

**ROCKY VIEW COUNTY
SUBDIVISION AND DEVELOPMENT APPEAL BOARD**

Board Order No.: 2019-SDAB-041

File No.: 03913077; PRDP20184945

Appeal by: Craig Nickel, Aaron Matushyk, Jennifer Liddle

Appeal by: Adam McLane

Appeal Against: Development Authority of Rocky View County

Hearing Date: 2019 April 24
2019 June 5
2019 June 20

Decision Date: 2019 September 11

Board Members: D. Kochan, Chair
I. Galbraith
H. George
D. Henn
W. Metzger

DEVELOPMENT APPEAL DECISION

INTRODUCTION

[1] This is the decision of the Rocky View County Subdivision and Development Appeal Board (the Board) on two appeals from a decision of the Rocky View County Development Authority issued December 5, 2018. In the decision, the Development Authority conditionally approved a development permit for a Brewery (General Industry Type I and II), 21 room Hotel, Restaurant and Drinking Establishment, the construction of a multi-use commercial building, the relaxation of the minimum side yard setback requirement and the relaxation of the maximum height requirement and signage (the Development), at 19 River Drive North in Bragg Creek (the Lands).

[2] In one appeal, Craig Nickel, Aaron Matushyk and Jennifer Liddle, the owners/and or occupants of an adjacent property, challenge the conditional approval of the Development. In the other appeal, the proponent of the Development challenges certain conditions imposed by the Development Authority as part of its approval of the development. In this Decision, the adjacent property owner appellants will be referred to as the "Appellants" and the proponent of the Development will be referred to as the "Applicant".

[3] The Appellants' appeal was filed on April 9, 2019. The Appellants requested that the Board revoke or vary the development permit issued to the Applicant on the basis that the Development will materially interfere with or affect the use, enjoyment or value of their property. Among other things, the Appellants take issue with the proposed height of the Development, arguing that it does not comply with Section 63.6(a)(i) of the Hamlet Commercial District zoning, which imposes a maximum height of 10 m for a principal building.

[4] A Notice of Hearing was circulated to 90 adjacent landowners in accordance with the *Municipal Government Act*, RSA 2000, c M-26 and Rocky View County Council Policy C-327, *Circulation and Notification Standards*. The hearing was scheduled to commence April 24, 2019.

[5] The Applicant's appeal was filed on April 18, 2019. The Applicant appealed four of the conditions included in the development permit relating to parking (Conditions 4, 36, 37 and 38) and three conditions relating to water/wastewater servicing (Conditions 17, 19 and 22).

[6] The appeals were heard together, commencing on April 24, 2019. The Applicant requested an adjournment to June 5th, 2019 due to the fact that it had filed its appeal less than one week previously and because some of the Applicant's witnesses were not able to attend until that date.

[7] The adjournment request was granted. The oral hearing of the appeal proceeded on June 5 and continued on June 20, 2019, in Council Chambers of Rocky View County's County Hall, located at 262075 Rocky View Point, Rocky View County, Alberta. The Applicant's appeal was heard first, followed by the Appellants' appeal. At the commencement of its appeal, the Applicant advised that it was only proceeding with an appeal of Conditions 4 and 37 on parking (as well as the conditions on servicing).

[8] On June 21, 2019, the Board issued a letter to the Development Authority, the Applicant and the Appellants seeking further submissions on (1) the status of an approved Master Site Development Plan¹ for the proposed development and (2) who the approving authority is for a Master Site Development Plan. On June 25, 2019, the Development Authority provided written submissions on these questions. The Applicants and the Appellants provided written submissions on July 2, 2019.

DECISION

[9] The appeals are allowed in part and the decision of the Development Authority is varied.

[10] For the reasons which follow, the Board is not prepared to approve the development of a 3-storey building on the Lands in the absence of a Master Site Development Plan approved by County Council. Therefore, the Board varies the decision by approving a 2-storey building, as this is consistent with the Greater Bragg Creek Area Structure Plan and the Land Use Bylaw.

[11] In addition, the Board is not prepared to approve the Development with off-site parking. The Board was not persuaded that the off-site parking plan proposed by the Applicant is workable and is concerned that patrons of the brewery/hotel will park on the street, as near as possible to the Lands and the Appellants' property. Therefore, the development permit is varied to allow only for on-site parking.

¹ Mistakenly referred to in the Board's letter as a Master Neighbourhood Plan.

[12] Finally, the Board agrees with the Development Authority that Conditions 17, 19 and 22 of the development permit, which deal with servicing, fall under the Master Rates Bylaw and the Water and Wastewater Utilities Bylaw, not the Land Use Bylaw. The Board finds that the conditions are within the requirements of the utility system design requirements for Bragg Creek and therefore dismisses the Applicant's appeal of these conditions.

[13] Based on the findings summarized above, a development permit shall be issued subject to the conditions set forth in Appendix "A" to this Decision.

BACKGROUND

[14] On December 5, 2018, the Applicant submitted a development permit application for the development of a multi-use commercial building that would house a microbrewery, coffee roaster, restaurant and a boutique inn.

[15] The Lands are located at SE-13-23-05-W5M, in the Hamlet of Bragg Creek, at the northwest intersection of Balsam Avenue and River Drive. The Lands are approximately 0.23 hectares (0.57 acres) in area and are owned by 2127145 Alberta Ltd.

[16] The land use designation for the Lands is Hamlet Commercial District, which is regulated in section 63 of the Rocky View County, *Land Use Bylaw C-4841-97*.

[17] On April 4, 2019, the Development Authority issued Development Permit PRDP20184945, which conditionally approved the Development. Development Permit PRDP20184945 is attached at Appendix "B".

SUMMARY OF EVIDENCE

[18] The Board heard verbal submissions from 17 individuals, listed in Appendix "C". The documents presented to the Board during the hearing and marked as exhibits during the hearing are listed in Appendix "D". In addition, The Board received 45 letters in support of the development and four letters in opposition to the development. The names of those who submitted letters in support are listed in Appendix "E". The names of those who submitted letters in opposition are listed in Appendix "F".

[19] The Board considered all the submissions and evidence, written and oral. The principal submissions made by the Development Authority, the Applicant and the Appellants, with a focus on the issues of building height, parking and servicing are summarized below. The Board will first summarize the submissions made in the Applicant's appeal and then the submissions made in the Appellants' appeal.

Applicant's Appeal

Development Authority's Submissions – June 5, 2019

[20] On October 10, 2017, the Lands were redesignated from Hamlet Residential to Hamlet Commercial.

[21] The development permit allows a setback relaxation to the side yard as well as a relaxation to the height requirement from 10 metres to 12.5 metres. Screening requirements for any mechanical equipment on the roof of the development do not factor into the height requirement setback, as mechanical equipment screening is exempt from this.

[22] There is a minor shadow encroachment on the neighbouring property, but it is minor in nature and only occurs during the spring and fall seasons.

[23] The Land Use Bylaw states that any parking for a development is required for the life of the development.

[24] As this is, a multi-use commercial building not one specific use can determine the parking needed, therefore, uses are combined to calculate the parking stalls necessary.

[25] A parking study can be undertaken by the Applicant to justify the reduction in parking for the development; however, the Development Authority is not bound by this recommendation.

[26] The parking requirement set out in the development permit states that 55 parking spaces are needed, more than the Applicant's number of 43 parking spaces, as per their parking study.

[27] There are only 22 parking stalls on site and not 23, as there is space needed for a truck-turning radius as you enter the Lands.

[28] The Applicant had a plan for 64 proposed parking stalls, 42 of which are offsite. The offsite parking stalls have written agreements with a 30-day cancellation clause within them. If any of these agreements were to be cancelled, the County would not be advised of the cancellation, which would thereby reduce the number of parking stalls available to patrons.

[29] The Development Authority has asked that all parking stalls outside of the Development be registered to title of the property the parking stall resides on, this would allow the County to be notified if anything were to change, as well it ensure there is always adequate parking for patrons.

[30] Other conditions on the development permit include that there must be a minimum of 33 offsite stalls and no parking on the County road system.

[31] The County can erect no parking signs to state there is no parking allowed on the streets; there are currently no signs that have been erected in the Hamlet. Should parking become an issue there will be signs erected, as well parking permits can be issued for residential parking.

[32] A condition can be amended to state there is a maximum distance from the Lands for offsite parking. Industry standard is a five-minute walk, which equates to 400-600 metres from the property.

[33] The parking requirements according to the Land Use Bylaw for this development is based on square footage not occupancy or number of patrons of the establishment.

[34] The Applicant has appealed conditions 17, 19 and 22 of the development permit; however, these conditions have to do with servicing and fall under the Master Rates Bylaw and the Water and Wastewater Utilities Bylaw. These conditions do not fall under the jurisdiction of the Land Use Bylaw; therefore, the Board must decide if these conditions have been applied properly in accordance with both the Master Rates Bylaw and the Water and Wastewater Utilities Bylaw.

[35] The site has one cubic metre of water and wastewater allocated to them with the Local Improvement Tax in Bragg Creek; a Prior to Issuance condition requires the Applicant to complete a Water and Wastewater Study to determine the usage. Prior to occupancy, they are required to pay for the usage required in the study. The volume will be metered.

[36] There is an asphalt pathway on the south side of Balsam Avenue; the Development is on the north side of the street. There is a possibility that this could mean patrons walking from their offsite parking to the Development would walk on the driving surface to get to the establishment.

[37] The County does not regulate access onto a development. Section 400 of the County Servicing Standards state an approach cannot be located within 150 metres of a bridge or 40 metres of intersection; therefore, a distance of 10 metres is the required width for an entrance to a commercial development.

[38] To create another entrance off Balsam Avenue directly would require fill and grading of the lands as the lands are below the grade of the road.

Applicant's Submissions – June 5, 2019

[39] There is positive community support for the land use designation; more than 90 letters of support were received from the community. During the consultation period for the Development, there was again positive support with over 70 letters received in support of the Development.

[40] The design of the Development has the front of the Development facing Balsam Avenue and the rear of the property facing the Appellants' property. The building was designed to look like a two-storey building rather than a three-storey building, making the design unobtrusive as well as camouflaging the building on the site. The dark façade of the building will help it blend into the trees and landscape. With the rear of the property facing onto the Appellants' lands, there will be fewer windows to help with privacy.

[41] The Development is the first major development in Bragg Creek in 20 years and is a natural extension of the Hamlet Core/Commercial area. The Development is beside the Old West Mall, right in the heart of the commercial centre of Bragg Creek. Balsam Avenue is the main street of commercial activity in Bragg Creek.

[42] The Development meets the policies and general intent of all relevant planning policies. The Development meets key objectives of the Interim Growth Plan including increasing employment density in an existing settlement area, introducing a mix of new uses to Bragg Creek, making efficient and cost effective use of existing infrastructure, and support of the Bragg Creek Flood Mitigation Project.

[43] The Development meets all requirements outlined in the County Plan including development of a Master Site Development Plan, a geotechnical report, a parking study, public consultation, a Stormwater Management Plan, a detailed site plan and architectural drawings. The design matches with the Design Specifics for Bragg Creek.

[44] The Development meets all requirements of the Land Use Bylaw except for two minor relaxations. A 25% relaxation from the Public Utility Lot for the Elbow River Berm was approved (0.9m in lieu of 1.2m); and a 25% relaxation for maximum height was approved. These relaxations do not negatively affect the use and enjoyment of the adjacent properties

[45] While the Land Use Bylaw permits only two-storey buildings, the Area Structure Plan allows up to four-storeys in the Hamlet Core area.

[46] The Development positively contributes to Bragg Creek's long-term vision through its adherence to the Greater Bragg Creek ASP, Bragg Creek Design Standards, and the Bragg Creek Revitalization Plan. In particular, the Development contributes to achieving the long-term goal of establishing Balsam Avenue as Bragg Creek's main street. It also revitalizes an under-utilized parcel on the Hamlet's main street, making efficient and cost-effective use of existing servicing infrastructure.

[47] The Development respects the proposed flood mitigation berm and addresses the river with an eye to contributing to a high-quality public realm once the river trail is completed.

[48] The Development achieves a desirable mix of uses and supports economic diversification including the development of new accommodations. It also meets the goals and objectives of the applicable statutory plans. This Development will positively contribute to the revitalization of Bragg Creek.

[49] There is a large natural buffer of trees and screening between the Applicant/Appellant's property and the Appellants property. The trees are 40-60 feet in height and take them well above the height of the Development. The shadowing on the Appellants' property is generally from the trees on the Appellants' property. As many trees as possible will be preserved on the site.

[50] The Development is located over 20 metres (66 feet) from the appellants dwelling. The Appellants' concerns have been addressed through the landscaping and architectural design of the Development. Windows have been reduced on the building adjacent to their property as well there are a large number of mature trees providing screening. Off-site parking arrangements will alleviate any parking concerns.

[51] The results of the shadow studies show the proposed Development has no impact on adjacent buildings; the adjacent buildings are predominantly shadowed by surrounding trees.

[52] The Development provides a substantial 3-metre wide landscaping buffer along the northern boundary with mature trees; additionally, the orientation of the Development is primarily towards the river and Public Utility Lot to minimize impact on neighbouring parcels.

[53] The Development includes adequate lighting for safety, security, and pedestrian comfort; as well, it addresses all safety considerations from the County and County Fire Department.

[54] The Development incorporates significant measures to mitigate the Appellants' concerns. The building provides an architecturally attractive and economically beneficial addition to Bragg Creek.

[55] There are 78 parking spots located within 200 metres (2.5-minute walk) from the development. There is a 32-stall parking lot as well as a 40 stall municipal parking lot across the street from the Development. Sufficient off-site parking is provided that meets the parking demands of the development.

[56] A parking study by an independent professional transportation engineer was conducted, indicating that the appropriate number of parking stalls for the development is 35-38. The study was peer reviewed by a second transportation engineer who confirmed the conclusions.

[57] The Applicant is willing to implement parking demand management in the form of directing customers to the off-site parking locations and requiring staff of the Development to park off-site. There will be a valet parking service available to the patrons of the hotel.

[58] The magnitude of parking demand will be smaller than it would be in a big municipality as it is in a smaller municipality. There will be a small parking demand and it is expected that 35-38 spaces will be needed on a very busy day at the development. A parking relaxation is warranted based on sound planning and transportation engineering principles.

[59] A second company hired to review the parking study done by Bundt and Associates reached the same conclusion.

[60] Fewer parking spaces on the site will reduce traffic on River Drive.

[61] The Applicant requests that Prior To Issuance Condition 4 be replaced by the following condition:

- (1) That prior to the issuance of this permit, the Applicant/Appellant shall, to the satisfaction the Development Authority, submit the parking agreements between the Applicant/Owner and the Owner of each consenting property to accommodate the proposed offsite parking arrangements for the proposed development, as referred to in permanent conditions 37 to 37.4.

[62] Prior to issuance Condition 4, parking agreements that provide offsite parking should be sufficient to mitigate offsite parking. The condition is cost prohibitive to add stalls to title. The County does not have security to be privy to the agreements.

[63] The Applicant requests that Permanent Condition 37 be replaced by the following conditions:

- (1) 37 – That a minimum of 12 parking stalls shall be available at all times at off-site locations in accordance with parking agreements between the Applicant/Owner and the Owners of the parcels on which the offsite parking stalls are available for the proposed development.
- (2) 37.1 – If any of the offsite parking stalls cease to be available for the development, immediate alternate parking stalls must be secured to the satisfaction of the Development Authority. If no replacement parking stalls can be secured, the seating area of the Restaurant and Drinking Establishment must be proportionally reduced for any stalls lost, or a new development permit application must be applied for the Restaurant and Drinking Establishment uses.
- (3) 37.2 – Staff of the Development must park their motor vehicles at off-site parking locations.
- (4) 37.3 – All clients, customers, and patrons of the Development must be advised of the locations of the offsite parking stalls.
- (5) 37.4 – Signage must be provided at the off-site parking locations indicating that offsite parking stalls are available for the proposed Development.

[64] The Applicant will accept no parking on street if the board accepts the Conditions as offered by Applicant. The Applicant is open to further discussions to ensure that there is enough parking, will accept 38 stalls. In addition, there will be no undue impact on the surrounding neighbourhood.

[65] The hours of the establishment are approximately pre lunch until 11pm (approx. 11-11). Patrons will be directed to offsite parking, and signs will be posted as to where parking is located. Encouraging patrons to park at the Bragg Creek Community Centre creates a walking community.

[66] The parking conditions were a surprise to the Applicant when the approval document was received. The seating capacity of the restaurant is 60 people. According to the parking study and the peer review done there is adequate parking for the site.

[67] There are plans in place to mitigate traffic on River Drive that is circling looking for parking.

[68] With regard to servicing, the Applicant requests that Conditions 19 and 22 be deleted and Condition Number 17 retained (the requirement to enter into a Customer Service Agreement with the County). This will achieve all issues regarding the water and wastewater services of the Development and the applicable Master's Rates Bylaw would be subject of the Customer Service Agreement. The agreement would be broken into three payments over a 3-year term; and payments would be incremental based on volume usage as negotiated through email with Executive Director of Operations Byron Riemann on February 5, 2018.

[69] The change in Condition 17 bases the usage on actual usage not a fictitious number and the Applicant would like the County to honour what was promised to them during the negotiations with Byron Riemann.

[70] The anticipated number for water and wastewater is more than one cubic meter; however, the Applicant is unsure on the number they are looking at in terms of usage. The Applicant is willing to pay the capacity that is needed but requesting the payment be split into a three-year term.

[71] The Applicant is willing to accept Condition 38 if the Board considers proposed condition 37.1.

[72] If the conditions are imposed as they are specified in the approval document, the Applicant is concerned the project is not financially viable. These terms were negotiated in good faith. The Applicant is asking to be treated fairly, based on these negotiations.

[73] The need was seen for this Development after the Revitalisation Plan in 2013. It will become a place for the community to gather and support the vision of renewal of Bragg Creek. The Applicant is ready and willing to work with the County to make this development happen.

[74] The Gettel report speaks about the value of the property, but value is intrinsic not monetary. There is no absolute right to sunlight or the protection of use of lands. Appraisals can vary from company to company. When the subject lands were redesignated to commercial the property value doubled. The Applicant feels it was procedurally unfair for the Gettel report to be provided the day of the hearing, all parties should be given this information prior to the hearing.

[75] If this Development is denied, it will send a message to developers and they will think twice about investing and developing in the Bragg Creek area.

Development Authority Submission – June 20, 2019

[76] This is the first development that will be over two storeys in the Hamlet. A Master Site Development Plan was not created for this project; however, all elements that would be included in this plan were submitted as part of the original development permit application.

[77] A distance of 0.9 metres is wide enough for the Public Utility Lot.

[78] Condition 4 in the Development Permit was specifically worded stating that an agreement to the Development Authorities satisfaction regarding parking is a prior to issuance condition. The wording of Condition 4 regarding parking is to be amended to include the County as a party on the title to ensure that the County is aware when and if a parking agreement is terminated.

[79] It is in the best interest of all parties for additional off-site parking to be registered to title. Registering the stalls to title would allow new agreements to be made prior to removing the previous stalls from the title. A new Development Permit can be applied for to amend the necessary parking in the original Development Permit. There is a chance that the business can be shut down if there is not adequate parking available.

[80] It is an option to add a condition to enter into a Development Agreement to construct offsite sidewalks and/or paths. The maintenance of these sidewalks and paths would not fall under the Applicant's scope.

[81] A legal opinion was not obtained regarding the titling of the stalls for offsite parking. Additionally, the County does not have jurisdiction to register a title to the T'su T'ina lands where the majority of the offsite parking is located.

Applicant Rebuttal to Development Authority – June 20, 2019

[82] No party will agree to the County being registered on title as it makes it very hard to dissolve the agreement.

[83] With regards to the hearing being fair, the Applicant is not willing to answer the questions of fairness until the end of the hearing. Fairness cannot in fact be determined until the decision is rendered.

Appellants' Appeal

Appellants' Submissions – June 20, 2019

[84] A cabin in the woods is the standard housing in Bragg Creek, which is exactly what this house is.

[85] The Lands are on the fringe of the Hamlet Core district. The Applicant has stated they will be an extension of the commercial area of Bragg Creek; however, residential parcels surround the Development on all sides.

[86] As the only adjacent landowner directly bordering the Lands, and the most heavily impacted party, the Appellants were hopeful that the developer would keep them informed and respect their feedback.

[87] Initial conversations indicated plans for a quaint brewery and coffee roastery, respectful of the neighbors and neighborhood in terms of both scale, and hours of operation. There was no mention of a hotel or event space. The Appellants were led to believe that the size of the development would be similar to other small restaurants in the hamlet, based on the limited acreage, and the description provided. The Appellants were quite supportive at this point.

[88] The Appellants maintained regular contact with Mr. Laskin, however, there were no material updates as far as renderings or site plans, and the Appellants were not notified of the first public engagement session. The Appellants assumed that they could gain access to the materials presented, but their requests never materialized.

[89] The Appellants were caught off guard by the rezoning application and disappointed that they had not been given any indication of the inclusion of a hotel and event space. The Appellants received no notification of the second public engagement session, despite their requests for plans and/or substantive information regarding the site plan and scope were not provided. After receiving the development permit application the Appellants contacted Rocky View County. The staff provided site plan and drawings of the proposed development.

[90] The Development is the only three-storey development in the hamlet. The angled roof is not part of the height variance that has been requested, this will add another metre to the height.

[91] The Cabin is located directly adjacent to the structure, separated by the recreation area for the cabin.

[92] The Lands are not in a natural depression as stated. Balsam Avenue is built at a higher elevation and the Lands are at the natural grade. There is no elevation change for the adjacent lands views of the building.

[93] It is unclear whether the dark façade of the building will blend into environment.

[94] Both the Applicant's and the Appellants' properties are affected by the flood mitigation efforts. Large mature trees will be removed from both lands to aid in the efforts. In the Applicant's renderings, the trees have been removed from their lands for the flood mitigation efforts but not from the Appellants' land, where they will also be removed. The Applicant's site will not be a tree canopy as stated, as the majority of the trees will be removed to create the Development.

[95] Most of the pictures taken by the Applicant have been taken from the front and back of the property, not from the mutual property line. The tree coverage on the properties is not as dense as the Applicant has presented it.

[96] The County Plan states that any proposals for business development outside of the mapped area, which includes the Bragg Creek area, should be limited in size, scale, intensity and scope; as well, they should limit the impact on existing residential use.

[97] The Greater Bragg Creek Area Structure Plan notes the importance of any development being complementary and consistent to that of its neighbours. The proposed Development has single-family dwellings surrounding it.

[98] This Development places a 3 storey commercial building onto a residential street. There are not even any three storey commercial buildings in the densest commercial areas of the hamlet. To put one amongst quiet residences does not meet the direction of the ASP.

[99] The size of the Development has been increased over time; this is in spite of the fact that the residents of Bragg Creek knew that flood mitigation was coming.

[100] The Applicant suggested that their footprint is in keeping with surrounding properties. However, using their own numbers, their proposed Development is actually 70 - 335 square metres larger than three neighbouring properties.

[101] The Appellants' second concern with the size of the development relates to the location of the building on the site. The development is located as close to the mutual property line as possible.

[102] An added concern is with the Applicant asking the County to change what is considered front, side, and rear yard designation, which has the effect of letting them build bigger. The driveway on the lands remains from River Drive North and there is no access to or from Balsam Avenue. The change in yard configuration means a smaller setback requirement where the Applicant needed it, additionally the maximum variance of the new was granted.

[103] The Applicant's door is on the south side of the building, but their frontage is still on River Drive North. There is a permanent silo, loading and delivery service area, driveway in the six-metre setback area to the Appellants' property. A commercial loading zone is proposed as close as possible to the Appellants' property. This commercial loading zone will result in increased noise of supply trucks loading and unloading.

[104] Floors one and two of the development have public patios with direct view into the Appellants' property. Floors two and three have hotel rooms with a direct view into the Appellants' property.

[105] The Development is a high-density drinking and event space, with easily 50 - 100 people on 0.4 acres. There will be increased traffic and noise during the long and late hours of operation of both the drinking and event space.

[106] The Applicant suggests they might only operate until 11 pm. This is a brewery with an event space. Will events like weddings, Christmas parties, or work parties be shut down by 11 pm? Even if they do, patrons might just move the party up a floor to the hotel rooms to continue.

[107] There are security concerns, especially given the volume of patrons that will frequent the establishment at night.

[108] A fence might help with some low level activity, i.e. cars parking. However, how will a three-storey building with windows, patios, and vantage points overlooking the river and adjacent lands be screened from the Appellants' property?

[109] The Applicant's pictures do not provide a true picture of the actual tree cover between the two properties. The majority of the photos that were shown to demonstrate the privacy provided by tree coverage between the properties are taken east to west (front and back). The photos do not accurately show the sight lines between the properties at the mutual property line (north and south).

[110] There are significant areas of the Appellants' yard that faces 21 River Drive North that do not have thick coverage of trees, given that this is the part of the yard that is developed for recreational use. A caragana bush stands between the Appellants' woodworking area and the front of the cabin. The coverage from this is minimal, as it has no leaves for three seasons of the year.

[111] This development removes any semblance of the Appellants' being able to enjoying the "cabin in the woods" effect. A fence and minor landscaping with a few mature and immature trees will not adequately screen the Appellants from the view of a three-storey complex next-door.

[112] The County requires 55 parking stalls for a development of this size. The Applicant only has room for one vehicular access point that leads to 22 parking stalls on site in the current design. The Applicant intends to source the remaining parking spaces from off-site. Most of the offsite parking is not in the Hamlet and is on federal lands. Additionally some of these stalls require 24-hours' notice to use them, and some are only available for use on Saturdays and Sundays.

[113] Patrons will not be able to see the Development from the off-site parking lots and could be expected to walk nearly half a kilometer in varying weather conditions. Patrons will likely seek parking in a flat ditch area rather than walking from stalls provided.

[114] Additionally there can be safety issues with parking so far away from the Development.

[115] The Development has an event space that will host events like weddings, parties, beer tours. The most likely scenario for parking beer tour buses or event limos is going to be on street, as they are not easily accommodated in the on-site parking design, and there are likely safety and convenience issues with parking up to a half a kilometre away. If someone is a guest at a wedding, and the parking lot to the event venue is full, it is not realistic that the guests are going to hike in from off-site up to a half a kilometre in heels. They will illegally park on the street.

[116] Winter weather also makes on street parking a likely scenario. Not many people will want to hike in up to a half a kilometre on snow and ice and potentially in the dark to reach their destination - they are going to park on the street, if for no other reason than comfort and safety. There is concern about vehicles unlawfully parking on River Drive North, and also parking into the flat ditch area in front of the Appellants property where they can damage landscaped areas.

[117] The Applicant presented different ways to keep parkers in line, maybe a valet service that can navigate a full parking lot with one access point, calling people in advance, sending them an email reminder. There is no guarantee that these ideas will work to keep people from parking on the street, and it is not known what mechanism would exist to force the Applicant to see these ideas through. The enforceability side of all of these cobbled together ideas makes the Appellant really nervous.

[118] The Applicant is trying to build such a large complex on such a small piece of land that when they need to deal with parking requirements, there is not enough land left to provide even half the parking required. It feels like this development is happening backwards, with the building design taking the lead instead of the capabilities of the land, and all without balancing neighbour interests.

[119] The Greater Bragg Creek Area Structure Plan states that parking areas should be located at the side or rear of the building not between the building front and street edge.

[120] No matter which way you configure the Applicant's front yard, there is parking at the front of the property. However, if the Applicant is being permitted to call the area of property facing Balsam Avenue the front yard, then a majority of the on-site parking is at the front. The Applicant's have not done this; to do so, more parking stalls on-site would need to be sacrificed when there already is not enough parking.

[121] The Applicant only has one access point (instead of two) with the sole access as close to the Appellant's property as possible. The proposed parking has more than half of the required parking stalls off site, and most of those on the reserve, not even in the hamlet. This is not sufficient mitigation to ensure traffic will not impact residential properties.

[122] The Appellants have various concerns of how this development unduly interferes with amenities of neighbourhood or materially interferes with or affects the use, enjoyment, value of neighbouring parcels of land.

[123] The Applicant has made the building as big as possible; it is as close to the Appellants' property as possible. The Applicant has employed the maximum variances, and employed some informal variances as well, to build the largest building possible.

[124] The Appellants will have no privacy. The public patio and hotel rooms look directly into the Appellants' property. There will be a commercial loading zone right next to the Appellants' property line this will cause ongoing noise; as well, it will be a high-density drinking and event space with easily 50-100 people on site.

[125] It is impossible to screen the adjacent parcels from a three-storey building.

[126] Over half of the parking is off-site, with time restrictions, easy cancellation, and located up to half a kilometre away, with most of the parking outside the Hamlet boundaries on the opposite side of town. Patrons will park unlawfully on River Drive North, and in the flat ditch area at the front of the properties on River Drive North causing damage to landscaped areas.

[127] A case from the Calgary Subdivision and Development Appeal Board (SDAB2015-0032) states that when legislation is interpreted a purposive and contextual approach should be taken. In that case, the Appellants also noted that their property would be affected by a development; however, since there was no appraisal was done on the property this argument would not apply. Therefore, the Appellant's had an appraisal conducted on their property.

[128] The Appellants respectfully request that the Board revoke or vary the order, decision, or development permit or any condition attached to any of these, or make or substitute an order, decision or permit of its own, with the effect of refusing the development permit in full or in part (such as refusing relaxations or variances).

[129] Additionally, we request that the Board refuse to make an order or decision or issue or confirm the issuance of a development permit where the proposed Development does not comply with the Land Use Bylaw, because the proposed Development would unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment, or value of neighbouring parcels of land.

[130] If the Appellants' appeal is not successful, they would like to commend the County for the condition to have parking agreements registered on title. It gives the County and other neighbours some mechanism to see whether a parking agreement has disappeared or remains.

[131] The Appellants note that if they had been properly and honestly engaged, there may have been an opportunity to have their concerns taken into account, instead of ending up appearing at the 11th hour in front of the Board, where the Applicant is so far invested into a certain course of action that any meaningful response to any concerns or engagement is not possible.

[132] Additionally, if the Appellants had been presented with a commercial development that matched the neighbourhood and proposed a density of use that correlated with the size of the parcel available, they would not have appealed this Development.

[133] The Appellants are concerned there could be potential safety issues when the property is vacant, with the increased volume of people in the area.

[134] The Appellants frequent the property consistently during the year, as it is used as a recreation property. In the summer months, the Appellants hike and in the winter, they snowshoe and cross country ski. Occasionally one of the Appellants works in the Calgary office of his company and stays at the property.

[135] The lack of engagement is on the Applicant's side not the Rocky View County side. Anytime more details were requested from the Applicant the marketing pitch was given rather than details on the development.

[136] The Appellants do not have expertise on the smells emanating from a brewery and coffee roastery, therefore the appraisers' knowledge and case studies were used.

Chris Kroker and Scott Strang (Gettel Appraisals) Submissions for the Appellants – June 20, 2019

[137] There are three primary factors that it is believed will reduce the market value of the Appellants' property as a result of the proposed commercial development of the Applicant's property: (1) an increase in pedestrian and vehicular traffic; (2) an increase in noise nuisance; and (3) decreased privacy.

[138] The Appellants' property was initially estimated as if not impacted by the proposed commercial development on the adjacent lot. Case studies in which stigma or external nuisance was apparent were then used to arrive an approximate discount on the property.

[139] Perfect comparables rarely exist in appraisal practice. However, all case studies utilized involved some form of stigma or nuisance and showed a resulting loss in value.

[140] The first case study involved proximity to a newly constructed LRT line within Edmonton. The two primary concerns involved in this study are increased noise and increased traffic.

[141] The second case study involved an increased nuisance resulting from adjacency to institutional and commercial facilities. Adjacency to commercial facilities resulted in an 8% loss of value, which would be expected to compound given the comparatively quiet nature of Bragg Creek in comparison to the more populous nature of the Edmonton neighborhood Windsor Park and the City of Edmonton in general.

[142] The third case study involved the impact to properties stemming from adjacency to sewage lagoons. Less weighting was placed on this case study given that odors are expected to be minimal, although odors could potentially stem from the brewery.

[143] The intent of the case studies is to show there is an impact on property value, not to equate the Applicant's or the Appellants' land to the lands in the case studies.

[144] It is important to note that the varying case studies show that when the market considers a property to have a stigma or nuisance, there is a resulting loss in value. Traffic, nuisance and smell were used in conjunction with one another for the assessment, not in a compounding nature.

[145] The Appellants' property was appraised using both a direct comparison approach, which valued the property at \$490,000, and the cost comparison approach, which valued the property at \$550,000. This assessment was completed April 15, 2019.

[146] The 2018 market value assessment done by Rocky View County valued the property at \$441,000; however, it may not have taken into account the renovation valued at \$120,000. These improvements were completed in 2015-2016. Additionally, the County completes their assessments using mass appraisal rather than using specifics when appraising a property.

[147] It is the opinion of the appraisers that the proposed development would in fact materially affect the enjoyment and value of the Appellant's residential property.

[148] The proposed development is a discretionary use and the variances in question do not comply with the Land Use Bylaw.

[149] There will be no increase in property value with the proposed development.

Nicolas Kuhl Submission (O2 Planning and Design) for the Applicant – June 20, 2019

[150] The berm that is part of the Public Utility Lot is 15 metres wide. Even with this berm there will be landscaping and trees preserved to maintain the screening and privacy.

[151] The County Plan notes that the Hamlet Area Structure Plan is what will ultimately designate any business areas. The Appellants' property is part of the Hamlet Core and the Appellants' property is also part of the revitalisation to be developed into commercial lands in the future.

[152] The Greater Bragg Creek Area Structure Plan notes that "Buildings with three to four storeys may be considered in the Hamlet Core, if the development is supported by a conceptual scheme or a Master Site Development Plan". The development is not being built to the maximum size allowable.

[153] The Lands are intended for commercial use, and it was confirmed during the land redesignation hearing that this is in the best interest of the community.

[154] The proposed Development is consistent with the natural environment and esthetic of Bragg Creek.

[155] The Area Structure Plan states that shared parking is to be considered as a provision in Bragg Creek for any future development.

Eziekai Dada Submission (Bundt and Associates) for the Applicant – June 20, 2019

[156] The site can only provide 22 parking stalls; if each use of the development were a stand-alone use the development, it would require 43 stalls. Therefore, shared parking is encouraged.

[157] Offsite parking is justified and a distance of 300 metres is acceptable.

[158] On a day-to-day basis, there will not be more than 22 vehicles on the site. In the summer months or during events there will be more vehicles and having an operational plan to manage those events is important.

[159] The parking agreements are based on relationships between the Applicant and third parties; the County does not have jurisdiction over the property owners in the Hamlet or the federal lands. The Applicant would let the County know if any of these were terminated.

[160] The Board can ignore the agreement the Applicant has for parking stalls on the federal lands, as the *Municipal Government Act* does not apply to them. There is still sufficient parking without these stalls.

Baruch Laskin (Bragg Creek Brewing) Submission for the Applicant – June 20, 2019

[161] The Operational Plan has been submitted for consideration, in response to the Appellants' concerns. The hours of operation for the Restaurant / Tap Room will be 11am to 11pm; the microbrewery will be 9am-5pm; the Boutique Inn 24 hours; the coffee roastery 7am-5pm; and the event space 11am-11pm. Deliveries at the proposed Development will only occur on weekdays only and between 9am and 5pm. All servers will have Pro-Serve and Pro-Tech based on Alberta Gaming and Liquor Commission standards.

[162] Bragg Creek is considered an Urban Centre and Balsam Avenue is now being developed commercially. The Appellants knew the Hamlet Core was being rezoned and there is a plan to expand the Hamlet Core to the south.

[163] There is an existing 3-metre paved sidewalk on the south side of Balsam Avenue that is part of the Great Trail, and is greatly used by pedestrians. The Applicant is willing to look into the creation of crosswalks to connect the path at the bridge and the proposed Development and the other businesses on Balsam Avenue.

[164] The furthest place from the Lands to park is the Community Centre, which is 400 metres and an average 20-year-old male will take is just under five minutes and a female of the same age is 6.8 minutes. The furthest parking location will be used for staff parking and the valet parking for the hotel guests. The parking on site will be to accommodate the daily needs for the restaurant and brew house.

[165] The Applicant has worked with a business in eastern Canada that has implemented wastewater cleaning.

[166] The proposed Development will meet the design guidelines of a dark sky Hamlet.

[167] The proposed Development is not surrounded only by residential properties. Other commercial developments in the area are surrounded by residences.

[168] The Appellants were consulted on all aspects of the development. The Appellants are absentee owners and are not easy to consult with. The only thing the Appellants had asked for was a mutually agreed upon fence, which the Applicant was in agreement with. The Applicant drove to Edmonton to meet with the Appellants.

[169] Following the public engagement, the brewery was reduced by half and the number of rooms in the hotel was increased. This allows for survivability of the business and is a great activation for the community.

[170] The proposed Development is in alignment with the revitalization efforts in the community.

George Reti Submission for the Applicant – June 20, 2019

[171] A property is given value by what the owner chooses to do with it. This starts with land use designation and any proposed development on the lands. The change in the value of neighbouring properties took place when the subject lands were redesignated, not now at the development stage.

[172] The land use has been met by this development. The Appellants' property is a transitional property based on the Area Structure Plan for the area. These transitional properties are less affected by change than other properties. The Appellants' property is likely worth more now with the proposed Development next door.

[173] The Subdivision and Development Appeal Board is not a good forum for the discussion of property values. Value is not a valid argument with discretionary uses and the Subdivision and Development Appeal Boards typically deny this argument.

Rick Grol Submission for the Applicant – June 20, 2019

[174] The Appellants' property is only used as a recreational property; this development will not affect the Appellants as much as it would if they were full time residents of Bragg Creek.

[175] This development will be a boutique hotel not a hotel complex. The hotel will only have approximately 70% utilization, therefore parking requirements should be considered with this utilization.

[176] The proposed Development meets both the County Plan and the Greater Bragg Creek Area Structure Plan.

[177] The Land Use Bylaw allows for offsite parking arrangements, if parking requirements are met with offsite parking it is technically not a Land Use Bylaw relaxation. Both of the Applicant's consultants determined that the proposed development would only require 35-38 stalls to meet the parking demands.

[178] It was stated by the Development Authority at the hearing on June 5, 2019 that the County does not challenge the findings of the Applicant's transportation experts. The Applicant is willing to accept a condition that valet parking must be used for the hotel guests and that staff must park in offsite parking. The Appellants have not provided evidence that there are indeed parking problems in Bragg Creek.

[179] The Applicant is willing to accept a condition that on the north side of the patio facing the Appellants' property a privacy screen will be installed. The Applicant is willing to accept a condition that the lower portion of the windows on the Appellants' side of the building will be frosted.

[180] With regards to the Gettel appraisal, using case studies from an urban centre, such as Edmonton, have no bearing on a value assessment for a property in a Hamlet area such as Bragg Creek.

[181] The size of this Development if it were to be in Calgary would be a large commercial development.

[182] With regard to the registration on title of the offsite parking stalls, this condition will be extremely challenging for the Applicant to meet. Property owners will be reluctant to place a caveat on title with the County as a party. Alternative conditions have been proposed.

[183] If this Development is denied this will halt any redevelopment of Bragg Creek.

[184] Construction on the proposed Development has not been started, it will take three months to get drawings for quotes and bids, and the build period will be approximately 18 months. This will vary based on when the development permit is issued and the time of the year.

David Zimmerman, in support of the development – June 20, 2019

[185] A permanent year round resident of Bragg Creek for over 18 years. Resides on Range Road 54, a significant distance away from the proposed development.

[186] A Wellness Committee was formed after the flooding in 2013, that was created to deal with the social-psycho health and wellness of the community. This committee identified that the main concerns of residents include the vibrancy of the Hamlet after the flooding.

[187] Spaces are needed that can provide a strong economic boost to the community. That can provide accommodations within the Hamlet. These would all increase the vibrancy within the community.

[188] This development would provide a "third space" to residents to connect the community and avoid isolation of the residents and community.

Bryce Hleucka, in support of the development – June 20, 2019

[189] Is a resident of Redwood Meadows for 16 years, a significant distance away from the proposed development.

[190] The trail system in and around Bragg Creek has failed to attract people due to the lack of accommodations in the Hamlet.

[191] The Area Structure Plan was adopted to benefit the community and all residents.

[192] Redwood Meadows and Bragg Creek are essentially one community; a trail network connects them. Redwood Meadows relies intrinsically on Bragg Creek for its economic centre.

[193] Accommodations are vital to the survival of a business. Breweries are quaint, communal and quiet, unlike bars.

[194] The Appellants appear to have a not in my back yard opposition; however, not being there full time residents they do not see the community not thriving. Their opposition is seemingly to the Area Structure Plan not this particular development.

[195] There are no parking issues in Bragg Creek. The businesses and residents would rather have the vibrancy in the area that comes with this issue than the alternative.

[196] The location for the development is perfectly situated; the height and size is not out of character for the area.

Troy Delfs, in support of the development – June 20, 2019

[197] A resident of Bragg Creek for over 17 years but has recently moved to Calgary due to the lack of viability and business opportunity in the Bragg Creek area.

[198] There are no hotels or inns in the Bragg Creek Area. The previous hotel was destroyed during the flood and has not been rebuilt. There are some Bed and Breakfast facilities but they do not afford the accessibility and affordability of a hotel especially with larger groups.

[199] Bragg Creek is a backyard playground for Calgary; however, it has been suffering greatly since the floods. Businesses are closing and failing since the floods.

[200] A hotel would draw people to the community and would benefit not only Bragg Creek but also Rocky View County as a whole.

[201] Offsite parking is a benefit to the community it fits with the environment of Bragg Creek. Walking through the community will allow people to frequent other businesses on the way too and from the brewery.

[202] This would be the only business on the river by taking in the beautiful nature that is Bragg Creek.

[203] The hotel that was destroyed during the flood was part of the Steakpit, it is unknown why it was not rebuilt after the floods.

Cathy Martin, in support of the development – June 20, 2019

[204] Lives across the street from the proposed development and would like to build a permanent home on those lands; however, they currently reside in Calgary and visit on the weekends more so during the summer than the winter.

[205] This development is vital in the revitalization of the area.

[206] No objections to the proposed development, they feel that they were included and kept up to date with all aspects of the development.

[207] Occasionally there are people parked on River Drive North when there is a garage sale or when the Martin's have many people over. However, parking has never been an issue in the 38 years they have been on their property.

John Teghtmeyer, in support of the development – June 20, 2019

[208] Third generation resident of Bragg Creek, resides at 47 Bracken Drive, the family owns various properties in the Hamlet.

[209] The majority of properties on Balsam Avenue are commercial.

[210] The offsite parking will be registered to title and therefore the availability of offsite parking should not be an issue.

Development Authority's Closing Comments – June 20, 2019

[211] A Master Site Development Plan for the Development was not submitted; however, all documents that would be included in a Master Site Development Plan were included as part of the application for the permit. The Design Standards set for Bragg Creek within the Area Structure Plan are simply a guideline and the requirement for a Master Site Development Plan is not a statutory requirement.

[212] Council does not need to approve a Master Site Development Plan on this occasion. Usually the Master Site Development Plan is included in the redesignation application; however, in this case it was submitted as part of the development permit application.

[213] The frosting of the bottom half of the windows and the addition of a privacy screen on the balcony can be added as a prior to issuance condition requiring new plans from the Applicant.

[214] A variance is not required for the off-site parking; an adjustment is necessary, however, if the Board accepts the Applicant's transportation studies. The Development Authority still believes that the development requires 55 parking stalls.

[215] Engineering has no concerns with the findings of the transportation studies from the Applicant.

[216] The Land Use Bylaw states that the front yard is any yard that fronts onto the street. It is preferred that the Development fronts onto Balsam Avenue based on the land use.

Appellants' Closing Comments – June 20, 2019

[217] The Appellants are not against the development of the subject lands; however, they do feel that the site is better suited for one use rather than all uses at the same time.

[218] The statement made by the Applicant's appraisal expert with regards to the value of the Appellants' property increasing following this Development, should be given minimal weight, as it is a bare statement. The land use redesignation did adversely affect the Appellants' property, by placing commercial adjacent to residential parcels.

[219] The area, whilst it has been referred to as transitional, has historically been low density residential and this is the most productive use of the land. The Area Structure Plan is traditionally fluid and what is stated in the document may not be what happens in the future. The transition to a commercial area could take decades for demand to move forward with speculative development.

[220] Section 534 of the *Municipal Government Act* refers to public works installations. The intent of the case study used in the appraisal of the Appellants' property with regards to public works was to demonstrate loss of value, not to make the equivalent comparison of the same. The recreational use of the Appellants' property has no bearing on the value of the property.

[221] The best way to determine lost value in an appraisal is to look at case studies. In order to make a case study you require a plethora of data from an area to use as a sample set there is not enough information in the Hamlet of Bragg Creek due to its small size. Therefore, case studies from urban centres were used; the expectation is the value loss would be compounded due to the recreational quiet nature of Bragg Creek as compared to Edmonton.

FINDINGS & REASONS FOR DECISION

[222] The Board finds it has the authority to make a decision on this matter pursuant to section 687(3) of the *Municipal Government Act*.

[223] The Board reviewed all evidence and arguments, written and oral, submitted by the Development Authority, the Applicant, the Appellants and other interested parties who made written or verbal submissions. In this Decision, we focus on the most relevant evidence and arguments. The Board considered the context of the proposed development, sound-planning considerations, the merits of the application and all applicable legislation, plans, and policies.

[224] The Board considers that the appeals raise three issues that require discussion and analysis.

[225] First, there is the question of the height of the Development. The proposed Development includes a 3-storey building and requires relaxation of the maximum height requirement.

[226] Second, there is not enough parking on-site to accommodate the Development as proposed. To deal with this, the Applicant has proposed off-site parking and there is a disagreement with the Development Authority as to how off-site parking should be achieved.

[227] Third, the Applicant's appeal raises issues relating to the conditions imposed by the Development Authority relating to servicing. The Board will address each of these issues in turn.

Building Height

[228] A multi-use commercial building is a discretionary use in the Hamlet Commercial District, in accordance with section 63 of the *Land Use Bylaw*. The Board acknowledges that the Lands have the appropriate zoning for the proposed Development. However, the Applicant requested relaxation of the maximum height requirement from 10.00 m (32.81 ft.) to 12.50 m (41.01 ft.); i.e., a variation of 25%.

[229] The County has approved an Area Structure Plan (the ASP) for the Hamlet of Bragg Creek: the Greater Bragg Creek ASP. Appendix "A" to the ASP is a document titled "Hamlet of Bragg Creek Design Standards" (the Design Standards). The Design Standards were added to the ASP by way of an amendment to the ASP made in 2016 (they replaced existing "Development Guidelines").

[230] The proposed brewery/hotel building is three-storeys tall. Sections 3.2.2(e) and (f) of the Design Standards state that for commercial development in Bragg Creek building height "should be limited to two storeys" but buildings with 3-4 storeys may be considered "if the development is supported by a conceptual scheme or master site development plan" (MSDP).

[231] According to Rocky View's County Plan (at page 15), a MSDP is a "non-statutory plan that is adopted by Council resolution" and "accompanies a land use redesignation application".

[232] The Lands were redesignated from Hamlet Residential Single Family District to Hamlet Commercial District to allow for this proposed Development. The County did not require the Applicant to submit, and therefore it did not approve, a MSDP as part of the redistricting process. The Board notes that it is Council who approve a MSDP, not the Development Authority.

[233] In its report to the Board dated June 5, 2019 the Development Authority stated (on page 4) that the Applicant "submitted a MSDP". This is not correct. At the hearing of the appeals, the Development Authority clarified that a MSDP was not submitted; however, all documents that would be included in a MSDP were included as part of the development permit application.

Position of the Applicant and Development Authority

[234] The Applicant and the Development Authority argue that the Design Standards are guidelines and not policy that form part of the ASP. In other words, the Design Standards are not binding on the Board. Essentially, they argue that the ASP does not require the submission of an MSDP approved or adopted by Council. In support of their position they point to the following:

- The wording of section 1.3 of the Design Standards, which describes them as “a companion” to the ASP and LUB that will “guide” the physical design of developments; and states that developers “should consult” the standards in conjunction with relevant policies and standards; and
- Section 616(dd) of the *Municipal Government Act* (the MGA), the definition of “statutory plan” (which provides that an ASP is a statutory plan).

[235] Additionally, the Applicant argues that even if the Design Standards are found to form part of the ASP, the ASP is a policy document, not a regulatory document like a Land Use Bylaw and thus the Development Authority “has considerable latitude in the implementation of the objectives of the ASP in the review of a development permit application.”²

Position of the Appellants

[236] The Appellants argue that the Design Standards, as amendments to the ASP, form part of the ASP, which is a statutory plan. In support of this position, they cite section 691(1) of the MGA, which they say requires that a statutory ASP, including amendments thereto, be adopted by Council by bylaw. In fact, section 691(1) deals with the Municipal Government Board’s obligation to hold a hearing on receiving a notice of appeal, not amendments to statutory plans. The relevant section of the MGA is section 633(1), which provides that a council “may by bylaw adopt” an ASP. The Bragg Creek ASP was adopted by bylaw and is clearly a statutory plan.

[237] The Appellants also argue that the ASP contains mandatory language requiring that new commercial development in Bragg Creek “shall conform” to the Design Standards “which form Appendix A of this Plan”. The ASP also states that new hotel development “shall be in compliance with” the Design Standards. This “mandatory” language, the Appellants argue, means that the Applicant was required to have a MSDP approved by Council in order to obtain a development permit for the Development.

² Page 2 of the Applicant’s July 2, 2019 submissions.

Relevant Provisions in the MGA, the ASP, the Design Standards and the MSDP

[238] Section 687(3)(a.2) of the MGA requires that the Board must comply with any applicable statutory plan. It is clear that in making its decision on the appeals, the Board must comply with the Greater Bragg Creek ASP.

[239] The Greater Bragg Creek ASP states at section 7.3.2(b):

New commercial, institutional, mixed-use, and multi-residential development within the hamlet shall conform to the Hamlet of Bragg Creek Design Standards, which forms Appendix A of this Plan. [emphasis added]

[240] Section 3.2.2(e) and (f) of the Design Standards read as follows:

e) Building height should be limited to two storeys, and generally should not extend beyond 10 metres (32 feet). Height relaxation may be considered to accommodate desirable architectural detailing.

f) Buildings with three to four storeys may be considered in the hamlet core, if the development is supported by a conceptual scheme or master site development plan. [emphasis added]

[241] There is no suggestion in the record that the existence of a conceptual scheme is relevant on the facts, so the Board will focus on the MSDP. The Rocky View County Plan defines a Master Site Development Plan as follows:

MASTER SITE DEVELOPMENT PLAN: A non-statutory plan that is adopted by Council resolution. A master site development plan accompanies a land use redesignation application and provides design guidance for the development of a large area of land with little or no anticipated subdivision. In some cases, a master site development plan may be used following a conceptual scheme when certain site design details have not been finalized.

A master site development plan addresses building placement, landscaping, lighting, parking, and architectural treatment. The plan emphasis is on site design with the intent to provide Council and the public with a clear idea of the final appearance of the development.³ [emphasis added]

[242] The County Plan states at section 29.7 that a MSDP “should address all matters identified in Appendix C, sections 1 and 3.” Appendix C sets out the technical requirements for a MSDP submission.

³ County Plan at pp. 14-15

Analysis

[243] Based on the wording of the ASP, the Board has concluded that the Design Standards form part of the ASP and are thus part of a statutory plan as defined in the MGA. In legal form, the ASP is a bylaw enacted by Council of Rocky View County, Bylaw C-7603-2016. The Bylaw itself (as opposed to the ASP which is essentially an attachment to the Bylaw) includes the following:

“PART 3 – EFFECT OF BYLAW

THAT Bylaw C-6260-2006, known as the “Greater Bragg Creek Area Structure Plan”, be amended in accordance with the amendments contained in Schedule ‘A’ [the Design Standards], attached to and forming part of the Bylaw.” [emphasis added]

[244] The plain meaning of the Bylaw is that the Design Standards “form part of” the ASP. The ASP had to be amended to include the Design Standards as an appendix. If the Design Standards are not, in fact, part of the ASP, there should have been no need to amend the ASP to adopt them.

[245] A contrary interpretation is, in the Board’s view, absurd. It would mean that an appendix to the ASP is not part of the ASP it is attached to. That being the case, the Board does not accept the interpretation argued by the Applicant and the Development Authority, that the Design Standards are merely guidelines but not policy like the ASP. The Board acknowledges that the Design Standards themselves, in section 1.3, state that they act as a “companion” to the ASP meant to “guide” physical design, etc. However, we view this statement as relating to how the Design Standards should be used, not to their legal status.

[246] As noted above, the Appellants cite several examples of provisions of the ASP containing mandatory language as it applies to the Design Standards. Most significantly, section 7.3.2(b) of the ASP clearly states that new commercial development in Bragg Creek “shall conform” to the Design Standards. All parties agree that the word “shall” is mandatory in this context.⁴

[247] However, the Applicant argues that section 3.2.2(e) of the Design Standards, which states that building height “should” be limited to two storeys, means that the two-storey height limitation is not mandatory but merely “directory”. While this is true, is it is irrelevant, since section 3.2.2(e) is followed by section 3.2.2(f), which clearly states that buildings of 3 to 4 storeys may be considered, but only if the development is supported by a MSDP.

⁴ Section 4.1 of the ASP states:

When “shall” is used, the community intends for the action to be mandatory. The community realizes that this inherently reduces flexibility for decision makers to find unique solutions to situations that arise, however, the community has contemplated the consequences of when and if an alternate action would be appropriate and has determined that the action required by the policy best reflects the community’s desires. [emphasis added]

[248] The Board notes that section 3.2.2(e) states that height relaxation may be considered “to accommodate desirable architectural detailing”. In this case, the height relaxation is sought to add a third storey to the building, something which the Board considers goes beyond accommodating “architectural detailing”.

[249] Further, both the ASP and the Design Standards suggest that the word “should”, while not mandatory, should be interpreted narrowly:

4.1 [ASP] When “should” is used, the community realizes that there will be cases where its desires can be achieved through alternate actions but it strongly advises that the action be taken, in order to achieve the balance that is articulated in the vision and through the policies.

1.4 [Design Standards] “**Should**”: this indicates the design standard is strongly advised. Rocky View County realizes that there will be cases where the intention of the standard may be achieved through **alternate actions**, but it strongly advises that the action be taken if no other suitable alternative is determined. The applicant shall still respond to the specific standards, but with an acceptable equivalency or appropriate response. **Disregard for the standard is unacceptable.**

[250] These definitions support the Board's view that while the two-story height restriction may be varied (and is therefore not “mandatory”), it is strongly recommended and may only be varied where supported by a MSDP. The real question is not whether the height restriction is mandatory but whether the restriction may only be varied if supported by a MSDP. The answer to that question is yes.

[251] As noted above, the Development Authority argues that the information that must be contained in a MSDP was provided by the Applicant as part of the development permit application. In the Board's view, this does not rectify the absence of an approved MSDP, since a MSDP is approved by Council, not the development authority. The development authority has no authority to effectively grant the Applicant a waiver from having to obtain from Council approval of a MSDP.

[252] The Applicant argues that the fact that Council did not require that a MSDP be prepared when the land use for the site was redesignated is a significant factor in favour of not requiring one now. In the Board's view, it is not clear whether Council was aware, when the property was redesignated, that a 3-storey building was contemplated. Regardless, like the development authority and the Board, Council is required to comply with the ASP. Since the ASP requires that a 3-storey development be supported by a MSDP, to the extent Council did not require one, which was an error on Council's part. That error cannot now be relied on by the Applicant as constituting a waiver of the requirement for a MSDP.

[253] Based on the foregoing, the Board has concluded that the Development Authority erred by conditionally approving the proposed Development in the absence of a Council-approved MSDP. Our conclusion is based on the mandatory language of the ASP and the Design Standards requiring that development of 3-storey commercial building in Bragg Creek be supported by a MSDP.

[254] The Applicant argues that in the event the Board concludes that an approved MSDP supporting the 3-story development is required, the Board could vary the development permit by adding a prior-to-release condition that a MSDP must be approved by Council before the development permit may be released. The Board has considered this idea but rejects it.

[255] The Board considers the requested 25% height variance to be significant. As noted above, the height relaxation is requested not to accommodate architectural detailing but to add a third floor to the building. Council, in its wisdom, enacted Design Standards (which we have found to form part of the statutory ASP) which restrict building height to two storeys. If the Applicant wants to develop a three-storey building, it must follow the process clearly set out in the ASP and Design Standards, and obtain approval from County Council of a MSDP for the development.

[256] In conclusion, the Board is only prepared to approve a two-storey building as part of the Development.

Parking

[257] The record is clear that the Lands can only accommodate 22 parking stalls on-site. The Applicant stated that its parking study concluded that 35 - 38 parking stalls are required for the Development. The Development Authority calculated that a total of 55 stalls are required.

[258] The Applicant proposed to supplement the on-site parking with off-site parking. It stated that it had entered into agreements with third-party property owners to provide up to 42 off-site parking stalls. The agreements could be canceled by either party on 30 days' notice.

[259] The Development Authority was satisfied with the concept of off-site parking for the Development but not with the use of agreements that could be canceled by either party at any time on 30 days' notice. The Development Authority therefore imposed conditions (Conditions 4 and 37) on the development permit requiring that the parking agreements be registered on title. Condition 4 states:

- (4) That prior to the issuance of this permit, the Applicant/Owner shall register on title, the appropriate parking agreement between each consenting property, to accommodate the proposed offsite parking agreements. The instrument shall remain on title for the life of the development unless updated or replaced with alternative parking locations.

[260] The Board finds the wording of Condition 4 problematic. The condition is not clear, on its face, whether it requires that a caveat be filed against title to the Applicant's property or against title to the property furnishing the off-site parking stalls, or both. In its verbal submissions, the Development Authority clarified that it was asking that the parking agreements be registered against titles of the properties furnishing the off-site parking stalls.

[261] The Board believes such a condition is unworkable. If a third party property owner is prepared to register a parking agreement against the title to their property, that is their business. However, the Board is not prepared to make such registration a condition of a development permit issued to the Applicant. No evidence was submitted to the Board confirming how many—if any—third parties would agree to the registration of parking agreements against their titles. In the absence of such evidence, the Board has very little confidence that the condition will achieve the purpose for which the Development Authority included it as part of the development permit.

[262] Further, the Board is not persuaded that off-site parking is feasible in any event. The Board is skeptical that patrons of the proposed brewery and hotel will be interested in parking their vehicles up to 400 metres away from the Development and walking the rest of the way, particularly after dark or during the winter. The Board agrees with the Appellants that it is likely that some people will simply park on the street as close as possible to the Development.

[263] Accordingly, the Board is not prepared to approve the Development with off-site parking. The development permit will therefore be varied to restrict the Development to on-site parking only.

Servicing

[264] The Board finds that the stated utility conditions are within the requirements of the Bragg Creek Utility System design requirements. The Board notes that all utility work is required to be in accordance with the Counties Servicing Standards and Water & Wastewater Utilities bylaw (C-7662-2017).

CONCLUSION

[265] Based on the above findings and pursuant to section 687 of the *Municipal Government Act*, the Board finds that the proposed development, as varied by the Board, would not unduly interfere with the amenities of the neighbourhood, or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land. The Board also finds the proposed development conforms to the use prescribed for the Lands in the *Land Use Bylaw*.

[266] For the reasons set out above, the appeals are allowed in part and the decision of the Development Authority is varied. A development permit shall be issued subject to the above-noted conditions.

Dated at Rocky View County, in the Province of Alberta on September 11, 2019.



Don Kochan, Chair
Subdivision and Development Appeal Board

**APPENDIX “A”: CONDITIONAL DEVELOPMENT PERMIT AS VARIED BY THE
SUBDIVISION AND DEVELOPMENT APPEAL BOARD**

Description:

- (1) That a General Industry Type I and II multi-use commercial building may take place on the subject site in general accordance with the approved Bragg Creek Area Structure Plan subject to the conditions of this approval and includes:
 - (a) Construction of a multi-use commercial building with a footprint of ± 354.24 sq. m. (3,813 sq. ft.) and total gross building area of $\pm 1,026.49$ sq. m (11,049 sq. ft.);
 - (b) Signage including 2 freestanding, 2 façade and onsite parking wayfinding (as required).

Prior to Issuance:

Developability

- (2) That prior to issuance of this permit, the Applicant/Owner shall submit a revised landscaping plan that identifies the proposed amount of landscaping to be incorporated/maintained onsite, to the satisfaction of Rocky View County (“the County”). Note, the landscaping plan shall be in compliance with the Provincial FireSmart Guidelines and the Hamlet of Bragg Creek Design Standards.
- (3) That prior to issuance of this permit, the Applicant/Owner shall submit a revised parking plan, identifying the minimum required onsite parking stalls including barrier free parking stalls (two [2]), stall dimensions and associated signage for the subject site, in accordance with the Land Use Bylaw and Alberta Building Code 2014, to the satisfaction of the County.
- (4) That prior to issuance of this permit, the Applicant/Owner shall enter into an agreement with the adjacent landowner at 23 River Drive North for the construction of a mutually agreed upon privacy fence on the common property line.
- (5) That prior to issuance of this permit, the Applicant/Owner shall provide updated drawing identifying the entrance to the proposed development is a minimum of 6m wide, and the access route has a 12m centreline-turning radius to accommodate fire and emergency vehicles.

Servicing

- (6) That prior to the issuance of this permit, the Applicant/Owner shall submit a water and wastewater servicing assessment to the satisfaction of the County. The water and wastewater servicing assessment shall be prepared by a qualified professional and determine the water demands and wastewater generation of the proposed development at full build out.
 - (a) The servicing assessment shall determine if upgrades are required to meet the increased servicing demands based on the full buildout of the development;
 - (b) The servicing assessment shall include further information on the pre-treatment system that shall be provided, including details of the strength and composition of wastewater that will be discharged into the Bragg Creek Wastewater Collection System;
 - (c) The servicing assessment shall demonstrate that wastewater released from the development shall not be over strength in accordance with the terms of the Water & Wastewater Utilities Bylaw (C-7662-2017).
- (7) That prior to the issuance of this permit, the Applicant/Owner shall be required to provide the necessary security for the tie-in to the existing water main, based on estimated construction costs prepared by a qualified professional; if an upgraded water and/or sanitary utilities main connection and service connection is required.
- (8) That prior to the issuance of this permit, the Applicant/Owner shall submit engineered design drawings of the utility connections for review and acceptance by the County, if an upgraded utilities main connection and service connection to the water main and/or the sanitary sewer within the River Drive North right-of-way is required. Written approval of the design drawings shall be obtained from the County Utility Services manager, prior to construction commencement.
- (9) That prior to the issuance of this permit, the Applicant/Owner shall submit design drawing(s) showing the location of the sanitary sewer services connection and test manhole, to the satisfaction of the County.
 - (a) The test manhole shall be located in the gravity portion of the sanitary sewer service connection, as close as practically possible to the east property line, in an easily accessible area for wastewater sampling.

- (10) That prior to the issuance of this permit, the Applicant/Owner shall enter into an access easement or utility right-of-way agreement with the County and register on title, to allow the County representatives to enter the subject lands and access the test manhole to obtain samples to verify that wastewater is in compliance with the County's Water & Wastewater Utilities Bylaw (C-7662-2017).
- (11) That prior to the issuance of this permit, the Applicant/Owner shall confirm the location and volume of an onsite water reservoir to be used for fire suppression, to the satisfaction of the County.

Note: That the Bragg Creek Water distribution system is not capable of providing water pressures for fire suppression. Therefore, any fire suppression systems required by the building code must be accommodated with onsite storage and pressurization.

Storm Water Management

- (12) That prior to the issuance of this permit, the Applicant/Owner shall submit a Storm Water Management Plan (SWMP), to the satisfaction of the County. The SWMP shall demonstrate that the site can manage storm water in accordance with the requirements of the County Servicing Standards and the Bragg Creek Master Drainage Plan.
 - (a) The SWMP shall comment on pre and post-development water quality, release rates, and runoff volume control targets.
 - (b) The SWMP shall demonstrate how any negative impacts to the Elbow River will be mitigated both during and post construction, in accordance with *County Policy 419: Riparian Land Conservation and Management*.
 - (c) The SWMP shall include a site grading plan, and give consideration to berm construction for the Bragg Creek Flood Mitigation Project.

Note: Any Alberta Environment approvals may be required if any storm water ponds are required.

Construction Management

- (13) That prior to the issuance of this permit, the Applicant/Owner shall submit a Construction Management Plan, to the satisfaction of the County. The Plan shall be prepared by a qualified professional, addressing noise mitigation measures, traffic accommodation, sedimentation and dust control, management of storm water during construction, erosion and weed control, construction practices, waste management, firefighting procedures, evacuation plan, and all other relevant construction management details.

Road Use Agreement

- (14) That prior to the issuance of this permit, the Applicant/Owner shall contact County Road Operations to determine if a Road Use Agreement and/or any Road Data Permits are required for the importing of fill and topsoil, removal of any excess fill, and for the mobilization and demobilization of any construction equipment to and from the subject site utilizing any County Roads.
- (a) Written confirmation shall be received from County Road Operations confirming the status of this condition. Any required agreement or permit shall be obtained unless otherwise noted by County Road Operations.

Fees & Levies

- (15) That prior to the issuance of this permit, the Applicant/Owner shall submit payment of the Transportation Off-site Levy in accordance with the applicable levy at time of Development Permit approval (Bylaw C-7356-2014), for the total gross acreage of the lands.

Note: The Transportation Off-site Levy shall not include the lands that the County is purchasing for construction of the Flood Mitigation Berm.

- (16) That prior to issuance of this permit, the Applicant/Owner shall confirm acceptance or refusal to participate in the Voluntary Recreation Contribution for Community Recreation Funding on the form provided by the County. If accepted, the contribution is calculated at \$800.00 per acre.

Prior to Occupancy:

Landscaping

- (17) That prior to occupancy of the site, all landscaping and final site surfaces shall be completed.
- (a) That should permission for occupancy of the site be requested during the months of October through May inclusive and prior to the required landscaping and site surface completion, then occupancy may be allowed provided that an Irrevocable Letter of Credit is received by the County.
- (b) The Irrevocable Letter of Credit shall be in the amount of 150.00% of the total cost of completing all the landscaping and final site surfaces that is not yet completed. A contractor's/engineer's quote shall accompany the Letter of Credit describing the work to be carried out and shall be placed with Rocky View County to guarantee the works shall be completed by the 30th day of June immediately thereafter.

- (18) That prior to occupancy of the site, the mutually agreed upon privacy fence, on the common property line with the adjacent landowner at 23 River Drive North, be constructed and approved by both the Applicant/Owner and the owners of 23 River Drive North.

Servicing

- (19) That prior to the occupancy of the site, the Applicant/Owner shall enter into a Customer Servicing Agreement with the County, for the water and wastewater utility services provided to the subject lands.
- (20) That prior to occupancy of the site, after approval of the utilities main connection and service connection designs by the County's Utility Services manager, the Applicant/Owner shall provide 14 days' written notice to the County prior to utility construction commencing. The Applicant/Owner shall arrange to have County personnel present to supervise construction at their expense, in accordance with the County's Water & Wastewater Utilities Bylaw (C-7662-2017).
- (a) All utility construction shall be to the satisfaction of the County.
 - (b) All ground disturbances shall be restored to pre-existing or superior conditions, to the satisfaction of the County.
 - (c) All engineering and construction costs shall be borne by the Applicant/Owner.
- (21) That prior to occupancy of the site, the Applicant/Owner shall purchase additional water and wastewater capacity required to service the development, as determined by the Water & Wastewater servicing assessment, in accordance with the County's Master Rates Bylaw (C-7751-2018), as amended.
- (22) That prior to occupancy of the site, the Applicant/Owner shall submit as-built drawings of the site that are certified by a professional engineer. The as-built drawings shall include verification of any as-built water, sanitary, storm water management infrastructure and the test manhole.
- (a) Following receipt of the as-built drawings from the Applicant's consulting engineer, the County shall complete an inspection of the site to verify the storm water infrastructure has been completed as per the stamped "examined drawings".
- (23) That prior to occupancy of the site, the Applicant/Owner shall contact County Utility Operations for an inspection of the water meter, sanitary sewer service connection, and the sanitary test manhole.

Permanent:

Servicing

- (24) That water and wastewater volumes used by the development shall be within the amounts allocated to the subject lands, and all overages shall be billed in accordance with the Water Rates Bylaw (C-7751-2018) and the Water & Wastewater Utilities Bylaw (C-7662-2017).
 - (a) That if the wastewater released from the development is found to be over strength, the Applicant/Owner shall be subject to over strength wastewater surcharge specified within the Master Rates Bylaw and the Water & Wastewater Utilities Bylaw.
- (25) That connection to existing sanitary mains, waste mains, and water mains shall not be permitted without the authorization of the County's Utility Operations.

Construction Management

- (26) That the Applicant/Owner shall submit a deep fill report, with compaction results, if any areas shall have a fill depth greater than 1.2 m.
- (27) That no topsoil shall be removed from the subject property.
- (28) That during construction, dust control shall be maintained on the site and that the Applicant/Owner shall take whatever means necessary to keep visible dust from blowing onto adjacent lands.
- (29) That any dirt removed from the site during construction shall be hauled off in a covered trailer/truck that will prevent the blowing of dust/small rocks onto the road, and prevent issues with other vehicles on the road.
- (30) That the clean-up of any mud tracking and/or dirt that enters onto adjacent County roads during construction shall be the responsibility and cost of the Applicant/Owner.
- (31) That the entire site shall be maintained in a neat and orderly manner at all times. All waste material shall be deposited and confined in an appropriate enclosure. All waste material shall be regularly removed from the property to prevent any debris from blowing onto adjacent property or roadways.
- (32) That any flood proofing measures shall be followed in accordance with the Alberta Building Code, good engineering practice and recommendations stated in the Bragg Creek Area Structure Plan.

- (33) That the Applicant/Owner shall ensure that all habitable floor levels are above the 1 in 100 flood level. Any construction below this flood level may require engineered flood proofing measures.

Note: The required flood elevation level is 1297.63 m

Solid Waste & Recycling Management

- (34) That the garbage containers shall be screened from view from adjacent properties and public thoroughfares. All garbage and waste shall be stored in weatherproof and animal proof containers and be in a location easily accessible to containerized garbage pickup.

Signage & Lighting

- (35) That any future signage, not included within this application, shall require separate Development Permit approval and shall adhere to the Hamlet of Bragg Creek Design Standards and the Land Use Bylaw.
- (36) That no temporary signage shall be placed on the site at any time except any temporary signs required during development or building construction.
- (37) 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 be required to demonstrate lighting design that reduces the extent of spill-over glare and eliminates glare as viewed from nearby residential properties.

Parking

- (38) That the site shall maintain all parking requirements on site and one loading bay onsite at all times, in accordance with the approved Parking Study.
- (39) That no parking shall be permitted on the adjacent County road system.

Landscaping

- (40) That all landscaping shall be in accordance with the approved Landscape Plan.
- (41) That the existing trees and terrain shall be retained except as required to meet conditions of this permit and any disturbed areas shall be replanted with vegetation similar to existing predevelopment ground cover.
- (42) That no outdoor display areas, storage areas, parking or marshalling yards shall be allowed within landscaped yards.

- (43) That the quality and extent of the landscaping shall be maintained over the life of the development and any deceased vegetation shall be replaced within 30 days or before June 30th of the next growing season.
- (44) That there shall be no potable water used for irrigation and landscaping purposes, and that no exterior hose bibs shall be installed.

Other

- (45) 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 proposed development located on the subject site, to facilitate accurate emergency response.
- (46) That if the facility changes commercial usage, the Owner shall submit to the County a revised description of process and subsequent water and wastewater requirements.
- (47) That any plan, technical submission, agreement, matter or understanding submitted and approved as part of the application or in response to a Prior to Issuance or Occupancy condition, shall be implemented and adhered to in perpetuity and includes but is not limited to (as amended):
 - (a) Geotechnical Investigation Report, as prepared by E2K Engineering Ltd, dated November 29, 2018);
 - (b) Trip Generation Exercise, as prepared by Bunt & Associates, dated March 31, 2017;
 - (c) Parking Study, as prepared by Bunt & Associates, dated November 21, 2018;
 - (d) Stormwater Management Plan, as prepared by Richview Engineering Inc., dated February 1, 2019;
 - (e) Erosion & Sediment Control Plan, as prepared by Richview Engineering Inc., dated November 18, 2018;

Advisory:

- (48) That during construction, the County's Noise Control Bylaw C-5772-2003 shall be adhered to at all times.
- (49) That during construction, all construction and building materials shall be maintained onsite in a neat and orderly manner. Any debris or garbage shall be stored/placed in garbage bins and disposed of at an approved disposal facility.
- (50) That the site shall remain free of restricted or noxious weeds, in accordance with the Weed Control Act.

- (51) That the Applicant/Owner shall be responsible for all required payments of third party reviews and/or inspections, as per the Master Rates Bylaw.
- (52) That a Building Permit with applicable subtrade permits, shall be obtained through Building Services, prior to any construction taking place and shall require:
 - (a) The Commercial, Industrial and Institutional application checklist;
 - (b) A completed 3.2.2 Code Analysis;

Note: The Development shall conform to the National Energy Code 2011 and Alberta Building Code & it is recommended that the Applicant/Owner schedule a pre-application meeting with Building Services, to go over in detail, any Building Permit application requirements.

- (53) That a Building Demolition permit shall be obtained through Building Services, prior to any demolition of any existing building onsite.
- (54) That all other government compliances and approvals are the sole responsibility of the Applicant/Owner and include:
 - (a) An issued Roadside Development Permit through Alberta Transportation;
 - (b) Any Alberta Health Services approvals.
- (55) That if the development authorized by this Development Permit is not commenced with reasonable diligence within 12 months from the date of issue, and completed within 36 months of the date of issue, the permit is deemed to be null and void unless an extension to this permit shall first have been granted by the Development Authority.
- (56) That if this Development Permit is not issued by **December 31, 2020** or the approved extension date, then this approval is null and void and the Development Permit shall not be issued.

Note: The Applicant/Owner shall be responsible for all Alberta Environment and Park (AEP) approvals for any impact to any wetland areas or for on-site stormwater Infrastructure

APPENDIX “B”: DEVELOPMENT PERMIT PRDP20184945

Description:

- (1) That General Industry Type I and II (Brewery), Hotel (21 room), Restaurant and Drinking establishment, construction of a multi-use commercial building may take place on the subject site in general accordance with the Site Plan and Architectural Drawings prepared by STARK architecture, dated October 5, 2018, subject to the amendments required in accordance with the conditions of this approval and includes:
 - (a) Construction of a multi-use commercial building with a footprint of ± 354.24 sq. m. (3,813 sq. ft.) and total gross building area of $\pm 1,026.49$ sq. m (11,049 sq. ft.);
 - (b) Relaxation of the minimum side yard setback requirement from **1.20 m (3.94 ft.) to ± 0.90 m (± 3.00 ft.)** from the proposed Public Utility Lot (flood mitigation structure) to the west;
 - (c) Relaxation of the maximum height requirement from **10.00 m (32.81 ft.) to 12.50 m (41.01 ft.)**, (excluding the parapet wall); and
 - (d) Signage including 2 freestanding, 2 façade and onsite/offsite parking wayfinding (as required).

Prior to Issuance:

Developability

- (2) That prior to issuance of this permit, the Applicant/Owner shall submit a revised landscaping plan that identifies the proposed amount of landscaping to be incorporated/maintained onsite, to the satisfaction of Rocky View County [“the County”]. Note, the landscaping plan shall be in compliance with the Provincial FireSmart Guidelines and the Hamlet of Bragg Creek Design Standards.
- (3) That prior to issuance of this permit, the Applicant/Owner shall submit a revised parking plan, identifying the minimum required barrier free parking stalls (two [2]), stall dimensions and associated signage for the subject site, in accordance with the Land Use Bylaw and Alberta Building Code 2014, to the satisfaction of the County.
- (4) That prior to issuance of this permit, the Applicant/Owner shall register on title, the appropriate parking agreement between each consenting property, to accommodate the proposed offsite parking agreements. The instrument shall remain on title for the life of the development unless updated or replaced with alternative parking locations.

Servicing

- (5) That prior to the issuance of this permit, the Applicant/Owner shall submit a water and wastewater servicing assessment to the satisfaction of the County. The water and wastewater servicing assessment shall be prepared by a qualified professional and determine the water demands and wastewater generation of the proposed development at full build out.
 - (a) The servicing assessment shall determine if upgrades are required to meet the increased servicing demands based on the full buildout of the development;
 - (b) The servicing assessment shall include further information on the pre-treatment system that shall be provided, including details of the strength and composition of wastewater that will be discharged into the Bragg Creek Wastewater Collection System;
 - (c) The servicing assessment shall demonstrate that wastewater released from the development shall not be over strength in accordance with the terms of the Water & Wastewater Utilities Bylaw (C-7662-2017).
- (6) That prior to the issuance of this permit, the Applicant/Owner shall be required to provide the necessary security for the tie-in to the existing water main, based on estimated construction costs prepared by a qualified professional, if an upgraded water and/or sanitary utilities main connection and service connection is required;
- (7) That prior to the issuance of this permit, the Applicant/Owner shall submit engineered design drawings of the utility connections for review and acceptance by the County, if an upgraded utilities main connection and service connection to the water main and/or the sanitary sewer within the River Drive North right-of-way is required. Written approval of the design drawings shall be obtained from the County Utility Services manager, prior to construction commencement.
- (8) That prior to the issuance of this permit, the Applicant/Owner shall submit design drawing(s) showing the location of the sanitary sewer services connection and test manhole, to the satisfaction of the County.
 - (a) The test manhole shall be located in the gravity portion of the sanitary sewer service connection, as close as practically possible to the east property line, in an easily accessible area for wastewater sampling.

- (9) That prior to the issuance of this permit, the Applicant/Owner shall enter into an access easement or utility right-of-way agreement with the County and register on title, to allow the County representatives to enter the subject lands and access the test manhole to obtain samples to verify that wastewater is in compliance with the County's Water & Wastewater Utilities Bylaw (C-7662-2017).
- (10) That prior to the issuance of this permit, the Applicant/Owner shall confirm the location and volume of an onsite water reservoir to be used for fire suppression, to the satisfaction of the County.

Note: That the Bragg Creek Water distribution system is not capable of providing water pressures for fire suppression. Therefore, any fire suppression systems required by the building code must be accommodated with onsite storage and pressurization.

Storm Water Management

- (11) That prior to the issuance of this permit, the Applicant/Owner shall submit a Storm Water Management Plan (SWMP), to the satisfaction of the County. The SWMP shall demonstrate that the site can manage storm water in accordance with the requirements of the County Servicing Standards and the Bragg Creek Master Drainage Plan.
 - (a) The SWMP shall comment on pre and post-development water quality, release rates, and runoff volume control targets.
 - (b) The SWMP shall demonstrate how any negative impacts to the Elbow River will be mitigated both during and post construction, in accordance with *County Policy 419: Riparian Land Conservation and Management*.
 - (c) The SWMP shall include a site grading plan, and give consideration to berm construction for the Bragg Creek Flood Mitigation Project.

Note: Any Alberta Environment approvals may be required if any storm water ponds are required.

Construction Management

- (12) That prior to the issuance of this permit, the Applicant/Owner shall submit a Construction Management Plan, to the satisfaction of the County. The Plan shall be prepared by a qualified professional, addressing noise mitigation measures, traffic accommodation, sedimentation and dust control, management of storm water during construction, erosion and weed control, construction practices, waste management, firefighting procedures, evacuation plan, and all other relevant construction management details.

Road Use Agreement

- (13) That prior to the issuance of this permit, the Applicant/Owner shall contact County Road Operations to determine if a Road Use Agreement and/or any Road Data Permits are required for the importing of fill and topsoil, removal of any excess fill, and for the mobilization and demobilization of any construction equipment to and from the subject site utilizing any County Roads.
- (a) Written confirmation shall be received from County Road Operations confirming the status of this condition. Any required agreement or permit shall be obtained unless otherwise noted by County Road Operations.

Fees & Levies

- (14) That prior to the issuance of this permit, the Applicant/Owner shall submit payment of the Transportation Off-site Levy in accordance with the applicable levy at time of Development Permit approval (Bylaw C-7356-2014), for the total gross acreage of the lands.

Note: The Transportation Off-site Levy shall not include the lands that the County is purchasing for construction of the Flood Mitigation Berm.

- (15) That prior to issuance of this permit, the Applicant/Owner shall confirm acceptance or refusal to participate in the Voluntary Recreation Contribution for Community Recreation Funding on the form provided by the County. If accepted, the contribution is calculated at \$800.00 per acre.

Prior to Occupancy:

Landscaping

- (16) That prior to occupancy of the site, all landscaping and final site surfaces shall be completed.
- (a) That should permission for occupancy of the site be requested during the months of October through May inclusive and prior to the required landscaping and site surface completion, then occupancy may be allowed provided that an Irrevocable Letter of Credit is received by the County.
- (b) The Irrevocable Letter of Credit shall be in the amount of 150.00% of the total cost of completing all the landscaping and final site surfaces that is not yet completed. A contractor's/engineer's quote shall accompany the Letter of Credit describing the work to be carried out and shall be placed with Rocky View County to guarantee the works shall be completed by the 30th day of June immediately thereafter.

Servicing

- (17) That prior to the occupancy of the site, the Applicant/Owner shall enter into a Customer Servicing Agreement with the County, for the water and wastewater utility services provided to the subject lands.
- (18) That prior to occupancy of the site, after approval of the utilities main connection and service connection designs by the County's Utility Services manager, the Applicant/Owner shall provide 14 days written notice to the County prior to utility construction commencing. The Applicant/Owner shall arrange to have County personnel present to supervise construction at their expense, in accordance with the County's Water & Wastewater Utilities Bylaw (C-7662-2017).
 - (a) All utility construction shall be to the satisfaction of the County.
 - (b) All ground disturbances shall be restored to pre-existing or superior conditions, to the satisfaction of the County.
 - (c) All engineering and construction costs shall be borne by the Applicant/Owner.
- (19) That prior to occupancy of the site, the Applicant/Owner shall purchase additional water and wastewater capacity required to service the development, as determined by the Water & Wastewater servicing assessment, in accordance with the County's Master Rates Bylaw (C-7751-2018), as amended.
- (20) That prior to occupancy of the site, the Applicant/Owner shall submit as-built drawings of the site that are certified by a professional engineer. The as-built drawings shall include verification of any as-built water, sanitary, stormwater management infrastructure and the test manhole.
 - (a) Following receipt of the as-built drawings from the Applicant's consulting engineer, the County shall complete an inspection of the site to verify the stormwater infrastructure has been completed as per the stamped "*examined drawings*".
- (21) That prior to occupancy of the site, the Applicant/Owner shall contact County Utility Operations for an inspection of the water meter, sanitary sewer service connection, and the sanitary test manhole.

Permanent:

Servicing

- (22) That water and wastewater volumes used by the development shall be within the amounts allocated to the subject lands, and all overages shall be billed in accordance with the Mater Rates Bylaw (C-7751-2018) and the Water & Wastewater Utilities Bylaw (C-7662-2017).
 - (a) That if the wastewater released from the development is found to be over strength, the Applicant/Owner shall be subject to over strength wastewater surcharge specified within the Master Rates Bylaw and the Water & Wastewater Utilities Bylaw.
- (23) That connection to existing sanitary mains, waste mains, and water mains shall not be permitted without the authorization of the County's Utility Operations.

Construction Management

- (24) That the Applicant/Owner shall submit a deep fill report, with compaction results, if any areas shall have a fill depth greater than 1.2 m.
- (25) That no topsoil shall be removed from the subject property.
- (26) That during construction, dust control shall be maintained on the site and that the Applicant/Owner shall take whatever means necessary to keep visible dust from blowing onto adjacent lands.
- (27) That any dirt removed from the site during construction shall be hauled off in a covered trailer/truck that will prevent the blowing of dust/small rocks onto the road, and prevent issues with other vehicles on the road.
- (28) That the clean-up of any mud tracking and/or dirt that enters onto adjacent County roads during construction shall be the responsibility and cost of the Applicant/Owner.
- (29) That the entire site shall be maintained in a neat and orderly manner at all times. All waste material shall be deposited and confined in an appropriate enclosure. All waste material shall be regularly removed from the property to prevent any debris from blowing onto adjacent property or roadways.
- (30) That any flood proofing measures shall be followed in accordance with the Alberta Building Code, good engineering practice and recommendations stated in the Bragg Creek Area Structure Plan.

- (31) That the Applicant/Owner shall ensure that all habitable floor levels are above the 1 in 100 flood level. Any construction below this flood level may require engineered flood proofing measures.

Note: The required flood elevation level is 1297.63 m

Solid Waste & Recycling Management

- (32) That the garbage containers shall be screened from view from adjacent properties and public thoroughfares. All garbage and waste shall be stored in weatherproof and animal proof containers and be in a location easily accessible to containerized garbage pickup.

Signage & Lighting

- (33) That any future signage, not included within this application, shall require separate Development Permit approval and shall adhere to the Hamlet of Bragg Creek Design Standards and the Land Use Bylaw.
- (34) That no temporary signage shall be placed on the site at any time except any temporary signs required during development or building construction.
- (35) 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 be required to demonstrate lighting design that reduces the extent of spill-over glare and eliminates glare as viewed from nearby residential properties.

Parking

- (36) That the site shall maintain a minimum of 22 parking stalls and one loading bay onsite at all times, in accordance with the approved Parking Study.
- (37) That a minimum of 33 parking stalls shall be available at all times via the registered off-site parking arrangements and shall be maintained on title for the life of the development permit.
- (38) That no parking shall be permitted on the adjacent County road system.

Landscaping

- (39) That all landscaping shall be in accordance with the approved Landscape Plan.
- (40) That the existing trees and terrain shall be retained except as required to meet conditions of this permit and any disturbed areas shall be replanted with vegetation similar to existing predevelopment ground cover.

- (41) That no outdoor display areas, storage areas, parking or marshalling yards shall be allowed within landscaped yards.
- (42) That the quality and extent of the landscaping shall be maintained over the life of the development and any deceased vegetation shall be replaced within 30 days or before June 30th of the next growing season.
- (43) That there shall be no potable water used for irrigation and landscaping purposes, and that no exterior hose bibs shall be installed.

Other

- (44) 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 proposed development located on the subject site, to facilitate accurate emergency response.
- (45) That if the facility changes commercial usage, the Owner shall submit to the County a revised description of process and subsequent water and wastewater requirements.
- (46) That any plan, technical submission, agreement, matter or understanding submitted and approved as part of the application or in response to a Prior to Issuance or Occupancy condition, shall be implemented and adhered to in perpetuity and includes but is not limited to (as amended):
 - (a) Geotechnical Investigation Report, as prepared by E2K Engineering Ltd, dated November 29, 2018);
 - (b) Trip Generation Exercise, as prepared by Bunt & Associates, dated March 31, 2017;
 - (c) Parking Study, as prepared by Bunt & Associates, dated November 21, 2018;
 - (d) Stormwater Management Plan, as prepared by Richview Engineering Inc., dated February 1, 2019;
 - (e) Erosion & Sediment Control Plan, as prepared by Richview Engineering Inc., dated November 18, 2018;

Advisory:

- (47) That during construction, the County's Noise Control Bylaw C-5772-2003 shall be adhered to at all times.
- (48) That during construction, all construction and building materials shall be maintained onsite in a neat and orderly manner. Any debris or garbage shall be stored/placed in garbage bins and disposed of at an approved disposal facility.

- (49) That the site shall remain free of restricted or noxious weeds, in accordance with the Weed Control Act.
- (50) That the Applicant/Owner shall be responsible for all required payments of third party reviews and/or inspections, as per the Master Rates Bylaw.
- (51) That a Building Permit with applicable subtrade permits, shall be obtained through Building Services, prior to any construction taking place and shall require:

- (a) The Commercial, Industrial and Institutional application checklist;
- (b) A completed 3.2.2 Code Analysis;

Note: The Development shall conform to the National Energy Code 2011 and Alberta Building Code & it is recommended that the Applicant/Owner schedule a pre-application meeting with Building Services, to go over in detail, any Building Permit application requirements.

- (52) That a Building Demolition permit shall be obtained through Building Services, prior to any demolition of any existing building onsite.
- (53) That all other government compliances and approvals are the sole responsibility of the Applicant/Owner and include.
 - (a) An issued Roadside Development Permit through Alberta Transportation;
 - (b) Any Alberta Health Services approvals.
- (54) That if the development authorized by this Development Permit is not commenced with reasonable diligence within 24 months from the date of issue, and completed within 36 months of the date of issue, the permit is deemed to be null and void unless an extension to this permit shall first have been granted by the Development Authority.
- (55) That if this Development Permit is not issued by **JUNE 30, 2020** or the approved extension date, then this approval is null and void and the Development Permit shall not be issued.

Note: The Applicant/Owner shall be responsible for all Alberta Environment and Park (AEP) approvals for any impact to any wetland areas or for on-site stormwater Infrastructure

APPENDIX “C”: LIST OF PERSONS WHO MADE VERBAL SUBMISSIONS

- (1) Johnson Kwan, Municipal Planner, for the Development Authority;
- (2) Sean MacLean, Planning and Development Supervisor, for the Development Authority;
- (3) Gurbir Nijjar, Municipal Engineer, for the Development Authority;
- (4) Rick Grol, on behalf of the Applicant;
- (5) Nicolas Kuhl, O2 Planning and Design, for the Applicant;
- (6) Eziekal Dada, Bundt and Associates, for the Applicant;
- (7) Adam McLane, Developer, for the Applicant;
- (8) Baruch Laskin, Bragg Creek Brewing, for the Applicant;
- (9) John Jackson, for the Applicant;
- (10) George Reti, for the Applicant;
- (11) Craig Nickel and Jennifer Liddle, the Appellants;
- (12) Chris Kroker and Scott Stang, Gettel Appraisals Ltd., for the Appellants;
- (13) David Zimmerman, in support of the development;
- (14) Bryce Hleucka, in support of the development;
- (15) Troy Delfs, in support of the development;
- (16) Cathy Martin, in support of the development; and
- (17) John Teghtmeyer, in support of the development.

APPENDIX “D”: EXHIBIT LIST

DOCUMENTS PRESENTED AT THE HEARING AND CONSIDERED BY THE BOARD

NO.	ITEM
1.	Development Authority’s Report to the Board June 5 (224 pages)
2.	Development Authority’s Presentation to the Board June 5 (43 pages)
3.	Applicant Report to the Board (97 pages)
4.	Applicant Presentation to the Board – June 5 (57 pages)
5.	Duncan Odie Berm Email (2 pages)
6.	Applicant Overland Drainage Plan (4 pages)
7.	Applicant Commercial vs Residential Parcels (1 page)
8.	Applicant Operational Plan (12 pages)
9.	Applicant Erosion Control Plan (4 pages)
10.	Applicant Presentation to the Board – June 20 (21 pages)
11.	Applicant Letter from Rick Grol (4 pages)
12.	Applicant Engagement Log with 21 River Dr N Bragg Creek AB (2 pages)
13.	George Reti Presentation (7 pages)
14.	Appellant Presentation to the Board (40 pages)
15.	Gettel Appraisal Presentation Bragg Creek (9 pages)
16.	Calgary SDAB Decision from Appellant (16 pages)

**APPENDIX “E”: PERSONS WHO SENT LETTERS IN SUPPORT OF
DEVELOPMENT**

- (1) Laureen Harper
- (2) Alison Kippen
- (3) Fred Konopaki
- (4) Reshma Patel – Owner Bragg Creek Carl’s Jr.
- (5) Pramrod Patel – Owner Bragg Creek Esso
- (6) Conrad Schiebel – President, The Greater Bragg Creek Trails Association
- (7) Lowell Harder – Bragg Creek and Area Chamber of Commerce
- (8) Birgit Schmitt – Bragg’s Korner Kitchen
- (9) Michael Brown – President & CEO Calgary Municipal Lands Corporation
- (10) Sharon Bayer
- (11) Kathleen Burk
- (12) Rebecca Cleaver Burke
- (13) Royce Chwin – Chief Executive Officer, Travel Alberta
- (14) Troy Delfs – Owner, Momentum Cycling
- (15) David Farran – President, Eau Claire Distillery
- (16) Lowell Harder – Owner, Harder and Sons Exterior Maintenance Services Inc.
- (17) Trevor Hassel – Cycles Construction
- (18) Dr. John Heerema
- (19) Rod Burns and Elizabeth Hertz
- (20) Bryce Hleucka
- (21) Greg Hoffart – Tree Construction
- (22) John Teghtmeyer
- (23) Jennifer Jurkowski
- (24) Karl Teghtmeyer

- (25) William Kokotylo
- (26) Darren Kroeker
- (27) Brad Krusky
- (28) Charles Lawrence & Family
- (29) Eric Lloyd
- (30) Michele & Joe Longo
- (31) Neil MacDonald
- (32) Cathy and Bob Martin
- (33) Fern Maas
- (34) Terry Neufeld
- (35) Dr. Jason Pearce
- (36) Robb & Barbara Teghtmeyer
- (37) Richard Brown – Chair, Bragg Creek Revitalization Committee
- (38) Warren Saunders
- (39) Brett Schönekeess – Co-founder, Director, CFO, Two Pine Ventures Inc.
- (40) Clay Swerdelian
- (41) Bas & Amy van Lankvelt
- (42) Cailen Van Tighem – The Heart Café
- (43) Andrew Watts
- (44) Rick Woods
- (45) David Zimmerman

APPENDIX "F": PERSONS WHO SENT LETTERS OBJECTING TO DEVELOPMENT

- (1) Joan MacKenzie
- (2) Joni and Duane Peperkorn
- (3) Judie Norman