




<b>Title: ENCROACHMENT POLICY</b>		<b>Number: 0132</b>
<b>Reference:</b> Administrative Committee January 21, 2009	<b>Adopted by City Council:</b> February 2, 2009 	<b>Supersedes:</b> May 2, 2005
<b>Prepared by:</b> PLANNING, BUILDING AND DEVELOPMENT SERVICES		

## STATEMENT

THE CITY OF MEDICINE HAT RECOGNIZES THAT ENCROACHMENTS EXIST AND WILL CONTINUE TO BE DISCOVERED ON MUNICIPAL LAND. THE CITY HAS ESTABLISHED THIS POLICY AND PROCEDURES TO PROVIDE A CONSISTENT PROCESS FOR EVALUATING APPLICATIONS FOR ENCROACHMENT AUTHORIZATION.

## PRINCIPLES

1. The City recognizes the importance in assisting the public by effectively managing Encroachments.
2. The City recognizes the importance of providing a consistent approach in processing applications for Encroachment authorizations.
3. The City must ensure that Encroachments do not adversely affect the City's ability to maintain services for public use by maintaining sufficient access to the infrastructure located within Easements or Roads upon which Encroachments exist.
4. Encroachments which are not authorized by the City shall be removed at the expense of the Owner of the Encroachment.
5. The proliferation of Encroachments into Municipal Lands shall be discouraged.
6. In the case of existing Encroachments that cannot practically be removed, the City will obtain compensation to offset the negative effects of an undesirable Encroachment.
7. Formal authorization of Encroachments will be in the form of an Encroachment Agreement or Letter of Consent to protect the City, the Utilities, and the public when Encroachments are identified on City-owned Parcels, Roads, Easements, or Reserve Parcels.
8. The City may consider selling or leasing Municipal Lands upon which an Encroachment is located, subject to complying with the *Municipal Government Act*.

This Policy applies to all City-owned Parcels, Reserve Parcels, Roads and Easements within the corporate boundaries of the City of Medicine Hat.

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## 1. DEFINITIONS

The following definitions apply to both the Policy and Procedures:

- 1.01 City  
The municipal corporation of the City of Medicine Hat, or the area contained within the City boundaries, as the context requires.
- 1.02 City-owned Parcel  
Any land owned by the City for which a certificate of title has been issued in accordance with the *Land Titles Act*, excluding Reserve Parcels.
- 1.03 Council  
The Municipal Council for the City of Medicine Hat.
- 1.04 Easement  
Any Utility Right of Way or other right of way on privately owned property established for the installation, construction, repair and maintenance of Utilities, or for the access and passage of the general public, identified by a registered plan or by description, and documented by a registered caveat or Easement agreement at the South Alberta Land Titles Office.
- 1.05 Encroachment  
Anything placed, constructed or erected below, on or above the ground or attached to something placed, constructed or erected below, on or above the ground (excluding sound attenuation structures or fences for City purposes), that extends on, over or under municipal lands including, but not limited to the following:
- (a) Buildings and all projections (including eaves, footings, foundations, weeping tiles, cantilevers, etc.) and siding
  - (b) Sheds (including those attached to a dwelling and/or fence)
  - (c) Extensions of adjacent lands by fill or any deposit of fill
  - (d) Fences
  - (e) Sidewalks, curbs, parking pads, aprons or driveways, made from asphalt, concrete or brick
  - (f) Structures (including decks, stairs, patios, gazebos, satellite dishes, antennas, decorative walls, etc.)
  - (g) Retaining walls
  - (h) Swimming pools and hot tubs
  - (i) Shrubs, trees or other organic landscape materials planted in Reserve Parcels or City-owned Parcels
  - (j) Hard landscaping (including asphalt, concrete paving stones, retaining walls, structures, planters etc.)
  - (k) Light standards
  - (l) Permanent signs
  - (m) Underground electrical wiring (excluding Utilities authorized by the City)
  - (n) Underground irrigation systems, but does not include Utilities authorized by the City and located within municipal lands

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1.06 Encroachment Agreement

An agreement (including an agreement amending an existing Easement Agreement) between the applicant and the City authorizing an Encroachment and shall, among other things, include:

- (a) The location and identification of the Encroachment
- (b) The Owner’s responsibilities to maintain the Encroachment
- (c) Term or conditions under which the Agreement is terminated
- (d) The City’s right to have access to the land
- (e) Indemnification of the City, its agent and licensees

1.07 Fence

Any enclosing barrier, wall or structure such as a chain link fence, wooden fence, or brick or stucco wall, usually located along a property line.

1.08 Letter of Consent

A letter substantially in the same form as set out in Schedule “D”.

1.09 Municipal Lands

Collectively or individually, Roads, Easements, Reserve Parcels and City-owned Parcels.

1.10 Owner

The person or persons registered under the *Land Titles Act* as the owner of the fee simple estate in the land. In the context of a Road, Reserve Parcel and City-owned Parcel, “owner” shall mean the owner of adjacent land which has an Encroachment into the Road, Reserve Parcel or City-owned Parcel.

1.11 Reserve Parcel

A parcel that is municipal reserve, environmental reserve, municipal and school reserve, community services reserve, or school reserve, as defined in the *Municipal Government Act*.

1.12 Road

Land shown as a road on a plan of survey that has been filed or registered in a land titles office, or land used as a public road, and includes a bridge forming part of a public road and any structure incidental to a public road.

1.13 Utilities

Any lines, systems, infrastructure or other facilities relating to any one or more of the following:

- (a) The production or distribution of gas or oil products, whether artificial or natural.
- (b) The distribution or transmission of electricity, telephone, cable television or telecommunications.
- (c) The storage, transmission, treatment, distribution or supply of water.
- (d) The collection, treatment, movement or disposal of sanitary sewage, including but not limited to pipes, force mains, and pumping stations.
- (e) The drainage, collection, treatment, movement or disposal of storm sewer water, including but not limited to collection devices, drainage swales, pipes, pumping stations, storm water ponds and wetlands, or means the applicable Utility departments of the City or other owners of Utilities, as the context requires.

1.14 Utility Right of Way

A utility right of way granted pursuant to the *Land Titles Act*.

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## 2. RESPONSIBILITIES

### 2.01 Council

- (a) Receive, review, and consider for adoption this Policy and any recommended amendments thereto.

### 2.02 City Clerk

- (a) Make the Policy available to the public upon request.

### 2.03 Administrative Committee

- (a) Make recommendations to Council, from time to time, regarding any amendments to this Policy.
- (b) Review and adopt procedures developed for the implementation of this Policy.
- (c) Receive, review and decide upon appeals arising from this Policy.

### 2.04 Planning, Building and Development Services Department

- (a) Make recommendations to the Administrative Committee regarding this Policy and amendments thereto.
- (b) Decide on the acceptability of Encroachments through consultation with the affected City departments and Utilities in accordance with this Policy, with the exception of Encroachments into Reserve Parcels, which shall be dealt with in accordance with Section 3.13.
- (c) Administer and enforce adherence to this Policy, including the issuing of orders for the removal of unacceptable Encroachments, and advise the relevant Commissioner of any material breach of this Policy.
- (d) Communicate the Policy, and related procedures, to affected City departments and Utilities.
- (e) Refer all Encroachments into Reserve Parcels to the Parks and Outdoor Recreation Department.
- (f) Advise the Administrative Committee on matters of appeal related to Encroachments.

### 2.05 Parks and Outdoor Recreation Department

- (a) Address all Encroachment matters relating to Reserve Parcels that are referred to the Department.
- (b) Decide on the acceptability of Encroachments into Reserve Parcels in accordance with Section 3.13 of this Policy and Procedures.
- (c) Administer and enforce adherence to this Policy with respect to Encroachments into Reserve Parcels, including the issuing of orders for the removal of unacceptable Encroachments, and advising the relevant Commissioner of any material breach of this Policy.

### 2.06 Other City Departments

- (a) Review and make recommendations to the Planning, Building and Development Services Department on applications for Encroachment Agreements that are circulated for comment.

### 2.07 City Solicitor Department

- (a) Prepare a standard form Encroachment Agreement for use by the Planning, Building and Development Services Department.
- (b) Consider and initiate legal action, if considered advisable, against Owners who do not comply with written orders issued by the City to rectify or remove any Encroachment determined to be unacceptable by the City.

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2.08 By-Law Enforcement

- (a) Enforce Encroachment related by-law offences, as appropriate.

3. PROCEDURES

- 3.01 The Planning, Building and Development Services Department is responsible for the review, administration, circulation, and coordination of all applications for Encroachment authorization to the relevant City departments and Utilities in accordance with this Policy and Procedures.
- 3.02 Notwithstanding any other provision of the Policy and Procedures, an application for an Encroachment Agreement related to a commercial or industrial development that is not within the guidelines set out in these Procedures shall be reviewed on its own merits by the Planning, Building and Development Services Department in consultation with all affected City departments and Utilities.
- 3.03 Unless an Encroachment is authorized by the City pursuant to this Policy and Procedures, the Encroachment shall be removed from the affected Municipal Lands.
- 3.04 Encroachments into Municipal Lands that are intended for or may be used as an emergency access shall be removed from the affected lands.
- 3.05 An application for authorization of an Encroachment created after December 31, 2008 will not be accepted by the Planning, Building and Development Services Department, under the provisions of this Policy and Procedures.
- 3.06 An Owner whose application has been rejected by the Planning, Building and Development Services Department under Section 3.05 may appeal to the Administrative Committee to request a relaxation of that Section.
- 3.07 Except as otherwise stated in this Policy and Procedures, where an Encroachment has been authorized by the City, an Owner shall, if required by the City, execute an Encroachment Agreement prepared and delivered by the City and pay any applicable fees, or the Encroachment shall be removed from the Municipal Lands.
- 3.08 An Encroachment Agreement between the City and the Owner shall be registered at the South Alberta Land Titles Office by caveat, subject to the Owner paying the applicable fees as set out in Section 3.17.
- 3.09 Unless an Encroachment Agreement states otherwise, an Encroachment once authorized by the City may continue to be used providing that the size of the Encroachment is not increased, and the Encroachment is not added to, rebuilt or structurally altered except:
- (a) As may be necessary to remove the Encroachment, or
- (b) As may be necessary for the routine maintenance of the Encroachment.
- 3.10 If an Encroachment or the structure benefiting from the Encroachment is damaged or destroyed to the extent of more than 75% of the replacement value of the Encroachment or such structure, the Encroachment shall not be repaired or

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reconstructed and shall be removed from the Municipal Lands unless the repair or reconstruction has been authorized by the City.

- 3.11 Any Encroachment existing prior to January 1, 2009 which has been authorized by an Encroachment Agreement, or any other existing agreement with the City, shall be deemed to be an authorized Encroachment under this Policy, subject to the terms of the authorizing agreement.
- 3.12 An authorized Encroachment does not relieve an Owner from the responsibility to comply with all applicable federal, provincial and municipal statutes, regulations, orders, by-laws and policies.
- 3.13 Guidelines for Encroachments into Reserve Parcels:
- (a) An Encroachment into a Reserve Parcel is not permitted and shall be removed, unless it is permitted through the provisions of any other City policy, by bylaw or in accordance with the *Municipal Government Act*.
  - (b) Encroachments into Reserve Parcels are to be administered by the Parks and Outdoor Recreation Department in consultation with any relevant City departments and Utilities in accordance with relevant federal, provincial and municipal statutes, regulations, orders, bylaws and policies.
- 3.14 Guidelines for Encroachments into City-owned Parcels (excluding Reserve Parcels):
- (a) Notwithstanding Section 3.05, Encroachments less than 0.05 metres into City-owned Parcels are authorized and do not require an Encroachment Agreement. At the request of the Owner, the Planning, Building and Development Services Department shall prepare a Letter of Consent in substantially the same form as set out in Schedule “D”, subject to the Owner paying the applicable fee as set out in Section 3.17.
  - (b) Subject to section 3.05, where an Encroachment extends into a City-owned Parcel in excess of 0.05 metres, the Owner may apply to the Planning, Building and Development Services Department for an Encroachment Agreement and the Encroachment will be considered on its own merit in consultation with the relevant City departments and Utilities.
  - (c) The Owner shall remove an Encroachment from a City-owned Parcel if the Planning, Building and Development Services Department determines that the Encroachment is not acceptable.
- 3.15 Guidelines for Encroachments into Roads and Easements:
- (a) Notwithstanding Section 3.05 and subject to Sections 3.02, 3.03 and 3.04, Encroachments into Roads or Easements which are less than 0.05 metres, or fall within the guidelines set out in the attached Schedule “A”, are authorized by the City and do not require an Encroachment Agreement. At the request of the Owner, the Planning, Building and Development Services Department shall prepare a Letter of Consent, subject to the Owner paying the applicable fee as set out in Section 3.17.
  - (b) Subject to Sections 3.05, 3.15(d), 3.15(e), and 3.15(f), Encroachments into Roads or Easements which fall within the guidelines set out in the attached Schedule “B” will receive an Encroachment Agreement from the Planning,

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Building and Development Services Department without circulation, subject to the Owner paying the applicable fees as set out in Section 3.17.

- (c) Subject to Sections 3.05, 3.15(d), 3.15(e), and 3.15(f), Encroachments into Roads or Easements which are not within the guidelines set out in Sections 3.15(a) or 3.15(b), and were in existence prior to January 1, 2009, will be reviewed by the Planning, Building and Development Services Department and circulated to the Municipal Works Department, and any other relevant City departments and Utilities. If it is determined that the Encroachment is acceptable, an Encroachment Agreement will be granted, subject to the Owner paying the applicable fees as set out in Section 3.17. If the Encroachment is not acceptable to the City, the Owner will be required to remove the Encroachment.
- (d) Notwithstanding any other provision of this Policy and Procedures, Encroachments affecting Roads or Easements containing well sites, gas production or high pressure gas distribution lines, surface mounted electrical equipment or overhead electrical lines shall be considered on their own merit and are not subject to the guidelines set out in these procedures.
- (e) Notwithstanding any other provision of this Policy and Procedures, an Encroachment shall not interfere with access to or use of Utilities, Easements or Roads by the City, by owners of Utilities, or by users of the Utilities, Easements or Roads. Nothing in this Policy or Procedures is intended to restrict or limit any rights in relation to the access to, or use of, Utilities, Easements and Roads affected by an Encroachment.
- (f) Notwithstanding any other provision of this Policy and Procedures, the City reserves the right to limit the term of an Encroachment Agreement, Letter of Consent or other authorization, or provide for the termination of an Encroachment Agreement, Letter of Consent or other authorization in the event that the Encroachment could be affected by future plans for Utilities, Road widening, or other requirements.

### 3.16 Enforcement and Appeals

- (a) If, under the provisions of this Policy and Procedures, an Encroachment has not been authorized or an application for an Encroachment Agreement has not been made, the Owner shall remove the Encroachment at no cost to the City.
- (b) If the Owner refuses to remove the Encroachment or fails to apply for authorization, the City may take action to remove the Encroachment or relocate the utility (as the case may be) and seek reimbursement from the Owner for all such costs in accordance with the applicable City bylaws and policies and in accordance with the *Municipal Government Act*.
- (c) The Owner shall also be subject to any and all applicable federal, provincial and municipal statutes, regulations, orders, bylaws and policies beyond the scope of this Policy.
- (d) Appeals by the Owner arising from the application of this Policy and Procedures shall be submitted to, reviewed and decided upon by the Administrative Committee. In deciding upon an appeal, the Administrative Committee may adjust the encroachment fee where the Committee determines that an adjustment is warranted and does not compromise the fair application of this Policy and Procedures or its principles.
- (e) The decision of the Administrative Committee is final and binding.

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### 3.17 Application Fees and Encroachment Fees

(a) Application Fee:

For an application for authorization of an Encroachment where it is necessary to circulate the application to City departments and Utilities: **\$100.00.**

(b) Encroachment Fees:

(1) For Encroachments of eaves and footings of structures into Easements where the applicant can provide an approved development permit or building permit which permitted the Encroachment: **No charge.**

(2) For Encroachments set out in Schedule “A” or which are no more than 0.05 metres and a Letter of Consent is requested: **\$50.00.**

(3) For Encroachments created prior to January 1, 2009 and allowable under Schedule “B” (no circulation required): **\$300.00.**

(4) For Encroachments created prior to January 1, 2009 and not within Schedule “A” or Schedule “B” which cover no more than 10 square metres of Municipal Lands and no significant objections were received following circulation: **\$400.00.**

(5) For Encroachments created prior to January 1, 2009 and not within Schedule “A” or Schedule “B” which cover more than 10 square metres of Municipal Lands and no significant objections were received following circulation: **\$1,000.00.**

(6) For Encroachments created after December 31, 2008 and authorized by the Administrative Committee on appeal, the encroachment fee shall be 75% of the assessed land value for the area of the Encroachment, or \$1,000.00 whichever is greater, or as otherwise determined by the Administrative Committee in accordance with Section 3.16(d).

3.18 This fee schedule may be revised from time to time with the approval of Council.

3.19 The applicant shall be responsible for all costs including but not limited to:

(a) Fees arising from the use of Municipal Lands in accordance with an Encroachment Agreement.

(b) Any additional costs related to the processing of an application for an Encroachment Agreement, including Road closure application, subdivision application, disposal of reserve, or other related costs.

(c) Any costs of utility relocation or reconstruction required to facilitate an Encroachment.

## 4. ATTACHMENTS

4.01 Schedule “A” – Encroachments Not Requiring an Encroachment Agreement

4.02 Schedule “B” – Encroachments into Roads and Easements that Require an Encroachment Agreement (No Circulation Required)

4.03 Schedule “C” – Application and Review Process

4.04 Schedule “D” – Letter of Consent

This policy is subject to any specific provision of *The Municipal Government Act* or other relevant legislation or union agreement.



## **Schedule “A”**

### **Encroachments Not Requiring an Encroachment Agreement**

#### **Encroachments into Roads Not Requiring an Encroachment Agreement**

1. Driveways or sidewalks which provide access to a residential dwelling or commercial business, excluding retaining walls or landscape structures that, in the opinion of the Planning, Building and Development Services Department, are considered to be features not directly benefiting the access or which may adversely affect access to or use of the Road.
2. Fence sections that encroach less than 0.3 metres into a Road providing no Utilities are captured within the fence sections.
3. Concrete garage aprons encroaching less than 0.3 metres into lanes.
4. Steps which do not interfere with public sidewalks or trails and do not decrease the usable width of a lane.
5. Retaining walls less than 0.2 metres in height, encroaching less than 0.3 metres into a Road, except where the retaining wall is located adjacent to a City of Medicine Hat Electric System or other above ground surface utility facilities.
6. Non-permanent surface improvements within a boulevard area, including landscaping features, ground cover, driveways, and irrigation systems, which extend beyond a property line to a sidewalk, curb or edge of pavement.
7. Signs, awnings or canopies projecting into a Road providing any portion thereof:
  - (a) Do not project more than 2.4 metres measured horizontally over the Road, and
  - (b) Are not located closer than 0.6 metres measured horizontally to the portion of the road used for the passage of motor vehicles, and
  - (c) Are not less than 2.4 metres measured vertically above the surface of the Road.

#### **Encroachments into Easements Not Requiring an Encroachment Agreement**

1. Driveways or sidewalks which provide access to a residential dwelling or commercial business excluding retaining walls or landscape structures that, in the opinion of the Planning, Building and Development Services Department, are considered to be features not directly benefiting the access or which may adversely affect access to or use of the Easement.
2. Fence sections that span an Easement or encroach less than 0.3 metres into an Easement.
3. Portable sheds under 10 sq. m. not constructed on a permanent foundation nor connected to utility services.
4. Retaining walls less than 0.2 metres in height, encroaching less than 0.3 metres into an Easement except where the retaining wall is located adjacent to a City of Medicine Hat Electric System or other above ground surface utility facilities.
5. Non permanent surface improvements including landscaping features, ground cover, driveways and irrigation systems.
6. Eaves encroaching less than 0.1 metres into an Easement.

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## **Schedule “B”**

### **Encroachments into Roads or Easements that Require an Encroachment Agreement (No Circulation Required)**

1. Notwithstanding items 2 through 8 in this Schedule, Encroachments affecting Roads and Easements containing well sites, or gas production or high pressure gas distribution lines, shall be considered on their own merit.
2. Residential footings for buildings or structures encroaching 0.3 metres or less into an Easement at a depth of more than 2.0 metres below grade, where the building or structure is not encroaching, will be authorized.
3. Where a residential building or structure does not encroach, eaves encroaching 0.6 metres or less into an Easement above a height of 2.4 metres above grade will be authorized, except where adjacent to or located on lands with an overhead electrical line.
4. Eaves into an Easement or Road for developments which have received a development permit or building permit allowing the Encroachment of the eaves.
5. Hard landscaping or retaining walls less than or equal to 0.6 metres in height encroaching less than 0.3 metres into a Road will be approved, except where adjacent to or located on lands with an overhead electrical line or high pressure gas line.
6. Where an Encroachment is created by an Owner granting land to the City for a Road or an Easement (for example, a Dedication Agreement where an existing Encroachment is allowed to remain), the City shall, without charge, permit an Encroachment agreement to be entered into with the Owner, the removal period to be negotiated as part of the purchase or dedication (and would be related to the life of the Encroachment, and the timing of road widening, if applicable).
7. Subject to any other restrictions, an Encroachment of less than 0.3 metres into an Easement (not within the guidelines set out in Schedule A), will be authorized.
8. An Encroachment that separates an Easement from the nearest Road or City-owned Parcel that:
  - (a) Forms a barrier (which includes, but is not limited to development features such as entrance features, walls and decorative fences), and
  - (b) Prevents direct access by the City,will be permitted provided the following conditions are met:
  - (1) It has easily removable and replaceable sections,
  - (2) The length of the sections are greater than 2.4 metres on each affected lot, and
  - (3) The support pillars encroach no more than 0.6 metres into the Easement.
9. A barrier which includes, but is not limited to, development features such as an entrance feature, wall and decorative fence, that crosses an Easement will be accepted providing:
  - (a) It has easily removable and replaceable sections,
  - (b) The length of the sections are greater than 2.4 metres on each affected lot, and
  - (c) The access to and use of the Easement is not adversely affected.

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## **Schedule “C”**

### **Application and Review Process**

#### **Planning, Building and Development Services Department**

##### ***Applications***

An application for an Encroachment Agreement shall be made to the Planning, Building and Development Services Department, where the Encroachment is not within the guidelines set out in Schedule A, or is greater than 0.05 metres and shall include the following:

- (a) A hard copy (preferably an original) and/or digital version of a current Real Property Report detailing the property and the extent of the Encroachment.
- (b) A current copy of the certificate of title for the parcel.
- (c) The application fee, as set out in Section 3.17.
- (d) Photographs of the Encroachment, if required.

##### ***Complaints***

Encroachments identified by public complaints or by City personnel shall be referred to the Planning, Building and Development Services Department. If the Encroachment is into a Reserve Parcel, the matter shall be referred to the Parks and Outdoor Recreation Department.

**Schedule “D”****Letter of Consent****(Easements and Roads)**

(Date)

(Address of Applicant)

Subject: (Description of Encroachment and Legal Description of Property)

The City of Medicine Hat consents to the captioned Encroachment as outlined on the enclosed Alberta Land Surveyor’s Real Property Report prepared by the firm of \_\_\_\_\_ (name of firm), dated (date of Real Property Report), and does not require an Encroachment Agreement, subject to the terms and conditions set out in this letter.

This consent does not restrict or limit the City of Medicine Hat’s right to construct, install, replace, remove, repair or maintain any Utilities or Roads and does not relieve the Owner of the Encroachment from any liability arising from the Encroachment. Any and all costs resulting from modification, relocation and/or removal of City facilities and services, or any damages or repairs to City facilities and services resulting from the Encroachment, shall be borne by the Owner. The City shall not be liable for any damage whatsoever to the Encroachment arising from the City’s use of or operations in relation to the (utility right of way/Easement/Road/City-owned Parcel). This consent shall terminate at such time as the Encroachment is removed from the above property.

If you require further information with respect to this matter, please contact the Planning, Building and Development Services Department at 529-8374.

Sincerely,

(name)

Title

Planning, Building and Development Services