

SUBDIVISION AND DEVELOPMENT APPEAL BOARD AGENDA 9:00 AM May 15, 2019

**ROCKY VIEW COUNTY
COUNCIL CHAMBERS
262075 ROCKY VIEW POINT
ROCKY VIEW COUNTY, AB
T4A 0X2**

A CALL MEETING TO ORDER

B DEVELOPMENT APPEALS

9:00 AM APPOINTMENTS

1. Division 5 File: 06208009; PRDP20190626 Page 2

This is an appeal against the Development Authority's decision to conditionally approve a development permit for a General Industry, Type III (existing), tenancy and signage for an explosives storage company at 274125 Township Road 262, NE-08-26-27-W4M, located approximately 0.81 kilometre (1/2 mile) east of Range Road 275 and on the south side of Highway 566.

Appellant: Catherine Agar (West Kathryn Developments Ltd.)
Owner/Applicant: Austin Powder Ltd. (Trevor Geddes)

2. Division 8 File: 05629011; PRDP20183946 Page 33

This is an appeal against the Development Authority's decision to refuse a development permit for six existing accessory buildings, and relaxations to the maximum accessory building area for the garage, the minimum side yard setback of the garage, the maximum total building area for all accessory buildings per lot, and the maximum number of accessory buildings per lot at 24137 Aspen Drive, NW-29-25-02-W5M, located approximately 0.80 km (1/2 mile) east of Range Road 25 on the south side of Aspen Drive.

Appellant/Owner: John and Janina Boguslawski
Applicant: J.K. Engineering Ltd. (Jan Korzeniowski)

10:30 AM APPOINTMENTS

3. Division 3 File: 04702038; PL20180079 Page 53

This is an appeal against the Subdivision Authority's decision to conditionally approve a subdivision application at 240094 Range Road 32, SW-02-24-03-W5M, located 6.5 km (4 miles) west of the City of Calgary, 0.8 kilometres (0.5 mile) south of Highway 8, at the northeast junction of Range Road 32 and West Meadows Estates Road.

Appellant: Robert Homersham of Stikeman Elliott
Owner: Eric S. & Jamie H. Horvath
Applicant: B & A Planning Group

C CLOSE MEETING

D NEXT MEETING: June 5, 2019

PLANNING & DEVELOPMENT

TO: Subdivision and Development Appeal Board

DATE: Wednesday, May 15, 2019 **DIVISION:** 05

FILE: 06208009 **APPLICATION:** B-1; PRDP20190626

SUBJECT: General Industry, Type III (existing), tenancy and signage for an explosives storage company

PROPOSAL: General Industry, Type III (existing), tenancy and signage for an explosives storage company	GENERAL LOCATION: located approximately 0.81 km (1/2 mile) east of Rge. Rd. 275 and on the south side of Hwy. 566
APPLICATION DATE: February 19, 2019	DEVELOPMENT AUTHORITY DECISION: Discretionary-Approved
APPEAL DATE: April 23, 2019	DEVELOPMENT AUTHORITY DECISION DATE: April 2, 2019
APPELLANT: WestCreek Developments (Catherine Agar)	APPLICANT: Austin Powder Ltd. (Trevor Geddes)
LEGAL DESCRIPTION: NE-08-26-27-W04M	MUNICIPAL ADDRESS: (274125 TWP RD 262)
LAND USE DESIGNATION: Ranch and Farm District (RF) Limited Business District (B-3)	GROSS AREA: ± 37.75 hectares (± 93.28 acres) (Ranch and Farm) ± 3.34 hectares (± 8.25 acres) (General Business)
PERMITTED USE: General Industry, Type III is listed as a discretionary use within the Limited Business District (B-3) and is not a listed use within the Ranch and Farm District (RF).	DEVELOPMENT VARIANCE AUTHORITY: No variances have been requested with this application.
PUBLIC SUBMISSIONS: The application was circulated to 15 adjacent landowners. At the time this report was prepared, no letters were received in support or objection to the application.	LAND USE POLICIES AND STATUTORY PLANS: <ul style="list-style-type: none"> County Plan (C-7280-2013) Land Use Bylaw (C-4841-97)



EXECUTIVE SUMMARY:

This application is for General Industry, Type III (existing), tenancy and signage for an explosives storage company.

The subject land is located adjacent to the Hamlet of Kathryn and includes split land zoning. The proposed business would operate on the Limited Business District zoned portion of the land, ± 3.34 hectares (± 8.25 acres) (General Business) in area. The site includes direct access from Hwy. 566 and includes no primary buildings.

The land was rezoned in 2001, from Ranch and Farm to Business Limited District, to allow the subject business use and business to start operations. The was occupied by a previous business of the same nature from March 2002 to December 2011, under Development Permit #2011-DP-9517.

As per Section 20.11 of the Land Use Bylaw, the approved business use or development was discontinued, therefore the issued Development Permit became null and void. Therefore, a new Development Permit for the new business tenancy was required.

The business, Austin Powder Ltd., is an explosives supplier for various industries including mining, seismic and construction. To support the application, the Applicants submitted updated Site, Fire Safety, Site Security and an Emergency Response Assistant plans. The Development Authority assessed the submitted application and technical reports against the policies of the Land Use Bylaw. As the application appeared consistent with the Land Use Bylaw requirements, the application was conditionally-approved the development application on April 2, 2019.

On April 23, 2019, the Appellant, an affected party, appealed the decision of the Development Authority on the grounds that *"the land use as it will have a detrimental effect on future development of Kathryn."* The full appeal submission and rational is included within this report package.

PROPERTY HISTORY:

February 13, 2007	Planning File #2006-RV-603 was approved by Rocky View Council (<i>To redesignate a portion of the subject lands from Ranch and Farm District to Farmstead District in order to facilitate the subdivision of a +/- 20 acre parcel with a +/- 142 acre remainder. To create a +/- 20 acre parcel with a +/- 142 acre remainder</i>)
April 18, 2002	Building Permits 2001-BP-15041, 2001-BP-15042 and 2001-BP-15043 issued by Building Services (<i>Explosives Storage Magazines</i>); No inspection information visible
March 26, 2002	Development Permit #2001-DP-9517 was issued by the Development Authority (<i>General Industry, Type III, for explosives storage</i>)
October 2, 2001	Planning File #2001-RV-143 was approved by Rocky View Council (<i>To redesignate a portion of the subject lands from Ranch and Farm District to Business Three District (B-3) in order to facilitate an explosives magazine storage site</i>) [Parcel Parent #06208004]



ROCKY VIEW COUNTY
Cultivating Communities

APPEAL:

See attached report and exhibits.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "S. MacLean", written over a horizontal line.

Sean MacLean
Supervisor, Planning & Development

JT/ltt

DEVELOPMENT PERMIT REPORT

Application Date: February 19, 2019	File: 06208009
Application: PRDP20190626	Applicant/Owner: Austin Powder Ltd. (Trevor Geddes)
Legal Description: NE-8-26-27-W4M	General Location: located approximately 0.81 km (1/2 mile) east of Rge. Rd. 275 and on the south side of Hwy. 566
Land Use Designation: Ranch and Farm District (RF) Limited Business District (B-3)	Gross Area: ± 37.75 hectares (± 93.28 acres) (Ranch and Farm) ± 3.34 hectares (± 8.25 acres) (General Business)
File Manager: Jacqueline Targett	Division: 5

PROPOSAL:

The proposal is for General Industry, Type III (existing), tenancy and signage for an explosives storage company.

This subject property is ±101.53 acres in area, with land uses of Ranch and Farm [± 37.75 hectares (± 93.28 acres)] and Limited Business District [± 3.34 hectares (± 8.25 acres)]. The subject business is located within the Limited Business District area only. The previous business, Western Explosives operated onsite from March 2002 to December 2011. The subject business, of the same nature, is looking to re-occupy the site. As per Section 20.11 of the Land Use Bylaw, a new tenancy application was required.

20.11 Where a Development Permit has been issued for a business or development, in the event that the approved business use or development is discontinued or abandoned for two or more consecutive years, the Development Permit shall be deemed to be null and void. A new Development Permit shall be required before the business use or development and any related construction or other activity may recommence.

The site submitted for redesignation in 2001. Public circulation included Alberta Transportation, ATCO Gas, Canadian National Railway, Natural Resources Canada Explosives Regulatory Division, the Kathryn School and the Western Irrigation District. Through a public hearing, the application was approved by Rocky View Council, as the proposed facility appeared consistent with the County's Municipal Development Plan and Business Development Policies.

Business Details:

Austin Powder Inc. is an explosives supplier for various industries including mining, seismic and construction. The site will include a bulk truck onsite, stored within an accessory building (tent). The tent is 111.48 sq. m (1,200.00 sq. ft.) in area [6.09 m (20.00 ft.) w x 18.28 m (60.00 ft.) long x 6.09 m (20.00 ft.) high]. The tent would be used for additional storage of equipment and misc. small repairs.

The site will be storing:

- Emulsion Storage: one 30,000 kg. Insulated Vertical Storage Tank EM in a silo
- Ammonium Nitrate Prill Storage: one 30,000 kg. in a silo.



The site will be accessed 1-2 times a week for deliveries. All onsite employees are extensively trained and have the required provincial/federal screening authorization.

Site Security / Fire Safety Information:

The subject business, Austin Powder Inc. has identified the following possible security risks:

- Bulk ammonium nitrate
- Bulk emulsion storage
- MPU's W/Heel

Procedures:

- All dense growth within 10.00 m of the storage vicinity has been removed
- No trespassing signs installed
- Security gates installed
- Emulsion tanks and Ammonium nitrate storage are located within a secure mine site
- Security lighting installed
- No smoking or open flames are permitted onsite
- Fire Extinguishers installed onsite
- The site has extensive onsite Emergency & Reporting Procedures in case of incident

Existing Site Conditions:

From the previous Development Permit application, the site was approved with:

- Three accessory buildings (storage buildings for Explosive Storage Magazines), 37.83 sq. m (407.1 sq. ft.) in area [3.10 m (10.17 ft.) x 12.20 m (40.02 ft.)]
 - These accessory buildings have been removed from the subject site. The Applicant will be placing one accessory building (tent) and up to three (3) new sea containers for storage purposes
- Perimeter fencing [1.83 m (6.00 ft. high), with 0.30 m (1.00 ft.) barbed-topping], entrance lockable gates, and gravel access road [3.50 m (11.48 ft.) wide x 600.00 m (1,968.80 ft.) long]
 - From the existing approach, the gated entrance is located 20.00 m from Highway #566. This was designed to allow Delivery Trucks adequate space to pull off the highway onsite the subject property
 - The subject fence remains onsite
- Berming along Gravel Access Road
 - Three berms were constructed in accordance with 2003 Development Permit approval drawings, *"the Overhead View and Cross-Section as prepared by Western Explosives Ltd., Job #011137, and Dated November 5, 2001"*;
 - One berm, [35.00 m (114.82 ft.) long x 2.95 m (9.67 ft.) high x 6.75 m (22.14 ft.) wide] was constructed parallel to each of the Explosive Storage Magazines. The berm included an opening of 5.0 m (16.40 ft.), to allow for vehicular access.

- One large topsoil pile was placed onsite by the property owner, over the existing berms, slightly enlarging the berms in size and height and creating one (1) large berm. The change enhances the screening aspect of the berm. The berm will have to be re-seeded to native grass

Surrounding Properties:

- The subject property is located approximately 0.81 km (1/2 mile) east of Rge. Rd. 275 and on the south side of Hwy. 566. The property is predominately surrounded by country agricultural quarter sections, with first parcel outs and borders the Canadian National Railway along the south property. The nearest dwelling is located 740 m northeast of the proposed product storage area.

Application Submissions:

- *Site Plan*
- *Fire Safety Plan*, as prepared by Austin Powder Ltd., dated February 2019
- *Site Security Plan (revised)*, as prepared by Austin Powder Ltd., Revision 1:0; dated February 2019
- *Emergency Response Assistant Plan (ERAP)*, as prepared by Austin Powder Ltd., dated July 2016

Land Use Bylaw:

Section 8: Definitions

GENERAL INDUSTRY means the following activities:

- (a) the processing of raw, value added, or finished materials;*
- (b) the manufacturing or assembling of goods, products, or equipment;*
- (c) the cleaning, servicing, repairing or testing of materials, goods and equipment normally associated with industrial or commercial businesses or cleaning, servicing and repair operations to goods and equipment associated with personal or household use, where such operations have impacts that would make them incompatible in non-industrial districts;*
- (d) the storage or transshipping of materials, goods and equipment, including petro-chemical products and supplies;*
- (e) the training of personnel in general industrial operations; and*
- (f) It may include any indoor display, office, technical or administrative support areas or any sales operation accessory to the general industrial uses.*

GENERAL INDUSTRY TYPE III means those developments which may have an effect on the safety, use, amenity, or enjoyment of adjacent or nearby sites due to appearance, noise, odour, emission of contaminants, fire or explosive hazards, or dangerous goods;

Section 26: Parking Regulations

- The previous permit calculated that a minimum of 1 parking space was required for business operations [3 x 37.83 sq. m. = 113.46 sq. m/100=1.1346 x 1] = 1 parking stalls.
- The site has been developed to include five parking stalls

Section 54 Limited Business District

54.1 Purpose and Intent

The purpose and intent of this District is to provide for industrial uses that may have large land requirements and may have some nuisance effects on adjacent sites and which must be mitigable.

- The proposed industrial tenancy falls within a discretionary use under this district

54.3 Uses, Discretionary

- *General Industry Type III*

54.5 (a)(i) Yard, Front:

- **Required:** 15.00 m (49.21 ft.);

Proposed Accessory Buildings

- **Proposed:** >15.00 m (49.21 ft.);

54.5 (b)(i) Yard, Side:

- **Required:** 15.00 m (49.21 ft.);

Proposed Accessory Buildings

- **Proposed:** ~28.00 m (~91.86 ft.) from the west property line
- **Proposed:** ~20.00 m (~65.61 ft.) from the east property line

54.5 (c)(i) Yard, Rear:

- **Required:** 15.00 m (49.21 ft.);

Proposed Accessory Buildings

- **Proposed:** >15.00 m (49.21 ft.)

54.6 Additional Regulations

(a) A Development Authority may require a greater building setback for an industrial development which, in the opinion of a Development Authority, may interfere with the amenity of adjacent sites.

- As the subject site does not include immediate residences, with the closest residence being 740.00 m (2,427.82 ft.) away, is largely surrounded by agricultural fields, and is screened with berming and natural topography, a larger building setback does not appear to be required in this application

(b) A Development Authority may require an Environmental Impact Assessment where there is uncertainty as to potential impacts or potential significant risk from the proposed development.

- It is the interpretation of the Development Authority that an EIA is not required for this application

54.7 Building Requirements

(a) Building Design

(i) The design, character, and appearance of all buildings shall be appropriate to and compatible with the surrounding area and shall be constructed of durable materials designed to maintain the initial quality throughout the life of the project.

- The subject business is utilizing standard-design commercial accessory buildings for storage of product and equipment. The accessory buildings are required for product storage and therefore is composed of durable materials.

54.8 Special Requirements

A minimum of 10% of the site area shall be landscaped.

- As per the previous Development Permit, the site was landscaped with four berms in lieu of tree landscaping.

STATUTORY PLANS:

The subject property does not fall under any approved Area Structure plan, Conceptual Scheme, or Intermunicipal Development Plan. The application was evaluated in accordance with the Land Use Bylaw.

INSPECTOR'S COMMENTS:

Inspection: March 22, 2019

- No access; gated
- Berms visible along the west side of the property from roadway
- Fencing visible, buildings not visible

CIRCULATIONS:

Alberta Transportation (March 15, 2019)

- The proposed development is located greater than 400 metres from the highway right-of-way, a Roadside Development Permit from Alberta Transportation is not required.

CN Railway (March 25, 2019)

- Thank you for circulating CN Rail on this application. I also appreciate the time this afternoon to discuss this application and the previous land use. I have some concerns about this use as it is approximately 350 m from our rail line.
 - Would you be able to look in the municipal files from the previous owner and see what comments CN Rail submitted at that time?
 - *County Response to CN:*
 - Planning Circulation Response: Applicant to install a 1.83 m chain link fence along the mutual property line. Any disruption in drainage affecting the railway property must be mitigated to the satisfaction of the Railway. Owner to engage a consultant to analysis noise and vibration affecting the site and to mitigate any adverse impact to the satisfaction of the MD
 - *CN Response to County:*
 - The 2001 comment would have been a standard submission, but I can confirm that we not concerned about noise from the facility.



- I would also be interested if the applicant could confirm any federal regulations regarding the siting of their operation and the setback required from transportation infrastructure.
- Should this use be approved, I would also ask that the contact information for CN Police are included in the emergency procedures for the facility. I can confirm with CN Police the contact information that should be included.
- I would request that you include the emergency number for CN Polices in the facility emergency manual in the event there is a major incident and there could be an impact on the rail line. Even when there is an incident in proximity to the line and not directly affecting the line, it can be a good idea to let CN know. Given the types of freight we haul and the materials that your facility is storing, there is a potential for a conflict.
 - *Applicant Response to CN:*
 - Applicant provided answered follow-up questions and regulations on March 28, 2019
 - Applicant added CN Emergency Number to the Emergency Contacts for the site on April 2, 2019

AG Services Review (March 15, 2019)

- No agricultural concerns

Alberta Health Services (March 26, 2019)

- Given the volatile nature of the product to be stored we recommend the development of a communications plan to help ensure all neighbouring residents (including Kathryn School) are aware of the facility's existence and are able to incorporate its presence into any safety plans they may have.
- AHS would also like to suggest that the Applicant stays in contact with Rocky View County Fire Services regarding best management practices on the site for matters like chemical storage, spill response, etc.

Alberta Environment and Parks

- No response received at the time of this report.

Ember

- No response received at the time of this report.

Building Services Review (March 27, 2019)

- No Concerns with existing storage.
- Any new or additional Buildings will require Building Permits.

Enforcement Services Review (March 11, 2019)

- Recommend that all garbage be contained in weather and animal proof containers.

Engineering Services Review (March 15, 2019)

General

- The review of this file is based upon the application submitted. These conditions/recommendations may be subjected to change to ensure best practices and procedures.



- Parcel Size is 101.53 acres. Current Land Use is B-3.
- At this time, the application is to be circulated to fire services for their review and comment. Should fire services have any concerns, all fire service concerns should be addressed prior to issuance

Geotechnical - Section 300.0 requirements:

- Engineering have no requirements at this time.

Transportation - Section 400.0 requirements:

- Access to the parcel is from a gravel approach off Township Road 262.
- At this time, the application is to be circulated to AT for their review and comment. Should AT have any concerns, all AT concerns should be addressed prior to issuance
- The site would be accessed 1-2 times a week for the deliveries. No access to general public will be provided.
- Engineering have no requirement at this time.

Sanitary/Waste Water - Section 500.0 requirements:

- No information was provided. It is estimated that site is not serviced as the site is to be used for storage of trucks and liquid emulsion.
- Engineering have no requirement at this time.

Water Supply And Waterworks - Section 600.0 & 800.0 requirements:

- No information was provided. It is estimated that site is not serviced.
- Engineering have no requirement at this time.

Storm Water Management – Section 700.0 requirements:

- No impervious surface is present on site.
- ES have no requirements at this time.

Environmental – Section 900.0 requirements:

- Provide chemical management/handling plan addressing how material and spill shall be handled on site.

Fire Services Review (March 26, 2019)

- Site visit is required to discuss items below. I appreciate you making that connection.
 - Vehicle oils and separation from product
 - Access to all parts of the site / site layout
 - Fencing
 - Emergency Response Plan
- This is a high hazard site, initial isolation distances appear adequate; however, additional measures may need to be taken to ensure the protection of the farm house to the NE & the Kathryn school.



Transportation Services Review (March 26, 2019)

- Application involves Development along Alberta Transportation Road Allowance, Therefore, application to be circulated to Alberta Transportation for review and comment
- No County roads impacted
- Please circulate Emergency Services, Fire Services and CN Rail for comments

Utility Services Review (March 6, 2019)

- No Concerns

Natural Resources Canada (NRC) Explosives Offices [formerly Natural Resources Canada Explosives Regulatory Division] (March 22, 2019)

- As the federal regulator responsible for licensing explosives sites, it would not be appropriate for me to comment on this development permit. We licence sites only after receiving all required documentation and verifying that the site/operations meet the Explosives Regulations.
- However, I would like to clarify that this site would be required to have a wash facility for the truck.

OPTIONS:

Option #1 (this would allow the subject tenancy onsite)

That the appeal against the decision of the Development Authority to approve a Development Permit for General Industry, Type III (existing), tenancy and signage for an explosives storage company on NE-08-26-27-04 (274125 TWP RD 262) be denied, that the decision of the Development Authority be confirmed, and that the Development Permit be conditionally approved, subject to the following conditions:

Description:

1. That General Industry, Type III (existing), tenancy and signage for an explosives storage company may take place on the subject site in accordance with the submitted application and includes:
 - a. Storage of explosives materials within designated Silos;
 - b. Construction/placement of one accessory building (tent), approximately 111.48 sq. m (1,200 sq. ft.) in area;
 - c. Three accessory buildings [sea containers], 37.82 sq. m (407.09 sq. ft.) in area, for storage;
 - d. One Berms [existing onsite];
 - e. Minor Regrading (if required) + placement of clean topsoil (*existing onsite*);
 - f. Signage (identification, site wayfinding and security as required).

Permanent:

2. That the existing earth berm shall remain and be maintained on the subject property at all times.
3. That the existing earth berm shall be covered with 6.00 inches of topsoil and seeded to natural prairie grasses at all times.
4. That no additional topsoil or fill may be placed on the subject property, unless a separate Development Permit application is approved.

5. That all signage on-site shall be kept in a safe, clean, and tidy condition. At no point, shall any signage be flashing or animated.
6. That all on-site lighting shall be dark sky, and all private lighting, including site security lighting and parking area lighting, shall be designed to conserve energy, reduce glare, and reduce uplight. All development shall demonstrate lighting design that reduces the extent of spill-over glare, and eliminates glare as viewed from nearby residential properties.
7. That there shall be a minimum of five (5) parking stalls maintained on site at all times.
8. That the existing 1.82 m (6.00 ft.) high barbwire perimeter fence or a fence of a higher standard, shall be maintained onsite at all times. The perimeter fence shall enclose the storage area and include a lockable gate at the entrance.
9. That all garbage and waste shall be stored in weather and animal proof containers and shall be completely screened from view from adjacent properties and the public thoroughfares.
10. That it is the Applicant/Owner's responsibility to obtain and display a distinct municipal address in accordance with the County Municipal Addressing Bylaw (Bylaw C-7562-2016), for the subject principal use on the subject site, to facilitate accurate emergency response.

Note: The Municipal Address is 274125 TWP RD 262

11. That the Applicant/Owner shall request a site inspection, to be completed by County Fire Services, within 30 days of permit issuance or site occupancy (whichever occurs first) to discuss site operations.
 - a. The Applicant/Owner shall implement any recommendations arising from the Site Inspection, to the satisfaction of the County Fire Services.
12. That any plan, technical submission, agreement, or other matter submitted and approved as part of the Development Permit application or submitted in response to a Prior to Issuance or Occupancy condition, shall be implemented and adhered to in perpetuity.
 - a. That the Applicant/Owner shall adhere to the approved Site Security, Fire Safety Plan, and ERAP, as approved by the County.
 - i. If any recommendations or changes are required or arise by the County, the Applicant/Owner shall adhere and implement those recommendations in keeping with safe Fire Safety Practices as per the Alberta Fire Code.

Advisory:

13. That it is recommended that the Applicant/Owner install a truck wash facility, as per Federal requirements.
14. That the business and associated development area shall adhere to the Weed Control Act [Statutes of Alberta, 2008 Chapter W-5.1], at all times.
15. That all other Federal, Provincial or Municipal approvals, permits and compliances are the sole responsibility of the Applicant/Owner.
16. That if the development authorized by this Development Permit is not commenced with reasonable diligence within twelve (12) months from the date of issue, and completed within twenty-four (24) months of the issue, the permit is deemed to be null and void, unless an extension to this permit shall first have been granted by the Development Officer.



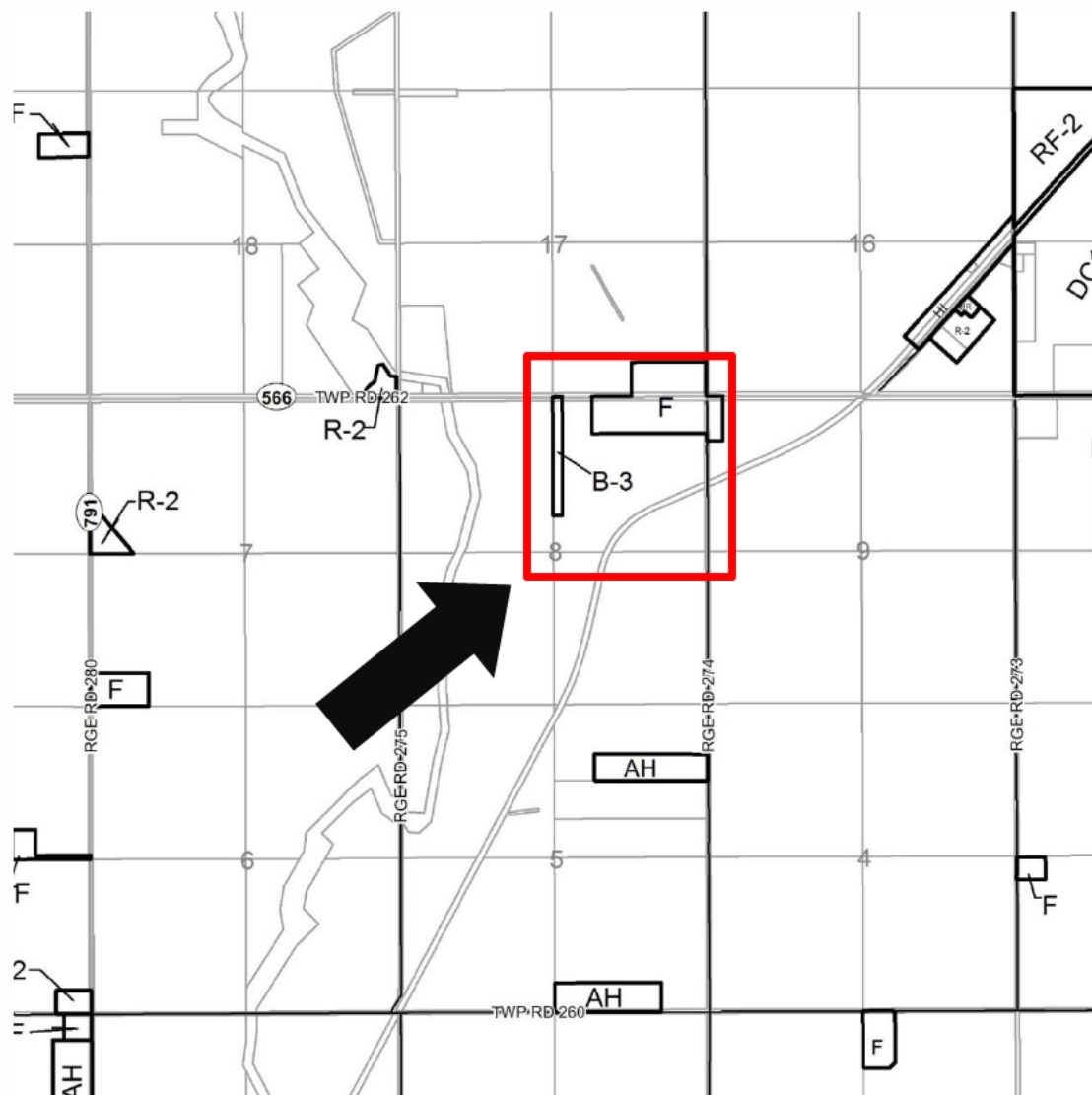
Option #2 (this would not allow the subject tenancy onsite)

That the appeal against the decision of the Development Authority to approve a Development Permit for General Industry, Type III (existing), tenancy and signage for an explosives storage company on NE-08-26-27-04 (274125 TWP RD 262) be upheld, that the decision of the Development Authority be revoked, and that the Development Permit be denied.



NE-08-26-27-W4M
Division 5; File 06208009





Land Use:

Ranch and Farm District (RF)

± 37.75 hectares (± 93.28 acres)

Limited Business District (B-3)

± 3.34 hectares (± 8.25 acres)

Ranch and Farm	B-1 Highway Business
RF2 Ranch and Farm Two	B-2 General Business
RF3 Ranch and Farm Three	B-3 Limited Business
AH Agricultural Holding	B-4 Recreation Business
F Farmstead	B-5 Agricultural Business
R-1 Residential One	B-6 Local Business
R-2 Residential Two	NRI Natural Resource Industrial
R-3 Residential Three	HR-1 Hamlet Residential Single Family
DC Direct Control	HR-2 Hamlet Residential (2)
PS Public Service	HC Hamlet Commercial
	AP Airport



Note: Post processing of raw aerial photography may cause varying degrees of visual distortion at the local level.

AIR PHOTO
Spring 2018

NE-08-26-27-W4M
Division 5; File 06208009

 **ROCKY VIEW COUNTY**



SITE PLAN

NE-08-26-27-W4M
Division 5; File 06208009

 **ROCKY VIEW COUNTY**

HWY 566



SITE PLAN

NE-08-26-27-W4M
Division 5; File 06208009

 **ROCKY VIEW COUNTY**



SITE PLAN

NE-08-26-27-W4M
Division 5; File 06208009





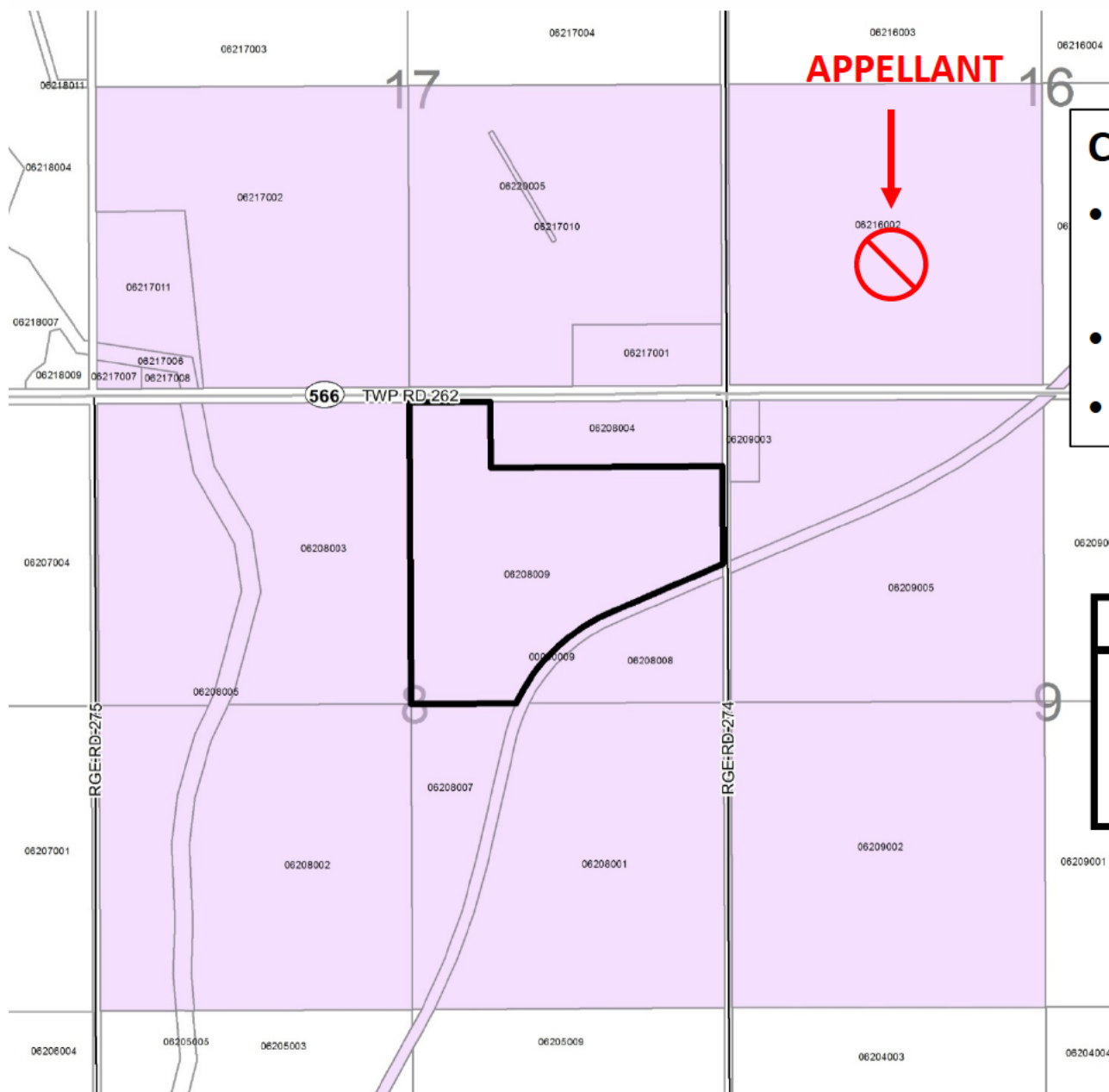
Inspection Date:
March 22, 2019



SITE INSPECTION PHOTOS
(March 2019)

NE-08-26-27-W4M
Division 5; File 06208009

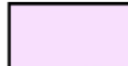
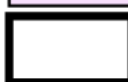
 **ROCKY VIEW COUNTY**



Circulation Responses

- Circulated to 15 adjacent landowners
- No letters in support
- No letters in opposition

Legend

-  Circulation Area
-  Subject Lands

LANDOWNER CIRCULATION AREA

SE-27-24-27-W04M

Lot 4, Block 4, Plan 0312137
Division 5; File 04227009



ROCKY VIEW COUNTY



Notice of Appeal
Subdivision and Development Appeal Board
Enforcement Appeal Committee

[illegible]

This information is collected for the Subdivision and Development Appeal Board or Enforcement Appeal Committee of Rocky View County and will be used to process your appeal and to create a public record of the appeal hearing. The information is collected in accordance with the *Freedom of Information and Protection of Privacy Act*. If you have questions regarding the collection or use of this information, contact the Manager of Legislative and Legal Services at 403-230-1401.


Appellant's Signature

Date April 23/19

April 22, 2019

Jacqueline Targett
Rocky View County, Planning & Development
262075 Rocky View Point
Rocky View County, AB T4A 0X2

Dear: Jacqueline

Re: Appeal for Application PRDP20190626

WestCreek Developments Ltd, on behalf of West Kathryn Developments Ltd, received notice that a Development Permit has been approved for the lands adjacent to our property, illustrated in Figure 1. It is our understanding that Application Number PRDP20190626 is an application for General Industry, Type III (existing), tenancy and signage for an explosives storage company.

West Kathryn Developments (West Kathryn) is opposed to this land use as it will have a detrimental affect on the future development of Kathryn. On September 4, 2007, The Hamlet of Kathryn Conceptual Scheme was approved. The ultimate build out of this area encompasses approximately 884 acres, 2100 residences and 6500 people. The purpose of the Conceptual Scheme was to provide a comprehensive planning framework for the subject lands, illustrated in Figure 2. The Conceptual Scheme and its supplementary information provide clear and concise policy direction for the development of the subject lands, including redevelopment of the existing Hamlet.

On December 1, 2009 Council approved a Direct Control Bylaw for Stage 1 of the Conceptual Scheme, which includes approximately 250 acres. The Bylaw introduces a fully serviced community consisting of predominantly residential land uses, a possible future local commercial node and complementary recreational land uses around the existing Kathryn school and on the future Municipal Reserve parcels.

It should be noted that the Hamlet of Kathryn has been described as a Community Core, which is to be the "local focus for community services and amenities, providing services such as schools, community halls, senior's facilities and a host of other services to the surrounding areas".

West Kathryn is extremely concerned about the future viability of the Hamlet of Kathryn if an explosives storage company is located adjacent to these lands. WestCreek firmly believe that we will have difficulty selling lots given the close proximity of the explosives storage facility, as it does not create a desirable location for future residents and businesses. WestCreek has recently begun to look at servicing options in order to move forward with this development, however we may have to reconsider given the outcome of the approval of this Development Permit.

WestCreek respectfully opposes Application PRDP20190626 as we believe it will have an adverse affect on the future viability of the Hamlet of Kathryn.

Regards,



Catherine Agar
Manager of Planning
WestCreek Developments Ltd.

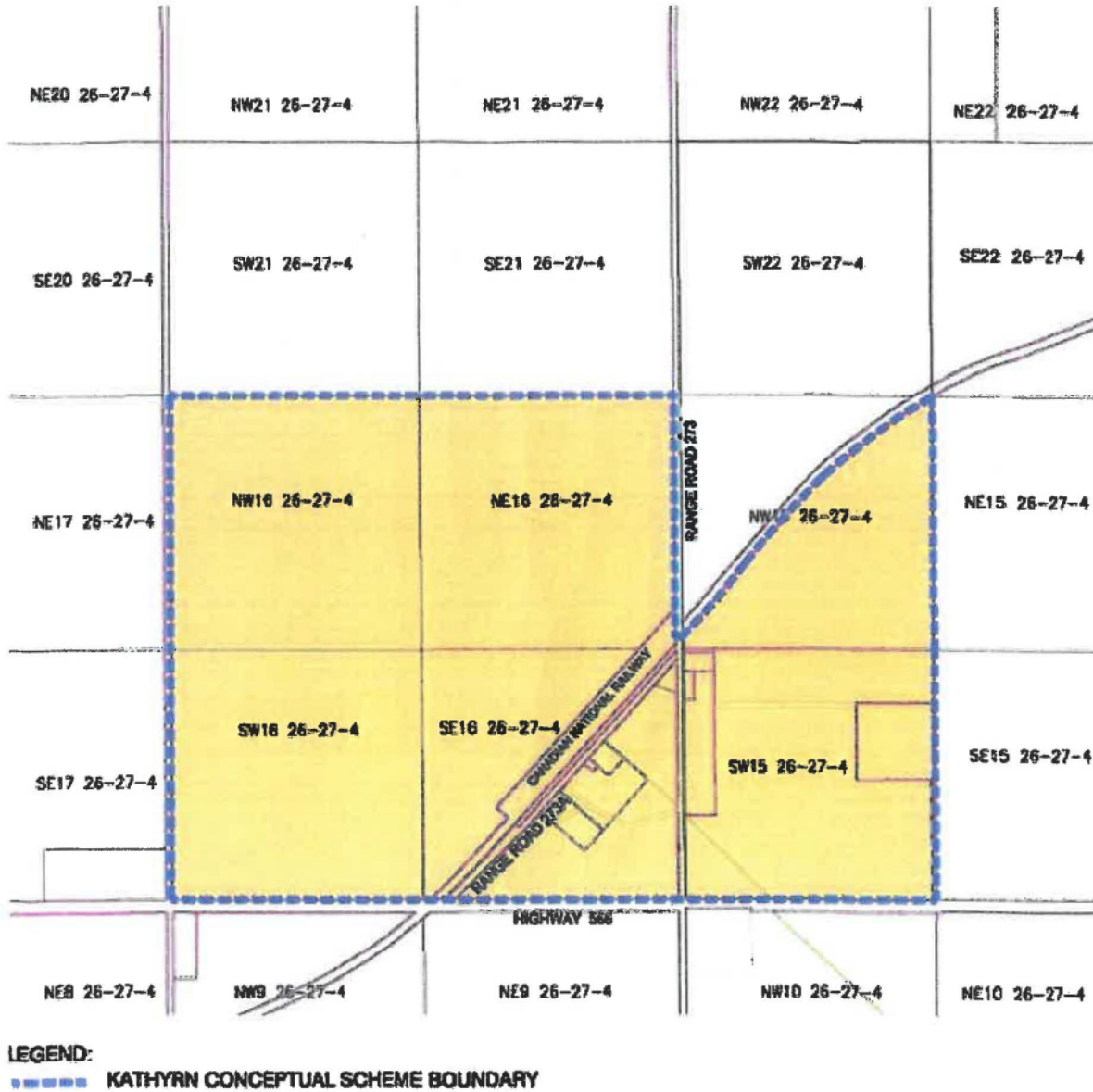


Figure 1
Conceptual Scheme Boundary
 Hamlet of Kathryn Conceptual Scheme

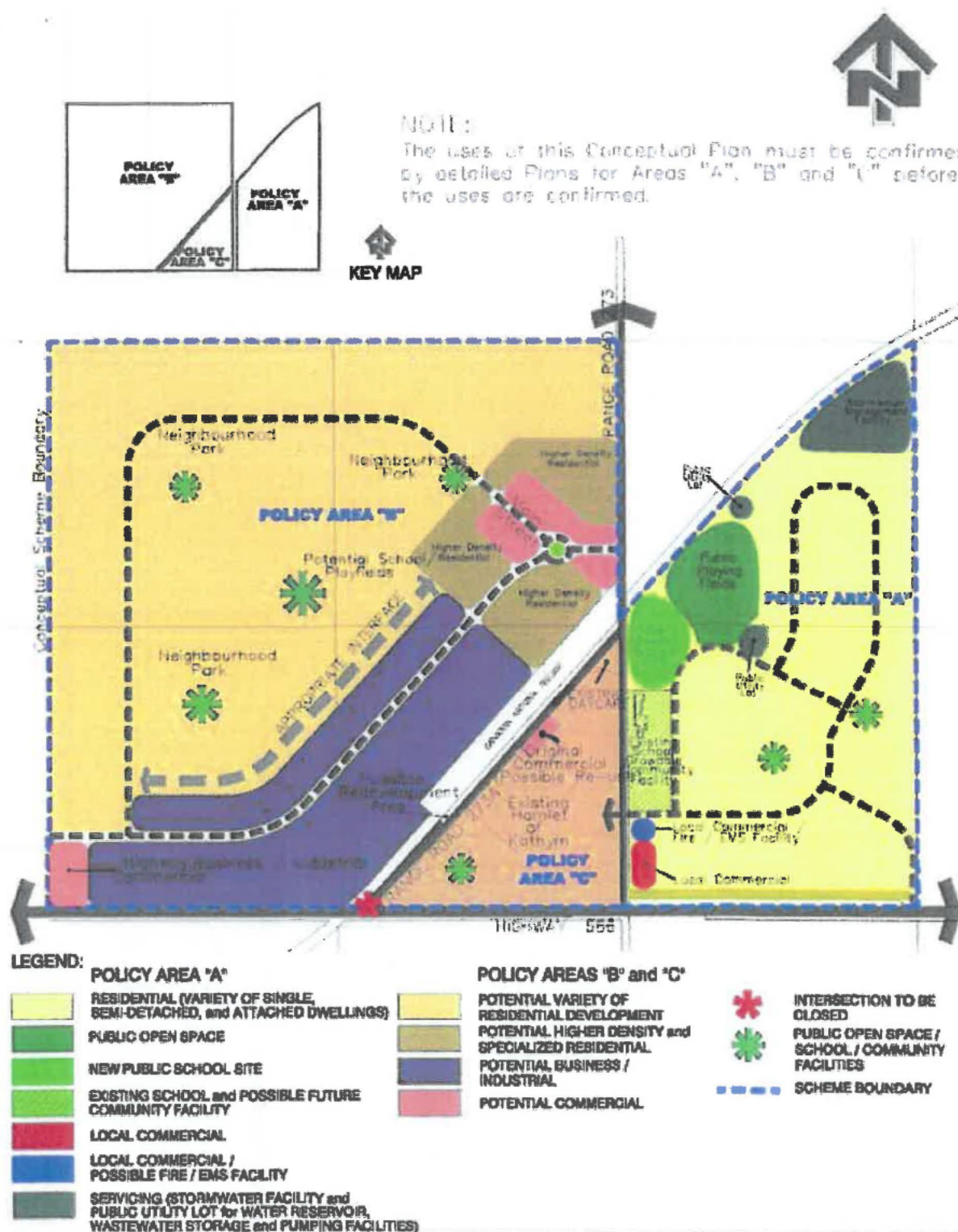


Figure 2
Generalized Land Use Concept Plan
Hamlet of Kathryn Conceptual Scheme



ROCKY VIEW COUNTY

262075 Rocky View Point
Rocky View County, AB, T4A 0X2

403-230-1401
questions@rockyview.ca
www.rockyview.ca

THIS IS NOT A DEVELOPMENT PERMIT

Please note that the appeal period *must* end before this permit can be issued and that any
Prior to Issuance conditions (if listed) *must* be completed.

NOTICE OF DECISION V2.0

Austin Powder Ltd. (Trevor Geddes)
3810 - 7th Street SE
Calgary, AB T2G 2Y8

Page 1 of 3

Wednesday, April 24, 2019

Roll: 06208009

RE: Development Permit #PRDP20190626

NE-08-26-27-04;

The Development Permit application for General Industry, Type III (existing), tenancy and signage for an explosives storage company has been **conditionally-approved** by the Development Officer subject to the listed conditions below (**PLEASE READ ALL CONDITIONS**):

Description:

1. That General Industry, Type III (existing), tenancy and signage for an explosives storage company may take place on the subject site in accordance with the submitted application and includes:
 - i. Construction/placement of one accessory building (tent), approximately 111.48 sq. m (1,200 sq. ft.) in area,
 - ii. Three accessory buildings [sea containers], 37.82 sq. m (407.09 sq. ft.) in area, for storage
 - iii. One Berms [existing onsite]
 - iv. Minor Regrading (if required) + placement of clean topsoil (*existing onsite*)
 - v. Signage (identification, site wayfinding and security as required)

Permanent:

2. That the existing earth berm shall remain and be maintained on the subject property at all times.
3. That the existing earth berm shall be covered with 6.00 inches of topsoil and seeded to natural prairie grasses at all times.
4. That no additional topsoil or fill may be placed on the subject property, unless a separate Development Permit application is approved.



ROCKY VIEW COUNTY

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403-230-1401
questions@rockyview.ca
www.rockyview.ca

Austin Powder Ltd. (Trevor Geddes) Page 2 of 3
#PRDP20190626

5. That all signage on-site shall be kept in a safe, clean, and tidy condition. At no point, shall any signage be flashing or animated.
6. That all on-site lighting shall be dark sky, and all private lighting, including site security lighting and parking area lighting, shall be designed to conserve energy, reduce glare, and reduce uplight. All development shall demonstrate lighting design that reduces the extent of spill-over glare, and eliminates glare as viewed from nearby residential properties.
7. That there shall be a minimum of five (5) parking stalls maintained on site at all times.
8. That the existing 1.82 m (6.00 ft.) high barbwire perimeter fence or a fence of a higher standard, shall be maintained onsite at all times. The perimeter fence shall enclose the storage area and include a lockable gate at the entrance.
9. That all garbage and waste shall be stored in weather and animal proof containers and shall be completely screened from view from adjacent properties and the public thoroughfares.
10. That it is the Applicant/Owner's responsibility to obtain and display a distinct municipal address in accordance with the County Municipal Addressing Bylaw (Bylaw C-7562-2016), for the subject principal use on the subject site, to facilitate accurate emergency response.

Note: The Municipal Address is 274125 TWP RD 262

11. That the Applicant/Owner shall request a site inspection, to be completed by County Fire Services, within 30 days of permit issuance or site occupancy (whichever occurs first) to discuss site operations.
 - i. The Applicant/Owner shall implement any recommendations arising from the Site Inspection, to the satisfaction of the County Fire Services.
12. That any plan, technical submission, agreement, or other matter submitted and approved as part of the Development Permit application or submitted in response to a Prior to Issuance or Occupancy condition, shall be implemented and adhered to in perpetuity.
 - i. That the Applicant/Owner shall adhere to the approved Site Security, Fire Safety Plan, and Emergency Response Assistant Plan, as approved by the County.
13. If any recommendations or changes are required or arise by the County, the Applicant/Owner shall adhere and implement those recommendations in keeping with safe Fire Safety Practices as per the Alberta Fire Code.

Advisory:

14. That it is recommended that the Applicant/Owner install a truck wash facility, as per Federal requirements.
15. That all other Federal, Provincial or Municipal approvals, permits and compliances are the sole responsibility of the Applicant/Owner.
16. That if the development authorized by this Development Permit is not commenced with reasonable diligence within twelve (12) months from the date of issue, and completed within twenty-four (24) months of the issue, the permit is deemed to be null and void, unless an extension to this permit shall first have been granted by the Development Officer.



ROCKY VIEW COUNTY

262075 Rocky View Point
Rocky View County, AB, T4A 0X2

403-230-1401
questions@rockyview.ca
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Austin Powder Ltd. (Trevor Geddes) Page 3 of 3
#PRDP20190626

If Rocky View County does not receive any appeal(s) from you or from an adjacent/nearby landowner(s) by **Wednesday, May 15, 2019**, a Development Permit may be issued, unless there are specific conditions which need to be met prior to issuance. If an appeal is received, then a Development Permit will not be issued unless and until the decision to approve the Development Permit has been determined by the Development Appeal Committee.

Regards,

Development Authority
Phone: 403-520-8158
E-Mail: development@rockyview.ca

THIS IS NOT A DEVELOPMENT PERMIT



ROCKY VIEW COUNTY
Cultivating Communities

PRDP20190626
**APPLICATION FOR A
DEVELOPMENT PERMIT**

FOR OFFICE USE ONLY	
Fee Submitted \$530.00	File Number 06208009
Date of Receipt Feb 28/19	Receipt #

Name of Applicant Trevor Geddes Email Trevor.Geddes@Austin Powder.co.

Mailing Address 3810-7th st SE

Postal Code T2G 2Y8

Telephone (B) 403-243-5566

(H) [REDACTED]

Fax 403-287-2353

For Agents please supply Business/Agency/ Organization Name Austin Powder Ltd

Registered Owner (if not applicant) _____

Mailing Address _____

Postal Code _____

Telephone (B) _____

(H) _____

Fax _____

1. LEGAL DESCRIPTION OF LAND

a) All / part of the NE ¼ Section 8 Township 24 Range 27 West of 4 Meridian

b) Being all / parts of Lot _____ Block _____ Registered Plan Number _____

c) Municipal Address _____

d) Existing Land Use Designation RF/B-3 Parcel Size 101.53 Division 5

2. APPLICATION FOR

Explosives storage site

3. ADDITIONAL INFORMATION

- | | | |
|--|---|--|
| a) Are there any oil or gas wells on or within 100 metres of the subject property(s)? | Yes _____ | No <input checked="" type="checkbox"/> |
| b) Is the proposed parcel within 1.5 kilometres of a sour gas facility?
(Sour Gas facility means well, pipeline or plant) | Yes _____ | No <input checked="" type="checkbox"/> |
| c) Is there an abandoned oil or gas well or pipeline on the property? | Yes _____ | No <input checked="" type="checkbox"/> |
| d) Does the site have direct access to a developed Municipal Road? | Yes <input checked="" type="checkbox"/> | No _____ |

4. REGISTERED OWNER OR PERSON ACTING ON HIS BEHALF

I _____ hereby certify that _____ I am the registered owner
(Full Name in Block Capitals)

☒ I am authorized to act on the owner's behalf

and that the information given on this form
is full and complete and is, to the best of my knowledge, a true statement
of the facts relating to this application.

Affix Corporate Seal
here if owner is listed
as a named or
numbered company

Applicant's Signature [Signature]

Date 2/17/2019.

Owner's Signature _____

Date _____



AUSTIN POWDER

Trevor Geddes – Location Manager
Calgary AB.

To whom it may concern,

Austin Powder Ltd is an explosives supplier for many industries including but not limited to, Mining, seismic, and construction which would be considered the main industries.

Austin Powder Ltd is looking to use the land to store one silo of 30000kgs liquid emulsion which is considered 1.5D, and 1 silo of 30 000kgs ammonium nitrate.

We would have a bulk truck on site which will be used to deliver the products stored in the silos to mining quarries in the area. The bulk truck would be stored in a tent which we would have on site for storage and misc small repairs.

The site would be accessed 1-2 times a week for the deliveries.

The site is fenced off from the general public and has a gate which is locked when not at site.

There will be no trespassing signs up at the front gate as well as Safety signs of proper PPE.

Site is 420m in from highway 566.



LAND USE BYLAW OF
THE MUNICIPAL DISTRICT OF ROCKY VIEW NO. 44
BYLAW C-4841-97

DEVELOPMENT PERMIT NO. **2001-DP-9517**
DATE OF ISSUE: March 26, 2002
FILE(S) **06208004**
TO: Western Explosives Ltd. c/o Synterra Tech. Ltd.
#208, 214-11 Ave. S.E.
Calgary, Alberta
T2G-0X8

YOUR APPLICATION dated September 28, 2001 for a Development Permit in accordance with the provisions of the Land Use Bylaw in respect of:

General Industry Type III, explosives storage

at NE-1/4-08-26-27-W04M; (274055 TWP. RD. 262)

has been considered by the Development Officer and the decision in the matter is that your application be **approved** subject to the following conditions:

- 1) That a General Industry, Type III, for explosives storage may take place on the subject site in accordance with the Overhead View as prepared by Western Explosives Ltd., Job #011137, and Dated November 5, 2001.
- 2) That this approval includes the construction of three (3.1m x 12.2m) 37.82 m² explosive magazine storage buildings in accordance with the Overhead View as prepared by Western Explosives Ltd., Job #011137, and Dated November 5, 2001.
- 3) That this approval includes the construction of three (3) earth berms in accordance with the Overhead View and Cross-Section as prepared by Western Explosives Ltd., Job #011137, and Dated November 5, 2001; in addition a 35 metre earth berm which is 2.95 metre in height and 6.75 metre in width at the base shall be constructed parallel to each of the Explosive Storage Magazines with an opening of no more than 5.0 m to allow for vehicular access to the Magazines.
- 4) That all earth berms constructed on site shall be covered with no less than 6 inches of topsoil and seeded to natural prairie grasses no later than June 30, 2002.
- 5) That a Management Plan for the safe handling and storage of hazardous goods, substances, or other materials proposed to be either generated on-site or brought to the site, shall be prepared by a qualified professional to the satisfaction of the Development Officer, and submitted to the Municipal District of Rocky View No. 44 prior to the issuance of this permit.
- 6) That an Emergency Management and Response Plan which shall include, but is not limited to emergency accesses and measures to prevent the threat of and assist in the containment of fire, hazardous materials or the like, shall be submitted to the satisfaction of the Development Officer prior to the issuance of this permit.
- 7) That a Hazardous Goods Transportation Management Plan shall be prepared by a qualified professional to the satisfaction of the Development Officer, and shall include, but is not limited to, a detailed description of the routes by which explosive materials will be brought to, and shipped from the Lands on all roads and highways within the Municipality, and submitted to the Municipal District of Rocky View No. 44 prior to the issuance of this permit.
- 8) That there shall be a minimum of five (5) parking stalls maintained on site at all times.
- 9) That there shall be a six (6) foot high barbwire fence or a fence of a higher standard, approved by the Development Officer, around the storage area, and a lockable gate at the entrance, prior to any use of the buildings.
- 10) That all garbage and waste shall be stored in weather proof and animal proof containers.
- 11) That all other government approvals, permits and compliances are the sole responsibility of the applicant/owner.
- 12) That if the development authorized by this Development Permit is not commenced with reasonable diligence within twelve (12) months from the date of issue, and completed within twenty-four (24) months of the issue, the permit is deemed to be null and void, unless an extension to this permit shall first have been granted by the Development Officer.
- 13) That this Development Permit shall not be issued unless and until Conditions #5, #6 and #7 have been met.
- 14) That if this Development Permit is not issued by **APRIL 30, 2002** then this approval becomes null and void.

A handwritten signature in black ink, appearing to read 'G. W. Smith', written over a horizontal line.

Graham W. Smith
Development Officer

NOTE: It is the responsibility OF THE APPLICANT to ensure that all conditions of approval are met.

TO: Subdivision and Development Appeal Board

DATE: Monday, May 15, 2019 **DIVISION:** 08

FILE: 05629011 **APPLICATION:** B-2; PRDP20183946

SUBJECT: Existing accessory buildings.

Agenda Page 33 of 112



EXECUTIVE SUMMARY:

The proposal is to bring the existing accessory buildings on site into compliance as the result of an Enforcement file.

The application was refused by the Development Authority on April 11, 2019 for the following reasons:

1. The building area of an existing accessory building (garage) exceeds the maximum building area allowed for an accessory building as defined in Section 48.3 of Land Use Bylaw C-4841-97.

Permitted: 120.00 m² (1,291.67 ft²)
Existing: 302.61 m² (3,257.27 ft²)
Maximum variance: 10%
Requested variance: 152.18%
2. The side yard setback of the existing accessory building (garage) does not meet the minimum side yard setback from a parcel to a building as defined in Section 48.5(c) of Land Use Bylaw C-4841-97.

Required: 3.00 m (9.84 ft)
Existing: 1.48 m (4.86 ft.)
Maximum variance: 25%
Requested variance: 50.67%
3. The existing total building area of all accessory buildings exceeds the total building area allowed for all accessory buildings as defined in Section 48.9 of Land Use Bylaw C-4841-97.

Permitted: 120.00 m² (1,291.67 ft²)
Existing: 372.27 m² (4,007.08 ft²)
Maximum variance: N/A
Requested variance: 210.23%
4. The existing number of accessory buildings exceeds the total number of accessory buildings allowed as defined in Section 48.10 of Land Use Bylaw C-4841-97.

Permitted: 2
Existing: 6
Maximum variance: N/A
Requested variance: 200.00%

The decision was appealed by the Appellant/Owner on May 2, 2019. The Notice of Appeal is included in the agenda package. As identified in the Notice of Appeal, the Appellant/Owner has stated that the additional buildings are required for the storage and maintenance earth moving equipment and personal vehicles.

PROPERTY HISTORY:

2011-DP-14807	February 1, 2012 <ul style="list-style-type: none"> • Placement of clean fill for a landscaped berm
2011-BP-24519	December 7, 2011 <ul style="list-style-type: none"> • As built seacan



ROCKY VIEW COUNTY
Cultivating Communities

2011-BP-24518	December 7, 2011 <ul style="list-style-type: none">• As built seacan
---------------	--

APPEAL:

See attached report and exhibits.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'S. MacLean'.

Sean MacLean
Supervisor, Planning & Development

SKh/lt



DEVELOPMENT PERMIT REPORT

Application Date: October 4, 2018	File: 05629011
Application: PRDP20183946	Applicant: J.K. Engineering Ltd. (Jan Korzeniowski) Owner: John and Janina Boguslawski
Legal Description: Lot 2, Block 5, Plan 9810307, NW-29-25-02-W5M (24137 Aspen Drive)	General Location: Located approximately 0.80 km (1/2 mile) east of Rge. Rd. 25 on the south side of Aspen Drive.
Land Use Designation: Residential One District (R-1)	Gross Area: ± 0.81 hectares (± 2.00 acres)
File Manager: Lindsey Ganczar	Division: 8

PROPOSAL:

The proposal is to bring six existing accessory buildings into conformance through relaxations:

- Garage = 302.61 m² (3,257.27 ft²)
- Sea-can 1 = 29.67 m² (319.37 ft²)
- Sea-can 2 = 14.71 m² (158.37 ft²)
- Shed 1 = 5.95 m² (64.08 ft²)
- Shed 2 = 5.95 m² (64.08 ft²)
- Coverall = approx. 13.38 m² (144.00 ft²)

This development permit is the result of an Enforcement file. No new buildings are being requested as part of the application.

Relaxations are required for the maximum area of an accessory building (garage), the minimum side yard setback for an accessory building (garage), the total area of all accessory buildings, and the maximum number of accessory buildings per parcel.

Residential One District (R-1) Requirements

- Accessory Building Maximum Size (area):
 - Permitted – 80.27 m² (864.02 ft²)
 - Discretionary – 120.00 m² (1,291.67 ft²)
- Minimum Building Setbacks:
 - Front – 15.00 m (49.21 ft.)
 - Side – 3.00 m (9.84 ft.)
 - Rear – 7.00 m (22.97 ft.)
- Maximum Total Accessory Building Area:
 - 120.00 m² (1,291.67 ft²)
- Maximum Number of Accessory Buildings:
 - 2

The six accessory buildings that are currently located on the parcel do not comply with various Land Use Bylaw regulations.



Section 48.5 Minimum and Maximum Requirements (R-1)

- Garage
 - Building Area – 302.61 m² (3,257.27 ft²)
 - Requires a 182.61 m² (1,965.60 ft²) or approximately **152.18% relaxation**.
 - Building Setbacks:
 - Front – approx. 33.50 m (109.91 ft.)
 - West Side – 1.48 m (4.86 ft.)
 - Requires a 1.52 m (4.99 ft.) or approximately **50.67% relaxation**.
 - East Side – lots
 - Rear – lots
- Sea-can 1
 - Building Size - 29.67 m² (319.37 ft²)
 - Building Setbacks:
 - Front – approx. 28.00 m (91.86 ft.)
 - West Side – 9.00 m (29.53 ft.)
 - East Side – lots
 - Rear – lots
 - Note: All setbacks comply.
- Sea-can 2
 - Building Size – 14.71 m² (158.37 ft²)
 - Building Setbacks:
 - Front – 16.60 m (54.46 ft.)
 - West Side – 5.00 m (16.40 ft.)
 - East Side – lots
 - Rear – lots
 - Note: All setbacks comply.
- Shed 1
 - Building Size – 5.95 m² (64.08 ft²)
 - Building Setbacks:
 - Front – lots
 - West Side – lots
 - East Side – lots
 - Rear – lots
 - Note: All setbacks comply.



- Shed 2
 - Building Size – 5.95 m² (64.08 ft²)
 - Building Setbacks:
 - Front – lots
 - West Side – lots
 - East Side – lots
 - Rear – lots
 - Note: All setbacks comply.
- Coverall
 - Building Size - approx. 13.38 m² (144.00 ft²)
 - Building Setbacks:
 - Front – approx. 38.00 m (124.67 ft.)
 - West Side – lots
 - East Side – lots
 - Rear – lots
 - Note: All setbacks comply.

Section 48.9 Maximum Total Area of Accessory Buildings

- The total area of the six accessory buildings is 372.27 m² (4,007.08 ft²).
 - Requires a 252.27 m² (2,715.41 ft²) or approximately **210.23% relaxation**.

Section 50.8 Maximum Number of Accessory Buildings

- There are currently six accessory buildings on site.
 - Requires a +4 or approximately **200.00% relaxation**.

Section 12.2(c)(ii) of the Land Use Bylaw states that the Development Authority may consider variances up to 25% for required distances and height, and up to 10% for area. The distance and area relaxations sought with this development permit application exceed these allowances. The other relaxation sought with this application is for number of buildings.

PERMIT HISTORY:

2011-DP-14807	February 1, 2012 <ul style="list-style-type: none"> • Placement of clean fill for a landscaped berm
2011-BP-24519	December 7, 2011 <ul style="list-style-type: none"> • As built seacan
2011-BP-24518	December 7, 2011 <ul style="list-style-type: none"> • As built seacan



STATUTORY PLANS:

The subject property is located within the City of Calgary/Rocky View County Intermunicipal Development Plan. The application was circulated to the City of Calgary for comment and they had no objections.

The property is also located within the Bearspaw Area Structure Plan, which reverts back to the Land Use Bylaw for accessory building regulations. As such, the application was evaluated in accordance with the Land Use Bylaw.

INSPECTOR'S COMMENTS:

November 21, 2018

- Large accessory building under construction.
- Two portable sheds beside house.
- One coverall building.
- One large sea-can, one small sea-can.
- No other issues.

CIRCULATIONS:

Building Services

- As-built building permits are required for all buildings over 10.00 m².

City of Calgary

- No objections.

Enforcement Services

- File #201808-0859

OPTIONS:

Option #1 (this would grant the requested relaxations)

The appeal against the decision of the Development Authority to refuse to issue a Development Permit for accessory buildings (existing), relaxation of the maximum building area for an accessory building (detached garage), relaxation of the minimum side yard setback (detached garage), relaxation of the total building area for all accessory buildings, and relaxation of the total number of accessory buildings on Lot 2, Block 5, Plan 9810307, NW-29-25-02-W5M (24137 Aspen Drive) be upheld, that the decision of the Development Authority be revoked, and that a Development Permit be issued, subject to the following conditions:

Description:

- 1) That the six (6) existing accessory buildings (detached garage, two [2] sea-cans, two [2] sheds, and coverall building) may remain on the subject property in accordance with the staff-amended site plan prepared by J.K. Engineering Ltd., dated September 24, 2018, and the conditions of this development permit.
- 2) That the maximum building area of the existing accessory building (detached garage) is relaxed from **120.00 m² (1,291.67 ft²) to 302.61 m² (3,257.27 ft²)**.
- 3) That the minimum side yard setback to the existing accessory building (detached garage) is relaxed from **3.00 m (9.84 ft) to 1.48 m (4.86 ft.)**.



- 4) That the total building area for all accessory buildings is relaxed from **120.00 m² (1,291.67 ft²) to 372.27 m² (4,007.08 ft²)**.
- 5) That the maximum number of accessory buildings is relaxed from **two (2) to six (6)**.

Permanent:

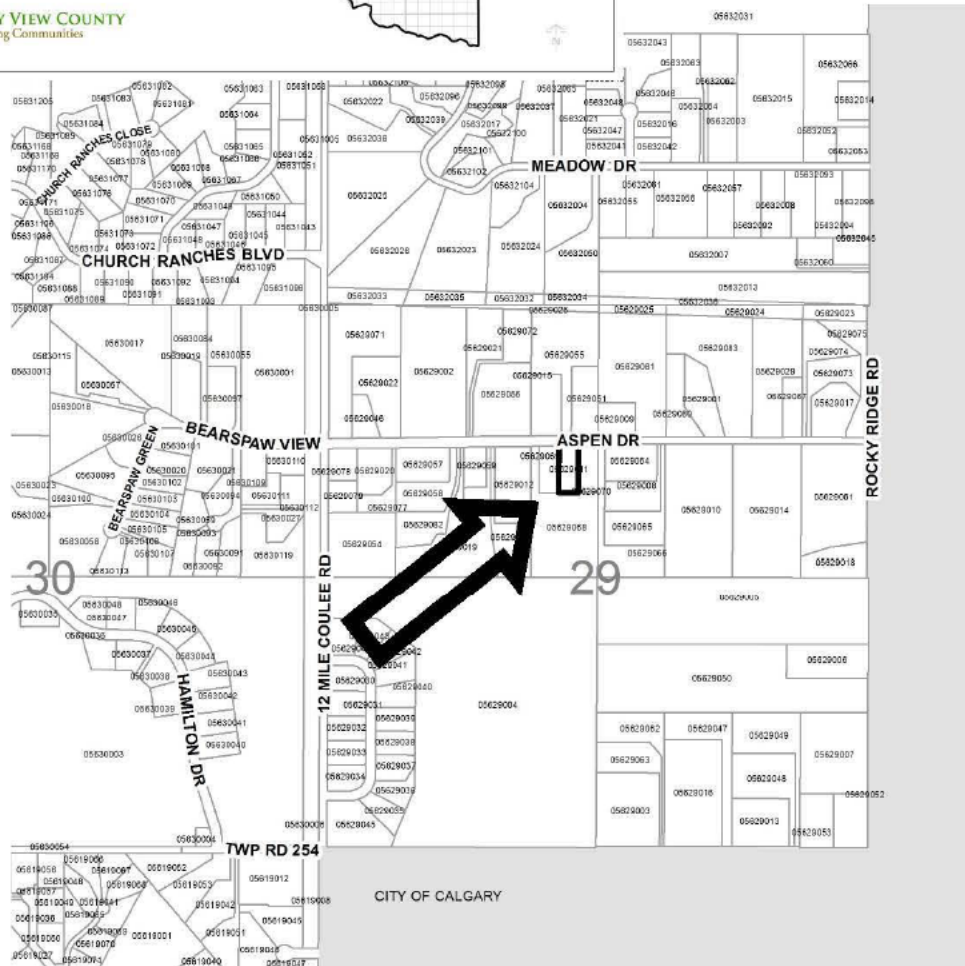
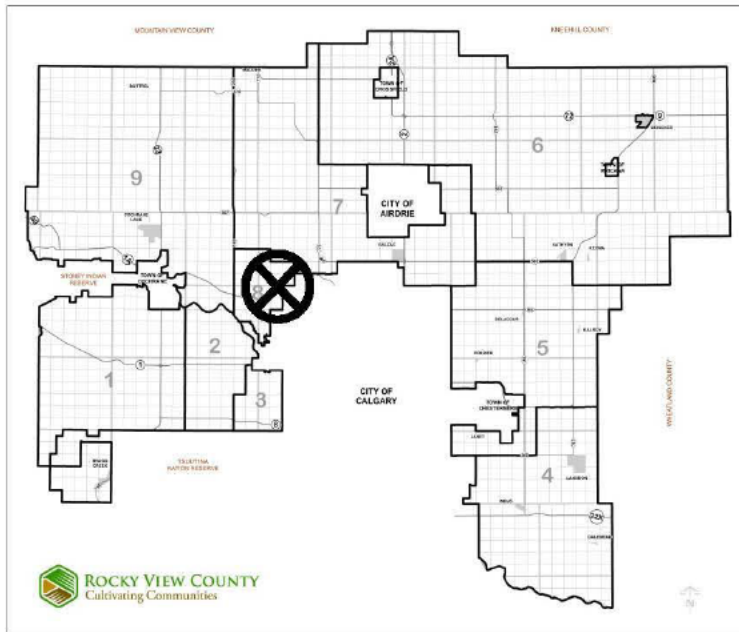
- 6) That the accessory buildings shall not be used for commercial purposes at any time, except for a Home-Based Business, Type I.
- 7) That the accessory buildings shall not be used for residential occupancy at any time.

Advisory:

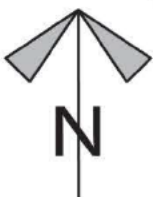
- 8) That as-built Building Permits for the existing four (4) accessory buildings (detached garage, two [2] sheds, and coverall building) shall be obtained.
- 9) That any other government permits, approvals, or compliances are the sole responsibility of the Applicant.

Option #2 (this would not grant the requested relaxations)

The appeal against the decision of the Development Authority to refuse to issue a Development Permit for accessory buildings (existing), relaxation of the maximum building area for an accessory building (detached garage), relaxation of the minimum side yard setback (detached garage), relaxation of the total building area for all accessory buildings, and relaxation of the total number of accessory buildings on Lot 2, Block 5, Plan 9810307, NW-29-25-02-W5M (24137 Aspen Drive) be denied, that the decision of the Development Authority be confirmed.



LOCATION PLAN

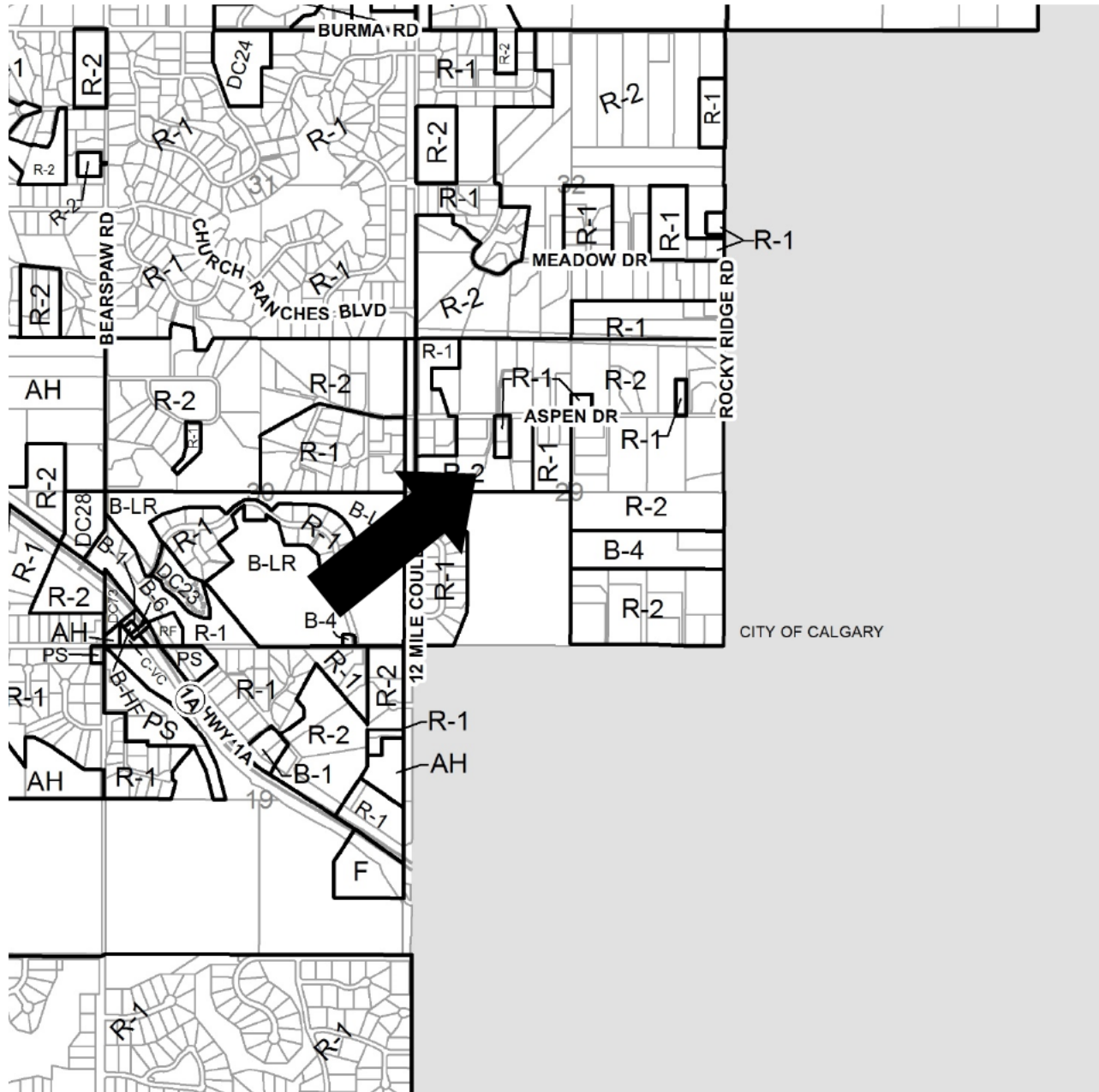


NW-29-25-02-W05M
Lot:2 Block:5 Plan:9810307

Date: May 02, 2019

Division # 8

File: 05629011



Ranch and Farm	B-1 Highway Business
RF2 Ranch and Farm Two	B-2 General Business
RF3 Ranch and Farm Three	B-3 Limited Business
AH Agricultural Holding	B-4 Recreation Business
F Farmstead	B-5 Agricultural Business
R-1 Residential One	B-6 Local Business
R-2 Residential Two	NRI Natural Resource Industrial
R-3 Residential Three	HR-1 Hamlet Residential Single Family
DC Direct Control	HR-2 Hamlet Residential (2)
PS Public Service	HC Hamlet Commercial
	AP Airport

LAND USE MAP



NW-29-25-02-W05M
Lot:2 Block:5 Plan:9810307

Date: May 02, 2019

Division # 8

File: 05629011

Garage #1



Sea-can #1

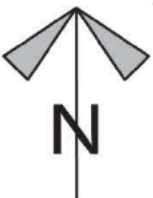


Sea-can #2 (Building #3 on site plan)



INSPECTION PHOTOS

November 21, 2018



NW-29-25-02-W05M
Lot:2 Block:5 Plan:9810307

Date: May 02, 2019

Division # 8

File: 05629011

Two portable sheds (# 4, 5)

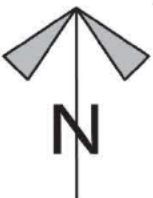


Coverall #6



INSPECTION PHOTOS

November 21, 2018



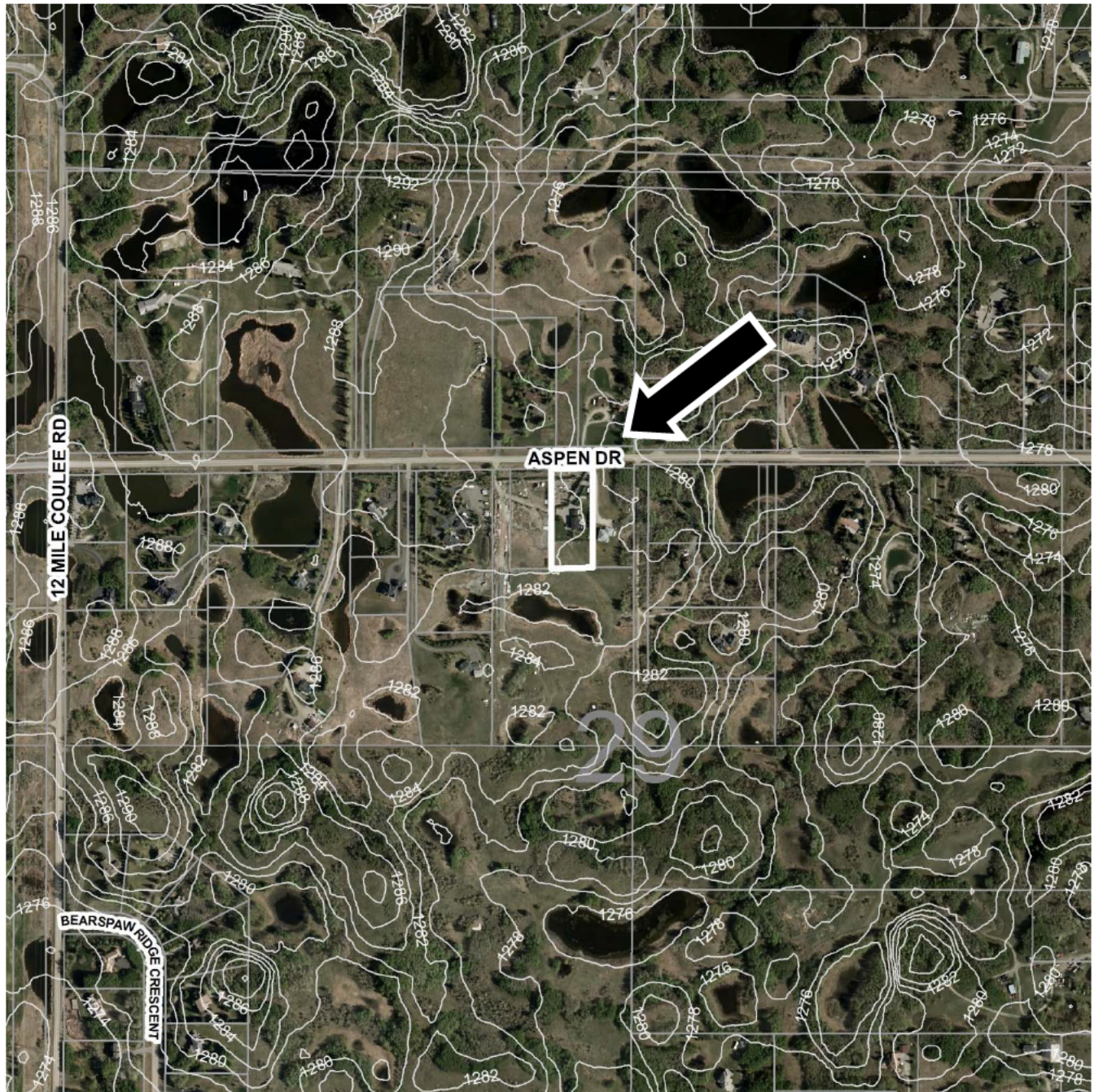
NW-29-25-02-W05M

Lot:2 Block:5 Plan:9810307

Date: May 02, 2019

Division # 8

File: 05629011



Contours are generated using 10m grid points, and depict general topographic features of the area. Detail accuracy at a local scale cannot be guaranteed. They are included for reference use only.

TOPOGRAPHY
Contour Interval 2 M



NW-29-25-02-W05M
Lot:2 Block:5 Plan:9810307

Date: May 02, 2019

Division # 8

File: 05629011



Note: Post processing of raw aerial
photography may cause varying degrees
of visual distortion at the local level.

AIR PHOTO
Spring 2018



NW-29-25-02-W05M
Lot:2 Block:5 Plan:9810307

Date: May 02, 2019

Division # 8

File: 05629011




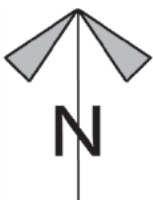
LOT2

LOT1

b Overall building seen on site visit (dimensions unknown)
→ See attached approx. photo.
18' x 8'



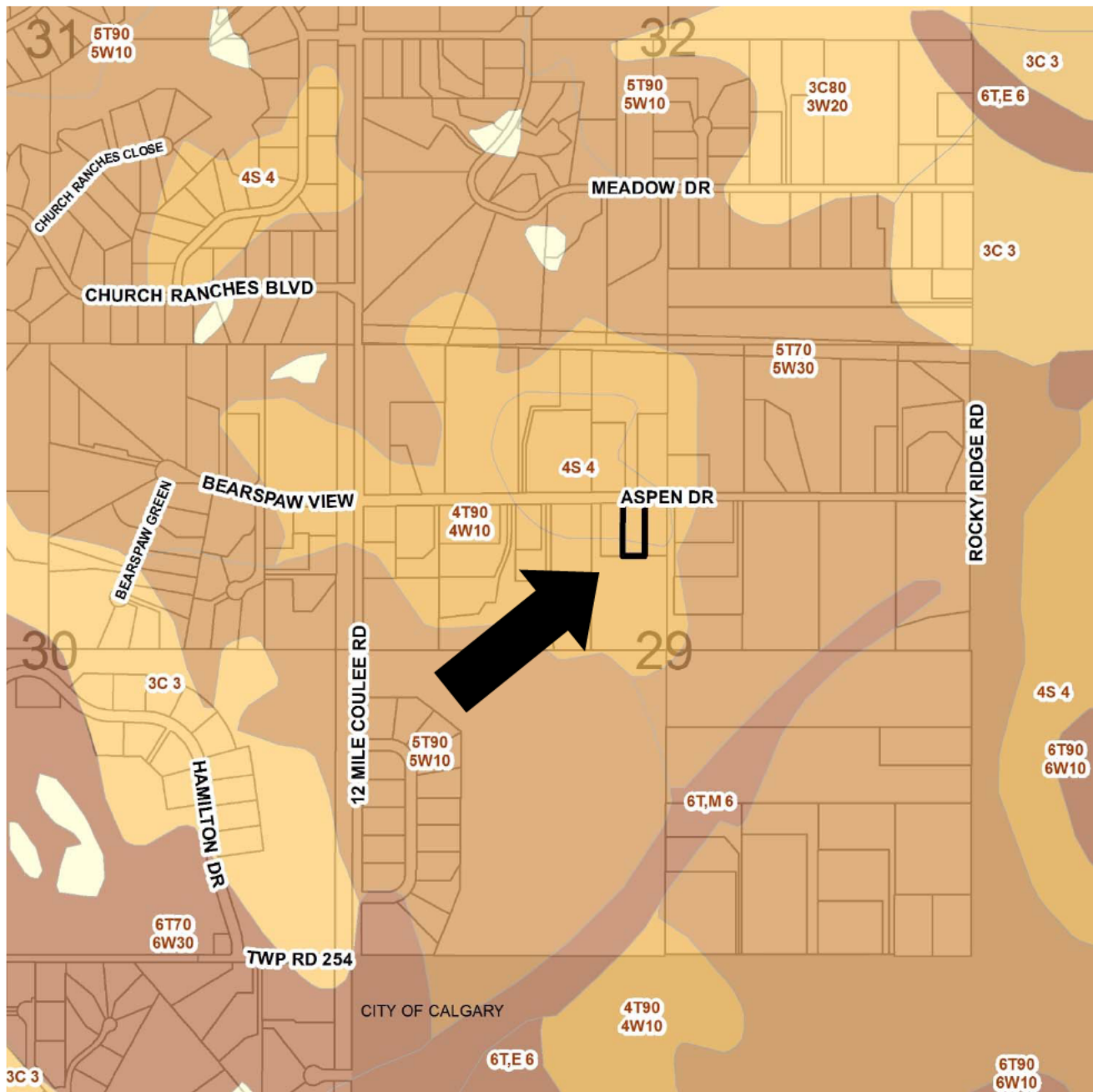
	J.K. ENGINEERING LTD.	
	OWNER:	DATE:
	PROJECT:	SCALE:
	DRAWING:	DWG. NO.
	JOHN BOGUSLAWSKI PROPERTY	09/24/18
	ACCESSORY BUILDINGS	1:500
	24173 ASPEN RD. NW	
	SITE PLAN - LOT 2	102-JB



Date: May 02, 2019

Division # 8

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LAND CAPABILITY CLASSIFICATION LEGEND
Limitations refer to cereal, oilseeds and tame hay crops

CLI Class

- 1 - No significant limitation
- 2 - Slight limitations
- 3 - Moderate limitations
- 4 - Severe limitations
- 5 - Very severe limitations
- 6 - Production is not feasible
- 7 - No capability

Limitations

- B - brush/tree cover
- C - climate
- D - low permeability
- E - erosion damage
- F - poor fertility
- G - Steep slopes
- H - temperature
- I - flooding
- J - field size/shape
- K - shallow profile development
- M - low moisture holding, adverse texture
- N - high salinity
- P - excessive surface stoniness
- R - shallowness to bedrock
- S - high sodicity
- T - adverse topography
- U - prior earth moving
- V - high acid content
- W - excessive wetness/poor drainage
- X - deep organic deposit
- Y - slowly permeable
- Z - relatively impermeable

SOIL MAP

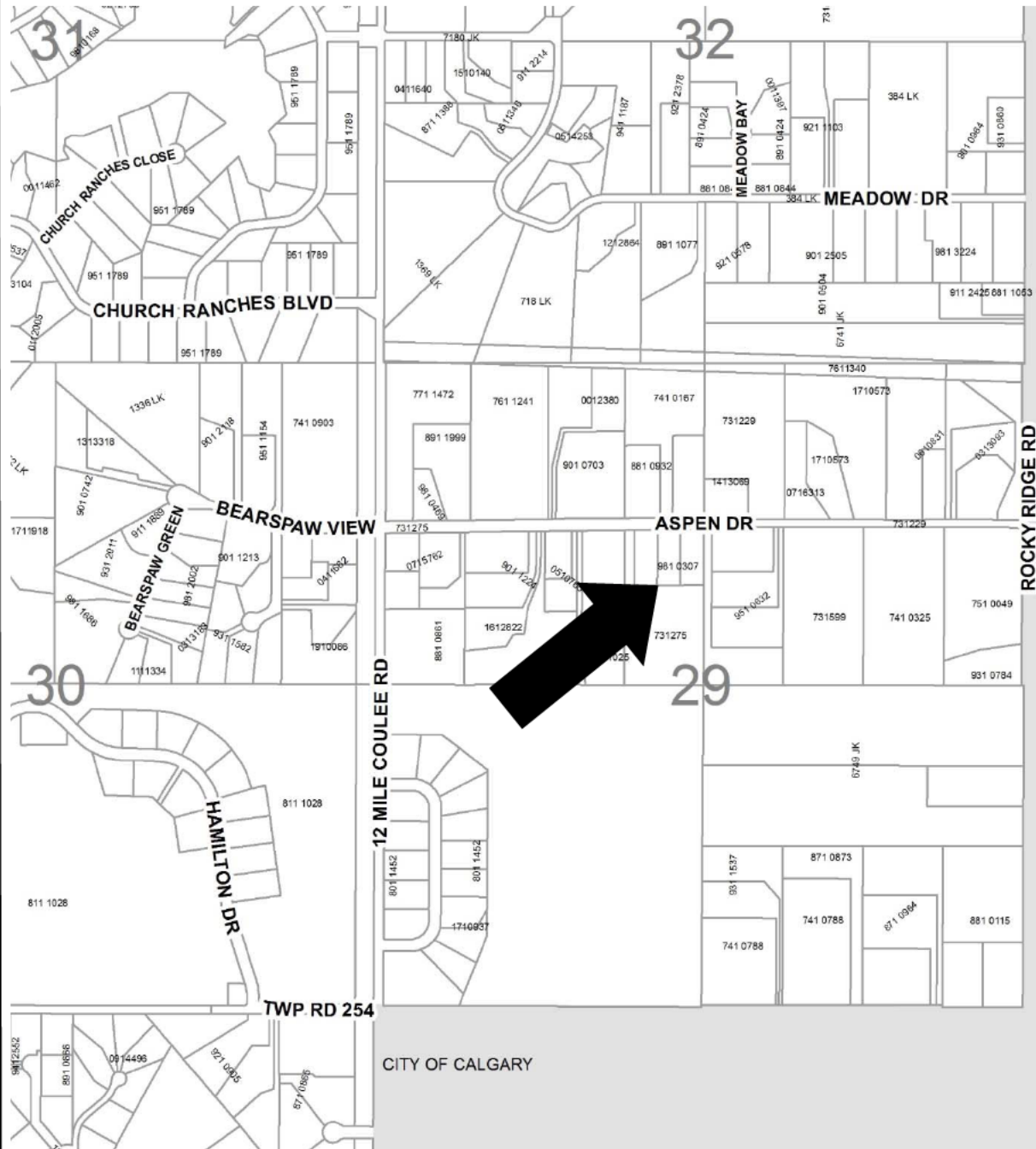


NW-29-25-02-W05M
Lot:2 Block:5 Plan:9810307

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Legend – Plan numbers

- First two numbers of the Plan Number indicate the year of subdivision registration.
- Plan numbers that include letters were registered before 1973 and do not reference a year

HISTORIC SUBDIVISION MAP

NW-29-25-02-W05M

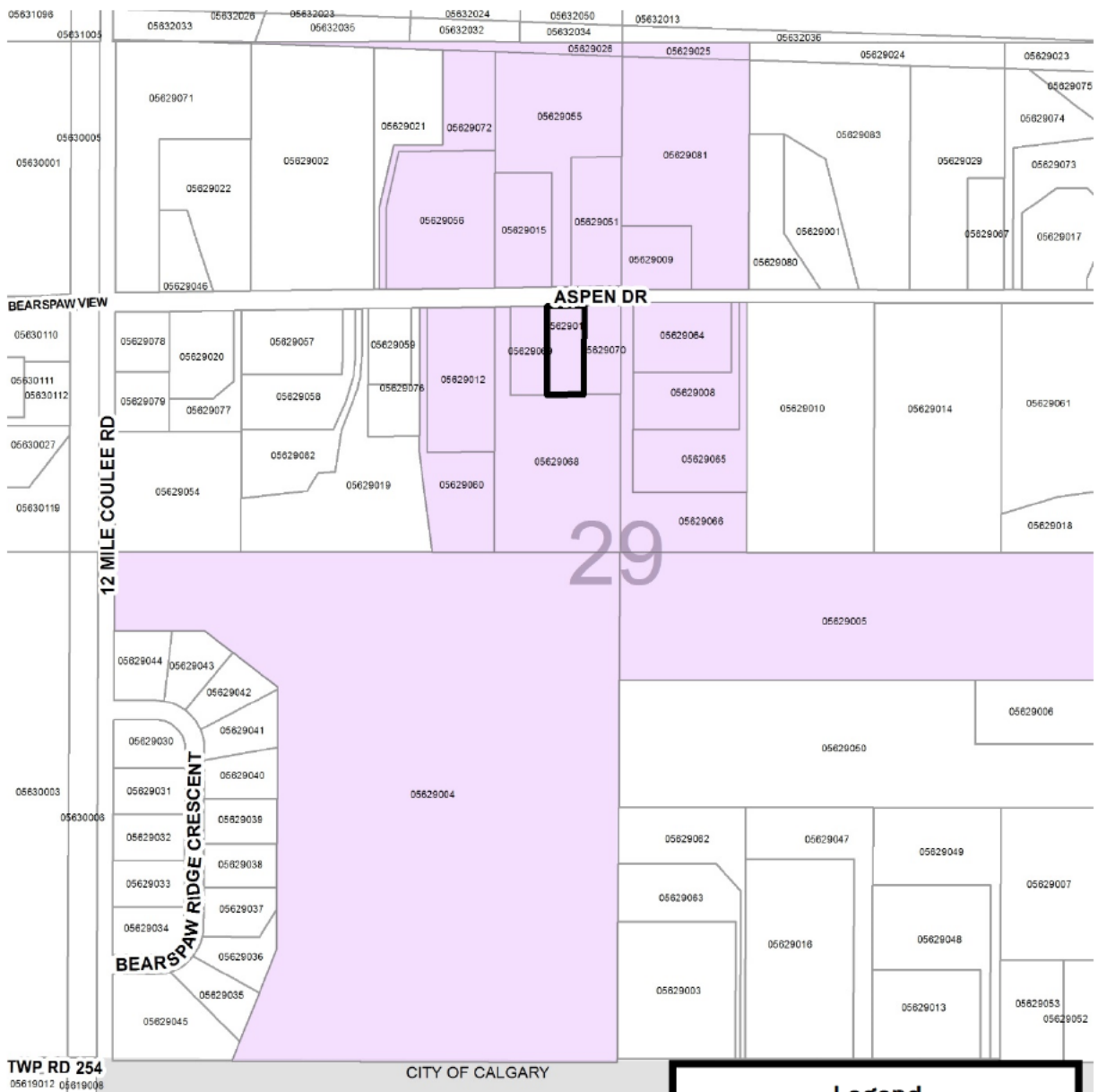
Lot:2 Block:5 Plan:9810307

Date: May 02, 2019

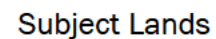
Division # 8

File: 05629011





Letters in Support



LANDOWNER CIRCULATION AREA

NW-29-25-02-W05M

Lot:2 Block:5 Plan:9810307

Date: May 02, 2019

Division # 8

File: 05629011



Notice of Appeal

Subdivision and Development Appeal Board
Enforcement Appeal Committee

Appellant Information			
Name of Appellant(s) John and Janina Boguslawski			
Mailing Address [REDACTED]	Municipality [REDACTED]	Province [REDACTED]	Postal Code [REDACTED]
Main Phone # [REDACTED]	Alternate Phone # [REDACTED]	Email Address [REDACTED]	
Site Information			
Municipal Address 24137 Aspen Drive NW, Calgary T3R 1A4		Legal Land Description (lot, block, plan OR quarter-section-township-range-meridian) Lot 2, Block 5, Plan 9810307, NW 29-25-02-W5M	
Property Roll # 05629011		Development Permit, Subdivision Application, or Enforcement Order # PRDP20183946	

I am appealing: (check one box only)		
Development Authority Decision <input type="checkbox"/> Approval <input type="checkbox"/> Conditions of Approval <input checked="" type="checkbox"/> Refusal	Subdivision Authority Decision <input type="checkbox"/> Approval <input type="checkbox"/> Conditions of Approval <input type="checkbox"/> Refusal	Decision of Enforcement Services <input type="checkbox"/> Stop Order <input type="checkbox"/> Compliance Order

Reasons for Appeal (attach separate page if required)
<p>I need additional buildings and storage for maintenance and earth moving equipment as I am planning development of land which I own immediately to the west (Lot 1) and to the south (13 acres undivided land).</p> <p>The accessory buildings include the following and as shown on drawing No. 102-JB attached:</p> <ol style="list-style-type: none"> Bldg 1, proposed garage under construction, for storage of motorhome and large maintenance and construction equipment. Bldg 2, large steel container for storage of materials, permit obtained. Bldg 3, small steel container will be removed. Bldg 4 and 5 are small plastic buildings for storage of house tools, equipment and materials, permit not required. Bldg 6, large steel container for storage of materials and small maintenance equipment, permit obtained. <p><i>IF NECESSARY I WILL REMOVE BUILDING 4, 5</i></p> <p>Rain water drainage will be directed from all accessory buildings to the east and north and will not adversely affect lot 1 located immediately west and the land located immediately south of to subject lot 2.</p> <p>The reasons for the accessory buildings are as follows:</p> <ol style="list-style-type: none"> At present the attached garage is not functional. My van does not fit because the garage is not deep enough. We can park only two small cars, with a third car we cannot open doors. At present the property is rented to a family of three adults with three children and there are five vehicles used with no adequate garage. I want to solve the above problems by building additional garage to accommodate all equipment I have: <ul style="list-style-type: none"> - Three vehicles - Bobcat for snow removal from 100 meter long driveway and snow moving to storage area - Bobcat attachments - Horse trailer - Cargo trailer - Lawn mower - Other small equipment and materials <p>We want to keep all the above equipment and oversized motorhome under roof and not visible to neighbors. The new garage is not visible from the west, east and north sides, Aspen Drive. Over the past fifteen years I planted over 800 trees and they screens the new garage from the neighbors and Aspen Drive.</p>

This information is collected for the Subdivision and Development Appeal Board or Enforcement Appeal Committee of Rocky View County and will be used to process your appeal and to create a public record of the appeal hearing. The information is collected in accordance with the *Freedom of Information and Protection of Privacy Act*. If you have questions regarding the collection or use of this information, contact the Municipal Clerk at 403-230-1401.

Appellant's Signature: *[Signature]* Date: *May 2 April 16, 2019*



REFUSAL

Jan Korzeniowski
J.K. Engineering Ltd.
320- 7930 Bowness Rd. NW
Calgary, AB T3B 0H3

Development Permit #: PRDP20183946

Date of Issue: April 11, 2019

Roll #: 05629011

Your application dated October 4, 2018 for a Development Permit in accordance with the provisions of the Land Use Bylaw C-4841-97 of Rocky View County with respect to:

Accessory Buildings (six existing), relaxations for maximum accessory building area (garage), minimum side yard setback (garage), maximum total building area for all accessory buildings per lot, and maximum number of accessory buildings per lot.

at Lot 2, Block 5, Plan 9810307, NW-29-25-02-W5M (24137 Aspen Drive)

has been considered by the Development Authority and the decision in the matter is that your application be **REFUSED** for the following reasons:

- 1) The building area of an existing accessory building (garage) exceeds the maximum building area allowed for an accessory building as defined in Section 48.3 of Land Use Bylaw C-4841-97.
Discretionary allowance - 120.00 m² (1,291.67 ft²); proposed - 302.61 m² (3,257.27 ft²).
- 2) The side yard setback of the existing accessory building (garage) does not meet the minimum side yard setback from a parcel to a building as defined in Section 48.5(c) of Land Use Bylaw C-4841-97.
Required - 3.00 m (9.84 ft); proposed - 1.48 m (4.86 ft.).
- 3) The existing total building area of all accessory buildings exceeds the total building area allowed for all accessory buildings as defined in Section 48.9 of Land Use Bylaw C-4841-97.
Allowed - 120.00 m² (1,291.67 ft²); proposed - 372.27 m² (4,007.08 ft²).
- 4) The existing number of accessory buildings exceeds the total number of accessory buildings allowed as defined in Section 48.10 of Land Use Bylaw C-4841-97.
Allowed – 2; proposed – 6



Matthew Wilson
Manager, Planning and Development Services

NOTE: An appeal of this decision may be made to the Subdivision and Development Appeal Board of Rocky View County. Notice of Appeal to the Subdivision and Development Appeal Board shall be filed with the requisite fee of \$350.00 with Rocky View County no later than 21 days following the date on which this Notice is dated.

PLANNING & DEVELOPMENT

TO: Subdivision & Development Appeal Board
DATE: May 15, 2019 **DIVISION:** 3
FILE: 04702038 **APPLICATION:** PL20180079
SUBJECT: Subdivision Item – Creation of two (2) new Residential One District parcels

PROPOSAL: To create a \pm 0.82 hectare (\pm 2.02 acre) parcel, a \pm 1.13 hectare (\pm 2.80 acre) parcel with a \pm 4.05 hectare (\pm 10.00 acre) remainder.	GENERAL LOCATION: Located 6.5 km (4 miles) west of the city of Calgary, 0.8 km (0.5 mile) south of Highway 8, at the northeast junction of Range Road 32 and West Meadows Estates Road.
LEGAL DESCRIPTION: Portion of SW-02-24-03-W05M	GROSS AREA: \pm 6.00 hectares (\pm 14.82 acres)
APPLICANT: B & A Planning Group / Ken Venner OWNERS: Eric S. & Jamie H. Horvath	RESERVE STATUS: Municipal Reserves are outstanding in the amount of 10%.
LAND USE DESIGNATION: Residential One District (R-1)	LEVY INFORMATION: Transportation Off-Site Levy is owing on the total gross acreage of the subject lands
DATE SUBDIVISION APPLICATION RECEIVED: June 25, 2018	APPEAL BOARD: Subdivision Development Appeal Board
TECHNICAL REPORTS SUBMITTED: <ul style="list-style-type: none"> Transportation Review (Bunt & Associates, 2017) Level 3 PSTS Assessment (Sedulous, 2017) Conceptual Level Site-Specific Stormwater Implementation Plan (Sedulous, 2017) 	LAND USE POLICIES AND STATUTORY PLANS: <ul style="list-style-type: none"> County Plan (C-7280-2013) Rocky View/Calgary IDP (C-7197-2012) Land Use Bylaw (C-4841-97)

EXECUTIVE SUMMARY:

On March 12, 2019, the Subdivision Authority approved application PL20180079 subject to conditions. On April 1, 2019, the Applicant appealed Condition #10 of the Subdivision Authority's decision, which pertains to the requirement to provide cash-in-lieu of Municipal Reserve (MR) dedication.

- 10) The provision of Reserve in the amount of 10 percent of the area of Lots 1 & 2, as determined by the Plan of Survey, is to be provided by payment of cash-in-lieu pursuant to Section 666(3) of the *Municipal Government Act*:
 - a) The Applicant shall provide a market value appraisal, prepared by a certified appraiser, in accordance with Section 667(1)(a) of the *Municipal Government Act*, and the satisfaction of Rocky View County;
 - b) Reserves for Lot 3 are to be deferred with Caveat, pursuant to Section 669(2) of the *Municipal Government Act*.

The Appellant has provided reasons for appeal, which are included in the Notice of Appeal attached to this report.



This appeal was originally scheduled for the Subdivision and Development Authority Board meeting of April 24, 2019, but was rescheduled to May 15, 2019 due to a scheduling conflict on behalf of the Appellant.

DISCUSSION:

On March 12, 2019, the Subdivision Authority considered a proposal to create a ± 1.13 hectare (± 2.80 acre) parcel (Lot 1), a ± 0.82 hectare (± 2.02 acre) parcel (Lot 2), with a ± 4.05 hectare (± 10.00 acre) remainder (Lot 3).

The subject lands consist of a 14.82 acre parcel that accesses West Meadows Estates Road and Range Road 32. The parcel currently contains a dwelling, which is located within the boundaries of proposed Lot 1. Servicing to the existing dwelling is provided by a water well and a private sewage treatment system. Lots 2 and 3 are proposed to be serviced by the same means. The subject lands hold the Residential One District land use designation, which allows for a minimum parcel size of 1.98 acres.

The Subdivision Authority approved the application with no amendments to the conditions provided by Administration. Despite the reasons for appeal provided by the Applicant, Administration notes that the conditions approved by the Subdivision Authority are appropriate. Rationale for these reasons is summarized below.

Background

A comprehensive review of the development history within the subject quarter section has determined that municipal reserves, or cash-in-lieu of municipal reserves, have not been provided by or on behalf of the subject lands. As such, the Subdivision Authority approved the proposed subdivision application with a condition that the lands provide the required reserves, comprising 10% of the value of the subject lands.

The Appellant has not provided a land value appraisal in order to determine the value of this reserve. As such, the value the Board is being asked to waive cannot be conclusively determined. Based on the size and location of the lands, the land use designation, and a 2011 transfer of land figure observed on the land title, a reasonable estimate of the unimproved value of the lands is between \$2,000,000 and \$3,000,000.

Using that estimate, the Appellant has requested that the Board waive MR dedication in the amount of \$200,000 to \$300,000.

Instead of the appraisal, the Applicant has produced an unregistered copy of a deferred reserve caveat (DRC 5621 IH), and claimed that this document constitutes provision of the required municipal reserve dedication. It is important to note that registration of a deferred reserve caveat does not satisfy the provision of municipal reserve. MR dedication is only considered to have been satisfied once land or cash-in-lieu of land has been provided (see below in the discussion regarding the *Municipal Government Act*).

It is important to note that DRC 5621 IH is not currently registered on any active title, and has no legal standing. Originally drafted at the time of the first subdivision within the quarter section in 1961, the document intended to defer the municipal reserve owing on the proposed lot to the remainder. This means that as the remainder lands subdivided going forward, they would have been required to provide municipal reserves for their lands as well as a proportional amount of the deferred reserve dedication.

As the remainder lands were subdivided further in subsequent years, municipal reserves were provided for the amount owing for each new proposal, but the deferred portion was never accounted for. In a legal opinion dated November 21, 2018, Joanne M. Klauer provides clarification on the matter (see attached). In short, as the DRC 5621 IH was registered prior to the 1963 Planning Act, it has no legal standing. As such, it was not legally enforceable, and the owners of the lands proposing subdivision could not be legally compelled to recognize it.

Past development within this quarter section has been undertaken with the understanding that a deferred reserve caveat registered prior to 1963 does not have legal standing under modern legislation. This is the same today as it was in the 1980s and 90s – DRC 5621 IH was (and is) not legally enforceable.

Ultimately, the subject lands have not provided municipal reserve dedication.

Municipal Reserve and the Responsibility of Developers

Land development inherently creates the need for new or expanded infrastructure and services. Throughout the modern history of land development in Alberta, municipalities and the development industry have struck a balance regarding who is responsible for the provision of these services. The provision of Municipal Reserve, which has been a principle in Alberta for over a century, requires that as land is developed, 10% of the area should be set aside to provide recreational and educational opportunities to local residents.

Unless specifically exempted in accordance with Section 663 of the Municipal Government Act, development within Rocky View County is required to provide Municipal Reserves for the betterment of all residents. The lands provided have allowed for the establishment of parks, pathways, and school sites. In areas where lands were not required, cash-in-lieu of land was provided and used to fund recreational programs or the maintenance of existing facilities. When cash-in-lieu is taken, the funds are split between the following entities:

- Rocky View County;
- The local recreation board (Rocky View West Recreation Board in this case); and
- Rocky View Schools.

The Appellant has requested to remove a condition that will effectively waive the requirement to provide approximately \$200,000 to \$300,000 in MR dedication. It is important to note that the majority of these funds will be provided directly to the recreation board and the school board, where they will be used to provide and enhance recreational and educational opportunities to the residents of Rocky View County.

Waiving the requirement for the Appellant to provide their share of these fees will result in this value being provided by the taxpayers of Rocky View County. This is not equitable to the County residents, or to past developers who have provided their MR dedication in good faith.

Municipal Government Act

The legislative authority for municipalities is established by the *Municipal Government Act*. The following sections are relevant to this appeal (emphasis added).

The purpose of *Municipal Government Act* legislation pertaining to planning and development is provided in Section 617:

*“to achieve the **orderly, economical and beneficial development**, use of land and patterns of human settlement, and **to maintain and improve the quality of the***



physical environment within which patterns of human settlement are situated in Alberta, without infringing on the rights of individuals for any public interest except to the extent that is necessary for the overall greater public interest.”

Legislation requiring the dedication of reserve land is provided in Section 661(b):

“the owner of a parcel of land that is the subject of a proposed subdivision must provide... land for municipal reserve, school reserve, municipal and school reserve, money in place of any or all of those reserves or a combination of reserves and money.”

The use of municipal reserve to provide recreational and educational opportunities to the residents of Rocky View County is certainly in the overall greater public interest. The requirement for individuals who chose to subdivide lands to provide their share of these opportunities is well-established within the *Municipal Government Act*, and is standard practice for planning and development in Alberta.

Section 663 provides four situations where a subdivision authority may not require the dedication of municipal reserves. These are:

- a. *“one lot is to be created from a quarter section of land,*
- b. *land is to be subdivided into lots of 16.0 hectares or more and is to be used only for agricultural purposes,*
- c. *the land to be subdivided is 0.8 hectares or less, or*
- d. ***reserve land, environmental reserve easement or money in place of it was provided in respect of the land that is the subject of the proposed subdivision under this Part or the former Act.”***

Parts a, b, and c, do not apply in this case. As previously discussed, municipal reserve land or cash-in-lieu has not been provided by or on behalf of the subject lands. In accordance with 663(d), only the provision of land or cash-in-lieu satisfies the municipal reserve requirement. Contrary to the Appellant's rationale, registration of a deferred reserve caveat does not satisfy 663(d).

Appellant Rationale

The Appellant has provided rationale regarding their request for the MR dedication to be waived. Administration provides the following comments with respect to these particular arguments.

- The DRC provided by the applicant is not currently registered on any active title.
- The DRC was registered under the previous planning act, as such it does not have legal standing.
- When lands intended to be subject to the conditions of the DRC were subdivided in the 1990s, Rocky View County was not able to act on the DRC for this reason.
- As such, MR has not been collected on behalf of the subject lands, despite the intention of the DRC.
- A DRC does not constitute provision of MR, only the dedication of land or cash-in-lieu does so.
- As MR has not been previously provided, the Appellant's statement asserting that it would be “inequitable to take MR twice” is not factual.

Summary

To summarize the important considerations with regard to municipal reserve dedication for this parcel:

- Deferred reserve caveat 5621 IH was registered prior to 1963, and is not enforceable under modern legislation. It is not currently registered on an active title;



- Registration of a DRC alone does not satisfy the requirement to provide municipal reserve. Municipal reserve dedication is only considered to be provided once land or cash-in-lieu of land is provided;
- Lands that were subject to 5621 IH in the past have not provided the deferred portion of land or cash-in-lieu of land. Despite the intention of 5621 IH, no municipal reserve dedication has been provided on behalf of the subject lands.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "S-2-2", written over a horizontal line.

Sean MacLean
Supervisor, Planning & Development

SK/ltt

PLANNING & DEVELOPMENT

TO:	Subdivision Authority	DIVISION:	3
DATE:	March 12, 2019	APPLICATION:	PL20180079
FILE:	04702038		
SUBJECT:	Subdivision Item – Residential One District		

¹POLICY DIRECTION:

The application was evaluated against the terms of Section 654 of the *Municipal Government Act*, Section 7 of the Subdivision and Development Regulations, and the policies within the County Plan, and was found to be compliant:

- The proposal is consistent with the land use designation approved in May 2018;
- The proposal is consistent with the subdivision policies in Section 10 of the County Plan; and
- All technical matters are addressed through the suggested conditions of approval.

EXECUTIVE SUMMARY:

The purpose of this application is to create a ± 1.13 hectare (± 2.80 acre) parcel (Lot 1), a ± 0.82 hectare (± 2.02 acre) parcel (Lot 2), with a ± 4.05 hectare (± 10.00 acre) remainder (Lot 3).

The subject lands consist of a 14.82 acre parcel that accesses West Meadows Estates Road and Range Road 32. The parcel currently contains a dwelling, which is located within the boundaries of proposed Lot 1. Servicing to the existing dwelling is provided by a water well and a private sewage treatment system. Lots 2 and 3 are proposed to be serviced by the same means. The subject lands hold the Residential One District land use designation, which allows for the creation of a 1.98 acre parcel.

Administration determined that the application meets policy.

PROPOSAL: To create a ± 0.82 hectare (± 2.02 acre) parcel, a ± 1.13 hectare (± 2.80 acre) parcel with a ± 4.05 hectare (± 10.00 acre) remainder.	GENERAL LOCATION: Located 6.5 km (4 miles) west of the City of Calgary, 0.8 km (0.5 mile) south of Highway 8, at the northeast junction of Range Road 32 and West Meadows Estates Road.
LEGAL DESCRIPTION: Portion of SW-2-24-3-W5M	GROSS AREA: ± 6.00 hectares (± 14.82 acres)
APPLICANT: B & A Planning Group - Ken Venner OWNER: Eric S. & Jamie H. Horvath	RESERVE STATUS: Municipal Reserves are outstanding, comprising 10% of the subject lands.
LAND USE DESIGNATION: Residential One District	LEVIES INFORMATION: Transportation Off-Site Levy is outstanding

¹ Administration Resources

Stefan Kunz & Eric Schuh, Planning & Development



DATE SUBDIVISION APPLICATION RECEIVED: June 25, 2018	APPEAL BOARD: Subdivision and Development Appeal Board
TECHNICAL REPORTS SUBMITTED: <ul style="list-style-type: none"> • Transportation Review (Bunt & Associates, 2017) • Level 3 PSTS Assessment (Sedulous, 2017) • Conceptual Level Site-Specific Stormwater Implementation Plan (Sedulous, 2017) 	LAND USE POLICIES AND STATUTORY PLANS: <ul style="list-style-type: none"> • County Plan (C-7280-2013) • Rocky View/Calgary IDP (C-7197-2012) • Land Use Bylaw (C-4841-97)

PUBLIC & AGENCY SUBMISSIONS:

The application was circulated to 44 landowners. At the time of report preparation, no responses were received. The application was also circulated to a number of internal and external agencies. Those responses are available in Appendix 'B'.

HISTORY:

May 8, 2018	Subject lands are redesignated from Residential Two District to Residential One District (PL20180005).
1990-98	Various survey plans are registered, resulting in the creation of approximately 30 parcels within the quarter section. The subject lands are the remainder portion of these subdivisions.
1974	Plan 7410676 is registered, resulting in the creation of ten lots approximately 20 acres in size, a 40 acre remainder (encompassing the subject lands), and an internal access road.
1960	The subject quarter section is subdivided into four 40 acre parcels. Instrument number 5621IH is registered at the time, transferring the provision of municipal reserve from the 40 acre parcel that would subsequently become the subject lands to the remainder of the quarter section.

TECHNICAL CONSIDERATIONS:

This application was evaluated in accordance with the matters listed in Sections 7 and 14 of the Subdivision and Development Regulation, which are as follows:

a) The site's topography

The topography of the land is rather flat and features very little in the way of measureable slopes. There are no significant waterbodies, drainage courses, or stands of natural vegetation located on-site. No constraints to the proposed subdivision were identified with regard to the topography of the site. No further concerns.

Conditions: None

b) The site's soil characteristics

The soils on site are Class 2, with slight limitations due to adverse climate. As the lands are intended for residential purposes, there are no concerns with regard to soil considerations.

Conditions: None



c) Storm water collection and disposal

The applicant provided a Conceptual Level Site-Specific Storm Water Implementation Plan (Sedulous Engineering Inc., December 21, 2017) in support of the application. The report recommends the use of swales and a dry pond with outlet control structure to manage increased runoff in the post-development condition. As this infrastructure is proposed to be located within the remainder portion of the lands, the requirements associated with the development of Lot 3 can be submitted at the time of future subdivision. As a condition of subdivision, a drainage right-of-way is required to be registered along the southern boundary of Lot 2 in order to ensure that the current proposal can be accommodated by the future storm water facilities.

Conditions: 6

d) Any potential for flooding, subsidence or erosion of the land

The lands do not feature any on-site wetlands as identified by Alberta Environment's Wetland Impact Model. The Elbow River is located approximately 1.5 miles to the north; however, the lands are not within the floodway or flood fringe according to Alberta Environment's Flood Hazard Map. Pirmez Creek is located approximately 300 metres to the south, a sufficient distance to ensure that there are no concerns regarding flooding from this drainage course. There are no other drainage courses or waterbodies on site, and there are no concerns with regard to flooding, subsidence, or erosion of the land.

Conditions: None

e) Accessibility to a road

The subject land currently features one existing dwelling located within proposed Lot 1. This dwelling accesses Range Road 32 via a paved approach. Although Lot 2 does not currently contain a dwelling, an approach accessing West Meadows Estates Drive is located within the boundaries of the proposed parcel. Upgrades to this approach are required in order to meet County Servicing Standards. Lot 3 is proposed to be further subdivided in the future. While an internal access road is eventually required to service these future lots, requirement for the construction of the road can be deferred at this time. In the meantime, a new approach to Lot 3 is required to provide access. The approach can be located in a manner conducive to allow further upgrades in order to accommodate the future road.

The Transportation Offsite Levy is outstanding for the total acreage of Lots 1 and 2, and is required to be provided through the conditions of subdivision approval. Lot 3 is greater than 9.88 acres in size and, as such, is deferred at this time.

- Base Levy = \$4,595/acre. Acreage = 4.82 acres. Estimated TOL payment = (\$4,595/acre)*(4.82 acres) = \$22,148

Conditions: 2, 3, 4

f) Water supply, sewage and solid waste disposal

The Applicant provided a Level I Variation Assessment for the existing septic field located within Lot 1 that indicates that the system is in good working order. A Level 3 PSTS Assessment (Sedulous Engineering Inc., December 21, 2017) was provided that indicates that the site is suitable for the additional systems required on Lots 2 and 3. As Lot 2 is proposed to be less than 3.95 acres in size, it is required to construct a Packaged Sewage Treatment Plant in accordance with County Policy 449. As a condition of subdivision, a Site Improvements / Services Agreement is required in order to ensure that the system is constructed in accordance with County standards and national requirements.



Potable water servicing to the existing dwelling is provided via water well. Servicing to Lots 2 and 3 is proposed to be provided by the same means. In support of this, the Applicant submitted a Phase 1 Groundwater Supply Evaluation (Groundwater Information Technologies Ltd., December 5, 2017). The report meets the requirements of the County Servicing Standards and concludes that the aquifer underlying the proposed subdivision can supply water at a rate of 1250m³/year without causing adverse effects on existing users. As a condition of subdivision, new wells within Lots 2 and 3 are required. A Phase 2 Aquifer Testing Report is also required in order to confirm that the new wells are capable of maintaining the County's minimum pump rate.

Lastly, a Deferred Services Agreement shall be registered for each proposed parcel, requiring the owner to tie into municipal services when they become available.

Conditions: 7, 8, 9

g) The use of the land in the vicinity of the site

The lands are located west of the Elbow Valley community and south of the Elbow Valley West community, 0.5 miles south of Highway 8, at the northeast junction of Range Road 32 and West Meadows Estates Road. The lands surrounding the subject site are predominantly residential in nature. Unsubdivided quarter sections and other agricultural uses are located to the west. There are no concerns that the subdivision proposal is in misalignment with the land use in the area.

Conditions: None

h) Other matters

Municipal Reserves

Municipal Reserves are outstanding, comprising 10% of the subject lands. As the lands are 14.82 acres in size, 1.482 acres of municipal reserve land or cash-in-lieu is required to be dedicated for recreation and school board use. As the Applicant has not provided a land value appraisal, the value of this reserve land is not known at this time. Instead of the appraisal, the Applicant has produced an unregistered copy of a deferred reserve caveat (DRC 5621 IH), and claimed that this document constitutes provision of the required municipal reserve dedication.

It is important to note that DRC 5621 IH is not currently registered on any active title, and has no legal standing. Originally drafted at the time of the first subdivision within the quarter section in 1961, the document intended to defer the municipal reserve owing on the proposed lot to the remainder. This means that as the remainder lands subdivided in the future, they would have been required to provide municipal reserves for their lands as well as a proportional amount of the deferred reserve dedication.

As the remainder lands were subdivided further in subsequent years, municipal reserves were provided for the amount owing for each new proposal, but the deferred portion was never accounted for. In a legal opinion dated November 21, 2018, Joanne M. Klauer provides clarification on the matter (see Appendix 'D'). In short, as the DRC 5621 IH was registered prior to the 1963 *Planning Act*, it has no legal standing. As DRC 5621 IH was registered prior to 1963, it was not legally enforceable, and the owners of the lands proposing subdivision could not be legally compelled to recognize it.

Past development within this quarter section has been undertaken with the understanding that a deferred reserve caveat registered prior to 1963 does not have legal standing with respect to the consideration of municipal reserve under modern legislation. This is the same today as it was in the 1980s and 90s – DRC 5621 IH was (and is) not legally enforceable.

The *Municipal Government Act* provides the legislation requiring the dedication of reserve land. Section 661(b) states that:

“the owner of a parcel of land that is the subject of a proposed subdivision must provide... land for municipal reserve, school reserve, municipal and school reserve, money in place of any or all of those reserves or a combination of reserves and money.”

Note that registration of a deferred reserve caveat does not constitute dedication of reserves in accordance with the Act.

To summarize the important considerations with regard to municipal reserve dedication for this parcel:

- Deferred reserve caveat 5621 IH was registered prior to 1963, and is not enforceable under modern legislation. It is not currently registered on an active title;
- Registration of a DRC alone does not satisfy the requirement to provide municipal reserve. Municipal reserve dedication is only considered to be provided once land or cash-in-lieu of land is provided;
- Lands that were subject to 5621 IH in the past have not provided the deferred portion of land or cash-in-lieu of land. Despite the intention of 5621 IH, no municipal reserve dedication has been provided on behalf of the subject lands.

Conditions: 10

POLICY CONSIDERATIONS:

Policy considerations were addressed in redesignation application PL20180005. The Applicant provided a Lot and Road Plan in accordance with the requirements of the County Plan.

CONCLUSION:

The subject lands hold the appropriate land use designation for the proposed parcels, and all technical considerations have been appropriately addressed through the conditions of approval, in accordance with approved Statutory Policy. Therefore, the application meets applicable policies.

OPTIONS:

Option #1: THAT Subdivision Application PL20180079 be approved with the conditions noted in Appendix A.

Option #2: THAT Subdivision Application PL20180079 be refused as per the reasons noted.

Respectfully submitted,

Concurrence,

“Sherry Baers”

“Al Hoggan”

Executive Director
Community Development Services

Chief Administrative Officer

SK/rp

APPENDICES:

APPENDIX 'A': Approval Conditions

APPENDIX 'B': Application Referrals

APPENDIX 'C': Map Set

APPENDIX 'D': County Legal Opinion

APPENDIX 'E': Landowner Comments

APPENDIX A: APPROVAL CONDITIONS

- A. That the application to create a ± 0.82 hectare (± 2.02 acre) parcel, and a ± 1.13 hectare (± 2.80 acre) parcel with a ± 4.05 hectare (± 10.00 acre) remainder from a portion of SW-2-24-3-W5M was evaluated in terms of Section 654 of the *Municipal Government Act* and Sections 7 and 14 of the Subdivision and Development Regulations, and having considered adjacent landowner submissions, it is recommended that the application be approved as per the Tentative Plan for the reasons listed below:
1. The application is consistent with statutory policy;
 2. The subject lands hold the appropriate land use designation;
 3. The technical aspects of the subdivision proposal have been considered, and are further addressed through the conditional approval requirements.
- B. The Owner is required, at their expense, to complete all conditions attached to and forming part of this conditional subdivision approval prior to Rocky View County (the County) authorizing final subdivision endorsement. This requires submitting all documentation required to demonstrate each specific condition has been met, or agreements (and necessary securities) have been provided to ensure the condition will be met, in accordance with all County Policies, Standards and Procedures, to the satisfaction of the County, and any other additional party named within a specific condition. Technical reports required to be submitted as part of the conditions must be prepared by a Qualified Professional, licensed to practice in the Province of Alberta, within the appropriate field of practice. The conditions of this subdivision approval do not absolve an Owner from ensuring all permits, licenses, or approvals required by Federal, Provincial, or other jurisdictions are obtained.
- C. Further, in accordance with Section 654 and 655 of the *Municipal Government Act*, the application is approved subject to the following conditions of approval:

Plan of Subdivision

- 1) Subdivision is to be effected by a Plan of Survey, pursuant to Section 657 of the *Municipal Government Act*, or such other means satisfactory to the Registrar of the South Alberta Land Titles District;

Transportation and Access

- 1) The Owner shall upgrade the existing approach on West Meadows Estates Road to a paved standard in order to provide access to Lot 2.
- 2) The Owner shall construct a new paved approach on West Meadows Estates Road in order to provide access to Lot 3.

Fees and Levies

- 3) The Owner shall pay the Transportation Off-Site Levy in accordance with Bylaw C-7356-2014 prior to endorsement. The County shall calculate the total amount owing:
 - a) from the total gross acreage of Lots 1 and 2 as shown on the Plan of Survey.
- 4) The Owner shall pay the County subdivision endorsement fee, in accordance with the Master Rates Bylaw, for the creation of two new lots.

Site Servicing/Developability

- 5) The Owner shall prepare and register a Utility Right-of-Way, satisfactory to the County, on the title of Lot 2:



- a) 6 metre wide drainage easement/utility right-of-way on title along the entire southern boundary of Lot 2, in accordance with the Conceptual SSIP.
- 6) The Owner is to enter into a Development Agreement (Site Improvements / Services Agreement) with the County that includes the following:
 - a) The installation of a packaged sewage treatment system meeting BNQ or NSF 40 Standards, in accordance with the findings of the Private Sewage Treatment System Assessment and Site Evaluation prepared by SOILWORX (December 2016).
- 7) Water is to be supplied by an individual well on Lots 2 & 3. The subdivision shall not be endorsed until:
 - a) An Aquifer Testing (Phase II) Report is provided, which is to include aquifer testing and the locations of the wells on each lot; and
 - b) The results of the aquifer testing meet the requirements of the Water Act; if they do not, the subdivision shall not be endorsed or registered.
- 8) The Owner is to enter into a Deferred Services Agreement with the County, to be registered on title for each of proposed Lots 1, 2, & 3, indicating:
 - a) Requirements for each future Lot Owner to connect to County piped water, wastewater, and storm water systems at their cost when such services become available;
 - b) Requirements for decommissioning and reclamation once County servicing becomes available.

Municipal Reserves

- 9) The provision of Reserve in the amount of 10 percent of the area of Lots 1 & 2, as determined by the Plan of Survey, is to be provided by payment of cash-in-lieu pursuant to Section 666(3) of the *Municipal Government Act*.
 - a) The Applicant shall provide a market value appraisal, prepared by a certified appraiser, in accordance with Section 667(1)(a) of the *Municipal Government Act*, and the satisfaction of Rocky View County:
 - b) Reserves for Lot 3 are to be deferred with Caveat, pursuant to Section 669(2) of the *Municipal Government Act*.

Taxes

- 10) All taxes owing, up to and including the year in which subdivision is to be registered, are to be paid to Rocky View County prior to signing the final documents pursuant to Section 654(1) of the *Municipal Government Act*.

D. SUBDIVISION AUTHORITY DIRECTION

- 1) Prior to final endorsement of the Subdivision, Administration is directed to present the Owner with a Voluntary Recreation Contribution Form and to ask them if they will contribute to the Fund in accordance with the contributions prescribed in the Master Rates Bylaw.

APPENDIX 'B': APPLICATION REFERRALS

AGENCY	COMMENTS
<i>School Authority</i>	
Rocky View Schools	No comment.
Calgary Catholic School District	No comment.
Public Francophone Education	No comment.
Catholic Francophone Education	No comment.
<i>Province of Alberta</i>	
Alberta Environment	Not required.
Alberta Transportation	<p>The department recognizes that the land involved in this application is removed from the provincial highway system, and relies on the municipal road network for access. It appears that the two residential parcels being created by this application should not have a significant impact on the provincial highway system.</p> <p>Alberta Transportation has no objection to this proposal and grants an unconditional variance of Section 14 of the Subdivision and Development Regulation. Pursuant to Section 678(2.1) of the Municipal Government Act, Alberta Transportation varies the distance to a highway set out in Section 5 of the Subdivision and Development Regulation. From the department's perspective any appeals to be heard regarding this subdivision application may be heard by the local Subdivision and Development Appeal Board rather than the Municipal Government Board.</p>
Alberta Sustainable Development (Public Lands)	Not required.
Alberta Culture and Community Spirit (Historical Resources)	Not required.
Energy Resources Conservation Board	No comment.
Alberta Health Services	No concerns.
<i>Public Utility</i>	
ATCO Gas	No objection.
ATCO Pipelines	No objection.
AltaLink Management	No comment.

AGENCY	COMMENTS
FortisAlberta	No easement required.
Telus Communications	No concerns.
TransAlta Utilities Ltd.	No comment.
Rockyview Gas Co-op Ltd.	No comment.
<i>Other External Agencies</i>	
EnCana Corporation	No comment.
Canadian Pacific Railway	No comment.
City of Calgary	No comments.
<i>Rocky View County</i>	
<i>Boards and Committees</i>	
ASB Farm Members and Agricultural Fieldmen	No concerns.
Rocky View Central Recreation Board	As Municipal Reserves were previously provided on Plan 9510253, Rocky View Central Recreation District Board has no comments on this circulation.
<i>Internal Departments</i>	
Recreation, Parks & Community Support	No concerns.
Development Authority	No comment.
GIS Services	No comment.
Building Services	No comment.
Municipal Enforcement	No concerns.
Fire Services & Emergency Management	No concerns.
Planning, Development, & Bylaw Services - Engineering	Geotechnical: <ul style="list-style-type: none"> As a condition of future subdivision of the Remainder parcel (Lot 3), the applicant may be required to submit a Geotechnical Investigation Report, in accordance with the requirements of the County Servicing Standards. The report shall provide recommendations for road construction (as identified in previous application PL20180005) and include a

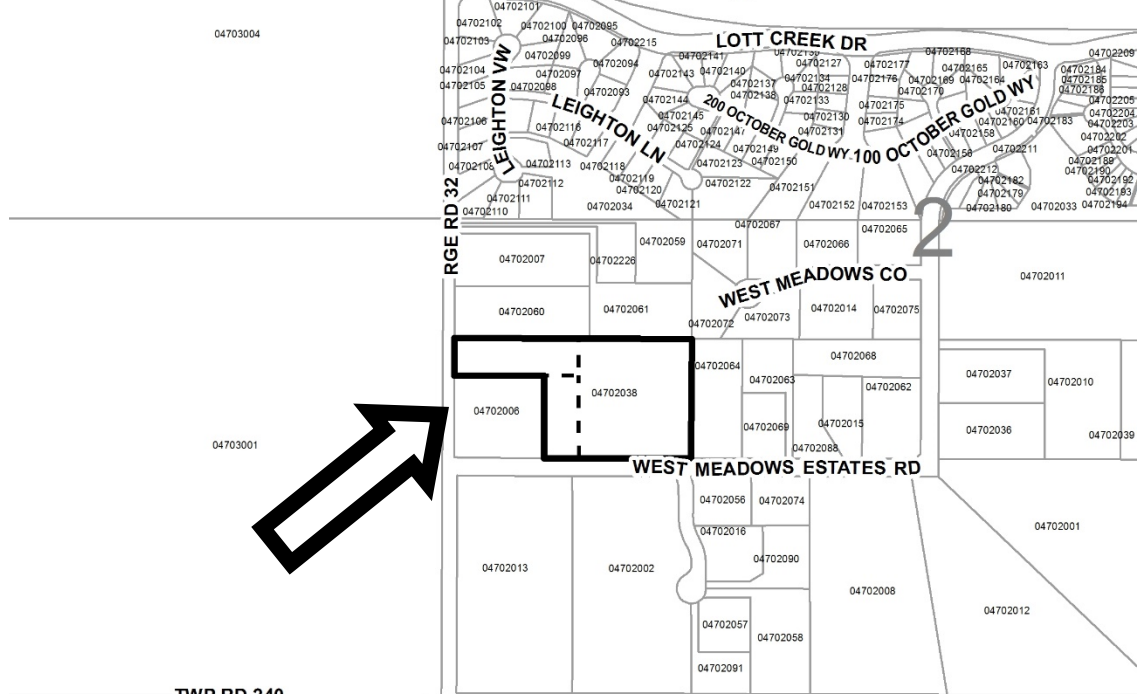
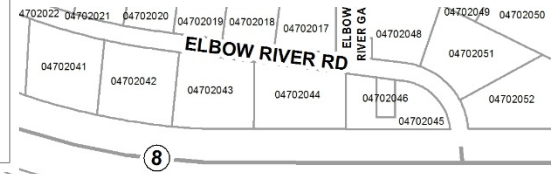
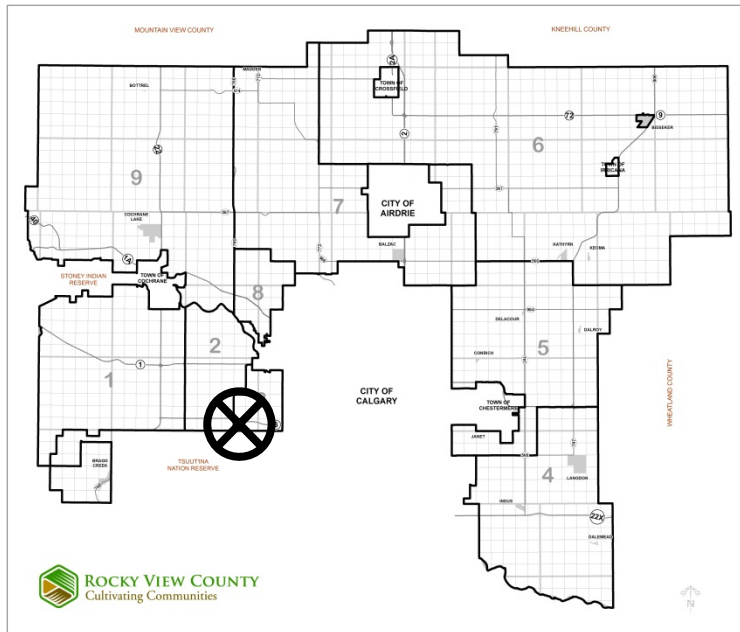
AGENCY	COMMENTS
	<p>Slope Stability Assessment if any slopes greater than 15% are identified.</p> <p>Transportation:</p> <ul style="list-style-type: none"> The applicant submitted a Transportation Review (Bunt & Associates Engineering Ltd. – November 20, 2017) with the previous land use redesignation application (PL20180005). The review concludes that the proposed future subdivision will not have any impacts on the surrounding road network, and that no upgrades are required. Engineering has no further concerns. Proposed Lot 1 is accessed from an existing approach from Range Road 32. Proposed Lot 2 is accessed from an existing approach from West Meadows Estates Road. The proposed Remainder (Lot 3) does not have an existing approach. As a condition of subdivision, the applicant shall be required to construct a new paved approach to the Remainder (Lot 3) and upgrade the existing approach to Lot 2 to a paved standard, in accordance with the requirements of the County Servicing Standards. As a condition of subdivision, the applicant is required to provide payment of the Transportation Off-site Levy in accordance with the applicable levy at time of subdivision approval, for the total acreage of proposed Lots 1 & 2, as the applicant is proposing to subdivide a Residential One District parcel. At this time, TOL shall be deferred on the proposed Remainder (Lot 3), as the parcel is greater than 9.88 acres in size. TOL shall be collected on the Remainder (Lot 3) at the time of future subdivision. <ul style="list-style-type: none"> Base TOL = \$4595/acre. Acreage = 2.8 + 2.02 acres. TOL payment = (\$4595/acre)*(4.82 acres) = \$22,148. In the previous land use redesignation application (PL20180005), the applicant had proposed to dedicate 25 metre wide portion of the subject lands as public road allowance to construct a road from West Meadows Estates Road to access four lots which will be subdivided from the Remainder (Lot 3) in the future. The proposed internal road is aligned with the driveway across West Meadows Estates Road. This proposal aligns with the County Servicing Standards, and shall be accessed by a Country Residential Standard Road (section 400.5), which requires a 25 metre right-of-way. As a condition of future subdivision of the Remainder (Lot 3), the applicant shall enter into a Development Agreement for construction of a Country Residential Standard Road and cul-de-sac, as identified on the proposed plan of subdivision (submitted with previous application PL20180005), in

AGENCY	COMMENTS
	<p>accordance with the County Servicing Standards.</p> <ul style="list-style-type: none"> ○ Some of the construction costs may be recovered through the County's Infrastructure Cost Recovery Policy; ○ If required by the County Road Operations Group, the applicant will be required to enter into a Road Use Agreement. <p>Sanitary/Waste Water:</p> <ul style="list-style-type: none"> • The applicant submitted a Level 3 PSTS Assessment (Sedulous Engineering Inc. – December 21, 2017) with the previous land use redesignation application (PL20180005). The report concludes that the soils of the subject lands are suitable for use of a PSTS. The report acknowledged that in accordance with County Policy 449, for parcel sizes less than 3.95 acres and greater than 1.98 acres, the County requires the use a Package Sewage Treatment Plant meeting BNQ standards, and the septic field was sized accordingly. The Report also included a Level 1 Variation Assessment, which concludes that the existing PSTS system meets the required setback distances and is in good working order. • In accordance with County Policy 449, for parcel sizes less than 3.95 acres and greater than 1.98 acres, the County requires the use a Package Sewage Treatment Plant meeting BNQ standards. • As a condition of subdivision, the Owner is to enter into a Site Improvements / Services Agreement with the County, which shall be registered on title of Lot 2 and Remainder (Lot 3) and shall include the following: <ul style="list-style-type: none"> ○ In accordance with the Level 3 PSTS Assessment prepared by Sedulous Engineering Inc. ○ For the construction of a Packaged Sewage Treatment Plant meeting Bureau de Normalisation du Quebec (BNQ) standards. • As a condition of subdivision, a Deferred Services Agreement shall be registered against each new certificate of title (lot) created, requiring the owner to tie into municipal services when they become available. <p>Water Supply And Waterworks:</p> <ul style="list-style-type: none"> • The applicant has indicated that they approached Westridge Utilities to inquire about water servicing. However, they refused to provide a letter of commitment regarding servicing, so the applicant has chosen to use groundwater wells. • The applicant submitted a Phase 1 Groundwater Supply Evaluation (Groundwater Information Technologies Ltd. –

AGENCY	COMMENTS
	<p>December 5, 2017) with the previous land use redesignation application (PL20180005). The report meets the requirements of the County Servicing Standards and concludes that the aquifer underlying the proposed subdivision can supply water at a rate of 1250m³/year without causing adverse effects on existing users.</p> <ul style="list-style-type: none"> • As a condition of subdivision, the applicant will be required to drill new wells on Lot 2 & Remainder (Lot 3), and provide the County with a Phase 2 Aquifer Testing Report for the new wells, prepared by a qualified professional, in accordance with procedures outlined in the County Servicing Standards. The report shall include a Well Driller's Report confirming a minimum pump rate of 1.0 igpm for each well. • As a condition of subdivision, a Deferred Services Agreement shall be registered against each new certificate of title (lot) created, requiring the owner to tie into municipal services when they become available. • As a condition of future subdivision of the Remainder (Lot 3), the applicant will be required to drill new wells on proposed lots, and provide the County with a Phase 2 Aquifer Testing Report for the new wells, prepared by a qualified professional, in accordance with procedures outlined in the County Servicing Standards. The report shall include a Well Driller's Report confirming a minimum pump rate of 1.0 igpm for each well. <p>Storm Water Management:</p> <ul style="list-style-type: none"> • The applicant submitted a Conceptual Level Site-Specific Stormwater Implementation Report (Sedulous Engineering Inc. – December 21, 2017) with the previous land use redesignation application (PL20180005). The report recommends the use of swales and a dry pond with outlet control structure to manage to increased runoff in the post-development condition. The development meets the requirements of the Springbank Master Drainage Plan. <ul style="list-style-type: none"> ○ This will allow the development to meet the requirements for the Average Annual Runoff Volume Target of 45mm and the Max Release Rate of 1.714 L/s/ha (A Report on Drainage Strategies for Springbank – Westhoff Engineering Resources Inc. – 2004). • As a condition of subdivision, the applicant shall be required to provide and register on title, a 6 metre wide overland drainage utility right-of-way along the entire southern boundary of proposed Lot 2. This shall allow for the future construction of the swale identified in the Conceptual SSIP at the time when Remainder (Lot 3) develops. • As a condition of future subdivision of the Remainder (Lot 3), the applicant shall submit a Site-Specific Stormwater

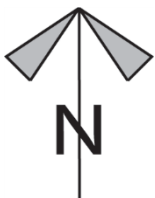
AGENCY	COMMENTS
	<p>Implementation Plan (SSIP) to address the detailed design of the stormwater management infrastructure, including the swales, dry pond and outlet control structure;</p> <ul style="list-style-type: none"> • As a condition of future subdivision of the Remainder (Lot 3), the applicant shall enter into a Development Agreement for the construction of the stormwater management infrastructure, in accordance with recommendations of the SSIP; • As a condition of future subdivision of the Remainder (Lot 3), the applicant shall provide confirmation of all required Alberta Environment approvals for the Stormwater Management Infrastructure; • As a condition of future subdivision of the Remainder (Lot 3), the applicant shall be required to register a drainage easement/utility right-of-way on title, as identified in the Conceptual SSIP; • As a condition of future subdivision of the Remainder (Lot 3), the applicant shall submit an Erosion and Sedimentation Control Plan, in accordance with the requirements of the County Servicing Standards. <p>Environmental</p> <ul style="list-style-type: none"> • Any approvals required through Alberta Environment shall be the sole responsibility of the Applicant/Owner.
Transportation Services	No issues.
Capital Project Management	No concerns.
Operational Services	Access required.
Agriculture and Environmental Services - Solid Waste and Recycling	No concerns.

Circulation Period: July 13, 2018 to August 3, 2018



TSUUT'INA NATION RESERVE

LOCATION PLAN



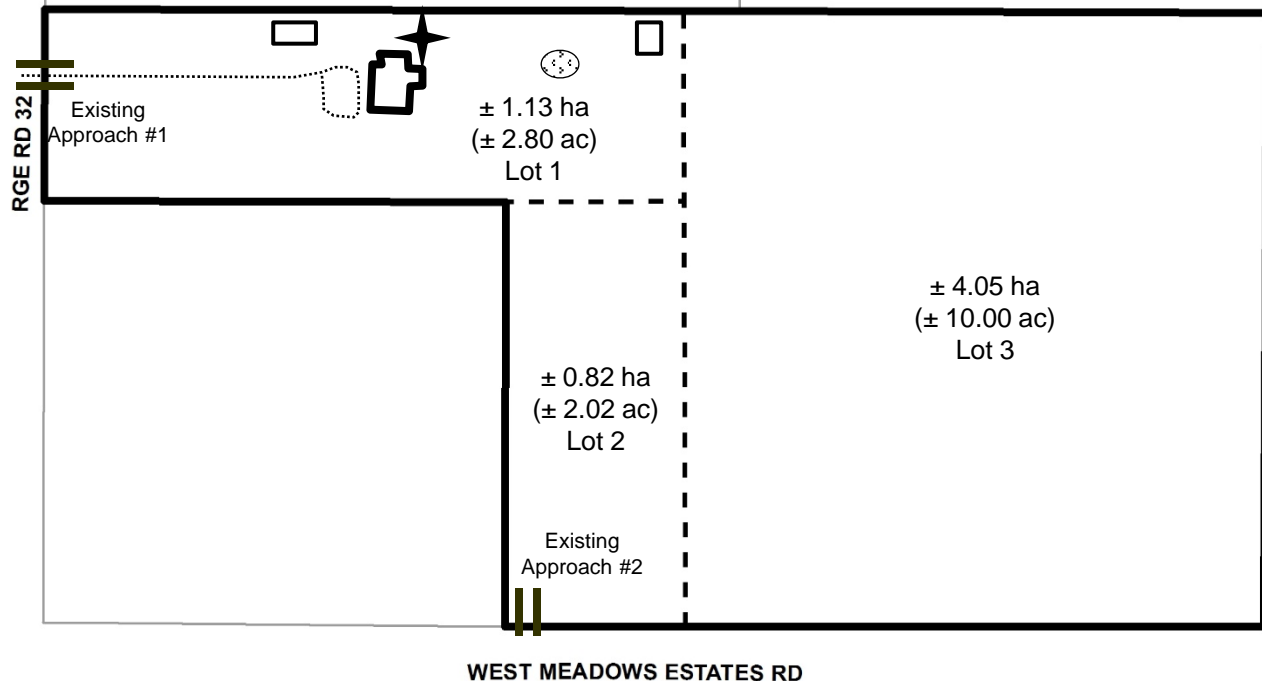
SW-02-24-03-W05M

Date: June 27, 2018

Division # 3

File: 04702038

Subdivision Proposal: To create a ± 0.82 hectare (± 2.02 acre) parcel, a ± 1.13 hectare (± 2.80 acre) parcel with a ± 4.05 hectare (± 10.00 acre) remainder.



Legend

- Dwelling
- Accessory Building
- Water Well
- Septic Field
- Driveway

Surveyor's Notes:

1. Parcels must meet minimum size and setback requirements of Land Use Bylaw C-4841-97.
2. Refer to Notice of Transmittal for approval conditions related to this Tentative Plan.

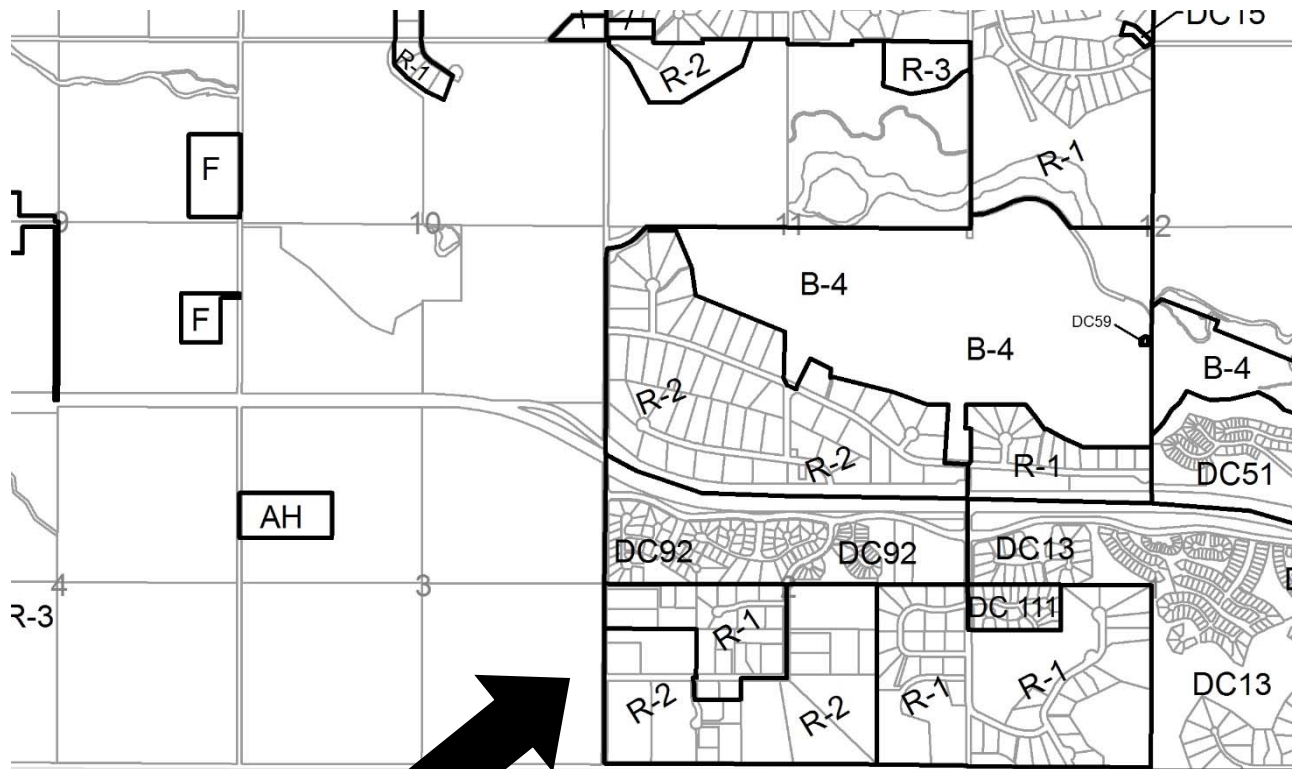
TENTATIVE PLAN

SW-02-24-03-W05M

Date: June 27, 2018

Division # 3

File: 04702038



TSUUT'INA NATION RESERVE

Ranch and Farm	B-1 Highway Business
RF2 Ranch and Farm Two	B-2 General Business
RF3 Ranch and Farm Three	B-3 Limited Business
AH Agricultural Holding	B-4 Recreation Business
F Farmstead	B-5 Agricultural Business
R-1 Residential One	B-6 Local Business
R-2 Residential Two	NRI Natural Resource Industrial
R-3 Residential Three	HR-1 Hamlet Residential Single Family
DC Direct Control	HR-2 Hamlet Residential (2)
PS Public Service	HC Hamlet Commercial
	AP Airport

LAND USE MAP

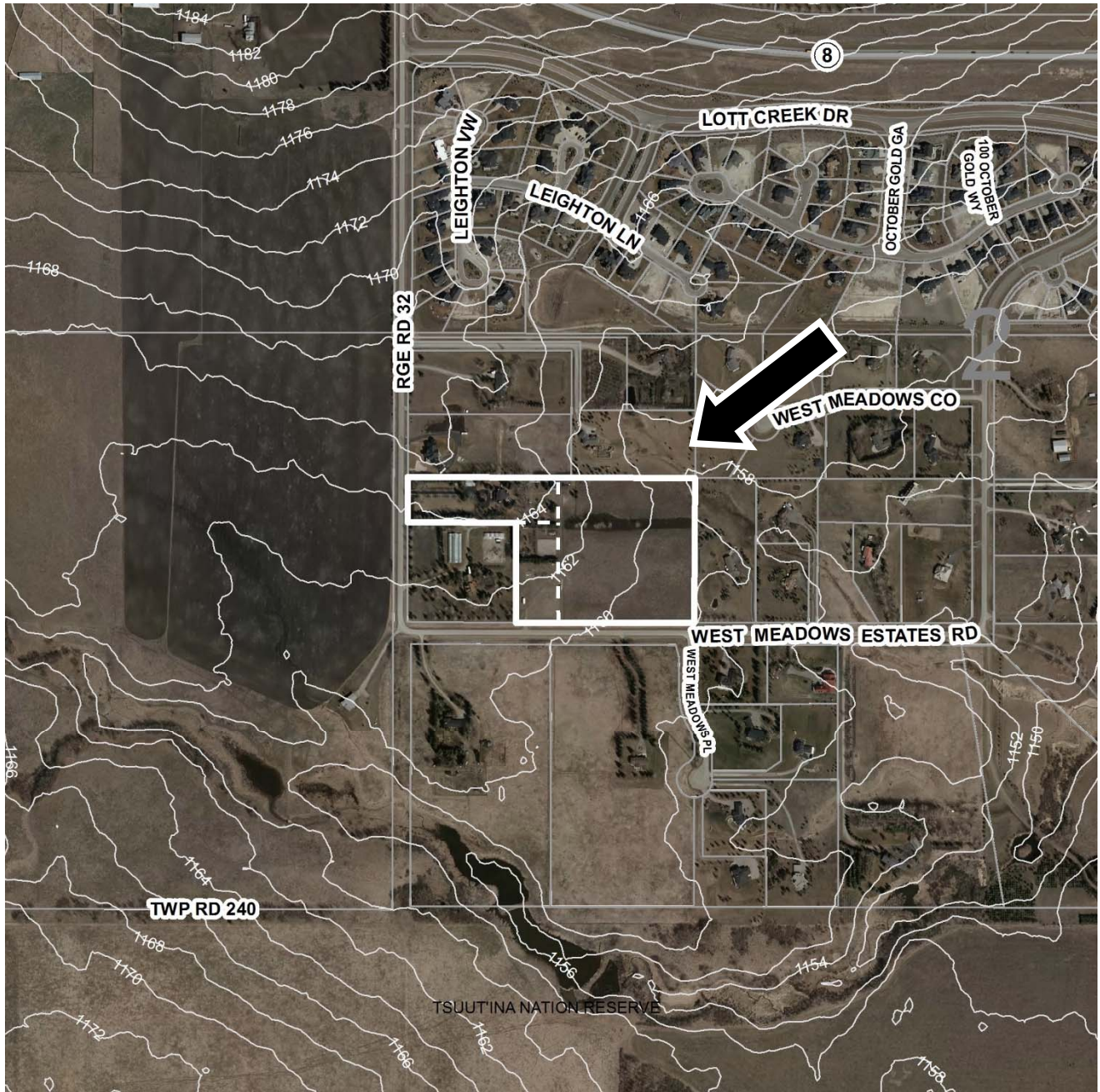


SW-02-24-03-W05M

Date: June 27, 2018

Division # 3

File: 04702038



Contours are generated using 10m grid points, and depict general topographic features of the area. Detail accuracy at a local scale cannot be guaranteed. They are included for reference use only.

TOPOGRAPHY
Contour Interval 2 M



SW-02-24-03-W05M

Date: June 27, 2018

Division # 3

File: 04702038



Note: Post processing of raw aerial
photography may cause varying degrees
of visual distortion at the local level.

AIR PHOTO

Spring 2016

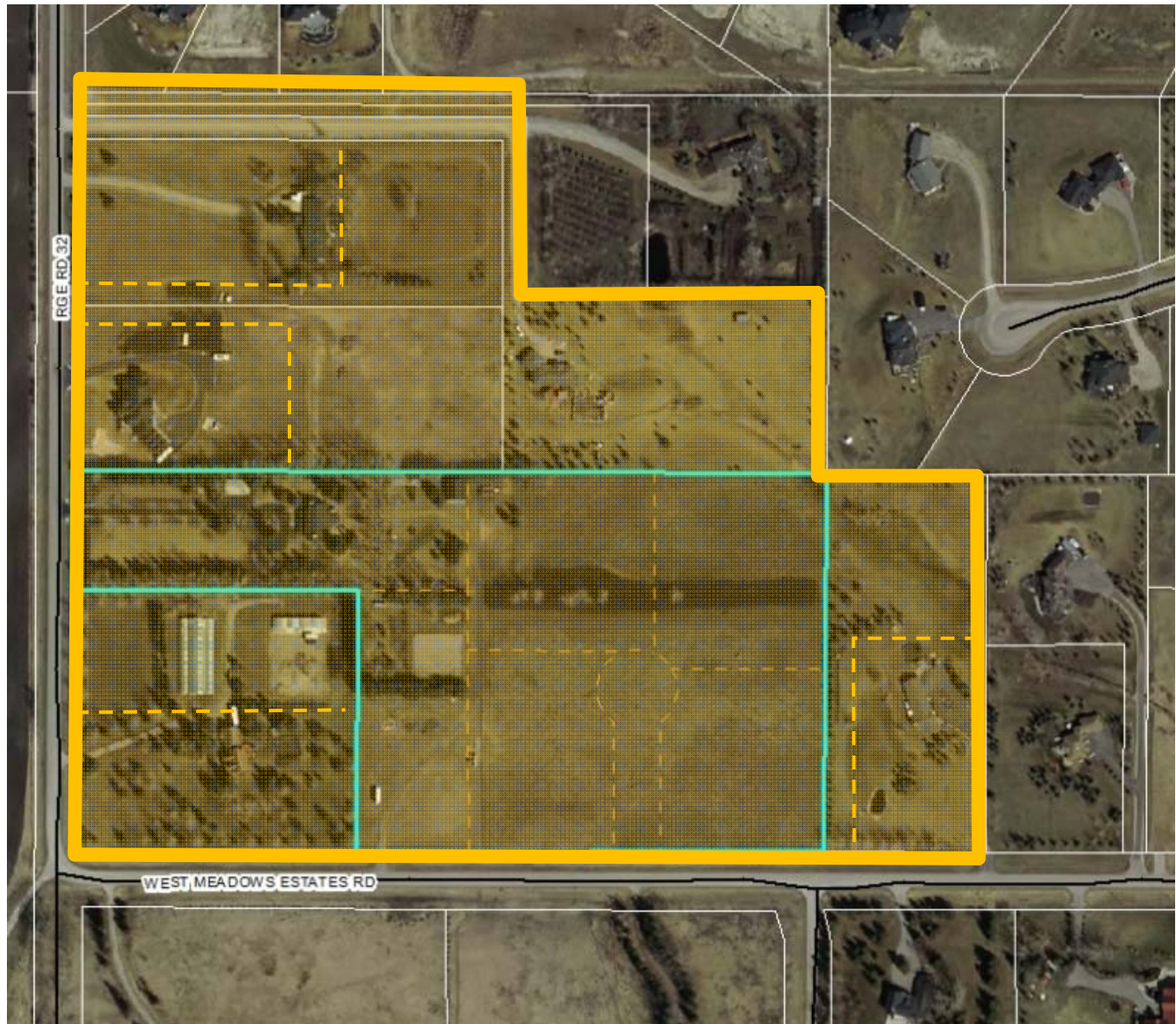


SW-02-24-03-W05M

Date: June 27, 2018

Division # 3

File: 04702038



LOT & ROAD PLAN

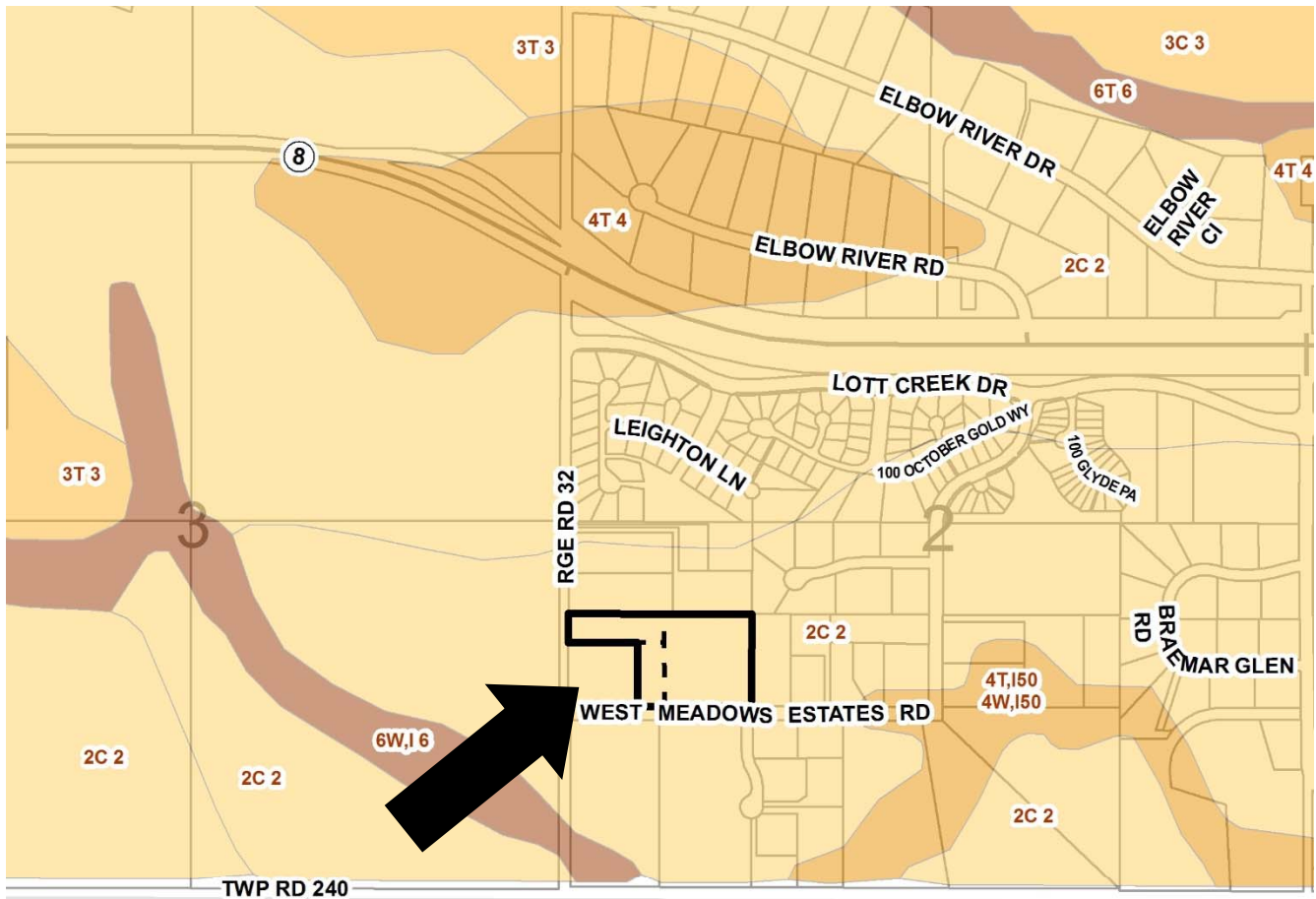


SW-02-24-03-W05M

Date: June 27, 2018

Division # 3

File: 04702038



LAND CAPABILITY CLASSIFICATION LEGEND
Limitations refer to cereal, oilseeds and tame hay crops

CLI Class

- 1 - No significant limitation
- 2 - Slight limitations
- 3 - Moderate limitations
- 4 - Severe limitations
- 5 - Very severe limitations
- 6 - Production is not feasible
- 7 - No capability

Limitations

- B - brush/tree cover
- C - climate
- D - low permeability
- E - erosion damage
- F - poor fertility
- G - Steep slopes
- H - temperature
- I - flooding
- J - field size/shape
- K - shallow profile development
- M - low moisture holding, adverse texture
- N - high salinity
- P - excessive surface stoniness
- R - shallowness to bedrock
- S - high sodicity
- T - adverse topography
- U - prior earth moving
- V - high acid content
- W - excessive wetness/poor drainage
- X - deep organic deposit
- Y - slowly permeable
- Z - relatively impermeable

SOIL MAP

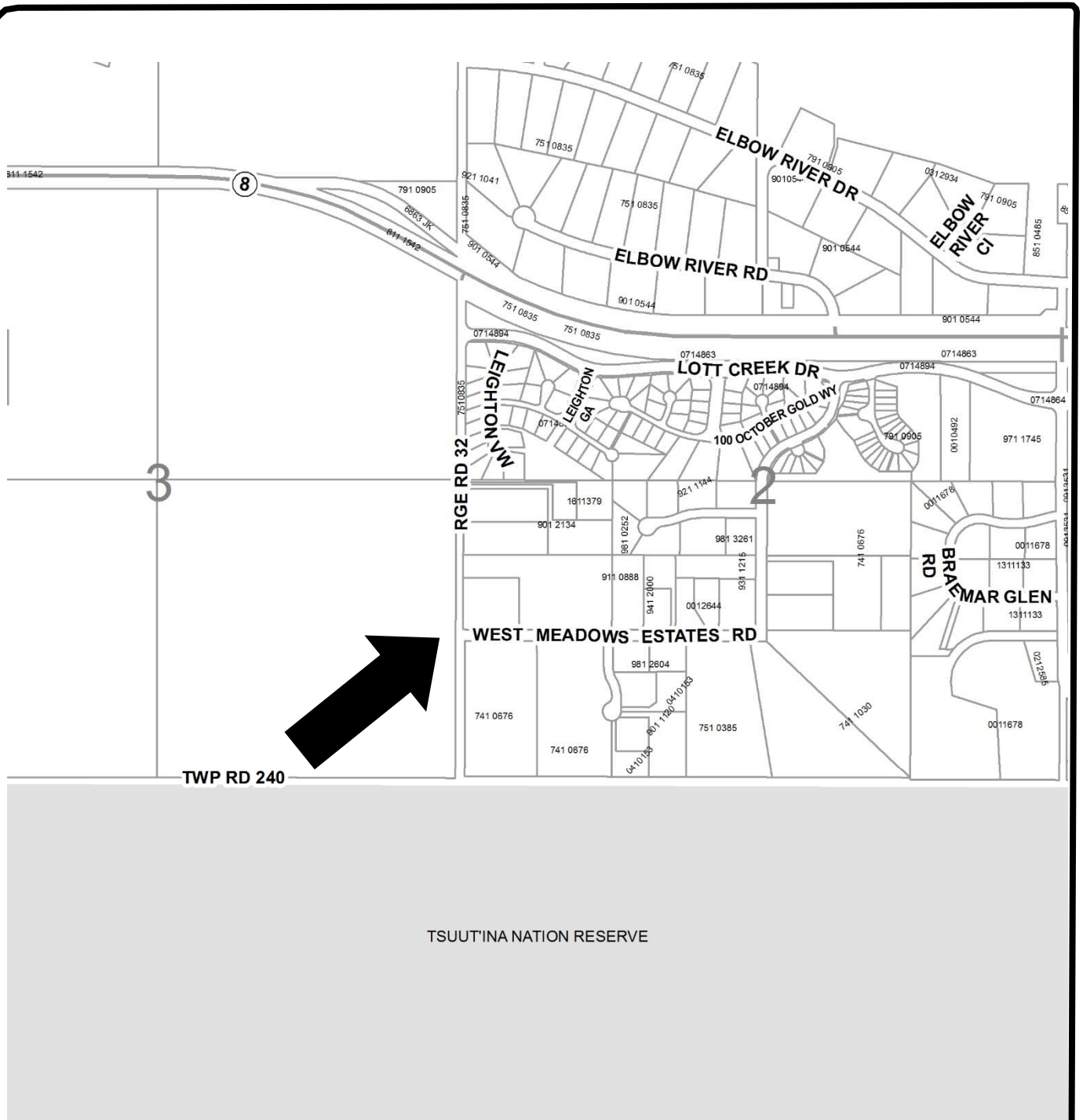


SW-02-24-03-W05M

Date: June 27, 2018

Division # 3

File: 04702038



Legend – Plan numbers

- First two numbers of the Plan Number indicate the year of subdivision registration.
- Plan numbers that include letters were registered before 1973 and do not reference a year

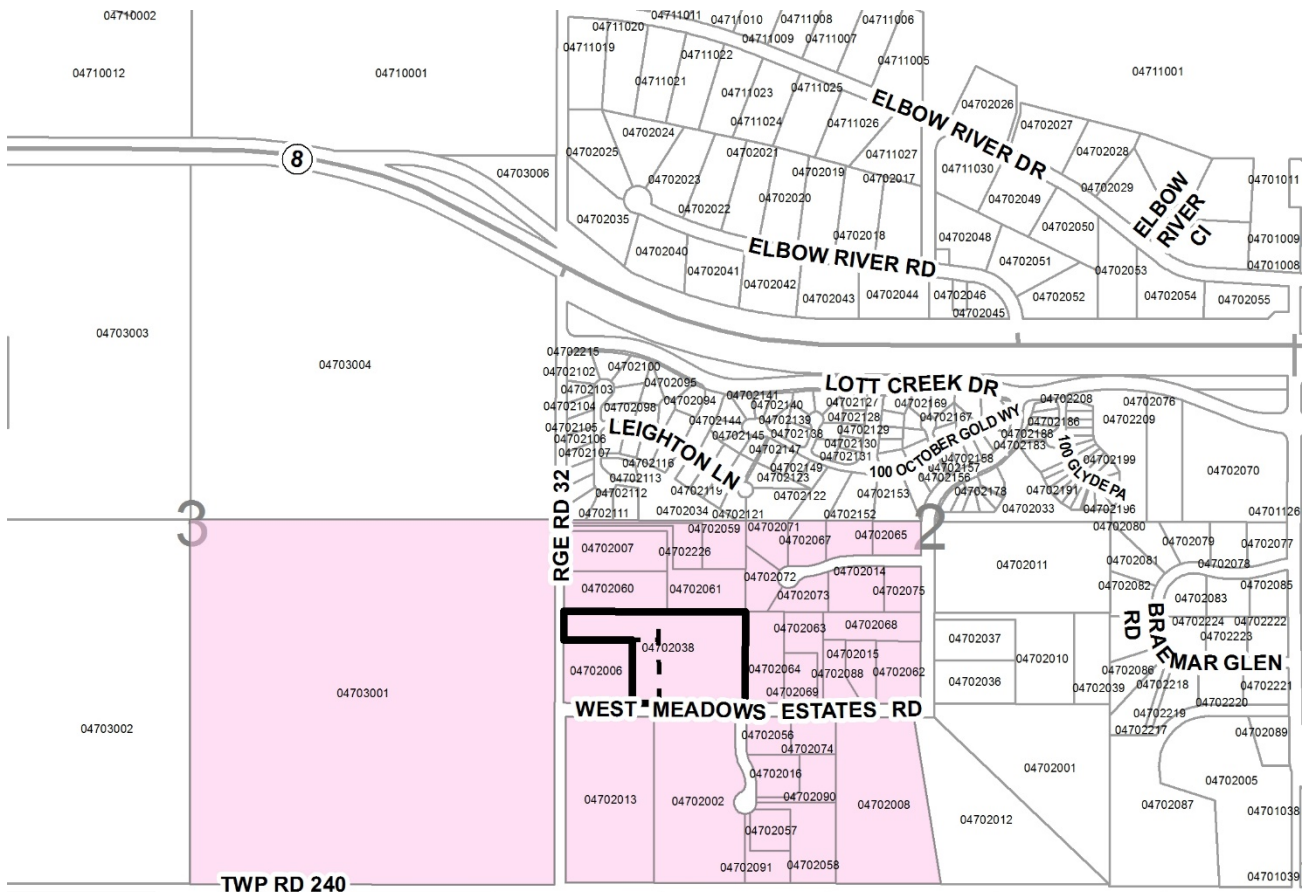
HISTORIC SUBDIVISION MAP

SW-02-24-03-W05M

Date: June 27, 2018

Division # 3

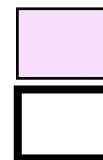
File: 04702038



Letters in Opposition

Letters in Support

Legend



Circulation Area

Subject Lands

LANDOWNER CIRCULATION AREA

SW-02-24-03-W05M

Date: June 27, 2018

Division # 3

File: 04702038



262075 Rocky View Point
Rocky View County, AB, T4A 0X2

403-230-1401
questions@rockyview.ca
www.rockyview.ca

Date Mailed: Friday, March 15, 2019

B & A Planning Group - Ken Venner
Suite 600, 215 - 9th Avenue SW
Calgary, AB T2P 1K3

File: PL20180079

RE: SUBDIVISION TRANSMITTAL OF DECISION

Pursuant to a decision of the Subdivision Authority for Rocky View County on March 12, 2019, your Subdivision Application was conditionally approved. The conditions of approval are outlined below:

- A. That the application to create a ± 0.82 hectare (± 2.02 acre) parcel, and a ± 1.13 hectare (± 2.80 acre) parcel with a ± 4.05 hectare (± 10.00 acre) remainder from a portion of SW-2-24-3-W5M was evaluated in terms of Section 654 of the *Municipal Government Act* and Sections 7 and 14 of the Subdivision and Development Regulations, and having considered adjacent landowner submissions, it is recommended that the application be approved as per the Tentative Plan for the reasons listed below:
 - 1) The application is consistent with statutory policy;
 - 2) The subject lands hold the appropriate land use designation;
 - 3) The technical aspects of the subdivision proposal have been considered, and are further addressed through the conditional approval requirements.
- B. The Owner is required, at their expense, to complete all conditions attached to and forming part of this conditional subdivision approval prior to Rocky View County (the County) authorizing final subdivision endorsement. This requires submitting all documentation required to demonstrate each specific condition has been met, or agreements (and necessary securities) have been provided to ensure the condition will be met, in accordance with all County Policies, Standards and Procedures, to the satisfaction of the County, and any other additional party named within a specific condition. Technical reports required to be submitted as part of the conditions must be prepared by a Qualified Professional, licensed to practice in the Province of Alberta, within the appropriate field of practice. The conditions of this subdivision approval do not absolve an Owner from ensuring all permits, licenses, or approvals required by Federal, Provincial, or other jurisdictions are obtained.
- C. Further, in accordance with Section 654 and 655 of the *Municipal Government Act*, the application is approved subject to the following conditions of approval:

Plan of Subdivision

- 1) Subdivision is to be effected by a Plan of Survey, pursuant to Section 657 of the *Municipal Government Act*, or such other means satisfactory to the Registrar of the South Alberta Land Titles District;

Transportation and Access

- 2) The Owner shall upgrade the existing approach on West Meadows Estates Road to a paved



ROCKY VIEW COUNTY

262075 Rocky View Point
Rocky View County, AB, T4A 0X2

403-230-1401
questions@rockyview.ca
www.rockyview.ca

standard in order to provide access to Lot 2.

- 3) The Owner shall construct a new paved approach on West Meadows Estates Road in order to provide access to Lot 3.

Fees and Levies

- 4) The Owner shall pay the Transportation Off-Site Levy in accordance with Bylaw C-7356-2014 prior to endorsement. The County shall calculate the total amount owing:
 - a) from the total gross acreage of Lots 1 and 2 as shown on the Plan of Survey.
- 5) The Owner shall pay the County subdivision endorsement fee, in accordance with the Master Rates Bylaw, for the creation of two new lots.

Site Servicing/Developability

- 6) The Owner shall prepare and register a Utility Right-of-Way, satisfactory to the County, on the title of Lot 2:
 - a) 6 metre wide drainage easement/utility right-of-way on title along the entire southern boundary of Lot 2, in accordance with the Conceptual SSIP.
- 7) The Owner is to enter into a Development Agreement (Site Improvements / Services Agreement) with the County that includes the following:
 - a) The installation of a packaged sewage treatment system meeting BNQ or NSF 40 Standards, in accordance with the findings of the Private Sewage Treatment System Assessment and Site Evaluation prepared by SOILWORX (December 2016).
- 8) Water is to be supplied by an individual well on Lots 2 & 3. The subdivision shall not be endorsed until:
 - a) An Aquifer Testing (Phase II) Report is provided, which is to include aquifer testing and the locations of the wells on each lot; and
 - b) The results of the aquifer testing meet the requirements of the Water Act; if they do not, the subdivision shall not be endorsed or registered.
- 9) The Owner is to enter into a Deferred Services Agreement with the County, to be registered on title for each of proposed Lots 1, 2, & 3, indicating:
 - a) Requirements for each future Lot Owner to connect to County piped water, wastewater, and storm water systems at their cost when such services become available;
 - b) Requirements for decommissioning and reclamation once County servicing becomes available.

Municipal Reserves

- 10) The provision of Reserve in the amount of 10 percent of the area of Lots 1 & 2, as determined by the Plan of Survey, is to be provided by payment of cash-in-lieu pursuant to Section 666(3) of the *Municipal Government Act*:
 - a) The Applicant shall provide a market value appraisal, prepared by a certified appraiser, in accordance with Section 667(1)(a) of the *Municipal Government Act*, and the satisfaction of



262075 Rocky View Point
Rocky View County, AB, T4A 0X2

403-230-1401
questions@rockyview.ca
www.rockyview.ca

Rocky View County:

- b) Reserves for Lot 3 are to be deferred with Caveat, pursuant to Section 669(2) of the Municipal Government Act.

Taxes

- 11) All taxes owing, up to and including the year in which subdivision is to be registered, are to be paid to Rocky View County prior to signing the final documents pursuant to Section 654(1) of the *Municipal Government Act*.

D. SUBDIVISION AUTHORITY DIRECTION

- 1) Prior to final endorsement of the Subdivision, Administration is directed to present the Owner with a Voluntary Recreation Contribution Form and to ask them if they will contribute to the Fund in accordance with the contributions prescribed in the Master Rates Bylaw.

Prior to the submission of any final documents, we advise that it is the applicant's responsibility to ensure that all conditions of approval have been met and all approval fees paid within ONE YEAR of the approval date, and that the Municipality has received documented evidence to this effect.

Pursuant to the *Municipal Government Act*, and in keeping with the instructions set out in the attached Notice of Appeal form, an appeal or dispute from this decision, or the conditions, may be commenced within 21 days from the date of this letter by:

- a) the applicant;
- b) a Government Department where a referral is required pursuant to the Subdivision and Development Regulation; and/or
- c) a school authority with respect to Reserve

An appeal to this decision rests with the Subdivision and Development Appeal Board. Use of the attached Notice of Subdivision Appeal form is required for submission of the appeal.

DUE TO THE POSSIBILITY OF APPEALS, any development or steps necessary to meet the conditions of approval should not occur within 21 days from the date of this letter.

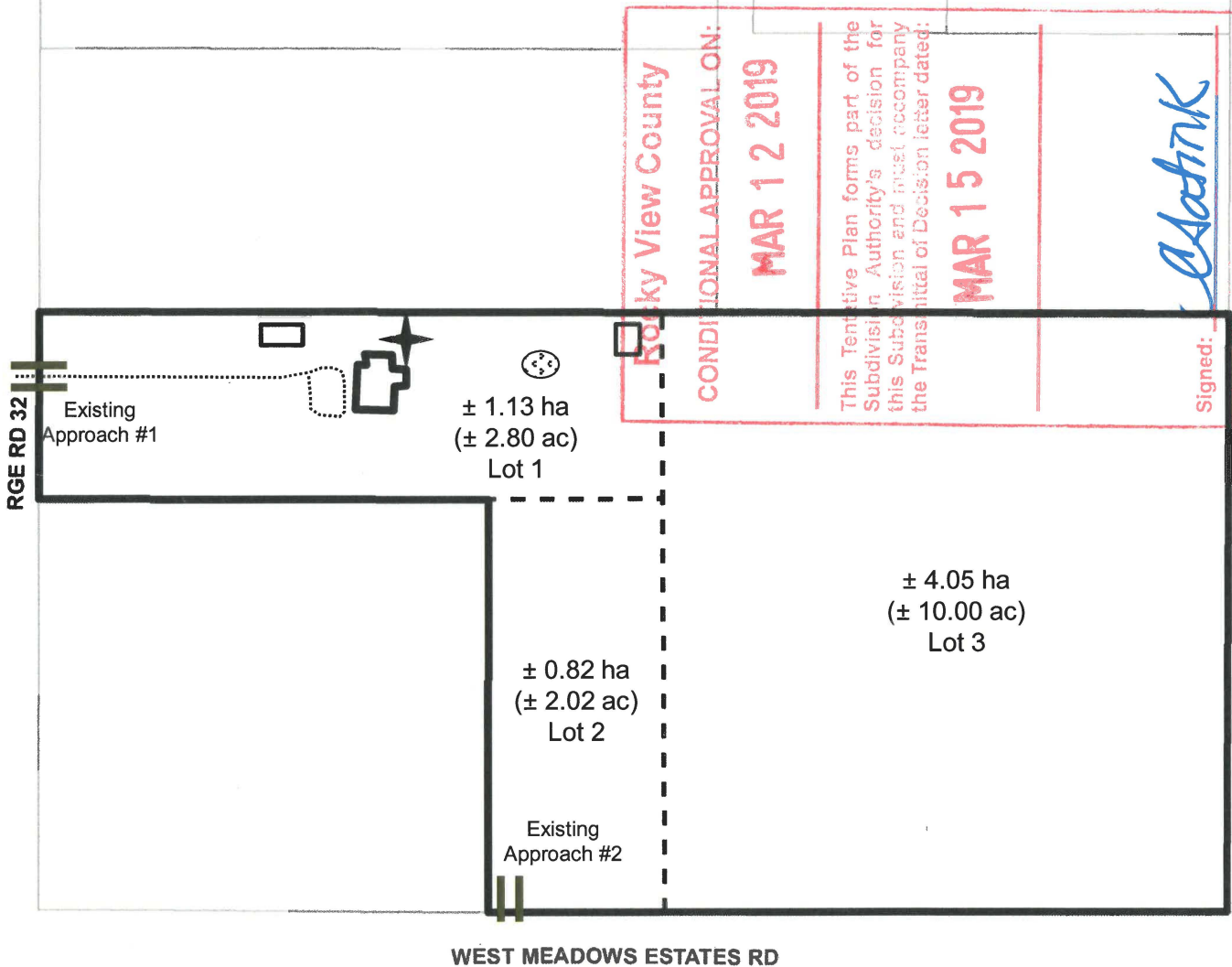
The Subdivision Authority reserves the right to make corrections to any technical or clerical errors or omissions to this decision.

Should you have any questions or concerns, please contact Stefan Kunz at 403-520-3936 for assistance and quote the file number as noted above.

Charlotte Satink
Municipal Clerk
403-520-1651
csatink@rockyview.ca

cc: Horvath, Eric S. & Jamie H.

Subdivision Proposal: To create a ± 0.82 hectare (± 2.02 acre) parcel, a ± 1.13 hectare (± 2.80 acre) parcel with a ± 4.05 hectare (± 10.00 acre) remainder.





Notice of Appeal

Subdivision and Development Appeal Board

Appellant Information			
Name of Appellant(s) Eric Horvath and Jamie Horvath, by their solicitors and agents Stikeman Elliott, Attn: Robert Homersham			
Mailing Address c/o Stikeman Elliott, 4300, 888-3 rd St SW		Municipality Calgary	Province AB
		Postal Code T2P 5C5	
Home Phone #	Business Phone # (403) 508-9266	Email Address rhomersham@stikeman.com	

Site Information	
Municipal Address 240094 Range Road 32 Calgary, AB, T3Z 1M3	Legal Land Description (lot, block, plan and/or quarter-section-township-range-meridian) SW 2-24-3-W5M
Development Permit, Subdivision Application, or Stop Order # PL20180079	Roll#

I am appealing: (check one box only)		
Development Authority Decision <input type="checkbox"/> Approval <input type="checkbox"/> Conditions of Approval <input type="checkbox"/> Refusal	Subdivision Authority Decision <input type="checkbox"/> Approval <input checked="" type="checkbox"/> Conditions of Approval <input type="checkbox"/> Refusal	Decision of Enforcement Services <input type="checkbox"/> Stop Order

Reasons for Appeal (attach separate page, if required)	
The Appellants appeal Condition 10 of the Conditions of Approval of Subdivision Application PL20180079 for the following reasons:	
1. Municipal Reserves ("MR") have already been properly deferred to another parcel and are no longer owing on the subject parcel;	
2. A deferred reserve agreement was entered into in respect of the subject parcel between the then owner of the parent parcel from which the subject parcel was subdivided and the MD of Rocky View No. 44, the predecessor municipality to Rocky View County ("RVC"). This agreement properly documents the deferral of the MR and binds RVC contractually;	
3. This deferral of reserves to another eligible parcel was accepted by the subdivision authority at the time in lieu of an MR dedication of lands or cash-in-lieu of such dedication. The authority for this was under an act, the <i>Surveys and Expropriation Act</i> , 1960, that pre-dates each "former Act" as such is defined in Part 17 of the <i>Municipal Government Act</i> ("MGA"). Notwithstanding this, the language of Sec. 663(d) of the MGA, is permissive rather than mandatory, so does not preclude RVC from exercising its discretion to not take MR again from the subject parcel;	
4. It would be inequitable to take MR twice from the subject parcel;	
5. Such further and other reasons that the Appellants may raise at the hearing of this Appeal.	

This information is collected for the Subdivision and Development Appeal Board of Rocky View County and will be used to process your appeal and to create a public record of the appeal hearing. The information is collected under the authority of the *Freedom of Information and Protection of Privacy Act*, section 33(c) and sections 645, 678, and 686 of the *Municipal Government Act*. If you have questions regarding the collection or use of this information, contact the Manager of Legislative and Legal Services at 403-230-1401.

 Signature of Agent for the Appellants,
 Robert Homersham

April 1, 2019

Date





MLT Aikins LLP
1600 - 520 - 3rd Avenue S.W.
Calgary, Alberta T2P 0R3
T: (403) 693-4300
F: (403) 508-4349

November 21, 2018

Joanne M. Klauer
Direct Line: (403) 693-4335
E-mail: JKlauer@mltaikins.com

Rocky View County
262075 Rocky View Point
Rocky View County, AB
T4A 0X2

Attention: Stefan Kunz, Planner

Dear Sir:

Re: Horvath Subdivision: Deferred Reserve Caveat
File No.: 0051525-New File

Further to the information forwarded by your office, I now provide you with my opinion with respect to the question of whether or not the County can require municipal reserves to be provided with respect to the subdivision of the Horvath lands (PL20180079).

I. Background

The current subdivision application involves a 14.82 acre parcel being subdivided to create two \pm 2 acre parcels with a 10 acre remainder parcel (the "**Lands**").

The Applicant claims that the County cannot impose a municipal reserve requirement on the subdivision because Municipal Reserves have previously been provided in relation to the Lands by way of a deferred reserve caveat in 1960. The Lands are part of a quarter section (SW-2-24-3-W5M) that was originally subdivided in 1961 creating a 40 acre parcel in the NW corner of the quarter section. This 40 acre parcel was then subsequently subdivided into two 20 acre parcels. The Lands are part of the southern 20 acre parcel created from the 40 acre parcel. At the time of the original subdivision of the quarter section, MR was deferred from the 40 acre parcel to the remainder of the quarter section by a deferred reserve caveat (the "**DRC**").

Review of the DRC indicates that it was entered into between William Simpson (the younger) and the County (then the MD) on November 25, 1960 and was originally registered in the Land Titles Office as Document 5621 IH in accordance with Alberta Regulation 185/60: being the "*Subdivision and Transfer Regulations pursuant to the Surveys and Expropriation Act*". While the DRC was acknowledged by County staff to have been registered on certificate of titles to the relevant receiving lands in the 1980's and 1990's, the DRC is no longer registered on title to any lands.

II. Discussion

A. Section 663 of the *Municipal Government Act*

Section 663(d) of the *Municipal Government Act* provides that:

A subdivision authority may not require the owner of a parcel of land that is the subject of a proposed subdivision to provide reserve land or money in place of reserve land if

...

- (d) reserve land, environmental reserve easement or money in place of it was provided in respect of the land that is the subject of the proposed subdivision under this Part or the former Act.

Section 616(g) defines "former Act" as follows:

means the *Planning Act*, RSA 1980 cP-9, *The Planning Act*, 1977, SA 1977 c89, *The Planning Act*, 1970 c276 or *The Planning Act*, SA 1963 c43

As noted above, the DRC was registered in 1960 pursuant to Alberta Regulation 185/60: being the "*Subdivision and Transfer Regulations pursuant to the Surveys and Expropriation Act*". The defined scope of "former Act" does not extend to legislation prior to the 1963 *Planning Act*.

In the text "*Planning Law and Practice in Alberta*", the late Professor Laux notes that there have been regulations in place in Alberta requiring the dedication of reserve land since 1913. Laux states:

The term, "former Act", refers only to planning legislation in effect since the 1963 Planning Act, although reserves were required to be dedicated pursuant to regulations passed under pre-1963 legislation. Accordingly, even though maximum reserves may have been dedicated in respect of the subject land at the time that a previous subdivision was effected prior to 1963, it would appear that such land is nevertheless subject to the reserve requirements of the current Act.

I have found no case authority to support this interpretation. However, in my opinion, the County has a strong argument that as the DRC was registered pursuant to pre-1963 legislation, the Lands are subject to reserve requirements today.

While I think the statutory interpretation argument resolves the issue, I am answering the balance of your questions below.

B. County Questions

1. *When deferring reserves to other lands, at what point is the MR for the sending portion considered to be provided and those lands absolved of further MR requirements?*
 - a. *In other words, is the mere registration of the DRC sufficient, or is it not until the deferred portion of land or cash-in-lieu is actually provided?*
 - b. *In this case, lands in the receiving area were allowed to be subdivided without providing the additional proportional reserve to account for the original sending area. Because the deferred portion was not provided by the receiving lands in accordance with the DRC, is the MR for the sending area considered provided?*

In my opinion, at the time of subdivision of a parcel, the subdivision authority has three options:

1. Don't take any reserves,
2. Take reserves in the form of land and/or cash in lieu from the parcel that is the subject of the proposed subdivision approval, or
3. Direct that the requirement to provide all or part of the reserves be deferred against:
 - a. the remainder of the parcel that is the subject of the proposed subdivision approval, and/or
 - b. other land of the person applying for subdivision approval that is within the same municipality as that parcel of land.

In my opinion, if the subdivision authority opts to defer the reserve requirement on a parcel (the "**Sending Parcel**") pursuant to Section 669 of the ***Municipal Government Act*** and the municipality has registered the deferred reserve caveat against the other parcel(s) (the "**Receiving Parcels**"), reserves will be considered to have been provided for the Sending Parcel for the purpose of Section 663(d) of the ***Municipal Government Act***. In my opinion, the only way that the municipality could take reserves on the Sending Parcel is if the municipality and land owner agree to discharge the deferred reserve caveat from the Receiving Parcel(s) and take the reserves owing from the Sending Parcel. Any other interpretation would permit the municipality to effectively "double dip" by imposing reserves on the Sending Parcel and maintaining the deferred reserve caveat on the Receiving Parcel(s) which clearly cannot be the intention of the legislation.

In my opinion, if the municipality misses the proverbial boat by not taking the additional reserves when the Receiving Parcel(s) is/are subdivided, the municipality cannot then seek to impose the reserves on the Sending Parcel because the subdivision authority originally made the decision to direct that the reserve requirement owing from the Sending Parcel be deferred to the

Receiving Parcel(s). The municipality will simply have to wait for a future subdivision of the Receiving Parcel(s).

2. *Considering it is not listed on any current title in the area, is the instrument registered as 5621 IH legally valid in its current form?*
 - a. *In general, does a DRC need to be registered on an active title in order to be valid? If not, what determines the validity of a DRC?*
 - b. *Is there a question as to the intent of 5621 IH? Could ambiguity in the wording have allowed subdivisions in the receiving area to proceed without providing proportional MR from the sending area?*

In my opinion, the DRC isn't valid because it was imposed pursuant to legislation that pre-dated the 1963 **Planning Act**. While I haven't researched this point, it may well be that the Land Titles Office discharged all deferred reserve caveats registered pursuant to pre-1963 legislation as a result of the limitation to "former Act" as provided in the **Municipal Government Act** which came into effect in 1995.

That being said, in my opinion, generally speaking, in order for a deferred reserve caveat to be valid, it must be registered on a certificate of title. Section 669(2) of the **Municipal Government Act** is clear that if a deferment is directed under Section 669(1), the subdivision authority must file a caveat against the certificate of title to which the direction relates.

The Alberta land titles system is based upon the Torrens System which, simplistically, means that a landowner is entitled to trust that their title to land is only subject to the encumbrances registered on the certificate of title. The exceptions to this assumption are contained in Section 61 of the **Land Titles Act** which include a number of "implied conditions" that can apply to a certificate of title even if there's no registration such as a public highway. A deferred reserve caveat does not come within the list of "implied conditions" in Section 61 of the **Land Titles Act** which means that the deferred reserve caveat would have to be registered on the certificate of title in order for it to be enforceable as against the owner of that parcel.

In my opinion, the wording of the DRC is not ambiguous and I cannot speak to why the additional reserves were not taken when the DRC was registered on title to the receiving lands.

3. *Considering the questions above, are the owners of the three remaining parcels from the 1974 subdivision subject to the deferred MR owed by the original 1961 subdivision?*
 - a. *If so, how would this be identified and enforced without the DRC on title? How would prospective purchasers be aware of their requirement to provide additional MR dedication?*
 - b. *If the County were to receive a subdivision application for these lands and attempt to collect proportional MR from the sending area in addition to the*

- 10% typically required, what would be the likelihood that this would be successfully appealed? What arguments would you use in order to represent the landowner in an appeal of this decision?*
- c. *What would be your recommended approach to ensure that any outstanding reserves can be collected?*

In my opinion, the DRC is a proverbial dead duck without any force or effect because it was registered pursuant to pre-1963 legislation and it's been discharged from all titles. The impact of this is that the original sending parcels cannot avoid having reserves imposed today as a result of the DRC and the original receiving parcels are no longer obligated to provide additional reserves to account for the reserve allocations from the original sending parcels.

In my opinion, if the County's subdivision authority tried to impose proportional MR from the sending area in addition to the 10% reserve requirement required from the receiving area, the likelihood of a successful appeal is approximately 100% for the reasons set out above.

In my opinion, the County is restricted to imposing reserve requirements on the original sending parcels as it is permitted to do so under the *Municipal Government Act* without consideration to the DRC.

I hope my comments are of assistance. Please contact me directly if you have any further questions.

Yours truly,

MLT AIKINS LLP

Per:



JOANNE M. KLAUER

February 27th, 2019

B&A File: #C2185
RVC File: PL20180009

Rocky View County
262075 Rocky View Point
Rocky View, AB T4A 0X2

Attn: Stefan Kunz – Municipal Planner

Re: Subdivision Application affecting Pt. SW 2-24-3-W5M within West Meadows Estates
Eric & Jamie Horvath
Request for the Subdivision Authority to approve PL20180079 without obligation to
dedicate Municipal Reserve (MR)

Dear Stefan,

Thank you for scheduling PL20180079 for consideration during the regular Council meeting on March 12th, 2019. We thank you for your guidance throughout the application review process.

As we understand, administration is recommending this subdivision application be approved subject to a condition that Municipal Reserves (MR) be dedicated via payment of cash-in-lieu of land.

It is noted that the subdivision application which created title to the original 20 ac parent parcel that is the subject of this application was approved by the County and the Calgary Regional Planning Commission in 1960 with a condition that outstanding 10% MR dedication be deferred and future obligation to dedicate said MR be transferred from the title of the subject lands to the title of the remainder of SW 2-24-3-W5M. A **Deferred Reserve Agreement** was executed between the original landowner and the County which includes specific whereas statements that direct the MR deferral and transfer. The **Deferred Reserve Agreement** was registered with Alberta Land Titles as instrument #5621 IH and attached to this correspondence as Appendix I.

Since the initial above-referenced subdivision application was approved in 1960, the SW 2-24-3-W5M (now referred to as West Meadows Estates) has been subject to a long history of multiple subdivision applications wherein the County provided specific direction relative to the disposition of outstanding MR in a manner that appears consistent with the terms of **Deferred Reserve Agreement #5621 IH**.



To support the review of this subdivision application, administration consulted the County's legal counsel which provided an opinion that claims Municipal Reserves against the title of the subject lands remain outstanding, notwithstanding the terms of the **Deferred Reserve Agreement #5621 IH**. The reason being, the current Municipal Government Act, RSA 2000 governing the disposition of MR via the subdivision process does not refer back to the Provincial planning legislation in effect when the original subdivision was approved (Surveys & Expropriation Act, 1960).

My clients respectfully disagree with the County's legal counsel relative to this matter and subsequently commissioned their own legal counsel undertake a review, which is attached to this correspondence as Appendix II.

The Horvath's believe that outstanding Municipal Reserves relative to their subject lands have already been provided in accordance with the terms of the **Deferred Reserve Agreement #5621 IH**. As such, we ask the Subdivision Authority to consider this correspondence as part of deliberations regarding this matter on March 12th, 2019.

On behalf of the owners Eric & Jamie Horvath, we request that Council (as the Subdivision Authority) honor the terms of **Deferred Reserve Agreement #5621 IH** and consider approving this subdivision application without obligation to dedicate Municipal Reserves.

We have prepared a short presentation to illustrate the subject of this correspondence and hereby request an opportunity to address the Subdivision Authority during the meeting on March 12th, 2019 to clarify the matter accordingly.

Respectfully,



Ken Venner | RPP | MCIP
B&A Planning Group

cc. Eric & Jamie Horvath

Encl. Appendix I – Deferred Reserve Agreement #5621 IH dated November 25, 1960
Appendix II – Correspondence from Stikeman Elliot LLP to MLT Atkins LLP dated December 7, 2018

APPENDIX I – DEFERRED RESERVE COVENANT AGREEMENT #5621 IH

ALBERTA GOVERNMENT SERVICES LAND TITLES OFFICE

IMAGE OF DOCUMENT REGISTERED AS:

5621IH .

ORDER NUMBER: 35219621

ADVISORY

This electronic image is a reproduction of the original document registered at the Land Titles Office. Please compare the registration number on this coversheet with that on the attached document to ensure that you have received the correct document. Note that Land Titles Staff are not permitted to interpret the contents of this document.

Please contact the Land Titles Office at (780) 422-7874 if the image of the document is not legible.

WILLIAM SIMPSON, the younger,
of the City of Calgary, in the
Province of Alberta, farmer
(hereinafter called the "Owner")

OF THE FIRST PART

- and -

The Municipal District of Rocky View
No. 44 a Municipal Corporation in the
Province of Alberta
(hereinafter called the "Municipal
District")

OF THE SECOND PART

I certify that the within instrument
is duly Entered and Registered in the Land
Titles Office for the South of a Land
Registration District at Calgary in the
Province of Alberta, at 1:41
o'clock P.M., on the 30 day
of May 1961.
as number 5621 Sub 144

Folio 5621
B. J. Nesbitt & Beaumont
Barristers and Solicitors
CALGARY ALBERTA

REGN. FEE	5
EX. REF.	
ASSCE.	
TOTAL FEES	
CLERK	

B. J. NESBITT & BEAUMONT
Barristers and Solicitors
CALGARY ALBERTA

THIS AGREEMENT made in quadruplicate this 25a day of November, A.D. 1960.

B E T W E E N:

WILLIAM SIMPSON, the younger,
of the City of Calgary, in the Province
of Alberta, farmer
(hereinafter called the "Owner")

OF THE FIRST PART

- and -

The Municipal District of Rocky View No. 44
a Municipal Corporation in the Province of
Alberta (hereinafter called the "Municipal
District")

OF THE SECOND PART

WHEREAS by virtue of Alberta Regulation 185/60, entitled
the "Subdivision and Transfer Regulations pursuant to the Surveys
and Expropriation Act", it is provided (inter alia) as follows:

- "2.(32) "Subdivision" means the division of land in the manner shown or described by an agreement, by a plan of subdivision or by any instrument which is capable of registration or notification on a certificate of title in a Land Titles Office and which, upon such registration or notification, will or may result in the creation of a new parcel or parcels on a new estate or interest in part of the land greater than a leasehold interest for three years;"
- "22.(1) When land that exceeds two acres in area is subdivided, such parcels as the Director, the approving authority, or the Board may designate and as may be specified by the other provisions of these regulations shall be reserved for provincial or municipal government use and other public purposes, and for parks, school sites and other community purposes.
- (2) The provision of a reserve under clause (1) may be deferred, only when the newly created parcels in the proposed plan of subdivision are in excess of 20 acres each, and where a written covenant is made by the owner to the effect that he will provide the required reserve at a later date. Such covenant shall run with the land and shall specify:

- (a) the area of the reserve, the provision of which is being deferred;
 - (b) the parcel from which the reserve is to be provided; and
 - (c) the circumstances in which the reserve shall be provided.
- (3) A covenant made under clause (2) shall be registered in the Land Titles Office when the plan of subdivision or other instrument effecting the subdivision is registered."

"23.(1) ~~Except as otherwise provided herein,~~ the total area of a reserve or reserves provided shall be not less than ten percent of the whole area to be registered under the plan of subdivision.

- (2) When part of a tract of land which was under single ownership has already been subdivided the reserves to be provided when the remainder thereof is subdivided shall be such that when added to the area of any reserves provided, is not less than ten percent of the area of the whole tract."

"24.(1) The location of each reserve shall be to the satisfaction of the Director, the approving authority, or the Board and in the case of reserves provided for provincial government use, to the satisfaction of the Director of Surveys.

- (2) The land contained in each reserve shall be suitable for the use for which it is intended and shall, as to the average conditions of its topography and the nature of its soil, be of the same general character and quality as the remainder of the land in the subdivision.
- (3) Notwithstanding Regulation 23, where the land to be subdivided contains waste land, or ravines, swamps, natural drainage courses, or other area which in the opinion of the Director or the approving authority are unsuitable for building sites or other private use, the Board, upon recommendation of the Director, or the approving authority, may require that those areas be reserve for park or other public purposes in addition to such reserves as are provided pursuant to Regulation 23".

WHEREAS William Simpson, the younger, is the registered owner of that certain parcel of land situated in the Province of Alberta and described as follows:

The South-West quarter of Section Two (2) in Township Twenty-four (24), Range Three (3) West of the Fifth Meridian in the Province of

- 3 -

Alberta containing One Hundred and sixty (160) acres more or less. Excepting thereout all mines and minerals.

WHEREAS the Owner has made application to the appropriate approving authority being the Calgary District Planning Commission in accordance with the provisions of the said Subdivision and Transfer Regulations for approval of a "subdivision" of a portion of the said lands, such subdivision to contain an area of forty (40) acres more or less, being made up of 2-20 acre parcels, (hereinafter called the "Subdivided Land"); and

WHEREAS pursuant to the said Subdivision and Transfer Regulations made under the provisions of the Surveys and Expropriation Act, the Owner is required to reserve not less than ten (10%) percent of the subdivided area for public purposes, (hereinafter called the "Reserve"); and

WHEREAS it is expedient and in the interests of all parties hereto that the said Public Reserve which would normally be dedicated for public purposes on the said subdivided land be instead derived and dedicated from the balance after subdivision of the said lands; and

WHEREAS it is expedient to delay the assignment of the precise location of the said Public Reserve within the said balance after subdivision of the said lands; and

WHEREAS the Owner has requested that the required Public Reserve from the subdivided lands be dedicated and granted from the balance after subdivision of the said lands and that such dedication be postponed for a reasonable period of time, and the Municipal District has recommended to the Calgary District Planning Commission that such request be approved; and

- 4 -

WHEREAS the Calgary District Planning Commission is prepared to approve the subdivided land provided that the Public Reserve is protected for public use and shall hereafter be designated and dedicated in a like area from the balance after subdivision of the said lands, in substitution for any and all reserve which could now or might hereafter be required from, or in respect of the said subdivided land;

NOW THEREFORE IN CONSIDERATION OF THE FOREGOING THE OWNER COVENANTS AND AGREES WITH THE MUNICIPAL DISTRICT:

1. That it shall provide from the balance after subdivision of the said lands a Reserve of not less than ten (10%) percent of the gross acreage contained in the said subdivision in substitution for the Reserve which would otherwise be derived and dedicated from the subdivided lands.
2. That nothing in this Agreement contained shall in any way be construed so as to reduce or alter any future requirements which may be made for the provision of Reserve from the balance after subdivision of the said lands in the event that the same are in fact subdivided.
3. That the said Reserve to be derived from the balance after subdivision of the said lands when established, shall be to the satisfaction of the Director of Surveys.
4. That the Municipal District shall have the right to have this covenant registered against the said lands pursuant to Section 52, Chapter 170 of the Revised Statutes of Alberta 1955, and amendments thereto.
5. Upon subdivision of the balance of the said lands the Owner agrees that the Reserve shall be surveyed and registered at the Owner's expense; PROVIDED that if subdivision of the said lands is delayed unreasonably the Municipal District may upon sixty (60) days' written notice to the

- 5 -

Owner of its intention so to do, establish the location of the Reserve herein required, and the Municipal District may by its agents or assignees enter upon the said lands for the purpose of surveying the Reserve and all cost of surveying and acquiring title shall be at the expense of the Owner; PROVIDED FURTHER that if the Municipal District shall enter upon the said lands for the purpose of acquiring a part only of the Reserve to which it is by this Covenant Agreement entitled then and so often as the same may occur the Municipal District shall provide the Owner with a duly modified covenant Agreement providing for the appropriate reduction of the Reserve required.

6. That it will as soon as reasonably practical commence and carry out development of the said lands and will co-operate with the Municipal District in the selection and dedication of the Reserve. THE MUNICIPAL DISTRICT COVENANTS AND AGREES WITH THE OWNER that if it desires to make a selection of part only of the Reserve to which it is otherwise entitled the said Municipal District will be responsible for all cost of surveying and acquiring title to the Partial Reserve so selected.

IT IS MUTUALLY UNDERSTOOD AND AGREED that neither party to this Agreement shall either individually or jointly take any action which would lead to the withdrawal and discharge or modification of covenant as herein provided excepting that such action shall be in accordance with the requirements of the said Subdivision and Transfer Regulations and shall bear the approval of the appropriate approving authority for subdivision.

This Covenant Agreement shall be binding upon and shall enure to the benefit of the Owner and the said Municipal District and their respective successors and assigns, and shall be and is deemed to be a covenant running with the land.

- 6 -

IN WITNESS WHEREOF the Municipal District of Rocky View No. 44
has hereunto caused to be affixed its Corporate Seal attested to by
the signatures of its proper signing officers and William Simpson/^{the younger} has
hereunto subscribed and set his hand and seal as of the day and year
above written.

THE MUNICIPAL DISTRICT OF ROCKY VIEW
NO. 44

By:

James Bull
Reeve

W. J. Sandford
Secretary-Treasurer

Signed, Sealed and Delivered
by William Simpson/in the presence of:
the younger

Henry Bean
witness

William Simpson
William Simpson, the
younger

Calgary District Planning Commission

Approved 15 June 1961

A. R. Smith
Director

CANADA

PROVINCE OF ALBERTA

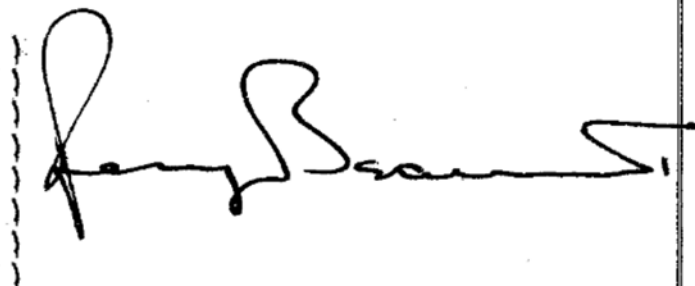
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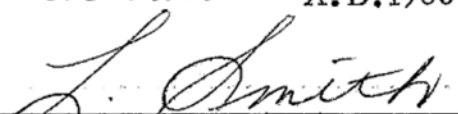
AFFIDAVIT OF EXECUTION

I, HENRY M. BEAUMONT, of the City of Calgary, in the
Province of Alberta, Solicitor, MAKE OATH AND SAY:

1. That I was personally present and did see William Simpson, the
younger
who is personally known to me to be person named therein, duly sign
and execute the same for the purpose named therein.
2. That the same was executed at the City of Calgary, in the
Province of Alberta, and that I am the subscribing witness thereto.
3. That I know the said William Simpson, ^{the younger} and he is, in my
belief, of the full age of twenty-one years.

SWORN before me at the City
of Calgary, in the Province of
Alberta, this ^{29th} day of
^{December} A.D. 1960.




A COMMISSIONER FOR OATHS in and
for the Province of Alberta

THE DOWER ACT - 1948

CONSENT OF SPOUSE

I, _____ being married to the above
named William Simpson, do hereby give my consent to the disposition
of our homestead made in this instrument, and I have executed this
document for the purpose of giving up my life estate and other dower rights
in the said property given to me by The Dower Act, 1948, to the extent
necessary to give effect to the said disposition.

Signature of Spouse

=====

CERTIFICATE OF ACKNOWLEDGEMENT BY
SPOUSE

1. This document was acknowledged before me by

apart from her husband.
2. _____ acknowledged to me
that she;
 - (a) is aware of the nature of the disposition;
 - (b) is aware that the Dower Act, 1948, gives her a life estate
in the homestead and the right to prevent disposition of the
homestead by withholding consent;
 - (c) consents to the disposition for the purpose of giving up the
life estate and other dower rights in the homestead given to
her, by The Dower Act, 1948, to the extent necessary to give
effect to the said disposition;
 - (d) is executing the document freely and voluntarily without any
compulsion on the part of her husband.

DATED at Calgary, in the Province of Alberta, this _____ day of

A.D. 1960.

A COMMISSIONER FOR OATHS in and for the
Province of Alberta

AFFIDAVIT

I, WILLIAM SIMPSON, the younger
of the City of Calgary, in the Province of Alberta, farmer,
MAKE OATH AND SAY:

1. I am the Grantor named in the within instrument.
2. That neither myself nor my spouse has resided on the within
described land at any time since our marriage.

SWORN at the City of Calgary,

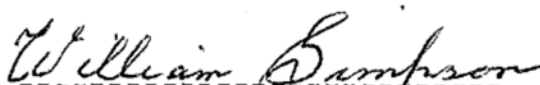
in the Province of Alberta, this

25th day of June.

A.D. 1960.

BEFORE ME:


A COMMISSIONER FOR OATHS in
and for the Province of Alberta


William Simpson, the younger

APPENDIX II – CORRESPONDENCE FROM
STIKEMAN ELLIOT LLP TO MLT ATKINS LLP
RE: LEGAL OPINION

Stikeman Elliott

Stikeman Elliott LLP
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December 7, 2018

MLT Aikins LLP
1600 Centennial Place
520 - 3rd Avenue SW
Calgary, AB T2P 0R3

By Email

Attention: Joanne Klauer

Dear Ms. Klauer:

**Re: Horvath Subdivision of the South Half of Legal Subdivision 5 in the SW 2; 24; 3; W5M
Containing 8.09 Hectares (20 Acres) More or Less (the "Horvath Lands")**

We are writing in response to your email dated November 22, 2018, in which you set out your advice to Rocky View County ("RVC") regarding whether reserves are owing as a condition of subdivision approval of the Horvath lands, which application is currently before RVC. Our position is, and remains, that reserves are no longer owing on the Horvath Lands because they were properly deferred to the remnant SW quarter section when these lands were subdivided in 1960 to create the Horvath Lands. Your position is that reserves were deferred with respect to the Horvath Lands under legislation that pre-dates *The Planning Act*, SA 1963 c43, which is the earliest of "former Acts" as defined in the *Municipal Government Act* ("MGA"), and therefore reserves not already provided under the MGA or former Act do not fit within the exception to the obligation to provide reserves, which exception is described in section 663(d) of the MGA.

We respectfully disagree with your position for the reasons we set out below.

Brief History of Subdivision Application for Horvath Lands (PL20180079)

- The Horvath Lands comprise half of a legal subdivision (40 acres) created by the subdivision of the SW 2; 24; 3; W5M in 1960
- The Subdivision Authority at the time, the Calgary District Planning Commission, chose to defer municipal reserves otherwise owed on the 40 acres to the remainder of the SW quarter section
- An agreement was entered into between the MD of Rocky View No. 44 ("MD") and the then owner of the SW quarter, William Simpson, and that agreement was registered against title to the SW quarter as instrument # 5621H (the "Deferred Reserve Agreement")
- The legislative authority for deferring reserves was the Subdivision and Transfer Regulations passed under section 6 of the *Surveys and Expropriation Act*
- The Horvaths have applied to subdivide their Lands (PL20180079). The MD (now Rocky View County, "RVC") takes the position that municipal reserves are owing on this subdivision,

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notwithstanding that they were provided (ie, properly deferred) in 1960, as evidenced by the Deferred Reserve Agreement.

- In support of its position RVC relies on s. 663(d) of the MGA, which provides one of four exceptions to the subdivision authority's right to demand municipal reserves at the time of subdivision:

Reserves not required

663 A subdivision authority may not require the owner of a parcel of land that is the subject of a proposed subdivision to provide reserve land or money in place of reserve land if

- (a) one lot is to be created from a quarter section of land,
 - (b) land is to be subdivided into lots of 16.0 hectares or more and is to be used only for agricultural purposes,
 - (c) the land to be subdivided is 0.8 hectares or less, or
 - (d) reserve land, environmental reserve easement or money in place of it was provided in respect of the land that is the subject of the proposed subdivision under this Part or the former Act.
- Under Part 17 of the MGA, "former Act" means the *Planning Act*, RSA 1980 cP-9, *The Planning Act*, 1977, SA 1977 c89, *The Planning Act*, RSA 1970 c276 or *The Planning Act*, SA 1963 c43.
 - RVC takes the position that the Deferred Reserve Agreement was entered into under the authority of an act that predates any of the *Planning Acts* that comprise the definition of a "former Act", so the exception under sec. 663(d) does not apply.

We respectfully disagree. Although a plain reading of section 663(d) would have excluded reserves dedicated prior to 1963 as an exception to the general rule that reserves are payable upon subdivision of lands in Alberta, this plain reading leads to an arbitrary result, unsupportable at law.

Legislative History

Alberta Regulation 185/60, the Subdivision and Transfer Regulations, was approved by Cabinet and filed on June 22, 1960. The legislative authority for this Regulation was section 6 of the *Surveys and Expropriation Act*. The deferred reserve agreement that was registered against title to the remnant parcel, when the two 20-acre parcels were created by subdivision plan in 1960, as instrument # 5621IH (the "Deferred Reserve Agreement") was made under the authority of section 22(2) of this Regulation.

Section 152 of the *Planning Act* of 1963 (the first of the "former Acts" under the MGA definition) repealed and replaced, among other sections, section 6 of the *Surveys and Expropriation Act*. With the repeal of section 6 went the legislative authority for the Subdivision and Transfer Regulations thereunder. Accordingly, Alberta Regulation 361/63, the Subdivision and Transfer Regulations, was made pursuant to section 17 of *The Planning Act*.

Comparing Alberta Regulation 185/60 and Alberta Regulation 361/63 – though not identical, both provide comprehensive rules for the subdivision of land in Alberta. For the purposes of our argument I have excerpted the section from each that deals with the "Provision of Reserves" and specifically the deferral of reserves:

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Regulation 185/60

COMMUNITY AND PUBLIC RESERVES

22. *Provision of Reserves*

(1) When land that exceeds two acres in area is subdivided, such parcels as the Director, the approving authority, or the Board may designate and as may be specified by the other provisions of these regulations shall be reserved for provincial and municipal government use and other public purposes, and for parks, school sites and other community purposes.

(2) The provision of a reserve under clause (1) may be deferred, only when the newly created parcels in the proposed plan of subdivision are in excess of 20 acres each, and where a written covenant is made by the owner to the effect that he will provide the required reserve at a later date. Such covenant shall run with the land and shall specify:

- (a) the area of the reserve, the provision of which is being deferred;
- (b) the parcel from which the reserve is to be provided; and
- (c) the circumstances in which the reserve shall be provided.

(3) A covenant made under clause (2) shall be registered in the Land Titles Office when the plan of subdivision or other instrument effecting the subdivision is registered.

(4) Notwithstanding the provisions of clause (1), a reserve need not be provided:

- (a) where the land being subdivided is a parcel created within a previous subdivision which contained reserves amounting in area to not less than ten percent of the total area then registered under a plan of subdivision; or
- (b) where the total holding of the applicant, including the land being subdivided and any other land in the vicinity thereof is less than four acres in area, and the approving authority or Director is of the opinion that a reserve is not required.

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Regulation 361/63

RESERVES

12. *Provision of Reserves*

(1) When a parcel of land that is equal to or is less than 1/3 of an acre is to be subdivided, reserves are not required.

(2) When a parcel of land that exceeds 1/3 acre is to be subdivided, such parcels as the approving authority, or the Board may designate and as may be specified by the other provisions of this Regulation shall be provided as reserves.

(3) Notwithstanding the provisions of Subsection (1), a reserve need not be provided where the land being subdivided is a parcel created within a previous subdivision which contained reserves amounting in area to not less than ten per cent of the total area then registered under a plan of subdivision.

(4) (a) Where the Board orders that the provision of land for reserves be deferred pursuant to Section 25(a) of the Act, such deferral shall be the subject of an agreement made between the applicant and the municipality.

(b) the applicant shall file a certified copy of such agreement with the approving authority prior to the endorsement of the proposed plan of subdivision and who may require the Director to place a caveat relating to the agreement upon the land to be registered.

(5) Where the Board orders that the provision of land for reserves be waived pursuant to Section 25(b) of the Act, then the sum of money paid to the municipality in lieu of such reserves shall be deposited with the municipality.

(a) in the case of a plan of subdivision pursuant to Section 2(n) of the Act prior to the endorsement of the said plan by the approving authority, or

(b) in the case of an instrument pursuant to Section 23 of the Act, prior to the approval of the instrument by the approving authority.

The Regulation under which reserves were deferred in 1960 - Alberta Regulation 185/60, the Subdivision and Transfer Regulations - was replaced on August 1, 1963, by Alberta Regulation 361/63, the Subdivision and Transfer Regulations under *The Planning Act* of 1963. Both Regulations serve the same purpose of providing comprehensive rules for subdividing land in Alberta. There is a clear continuity of subdivision regulations from 185/60 to 361/63. Yet inexplicably section 663(d) of the MGA draws a hard line between them, leading to potentially absurd (and therefore unintended) results. For example, municipal reserves could have been provided as a condition of a subdivision approval on Parcel "A" - whether by dedication of lands, payment of cash-in-lieu, or deferral of either obligation to another parcel - on July 31, 1963. The very next day, August 1, 1963, municipal reserves could have been provided as a condition of a subdivision approval on Parcel "B" - whether by dedication of lands, payment of cash-in-lieu, or deferral of either obligation to another parcel. The satisfaction of each of these conditions would have done under similar regulatory regimes, the Subdivision and Transfer Regulations. However, if Parcel "B" were to be further subdivided today, the subdivision authority may not require municipal reserves. If Parcel "A" were to be further subdivided today, the subdivision authority may require municipal reserves. This is an absurd result.

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Statutory Interpretation

A. Doctrine of Absurdity

Simply disregarding the Deferred Reserve Agreement because it was entered into under the authority of an act that predated the *Planning Acts* included in the definition of "former Act" under the MGA, would be contrary to accepted norms of justice or reasonableness, would lead to an absurd result and would be presumed to have been unintended: (*Waugh v Pedneault*, [1948] BCJ No 1, [1949] 1 WWR 14, at 15 (BCCA); *Ontario v Canadian Pacific Ltd.*, [1995] SCJ No 62, [1995] 2 SCR 1031 at para 65; *Ryan (c.o.b. Ryan Designs) v Dew Enterprises Limited*, [2014] NJ No 54, 2014 NLCA 11 (NLCA); *R v R(TS)*, [2005] AJ No 1053, 257 DLR (4th) 500 (Alta CA); *United States of America v Allard*, [1991] SCJ No 30, [1991] 1 SCR 861 (SCC)). For RVC to again take reserves from the Horvath Lands would defeat the legislative purpose, create irrational distinctions, and is self-evidently unreasonable, unjust and unfair.

(a) Legislative Purpose

The legislative purpose of Part 17 Planning and Development of the MGA is set out in s. 617:

Purpose of this Part

617 The purpose of this Part and the regulations and bylaws under this Part is to provide means whereby plans and related matters may be prepared and adopted

(a) to achieve the orderly, economical and beneficial development, use of land and patterns of human settlement, and

(b) to maintain and improve the quality of the physical environment within which patterns of human settlement are situated in Alberta,

without infringing on the rights of individuals for any public interest except to the extent that is necessary for the overall greater public interest. (emphasis added)

It is our view that no public interest would be served by taking reserves twice from the Horvath Lands simply because some unfortunate legislative drafting appears to allow for this. The Alberta Court of Appeal in *Love v. Flagstaff (County of) Subdivision and Development Appeal Board*, 2002 ABCA 292 at paragraphs 26-29 reviewed in considerable detail the purpose of Part 17 of the MGA and made the following statements:

These values – orderly and economic development, preservation of quality of life and the environment, respect for individual rights, and recognition of the limited extent to which the overall public interest may legitimately override individual rights – are critical components in planning law and practice in Alberta, and thus highly relevant to the interpretation of the *Bylaw*.

Central to these values is the need for certainty and predictability in planning law. Although expropriation of private property is permitted for the public, not private, good in clearly defined and limited circumstances, private ownership of land remains one of the fundamental elements of our Parliamentary democracy. Without certainty, the economical development of land would be an unachievable objective. Who would invest in land with no clear indication as to the use to which it could be put? Hence the importance of land use bylaws which clearly define the specific uses for property and any limits on them.

The need for predictability is equally imperative. The public must have confidence that the rules governing land use will be applied fairly and equally. This is as important to the

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individual landowner as it is to the corporate developer. Without this, few would wish to invest capital in an asset the value of which might tomorrow prove relatively worthless. This is not in the community's collective interest.

The fundamental principle of consistency in the application of the law is a reflection of both these needs. The same factual situation should produce the same legal result. To do so requires that it be certain. The corollary of this is that if legislation is uncertain, it runs the risk of being declared void for uncertainty in whole or in part. As explained by Garrow, J.A. in *Re Good and Jacob Y. Shantz Son and Company Ltd.* (1911) 23 O.L.R. 544 (C.A.) at 552:

It is a general principle of legislation, at which superior legislatures aim, and by which inferior bodies clothed with legislative powers, such as ... municipal councils ... are bound, that all laws shall be definite in form and equal and uniform in operation, in order that the subject may not fall into legislative traps or be made the subject of caprice or of favouritism – in other words, he must be able to look with reasonable effect before he leaps.

The Court was considering the application of a bylaw passed by Flagstaff County Council but the principles of certainty and predictability enunciated apply equally to the application of subdivision regulations promulgated under the MGA or to provisions under Part 17 of the MGA itself.

The narrow application by RVC of section 663(d) of the MGA and the definition of "former Act" thereunder to justify the re-taking of reserves from the Horvath Lands would only serve to undermine these principles of predictability and certainty. The value of the Horvath Lands, which weren't apparently subject to any further reserve requirements, and the value of the remnant SW quarter, which was apparently subject to reserves triggered by its own further subdivision plus those reserves deferred to it from the Horvath Lands and the adjacent 20-acre parcel – these values will be undermined if RVC is to take reserves from where they have already been provided and not take them from where they haven't.

(b) Irrational Distinctions

RVC's proposed interpretation would result in private landowners who entered into deferred reserve agreements prior to 1963 receiving different treatment for no apparent reason. We were unable to find any judicial consideration of section 663(d) of the MGA and the definition of "former Act", nor any record of debate of such in *Hansard*, so nothing that could guide us to a different conclusion.

(c) Self-Evidently Unreasonable, Unjust and Unfair

As stated by Frederick A. Laux, in *Planning Law and Practice in Alberta, 3rd ed.* (Edmonton: Juriliber, 2001), in his analysis of section 663(d) of the MGA: "[I]t seems patently inequitable that an owner be required to dedicate the full amount of reserves more than once for the same land". (§14.2(3)(a) at footnote 52). I note that you quote from Laux the passage that ostensibly supports your position but not this footnote to it, wherein he questions the reasonableness of taking reserves more than once.

B. Drafting Error

It is our view that the interpretation of section 663(d) you offer and on which RVC would be relying to take reserves again from the Horvath Lands is the result of a legislative mistake or drafting error. The Legislature cannot have intended to produce such an unfair result. The courts have jurisdiction to correct drafting mistakes when there is reason to believe that the text of legislation does not express the rules that the Legislature intended to enact: (*United States of America v Allard*, [1991] SCJ No 30, [1991] 1 SCR 861 (SCC))

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C. Contractual Obligation

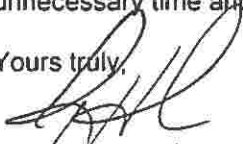
The Deferred Reserve Agreement sets out contractual rights and obligations that are binding on the parties. By its terms and the terms of the legislation under which it was properly entered into, the covenants in the Deferred Reserve Agreement run with the land. The Horvaths, as successors in title to the benefitting lands, have the right to enforce against RVC, as the successor to the MD, the benefit of reserves having been deferred from their Lands. Section 663(d) does not, in our view, obviate this right.

D. May is Permissive

Pursuant to the *Interpretation Act*, "may" shall be construed as permissive and empowering (RSA 2000, c I-8 at s 28(2)(c)). Under section 666 of the MGA a subdivision authority is given the power to take a reserve. However that power is discretionary - the subdivision authority does not have to exercise that power.

We ask that RVC exercise its discretion to not take reserves from the Horvath Lands under the current subdivision application to avoid an absurd and inequitable result, to honour its contractual obligations under the Deferred Reserve Agreement, and to avoid putting the Horvaths to the substantial and unnecessary time and expense of litigating this issue.

Yours truly,



Robert Homersham

RH/