

**MAYFAIR / BEL-AIRE COMMUNITY ASSOCIATION
PRESENTATION TO CALGARY CITY COUNCIL**

**Item # 8.2.1
(public submissions)**

"GUIDEBOOK FOR GREAT COMMUNITIES" - BYLAW17P2020

[An "Additional Statutory Plan" pursuant to s. 635.1 MGA /
Calgary Charter – Alberta Reg. 40/2018]

MONDAY MARCH 22 / TUESDAY MARCH 23, 2021

Good day Your Worship and Members of City Council. I am Chris Davis. I am a planning lawyer by profession. I grew up in the Mayfair / Bel-Aire community and have acted on behalf of this community on restrictive covenant related matters. I have been asked to speak today *pro bono* at the community's request.

The community is not here today to fight City Hall, but even the much-revered JANE JACOBS in her own "guidebook" (The Death and Life of Great American Cities) said that sometimes fighting City Hall must be an option:

"A district (comprised of neighborhoods) has to be big and powerful enough to fight city hall. Nothing less is to any purpose ... sometimes a district has to do exactly this ... a district lacking the power and will to fight city hall – and to win – when its people feel deeply threatened, is unlikely to possess the power and will to contend with other serious problems." ¹

In considering the statutory "Charter Bylaw" – the Guidebook for Great Communities, I ask that Calgary City Council do what you do every time you engage in a public hearing– that no matter where you might have stood in the past two+ years on this plan, that each of you keep an open mind to everything you are hearing and seeing and be capable of persuasion by listening to each presenter. That's all we can ask – and that in turn will allow you to reflect on what can be done to make this process lead to the best achievable outcome for all Calgarians.

Part 1 - CONTEXT – THE STORY OF A COMMUNITY

The communities now known as Mayfair /Bel-Aire in 2016 comprise 860 people. These communities were developed starting in the 1950's. Redevelopment is on-going.

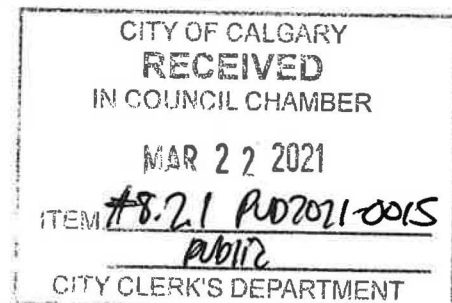
On average these communities are more affluent, more educated, increasingly diverse and skew older than other Calgarians.² These are desirable communities for many, the City's assessment roll supports that fact. And the community is made up exclusively of single-detached residential homes.

These communities are one of the many Calgary communities built post-World War 2 where restrictive covenants were the preferred planning tool used by both the City and developers to define community character, including but not limited to type of home, type of use, lot coverage, setbacks and building elevations.

[For more detail about the community, see Appendix A.]

¹ Jacobs, Jane. The Death and Life of Great American Cities, 1993 ed., pp. 159-160.

² 2016 Canada Census data, City of Calgary. <https://www.calgary.ca/csps/cns/social-research-policy-and-resources/community-profiles.html>



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PART 2 – WHAT DOES THE COMMUNITY WANT?

Respectfully, the Mayfair / Bel-Aire Community Association would like Council to do the following:

1. To defer the approval of the Guidebook until after "meaningful consultation" has been completed? The community response to the Guidebook suggests that it hasn't happened yet. In legal circles we say that "the thing speaks for itself". It's self-evident.
2. Should Council elect to approve the Guidebook by giving three readings, as recommended, to incorporate two changes that we believe will improve its acceptance to many concerned citizens.

PART 3 - HOW MIGHT THE GUIDEBOOK BE BETTER? (I only have time for this one in my 5 minutes ...)

**ISSUE #1 – RECOGNIZE THE CONTINUING APPLICATION OF RESTRICTIVE COVENANTS AS A VALID
PLANNING TOOL IN THE GUIDEBOOK**

In addition to government regulation of land use, uses can also be privately regulated through private contracts, which may or may not be registered as restrictive covenants.³

Mayfair / Bel-Aire has a series of uniform covenants that apply to all homes in the community. Until 2018, there was little need to take action to enforce the community covenants as the covenants and the City's Land Use Bylaw were generally in alignment. However, starting with a decision to allow "secondary suites" in all land use districts, this alignment no longer holds true. Many covenant communities are now developing "legal defense funds" to protect their requirements. In a case in University Heights about a year ago, the Court found that there is a "strong *prima facie* case" that a use approved by the City constituted a second dwelling unit that directly contravened a provision limiting the community to "single-family" dwellings.⁴

If covenant communities don't enforce their covenants, they risk having the covenants lapse.⁵

The Guidebook's lowest density residential "Urban Form Category" (UFC) is "Neighbourhood Local".⁶ There will only be one low-density residential district that will be used in a new Land Use Bylaw and that Category will be developed using "different considerations that could be addressed through a renewed (Land Use) Bylaw, based on the policies and direction of the *Guidebook*."⁷ It is clear that within this Category (or district) a range of built form will be permitted, from single-detached to row housing and cluster homes.⁸ Without further refinement to the Guidebook, this will inevitably pit covenant communities against the Guidebook, the Local Area Plan and the Land Use Bylaw.

³ Planning Law and Practice in Alberta, Laux, Fred and Stewart-Palmer, Gwendolyn. (4 Ed – 2019), at p. 3-1.

⁴ Faulkner v Donaldson, 2020 ABQB 259, at para. 27.

⁵ Potts v McCann, 2002 ABQB 734, at para 32.

⁶ Guidebook, p. 44.

⁷ A Framework for a Renewed Land Use Bylaw & Outline for New Districts, City of Calgary (June, 2019), <https://www.calgary.ca/pda/pd/current-studies-and-ongoing-activities/toward-a-renewed-land-use-bylaw.html>

⁸ Guidebook, Appendix 2, p. 130-131.

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Although the Guidebook is not applicable until such time as a Local Area Plan is approved, the current language of the Guidebook means that its words are powerful and will have immediate legal impact.⁹ Of equal importance, the Guidebook will be considered and applied by City planning staff when considering most all planning applications – whether the Guidebook is legally applicable or not, it will be considered as an approved planning instrument that represents the will of City Council. One has only to think about how much impact the non-statutory "*Infill Housing Guidelines*" have had since their implementation in 1993.¹⁰

To remove the potential for further conflict arising from the Guidebook and the legal covenants affecting many communities within both Zone A and Zone B,¹¹ we respectfully request that Council amend the Guidebook to include registered covenants as a further valid criterion for development intensity consideration.

For the Suggested amendment #1 – See APPENDIX B

We have a second suggested amendment, more applicable to communities with existing ARP's, and that's in our written submissions.

CLOSING

Neighbourhoods remain important to Calgarians. RICHARD WHITE, Calgary's "Everyday Tourist" has lots of good things to say about Calgary and about neighbourhoods. In 2018 he said:

*One of the great things about living in Calgary is you don't 'live' in a city of a million people, but rather in one of the 200 different neighbourhoods ..."*¹²

In his blog on the weekend he had this to say about the Guidebook:

*Turns out the Guidebook is not just guidelines for future development, but in fact will become yet another lengthy legal document governing development in our city. Unfortunately it has divided the city in an antagonistic manner, at a time when we need to be united.*¹³

⁹ Guidebook, Section 4.6 (m), p.117. "*Policies that use the word "should" are to be applied in all situations, unless it can be clearly demonstrated to the satisfaction of The City that the policy is not reasonable, practical or feasible in a specific situation. Proposed alternatives must be to the satisfaction of The City with regards to design and performance standards and should support the general policy intent.*" (emphasis added). The Guidebook does not define "The City", but the community assumes that this means City's senior administrative planning official. If such a determination is to be made by "The City", it is recommended that such determination be made by the Calgary Planning Commission rather than one official or that official's staff.

¹⁰ Low Density Residential Infill Housing Guidelines for Established Communities, 1993, amended 2010.
<https://media1-production.mightybell.com/asset/737949/InfillGuidelines2010.pdf>

¹¹ Guidebook, Map 1 (Zones for Limited Scale Residential Intensity), p. 47.

¹² White, Richard. "Everyday Tourist" blog. "Does Calgary Have too Many Neighbourhoods?" September 8, 2018.
<https://everydaytourist.ca/city-planning-101/2018/9/8/does-calgary-have-too-many-neighbourhoods>

¹³ White, Richard. "Everyday Tourist" blog. "No Formula For Creating Great Communities." March 21, 2021.
<https://everydaytourist.ca/city-planning-101/creating-great-communities>

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Council, please help Mayfair / Bel-Aire be more united and aligned with the Guidebook. Look at our written submissions and attachments. Please support this community in either engaging in further meaningful consultation on the Guidebook or incorporating the amendments we suggest.

Thankyou and I am available for questions.

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**ISSUE #2\_ - PROTECT THE REMAINING APPLICABLE PARTS OF EXISTING STATUTORY PLANS (I.E. *DON'T THROW OUT THE BABY WITH THE BATHWATER* )**

The Guidebook process attempts to fill the planning gap between the 2009 Municipal Development Plan (MDP), which is an aspirational City-wide statutory plan, and the more specific "Local Area Plans" (or LAPs, again, statutory). A new Land Use Bylaw will deliver on this ambitious reworking of the City's overarching planning framework.<sup>14</sup>

All these documents, as either statutory plans or as a Land Use Bylaw, will work together. By operation of law, they must be consistent with each other.<sup>15</sup> The Guidebook will, metaphorically, set the table for the contemplated "appetizers" (local area plans) and the "Main course" (a new Land Use Bylaw).

The Guidebook "only applies to communities with **local area plans** that are completed using the Guidebook."<sup>16</sup>

"No representation is made (in the Guidebook) that any site is suitable for a particular purpose."<sup>17</sup>

Mayfair / Bel-Aire is identified within LAP Area 8, which is bounded by the Elbow River to the northwest, Glenmore Trail to the south and Blackfoot Trail to the east.<sup>18</sup> LAP Area 8 is not within the 5 areas currently within a multi-community planning process.<sup>19</sup>

Local Area Plans are defined by way of example in the Guidebook as including Area Redevelopment Plans (ARPs) and Area Structure Plans (ASPs).<sup>20</sup> Historic ARPs such as the "Upper Mt. Royal ARP"<sup>21</sup> must either be consistent with the Guidebook and any contemplated future LAP or must be repealed.

Much good work has gone into these "vintage" statutory planning documents. To ensure that relevant applicable planning tools and directions from these current documents are captured, the Guidebook should ensure due consideration of their application to any new LAP.

Suggested amendment #2 – See APPENDIX B

<sup>14</sup> <https://www.calgary.ca/pda/pd/current-studies-and-ongoing-activities/toward-a-renewed-land-use-bylaw.html>

<sup>15</sup> See Section 635.1 (3), Calgary Charter, Alta Reg. 40/2018.

<sup>16</sup> Guidebook for Great Communities, p. iii.

<sup>17</sup> Guidebook, Section 4.6.(o), p.117.

<sup>18</sup> Local Area Planning in Calgary. <https://www.calgary.ca/pda/pd/current-studies-and-ongoing-activities/local-area-planning-in-calgary.html>

<sup>19</sup> Local Area Planning in Calgary. North Hill (Areas 5&6), Heritage (Area 31), Westbrook (Area 10), West Elbow (Areas 2&3) and Riley (Area 4) are currently involved in LAP planning.

<sup>20</sup> Guidebook, p. 118.

<sup>21</sup> Calgary Bylaw 7P96, <https://www.calgary.ca/pda/pd/planning-and-development-resource-library/publications.html>

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**APPENDIX A**

**Part 1 - CONTEXT – THE STORY OF A COMMUNITY**

The community of Mayfair is located east of the Glenmore Reservoir, near the site of the Glenmore Dam. Mayfair was annexed to the City of Calgary in 1956 and the neighbourhood developed in approximately 1957. 2016 census information is 475 people living in 150 households.

Bel-Aire is located immediately adjacent to and north of Mayfair. This community was annexed to the City of Calgary in 1954 and substantial development occurred in approximately 1960 and again in the early 1980's. 2016 census information is 385 people living in 115 households.

Mayfair has a small tot-lot that supports a skating rink in winter and year-round children's play facilities. Bel-Aire had a public elementary school which is now occupied by the regionally-based Calgary Girls Charter School. Residents of Mayfair / Bel-Aire have access to numerous recreational activities provided by their proximity via an improved connection to the river pathway system, south to Heritage Park, west to the reservoir loop and northwest to the Elbow River via the recently renewed Glenmore Reservoir pathway.

While multi-dwelling accommodation was considered at Bel-Aire's inception, that site was converted into surface-level parking for the community's other institutional facility, a church. Direct access to the Downtown, which is approximately 6 kilometers north of Mayfair / Bel-Aire, is available via Elbow Drive and transit route #3. The community's commercial area was largely removed by the construction of the GE5 project in 2007.<sup>22</sup> The community is approximately 1.2 km from the Transit Max Teal Rockyview Hospital station. The Chinook Station LRT is between 1.25 and 2.0 km distant. The Chinook Shopping Centre and Rockyview Hospital are both within easy walking distance.

These communities are more affluent, more educated, less diverse and skewing older than Calgary on average.<sup>23</sup> And they are exclusively single-detached residential homes.

Finally, these communities are one of the many Calgary communities built during the post-War to 1980 period where restrictive covenants were the preferred planning tool used by both the City and developers to define community character, including but not restricted to type of home, lot coverage, setbacks and elevations.

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<sup>22</sup> "Glenmore Trail/Elbow Drive/5 Street SW Interchange – Managing Traffic on Calgary's Largest Interchange Project", Jon Halford, P. Eng.(City of Calgary)

<http://conf.tac-atc.ca/english/resourcecentre/readingroom/conference/conf2006/docs/s011/halford.pdf>

<sup>23</sup> 2016 Canada Census data, City of Calgary. <https://www.calgary.ca/csps/cns/social-research-policy-and-resources/community-profiles.html>

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**APPENDIX B**

**SUGGESTED AMENDMENTS TO THE GUIDEBOOK**

Suggested amendment #1

To reflect that many restrictive covenant communities are found within Zone A and Zone B in Guidebook Map 1, insert the following language within Section 2.8 "Neighbourhood Local Policies":

*Amend Section 2.8 to include the words "is subject to a registered restrictive covenant which limits residential built form to either low intensity (i.e. single-detached) or moderate intensity (i.e. semi-detached or duplex) or similar typologies" in Neighbourhood Local Policies 2.8(d), 2.8(e) and 2.8(h).*

Suggested amendment #2

Much good work has gone into many "vintage" statutory planning documents. To ensure that relevant applicable planning tools and directions from these current documents are captured, the Guidebook should ensure due consideration of their application to any new LAP.

Insert the following language after subsection (b) in Section 4.6:

*Prior to the repeal of any existing statutory plan, it must be demonstrated to the satisfaction of Council that the provisions of such existing plan have been considered and found to be either redundant or inapplicable or must otherwise have been incorporated into any **local area plan** replacing such existing plan.*