

To: Mayor and Members of Council

September 6, 2011

Re: Garden of Eden Estates

Background

In the past the Town has withheld development permits due to health and safety concerns and zoning contraventions. At the August 22, 2011 Council Meeting the Developer of Garden of Eden Estates, Ernie Schwartz, requested the Town to make a formal statement that the Town will never withhold Development Permits within the Garden of Eden Estates Development again.

A motion was passed at the Council meeting to discuss this with our legal counsel. A meeting with Mark Mulatz was held on Friday August 26th. As a result of that meeting a letter was sent to Mr. Schwartz's legal counsel, please see attached correspondence dated September 2, 2011 (faxed August 29, 2011).

As a response to that letter is a letter from Noble Johnson, please see attached correspondence dated September 1, 2011.

Discussion

The letter from Mr. Schwartz's Legal Counsel suggests that the developer will be paving both phases of the Development this fall. However, he will not be paving White City Drive this year due to the outstanding issues around the interpretation on the paving requirements of White City Drive.

The other concern that was identified in the letter from the Developer's lawyer was the placement of the three phase power line within the right of way on the south side of Betteridge Road. The complaint is that the power lines will be placed at 0.5 meters away from the property line, and then over hang 2.5 meters onto the properties that back along Betteridge Road. However there is a municipal buffer of 3 meters from the property line of the ditch. Please see attached plan. The reason the three phase line is being erected on the south side of Betteridge Road is because the newly installed force main is located in the north ditch of Betteridge Road.

Budget Implications

None

Conclusion

Mr, Schwartz is requesting a response in regards to two items.

- 1) Pavement of White City Drive cost sharing.
- 2) Location of the three phase power line in the South side Betteridge Road

Recommendation

Administration recommends a letter from our Legal Counsel be sent to the Developer responding to requests as identified in the letter dated September 1, 2011.

Respectfully submitted,



Shauna Bzdel,
Town Manager

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PLEASE REFER TO: Mark F. Mulatz
Email: mmulatz@gj.ca

September 2, 2011

Noble Johnston
1143 Lakewood Court North
Regina SK S4X 3S3

Attention: Kevin A. Clarke

Dear Sir:

**RE: Town of White City
Garden of Eden Subdivision
Schwartz Homes Ltd.
Our File Reference: T 3683.017 MFM**

BY FAX TO: 775-2234

Total of **1** page(s)

Confidentiality: This fax contains privileged and confidential information intended for the addressee only. If sent erroneously, please notify the sender immediately. Any dissemination, distribution or copying of the communication is strictly prohibited.

We are now in a position to respond to your June 17, 2011 correspondence. There are a number of issues which must be addressed relating to the Garden of Eden subdivision.

The Town of White City has enforcement provisions under the Development Agreement dated August 29, 2005 as amended (the "Development Agreement") between the Town and Schwartz Homes Ltd. Schwartz Homes Ltd. is in breach of the Development Agreement currently, and has breached the Development Agreement in the past on numerous occasions.

Currently there are two (2) significant breaches which are ongoing, namely:

1. The roadways within the subdivision are not paved; and
2. The pavement of Centre Street to the subdivision has not been completed.

We will address both breaches however we wish to clarify two (2) matters:

- A. In the March 7, 2011 meeting at no time did the Town agree that it would refuse to issue building permits regardless of whether or not the Development Agreement had been breached. The Town has in the past refused permits due to health and safety issues and breach of zoning bylaws, all of which were due to non-compliance under the Development Agreement. If such issues arise, the Town cannot issue building permits.

- B. The writer in our conversation did not state that building permits would be withheld if there was non-compliance with the Development agreement. There was a wide ranging conversation dealing with the relationship between the Town and Mr. Schwartz and enforcement, and if the implication was received that building permits would be withheld to enforce compliance with the Development Agreement, we are instructed to advise that building permits will not be withheld to enforce compliance with the Development Agreement. This is subject however at all times to an Application complying with the building bylaws, zoning requirements, and there being no health and safety issues.

The Town will rely on its security and other measures set forth in the Development Agreement to enforce the current breaches.

We are instructed to advise:

- I. With respect to the pavement of the subdivision roadways, this must be completed by November 1, 2011. In the event of default, the Town may, without further notice, arrange for compliance and charge the cost to the security held. With respect to this requirement the Town requires only Phase 1 be paved by November 1, 2011. The Town believes that paving Phase 2 at this time will result in additional cost to you and potentially the Town in the future.
- II. With respect to the extension of White City Drive to the subdivision, this must be completed by July 31, 2012. In the event of default the Town may, without further notice, arrange for compliance and charge the cost to the security held. Dust control cost for the extension until completed will be the responsibility of Schwartz Homes Ltd.

Yours truly,

GERRAND RATH JOHNSON LLP

Per:

Mark F. Mulatz

MFM/lid

**noble
johnston**
AND ASSOCIATES
LAW OFFICES

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September 1, 2011

Gerrard Rath Johnson
Barristers and Solicitors
700 - 1914 Hamilton Street
Regina, Saskatchewan
S4P 3N6

VIA FACSIMILE: 522-3555

Attention: Mark F. Mulatz

Dear Sir:

RE: **SCHWARTZ HOMES LTD. - EASEMENT AGREEMENT**
OUR FILE REFERENCE: 28284-01 KAC

Thank you for your letter of August 29, 2011. We have the following comments.

With respect to the paving within Garden of Eden Estates, Schwartz Homes Ltd. has arranged for a paver to complete all of the paving within the development. One of the current owners in "Phase 2" is insisting that the pavement be completed, and has threatened legal action as against both Schwartz Homes Ltd. and the Town of White City. In the circumstances, Schwartz Homes Ltd. will complete all of its paving requirements within the subdivision this fall. Schwartz Homes Ltd. recognizes its requirement to warrant the pavement for two years.

As an aside, while it was Schwartz Homes Ltd.'s intentions to complete the paving this fall, we note that the Town of White City could not impose a deadline in any event. We cannot see any provision in the Development Agreement concerning when paving must be completed, and Mr. Ernie Schwartz notes that other subdivisions, notably Mackenzie Point, do not yet have pavement, notwithstanding that the development has been ongoing since 2003.

With respect to the question concerning Centre Street (White City Drive), Mr. Schwartz presented a proposal to town council to resolve this outstanding dispute. We understand that town council is considering the proposal, and may be discussing the matter with the RM.

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Schwartz Homes Ltd. notes that the interpretation question concerning Centre Street (White City Drive) came to light on October, 2009. They did not receive a definitive position from the Town until June, 2011.

I make the above comment, however, simply to highlight the necessity for the Town to respond to Mr. Schwartz's proposal as presented to council on the August 22, 2011 meeting. In consulting with paving contractors, their spring bookings are already starting to fill up. Completion of Centre Street (White City Drive) will require the cooperation of the RM, and will likely have to be overseen by the engineer for the RM of Edenwold. Costs may increase if there are delays. This would also, of course, impact the deadline which is imposed in your letter of August 29, 2011.

We would encourage you to advise the council of the need to respond to Mr. Schwartz promptly, preferably next week following the September 6, 2011 meeting. In good faith, Mr. Schwartz did propose a resolution to the disagreement, and council indicated in its meeting of August 22, 2011 they were going to consider the proposal and discuss the matter with the RM of Edenwold.

We look forward to the reply, next week.

A new issue has also arisen, which we will require to be addressed by the Town of White City. Recently, Schwartz Homes Ltd. has learned that it is the intention of SaskPower to install a highly voltage three-phase power line on the south side of Betteridge Drive. The power lines, to date, had been located on the north side of Betteridge Drive. Schwartz Homes Ltd. understands that it was SaskPower's intention to install the three-phase line on the north side of Betteridge Drive, but the Town of White City requested its relocation to the south side.

Because of the construction of Betteridge Drive, there is very little right of way remaining on the south side. In fact, Schwartz Homes Ltd. believes that there is in fact an encroachment on their property from the roadway.

SaskPower recently staked where they planned to put the new power line. The power line is located one half meter from the edge of the Schwartz Homes development. With the crossbar, a significant portion of the line will in fact encroach on Garden of Eden Estates. There is one home owner that will now be faced with a high voltage power line crossing over their property. They have complained to the Town.

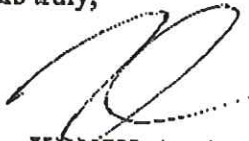
Schwartz Homes Ltd. has looked at the right of way. Assuming that this is a standard road right of way of 66 feet, there would appear to be no less than 20 - 30 feet of undeveloped right of way north of Betteridge Road. We also note that there is already a power line north of Betteridge Road. Mr. Schwartz has requested an explanation from the Town as to why they asked SaskPower to put this new power line on the south side of the road, but has yet to receive a reasonable explanation.

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We acknowledge that SaskPower can place a power line within a roadway allowance, but we also note that placement of the line within the roadway allowance is made in consultation with the municipal authority. In this instance, we understand SaskPower proposed to place the power line on the north side of Betteridge Road, but that the Town of White City requested the move from the north side to the south side of Betteridge Road. This move creates a nuisance to Garden of Eden Estates, and the potential for both property damage and physical injury. Given that there is no development to the north side of Betteridge Road, it does not appear to have been a reasonable request by the Town of White City, particularly when houses have already been built in Garden of Eden.

Could you please provide us with a reply and explanation as to why the Town of White City requested that the new three phase power line being installed by SaskPower be located on the south side of Betteridge Road? We do require this response by September 9, 2011.

Yours truly,



per: KEVIN A. CLARKE

Legal Assistant: Sabrina Jacobs

KAC/sj

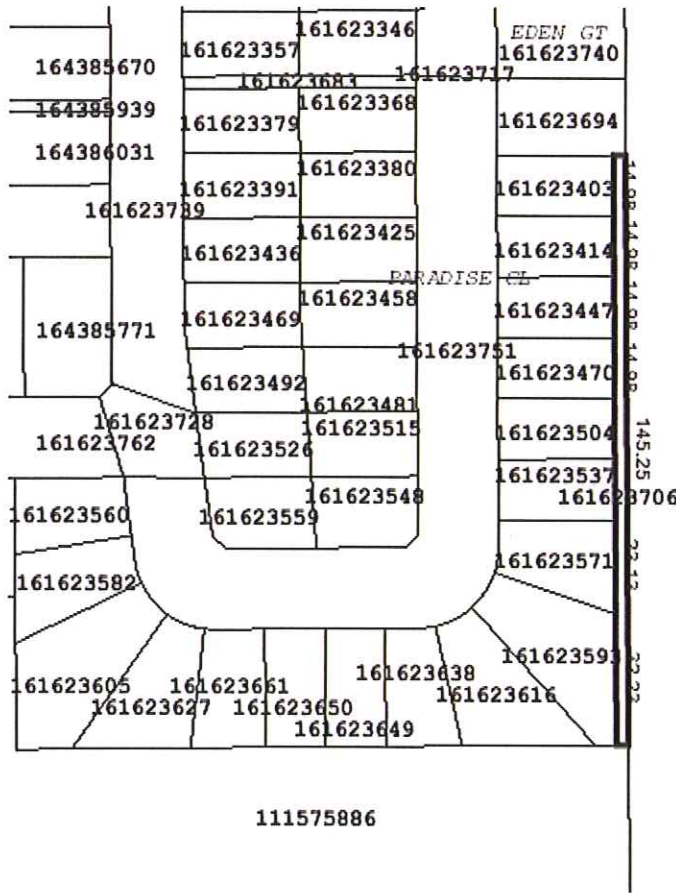
c.c. Schwartz Homes Ltd.

Enclosures: - None



Information Services Corporation
of Saskatchewan

Surface Parcel Number: 161623706
LLD: (Parcel: MB1)Plan 101893899 Ext 0
Parcel Class Code: Municipal Buffer
Area: 0.044 hectares (0.11 acres)
Request Date: 2-Sep-2011 4:27:31 o'clock PM CST



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DISCLAIMER: THIS IS NOT A PLAN OF SURVEY. It is a consolidation of plans to assist in identifying the location, size and shape of a parcel in relation to other parcels. Parcel boundaries and area may have been adjusted to fit with adjacent parcels. To determine actual boundaries, dimensions, or area of any parcel, refer to the plan, or consult a surveyor.

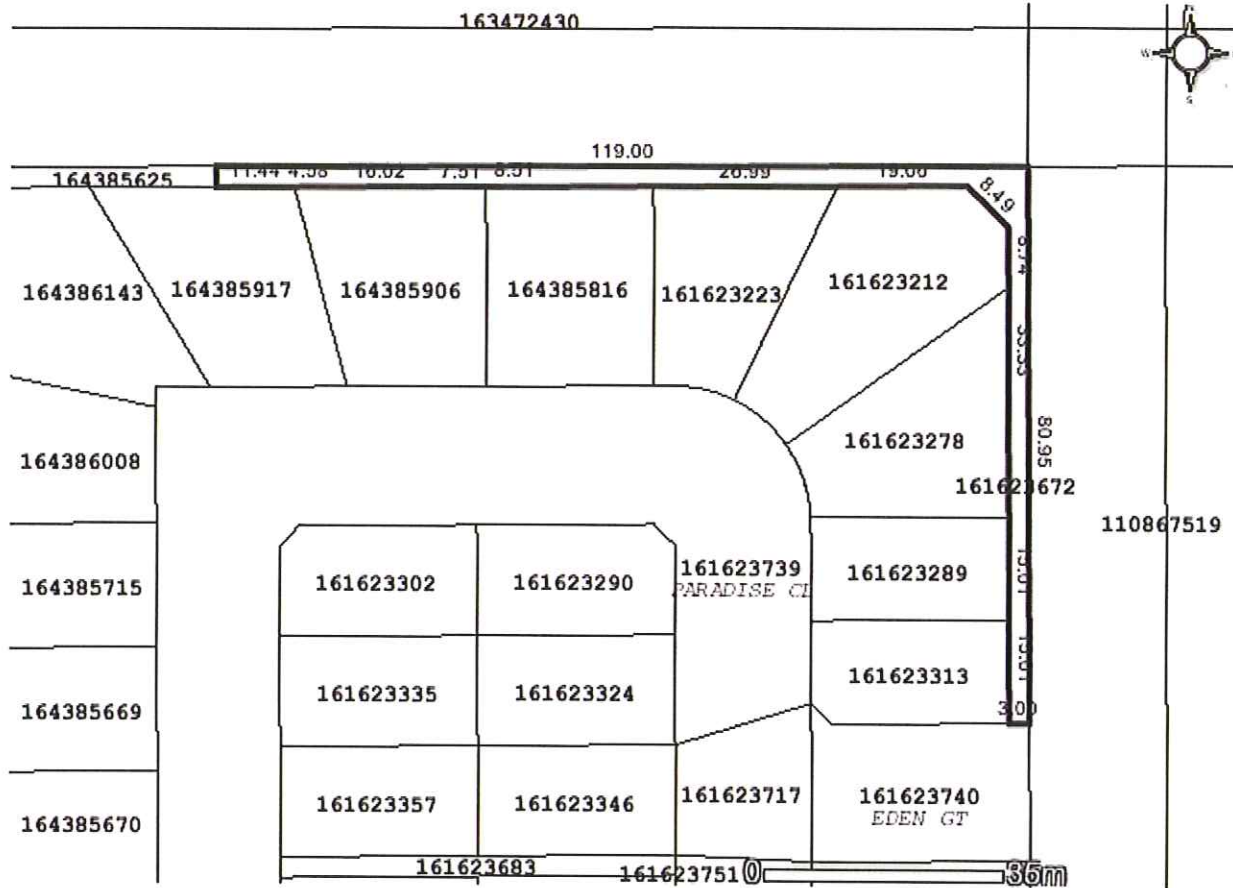
Related Information

Parcel	Land Description
161623571	Lot 7-Blk/Par 1 Plan 101893899 Ext 0
111575886	NE 11-17-18-2 Ext 24
161623593	Lot 8-Blk/Par 1 Plan 101893899 Ext 0
161623403	Lot 1-Blk/Par 1 Plan 101893899 Ext 0
161623470	Lot 4-Blk/Par 1 Plan 101893899 Ext 0
161623706	(Parcel: MB1)Plan 101893899 Ext 0
161623447	Lot 3-Blk/Par 1 Plan 101893899 Ext 0
161623740	(Parcel: S4)Plan 101893899 Ext 0
161623537	Lot 6-Blk/Par 1 Plan 101893899 Ext 0
161623504	Lot 5-Blk/Par 1 Plan 101893899 Ext 0



Information Services Corporation
of Saskatchewan

Surface Parcel Number: 161623672
LLD: (Parcel: MB2)Plan 101893899 Ext 0
Parcel Class Code: Municipal Buffer
Area: 0.06 hectares (0.15 acres)
Request Date: 2-Sep-2011 4:28:08 o'clock PM CST



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Related Information

Parcel	Land Description
161623335	Lot 19-Blk/Par 3 Plan 101893899 Ext 0
164385625	(Parcel: MB1)Plan 101978668 Ext 0
161623302	Lot 20-Blk/Par 3 Plan 101893899 Ext 0
164386143	Lot 10-Blk/Par 2 Plan 101978668 Ext 0
161623346	Lot 3-Blk/Par 3 Plan 101893899 Ext 0
161623683	(Parcel: W1)Plan 101893899 Ext 0
161623212	Lot 4-Blk/Par 2 Plan 101893899 Ext 0
164385670	Lot 14-Blk/Par 2 Plan 101978668 Ext 0
164385816	Lot 6A-Blk/Par 2 Plan 101978668 Ext 0
161623672	(Parcel: MB2)Plan 101893899 Ext 0