File No: PRDP20223151

Rocky View Subdivision and Development Appeal Board

In the Matter of:

Appeal by Regine Landry against a decision of the Subdivision Authority of Rocky View County to place restrictions on the development of lands described as 280003 RGE RD 262

SUBMISSION OF THE APPELLANT REGINE LANDRY

Date: June 27, 2025

Submitted by:

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I. Introduction

1. This case concerns an appeal by Regine Landry against a decision of the Subdivision Authority of Rocky View County and raises critical issues concerning the rights of private property owners to develop their lands. This matter is returned to the SDAB by the Alberta Court of Appeal, following an earlier decision of this Board. The within hearing is a hearing *de novo,* and Ms. Landry is again appealing conditions imposed on Development Permit #PRDP20223151 for her property, described as NE-34-27-26-04; (280003 RGE RD 262).

2. The issues in this appeal revolve around two main restrictions placed on her land, which together, have the effect of making Ms. Landry's proposed development impossible. The two restrictions at issue are:

   (a) A 30-meter setback requirement from an adjacent railway line; and

   (b) Construction of a 6-foot tall chain-link fence abutting the railway.

3. The removal of these two restrictions is the only issue now before the Board. Ms. Landry seeks the removal of both the railway setback condition and the fence requirement. Removal of these restrictions is appropriate because these restrictions arise from three errors made by Rocky View Development Authority ("**RVDA**"), namely:

   (a) Canadian National Railway ("**CN**") is not an authority responsible for the regulation of railway safety. The sole jurisdiction for railway safety rests with the Canadian Transportation Authority and Transport Canada. The RVDA erred when they relied on recommendations from CN for safety concerns;

   (b) CN never represented that the 30-metre recommendation was based on safety concerns; and

   (c) A risk-based approach is more appropriate when considering the safety of residential occupants in the context of processing a development permit. A risk analysis in this case reveals that there is a vanishingly small risk associated with the proposed development on the Property.

4. As will be discussed below, the 30-metre setback, found in the *Guidelines for New Development in Proximity to Railway Operations* ("**Guidelines**")[1] were put forth as a recommendation based on noise and vibration concerns. These submissions demonstrate that this setback was never intended to be used as a safety recommendation.

[1] Railway Association of Canada & Federation of Canadian Municipalities, *Guidelines for New Development in Proximity to Railway Operations* (FCM/RAC Proximity Initiative, 2013) Tab "6" [Guidelines].

5. Further, expert evidence in this matter shows that the risk of Ms. Landry's proposed development is extremely remote. A 6-foot tall chain-link fence is unnecessary and out of character with adjacent lands.

II. Procedural History

6. Ms. Landry relies on her original Notice of Appeal (the "**Notice of Appeal**"),[2] and her submissions filed November 23, 2022 (the "**Original Submissions**").[3] The Development Authority has filed the complete Board Record related to Ms. Landry's original appeal, notwithstanding that these proceedings are *de novo.* This prior record, therefore, also forms part of the evidence before this Board.

(a) The Development Permit application

7. As set out in the Original Submissions, the Lands were purchased by Regine Landry in 2009 for the purpose of building a residence on the lands. At the time of the purchase, the Appellant received no information from the seller as to any special requirements for setbacks on the lands related to neighbouring roads, or the neighbouring CN railway (the "**Railway**"). The documents related to this transaction are attached as Appendix "A" to the Notice of Appeal filed with the SDAB dated August 30, 2022.[4]

8. The Appellant approached Rocky View with respect to any development restrictions. A copy of the response received in 2021 indicating a requirement setback from the CN railway of 6 metres is attached to the Notice of Appeal as Appendix "B".[5]

9. Ms. Landry relied on the response provided by Rocky View and applied for a Development Permit to allow construction of a residence on the Lands.

10. On or about August 16, 2022, the Appellant received a Notice of Decision dated August 9, 2022 (the "**Decision**") with respect to Development Permit application PRDP2022231 (the "**Application**"). The Decision approved construction of a residence on the Lands, but imposed certain restrictions on the use of the Lands. The conditions are:

    (c) a setback from the Railway of 30 metres is required (the "**Railway Setback Requirement**").

    (d) a requirement to construct a 1.83 metres (6.00 feet) high chain link or wood fence abutting the south property line (the "**Fence Requirement**").

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[2] Notice of Appeal of the Appellant Regine Landry, Tab "1" [Notice of Appeal].

[3] Submission of the Appellant Regine Landry, Tab "2" [Original Submissions].

[4] Notice of Appeal, *supra* note 2 at Appendix "A".

[5] Notice of Appeal, *supra* note 2 at Appendix "B".

11. The Decision approved a relaxation of the side yard setback from 45 metres to 3 metres as requested in the Application.

12. The setback renders much of the land unusable, reducing the developable area from 4.5 to 1.3 acres. Further, the Fence Requirement imposes significant additional costs of approximately $44,000 for the size and type of fence that is required.

(b) Appeal of the Decision to the SDAB

13. Ms. Landry filed the Notice of Appeal and Appeal Reasons on August 30, 2022 appealing the conditions of the Development Permit to the Subdivision Appeal Board ("**SDAB**" or "**Board**"). The Board opened the hearing on both September 22, 2022, and October 13, 2022, and granted adjournment requests made by the Applicant at each hearing. The Board did not hear any merit arguments of the appeal on those dates.

14. The Original Submissions on Appeal were filed November 23, 2022 The Board heard full merit arguments of the appeal on November 24, 2022, and December 15, 2022.

15. On December 30, 2022 the SDAB issued its decision. The Board:

(c) permitted Ms. Landry's appeal, but

(d) *reversed* the Development Authority's relaxation of the side yard setback and revoked the development permit altogether.

16. The SDAB upheld that the 30-metre setback was appropriate and ordered that the side-yard set-back be set aside.

(c) Appeal to the Court of Appeal of Alberta

17. Ms. Landry appealed the SDAB decision to the Court of Appeal of Alberta. Permission to appeal was granted on two questions of law:[6]

> a) When hearing Ms Landry's appeal of the condition on her development permit, did the Board err in law in revoking the entire permit?
>
> b) Was Ms Landry given reasonable notice of the Board's intention to revoke the permit, or to consider the impact of the development on the road allowance?

18. On the first question, the Court of Appeal found that appeals before the SDAB are heard *de novo* as established by the case law. In a *de novo* hearing, the Board has discretion to consider the development permit in its entirety and re-exercise afresh all the discretionary

[6] *Landry v Rocky View County (Subdivision and Development Appeal Board)*, 2025 ABCA 34 at para 6, Tab "3" [*Landry*].

powers of the Development Authority. The Board was not limited to considering only those issues raised on appeal by Ms. Landry.[7]

19. On the second question, The Court of Appeal found that the SDAB breached their duty of procedural fairness owed to Ms. Landry by failing to alert her of the Board's concerns over the side yard setback and by not informing her that they would revoke the permit altogether if she did not provide a proposal for the location of her home that complied with both setbacks.[8]

20. The Court of Appeal allowed the appeal, quashed the Board's decision and remitted the matter back to the SDAB for a rehearing. This means Ms. Landry is returned to the same position as before her original appeal to the SDAB and that the complete previous Board record with respect to the Application is part of the evidence before the Board for the purpose of determining Ms. Landry's appeal. There is presently a development permit in force with the following conditions in place:

    (a) a setback from the Railway of 30 metres is required (the "**Railway Setback Requirement**").

    (b) a requirement to construct a 1.83 metres (6.00 feet) high chain link or wood fence abutting the south property line (the "**Fence Requirement**").

    (c) a relaxation of the side yard setback from 45 metres to 3 metres.

21. Ms. Landry now respectfully requests that this Board grant an order for:

    (a) removal of the required 30 metre setback from the Railway and

    (b) removal of the 1.83 metre chain link fence requirement.

22. The proposed development and setback variance does not materially interfere with the use, enjoyment and value of the adjacent properties and does not unduly impact the amenities of the neighbourhood. Further, these variances are appropriate from a development perspective when risk factors are considered.

III. Directions from the Court of Appeal of Alberta

23. The Court of Appeal ordered a rehearing directing the SDAB to consider its comments at paragraphs 39-42 of the Court of Appeal's decision.[9] They can be summarised as follows:

    (a) The Board is tasked with achieving the delicate balance between "the orderly, economical and beneficial development, use of land and patterns of human

[7] *Landry*, *supra* note 6 at para 31.

[8] *Landry*, *supra* note 6 at paras 36-37.

[9] *Landry*, *supra* note 6 at para 44.

settlement...” without unnecessarily infringing on the rights of individuals. Both the development authorities and appeal boards are guided by legitimate planning purposes. The Board cannot reject a development permit for a discretionary use without having some legitimate planning reason for doing so.[10]

(b) The Board’s decision fails to identify a legitimate planning reason for reversing the side yard variance.[11]

(c) The Board’s reasoning cannot be gleaned from the record. The Development Authority granted the variance because administration did not expect the road allowance would be developed in the foreseeable future based on the location of the subject parcel and the surrounding road network. Prior to the Development Authority’s decision, Ms. Landry obtained a letter issued by Alberta Transportation dated July 5, 2022, advising Rocky View County it had no concerns with the relaxation of the side yard setback.[12]

(d) There is no evidence tethering the Board's decision reversing the relaxation of the side yard setback and instead insisting on the 45-metre setback contained in the land use bylaw. The Board failed to strike the appropriate balance between sound planning in the public interest and unnecessarily restricting Ms. Landry from developing her land.[13]

(e) The Board cannot simply point to the possibility, no matter how remote, that the road might be developed at some point in the future.[14]

24. As above, this is a hearing *de novo*. However, should the Board contemplate addressing issues outside of the relief requested by Ms. Landry and not raised by the parties, procedural fairness requires the Board provide notice of such issues to the appeal participants and provide them with an opportunity to respond.[15]

IV. Evidence and Arguments

25. The Development Authority and CN have relied on the Guidelines to suggest that a 30-metre setback is appropriate. The Expert Report demonstrates that this reliance is not appropriate and provides an in-depth review of the history of the Guidelines and why they came about.[16]

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[10] *Landry*, *supra* note 6 at para 39.
[11] *Landry*, *supra* note 6 at para 40.
[12] *Landry*, *supra* note 6 at para 41.
[13] *Landry*, *supra* note 6 at para 42.
[14] *Ibid*.
[15] *Landry*, *supra* note 6 at para 43.
[16] Expert Report from Fjord Consulting Ltd., Tab “4”.

26. The history of the Guidelines can be summarized as follows:

(a) Historically landowners adjacent to railways had limited recourse against railways for issues like noise, vibrations, and other effects. Persons suffering a form of injury had to rely on nuisance actions which offered monetary remedies but could not address the root cause of their ailments, such as ordering railway operational changes. Regulatory changes in the 1990's began to address these concerns which led to increased scrutiny of railway operations.

(b) Under this framework CN had to provide notice to communities when constructing new rail lines and yards, however it was largely able to operate without considering how its operations would impact adjacent landowners and communities.

(c) After the *Canada Transportation Act*[17] was passed in 1996, the Canada Transport Agency ("**CTA**") began regularly adjudicating noise, vibration, and emissions complaints from members of the public. By 1999, two landmark CTA decisions had ordered CN to make changes to its operations and mitigate operational impacts within the railway property.

(d) CN successfully appealed these decisions to the Federal Court of Appeal on the basis that the CTA did not have jurisdiction over these complaints.

(e) After successfully challenging the CTA's jurisdiction to hear noise, vibration and emission complaints, CN began redefining the issue. CN framed the issue as a failure of proper municipal planning for adjacent land use, rather than a railway issue to be dealt with on railway property.

(f) Starting in the early 2000's, CN worked through the Railway Association of Canada ("**RAC**") to engage with the Federation of Canada Municipalities ("**FCM**") to "build common approaches" to prevent and resolve proximity issues. In 2007 the *Canada Transportation Act* was amended to give the CTA jurisdiction to adjudicate noise and vibration complaints. Just a few weeks later, the first Guidelines were published. The Guidelines were later revised and re-published in 2013.

27. The Guidelines essentially provide a long list of recommendations - from the perspective of the railway - for municipalities to carry out in their planning. The objective of these guidelines is to shift the onus of noise, vibration and emission mitigation from CN on to landowners through municipalities. The Guidelines were *not* developed for the purpose of railway safety, or development safety.

[17] *Canada Transportation Act*, SC 1996, c 10 [*Canada Transportation Act*].

(a) Jurisdiction over Railway Safety

28. The Parliament of Canada has exclusive jurisdiction to regulate railway safety standards.[18] Railway safety standards regulate the track, ***not*** lands adjacent to the railway. Safety is not regulated through set-backs, buffers or safety zones placed over adjacent lands. The clearance zone for rail cars is fully contained within the right of way.

29. Federal Government exercises its jurisdiction to regulate railway safety through the *Canada Transportation Act*[19] and *Railway Safety Act*.[20] The CTA and Transport Canada ("**TC**") are federal regulators that administer the complex framework of laws and regulations that govern railways.[21]

30. The *Railway Safety Act* introduced the principle that railway companies are responsible for the safety of their operations. TC is given responsibility for overseeing rail safety and does this by ensuring rail companies operate safely within a national framework.[22]

31. The CTA is an independent regulator and quasi-judicial tribunal created and guided by the *Canada Transportation Act*. The CTA's mandate includes ensuring national transportation systems run efficiently and hearing disputes between transportation providers and their clients or neighbors.[23] The CTA states, "Railway companies have control over their construction and operations. They should assess and mitigate their impacts on neighbouring areas."[24] Put differently, the onus is on the *railway* to ensure its safety by taking measures *on the railway's property* - not on the property of Ms. Landry.

32. Similarly, Transport Canada has no jurisdiction to regulate land use adjacent to federal railways unless there is a threat to safe railway operations. There is no threat to safe railway operations from Ms. Landry's proposed development. The Minister of Transport and TC have no authority to regulate land use outside of the federal railway corridor.[25]

33. While there is a set back for safety purposes - referred to as a clearance envelope or zone ("Clearance Zone") - it protects the track on the right-of-way. TC has set strict Clearance

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[18] *Constitution Act*, 1867 (UK), 30 & 31 Vict, c 3, ss 91(29), 92(10).

[19] *Canada Transportation Act*, *supra* note 17.

[20] *Railway Safety Act*, RSC 1985, c 32 (4th Supp) [*Railway Safety Act*].

[21] Expert Report, *supra* note 16 at 4.

[22] Transport Canada, *The Railway Safety Act*, online: <https://tc.canada.ca/en/rail-transportation/rail-safety-canada/railway-safety-act>.

[23] Canadian Transportation Agency, *Our Mandate*, online: <https://otc-cta.gc.ca/eng/our-organization/our-mandate>.

[24] Canadian Transportation Agency, *Guidelines for the Resolution of Complaints over Railway Noise and Vibration*, at 4, online: <www.otc-cta.gc.ca/eng/publication/guidelines-resolution-complaints-over-railway-noise-and-vibration>.

[25] *Canada Transportation Act*, *supra* note 17 and regulations under this statute; *Railway Safety Act*, *supra* note 20, at s. 24 (1) and regulations under this statute; Expert report, *supra* note 16 at 7-11.

Zones,[26] and no infrastructure or structures are permitted within the Clearance Zone. The Clearance Zone is defined by specific dimensions around the railway track to allow for the safe passage of trains over the track. It is fully contained within the right-of-way. TC has formalized the clearance standards in: *Standards Respecting Railway Clearances* TC E-05, May 14, 1992[27]

34. While Rocky View does have jurisdiction to regulate Ms. Landry's development, such regulation must be based on development concerns - not upon railway safety.

(b) Rocky View erroneously interpreted its communications with CN

35. As above, Rocky View does not have the jurisdiction to regulate railway safety through the use of setbacks. However, even if such jurisdiction existed, there have never been "rail safety setbacks" or "safety buffers" in railway safety regulations for land that is adjacent to railway lines. There is good reason for this - to impose setbacks adjacent to 43,000 kilometres of track would impact thousands of municipalities and landowners. Setbacks of this type would effectively freeze the development of thousands of acres of land located adjacent to railway lines across Canada.[28]

36. By implementing a 30-metre setback here, Rocky View has, in effect, expropriated several acres of the Appellant's land. In Rocky View's Staff Report, the Administration states that this was done on CN's advice, and that "CN advised Administration that the recommendation [30 m setback] was due to health and safety concerns in the event of a train derailment."[29]

37. A copy of the communications between Rocky View and CN and TC is attached to the Staff Report.[30] To Ms. Landry's knowledge, CN never represented that its recommendations were due to health and safety concerns in the event of a train derailment.[31] Further, TC informed RVDA that the recommendations put forth by CN and found in the Guidelines are not mandated by any TC regulations or standards.[32]

38. In short, RVDA erred when it assumed that CN's recommendations were based on safety concerns.[33] In fact:

(a) It is unknown where CN Rail's "30 metre setback" originated;

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[26] Expert report, *supra* note 16 at 9-16.

[27] Expert report, *supra* note 16 at 9.

[28] *Ibid*.

[29] Rocky View County, *Staff Report*, Tab "5" at 3 [Staff Report].

[30] Emails between Rocky View and CN and TC, Tab "5" at 49-52.

[31] *Ibid*.

[32] Emails from TC to RVDA, Tab "5" at 50-51.

[33] Staff Report, *supra* note 29.

(b) No studies, research or industry standards support this recommendation; and

(c) It is not based on safety measures or evidence.[34]

39. CN has never attended any of the proceedings related to Ms. Landry's property, nor provided any reasoning as to the origin of the 30-metre set-back. This makes it impossible for Mr. Landry to directly challenge CN on this issue.

40. Still, while there is no clear evidence as to where the 30-metre set-back came from, it appears that the most likely explanation is that it "ensures that the entire railway right-of-way is protected for potential rail expansion in the future."[35] Put differently, it protects the railways interests, should the railway wish to expand at some future point.

41. Rocky View's strict application of the 30-metre setback for alleged safety reasons and based on the Guideline's recommendation is therefore inappropriate. The Railway Setback Requirement arbitrarily restrains the Appellant from development, use, and enjoyment of her land for the sole benefit of the railway.

(c) The Guidelines have not been adopted by Rocky View County (or any other regulator)

42. The Guidelines are intended to be used by municipal development authorities as a *framework* for approving development projects in urban areas with a view to ensuring consistent noise and vibration mitigations are in place.[36] They are not safety standards. Neither the Canadian Federal Government, the Province of Alberta, and nor Rocky View County have adopted the Guidelines.[37]

43. The implementation of the Guidelines is discretionary. Case law makes it clear that whether they are implemented or not by a municipality is dependent on whether legitimate concerns that could be addressed by the Guidelines are demonstrated. For example:

(a) *Lesenko v Lac Ste. Anne County (Subdivision Authority)*[38], was an appeal to the LPRT regarding two conditions the Lac Ste. Anne County Subdivision Authority (SA) imposed when it approved subdivision of a 31-acre agricultural parcel from a previously subdivided quarter section. One condition required relocation of an existing access farther from an intersection (from 10 m to 90 m). The Appellant had purchased the property in 1982 and never changed the access. She was not aware of any accidents or safety issues with the current access road. The

[34] Expert report, *supra* note 16 at 21-24.

[35] Guidelines, *supra* note 1 at 27.

[36] Guidelines, *supra* note 1 at 8.

[37] Expert report, *supra* note 16 at 1.

[38] *Lesenko v Lac Ste. Anne County (Subdivision Authority)*, 2022 ABLPRT 499, Tab "2" at 30-44.

Appellant was not able to locate a policy requiring a 90 m setback on the County website.

Ultimately, the LPRT found no evidence to support a safety hazard if the access was left in its current position. It pointed out that the SA relied on an unpublished policy in making its decision (in contravention of s. 638.2 of the *MGA*)[39]. However, the LPRT added that whether or not it was posted, the policy was not binding on the LPRT as per *MGA*'s. 680(2). Even if the policy was posted appropriately, the panel would have exercised its discretion to vary it since the SA did not put forward any evidence that a safety issue was evident at the intersection. The LPRT further noted that the County had approved a development permit the previous year in that area and the location of the access was not raised as a safety issue.

(b) In *Innocon Inc. v Toronto (City)*[40], the Appellants owned land made subject to instruments that *would* limit future development. They appealed the decision of the City Council to adopt these instruments. One of the issues pertained to a policy that required a minimum 30 m setback from a railway corridor in accordance with the Guidelines. The LPAT wrote that the 30 m setback was a recognized component of the railways' suggestion of a "package of mitigation measures". The setback was but one of these measures. Others included an earthen berm, acoustical and/or chain link security fence, as well as additional measures for sound and vibration attenuation. The LPAT stated that the 30 m standard was not of a mandatory nature, nor did it take precedence over other safety considerations. Rather, it is but one mitigative measure that can be pursued alone or in combination with other measures to guarantee safety along the railway corridor.

44. Where the guidelines are going to be implemented, notice must be given. Reliance on the Guidelines is subject to Section 638.2 of the *MGA*[41] which provides (emphasis added):

Listing and publishing of policies

638.2(1) Every municipality must compile and keep updated a list of any policies that may be considered in making decisions under this Part

(a) that have been approved by council by resolution or bylaw, or

(b) that have been made by a body or person to whom powers, duties or functions are delegated under section 203 or 209,

[39] *Municipal Government Act*, RSA 2000, c M-26 [*MGA*].

[40] *Innocon Inc. v Toronto (City)*, 2019 CanLII 79795 (ON LPAT), Tab "2" at 46-58.

[41] *MGA*, *supra* note 39.

and that do not form part of a bylaw made under this Part.

(2) The municipality must publish the following on the municipality's website:

(a) the list of the policies referred to in subsection (1);

(b) the policies described in subsection (1);

(c) a summary of the policies described in subsection (1) and of how they relate to each other and how they relate to any statutory plans and bylaws passed in accordance with this Part;

(d) any documents incorporated by reference in any bylaws passed in accordance with this Part.

(3) A development authority, subdivision authority, subdivision and development appeal board, the Land and Property Rights Tribunal or a court shall not have regard to any policy approved by a council or by a person or body referred to in subsection (1)(b) unless the policy is set out in the list prepared and maintained under subsection (1) and published in accordance with subsection (2).

[…]

45. While Development Authorities have broad discretion to consider a discretionary development permit, the discretion is not boundless. There must be a legitimate planning purposes, they cannot exercise their discretion without some legitimate planning reason for doing so.[42] If the Development authority wished to implement the 30-metre set-back for a planning purpose, then that planning purpose must be demonstrated. Development Authorities cannot point to a possibility of a catastrophic rail incident, no matter how remote, to justify implementation of such a restriction.[43] As will be discussed below, there is no demonstrable risk arising from Ms. Landry's development.

46. Even if there were demonstrable risk justifying adoption of the 30-metre set-back, there has been no notice to the public of the adoption of this policy. The Guidelines were not adopted by Rocky View's counsel, nor were they published on Rock View's website. Despite her inquiries, the Appellant was not advised of any such restrictions arising from the Guidelines. In fact, notwithstanding multiple inquiries to the appropriate municipal authorities, the Appellant had no proper notice of any requirement for the restrictions

[42] *Landry*, *supra* note 6 at para 39.

[43] *Landry*, *supra* note 6 at para 42.

placed upon the lands.[44] Ms. Landry's first notice of this was when the conditions were imposed as part of her development permit.

(d) Reliance on CN's recommendation is an improper delegation of Rocky View's authority

47. Rocky View purports to rely on CN's recommendation to impose the set back. Rocky View does this without considering that CN is a publicly traded corporation regulated by the *Canada Transportation Act* and *Railway Safety Act*. In short, CN is a private, federally regulated corporation. It does not have authority to impose development safety standards on landowners or development authorities. Further:

(a) The Guidelines are co-published by RAC and FCM.[45] CN is a member of RAC. CN executives form part of RAC's Board of Directors.[46] The recommendations put forth in the Guidelines are in-part for CN's for-profit interest.

(b) CN is the landowner of the railway corridor adjacent to the Appellant's land. CN's only role in this case is that of an adjacent landowner. CN does not represent the rail industry or exercise the powers of a railway regulator to stipulate conditions of approval.

48. By implementing a 30-metre setback as per CN's recommendation, Rocky View has, in essence, expropriated several acres of the Appellant's land for CN's corporate benefit, reducing the developable area of land.[47] In so doing, Rocky View has improperly delegated its authority to regulate development.[48]

(e) There is no realistic risk arising from this development:

49. Even assuming that Rocky View had properly adopted the Guidelines, applying them with respect to Ms. Landry's property is not appropriate given the incredibly low risk level.

50. According to the Insurance Information Institute Mortality Statistics, the one-year odds of fatality due to main line derailment is 1 in 9,090,964.[49] There is no factual evidence to that suggest this rural location has any known risk factors increasing this risk.

51. To put this in perspective:

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[44] Email between Rocky View and Ms. Landry, Tab "5" at 34-35.

[45] Guidelines, *supra* note 1 at iii.

[46] Railway Association of Canada, *RAC Board of Directors*, online: <https://www.railcan.ca/what-we-do/rac-board-of-directors/>.

[47] Land Surveyor's Plot Plan drawings A to D, Tab "8".

[48] *Vic Restaurant Inc. v. Montreal (City)*, (1958), 17 D.L.R. (2d) 81 (S.C.C.), Tab "9".

[49] Expert Report, *supra* note 16 at 2, 30-31, 33.

(c) a 1 in 1,000,000 chances of a fatality to an individual over one year is considered to be acceptable by the City of Calgary; and

(d) for sensitive uses, such as a hospital next to a railway, that risk tolerance becomes a 1 in 3,333,333.[50]

52. The risk tolerance adopted by the City of Calgary is based on the Major Industrial Accidents Council of Canada (MIACC).[51] Established in 1987, MIACC is a non-profit, multi-stakeholder organization that was created to address the prevention, preparedness and response to major industrial accidents. MIACC has done extensive research of existing standards, accident statistics and consultation with experts in both Canada and abroad. Based on that extensive research, they have published the *Risk-based Land Use Planning Guidelines* to help municipalities in their land use planning efforts.

53. The risk of fatality of the Appellant due to a main line derailment is extremely remote and does not constitute a legitimate planning purpose to impose restrictions on Ms. Landry's lands.

54. The potential for adverse noise and vibration impacts on the Landry property is similarly low, with various factors and the client's willingness to accommodate, ensuring any occasional interference is reasonable.

55. Federal regulations, specifically the Locomotive Emissions Regulation SOR/2017-121 under the *Railway Safety Act* and section 95.1 of the *Canada Transportation Act*, govern railway noise emissions. The standard applied by the Canadian Transportation Agency is based on a "reasonableness" test, acknowledging the operational requirements of railways. Crucially, the CN rail operations adjacent to the Landry property do not involve the particularly noisy activities typically found in rail yards or more complex operational settings. Key factors relevant to Ms. Landry's property are:

- **Low Train Frequency:** With only about four trains per day, the overall noise exposure over a 24-hour period is low.
- **Low Train Speed:** The maximum speed of 40 mph, with an likely lower average, generates less noise than higher-speed operations.
- **Pass-Through Traffic Only:** The absence of shunting, switching, braking associated with complex operations, or curve squeal on this straight track minimizes noise generation.
- **Track Geometry:** The straight track with no grade eliminates noise associated with braking or powering up on inclines or curves.

56. Furthermore, the proposed **building size and orientation** are designed to mitigate noise exposure. The small, single-family dwelling is positioned at an angle, with the unoccupied

[50] City of Calgary, *Development Next to Freight Rail Corridors Policy*, Tab "7".

[51] Expert Report, *supra* note 16 at 2.

garage facing the rail corridor, diverting noise away from living and sleeping areas. This strategic orientation is a recognized noise mitigation technique.

57. Finally, Ms. Landry's **willingness to sign a noise waiver** demonstrates an acknowledgment of the railway's presence and an acceptance of occasional rail sound levels. This proactive measure significantly lowers the risk of future noise complaints, aligning with common practices where railways suggest such agreements for adjacent landowners.

58. The need for fencing as a trespass deterrent is unwarranted given the extremely low risk of trespassing associated with the Landry property. Fencing is typically considered for large residential developments or conversions in more densely populated settings, particularly where development on both sides of a track might encourage crossings. None of these conditions are present here.

59. Several factors combine to create this low trespass risk:

- **Rural Setting:** The development is a modest single-family dwelling on a large rural lot (slightly less than 4.3 acres). The surrounding agricultural area does not generate a pool of potential trespassers.[52]
- **Absence of Adjacent Development:** There is no development on the opposite side of the CN rail line, which also remains largely agricultural, removing any incentive for individuals to cross the rail line at this location.[53]
- **Safe Rail Crossing:** A recreational trail on the former CP right-of-way provides a safe underpass beneath the CN rail line, obviating any need for trail users to trespass on the Landry property or the CN right-of-way to cross the tracks.[54]
- **Responsibility for Trespass Prevention:** Both Rocky View County and CN have proactively placed the responsibility for preventing trespassing on the Meadowlark Trail Society, rather than on adjacent landowners, through existing by-laws, development permits, and agreements.
- **Difficult Access from Trail:** The physical characteristics of the trail itself discourage users from leaving it. The trail lies in a steep ravine below the Landry property, and barbed wire fencing exists on the flatter portion atop the ravine on the former right-of-way's property.[55]

60. The above is underscored in detail and corroborated by the Expert Report. Namely: the risk of fatality due to derailment is exceedingly remote, municipalities accept relatively higher levels of risk when assessing development permits, there are sufficient noise and vibration mitigations already in place, and the risk of trespass is extremely unlikely.

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[52] Photographs of Ms. Landry's land and surroundings, Tab "2" at 10-28.

[53] *Ibid*.

[54] Photographs of the trail providing a safe underpass under the railway, Tab "2" at 23-24.

[55] *Ibid*.

61. In conclusion, the assessment of specific safety, noise and vibration, and trespass risks associated with the Landry proposal demonstrates extremely low levels of risk across all categories, clearly indicating that additional mitigation measures, such as fencing, are unnecessary.

(f) The Railway Setback of 30 metres renders much of the land unusable by the Appellant.

62. The Railway Setback Requirement reduces the developable area of the Appellant's land from approximately 4.5 to approximately 1.3 acres. As demonstrated above, it does this without a legitimate planning purpose. This unnecessarily infringes on the Appellant's right to develop and enjoy her land.

63. By imposing conditions of this nature, the Development Authority has failed its task to achieve the delicate balance between "the orderly, economical and beneficial development, use of land and patterns of human settlement..." without unnecessarily infringing on the rights of individuals: *MGA* s 617.[56]

V. Summary

64. As above, this case concerns an individual's private property rights and their ability to develop their home, and whether the regulatory decisions made by the Development Authority were made with a legitimate development purpose. The law is clear that Rocky View has no jurisdiction to regulate railway safety - only the federal government does.

65. Further, Ms. Landry's evidence demonstrates that Rocky View's restrictions were not applied to reduce the risk of her development - as any such risk is practically non-existent. Ms. Landry's requested relief should be granted.

VI. Relief Requested

66. The Appellant respectfully requests that the conditions imposed on Development Permit #PRDP20223151, namely the setback from the rail line and the requirement to construct a 6-foot chain link fence parallel to the CNR right of way, be removed.

Respectfully submitted on behalf of the Appellant, Regine Landry, this 27th day of June, 2025.

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Agents for the Appellant

[56] *Landry*, *supra* note 6 at paras 39-42 in relation to the side yard setback.

Table of Authorities

Tab	Authorities
1.	Notice of Appeal of the Appellant Regine Landry, August 30, 2022
2.	Submission of the Appellant Regine Landry, November 23, 2022
3.	*Landry v Rocky View County (Subdivision and Development Appeal Board), 2025 ABCA 34*
4.	Expert Report from Fjord Consulting, June 27, 2025
5.	Rocky View County, Staff Report, September 22, 2022
6.	Development in Proximity to Railway Operations (FCM/RAC Proximity Initiative, 2013)
7.	City of Calgary, *Development Next to Freight Rail Corridors Policy*
8.	Land Surveyor's Plot Plan Drawings A to D
9.	*Vic Restaurant Inc. v. Montreal (City), (1958), 17 D.L.R. (2d) 81 (S.C.C.)*