REPORT TO THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD

DATE: ~~June 24, 2021~~; July 29, 2021	**APPEAL NO.: SDAB 2021-0040** **FILE NO.: DP2021-1721**
APPEAL BY: Donna Wiebe & Barry Fodor, George Giachino, Stewart Henderson, David & Allison Leese, and Tenzin Blair & Melissa Fellows	
FROM A DECISION OF THE DEVELOPMENT AUTHORITY where a **New: Rowhouse Building (1 Building, 12 Units), Secondary Suite (11 Suites), Accessory Residential Building (2 Buildings - Garage and Bicycle Storage).** **was approved at 1651 8 Avenue NW (Bldg: 818, 822, 826 16 Street NW)**	**LAND USE DESIGNATION: RC-G** **Permitted**
COMMUNITY OF: Hillhurst	**DATE OF DECISION: May 11, 2021**
APPLICANT: Jackson McCormick Design Group represented by Rick Grol	**OWNER: Riverview Custom Homes**

The hearing commenced on June 24, 2021 with consideration of procedural and jurisdictional issues. The Board adjourned the hearing to July 29, 2021.

Notes:

- Notice has been given of the hearing pursuant to the *Municipal Government Act* and Land Use Bylaw, including notices to parties who may be affected by the appeal. The final determination of whether a party is an "affected person" will be made by the Board if required.

- This Report is provided as a courtesy only. The Board's record may include additional materials, including notifications to affected parties and correspondence of a procedural or administrative nature.

Subdivision & Development APPEAL BOARD

NOTICE OF APPEAL
SUBDIVISION AND DEVELOPMENT APPEAL BOARD

CC 821 (R2014-01)

In accordance with Sections 678 and 686 of the Municipal Goverment Act and The City of Calgary Bylaw 25P95, as amended, an appeal to the Subdivision and Development Appeal Board must be filed within the legislated time frame and each Notice of Appeal must be accompanied by the legislated fee. For filing instructions and fee payment options, see the reverse side of this form.

ISC: Unrestricted

Online Store Information

Confirmation Number	Order Number	Online Form Processed
10377844	35066815	2021-05-31 10:24:40 AM

Site Information

Municipal Address of Site Under Appeal	Development Permit/Subdivision Application/File Number
1619 8 TH AVE N.W.	DP 2021 1721

Appellant Information

Name of Appellant	Agent Name (if applicable)
GEORGE GIACHINO	GEORGE GIACHINO

Street Address (for notification purposes)
804 - 16TH STREET N.W.

City	Province	Postal Code	Residential Phone #
CALGARY	ALBERTA	T2N 2C3	403-671-1561

Business Phone #	Email Address
	heyjudegiachino@shaw.ca

APPEAL AGAINST

Development Permit	Subdivision Application	Notice of Order
☑ Approval	☐ Approval	☐ Notice of Order
☐ Conditions of Approval	☐ Conditions of Approval	
☐ Refusal	☐ Refusal	

REASONS FOR APPEAL Sections 678 and 686 of the Municipal Government Act require that the written Notice of Appeal must contain specific reasons for the appeal.

I do hereby appeal the decision of the Subdivision/Development Authority for the following reasons:

Misinterpretation and misapplication of L.U.B. Section 546 for this permitted use approved development.

Co-appellants:
David and Allison Leese, 816 16th St. N.W. T2N 2C3, ph. 403-0523, email n/a.
Tenzin Blair and Melissa Fellows, 1615 8th Ave. N.W., T2N 4R4, tenzinblair@gmail.com
melissa.fellows@hotmail.com
Stewart Henderson 1701 8th Ave. N.W. T2N 2C3, ph. 587-229-3130, shenders@shaw.ca
Barry Fodor and Donna Wiebe, 810 16th St. N.W. T2N 2C3, ph. 403 283-2932, bfodor@telusplanet.net

In order to assist the Board in scheduling, please answer the following questions to the best of your ability:

Estimated presentation time (minutes/hours)	Will you be using an agent/legal counsel?
1 HOUR	☐ Yes ☑ No ☐ Unknown

Do you anticipate any preliminary issues with your appeal? (i.e. jurisdiction, parties status as affected persons, adjournment, etc.)
☐ Yes ☑ No ☐ Unknown

If yes, what are the issues?

Do you anticipate bringing any witnesses/experts to your hearing?	If yes, how many will you be bringing?
☐ Yes ☑ No ☐ Unknown	

This personal information is collected under the authority of the Freedom of Information and Protection of Privacy Act, Section 33(c) and the Municipal Government Act, Sections 678 and 686. NOTE: THIS INFORMATION WILL FORM PART OF A FILE AVAILABLE TO THE PUBLIC. If you have any questions regarding the collection of this information, contact the City Appeal Boards at 403-268-5312 or PO Box 2100 Stn. "M", #8110, Calgary, AB, T2P 2M5.

FOR OFFICE USE ONLY

Final Date of Appeal (YYYY / MM / DD)	SDAB Appeal Number	Fee Paid	Hearing Date (YYYY / MM / DD)	Date Received
2021 / 06 / 01	SDAB2021-0040	☑ Yes ☐ No	2021 / 06 / 24	May 31, 2021

SDAB2021-0040

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Appeal Board rec'd: June 16, 2021
Submitted by: G. Giachino, co-appellant

From: Judy Giachino
To: Calgary SDAB Info
Subject: [EXT] Re: Notice of Appeal: SDAB2021-0040 (CORRECT DP2021-1721, 1653 8 Avenue NW (Bldg: 818, 822, 826 16 Street NW)
Date: Wednesday, June 16, 2021 11:20:46 AM

Report to the Board. Appeal number 2021-0040.

The basis of this appeal against the approval of DP 2021 1721 is the contention that the Development Authority has misinterpreted and misapplied Section 546 of the L.U.B.

In correspondence with the Hillhurst Sunnyside Community Association, the Development Authority has indicated that one of the requirements for reducing onsite parking requirements for secondary suites to zero is that the development is within 600 meters of an LRT platform. The Development Authority's methodology for this metric is "as the crow flies." This applies to measuring the distance requirement for regularly scheduled bus service as well.

The L.U.B. Section 546 does not direct the Development Authority to use the distance requirements as linear measurement or "as the crow flies." The Development Authority has decided to use this "as the crow flies" metric because it favours applicants who do not want their development permits being routed into the discretionary permit application process.

Rational people do not measure travelling distance "as the crow flies." Reasons for this are obvious. An accounting must be made for physical obstacles, topography, personal safety regarding vehicular traffic, the need to obey traffic and roadway laws, as well as avoiding trespass of private or restricted property.

The authors of the L.U.B. used precise language. Had they intended Section 546 to be applied using straight line or linear measurement they would have said so. Since they did not, we submit to the board that since the L.U.B. does not specify such measurements that their intention was that a more rational approach involving actual pedestrian travelling distance be used.

Consider the following:

The Bow Trail LRT station is within 600 metres of the dense areas of the Spruce Cliff community in Calgary's southwest quadrant. However, an "as the crow flies" route would require trespassing the Shaganappi Golf Course for most of the distance.

Westerly parts of the Hillhurst/Sunnyside community, including the former CBC property, are within 600 meters of the Sunalta LRT station. Yet, in order to get to the station, one must first travel out of the way to one block east to access the 14th St. N.W. bridge, cross the Bow River, cross several east/west thoroughfares, and the CPR right of way, before heading west to the station, a distance close to 1000 meters.

The western end of Inglewood, north of Ninth Ave. S.E., is within 600 meters of the Bridgeland LRT station. Yet, the actual distance is far longer as the trip requires three river crossings in order to get to the station.

The east end of Inglewood is within 600 meters "as the crow flies" of the Zoo LRT station. However, accessing this LRT station in 600 meters would require legally accessing the Zoo property during normal opening hours. Otherwise, one would be required to travel almost the entire periphery of the Zoo park.

These examples of the "600 meter as the crow flies" distance metric are given to illustrate how faulty this methodology is. Likewise, though the subject parcel may be within 600 meters "as the crow flies" of the SAIT LRT station, the residents of this parcel will not be able to access the station without travelling approximately 900 meters. There is no safe controlled pedestrian crossing point for 14th Street N.W. at any point north of 7th Ave N.W. and south of 14th Ave. N.W. It needs to be remembered that 14th Street is the highest volume thoroughfare in the area after Crowchild Trail. One must deviate substantially from the "as the crow flies" route to safely and legally access the SAIT LRT platform from the subject parcel.

The 600 meter "as the crow flies" methodology is wrong and amounts to a way to grant a very valuable relaxation to the applicant which under a "permitted use" development permit would not be allowed.

The appellants also question whether the Development Authority has properly applied L.U.B. requirements that "permitted use" rowhouse developments have a motor vehicle parking stall for every unit. While the circulated plans indicate that private single vehicle garages will be provided by the applicant, we sincerely doubt that the structure will function as required as off-street parking. The concern arises from the fact that, like other recent rowhouse developments in the area that contain secondary suites, there will be a material issue with the storage and handling of City of Calgary bins for recycling, compost and garbage. If this proposal follows suit with other newly occupied two suite rowhouses, each suite will be assigned three bins, one each for blue, green, and black. In this case there are a total of 23 suites proposed for the parcel which means a total of 69 individual bins. The need to store these bins in such a way that they do not impede traffic in the alley will necessitate one of two scenarios. Either bins will be stored in already tight single car garages ,or they will be lined up along the east elevation of the garage structure where 108 lineal feet of that elevation is overhead garage door openings or 82% of the elevation face. Remember each garage represents 5.75 bins. Each bin is 2'0" wide by 2'4" deep. There is very little wall space between overhead doors, about 2'0". So

even if bins are stored two deep between overhead doors this accounts for 26 bins, leaving 43 bins needing storage space. Wednesdays will be particularly problematic. On this day both green and blue bins will be picked up. So, along the east elevation on this day 46 bins must be put out. Given that bins are 2'0" wide and 1'6" space is needed between bins for operating clearance there will be a need for 158' of frontage to accommodate pickup. The East elevation is 135 feet. The bottom line is that this scenario will block overhead garage doors, rendering the structure unsuitable for parking for that day and until picked up bins and properly stowed. Similarly, this scenario will play out again every second Tuesday on black bin pickup.

Circulated plans do not indicate an alternative waste management plan. We submit to the board that on account of the waste bin scenario that we have laid out that the Development Authority has erred and has not followed sound planning principles in approving this permit as well as having the requisite number of properly functioning parking stalls for primary above grade units.

Myself and the co-appellants look forward to the hearing to further discuss this matter.

Regards,

George Giachino
Appellant SDAB 2021-0040

From: Calgary SDAB Info <Info@calgarysdab.ca>
Sent: June 8, 2021 12:57 PM
To: Calgary SDAB Info <Info@calgarysdab.ca>
Subject: RE: Notice of Appeal: SDAB2021-0040 (CORRECT DP2021-1721, 1653 8 Avenue NW (Bldg: 818, 822, 826 16 Street NW)

Please note the correct development permit number – our apologies for any confusion this may have caused.

Appeal Number: SDAB2021-0040
1653 8 Avenue NW (Bldg: 818, 822, 826 16 Street NW). New: Rowhouse Building (1 Building, 12 Units), Secondary Suite (11 Suites), Accessory Residential Building (2 Buildings - Garage and Bicycle Storage) Appeal against an approval. **DP2021-1721**

Thank you,

SDAB Admin
City Appeal Boards, Appeals and Tribunals
City Clerk's Office | The City of Calgary | Mail Code #8110
PO Box 2100, Station M | Calgary, AB T2P 2M5
General Phone Line: 403.268.5312 | calgarysdab.ca

From: Riley, Coeur A. **On Behalf Of** Calgary SDAB Info
Sent: Thursday, June 3, 2021 10:46 PM
To: Calgary SDAB Info <Info@calgarysdab.ca>
Subject: Notice of Appeal: SDAB2021-0040 (DP2021-0040, 1653 8 Avenue NW (Bldg: 818, 822, 826 16 Street NW)

An appeal has been filed with the Calgary Subdivision and Development Appeal Board (SDAB) regarding a decision of The City of Calgary DEVELOPMENT AUTHORITY as follows:

Appeal Number: SDAB2021-0040
1653 8 Avenue NW (Bldg: 818, 822, 826 16 Street NW). New: Rowhouse Building (1 Building, 12 Units), Secondary Suite (11 Suites), Accessory Residential Building (2 Buildings - Garage and Bicycle Storage) Appeal against an approval. DP2021-0040.

The appeal is tentatively scheduled as follows:

Type:	**Procedural & Jurisdictional**
Date:	**Thursday, June 24, 2021**
Time:	**9:00 a.m.***
Format:	**MS Teams video conference call**

*The time assigned to your appeal is the earliest possible time this particular item might be heard. The start time of these appeals may be delayed depending on the complexities associated with other appeals.

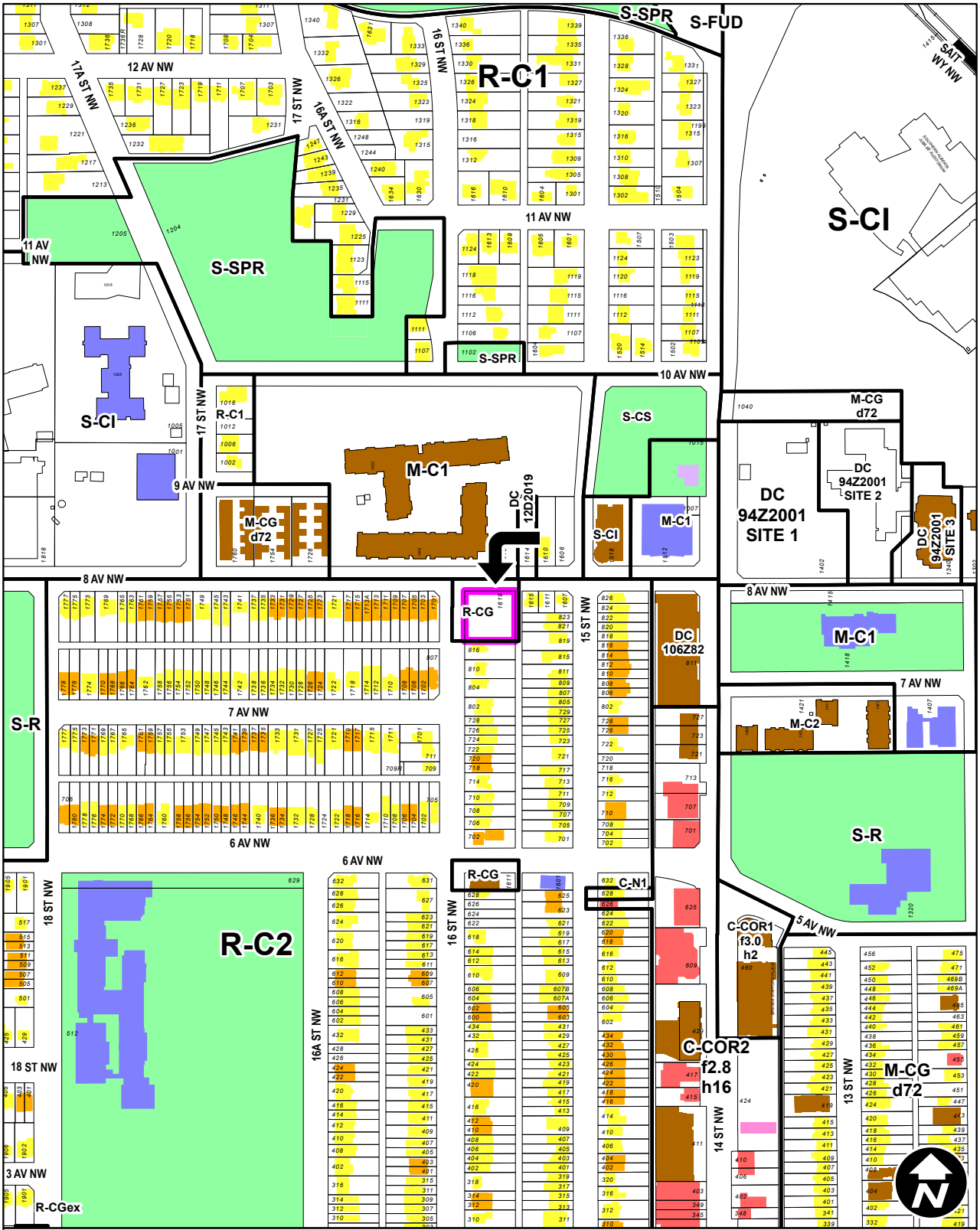
*You do not have to have the application downloaded to participate.

A formal Notice of Hearing letter confirming your hearing date and further outlining how to participate and submit your materials for evidence will be emailed to you on: **Friday, June 11, 2021**

We encourage you to reference our website at http://calgarysdab.ca/preparing-for-a-hearing.html for resources on how to prepare your evidence based on
relevant planning considerations, how to respond to the issues being raised by the other parties, and on the hearing procedures.

If you cannot attend this hearing, you may have an authorized individual represent you. When authorizing someone to speak on your behalf, you are encouraged
to provide written authorization to info@calgarysdab.ca. Please reference your appeal hearing (SDAB2021-XXXX) and/or the development permit (DP2021-XXXX)

Appeal Board rec'd: June 16, 2021
Submitted by: Development Authority



VUGRAPH - ITEM NO. SDAB2021-0040

SDAB2021-0040

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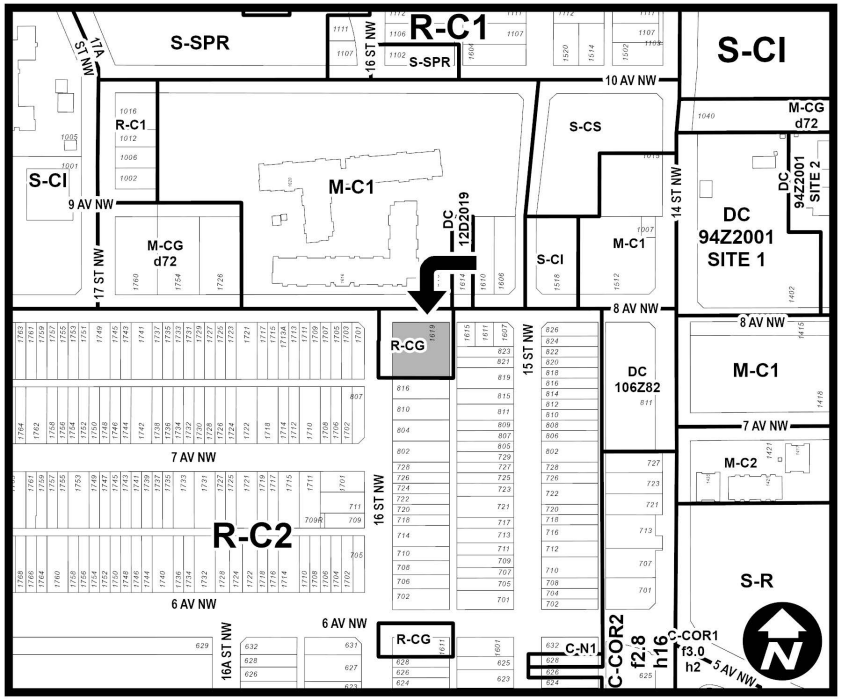


SDAB2021-0040

May 11, 2021

JACKSON MCCORMICK DESIGN GROUP
ANDREW RELAYO
ANDREW@JMDESIGNGROUP.CA
(403) 520-8018

Dear Sir/Madam:

RE: Notification of Decision:DP2021-1721
Subject: New: Rowhouse Building (1 Building, 12 Units), Secondary Suite (11 Suites), Accessory Residential Building (2 Buildings - Garage and Bicycle Storage)
Project: hillhurst multi-family
Address: 1619 8 AV NW

This is your notification of decision by the Development Authority to approve the above noted application on may 11, 2021.

Read all of the Permanent Conditions of approval carefully as they form part of the approval decision. Advisory Comments, if applicable, are also attached and are intended to be of assistance in obtaining additional permits and supplementary information for the successful completion of your development.

Development approved by this permit must commence by May 11, 2023 or the development permit shall cease to be valid.

An appeal along with reasons must be submitted, together with payment of $200.00 fee, to the Subdivision and Development Appeal Board (4th floor, 1212 31 Avenue N.E., Calgary, AB T2E 7S8) within 21 days of receipt of this letter. An appeal may also be filed online at http://www.calgarysdab.ca. To obtain an appeal form, for information on appeal submission options or the appeal process, please call (403) 268-5312.

Please note that this letter is to advise you of the conditions of approval and the timeframe in which you may appeal the conditions. You will be required to meet the Prior to Release Requirements before your Development Permit will be released. Should you require clarification of the above or further information, please contact me at (403) 268-5398 or by email at Allan.Singh@calgary.ca and assist me by quoting the Development Permit number.

Sincerely,

Allan Singh
Planner 1
Planning and Development

Attachment(s)

May 11 2021

Reasons for Approval for DP2021-1721

The Reasons for Approval document is intended to provide a short summary of the development permit process; response to concerns raised by neighbours, other affected parties and the Community Association; and rationale for any relaxations of the Land Use Bylaw granted by the Development Authority. Only the approved plans and conditions of approval are the subject of an appeal.

Scope and Process

Development Scope:

The development permit (DP2021-1721) was submitted by Jackson McCormick Design Group on 16 March 2021. The application seeks approval for a new 12-unit rowhouse building at 1619 8 Avenue NW in the community of Hillhurst.

The subject parcel is located at the northwest corner of 8 Avenue NW and 16 Street NW in the community of Hillhurst, in the northwest quadrant of Calgary. The parcel has a total area of 1,650 square metres, with approximate dimensions of 40 metres in frontage along 8 Avenue NW and 45 metres in frontage along 16 Street NW. The site currently contains three one-storey single detached dwellings with detached garages. A rear lane exists along the eastern boundary of the site.

The community is characterized by a mix of residential uses. The predominant land use in the area is Residential – Contextual One / Two Dwelling (R-C2) District to the south of 8 Avenue NW. However, there are pockets of re-development throughout the area which contain a mix of higher residential densities, specifically redevelopment north of the site along 8 Avenue NW. In terms of open space amenities, Hounsfield Heights, Riley and West Hillhurst Parks are all located within a one-kilometre radius of the subject site.

The parcel is designated as Residential – Contextual Grade Oriented Infill District, which allows for the rowhouse building use.

A previous Development Permit application (DP2020-3544) was applied for in June 2020. The applicant proposed a 12 unit rowhouse with secondary suites but as a Discretionary use. After careful consideration and review, the Development Authority rendered a decision of Approval in November 2020. However, the decision was appealed in December 2020 and argued in front of the SDAB in February 2021. The board ruled in favour of the appellant and the Development Authority's decision was overturned. When a decision is overturned on a Discretionary approval the applicant must wait 6 months before being allowed to apply for the same use again. However, since this application was applied for as a Permitted use the applicant may proceed with the application and is not required to wait an allotted time as per the 1P2007.

Circulation and Notice Posting:

The following referees were circulated:

1. Ward Councillor – no objection
2. Enmax – no objection
3. Building Regulations – provided advisory comments
4. Hounsfield Heights Community Association – no objection
5. Hillhurst-Sunnyside Community Association – provided comments
   The Community Association's concerns included:
   a. Compatibility with context;
   b. Privacy concerns;
   c. Poor design;
   d. Increase in density, and
   e. Deficiency in motor vehicle parking stalls.

6. As per Land Use Bylaw requirements, the application was not notice posted. Permitted Applications must not be notice posted, per Section 27 of the Land Use Bylaw.

The Developer has indicated they will be reaching out to adjacent neighbours to inform them of the approval. Although the application is to be approved as a Permitted use it can still be appealed on the basis that the Development Authority made an error during its review process, thus not meeting all the rules of the bylaw.

Comments on Relevant City Planning Policies

Municipal Development Plan (Statutory – 2009)

The subject parcel is located within the Residential – Developed – Inner City area as identified on Map 1: Urban Structure in the *Municipal Development Plan* (MDP). The applicable MDP policies encourage redevelopment and modest intensification in inner-city communities intended to occur in a form and nature that respects the scale and character of the neighbourhood context.

The proposal is in keeping with relevant MDP policies as the R-CG District is a low-density district and provides for a modest increase in density in a form that is sensitive to existing residential development in terms of height, scale and massing. Furthermore, the application aligns with Section 2.6 of the MDP as the proposal would allow for a more compact urban form that uses less land.

Hillhurst/Sunnyside Area Redevelopment Plan (Statutory – 1988)

The Hillhurst Sunnyside Redevelopment Plan (ARP) provides statutory direction for future redevelopment in the community of Hillhurst. The ARP was adopted by Council in 1988.

The ARP supports residential intensification through renovation, redevelopment, conversion, and infill development that is sensitive to the existing neighbourhood. The ARP encourages a variety of housing forms that accommodate different age groups, household types, and income levels. The policies of the ARP encourage redevelopment that is contextually sensitive to the existing character of the community.

In the ARP, the subject site is located within Residential Character Area 5, which allows for Low Density and Low Density Multi-Unit type redevelopment. The Low Density Multi-Unit policy allows for a low profile multi-unit redevelopment with a maximum density of 75 units per hectare.

Land Use Bylaw 1P2007

Back on 28 July 2020, Council approved an applicant-initiated land use amendment (LOC2020-0003; Bylaw 95D2020) for the subject parcels located at 818 and 822 16 Street NW to the Residential – Contextual Grade Oriented Infill (R-CG) District from Residential – Contextual One/Two District. The parcel located at 826 16 Street NW was previously redesignated to the R-CG in 2018. The approval of the land-use amendment was necessary to amalgamate the three parcels into a single subject site to accommodate the proposed development.

The R-CG District is intended to accommodate a grade-oriented development in the form of rowhouse buildings, in addition to buildings and land uses already allowed in low density residential districts such as duplexes, single, semi-detached dwellings and secondary suites. This land use amendment allows for an increase of the maximum Bylaw building height to 11 metres and an increase of density to allow for a maximum of 12 units on the subject parcel based on the 75 units per hectare bylaw outlined in the R-CG District.

A bylaw check of the proposed development identified no bylaw relaxations. All applicable rules pertaining to the Rowhouse, Accessory Residential Garage and Secondary Suites have been met.

Reasons For Approval

The Development Authority supports the proposal for the following reasons:

- The intent of the MDP and Local Area Plan has been met. The proposal is in keeping with both statutory policies as the R-CG District provides for a modest increase in density in a form that is sensitive to existing residential development in terms of height, scale and massing**.**

- CPAG and each generalist conducted a thorough review as pertained to their disciplines and found no impediment to approving this development. Furthermore, the requirements for each discipline were met, thus allowing the Development Authority to render a decision of approval.

- In conjunction with the CPAG review, three bylaw checks were conducted on three separate occasions to confirm if all the rules of proposed use were met. The first two checks revealed minor deficiencies that needed to be amended. These were addressed by the applicant and the final check on May 5th indicated there were no outstanding items left that needed to be resolved. As such, the proposal complies with the applicable rules of the Land Use Bylaw.

For the reasons listed above the Development Authority approves this Development Permit application.

DEVELOPMENT PERMIT
LAND USE BYLAW NO 1P2007

DP2021-1721

This permit relates to land in the City of Calgary municipally described as:

1619 8 AV NW

Community: **Hillhurst** L.U.D.:**R-CG, R-CG**

and legally described as:

6219L;6;39-41

and permits the land to be used for the following development:

New: Rowhouse Building (1 Building, 12 Units), Secondary Suite (11 Suites), Accessory Residential Building (2 Buildings - Garage and Bicycle Storage)

The present owner and any subsequent owner of the above described land must comply with any attached conditions.

The development has been approved subject to any attached conditions and to full compliance with the approved plans bearing the stamp of approval and the above development permit number.

Decision By: **Development Authority**

Date of Decision: **May 11, 2021**

Development Authority **Joshua Ross** _____

File Manager: **Allan Singh** Release Date: _____

This permit will not be valid if development has not commenced by: May 11, 2023

This is NOT a Building Permit

In addition to your Development Permit, a Building Permit may be required, prior to any work commencing. further information, you should contact the City of Calgary, Planning, Development & Assessment - Building Regulations Division.

WARNING

This permit does not relieve the owner or the owner's authorized agent from full compliance with the requirements of any federal, provincial or other municipal legislation, or the terms and conditions of any easement, covenant, building scheme or agreement affecting the building or land.

Applicant: **JACKSON MCCORMICK DESIGN GROUP**
Address: **804A 16 AV SW**
City: **CALGARY, AB, T2R 0S9**
Phone: **4035208018**

Complete Address and Legal Description listing for Development Permit DP2021-1721

Address Type	Address	Legal Description
Building	818 16 ST NW	
Building	822 16 ST NW	
Building	826 16 ST NW	
Parcel	1619 8 AV NW	**6219L;6;39-41**

Conditions of Approval – Development Permit

Application Number:	**DP2021-1721**
Application Description:	New: Rowhouse Building (1 Building, 12 Units), Secondary Suite (11 Suites), Accessory Residential Building (2 Buildings - Garage and Bicycle Storage)
Land Use District:	Residential - Grade-Oriented Infill
Use Type:	Permitted
Site Address:	1619 8 AV NW
Community:	HILLHURST
Applicant:	JACKSON MCCORMICK DESIGN GROUP

CPAG Team		
Planning:	ALLAN SINGH	Allan.Singh@calgary.ca
Development Engineering:	DINO DI TOSTO	dino.ditosto@calgary.ca
Parks:	KAREN MOUG	Karen.Moug@calgary.ca
Transportation:	JASON BELL	Jason.Bell2@calgary.ca

Prior to Release Requirements

The following requirements shall be met prior to the release of the permit. All requirements shall be resolved to the satisfaction of the Approving Authority:

Planning

1. Please submit a complete digital set of the amended plans in PDF format and a separate PDF response letter that provides a point-by-point explanation as to how each of the Prior to Decision conditions were addressed and/or resolved. If Prior to Release conditions have been addressed in the amended plans, include a point-by-point explanation for these items as well. The submitted plans must comprehensively address the Prior to Decision conditions as specified in the DTR document. Ensure that all plans affected by the revisions are amended accordingly. To arrange the digital submission, please contact the File Manager directly.

Transportation

2. Remit a performance security deposit (certified cheque, bank draft, letter of credit) for the proposed infrastructure listed below within the public right-of-way to address the requirements of the Business Unit. The amount of the deposit is calculated by Roads and is based on 100% of the estimated cost of construction.

   The developer is responsible to arrange for the construction of the infrastructure with their own forces and to enter into an Indemnification Agreement with Roads at the time of construction (the security deposit will be used to secure the work).

   Roads
   a. Reconstruction of new lane driveway crossings on 8 Av NW,
   b. Construction of new 1.5m sidewalk adjacent to 8 Av NW,
   c. Construction of new wheelchair ramp on the NW corner of 8 Av and 16 St NW,
   d. Rehabilitation of existing sidewalks, curb and gutter, etc., should it be deemed necessary through a site inspection by Roads personnel,

3. Remit payment (certified cheque, bank draft) for the proposed street light upgrades adjacent to the development within the public right-of-way to address the requirements of the Roads Business Units. The amount is calculated by Roads and is based on 100% of the estimated cost of construction. The developer is responsible to coordinate the timing of the construction by City forces. The payment is non-refundable.

Development Engineering

4. Submit three (3) sets of the Development Site Servicing Plan details to Development Servicing, Inspections and Permits, for review and acceptance from Water Resources, as required by Section 5 (2) of the Utility Site Servicing Bylaw 33M2005. Contact Water Resources for additional details for additional details.

   The DSSP may be submitted prior to approval of this DP. Produce this DTR document at the 3rd floor counter as evidence for early DSSP submission.

   For further information, refer to the following:

   Design Guidelines for Development Site Servicing Plans
   http://www.calgary.ca/UEP/Water/Pages/Specifications/Water-developent-resources/Development-Site-Servicing-Plans.aspx

   Development Site Servicing Plans CARL (requirement list)
   http://www.calgary.ca/PDA/pd/Pages/Permits/carl-building-development-permit-search.aspx

5. After the Development Permit is approved but prior to its release, the landowner shall execute an Off-Site Levy Agreement for the payment of off-site levies pursuant to Bylaw 2M2016. The off-site levy is based on a 2020 development approval date and was based on the following:

   Based on the information given, the preliminary estimate is $32,793.00.

Should payment be made prior to release of the development permit, an Off-Site Levy Agreement will not be required.

a) include the completed Payment Submission Form, which was emailed to the applicant.
b) Only certified cheques or bank drafts made payable to the City of Calgary are acceptable.

To obtain an off-site levy agreement or for further information, contact the Calgary Approvals Coordination, Infrastructure Strategist (JILL THOMSON at 4032685782 or Jill.Thomson@calgary.ca) or offsitelevy@calgary.ca.

Parks

6. Amend the site and landscape plans to indicate all existing public trees within 6.0m of the development site. As per the Tree Protection Bylaw, provide the following updated information obtained by Urban Forestry:

   a. Tree species,
   b. Caliper of tree trunk (dbh),
   c. Height of tree,
   d. Location of the centre point of the tree trunk,
   e. Scaled outline of the tree canopy dripline,
   f. Indicate whether the tree is to remain or to be removed.

Tree No./Serial	Species	Canopy (m)	Height (m)	Calliper (cm)	Status
16/T32092198	**American Elm**	11	11	**62**	**Remain**
40/T32092194	**American Elm**	8	9	**51**	**Remain**
41/T32092193	**American Elm**	8	9	**56**	**Remain**
42/T32092192	**American Elm**	8	9	**47**	**Remain**

7. Amend the plans to include a note stating 'An Urban Forestry Technician must be on-site during excavation of the proposed servicing from 16 ST NW and proposed walkways in order to mitigate any damage to adjacent public trees. Contact Urban Forestry by phoning 311 at least three (3) business days in advance of excavation.' If canopies or root systems are damaged to the point where the tree becomes unstable, then Urban Forestry will require their removal using an approved indemnified tree contractor at applicant's expense, plus compensation for the removed tree(s).

Permanent Conditions

The following permanent conditions shall apply:

Planning

8. The development shall be completed in its entirety, in accordance with the approved plans and conditions.

9. No changes to the approved plans shall take place unless authorized by the Development Authority.

10. Prior to issuance of a development completion permit, provide copies of the land titles and registered subdivision or bare land condominium plan. These documents must comply with the Land Use Bylaw 1P2007 requirements that prohibit more than one Secondary Suite per parcel or bare land unit containing a Dwelling Unit.

11. All trees located within the subject property and shown on the approved plans, which cannot be retained during development, must be replaced by a tree of a species and size which is acceptable to the Development Authority within twelve months of the issuance of the development completion permit

12. The grades indicated on the approved Development Permit plans must match the grades on the Development Site Servicing Plan for the subject site as per the Lot Grading Bylaw.

13. All areas of soft landscaping shall be provided with an underground sprinkler irrigation system as identified on the approved plans.

14. Crushed aggregate or materials including but not limited to brick, pea gravel, shale, river rock and gravel are not permitted within required landscape areas.

15. Upon completion of the main floor of each townhouse proof of the geodetic elevation of the constructed main floor must be submitted to and approved by the Development Authority prior to any further construction proceeding. Email confirmation to geodetic.review@calgary.ca.

16. If during construction of the development, the developer, the owner of the titled parcel, or any of their agents or contractors becomes aware of any contamination, the person discovering such contamination shall immediately report the contamination to the appropriate regulatory agency including, but not limited to, Alberta Environment, Alberta Health Services and The City of Calgary (311).

    If prior to or during construction of the development, the developer, the owner of the titled parcel, or any of their agents become aware of contamination on City of Calgary lands or utility corridors, the City's Environmental Assessment & Liabilities division shall be immediately notified (311).

17. A Development Completion Permit shall be issued for the development; before the use is commenced or the development occupied. A Development Completion Permit is independent from the requirements of Building Permit occupancy. Call Development Inspection Services at 403-268-5311 to request a site inspection for the Development Completion Permit.

18. Retaining wall(s) that are 1.2m or greater in height shall be located and constructed as shown on the approved plans released with this permit.

19. Parking and landscaping areas shall be separated by a 150mm (6 inch) continuous, poured in place, concrete curb or equivalent material to the satisfaction of the Development Authority, where the height of the curb is measured from the finished hard surface.

Transportation

20. The developer shall be responsible for the cost of public work and any damage during construction in City road right-of-ways, as required by the Director, Transportation Planning. All work performed on public property shall be done in accordance with City standards.

21. Indemnification Agreements are required for any work to be undertaken adjacent to or within City rights-of-way, bylawed setbacks and corner cut areas for the purposes of crane operation, shoring, tie-backs, piles, surface improvements, lay-bys, utility work, +15 bridges, culverts, etc. All temporary shoring, etc., installed in the City rights-of-way, bylawed setbacks and corner cut areas must be removed to the satisfaction of the Manager of Transportation Planning, at the applicant's expense, upon completion of the foundation. Prior to permission to construct, contact the Indemnification Agreement Coordinator, Roads at roadsia@calgary.ca

22. Garage aprons at rear must tie to the existing lane grades. Lane grades will be provided on the grade slip issued by Development Servicing. It is the responsibility of developer, contractor, or homeowner to set the elevations of the garage slab based on the lot grading and to ensure that garage is operationally accessible and that it ties to established land grades. Lane grades are not to be altered without the approval of Roads.

Development Engineering

23. If during construction of the development, the developer, the owner of the titled parcel, or any of their agents or contractors becomes aware of any contamination,
a. the person discovering such contamination shall immediately report the contamination to the appropriate regulatory agency including, but not limited to, Alberta Environment and Parks, Alberta Health Services and The City of Calgary (311).
b. on City of Calgary lands or utility corridors, The City of Calgary, Environmental Risk and Liability group shall be immediately notified (311).

24. The developer / project manager, and their site designates, shall ensure a timely and complete implementation, inspection and maintenance of all practices specified in erosion and sediment control report and/or drawing(s) which comply with Section 3.0 of The City of Calgary Guidelines for Erosion and Sediment Control. Any amendments to the ESC documents must comply with the requirements outlined in Section 3.0 of The City of Calgary Guidelines for Erosion and Sediment Control.

    For other projects where an erosion and sediment control report and/or drawings have not been required at the Prior to Release stage, the developer, or their designates, shall, as a minimum, develop an erosion and sediment control drawing and implement good housekeeping practices to protect onsite and offsite storm drains, and to prevent or mitigate the offsite transport of sediment by the forces of water, wind and construction traffic (mud-tracking) in accordance with the current edition of The City of Calgary Guidelines for Erosion and Sediment Control. Some examples of good housekeeping include stabilization of stockpiles, stabilized and designated construction entrances and exits, lot logs and perimeter controls,

suitable storm inlet protection and dust control.

The City of Calgary Guidelines for Erosion and Sediment Control can be accessed at: www.calgary.ca/ud (under publications).

For all soil disturbing projects, the developer, or their representative, shall designate a person to inspect all erosion and sediment control practices a minimum of every seven (7) days and during, or within 24 hours of, the onset of significant precipitation (> 12 mm of rain in 24 hours, or rain on wet or thawing soils) or snowmelt events. Note that some practices may require daily or more frequent inspection. Erosion and sediment control practices shall be adjusted to meet changing site and winter conditions.

25. Stormwater runoff must be contained and managed in accordance with the Stormwater Management & Design Manual all to the satisfaction of the Director of Water Resources.

26. The grades indicated on the approved Development Site Servicing Plan(s) must match the grades on the approved Development Permit plans. Upon a request from the Development Authority, the developer or owner of the titled parcel must confirm under seal from a Consulting Engineer or Alberta Land Surveyor, that the development was constructed in accordance with the grades submitted on the Development Permit and Development Site Servicing Plan.

27. Prior to issuance of a Development Completion Permit or any occupancy of the building, payment shall be made for off-site levies pursuant to Bylaw 2M2016.

28. Pursuant to Bylaw 2M2016, off-site levies are applicable

Parks

29. Any damage to public parks, boulevards or trees resulting from development activity, construction staging or materials storage, or construction access will require restoration at the developers expense. The disturbed area shall be maintained until planting is established and approved by the Parks Development Inspector. Contact the Development Inspector at 403-804-9397 for an inspection.

30. In order to ensure the integrity of existing public trees and roots, construction access is only permitted through the rear lane and outside the dripline of public trees, per the approved Tree Protection Plan.

31. Public trees located on the boulevard adjacent to the development site shall be retained and protected unless otherwise authorized by Urban Forestry. Prior to construction, install a temporary fence around the extent of the branches ("drip line") and ensure no construction materials are stored inside this fence.

32. In order to ensure the integrity of existing public trees and roots, no grade changes are permitted in the boulevard within drip lines.

33. Tree protection information given as per the approved development permit does not constitute Tree Protection Plan approval. Tree Protection Plan approval must be

obtained separately through Urban Forestry. Visit www.calgary.ca, call 311, or email tree.protection@calgary.ca for more information.

Advisory Comments

The following advisory comments are provided as a courtesy to the Applicant and registered property owner. The comments represent some, but not all of the requirements contained in the Land Use Bylaw that must be complied with as part of this approval.

Planning

34. The approval of this Development Permit does not limit in any way the application of the regulations in the Alberta Building Code, nor does it constitute any permit or permission under the Alberta Building Code.

35. The Applicant may appeal the decision of the Development Authority, including any of the conditions of the development permit. If you decide to file an appeal, it must be submitted to the Subdivision and Development Appeal Board (4th Floor, 1212 31 Avenue NE, Calgary, AB T2E 7S8) [DJ3 Building] within 21 days after the date on which the decision is made. An appeal along with reasons must be submitted, together with payment of a $200.00 fee, to the Subdivision and Development Appeal Board. An appeal may also be filed online at http://www.calgarysdab.ca or mailed to Subdivision and Development Appeals Board (#8110), P.O. Box 2100, Station M, Calgary AB T2P 2M5. To obtain an appeal form, for information on appeal submission options or the appeal process, please visit the website or call 403-268-5312.

36. Building Regulations has provided comments as it pertains to this this application. Please refer to the attachment provided with this document for details. If you require further assistance contact Carla Weedon at 403-807-5129 or Jennifer.Rodger@Calgary.Ca for Building Permit related questions.

37. In addition to your Development Permit, you should be aware that Building Permit(s) are required. Once your Development Permit application has been approved, you may apply for Building Permit(s). Please contact Building Regulations at 403-268-5311 for further information.

Transportation

38. Contact the Traffic Engineer (403-268-4356) ten (10) weeks prior to occupancy to arrange for signage to support the subject development. All costs will be at the applicant's sole expense and invoiced at time of installation.

Development Engineering

39. The developer is responsible for ensuring that:
a. The environmental conditions of the subject property and associated utility corridors meet appropriate regulatory criteria and appropriate environmental assessment, remediation or risk management is undertaken.
b. Appropriate environmental assessment(s) of the property has been undertaken and, if required, a suitable remedial action plan and/or risk management plan has been prepared, reviewed and accepted by the appropriate regulatory agency(s) including but not limited to Alberta Environment and Parks and Alberta Health Services.
c. The development conforms to any reviewed and accepted remedial action plan/risk management plans.
d. All reports are prepared by a qualified professional in accordance with accepted guidelines, practices and procedures that include but are not limited to those in the most recent versions of the Canadian Standards Association and City of Calgary Phase I & II Environmental Site Assessment Terms of Reference.
e. The development is in compliance with applicable environmental approvals (e.g. Alberta Environment and Parks Approvals, Registrations, etc.), Alberta Energy Regulator approvals and related setback requirements, and landfill setback requirements as set out in the Subdivision and Development Regulation.

    If the potential for methane generation or vapours from natural or contaminated soils and groundwater has been identified on the property, the developer is responsible for ensuring appropriate environmental assessment(s) of the property has been undertaken and appropriate measures are in place to protect the building(s) and utilities from the entry of methane or other vapours.

    Issuance of this permit does not absolve the developer from complying with and ensuring the property is developed in accordance to applicable environmental legislation.

40. The allowable stormwater run-off coefficient shall be 50 L/s/ha.

41. As per The City of Calgary Drainage Bylaw 37M2005, the developer, and those under their control, are responsible for ensuring that a Drainage Permit is obtained from Water Resources prior to discharging impounded runoff (caused by rainfall and/or snowmelt) seepage or groundwater from construction site excavations or other areas to a storm sewer. The developer, and those under their control, is responsible for adhering to all conditions and requirements stipulated in the Drainage Permit at all times. For further information, contact the Corporate Call Centre at 311 or visit http://www.calgary.ca/UEP/Water/Pages/Watersheds-and-rivers/Erosion-and-sediment-control/Report-and-Drawings-Templates-and-Guides.aspx (Drainage Permit applications can be downloaded from this website).

42. For questions and concerns regarding waste storage facilities, refer to the Development Reviews: Design Standards for the Storage and Collection of Waste Found at: http://www.calgary.ca/UEP/WRS/Pages/Commercial-Services/Development-Permits-Waste-Recycling.aspx

Parks

43. The Streets Bylaw (20M88) and the Tree Protection Bylaw (23M2002) contain clauses intended to protect trees growing on Public Land. No person shall remove, move, cut, or prune a Public Tree or cause a Public Tree to be removed, moved, cut or pruned without prior written authorization from the Director, Parks. A copy of the bylaw can be found at www.calgary.ca. Parks does not permit the removal of public trees to facilitate development unless all options to retain and protect are exhausted.

44. If clearance pruning of public trees is required, Urban Forestry must be notified (minimum two business days notice) and an indemnified contractor must be used at the applicants expense. Please contact Urban Forestry at 311 for more information.

45. An Urban Forestry Technician must be on-site to mitigate possible root damage to adjacent public trees during excavation of servicing from 16 ST NW and proposed walkways. Prior to construction, contact Urban Forestry at 311 and ask to speak to an Urban Forestry Technician. Urban Forestry requires minimum two business days notice prior to meeting onsite.

46. As part of the Tree Protection Bylaw, a Tree Protection Plan will be required when a development, construction activity, or a disturbance occurring on the City Boulevard is within 6 metres of a boulevard tree. For more information about submitting your tree protection plan visit www.calgary.ca and search protecting trees during construction and development; alternatively, call 311 or email tree.protection@calgary.ca. Applicant is to apply for tree protection plan prior to demolition.

47. The applicant will be required to provide compensation to the City of Calgary for any Public Trees that are removed or damaged. The Public Trees adjacent to this development are valued at $33,998.87. Applicants that are unfamiliar with tree protection or tree appraisal are advised to consult an arborist.

48. Services should be shown on the plans in accordance with the Grade Slip granted by the City. If the servicing trench will be located within the dripline of an existing public tree, the applicant shall contact Urban Forestry or contact Development Site Servicing through 311 in attempt to avoid this conflict.

49. No stockpiling or dumping of construction materials is permitted on the adjacent boulevard.

Development Permit Complete Application Requirement List

New Rowhouse, or Addition to Existing Rowhouse, in the Developed Area

The following **Development Permit Complete Application Requirement List** outlines all of the information necessary to evaluate and provide a timely decision on your application. Only applications that are complete will be accepted. Applications and materials submitted must be clear, legible and precise. Plans submitted must be to a professional drafting standard. All plans must be clear of any previous approval stamps and/or notations. Please review the **Processing Times and Deemed Refusal** section.

NOTE: Building and development permit applications must be submitted without personal information on any plans. Omitting this information will protect builders and tenants by reducing the risk of any personal information being wrongfully displayed, while also following the Province of Alberta's FOIP Act. Failure to follow this requirement may result in an incomplete application. If you consider the information to be personal, do not put it on the plans.

The Development Authority may require additional material considered necessary to properly evaluate the proposed development (as stated in Part 2, Section 26(3) of the Land Use Bylaw1P2007).

Processing Times and Deemed Refusals

Applicants are advised of their option under the Municipal Government Act to treat their application as being refused if the Development Authority fails to make a decision within 40 days of the application being accepted by the Development Authority, or at the expiry of an extended review timeframe specified by a time extension agreement between the Development Authority and Applicant. Time extension agreements must be initiated by the Applicant.

To exercise the "deemed refusal" option, an appeal to the Subdivision and Development Appeal Board must be filed within 14 days of the latest specified date for the review, or the right to an appeal is lost until such time as a decision is rendered on the application by the Development Authority.

SECTION 1: Project Details

Project Address: 818 / 822 / 826 16th ST N.W. Calgary, Alberta					
Cumulative gross floor area:	Addition	☐ ft² ☐ m²	New Building: 23154.09	☑ ft² ☐ m²	
New dwelling units created:	☑ Yes ☐ No	If yes, number of new dwelling units: 12			

SECTION 2: Required Items

✓ 1	A copy of the current **Certificate(s) of Title**
✓ 2	Current copies of any **Restrictive Covenants, Utility Rights-of-Way, Easements, or City Caveats** registered on the Title(s)
✓ 3	**A Letter of Authorization*** from the registered owner of the land, their agent, or other persons having legal or equitable interest in the parcel. *You may use this sample letter of authorization template or you can provide your own letter, but it must contain all information indicated on the sample letter
✓ 4	**Colour photographs** (minimum of four different views, label and identify each photograph) showing: ▪ Site from front and rear ▪ One adjoining parcel on either side of the subject site ▪ Unique features and aspects of significance to development of the parcel ▪ Details of curbs, driveways, sidewalks, garbage enclosures and overhead poles

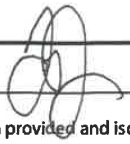
MAIN AREA. 6686.63 sqft.
GARAGE 2596.4 sqft.
BIKE 424 sqft.

	Optional: **Color rendering, elevation, or streetscape** to appear on Notice Posting. For more information go to calgary.ca/noticeposting
5	☐ Emailed to notices@calgary.ca* with following size requirements: Small: 1560 pixels x 789 pixels, landscape view Large: 2431 pixels x 2243 pixels, landscape view **must be identified with project address in email* ☐ Or the following requirements if submitted in printed form: Small: 8.55"x16", landscape view, minimum 300 DPI Large: 26"x21", landscape view, minimum 300 DPI
6	Development Permit fee (Fee Schedule) ?
7	Residential Grades fee, where applicable ?
8	☑ Completed Site Contamination Statement
9	✓ Completed Public Tree Disclosure Statement If public trees are identified one additional site plan may be required
10	✓ Completed Abandoned Well Declaration
11	✓ Completed Climate Resilience Inventory form
Plans	
12	One (1) copy of a **Site Plan**, including: (preferred scale is Metric 1:100 or Imperial ¼" = 1'0")
✓	**North arrow**, pointing to top or left of page
✓	**Municipal address** (i.e. street address) and legal address (i.e. plan/block/lot)
✓	All elements of plan labelled as **existing** or **proposed**
☑	**Include a legend showing:** ▪ Parcel area in square metres labelled ▪ Calculate areas of all buildings (include all covered structures) ▪ Calculate parcel coverage (total area of footprint, divided by parcel area)
☑	**Plot and dimension property lines and building setbacks:** ▪ Dimension front, side and rear building setbacks from property lines ▪ Draw, label, and dimension require setback areas
☑	**Corner parcels only:** ▪ Outline and dimension corner visibility triangle
	Geodetic datum points/contours: ▪ Label existing (if applicable) and proposed geodetic datum points ▪ At the corners of the parcel ▪ To demonstrate lot drainage to the street or lane ▪ To detail slope of the concrete drainage swale ▪ At the primary corners of the building ▪ Main floor and roof peak of the building

	Easements, Utility Rights-Of-Way, Utilities on and adjoining the parcel ▪ Dimension (width, depth and location) ▪ Label type of easement and registration number ▪ Include any proposed overland drainage easements when overland drainage will cross existing or proposed property lines ▪ Water, storm and sanitary sewer ▪ Gas, electrical, cable and telephone ▪ Utility poles ▪ Guy wires/pole anchors ▪ Hydrants, utility fixtures or boxes
	If an abandoned gas or oil well is identified on the site, indicate the necessary setback area for each well
	Plot Rights-of-Way setback lines required in Section 53, Table 1: ▪ Dimension depth of Rights-of-Way ▪ Dimension distance from Rights-of-Way to building
	Floodway, Flood Fringe and Overland Flow: ▪ Indicated on the Floodway/Flood Fringe maps [Section 3 (c) & (d)] ▪ Dimension distance to buildings and structures
	Adjacent to parcel: ▪ City streets, label street names ▪ Sidewalks, City and public paths (Regional Pathway System) ▪ Curb cuts, medians and breaks in medians ▪ Pedestrian crosswalks, bus zones and bus shelters ▪ Light standards, utility poles
	Dimension to property line: ▪ Back of sidewalk and curb ▪ Lip of gutter
	Setbacks: ▪ Dimension front, side and rear building setbacks from property lines ▪ Draw, label and dimension required setback areas (as prescribed in the Land Use Bylaw)
	Outline and dimension buildings: ▪ Projections and structures (bay windows, cantilevers, deck, window wells) ▪ Detached buildings and structures (sheds, garages) ▪ Mechanical equipment (parkade vents, air conditioners) ▪ Location of all openings (windows, doors, overhead doors)
	Driveways & parking areas: ▪ Label surface material ▪ Dimension length from back of curb or sidewalk ▪ Dimension width of driveway at throat and flare (adjacent to street) ▪ Dimension distance to adjoining driveways
	For R-G, and R-Gm districts, please indicate the outdoor private amenity space, along with the dimensions and total area.
	Retaining walls: ▪ Label height (provide height of fences on top of wall) ▪ Cross reference to elevation (for each wall) ▪ Provide geodetic datum points at top and bottom of wall ▪ Provide geodetic datum points of grade on each side of the wall (**NOTE:** height of retaining wall measured as the vertical difference between the ground levels on each side of the wall)
13	One (1) copy of **Floor Plan(s)** (preferred scale is Metric 1:100 or Imperial scale, minimum 3/16"=1")
	Municipal address (i.e. street address) and legal address (i.e. plan/block/lot)

	All elements labelled as **existing or proposed**
✓	**Outline and dimension walls:** ▪ Interior and exterior (dimension to centre line of common walls) ▪ Plot location of interior and exterior openings (windows, doors, overhead doors) ▪ Label the purpose of spaces (i.e. Kitchen, living room, bathroom)
14	One (1) copy of **Elevation(s)** (preferred scale is Metric 1:100 or Imperial scale, minimum 3/16"=1")
	Municipal address (i.e. street address) and legal address (i.e. plan/block/lot)
	All elements of plan labelled as **existing** or **proposed**
✓	**Include elevations for:** ▪ Dwelling and accessory residential buildings (e.g detached garage) ▪ Privacy screens and retaining walls (retaining walls must be less than 1.2 meters)
	Include on elevations: ▪ Decks, balconies, and decorative elements
	Grade: ▪ Plot existing (if applicable) and proposed grade extending to property lines ▪ Plot property lines (extending vertically) ▪ Plot all geodetic datum points required on Site Plan
	Building height (indicate on all elevations): ▪ Plot line for main floor ▪ Dimension height (vertically) of building from existing and proposed grade ▪ Dimension height of structures (fences, retaining walls) from existing and proposed grade
15	One (1) copy of **Cross-sections**, including: (preferred scale is Metric 1:100 or Imperial scale, minimum 3/16"=1")
✓	**Cross-section of driveways** ▪ Indicate slope and include transition lengths ▪ Provide geodetic datum points at transition points in ramp (including top and bottom)
Supporting Information	
16	**If the application is being submitted concurrently with an existing Land Use Amendment, a completed Concurrent Submission Declaration Form is required.**
	☐ Yes, this application is being submitted concurrently with a Land Use Amendment, LOC20__ -_____
	☐ No, this application is not being submitted concurrently with a Land UseAmendment
17	**When proposed development is to be phased (e.g. portions are to be occupied prior to the completion of the entire development), include a phasing plan showing the sequence of the phases and the area encompassed by each phase.** If parcel is located within the area governed by the Airport Vicinity Protection Act (AVPA) clearly label the NEF layer to which the parcel is located. AVPA calculations will be required at time of Building Permit application. If you are uncertain as to the location within the AVPA phone 403-268-5311.

NOTE: This application does not relieve the owner or the owner's authorized agent from full compliance with the requirements of any federal, provincial or other municipal legislation, or the terms and conditions of any easement, covenant, building scheme or agreement affecting the building or land.

Applicant's Signature  TODD JACKSON	Date: MARCH 18/2021
(confirming that all required information has been provided and iscorrect)	
Screened by	Date:
Planning Services Technician	
	Date:
Senior Services Technician	

Checklists are updated periodically. Please ensure you have the most recent edition.

Contact Us

Phone: 403 268 5311	In Person	Mail
Chat: Calgary.ca/livechat	3rd floor, Calgary Municipal Building 800 Macleod Trail SE, Calgary, Alberta	The City of Calgary Planning & Development (#8108) 800 Macleod Trail SE, Calgary, Alberta T2P 2M5
8:00 a.m. to 4:15 p.m. Monday – Friday	8:00 a.m. to 4:15 p.m. Monday – Friday	

Concurrent Submission Declaration

for Land Use Amendment and Development Permit Applications

PL 1249 (R2016-01)

LOC # _____

DP # _____

For office use only

Site Address: 818 / 822 / 826 16th ST N.W. Calgary, Alberta

Legal Description: Lot- 39 to 41 Block 6, Plan 6219L

When a proposed development requires both a Land Use Amendment and a Development Permit to proceed, applicants have two submission options. Applicants can wait to submit the Development Permit until after the Land Use Amendment has been approved, or they can submit the Development Permit while the Land Use Amendment is still in progress. The second option is referred to as a "concurrent submission." These two submission options allow the applicant to select the process that best suits the unique conditions of their application.

Planning & Development recommends that an applicant interested in the concurrent submission option request a Pre-Application Meeting before making their submission. At the Pre-Application Meeting, a planner will help the applicant determine which submission option is most appropriate for their application.

Please select from the following:

☐ A Pre-Application Meeting occurred. PE_____-_____.

☑ I am aware a Pre-Application Meeting is recommended but I chose not to request one.

Note: This form is to be signed by the titled owner(s) of the property or their authorized agents or consultants.

I, the ☑ owner, ☐ authorized agent, hereby declare that I understand my Land Use Amendment and Development Permit applications, as referenced above, will, at my request, be processed concurrently. I understand that my Development Permit application can only be approved by the Development Authority after the Land Use Amendment has been approved by Council.

I am aware that my Land Use Amendment application will be approved or refused at Council's discretion, regardless of the results of my Pre-Application Meeting (if such meeting occurred) and the fact that my applications are proceeding concurrently. I understand that if my Land Use Amendment application is refused, my Development Permit application will be cancelled and any applicable refund will be provided in accordance with the Council-approved fee schedule. Further, I understand that if, after an unsuccessful Land Use Amendment application, I wish to modify my Development Permit application to meet the rules of the existing district, I must apply for a new Development Permit at my expense. Despite these risks, I still wish to proceed with the concurrent application option.

2020 / JUNE / 08

Date (YYYY-MM-DD)

Applicant Signature

Chris York

Applicant Name (Please Print)

HISTORICAL LAND TITLE CERTIFICATE

TITLE CANCELLED ON JUNE 23,2020

B

LINC	SHORT LEGAL	TITLE NUMBER
0017 476 459	6219L;6;39,40	051 269 664

LEGAL DESCRIPTION

PLAN 6219L
BLOCK (6)
THAT PORTION OF LOT (39) WHICH LIES NORTH OF THE SOUTHERLY
(44) FEET THROUGHOUT THE SAID LOT (39) AND THAT PORTION OF
LOT (40) WHICH LIES SOUTH OF THE NORTHERLY (12) FEET
THROUGHOUT THE SAID LOT (40)

EXCEPTING OUT OF LOT (39) ALL MINES AND MINERALS

ATS REFERENCE: 5;1;24;20;SE
ESTATE: FEE SIMPLE

MUNICIPALITY: CITY OF CALGARY

REFERENCE NUMBER: 031 345 918

REGISTERED OWNER(S)

REGISTRATION	DATE(DMY)	DOCUMENT TYPE	VALUE	CONSIDERATION
051 269 664	28/07/2005	TRANSFER OF LAND	$367,000	CASH & MORTGAGE

OWNERS

JOANNA HAAF

AND
RICHARD KORZENIEWSKI
BOTH OF:
438 TUSCANY RAVINE ROAD NW
CALGARY
ALBERTA T3L 3B2
AS JOINT TENANTS
(DATA UPDATED BY: CHANGE OF ADDRESS 131309238)

(CONTINUED)

ENCUMBRANCES, LIENS & INTERESTS

REGISTRATION NUMBER	DATE (D/M/Y)	PARTICULARS
3603AC .	24/06/1910	RESTRICTIVE COVENANT "AS TO LOT 39"
051 260 816	21/07/2005	CAVEAT RE : VENDOR'S LIEN CAVEATOR - LESLIE J KLATT C/O SMITH LAW OFFICE 348-14 ST NW CALGARY ALBERTA T2N1Z7 AGENT - JAMES A SMITH
051 269 665	28/07/2005	MORTGAGE MORTGAGEE - CIBC MORTGAGES INC. 700, 33 YONGE ST TORONTO ONTARIO M5E1G4 ORIGINAL PRINCIPAL AMOUNT: $359,981
051 286 618	09/08/2005	DISCHARGE OF CAVEAT 051260816
061 406 645	02/10/2006	MORTGAGE MORTGAGEE - CIBC MORTGAGES INC. 33 YONGE ST, SUITE 700 TORONTO ONTARIO M5E1G4 ORIGINAL PRINCIPAL AMOUNT: $442,500
061 463 804	07/11/2006	DISCHARGE OF MORTGAGE 051269665
131 309 238	02/12/2013	CHANGE OF ADDRESS FOR SERVICE RE: JOANNA HAAF RE: RICHARD KORZENIEWSKI BOTH OF: 438 TUSCANY RAVINE ROAD NW CALGARY ALBERTA T3L3B2 AFFECTS INSTRUMENT: 051269664
141 061 642	12/03/2014	MORTGAGE MORTGAGEE - THE TORONTO DOMINION BANK. 500 EDMONTON CITY CENTER EAST, 10205-101 STREET, 5TH FLOOR EDMONTON ALBERTA T5J5E8 ORIGINAL PRINCIPAL AMOUNT: $415,000
141 090 536	15/04/2014	DISCHARGE OF MORTGAGE 061406645
151 084 097	27/03/2015	MORTGAGE

(CONTINUED)

ENCUMBRANCES, LIENS & INTERESTS

PAGE 3
051 269 664

REGISTRATION NUMBER	DATE (D/M/Y)	PARTICULARS
		MORTGAGEE - THE TORONTO DOMINION BANK. 500 EDMONTON CITY CENTRE E 10205-101 ST, 5TH FLR EDMONTON ALBERTA T5J5E8 ORIGINAL PRINCIPAL AMOUNT: $71,817
201 112 003	23/06/2020	TRANSFER OF LAND OWNERS - RIVERVIEW CUSTOM HOMES LTD. 804 16 AVENUE SW CALGARY ALBERTA T2R0S9 NEW TITLE ISSUED

TOTAL INSTRUMENTS: 011

THE REGISTRAR OF TITLES CERTIFIES THIS TO BE AN ACCURATE REPRODUCTION OF THE CERTIFICATE OF TITLE REPRESENTED HEREIN THIS 12 DAY OF MARCH, 2021 AT 08:30 A.M.

ORDER NUMBER: 41206985

CUSTOMER FILE NUMBER:

REGISTRAR OF LAND TITLES

END OF CERTIFICATE

CERTIFIED COPY OF

Certificate of Title

B

LINC 0038 758 637

SHORT LEGAL 6219L;6;39-41

TITLE NUMBER: 201 218 881
CONSOLIDATION - PARCELS
DATE: 26/11/2020

AT THE TIME OF THIS CERTIFICATION

RIVERVIEW CUSTOM HOMES LTD.
OF 804 16 AVENUE SW
CALGARY
ALBERTA T2R 0S9

IS THE OWNER OF AN ESTATE IN FEE SIMPLE
OF AND IN

PLAN6219L
BLOCK 6
LOTS 39, 40 AND 41
EXCEPTING THEREOUT ALL MINES AND MINERALS
FROM THE SOUTHERLY 44 FEET OF LOT 39

SUBJECT TO THE ENCUMBRANCES,LIENS AND INTERESTS NOTIFIED BY MEMORANDUM UNDER-WRITTEN OR ENDORSED HEREON,OR WHICH MAY HEREAFTER BE MADE IN THE REGISTER.

ENCUMBRANCES, LIENS & INTERESTS

REGISTRATION NUMBER	DATE (D/M/Y)	PARTICULARS
3603AC .	24/06/1910	RESTRICTIVE COVENANT "AS TO LOT 39"
011 029 219	30/01/2001	CAVEAT RE : ENCROACHMENT AGREEMENT " AFFECTS PART OF THIS TITLE "
201 112 006	23/06/2020	MORTGAGE MORTGAGEE - CALVERT HOME MORTGAGE INVESTMENT CORPORATION. 127, 808-42 AVENUE SE CALGARY ALBERTA T2G1Y9 ORIGINAL PRINCIPAL AMOUNT: $1,271,000

THE REGISTRAR OF TITLES CERTIFIES THIS TO BE AN ACCURATE REPRODUCTION OF THE CERTIFICATE OF TITLE REPRESENTED HEREIN THIS 26 DAY OF NOVEMBER ,2020

(CONTINUED)

Certificate of Title

TITLE NUMBER: 201 218 881

SUPPLEMENTARY INFORMATION

MUNICIPALITY: CITY OF CALGARY
REFERENCE NUMBER:
201 112 005
201 112 004
201 112 003
ATS REFERENCE:
5;1;24;20;SE
TOTAL INSTRUMENTS: 003

ALBERTA GOVERNMENT SERVICES
LAND TITLES OFFICE

IMAGE OF DOCUMENT REGISTERED AS:

011029219

ORDER NUMBER: 39449957

THIS AGREEMENT made effective 2001 January 9 between:

THE CITY OF CALGARY, a municipal corporation in the Province of Alberta

- and -

PENELOPE CLARE ANTONIUK AND ROBERT BRADLEY ANTONIUK, of the City of Calgary in the Province of Alberta

ENCROACHMENT AGREEMENT

Definitions

1. In this Agreement:

   (a) "Agreement" means this encroachment agreement and any amendments, schedules and supplements to it.

   (b) "City" means the municipal corporation of The City of Calgary.

   (c) "City Parcel" means the following interest(s) in land as owned by the City:

   the road / street right-of-way known as 16 STREET NW.

   (d) "Corporate Properties, General Manager" means such person or delegate employed by the City and holding the office of Corporate Properties, General Manager.

   (e) "Development" means any structure, building or improvement or repair of a building, constructed or placed on the Owner's Land which extends in, on, over or under the City Parcel.

   (f) "Encroachment" means that portion of a Development which encroaches in, on, over or under the City Parcel as more particularly dimensioned and further identified by colouring or highlighting or other clear means on the real property report attached to this Agreement.

   (g) "Owner" means the registered legal owner(s) of the owner's land.

(h) "Owner's Land" means a freehold interest in a parcel of land registered at the South Alberta Land Registration District office ("Land Titles") in the name of the Owner and legally described as:

PLAN 6219L
BLOCK SIX (6)
THE NORTH TWELVE (12) FEET THROUGHOUT OF LOT FORTY (40) AND THE WHOLE LOT OF FORTY ONE (41)

(Municipally described as 826 16 STREET NW)

(i) "notice" or "notify" means a notice in writing sufficiently given by the City to the Owner if personally delivered to the Owner or an occupant of the Owner's Land or if mailed by single registered mail to the Owner's address noted on the Certificate of Title for the Owner's Land.

Consideration & right to maintain

2. In consideration of the sum of:

Five hundred ($500.00) dollars

paid by **THE CITY OF CALGARY** (such sum having been received satisfactorily by the City) and subject to the terms and conditions of this Agreement, the City gives to the Owner the right, licence and privilege to:

continue the Encroachment subject to a determination that the affected area of the City Parcel is not required for public use and subject to the right of the City to give the Owner thirty (30) days notice to remove the Encroachment in accordance with sub-section 16(1)(q) of the Highway Traffic Act, R.S.A. 1980, c. H-7.

Owner's obligation

3. Throughout the continuance of this Agreement, the **Owner will,** at its sole cost and expense:

Maintain

(a) **keep, maintain and repair the Encroachment** in good order and condition commensurate with high quality developments of a similar nature, all to the satisfaction of the Corporate Properties, General Manager, acting reasonably.

No increase in Encroachment

(b) ensure that the **Encroachment is not enlarged, added to, rebuilt or structurally altered** except as may be necessary to make it non-encroaching.

Removal

(c) **remove the Encroachment** if the Development is damaged, destroyed, requires rebuilding or is re-developed to the extent of more than seventy-five (75%) per cent of the value of the Development above its foundation as valued prior to such damage, destruction or rebuilding, such determination to be made by the Corporate Properties, General Manager.

Redevelopment

(d) ensure that any **further development** built on the Owner's Land **will not encroach** in, on, over or under the City Parcel.

Taxes

(e) promptly **pay when due any additional municipal property taxes** (including without limitation local improvement taxes) that are assessed and levied against the Owner's Land by virtue of the Encroachment. The Owner acknowledges and agrees that the municipal assessment and tax records for the Owner's Lands may be amended to include the Encroachment.

Owner's Non-performance

4. If the **Owner fails or neglects within thirty (30) days** of the receipt of notice from the Corporate Properties, General Manager **to comply with the requirements of this Agreement** for a period of thirty (30) days after notice of non-compliance has been delivered, or without notice in the case of an emergency, the City may (but is not required to):

(a) perform or cause to be performed the requirements of this Agreement on behalf of and at the Owner's cost and expense. The **Owner will reimburse the City** for all costs, charges, and expenses incurred by the City on behalf of the Owner within ten (10) days of receipt by the Owner of an invoice for them;

(b) **demolish and remove the Encroachment** on behalf of and at the Owners costs, charges, and expenses and terminate the Owner's rights under this Agreement. The Owner will reimburse the City for all such costs, charges, and expenses incurred by the City for undertaking such work within ten (10) days of receipt by the Owner of an invoice for them;

(c) pursue any other right or remedy which the City may be entitled to under this Agreement, or in law or equity.

Indemnity

5. Save and except for the negligent act or wilful misconduct of the City **the Owner shall indemnify the City** and save it harmless from and **against all claims**, actions, damages, liabilities and expenses in connection with losses of life, personal injury, damage to property, or any other damage, loss or injury **which are based upon, or arise out of or are in any way connected with the Encroachment** and the exercise of the rights and privileges contained in this Agreement , including but not limited to the following:

   (a) suffered or incurred by the Owner or those for whom the Owner is in law responsible;

   (b) suffered or incurred by the City or those for whom the City is in law responsible (including without limitation any additional costs and expenses incurred by the City in carrying out work on the City Parcel by reason of the Encroachment);

   (c) damage or expense sustained by the Owner and related to the removal of the Encroachment;

   (d) made, brought or prosecuted by anyone else.

Continuing obligations

6. Any **obligation of the Owner to protect the City shall survive the termination** of this Agreement.

Charge

7. The City shall have a **charge upon the Owner's Land** for any sum that may at any time be payable to the City pursuant to this Agreement and shall be entitled to file a Caveat against the title to the Owner's Land to protect such interest under this Agreement.

Caveat

8. The **City shall be entitled to file a Caveat** against the certificate of title to the Owner's Land to protect its interest under this Agreement in accordance with section 72.3 of the *Land Titles Act*, R.S.A. 1980, Chapter L-5.

No interest in city parcel

9. Notwithstanding sub-section (b) of section 72.3 of the *Land Titles Act* and in order to comply with section 16 of the *Highway Traffic Act*, the City and the Owner agree that the registration of this Agreement against title to the Owner's Land **does not constitute an interest in land in the City Parcel.**

Successors

10. The Agreement shall be binding upon and enure to the benefit of the City and its successors, licensees and assigns, and the Owner and its successors and assigns.

Severability

11. Should part of this Agreement be or become illegal or unenforceable, it will be considered severable from this Agreement and the remainder of this agreement will remain in effect as though the illegal or unenforceable parts had not been included.

IN WITNESS AND TO CONFIRM THIS AGREEMENT AND AS EVIDENCE OF ITS BINDING CONTRACTUAL NATURE, the parties to this Agreement have signed this Agreement before witnesses effective on the day and year noted on the first page.

Witness Signature

PENELOPE CLARE ANTONIUK

Witness Signature

ROBERT BRADLEY ANTONIUK

Approved
Terri Pekrul
Richard Colluney

THE CITY OF CALGARY

Per:

General Manager, Corporate Properties

witness signature

FORM 31

LAND TITLES ACT
(Sections 151 and 152)

AFFIDAVIT OF EXECUTION

I, JEREL PERREAULT, of the City of Calgary, in the Province of Alberta make oath and say:

1. I was personally present and did see **PENELOPE CLARE ANTONIUK AND ROBERT BRADLEY ANTONIUK** who is known to me to be the person named in the within *(or annexed)* instrument, duly sign the instrument;

or

I was personally present and did see **PENELOPE CLARE ANTONIUK AND ROBERT BRADLEY ANTONIUK** who, on the basis of the identification provided to me, I believe to be the person named in the within *(or annexed)* instrument, duly sign the instrument;

2. The instrument was signed at the City of Calgary, in the Province of Alberta and I am the subscribing witness thereto;

3. I believe the person whose signature I witnessed is at least eighteen (18) years of age.

SWORN before me at the City of Calgary in the Province of Alberta this 09 day of January, 2001.

A Commissioner for Oaths in and for the Province of Alberta

(witness signature)

RICHARD COLLINEY
A Commissioner for Oaths
in and for the Province of Alberta
My Commission Expires Sept. 29/2002

AFFIDAVIT VERIFYING CORPORATE SIGNING AUTHORITY

CANADA)
PROVINCE OF ALBERTA)
TO WIT:)

I, Larry J. Taylor, of the City of Calgary, in the Province of Alberta,

MAKE OATH AND SAY THAT:

1. I am the General Manager of Corporate Properties for The City of Calgary named in the attached Encroachment Agreement.

2. I am authorized on behalf of The City of Calgary to bind The City of Calgary to the terms of this Agreement by affixing my signature thereto.

SWORN BEFORE ME at the City of Calgary,
in the Province of Alberta,
this 23 day of January, 2001.

A Commissioner for Oaths in and for the
Province of Alberta
TERRI PEKRUL
A Commissioner for Oaths
in and for the Province of Alberta
My Commission Expires Feb. 17 2002.

AFFIDAVIT OF EXECUTION

CANADA)
PROVINCE OF ALBERTA)
TO WIT:)

I, Richard Colluney, of the City of Calgary, in the Province of Alberta,

MAKE OATH AND SAY THAT:

1. I was personally present and did see Larry J. Taylor named in the attached instrument, who is personally known to me to be the person named therein, duly sign and execute the same for the purposes named therein.

2. The same was executed at the City of Calgary in the Province of Alberta and that I am the subscribing witness thereto.

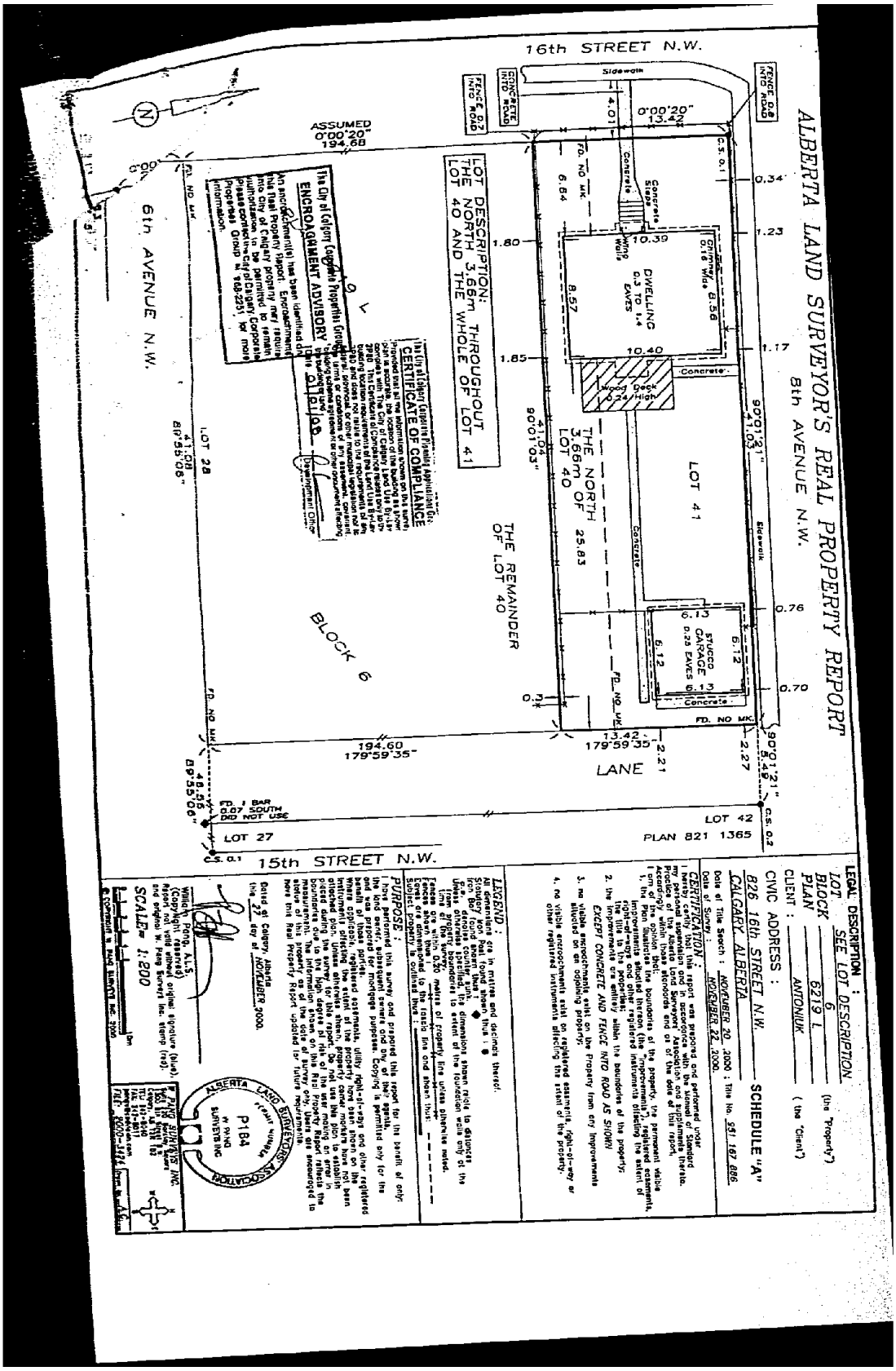
3. I know the said Larry J. Taylor ~~and he~~ is in my belief of the full age of eighteen years.

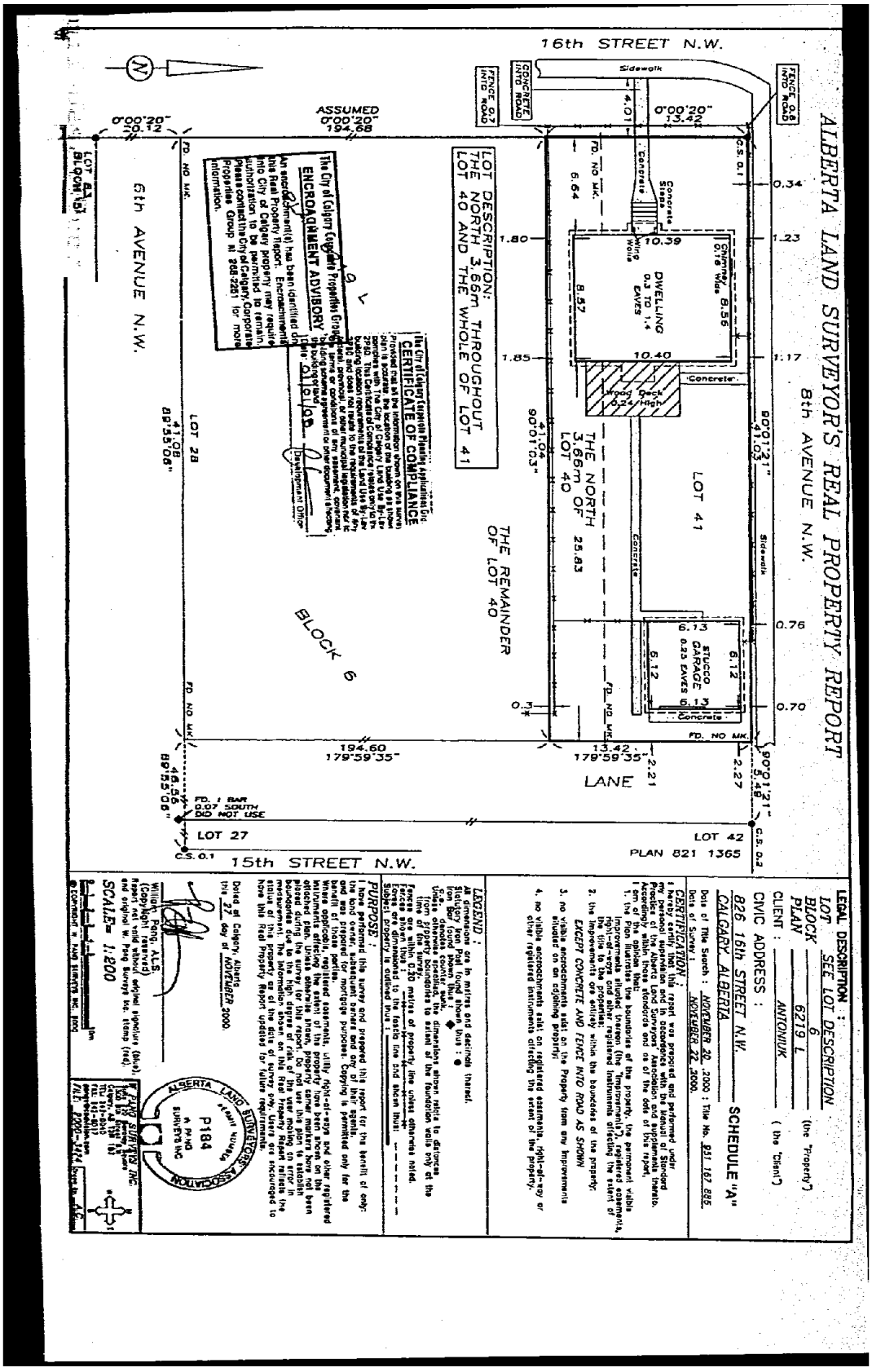
SWORN BEFORE ME at the City of Calgary,
in the Province of Alberta
this 23 day of January, 2001.

A Commissioner for Oaths in and for the
Province of Alberta

) Witness

TERRI PEKRUL
A Commissioner for Oaths
in and for the Province of Alberta
My Commission Expires Feb. 17 2002


ALBERTA LAND SURVEYOR'S REAL PROPERTY REPORT
16th STREET N.W.
8th AVENUE N.W.
6th AVENUE N.W.
15th STREET N.W.
LANE
BLOCK 6
LOT 41
LOT 40
LOT 42
PLAN 821 1365
LOT 27
LOT 28
THE REMAINDER OF LOT 40
THE NORTH 3.66m OF LOT 40
LOT DESCRIPTION: THE NORTH 3.66m THROUGHOUT LOT 40 AND THE WHOLE OF LOT 41
DWELLING
STUCCO GARAGE
CERTIFICATE OF COMPLIANCE
ENCROACHMENT ADVISORY
LEGAL DESCRIPTION : LOT 6 BLOCK 6219 L PLAN ANTONIUK (the "Property")
CLIENT :
CIVIC ADDRESS : 826 16th STREET N.W. CALGARY, ALBERTA
SCHEDULE "A"
CERTIFICATION :
LEGEND :
PURPOSE :
SCALE= 1:200
P184
ALBERTA LAND SURVEYORS ASSOCIATION


ALBERTA LAND SURVEYOR'S REAL PROPERTY REPORT
16th STREET N.W.
8th AVENUE N.W.
6th AVENUE N.W.
15th STREET N.W.
LANE
LOT 41
THE NORTH 3.66m OF LOT 40
THE REMAINDER OF LOT 40
BLOCK 6
LOT 28
LOT 27
LOT 42
PLAN 821 1365
DWELLING
STUCCO GARAGE
Concrete
Sidewalk
FENCE 0.8 INTO ROAD
CONCRETE INTO ROAD
FD. NO MK.
C.S. 0.1
C.S. 0.2
ASSUMED 0°00'20" 194.68
0°00'20" 20.12
90°01'21" 41.03
90°01'03" 41.04
89°55'05" 41.08
179°59'35" 194.60
179°59'35" 13.42
90°01'21" 5.48
FD. 1" BAR 0.07 SOUTH DO NOT USE
LOT DESCRIPTION:
THE NORTH 3.66m THROUGHOUT
LOT 40 AND THE WHOLE OF LOT 41
ENCROACHMENT ADVISORY
CERTIFICATE OF COMPLIANCE
LEGAL DESCRIPTION
LOT 6
BLOCK
PLAN 6219 L
CLIENT : ANTONIUK
CIVIC ADDRESS :
826 16th STREET N.W.
CALGARY ALBERTA
SCHEDULE "A"
CERTIFICATION
LEGEND
PURPOSE :
SCALE= 1:200
P184
ALBERTA LAND SURVEYORS ASSOCIATION
PLAN SURVEYS INC.

011-0225219 008

Dated: 2001 January 9

BETWEEN:

THE CITY OF CALGARY

- and -

PENELOPE CLARE ANTONIUK
ROBERT BRADLEY ANTONIUK

ENCROACHMENT AGREEMENT

A.A. ABOUGOUSH, Q.C.
CITY SOLICITOR
CITY HALL
CALGARY, ALBERTA
T2P 2M5
FAX: (403) 268-4634

CORPORATE PROPERTIES
FILE NO. LEO8O4-826

041 029 240 +003

CAVEAT

FORBIDDING REGISTRATION

TO THE REGISTRAR OF THE SOUTH ALBERTA LAND REGISTRATION DISTRICT

Take Notice that **WOLFRAM TETZLAFF**
in the Province of Alberta
claims a statutory interest under and by virtue of an Encroachment Agreement made in writing between The City of Calgary and **PENELOPE CLARE ANTONIUK AND ROBERT BRADLEY ANTONIUK** dated **January 9, 2001** and entered into pursuant to Section 72.3 of the Land Titles Act (Alberta) (a true copy of which is attached)

PLAN 6219L
BLOCK SIX (6)
THE NORTH TWELVE (12) FEET THROUGHOUT OF LOT FORTY (40) AND THE WHOLE LOT OF FORTY ONE (41)

being the benefited lands and standing in the register in the name of **WOLFRAM TETZLAFF**
and
It forbids the registration of any person as transferee or owner of, or of any instrument affecting the said estate or interest unless the instrument or certificate of title, as the case may be, is expressed to be subject to its claim.

It appoints the office of the General Manager, Corporate Properties
12th Floor, Municipal Building
800 MacLeod Trail South East
Calgary, Alberta T2P 2M5

as the place at which notice and proceedings relating hereto may be served.

DATED on this 30th day of January 2001 A.D.

WOLFRAM TETZLAFF
By its agent in that behalf

Patricia Lynne Craig
Acting Manager of Land
Division
The City of Calgary

Canada)
Province of Alberta)
To Wit:)
)

I, Patricia Lynne Craig, Acting Manager of Land Division
The City of Calgary
in the Province of Alberta
Agent for **WOLFRAM TETZLAFF**
make oath and say:

(1) That I am the agent for the above named Caveator

(2) That I believe that the said Caveator has a good and valid claim upon the said lands and I say that this Caveat is not being filed for the purpose of delaying or embarrassing any person interested in or proposing to deal therewith.

SWORN at The City of Calgary)
)
in the Province of Alberta)

Patricia Lynne Craig
Acting Manager of Land Division
The City of Calgary
Agent for this **WOLFRAM TETZLAFF**

this 30th day of January 2001 A.D.

A Commissioner for Oaths in and for the Province of Alberta

TERRI PEKRUL
A Commissioner for Oaths
in and for the Province of Alberta
My Commission Expires Feb. 17, 2002

CAVEAT
FORBIDDING REGISTRATION

THE CITY OF CALGARY

- AND -

PENELOPE CLARE ANTONIUK AND ROBERT BRADLEY A

REAL ESTATE SERVICES FILE NO: LEO8O4-826

011029219
CAVE - CAVEAT
DOC 1 OF 1 DRR#: 9403939 ADR/CTSU
LINC/S: 0013402300
REGISTERED 2001 01 30

ALBERTA GOVERNMENT SERVICES
LAND TITLES OFFICE

IMAGE OF DOCUMENT REGISTERED AS:

3606AC .

ORDER NUMBER: 39449957

3606 a c

13 June 1910

3606 A.C.

Reject Sub

to

Anderson

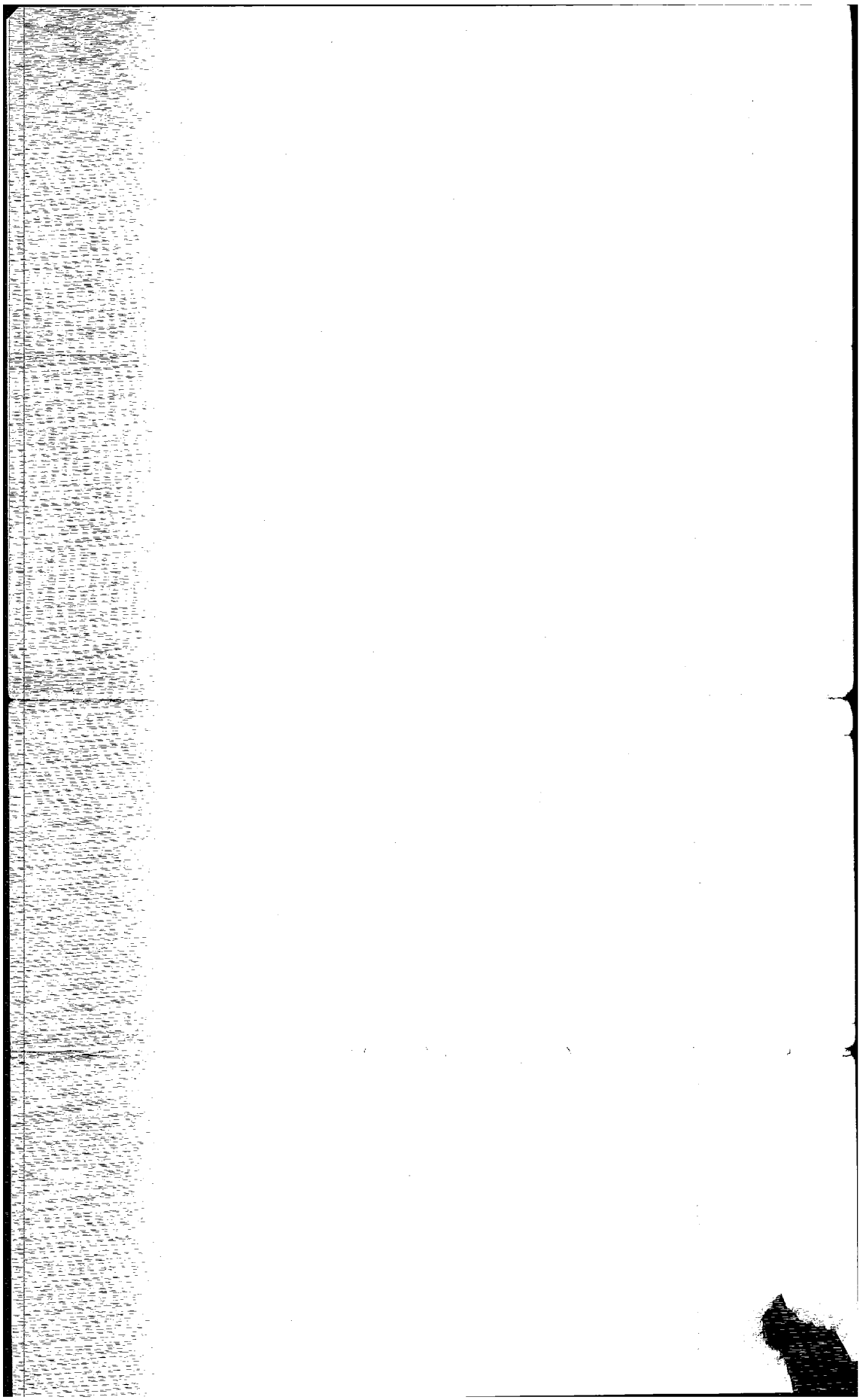
Reg J.E.247

I certify that the within instrument is duly Entered and Registered in the Land Titles Office for the South Alberta Land Registration District at Calgary, in the Province of Alberta, at 3 o'clock P.M., on the 21 day of June A.D., 1910 Number 3606 Book A6 Folio 125

Registrar
S. A. L. R. D.

No. H250

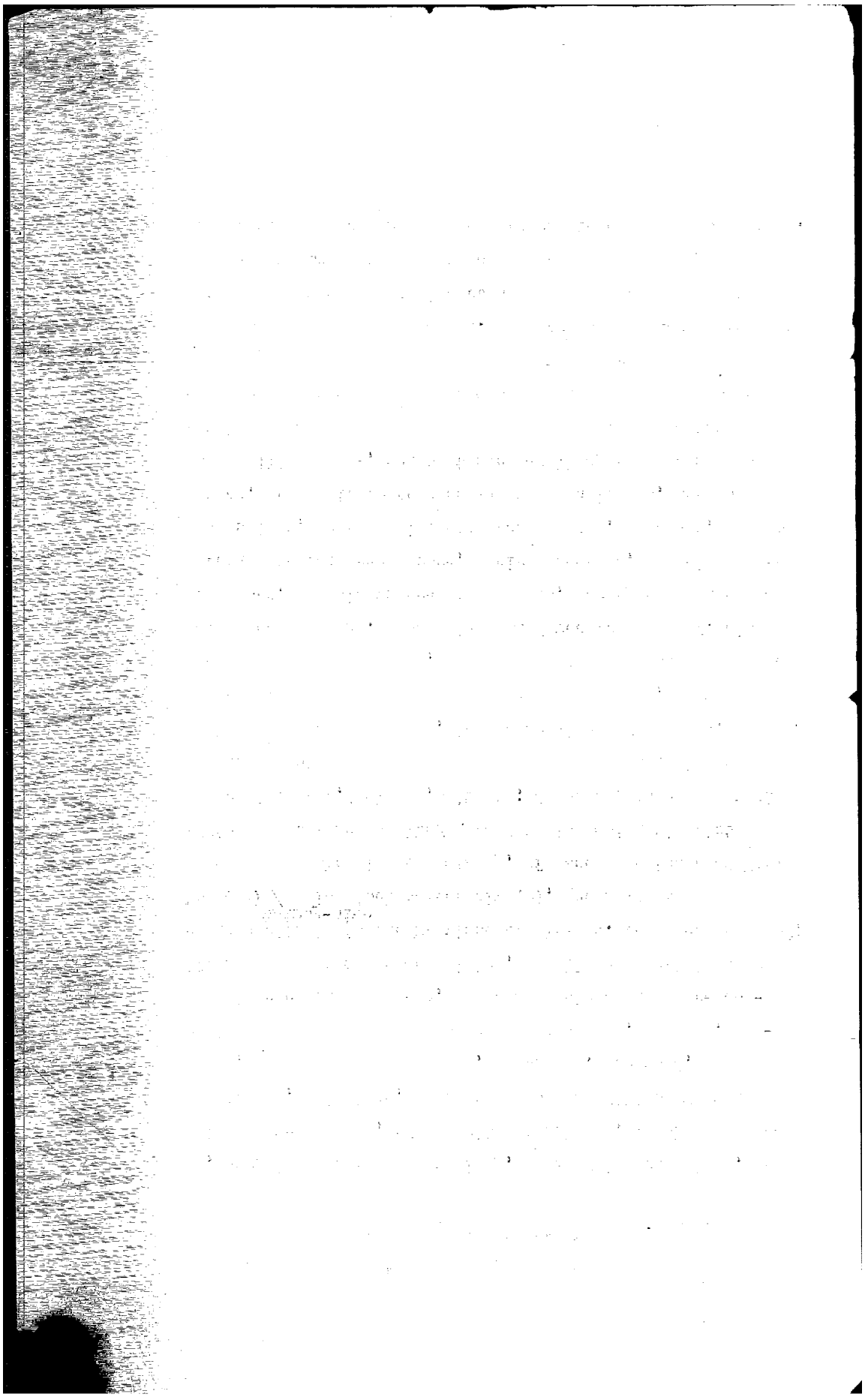
3691



"THE LAND TITLES ACT"

T R A N S F E R OF L A N D.

WE, Georgiana Clare Louise Riley, Maria Elisabeth Riley, and Emily Frances Riley, of the City of Calgary, in the Province of Alberta, Spinsters, Executrices of the Will of Thomas Riley, late of the same place, Gentleman, deceased, being registered owners of an estate in fee simple, subject, however to such encumbrances, liens and interests as are notified by memorandum underwritten, in all that certain tract of land situate in the Province of Alberta. being composed of; Lot (39) / thirty-nine in Block number six (6), according to a plan of a part of the City of Calgary, of record in the Land Titles Office for the South Alberta Land Registration District as Upper Hillhurst,"Calgary,6219 L" ; do hereby in consideration of the sum of Four hundred and fifty dollars paid to us by Leslie Anderson of Namaka, in the Province of Alberta, Farmer, the receipt of which sum we hereby acknowledge , transfer to the said Leslie Anderson, all our estate and interest in the said piece of land. The said transferee for himself, his executors, administrators and assigns, hereby covenants and agrees with the transferors, their executors, administrators and assigns, that he will not erect or use, or cause, or suffer, or permit to be erected on the said lot, more than one dwelling house, and that such dwelling house shall cost not less than Two thousand dollars ($2,000.00) and that such dwelling house shall be placed or erected at a distance of not less than twenty feet from the street or avenue line at the front or rear of said lot. The transferee hereby further covenants and agrees to insert similar conditions to the above in all agreements for the sale and transfers made by him for the resale of the land herein referred to or any part thereof.



2

#2.

IN WITNESS WHEREOF, we have hereunto subscribed our names, and the transferee has hereunto set his hand and seal in token of his acceptance of this transfer on the terms and conditions herein mentioned and contained, this 13th day of June, 1910.

SIGNED by the said Georgiana Clare Louise Riley, Maria Elisabeth Riley and Emily Frances Riley in the presence of

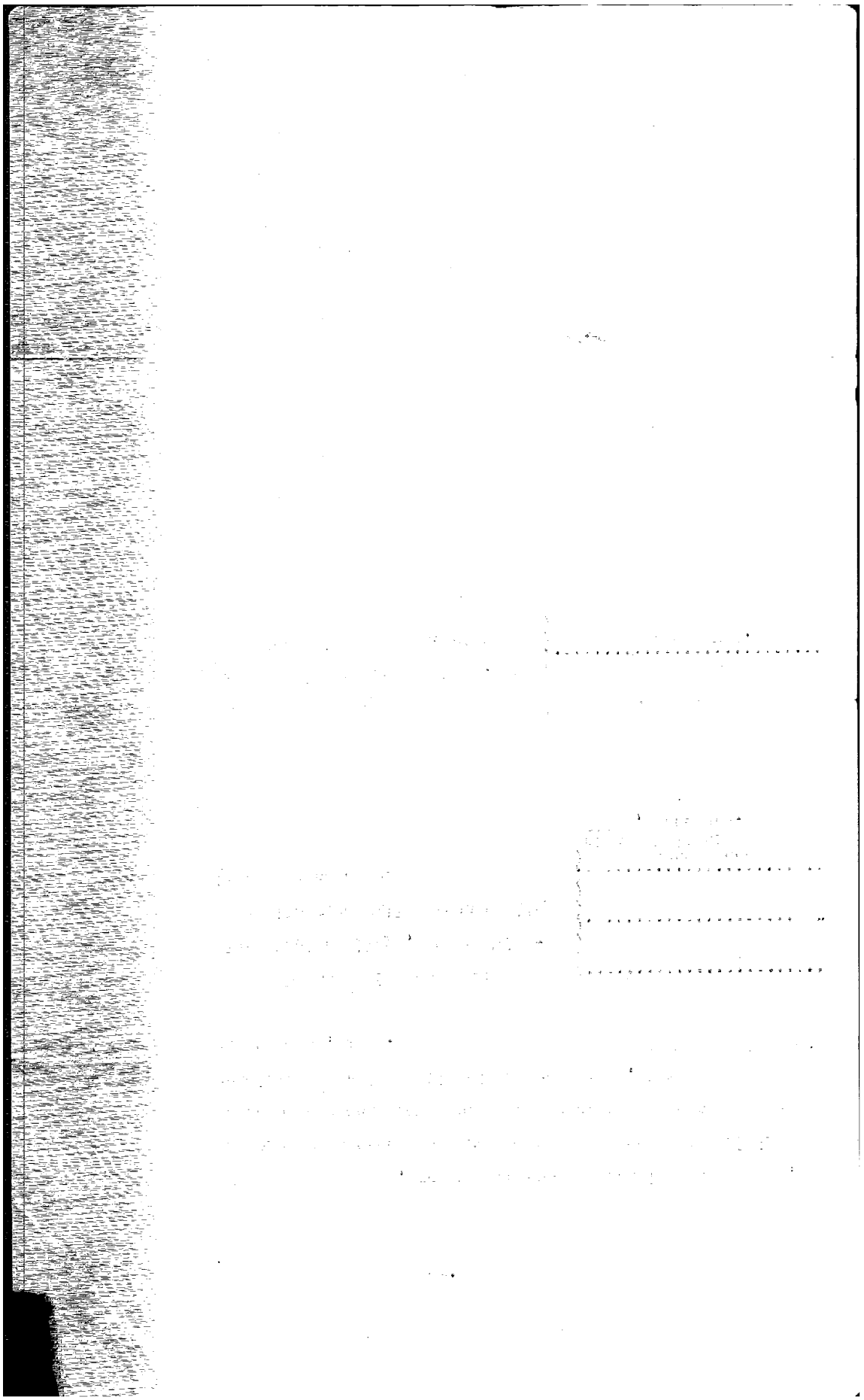
P. L. McGavish

Georgiana Clare Louise Riley
Maria Elisabeth Riley.
Emily Frances Riley.
Executrices of the Will of Thomas Riley, deceased.

and SIGNED? SEALED AND DELIVERED by the said Leslie Anderson, as transferee in the presence of

R. H. Laurie

Leslie Anderson
Transferee.



5

AFFIDAVIT OF EXECUTION.

C A N A D A
PROVINCE OF BRITISH COLUMBIA

I, D.P.McTavish, of the City of Vancouver, in the Province of British Columbia, make oath and say;

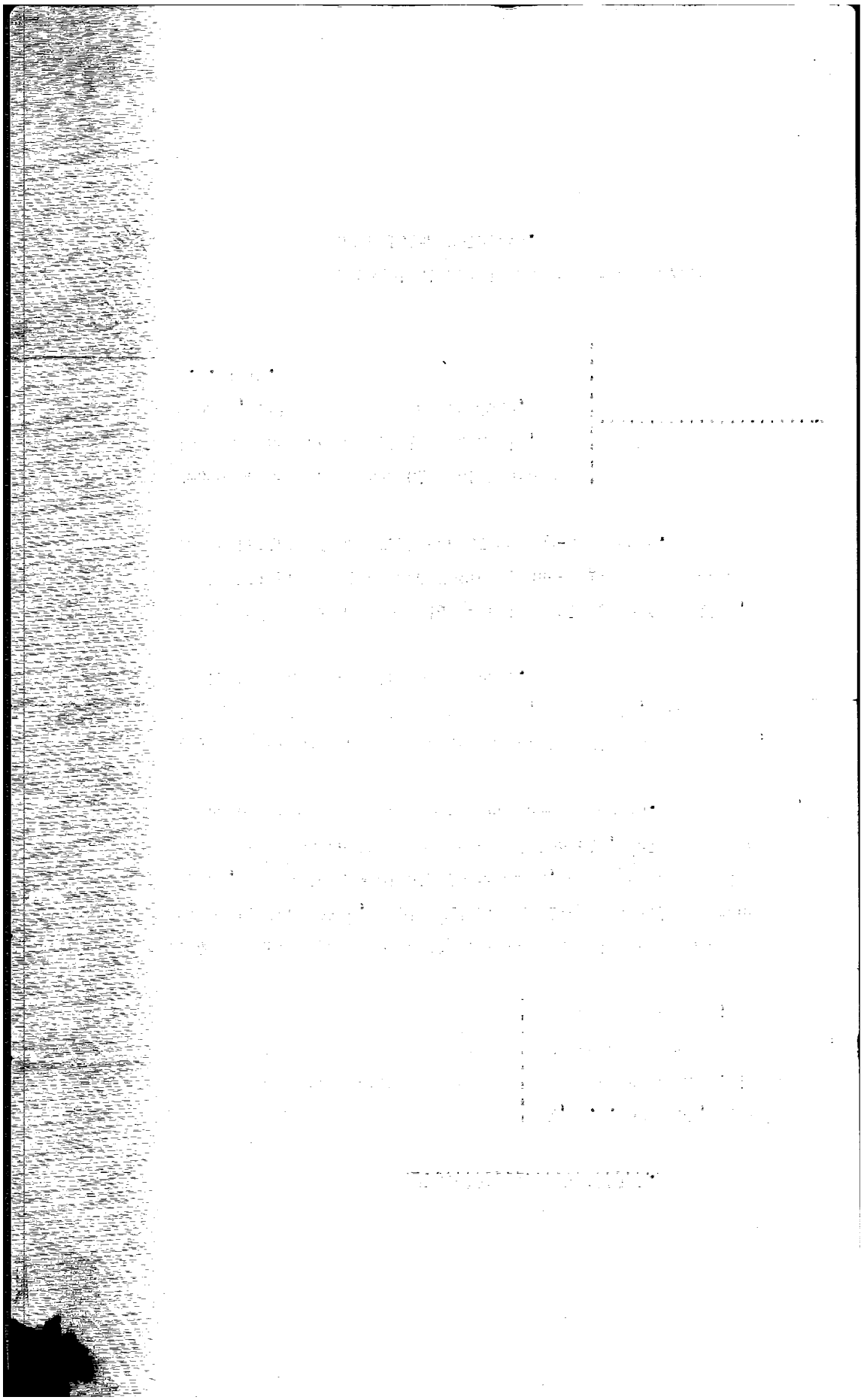
(1) That I was personally present and did see Georgiana Clare Louise Riley, Maria Elisabeth Riley and Emily Frances Riley, named in the within instrument, who are personally known to me to be the persons named therein, duly sign and execute the same for the purposes named therein.

(2) That the same was executed at the City of Vancouver, in the Province of British Columbia, aforesaid, and that I am the subscribing witness thereto.

(3) That I know the said Georgiana Clare Louise Riley, Maria Elisabeth Riley and Emily Frances Riley and They are in my belief of the full age of twenty-one years.

Sworn before me at the City of Vancouver in the Province of British Columbia, Canada, this 13 day of June, A.D. 1910.

A Notary Public ~~Commissioner~~ in and for the Province of British Columbia.



4

AFFIDAVIT OF EXECUTION.

CANADA
PROVINCE OF ALBERTA

I, Robert H. Laurie of the Village of Namaka in the Province of Alberta, Farmer make oath and say;

(1) That I was personally present and did see Leslie Anderson, named in the within instrument, who is personally known to me to be the person named therein, duly sign and execute the same for the purposes named therein.

L.R.A.

(2) That the same was executed at the ~~City~~ Village of Namaka in the Province of Alberta, aforesaid, and that I am the subscribing witness thereof.

(3) That I know the said Leslie Anderson and He is in my belief of the full age of twenty-one years.

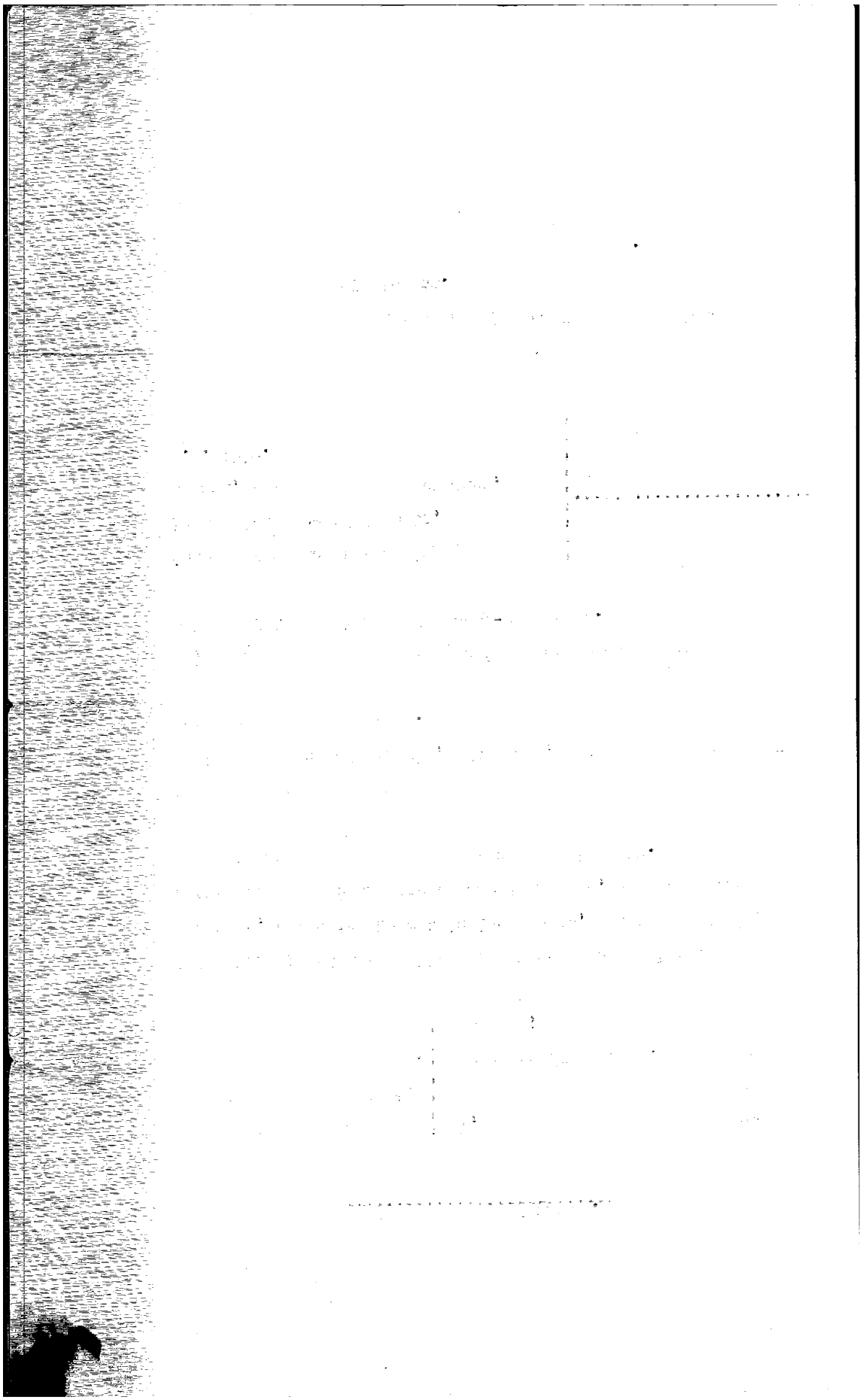
L.R.A.

Sworn before me at the ~~City~~ Village of Namaka in the Province of Alberta, Canada, this 20th day of June, A.D. 1910.

R. H. Laurie

F. R. Shouldice

A Commissioner in and for the Province of Alberta.



5

AFFIDAVIT OF VALUATION.

C A N A D A
PROVINCE OF ALBERTA

I, Leslie Anderson, L.A.
of the ~~City~~ Village of Namaka,
in the Province of Alberta, Farmer
make oath and say;

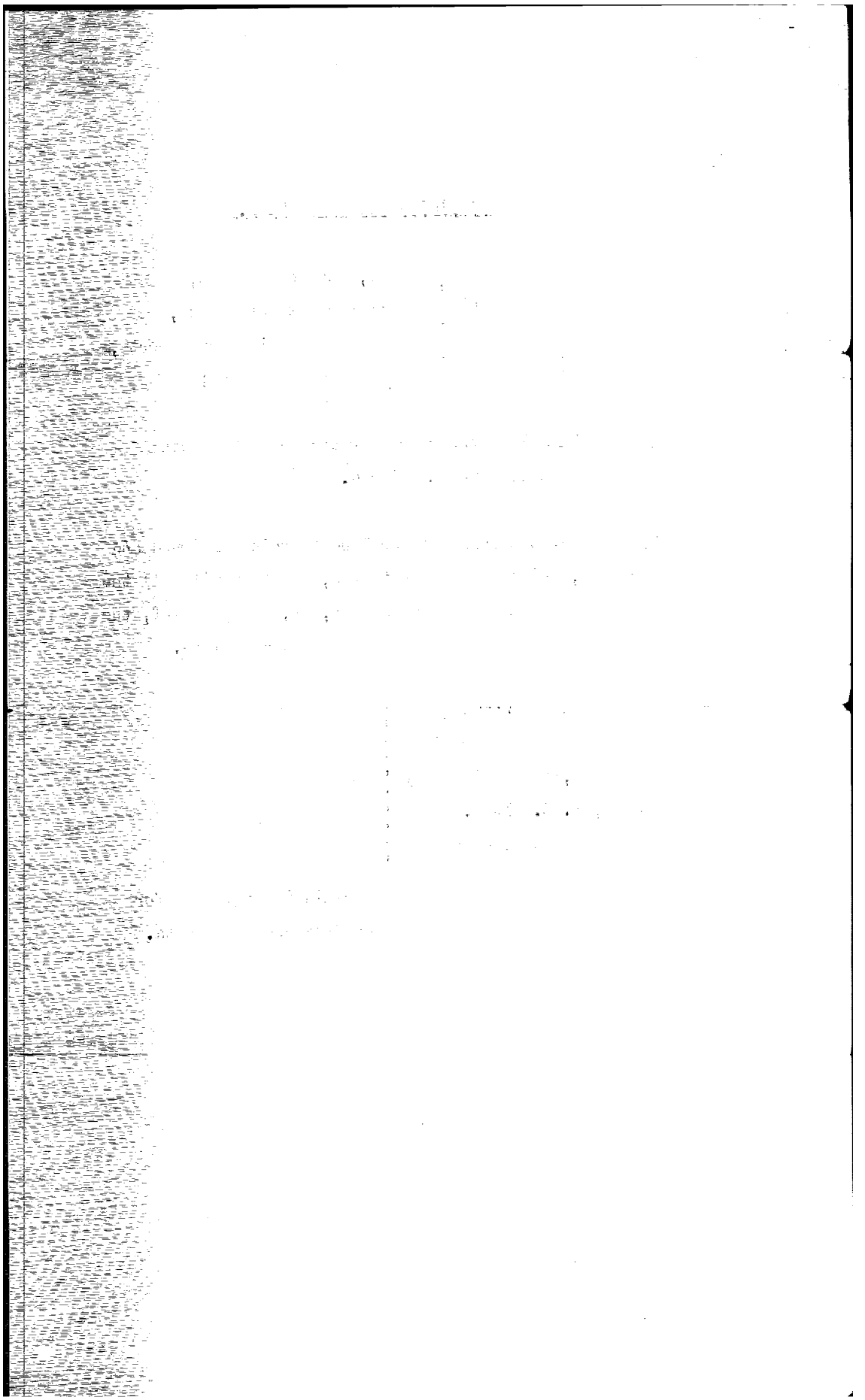
(1) That I am the purchaser and know the lands in the within transfer mentioned.

(2) That the value of the land therein mentioned and described, and thereby transferred, together with all the buildings and improvements thereon, is, in my belief, the sum of Four hundred and fifty Dollars and no more.

L.A. ~~Sworn to at the Village of~~
Namaka in the Province
of Alberta, this 20th day
of June, A. D. 1910.
before me

Leslie Anderson

L. R. Shoudice
A Commissioner in and for
the Province of Alberta.



ALBERTA GOVERNMENT SERVICES
LAND TITLES OFFICE

IMAGE OF DOCUMENT REGISTERED AS:

3603AC .

ORDER NUMBER: 39449957

CANADA:
PROVINCE OF ALBERTA
To Wit:

I, Maud Haywood,
of the City of Calgary,
in the Province of Alberta Stenographer,
make oath and say:

1. That I was personally present and did see THOMAS E. GOOCH,

named in the within instrument, who is personally known to me to be the person named therein, duly sign and execute the same for the purposes named therein.

2. That the same was executed at the City of Calgary,
in the Province of Alberta, aforesaid, and I am the subscribing witness thereto.

3. That I know the said Thomas E. Gooch,
and he is in my belief of the full age of twenty-one years.

Sworn before me at Calgary,
in the Province of Alberta, Canada, this
24th day of June,
A.D. 1910.

Maud Haywood

A Commissioner in and for the Province of Alberta.

Dated ----June 24----A.D. 1910.

GOOCH.

TO

ROE.

Transfer of Land

F. E. Osborne, Law and Office Stationer, Calgary, Alta.

Lots 1, 2 and 3, Block 9.

"Plan 3940-L, Calgary"

I certify that the within instrument is duly Entered and Registered in the Land Titles Office for the South Alberta Land Registration District at Calgary, in the Province of Alberta, at 3.03 o'clock P.M., on the 24th day of June A.D., 1910 Number 36003 Book 246 Folio 125

Registrar

S. A. L. R. D.

F. C. LOWES & CO.
REAL ESTATE & FINANCIAL BROKERS
ALBERTA BLOCK
CALGARY

36003 A6

36114

CANADA:
PROVINCE OF ALBERTA

I, Samuel H. Roe, of the City of Calgary,
in the Province of Alberta, Manager,
make oath and say:

1. That I am the transferee and know the lands in the within transfer mentioned.

2. That the value of the lands therein mentioned and described, and thereby transferred together with all buildings and improvements thereon, is in my opinion, the sum of Nineteen Hundred ($1900.00) ---------- Dollars and no more.

Sworn to at Calgary,
in the Province of Alberta
this 24th day of June,
A.D. 1910. before me

S H Roe

A Commissioner in and for the Province of Alberta.

No. 701—Transfer of Land

F. E. Osborne, Law and Office Stationer, Calgary, Alta.

"The Land Titles Act"

Transfer of Land

I, THOMAS EDWIN COOCH, of the City of Calgary, in the Province of Alberta, Engineer,

being registered owner of an estate in fee simple, subject, however to such encumbrances, liens and interests as are notified by memorandum underwritten, in all th at certain tract of land situate in the Province of Alberta, being composed of

Lots One (1), Two (2) and Three (3) in Block Nine (9), according to a plan of record in the Land Titles Office for the South Alberta Land Registrat on District as "Plan 3940-L, Calgary".

do hereby in consideration of the sum of One ($1.00) ---------- Dollars

paid to ---- me---------- by SAMUEL H. ROE, of the City of Calgary, in the Province of Alberta, Manager,

the receipt of which sum --I hereby acknowledge, transfer to the said SAMUEL H. ROE,

all ---my----- estate and interest in the said piece of land.

IN WITNESS WHEREOF I have hereunto subscribed my name this Twenty-fourth day of June---------- A.D. 1910.

Signed by said THOMAS EDWIN COOCH, Thos Edwin Gooch

in presence of

Maud Haywood

MEMO. OF ENCUMBRANCES

RIVERVIEW CUSTOM HOMES
owner(s)
CHRIS YORK
contact name
804A . 16 AVE SW.
contact address
403. 973.9675
contact phone
CHRIS@RIVERVIEWHOMES.CA
contact email

City of Calgary
Planning & Development
P.O. Box 2100, Stn. M, # 8108
Calgary, AB, Canada T2P 2M5

To Whom It May Concern,

With regards to 818 / 822 / 826 16th ST N.W. Calgary, Alberta (property address) Hillhurst Multi-Family (project name (if applicable))

Please be advised that I, _____ (full name) am:

(select one)

- (•) the owner of the above mentioned property, and that I authorize
- ( ) an officer or director of the owner(s) of the above mentioned property, and that I am authorized by that owner to authorize

Jackson McCormick Design Group (agent or company name) and/or its contractor, Riverview Homes (applicant, consultant, contractor (if applicable))

to apply for any and all development, demolition, or building permits (permit type)

for the above mentioned property.

I further agree to immediately notify The City of Calgary, in writing, of any changes regarding the above information.

JUNE 8/2020
date signed

signature of owner

CHRIS YORK
name of owner (printed)

FOIP DISCLAIMER: The personal information on this form is being collected under the authority of The Freedom of Information and Protection of Privacy (FOIP) Act, Section 33(c). It will be used to provide operating programs, account services and to process payments received for said services. It may also be used to conduct ongoing evaluations of services received from Planning & Development. Please send inquiries by mail to the FOIP Program Administrator, Planning & Development, PO Box 2100, Station M, Calgary, AB T2P 2M5 or contact us by phone at 311.

ISC: Confidential
Revised 2016 September 30

Colour Photographs

Hillhurst Multifamily

Front Views

Left to right: (1) view towards lot 41 on corner of 16th St. and 8th Ave; (2) view towards lot 40; (3) view towards lot 39

Rear Views

Left to right: (4) view towards lot 39 within rear lane; (5) view towards lot 40 along rear lane; (6) view towards lot 41 from rear lane.

Adjacent Characteristics

Left to right: (7) view towards lot 38 along 16th St. (8) view towards lot 42 along 8th Ave.

Special Site Characteristics

Left to right: (1) Overhead poles; (2) showing access to rear lane; (3) view showing bus stop

Updated 2016 June 15

Site Contamination Statement

Application # _____
for office use only

Site Address: 818 / 822 / 826 16th ST N.W. Calgary, Alberta

Legal Description: Lot- 39 to 41 Block 6, Plan 6219L

The information provided in this disclosure statement will assist the Development, Land Use and Subdivision Authorities in processing planning applications. The Authorities rely on the information provided in this statement to assist in determining the potential for site contamination, which may have been caused by current or historic activities.

You are responsible for the accuracy of the information provided in this statement. The questions must be answered to the best of your knowledge based upon diligent inquiry and the thorough inspection and review of all documents and other information pertaining to the subject property. **Please be aware that further site assessments may be required as part of the review of your application.**

1. Are you aware of any environmental investigations (audits, assessments, tests, surveys or studies) for this site? ☐ Yes ☑ No

   If yes, please provide copy(s).

2. Are you aware of any environmental requirements associated with any previous planning applications on this site? (i.e. development permit, land use redesign or subdivision) ☐ Yes ☑ No

   If yes please provided a brief description and the associated development application number(s):

3. Has there been site remediation or a request for such on the site? ☐ Yes ☑ No

   If yes, please provide a brief description:

4. Are you aware of any regulatory actions, past or current, which have been applied to this site? ☐ Yes ☑ No

   Examples include (but are not limited to):
   - Environmental Protection Orders
   - Reclamation Orders or Certificates
   - Control / Stop Orders, fines, tickets or prosecutions
   - Violations of environmental statutes, regulations and bylaws
   - Administrative penalties and warning letters

   If yes, please describe and provide copies of relevant documents:

5. Have any permits been issued or are you currently operating under a license or approval issued by federal or provincial authorities or the Calgary Fire Department for activities which may impact the property? ☐ Yes ☑ No
   (e.g. certificates of approval, storage tank regulations, plant operating permits)

   If yes, please describe:

6. Has there been contact with Alberta Environment or Calgary Regional Health Authority regarding possible contamination on the site? ☐ Yes ☑ No

   If yes, please provided a brief description:

NOTE: This form is to be signed by the titled owner(s) of the property or their authorized agents or consultants.

I, the ☐ owner, ☐ authorized agent, ☑ authorized consultant, state that, to the best of my knowledge, the information provided in this statement is accurate, complete and is based on diligent inquiry and thorough inspection and review of all the documents and other information reasonably available pertaining to the subject property. I am not aware of any other information that may indicate that the subject property is potentially contaminated.

June 8/2020

Date

Applicant Signature

Chris York

Applicant Name (Please Print)

Riverview Custom Homes

Company Name (Please Print)

FOIP DISCLAIMER: The personal information on this form is being collected under the authority of The Freedom of Information and Protection of Privacy (FOIP) Act, Section 33(c). It will be used to provide operating programs, account services and to process payments received for said services. It may also be used to conduct ongoing evaluations of services received from Planning, Development & Assessment. Please send inquiries by mail to the FOIP Program Administrator, Planning, Development & Assessment, PO Box 2100, Station M, Calgary, AB T2P 2M5 or contact us by phone at 311.

Calgary

Public Tree Disclosure Statement

The City of Calgary Street Bylaw (20M88) and the Tree Protection Bylaw (23M2002) protect trees growing on City (public) land. An approved Tree Protection Plan is required when construction activities occur within 6m of a public tree. More information regarding protecting trees during construction and development is found here. Public trees are required to be shown on plans submitted for this application.

1. Are there public trees on the City lands within six meters of and/or overhanging the development site? ◉ Yes ○ No

If you answered yes, ensure all trees identified are shown on the submitted plans.

Note: if you are not sure how to determine which trees are yours and which are public, you can:
   a. Use the City's tree map (may not be up to date for your property)
   b. Contact 3-1-1 to put in a "development tree inquiry" to get confirmation from an Urban Forester
   c. Send inquiries to tree.protection@calgary.ca

2. Who will be submitting the Tree Protection Plan for this development?

○ Applicant ○ Owner ◉ Builder ○ Other:

If Other: Name: Chris York Phone: _____

Email: Chris@riverviewhomes.ca

The Tree Protection Plan must be submitted directly to Urban Forestry at tree.protection@Calgary.ca following the Tree Protection Plan Guidelines.

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Updated 2016 July 15

Calgary

Abandoned Well Declaration

Application # _____
for office use only

Site Address: 818 / 822 / 826 16th ST N.W. Calgary, Alberta

Legal Description: Lot- 39 to 41 Block 6, Plan 6219L

The *Municipal Government Act's Subdivision and Development Regulations (Alberta Regulation 160/2012)* requires developers to identify abandoned oil and gas wells and, where present, to comply with setback requirements as identified in the Energy Resources Conservation Board (ERCB) Directive 079: Surface Development in Proximity to Abandoned Wells.

You are responsible for the accuracy of the information provided in this statement. The questions must be answered to the best of your knowledge based upon diligent inquiries and a thorough inspection and review.

1. Provide a map of the subject parcel showing the presence or absence of abandoned wells.
   - User Guide to Finding Abandoned Wells on GeoDiscover Alberta's Map Viewer
   - Abandoned Well Locations on GeoDiscover Alberta's Map Viewer

   NOTE: The map must show the actual well location, as identified in the field, including the surface coordinates (available on the Abandoned Well Map Viewer or by contacting the ERCB Customer Contact Centre at 1-855-297-8311) and the 5 metre setback established in ERCB Directive 079 in relation to existing or proposed building sites.

2. Are there abandoned Oil/Gas wells located within 5 m of the site? ☐ Yes ☑ No
   If you answered 'yes', please answer question 3 and include the well location(s) on the site plan.

3. Have you contacted the licensee of the well(s) to confirm the exact location? ☐ Yes ☑ No
   If you answered 'yes', you must have written confirmation included with your application.

   Licensee Company Name _____ Licensee Contact _____

   NOTE: Where a well is identified, the Development Authority must refer a copy of the application to the Licensee(s) of Record. The referral will include the applicant's contact information.

4. Who is submitting the Abandoned Well Declaration for this development?

   ☐ Applicant ☑ Owner ☑ Builder ☐ Other _____

   Company Name Riverview Custom Homes Contact Person Candice Cretney

   Address 804 16th Ave SW

   Phone 4034642712 Cell Phone _____ Email Candice@riverviewhomes.ca

5. Will the development result in construction activity within the setback area? ☐ Yes ☑ No
If you answered 'yes':

- Provide a statement confirming that the abandoned wells will be temporarily marked with on-site identification to prevent contact during construction; and
- Describe what measures will be taken to prevent contact during construction.

NOTE: This form is to be signed by the titled owner(s) of the property or their authorized agents or consultants.

I, the ☑ owner, ☐ authorized agent, ☑ authorized consultant, state that, to the best of my knowledge, the information provided in this statement is accurate, complete and is based on diligent inquiry and thorough inspection and review of all the documents and other information reasonably available pertaining to the subject property.

June 8 / 2020
Date

Applicant Signature

Chris York
Applicant Name (Please Print)

Riverview Custom Homes
Company Name (Please Print)

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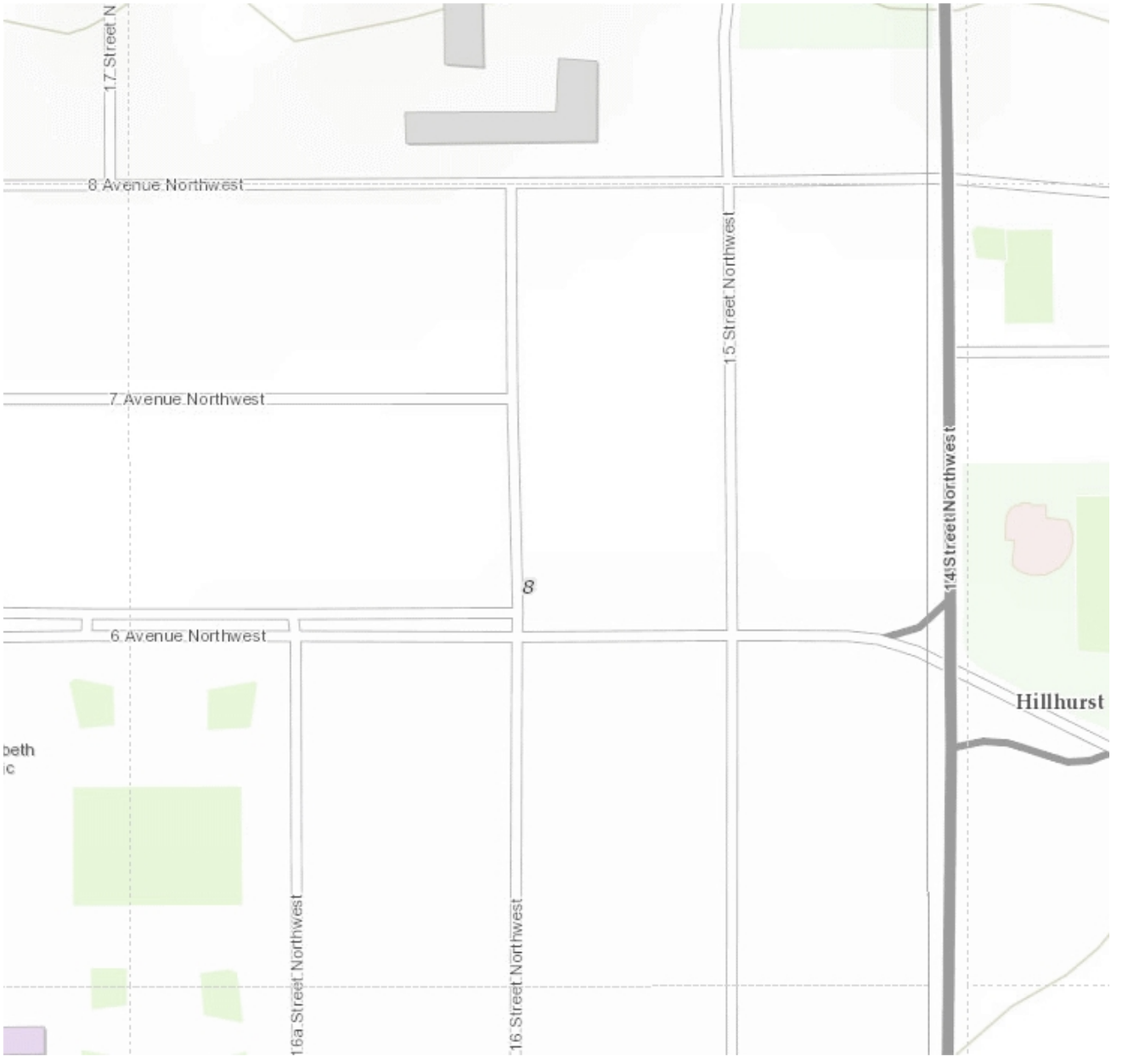

Abandoned Well Map

Base Data provided by: Government of Alberta

Author XXX

Printing Date: 6/5/2020

Legend

- Abandoned Well (Large Scale)
- Revised Well Location (Large Scale)
- Revised Location Pointer
- ATS Township (large scale)
- ATS Section without Road Allowance
- ATS Section label (large scale)
- ATS LSD
- ATS LSD label (large scale)
- Provincial Boundary
- Citations

Date Date (if applicable)

Scale: 4,513.99

0.07 Kilometers 0

Projection and Datum:

WGS84 Web Mercator Auxiliary Sphere

Alberta Energy Regulator

District Title: Residential - Grade-Oriented Infill (R-CG)

The information contained herein is intended for information purposes only. Please refer to the Calgary Land Use Bylaw 1P2007 for a complete list of rules and regulations. This form has no legal status and cannot be used as an official interpretation of the Land Use Bylaw 1P2007.

Date:	April 19, 2021
Date Received:	March 16 2021
F/M:	**Allan Singh**
BLC BY:	**Stephanie Fowler**
Review Required:	COMPLETE
Markups Completed Electronically:	Yes - Refer to Livelink

D.P. #	**2021-1721**

For Internal Distribution Only

Modifier(s):	**F.A.R**		**Height**		**Density**		**ALL MODIFIER(S) ARE COMPULSORY (Cannot be relaxed)**

Project Description(s):	New: Rowhouse Building with Secondary Suites (1 Building), Accessory Residential Building (Garage)

Floodway/Floodfringe/Overland Flow
DOES NOT APPLY
If applicable Complete Flood Sheet*

Airport Vicinity Protection Area (AVPA)
DOES NOT APPLY

Right-of-Way Setback(S)					
Rd / St / Av		**Required**		**Provided**	
Rd / St / Av	**N/A**	**Required**		**Provided**	
Rd / St / Av		**Required**		**Provided**	

Main Floor Elevation(S):		***Roof Peak Elevation(s):***	
	54.35		**63.93**

LDR: For Additions or alterations to existing See Section 358 For Dwellings Deemed Conforming

Notes:
Rounding per Section 14(1) has been applied to the 1 and 2 unit worksheets.
Per discussion with sustainment, areas under stairs have not been counted toward suite area
FM to review proposed amenity for Suites 5 through 10 - proposed spaces with garden boxes. Not private, no seating.

Page 2

Residential - Grade-Oriented Infill (R-CG) District

D.P. # 2021-1721

Rule	Requirements	Notes	Evaluation Provided/Variance			
Secondary Suites	If applicable please refer to Secondary Suites Form		See Attached	N/A	N/I	
347.3 Permitted Use Rowhouse Building	(Front A 53.27 + Front B 53.17) / 2 = Front *Average Building Reference Point*		53.22			
	(Rear A 53.07 + Rear B 53.05) / 2 = Rear *Average Building Reference Point*		53.06			
	(1)(g) Must not be located on a parcel where the difference between the average building reference points is greater than 2.4 metres;					
	Difference between *Front & Rear Average Building Reference Points* =	*0.16*	C	N/C	N/A	N/I
39 Contextual Front Setback	**A) Contextual Front Setback for 2 Contextual Adjacent Buildings** (Adj. Building 1 **6.09** + Adj. Building 2 **9.19**)/2 = A		**8**			
	or B) Contextual Front setback for 1 Contextual Adjacent Building Adjacent Building = B		**0.00**			
	or C) Contextual Front Setback with no Contextual Adjacent Buildings = C		**3**			
537 Building Setback from Front Property Line	(1) Unless otherwise referenced in subsections (2) or (3), the min building setback from a front property line is the greater of: (a) the contextual front setback less 1.5m to a max of 4.5m; or **7.64** (**Contextual Front Setback**) less 1.5m **4.50** (Required Front Setback)		N/A			Rounded
	(b) 3.0m		N/A			Not Rounded
	(2) On a corner parcel, the min building setback from a front property line may be reduced to: (a) the contextual front setback at the side property line shared with another parcel to a max of 6.0m; and (b) decreases in equal proportion with the increase in the distance from the shared side property line, to a min of 3.0m.	West	C	N/C	N/A	N/I
7.64						
347.3 Permitted Use Rowhouse Building	(1) To be a permitted use in the R-CG District a Rowhouse Building: (a) must have façade articulation for each Dwelling Unit, by including: (i) a portion of a street facing façade forward from the remainder of the street facing façade of that unit, with the projecting or recessed portion having a minimum dimension of: (A) 2.0m in width;		C	N/C	N/A	N/I
	(B) 0.3m in depth; and		C	N/C	N/A	N/I
	(C) 2.4m in height; or		C	N/C	N/A	N/I
	(ii) a porch that projects from a street facing façade a minimum dimension of: (A) 2.0m in width; and		C	N/C	N/A	N/I
	(B) 1.2m in depth;		C	N/C	N/A	N/I
	(b) must have the main floor located above grade adjacent to the building to a maximum of 1.20m above grade for street facing facades;	highest	1.07		-0.13	Not Rounded
334 Projections into Setback Areas	(3) Portions of a building below the surface of the ground may extend without any limits into a setback area, with the exception of the required front setback area.		C	N/C	N/A	N/I
336 Projections Into Front Setback Area	(1) Unless otherwise referenced in subsection (6), bay windows and eaves may project a max. of 0.6 m into the front setback area.		N/A			Rounded
	(2) Landings, ramps other than wheelchair ramps and stairs may project into a front setback area provided: (a) they provide access to the main floor or lower level of the building; and		C	N/C	N/A	N/I
	(b) the area of a landing does not exceed 2.5m²		C	N/C	N/A	N/I
	(5) In a Developed Area, a porch may project a maximum of 1.8m into a front setback area where: (a) it forms an entry to the main floor of a Dwelling Unit of a main residential building;		C	N/C	N/A	N/I
	(b) the setback of the porch from the front property line is not less than the minimum setback in the district;		C	N/C	N/A	N/I
	(c) the maximum height of the porch platform is 1.2m measured from grade, excluding stairs and a landing area not exceeding 2.5m²; and		C	N/C	N/A	N/I
	(d) the portion of the porch that projects into a front setback area is unenclosed, other than by a railing, balustrade or privacy walls located on porches between attached units.		C	N/C	N/A	N/I
	(6) Eaves may project an additional 0.6m from a porch into the front setback area, as described in subsection (5).		N/A			Rounded

335 Length of Portions of a Building in Setback Areas (Front)	(1) On each storey, the total combined length of all projections into any setback area must not exceed 40% of the length of the facade (Does not apply to eaves, ramps and stairs)					PROVIDE LENGTH AND % VALUES	%	Length	%	Length
	1st st			X 40% =			N/A			
	2nd st			X 40% =						
	(2) The max. length of an individual projection into any setback area is 3.1 m.						N/A			
538 Block Face Requirements	(1) A minimum building setback of 1.2m is required from a side property line at least every 60.0m along the entire length of a block face.						N/A			
	(2) Where subsection (1) applies, the side setback area must be clear of all air conditioning units, window wells and portions of a building measured from grade to a height of 2.4 metres.						C	N/C	N/A	N/I
539 Building Setback from Side Property Line	(1) Subject to subsection (3) through (11), the minimum building setback from any side property line is 1.2m					South to main bldg	1.20		0.00	
						South to bike storage	1.50		0.30	
	(2) Subject to subsections (3) through (9), for a laneless parcel, the minimum building setback from any side property line is:	(a) 1.2 metres; or					N/A			
		(b) 3.0m on one side of the parcel where no provision is made for a private garage on the front or side of a building.					N/A			
	(3) For a Backyard Suite, Contextual Semi-detached Dwelling, Rowhouse Building or Semi-detached Dwelling, there is no requirement for a building setback from a property line upon which a party wall is located.						C	N/C	N/A	N/I
	(4) The minimum building setback from a side property line may be reduced to zero metres where:	(a) the owner of the parcel proposed for development and the owner of the adjacent parcel register, against both titles, a 1.2m private maintenance easement;					C	N/C	N/A	N/I
		(b) the building setback is not greater than 0.1m from the side property line for any portion of a building that is recessed 0.6 metres or greater from the front façade or the rear façade of the building and is setback less than 1.2 metres from the side property line;					C	N/C	N/A	N/I
		(c) the wall at the shared side property line is constructed of maintenance-free materials and there is no overhang of eaves onto an adjacent parcel; and					C	N/C	N/A	N/I
		(d) all roof drainage from the building is discharged through eavestroughs and downspouts onto the parcel on which the building is located.					C	N/C	N/A	N/I
	(5) For a Rowhouse Building, Contextual Semi-detached Dwelling, Semi-detached Dwelling or Single Detached Dwelling the minimum building setback from a side property line may be reduced to zero metres where:	(a) the main residential building on the adjacent parcel has a setback of 0.1m or less at the shared side property line for any portion of the building that is recessed 0.6 metres or greater from the front façade or the rear façade of the building and is setback less than 1.2m from the side property line.					C	N/C	N/A	N/I
		(b) the building setback is not greater than 0.1m from the side property line for any portion of a building that is recessed 0.6m or greater from the front façade or the rear façade of the building and is setback less than 1.2m from the side property line;					C	N/C	N/A	N/I
		(c) the wall at the shared side property line is constructed of maintenance-free materials and there is no overhang of eaves onto an adjacent parcel; and					C	N/C	N/A	N/I
		(d) all roof drainage from the building is discharged through eavestroughs and downspouts onto the parcel on which the building is located.					C	N/C	N/A	N/I
	(7) For a corner parcel, the minimum building setback from a side property line shared with a street is 0.6m.					North	1.45		0.85	
	(9) The building setback from a side property line is 3.0 metres required in subsection 2(b) may be reduced to zero metres where the owner of the parcel proposed for development and the owner of the adjacent parcel registers, against both titles, an exclusive private access easement:	(a) where the width if the easement, in combination with the reduced building setback, must be at least 3.0m; and					N/A			
		(b) that provides unrestricted vehicle access to the rear of the parcel.					C	N/C	N/A	N/I
	(10) Unless otherwise referenced in subsection (11), on a laned parcel the min building setback from a side property line for a private garage attached to a main residential building is 0.6m.						N/A			
	(11) On a laned parcel, the min building setback for a private garage attached to a main residential building that does not share a side or rear property line with a street may be reduced to zero metres where the wall of the portion of the building that contains the private garage is constructed of maintenance-free materials and there is no overhang of eaves onto an adjacent parcel.						N/A			
	(1.1) Portions of a building greater than or equal to 2.4m above grade may project a max of 0.6m into any side setback area.						N/A			
	(1.2) Portions of a building less than 2.4m above grade may project a maximum of									

Rounded

Not Rounded

Not Rounded

Not Rounded

Not Rounded

337 Projections Into Side Setback Area	(1.2) Portions of a building less than 2.4m above grade may project a maximum of 0.6m,				N/A				
	(1.2) (b) for all other uses:	(i) when located on a corner parcel;			C	N/C	N/A	N/I	
		(ii) where at least one side setback area is clear of all portions of the building measured from grade to a height of 2.4m; or			C	N/C	N/A	N/I	
		(iii) where the side setback area contains a private maintenance easement required by this Bylaw and no portion of the building projects into the required private maintenance easement.			C	N/C	N/A	N/I	
	(1.3) Window wells may project a maximum of 0.8m into any side setback area.				N/A				Rounded
	(2) Window wells and portions of a building, other than eaves, must not project into a 3.0m setback required on a laneless parcel.				C	N/C	N/A	N/I	
	(3) Eaves may project a max. of 0.6m into any side setback area.			North	-0.54		-1.14		Rounded
				South	0.15		-0.45		
	(5) Landings, ramps other than wheelchair ramps and stairs may project in a side setback area provided:	(a) they provide access to the main floor or lower level of the building;		North	C	N/C	N/A	N/I	
		(b) the area of a landing does not exceed 2.5m^2		smallest	4.41		1.91		Rounded
		(c) the area of any portion of a landing that projects into the side setback area does not exceed 1.8m^2		largest	1.06		-0.74		
		(d) they are not located in a 3.0m side setback area required on a laneless parcel; and			C	N/C	N/A	N/I	
		(e) they are not located in a side setback area required to be clear of projections, unless pedestrian access from the front to the rear			C	N/C	N/A	N/I	
	(10) Central air conditioning equipment may project a maximum of 1.0m into a side setback area:				N/A				Rounded
	(8) Any portion of a building that projects into a side setback area, other than eaves, landings, window wells, ramps and stairs, must not be located closer than 0.9 m from the nearest front façade.				N/A				Not Rounded
	(9) Balconies and decks must not project into any side setback area;				N/A				Not Rounded
335 Length of Portions of a Building in Setback Areas (Side)	(1) On each storey, the total combined length of all projections into any setback area must not exceed 40% of the length of the facade (Does not apply to decks, eaves, ramps and stairs)			PROVIDE LENGTH AND % VALUES	%	Length	%	Length	Rounded
	1st st		X 40% =		N/A				
	2nd st		X 40% =						
	__st		X 40% =						
	__st		X 40% =						
	(2) The max. length of an individual projection into any setback area is 3.1m (Includes Window Wells)				N/A				Not Rounded
540 Building Setback from Rear Property Line	(1) Unless otherwise referenced in subsections (2) or (3) the minimum building setback from a rear property line is 7.5m			East	8.31		0.81		Not Rounded
	(2) For a Rowhouse Building on a corner parcel, the min building setback from a rear property line is 1.5m where the building setback from the side property line shared with another parcel is a min of 3.0m for any portion of the Rowhouse Building located between the rear property line and 50.0% parcel depth or the building depth of the main residential building on the adjoining parcel, whichever is closer to the rear property line.				C	N/C	N/A	N/I	Rounded
	(3) Where two or more main residential buildings are located on a corner parcel, the min building setback from a rear property line is 1.5m for a Duplex Dwelling, Rowhouse Building, Semi-detached Dwelling or Single Detached Dwelling where:	(a) one main residential building is wholly located between the front property line and 60.0% parcel depth; and			C	N/C	N/A	N/I	
		(b) the building setback is a min of 3.0m from the side property line shared with another parcel for any portion of a main residential building located between the rear property line and 50.0% parcel depth or the building depth of the main residential building on the adjoining parcel, whichever is closer to the rear property line.			C	N/C	N/A	N/I	Rounded
338 Projections Into Rear Setback Area	(2) Awnings, balconies, bay windows, canopies, chimneys, decks, eaves, fireplaces, fire escapes, landings, porches, and ramps other than wheelchair ramps may project a max of 1.5m into any rear setback area.				N/A				Rounded
	(3) A private garage attached to a building may project without limits into a rear setback area provided it:	(a) does not exceed 4.6m in height, measured from the finished floor of the private garage;			N/A				Not Rounded
		(b) does not exceed 75.0m^2 in gross floor area for each Dwelling Unit located on the parcel.		Unit 1					Rounded
				Unit 2					
				Unit 3					
				Unit 4					
		(c) has no part that is located closer than 0.60m to the rear property line; and							Not Rounded
		(d) has no eave closer than 0.6m to a side property line.							
	(4) When an attached private garage has a balcony or deck, the balcony or deck must not be located within 6.0m of a rear property line or 1.2m of a side property line.			Rear					
				Side					
				Side					

347.3 Permitted Use Rowhouse Building	(1) To be a permitted use a Rowhouse Building:	(c) located on a corner parcel must have an exterior entrance which is visible from each street side of the corner parcel;			C	N/C	N/A	N/I	
		(d) must not have an attached private garage;			C	N/C	N/A	N/I	
		(e) must have a motor vehicle parking stall or private garage for each Dwelling Unit with direct, individual access to a lane.			C	N/C	N/A	N/I	
		(f) must not have windows on an exposed side façade of a unit that are located beyond the rear façade of a contextually adjacent building on an adjoining parcel unless:	(i) the window is located below the second storey;		Applies		N/A	N/I	
			(ii) the glass in the window is entirely obscured;		C	N/C	N/A	N/I	
			(iii) there is a minimum distance of 1.5m between the finished floor and the bottom of the window sill; or		C	N/C	N/A	N/I	
			(iv) the façade that contains the window is setback a minimum of 4.2m from the side property line; and		C	N/C	N/A	N/I	
335 Length of Portions of a Building in Setback Areas (Rear)	(1) On each storey, the total combined length of all projections into any setback area must not exceed 40% of the length of the façade (Does not apply to decks, eaves, ramps stairs & attached garage)			PROVIDE LENGTH AND % VALUES	%	Length	%	Length	Rounded
	1st st		X 40% =		N/A				
	2nd st		X 40% =						
	(2) The max. length of an individual projection into any setback area is 3.1m				N/A				Not Rounded
339 Decks	(2) The height of a deck in the Developed Area must not exceed:	(a) 1.5m above grade at any point, except where the deck is located on the same façade as the at-grade entrance to a walkout basement; and		Unit 9 rear	1.10		-0.40		Not Rounded
		(b) 0.3m above the main floor level of the closest main residential building on the parcel.			-0.12		-0.42		Not Rounded
	(2.1) Unless otherwise referenced in subsection (3), a privacy wall located on a deck:	(a) must not exceed 2.0m in height when measured from the surface of the deck; and			N/A				Not Rounded
		(b) must not be located between the foremost front façade of the main residential building and the front property line.			C	N/C	N/A	N/I	
	(3) A deck attached to a Semi-detached Dwelling, Rowhouse or Townhouse within 1.2m of a party wall must have a solid privacy wall that:		(a) is a min. of 2.0m in height;	Unit 9	N/I		#VALUE!		Not Rounded
			(b) is a max. of 3.0m in height; and		N/I		#VALUE!		Not Rounded
			(c) extends the full depth of the deck.		C	N/C	N/A	N/I	
340 Balconies	(1) Unless otherwise referenced in this Part, an open balcony must not project more than 1.85 metres from the building façade to which it is attached.				N/A				Not Rounded
	(2) Unless otherwise referenced in this Part, the floor area of a recessed balcony must not exceed 10.0m²				N/A				Rounded
	(2.1) Unless otherwise referenced in this Part, a privacy wall located on a balcony:	(a) must not exceed 3.0m in height when measured from the surface of the balcony; and			N/A				Not Rounded
		(b) must not be located between the foremost front façade of the main residential building and front property line.			C	N/C	N/A	N/I	
	(3) A balcony attached to a Contextual Semi-detached Dwelling, Semi-detached Dwelling, Rowhouse Building or Townhouse within 1.2m of a party wall must have a privacy wall that:		(a) is a min. of 2.0m in height;		N/A				Not Rounded
			(b) is a max. of 3.0m in height; and		N/A				Not Rounded
			(c) extends the full depth of the balcony.		C	N/C	N/A	N/I	
544 Balconies	(1) Where a balcony is located on the roof of the first or second storey of a Contextual Single Detached Dwelling, Contextual Semi-detached, Rowhouse Building, Single Detached Dwelling or Semi-detached Dwelling and does not overhang any façade of the storey below, the balcony may have a maximum floor area that equals 30.0% of the horizontal cross section of the storey below.			**Horizontal Cross Section of Floor Below** **641.37** **30% of Area (Max)** **192.41**	**Area** **168.24** **Percent** **26.23%**		**-24.17** **-3.77%**		Rounded
	(2) A balcony attached to a Contextual Single Detached Dwelling, Contextual Semi-detached Dwelling, or Rowhouse Building that is a permitted	(a) may be located on a side façade of a building:	(i) where it forms part of the front façade and is not recessed back more than 4.5m from the front façade; or		N/A				Not Rounded
			(ii) where it is on the street side of a corner parcel;		C	N/C	N/A	N/I	
		(b) may be located on a rear façade of a building where:	(i) it does not form part of the side façade unless the side façade is on the street side of a corner parcel;		C	N/C	N/A	N/I	
			(ii) a privacy wall is provided where the balcony is facing a side property line shared with a contextually adjacent building; and		C	N/C	N/A	N/I	

	use:		(iii) the privacy wall is a minimum of 2.0m in height and a maximum of 3.0m in height; and	Minimum	N/A				Not Rounded
				Maximum	N/A				
		(c) must not have a balcony on the rear façade with a height greater than 6.0m, when measured vertically at any point from grade to the platform of the balcony.		Unit 12	7.20		1.20		Not Rounded
					N/A				
541 Building Height	(1) Unless otherwise referenced in subsections (2) and (3), for a Contextual Semi-detached Dwelling, Duplex Dwelling, Rowhouse Building, Semi-detached Dwelling or Single Detached Dwelling, the max building height is 11.0m measured from grade.			portion of South	C	N/C	N/A	N/I	
	(2) Where a building setback is required from a property line shared with another parcel designated with a low density residential district or the M-CG District, the max building height:	(a) is the greater of the highest geodetic elevation of a main residential building on the adjoining parcel or 7.0m, measured from grade, at the shared property line; and		South	C	N/C	N/A	N/I	
		(b) increases at a 45 degree angle to a max of 11.0m measured from grade.							
	(3) The max area of a horizontal cross section through a building at 9.5m above average grade must not be greater than 75.0% of the max area of a horizontal cross section through the building between average grade and 8.6m.								Rounded
	53.37 Prim Bldg Crnr 1	53.27 Prim Bldg Crnr 2		62.76 Geo 9.5m Abve Avrge Grade					
	53.04 Prim Bldg Crnr 3,4	53.36 Prim Bldg Crnr 5,6		61.86 Geo 8.6m Abve Avrge Grade					
	633.66 Max. Area	X 75% =	475.25 Max. Area allowed at 9.5m		Percentage: 65.62%		-9.38%		
					Area (m²): 415.83		-59.42		
	(4) For all other uses, the maximum building height is 10.0m.				C	N/C	N/A	N/I	
349 Roof Equipment Projection	(2) Mechanical equipment may project a maximum of 0.3m from the surface of a roof on a building.				N/A				Not Rounded
532 Façade Width	The minimum width of a street facing façade of a unit is 4.2m			Unit 9 smallest	4.34		0.14		Not Rounded
535 Building Depth	(1) Unless otherwise referenced in subsection (2) the maximum building depth is 65.0 per cent of the parcel depth for a Duplex Dwelling, Rowhouse Building, Semi-detached Dwelling and a Single Detached Dwelling.				Percentage (%): N/A				Rounded
	65% x 41.14 Parcel Depth = 26.70 Max Bldg Depth				Building Depth (m): N/A				
	(2) For a Rowhouse Building located on a corner parcel there is no max building depth where the building setback from the side property line shared with another parcel is a min of 3.0m for any portion of the Rowhouse Building located between the rear property line and 50.0% parcel depth or the building depth of the main residential building on the adjoining parcel, whichever is closer to the rear property line.				C	N/C	N/A	N/I	Rounded
	(3) Where two or more main residential buildings are located on a corner parcel, there is no max building depth for a Duplex Dwelling, Rowhouse Building, Semi-detached Dwelling or Single Detached Dwelling where:	(a) one main residential building is wholly located between the front property line and 60.0% parcel depth; and			C	N/C	N/A	N/I	
		(b) the building setback is a min of 3.0m from the side property line shared with another parcel for any portion of a main residential building located between the rear property line and 50.0% parcel depth or the building depth of the main residential building on the adjoining parcel, whichever is closer to the rear property line.			C	N/C	N/A	N/I	Rounded
37 Contextual Building Depth Average	**A) Contextual Building Depth Average for 2 Contextual Adjacent Buildings**								
	(Adj. building 1	+ Adj. building 2	) / 2 + 4.6 = A		4.6				
	OR B) Contextual Building Depth Average for 1 Contextual Adjacent Building								
	Adjacent Building	+ 4.6 = B			4.60				
	OR C) Contextual Building Depth Average with no Contextual Adjacent Buildings								
	60% X	= C			0				
347.3 Permitted Use Rowhouse Building	(3) Unless otherwise referenced in subsection (4) the maximum building depth of a Rowhouse Building that is a permitted use in the R-CG District is the greater of:	(a) 60.0% of the parcel depth; 60% x Parcel Depth = 0.00 Max. Bldg Depth			N/A				
		(b) the contextual building depth average. Contextual Building Depth Avg.= 4.60							
	(4) There is no maximum building depth for a Rowhouse Building located on a corner parcel in the R-CG District				Applies		N/A	N/I	
	(5) To be a permitted use in R-CG District a Rowhouse Building must not be located on a parcel that contains more than one main residential building				Applies		N/A	N/I	
	The maximum density for parcels designated R-CG District is 75 units per hectare								

529 Density	The maximum density for parcels designated R-CG District is 75 units per hectare.					Units	12.00		0.00	
	75 U.P.H	1654.90 (m²) / 0.1654900 (ha)	=	12.00 Units		U.P.H	72.51		-2.49	
339.1 Porches ***(must meet all requirements to be exempt)***	In a Developed Area, a porch is exempt from parcel coverage where:	(a) the porch is located between the façade of the main residential building and:	(i) the front property line; or				C	N/C	N/A	N/I
			(ii) the side property line on the street side of a corner parcel;				C	N/C	N/A	N/I
		(b) the porch is unenclosed on a minimum of two sides, other than by a railing, balustrade, or privacy walls located on porches between attached units when the porch is at or exceeds the contextual front setback; and					C	N/C	N/A	N/I
		(c) there is no enclosed floor area or balcony located directly above the roof of the porch.					C	N/C	N/A	N/I
534 Parcel Coverage	(2) Unless otherwise referenced in subsection (3), the maximum cumulative building coverage over all the parcels subject to a single development permit containing a Contextual Semi-Detached Dwelling, Cottage Housing Cluster, Rowhouse Building, Semi-Detached Dwelling or Single Detached Dwelling is:	(a) 45.0% of the area of the parcels subject to the single development permit for a development with a density of less than 40 units per hectare.					Applies		Does Not Apply	
		(b) 50.0% of the area of the parcels subject to the single development permit for a development with a density of 40 units per hectare or greater and less than 50 units per hectare;					Applies		Does Not Apply	
		(c) 55.0% of the area of the parcels subject to the single development permit for a development with a density of 50 units per hectare or greater and less than 60 units per hectare; or					Applies		Does Not Apply	
		(d) 60.0% of the area of the parcels subject to a single development permit for a development with a density of 60 units per hectare or greater.					Applies		Does Not Apply	
	(3) The maximum parcel coverage referenced in subsections (1) and (2), must be reduced by:	(a) 21.0m² where one motor vehicle parking stall is required on a parcel that is not located in a private garage; and					Applies		Does Not Apply	
		(b) 19.0m² for each required motor vehicle parking stall that is not located in a private garage where more than on motor vehicle parking stall is required on a parcel.					Applies		Does Not Apply	
	(4) For all other uses, the maximum parcel coverage is 45.0%						Applies		Does Not Apply	
	Determine correct percentage of parcel coverage and input values below						%		%	
	60.00%	1654.90 Parcel Area	minus	Required Stalls		= 992.94 Max. Coverage	52.85%		-7.15%	
	Parcel Coverage Totals						m²		m²	
	House	Proj. > 1.0m	Garage(s)	Other	Total					
	633.66		240.91		874.57		874.57		-118.37	
Accessory Building	If applicable please refer to Accessory Residential Building Form						See Attached		N/A	N/I
542 Outdoor Private Amenity Space	For a Contextual Semi-detached Dwelling, Duplex Dwelling, Rowhouse Building, Semi-detached Dwelling and a Single Detached Dwelling, each unit must have direct access to private amenity space that:	(a) is provided outdoors;					C	N/C	N/A	N/I
		(b) has a minimum total area of 20.0m²; and				all units	complies			
		(c) may be divided over a maximum of two amenity spaces where:	(i) one amenity space has no dimension less than 3.0m; and			Amenity Space 1(Min.)	Area (m²)			
							15.32		15.32	
							Dimension (m)			
							3.39		0.39	
			(ii) the second amenity space has a minimum contiguous area of 7.5m² with no dimensions less than 1.5m			Amenity Space 2(Min.)	Area (m²)			
							7.70		0.20	
							Dimension (m)			
							2.51		1.01	
						Total Amenity Area (m²):	23.02		3.02	
341 Driveways	(1) A driveway must not have direct access to a major street unless:	(a) there is no practical alternative method of vehicular access to the parcel; and					C	N/C	N/A	N/I
		(b) a turning space is provided on the parcel to allow all vehicles exiting to face the major street.					C	N/C	N/A	N/I
	(2) A driveway connecting a street to a private garage must:	(a) be a min of 6.0m in length along the intended direction of travel for vehicles measured from:	(i) the back of the public sidewalk to the door of the private garage; or				N/A			
			(ii) a curb where there is no public sidewalk to the door of a private garage, and				N/A			
		(b) contain a rectangular area measuring 6.0m in length and 3.0m in width.					C	N/C	N/A	N/I
	(3) A driveway connecting a lane to a private garage must be a min of 0.60m in length along the intended direction of travel for vehicles, measured from the property line					East	0.82		0.22	

Rounded

Rounded

Rounded

Not Rounded

Rounded

Not Rounded

Not Rounded

Not Rounded

Not Rounded

	shared with the lane to the door of a private garage.							
	(4) Parking Surface located in the actual front setback must be surfaced.			C	N/C	N/A	N/I	
	(5) That portion of a driveway including a motor vehicle parking stall within 6.0m of a public sidewalk, or a curb on a street where there is no public sidewalk, must not exceed a width of:	(a) 6.0m where the parcel width is 9.0m or less; or		N/A				Not Rounded
		(b) 7.0m for parcel width > than 9.0m and < than 15.0m		N/A				Not Rounded
	(6) In the developed area a driveway accessing a street must not be constructed, altered or replaced except where:	(a) located on a laneless parcel; (b) located on a laned parcel and 50 % or more parcels on same block face have an existing driveway accessing a street; or (c) legally existing driveway not being relocated or widened.		C	N/C	N/A	N/I	
				Existing Driveway No Changes				
342 Retaining Walls	(1) A retaining wall must be less than 1.2m in height when measured from the lowest grade at any point adjacent to the retaining wall to the highest grade retained by the retaining wall.			C	N/C	N/A	N/I	Not Rounded
	(2) A min horizontal separation of 1.0m must be maintained between retaining walls on the same parcel.			C	N/C	N/A	N/I	Not Rounded
338.1 Patios	(1) Unless otherwise referenced in subsections (2) and (3), a privacy wall may be located on a patio, provided it does not exceed a height of 2.0m from the surface of the patio.			C	N/C	N/A	N/I	Not Rounded
	(2) A privacy wall located on a patio must not exceed 2.0m in height, when measured from grade and when the privacy wall is located within: (a) a side setback area; or (b) 6.0m of a rear property line.			C	N/C	N/A	N/I	Not Rounded
	(3) A privacy wall located on a patio must not exceed 1.2m in height when measured from grade when the privacy wall is located between the foremost front façade of the main residential building and the front property line.			C	N/C	N/A	N/I	Not Rounded
540.1 Fences *Note: Only apply fence rules to proposed fences*	The height of a fence above grade at any point along a fence line must not exceed 1.2m for any portion of a fence extending between the foremost front façade of the immediately adjacent main residential building and the front property line.			C	N/C	N/A	N/I	Not Rounded
343 Fences *Note: Only apply fence rules to proposed fences*	The height of a fence above grade at any point along a fence line must not exceed:	(b) 2.0m in all other cases, and		C	N/C	N/A	N/I	Not Rounded
		(c) 2.5m at the highest point of a gate that is not more than 2.5m in length.		C	N/C	N/A	N/I	Not Rounded
348 Visibility Setback	Within a corner visibility triangle, buildings, fences, finished grade of a parcel and vegetation must not exceed the lowest elevation of the street by more than 0.75m above lowest elevation of the street.			C	N/C	N/A	N/I	Not Rounded
287 Rowhouse	(c) requires a minimum of 1.0 motor vehicle parking stalls per Dwelling Unit; and # of Dwelling Units: 12			12		0		
122 Standards for Motor Vehicle Parking Stalls	(3) The minimum depth of a motor vehicle parking stall is 5.9m where it is required for: (a) a Contextual Single Detached Dwelling, Duplex Dwelling, Secondary Suite, Semi-detached Dwelling or Single Detached Dwelling (b) a Dwelling Unit where the stall is provided in a private garage intended to be used for the occupants of only one Dwelling Unit.			C	N/C	N/A	N/I	Not Rounded
	(4) The minimum width of a motor vehicle parking stall required for a Dwelling Unit is: (a) 3.0m where both sides of a stall abut a physical barrier; (b) 2.85m where one side of a stall abuts a physical barrier; and (c) 2.5m in all other			C	N/C	N/A	N/I	Not Rounded
	(7) The minimum width of a motor vehicle parking stall for Multi-Residential Development, Multi-Residential Development - Minor, a Townhouse or a Rowhouse Building provided for the exclusive use of a Dwelling Unit is reduced to 2.60m where: (a) the stall is one of two or more motor vehicle parking stalls that are provided in a private garage; (b) the motor vehicle parking stalls in the private garage are for the sole use of the occupants of the Dwelling Unit; and (c) the motor vehicle parking stalls are not counted towards fulfilling the minimum motor vehicle parking stall requirements for that Dwelling Unit.			C	N/C	N/A	N/I	Not Rounded
	(15) Motor vehicle parking stalls for a Backyard Suite, Contextual Semi-detached Dwelling, Contextual Single Detached Dwelling, Duplex Dwelling, Secondary Suite, Semi-detached Dwelling and Single Detached Dwelling must be: (a) hard surfaced; and (b) located wholly on the subject parcel.			C	N/C	N/A	N/I	

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Accessory Residential Building

D.P. # 2021-1721

Rule	Requirements			Notes	Evaluation			
					Provided/Variance			
345 Accessory Residential Building	(1) The min. building setback for an Accessory Residential Building is::	(a) 1.2m from a side or rear property line shared with a street; or		North	1.37		0.17	
		(b) 0.6m from a side or rear property line in all other cases.		Easts (rear)	0.82		0.22	
				South	0.61		0.01	
	(2) The min. building setback for an Accessory Residential Building that does not share a side or rear property line with a street may be reduced to zero m when:	(a) the Accessory Residential Building is less than 10.0m^2			C	N/C	N/A	N/I
		(b) the wall of the Accessory Residential Building is constructed of maintenance-free materials and there is no overhang of eaves onto an adjacent parcel; or			C	N/C	N/A	N/I
		(c) the owner of the adjacent parcel grants a 1.5m private maintenance easement that must:	(i) be registered against the title of the parcel proposed for development and the title of the adjacent parcel; and		C	N/C	N/A	N/I
			(ii) include a 0.60m eave and footing encroachment easement.		C	N/C	N/A	N/I
	(3) An Accessory Residential Building must not be located in the actual front setback area.				C	N/C	N/A	N/I
	(4) A private garage on laneless parcel may be located in required 3.0m side setback, except along street side of a corner parcel.				C	N/C	N/A	N/I
	(5) The min. distance between any façade of an Accessory Residential Building 10.0m^2 or more and a main residential building or a building containing a Secondary Suite is 1.0m			1.26	C	N/C	N/A	N/I
	(6) The height of an Accessory Residential Building must not exceed:	(a) 4.6m, measured from the finished floor of the building;		Bike Storage	3.67		-0.93	
				Detached Garage	3.82		-0.78	
		(b) 3.0m at any eaveline, when measured from the finished floor of the building; and		Bike Storage	2.74		-0.26	
				Detached Garage	2.89		-0.11	
		(c) one storey,			C	N/C	N/A	N/I
		(c) one storey, which may include an attic space that:	(i) is accessed by a removable ladder;		C	N/C	N/A	N/I
			(ii) does not have windows;		C	N/C	N/A	N/I
			(iv) has a max. height of 1.5m from the attic floor to the underside of any rafter.		N/A			
346 Restrictions on Use of Accessory Residential Building	(1) The finished floor of an Accessory Residential Building, other than a private garage, must not exceed 0.6m above grade.				C	N/C	N/A	N/I
	(2) An Accessory Residential Building must not be used as a Dwelling Unit, unless a Backyard Suite has been approved.				C	N/C	N/A	N/I
	(3) An Accessory Residential Building must not have a balcony or rooftop deck.				C	N/C	N/A	N/I
	(4) The area of a parcel covered by all Accessory Residential Buildings located on a parcel:	(a) must not exceed the less of:	(i) the building coverage of the main residential buildings; or		C	N/C	N/A	N/I
			(ii) 75.0m^2 for each Dwelling Unit located on the parcel; and	12 Units =				
				900	240.91		-659.09	
				per unit	20.08		-54.92	

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Secondary Suite

D.P. # 2021-1721

Rule	Requirements		Notes	Evaluation			
				Provided/Variance			
	Note: Remember to check any applicable district rules						
351 Secondary Suite	(1) For a Secondary Suite the minimum building setback from a property line, must be equal to or greater than the minimum building setback from a property line for the main residential building.			**C**	**N/C**	**N/A**	**N/I**
	(2) Except as otherwise stated in subsection (2.1) and (3), the maximum floor area of a Secondary Suite, excluding any area covered by stairways and landings, is 100.0m²:	(a) in the R-C1L, R-C1Ls, R-C1, R-C1s, R-C1N, R-1, R-1s and R-1N District; or		**N/A**			
		(b) when located on a parcel with a parcel width less than 13.0m.					
	(2.1) There is no maximum floor area for a Secondary Suite wholly located in a basement. Internal landings and stairways providing access to the basement may be located above grade.			**Applies**		**N/A**	**N/I**
	(4) A Secondary Suite must have a private amenity space that:	(a) is located outdoors; and	Suites 5 - 10 are gardens not private, no seating	**F/M Discretion**		**N/A**	**N/I**
		(a) is located outdoors; and		**C**	**N/C**	**N/A**	**N/I**
		(b) has a minimum area of 7.5m² with no dimension less than 1.5m.		**Dimension (m)**			
			Min.	**2.88**		**1.38**	
				Area (m²)			
			Min.	**9.55**		**2.05**	

354 Accessory Suite - Density	(1) Unless otherwise referenced in subsection (4), there must not be more than one Backyard Suite located on a parcel.				C	N/C	N/A	N/I
	(1.1) There must not be more than one Secondary Suite contained within a Dwelling Unit.				C	N/C	N/A	N/I
	(2) Unless otherwise referenced in subsection (4), a Secondary Suite and a Backyard Suite must not be located on the same parcel.				C	N/C	N/A	N/I
	(3) A Secondary Suite or Backyard Suite must not be separated from the main residential use on a parcel by the registration of a condominium or subdivision plan.				C	N/C	N/A	N/I
	(4) In the R-CG District, one Backyard Suite or one Secondary Suite may be located on a bare land unit containing a Dwelling Unit.				C	N/C	N/A	N/I
546 Motor Vehicle Parking Stalls **Applies to R-CG Only**	(2) The minimum number of motor vehicle parking stalls for a Secondary Suite is reduced to 0.0 where: **All Rules are COMPULSORY**	(a) the floor area of a Secondary Suite is 45.0m² or less.			C	N/C	N/A	N/I
		(b) the parcel is located within 600.0m of an existing or approved capital funded LRT platform or within 150.0m of frequent bus service; and		Within 600m of SAIT LRT	C	N/C	N/A	N/I
		(c) space is provided in a building for the occupant of the Secondary Suite for storage of mobility alternatives such as bicycles or strollers that:	(i) is accessed directly from the exterior; and		C	N/C	N/A	N/I
			(ii) has an area of 2.5m² or more for every Secondary Suite that is not provided with a motor vehicle parking stall. *NOTE: Parcel coverage excludes the building coverage area of the mobility alternative storage space.*		C	N/C	N/A	N/I
295 Secondary Suite	(c) requires a minimum of 1.0 motor vehicle parking stall.				N/A			
122 Standards for Motor Vehicle Parking Stalls	(3) The minimum depth of a motor vehicle parking stall is 5.9m where it is required for: (a) a Contextual Single Detached Dwelling, Duplex Dwelling, Secondary Suite, Semi-detached Dwelling or Single Detached Dwelling				C	N/C	N/A	N/I
	(4) The minimum width of a motor vehicle parking stall required for a Dwelling Unit is: (a) 3.0m where both sides of a stall abut a physical barrier; (b) 2.85m where one side of a stall abuts a physical barrier; and (c) 2.5m in all other cases.				C	N/C	N/A	N/I
	(15) Motor vehicle parking stalls for a Backyard Suite, Contextual Semi-detached Dwelling, Contextual Single Detached Dwelling, Duplex Dwelling, Secondary Suite, Semi-detached Dwelling and Single Detached Dwelling must be: (a) hard surfaced; and (b) located wholly on the subject parcel.				C	N/C	N/A	N/I
Additional Notes								

FILE: **DP2021-1721**

DATE RECEIVED: March 16 2021

Bylaw Discrepancies

Regulation	Standard	Provided
541 Building Height	(1) Unless otherwise referenced in subsections (2) and (3), for a Contextual Semi-detached Dwelling, Duplex Dwelling, Rowhouse Building, Semi-detached Dwelling or Single Detached Dwelling, the max building height is 11.0m measured from grade.	Plans indicate the south elevation as being 11.04m (+0.04m)

Permitted Use Rowhouse Building

Regulation	Standard	Provided
	Complies	

District Title: Residential - Grade-Oriented Infill (R-CG)

The information contained herein is intended for information purposes only. Please refer to the Calgary Land Use Bylaw 1P2007 for a complete list of rules and regulations. This form has no legal status and cannot be used as an official interpretation of the Land Use Bylaw 1P2007.

Date:	May 4, 2021
Date Received:	April 26, 2021
F/M:	**Allan Singh**
BLC BY:	**Stephanie Fowler**
Review Required:	COMPLETE
Markups Completed Electronically:	Yes - Refer to Livelink

D.P. #	**2021-1721**

For Internal Distribution Only

Modifier(s):	**F.A.R**		**Height**		**Density**		**ALL MODIFIER(S) ARE COMPULSORY (Cannot be relaxed)**

Project Description(s):	New: Rowhouse Building with Secondary Suites (1 Building), Accessory Residential Building (Garage)

Floodway/Floodfringe/Overland Flow

DOES NOT APPLY

If applicable Complete Flood Sheet

Airport Vicinity Protection Area (AVPA)

DOES NOT APPLY

Right-of-Way Setback(S)					
Rd / St / Av		**Required**		**Provided**	
Rd / St / Av	**N/A**	**Required**		**Provided**	
Rd / St / Av		**Required**		**Provided**	

Main Floor Elevation(S):		***Roof Peak Elevation(s):***	
Unit 1		**Unit 1**	
Unit 2		**Unit 2**	

LDR: For Additions or alterations to existing See Section 358 For Dwellings Deemed Conforming

Notes:
Rounding per Section 14(1) has been applied to the 1 and 2 unit worksheets.

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Residential - Grade-Oriented Infill (R-CG) District

D.P. # 2021-1721

Rule	Requirements					Notes	Evaluation Provided/Variance			
Secondary Suites	If applicable please refer to Secondary Suites Form						See Attached	N/A	N/I	
347.3 Permitted Use Rowhouse Building	(Front A 53.27 + Front B 53.17) / 2 = Front *Average Building Reference Point*						53.22			
	(Rear A 53.07 + Rear B 53.05) / 2 = Rear *Average Building Reference Point*						53.06			
	(1)(g) Must not be located on a parcel where the difference between the average building reference points is greater than 2.4 metres;									
	Difference between *Front & Rear Average Building Reference Points* =					*0.16*	C	N/C	N/A	N/I
39 Contextual Front Setback	**A) Contextual Front Setback for 2 Contextual Adjacent Buildings** (Adj. Building 1 **6.09** + Adj. Building 2 **9.19**)/2 = A						**8**			
	or B) Contextual Front setback for 1 Contextual Adjacent Building Adjacent Building = B						**0.00**			
	or C) Contextual Front Setback with no Contextual Adjacent Buildings = C						**3**			
537 Building Setback from Front Property Line	(1) Unless otherwise referenced in subsections (2) or (3), the min building setback from a front property line is the greater of:	(a) the contextual front setback less 1.5m to a max of 4.5m; or					N/A			Rounded
		7.64 Contextual Front Setback	less 1.5m	**4.50** Required Front Setback						
		(b) 3.0m					N/A			Not Rounded
	(2) On a corner parcel, the min building setback from a front property line may be reduced to:	(a) the contextual front setback at the side property line shared with another parcel to a max of 6.0m; and					C	N/C	N/A	N/I
		(b) decreases in equal proportion with the increase in the distance from the shared side property line, to a min of 3.0m.								
7.64										
347.3 Permitted Use Rowhouse Building	(1) To be a permitted use in the R-CG District a Rowhouse Building:	(a) must have façade articulation for each Dwelling Unit, by including:	(i) a portion of a street facing façade forward from the remainder of the street facing façade of that unit, with the projecting or recessed portion having a minimum dimension of:	(A) 2.0m in width;			C	N/C	N/A	N/I
				(B) 0.3m in depth; and			C	N/C	N/A	N/I
				(C) 2.4m in height; or			C	N/C	N/A	N/I
			(ii) a porch that projects from a street facing façade a minimum dimension of:	(A) 2.0m in width; and			C	N/C	N/A	N/I
				(B) 1.2m in depth;			C	N/C	N/A	N/I
		(b) must have the main floor located above grade adjacent to the building to a maximum of 1.20m above grade for street facing facades;				highest	1.07		-0.13	Not Rounded
334 Projections into Setback Areas	(3) Portions of a building below the surface of the ground may extend without any limits into a setback area, with the exception of the required front setback area.						C	N/C	N/A	N/I
336 Projections Into Front Setback Area	(1) Unless otherwise referenced in subsection (6), bay windows and eaves may project a max. of 0.6 m into the front setback area.						N/A			Rounded
	(2) Landings, ramps other than wheelchair ramps and stairs may project into a front setback area provided:	(a) they provide access to the main floor or lower level of the building; and					C	N/C	N/A	N/I
		(b) the area of a landing does not exceed 2.5m²					C	N/C	N/A	N/I
	(5) In a Developed Area, a porch may project a maximum of 1.8m into a front setback area where:	(a) it forms an entry to the main floor of a Dwelling Unit of a main residential building;					C	N/C	N/A	N/I
		(b) the setback of the porch from the front property line is not less than the minimum setback in the district;					C	N/C	N/A	N/I
		(c) the maximum height of the porch platform is 1.2m measured from grade, excluding stairs and a landing area not exceeding 2.5m²; and					C	N/C	N/A	N/I
		(d) the portion of the porch that projects into a front setback area is unenclosed, other than by a railing, balustrade or privacy walls located on porches between attached units.					C	N/C	N/A	N/I
	(6) Eaves may project an additional 0.6m from a porch into the front setback area, as described in subsection (5).						N/A			Rounded

335 Length of Portions of a Building in Setback Areas (Front)	(1) On each storey, the total combined length of all projections into any setback area must not exceed 40% of the length of the facade (Does not apply to eaves, ramps and stairs)					PROVIDE LENGTH AND % VALUES	%	Length	%	Length
	1st st			X 40% =			N/A			
	2nd st			X 40% =						
	(2) The max. length of an individual projection into any setback area is 3.1 m.						N/A			
538 Block Face Requirements	(1) A minimum building setback of 1.2m is required from a side property line at least every 60.0m along the entire length of a block face.						N/A			
	(2) Where subsection (1) applies, the side setback area must be clear of all air conditioning units, window wells and portions of a building measured from grade to a height of 2.4 metres.						C	N/C	N/A	N/I
539 Building Setback from Side Property Line	(1) Subject to subsection (3) through (11), the minimum building setback from any side property line is 1.2m					South to main bldg	1.20		0.00	
						South to bike storage	1.50		0.30	
	(2) Subject to subsections (3) through (9), for a laneless parcel, the minimum building setback from any side property line is:	(a) 1.2 metres; or					N/A			
		(b) 3.0m on one side of the parcel where no provision is made for a private garage on the front or side of a building.					N/A			
	(3) For a Backyard Suite, Contextual Semi-detached Dwelling, Rowhouse Building or Semi-detached Dwelling, there is no requirement for a building setback from a property line upon which a party wall is located.						C	N/C	N/A	N/I
	(4) The minimum building setback from a side property line may be reduced to zero metres where:	(a) the owner of the parcel proposed for development and the owner of the adjacent parcel register, against both titles, a 1.2m private maintenance easement;					C	N/C	N/A	N/I
		(b) the building setback is not greater than 0.1m from the side property line for any portion of a building that is recessed 0.6 metres or greater from the front façade or the rear façade of the building and is setback less than 1.2 metres from the side property line;					C	N/C	N/A	N/I
		(c) the wall at the shared side property line is constructed of maintenance-free materials and there is no overhang of eaves onto an adjacent parcel; and					C	N/C	N/A	N/I
		(d) all roof drainage from the building is discharged through eavestroughs and downspouts onto the parcel on which the building is located.					C	N/C	N/A	N/I
	(5) For a Rowhouse Building, Contextual Semi-detached Dwelling, Semi-detached Dwelling or Single Detached Dwelling the minimum building setback from a side property line may be reduced to zero metres where:	(a) the main residential building on the adjacent parcel has a setback of 0.1m or less at the shared side property line for any portion of the building that is recessed 0.6 metres or greater from the front façade or the rear façade of the building and is setback less than 1.2m from the side property line.					C	N/C	N/A	N/I
		(b) the building setback is not greater than 0.1m from the side property line for any portion of a building that is recessed 0.6m or greater from the front façade or the rear façade of the building and is setback less than 1.2m from the side property line;					C	N/C	N/A	N/I
		(c) the wall at the shared side property line is constructed of maintenance-free materials and there is no overhang of eaves onto an adjacent parcel; and					C	N/C	N/A	N/I
		(d) all roof drainage from the building is discharged through eavestroughs and downspouts onto the parcel on which the building is located.					C	N/C	N/A	N/I
	(7) For a corner parcel, the minimum building setback from a side property line shared with a street is 0.6m.					North	1.45		0.85	
	(9) The building setback from a side property line is 3.0 metres required in subsection 2(b) may be reduced to zero metres where the owner of the parcel proposed for development and the owner of the adjacent parcel registers, against both titles, an exclusive private access easement:	(a) where the width if the easement, in combination with the reduced building setback, must be at least 3.0m; and					N/A			
		(b) that provides unrestricted vehicle access to the rear of the parcel.					C	N/C	N/A	N/I
	(10) Unless otherwise referenced in subsection (11), on a laned parcel the min building setback from a side property line for a private garage attached to a main residential building is 0.6m.						N/A			
	(11) On a laned parcel, the min building setback for a private garage attached to a main residential building that does not share a side or rear property line with a street may be reduced to zero metres where the wall of the portion of the building that contains the private garage is constructed of maintenance-free materials and there is no overhang of eaves onto an adjacent parcel.						N/A			
	(1.1) Portions of a building greater than or equal to 2.4m above grade may project a max of 0.6m into any side setback area.						N/A			
	(1.2) Portions of a building less than 2.4m above grade may project a maximum of									

Rounded

Not Rounded

Not Rounded

Not Rounded

Not Rounded

337 Projections Into Side Setback Area	(1.2) Portions of a building less than 2.4m above grade may project a maximum of 0.6m,				N/A				
	(1.2) (b) for all other uses:	(i) when located on a corner parcel;			C	N/C	N/A	N/I	
		(ii) where at least one side setback area is clear of all portions of the building measured from grade to a height of 2.4m; or			C	N/C	N/A	N/I	
		(iii) where the side setback area contains a private maintenance easement required by this Bylaw and no portion of the building projects into the required private maintenance easement.			C	N/C	N/A	N/I	
	(1.3) Window wells may project a maximum of 0.8m into any side setback area.				N/A				Rounded
	(2) Window wells and portions of a building, other than eaves, must not project into a 3.0m setback required on a laneless parcel.				C	N/C	N/A	N/I	
	(3) Eaves may project a max. of 0.6m into any side setback area.			North	-0.54		-1.14		Rounded
				South	0.15		-0.45		
	(5) Landings, ramps other than wheelchair ramps and stairs may project in a side setback area provided:	(a) they provide access to the main floor or lower level of the building;			C	N/C	N/A	N/I	
		(b) the area of a landing does not exceed 2.5m^2		largest	4.07		1.57		Rounded
		(c) the area of any portion of a landing that projects into the side setback area does not exceed 1.8m^2		largest	0.74		-1.06		
		(d) they are not located in a 3.0m side setback area required on a laneless parcel; and			C	N/C	N/A	N/I	
		(e) they are not located in a side setback area required to be clear of projections, unless pedestrian access from the front to the rear			C	N/C	N/A	N/I	
	(10) Central air conditioning equipment may project a maximum of 1.0m into a side setback area:				N/A				Rounded
	(8) Any portion of a building that projects into a side setback area, other than eaves, landings, window wells, ramps and stairs, must not be located closer than 0.9 m from the nearest front façade.				N/A				Not Rounded
	(9) Balconies and decks must not project into any side setback area;				N/A				Not Rounded
335 Length of Portions of a Building in Setback Areas (Side)	(1) On each storey, the total combined length of all projections into any setback area must not exceed 40% of the length of the facade (Does not apply to decks, eaves, ramps and stairs)			PROVIDE LENGTH AND % VALUES	%	Length	%	Length	Rounded
	1st st		X 40% =		N/A				
	2nd st		X 40% =						
	__st		X 40% =						
	__st		X 40% =						
	(2) The max. length of an individual projection into any setback area is 3.1m (Includes Window Wells)				N/A				Not Rounded
540 Building Setback from Rear Property Line	(1) Unless otherwise referenced in subsections (2) or (3) the minimum building setback from a rear property line is 7.5m			East	8.31		0.81		Not Rounded
	(2) For a Rowhouse Building on a corner parcel, the min building setback from a rear property line is 1.5m where the building setback from the side property line shared with another parcel is a min of 3.0m for any portion of the Rowhouse Building located between the rear property line and 50.0% parcel depth or the building depth of the main residential building on the adjoining parcel, whichever is closer to the rear property line.				C	N/C	N/A	N/I	Rounded
	(3) Where two or more main residential buildings are located on a corner parcel, the min building setback from a rear property line is 1.5m for a Duplex Dwelling, Rowhouse Building, Semi-detached Dwelling or Single Detached Dwelling where:	(a) one main residential building is wholly located between the front property line and 60.0% parcel depth; and			C	N/C	N/A	N/I	
		(b) the building setback is a min of 3.0m from the side property line shared with another parcel for any portion of a main residential building located between the rear property line and 50.0% parcel depth or the building depth of the main residential building on the adjoining parcel, whichever is closer to the rear property line.			C	N/C	N/A	N/I	Rounded
338 Projections Into Rear Setback Area	(2) Awnings, balconies, bay windows, canopies, chimneys, decks, eaves, fireplaces, fire escapes, landings, porches, and ramps other than wheelchair ramps may project a max of 1.5m into any rear setback area.				N/A				Rounded
	(3) A private garage attached to a building may project without limits into a rear setback area provided it:	(a) does not exceed 4.6m in height, measured from the finished floor of the private garage;			N/A				Not Rounded
		(b) does not exceed 75.0m^2 in gross floor area for each Dwelling Unit located on the parcel.		Unit 1					Rounded
				Unit 2					
				Unit 3					
				Unit 4					
		(c) has no part that is located closer than 0.60m to the rear property line; and							Not Rounded
		(d) has no eave closer than 0.6m to a side property line.							
	(4) When an attached private garage has a balcony or deck, the balcony or deck must not be located within 6.0m of a rear property line or 1.2m of a side property line.			Rear					
				Side					
				Side					

347.3 Permitted Use Rowhouse Building	(1) To be a permitted use a Rowhouse Building:	(c) located on a corner parcel must have an exterior entrance which is visible from each street side of the corner parcel;			C	N/C	N/A	N/I	
		(d) must not have an attached private garage;			C	N/C	N/A	N/I	
		(e) must have a motor vehicle parking stall or private garage for each Dwelling Unit with direct, individual access to a lane.			C	N/C	N/A	N/I	
		(f) must not have windows on an exposed side façade of a unit that are located beyond the rear façade of a contextually adjacent building on an adjoining parcel unless:	(i) the window is located below the second storey;		Applies		N/A	N/I	
			(ii) the glass in the window is entirely obscured;		C	N/C	N/A	N/I	
			(iii) there is a minimum distance of 1.5m between the finished floor and the bottom of the window sill; or		C	N/C	N/A	N/I	
			(iv) the façade that contains the window is setback a minimum of 4.2m from the side property line; and		C	N/C	N/A	N/I	
335 Length of Portions of a Building in Setback Areas (Rear)	(1) On each storey, the total combined length of all projections into any setback area must not exceed 40% of the length of the façade (Does not apply to decks, eaves, ramps stairs & attached garage)			PROVIDE LENGTH AND % VALUES	%	Length	%	Length	Rounded
	1st st		X 40% =		N/A				
	2nd st		X 40% =						
	(2) The max. length of an individual projection into any setback area is 3.1m				N/A				Not Rounded
339 Decks	(2) The height of a deck in the Developed Area must not exceed:	(a) 1.5m above grade at any point, except where the deck is located on the same façade as the at-grade entrance to a walkout basement; and		Unit 9 rear	1.12		-0.38		Not Rounded
		(b) 0.3m above the main floor level of the closest main residential building on the parcel.			-0.12		-0.42		Not Rounded
	(2.1) Unless otherwise referenced in subsection (3), a privacy wall located on a deck:	(a) must not exceed 2.0m in height when measured from the surface of the deck; and			N/A				Not Rounded
		(b) must not be located between the foremost front façade of the main residential building and the front property line.			C	N/C	N/A	N/I	
	(3) A deck attached to a Semi-detached Dwelling, Rowhouse or Townhouse within 1.2m of a party wall must have a solid privacy wall that:		(a) is a min. of 2.0m in height;	Unit 9	2.13		0.13		Not Rounded
			(b) is a max. of 3.0m in height; and		2.13		-0.87		Not Rounded
			(c) extends the full depth of the deck.		C	N/C	N/A	N/I	
340 Balconies	(1) Unless otherwise referenced in this Part, an open balcony must not project more than 1.85 metres from the building façade to which it is attached.				N/A				Not Rounded
	(2) Unless otherwise referenced in this Part, the floor area of a recessed balcony must not exceed 10.0m²				N/A				Rounded
	(2.1) Unless otherwise referenced in this Part, a privacy wall located on a balcony:	(a) must not exceed 3.0m in height when measured from the surface of the balcony; and			N/A				Not Rounded
		(b) must not be located between the foremost front façade of the main residential building and front property line.			C	N/C	N/A	N/I	
	(3) A balcony attached to a Contextual Semi-detached Dwelling, Semi-detached Dwelling, Rowhouse Building or Townhouse within 1.2m of a party wall must have a privacy wall that:		(a) is a min. of 2.0m in height;		N/A				Not Rounded
			(b) is a max. of 3.0m in height; and		N/A				Not Rounded
			(c) extends the full depth of the balcony.		C	N/C	N/A	N/I	
544 Balconies	(1) Where a balcony is located on the roof of the first or second storey of a Contextual Single Detached Dwelling, Contextual Semi-detached, Rowhouse Building, Single Detached Dwelling or Semi-detached Dwelling and does not overhang any façade of the storey below, the balcony may have a maximum floor area that equals 30.0% of the horizontal cross section of the storey below.			**Horizontal Cross Section of Floor Below** **641.37** **30% of Area (Max)** **192.41**	**Area** **168.24** **Percent** **26.23%**		**-24.17** **-3.77%**		Rounded
	(2) A balcony attached to a Contextual Single Detached Dwelling, Contextual Semi-detached Dwelling, or Rowhouse Building that is a permitted	(a) may be located on a side façade of a building:	(i) where it forms part of the front façade and is not recessed back more than 4.5m from the front façade; or		N/A				Not Rounded
			(ii) where it is on the street side of a corner parcel;		C	N/C	N/A	N/I	
		(b) may be located on a rear façade of a building where:	(i) it does not form part of the side façade unless the side façade is on the street side of a corner parcel;		C	N/C	N/A	N/I	
			(ii) a privacy wall is provided where the balcony is facing a side property line shared with a contextually adjacent building; and		C	N/C	N/A	N/I	

	use:		(iii) the privacy wall is a minimum of 2.0m in height and a maximum of 3.0m in height; and	Minimum	N/A				Not Rounded
				Maximum	N/A				
		(c) must not have a balcony on the rear façade with a height greater than 6.0m, when measured vertically at any point from grade to the platform of the balcony.		East elevation - Unit 12	7.18	1.18			Not Rounded
541 Building Height	(1) Unless otherwise referenced in subsections (2) and (3), for a Contextual Semi-detached Dwelling, Duplex Dwelling, Rowhouse Building, Semi-detached Dwelling or Single Detached Dwelling, the max building height is 11.0m measured from grade.				C	N/C	N/A	N/I	
	(2) Where a building setback is required from a property line shared with another parcel designated with a low density residential district or the M-CG District, the max building height:	(a) is the greater of the highest geodetic elevation of a main residential building on the adjoining parcel or 7.0m, measured from grade, at the shared property line; and			C	N/C	N/A	N/I	
		(b) increases at a 45 degree angle to a max of 11.0m measured from grade.							
	(3) The max area of a horizontal cross section through a building at 9.5m above average grade must not be greater than 75.0% of the max area of a horizontal cross section through the building between average grade and 8.6m.								Rounded
	53.37 Prim Bldg Crnr 1	53.27 Prim Bldg Crnr 2	62.78 Geo 9.5m Abve Avrge Grade						
	53.11 Prim Bldg Crnr 3	53.36 Prim Bldg Crnr 4	61.88 Geo 8.6m Abve Avrge Grade						
	633.66 Max. Area	X 75% =	475.25 Max. Area allowed at 9.5m		Percentage 65.62%	-9.38%			
					Area (m²) 415.83	-59.42			
	(4) For all other uses, the maximum building height is 10.0m.				C	N/C	N/A	N/I	
349 Roof Equipment Projection	(2) Mechanical equipment may project a maximum of 0.3m from the surface of a roof on a building.				N/A				Not Rounded
532 Façade Width	The minimum width of a street facing façade of a unit is 4.2m			Unit 9 smallest	4.34	0.14			Not Rounded
535 Building Depth	(1) Unless otherwise referenced in subsection (2) the maximum building depth is 65.0 per cent of the parcel depth for a Duplex Dwelling, Rowhouse Building, Semi-detached Dwelling and a Single Detached Dwelling.				Percentage (%) N/A				Rounded
	65% x Parcel Depth = 0.00 Max Bldg Depth				Building Depth (m) N/A				
	(2) For a Rowhouse Building located on a corner parcel there is no max building depth where the building setback from the side property line shared with another parcel is a min of 3.0m for any portion of the Rowhouse Building located between the rear property line and 50.0% parcel depth or the building depth of the main residential building on the adjoining parcel, whichever is closer to the rear property line.				C	N/C	N/A	N/I	Rounded
	(3) Where two or more main residential buildings are located on a corner parcel, there is no max building depth for a Duplex Dwelling, Rowhouse Building, Semi-detached Dwelling or Single Detached Dwelling where:	(a) one main residential building is wholly located between the front property line and 60.0% parcel depth; and			C	N/C	N/A	N/I	
		(b) the building setback is a min of 3.0m from the side property line shared with another parcel for any portion of a main residential building located between the rear property line and 50.0% parcel depth or the building depth of the main residential building on the adjoining parcel, whichever is closer to the rear property line.			C	N/C	N/A	N/I	Rounded
37 Contextual Building Depth Average	**A) Contextual Building Depth Average for 2 Contextual Adjacent Buildings**								
	(Adj. building 1	+ Adj. building 2	) / 2 + 4.6 = A		4.6				
	OR B) Contextual Building Depth Average for 1 Contextual Adjacent Building								
	Adjacent Building	+ 4.6 = B			4.60				
	OR C) Contextual Building Depth Average with no Contextual Adjacent Buildings								
	60% X	= C			0				
347.3 Permitted Use Rowhouse Building	(3) Unless otherwise referenced in subsection (4) the maximum building depth of a Rowhouse Building that is a permitted use in the R-CG District is the greater of:	(a) 60.0% of the parcel depth; 60% x Parcel Depth = 0.00 Max. Bldg Depth			N/A				
		(b) the contextual building depth average. Contextual Building Depth Avg.=	4.60						
	(4) There is no maximum building depth for a Rowhouse Building located on a corner parcel in the R-CG District				Applies	N/A	N/I		
	(5) To be a permitted use in R-CG District a Rowhouse Building must not be located on a parcel that contains more than one main residential building				Applies	N/A	N/I		
	The maximum density for parcels designated R-CG District is 75 units per hectare								

529 Density	The maximum density for parcels designated R-CG District is 75 units per hectare.				Units	**12.00**		**0.00**	
	75	1654.90	(m²)	12.00					
		0.1654900	(ha) =	Units	U.P.H	**72.51**		**-2.49**	
	U.P.H								
339.1 Porches ***(must meet all requirements to be exempt)***	In a Developed Area, a porch is exempt from parcel coverage where:	(a) the porch is located between the façade of the main residential building and:	(i) the front property line; or			**C**	**N/C**	**N/A**	**N/I**
			(ii) the side property line on the street side of a corner parcel;			**C**	**N/C**	**N/A**	**N/I**
		(b) the porch is unenclosed on a minimum of two sides, other than by a railing, balustrade, or privacy walls located on porches between attached units when the porch is at or exceeds the contextual front setback; and				**C**	**N/C**	**N/A**	**N/I**
		(c) there is no enclosed floor area or balcony located directly above the roof of the porch.				**C**	**N/C**	**N/A**	**N/I**
534 Parcel Coverage	(2) Unless otherwise referenced in subsection (3), the maximum cumulative building coverage over all the parcels subject to a single development permit containing a Contextual Semi-Detached Dwelling, Cottage Housing Cluster, Rowhouse Building, Semi-Detached Dwelling or Single Detached Dwelling is:	(a) 45.0% of the area of the parcels subject to the single development permit for a development with a density of less than 40 units per hectare.				**Applies**		**Does Not Apply**	
		(b) 50.0% of the area of the parcels subject to the single development permit for a development with a density of 40 units per hectare or greater and less than 50 units per hectare;				**Applies**		**Does Not Apply**	
		(c) 55.0% of the area of the parcels subject to the single development permit for a development with a density of 50 units per hectare or greater and less than 60 units per hectare; or				**Applies**		**Does Not Apply**	
		(d) 60.0% of the area of the parcels subject to a single development permit for a development with a density of 60 units per hectare or greater.				**Applies**		**Does Not Apply**	
	(3) The maximum parcel coverage referenced in subsections (1) and (2), must be reduced by:	(a) 21.0m² where one motor vehicle parking stall is required on a parcel that is not located in a private garage; and				**Applies**		**Does Not Apply**	
		(b) 19.0m² for each required motor vehicle parking stall that is not located in a private garage where more than on motor vehicle parking stall is required on a parcel.				**Applies**		**Does Not Apply**	
	(4) For all other uses, the maximum parcel coverage is 45.0%					**Applies**		**Does Not Apply**	
	Determine correct percentage of parcel coverage and input values below					**%**		**%**	
	60.00%	1654.90 Parcel Area	minus	Required Stalls	= 992.94 Max. Coverage	**52.87%**		**-7.13%**	
	Parcel Coverage Totals					**m²**		**m²**	
	House	Proj. > 1.0m	Garage(s)	Other	Total				
	633.66		241.33		874.99	**874.99**		**-117.95**	
Accessory Building	If applicable please refer to Accessory Residential Building Form					**See Attached**		**N/A**	**N/I**
542 Outdoor Private Amenity Space	For a Contextual Semi-detached Dwelling, Duplex Dwelling, Rowhouse Building, Semi-detached Dwelling and a Single Detached Dwelling, each unit must have direct access to private amenity space that:	(a) is provided outdoors;				**C**	**N/C**	**N/A**	**N/I**
		(b) has a minimum total area of 20.0m²; and			all units	**complies**			
		(c) may be divided over a maximum of two amenity spaces where:	(i) one amenity space has no dimension less than 3.0m; and		Amenity Space 1(Min.)	**Area (m²)**			
						15.32		**15.32**	
						Dimension (m)			
						3.39		**0.39**	
			(ii) the second amenity space has a minimum contiguous area of 7.5m² with no dimensions less than 1.5m		Amenity Space 2(Min.)	**Area (m²)**			
						7.70		**0.20**	
						Dimension (m)			
						2.51		**1.01**	
					Total Amenity Area (m²):	**23.02**		**3.02**	
341 Driveways	(1) A driveway must not have direct access to a major street unless:	(a) there is no practical alternative method of vehicular access to the parcel; and				**C**	**N/C**	**N/A**	**N/I**
		(b) a turning space is provided on the parcel to allow all vehicles exiting to face the major street.				**C**	**N/C**	**N/A**	**N/I**
	(2) A driveway connecting a street to a private garage must:	(a) be a min of 6.0m in length along the intended direction of travel for vehicles measured from:	(i) the back of the public sidewalk to the door of the private garage; or			**N/A**			
			(ii) a curb where there is no public sidewalk to the door of a private garage, and			**N/A**			
		(b) contain a rectangular area measuring 6.0m in length and 3.0m in width.				**C**	**N/C**	**N/A**	**N/I**
	(3) A driveway connecting a lane to a private garage must be a min of 0.60m in length along the intended direction of travel for vehicles, measured from the property line				East	**0.82**		**0.22**	

Rounded

Rounded

Rounded

Not Rounded

Rounded

Not Rounded

Not Rounded

Not Rounded

Not Rounded

	shared with the lane to the door of a private garage.							
	(4) Parking Surface located in the actual front setback must be surfaced.			C	N/C	N/A	N/I	
	(5) That portion of a driveway including a motor vehicle parking stall within 6.0m of a public sidewalk, or a curb on a street where there is no public sidewalk, must not exceed a width of:	(a) 6.0m where the parcel width is 9.0m or less; or		N/A				Not Rounded
		(b) 7.0m for parcel width > than 9.0m and < than 15.0m		N/A				Not Rounded
	(6) In the developed area a driveway accessing a street must not be constructed, altered or replaced except where:	(a) located on a laneless parcel; (b) located on a laned parcel and 50 % or more parcels on same block face have an existing driveway accessing a street; or (c) legally existing driveway not being relocated or widened.		C	N/C	N/A	N/I	
				Existing Driveway No Changes				
342 Retaining Walls	(1) A retaining wall must be less than 1.2m in height when measured from the lowest grade at any point adjacent to the retaining wall to the highest grade retained by the retaining wall.			C	N/C	N/A	N/I	Not Rounded
	(2) A min horizontal separation of 1.0m must be maintained between retaining walls on the same parcel.			C	N/C	N/A	N/I	Not Rounded
338.1 Patios	(1) Unless otherwise referenced in subsections (2) and (3), a privacy wall may be located on a patio, provided it does not exceed a height of 2.0m from the surface of the patio.			C	N/C	N/A	N/I	Not Rounded
	(2) A privacy wall located on a patio must not exceed 2.0m in height, when measured from grade and when the privacy wall is located within: (a) a side setback area; or (b) 6.0m of a rear property line.			C	N/C	N/A	N/I	Not Rounded
	(3) A privacy wall located on a patio must not exceed 1.2m in height when measured from grade when the privacy wall is located between the foremost front façade of the main residential building and the front property line.			C	N/C	N/A	N/I	Not Rounded
540.1 Fences *Note: Only apply fence rules to proposed fences*	The height of a fence above grade at any point along a fence line must not exceed 1.2m for any portion of a fence extending between the foremost front façade of the immediately adjacent main residential building and the front property line.			C	N/C	N/A	N/I	Not Rounded
343 Fences *Note: Only apply fence rules to proposed fences*	The height of a fence above grade at any point along a fence line must not exceed:	(b) 2.0m in all other cases, and		C	N/C	N/A	N/I	Not Rounded
		(c) 2.5m at the highest point of a gate that is not more than 2.5m in length.		C	N/C	N/A	N/I	Not Rounded
348 Visibility Setback	Within a corner visibility triangle, buildings, fences, finished grade of a parcel and vegetation must not exceed the lowest elevation of the street by more than 0.75m above lowest elevation of the street.			C	N/C	N/A	N/I	Not Rounded
287 Rowhouse	(c) requires a minimum of 1.0 motor vehicle parking stalls per Dwelling Unit; and # of Dwelling Units: 12			12		0		
122 Standards for Motor Vehicle Parking Stalls	(3) The minimum depth of a motor vehicle parking stall is 5.9m where it is required for: (a) a Contextual Single Detached Dwelling, Duplex Dwelling, Secondary Suite, Semi-detached Dwelling or Single Detached Dwelling (b) a Dwelling Unit where the stall is provided in a private garage intended to be used for the occupants of only one Dwelling Unit.			C	N/C	N/A	N/I	Not Rounded
	(4) The minimum width of a motor vehicle parking stall required for a Dwelling Unit is: (a) 3.0m where both sides of a stall abut a physical barrier; (b) 2.85m where one side of a stall abuts a physical barrier; and (c) 2.5m in all other			C	N/C	N/A	N/I	Not Rounded
	(7) The minimum width of a motor vehicle parking stall for Multi-Residential Development, Multi-Residential Development - Minor, a Townhouse or a Rowhouse Building provided for the exclusive use of a Dwelling Unit is reduced to 2.60m where: (a) the stall is one of two or more motor vehicle parking stalls that are provided in a private garage; (b) the motor vehicle parking stalls in the private garage are for the sole use of the occupants of the Dwelling Unit; and (c) the motor vehicle parking stalls are not counted towards fulfilling the minimum motor vehicle parking stall requirements for that Dwelling Unit.			C	N/C	N/A	N/I	Not Rounded
	(15) Motor vehicle parking stalls for a Backyard Suite, Contextual Semi-detached Dwelling, Contextual Single Detached Dwelling, Duplex Dwelling, Secondary Suite, Semi-detached Dwelling and Single Detached Dwelling must be: (a) hard surfaced; and (b) located wholly on the subject parcel.			C	N/C	N/A	N/I	

Accessory Residential Building

D.P. # 2021-1721

Rule	Requirements			Notes	Evaluation			
					Provided/Variance			
345 Accessory Residential Building	(1) The min. building setback for an Accessory Residential Building is::	(a) 1.2m from a side or rear property line shared with a street; or		North	1.37		0.17	
		(b) 0.6m from a side or rear property line in all other cases.		Easts (rear)	0.82		0.22	
				South	0.61		0.01	
	(2) The min. building setback for an Accessory Residential Building that does not share a side or rear property line with a street may be reduced to zero m when:	(a) the Accessory Residential Building is less than 10.0m^2			C	N/C	N/A	N/I
		(b) the wall of the Accessory Residential Building is constructed of maintenance-free materials and there is no overhang of eaves onto an adjacent parcel; or			C	N/C	N/A	N/I
		(c) the owner of the adjacent parcel grants a 1.5m private maintenance easement that must:	(i) be registered against the title of the parcel proposed for development and the title of the adjacent parcel; and		C	N/C	N/A	N/I
			(ii) include a 0.60m eave and footing encroachment easement.		C	N/C	N/A	N/I
	(3) An Accessory Residential Building must not be located in the actual front setback area.				C	N/C	N/A	N/I
	(4) A private garage on laneless parcel may be located in required 3.0m side setback, except along street side of a corner parcel.				C	N/C	N/A	N/I
	(5) The min. distance between any façade of an Accessory Residential Building 10.0m^2 or more and a main residential building or a building containing a Secondary Suite is 1.0m			1.19m	C	N/C	N/A	N/I
	(6) The height of an Accessory Residential Building must not exceed:	(a) 4.6m, measured from the finished floor of the building;		Bike Storage	3.67		-0.93	
				Detached Garage	3.70		-0.90	
		(b) 3.0m at any eaveline, when measured from the finished floor of the building; and		Bike Storage	2.74		-0.26	
				Detached Garage	2.92		-0.08	
		(c) one storey,			C	N/C	N/A	N/I
		(c) one storey, which may include an attic space that:	(i) is accessed by a removable ladder;		C	N/C	N/A	N/I
			(ii) does not have windows;		C	N/C	N/A	N/I
			(iv) has a max. height of 1.5m from the attic floor to the underside of any rafter.		N/A			
346 Restrictions on Use of Accessory Residential Building	(1) The finished floor of an Accessory Residential Building, other than a private garage, must not exceed 0.6m above grade.				C	N/C	N/A	N/I
	(2) An Accessory Residential Building must not be used as a Dwelling Unit, unless a Backyard Suite has been approved.				C	N/C	N/A	N/I
	(3) An Accessory Residential Building must not have a balcony or rooftop deck.				C	N/C	N/A	N/I
	(4) The area of a parcel covered by all Accessory Residential Buildings located on a parcel:	(a) must not exceed the less of:	(i) the building coverage of the main residential buildings; or		C	N/C	N/A	N/I
			(ii) 75.0m^2 for each Dwelling Unit located on the parcel; and	12 Units =				
				900	241.33		-658.67	
				per unit	20.11		-54.89	

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Secondary Suite

D.P. # 2021-1721

Rule	Requirements		Notes	Evaluation			
				Provided/Variance			
	Note: Remember to check any applicable district rules						
351 Secondary Suite	(1) For a Secondary Suite the minimum building setback from a property line, must be equal to or greater than the minimum building setback from a property line for the main residential building.			**C**	**N/C**	**N/A**	**N/I**
	(2) Except as otherwise stated in subsection (2.1) and (3), the maximum floor area of a Secondary Suite, excluding any area covered by stairways and landings, is 100.0m²:	(a) in the R-C1L, R-C1Ls, R-C1, R-C1s, R-C1N, R-1, R-1s and R-1N District; or		**N/A**			
		(b) when located on a parcel with a parcel width less than 13.0m.					
	(2.1) There is no maximum floor area for a Secondary Suite wholly located in a basement. Internal landings and stairways providing access to the basement may be located above grade.			**Applies**		**N/A**	**N/I**
	(4) A Secondary Suite must have a private amenity space that:	(a) is located outdoors; and	Suites 5 - 10 are gardens not private, no seating	**F/M Discretion**		**N/A**	**N/I**
		(a) is located outdoors; and		**C**	**N/C**	**N/A**	**N/I**
		(b) has a minimum area of 7.5m² with no dimension less than 1.5m.		**Dimension (m)**			
			Min.	**2.88**		**1.38**	
				Area (m²)			
			Min.	**9.55**		**2.05**	

354 Accessory Suite - Density	(1) Unless otherwise referenced in subsection (4), there must not be more than one Backyard Suite located on a parcel.				**C**	**N/C**	**N/A**	**N/I**
	(1.1) There must not be more than one Secondary Suite contained within a Dwelling Unit.				**C**	**N/C**	**N/A**	**N/I**
	(2) Unless otherwise referenced in subsection (4), a Secondary Suite and a Backyard Suite must not be located on the same parcel.				**C**	**N/C**	**N/A**	**N/I**
	(3) A Secondary Suite or Backyard Suite must not be separated from the main residential use on a parcel by the registration of a condominium or subdivision plan.				**C**	**N/C**	**N/A**	**N/I**
	(4) In the R-CG District, one Backyard Suite or one Secondary Suite may be located on a bare land unit containing a Dwelling Unit.				**C**	**N/C**	**N/A**	**N/I**
546 Motor Vehicle Parking Stalls **Applies to R-CG Only**	(2) The minimum number of motor vehicle parking stalls for a Secondary Suite is reduced to 0.0 where: **All Rules are COMPULSORY**	(a) the floor area of a Secondary Suite is 45.0m² or less.			**C**	**N/C**	**N/A**	**N/I**
		(b) the parcel is located within 600.0m of an existing or approved capital funded LRT platform or within 150.0m of frequent bus service; and		Within 600m of SAIT LRT	**C**	**N/C**	**N/A**	**N/I**
		(c) space is provided in a building for the occupant of the Secondary Suite for storage of mobility alternatives such as bicycles or strollers that:	(i) is accessed directly from the exterior; and		**C**	**N/C**	**N/A**	**N/I**
			(ii) has an area of 2.5m² or more for every Secondary Suite that is not provided with a motor vehicle parking stall. *NOTE: Parcel coverage excludes the building coverage area of the mobility alternative storage space.*		**C**	**N/C**	**N/A**	**N/I**
295 Secondary Suite	(c) requires a minimum of 1.0 motor vehicle parking stall.				**N/A**			
122 Standards for Motor Vehicle Parking Stalls	(3) The minimum depth of a motor vehicle parking stall is 5.9m where it is required for: (a) a Contextual Single Detached Dwelling, Duplex Dwelling, Secondary Suite, Semi-detached Dwelling or Single Detached Dwelling				**C**	**N/C**	**N/A**	**N/I**
	(4) The minimum width of a motor vehicle parking stall required for a Dwelling Unit is: (a) 3.0m where both sides of a stall abut a physical barrier; (b) 2.85m where one side of a stall abuts a physical barrier; and (c) 2.5m in all other cases.				**C**	**N/C**	**N/A**	**N/I**
	(15) Motor vehicle parking stalls for a Backyard Suite, Contextual Semi-detached Dwelling, Contextual Single Detached Dwelling, Duplex Dwelling, Secondary Suite, Semi-detached Dwelling and Single Detached Dwelling must be: (a) hard surfaced; and (b) located wholly on the subject parcel.				**C**	**N/C**	**N/A**	**N/I**
Additional Notes								

FILE: DP 2021-1721

DATE RECEIVED : April 26, 2021

Bylaw Discrepancies		
Regulation	**Standard**	**Provided**
337 Projections Into Side Setback Area	(5) Landings, ramps other than wheelchair ramps and stairs may project in a side setback area provided: (b) the area of a landing does not exceed 2.5m2	Plans indicate the landings along the North setback area as big as 4.07m^2 (+1.57m^2)
544 Balconies	(2) A balcony attached to a Rowhouse Building that is a permitted use: (c) must not have a balcony on the rear façade with a height greater than 6.0m, when measured vertically at any point from grade to the platform of the balcony.	Plans indicate the third storey balcony of Unit 12 forms part of the rear façade and has a height of 7.18m from grade to platform.

District Title: Residential - Grade-Oriented Infill (R-CG)

The information contained herein is intended for information purposes only. Please refer to the Calgary Land Use Bylaw 1P2007 for a complete list of rules and regulations. This form has no legal status and cannot be used as an official interpretation of the Land Use Bylaw 1P2007.

Date:	May 6, 2021
Date Received:	May 5, 2021
F/M:	**Allan Singh**
BLC BY:	**Stephanie Fowler**
Review Required:	PARTIAL
Markups Completed Electronically:	Yes - Refer to Livelink

D.P. #	**2021-1721**

For Internal Distribution Only

Modifier(s):	**F.A.R**		**Height**		**Density**		**ALL MODIFIER(S) ARE COMPULSORY (Cannot be relaxed)**

Project Description(s):	New: Rowhouse Building with Secondary Suites (1 Building), Accessory Residential Building (Garage)

Floodway/Floodfringe/Overland Flow

DOES NOT APPLY

If applicable Complete Flood Sheet

Airport Vicinity Protection Area (AVPA)

DOES NOT APPLY

Right-of-Way Setback(S)					
Rd / St / Av		**Required**		**Provided**	
Rd / St / Av	**N/A**	**Required**		**Provided**	
Rd / St / Av		**Required**		**Provided**	

Main Floor Elevation(S):		***Roof Peak Elevation(s):***	
Unit 1		**Unit 1**	
Unit 2		**Unit 2**	

LDR: For Additions or alterations to existing See Section 358 For Dwellings Deemed Conforming

Notes:
Rounding per Section 14(1) has been applied to the 1 and 2 unit worksheets.

Residential - Grade-Oriented Infill (R-CG) District					D.P. # 2021-1721				
Rule	**Requirements**			**Notes**	**Evaluation** Provided/Variance				
337 Projections Into Side Setback Area	(5) Landings, ramps other than wheelchair ramps and stairs may project in a side setback area provided:	(a) they provide access to the main floor or lower level of the building;			**C**	**N/C**	**N/A**	**N/I**	
		(b) the area of a landing does not exceed 2.5m^2		largest	**2.06**		**-0.44**		Rounded
		(c) the area of any portion of a landing that projects into the side setback area does not exceed 1.8m^2			**N/A**				
		(d) they are not located in a 3.0m side setback area required on a laneless parcel; and			**C**	**N/C**	**N/A**	**N/I**	
		(e) they are not located in a side setback area required to be clear of projections, unless pedestrian access from the front to the rear			**C**	**N/C**	**N/A**	**N/I**	
544 Balconies	(2) A balcony attached to a Contextual Single Detached Dwelling, Contextual Semi-detached Dwelling, or Rowhouse Building that is a permitted use:	(c) must not have a balcony on the rear façade with a height greater than 6.0m, when measured vertically at any point from grade to the platform of the balcony.			**N/A**				Not Rounded
542 Outdoor Private Amenity Space	For a Contextual Semi-detached Dwelling, Duplex Dwelling, Rowhouse Building, Semi-detached Dwelling and a Single Detached Dwelling, each unit must have direct access to private amenity space that:	(a) is provided outdoors;			**C**	**N/C**	**N/A**	**N/I**	
		(b) has a minimum total area of 20.0m^2; and		Unit 12	**complies**				Rounded
		(c) may be divided over a maximum of two amenity spaces where:	(i) one amenity space has no dimension less than 3.0m; and	Amenity Space 1(Min.)	**Area (m^2)**				Rounded
					10.99		**10.99**		
					Dimension (m)				Not Rounded
					3.27		**0.27**		
			(ii) the second amenity space has a minimum contiguous area of 7.5m^2 with no dimensions less than 1.5m	Amenity Space 2(Min.)	**Area (m^2)**				Rounded
					14.46		**6.96**		
					Dimension (m)				Not Rounded
					3.32		**1.82**		
				Total Amenity Area (m^2):	**25.45**		**5.45**		

100

FILE: **DP 2021-1721**

DATE RECEIVED : May 5, 2021

Bylaw Discrepancies		
Regulation	**Standard**	**Provided**
No discrepancies noted		

101

Legend

- Subject Parcel
- LRT Red Line Station
- 600m Distance from LRT Station

0 200 400 600

Metres

SDAB2021-0040

JACKSON MCCORMICK DESIGN GROUP
dawn@jmdesigngroup.ca
(403) 520-8018

Dear Sir/Madam:

RE: Detailed Team Review (DTR)

Development Permit Number: DP2021-1721

Based on the plans received March 16, 2021, the Corporate Planning Applications Group (CPAG) has completed a detailed review of your application in order to determine compliance with the Land Use Bylaw and applicable City policies. Any variance from the Land Use Bylaw or City policies may require further discussion or revision prior to a decision being rendered.

Applicants are requested to contact the respective team members to resolve outstanding issues. Amended plans should not be submitted to the Planner until we are able to provide comments from all circulation referees.

CPAG endeavours to render decisions on applications within specific service standards. Please assist us in meeting these targets by ensuring your resubmission is made in a timely manner. Should you have any questions or concerns (587) 576-4312 or by email at Allan.Singh@calgary.ca.

Sincerely,

ALLAN SINGH
PLANNER 1, PLANNING & DEVELOPMENT

Detailed Review 1 – Development Permit

Application Number:	**DP2021-1721**	
Application Description:	New: Rowhouse Building with Secondary Suites (1 Building), Accessory Residential Building (Garage)	
Land Use District:	Residential - Grade-Oriented Infill	
Use Type:	Permitted	
Site Address:	1619 8 AV NW	
Community:	HILLHURST	
Applicant:	JACKSON MCCORMICK DESIGN GROUP	
Date DTR Sent:	APRIL 20, 2020	
Response Due Date:	JUNE 19, 2021	
CPAG Team		
Planning:	ALLAN SINGH	Allan.Singh@calgary.ca
Development Engineering:	DINO DI TOSTO	dino.ditosto@calgary.ca
Parks:	KAREN MOUG	Karen.Moug@calgary.ca
Transportation:	JASON BELL	Jason.Bell2@calgary.ca

General Comments

This Development Permit application is to amend the current site plan for the subject parcel. It was applied for as a Permitted use. The applicant, on behalf of their client has proposed a 12 unit multi-residential development with secondary suites.

The subject parcels, with a total area of 1650 square metres, are located at the corner of 8 Avenue NW and 16 Street NW. The site is approximately 40 metres in width by 45 metres in depth and is located in the community of Hillhurst in the northwest quadrant of Calgary. The site currently contains three one-storey single detached dwellings with detached garages located off a back lane.

The proposal aligns with applicable policy directives of the *Municipal Development Plan* and *Hillhurst/Sunnyside Area Redevelopment Plan*. The proposed development would allow for a modest increase in density for an inner-city site but still be compatible with the built form and character of the existing community.

A previous Development Permit application (DP2020-3544) was applied for in June 2020. The applicant proposed a 12 unit rowhouse with secondary suites but as a Discretionary use. After careful consideration and review the Development Authority rendered a decision of Approval. However, the decision was appealed in December 2020 and argued in front of the SDAB in February 2020. The board ruled in favor of the appellant and the Development Authority's decision was overturned. When a decision is overturned on a Discretionary approval the

applicant must wait 6 months before being allowed to apply for the same use again. However, since this application was applied for as a Permitted use the applicant may proceed with the application and is not required to wait any allotted time as per the 1P2007.

Comments on Relevant City Policies

Hillhurst/Sunnyside Area Redevelopment Plan (Statutory – 1988)

The *Hillhurst/Sunnyside Area Redevelopment Plan* (ARP) supports residential intensification through renovation, redevelopment, conversion, and infill development that is sensitive to the existing neighbourhood. The ARP encourages a variety of housing forms that accommodate different age groups, household types, and income levels.

The policies of the ARP encourage redevelopment that is contextually sensitive to the existing character of the community. In the ARP, the subject site is located within Residential Character Area 5, which allows for Low Density and Low Density Multi-Unit type redevelopment. The Low Density Multi-Unit policy allows for a low profile multi-unit redevelopment with a maximum density of 75 units per hectare which translates into 8 developable units for the parcels located at 818 and 822 16 Street NW. The parcel at 826 Street NW allows for a maximum of 4 developable units. Therefore, if the sites were to be amalgamated, a maximum of 12 units could be developed.

The proposal is in keeping with relevant ARP policies as the proposal provides for a modest increase in density in a form that is sensitive to existing residential development in terms of height, scale and massing.

Municipal Development Plan (Statutory – 2009)

The subject parcel is located within the Residential – Developed – Inner City area as identified on Map 1: Urban Structure in the *Municipal Development Plan* (MDP). The applicable MDP policies encourage redevelopment and modest intensification in inner-city communities intended to occur in a form and nature that respects the scale and character of the neighbourhood context.

The proposal is in keeping with relevant MDP policies as the R-CG District is a low-density district and provides for a modest increase in density in a form that is sensitive to existing residential development in terms of height, scale and massing. Furthermore, the application aligns with Section 2.6 of the MDP as the proposal would allow for a more compact urban form that uses less land.

Bylaw Discrepancies		
Regulation	**Standard**	**Provided**
337 Projections Into Side Setback Area	(5) Landings, ramps other than wheelchair ramps and stairs may project in a side setback area provided: (b) the area of a landing does not exceed 2.5m2	Plans indicate the landings along the North setback area as big as 4.41m^2 (+1.91m^2)
339 Decks	(3) A deck attached to a Rowhouse within 1.2m of a party wall must have a solid privacy wall that: (a) is a min. of 2.0m in height; (b) is a max. of 3.0m in height; and (c) extends the full depth of the deck	Plans indicate a rear deck on Unit 9 sandwiched between two units which does not provide privacy walls on either side although both sides are within 1.2m of a party wall.
544 Balconies	(2) A balcony attached to a Rowhouse Building that is a permitted use: (c) must not have a balcony on the rear façade with a height greater than 6.0m, when measured vertically at any point from grade to the platform of the balcony.	Plans indicate the third storey balcony of Unit 12 is located along the rear façade and has a height of 7.2m from grade to platform.
541 Building Height	(1) Unless otherwise referenced in subsections (2) and (3), for a Rowhouse Building, Semi-detached Dwelling or Single Detached Dwelling, the max building height is 11.0m measured from grade.	Plans indicate a portion of the South elevation exceeds the 11.0m height plane.
540.1 Fences	The height of a fence above grade at any point along a fence line must not exceed 1.2m for any portion of a fence extending between the foremost front façade of the immediately adjacent main residential building and the front property line.	Plans indicate gates accessing most (not all) units amenity spaces along the West PL. Plans do not indicate if there would be a fence attached to these gates, nor the height of the gates.

Prior to Decision Requirements

The following issues must be addressed by the Applicant through a written submission and amended plans prior to a decision by the Approving Authority. Applicants are encouraged to contact the respective team members directly to discuss outstanding issues or alternatively request a meeting with the CPAG Team.

Planning

1. Please submit a complete digital set of the amended plans in PDF format and a separate PDF response letter that provides a point-by-point explanation as to how each of the Prior to Decision conditions were addressed and/or resolved. If Prior to Release conditions have been addressed in the amended plans, include a point-by-point explanation for these items as well. The submitted plans must comprehensively address the Prior to Decision conditions as specified in the DTR document. Ensure that all plans affected by the revisions are amended accordingly. To arrange the digital submission, please contact the File Manager directly.

Transportation

2. With regard to the boulevard:

   a. Amend the plans to extend the new proposed sidewalk on 8 Av NW to the East side of the lane driveway.

   b. Amend the plans to indicate that the NW corner cut is clear of obstructions in all vertical elevations; both underground and above grade. The land within the 4.5m x 4.5m corner cut is to be registered as an access easement. Amend the plans to clearly indicate the access easement on the DP drawings. If the applicant does not wish to maintain this area under an access easement, then the Applicant may dedicate this portion of the parcel to the City as right-of-way. Please contact the Transportation Generalist to obtain a sample agreement.

   c. Amend the proposed wheel chair ramp design on the NW corner. As per Section G.3 of The City of Calgary's 2014 Design Guidelines for Subdivision Servicing (DGSS): "Wheelchair ramps must be provided at all intersection corners. Locations of wheelchair ramps should align with the crosswalks and vice versa". As such, amend the plans to align the WCR with the East-West crosswalk across 16 St NW. Amend the design to provide a 0.6m x 1.2m tactile warning plate within the WCR. Align the tactile plate with the East-West crossing. Amend the plans to provide a 1.2m x 1.2m landing space on top of the WCR; which provides a safe space for wheeled users to maneuver.

   d. Provide one (1) boulevard cross section along each adjacent road (8 Av NW and 16 St NW). Indicate the existing and proposed dimensions, elevations and slopes at the top of curb, back of sidewalk, property line and the main floor. A maximum 2% grade is permitted in the boulevard. Indicate that all adjacent boulevards are graded at 2% up from the top of curb to the ultimate property line.

3. With regard to the lane:

   a. Amend the plans to provide additional setback to the parking garage to facilitate a functional width of 7.2m (that is, 7.2m from the overhead garage door to the property line across the lane), such that two vehicles can pass each other within the lane, and opposing parcels can be properly accessed. If power poles are present, the 7.2m measurement should be measured from the power pole.

   The proposed internal walkway is 1.26m in width. The City of Calgary's Access Design Standards recommends a minimum unobstructed width of 1.5m width for any private walkways to improve accessibility for those who use walkers/wheelchairs. The Alberta Building Code specifies a minimum dimension of 1.1m for public corridors (Means of Egress Section 9.9.3.3).

   Alternatively, amend the plans to indicate that parking stalls adjacent to existing power poles (units 9 - 12) can be safely accessed. Amend plans to include sweep paths to confirm turning requirements for access to and from parking stalls for units 9 -12. The plan is also to include an appropriate design vehicle with dimensions and the standard Transportation Association of Canada (TAC) name. All minimum clearances between the sweep paths and obstructions (garage doors, curbs, fencing, power poles, etc.) are to be dimensioned and must exceed the minimum 0.6 m clearance.

   b. Amend the plans to provide a new driveway access to the lane, complete with 1.0m flares on 8 av NW. Match the width of the driveway to the width of the existing lane. Provide a detailed driveway cross-section complete with ramp grades and elevations at face of curb, back of sidewalk, property line. Refer to The City of Calgary Roads Construction 2015 Standard Specifications 454.1010.004 (curb returns are not permitted).

   c. Amend the plans to include a minimum of 3 cross sections through the full width of the lane at key low points or high points. On each cross section, include existing and proposed elevations along both property lines (subject site and opposing side of the lane), centerline of the lane, garage apron, front of garage and back of garage. Full grading information is required to confirm if the lane will drain adequately. If drainage issues exist that may result in flooding of the lane or adjacent lots, regrading of the lane may be required.

Development Engineering

4. Amend the plans to:

   a. Provide details of the proposed recyclable materials and waste collection facilities. No information on recyclable materials and waste collection facilities are indicated on the plans.

   If bins are to be stored in the garage, a depth of at least 20 feet must be achieved.

Parks

5. No Comments

Prior to Release Requirements

If this Development Permit is approved, the following requirements shall be met prior to the release of the permit. All requirements shall be resolved to the satisfaction of the Approving Authority:

Planning

6. The Prior to Release conditions will be finalized at the time of Development Authority decision.

Transportation

7. Remit a performance security deposit (certified cheque, bank draft, letter of credit) for the proposed infrastructure listed below within the public right-of-way to address the requirements of the Business Unit. The amount of the deposit is calculated by Roads and is based on 100% of the estimated cost of construction.

   The developer is responsible to arrange for the construction of the infrastructure with their own forces and to enter into an Indemnification Agreement with Roads at the time of construction (the security deposit will be used to secure the work).

   Roads
   a. Reconstruction of new lane driveway crossings on 8 Av NW,
   b. Construction of new 1.5m sidewalk adjacent to 8 Av NW,
   c. Construction of new wheelchair ramp on the NW corner of 8 Av and 16 St NW,
   d. Rehabilitation of existing sidewalks, curb and gutter, etc., should it be deemed necessary through a site inspection by Roads personnel,

8. Remit payment (certified cheque, bank draft) for the proposed street light upgrades adjacent to the development within the public right-of-way to address the requirements of the Roads Business Units. The amount is calculated by Roads and is based on 100% of the estimated cost of construction. The developer is responsible to coordinate the timing of the construction by City forces. The payment is non-refundable.

Development Engineering

9. Amend the plans to:

   Water Resources - Water Servicing

   b. Indicate an adequate water meter area where the services (50mm and smaller) enter the building,

10. Submit three (3) sets of the Development Site Servicing Plan details to Development Servicing, Inspections and Permits, for review and acceptance from Water Resources, as required by Section 5 (2) of the Utility Site Servicing Bylaw 33M2005. Contact Water Resources for additional details for additional details.

    The DSSP may be submitted prior to approval of this DP. Produce this DTR document at the 3rd floor counter as evidence for early DSSP submission.

    For further information, refer to the following:

    Design Guidelines for Development Site Servicing Plans
    http://www.calgary.ca/UEP/Water/Pages/Specifications/Water-developent-resources/Development-Site-Servicing-Plans.aspx

    Development Site Servicing Plans CARL (requirement list)
    http://www.calgary.ca/PDA/pd/Pages/Permits/carl-building-development-permit-search.aspx

11. After the Development Permit is approved but prior to its release, the landowner shall execute an Off-Site Levy Agreement for the payment of off-site levies pursuant to Bylaw 2M2016. The off-site levy is based on a 2020 development approval date and was based on the following:

    Based on the information given, the preliminary estimate is $32,793.00.

    Should payment be made prior to release of the development permit, an Off-Site Levy Agreement will not be required.

    a) include the completed Payment Submission Form, which was emailed to the applicant.
    b) Only certified cheques or bank drafts made payable to the City of Calgary are acceptable.

    To obtain an off-site levy agreement or for further information, contact the Calgary Approvals Coordination, Infrastructure Strategist (JILL THOMSON at 4032685782 or Jill.Thomson@calgary.ca) or offsitelevy@calgary.ca.

Parks

12. Amend the site and landscape plans to indicate all existing public trees within 6.0m of the development site. As per the Tree Protection Bylaw, provide the following updated information obtained by Urban Forestry:

a. Tree species,
b. Caliper of tree trunk (dbh),
c. Height of tree,
d. Location of the centre point of the tree trunk,
e. Scaled outline of the tree canopy dripline,
f. Indicate whether the tree is to remain or to be removed.

Tree No./Serial	Species	Canopy (m)	Height (m)	Calliper (cm)	Status
16/T32092198	American Elm	11	11	62	Remain
40/T32092194	American Elm	8	9	51	Remain
41/T32092193	American Elm	8	9	56	Remain
42/T32092192	American Elm	8	9	47	Remain

13. Amend the plans to include a note stating 'An Urban Forestry Technician must be on-site during excavation of the proposed servicing from 16 ST NW and proposed walkways in order to mitigate any damage to adjacent public trees. Contact Urban Forestry by phoning 311 at least three (3) business days in advance of excavation.' If canopies or root systems are damaged to the point where the tree becomes unstable, then Urban Forestry will require their removal using an approved indemnified tree contractor at applicant's expense, plus compensation for the removed tree(s).

Permanent Conditions

If this Development Permit is approved, the following permanent conditions shall apply:

Planning

14. The development shall be completed in its entirety, in accordance with the approved plans and conditions.

15. No changes to the approved plans shall take place unless authorized by the Development Authority.

16. The permanent conditions will be finalized at the time of Development Authority decision.

17. Prior to issuance of a development completion permit, provide copies of the land titles and registered subdivision or bare land condominium plan. These documents must comply with the Land Use Bylaw 1P2007 requirements that prohibit more than one Secondary Suite per parcel or bare land unit containing a Dwelling Unit.

18. This approval does not acknowledge any relaxations of the rules of the Land Use Bylaw.

19. The grades indicated on the approved Development Permit plans must match the grades on the Development Site Servicing Plan for the subject site as per the Lot Grading Bylaw.

20. A Development Completion Permit shall be issued for the development; before the use is commenced or the development occupied. A Development Completion Permit is independent from the requirements of Building Permit occupancy. Call Development Inspection Services at 403-268-5311 to request a site inspection for the Development Completion Permit.

21. If during construction of the development, the developer, the owner of the titled parcel, or any of their agents or contractors becomes aware of any contamination, the person discovering such contamination shall immediately report the contamination to the appropriate regulatory agency including, but not limited to, Alberta Environment, Alberta Health Services and The City of Calgary (311).

    If prior to or during construction of the development, the developer, the owner of the titled parcel, or any of their agents become aware of contamination on City of Calgary lands or utility corridors, the City¿s Environmental Assessment & Liabilities division shall be immediately notified (311).

22. Upon completion of the main floor of each townhouse proof of the geodetic elevation of the constructed main floor must be submitted to and approved by the Development Authority prior to any further construction proceeding. Email confirmation to geodetic.review@calgary.ca.

23. Crushed aggregate or materials including but not limited to brick, pea gravel, shale, river rock and gravel are not permitted within required landscape areas.

24. All areas of soft landscaping shall be provided with an underground sprinkler irrigation system as identified on the approved plans.

25. All trees located within the subject property and shown on the approved plans, which cannot be retained during development, must be replaced by a tree of a species and size which is acceptable to the Development Authority within twelve months of the issuance of the development completion permit

Transportation

26. The developer shall be responsible for the cost of public work and any damage during construction in City road right-of-ways, as required by the Director, Transportation Planning. All work performed on public property shall be done in accordance with City standards.

27. Indemnification Agreements are required for any work to be undertaken adjacent to or within City rights-of-way, bylawed setbacks and corner cut areas for the purposes of crane operation, shoring, tie-backs, piles, surface improvements, lay-bys, utility work, +15 bridges, culverts, etc. All temporary shoring, etc., installed in the City rights-of-way, bylawed setbacks and corner cut areas must be removed to the satisfaction of the Manager of Transportation Planning, at the applicant's expense, upon completion of the foundation. Prior to permission to construct, contact the Indemnification Agreement Coordinator, Roads at roadsia@calgary.ca

28. Garage aprons at rear must tie to the existing lane grades. Lane grades will be provided on the grade slip issued by Development Servicing. It is the responsibility of developer, contractor, or homeowner to set the elevations of the garage slab based on the lot grading and to ensure that garage is operationally accessible and that it ties to established land grades. Lane grades are not to be altered without the approval of Roads.

Development Engineering

29. If during construction of the development, the developer, the owner of the titled parcel, or any of their agents or contractors becomes aware of any contamination,
a. the person discovering such contamination shall immediately report the contamination to the appropriate regulatory agency including, but not limited to, Alberta Environment and Parks, Alberta Health Services and The City of Calgary (311).
b. on City of Calgary lands or utility corridors, The City of Calgary, Environmental Risk and Liability group shall be immediately notified (311).

30. The developer / project manager, and their site designates, shall ensure a timely and complete implementation, inspection and maintenance of all practices specified in erosion and sediment control report and/or drawing(s) which comply with Section 3.0 of The City of Calgary Guidelines for Erosion and Sediment Control. Any amendments to the ESC documents must comply with the requirements outlined in Section 3.0 of The City of Calgary Guidelines for Erosion and Sediment Control.

    For other projects where an erosion and sediment control report and/or drawings have not been required at the Prior to Release stage, the developer, or their designates, shall, as a minimum, develop an erosion and sediment control drawing and implement good housekeeping practices to protect onsite and offsite storm drains, and to prevent or mitigate the offsite transport of sediment by the forces of water, wind and construction traffic (mud-tracking) in accordance with the current edition of The City of Calgary Guidelines for Erosion and Sediment Control. Some examples of good housekeeping include stabilization of stockpiles, stabilized and designated construction entrances and exits, lot logs and perimeter controls, suitable storm inlet protection and dust control.

    The City of Calgary Guidelines for Erosion and Sediment Control can be accessed at: www.calgary.ca/ud (under publications).

    For all soil disturbing projects, the developer, or their representative, shall designate a person to inspect all erosion and sediment control practices a minimum of every seven (7) days and during, or within 24 hours of, the onset of significant precipitation (> 12 mm of rain in 24 hours, or rain on wet or thawing soils) or snowmelt events. Note that some practices may require daily or more frequent inspection. Erosion and sediment control practices shall be adjusted to meet changing site and winter conditions.

31. Stormwater runoff must be contained and managed in accordance with the Stormwater Management & Design Manual all to the satisfaction of the Director of Water Resources.

32. The grades indicated on the approved Development Site Servicing Plan(s) must match the grades on the approved Development Permit plans. Upon a request from the Development Authority, the developer or owner of the titled parcel must confirm under seal from a Consulting Engineer or Alberta Land Surveyor, that the development was constructed in accordance with the grades submitted on the Development Permit and Development Site Servicing Plan.

33. Prior to issuance of a Development Completion Permit or any occupancy of the building, payment shall be made for off-site levies pursuant to Bylaw 2M2016.

34. Pursuant to Bylaw 2M2016, off-site levies are applicable

Parks

35. Any damage to public parks, boulevards or trees resulting from development activity, construction staging or materials storage, or construction access will require restoration at the developers expense. The disturbed area shall be maintained until planting is established and approved by the Parks Development Inspector. Contact the Development Inspector at 403-804-9397 for an inspection.

36. In order to ensure the integrity of existing public trees and roots, construction access is only permitted through the rear lane and outside the dripline of public trees, per the approved Tree Protection Plan.

37. Public trees located on the boulevard adjacent to the development site shall be retained and protected unless otherwise authorized by Urban Forestry. Prior to construction, install a temporary fence around the extent of the branches ("drip line") and ensure no construction materials are stored inside this fence.

38. In order to ensure the integrity of existing public trees and roots, no grade changes are permitted in the boulevard within drip lines.

39. Tree protection information given as per the approved development permit does not constitute Tree Protection Plan approval. Tree Protection Plan approval must be obtained separately through Urban Forestry. Visit www.calgary.ca, call 311, or email tree.protection@calgary.ca for more information.

Advisory Comments

The following advisory comments are provided as a courtesy to the Applicant and registered property owner. The comments represent some, but not all of the requirements contained in the Land Use Bylaw that must be complied with as part of this approval.

Planning

40. The Applicant may appeal the decision of the Development Authority, including any of the conditions of the development permit. If you decide to file an appeal, it must be submitted to the Subdivision and Development Appeal Board (4th Floor, 1212 31 Avenue NE, Calgary, AB T2E 7S8) [DJ3 Building] within 21 days after the date on which the decision is made. An appeal along with reasons must be submitted, together with payment of a $200.00 fee, to the Subdivision and Development Appeal Board. An appeal may also be filed online at http://www.calgarysdab.ca or mailed to Subdivision and Development Appeals Board (#8110), P.O. Box 2100, Station M, Calgary AB T2P 2M5. To obtain an appeal form, for information on appeal submission options or the appeal process, please visit the website or call 403-268-5312.

41. The approval of this Development Permit does not limit in any way the application of the regulations in the Alberta Building Code, nor does it constitute any permit or permission under the Alberta Building Code.

42. In addition to your Development Permit, you should be aware that Building Permit(s) are required. Once your Development Permit application has been approved, you may apply for Building Permit(s). Please contact Building Regulations at 403-268-5311 for further information.

43. Building Regulations has provided comments as it pertains to this this application. Please refer to the attachment provided with this document for details. If you require further assistance contact Carla Weedon at 403-807-5129 or Jennifer.Rodger@Calgary.Ca for Building Permit related questions.

Transportation

44. Contact the Traffic Engineer (403-268-4356) ten (10) weeks prior to occupancy to arrange for signage to support the subject development. All costs will be at the applicant's sole expense and invoiced at time of installation.

Development Engineering

45. The developer is responsible for ensuring that:
    a. The environmental conditions of the subject property and associated utility corridors meet appropriate regulatory criteria and appropriate environmental assessment, remediation or risk management is undertaken.
    b. Appropriate environmental assessment(s) of the property has been undertaken and, if required, a suitable remedial action plan and/or risk management plan has been prepared, reviewed and accepted by the appropriate regulatory agency(s)

including but not limited to Alberta Environment and Parks and Alberta Health Services.
c. The development conforms to any reviewed and accepted remedial action plan/risk management plans.
d. All reports are prepared by a qualified professional in accordance with accepted guidelines, practices and procedures that include but are not limited to those in the most recent versions of the Canadian Standards Association and City of Calgary Phase I & II Environmental Site Assessment Terms of Reference.
e. The development is in compliance with applicable environmental approvals (e.g. Alberta Environment and Parks Approvals, Registrations, etc.), Alberta Energy Regulator approvals and related setback requirements, and landfill setback requirements as set out in the Subdivision and Development Regulation.

If the potential for methane generation or vapours from natural or contaminated soils and groundwater has been identified on the property, the developer is responsible for ensuring appropriate environmental assessment(s) of the property has been undertaken and appropriate measures are in place to protect the building(s) and utilities from the entry of methane or other vapours.

Issuance of this permit does not absolve the developer from complying with and ensuring the property is developed in accordance to applicable environmental legislation.

46. The allowable stormwater run-off coefficient shall be 50 L/s/ha.

47. As per The City of Calgary Drainage Bylaw 37M2005, the developer, and those under their control, are responsible for ensuring that a Drainage Permit is obtained from Water Resources prior to discharging impounded runoff (caused by rainfall and/or snowmelt) seepage or groundwater from construction site excavations or other areas to a storm sewer. The developer, and those under their control, is responsible for adhering to all conditions and requirements stipulated in the Drainage Permit at all times. For further information, contact the Corporate Call Centre at 311 or visit http://www.calgary.ca/UEP/Water/Pages/Watersheds-and-rivers/Erosion-and-sediment-control/Report-and-Drawings-Templates-and-Guides.aspx (Drainage Permit applications can be downloaded from this website).

48. For questions and concerns regarding waste storage facilities, refer to the Development Reviews: Design Standards for the Storage and Collection of Waste Found at: http://www.calgary.ca/UEP/WRS/Pages/Commercial-Services/Development-Permits-Waste-Recycling.aspx

Parks

49. The Streets Bylaw (20M88) and the Tree Protection Bylaw (23M2002) contain clauses intended to protect trees growing on Public Land. No person shall remove, move, cut, or prune a Public Tree or cause a Public Tree to be removed, moved, cut or pruned without prior written authorization from the Director, Parks. A copy of the bylaw can be found at www.calgary.ca. Parks does not permit the removal of public

trees to facilitate development unless all options to retain and protect are exhausted.

50. If clearance pruning of public trees is required, Urban Forestry must be notified (minimum two business days notice) and an indemnified contractor must be used at the applicants expense. Please contact Urban Forestry at 311 for more information.

51. An Urban Forestry Technician must be on-site to mitigate possible root damage to adjacent public trees during excavation of servicing from 16 ST NW and proposed walkways. Prior to construction, contact Urban Forestry at 311 and ask to speak to an Urban Forestry Technician. Urban Forestry requires minimum two business days notice prior to meeting onsite.

52. As part of the Tree Protection Bylaw, a Tree Protection Plan will be required when a development, construction activity, or a disturbance occurring on the City Boulevard is within 6 metres of a boulevard tree. For more information about submitting your tree protection plan visit www.calgary.ca and search protecting trees during construction and development; alternatively, call 311 or email tree.protection@calgary.ca. Applicant is to apply for tree protection plan prior to demolition.

53. The applicant will be required to provide compensation to the City of Calgary for any Public Trees that are removed or damaged. The Public Trees adjacent to this development are valued at $33,998.87. Applicants that are unfamiliar with tree protection or tree appraisal are advised to consult an arborist.

54. Services should be shown on the plans in accordance with the Grade Slip granted by the City. If the servicing trench will be located within the dripline of an existing public tree, the applicant shall contact Urban Forestry or contact Development Site Servicing through 311 in attempt to avoid this conflict.

55. No stockpiling or dumping of construction materials is permitted on the adjacent boulevard.

Todd Jackson | Architecture Inc
Principal: Todd Jackson, Architect, AAA

ALLAN SINGH
PLANNER 1, PLANNING & DEVELOPMENT

RE: Detailed Team Review (DTR) Development

Permit Number: DP2021-1721

Please refer to this written response as part of your review of our revised submission for the above Development Permit Application. If you have any question, please don't hesitate to contact me.

Bylaw Discrepancies		
Regulation	**Standard**	**Provided**
337 Projections Into Side Setback Area	(5) Landings, ramps other than wheelchair ramps and stairs may project in a side setback area provided: (b) the area of a landing does not exceed 2.5m2	Plans indicate the landings along the North setback area as big as 4.41m^2 (+1.91m^2) 1. Landing is revised. Average area of landing in the setback area is 2.3 sq.m.
339 Decks	(3) A deck attached to a Rowhouse within 1.2m of a party wall must have a solid privacy wall that: (a) is a min. of 2.0m in height; (b) is a max. of 3.0m in height; and (c) extends the full depth of the deck	Plans indicate a rear deck on Unit 9 sandwiched between two units which does not provide privacy walls on either side although both sides are within 1.2m of a party wall. 2. 2.0m high privacy wall provided.
544 Balconies	(2) A balcony attached to a Rowhouse Building that is a permitted use: (c) must not have a balcony on the rear façade with a height greater than 6.0m, when measured vertically at any point from grade to the platform of the balcony.	Plans indicate the third storey balcony of Unit 12 is located along the rear façade and has a height of 7.2m from grade to platform. 3. The balcony is facing the street, not on the rear façade.

Todd Jackson | Architecture Inc
Principal: Todd Jackson, Architect, AAA

541 Building Height	(1) Unless otherwise referenced in subsections (2) and (3), for a Rowhouse Building, Semi-detached Dwelling or Single Detached Dwelling, the max building height is 11.0m measured from grade.	Plans indicate a portion of the South elevation exceeds the 11.0m height plane. 4. Grade is revised.
540.1 Fences	The height of a fence above grade at any point along a fence line must not exceed 1.2m for any portion of a fence extending between the foremost front façade of the immediately adjacent main residential building and the front property line.	Plans indicate gates accessing most (not all) units amenity spaces along the West PL. Plans do not indicate if there would be a fence attached to these gates, nor the height of the gates. 5. Fence and gate is removed.

Prior to Decision Requirements

Planning

1. Please submit a complete digital set of the amended plans in PDF format and a separate PDF response letter that provides a point-by-point explanation as to how each of the Prior to Decision conditions were addressed and/or resolved. If Prior to Release conditions have been addressed in the amended plans, include a point-by-point explanation for these items as well. The submitted plans must comprehensively address the Prior to Decision conditions as specified in the DTR document. Ensure that all plans affected by the revisions are amended accordingly. To arrange the digital submission, please contact the File Manager directly.

Todd Jackson | Architecture Inc
Principal: Todd Jackson, Architect, AAA

Transportation

2. With regard to the boulevard:

a. Amend the plans to extend the new proposed sidewalk on 8 Av NW to the East side of the lane driveway.

6. Proposed sidewalk is extended.

b. Amend the plans to indicate that the NW corner cut is clear of obstructions in all vertical elevations; both underground and above grade. The land within the 4.5m x 4.5m corner cut is to be registered as an access easement. Amend the plans to clearly indicate the access easement on the DP drawings. If the applicant does not wish to maintain this area under an access easement, then the Applicant may dedicate this portion of the parcel to the City as right-of-way. Please contact the Transportation Generalist to obtain a sample agreement.

7. Plan is revised.

c. Amend the proposed wheel chair ramp design on the NW corner. As per Section G.3 of The City of Calgary's 2014 Design Guidelines for Subdivision Servicing (DGSS): "Wheelchair ramps must be provided at all intersection corners. Locations of wheelchair ramps should align with the crosswalks and vice versa". As such, amend the plans to align the WCR with the East-West crosswalk across 16 St NW. Amend the design to provide a 0.6m x 1.2m tactile warning plate within the WCR. Align the tactile plate with the East-West crossing. Amend the plans to provide a 1.2m x 1.2m landing space on top of the WCR; which provides a safe space for wheeled users to maneuver.

8. Wheel chair ramp is revised.

d. Provide one (1) boulevard cross section along each adjacent road (8 Av NW and 16 St NW). Indicate the existing and proposed dimensions, elevations and slopes at the top of curb, back of sidewalk, property line and the main floor. A maximum 2% grade is permitted in the boulevard. Indicate that all adjacent boulevards are graded at 2% up from the top of curb to the ultimate property line.

9. Boulevard cross section provided.

#

Todd Jackson | Architecture Inc

Principal: Todd Jackson, Architect, AAA

3. With regard to the lane:

a. Amend the plans to provide additional setback to the parking garage to facilitate a functional width of 7.2m (that is, 7.2m from the overhead garage door to the property line across the lane), such that two vehicles can pass each other within the lane, and opposing parcels can be properly accessed. If power poles are present, the 7.2m measurement should be measured from the power pole.

The proposed internal walkway is 1.26m in width. The City of Calgary's Access Design Standards recommends a minimum unobstructed width of 1.5m width for any private walkways to improve accessibility for those who use walkers/wheelchairs. The Alberta Building Code specifies a minimum dimension of 1.1m for public corridors (Means of Egress Section 9.9.3.3).

Alternatively, amend the plans to indicate that parking stalls adjacent to existing power poles (units 9 - 12) can be safely accessed. Amend plans to include sweep paths to confirm turning requirements for access to and from parking stalls for units 9 -12. The plan is also to include an appropriate design vehicle with dimensions and the standard Transportation Association of Canada (TAC) name. All minimum clearances between the sweep paths and obstructions (garage doors, curbs, fencing, power poles, etc.) are to be dimensioned and must exceed the minimum 0.6 m clearance.

10. Under review by our transportation consultant.

b. Amend the plans to provide a new driveway access to the lane, complete with 1.0m flares on 8 av NW. Match the width of the driveway to the width of the existing lane. Provide a detailed driveway cross-section complete with ramp grades and elevations at face of curb, back of sidewalk, property line. Refer to The City of Calgary Roads Construction 2015 Standard Specifications 454.1010.004 (curb returns are not permitted).

11. Driveway revised. Cross section provided.

c. Amend the plans to include a minimum of 3 cross sections through the full width of the lane at key low points or high points. On each cross section, include existing and proposed elevations along both property lines (subject site and opposing side of the lane), centerline of the lane, garage apron, front of garage and back of garage. Full grading information is required to confirm if the lane will drain adequately. If drainage issues exist that may result in flooding of the lane or adjacent lots, regrading of the lane may be required.

12. Cross sections provided.

#

Todd Jackson | Architecture Inc

Principal: Todd Jackson, Architect, AAA

Development Engineering

4. Amend the plans to:

   a. Provide details of the proposed recyclable materials and waste collection facilities. No information on recyclable materials and waste collection facilities are indicated on the plans.

   If bins are to be stored in the garage, a depth of at least 20 feet must be achieved.
13. 20’-0” depth provided.

Parks

5. No Comments

TRANSPORTATION PLANNERS AND ENGINEERS

MEMO

Date: May 3, 2021
Project: DP2021-1721 (1619 Avenue NW) **Project #:** 02-21-0066
Subject: **Justification for 4.87m Design Vehicle for Swept Path Analysis**

To: Allan Singh and Jason Bell, City of Calgary
From: Ezekiel Dada, Ph.D., P.Eng. l Principal l Bunt & Associates Engineering Ltd.

Jackson McCormick is processing an application for a residential development in Hillhurst area of Calgary. The site is located at 818,822 & 826 16 Street NW. The City is concerned about the ability of vehicles to access and egress some parking spaces through the lane. As a result, Bunt & Associates completed a vehicle turning analysis using a non-TAC personal vehicle. This vehicle has been used in previous swept path analyses.

The development has 12 individual garages that can only be accessed through the lane. The lane currently provides access to all existing garages that fronts it. Of importance is the existence of power poles in the lane. These poles limit the width of the driving lane and may create some difficulty for vehicles accessing some garages.

Swept Path Analysis

Bunt completed a swept path analysis for typical personal vehicle along the lane. The analysis applied a 4.87m passenger vehicles for access and egress to/from the parking stalls. This memo is to confirm that the passenger vehicle applied is representative of most vehicles that would be parked at this development.

A review of vehicle dimensions including those of minivans, SUV's and pickup trucks was completed. It was confirmed that average vehicle length is 4.5m and that 4.87m represents 81th percentile length. Vehicle dimension analysis is summarized in **Table 1.**

As can be seen from the Table, the average vehicle length is between 4.15m -4.78m. The median ranged from 4.17 to 4.85m. Further analysis shows that if the composition of likely vehicles were weighted as 60% cars, minivans and compact SUV, and 40% large SUV and pickups, the minimum vehicle length would be 4.37 m, the maximum would be 4.95m and the midpoint would be 4.66m. This clearly confirms that a passenger vehicle with length 4.87m would represent at least 3 (0.81x4 =3.24) of the 4 vehicles that are likely to use any of the parking spaces for which concerns have been raised. Therefore, this design vehicle is considered an appropriate representative of the size of vehicle that may be owned by residents at this development.

The applicant notes that all information regarding site geometry and stall sizes and location, ease of ingress and egress to/from parking spaces will be provided to potential buyers/renters. Therefore, buying/renting would be an educated decision.

Table 1: Vehicle Dimensions[1]

Vehicle Type	Min Length (mm)	Max Length (mm)	Midpoint Length (mm)
City Cars	2695	3665	3180
Minis	3821	4084	3953
Compact	4109	4370	4240
Family	4425	4726	4576
Executive	4631	5624	5128
Sports	3995	5027	4511
Estate	4236	4966	4601
MPV's	4068	5130	4599
Small Crossovers	3700	4300	4000
Compact SUV	4255	4735	4495
Large SUV	4662	5130	4896
Pickups	5205	5632	5419
Average	***4150***	***4782***	***4466***
Median	***4173***	***4851***	***4543***
75th Percentile	***4477***	***5130***	***4675***
81th Percentile	***4612***	***5130***	***4869***
Assuming 60% Cars, minivans & Compact SUVs, and 40% Large SUVs & Pickups			
Weighted Average	**4370**	**4950**	**4660**

[1] https://anewwayforward.org/average-car-length

DEVELOPMENT PERMIT APPLICATION CIRCULATION REPORT

Name: JACKSON MCCORMICK DESIGN GROUP
Building Address: 1619 8 AV NW

Development Permit Number: DP2021-1721
Development Description: New: Rowhouse Building with Secondary Suites (1 Building)

IMPORTANT NOTICE

A preliminary review for compliance with the National Building Code – 2019 Alberta Edition has been completed based on the Development Permit Application Drawings. The following comments may affect the design concept of the building and shall be addressed prior to the application for a Building Permit.

A Building Permit shall be obtained from the Building Regulations Division before construction

Building Regulations has reviewed the proposed development and alterations are required to bring the proposed development into compliance with the National Building Code – 2019 Alberta Edition which may result in a new or revised Development Permit if items are not addressed at this time.

1. **Division A, 1.3.3.3. Application of Parts 9, 10 and 11**
   1) Part 9 of Division B applies to all *buildings* described in Article 1.1.1.1. of 3 *storeys* or less in *building height*, having a *building area* not exceeding 600 m_2, and used for *major occupancies* classified as
      a) Group C, *residential occupancies* (see Note A-9.1.1.1.(1) of Division B)

   Division B, 9.10.15.1. Application (Spatial Separation Between Houses)
   1) This Subsection applies to
   a) *buildings* that contain only *dwelling units* and have no *dwelling unit* above another *dwelling unit*, and
   b) houses with a *secondary suite* including their common spaces.

This preliminary review assumes the intent to comply with Part 9 with reduction in building area or separation of buildings with a firewall, and under 9.10.15. as houses with secondary suites. These comments do not apply to a Part 3 building or 9.10.14. application.

2. **Division B, 9.10.11.2. Firewalls Not Required**
   2) Where a *building* of *residential occupancy* contains more than 2 houses, a *party wall* that separates any 2 adjacent houses with a *secondary suite* from the rest of the *building* shall be constructed as a *firewall* to create separate *buildings* each containing no more than 2 adjacent houses with a *secondary suite*.

   Division B, 9.10.11.3. Construction of Firewalls
   1) Where *firewalls* are used, the requirements in Part 3 shall apply.

Firewalls are required to create separate buildings each containing no more than 2 adjacent houses with a secondary suite.

3. **Division B, 9.9.4.4. Openings Near Unenclosed Exterior Exit Stairs and Ramps**

1) *Unprotected openings* in exterior walls of the *building* shall be protected with wired glass in fixed steel frames or glass block conforming to Articles 9.10.13.5. and 9.10.13.7., where
   a) an unenclosed exterior *exit* stair or ramp provides the only *means of egress* from a *suite* and is exposed to fire from *unprotected openings* in the exterior walls of
      i) another *fire compartment*, or

ii) another *dwelling unit*, ancillary space or common space in a house with a *secondary suite*, and

b) *unprotected openings* in the exterior walls of the *building* are within 3 m horizontally and less than 10 m below or less than 5 m above the *exit* stair or ramp.

Unprotected openings located within 3m horizontally and less then 5m above the exterior secondary suite exit stair require protection. See 'Advisory Bulletin – Protection of Openings Near Unenclosed Exterior Stairs and Ramps'.
https://www.calgary.ca/PDA/pd/Documents/building/advisories/br-advisory-openings-near-unenclosed-exterior-stairs-ramps-doors.pdf

4. **Division B, 9.10.12.3. Exterior Walls Meeting at an Angle**
   1) Except as provided in Article 9.9.4.5., where exterior walls of a *building* meet at an external angle of 135° or less, the horizontal distance from an *unprotected opening* in one exterior wall to an *unprotected opening* in the other exterior wall shall be not less than 1.2 m, where these openings are
      a) in different *fire compartments*, or
      b) in different *dwelling units*, ancillary spaces or common spaces in a house with a *secondary suite*.
   2) Except as provided in Sentence (3), the exterior wall of each *fire compartment* referred to in Sentence (1) within the 1.2 m distance shall have a *fire-resistance rating* not less than that required for the interior vertical *fire separation* between the compartment and the remainder of the *building*.

Exterior walls of Unit 6 and 9 meets at an angle less than 135° and contain unprotected openings.

Advisory Comments:

1. **Division C 2.4.2.1. Professional Involvement**
   3) Except as required in Sentence (9), *registered architectural professional* and *registered engineering professional* seals or stamps are not required on plans or specifications for a *building*
      b) classified as a *residential occupancy* that is
         ii) a multiple-family dwelling that contains 4 *dwelling units* or less

Drawings and specifications are required to be sealed or stamped by registered architectural and engineering professionals.

2. **Division B, Part 9.10.2.1 Occupancy Classification**
   Provide a complete building code review at time of Building Permit application. The **building classification** shall be provided and required fire separations and fire resistance ratings shall be clearly identified on the drawings.

3. **Division B, 9.10.15. Spatial Separation Between Houses**
   Provide glazed opening calculations and exposed building face construction assessment for all exposing building faces of the new building(s) at time of building permit application. In the event there is no established property line to calculate limiting distance, indicated the location an imaginary located between the two buildings used to calculated glazed openings for both buildings.

4. **Division B, 9.10.14. Spatial Separation Between Buildings**
   Provide spatial separation for detached garages under Division B, 9.10.14. or using the standing posted variance (SPV-003) on Calgary.ca. Should you wish to use this variance the construction details must follow exactly and reference to the SPV-003 shall be included on the building permit application drawings.

5. **Division C, 2.2.10.1. General (New Home Warranty)**
   Provide proof of New Home Warranty for building permit submission as required under New Home Buyer Protection Act. Refer

6. **Division C, 2.2.10.1. General (Builder License)**
   The Province of Alberta requires all residential builders to have a builder license to construct residential projects including multi-residential. Accordingly, the City of Calgary is required to check for evidence of the

builder license for any building permits that include residential dwelling units in the scope of work. Provide proof of builder's licence as required under New Home Buyer Protection Act; General Contractor licence (up to 4 dwelling units) or Developer licence (5 or more dwelling units). Any questions related to builder licensing can be directed to builderlicensing@gov.ab.ca.

7. **Division C, 2.2.10.1. General (Partial Permit)**
   Please note that a partial permit application may be made at the time of your building permit application or anytime thereafter (in consultation with your building permit file manager SCO). The scope of a partial permit may vary and specification of the proposed scope of the partial permit is required at the time of the application. Please refer to the following document for information necessary when applying for a partial permit on this project. http://www.calgary.ca/PDA/pd/Documents/building/commercial-partial-permit.pdf

Carla Weedon
Safety Codes Officer | Building
Calgary Building Services | Planning & Development
E: carla.weedon@calgary.ca | P: 403.807.5129

Please note that a full plans review has not been completed and further issues may arise upon full building permit application review.

ENMAX Power Corporation
141 – 50 Avenue SE
Calgary, AB T2G 4S7
Tel (403) 514-3000
enmax.com

April 11, 2021

File No: DP2021-1721
Location: 1619 8 AV NW

ENMAX Power Corporation (EPC) has reviewed the above permit application dated 3/24/2021 and based on the information provided and as of the above noted date the proposed development does not conflict with ENMAX facilities in respect of the requirements set forth in 10-002 Overhead System (Table 7) and 12-002 Underground Systems of the Alberta Electrical Utility Code (AEUC) under the *Safety Codes Act* (Alberta). This non-conflict letter does not reduce or limit responsibility to comply will all laws and regulations regarding utility facilities and all requirements under the *Occupational Health & Safety Act* (Alberta) (OHS) and the applicant shall observe all such laws and regulations when commencing any work related to the permit application. If a situation arises where there is a discrepancy between ENMAX required setbacks and the AEUC or the OHS, the stricter set of requirements shall govern.

Pursuant to Section 225(1) of Part 17 of the *Occupational Health and Safety Code* (Alberta) (Code) anyone working near overhead powerlines must maintain safe limits of approach as provided for in Schedule 4, Table 1 of the Code or Table 1 in the AEUC and anyone excavating must contact Alberta One-Call prior to performance of such excavation. As a condition of this no-conflict letter, and despite any existence of a permit, the applicant must contact EPC (Powerline Inspections (403) 514-3117) prior to the commencement of any construction where any workers or equipment will be within 7.0m of existing overhead EPC facilities If EPC is contacted in accordance with the above, no construction work shall be commenced thereafter unless and until EPC determines the minimum safe limit of approach distance in relation to the overhead facilities present at the project site.
**NOTE: This letter provided by ENMAX Power Corporation is intended for information purposes only and is not in any manner intended to nor shall be construed to derogate from applicant's obligations to follow any applicable law. The provision of this no-conflict letter is not a representation that work will meet any legislative or regulatory obligations. This no-conflict letter is provided as of the date first note above – the applicant is still required to perform their own due diligence prior to any development activities and resolve any conflicts (new or existing) at the Developer's sole expense. ENMAX expressly disclaims any liability related to applicant's responsibility to comply with such laws and regulations and ENMAX's required setbacks.

If you require any additional information regarding this Development Permit, please contact the Project Administrator at EPC_Permits@enmax.com.

Sincerely,

Kim Yl

Younglae Kim, P.Eng
Permits and Circulations

Ta, Alicia

From: CAWard7 - Dale Calkins
Sent: Tuesday, March 30, 2021 1:23 PM
To: DP Circ
Cc: Singh, Allan; 'Lisa Chong'
Subject: RE: Electronic Circulation of DP2021-1721 @ 1619 8 AV NW

Hello Allan,

Councillor Farrell's office reviewed DP2021-1721 and offers the following comments:

- The proposed development is broadly consistent with the rules of the district and the intent of the Hillhurst-Sunnyside Area Redevelopment Plan.
- The proposed development is similar to the previous proposal but appears to make a number of changes to reduce bylaw relaxations. These changes appear to be positive.

Best regards,

Dale Calkins (he/him)
Senior Policy & Planning Advisor
Druh Farrell – Ward 7 Councillor
Office of the Councillors, PO Box 2100, Station M, Calgary, Alberta, T2P 2M5
e CAWard7@Calgary.ca **w** www.DruhFarrell.ca

From: Halliburn, Pamela E. **On Behalf Of** DP Circ
Sent: Wednesday, March 24, 2021 16:07
Cc: DP Circ ; Singh, Allan
Subject: Electronic Circulation of DP2021-1721 @ 1619 8 AV NW

For more information
CALGARY.CA/PD
DISPATCH
ENEWSLETTER

Good day,

Please find attached the circulation package for the above noted Development Permit application.

Included are the following documents:

1. Circulation Package
   - Guidelines for Electronic Circulation
   - Request for Comment Sheet
   - Complete Set of Plans

2. Community Association Feedback Form
   Please note, you can also submit feedback online.

Please respond electronically to DP.Circ@calgary.ca.

Thank you.

Pamela Halliburn
Applications Processing Representative
Calgary Building Services
Development, Applications and Licensing Services
The City of Calgary | Mail code: #8201
(403) 268-5744 DP.Circ@calgary.ca
Floor 3, Municipal Building - 800 Macleod Trail S.E.
P.O. Box 2100, Station M, Calgary, AB Canada T2P 2M5

ISC: Unrestricted

HSCA
Planning Committee

April 14, 2021

Development Circulation Controller
Planning & Development #8201
P.O. Box 2100 Station M
Calgary, AB T2P 2M5

RE: DP2021-11721 | 1619 8th Ave NW | Proposed 2 Building Development

Dear Mr. Allan Singh,

The Hillhurst Sunnyside Planning Committee ("HSPC") is pleased to provide comment on the above application. Please see attached for a copy of the Community Association Feedback Form. We reviewed this application with affected neighbours and the Hillhurst Sunnyside Area Redevelopment Plan ("ARP"), and other relevant policy.

Our infill subcommittee has several concerns with the overall fit of the proposed development in the community and fit within the ARP. The HSCA would like to submit its comments to supplement the Developed Areas Guidebook. Furthermore, the HSCA has concerns that this application is coming within the 6-month period after the recent SDAB appeal (SDAB 2020-0070).

Please notify the HSCA if this Development Permit Application is Approved.

Thank you for the opportunity to comment,

Hillhurst Sunnyside Planning Committee
Hillhurst Sunnyside Community Association

cc: Andrew Hoskin, Mark Beckman, Members, Hillhurst Sunnyside Planning Committee
Lisa Chong, Community Planning Coordinator, HSCA
Dale Calkins, Senior Policy & Planning Advisor, Ward 7 Councillor's Office
Development Permit Circulation Controller

Community Association Feedback Form

By providing feedback on the proposed development that is enclosed in this package, you are providing your community association's perspective as the "eyes of the community." This helps City staff better understand what is important to your community as we work with the applicant who has proposed this development, and it enables us to make an informed decision about whether to issue this development permit. In the course of this development permit evaluation, the planning department will review all relevant statutory plans including the Municipal Development Plan, Area Redevelopment or Area Structure Plans as well as the Land Use Bylaw.

File Number: DP2021-1721
Name of Planning Representative/s who completed this form: Andrew Hoskin, Mark Beckman, Lisa Chong
Community Association: Hillhurst Sunnyside
Date returned: April 14, 2021

✓ I commit to the Planning System core values: innovation, collaboration, transparency, accountability, trust, and responsibility.

Questions

Please provide your Community Association perspective and respond to the following questions:

1. **What are the strengths and challenges of the proposed development?**
   - **Strengths**
     - The ARP encourages family-friendly redevelopment – Many units appear to have 3 bedrooms
     - Appears to have durable exterior finish in place (ARP Section 2.4.1.1)
     - Some trees on the property will be retained
     - Third floor is set back from front of building (ARP 2.4.1.1)
     - Alternating colours for each unit.

   - **Challenges**

     - HSCA is unsure if reapplication for a Development Permit is allowed as these plans would appear to require a parking relaxation at a minimum; (see blow) And therefore not be eligible for reapplication

Reapplication for a Development Permit

46 Where a ***development permit*** application has been refused, the ***Development Authority*** must not accept an application for the same or similar ***development*** within six months of the date of decision except where the proposed ***development*** is for a ***permitted use*** that conforms to all of the applicable requirements and rules of this Bylaw.

-

- This development failed to meet the parking requirements laid out in SDAB reasons 54 through 57. (SDAP 2020-0070)
- Failure to fit within several of the ARP Guidelines (See Section 2.4)
- Excessive building height -exceeds height of adjacent buildings by a significant margin.
- Flat roofs are not consistent with the ARP Guidelines (ARP Section 2.4.1.1)
- Building height is not consistent with the ARP Guidelines (ARP Section 2.4.1.1)
- Massing of the building is inconsistent with neighbouring properties and streetscape
- The small size of the front porches on this development
- Unit #8 on the North end of Building 1 has a poor façade facing 8th Ave.
- No provision for garbage collection for 23 units

2. Are there changes that could be made to the proposed development to make it more compatible or beneficial to the area?

- ☐ Make changes to the development to address all the requirements provided in SDAB 2020-0070 report
- ☐ Reduce the height and massing to be consistent with the ARP and maximum allowable height
- ☐ Increase the set back to be more consistent with the property to the immediate South.
- ☐ Increase size of porches

3. Provide comments on the following. You may wish to consider height, privacy, parking, vehicle or pedestrian access and landscaping as you respond to these questions.

a. The use (if identified – not applicable for single-detached houses, semi-detached dwellings or duplexes)

- This is an R-CG/R-C2 district; the lot coverage appears be acceptable with special considerations provided there is sufficient fire access
- Unsure if lot coverage is allowable

b. The site design

- Very awkward amenity space for units B11 and B12

c. The building design

- The façade of Unit #8 facing 8th Ave should be re-designed to improve streetscape
- The ARP states that for developments which exceed the height of the adjacent properties the front yard should be smaller than, not greater than or equal to, the adjacent properties (See ARP Section 2.4.1.1)
- Small size of front porches is unusable
- Unsure how side windows will affect neighboring properties – opaque windows noted

Community Character & Streetscape

- The flat roof of the proposed development is out of place in the streetscape

Height & Privacy

- The windows on the houses to the South could have significant privacy concerns but it impossible to determine since the drawing did not include the relative placement of

proposed development's windows on the neighbouring elevations -note that opaque glass is used
- The third floor balconies are a significant concern -esp. for the property to the South- and should be eliminated, or the privacy screen extended
- Third floor windows will overlook neighbours back yards

4. Has the applicant discussed the development permit application with the Community Association?
- As far as HSCA is aware, neighbours have not been approached.
- HSCA delivered flyer notifications to the immediate neighbours to inform them of a potential development nearby. We provided the contact information for the City of Calgary File Manager and to advise that the plans were available with the HSCA for viewing. Neighbour comments received by HSCA are attached.

5. Please provide any additional comments or concerns regarding the proposed development.
- The HSCA would like to see consideration of "repurposing architectural elements" when historic homes are razed. The ARP promotes sustainability and heritage considerations.
- Adaptive reuse is especially important due to tonnage going to the landfill each time a house is demolished (and the heritage architectural elements with it).
- We request that the developer work with the HSCA to ensure that the maximum salvageable fixtures and heritage architectural elements be given back to community residents and/or reused.
- This would serve two purposes: provide a goodwill gesture to the community and secondly, focus on recycling heritage elements that are valued by our community.
- The HSCA would be pleased to coordinate volunteer resources with the developer/ builder as we have worked with another homeowner in the same area to rescue items before their existing house was demolished.
  or, Ward 7 Councillor's office

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From: Singh, Allan
Sent: Tuesday, June 15, 2021 1:13 PM
To: Ta, Alicia
Subject: FW: [EXT] HSCA Comment for DP2021-1721 @ 1619 8 AV NW (818 822 826 16 St NW)

Follow Up Flag: Follow up
Flag Status: Flagged

From: Singh, Allan
Sent: Friday, May 14, 2021 1:36 PM
To: 'Andrew Hoskin [redacted] Mark Beckman [redacted] Lisa Chong [redacted] glennwierzba [redacted] Lorna Cordeiro [redacted]
Cc: Robert McKercher [redacted] Decker Butzner [redacted] Daria McDonald [redacted] Peter La Bastide [redacted] Tom Dvorak [redacted] CAWard7 - Dale Calkins <caward7@calgary.ca>
Subject: RE: [EXT] HSCA Comment for DP2021-1721 @ 1619 8 AV NW (818 822 826 16 St NW)

Hello Andrew,

Hope all is well. Thank you for responding to my email. The issue of the secondary suite parking relaxation and the location of SAIT LRT station has been a contentious one, to say the least.

When measuring the radius/ distance of a parcel from an LRT station the City of Calgary uses the definition of "as the crow flies". When using this methodology SAIT LRT Station is located 580 metres from the subject parcel. This has been confirmed by our Bylaw team and Calgary Transit.

I understand your frustration and confusion especially considering the board's previous ruling in regards to this matter. However, based on my assessment and that of my Senior Leadership team the application meets all of the rules laid out in Section 546 of the bylaw.

If you have any further questions please reach out at any time.

Allan Singh
Planner, Community Planning North
Planning & Development
The City of Calgary | Mail Code: #8076
P (587) 576-4312 **E** allan.singh@calgary.ca
Floor 5, 800 Macleod Trail S.E.
P.O. Box 2100, Station M, Calgary, AB Canada T2P 2M5

From: Andrew Hoskin [mailto:abhoskin@hotmail.com]
Sent: Thursday, May 13, 2021 4:30 PM
To: Singh, Allan <Allan.Singh@calgary.ca>; Mark Beckman [redacted]; Lisa Chong [redacted]>;

glennwierzba[redacted] Lorna Cordeiro [redacted]
Cc: Robert McKercher [redacted] Decker Butzner [redacted]; Daria McDonald [redacted] Peter La Bastide [redacted] Tom Dvorak [redacted] CAWard7 - Dale Calkins <caward7@calgary.ca>
Subject: Re: [EXT] HSCA Comment for DP2021-1721 @ 1619 8 AV NW (818 822 826 16 St NW)

Hi Allan,

This is where I'm confused:

Motor Vehicle Parking Stalls

546 (1) The minimum number of ***motor vehicle parking stalls*** for a **Contextual Semi-detached Dwelling** is 1.0 stall per **Dwelling Unit**.

(2) The minimum number of ***motor vehicle parking stalls*** for a **Secondary Suite** is reduced to 0.0 where

(a) the floor area of a **Secondary Suite** is 45.0 square metres or less;

(b) the ***parcel*** is located within 600.0 metres of an existing or approved capital funded ***LRT platform*** or within 150.0 metres of ***frequent bus service***; and

(c) space is provided in a ***building*** for the occupant of the **Secondary Suite** for storage of mobility alternatives such as bicycles or strollers that:

(i) is accessed directly from the exterior; and

(ii) has an area of 2.5 square metres or more for every **Secondary Suite** that is not provided with a ***motor vehicle parking stall***.

The SDAB ruled in their decision of the last appeal that neither of these applied and therefore this site is not allowed a minimum of 0 parking stalls for Secondary Suites.

"54 The Board finds that there is insufficient on-site parking provided in the development. Although Units 1 – 12 have the LUB-required stalls on site (one per dwelling unit), the Secondary Suites present a problem. The LUB states that the minimum number of motor vehicle parking stalls for a Secondary Suite is reduced to 0.0 where the floor area of a Secondary Suite is 45 square metres or less. Three Secondary Suites have floor areas exceeding 45 square metres. Further, the LUB goes on to require that the parcel which contains the Secondary Suites must be located within 600.0 metres of an existing or approved capital funded LRT platform or within 150 metres of frequent bus service. There are no LRT stations within 600.0 metres of the development, and there is only one eastbound bus service located within 150 metres of the development, and one westbound bus service within 150 metres of the development. These shortcomings will likely create the situation where at least some of the residents of the Secondary Suites will possess motor vehicles. "

Add to that, the adjacent bus stop only runs hourly each direction on weekdays, so it doesn't meet the 1P2007 definition of "frequent bus service"

That means that this application does not achieve " all the rules of the applicable land use district". and as such should not have been approved.

Was this an oversight?

Thank you,

Andrew Hoskin

From: Singh, Allan <Allan.Singh@calgary.ca>
Sent: May 13, 2021 12:22 PM
To: Mark Beckman [redacted]; Lisa Chong [redacted] abhoskin [redacted] glennwierzba [redacted] Lorna Cordeiro [redacted]
Cc: Robert McKercher [redacted] Decker Butzner [redacted] Daria McDonald [redacted]; Peter La Bastide [redacted] Tom Dvorak [redacted] CAWard7 - Dale Calkins <caward7@calgary.ca>
Subject: RE: [EXT] HSCA Comment for DP2021-1721 @ 1619 8 AV NW (818 822 826 16 St NW)

Hello Mark,

Hope all is well. Thank you for taking the time and responding to the circulation. In these challenging times, it is very commendable that you and your committee continue to provide excellent commentary to all DP and Land Use circulations in Hillhurst.

I wanted to reach out and provide you with an update as to the status of this application. After a careful and thorough review, the above-noted application has now been approved. The following is the rationale behind the decision:

1) **The application met all the rules for a Permitted Use Rowhouse: When a development permit application is for a permitted use in a building or on a parcel and proposed development conforms to all of the applicable requirements and rules of this Bylaw, the Development Authority must approve the application and issue the development permit.**

2) **As per the land use bylaw, the Development Authority may, as a condition of issuing a development permit require the applicant to construct or pay for the construction of the following that are necessary to serve the development:**

    a. **Public utilities, other than telecommunications or works; and**
    b. **Vehicular and pedestrian access.**

What these two statements mean is that if a permitted use application meets all the rules of the applicable land use district the City has no choice but to approve it. The scope of our review for Permitted Use applications is extremely limited and as such comments are restricted to fundamental elements of an application. For example, my planning review was limited to ensuring compliance with the Land Use Bylaw. Transportation had their review limited to site access while Development Engineering could only comment on site servicing.

In your letter, you made an excellent point about the 6 month waiting period that is required before an applicant can apply for a DP once an SDAB refusal order has been issued. While this is true for a discretionary application the applicant was legally entitled to apply if it was done so as a Permitted use. However, as mentioned previously we can only issue

an approval if all the rules of the R-CG district have been met. If even one rule was not in compliance then an approval could not have been issued as it would have triggered a relaxation which would have meant this application becomes a Discretionary Use and the 6-month clause kicks back in.

For your information, while the previous application was notice posted it was done so because it was a discretionary use and was required as per the land use bylaw. However, the bylaw does not permit the notice posting of applications not specifically stated as being required. Permitted Use rowhouse applications in the developed area are not required to be notice posted.

If you have any further questions or concerns please reach out at any time. Again I want to thank you and your committee for responding to this circulation.

Thanks,

Allan Singh
Planner, Community Planning North
Planning & Development
The City of Calgary | Mail Code: #8076
P (587) 576-4312 **E** allan.singh@calgary.ca
Floor 5, 800 Macleod Trail S.E.
P.O. Box 2100, Station M, Calgary, AB Canada T2P 2M5

From: Mark Beckman [redacted]
Sent: Tuesday, April 13, 2021 10:01 PM
To: Lisa Chong [redacted] abhoskin [redacted] glennwierzba [redacted] Lorna Cordeiro [redacted]
Cc: Robert McKercher [redacted] Decker Butzner [redacted] Daria McDonald [redacted] Peter La Bastide ([redacted] Tom Dvorak [redacted] Singh, Allan <Allan.Singh@calgary.ca>; CAWard7 - Dale Calkins <caward7@calgary.ca>
Subject: [EXT] HSCA Comment for DP2021-1721 @ 1619 8 AV NW (818 822 826 16 St NW)

Hi Allan:
Please find comments for the proposed development at 1619 8th Ave NW (DP2021-1721) on behalf of the HSCA.
Mark

Development Authority Response to Notice of Appeal

Appeal number: SDAB2021-0040

Development Permit number: DP2021-1721

Address: 1619 – 8 Avenue NW

Description: Rowhouse Building (1 Building, 12 Units), Secondary Suite (11 Suites), Accessory Residential Building (2 Buildings - Garage and Bicycle Storage)

Land Use: Residential – Grade-Oriented Infill (R-CG) District

Community: Hillhurst

Jurisdiction Criteria:

- Subject to National Resources Conservation Board, Energy Resources Conservation Board, Alberta Energy Regulator, Alberta Energy and Utilities Board, Alberta Utilities Commission or Minister of Environmental and Parks license, permit, approval, or other authorization: **NO**

DA Attendance: Yes

Use: Permitted

Notice Posted: Not required.

Bylaw relaxations: None.

The Development Authority may provide additional relevant records at a later date.

Appeal Board Rec'd: June 14, 2021
Submitted by: T. Jackson, Applicant

McLean, Lauren E.

From: Todd Jackson <todd@jmdesigngroup.ca>
Sent: Monday, June 14, 2021 9:18 AM
To: Calgary SDAB Info
Cc: Chris York; Rick Grol
Subject: *LM* [EXT] SDAB 2021-0040 (DP 2021-1721)

Follow Up Flag: Follow up
Flag Status: Completed

Hello,

Our firm is the applicant of development permit application DP2021-1721, which is the subject of appeal SDAB2021-0040, scheduled for a Procedural and Jurisdictional Hearing on June 24, 2021. Please be advised that Mr. Rick Grol will act as our agent/representative with respect to this appeal and application.

Regards,

TODD JACKSON MAAA, MAIBC, MRAIC
PRINCIPAL

JACKSON McCORMICK
DESIGN GROUP

403.520.8018 ext 225 I jmdesigngroup.ca I 804A 16th Ave SW Calgary AB T2R 0S9

TODD JACKSON
ARCHITECTURE INC

403.520.8018 ext 225 I tjarchitecture.com I 804A 16th Ave SW Calgary AB T2R 0S9

Jackson McCormick Design Group. Inc./Todd Jackson Architecture Inc.

804 16th Ave. SW - Suite A
Calgary, AB, T2R 0S9
tel 403.520.8018 ext 225
fax 403.276.5146

www.tjarchitecture.com
www.jmdesigngroup.ca
todd@jmdesigngroup.ca

DECISION RENDERED

HILLHURST MULTI-FAMILY

818 / 822 / 826 16th ST N.W. CALGARY, ALBERTA

PROJECT CONSULTANTS

PROPERTY OWNER: RIVERVIEW CUSTOM HOMES LTD.

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ADDRESS: SUITE A, 804 16TH AVENUE S.W. CALGARY AB, T2R 0S9
PH: (403) 973 9275
EMAIL: chris@riverviewhomes.ca

CONTRACTOR: RIVERVIEW CUSTOM HOMES LTD.

CONTACT: BRIAN BONNER
ADDRESS: SUITE A, 804 16TH AVENUE S.W. CALGARY AB, T2R 0S9
PH: (403) 870 2757
EMAIL: brian@riverviewhomes.ca

ARCHITECT: JACKSON McCORMICK DESIGN GROUP INC.

CONTACT: TODD JACKSON, ARCHITECT
ADDRESS: SUITE A, 804 16TH AVENUE S.W. CALGARY AB, T2R 0S9
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CONTACT: RICHARD NEUFELD
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ELECTRICAL: DESIGN WORKS ENGINEERING

CONTACT: LOGAN GROTKOWSKI
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EMAIL: logang@designworkseng.com

CIVIL: DESIGN WORKS ENGINEERING

CONTACT: ABDULLAH RABI
ADDRESS: 12328, 104 AVENUE EDMONTON AB, T5N 0V3
PH: (780) 993 4191
EMAIL: abdullahr@designworkseng.com

DRAWING INDEX

SYMBOL LEGEND

Room name	INDICATES ROOM NAME AND NUMBER.
1 / A101	INDICATES BUILDING SECTION MARKER.
1 / A101	INDICATES WALL SECTION MARKER.
1 / A101 SIM	INDICATES BUILDING DETAIL MARKER.
22.75M EL. 1234.56	INDICATES EXISTING ELEVATION ON SITE / BLOCK PLANS
EL. 1234.56	INDICATES PROPOSED ELEVATION ON SITE / BLOCK PLANS
0'-0"	INDICATES PROPOSED SPOT ELEVATION
	INDICATES EXISTING TREE TO BE REMOVED
	INDICATES EXISTING TREE TO REMAIN
	INDICATES NEW TREE
1	INDICATES INTERIOR DOOR TAG
1.1	INDICATES EXTERIOR DOOR / WINDOW TAG
9'-10" CLG	INDICATES HEIGHT OF CEILING STRUCTURE ABOVE SUBFLOOR
	INDICATES SUBFLOOR ELEVATION ON FLOOR PLANS
WT#	INDICATES CONSTRUCTION ASSEMBLY TYPE TAG - REFER TO CONSTRUCTION ASSEMBLIES
FF1	INDICATES FLOOR FINISH TYPE TAG - REFER TO FINISHES LEGEND
WF1	INDICATES WALL FINISH TYPE TAG - REFER TO FINISHES LEGEND
CF1	INDICATES CEILING FINISH TYPE TAG - REFER TO FINISHES LEGEND
KN	KEYNOTE TAG - REFER TO DRAWING NOTES

TYPICAL ABBREVIATIONS

AFF	ABOVE FINISHED FLOOR	I.D.	INSIDE DIAMETER
ASF	ABOVE SUB-FLOOR	LL	LIVE LOAD
AFS	ABOVE FINISHED SLAB	MANUF.	MANUFACTURER
BLDG	BUILDING	MECH	MECHANICAL
C/W	COMPLETE WITH	MW	MICROWAVE
CONC.	CONCRETE	N/A	NOT APPLICABLE
CNCI	CONTRACTOR SUPPLIED CONTRACTOR INSTALLED	N.I.C.	NOT IN CONTRACT
CT	COOKTOP	N.T.S.	NOT TO SCALE
DIA	DIAMETER	O/C	ON CENTRE
DN	DOWN	OSCI	OWNER SUPPLIED OWNER INSTALLED
DW	DISHWASHER	OSCI	OWNER SUPPLIED CONTRACTOR INSTALLED
DWG	DRAWING	O.D.	OUTSIDE DIAMETER
EW	EACH WAY	SPEC.	SPECIFICATION
ELEC.	ELECTRICAL	S	SINK
ENG.	ENGINEER	T.O.	TOP OF
EQ.	EQUAL	TOW	TOP OF WALL
E.O.S.	EDGE OF SLAB	T&B	TOP AND BOTTOM
F	FRIDGE	T&G	TONGUE AND GROOVE
FD	FLOOR DRAIN	TYP.	TYPICAL
FURN.	FURNACE	U/S	UNDERSIDE
GA	GAUGE	VERT.	VERTICAL
GWB	GYPSUM WALL BOARD	W/D	WASHER / DRYER
HWH	HOT WATER HEATER	WD	WARMING DRAWER
H/WD	HARDWOOD	W/O	WALL OVEN
		WPM	WATERPROOF MEMBRANE

RECORD OF ISSUE

01	2021.03.16	DP APPLICATION
02	2021.04.26	DTR 1 RESPONSE
03	2021.05.05	DTR 1 RESPONSE

RECORD OF REVISIONS

NOTES:

ALL WORK SHALL CONFORM TO THE LATEST EDITION OF THE ABC, NBC, ELECTRICAL AND PLUMBING CODES

ALL WORK SHALL BE PERFORMED IN A PROFESSIONAL AND WORKMANLIKE MANNER

ALL MATERIALS SHALL BE HANDLED AND STORED TO PREVENT DAMAGE

VERIFY ALL DIMENSIONS, ELEVATIONS, AND DATUM, REPORT ANY ERRORS AND/OR DISCREPANCIES TO THE ARCHITECT PRIOR TO CONSTRUCTION

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DO NOT SCALE DRAWINGS

THIS DRAWING SUPERCEDES PREVIOUS ISSUES

DEVELOPMENT PERMIT DECISION RENDERED ON THIS PLAN

JACKSON McCORMICK
DESIGN GROUP

804 A 16TH AVENUE S.W.
CALGARY AB
T2R 0S9

tel 403 520 8018
email info@jmdesigngroup.ca

PROJECT:
HILLHURST MULTI-FAMILY

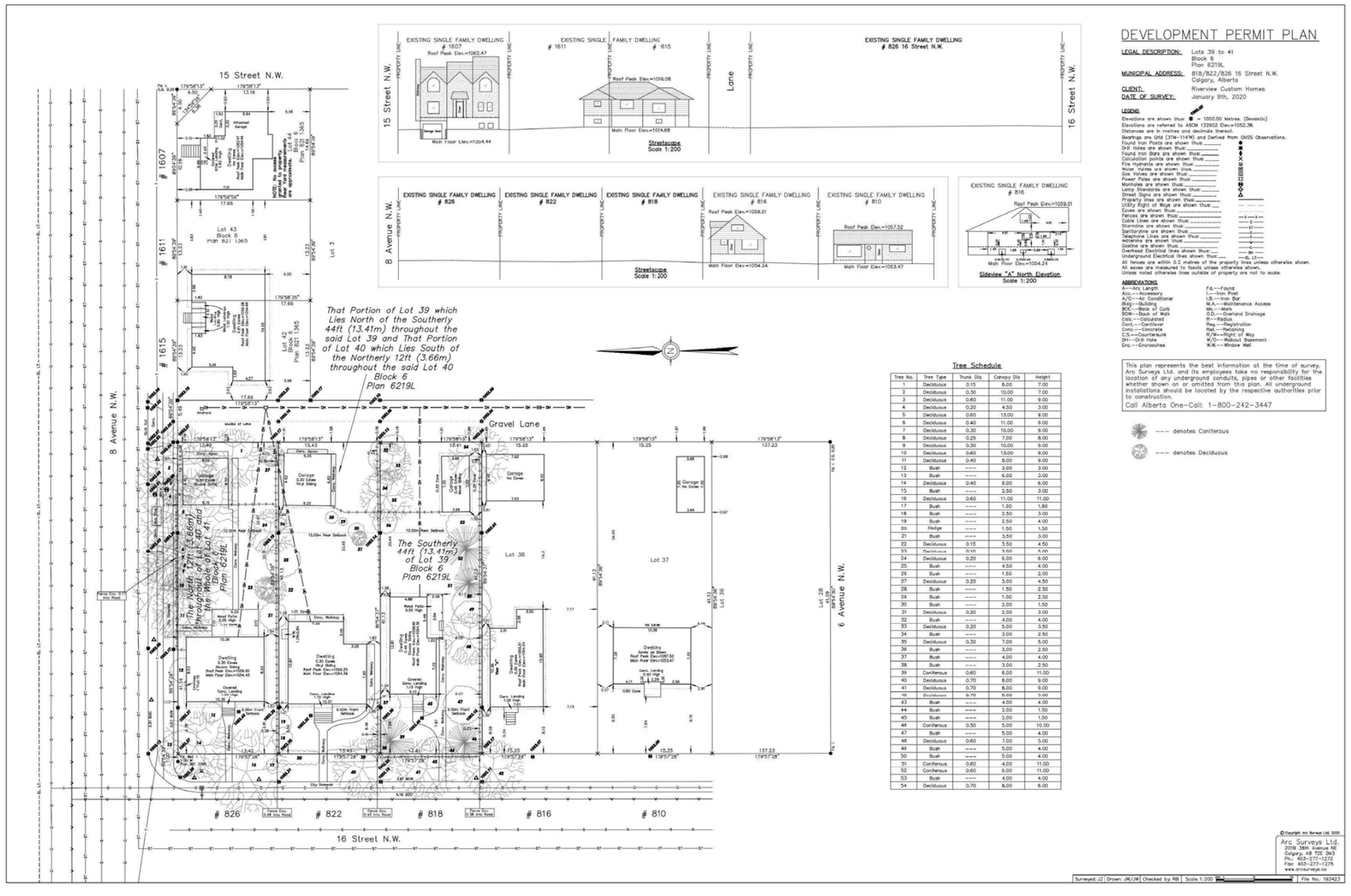
818 / 822 / 826 16th ST N.W.
CALGARY, ALBERTA
LOTS 39 TO 41, BLOCK 6, PLAN 6211IL

DRAWING DESCRIPTION:
COVER PAGE

PLOT SCALE: AS NOTED	DRAWING NO.: A0.0
PROJECT NO.: 2021-06	
CHECKED BY: TJ	
DRAWN BY: AR	PLOT DATE: 2021.05.05

SDAB2021-0040

DECISION RENDERED



DEVELOPMENT PERMIT PLAN

LEGAL DESCRIPTION: Lots 39 to 41 Block 6 Plan 6219L

MUNICIPAL ADDRESS: 818/822/826 16 Street N.W. Calgary, Alberta

CLIENT: Riverview Custom Homes

DATE OF SURVEY: January 9th, 2020

LEGEND

Elevations are shown thus: ■ = 1000.00 Metres. (Geodetic)
Elevations are referred to ASCM 132902 Elev.=1052.38.
Distances are in metres and decimals thereof.
Bearings are Grid (3TM-114W) and Derived from GNSS Observations.
Found Iron Posts are shown thus: .....
Drill Holes are shown thus: .....
Found Iron Bars are shown thus: .....
Calculation points are shown thus: .....
Fire Hydrants are shown thus: .....
Water Valves are shown thus: .....
Gas Valves are shown thus: .....
Power Poles are shown thus: .....
Manholes are shown thus: .....
Lamp Standards are shown thus: .....
Street Signs are shown thus: .....
Property lines are shown thus: .....
Utility Right of Ways are shown thus: .....
Eaves are shown thus: .....
Fences are shown thus: .....
Cable Lines are shown thus: .....
Stormline are shown thus: .....
Sanitarylins are shown thus: .....
Waterline are shown thus: .....
Natalrine are shown thus: .....
Gasline are shown thus: .....
Overhead Electrical lines shown thus: .....
Underground Electrical lines shown thus: .....
All fences are within 0.2 metres of the property lines unless otherwise shown.
All eaves are measured to fascia unless otherwise shown.
Unless noted otherwise lines outside of property are not to scale.

ABBREVIATIONS

A---Arc Length
Acc.---Accessory
A/C---Air Conditioner
Bldg.---Building
BOC---Back of Curb
BOW---Back of Walk
Calc.---Calculated
Cant.---Cantilever
Conc.---Concrete
C.S.---Countersunk
DH---Drill Hole
Enc.---Encroaches
Fd.---Found
I.---Iron Post
I.B.---Iron Bar
M.A.---Maintenance Access
Mk.---Mark
O.D.---Overland Drainage
R---Radius
Reg.---Registration
Ret.---Retaining
R/W---Right of Way
W/O---Walkout Basement
W.W.---Window Well

This plan represents the best information at the time of survey. Arc Surveys Ltd. and its employees take no responsibility for the location of any underground conduits, pipes or other facilities whether shown on or omitted from this plan. All underground installations should be located by the respective authorities prior to construction.
Call Alberta One-Call: 1-800-242-3447

--- denotes Coniferous

--- denotes Deciduous

Tree Schedule

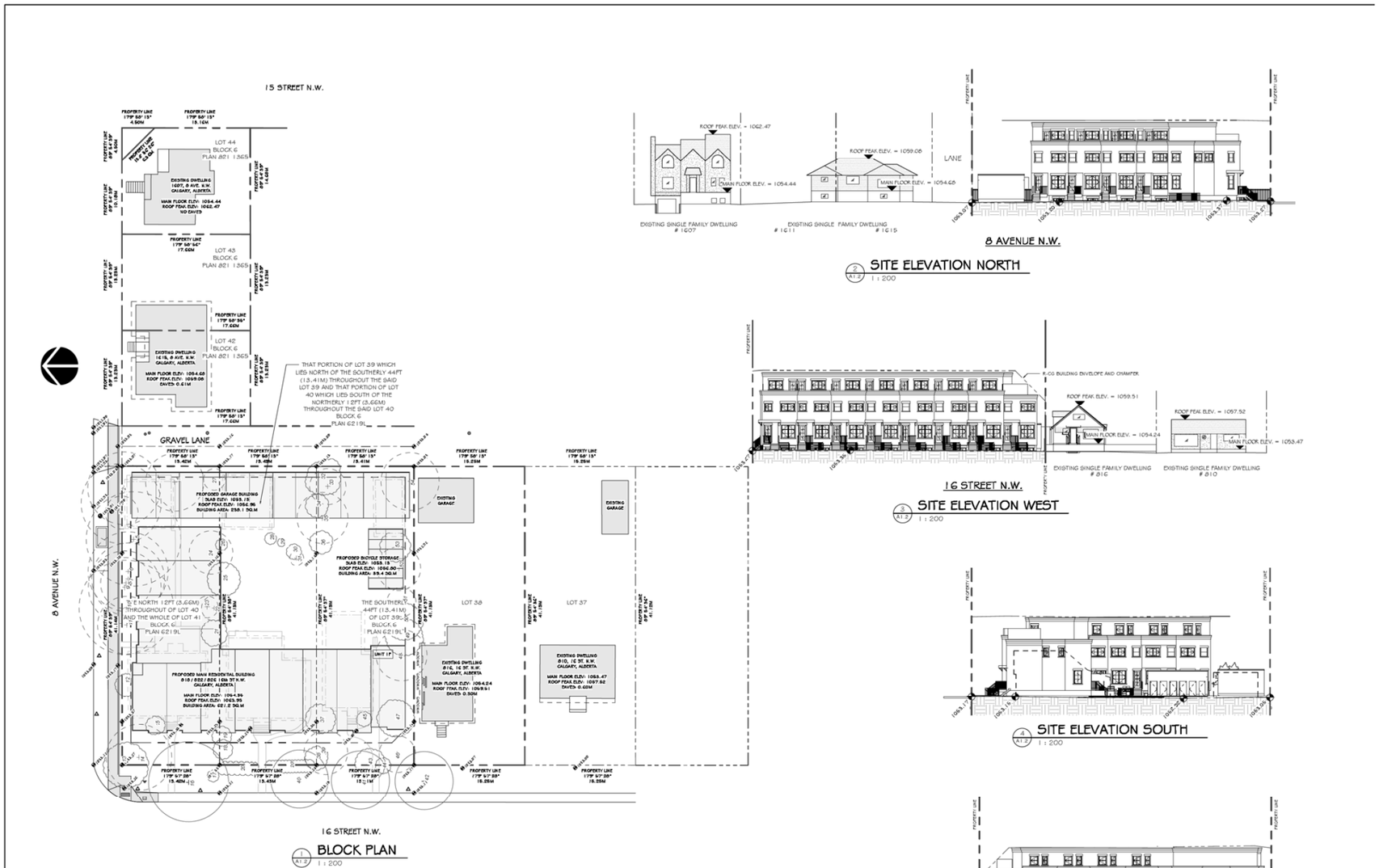
Tree No.	Tree Type	Trunk Dia.	Canopy Dia	Height
1	Deciduous	0.15	8.00	7.00
2	Deciduous	0.30	10.00	7.00
3	Deciduous	0.60	11.00	9.00
4	Deciduous	0.20	4.50	3.00
5	Deciduous	0.60	13.00	9.00
6	Deciduous	0.40	11.00	9.00
7	Deciduous	0.30	10.00	9.00
8	Deciduous	0.25	7.00	8.00
9	Deciduous	0.30	10.00	9.00
10	Deciduous	0.60	13.00	9.00
11	Deciduous	0.40	8.00	9.00
12	Bush	----	3.00	3.00
13	Bush	----	6.00	3.00
14	Deciduous	0.40	8.00	6.00
15	Bush	----	2.50	3.00
16	Deciduous	0.60	11.00	11.00
17	Bush	----	1.50	1.80
18	Bush	----	2.50	3.00
19	Bush	----	2.50	4.00
20	Hedge	----	1.50	1.50
21	Bush	----	3.50	3.00
22	Deciduous	0.15	3.50	4.50
23	Deciduous	0.15	3.00	5.00
24	Deciduous	0.20	6.00	6.00
25	Bush	----	4.50	4.00
26	Bush	----	1.50	2.00
27	Deciduous	0.20	3.00	4.50
28	Bush	----	1.50	2.50
29	Bush	----	1.00	2.50
30	Bush	----	2.00	1.50
31	Deciduous	0.20	2.00	3.00
32	Bush	----	4.00	4.00
33	Deciduous	0.20	5.00	3.50
34	Bush	----	3.00	2.50
35	Deciduous	0.30	7.00	5.00
36	Bush	----	3.00	2.50
37	Bush	----	4.00	4.00
38	Bush	----	3.00	2.50
39	Coniferous	0.60	8.00	11.00
40	Deciduous	0.70	8.00	9.00
41	Deciduous	0.70	8.00	9.00
42	Deciduous	0.70	8.00	9.00
43	Bush	----	4.00	4.00
44	Bush	----	2.00	1.50
45	Bush	----	2.00	1.50
46	Coniferous	0.50	5.00	10.00
47	Bush	----	5.00	4.00
48	Deciduous	0.60	7.00	5.00
49	Bush	----	5.00	4.00
50	Bush	----	5.00	4.00
51	Coniferous	0.60	6.00	11.00
52	Coniferous	0.60	8.00	11.00
53	Bush	----	4.00	4.00
54	Deciduous	0.70	8.00	6.00

Arc Surveys Ltd.
2018 36A Street N.E.
Calgary, AB T2E 6Y3
Ph: 403-277-1173
Fax: 403-277-1175
www.arcsurveys.ca

Surveyed: JZ | Drawn: JW/JW | Checked by: RB | Scale: 1:200 | File No.: 193423

DEVELOPMENT PERMIT DECISION RENDERED ON THIS PLAN

DECISION RENDERED



RECORD OF ISSUE		
01	2021.03.16	DP APPLICATION
02	2021.04.26	DTR 1 RESPONSE
03	2021.05.05	DTR 1 RESPONSE

RECORD OF REVISIONS

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ALL DESIGNS AND DRAWINGS REMAIN THE PROPERTY OF THE DESIGNER AND MAY NOT BE REPRODUCED WITHOUT PERMISSION OF THE DESIGNER

DO NOT SCALE DRAWINGS

THIS DRAWING SUPERCEDES PREVIOUS ISSUES

DEVELOPMENT PERMIT DECISION RENDERED ON THIS PLAN

JACKSON McCORMICK
DESIGN GROUP
804-A 19TH AVENUE S.W.
CALGARY AB
T2R 0S9
tel: 403.520.9010
email: info@jacksonmccormick.ca

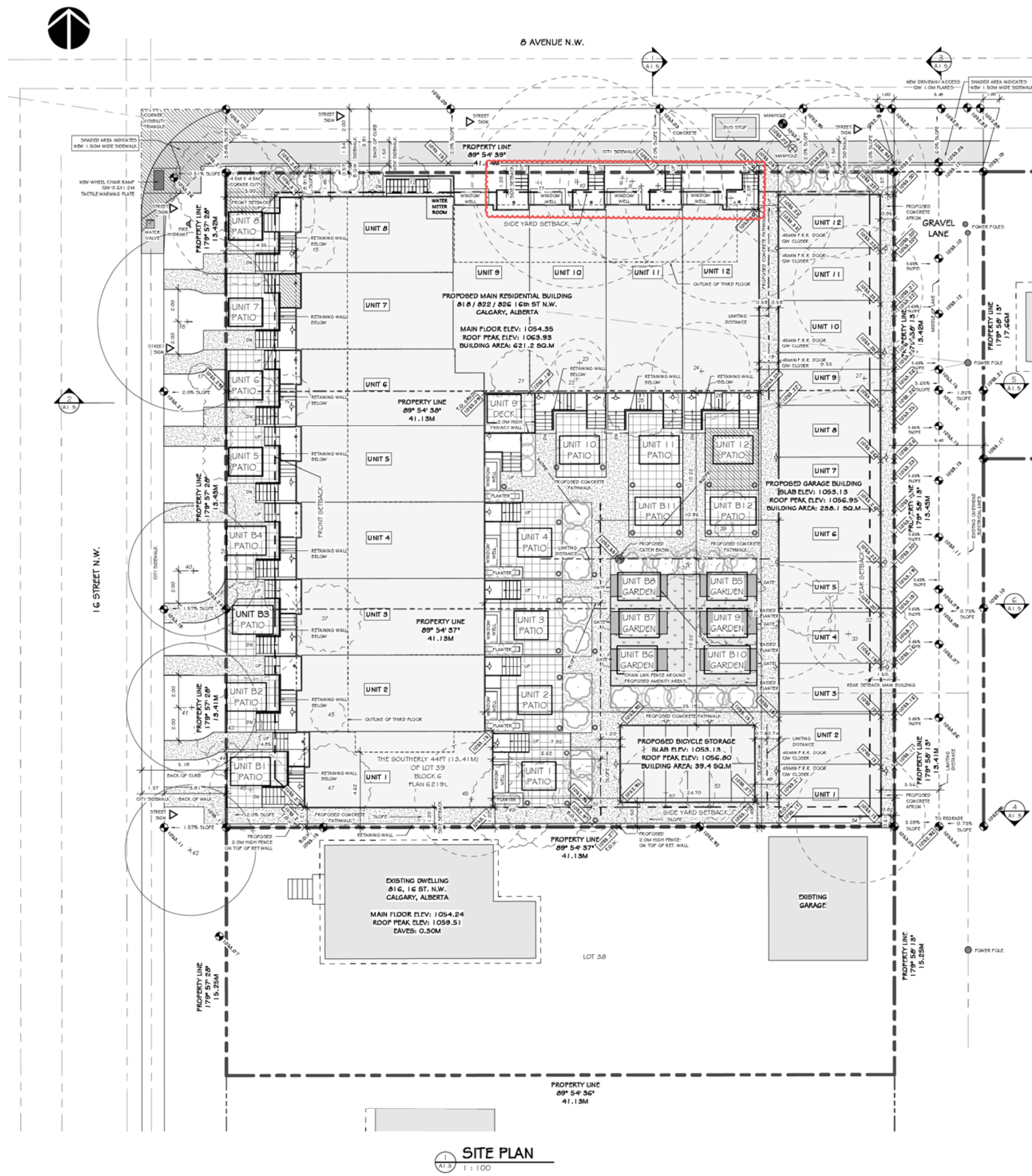
PROJECT:
HILLHURST
MULTI-FAMILY
818 / 822 / 826 16th ST N.W.
CALGARY, ALBERTA
LOTS 39 TO 41, BLOCK 6, PLAN 6219L

DRAWING DESCRIPTION:
BLOCK PLAN & STREETSCAPE

PLOT SCALE: AS NOTED	DRAWING NO.: A1.2
PROJECT NO.: 2021-06	
CHECKED BY: TJ	
DRAWN BY: AR	PLOT DATE: 2021.05.05

SDAB2021-0040

DECISION RENDERED



BYLAW REVIEW / DEVELOPMENT DATA		
	REQUIRED	PROVIDED
LEGAL DESCRIPTION:	LOTS 39 TO 41, BLOCK 6, PLAN 6219L	
CIVIC ADDRESS:	818 / 822 / 826 / 16 ST. N.W. CALGARY, ALBERTA	
STREET ZONING:	R-CG	
FRONT SETBACK:	4.82M (CONTEXTUAL SETBACK)	3.00M
REAR SETBACK:	1.20M	1.21M
SIDE SETBACK:	1.20M	1.21M NORTH / 1.20M SOUTH
PARCEL AREA:		17,813.47 SQ.FT.
PARCEL COVERAGE:		9,741.52 SQ.FT.
MAIN FLOOR ELEVATION:		
MAIN RESIDENTIAL:		1054.35M
GARAGE:		1053.13M
BICYCLE STORAGE:		1053.13M
ROOF PEAK ELEVATION:		
MAIN RESIDENTIAL:		1063.93M
GARAGE:		1056.95M
BICYCLE STORAGE:		1056.80M

AREA COVERAGE

TOTAL PARCEL AREA: 1,654.9 SQ.M
MAIN BUILDING AREA: 621.2 SQ.M
GARAGE AREA: 238.1 SQ.M
BIKE STOREAGE AREA: 39.4 SQ.M
TOTAL BUILDING AREA: 898.7 SQ.M

PERCENT COVERAGE: 54.3%

529
DENSITY : 75 UNITS PER HA

PROVIDED: 72.6 UNITS PER HA

532
MIN STREET FACADE WIDTH: 4.2M

PROVIDED: 4.7M

534
MAX PARCEL COVERAGE (2D): 60%

PROVIDED:

535(2)
MAX BUILDING DEPTH - NONE

PROVIDED: N/A

537(2)
MIN FRONT SETBACK :

PROVIDED:
6M AT SOUTH PL, INCREASING PROPORTIONALLY TO 4.56M

539 (1)
MIN SIDE SETBACK 1.2M
PROVIDED:
SOUTH 1.2M
NORTH 1.2M

540(2)
MIN REAR SETBACK 1.5M

PROVIDED: 8.54M

541(1)
BUILDING HEIGHT 11M

PROVIDED: REFER TO ELEVATIONS (WITHIN HEIGHT)

542
OUTDOOR PRIVATE AMENITY SPACE
MAIN UNITS: 20 SQ.M TOTAL (DIRECT ACCESS)
SECONDARY SUITES: 7.5 SQ.M (LOCATED OUTDOORS)

PROVIDED: (REFER TO AMENITY SPACE CHART AND PLANS)

544(1)
ROOFTOP BALCONIES: MAX FLOOR AREA 30% OF FLOOR BELOW
UNITS 1-6/9-12: 54.35 SQ M X 30% = 16.30 SQ M MAX
UNIT 6: 51.65 SQ M X 30% = 15.50 SQ M MAX
UNIT 7-8: 45.34 SQ M X 30% = 13.60 SQ M MAX

PROVIDED:

UNITS 1-6/9-12: 16.30 SQ
UNIT 6: 51.65 SQ M X 30% = 15.50 SQ M MAX
UNIT 7-8: 45.34 SQ M X 30% = 13.60 SQ M MAX

MOTOR VEHICLE PARKING STALLS:
REFER TO 347.3 FOR PERMITTED USE ROWHOUSE REQUIREMENTS

PROVIDED: 12 STALLS

546 (2): SECONDARY SUITE STALL REQUIREMENT REDUCED TO 0.0

PROVIDED: 0 STALLS
(A) FLOOR AREA IS 45 SQ. M OR LESS
(B) PARCEL IS LOCATED WITHIN 600M OF LRT PLATFORM (SAIT)
(C) BICYCLE STORAGE IS PROVIDED IN ACCORDANCE WITH THIS SECTION

122 (4) MIN PARKING WIDTH: 3.0M

PROVIDED: (REFER TO GARAGE PLAN)

347.3 PERMITTED USE ROWHOUSE:

347.3 (1)

PROVIDED:
(A) FACADE ARTICULATION PROVIDED IN ACCORDANCE WITH THIS SECTION.
(B) MAIN FLOOR WITHIN 1.2 M OF GRADE
(C) ENTRANCES ARE VISIBLE FROM THE STREETS
(D) DOES NOT HAVE AN ATTACHED PRIVATE GARAGE
(E) HAS A PARKING STALL FOR EACH DWELLING UNIT ACCESSED DIRECTLY OFF THE LANE
(F) ALL SIDEYARD WINDOWS ARE OBSCURRED
(G) THE DIFFERENCE BETWEEN AVERAGE BUILDING REFERENCE POINTS IS LESS THAN 2.4M

347.3 (4)
BUILDING IS ON A CORNER PARCEL

347.3 (5)
THERE IS ONLY ONE MAIN RESIDENTIAL BUILDING

RECORD OF ISSUE		
01	2021.03.16	DP APPLICATION
02	2021.04.26	DTR 1 RESPONSE
03	2021.05.05	DTR 1 RESPONSE

RECORD OF REVISIONS

NOTES:

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DEVELOPMENT PERMIT DECISION RENDERED ON THIS PLAN

JACKSON McCORMICK
DESIGN GROUP

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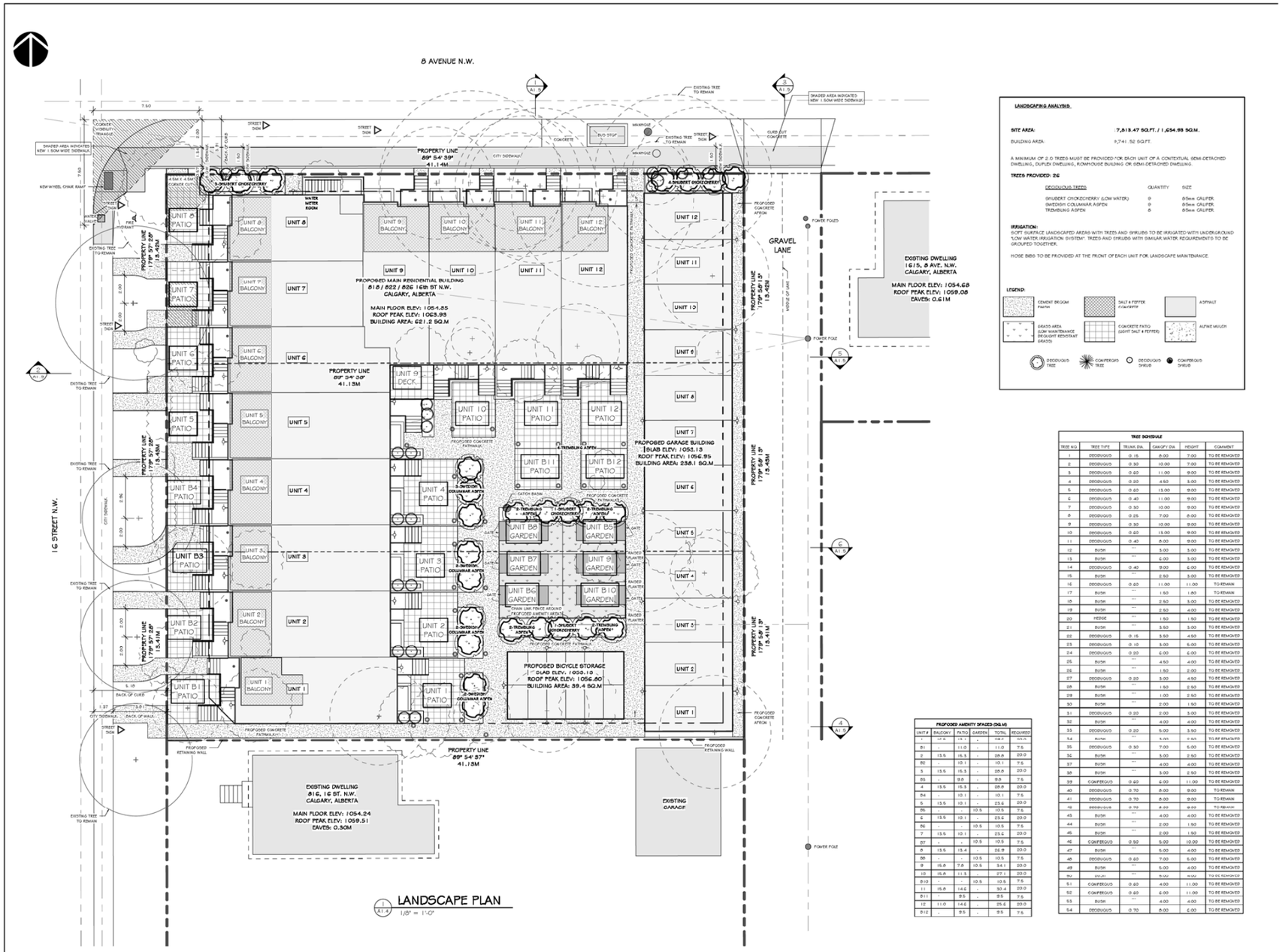
PROJECT:
HILLHURST
MULTI-FAMILY

818 / 822 / 826 16th ST N.W.
CALGARY, ALBERTA
LOTS 39 TO 41, BLOCK 6, PLAN 6219L

DRAWING DESCRIPTION:
SITE PLAN

PLOT SCALE: AS NOTED	DRAWING NO.: A1.3
PROJECT NO.: 2021-06	
CHECKED BY: TJ	
DRAWN BY: AR	PLOT DATE: 2021.05.05

DECISION RENDERED



LANDSCAPING ANALYSIS:

SITE AREA: 7,813.47 SQ.FT. / 1,654.93 SQ.M.

BUILDING AREA: 9,741.52 SQ.FT.

A MINIMUM OF 2.0 TREES MUST BE PROVIDED FOR EACH UNIT OF A CONTEXTUAL SEMI-DETACHED DWELLING, DUPLEX DWELLING, ROWHOUSE BUILDING OR SEMI-DETACHED DWELLING.

TREES PROVIDED: 26

DECIDUOUS TREES	QUANTITY	SIZE
SAKAKAWEA CHOKECHERRY (LOW WATER)	9	65mm CALIPER
SWEDISH COLUMNAR ASPEN	9	65mm CALIPER
TREMBLING ASPEN	8	65mm CALIPER

IRRIGATION:
SOFT SURFACE LANDSCAPED AREAS WITH TREES AND SHRUBS TO BE IRRIGATED WITH UNDERGROUND LOW WATER IRRIGATION SYSTEM. TREES AND SHRUBS WITH SIMILAR WATER REQUIREMENTS TO BE GROUPED TOGETHER.

HOSE BIBS TO BE PROVIDED AT THE FRONT OF EACH UNIT FOR LANDSCAPE MAINTENANCE.

LEGEND:

CEMENT BROOM FINISH · SALT & PEPPER EXPOSED AGGREGATE · ASPHALT
GRASS AREA (LOW MAINTENANCE DROUGHT RESISTANT GRASS) · CONCRETE PATIO (LIGHT SALT & PEPPER) · ALPINE MULCH
DECIDUOUS TREE · CONIFEROUS TREE · DECIDUOUS SHRUB · CONIFEROUS SHRUB

TREE SCHEDULE

TREE NO.	TREE TYPE	TRUNK DIA.	CANOPY DIA.	HEIGHT	COMMENT
1	DECIDUOUS	0.15	6.00	7.00	TO BE REMOVED
2	DECIDUOUS	0.30	10.00	7.00	TO BE REMOVED
3	DECIDUOUS	0.60	11.00	9.00	TO BE REMOVED
4	DECIDUOUS	0.20	4.50	5.00	TO BE REMOVED
5	DECIDUOUS	0.60	13.00	9.00	TO BE REMOVED
6	DECIDUOUS	0.40	11.00	9.00	TO BE REMOVED
7	DECIDUOUS	0.30	10.00	9.00	TO BE REMOVED
8	DECIDUOUS	0.25	7.00	8.00	TO BE REMOVED
9	DECIDUOUS	0.30	10.00	9.00	TO BE REMOVED
10	DECIDUOUS	0.60	13.00	9.00	TO BE REMOVED
11	DECIDUOUS	0.40	8.00	9.00	TO BE REMOVED
12	BUSH	---	3.00	3.00	TO BE REMOVED
13	BUSH	---	6.00	3.00	TO BE REMOVED
14	DECIDUOUS	0.40	9.00	6.00	TO BE REMOVED
15	BUSH	---	2.50	3.00	TO BE REMOVED
16	DECIDUOUS	0.60	11.00	11.00	TO REMAIN
17	BUSH	---	1.50	1.80	TO REMAIN
18	BUSH	---	2.50	3.00	TO BE REMOVED
19	BUSH	---	2.50	4.00	TO BE REMOVED
20	HEDGE	---	1.50	1.50	TO BE REMOVED
21	BUSH	---	3.50	3.00	TO BE REMOVED
22	DECIDUOUS	0.15	3.50	4.50	TO BE REMOVED
23	DECIDUOUS	0.10	3.50	5.00	TO BE REMOVED
24	DECIDUOUS	0.20	6.00	6.00	TO BE REMOVED
25	BUSH	---	4.50	4.00	TO BE REMOVED
26	BUSH	---	1.50	2.00	TO BE REMOVED
27	DECIDUOUS	0.20	3.00	4.50	TO BE REMOVED
28	BUSH	---	1.50	2.50	TO BE REMOVED
29	BUSH	---	1.00	2.50	TO BE REMOVED
30	BUSH	---	2.00	1.50	TO BE REMOVED
31	DECIDUOUS	0.20	2.00	5.00	TO BE REMOVED
32	BUSH	---	4.00	4.00	TO BE REMOVED
33	DECIDUOUS	0.20	5.00	5.50	TO BE REMOVED
34	BUSH	---	1.00	2.50	TO BE REMOVED
35	DECIDUOUS	0.30	7.00	5.00	TO BE REMOVED
36	BUSH	---	3.00	2.50	TO BE REMOVED
37	BUSH	---	4.00	4.00	TO BE REMOVED
38	BUSH	---	3.00	2.50	TO BE REMOVED
39	CONIFEROUS	0.20	6.00	11.00	TO REMAIN
40	DECIDUOUS	0.70	8.00	9.00	TO REMAIN
41	DECIDUOUS	0.70	8.00	9.00	TO REMAIN
42	DECIDUOUS	0.70	8.00	9.00	TO REMAIN
43	BUSH	---	4.00	4.00	TO BE REMOVED
44	BUSH	---	2.00	1.50	TO BE REMOVED
45	BUSH	---	2.00	1.50	TO BE REMOVED
46	CONIFEROUS	0.50	5.00	12.00	TO BE REMOVED
47	BUSH	---	5.00	4.00	TO BE REMOVED
48	DECIDUOUS	0.60	7.00	5.00	TO BE REMOVED
49	BUSH	---	5.00	4.00	TO BE REMOVED
50	BUSH	---	5.00	4.00	TO BE REMOVED
51	CONIFEROUS	0.60	4.00	11.00	TO BE REMOVED
52	CONIFEROUS	0.60	6.00	11.00	TO BE REMOVED
53	BUSH	---	4.00	4.00	TO BE REMOVED
54	DECIDUOUS	0.70	8.00	6.00	TO BE REMOVED

PROPOSED AMENITY SPACES (SQ.M)

UNIT #	BALCONY	PATIO	GARDEN	TOTAL	REQUIRED
1	12.6	19.1	-	19.1	7.5
B1	-	11.0	-	11.0	7.5
2	13.5	15.3	-	28.8	20.0
B2	-	10.1	-	10.1	7.5
3	13.5	15.3	-	28.8	20.0
B3	-	9.8	-	9.8	7.5
4	13.5	15.3	-	28.8	20.0
B4	-	10.1	-	10.1	7.5
5	13.5	10.1	-	23.6	20.0
B5	-	-	10.5	10.5	7.5
6	13.5	10.1	-	23.6	20.0
B6	-	-	10.5	10.5	7.5
7	13.5	10.1	-	23.6	20.0
B7	-	-	10.5	10.5	7.5
8	13.5	13.4	-	26.9	20.0
B8	-	-	10.5	10.5	7.5
9	15.8	7.8	10.5	34.1	20.0
10	15.8	11.3	-	27.1	20.0
B10	-	-	10.5	10.5	7.5
11	15.8	14.6	-	30.4	20.0
B11	-	9.5	-	9.5	7.5
12	11.0	14.6	-	25.6	20.0
B12	-	9.5	-	9.5	7.5

RECORD OF ISSUE

01	2021.03.16	DP APPLICATION
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RECORD OF REVISIONS

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DEVELOPMENT PERMIT DECISION RENDERED ON THIS PLAN

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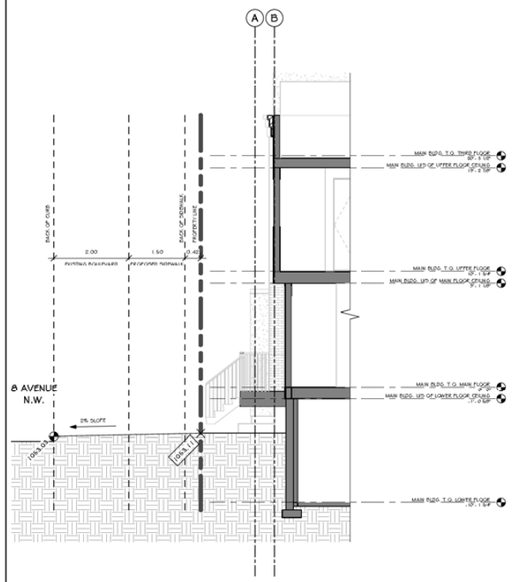
PROJECT:
HILLHURST
MULTI-FAMILY
818 / 822 / 826 16th ST N.W.
CALGARY, ALBERTA
LOTS 39 TO 41, BLOCK 6, PLAN 621RL

DRAWING DESCRIPTION:
LANDSCAPE PLAN

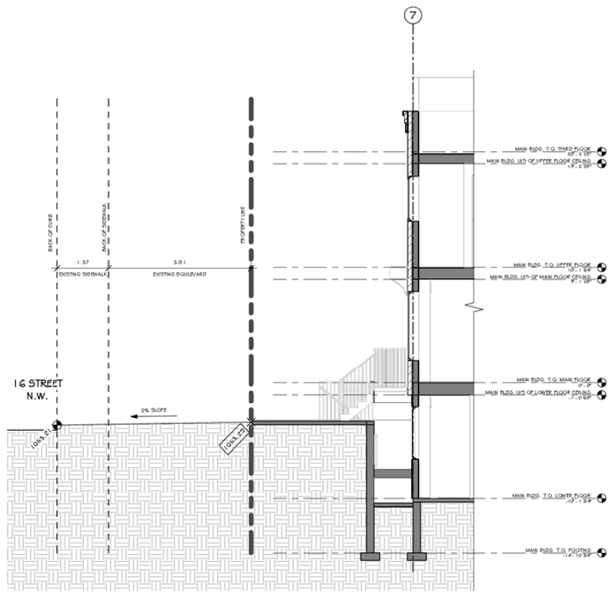
PLOT SCALE: AS NOTED	DRAWING NO.: A1.4
PROJECT NO.: 2021-06	
CHECKED BY: TJ	
DRAWN BY: AR	PLOT DATE: 2021.05.05

SDAB2021-0040

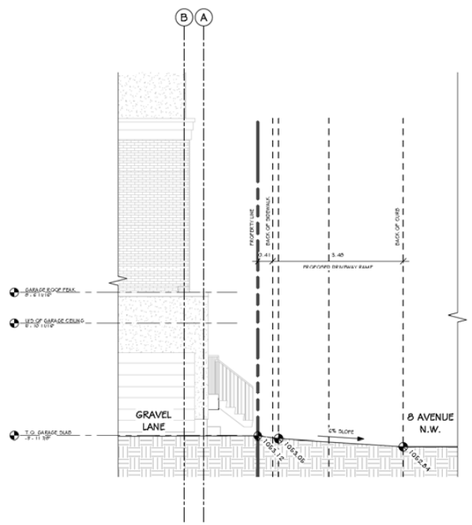
DECISION RENDERED



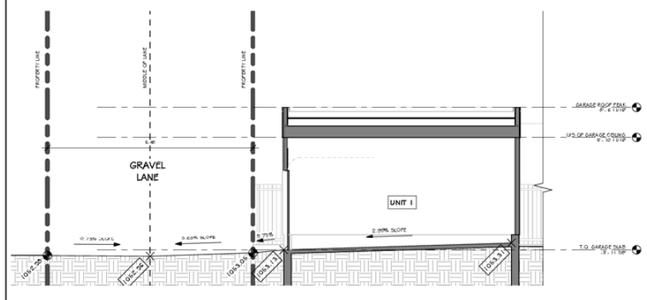
1 A1.5 BOULEVARD SECTION ALONG 8 AVE. N.W.
1/4" = 1'-0"



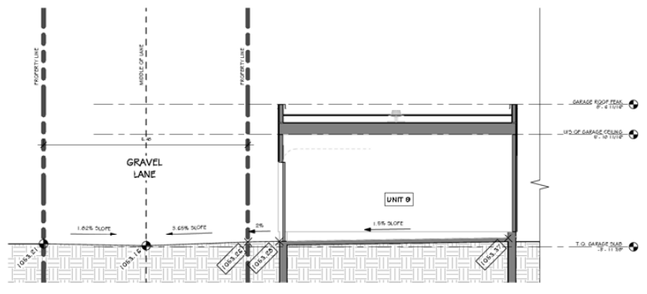
2 A1.5 BOULEVARD SECTION ALONG 16 STREET N.W.
1/4" = 1'-0"



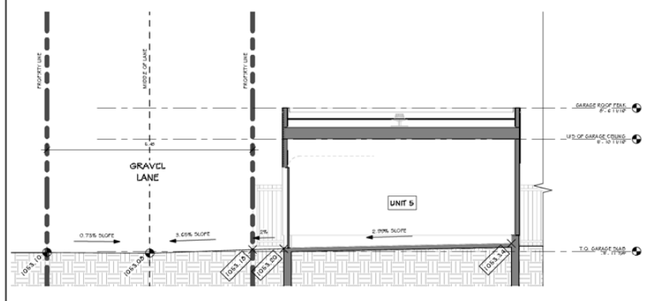
3 A1.5 DRIVEWAY SECTION
1/4" = 1'-0"



4 A1.5 LANE SECTION
1/4" = 1'-0"



5 A1.5 LANE SECTION
1/4" = 1'-0"



C A1.5 LANE SECTION
1/4" = 1'-0"

RECORD OF ISSUE

01	2021.03.16	DP APPLICATION
02	2021.04.26	DTR 1 RESPONSE
03	2021.05.05	DTR 1 RESPONSE

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DEVELOPMENT PERMIT DECISION RENDERED ON THIS PLAN

JACKSON McCORMICK
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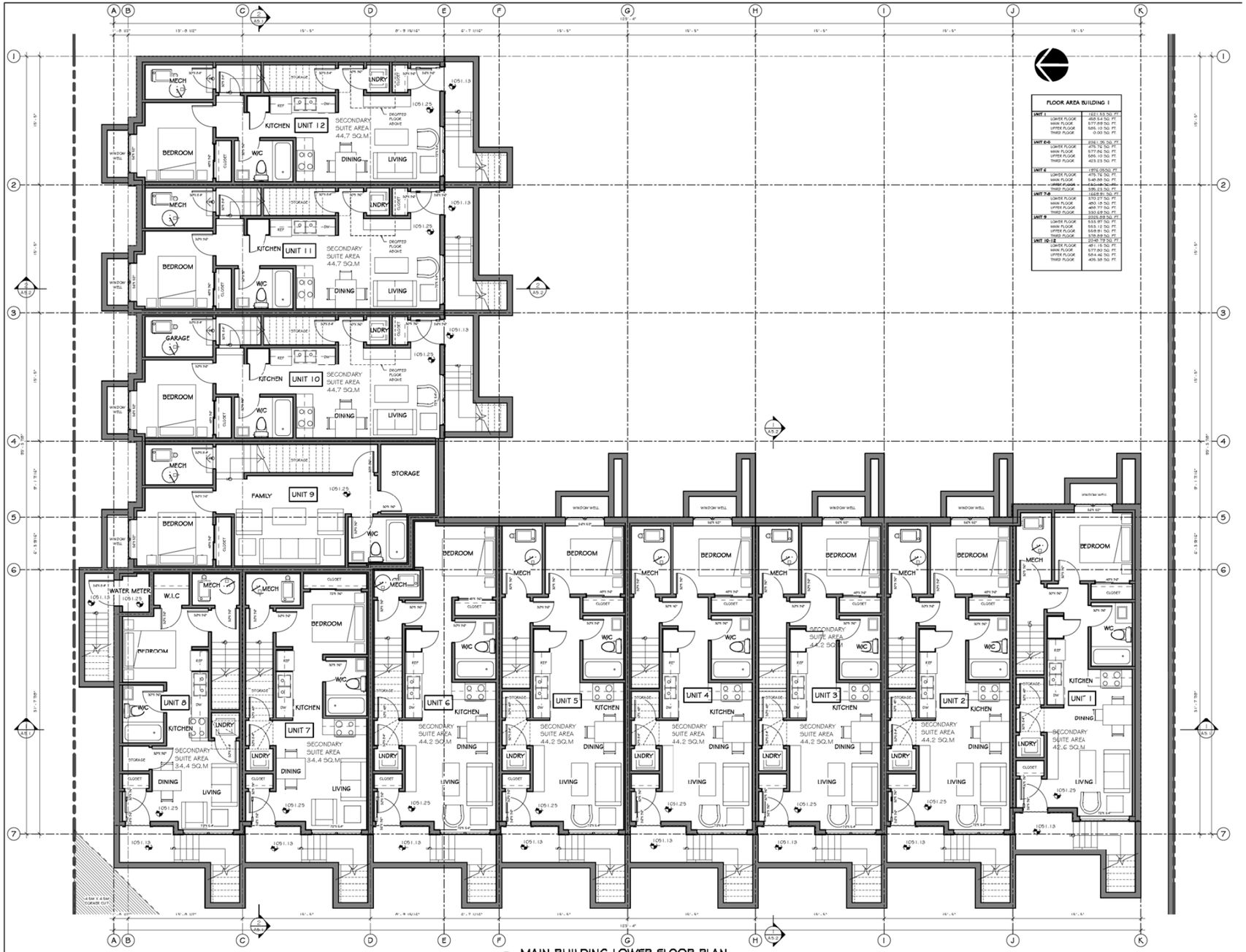
email info@jmdesigngroup.ca

PROJECT:
HILLHURST MULTI-FAMILY
818 / 822 / 826 16th ST N.W.
CALGARY, ALBERTA
LOTS 39 TO 41, BLOCK 6, PLAN 6219L

DRAWING DESCRIPTION:
SITE SECTIONS

PLOT SCALE: AS NOTED	DRAWING NO.: A1.5
PROJECT NO.: 2021-06	
CHECKED BY: TJ	
DRAWN BY: AR	PLOT DATE: 2021.05.05

DECISION RENDERED



MAIN BUILDING LOWER FLOOR PLAN
1/4" = 1'-0"

FLOOR AREA BUILDING 1

UNIT 1	1621.53 SQ. FT.
LOWER FLOOR	468.64 SQ. FT.
MAIN FLOOR	577.89 SQ. FT.
UPPER FLOOR	585.10 SQ. FT.
THIRD FLOOR	0.00 SQ. FT.
UNIT 2-6	2052.14 SQ. FT.
LOWER FLOOR	475.76 SQ. FT.
MAIN FLOOR	577.56 SQ. FT.
UPPER FLOOR	585.10 SQ. FT.
THIRD FLOOR	413.73 SQ. FT.
UNIT 7	1976.05 SQ. FT.
LOWER FLOOR	475.76 SQ. FT.
MAIN FLOOR	546.66 SQ. FT.
UPPER FLOOR	454.48 SQ. FT.
THIRD FLOOR	395.23 SQ. FT.
UNIT 7-8	1668.81 SQ. FT.
LOWER FLOOR	370.27 SQ. FT.
MAIN FLOOR	460.18 SQ. FT.
UPPER FLOOR	337.07 SQ. FT.
THIRD FLOOR	330.29 SQ. FT.
UNIT 9	2025.89 SQ. FT.
LOWER FLOOR	553.97 SQ. FT.
MAIN FLOOR	553.12 SQ. FT.
UPPER FLOOR	558.91 SQ. FT.
THIRD FLOOR	359.88 SQ. FT.
UNIT 10-12	2048.19 SQ. FT.
LOWER FLOOR	481.16 SQ. FT.
MAIN FLOOR	577.80 SQ. FT.
UPPER FLOOR	584.46 SQ. FT.
THIRD FLOOR	405.36 SQ. FT.

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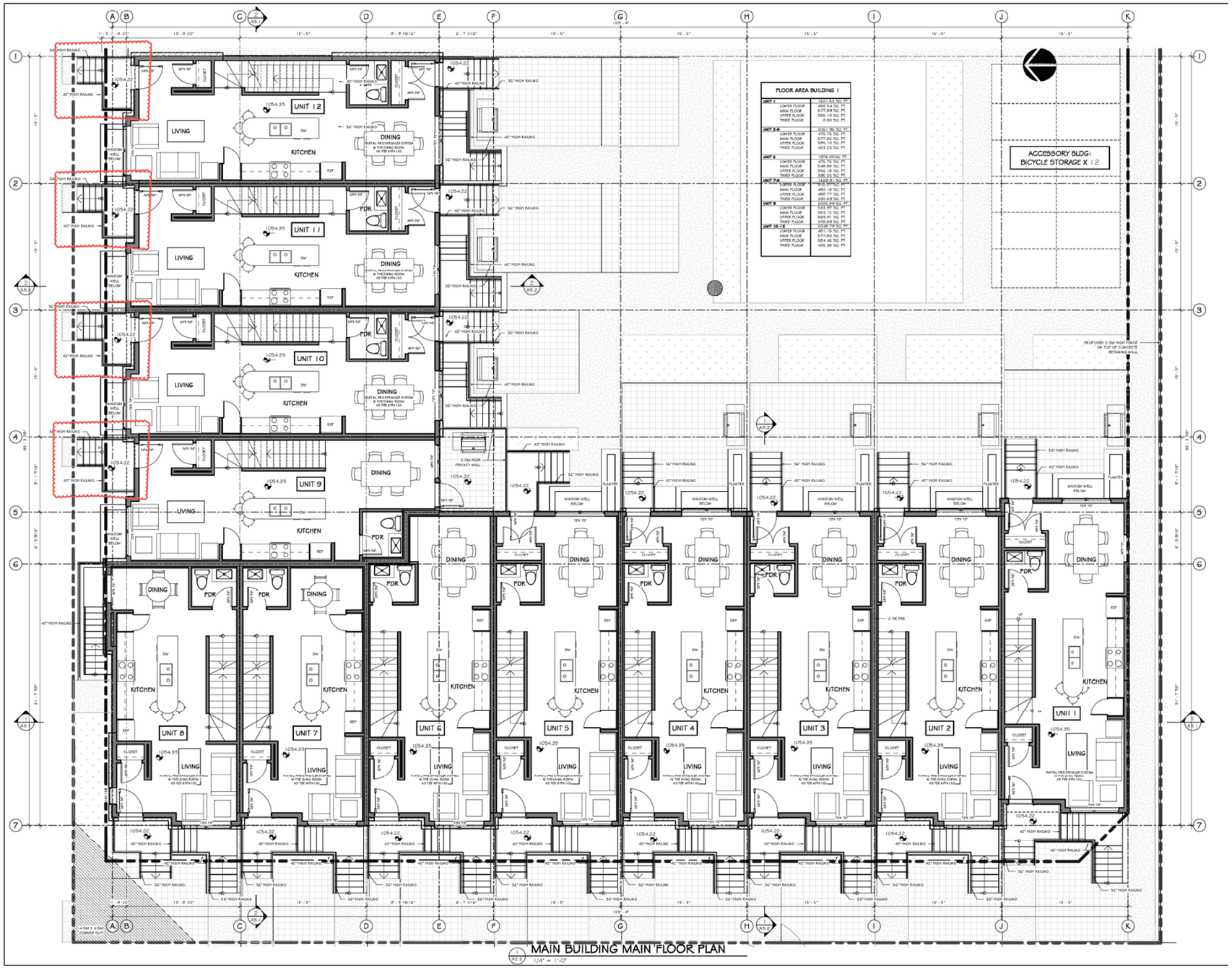
PROJECT:
HILLHURST
MULTI-FAMILY

818 / 822 / 826 16th ST N.W.
CALGARY, ALBERTA
LOTS 39 TO 41, BLOCK 6, PLAN 6219L

DRAWING DESCRIPTION:
MAIN BUILDING LOWER FLOOR PLAN

PLOT SCALE: AS NOTED	DRAWING NO.: A2.1
PROJECT NO.: 2021-06	
CHECKED BY: TJ	
DRAWN BY: AR	PLOT DATE: 2021.05.05

DECISION RENDERED



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PROJECT:
HILLHURST
MULTI-FAMILY
819 / 822 / 826 16th ST N.W.
CALGARY, ALBERTA
LOTS 39 TO 41, BLOCK 6, PLAN 6219L

DRAWING DESCRIPTION:
MAIN BUILDING MAIN FLOOR PLAN

PLOT SCALE: AS NOTED	DRAWING NO.: A2.2
PROJECT NO.: 2021-06	
CHECKED BY: TJ	
DRAWN BY: AR	PLOT DATE: 2021.05.05

DECISION RENDERED

MAIN BUILDING UPPER FLOOR PLAN
1/4" = 1'-0"

FLOOR AREA BUILDING 1

UNIT 1		1021.55 SQ. FT.
	LOWER FLOOR	468.54 SQ. FT.
	MAIN FLOOR	577.69 SQ. FT.
	UPPER FLOOR	565.10 SQ. FT.
	THIRD FLOOR	0.00 SQ. FT.
UNIT 2-5		2041.96 SQ. FT.
	LOWER FLOOR	475.76 SQ. FT.
	MAIN FLOOR	577.84 SQ. FT.
	UPPER FLOOR	565.10 SQ. FT.
	THIRD FLOOR	423.25 SQ. FT.
UNIT 6		1892.35 SQ. FT.
	LOWER FLOOR	475.76 SQ. FT.
	MAIN FLOOR	546.66 SQ. FT.
	UPPER FLOOR	564.16 SQ. FT.
	THIRD FLOOR	305.73 SQ. FT.
UNIT 7-8		1668.91 SQ. FT.
	LOWER FLOOR	370.27 SQ. FT.
	MAIN FLOOR	460.18 SQ. FT.
	UPPER FLOOR	466.77 SQ. FT.
	THIRD FLOOR	330.69 SQ. FT.
UNIT 9		2023.79 SQ. FT.
	LOWER FLOOR	468.54 SQ. FT.
	MAIN FLOOR	553.12 SQ. FT.
	UPPER FLOOR	564.91 SQ. FT.
	THIRD FLOOR	536.99 SQ. FT.
UNIT 10-12		2048.79 SQ. FT.
	LOWER FLOOR	461.15 SQ. FT.
	MAIN FLOOR	577.80 SQ. FT.
	UPPER FLOOR	564.46 SQ. FT.
	THIRD FLOOR	405.38 SQ. FT.

RECORD OF ISSUE

01	2021.03.16	DP APPLICATION
02	2021.04.26	DTR 1 RESPONSE
03	2021.05.05	DTR 1 RESPONSE

RECORD OF REVISIONS

NOTES:

ALL WORK SHALL CONFORM TO THE LATEST EDITION OF THE ABC, NBC, ELECTRICAL AND PLUMBING CODES

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ALL MATERIALS SHALL BE HANDLED AND STORED TO PREVENT DAMAGE

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ALL DESIGNS AND DRAWINGS REMAIN THE PROPERTY OF THE DESIGNER AND MAY NOT BE REPRODUCED WITHOUT PERMISSION OF THE DESIGNER

DO NOT SCALE DRAWINGS

THIS DRAWING SUPERCEDES PREVIOUS ISSUES

DEVELOPMENT PERMIT DECISION RENDERED ON THIS PLAN

JACKSON McCORMICK
DESIGN GROUP
804-A 16TH AVENUE S.W.
CALGARY AB
T2R 0S9
tel: 403.520.9010
email: info@jmdesigngroup.ca

PROJECT:
HILLHURST
MULTI-FAMILY

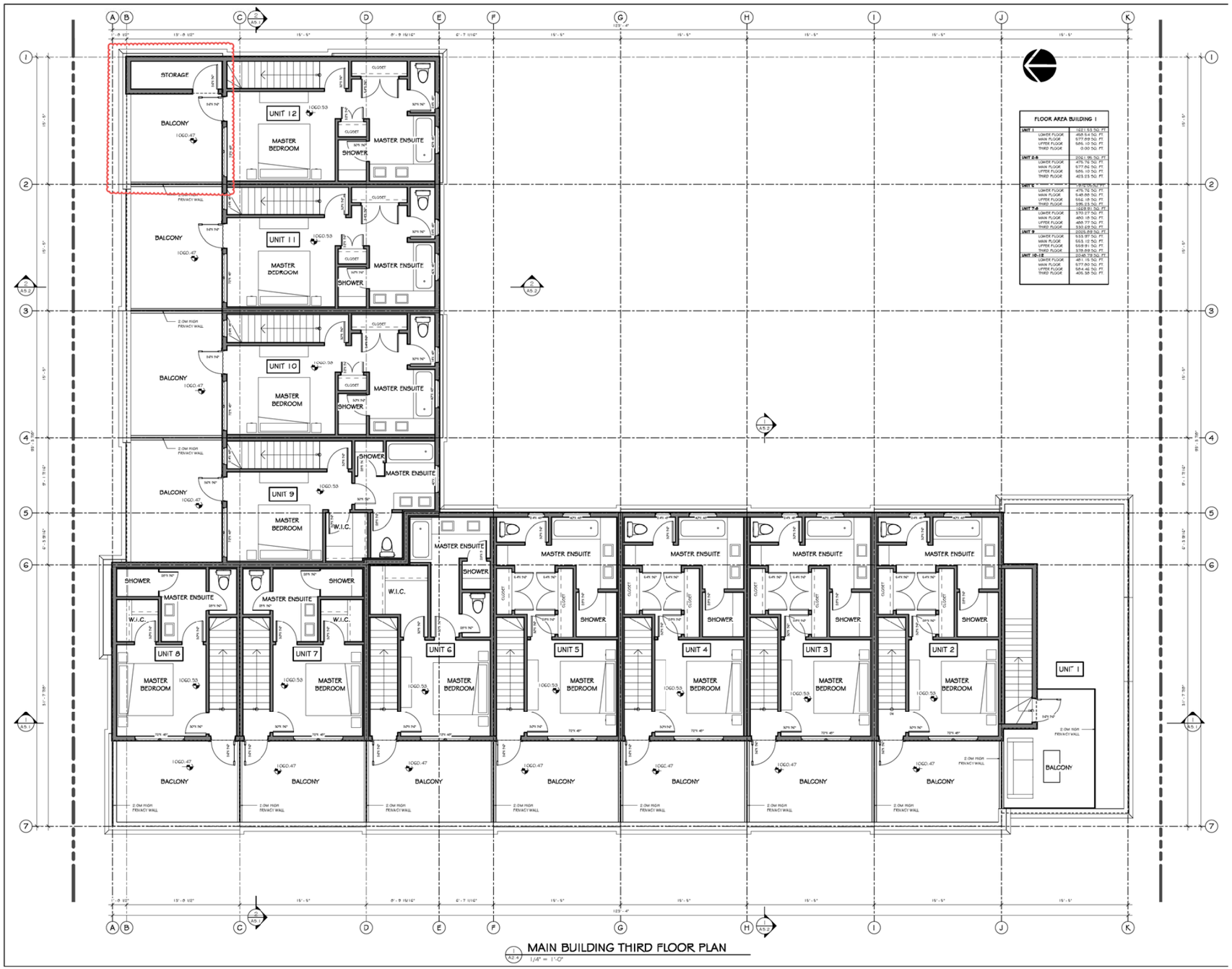
819 / 822 / 826 16th ST N.W.
CALGARY, ALBERTA
LOTS 39 TO 41, BLOCK 6, PLAN 6219L

DRAWING DESCRIPTION:
MAIN BUILDING UPPER FLOOR PLAN

PLOT SCALE: AS NOTED	DRAWING NO.: A2.3
PROJECT NO.: 2021-06	
CHECKED BY: TJ	
DRAWN BY: AR	PLOT DATE: 2021.05.05

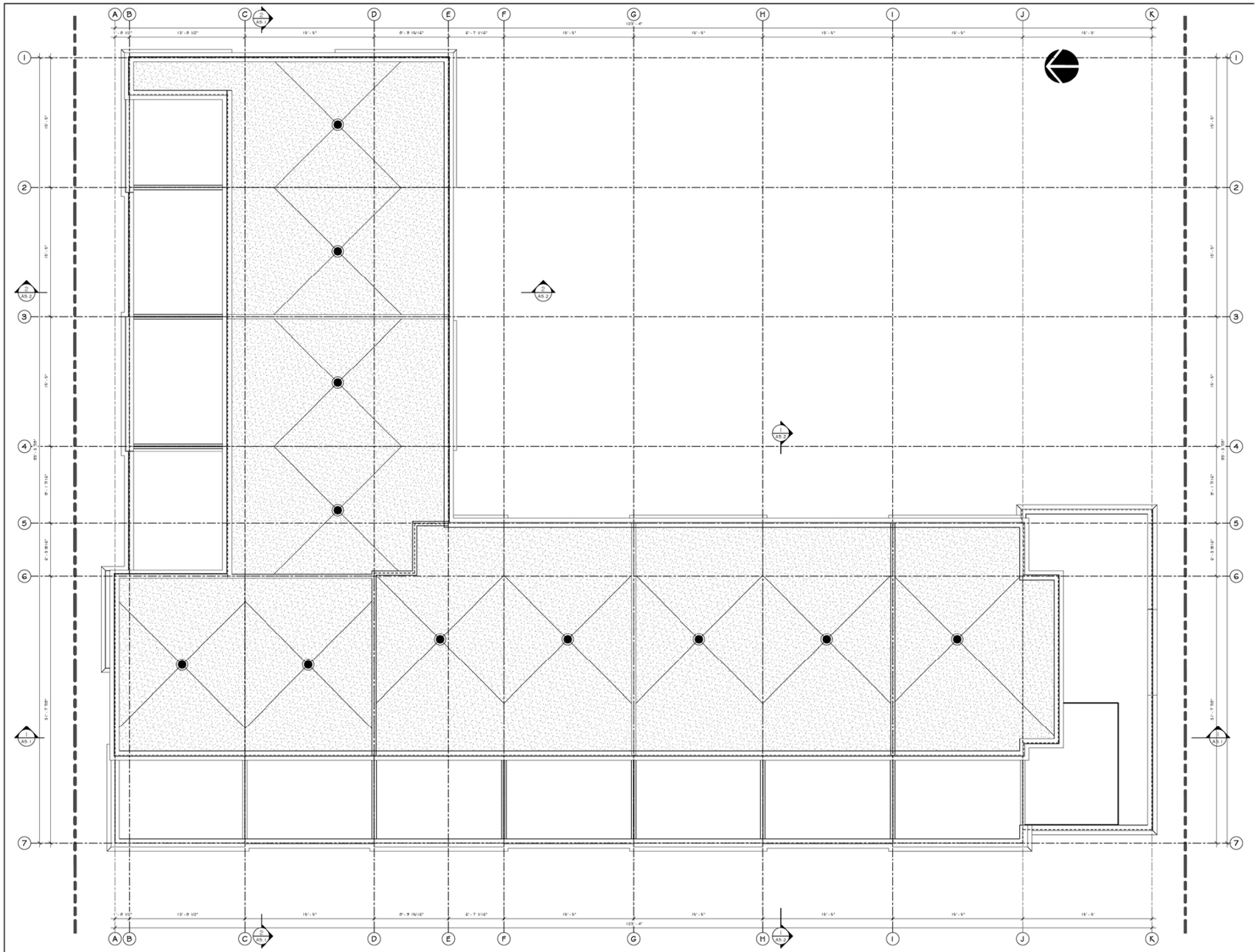
SDAB2021-0040

DECISION RENDERED



MAIN BUILDING THIRD FLOOR PLAN
1/4" = 1'-0"

DECISION RENDERED



MAIN BUILDING ROOF PLAN
1/4" = 1'-0"

RECORD OF ISSUE

RECORD OF REVISIONS

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JACKSON McCORMICK
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804-A 10TH AVENUE S.W.
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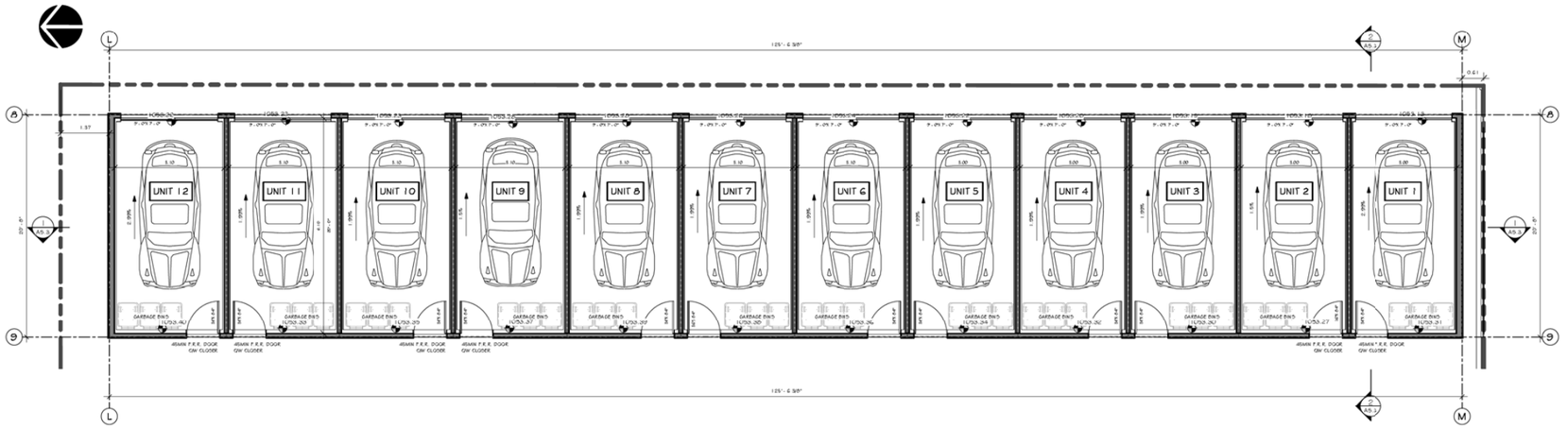
PROJECT:
HILLHURST
MULTI-FAMILY

819 / 822 / 826 16th ST N.W.
CALGARY, ALBERTA
LOTS 39 TO 41, BLOCK 6, PLAN 621RL

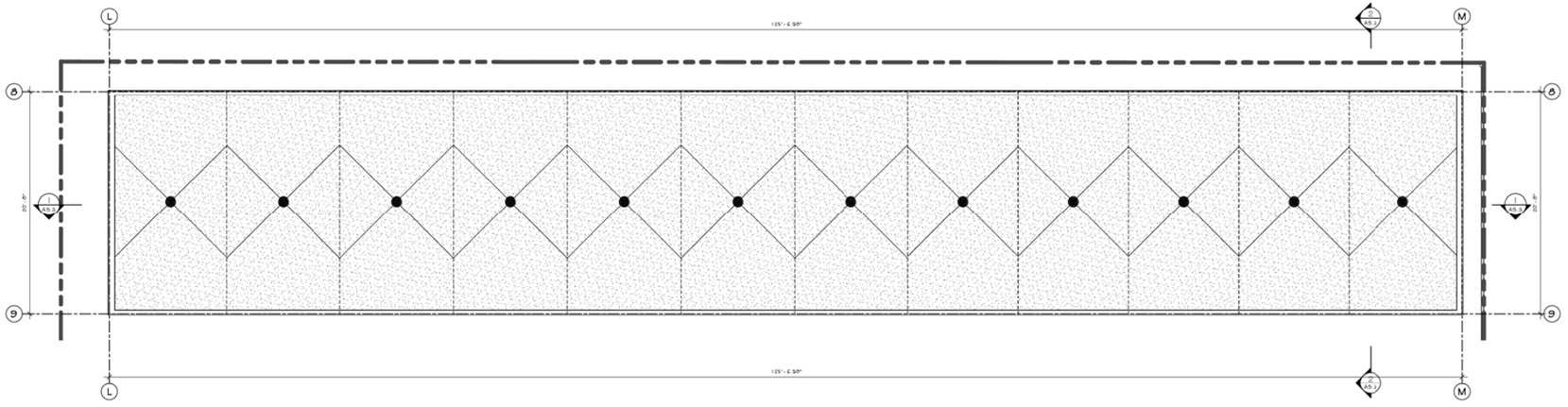
DRAWING DESCRIPTION:
MAIN BUILDING ROOF PLAN

PLOT SCALE: AS NOTED	DRAWING NO.: A2.5
PROJECT NO.: 2021-06	
CHECKED BY: TJ	
DRAWN BY: AR	PLOT DATE: 2021.05.05

DECISION RENDERED



1 GARAGE BLDG FLOOR PLAN
A2.6 1/4" = 1'-0"



2 GARAGE ROOF PLAN
A2.6 1/4" = 1'-0"

RECORD OF ISSUE

01	2021.03.16	DP APPLICATION
02	2021.04.26	DTR 1 RESPONSE
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DEVELOPMENT PERMIT DECISION RENDERED ON THIS PLAN

JACKSON McCORMICK
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604A 10TH AVENUE S.W.
CALGARY, AB.
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email: info@jmdesigngroup.ca

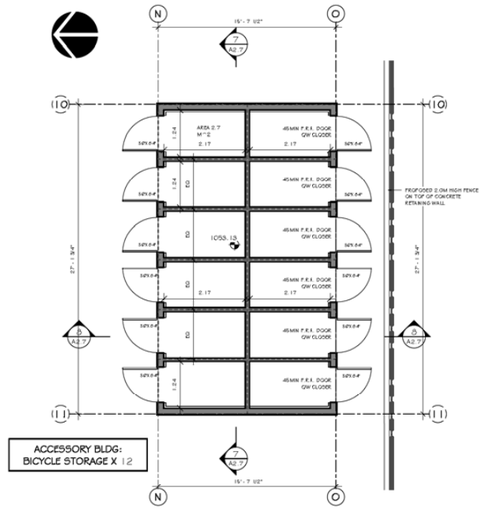
PROJECT:
HILLHURST
MULTI-FAMILY

818 / 822 / 826 18th ST N.W.
CALGARY, ALBERTA
LOTS 39 TO 41, BLOCK 6, PLAN 6219L

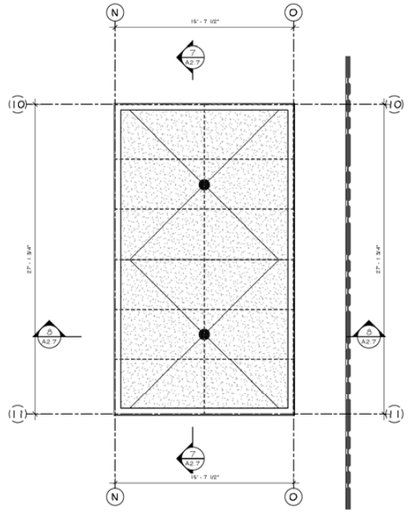
DRAWING DESCRIPTION:
GARAGE BUILDING
FLOOR PLAN

PLOT SCALE: AS NOTED	DRAWING NO.: A2.6
PROJECT NO.: 2021-06	
CHECKED BY: TJ	
DRAWN BY: AR	PLOT DATE: 2021.05.05

DECISION RENDERED



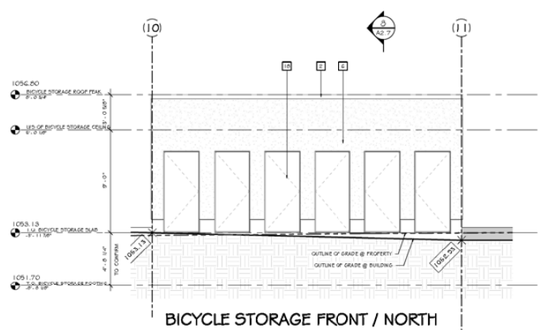
1 BICYCLE STORAGE FLOOR PLAN
1/4" = 1'-0"



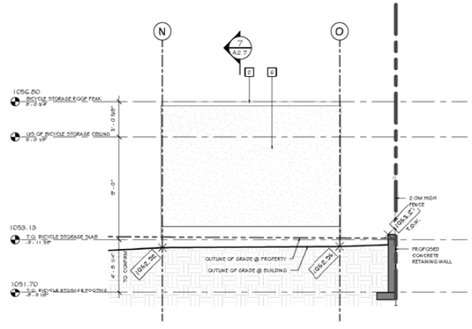
C BICYCLE STORAGE ROOF PLAN
1/4" = 1'-0"

EXTERIOR FINISHES

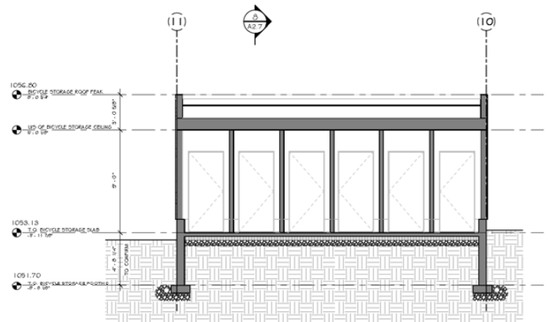
1. ROOF TORCH-ON MEMBRANE
2. PRE-FINISHED METAL CAP FLASHING COLOR:
3. PRE-FINISHED METAL GUTTER COLOR:
4. PRE-FINISHED METAL DOWNSPOUT COLOR:
5. METAL SOFFIT COLOR:
6. MASONRY STUCCO BASE COAT WITH ACRYLIC STUCCO TOP COAT COLOR: DARK GRAY
7. BRICK MASONRY COLOR: WHITE
8. HARDIE BOARD CORNICE MOLDING
9. HARDIE FASCIA
10. ARCHITECTURAL CORBEL
11. WINDOW AND DOOR SYSTEM C/W EXTERIOR TRIMS TRIPLE GLAZED FRAME COLOR: DARK
12. METAL RAILING 42" HIGH GUARD RAIL, 34" HIGH STAIR HANDRAIL COLOR: PAINTED BLACK
13. CONCRETE STAIRS
14. CEMENTITIOUS PARGING
15. 2.0 M HIGH GLASS PRIVACY SCREEN
16. SMOOTH CONCRETE
17. METAL RAILING
18. METAL DOOR



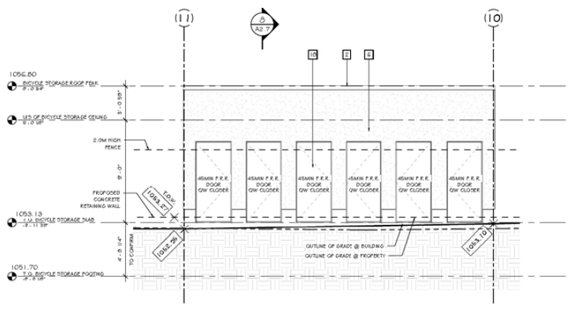
6 BICYCLE STORAGE FRONT / NORTH ELEVATION
1/4" = 1'-0"



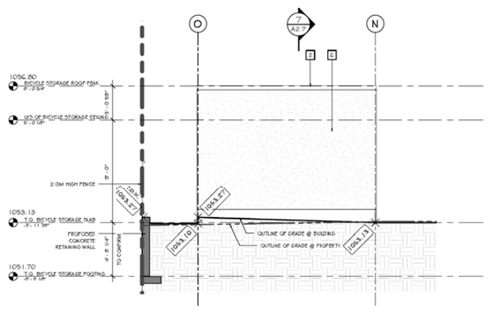
3 BICYCLE STORAGE RIGHT / WEST ELEVATION
1/4" = 1'-0"



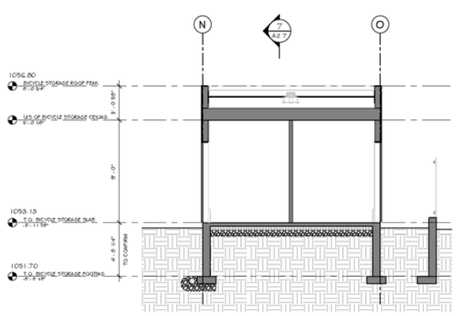
7 BICYCLE STORAGE SECTION 1
1/4" = 1'-0"



4 BICYCLE STORAGE REAR / SOUTH ELEVATION
1/4" = 1'-0"



5 BICYCLE STORAGE LEFT / EAST ELEVATION
1/4" = 1'-0"



8 BICYCLE STORAGE SECTION 2
1/4" = 1'-0"

RECORD OF ISSUE

01	2021.03.16	DP APPLICATION
02	2021.04.26	DTR 1 RESPONSE
03	2021.05.05	DTR 1 RESPONSE

RECORD OF REVISIONS

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JACKSON McCORMICK
DESIGN GROUP
804-A 16TH AVENUE S.W.
CALGARY AB
T2R 0S9
tel: 403.520.9010
email: info@jmdesigngroup.ca

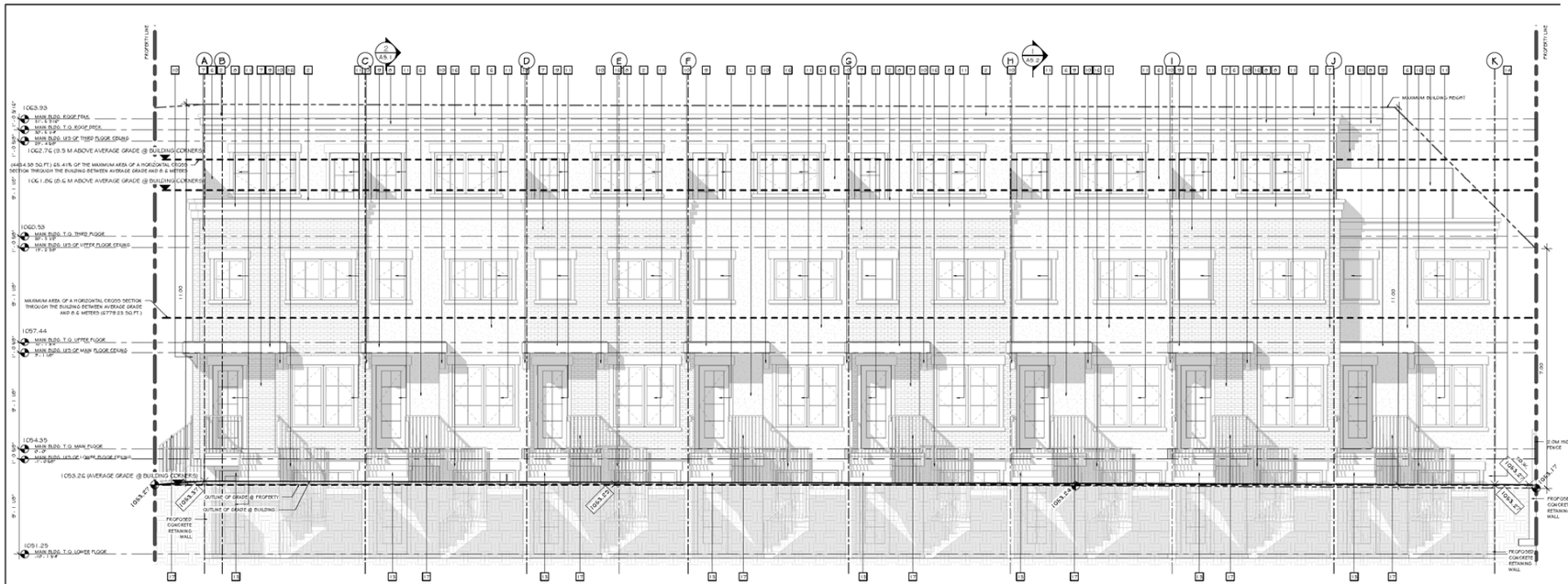
PROJECT:
HILLHURST MULTI-FAMILY
818 / 822 / 826 16th ST N.W.
CALGARY, ALBERTA
LOTS 39 TO 41, BLOCK 6, PLAN 6211L

DRAWING DESCRIPTION:
BICYCLE STORAGE FLOOR PLANS, ELEV, SECTION

PLOT SCALE: AS NOTED	DRAWING NO.: A2.7
PROJECT NO.: 2021-06	
CHECKED BY: TJ	
DRAWN BY: AR	PLOT DATE: 2021.05.05

SDAB2021-0040

DECISION RENDERED



EXTERIOR FINISHES	
1	ROOF TORCH-ON MEMBRANE
2	PRE-FINISHED METAL CAP FLASHING COLOR:
3	PRE-FINISHED METAL GUTTER COLOR:
4	PRE-FINISHED METAL DOWNSPOUT COLOR:
5	METAL SOFFIT COLOR:
6	MASONRY STUCCO BASE COAT WITH ACRYLIC STUCCO TOP COAT COLOR: DARK GRAY
7	BRICK MASONRY COLOR: WHITE
8	HARDIE BOARD CORNICE MODLING
9	HARDIE FASCIA
10	ARCHITECTURAL CORBEL
11	WINDOW AND DOOR SYSTEM C/W EXTERIOR TRIMS TRIPLE GLAZED FRAME COLOR: DARK
12	METAL RAILING 42" HIGH GUARD RAIL, 34" HIGH STAIR HANDRAIL COLOR: PAINTED BLACK
13	CONCRETE STAIRS
14	CEMENTITIOUS PARGING
15	2.0 M HIGH GLASS PRIVACY SCREEN
16	SMOOTH CONCRETE
17	METAL RAILING
18	METAL DOOR

RECORD OF ISSUE

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JACKSON McCORMICK
DESIGN GROUP
804 A 16TH AVENUE S.W.
CALGARY AB
T2R 0S9
tel: 403.520.9010
email: info@jmdesigngroup.ca

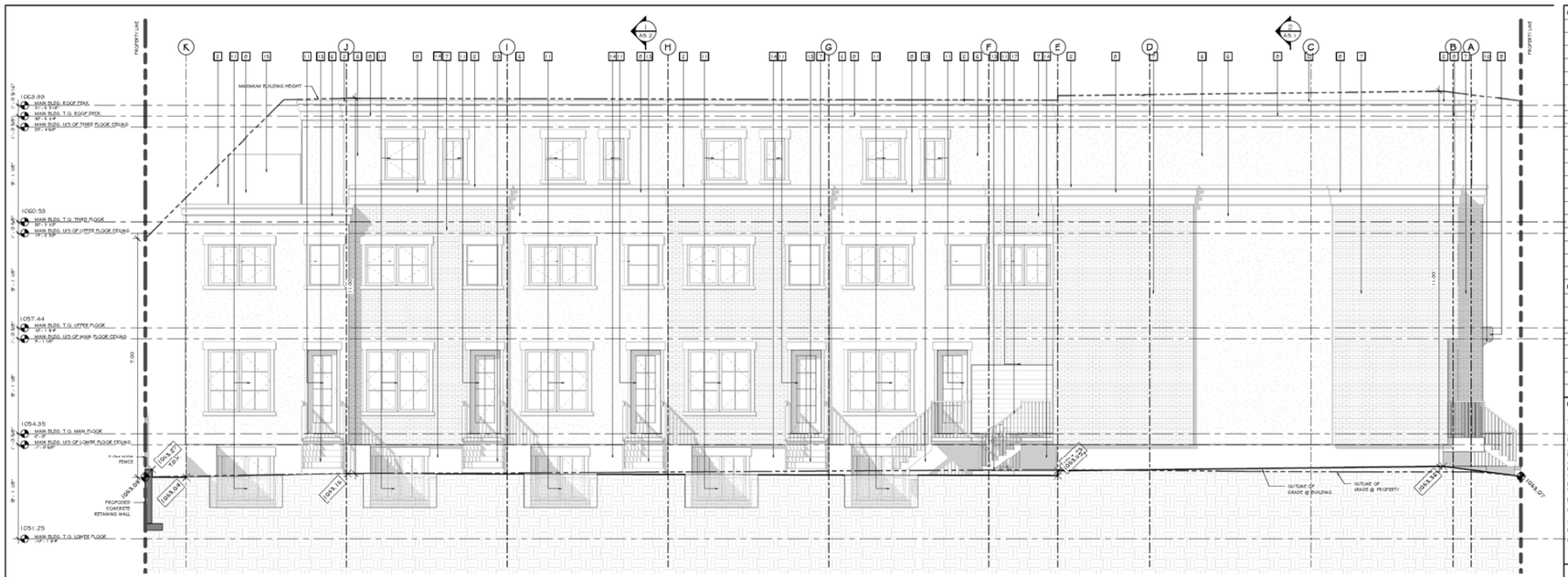
PROJECT:
HILLHURST
MULTI-FAMILY

818 / 822 / 826 16th ST N.W.
CALGARY, ALBERTA
LOTS 39 TO 41, BLOCK 6, PLAN 6219L

DRAWING DESCRIPTION:
MAIN BUILDING
ELEVATIONS

PLOT SCALE: AS NOTED	DRAWING NO.: A4.1
PROJECT NO.: 2021-06	
CHECKED BY: TJ	
DRAWN BY: AR	PLOT DATE: 2021.05.05

DECISION RENDERED



EXTERIOR FINISHES

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2	PRE-FINISHED METAL CAP FLASHING COLOR:
3	PRE-FINISHED METAL GUTTER COLOR:
4	PRE-FINISHED METAL DOWNSPOUT COLOR:
5	METAL SOFFIT COLOR:
6	MASONRY STUCCO BASE COAT WITH ACRYLIC STUCCO TOP COAT COLOR: DARK GRAY
7	BRICK MASONRY COLOR: WHITE
8	HARDIE BOARD CORNICE MODLING
9	HARDIE FASCIA
10	ARCHITECTURAL CORBEL
11	WINDOW AND DOOR SYSTEM: GW EXTERIOR TRIMS TRIPLE GLAZED FRAME COLOR: DARK
12	METAL RAILING 42" HIGH GUARD RAIL, 34" HIGH STAIR HANDRAIL COLOR: PAINTED BLACK
13	CONCRETE STAIRS
14	CEMENTITIOUS PARGING
15	2.0 M HIGH GLASS PRIVACY SCREEN
16	SMOOTH CONCRETE
17	METAL RAILING
18	METAL DOOR

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JACKSON McCORMICK
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804-A 19TH AVENUE S.W.
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email: info@jmdesigngroup.ca

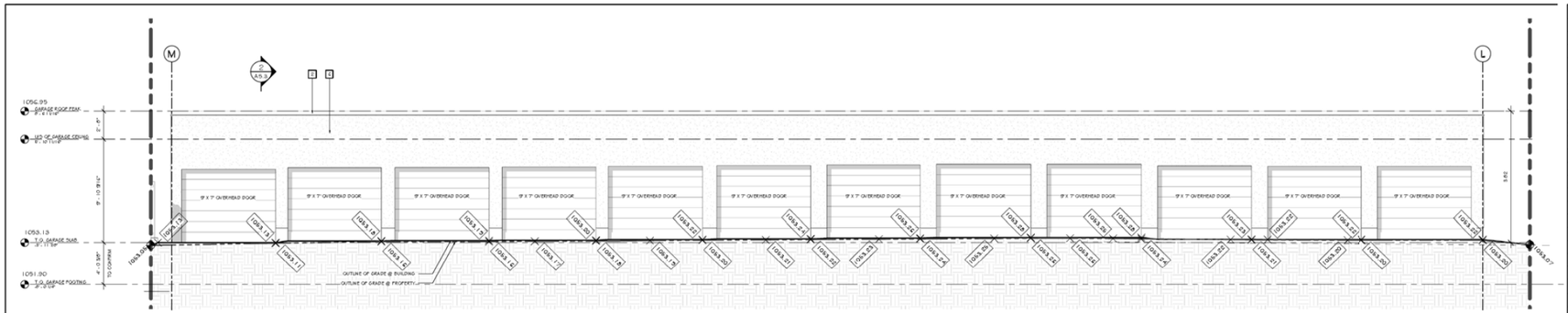
PROJECT:
HILLHURST
MULTI-FAMILY
819 / 822 / 826 16th ST N.W.
CALGARY, ALBERTA
LOTS 39 TO 41, BLOCK 6, PLAN 6219L

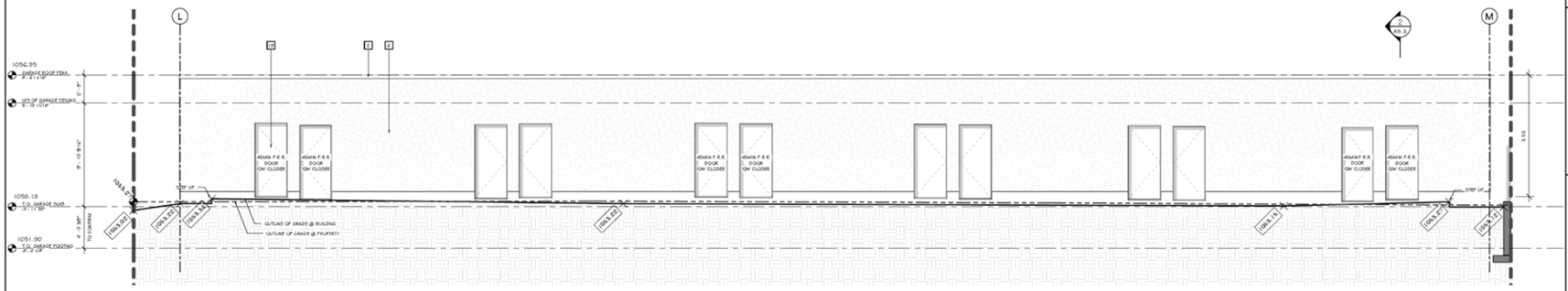
DRAWING DESCRIPTION:
MAIN BUILDING
ELEVATIONS

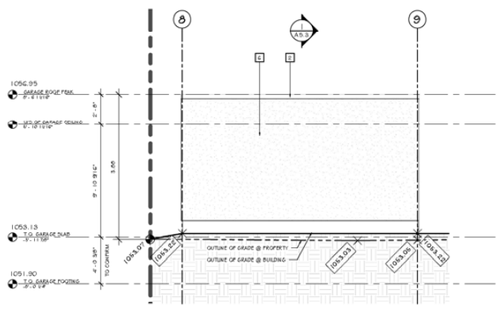
PLOT SCALE: AS NOTED	DRAWING NO.: A4.2
PROJECT NO.: 2021-06	
CHECKED BY: TJ	
DRAWN BY: AR	PLOT DATE: 2021.05.05

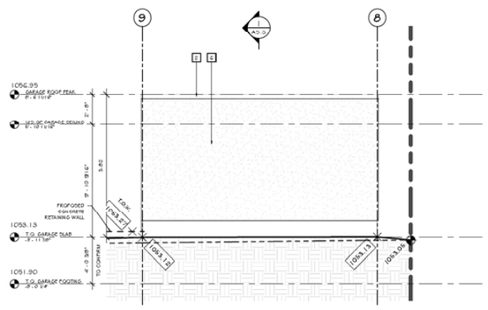
SDAB2021-0040

DECISION RENDERED









EXTERIOR FINISHES

1	ROOF TORCH-ON MEMBRANE
2	PRE-FINISHED METAL CAP FLASHING COLOR:
3	PRE-FINISHED METAL GUTTER COLOR:
4	PRE-FINISHED METAL DOWNSPOUT COLOR:
5	METAL SOFFIT COLOR:
6	MASONRY STUCCO BASE COAT WITH ACRYLIC STUCCO TOP COAT COLOR: DARK GRAY
7	BRICK MASONRY COLOR: WHITE
8	HARDIE BOARD CORNICE MOULING
9	HARDIE FASCIA
10	ARCHITECTURAL CORBEL
11	WINDOW AND DOOR SYSTEM GW EXTERIOR TRIMS TRIPLE GLAZED FRAME COLOR: DARK
12	METAL RAILING 42" HIGH GUARD RAIL, 34" HIGH STAIR HANDRAIL COLOR: PAINTED BLACK
13	CONCRETE STAIRS
14	CEMENTITIOUS PARGING
15	2.0 M HIGH GLASS PRIVACY SCREEN
16	SMOOTH CONCRETE
17	METAL RAILING
18	METAL DOOR

RECORD OF ISSUE

01	2021.03.16	DP APPLICATION
02	2021.04.26	DTR 1 RESPONSE
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THIS DRAWING SUPERCEDES PREVIOUS ISSUES

DEVELOPMENT PERMIT DECISION RENDERED ON THIS PLAN

JACKSON McCORMICK
DESIGN GROUP
804-A 10TH AVENUE S.W.
CALGARY AB
T2R 0S9
tel: 403.520.9010
email: info@jmdesigngroup.ca

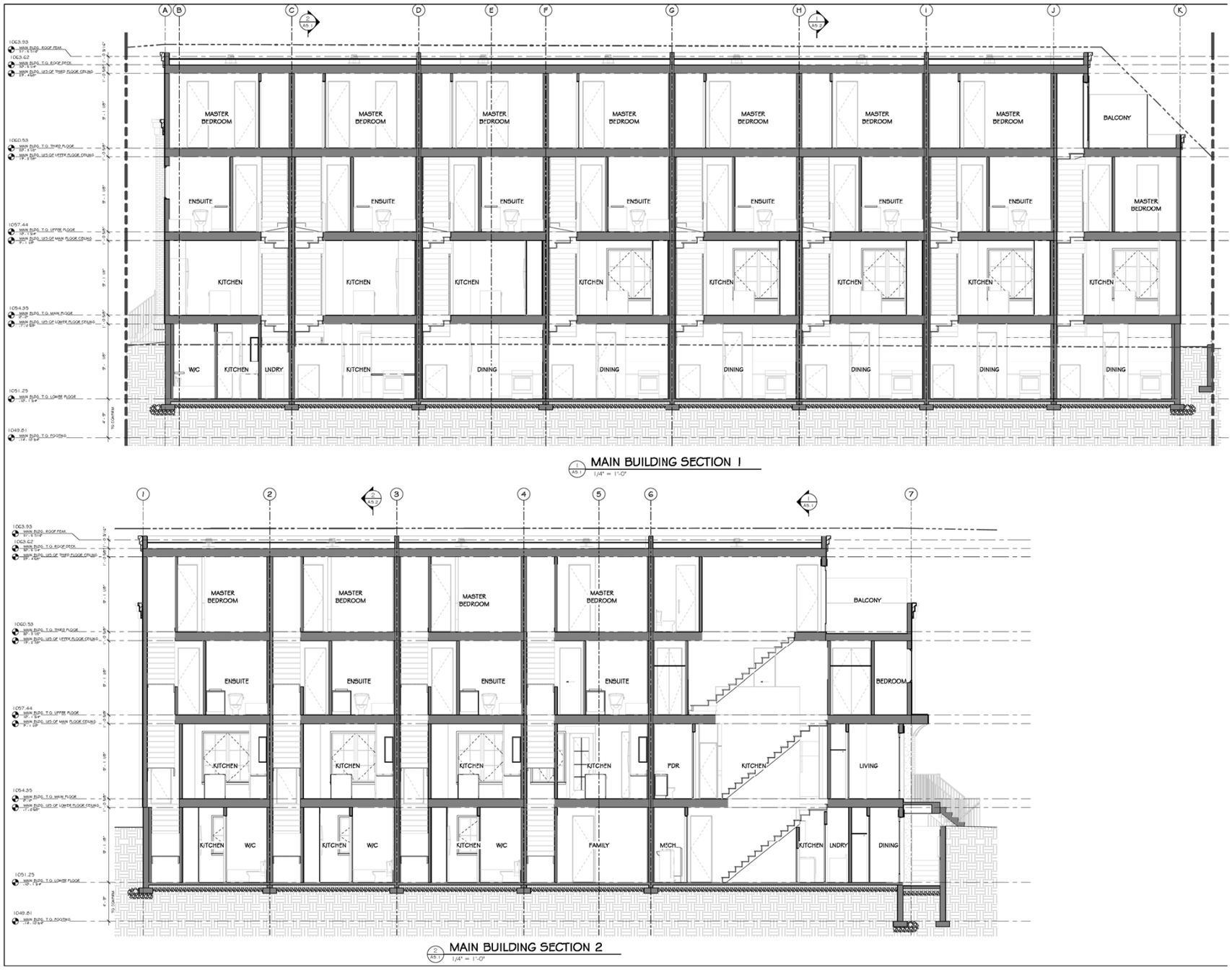
PROJECT:
HILLHURST
MULTI-FAMILY

818 / 822 / 826 16th ST N.W.
CALGARY, ALBERTA
LOTS 39 TO 41, BLOCK 6, PLAN 6219L

DRAWING DESCRIPTION:
GARAGE BUILDING
ELEVATIONS

PLOT SCALE: AS NOTED	DRAWING NO.: A4.3
PROJECT NO.: 2021-06	
CHECKED BY: TJ	
DRAWN BY: AR	PLOT DATE: 2021.05.05

DECISION RENDERED



RECORD OF ISSUE

01	2021.03.16	DP APPLICATION
02	2021.04.26	DTR 1 RESPONSE
03	2021.05.05	DTR 1 RESPONSE

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DO NOT SCALE DRAWINGS

THIS DRAWING SUPERCEDES PREVIOUS ISSUES

DEVELOPMENT PERMIT DECISION RENDERED ON THIS PLAN

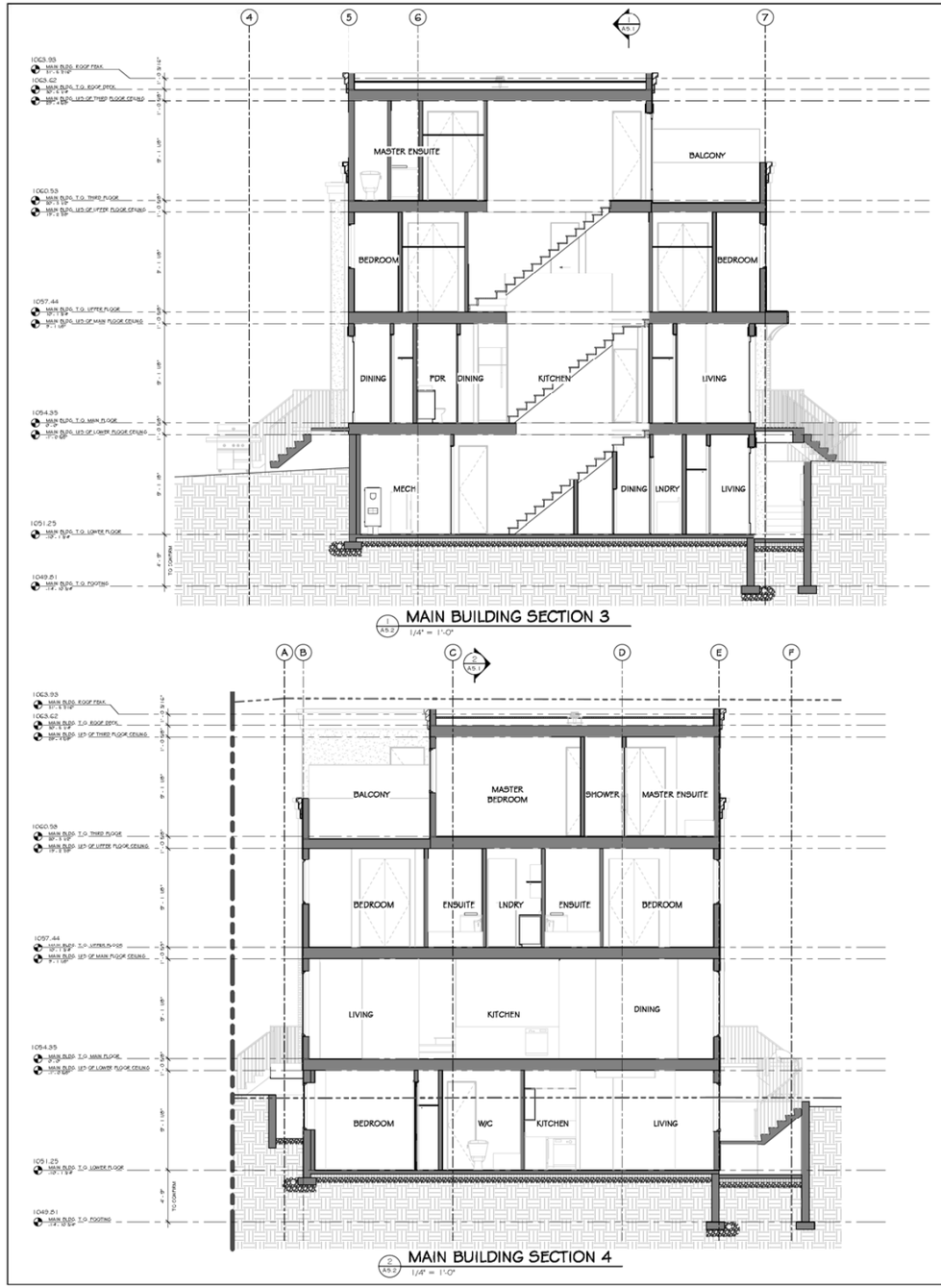
JACKSON McCORMICK
DESIGN GROUP
804-A 19TH AVENUE S.W.
CALGARY AB
T2S 0C9
tel: 403.630.9009
email: info@jmdesigngroup.ca

PROJECT:
HILLHURST
MULTI-FAMILY
818 / 822 / 826 16th ST N.W.
CALGARY, ALBERTA
LOTS 39 TO 41, BLOCK 6, PLAN 6219L

DRAWING DESCRIPTION:
MAIN BUILDING SECTIONS

PLOT SCALE: AS NOTED	DRAWING NO.: A5.1
PROJECT NO.: 2021-06	
CHECKED BY: TJ	
DRAWN BY: AR	PLOT DATE: 2021.05.05

DECISION RENDERED



CONSTRUCTION ASSEMBLIES

FLOOR ASSEMBLIES

F1 — **CONCRETE GARAGE SLAB TYPICAL**
- 4" REINFORCED CONCRETE SLAB ON GRADE AS PER STRUCTURAL
- 6 MIL POLY VAPOUR BARRIER
- 2-0" RIGID INSULATION, STAGGERED 50MM
- 6" COMPACTED GRAVEL BASE

F2 — **BASEMENT SLAB**
- FLOOR FINISH AS SPECIFIED
- 4" REINFORCED CONCRETE SLAB ON GRADE AS PER STRUCTURAL
- 6 MIL POLY VAPOUR BARRIER
- 2-0" RIGID INSULATION, STAGGERED 50MM
- 6" COMPACTED GRAVEL BASE

F3 — **11 7/8" TJI FLOOR ASSEMBLY - TYPICAL** (NBC.2015 9.40 TABLE 9.10.3.1.-B, FTL, STC 57)
- FLOOR FINISH AS SPECIFIED
- 3/4" T&G PLYWOOD SHEATHING (GLUED + SCREWED)
- PRE ENGINEERED 11 7/8" TJI WOOD JOISTS @ SPECIFIED SPACING CROSS BRACING AS PER STRUCTURAL ENGINEER
- 1/2" GYPSUM BOARD
- PAINTED FINISH

F4 — **11 7/8" TJI FLOOR ASSEMBLY @ CANTILEVER**
- FLOOR FINISH AS SPECIFIED
- 3/4" T&G PLYWOOD SHEATHING (GLUED + SCREWED)
- PRE ENGINEERED 11 7/8" TJI WOOD JOISTS @ SPECIFIED SPACING CROSS BRACING AS PER STRUCTURAL ENGINEER
- 38mm CLOSED CELL SPRAY FOAM INSULATION (R30)
- WOOD SHEATHING IF APPLICABLE - SIZE AS INDICATED
- VENTED SOFFIT PANCH AS REQUIRED

F5 — **9 1/2" TJI FLOOR ASSEMBLY @ BALCONY**
- DESIGNMAT ULTRA DR MIL WATERPROOF MEMBRANE
- 3/4" T&G EXTERIOR GRADE PLYWOOD SHEATHING (GLUED + SCREWED)
- WOOD SLEEPERS LAMINATED TO WOOD JOISTS @1% SLOPE MIN.
- PRE ENGINEERED 9 1/2" TJI WOOD JOISTS @ SPECIFIED SPACING CROSS BRACING AS PER STRUCTURAL ENGINEER
- 38mm CLOSED CELL SPRAY FOAM INSULATION (R30)
- 1/2" GYPSUM BOARD
- PAINTED FINISH

CONSTRUCTION ASSEMBLIES

ROOF ASSEMBLIES

R1 — **TYPICAL FLAT ROOF**
- 2-PLY SBS ROOF MEMBRANE, FULLY ADHERED INSTALLED AS PER MANUFACTURER'S SPECS.
- 1" SEPERATION FIBREGLASS MAT
- 87:1 SLOPE PACKAGE = 4" EXTRUDED RIGID INSULATION (AVG R34), ADHERED WITH LOW RISE ADHESIVE. SLOPED TO DRAINS (2" MIN @ DRAIN)
- VAPOUR BARRIER FULLY ADHERED
- 3/4" T&G PLYWOOD SHEATHING
- PRE ENGINEERED 11 7/8" TJI WOOD JOISTS @ SPECIFIED SPACING CROSS BRACING AS PER STRUCTURAL ENGINEER
- 1/2" GYPSUM BOARD
- PAINTED FINISH

R2 — **CANOPY TYPICAL**
- 2-PLY SBS ROOF MEMBRANE, FULLY ADHERED INSTALLED AS PER MANUFACTURER'S SPECS.
- 3/4" T&G EXTERIOR GRADE PLYWOOD SHEATHING (GLUED + SCREWED)
- WOOD SLEEPERS LAMINATED TO WOOD JOISTS @1% SLOPE MIN.)
- WOOD JOISTS @ SPECIFIED SIZE & SPACING
- CROSS BRACING AS PER STRUCTURAL ENGINEER
- WOOD SHEATHING IF APPLICABLE - SIZE AS INDICATED
- VENTED SOFFIT PANCH AS REQUIRED

CONSTRUCTION ASSEMBLIES

EXTERIOR WALL ASSEMBLIES

W1 — **WOOD FRAMING TYPICAL - 1HR F.R.R.** (NBC.2015 9.40 TABLE 9.10.3.1.-A, BW1a, 1 HR F.R.R.)
- EXTERIOR FINISH AS SPECIFIED (REFER TO ELEVATION)
- 2 LAYERS 30 MIN. WATER BARRIER - LAP JOINTS TO SHED WATER
- 1/2" GDB SHEATHING
- 2x6 #2 SPF WOOD STUDS @ 16" O.C.
- FIBREGLASS BATT INSULATION (R20)
- 6 MIL POLY VAPOUR BARRIER (LAPPED & CAULKED)
- 5/8" TYPE 'X' GYPSUM BOARD
- PAINTED FINISH

W1.1 — **WOOD FRAMING 2X8 TYPICAL - 1HR F.R.R.** (NBC.2015 9.40 TABLE 9.10.3.1.-A, BW1a, 1 HR F.R.R.)
- EXTERIOR FINISH AS SPECIFIED (REFER TO ELEVATION)
- 2 LAYERS 30 MIN. WATER BARRIER - LAP JOINTS TO SHED WATER
- 1/2" GDB SHEATHING
- 2x8 #2 SPF WOOD STUDS @ 16" O.C.
- FIBREGLASS BATT INSULATION (R20)
- 6 MIL POLY VAPOUR BARRIER (LAPPED & CAULKED)
- 5/8" TYPE 'X' GYPSUM BOARD
- PAINTED FINISH

W2 — **WOOD FRAMING TYPICAL, NEIGHBOR WALL - 1HR F.R.R.** (NBC.2015 9.40 TABLE 9.10.3.1.-A, BW1a, 1 HR F.R.R.)
- EXTERIOR FINISH AS SPECIFIED (REFER TO ELEVATION)
- 2 LAYERS 30 MIN. WATER BARRIER - LAP JOINTS TO SHED WATER
- 5/8" DENSGLASS EXTERIOR GLASS FACED GYPSUM SHEATHING
- 2x6 #2 SPF WOOD STUDS @ 16" O.C.
- FIBREGLASS BATT INSULATION (R20)
- 6 MIL POLY VAPOUR BARRIER (LAPPED & CAULKED)
- 5/8" TYPE 'X' GYPSUM BOARD
- PAINTED FINISH

W3 — **6" CONCRETE FIREWALL EXTERIOR**
- EXTERIOR FINISH AS SPECIFIED (REFER TO ELEVATION)
- 2 LAYERS 30 MIN. WATER BARRIER - LAP JOINTS TO SHED WATER
- 6" CONCRETE WALL - REINFORCED AS PER ENGINEERING DRAWINGS AND SPECIFICATIONS
- 1/2" AIR SPACE
- 2x2 #2 SPF STUDS @ 16" O.C.
- 1 1/2" SPS RIGID INSULATION
- 6 MIL POLY VAPOUR BARRIER
- 1/2" GYPSUM BOARD
- PAINTED FINISH

W4 — **BALCONY WALL**
- EXTERIOR FINISH AS SPECIFIED (REFER TO ELEVATION)
- 2 LAYERS 30 MIN. WATER BARRIER - LAP JOINTS TO SHED WATER
- 1/2" GDB SHEATHING
- 2x6 #2 SPF WOOD STUDS @ 16" O.C.
- 1/2" GDB SHEATHING
- 2 LAYERS 30 MIN. WATER BARRIER - LAP JOINTS TO SHED WATER
- EXTERIOR FINISH AS SPECIFIED (REFER TO ELEVATION)

W5 — **PARAPET WALL GW GAF FLASHING**
- EXTERIOR FINISH AS SPECIFIED (REFER TO ELEVATION)
- 2 LAYERS 30 MIN. WATER BARRIER - LAP JOINTS TO SHED WATER
- 1/2" GDB SHEATHING
- 2x6 #2 SPF WOOD STUDS @ 16" O.C.
- 1/2" GDB SHEATHING
- 2-PLY SBS MEMBRANE - FULLY ADHERED (TORCH-ON)

W6 — **6" CONCRETE FIREWALL PARAPET GW GAF FLASHING**
- 2-PLY SBS MEMBRANE - FULLY ADHERED (TORCH-ON)
- 6" CONCRETE WALL - REINFORCED AS PER ENGINEERING DRAWINGS AND SPECIFICATIONS
- 2-PLY SBS MEMBRANE - FULLY ADHERED (TORCH-ON)

CONSTRUCTION ASSEMBLIES

FOUNDATION WALL ASSEMBLIES

FW1 — **PERIOD WALL**
- 2" XPS RIGID INSULATION ALONG PERIMETER TO MINIMUM 4'-0" BELOW GRADE
- PARGING AS REQD - ABOVE GRADE
- DAMPROOFING / WATERPROOFING - BELOW GRADE
- 8" CONCRETE FOUNDATION WALL - REINFORCED AS PER ENGINEERING DRAWINGS AND SPECIFICATIONS
- 1/2" AIR SPACE
- 2x4 #2 SPF STUDS @ 16" O.C.
- R 12 FIBREGLASS BATT INSULATION
- 6 MIL POLY VAPOUR BARRIER
- 1/2" GYPSUM BOARD
- PAINTED FINISH

FW2 — **FOUNDATION WALL - FINISHED INTERIOR WALL**
- 2" XPS RIGID INSULATION ALONG PERIMETER TO MINIMUM 4'-0" BELOW GRADE
- PARGING AS REQD - ABOVE GRADE
- DAMPROOFING / WATERPROOFING - BELOW GRADE
- 8" CONCRETE FOUNDATION WALL - REINFORCED AS PER ENGINEERING DRAWINGS AND SPECIFICATIONS
- 1/2" AIR SPACE
- 2x4 #2 SPF STUDS @ 16" O.C.
- R 12 FIBREGLASS BATT INSULATION
- 6 MIL POLY VAPOUR BARRIER
- 1/2" GYPSUM BOARD
- PAINTED FINISH

CONSTRUCTION ASSEMBLIES

PARTITION WALL ASSEMBLIES

NOTE: MOISTURE RESISTANT GYPSUM BOARD TO BE USED AT ALL SHOWER AND BATH LOCATIONS

P1 — **PARTY WALL - 1 HR F.R.R.** (NBC.2015 9.40 TABLE 9.10.3.1.-A, W15a, 1 HR F.R.R., STC 57)
- PENETRATION SEAL TO CONFORM TO USE OF ROOF
- PAINTED FINISH
- 5/8" TYPE 'X' GYPSUM BOARD
- 2x4 WOOD STUD FRAMING @ SPACING INDICATED ON STRUCTURAL DRAWINGS
- ACOUSTIC BATT INSULATION IN STUD CAVITY (R12)
- 5/8" TYPE 'X' GYPSUM BOARD
- 2x4 WOOD STUD FRAMING @ SPACING INDICATED ON STRUCTURAL DRAWINGS
- ACOUSTIC BATT INSULATION IN STUD CAVITY (R12)
- 5/8" TYPE 'X' GYPSUM BOARD
- PAINTED FINISH

P2 — **6" CONCRETE FIREWALL - FINISHED**
- PAINTED FINISH
- 1/2" GYPSUM BOARD
- 1 1/2" XPS RIGID INSULATION
- 2x2 #2 SPF STUDS @ 16" O.C.
- 1/2" AIR SPACE
- 6" CONCRETE WALL - REINFORCED AS PER ENGINEERING DRAWINGS AND SPECIFICATIONS
- 1/2" AIR SPACE
- 2x2 #2 SPF STUDS @ 16" O.C.
- 1 1/2" XPS RIGID INSULATION
- 1/2" GYPSUM BOARD
- PAINTED FINISH

P3 — **2X4 WOOD FRAMING**
- PAINTED FINISH
- 1/2" GYPSUM BOARD
- 2x4 #2 SPF WOOD STUDS @ 16" O.C.
- 1/2" GYPSUM BOARD
- PAINTED FINISH

P4 — **2X4 WOOD FRAMING - GYPSUM 1 SIDE**
- PAINTED FINISH
- 1/2" GYPSUM BOARD
- 2x4 #2 SPF WOOD STUDS @ 16" O.C.
- PAINTED FINISH

P5 — **2X6 WOOD FRAMING**
- PAINTED FINISH
- 1/2" GYPSUM BOARD
- 2x6 #2 SPF WOOD STUDS @ 16" O.C.
- 1/2" GYPSUM BOARD
- PAINTED FINISH

P6 — **2X6 WOOD FRAMING - INSULATED**
- PAINTED FINISH
- 1/2" GYPSUM BOARD
- 2x6 #2 SPF WOOD STUDS @ 16" O.C.
- FIBREGLASS BATT INSULATION (R12)
- 1/2" GYPSUM BOARD
- PAINTED FINISH

P7 — **WATER METER ROOM (1 HR F.R.R.)** (NBC.2015 9.40 TABLE 9.10.3.1.-A, W14, 1 HR F.R.R., STC 54)
- PAINTED FINISH
- 5/8" TYPE 'X' GYPSUM BOARD
- 2x6 #2 SPF WOOD STUDS @ 16" O.C.
- ACOUSTIC FIBREGLASS BATT INSULATION (R20)
- 5/8" TYPE 'X' GYPSUM BOARD
- 3/4" PLYWOOD SHEATHING FOR BACKING (AS REQUIRED)

P8 — **GARAGE PARTITIONS (1 HR F.R.R.)**
- PAINTED FINISH
- 5/8" TYPE 'X' GYPSUM BOARD
- 2x4 #2 SPF WOOD STUDS @ 16" O.C.
- ACOUSTIC FIBREGLASS BATT INSULATION (R20)
- 5/8" TYPE 'X' GYPSUM BOARD
- 3/4" PLYWOOD SHEATHING FOR BACKING (AS REQUIRED)

CEILING ASSEMBLIES

C1 — **1 HR F.R.R. WATER METER ROOM**
- 2 LAYERS OF 5/8 TYPE 'X' GYPSUM BOARD
- PAINTED FINISH

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02	2021.04.26	DTR 1 RESPONSE
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JACKSON McCORMICK
DESIGN GROUP
604-A 15TH AVENUE S.W.
CALGARY AB
T2R 0S9
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email: info@jmdesigngroup.ca

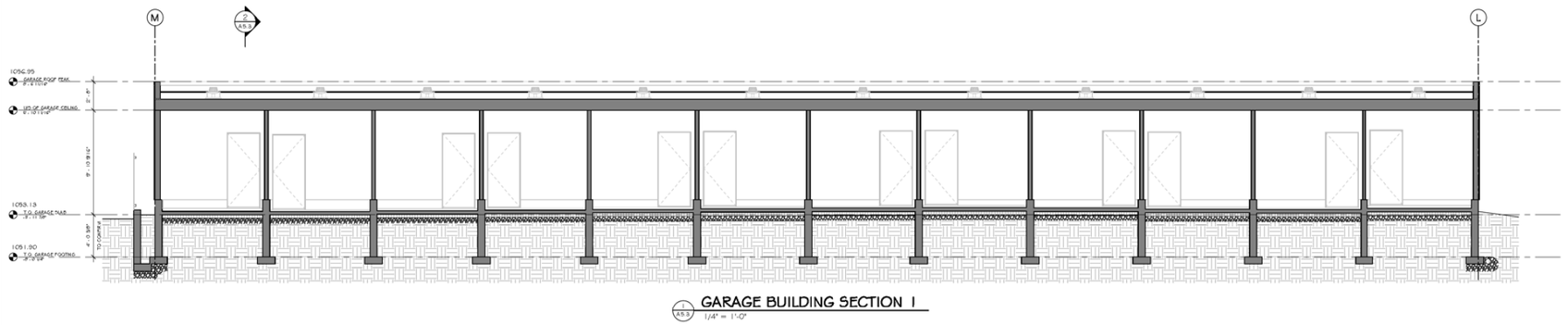
PROJECT:
HILLHURST
MULTI-FAMILY

818 / 822 / 826 16th ST N.W.
CALGARY, ALBERTA
LOTS 39 TO 41, BLOCK 6, PLAN 6219L

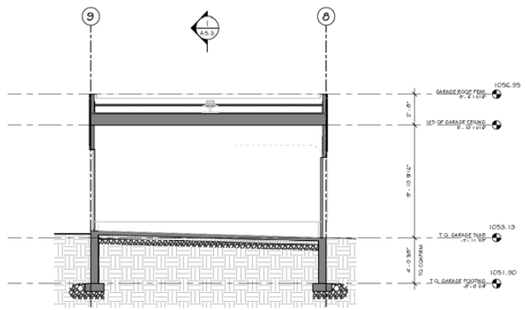
DRAWING DESCRIPTION:
MAIN BUILDING SECTIONS

PLOT SCALE: AS NOTED	DRAWING NO.: A5.2
PROJECT NO.: 2021-06	
CHECKED BY: TJ	
DRAWN BY: AR	PLOT DATE: 2021.05.05

DECISION RENDERED



1 A5.3 GARAGE BUILDING SECTION 1
1/4" = 1'-0"



2 A5.3 GARAGE BUILDING SECTION 2
1/4" = 1'-0"

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PROJECT:
HILLHURST
MULTI-FAMILY

816 /822 /826 16th ST N.W.
CALGARY, ALBERTA
LOTS 39 TO 41, BLOCK 6, PLAN 6219L

DRAWING DESCRIPTION:
GARAGE BUILDING SECTIONS

PLOT SCALE: AS NOTED	DRAWING NO.: A5.3
PROJECT NO.: 2021-06	
CHECKED BY: TJ	
DRAWN BY: AR	PLOT DATE: 2021.05.05

RELEASED PLANS

HILLHURST MULTI-FAMILY

1619 8th AVENUE N.W. CALGARY, ALBERTA

ARTISTS DEPICTION

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DRAWING INDEX

SYMBOL LEGEND

Room name	INDICATES ROOM NAME AND NUMBER
A101	INDICATES BUILDING SECTION MARKER
A101	INDICATES WALL SECTION MARKER
A101 SIM	INDICATES BUILDING DETAIL MARKER
276.75m EXISTING	INDICATES EXISTING ELEVATION ON SITE / BLOCK PLANS
276.75m PROPOSED	INDICATES PROPOSED ELEVATION ON SITE / BLOCK PLANS
276.75m	INDICATES PROPOSED SPOT ELEVATION
	INDICATES EXISTING TREE TO BE REMOVED
	INDICATES EXISTING TREE TO REMAIN
	INDICATES NEW TREE
1	INDICATES INTERIOR DOOR TAG
1x	INDICATES EXTERIOR DOOR / WINDOW TAG
9'-10" CLG	INDICATES HEIGHT OF CEILING STRUCTURE ABOVE SUBFLOOR
	INDICATES SUBFLOOR ELEVATION ON FLOOR PLANS
WA1	INDICATES CONSTRUCTION ASSEMBLY TYPE TAG - REFER TO CONSTRUCTION ASSEMBLIES
FA1	INDICATES FLOOR FINISH TYPE TAG - REFER TO FINISHES LEGEND
WA1	INDICATES WALL FINISH TYPE TAG - REFER TO FINISHES LEGEND
CA1	INDICATES CEILING FINISH TYPE TAG - REFER TO FINISHES LEGEND
01	KEYNOTE TAG - REFER TO DRAWING NOTES

TYPICAL ABBREVIATIONS

ATF	ABOVE FINISHED FLOOR	I.D.	INSIDE DIAMETER
ASF	ABOVE SUBFLOOR	LL	LIVE LOAD
AFS	ABOVE FINISHED SLAB	MANUF.	MANUFACTURER
BLDG	BUILDING	MECH	MECHANICAL
CW	COMPLETE WITH	MW	MICROWAVE
CONC	CONCRETE	N.A.	NOT APPLICABLE
CNCI	CONTRACTOR SUPPLIED CONTRACTOR INSTALLED	N.I.C.	NOT IN CONTRACT
CT	COOKTOP	N.T.S.	NOT TO SCALE
DIA	DIAMETER	OC	ON CENTRE
DN	DOWN	OSOI	OWNER SUPPLIED OWNER INSTALLED
DW	DISHWASHER	OSCI	OWNER SUPPLIED CONTRACTOR INSTALLED
DWG	DRAWING	O.D.	OUTSIDE DIAMETER
EW	EACH WAY	SPEC	SPECIFICATION
ELEC	ELECTRICAL	S	SINK
ENG.	ENGINEER	T.O.	TOP OF
EQ.	EQUAL	TOW	TOP OF WALL
E.O.S.	EDGE OF SLAB	TAB	TOP AND BOTTOM
F	FRIDGE	T&G	TONGUE AND GROOVE
FD	FLOOR DRAIN	TYP.	TYPICAL
FURN	FURNACE	UFS	UNDERSIDE
GA	GAUGE	VERT.	VERTICAL
GWB	GYPSUM WALL BOARD	WD	WASHER / DRYER
HWH	HOT WATER HEATER	WD	WARMING DRAWER
HDWD	HARDWOOD	WO	WALL OVEN
		WPM	WATERPROOF MEMBRANE

RECORD OF ISSUE

01	2021.03.16	DP APPLICATION
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04	2021.05.11	BP APPLICATION
05	2021.05.21	DP PRIOR TO RELEASE

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ALL DESIGNS AND DRAWINGS REMAIN THE PROPERTY OF THE DESIGNER AND MAY NOT BE REPRODUCED WITHOUT PERMISSION OF THE DESIGNER

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CITY OF CALGARY - PLANNING, DEVELOPMENT AND ASSESSMENT
THESE ARE THE PLANS REFERRED TO IN MUNICIPAL PERMIT NO.

DP No 2021-1721
Date Issued MAY 11 2021

WORK ARE APPROVED SUBJECT TO THE ALTERATIONS IF ANY SHOWN, AND ALSO SUBJECT TO ANY OTHER NOTES IN THE DEVELOPMENT PERMIT

DEVELOPMENT AUTHORITY: Aman Singh

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email info@jmdesigngroup.ca

PROJECT:
HILLHURST MULTI-FAMILY
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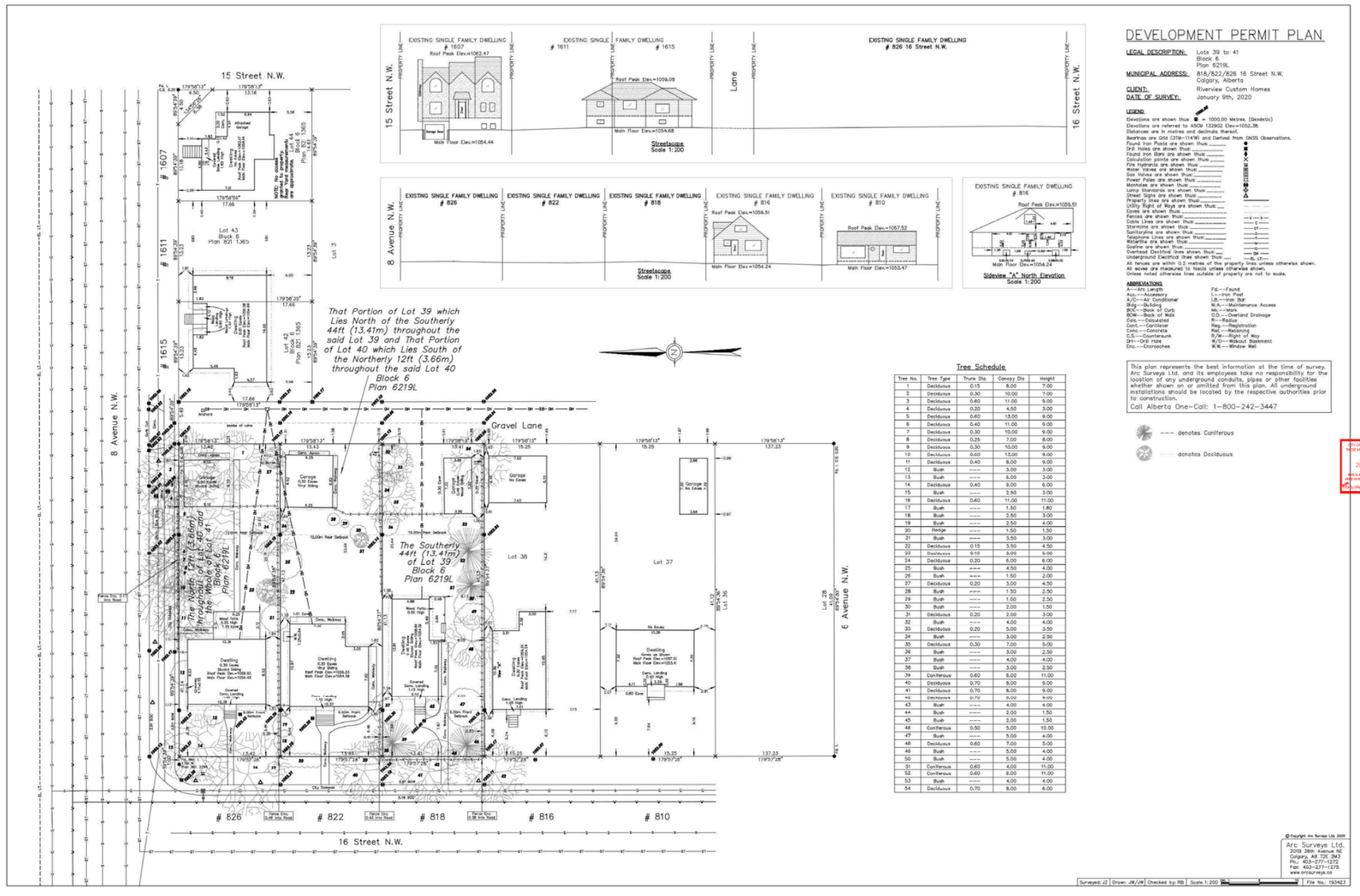
DRAWING DESCRIPTION:
COVER PAGE

PLOT SCALE: AS NOTED	DRAWING NO.: A0.0
PROJECT NO.: 2021-06	
CHECKED BY: TJ	
DRAWN BY: AR	PLOT DATE: 2021.05.21

SDAB2021-0040

RELEASED PLANS



DEVELOPMENT PERMIT PLAN

LEGAL DESCRIPTION: Lots 39 to 41 Block 6 Plan 6219L

MUNICIPAL ADDRESS: 818/822/826 16 Street N.W. Calgary, Alberta

CLIENT: Riverview Custom Homes

DATE OF SURVEY: January 9th, 2020

LEGEND

Elevations are shown thus: ■ = 1000.00 Metres. (Geodetic)
Elevations are referred to ASCM 132902 Elev.=1052.38.
Distances are in metres and decimals thereof.
Bearings are Grid (3TM-114W) and Derived from GNSS Observations.
Found Iron Posts are shown thus: _____
Drill Holes are shown thus: _____
Found Iron Bars are shown thus: _____
Calculation points are shown thus: _____
Fire Hydrants are shown thus: _____
Water Valves are shown thus: _____
Sas Valves are shown thus: _____
Power Poles are shown thus: _____
Manholes are shown thus: _____
Lamp Standards are shown thus: _____
Street Signs are shown thus: _____
Property lines are shown thus: _____
Utility Right of Ways are shown thus: _____
Eaves are shown thus: _____
Fences are shown thus: _____
Cable Lines are shown thus: _____
Storm Ins are shown thus: _____
Sanitary Ins are shown thus: _____
Overhead Line Lines are shown thus: _____
Telephone are shown thus: _____
Gasline are shown thus: _____
Overhead Electrical lines shown thus: _____
Underground Electrical lines shown thus: _____

All fences are within 0.3 metres of the property lines unless otherwise shown.
All eaves are measured to fascia unless otherwise shown.
Unless noted otherwise lines outside of property are not to scale.

ABBREVIATIONS

A---Arc Length
Acc.---Accessory
A/C---Air Conditioner
Bldg---Building
BOC---Back of Curb
BOW---Back of Walk
Calc.---Calculated
Cant.---Cantilever
Conc.---Concrete
C.S.---Countersunk
DH---DYE Hole
Enc.---Encroaches
Fd.---Found
I.---Iron Post
I.B.---Iron Bar
M.A.---Maintenance Access
Mk.---Mark
O.D.---Overland Drainage
R---Radius
Reg.---Registration
Rel.---Retaining
R/W---Right of Way
W/O---Walkout Basement
W.M.---Window Well

This plan represents the best information at the time of survey. Arc Surveys Ltd. and its employees take no responsibility for the location of any underground conduits, pipes or other facilities whether shown on or omitted from this plan. All underground installations should be located by the respective authorities prior to construction.
Call Alberta One-Call: 1-800-242-3447

---- denotes Coniferous
denotes Deciduous

CITY OF CALGARY - PLANNING, DEVELOPMENT AND ASSESSMENT
THESE ARE THE PLANS REFERRED TO IN DEVELOPMENT PERMIT NO.
DP No: 2021-1721
Date Issued: MAY 11 2021
PLANS ARE APPROVED SUBJECT TO THE CONDITIONS OF DEVELOPMENT PERMIT NO. AS NOTED ON SAID PERMIT
DEVELOPMENT AUTHORITY: Allan Singh

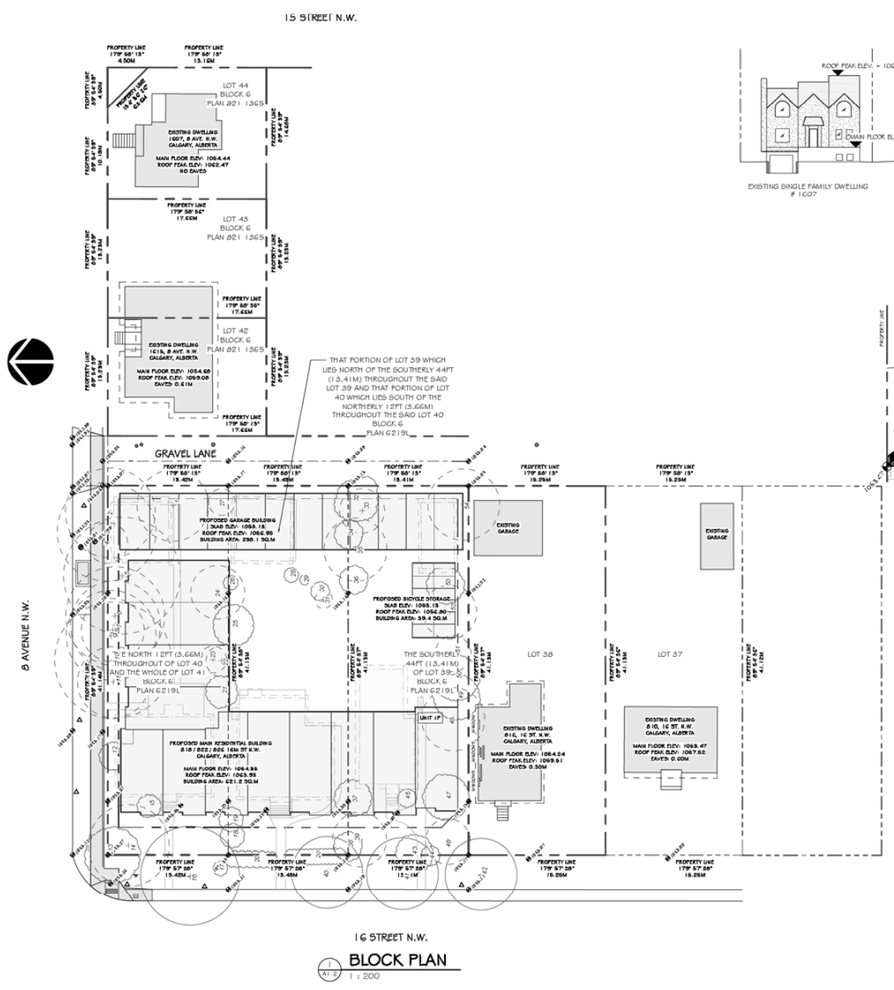
Tree Schedule

Tree No.	Tree Type	Trunk Dia.	Canopy Dia	Height
1	Deciduous	0.15	8.00	7.00
2	Deciduous	0.30	10.00	7.00
3	Deciduous	0.60	11.00	9.00
4	Deciduous	0.20	4.50	3.00
5	Deciduous	0.60	13.00	9.00
6	Deciduous	0.40	11.00	9.00
7	Deciduous	0.30	10.00	9.00
8	Deciduous	0.25	7.00	8.00
9	Deciduous	0.30	10.00	9.00
10	Deciduous	0.60	13.00	9.00
11	Deciduous	0.40	8.00	9.00
12	Bush	----	3.00	3.00
13	Bush	----	6.00	3.00
14	Deciduous	0.40	8.00	6.00
15	Bush	----	2.50	3.00
16	Deciduous	0.60	11.00	11.00
17	Bush	----	1.50	1.80
18	Bush	----	2.50	3.00
19	Bush	----	2.50	4.00
20	Hedge	----	1.50	1.50
21	Bush	----	3.50	3.00
22	Deciduous	0.15	3.50	4.50
23	Deciduous	0.10	3.00	6.00
24	Deciduous	0.20	6.00	6.00
25	Bush	----	4.50	4.00
26	Bush	----	1.50	2.00
27	Deciduous	0.20	3.00	4.50
28	Bush	----	1.50	2.50
29	Bush	----	1.00	2.50
30	Bush	----	2.00	1.50
31	Deciduous	0.20	2.00	3.00
32	Bush	----	4.00	4.00
33	Deciduous	0.20	5.00	3.50
34	Bush	----	3.00	2.50
35	Deciduous	0.30	7.00	5.00
36	Bush	----	3.00	2.50
37	Bush	----	4.00	4.00
38	Bush	----	3.00	2.50
39	Coniferous	0.60	6.00	11.00
40	Deciduous	0.70	8.00	9.00
41	Deciduous	0.70	8.00	9.00
42	Deciduous	0.70	8.00	9.00
43	Bush	----	4.00	4.00
44	Bush	----	2.00	1.50
45	Bush	----	2.00	1.50
46	Coniferous	0.50	5.00	10.00
47	Bush	----	5.00	4.00
48	Deciduous	0.60	7.00	5.00
49	Bush	----	5.00	4.00
50	Bush	----	5.00	4.00
51	Coniferous	0.60	4.00	11.00
52	Coniferous	0.60	6.00	11.00
53	Bush	----	4.00	4.00
54	Deciduous	0.70	8.00	6.00

Arc Surveys Ltd.
2019 38th Avenue NE
Calgary, AB T2E 2N3
Ph.: 403-277-1272
Fax: 403-277-1273
www.arcsurveys.ca

Surveyed: JZ | Drawn: JW/JR | Checked by: RB | Scale: 1:200 | File No.: 193403

RELEASED PLANS



RECORD OF ISSUE		
01	2021.03.16	DP APPLICATION
02	2021.04.26	DTR 1 RESPONSE
03	2021.05.05	DTR 1 RESPONSE
04	2021.05.11	BP APPLICATION
05	2021.05.21	DP PRIOR TO RELEASE

RECORD OF REVISIONS

NOTES:

ALL WORK SHALL CONFORM TO THE LATEST EDITION OF THE ABC, NBC, ELECTRICAL, AND PLUMBING CODES

ALL WORK SHALL BE PERFORMED IN A PROFESSIONAL AND WORKMANLIKE MANNER

ALL MATERIALS SHALL BE HANDLED AND STORED TO PREVENT DAMAGE

VERIFY ALL DIMENSIONS, ELEVATIONS, AND DATUM. REPORT ANY ERRORS AND/OR DISCREPANCIES TO THE ARCHITECT PRIOR TO CONSTRUCTION

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EACH SUCCESSIVE SUBTRADE IS REQUIRED TO CONFIRM THE LOCATION OF REFERENCE POINTS FOR LOCATING NEW WORK INTO THE WALLS FROM ALREADY IN PLACE

ALL DESIGNS AND DRAWINGS REMAIN THE PROPERTY OF THE DESIGNER AND MAY NOT BE REPRODUCED WITHOUT PERMISSION OF THE DESIGNER

DO NOT SCALE DRAWINGS

THIS DRAWING SUPERCEDES PREVIOUS ISSUES

CITY OF CALGARY - PLANNING, DEVELOPMENT AND ASSESSMENT
THESE ARE THE PLANS REFERRED TO IN OUR APPROVAL LETTER DATED

DP No: 2021-1721
Date Issued: MAY 11 2021

WORK ARE APPROVED SUBJECT TO THE ACKNOWLEDGEMENT OF MY KNOWN CONDITIONS AND ALL OTHERWISE NOTED IN THE DEVELOPMENT PERMIT.

DEVELOPMENT AUTHORITY: Adam Singh

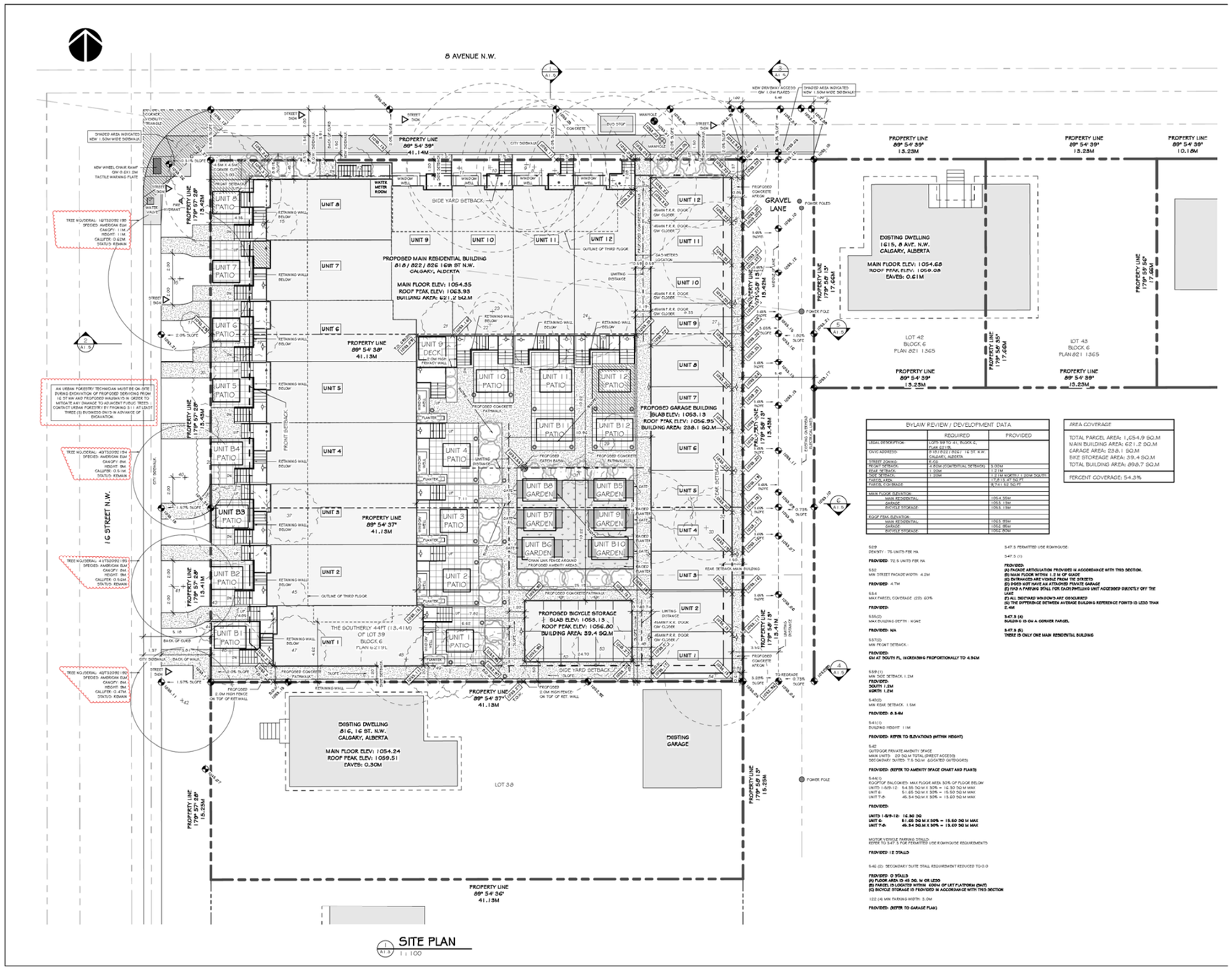
JACKSON McCORMICK
DESIGN GROUP
804-A 10TH AVENUE S.W.
CALGARY AB
T2R 0S9
tel: 403.520.9010
email: info@mdesigngroup.ca

PROJECT:
HILLHURST
MULTI-FAMILY
1619 8th AVENUE N.W.
CALGARY, ALBERTA
LOTS 39 TO 41, BLOCK 6, PLAN 6219L

DRAWING DESCRIPTION:
BLOCK PLAN &
STREETSCAPE

PLOT SCALE: AS NOTED	DRAWING NO.: A1.2
PROJECT NO.: 2021-06	
CHECKED BY: TJ	
DRAWN BY: AR	PLOT DATE: 2021.05.21

RELEASED PLANS



BYLAW REVIEW / DEVELOPMENT DATA		
	REQUIRED	PROVIDED
LEGAL DESCRIPTION:	LOTS 39 TO 41, BLOCK 6, PLAN 821 1365	
CIVIC ADDRESS:	818/822/826/1 16 ST. N.W. CALGARY, ALBERTA	
STREET ZONING:	R-CG	
FRONT SETBACK:	4.80M (CONTEXTUAL SETBACK)	5.90M
REAR SETBACK:	7.50M	7.51M
SIDE SETBACK:	1.20M	1.21M NORTH / 1.20M SOUTH
PARCEL AREA:		1,726.15 SQ.M
PARCEL COVERAGE:		18,741.52 SQ.FT
MAIN FLOOR ELEVATION:		
MAIN RESIDENTIAL:		1054.35M
GARAGE		1055.13M
BICYCLE STORAGE		1055.13M
ROOF PEAK ELEVATION:		
MAIN RESIDENTIAL		1063.93M
GARAGE		1056.93M
BICYCLE STORAGE		1056.80M

AREA COVERAGE

TOTAL PARCEL AREA: 1,654.9 SQ.M
MAIN BUILDING AREA: 621.2 SQ.M
GARAGE AREA: 258.1 SQ.M
BIKE STORAGE AREA: 39.4 SQ.M
TOTAL BUILDING AREA: 898.7 SQ.M

PERCENT COVERAGE: 54.3%

509
DENSITY: 75 UNITS PER HA

PROVIDED: 72.5 UNITS PER HA

552
MIN STREET FACADE WIDTH: 4.2M

PROVIDED: 4.7M

554
MAX PARCEL COVERAGE (2D): 60%

PROVIDED:

555(2)
MAX BUILDING DEPTH : NONE

PROVIDED: N/A

557(2)
MIN FRONT SETBACK :

PROVIDED:
6M AT SOUTH PL, INCREASING PROPORTIONALLY TO 4.5M

559 (1)
MIN SIDE SETBACK: 1.2M

PROVIDED:
SOUTH: 1.2M
NORTH: 1.2M

540(2)
MIN REAR SETBACK: 1.5M

PROVIDED: 8.34M

541(1)
BUILDING HEIGHT: 11M

PROVIDED: REFER TO ELEVATIONS (WITHIN HEIGHT)

542
OUTDOOR PRIVATE AMENITY SPACE
MAIN UNITS: 20 SQ.M TOTAL (DIRECT ACCESS)
SECONDARY SUITES: 7.5 SQ.M (LOCATED OUTDOORS)

PROVIDED: (REFER TO AMENITY SPACE CHART AND PLANS)

544(1)
ROOFTOP BALCONIES: MAX FLOOR AREA 30% OF FLOOR BELOW
UNITS 1-6/9-12: 54.35 SQ.M X 30% = 16.30 SQ.M MAX
UNIT 6: 51.45 SQ.M X 30% = 15.50 SQ.M MAX
UNIT 7-8: 45.34 SQ.M X 30% = 13.60 SQ.M MAX

PROVIDED:

UNITS 1-6/9-12: 14.90 SQ.
UNIT 6: 51.45 SQ.M X 30% = 15.50 SQ.M MAX
UNIT 7-8: 45.34 SQ.M X 30% = 13.60 SQ.M MAX

MOTOR VEHICLE PARKING STALLS
REFER TO 547.5 FOR PERMITTED USE ROWHOUSE REQUIREMENTS

PROVIDED: 12 STALLS

542 (2) SECONDARY SUITE STALL REQUIREMENT REDUCED TO 0.0

PROVIDED: 0 STALLS
(A) FLOOR AREA: 0 <65.0Q. M OR LESS
(B) PARCEL IS LOCATED WITHIN 600M OF LRT PLATFORM (DAT)
(C) BICYCLE STORAGE IS PROVIDED IN ACCORDANCE WITH THIS SECTION

122 (4) MIN PARKING WIDTH: 5.0M

PROVIDED: (REFER TO GARAGE PLAN)

547.5 PERMITTED USE ROWHOUSE:

547.5 (1)

PROVIDED:
(A) FACADE ARTICULATION PROVIDED IN ACCORDANCE WITH THIS SECTION.
(B) MAIN FLOOR WITHIN 1.2 M OF GRADE
(C) ENTRANCES ARE VISIBLE FROM THE STREETS
(D) DOES NOT HAVE AN ATTACHED PRIVATE GARAGE
(E) TWO A PARKING STALL FOR EACH DWELLING UNIT ACCESSED DIRECTLY OFF THE LANE
F) ALL SKIRTSAID WINDOWS ARE CONSIDERED
(G) THE DIFFERENCE BETWEEN AVERAGE BUILDING REFERENCE POINTS IS LESS THAN 0.4M

547.5 (4)
BUILDING IS ON A CORNER PARCEL

547.5 (5)
THERE IS ONLY ONE MAIN RESIDENTIAL BUILDING

RECORD OF ISSUE

01	2021.03.16	DP APPLICATION
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CITY OF CALGARY - PLANNING, DEVELOPMENT AND ASSESSMENT
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DP No: 2021-1721
Date Issued: MAY 11 2021

WHICH WAS APPROVED SUBJECT TO THE ATTACHED CONDITIONS AND/OR REASONS NOTED OR AS OTHERWISE NOTED IN THE DEVELOPMENT PERMIT.

Development Authority: Ali an Singh

JACKSON McCORMICK
DESIGN GROUP

304A 16TH AVENUE S.W.
CALGARY AB.
T2R 0S9

tel 403 520 6016
email info@mccormick.ca

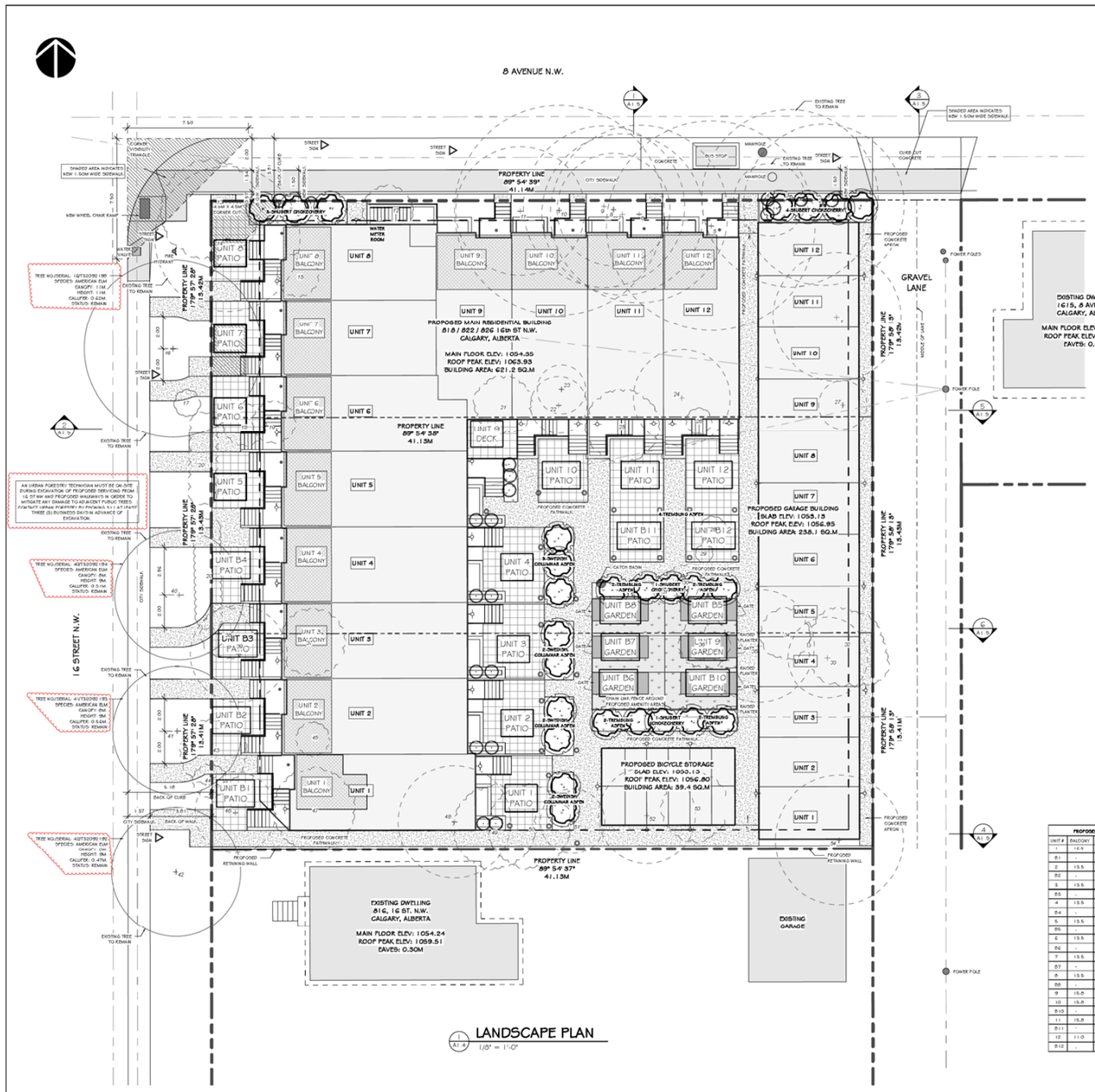
PROJECT:
HILLHURST
MULTI-FAMILY

1619 8th AVENUE N.W.
CALGARY, ALBERTA
LOTS 39 TO 41, BLOCK 6, PLAN 6219L

DRAWING DESCRIPTION:
SITE PLAN

PLOT SCALE: AS NOTED	DRAWING NO.: A1.3
PROJECT NO.: 2021-06	
CHECKED BY: TJ	
DRAWN BY: AR	PLOT DATE: 2021.05.21

RELEASED PLANS



LANDSCAPING ANALYSIS:

SITE AREA: 17,818.47 SQ.FT. / 1,654.98 SQ.M.

BUILDING AREA: 9,741.52 SQ.FT.

A MINIMUM OF 2.0 TREES MUST BE PROVIDED FOR EACH UNIT OF A CONTEXTUAL SEMI-DETACHED DWELLING, DUPLEX DWELLING, ROWHOUSE BUILDING OR SEMI-DETACHED DWELLING.

TREES PROVIDED: 26

DECIDUOUS TREES	QUANTITY	SIZE
SKYLIGHT CHOKECHERRY (LOW WATER)	9	65mm CALIPER
SWEDISH COLUMNAR ASPEN	9	65mm CALIPER
TREMBLING ASPEN	8	65mm CALIPER

IRRIGATION:
SOFT SURFACE LANDSCAPED AREAS WITH TREES AND SHRUBS TO BE IRRIGATED WITH UNDERGROUND "LOW WATER IRRIGATION SYSTEM". TREES AND SHRUBS WITH SIMILAR WATER REQUIREMENTS TO BE GROUPED TOGETHER.

HOSE BIBS TO BE PROVIDED AT THE FRONT OF EACH UNIT FOR LANDSCAPE MAINTENANCE.

LEGEND:

CEMENT BROOM FINISH · SALT & PEPPER CONCRETE · ASPHALT · GRASS AREA (LOW MAINTENANCE DROUGHT RESISTANT GRASS) · CONCRETE PATIO (LIGHT SALT & PEPPER) · ALPINE MULCH · DECIDUOUS TREE · CONIFEROUS TREE · DECIDUOUS SHRUB · CONIFEROUS SHRUB

TREE SCHEDULE

TREE NO.	TREE TYPE	TRUNK DIA.	CANOPY DIA	HEIGHT	COMMENT
1	DECIDUOUS	0.15	5.00	7.00	TO BE REMOVED
2	DECIDUOUS	0.30	10.00	7.00	TO BE REMOVED
3	DECIDUOUS	0.60	11.00	9.00	TO BE REMOVED
4	DECIDUOUS	0.20	4.50	5.00	TO BE REMOVED
5	DECIDUOUS	0.60	13.00	9.00	TO BE REMOVED
6	DECIDUOUS	0.40	11.00	9.00	TO BE REMOVED
7	DECIDUOUS	0.30	10.00	8.00	TO BE REMOVED
8	DECIDUOUS	0.25	7.00	8.00	TO BE REMOVED
9	DECIDUOUS	0.50	10.00	9.00	TO BE REMOVED
10	DECIDUOUS	0.60	13.00	9.00	TO BE REMOVED
11	DECIDUOUS	0.40	8.00	9.00	TO BE REMOVED
12	BUSH	—	3.00	3.00	TO BE REMOVED
13	BUSH	—	6.00	3.00	TO BE REMOVED
14	DECIDUOUS	0.40	9.00	6.00	TO BE REMOVED
15	BUSH	—	2.50	5.00	TO BE REMOVED
16	DECIDUOUS	0.60	11.00	11.00	TO REMAIN
17	BUSH	—	1.50	1.80	TO REMAIN
18	BUSH	—	2.50	3.00	TO BE REMOVED
19	BUSH	—	2.50	4.00	TO BE REMOVED
20	HEDGE	—	1.50	1.50	TO BE REMOVED
21	BUSH	—	3.50	5.00	TO BE REMOVED
22	DECIDUOUS	0.15	3.50	4.50	TO BE REMOVED
23	DECIDUOUS	0.10	3.50	5.00	TO BE REMOVED
24	DECIDUOUS	0.20	6.00	6.00	TO BE REMOVED
25	BUSH	—	4.50	4.00	TO BE REMOVED
26	BUSH	—	1.50	2.00	TO BE REMOVED
27	DECIDUOUS	0.20	3.00	4.50	TO BE REMOVED
28	BUSH	—	1.50	2.50	TO BE REMOVED
29	BUSH	—	1.00	2.50	TO BE REMOVED
30	BUSH	—	2.00	1.50	TO BE REMOVED
31	DECIDUOUS	0.20	2.00	5.00	TO BE REMOVED
32	BUSH	—	4.00	4.00	TO BE REMOVED
33	DECIDUOUS	0.20	5.00	5.50	TO BE REMOVED
34	BUSH	—	4.00	4.00	TO BE REMOVED
35	DECIDUOUS	0.30	7.00	5.00	TO BE REMOVED
36	BUSH	—	5.00	2.50	TO BE REMOVED
37	BUSH	—	4.00	4.00	TO BE REMOVED
38	BUSH	—	5.00	2.50	TO BE REMOVED
39	CONIFEROUS	0.60	6.00	11.00	TO BE REMOVED
40	DECIDUOUS	0.70	8.00	9.00	TO REMAIN
41	DECIDUOUS	0.70	8.00	9.00	TO REMAIN
42	DECIDUOUS	0.70	8.00	9.00	TO REMAIN
43	BUSH	—	4.00	4.00	TO BE REMOVED
44	BUSH	—	2.00	1.50	TO BE REMOVED
45	BUSH	—	2.00	1.50	TO BE REMOVED
46	CONIFEROUS	0.50	5.00	12.00	TO BE REMOVED
47	BUSH	—	5.00	4.00	TO BE REMOVED
48	DECIDUOUS	0.60	7.00	5.00	TO BE REMOVED
49	BUSH	—	5.00	4.00	TO BE REMOVED
50	BUSH	—	5.00	4.00	TO BE REMOVED
51	CONIFEROUS	0.60	4.00	11.00	TO BE REMOVED
52	CONIFEROUS	0.60	6.00	11.00	TO BE REMOVED
53	BUSH	—	4.00	4.00	TO BE REMOVED
54	DECIDUOUS	0.70	8.00	6.00	TO BE REMOVED

PROPOSED AMENITY SPACES (SQ.M)

UNIT #	BALCONY	PATIO	GARDEN	TOTAL	REQUIRED
1	16.9	18.1	-	69.0	60.0
B1	-	11.0	-	11.0	7.5
2	13.5	15.3	-	28.8	20.0
B2	-	10.1	-	10.1	7.5
3	13.5	15.3	-	28.8	20.0
B3	-	9.8	-	9.8	7.5
4	13.5	15.3	-	28.8	20.0
B4	-	10.1	-	10.1	7.5
5	13.5	10.1	-	23.6	20.0
B5	-	-	10.5	10.5	7.5
6	13.5	10.1	-	23.6	20.0
B6	-	-	10.5	10.5	7.5
7	13.5	10.1	-	23.6	20.0
B7	-	-	10.5	10.5	7.5
8	13.5	13.4	-	26.9	20.0
B8	-	-	10.5	10.5	7.5
9	15.9	7.8	10.5	34.1	20.0
10	15.8	11.3	-	27.1	20.0
B10	-	-	10.5	10.5	7.5
11	15.8	14.6	-	30.4	20.0
B11	-	9.5	-	9.5	7.5
12	11.0	14.6	-	25.6	20.0
B12	-	9.5	-	9.5	7.5

RECORD OF ISSUE

01	2021.03.16	DP APPLICATION
02	2021.04.26	DTR 1 RESPONSE
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DP No 2021-1721
Date Issued MAY 11 2021
WHICH ARE APPROVED SUBJECT TO THE ATTACHED CONDITIONS AND NOTES OR ATTACHED NOTES IN THIS DEVELOPMENT PERMIT
Authorized Authority Ad'am Singh

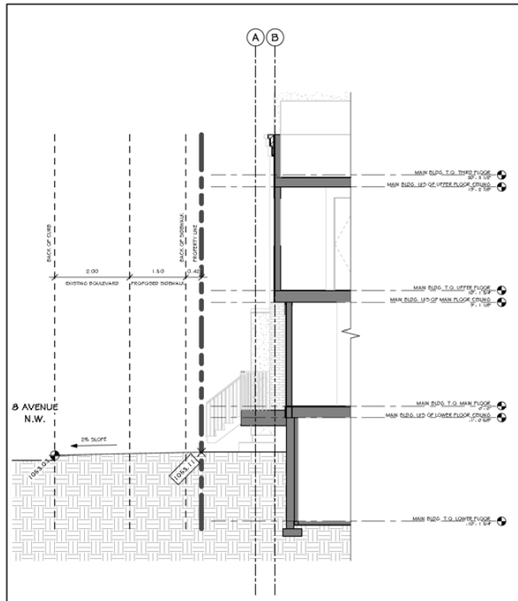
JACKSON McCORMICK
DESIGN GROUP
1004-A 19TH AVENUE S.W.
CALGARY AB
T2R 0R9
tel: 403 920 0018
email: info@mkdesigngroup.ca

PROJECT:
HILLHURST MULTI-FAMILY
1619 8th AVENUE N.W.
CALGARY, ALBERTA
LOTS 39 TO 41, BLOCK 6, PLAN 621N,

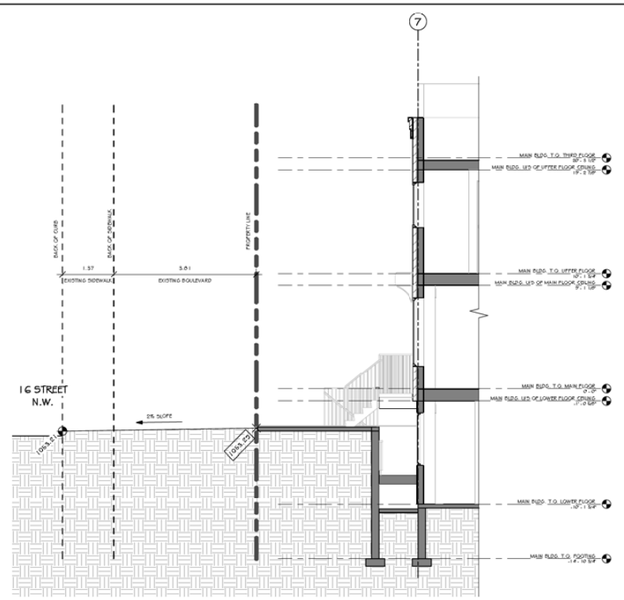
DRAWING DESCRIPTION:
LANDSCAPE PLAN

PLOT SCALE: AS NOTED	DRAWING NO.: A1.4
PROJECT NO.: 2021-06	
CHECKED BY: TJ	
DRAWN BY: AR	PLOT DATE: 2021.05.21

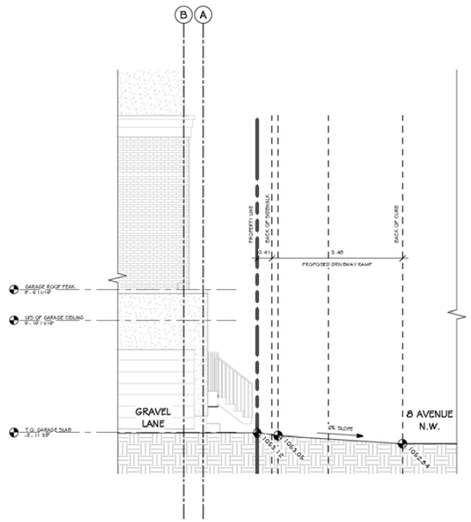
RELEASED PLANS



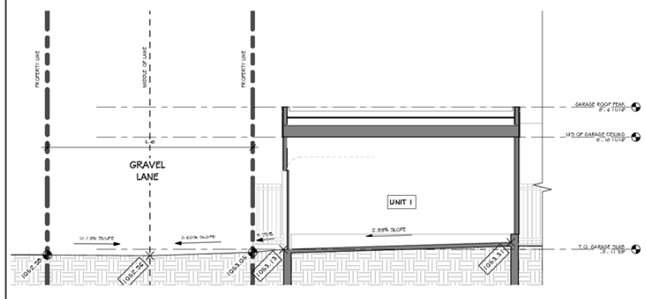
1 A1.5 BOULEVARD SECTION ALONG 8 AVE. N.W.
1/4" = 1'-0"



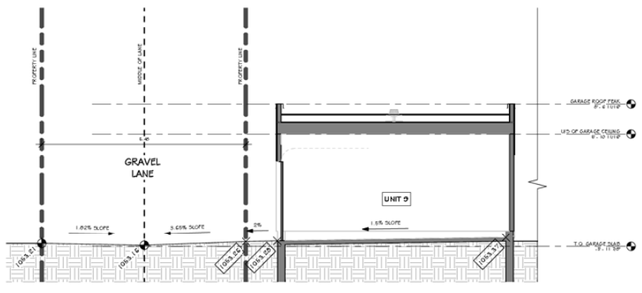
2 A1.5 BOULEVARD SECTION ALONG 16 STREET N.W.
1/4" = 1'-0"



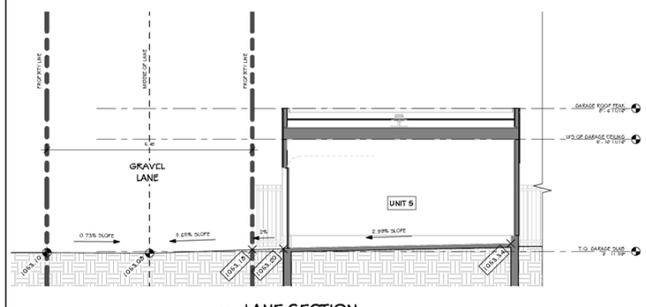
3 A1.5 DRIVEWAY SECTION
1/4" = 1'-0"



4 A1.5 LANE SECTION
1/4" = 1'-0"



5 A1.5 LANE SECTION
1/4" = 1'-0"



C A1.5 LANE SECTION
1/4" = 1'-0"

RECORD OF ISSUE

01	2021.03.16	DP APPLICATION
02	2021.04.26	DTR 1 RESPONSE
03	2021.05.05	DTR 1 RESPONSE
04	2021.05.11	BP APPLICATION
05	2021.05.21	DP PRIOR TO RELEASE

RECORD OF REVISIONS

NOTES:

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CITY OF CALGARY - PLANNING, DEVELOPMENT AND ASSESSMENT
THESE ARE THE PLANS REFERRED TO IN DEVELOPMENT PERMIT NO.

DP No	Date Issued
2021-1721	MAY 11 2021

WHICH ARE APPROVED SUBJECT TO THE ALTERATIONS IF ANY SHOWN IN RED OR AS OTHERWISE NOTED IN THE DEVELOPMENT PERMIT

DEVELOPMENT AUTHORITY: Alisa Singh

JACKSON McCORMICK
DESIGN GROUP
804A 16TH AVENUE S.W.
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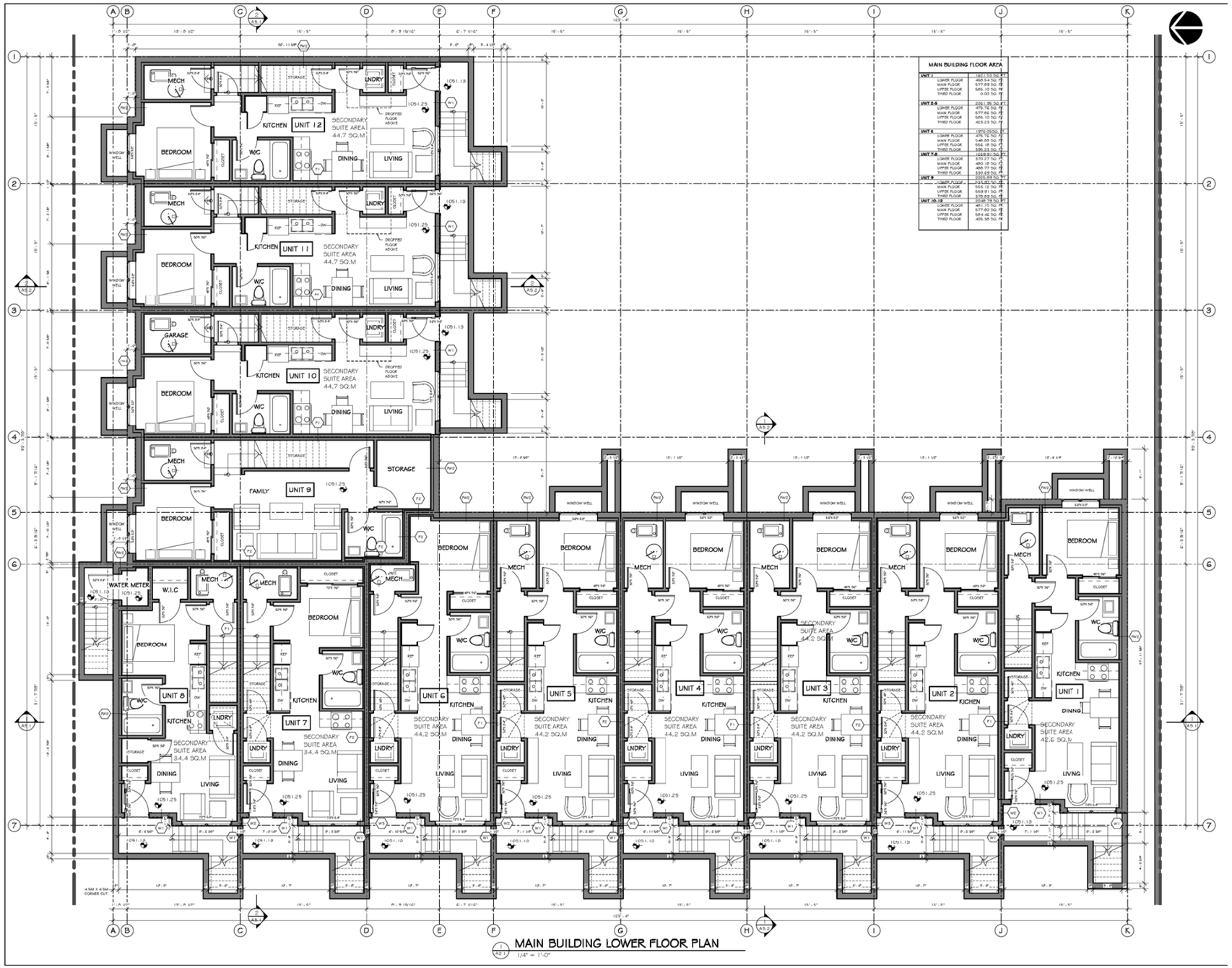
PROJECT:
HILLHURST
MULTI-FAMILY

1619 8th AVENUE N.W.
CALGARY, ALBERTA
LOTS 39 TO 41, BLOCK 6, PLAN 6219L

DRAWING DESCRIPTION:
SITE SECTIONS

PLOT SCALE: AS NOTED	DRAWING NO.: A1.5
PROJECT NO.: 2021-06	
CHECKED BY: TJ	
DRAWN BY: AR	PLOT DATE: 2021.05.21

RELEASED PLANS



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CITY OF CALGARY - PLANNING, DEVELOPMENT AND ASSESSMENT
THESE ARE THE PLANS REFERRED TO IN A BUILDING PERMIT DATED
DP No 2021-1721
Date Issued MAY 11 2021
WHICH ARE APPROVED SUBJECT TO THE ALTERATIONS IF ANY SHOWN IN RED OR AS OTHERWISE NOTED IN THE DEVELOPMENT PERMIT
DEVELOPMENT AUTHORITY: Adam Singh

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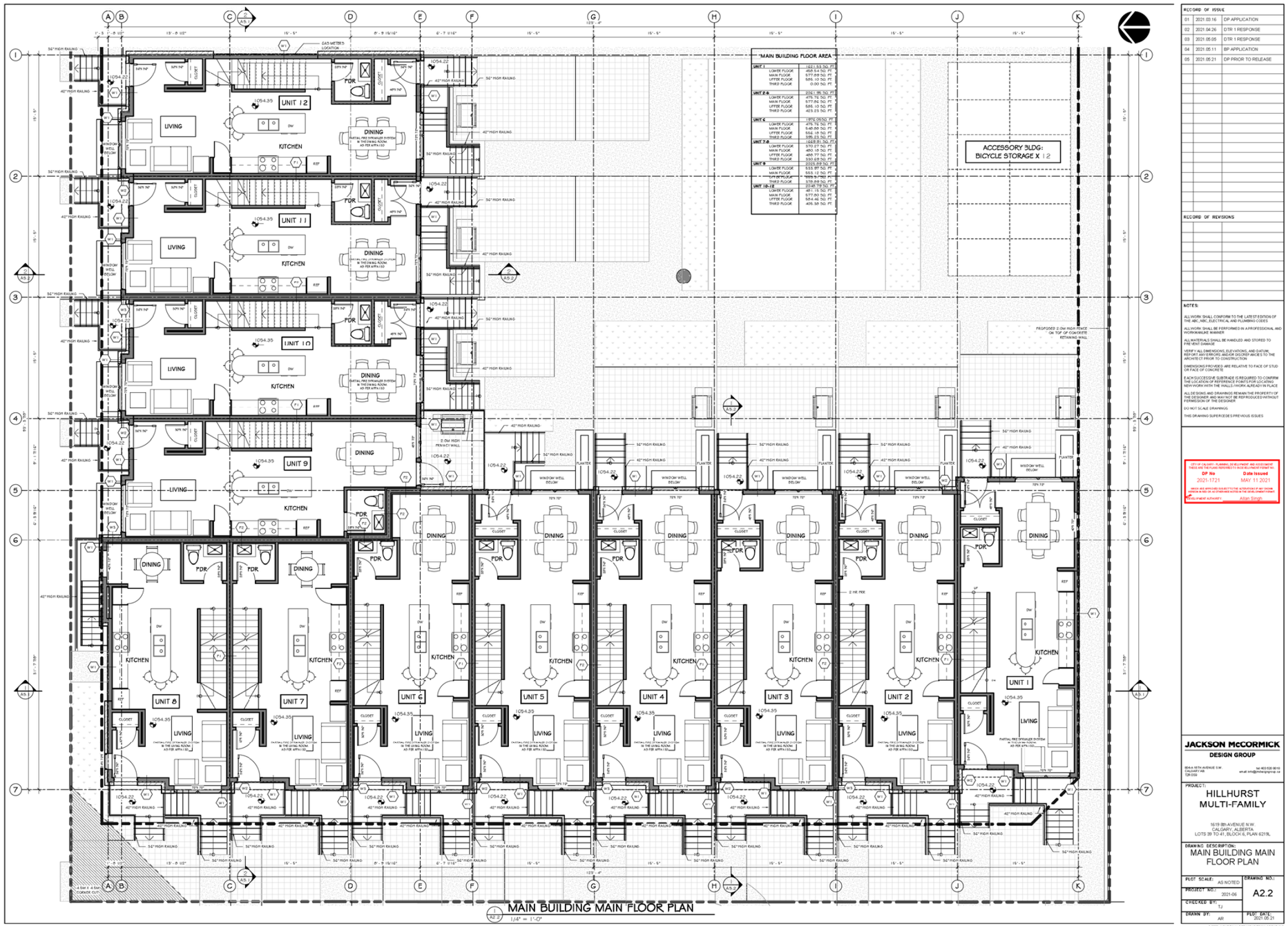
PROJECT:
HILLHURST
MULTI-FAMILY
1619 8th AVENUE N.W.
CALGARY, ALBERTA
LOTS 39 TO 41, BLOCK 6, PLAN 6219L

DRAWING DESCRIPTION:
MAIN BUILDING LOWER FLOOR PLAN

PLOT SCALE: AS NOTED	DRAWING NO.: A2.1
PROJECT NO.: 2021-06	
CHECKED BY: TJ	
DRAWN BY: AR	PLOT DATE: 2021.05.21

RELEASED PLANS



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CITY OF CALGARY - PLANNING, DEVELOPMENT AND ASSESSMENT
THESE ARE THE PLANS REFERRED TO IN DEVELOPMENT PERMIT NO.

DP No	Date Issued
2021-1721	MAY 11 2021

WORK ARE APPROVED SUBJECT TO THE CONDITIONS OF ANY ENDORSEMENTS AND OR AS OTHERWISE NOTED IN THE DEVELOPMENT PERMIT

DEVELOPMENT AUTHORITY: Allan Singh

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PROJECT:
HILLHURST
MULTI-FAMILY

1619 8th AVENUE N.W.
CALGARY, ALBERTA
LOTS 39 TO 41, BLOCK 6, PLAN 6219L

DRAWING DESCRIPTION:
MAIN BUILDING MAIN FLOOR PLAN

PLOT SCALE: AS NOTED	DRAWING NO.: A2.2
PROJECT NO.: 2021-06	
CHECKED BY: TJ	
DRAWN BY: AR	PLOT DATE: 2021.05.21

RELEASED PLANS

MAIN BUILDING UPPER FLOOR PLAN
1/4" = 1'-0"

MAIN BUILDING FLOOR AREA

UNIT 1	1021.53 SQ. FT.	
	LOWER FLOOR	458.54 SQ. FT.
	MAIN FLOOR	577.89 SQ. FT.
	UPPER FLOOR	585.10 SQ. FT.
	THIRD FLOOR	0.00 SQ. FT.
UNIT 2-6	1051.85 SQ. FT.	
	LOWER FLOOR	475.76 SQ. FT.
	MAIN FLOOR	577.89 SQ. FT.
	UPPER FLOOR	585.10 SQ. FT.
	THIRD FLOOR	403.23 SQ. FT.
UNIT 7	1975.00 SQ. FT.	
	LOWER FLOOR	475.76 SQ. FT.
	MAIN FLOOR	545.88 SQ. FT.
	UPPER FLOOR	554.16 SQ. FT.
	THIRD FLOOR	399.23 SQ. FT.
UNIT 7-8	1623.91 SQ. FT.	
	LOWER FLOOR	393.78 SQ. FT.
	MAIN FLOOR	399.36 SQ. FT.
	UPPER FLOOR	466.77 SQ. FT.
	THIRD FLOOR	330.69 SQ. FT.
UNIT 9	2005.69 SQ. FT.	
	LOWER FLOOR	533.97 SQ. FT.
	MAIN FLOOR	553.12 SQ. FT.
	UPPER FLOOR	592.91 SQ. FT.
	THIRD FLOOR	325.69 SQ. FT.
UNIT 10-12	2048.79 SQ. FT.	
	LOWER FLOOR	481.15 SQ. FT.
	MAIN FLOOR	577.80 SQ. FT.
	UPPER FLOOR	584.46 SQ. FT.
	THIRD FLOOR	405.38 SQ. FT.

RECORD OF ISSUE

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CITY OF CALGARY - PLANNING, DEVELOPMENT AND ASSESSMENT
THESE ARE THE PLANS REFERRED TO IN DEVELOPMENT PERMIT NO.
DP No: 2021-1721
Date Issued: MAY 11 2021
VARIOUS ARE APPROVED SUBJECT TO THE ATTACHED LIST OF ANY SIGNIFICANT VARIANCES FROM THE APPROVED PLANS IN THE DEVELOPMENT PERMIT
DEVELOPMENT AUTHORITY: Allan Singh

JACKSON McCORMICK DESIGN GROUP
304A 16TH AVENUE S.W.
CALGARY AB
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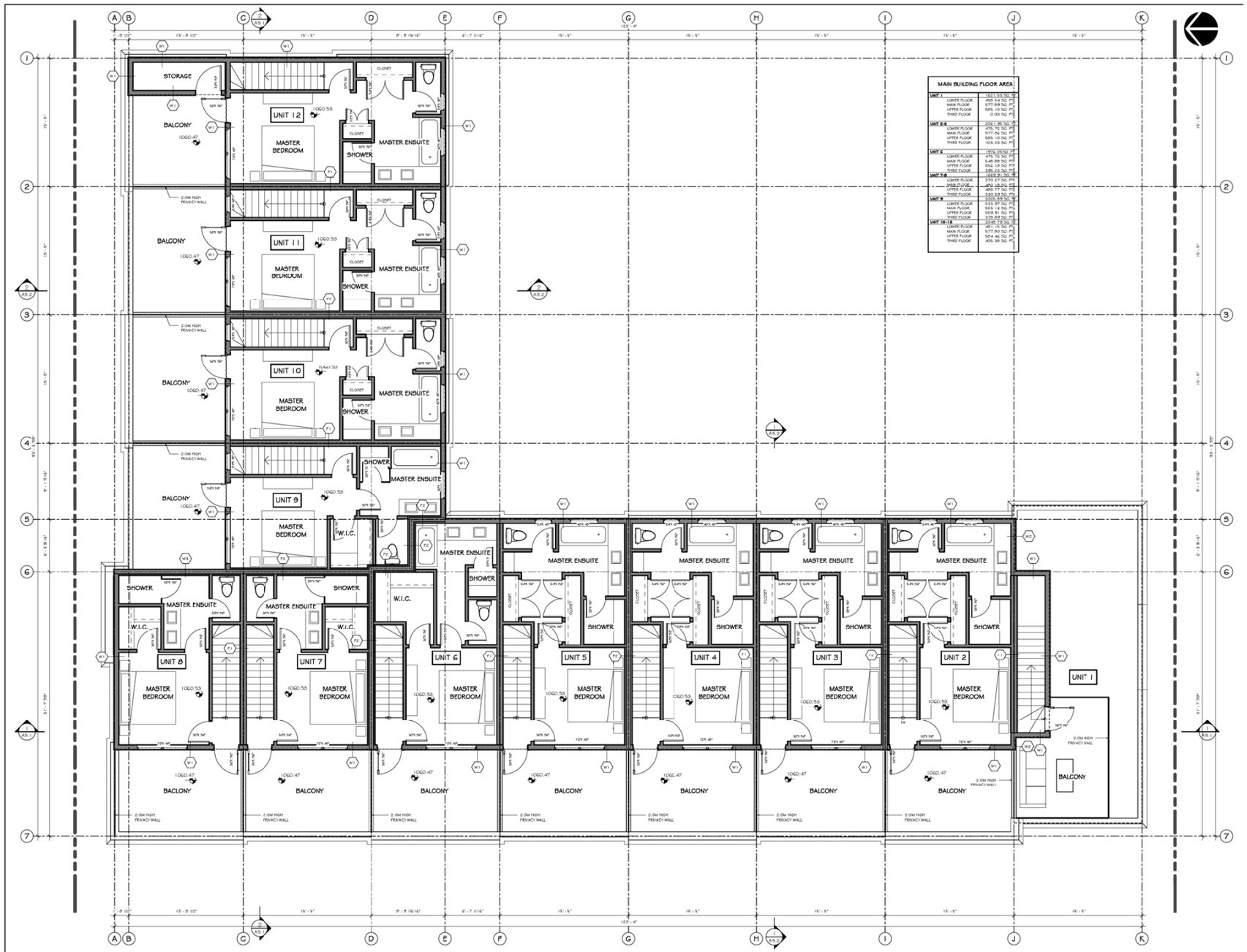
tel 403 530 3610
email: info@mkdesigngroup.ca

PROJECT:
HILLHURST MULTI-FAMILY
1619 8th AVENUE N.W.
CALGARY, ALBERTA
LOTS 39 TO 41, BLOCK 6, PLAN 6219L

DRAWING DESCRIPTION:
MAIN BUILDING UPPER FLOOR PLAN

PLOT SCALE: AS NOTED	DRAWING NO.: A2.3
PROJECT NO.: 2021-06	
CHECKED BY: TJ	
DRAWN BY: AR	PLOT DATE: 2021.05.21

RELEASED PLANS



MAIN BUILDING FLOOR AREA

UNIT 1	1601.53 SQ. FT.
LOWER FLOOR	458.54 SQ. FT.
MAIN FLOOR	577.88 SQ. FT.
UPPER FLOOR	565.10 SQ. FT.
THIRD FLOOR	0.00 SQ. FT.
UNIT 2-6	2061.95 SQ. FT.
LOWER FLOOR	476.72 SQ. FT.
MAIN FLOOR	577.62 SQ. FT.
UPPER FLOOR	565.10 SQ. FT.
THIRD FLOOR	442.51 SQ. FT.
UNIT 7	1974.09 SQ. FT.
LOWER FLOOR	476.72 SQ. FT.
MAIN FLOOR	546.66 SQ. FT.
UPPER FLOOR	554.18 SQ. FT.
THIRD FLOOR	396.53 SQ. FT.
UNIT 8-9	1669.91 SQ. FT.
LOWER FLOOR	370.27 SQ. FT.
MAIN FLOOR	492.18 SQ. FT.
UPPER FLOOR	455.77 SQ. FT.
THIRD FLOOR	351.69 SQ. FT.
UNIT 10	2061.95 SQ. FT.
LOWER FLOOR	533.97 SQ. FT.
MAIN FLOOR	593.12 SQ. FT.
UPPER FLOOR	559.81 SQ. FT.
THIRD FLOOR	375.03 SQ. FT.
UNIT 10-12	2048.78 SQ. FT.
LOWER FLOOR	481.15 SQ. FT.
MAIN FLOOR	577.80 SQ. FT.
UPPER FLOOR	564.46 SQ. FT.
THIRD FLOOR	425.36 SQ. FT.

MAIN BUILDING THIRD FLOOR PLAN
1/4" = 1'-0"

RECORD OF ISSUE

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THESE ARE THE PLANS REFERRED TO IN DEVELOPMENT PERMIT NO.
DP No 2021-1721
Date Issued MAY 11 2021
UNDER AND APPROVED SUBJECT TO THE AUTHORITIES OF ANY ZONING, DEVELOPMENT AGREEMENT AND OTHER NOTES ON THE DEVELOPMENT PERMIT
DEVELOPMENT AUTHORITY: Allan Singh

JACKSON McCORMICK
DESIGN GROUP
604A 16TH AVENUE S.W.
CALGARY AB
T2R 0S9
tel 403 630 9616
email info@jmdesigngroup.ca

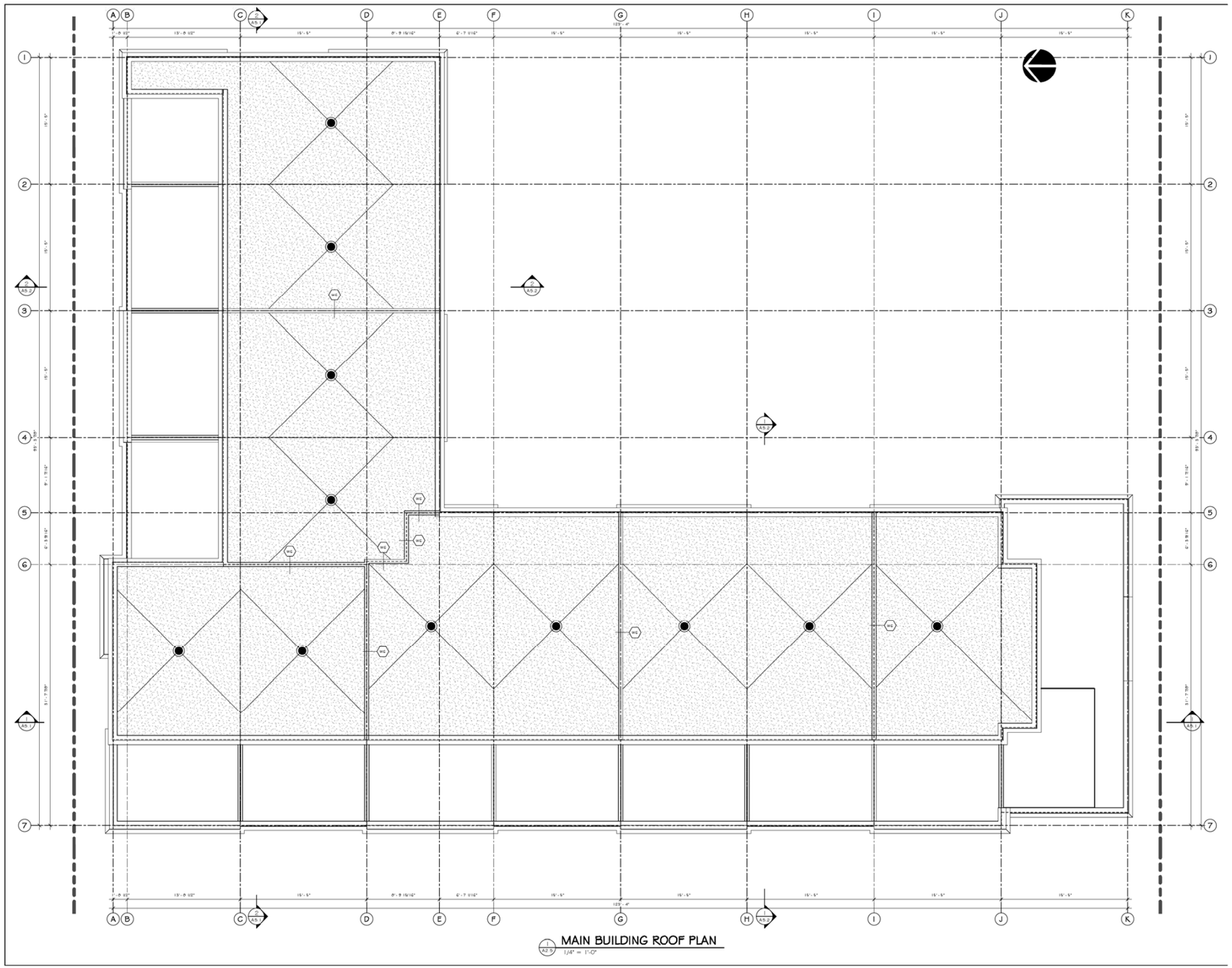
PROJECT:
HILLHURST
MULTI-FAMILY

1619 8th AVENUE N.W.
CALGARY, ALBERTA
LOTS 39 TO 41, BLOCK 6, PLAN 6219L

DRAWING DESCRIPTION:
MAIN BUILDING THIRD FLOOR PLAN

PLOT SCALE: AS NOTED	DRAWING NO.: A2.4
PROJECT NO.: 2021-06	
CHECKED BY: TJ	
DRAWN BY: AR	PLOT DATE: 2021.05.21

RELEASED PLANS



RECORD OF ISSUE

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DEVELOPMENT AUTHORITY: Allan Singh

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DESIGN GROUP

5944 16TH AVENUE S.W.
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email: info@jacksonmccormick.ca

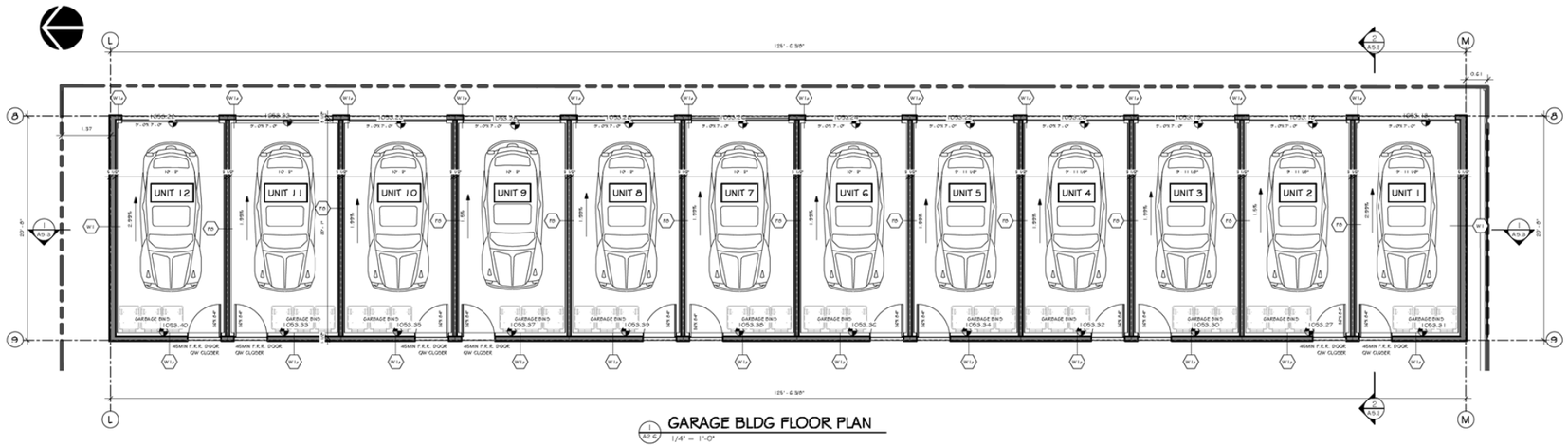
PROJECT:
HILLHURST
MULTI-FAMILY

1619 8th AVENUE N.W.
CALGARY, ALBERTA
LOTS 39 TO 41, BLOCK 6, PLAN 6219L

DRAWING DESCRIPTION:
MAIN BUILDING ROOF PLAN

PLOT SCALE: AS NOTED	DRAWING NO.: A2.5
PROJECT NO.: 2021-06	
CHECKED BY: TJ	
DRAWN BY: AR	PLOT DATE: 2021.05.21

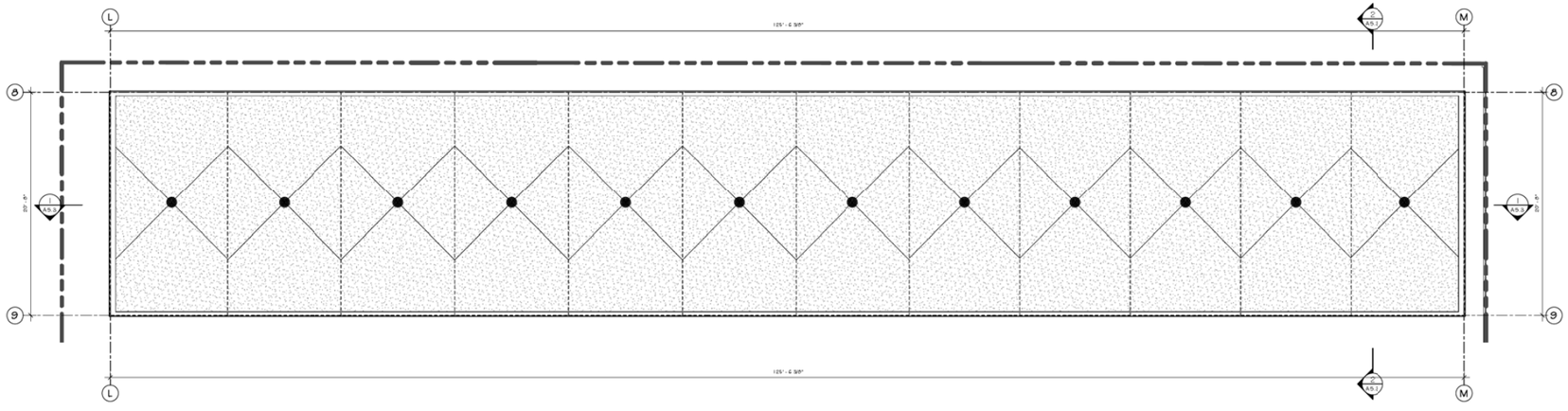
RELEASED PLANS



A2.6 GARAGE BLDG FLOOR PLAN
1/4" = 1'-0"

GARAGE BUILDING FLOOR AREA
(TO THE EXTERIOR FACE AND CENTERLINE OF PARTITION WALL)

UNIT 1	817.62 SQ. FT.
UNIT 2	811.16 SQ. FT.
UNIT 3	811.16 SQ. FT.
UNIT 4	811.16 SQ. FT.
UNIT 5	811.16 SQ. FT.
UNIT 6	817.84 SQ. FT.
UNIT 7	817.84 SQ. FT.
UNIT 8	817.84 SQ. FT.
UNIT 9	817.84 SQ. FT.
UNIT 10	817.84 SQ. FT.
UNIT 11	817.84 SQ. FT.
UNIT 12	824.40 SQ. FT.
TOTAL BUILDING AREA	9,984.90 SQ. FT.



A2.6 GARAGE ROOF PLAN
1/4" = 1'-0"

RECORD OF ISSUE

01	2021.03.16	DP APPLICATION
02	2021.04.26	DTR 1 RESPONSE
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DP No: 2021-1721
Date Issued: MAY 11 2021

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DEVELOPMENT AUTHORITY: Allan Singh

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email: info@jmkdesign@mail.ca

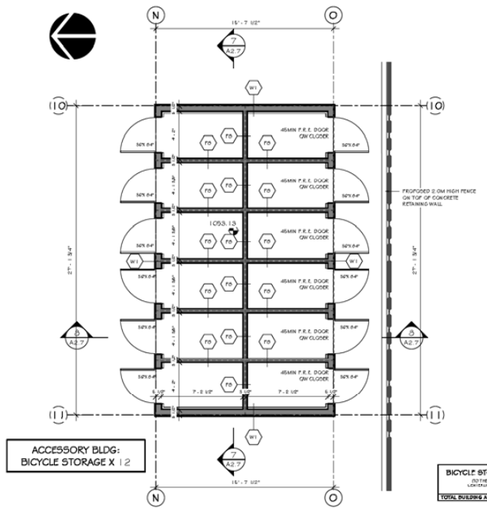
PROJECT:
HILLHURST
MULTI-FAMILY

1619 8th AVENUE N.W.
CALGARY, ALBERTA
LOTS 39 TO 41, BLOCK 6, PLAN 6219L

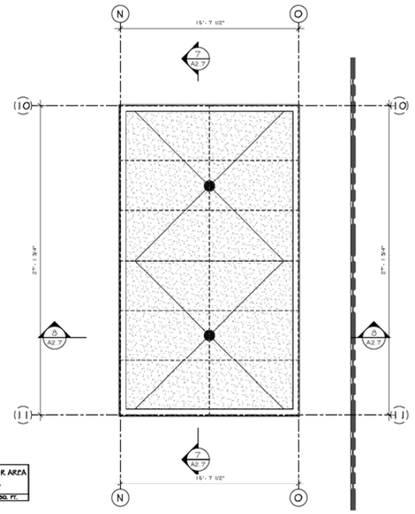
DRAWING DESCRIPTION:
GARAGE BUILDING
FLOOR PLAN

PLOT SCALE: AS NOTED	DRAWING NO.: A2.6
PROJECT NO.: 2021-06	
CHECKED BY: TJ	
DRAWN BY: AR	PLOT DATE: 2021.05.21

RELEASED PLANS



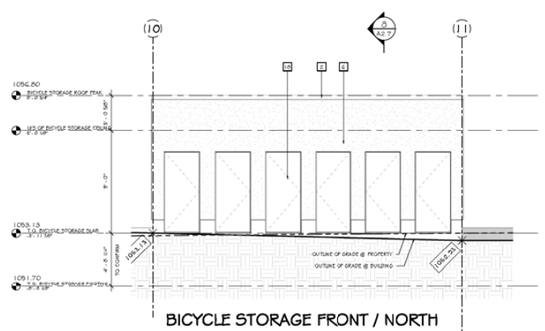
1 A2.7 BICYCLE STORAGE FLOOR PLAN
1/4" = 1'-0"



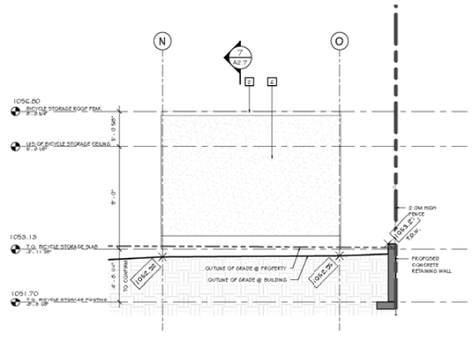
C A2.7 BICYCLE STORAGE ROOF PLAN
1/4" = 1'-0"

EXTERIOR FINISHES

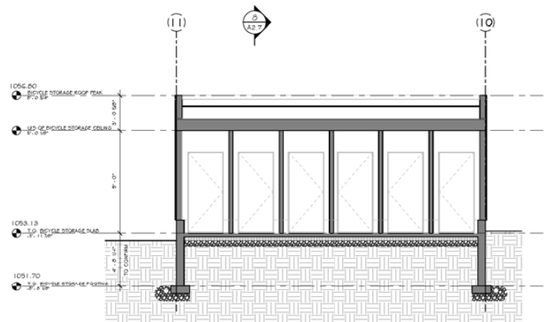
1	ROOF TORCH-ON MEMBRANE
2	PRE-FINISHED METAL CAP FLASHING COLOR:
3	PRE-FINISHED METAL GUTTER COLOR:
4	PRE-FINISHED METAL DOWNSPOUT COLOR:
5	METAL SOFFIT COLOR:
6	MASONRY STUCCO BASE COAT WITH ACRYLIC STUCCO TOP COAT COLOR: DARK GRAY
7	BRICK MASONRY COLOR: WHITE
8	HARDIE BOARD CORNICE MODLING
9	HARDIE FASCIA
10	ARCHITECTURAL CORBEL
11	WINDOW AND DOOR SYSTEM C/W EXTERIOR TRIMS TRIPLE GLAZED FRAME COLOR: DARK
12	42" HIGH GUARD RAIL, 3-6" HIGH STAIR HANDRAIL COLOR: PAINTED BLACK
13	CONCRETE STAIRS
14	CEMENTITIOUS PARGING
15	2.0 M HIGH GLASS PRIVACY SCREEN
16	SMOOTH CONCRETE
17	METAL RAILING
18	METAL DOOR



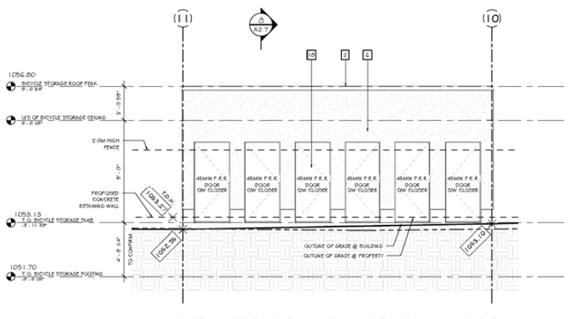
2 A2.7 BICYCLE STORAGE FRONT / NORTH ELEVATION
1/4" = 1'-0"



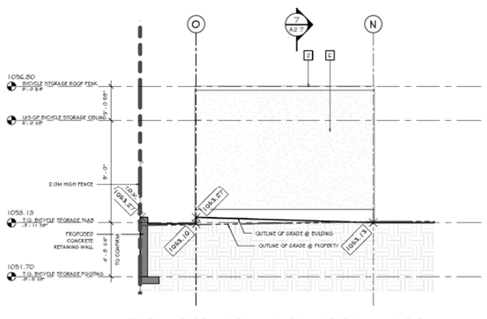
3 A2.7 BICYCLE STORAGE RIGHT / WEST ELEVATION
1/4" = 1'-0"



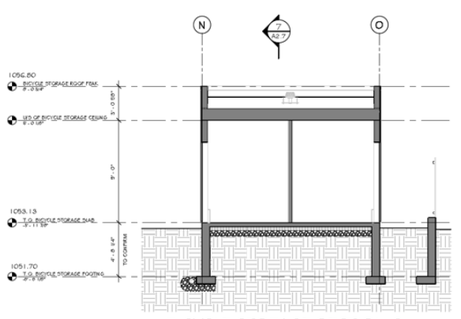
7 A2.7 BICYCLE STORAGE SECTION 1
1/4" = 1'-0"



4 A2.7 BICYCLE STORAGE REAR / SOUTH ELEVATION
1/4" = 1'-0"



5 A2.7 BICYCLE STORAGE LEFT / EAST ELEVATION
1/4" = 1'-0"



6 A2.7 BICYCLE STORAGE SECTION 2
1/4" = 1'-0"

RECORD OF ISSUE

01	2021.03.16	DP APPLICATION
02	2021.04.26	DTR 1 RESPONSE
03	2021.05.05	DTR 1 RESPONSE
04	2021.05.11	BP APPLICATION
05	2021.05.21	DP PRIOR TO RELEASE

RECORD OF REVISIONS

NOTES:

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CITY OF CALGARY - PLANNING, DEVELOPMENT AND ASSESSMENT
THESE ARE THE PLANS REFERRED TO IN PERMIT AND DEVELOPMENT NO.
DP No. 2021-1721
Date Issued MAY 11 2021
WORK ARE APPROVED SUBJECT TO THE ATTACHED LIST OF ANY SHOWN, NOTED IN RED OR AS OTHERWISE NOTED ON THE DEVELOPMENT PERMIT
DEVELOPMENT AUTHORITY: Aidan Singh

JACKSON McCORMICK DESIGN GROUP

304A 16TH AVENUE S.W.
CALGARY AB
T2R 0S9
tel: 403 520 9919
email: info@jmdesigngroup.ca

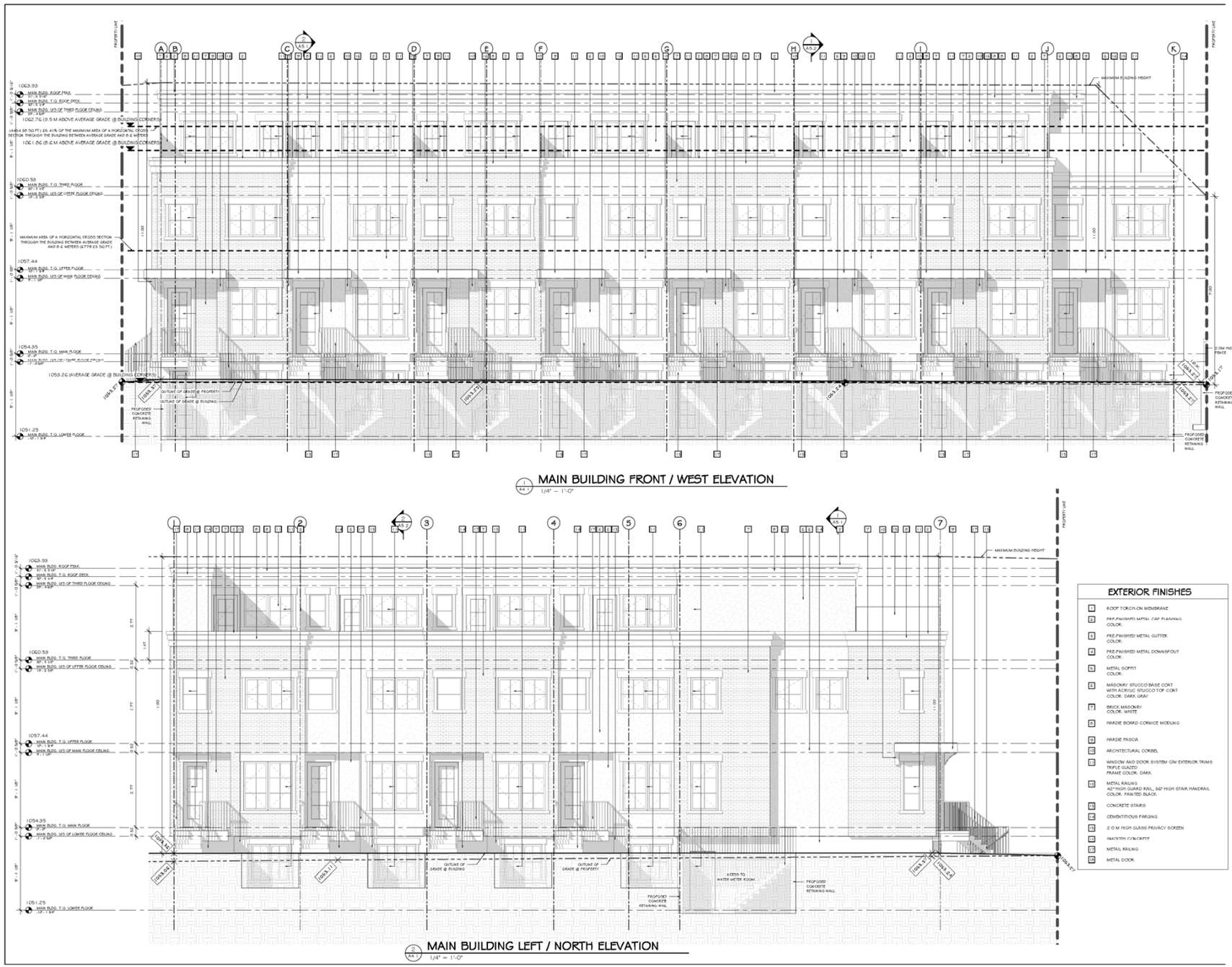
PROJECT:
HILLHURST MULTI-FAMILY

1619 8th AVENUE N.W.
CALGARY, ALBERTA
LOTS 39 TO 41, BLOCK 6, PLAN 6219L

DRAWING DESCRIPTION:
BICYCLE STORAGE FLOOR PLANS, ELEV, SECTION

PLOT SCALE:	AS NOTED
PROJECT NO.:	2021-06
CHECKED BY:	TJ
DRAWN BY:	AR
DRAWING NO.:	A2.7
PLOT DATE:	2021.05.21

RELEASED PLANS



EXTERIOR FINISHES

1. ROOF TORCH-ON MEMBRANE
2. PRE-PAINTED METAL CAP FLASHING COLOR:
3. PRE-PAINTED METAL GUTTER COLOR:
4. PRE-PAINTED METAL DOWNSPOUT COLOR:
5. METAL SOFFIT COLOR:
6. MASONRY STUCCO BASE COAT WITH ACRYLIC STUCCO TOP COAT COLOR: DARK GRAY
7. BRICK MASONRY COLOR: WHITE
8. HARDIE BOARD CORNICE MOULDING
9. HARDIE FASCIA
10. ARCHITECTURAL CORBEL
11. WINDOW AND DOOR SYSTEM C/W EXTERIOR TRIMS TRIPLE GLAZED FRAME COLOR: DARK
12. METAL RAILING 42" HIGH GUARD RAIL, 34" HIGH STAIR HANDRAIL COLOR: PAINTED BLACK
13. CONCRETE STAIRS
14. CEMENTITIOUS PARGING
15. 2.0 M HIGH GLASS PRIVACY SCREEN
16. SMOOTH CONCRETE
17. METAL RAILING
18. METAL DOOR

RECORD OF ISSUE

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THESE ARE THE PLANS REFERRED TO IN DEVELOPMENT PERMIT NO.

DP No: 2021-1721
Date Issued: MAY 11 2021

WORK ARE APPROVED SUBJECT TO THE ALTERATIONS OF ANY SHOWN VERSION IN RED OR ATTACHED NOTES IN THE DEVELOPMENT PERMIT

DEVELOPMENT AUTHORITY: Alisa Singh

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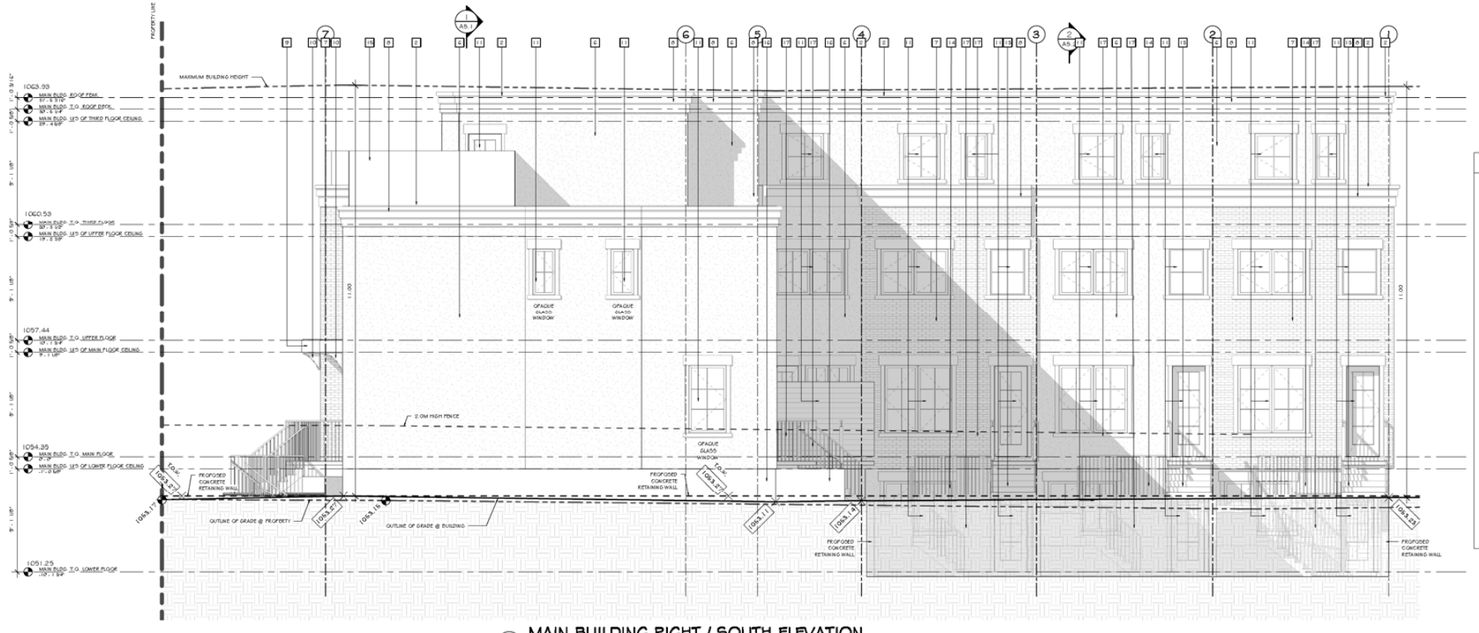
PROJECT:
HILLHURST MULTI-FAMILY
1619 8th AVENUE N.W.
CALGARY, ALBERTA
LOTS 39 TO 41, BLOCK 6, PLAN 6219L

DRAWING DESCRIPTION:
MAIN BUILDING ELEVATIONS

PLOT SCALE: AS NOTED	DRAWING NO.: A4.1
PROJECT NO.: 2021-06	
CHECKED BY: TJ	
DRAWN BY: AR	PLOT DATE: 2021.05.21

RELEASED PLANS

1 / A4.2 MAIN BUILDING REAR / EAST ELEVATION
1/4" = 1'-0"



2 / A4.2 MAIN BUILDING RIGHT / SOUTH ELEVATION
1/4" = 1'-0"

EXTERIOR FINISHES

1	ROOF TORCH-ON MEMBRANE
2	PRE-FINISHED METAL CAP FLASHING COLOR:
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DP No	Date Issued
2021-1721	MAY 11 2021

WORK ARE APPROVED SUBJECT TO THE ALTERATIONS (IF ANY) SHOWN IN RED OR AS OTHERWISE NOTED ON THE DEVELOPMENT PERMIT

DEVELOPMENT AUTHORITY: Aidan Singh

JACKSON McCORMICK
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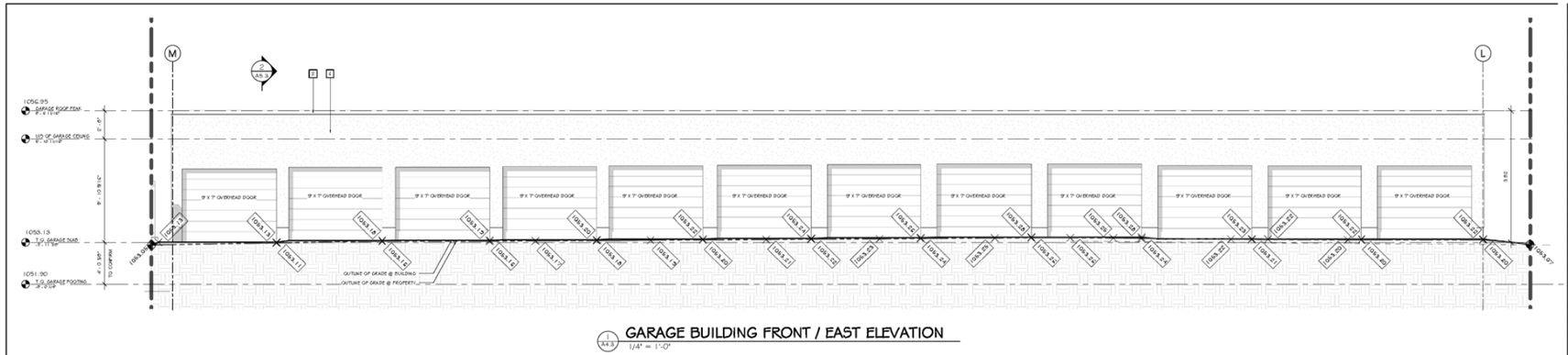
PROJECT:
HILLHURST
MULTI-FAMILY

1619 8th AVENUE N.W.
CALGARY, ALBERTA
LOTS 39 TO 41, BLOCK 6, PLAN 6211K

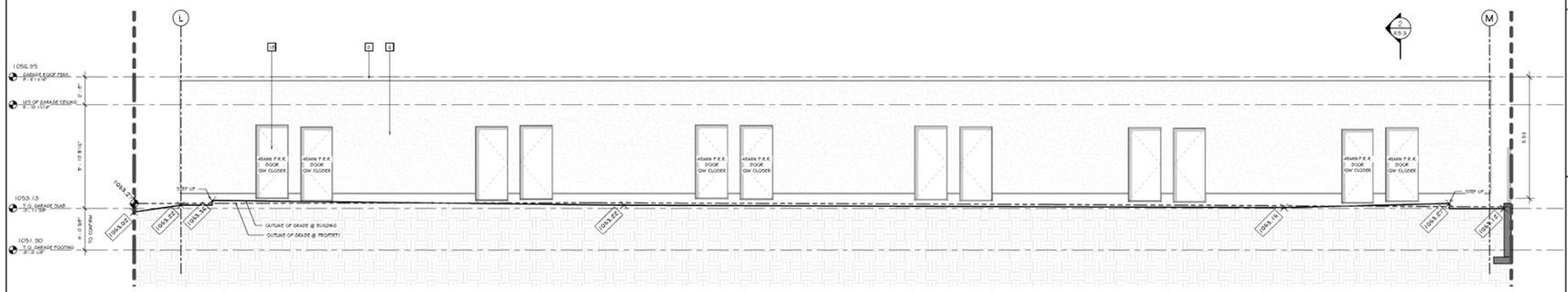
DRAWING DESCRIPTION:
MAIN BUILDING
ELEVATIONS

PLOT SCALE: AS NOTED	DRAWING NO.: A4.2
PROJECT NO.: 2021-06	
CHECKED BY: TJ	
DRAWN BY: AR	PLOT DATE: 2021.05.21

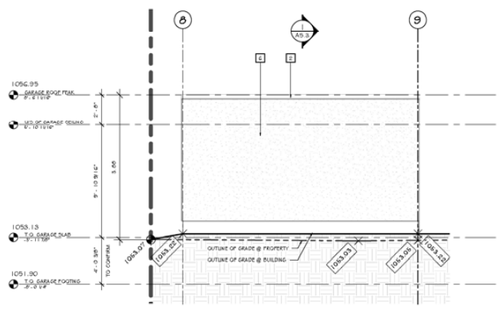
RELEASED PLANS



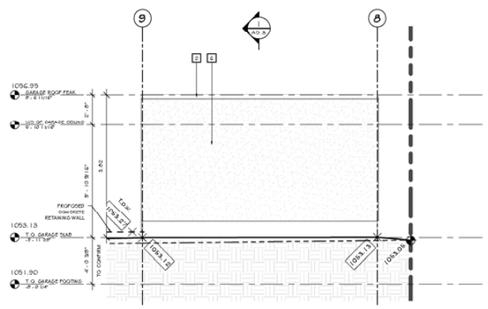
1 GARAGE BUILDING FRONT / EAST ELEVATION
1/4" = 1'-0"



2 GARAGE BUILDING REAR / WEST ELEVATION
1/4" = 1'-0"



3 GARAGE BUILDING RIGHT / NORTH ELEVATION
1/4" = 1'-0"



4 GARAGE BUILDING LEFT / SOUTH ELEVATION
1/4" = 1'-0"

EXTERIOR FINISHES

1	ROOF TORCH-ON MEMBRANE
2	PRE-FINISHED METAL CAP FLASHING COLOR:
3	PRE-FINISHED METAL GUTTER COLOR:
4	PRE-FINISHED METAL DOWNSPOUT COLOR:
5	METAL SOFFIT COLOR:
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13	CONCRETE STAIRS
14	CEMENTITIOUS PARGING
15	2.0 M HIGH GLASS PRIVACY SCREEN
16	SMOOTH CONCRETE
17	METAL RAILING
18	METAL DOOR

RECORD OF ISSUE

01	2021.03.16	DP APPLICATION
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RECORD OF REVISIONS

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CITY OF CALGARY - PLANNING, DEVELOPMENT AND ASSESSMENT
THESE ARE THE PLANS REFERRED TO IN MY DEVELOPMENT PERMIT NO.

DP No	Date Issued
2021-1721	MAY 11 2021

WORK ARE APPROVED SUBJECT TO THE ALTERATIONS (IF ANY) SHOWN IN RED OR AS OTHERWISE NOTED IN THE DEVELOPMENT PERMIT

DEVELOPMENT AUTHORITY: Adam Singh

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DESIGN GROUP
804-6 15TH AVENUE S.W.
CALGARY AB
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email: info@mccormick.ca

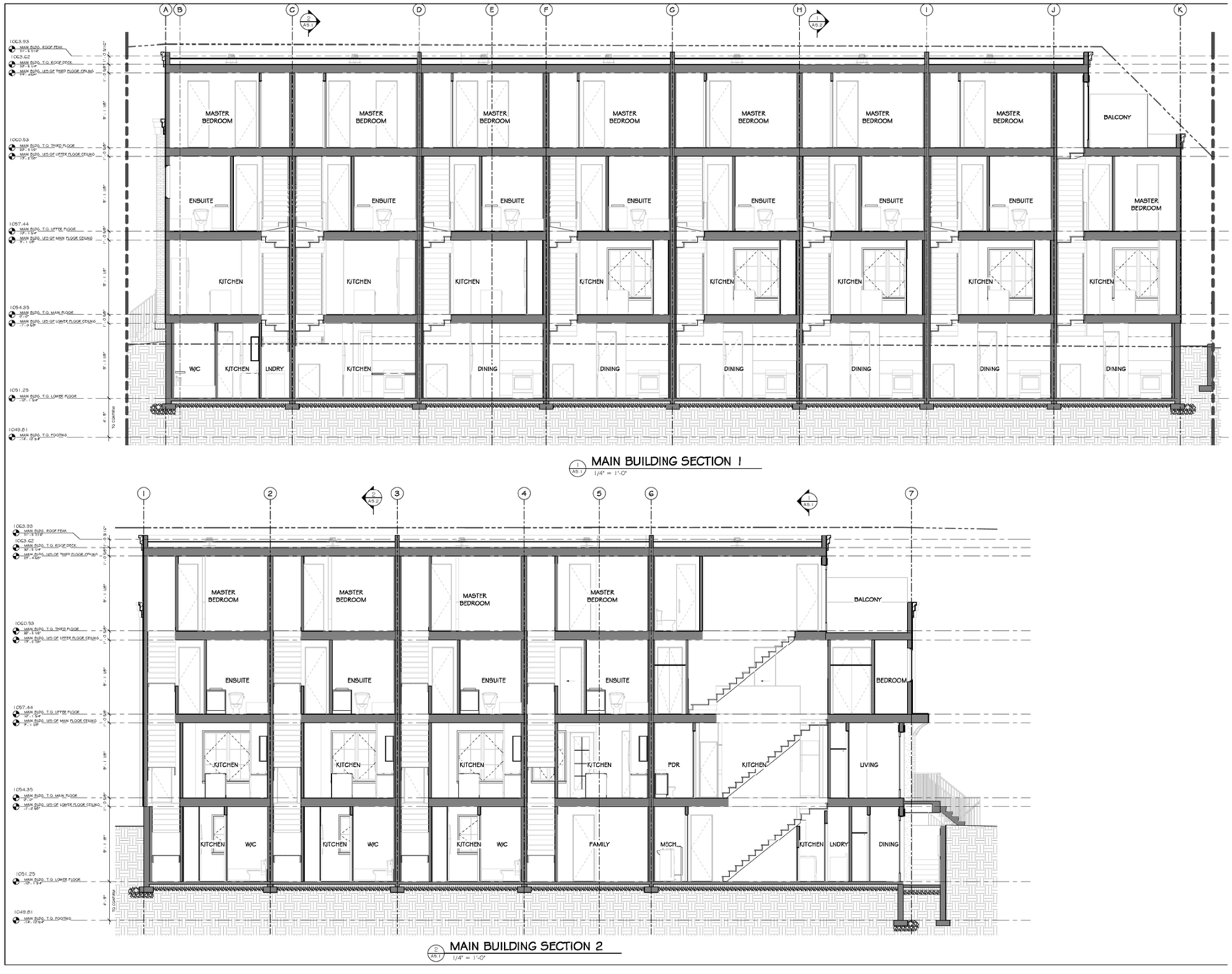
PROJECT:
HILLHURST
MULTI-FAMILY

1619 8th AVENUE N.W.
CALGARY, ALBERTA
LOTS 39 TO 41, BLOCK 6, PLAN 6211L

DRAWING DESCRIPTION:
GARAGE BUILDING
ELEVATIONS

PLOT SCALE: AS NOTED	DRAWING NO.: A4.3
PROJECT NO.: 2021-06	
CHECKED BY: TJ	
DRAWN BY: AR	PLOT DATE: 2021.05.21

RELEASED PLANS



RECORD OF ISSUE		
01	2021.03.16	DP APPLICATION
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04	2021.05.11	BP APPLICATION
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DP No: 2021-1721
Date Issued: MAY 11 2021

WORK WAS APPROVED SUBJECT TO THE AUTHORITIES OF ANY BYLAW, SPECIFIC IN SEC 24 OR OTHERWISE NOTED IN THE DEVELOPMENT PERMIT

DEVELOPMENT AUTHORITY: Alisin Singh

JACKSON McCORMICK
DESIGN GROUP

304A 10TH AVENUE S.W.
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T2R 0S9

tel: 403 630 3010
email: info@jmdesigngroup.ca

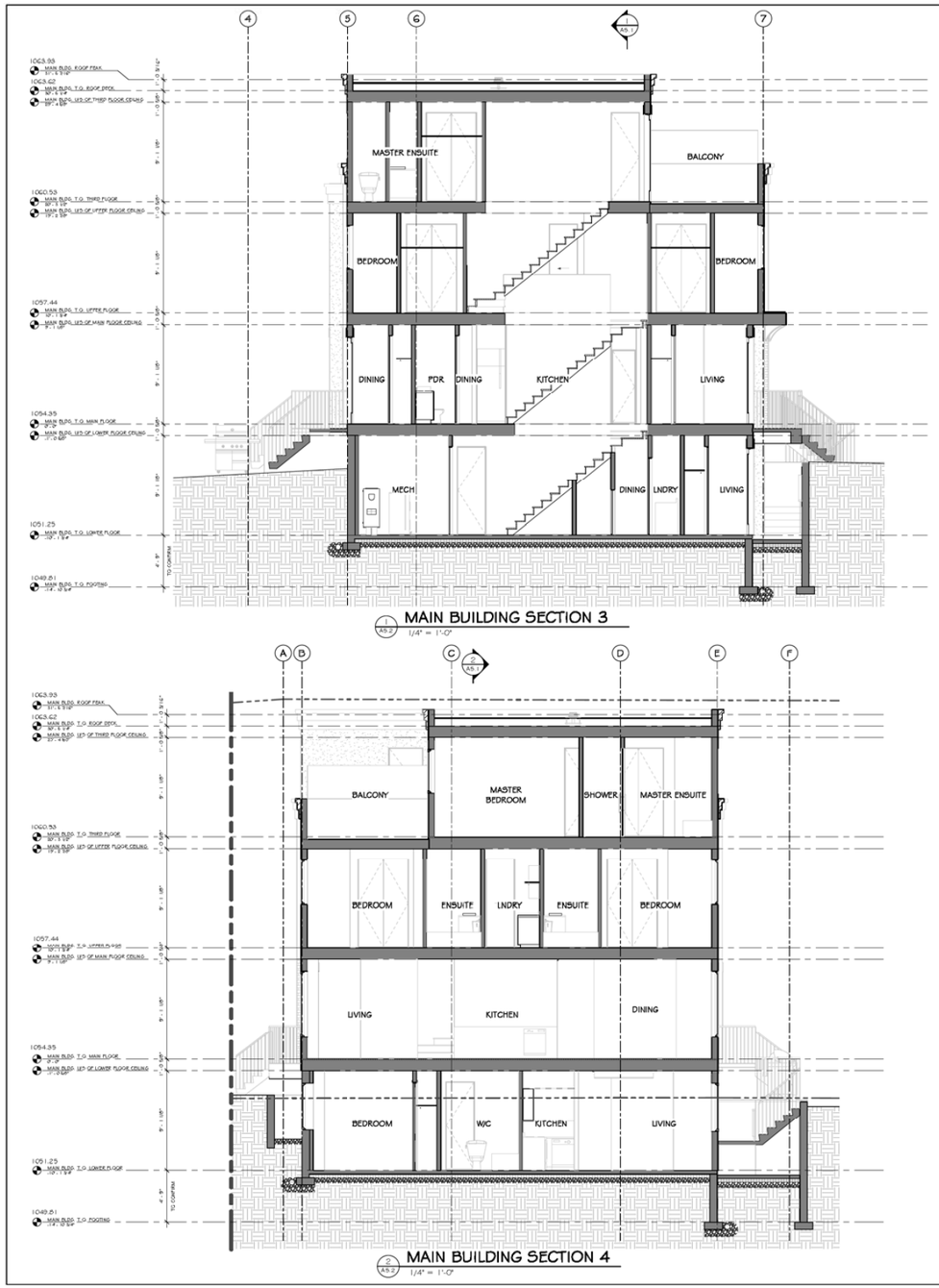
PROJECT:
HILLHURST
MULTI-FAMILY

1619 8th AVENUE N.W.
CALGARY, ALBERTA
LOTS 39 TO 41, BLOCK 6, PLAN 6219L

DRAWING DESCRIPTION:
MAIN BUILDING SECTIONS

PLOT SCALE: AS NOTED	DRAWING NO.: A5.1
PROJECT NO.: 2021-06	
CHECKED BY: TJ	
DRAWN BY: AR	PLOT DATE: 2021.05.21

RELEASED PLANS



CONSTRUCTION ASSEMBLIES

FLOOR ASSEMBLIES

F1 — **CONCRETE GARAGE SLAB TYPICAL**
- 4" REINFORCED CONCRETE SLAB ON GRADE AS PER STRUCTURAL
- 6 MIL POLY VAPOUR BARRIER
- 2"-5" RIGID INSULATION, STAGGERED TASM
- 6" COMPACTED GRAVEL BASE

F2 — **BASEMENT SLAB**
- FLOOR FINISH AS SPECIFIED
- 4" REINFORCED CONCRETE SLAB ON GRADE AS PER STRUCTURAL
- 6 MIL POLY VAPOUR BARRIER
- 2"-5" RIGID INSULATION, STAGGERED TASM
- 6" COMPACTED GRAVEL BASE

F3 — **11 7/8" TJI FLOOR ASSEMBLY - TYPICAL**
(NBC-2019 AE TABLE 9.10.3.1.-B, FSa, STC 27)
- FLOOR FINISH AS SPECIFIED
- 3/4" T&G FLYWOOD SHEATHING (GLUED & SCREWED)
- PRE ENGINEERED 11 7/8" TJI WOOD JOISTS @ SPECIFIED SPACING CROSS BRACING AS PER STRUCTURAL ENGINEER
- 1/2" GYPSUM BOARD
- PAINTED FINISH

F4 — **11 7/8" TJI FLOOR ASSEMBLY @ CANTILEVER**
- FLOOR FINISH AS SPECIFIED
- 3/4" T&G FLYWOOD SHEATHING (GLUED & SCREWED)
- PRE ENGINEERED 11 7/8" TJI WOOD JOISTS @ SPECIFIED SPACING CROSS BRACING AS PER STRUCTURAL ENGINEER
- 25mm CLOSED CELL SPRAY FOAM INSULATION (R30)
- WOOD SHEATHING IF APPLICABLE - SIZE AS INDICATED
- VENTED SOFFIT FINISH AS REQUIRED

F5 — **9 1/2" TJI FLOOR ASSEMBLY @ BALCONY**
- DESIGNART ULTRA 60 MIL WATERPROOF MEMBRANE
- 3/4" T&G EXTERIOR GRADE PLYWOOD SHEATHING (GLUED & SCREWED)
- WOOD SLEEPERS LAMINATED TO WOOD JOISTS (2% SLOPE MIN.)
- PRE ENGINEERED 9 1/2" TJI WOOD JOISTS @ SPECIFIED SPACING CROSS BRACING AS PER STRUCTURAL ENGINEER
- 25mm CLOSED CELL SPRAY FOAM INSULATION (R30)
- 1/2" GYPSUM BOARD
- PAINTED FINISH

CONSTRUCTION ASSEMBLIES

EXTERIOR WALL ASSEMBLIES

W1 — **WOOD FRAMING TYPICAL - 1HR F.R.R.**
(NBC-2019 AE TABLE 9.10.3.1.-A, EW1a, 1 HR F.R.R.)
- EXTERIOR FINISH AS SPECIFIED (REFER TO ELEVATION)
- 2-LAYERS 30 MIN. WATER BARRIER - LAP JOINTS TO SHED WATER
- 1/2" OSB SHEATHING
- 2x4 #2 SPF WOOD STUDS @ 16" O.C.
- FIBERGLASS BATT INSULATION (R20)
- 6 MIL POLY VAPOUR BARRIER (LAPPED & CAULKED)
- 5/8" TYPE 'X' GYPSUM BOARD
- PAINTED FINISH

W1A — **WOOD FRAMING 2X4 TYPICAL - 1HR F.R.R.**
(NBC-2019 AE TABLE 9.10.3.1.-A, EW1a, 1 HR F.R.R.)
- EXTERIOR FINISH AS SPECIFIED (REFER TO ELEVATION)
- 2-LAYERS 30 MIN. WATER BARRIER - LAP JOINTS TO SHED WATER
- 1/2" OSB SHEATHING
- 2x4 #2 SPF WOOD STUDS @ 16" O.C.
- FIBERGLASS BATT INSULATION (R20)
- 6 MIL POLY VAPOUR BARRIER (LAPPED & CAULKED)
- 5/8" TYPE 'X' GYPSUM BOARD
- PAINTED FINISH

W2 — **WOOD FRAMING TYPICAL, KICKBOX WALL - 1HR F.R.R.**
(NBC-2019 AE TABLE 9.10.3.1.-A, EW1a, 1 HR F.R.R.)
- EXTERIOR FINISH AS SPECIFIED (REFER TO ELEVATION)
- 2-LAYERS 30 MIN. WATER BARRIER - LAP JOINTS TO SHED WATER
- 5/8" DENSGLASS (EXTERIOR GLASS FACED GYPSUM BOARD)
- 2x4 #2 SPF WOOD STUDS @ 16" O.C.
- FIBERGLASS BATT INSULATION (R20)
- 6 MIL POLY VAPOUR BARRIER (LAPPED & CAULKED)
- 5/8" TYPE 'X' GYPSUM BOARD
- PAINTED FINISH

W3 — **6" CONCRETE FIREWALL EXTERIOR**
- EXTERIOR FINISH AS SPECIFIED (REFER TO ELEVATION)
- 2-LAYERS 30 MIN. WATER BARRIER - LAP JOINTS TO SHED WATER
- 6" CONCRETE WALL - REINFORCED AS PER ENGINEERING DRAWINGS AND SPECIFICATIONS
- 102 MM SPACER
- 2x2 #2 SPF STUDS @ 16" O.C.
- 1 1/2" XPS RIGID INSULATION
- 6 MIL POLY VAPOUR BARRIER
- 1/2" GYPSUM BOARD
- PAINTED FINISH

W4 — **BALCONY WALL**
- EXTERIOR FINISH AS SPECIFIED (REFER TO ELEVATION)
- 2-LAYERS 30 MIN. WATER BARRIER - LAP JOINTS TO SHED WATER
- 2x6 #2 SPF WOOD STUDS @ 16" O.C.
- 1/2" OSB SHEATHING
- 2-LAYERS 30 MIN. WATER BARRIER - LAP JOINTS TO SHED WATER
- EXTERIOR FINISH AS SPECIFIED (REFER TO ELEVATION)

W5 — **PARAPET WALL GW CAP FLASHING**
- EXTERIOR FINISH AS SPECIFIED (REFER TO ELEVATION)
- 2-LAYERS 30 MIN. WATER BARRIER - LAP JOINTS TO SHED WATER
- 1/2" OSB SHEATHING
- 2x6 #2 SPF WOOD STUDS @ 16" O.C.
- 1/2" OSB SHEATHING
- 2-PLY SBS MEMBRANE - FULLY ADHERED (TORCH-ON)

W6 — **6" CONCRETE FIREWALL PARAPET GW CAP FLASHING**
- METAL CLADDING
- 19-6 WOOD STRAPPING
- 2" RIGID INSULATION
- 2-LAYERS 30 MIN. WATER BARRIER - LAP JOINTS TO SHED WATER
- 6" CONCRETE WALL - REINFORCED AS PER ENGINEERING DRAWINGS AND SPECIFICATIONS
- 2-LAYERS 30 MIN. WATER BARRIER - LAP JOINTS TO SHED WATER
- 2" RIGID INSULATION
- 19-6 WOOD STRAPPING
- METAL CLADDING

CONSTRUCTION ASSEMBLIES

FOUNDATION WALL ASSEMBLIES

FW1 — **FROST WALL**
- 2" XPS RIGID INSULATION ALONG PERIMETER TO MINIMUM 4'-0" BELOW GRADE
- ASPHALT TAR DAMPPROOFING - BELOW GRADE
- CONCRETE FOUNDATION WALL - REINFORCED AS PER ENGINEERING DRAWINGS AND SPECIFICATIONS

FW2 — **FOUNDATION WALL - FINISHED INTERIOR WALL**
- 2" XPS RIGID INSULATION ALONG PERIMETER TO MINIMUM 4'-0" BELOW GRADE
- PARGING AS REQD. - ABOVE GRADE
- ASPHALT TAR DAMPPROOFING - BELOW GRADE
- 8" CONCRETE FOUNDATION WALL - REINFORCED AS PER ENGINEERING DRAWINGS AND SPECIFICATIONS
- 102 MM SPACER
- 2x4 #2 SPF STUDS @ 16" O.C.
- R12 FIBERGLASS BATT INSULATION
- 6 MIL POLY VAPOUR BARRIER
- 1/2" GYPSUM BOARD
- PAINTED FINISH

CONSTRUCTION ASSEMBLIES

PARTITION WALL ASSEMBLIES

NOTE: MOISTURE RESISTANT GYPSUM BOARD TO BE USED AT ALL SHOWER AND BATH LOCATIONS

P1 — **PARTY WALL - 1 HR F.R.R.**
(NBC-2019 AE TABLE 9.10.3.1.-A, W13a, 1 HR F.R.R., STC 57)
- CONFIGURATION WILL TO CONTINUE TO U/S OF ROOF
- PAINTED FINISH
- 5/8" TYPE 'X' GYPSUM BOARD
- 2x4 WOOD STUD FRAMING @ SPACING INDICATED ON STRUCTURAL DRAWINGS
- ACOUSTIC BATT INSULATION IN STUD CAVITY (R12)
- 1" AIR SPACE
- 2x4 WOOD STUD FRAMING @ SPACING INDICATED ON STRUCTURAL DRAWINGS
- ACOUSTIC BATT INSULATION IN STUD CAVITY (R12)
- 5/8" TYPE 'X' GYPSUM BOARD
- PAINTED FINISH

P2 — **6" CONCRETE FIREWALL - FINISHED**
- PAINTED FINISH
- 1/2" GYPSUM BOARD
- 2x2 #2 SPF STUDS @ 16" O.C.
- 1/2" AIR SPACE
- 6" CONCRETE WALL - REINFORCED AS PER ENGINEERING DRAWINGS AND SPECIFICATIONS
- 102 MM SPACER
- 2x2 #2 SPF STUDS @ 16" O.C.
- 1 1/2" XPS RIGID INSULATION
- 1/2" GYPSUM BOARD
- PAINTED FINISH

P3 — **2X4 WOOD FRAMING**
- PAINTED FINISH
- 1/2" GYPSUM BOARD
- 2x4 #2 SPF WOOD STUDS @ 16" O.C.
- 1/2" GYPSUM BOARD
- PAINTED FINISH

P4 — **2X4 WOOD FRAMING - GYPSUM 1 SIDE**
- PAINTED FINISH
- 1/2" GYPSUM BOARD
- 2x4 #2 SPF WOOD STUDS @ 16" O.C.

P5 — **2X6 WOOD FRAMING**
- PAINTED FINISH
- 1/2" GYPSUM BOARD
- 2x6 #2 SPF WOOD STUDS @ 16" O.C.
- 1/2" GYPSUM BOARD
- PAINTED FINISH

P6 — **2X4 WOOD FRAMING - INSULATED**
- PAINTED FINISH
- 1/2" GYPSUM BOARD
- 2x4 #2 SPF WOOD STUDS @ 16" O.C.
- FIBERGLASS BATT INSULATION (R12)
- 1/2" GYPSUM BOARD
- PAINTED FINISH

P7 — **WATER METER ROOM (1 HR F.R.R.)**
(NBC-2019 AE TABLE 9.10.3.1.-A, W1a, 1 HR F.R.R., STC 52)
- PAINTED FINISH
- 5/8" TYPE 'X' GYPSUM BOARD
- 2x4 #2 SPF WOOD STUDS @ 16" O.C.
- ACOUSTIC FIBERGLASS BATT INSULATION (R20)
- 5/8" TYPE 'X' GYPSUM BOARD
- 3/4" PLYWOOD SHEATHING FOR BACKING (AS REQUIRED)

P8 — **GARAGE PARTITIONS (1 HR F.R.R.)**
- PAINTED FINISH
- 5/8" TYPE 'X' GYPSUM BOARD
- 2x4 #2 SPF WOOD STUDS @ 16" O.C.
- ACOUSTIC FIBERGLASS BATT INSULATION (R20)
- 5/8" TYPE 'X' GYPSUM BOARD
- 3/4" PLYWOOD SHEATHING FOR BACKING (AS REQUIRED)

CEILING ASSEMBLIES

C1 — **1 HR F.R.R. WATER METER ROOM**
- 2 LAYERS OF 5/8 TYPE 'X' GYPSUM BOARD
- PAINTED FINISH

CONSTRUCTION ASSEMBLIES

ROOF ASSEMBLIES

R1 — **TYPICAL FLAT ROOF**
- 2-PLY SBS ROOF MEMBRANE, FULLY ADHERED INSTALLED AS PER MANUFACTURER'S SPECS.
- 1" IMPERMEATED POWERGRAD
- 0% SLOPE PACKAGE (1" POLYISO RIGID INSULATION (AVG R 5.4), ADHERED WITH LOW RISE ADHESIVE, TAPERED TO DRAIN TO INTERNAL @ DRAINS)
- 1/2" OSB SHEATHING ON TJI'S
- 3/4" T&G PLYWOOD SHEATHING
- PRE ENGINEERED 11 7/8" TJI WOOD JOISTS @ SPECIFIED SPACING CROSS BRACING AS PER STRUCTURAL ENGINEER
- 1/2" GYPSUM BOARD
- PAINTED FINISH

R2 — **CANOPY TYPICAL**
- 2-PLY SBS ROOF MEMBRANE, FULLY ADHERED INSTALLED AS PER MANUFACTURER'S SPECS.
- 3/4" T&G EXTERIOR GRADE PLYWOOD SHEATHING (GLUED & SCREWED)
- WOOD SLEEPERS LAMINATED TO WOOD JOISTS (2% SLOPE MIN.)
- WOOD JOISTS @ SPECIFIED SIZE & SPACING CROSS BRACING AS PER STRUCTURAL ENGINEER
- WOOD STRAPPING IF APPLICABLE - SIZE AS INDICATED
- VENTED SOFFIT FINISH AS REQUIRED

RECORD OF ISSUE

01	2021.03.16	DP APPLICATION
02	2021.04.26	DTR 1 RESPONSE
03	2021.05.05	DTR 1 RESPONSE
04	2021.05.11	BP APPLICATION
05	2021.05.21	DP PRIOR TO RELEASE

RECORD OF REVISIONS

NOTES:

ALL WORK SHALL CONFORM TO THE LATEST EDITION OF THE ABC, NBC, ELECTRICAL AND PLUMBING CODES

ALL WORK SHALL BE PERFORMED IN A PROFESSIONAL AND WORKMANLIKE MANNER

ALL MATERIALS SHALL BE HANDLED AND STORED TO PREVENT DAMAGE

VERIFY ALL DIMENSIONS, ELEVATIONS, AND DATUM, REPORT ANY ERRORS AND/OR DISCREPANCIES TO THE ARCHITECT PRIOR TO CONSTRUCTION

DIMENSIONS PROVIDED ARE RELATIVE TO FACE OF STUD OR FACE OF CONCRETE

EACH SUCCESSIVE SUBTRADE IS REQUIRED TO CONFIRM THE LOCATION OF REFERENCE POINTS FOR LOCATING NEW WORK INTO THE WALLS FROM ALREADY IN PLACE

ALL DESIGNS AND DRAWINGS REMAIN THE PROPERTY OF THE DESIGNER AND MAY NOT BE REPRODUCED WITHOUT PERMISSION OF THE DESIGNER

DO NOT SCALE DRAWINGS

THIS DRAWING SUPERCEDES PREVIOUS ISSUES

CITY OF CALGARY - PLANNING, DEVELOPMENT AND ASSESSMENT
THESE ARE THE PLANS REFERRED TO IN DEVELOPMENT PERMIT NO.
DP No 2021-1721
Date Issued MAY 11 2021
WHICH ARE APPROVED SUBJECT TO THE ALTERATIONS IF ANY SHOWN HEREON IN RED OR AS OTHERWISE NOTED IN THE DEVELOPMENT PERMIT
DEVELOPMENT AUTHORITY: Aisin Singh

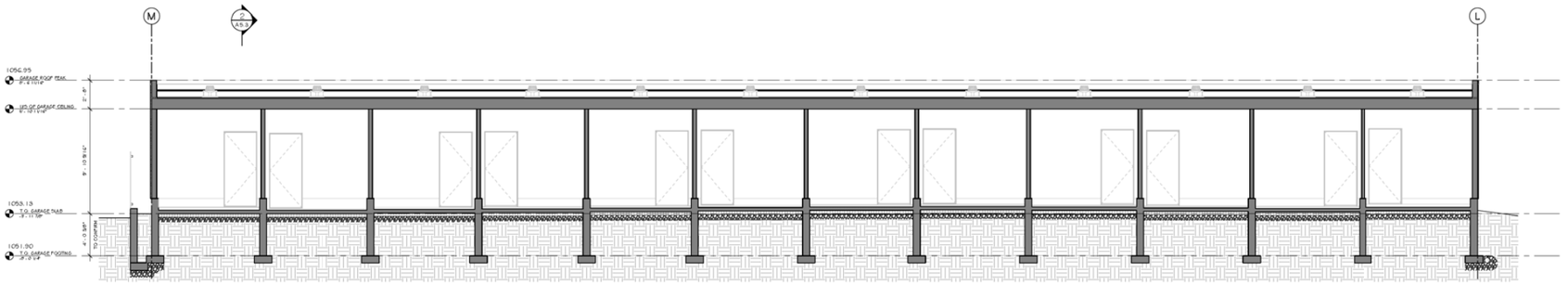
JACKSON McCORMICK
DESIGN GROUP
804-A 10TH AVENUE S.W.
CALGARY AB
T2R 0S9
tel: 403 530 3610
email: info@mkdesigngroup.ca

PROJECT:
HILLHURST MULTI-FAMILY
1619 8th AVENUE N.W.
CALGARY, ALBERTA
LOTS 39 TO 41, BLOCK 6, PLAN 6219L

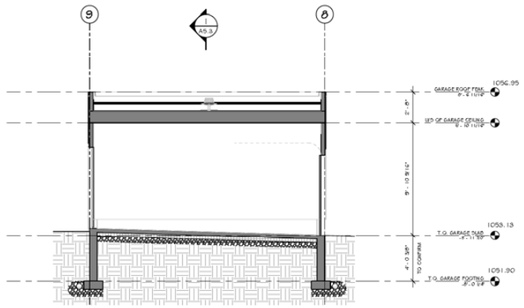
DRAWING DESCRIPTION:
MAIN BUILDING SECTIONS

PLOT SCALE:	AS NOTED
DRAWING NO.:	A5.2
PROJECT NO.:	2021-06
CHECKED BY:	TJ
DRAWN BY:	AR
PLOT DATE:	2021.05.21

RELEASED PLANS



1 GARAGE BUILDING SECTION 1
1/4" = 1'-0"



2 GARAGE BUILDING SECTION 2
1/4" = 1'-0"

RECORD OF ISSUE

01	2021.03.16	DP APPLICATION
02	2021.04.26	DTR 1 RESPONSE
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DO NOT SCALE DRAWINGS

THIS DRAWING SUPERCEDES PREVIOUS ISSUES

CITY OF CALGARY - PLANNING, DEVELOPMENT AND ASSESSMENT
THESE ARE THE PLANS REFERRED TO IN BUILDING PERMIT NO.

DP No: 2021-1721
Date Issued: MAY 11 2021

ANY/OR ARE APPROVED SUBJECT TO THE ATTACHED CONDITIONS OF ANY DESIGN VARIATION IN RED OR AS OTHERWISE NOTED ON THE DEVELOPMENT PERMIT

DEVELOPMENT AUTHORITY: Allan Singh

JACKSON McCORMICK
DESIGN GROUP
804-A 16TH AVENUE S.W.
CALGARY AB
T2R 0S9
tel 403 530 3616
email: info@jacksonmccormick.ca

PROJECT:
HILLHURST
MULTI-FAMILY

1619 8th AVENUE N.W.
CALGARY, ALBERTA
LOTS 39 TO 41, BLOCK 6, PLAN 6219L

DRAWING DESCRIPTION:
GARAGE BUILDING SECTIONS

PLOT SCALE: AS NOTED	DRAWING NO.: A5.3
PROJECT NO.: 2021-06	
CHECKED BY: TJ	
DRAWN BY: AR	PLOT DATE: 2021.05.21

Appeal Board rec'd: July 20, 2021
Submitted by: B. Fodor, Appellant

McLean, Lauren E.

From: Barry <bfodor@telusplanet.net>
Sent: Tuesday, July 20, 2021 2:27 PM
To: Calgary SDAB Info
Subject: [EXT] Appeal No. 2021-0040

Follow Up Flag: Follow up
Flag Status: Flagged

This is written permission that George Giachino (appellant), will be speaking on our behalf at this hearing.

Donna Wiebe
Barry Fodor

Both of 810-16 Street N.W.

Comments:

We won this appeal? Why are we doing this again?

They have gone to the trouble of removing the asbestos, but have done nothing else. The properties are filled with garbage, doors are kicked in, and nothing has been fenced off as with other vacant properties. Isn't this a safety issue?

Thank-you,

D Wiebe and B Fodor

McLean, Lauren E.

From: Tenzin Blair <tenzinblair@gmail.com>
Sent: Tuesday, July 20, 2021 3:02 PM
To: Calgary SDAB Info
Subject: [EXT] Appeal No. 2021-0040

Follow Up Flag: Follow up
Flag Status: Flagged

To whom it may concern,

George Giachino (appellant) will be speaking on my behalf at this hearing.

Sincerely,

Tenzin Blair and Melissa Fellows

Appeal Board rec'd: July 20, 2021
Submitted by: D. Leese and A. Leese,
Appellants

July 20, 2021

RE: Appeal No. 2021-0040 Hearing

George Giachino is authorized to speak on our behalf for this hearing.

D. W. Leese

David Leese

A. G. Leese

Allison Leese

812 – 16th Street N.W., Calgary

Appeal Board Rec'd: July 20, 2021
Submitted by: S. Henderson, Appellant

McLean, Lauren E.

From: Stew Henderson <shenders@shaw.ca>
Sent: Tuesday, July 20, 2021 12:06 PM
To: Calgary SDAB Info
Subject: [EXT] Appeal No. 2021-0040

Follow Up Flag: Follow up
Flag Status: Flagged

In regards to the above appeal on three properties on the corner of 16 street and 8 Ave NW please be advised that George Giachino (Appellant)will be speaking on my behalf at this hearing.

In addition I am disappointed that the properties are not being maintained in a good community standard as there is no barrier fence around them, the units are not secure with doors that lock and the properties are attracting squatters that are using the garages as a covered place to congregate and sleep

Thanks for giving my comments consideration

Stewart Henderson
1701 8 Ave N W
587-229-3130

Appeal Board rec'd: July 21, 2021
Submitted by: G. Giachino, Appellant


CROSSWALK
CLOSED USE
NOT CROSSWALK

Calgary

Subdivision & Development Appeal Board

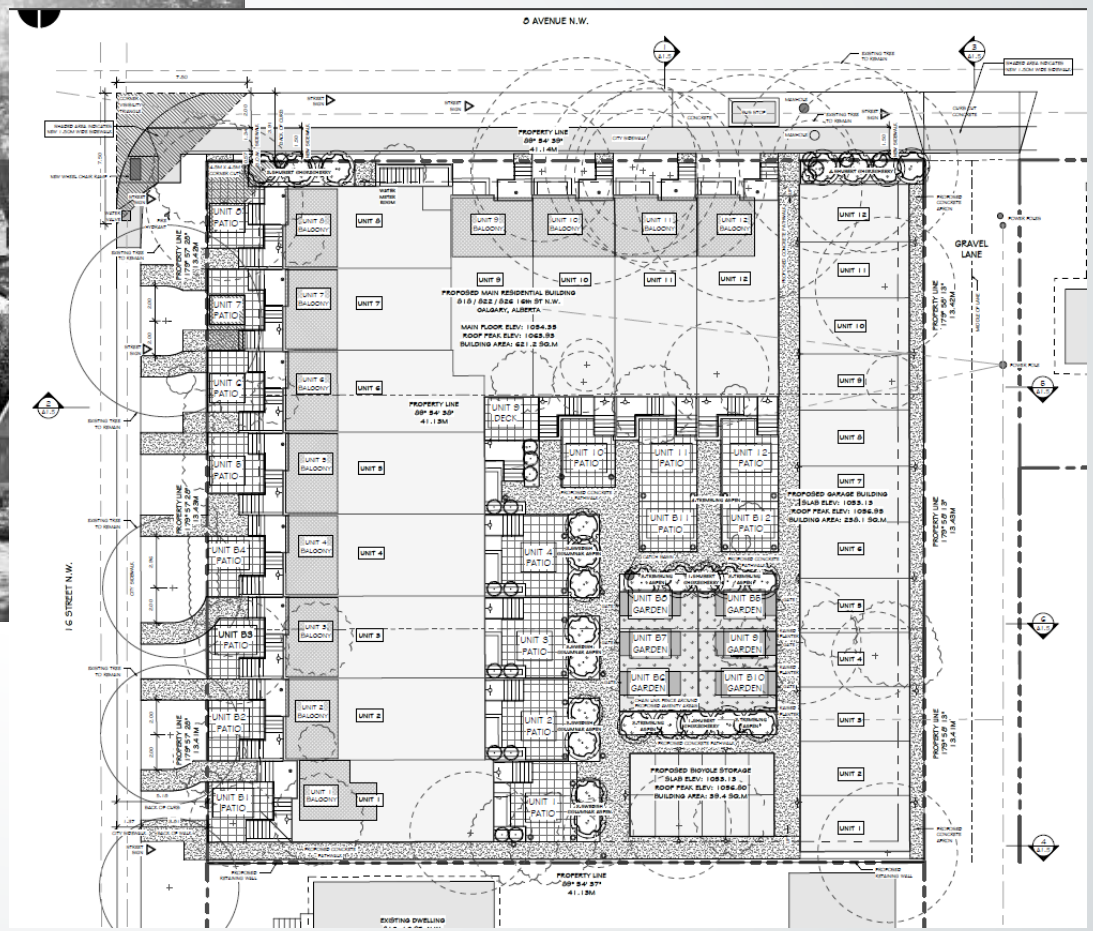
Appeal Board received: July 21, 2021
Submitted by: Development Authority

SDAB2021-0040 / DP2021-1721

Appeal of: New: Rowhouse Building (1 Building, 12 Units), Secondary Suite (11 Suites), Accessory Residential Building (2 Buildings - Garage and Bicycle Storage)

Permitted

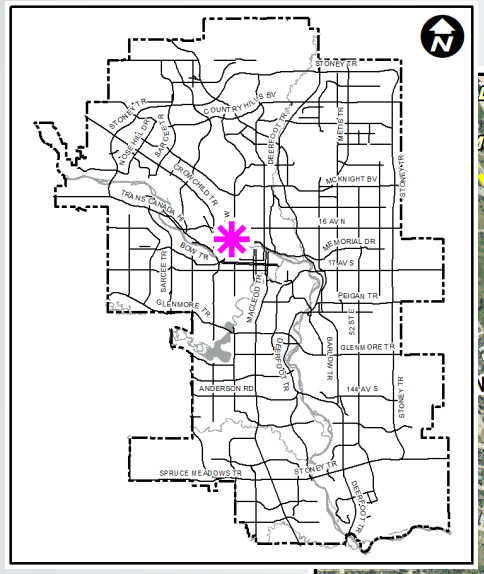
Proposed Development - Summary

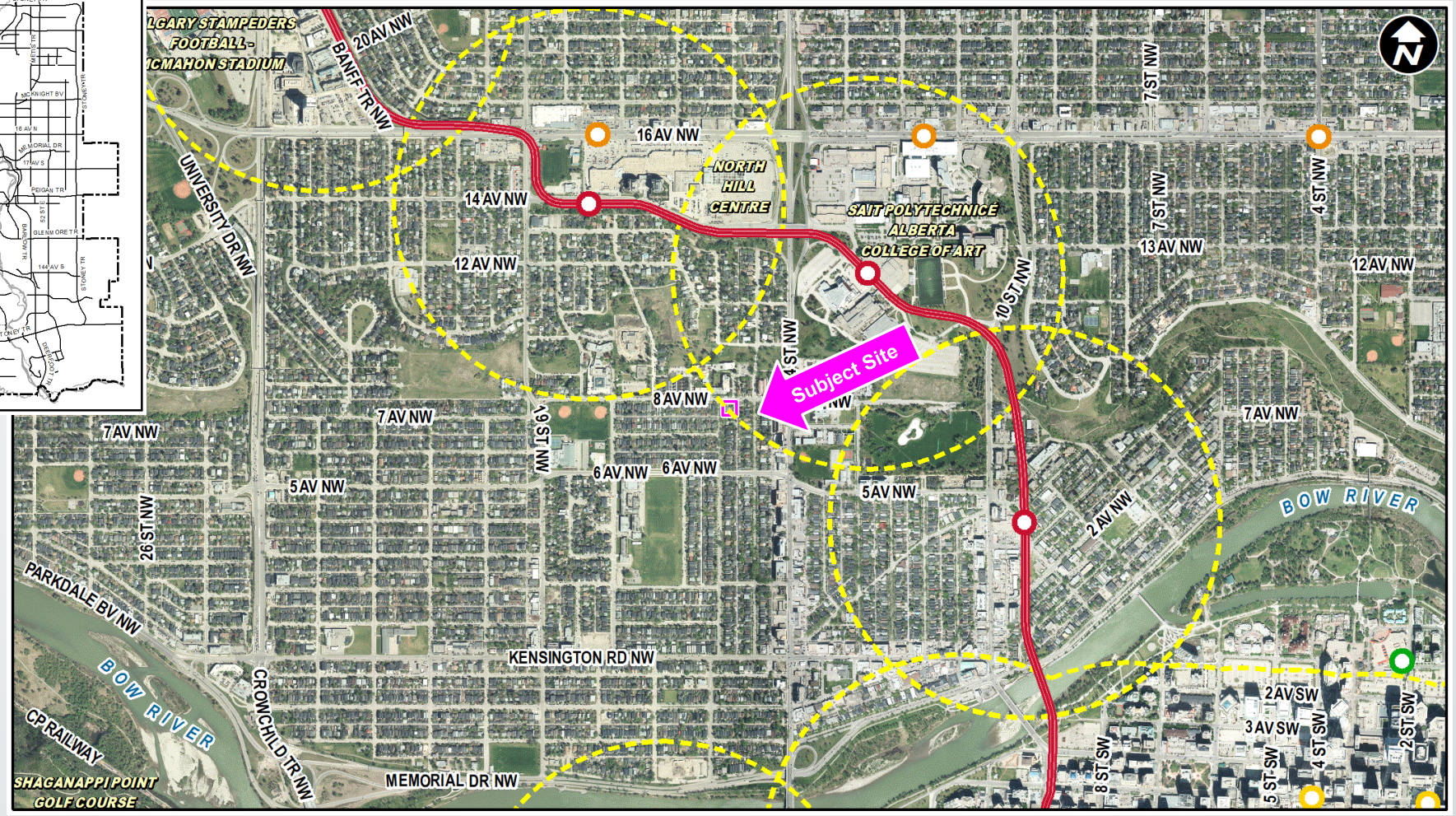


New: Rowhouse Building with Secondary Suites

- 12 units
- 11 secondary suites
- 12 on-site parking stalls

Location Maps





LEGEND

- 600m buffer from LRT station

LRT Stations

- Blue
- Downtown
- Red
- Green (Future)

LRT Line

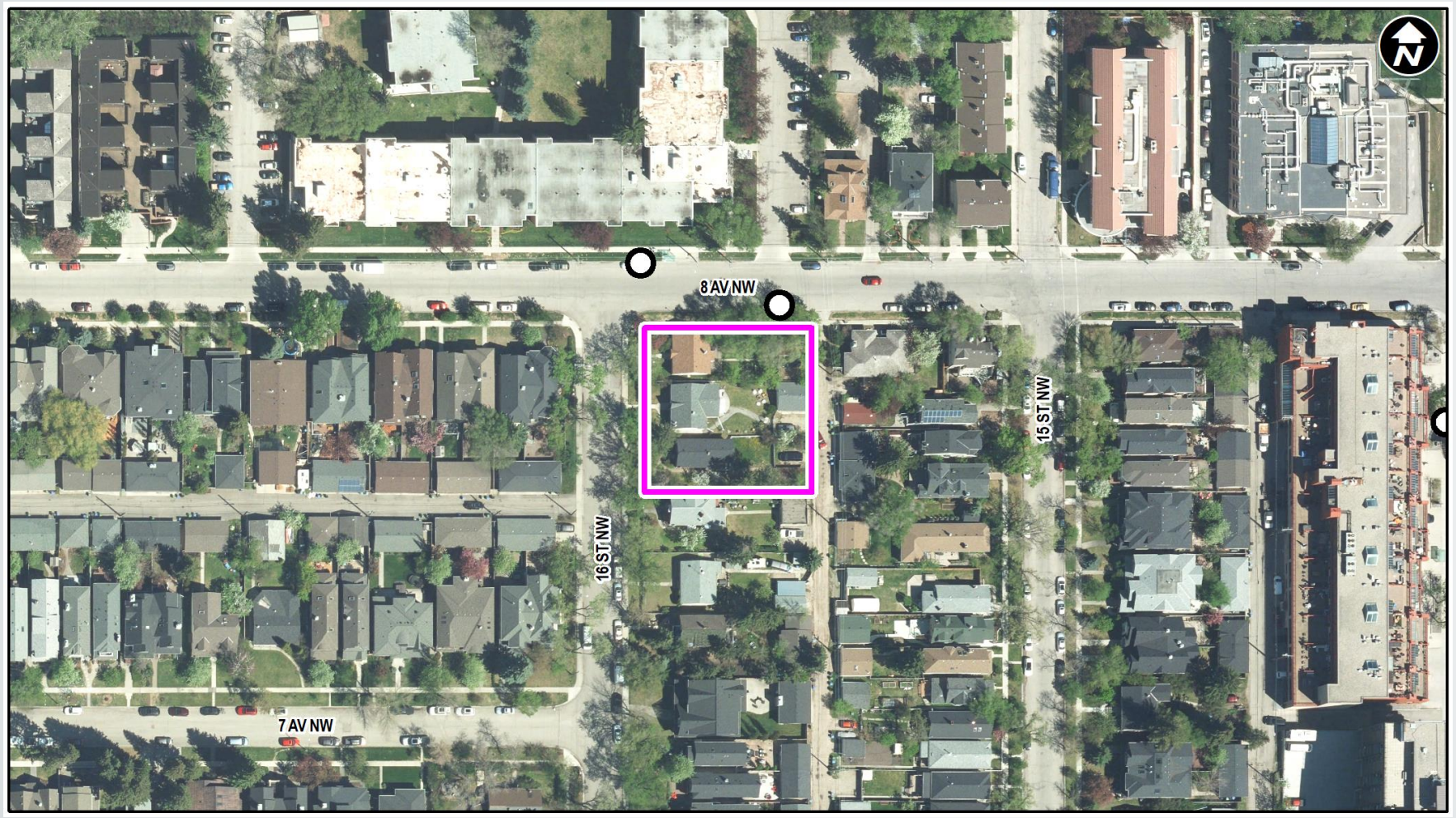
- Blue
- Blue/Red
- Red

Max BRT Stops

- Orange
- Purple
- Teal
- Yellow

SDAB2021-0040 Additional Submission

Context



SDAB2021-0040 Additional Submission

Context

SDAB2021-0040 Additional Submission

Context

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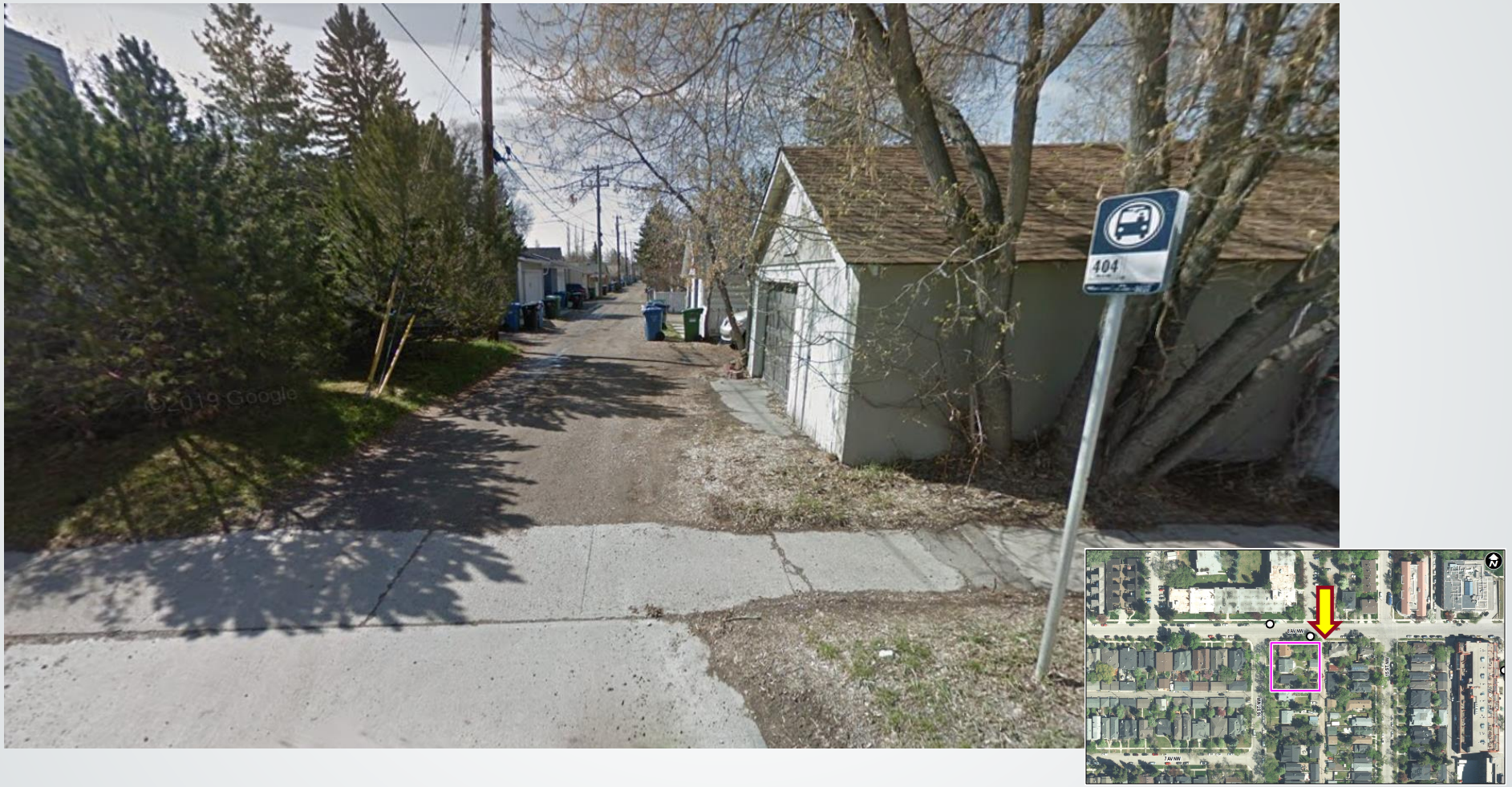


SDAB2021-0040 Additional Submission

Surrounding Land Use

SDAB2021-0040 Additional Submission

R-CG District

Section 525 of Bylaw 1P2007

The Residential – Grade-Oriented Infill (R-CG) District…

(b) accommodates grade-oriented development in the form of **Rowhouse Buildings**, **Duplex Dwellings**, **Semi-detached Dwellings** and **Cottage Housing Clusters**;
(c) accommodates **Secondary Suites** and **Backyard Suites** with new and existing residential ***development***;
(d) provides flexible ***parcel*** dimensions and ***building setbacks*** that facilitate integration of a diversity of grade-oriented housing over time; and
(e) accommodates site and ***building*** design that is adaptable to the functional requirements of evolving household needs

R-CG density - 75 units per hectare or 12 units on the subject site (excluding secondary suites)

Rowhouse Building; Secondary Suite – Permitted Uses in R-CG District

287 "Rowhouse Building"

(a) means a ***use*** where a ***building***:
- (i) contains three or more **Dwelling Units**, located side by side and separated by common party walls extending from foundation to roof;
- (ii) where one façade of each **Dwelling Unit** directly faces a public ***street***;
- (iii) where no intervening ***building*** is located between the ***street*** facing façade of each **Dwelling Unit** and the ***adjacent*** public ***street***;
- (iv) where each **Dwelling Unit** has a separate direct entry from ***grade*** to an ***adjacent*** public sidewalk or an ***adjacent*** public ***street***;
- (v) where no **Dwelling Unit** is located wholly or partially above another **Dwelling Unit**; and
- (vi) may contain a **Secondary Suite** within a **Dwelling Unit** in a district where a **Secondary Suite** is a listed ***use*** and conforms with the rules of the district;

(b) is a ***use*** within the Residential Group in Schedule A to this Bylaw;

(c) requires a minimum of 1.0 ***motor vehicle parking stalls*** per **Dwelling Unit**; and

(d) does not require ***bicycle parking stalls – class 1*** or ***class 2***.

Rowhouse Building; Secondary Suite – Permitted Uses in R-CG District

295 **"Secondary Suite"**

(a) means a ***use*** that:

(i) contains two or more rooms used or designed to be used as a residence by one or more persons;

(ii) contains a ***kitchen***, living, sleeping and sanitary facilities;

(iii) is self-contained and located within a **Dwelling Unit**;

(iv) is considered part of and secondary to a **Dwelling Unit**;

(v) except as otherwise indicated in subsection (vi) and (vii), must be contained in a **Contextual Semi-detached Dwelling**, **Contextual Single Detached Dwelling, Semi-detached Dwelling**, or a **Single Detached Dwelling**;

(vi) in the R-CG District or a ***multi-residential district*** must be contained in a **Contextual Semi-detached Dwelling**, **Contextual Single Detached Dwelling**, **Rowhouse Building**, **Semi-detached Dwelling**, or a **Single Detached Dwelling**; and

(vii) in the R-G and R-Gm Districts must be contained in a **Rowhouse Building**, **Semi-detached Dwelling** or a **Single Detached Dwelling**;

(b) is a ***use*** within the Residential Group in Schedule A to this Bylaw;

(c) requires a minimum of 1.0 ***motor vehicle parking stalls***; and

(d) does not require ***bicycle parking stalls – class 1*** or ***class 2***.

.

(48) ***"density"*** means the number of **Dwelling Units** and **Live Work Units** on a ***parcel***, expressed in ***units*** per hectare or in ***units*** per ***parcel***, but does not include **Secondary Suites** or **Backyard Suites**.

Rowhouse Building; Secondary Suite – Permitted Uses in R-CG District

- Permitted Uses & R-CG
  - Section **526(1)** of Land Use Bylaw 1P2007 lists **Secondary Suite** as a permitted use.
  - Section **526(2)** of Land Use Bylaw 1P2007 lists **Rowhouse Building** as a permitted use in the R-CG District where a **Rowhouse Building** meets the rules:
    - in the R-CG District for the use; and
    - of **Section 347.3** – (rules for permitted Rowhouse Building).

Development Permit – Review Process

- March 16, 2021 DP2021-1721 submitted
- March 24, 2021 application circulated to applicable city departments and other standard circulation referees for comments and information
- No on-site notice posting required - Section 27 of Bylaw 1P2007
- April 20, 2021 DTR1 issued
- May 5, 2021 final bylaw check revealed no bylaw discrepancies **no relaxations required** (page 100 of the Board report)
- May 11, 2021 Application approved
- May 26, 2021 Permit released to the applicant

Permitted Uses That Meet All Requirements

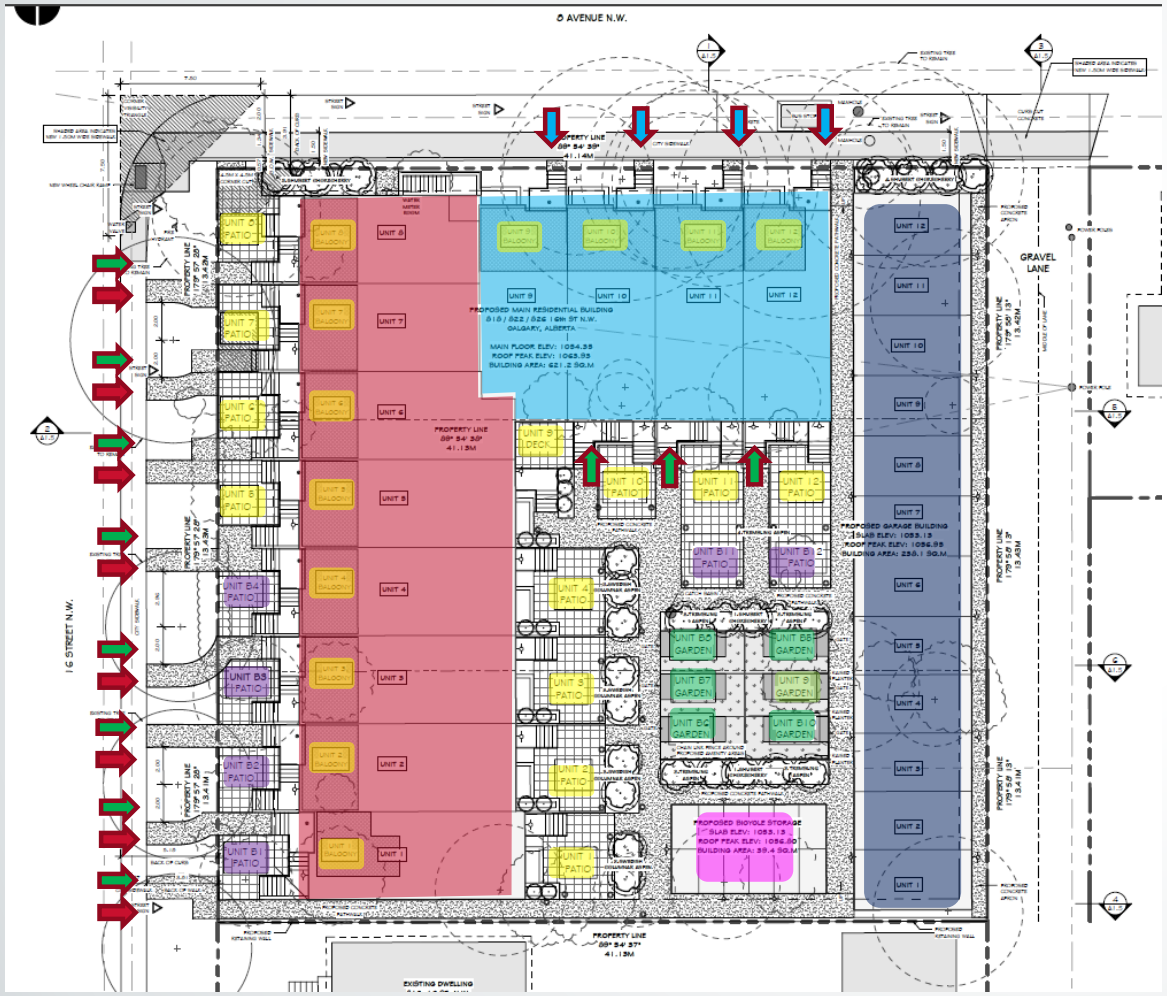
- Section 642(1) of Municipal Government Act

When a person applies for a permitted use development permit, the Development Authority must, if the application otherwise conforms to the land use bylaw, issue a development permit with or without conditions as provided for in the land use bylaw.

- Section 28(1) of Bylaw 1P2007

Where a development permit application is for a permitted use in a building or on a parcel and the proposed development conforms to all of the applicable requirements and rules of this Bylaw, the Development Authority must approve and issue the development permit.

Development Permit – Overview



12 rowhouse units
- Units 1-8 with access from 16 St
- Units 9-12 with access from 8 Av
- Private amenity (balconies, patios & garden – unit 9 only)
- 12 on-site parking stalls – lane access

11 secondary suites
- Private amenity (patios & gardens)
- No on-site parking stalls; on-site storage for alternative mobility options provided

Waste & Recycling
- 3 bins for each rowhouse unit
- Secondary suites to share bins with their respective principal dwelling units

Rowhouse unit access – 16 St

Rowhouse unit access – 8 Av

Secondary suite access

Motor Vehicle Parking Stalls for Secondary Suites

Motor Vehicle Parking Stalls

546 **(2)** The minimum number of ***motor vehicle parking stalls*** for a **Secondary Suite** is reduced to 0.0 where:

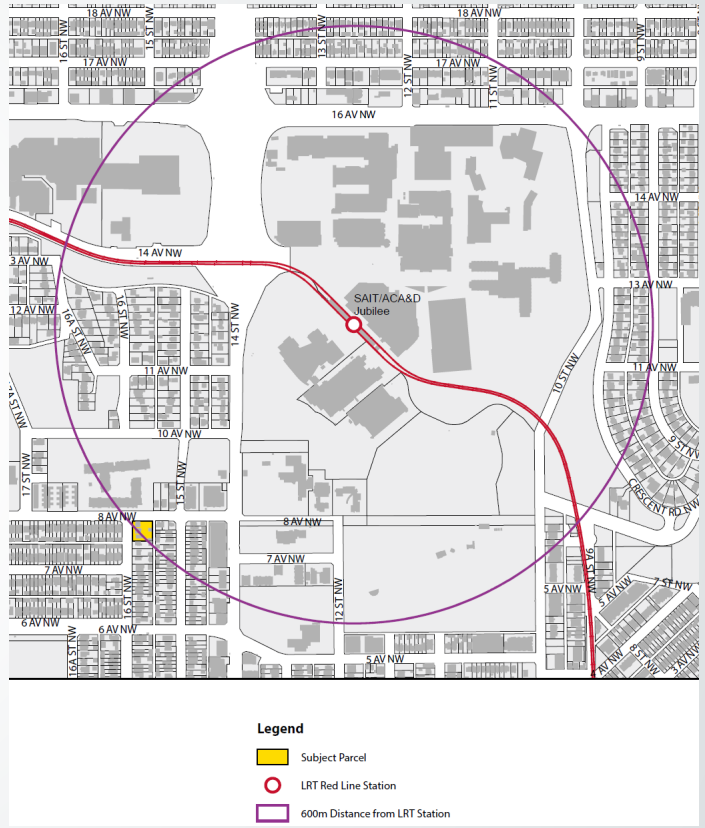
(a) the floor area of a **Secondary Suite** is 45.0 square metres or less;

(b) the ***parcel*** is located within 600.0 metres of an existing or approved capital funded ***LRT platform*** or within 150.0 metres of ***frequent bus service***; and

(c) space is provided in a ***building*** for the occupant of the **Secondary Suite** for storage of mobility alternatives such as bicycles or strollers that:

(i) is accessed directly from the exterior; and

(ii) has an area of 2.5 square metres or more for every **Secondary Suite** that is not provided with a ***motor vehicle parking stall***.

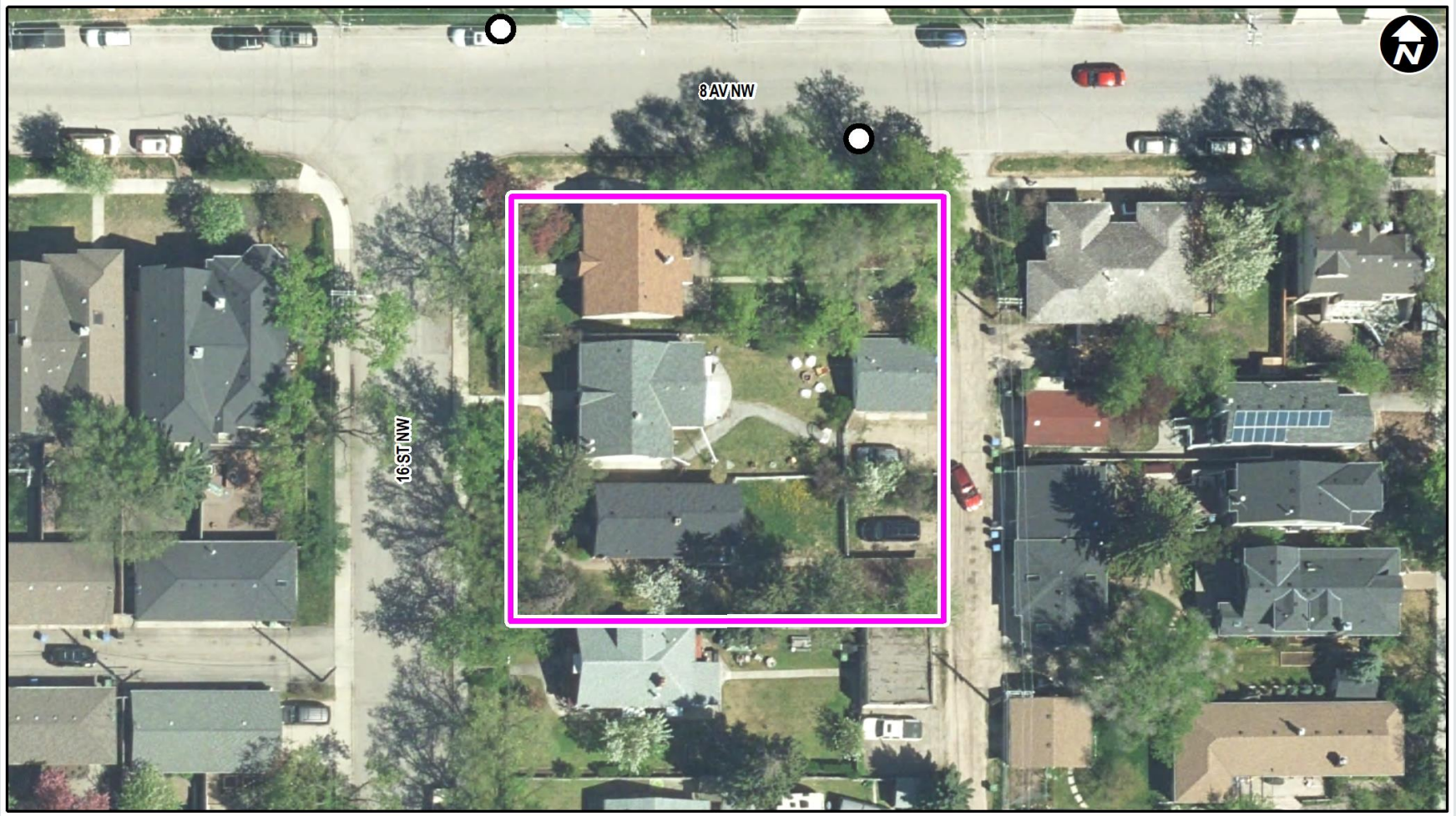


Conclusion & Recommendation

- The development permit application is for a permitted use;
- The development permit application conforms too all applicable rules and requirements of Bylaw 1P2007 - no relaxations required; and
- Therefore, the Development Authority approved the application and issued the development permit.

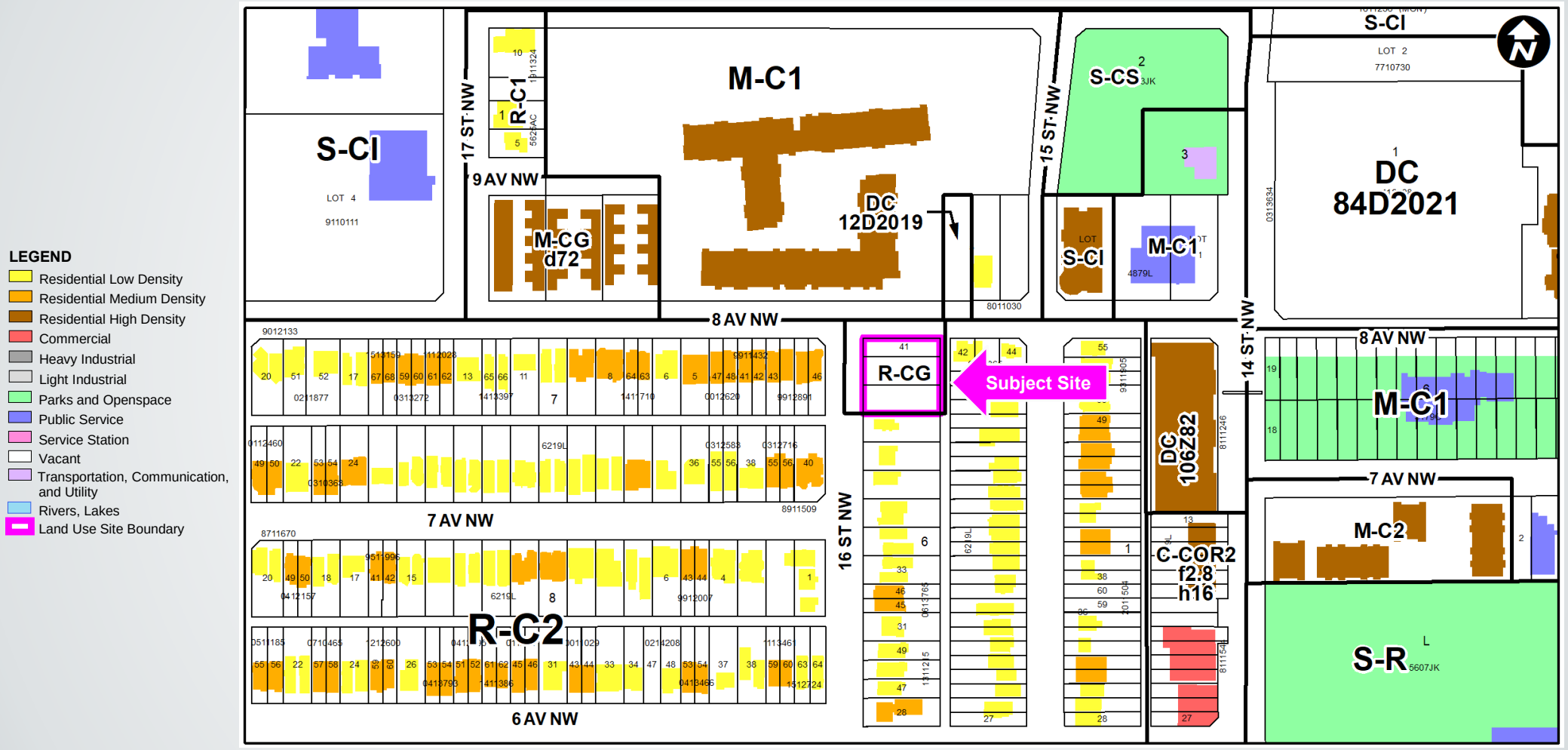
- The Development Authority recommends the Subdivision and Development Appeal Board **deny the appeal and uphold the decision of the Development Authority**.

Supplementary Slides



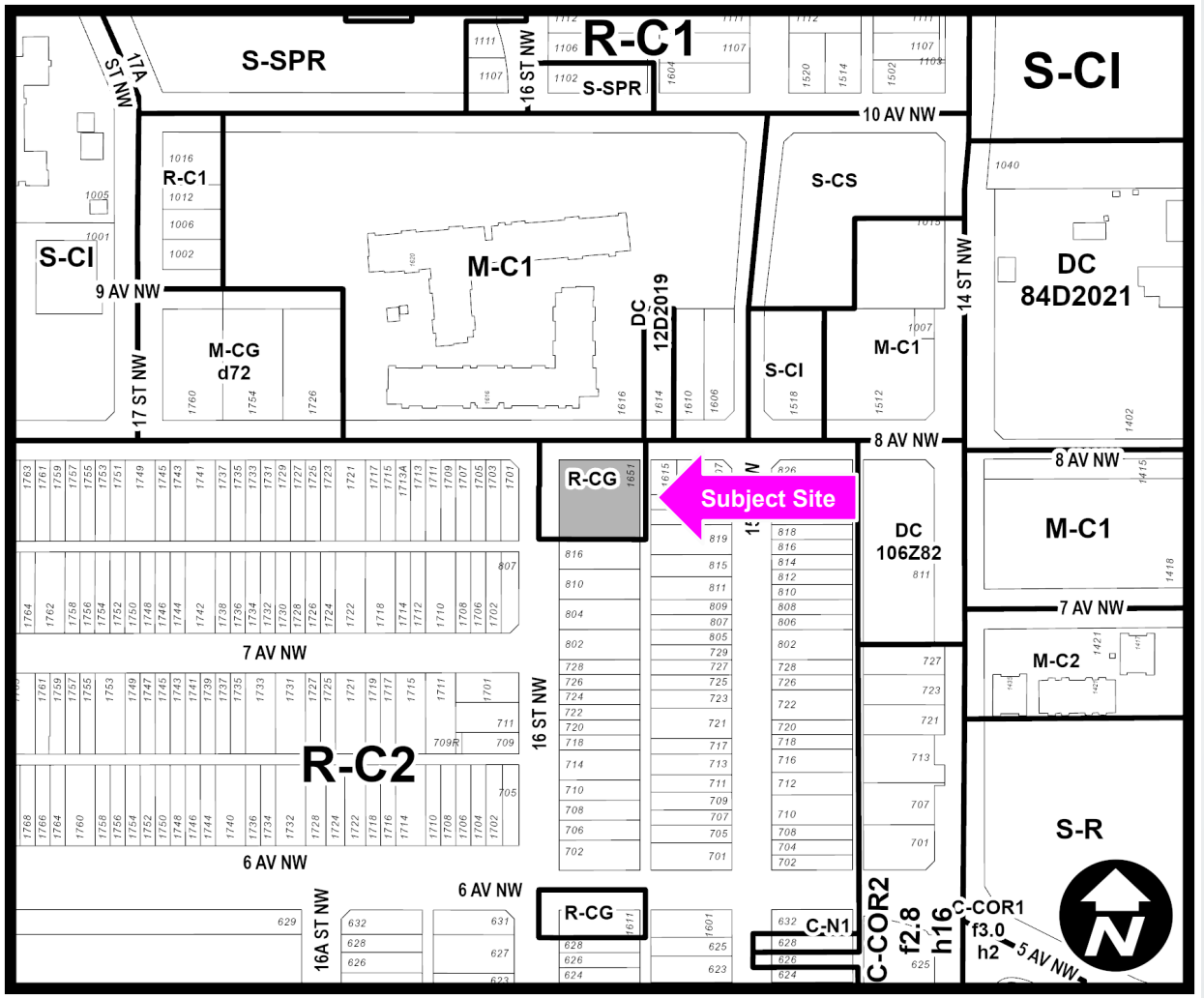
SDAB2021-0040 Additional Submission

Surrounding Land Use



SDAB2021-0040 Additional Submission

Existing Land Use Map



SDAB2021-0040 Additional Submission

Background

- DP2020-3544 (**discretionary use**) for a 12-unit Rowhouse Building with 11 Secondary Suites refused by SDAB on February 16, 2021.
- A new DP2021- 1721 (**permitted use**) for a 12-unit Rowhouse Building with 11 Secondary Suites submitted on March 16, 2021.
- Where a development permit has been refused, the Development Authority must not accept a development permit for the same or similar development within 6 months of the refusal.
- This 6-month “cooling off period” applies except where the proposed development is for a **permitted use** that conforms to all of the applicable requirements and rules of Bylaw 1P2007 (Section 46).

Reapplication for a Development Permit

46 Where a ***development permit*** application has been refused, the ***Development Authority*** must not accept an application for the same or similar ***development*** within six months of the date of decision except where the proposed ***development*** is for a ***permitted use*** that conforms to all of the applicable requirements and rules of this Bylaw.

209

From: Beck, Martin
Sent: Monday, July 19, 2021 3:17 PM
To: Beck, Martin
Subject: FW: Measuring distance from an LRT platform

From: Pearce, Stephen M.
Sent: Monday, July 19, 2021 10:06 AM
To: Singh, Allan <Allan.Singh@calgary.ca>
Cc: Tsimaras, John <John.Tsimaras@calgary.ca>
Subject: Measuring distance from an LRT platform

Good morning Allan,

To implement the following rule:

546(2)(b) the parcel is located within 600.0 metres of an existing or approved capital funded LRT platform or within 150.0 metres of frequent bus service;

The City measures 600.0 m in a straight line from the outside edge of the LRT platform and if any portion of a parcel is within this distance from the edge of the LRT platform the entire parcel is considered to qualify.

Please let me know if you have any further questions.

Stephen Pearce | RPP | MCIP
Coordinator
Legislation & Land Use Bylaw
Calgary Growth Strategies
The City of Calgary
C 403.850.6532
stephen.pearce@calgary.ca

ISC: Protected

210

From: Beck, Martin
Sent: Monday, July 19, 2021 3:04 PM
To: Beck, Martin
Subject: FW: RCG rule - 600m proximity to LRT station

From: Veltom, Olivia
Sent: Friday, July 16, 2021 9:46 AM
To: Singh, Allan <Allan.Singh@calgary.ca>
Cc: Mielke, Karl <Karl.Mielke@calgary.ca>
Subject: RE: RCG rule - 600m proximity to LRT station

Hi Allan,

To confirm our previous discussion:

The site at 1619 8 AV NW is within 600m of SAIT LRT station, as measured directly.

- Transit measures the distance from the property to the closest existing (or future funded) LRT station platform.
- The 600m radius is centered upon the LRT platform and a direct line is used, regardless of right of way or land use.

I'm away next week but Karl will be able to help you if you need more info.

Thanks,

Olivia

Olivia Veltom, PMP

SDAB2021-0040 Additional Submission

211

Transit Planner
T 403 650 3763

Excerpt from Council-approved Transit Oriented Development Policy Guidelines (2004 - non-statutory)

1.0 INTRODUCTION

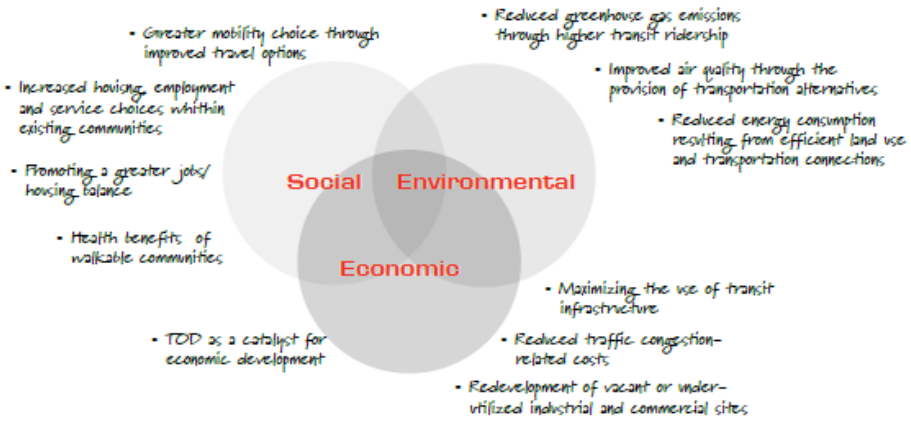
1.1 Transit Oriented Development Definition

Transit Oriented Development (TOD) is a walkable, mixed-use form of development typically focused within a 600m radius of a Transit Station – a Light Rail Transit (LRT) station or Bus Rapid Transit (BRT) stop prior to the arrival of LRT. Higher density development is concentrated near the station to make transit convenient for more people and encourage ridership. This form of development utilizes existing infrastructure, optimizes use of the transit network and creates mobility options for transit riders and the local community. Successful TOD provides a mix of land uses and densities that create a convenient, interesting and vibrant community for local residents and visitors alike.

City-wide destinations served by frequent service and multiple bus routes should also be included as areas that are appropriate for locating transit oriented development. This includes the general commercial nodes, employment concentrations and institutional nodes identified within the *Municipal Development Plan*.

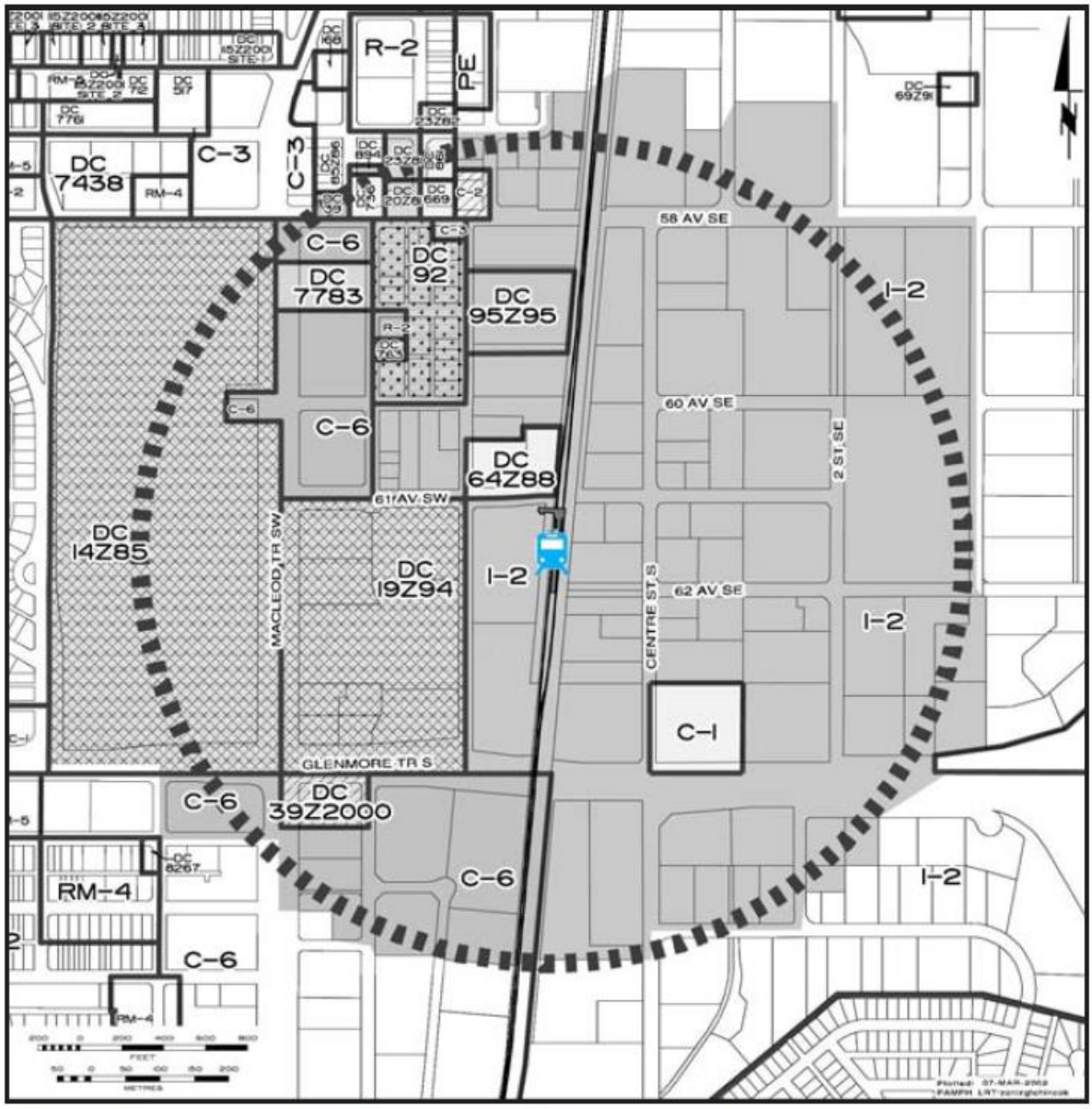
1.2 Benefits of TOD

Transit Oriented Development seeks to implement a more sustainable approach to urban planning and land use. By optimizing the use of land around transit stations, the principles of Smart Growth are followed and a "Triple Bottom Line" approach can help Calgary achieve some of its environmental, economic and social objectives.



TOD can help achieve a "Triple Bottom Line" for Calgary

Excerpt from Transit Oriented Development – Best Practices Handbook (2004 - non-statutory)



Chinook Station, Calgary, AB showing 600m radius circle

This Best Practices Handbook is not a policy document. It is intended as an information resource for Council, developers, builders, planners, urban designers, communities and the general public. Its purpose is to explain TOD, its characteristics, its benefits and its challenges. It will serve as a background document for future City of Calgary policies which will guide TOD land uses, urban design and implementation strategies at LRT stations.

Excerpt from LUB 1P2007 - Section 522

Manufactured Home Park

522 **(1)** The minimum area of a **parcel** used for a **Manufactured Home Park** is 8.0 hectares and the maximum is 16.0 hectares.

(2) In a **Manufactured Home Park** each **Manufactured Home** must:

(a) be located entirely within the bounds of a **Manufactured Home** site, as shown on an approved site plan;

Calgary Subdivision and Development Appeal Board

In the Matter of:

Appeal by Donna Wiebe & Barry Fodor , George Giachino, Stewart Henderson, David & Allison Leese, and Tenzin Blair & Melissa Fellows against the Development Authority's decision to approve a new Rowhouse Building (1 Building, 12 Units), Secondary Suite (11 Suites) and Accessory Residential Buildings (2 Buildings – Garage and Bicycle Storage) at 1651 8 Avenue NW, Calgary.

SDAB2021-0040
DP2021-1721

Hearing: June 24, 2021
Adjourned to: July 29, 2021

SUBMISSIONS
of
Respondents:

(a) Jackson McCormick Group, Applicant; and

(b) Review Custom Homes Ltd, Property owner.

Date: July 21, 2021

Submitted by Rick Grol, agent for the Respondents

I. Introduction

1. The appellants appealed the Development Authority's approval of Development Permit DP2021-0040 for a new: Rowhouse Building (1 Building, 12 Units), Secondary Suite (11 Suites), Accessory Residential Buildings (2 Buildings – Garage and Bicycle Storage) at 1651 8 Avenue NW, Calgary. The property has the land use designation RC-G District pursuant to Land Use Bylaw 1P2007 (LUB).

2. The proposed development is a permitted use development pursuant to the LUB.

3. The respondents, the applicant and property owner, submit that in approving the proposed development the Development Authority(DA) properly acted in accordance with the LUB. The respondents submit that the appellants did not sufficiently demonstrate that the DA erred in determining that the development permit application meets section 546 and other applicable sections of the LUB.

4. The respondents agree with the DA's approval of the proposed development for the reasons outlined in this submission.

II. Background

5. On May 11, 2021, the DA approved development permit DP2021--1721, which approved the proposed development that is the subject of the appeal.

6. In the case at hand, the DA determined that the proposed development complied with all the applicable rules and requirements of the LUB and approved a development permit for the development. The DA determined the development permit application in all aspects complied with the LUB. There are no Bylaw relaxations.

III. Reasons for the Appeal

7. According to the notice of appeal, the appellants submitted that there is a misinterpretation and misapplication of LUB section 546 regarding the permitted use development. The appellants contended that the DA has indicated that one of the requirements for reducing onsite parking requirements for secondary suites to zero is that the development is within 600 metres of a LRT platform. In the appellants' opinion section 546 of the LUB does not direct the DA to use the distance requirement as linear measurements or "as the crow flies" and that the DA has decided to use the "as the crow

flies" because it favours applicants who do not want their development permits being routed through the discretionary permit process. In support of their arguments the appellants reference examples of other LRT stations in the city and the physical limitations in the 600 metre distances to access the LRT stations when the "as the crow flies" standard is used.

8. In addition, the appellants also questioned whether the DA has properly applied the LUB requirements that permitted use rowhouse developments must have a motor vehicle parking stall for every dwelling unit. The appellants doubt that the private single garages will function as required off street parking. In the appellants' opinion the garages will likely be used for storage of materials and storage of bins for recycling, compost and garbage, rather than for parking of motor vehicles. The appellants submitted that the DA has erred and has not followed sound planning principles in approving the permit, as well as having the requisite number of functional parking stalls for the above grade dwelling units.

IV. Evidence and Arguments

Land Use Bylaw

9. The following sections of LUB are relevant in this case:

Permitted Uses That Meet All Requirements

28 (1) Where a ***development permit*** application is for a ***permitted use*** in a ***building*** or on a ***parcel*** and the proposed ***development*** conforms to all of the applicable requirements and rules of this Bylaw, the ***Development Authority*** must approve the application and issue the ***development permit***.

287 "Rowhouse Building"

(a) means a ***use*** where a ***building***:

(i) contains three or more **Dwelling Units**, located side by side and separated by common party walls extending from foundation to roof;

(ii) where one façade of each **Dwelling Unit** directly faces a public ***street***;

(iii) where no intervening ***building*** is located between the ***street*** facing façade of each **Dwelling Unit** and the ***adjacent*** public ***street***;

(iv) where each **Dwelling Unit** has a separate direct entry from ***grade*** to an ***adjacent*** public sidewalk or an adjacent public ***street***;

(v) where no **Dwelling Unit** is located wholly or partially above another **Dwelling Unit**; and

(vi) may contain a **Secondary Suite** within a **Dwelling Unit** in a district where a **Secondary Suite** is a listed ***use*** and conforms with the rules of the district;

(b) is a ***use*** within the Residential Group in Schedule A to this Bylaw;

(c) requires a minimum of 1.0 ***motor vehicle parking stalls*** per **Dwelling Unit**; and

(d) does not require ***bicycle parking stalls – class 1*** or ***class 2***.

Motor Vehicle Parking Stalls

546 **(1)** The minimum number of ***motor vehicle parking stalls*** for a **Contextual Semi-detached Dwelling** is 1.0 stall per **Dwelling Unit.**

(2) The minimum number of ***motor vehicle parking stalls*** for a **Secondary Suite** is reduced to 0.0 where:

(a) the floor area of a **Secondary Suite** is 45.0 square metres or less;

(b) the ***parcel*** is located within 600.0 metres of an existing or approved capital funded ***LRT platform*** or within 150.0 metres of ***frequent bus service***; and

(c) space is provided in a ***building*** for the occupant of the **Secondary Suite** for storage of mobility alternatives such as bicycles or strollers that:

(i) is accessed directly from the exterior; and

(ii) has an area of 2.5 square metres or more for every **Secondary Suite** that is not provided with a ***motor vehicle parking stall***.

(3) ***Parcel coverage*** excludes the ***building coverage*** area required by subsection (2)(c).

Municipal Government Act

10. Section 642(1) of the *Municipal Government,* RSA 2000, c M-26, as amended (Act or MGA) states that "[w]hen a person applies for a development permit in respect to a development provided for by the land use bylaw pursuant to section 640(2)(b)(i), the development authority must, if the application otherwise conforms to the land use bylaw and is complete in accordance with section 683.1, issue a development permit with or without conditions provide for in the land use bylaw." Section 640(2)(b)(i) refers to so-called permitted use developments.

11. Section 685(3) of the MGA states that "[d]espite subsections (1) and (2), no appeal lies in respect of the issuance of a development permit for a permitted use unless the provisions of the land use bylaw were relaxed, varied or misinterpreted, or the application for the development permit was deemed to be refused under section 683.1(8)."

Respondents' Position

12. It is the respondents' position that under the scheme of the *Municipal Government Act* and LUB, and its operations, if an application is made for a development permit for a permitted use that complies with all rules and requirements of the LUB in effect, the DA is duty bound to issue a development permit. This is enshrined in section 642(2)(b)(i) of the MGA and section 28(1) of the LUB.

13. The express wording of section 685(3) of the Act provides that there is no right to an appeal if a development permit for a permitted use is issued by the DA and the provisions of the LUB were not relaxed, varied or misinterpreted. See among other, Board decisions SDAB2008-0165 and SDAB2011-0065 [Appendix A].

14. Under the *Municipal Government Act* there is an absolute right to a development permit in the case of a permitted use and the provisions of the LUB have not been relaxed, varied or misinterpreted. This has been confirmed by the Alberta Court of Appeal in the case of *Eckards Tecumsah Mountain Guest Ranch Ltd. v. Crowsnest Pass (Municipality)*, 2003 ABCA 287 [Appendix B]

15. With respect to a development permit application for a permitted use development, the onus is on an appellant to establish that the land use bylaw has been relaxed, varied or misinterpreted.

16. In this case, in reviewing the subject development permit application, the DA determined that the subject development permit application complied with all the applicable rules and requirements of the LUB, and approved the subject development permit. There are no relaxations or variances of the LUB. The DA determined that the subject parcel is located within 600 metres of an existing LRT platform (LRT station SAIT/ACA/Jubilee). Thus the requirement for motor vehicle stalls for the secondary suites included in the proposed development is zero.

17. The respondents submit that the appellants have not demonstrated that the LUB has been varied or relaxed. Neither have the appellant demonstrated that the LUB has been misinterpreted. Therefore, the appeal is without merit.

Section 546 LUB

18. Section 546(2) of LUB states that the minimum number of motor vehicle parking stalls for a secondary suites is reduced to 0.0 where: (a) the floor area of a secondary suite is 45.0 square metres or less; (b) the parcel is located within 600.0 metres of an existing or approved capital funded LRT platform or within 150.0 metres of frequent bus service; and (c) space is provided in a building for the occupant of the secondary suite for storage of mobility alternatives such as bicycles or strollers that: (i) is accessed directly from the

exterior; and (ii) has an area of 2.5 square metres or more for every secondary Suite that is not provided with a motor vehicle parking stall. [Appendix C]

19. The appellants are of the opinion that the 600 metre distance from the LRT station should be measured as a walking distance and not "as the crow flies ".

20. The Map contained on page 101 of the Board report indicates the 600 metre radial distance from the aforementioned LRT station. It shows that the subject parcel is within the 600 metre distance of the nearest LRT station.

21. The respondents commissioned a survey by ARC Surveys Ltd (by Mr. Rheal Bourqoin, an accredited member of the Alberta Land Surveyors' Association), which confirm the DA's findings regarding the distance of the LRT Station and the subject parcel. According to ARC's Survey, the distance from the LRT platform to the subject parcel is 561 metres. The majority of the parcel is located within 600 metre radius of the LRT station. [Appendix D]

Principles of Statutory Interpretation

22. When interpreting the LUB, the principles of statutory interpretation apply. A recent Supreme Court of Canada decision, *Bell Canada v. Canada (Attorney General)*, 2019 SCC 66 (CanLII) sets out the approach to be taken when interpreting legislation [Appendix E]:

> [41] The scope of the CRTC's authority under s. 9(1)(h) is to be determined by interpreting that provision in accordance with the modern approach to statutory interpretation. As this Court has reiterated on numerous occasions, this approach requires that the words of the statute be read "in their entire context and in their grammatical and ordinary sense harmonious with the scheme of the Act, the object of the Act, and the intention of Parliament" (E. A. Driedger, Construction of Statutes (2nd ed. 1983), at p. 87, as quoted in *Rizzo & Rizzo Shoes Ltd. (Re)*, 1998 CanLII 837 (SCC), [1998] 1 S.C.R. 27, at para. 21, and most recently in *R. v. Barton*, 2019 SCC 33 (CanLII), at para. 71).

23. The contextual approach requires that the words chosen must be assessed in the entire context in which they have been used. The words must be given their plain and ordinary meaning as the context requires. With respect to a land use bylaw, the Alberta Court of Appeal has adopted this approach in many cases: *Love v. Flagstaff (County of) Subdivision and Development Appeal Board*, 2002 ABCA 292, at paras 19-21, and *Desaulniers v. Clearwater (County)*, 2007 ABCA 71, at para 52. [Appendix E] This approach is also consistent with section 10 of the *Interpretation Act*, RSA 2000, c I-8, which provides that every provincial enactment shall be given a fair, large and liberal construction and interpretation that best ensures the attainment of its objects.

24. Pursuant to section 10(1)(c) of the LUB, the words must be given their plain and ordinary meaning as the context requires.

25. It is a well-established principle of statutory interpretation that the legislature does not intend to produce absurd consequences (*Rizzo*, at para 27). [Appendix E]

26. The respondents submit that the words used in section 546(2) of the LUB are very clear: "The minimum number of motor vehicle parking stalls for a Secondary Suite is reduced to 0.0 where: […] (b) the parcel is located within 600.0 metres of an existing or approved capital funded LRT platform […]"

27. The respondents submit that if the drafters of the Bylaw would have intended that the distance to be measured as walking or driving distance it would have said. The drafters and Council expressly and purposely used the words "the parcel is located within 600.0 metres of an existing or approved capital funded LRT platform." That is the determining criteria whether the requirement for a motor vehicle parking stall for a secondary suite is met by a proposed development. We submit there is no ambiguity in the wording of the subject Bylaw section.

28. The respondents submit that the appellants' approach would result in ambiguities in how to apply the 600 metre distance as contemplated in section 546(2) and would create an absurd result: the DA would have to determine from case to case depending on the facts and physical obstacles located within the 600 metre distance what the walking or driving distance would be. In our view that is not the intent of the Bylaw. Clear and unambiguous language in the Bylaw is important. The plain and ordinary meaning of the words used in the subject LUB section indicate that the radial distance of 600 metres is the correct measurement to use.

Other Relevant LUB Sections

29. Note that in terms of the 600 metre distance, section 560(1)(b) of the LUB uses the similar language as section 546(2). More importantly section 560(2)(c) uses the words "[…] the parcel is within 150.0 metres of an existing street where a frequent bus service operates." The appellants' assertion that the "as the crow flies" measurement should not be used for measuring prescribed distances in the LUB, would in our view result in an absurdity when applying section 560(2)(c) and the 150 metre distance referred therein.

30. By analogy other sections of the LUB that stipulate compulsory distances are important to take into account as well. For example the required 300 metre separation distance between cannabis stores and liquor stores (section 160.3 – cannabis store & section 225 – liquor store). Regarding development permit applications for cannabis and liquor stores the DA and the SDAB consistently have applied a radial distance or "as the crow flies". [See Appendix , Excerpt of relevant LUB sections] While it is important to note that LUB

sections 160.3 and 225 specify that the separation distance is measured as the shortest distance from one store to the other store LUB, the Bylaw clearly intends that the distance be measured using a radial distance.

31. In terms of specifically stipulated distances in the LUB, one reasonably cannot interpret the Bylaw differently.

32. The intent behind the 600 metre distance stipulated in the LUB regarding reduced requirements for motor vehicle parking stalls is based on reasonable walking distance from a proposed development to an LRT station or bus stop of a frequent bus service. This is regularly submitted by the DA and the City's Transportation Engineers to the SDAB during appeal hearings. The planning area for a Transit Oriented Development (TOD) around an LRT station is the distance that a pedestrian is likely to travel to take transit. This has been determined to typically be a 5 to 10 minute walk, or approximately 600 m. That is the rationale and intent of the aforementioned LUB section wherein the 600 metre distance to a LRT station is stipulated.

Meaning of the Word Within

33. Section 546(2) uses the word "within" in relationship to the 600 metre distance. The respondents submit that as long as the parcel for the most part is located within the aforementioned distance, then the requirement of the Bylaw is met. The Map contained on page 101 of the Board report indicates that the majority of the subject parcel is located within the 600 metre radial distance from the LRT platform. This is corroborated by ARC's survey. Almost three quarters of the parcel, which is a substantial portion, is within the 600 metre radius from the LRT platform. Note that the LUB doesn't use the word "entirely" in this section. We submit this is expressly and purposely. If Council would have intended that to be the case, it would have said so. Note section 522(2) of the LUB with respect to "Manufactured Home Park", which uses the words "[…] be located entirely within the bounds of Manufactured Home site, […]" The word "entirely" is used. That word is not used in section 546(2). We submit that it reasonably can be inferred that by the absence of the word "entirely" in section 546(2) one can conclude that a parcel does not need to be located wholly or completely within the 600 metre radial distance but rather a portion thereof is sufficient.

34. The evidence indicates that the 600 metre distance stipulated in section 546(2) of the LUB is met. Based on the evidence, the subject parcel is located within the 600 metre distance from the LRT station.

Other Issued raised by the Appellants

35. Whether or not the Accessory Residential Buildings (garage), which under the LUB are a permitted use under the included in proposed development would be used for storage of

materials, etc. irrelevant and is not within the DA or Board's authority of jurisdiction to be reviewed. Those are operational aspects of a development that are beyond the realm of the LUB, and thus are outside the jurisdiction of the DA and the Board.

36. Once the DA determined that the subject development permit application met the rules and requirements of the LUB, the DA had no choice but to approve and issue the subject development permit application.

V. Summary

37. It is the respondents' position that:

(a) The subject development permit application complies in all aspects with the LUB;

(b) In approving and issuing the development permit, the DA did not vary or relax the provisions of the LUB;

(c) The DA did not misinterpret the LUB; and

(d) In accordance with the LUB, the DA correctly issued the development permit.

38. Therefore, in accordance with section 685(3) of the *Municipal Government Act*, in this case the appellants have no right to an appeal.

VI. Conclusion

39. We respectfully request that the appeal be struck, denied or dismissed.

Respectfully submitted on behalf of the respondents,

Rick Grol, Agent for the respondents

Encl.:

- Appendix A – SDAB Decisions
- Appendix B – *Eckards Tecumsah Mountain Guest Ranch Ltd. v. Crowsnest Pass (Municipality)*
- Appendix C – Excerpts LUB
- Appendix D - Map ARC Surveys Ltd.
- Appendix E – Case law SCC & ABCA

Appeal Board rec'd: July 21, 2021
Submitted by: R. Grol, Agent for
Applicant & Property Owner

APPENDIX A

Decisions

SDAB2008-0165

SDAB2011-0065

Calgary Subdivision and Development Appeal Board
P.O. Box 2100, Station M, # 8110,
Calgary, AB T2P 2M5
Email: sdab@calgary.ca

Subdivision & Development APPEAL BOARD

CALGARY SUBDIVISION AND DEVELOPMENT APPEAL BOARD

Citation: 2008 CGYSDAB 165

Case Name: SDAB2008-0165 (Re)

File No: DP2007-3702

Appeal by:	**The Mayfair Bel-Aire Community Association, Margot Willox and Dan Baxter, represented by Christopher Davis and Bonnie Anderson of Municipal Counsellors; Wendy Mortis; Lori Smith, Rob Smith, Jack Smith, Elsie Smith, Bill Dalgeish, and Ann Dalgeish; Alister A. Lee; Patricia Brotherhood; Kathy Uniacke; Doris Wolter and Jim Wolter; Eric Libin & Gay Libin; Richard Galloway; Paul Pellicano; and Marlene Nelson;**
Appeal against:	Development Authority of The City of Calgary
Hearing date:	June 17, 2008
Decision date:	July 31, 2008
Board members:	Rick Grol, Chairman Lou Baisi Sabine Goubau Martina Jileckova Bill Scott

DECISION

Basis of appeal:

This is an Appeal from an approval by the Development Authority for a Development Permit made on the application of **Quinn Young Architects** for **a change of use and addition (2 portables): public school** at 1011 Beverley Boulevard SW.

Description of Application:

The Appeal before the Subdivision and Development Appeal Board ("Board") dealt with an approval of the Development Authority for a Development Permit for a change of use and addition (2 portables): public school at 1011 Beverley Boulevard SW. The property is located in the community of Bel-Aire and has a land use designation of PE Public Park, School, and Recreational District pursuant to the Land Use Bylaw 2P80.

Adjournment:

This Appeal was originally scheduled for July 03, 2008 but was adjourned to July 17, 2008 to allow the Appellants' legal counsel additional time to prepare for the Jurisdictional Issues.

Preliminary Issue:

Firstly, the Board heard submissions from the parties limited to the preliminary issue whether the Board had jurisdiction with respect to the Appeal.

Hearing:

The Board heard verbal submissions from:

Carol McClary, representing the Development Authority;
Bonnie J. Anderson and Christopher S. Davis of Municipal Counsellors, legal counsel for the Mayfair Bel-Aire Community Association, Margot Willox and Dan Baxter, Appellants in favour of the Appeal;
Angus Brotherhood, Appellant, in favour of the Appeal;
Kathy Uniacke, Appellant, in favour of the Appeal; and
Timothy W. Bardsley, Fraser Milner Casgrain LLP, legal counsel for the Applicant and the Calgary Girls School, opposed to the Appeal.

Summary of Evidence:

The Board report forms part of the evidence presented to the Board. It contains the Development Authority's decision respecting the development permit application and the materials submitted by the Development Authority that pertain to the application. The Board report further contains the notices of appeal and the documents, materials or written submissions of the appellants, applicant and any other party to the appeal.

The Development Authority:

The Development Authority presented exhibits including the report, photographs, location map and viewgraphs and submitted the following:

Summary of events:

October 18, 2007 -	development permit application was submitted
November 13, 2007 -	Detailed Team Review from CPAG was prepared and sent to applicant
November 20, 2007 -	Circulated application to Mayfair/Bel-Aire Community Association and Aldermanic Office,
December 12, 2007 -	Notice Posted the site for 2 weeks
December 21, 2007 -	Email from applicant, advising the Notice Posting sign is incorrect, portables are for a charter school which is a public school under Alberta Education
January 9, 2008 -	received Revised Plans from applicant
February to April 2008 -	ongoing discussions with applicant and superintendent of School
May 21, 2007 -	Decision Rendered on permit with the description of Change of Use and Addition (2 Portables): Public School. Letter sent to applicant and to Community Association. At that time the Bylaw in effect was 2P80.

This land was designated PE. The adjacent parcel is designated RR1. Under Land Use Bylaw 2P80 the designation was PE; Public Park, School and Recreation District. Purpose of the district is to provide for educational, recreational, and conservation uses. In terms of use that we had applied to the site was public/separate school and they are listed under permitted uses.

In terms of the Land Use Bylaw not all uses were defined. Listed in section 4 of Land Use Bylaw 2P80:

(92) school, public or separate: means a place of instruction operated with public funds pursuant to the School Act.

Therefore, by looking at the school act, the department determined that a Charter school is a public or separate school. It was under those terms that

we rendered a decision of a permitted use and made the decision on May 21, 2008.

The Development Authority can appreciated that in terms of when the application came in, to when we rendered the decision we were contemplating with was it a private school, or was it a public school. However, because we have history of charter schools being approved as public schools, we had fallen on the side of being a public school.

There were no relaxations associated with this development permit.

Upon questioning by the Board the Development Authority confirmed the reason for the change of use in the new description was because in 2004, Development Permit 2004-2602 was approved, for change of use – private school and a child care facility. The child care facility was using some of the rooms in the building. They are now gone, so when a use that was approved before is physically removed from that building, the Development Authority then regarded it as a change of use because that flags people that that old use is gone and a new use comes in.

In Favour of the Appeal:

Ms. Anderson and Mr. Davis, representing the Mayfair Bel-Aire Community Association, Margot Willox and Dan Baxter, submitted a brief with respect to the preliminary jurisdictional issue and raised the following issues:

- Stated there are two issues which must be dealt with in the preliminary issue:
  - Does the Board have jurisdiction to hear the appeal?
  - Which land use bylaw should be applied to assess matters before the Board, 1P2007 of 2P80?
- Stated that if Bylaw 2P80 is applied the Development Authority erred in finding that a charter school is a "public or separate school" – a permitted use under 2P80. A charter school is not a "public or separate school". A charter school is more accurately characterized as a "private school"
- There is no definition of "charter school" in 2P80. In fact, there is no explicit mention of charter schools anywhere in 2P80 or 1P2007. The three types of schools covering K-12 as defined in 2P80 appear to have intended to exhaust all possibilities. A K-12 school is either a commercial school, private school, or public or separate school. Quotes Land Use Bylaw 2P80:

  "4(90) commercial schools means a place of instruction operated for profit but does not include a public, separate or private school;

  (91) school, private means a school, other than a school operated by a School Board uner the School Act, that provides grade and secondary school institution to pupils through courses prescribed or approved by the Minister of Education;

(92) school, public or separate means a place of institution operated with public funds pursuant to The School Act,"

- The *School Act*, RSA 2000, c.S-3 is the statutory framework within which schools operate in the Province.
- The current definition of private school appears to have been in place since 1990. At that time, a charter school was not a school "operated by a School Board under the *School Act*". "Charter schools only came into existence in 1994. Reference to School Board in 1990 version of the *School Act*, would have included those schools operated in a traditional manner, by a school division or district.
- A publicly funded school in 1980 would have been heavily regulated. The planning impact of a publicly-funded school at that time would have been known. Publicly-funded schools operated on the basis of "attendance area". Schools classified as publicly-funded in 1980 would have been highly predictable and thus rightly considered a permitted use in many situations.
- This would not be the case for private schools. They are minimally regulated, independently owner, operated by corporations or persons, function autonomously, may have their own school boards and councils and so long as they meet the Province's basic educational requirements, are allowed a great deal of deference as to how they operate and deliver their program. They have no restrictions, unless self-imposed, on location of their student base. The planning impact on a community of a private school is an unknown. Private schools would more often be discretionary as further assessment by a development authority into the operation of this type of school would be necessary.
- While a charter school receives public funding, they do not operate under the control of a school district or division. Like private schools, they operate with minimal regulation, autonomously and have flexibility beyond that of a public or separate school. Most important, charter schools are not operated on the basis of student attendance area. They can pull their student base from anywhere, and this chart schools admits students based on a lottery system. The potential planning impact of transporting students in the case of the Calgary Girls' School, up to 80% of its students are transported by bus, can be significant.
    - Quoted the Calgary Girls' School Society Board of Director's Meeting Minutes from February 13, 2008:

      "5.2 Bussing Protocol: Ches made it very clear that bussing is very critical to CGS, with 80% of our students riding the bus. Last year two busses were added due to the lengthy rides that some students had. Our Charter supports accessibility to all students, and at present, CGS has an average of 32 students per bus."
- Quoted Land Use Bylaw section 51.(5)

  (a) School Sites

  Where a current or former public or separate school site is used for other purposed the Approving Authority shall be satisfied the proposed use and any related parking and development requirements, will not adversely affect the surrounding residential area either directly or by its impact on existing playing fields and landscaped areas.

- From a review of the *School Act*, charter schools and private schools are not "operated" by a school division or school district. While they are physically located within a school district or division, they are operated by a separated corporate entity and report directly to the Minister. They Minister retains control over the standards of education n the Province, but gives autonomy and flexibility to charter and private schools as to how those standards are delivered.
- If Land Use Bylaw 2P80 applies and a charter school is a private school, the Development Authority is without jurisdiction to issue DP2007-3072 because:
  - The property is located in the PE District
  - Permitted uses in the PE District include "public or separate schools"
  - Discretionary uses in the PE District included "private school" but may "be allowed only within buildings used, or previously used, as a public or separate school" (2P80 section 51(4)(a))

Mr. Brotherhood, Appellant, raised the following issues:

- He is the property owner of 1111 Beverly Boulevard SW
- He is the former treasurer of the Bel-Aire Community Association
- He stated that the City has not taken into consideration that the land is 1/3 school and 2/3 community reserve

Ms. Uniak, Appellant, raised the following issues:

- She is the property owner of 1016 Beverly Boulevard SW
- She stated that the school is a private school, not a public school and therefore has an impact on the community.
- She stated that she is in agreement with the statements made by Ms. Anderson and Mr. Davis, counsel for the Appellants.

Opposed to the Appeal:

Mr. Bardsley, representing the Applicant and the Calgary Girls School, submitted a brief with respect to the preliminary jurisdictional and raised the following issues:

- Stated the approved use of a public school is a permitted use in the PE district of 2P80. Bylaw 1P2007 was not in force on the date of the decision by the Development Authority, which was May 22, 2008. If the Board does not apply 2P80 to its review of the development permit approval, then it can perform its mandated appeal function under section 268(3) of the MGA. Therefore, the decision under appeal must be reviewed by the Board under 2P80 and that Bylaw 1P2007 has not bearing on the appeal.
- There is no evidence or argument before the Board that any relaxation or variance to the development standards of the PE district of 2P80 was granted in the

issuance of this development permit. The only interpretative issue pertaining to 2P80 that has been raised by the Appellants is that a Charter School is not a "school, public or separate" as defined within section 4(92) of 2P80.

- The Courts have ruled that in a permitted used appeal, if the Board finds that there are no bylaw variances or interpretive errors, then the appeal must be dismissed at that point. No further hearing is required after that finding is made.
- The provisions and cases cited below confirm that a permitted use permit which complies with the Land Use bylaw must be issued by the Authority
- In the 1981 landmark case of *Chrumka and the City of Calgary*, at paragraph 21, our Court of Appeal adopted and approved the opinion of Professor F.L. Laux in describing permitted uses in this fashion;

  > The philosophy behind the distinction between permitted and discretionary uses is simply that, where uses are shown to be permitted within a particular district, they are regarded to be of that type as are so clearly compatible with one another and, therefore are unlikely to adversely affect neighbouring properties in the same district. (*Chrumka v Calgary (City) Development Appeal Board*, 1981)

- The decision as to whether a permitted use is compatible within and with a land use district is made by City Council.
- In deciding the question of which land use bylaw, 2P80 or 1P2007, governs this hearing the Board should have regard to two further sections of the MGA:
  - 685(3) Despite sections (1) and (2), no appeal lies in respect of the issuance of a development permit for a permitted use unless the provisions of the land use bylaw were relaxed, varied or misinterpreted
  - 687(3)(a) (in deciding an appeal the Board) must comply with the land use policies and statutory plans and, subject to clause (d), the land use bylaw in effect

    > (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

- In deciding the question of which Land Use Bylaw is to be used, the Board must adopt the plain and ordinary meaning of these sections in context, consistent with the scheme and philosophy of the MGA, and that in doing so the Board must ascribe meaning to each and every one of these sections.
  - The proper application of section 685(3) in this case makes it clear that the words the "land use bylaw in effect" in section 687(3)(a), in this context, must refer to the land use bylaw which was in force at the time of the making the decision appealed from.
- Quoted *Bouchard and Canmore* (paragraph 10):

  > Further, we note that the Bouchards had no absolute entitlement to the issuance of a development permit under the old bylaw. Their proposed use of the subject lands, namely as a school, was, as mentioned, a discretionary used under the old bylaw. Thus it cannot be said that the Bouchards are in the position of a landowner who had an absolute right to

> a development permit… *(Bouchard v, Canmore (Town of) Subdivision and Development Appeal Board,* 2000 ABCA 117)

- The determination of the meaning of "school, public or separate" in the context of this appeal must be made on the basis of the evidence on the hands of the Authority on the date of the decision to approve the development permit. The Authority knew the application was for a Charter School and that the Charter School was fully publicly funded.
- The appellants argument for what they describe as a "contextual interpretation" of the definition of "school, public, or separate" under 2P80, brings into relevance the comments of our Court of Appeal in the 2003 decision of *Condiminium Plan No. 8222909 v Francis*, where at paragraph 30, the Court of Appeal addressed an interpretation argument relating to the provisions of the Condominium Property Act in this fashion:

> The respondents also argue that the provisions of the Act are to be given a liberal and remedial interpretation. However, broad liberal and remedial interpretations do not permit courts to ignore the words that are part of an enactment. … It is not the role of the courts to enlarge what the legislature has chosen to provide for whenever a possible inequity may occur as a result of the enforcement of the plain meaning of the legislative provision. (*Condominium Plan No. 8222909 v Francis*, 2003 ABCA 234)

Decision:

In deciding the jurisdictional issue with respect to the Appeal, the Board:

- Complied with the *Municipal Government Act*, R.S.A, 2000, c.M-26, as amended, and The City of Calgary Land Use Bylaw 1P2007; and
- Considered all the evidence presented at the hearing, the arguments made and the circumstances**.**

The Appeal was struck.

Reasons:

1 With respect to the Appeal filed by the Appellants, the Board first dealt with the preliminary issue whether it had jurisdiction to deal with the matter. In deciding this issue, the Board had regard to the written and oral submissions submitted by the Appellants and the Applicant as well as the case law cited by the parties.

2 The Board noted that the Development Authority rendered its decision with respect to Development Permit DP2007-3702 on May 22, 2008. At that time, Land Use Bylaw 2P80 was in effect and the Development Authority applied the rules of that Bylaw.

Subsequently, the Land Use Bylaw 1P2007 came into effect on June 01, 2008, at which time the Land Use Bylaw 2P80 was repealed and ceased to have effect pursuant to section 2 of the Land Use Bylaw 1P2007.

3 The Appeal pertains to an approval by the Development Authority and issuance of a Development Permit for a change of use and addition (two (2) portables): public school at 1011 Beverley Boulevard SW.

4 The Board further noted that the Development Permit application is for a change of use and addition of two (2) portables to an existing school building on the subject property for the purpose of the Calgary Girls School. The Calgary Girls School is a charter school as defined in the *School Act*, R.S.A 2000, c.S-3. The Calgary Girls School leases the existing school building on the site from the Calgary Board of Education, the owner of the property. Pursuant to the Land Use Bylaw 2P80, the subject property had a land use designation of PE Public Park, School, and Recreational District.

5 The Development Authority determined that the proposed use and development met the definition of "school, public or separate" in section 4(92) of the Land Use Bylaw 2P80. Furthermore, the Development Authority determined that pursuant to section 51 the proposed use is a permitted use within the PE district. At the hearing, the Development Authority submitted that the application met all the requirements of the Land Use Bylaw 2P80 and that there were no relaxations or variances of the rules of the Land Use Bylaw 2P80.

6 Under the rules of the new Land Use Bylaw 1P2007, the subject property has a land use designation of Special Purpose – School, Park and Community Reserve (S-SPR) District. The Land Use Bylaw 1P2007 contains different definitions for schools than 2P80.

7 The jurisdiction of the Board in regard to the matter before the Board is provided in section 685(3) of the *Municipal Government Act*, which states:

> **685(3)** Despite subsections (1) and (2), no appeal lies in respect of the issuance of the development permit for a permitted use unless the provisions of the land use bylaw were relaxed, varied or misinterpreted.

8 With respect to the issuance of the subject Development Permit, the Board had to decide whether the Land Use Bylaw 2P80 or the Land Use Bylaw 1P2007 applies to the application of section 685(3) of the *Municipal Government Act* in this case.

9 The Appellants submitted that based on section 687(3)(a) of the *Municipal Government Act*, the Board in determining the Appeal should apply the Land Use Bylaw 1P2007, as this was the Land Use Bylaw in effect at the time of the hearing by the Board on the matter. The Applicant submitted that the Land Use Bylaw 2P80 applies as it was in effect on May 22, 2008, the date the said Development Permit was issued.

10 The Board reviewed section 687(3)(a) of the *Municipal Government Act*, which states:

> **687(3)** In determining an appeal, the subdivision and development appeal board
>
> (a) must comply with the land use policies and statutory plans and, subject to clause (d), the land use bylaw in effect;

11 The Board found that section 687(3)(a) does not apply for the consideration of the jurisdictional matter, for the reason that with respect to the jurisdictional matter, the Board does not "determine an appeal" as provided in section 687(3)(a). This provision would, in the opinion of the Board, only apply if and when the Board decides that there is a valid appeal before the Board, as contemplated by the provision of section 687(3)(a).

12 In deciding the jurisdictional matter, the Board first had to decide whether or not there was a valid appeal before the Board pursuant to section 685(3) of the *Municipal Government Act*. In this regard, the Board found that the question was whether the Development Authority at the time it rendered its decision correctly applied the Land Use Bylaw in effect at that time, i.e. Land Use Bylaw 2P80. In rendering its decision on the preliminary jurisdictional matter, the Board found that is acting in a supervisory manner and is limited to the question of whether or not there is a right to an appeal with respect to the issuance of the subject Development Permit pursuant the provisions of section 685(3). This review and hearing the parties on the preliminary jurisdictional issue, is not a hearing *de novo* like the hearing under sections 686 and 687 of the *Municipal Government Act,* when the Board is dealing with the adjudication of a valid appeal.

13 In this regard, the Board took into account sections 640(2)(b)(i) and 642(1) of the *Municipal Government Act*, which state:

> **640(2)** A land use bylaw
>
> (a) …
>
> (b) must, unless the district is designated as a direct control district pursuant to section 641, prescribe with respect to each district,
>
> (i) the one or more uses of land or buildings that are permittted in the district, with or without conditions or
>
> (ii) …
>
> (c) …
>
> **642(1)** When a person applies for a development permit in respect to a development provided for by the land use bylaw pursuant to section 640(2)(b)(i), the development

> authority must, if the application otherwise conforms to the land use bylaw, issue a development permit with or without conditions provide for in the land use bylaw.

14 Under the *Municipal Government Act*, if an application is made for a Development Permit for a permitted use that complies with all rules and requirements of the Land Use Bylaw in effect, the Development Authority is duty bound to issue a Development Permit. The express wording of section 685(3) provides that there is no right to an appeal if a Development Permit for a permitted use is issued by the Development Authority and the provisions of the Bylaw were not relaxed, varied or misinterpreted.

15 Having regard to the scheme of the *Municipal Government Act*, the Board found that for the determination of whether the Appellants have a right to an appeal pursuant to section 685(3), it is logical to apply the Land Use Bylaw applies that is in effect at the time the Development Authority rendered its decision. Under *the Municipal Government Act* there is an absolute right to a Development Permit in the case of a permitted use and the provisions of the Land Use Bylaw have not been relaxed, varied or misinterpreted. This has been confirmed by the Alberta Court of Appeal in the case of *Eckards Tecumsah Mountain Guest Ranch Ltd. v. Crowsnest Pass (Municipality),* 2003 ABCA 287.

16 The right of the Applicant to a Development Permit for a permitted use would have crystallized if indeed: a) the application was for a permitted use and b) it complied in all aspects with the provisions of the Land Use Bylaw in effect at the time the Development Authority rendered its decision and no provisions of the Land Use Bylaw were varied, relaxed or misinterpreted. In the opinion of the Board, it is unfair that an absolute right to a Development Permit for a permitted use could be defeated by applying a subsequent Land Use Bylaw on appeal, where the new Land Use Bylaw has different provisions or would not allow the same use or development.

17 For these reasons, the Board determined that the Land Use Bylaw 2P80 applies with respect to the jurisdictional issue before the Board.

18 The next question the Board needs to address is whether the provisions of the Land Use Bylaw 2P80 were relaxed, varied or misinterpreted by the Development Authority.

19 Under section 51(2) of the Land Bylaw 2P80 the use of “Public and Separate Schools” is a permitted use within the PE Public Park, School, and Recreational District.

20 In reviewing whether the Development Authority relaxed, varied or misinterpreted the provisions of the Land Use Bylaw 2P80, the Board reviewed section 4 of the Bylaw, which contains the following definitions:

> **(90)** school, commercial means a place of instruction operated for profit but does not include a public, separate or private school;

> **(91) school, private** means a school, other than a school operated by a School Board under the School Act, that provides grade and secondary school instruction to pupils through courses prescribed or approved by the Minister of Education;
>
> **(92) school, public or separate** means a place of instruction operated with public funds pursuant to The School Act;

21 In determining which definition(s) of section 4 apply, the Board had regard to the *School Act*, and the *Charter Schools Regulations 212/2002* as well to the references in sections 4(91) and 4(92) of the Land Use Bylaw 2P80 to the *School Act.*

22 It was undisputed that the proposed use is for a charter school established pursuant to the *School Act.* The Appellants and the Applicant agreed that the development in question was not for a "school, commercial". However, they disagreed whether the development was a "school, private" or a "school, public or separate" as defined in sections 4(91) and 4(92) of the Land Use Bylaw 2P80.

23 The Appellants submitted that the subject charter school meets both the definition of "school, private" and "school, public and separate'', but based on the provisions of the *School Act* should be characterized as a "school, private"; and therefore would not be a permitted use but a discretionary use within the subject land use designation. The Applicant submitted that the subject charter school clearly meets the definition of "school, public or separate" as defined in section 4(92) and therefore is a permitted use. Both parties agreed that no provisions of the Land Use Bylaw 2P80 were relaxed or varied by the Development Authority.

24 The Board found that the subject school does not meet the definition of "school, commercial" as defined in section 4(90) of the Land Use Bylaw 2P80. However, in the opinion of the Board, it may well meet both the definition of "school, private" as well as "school, public or separate". Firstly, the Board noted that the subject school is a publicly funded school and that it does not charge tuition for its students. Secondly, it is a school other than a school operated by a school board under the *School Act*. However, based on the content and scheme of the *School Act*, in the opinion of the Board there are some distinguishing differences between a private school and a charter school in terms of the way they are regulated pursuant to the *School Act.*

25 Part 2, Division 2, section 28, of the *School Act* provides for the legislative regulation of a "private school", as defined in the *School Act.* Looking at the content of the *School Act,* the Board concluded that the *School Act* provides for minimal regulation for a "private school". However, Part 2, Division 3, sections 31 - 38 provides for the legislative regulation of a "charter school". In this regard, the Board put emphasis on section 36 in particular.

26 Section 36 of the *School Act* states:

Application of Act
36(1) The following provisions and any regulations made under them apply to a charter school and its operation, and a reference in those provisions or those regulations to a board or a trustee is deemed to include a reference to a society or company that operates a charter school or a member of the governing body of that society or company, as the case may be:

(a) sections 1, 2 and 3;

(b) Part 1;

(c) Part 2 except sections 21(3), 28 and 29;

(d) in Part 3, sections 49, 50, 52, 54, 56, 57, 60, 75, 77, 78, 79, 80 and 81, section 82 except subsections (1)(a) and (2), sections 83 to 85 and section 86 except clauses (b) and (c);

(e) Part 4;

(f) Part 5;

(g) in Part 6, sections 145 to 152, 178 and 183;

(h) Part 7 except section 199;

(i) in Part 10, sections 272 to 280.

(2) Notwithstanding subsection (1), the Lieutenant Governor in Council

(a) may exempt a charter school from the operation of any provision of this Act, except sections 31, 32, 34 and 35, or of the regulations, or

(b) may make any provision of this Act or the regulations apply to a charter school.

27 In the opinion of the Board, it is of significance that many provisions of the *School Act,* and any regulation made under them, with respect to schools operated by a school board apply to charter schools as well. More in particular, the provisions in Part 2, Part 3, Part 4, Part 6, Part 7 and Part 10 of the *School Act*, apply to charter schools and, pursuant to section 36 of the *School Act* any references in those applicable provisions or regulations to a board or a trustee is "deemed to include a reference to a society or company that operates a charter school or a member of the governing body of that society or company, as the case may be". The Board noted that the *School Act* does not provide for an equivalent provision with respect to private schools. Therefore, these provisions and sections do not apply to a private school.

28 The Board found that the majority of the provisions of the *School Act* apply to a charter school. The Board determined that charter schools in essence are heavily

regulated pursuant to the *School Act* in the same or a similar manner as schools operated by a school board of a district or division pursuant to the *School Act.*

29 For these reasons, the Board determined that a charter school is more akin to a school operated by a school board of a district or a division pursuant to the *School Act.*

30 Therefore, the Board concluded that the subject charter school meets the definition of "school, public or separate" as defined in section 4 of the Land Use Bylaw 2P80. As a result the subject school is a permitted use under the rules of the Land Use Bylaw 2P80. Therefore, in the opinion of the Board the Development Authority did not misinterpret the provisions of Land Use Bylaw 2P80 when it approved and issued the subject Development Permit.

31 As a result, based on the aforementioned findings of the Board and its the finding that the Land Use Bylaw 2P80 was not relaxed, varied or misinterpreted by the Development Authority when the subject Development Permit was issued, the Board concluded that no appeal lies with respect to the issuance of the subject Development Permit.

32 Therefore, the Appeal was struck.

_____

Rick Grol, Chairman
Subdivision and Development Appeal Board

Issued on this 31st day of July, 2008

Calgary Subdivision and Development Appeal Board
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Subdivision & Development APPEAL BOARD

CALGARY SUBDIVISION AND DEVELOPMENT APPEAL BOARD

Citation: 2011 CGYSDAB 065

Case Name: SDAB2011-0065 (Re)

File No: DP2011-0961

Appeal by:	Ramsay Community Association represented by Art Matsui
Appeal against:	Development Authority of The City of Calgary
Hearing date:	June 16, 2011
Decision date:	June 29, 2011
Board members:	Rick Grol, Chairman Kerry Armstrong Brian Corkum Angela Dowling Sally Haggis Andrew Wallace

DECISION

Basis of appeal:

This is an appeal from an approval by the Development Authority for a development permit made on the application of **Andreasen Construction** for a **new: contextual single detached dwelling** at 1133 9 Street SE.

Description of Application:

The appeal before the Subdivision and Development Appeal Board (Board) deals with an approval by the Development Authority for a development permit for a new contextual single detached dwelling at 1133 9 Street SE. The property is located in the community of Ramsay and has a land use designation of Residential – Contextual One/Two Dwelling (R-C2) District.

Preliminary Issue:

The Board first heard submissions of all parties limited to the preliminary issue of whether it had the jurisdiction to hear the appeal against the Development Authority's decision to approve a development permit regarding the subject application.

Hearing:

The Board heard verbal submissions from:

Andy Orr, representing the Development Authority;
Maurie Loewen, senior planning technician with City of Calgary Development and Building Approvals; and
Art Matsui, vice-president external for the Ramsay Community Association, the appellant, in favour of the appeal.

Summary of Evidence:

The Board report forms part of the evidence presented to the Board. It contains the Development Authority's decision respecting the development permit application and the materials submitted by the Development Authority that pertain to the application. The Board report further contains the notice of appeal and the documents, materials or written submissions of the appellant, applicant and any other party to the appeal.

In Favour of the Appeal:

The Board heard verbal submissions from the appellant who confirmed that he is aware that in order for an application to qualify as a permitted use contextual single detached dwelling, there can be no relaxations of the Land Use Bylaw. The appellant then stated the following in response to the jurisdictional issue:

> An email sent by planning technician Jeff Martin to the applicant can be found on page 30 of the Board report. Attached to this email is a bylaw check and a bylaw relaxation sheet. The bylaw check is located on page 15 of the Board report and shows an address of 1139 9 Street SE which is not the address of the subject property. In addition, the appellant was unable to locate the bylaw relaxation sheet attached to the aforementioned email in the Board report. The appellant felt that the Board report should provide full disclosure of all information submitted or given to the applicant. On page 16 of the report, the bylaw check for secondary suites (a discretionary use) the box says "see attached". The appellant is unsure whether this was a checklist for a different property, if he is misreading the checklist or is it just not attached as the bylaw relaxation sheet seems to be.
>
> On the main floor plan (drawing A2) it shows an area labeled "Courtyard" which is nine feet by 15 feet abutting stairs to a main floor access door. As this area is the only horizontal platform abutting the stairs the appellant believes this would be more correctly labeled as a landing. As such, the area (12.54 square metres) offends the 2.5 square metre area rule and the portion in the side setback area is 5.57 square metres offending the 1.8 square metre rule. Section 76 of the Land Use Bylaw defines landing as "an uncovered platform extending horizontally from a building, abutting an entry door and providing direct access to grade or stairs." Section 337 (5) of the Bylaw states:
>
> (5) Landings, ramps other than wheelchair ramps and stairs may project in a side setback area provided:
>
> (a) they provide access to the main floor or lower level of the building;
> (b) the area of a landing does not exceed 2.5 square metres;
> (c) the area of any portion of a landing that projects into the side setback area does not exceed 1.8 square metres;
> (d) they are not located in a 3.0 metre side setback area required on a laneless parcel; and
> (e) they are not located in a side setback area required to be clear of projections, unless pedestrian access from the front to the rear of the parcel is provided.

The drawing also shows a balcony labeled deck which is 24 feet by six feet. In order to qualify as a deck when over 1.5 metres above grade, the deck must be on the same façade as the at-grade entrance to a walkout basement. The south elevation (drawing A3) shows a retaining wall of 0.71 metres allowing the entrance to the basement to be below grade. Since there is no at-grade entrance on the south façade there is an oversized (13.38 square metres) balcony 3.4 metres over the entrance grade. With no privacy screening and the 11.15 foot height there are privacy and overlooking issues.

Also on page 21 of the report, the maximum contextual building depth allowed is 18.5 metres. Drawing A3 shows a building depth of 20.27 metres (3.05 metre front setback added to 17.22 metre building depth to the end of the balcony which equals a total of 20.27 metres). This forced grade would also place the second storey balcony at 6.2 metres above the entrance grade below, offending section 347(2) of the LUB which says that a contextual single detached dwelling must not have a balcony more than 6.0 metres in height from grade to the platform of the balcony.

Allowing the entrance below grade also affects the height calculations. If there is a below grade entrance that entrance grade should be used for the height reference point putting this house over the permitted height for a flat roof contextual single.

In conclusion he asks the Board to uphold the appeal of the community and classify this application as discretionary. The applicant brought this forward as a permitted use to circumvent the wishes of the community and neighbours and to take the Ramsay Area Redevelopment Plan (ARP) out of play. The reason that the area that the applicant wishes to build a modern flat roof dwelling, which was designated as a Heritage zone in the ARP, is the historical streetscape in that area. This is the oldest neighbourhood in Calgary and the houses used for context are all around 100 years old, one of the few remaining historical streetscapes in our young City. This is also the reason that many of the neighbours on 9 Street bought or built houses in the area. Those who built new houses in this area made a nod to the past and paid homage to historical forms. I have letters to read from some of those neighbours. Given that the applicant is knowingly gone against the wishes of the community and the ARP, they ask that the Board use their discretionary power to hold this permitted use application to the highest standards and uphold their appeal.

Upon questioning by the Board, the appellant clarified the following:

- Although he believes the address stated on the bylaw check may simply be a clerical error, the appellant stated that his main issue is that the bylaw relaxation

sheet is missing and it would be germain to all involved if all information associated with this application was made available.

- The appellant clarified on the approved plans the area where he thought the "landing" would be located.
- Mr. Matsui confirmed that he used the dimensions found on the approved plans and from the bylaw check for his calculations.
- In his opinion, the applicant is attempting to force a walkout basement on a property not naturally designed for one; excavating the property to force a walkout basement would mean that it is not located at the true grade. He also stated that he did not consider the definition of grade found in section 13(69) the Bylaw.
- In the appellant's opinion, there are at least three relaxations associated with this application: height, depth and forced walkout. That being the case, should the Board accept the appellant's argument in regards to a forced walkout basement there could conceivably be more relaxations. For example, if the Board were to accept the appellant's argument that the basement walkout is forced then the first floor deck should be considered a balcony and the second storey would in turn be higher than six metres.
- The appellant maintained that the proposed deck should be considered a balcony and he would ask the Board to provide and interpretation of at grade.

The Development Authority:

The Board also heard from the Development Authority who presented the report; view graph; section 28 of Land Use Bylaw 1P2007 which deals with permitted uses that meet all the requirements; section 685 of the *Municipal Government Act,* R.S.A. 2000, c.M-26, as amended; and the approved plans. The Development Authority then stated the following:

> For the record the Development Authority is opposed to this appeal being heard. The application was received and evaluated with a complete bylaw check review which is contained in the Board report. Upon completion of the review and confirmation that the requirements for this permitted use had been met, the application was approved by the Development Authority as a contextual single-detached dwelling on May 5, 2011. Since the application was approved as a permitted use, no advertising was required and the application was released on May 09, 2011
>
> As per section 28(1) of the Land Use Bylaw the Development Authority must approve the application and issue the development permit if the use meets all the requirements.
>
> In addition to the requirements of the Bylaw, section 685(3) of the Act also states that no appeal lies in respect to the issuance of a development permit for a permitted use unless the provisions of the Land Use Bylaw were relaxed, varied, or misrepresented.

> The Bylaw check on this file indicates there are no variations or misrepresentations noted or found and as per the requirements of both the Land Use Bylaw and the Act. Therefore the application was issued after its approval as a permitted use and it is the Development Authority's position that no appeal is allowed.
>
> If the appeal is heard and it is determined by the Board that the approval is not a permitted use contextual single detached dwelling, a new use would be created requiring a development permit for what would now be a discretionary use single detached development permit and any new approval would be subject to notice posting, full circulation, etc. As such, the Board could not during the course of the hearing change the use and potentially allow any variations since that would be outside of their jurisdiction.

Upon questioning by the Board, the Development Authority clarified the following:

- The development permit application was approved May 05, 2011 and the appeal received May 19, 2011 which does meet the 14 day legislated time period for filing an appeal.
- Section 347 states that a balcony can be no higher than 6 metres from grade. The approved plans show the balcony at 4.95 metres. Grade is defined in section 13(69) as the elevation of a finished ground surface, not including any artificial embankments.
- Section 337 states that a landing, an uncovered platform abutting an entry door providing direct access to grade, may project into a side setback area provided that the area of the landing does not exceed 2.5 square metres. The approved plans indicate that the landing does project into the required side yard setback area.

The Board also heard from Mr. Loewen who presented relevant sections of Land Use Bylaw 1P2007 to demonstrate that there are no relaxations associated with the development permit application. Mr. Loewen also addressed the issues brought forth by the appellant using the site plan (drawing A1), floor plans (drawing A2) and building elevations (drawing A3) and stated that it is his understanding the appellant has issues with: the side entry; the amenity space at the rear; the measurement of building depth; and the building height. Mr. Loewen then raised the following:

- The term "landing is described in section 13(76) as "an uncovered platform extending horizontally from a building, abutting an entry door or providing direct access to grade or stairs". The proposed development shows stairs abutting the entry door therefore the area questioned by the appellant would not be considered a landing. To support this, Mr. Loewen also referenced the definition of building found in section 13(20) of the Bylaw. He then stated that the building is setback greater than 1.2 metres and is therefore not projecting into the side setback area.

- Mr. Loewen also referenced section 13(47) of the Bylaw which provides the definition of “deck” and section 13(13) which provides the definition of “balcony”. The proposed development indicates that the deck is 0.6 metres above grade and is accessed from the first storey level.
- Section 13(69) of the Bylaw provides the definition of grade. In Mr. Loewen’s opinion the key words within this definition are “finished ground surface” as the grade will be altered during the course of any development (for example altering the grade of a property due to sloping to allow for proper drainage). Therefore, the Development Authority looked to drawing A3, which shows the side elevations of the proposed development, to determine what constitutes the finished grade.
- He also presented the Bylaw definition of “basement” found in section 13(15). When looking at drawing A3, specifically the south elevation, it is clear that the proposed basement will be located primarily below grade and therefore conforms to the above mentioned definition. In addition, he also referenced section 13(141) for a “walkout basement”. To illustrate that the proposed development complies with this definition as well, Mr. Loewen again referenced drawing A3, the west (rear) elevation. Based on this approved drawing, it is clear that even though some of this area has been excavated the basement door exits primarily at the finished grade
- The above mentioned definitions correlate directly with the Bylaw regulations for decks found in section 339(2)(a). This section indicates that a deck must not exceed “1.5 metres above grade at any point, except where the deck is located on the same façade as the at-grade entrance to a walk out basement”.
- The appellant also expressed concern in regard to the height of the proposed balcony. Section 347 of the Land Use Bylaw states that the maximum height of a balcony, when measure from grade, can be no more than 6.0 metres. The intent of this regulation is to limit the opportunities for third storey amenity areas. As show on drawing A3, the proposed balcony measures 4.95 metres and is located on the second storey of the development. The Development Authority therefore determined that it complies with the above mentioned section.
- In regard to building depth, Mr. Loewen stated that this is calculated by measuring the distance from the front property line to the rear of the proposed building. As a rule, building depth is used to address the rear of a proposed development in relation to the adjacent existing homes. The bylaw check found in the report indicates that the maximum building depth allowed is 18.44 metres. The measurements would not include the rear deck as the definition of building depth, found in section 13(23) of the Bylaw, specifically excludes “decks, landings and patios”.
- Finally, the appellant stated that the community has concerns associated with the height of the proposed development; section 360 of the Bylaw deals with the allowable building height of a contextual single detached dwelling. Mr. Loewen specifically referenced the diagram found within this section as in his opinion it very clearly articulates how building height is measured. The Development Authority measures building height from reference points located at the along the front and rear property lines. In this case the bylaw check was done correctly as the height plane was established in accordance with the Bylaw and then a 4-12 pitch was taken off the back as the grade changes from front to back of the property.

Upon questioning by the Board, Mr. Loewen confirmed the following points:

- There are two grades on the subject property: the one that slopes downwards from the front of the property to the rear; and the one that the walkout basement exits on.
- Mr. Loewen reiterated how the Development Authority calculates building depth and stated that the measurements on the approved plans are correct and therefore the proposed development meets the rules of the Land Use Bylaw. He also stated that section 12 of the Bylaw deals with mathematical calculations and that bylaw checks are more detailed and accurate than what the Bylaw requests as the checkers calculate measurements to within two decimal points rather than one.
- Mr. Loewen also reinforced his contention that contrary to the assertion of the appellant there is no landing associated with the subject development, and therefore there would be no Bylaw relaxation in this regard.

Opposed to the Appeal:

No one spoke in opposition of the appeal but a letter opposed was received prior to the hearing.

Decision:

In determining this appeal, the Board:

- Complied with the provincial legislation and land use policies, applicable statutory plans and, subject to variation by the Board, The City of Calgary Land Use Bylaw 1P2007, as amended, and all other relevant City of Calgary Bylaws;
- Had regard to the subdivision and development regulations; and
- Considered all the relevant planning evidence presented at the hearing, the arguments made and the circumstances and merits of the application.

The appeal is struck

Reasons:

1 The Board first deals with the preliminary issue whether it has jurisdiction to deal with the matter.

2 The appellant, in summary, submitted that the Development Authority relaxed the Land Use Bylaw 1P2007 on several points:

(1) The area labeled courtyard on the plans is in the opinion of the appellant's representative actually a landing and does not meet section 337(5) of Land Use Bylaw 1P2007;

(2) The development exceeds the allowable maximum contextual building depth of 18.5 metres as per section 347(4) of the Bylaw;

(3) The second storey balcony does not comply with section 347(2)(c) of the Bylaw as it is 6.2 metres above the entrance; and

(4) The entrance grade affects the height calculation and would push the height over the allowable height for the use.

3 The Board has particular regard to the following sections of the *Municipal Government Act*, R.S.A. 2000, c.M-26, as amended:

Section 642(1) states:

> **642(1)** When a person applies for a development permit in respect to a development provided for by the land use bylaw pursuant to section 640(2)(b)(i), the development authority must, if the application otherwise conforms to the land use bylaw, issue a development permit with or without conditions provide for in the land use bylaw.

Section 685 states:

> **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.
>
> **(2)** In addition to an applicant under subsection (1), any person affected by an order, decision or development permit made or issued by a development authority may appeal to the subdivision and development appeal board.
>
> **(3)** Despite subsections (1) and (2), no appeal lies in respect of the issuance of a development permit for a permitted use unless the provisions of the land use bylaw have been relaxed, varied or misinterpreted.

4 The Board has particular regard to the following sections of Land Use Bylaw 1P2007 including but not limited to:

Section 28(1) states:

> **Permitted Uses That Meet All Requirements**
>
> **28** **(1)** Where a ***development permit*** application is for a ***permitted use*** in a ***building*** or on a ***parcel*** and the proposed ***development*** conforms to all of the applicable requirements and rules of this Bylaw, the ***Development Authority*** must approve the application and issue the ***development permit***.

Section 171 states:

> **171** **"Contextual Single Detached Dwelling"**
>
> (a) means a ***building*** containing one **Dwelling Unit** that:
>
> (i) meets all of the rules specified for the ***use*** in a district; and
>
> (ii) may include a **Secondary Suite** in districts that list that ***use***;
>
> (b) is a ***use*** within the Residential Group in Schedule A to this Bylaw;
>
> (c) requires a minimum of 1.0 ***motor vehicle parking stalls*** per **Dwelling Unit**;
>
> (d) does not require ***bicycle parking stalls – class 1*** or ***class 2***.

Section 425(1)(b) lists "Contextual Single Detached Dwelling" as a permitted use in the R-C2 District.

5 In addition, the Board has regard to all sections of Land Use Bylaw 1P2007 referenced by the appellant including but not limited to sections 13, 337(5), 339(2), 347(2) and (4) and 360.

6 The application is for a development permit for a new "Contextual Single Detached dwelling" on the subject parcel which has the land use designation R-C2 pursuant to Land Use Bylaw 1P2007.

7 Pursuant to section 425(1)(b) of Land Use Bylaw 1P2007 the subject use and development is a permitted use in the R-C2 district.

8 Under the scheme of the *Municipal Government Act* and Land Use Bylaw 1P2007, and its operations, if an application is made for a development permit for a permitted use that complies with all rules and requirements of the Land Use Bylaw in effect, the Development Authority is duty bound to issue a development permit. The express

wording of section 685(3) of the Act provides that there is no right to an appeal if a development permit for a permitted use is issued by the Development Authority and the provisions of the Land Use Bylaw were not relaxed, varied or misinterpreted.

9 The Board carefully considered the appellants arguments but for the reasons that follow, finds the arguments of the appellant not persuasive.

10 At the hearing, the Development Authority responded to all the points raised by the appellant and provided detailed evidence on how the application and development meets the subject applicable provisions of the Bylaw. In addition, the applicant submitted a written response to the appellant's issues (contained in the Board report) and submitted that the application pertains to a permitted use and fully complies with the provisions of the Bylaw.

11 The appellant, amongst other things, argued that the bylaw check contained in the Board report lists an address of 1139 9 Street SE; he pointed out that this is not the address of the subject property which is 1133 9 Street SE. In this regard the Board notes that the bylaw check contained in the Board report clearly list the application No: DP2011-0961, which is the application number of the subject development permit approved by the Development Authority. The Board concludes that the address listing has a typo in the fourth digit and therefore is the correct bylaw check.

12 The Board accepts on all points the Development Authority's evidence and explanation how the application meets the subject Bylaw sections referenced by the appellant. The Board, based on the evidence, finds the Development Authority's explanation plausible and reasonable.

13 Based on all of the evidence, the Board finds that the application in all aspects meets the rules and requirements of Land Use Bylaw 1P2007.

14 In reviewing and weighing all of the evidence, the Board concludes that the Development Authority did not relax, vary or misinterpret the provisions of Land Use Bylaw 1P2007.

15 In accordance with section 685(3) of the *Municipal Government Act*, the Board thus finds that the no appeal lies with the respect to the issuance of the subject development permit.

16 Therefore, the appeal is struck.

_____

Rick Grol, Chairman
Subdivision and Development Appeal Board

Issued on this 29th day of June, 2011

APPENDIX B

Eckards Tecumsah Mountain Guest Ranch Ltd. v. Crowsnest Pass (Municipality), 2003 ABCA 287 (Canlii)

In the Court of Appeal of Alberta

Citation: Eckardts Tecumseh Mountain Guest Ranch Ltd. v. Crowsnest Pass (Municipality), 2003 ABCA 287

Date: 20031015
Docket: 01-00299
Registry: Calgary

In the Matter of Part 17 of the Municipal Government Act, R.S.A. 2000, c.26
And in the Matter of Land Use By-Law No. 481/98 of the Municipality of Crowsnest Pass
And in the Matter of a Proposed Appeal from the Decision of the Subdivision and Development Appeal Board for the Municipality of Crowsnest Pass dated July 11, 2001

Between:

Eckardts Tecumseh Mountain Guest Ranch Ltd.

Appellant

- and -

Municipality of Crowsnest Pass and
Subdivision and Development Appeal Board for
The Municipality of Crowsnest Pass

Respondents

The Court:

The Honourable Mr. Justice O'Leary
The Honourable Mr. Justice Wittmann
The Honourable Mr. Justice Ritter

Memorandum of Judgment
Delivered from the Bench

Appeal from the Decision of The Subdivision and Development Appeal Board
for the Municipality of Crowsnest Pass
Dated July 11, 2001

Memorandum of Judgment
Delivered from the Bench

Wittmann JA (For the Court):

[1] The appellant, Eckardts Tecumseh Mountain Guest Ranch Ltd., owns 30.47 acres of land near Coleman, Alberta in the Municipality of Crowsnest Pass. On April 25, 2001, Eckardts applied to the Municipality for a development permit for a ski resort, which was to include 25 log cabins to be completed within 10 years. The Municipality's Subdivision and Development Authority approved the development with conditions. Four neighbours appealed the development permit. The Subdivision and Development Appeal Board of the Municipality of Crowsnest Pass ("SDAB") dismissed the appeals and upheld the decision of the municipality allowing the development of the ski resort, subject to five conditions. The text of the decision is as follows:

> This Board has decided that the appeal be denied and to uphold the decision of the Subdivision and Development Authority allowing the development of a ski resort with the following conditions:
>
> 1. Accommodations, residence, cabins, etc. are deemed to be an accessory use to a ski resort and shall be applied for under separate development applications and shall include floor plans, elevation drawings and site layout plans.
>
> 2. Six cabins are approved for construction with the following size restriction. No cabin shall exceed 2000 sq. ft. of floor space and the aggregate floor space of the six cabins shall not exceed 8100 sq. ft. The six cabins are approved for sites 1, 2 4, 6, 7 and 8 as shown on drawing No. 12.
>
> 3. Setbacks shall be a minimum of 60 ft. from the property line.
>
> 4. Cabins are for short-term rentals only - all cabins shall have a 30 day maximum stay.
>
> 5. Cabin construction shall commence within 12 months of the date of the development permit and must be completed within 18 months after construction begins.

[2] The appellant was granted leave to appeal the decision of the SDAB on issues arising from the imposition of the conditions and the wording of the denial of the appeals.

[3] The appellant argued that the SDAB erred in law by failing to comply with s.685(3) of the ***Municipal Government Act***, R.S.A. 2000, c. M-26, which provides that "no appeal lies in respect of the issuance of a development permit for a permitted use, unless the provisions of the land use

bylaw were relaxed, varied or misinterpreted."

[4] The appellant argued that since the permit was granted for a ski resort, a permitted use under Land Use Bylaw No. 481, and since it was issued with no relaxations, the SDAB was obliged to dismiss the appeals, rather than dismiss them and imposing additional conditions.

[5] In granting leave to appeal, Fruman, J.A. noted that the SDAB order is somewhat confusing. The appellants filed a development application for the ski resort consisting primarily of a number of cabins. By approving the ski resort, a permitted use, but deeming the cabins to be an accessory use to a ski resort, a discretionary use, the SDAB appears to have found both a permitted and a discretionary use to operate at the same time in the same permit.

[6] Whether this is permissible under the Land Use Bylaw is a question of law: ***Chrumka v. Calgary (City) Development Appeal Board*** (1981), 16 Alta. L.R. (2d) 328 at 334. This determination, in turn, affects the validity of the conditions imposed in the proposed development permit. As well, because the appellant is required to file further development applications, there needs to be a clear understanding what "ski resort" includes and whether the development is a permitted or discretionary use.

[7] Leave to appeal was granted on two questions:

> 1. Did the SDAB err in law or jurisdiction in allowing the development of a ski resort, which is a permitted use, but in deeming "accommodation residence and cabins to be an accessory use to a ski resort", which is a discretionary use?
>
> 2. Did the SDAB err in law or jurisdiction in imposing conditions 1, 3 and 4 and in imposing the size restriction in condition 2 on the six cabins that are authorized to be constructed?

[8] The appellant argued that s. 685(3) of the ***Municipal Government Act*** required only that the SDAB determine if the use was permitted and second, if there were any relaxations or variances required. After answering the first question positively and the second negatively, the SDAB could not address the substantive merits of the application.

[9] The respondent argued whether the ski resort is a permitted or discretionary use is a question of fact which this Court ought not to answer. Alternatively, if it is a question of law or jurisdiction, the respondent submits the purpose of the cabins is a discretionary use, not a ski resort.

[10] Both counsel agreed that part of our function in answering the first question upon which leave was granted is to consider whether the finding of the SDAB that this development was a "ski resort" ought to be sustained.

[11] There is no definition in the Land Use Bylaw No. 481 of what a "ski resort" is. The respondent pointed out in argument there is nothing in the evidence to establish that the proposed

development is a “ski resort” within the meaning of the Land Use Bylaw. For example, it was asserted that there are no ski trails on the property, nor immediately adjacent to it, that there is no reference to ski trails in the application, that is ski trails on the property, or ski equipment rental facilities or ski storage facilities.

[12] The appellant’s then solicitor before the SDAB, indicated that the “ski resort” aspect came to mind because of the close proximity to Alison Chinook Cross Country Ski Trails which are only some one-half mile from the existing Eckhardts Tecumseh Mountain Guest Resort Ltd., on which there is some existing development.

[13] The appellant argued that there was an express finding before the Subdivision and Development Authority that granted the development permit in the first instance. They argued that this express finding was that this development was a ski resort and was a permitted use. This stems from the submissions made by one John Prince to the SDAB upon the hearing before the SDAB. Further, it is argued by the appellant that the SDAB confirmed this finding that they were dealing a development that constituted a “ski resort” because they dismissed the appeal on this basis and called it a ski resort in their findings. The issue of whether the development was a “ski resort” was a live issue before the SDAB. It was commented on by the participants. The application for development before the Subdivision and Development Authority and before the SDAB calls the development a “ski resort”. The proposed 25 cabins were put forward as accommodations for users of the ski trails in close proximity to the property.

[14] According to our standard of review, we cannot disturb the finding that this development was a ski resort.

[15] In arriving at this conclusion we adopt the dominant purpose and intended use test articulated in ***Old Strathcona Foundation v. Edmonton (City)*** 2000 ABCA 205 at paras. 20 and 21. The essential character of the development is to be considered. The essential character of this development may not achieve the status of a ski resort were we hearing the matter as a tribunal of first instance. But we are not. The SDAB made their finding on the basis of some evidence before it and we cannot disturb it according to our standard of review.

[16] Conditions were added. It is common ground that most of these conditions cannot stand because it follows from the finding that the development was a ski resort that it is a permitted use within the meaning of the Land Use Bylaw and s. 685(3) of the ***Municipal Government Act*** does not permit an appeal from that decision.

[17] The SDAB had no jurisdiction to hear the merits of the appeal having inquired of the issue as to whether the development was a ski resort, a permitted use, and affirming that finding.

[18] It is argued we must send this matter back to the SDAB by reason of s. 689(2) of the ***Municipal Government Act*** which states:

> 689(2) In the event that the Court cancels a decision, the Court must refer the matter back to the Municipal Government Board or the subdivision and development appeal board, and the relevant board must rehear the matter and deal with it in accordance with the opinion of or any direction given by the Court on the question of law or the question of jurisdiction.

[19] We view this statutory mandate as applicable when a decision of a planning authority is "cancelled" because of an error of law or jurisdiction made within its jurisdictional capacity. That is not this case. Once it was determined that the development was a ski resort, a permitted use, the SDAB lost jurisdiction. We so declare. There is no appeal from the decision of the Subdivision and Development Authority. That decision is restored but amended as agreed by counsel to delete the reference to 25 cabins and substitute therefor six cabins subject to the condition that requires construction is to commence within 12 months and be finished within 18 months from a date which we suggest be the issuance of the development permit if one has not been issued or, if one has been issued, from today's date.

[20] In the event any issues arise as to costs, I will be delegated by the panel to deal with them.

Appeal heard on October 3, 2003

Memorandum filed at Calgary, Alberta
this 15th day of October, 2003

Wittmann J.A.

Appearances:
H. Ham
for the Appellant

J. S. Grundberg
for the Respondents

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APPENDIX

Excerpts Land Use Bylaw

Reference Aids

10 **(1)** For ease of reference:

(a) words that are capitalized and bold denote ***uses*** defined in Part 4;

(b) words that are italicized and bold denote terms defined in Part 1; and

(c) all other words must be given their plain and ordinary meaning as the context requires.

(2) Headings are for ease of reference only and do not affect the meaning of the provisions to which they relate.

Permitted Uses That Meet All Requirements

28 **(1)** Where a ***development permit*** application is for a ***permitted use*** in a ***building*** or on a ***parcel*** and the proposed ***development*** conforms to all of the applicable requirements and rules of this Bylaw, the ***Development Authority*** must approve the application and issue the ***development permit***.

Motor Vehicle Parking Stalls

546 **(1)** The minimum number of ***motor vehicle parking stalls*** for a **Contextual Semi-detached Dwelling** is 1.0 stall per **Dwelling Unit.**

(2) The minimum number of ***motor vehicle parking stalls*** for a **Secondary Suite** is reduced to 0.0 where:

(a) the floor area of a **Secondary Suite** is 45.0 square metres or less;

(b) the ***parcel*** is located within 600.0 metres of an existing or approved capital funded ***LRT platform*** or within 150.0 metres of ***frequent bus service***; and

(c) space is provided in a ***building*** for the occupant of the **Secondary Suite** for storage of mobility alternatives such as bicycles or strollers that:

(i) is accessed directly from the exterior; and

(ii) has an area of 2.5 square metres or more for every **Secondary Suite** that is not provided with a ***motor vehicle parking stall***.

(3) ***Parcel coverage*** excludes the ***building coverage*** area required by subsection (2)(c).

287 "Rowhouse Building"

(a) means a ***use*** where a ***building***:

(i) contains three or more **Dwelling Units**, located side by side and separated by common party walls extending from foundation to roof;

(ii) where one façade of each **Dwelling Unit** directly faces a public ***street***;

(iii) where no intervening ***building*** is located between the ***street*** facing façade of each **Dwelling Unit** and the ***adjacent*** public ***street***;

(iv) where each **Dwelling Unit** has a separate direct entry from ***grade*** to an ***adjacent*** public sidewalk or an adjacent public ***street***;

(v) where no **Dwelling Unit** is located wholly or partially above another **Dwelling Unit**; and

(vi) may contain a **Secondary Suite** within a **Dwelling Unit** in a district where a **Secondary Suite** is a listed ***use*** and conforms with the rules of the district;

(b) is a ***use*** within the Residential Group in Schedule A to this Bylaw;

(c) requires a minimum of 1.0 ***motor vehicle parking stalls*** per **Dwelling Unit**; and

(d) does not require ***bicycle parking stalls – class 1*** or ***class 2***.

160.3 "Cannabis Store"

(a) means a ***use***:

(i) where cannabis is sold for consumption off the premises;

(ii) where consumption of cannabis must not occur;

(iii) that may include the ancillary retail sale or rental of merchandise; and

(iv) where counselling on cannabis may be provided;

(b) is a ***use*** within the Sales Group in Schedule A to this Bylaw;

(c) where all cannabis that is offered for sale or sold must be from a federally approved and licenced facility;

(d) that has been licensed by the Alberta Government;

(e) in the C-N1 and C-N2 Districts, must only be located on a ***parcel*** with a ***front property line*** on a ***major street*** or a primary collector ***street***;

(f) in all Districts, not including the C-R2, C-R3 and CR20-C20/R20 Districts, must not be located within 300.0 metres of any other **Cannabis Store**, when measured from the closest point of a **Cannabis Store** to the closest point of another **Cannabis Store**;

(g) in all Districts, not including the C-R2, C-R3 and CR20-C20/R20 Districts, must not:

(i) abut a **Liquor Store**;

(ii) if not for one or more intervening ***actual side setback areas***, abut a **Liquor Store**; and

(iii) when located on the same ***parcel***, if not for a vacant space between ***buildings***, not including an internal road, abut a **Liquor Store**;

(h) in all Districts, must not be located within 100 metres of a ***parcel*** that does not have a **School Authority – School** located on it and is designated as a municipal and school reserve or school reserve on the certificate of title;

(i) in all ***commercial***, ***industrial*** and ***mixed use districts***, not including the C-R2, C-R3 and CR20-C20/R20 Districts, must not be located with 150.0 metres of a ***parcel*** that contains any of the following ***uses***, when measured from the closest point of a **Cannabis Store** to the closest point of a ***parcel*** that contains any of them:

(i) **Emergency Shelter**;

225 "Liquor Store"

(a) means a ***use*** where alcoholic beverages are sold for consumption off the retail outlet premises, that has been licensed by the Alberta Gaming and Liquor Commission;

(b) is a ***use*** within the Sales Group in Schedule A to this Bylaw;

(c) in the C-N1 and C-N2 Districts, must only be located on a ***parcel*** with a front ***property line*** on a ***major street*** or a primary collector ***street***;

(d) in all Districts, not including the C-R2, C-R3 and CR20-C20/R20 Districts, must not be located within 300.0 metres of any other **Liquor Store**, when measured from the closest point of a **Liquor Store** to the closest point of another **Liquor Store**;

(e) in all ***commercial***, ***industrial*** and ***mixed use districts***, not including the C-R2, C-R3 and CR20-C20/R20 Districts, must not be located within 150.0 metres of a ***parcel*** that contains a **School – Private** or a **School Authority – School**, when measured from the closest point of a **Liquor Store** to the closest point of a ***parcel*** that contains a **School Authority – School** or a **School – Private**;

(e.1) in all Centre City East Village Districts, **Liquor Stores** must not be located:

(i) within 150.0 metres of a ***parcel*** that contains an **Emergency Shelter**, when measured from the closest point of a **Liquor Store** to the closest point of a ***parcel*** that contains an **Emergency Shelter**; and

Manufactured Home Park

522 **(1)** The minimum area of a ***parcel*** used for a **Manufactured Home Park** is 8.0 hectares and the maximum is 16.0 hectares.

(2) In a **Manufactured Home Park** each **Manufactured Home** must:

(a) be located entirely within the bounds of a **Manufactured Home** site, as shown on an approved site plan;

(b) be on a site, that abuts an internal road, with a minimum width of 4.3 metres;

(c) be on a site which must have a private driveway that provides direct access to an internal road;

(d) be located on a clearly defined site marked by permanent flush stakes or markers;

(e) be addressed with a number;

(f) be located on a site with a minimum area of 240.0 square metres, with a minimum mean width of 9.0 metres; and

(g) be installed on a concrete or asphalt pad, which must be located:

(i) a minimum of 5.0 metres from any ***adjacent*** concrete or asphalt pad provided for another **Manufactured Home**;

(ii) a minimum of 3.0 metres from any ***property line***;

(iii) a minimum of 3.0 metres from any internal road; and

(iv) a minimum of 15.0 metres from any concrete or asphalt pad provided for another **Manufactured Home** or another permanent ***building*** located on the opposite side of an internal roadway.

(3) A **Manufactured Home Park** must be provided with street lighting.

(4) In a **Manufactured Home Park** all ***buildings*** must have a minimum ***building setback*** of 3.0 metres from an internal road, ***street*** or a ***parcel*** that is not designated Residential - Manufactured Home District.

(5) All areas of a **Manufactured Home Park** must be landscaped when not developed or occupied by ***buildings*** or other facilities, concrete or asphalt pads for **Manufactured Homes**, driveways, internal roads, parking areas or walkways.

(6) A minimum of 10.0 per cent of the total area of a **Manufactured Home Park** must be provided for the recreational use of the residents.

Reduction for Transit Supportive Multi-Residential Development

560 **(1)** Where a ***building*** contains three or more ***units*** with shared entrance facilities in a **Multi-Residential Development** and **Multi-Residential Development – Minor**, the required number of ***motor vehicle parking stalls*** for resident parking is reduced by 10.0 per cent where:

(a) the ***parcel*** on which the ***building*** is located is within Area 1 or 2 of the "Parking Areas Map", as illustrated on Map 7;

(b) any portion of the ***parcel*** is within 600.0 metres of an existing or approved Capital funded ***LRT platform***; and

(c) there are pedestrian connections between the ***parcel*** and an ***LRT station***.

(2) Where a ***building*** contains three or more ***units*** with shared entrance facilities in a **Multi-Residential Development** and **Multi-Residential Development – Minor**, the required number of ***motor vehicle parking stalls*** for resident parking is reduced by 10.0 per cent where:

(a) the reduction referenced in subsection (1) is not applied;

(b) the ***parcel*** on which the ***building*** is located is within Area 1 or 2 of the "Parking Areas Map", as illustrated on Map 7; and

(c) the ***parcel*** is within 150.0 metres of an existing ***street*** where a ***frequent bus service*** operates.

Parking Maximums Close to LRT Stations

561 Where a ***building*** contains three or more ***units*** with shared entrance facilities in a **Multi-Residential Development** and **Multi-Residential Development – Minor** located on a **parcel** within 600.0 metres of an existing or approved Capital funded ***LRT Platform***, the maximum number of ***motor vehicle parking stalls*** is:

(a) 1.5 stalls per **Dwelling Unit** for resident parking in Area 1 of the "Parking Areas Map", as illustrated on Map 7; and

(b) 1.25 stalls per **Dwelling Unit** for resident parking in Area 2 of the "Parking Areas Map", as illustrated on Map 7.

APPENDIX D

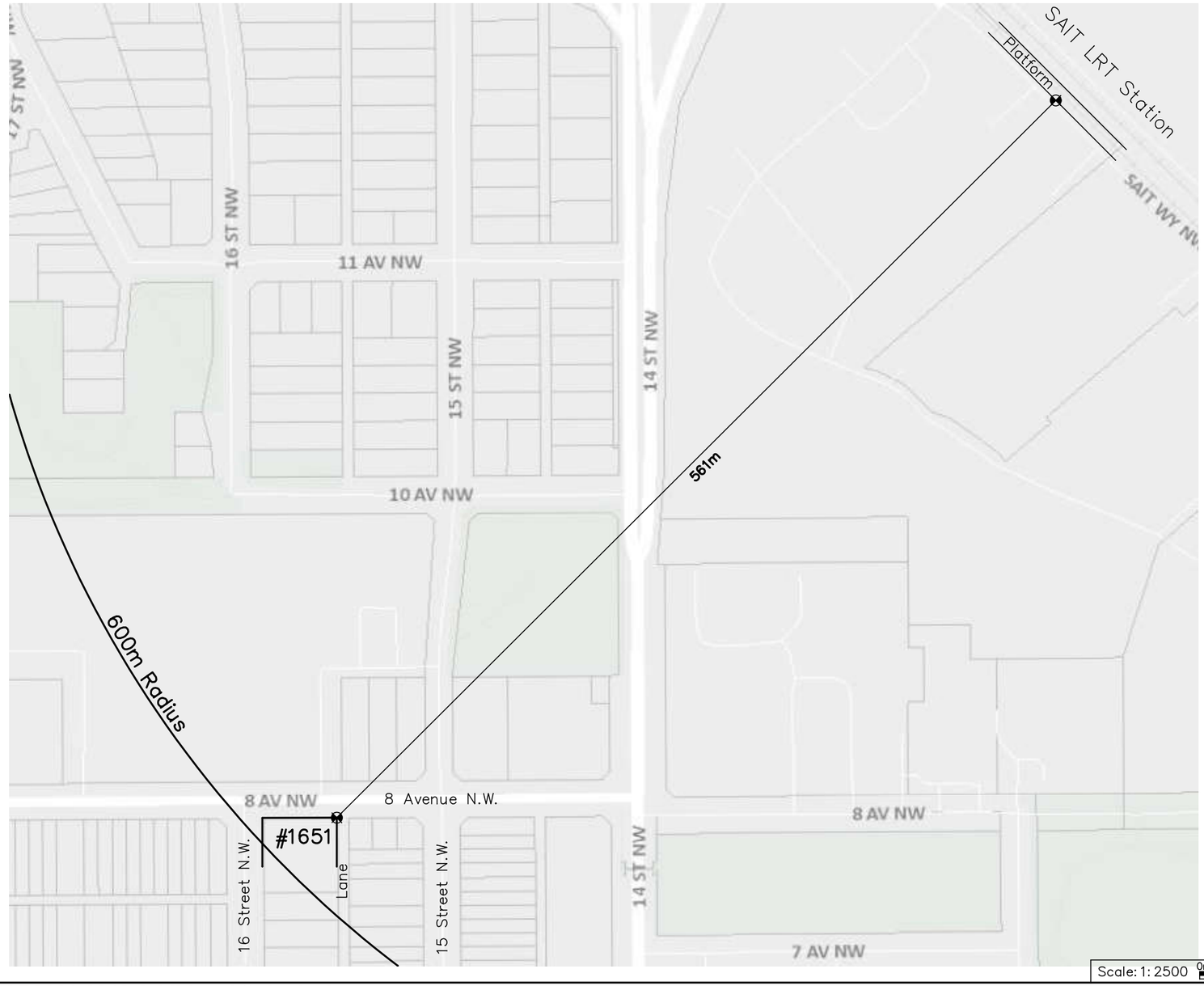
Map ARC Surveys Ltd.

SITE PLAN SHOWING DISTANCE BETWEEN 1651 8 AVENUE NW & SAIT LRT STATION

MUNICIPAL ADDRESSES: 1651 8 Avenue N.W. &
SAIT LRT Station, Calgary, Alberta

CLIENT: Riverview Custom Homes

DATE OF SURVEY: July 20th, 2021.



ALBERTA LAND SURVEYORS' ASSOCIATION
PERMIT NUMBER
P 273
ARC
SURVEYS LTD.

Dated at Calgary, Alberta on this
20th day of July, 2021.

Rheal Bourgouin, A.L.S.

Arc Surveys Ltd.
#202, 337 41 Avenue N.E.
Calgary, Alberta T2E 2N4
Ph.: 403-277-1272
Fax: 403-277-1275
www.arcsurveys.ca

Scale: 1: 2500	0m 25 50 100	Surveyed: SS	Drawn: QM	Checked: RB	File No.: 193423

APPENDIX E

Case law SCC & ABCA

SUPREME COURT OF CANADA

CITATION: Bell **Canada** *v.* Canada (Attorney General), 2019 SCC 66

APPEALS HEARD: December 4, 5, 6, 2018
JUDGMENT RENDERED: December 19, 2019
DOCKETS: 37896, 37897

BETWEEN:

Bell Canada and Bell Media Inc.
Appellants

and

Attorney General of Canada
Respondent

- and -

Attorney General of Ontario, Attorney General of Quebec, Attorney General of British Columbia, Attorney General of Saskatchewan, Canadian Radio-television and Telecommunications Commission, Telus Communications Inc., Advocacy Centre for Tenants Ontario - Tenant Duty Counsel Program, Ontario Securities Commission, British Columbia Securities Commission, Alberta Securities Commission, Ecojustice Canada Society, Workplace Safety and Insurance Appeals Tribunal (Ontario), Workers' Compensation Appeals Tribunal (Northwest Territories and Nunavut), Workers' Compensation Appeals Tribunal (Nova Scotia), Appeals Commission for Alberta Workers' Compensation, Workers' Compensation Appeals Tribunal (New Brunswick), British Columbia International Commercial Arbitration Centre Foundation, Council of Canadian Administrative Tribunals, National Academy of Arbitrators, Ontario Labour-Management Arbitrators' Association, Conférence des arbitres du Québec, Canadian Labour Congress, National Association of Pharmacy Regulatory Authorities, Queen's Prison Law Clinic, Advocates for the Rule of Law, Cambridge Comparative Administrative Law Forum, Association of Canadian Advertisers, Alliance of Canadian Cinema, Television and Radio Artists, Samuelson-Glushko Canadian Internet Policy and Public Interest Clinic, Canadian Bar Association, Blue Ant Media Inc., Canadian Broadcasting Corporation, DHX Media Ltd., Groupe V Média inc., Independent Broadcast

Group, Aboriginal Peoples Television Network, Allarco Entertainment Inc., BBC Kids, Channel Zero, Ethnic Channels Group Ltd., Hollywood Suite, OUTtv Network Inc., Stingray Digital Group Inc., TV5 Québec Canada, ZoomerMedia Ltd., Pelmorex Weather Networks (Television) Inc. and First Nations Child & Family Caring Society of Canada
Interveners

AND BETWEEN:

National Football League, NFL International LLC and NFL Productions LLC
Appellants

and

Attorney General of Canada
Respondent

- and -

Attorney General of Ontario, Attorney General of Quebec, Attorney General of British Columbia, Attorney General of Saskatchewan, Canadian Radio-television and Telecommunications Commission, Telus Communications Inc., Advocacy Centre for Tenants Ontario - Tenant Duty Counsel Program, Ontario Securities Commission, British Columbia Securities Commission, Alberta Securities Commission, Ecojustice Canada Society, Workplace Safety and Insurance Appeals Tribunal (Ontario), Workers' Compensation Appeals Tribunal (Northwest Territories and Nunavut), Workers' Compensation Appeals Tribunal (Nova Scotia), Appeals Commission for Alberta Workers' Compensation, Workers' Compensation Appeals Tribunal (New Brunswick), British Columbia International Commercial Arbitration Centre Foundation, Council of Canadian Administrative Tribunals, National Academy of Arbitrators, Ontario Labour-Management Arbitrators' Association, Conférence des arbitres du Québec, Canadian Labour Congress, National Association of Pharmacy Regulatory Authorities, Queen's Prison Law Clinic, Advocates for the Rule of Law, Cambridge Comparative Administrative Law Forum, Association of Canadian Advertisers, Alliance of Canadian Cinema, Television and Radio Artists, Samuelson-Glushko Canadian Internet Policy and Public Interest Clinic, Canadian Bar Association and First Nations Child & Family Caring Society of Canada
Interveners

CORAM: Wagner C.J. and Abella, Moldaver, Karakatsanis, Gascon, Côté, Brown, Rowe and Martin JJ.

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JOINT REASONS FOR JUDGMENT: (paras. 1 to 59)	Wagner C.J. and Moldaver, Gascon, Côté, Brown, Rowe and Martin JJ.
JOINT DISSENTING REASONS: (paras. 60 to 97)	Abella and Karakatsanis JJ.

NOTE: This document is subject to editorial revision before its reproduction in final form in the *Canada Supreme Court Reports*.

Bell Canada and
Bell Media Inc. *Appellants*

v.

Attorney General of Canada *Respondent*

and

Attorney General of Ontario,
Attorney General of Quebec,
Attorney General of British Columbia,
Attorney General of Saskatchewan,
Canadian Radio-television and Telecommunications Commission,
Telus Communications Inc.,
Advocacy Centre for Tenants Ontario - Tenant Duty Counsel Program,
Ontario Securities Commission,
British Columbia Securities Commission,
Alberta Securities Commission,
Ecojustice Canada Society,
Workplace Safety and Insurance Appeals Tribunal (Ontario),
Workers' Compensation Appeals Tribunal (Northwest Territories and Nunavut), Workers' Compensation Appeals Tribunal (Nova Scotia),
Appeals Commission for Alberta Workers' Compensation,
Workers' Compensation Appeals Tribunal (New Brunswick),
British Columbia International Commercial Arbitration Centre Foundation,
Council of Canadian Administrative Tribunals,
National Academy of Arbitrators,
Ontario Labour-Management Arbitrators' Association,
Conférence des arbitres du Québec,
Canadian Labour Congress,
National Association of Pharmacy Regulatory Authorities,
Queen's Prison Law Clinic,
Advocates for the Rule of Law,
Cambridge Comparative Administrative Law Forum,
Association of Canadian Advertisers,

Alliance of Canadian Cinema, Television and Radio Artists,
Samuelson-Glushko Canadian Internet Policy and Public Interest Clinic,
Canadian Bar Association,
Blue Ant Media Inc.,
Canadian Broadcasting Corporation,
DHX Media Ltd.,
Groupe V Média inc.,
Independent Broadcast Group,
Aboriginal Peoples Television Network,
Allarco Entertainment Inc.,
BBC Kids,
Channel Zero,
Ethnic Channels Group Ltd.,
Hollywood Suite,
OUTtv Network Inc.,
Stingray Digital Group Inc.,
TV5 Québec Canada,
ZoomerMedia Ltd.,
Pelmorex Weather Networks (Television) Inc. and
First Nations Child & Family Caring Society of Canada *Interveners*

- and -

National Football League,
NFL International LLC and NFL Productions LLC *Appellants*

v.

Attorney General of Canada *Respondent*

and

Attorney General of Ontario,
Attorney General of Quebec,
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Attorney General of Saskatchewan,

Canadian Radio-television and Telecommunications Commission,
Telus Communications Inc.,
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National Association of Pharmacy Regulatory Authorities,
Queen's Prison Law Clinic,
Advocates for the Rule of Law,
Cambridge Comparative Administrative Law Forum,
Association of Canadian Advertisers,
Alliance of Canadian Cinema, Television and Radio Artists,
Samuelson-Glushko Canadian Internet Policy and Public Interest Clinic,
Canadian Bar Association and
First Nations Child & Family Caring Society of Canada *Interveners*

Indexed as: Bell Canada *v.* Canada (Attorney General)

2019 SCC 66

File Nos.: 37896, 37897.

2018: December 4, 5, 6; 2019: December 19.

Present: Wagner C.J. and Abella, Moldaver, Karakatsanis, Gascon, Côté, Brown, Rowe and Martin JJ.

ON APPEAL FROM THE FEDERAL COURT OF APPEAL

Administrative law — Appeals — Boards and tribunals — Regulatory boards — Jurisdiction — CRTC deciding that simultaneous substitution regime does not apply to Super Bowl broadcast — Canadians therefore able to view American commercials aired during Super Bowl — Whether CRTC had authority to prohibit simultaneous substitution for Super Bowl — Framework for determining applicable standard of review set out in Vavilov applied — Broadcasting Act, S.C. 1991, c. 11, s. 9(1)(h).

For more than 40 years, the NFL's Super Bowl game, which is played in the United States, had been broadcast in Canada in accordance with the "simultaneous substitution" regime. This regime, set out in various regulations made under the *Broadcasting Act*, allows for a television service provider to temporarily delete and replace the entire signal of a distant (usually national or international) television station with the signal of another (usually local) television station that is airing the same program at the same time. Simultaneous substitution is permitted by the CRTC to allow Canadian broadcasters to realize greater advertising revenues; since simultaneous substitution allows local television stations to maximize their

audiences for specific programs, those stations are able to charge advertisers more for in-program commercials. Because the Canadian broadcast of the Super Bowl had been subject to the applicable simultaneous substitution regime, Canadians were prevented from viewing high-profile American commercials that were aired in the U.S. broadcast of the game.

In 2013, the CRTC initiated a broad public consultation for the purpose of reviewing the entire framework for the regulation of television in Canada. As part of this consultation, it held a public hearing seeking comments on simultaneous substitution, through which Canadians expressed frustration over their inability to see high-profile commercials aired on the U.S. broadcast of the Super Bowl. In August 2016, pursuant to s. 9(1)(h) of the *Broadcasting Act*, the CRTC issued an order ("Order") prohibiting simultaneous substitution for the Super Bowl as of January 1, 2017, supported by reasons ("Decision"). This meant that Canadians would be free to view the U.S. broadcast that features American commercials. Bell and the NFL sought leave to appeal the Decision and Order to the Federal Court of Appeal pursuant to s. 31(2) of the *Broadcasting Act*. Leave was granted but their appeals were unanimously dismissed.

Held (Abella and Karakatsanis JJ. dissenting): The appeals should be allowed and the Decision and Order of the CRTC quashed.

Per **Wagner** C.J. and **Moldaver, Gascon, Côté, Brown, Rowe** and **Martin** JJ.: The Order was issued on the basis of an incorrect interpretation by the

CRTC of the scope of its authority under s. 9(1)(h) of the *Broadcasting Act*. Properly interpreted, this provision only authorizes the issuance of mandatory carriage orders — orders that require television service providers to carry specific channels as part of their cable or satellite offerings — that include specified terms and conditions. It does not empower the CRTC to impose terms and conditions on the distribution of programming services generally. Accordingly, because the Order does not actually mandate that television service providers distribute a channel that broadcasts the Super Bowl, but instead simply imposes a condition on those that already do, its issuance was not authorized by s. 9(1)(h) of the *Broadcasting Act.*

The applicable standard of review of the CRTC's Order and Decision must be determined in accordance with the framework set out in *Vavilov*. Given that the CRTC's Order and Decision have been challenged by way of the statutory appeal mechanism provided for in s. 31(2) of the *Broadcasting* Act, which allows for an appeal to be brought to the Federal Court of Appeal, with leave, on a question of law or a question of jurisdiction, the appellate standards of review apply in this case. And because the issues in these appeals raise legal questions that go directly to the limits of the CRTC's statutory grant of power, that is, that the CRTC lacked the authority under s. 9(1)(h) to issue the Order, and therefore plainly fall within the scope of the statutory appeal mechanism set out in s. 31(2), the applicable standard is correctness.

The scope of the CRTC's authority under s. 9(1)(h) of the *Broadcasting Act* is to be determined by interpreting that provision in accordance with the modern

approach to statutory interpretation. This approach requires the words of the statute be read in their entire context and in their grammatical and ordinary sense harmonious with the scheme of the Act, the object of the Act, and the intention of Parliament. Interpreted in accordance with text, context and purpose of s. 9(1)(h), the CRTC's authority is limited to issuing orders that require television service providers to carry specific channels as part of their service offerings, and attaching terms and conditions to such mandatory carriage orders. Section 9(1)(h) does not give the CRTC a broad power to impose conditions outside the context of a mandatory carriage order. The wording of the provision indicates that the primary power delegated to the CRTC is to mandate that television service providers carry specific programming services as part of their cable or satellite offerings, and that the secondary power relates to the imposition of terms and conditions on such mandatory carriage orders. The statutory context surrounding s. 9(1)(h), notably the powers under ss. 9(1)(b), 9(1)(g) and 10, supports this conclusion as to its scope; the existence of these specific powers weighs against reading s. 9(1)(h) as conferring a general power to impose terms and conditions on any carriage of programming services. This interpretation is also confirmed by the purpose for which s. 9(1)(h) was enacted, and by the legislative history of the provision.

Because the CRTC did not purport, in the Order, to mandate the carriage of any particular programming services, but instead sought to add a condition that must be fulfilled should a television service provider carry a Canadian station that broadcasts the Super Bowl, the issuance of that Order was not within the scope of its

delegated power under s. 9(1)(h) of the *Broadcasting Act*. The Order should therefore be quashed, as well as the Decision; however, no view is expressed as to whether the CRTC could do so pursuant to some other statutory power.

Per **Abella** and **Karakatsanis** JJ. (dissenting): The appeals should be dismissed. The CRTC reasonably interpreted s. 9(1)(h) of the *Broadcasting Act*, and its Super Bowl Order was reasonable and defensible in light of the facts and law.

As a general rule, administrative decisions are to be reviewed for reasonableness. When conducting reasonableness review, a court assesses whether the decision as a whole is reasonable, viewed in light of the reasons given, the decision-making context and the grounds on which it is challenged. Reviewing courts should pay particular attention to the consequences, operational implications and challenges identified by the decision-maker. Because judicial substitution is incompatible with reasonableness review, the reviewing court must not begin its analysis by asking how it would have decided the issue. Rather, the reviewing court defers to any reasonable interpretation adopted by an administrative decision-maker, even if other reasonable interpretations may exist.

The majority's framework disregards the significance of specialized expertise and results in a broad application of the standard of correctness. None of the correctness exceptions apply to the CRTC's decision and reasonableness review is consistent with the highly specialized expertise of the CRTC. As an archetype of an expert administrative body, the CRTC's specialized expertise is well-settled.

Extensive statutory powers have been granted to this regulatory body, and an exceptionally specialized mandate requires the CRTC to consider and balance complex public interest considerations in regulating an entire industry. The need for an expert body to balance sensitive public interest issues in a highly technical context is particularly evident in this case, with the record containing a series of public notices, consultations and policies spanning almost three years and leading to the decision at issue.

Under reasonableness review, Bell and the NFL bear the onus of demonstrating that the CRTC's decision, as a whole, is unreasonable. They have not met their burden. The reasons provided by the CRTC in the Order and accompanying regulatory policy set out a rational and persuasive line of reasoning which clearly outlines the consequences, operational implications and challenges that motivated its decision. While Bell and the NFL submit that the term "programming services" in s. 9(1)(h) cannot support the issuance of an order with terms and conditions that relate to a single program, it is agreed that "programming services" could relate to a single program in this context. In addition, the Order attached a condition to the carriage of Canadian television stations and was, by its own terms, structured to apply to programming services — a reflection of how simultaneous substitution is actually performed. The CRTC's reasoning engaged its specialized and technical knowledge, leading to an interpretation that was reasonable in this operational context. The CRTC also evidently considered s. 9(1)(h) in its context, including not only the objectives of the *Broadcasting Act* but also its broader statutory framework. The CRTC made clear

that its decision was weighed — and ultimately justified — in light of much broader policy determinations and the CRTC's duty to regulate the system as a whole. It is not for a court to engage in weighing competing policy objectives and substituting its own view in deciding which policy objectives should be pursued in the public interest. Finally, the CRTC's interpretation of s. 9(1)(h) of the *Broadcasting Act* does not conflict with the *Copyright Act* and Canada's treaty obligations. The CRTC reasonably interpreted s. 9(1)(h) of the *Broadcasting Act* and its Super Bowl Order was reasonable.

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By Abella and Karakatsanis JJ. (dissenting)

Canada (Minister of Citizenship and Immigration) v. Vavilov, 2019 SCC 65; *Reference re Broadcasting Regulatory Policy CRTC 2010-167 and Broadcasting Order CRTC 2010-168*, 2012 SCC 68, [2012] 3 S.C.R. 489; *McLean v. British Columbia (Securities Commission)*, 2013 SCC 67, [2013] 3 S.C.R. 895.

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Steven G. Mason, *Brandon Kain* and *Richard Lizius*, for the appellants.

Michael H. Morris and *Ian Demers*, for the respondent.

Sara Blake and *Judie Im*, for the intervener the Attorney General of Ontario.

Stéphane Rochette, for the intervener the Attorney General of Quebec.

J. Gareth Morley and *Katie Hamilton*, for the intervener the Attorney General of British Columbia.

Kyle McCreary and *Johnna Van Parys*, for the intervener the Attorney General of Saskatchewan.

No one appeared for the intervener the Canadian Radio-television and Telecommunications Commission.

Christopher C. Rootham, for the intervener Telus Communications Inc.

Karen Andrews, for the intervener the Advocacy Centre for Tenants Ontario - Tenant Duty Counsel Program.

Matthew Britton and *Jennifer M. Lynch*, for the interveners the Ontario Securities Commission, the British Columbia Securities Commission and the Alberta Securities Commission.

Laura Bowman and *Bronwyn Roe*, for the intervener Ecojustice Canada Society.

David Corbett and *Michelle Alton*, for the interveners the Workplace Safety and Insurance Appeals Tribunal (Ontario), the Workers' Compensation Appeals Tribunal (Northwest Territories and Nunavut), the Workers' Compensation Appeals Tribunal (Nova Scotia), the Appeals Commission for Alberta Workers' Compensation and the Workers' Compensation Appeals Tribunal (New Brunswick).

Written submissions only by *Gavin R. Cameron* and *Tom Posyniak*, for the intervener the British Columbia International Commercial Arbitration Centre Foundation.

Terrence J. O'Sullivan and *Paul Michell*, for the intervener the Council of Canadian Administrative Tribunals.

Written submissions only by *Susan L. Stewart*, *Linda R. Rothstein*, *Michael Fenrick*, *Angela E. Rae* and *Anne Marie Heenan*, for the interveners the National Academy of Arbitrators, the Ontario Labour-Management Arbitrators' Association and Conférence des arbitres du Québec.

Steven Barrett, for the intervener the Canadian Labour Congress.

Written submissions only by *William W. Shores, Q.C.*, and *Kirk N. Lambrecht, Q.C.*, for the intervener the National Association of Pharmacy Regulatory Authorities.

Brendan Van Niejenhuis and *Andrea Gonsalves*, for the intervener Queen's Prison Law Clinic.

Adam Goldenberg, for the intervener Advocates for the Rule of Law.

Paul Warchuk and *Francis Lévesque*, for the intervener the Cambridge Comparative Administrative Law Forum.

Written submissions only by *J. Thomas Curry* and *Sam Johansen*, for the interveners the Association of Canadian Advertisers and the Alliance of Canadian Cinema, Television and Radio Artists.

James Plotkin and *Alyssa Tomkins*, for the intervener the Samuelson-Glushko Canadian Internet Policy and Public Interest Clinic.

Guy Régimbald, for the intervener the Canadian Bar Association.

Written submissions only by *Christian Leblanc* and *Michael Shortt*, for the interveners Blue Ant Media Inc., the Canadian Broadcasting Corporation, DHX Media Ltd., Groupe V Média inc., the Independent Broadcast Group, the Aboriginal Peoples Television Network, Allarco Entertainment Inc., BBC Kids, Channel Zero, Ethnic Channels Group Ltd., Hollywood Suite, OUTtv Network Inc., Stingray Digital Group Inc., TV5 Québec Canada, ZoomerMedia Ltd. and Pelmorex Weather Networks (Television) Inc. (37896).

Nicholas McHaffie, for the intervener the First Nations Child & Family Caring Society of Canada.

Daniel Jutras and *Audrey Boctor*, as *amici curiae*, and *Olga Redko* and *Edward Béchard Torres*.

The following is the judgment delivered by

THE CHIEF JUSTICE, MOLDAVER, GASCON, CÔTÉ, BROWN, ROWE AND MARTIN JJ. —

[1] For more than 40 years, the Super Bowl game, which is played in the United States, had been broadcast in Canada in accordance with the "simultaneous substitution" regime, which was set out in various regulations made under the *Broadcasting Act*, S.C. 1991, c. 11. As a result, Canadians were prevented from

viewing high-profile commercials that were aired in the U.S. broadcast of the Super Bowl.

[2] After a lengthy consultation process, the Canadian Radio-television and Telecommunications Commission ("CRTC") decided that the broadcast of the Super Bowl should be exempt from the simultaneous substitution regime as of January 1, 2017 ("Final Decision"), which meant that Canadians would be free to view the U.S. broadcast that features American commercials — which the CRTC described as being "an integral element of the event". The CRTC implemented that decision by way of an order ("Final Order") issued under s. 9(1)(h) of the *Broadcasting Act*, which provides that the CRTC can require that television service providers "carry, on such terms and conditions as the [CRTC] deems appropriate, programming services specified by the [CRTC]".

[3] The main question in these statutory appeals is whether the CRTC had the authority under s. 9(1)(h) of the *Broadcasting Act* to issue the Final Order. The Federal Court of Appeal answered this question in the affirmative. Applying the standard of reasonableness, it held — on the basis of "the deference owed to the CRTC in its interpretation of its home statutes and the broad discretion conferred on the CRTC by paragraph 9(1)(h)" — that "the CRTC's explanation of its jurisdiction to make the Final Order is justifiable, transparent, and intelligible and falls within the range of reasonable outcomes defensible in respect of the facts and the law" (2017 FCA 249, [2018] 4 F.C.R. 300, at para. 28).

[4] We arrive at a different conclusion. The applicable standard must be determined in accordance with the framework set out in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, a case this Court heard together with these statutory appeals in order to "consider the law applicable to the judicial review of administrative decisions as addressed in *Dunsmuir* and subsequent cases" (*Vavilov*, at para. 6). Given that the appellants have challenged the CRTC's Final Decision and Final Order by way of the statutory appeal mechanism provided for in s. 31(2) of the *Broadcasting Act*, the appellate standards of review apply here (*Vavilov*, at paras. 36-52). And because the issues in these appeals raise legal questions that go directly to the limits of the CRTC's statutory grant of power, and therefore plainly fall within the scope of the statutory appeal mechanism referred to above, the applicable standard is correctness.

[5] Applying this standard, we are of the view that the Final Order was issued on the basis of an incorrect interpretation of the scope of the authority conferred on the CRTC under s. 9(1)(h). Properly interpreted, s. 9(1)(h) only authorizes the issuance of mandatory carriage orders — orders that require television service providers to carry specific channels as part of their cable or satellite offerings — that include specified terms and conditions. It does not empower the CRTC to impose terms and conditions on the distribution of programming services *generally*. Accordingly, because the Final Order does not actually mandate that television service providers distribute a channel that broadcasts the Super Bowl, but

instead simply imposes a condition on those that already do, its issuance was not authorized by s. 9(1)(h) of the *Broadcasting Act*.

[6] We would allow the appeals and quash the Final Order and the Final Decision accordingly.

I. Background

A. *Overview of Simultaneous Substitution in Canada*

[7] The CRTC is an independent public authority that oversees broadcasting and telecommunications in Canada. Section 5(1) of the *Broadcasting Act* requires that the CRTC "regulate and supervise all aspects of the Canadian broadcasting system with a view to implementing the broadcasting policy set out in subsection 3(1)" of that Act.

[8] In regulating the Canadian broadcasting industry, the CRTC is required, for the most part, to ensure that all "programming undertakings" and "distribution undertakings" are licensed and that they comply with all conditions applicable to such licences (*Broadcasting Act*, ss. 32 and 33).

[9] Programming undertakings are broadcasters, or television stations, that "acquire, create and produce television programming, and are licensed by the CRTC to serve a certain geographic area within the reach of their signal transmitters"

(*Reference re Broadcasting Regulatory Policy CRTC 2010-167 and Broadcasting Order CRTC 2010-168*, 2012 SCC 68, [2012] 3 S.C.R. 489 ("*Cogeco*"), at para. 4). Although the signals of local television stations can be received for free by anyone with the proper equipment, most Canadians receive them from "distribution undertakings" — which are essentially television service providers like Bell — as part of their cable, satellite or Internet TV subscriptions (Broadcasting Regulatory Policy CRTC 2015-24, January 29, 2015 (online), at para. 3). These distribution undertakings receive signals from television stations, and retransmit them to their subscribers for a fee (*Cogeco*, at para. 4).

[10] Given the technical nature of these terms, we will refer in these reasons to distribution undertakings as "television service providers", and programming undertakings as "television stations". Some of the authorities also refer to programming undertakings as "broadcasters".

[11] Section 7 of the *Broadcasting Distribution Regulations*, SOR/97-555 ("*Distribution Regulations*"), provides that, as a general rule, television service providers cannot alter or delete the signals of television stations while retransmitting them. Section 7(a) of the *Distribution Regulations* provides for an exception to this rule that applies where simultaneous substitution of the signal is either required or authorized under the *Simultaneous Programming Service Deletion and Substitution Regulations*, SOR/2015-240 ("*Simultaneous Substitution Regulations*"). The

Simultaneous Substitution Regulations were made by the CRTC in November 2015 pursuant to its powers under s. 10(1) of the *Broadcasting Act*.

[12] Simultaneous substitution is a process by which a television service provider temporarily deletes and replaces the *entire* signal of a distant (usually national or international) television station with the signal of another (usually local) television station that is airing the same program at the same time. Requests for simultaneous substitution are most often made by Canadian television stations that hold exclusive broadcasting rights to a particular American program so as to require that television service providers in Canada replace the signal of an American station airing the same program with the Canadian station's signal. For example, if the Canadian Broadcasting Corporation ("CBC") owns the exclusive broadcasting rights for a specific event (e.g. the Academy Awards), it can request that the signal of an American station airing that event (e.g. a station of the American Broadcasting Company) be replaced with a CBC station's signal. The result is that local viewers will see the CBC's broadcast of that event — with the same content as the U.S. broadcast *but with different commercials* — when tuning in to either station.

[13] An important reason why simultaneous substitution is permitted by the CRTC as an exception to the general rule in s. 7 of the *Distribution Regulations* is to allow Canadian broadcasters to realize greater advertising revenues:

> *The record of this proceeding indicates that simultaneous substitution is still of significant benefit to Canadian broadcasters since it allows them to fully exploit and monetize the programming rights they have acquired,*

> *to the benefit of their overall investment in the production of Canadian programming. While the Commission recognizes the challenges of quantifying the actual financial benefits of simultaneous substitution for broadcasters, it generally agrees that the estimated value of advertising revenue attributable to substitution in the 2012-2013 broadcast year was approximately $250 million.*
>
> *(Broadcasting Regulatory Policy CRTC 2015-25, January 29, 2015 (online), at para. 14.)*

Put simply, because simultaneous substitution allows local television stations to maximize their audiences for specific programs, those stations will be able to charge advertisers more for in-program commercials.

[14] Section 3 of the *Simultaneous Substitution Regulations* authorizes an operator of a Canadian television station to ask a television service provider "to delete the programming service of another Canadian television station or a non-Canadian television station and substitute for it the programming service of a local television station or regional television station". Section 4(1)(b) requires that the television service provider carry out the requested action if, among other things, "the programming service to be deleted and the programming service to be substituted are comparable and are to be broadcast simultaneously". Pursuant to s. 4(3), however, a television service provider "must not delete a programming service and substitute another programming service for it if the [CRTC] decides under subsection 18(3) of the *Broadcasting Act* that the deletion and substitution are not in the public interest". Section 18(3) of the *Broadcasting Act* reads as follows:

> The [CRTC] may hold a public hearing, make a report, issue any decision and give any approval in connection with any complaint or representation made to the [CRTC] or in connection with any other matter within its jurisdiction under this Act if it is satisfied that it would be in the public interest to do so.

[15] The relevant provisions of the *Broadcasting Act*, the *Distribution Regulations*, and the *Simultaneous Substitution Regulations* are reproduced in full in Appendix A to these reasons.

B. *Simultaneous Substitution and the Super Bowl*

[16] Bell Media Inc. ("Bell") is a Canadian broadcaster that owns and operates a number of television stations of the CTV network in large and small markets across the country.

[17] The National Football League ("NFL") is an unincorporated association of 32 separately owned member clubs, each of which operates a professional football team. The NFL's Super Bowl championship game is among the most widely viewed single television events in Canada each year.

[18] The NFL owns the copyright for the television production of the Super Bowl. In 2013, it granted Bell the exclusive right to broadcast that event in Canada on CTV until the 2018-2019 season.

[19] For over 40 years, the Canadian broadcast of the Super Bowl had been subject to the applicable simultaneous substitution regime, which meant that the U.S. broadcast of the event — featuring American commercials — was unavailable to Canadian viewers.

[20] In 2013, the CRTC initiated a broad public consultation, called "Let's Talk TV: A Conversation with Canadians about the Future of Television", for the purpose of reviewing the entire framework for the regulation of television in Canada. As part of this consultation, it held a public hearing seeking comments on simultaneous substitution, through which Canadians expressed frustration over their inability to see the high-profile commercials that are aired on the U.S. broadcast of the Super Bowl.

[21] On January 29, 2015, the CRTC released Broadcasting Regulatory Policy CRTC 2015-25, in which it announced its intention to continue to allow the practice of simultaneous substitution generally, but to disallow it for (among other things) broadcasts of the Super Bowl beginning in 2017. The CRTC based this decision on "the comments received from Canadians and the fact that the non-Canadian advertising produced for the Super Bowl is an integral part of this special event programming" (para. 22).

[22] On November 19, 2015, the CRTC announced the enactment of the *Simultaneous Substitution Regulations*, which would replace the previous regime set out in the *Distribution Regulations*. In the accompanying Broadcasting Regulatory

Policy CRTC 2015-513, November 19, 2015 (online), the CRTC indicated that it intended to prohibit simultaneous substitution for the Super Bowl by way of an order issued under s. 9(1)(h) of the *Broadcasting Act*.

[23] The Federal Court of Appeal unanimously dismissed statutory appeals brought by Bell and the NFL against the CRTC's broadcasting regulatory policies of January and November 2015 and the promulgation of the *Simultaneous Substitution Regulations* (*Bell Canada v. Canada (Attorney General)*, 2016 FCA 217, 402 D.L.R. (4th) 551). Writing for the court, de Montigny J.A. held that it was premature to assess the validity of a *proposed* distribution order or regulation prohibiting simultaneous substitution for the Super Bowl, as no such order or regulation had actually been made as of the time of the hearing (para. 34). He also held that "the remedial regime set out in the [*Simultaneous Substitution Regulations*] ha[d] been validly adopted" (para. 54).

[24] On February 3, 2016, the CRTC invited comments on its proposed order under s. 9(1)(h) to prohibit simultaneous substitution for the Super Bowl (Broadcasting Notice of Consultation CRTC 2016-37, February 3, 2016 (online)). It received submissions from a number of interested parties, including Bell and the NFL.

II. Procedural History

A. *Decisions of the CRTC: Broadcasting Regulatory Policy CRTC 2016-334 and Broadcasting Order CRTC 2016-335, August 19, 2016 (online)*

[25] On August 19, 2016, pursuant to s. 9(1)(h) of the *Broadcasting Act*, the CRTC issued Broadcasting Order 2016-335 ("Final Order"), which prohibited simultaneous substitution for the Super Bowl as of January 1, 2017. The salient portion of the Final Order reads as follows:

> A distribution undertaking subject to this order may only distribute the programming service of a Canadian television station that broadcasts the Super Bowl if that distribution undertaking does not carry out a request made by that Canadian television station pursuant to section 3 of the *Simultaneous Programming Service Deletion and Substitution Regulations* to delete the programming service of another Canadian television station or a non-Canadian television station and substitute for it the programming service of a local television station or regional television station during any period in which the Super Bowl is being broadcast on the requesting Canadian television station. [para. 3]

[26] The CRTC's reasons for issuing the Final Order are set out in Broadcasting Regulatory Policy CRTC 2016-334 ("Final Decision"). In those reasons, the CRTC expressed the view that the decision to no longer authorize simultaneous substitution for the Super Bowl reflected a reasonable balance of the many policy objectives of the *Broadcasting Act*. The CRTC also held that its authority to implement that policy decision was rooted in s. 9(1)(h) of that Act, and that the Final Order issued pursuant to that authority satisfied the requirement of s. 4(3) of the *Simultaneous Substitution Regulations*. As we noted above, s. 4(3) prohibits television service providers from carrying out simultaneous substitution

where the CRTC has decided, under s. 18(3) of the *Broadcasting Act*, that doing so is not in the public interest.

[27] Among the legal submissions advanced during the consultation process, Bell and the NFL argued that the CRTC lacked jurisdiction to issue the Final Order under s. 9(1)(h) of the *Broadcasting Act*. They took the position that orders issued under s. 9(1)(h) "can only affect a programming service (that is, the entire output of a service), and not an individual program such as the Super Bowl" (Final Decision, at para. 52). The CRTC rejected this argument, finding that the provision in question confers on it the "broad power to regulate the cable industry and impose any conditions necessary to do so" (para. 21). It explained the relationship between s. 9(1)(h) and the Final Order specifically as follows:

> The proposed distribution order relates to the distribution of a "Canadian television station that broadcasts the Super Bowl", . . . and then imposes a condition on that distribution, specifically, that the simultaneous substitution shall not be performed during the Super Bowl. Further, the wording of the proposed order adequately responds to the contention that s. 9(1)(h) can only operate with respect to a programming service, as opposed to a particular program (such as the Super Bowl).
>
> Moreover, the distribution order reflects the way simultaneous substitution is actually performed. The entire output of a programming service is, for a particular program, deleted and the entire output of another programming service is substituted, until that program ends. The distribution order reflects the notion that the entire output of the programming service of a television station will not be deleted and substituted for the Super Bowl, a particular program. [paras. 54-55]

[28] The Final Decision also addressed a submission from SaskTel that the wording of the Final Order could be interpreted as requiring a television service

provider to distribute a Canadian television station that broadcasts the Super Bowl, even if it does not otherwise distribute that station (para. 62). The CRTC clarified its position: the Final Order was not intended to mandate the distribution of a station that broadcasts the Super Bowl, "but simply to add a condition that must be fulfilled should a [television service provider] carry the station (whether it is being carried because it is mandated to be carried by regulation as a local television station, or whether it is simply authorized to be carried as a distant signal)" (para. 63 (emphasis added)).

B. *Decision of the Federal Court of Appeal: 2017 FCA 249, [2018] 4 F.C.R. 300*

[29] Bell and the NFL were granted leave to appeal the Final Decision and the Final Order to the Federal Court of Appeal pursuant to s. 31(2) of the *Broadcasting Act*. Their appeals were unanimously dismissed.

[30] Near J.A., writing for the court, began his analysis by considering the issue of whether the CRTC had jurisdiction to issue the Final Order pursuant to s. 9(1)(h) of the *Broadcasting Act*. After identifying reasonableness as the applicable standard of review, he found that it was reasonable for the CRTC to have interpreted that the term "programming services", as it is used in s. 9(1)(h), includes an individual program like the Super Bowl. He also found that the CRTC's policy determination that simultaneous substitution for the Super Bowl was not in the public interest was entitled to deference on appeal (para. 24), and that once it had made this determination under s. 18(3) of the *Broadcasting Act*, "it was entitled to exempt the

Super Bowl from the simultaneous substitution regime under [s.] 4(3) of the [*Simultaneous Substitution Regulations*]" (para. 25).

[31] In addition to challenging the reasonableness of the CRTC's Final Decision and Final Order, the NFL argued that the Final Order should be set aside on the basis that it conflicted with the *Copyright Act*, R.S.C. 1985, c. C-42, and with international trade law. Near J.A. agreed with the NFL that the standard of review for this issue was correctness, both because the *Copyright Act* is not the CRTC's "home statute" and because the CRTC shares concurrent jurisdiction over the application of that Act with the Copyright Board and courts at first instance (para. 38). On the merits, however, he found no conflict of purpose or operational conflict between the Final Order and the *Copyright Act*, and rejected the NFL's submission on this issue accordingly.

III. Analysis

[32] Before this Court, the appellants, Bell and the NFL, submit that the Final Order and the Final Decision should be set aside on the basis that the CRTC lacked the statutory authority, pursuant to s. 9(1)(h) of the *Broadcasting Act*, to prohibit simultaneous substitution for the Super Bowl. They also submit that the Final Decision and the Final Order are invalid because they conflict with the operation and the purpose of s. 31(2) of the *Copyright Act*.

[33] Because we accept the appellants' primary jurisdictional argument and would allow the appeals on that basis alone, we find it unnecessary to address the purported conflict between the Final Decision and Order and the *Copyright Act*. The two issues that we will address in these reasons are therefore the following:

1. What standard should this Court apply in reviewing the CRTC's decision regarding the scope of its authority under s. 9(1)(h) of the *Broadcasting Act*?

2. Was the CRTC correct in deciding that it had the power under s. 9(1)(h) of the *Broadcasting Act* to implement its Final Decision to issue the Final Order prohibiting simultaneous substitution for the Super Bowl?

A. *Correctness as the Applicable Standard of Review*

[34] Bell and the NFL challenge the Final Decision and the Final Order by means of the statutory appeal mechanism provided for in s. 31(2) of the *Broadcasting Act*, which allows for an appeal to be brought to the Federal Court of Appeal, with leave, "on a question of law or a question of jurisdiction". The appellate standards of review therefore apply (see *Vavilov*, at paras. 36-52).

[35] Bell and the NFL do not dispute that the CRTC is the administrative body that is statutorily mandated with overseeing broadcasting and telecommunications in Canada in accordance with the policy objectives set out in the *Broadcasting Act* and

the *Telecommunications Act*, S.C. 1993, c. 38. Instead, the primary ground of appeal they advance in this case is that the CRTC lacked the authority to issue a specific order prohibiting simultaneous substitution for the Super Bowl under s. 9(1)(h) of the *Broadcasting Act*. This raises a question that goes directly to the limits of the CRTC's statutory grant of power, and therefore plainly falls within the scope of the statutory appeal mechanism of s. 31(2); the Attorney General of Canada conceded as much in oral argument (transcript, day 1, at p. 80).[1] The applicable standard is therefore correctness (*Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235, at para. 8).

B. *CRTC's Authority Under Section 9(1)(h) of the Broadcasting Act*

[36] The main issue on the merits of the appeals is therefore whether the CRTC was correct in determining that it had the authority, pursuant to s. 9(1)(h) of the *Broadcasting Act*, to implement its Final Decision to issue the Final Order prohibiting simultaneous substitution for the Super Bowl. Before determining the scope of the CRTC's power under that provision, we will begin with an analysis of the nature and effect of the Final Order.

(1) Nature and Effect of the Final Order

[37] The Final Order permits television service providers to distribute "**the programming service** of a Canadian television station that broadcasts the Super

[1] "**Mr. Morris:** I wouldn't dispute that in this case you are dealing with a question of jurisdiction within the sense of [s. 31(2) of the *Broadcasting Act*], there is no doubt about that, but it is absolutely is [sic] not a true question of jurisdiction."

Bowl" (Final Decision, at para. 53), *on the condition that* they refrain from carrying out a request for simultaneous substitution from that station for the duration of the event. Its effect is therefore that a television service provider that distributes both American and Canadian television stations airing the Super Bowl must do so without altering their respective signals.

[38] It is important to recognize, however, that the Final Order does not require that television service providers distribute any programming services to their customers; this was made clear in the CRTC's Final Decision. Responding to SaskTel's concern that the wording of the Final Order "could be interpreted as requiring a [television service provider] to distribute a . . . station that broadcasts the Super Bowl, even if it does not already distribute that station" (para. 62), the CRTC gave the following explanation:

> It was not the [CRTC's] intent to mandate [television service providers] to distribute a station that broadcasts the Super Bowl, but simply to add a condition that must be fulfilled should a [television service provider] carry the station (whether it is being carried because it is mandated to be carried by regulation as a local television station, or whether it is simply authorized to be carried as a distant signal). Accordingly, SaskTel is correct as to the intent of the distribution order and how the [CRTC] will interpret it in the future. [para. 63]

[39] The result is therefore that the condition of carriage set out in the Final Order — prohibiting simultaneous substitution for the Super Bowl — applies only to those service providers that already distribute the programming services of a Canadian television station airing the Super Bowl, either because they are required to

do so in accordance with some other order or have chosen to do so on a discretionary basis. The Final Order does not *mandate* the distribution of any such station.

(2) Scope of the CRTC's Power Under Section 9(1)(h) of the *Broadcasting Act*

[40] The main thrust of the position advanced by Bell and the NFL is that the Final Order exceeds the authority delegated to the CRTC under s. 9(1)(h) of the *Broadcasting Act*. That provision reads as follows:

> **9 (1)** Subject to this Part, the [CRTC] may, in furtherance of its objects,
>
> . . .
>
> **(h)** require any licensee who is authorized to carry on a distribution undertaking to carry, on such terms and conditions as the [CRTC] deems appropriate, programming services specified by the [CRTC].

[41] The scope of the CRTC's authority under s. 9(1)(h) is to be determined by interpreting that provision in accordance with the modern approach to statutory interpretation. As this Court has reiterated on numerous occasions, this approach requires that the words of the statute be read "in their entire context and in their grammatical and ordinary sense harmonious with the scheme of the Act, the object of the Act, and the intention of Parliament" (E. A. Driedger, *Construction of Statutes* (2nd ed. 1983), at p. 87, as quoted in *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, at para. 21, and most recently in *R. v. Barton*, 2019 SCC 33, at para. 71).

[42] Bell and the NFL submit that s. 9(1)(h) "does not allow the CRTC to require that [television service providers] carry a specific program, or set terms and conditions for the carriage of a single program like the Super Bowl" (A.F. (NFL), at para. 35). Rather, they say, the term "programming services" as used in that provision refers to the *entire aggregation of programs* broadcast by a television station. On this basis, they submit that the CRTC cannot issue a s. 9(1)(h) order that targets *individual programs*, like the Super Bowl.

[43] To begin, we observe that the Final Order appears to impose a condition on the distribution of a Canadian television station's signal; the order effectively says that a service provider can distribute such a signal during its broadcast of the Super Bowl *as long as* it does not carry out a request for simultaneous substitution for an American television station that also broadcasts the Super Bowl for the duration of the event (Final Decision, at para. 54). This, according to the CRTC, "reflects the way [in which] simultaneous substitution is actually performed": the television service provider deletes and replaces the signal of the *television station*, and not of a specific *television program* (*ibid.*, at para. 55). Put simply, the Final Order imposes a requirement upon the carriage of a given "programming service" — in the sense of the affected television stations' broadcast to the public — albeit only for the duration of a specific program.

[44] We need not decide, for the purpose of these appeals, whether the "terms and conditions" that can be imposed under s. 9(1)(h) of the *Broadcasting Act* can

relate directly to a specific program or must instead relate to a television station's slate of programming in its entirety. This is because we are of the view that the CRTC did not have the statutory authority to issue the Final Order pursuant to that provision in the first place. Specifically, the CRTC's authority under s. 9(1)(h) — interpreted in accordance with the provision's text, context and purpose — is limited to issuing orders that require television service providers to carry specific channels as part of their service offerings, and attaching terms and conditions to such mandatory carriage orders (A.F. (NFL), at paras. 3, 8, 12, 29, 35, 61-62 and 77-79; transcript, day 1, at pp. 5 and 17-21; transcript, day 3, at pp. 180-83). Section 9(1)(h) does not, as the Attorney General of Canada suggests (R.F., at paras. 65, 66, 71 and 76-78; transcript, day 1, at pp. 80 and 90-92), give the CRTC a broad power to impose conditions outside the context of a mandatory carriage order.

[45] We will begin this interpretive exercise with the statutory text of s. 9(1)(h) of the *Broadcasting Act*, the bilingual version of which we reproduce below for ease of reference:

9 (1) Subject to this Part, the Commission may, in furtherance of its objects,	**9 (1)** Sous réserve des autres dispositions de la présente partie, le Conseil peut, dans l'exécution de sa mission :
. . .	. . .
(h) require any licensee who is authorized to carry on a distribution undertaking to carry, on such terms and conditions as the Commission	**h)** obliger ces titulaires à offrir certains services de programmation selon les modalités qu'il précise.

> deems appropriate, programming services specified by the Commission.

It is highly relevant that, in the English version of the Act, the phrase "on such terms and conditions as the [CRTC] deems appropriate" is couched in between commas, next to the words "carry" and "programming services". This, in our view, indicates that the *primary* power delegated to the CRTC is to mandate that television service providers carry specific programming services as part of their cable or satellite offerings, and that the *secondary* power relates to the imposition of terms and conditions on such mandatory carriage orders.

[46] Support for this interpretation can also be found in the text of the French version. The language used there contemplates a direct link between "les *modalités*" (the terms and conditions) and the "*oblig[ation] . . . à offrir [les] services de programmation*" (obligation to carry programming services) — and therefore further weighs against interpreting this provision as conferring on the CRTC a general power to impose conditions on carriage. Indeed, there is no discordance between the English and French versions of s. 9(1)(h); both indicate that it is limited to authorizing the issuance of mandatory carriage orders on specified terms and conditions.

[47] The Federal Court of Appeal reached the same conclusion as to the plain meaning of this statutory text in *Bell Canada v. 7262591 Canada Ltd.*, 2018 FCA 174, 428 D.L.R. (4th) 311. At issue in that case was whether the CRTC had jurisdiction under s. 9(1)(h) of the *Broadcasting Act* to order that television service

providers adhere to the "Wholesale Code", a broadcasting regulatory policy that governed "affiliation agreements" between television stations and service providers. Answering this question in the negative, Woods J.A. explained her conclusion as follows:

> By its terms, paragraph 9(1)(*h*) provides the CRTC with the power to require a licensee to carry specified programming services, and if so required, it provides an additional power to mandate such terms and conditions of carriage of those services as the Commission deems appropriate . . . .
>
> The ordinary meaning of this provision does not encompass a general power to regulate the terms and conditions of carriage. Such regulation must relate to terms and conditions of programming services that the CRTC specifies and requires to be provided by a licensee. [paras. 168-169]

[48] The context surrounding s. 9(1)(h) also supports our view as to its scope. It is important to recognize that this provision sets out but one power among many that the CRTC has in relation to the issuance of licenses to broadcasting undertakings pursuant to s. 9 of the *Broadcasting Act*. Of particular note are the powers under s. 9(1)(b), which allows the CRTC to subject such licenses to conditions it deems appropriate for the implementation of Canadian broadcasting policy, and under s. 9(1)(g), which allows the CRTC to "require any licensee who is authorized to carry on a distribution undertaking to give priority to the carriage of broadcasting". The existence of these *specific* powers weighs against reading s. 9(1)(h) as conferring a *general* power to impose terms and conditions on any carriage of programming services.

[49] Moreover, s. 10 of the *Broadcasting Act* confers on the CRTC the power to make regulations in respect of various aspects of the broadcasting system, including "standards of programs and the allocation of broadcasting time for the purpose of giving effect to the broadcasting policy set out in subsection 3(1)" (s. 10(1)(c)); "the carriage of any foreign or other programming services by distribution undertakings" (s. 10(1)(g)); and "such other matters as it deems necessary for the furtherance of its objects" (s. 10(1)(k)). Again, the extent of the CRTC's powers under this section of the *Broadcasting Act* means that a narrow reading of s. 9(1)(h) will not hamper its efforts to regulate the broadcasting industry in accordance with the statutory objectives listed in s. 3(1).

[50] Further, the *Distribution Regulations* refer in various provisions to "the programming services of a programming undertaking that the [CRTC] has required, under paragraph 9(1)(h) of the Act, to be distributed as part of [a television service provider's] basic service" (ss. 17(1)(g), 41(1)(b), and 46(3)(b); see also ss. 18(3)(a), 19(2)(d), 47(2)(a.1) and 49(2)(a)(i)). These regulatory provisions offer yet another contextual indication that the power under s. 9(1)(h) extends only to the issuance of mandatory carriage orders on specified terms and conditions.

[51] Finally, this interpretation is confirmed by the purpose for which s. 9(1)(h) of the *Broadcasting Act* was enacted. As was explained in a report entitled *Review of the Regulatory Framework for Broadcasting Services in Canada*:

> Section 9(1)(h) provides an important means for the Commission to ensure carriage of important Canadian services which market forces might not otherwise dictate be carried in different regions of Canada. This power is also an important one in ensuring that the Canadian broadcasting system strengthens and enriches the cultural, political, social and economic fabric of Canada.
>
> (L. J. E. Dunbar and C. Leblanc, *Review of the Regulatory Framework for Broadcasting in Canada — Final Report* (2007), at p. 195.)

[52] The power to mandate the carriage of specific programming services is thus a useful tool — albeit one among many — that the CRTC can use to achieve the various policy objectives listed in s. 3 of the *Broadcasting Act* (*ibid.*, at p. 75). The CRTC has in fact exercised this power on several occasions to mandate the distribution of an existing or proposed service that

> - makes an exceptional contribution to Canadian expression and reflects Canadian attitudes, opinions, ideas, values and artistic creativity;
> - contributes in an exceptional manner to achieving the overall objectives for the digital basic service and one or more objectives of the Act, such as:
>   - Canadian identity and cultural sovereignty;
>   - ethno-cultural diversity, including the special place of Aboriginal peoples in Canadian society;
>   - service to and reflection and portrayal of persons with disabilities; or
>   - linguistic duality, including improved service to official language minority communities (OLMCs); and
> - makes exceptional commitments to original, first-run Canadian programming in terms of exhibition and expenditures.
>
> (Broadcasting Regulatory Policy CRTC 2013-372, August 8, 2013 (online), at para. 7)

For example, the CRTC recently granted a mandatory carriage order to the Aboriginal Peoples Television Network, requiring that that network be distributed as part of the basic service of Canadian cable and satellite providers at a specified monthly rate of $0.35 per subscriber (Broadcasting Order CRTC 2018-341, August 31, 2018 (online)). Other programming services that enjoy s. 9(1)(h) status include the Cable Public Affairs Channel (CPAC), Nouveau TV-5, and The Weather Network.

[53] More significantly, it appears that the CRTC has only *ever* validly exercised its power under s. 9(1)(h) for the issuance of mandatory carriage orders. As we noted above, its attempt to use that power to make the Wholesale Code binding upon television service providers (Broadcasting Order CRTC 2015-439, September 24, 2015 (online)) was rejected by the Federal Court of Appeal. Likewise, this Court held in *Cogeco*, in the context of a reference question, that the CRTC lacked jurisdiction under s. 9(1)(h) to implement a proposed "value for signal regime". Apart from those cases, we have not been directed to, nor have we found, any orders under s. 9(1)(h) other than ones that mandate the distribution of particular programming services on specified terms and conditions.

[54] Furthermore, this use of s. 9(1)(h) is consistent with the way in which this provision was understood in various reports and publications that were prepared in advance of the enactment of the *Broadcasting Act* in 1991. In a clause-by-clause analysis of the bill that became the *Broadcasting Act*, the Department of Communications explained that s. 9(1)(h) addressed what was described as the

"cable-as-gatekeeper" problem in that it would "ensur[e] that the cable industry cannot frustrate the licensing of new satellite to cable services simply by refusing to carry them". The analysis also included the following comments:

> This clause provides a clear statutory basis for the [CRTC]'s priority carriage regulations (already enacted in the Cable Regulations). The 1968 Act was silent on such a power. It would also allow the CRTC to require carriage of a particular service such as, for example, TV-5, a second CBC service, or the alternative programmer. [Emphasis added.]
>
> (Canada, Department of Communications, *The Broadcasting Act 1988: A Clause-by-Clause Analysis of Bill C-136* (1988), at s. 9(1)(h))

[55] The *Government Response to the Fifteenth report of the Standing Committee on Communications and Culture: A Broadcasting Policy for Canada* (1988) also refers, at various places, to the fact that, "[u]nder clause 9.(1)(h), the CRTC can require carriage of specified services" (see pp. 27, 56 and 90) — it appeared in particular in a response to a recommendation that the *Broadcasting Act* "be drafted so as to define the essential role of distribution undertakings as that of distributing Canadian radio and television services in French and English, both public and private, with first priority given to public-sector Canadian services" (p. 90). And after the Standing Committee on Communications and Culture expressed the view that the statute "should be drafted so as to provide authorization for the [CRTC] to establish any conditions respecting the carriage of programming services that are necessary to further the objectives of the Act" (House of Commons, *Minutes of Proceedings and Evidence of the Standing Committee on Communications and Culture*, No. 36, 2nd Sess., 33th Parl., May 4, 1987, at p. 78), the government showed

it was satisfied that this concern was adequately addressed by the narrowly drafted s. 9(1)(h) (*Government Response*, at p. 89).

[56] While certainly not determinative, this legislative history nevertheless provides a further indication as to the interpretation of s. 9(1)(h) that is borne out by its text and its context: that this provision *only* confers on the CRTC the authority to issue mandatory carriage orders on specified terms and conditions, and does not establish a "broad power to regulate the cable industry and impose any conditions necessary to do so" (Final Decision, at para. 21 (emphasis added)).

[57] Because the CRTC did not, in the Final Order, purport to mandate the carriage of any particular programming services, but instead sought to "add a condition that must be fulfilled should a [television service provider] carry [a Canadian] station" that broadcasts the Super Bowl (Final Decision, at para. 63 (emphasis added)), the issuance of that order was not within the scope of its delegated power under s. 9(1)(h) of the *Broadcasting Act*. We would therefore quash the Final Order, as well as the Final Decision.

[58] We would note that these appeals turn strictly on the scope of the CRTC's authority under s. 9(1)(h) of the *Broadcasting Act*, and that neither Bell nor the NFL disputes the Federal Court of Appeal's holding that it was reasonable for the CRTC to have determined that the public interest would be served by exempting the Super Bowl from the simultaneous substitution regime (paras. 23-24). Therefore, and although we maintain that s. 9(1)(h) did not give the CRTC the authority to

implement that policy determination, we express no view as to whether the CRTC could do so pursuant to some other statutory power.

IV. Conclusion

[59] For the foregoing reasons, we would allow these appeals with costs throughout, set aside the decision of the Federal Court of Appeal, and quash the decisions of the CRTC (CRTC 2016-334 and CRTC 2016-335).

The following are the reasons delivered by

ABELLA AND KARAKATSANIS JJ. —

[60] These cases concern the Canadian Radio-television and Telecommunications Commission's 2016 decision to prohibit broadcasters from substituting Canadian advertisements for U.S. advertisements during the Super Bowl broadcast. The outcome of the appeals turns on whether the CRTC's interpretation of "programming services" in its home statute is reasonable. In our view, that interpretation was reasonable and the decision should be upheld.

[61] As set out in our concurring reasons in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, as a general rule, administrative decisions are to be reviewed for reasonableness. None of the correctness exceptions apply to the

CRTC's decision and reasonableness review is consistent with the highly specialized expertise of the CRTC. When conducting reasonableness review, a court assesses whether the decision as a whole is reasonable, viewed in light of the reasons given and the decision-making context. Reviewing courts should pay particular attention to the administrative context and the consequences, operational implications and challenges identified by the decision-maker. To succeed, the party challenging the decision must satisfy the reviewing court that the decision is unreasonable.

[62] The Super Bowl is the championship match that closes each season of football games played by the 32 teams of the National Football League (NFL). The Super Bowl broadcast is among the most widely-viewed events on Canadian television.

[63] Bell Canada is the parent company of Bell Media Inc. (collectively, Bell). In addition to providing cable television services to Canadians, Bell owns and operates 30 local CTV television stations across the country. In 2013, Bell purchased an exclusive license to broadcast the Super Bowl on CTV until the 2018-19 season.

[64] The Canadian Radio-television and Telecommunications Commission is a regulatory body established in 1976. It has been called the "archetype" of an expert administrative tribunal: B. Kain, "Developments in Communications Law: The 2012-2013 Term — The *Broadcasting Reference*, the Supreme Court and the Limits of the CRTC" (2014), 64 *S.C.L.R.* (2d) 63, at p. 63. Parliament gave the CRTC an extensive mandate to implement measures that further Canadian broadcasting policy: *Reference*

re Broadcasting Regulatory Policy CRTC 2010-167 and Broadcasting Order CRTC 2010-168, [2012] 3 S.C.R. 489, at para. 2, per Rothstein J. Broadcasting policy in Canada seeks to maintain a distinctive Canadian culture while fostering a competitive environment for the development of a strong domestic telecommunications industry: *Broadcasting Act*, S.C. 1991, c. 11, s. 3.

[65] The powers and purposes of the CRTC in relation to broadcasting are set out in Part II of the *Broadcasting Act* (see also *Canadian Radio-television and Telecommunications Commission Act*, R.S.C. 1985, c. C-22, s. 12(1)). The CRTC licenses television stations and cable providers and can subject those licenses to terms and conditions that it deems appropriate. It can also make regulations about program standards, the character of advertising, and the proportion of time that may be allotted to Canadian and foreign content.

[66] Among the regulatory tools available to the CRTC is a technique called simultaneous substitution. First proposed by the CRTC's institutional predecessor in 1971, simultaneous substitution is a process by which the signal of a "distant" station (usually in the United States) is replaced by the signal of a "local" station: R. Armstrong, *Broadcasting Policy in Canada* (2nd ed. 2016), at p. 45. When a Canadian station, or broadcaster, broadcasts a U.S. program at the same time as a U.S. station, the Canadian station can request a Canadian distribution undertaking — the cable or television service provider — to replace the U.S. signal with its signal, which usually includes Canadian advertising: *Simultaneous Programming Service*

Deletion and Substitution Regulations, SOR/2015-240, s. 3 (*Simultaneous Substitution Regulations*). As long as a request respects certain guidelines, the distribution undertaking receiving the request must comply: s. 4.

[67] Canadian broadcasters frequently make simultaneous substitution requests as a means of protecting their distribution rights in Canada: Armstrong, at p. 116. Simultaneous substitution also allows Canadian companies to consolidate audiences for a given program and, as a result, permits broadcasters to charge higher rates for advertising during that time slot: Armstrong, at pp. 54-55. The CRTC reported that in 2012-13, simultaneous substitution created revenue of approximately $250 million: Broadcasting Regulatory Policy CRTC 2015-25, January 29, 2015 (online).

[68] In October 2013, the CRTC launched "Let's Talk TV", a three-stage public consultation seeking input from Canadians on the future of Canadian television. The CRTC reported that it had received numerous complaints regarding simultaneous substitution, 20 percent of which were related to Super Bowl commercials: Broadcasting Notice of Consultation CRTC 2014-190, April 24, 2014 (online). The CRTC later issued a working document to provide models for reform concerning a number of issues and to stimulate discussion and debate among stakeholders, in which it proposed two options to address simultaneous substitution complaints — eliminating simultaneous substitution entirely or, alternatively, only during live event programming, including sporting events such as the Super Bowl:

Broadcasting Notice of Consultation CRTC 2014-190-3, August 21, 2014 (online). Bell subsequently submitted evidence to the CRTC to establish the significance of live event simultaneous substitution, which accounted for as much as 33 percent of the total simultaneous substitution revenues of one of its television networks: CRTC 2015-25.

[69] In January 2015, the CRTC announced its intention to proceed with the second option, disallowing simultaneous substitution for specialty services in general and for the Super Bowl in particular, beginning with the 2017 broadcast. It found this partial disallowance would be less harmful to the broadcasting industry than a complete elimination of simultaneous substitution: CRTC 2015-25. At the same time, the CRTC announced its intention to address "recurring, substantial simultaneous substitution errors" by imposing various sanctions for such errors: CRTC 2015-25, at para. 20.

[70] In July 2015, the CRTC issued a notice indicating that it would implement its decision to prohibit simultaneous substitution for the 2017 Super Bowl by issuing an order pursuant to s. 9(1)(h) of the *Broadcasting Act*: Broadcasting Notice of Consultation CRTC 2015-330, July 23, 2015 (online). That provision authorizes the CRTC to require any licensee to carry specific programming services on such terms and conditions as the Commission deems appropriate.

[71] In the notice, the CRTC also announced its intention to create the *Simultaneous Substitution Regulations*, which would update and amend the

Broadcasting Distribution Regulations, SOR/97-555, that governed the regime. Interested parties were given two months to comment on the proposed regulations: CRTC 2015-330. The same day, the CRTC issued an information bulletin explaining its rationale for the changes and indicating how viewers could submit simultaneous substitution-related complaints: Broadcasting Information Bulletin CRTC 2015-329, July 23, 2015 (online).

[72] Bell and the NFL filed submissions to the CRTC in response to the call for comments. They argued that the CRTC was engaging in impermissible "administrative law discrimination" by targeting a single show and lacked jurisdiction to make an order they saw as conflicting with the *Copyright Act*, R.S.C. 1985, c. C-42, and Canada's treaty obligations. After receiving these and other submissions, the CRTC announced the promulgation of the *Simultaneous Substitution Regulations*, whereby it had the authority to prohibit simultaneous substitution in the public interest: s. 4(3). The new public interest provisions were broader than those repealed in the *Broadcasting Distribution Regulations*: ss. 38(4) and 51(3). In the CRTC's view, s. 9(1)(h) of the *Broadcasting Act* — which authorizes it to impose terms and conditions on the distribution of programming services — permitted it to make targeted simultaneous substitution orders: Broadcasting Regulatory Policy CRTC 2015-513, November 19, 2015 (online).

[73] In February 2016, the CRTC again called for comments about its proposed order to prohibit simultaneous substitution during the Super Bowl. The NFL

reiterated its opposition and Bell made new submissions regarding the potential impact of the order on Canadian production and entertainment industries.

[74] On August 19, 2016, the CRTC issued Broadcasting Regulatory Policy CRTC 2016-334, and Broadcasting Order CRTC 2016-335, August 19, 2016 (online), its final order prohibiting simultaneous substitution during the Super Bowl, effective January 2017 (Super Bowl Order).

[75] Bell and the NFL appealed the Order pursuant to s. 31(2) of the *Broadcasting Act*, challenging the Commission's reliance on s. 9(1)(h) of the *Broadcasting Act* as being outside of its jurisdiction.

[76] Near J.A., writing for the Federal Court of Appeal, dismissed the appeals ([2018] 4 F.C.R. 300). He concluded that the standard of review for the jurisdictional question was reasonableness. In his view, the CRTC's previous interpretations of the term "programming services" left ample room for the interpretation applied here. He also concluded that it was not open to a reviewing court to step into the place of the CRTC to reweigh the competing objectives set out in the *Broadcasting Act*. Near J.A. dismissed the NFL's arguments that the decision conflicted with the *Copyright Act* and Canada's treaty obligations.

[77] Before this Court, Bell focuses its submissions on the standard of review, arguing that the applicable standard of review is correctness. Bell argues first that s. 9(1)(h) is a jurisdiction-conferring provision, framing the issue as a true question of

jurisdiction in "the narrow sense of [the CRTC's] authority to enter upon an inquiry": A.F. (Bell), at para. 52. It also argues that concerns regarding freedom of expression, the presence of a statutory appeal and the absence of policy considerations also militate in favour of correctness. Finally, Bell asserts that the question of whether the Super Bowl Order conflicts with the *Copyright Act* must be reviewed for correctness, because these questions extend beyond the CRTC's home statute. In the alternative, Bell argues that the CRTC's interpretation of s. 9(1)(h) is unreasonable because the statute permits only one reasonable interpretation.

[78] The NFL adopts Bell's arguments regarding the standard of review and makes additional arguments regarding the merits of the CRTC's decision. The NFL characterizes the CRTC's interpretation of s. 9(1)(h) as the arrogation of an "Orwellian power to reach down into the specific shows that broadcasters create and decide which ones are worthy of distribution to the public": A.F. (NFL), at para. 4. Drawing on dictionaries, previous CRTC decisions and other provisions of the *Broadcasting Act*, the NFL asserts that "programming services" can *only* mean an entire channel. It relies heavily on the legislative history of the provision to argue that s. 9(1)(h) was not intended to permit orders regarding individual programs. The NFL further asserts that the "contrived interpretation of the CRT[C] . . . was clearly designed to justify its end goal of banning Sim Sub for only a single program": para. 96. Finally, the NFL argues that the CRTC's interpretation creates an operational conflict with and frustrates the purposes of the *Copyright Act*.

[79] The Attorney General of Canada submits that the applicable standard of review is reasonableness and that a deferential analysis should begin with respectful attention to the CRTC's reasons. In its view, an administrative body may choose *any* reasonable interpretation of a statute — not only the *most* reasonable interpretation. Moreover, the Attorney General of Canada submits that Bell and the NFL have failed to demonstrate how the CRTC's interpretation was unreasonable, particularly in light of the CRTC's specialized, technical knowledge of its operational context and duty to balance the 40-odd objectives of the *Broadcasting Act*. The CRTC, it says, reasonably rejected the appellants' arguments regarding the *Copyright Act* and international treaties.

I. Analysis

[80] We are of the view that the applicable standard of review is reasonableness and that the CRTC's decision was reasonable. As we point out in our concurring reasons in *Vavilov*, the majority's framework disregards the significance of specialized expertise and results in broad application of the standard of correctness. It does so based solely on the premise that appeal clauses reflect the legislature's intention that all questions of law be reviewed by a court on the basis of correctness. Since there is an appeal clause in the *Broadcasting Act*, the majority says the Court is entitled to substitute its opinion for that of the CRTC. This case demonstrates the fundamental flaws of such an approach.

[81] Under reasonableness review, Bell and the NFL bear the onus of demonstrating that the CRTC's decision, as a whole, is unreasonable. In our view, the Federal Court of Appeal approached the decision with appropriate deference, providing an effective foil to the appellants' correctness-based arguments. We agree that the appellants have not met their burden.

[82] Reasonableness review begins with seeking to understand the decision and the reasons for that decision in light of the administrative context and the grounds on which it is challenged. Here, Bell and the NFL argue that the CRTC's interpretation of "programming services" was not available because, in their view, the term refers to an entire channel, whereas they characterize the Super Bowl Order as targeting a specific program. As a result, they argue, there was no legal basis for the Super Bowl Order.

[83] As an archetype of an expert administrative body, the CRTC's specialized expertise is well-settled. Extensive statutory powers have been granted to this regulatory body, and an exceptionally specialized mandate requires the CRTC to consider and balance complex public interest considerations in regulating an entire industry. The need for an expert body to balance sensitive public interest issues in a highly technical context is particularly evident in this case, with the record containing a series of public notices, consultations and policies spanning almost three years and leading to the decision at issue.

[84] In our view, the reasons provided by the CRTC in the Order and accompanying regulatory policy set out a rational and persuasive line of reasoning which clearly outlines the consequences, operational implications and challenges that motivated its decision. The challenges raised by Bell and the NFL fail to satisfy us that the CRTC was unreasonable in concluding that s. 9(1)(h) provided a legal basis to prohibit simultaneous substitution during the Super Bowl.

[85] In its decision, the CRTC highlighted that simultaneous substitution is not a right, but an exception to the general requirement that distribution undertakings may not alter the programs they transmit. The CRTC emphasized that the decision was part of "much broader policy determinations" in light of its duty to regulate and supervise the broadcasting system as a whole. Given the cultural significance of the Super Bowl, the decision was an attempt to balance support for Canadian programming with a response to the frustrations of viewers and other objectives of the *Broadcasting Act*, such as allowing subscribers to view complete programming. The CRTC noted that s. 4(3) of the *Simultaneous Substitution Regulations* prohibits simultaneous substitution where the CRTC has decided that the practice is not in the public interest.

[86] Given its decision that authorizing simultaneous substitution during the Super Bowl was not in the public interest, the CRTC determined it could use its power under s. 9(1)(h) of the *Broadcasting Act* to implement that decision.

[87] Section 9(1)(h) of the *Broadcasting Act* provides:

Licences, etc.

9 (1) Subject to this Part, the Commission may, in furtherance of its objects,

. . .

(h) require any licensee who is authorized to carry on a distribution undertaking to carry, on such terms and conditions as the Commission deems appropriate, programming services specified by the Commission.

[88] In the CRTC's view, s. 9(1)(h) of the *Broadcasting Act* was enacted "to clarify the Commission's broad power to regulate the cable industry and impose any conditions necessary to do so." The opening clause of s. 9(1) couches the CRTC's authority to make orders "in furtherance of its objects", and thus, in the purposes of the Act. In support of this, the CRTC cited a previous notice in which it had concluded that the broad wording of s. 9(1)(h) was part and parcel of the flexible mandate that allows it to use a combination of regulations, conditions and orders to achieve the objects of the *Broadcasting Act*. The Order was therefore found by the CRTC to be within its jurisdiction.

[89] The CRTC also responded to the NFL's argument that s. 9(1)(h) could only be used to make orders concerning the entire output of a programming service rather than an individual program. In the CRTC's view, the wording of the Order — directed at a programming service — was sufficient to indicate that this was in fact what was being done. The CRTC explained that, on a technical level, *any* simultaneous substitution order involves replacing the entire output of a programming service. As the CRTC wrote in its decision:

> Moreover, the distribution order reflects the way simultaneous substitution is actually performed. The entire output of a programming service is, for a particular program, deleted and the entire output of another programming service is substituted, until that program ends. The distribution order reflects the notion that the entire output of the programming service of a television station will not be deleted and substituted for the Super Bowl, a particular program.
>
> (Super Bowl Order, at para. 55)

[90] Finally, the CRTC wrote that policy determinations regarding simultaneous substitution do not affect the NFL's copyright and would, at most, have only a secondary impact on the revenues that could be generated from broadcasting the program. Furthermore, not only did the international trade agreements raised by the NFL not apply directly to the CRTC, they simply provided Canada with the ability to create simultaneous substitution and did not limit the Commission's ability to modify or remove the regime.

[91] Because judicial substitution is incompatible with reasonableness review, we do not begin our analysis by asking how we would have decided the issue before us. Rather, it is in light of the above reasons, as well as the broader administrative context and record, that we must consider whether Bell and the NFL have raised any arguments that, if accepted, would render the CRTC's decision unreasonable. The CRTC here holds the "interpretative upper hand: under reasonableness review, we defer to *any* reasonable interpretation adopted by an administrative decision maker, *even if* other reasonable interpretations may exist": *McLean v. British Columbia (Securities Commission)*, [2013] 3 S.C.R. 895, at para. 40 (emphasis in original).

[92] Bell and the NFL concentrated their textual analysis of s. 9(1)(h) on the term "programming services". They submit that this term cannot support the issuance of an order with terms and conditions that relate to a single program. The NFL further argued that the use of the terms "programming services" and "programs" elsewhere in the *Broadcasting Act* indicates that the two terms serve different purposes in the Act.

[93] We agree with Near J.A. that neither Bell and the NFL's submissions, nor the legislative history of s. 9(1)(h), exclude the possibility that "programming services" could relate to a single program in this context. Showing appropriate deference and attention to the administrative context, Near J.A. looked to a previous decision of the CRTC for guidance with respect to the interpretation of this term, which confirmed that the CRTC had previously relied on s. 33(2) of the *Interpretation Act*, R.S.C. 1985, c. I-21, to support its conclusion that the term "programming services" may be singular or plural *depending on the context in which it is used*: Broadcasting Decision CRTC 2005-195, May 12, 2005 (online), at paras. 27-28. As the intervener the "Wholesale Code Applicants" pointed out, Bell itself has advanced contradictory interpretations of s. 9(1)(h) in different proceedings: I.F. (Wholesale Code Applicants), at paras. 11-13. In addition, the fact that Parliament granted to the Governor in Council the right to make an order for the urgent broadcast of a specific "program" under s. 26(2) of the *Broadcasting Act* sheds little light on the interpretation of "programming services" in s. 9(1)(h), which operates in a completely different context and allows the CRTC to impose terms and conditions on the distribution of programming services.

[94] In any event, the Super Bowl Order attached a condition to the carriage of Canadian television stations and was, by its own terms, structured to apply to programming services — a reflection of how simultaneous substitution is actually performed. As the CRTC observed, when simultaneous substitution is performed, it is not simply the advertisements that are replaced, but the entire feed of the program. If a station were to make a simultaneous substitution request for the Super Bowl, for example, both the game *and* the advertisements would be re-broadcasted by distribution undertakings complying with the request. In other words, the resulting broadcast would not be an American signal of the Super Bowl game intermittently interrupted by a signal carrying Canadian commercials. It would be a continuous Canadian re-transmission of the entire Super Bowl broadcast, including Canadian commercials. We agree with the Attorney General of Canada's submission that the CRTC's reasoning here engaged its specialized and technical knowledge, leading to an interpretation that was reasonable in this operational context.

[95] In addition, the CRTC evidently considered s. 9(1)(h) in its context, including not only the objectives of the *Broadcasting Act* but also its broader statutory framework. In response to the jurisdictional arguments brought by Bell and the NFL, the CRTC relied on s. 4(1) and (3) of the *Simultaneous Substitution Regulations* which prohibit licensees from engaging in simultaneous substitution where the CRTC has determined that the practice is "not in the public interest". We agree with the Federal Court of Appeal's assessment that "[i]t is not for the Court to engage in weighing these competing policy objectives and substituting its own view

in deciding which policy objectives should be pursued" in the public interest: para. 24. The Super Bowl Order was one piece in a mosaic of decisions arising from nearly three years of consultation and was reasonably determined to further the policy objectives of the *Broadcasting Act*. Section 9(1)(h) contains no statutory limits on the types of terms or conditions that the CRTC may deem appropriate towards programming services, and the provision must be read in light of Parliament's broad grant of discretion to the CRTC. Throughout the process, the CRTC made clear that its decision was weighed — and ultimately justified — in light of "much broader policy determinations" and the CRTC's duty to regulate the "system as a whole".

[96] Finally, Bell and the NFL argue that the CRTC's interpretation of s. 9(1)(h) conflicts with the operation and purpose of the *Copyright Act*. It is well established that the purpose of the *Copyright Act* is to balance authors' and users' rights and that the CRTC may not choose to pursue its objectives in ways that are incompatible with the purposes of the *Copyright Act* or which operationally conflict with its specific provisions: *Reference re Broadcasting Regulatory Policy CRTC 2010-167 and Broadcasting Order CRTC 2010-168*, at para. 45. But given the NFL's repeated submission that "[U.S.] advertising is not even part of the Super Bowl game or covered by the NFL's copyright, much less integral to the Super Bowl", it can hardly come as a surprise that the CRTC adopted the same position: A.R., vol. II, at p. 115 (emphasis added). We agree with Near J.A. that there is no operational conflict with the *Copyright Act*. The NFL submits that the Super Bowl Order conflicts with s. 31(2)(c) of the *Copyright Act* because it is not "required or permitted by or under the

laws of Canada". As the Court of Appeal pointed out, however, this submission ignores that the Order was validly made pursuant to s. 9(1)(h) of the *Broadcasting Act* and by way of s. 4(3) of the *Simultaneous Substitution Regulations*. Finally, we see nothing wrong with the CRTC's conclusion that the international treaties raised by the parties are permissive and do not *require* simultaneous substitution. There is therefore no conflict of purpose.

[97] Bell and the NFL's burden was not only to show that their competing interpretation of s. 9(1)(h) was reasonable, but also that the CRTC's interpretation was unreasonable (*McLean*, at para. 41). That they have not done. Deferential review of the decision and administrative context satisfy us that the CRTC reasonably interpreted s. 9(1)(h) of the *Broadcasting Act* and that its Super Bowl Order was reasonable and defensible in light of the facts and law. We would dismiss the appeals.

APPENDIX A

***Broadcasting Act*, S.C. 1991, c. 11**	***Loi sur la radiodiffusion*, L.C. 1991, c. 11**
2 (1) In this Act,	**2 (1)** Les définitions qui suivent s'appliquent à la présente loi.
. . .	. . .
program means sounds or visual images, or a combination of sounds and visual images, that are intended to inform, enlighten or entertain, but does not include visual images, whether or not combined with sounds, that consist predominantly of alphanumeric text; (*émission*)	***émission*** Les sons ou les images — ou leur combinaison — destinés à informer ou divertir, à l'exception des images, muettes ou non, consistant essentiellement en des lettres ou des chiffres. (*program*)
. . .	. . .
9 (1) Subject to this Part, the Commission may, in furtherance of its objects,	**9 (1)** Sous réserve des autres dispositions de la présente partie, le Conseil peut, dans l'exécution de sa mission :
. . .	. . .
(h) require any licensee who is authorized to carry on a distribution undertaking to carry, on such terms and conditions as the Commission deems appropriate, programming services specified by the Commission.	**h)** obliger ces titulaires à offrir certains services de programmation selon les modalités qu'il précise.
. . .	. . .
18 . . .	**18** . . .
(3) The Commission may hold a public hearing, make a report, issue any decision and give any approval in connection with any complaint or representation made to the Commission or in connection with any other matter	**(3)** Les plaintes et les observations présentées au Conseil, de même que toute autre question relevant de sa compétence au titre de la présente loi, font l'objet de telles audiences, d'un rapport et d'une décision — notamment

within its jurisdiction under this Act if it is satisfied that it would be in the public interest to do so.

. . .

31 (1) Except as provided in this Part, every decision and order of the Commission is final and conclusive.

(2) An appeal lies from a decision or order of the Commission to the Federal Court of Appeal on a question of law or a question of jurisdiction if leave therefor is obtained from that Court on application made within one month after the making of the decision or order sought to be appealed from or within such further time as that Court under special circumstances allows.

une approbation — si le Conseil l'estime dans l'intérêt public.

. . .

31 (1) Sauf exceptions prévues par la présente partie, les décisions et ordonnances du Conseil sont définitives et sans appel.

(2) Les décisions et ordonnances du Conseil sont susceptibles d'appel, sur une question de droit ou de compétence, devant la Cour d'appel fédérale. L'exercice de cet appel est toutefois subordonné à l'autorisation de la cour, la demande en ce sens devant être présentée dans le mois qui suit la prise de la décision ou ordonnance attaquée ou dans le délai supplémentaire accordé par la cour dans des circonstances particulières.

***Simultaneous Programming Service Deletion and Substitution Regulations*, SOR/2015-240**

1 . . .

(2) In these Regulations, the expressions *Canadian programming service*, *comparable*, *customer*, *DTH distribution undertaking*, *educational authority*, *educational television programming service*, *format*, *licence*, *licensed*, *licensed area*, *licensee*, *non-Canadian television station*, *official contour*, *operator*, *programming service*, *regional television station*, *relay distribution undertaking*, *subscriber*, *subscription television system* and *terrestrial distribution undertaking* have the same meanings as in section 1 of the *Broadcasting Distribution Regulations*.

. . .

3 (1) The operator of a Canadian television station may ask a licensee that carries on a terrestrial distribution undertaking to delete the programming service of another Canadian television station or a non-Canadian television station and substitute for it the programming service of a local television station or regional television station.

. . .

4 (1) Except as otherwise provided under these Regulations or in a condition of its licence, a licensee that receives a request referred to in section

***Règlement sur le retrait et la substitution simultanée de services de programmation*, DORS/2015-240**

1 . . .

(2) Dans le présent règlement, *abonné*, *autorisé*, *autorité éducative*, *client*, *comparable*, *entreprise de distribution par relais*, *entreprise de distribution par SRD*, *entreprise de distribution terrestre*, *exploitant*, *format*, *licence*, *périmètre de rayonnement officiel*, *service de programmation*, *service de programmation canadien*, *service de programmation de télévision éducative*, *station de télévision non canadienne*, *station de télévision régionale*, *système de télévision par abonnement*, *titulaire* et *zone de desserte autorisée* s'entendent au sens de l'article 1 du *Règlement sur la distribution de radiodiffusion*.

. . .

3 (1) L'exploitant d'une station de télévision canadienne peut demander au titulaire qui exploite une entreprise de distribution terrestre de retirer le service de programmation d'une station de télévision canadienne ou d'une station de télévision non canadienne et d'y substituer le service de programmation d'une station de télévision locale ou d'une station de télévision régionale.

. . .

4 (1) Sous réserve du présent règlement ou des conditions de sa licence, le titulaire qui reçoit la demande visée à l'article 3 doit retirer le service de

3 must carry out the requested deletion and substitution if the following conditions are met:

(a) the request is in writing and is received by the licensee at least four days before the day on which the programming service to be substituted is to be broadcast;

(b) the programming service to be deleted and the programming service to be substituted are comparable and are to be broadcast simultaneously;

(c) the programming service to be substituted has the same format as, or a higher format than, the programming service to be deleted; and

(d) if the licensee carries on a terrestrial distribution undertaking, the programming service to be substituted has a higher priority under section 17 of the *Broadcasting Distribution Regulations* than the programming service to be deleted.

. . .

(3) A licensee must not delete a programming service and substitute another programming service for it if the Commission decides under subsection 18(3) of the *Broadcasting Act* that the deletion and substitution are not in the public interest.

***Broadcasting Distribution Regulations*, SOR/97-555**

programmation en cause et effectuer la substitution demandée si les conditions suivantes sont réunies :

a) la demande est présentée par écrit et doit être reçue par le titulaire au moins quatre jours avant la date prévue pour la diffusion du service de programmation à substituer;

b) le service de programmation à retirer et le service de programmation à substituer sont comparables et doivent être diffusés simultanément;

c) le service de programmation à substituer est d'un format égal ou supérieur au service de programmation à retirer;

d) dans le cas où le titulaire exploite une entreprise de distribution terrestre, le service de programmation à substituer a priorité, en vertu de l'article 17 du *Règlement sur la distribution de radiodiffusion*, sur le service de programmation à retirer.

. . .

(3) Le titulaire ne peut retirer un service de programmation et y substituer un autre service de programmation si le Conseil rend une décision, en vertu du paragraphe 18(3) de la *Loi sur la radiodiffusion*, portant que le retrait et la substitution ne sont pas dans l'intérêt public.

***Règlement sur la distribution de radiodiffusion*, DORS/97-555**

1 The definitions in this section apply in these Regulations.

. . .

programming service means a program that is provided by a programming undertaking. (*service de programmation*)

. . .

7 Subject to section 7.2, a licensee shall not alter the content or format of a programming service or delete a programming service in a licensed area in the course of its distribution except

(a) as required or authorized by a condition of its licence or under the *Simultaneous Programming Service Deletion and Substitution Regulations*.

1 Les définitions qui suivent s'appliquent au présent règlement.

. . .

service de programmation Émission fournie par une entreprise de programmation. (*programming service*)

. . .

7 Sous réserve de l'article 7.2, le titulaire ne peut modifier le contenu ou le format d'un service de programmation ou retirer un tel service au cours de sa distribution dans une zone de desserte autorisée, sauf si, selon le cas :

a) la modification ou le retrait est fait en conformité avec les conditions de sa licence ou le *Règlement sur le retrait et la substitution simultanés de services de programmation*;

Appeals allowed with costs throughout, ABELLA *and* KARAKATSANIS JJ. *dissenting.*

Solicitors for the appellants: McCarthy Tétrault, Toronto.

Solicitor for the respondent: Attorney General of Canada, Toronto.

Solicitor for the intervener the Attorney General of Ontario: Attorney General of Ontario, Toronto.

Solicitor for the intervener the Attorney General of Quebec: Attorney General of Quebec, Québec.

Solicitor for the intervener the Attorney General of British Columbia: Attorney General of British Columbia, Victoria.

Solicitor for the intervener the Attorney General of Saskatchewan: Attorney General of Saskatchewan, Regina.

Solicitors for the intervener Telus Communications Inc.: Nelligan O'Brien Payne, Ottawa.

Solicitor for the intervener the Advocacy Centre for Tenants Ontario - Tenant Duty Counsel Program: Advocacy Centre for Tenants Ontario, Toronto.

Solicitor for the interveners the Ontario Securities Commission, the British Columbia Securities Commission and the Alberta Securities Commission: Ontario Securities Commission, Toronto.

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Territories and Nunavut), the Workers' Compensation Appeals Tribunal (Nova Scotia), the Appeals Commission for Alberta Workers' Compensation and the Workers' Compensation Appeals Tribunal (New Brunswick): Workplace Safety and Insurance Appeals Tribunal, Toronto.

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Solicitors for the intervener the Council of Canadian Administrative Tribunals: Lax O'Sullivan Lisus Gottlieb, Toronto.

Solicitors for the interveners the National Academy of Arbitrators, the Ontario Labour-Management Arbitrators' Association and Conférence des arbitres du Québec: Susan L. Stewart, Toronto; Paliare Roland Rosenberg Rothstein, Toronto; Rae Christen Jeffries, Toronto.

Solicitors for the intervener the Canadian Labour Congress: Goldblatt Partners, Toronto.

Solicitors for the intervener the National Association of Pharmacy Regulatory Authorities: Shores Jardine, Edmonton.

Solicitors for the intervener Queen's Prison Law Clinic: Stockwoods, Toronto.

Solicitors for the intervener Advocates for the Rule of Law: McCarthy Tétrault, Vancouver.

Solicitors for the intervener the Cambridge Comparative Administrative Law Forum: Cambridge University — The Faculty of Law, Cambridge, U.K.; White & Case, Washington, D.C.

Solicitors for the interveners the Association of Canadian Advertisers and the Alliance of Canadian Cinema, Television and Radio Artists: Lenczner Slaght Royce Smith Griffin, Toronto.

Solicitors for the intervener the Samuelson-Glushko Canadian Internet Policy and Public Interest Clinic: Caza Saikaley, Ottawa.

Solicitors for the intervener the Canadian Bar Association: Gowling WLG (Canada), Ottawa.

Solicitors for the interveners Blue Ant Media Inc., the Canadian Broadcasting Corporation, DHX Media Ltd., Groupe V Média inc., the Independent Broadcast Group, the Aboriginal Peoples Television Network, Allarco Entertainment Inc., BBC Kids, Channel Zero, Ethnic Channels Group Ltd., Hollywood Suite, OUTtv

Network Inc., Stingray Digital Group Inc., TV5 Québec Canada, ZoomerMedia Ltd. and Pelmorex Weather Networks (Television) Inc. (37896): Fasken Martineau DuMoulin, Montréal.

Solicitors for the intervener the First Nations Child & Family Caring Society of Canada: Stikeman Elliott, Ottawa.

Philippe Adrien, Emilia Berardi, Paul Creador, Lorenzo Abel Vasquez and Lindy Wagner on their own behalf and on behalf of the other former employees of Rizzo & Rizzo Shoes Limited *Appellants*

v.

Zittrer, Siblin & Associates, Inc., Trustees in Bankruptcy of the Estate of Rizzo & Rizzo Shoes Limited *Respondent*

and

The Ministry of Labour for the Province of Ontario, Employment Standards Branch *Party*

INDEXED AS: RIZZO & RIZZO SHOES LTD. (RE)

File No.: 24711.

1997: October 16; 1998: January 22.

Present: Gonthier, Cory, McLachlin, Iacobucci and Major JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

Employment law — Bankruptcy — Termination pay and severance available when employment terminated by the employer — Whether bankruptcy can be said to be termination by the employer — Employment Standards Act, R.S.O. 1980, c. 137, ss. 7(5), 40(1), (7), 40a — Employment Standards Amendment Act, 1981, S.O. 1981, c. 22, s. 2(3) — Bankruptcy Act, R.S.C., 1985, c. B-3, s. 121(1) — Interpretation Act, R.S.O. 1990, c. I.11, ss. 10, 17.

A bankrupt firm's employees lost their jobs when a receiving order was made with respect to the firm's property. All wages, salaries, commissions and vacation pay were paid to the date of the receiving order. The province's Ministry of Labour audited the firm's records to determine if any outstanding termination or severance pay was owing to former employees under the *Employment Standards Act* ("*ESA*") and delivered a proof of claim to the Trustee. The Trustee disallowed the claims on the ground that the bankruptcy of an employer does not constitute dismissal from employment and accordingly creates no entitlement to sever-

Philippe Adrien, Emilia Berardi, Paul Creador, Lorenzo Abel Vasquez et Lindy Wagner en leur propre nom et en celui des autres anciens employés de Rizzo & Rizzo Shoes Limited *Appelants*

c.

Zittrer, Siblin & Associates, Inc., syndic de faillite de Rizzo & Rizzo Shoes Limited *Intimée*

et

Le ministère du Travail de la province d'Ontario, Direction des normes d'emploi *Partie*

RÉPERTORIÉ: RIZZO & RIZZO SHOES LTD. (RE)

N° du greffe: 24711.

1997: 16 octobre; 1998: 22 janvier.

Présents: Les juges Gonthier, Cory, McLachlin, Iacobucci et Major.

EN APPEL DE LA COUR D'APPEL DE L'ONTARIO

Employeur et employé — Faillite — Indemnités de licenciement et de cessation d'emploi payables en cas de licenciement par l'employeur — Faillite peut-elle être assimilée au licenciement par l'employeur? — Loi sur les normes d'emploi, L.R.O. 1980, ch. 137, art. 7(5), 40(1), (7), 40a — Employment Standards Amendment Act, 1981, L.O. 1981, ch. 22, art. 2(3) — Loi sur la faillite, L.R.C. (1985), ch. B-3, art. 121(1) — Loi d'interprétation, L.R.O. 1990, ch. I.11, art. 10, 17.

Les employés d'une entreprise en faillite ont perdu leur emploi lorsqu'une ordonnance de séquestre a été rendue à l'égard des biens de l'entreprise. Tous les salaires, les traitements, toutes les commissions et les paies de vacances ont été versés jusqu'à la date de l'ordonnance de séquestre. Le ministère du Travail de la province a vérifié les dossiers de l'entreprise pour déterminer si des indemnités de licenciement ou de cessation d'emploi devaient encore être versées aux anciens employés en application de la *Loi sur les normes d'emploi* (la «*LNE*») et il a remis une preuve de réclamation au syndic. Ce dernier a rejeté les réclamations pour le

ance, termination or vacation pay under the *ESA*. The Ministry successfully appealed to the Ontario Court (General Division) but the Ontario Court of Appeal overturned that court's ruling and restored the Trustee's decision. The Ministry sought leave to appeal from the Court of Appeal judgment but discontinued its application. Following the discontinuance of the appeal, the Trustee paid a dividend to Rizzo's creditors, thereby leaving significantly less funds in the estate. Subsequently, the appellants, five former employees of Rizzo, moved to set aside the discontinuance, add themselves as parties to the proceedings, and requested and were granted an order granting them leave to appeal. At issue here is whether the termination of employment caused by the bankruptcy of an employer give rise to a claim provable in bankruptcy for termination pay and severance pay in accordance with the provisions of the *ESA*.

Held: The appeal should be allowed.

At the heart of this conflict is an issue of statutory interpretation. Although the plain language of ss. 40 and 40*a* of the *ESA* suggests that termination pay and severance pay are payable only when the employer terminates the employment, statutory interpretation cannot be founded on the wording of the legislation alone. The words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament. Moreover, s. 10 of Ontario's *Interpretation Act* provides that every Act "shall be deemed to be remedial" and directs that every Act shall "receive such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of the Act according to its true intent, meaning and spirit".

The objects of the *ESA* and of the termination and severance pay provisions themselves are broadly premised upon the need to protect employees. Finding ss. 40 and 40*a* to be inapplicable in bankruptcy situations is incompatible with both the object of the *ESA* and the termination and severance pay provisions. The legislature does not intend to produce absurd consequences and such a consequence would result if employees dismissed before the bankruptcy were to be entitled to these benefits while those dismissed after a bankruptcy would not be so entitled. A distinction would be made between employees merely on the basis of the timing of their dismissal and such a result would arbi-

motif que la faillite d'un employeur ne constituant pas un congédiement, aucun droit à une indemnité de cessation d'emploi, à une indemnité de licenciement ni à une paie de vacances ne prenait naissance sous le régime de la *LNE*. En appel, le ministère a eu gain de cause devant la Cour de l'Ontario (Division générale) mais la Cour d'appel de l'Ontario a infirmé ce jugement et a rétabli la décision du syndic. Le ministère a demandé l'autorisation d'interjeter appel de l'arrêt de la Cour d'appel mais il s'est désisté. Après l'abandon de l'appel, le syndic a versé un dividende aux créanciers de Rizzo, réduisant de façon considérable l'actif. Par la suite, les appelants, cinq anciens employés de Rizzo, ont demandé et obtenu l'annulation du désistement, l'obtention de la qualité de parties à l'instance et une ordonnance leur accordant l'autorisation d'interjeter appel. En l'espèce, il s'agit de savoir si la cessation d'emploi résultant de la faillite de l'employeur donne naissance à une réclamation prouvable en matière de faillite en vue d'obtenir une indemnité de licenciement et une indemnité de cessation d'emploi conformément aux dispositions de la *LNE*.

Arrêt: Le pourvoi est accueilli.

Une question d'interprétation législative est au centre du présent litige. Bien que le libellé clair des art. 40 et 40*a* de la *LNE* donne à penser que les indemnités de licenciement et de cessation d'emploi doivent être versées seulement lorsque l'employeur licencie l'employé, l'interprétation législative ne peut pas être fondée sur le seul libellé du texte de loi. Il faut lire les termes d'une loi dans leur contexte global en suivant le sens ordinaire et grammatical qui s'harmonise avec l'esprit de la loi, l'objet de la loi et l'intention du législateur. Au surplus, l'art. 10 de la *Loi d'interprétation* ontarienne dispose que les lois «sont réputées apporter une solution de droit» et qu'elles doivent «s'interpréter de la manière la plus équitable et la plus large qui soit pour garantir la réalisation de leur objet selon leurs sens, intention et esprit véritables».

L'objet de la *LNE* et des dispositions relatives à l'indemnité de licenciement et à l'indemnité de cessation d'emploi elles-mêmes repose de manière générale sur la nécessité de protéger les employés. Conclure que les art. 40 et 40*a* sont inapplicables en cas de faillite est incompatible tant avec l'objet de la *LNE* qu'avec les dispositions relatives aux indemnités de licenciement et de cessation d'emploi. Le législateur ne peut avoir voulu des conséquences absurdes mais c'est le résultat auquel on arriverait si les employés congédiés avant la faillite avaient droit à ces avantages mais pas les employés congédiés après la faillite. Une distinction serait établie entre les employés sur la seule base de la date de leur

trarily deprive some of a means to cope with economic dislocation.

The use of legislative history as a tool for determining the intention of the legislature is an entirely appropriate exercise. Section 2(3) of the *Employment Standards Amendment Act, 1981* exempted from severance pay obligations employers who became bankrupt and lost control of their assets between the coming into force of the amendment and its receipt of royal assent. Section 2(3) necessarily implies that the severance pay obligation does in fact extend to bankrupt employers. If this were not the case, no readily apparent purpose would be served by this transitional provision. Further, since the *ESA* is benefits-conferring legislation, it ought to be interpreted in a broad and generous manner. Any doubt arising from difficulties of language should be resolved in favour of the claimant.

When the express words of ss. 40 and 40*a* are examined in their entire context, the words "terminated by an employer" must be interpreted to include termination resulting from the bankruptcy of the employer. The impetus behind the termination of employment has no bearing upon the ability of the dismissed employee to cope with the sudden economic dislocation caused by unemployment. As all dismissed employees are equally in need of the protections provided by the *ESA*, any distinction between employees whose termination resulted from the bankruptcy of their employer and those who have been terminated for some other reason would be arbitrary and inequitable. Such an interpretation would defeat the true meaning, intent and spirit of the *ESA*. Termination as a result of an employer's bankruptcy therefore does give rise to an unsecured claim provable in bankruptcy pursuant to s. 121 of the *Bankruptcy Act* for termination and severance pay in accordance with ss. 40 and 40*a* of the *ESA*. It was not necessary to address the applicability of s. 7(5) of the *ESA*.

Cases Cited

Distinguished: *Re Malone Lynch Securities Ltd.*, [1972] 3 O.R. 725; *Re Kemp Products Ltd.* (1978), 27 C.B.R. (N.S.) 1; *Mills-Hughes v. Raynor* (1988), 63 O.R. (2d) 343; **referred to:** *U.F.C.W., Loc. 617P v. Royal Dressed Meats Inc. (Trustee of)* (1989), 76 C.B.R. (N.S.) 86; *R. v. Hydro-Québec*, [1997] 1 S.C.R. 213;

congédiement et un tel résultat les priverait arbitrairement de certains des moyens dont ils disposent pour faire face à un bouleversement économique.

Le recours à l'historique législatif pour déterminer l'intention du législateur est tout à fait approprié. En vertu du par. 2(3) de l'*Employment Standards Amendment Act, 1981*, étaient exemptés de l'obligation de verser des indemnités de cessation d'emploi, les employeurs qui avaient fait faillite et avaient perdu la maîtrise de leurs biens entre le moment où les modifications sont entrées en vigueur et celui où elles ont reçu la sanction royale. Le paragraphe 2(3) implique nécessairement que les employeurs en faillite sont assujettis à l'obligation de verser une indemnité de cessation d'emploi. Si tel n'était pas le cas, cette disposition transitoire semblerait ne poursuivre aucune fin. En outre, comme la *LNE* est une loi conférant des avantages, elle doit être interprétée de façon libérale et généreuse. Tout doute découlant de l'ambiguïté des textes doit se résoudre en faveur du demandeur.

Lorsque les mots exprès employés aux art. 40 et 40*a* sont examinés dans leur contexte global, les termes «l'employeur licencie» doivent être interprétés de manière à inclure la cessation d'emploi résultant de la faillite de l'employeur. Les raisons qui motivent la cessation d'emploi n'ont aucun rapport avec la capacité de l'employé congédié de faire face au bouleversement économique soudain causé par le chômage. Comme tous les employés congédiés ont également besoin des protections prévues par la *LNE*, toute distinction établie entre les employés qui perdent leur emploi en raison de la faillite de leur employeur et ceux qui sont licenciés pour quelque autre raison serait arbitraire et inéquitable. Une telle interprétation irait à l'encontre des sens, intention et esprit véritables de la *LNE*. La cessation d'emploi résultant de la faillite de l'employeur donne effectivement naissance à une réclamation non garantie prouvable en matière de faillite au sens de l'art. 121 de la *LF* en vue d'obtenir une indemnité de licenciement et une indemnité de cessation d'emploi en conformité avec les art. 40 et 40*a* de la *LNE*. Il était inutile d'examiner la question de l'applicabilité du par. 7(5) de la *LNE*.

Jurisprudence

Distinction d'avec les arrêts: *Re Malone Lynch Securities Ltd.*, [1972] 3 O.R. 725; *Re Kemp Products Ltd.* (1978), 27 C.B.R. (N.S.) 1; *Mills-Hughes c. Raynor* (1988), 63 O.R. (2d) 343; **arrêts mentionnés:** *U.F.C.W., Loc. 617P c. Royal Dressed Meats Inc. (Trustee of)* (1989), 76 C.B.R. (N.S.) 86; *R. c. Hydro-Québec*,

Royal Bank of Canada v. Sparrow Electric Corp., [1997] 1 S.C.R. 411; *Verdun v. Toronto-Dominion Bank*, [1996] 3 S.C.R. 550; *Friesen v. Canada*, [1995] 3 S.C.R. 103; *Machtinger v. HOJ Industries Ltd.*, [1992] 1 S.C.R. 986; *Wallace v. United Grain Growers Ltd.*, [1997] 3 S.C.R. 701; *R. v. TNT Canada Inc.* (1996), 27 O.R. (3d) 546; *Re Telegram Publishing Co. v. Zwelling* (1972), 1 L.A.C. (2d) 1; *R. v. Vasil*, [1981] 1 S.C.R. 469; *Paul v. The Queen*, [1982] 1 S.C.R. 621; *R. v. Morgentaler*, [1993] 3 S.C.R. 463; *Abrahams v. Attorney General of Canada*, [1983] 1 S.C.R. 2; *Hills v. Canada (Attorney General)*, [1988] 1 S.C.R. 513; *British Columbia (Director of Employment Standards) v. Eland Distributors Ltd. (Trustee of)* (1996), 40 C.B.R. (3d) 25; *R. v. Z. (D.A.)*, [1992] 2 S.C.R. 1025.

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Employment Standards Act, R.S.O. 1970, c. 147, s. 13(2).
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Employment Standards Act, 1974, S.O. 1974, c. 112, s. 40(7).
Employment Standards Amendment Act, 1981, S.O. 1981, c. 22, s. 2.
Interpretation Act, R.S.O. 1980, c. 219 [now R.S.O. 1990, c. I.11], ss. 10, 17.
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Loi sur les normes d'emploi, L.R.O. 1980, ch. 137, art. 7(5) [abr. & rempl. 1986, ch. 51, art. 2], 40(1) [abr. & rempl. 1987, ch. 30, art. 4(1)], (7), 40*a*(1) [abr. & rempl. *ibid.*, art. 5(1)].

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APPEAL from a judgment of the Ontario Court of Appeal (1995), 22 O.R. (3d) 385, 80 O.A.C. 201, 30 C.B.R. (3d) 1, 9 C.C.E.L. (2d) 264, 95 C.L.L.C. ¶210-020, [1995] O.J. No. 586 (QL), reversing a judgment of the Ontario Court (General Division) (1991), 6 O.R. (3d) 441, 11 C.B.R. (3d) 246, 92 C.L.L.C. ¶14,013, ruling that the Ministry of Labour could prove claims on behalf of employees of the bankrupt. Appeal allowed.

Steven M. Barrett and *Kathleen Martin*, for the appellants.

Raymond M. Slattery, for the respondent.

David Vickers, for the Ministry of Labour for the Province of Ontario, Employment Standards Branch.

The judgment of the Court was delivered by

IACOBUCCI J. — This is an appeal by the former employees of a now bankrupt employer from an order disallowing their claims for termination pay (including vacation pay thereon) and severance pay. The case turns on an issue of statutory interpretation. Specifically, the appeal decides whether, under the relevant legislation in effect at the time of the bankruptcy, employees are entitled to claim termination and severance payments where their employment has been terminated by reason of their employer's bankruptcy.

1. Facts

Prior to its bankruptcy, Rizzo & Rizzo Shoes Limited ("Rizzo") owned and operated a chain of retail shoe stores across Canada. Approximately 65 percent of those stores were located in Ontario. On April 13, 1989, a petition in bankruptcy was filed against the chain. The following day, a receiving

Sullivan, Ruth. *Statutory Interpretation*. Concord, Ont.: Irwin Law, 1997.

POURVOI contre un arrêt de la Cour d'appel de l'Ontario (1995), 22 O.R. (3d) 385, 80 O.A.C. 201, 30 C.B.R. (3d) 1, 9 C.C.E.L. (2d) 264, 95 C.L.L.C. ¶210-020, [1995] O.J. nº 586 (QL), qui a infirmé un jugement de la Cour de l'Ontario (Division générale) (1991), 6 O.R. (3d) 441, 11 C.B.R. (3d) 246, 92 C.L.L.C. ¶14,013, statuant que le ministère du Travail pouvait prouver des réclamations au nom des employés de l'entreprise en faillite. Pourvoi accueilli.

Steven M. Barrett et *Kathleen Martin*, pour les appelants.

Raymond M. Slattery, pour l'intimée.

David Vickers, pour le ministère du Travail de la province d'Ontario, Direction des normes d'emploi.

Version française du jugement de la Cour rendu par

LE JUGE IACOBUCCI — Il s'agit d'un pourvoi interjeté par les anciens employés d'un employeur maintenant en faillite contre une ordonnance qui a rejeté les réclamations qu'ils ont présentées en vue d'obtenir une indemnité de licenciement (y compris la paie de vacances) et une indemnité de cessation d'emploi. Le litige porte sur une question d'interprétation législative. Tout particulièrement, le pourvoi tranche la question de savoir si, en vertu des dispositions législatives pertinentes en vigueur à l'époque de la faillite, les employés ont le droit de réclamer une indemnité de licenciement et une indemnité de cessation d'emploi lorsque la cessation d'emploi résulte de la faillite de leur employeur. 1

1. Les faits

Avant sa faillite, la société Rizzo & Rizzo Shoes Limited («Rizzo») possédait et exploitait au Canada une chaîne de magasins de vente au détail de chaussures. Environ 65 pour 100 de ces magasins étaient situés en Ontario. Le 13 avril 1989, une pétition en faillite a été présentée contre la 2

order was made on consent in respect of Rizzo's property. Upon the making of that order, the employment of Rizzo's employees came to an end.

3 Pursuant to the receiving order, the respondent, Zittrer, Siblin & Associates, Inc. (the "Trustee") was appointed as trustee in bankruptcy of Rizzo's estate. The Bank of Nova Scotia privately appointed Peat Marwick Limited ("PML") as receiver and manager. By the end of July 1989, PML had liquidated Rizzo's property and assets and closed the stores. PML paid all wages, salaries, commissions and vacation pay that had been earned by Rizzo's employees up to the date on which the receiving order was made.

4 In November 1989, the Ministry of Labour for the Province of Ontario, Employment Standards Branch (the "Ministry") audited Rizzo's records to determine if there was any outstanding termination or severance pay owing to former employees under the *Employment Standards Act*, R.S.O. 1980, c. 137, as amended (the "*ESA*"). On August 23, 1990, the Ministry delivered a proof of claim to the respondent Trustee on behalf of the former employees of Rizzo for termination pay and vacation pay thereon in the amount of approximately $2.6 million and for severance pay totalling $14,215. The Trustee disallowed the claims, issuing a Notice of Disallowance on January 28, 1991. For the purposes of this appeal, the relevant ground for disallowing the claim was the Trustee's opinion that the bankruptcy of an employer does not constitute a dismissal from employment and thus, no entitlement to severance, termination or vacation pay is created under the *ESA*.

5 The Ministry appealed the Trustee's decision to the Ontario Court (General Division) which reversed the Trustee's disallowance and allowed the claims as unsecured claims provable in bankruptcy. On appeal, the Ontario Court of Appeal overturned the trial court's ruling and restored the decision of the Trustee. The Ministry sought leave

chaîne de magasins. Le lendemain, une ordonnance de séquestre a été rendue sur consentement à l'égard des biens de Rizzo. Au prononcé de l'ordonnance, les employés de Rizzo ont perdu leur emploi.

Conformément à l'ordonnance de séquestre, l'intimée, Zittrer, Siblin & Associates, Inc. (le «syndic») a été nommée syndic de faillite de l'actif de Rizzo. La Banque de Nouvelle-Écosse a nommé Peat Marwick Limitée («PML») comme administrateur séquestre. Dès la fin de juillet 1989, PML avait liquidé les biens de Rizzo et fermé les magasins. PML a versé tous les salaires, les traitements, toutes les commissions et les paies de vacances qui avaient été gagnés par les employés de Rizzo jusqu'à la date à laquelle l'ordonnance de séquestre a été rendue.

En novembre 1989, le ministère du Travail de la province d'Ontario, Direction des normes d'emploi (le «ministère») a vérifié les dossiers de Rizzo afin de déterminer si des indemnités de licenciement ou de cessation d'emploi devaient encore être versées aux anciens employés en application de la *Loi sur les normes d'emploi*, L.R.O. 1980, ch. 137 et ses modifications (la «*LNE*»). Le 23 août 1990, au nom des anciens employés de Rizzo, le ministère a remis au syndic intimé une preuve de réclamation pour des indemnités de licenciement et des paies de vacances (environ 2,6 millions de dollars) et pour des indemnités de cessation d'emploi (14 215 $). Le syndic a rejeté les réclamations et a donné avis du rejet le 28 janvier 1991. Aux fins du présent pourvoi, les réclamations ont été rejetées parce que le syndic était d'avis que la faillite d'un employeur ne constituant pas un congédiement, aucun droit à une indemnité de cessation d'emploi, à une indemnité de licenciement ni à une paie de vacances ne prenait naissance sous le régime de la *LNE*.

Le ministère a interjeté appel de la décision du syndic devant la Cour de l'Ontario (Division générale) laquelle a infirmé la décision du syndic et a admis les réclamations en tant que réclamations non garanties prouvables en matière de faillite. En appel, la Cour d'appel de l'Ontario a cassé le jugement de la cour de première instance et rétabli la

to appeal from the Court of Appeal judgment, but discontinued its application on August 30, 1993. Following the discontinuance of the appeal, the Trustee paid a dividend to Rizzo's creditors, thereby leaving significantly less funds in the estate. Subsequently, the appellants, five former employees of Rizzo, moved to set aside the discontinuance, add themselves as parties to the proceedings, and requested an order granting them leave to appeal. This Court's order granting those applications was issued on December 5, 1996.

2. Relevant Statutory Provisions

The relevant versions of the *Bankruptcy Act* (now the *Bankruptcy and Insolvency Act*) and the *Employment Standards Act* for the purposes of this appeal are R.S.C., 1985, c. B-3 (the "*BA*"), and R.S.O. 1980, c. 137, as amended to April 14, 1989 (the "*ESA*") respectively.

Employment Standards Act, R.S.O. 1980, c. 137, as amended:

7. —

(5) Every contract of employment shall be deemed to include the following provision:

> All severance pay and termination pay become payable and shall be paid by the employer to the employee in two weekly instalments beginning with the first full week following termination of employment and shall be allocated to such weeks accordingly. This provision does not apply to severance pay if the employee has elected to maintain a right of recall as provided in subsection 40a (7) of the *Employment Standards Act.*

40. — (1) No employer shall terminate the employment of an employee who has been employed for three months or more unless the employee gives,

(a) one weeks notice in writing to the employee if his or her period of employment is less than one year;

(b) two weeks notice in writing to the employee if his or her period of employment is one year or more but less than three years;

décision du syndic. Le ministère a demandé l'autorisation d'en appeler de l'arrêt de la Cour d'appel, mais il s'est désisté le 30 août 1993. Après l'abandon de l'appel, le syndic a versé un dividende aux créanciers de Rizzo, réduisant de façon considérable l'actif. Par la suite, les appelants, cinq anciens employés de Rizzo, ont demandé l'annulation du désistement, l'obtention de la qualité de parties à l'instance et une ordonnance leur accordant l'autorisation d'interjeter appel. L'ordonnance de notre Cour faisant droit à ces demandes a été rendue le 5 décembre 1996.

2. Les dispositions législatives pertinentes

Aux fins du présent pourvoi, les versions pertinentes de la *Loi sur la faillite* (maintenant la *Loi sur la faillite et l'insolvabilité*) et de la *Loi sur les normes d'emploi* sont respectivement les suivantes: L.R.C. (1985), ch. B-3 (la *«LF»*) et L.R.O. 1980, ch. 137 et ses modifications au 14 avril 1989 (la *«LNE»*).

Loi sur les normes d'emploi, L.R.O. 1980, ch. 137 et ses modifications:

7 . . .

(5) Tout contrat de travail est réputé comprendre la disposition suivante:

> L'indemnité de cessation d'emploi et l'indemnité de licenciement deviennent exigibles et sont payées par l'employeur à l'employé en deux versements hebdomadaires à compter de la première semaine complète suivant la cessation d'emploi, et sont réparties sur ces semaines en conséquence. La présente disposition ne s'applique pas à l'indemnité de cessation d'emploi si l'employé a choisi de maintenir son droit d'être rappelé, comme le prévoit le paragraphe 40a (7) de la *Loi sur les normes d'emploi.*

40 (1) Aucun employeur ne doit licencier un employé qui travaille pour lui depuis trois mois ou plus à moins de lui donner:

a) un préavis écrit d'une semaine si sa période d'emploi est inférieure à un an;

b) un préavis écrit de deux semaines si sa période d'emploi est d'un an ou plus mais de moins de trois ans;

(c) three weeks notice in writing to the employee if his or her period of employment is three years or more but less than four years;

(d) four weeks notice in writing to the employee if his or her period of employment is four years or more but less than five years;

(e) five weeks notice in writing to the employee if his or her period of employment is five years or more but less than six years;

(f) six weeks notice in writing to the employee if his or her period of employment is six years or more but less than seven years;

(g) seven weeks notice in writing to the employee if his or her period of employment is seven years or more but less than eight years;

(h) eight weeks notice in writing to the employee if his or her period of employment is eight years or more,

and such notice has expired.

. . .

(7) Where the employment of an employee is terminated contrary to this section,

(a) the employer shall pay termination pay in an amount equal to the wages that the employee would have been entitled to receive at his regular rate for a regular non-overtime work week for the period of notice prescribed by subsection (1) or (2), and any wages to which he is entitled;

. . .

40*a* . . .

(1a) Where**,**

(a) fifty or more employees have their employment terminated by an employer in a period of six months or less and the terminations are caused by the permanent discontinuance of all or part of the business of the employer at an establishment; or

(b) one or more employees have their employment terminated by an employer with a payroll of $2.5 million or more,

the employer shall pay severance pay to each employee whose employment has been terminated and who has been employed by the employer for five or more years.

c) un préavis écrit de trois semaines si sa période d'emploi est de trois ans ou plus mais de moins de quatre ans;

d) un préavis écrit de quatre semaines si sa période d'emploi est de quatre ans ou plus mais de moins de cinq ans;

e) un préavis écrit de cinq semaines si sa période d'emploi est de cinq ans ou plus mais de moins de six ans;

f) un préavis écrit de six semaines si sa période d'emploi est de six ans ou plus mais de moins de sept ans;

g) un préavis écrit de sept semaines si sa période d'emploi est de sept ans ou plus mais de moins de huit ans;

h) un préavis écrit de huit semaines si sa période d'emploi est de huit ans ou plus,

et avant le terme de la période de ce préavis.

. . .

(7) Si un employé est licencié contrairement au présent article:

a) l'employeur lui verse une indemnité de licenciement égale au salaire que l'employé aurait eu le droit de recevoir à son taux normal pour une semaine normale de travail sans heures supplémentaires pendant la période de préavis fixée par le paragraphe (1) ou (2), de même que tout salaire auquel il a droit;

. . .

40*a* . . .

[TRADUCTION] (1a) L'employeur verse une indemnité de cessation d'emploi à chaque employé licencié qui a travaillé pour lui pendant cinq ans ou plus si, selon le cas:

a) l'employeur licencie cinquante employés ou plus au cours d'une période de six mois ou moins et que les licenciements résultent de l'interruption permanente de l'ensemble ou d'une partie des activités de l'employeur à un établissement;

b) l'employeur dont la masse salariale est de 2,5 millions de dollars ou plus licencie un ou plusieurs employés.

Employment Standards Amendment Act, 1981, S.O. 1981, c. 22

2. — (1) Part XII of the said Act is amended by adding thereto the following section:

. . .

(3) Section 40*a* of the said Act does not apply to an employer who became a bankrupt or an insolvent person within the meaning of the *Bankruptcy Act* (Canada) and whose assets have been distributed among his creditors or to an employer whose proposal within the meaning of the *Bankruptcy Act* (Canada) has been accepted by his creditors in the period from and including the 1st day of January, 1981, to and including the day immediately before the day this Act receives Royal Assent.

Bankruptcy Act, R.S.C., 1985, c. B-3

121. (1) All debts and liabilities, present or future, to which the bankrupt is subject at the date of the bankruptcy or to which he may become subject before his discharge by reason of any obligation incurred before the date of the bankruptcy shall be deemed to be claims provable in proceedings under this Act.

Interpretation Act, R.S.O. 1990, c. I.11

10. Every Act shall be deemed to be remedial, whether its immediate purport is to direct the doing of anything that the Legislature deems to be for the public good or to prevent or punish the doing of any thing that it deems to be contrary to the public good, and shall accordingly receive such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of the Act according to its true intent, meaning and spirit.

. . .

17. The repeal or amendment of an Act shall be deemed not to be or to involve any declaration as to the previous state of the law.

3. Judicial History

A. *Ontario Court (General Division)* (1991), 6 O.R. (3d) 441

Employment Standards Amendment Act, 1981, L.O. 1981, ch. 22

[TRADUCTION]

2. (1) La partie XII de la loi est modifiée par adjonction de l'article suivant:

. . .

(3) L'article 40*a* de la loi ne s'applique pas à l'employeur qui a fait faillite ou est devenu insolvable au sens de la *Loi sur la faillite* (Canada) et dont les biens ont été distribués à ses créanciers ou à l'employeur dont la proposition au sens de la *Loi sur la faillite* (Canada) a été acceptée par ses créanciers pendant la période qui commence le 1er janvier 1981 et se termine le jour précédant immédiatement celui où la présente loi a reçu la sanction royale inclusivement.

Loi sur la faillite, L.R.C. (1985), ch. B-3

121. (1) Toutes créances et tous engagements, présents ou futurs, auxquels le failli est assujetti à la date de la faillite, ou auxquels il peut devenir assujetti avant sa libération, en raison d'une obligation contractée antérieurement à la date de la faillite, sont réputés des réclamations prouvables dans des procédures entamées en vertu de la présente loi.

Loi d'interprétation, L.R.O. 1990, ch. I.11

10 Les lois sont réputées apporter une solution de droit, qu'elles aient pour objet immédiat d'ordonner l'accomplissement d'un acte que la Législature estime être dans l'intérêt public ou d'empêcher ou de punir l'accomplissement d'un acte qui lui paraît contraire à l'intérêt public. Elles doivent par conséquent s'interpréter de la manière la plus équitable et la plus large qui soit pour garantir la réalisation de leur objet selon leurs sens, intention et esprit véritables.

. . .

17 L'abrogation ou la modification d'une loi n'est pas réputée constituer ou impliquer une déclaration portant sur l'état antérieur du droit.

3. L'historique judiciaire

A. *La Cour de l'Ontario (Division générale)* (1991), 6 O.R. (3d) 441

7 Having disposed of several issues which do not arise on this appeal, Farley J. turned to the question of whether termination pay and severance pay are provable claims under the *BA*. Relying on *U.F.C.W., Loc. 617P v. Royal Dressed Meats Inc. (Trustee of)* (1989), 76 C.B.R. (N.S.) 86 (Ont. S.C. in Bankruptcy), he found that it is clear that claims for termination and severance pay are provable in bankruptcy where the statutory obligation to provide such payments arose prior to the bankruptcy. Accordingly, he reasoned that the essential matter to be resolved in the case at bar was whether bankruptcy acted as a termination of employment thereby triggering the termination and severance pay provisions of the *ESA* such that liability for such payments would arise on bankruptcy as well.

Après avoir tranché plusieurs points non soulevés dans le présent pourvoi, le juge Farley est passé à la question de savoir si l'indemnité de licenciement et l'indemnité de cessation d'emploi sont des réclamations prouvables en application de la *LF*. S'appuyant sur la décision *U.F.C.W., Loc. 617P c. Royal Dressed Meats Inc. (Trustee of)* (1989), 76 C.B.R. (N.S.) 86 (C.S. Ont. en matière de faillite), il a conclu que manifestement, l'indemnité de licenciement et l'indemnité de cessation d'emploi sont prouvables en matière de faillite lorsque l'obligation légale d'effectuer ces versements a pris naissance avant la faillite. Par conséquent, il a estimé que le point essentiel à résoudre en l'espèce était de savoir si la faillite était assimilable au licenciement et entraînait l'application des dispositions relatives à l'indemnité de licenciement et à l'indemnité de cessation d'emploi de la *LNE* de manière que l'obligation de verser ces indemnités prenne naissance également au moment de la faillite.

8 In addressing this question, Farley J. began by noting that the object and intent of the *ESA* is to provide minimum employment standards and to benefit and protect the interests of employees. Thus, he concluded that the *ESA* is remedial legislation and as such it should be interpreted in a fair, large and liberal manner to ensure that its object is attained according to its true meaning, spirit and intent.

Le juge Farley a abordé cette question en faisant remarquer que l'objet et l'intention de la *LNE* étaient d'établir des normes minimales d'emploi et de favoriser et protéger les intérêts des employés. Il a donc conclu que la *LNE* visait à apporter une solution de droit et devait dès lors être interprétée de manière équitable et large afin de garantir la réalisation de son objet selon ses sens, intention et esprit véritables.

9 Farley J. then held that denying employees in this case the right to claim termination and severance pay would lead to the arbitrary and unfair result that an employee whose employment is terminated just prior to a bankruptcy would be entitled to termination and severance pay, whereas one whose employment is terminated by the bankruptcy itself would not have that right. This result, he stated, would defeat the intended working of the *ESA*.

Le juge Farley a ensuite décidé que priver les employés en l'espèce du droit de réclamer une indemnité de licenciement et une indemnité de cessation d'emploi aurait pour conséquence injuste et arbitraire que l'employé licencié juste avant la faillite aurait droit à une indemnité de licenciement et à une indemnité de cessation d'emploi, alors que celui qui a perdu son emploi en raison de la faillite elle-même n'y aurait pas droit. Ce résultat, a-t-il dit, irait à l'encontre du but visé par la loi.

10 Farley J. saw no reason why the claims of the employees in the present case would not generally be contemplated as wages or other claims under the *BA*. He emphasized that the former employees in the case at bar had not alleged that termination pay and severance pay should receive a priority in

Le juge Farley ne voyait pas pourquoi les réclamations des employés en l'espèce ne seraient pas généralement considérées comme des réclamations concernant les salaires ou comme d'autres réclamations présentées en application de la *LF*. Il a souligné que les anciens employés en l'espèce

the distribution of the estate, but merely that they are provable (unsecured and unpreferred) claims in a bankruptcy. For this reason, he found it inappropriate to make reference to authorities whose focus was the interpretation of priority provisions in the *BA*.

n'avaient pas soutenu que les indemnités de licenciement et de cessation d'emploi devaient être prioritaires dans la distribution de l'actif, mais tout simplement qu'elles étaient des réclamations prouvables en matière de faillite (non garanties et non privilégiées). Pour ce motif, il a conclu qu'il ne convenait pas d'invoquer la jurisprudence et la doctrine portant sur l'interprétation des dispositions relatives à la priorité de la *LF*.

Even if bankruptcy does not terminate the employment relationship so as to trigger the *ESA* termination and severance pay provisions, Farley J. was of the view that the employees in the instant case would nevertheless be entitled to such payments as these were liabilities incurred prior to the date of the bankruptcy by virtue of s. 7(5) of the *ESA*. He found that s. 7(5) deems every employment contract to include a provision to provide termination and severance pay following the termination of employment and concluded that a contingent obligation is thereby created for a bankrupt employer to make such payments from the outset of the relationship, long before the bankruptcy.

11 Même si la faillite ne met pas fin à la relation entre l'employeur et l'employé de façon à faire jouer les dispositions relatives aux indemnités de licenciement et de cessation d'emploi de la *LNF*, le juge Farley était d'avis que les employés en l'espèce avaient néanmoins droit à ces indemnités, car il s'agissait d'engagements contractés avant la date de la faillite conformément au par. 7(5) de la *LNE*. Il a conclu d'une part qu'aux termes du par. 7(5), tout contrat de travail est réputé comprendre une disposition prévoyant le versement d'une indemnité de licenciement et d'une indemnité de cessation d'emploi au moment de la cessation d'emploi et d'autre part que l'employeur en faillite est assujetti à l'obligation conditionnelle de verser ces indemnités depuis le début de la relation entre l'employeur et l'employé, soit bien avant la faillite.

Farley J. also considered s. 2(3) of the *Employment Standards Amendment Act, 1981*, S.O. 1981, c. 22 (the "*ESAA*"), which is a transitional provision that exempted certain bankrupt employers from the newly introduced severance pay obligations until the amendments received royal assent. He was of the view that this provision would not have been necessary if the obligations of employers upon termination of employment had not been intended to apply to bankrupt employers under the *ESA*. Farley J. concluded that the claim by Rizzo's former employees for termination pay and severance pay could be provided as unsecured and unpreferred debts in a bankruptcy. Accordingly, he allowed the appeal from the decision of the Trustee.

12 Le juge Farley a également examiné le par. 2(3) de l'*Employment Standards Amendment Act, 1981*, L.O. 1981, ch. 22 («l'*ESAA*»), qui est une disposition transitoire exemptant certains employeurs en faillite des nouvelles obligations relatives au paiement de l'indemnité de cessation d'emploi jusqu'à ce que les modifications aient reçu la sanction royale. Il était d'avis que cette disposition n'aurait pas été nécessaire si le législateur n'avait pas voulu que les obligations auxquelles sont tenus les employeurs au moment d'un licenciement s'appliquent aux employeurs en faillite en vertu de la *LNE*. Le juge Farley a conclu que la réclamation présentée par les anciens employés de Rizzo en vue d'obtenir des indemnités de licenciement et de cessation d'emploi pouvait être traitée comme une créance non garantie et non privilégiée dans une faillite. Par conséquent, il a accueilli l'appel formé contre la décision du syndic.

B. *Ontario Court of Appeal* (1995), 22 O.R. (3d) 385

13 Austin J.A., writing for a unanimous court, began his analysis of the principal issue in this appeal by focussing upon the language of the termination pay and severance pay provisions of the *ESA*. He noted, at p. 390, that the termination pay provisions use phrases such as "[n]o employer shall terminate the employment of an employee" (s. 40(1)), "the notice required by an employer to terminate the employment" (s. 40(2)), and "[a]n employer who has terminated or who proposes to terminate the employment of employees" (s. 40(5)). Turning to severance pay, he quoted s. 40*a*(1)(*a*) (at p. 391) which includes the phrase "employees have their employment terminated by an employer". Austin J.A. concluded that this language limits the obligation to provide termination and severance pay to situations in which the employer terminates the employment. The operation of the *ESA*, he stated, is not triggered by the termination of employment resulting from an act of law such as bankruptcy.

14 In support of his conclusion, Austin J.A. reviewed the leading cases in this area of law. He cited *Re Malone Lynch Securities Ltd.*, [1972] 3 O.R. 725 (S.C. in bankruptcy), wherein Houlden J. (as he then was) concluded that the *ESA* termination pay provisions were not designed to apply to a bankrupt employer. He also relied upon *Re Kemp Products Ltd.* (1978), 27 C.B.R. (N.S.) 1 (Ont. S.C. in bankruptcy), for the proposition that the bankruptcy of a company at the instance of a creditor does not constitute dismissal. He concluded as follows at p. 395:

> The plain language of ss. 40 and 40*a* does not give rise to any liability to pay termination or severance pay except where the employment is terminated by the employer. In our case, the employment was terminated, not by the employer, but by the making of a receiving order against Rizzo on April 14, 1989, following a peti-

B. *La Cour d'appel de l'Ontario* (1995), 22 O.R. (3d) 385

Au nom d'une cour unanime, le juge Austin a commencé son analyse de la question principale du présent pourvoi en s'arrêtant sur le libellé des dispositions relatives à l'indemnité de licenciement et à l'indemnité de cessation d'emploi de la *LNE*. Il a noté, à la p. 390, que les dispositions relatives à l'indemnité de licenciement utilisent des expressions comme «[a]ucun employeur ne doit licencier un employé» (par. 40(1)), «le préavis qu'un employeur donne pour licencier» (par. 40(2)) et les «employés qu'un employeur a licenciés ou se propose de licencier» (par. 40(5)). Passant à l'indemnité de cessation d'emploi, il a cité l'al. 40*a*(1)*a*), à la p. 391, lequel contient l'expression «l'employeur licencie cinquante employés». Le juge Austin a conclu que ce libellé limite l'obligation d'accorder une indemnité de licenciement et une indemnité de cessation d'emploi aux cas où l'employeur licencie des employés. Selon lui, la cessation d'emploi résultant de l'effet de la loi, notamment de la faillite, n'entraîne pas l'application de la *LNE*.

À l'appui de sa conclusion, le juge Austin a examiné les arrêts de principe dans ce domaine du droit. Il a cité *Re Malone Lynch Securities Ltd.*, [1972] 3 O.R. 725 (C.S. en matière de faillite), dans lequel le juge Houlden (maintenant juge de la Cour d'appel) a statué que les dispositions relatives à l'indemnité de licenciement de la *LNE* n'étaient pas conçues pour s'appliquer à l'employeur en faillite. Il a également invoqué *Re Kemp Products Ltd.* (1978), 27 C.B.R. (N.S.) 1 (C.S. Ont. en matière de faillite), à l'appui de la proposition selon laquelle la faillite d'une compagnie à la demande d'un créancier ne constitue pas un congédiement. Il a conclu ainsi, à la p. 395:

> [TRADUCTION] Le libellé clair des art. 40 et 40*a* ne crée une obligation de verser une indemnité de licenciement ou une indemnité de cessation d'emploi que si l'employeur licencie l'employé. En l'espèce, la cessation d'emploi n'est pas le fait de l'employeur, elle résulte d'une ordonnance de séquestre rendue à l'encontre de Rizzo le 14 avril 1989, à la suite d'une pétition présentée par l'un de ses créanciers. Le droit à une indemnité

tion by one of its creditors. No entitlement to either termination or severance pay ever arose.

Regarding s. 7(5) of the *ESA*, Austin J.A. rejected the trial judge's interpretation and found that the section does not create a liability. Rather, in his opinion, it merely states when a liability otherwise created is to be paid and therefore it was not considered relevant to the issue before the court. Similarly, Austin J.A. did not accept the lower court's view of s. 2(3), the transitional provision in the *ESAA*. He found that that section had no effect upon the intention of the Legislature as evidenced by the terminology used in ss. 40 and 40*a*.

Austin J.A. concluded that, because the employment of Rizzo's former employees was terminated by the order of bankruptcy and not by the act of the employer, no liability arose with respect to termination, severance or vacation pay. The order of the trial judge was set aside and the Trustee's disallowance of the claims was restored.

4. Issues

This appeal raises one issue: does the termination of employment caused by the bankruptcy of an employer give rise to a claim provable in bankruptcy for termination pay and severance pay in accordance with the provisions of the *ESA*?

5. Analysis

The statutory obligation upon employers to provide both termination pay and severance pay is governed by ss. 40 and 40*a* of the *ESA*, respectively. The Court of Appeal noted that the plain language of those provisions suggests that termination pay and severance pay are payable only when the employer terminates the employment. For example, the opening words of s. 40(1) are: "No employer shall terminate the employment of an employee. . . ." Similarly, s. 40*a*(1a) begins with

de licenciement ou à une indemnité de cessation d'emploi n'a jamais pris naissance.

15 En ce qui concerne le par. 7(5) de la *LNE*, le juge Austin a rejeté l'interprétation du juge de première instance et a estimé que cette disposition ne créait pas d'engagement. Selon lui, elle ne faisait que préciser quand l'engagement contracté par ailleurs devait être acquitté et ne se rapportait donc pas à la question dont la cour était saisie. Le juge Austin n'a pas accepté non plus l'opinion exprimée par le tribunal inférieur au sujet du par. 2(3), la disposition transitoire de l'*ESAA*. Il a jugé que cette disposition n'avait aucun effet quant à l'intention du législateur, comme l'attestait la terminologie employée aux art. 40 et 40*a*.

16 Le juge Austin a conclu que, comme la cessation d'emploi subie par les anciens employés de Rizzo résultait d'une ordonnance de faillite et n'était pas le fait de l'employeur, il n'existait aucun engagement en ce qui concerne l'indemnité de licenciement, l'indemnité de cessation d'emploi ni la paie de vacances. L'ordonnance du juge de première instance a été annulée et la décision du syndic de rejeter les réclamations a été rétablie.

4. Les questions en litige

17 Le présent pourvoi soulève une question: la cessation d'emploi résultant de la faillite de l'employeur donne-t-elle naissance à une réclamation prouvable en matière de faillite en vue d'obtenir une indemnité de licenciement et une indemnité de cessation d'emploi conformément aux dispositions de la *LNE*?

5. Analyse

18 L'obligation légale faite aux employeurs de verser une indemnité de licenciement ainsi qu'une indemnité de cessation d'emploi est régie respectivement par les art. 40 et 40*a* de la *LNE*. La Cour d'appel a fait observer que le libellé clair de ces dispositions donne à penser que les indemnités de licenciement et de cessation d'emploi doivent être versées seulement lorsque l'employeur licencie l'employé. Par exemple, le par. 40(1) commence par les mots suivants: «Aucun employeur ne doit

the words, "Where . . . fifty or more employees have their employment terminated by an employer. . . ." Therefore, the question on which this appeal turns is whether, when bankruptcy occurs, the employment can be said to be terminated "by an employer".

19 The Court of Appeal answered this question in the negative, holding that, where an employer is petitioned into bankruptcy by a creditor, the employment of its employees is not terminated "by an employer", but rather by operation of law. Thus, the Court of Appeal reasoned that, in the circumstances of the present case, the *ESA* termination pay and severance pay provisions were not applicable and no obligations arose. In answer, the appellants submit that the phrase "terminated by an employer" is best interpreted as reflecting a distinction between involuntary and voluntary termination of employment. It is their position that this language was intended to relieve employers of their obligation to pay termination and severance pay when employees leave their jobs voluntarily. However, the appellants maintain that where an employee's employment is involuntarily terminated by reason of their employer's bankruptcy, this constitutes termination "by an employer" for the purpose of triggering entitlement to termination and severance pay under the *ESA*.

20 At the heart of this conflict is an issue of statutory interpretation. Consistent with the findings of the Court of Appeal, the plain meaning of the words of the provisions here in question appears to restrict the obligation to pay termination and severance pay to those employers who have actively terminated the employment of their employees. At first blush, bankruptcy does not fit comfortably into this interpretation. However, with respect, I believe this analysis is incomplete.

21 Although much has been written about the interpretation of legislation (see, e.g., Ruth Sullivan, *Statutory Interpretation* (1997); Ruth Sullivan, *Driedger on the Construction of Statutes* (3rd ed. 1994) (hereinafter "*Construction of Statutes*"); Pierre-André Côté, *The Interpretation of Legisla-*

licencier un employé . . .» Le paragraphe 40*a*(1a) contient également les mots: «si [. . .] l'employeur licencie cinquante employés ou plus . . .» Par conséquent, la question dans le présent pourvoi est de savoir si l'on peut dire que l'employeur qui fait faillite a licencié ses employés.

La Cour d'appel a répondu à cette question par la négative, statuant que, lorsqu'un créancier présente une pétition en faillite contre un employeur, les employés ne sont pas licenciés par l'employeur mais par l'effet de la loi. La Cour d'appel a donc estimé que, dans les circonstances de l'espèce, les dispositions relatives aux indemnités de licenciement et de cessation d'emploi de la *LNE* n'étaient pas applicables et qu'aucune obligation n'avait pris naissance. Les appelants répliquent que les mots «l'employeur licencie» doivent être interprétés comme établissant une distinction entre la cessation d'emploi volontaire et la cessation d'emploi forcée. Ils soutiennent que ce libellé visait à dégager l'employeur de son obligation de verser des indemnités de licenciement et de cessation d'emploi lorsque l'employé quittait son emploi volontairement. Cependant, les appelants prétendent que la cessation d'emploi forcée résultant de la faillite de l'employeur est assimilable au licenciement effectué par l'employeur pour l'exercice du droit à une indemnité de licenciement et à une indemnité de cessation d'emploi prévu par la *LNE*.

Une question d'interprétation législative est au centre du présent litige. Selon les conclusions de la Cour d'appel, le sens ordinaire des mots utilisés dans les dispositions en cause paraît limiter l'obligation de verser une indemnité de licenciement et une indemnité de cessation d'emploi aux employeurs qui ont effectivement licencié leurs employés. À première vue, la faillite ne semble pas cadrer très bien avec cette interprétation. Toutefois, en toute déférence, je crois que cette analyse est incomplète.

Bien que l'interprétation législative ait fait couler beaucoup d'encre (voir par ex. Ruth Sullivan, *Statutory Interpretation* (1997); Ruth Sullivan, *Driedger on the Construction of Statutes* (3e éd. 1994) (ci-après «*Construction of Statutes*»); Pierre-André Côté, *Interprétation des lois* (2e éd.

tion in Canada (2nd ed. 1991)), Elmer Driedger in *Construction of Statutes* (2nd ed. 1983) best encapsulates the approach upon which I prefer to rely. He recognizes that statutory interpretation cannot be founded on the wording of the legislation alone. At p. 87 he states:

> Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

Recent cases which have cited the above passage with approval include: *R. v. Hydro-Québec*, [1997] 1 S.C.R. 213; *Royal Bank of Canada v. Sparrow Electric Corp.*, [1997] 1 S.C.R. 411; *Verdun v. Toronto-Dominion Bank*, [1996] 3 S.C.R. 550; *Friesen v. Canada*, [1995] 3 S.C.R. 103.

I also rely upon s. 10 of the *Interpretation Act*, R.S.O. 1980, c. 219, which provides that every Act "shall be deemed to be remedial" and directs that every Act shall "receive such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of the Act according to its true intent, meaning and spirit".

Although the Court of Appeal looked to the plain meaning of the specific provisions in question in the present case, with respect, I believe that the court did not pay sufficient attention to the scheme of the *ESA*, its object or the intention of the legislature; nor was the context of the words in issue appropriately recognized. I now turn to a discussion of these issues.

In *Machtinger v. HOJ Industries Ltd.*, [1992] 1 S.C.R. 986, at p. 1002, the majority of this Court recognized the importance that our society accords to employment and the fundamental role that it has assumed in the life of the individual. The manner in which employment can be terminated was said to be equally important (see also *Wallace v. United Grain Growers Ltd.*, [1997] 3 S.C.R. 701). It was in this context that the majority in *Machtinger* described, at p. 1003, the object of the *ESA* as being the protection of ". . . the interests of employees by requiring employers to comply with

1990)), Elmer Driedger dans son ouvrage intitulé *Construction of Statutes* (2e éd. 1983) résume le mieux la méthode que je privilégie. Il reconnaît que l'interprétation législative ne peut pas être fondée sur le seul libellé du texte de loi. À la p. 87, il dit:

> [TRADUCTION] Aujourd'hui il n'y a qu'un seul principe ou solution: il faut lire les termes d'une loi dans leur contexte global en suivant le sens ordinaire et grammatical qui s'harmonise avec l'esprit de la loi, l'objet de la loi et l'intention du législateur.

Parmi les arrêts récents qui ont cité le passage ci-dessus en l'approuvant, mentionnons: *R. c. Hydro-Québec*, [1997] 1 R.C.S. 213; *Banque Royale du Canada c. Sparrow Electric Corp.*, [1997] 1 R.C.S. 411; *Verdun c. Banque Toronto-Dominion*, [1996] 3 R.C.S. 550; *Friesen c. Canada*, [1995] 3 R.C.S. 103.

22 Je m'appuie également sur l'art. 10 de la *Loi d'interprétation*, L.R.O. 1980, ch. 219, qui prévoit que les lois «sont réputées apporter une solution de droit» et doivent «s'interpréter de la manière la plus équitable et la plus large qui soit pour garantir la réalisation de leur objet selon leurs sens, intention et esprit véritables».

23 Bien que la Cour d'appel ait examiné le sens ordinaire des dispositions en question dans le présent pourvoi, en toute déférence, je crois que la cour n'a pas accordé suffisamment d'attention à l'économie de la *LNE*, à son objet ni à l'intention du législateur; le contexte des mots en cause n'a pas non plus été pris en compte adéquatement. Je passe maintenant à l'analyse de ces questions.

24 Dans l'arrêt *Machtinger c. HOJ Industries Ltd.*, [1992] 1 R.C.S. 986, à la p. 1002, notre Cour, à la majorité, a reconnu l'importance que notre société accorde à l'emploi et le rôle fondamental qu'il joue dans la vie de chaque individu. La manière de mettre fin à un emploi a été considérée comme étant tout aussi importante (voir également *Wallace c. United Grain Growers Ltd.*, [1997] 3 R.C.S. 701). C'est dans ce contexte que les juges majoritaires dans l'arrêt *Machtinger* ont défini, à la p. 1003, l'objet de la *LNE* comme étant la protection «. . . [d]es intérêts des employés en exigeant que

certain minimum standards, including minimum periods of notice of termination". Accordingly, the majority concluded, at p. 1003, that, ". . . an interpretation of the Act which encourages employers to comply with the minimum requirements of the Act, and so extends its protections to as many employees as possible, is to be favoured over one that does not".

les employeurs respectent certaines normes minimales, notamment en ce qui concerne les périodes minimales de préavis de licenciement». Par conséquent, les juges majoritaires ont conclu, à la p. 1003, qu'«. . . une interprétation de la Loi qui encouragerait les employeurs à se conformer aux exigences minimales de celle-ci et qui ferait ainsi bénéficier de sa protection le plus grand nombre d'employés possible est à préférer à une interprétation qui n'a pas un tel effet».

25 The objects of the termination and severance pay provisions themselves are also broadly premised upon the need to protect employees. Section 40 of the *ESA* requires employers to give their employees reasonable notice of termination based upon length of service. One of the primary purposes of this notice period is to provide employees with an opportunity to take preparatory measures and seek alternative employment. It follows that s. 40(7)(a), which provides for termination pay in lieu of notice when an employer has failed to give the required statutory notice, is intended to "cushion" employees against the adverse effects of economic dislocation likely to follow from the absence of an opportunity to search for alternative employment. (Innis Christie, Geoffrey England and Brent Cotter, *Employment Law in Canada* (2nd ed. 1993), at pp. 572-81.)

L'objet des dispositions relatives à l'indemnité de licenciement et à l'indemnité de cessation d'emploi elles-mêmes repose de manière générale sur la nécessité de protéger les employés. L'article 40 de la *LNE* oblige les employeurs à donner à leurs employés un préavis de licenciement raisonnable en fonction des années de service. L'une des fins principales de ce préavis est de donner aux employés la possibilité de se préparer en cherchant un autre emploi. Il s'ensuit que l'al. 40(7)a), qui prévoit une indemnité de licenciement tenant lieu de préavis lorsqu'un employeur n'a pas donné le préavis requis par la loi, vise à protéger les employés des effets néfastes du bouleversement économique que l'absence d'une possibilité de chercher un autre emploi peut entraîner. (Innis Christie, Geoffrey England et Brent Cotter, *Employment Law in Canada* (2e éd. 1993), aux pp. 572 à 581.)

26 Similarly, s. 40*a*, which provides for severance pay, acts to compensate long-serving employees for their years of service and investment in the employer's business and for the special losses they suffer when their employment terminates. In *R. v. TNT Canada Inc.* (1996), 27 O.R. (3d) 546, Robins J.A. quoted with approval at pp. 556-57 from the words of D. D. Carter in the course of an employment standards determination in *Re Telegram Publishing Co. v. Zwelling* (1972), 1 L.A.C. (2d) 1 (Ont.), at p. 19, wherein he described the role of severance pay as follows:

De même, l'art. 40*a*, qui prévoit l'indemnité de cessation d'emploi, vient indemniser les employés ayant beaucoup d'années de service pour ces années investies dans l'entreprise de l'employeur et pour les pertes spéciales qu'ils subissent lorsqu'ils sont licenciés. Dans l'arrêt *R. c. TNT Canada Inc.* (1996), 27 O.R. (3d) 546, le juge Robins a cité en les approuvant, aux pp. 556 et 557, les propos tenus par D. D. Carter dans le cadre d'une décision rendue en matière de normes d'emploi dans *Re Telegram Publishing Co. c. Zwelling* (1972), 1 L.A.C. (2d) 1 (Ont.), à la p. 19, où il a décrit ainsi le rôle de l'indemnité de cessation d'emploi:

Severance pay recognizes that an employee does make an investment in his employer's business — the extent of this investment being directly related to the length of

[TRADUCTION] L'indemnité de cessation d'emploi reconnaît qu'un employé fait un investissement dans l'entreprise de son employeur — l'importance de cet investis-

the employee's service. This investment is the seniority that the employee builds up during his years of service. . . . Upon termination of the employment relationship, this investment of years of service is lost, and the employee must start to rebuild seniority at another place of work. The severance pay, based on length of service, is some compensation for this loss of investment.

sement étant liée directement à la durée du service de l'employé. Cet investissement est l'ancienneté que l'employé acquiert durant ses années de service [. . .] À la fin de la relation entre l'employeur et l'employé, cet investissement est perdu et l'employé doit recommencer à acquérir de l'ancienneté dans un autre lieu de travail. L'indemnité de cessation d'emploi, fondée sur les années de service, compense en quelque sorte cet investissement perdu.

In my opinion, the consequences or effects which result from the Court of Appeal's interpretation of ss. 40 and 40*a* of the *ESA* are incompatible with both the object of the Act and with the object of the termination and severance pay provisions themselves. It is a well established principle of statutory interpretation that the legislature does not intend to produce absurd consequences. According to Côté, *supra*, an interpretation can be considered absurd if it leads to ridiculous or frivolous consequences, if it is extremely unreasonable or inequitable, if it is illogical or incoherent, or if it is incompatible with other provisions or with the object of the legislative enactment (at pp. 378-80). Sullivan echoes these comments noting that a label of absurdity can be attached to interpretations which defeat the purpose of a statute or render some aspect of it pointless or futile (Sullivan, *Construction of Statutes*, *supra*, at p. 88).

27 À mon avis, les conséquences ou effets qui résultent de l'interprétation que la Cour d'appel a donnée des art. 40 et 40*a* de la *LNE* ne sont compatibles ni avec l'objet de la Loi ni avec l'objet des dispositions relatives à l'indemnité de licenciement et à l'indemnité de cessation d'emploi elles-mêmes. Selon un principe bien établi en matière d'interprétation législative, le législateur ne peut avoir voulu des conséquences absurdes. D'après Côté, *op. cit.*, on qualifiera d'absurde une interprétation qui mène à des conséquences ridicules ou futiles, si elle est extrêmement déraisonnable ou inéquitable, si elle est illogique ou incohérente, ou si elle est incompatible avec d'autres dispositions ou avec l'objet du texte législatif (aux pp. 430 à 432). Sullivan partage cet avis en faisant remarquer qu'on peut qualifier d'absurdes les interprétations qui vont à l'encontre de la fin d'une loi ou en rendent un aspect inutile ou futile (Sullivan, *Construction of Statutes*, *op. cit.*, à la p. 88).

The trial judge properly noted that, if the *ESA* termination and severance pay provisions do not apply in circumstances of bankruptcy, those employees "fortunate" enough to have been dismissed the day before a bankruptcy would be entitled to such payments, but those terminated on the day the bankruptcy becomes final would not be so entitled. In my view, the absurdity of this consequence is particularly evident in a unionized workplace where seniority is a factor in determining the order of lay-off. The more senior the employee, the larger the investment he or she has made in the employer and the greater the entitlement to termination and severance pay. However, it is the more senior personnel who are likely to be employed up

28 Le juge de première instance a noté à juste titre que, si les dispositions relatives à l'indemnité de licenciement et à l'indemnité de cessation d'emploi de la *LNE* ne s'appliquent pas en cas de faillite, les employés qui auraient eu la «chance» d'être congédiés la veille de la faillite auraient droit à ces indemnités, alors que ceux qui perdraient leur emploi le jour où la faillite devient définitive n'y auraient pas droit. À mon avis, l'absurdité de cette conséquence est particulièrement évidente dans les milieux syndiqués où les mises à pied se font selon l'ancienneté. Plus un employé a de l'ancienneté, plus il a investi dans l'entreprise de l'employeur et plus son droit à une indemnité de licenciement et à une indemnité de cessation d'emploi est fondé. Pourtant, c'est le personnel ayant le plus d'ancienneté qui risque de travailler

until the time of the bankruptcy and who would thereby lose their entitlements to these payments.

29 If the Court of Appeal's interpretation of the termination and severance pay provisions is correct, it would be acceptable to distinguish between employees merely on the basis of the timing of their dismissal. It seems to me that such a result would arbitrarily deprive some employees of a means to cope with the economic dislocation caused by unemployment. In this way the protections of the *ESA* would be limited rather than extended, thereby defeating the intended working of the legislation. In my opinion, this is an unreasonable result.

30 In addition to the termination and severance pay provisions, both the appellants and the respondent relied upon various other sections of the *ESA* to advance their arguments regarding the intention of the legislature. In my view, although the majority of these sections offer little interpretive assistance, one transitional provision is particularly instructive. In 1981, s. 2(1) of the *ESAA* introduced s. 40*a*, the severance pay provision, to the *ESA*. Section 2(2) deemed that provision to come into force on January 1, 1981. Section 2(3), the transitional provision in question provided as follows:

2. . . .

(3) Section 40*a* of the said Act does not apply to an employer who became a bankrupt or an insolvent person within the meaning of the *Bankruptcy Act* (Canada) and whose assets have been distributed among his creditors or to an employer whose proposal within the meaning of the *Bankruptcy Act* (Canada) has been accepted by his creditors in the period from and including the 1st day of January, 1981, to and including the day immediately before the day this Act receives Royal Assent.

31 The Court of Appeal found that it was neither necessary nor appropriate to determine the intention of the legislature in enacting this provisional

jusqu'au moment de la faillite et de perdre ainsi le droit d'obtenir ces indemnités.

Si l'interprétation que la Cour d'appel a donnée des dispositions relatives à l'indemnité de licenciement et de l'indemnité de cessation d'emploi est correcte, il serait acceptable d'établir une distinction entre les employés en se fondant simplement sur la date de leur congédiement. Il me semble qu'un tel résultat priverait arbitrairement certains employés d'un moyen de faire face au bouleversement économique causé par le chômage. De cette façon, les protections de la *LNE* seraient limitées plutôt que d'être étendues, ce qui irait à l'encontre de l'objectif que voulait atteindre le législateur. À mon avis, c'est un résultat déraisonnable.

En plus des dispositions relatives à l'indemnité de licenciement et de l'indemnité de cessation d'emploi, tant les appelants que l'intimée ont invoqué divers autres articles de la *LNE* pour appuyer les arguments avancés au sujet de l'intention du législateur. Selon moi, bien que la plupart de ces dispositions ne soient d'aucune utilité en ce qui concerne l'interprétation, il est une disposition transitoire particulièrement révélatrice. En 1981, le par. 2(1) de l'*ESAA* a introduit l'art. 40*a*, la disposition relative à l'indemnité de cessation d'emploi. En application du par. 2(2), cette disposition entrait en vigueur le 1er janvier 1981. Le paragraphe 2(3), la disposition transitoire en question, était ainsi conçue:

[TRADUCTION]

2. . . .

(3) L'article 40*a* de la loi ne s'applique pas à l'employeur qui a fait faillite ou est devenu insolvable au sens de la *Loi sur la faillite* (Canada) et dont les biens ont été distribués à ses créanciers ou à l'employeur dont la proposition au sens de la *Loi sur la faillite* (Canada) a été acceptée par ses créanciers pendant la période qui commence le 1er janvier 1981 et se termine le jour précédant immédiatement celui où la présente loi a reçu la sanction royale inclusivement.

La Cour d'appel a conclu qu'il n'était ni nécessaire ni approprié de déterminer l'intention qu'avait le législateur en adoptant ce paragraphe

subsection. Nevertheless, the court took the position that the intention of the legislature as evidenced by the introductory words of ss. 40 and 40*a* was clear, namely, that termination by reason of a bankruptcy will not trigger the severance and termination pay obligations of the *ESA*. The court held that this intention remained unchanged by the introduction of the transitional provision. With respect, I do not agree with either of these findings. Firstly, in my opinion, the use of legislative history as a tool for determining the intention of the legislature is an entirely appropriate exercise and one which has often been employed by this Court (see, e.g., *R. v. Vasil*, [1981] 1 S.C.R. 469, at p. 487; *Paul v. The Queen*, [1982] 1 S.C.R. 621, at pp. 635, 653 and 660). Secondly, I believe that the transitional provision indicates that the Legislature intended that termination and severance pay obligations should arise upon an employers' bankruptcy.

In my view, by extending an exemption to employers who became bankrupt and lost control of their assets between the coming into force of the amendment and its receipt of royal assent, s. 2(3) necessarily implies that the severance pay obligation does in fact extend to bankrupt employers. It seems to me that, if this were not the case, no readily apparent purpose would be served by this transitional provision.

I find support for my conclusion in the decision of Saunders J. in *Royal Dressed Meats Inc.*, *supra*. Having reviewed s. 2(3) of the *ESAA*, he commented as follows (at p. 89):

> . . . any doubt about the intention of the Ontario Legislature has been put to rest, in my opinion, by the transitional provision which introduced severance payments into the E.S.A. . . . it seems to me an inescapable inference that the legislature intended liability for severance payments to arise on a bankruptcy. That intention would, in my opinion, extend to termination payments which are similar in character.

This interpretation is also consistent with statements made by the Minister of Labour at the time

provisoire. Néanmoins, la cour a estimé que l'intention du législateur, telle qu'elle ressort des premiers mots des art. 40 et 40*a*, était claire, à savoir que la cessation d'emploi résultant de la faillite ne fera pas naître l'obligation de verser l'indemnité de cessation d'emploi et l'indemnité de licenciement qui est prévue par la *LNE*. La cour a jugé que cette intention restait inchangée à la suite de l'adoption de la disposition transitoire. Je ne puis souscrire ni à l'une ni à l'autre de ces conclusions. En premier lieu, à mon avis, l'examen de l'historique législatif pour déterminer l'intention du législateur est tout à fait approprié et notre Cour y a eu souvent recours (voir, par ex., *R. c. Vasil*, [1981] 1 R.C.S. 469, à la p. 487; *Paul c. La Reine*, [1982] 1 R.C.S. 621, aux pp. 635, 653 et 660). En second lieu, je crois que la disposition transitoire indique que le législateur voulait que l'obligation de verser une indemnité de licenciement et une indemnité de cessation d'emploi prenne naissance lorsque l'employeur fait faillite.

32 À mon avis, en raison de l'exemption accordée au par. 2(3) aux employeurs qui ont fait faillite et ont perdu la maîtrise de leurs biens entre le moment où les modifications sont entrées en vigueur et celui où elles ont reçu la sanction royale, il faut nécessairement que les employeurs faisant faillite soient de fait assujettis à l'obligation de verser une indemnité de cessation d'emploi. Selon moi, si tel n'était pas le cas, cette disposition transitoire semblerait ne poursuivre aucune fin.

33 Je m'appuie sur la décision rendue par le juge Saunders dans l'affaire *Royal Dressed Meats Inc.*, précitée. Après avoir examiné le par. 2(3) de l'*ESAA*, il fait l'observation suivante (à la p. 89):

> [TRADUCTION] . . . tout doute au sujet de l'intention du législateur ontarien est dissipé, à mon avis, par la disposition transitoire qui introduit les indemnités de cessation d'emploi dans la L.N.E. [. . .] Il me semble qu'il faut conclure que le législateur voulait que l'obligation de verser des indemnités de cessation d'emploi prenne naissance au moment de la faillite. Selon moi, cette intention s'étend aux indemnités de licenciement qui sont de nature analogue.

34 Cette interprétation est également compatible avec les déclarations faites par le ministre du

he introduced the 1981 amendments to the *ESA*. With regard to the new severance pay provision he stated:

> The circumstances surrounding a closure will govern the applicability of the severance pay legislation in some defined situations. For example, a bankrupt or insolvent firm will still be required to pay severance pay to employees to the extent that assets are available to satisfy their claims.
>
> . . .
>
> . . . the proposed severance pay measures will, as I indicated earlier, be retroactive to January 1 of this year. That retroactive provision, however, will not apply in those cases of bankruptcy and insolvency where the assets have already been distributed or where an agreement on a proposal to creditors has already been reached.

(*Legislature of Ontario Debates*, 1st sess., 32nd Parl., June 4, 1981, at pp. 1236-37.)

Moreover, in the legislative debates regarding the proposed amendments the Minister stated:

> For purposes of retroactivity, severance pay will not apply to bankruptcies under the Bankruptcy Act where assets have been distributed. However, once this act receives royal assent, employees in bankruptcy closures will be covered by the severance pay provisions.

(*Legislature of Ontario Debates*, 1st sess., 32nd Parl., June 16, 1981, at p. 1699.)

35 Although the frailties of Hansard evidence are many, this Court has recognized that it can play a limited role in the interpretation of legislation. Writing for the Court in *R. v. Morgentaler*, [1993] 3 S.C.R. 463, at p. 484, Sopinka J. stated:

> . . . until recently the courts have balked at admitting evidence of legislative debates and speeches. . . . The main criticism of such evidence has been that it cannot represent the "intent" of the legislature, an incorporeal body, but that is equally true of other forms of legisla-

Travail au moment de l'introduction des modifications apportées à la *LNE* en 1981. Au sujet de la nouvelle disposition relative à l'indemnité de cessation d'emploi, il a dit ce qui suit:

> [TRADUCTION] Les circonstances entourant une fermeture régissent l'applicabilité de la législation en matière d'indemnité de cessation d'emploi dans certains cas précis. Par exemple, une société insolvable ou en faillite sera encore tenue de verser l'indemnité de cessation d'emploi aux employés dans la mesure où il y a des biens pour acquitter leurs réclamations.
>
> . . .
>
> . . . les mesures proposées en matière d'indemnité de cessation d'emploi seront, comme je l'ai mentionné précédemment, rétroactives au 1er janvier de cette année. Cette disposition rétroactive, toutefois, ne s'appliquera pas en matière de faillite et d'insolvabilité dans les cas où les biens ont déjà été distribués ou lorsqu'une entente est déjà intervenue au sujet de la proposition des créanciers.

(*Legislature of Ontario Debates*, 1re sess., 32e Lég., 4 juin 1981, aux pp. 1236 et 1237.)

De plus, au cours des débats parlementaires sur les modifications proposées, le ministre a déclaré:

> [TRADUCTION] En ce qui a trait à la rétroactivité, l'indemnité de cessation d'emploi ne s'appliquera pas aux faillites régies par la Loi sur la faillite lorsque les biens ont été distribués. Cependant, lorsque la présente loi aura reçu la sanction royale, les employés visés par des fermetures entraînées par des faillites seront visés par les dispositions relatives à l'indemnité de cessation d'emploi.

(*Legislature of Ontario Debates*, 1re sess., 32e Lég., 16 juin 1981, à la p. 1699.)

Malgré les nombreuses lacunes de la preuve des débats parlementaires, notre Cour a reconnu qu'elle peut jouer un rôle limité en matière d'interprétation législative. S'exprimant au nom de la Cour dans l'arrêt *R. c. Morgentaler*, [1993] 3 R.C.S. 463, à la p. 484, le juge Sopinka a dit:

> . . . jusqu'à récemment, les tribunaux ont hésité à admettre la preuve des débats et des discours devant le corps législatif. [. . .] La principale critique dont a été l'objet ce type de preuve a été qu'elle ne saurait représenter «l'intention» de la législature, personne morale, mais

tive history. Provided that the court remains mindful of the limited reliability and weight of Hansard evidence, it should be admitted as relevant to both the background and the purpose of legislation.

c'est aussi vrai pour d'autres formes de contexte d'adoption d'une loi. À la condition que le tribunal n'oublie pas que la fiabilité et le poids des débats parlementaires sont limités, il devrait les admettre comme étant pertinents quant au contexte et quant à l'objet du texte législatif.

Finally, with regard to the scheme of the legislation, since the *ESA* is a mechanism for providing minimum benefits and standards to protect the interests of employees, it can be characterized as benefits-conferring legislation. As such, according to several decisions of this Court, it ought to be interpreted in a broad and generous manner. Any doubt arising from difficulties of language should be resolved in favour of the claimant (see, e.g., *Abrahams v. Attorney General of Canada*, [1983] 1 S.C.R. 2, at p. 10; *Hills v. Canada (Attorney General)*, [1988] 1 S.C.R. 513, at p. 537). It seems to me that, by limiting its analysis to the plain meaning of ss. 40 and 40*a* of the *ESA*, the Court of Appeal adopted an overly restrictive approach that is inconsistent with the scheme of the Act.

36 Enfin, en ce qui concerne l'économie de la loi, puisque la *LNE* constitue un mécanisme prévoyant des normes et des avantages minimaux pour protéger les intérêts des employés, on peut la qualifier de loi conférant des avantages. À ce titre, conformément à plusieurs arrêts de notre Cour, elle doit être interprétée de façon libérale et généreuse. Tout doute découlant de l'ambiguïté des textes doit se résoudre en faveur du demandeur (voir, par ex., *Abrahams c. Procureur général du Canada*, [1983] 1 R.C.S. 2, à la p. 10; *Hills c. Canada (Procureur général)*, [1988] 1 R.C.S. 513, à la p. 537). Il me semble que, en limitant cette analyse au sens ordinaire des art. 40 et 40*a* de la *LNE*, la Cour d'appel a adopté une méthode trop restrictive qui n'est pas compatible avec l'économie de la Loi.

The Court of Appeal's reasons relied heavily upon the decision in *Malone Lynch*, *supra*. In *Malone Lynch*, Houlden J. held that s. 13, the group termination provision of the former *ESA*, R.S.O. 1970, c. 147, and the predecessor to s. 40 at issue in the present case, was not applicable where termination resulted from the bankruptcy of the employer. Section 13(2) of the *ESA* then in force provided that, if an employer wishes to terminate the employment of 50 or more employees, the employer must give notice of termination for the period prescribed in the regulations, "and until the expiry of such notice the terminations shall not take effect". Houlden J. reasoned that termination of employment through bankruptcy could not trigger the termination payment provision, as employees in this situation had not received the written notice required by the statute, and therefore could not be said to have been terminated in accordance with the Act.

37 La Cour d'appel s'est fortement appuyée sur la décision rendue dans *Malone Lynch*, précité. Dans cette affaire, le juge Houlden a conclu que l'art. 13, la disposition relative aux mesures de licenciement collectif de l'ancienne *ESA*, R.S.O. 1970, ch. 147, qui a été remplacée par l'art. 40 en cause dans le présent pourvoi, n'était pas applicable lorsque la cessation d'emploi résultait de la faillite de l'employeur. Le paragraphe 13(2) de l'*ESA* alors en vigueur prévoyait que, si un employeur voulait licencier 50 employés ou plus, il devait donner un préavis de licenciement dont la durée était prévue par règlement [TRADUCTION] «et les licenciements ne prenaient effet qu'à l'expiration de ce délai». Le juge Houlden a conclu que la cessation d'emploi résultant de la faillite ne pouvait entraîner l'application de la disposition relative à l'indemnité de licenciement car les employés placés dans cette situation n'avaient pas reçu le préavis écrit requis par la loi et ne pouvaient donc pas être considérés comme ayant été licenciés conformément à la Loi.

Two years after *Malone Lynch* was decided, the 1970 *ESA* termination pay provisions were

38 Deux ans après que la décision *Malone Lynch* eut été prononcée, les dispositions relatives à l'in-

amended by *The Employment Standards Act, 1974*, S.O. 1974, c. 112. As amended, s. 40(7) of the 1974 *ESA* eliminated the requirement that notice be given before termination can take effect. This provision makes it clear that termination pay is owing where an employer fails to give notice of termination and that employment terminates irrespective of whether or not proper notice has been given. Therefore, in my opinion it is clear that the *Malone Lynch* decision turned on statutory provisions which are materially different from those applicable in the instant case. It seems to me that Houlden J.'s holding goes no further than to say that the provisions of the 1970 *ESA* have no application to a bankrupt employer. For this reason, I do not accept the *Malone Lynch* decision as persuasive authority for the Court of Appeal's findings. I note that the courts in *Royal Dressed Meats*, *supra*, and *British Columbia (Director of Employment Standards) v. Eland Distributors Ltd. (Trustee of)* (1996), 40 C.B.R. (3d) 25 (B.C.S.C.), declined to rely upon *Malone Lynch* based upon similar reasoning.

39 The Court of Appeal also relied upon *Re Kemp Products Ltd.*, *supra*, for the proposition that although the employment relationship will terminate upon an employer's bankruptcy, this does not constitute a "dismissal". I note that this case did not arise under the provisions of the *ESA*. Rather, it turned on the interpretation of the term "dismissal" in what the complainant alleged to be an employment contract. As such, I do not accept it as authoritative jurisprudence in the circumstances of this case. For the reasons discussed above, I also disagree with the Court of Appeal's reliance on *Mills-Hughes v. Raynor* (1988), 63 O.R. (2d) 343 (C.A.), which cited the decision in *Malone Lynch*, *supra*, with approval.

40 As I see the matter, when the express words of ss. 40 and 40*a* of the *ESA* are examined in their entire context, there is ample support for the con-

demnité de licenciement de l'*ESA* de 1970 ont été modifiées par *The Employment Standards Act, 1974*, S.O. 1974, ch. 112. Dans la version modifiée du par. 40(7) de l'*ESA* de 1974, il n'était plus nécessaire qu'un préavis soit donné avant que le licenciement puisse produire ses effets. Cette disposition vient préciser que l'indemnité de licenciement doit être versée lorsqu'un employeur omet de donner un préavis de licenciement et qu'il y a cessation d'emploi, indépendamment du fait qu'un préavis régulier ait été donné ou non. Il ne fait aucun doute selon moi que la décision *Malone Lynch* portait sur des dispositions législatives très différentes de celles qui sont applicables en l'espèce. Il me semble que la décision du juge Houlden a une portée limitée, soit que les dispositions de l'*ESA* de 1970 ne s'appliquent pas à un employeur en faillite. Pour cette raison, je ne reconnais à la décision *Malone Lynch* aucune valeur persuasive qui puisse étayer les conclusions de la Cour d'appel. Je souligne que les tribunaux dans *Royal Dressed Meats*, précité, et *British Columbia (Director of Employment Standards) c. Eland Distributors Ltd. (Trustee of)* (1996), 40 C.B.R. (3d) 25 (C.S.C.-B.), ont refusé de se fonder sur *Malone Lynch* en invoquant des raisons similaires.

La Cour d'appel a également invoqué *Re Kemp Products Ltd.*, précité, à l'appui de la proposition selon laquelle, bien que la relation entre l'employeur et l'employé se termine à la faillite de l'employeur, cela ne constitue pas un «congédiement». Je note que ce litige n'est pas fondé sur les dispositions de la *LNE*. Il portait plutôt sur l'interprétation du terme «congédiement» dans le cadre de ce que le plaignant alléguait être un contrat de travail. J'estime donc que cette décision ne fait pas autorité dans les circonstances de l'espèce. Pour les raisons exposées ci-dessus, je ne puis accepter non plus que la Cour d'appel se fonde sur l'arrêt *Mills-Hughes c. Raynor* (1988), 63 O.R. (2d) 343 (C.A.), qui citait la décision *Malone Lynch*, précitée, et l'approuvait.

Selon moi, l'examen des termes exprès des art. 40 et 40*a* de la *LNE*, replacés dans leur contexte global, permet largement de conclure que les

clusion that the words "terminated by the employer" must be interpreted to include termination resulting from the bankruptcy of the employer. Using the broad and generous approach to interpretation appropriate for benefits-conferring legislation, I believe that these words can reasonably bear that construction (see *R. v. Z. (D.A.)*, [1992] 2 S.C.R. 1025). I also note that the intention of the Legislature as evidenced in s. 2(3) of the *ESAA*, clearly favours this interpretation. Further, in my opinion, to deny employees the right to claim *ESA* termination and severance pay where their termination has resulted from their employer's bankruptcy, would be inconsistent with the purpose of the termination and severance pay provisions and would undermine the object of the *ESA*, namely, to protect the interests of as many employees as possible.

mots «l'employeur licencie» doivent être interprétés de manière à inclure la cessation d'emploi résultant de la faillite de l'employeur. Adoptant l'interprétation libérale et généreuse qui convient aux lois conférant des avantages, j'estime que ces mots peuvent raisonnablement recevoir cette interprétation (voir *R. c. Z. (D.A.)*, [1992] 2 R.C.S. 1025). Je note également que l'intention du législateur, qui ressort du par. 2(3) de l'*ESAA*, favorise clairement cette interprétation. Au surplus, à mon avis, priver des employés du droit de réclamer une indemnité de licenciement et une indemnité de cessation d'emploi en application de la *LNE* lorsque la cessation d'emploi résulte de la faillite de leur employeur serait aller à l'encontre des fins visées par les dispositions relatives à l'indemnité de licenciement et à l'indemnité de cessation d'emploi et minerait l'objet de la *LNE*, à savoir protéger les intérêts du plus grand nombre d'employés possible.

In my view, the impetus behind the termination of employment has no bearing upon the ability of the dismissed employee to cope with the sudden economic dislocation caused by unemployment. As all dismissed employees are equally in need of the protections provided by the *ESA*, any distinction between employees whose termination resulted from the bankruptcy of their employer and those who have been terminated for some other reason would be arbitrary and inequitable. Further, I believe that such an interpretation would defeat the true meaning, intent and spirit of the *ESA*. Therefore, I conclude that termination as a result of an employer's bankruptcy does give rise to an unsecured claim provable in bankruptcy pursuant to s. 121 of the *BA* for termination and severance pay in accordance with ss. 40 and 40*a* of the *ESA*. Because of this conclusion, I do not find it necessary to address the alternative finding of the trial judge as to the applicability of s. 7(5) of the *ESA*.

41 À mon avis, les raisons qui motivent la cessation d'emploi n'ont aucun rapport avec la capacité de l'employé congédié de faire face au bouleversement économique soudain causé par le chômage. Comme tous les employés congédiés ont également besoin des protections prévues par la *LNE*, toute distinction établie entre les employés qui perdent leur emploi en raison de la faillite de leur employeur et ceux qui ont été licenciés pour quelque autre raison serait arbitraire et inéquitable. De plus, je pense qu'une telle interprétation irait à l'encontre des sens, intention et esprit véritables de la *LNE*. Je conclus donc que la cessation d'emploi résultant de la faillite de l'employeur donne effectivement naissance à une réclamation non garantie prouvable en matière de faillite au sens de l'art. 121 de la *LF* en vue d'obtenir une indemnité de licenciement et une indemnité de cessation d'emploi en conformité avec les art. 40 et 40*a* de la *LNE*. En raison de cette conclusion, j'estime inutile d'examiner l'autre conclusion tirée par le juge de première instance quant à l'applicabilité du par. 7(5) de la *LNE*.

I note that subsequent to the Rizzo bankruptcy, the termination and severance pay provisions of the *ESA* underwent another amendment. Sections

42 Je fais remarquer qu'après la faillite de Rizzo, les dispositions relatives à l'indemnité de licenciement et à l'indemnité de cessation d'emploi de la

74(1) and 75(1) of the *Labour Relations and Employment Statute Law Amendment Act, 1995*, S.O. 1995, c. 1, amend those provisions so that they now expressly provide that where employment is terminated by operation of law as a result of the bankruptcy of the employer, the employer will be deemed to have terminated the employment. However, s. 17 of the *Interpretation Act* directs that, "[t]he repeal or amendment of an Act shall be deemed not to be or to involve any declaration as to the previous state of the law". As a result, I note that the subsequent change in the legislation has played no role in determining the present appeal.

LNE ont été modifiées à nouveau. Les paragraphes 74(1) et 75(1) de la *Loi de 1995 modifiant des lois en ce qui concerne les relations de travail et l'emploi*, L.O. 1995, ch. 1, ont apporté des modifications à ces dispositions qui prévoient maintenant expressément que, lorsque la cessation d'emploi résulte de l'effet de la loi à la suite de la faillite de l'employeur, ce dernier est réputé avoir licencié ses employés. Cependant, comme l'art. 17 de la *Loi d'interprétation* dispose que «[l]'abrogation ou la modification d'une loi n'est pas réputée constituer ou impliquer une déclaration portant sur l'état antérieur du droit», je précise que la modification apportée subséquemment à la loi n'a eu aucune incidence sur la solution apportée au présent pourvoi.

6. Disposition and Costs

6. Dispositif et dépens

43 I would allow the appeal and set aside paragraph 1 of the order of the Court of Appeal. In lieu thereof, I would substitute an order declaring that Rizzo's former employees are entitled to make claims for termination pay (including vacation pay due thereon) and severance pay as unsecured creditors. As to costs, the Ministry of Labour led no evidence regarding what effort it made in notifying or securing the consent of the Rizzo employees before it discontinued its application for leave to appeal to this Court on their behalf. In light of these circumstances, I would order that the costs in this Court be paid to the appellant by the Ministry on a party-and-party basis. I would not disturb the orders of the courts below with respect to costs.

Je suis d'avis d'accueillir le pourvoi et d'annuler le premier paragraphe de l'ordonnance de la Cour d'appel. Je suis d'avis d'y substituer une ordonnance déclarant que les anciens employés de Rizzo ont le droit de présenter des demandes d'indemnité de licenciement (y compris la paie de vacances due) et d'indemnité de cessation d'emploi en tant que créanciers ordinaires. Quant aux dépens, le ministère du Travail n'ayant produit aucun élément de preuve concernant les efforts qu'il a faits pour informer les employés de Rizzo ou obtenir leur consentement avant de se désister de sa demande d'autorisation de pourvoi auprès de notre Cour en leur nom, je suis d'avis d'ordonner que les dépens devant notre Cour soient payés aux appelants par le ministère sur la base des frais entre parties. Je suis d'avis de ne pas modifier les ordonnances des juridictions inférieures à l'égard des dépens.

Appeal allowed with costs.

Pourvoi accueilli avec dépens.

Solicitors for the appellants: Sack, Goldblatt, Mitchell, Toronto.

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Solicitors for the respondent: Minden, Gross, Grafstein & Greenstein, Toronto.

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Solicitor for the Ministry of Labour for the Province of Ontario, Employment Standards Branch: The Attorney General for Ontario, Toronto.

Procureur du ministère du Travail de la province d'Ontario, Direction des normes d'emploi: Le procureur général de l'Ontario, Toronto.

Love v. Flagstaff (County of) Subdivision and Development Appeal Board, 2002 ABCA 292

Date: 20021209
Dockets: 0003-0393-AC
0003-0394-AC

IN THE COURT OF APPEAL OF ALBERTA

THE COURT:

THE HONOURABLE CHIEF JUSTICE FRASER
THE HONOURABLE MADAM JUSTICE RUSSELL
THE HONOURABLE MADAM JUSTICE FRUMAN

IN THE MATTER OF SECTION 688 OF THE *MUNICIPAL GOVERNMENT ACT*, S.A. 1994, c. M-26.1, AS AMENDED; AND

IN THE MATTER OF THE DECISION OF THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD OF FLAGSTAFF COUNTY DATED AUGUST 8, 2000;

BETWEEN:

APPEAL NO: 0003-0393-AC

BARRY LOVE

Appellant

- and -

THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD OF FLAGSTAFF COUNTY and FLAGSTAFF COUNTY

Respondents

IN THE MATTER OF SECTION 688 OF THE *MUNICIPAL GOVERNMENT ACT*, S.A. 1994, c. M-26.1, AS AMENDED; AND

IN THE MATTER OF THE DECISION OF THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD OF FLAGSTAFF COUNTY DATED AUGUST 8, 2000;

APPEAL NO: 0003-0394-AC

PAUL ALDERDICE

Appellant

- and -

THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD
OF FLAGSTAFF COUNTY and FLAGSTAFF COUNTY

Respondents

Appeal from the Decision of the
SUBDIVISION AND DEVELOPMENT APPEAL BOARD OF FLAGSTAFF COUNTY
Dated the 8th day of August, 2000

REASONS FOR JUDGMENT RESERVED

REASONS FOR JUDGMENT OF THE
HONOURABLE CHIEF JUSTICE FRASER
CONCURRED IN BY THE HONOURABLE MADAM JUSTICE FRUMAN

DISSENTING REASONS FOR JUDGMENT OF
THE HONOURABLE MADAM JUSTICE RUSSELL

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REASONS FOR JUDGMENT OF THE
HONOURABLE CHIEF JUSTICE FRASER

I. INTRODUCTION

[1] These two appeals arise out of the refusal by the Subdivision and Development Appeal Board of Flagstaff County (SDAB) to grant a residential development permit to the appellants, Barry Love (Love) and Paul Alderdice (Alderdice). These appeals were heard together with a related appeal, ***Goodrich* v. *Flagstaff (County of) Subdivision and Development Appeal Board***. Taiwan Sugar Corporation (Taiwan Sugar) and DGH Engineering were respondents in that appeal. While not added as parties to these appeals, they have participated as respondents throughout with the consent of the parties.

[2] All three appeals were heard together because they are effectively linked to each other, concerning as they do competing development applications for lands in the County of Flagstaff (County). On one side are Love and Alderdice. Love seeks to construct a single family home on a quarter section of land he owns (Love Lands) and Alderdice, as agent for Joseph Bebee, seeks to construct a single family home on a quarter section of land owned by Bebee (Alderdice Lands). On the other side of the development divide is Taiwan Sugar which seeks to develop an intensive animal operation (IAO) on five different quarter sections in the County (IAO Lands), two quarters of which are adjacent to the Love Lands and Alderdice Lands (IAO Lands).

II. BACKGROUND FACTS

[3] The Love Lands, Alderdice Lands and IAO Lands are all zoned Agricultural (A) District under the Land Use Bylaw of Flagstaff County, Bylaw No. 03/00 (22 March 2000) (*Bylaw*). Under s.6.2.1.1 of the *Bylaw*, "all forms of extensive agriculture and forestry, including a single family dwelling or a manufactured home" are permitted uses. By contrast, an IAO is a discretionary use only: s.6.2.1.2.

[4] Love and Alderdice each applied to the development authority (DA) designated by the County under s.624(1) of the *Municipal Government Act*, R.S.A. 2000, c. M-26 (*Act*) for a development permit to build a single family residential dwelling on their respective lands – a permitted use. When the Love and Alderdice applications were filed, Taiwan Sugar had not yet applied for an IAO development permit on the IAO. By the date on which the Love and Alderdice applications were denied, Taiwan Sugar had filed an incomplete IAO application. That application was not finally complete until more than 2 ½ months after the initial filing.

[5] The DA denied both the Love and Alderdice applications on the same basis, namely that the dwelling each wished to build would be too close to a "proposed" intensive animal operation, that is the Taiwan Sugar IAO, and thus in breach of s.6.1.7.3 of the *Bylaw*.

[6] These appeals turn therefore on the interpretation of the following critical provisions of s.6.1.7.3 of the *Bylaw* mandating a minimum setback for the siting of dwellings near an IAO:

> For the siting of a dwelling in close proximity to an intensive animal operation (whether existing or proposed), the dwelling, if a permitted use, must be located at least the minimum distance prescribed in the Code of Practice.

[7] The Code of Practice is defined in s.1.3.9 of the *Bylaw* as the Code of Practice for the Safe and Economic Handling of Animal Manures published by Alberta Agriculture, Food and Rural Development in 1995, together with the modifications to that Code, published by Alberta Agriculture, Food, and Rural Development in 1999 (collectively the *Code*). As stated in s.1 of the *Code*, it "outlines a two part approach to reduce rural conflicts through proper land use siting and animal manure management." The first method is to maintain a "minimum distance separation" (MDS) between an IAO and its neighbours as explained in s.3 of the *Code*:

> Separation between intensive livestock facilities and neighbours can compensate for normal odour production, thereby reducing potential nuisance conflicts. The MDS applies reciprocally for the siting of either the odour source (intensive livestock operation) and/or the neighbouring landowner (neighbour).

[8] The *Code* contains detailed tables prescribing the applicable MDS which varies depending on the size and type of IAO. The *Code* does not expressly address who is to be responsible for providing the required MDS buffer zone when there are competing applications for a residence and an IAO on adjacent lands. In this case, the sites Taiwan Sugar selected adjacent to the Love Lands and the Alderdice Lands are not large enough to absorb the buffer zone. In fact, given the size and type of Taiwan Sugar's IAO, were Love and Alderdice required to provide the buffer zone out of their lands, there would be nowhere on the Love Lands or the Alderdice Lands that a residence could be built.

[9] With respect to the *Bylaw* and the required MDS buffer zone, there is evidence that the County, unlike, for example, Ponoka County, elected not to impose the obligation for meeting the MDS solely on the IAO developer: Ponoka No. 3 (County) Bylaws, Land Use Bylaw No. 5-97-A, s.10.4.2 (1997). While the *Bylaw* does not expressly specify who is to provide this buffer zone – the IAO developer or neighbouring landowners – it is implicit in the *Bylaw* that an IAO developer may include the lands of adjacent landowners, in whole or in part, in determining whether it has met the required MDS. And this may be done even when it precludes adjacent landowners using the portion of their lands that falls in the MDS for future residential permitted uses. As the County's jurisdiction to enact this aspect of the *Bylaw* is not before us, this decision assumes the validity of s.6.1.7.3.

[10] A summary of the relevant sequence of events in 2000 follows.

January 21	Taiwan Sugar approached the County regarding its plans.
March 15	Taiwan Sugar advised the County of proposed sites for the IAO.
March 23	The public was advised of the IAO sites.
April 11	Taiwan Sugar held public consultations regarding the IAO.
April 20	Love submitted a residential development permit application to the DA.
April 25	Alderdice submitted a residential development permit application to the DA.
April 27	Taiwan Sugar submitted an incomplete IAO development permit application to the DA.
May 5	Taiwan Sugar submitted further information in support of its IAO application.
May 30	Love's application was refused.
June 5	Alderdice's application was refused.
June 9	Love filed a notice of appeal with the SDAB.
June 16	Alderdice filed a notice of appeal with the SDAB.
July 17	Taiwan Sugar's IAO application was finally complete.
July 25	SDAB heard the Love and Alderdice appeals together.
August 8	SDAB denied both appeals.
September 8	Taiwan Sugar was granted a development permit for the IAO.
September	Several County residents appealed the DA's grant of the IAO permit.
November 2	Love and Alderdice were granted leave to appeal the SDAB decision.
November 27	SDAB, with slight modifications, denied the appeals on the IAO permit.

[11] The SDAB denied the Love and Alderdice appeals on the basis that the homes they wanted to build would be too close to Taiwan Sugar's "proposed" IAO. In its view, a

"proposed" IAO under s.6.1.7.3 meant something less than an "approved" one. In deciding what that something less might be, the SDAB concluded that the steps taken by Taiwan Sugar prior to filing an IAO application coupled with the filing of a formal application made the IAO a "proposed" one on the date on which Taiwan Sugar first filed its IAO application.

[12] The SDAB then concluded that the relevant date for deciding whether a residential permitted use was sited the required distance from an IAO was not the date on which the permitted use application had been filed but the date on which the DA made its decision on the application. Accordingly, on this reasoning, since Taiwan Sugar's IAO was "proposed" on the date that the DA decided both the Love and Alderdice applications, and since neither home met the required MDS, the SDAB determined that both applications were properly refused.

III. STANDARD OF REVIEW AND ISSUES

[13] The standard of review for the interpretation of a land use bylaw by a subdivision and development appeal board is correctness: ***Harvie v. Province of Alberta*** (1981) 31 A.R. 612 (C.A.); ***Chrumka v. Calgary Development Appeal Board*** (1981) 33 A.R. 233 (C.A.); ***500630 Alberta Ltd. v. Sandy Beach (Summer Village)*** (1996), 181 A.R. 154 (C.A.).

[14] This Court granted leave to appeal the SDAB decision on the Love and Alderdice appeals on the following ground:

> Did the Subdivision and Development Appeal Board of Flagstaff County err in law in its interpretation of the word "proposed" as found in Section 6.1.7.3 of the Flagstaff County Land Use *Bylaw* No. 03/00?

[15] This question raises two distinct issues, both of which must be addressed in order to properly answer this question:

> 1. When does an IAO become "proposed" for purposes of s.6.1.7.3 of the *Bylaw*; and
>
> 2. What is the relevant date to determine whether a permitted use residential dwelling meets the MDS under the *Bylaw* – the date of filing the application or some later date?

IV. ANALYSIS

A. WHEN DOES AN IAO BECOME "PROPOSED" UNDER S.6.1.7.3?

[16] Once an IAO has been constructed, it can no longer be "proposed" for any purpose. The question which must be answered therefore is at what stage prior to completion of an IAO does it become "proposed" for purposes of s.6.1.7.3 of the *Bylaw*.

[17] Although the *Bylaw* does not define when this "proposed" status is achieved, a number of possibilities exist ranging from the date on which the IAO is only a "twinkle in the eye" of the developer – "proposed" only in its mind and to itself – to the date on which a development permit for the IAO becomes final and binding on all parties. No one suggested that a "proposed" IAO for purposes of s.6.1.7.3 included its conception stage and thus, the time spectrum range covers the following alternative options:

> 1. the date a developer publicly exhibits a serious intention to develop an IAO (option 1, sometimes called the "serious intention date");
>
> 2. the date a developer files an incomplete application for an IAO development permit (option 2, sometimes called the "incomplete application date");
>
> 3. the date a developer files a complete application, that is one containing all required information to allow the DA to determine if the IAO meets the *Bylaw* (option 3, sometimes called the "complete application date");
>
> 4. the date a development permit first issues for the IAO (option 4, sometimes called the "permit issue date"); and
>
> 5. the date a development permit becomes final and binding on the parties, including, if applicable, exhaustion of all appeals (option 5, sometimes called the "permit effective date").

[18] Love and Alderdice contend that an IAO becomes "proposed" for purposes of the *Bylaw* on the date it has been approved and a permit issued (either option 4 or 5 above) or alternatively, the date on which a complete development application has been submitted (option 3). Taiwan Sugar argues that it is the date on which a reasonable person would believe that a serious intention to develop an IAO has been demonstrated by the developer (option 1) or alternatively the date on which an IAO development permit application is first filed, no matter how incomplete (option 2).

[19] In interpreting the *Bylaw*, the purposive and contextual approach repeatedly endorsed by the Supreme Court of Canada and set out in E.A. Driedger, *Construction of Statutes*, 2nd ed. (Toronto: Butterworths, 1983) at 87 applies:

> Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.[As cited with approval in ***Re Rizzo & Rizzo Shoes*** [1998] 1 S.C.R. 27; ***Bell ExpressVu Limited Partnership v. Rex*** (2002) 212 D.L.R. (4th) 1 (S.C.C.).]

[20] The purposive approach to statutory interpretation requires that a court assess legislation in light of its purpose since legislative intent, the object of the interpretive exercise, is directly linked to legislative purpose. As a result, as explained in R. Sullivan, *Driedger on the Construction of Statutes*, 3rd ed. (Toronto: Butterworths, 1994) at 35:

> Other things being equal, interpretations that are consistent with or promote legislative purpose should be preferred and interpretations that defeat or undermine legislative purpose should be avoided.

[21] The contextual approach rests on a simple, but highly compelling, foundation. "The meaning of a word depends on the context in which it has been used": *Ibid* at 193. Therefore, any attempt to deduce legislative intent behind a challenged word or phrase cannot be undertaken in a vacuum. The words chosen must be assessed in the entire context in which they have been used. Thus, it must be emphasized that the issue here is not what the solitary word "proposed" means in isolation but when an IAO becomes "proposed" for purposes of s.6.1.7.3.

[22] The starting point for the analysis must be the legislative scheme of which the *Bylaw* forms a part. The *Bylaw*, enacted by the County as required by ss.639 and 639.1 of the *Act*, constitutes one piece of the legislative planning puzzle governing the development and use of lands in the County. Other relevant pieces include Part 17 of the *Act* itself, the Land Use Policies established by the Lieutenant Governor in Council pursuant to ss.622(1) of the *Act* as O/C 522/96 (*Land Use Policies*), the County's Municipal Development Plan established pursuant to s.632 of the *Act* [Flagstaff County, Bylaw No.02/00, Municipal Development Plan (12 April, 2000)] (*Plan*) and the *Code*. The presumption of coherence presumes that the legislative framework is rational, logical, coherent and internally consistent: ***Friends of Oldman River Society v. Canada (Minister of Transport)*** [1992] 1 S.C.R. 3.

[23] It is evident from a review of Part 17 of the *Act* that its purpose, or object, is to regulate the planning and development of land in Alberta in a manner as consistent as possible with community values. In so doing, it strikes an appropriate balance between the rights of property owners and the larger public interest inherent in the planned, orderly and safe development of lands. In this regard, s.617 contains an authoritative statement of legislative purpose and relevant community values:

> The purpose of this Part and the regulations and Bylaws under this Part is to provide means whereby plans and related matters may be prepared and adopted
>
> > (a) to achieve the orderly, economical and beneficial development, use of land and patterns of human settlement, and
> >
> > (b) to maintain and improve the quality of the physical environment within which patterns of human settlement are situated in Alberta,
>
> without infringing on the rights of individuals for any public interest except to the extent that it is necessary for the overall greater public interest.

[24] These objectives are carried forward into both the *Plan* and the *Bylaw*. The *Plan* identifies as its goal encouraging "environmentally sound, sustainable agricultural and other forms of economic development, while conserving and enhancing the County's rural character." The *Bylaw* provides in critical part in s.1.2 that its purpose is to "regulate and control the use and development of land and buildings within the municipality to achieve the orderly and economic development of land".

[25] While the *Land Use Policies* focus on matters of public policy, not law, and are by their nature therefore general in scope, they nevertheless provide a policy framework for land use bylaws and municipal plans. Indeed, both the *Plan* and the *Bylaw* must be consistent with the *Land Use Policies*: s.622(3) of the *Act*. The *Land Use Policies* provide in s.4.0.2 which is part of the general section dealing with land use patterns that:

> Municipalities are encouraged to establish land use patterns which embody the principles of sustainable development, thereby contributing to a healthy environment, a healthy economy and a high quality of life.

[26] These values – orderly and economic development, preservation of quality of life and the environment, respect for individual rights, and recognition of the limited extent to which the overall public interest may legitimately override individual rights – are critical components in planning law and practice in Alberta, and thus highly relevant to the interpretation of the *Bylaw*.

[27] Central to these values is the need for certainty and predictability in planning law. Although expropriation of private property is permitted for the public, not private, good in clearly defined and limited circumstances, private ownership of land remains one of the fundamental elements of our Parliamentary democracy. Without certainty, the economical development of land would be an unachievable objective. Who would invest in land with no clear indication as to the use to which it could be put? Hence the importance of land use bylaws which clearly define the specific uses for property and any limits on them.

[28] The need for predictability is equally imperative. The public must have confidence that the rules governing land use will be applied fairly and equally. This is as important to the individual landowner as it is to the corporate developer. Without this, few would wish to invest capital in an asset the value of which might tomorrow prove relatively worthless. This is not in the community's collective interest.

[29] The fundamental principle of consistency in the application of the law is a reflection of both these needs. The same factual situation should produce the same legal result. To do so requires that it be certain. The corollary of this is that if legislation is uncertain, it runs the risk of being declared void for uncertainty in whole or in part. As explained by Garrow, J.A. in ***Re Good and Jacob Y. Shantz Son and Company Ltd.*** (1911) 23 O.L.R. 544 (C.A.) at 552:

> It is a general principle of legislation, at which superior legislatures aim, and by which inferior bodies clothed with legislative powers, such as ... municipal councils ... are bound, that all laws shall be definite in form and equal and uniform in operation, in order that the subject may not fall into legislative traps or be made the subject of caprice or of favouritism – in other words, he must be able to look with reasonable effect before he leaps.

[30] There is another critical contextual feature to this interpretive exercise. The question of what constitutes a "proposed" IAO under s.6.1.7.3 arises in only one context – a conflict between an application for a residential development permit and an IAO not yet built. Typically, in the rural part of the County, potential problems would arise where a landowner seeks to develop a single family home on a quarter section since single family homes are permitted uses in every zoning category in the County but one. Thus, the conflict, if there is to

be one, will, in the majority of cases, be between a single family residential permitted use and a discretionary IAO use.

[31] Applying the purposive and contextual analysis, I have concluded that an IAO becomes "proposed" for purposes of s.6.1.7.3 on the permit issue date (option 4). There are several reasons for this.

[32] First, to adopt an interpretation permitting an IAO to achieve "proposed" status prior to the permit issue date would run afoul of a principle firmly entrenched in the legislative planning scheme in effect in Alberta – respect for individual property rights. The *Act* explicitly recognizes the preeminence of individual rights in planning law in Alberta. While these rights are subject to a clearly circumscribed overriding exception in favour of the greater public interest, nowhere is it suggested that individual rights should be overridden for a private interest.

[33] This respect for individual property rights is a statutory affirmation of a basic common law principle. As explained by Cote, P.A. in *The Interpretation of Legislation in Canada*, *supra*, at 482:

> "Anglo-Canadian jurisprudence has traditionally recognized, as a fundamental freedom, the right of the individual to the enjoyment of property and the right not to be deprived thereof, or any interest therein, save by due process of law." To this right corresponds a principle of interpretation: encroachments on the enjoyment of property should be interpreted rigorously and strictly.

[34] Here, the scheme and object of the *Act* reveal a legislative intention not only to expressly protect individual rights but to permit those rights to be eroded only in favour of a public interest and only to the extent necessary for the overall public interest. See s.617, *supra*. It follows therefore that encroachments on individual rights, especially by private parties, should be strictly construed.

[35] Concerns about encroachments on property rights are exacerbated where, as here, the *Bylaw* permits neighbouring landowners to bear all or part of the MDS requirement. If an IAO developer acquires a site too small to accommodate the required buffer zone, then the MDS setback requirements must instead be met out of the lands of neighbouring landowners. Given the respect accorded to individual rights under the *Act* and the potentially serious sterilizing effect that these MDS setback requirements would have on neighbouring lands, it would take much clearer statutory language to strip a landowner of residential development rights, especially permitted use residential rights, in favour of a discretionary use IAO project before its permit issue date.

[36] Further, strictly interpreting encroachments on the enjoyment of property minimizes conflict, whether that be conflict between the state (as represented by the County) and its citizens or amongst the citizens themselves. This is in keeping with one of the underlying rationales of planning law, namely to avoid pitting neighbour against neighbour by imposing on all parties clearly defined reciprocal rights and obligations. The legislative scheme here is designed to promote harmony, not create litigation. Accordingly, given the priority accorded to individual rights under Alberta planning law, where possible, planning laws should be interpreted in a manner consistent with what I would characterize as the "good neighbour policy". That includes respecting individual rights by interpreting encroachments on property rights rigorously and strictly especially where the encroachment is in favour of a private interest.

[37] Second, it must be remembered that an IAO is only a discretionary use. Thus, there is no assurance that an application for an IAO permit will ever be successful. If an IAO could become "proposed" for purposes of s.6.1.7.3 prior to its permit issue date, this would effectively freeze permitted use residential development on nearby lands falling within the MDS for what could be a lengthy period in favour of an IAO project that might never be approved. This too militates in favour of a restrictive interpretation as to when "proposed" IAO status for purposes of s.6.1.7.3 is achieved.

[38] Third, finding that an IAO achieves "proposed" status on the permit issue date also provides the required degree of certainty and predictability. This is an extremely weighty consideration since using any earlier date – the serious intention date, the incomplete application date or the complete application date – is replete with problems fatal to these possible interpretations.

[39] Taiwan Sugar contends that the serious intention date should apply. Under the test it suggests, an IAO would be "proposed" on the date by which circumstances were such that a reasonable person would believe that a developer had a serious intent to develop an IAO. In its view, a publicly announced project would meet this test. But the most critical failing of this approach would be the inability of a landowner intent on developing land nearby an announced IAO to predict whether a stated intention would ever lead to a development proposal, much less a filed application, never mind an approved one. In the meantime, the landowner's ability to develop land he or she owns for a permitted single family residential use in conjunction with their extensive farming operation would at best be compromised and at worst, prevented altogether. This cannot be.

[40] Moreover, the phrase "serious intention" is vague and subject to arbitrary application. A serious intention is not a proposal for anything unless and until steps are taken to proceed with the stated intention. To what extent would the suggested plan need to be developed? Would complete details on obvious issues such as size, site locations, and methods of resolving water and other environmental issues need to be disclosed? And to whom and at what time? And more fundamentally, how would one determine when and if the "serious

intention" ever crystallized into a concrete proposal? Finally, if one were to accept that an IAO could reach "proposed" status before the developer even filed an application, how would one determine whether the project had been abandoned? For these reasons alone, this interpretation cannot be sustained.

[41] Nor would using either the incomplete application date or the complete application date provide the required degree of certainty. Although the filing date for each would be ascertainable, there would be no way of knowing with certainty when the project was abandoned. Under the *Bylaw*, there is no requirement mandating the DA to make a decision on an application within a specific period of time. Under s.3.4.15, if the DA does not do so within 40 days, the application shall be deemed refused after the expiry of that time period. But this is at the option of the applicant and the applicant alone as the following key part of this section makes clear:

> An application for a development permit shall, at the option of the applicant, be deemed to be refused when a decision thereon is not made by the Development Authority within forty (40) days after receipt of the application by the Development Authority.

[42] Further, there does not appear to be any ability on the part of a nearby landowner to compel the DA to make a decision following the expiry of the 40 day period or to seek an order declaring that the IAO application has been refused simply because of the lapse of the 40 day period. Instead, it appears that the extension of the 40 day period is a matter requiring only the concurrence of the DA and the applicant. What this would mean therefore is that if the DA did not make a decision on an IAO within the 40 day period because it was, for example, waiting for additional required information – never to be provided – there would be no objective means of determining when the project had been abandoned.

[43] Thus, an IAO development permit application could simply languish for an indeterminate period into the future, long after the IAO developer had abandoned any intention of proceeding with the IAO. Since nearby landowners would be precluded from developing single family permitted use housing on their lands in the interim, an interpretation which led to this result (as either the use of the incomplete application date or the complete application date would do), ought to be rejected.

[44] It is no answer to say that these problems could be avoided by a landowner's seeking an order of mandamus compelling the County to make a decision on an IAO application. The County and IAO developer might well be engaged in prolonged and protracted negotiations over conditions, additional information, plans, etc. with no end in sight, thereby precluding the securing of any such order even though ultimately the project is abandoned. Even if this were not so, it would be unreasonable, given the statutory planning regime, to impose on a landowner otherwise entitled to a residential permitted use permit an obligation to try to establish that an IAO project had in fact been abandoned. The legislation does not contemplate forcing this heavy financial and legal obligation onto the party with the least information

relating to the IAO application and the least control over it and there can be no justification for judicially imposing it on neighbouring landowners.

[45] Fourth, the disputed words themselves and the context in which they are used in s.6.1.7.3 are consistent with the view that the required "proposed" status is achieved on the permit issue date. Under s.6.1.7.3, "proposed" is used in contradistinction to an "existing" IAO. The distinction relates to the physical state of the IAO, and not to its planning status on the relevant date. It must be remembered that even when a permit has been issued for an IAO, the IAO is "proposed" unless and until it is actually built. If the approved development is not commenced within 12 months from the date of the issue of the permit, and carried out with "reasonable diligence", the permit is deemed to be void, unless an extension is granted: s.3.6.6 of the *Bylaw*. This means that "proposed" and "approved" are not mutually exclusive terms. Accordingly, it does not follow that "proposed" must mean something less than "approved" for purposes of s.6.1.7.3.

[46] It is true that there are other sections of the *Bylaw* in which the word "proposed" refers to a development for which a development permit application has been received by the DA. But one cannot simply find the same word – proposed – in other sections of the *Bylaw* and conclude that it has the same meaning when used in s.6.1.7.3. While the word "proposed" is sprinkled throughout the *Bylaw*, it is used elsewhere in the context of a "proposed development", that is one in respect of which a development permit application has been filed. But in s.6.1.7.3, the words used are not the same, the reference instead being to an "intensive animal operation (whether existing or proposed)", and they are used in an entirely different context.

[47] Fifth, concluding that an IAO achieves "proposed" status under s.6.1.7.3 on the permit issue date best promotes one of the key objectives of the planning legislation, the orderly and economic development of land. The orderly development of land militates in favour of an interpretation of the *Bylaw* which avoids the repeated filing of unnecessary development applications, whether by an IAO developer or an adjacent landowner. Much is made of the fact that Love and Alderdice filed their permit applications shortly after the public meetings, but it is equally noteworthy that Taiwan Sugar filed its initial application, an incomplete one, shortly after the Love and Alderdice filings.

[48] If a "proposed" IAO meant one in respect of which an application had been filed, no matter how incomplete, then this would encourage the filing of inadequate IAO applications at an early stage – and possibly repeatedly – in an effort to defeat potentially competing permitted uses. In turn, this would lead to its own uncertainties and promote the same action by adjacent landowners. These landowners would be tempted to file repeated development applications to protect against the risk of an IAO being built nearby on a site inadequate to meet the MDS requirements and thereby freezing the use of their lands for residential purposes. This result cannot have been intended.

[49] Not only would this be unduly costly to the applicants (in terms of filing fees and lost time), and the County (in terms of processing of the permits), it runs counter to the philosophy

of recent amendments to planning legislation in Alberta designed to reduce “red tape” and costs and could not help but have a negative impact on overall productivity. This is not in the wider community interest.

[50] Using the permit issue date as the date on which “proposed” status is achieved for purposes of s.6.1.7.3 avoids the prospect of multiple filings. There would be no need on the part of individual landowners to apply for residential development permits early and repeatedly to protect their legitimate permitted use rights since a permit could be successfully applied for at any time prior to an IAO’s permit issue date. It would also avoid preemptive filings by an IAO developer intending to include part of its neighbours lands in the calculation of the required MDS since there would be nothing to be gained by these filings.

[51] Further, s.3.4.8 also militates against using the incomplete application date as the date on which the IAO achieves “proposed” status. Under this section, the DA may return the application to an applicant for further details and in such event, the application is “deemed to not have been submitted”. To treat an IAO project as “proposed” for purposes of s.6.1.7.3 even though in the end the IAO application might be returned and treated as not submitted would be illogical.

[52] Under s.3.4.4 of the *Bylaw*, an IAO developer is mandated to provide certain required information in an IAO application. However, under s.3.4.9:

> The Development Authority may make a decision on an application for a development permit notwithstanding that any information required or requested has not been submitted.

[53] This being so, it has been argued that the DA’s ability to issue a conditional IAO development approval means that “proposed” status can be achieved before the IAO developer has provided all information required under the *Bylaw*, that is on the incomplete application date. But this looks at matters the wrong way round. The point is not whether the permit issue date may occur before all required information is filed; it is whether the permit issue date has been achieved. Even assuming therefore that an IAO permit could be issued without all information required under this section (and quaere whether this is so), what would make the IAO project a “proposed” one for purposes of s.6.1.7.3 would not be the filing of an incomplete permit application, but rather the issuance of a development permit.

[54] It was suggested that the emphasis the County places on agriculture lends added weight to the argument that an IAO should be treated as “proposed” the moment a development application is filed, no matter how incomplete. However, this argument assumes that in a competition between a single family residential permitted use and an IAO that it is only the IAO which satisfies the emphasis on agriculture in the *Bylaw* and the *Plan*. This is clearly wrong. Section 6.2.1 of the *Bylaw* states that the purpose of the Agricultural District is to “provide land where all forms of agriculture can be carried on without interference by other, incompatible land uses.” The very first permitted use is “all forms of extensive agriculture and

forestry, including a single family dwelling or a manufactured home." [Emphasis added.] The second is "single family dwellings and manufactured homes, on a sole residential parcel subdivided out of a quarter section ...." [Emphasis added.]

[55] Why is this so? The answer lies in part in the history of Alberta. The quarter section of land with the family home has been one of the fundamental building blocks of farming life in rural Alberta. As such, it has been an integral component in the orderly and economic development of land in this province. Further, providing that a single family home is a permitted use on a farm quarter and on a parcel subdivided out of a farm quarter also recognizes the inter-generational needs of extended farm families. Had the County wanted to demolish this foundational structure, and grant IAO's preferential treatment, it was certainly free to do so. It has not. Instead, the County has expressly provided that use of land for a single family residence in conjunction with a farming operation or on a parcel subdivided out of agricultural land are permitted uses under the *Bylaw* while an IAO is merely a discretionary use.

[56] Consequently, one does not need evidence of the importance of a residence on any particular quarter section. The County's decision to make the construction of the single family home a permitted use is sufficient evidence of legislative intent whether or not this settlement pattern continues today. Thus, there is no merit to an argument premised on the assumption that an IAO on land zoned Agricultural (A) District trumps use of agricultural lands for single family homes in conjunction with an extensive farming operation. In fact, policy considerations explicitly tilt in favour of the residential permitted use.

[57] It follows that I do not agree with the proposition that an IAO is entitled to priority on the basis it benefits the community economically as a whole. So too do other forms of extensive agriculture, including the residences associated with them. This is not a case where the County has elected to exclude all forms of agriculture other than IAO's. Instead, the *Bylaw* specifically contemplates a variety of uses for land zoned Agricultural (A) District.

[58] Sixth, concluding that an IAO becomes "proposed" on the permit issue date best avoids inequitable results. The legality or merit of the County's decision to allow an IAO developer to include adjacent lands in the calculation of whether it meets the required MDS is not before us. However, Taiwan Sugar argues that if the serious intention test is not adopted, then when an IAO developer goes through the public consultation process encouraged by s.1.12 of the *Plan*, landowners near identified selected sites could easily defeat a project by filing an application for a development permit for a residence within the mandated setback area. It opposes the use of any date after the incomplete application date for the same reason, namely that this is not fair.

[59] However, there is nothing unfair or improper in neighbouring landowners filing residential permitted use applications on lands nearby a publicly disclosed IAO site. The County has set its priorities under the *Bylaw;* declared the permitted uses, including single family homes on agricultural lands; and encouraged anyone seeking a discretionary IAO permit to enter into a public consultation process. The very existence of that process reflects an

intention that neighbouring landowners have the opportunity to consider and exercise whatever rights attach to their lands prior to the issuance of an IAO permit. In essence, the legislative scheme requires them to choose a right or lose a right.

[60] It must be remembered that the conflict here has arisen because the sites acquired for the IAO near the Love Lands and the Alderdice Lands do not permit the IAO developer to fully meet the MDS requirements on its own lands. One method an IAO developer can use to ensure that its project goes forward is to acquire a sufficiently large block of land to fully meet the MDS requirements without relying on neighbouring property. Thus, an IAO developer can easily eliminate any risk of its plans being defeated by competing residential permitted use applications by the simple expedient of acquiring a large enough site to satisfy the MDS requirements out of its own lands.

[61] If this imposes too great an economic cost on an IAO developer, there is another method it can use to minimize the risk of its plans being defeated by competing residential permitted use applications. That is to consult with neighbouring landowners. One consequence of this judgment is that it will provide certainty and eliminate races to file competing development applications. IAO developers, who are required to consult before applying for a permit, are not in a position to conceal an IAO proposal. The IAO developers can now reasonably anticipate that adjacent property owners whose lands may be negatively affected by the MDS requirements may well file residential permitted use applications to protect their future development rights. These applications will have priority over competing IAO applications until the permit issue date. Thus, IAO developers who have not acquired sites large enough to absorb the entire MDS out of their lands may wish to engage in economic negotiations with adjacent property owners with a view to compensating them for the loss of their future right to construct a residence.

[62] As for the proposition that an IAO developer may be required to deal with a number of landowners, there is a simple answer to this. The *Bylaw* does not prevent an IAO from being constructed on a number of contiguous quarter sections of land. A developer can either choose a number of sites physically isolated from each other or select contiguous sections of land, and deal with the consequences that flow from that voluntary choice. Additionally, it is not in the public interest to sterilize large tracts of land for residential purposes when this could be avoided by an IAO developer's building on a larger, contiguous site.

[63] This raises another related point. In urban areas, planning bylaws typically contemplate an extensive and wide range of land uses with different rules for each. For example, land for residential use might be zoned in specific locations for particular uses, such as single family homes, townhouses, and high rise apartments. The same holds true for other zoning categories such as commercial and industrial uses. But to date in rural Alberta, there has been little attempt to distinguish amongst various kinds of agricultural uses. One possible way of reducing the potential for conflict arising from the competing demands of rural landowners and IAO developers would be to limit IAO's to specific designated areas. However, the question

whether such an approach would be beneficial falls squarely within the legislative, and not the judicial, role.

[64] Finally, I turn to why the permit issue date is to be preferred over the permit effective date. A permit does not come into effect until 14 days after its publication date (s.3.6.1), or if appealed, until expiry of all appeal periods (s.3.6.2). It could be argued that unless and until the permit comes into effect, a discretionary IAO ought not to defeat a permitted use application filed at any time before the permit becomes final. However, once an IAO permit has been issued, the equities change as between an IAO developer and adjacent landowners. At that point, a permit has been issued which is to come into full effect on expiry of certain statutory periods. Meanwhile, the neighbouring landowner has elected not to file any competing permitted use applications prior to that date. Thus, to allow a residential permitted use application filed after the permit issue date to defeat the IAO in these circumstances would not be reasonable. At this stage, the appeal process governs.

[65] Accordingly, for these reasons, I have concluded that an IAO becomes "proposed" for purposes of s.6.1.7.3 on the permit issue date. There must be a practical, fair, easily-administered and certain cut-off date and the permit issue date qualifies on all grounds. In the end, it is this interpretation which best conforms with the spirit and intent of the *Act*, the *Policies*, the *Plan* and the *Bylaw*.

B. RELEVANT DATE FOR ASSESSING PERMITTED USE APPLICATIONS

[66] I now turn to the second issue to be resolved. This concerns the date on which the Love and Alderdice applications ought to have been assessed for compliance with s.6.1.7.3 of the *Bylaw*. At issue here is the question of acquired rights: at the time an application for a single family residential permitted use is filed, are the rights of the applicant sufficiently concretized that those rights cannot be defeated by a later, competing discretionary use application? I have concluded that they are.

[67] Given my conclusion on this issue, it is in one sense unnecessary to have definitively decided the date by which an IAO becomes "proposed" for purposes of s.6.1.7.3. It would be enough to determine that as long as an IAO does not become "proposed" by the serious intention date (option 1), the DA is required to issue the residential permits to Love and Alderdice. However, to eliminate option 1 required an analysis of the first issue in detail. In addition, in any event, many of the interpretive factors affecting the first issue have equal application to the second.

[68] Taiwan Sugar maintains that filing an application for a permit does not crystallize any rights. It points to the line of cases concluding that permitted use applications may be defeated by changes in the law, arguing that this same principle should apply to what they characterize as a change in the facts. The argument reduces to this. If a change in the law can defeat an application for a permitted use, then it follows that a change in facts should be able to do so too.

[69] In my view, the appropriate date for determining whether a single family permitted use application meets the required MDS is the date on which the application is filed, regardless of when that assessment might occur and a decision follow. In the case of Love and Alderdice, their respective applications preceded even the incomplete application date. Thus, even were I wrong in concluding that an IAO becomes "proposed" for purpose of s.6.1.7.3 on the permit issue date, and it were determined that the applicable date should be the complete application date or the incomplete application date, Love and Alderdice would remain entitled to the issuance of the requested single family residential development permits.

[70] I begin with the context in which this particular issue arises. Permitted uses have been a central part of the legislative planning scheme in Alberta since 1929. In 1957, the concept of a conditional (now called "discretionary") use, as opposed to a permitted use, was first introduced in Alberta: See F. Laux, *Planning Law and Practice in Alberta*, 3rd ed. (Edmonton: Juriliber, 2002) at 1-35. That distinction remains in effect today. Permitted uses are those to which an applicant is entitled as of right providing that the proposed development otherwise meets the requirements of the *Bylaw*. The "as of right" entitlement is clear from s.642(1) of the *Act*:

> When a person applies for a development permit in respect of a development [for a permitted use], the development authority must, if the application otherwise conforms to the land use Bylaw, issue a development permit with or without conditions as provided for in the land use Bylaw. [Emphasis added.]

[71] The theory underlying permitted uses has been well-explained by Laux in *Planning Law and Practice in Alberta*, *supra*, at 6-3:

> ... as a matter of good planning, within a given district, one or more uses may be identified that are so clearly appropriate in that district, and so compatible with one another that they demand no special consideration. Therefore, such uses ought to be approved as a matter of course no matter where they are located in the district, provided that the development standards set out in the Bylaw are also met.

[72] As noted, under s.642(1) of the *Act*, the development authority "must" grant a permit when a person applies for a permitted use that conforms to the *Bylaw*. The operative word is must. In these appeals, there was no suggestion that the Love and Alderdice applications for residential housing permits were turned down on any basis other than an alleged non-compliance with s.6.1.7.3. But for the alleged non-compliance with the MDS, the residential permit applications complied with the *Bylaw*: see AB 87.

[73] It is true that any permitted use acquired rights are not absolute, notwithstanding s.642(1) of the *Act*. They may well be defeated by a change in the law occurring before a decision is made on the application. Since s.643(1) of the *Act* provides that a change in a land use Bylaw does not affect the validity of a permit granted on or before the change, this has been interpreted to mean that a permit application may be defeated by a change in the law that occurs between the date of filing of the application and the final decision on the application: ***698114 Alberta Ltd. v. Banff (Town)*** (2000) 190 D.L.R. (4th) 353 (Alta. C.A.); ***Parks West Mall Ltd. v. Hinton (Town)*** (1994) 148 A.R. 297 (Q.B.); ***Bouchard v. Subdivision and Development Appeal Board (Canmore(Town))*** (2000) 261 A.R. 342 (C.A.). Thus, the law in effect at the time that the decision is made is usually the operative law.

[74] But there are exceptions even to this rule: ***Ottawa (City) v. Boyd Builders Ltd.*** [1965] S.C.R. 408; ***Smith's Field Manor Development Ltd. v. Halifax (City)*** (1988) 48 D.L.R. (4th) 144 (N.S.C.A.). Hence, it does not follow that no rights are acquired under any circumstances on filing of a permitted use application. Indeed, this Court expressly left open the question of whether a Bylaw change post-dating an application for a permitted use will defeat that permitted use: ***Bouchard***, *supra*.

[75] In any event, even assuming for the moment that a change in the law made following the filing of an application for a permitted use defeated that application, I do not agree that this reasoning applies to a change in facts relating to lands other than those which are the subject of the permitted use application.

[76] The only alleged change of fact in these appeals is that Taiwan Sugar filed an application for an IAO discretionary use after Love and Alderdice had filed their permitted use applications. Indeed, it is debatable whether this is properly characterized as a change in facts or simply a competing development application. Even assuming the former, to focus on a change in facts which occurs on another site after the filing of a permitted use application would invert the entire permitted use planning process. When an application is filed for a permitted use, the focus is to be on the facts relating to that permitted use application, not on facts arising later in relation to competing discretionary use applications on other sites.

[77] Nor is there any evident policy reason for eroding permitted use rights in these circumstances. The statutory scheme itself recognizes not only the importance of individual rights but also the superior position granted to those applying for a permitted use, as opposed to a discretionary one. Therefore, to allow a permitted use right to be defeated by a later-filed competing discretionary use would be inconsistent with the present statutory planning regime.

[78] There is another reason for not accepting this argument. Because consistency in the application of the law is an underlying principle of the rule of law, an interpretation of the *Bylaw* that permits inconsistency should be rejected. If two land development applications that are identical on their merits result in different dispositions for no defensible reason, the orderly and economic development of land would be affected. Yet this could happen if a permitted use application could be defeated by a change in facts resulting from a later-filed development

permit application on adjacent lands. If the development authority deferred consideration of the permitted use application in one case, but not in the other, the results of the two applications would be different. A development authority ought not to be placed in the position in which the timing of its decision on an application affects the outcome or creates inconsistent rulings.

[79] Perhaps most important is that it would be inequitable for a permitted use application to be denied because of a discretionary use application filed subsequent to the permitted use application where the discretionary use application might never be approved. Where the IAO is not subsequently approved, one cannot simply unwind the past rejection of a permitted use application and restore the applicant to the position he or she was in. Indeed, if a permitted use applicant were unsuccessful on the basis of a pending, but subsequently unapproved IAO, the permitted use applicant could not make an application for another 6 months unless the DA, in the exercise of its sole discretion, agreed otherwise: s.3.4.12 of the *Bylaw*. Applicants could therefore find themselves in the position where the DA did not permit the filing of a new permitted use application prior to the expiry of the 6 month period because the DA was awaiting the filing of a new IAO application on nearby lands.

[80] These consequences, demonstrating the very real dangers of differential treatment, underscore why as between a residential permitted use applicant and a subsequent IAO discretionary use applicant, the rights of the permitted use applicant crystallize as of the date of the filing of the permitted use application. Put into the lexicon of planning law, on the date a residential permitted use application is filed in conformity with the *Bylaw*, the applicant's potential right becomes a sufficiently acquired right that it cannot be defeated by a later-filed IAO discretionary use application on the basis of the MDS requirement.

[81] Nor should there be any difficulty in ascertaining the relevant facts as of the date of filing of the residential permitted use application. After all, they must be disclosed in the application itself. In this regard, the Love and Alderdice applications were both complete on the day of filing and in compliance with the *Bylaw*. Since the subject IAO had not achieved "proposed" status under s.6.1.7.3 on the date of filing of the Love and Alderdice single family permitted use applications, the DA was required to issue the single family residential permitted use permits.

[82] Therefore, I allow the appeal, reverse the decision of the SDAB and direct the DA to issue to Love and Alderdice the permits to which they are entitled for the construction of the requested single family residential dwellings.

APPEAL HEARD on NOVEMBER 27th, 2001

REASONS FILED at EDMONTON, Alberta
this 9th day of DECEMBER, 2002

FRASER C.J.A.

I concur: _____
as authorized by: FRUMAN J.A.

DISSENTING REASONS FOR JUDGMENT OF
THE HONOURABLE MADAM JUSTICE RUSSELL

[83] The relevant facts, the decision below, and the applicable standard of review are as set out in the Reasons for Judgment of Fraser, C.J.A.

GROUND OF APPEAL

[84] Leave to appeal was granted on the following ground:

> Did the Subdivision and Development Appeal Board of Flagstaff County err in law in its interpretation of the word "proposed" as found in Section 6.1.7.3 of the Flagstaff County Land Use Bylaw No. 03/00 (LUB)?

[85] The appellants assert that two issues are raised by this ground of appeal: (1) the meaning of the term "proposed" in s. 6.7.1.3 of the LUB, and (2) the relevant time for determining whether an intensive animal operation (IAO) has achieved that status. Although the ground of appeal does not expressly include the second issue, no one has objected to its consideration and all parties have provided argument on it. Accordingly, I will assume that it is an element of the ground of appeal for which leave was granted.

ANALYSIS

What does "proposed" mean?

[86] Section 6.1.7.3 of the LUB prohibits construction of a residence within the minimum distance separation distance from an IAO, "either existing or proposed".

[87] The appellants submit that a "proposed" IAO is either one which has been approved but not yet constructed, or one for which a complete development application has been submitted. They argue that these definitions provide the certainty to which an applicant for a permitted use permit is entitled. In their view, the SDAB erred in holding, in effect, that the developer need only submit an incomplete application to render the development "proposed".

[88] In response, the developer contends that an IAO is "proposed" when a reasonable person would believe that a serious intention to develop has been shown.

[89] Given the significance of this term for both landowners and IAO developers, it is unfortunate that the LUB does not provide a definition.

[90] The Supreme Court recently reiterated its preferred approach to statutory interpretation in ***Bell ExpressVu Limited Partnership* v. *Rex***, 2002 SCC 42 at para. 26, (2002) 212 D.L.R. (4th) 1, citing E.A. Driedger, *Construction of Statutes*, 2nd ed (Toronto: Butterworths, 1983) at 87:

> Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

[91] Hence, the meaning of "proposed" must be determined in the context of s. 6.1.7.3 and the LUB as a whole, considering the scheme, object and purpose of the LUB. The object and purpose of the *Municipal Development Plan*, County of Flagstaff, Bylaw No. 02/00 (Plan) and aspects of the *Municipal Government Act*, R.S.A. 2000, c. M-26 (Act) are also relevant to this inquiry as they form part of the legislative scheme in which a development permit application will be assessed.

[92] The word "proposed" is used in s. 6.1.7.3 as an alternative to "existing". This suggests that a proposed operation is one for which construction has not yet begun.

[93] The word "proposed" is used elsewhere in the LUB in a context which indicates that it there refers to a development for which an application has been submitted, but no permit has yet been issued: s. 3.4.4, 3.4.8, 3.4.13, 3.4.14. This might suggest that the same interpretation should be given to s. 6.1.7.3. But it does not clarify the degree to which an application should be complete, for a development to be "proposed".

[94] One might expect other provisions of the LUB to assist in that regard. However, s. 3.4.4 requires an IAO application to include "all relevant information necessary to allow the Development Authority to determine if the proposed development will meet the guidelines of the Code of Practice". Section 3.4.8 provides that if the application does not contain sufficient information, the development authority may return it, in which case it is deemed not to have been received. Those provisions suggest a complete application is required. But s. 3.4.9 specifically authorizes the Development Authority to make decisions on such applications, suggesting that the development retains proposed status even though the application itself is deficient. That broad discretion permits an incomplete application to be rejected or approved. It follows that little weight can be placed on these provisions in interpreting the LUB.

[95] One of the purposes of the LUB, as set out in s. 1.2, is to regulate and control the use and development of the County's land, to ensure orderly and economic development. This objective is largely achieved by providing a system for balancing competing land uses. In striking that balance, the LUB emphasizes the import of agriculture in the Agricultural District in which IAOs may be located. The preamble to the relevant district regulations reads:

> The purpose of the Agricultural District is to provide land where all forms of agriculture can be carried on without interference by other, incompatible land

> uses. The Development Authority may, at his discretion, refuse to issue a development permit for any land use which may limit or restrict existing or proposed agricultural operations in the vicinity.
>
> LUB s. 6.2.1

[96] Arguably a narrow definition of the term“proposed” might undermine this purpose. Neighbouring landowners could defeat an IAO, which is planned but not yet “proposed”, by rushing to obtain residential permits for land within the prescribed minimum distance separation from the IAO at the first hint of such a development. This possibility is exacerbated by the Plan’s direction, in s. 1.12, that developers should seek local support for an IAO before submitting a development permit application, thus alerting neighbours to the proposal, and providing them the opportunity to take evasive action. In this case, both applications for residential development permits were filed within days following the public consultation conducted by the developer.

[97] The emphasis placed on agriculture in the LUB is consistent with the Plan, which states that:

> Agriculture and providing services to the agricultural community are regarded as the most important forms of development in Flagstaff County....
>
> [A]griculture is viewed as the priority use when affected by competing land uses in most of the County....
>
> In that agricultural activities have priority in most of the County, the intent of this Plan is that no legitimate activity related to the production of food which meets Provincial and/or municipal requirements should be curtailed solely because of the objections of nearby non-farming landowners or residents....
>
> s.1.0, Statement of Intent

The Plan also reflects the role intensive agriculture is to play in the Agricultural Use Area. It includes amongst its objectives “the rational diversification and intensification of agricultural activities”: s. 1.0, Objectives. It considers the primary uses of the Agricultural Use Area to be extensive agriculture and IAOs: s. 1.3.

[98] In her Reasons for Judgment, Fraser C.J.A. contends that residential land use, in conjunction with extensive agriculture, satisfies this emphasis on agriculture. However, the development of a residence in conjunction with a farming operation is only one of two forms of residential development which are permitted uses in the area; the other is a single family dwelling on a residential parcel subdivided from a quarter section and unrelated to farming activities. Further, while rural Alberta may have developed in a pattern of quarter sections of land, each equipped with a family home, there is no evidence before this court to suggest that

this settlement pattern remains today, in a time of ever increasing mechanization. Nor is there evidence that the ability to develop a home on each quarter section is necessary to accommodate inter-generational farm families. In any event, interpretation of a bylaw involves consideration of the object and intention of the legislative scheme, as inferred from the relevant legislation itself. I do not infer from that legislation that these policy considerations form part of its object or intention.

[99] The legislative scheme of the Act is also relevant to this inquiry. Section 617 states that one of the purposes of the Act, and bylaws thereunder, is to achieve orderly, economical and beneficial development without infringing on the rights of individuals except to the extent necessary in the overall public interest. This reflects an intention to protect the capacity of property owners to develop their land as they see fit, subject to compromise for the pubic good.

[100] While IAO developers will generally be private entities, the development of IAOs serves the public interest, as they provide an economic benefit to the community as a whole. The Plan's emphasis of the importance of agriculture is motivated, at least in part, by economics. The Plan seeks to "promote economic diversification so that all residents may enjoy optimum working and living standards" and sees "agriculture and agricultural services as continuing to be a major economic force in the community": Goal. The Plan refers to "providing an environment that will benefit the agricultural community and economy": s. 1.0, Statement of Intent. It seeks to ensure that "agriculture remains an integral and viable component of the regional economy": s. 1.0, Objectives. Indeed, given the obvious nuisance factors associated with IAOs, it is hard to imagine why an IAO would ever be tolerated by a community, if not for its potential for positive economic impact.

[101] If "proposed" status is not achieved until late in the application process, neighbouring landowners may easily defeat the project by obtaining residential development permits. However, Fraser C.J.A. suggests that potential IAO's may avoid this conflict by the simple expedient of purchasing the entire minimum distance separation (MDS) area or by negotiating rights over it. This approach suggests that incursion onto private rights is not necessary, as required in s. 617. However, MDS areas are sizable. In the current case, the IAO is spread over five quarter sections. The MDS area for each of those quarters runs onto at least the eight surrounding quarter sections. Adopting Fraser C.J.A.'s approach would require acquisition or negotiation with respect to either all or part of the 40 quarter sections which surround the parcels marked for development. The developer's ability to purchase only the specific portions of the neighbouring sections which comprise the MDS area would be dependent upon subdivision approval from the County. A larger IAO would involve an even larger MDS area. This approach would significantly impact the economic viability of any potential IAO operation, depriving the community of the economic benefits associated with the intensification of agriculture. This would be inconsistent with the Plan's emphasis on agriculture as a key economic force in the County. Accordingly, while s. 617 contemplates preservation of private interests, the greater public good weighs against an interpretation of "proposed" that would render the County economically unfriendly to IAOs.

[102] The distinction the Act draws between permitted and discretionary uses is also relevant. These concepts are defined in both the Act and the LUB. A permitted use is one for which a permit must be granted if bylaws are complied with. As the name suggests, a discretionary use is one for which there is no imperative to grant a permit. This distinction reflects the principle underlying permitted uses:

> that, as a matter of good planning, within a given district, one or more uses may be identified that are so clearly appropriate in that district, and so compatible with one another that they demand no special consideration. Therefore, such uses ought to be approved as a matter of course no matter where they are located in the district, provided that the development standards set out in the bylaw are also met.
>
> F.A. Laux, *Planning Law and Practice in Alberta*, 3rd ed., looseleaf (Edmonton: Juriliber, 2002) at 6-3, cited with approval in ***Burnco Rock Products Ltd.* v. *Rockyview No. 44 (Municipal District)*** (2000), 261 A.R. 148 at para. 13 (C.A.)

[103] Most dwellings in the relevant district, including those under consideration in this matter, will be permitted uses. Extensive agriculture is also a permitted use under s. 6.2.1.1.a. However, an IAO is merely a discretionary use. While agriculture is a priority in the County, an IAO is considered distinct from extensive agriculture, and subordinate in its suitability for the district. This militates against an overly broad interpretation of "proposed".

[104] While permitted uses are given planning priority, their approval is subject to compliance with the relevant bylaws. The question of statutory interpretation raised in this appeal will determine whether the applicants' prospective residences comply with the LUB. Given that compliance with the bylaw is the central issue here, and permitted use permits are available only when bylaws are complied with, I do not place significant weight on the permitted nature of a residence. The County is entitled, through its bylaws, to place restrictions on permitted uses. It follows that inclusion of a particular type of development, in a list of permitted uses, does not mandate an interpretive approach that minimizes any restrictions the County has chosen to impose on such developments.

[105] The permitted/discretionary dichotomy, and the imperative to approve permitted uses subject to compliance with bylaws, support an interpretation of "proposed" that will provide certainty as to when that status is achieved. The greater the uncertainty on this point, the more approval of a residential development permit application might depend on an exercise of discretion by the Development Authority. This would tend to blur the distinction between a permitted use and a discretionary use.

[106] The developer equates the word "proposed" with incompleteness. It contends that a project is "proposed" when a reasonable person would have no doubt that a serious intention to develop has been displayed even though no application is filed. But such a test promotes

uncertainty. Would public consultation constitute a proposal or a mere testing of the waters? If "proposed" status may arise prior to the filing of an application, to whom must the development be proposed? How and when would serious intent be crystallized? How would any abandonment of that intent be determined?

[107] On the other hand, the appellants' proposal, that a complete IAO development permit application must be submitted to be "proposed," cannot be rationalized with s. 3.4.9. That section provides the development authority with discretionary power to decide an application despite the absence of required or requested information. According to that section, approval may be given to an IAO development permit application, even if it is incomplete. So there is no point at which the application can be objectively determined to be complete. Hence the standard of completeness does not assist in the interpretation of the word "proposed".

[108] In contrast, the decision of the SDAB that a development becomes "proposed" once a development permit application is submitted to the County provides a more objective and tangible touchstone.

[109] In her Reasons for Judgment, Fraser C.J.A. raises the question of how one could know with certainty when a filed IAO development permit had been abandoned. Neither the LUB nor the Act provide a mechanism for neighbouring landowners to compel the Development Authority to either decide or return a development permit application. She reasons that an application might remain filed and incomplete indefinitely if the applicant does not exercise his or her option to deem the application denied. However, the Development Authority is obliged to "receive, consider and decide on all applications": LUB s. 3.4.7. While the LUB does not provide a specific time frame for carrying out this duty, the Development Authority could not fail to act indefinitely. A neighbouring landowner, wishing to obtain a residential development permit, could seek an order of mandamus compelling the Development Authority to discharge its duty to decide the application. Accordingly, if an IAO is proposed as of the date an application is filed, an unannounced abandonment of that application could not indefinitely prevent a residential development from proceeding.

[110] Fraser C.J.A. also considers the prospect of numerous, repeated, development permit applications if an IAO becomes "proposed" upon the filling of an incomplete application. In such circumstances, an IAO developer might be motivated to file an application at the earliest possible time. However, under s. 3.4.1. LUB, only owners, or agents of owners, can apply for development permits. Thus a developer must either already be a landowner, or must acquire ownership or agency status, before applying for a permit. This would deter speculative applications. Further, a developer who submits an incomplete application runs the risk that it will either be returned under s. 3.4.8 or simply refused. In the latter case, the Development Authority could decline to accept a further application for 6 months: 3.4.12. So while a developer might be motivated to move quickly to file even an incomplete application, there are limitations on the extent to which this can be done and the benefits to be achieved.

[111] Moreover, the prospect of repeated IAO applications would only arise if an IAO permit was issued, but no development commenced within a 12 month period, resulting in the permit becoming void under s. 3.6.6 LUB. Few commercial enterprises would intentionally indefinitely postpone commencement of operations on potential revenue generating property. Further, it is unlikely that a Development Authority, answerable to an elected municipal council, would repeatedly grant permits for an unpopular IAO, construction of which was unreasonably delayed.

[112] The prospect of repeated residential development permits exists irrespective of when an IAO becomes "proposed". If an IAO is deemed to be "proposed" early in the planning process, landowners may be inclined to obtain residential development permits to ensure that, in the event an IAO project is announced in their area, they will retain the ability to develop a residence on their land. If an IAO does not become "proposed" until later in the planning process, landowners could wait until an IAO project is announced before seeking a development permit. But, in any event, if an IAO does not become proposed until it is approved, landowners may nonetheless be motivated to apply for a residential permit to block the project.

[113] Fraser C.J.A. concludes that an interpretation of the term "proposed" that might foster multiple applications for permits cannot have been intended as it could give rise to undue costs to landowners and IAO developers, increase in the County's workload, and run contrary to an intention to reduce red tape and costs.

[114] But if landowners choose to file development applications for the sole purpose of defeating the intended operation of the LUB, it is not unreasonable to expect them to bear the financial cost and inconvenience involved. If the County does experience an increased workload, it could adopt a fee structure that would discourage repeat applications.

[115] The LUB was intended to provide a scheme to prioritize residential permits and IAO permits. Regardless of how that scheme is interpreted, landowners and IAO developers are motivated to file permit applications as early as possible. From a policy perspective, it may be desirable to choose the option that minimizes administrative costs. One may even find a statutory intention to maintain costs at a reasonable level. But in the absence of evidence of any increase in administrative costs inconsistent with the intention of the legislative scheme, or evidence as to which interpretation would create the greatest cost impact, I am unwilling to attribute any weight to this factor.

[116] Fraser C.J.A. also considers the inequities of a developer being permitted to set up an IAO on a parcel of land too small to encompass the entire prescribed MDS. However, the issue before us concerns the meaning of "proposed" in the context of the objects and intention of the legislative scheme. Section 6.1.7.3 of the LUB reflects a clear choice by the Council of Flagstaff County not to require an IAO developer to purchase the entire MDS area. The validity of that provision is not before us. Nor is the fairness of the Council's choice to enact it.

[117] Considering the context surrounding the use of "proposed" in s. 6.1.7.3, its use elsewhere in the LUB, the emphasis placed on agriculture in the District, and the significance of agriculture in area economy, as well as the need for certainty with respect to limitations on permitted uses, the appellants' arguments cannot prevail. I conclude that "proposed" in s. 6.1.7.3 refers to an IAO for which a development permit application has been submitted to the County, whether or not it is complete.

[118] It follows that, in my view, the SDAB did not err in its interpretation of "proposed".

What is the relevant time for determining whether an IAO has achieved "proposed" status?

[119] The appellants argue that the development authority should have made its decision on their residential development permit applications on the basis of facts that existed at the time those applications were filed. They submit that this approach provides the degree of certainty to which a permitted use applicant is entitled. Since the application for the IAO development permit had not been made at the time the residential applications were submitted, they maintain that should foreclose any entitlement to an IAO development permit.

[120] However, the SDAB and developer maintain that filing an application for a permit does not crystallize any rights. They suggest that a change in facts should invoke the same principle as a change in the applicable law. They rely on authorities interpreting section 643(1) of the Act. That section does not allow a change in the land use bylaw to affect the validity of a permit granted on or before the change. This has been interpreted to mean a permit application may be defeated by a change in law that occurs between the filing of the application and the final decision thereon: ***698114 Alberta Ltd.* v. *Banff (Town)*** (2000), 190 D.L.R. (4th) 353 (Alta. C.A.); ***Parks West Mall Ltd.* v. *Hinton (Town)*** (1994), 148 A.R. 297 (Q.B.); ***Bouchard* v. *Subdivision and Development Appeal Board (Canmore (Town))*** (2000), 261 A.R. 342 (C.A.); Laux, *supra*, at 9-14.

[121] Neither the Act nor the LUB expressly directs a development authority or SDAB to consider only those facts in existence at the time a development permit application is filed. Nor have the appellants pointed to any provisions from which this could be inferred. The legislative scheme is silent on the question and the appellants, in effect, ask this court to read into the scheme a right to have their applications decided as of the date of filing.

[122] In non-*Charter* cases, a court's jurisdiction to read words into a statute is limited:

> It is one thing to put in or take out words to express more clearly what the legislature did say, or must from its own words be presumed to have said by implication; it is quite another matter to amend a statute to make it say something it does not say, or to make it say what is conjectured the legislature could have said or would have said if a particular situation had been before it.

Driedger, *supra,* at 101.

[123] In ***Western Bank Ltd.* v. *Schindler***, [1977] 1 Ch. 1 at 18 (C.A.), Scarman L.J. considered the relevant distinction in the following terms:

> ... our courts do have the duty of giving effect to the intention of Parliament, if it be possible, even though the process requires a strained construction of the language used or the insertion of some words in order to do so.... The line between judicial legislation, which our law does not permit, and judicial interpretation in a way best designed to give effect to the intention of Parliament is not an easy one to draw. Suffice it to say that before our courts can imply words into a statute the statutory intention must be plain and the insertion not too big, or too much at variance with the language in fact used by the legislature.

[124] The legislative scheme does not expressly provide that a permitted use application must be assessed on the basis of facts in existence at the time of filing. Nor can such a right be implied. There may be compelling policy considerations which suggest that, had the legislators turned their minds to this issue, they would have granted the right asserted by the appellants. However, in the absence of discernable legislative intent, the grant of such a right oversteps statutory interpretation and amounts to judicial legislation.

CONCLUSION

[125] I would dismiss the appeal.

APPEAL HEARD on NOVEMBER 27th, 2001

REASONS FILED at EDMONTON, Alberta,
this 9th day of DECEMBER, 2002

RUSSELL J.A.

In the Court of Appeal of Alberta

Citation: Desaulniers v. Clearwater (County), 2007 ABCA 71

Date: 20070228
Docket: 0603-0328-AC
Registry: Edmonton

Between:

Jude Desaulniers

Applicant

- and -

Clearwater County and The Subdivision and Development Appeal Board of Clearwater County

Respondents

Reasons for Decision of
The Honourable Mr. Justice Jack Watson

Application for Leave to Appeal

Reasons for Decision of
The Honourable Mr. Justice Watson

1. Introduction

[1] The applicant seeks leave to appeal pursuant to s. 688(3) of the *Municipal Government Act*, R.S.A. 2000, c. M-26 ("MGA") from a decision of the Clearwater County Subdivision and Development Appeal Board ("SDAB"). The SDAB upheld a decision of the Clearwater County Municipal Planning Commission ("MPC") which had denied the applicant's application for a development permit to construct and maintain on her residential acreage property a stable / hobby shop in which to keep her horse, O'Bee.

[2] Leave to appeal may be granted under s. 688(3) of the MGA "if the judge is of the opinion that the appeal involves a question of law of sufficient importance to merit a further appeal and has a reasonable chance of success". Citing Frederick A. Laux, *Planning Law and Practice in Alberta*, 3rd Edition, [Edmonton: Juriliber, 2001] at §16.3(5), the applicant argues that leave should be granted if it can be demonstrated that the alleged errors were material to the decision and an appeal, if granted, possessed a reasonable chance of success.

[3] The application was opposed by the SDAB on the basis that an error of law is not involved and, in any event, does not have a reasonable chance of success, having regard to the relevant standard of review of the SDAB decision. Clearwater County itself took no part in the application.

2. Background

[4] The applicant asserts that the stable / hobby shop for the horse was necessary for pleasure and for therapeutic use by her in light of her health condition. She had provided evidence to the SDAB about her having suffered from chronic fatigue syndrome since 1999, which developed into fibromyalgia in 2005. She also provided information to the SDAB concerning "equine therapy" and its effects upon her condition since she learned of it in 2004. At the hearing before me, her counsel clarified that the role of O'Bee was largely to "mitigate her symptoms".

[5] In addition, the applicant gave information to the SDAB as to her plans for housing, transporting, food storage and waste disposal in connection with keeping O'Bee on her property. She presented to the SDAB evidence of support from her neighbours, and also made reference to the Yellowhead County's Land Use Bylaw as a comparison of its approach to what her argument characterized as keeping a pet animal.

[6] In July, 2001, the applicant acquired a 2.2 acre parcel of land near Nordegg in Clearwater County. Her counsel colourfully described this as near the forested slopes of the Coliseum Mountains.

[7] In February, 2006, the applicant applied for, and was granted, a development permit (Development Permit No. 11/06) for the construction of a residential log home and detached garage, and also a hobby shop in the area zoned as the Nordegg Rural Residential District ("NRR"). Permit 11/06 as granted contained various conditions including in condition (g) thereof which prohibited against keeping animals on the property beyond a maximum of two cats and two dogs.

[8] In her affidavit before me, the applicant asserted that she had not been told of this animal limitation when she purchased the acreage in the County of Clearwater. Referring to the *Clearwater County Land Use Bylaw No. 714/01* ("LUB"), her affidavit averred that she was "not provided with any information relating to the Clearwater County Land Use Bylaw" when she acquired the property. In 2002, according to her affidavit, she did ask questions of "Clearwater County" about building restrictions but was not "provided with any information concerning pet ownership".

[9] Her counsel submitted in argument that the applicant became aware that *Development Guidelines* applicable to a *neighbouring* district – the Nordegg Leisure Residential District ("NLR") – limited "other animals". Counsel for SDAB said the terms of that limitation were the same as for the NRR district. The applicant did not believe that the NLR *Development Guidelines* would apply to her horse O'Bee. Her counsel said that the applicant had looked at the LUB applicable to the NRR but did not understand that the LUB controlled pet ownership in the manner set out in Development Permit No. 11/06.

[10] Condition (g) of Development Permit 11/06 replicated language in s. 15 of *Development Guidelines for the Nordegg Rural Residential District ("Development Guidelines")* which counsel for the SDAB said were passed by resolution of the County. Section 15 of the *Development Guidelines* state:

> No animals shall be kept on the property except those animals owned by persons who normally reside on the property, and the only animals which may be kept are a maximum of two cats and two dogs. All pets and other animals shall be restrained and kept within the property of the owner of such pets, so as not to cause any nuisance, annoyance, or excessive noise.

[11] It was condition (g) of Development Permit 11/06 which, according to her affidavit, drew the applicant's attention to the existence of such a restriction on animals. The applicant sought information about the restriction and was told that she would have to apply for another permit in order to keep and shelter O'Bee on her property. Consequently, in August 2006, she launched the

subject application, setting out that it was for the construction of a stable / hobby shop to house one horse for her therapeutic and personal use.

[12] There was a dispute before me as to whether these *Development Guidelines* were effectively promulgated by the County for the NRR district. Counsel for the SDAB produced records dating from May 28, 1996, where, under the headline "*Nordegg Lot Purchasing Policy*", the vote was recorded as adopting that Purchasing Policy. The Purchasing Policy form consisted of one sheet with 10 sections, setting out that this Purchasing Policy "shall apply to the first batch of residential lots only". Clause 3 of the Purchasing Policy sheet provided that "All purchasers must agree to follow Municipal District of Clearwater development guidelines and policies." This language did not expressly incorporate by reference the document entitled "*Development Guidelines for the Nordegg Rural Residential District Relating to Lots 1 to 22 of Phase 1 Inclusive*". Nonetheless, Counsel for the SDAB claimed that the *Development Guidelines* document was associated with this Purchasing Policy in the Council records. Counsel for the SDAB reminded me that lawyers were not necessarily involved in Council or SDAB proceedings.

[13] Counsel for the applicant argued that this association was insufficient to constitute either a promulgation by way of resolution or by way of bylaw to make the *Development Guidelines* effective as part of the LUB affecting the NRR district therein addressed. Moreover, s. 1.6 of the LUB indicates that an action by the SDAB must be "consistent with any land use policies established pursuant to the Municipal Government Act". The applicant's counsel contended that the *Development Guidelines* were not "established" in that sense.

[14] Counsel for the SDAB took the position that promulgation irregularity of the *Development Guidelines*, if any, was a moot point since the SDAB did not treat the *Development Guidelines* as anything more than a contextual factor in its decision. Counsel said the SDAB's decision ultimately rested on the language of the LUB.

[15] Moreover, counsel for the SDAB conceded that the SDAB was not taking the position before me that the *Development Guidelines* were binding in and of themselves when it came to applying the LUB. Nonetheless, counsel for the SDAB suggested that the *Development Guidelines* were some indication of the will of the body politic, as it were, respecting possession of animals in the relevant NRR district.

[16] The applicant's request for a new development permit was initially refused by the MPC, by letter dated September 15, 2006, which set out the following reasons for the refusal:

> 1. The Nordegg Rural Residential Land Use District does not allow for the housing of horses as either a permitted or discretionary use.

2. The Development Guidelines for the Nordegg Rural Residential District states in Section 15 that

> "No animals shall be kept on the property except those animals owned by persons who normally reside on the property, and the only animals which may be kept are a maximum of two cats and two dogs. All pets and other animals shall be restrained and kept within the property of the owner of such pets, so as not to cause any nuisance, annoyance, or excessive noise."

[17] The applicant appealed the MPC ruling to the SDAB by letter dated September 25, 2006. The hearing was conducted on October 25, 2006, with no member of the public in opposition, whereas one of the applicant's neighbours was present in support. As noted above, the applicant offered a comprehensive array of information to the SDAB.

[18] In opposition, a development officer submitted a report asserting that Development Permit 11/06 clearly specified the restriction on animals and that the *Development Guidelines* were annexed to the NRR when the lots were offered for sale. The applicant's counsel submitted that the officer did not "elaborate on the authority, if any, for the creation of said guidelines". The officer apparently submitted that the NRR did not make any allowance for the keeping of a horse as a permitted or discretionary use.

[19] By letter dated November 7, 2006, the SDAB denied the applicant's appeal and upheld the decision of the MPC. The fact findings of the SDAB were as follows:

1) Horses are defined as livestock in the Clearwater County Land Use Bylaw;

2) The keeping of livestock is not a permitted or a discretionary use within the Nordegg Rural Residential District "NRR" of the Clearwater County Land Use Bylaw; and,

3) Development Permit 11/06 issued to Jude Desaulniers for the construction of a conventional first residence and detached garage states that:

> "No animals shall be kept on the property except those animals owned by persons normally residing on the property, and the only animals which may be kept are a maximum of two cats and two dogs. All animals are to be restrained and kept within the property of the owner, so as not to cause any nuisance, annoyance, or

excessive noise."

[20] The letter went on to provide the following Reasons:

1. The Board finds that both the Clearwater County Land Use Bylaw and the Provincial Livestock and Livestock Products Act clearly define horses as a form of livestock.

2. In addition, the Board finds that the keeping of livestock is not a permitted use or a discretionary use in the Nordegg Rural Residential District "NRR".

3. The Board finds that Development Permit 11/06 is clear in stating that the only animals permitted to be kept on the property are a maximum of two cats and two dogs.

[21] The applicant's counsel suggested the *Livestock and Livestock Products Act*, R.S.A. 2000, c. L-18 was spurious. She said she had argument to make about its applicability, if any, to the issues. Counsel for the SDAB did not press the relevance of that *Act* in her submissions.

3. Grounds of Application

[22] The applicant's grounds of application were proposed in a sequentially related manner. The two first grounds in the applicant's notice of motion were consolidated into one to the effect that the SDAB misinterpreted the LUB, thereby committing a reviewable error of law which was subject to review on a standard of correctness. As noted above, she cited Professor Laux for the contention that she need merely show that she has a viable argument on the legal error thus proposed to meet the criteria in s. 688(3) of the *MGA*.

[23] Counsel for the applicant stated this unified ground in different manners. In her brief, counsel stated that the SDAB error was "in holding that a development permit is required for one animal, being a horse, kept as a companion animal and for therapeutic use, when the land use bylaw for the district NRR is silent on the keeping of animals".

[24] In oral argument, counsel explained that the SDAB made this error by misinterpreting the meaning of the word "livestock" under the LUB, and by resorting to the *Development Guidelines* in applying the LUB. Her written argument embellished on this point by arguing that O'Bee was a "pet" nd therefore that the possession, stabling and care of O'Bee constituted "the pursuit of minor personal recreational interests on one's own property" pursuant to s. 3.2 (1)(g) of *Part*

Three: Development Control and Permits of the LUB ("*Development Control and Permits")*.

[25] Counsel for the applicant referred to various elements of the LUB to cast light on the meaning and application of the LUB. She asserted that the LUB, if properly read, could support the applicant's possession and care of O'Bee as a permitted or discretionary use on her land and that, accordingly, the applicant could also construct the appropriate hobby shop / stable to provide for O'Bee on her property.

[26] Counsel for the applicant also urged that the interpretation, and authority, of the LUB should be considered by this Court in the context of the policy tension reflected in s. 617 of the *MGA* where the Legislature states:

> 617 The purpose of this Part and the regulations and bylaws under this Part is to provide means whereby plans and related matters may be prepared and adopted
>
> (a) to achieve the orderly, economical and beneficial development, use of land and patterns of human settlement, and
>
> (b) to maintain and improve the quality of the physical environment within which patterns of human settlement are situated in Alberta,
>
> without infringing on the rights of individuals for any public interest except to the extent that is necessary for the overall greater public interest.

[27] The next phase of the applicant's grounds for the motion concerned whether the SDAB "fettered its discretion" in refusing to consider a variance of the animal restriction. This argument proceeded on the footing that if the SDAB was wrong to conclude that the possession, stabling and care of O'Bee on the property was not either a permitted or discretionary use, then the SDAB had fettered its discretion by refusing to issue a permit with such conditions as it deemed appropriate.

[28] On this point the applicant referred to s. 687(3)(d) of the *MGA*, which provides:

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

(d) may make an order or decision or issue or confirm the issue of a development permit even though 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.

[29] The applicant argued that the SDAB did not inquire into the facts necessary to consider the possibility of such a variance because the SDAB shut the door of the inquiry at the stage of concluding that this was not a permitted or discretionary use under the LUB for the NRR. On this aspect, the applicant cited ***Omega2 Corporation v. Edmonton (City)***, (2005) 24 M.P.L.R. (4th) 36, 2005 ABCA 449 (Alta. C.A., Picard J.A.) ("*Omega2 Corporation*") at paras. 10 to 13. It should be noted that ***Omega2 Corporation*** involved an application for a variance.

[30] The final ground of application was that the SDAB failed to provide reasons and, instead, merely provided a conclusion. This argument was said to be supported by: ***Omega2 Corporation***, at para. 13; ***Lor-Al Springs Ltd. v. Ponoka (County) SDAB***, (2000) 19 M.P.L.R. (3rd) 216, 2000 ABCA 299 (Alta. C.A., Picard J.A.) ("*Lor-Al Springs*") at paras. 11 to 17; ***Burnco Rock Products Ltd. v. Rocky View (Municipal District No. 44)***, (2000) 11 M.P.L.R. (3rd) 109, 2000 CarswellAlta 412 (Alta. C.A.) ("*Burnco Rock*") at para. 7.

[31] Specifically, the applicant's counsel argued that it was not possible from the SDAB's reasons to determine whether the SDAB directed its mind to the distinction between a "pet" for the purposes of s. 3.2(1)(g) of the *Part Three: Development Control and Permits* of the LUB, and "livestock" for the purposes of the definition of "livestock" in the LUB, Part 1.7, and s. 3.2(1)(l) of *Development Control and Permits* of the LUB.

[32] The applicant's counsel supplemented this argument by urging that the SDAB's reasons did not disclose if the SDAB considered whether a restriction on animal ownership in the case of a permitted use constituted an impermissible delegation of authority, having regard to both s. 640

of the *MGA* and the terms of the LUB. The applicant's counsel also emphasized that the SDAB "failed to even comment" on the body of evidence from the applicant about the circumstances, including from the neighbours (to what is this referring - the lack of opposition from the neighbours?).

4. Standard of Review

[33] The parties agreed that correctness was the standard of review for questions of law for which the SDAB had no special expertise: ***Canada Land Company CLC Ltd. v. Edmonton (City)***, (2005) 2005 ABCA 218 ("*Canada Land*"), at paras. 4 to 10, relying, notably, on ***Lor-Al Springs*** and ***The United Taxi Drivers' Fellowship of Southern Alberta et al. v. Calgary (City)***, [2004] 1 S.C.R. 485, 2004 SCC 19 ("*United Taxi*"), at para. 5, plus other authorities.

[34] For questions of law for which the SDAB had expertise, however, counsel for the SDAB argued that a more deferential standard would apply, citing ***Canada Land***. Arguably, the SDAB's application of the LUB would often be a polycentric decision with factual elements as well as contextual considerations. Deference may apply to an SDAB interpretation of plans.

[35] The SDAB contended that the meaning of "livestock" was one within the expertise of the SDAB, notably since it was included in the massive LUB which the SDAB was routinely called upon to consider. Even were it necessary for me to decide this point, the SDAB's reading of the term "livestock" in the *Livestock and Livestock Products Act*, R.S.A. 2000, c. L-18 might arguably involve a different and somewhat more transcendent legal question – hence inviting a correctness review – than the SDAB reading anything in the LUB. Counsel for the SDAB did not emphasize that element of the SDAB's reasons notably in light of the applicant's counsel's objection.

[36] As the basis for leave to appeal in this instance is ultimately contingent on the finding of a viable argument that there was legal error capable of being subjected to appellate review, the standard of review question is relevant: ***Lor-Al Springs*** at para 6; ***Seabolt Watershed Association v. Yellowhead (County) SDAB***, (2002) 303 A.R. 347, 2002 ABCA 124 at para. 9. However, the decisions of ***Canada Land*** and ***Goodrich v. Flagstaff (County) SDAB***, 317 A.R. 289, 2002 ABCA 293 at paras. 8 to 10 must guide me on this question of standard of review.

[37] Were I to analyze in writing the criteria in ***Pushpanathan v. Canada***, [1998] 1 S.C.R. 982, 1998 CarswellNat 2636 (S.C.C.), ("*Pushpanathan*"), I would, as in ***Goodrich*** be inclined to see enough of a transcendent character to the legal meaning of s. 3.2(1)(g) and 3.2(1)(l) of *Part Three: Development Control and Permits* of the LUB to warrant applying the standard of correctness. As such, the question of the standard of review might be arguable before a panel if

the further point of substantive legal error were also arguable.

[38] Accordingly, the success of the application here hinges largely on whether the SDAB read those provisions correctly in law, or, at least, whether the Applicant has a reasonable chance to persuade a panel of this Court that the SDAB erred in law in that respect. Further, the applicant must also show that, even if the SDAB erred, the issue is of sufficient importance to warrant the attention of the Court. If the SDAB was correct, the question of alleged "fettering" of their decision would not by itself support leave to appeal.

5. Analysis

Reasons

[39] Counsel for the SDAB opposed the application in somewhat of a reverse order, first addressing the question of sufficiency of reasons. Applying ***Lor-Al Springs*** and ***Dome Petroleum Ltd. v. Alberta (Public Utilities Board)***, (1976) 2 A.R. 453, [1976] A.J. No. 444 (QL) (Alta. C.A.), appeal dismissed [1977] 2 S.C.R. 822 (S.C.C.), counsel for the SDAB suggested that the reasons were sufficient to illuminate the pathway leading to the SDAB's conclusion as regards to whether the Applicant's desired possession, stabling and care of O'Bee on her land was a permitted or discretionary use under the LUB. In their view, that is as far as the SDAB had to go.

[40] The SDAB is correct on that point, so far as it goes. The rationales for giving reasons, as expressed in ***R. v. Sheppard***, [2002] 1 S.C.R. 869, 2002 SCC 26, have been adapted to the administrative law context: ***Critch v. Human Rights Commission (Newfoundland)***, (January 31, 2007) 2007 NLCA 10; ***Nova Scotia Barristers' Society v. Harris***, (2004) 228 N.S.R. (2nd) 153, 2004 NSCA 143. The theory is not merely to extol the virtues of having reasons – though it improves the repute of justice if clear and adequate reasons are given for decisions – but also, amongst other things, to permit functional appellate review.

[41] In my view, it is not arguable that the SDAB's reasons fail to permit functional appellate review *of the point they decided*. The SDAB could have said more. A judge possibly would have done so. The reasons given are not nebulous so far as they go. On the other hand, were the matter to get past the question of why and how the SDAB decided the point of permitted and discretionary uses, the applicant would have an arguable case of insufficient reasons. The question of "fettering" of discretion is moot as a separate point, since the SDAB did not purport to give reasons why they would not grant a variance or conditional permit. The SDAB did not find that they were empowered to grant a variance or conditional permit.

Interpretation of LUB

[42] As regards the SDAB's interpretation of the LUB, a first feature of the LUB is the definition of "livestock". Section 1.7 of the LUB states:

> "LIVESTOCK" means, but may not be restricted to, cattle, horses, sheep, goats, swine and domestic fowl."

[43] The definition thus distinguishes the cases of ***Summers v. Clearwater (County) SDAB et al.***, (2004) 2 M.P.L.R. (4th) 81, 2004 ABCA 285 (Alta. C.A.) ("*Summers No. 2*") and ***Summers v. Clearwater (County) SDAB et al.,*** (2003) 37 M.P.L.R. (3rd) 72, 2003 ABCA 140 (Alta. C.A. Berger J.A.) ("*Summers No. 1*"). Those cases had to do with possession of llamas on the property of the applicant in that case. The SDAB there contended that llamas were livestock. This Court in that case observed that the definition of "livestock" in the LUB did not mention llamas and, accordingly, looked for another basis to determine if llamas were "livestock". The Court could not locate any finding of fact by the SDAB that supported finding llamas were "livestock". In that regard, the ***Summers*** decisions are distinguishable. Here the applicant contends for an interpretation of the overall LUB that would sidestep the inclusion of "horses" in the "livestock" definition entirely, not one that would construe it.

[44] There is in my view no significance to the use of the plural in this definition even though the applicant's counsel suggested a "herd of one" was nonsense. All the animals listed are set out in plural groupings. The law of statutory construction generally recognizes, as does s. 26(3) of the *Interpretation Act*, R.S.A. 2000, c. I-8, that, with respect to enactments, "words in the singular include the plural, and words in the plural include the singular." The applicant's counsel did not seek to suggest that the word "horses" prevented the application of the definition to a single horse. As noted above, the argument was rather that the LUB as a whole did not make that definition of "livestock" an impediment to her possession, stabling and care of O'Bee because O'Bee was a "pet" in the context of s. 3.2(1)(g) of the *Development Control and Permits* of the LUB regardless of whether O'Bee was also "livestock" if some other part of the bylaw applied. The LUB did not, she asserted, exclude possession of a horse from a permitted use.

[45] The decisions in ***Summers*** emphasize that "restrictions on a permitted use must be clearly stated in the bylaw": ***Summers No. 1***, at para. 11 citing ***274099 Alberta Ltd. v. Sturgeon (Municipal District No. 90 DAB)***, (1990) 3 M.P.L.R. (2nd) 265 (Alta. C.A.).

[46] To give context to her argument that the LUB permitted possession, stabling and care of a

pet horse, the applicant's counsel noted that the definition of "ancillary building" in s. 1.7 of the LUB refers to a main building and a secondary building that "with regard to a residential use may include a private garage, a storage shed and greenhouse, but does not include a guest house". Contrary to the applicant's position, however, the definition of "ancillary building" would arguably assist the SDAB's interpretation of the LUB by revealing an intent to distinguish between "residential" usages and other usages. The applicant's use is asserted to be a residential use.

[47] Nonetheless, the applicant's counsel sought to connect the defined term "ancillary building" to the internal terms of the definition of "private stable", defined in the LUB as "an ancillary building for the accommodation of a horse or horses kept for the private use of the owner". The latter definition, however, appears to be only a free-standing concept in the LUB since, according to counsel for the SDAB, the expression "private stable" does not otherwise appear in the LUB. As such, the definition sheds light on no other use of the term. It cannot assist the interpretation of s. 3.2 of the *Development Control and Permits* part of the LUB.

[48] As mentioned above, the applicant's counsel relied heavily on the argument that the possession , stabling and care of a single horse amounted to having a pet, and thus fell within "the pursuit of a minor personal recreational interest" pursuant to s. 3.2(1)(g) of the *Development Control and Permits* part of the LUB. This provision must be read in conjunction with s.3.2(1)(l) of *Development Control and Permits* of the LUB which states:

> (l) minor agricultural pursuits, including but not necessarily limited to raising poultry and maintaining livestock for the exclusive use and enjoyment of the occupants of a lot in a Country Residence Agricultural District ("CRA"), in an isolated Country Residence District, "CR" which is entirely composed of only one lot, or on any residential lot in an Agriculture District "A"; ...

[49] S. 640(2) of the *MGA* provides that a bylaw like the LUB must divide the municipality into districts. Here it was accepted that the Applicant's residence is in the NRR district and not in the CRA, CR or A district. The Applicant's Counsel contended that 3.2(1)(l) of the *Development Control and Permits* did not influence the meaning of s. 3.2(1)(g) of the *Development Control and Permits* part of the LUB.

[50] The law, however, would suggest otherwise. In ***R. v. Ulybel***, [2001] 2 S.C.R. 867, 2001 SCC 56 (S.C.C.), at para.30, the Supreme Court considered the interpretation of a statutory provision where words appeared without a limitation. In doing so, the Court compared that

provision to others in the same statute where a limitation did appear. Applying the steps in the familiar core principle in Professor Driedger's *The Construction of Statutes* (*Driedger on the Construction of Statutes*, 3rd ed. By Ruth Sullivan (Toronto: Butterworths, 1994) at 288), the Supreme Court used Professor Sullivan's third edition of that work to explain the context concept:

> The meaning of words in legislation depends not only on their immediate context but also on a larger context which includes the Act as a whole and the statute book as a whole. The presumptions of coherence and consistency apply not only to Acts dealing with the same subject but also, albeit with lesser force, to the entire body of statute law produced by a legislature. ... Therefore, other things being equal, interpretations that minimize the possibility of conflict or incoherence among different enactments are preferred.

[51] As pointed out recently in ***McDiarmid Lumber Ltd. v. God's Lake First Nation***, (2006) 57 C.L.R. (3d) 1, 2006 CarswellMan 425, 2006 SCC 58 (S.C.C.) at para. 36:

> 36 It is presumed that the legislature avoids superfluous or meaningless words, that it does not pointlessly repeat itself or speak in vain: *Sullivan*, at p. 158. Thus "[e]very word in a statute is presumed to make sense and to have a specific role to play in advancing the legislative purpose." This principle is often invoked by courts to resolve ambiguity or to determine the scope of general words.

[52] This notion of context relates back to the "core principle" of statutory interpretation emphasized by *Driedger* mentioned above, and has been cited many times by the Supreme Court, including in ***R. ex rel Merk v. International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 771***, [2005] 3 S.C.R. 425, 2005 SCC 70 (S.C.C.), at para. 18, that "[T]he words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament." See also ***Seabolt Watershed Association v. Yellowhead (County) SDAB***, (2002) 2002 ABCA 124 (Alta. C.A.; Russell J.A.) at paras. 27 to 28 ("*Seabolt*").

[53] Here, the express reference to maintaining livestock in s. 3.2(1)(l) of the *Development Control and Permits* of the LUB strongly suggests that "maintaining livestock for the exclusive use and enjoyment of the occupants of a lot" would be a permitted or discretionary use for the specified districts. Counsel for the SDAB suggests, therefore, that maintaining livestock, namely a horse, for use or enjoyment could not be inferred to be a permitted or discretionary use for the NRR districts, otherwise there would be little point in specifying the districts to which s. 3.2(1)(l) applied.

[54] Following the SDAB's reasoning further, then, it follows that maintaining livestock, namely a horse, likewise could not be included within "minor personal recreational interests" because maintaining livestock, namely a horse, falls within "minor agricultural pursuits", with the only common word being "minor". More specifically, "minor personal recreational interests" is defined in the LUB as a "use of land for recreational purposes that is unobtrusive and does not unduly disturb or affect the use and enjoyment by neighbouring land owners of their property". This latter definition does not of itself expressly exclude having a horse if doing so would be "unobtrusive" and not "unduly disturb or effect" neighbours' enjoyment of their property. However, by the same token the LUB does not expressly permit having a horse nor does it assume that to do so would be found by the SDAB to be "unobtrusive" and so forth merely because current neighbours do not object. No separate definition for "minor agricultural pursuits" was referred to me by counsel during argument.

[55] Counsel for the SDAB adds that s. 3.1 of the *Development Control and Permits* of the LUB specifies that no development other than those listed in s. 3.2 of that part shall be commenced without a permit. That in itself does not necessarily assist in the interpretation of s. 3.2(1)(g) for the purposes of this application but it does in part address the point in ***Summers No. 1*** about restrictions needing to be express in the bylaw.

[56] The SDAB's exclusion of keeping O' Bee as a pet was driven by the thesis that a permitted or discretionary use should be authorized in the LUB before a permit can be issued to allow it: s. 687(3) of the *MGA*. Counsel also referred to Laux, *Planning and Practice in Alberta*, 3rd Edition, at p. 9-5. The keeping of livestock is not expressly included in s. 3.2(1)(g), and the reference in s. 3.2(1)(l) to minor agricultural pursuits is a specific permitted or discretionary use not applicable to the NRR district.

[57] The SDAB's reference to the putative *Development Guidelines* for the NRR district was, its counsel urges, merely a contextual reference to interpreting what s. 3.2 of the LUB must have intended to allow in s. 3.2(1)(g). In that sense, Counsel said, it did not matter if the *Development Guidelines* for the NRR had itself been promulgated to the point of being a lawful restriction on permitted or discretionary uses. Counsel said it was unnecessary to consider if the *Development Guidelines* involved some sort of overbroad delegation of discretion to development officers as the Applicant's Counsel urged, citing ***Urban Outdoor Trans Ad v. Edmonton (City SDAB)***, (2000) 2000 CarswellAlta 414 (Alta. C.A., Costigan J.A.) at paras. 11 to 13.

[58] It is unnecessary to decide the full status of the *Development Guidelines*, notably whether they rise to "policies" under s. 1.6 of the LUB, or any other legal effect they might have. I am not persuaded that the SDAB used the *Development Guidelines* to unduly influence their

interpretation of what were permitted or discretionary uses under the LUB. If the *Development Guidelines* for the NRR district were clearly set out in the LUB as applying to the NRR district, the SDAB's position about what the LUB stipulated for the NRR district would be strengthened. The fact that such is not the case is not, however, necessarily fatal to the SDAB's position.

[59] The SDAB was not entitled to grant a permit under *Development Control and Permits* of the LUB to the applicant to possess and house O'Bee on her property unless that "use" conformed "with the use prescribed for that land or building in the land use bylaw": s. 687(3)(d)(ii) of the *MGA*. To "conform", the use had to be authorized under s. 3.1 of the LUB. To be authorized as a permitted or discretionary use, the use had to be included in s. 3.2 of the LUB. In light of the definitions of "livestock" and "minor personal recreational interests" in the LUB, coupled with the implicit exclusion from s. 3.2(1)(g) of activities addressed for other districts pursuant to s. 3.2(1)(l) of the LUB, it cannot be argued that the possession of O'Bee would "conform". The SDAB did not, therefore, have the ability under s. 687(3)(d)(i) of the *MGA* to issue a permit allowing the possession, stabling and care of O'Bee as a "variance" even with the conditions said to have been proposed by the applicant.

[60] It is not reasonably arguable that the applicant's intended use falls within the list of permitted or discretionary uses in the LUB. The applicant's argument would have to stitch together unrelated definitions and ignore impediments, both direct and implicit in the LUB, to prevail. However thoughtful it may be, the argument does not rise to the level required by s. 688(3) of the MGA: see *e.g.* ***Mirror (Village) v. Lacombe (County) SDAB***, [2001] A.J. No. 1338 (QL), 2001 ABCA 272 (Alta. C.A.) at para. 7.

[61] As the SDAB did not have the ability to issue a permit, there is no need to consider the question of fettered discretion or of improper use of the *Development Guidelines* or a provincial statute or improper sub-delegation. The reasons of the SDAB on this point are sufficient to illuminate the pathway to its conclusion.

7. Conclusion

[62] The application for leave to appeal is dismissed as having no reasonable prospect of success, and in any event as not raising a point of sufficient importance. Whether the applicant might seek to have the LUB adjusted either as to permitted or discretionary uses or districting is not for me to say.

Application heard on February 14, 2007

Reasons filed at Edmonton, Alberta
this 28th day of February, 2007

Watson J.A.

Appearances:

S. Alexander-Smith
for the Applicant

S.C. McNaughtan
K.L. Becker
for the Respondents

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Appeal Board rec'd: June 22, 2021
Submitted by: D. Taylor, neighbour

20 June, 2021

City of Calgary
Development Appeal Board
1212 31 Avenue NW,
Calgary, AB
T2E 7S8

Hearing: SDAB 2021-0040 .
Re: DP2021-1721 – 1651 8th Avenue NW

Thank you for the opportunity to speak to my concerns with the most recent proposal you have before you. We have both been down this road before, so I will be somewhat brief in my remarks. You may still have access to my more substantial comments from the first hearing on this address.

The question that interests me, and the one you must first answer for yourselves to determine whether or not you have any discretion in this matter is: what conditions existed for the first submission to be considered a **discretionary use** and what conditions changed to have it now considered a **permitted use**? The physical proposals are essentially identical, so what happened?

I will begin by repeating that I fully support the principle of urban densification in the interests of a more diversified and responsive city, and of encouraging the development of secondary suites. I supported the use of the Rowhouse typology on the north/8th Avenue lot, and suggested that the 130+ foot long 16th Street façade could be made more contextual with minor loss of sellable area. I optimistically hoped that some careful design thought and a little more respect for the neighbourhood could resolve the differences. I know developers and designers who have made friendly and good places with rowhouses on corner lots, so it can be done.

My objection to this current proposal remains, that in my opinion this particular built form is still not sufficiently "Contextual" (that is what the **C** in **R-CG** stands for) and is an inappropriate imposition on the character and qualities of the already-densified R-C2 neighbourhood. This view is consistent with that of the SDAB the first time this was submitted.

So I was surprised and disappointed to find that it is a new game. If you don't win – change the rules. It now appears that the current proposal assumes that the SDAB has no jurisdiction in matters of "context" and that Planning approval of the current DP ends this matter. The 16th Street face of the current project is virtually the same as the earlier proposal in its size, scale and detail. As if to confirm who is the boss, it moves the secondary suite entries from the rear to 16th Street, so instead of 8 front doors there are now 16. "Context" is no longer about the qualities of what surrounds you, but a series of boxes to be checked. Your neighbour may be

looking at a flat face 35 feet high and 130+ feet long, but if your front doors are recessed 12 inches and you have a "porch" slightly narrower than a double bed, you are "contextual". (Actual requirements). You can hear the authorities heaving a sigh, no longer having to make those tough judgements about context. The damage was apparently done when all 3 lots were rezoned R-CG and not just the north lot. Those who approved that zoning could have actually thought it through and seen this coming. Live and learn.

Perhaps if you are able to know who changed the rules and why, you may be able to make the kind of judgements in the public interest that the SDAB was created for. If not, one just moves on. I am sorry that we have both been so disrespected by many involved in this process, because you do valuable work. Thanks for that.

The World is Changing
Keep Up

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SUBMITTED BY EMAIL 22 June, 2021

This difference of opinion is the result of the proponent's decision to develop the entire site with the rowhouse typology and the corresponding standards now permitted by the new R-CG designation, and enabled by the decision of the Development Authority, despite a number of remaining Bylaw Discrepancies, that the chosen form would have no negative effects on the character of the street or the experiences of its residents. My objection is not about the quality of the building as such, but about the suitability of the townhouse typology, and attendant baggage, in this particular place. Please note that I have not specifically included the issue of parking in my objection, as it is a topic to be addressed in detail by other appellants. I would like to separate the issue of context from that of parking so if the parking objection is dismissed (it is my experience that this is most often the case), context will remain a factor and still be seriously considered. I will also qualify my objection out of respect for the hard work and firmly held opinions of those involved, and with the hope that there is still a way forward that may be acceptable.

It is the job of Council to make decisions at the broad policy level, to not follow their execution in detail, and to pass the implementation on to staff. They would likely be pleased with a significant added density and no Twitter storm. It is the Job of the Development Authority to apply the rules, be fair and to assure that the interests of the community are well represented. They would likely be satisfied to just point out the measurable rules and have the subjective questions, such as what constitutes context and character, or why a 3-bedroom unit in a rowhouse needs 1 parking stall and a 3-bedroom semi-detached unit needs 2, or why a secondary suite doesn't need any, left to the Board.

As for the proponent, it is a natural part of the development business to look for land that can be turned to higher and better use, often with the desire to create something better but always with the objective of profit. If you see an old R-1 lot now able to have an R-C2 density, that is an opportunity. Given the City's pressure to densify, there may be a designation that allows more that R-C2 and that is a better opportunity, so give it a try. I have no problem with the builder seeking the opportunity. That's business. It is the job of the Development Authority to balance the private and public interests.

In the minds of City staff an R-CG designation was the next density stage up and, being aware of the pressure both from above and from the applicant, and of their responsibility to the neighbourhood, they decided that R-CG should work fine. This was the point where all possible outcomes should have been imagined, an actual walk through the neighbourhood happened and the neighbourhood context taken into account. (Note that both designations above have a "C" in them, and that a rowhouse is not a permitted use in an R-C2 district, presumable because it is not in context. To simply declare it a permitted use does not alter its effect on the neighbourhood, or oblige one to use it). Either this site review did not seriously occur in this case, or the pressure of expectations and the bureaucratic tendency to avoid decisions that are not the result of some measurable process or written rule was too much. It is now the task of the Board to consider what others find difficult – the hard-to-measure qualities of Context and Neighbourhood Character and the responsibility of new buildings to respect that. Good luck.

* * * *

In this instance, the existing neighbourhood is in the final stages of transition to its completed R-C2 character from its historic single family bungalow life. This proposal is not the first stage in the eventual transition of an aging R-1 to an R-CG neighbourhood, as is the case with a number of recent rowhouse developments in the NW beltline, which I imagine are presented as precedents. These corner developments are intended to be what the neighbourhood will eventually become. They are not what our blocks have already become. On the 6th, 7th & 8th Avenue/16th Street stretch that we are discussing there are a few developable single lots remaining, and only two locations with adjacent developable lots, of which this is one. The character of these streets has been clearly established. It could, and many believe should, complete itself as a C2 neighbourhood. That is clearly anticipated in the City's carefully considered and approved Hillhurst Sunnyside APR referred to above. But things do change and the possibility for things like secondary suites and appropriate densification should be fairly considered. It is possible that there could be proposals under the R-CG designation that allow for both more density and contextual fit, and that your decision today need not be the final all-or-nothing decision in the matter of density and neighbourhood character. I know that you have been down this path before, but a decision that parking pressures are a fair price to pay for more density, thus allowing the proposal as presented to go ahead, would be premature without seriously considering the issue of context. It is not my place here to redesign the project, but perhaps to show that there may be other options.

Consider, for instance, the north lot facing 8th Avenue at #826. Across 8th Avenue is a streetscape unlike the R-C2 scale and character of 16th Street. This lot is like the one on the corner of 16th Street and 6th Avenue that had been previously redesignated R-CG. That lot has been developed with row housing on traffic-heavy 6th Avenue, but the resulting 16th Street face is still of the scale of a semi-detached unit, compatible with the R-C2 street. With this façade length, and being at the 6th Avenue corner, the rest of 16th Street is not seriously compromised by that building. The north lot of the development we are considering is the same size and proposes 6 units, plus 5 secondary suites, 5 times the current potential C2 density. Given the particular nature of 8th Avenue and of this site, that portion of the scheme, like its cousin on 6th Avenue, could be considered properly contextual. The rowhouse typology of R-CG might work on that north-facing portion of this project from the point of view of density and compatibility.

It is when this proposal turns the corner onto 16th Street that it gets into trouble. It becomes a 132' long single building, with serious encroachment on the contextual front setback, no permeability from street to the common outdoor space and the casual indifference to the public life of the street that rowhouses seem to have (and there are reasons for that). If the 2 lots to the south had been available, it would have probably been 230 feet long, and when those lots do become available and if this proposal is approved, it probably will become so. No matter how tastefully you disguise it, it is a pushy rowhouse. While handsome, it is not a good neighbour. It needs a street of its own, with a beginning and an end (like the *Henry* on Parkdale Blvd, which I admire) so that it doesn't look like it is ready to eat its neighbours. The two lots

mentioned above on 6th and 8th Avenues are sufficiently contained in this way, face streets with character different and separate from 16th Street, and so can accept rowhouses.

Units 1 through 6 of this proposal are the problem, and also hold the solution. They could, for instance, become 4 “semi-detached” units with secondary suites, each 21’ wide (40% wider than those they replace) which will allow them to be reconfigured to now respect the contextual rhythm of the street and address the minimal front yard. The additional unit area and new access to light may help reduce any theoretical “lost revenue” of 2 less units. 16th Street could now have a consistent R-C2 street presence, as valued and deserved by the residents and supported by the APR, and Council could have its significant increase in density. These changes would require the whole parcel to remain R-CG, both so the rules that allow the current proposal’s parking and common outdoor space plan could remain, and because the resulting “semi-detached” units are not detached in the same sense as defined in the Bylaw. They should really be seen as 4 of the original rowhouse units that have put on some weight and have been separated from their colleagues in order to fit in with their neighbours. It is sometimes useful to think of places as having a life rather than as just numbers and checked boxes. So it should be possible to apply the R-CG rules without maxing out the site with a single rowhouse, and be possible to achieve a significant density increase while respecting both the character of the neighbourhood and its residents. The current proposal has not done so.

In conclusion, I urge that this appeal be upheld and that the proposal as presented not be allowed to go forward in its present form. Unless this appeal is successful on the basis of parking pressures or oversight, which would likely also disqualify any amended version, a new proposal could reappear with revisions that respect the context and the spirit of the Hillhurst Sunnyside APR and eventually be welcomed as a new member of the neighbourhood. Either outcome would help reduce my serious concern that this may become a precedent for the reclassification to R-CG of the one other adjacent set of developable lots in the neighbourhood, which happens to be a short distance away on the corner of 16th Street and 7th Avenue, directly across the street from my own semi-detached home. Being in the centre of the redeveloped C2 neighbourhood and not on an edge as in the case we have discussed, another rowhouse proposal would be seriously “non-contextual” (and not just because it is in my line of sight) and I would be obliged to strenuously oppose it from the beginning and not wait for appeal time. That response would not be as accommodating as this one.

Thank you for your careful consideration.

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