

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

Board Order No.: 2019-SDAB-052

File No.: 04734003; PRDP20190666

Appeal by: Eagle Butte Ranches Ltd. c/o JSS Barristers

Appeal Against: Development Authority of Rocky View County

Hearing Date: 2019 October 9

Decision Date: 2019 October 24

Board Members: D. Kochan, Chair
D. Henn
W. Metzger

DEVELOPMENT APPEAL DECISION

INTRODUCTION

[1] This is an appeal to the Rocky View County Subdivision and Development Appeal Board (the Board) from a decision of the Rocky View County Development Authority issued September 3, 2019. In this decision the Development Authority conditionally approved a development permit for Retail, Regional and Retail, Local, the construction of eight (8) retail buildings and signage associated with the Bingham Crossing Development at 32159 Township Road 250 (the Lands).

[2] Upon notice being given, this appeal was heard on October 9, 2019 in Council Chambers of Rocky View County's County Hall, located at 262075 Rocky View Point, Rocky View County, Alberta.

DECISION

[3] The appeal is denied and the decision of the Development Authority is upheld. A development permit shall be issued subject to the following conditions:

Description:

- (1) That *Retail, Regional* and *Retail, Local*, construction of eight (8) retail buildings and signage may take place in accordance with the drawings prepared by Dialog, dated March 4, 2019 and August 13, 2019 as amended and includes the following:
 - (a) Construction of eight (8) retail buildings including:
 - (i) Building 1 (approximately 47,086 sq. ft. (4,374.48 sq. m.) in area);
 - (ii) Building 4 (approximately 43,571 sq. ft. (4,047.89 sq. ft.) in area);
 - (iii) Building 5 (approximately 20,157 sq. ft. (1,872 sq. m.) in area);
 - (iv) Building 6 (approximately 19,839 sq. ft. (1,843.11 sq. m.) in area);
 - (v) Building 7 (approximately 32,098 sq. ft. (2,981.96 sq. m.) in area);
 - (vi) Building 8 (approximately 20,471 sq. ft. (1,901.78 sq. m.) in area);
 - (vii) Building 9 (approximately 22,170 sq. ft. (2,059.66 sq. m.) in area);
 - (viii) Building 10 (approximately 48,671 sq. ft. (4,521.67 sq. m.) in area);
 - (b) Site grading in accordance with Grading Plans (B-1 to B-6); and,
 - (c) One (1) freestanding/pylon sign and on-site wayfinding signage as required; details to be submitted and approved prior to installation.
- (2) That all buildings shall comply with the required setback requirements as per section 1.5.2 – 1.5.4 of Direct Control District 148 with the noted exceptions below:
 - (a) That the minimum front yard setback requirement for Building 4 is relaxed from **6.00 m. (19.69 ft.) to 5.40 m (17.72 ft.)**.
 - (b) That the minimum front yard setback requirement for Building 6 is relaxed from **6.00 m. (19.69 ft.) to 5.89 m (19.32 ft.)**.

Prior to Issuance:

Payments and Levies:

- (3) 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 and that the contribution, if accepted, is \$26,816.00 calculated at \$800.00 per acre for 33.52 acres.
- (4) That prior to the issuance of this permit, the Applicant/Owner shall provide payment of Transportation Offsite Levy for the proposed development in accordance with the applicable Transportation Offsite Bylaw at time of Development Permit approval for the gross area of the proposed development.
 - (a) If TOL has been previously been paid under PL20140054, it will not be required as part of this Development Permit and similarly, if TOL is paid for this DP, the area will be deducted from the TOL required under PL20140054.

Site Developability:

- (5) That prior to issuance of this permit, the Applicant/Owner shall submit an Outdoor Lighting Plan, in accordance with Section 5.2.14 of DC 148 and Section 27 of the Land Use Bylaw, detailing the proposed building and site lighting for the development. The lighting shall be compliant with the County's dark sky lighting regulations.
- (6) That prior to issuance of this permit, the Applicant/Owner shall submit a Signage Plan, including number of signs, type, size, dimensions, and design details, in accordance with Section 35 of the Land Use Bylaw.
- (7) That prior to issuance of this permit, the Applicant/Owner shall submit a Road Naming application for the development addressing, to the County for review and approval.

Technical:

- (8) That prior to issuance of this permit, the Applicant/Owner shall enter into a Development Agreement for the on-site infrastructure improvements identified in the conditions of subdivision approval PL20140054.
- (9) That prior to the issuance of this permit, the Applicant/Owner shall enter into the Special Improvements Development Agreement for off-site transportation improvements required at the HWY 1 / Range Road 33 interchange in accordance with the conditions of subdivision approval PL20140054.
- (10) That prior to the issuance of this permit, the Applicant/Owner shall enter into the Special Improvements Development Agreement for the Bingham Crossing Waste Water Treatment Plant in accordance with the conditions of subdivision approval PL20140054.

- (11) That prior to the issuance of this permit, the Applicant/Owner shall submit a detailed Site Servicing Plan addressing how the development will be serviced for wastewater, potable water, fire suppression and irrigation infrastructure. This shall include (but not be limited to) the following;
- (a) Engineering drawings for all on-site potable water, wastewater, firewater and irrigation infrastructure showing all applicable building connections as well as appropriate tie-ins to the overall Bingham Crossing servicing infrastructure;
 - (b) A wastewater demand analysis confirming the site design conforms to the overall design of the Bingham Crossing waste water treatment collection/treatment and disposal infrastructure;
 - (c) A potable water demand analysis confirming the site design conforms to the overall design for the Bingham Crossing water distribution system and network;
 - (d) A firewater demand analysis confirming the site design conforms to the overall design for the Bingham Crossing fire water distribution system and network including confirmation of reservoir sizing;
 - (e) An irrigation plan that complies with the recommendations of the SSIP and the overall irrigation design for the Bingham Crossing Development; and,
 - (f) If the Applicant intends to operate any portion or all of the site with interim servicing plans, these plans shall be included as part of the site servicing plan.
- (12) That prior to the issuance of this permit, the Applicant/Owner shall submit a development Site-Specific Stormwater Management Plan (SSIP) in accordance with the County's Servicing Standards and the Bingham Crossing Staged Master Drainage Plan and Pond Report.
- (a) The Applicant/Owner shall be responsible for any related EPEA or Water Act approvals for the on-site stormwater infrastructure.
- (13) That prior to the issuance of this permit, the Applicant/Owner shall submit a Construction Management Plan in accordance with Section 5.2.1 of DC 148 and the County's Servicing Standards.
- (14) That prior to the issuance of this permit, the Applicant/Owner shall submit an Erosion and Sediment control report, in accordance with County Servicing Standards.
- (15) That prior to the issuance of this permit, the Applicant/Owner shall submit compaction-testing records for the Development Area in accordance with the recommendations and requirements of the Stripping and Grading Development Permit (2013-DP-15327) and examined Deep Fill Report.

- (16) 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 requirement agreement or permits shall be obtained unless otherwise noted by County Road Operations.
- (17) That prior to the issuance of this permit, the Applicant/Owner shall submit a Site Plan demonstrating that a secondary access road is available during all phases of construction. The access shall be compliant to the National Building Code and to the County Servicing Standards.
- (18) That prior to the issuance of this permit, the Applicant/Owner shall submit a solution for water supply for firefighting during construction, compliant to the National Building Code and to the County Servicing Standards. Note, this may require a formal alternative solution.
- (19) That prior to the issuance of this permit, the Applicant/Owner shall submit a Fire Safety Plan for the development in accordance with Alberta Fire Code 2006 (Division B, Section 5.6.1.2.(1)) to the satisfaction of the County.

Other:

- (20) That prior to issuance of this permit, the Applicant/Owner shall submit a Solid Waste Management Plan, in accordance with Section 5.2.7 of DC 148, Section 8.5 of the CS and the Main Street Development Principles of the MSDP, to the satisfaction of the County. The plan shall also detail how the development will manage the waste, recyclables and organics generated during construction and operation of the development including proposed targets for diversion.
- (21) That prior to the issuance of this permit, the Applicant/Owner shall submit a 3.2.2 Building Code analysis, for each building structure planned, and a Site Plan confirming the hydrant location and Siamese connection/front entry, access route design and water supply that conform to the applicable ABC 2014 articles to the satisfaction of the County.

Prior to Occupancy:

- (22) That prior to occupancy of the site, all infrastructure shall be constructed and as-built drawings certified by a professional engineer be submitted to the County for all underground and surface works required to be constructed as part of the on-site Development Agreement for Bingham Crossing under approval PL20140054. This includes (but not limited to) the following:
 - (a) waste water collection infrastructure;
 - (b) potable water storage and distribution infrastructure;

- (c) fire suppression infrastructure including hydrants;
- (d) storm water infrastructure;
- (e) roadways;
- (f) pathways;
- (g) landscaping; and,
- (h) irrigation infrastructure.

Following receipt of the as-built drawings from the consulting engineer, the County shall make an inspection of the site to verify infrastructure has been completed as per the stamped "examined drawings".

Note: The County may consider release of occupancy in the absence of all of the above reference infrastructure being constructed if an appropriate interim servicing strategy is in place and appropriate waivers are executed.

- (23) That prior to occupancy of the site, the Applicant/Owner shall complete the required off-site transportation improvements at the Highway 1 & Range Road 33 interchange to the satisfaction of the County and Alberta Transportation.
- (24) That prior to occupancy of the site, the Applicant/Owner shall complete the off-site wastewater treatment and disposal infrastructure to the satisfaction of the County.
- (25) That prior to occupancy of the site, subdivision file PL20140054 shall be registered at Alberta Land Titles.
- (26) That prior to occupancy of the site, all development addressing shall be placed and installed onsite. Note, addressing may be placed and installed per phase development.
- (27) That all landscaping and final site surfaces shall be in place prior to occupancy of the site.
 - (a) That should permission for occupancy of the site be requested during the months of October through May inclusive, occupancy may be allowed without landscaping and final site surface completion provided that an Irrevocable Letter of Credit in the amount of 150.00% of the total cost of completing all the landscaping and final site surfaces shall be placed with Rocky View County to guarantee the works shall be completed by the 30th day of June immediately thereafter.

- (b) That upon each phase completion, a landscaping cost breakdown shall be submitted to the County, detailing the outstanding landscaping works for that phase. Upon completion and inspection by the County, the associated phase security shall be released back to the Applicant.

Permanent:

- (28) That the Applicant/Owner shall tie into the wastewater servicing for Bingham Crossing when such servicing becomes available, including decommissioning of any temporary infrastructure at the Owner's expense.
- (29) That the Applicant/Owner shall tie into the overall water distribution network for the Bingham Crossing development when such servicing becomes available, including decommissioning of any temporary infrastructure at the Owner's expense.
- (30) That the subject lands shall tie into the overall Bingham Crossing storm water management infrastructure when it becomes available, including decommissioning of any temporary infrastructure at the Owner's expense.
- (31) That the Applicant/Owner shall tie into the overall Bingham Crossing irrigation infrastructure when it becomes available, including decommissioning of any temporary infrastructure at the Owner's expense.
- (32) That a minimum of 300mm of topsoil be utilized for all landscaped areas.
- (33) That, if required, any topsoil/dirt removed from the site shall be hauled off in a covered trailer/truck, which will prevent blowing of dust/small rocks onto the road or cause issues with other vehicles on the road.
- (34) That the cleanup 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.
- (35) That during construction and operation of the business, dust control shall be maintained onsite and that the Developer shall take whatever means necessary to keep visible dust from blowing onto adjacent lands.
- (36) That the garbage containers shall be screened from view from all adjacent properties and public thoroughfares, in accordance with the submitted site plan. The garbage and waste material on site shall be stored in weatherproof and animal-proof containers located within buildings or adjacent to the side or rear of buildings.
- (37) 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 each principal building located on the subject site, to facilitate accurate emergency response.
- (38) That the subject property shall obtain water from the Bingham Crossing Water Distribution system.

- (39) That prior to the installation of any approaches, the Applicant/Owner shall contact and submit a Road Approach Application with County Road Operations and upon completion shall contact Road Operations for an inspection.
- (40) That any future signage, not approved within this development permit, shall require a separate Development Permit approval and shall adhere to the Bingham Crossing Conceptual Scheme, the Bingham Crossing Master Site Development Plan and Section 35 of the Land Use Bylaw.
- (41) That all signage shall be kept in a safe, clean, and tidy condition at all times.
- (42) That no temporary signs shall be placed on site at any time except any temporary signs required during development or building construction. That no signage shall be placed within the County Road Allowance at any time.
- (43) That any mailbox pullouts or installations shall be constructed in accordance with County Servicing standards.
- (44) That the entire site shall be maintained in a neat and orderly manner at all times to the satisfaction of the Development Officer.
- (45) That all landscaping shall be in accordance with the landscaping details provided on the Landscape Plan, as revised.
- (46) That the Applicant/Owner shall be responsible for the irrigation and maintenance of the landscaped areas (include pathways) including the replacement of any deceased trees, shrubs, or plants within 30 days or by June 30th of the next growing season.
- (47) That all on site Lighting shall be "dark sky", and all private lighting, including site security lighting and parking area lighting, should be designed to conserve energy, reduce glare and reduce uplight. All development will be required to demonstrate lighting design that reduces the extent of spillover glare and eliminates glare as viewed from nearby residential properties.
- (48) That the minimum number of parking stalls, being sixteen hundred fifty two (1,652) parking stalls, including barrier free stalls shall be maintained on site at all times, or as determined by an approved Parking Assessment, to the satisfaction of the County.
- (49) There shall be no parking of any kind along the adjacent County Road System.
- (50) That water conservation strategies shall be implemented and maintained at all times.
- (51) That there shall be no hose bibs installed on the exterior of the building as no potable water may be used for any irrigation purposes.
- (52) That no outside storage of supplies and/or materials shall be permitted.

- (53) That any plan, technical submission, agreement, matter, or understanding submitted and approved as part of the application, in response to a Prior to Issuance or Occupancy condition, shall be implemented and adhered to in perpetuity including:
 - (a) The approved Site Servicing Plan;
 - (b) The approved Construction Management Plan;
 - (c) The approved Erosion and Sedimentation Control Plan; and,
 - (d) The approved Site Specific Storm Water Management Plan (SSIP).
- (54) That the Applicant/Owner shall comply with all recommendations of the Tetra Tech EBA Geotechnical Evaluation for the Bingham Crossing Project (January 2016).
- (55) That the Applicant/Owner shall operate the site in accordance with the Bingham Crossing Staged Master Drainage Plan and Pond Report.
- (56) That on-site wayfinding signage including for direction and information purposes shall be permitted, providing it providing that it conforms with the design of the overall development, to the satisfaction of the County. Business advertising including monument, pylon signage or similar shall require a separate Development Permit.

Advisory:

- (57) That the Applicant/Owner shall be responsible for all required payments of 3rd party reviews and/or inspections as per the Master Rates Bylaw based on the County's discretion or requirement.

Note: For any 3rd party review work completed prior to Issuance of the Development Permit, the invoices shall be paid prior to the Development Permit being issued. For any work completed after Permit issuance but before Permit Occupancy, the invoices shall be paid prior to Development Occupancy.
- (58) That the site shall conform to the County's Noise Bylaw C-5773-2003 in perpetuity.
- (59) That the site shall remain free of restricted or noxious weeds, in accordance with the Weed Control Act.
- (60) 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.
- (61) That separate building permits (per building) and all applicable sub-trade permits shall be obtained, through Building Services, prior to any construction taking place, using the Commercial/Industrial checklist and shall include:

- (a) The approved 3.2.2. Building Code Analysis
- (b) A dimensioned site plan with dimensions to the hydrant locations, Siamese connection/front entry (if applicable), Access route design and water supply

Note: The Development shall conform to the National Energy Code 2011, NFPA 1142, and any requirements of the Alberta Building Code. New Building, Fire and Energy Efficiency codes will be in full force as of Dec 01, 2019. The 6-month transition period to submit a Building permit under the current and outgoing codes will lapse on Nov 30th, 2019. Once the transition period has lapsed, the National Building & Fire Code - 2019 Alberta Edition and the National Energy Code for Buildings – 2017 Edition will be in effect for all building permits to follow

- (62) That separate Development Permits shall be issued for each tenant prior to occupancy of any unit.
- (63) That separate Development Permits shall be issued for Buildings 2 and 3.
- (64) That any other government permits, approvals, or compliances are the sole responsibility of the Applicant/Owner includes any Alberta Transportation or NAV Canada requirements.
- (65) That the buildings and/or works completed under this permit prior to the end of the validity of this permit remain subject to the terms and conditions of this permit.
- (66) That the buildings and/or works not completed under this permit are subject to a new Development Permit subject to the satisfaction of the County.
- (67) 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 48 months of the issue, the permit is deemed to be null and void, unless an extension to this permit shall first have been granted by the Development Officer.
- (68) That if this Development Permit is not issued by **FEBRUARY 29, 2021**, or by an 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 storm water infrastructure.

BACKGROUND

[4] On March 5, 2019, Alex Pidgeon (the Applicant) submitted a development permit application for a new outdoor retail mall development (8 commercial buildings).

[5] The Lands are located at NW-34-24-03-W5M, located at the northeast junction of Highway 1 and Range Road 33. The Lands are approximately 64.31 hectares (152.98 acres) in area and are owned by Bingham Crossing Properties c/o Rencor Development Inc.

[6] The Lands' are designated Direct Control District 148, falling within Cell B & C. The Lands' are regulated by both the *Direct Control Bylaw C-7186-2012* [the *Direct Control Bylaw*] and Parts One, Two, and Three of the Rocky View County, *Land Use Bylaw C-4841-97* [the *Land Use Bylaw*]

[7] On September 3, 2019, the Development Authority conditionally approved to grant a development permit on the following grounds:

Description:

- (1) That *Retail, Regional* and *Retail, Local*, construction of eight (8) retail buildings and signage may take place in accordance with the drawings prepared by Dialog, dated March 4, 2019 and August 13, 2019 as amended and includes the following:
 - (a) Construction of eight (8) retail buildings including:
 - (i) Building 1 (approximately 47,086 sq. ft. (4,374.48 sq. m.) in area);
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- (2) That all buildings shall comply with the required setback requirements as per section 1.5.2 – 1.5.4 of Direct Control District 148 with the noted exceptions below:

- (a) That the minimum front yard setback requirement for Building 4 is relaxed from **6.00 m. (19.69 ft.) to 5.40 m (17.72 ft.)**.
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 - (b) A wastewater demand analysis confirming the site design conforms to the overall design of the Bingham Crossing waste water treatment collection/treatment and disposal infrastructure;
 - (c) A potable water demand analysis confirming the site design conforms to the overall design for the Bingham Crossing water distribution system and network;
 - (d) A firewater demand analysis confirming the site design conforms to the overall design for the Bingham Crossing fire water distribution system and network including confirmation of reservoir sizing;
 - (e) An irrigation plan that complies with the recommendations of the SSIP and the overall irrigation design for the Bingham Crossing Development; and,
 - (f) If the Applicant intends to operate any portion or all of the site with interim servicing plans, these plans shall be included as part of the site servicing plan.
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Prior to Occupancy:

- (22) That prior to occupancy of the site, all infrastructure shall be constructed and as-built drawings certified by a professional engineer be submitted to the County for all underground and surface works required to be constructed as part of the on-site Development Agreement for Bingham Crossing under approval PL20140054. This includes (but not limited to) the following:
- (a) waste water collection infrastructure;
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 - (c) fire suppression infrastructure including hydrants;
 - (d) storm water infrastructure;
 - (e) roadways;
 - (f) pathways;
 - (g) landscaping; and,
 - (h) irrigation infrastructure.

Following receipt of the as-built drawings from the consulting engineer, the County shall make an inspection of the site to verify infrastructure has been completed as per the stamped "examined drawings".

Note: The County may consider release of occupancy in the absence of all of the above reference infrastructure being constructed if an appropriate interim servicing strategy is in place and appropriate waivers are executed.

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Permanent:

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- (34) 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.
- (35) That during construction and operation of the business, dust control shall be maintained onsite and that the Developer shall take whatever means necessary to keep visible dust from blowing onto adjacent lands.

- (36) That the garbage containers shall be screened from view from all adjacent properties and public thoroughfares, in accordance with the submitted site plan. The garbage and waste material on site shall be stored in weatherproof and animal-proof containers located within buildings or adjacent to the side or rear of buildings.
- (37) 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 each principal building located on the subject site, to facilitate accurate emergency response.
- (38) That the subject property shall obtain water from the Bingham Crossing Water Distribution system.
- (39) That prior to the installation of any approaches, the Applicant/Owner shall contact and submit a Road Approach Application with County Road Operations and upon completion shall contact Road Operations for an inspection.
- (40) That any future signage, not approved within this development permit, shall require a separate Development Permit approval and shall adhere to the Bingham Crossing Conceptual Scheme, the Bingham Crossing Master Site Development Plan and Section 35 of the Land Use Bylaw.
- (41) That all signage shall be kept in a safe, clean, and tidy condition at all times.
- (42) That no temporary signs shall be placed on the site at any time except any temporary signs required during development or building construction. That no signage shall be placed within the County Road Allowance at any time.
- (43) That any mailbox pullouts or installations shall be constructed in accordance with County Servicing standards.
- (44) That the entire site shall be maintained in a neat and orderly manner at all times to the satisfaction of the Development Officer.
- (45) That all landscaping shall be in accordance with the landscaping details provided on the Landscape Plan, as revised.
- (46) That the Applicant/Owner shall be responsible for the irrigation and maintenance of the landscaped areas (include pathways) including the replacement of any deceased trees, shrubs, or plants within 30 days or by June 30th of the next growing season.
- (47) That all on site Lighting shall be "dark sky", and all private lighting, including site security lighting and parking area lighting, should be designed to conserve energy, reduce glare and reduce uplight. All development will be required to demonstrate lighting design that reduces the extent of spillover glare and eliminates glare as viewed from nearby residential properties.

- (48) That the minimum number of parking stalls, being sixteen hundred fifty two (1,652) parking stalls, including barrier free stalls shall be maintained on site at all times, or as determined by an approved Parking Assessment, to the satisfaction of the County.
- (49) There shall be no parking of any kind along the adjacent County Road System.
- (50) That water conservation strategies shall be implemented and maintained at all times.
- (51) That there shall be no hose bibs installed on the exterior of the building as no potable water can be used for any irrigation purposes.
- (52) That no outside storage of supplies and/or materials shall be permitted.
- (53) That any plan, technical submission, agreement, matter, or understanding submitted and approved as part of the application, in response to a Prior to Issuance or Occupancy condition, shall be implemented and adhered to in perpetuity including:
 - (a) The approved Site Servicing Plan;
 - (b) The approved Construction Management Plan;
 - (c) The approved Erosion and Sedimentation Control Plan; and,
 - (d) The approved Site Specific Storm Water Management Plan (SSIP).
- (54) That the Applicant/Owner shall comply with all recommendations of the Tetra Tech EBA Geotechnical Evaluation for the Bingham Crossing Project (January 2016).
- (55) That the Applicant/Owner shall operate the site in accordance with the Bingham Crossing Staged Master Drainage Plan and Pond Report.
- (56) That on-site wayfinding signage including for direction and information purposes shall be permitted, where in keeping with the design of the overall development, to the satisfaction of the County. Business advertising including monument, pylon signage or similar shall require a separate Development Permit.

Advisory:

- (57) That the Applicant/Owner shall be responsible for all required payments of 3rd party reviews and/or inspections as per the Master Rates Bylaw based on the County's discretion or requirement.

Note: For any 3rd party review work completed prior to Issuance of the Development Permit, the invoices shall be paid prior to the Development Permit being issued. For any work completed after Permit issuance but before Permit Occupancy, the invoices shall be paid prior to Development Occupancy.

- (58) That the site shall conform to the County's Noise Bylaw C-5773-2003 in perpetuity.
- (59) That the site shall remain free of restricted or noxious weeds, in accordance with the Weed Control Act.
- (60) 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.
- (61) That separate building permits (per building) and all applicable sub-trade permits shall be obtained, through Building Services, prior to any construction taking place, using the Commercial/Industrial checklist and shall include:
 - (a) The approved 3.2.2. Building Code Analysis
 - (b) A dimensioned site plan with dimensions to the hydrant locations, Siamese connection/front entry (if applicable), Access route design and water supply

Note: The Development shall conform to the National Energy Code 2011, NFPA 1142, and any requirements of the Alberta Building Code. New Building, Fire and Energy Efficiency codes will be in full force as of Dec 01, 2019. The 6 month transition period to submit a Building permit under the current and outgoing codes will lapse on Nov 30th, 2019. Once the transition period has lapsed, the National Building & Fire Code - 2019 Alberta Edition and the National Energy Code for Buildings – 2017 Edition will be in effect for all building permits to follow

- (62) That separate Development Permits shall be issued for each tenant prior to occupancy of any unit.
- (63) That separate Development Permits shall be issued for Buildings 2 and 3.
- (64) That any other government permits, approvals, or compliances are the sole responsibility of the Applicant/Owner includes any Alberta Transportation or NAV Canada requirements.
- (65) That the buildings and/or works completed under this permit prior to the end of the validity of this permit remain subject to the terms and conditions of this permit.
- (66) That the buildings and/or works not completed under this permit are subject to a new Development Permit subject to the satisfaction of the County.
- (67) 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 48 months of the issue, the permit is deemed to be null and void, unless an extension to this permit shall first have been granted by the Development Officer.

- (68) That if this Development Permit is not issued by **FEBRUARY 29, 2021**, or by an 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 storm water infrastructure.

[8] On September 24, the Appellant appealed the Development Authority's decision. The Notice of Hearing was circulated to 29 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*.

PRELIMINARY AND PROCEDURAL MATTER

[9] David Marshall the counsel for the appellant objected to a member of the Board.

[10] David Marshall objected to Ian Galbraith remaining on the Board for the duration of the hearing due to his personal relationship with the developer of Rencor Developments.

[11] Ian Galbraith and Hazel George agree to recuse themselves from the hearing leaving three Board members to continue the hearing.

SUMMARY OF EVIDENCE

[12] The Board heard verbal submissions from:

- (1) Jessica Anderson, Municipal Planner, for the Development Authority;
- (2) Sean MacLean, Planning and Development Supervisor, for the Development Authority
- (3) Gurbir Nijjar, Supervisory Engineer, for the Development Authority;
- (4) Gavin Fitch, McLennan Ross LLP, for the Board;
- (5) David Marshall, for the Appellant;
- (6) Nancy MacDonald, the Appellant;
- (7) Sean Wilkenson, for the Applicant.

[13] The Board received no letters in support or opposition of the appeal.

Development Authority's Submissions

[14] As this application falls within a Direct Control District, the Board should only consider if the Development Authority followed council's intention within the direct control bylaw for this appeal.

[15] Condition 10 requires the Applicant/Owner shall enter into a Special Improvement Development Agreement for the Bingham Crossing Waste Water Treatment Plant in accordance with the conditions of the associated subdivision approval. This agreement is also a prior to issuance condition of the Waste Water Development Treatment development permit. This agreement must be entered into prior to the issuance of both the development permits and the subdivision endorsement for the site.

[16] Conditions 19 and 21 require that prior to occupancy of the site the Applicant/Owner shall complete the offsite wastewater treatment plant and disposal infrastructure to the satisfaction of the County.

[17] Compliance to provincial legislation and Alberta Environment and Parks are the responsibility of the Applicant/Owner.

[18] This application is for retail buildings and signage and is not for the Waste Water Treatment Plant and Infrastructure.

[19] There is an approved development permit for the Waste Water Treatment Plant from the County as well there is an application into Alberta Environment and Parks for the Waste Water Treatment Plant.

[20] Condition 6 is to provide details for the one freestanding sign and way finding signs for the development.

[21] Future development permits will be needed for any signage necessary for the individual units.

[22] Condition 22 covers the wastewater treatment plant and any other respective infrastructure related to the wastewater operations.

[23] Buildings one and two can be submitted together in a development permit or separately.

[24] The intention of the length of time noted in condition 68 allows for adequate time for all permits to be applied for.

[25] Alberta Environment and Parks have approved the Waste Water Treatment Plant. The County and the Applicant/Owner are in the process of finalizing the Special Improvement Development Agreement.

[26] The Appellant appealed the development permit for the Waste Water Treatment Plant during the appeal period for that permit.

Appellant's Submissions

- [27] This permit and the permit for the Waste Water Treatment Plant are inextricably connected.
- [28] The permit in question is premature due to the pending approvals of Waste Water permit and the Alberta Environment and Parks permit.
- [29] Waste Water issues are at the heart of this permit.
- [30] The appeal is based on reports that have not been completed yet.
- [31] An extension was granted for the original Waste Water Treatment Plant and the Appellant has filed an application with the Court of Queen's Bench for a Judicial Review of the extension granted by the Development Authority on that development permit.
- [32] Requesting the appeal be granted or an adjournment to this hearing until the Judicial Review is decided by the courts.
- [33] The time for satisfaction of the conditions on the permit on the subject permit are non-compliant with the Land Use Bylaw, as they are over the 12-month period listed in the Land Use Bylaw.
- [34] The Waste Water Treatment Facility is not in line with the Rocky View County County Plan.
- [35] Unless the Waste Water permit is issued, the subject permit is null and void. Therefore, the approval of this permit is premature.

Nancy MacDonald Submissions

- [36] The MacDonald family has owned the lands adjacent to the proposed development for over 40 years.
- [37] The current application is premature based on the fact that the conditions for the Waste Water Facility have not being met.

Sean Wilkenson Submissions

- [38] The approvals from Alberta Environment Parks for the Waste Water Treatment Plant have been received.
- [39] The permits for the buildings and the Waste Water Treatment Plant are related but not directly related to one another.
- [40] Consecutive permits with interrelated conditions are more acceptable due to time constraints.

Appellant's Rebuttal

[41] Consecutive permits are not the way to proceed as the appeal period for these is at the outset, and does not allow time to appeal in a substantive fashion.

Development Authority's Closing Comments

[42] The timeline for the prior to issuance conditions the Development Authority can grant extended timeline.

[43] The documents required for the prior to issuance conditions for the Waste Water Treatment Plant are not available to the public as a matter of process.

[44] If the development permit for the Waste Water Treatment Plant is quashed with the Judicial Review, the Applicant can reapply for the Waste Water Treatment Plant and the application would go through the same process.

[45] The Applicant does not have to wait six months to reapply if the outcome of the Judicial Review quashes the original development permit, as the outcome is not a refusal by the Development Authority.

Appellant's Closing Comments

[46] None.

FINDINGS & REASONS FOR DECISION

[47] The Retail, Regional and Retail, Local, the construction of eight (8) retail buildings and signage associated with the Bingham Crossing Development is a permitted use in the DC-148 District, in accordance with both the *Direct Control Bylaw* and Parts One, Two, and Three of the *Land Use Bylaw*.

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

[49] The Board reviewed all evidence and arguments, written and oral, submitted by the parties and focused on the most relevant evidence and arguments in outlining its reasons. The Board also considered the context of the proposed development, sound-planning considerations, the merits of the application, and all applicable legislation, plans, and policies.

[50] The Board finds that the Development Authority acted within the direction of council under the Direct Control Bylaw.

[51] Given the above findings and pursuant to section 687 of the *Municipal Government Act*, the Board finds that the proposed development 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*.

CONCLUSION

[52] For the reasons set out above, the appeal is denied and the decision of the Development Authority is upheld. A development permit shall be issued subject to the above-noted conditions.

Dated at Rocky View County, in the Province of Alberta on October 24, 2019.



Don Kochan, Chair
Subdivision and Development Appeal Board

EXHIBIT LIST

DOCUMENTS PRESENTED AT THE HEARING AND CONSIDERED BY THE BOARD

NO.	ITEM
1.	Development Authority's Report to the Board (91 pages)
2.	Development Authority's Presentation to the Board (15 pages)
3.	Appellant's Presentation to the Board (5 pages)