



CHRISTOPHER S. DAVIS, B.COMM., LL.B.  
Barrister & Solicitor  
Phone 403.457.2100  
Cell 403.701.2775  
Email [chris@chrisdavislaw.ca](mailto:chris@chrisdavislaw.ca)  
File No. 2663.001  
Your File No. LOC2014-0024

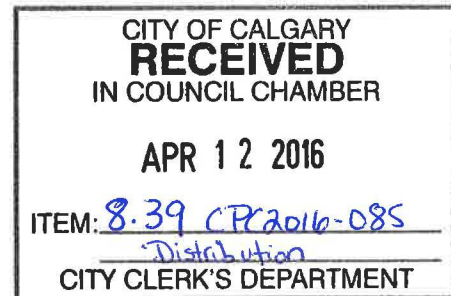
April 10, 2016

BY eMAIL DELIVERY

Ward 6 Councillor Richard Pootmans  
City of Calgary  
4<sup>th</sup> Floor, 800 Macleod Trail SE  
Calgary, AB T2P 2M5

Dear Councillor Pootmans:

**Re: LOC2014-0024 (Springbank Hill; Ward 6)**  
**3609 - 85<sup>th</sup> Street SW**  
**Council Hearing – Monday April 11, 2016**  
**Item 8.39 – Land Use Redesignation / Amendments to the East Springbank ASP, Appendix 1: Revised East Springbank I Community Plan**  
**Bylaws 17P2015 and 84D2015**



Further to the above reports, we confirm we act for John Bobenic, the owner of two parcels of land immediately adjacent to the subject parcel (John and Jodi Bobenic reside at 3421 – 85<sup>th</sup> Street SW; Plan 9812526, Block 2 and Lots 2 & 3).

The application is to remove 0.78 ha / 1.93 ac of land from a low density DC Direct Control District (Bylaw 11Z96) to allow for up to 7 residential dwelling units with a bulb cul-de-sac access to 85<sup>th</sup> Street SW.

Our clients DO NOT oppose the majority of the land use amendment, from DC to R-1s. They do, however, oppose the proposed redesignation of 0.012 ha / 0.03 ac at the west tip of the site from DC11Z96 to S-UN.

The reasons for their objection follow:

1. City staff may have incorrectly characterized the S-UN lands as a "natural drainage course" and therefore have identified such lands as qualifying as "Environmental Reserve" ("ER"). Site observations and aerial photos suggest that there is a small aspen grove that benefits from water runoff to a small depression or bowl. In turn, this supports the existing modest tree grove (see Attachment, Photos 1 to 3).
2. The determination of lands that may constitute ER is perhaps best not a matter to be put to City Council as part of a land use amendment. Respectfully, it is properly the subject of a subdivision application pursuant to section 664(1) of the *Municipal Government Act*

(MGA). This is a technical determination which provides an affected landowner a right of appeal under section 678 of the MGA.

3. It is perhaps an unintended consequence of the 2007 amendments to the Calgary Land Use Bylaw that applying the "S-UN" land use to any district requires that there be a prior determination that the designated area has already been found to qualify as ER. As stated by section 1021(2) of the Calgary Land Bylaw, this designation is to apply to lands which are:

"...dedicated as environmental reserve pursuant to the *Municipal Government Act* or its predecessors".

The small portion of proposed S-UN land that is part of this application has not yet been dedicated as ER.

4. ER is defined by section 664(1)(a) of the MGA. The particular characterization of ER that is being relied on here is the reference to a "swamp, gully, ravine, coulee or natural drainage course". It has been held by the Alberta courts that this definition must mean, at a minimum, a "defined path or channel formed by the natural flow of water in one direction". The Courts further found that drainage studies, elevation surveys or measurements should be relied on in making such a determination; mere observation may be insufficient. The fact that there is migration of water over a parcel is not sufficient to establish such lands as a "drainage course".<sup>1</sup> It is our client's position that while there is natural overland drainage over their lands, this is the case wherever there is slope on land. This does not, however, constitute a "natural drainage course".
5. Map 2 (Land Use Concept) of the East Springbank ASP (Appendix 1) does not identify the subject site as "natural drainage ravine / escarpment" on, but as "Country Residential Development".
6. Map 4 (Habitat Types) of the East Springbank ASP (Appendix 1) does not identify the subject site as having a noted biophysical habitat – either woodland or grassland.
7. The East Springbank ASP (Appendix 1) suggests that a biophysical impact assessment of any proposed development on areas identified as environmentally significant is to be done at the Outline Plan / Land Use Amendment stage. No such study has been provided as part of the staff reports.<sup>2</sup>

The City of Calgary has used adjacent prior ER dedications to support ER dedications in adjacent subdivisions.<sup>3</sup> The designation of any lands as S-UN therefore has a potential impact on our client's adjacent properties. Each land use application and subsequent subdivision application (where ER is lawfully to be considered and, if necessary, where such characterization can be appealed) should be considered at the time of subdivision and on its own merits.

---

<sup>1</sup> Stettler (County No. 6) v Ruttan, 2005 ABQB 74 at paragraph 27.

<sup>2</sup> <http://www.calgary.ca/PDA/pd/Documents/arp-asp/asp/east-springbank-append-1.pdf>, Section 1.7.13 "Open Space and Joint Use Sites" at p. 19.

<sup>3</sup> E.g. LOC2013-0026.

We acknowledge that the East Springbank ASP (Appendix 1) does consider alternative means for the City to preserve "non-qualifying lands" for protection in their natural state by other mechanisms:<sup>4</sup>

1. Voluntary dedication as MR
2. Purchase by the City
3. Application of "development controls" to require protection of the lands
4. Development incentives to encourage protection of the lands
5. Other means determined to be appropriate

Another viable method that may be used to preserve "significant" lands would be the dedication of either ER qualifying or otherwise non-qualifying lands by way of an "environmental reserve easement" pursuant to section 664(3) of the MGA. In this example, ownership of the lands remains with a private party, but the encumbered lands must remain in their natural state.

Our client respectfully asks that Council not redesignate the S-UN portion of the subject application, and let it remain as DC 11Z96. This can be done without further advertising or undue delay to the applicant. There will be little prejudice to the City's position, as the City will be able to review the validity of the proposed 0.012 ha / 0.03 ac portion as qualifying ER at the time of the anticipated subdivision.

Alternatively, should City Council accept the recommendations of City staff to redesignate the S-UN portion, our client takes the position that the S-UN designation should not in itself be considered as evidence in support of any portion of their land as qualifying as lawful ER.

We will be in attendance at the anticipated Public Hearing to respond to questions Council may have about our client's concern.

Sincerely,

**CHRISTOPHER DAVIS LAW**



Per: Christopher S. Davis  
Barrister & Solicitor

ENC.

Copied to: (by email)

Client

His Worship Mayor Nenshi and the remaining members of Calgary City Council  
City Clerk

Terry Fenton (T. Fenton Consulting)

City of Calgary Planning (Yuping Wang / Jyde Heaven / Keath Parker)

City of Calgary Law (Denise Jakal)

Springbank Hill Community Association (Planning and Development)

---

<sup>4</sup> East Springbank ASP (App. 1), section 1.7.9 at p. 18.

CHRISTOPHER DAVIS LAW

ATTACHMENT TO CHRISTOPHER DAVIS LAW - submission

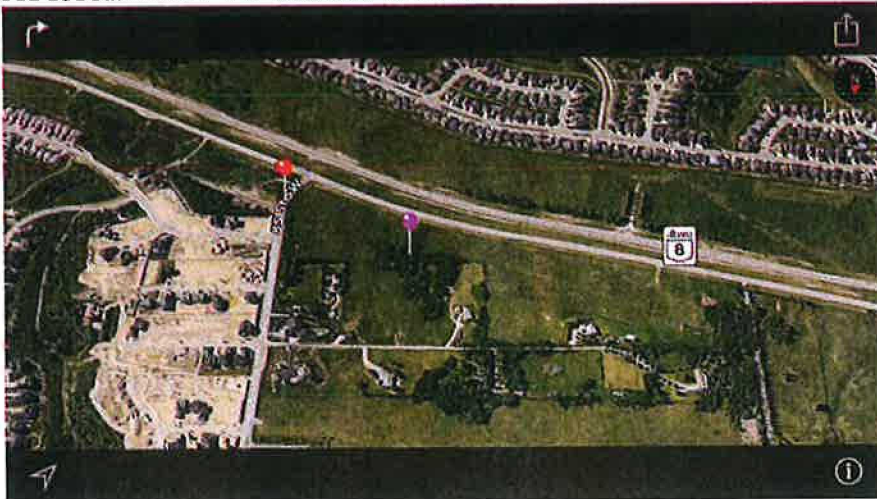


Figure 1 – (above) View to South (purple pin identifies proposed S-UN area, within tree cluster location)



Figure 2 – (left) View to SW, from 3421 - 85 St SW (Bobenic)



Figure 3 – (above) looking south, subject aspen stand, in small basin (April 3, 2016)