

# HEARING COMMITTEE AGENDA

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Hearing Committee Meeting  
**Wednesday, October 9, 2013**  
Tom Davies Square

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**COUNCILLOR ANDRÉ RIVEST, CHAIR**

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**Joe Cimino, Vice-Chair**

4:30 p.m. HEARING COMMITTEE MEETING, COUNCIL CHAMBER

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## **DECLARATIONS OF PECUNIARY INTEREST AND THE GENERAL NATURE THEREOF**

### **PUBLIC HEARINGS**

1. Report dated October 2, 2013 from the Acting General Manager of Growth & Development/Planning Director regarding Appeal of Vicious Dog Notice 439900. **3 - 18**  
**(RECOMMENDATION PREPARED)**  
(This report is in response to an Appeal of a Vicious Dog Notice issued to , pursuant to By-law 2002-285, for the control and Regulation of Dogs, Cats and other Animals.)
2. Report dated October 2, 2013 from the General Manager of Infrastructure Services regarding Driveway Appeal - 1441 Redfern Street. **19 - 48**  
**(RECOMMENDATION PREPARED)**  
(This report is in response to an appeal regarding an illegal driveway at 1441 Redfern Street which backs onto Barrydowne Road pursuant to By-Law #2011-220.)

**ADJOURNMENT**

**LISA MILLER, DEPUTY CITY CLERK**

**LIZ COLLIN, COMMITTEE ASSISTANT**

## Request for Decision

### Appeal of Vicious Dog Notice 439900

Presented To: Hearing Committee

Presented: Wednesday, Oct 09, 2013

Report Date: Wednesday, Oct 02, 2013

Type: Public Hearings

File Number: 439900

### Recommendation

THAT the City of Greater Sudbury uphold the Vicious Dog Notice #439900, issued to Paul Kingsbury of 1280 Ramsey View Court, Unit #98, Greater Sudbury.

### Background

City of Greater Sudbury By-law 2002-285, as amended, became effective on January 1, 2003 and regulates the keeping of animals and the registration of dogs and cats. Part VIII of the by-law entitled "Vicious Dogs"; section 21 of the by-law, contains provisions for the issuance of a Vicious Dog Notice to owners of dogs that have attacked a person or domestic animal without provocation.

The effect of the notice is to ensure the owner of a dog deemed vicious by receipt of the notice, muzzle and leash the dog when not inside the owner's dwelling at all times.

The by-law is specific about how the process is carried out and the contents of the notice. Several provisions in the by-law for the issuance of the notice are mandatory requirements of the Registrar and of the recipient of the Notice.

This section also provides for an appeal of the notice by the owner of the dog requesting a hearing of the matter by Council or Committee of Council. The Committee may uphold the notice and its contents, exempt the owner from the muzzling or leashing requirements or from both, or may modify the conditions for muzzling or leashing.

### By-law Procedure Vicious Dog Notice - 439900

Subsection 2.(1) of By-law 2002-285 designates the Manager of Compliance and Enforcement Services for the City of Greater Sudbury as the Registrar pursuant to the By-law.

#### Signed By

##### Report Prepared By

Darlene Barker  
Manager of Compliance and  
Enforcement  
*Digitally Signed Oct 2, 13*

##### Division Review

Guido Mazza  
Director of Building Services/Chief  
Building Official  
*Digitally Signed Oct 2, 13*

##### Recommended by the Department

Paul Baskcomb  
Acting General Manager of Growth &  
Development/Planning Director  
*Digitally Signed Oct 2, 13*

##### Recommended by the C.A.O.

Doug Nadorozny  
Chief Administrative Officer  
*Digitally Signed Oct 2, 13*

Subsection 21.(2) of the by-law states "Where the Registrar is informed upon written complaint, and is satisfied that the dog has attacked without provocation or bitten a person or domestic animal, and had further been provided with satisfactory evidence as to the name and address of the owner of the dog the Registrar shall serve notice on the owner of the dog that the dog is deemed to be a vicious dog and requiring the owner to comply with any or all of the requirements set out in Subsections 21(4) and 21(5)."

A written complaint was received by the Registrar from Samantha Secord of 1257 Ramsey View Court, Greater Sudbury, requesting that the dog named Diesel, kept at the address of 1280 Ramsey View Court, Unit #98, be deemed vicious, based on an incident on May 9, 2013 where she and her dog were attacked. The letter of complaint is attached to this report.

The letter contains information regarding the attack and also contains 2 other witnesses names and an additional statement of one of those witnesses. Seven (7) photographs were included in the package with the letter. Information in the letter describes an incident which happened on May 9, 2013. The victim states in the letter that she was walking from her house towards her car on the street with her dog, a dachshund, "when a large bulldog charged across the road almost causing a car accident" towards her. The bulldog struck the right side of her "taking me right out of my shoes and began snapping and biting at me and my dog." She describes how the dog pinned her against the car, jumped on her so hard it knocked her hat and sunglasses off her head. The attack on her dog is described as causing bruises and occurred with such force as to rip off her dog's harness. During the attack, efforts of the owner to control his dog were unsuccessful, and his dog circled around the victim's car and bit the victim's arm and attacked her dog again.

The victim sustained bruises and lacerations from the attack and sought medical attention. Under a doctor's care, she wore a sling as a result of pulled muscles and inflammation due to the attack and was forced to take time off from work.

Photos were provided showing injuries sustained by the victim on her lower back and arm. Additional photos were provided showing injuries to her dog, and showing scratches on her car. The pictures are not attached to this report, however originals are available for viewing by the committee.

The victim provided an additional statement by an individual who witnessed the attack and confirmed the written account of the victim. This statement is attached to this report. The victim also provided names of 2 other independent witnesses to this occurrence. The Manager of Compliance and Enforcement Services contacted the witnesses, and confirmed that they saw the bull dog charge at the victim, cross the road, almost creating an accident and attacking the victim and her dog.

Greater Sudbury Animal Control (GSAC) investigated this incident and at the time of the attack, the owners of the bulldog named Diesel had not registered the dog with the City as required pursuant to the by-law. The owner registered the dog with Animal Control during their investigation. The dog was registered "D-1013" by the name of "Diesel", a 3 year old male American Bulldog, owned by Paul Kingsbury of 1280 Ramsey View Court, Unit #98, Greater Sudbury.

On May 10, 2013, the owner of the dog was served a Certificate of Infraction for the offence of "Permit Dog to Attack", payable by a penalty of \$125.

A Vicious Dog Notice, #439900, dated August 7, 2013, was prepared and delivered to the registered owner of the dog. (See Attachment of the "Notice" to this report.) One copy of the notice was hand delivered by GSAC to the owner and another copy was delivered registered mail. The notice contains the requirements of Subsections 21(4) and 21(5) of the by-law; ensuring the dog is muzzled and leashed when not inside the owner's dwelling unit, notifying the owner of his requirement to provide a change of address, the owner's right to appeal the notices and the effective date of the notice, pursuant to subsections 21(6), 21(7) and

21(8).

### **Appeal Notice**

A letter of appeal of the Vicious Dog Notice was received by the owner of the dog and the hearing was scheduled. A copy of the letter of appeal is attached to this report. A notice was sent to the owner of the dog advising of the date and time of the hearing. A copy of this notice is attached to this report.

### **Conclusion**

In consideration of this report, the witnesses and the appellant, pursuant to subsection 21(7) the Hearing Committee may decide one of three options below;

1. Uphold the Notice;
2. Modify the Notice - exempting the owner from muzzling or leashing or modify the conditions for such muzzling or leashing; or
3. Quash the Notice - exempting the owner from all requirements to muzzle and leash.

The Registrar is confident that the Vicious Dog Notice issued to Paul Kingsbury of 1380 Ramsey View Court, Unit #98, Greater Sudbury, satisfies the requirements of By-law 2002-285, Part VIII, Section 21, a by-law to regulate the keeping of animals and the registration of dogs and cats. The purpose of the notice is to mitigate the recurrence of a similar incident and provide an assurance of safety for the area residents and the general public. The Registrar recommends that the Vicious Dog Notice be upheld by the Committee.

May 13, 2013

To Whom it May Concern,

My name is Samantha Secord and on May 9, 2013 at approximately 3:00pm my dog and I were attacked by a dog. I was walking toward my car with my dog, which was parked in front of my townhouse. When a large bulldog charged across the road almost causing a car accident. I then picked up my dog quickly so he would not get mauled by the dog. The owner was yelling at the dog to come back but the dog kept charging toward us. The dog then struck the right side of me taking me right out of my shoes and began snapping and biting at me and my dog (dachshund). The dog then pinned me against my car, he jumped and hit my hat off my head, removed my sunglasses from my face and knocked my keys out of my hand. He also ripped off my dog's harness. As the attack was happening the owner was yelling at the dog to stop but the dog kept going. The owner had no control due to the fact that he had no collar or leash to restrain the dog. When the owner finally got a hold of him, the owner was unable to control his dog and he circled around my car and came back at us again. The dog bit my arm causing a laceration from his teeth, he also bit my dog removing hair from his right rear leg. My dog is also bruised from the attack. I have also seen a doctor and have been taken off work from the attack. I have pulled muscles and inflammation in my arm and neck. I have to wear a sling and can barely move my arm. When the attack was over a lady grabbed all my things from the road and told me to go inside and call the police. Which I called and also called animal control. When I went back outside to speak to the

owner he accused me of hitting his dog and blaming me for the attack. Another body told me to go in the house and the owner started yelling and swearing at her. I do not feel safe with this animal around my house nor do the other people who live here. I have not left my house in 5 days alone because I am horrified and terrified from this event. This attack has changed my life for the worse and has only caused me pain. Please help me in removing this dog from my area or have him muzzled at all times when outside.

The owners name and address is:

Paul Kingsbury  
1280 Ramsey View Court apt 98

The dogs name is Diesel

Sincerely,

Samantha Secord

Samantha Secord

2013 05 10

TO WHOM IT MAY CONCERN:

THE FOLLOWING RELATES TO A VICIOUS DOG ATTACK  
ON MAY 9 AT ABOUT 3 PM, ON RAMSEY VIEW CRT  
IN FRONT OF #1257 UNIT.

A LADY CAME OUT OF HER HOME, <sup>WITH HER OWN DOG ON A LEASH,</sup> AND GOT TO THE  
SIDEWALK WHEN A LARGE WHITE DOG RAN ALONG  
THE FENCES AT THE BACK OF THE TOWNHOUSE UNITS.  
A MAN (THE OWNER) YELLED AT THE DOG WHICH WAS  
NOT ON A LEASH NOR DID IT HAVE A COLLAR OR TAG.  
THE DOG RAGED ACROSS THE LAWN, THE ROAD (ALMOST  
CAUSING A CAR ACCIDENT AS THE DRIVER HAD TO  
BRAKE DRASTICALLY TO MISS THE DOG. THE DOG  
THEN ATTACKED THE WOMAN AND HER DOG. THE  
ANIMAL REFUSED TO STOP ATTACKING, PUSHED THE  
WOMAN AGAINST THE CAR, KNOCKED THE WOMAN OUT OF  
HER SHOES, MADE HER ARM BLEED, BIT THE DOG,  
REMOVED HAIR FROM THE SMALL DOG. ANOTHER WOMAN  
TRIED TO HELP. THE "OWNER" WAS ARROGANT YELLING  
TO LEAVE HIS "FINE" DOG ALONE. THE PEOPLE  
IN THE AREA WANT TO FEEL SAFE WHEN



WE WALK OUR DOGS ON THE SIDEWALK,  
WE ARE TOLD THERE ARE THREE DOGS IN HIS HOME,  
I HOPE THIS DOG IS NEVER ALLOWED TO REPEAT  
THIS ACT AGAIN.



**DOG TAG ANNUAL REGISTRATION 2013** D 1013

Entered into System Initial

**Date Tag Purchased:** May 09, 2013  
(No Refunds)

**As per By-law 2002-285, Tag Registration Expires:**

- Dec 31, 2013
- Death of animal
- Transfer of Ownership

**Owner's Information:** (Please print clearly)

Last Name: Kingsbury  
First Name: Paul  
Phone: Home: 561-8032 Work: \_\_\_\_\_ Cell: \_\_\_\_\_  
Home Address: 1280 Ramsey View  
(For return of pet)  
Box # \_\_\_\_\_ Apt. # 98 City: Sudbury Postal Code: \_\_\_\_\_  
Have you moved since last registration? ☐ yes ☒ no  
If yes, then last Address / Home Phone: \_\_\_\_\_

**Pet Information:**

Pet's Name: Diesel  
Breed: American Bull Terrier Colour: White/Brown  
Sex: ☐ F ☒ M Age: 2yrs Date acquired pet: \_\_\_\_\_

WHITE - client  
YELLOW - animal control  
PINK - agent/office copy

Agent / CSC Name: GSA  
Agent / CSC Phone Number: \_\_\_\_\_  
Agent / CSC Signature: DD

**Check dates and follow across for fees**

**Prices:**

	REGULAR	SENIOR*	SPAY/NEUTER**
Before Jan. 31, 2013 - fee	<input type="checkbox"/> \$30.00	<input type="checkbox"/> \$15.00*	<input type="checkbox"/> \$15.00**
After Jan. 31, 2013 - fee	<input checked="" type="checkbox"/> \$40.00	<input type="checkbox"/> \$25.00*	<input type="checkbox"/> \$25.00**
or if newly acquired within 7 days	<input type="checkbox"/> \$30.00	<input type="checkbox"/> \$15.00*	<input type="checkbox"/> \$15.00**
After Oct. 1, 2013 - fee	<input type="checkbox"/> \$40.00	<input type="checkbox"/> \$25.00*	<input type="checkbox"/> \$25.00**
or if newly acquired within 7 days	<input type="checkbox"/> \$15.00	<input type="checkbox"/> \$15.00*	<input type="checkbox"/> \$15.00**
Replacement pet tag - replacing tag # _____ (MUST be filled in for replacement rate to be charged.)	<input type="checkbox"/> \$ 5.00		

**MUST BE FILLED OUT IF SENIOR RATE OR SPAY/NEUTER - BOX CHECKED**

\* Senior year of birth: \_\_\_\_\_ (must be 55)  
\*\* Spayed / Neutered Information: \_\_\_\_\_

Date Spayed / Neutered: \_\_\_\_\_

Name of Animal clinic: \_\_\_\_\_

Female - Spayed ☐ Male - Neutered ☐

The information may be verified by the City of Greater Sudbury, Compliance and Enforcement Services.

Owner's signature: \_\_\_\_\_

Office Use: Date Picked Up: \_\_\_\_\_ Amount Confirmed: \_\_\_\_\_

## **VICIOUS DOG NOTICE #439900**

*Pursuant to City of Greater Sudbury Animal Control By-law 2002-285*

### **REGISTERED MAIL & HAND DELIVERED**

PO BOX 5000 STN A  
200 BRADY STREET  
SUDBURY ON P3A 5P3

CP 5000 SUCCA  
200, RUE BRADY  
SUDBURY ON P3A 5P3

705.671.2489

[www.greatersudbury.ca](http://www.greatersudbury.ca)  
[www.grandsudbury.ca](http://www.grandsudbury.ca)

**To:** Paul Kingsbury  
1280 Ramsey View Court, Unit #98  
Sudbury, ON P3E 2G4

The City of Greater Sudbury is in receipt of a written complaint that your dog, named Diesel, registration number 2013 D1013, has attacked a person and another dog without provocation on May 9, 2013, in front of 1257 Ramsey View Court, in the City of Greater Sudbury.

As Registrar pursuant to the Animal Control By-Law #2002-285, I deem your dog to be vicious. Therefore, you are hereby required to comply with the requirements as set out in Sections 21 (4) and 21 (5) of the by-law which states:

- 4) "Every owner of a vicious dog shall at all times when the vicious dog is not in the owner's dwelling unit but otherwise within the boundaries of the owner's premises, ensure that
  - a) the vicious dog is muzzled so as to prevent it from biting a person or domestic animal; and
  - b) the vicious dog is securely leashed on a leash which does not allow it to go beyond the property line of the owner's lands."
- 5) "Every owner of a vicious dog shall at all times when the vicious dog is not within the boundaries of the owner's premises;
  - a) keep the vicious dog under the effective control of an adult person on a leash held by the person; and
  - b) keep the vicious dog muzzled.

AND FURTHER

- (6) Every owner of a vicious dog shall notify the Registrar within two working days of any change in ownership or residence of the vicious dog and provide the Registrar with the new address and telephone number of the owner.
- (7) Where the owner of a vicious dog is informed that his or her dog has been deemed to be a vicious dog, the owner may, within 14 days of such notice, request in writing a hearing by Council or committee established for that purpose and Council may exempt the owner from the muzzling or leashing requirement, or both such requirements or may modify the conditions for muzzling or leashing.
- (8) The notification that a dog is a vicious dog is effective from the date it is served, even if a hearing before Council is requested by the owner of the dog affected.

Failure to comply with this notice will result in charges pursuant to the by-law and Provincial Offences Act, which upon conviction may result in a fine to a maximum of \$5,000.

Dated this 7th day of August, 2013



Darlene Barker, Registrar  
Manager of Compliance and Enforcement  
City of Greater Sudbury

C: Greater Sudbury Animal Control

Paul Kingsbury  
1280 Ramsey View Court, Unit 98  
Sudbury, ON P3E 2G4  
705-561-8032

August 17, 2013

Po Box 5000, Stn A  
200 Brady Street  
Sudbury, ON P3A 5P3  
705-671-2489

RECEIVED  
AUG 27 2013  
BY-LAW DEPT

Subject: Request for Appeal

Dear Darlene Barker:

I am writing this letter to request an appeal to Vicious Dog Notice #439900 dated August 7, 2013.

On May 9, 2013 I had just come home from a job interview at Jutras Group and I noticed one of my three dogs (Deizel, American Bulldog) was about to be sick. I let him into the back gateway to get sick because he wanted to eat grass and our yard does not have any. My dog was getting physically ill and therefor I did not put a leash on him.

As I was cleaning up the mess, Deizel saw another dog and took off towards it. It was a lady walking a shih-tzu. He ran across the street. Once I saw him run off I yelled out "I'm sorry he won't hurt you, he just wants to play." I ran after Deizel yelling "no, no Deizel no" he was bumped by an oncoming car but kept running. He reached the lady and her dog; he was sniffing the dog and the lady started kicking him. She kicked him so hard her shoe flew off under a parked car. The lady picked up her dog. Deizel jumped on her after being kicked and accidentally scratched her. Her dog then bit Deizel in the jowls repeatedly so Deizel bit down to stop the dog from biting him. He did not shake the dog just held him still. There was only a puncture wound not a full bite. I grabbed Deizel and he let the dog go. The lady had a scratch on her arm so I apologized to her. She was still yelling and screaming. I offered to help pay any vet bills and she told me off. I left and brought him home. My neighbour was a witness and can contest to her hitting my dog.

This is not the first time these dogs have seen each other as we walk in the same neighbourhood all the time.

My dog is not vicious, we have two other dogs in our home and they are both shih-tzus. Our dogs cohabitate without any problems. I have pictures to prove this.

Also, we live in a townhouse complex where there are a lot of children. They often come up to our screen door where he is sitting and poke the screen and he does not even bark at them.

I have three letters from neighbours who have children and other dogs and who can attest that Deizel is not vicious. Please see the attached letters.

RECEIVED

AUG 27 2013

BY-LAW DEPT

Thursday, August 22nd, 2013

To whom it may concern,

Over the last two years I have gotten to know Diesel. People judge by appearances and it is not right. Humans do it with each other every day and unfortunately it carries over to our pets. He is a large dog with a huge heart. He is playful, sweet and makes us laugh. He is far from a threat to anyone or any pet. I trust him out with my two daughters who were 2 and 6 at the time they first met Diesel. We recently added a puppy to our family and the two of them love to play together. It is my opinion and that of my entire family that he is anything but vicious. I sincerely hope you will reconsider him being labelled that way.

RECEIVED  
AUG 27 2013  
BY-LAW DEPT

To whom it may concern;

My Name is Dorothy Penny and I have lived beside Paul Kingsbury for a year and half. I have two daughters who are four and ten years old. We also have a male boxer puppy.

We have never had any problems with Deizel. My daughters can walk up to the screen door of their house and poke at the screen when Deizel is sitting there and he barely acknowledges her. Our dogs have played and Deizel has never been dominant or vicious.

If you have any additional questions or concerns, please feel free to contact me.

September 9, 2013

Phil Kingsbury  
1280 Ramsey View Court, Unit 98  
Sudbury, ON P3E 2G4

Dear Mr. Kingsbury:

Re: Vicious Dog Notice #439900

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This will acknowledge receipt of your letter on August 17, 2013 appealing Vicious Dog Notice #439900 pursuant to the City of Greater Sudbury Animal Control By-law 2002-285.

This matter will be heard by the Hearing Committee at **4:00 p.m. on Wednesday October 9, 2013** in Council Chamber at Tom Davies Square. Bring any information you feel relevant in presenting your position. Please be advised that this hearing is a public process; the agenda will be made available on the City's website and the hearing is open to the public to attend.

I am enclosing a copy of the relevant sections of the City of Greater Sudbury's by-law to regulate the keeping of animals and the registration of dogs and cats, By-law 2002-285, for your convenience. If you require any further information, do not hesitate to contact the undersigned at 705-674-4455, ext. 4206.

Yours truly,

A handwritten signature in cursive script that reads 'Lisa Miller'.

Lisa Miller  
Deputy City Clerk

/ec

Enclosure

cc: **D. Barker**, Manager of Compliance & Enforcement Services



## **PART VIII -VICIOUS DOG**

**21.-(1)**No owner of a dog shall permit his or her dog to attack without provocation or to bite a person or domestic animal.

(2) Where the Registrar is informed upon written complaint, and is satisfied that a dog has attacked without provocation or bitten a person or domestic animal, and has further been provided with satisfactory evidence as to the name and address of the owner of the dog, the Registrar shall serve notice on the owner of the dog that the dog is deemed to be a vicious dog and requiring the owner to comply with any or all of the requirements set out in Subsections 21(4) and 21(5).

(3) Service of notice that a dog has been deemed a vicious dog may be effected on the person who shows in the City's records as the owner of the dog, or where the dog does not appear to be registered pursuant to this By-law, on such other person who appears to be the owner of the dog. Service may be effected by personal service, by mail or by posting up in a conspicuous place at the address shown in the records of the City as the address for the owner of the dog, or where the dog is not registered under this By-law, at such address as appears to be the address of the owner of the dog. Service of the notice shall be effective upon the date that personal service is effected, or where served by mail or by posting, shall be deemed effective on the third day after mailing or posting as the case may be.

(4) Every owner of a vicious dog shall at all times when the vicious dog is not in the owner's dwelling unit but otherwise within the boundaries of the owner's premises, ensure that the

- (a) the vicious dog is muzzled so as to prevent it from biting a person or domestic animal; and
- (b) the vicious dog is securely leashed on a leash which does not allow it to go beyond the property line of the owner's lands.

(5) Every owner of a vicious dog shall at all times when the vicious dog is not within the boundaries of the owner's premises:

- (a) keep the vicious dog under the effective control of an adult person on a leash held by the person; and
- (b) keep the vicious dog muzzled.

(6) Every owner of a vicious dog shall notify the Registrar within two working days of any change in ownership or residence of the vicious dog and provide the Registrar with the new address and telephone number of the owner.

(7) Where the owner of a vicious dog is informed that his or dog has been deemed to be a vicious dog, the owner may, within 14 days of such notice, request in writing a hearing by Council or committee established for that purpose and Council may exempt the owner from the muzzling or leashing requirement, or both such requirements or may modify the conditions for muzzling or leashing.

(8) The notification that a dog is a vicious dog is effective from the date it is served, even if a hearing before Council is requested by the owner of the dog affected.

## Request for Decision

### Driveway Appeal - 1441 Redfern Street

Presented To: Hearing Committee

Presented: Wednesday, Oct 09, 2013

Report Date: Wednesday, Oct 02, 2013

Type: Public Hearings

### Recommendation

That the City of Greater Sudbury uphold the Order to Comply to remove and close the second driveway for 1441 Redfern Street, accessing Barry Downe Road.

### Background

The property at 1441 Redfern Street is Zoned "R1-5", Low Density Residential under By-Law 2010-100Z. The property fronts Redfern Street with the rear yard backing onto a one (1) foot reserve that runs parallel to Barry Downe Road. A location map is attached for reference.

In May 2002, Mr. & Mrs. Lische applied for a building permit to construct a garage on their property which was subsequently reviewed by City Staff and a building permit was issued (Permit number 02-0396). The development plan submitted identified the location for a 30' x 40' garage in the north-east corner of the lot and did not identify the need for an access driveway from Barry Downe Road.

#### Signed By

##### **Report Prepared By**

Tony De Silva  
Roads Operations Engineer  
*Digitally Signed Oct 2, 13*

##### **Division Review**

David Shelsted  
Director of Roads & Transportation Services  
*Digitally Signed Oct 2, 13*

##### **Recommended by the Department**

Tony Cecutti  
General Manager of Infrastructure Services  
*Digitally Signed Oct 2, 13*

##### **Recommended by the C.A.O.**

Doug Nadorozny  
Chief Administrative Officer  
*Digitally Signed Oct 2, 13*

Staff noticed that the property owner had constructed an unapproved driveway on to Barry Downe Road in November of 2004. The Director of Roads and Transportation Services contacted the Lische's on November 30, 2004 to inform them that their entrance on to Barry Downe Road was not approved and needed to be removed accordingly. Follow up letters were sent on November 30, 2005 and January 12, 2009 with no action taken by the property owners on the said matter.

On June 23, 2009 City crews attended the site and removed the unapproved driveway and invoiced the property owners for the work. The driveway was reestablished by the property owners the following day, June 24, 2009. On August 20, 2010 staff sent the property owners another letter asking them to remove the driveway. No action occurred as a result of the letter.

On May 17, 2013, an Order to Comply was submitted to the Lische's which required the property owners to once again remove the driveway abutting Barry Downe Road. On June 4, 2013 the City received a letter

from the property owners' lawyer requesting a two (2) week extension to the deadline to allow their clients the opportunity to secure an entrance permit and if unsuccessful, re-evaluate the situation. Staff verbally agreed to the extension. On June 5, 2013 the City received an application for a second driveway for 1441 Redfern Street. Staff reviewed and denied the application.

The decision on this matter was based on the requirements outlined in By-law 2011-220, Schedule A, Guidelines for Approval of Private Entrances. Specifically, the following requirements of the by-law were not met and are the basis of staff's decision:

“the entrance to a property in a residential zone which has less than 30 metres frontage, should not result in the property having more than one entrance”, and

“the Official Plan requires that entrances onto arterial roads should be strictly regulated and kept to a minimum. Whenever property has frontage along more than one roadway, access will generally be limited to the lowest volume road”.

The property owners were advised of this decision shortly thereafter. Through Mr. Caza of Miller Maki, the City received a request for a hearing to challenge their position on this matter pursuant to Bylaw 2011-220.

In addition to the reasons identified in the Approval of Private Entrance application, the property owners at 1441 Redfern Street would need to address the issue of crossing a one (1) foot reserve that runs parallel to Barry Downe Road along the back of their property. Property reserves, similar to one found along Barry Downe Road at this location, are typically put in place to control access to high volume Arterial and Collector roadways. Currently, the one (1) foot reserve is held in private ownership to which the property owners do not have permission to cross.

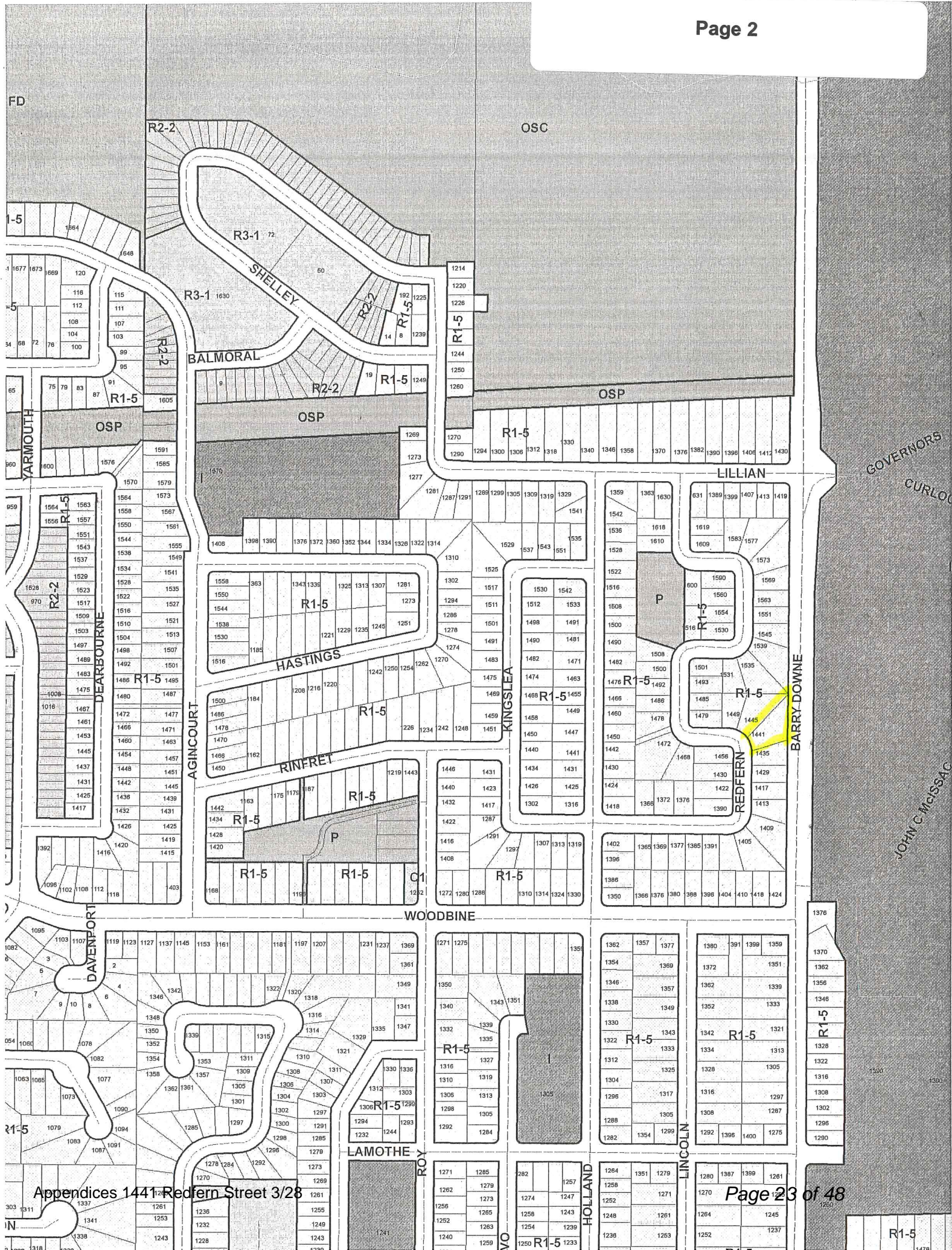
#### Conclusion

Barry Downe Road, north of Lasalle Boulevard, is a secondary arterial road with an annual average daily traffic count of approximately 10,000 vehicles and as such requires stricter controls as it relates to driveway access. This requirement is supported in a recent OMB decision (Grylls vs. City of Greater Sudbury – September 10, 2013) which was based in part on the premise that access to a secondary arterial road needs to be strictly regulated and kept to a minimum. This fact combined with the lack of approvals and agreement to cross private property was the basis for staff's decision to deny a private entrance to Barry Downe Road at this location.

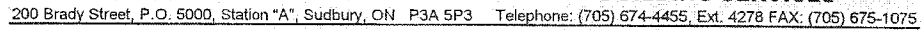
<b>Appendices – 1441 Redfern Street, Sudbury</b>		
	<b>Description</b>	<b>Page #</b>
<b>1</b>	<b>Location Map</b>	<b>1</b>
<b>2</b>	<b>Zoning Map</b>	<b>2</b>
<b>3</b>	<b>Building Permit Application</b>	<b>3</b>
<b>4</b>	<b>Building Permit</b>	<b>4</b>
<b>6</b>	<b>Roads and Drainage Section comments for Building Permit Application</b>	<b>5 - 6</b>
<b>7</b>	<b>Site Inspection Request</b>	<b>7</b>
<b>8</b>	<b>Record of Telephone Call (November 30, 2004)</b>	<b>8</b>
<b>9</b>	<b>Letter dated November 30, 2005 to Mr. Henry Lische – Filling of Roadside Ditch and Creation of Entrance at the Rear of 1441 Redfern Street</b>	<b>9 - 10</b>
<b>10</b>	<b>Letter dated January 19, 2009 to Mr. Henry Lische – Filling of Roadside Ditch and Creation of Entrance at the Rear of 1441 Redfern Street</b>	<b>11</b>
<b>11</b>	<b>Letter dated January 12, 2009 from Mr. Henry Lische – Filling of Roadside Ditch and Creation of Entrance at the Rear of 1441 Redfern Street</b>	<b>12</b>
<b>12</b>	<b>Letter dated August 20, 2010 to Mr. Henry Lische – Removing Illegal Entrance, Culvert and Reinstalling Swale at 1441 Redfern Street</b>	<b>13</b>
<b>13</b>	<b>Letter dated May 17, 2013 to Mr. Henry Lische – Drain Obstruction and Illegal Private Entrance, Contraventions of Road Fouling By-Law and Private Entrance By-Law at 1441 Redfern Street</b>	<b>14 - 15</b>
<b>14</b>	<b>Letter dated June 4, 2013 from Alexandre R.J. Caza, Miller, Maki to Tony DeSilva, Operations Engineer</b>	<b>16</b>
<b>15</b>	<b>Application for Driveway Entrance</b>	<b>17 - 21</b>
<b>16</b>	<b>OMB Hearing – Grylls vs. City of Greater Sudbury (September 10, 2013)</b>	<b>22 - 26</b>
<b>17</b>	<b>Copy of Registered Plan M-562 (Plan of Subdivision)</b>	<b>27</b>











## APPLICATION FOR A BUILDING PERMIT

Page 3

MCKIN            G6 LIL            Reg Pln# M562            Lot #2            Ref Pln#  
Part:            Parcel            PIN:  
Roll No.: 5307-036-019-02600-0000 Land Use: SINGLE FAMILY HOME  
Registered LISCHÉ, HENRY            Contact:  
Owner:            Home: (705) 566-0763  
                1441 REDFERN ST  
                SUDBURY ON PIA-358            Work: (705)  
Applicant: LISCHÉ, NANCY            Contact: NANCY  
   (705) 566-0763

Building Information: (T) Length: 40.00 Width: 30.00 Height: 13.50  
Storeys: 1.0 Ground Area: 1200 Gross Area: 1200 No. of New Units:  
Front Yard: 100.0 Side Yard: 75.0 Rear Yard: 15.0 Other Side: 0.0  
Fireplaces: N Wood Stoves: N Garages: Y Site Plan: N  
Lot Information: Frontage: 30.0 Depth: 210.0 Area: 6300  
APPLICANT TO CONSTRUCT DETACHED GARAGE. AN  
Prior to a building permit being issued, all conditions and approvals listed  
below must be completed:

# PAID

2009 3 0 2009

BUILDING SERVICES  
SECTION

Fee Details		Fee Charged	
	Building Permit Fee		288.00
Total Fee			288.00
Total Paid	\$288.00	Receipt No.	12613
		By	LAMTENE
		And	L

[illegible]

Nancy Lusche  
Signature of Applicant

Apr. 30/02



BUILDING

5307-030-019-02600-0000

RECEIPT NO.: 12613  
ISSUED BY: LM  
MCINNES, Lyne

CONTRACTOR  
=====

Phone:

FLOOR AREA

LENGTH	40.0	WIDTH	30.0	HEIGHT	13.8	GND	1200.0
FRONT	100.0	REAR	16.0			GRS	1200.0
SIDE-D	75.0	SIDE-D	6.0				

[illegible]

## BUILDING INSPECTION APPROVALS

### ① Footing Inspection

## ② Weeping Tile Inspection

### ③ Framing Inspection

EST. VALUE **③ Framing Inspection** 25,400

#### ④ Insulation Inspection

## Above Ground

## Below Ground

### ⑤ Inspection for Occupancy

## Final Inspection

## PLUMBING INSPECTION APPROVALS

## ⑥ Ground Work

⑦ RIP (above ground)

## 8 Final

**COMMENTS:**

☐ YES ☐ NO ☐ UNKNOWN

Building Inspector

            
Date

## Roads and Drainage Comments for Building Permit Applications

Permit Number: **02-0396** Nature of Construction: **DETACHED GARAGE**  
 Name of Owner: **HENRY LISCHE** Name of Applicant: **NANCY LISCHE**  
 Municipal Address: **1441 REDFERN ST** Township: **MCKIM**  
 Legal Description: **LOT 22 M562** Parcel Number: Twp Lot: **1**  
 Concession: **6**

**Applicant / Owner: READ THE FOLLOWING COMMENTS CAREFULLY !!!!!**

1. All work done within a City Road Allowance shall be performed by the City of Greater Sudbury at the owner's cost.
2. Grading of the property is NOT to create ANY DRAINAGE PROBLEMS or adversely affect adjacent properties.
3. Existing Drainage Courses and patterns are to be accommodated and maintained at all time.
4. Roof or surface drainage shall not be discharged onto neighbouring property in any manner that would create a nuisance.
5. NO Structure is to be constructed or fill material placed within a City of Greater Sudbury Easement.
6. Proposed driveway grades are NOT to exceed 10% in accordance with BY-LAW 79-180.
7. Municipal address sign shall be clearly posted in accordance with BY-LAW 98-62
8. The following information is specific to the property being developed / altered.
 

a) A City of Greater Sudbury Municipal Easement exists on the subject Property .....	Y <input type="checkbox"/>	N <input checked="" type="checkbox"/>
b) A Swale is to be Constructed within the City of Greater Sudbury Easement .....	Y <input type="checkbox"/>	N <input type="checkbox"/>
c) Lot Grading Plan Registered on Title of Property. ....	Y <input type="checkbox"/>	N <input checked="" type="checkbox"/>
d) <input type="checkbox"/> Applicant is to grade the subject property in full compliance with the lot grading plan registered on title.		
e) <input type="checkbox"/> Applicant is to prepare a Lot Grading Plan for approval by the Assistant City Manager.		
f) <input checked="" type="checkbox"/> Street As Built Drawings Checked.		
g) <input checked="" type="checkbox"/> Access to a Open Publicly Maintained Road <del>NOT</del> AVAILABLE !		
h) <input type="checkbox"/> Interference with proposed City of Greater Sudbury Road Construction or Storm Sewer Construction.		
i) <input type="checkbox"/> A Driveway Culvert/ Curb Cut/ Sidewalk Depression may be required at the entrance to the site. The owner will be responsible for the full cost of this work. City Maintenance is to be contacted in this regard at 671-2742.		

9) Lot Levies / Charges ..... \$

Comments: \_\_\_\_\_

Building Permit Issued: ☒ YES ☐ NO

If no, give reason \_\_\_\_\_

City of Greater Sudbury Technical Services Department Signature: \_\_\_\_\_

Date: May 3, 2002

I have read all of the above comments and do hereby agree to comply with them: \_\_\_\_\_

Owner / Applicant

Date: \_\_\_\_\_

Copies to: Building Controls , Owner / Applicant



Nancy Dwyer  
May 15/02. OFFICE COPY



## SITE INSPECTION REQUEST

DATE June 2/09BUILDING PERMIT # \_\_\_\_\_ AREA MUNICIPALITY Sud.LOCATION 1441 Redfern

PROPERTY OWNER \_\_\_\_\_

## REASON FOR INSPECTION

new garage - no permit  
access from Barrydowne Rd. near  
Cambridge College  
Bryan Butcher

PERSON CONTACTED \_\_\_\_\_ TELEPHONE NO. \_\_\_\_\_

## INSPECTION RESULTS

APPROX 4 CAR GARAGE IN REAR YARD  
ACCESS FROM BARRYDOWNE RD

PERMIT # 02-0396 FOR DETACHED GARAGE

## ACTION TAKEN/COMMENTS

[Signature]

BUILDING INSPECTOR

JUNE 8/09  
 DATE 1:20 PM

FEE: Not Required ☐  
 Appendices 1441 Redfern Street 8/28

Collect On-Site ☐Paid ☐ Receipt # \_\_\_\_\_

Page 28 of 48



# Record of Telephone Call

Engineering Section  
Public Works Department

Date: November 30, 2004 Time: 12:20 Job No: Illegal Entrance

Place Called / Calling: 1441 Redfern Street

Party Called / Calling: Nancy Lische

## Message Received / Transmitted:

I called the residence to inform them that they have created an illegal entrance which blocks our roadside ditch. I spoke with Nancy and told her that the entrance would have to be closed and the ditch reinstated. At this time Nancy said that they were given permission to enter through this location and that she would be looking for the documentation to prove this. I was also informed that Henry would be much more capable of discussing the issue at which point I was asked for a contact number where I could be reached. I left my name # and extension with Nancy so that Henry could call me back.

## Answer Given / Received:


## Distribution


Signed: \_\_\_\_\_



November 30, 2005

Henry Lische  
1441 Redfern Street  
Sudbury ON P3A 3S8

1441 REDFERN STREET  
SUDBURY ON P3A 3P1

1441 REDFERN STREET  
SUDBURY ON P3A 3P1

705 671 2449

www.greatersudbury.ca  
www.grandsudbury.ca

Re: Filling of roadside ditch and creation of entrance at the rear of  
1441 Redfern Street

As representatives of the City of Greater Sudbury, it has come to our attention that the portion of your land which abuts Barry Downe Road has been filled throughout the length of the roadside ditch and a new entrance has been created off of Barry Downe Road. Our observance of this entrance and a request for removal were forwarded to the attention of Nancy Lische via telephone on November 30, 2004.

This letter is to advise that the above described works are in contradiction to By-Law 73-204 which states:

Section 5.

"No person shall throw, place or deposit by any means whatsoever on any road, boulevard or bridge within the said Region, building material, dirt, filth..."

Section 6.

"No person shall place any obstruction, or obstruct or cause to be obstructed any ditch, gutter or watercourse on any Regional Municipality of Sudbury road or boulevard."

The City hereby requests that the roadside ditch which existed along the rear portion of your land be reinstated as soon as possible and the driveway entrance which was created without municipal consent be closed immediately.

Should you fail to reinstate the right-of-way to its previous state before January 1, 2006, the City will invoke its rights under Section 8 of the By-law which states:

Section 8.

"...if such demand for such removal is not complied with forthwith, the Regional Engineer may cause the same to be removed and may charge the cost of such removal to the person aforesaid and the same may be collected by process of law."

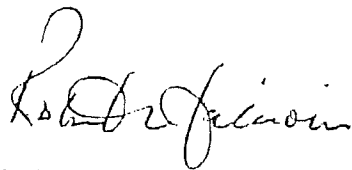
Filling of roadside ditch and creation of entrance at the rear of  
1441 Redfern Street

Page 2 of 2

It should be noted that the By-law also states that "any person convicted of a breach of any of the provisions of this By-law shall forfeit and pay, at the discretion of the convicting Judge, a penalty ... exclusive of costs". While the City would prefer to keep this matter out of the court system we are advising at this time that legal action could result in additional costs to yourself.

Should you have any questions or concerns in this matter please contact the undersigned at 671-2489 extension 2486.

Yours truly,



Robert Falcioni, P.Eng.  
Director of Roads and Transportation

GJK/jk

cc: Roger Leblanc, By-Law Enforcement Officer



January 12, 2009

Mr. Henry Lische  
1441 Redfern Street  
Sudbury ON P3A 3S8

Dear Mr. Lische:

**RE: FILLING OF ROADSIDE DITCH AND CREATION OF REAR ENTRANCE  
1441 REDFERN STREET, SUDBURY**

This letter is a follow-up to the letter dated November 30, 2005 sent to you from Robert Falcioni, Director of Roads of Transportation (copy attached).

Please note that the illegally installed driveway off of Barrydowne Road, entering 1441 Redfern Street, must be removed by May 1, 2009. If the said driveway is not removed by the indicated date, the City will remove the driveway at the owner's expense without further notice.

If you should have any questions or concerns please do not hesitate to contact me at 674-4455, ext. 3614.

Sincerely,

Tony De Silva, P.Eng.,  
Operations Engineer.

TDS/rt  
Attachment

c.c. Robert Falcioni, Director of Roads and Transportation  
Nathalie Mihelchic, Manager of Operations

Registered Domestic	Recommandé Régime intérieur	
To Destinataire		DELIVERY CONFIRMATION
HENRY LISCHÉ		1-800-550-6333
1441 REDFERN STREET		www.canadapost.ca
Sudbury, ON P3A 3S8		www.pptascanada.ca



**NORTHWALL**

258 Victoria St.  
Sudbury, Ontario, Canada  
P3C 1K4

Tel: (705) 566-2588  
Fax: (705) 566-6756  
E-mail: northwall@bellnet.ca

Greater Sudbury  
Roads/Transportation

APR 23 2009

Director's Office

April 21, 2009

Mr. Tony De Silva

Re: Filling of roadside ditch and creation of rear entrance at 1441 Redfern St., Sudbury

In response to your letter dated January 12, 2009.

At no time was the ditch filled altered. In 1970 the City of Sudbury issued a building permit for the construction of a shed at the portion of my property which abuts Barrydowne Rd.

The entire property was fenced in with a double gate; the gate was installed to allow vehicle access to the rear of the property.

Should you have any questions or concerns in this matter, please contact the undersigned at home (705) 560-5589 or cellular (705) 665-4282.

Yours truly,



Henry Lische

cc: Jackie-McGaughey-Ward  
Miller, Maki Barristers & Solicitors

• industrial • commercial • institutional •

• drywall • demountable partitions • plaster/EIFS • acoustic ceilings •



HAND DELIVERED

August 20, 2010

Mr. Henry Lische  
1441 Redfern Street  
Sudbury, ON P3A 3S8

Dear Mr. Lische:

**RE: REMOVING ILLEGAL ENTRANCE, CULVERT AND REINSTALLING SWALE AT  
1441 REDFERN STREET, SUDBURY, ONTARIO**

PO BOX 5000 SIN A  
200 BRADY STREET  
SUDBURY ON P3A 5P3

CP 5000 SUCCA  
200, RUE BRADY  
SUDBURY ON P3A 5P3

705.671.2489  
705.360.2022

[www.greatersudbury.ca](http://www.greatersudbury.ca)  
[www.grandsudbury.ca](http://www.grandsudbury.ca)

This letter is a follow-up to previous correspondence dated November 30, 2005 and January 12, 2009 (copies attached) regarding the illegally constructed entrance off Barrydowne Road.

Our records indicate that the City removed the driveway on June 23, 2009 in accord with our correspondence on January 12, 2009. A billing advice was sent to the above-noted address on October 5, 2009. The illegal driveway was re-established the following day.

We kindly ask that you remove the illegal entrance, culvert and reinstall the swale to its pre-existing state (constructed to a 3:1 slope) prior to September 7, 2010.

It should be noted that By-Law 73-204 states that "any person convicted of a breach of any of the provisions of this By-law shall forfeit and pay, at the discretion of the convicting Judge, a penalty...exclusive of costs". While the City would prefer to keep this matter out of the court system we are advising at this time that legal action could result in additional costs to yourself.

Thank you for your anticipated cooperation. Should you have any questions or concerns in this matter please contact the undersigned at 674-4455 extension 3614.

Yours truly,

A handwritten signature in black ink, appearing to read 'Tony De Silva'.

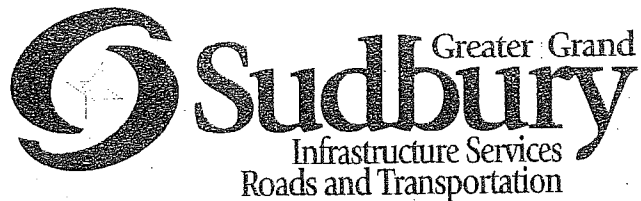
Tony De Silva, P.Eng.  
Operations Engineer

TDS/tsk

Attachments

c.c. Roger Leblanc, By-law Enforcement Officer  
Dave Brouse, By-law Enforcement Officer  
Robert Falcioni, Director of Roads and Transportation  
Nathalie Mihelchic, Manager of Operations  
Larry Blanchette, Section Superintendent

City of Greater Sudbury  
Ville du Grand Sudbury



## ORDER TO COMPLY

Issued pursuant to Section 20(8) of City of Greater Sudbury By-law #2011-219, and pursuant to Section 20 of City of Greater Sudbury By-law #2011-220

May 17, 2013

PO BOX 5000 STN A  
1800 FROBISHER STREET  
SUDBURY ON P3A 5P3

CP 5000 SUCCA  
1800, RUE FROBISHER  
SUDBURY ON P3A 5P3

Henry Lische,  
Nancy Belinda Lische  
1441 Redfern St  
Sudbury, ON P3A 3S8

Dear Henry Lische and Nancy Belinda Lische,

311  
705.671.2489

www.greatersudbury.ca  
www.grandsudbury.ca

**RE: Drain Obstruction and Illegal Private Entrance  
Contraventions of the Road Fouling By-law and Private Entrance Bylaw  
at 1441 Redfern Street, Sudbury, Ontario**

Being the said owners of the property at 1441 Redfern St, Sudbury, the open ditch along this property along Barry Downe Rd has been altered, and is adversely affecting neighboring properties. A ditch is an important component of roadside drainage. Also approval was not given to have a private driveway entrance along Barry Downe Rd, yet you have created the illegal driveway entrance.

You are hereby required to reinstate the ditch and remove the illegal private driveway entrance along Barry Downe Rd following the guidelines of a Road Occupancy Permit which must be obtained by application (enclosed) and payment to the Development Approvals Department located on the third floor of Tom Davies Square, 200 Brady Street, Sudbury, (telephone 311), and follow these requirement timelines:

**Apply for a Road Occupancy Permit immediately, and pay the permit fee no later than May 24, 2013. As per the permit guidelines, you or your contractor reinstate the open ditch and remove the private driveway along Barry Downe Rd, with all work to be completed by June 7, 2013.**

Please be advised that interfering with the ditch is in contravention of the Road Fouling By-Law #2011-219 of City of Greater Sudbury Section 19(3):

*No owner of property shall, or shall permit or authorize any person to alter, fill, block, interfere with, obstruct or cause or contribute to the obstruction of a drain within the limits of a highway, or to the lot grade such that the flow of storm rain, ground, surface or subsurface water is increased, impaired or deviates from the existing drainage pattern or approved grading and drainage pattern*

Also please be advised that creating an illegal driveway entrance in contravention of the Private Entrance By-Law #2011-220 of City of Greater Sudbury Section 5(1)(b):

*No owner shall construct, relocate, alter or close a private entrance, or authorize or cause a private entrance to be constructed, relocated, altered or closed without first obtaining ... a road occupancy permit in accordance with the provisions of the City's Road Occupancy By-law.*

Remediation by City states, as per Section 21 of By-Law #2011-220:

*Where the owner fails to comply with the requirements of the Order under Subsection 18(1) within the time period specified in the Order, the General Manager may cause such work to be done or take such steps as are necessary to meet the requirements of the Order, and the cost thereof including interest thereon at the rate of 15% , from the date the costs were incurred until payment in full, may be recovered from the owner by action or by adding same to the property tax rolls for the property owned by the owner and collecting them in the same manner as property taxes.*

Similar Remediation by City with By-Law #2011-219 Section 20 as stated above.

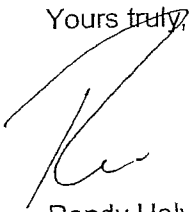
Enforcement as per Section 22(1) of By-law #2011-219 and of By-Law #2011-220 states:

*Every person who contravenes any of the provisions of this By-Law... is guilty of an offence and on conviction is liable to a fine (up to \$5000.00) as provided for in the Provincial Offences Act.*

**There must be compliance with the requirements of this Order before this date, June 7, 2013, otherwise the City will reinstate the open ditch at a cost that will be payable by you collected on your property taxes as per authority stated. As well legal action will be instituted and fines under both By-laws, with charges laid to both owners on title for failing to comply to the Order.**

Thank you for your anticipated cooperation. Should you have any questions please contact the undersigned at 705-674-4455, extension 3631.

Yours truly,



Randy Halverson,  
Manager of Operations

RH/tr

Encl.

cc: Tina Romanyszyn, By-Law Enforcement Officer  
David Shelsted, Director of Roads and Transportation  
Michael Kolanko, Southeast Section Superintendent  
Tony De Silva, Operations Engineer  
Tony Cecutti, General Manager of Infrastructure Services

*Miller, Maki* LLP

*Barristers and Solicitors*  
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GARY J. MARCUCCIO  
ALEXANDRE R.J. CAZA  
MEAGHAN R. BOISVERT

176 ELM STREET  
SUDBURY, ONTARIO  
P3C 1T7

TEL: (705) 675-7503  
FAX: (705) 675-8669

IN REPLY PLEASE REFER TO: **ALEXANDRE R.J. CAZA**

June 4<sup>th</sup>, 2013

**Tony DiSilva**  
City of Greater Sudbury  
1880 Frobisher Street  
Sudbury, ON

**FAX TO: (705) 560-6109**

Dear Sir:

**Re: Henry Lische - 1441 Redfern Street, Sudbury, ON, P3A 3S8**

Further to our telephone conversation of earlier today, this will confirm that you will be granting an extension from June 7, 2013 to June 21, 2013 to complete the work on the property.

In the interim, our client will take steps to apply to the City for the Entrance Permit and if unsuccessful, we will have to re-evaluate the situation.

Please do not hesitate to contact the undersigned if you have any questions or concerns.

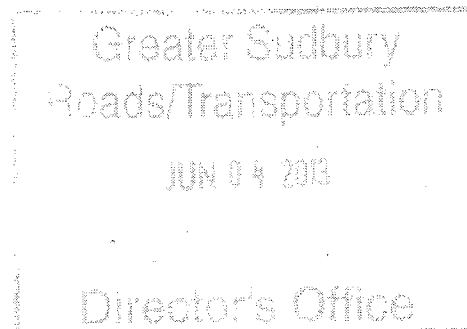
Yours very truly,

**MILLER, MAKI LLP**

**ALEXANDRE R.J. CAZA**

**B.A., LL.B.**

ARC/dg





## Application for Driveway Entrances

Fee \$63.00

Application Number: D 1 3 - 0 0 4 5

Date of Application: June 5/2013

## Applicant Information:

Applicants Name: Henry Lische

Street Number: 1441

Street Name: Redfern

Town: Sudbury

Postal Code: P3A 3S9

Phone number:

## Property Description:

House Number: 1441

Street Name: Redfern

Community: Sudbury

## Legal Description:

Township: McKim

Lot: 1

Con: 6

Plan: M562

Lot/ Part L 22

Parcel Number 28104

## Project Information:

Type of Driveway: New Entrance

Application received through Committee of Adjustment ☐ Yes ☒ No

Application Number: B

Request: 2nd entrance off Barrydowne Road

Inputted by: Raymond Chevette

Owner Signature:

Date:

Plan Attached: ☒ Yes ☐ No

## Office Only

## Development Approvals:

Permit Paid: ☒ Yes ☐ NoPayment Method: ☒ Cash ☐ Cheque ☐ DebitReceipt: ☒ Yes ☐ No

Office Only

## Development Engineering:

Application has been:

☐ Approved

Date:

☒ Not approved

Date:

June 6, 2013

Authorized by:

*Christian Trueman*

- ☐ The maximum width of a driveway must not exceed 6.1 m (20.0').
- ☐ The driveway must be constructed onto the private property which is gaining road access and must extend to the required legal parking space(s).
- ☐ The driveway must tie into the existing public roadway at an angle of not less than 70 deg. and is to maintain this alignment for a minimum distance of 6.1 m (20.0').
- ☐ The diameter of the new culvert(s) to match the larger of, the up-stream or down-stream culvert diameter but is not to be less than 450mm (18") in diameter.
- ☐ Follow the attached specifications on sight lines and the pertinent portions of the City Standard GSSD-303.020
- ☐ This application / proposal must be approved by the City of Greater Sudbury Planning Section
- ☐ If the use of this driveway ever changes from this proposed intent, the City reserves the right to have the property owner physically close it at it/his / her expense.
- All existing driveways to this property must be physically closed to vehicular traffic including removal of any culverts and its backfill, depressed curb, gutter, sidewalk etc. as well as any replacements as deemed necessary by City staff. These must be carried out at the serviced property owner's expense as soon as this new driveway is operational.
- ☐ Maximum grade on driveway is not to exceed 10%
- ☐ Road Occupancy Permit required if privately installing driveway entrance culvert. Permit fee \$34.00 (2012)
- ☐ The maximum length of entrance culvert not to exceed 9.1 m (30.0').

Note: These stipulations pertain only to the portion of the driveway which is located within the City of Greater Sudbury's right-of-way

Comments:

*No second driveway permitted*

Office Only

## Roads and Transportation:

Application has been:

☐ Approved

Date:

☐ Not approved

Date:

Authorized by:

- ☐ Applicant is to remove all necessary vegetation, earth and rock (located on the right-of-way of the road and/or on your property) which does not allow a driver to see headlights from any oncoming vehicle proceeding along the roadway on either side of the proposed driveway.
- ☐ Attached remarks

Note: These stipulations pertain only to the portion of the driveway which is located within the City of Greater Sudbury's right-of-way

Comments:

PERSONAL INFORMATION collected herein is collected under the authority of the **Municipal Act, 2001**, S.O. 2001, c. 25, for the purposes of assessing entitlement to and compliance with a Private Entrance Permit, in accordance with a municipal bylaw. Questions can be directed to the City of Greater Sudbury's Freedom of Information Co-Ordinator at Tom Davies Square, 200 Brady Street, P.O. Box 5000, Stn A, Sudbury, Ontario, P3A 5P3, or by phone at 3-1-1.

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**Ortho Toggle**

Easting: 504151.6797

Northing: 5152877.7486

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**iQuestor**

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For more information feel free to **Contact Us.**

Appendices 1441 Redfern Street 20/28  
<http://maps.greatersudbury.ca/internal/default.aspx>

Page 40 of 48  
 6/5/2013



**SCHEDULE A  
TO BY-LAW 2011-220**

**GUIDELINES FOR APPROVAL OF PRIVATE ENTRANCE**

The following guidelines apply to private entrances:

1. The proposed location of the entrance should meet the minimum stopping sight distance as established from time to time by the Transportation Association of Canada, (TAC) for the design speed on the highway abutting the property for which the entrance permit is sought. Sight distance are to be measured in accordance with the TAC Manual guidelines then in effect.

Sample Design Speeds and Stopping Sight Distances  
are set out below for road grades of less than 3%

Design Speed in kilometres per hour	Stopping Sight Distance in metres, rounded to the nearest metre
40	45
50	65
60	85
70	110
80	140
90	170
100	210

NOTE 1: in circumstances where the grade of the highway abutting the land to which the application applies is equal to or exceeds 3%, the minimum stopping sight distance should be adjusted in accordance with the TAC Manual

NOTE 2: the Applicant is responsible to remove from time to time, any vegetation, earth, rock or other obstacle necessary to maintain the minimum stopping sight distance on wet pavement in accordance with the TAC manual

2. The private entrance should not result in a contravention of the City's Official Plan or Zoning By-law then in effect for the land to which the application for the Driveway Permit applies. The following notations are included for assistance in issuing permits only and are not intended to be an all-inclusive listing of prohibitions:

- (a) the entrance should not be located within the sight triangle as defined in the City's Zoning By-law;
- (b) the entrance to a property in a residential zone should not result in more than 50% of the front yard being used for parking;
- (c) the entrance should not result in front yard parking contrary to the zoning for the property;
- (d) the entrance to a property in a residential zone which has less than 30 metres frontage, should not result in the property having more than one entrance;

NOTE: the Official Plan requires that entrances onto arterial roads be strictly regulated and kept to a minimum. Whenever property has frontage along more than one roadway, access will generally be limited to the lowest volume road

3. The sketch forming part of the application for the entrance permit should disclose that the entrance will be constructed in accordance with the City's Standard Drawings (GSSD – 303.020 & 350.010) as amended or replaced from time to time; and

4.(1) Subject to Subsection 4(2), the private entrance to a property in a residential zone should not be less than 3 metres in width and not more than 6.3 metres in width, measured at the street line.

(2) Despite Subsection 4(1) the private entrance to a property with a single detached dwelling with a shared entrance way may be in excess of 6.3 metres in width, provided the entrance does not exceed 10 metres in width.

5. The private entrance to a property zoned for commercial, industrial, agricultural uses should not exceed 9.1 metres in width;

6. The private entrance to a property should not have a grade in excess of 10% at any point.

7. The centerline of a private entrance should intersect the centerline of the roadway as nearly as practicable at a right angle, but in no case should the acute angle between the centerline of the private entrance and the centerline of the roadway be less than 70 degrees.

8. No private entrance permit should be issued where the General Manager, in his sole discretion determines that the private entrance as set out in the application would be likely to:

- (i) result in undue interference with the safe movement of public traffic, pedestrians or other users of the abutting highway; or
- (ii) create hazardous conditions due to inadequate sight distance, horizontal or vertical alignments or other considerations.

9. One additional entrance should be permitted to access a farm or field on a parcel of land zoned for agricultural use only where evidence is provided that the said property is being used for agricultural purposes.

10. A non-conforming entrance should not be approved unless in the circumstances a conforming entrance is not possible.

ISSUE DATE:

**September 10, 2013**



PL130509

Ontario  
Ontario Municipal Board  
Commission des affaires municipales de l'Ontario

IN THE MATTER OF subsection 53(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant:	Thomas Grylls
Subject:	Consent conditions
Property Address/Description:	3421 Regional Road 15
Municipality:	City of Greater Sudbury
Municipal File No.:	B0028/2013
OMB Case No.:	PL130509
OMB File No.:	PL130509

## APPEARANCES:

### Parties

### Counsel\*/Agent

The City of Greater Sudbury

S. Watt\*

Thomas Grylls

J. Grylls

## DECISION DELIVERED BY BLAIR S. TAYLOR AND ORDER OF THE BOARD

### INTRODUCTION

[1] Thomas and Jeannine Grylls (the "Owners") own approximately 10 acres (4 ha) at 3421 Regional Road 15, being part of Township Lot Number 2, Concession 5, in the City of Greater Sudbury ("the Subject Lands"). They had proposed to sever the Subject Lands into two parcels each containing about 5 acres (2.02 ha). The application was approved subject to some 10 conditions of approval. The Owners appealed to the Board with regard to two of the conditions of approval. The Board heard the matter on August 14, 2013.

### BACKGROUND

[2] The Owners purchased the Subject Lands in 1968 and have resided there since 1973. Thomas Grylls has been retired for fourteen years. The plan for the future was

for the Owners to sever the property and create two lots: the Owners would continue on the retained lands with their existing house and they would transfer the severed parcel to their son Jacques Grylls, who would relocate to the severed parcel and be closer to his parents. While the consent was approved, there were two conditions of approval that the Owners felt created an undue hardship: that they would have to apply for another consent to create a permanent right of way for a new mutual driveway to be located on the mutual property line, and close off the existing (driveway) entrance to their existing house. As their garage was located on the north side of the house, and the mutual property line was to be about 155 feet (48 m) to the south, the Owners felt that these conditions would effectively remove their front lawn, create a burden for snow clearing during the winter months, and was unreasonable in light of the existing conditions on Regional Road 15.

## DECISION

[3] For the reasons set out below, the Board dismisses the appeal by the Owners.

## CONTEXT

[4] The Subject Lands are designated in the Official Plan of the City of Greater Sudbury (the "City") as part of the Agricultural Reserve, and zoned Agricultural. Under this designation and this zoning, the minimum lot size is 30 ha (74 acres). Thus the Owners first had to apply for an Official Plan Amendment and a Zoning By-law Amendment ("OPA/ZBA").

[5] Following the Owners' application for the OPA/ZBA, the City circulated the application for agency comments. The Planning Department recommended against the OPA/ZBA as it was their opinion that it was inconsistent with the Provincial Policy Statement as it related to the long term protection of prime agricultural lands and that new residential lots were not permitted, and also contrary to the Official Plan policies against the creation of additional non-farm uses in the Agricultural Reserve which potentially could limit expansion of agricultural operations in the area.

[6] Other comments included a recommendation from the City's Roads and Transportation Services that if approved, when the severance came forward that as a

condition of approval, the existing entrance on the north side of the property be closed and a new entrance created on the proposed severance line to service both properties.

[7] Notwithstanding the staff recommendation to deny both the OPA and the ZBA, City Council approved the application, and on a site specific basis exempted the Subject Lands from the policies of the Official Plan and allowed the Subject Lands to be severed into two parcels, each having a lot area of approximately 2 ha, and similarly amended the Zoning By-law.

[8] As both the OPA and ZBA were not appealed, they came into full force and effect, and the Owners then applied for the severance, which was granted subject to the following conditions of approval that are contested by the Owners:

4 That prior to the issuance of a Certificate, the owners/applicants apply for and receive a driveway entrance permit for a shared driveway that shall be centered on the proposed lot line and also, close off the existing entrance located on the retained land to the satisfaction of the General Manager of Infrastructure

5 That the owners/applicants apply for and receive final approval for a consent for a right-of-way over a 10.0 m (32.81ft) wide section to be centered on the proposed lot line, for the purpose of a shared entrance. The right-of-way certificate shall be incorporated into the certificate herein and issued as one certificate.

[9] The Owners submitted that since the existing garage is on the north side of the existing house, that closing off the existing driveway would result in a driveway that was 48 m long, encompassing most of the front lawn of the existing home. This lengthy driveway would require extensive snow clearing in the winter, and it was their preference to retain the existing driveway and have the Board effectively approve a new one for the severed lot.

[10] This, they indicated, would be appropriate in the circumstances as there were no residential entrances on the opposite side of the road. The speed limit had recently been reduced to 60 km per hour, and there was adequate distance to the corner north of the Subject Lands. They did not foresee any other new driveways being added in the future, and the conditions as set out in the Consent decision, if implemented, could affect resale values.

[11] The City's evidence came from land use planner, Glen Ferguson and the Director of Road and Transportation Services, David Shelsted.

[12] The City's Official Plan, Mr. Ferguson noted, provided that one of its objectives for Transportation was to ensure the transportation network provide safe, convenient and efficient movement for all people and goods in Greater Sudbury. This objective is further refined in the road classification table where Regional Road 15 is a secondary arterial and that access from adjacent property is strictly regulated and kept to a minimum.

[13] Mr. Ferguson noted that while staff had recommended against the OPA/ZBA, and City Council had approved the OPA/ZBA, that Council had not included anything in its decision to alter the staff recommendation with regard to the shared driveway conditions that had been recommended by staff. He took the Board to the OPA and the ZBA and highlighted the fact that they only provided for the creation of two lots, but did not address the staff recommendation concerning a mutual driveway for the two lots.

[14] Mr. Shelsted indicated that Regional Road 15 at this location was a two-lane road. It currently had a 60 km per hour speed limit. It connected Val Caron and Chelmsford. He noted that Regional Road 15 was formerly Highway 64 and had been designed with a higher design speed than currently in use. It had been 80 km per hour in 2007, and Council, against the recommendation of staff, had reduced the speed limit to 60 km per hour in 2007. He noted that at the present time the 85<sup>th</sup> percentile of speed on the road in this section was still above 80 km per hour.

[15] He noted that the existing driveway was located 45 m south of the commencement of the curve in Regional Road 15. The recommended distance is 150 m from the commencement of the curve.

[16] Mr. Shelsted stated that the purpose of the conditions was to try and simplify the driving tasks on Regional Road 15 and have fewer points of potential conflict. This was important as a new mine had commenced in the area, and during the day the haulage route was along this section of Regional Road 15.

[17] In his opinion the conditions of approval would reduce the number of driveways onto this section of Regional Road, would provide a safer location for the proposed driveway and recommended the dismissal of the appeal against these conditions of approval.

**DECISION**

[18] The Board is required to have regard for the decision of municipal council, which it has done, and notes that no provision was made with regard to driveway access.

[19] The Board has considered s. 51(24) of the *Planning Act* and finds that the health, safety, and convenience of the present and future inhabitants of the City must be considered. In this regard the Board prefers the evidence of Mr. Shelsted that a mutual driveway on Regional Road 15 in this location would be safer for the travelling public, as it would remove the existing driveway located 45 m from the commencement of the curve.

[20] The Board notes that historically this Regional Road was a Provincial Highway, with a design speed in excess of the now posted 60 km per hour. The evidence is that the 85<sup>th</sup> percentile of drivers still exceeds 80 km per hour on this section of road. Thus, it is in the public interest for the City to seek to eliminate potential areas of traffic conflict.

**ORDER**

[21] The Board orders that since the Official Plan directs that access from adjacent lands shall be strictly regulated and kept to a minimum, the Board finds that the appealed conditions of approval are reasonable and appropriate in the circumstances, and dismisses the appeal.

"Blair S. Taylor"

BLAIR S. TAYLOR  
MEMBER

**A-562**

PLAN AND FIELDNOTES  
OF SUBDIVISION OF  
PART OF LOT 1, CONCESSION VI

SCALE 1" = 100'

MR MAHER O.L.S. DECEMBER 1955

