

CITY OF WHITEHORSE
COMMITTEE of the WHOLE

Tuesday, June 9, 2015 – 12:00 noon
Council Chambers, City Hall

CALL TO ORDER

ADOPTION OF AGENDA

1. Appeal of Subdivision Approval Conditions, Upper Tank Farm

ADJOURN

Appeal Procedures

Call to Order

Adoption of Agenda (no changes or additions allowed)

Introduction from the chair (summarizing process as follows):

1. Administration will present the administrative report. When that is done, council members will have an opportunity to ask questions
2. Council will hear from the appellants. If there are electronic participants they will be asked to speak first.

Delegates will be asked to keep their presentations brief – however, the five minute timer will not be used to limit their presentations.

When each delegate is finished, council members will have an opportunity to ask questions.
3. Each delegate will have only one opportunity to speak, but they will be allowed to respond to questions that arise.
4. When all persons have been given an opportunity to speak, administration will be asked if they have anything further to add as a result of what they have heard at this meeting.
5. Appellants will be asked if they have anything further to add
6. Council will leave the room to deliberate in-camera. Everyone present will be invited to remain in Chambers in case council members have additional questions.
7. If questions arise, council will come back to Chambers to ask their questions in an open meeting. When council members have the answers needed, council will leave again to continue deliberations in-camera.
8. Council will return to open meeting and advise that the decision of council will be ratified at an open meeting and communicated in writing within 60 days.

Adjourn

File #: 3250-02-S-02-2015

ADMINISTRATIVE REPORT

| |
|--|
| TO: Committee of the Whole |
| FROM: Administration |
| DATE: June 9, 2015 |
| RE: Appeal of Subdivision Approval Conditions – Upper Tank Farm |

ISSUE

On March 13, 2015 an application to subdivide Lot 430, Plan 26176 (the subdivided lands) into two lots was conditionally approved by administration. The applicant has appealed the decision of the Development Officer, specifically the condition for a partial cash-in-lieu payment and partial deferral of Public Use Land Dedication (“PULD”).

The letter of appeal requests that Council defer PULD for both new lots until development occurs on the site.

REFERENCE

- *Municipal Act* R.S.Y.T. 2002 c.154
- Subdivision Control Bylaw 2012-16
- Subdivision Application, accepted February 4, 2015
- Certificate of Compliance issued under Environment Act
- Development Review Committee minutes of February 18, 2015
- Subdivision approval issued March 13, 2015
- Letter of appeal received April 13, 2015

HISTORY

On February 4, 2015 administration accepted an application to subdivide Lot 430, Plan 26176 into two new parcels (Proposed Lots A and B). The applicant provided a Certificate of Compliance issued by the Yukon Government Environment Department as an application requirement. This confirmed the remediation of contaminants on Proposed Lot A was complete in accordance with the Contaminated Site Regulations of the Environment Act. The application did not include development plans; however the proposed use was identified as commercial/residential for Proposed Lot A, and ongoing remediation for Proposed Lot B.

The subdivided lands are zoned FP ‘Future Planning’ which allows minimal uses and whose purpose is to protect the land in an undeveloped and natural state until such time as planning has occurred to determine the appropriate zoning. The subdivided lands are also part of an established Direct Control District in the 2010 Official Community Plan. Section 291 of the *Municipal Act* allows for Council to establish a Direct Control District in its Official Community Plan to directly control development of land and buildings in an area.

The application was tabled at the February 18, 2015 Development Review Committee (“DRC”) for comment and recommendation. DRC provided comments regarding remediation of the site, access, municipal servicing constraints and the requirement for dedication of land for public use. In consideration of no land being identified for PULD in the application, it was determined that the applicant should provide payment in lieu of land in accordance with the provisions of the City’s Subdivision Control Bylaw. It was deemed reasonable and fair to require this payment for proposed Lot A (the clean lot), while the balance for proposed Lot B should be deferred until remediation is complete and a further application for subdivision made.

On March 3, 2015 an opinion of value was obtained for the subdivided lands from Yukon Government Property Assessment and Taxation Branch. This value is the basis for determining the payment in lieu equal to 10% of the fair value of the subdivided lands, immediately following subdivision. Based on the proposed plan of subdivision, the YG Assessor determined property values at:

| | | |
|--------------|---------------|--------------------|
| Lot A | 7.9ha | \$828,500 |
| Lot B | 22.0ha | \$2,318,900 |

On March 13, 2015 the proposed subdivision sketch was approved by the City’s Development Officer, subject to the following conditions:

1. That the owner (46447 Yukon Inc.) shall enter into a Development Agreement with the City of Whitehorse for the development of access and services to the proposed lots.
2. That Public Use Land Dedication shall be taken in the form of a cash in lieu payment in the amount of \$82,850.00 equaling 10% of the value of Proposed Lot A, assessed immediately after the subdivision of the land. Further Public Use Land Dedication (up to 10% of Proposed Lot B) is deferred until a further subdivision of Proposed Lot B is made.

On April 13, 2015 the applicant filed an appeal to Mayor and Council of the Development Officer’s decision requiring payment in lieu of PULD as a condition of subdivision approval.

ANALYSIS

The requirement for PULD is established in the *Municipal Act* and in the City’s Subdivision Control Bylaw. The bylaw states:

“It shall be the policy of the City of Whitehorse to exercise the right of the municipality to require a 10% public use land dedication, or payment in lieu thereof, for each subdivision application received within the constraints of the enabling legislation.”

The PULD requirements identified in the *Municipal Act* and the Subdivision Control Bylaw do not apply to a variety of applications, but in this case the requirement for PULD was within the constraints of the enabling legislation.

The *Municipal Act* and Subdivision Control Bylaw state that where it is determined that dedication of land for public use would serve no useful purpose, or be otherwise undesirable, the approving authority may instead require a payment in lieu equal to 10% of the value of the subdivided lands. As land for PULD was not identified in the application, and Proposed Lot B is undevelopable as it remains a designated contaminated site, payment in lieu was required for Proposed Lot A.

Public use land dedication is typically reflective of the need for parks, recreation opportunities, service infrastructure and protection of environmental features. All funds received in lieu of land dedication are reserved for expenditure only for the acquisition of lands used for public parks or other public uses.

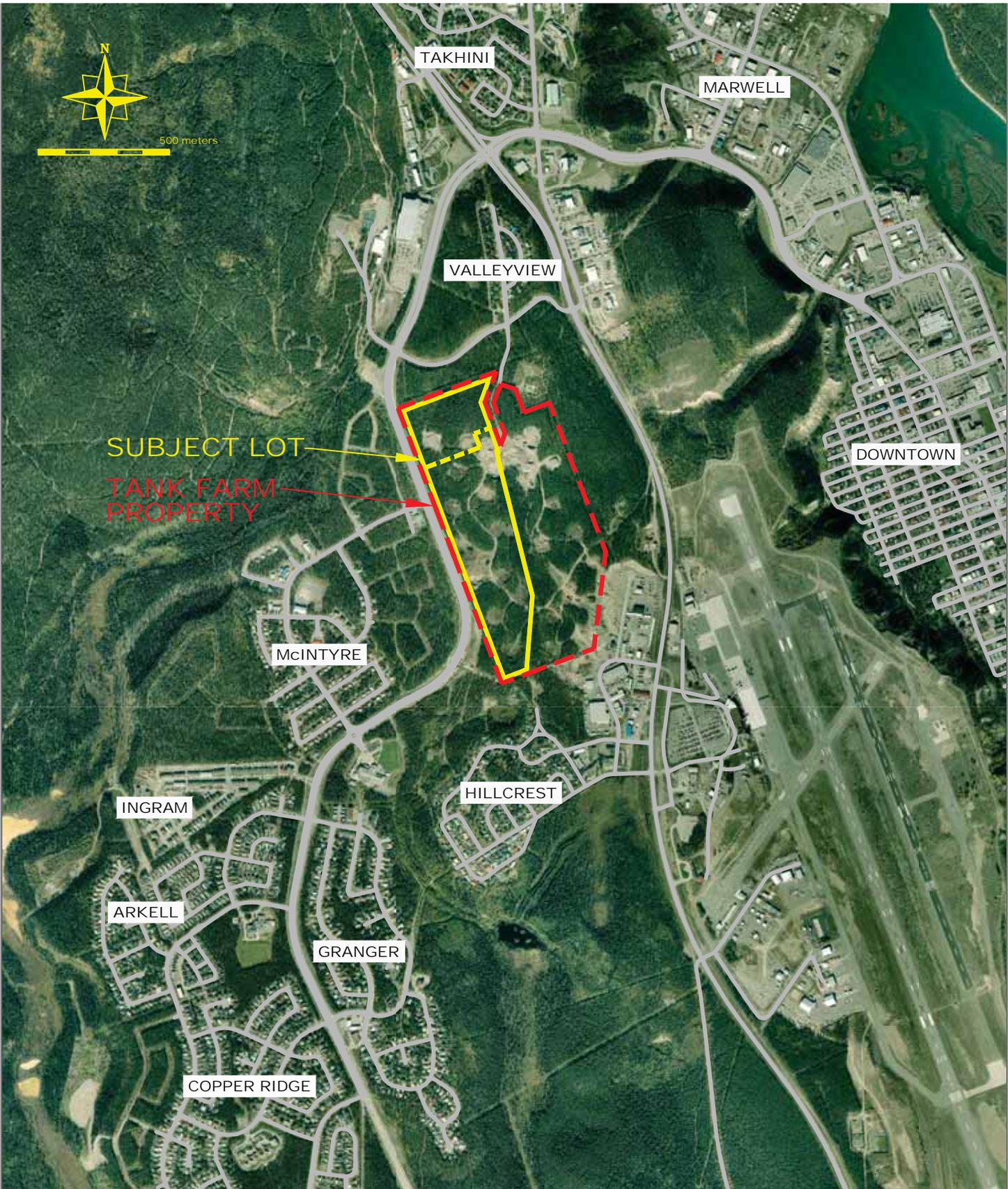
There are many other examples of subdivision decisions including a requirement for public use land dedication, deferral, or payment in lieu.

Taking land or a payment in lieu, deferring, or waiving PULD may be done to a portion of the subdivided lands. Where PULD is deferred, it is intended that PULD should be taken as a condition of approval on any future subdivision of the parcel. If PULD is waived or taken as a cash-in-lieu payment, future subdivision applications for those lands will not be subject to PULD, negating the ability to apply the PULD requirement to obtain land for public use.

ALTERNATIVES

In accordance with Subdivision Control Bylaw 2012-16, the *Municipal Act* and the *Subdivision Act*, council must within 60 days of the hearing of the appeal, render a decision by an order in writing to:

1. Deny the appeal. The conditional subdivision approval would stand, with PULD taken as cash-in-lieu payment equal to 10% of the value of proposed Lot A, and PULD being deferred for proposed Lot B.
2. Allow the appeal, varying the requirement for public use land dedication to:
 - a. Maintain the requirement of the subdivision approval for public use land dedication, but modify the time and method of a payment in lieu; or
 - b. Defer all public use land dedication for the subdivided lands until a subdivision application to create a residential subdivision is made. No cash-in-lieu payment would be required at this time; or
 - c. Waive the requirement for public use land dedication in its entirety, and not require payment of any cash-in-lieu. Dedication of public use land would no longer be applicable to future subdivision of these lands.



| | |
|--|-------------|
| SCALE: 1:20,000 | DWN. BY: nm |
| DATE: June 9, 2015 | R.No: 0 |
| FILE No: S-02-2015 | |
| R:\Plnng\Indmngmnt\sub\2015\S-02-2015*.dwg | |

CITY OF WHITEHORSE - PLANNING & DEVELOPMENT SERVICES

LOCATION SKETCH - IMAGE UNDERLAY
Upper Tank Farm Proposed Subdivision



Opinion of Value
City of Whitehorse Subdivision Application
Public Land Use Dedication
Subdivision of Lot 430, Valleyview, Plan 26176
Upper Tank Farm
Whitehorse, YT

ATTENTION: NICK MARNIK

The City of Whitehorse has requested an assessment of new proposed subdivision of Lot 430, being part of the Upper Tank Farm in the Valleyview area of Whitehorse. The request is made to determine the market value of the Parcel A: Public Land Use Dedication and Parcel B as part of the subdivision of Lot 430.

Option of Value:

Based on the information provided by the City of Whitehorse and the preliminary survey plan, the assessed value of Parcels A & B are estimated at:

| | | |
|----------|---------|--------------|
| Parcel A | 7.86 H | \$ 828,500 |
| Parcel B | 22.00 H | \$ 2,318,900 |

No site inspection of this parcel has been made for the purpose of this Opinion of Value. This valuation does not conform to Appraisal Institute of Canada standards for reports issued to the public domain. It is assumed that the lot has no restriction to development beyond those that are outlined in the Municipal Zoning by-law for FP zoned lands



Julie D. Mitchell
Property Assessor
Property Assessment & Taxation Branch

February 18th, 2015



City of Whitehorse

2121 - 2nd Avenue, Whitehorse, Yukon Y1A 1C2 Bus: (867) 667-6401 Fax: (867) 668-8398

March 13, 2015

File: 3250-02-S-02-2015

Mike Mikey
1409 Holly St.
Whitehorse, YT, Y1A 4V2

By email only

Re: Subdivision Approval Lot 430, Group 804, Plan 51614 CLSR, 25107 LTO

Dear Mr. Mikey:

This letter serves as notification of City approval of the subdivision of the above lot subject to the following conditions:

1. That the owner (46447 Yukon Inc.) shall enter into a Development Agreement with the City of Whitehorse for the development of access and services to the proposed lots.
2. That Public Use Land Dedication shall be taken in the form of a cash in lieu payment in the amount of \$82,850.00 equaling 10% of the value of Proposed Lot A, assessed immediately after the subdivision of the land. Further Public Use Land Dedication (up to 10% of Proposed Lot B) is deferred until a further subdivision of Proposed Lot B is made.

As provided by section 14 of the City's Subdivision Control Bylaw 2012-16, you have the right to appeal the above noted conditions of this subdivision approval to the Council for the City of Whitehorse. In accordance with section 15 of Subdivision Control Bylaw 2012-16, an appeal to Council must be made in writing within thirty (30) days of the date of this letter.

With regard to Condition #1 of the subdivision approval, the City has drafted the attached Development Agreement for the future construction of access and services to the proposed lots for review and execution by 46447 Yukon Inc, after which it will be presented to the Director of Development Services for approval. The Development Agreement will be registered in Whitehorse Land Titles Office against title to Lot 430, Group 804 Plan 25107 LTO. The Development Agreement is subject to a \$200.00 administrative fee, payable prior to registration of the new subdivision plan in the Land Titles Office.

With regard to Condition #2 of the subdivision approval, this payment must be made prior to the registration of the new subdivision plan in the Land Titles Office.



Enclosed please find a digital copy of the approved Subdivision Sketch signed by a Development Officer for the City of Whitehorse pursuant to the provisions of Subdivision Control Bylaw 2012-16. A copy of this letter and approved subdivision sketch has also been forwarded to your surveyor Carl Friesen CLS, at Underhill Geomatics Ltd.

Please note that this approval is granted for a period of one (1) year, and will expire on March 13, 2016

If you have any questions or comments, please feel free to contact me at 334-7228.

Sincerely,

A handwritten signature in blue ink, appearing to read "marnik".

Nicholas Marnik
Subdivision and Lands Coordinator

cc: Carl Friesen, CLS

DEVELOPMENT AGREEMENT

THIS Development Agreement made in triplicate as of this ____ day of _____, 2015.

BETWEEN:

**THE CITY OF WHITEHORSE
a municipal corporation
(hereinafter called "the City")**

BEING THE PARTY OF THE FIRST PART

AND:

**46447 Yukon Inc.
(hereinafter called "the Developer")**

BEING THE PARTIES OF THE SECOND PART

IN RESPECT OF:

**Lot 430, Group 804,
City of Whitehorse, Yukon
Plan 25107**

(hereinafter called the "Subject Land")

PREAMBLE

WHEREAS the Developer is or is entitled to become the registered owner in fee simple of the Subject Land; and

WHEREAS the Developer has applied to subdivide the Subject Land to create two lots, which approval was granted subject to certain conditions, including entering into a Development Agreement for the servicing, access and development of the subject Lands; and

WHEREAS the Developer is willing to undertake the Development of the Subject Land in co-operation with the City; and

WHEREAS the City and the Developer have agreed that the Development and all matters and things incidental thereto shall be subject to the terms, covenants and conditions as are hereinafter set forth.

NOW THEREFORE in consideration of the premises and mutual terms, covenants and conditions to be observed and performed by each of the parties hereto, the parties agree as follows:

1.0 DEFINITIONS

- 1.1 “City Engineer” means the Professional Engineer or Engineers employed or retained by the City or the person designated as such by the City for the purposes of this Development Agreement.
- 1.2 “Construct” or “Construction” includes build, erect, install, repair, alter, add, enlarge, move, locate, re-locate, re-construct, upgrade, demolish, remove, excavate, or shore.
- 1.3 “Consulting Engineer” means a professional engineer, permitted to practice in the Yukon, who is employed or retained by a Consulting Engineering Firm.
- 1.4 “Consulting Engineering Firm” means an engineering firm, retained by the Developer, which employs or retains the Consulting Engineer.
- 1.5 “Design Drawings” means the drawings conforming to Sub-section 2.2 of the City of Whitehorse Servicing Standards Manual (“SSM”), identifying the Works and Services requirements of this Development Agreement prepared by the Consulting Engineer Firm and submitted to the City.
- 1.6 “Substantial Performance” means the stage of completion of all of the Works and Services when the Works and Services are ready to be used for their intended purpose, as certified by the Consulting Engineer.
- 1.7 “Works and Services” includes driveways, street lighting, wiring, water distribution systems, sewage collection and disposal systems, drainage collection and disposal systems, and other such infrastructure or systems as may be provided by the Developer to service the Development.

2.0 DEVELOPMENT OF THE SUBJECT LAND

Design and Construction Requirements

- 2.1 Agreed Standards. Works and Services Constructed for the Development shall conform to the design and material standards found in the SSM, Transportation Association of Canada Geometric Design Guide for Canadian Roads, good Engineering practice, and the requirements of Private Utilities, or other relevant standards subject to the City Engineer’s discretion.
- 2.2 Consulting Engineer. The Developer, at its expense, shall retain a Consulting Engineer to design, inspect, test and certify all Works and Services.
- 2.3 Drawing Review. The Developer must submit Design Drawings to the City Engineer for review prior to Construction of the Works and Services. The City Engineer will complete the review of the Design Drawings within 21 working days from the date of receipt. Revisions to the Design Drawings, as agreed to by the Developer and the City Engineer, shall be made and the revised Design Drawings shall be submitted to the City prior to commencing Construction of the Works and Services.
- 2.4 Required Works and Services. The Developer shall design and Construct such Works and Services as are required to service new residential development and associated improvements on the Subject Land.

- 2.5 Location of Works and Services. Works and Services must be constructed within the boundaries of the Subject Land except those off-site locations approved or required by the City Engineer as part of the Design Drawing review. Works and Services that cross adjacent properties are to be contained within easements and easement agreements must be executed in the right of the Subject Land owner as per the City's Sewer and Water Bylaw.
- 2.6 Street Occupancy Permit. The Developer must not Construct Works and Services on, in or under a municipal highway or any City lands, or encroach upon any municipal highway or City lands during the course of Construction, unless the Developer has been issued a Street Occupancy Permit in the form approved by the City Engineer.
- 2.7 Underground Utilities. Before commencing Construction of Works and Services, the Developer must locate all underground utilities and structures that might be affected by the Construction of Works and Services and must consult with all public and private utilities to locate any underground utilities of which they have records. The Developer must also locate any other utilities or underground structures that are reasonably apparent from an inspection of the area in which the Works and Services are to be Constructed.
- 2.8 Survey Monuments. The Developer must protect all survey monuments and markers, pins, and posts during the Construction of the Works and Services and must employ, at the Developer's expense, a Canada Lands Surveyor in good standing to replace any such monuments and markers, pins, and posts which may be moved, damaged, or destroyed during such Construction.
- 2.9 Safety. The Developer must provide all necessary safety devices and supervision in relation to the Construction of the Works and Services so as to protect the public.
- 2.10 Essential Services. The Developer must provide and maintain the essential services of actual and reasonable access to and from the Subject Land secured to the satisfaction of the City, suitable for use by fire and emergency vehicles and equipment at all times.
- 2.11 Traffic. The Developer must provide traffic signs, markers, barricades, and flag persons as required by the City to permit the safe flow of traffic through the Construction area with a minimum of disruption and nuisance to the public and adjacent land owners.
- 2.12 Watercourses. Unless otherwise permitted by the City, the Developer must use care to not disturb any of the natural watercourses in and around the Subject Land, and must incorporate such protection and conservation methods as required by the City or by any enactments.
- 2.13 Access. The Developer must provide the City, its officers, employees and agents, at all reasonable times, with access to the Subject Land and Works and Services. No person may prevent or obstruct, or attempt to prevent or obstruct, the entry of officials authorized under this paragraph upon the Subject Land.

- 2.14 Property Damage. The Developer must protect the Works and Services, underground utilities and structures and property owned by third parties (including municipal and territorial property) from damage and make good any damage to such Works and Services, utilities and structures or third party property arising in connection with the Works and Services.
- 2.15 Compliance with Laws. The Developer must comply with all enactments, laws, statutes, regulations, and orders of any authority having jurisdiction, including bylaws of the City. Interpretation of City policies in effect at date of execution are subject to the intent and provisions of this Development Agreement
- 2.16 Licenses and Permits. The Developer must comply with and obtain all territorial, municipal, and environmental licenses, permits, and approvals required under applicable enactments.
- 2.17 Materials and Workmanship. The Developer must provide materials and workmanship in Constructing the Works and Services that are not defective or faulty, materials provided must be new, and products must be of a quality best suited to their purpose and use, as approved by the Consulting Engineer.
- 2.18 As-Built Drawings, Reports and Disks. The Owner must provide the City with detailed, reproducible as-built drawings and computer disks of the Works and Services, and all associated Engineering Reports, sealed and certified by the Consulting Engineer, where capable of sealing and certification, of the Works and Services as Constructed as of the date of Substantial Performance.

3.0 NOTICES

- 3.1 Whenever, under the provision of this development agreement, any notices, demands or requests are required to be given by either party to the other, such notice, demand or request may (except where expressly otherwise herein provided) be given by delivery by hand to, by sending the same by facsimile, or by registered mail sent to, the respective addresses or facsimile number hereinafter provided for, and if given by mail shall be deemed to have been served and given on the second business day following the date of mailing by registered mail and provided such addresses or facsimile number may change upon five (5) days notice. In the event that notice is served by mail at the time when there is an interruption of mail service affecting the delivery of mail, the notice shall not be deemed to have been served until one (1) week after the date that the normal service is restored. The respective addresses and facsimile number of the parties being, in the case of the City:

THE CITY OF WHITEHORSE

ATTENTION: Manager, Planning and Building Services

2121 Second Avenue

Whitehorse, Yukon Y1A 1C2

Fax: (867) 668-8395

and in the case of the Developer:

46447 YUKON INC.
10 Sunset Drive North
Whitehorse YT Y1A 4M8

4.0 COVENANTS RUN WITH TITLE

- 4.1 The City may file an interest in the property as a development agreement, caveat or such other document as it shall deem advisable against the title to the Subject Land to protect its interests therein, which development agreement, caveat or such other document shall be first in priority to any other charge, encumbrance or caveat registered;
- 4.2 The Developer agrees that pursuant to the *Municipal Act*, the conditions, terms and provisions of this development agreement shall be deemed to be covenants running with the title to the Subject Land and shall be binding upon the Developer and their heirs, executors, administrators, successors and assigns; and
- 4.3 The City shall remove this development agreement from the title of the Subject Land upon satisfaction of all terms and conditions of this development agreement and Substantial Performance and receipt of all As-Built Drawings, Reports and Disks associated with the Works and Services.

5.0 FORCE MAJEURE

- 5.1 The Developer and the City shall not be deemed to be in default in respect of non-performance of its obligations under this development agreement if and so long as the non-performance is due to strikes, walkouts, fires, tempests, or Acts of God or of the Queen's enemy or any other cause (whether similar or dissimilar to those enumerated) beyond the Developer's or the City's control, but lack of finances shall in no event be deemed to be a cause beyond the Developer's control.

6.0 ASSIGNABILITY OF DEVELOPMENT AGREEMENT

- 6.1 This development agreement shall not be assignable, nor shall any of the rights or obligations hereunder be assignable by the Developer, without the written approval of the City, which approval shall not be unreasonably withheld.
- 6.2 It is understood between the parties that in the event that the Developer wishes to assign any of its duties or obligations herein granted to it by the City, that the City has the full right to request that a development agreement be entered into by the assignee or transferee; and that no assignment of this development agreement shall be permitted unless the proposed assignee or transferee enters into such new agreement, which may impose further or other conditions, levies or terms and

**CORPORATE SIGNING AUTHORITY
AFFIDAVIT**

CANADA) We, **Dan Curtis and Norma Felker**,
)
 YUKON TERRITORY) of the City of Whitehorse, in the Yukon Territory,
)
 TO WIT:) SEVERALLY MAKE OATH AND SAY AS FOLLOWS:

- 1) We are the **Mayor** and **Assistant City Clerk** respectively of **The City of Whitehorse** (the "Corporation").
- 2) We are the persons who subscribed our names and affixed the corporate seal of the Corporation to the attached instrument.
- 3) We are authorized by the Corporation to subscribe our names and affix the corporate seal to the attached instrument.
- 4) The Corporation exists as of the date hereof.

SEVERALLY SWORN BEFORE ME)
 at the City of Whitehorse,)
 in the Yukon Territory,)
 this ____ day of _____,)
 2015.)

Dan Curtis, Mayor

**A Notary Public in and for
 the Yukon Territory**

Norma Felker, Assistant City Clerk

Print Name of Notary Public

April 10, 2015

Mayor and Council

Recent Tank Farm subdivision:

Hello Nick,

I am writing to appeal the recent decision to require 10% cash in lieu to complete the subdivision we applied for.

While I was surprised the value jumped so much just by subdivision I am not arguing the new value so much as they way COW wishes to apply their PLUD.

Requiring cash in lieu of land is actually very much to our benefit but I'm concerned what happens in the future when we actually develop the property and the city has lost it's right to receive 10% of the future development for public uses. The value placed on the property today is a pittance compared to the future value once all cleanup and subdivision is complete.

I had agreed with planning to simply pay the 10% cash at this time believing it would be paid on the entire parcel at this time based on it's current assessed value, or close to it. The land is basically worthless in it;s current condition and felt the rather small cash required now would be negligible when we did enter a development agreement in the future taking into account public use areas throughout.

I'm told the municipal act required the Planning department to make the decision they have so am appealing to have this, and likely future, PLUD charges assessed and then deferred to a future date when development actually takes place. The development agreement at that time would then require cash or land, whichever was in the best interest of COW.

With the final use yet to be determined, this would allow better planning of areas to be set aside to best suit the neighbourhood.

Regards,

Mike Mickey