



Lamont County



LAMONT, ALBERTA
T0B 2R0

TEL: (780) 895-2233
FAX: (780) 895-7404
e-mail: info@tclamont.ca
website: www.countylamont.ab.ca

NOTICE OF APPEAL HEARING

Development Permit No. 1941/06
Land Description: Section 35-55-20 W4

This is to notify you that an appeal has been made to the SUBDIVISION AND DEVELOPMENT APPEAL BOARD against a decision by the Municipal Planning Commission in respect to Development Permit No. 1941/06 which involves development described as follows:

A Sulphur Forming and Exporting Facility.

PLACE OF HEARING: Lamont County Administration Building
Council Chambers
5303 – 50th Avenue
Lamont, AB

DATE OF HEARING: May 24, 2006

TIME OF HEARING: 1:30 p.m.

PURPOSE: To open the hearing and to hear an adjournment request from the appellant. The merits and substance of the appeal will not be heard on May 24th, 2006.

Any persons affected by the proposed development have the right to present a written brief prior to the hearing and to be present and be heard at the hearing. Persons requiring to be heard at the hearing regarding the adjournment request shall submit a written brief on that matter to the Secretary of the Subdivision and Development Appeal Board no later than May 22, 2006 at 4:00 p.m. Mail or in person to: Lamont County Office, 5303 – 50th Ave. Lamont, AB T0B 2R0. Fax to 780-895-7404. Email to marie.k@tclamont.ca. If you require further information contact Marie Kurylow, Secretary of the Subdivision and Development Appeal Board. Phone: (780) 895-2233. All relevant documents are available for public inspection at Lamont County Office, 5303 – 50th Avenue, Lamont, Alberta.

May 3, 2006
DATE

Marie Kurylow
Secretary
Subdivision and Development Appeal Board

LAMONT COUNTY
SUBDIVISION & DEVELOPMENT APPEAL BOARD

HAZCO ENVIRONMENTAL SERVICES LTD.
DP 1941/06

APPEAL HEARING PACKAGE
May 24, 2006

Page No.

- 1 **Agenda.**
- 2-3 **Notice of Appeal** dated April 24, 2006, from Bennett Jones LLP, Appellant's legal counsel, to Sheila McNaughton, legal counsel for SDAB.
- 4 **Appeal fee** receipt dated April 26, 2006
- 5-6 **Letter requesting adjournment.** dated April 28, 2006, from Bennett Jones LLP, Appellant's legal counsel, to Sheila McNaughton, legal counsel for SDAB.
- 7 **Notice of Appeal Hearing** dated May 3, 2006
- 8-15 **Development Permit Decision** dated April 11, 2006.

LAMONT COUNTY

SUBDIVISION & DEVELOPMENT APPEAL BOARD

LAMONT COUNTY OFFICE

May 24, 2006

A G E N D A

1. Call to Order at 1:30 p.m.
2. Hearing Development Permit Application No. 1941/06
 Land Description: Section 35-55-20 W4
 Proposal: Sulphur Forming and Exporting Facility.
 Appellant / landowner: Hazco Environmental Services Ltd.
 - (a) Chairman introduces everyone and announces case.
 - (b) Chairman asks if any Board members believe they are disqualified from hearing the case.
 - (c) Chairman asks if the Appellant or the public have any objection to any member of the Board.
 - (d) Request for adjournment:
 - i) Submission by Appellant
 - ii) Submission of those in support of adjournment
 - iii) Submission of those opposed to adjournment
3. Adjournment

Shawn M. Munro
Direct Line: 403.298.3481
e-mail: munros@bennettjones.ca
Our File No.: 37471.04
Your File No.: DP Application 1941/06

April 24, 2006

Via Facsimile 780.895.7404

Lamont County
Subdivision and Development Appeal Board
Lamont, Alberta
TOB 2R0

Attention: Secretary - Subdivision and Development Appeal Board

Dear Sir or Madam:

Re: Notice of Appeal - Development Permit Application 1941/06 - Hazco Environmental Services Ltd. ("Hazco") - Sulphur Forming and Exporting Facility

Further to the above-referenced development permit application (the "Application") filed by Hazco on February 17th, 2006 and the subsequent decision of the Lamont County Municipal Planning Commission (the "MPC") which denied the Application, and for which notice of same was provided to Hazco on April 12th, 2006, Hazco wishes to appeal the said decision of the MPC to the Lamont County Subdivision and Development Appeal Board (the "SDAB").

The reasons for which Hazco wishes to appeal the decision of the MPC are:

1. The MPC erred by holding that Hazco had not met its onus of establishing that its proposed project did not have objectionable, dangerous or potentially hazardous conditions;
2. The MPC erred in accepting virtually all of the evidence presented by the parties opposed to the Application, many of whom were lay witnesses, and in accepting virtually none of the evidence presented by Hazco, despite much of Hazco's evidence being prepared by qualified, impartial experts; and
3. Such further and other reasons as Hazco may raise at the SDAB hearing associated with the hearing of its appeal of the MPC decision.

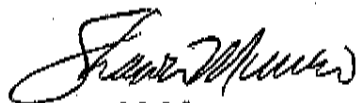
April 24, 2006
Page Two

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We believe that the within is satisfactory to represent Hazco's Notice of Appeal to the SDAB the decision of the MPC in connection with the above-referenced matter. However, should you require more information from Hazco with respect to same, please feel free to contact me at (403)298-3481 or Daron Naffin of our office at (403)298-3668.

Yours truly,

BENNETT JONES LLP



Shawn M. Munro

cc: Hazco Environmental Services Ltd. (Att: Mr. Don Priesen - E-mail)
Lamont County Planning Department (Att: Ms. Debbie Hamilton - E-mail)

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Lamont County
Lamont, AB T0B 2R0
** R E C E I P T **

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HAZCO ENVIRONMENTAL SERVICES L
10501 BARLOW TR SE

Date: 4/26/2006
Receipt No: 30277
PW

CALGARY, AB T2C 4M5
CANADA

Receipt	Account	Description	O/S	Amount
General	DEVAP	DEVELOPMENT APPEAL	\$100.00	\$100.00

Cash \$0.00
Cheque \$100.00
Credit Card \$0.00
Other \$0.00

Sub-Total \$100.00
Tax \$0.00
Total \$100.00
Change \$0.00

Cheque Number: 125346

Daron K. Nuffin
Direct Line: 403.298.3668
e-mail: dnuffin@bennettjones.ca
Our File No.: 314714

April 28, 2006

Ms. Sheila C. McNaughtan
Reynolds, Mirth, Richards & Farmer LLP
Barristers & Solicitors
3200 Macgillivray Place
10180 - 101 Street NW
Edmonton, AB T5J 3W8

Dear Ms. McNaughtan:

**Re: Hazco Environmental Services Ltd. - Development Permit 1941/06
Sulfur Forming and Exporting Facility
Scheduling of Subdivision and Development Appeal Board Hearing**

Further to our recent telephone conversation and your voicemail message of today, we understand that the hearing of the above-referenced matter is proposed to be scheduled for May 24, 2006.

On behalf of Hazco Environmental Services Ltd. ("Hazco"), we hereby request that the full hearing of our client's appeal be adjourned to a date later than May 24, 2006, for the following reasons:

1. The screening report issued by Alberta Environment on April 7, 2006, in connection to our client's project states at paragraph 6 on page 8 that our client is now required to prepare an Environmental Impact Assessment ("EIA") Report and that Alberta Environment has now recommended that our client's project be reviewed by the Natural Resources Conservation Board ("NRCB"). Given that the EIA will involve an extensive and time-consuming review process, and that the results of the EIA will be relevant to the Lamont County Subdivision and Development Appeal Board's ("SDAB") deliberations and ultimate decision in connection with our client's appeal, and given that any decision of the NRCB will bear upon the SDAB process pursuant to section 619 of the *Municipal Government Act*, it is our view that adjourning the SDAB hearing of our client's matter until after an EIA is completed and the NRCB process has come to fruition is appropriate in the circumstances. In particular, where section 619 states that an NRCB decision prevails over any decision by a subdivision and development appeal board, it seems most efficient to defer a decision by the SDAB to ensure it is not inconsistent with the NRCB decision.
2. Given that the Municipal Planning Commission ("MPC") denied Hazco's application largely on the basis that our client provided, in the MPC's view, insufficient technical evidence with respect to matters of concern, it would be our client's intention to present extensive technical

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April 28, 2006
Page Two

evidence at any SDAB hearing required to be held prior to an NRCB hearing. Given the timeframes involved in retaining and instructing appropriate technical experts, and in having those parties prepare reports and prepare for the upcoming SDAB hearing, we believe that an adjournment is appropriate to allow such evidence to be prepared in a fulsome and complete manner.

- 3. Notwithstanding our previous discussion wherein I advised that a May 24th or May 26th hearing date would likely be acceptable, I have now been advised by Shawn Munro of our office, who we intend to be our office's primary representative for our client at the upcoming SDAB hearing, that he is unavailable on both of the said dates.

In essence, we believe that it is appropriate for the SDAB to hear our client's adjournment request as soon as possible (within the next week, if possible) so that a determination with respect to our client's adjournment request may be made in advance of any potential hearing date. Given the fact that should the adjournment request be denied, we will be required to proceed immediately with the hearing, we wish to have advance notice of such a denial, so that we may retain and instruct appropriate witnesses and have those parties prepared to present evidence.

Therefore, we would ask that the within correspondence be presented to the SDAB immediately, and that it issues a ruling as soon as possible with respect to whether or not it is prepared to hear our client's adjournment request in advance of the discussed potential hearing date.

It would be our ultimate suggestion that the SDAB opens the hearing and hears our adjournment request as soon as possible within the thirty day statutory period after the filing of our Notice of Appeal, and that it then adjourn the hearing of our client's appeal until the completion of the EIA and NRCB processes.

Given the short timelines involved in this matter we would ask that you or the SDAB contact our office as soon as possible with respect to our proposal set out in the within correspondence. We look forward to hearing from you.

Yours truly,

BENNETT JONES LLP



Daron K. Neffin

DKN/AMW
Enclosures

cc: Shawn Munro
Paul Kashler

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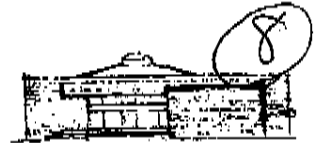
May 3, 2006
DATE

Marie Kurylow
Secretary

Subdivision and Development Appeal Board



Lamont County



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NOTICE OF DECISION OF MUNICIPAL PLANNING COMMISSION

Application/ Permit No. 1941/06

APPLICANT:

Hazco Environmental Services Ltd.

MAILING ADDRESS:

10501 Barlow TR SE
Calgary, AB
T2C 4M5

LEGAL: Section 35-55-20 W4

PHONE: 403-231-8425

You are hereby notified that your application to construct a sulphur forming and exporting facility has been:

Denied for the following reasons attached.

Date of Decision: April 11, 2006

Date of Notice of Decision: April 12, 2006

Signature of Development Officer _____

The Land Use Bylaw provides that any person claiming to be affected by a decision of the Municipal Planning Commission may appeal to the Subdivision and Development Appeal Board by serving written notice of appeal to the Secretary of the Subdivision and Development Appeal Board within 14 days after receipt of this notice including a development appeal fee as set by Council.

FEE \$100.00

If you have any questions, contact the Planning & Community Services Department of Lamont County at 780-895-2233 or toll free 1-877-895-2233.

PART I LEGISLATION AND TASK

The task of the Municipal Planning Commission ("MPC") is to evaluate the appropriateness of the development permit application (including supporting documents – Application No. 1941/06) for a Sulphur Forming and Exporting Facility. The proposal has been submitted by Hazco Environmental Services Ltd. (the "Developer"). The background information is set out in the Administrative Report provided to the MPC.

The proposed development is classified as "heavy industry" which is a discretionary use under the Industrial/Commercial (IC) District of the Land Use Bylaw. Various legislative provisions were referred to in Mr. Dolman's report and the MPC views the following excerpt from this legislation as central to the MPC's task:

County's Land Use Bylaw Part 7 Section 7.7.1: "No industrial use shall be allowed in this District if the Development Authority considers it to possess objectionable, dangerous or potentially hazardous conditions."

In considering this section, the MPC is of the view that a developer has the onus of establishing that its proposed development is appropriate, that is, that the industrial development does not have objectionable, dangerous or potentially hazardous conditions. In light of all the evidence, the MPC, has determined that the development permit application should be denied. The MPC is of the view that the location (the SW of 35-55-20-W4M) (the "Lands") is not an appropriate location for the proposed facility given:

- a) the proximity of the Lands to the Towns of Bruderheim and Lamont as well as other residential and agricultural uses in the general vicinity of the Lands; and
- b) the proximity of the Lands to the Canexus facility.

The location is not appropriate for the following reasons. The MPC views that suitability of a proposed industrial development must be considered not only in light of the impact on other landowners and occupants within the County, but also within neighbouring municipalities. The Town of Lamont has a population of approximately 1700 persons, and is approximately 4.0 kilometres from the Lands.

The Town of Bruderheim has a population of approximately 1200 persons and is approximately 2.4 kilometres from the Lands. The MPC is concerned about potential dangers particularly given the presence of schools, seniors facilities and a hospital in the Towns of Lamont and Bruderheim.

In support of its application, the Developer provided a Risk Assessment prepared by Doug McCutcheon and Associates. A Risk Assessment assists in determining the impact of a proposed development on public health and safety in the event of a catastrophic incident at the proposed development. Although, there were comments in

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the Risk Assessment suggesting that the proposed development is safe, the Risk Assessment also contained the following comments:

- "Enough sulphur on site to create an offsite impact if a fire were to happen."
- "The probability of an incident happening is not low..."
- "The company will need to put a high priority on [dust collections and leaks] because of the potential for impacting communities."

While the Canexus representative (Mr. K. Meaney) expressly stated that Canexus is not opposing the proposed development, the incompatibility of Canexus' operations and that of the proposed development was one of the key issues discussed before the MPC. Canexus operates a facility on the quarter section immediately west of the Lands.

The Developer had submitted an air quality report by D.M. Leahey and Associates Limited (Dr. Leahey) who was stated to be a recognized air quality expert. Dr. Leahey's report indicated, among other things, the following conclusion: "It was concluded that air emissions associated with activities at HAZCO's proposed Bruderheim sulphur forming facility should have no adverse effects on the environment or surrounding area."

Canexus retained Dr. James Hyne, Ph. D., who was stated to be a recognized industry expert in sulphur marketing, storage, handling and transportation. As stated in the information provided by Canexus, Dr. Hyne was a professor with the Chemistry Department at the University of Calgary for thirty years, and in 1964 founded Alberta Sulphur Research Ltd. Based on Dr. Hyne's review of the information provided by the Developer, Canexus made the following statements:

The presence of sulphur dust has the potential to pose an unacceptable safety risk to our employees and contractors working on site. The ingress of sulphur dust into our process would pose a potential explosion hazard as a result of sulphur contaminating our product or coming in contact with residue material within our facility. While controls are in place to prevent dirt and ambient dust ingress into our air handling system, the original design controls did not account for the presence of an active reducing agent in the air.

Further, the Canexus written submissions also stated as follows:

"Adding complexity to this issue is the fact that while the literature is clear on the chemical incompatibility of chlorate and sulphur, the level or concentration at which sulphur contamination of chlorate poses a fire/explosion risk is undefined."

In the presentations to the MPC, the representatives of both Canexus and the Developer referred to a "difference of technical opinion" with respect to the technical issue of fugitive dust emission associated with storage, loading and handling activities.

Canexus also referred to the potential impact on the cost structure of the Canexus Facility, because of the impact of sulphur dust deposition in the Canexus cooling tower, and the resulting impact on processing equipment.

Both Dr. Hyne and Dr. Leahey would appear to be very qualified within their fields. However, as Canexus' submissions cast doubt on the assumptions and conclusions in Dr. Leahey's report, the MPC is of the view that the Developer has not satisfied the necessary onus referred to above; in other words, the MPC is of the view that, based on the information provided to it, the proposed development possesses "objectionable, dangerous or potentially hazardous conditions."

PART II LACK OF INFORMATION

To be clear, the MPC denies the approval of the development permit and on the basis of the information before it has determined that the Lands are not an appropriate location for the proposed development.

However, a number of issues before the MPC focused on lack of information or inconsistent information, and the MPC wishes to comment on these issues as well.

In relation to the technical issues raised before the MPC with respect to lack of information or inconsistent information, the MPC finds certain submissions by Ms. S. Fehr and Mr. Dennis Maschmeyer particularly compelling. It should be noted that in addition to being residents of Lamont and area, both Ms. Fehr and Mr. Maschmeyer have relevant experience and training.

Ms. Fehr has a Bachelor of Science Degree and works as a chemical engineer at an industrial facility in the Lamont area.

She noted that a "worst case scenario" with respect to a fire at the proposed development had not been developed. She also noted that there may be an incorrect assumption made in the information submitted by the Developer as the information assumes that the sulphur pile will be completely screened whereas on the other hand, it was clear that the screening would not necessarily be the height of the sulphur pile (this lack of complete screening was confirmed verbally by the representatives of the Developer in the presentation before the MPC).

Mr. Dennis Maschmeyer also is a Professional Engineer and has a degree in Chemical Engineering. Mr. Maschmeyer worked for over 40 years with Sherritt International and held the position of President and CAO with them before retiring.

Mr. Maschmeyer stated that Dr. Leahey's report may be based on certain assumptions that may not be correct (see Maschmeyer Report p. 11 and following). During the course of the proceedings the Developer endeavoured to respond to a number of these issues; nevertheless, it is clear to the MPC that the Leahey report is based on a sulphur pile of "upwards to 18,000" tonnes (p. 1 of Leahey report), whereas the development permit information submitted clearly contemplates a pile of 50,000 tonnes. In the MPC's

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view this is an inconsistency in the Developer's information and undermines the findings in the Leahey report.

The MPC also provides the following additional comments on how the submissions of the Developer were lacking or inconsistent:

- a) Risk Assessment – Firstly, the Developer acknowledged that the risk assessment was determined on the basis of the proposed development essentially on a "stand alone" basis, without taking the Canexus operation into account. The MPC is of the view that it is necessary to determine the cumulative effect of the proposed development, in light of existing developments; this is a major omission, particularly given the nature of concerns raised by Canexus.

Secondly, while the Risk Assessment stated that it "is important to develop a worst-case scenario for a sulphur pastilles pile fire", no "worst case scenario" was in fact developed. In fact, the Risk Assessment stated:

"Not having access to the actual quantities it makes it difficult to determine if there is an impact that would be felt well beyond the fence line."

It seems that developing a "worst case scenario" would be necessary to determine appropriate fire controls and safe sulphur storage volumes.

- b) Emergency Response/Preventative Measures

The Developer indicated that:

- i. An Emergency Response Plan had been prepared in draft and would be tabled for consideration by Alberta Environmental Protection. The draft document was not provided to the MPC.
- ii. The Developer would take steps to train the local volunteer firefighters to respond to an emergency at the Lands.
- iii. The first response would be provided by workers on-site and not by volunteer firefighters.
- iv. Approximately 20-23 staff would be present at the Lands (spread out over various shifts)
- v. Preventative measures – certain preventative measures would be incorporated.

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The MPC is of the view the Developer's approach to Emergency Response is not appropriate as it is reactive rather than proactive. The essential features of an Emergency Response Plan should have been clearly spelled out during the application process so that its adequacy could have been assessed.

An Emergency Response Plan is integral to determining whether the project is appropriate or alternately whether additional mitigative design features are required.

The Developer's statement that the first responders will be staff rather than the volunteer firefighters does not seem feasible. Shifts and vacations may reduce the number of staff on the Lands at any one time, especially during the night shift. Further, in the event of a fire not all staff would be available to fight the fire as presumably some Staff may be required to operate the facility itself; in an emergency situation certain staff members may not be able to leave their posts.

Fire protection in the area is provided by volunteer Fire Departments. Training and personnel may be very limited. The MPC is particularly concerned about putting volunteer firefighters in harms way; if the volunteer firefighters are expected to address an industrial emergency lack of numbers or lack of training (and in particular training respecting hazardous materials) may put the firefighters or in turn the public at undue risk. The MPC is of the view that in the area of emergency response, an industrial developer should essentially be "user pay". However, because the Developer has not tabled the Emergency Response Plan (even in draft form), the proposal cannot be properly evaluated.

c) Best Practices/Detailed Design

In the submissions before the MPC (both written and verbal) there was some discussion about specific design features and whether they should be incorporated. Some of the presenters referred to these as "best practices". The Developer stated that "best practices" means different things to different people, and indicated that the design is an acceptable level, having regard to similar plants in locations across North America.

The MPC appreciates that it is not appropriate to expect a developer to prepare a detailed design prior to receiving a development approval; the Developer gave evidence that the detailed design for the facility will exceed \$1 million. That said, the Developer also seemed to take the approach that the discussion of design features is something that

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should be left for another day to be determined by Alberta Environmental Protection.

The MPC is of the view that while there is a parallel process for approval (Alberta Environmental Protection) it is within the purview of the MPC to determine the appropriateness of a proposed industrial facility. While there was some discussion about design, the Developer provided no comparative information in relation to specific design options, associated costs and impact on public safety and the environment; given the statements raised in the Risk Assessment about the probability of a fire and the potential impact off-site, this comparative information would have been useful.

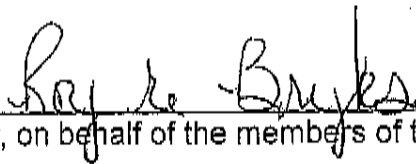
PART III OTHER ISSUES

A number of other issues were raised before the MPC and we will address them in turn:

- a) Tax Revenue – information had been provided by the County's assessment consultant (Al McNaughton) indicating that the proposed facility would (based on 2005 figures, and based on cost estimates provided by the Developer), result in an annual tax revenue to the County of approximately \$335,000. However, the MPC does not consider this information to be particularly helpful in evaluating the proposed development as it was recognized that the estimate was only based on very general information and was a simplified prognosis; further, the MPC is of the view that its primary focus should be on whether the proposal is appropriate from a land use perspective rather than from the perspective of what income will be generated for the County.
- b) Property values – the County's assessment consultant provided general information that land in the vicinity of active industry and commerce will increase in value; the opponents referred to a study by Dr. Peter Boxall. The MPC does not view this information as very helpful as it is general information; no information was tabled specifically by qualified experts about how this proposed facility would impact the value of lands in the vicinity.
- c) Economic forecasting respecting sulphur – much information was introduced with respect to the future price of sulphur. The MPC did not find it necessary to address this issue because of its findings above (ie the location is not appropriate); it does appear to the MPC, however, that a developer is probably in the best position to determine the economic viability of a proposed facility, and further that any concern respecting stockpiling of sulphur could have (if the MPC had chosen to issue the permit) been dealt with through strict specifications respecting maximum quantities of sulphur on site.

- d) Traffic Impact – the Traffic Impact assessment addressed impact on the intersections of the nearby primary highways but in no way addressed impact on the abutting County Road (Range Road 202). This is of a particular concern given the truck traffic that would be generated from the Lands. The nature and amount of the traffic may require upgrades (width and structure) to Range Road 202.
- e) Noise Assessment – it appears that the noise impact assessment did not take into consideration the impact on the Hauer residence, which given the proximity to rail and truck traffic, may be significant.

In light of the forgoing, the MPC's decision is to deny the application.



Chair, on behalf of the members of the Municipal Planning Commission

April 11, 2006