

- a) Presentation of Appellant**
J. Laurie addressed the Board identifying himself as the Managing Director of Corporation Farwest Land & Properties Inc. J. Laurie indicated he was here to

petition the SDAB to utilize its authority under Bylaw 1742/2013 Page 9, Paragraph 34 which states "The SDAB may confirm, revoke or vary the order, decision or development permit, subdivision or any condition attached to any of them or make an order, decision or permit of its own."

J. Laurie indicated he wishes to petition for the order of a variance in the approval and conditions of the instrument of Consolidation and Separation that was provided to the Subdivision Approving Authority (SAA).

J. Laurie referenced several documents which he has that identify the subdivision as being pre-existing. As well as documentation that shows existing access to the proposed subdivision and the available servicing to the area. He indicated he also had documentation confirming the zoning of the lots. He also has the titles which identify that there are 20 - 25 foot lots in 4 contiguous parcels.

J. Laurie referenced a confirmation of correctness that the application is as per the Alberta Land Titles Act Section 75 and Con 1 and Sep 1 and Form A with the application being in accordance with MGA 653(1). He indicated that he confirmed with Global Raymac that his process was correct and that the lots met the correct size as per the Town's Land Use Bylaw.

J. Laurie distributed copies of the plan of subdivision to the Board members and referred to the purpose of subdivision identified on the plan and Section 75 of the Land Titles Act and explained the intent. He also distributed another map which shows the existing lines of 25 foot lots. Further, commenting that you can separate the current titles and redistribute them into 9 parcels. He noted that the subdivision doesn't change the existing lines or boundaries.

He indicated he thought it would take 21 days to get approval and endorsement and then it could be registered. Instead it was treated like a brand new subdivision, which cost more, it should only of cost \$100 for the endorsement fee. He indicated that the application was processed incorrectly and now we have an approval with conditions. It should simply of been dealt with as a consolidation and separation. Further that any conditions should have been applied at the development permit stage as per Bylaw 1698 Sections 15, 16 and 18. He is appealing for a variance in this situation. He further commented the Town utilized section 655 of the MGA which introduces force and arm bending by attaching conditions to a once unencumbered lot.

J. Laurie suggested the easiest way to resolve this issue is for the SDAB to follow MGA Section 657(3) which allows for the approval and endorsement of the subdivision and all the conditions can be applied under Bylaw 1698. J. Laurie is looking for a way to resolve a situation they have found themselves, in that they have presold a home and now cannot get title and the purchaser cannot get a mortgage.

J. Laurie noted a development permit has been issued on one of the lots and a building permit should be issued shortly. J. Laurie implied errors occurred due to the lack of experience of Administration and his own.

J. Laurie also expressed concern the Town did something they should not have and referenced the Municipal Inspection Report. He noted the Town should of required an Environmental Site Assessment prior to processing the application

versus imposing a condition of provision of an Environmental Site Assessment. He commented that this proves that errors are being made. He reiterated that the solution is to approve the application without conditions and all conditions can be placed at the development permit stage. He indicated he feels he is being held at ransom as the application cannot be endorsed until he has met the conditions. Again commenting that it is against the law and indicated he has a court case that supports his position.

J. Laurie referenced the July 23, 2014 letter of approval and spoke to the conditions imposed and his proposed changes.

1. *Environmental Site Assessment (ESA) be provided by an environmental consultant company stating that an ESA has been conducted and that the site is acceptable for residential development.*
J. Laurie indicated an ESA should of been required prior to approval.
2. *Provision of a grade plan to the satisfaction of the Town's Engineering Department.*
J. Laurie indicated this is duplication and should be removed.
3. *Land Use Bylaw amendment to change the land use to an appropriate land use district.*
J. Laurie indicated the property has been rezoned to R1.
4. *Payment of any outstanding taxes.*
J. Laurie indicated that taxes have already been paid.
5. *Payment of Infrastructure Capacity Fee (1.49 acres x \$8,000.00) in the amount of \$11,920.00.*
J. Laurie indicated that as per the MGA there is no such thing as a Infrastructure Capacity Fee and a levy can only be charged if there is a Off Site Levy bylaw adopted.
6. *Applicant to satisfy Utility Company requirements and provide written confirmation.*
J. Laurie indicated he has letters from the Utility companies that resolve gas and electric servicing requirements.
7. *Applicant entering into a Service Agreement with the Town of Redcliff for the provision of detailed plans and specifications:*
 - *Provision of a site drainage plan and resolution of drainage issues to the satisfaction of the Manager of Engineering.*
J. Laurie proposed to provide a site grading plan confirming site drainage, lane drainage, and street drainage to existing catch basins.
 - *Confirmation that site drainage is in existence or will be established.*
J. Laurie proposed this condition be removed as it is duplication.
 - *Storm sewer.*
J. Laurie indicated the storm sewer/catch basins are pre-existent. The Town to correctly locate and set elevations for catch basins at their own cost to correct error in placement.

- *Curb/gutter.*
J. Laurie indicated plans to install curb and gutter to the north and west and south perimeter of Lots 1-20, Block 99, Plan 1117V. Cast catch basin lids into curb and gutter installations. As per standard design and specifications.
- *Sidewalk.*
J. Laurie indicated plans to install 4' standard sidewalk to 500 feet of frontage of Lots 1-20, Block 99, Plan 1117V as per standard design and specification.
- *Street lighting*
J. Laurie indicated plans to install streetlighting to the east side of the street on Block 99, Plan 1117V as per Medicine Hat Electric Utility.
- *Road base construction and pavement.*
J. Laurie indicated the street is pre-existent as per MGA 655(1)(b)(i). Any road development would be an upgrade or improvement. The appellant is only required to build a road to obtain access. Access is pre-existent. Appellant will participate up to 25% of costs.
- *Lane construction.*
J. Laurie indicated the back lane is pre-existent. Lane construction is not contemplated in the MGA. The appellant will participate up to 50% of costs to improve the lane. Current quote is \$13,000. Appellant will budget to a maximum of \$6,500.
J. Laurie commented the Town does not maintain laneways and sidewalks and results in deteriorated laneways and sidewalks.
- *Other service extension or improvements as required*
J. Laurie indicated it is Town's duty to install as per MGA 34(1). The appellant will budget \$27,000 for these services. No road patching required (9 x \$3,000 each)
- *Other items as required by the Town of Redcliff.*

J. Laurie further added the Town is to complete all contemplated and budgeted modifications to sewer and water services in 5th Street NW as early as possible. J. Laurie objected to not being told the Town may be upgrading infrastructure in 5th Street.

8. *All legal costs associated with the servicing agreement to be borne by the applicant.*

J. Laurie indicated this condition should be removed as payment of legal costs for preparation of a service agreement is not contemplated in the MGA or Municipal Bylaws.

J. Laurie asked that the application be approved and immediately endorsed. He indicated that he follows the MGA and expects the Town to do so. J. Laurie further made reference to the Canadian Charter of Rights and the rights and

freedoms outlined within it. He is concerned that things are being stopped because someone interprets laws differently. J. Laurie indicated it is within the law that this application be approved without conditions and conditions can be applied at the development permit stage. The conditions being imposed are development related and should be applied at the development stage.

The subdivision meets all the requirements that the town is asking for. These lots are an improvement for the Town. J. Laurie indicated that Land Titles has provided him with a letter which has said that process followed was incorrect.

b) Presentation of Subdivision Approving Authority Representative

J. Laurie objected to A. Crofts speaking for the Subdivision Approving Authority.

A. Crofts distributed his written presentation to the Board members.

A. Crofts advised that he had been appointed by the Subdivision Approving Authority to speak on their behalf. MGA Section 679 and 680 allows for a person acting on behalf of the Subdivision Authority to speak on their behalf.

A. Crofts addressed the Board with his presentation, as attached.

There was brief discussion regarding issuance of a development permit on one of the lots prior to subdivision.

c) Presentation of Planning Consultant

See attached.

d) Presentation of anyone served notice of hearing (School Authority, Government Agencies)

No one in attendance.

e) Presentation of Adjacent Property Owners

A. Vis, Sunshine Greenhouses expressed concern if they would incur any costs for any infrastructure improvements as they are an adjacent landowner. Further he questioned the vagueness of the conditions imposed. He indicated he is in favor of residential development and seeing the Town grow. However, purchasers need to be aware that they will be adjacent to a greenhouse which can produce noise and smells. A. Vis also commented that they might, in the future, look at developing their site into residential lots.

f) Rebuttal of Appellant

J. Laurie commented this area is a transition area and the blocks north and south have roads but do not have any sidewalks, curb and gutter or streetlights. The block behind does not have any improvements. There is disparity in the area because it is a transition area and is something that needs to be worked on. J. Laurie indicated it feels like we are doing a lot of hair splitting. The subdivision has been approved, the land use amendment has been approved and we are just struggling with the details. J. Laurie indicated there seems to be a misunderstanding with A. Crofts and what we are trying to do. Farwest is not trying to avoid anything, there are two processes and the Town is only considering one. Consolidation and separation is allowed under the Land Titles Act. He indicated this is not a real subdivision. The lots are already there, its just a redistribution of lines.

J. Laurie indicated he is not saying he should not go through the subdivision process but questions what kind of process should be followed. Should be able to proceed with subdividing with no conditions. J. Laurie referenced Section 75.1 of the Land Titles Act and reiterated that the application can be approved and they should only have to meet the standards of the Land Use Bylaw (ie: minimum lot sizes).

J. Laurie spoke to the process under the Land Titles Act and Con 1 indicating this is an appropriate approach to subdividing. There are two processes under the MGA that can be followed either by Section 650 or 655. One is a facilitator and one is an obstructer and J. Laurie is in favor of the one that does not impose conditions.

With regard to the road, the MGA says the requirement is to give access, nothing about upgrading, access is already there. It also says nothing about curb and gutter, and for public utilities the MGA says the municipality has a duty to install.

J. Laurie referenced a Court of Appeal judgment that deals with a similar situation. He indicated only those things expressly stated in the MGA can be applied as conditions. He further referenced natural person powers stating that natural person powers do not expand what the municipality may add into an agreement.

J. Laurie indicated he is not trying to avoid conditions but simply trying to clarify the conditions. With regard to utilities he noted the City has changed their position since they initially provided their comments to the Town.

J. Laurie commented they have met many conditions but are still trying to make some of them work. He commented that the blocks north and south do not have the infrastructure that is being asked of him to install.

He questioned what was approved if the lots were already there and the services were already there. He questioned what he was charged \$1,350 for, was it just to impose conditions, those conditions could be applied at the development stage. He sees this process as an obstruction.

J. Laurie commented that more people signed a petition than came out to vote.

J. Laurie commented he appreciates the concerns of A. Vis. However, he noted that his purchaser is not concerned with being adjacent to a greenhouse and is constructing a \$500,000 dollar residence.

He thanked everyone for hearing his appeal and reiterated that he would like the application varied by removing the conditions and attaching them at the development permit stage. He would like to see schedule 2 varied slightly and that any duplications be removed and further that if there is a service agreement required that it be applied at the development permit stage. Commenting that he is willing to extend an agreement to include the lot that a permit has already received approval on.

g) Other

K. Minhas clarified the difference between a grade plan and a site drainage plan. Further that the condition of a grade plan should be under the service agreement

as it is usually part of a site drainage plan.

B. Hawrelak questioned what existing infrastructure is in place for storm sewer. K. Minhas indicated that there may be different requirements for increased density for residential. B. Hawrelak questioned if a major refit for storm sewer would be required. K. Minhas responded that once a detailed design is completed the required infrastructure improvements would be identified.

A. Crofts commented that once the detailed design is completed that any cost sharing with the Town can be discussed at that time.

Discussion ensued with regard to the storm sewer in the area, the storm sewer study as well as the sanitary sewer system.

h) Recess

V. Lutz moved to meet In Camera at 9:11 p.m.

The Appellant, Subdivision Approving Authority Representative, Planning Consultant and other persons in the gallery left at 9:11 p.m.

i) Decision

P. Monteith moved that in regard to the appeal from Farwest Land & Properties Inc. against the decision of the Subdivision Approval Authority regarding Subdivision Application 2014 SUB 02 that the decision of the SDAB is to vary the decision of the Subdivision Approving Authority of July 21, 2014 by varying the conditions imposed in the following manner:

A. Condition #1 through #5 stand as issued.

[Repeated here for completeness.]

1. Environmental Site Assessment (ESA) to be provided by an environmental consultant company stating that an ESA has been conducted and that the site is acceptable for residential development.
2. Provision of a grade plan to the satisfaction of the Town's Engineering Department.
3. Land Use Bylaw amendment to change the land use to an appropriate land use district.
4. Payment of any outstanding taxes.
5. Payment of Infrastructure Capacity Fee (1.49 acres x \$8,000.00) in the amount of \$11,920.00.

B. Condition #6 is to be restated as: Applicant to satisfy Utility Company to *the standard of the authority having jurisdiction for that utility* and to provide written confirmation.

- C. Condition #7 is to be restated as: Applicant *to negotiate with and enter into a Service Agreement with the Town of Redcliff for the provision of detailed plans, specifications, and construction as following:*
- a. Provision of site drainage plan and resolution of drainage issues to the satisfaction of the Manager of Engineering.
 - b. Confirmation *in writing* that site drainage will be established.
 - c. ~~Storm-Sewer.~~ (struck out – see #i below)
 - d. *Installation of curb/gutter along 5th Street NW & 1st & 2nd Avenue NW abutting subject property to the standard of the Town of Redcliff with cost to be borne 100% by the Developer.*
 - e. *Installation of sidewalk along 5th Street NW abutting subject property to the standard of the Town of Redcliff with cost to be borne 100% by the Developer.*
 - f. *Installation of street lighting along 5th Street NW abutting subject property to the standard of the authority having jurisdiction (City of Medicine Hat Electric Department) with cost to be borne 100% by the Developer.*
 - g. *Road base and road construction (pavement) on 5th Street NW between the avenues of 1st and 2nd Northwest(including intersections) with cost to be shared between parties at negotiated proportion (Parties being the Developer, abutting property owners, the Town of Redcliff).*
 - h. *Lane construction between the avenues of 1st and 2nd Northwest (including curb crossings) abutting subject property with cost to be shared between parties at negotiated proportion (Parties being the Developer, abutting property owners, the Town of Redcliff).*
 - i. *Other service extension or improvements as required to service the development (sanitary sewer/storm sewer/main water piping) with cost to be shared between parties at negotiated proportion (Parties being the Developer, abutting property owners, the Town of Redcliff).*
 - j. *Individual service lines to the lots (sanitary sewer & water supply) with connection at the street main and interconnection at the property line with costs at established rate shall be borne 100% by the Developer.*
- D. Condition #8 stands with the insertion of: All *reasonable* legal costs associated with servicing agreement to be borne by the Applicant.

- Carried

Reasoning Behind the Board's Decision

The Board was guided by the principle that the subdivision must be of benefit to the Town of Redcliff as a whole (the Taxpayers), the adjacent properties, and the eventual owners (taxpayers) of the lots of the subject subdivision.

After presentations by all parties concerned, the Board believed that the principal matter to be determined during this appeal was one of the proportioning of costs between the Appellant (the

Developer) and the Town of Redcliff (the Subdivision Approving Authority – SAA).

While a claim has been made by the Appellant that the land parcel was already divided into four lots, and that the consolidation and then the re-division of the land parcel into nine lots was merely a matter of paperwork, this position ignores the fact that the parcel is to be re-zoned, that its use is to be significantly changed, from H Horticultural, to R1 Single Family Residential. Each of these zones has significantly different requirements in terms of utility services, site drainage, sidewalk and curb, roadway and curb crossing, and rear laneway. The existing roadway supplied and maintained by the Town of Redcliff may have been appropriate to the existing zoning (H), but entirely inappropriate for the requested zoning (R1). The re-zoning has been requested by the Appellant, not the Town of Redcliff, and is of direct benefit to the Appellant while being an indirect benefit to the Town of Redcliff (through increased taxes, increased development & population, better roadway to access 5th Street NW further to the North, etc.).

Additionally, while the improvement in services that are directly connected to the subject lots should be paid for by the Developer, when the services are shared with adjacent properties and the improvement may be of eventual benefit to those properties, then the matter of “Who should pay and when?” and the proportioning of cost becomes a more complex issue. As example, improvement of the roadway to current (modern) residential standards may require significant work and cost, and the installation of additional curb and gutter directly across from the subject development, and possibly in roadway areas to the North and South of the 100 block of 5th Street NW. What proportion of these costs should the Appellant pay? For the adjacent landowners, how much should they pay? When should they pay? With what instrument (Bylaw) would they be forced to pay? Under Board questioning, Mr. Vis, the property owner of the greenhouse directly to the West of the subject land (across 5th Street), admitted that at some point in the future he may be seeking to convert his greenhouse to residential lots, that the roadway improvement would be of direct benefit at that time, BUT, he had NO desire to contribute to the payment of the upgrade costs at this time. Should the taxpayers of Redcliff cover the cost proportion assigned to Mr. Vis property for the time being, with deferral of those costs assigned to Mr. Vis's property, to be paid when the property is redeveloped? How would this be achieved? Could the upgrade of the roadway be delayed with the Appellant installing curb & gutter at preplanned elevations and the Appellant's apportioned roadway improvement cost being paid and held in an account to pay for the future roadway work?

These questions were also extended to costs that may be incurred should it be determined that the sanitary sewer and water supply within the 100 block of 5th Street NW require significant work in support of the proposed redevelopment; utility upgrades would again benefit future redevelopment of adjacent lots.

The Board asked of the Town of Redcliff representatives present what utility upgrades are required and what the estimated costs might be, and the representatives indicated that as of the time of the hearing, both scope of work and estimated costs were unknown. Further investigation is required and therefore the costs cannot be established until this is completed. This condition appears to be impeding negotiations (in part) between the Developer and the Town of Redcliff, and thus potentially delaying the negotiation of a servicing agreement.

As the Board is indicating that some upgrades for the utilities and access to the proposed development be shared between the Developer, adjoining properties, and the Town of Redcliff, a division of costs must be determined. The Board cannot dictate a specific ratio of cost sharing, only stating that the desire is to be equitable between the various parties relative to the benefits to the parties.

With regard to the request by the Appellant for the Board to direct the Town of Redcliff to immediately register the new subdivision with Land Titles and that the conditions placed by the SAA on the subdivision should be the subject of the development process and NOT the subdivision process, consideration of this request became problematic upon the discovery that one of the original lots under the H zoning was the subject of active development and building permits issued under the discretionary use provision of the H zone (residential property directly in support of a horticultural operation). How could significant changes in the conditions of development be made retroactive to a permit already in force? In fact, with the approval and registration of the subdivision, in what manner would this alter the existing development & building permit? No one present within the hearing could or would speak to this issue. To the Board members it appeared that the desire by the Appellant to have the subdivision registered with Land Titles as soon as possible was being driven by a financial situation where either the sale of the lot, or the financial institution providing the mortgage for construction, required the title to be registered to the new owner as soon as possible, and that this could not occur until the subdivision was registered. The Board believed that while the Town of Redcliff's development department was complicit in creating the situation, the Appellant's actions were at the root of this situation, and the Board was not going to complicate the situation by directing the Town of Redcliff to register the subdivision prior to resolving matters effecting the development of the subdivision.

With regard to the Appellant's statements that conditions determined by the SAA to be placed upon the subdivision of a land parcel were contrary to the intent of the MGA (Municipal Governance Act – the Act), this is a subject to the interpretation of the Act and the Board does not claim to have any particular insight into the “correct” way to interpret the Act. The Board did recognize that until specific policy was determined by the SAA through legal counsel that recognized Court rulings of recent years, and this policy was written and available to the public and specifically parties considering potential subdivision, then the situation was going to arise again in the future. Additionally, the Board did consider that several of the conditions imposed should have been undertaken before the application for subdivision went before the SAA, however this is a matter of interpretation and timing by the various parties. As example, the undertaking of an Environmental Site Assessment (ESA) is likely best performed before the application for subdivision is filed so that the SAA has data establishing the site is suitable for the subdivision, but, developers would indicate, “Why spend the money on the ESA BEFORE having an SAA indication of agreement to subdivide? If I get approval, I'll spend the money and conduct the ESA and live by its findings as a condition of the agreement to subdivide.” The latter is what transpired within this case and the Board concluded it was reasonable.

Finally, throughout the hearing, on multiple occasions the Appellant gave indication that many of the conditions set by the SAA for subdivision have already been met, and the Appellant was willing to enter into a service agreement under reasonable terms. The Board took this as a positive position and urges the Town of Redcliff to negotiate and conclude a service agreement with the Developer that will benefit the Town as a whole, and be fair and equitable to all parties.

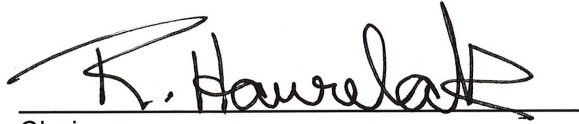
V. Lutz moved to return to regular session at 10:47 p.m.


The Appellant, SAA Representative, Planning Consultant, other members of the gallery returned at 10:47 p.m.

Chairman Hawrelak advised the appellant of the decision and that the written decision would be forthcoming.

4. **ADJOURNMENT**

P. Monteith moved the meeting be adjourned at 11:02 p.m.


Chairman


S. Simon, Recording Secretary

**Presentation to
Town of Redcliff Subdivision and Development Appeal Board
Appeal of Subdivision Application 2014 SUB 02**

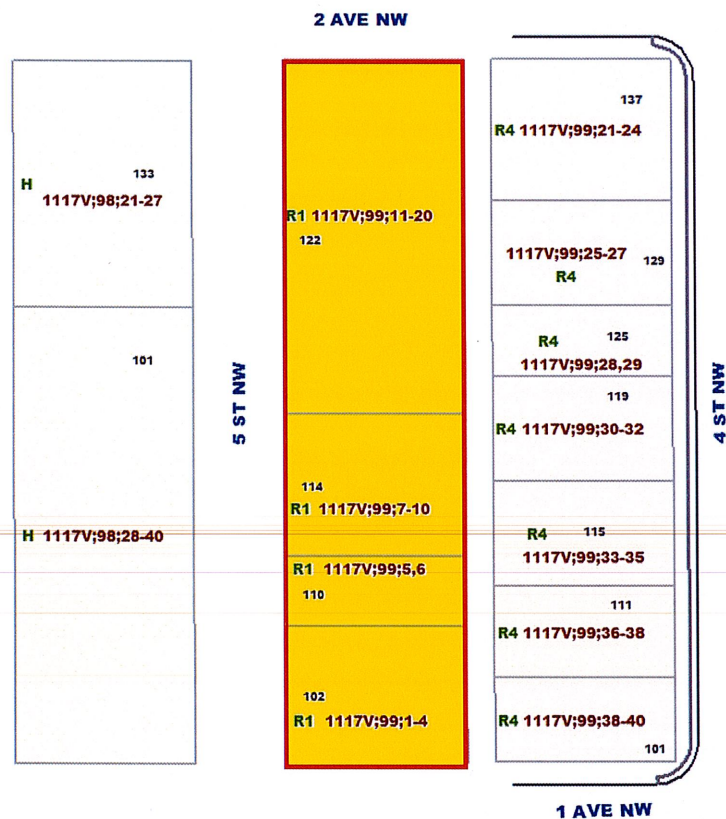
Background

An application for subdivision approval was received from Brian Munro, Global Raymac Surveys Inc. [agent for Farwest Land & Properties Inc. ("Farwest")] on June 18, 2014 and processed in accordance with the Municipal Government Act and the Subdivision and Development Regulations.

The proposed Subdivision Application 2014 SUB 02 was approved with conditions on July 21, 2014 by the Subdivision Approving Authority (Redcliff Town Council). The conditions are as follows:

1. Environmental Site Assessment (ESA) be provided by an environmental consultant company stating that an ESA has been conducted and that the site is acceptable for residential development.
2. Provision of a grade plan to the satisfaction of the Town's Engineering Department.
3. Land Use Bylaw amendment to change the land use to an appropriate land use district.
4. Payment of any outstanding taxes.
5. Payment of Infrastructure Capacity Fee (1.49 acres x \$8,000.00) in the amount of \$11,920.00.
6. Applicant to satisfy Utility Company requirements and provide written confirmation.
7. Applicant entering into a Service Agreement with the Town of Redcliff for the provision of detailed plans and specifications:
 - Provision of a site drainage plan and resolution of drainage issues to the satisfaction of the Manager of Engineering.
 - Confirmation that site drainage is in existence or will be established.
 - Storm Sewer.
 - Curb/gutter.
 - Sidewalk.
 - Street Lighting
 - Road base construction and pavement.
 - Lane construction.
 - Other service extension or improvements as required.
 - Other items as required by the Town of Redcliff.
8. All legal costs associated with servicing agreement to be borne by the applicant.

The location of the proposed subdivision is:



A Notice of Appeal was submitted to the Municipal Manager on August 11, 2014. Subsequently a Subdivision Appeal Board Hearing was scheduled for September 4, 2014.

To the matter of the requirement of Subdivision Approval:

Approval Process:

When the Subdivision Approval Authority receives and considers proposed subdivision applications it is required to make a decision in accordance with the *Municipal Government Act* and associated regulations (in this case the *Subdivision and Development Regulation*) as well as the subsequent Land Use Bylaw and other statutory planning documents (i.e. Municipal Development Plan and Tri-Area InterMunicipal Development Plan). Part 17 of the *Municipal Government Act* defines “subdivision” as “the division of a parcel of land by an instrument and “subdivide” has corresponding meaning.”

An application for subdivision approval was received from Brian Munro, Global Raymac Surveys Inc. [agent for , Farwest Land & Properties Inc. (“Farwest”)] on June 18, 2014 and processed in accordance with the *Municipal Government Act* and the *Subdivision and Development Regulations*. The application aimed to combine four current parcels of land in to one, followed by subdivision of that single parcel of land into nine separate parcels.

Farwest argues that its application qualifies under sections (652)(2)(e) of the *Municipal Government Act* and, as such, is exempt from requiring approval of a subdivision authority. Section 652(4) clarifies the need, in relation to Farwest’s application, for the required subdivision approval.

Part 17 of the *Municipal Government Act* states that, in general, a Registrar will not issue a Certificate of Title for a subdivision unless that subdivision has been approved.

It is important to note that the land (of which has conditional subdivision approval) in its current subdivided state was registered in 1909, and as such satisfies section 652(4)(a) of the *Municipal Government Act* and thus further solidifies that Farwest’s application is subject to approval of a subdivision authority. Furthermore, the subdivision Farwest seeks will result in lots less than 8.0 hectares in area, and therefore further satisfies section 652 (4)(b). Farwest’s application qualifies under section 652(4) and is subject to approval of a subdivision authority.

Municipal Government Act (MGA) Division 7, Section 652 Subsections 1 – 4 states:

652(1) *A Registrar may not accept for registration an instrument that has the effect or may have the effect of subdividing a parcel of land unless the subdivision has been approved by a subdivision authority.*

(2) *Despite subsection (1) and subject to subsection (4), a Registrar may accept for registration without subdivision approval an instrument that has the effect or may have the effect of subdividing a parcel of land described in a certificate of title if registration of the instrument results in the issuing of one or more certificates of title and the parcel of land described in each certificate of title so issued would consist only of any or all of the following:*

- (a) a quarter section;*
- (b) a river lot shown on an official plan, as defined in the Surveys Act, that is filed or lodged in a land titles office;*

- (c) *a lake lot shown on an official plan, as defined in the Surveys Act, that is filed or lodged in a land titles office;*
 - (d) *a settlement lot shown on an official plan, as defined in the Surveys Act, that is filed or lodged in a land titles office;*
 - (e) *a part of the parcel of land described in the existing title if the boundaries of the part are shown and delineated on a plan of subdivision;*
 - (f) *a parcel of land created pursuant to a bylaw passed by a municipality under section 665.*
- (3)** *For the purpose of subsection (2), a parcel of land is deemed to be a quarter section, river lot, lake lot or settlement lot if the parcel of land would consist of a quarter section, river lot, lake lot or settlement lot except that land has been removed from the parcel of land by a subdivision effected only for a purpose referred to in section 618(1) or by a plan of subdivision or any other instrument that effected a subdivision.*
- (4)** *Unless the subdivision of the parcel of land has been approved by a subdivision authority, the Registrar may not accept for registration an instrument that has the effect or may have the effect of subdividing a parcel of land*
-
- (a) *if the parcel of land is described in a plan of subdivision that was registered in a land titles office before July 1, 1950, and*
 - (b) *if the parcel of land contains 2 or more lots one or more of which is less than 8.0 hectares in area.*

Also of note as well is, provided the dividing lines do not deviate from the boundary lines as is on Plan 1117V a plan of survey nor a descriptive plan is required and the subdivision may be registered by instrument. If approval is granted, and once any conditions imposed are met, the applicable form would be stamped and signed by the Town of Redcliff. Because neither a plan of survey nor a descriptive plan is required does not change the fact that subdivision approval is required and must go through the same subdivision process.

Shortly after receipt of Farwest's completed subdivision application the application was referred, with copies of the complete application sent, to agencies determined relevant by the municipality, and as outlined in the *Subdivision and Development Regulation (5)* which includes the following:

- (5) On receipt of a complete application for subdivision, the subdivision authority must send a copy to
 - (a) each school authority that has jurisdiction in respect of land that is the subject of the application, if the application may result in the allocation of reserve land or money in place of reserve land for school purposes;
 - (c) if the proposed subdivision is to be served by a public utility, as defined in the Public Utilities Act, the owner of that public utility;
 - (n) any other persons and local authorities that the subdivision authority considers necessary.

In addition to the referrals made, the proposed subdivision falls within the boundary identified within the Tri-Area Intermunicipal Development Plan which requires such subdivision applications to be referred for comment to the neighbouring municipality, which in this case is Cypress County. The Tri-Area Intermunicipal Development Plan is a statutory document that was adopted by bylaw by the municipal authority. Section 2.14 54 (1) (b) of the Tri-Area Intermunicipal Development Plan states the following:

2.14 Urban Referral (UR) Area

2.14.1 Policy Context

The Urban Referral area as shown on Map A identifies a referral area where the County would be provided with information respecting urban planning and expansion within the Town and the City. Amendments to ASP's within half mile of municipal boundaries are subject to referrals to the neighbouring municipality. In addition, studies and initiatives that are not typical planning referrals such as engineering studies and municipal land use studies would be referred to the County for comment.

2.14.2 Urban Referral Area Policies

- | | |
|--|--|
| land
considered
for referrals | a) <i>Land within Medicine Hat and Redcliff boundaries shall be included in the IDP as shown in Map A for purposes of municipal planning referrals, dispute resolution and major extension of services and roads.</i> |
| documents
to be
circulated | b) <i>Referrals to the adjacent municipality will include land that is within 800 metres (0.5 mi.) of the adjacent municipality and is currently identified as Urban Reserve or Agricultural within the City of Medicine Hat or Town of Redcliff Land Use Bylaw.</i> |
| referral
expiry | c) <i>The City and Town shall refer applications for discretionary use development permits, Area Structure Plans, bylaw amendments, subdivision applications within the Urban Referral Area to the adjacent municipality.</i>

d) <i>When an Area Structure Plan is adopted by the Town or City for areas considered part of the Urban Referral area, further applications for planning approvals will not require referral to the adjacent municipality, unless the approving authority is of the opinion that a referral is appropriate due to the nature or scale of the development. Referral for municipal engineering or planning studies will continue to be referred to the adjacent municipality.</i> |

It should also be noted that pursuant to section 6 of the *Subdivision and Development Regulation*, the Subdivision authority is to make a decision within 21 days from the date of receipt of the completed application provided that no referrals are made. However, in this case, and in an effort to ensure that the lands were suitable for subdivision, and in keeping with provisions identified in section 5 of the

Subdivision and Development Regulation, referrals were made. As a result a decision was to be made within 60 days, which did occur.

To the matter of conditions of approval:

Conditions of Approval

As outlined in the appeal package, the proposed Subdivision Application 2014 SUB 02 was conditionally approved on July 21, 2014. The conditions are as follows:

1. Environmental Site Assessment (ESA) be provided by an environmental consultant company stating that an ESA has been conducted and that the site is acceptable for residential development.
2. Provision of a grade plan to the satisfaction of the Town's Engineering Department.
3. Land Use Bylaw amendment to change the land use to an appropriate land use district.
4. Payment of any outstanding taxes.
5. Payment of Infrastructure Capacity Fee (1.49 acres x \$8,000.00) in the amount of \$11,920.00.
6. Applicant to satisfy Utility Company requirements and provide written confirmation.
7. Applicant entering into a Service Agreement with the Town of Redcliff for the provision of detailed plans and specifications:
 - a. Provision of a site drainage plan and resolution of drainage issues to the satisfaction of the Manager of Engineering.
 - b. Confirmation that site drainage is in existence or will be established.
 - c. Storm Sewer.
 - d. Curb/gutter.
 - e. Sidewalk.
 - f. Street Lighting.
 - g. Road base construction and pavement.
 - h. Lane construction.
 - i. Other service extension or improvements as required.
 - j. Other items as required by the Town of Redcliff.
8. All legal costs associated with servicing agreement to be borne by the applicant.

As the subdivision requires approval by a subdivision authority, it is also subject to conditions imposed on it by the subdivision authority. Such conditions may include any condition as outlined in section 655(1) of the *Municipal Government Act*, the Town of Redcliff Land-Use Bylaw and any other statutory planning related bylaws of the Town of Redcliff, or Part 2 of the *Subdivision and Development Regulation*.

Section 655 (1) of the *Municipal Government Act* states the following:

- 655(1) A subdivision authority may impose the following conditions or any other conditions permitted to be imposed by the subdivision and development regulations on a subdivision approval issued by it:

- (a) any conditions to ensure that this Part and the statutory plans and land use bylaws and the regulations under this Part, and any applicable ALSA regional plan, affecting the land proposed to be subdivided are complied with;
- (b) a condition that the applicant enter into an agreement with the municipality to do any or all of the following:
 - (i) to construct or pay for the construction of a road required to give access to the subdivision;
 - (ii) to construct or pay for the construction of
 - (A) a pedestrian walkway system to serve the subdivision, or
 - (B) pedestrian walkways to connect the pedestrian walkway system serving the subdivision with a pedestrian walkway system that serves or is

proposed to serve an adjacent subdivision, or both;
 - (iii) to install or pay for the installation of public utilities, other than telecommunications systems or works, that are necessary to serve the subdivision;
 - (iv) to construct or pay for the construction of
 - (A) off-street or other parking facilities, and
 - (B) loading and unloading facilities;
 - (v) to pay an off-site levy or redevelopment levy imposed by bylaw;
 - (vi) to give security to ensure that the terms of the agreement under this section are carried out.

Subdivision Conditions

- 1. Environmental Site Assessment (ESA) be provided by an environmental consultant company stating that an ESA has been conducted and that the site is acceptable for residential development.**

This condition is part of the due diligence required by the Town to determine suitability of land to be subdivided as per Section 654(1) (a), because if a site/proposed lands are not suitable and the Town allows construction/development without the benefit of such an assessment, then the Town could be held legally liable.

This condition for approval is appropriate and is further supported by section 7 (b) of the *Subdivision and Development Regulation* which states the following:

- 7 *In making a decision as to whether to approve an application for subdivision, the subdivision authority must consider, with respect to the land that is the subject of the application,*
- (b)** *its soil characteristics,*

Further Section 54. ENVIRONMENTAL SITE ASSESSMENT of the Land Use Bylaw states:

- (1)** *An environmental site assessment may be required by the Development Authority:*
- (a)** *with respect to a Development Permit application, whether for a permitted or a discretionary use; or*
-
- (b)** *with respect to an application to amend this Bylaw or adopt an Area Structure Plan, Area Redevelopment Plan or Conceptual Scheme.*

to ensure that no development on a lot that contains contaminated soils or a lot adjacent to a lot that contains contaminated soils takes place until the contamination has been remediated as set forth in a remedial action plan.

- (2)** *An environmental site assessment shall be conducted by an individual or firm who, in the opinion of the Development Authority, is qualified to undertake the environmental site assessment.*
- (3)** *An environmental site assessment may be referred to Alberta Environment for review and comment.*
- (4)** *After considering an environmental site assessment and if the application is for a Development Permit, regardless of whether the proposed land use is a permitted or discretionary use, the Development Authority, may:*
- (a)** *approve the application if it is of the opinion that the proposed land use will not have a significant negative impact on the environment, having regard to mitigative measures that are identified;*
- (b)** *approve the application and impose such conditions as it deems advisable to reduce or prevent any negative impact on the environment; or*

- (c) *refuse the application if it is of the opinion that the proposed land use will have a significant negative impact on the environment, having regard to mitigative measures that are identified.*

Given that the subdivision authority is required, pursuant to the subdivision and development regulation and land use bylaw, to give relevant consideration to the soil characteristics of the land that is the subject of the application, a condition requiring the completion of an Environmental Site Assessment confirming the site is acceptable for residential development is acceptable (especially since the previous use of the subject land was that of horticultural where greenhouse operations were taking place).

2. Provision of a grade plan to the satisfaction of the Town's Engineering Department.

As per the Land Use Bylaw Grade is defined as *"(to determine building height) means the approved finished, landscape grade plan by the town of Redcliff Engineer, for lots without an approved grade plan, grade means the grade established by a grade certificate completed by an Alberta Land Surveyor."*

Section 49 (1) of the Land Use Bylaw specifies that an applicant shall be required to grade a parcel in such a manner that all surface water will drain from the building site to the back lane and/or front street.

Further, *Section 49 (4) states a site drainage / stormwater management plan prepared by a qualified professional, to the satisfaction of the Development Authority, may be required for all subdivision applications and development permit applications for commercial, industrial, greenhouses and multi-family developments or other developments as required by the Development Authority.*

In accordance with this requirement in the Land Use Bylaw it is entirely appropriate to include a condition of provision of a grade plan to the satisfaction of the Town Engineer.

3. Land Use Bylaw amendment to change the land use to an appropriate land use district.

To provide context to this condition for approval it is important to understand that while this subdivision application was being considered the land use, at the time, for the subject land was horticultural. There was an application in process to amend the land use bylaw in this regard. At the July 21st, 2014 council meeting the bylaw to amend the existing land use bylaw, in relation to the subject land, from horticultural to residential received 2nd and 3rd readings. Shortly after this amendment took place, this subdivision application submitted by Farwest, received conditional approval. This was an appropriate condition at the time of review and approval. As the land use is now appropriate for the proposed subdivision the proper course is

to show this condition as satisfied.

4. Payment of any outstanding taxes.

Section 654(1)(d) of the *Municipal Government Act* stipulates that the subdivision authority must not approve a subdivision application unless all outstanding property taxes on the subject land have been paid in full to the municipality or satisfactory arrangements have been made for such payment. Section 654(1)(d) of the *Municipal Government Act* reads as follows:

*654(1) A subdivision authority must not approve an application for subdivision approval unless
(d) all outstanding property taxes on the land proposed to be subdivided have been paid to the municipality where the land is located or arrangements satisfactory to the municipality have been made for their payment pursuant to Part 10.*

As this is expressly provided for in section 654 (1)(d) of the *Municipal Government Act* this is a valid condition. While it is confirmed to date that taxes are paid and up to date prior to endorsement this condition will have to be confirmed to ensure it still meets the condition. An applicant has one year to submit an instrument/plan for endorsement unless an extension has been granted. Thus the status of the taxes could change over that time period.

5. Payment of Infrastructure Capacity Fee (1.49 acres x \$8,000.00) in the amount of \$11,920.00.

As per the existing Infrastructure Capacity Fee Policy No. 100 (2012) adopted by the Town of Redcliff Municipal Council there is an established fee \$8,000.00/acre for existing/infill development areas. The Town of Redcliff adopted this policy in an effort to recover some of the Town's costs for main infrastructure that has already been constructed by the Town (i.e. sanitary sewer trunklines, water treatment plant, etc.). The policy states that that the "Infrastructure Capacity Fee Shall apply to all subdivisions where additional lots are created, and as a result, it is deemed by the Subdivision Approving Authority that there is potential for increased density and/or demand on the existing infrastructure." The proposed subdivision will result in 9 residential lots.

6. Applicant to satisfy Utility Company requirements and provide written confirmation.

The City of Medicine Hat Electric Department has identified that additional and or upgrades to infrastructure would be required to service the proposed subdivision. Thus it is appropriate to impose a condition to ensure the requirements of the utility companies are met.

7. Applicant entering into a Service Agreement with the Town of Redcliff for the provision of detailed plans and specifications:

- **Provision of a site drainage plan and resolution of drainage issues to the satisfaction of the Manager of Engineering.**

- Confirmation that site drainage is in existence or will be established.
- Storm Sewer.
- Curb/gutter.
- Sidewalk.
- Street Lighting
- Road base construction and pavement.
- Lane construction.
- Other service extension or improvements as required.
- Other items as required by the Town of Redcliff.

Section 655(1)(b) of the *Municipal Government Act* permits the Subdivision Authority to impose conditions as outlined in the act as well as the *Subdivision and Development Regulation*. It is outlined as follows:

655(1) A subdivision authority may impose the following conditions or any other conditions permitted to be imposed by the subdivision and development regulations on a subdivision approval issued by it:

- (a) any conditions to ensure that this Part and the statutory plans and land use bylaws and the regulations under this Part, and any applicable ALSA regional plan, affecting the land proposed to be subdivided are complied with;
- (b) a condition that the applicant enter into an agreement with the municipality to do any or all of the following:
 - (i) to construct or pay for the construction of a road required to give access to the subdivision;
 - (ii) to construct or pay for the construction of
 - (A) a pedestrian walkway system to serve the subdivision, or
 - (B) pedestrian walkways to connect the pedestrian walkway system serving the subdivision with a pedestrian walkway system that serves or is proposed to serve an adjacent subdivision, or both;
 - (iii) to install or pay for the installation of public utilities, other than telecommunications systems or works, that are necessary to serve the subdivision;
 - (iv) to construct or pay for the construction of
 - (A) off-street or other parking facilities, and

- (B) loading and unloading facilities;
- (v) to pay an off-site levy or redevelopment levy imposed by bylaw;
- (vi) to give security to ensure that the terms of the agreement under this section are carried out.

It is important to note that the main condition stipulated in relation to the approval is that of **entering into a service agreement that addresses the issues** noted in the conditional approval. Typically, when a service agreement is being assembled the municipality's administration will recommend to the municipal authority/council (usually based on documents such as the existing municipality's construction and design guidelines) what infrastructure requirements in relation to road/lane construction, public utility construction (water, sewer, storm sewer etc.), curb, gutter, sidewalk, and other items as noted in the conditional approval will be necessary, along with potential cost share ; however, final negotiations in relation to infrastructure requirements imposed as conditions of subdivision approval will ultimately be between the municipal authority/council and the subdivision applicant as it is these two parties that ultimately enter into agreement. While Farwest has indicated his intention to move forward with a servicing agreement, detailed discussions regarding the service agreement content between the municipal authority and Farwest have yet to take place.

8. All legal costs associated with servicing agreement to be borne by the applicant.

The purpose of the service agreement is to ultimately service the proposed subdivision to municipality's standards and as such the developer of that subdivision should bear those costs. The alternative would be for the ratepayers at large to bear the developers service agreement cost.

Withholding Registration at Alberta Land Titles

When the Subdivision Approval Authority receives and considers proposed subdivision applications it is required to make a decision in accordance with the *Municipal Government Act* and associated regulations (in this case the *Subdivision and Development Regulation*) as well as the subsequent Land Use Bylaw and other statutory planning documents (i.e. Municipal Development Plan and Tri-Area Municipal Development Plan). Part 17 of the *Municipal Government Act* defines "subdivision" as "the division of a parcel of land by an instrument and "subdivide" has corresponding meaning."

Farwest argues that its application qualifies under sections (652)(2)(e) of the *Municipal Government Act* and, as such, is exempt from requiring approval of a subdivision authority. Section 652(4) clarifies the need, in relation to Farwest's application, for the required subdivision approval.

Part 17 of the *Municipal Government Act* states that, in general, a Registrar will not issue a Certificate of Title for a subdivision unless that subdivision has been approved.

While it is not always necessary for a subdivision to be registered with the approval of the subdivision authority, section 652 outlines circumstances wherein approval is required. Those include:

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(4) Unless the subdivision of the parcel of land has been approved by a subdivision authority, the Registrar may not accept for registration an instrument that has the effect or may have the effect of subdividing a parcel of land

- (a) if the parcel of land is described in a plan of subdivision that was registered in a land titles office before July 1, 1950, and*
- (b) if the parcel of land contains 2 or more lots one or more of which is less than 8.0 hectares in area.*

It is important to note that the land (of which has conditional subdivision approval) in its current subdivided state was registered in 1909, and as such satisfies section 652(4)(a) of the *Municipal Government Act* and thus further solidifies that Farwest's application is subject to approval of a subdivision authority. Furthermore, the subdivisions Farwest seeks will result in lots less than 8.0 hectares in area, and therefore further satisfies section 652 (4)(b). Farwest's application qualifies under section 652(4) and is subject to approval of a subdivision authority.

Scheffer Andrew Ltd. Presentation Notes for Appeal of 2014 SUB 02

Presented by Jim Genge, RPP, MCIP, LEED Green Assoc.
Planner

Scheffer Andrew Ltd. has reviewed documentation provided by the Town with regard to the appeal to the approval of subdivision application **2014 SUB 02**. Please note that due to our involvement with the application and role in working with the Town, we are unable to provide comment on procedural matters in respect of the Subdivision and Development Appeal Board proceedings. Further, please note that matters regarding servicing and procedure are beyond our purview in the hearing. We offer the following planning comments

Planning Process Summary

This sets out our understanding of the application process.

- The application known as 2014 SUB 02 was received by the Town on June 18, 2014.
- The Town circulated the application to internal and external agencies. Scheffer Andrew Ltd. met with the Town's Administration to review this application and discuss the relevant Planning Policies and the application's consistency therewith. Our letter of opinion to the Town is included in the Subdivision and Development Appeal Board hearing package.
- On July 21, 2014 to facilitate the approval of subdivision application 2014 SUB 02, prior to subdivision approval Council adopted an amendment to the Town of Redcliff Land Use Bylaw 1698/2011 to change the land use designation of the subject site to an appropriate residential designation.
- Following the Third Reading of the above mentioned redesignation at the July 21, 2014 Council meeting Council conditionally approved subdivision application 2014 SUB 02.
- The purpose of the subdivision application and land use bylaw amendment was to create 9 lots for residential development.
- A notice of appeal was submitted to the Town August 11, 2014 citing procedural grounds for the appeal.

Planning Considerations Summary

The following will confirm the subdivision application complied with the Town's relevant land use planning policies and regulations at the time of application.

Tri-Area Inter-municipal Development Plan Considerations:

- The subject site is within the Urban Referral (UR) Area of the Tri-Area Intermunicipal Development Plan. The subject subdivision application was circulated to the Cypress County for comment prior to decision by the Subdivision Authority.
- The County responded with no comments or objections to the proposed subdivision.

Municipal Development Plan Considerations:

- The subject site is located in the Northend Transition Area of the Municipal Development Plan where residential redevelopment in place of former horticultural sites has been occurring for over a decade and the interspersing of residential with horticultural uses is a common development form within the Town and represents a unique aspect of Redcliff.
- The Municipal Development Plan allows for and continues on the tradition where land uses (horticultural, residential, and light industrial) are interspersed in this area.
- The subject subdivision approval is consistent with the policies of the Municipal Development Plan.



Land Use Bylaw Considerations:

- Town Council adopted an amendment to the land use designation of the subject site from Horticultural (H) District to R-1 Single Family Residential.
- The proposed residential lots meet the Land Use Bylaw minimum requirements for Lot Area and Lot Width for the R-1 Single Family Residential District.
- The proposed subdivision is located outside of the 300.0 m setback boundary from the non-operating landfill.

Summary and Conclusions

- The Municipal Development Plan supports residential redevelopment in the Northend Transition Area.
- The Municipal Development Plan appears to support transition of other uses in the Northend Transition Area to residential uses.
- The R-1 – Single Family Residential District is an appropriate land use designation for facilitating the proposed subdivision for the intended low density residential land uses.
- The subdivision application meets the criteria set forth in existing planning policy and Land Use Bylaw regulations of the Town for the R-1 – Single Family Residential District.
- The notice of appeal and supporting documents indicate that the conditions imposed may require clarification in the opinion of the appellant, however as the Town's planning consultant this is not within our scope of comments to determine.

