

**Smith, Theresa L.**

**From:** Christopher Davis [chris@chrisdavislaw.ca]  
**Sent:** Thursday, December 22, 2016 4:02 PM  
**To:** City Clerk  
**Cc:** m1; Hans Maier  
**Subject:** Public hearing - January 16, 2017 (Item CPC2017-022 / Bylaw 26D2017) 139 - 17th Avenue SW (Mission)  
**Attachments:** 2016 Dec 22 - letter to Calgary City Clerk - ver 4.pdf  
**Importance:** High

Attention: City Clerk

Please ensure the attached letter is included in the published package for the January 16, 2017 public hearing.

Thankyou.

Sincerely,

Chris

**Christopher S. Davis, B.Comm., LL.B**  
Barrister & Solicitor



**Christopher Davis Law**  
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Calgary, Alberta, Canada  
T2G 1X5

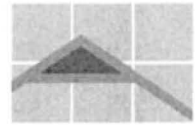
PLEASE UPDATE MY EMAIL ADDRESS ON YOUR RECORDS: [chris@chrisdavislaw.ca](mailto:chris@chrisdavislaw.ca)

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'Defining Development for Albertans'

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File No. 2678.001  
Your File No.

December 22, 2016

BY DELIVERY to City Clerk's ( [cityclerk@calgary.ca](mailto:cityclerk@calgary.ca) )

Office of the City Clerk  
The City of Calgary  
700 Macleod Trail SE  
P.O. Box 2100, Postal Station "M"  
Calgary, Alberta T2P 2M5

Attention: City Council

Your Worship and Members of Council:

**Re: Public Hearing - - Monday January 16, 2017**  
**CPC2017-022 (Mission) – Bylaw 26D2017**  
**Redesignation of lands: C-COR2 f3.0 h46 to M-H3 f5.5 h38**  
**139 – 17<sup>th</sup> Avenue SW (La Chaumiere site / OPUS Corporation application)**

We represent MRES Calgary Ltd. and H.M. & P.S. Holdings Ltd. MRES is the owner of the property immediately east of the subject site (139 – 17 Ave SW). HM&PS is the owner of the parcel immediately to the east of the MRES parcel. Together, these two lots make up about 70 metres (230 feet) or 1/3 of the south block face of 17<sup>th</sup> Avenue, between 1<sup>st</sup> Street SW (Rouleau Square) and Centre Street SW. The proposed land use amendment site is on this same block face.

While MRES does not oppose OPUS' application for increased site density, its preference is for the land use to remain as the current C-COR2, for the following reasons:

1. The negative impact of the M-H3 land use amendment on the MRES site. The land use amendment will be converting a commercial use to a residential use. Perhaps unintentionally, it will negatively impose on our client MRES' site an increase in the bylawed side setback area. *In effect, this land use amendment will sterilize the westerly 5.0 metres of our client's site.* As a commercial to commercial interface, the side setback is currently a ZERO; the amendment will increase the side setback to 5.0 metres. This results from the imposition of a residential interface on our clients' commercial sites.<sup>1</sup> This has a significant potential negative impact on our clients' collective parcels.

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<sup>1</sup> LUB 1P2007, section 807(1)(c).

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2. Existing access easements. As a direct result of the development of the subject application site in 1995<sup>2</sup>, MRES' predecessor in title and La Chaumiere Restaurant Ltd.<sup>3</sup> entered into an access easement affecting title to both Lot 1 and Lot 2, Block 3, Plan 9511724 (being the current La Chaumiere and MRES titles, respectively). This access easement<sup>4</sup> remains on the current titles. It may not be amended or withdrawn without the mutual agreement of both parties.<sup>5</sup>

#### Impact on MRES' parcel

We understand that the City has asked applicant OPUS to apply for a change to the multi-dwelling residential M-H3 use as there is no "commercial use" component proposed for the proposed development. It is not clear to our clients why an "assisted living" use such as that proposed cannot be accommodated within the existing C-COR2 land use?<sup>6</sup> The LU bylaw<sup>7</sup> requires that a minimum of 20% of the gross floor area in C-COR2 contain "commercial uses", but "commercial uses" are not defined in the LUB. Would the "assisted living" use not qualify as a "commercial use"?

Should Council consider it necessary to amend the use from commercial to residential, MRES and HM&PS will have to consider a response to address the "sterilization" issue. Once solution may be for our clients to make a resulting land use amendment application for their own "direct control" (DC) land use amendment for their two parcels. This would be driven by a need to mitigate the loss of the development potential for the westerly 5.0 metres of Lot 2 (the MRES parcel). The base district should remain as C-COR2, but with the DC bylaw removing any requirement for a 5.0 metre side setback.<sup>8</sup> The approval of this application would be City Council's to make, but in the circumstances it would be fair and equitable for Council to allow such an amendment to avoid the negative collateral impact of the current application on our clients' parcels. The land use amendment would be required and necessary in order to maintain the "*status quo*".

#### Access Easements

Until such time as our clients redevelop their parcels, the existing private access easements are required to provide access to parking on both the MRES and La Chaumiere parcels. It appears, from the drawings provided by OPUS to the City of Calgary as part of this application, that OPUS intends to accommodate the surface width of the existing access easements within the scope of their proposed site development design. What is unclear is whether the existing grades within the easement area will be maintained or if it is possible

<sup>2</sup> The current La Chaumiere restaurant.

<sup>3</sup> The current owner of Lot 1, the application site.

<sup>4</sup> Amended by both parties in 2001.

<sup>5</sup> Section 48, Land Titles Act and the provisions of the 2001 Amending Agreement instrument 011 222 124 / 315.

<sup>6</sup> Section 803(1) states that the maximum use area on the ground floor in the C-COR2 district is 930 sq m. However, section 803(4) states that there is NO use area restriction for "assisted living" use. Furthermore, the maximum use area is capable of relaxation during a development approval application.

<sup>7</sup> LUB, Section 804(1).

<sup>8</sup> A height or density modification would be considered as part of any DC application.

for the access to be continued during construction - as the access easement specifies that access must be continued "without hinderance, molestation or interruption".

City staff have expressed an interest in co-ordinating a meeting between the affected land-owners to examine options, including one that might allow a discharge of the existing access easements. The existing easements (as amended) state that the parties will "negotiate in good faith" with each other so that either party will not be "unnecessarily restricted or impeded" in the redevelopment of their parcels. Any amendment to the existing easements will affect our clients' approved uses and associated parking, so our clients would need the co-operation of the City, as development authority, to allow any such amendment.

Sincerely,

**Christopher Davis Law**



Per: CHRISTOPHER S. DAVIS  
Barrister & Solicitor

By email delivery:  
Clients  
Ming Chen, Architect