

MUNICIPAL DISTRICT OF PINCHER CREEK

CHINOOK INTERMUNICIPAL SUBDIVISION & DEVELOPMENT APPEAL BOARD

OCTOBER 17, 2024, NOVEMBER 21, 2024 and January 9, 2025

Hearing No. DP 2024-42

Appellant: Stephen Mogdan, Legal Counsel on behalf of Castle Valley Campground

ADDITIONAL SUBMISSIONS EXHIBITS

- P. DP 2024-42 Notice of Hearing Rescheduled to January 9, 2025
- Q. Excerpt from MD Pincher Creek Land Use Bylaw 1349-23 as amended
- R. Excerpt from MD Pincher Creek Municipal Development Plan Bylaw 1330-21 as amended
- S. Submission from the appellants, S. Mogdan

MUNICIPAL DISTRICT OF PINCHER CREEK NO. 9

NOTICE OF SUBDIVISION AND DEVELOPMENT APPEAL BOARD HEARING

Development Application 2024-42

NOTICE OF RESCHEDULED HEARING

HEARING NO. DP 2024-42

This is to notify you that a panel the Chinook Intermunicipal Subdivision and Development Appeal Board (Board) has recessed Hearing No. DP 2024-42, convened October 17, 2024 and November 21, 2024, regarding a refused development permit application located within LSD 1 and Portion of LSD 2, Section 2-7-1 W5M, within the Municipal District of Pincher Creek.

The hearing will reconvene:

DATE OF HEARING: January 9, 2025

TIME OF HEARING: 10:00 A.M.

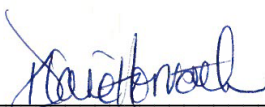
PLACE OF HEARING: Municipal District of Pincher Creek Council Chambers
1037 Herron Avenue, Pincher Creek, Alberta

PROCEDURES PRIOR TO THE RECOVERED HEARING:

1. **Submissions** - It is preferred that any additional submissions are forwarded via email to the Clerk, ideally in a PDF format, in 1 file, **on or before 12:00 pm (noon) on December 18, 2024** for distribution prior to the hearing. Any submissions to the Board after December 18, 2024 can be submitted to the Board at the hearing and 10 copies of the submission are to be supplied to the Board.

EMAIL: dianehorvath@orrsc.com
MAIL: **Diane Horvath, Board Clerk**
Oldman River Regional Services Commission
3105 – 16th Avenue N., Lethbridge, Alberta T1H 5E8

DATE: November 30, 2024



Diane Horvath, Clerk
Subdivision & Development Appeal Board

P1



Municipal District of Pincher Creek No. 9

Land Use Bylaw

No. 1349-23

April 2024

Consolidated to Bylaw No. 1352-24, November 2024

Q1

agreed on between the applicant and the Development Officer in writing to extend the deadline.

- 17.6 When the Development Officer determines that the information and documents required to be submitted under subsection 17.5 are complete, the Development Officer shall issue to the applicant a written Notice of Completeness acknowledging that the application is complete, delivered by hand, mail or electronic means.
- 17.7 If the required documents and information under subsection 17.5 have not been submitted to the Development Officer within the timeframe prescribed in the notice issued under subsection 17.5, the Development Officer shall return the application to the applicant accompanied by a written Notice of Refusal stating the application is deemed refused and the reasons for refusal.
- 17.8 Despite issuance of a Notice of Completeness under subsection 17.4 or 17.6, the development authority in the course of reviewing the application may request additional information or documentation from the applicant that the development authority considers necessary to review the application.

SECTION 18 DECISIONS ON DEVELOPMENT PERMIT APPLICATIONS

SUITABILITY OF SITES

- 18.1 Notwithstanding that a use of land may be permitted or discretionary or considered similar in nature to a permitted or discretionary use in a land use district, the Subdivision or Development Authority may refuse to approve a subdivision or issue a development permit if the Authority is made aware of or if, in their opinion, the site of the proposed building or use is not safe or suitable based on the following:
- (a) does not have safe legal and physical access to a maintained road in accordance with the Land Use Bylaw, other municipal requirements or those of Alberta Transportation if within 300 m (984 ft) of a provincial highway or 800 m (2,625 ft) from the centre point of an intersection of a controlled highway and a public road;
 - (b) has a high-water table or soil conditions which make the site unsuitable for foundations and/or sewage disposal systems in accordance with provincial regulations;
 - (c) is situated on an unstable slope;
 - (d) consists of unconsolidated material unsuitable for building;
 - (e) is situated in an area which may be prone to flooding, mass wasting, or erosion;
 - (f) does not comply with the requirements of the *South Saskatchewan Regional Plan, the Matters Relating to Subdivision and Development Regulation* or any other applicable statutory plans;
 - (g) is situated over an active or abandoned coal mine or oil or gas well or pipeline that has not been sufficiently remediated;
 - (h) would expose the structure itself and/or people living and working there to risk from the operations of a nearby airport or airstrip;
 - (i) is unsafe due to contamination by previous land uses;
 - (j) does not meet the minimum setback requirements from a sour gas well or bulk ammonia storage facility;



- (k) is situated closer to a confined feeding operation than the minimum distance separation recommended by the Natural Resources Conservation Board;
- (l) does not have an adequate (quality or volume) water supply;
- (m) does not have an adequate means of wastewater (i.e. sewage) disposal;
- (n) does not have an adequate means of stormwater disposal;
- (o) does not meet an applicable measurable standard (i.e. lot size or setback requirements) or any other applicable standards or requirements of this Bylaw;
- (p) would prevent or interfere with the natural and economic extension of a nearby developed area including but not limited to an oil or gas field, a sewage treatment plant, a waste disposal or transfer site, a pipeline or a road system;
- (q) is subject to any easement, caveat, restrictive covenant or other registered encumbrance which makes it impossible to build on the site;
- (r) or any other matter as determined by the Subdivision or Development Authority.

PERMITTED USE APPLICATIONS

- 18.2 Upon receipt of a completed application for a development permit for a permitted use, the Development Officer shall approve, with or without conditions, an application for a permitted use where the proposed development conforms to this bylaw and may:
- (a) require a Real Property Report, signed by an Alberta Land Surveyor for the purpose of evaluating the compliance of the proposed or existing development against all land use regulations relating to the use and building(s) that is (are) the subject of the development permit application;
 - (b) prior to making a decision, refer any application for a permitted use to any municipal department or external agency for comment;
 - (c) require, as a condition of issuing a development permit, that the applicant enter into and comply with a development agreement with the Municipal District of Pincher Creek in accordance with all the items listed in MGA Section 650(1). To ensure compliance with the conditions in the agreement, the Municipal District of Pincher Creek may be protected by caveat registered in favour of the Municipal District of Pincher Creek;
 - (d) require financial guarantees, in the form of an off-site levy, a redevelopment levy or in any other form and in an amount acceptable to the Municipal District of Pincher Creek, from the applicant to secure performance of any of the conditions of a development permit;
 - (e) refuse to issue a development permit for a proposed building on any parcel, where it would otherwise be permitted by the bylaw, in the case where Section 18.1 has not been met.
 - (f) issue a temporary development permit where, in the opinion of the Development Officer, the proposed use is of a temporary nature;
 - (g) update the file if the development has changed yet still conforms with the provisions of this bylaw;
 - (h) apply required setbacks from future road rights-of-way;
 - (i) any measures to ensure compliance with applicable federal, provincial and/or other municipal legislation and approvals;



professional engineer of The Association of Professional Engineers and Geoscientists of Alberta (APEGA), that preventative engineering and construction measures can be instituted to make the parcel suitable for the proposed development.

- 35.5 Further to Section 35.2, the Development Officer or Municipal Planning Commission may, at their discretion, require that a professional engineer of The Association of Professional Engineers and Geoscientists of Alberta (APEGA) design the development site and buildings.
- 35.6 Subject to Section 35.2 and 35.3, the Development Officer or Municipal Planning Commission may, at their discretion, reduce the setback requirements established pursuant to Sections 35.2 or 35.3, if the applicant provides satisfactory proof of bank stability.
- 35.7 Notwithstanding any other provisions of this bylaw, a permitted use for a site that is located adjacent to an area deemed to be a “steep slope” or within the 1:100 flood risk area shall be forwarded to the MPC for consideration.

FLOOD PLAIN

- 35.8 New development within the flood risk area shall be strongly discouraged, however should the Municipal Planning Commission consider it appropriate, a development may be allowed subject to the following requirements:
- (a) development shall be restricted to non-residential buildings or structures that can be adequately protected to minimize potential flood damage;
 - (b) the first floor and mechanical and electrical installations within any structures or buildings shall be a minimum of 0.5 m (1.6 ft.) above the 1:100 year flood elevation level.
- 35.9 Buildings shall have no “finished” floor space developed below the 1:100 year flood elevation.
- 35.10 The applicant must provide information on the grade elevations of the proposed building site, the building, as well as the building openings and mechanical or electrical equipment all referenced in geodetic elevations.
- 35.11 Before a development permit is issued, the Development Officer may require that the applicant provide a certificate containing the seal and signature of a Professional Engineer of The Association of Professional Engineers and Geoscientists of Alberta (APEGA) or registered Architect of The Alberta Association of Architects indicating that the requirements listed above have been met and that the building or structure is adequately protected against flood damage to the 1:100 year flood elevation.
- 35.12 The Development Officer or Municipal Planning Commission may consult with Alberta Environment or other appropriate organization or individual to assist in determining high-water marks, flood risk area, banks and the level of a lake, dam, river or other waterway taking into account 1:100 water levels, wind set-up and wave run-up.

- 35.13 If an existing parcel is contained within a 1:100 year flood plain, in whole or in part, so that the parcel has no developable area, any residential building or principal building on that parcel must satisfy the provisions of Section 35.11.
- 35.14 Where flood plain/slope information is not available but the Development Authority believes that lands may be subject to flooding, the Authority may require that development requiring a development permit be set back such distance as the Authority considers reasonable and appropriate to minimize the risk of flooding.
- 35.15 Development requiring a development permit may be set back at least 20 m (65.6 ft.) from a naturally occurring watercourse unless an engineering study, as required by Section 35.11, is provided.

AVALANCHE

- 35.16 Before a development permit is issued, the Development Officer may require that the applicant provide a certificate containing the seal and signature of a Professional Engineer of The Association of Professional Engineers and Geoscientists of Alberta (APEGA) or registered Architect of The Alberta Association of Architects indicating that the building or structure is adequately protected against avalanche.

SECTION 36 ACCESSORY BUILDINGS

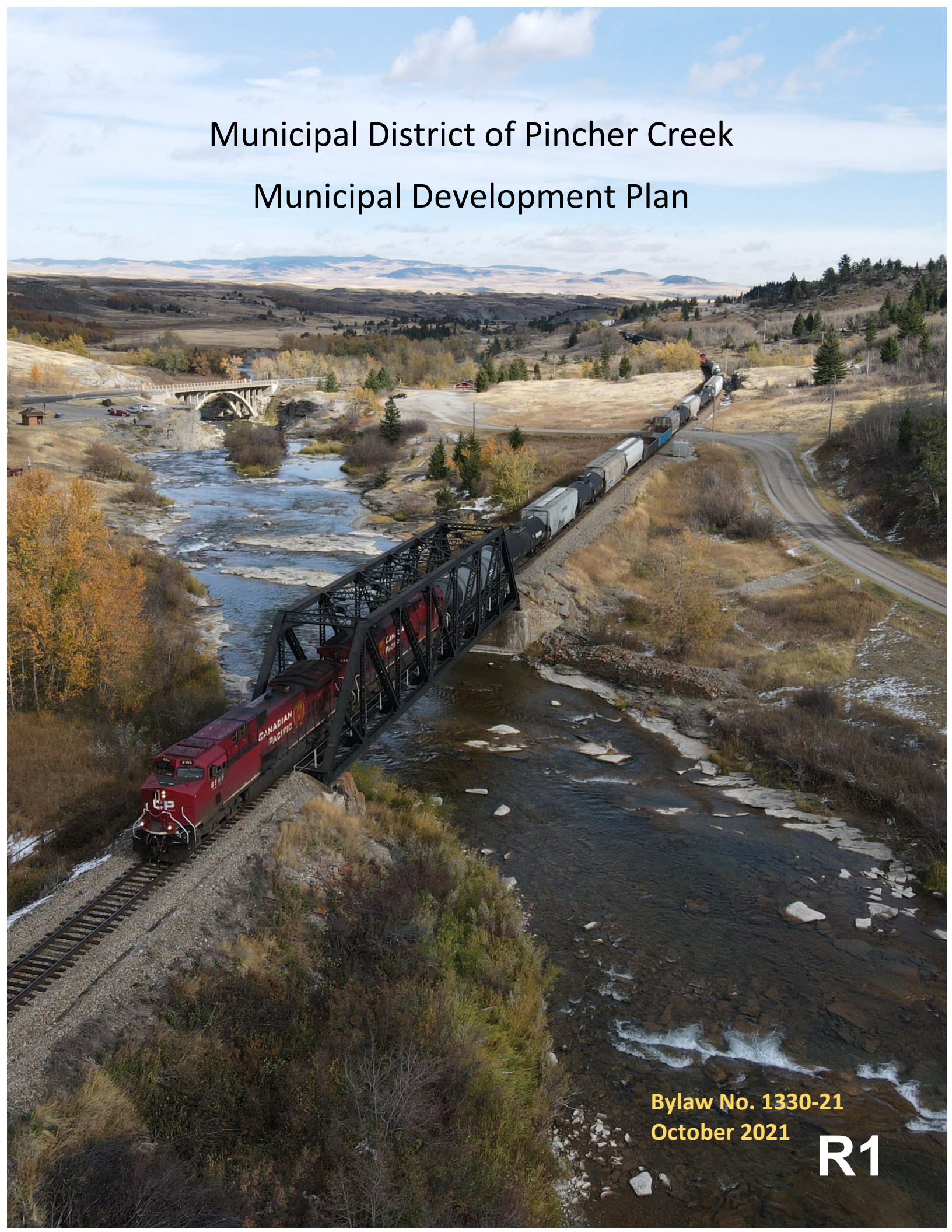
- 36.1 Accessory buildings must be:
- (a) separate and subordinate to the principal building or use; and
 - (b) associated with an existing principal building or use on the same parcel or lot.
- 36.2 Unless specified in a district, an accessory building must not exceed 7.5 m (24.6 ft.) in height.

SECTION 37 ACCESSORY STRUCTURES

FENCES AND GATES

- 37.1 Fences and gates within residential districts in designated hamlets and in the Grouped Country Residential district shall, unless otherwise required by the Development Authority:
- (a) not exceed 1 m (3.3 ft.) in height in the principal front yard on a corner or interior lot;
 - (b) not exceed 2 m (6.6 ft.) in height in a secondary front yard on a corner lot;
 - (c) not exceed 2 m (6.6 ft.) in height in a side or rear yard.
- 37.2 Fences and gates within commercial and industrial districts shall not exceed 2 m (6.6 ft.).
- 37.3 The location of fences in all districts shall comply with the provisions of Section 38.
- 37.4 The design, character and appearance of all fences within designated hamlets and country residential subdivisions must be to the satisfaction of the Development Authority.

Municipal District of Pincher Creek Municipal Development Plan



Bylaw No. 1330-21
October 2021

R1



17. ENVIRONMENT and its NATURAL CAPITAL

Context

The Vision and Mission statements of this document speak directly to the importance the natural assets of the MD of Pincher Creek. Much of the liveability, sustainability, and values of the citizenry is linked to the natural capital of the area. A healthy ecosystem with all that entails in supporting the natural world also supports the longevity of agricultural livelihoods. The language of this section may introduce new terms such as habitat patch, but the outcome should be clear that it is protecting our prairie grassland and waterways for generations to come.

Objectives

1. To protect and conserve the natural scenic attributes of foothills grazing lands and its natural capital.
2. To foster land use patterns that minimize environmental impact and facilitate the development of a healthy, safe and viable municipality and to promote sustainable development and land use patterns.
3. To recognize hazard lands and either avoid development of these lands or, where necessary, utilize mitigative measures to minimize the risk to health and safety and to reduce the risk of property damage.
4. To maintain the water quality in the headwaters and watersheds, recognizing that they are a consumptive resource that affect downstream municipalities, landowners and other consumers.
5. As far as possible, to cooperate with the province in managing non-renewable resources and water resources recognizing that the province has assumed a leadership role in managing these resources.

Policies

Generally

- 17.1 The MD encourages dark sky initiatives through the implementation of responsible outdoor lighting by landowners and businesses. Dark skies promotes ecological integrity, aesthetics and human health.
- 17.2 The MD requires that development should build with the contours of the land and avoid stripping and grading, where possible. And further, the MD requires that construction best practices to reduce wind and water erosion of soils shall be required.

Environmentally Significant Areas and Hazard Lands

- 17.3 The municipality recognizes the following environmentally significant areas documents:
 - (a) *Environmentally Significant Areas in the Oldman River Region: Municipal District of Pincher Creek* (Cottonwood Consultants: for Alberta Forestry, Lands and Wildlife and the Oldman River Regional Planning Commission) 1987.
 - (b) *Environmentally Significant Areas in Alberta: 2014 Update FINAL REPORT* (Report prepared for the Government of Alberta by Fiera Biological Consulting Ltd.) 2014.



- (c) Any subsequent ESA document adopted by the MD or the Alberta government.
- (d) Any documented data set accessible through the Government of Alberta.
- 17.4 The MD through its land use bylaw shall continue to address hazard lands with a view to reducing risks to health, safety and property damage. The MD may prohibit subdivision and/or development in potential environmental hazard lands, including flood prone areas and land prone to mass wasting, erosion or subsidence.
- 17.5 The MD shall not permit the subdivision or development of parcels located within the 1:100-year floodplain. In areas where there may be uncertainty as to where the floodplain lies, the applicant may be requested to provide a professional assessment of the floodplain at their expense.
- 17.6 The MD in cooperation with Alberta Environment shall through the land use bylaw discourage development and subdivision in a flood fringe where the proposed development or use entails risks to health, safety or property damage.
- 17.7 The MD shall prohibit subdivision and/or development in areas where brownfields (such as former gas stations) and other man-made hazard lands exist (such as coal mining), until the relevant approval authority is satisfied the development can proceed safely.
- 17.8 Prior to making a decision, the relevant approval authority may:
- require a professionally prepared geotechnical analysis;
 - circulate development application to the relevant government department for comment;
 - depending on the nature of the hazard, request an Environmental Impact Assessment (EIA) at the applicant's expense.
- 17.9 The MD encourages the retention of trees and vegetation within and adjacent to Environmentally Significant Areas. Trees prevent soil loss, intercept and slow down stormwater, improve air quality, provide habitat, are aesthetically appealing, and provide property owners with greater privacy.

Ecology

- 17.10 The MD shall encourage the use of best management practices for controlling noxious weeds, prohibited noxious weeds or invasive plants.
- 17.11 The protection of wildlife corridors and habitat patches is important to the MD, and the MD will consider provincial guidelines for planning purposes in this regard. The MD may require the preparation of an impact assessment for the protection of suspected wildlife corridors or habitat patches that may be significantly impacted by a proposed plan, subdivision or development.
- 17.12 Development of an area structure plan or concept plan as well as applications for subdivision and development shall consider and incorporate natural areas such as wildlife corridors and habitat patches, trees strands, wetlands and water courses into their design.
- 17.13 The restoration of sensitive ecosystems, natural areas, and wildlife corridors that have been previously disturbed is encouraged.

Water

- 17.14 The MD shall enforce setbacks to water bodies in their decision making processes. The setbacks may be guided by the provincial guidelines, Stepping Back from the Water: A



Beneficial Management Practices Guide of New Development near Water Bodies in the Alberta's Settled Region, the Alberta Wetland Policy or other recognized method of establishing setbacks.

- 17.15 With regard to the wetland policy, the MD recognizes the goal of the Alberta Wetland Policy is to conserve, restore, protect and manage Alberta's wetlands to sustain the benefits they provide to the environment, society and economy. To achieve this goal the MD recognizes the policy will focus on four outcomes:
- wetlands of the highest value are protected for the long-term benefit of Albertans;
 - wetlands and their benefits are conserved and restored in areas where losses have been high;
 - wetlands are managed by avoiding, minimizing and if necessary, replacing lost wetland value; and
 - wetland management considers regional context.
- 17.16 The MD acknowledges the work done by the Oldman Watershed Council (OWC) within the municipality and its grassroots approach to working with residents and decision-makers in pursuing its goals. To that end the MD will reference OWC documents when considering subdivision and development proposals.
- 17.17 Stormwater treatment and storage facilities should avoid the use of natural wetlands and locate away from existing floodways and riparian areas.
- 17.18 The MD will protect ground water and ensure use does not exceed carrying capacity of the land by:
- (a) Supporting long term ground water research and monitoring programs;
 - (b) Mitigating the potential adverse impacts of development on groundwater recharge areas;
 - (c) Adhering to provincial ground water testing requirements, as part of the development approval process; and
 - (d) Encouraging and facilitating the capping of abandoned water wells to protect against ground water leakage and cross contamination.

Our File: 149472-0001/SCM:crm

Legal Assistant: Chelsey R. Mackenzie
Email: chelsey@stringam.ca
Phone: (403) 388-1327
Fax: (403) 328-0274

Barristers & Solicitors
150 - 4 Street S.
Lethbridge, AB T1J 5G4
Office Phone: (403) 328-5577

December 18, 2024

- Via Email: dianehorvath@orrscc.com -

Chinook Intermunicipal Subdivision and Development Appeal Board

c/o Oldman River Regional Services Commission
3105 - 16 Avenue N.
Lethbridge, AB T1H 5E8

Attention: Diane Horvath

Dear Sir:

**Re: Hearing No. DP 2024-42
Rebuttal Submissions**

We acknowledge receipt of the Notice dated November 30, 2024, from Diane Horvath, Clerk, regarding the date for this reconvened Subdivision and Development Appeal Board hearing.

Ms. Horvath advised that any additional (written) submissions be forwarded by email on or before December 18, 2024 at noon. This letter constitutes the additional submissions on behalf of the Appellant, Castle Valley Campground Ltd.

Preliminary Matters

We must reiterate our objection to the manner in which this hearing has been conducted to date. The Chinook Intermunicipal Subdivision and Development Appeal Board (the "SDAB") has followed what we believe to be an irregular process in this hearing, in two respects.

First, although this was an appeal by Castle Valley Campground Ltd. (the Appellant"), the SDAB chose not to hear from the Appellant at the commencement of the hearing, but rather to hear first from – effectively – the Respondent. Second, the SDAB allowed the Respondent to introduce extensive, additional documentation during the course of the submissions on behalf of the Respondent. Both of these actions were and are prejudicial to the Appellant.

Although we recognize that the SDAB is entitled to determine its own procedures, common appeal practice and principles of procedural fairness dictates that the appellate forum first hear from the Appellant with respect to its appeal submissions. Once the Appellant has provided its submissions, the Respondent will typically have the opportunity to respond to those submissions (unless the appeal body elects not to hear from the Respondent). Following this, the Appellant is typically provided a brief opportunity to address the Respondent's submissions. This process

is followed virtually uniformly across appellate courts in Alberta (as in the Alberta Court of Appeal, and in the Alberta Court of King’s Bench when it hears appeals from the Alberta Court of Justice or from the decision of a Master/Applications Judge). Similarly, this process is substantively followed before other appeal tribunals such as subdivision and development appeal boards. Permitting the Respondent to make submissions prior to the Appellant is therefore irregular, contrary to established common practice, and prejudicial.

Similarly, although we recognize the SDAB’s previously stated indication that additional submissions could be made at the time of the hearing (provided sufficient copies were made available), this is a problematic practice and prejudicial to a party against whom such additional material is being introduced – here, the Appellant, Castle Valley Campground Ltd. Such process allows participation in the appeal hearing by “ambush” as it were. In the event such additional submissions and material are not extensive, the allowance is perhaps understandable. However, where the material is extensive – and particularly where extensive material is introduced by the Respondent prior to the Appellant making any submissions at all – the process is prejudicial and should no longer be entertained by the SDAB.

Additional Appellant Submissions

The Appellant will largely restrict its additional/rebuttal submissions to addressing the matters brought up by Mr. Gavin Scott on behalf of the Municipal District of Pincher Creek No. 9 (the “MD of Pincher Creek”).

A. Hearing *De Novo*

Mr. Scott submitted that Hearing No. DP 2024-42 was an appeal *de novo*. The writer objected to that characterization at the time of the original hearing, primarily because Mr. Scott intended that characterization to support an argument that the SDAB cannot review the reasons – or lack thereof – issued in the decision of the development authority. We believe this position is incorrect in law.

The nature of an appeal *de novo* before a subdivision and development appeal board means that the board (a) is not required to review the development authority’s decision for *error*, (b) is not limited only to remit a mistaken decision back to the development authority, because it may make whatever decision is appropriate on the merits of the appeal, and (c) may hear evidence and argument that was not before the development authority. See *Mahal and Sons Inc. v. Edmonton (City of)*, 2022 ABCA 22 (Exhibit 1). The point of an appeal before the SDAB is for this body to consider whether or not to change the decision of the development authority. To the extent that the development authority of the MD of Pincher Creek (here the Municipal Planning Commission, or “MPC”) rejected the development permit application of the Appellant, the reasons it did so (or the lack thereof) are relevant to this determination. In this case, the MPC appears to have failed to consider the evidence of Castle Valley Campground in support of its development permit application and effectively provided no reasons for why it did so.

B. Improper Evidence of Respondent

On behalf of the Respondent, Mr. Scott raised several arguments and items of evidence which were improper and/or irrelevant. We review these in turn.

a) "Original Approval"

The MPC stated as its ostensible reason for rejecting the development permit application of Castle Valley Campground Ltd. that the subject campground site was "only suitable for seasonal (being May 15 to Oct 15) recreational accommodation and that outdoor storage is not acceptable on this site". This was, in the MPC's words, "in keeping with the original approval". Mr. Scott made a series of submissions in support of what he characterized as the conditions of the "original approval." These relied in large part on what the SDAB permitted to be introduced as Exhibit "L" to the hearing, being minutes from the 2015 public hearing held in relation to Bylaw No. 1259-15 (the bylaw to amend the zoning of the campground land in order to allow the original campground development).

Quite clearly, no particulars of any conditions of the "original approval" of Bylaw No. 1259-15 was properly in evidence before the SDAB on November 21, 2024. If indeed there were conditions issued to Castle Valley Campground Ltd. years ago, in order to allow it to proceed with the campground in the first place, these have not been provided to the SDAB and therefore could not have been in evidence before the SDAB.

Moreover, the attempt by Mr. Scott to provide his own evidence of any such suggested condition of the "original approval" is not properly before the SDAB. Not only is Mr. Scott not able to give any evidence in this forum, but the manifest problems with Exhibit "L" should prompt the SDAB to reject those submissions.

Aside from the fact that the Appellant had not been provided with these minutes (Exhibit "L") prior to the hearing no. DP 2024-42, these minutes are prejudicial to the Appellant and should not have been allowed into evidence. The SDAB heard no evidence of the authorship of these minutes, and these were not properly introduced as an exhibit on behalf of the Respondent.

Further, Exhibit "L" is, on its face, ambiguous, lacking specifics, and generally devoid of context. As such, submissions based on such a problematic document are prejudicial to the Appellant.

As an example, the minutes contain the sentence "flooding events on the land were discussed." This is presented without any context as to who discussed such "flooding events", nor what exactly that person (or those persons) submitted to the public hearing regarding such 'flooding events', nor how any such 'flooding events' were related to the proposed bylaw, nor even whether such 'discussion' was a relevant aspect of the approval of Bylaw 1259-15. Other items from this Exhibit will be addressed at the hearing on January 9, 2025. For the present, we submit that the SDAB must give Exhibit "L" little to no weight, for the reasons identified above. These minutes provide the SDAB with no real information on whether any of the items mentioned therein were material to the decision of the MD of Pincher Creek in approving Bylaw No. 1259-15.

b) Irrelevant Submissions

On behalf of the Respondent, Mr. Scott brought up several irrelevant submissions. One of these related to the existence of movable sheds located at the campground, which he sought to characterize as being "permanent" structures. This submission was presumably made to try to suggest that the Appellant has not been complying with its currently authorized campground development. This submission was ostensibly based on his understanding – not properly in

evidence – that certain of these sheds had not been moved for some undefined period of time, and therefore could be characterized as being “permanent.”

Aside from the MD of Pincher Creek Land Use Bylaw (“LUB”) not containing a definition for the term “permanent structure” the submission is ridiculous on its face and irrelevant to the appeal before the SDAB. The fact that something that *can* be moved but has *not* been moved for an unspecified period of time does not change the nature of that thing to being “permanent”, unless the legislation provides for such a circumstance. The LUB here does not.

Further, Mr. Scott attempted to make some manner of submission regarding what might be characterized as ‘population density’ within the campground. He provided some sort of calculation suggesting that the campground could accommodate only a certain ‘population density’ (we believe he suggested 219 people); he then attempted to use an aerial photograph of the campground to argue that the Appellant was exceeding some sort of guideline or condition regarding population density. No such guidelines or conditions regarding the operation of Castle Valley Campground were before the SDAB and as such, Mr. Scott’s submissions in this regard must be rejected as being irrelevant.

Further, Mr. Scott’s submissions regarding the campground’s supposed ‘population density’ and the phenomenon of moveable objects having been transformed through the effluxion of an undefined period of time are both fatally flawed for the simple reason that neither are valid planning matters. Simply put, if any property within the MD of Pincher Creek is being operated contrary to the LUB, the municipality may take enforcement measures if it so chooses. To attempt to use these arguments to advocate against this development permit application – ignoring their irrelevancy – is to attempt to introduce a non-planning, collateral attack. This should be rejected by the SDAB.

c) (Non) Expert Evidence

Mr. Scott on behalf of the MD of Pincher Creek made further submissions in an attempt to convince the SDAB that Castle Valley Campground Ltd.’s permit application was properly dismissed because of flooding concerns. He provided no documentation in that regard, but purported to offer his opinion that flooding concerns were not only an aspect of the MPC’s refusal of the permit but also an objectively legitimate concern. In so doing, Mr. Scott attempts to take on the role of an expert.

We submit that Mr. Scott’s submissions in that regard should be rejected by the SDAB. No information was provided to the SDAB to support qualifying Mr. Scott as an expert in hydrology. Although the SDAB can admit any evidence it likes, procedural fairness dictates that some standards be observed by such a tribunal. Allowing Mr. Scott to provide opinion evidence falls very much outside such standards.

C. Approval of Permit No. DP 2024-42

We submit that the SDAB should approve permit no. DP 2024-42, on the basis that it meets all of the conditions for the discretionary use being sought, namely “outdoor storage.” The LUB allows outdoor storage as a discretionary use for RR-1 zoning. “Outdoor storage” is defined as the “use of land with or without attendant buildings for the outdoor storage of equipment,

materials or vehicles... For the purposes of this bylaw, "Outdoor storage" uses are limited to those uses that require minimal onsite improvements, service and public amenities or facilities." We submit that this is indeed the case, and that Castle Valley Campground Ltd.'s permit application explained this clearly.

In this case, when the Appellant submitted its development permit application, it addressed the fact that there would be little to no onsite improvements required in order to allow this discretionary use. Further, it addressed a number of additional aspects of the proposed use, including security, monitoring, winterization and the notion of flooding. The last of these was addressed by the Appellant not in the sense of providing an expert opinion, but rather providing conclusions based on river flow data, the elevated position of the campground (especially relative to adjacent, lower-elevation land), and the acknowledgment of the introduction many years previously of rock groins to modify river flow. Simply put, and as recognized by the development officer, Ms. McKinnon, there was and remains no reason for the development authority to refuse this permit, and we urge the SDAB to approve the same.

STRINGAM LLP

Per:

STEPHEN C. MOGDAN

Partner, B.A., M.Phil., LL.B.

scmogdan@stringam.ca

SCM/crm

cc: Municipal District of Pincher Creek No. 9 Attn: Roland Milligan, CAO