

BY-LAW NUMBER 97/58

BY-LAW NO. 97/58 is a by-law of the County of Wetaskiwin No. 10 in the Province of Alberta, to authorize the adoption of an Area Structure Plan for the purpose of providing a framework for subsequent subdivision and development of the SE 14-46-1-W5M, in accordance with Section 633(1) of the Municipal Government Act, Chapter M-26.1, Revised Statutes of Alberta 1994, and amendments thereto.

WHEREAS: at the request of County Council, an Area Structure Plan has been prepared for the SE 14-46-1-W5M.

AND WHEREAS: the proposed Area Structure Plan has been widely circulated and discussed within the County pursuant to Section 230, 606(1), and 633(1) of the Municipal Government Act, 1994, Chapter M-26.1, and amendments thereto.

NOW THEREFORE: the County of Wetaskiwin No. 10, duly assembled, hereby enacts as follows:

1. The document attached to this By-law as "Appendix A", together with accompanying maps, is hereby adopted as the "Area Structure Plan for the SE 14-46-1-W5M".
2. This By-law comes into effect on the date of third and final reading.

READ: A First time this 9th day of September, A.D., 1997.

READ: A Second time this 14 day of October, A.D., 1997.

READ: A Third time and finally passed this 14 day of October, A.D., 1997.

Wallace Wilson

REEVE

[Signature]

SECRETARY-TREASURER

*Amended by By-law
1998/33
2004/10
2005/16*

BY-LAW 97/58

SE 14-46-01-W5M

AREA STRUCTURE PLAN

Prepared for:
County of Wetaskiwin No. 10
by West Central Planning Agency

September 9, 1997

W.C.P.A.

1. INTRODUCTION

Phase 1 in the southeast corner of SE 14 has been partially developed and density will increase with the recent approval of 32 residential lots at a medium density urban standard. Rezoning has been approved for Phase 2 - a low density multi-lot country residential subdivision north of Phase 1. However, Alberta Transportation & Utilities will not support further subdivision until an Area Structure Plan is adopted. County and Agency staff support Alberta Transportation & Utilities' position. The purpose of this Plan is to identify and set policy on a few key planning issues. This Plan does not dictate land uses nor does it dictate how the land is to be subdivided.

2. INTERPRETATION

In this document:

1. *Act* means the Municipal Government Act, Statutes of Alberta, 1994, Chapter M-26.1.
2. *By-law* means the Land Use By-law 95/54 of the County of Wetaskiwin.
3. *Developer* means the owner of the balance of SE 14-46-01-W5M or an agent acting on the owner's behalf.
4. *Conservation Easement* has the same meaning as in Section 22.1 of the Environmental Protection and Enhancement Act.
5. *Environmental Reserve* has the same meaning as in Section 616(e) of the Act.
6. *Environmental Reserve Easement* has the same meaning as Section 616(f) of the Act.
7. *GMP* means the General Municipal Plan of the County of Wetaskiwin.
8. *NE 14* means NE 14-46-01-W5M.
9. *Municipal Reserve* has the same meaning as in Section 616(o) of the Act.
10. *Norris Beach Road* means the statutory road allowance between Sections 13 and 14-46-01-W5M.
11. *Parallel Road* means the proposed road described in Policy No. 1.
12. *Phase 1* means the area of land subdivided under Plans 952 3388 and 972 0979.
13. *Phase 2* means the area of land approved for Country Residential zoning under By-law No. 97/01.
14. *Plan* means the "SE 14-46-01-W5M Area Structure Plan".
15. *SE 14* means SE 14-46-01-W5M
16. *Transportation* means Alberta Transportation and Utilities.

3. ISSUES

3.1 Access

The west part of SE 14 is bordered by a creek on the east, the quarter section line to the north, a parcel under separate ownership to the west, and the Highway 13 right-of-way to the south. Access to this land for subdivision and development will be a concern because:

- a) The creek is a natural barrier,
- b) No statutory road allowances provide access to this part of the quarter,
- c) The parcel on the west side of the quarter is an intervening ownership, and
- d) Legal and physical access to the land is not available via Highway 13.

Given these constraints, the west part of SE 14 could become landlocked. This must be avoided and access options must be identified. They are, as shown on the Plan map:

- A.1. By way of the service road in the southwest corner ("service road"),
- A.2. By crossing the creek in the middle of SE 14 ("centre creek").
- A.3. By crossing the creek in the northeast corner of SE 14 ("north creek"), and
- A.4. By way of NE 14-46-01-W5M to the north ("NE 14"),

The intent of this Plan is not to rule out one or more options, but to make recommendations based on the characteristics of each option.

3.2 A.1 Service Road Option

Transportation has said that if the A.1 - service road option is developed to provide access to the west part of SE 14, they would require intersectional treatment. Transportation has also said they will not be prepared to pay for the cost of this treatment. This cost would have to be picked up by the County and the developer, or perhaps by the developer alone. Given this expense, and with other options available, the A.1 option is not recommended in this Plan for access to the west part of SE 14.

The Highway 13 access and service road which exist on the lands west of the area covered by this Plan are not to be used for any development other than that which currently exists. The lands covered by this Plan are to access the highway by the existing north-south road only. (Amended by By-law 98/33)

Amended by By-law 98/33
May 19, 1998
rdw.

3.3 A.2 & A.3 Centre and North Creek Options

The north and centre creek options both involve creek crossings. It is not the intent of this plan to pinpoint exactly where either crossing should go because the engineering work needed to decide crossing points is beyond the scope of this Plan. However, it is the intent of this Plan that both crossings be recommended for access to the west part of SE 14. There are pros and cons associated with both options.

Both crossings would be on land owned and controlled by the developer. The north creek option would cross where the banks slope gradually on either side, which means the crossing might be easier to build here, compared to other locations on the creek. However, the north creek option would bring the access into the north end of the west part of SE 14. The road would have to be built south to get to the rest of the developable area. The centre creek option would probably cross the creek where the banks are steeper, which might increase construction costs. However, it would access the middle of the west part of SE 14 which might lower road building costs compared to the north creek option.

There is another reason for supporting the centre creek option. When the half section to the east (i.e. SW and SE 13-46-01-W5M) was subdivided, a road parallel to Highway 13 was dedicated and built. This road allows for travel within the section, with access to Highway 13 only by way of the adjacent road allowances. This Plan recommends a similar alignment on SE 14, despite two problems. The first is that Phase 1 was subdivided in a way which doesn't allow for a continuation of the existing alignment from Section 13 west into Section 14. The second is that the 20 acre C of T on the west side of SE 14 is an intervening ownership and a barrier. This recommendation assumes that right-of-way can eventually be acquired for the road through negotiation.

3.4 A.4 NE 14 Option

The creek which bisects SE 14 runs through the southeast corner of NE 14. Access developed off the Norris Beach road would avoid a creek crossing, but would have to be built north of the parcel in the southeast corner of NE 14. This would mean building more road to get into SE 14. Most importantly, the balance of NE 14 is under separate ownership and, therefore, the NE 14 option is not recommended for access to the west part of SE 14.

3.5 Sequence of Development

The purpose of the Plan is to generally identify road alignments and access points across the creek now. It is not the purpose of the Plan to suggest that the developer will have to dedicate road for the alignments and the creek crossing the next time there is a subdivision application. It's expected that the development sequence for country residential lots will start in the north and extend south, in phases. If the developer wants to subdivide all the lots at once, then an engineering study will be needed to determine the creek crossing points and the road alignments prior to subdivision approval.

3.6 Site Suitability and Services

The long term development potential of SE 14, for a variety of land uses, is considerable. Development will be limited by the extent to which the land can support development. An adequate, potable water supply will have to be demonstrated for each significant phase of development. Appropriate subsoil conditions must be identified to prove out suitable building sites, as well as the capacity of the land to handle private sewage systems. In the long term, it may be necessary to install communal water and sewer services. Prior to adoption, this Plan must be sent to utility companies for comments.

3.7 Reserves

Any decision on reserve dedications on SE 14 must be made as part of a decision on a subdivision application, not in this Plan. However, reserves are an important issue at this stage for two reasons. First, this Plan is a precursor to an application for a multi-lot country residential subdivision. Rezoning has already been approved on about 23 acres. Ten per cent of this is 2.3 acres, an amount which increases to 3.2 acres if the remaining land east of the creek is included. This would represent a significant amount of municipal reserve. Second, the area covered by the creek is about 20 acres. Two acres, or 10%, is also a notable amount of reserve land.

This Plan assumes that Council won't want large reserve dedications within SE 14, with the possible exception of a continuation of the buffer strip next to the Highway 13 right-of-way. If Council doesn't want land, cash-in-lieu becomes an option but one which would add to the developer's costs. Deferring reserves is also an option but the amount involved may not be in the developer's interests. For example, 3.2 acres of municipal reserve could be deferred into the west part of SE 14, leaving about 89 acres in title. Twenty acres of creek would be undevelopable, leaving about 69 acres of developable land. Against this would be an outstanding reserve obligation of more than 13 acres, or about 20%. As land, cash, or a combination of both, this would be a lot for the developer to give up.

The creek also raises an environmental question - should it be developed or be left in its natural state? For several reasons, this Plan recommends that it be left in its natural state. The creek is undevelopable land. It is part of a natural drainage system. If developed, the drainage would have to be managed and diverted elsewhere at considerable cost. Also, given the developer's vision for SE 14, the creek has amenity value if left in its natural state.

There are four options with respect to the creek. It could be dedicated as *municipal reserve (MR)*. The MR parcel would be owned by the County and open to the public. As MR though, there might be a question of liability to the County. Maintenance could be covered by an agreement under Section 677 of the Act. For the developer an approximately 20 acre MR dedication would take care of the 13 acre reserve obligation. However, dedicating the creek as municipal reserve is questionable. Although municipal reserve can be used for a "public recreation area", the creek itself more closely fits the definition of environmental reserve under the Act.

The creek could be dedicated as *environmental reserve (ER)* since it is a "natural drainage course" as cited in the Act. The ER parcel would be owned by the County and open to the public. Liability might be less of an issue because the Act requires the land to be left in its natural state. The same opportunity for a Section 677 agreement would exist. For the developer this would mean giving up a 20 acre ER parcel while still owing more than 13 acres of MR. However, Section 1.5.6. of the GMP allows Council to give credit for ER provided, against MR owing, in its decision on a subdivision. This covers situations where the developer has to give up a large amount of ER, particularly where the ER has some "MR value". The test has always been: "Is it appropriate and safe to allow limited, low-impact public access to the ER parcel?" If so, the ER is deemed to have MR value. If Council decided to give credit, it would have to be careful with the decision. For example, full credit would mean the rest of SE 14 would be reserve-free. Council might want to hold back some reserves for the buffer strip next to Highway 13.

The creek could be subject to an *environmental reserve easement*. The developer would not be required to "give up" the creek. It would remain privately owned subject to the requirement that the land "remain in a natural state". The creek would not be open to the public. Section 1.5.6. of the GMP would not apply. The municipal reserve obligation would still be owing in full. The legal viability of this option is also in question because the County has legal advice which says the environmental reserve easement provisions of the MGA are inadequate.

The creek could be the subject of a *conservation easement*. Unlike the environmental reserve easement, the provisions for the conservation easement are considered to be adequate. However, they are under the Environmental Protection and Enhancement Act, not the Municipal Government Act. Council cannot demand a conservation easement as a condition of subdivision. The developer would have to voluntarily agree to the conservation easement. The drawbacks would be the same as with the environmental reserve easement, i.e. private vs. public ownership, no public access, no credit against MR.

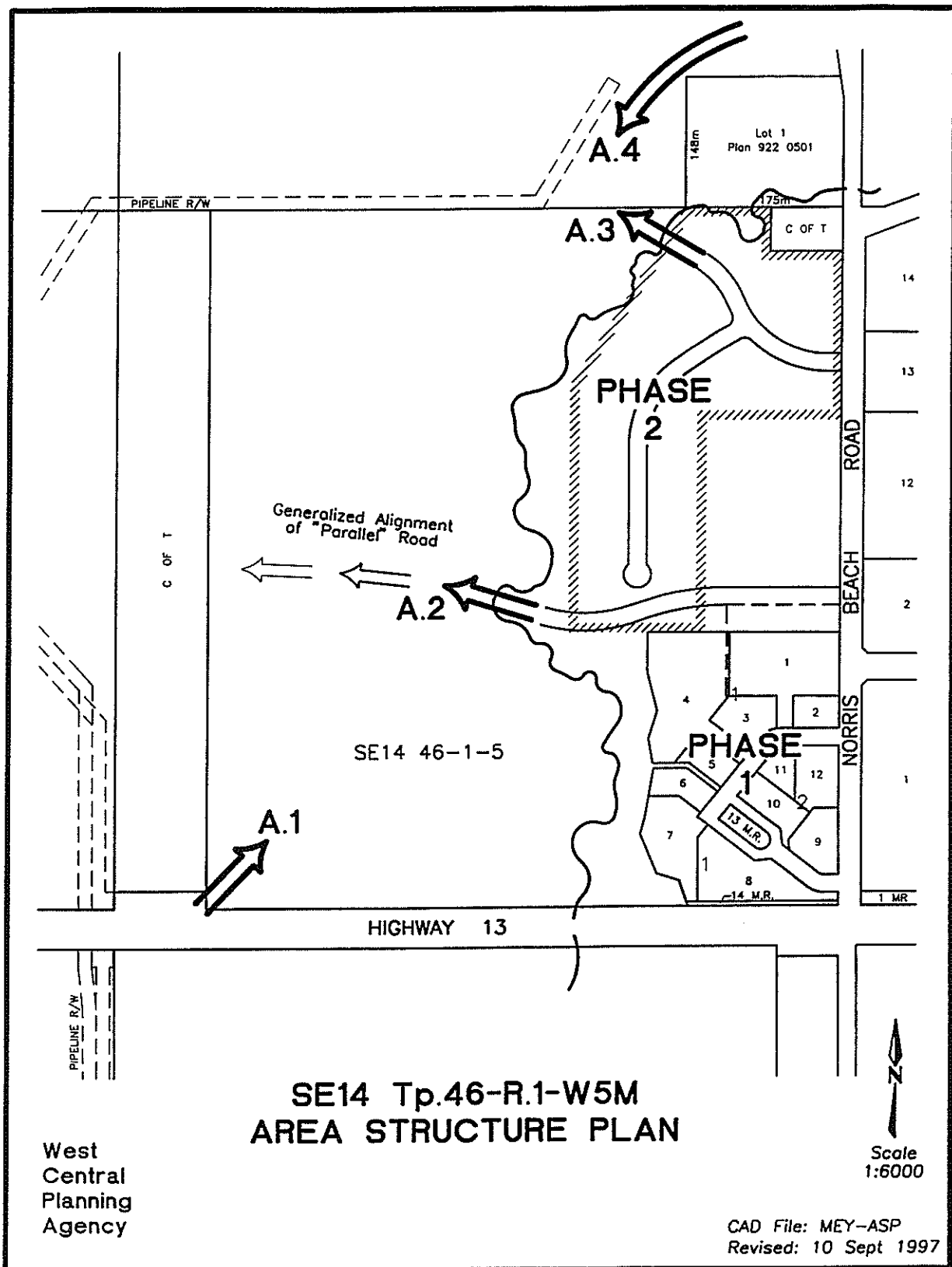
Finally, it must be noted that dedication of the creek as a reserve parcel does not preclude road dedication and construction across the creek as proposed in this Plan. A road may cross a reserve parcel pursuant to Section 677(a) of the Act. Also, the environmental reserve and conservation easement mechanisms, while provided for in law, have not been tested in the courts.

4. POLICY

1. Subject to further study and extension of this Area Structure Plan, a road parallel to Highway 13, may eventually provide access to the west part of SE 14 and may eventually be extended to the west boundary of the SW 14-46-01-W5M.
2. A.2, the centre creek access option, must be reserved to provide access to the west part of SE 14 and for the road alignment in No. 1 above.
3. A.3, the north creek access option, must be reserved to provide access to the west part of SE 14.
4. A.4, the NE 14 access option, may be developed.
5. A.1, the service road access option, is subject to Transportation's approval and requirements for intersectional treatment; however, this option is not recommended.
6. Road alignments and creek crossing points on the Plan map are shown in general terms. Crossing points and alignments east of the creek must be determined by an engineering study. Engineering for alignments west of the creek will be required when subdivision and development occurs on the west part of SE 14.
7. Any culverts used in creek crossings must be to the satisfaction and standards of Transportation, Alberta Environmental Protection and the County of Wetaskiwin.
8. Subject to the requirements of this Plan, subdivision may take place in phases.
9. No physical connection is anticipated between the Phase 2 internal subdivision road and the proposed parallel road. However, any subdivision design must incorporate some form of pedestrian access at the south end of the internal subdivision road (e.g. municipal reserve strip, public utility lot). The purpose will be to provide physical access to the south, across the proposed parallel road to Phase 1.

10. Wherever possible, diversion of stormwater should be to the creek, not to the Norris Beach Road.
11. The developer's long-term vision for the development of SE 14 calls for a variety of uses to be developed to varying density levels. Some of what has already been approved amounts to development at urban density levels in a rural area where there are no municipal services. Future subdivision and development on SE 14 must be subject to Sections 4, 5 and 7 of the Subdivision and Development Regulation (AR 212/95) and to Sections 3.5 and 3.11 of the Bylaw.
12. Council may require the developer to carry out and pay for a study into the feasibility of communal water and sewer utilities to serve existing and proposed development on SE 14. The study may include, but should not be limited to, an examination of the merits of public versus private ownership of any systems developed, and the feasibility of connecting existing development to these systems.
13. Council may require the developer to carry out and pay for a study into the feasibility of installing fire protection services to serve existing and proposed development on SE 14. The study may include, but should not be limited to, installation of a dry hydrant in SE 14, a pressurized hydrant system, or creating a water reservoir on the creek.
14. Council shall have regard to the discussion on reserves in this Plan when making a decision on a subdivision application.

W.E.



W.C.