if they don't use the off street parking and don't have a permit they will get ticketed.

Ben Coates, property owner, spoke on behalf of the application:

- He owns the property, his daughter lives in one half and his son has a business in the other half.

Moved by Councillor Harper that the Municipal Planning approve Development Permit Application DP13-096 subject to the conditions listed in the attached draft Development Permit DP13-096.

~~**Motion Carried 13-14.**~~

4C) DP13-121

**Height Variance For Retaining Wall And Fence
101 Silverthorn Close**

Recommendation 1: That the Municipal Planning Commission refuse Development Permit Application DP13-121 subject to the conditions listed in the attached draft Development Permit DP13-121 for the following reasons:

1. The Land Use Bylaw requires fences, walls or other means of enclosure be less than 2 m (6.6 ft.) in the side and rear yards of parcels. The proposed 2.33 m (7.6 ft.) height of the fence and retaining wall exceeds the Land Use Bylaw requirement by 0.33 m (1 ft.);
2. The height of the proposed fence poses a safety concern by reducing sight lines for vehicular traffic approaching Shannon Drive from the lane;
3. The design, character and appearance of the proposed fence height variance does not fit with the character of existing developments in the vicinity of the subject property; and
4. In review of the application, there is no valid reason to grant a variance for fence height in this situation.

Recommendation 2: That the Municipal Planning Commission directs the applicant to reduce the fence height to be in accordance with the Land Use Bylaw requirement of 2 m (6.6 ft.) measured at the outside grade.

Discussion:

Jolene Tejkl noted that she received one letter of support, one of objection and three telephone calls objecting to the application and that the applicant said the retaining wall was built due to the significant slope but administration did not feel this was the case.

MPC Member discussion was that safety cannot be compromised.

Pam Fagan, representative for the applicant spoke:

- the applicant is out of province until September or October and would like this file deferred.
- when entering the street from this alley the view is blocked by a fence on the West side.

MPC Members felt that waiting until October was too long due to the safety concern; and wondered if this application could be deferred until the Special Meeting planned for August 29, 2013.

Janet Lawritsen, attendee, asked for clarification on the recommendations.

Moved by Councillor Harper that the Municipal Planning defer Development Permit Application DP13-121 to the August 29, 2013 Municipal Planning Commission Special Meeting.

Motion Carried 13-15

~~4D) DP13-122~~

~~Home Occupation - Class 2: "Christo Communications"
4401 Shannon Drive~~

Recommendation:

That the Municipal Planning Commission approve Development Permit Application DP13-122 subject to the conditions listed in the attached draft Development Permit DP13-122.

Moved by Councillor Bull that the Municipal Planning approve Development Permit Application DP13-122 subject to the conditions listed in the attached draft Development Permit DP13-122.

Motion Carried 13-16

Councillor Harper excused herself from the meeting at 9:32 a.m.

4E) DP13-124

Home Occupation - Class 2: "Adair's Home Improvement"
5440 56 Street

Recommendation:

That the Municipal Planning Commission approve Development Permit Application DP13-124 subject to the conditions listed in the attached draft Development Permit DP13-124.

Moved by Natasha Sawatzky that the Municipal Planning approve Development Permit Application DP13-124 subject to the conditions listed in the attached draft Development Permit 13-124.

Motion Carried 13-17

4F) DP13-127

~~Home Occupation - Class 2: "Karin Hitchcock Counselling Services"~~

Exhibit (1)

I am not opposed to a 20 inch retaining wall and fence located at 101 Silverthorn Close, Olds, AB.

Name	Address	Phone	Comments
Tika Koelstra	104 Silverthorn	403 556 1179	As the wall was put up to create some privacy in own yard. I do not find the fence unsightly or overly out of place
> MAREK FLNER	5201 SHANNON DR	403-556-8868	THE FENCE IS OKAY
Tamara Radau	206 Silverthorn Cl.	556-2012	Who Gives a Shit !! It's a very nice Fence !!
> Brian Maetche	207 Silverthorn	556-8833	Give me a break.
Janet Lawritsen	4702 - 51 Ave	559-8657	Love the fence !!!
Dany/Craig	3901 Silverthorn Rd	507-9334	Unique !!!
BOB KEARNS	5411 SHANNON DR	(403) 556-2379	FENCE LOOKS FINE
Bob Maynes	307 Silverthorn	403 556-0852	You have greater issues Fence looks fine Height does not matter
Shannon Finerty	4910 Shannon Dr.	403-559-9130	Love The Fence.
Denna Zawalykut	4910 Shannon Dr.	403-559-6064	Love the Fence!
Jeremy Zawalykut	4910 Shannon Dr.	403-559-6027	
Paula D'Souza	5329 Shannon Dr.	587-888-2949	looks fine to me.
STEWART GRAHAM	5305 SHANNON DR.	403-556-6219	Good w/ me.
Marilyn Wilson	301 Silverthorn Close	403-556-8986	just fine
Geoffrey Andrusak	102 Silverthorn Cl	403-556-9444	Asset to neighbourhood!
Chris Andrusak	102 Silverthorn Cl	403-556-9444	your waisting our time and tax payers \$\$\$

I am not opposed to a 20 inch retaining wall and fence located at 101 Silverthorn Close, Olds, AB.

[illegible]