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

BOOK OF AUTHORITIES TO THE SUBMISSION OF THE APPELLANT REGINE LANDRY

Date: June 27, 2025

Submitted by:

Curtis E. Marble, FCIArb.
Céline Senecal, Student-at-Law
Carbert Waite LLP
marble@carbertwaite.com
403-705-3642

Agents for the Appellant, Regine Landry

Table of Authorities

Tab 1

ROCKY VIEW COUNTY
Cultivating Communities

Notice of Appeal

Subdivision and Development Appeal Board
Enforcement Appeal Committee

Appellant Information			
Name of Appellant(s): Regine Landry			
Mailing Address: 285 West Creek Circle, Chestermere	Municipality: Chestermere	Province: Alberta	Postal Code: T1S1R5
Main Phone #: 403-999-8748	Alternate Phone #:	Email Address: marble@carbertwaite.com	

Site Information	
Municipal Address: 280003 RGE RD 262	Legal Land Description (lot, block, plan OR quarter-section-township-range-meridian): NE-34-27-26-04
Property Roll #: 07134004	Development Permit, Subdivision Application, or Enforcement Order #: PRDP20223151

I am appealing: (check one box only)

Development Authority Decision	Subdivision Authority Decision	Decision of Enforcement Services
☐ Approval	☐ Approval	☐ Stop Order
☑ Conditions of Approval	☐ Conditions of Approval	☐ Compliance Order
☐ Refusal	☐ Refusal	

Reasons for Appeal (attach separate page if required)

Please see Appendix "A".

This information is collected for Rocky View County's Subdivision and Development Appeal Board or Enforcement Appeal Committee under section 33(c) of the Freedom of Information and Protection of Privacy Act (FOIP Act) and will be used to process your appeal and create a public record of the appeal hearing. Your name, legal land description, street address, and reasons for appeal will be made available to the public in accordance with section 40(1)(c) of the FOIP Act. Your personal contact information, including your phone number and email address, will be redacted prior to your appeal being made available to the public. If you have questions regarding the collection or release of this information, please contact the Municipal Clerk at 403-230-1401.

August 30, 2022

Appellant's Signature — Date

CURTIS E. MARBLE
BARRISTER and SOLICITOR

Last updated: 2020 August 07

SCHEDULE "A"

Rocky View Subdivision and Development Appeal Board

In the Matter of:

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

APPEAL REASONS OF THE APPELLANT REGINE LANDRY

Date: August 30, 2022

Submitted by Curtis E. Marble, Barrister and Solicitor

Agent for the Appellant, Regine Landry

SCHEDULE "A"

I. Introduction

1. The Appellant appeals to the Subdivision and Development Appeal Board (the "SDAB" or "Board") the conditions placed upon Development Permit #PRDP20223151 , for the lands described as NE-34-27-26-04; (280003 RGE RD 262) (the "Lands"). This property is owned by the appellant, Regine Landry.

2. The Appellant submits that

   (a) notwithstanding multiple inquiries to the appropriate municipal authorities, she had no proper notice of any requirement for the restrictions placed upon the lands;

   (b) the restrictions placed on her lands are not reasonable and are not required by legislation; and

   (c) such further and other grounds as the appellant may advise.

II. Background

3. The Lands were purchased by Regine Landry, Appellant, in 2009. These lands were purchased 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 set-backs on the lands related to neighbouring roads, or the neighbouring CN railway (the "Railway"). The documents related to this transaction are attached hereto at **Appendix "A"**.

4. 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 hereto at **Appendix "B"**. In reliance on this information, the Appellant prepared and submitted an application for a Development Permit.

5. 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"). In the Application, the Appellant had applied for a Development Permit allowing the construction of a residence on the Lands. The Notice of Decision, while approving the construction of the residence, places certain restrictions on the Appellant's use of the Lands that render much of the land unusable by the Appellant.

6. These conditions include, in particular, that a setback from the Railway of 30 metres is required.

7. The impact of this restriction is a large portion of the lot is rendered unusuable for residential development because the developable area is reduced from approximately 4.5 to approximately 1.3 acres.

8. Given the above, the Appellant respectfully requests a variance of the required 30 metre setback from the Railway. 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.

SCHEDULE "A"

IV. Evidence and Arguments

9. As indicated in the attached **Appendix "A"**, the Appellant received no notice of any restrictions on development of the Lands.

10. The Appellant conducted further due diligence prior to submitting an application prior to submitting an application for a development, including to request , requesting confirmation of the required setbacks. As indicated in **Appendix "B"** the requested setback was only 6 metres. As late as 2021, there was still no indication of the extensive setback now being required by Rocky View County.

11. The Appellant has not been advised of any legislative or safety reasons requiring the 30 meter setback now being imposed. Imposing this setback is a significant prejudice to the Appellants use of the Lands.

V. Summary

12. It is the Appellant's position that there is no legislative or other requirement for the setback imposed by the Decision.

13. In accordance with the factual evidence, this condition should be removed.

VI. Conclusion

14. The Appellant respectfully requests that the condition of the setback from the rail line be removed.

Respectfully submitted on behalf of the Appellant,

CARBERT WAITE LLP

Curtis E. Marble, FCIArb.

Agents for the Appellant

cc: Appellant, by email.

APPENDIX "A"

Lirenman Peterson

BARRISTERS · SOLICITORS · NOTARIES
Suite 300, Notre Dame Place, 255 – 17th Avenue SW, Calgary, Alberta T2S 2T8
Tel: (403) 245-0111 Fax: (403) 245-0115

May 7, 2010 Our file No. 93-639

Regina Landry
285 West Creek Circle
Chestermere, Alberta T1Y 1R5

Dear Ms. Landry:

Re: Purchase of 4-28-27-34 N.E. County of Rocky View

Further to the above, we are enclosing the updated Certificate of Title showing that all the Vendors encumbrances have been discharged.

As this completes this matter we are now closing our file and trust you will find this to be in order. If we can be of any assistance to you in the future, please do not hesitate to contact the writer.

Yours truly,
LIRENMAN PETERSON

Daniel D. Peterson, Q.C.
DDP/slk
Enls.

Lirenman Peterson

BARRISTERS • SOLICITORS • NOTARIES
Suite 300, Notre Dame Place, 255 - 17th Avenue S.W., Calgary, Alberta T2S 2T8

TEL (403) 245-0111
FAX (403) 245-0115

Our File Number: 93-673
May 7, 2010

Regina Landry
285 West creek Circle
Chestermere, Albrta
T1Y 1R5

Dear Ms. Landry:

Further to the above, we are enclosing the updated Certificate of Title. As this completes this matter we are closing our file and would like to once again take this opportunity to thank you for allowing us to have been of assistance to you in this matter. If we can be of any help to you in the future, please do not hesitate to contact the writer.

Yours truly,
LIRENMAN PETERSON

PER:

DANIEL D. PETERSON Q.C.
DDP/slk
Encls.

CERTIFIED COPY OF

Certificate of Title

S

LINC: 0016 793 663
SHORT LEGAL: 4;26;27;34;NE

TITLE NUMBER: 091 379 930
TRANSFER OF LAND
DATE: 15/12/2009

AT THE TIME OF THIS CERTIFICATION

REGINA LANDRY
OF 285 WEST CREEK CIRCLE
CHESTERMERE
ALBERTA T1Y 1R5

IS THE OWNER OF AN ESTATE IN FEE SIMPLE
OF AND IN

THAT PORTION OF THE NORTH EAST QUARTER OF SECTION 34
IN TOWNSHIP 27
RANGE 26
WEST OF THE 4 MERIDIAN WHICH LIES TO THE NORTH OF
THE RAILWAY ON PLAN RW 31 AND TO THE EAST OF A STRAIGHT LINE
PARALLEL WITH AND 100 FEET PERPENDICULARLY DISTANT SOUTH EASTERLY
FROM THE CENTRE LINE OF THE SAID RAILWAY ON PLAN RY 226 CONTAINING
1.82 HECTARES (4.5 ACRES) MORE OR LESS

EXCEPTING THEREOUT ALL MINES AND MINERALS
AND THE RIGHT TO WORK THE SAME

SUBJECT TO THE ENCUMBRANCES, LIENS AND INTERESTS NOTIFIED BY MEMORANDUM UNDER-WRITTEN OR ENDORSED HEREON, OR WHICH MAY HEREAFTER BE MADE IN THE REGISTER.

REGISTRATION NUMBER	DATE (D/M/Y)	ENCUMBRANCES, LIENS & INTERESTS PARTICULARS
1008FL .		RESTRICTIVE COVENANT
091 379 931	15/12/2009	MORTGAGE MORTGAGEE - FIRST NATIONAL FINANCIAL GP CORPORATION. 100 UNIVERSITY AVE, SUITE 700 NORTH TOWER TORONTO ONTARIO M5J1V6 ORIGINAL PRINCIPAL AMOUNT: $215,000

THE REGISTRAR OF TITLES CERTIFIES THIS TO BE AN ACCURATE REPRODUCTION OF THE CERTIFICATE OF TITLE REPRESENTED HEREIN THIS 08 DAY OF JANUARY ,2010

Certificate of Title

TITLE NUMBER: 091 379 930

SUPPLEMENTARY INFORMATION
VALUE: $90,000
CONSIDERATION: CASH & MORTGAGE
MUNICIPALITY: ROCKY VIEW COUNTY
REFERENCE NUMBER:
911 024 196
TOTAL INSTRUMENTS: 002

CERTIFIED COPY OF

Certificate of Title

S

LINC	SHORT LEGAL
0016 793 663	4;26;27;34;NE

TITLE NUMBER: 091 379 930
TRANSFER OF LAND
DATE: 15/12/2009

AT THE TIME OF THIS CERTIFICATION

REGINA LANDRY
OF 285 WEST CREEK CIRCLE
CHESTERMERE
ALBERTA T1Y 1R5

IS THE OWNER OF AN ESTATE IN FEE SIMPLE
OF AND IN

THAT PORTION OF THE NORTH EAST QUARTER OF SECTION 34
IN TOWNSHIP 27
RANGE 26
WEST OF THE 4 MERIDIAN WHICH LIES TO THE NORTH OF
THE RAILWAY ON PLAN RW 31 AND TO THE EAST OF A STRAIGHT LINE
PARALLEL WITH AND 100 FEET PERPENDICULARLY DISTANT SOUTH EASTERLY
FROM THE CENTRE LINE OF THE SAID RAILWAY ON PLAN RY 226 CONTAINING
1.82 HECTARES (4.5 ACRES) MORE OR LESS

EXCEPTING THEREOUT ALL MINES AND MINERALS
AND THE RIGHT TO WORK THE SAME

SUBJECT TO THE ENCUMBRANCES,LIENS AND INTERESTS NOTIFIED BY MEMORANDUM UNDER-WRITTEN OR ENDORSED HEREON,OR WHICH MAY HEREAFTER BE MADE IN THE REGISTER.

REGISTRATION NUMBER	DATE (D/M/Y)	ENCUMBRANCES, LIENS & INTERESTS PARTICULARS
1008FL	.	RESTRICTIVE COVENANT

THE REGISTRAR OF TITLES CERTIFIES THIS TO BE AN ACCURATE REPRODUCTION OF THE CERTIFICATE OF TITLE REPRESENTED HEREIN THIS 06 DAY OF MAY ,2010

SUPPLEMENTARY INFORMATION
VALUE: $90,000
CONSIDERATION: CASH & MORTGAGE
MUNICIPALITY: ROCKY VIEW COUNTY

APPENDIX "B"

Curtis E. Marble

From: rglandry@shaw.ca
Sent: Friday, July 22, 2022 10:02 AM
To: 'rglandry@shaw.ca'
Subject: FW: Setbacks for NE-34-27-26-W04M - Rocky View County

From: ENeilsen@rockyview.ca <ENeilsen@rockyview.ca>
Sent: April 30, 2021 4:23 PM
To: rglandry@shaw.ca
Subject: Setbacks for NE-34-27-26-W04M - Rocky View County

Hi Regina,

Thank you for your patience in responding to your voicemail earlier in the week. I was waiting to connect with one of my colleagues regarding setbacks and was finally able to hear back regarding how she would interpret setbacks as applied to your property. I have enclosed a map below for your consideration, and it would be my pleasure to provide any further information required. The writing in red indicates how far from each property line a dwelling (or other structure) would need to be located in order to comply with any required setbacks. I hope this helps and please feel free to reach out if we can assist further.

Best regards,

EVAN NEILSEN
Development Assistant | Planning Services

ROCKY VIEW COUNTY
262075 Rocky View Point | Rocky View County | AB | T4A 0X2
Phone: 403-520-7285
ENeilsen@rockyview.ca | www.rockyview.ca

Tab 2

Rocky View Subdivision and Development Appeal Board

In the Matter of:

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

SUBMISSION OF THE APPELLANT REGINE LANDRY

Date: November 23, 2022

Submitted by:

Rick Grol rgrol@shaw.ca 403-922-8269	Curtis E. Marble, FCIArb. Carbert Waite LLP marble@carbertwaite.com 403-705-3642

Agents for the Appellant, Regine Landry

I. Introduction

1. The Appellant appeals to the Subdivision and Development Appeal Board (the "SDAB" or "Board") the conditions placed upon Development Permit #PRDP20223151 , for the lands described as NE-34-27-26-04; (280003 RGE RD 262) (the "Lands"). This property is owned by the appellant, Regine Landry ("**Ms. Landry**").

2. As set out in the Appellant's Notice of Appeal, the Appellant submits:

   (a) notwithstanding multiple inquiries to the appropriate municipal authorities, she had no proper notice of any requirement for the restrictions placed upon the lands;

   (b) the restrictions placed on her lands are not reasonable and are not required by legislation; and

   (c) such further and other grounds as the appellant may advise.

II. Background

3. The Appellant relies on the background information set out in the Appellant's Notice of Appeal.

4. In specific reference to the issue of the nearby railway, Ms. Landry notes that there are only two trains per day that use this railway line. Photos showing the context of the property are appended hereto at "**Tab 1**".

III. Evidence and Arguments:

(a) Notwithstanding multiple inquiries to the appropriate municipal authorities, she had no proper notice of any requirement for the restrictions placed upon the lands

5. A background of Ms. Landry's discussions with Rocky View concerning development restrictions is contained in the Notice of Appeal dated August 30, 2022. In summary, the issue is that notwithstanding multiple inquiries to Rocky View regarding potential development restrictions, when the Notice of Decision dated August 9, 2022 was issued conditions were placed on the development of the lot rendering much of the land unusable by the Appellant by requiring a setback from the Railway of 30 metres is required. This reduces the developable area from approximately 4.5 to approximately 1.3 acres. Similarly, the conditions impose the construction of a 6 foot tall chain link fence, abutting the south property line (along the railway). Building this fence is an additional cost of approximately $44,000.

6. Given the above, Ms. Landry respectfully requests a variance of the required 30 metre setback from the Railway and a reduction in the height of the required fence. 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. Reducing the height of the fence poses no safety risk, as there is no pedestrian traffic across this property.

(b) The restrictions placed on her lands are not reasonable and are not required by legislation

7. As above, the imposition of the setback reduces the Appellant's usable area from approximately 4.5 acres to 1.3 acres. This was imposed notwithstanding the earlier representation by Rocky View to Ms. Landry that no such restrictions existed. Rocky View now wishes to impose this restriction based on the *Guidelines for New Development in Proximity to Railway Operations* (the "***Guidelines***") set out by the railway.

8. Reliance on the Guidelines is subject to Section 638.2 of the *Municipal Government Act*, RSA 2000, c M-26 ("***MGA***") which provides:

> **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,
>
> 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).
>
> **[...]**

9. The Guidelines were not adopted by Rocky View's counsel. The Guidelines were not published on RVC's website. Despite her inquiries, the Appellant was not advised of any such restrictions arising from the Guidelines.

10. Even in situations where the policies are posted, case law makes it clear that whether they are implemented or not by a municipality is discretionary. The implementation of policies is dependent on whether legitimate safety concerns are demonstrated. In particular:

(a) *Lesenko v Lac Ste. Anne County (Subdivision Authority)*[1], 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 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*). 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)*[2], 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.

11. In the present case, the Appellant submits that there are not sufficient safety concerns with the proposed location of her home, and Rocky View has not demonstrated any need to implement the recommended set-back set out in the Guidelines. It should also be considered that this rail line only sees minimal use, with two trains per day.

---

[1] 2022 ABLPRT 499 **[Tab 2]**

[2] 2019 CanLII 79795 (ON LPAT) **[Tab 3]**

12. The below photo shows the width of the lot from the properly line, towards the rail line.

13. The below photo shows the distance from the west wall of the proposed house (being in line with the truck) to the east wall of the house (where Ms. Landry is standing).

14. As noted by Ms. Landry, there are only two trains travelling this line per day, at low speed. The size and position of this lot makes a derailment or other railway incident at this location negligible and the already significant set-back (even if less than 30 metres) makes the risk of any personal or property damage even lower.

15. Similarly, an expensive, six-foot-tall fence is not required in this situation. There is no pedestrian traffic across the Lands to justify the expense. To the extent any deterrent is required, Ms. Landry suggests that a 4 foot tall, barbed wire fence is sufficient, and is consistent with other nearby properties.

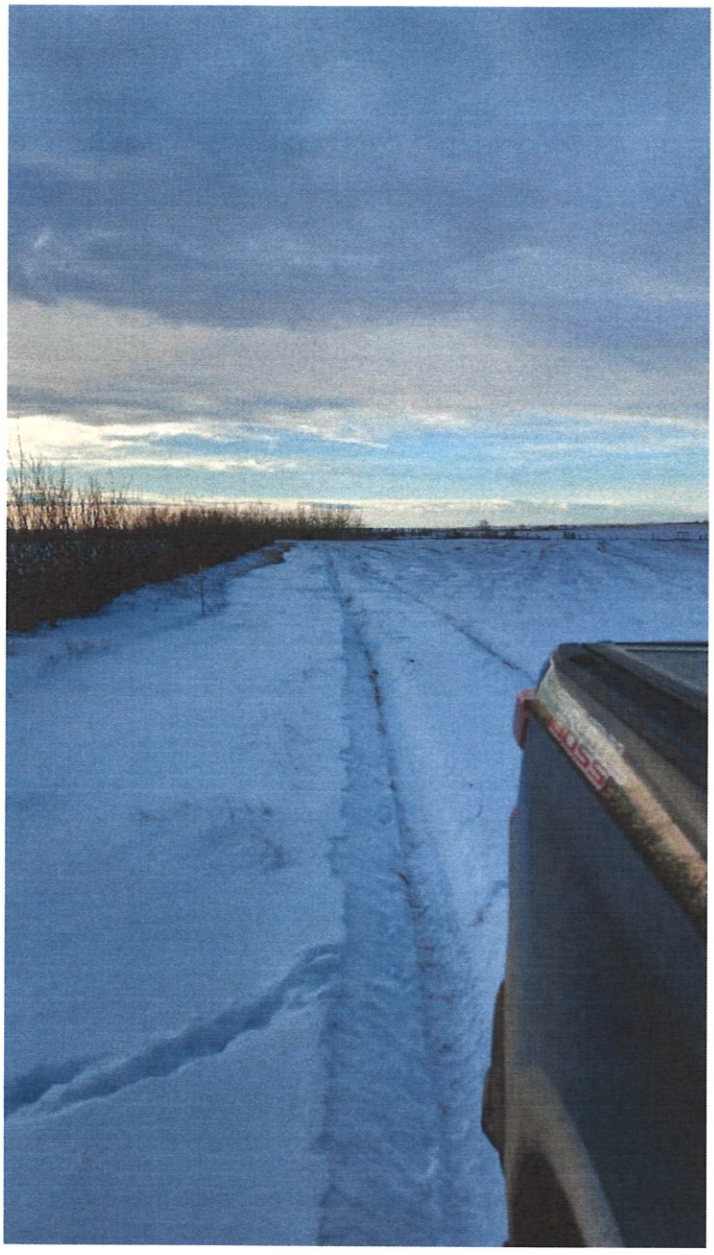
16. For the above reasons, the Appellant submits that the Guidelines are unenforceable under the law due to the non-compliance with the MGA. In any event, the Guidelines are not binding on Rocky View and the onus is on Rocky View to demonstrate that their implementation is warranted. Rocky View has not done so wither respect to either the setback, or the fence.

(c) Ms. Landry has canvassed alternatives

17. Throughout the development process, Ms. Landry investigated alternatives with Rocky View for the location of the house on this property.

18. Ms. Landry considered moving the house closer to the abandoned railway right-of-way (now part of a trail system). The issue with moving the house to this location is that the cost of extending the driveway and utilities would make the development, and maintenance, of the property unaffordable as a very long driveway would be required. The distance to the property entrance from the *proposed* build location is shown in the photograph below. Moving the build against the abandoned railway would mean extending the driveway and utilities to approximately double this distance.

19. Ms. Landry previously proposed that she purchase the road right-of-way from Rocky View, which would allow her to increase the set-back to the railway. A photograph of the road right-of-way is below:



20. As shown, this is a wide right-of-way. This would extend the width of Ms. Landry's lot significantly without interfering with any neighbour's property. Rocky View advised that the only way in which to do this, however, would be to apply for a relaxation of the set-backs from the right-of-way, or to apply for closure of the road allowance and consolidation into Ms. Landry's parcel – a process which would take a further 1 to 1 ½ years. The email correspondence setting this out is attached at **Tab "4"**.

V. Summary

21. Throughout the process of purchasing and developing these lands, Ms. Landry has exercised reasonable diligence to determine any applicable restrictions. None were posted by Rocky View, and no restrictions were communicated to her until the issuance of the Development Permit.

22. It is the Appellant's position that there is no legislative or other requirement for the setback imposed by the development permit. Rocky View's imposition of a 30 meter setback is neither in compliance with the *Municipal Government Act*, nor is it justified by any demonstrated safety concern. In accordance with the factual evidence, it remains Ms. Landry's position that this condition should be removed.

23. Similarly, Rocky View's imposition of a requirement for a 6 foot tall fence on the basis of the Guidelines is not in compliance with the Municipal Government Act, nor is it justified by any demonstrated safety concern. The property in question is rural, with no pedestrian traffic. Ms. Landry's position is that this condition should be removed, or modified to require a 4 foot tall barbed wire fence, consistent with other neighbouring rural properties.

VI. Relief Requested

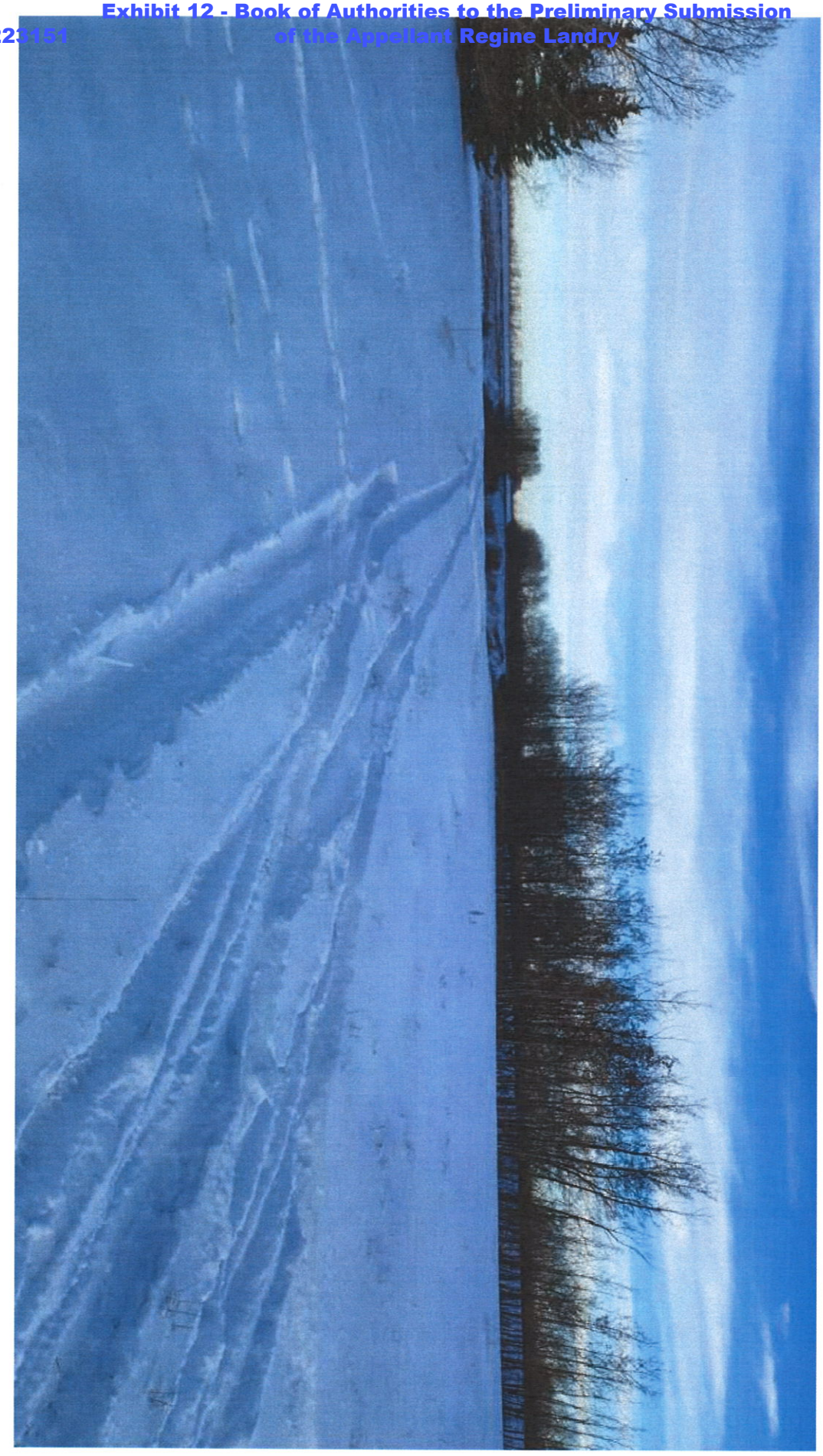
24. The Appellant respectfully requests that the condition of the setback from the rail line be removed.

Respectfully submitted on behalf of the Appellant,

Rick Grol and Curtis E. Marble, FCIArb.
Agents for the Appellant

cc: Appellant, by email.

Tab 1

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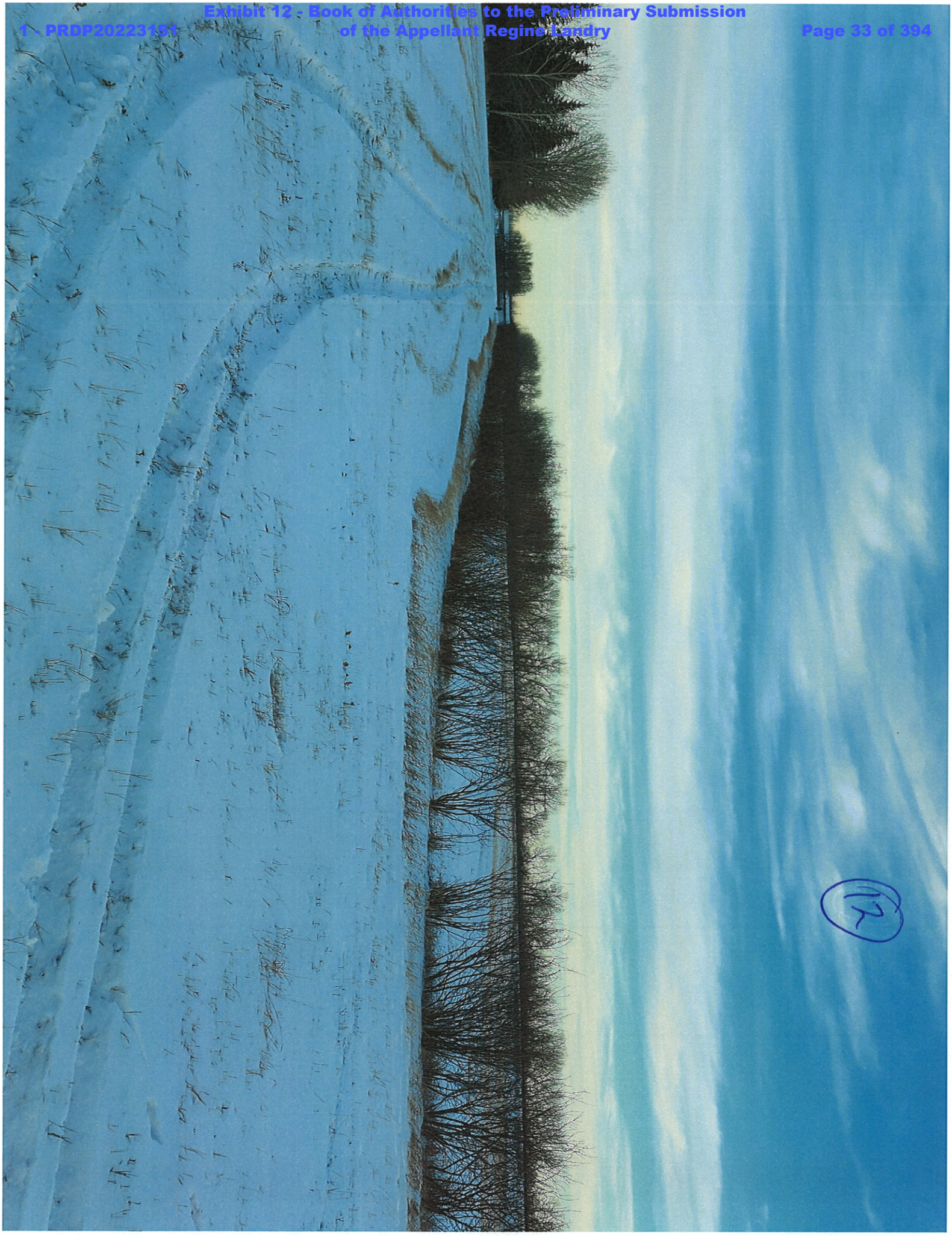
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19

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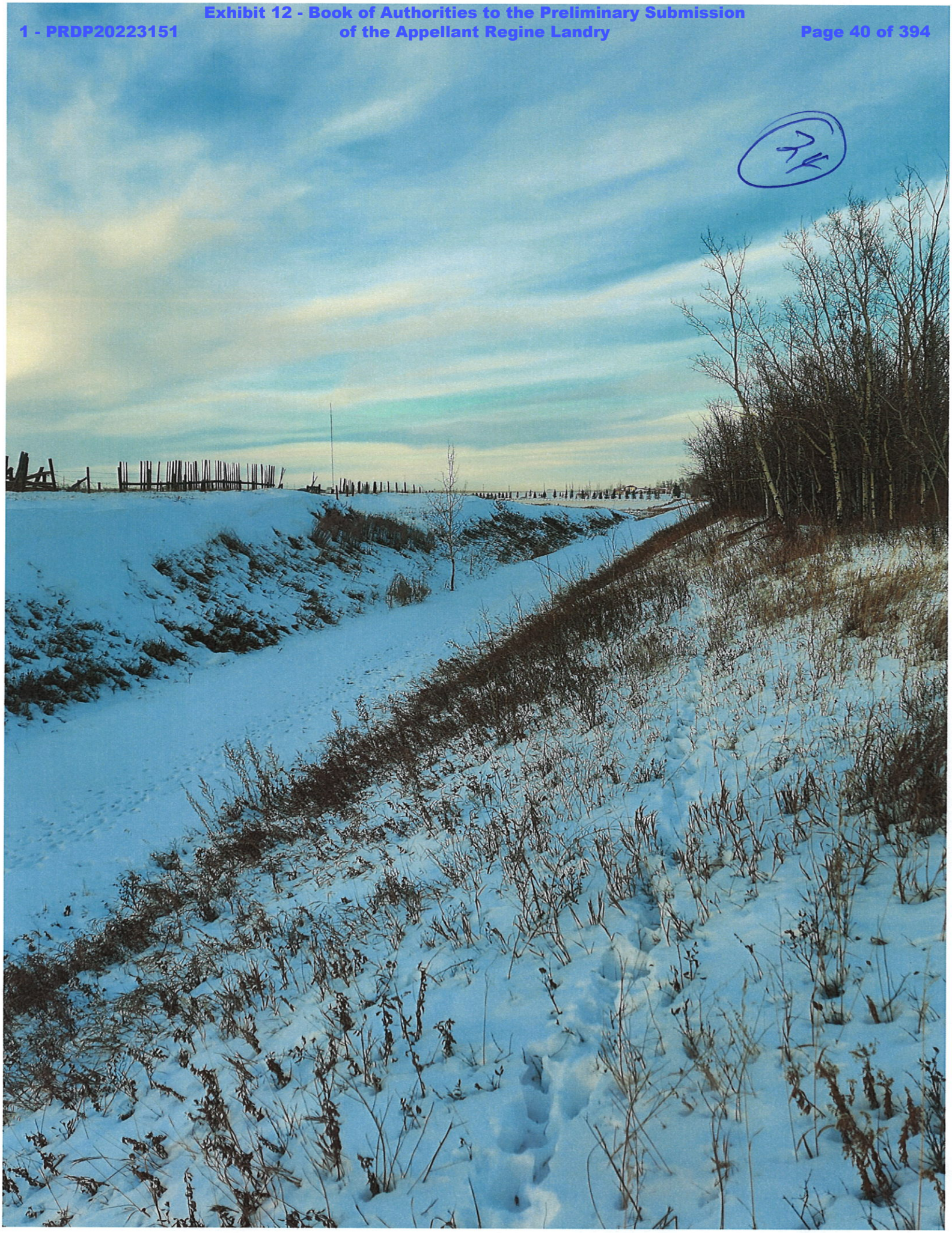
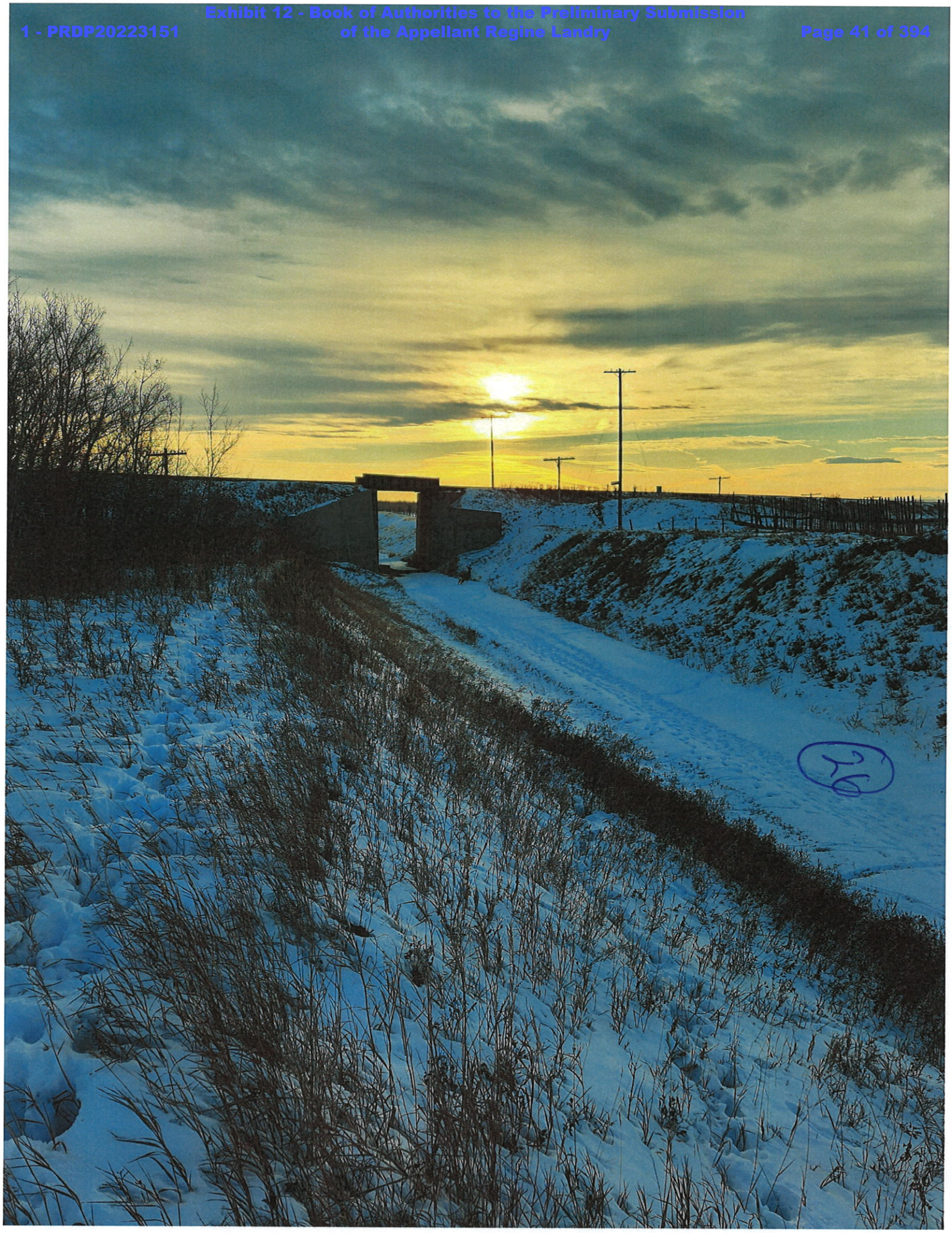
21
BOSS

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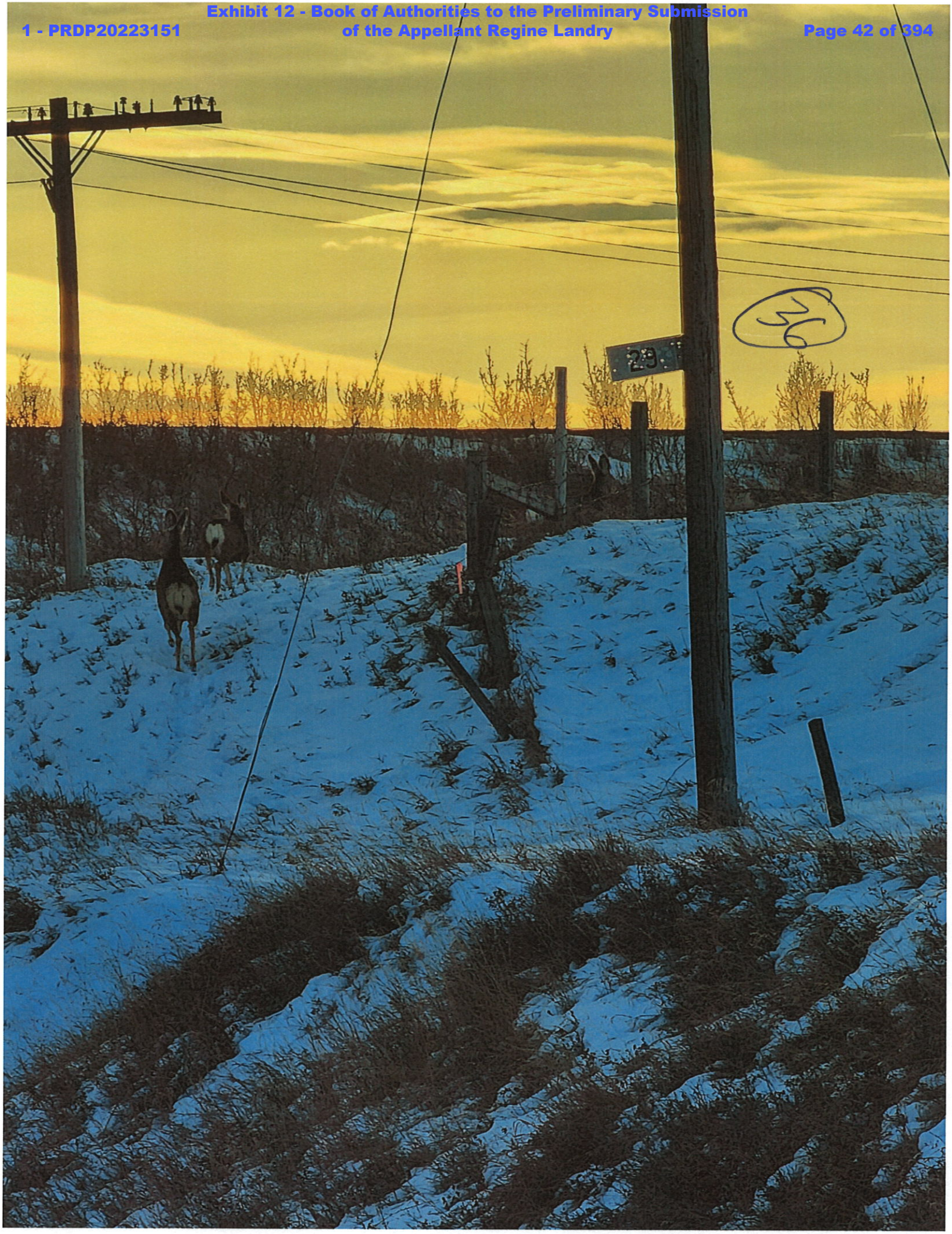
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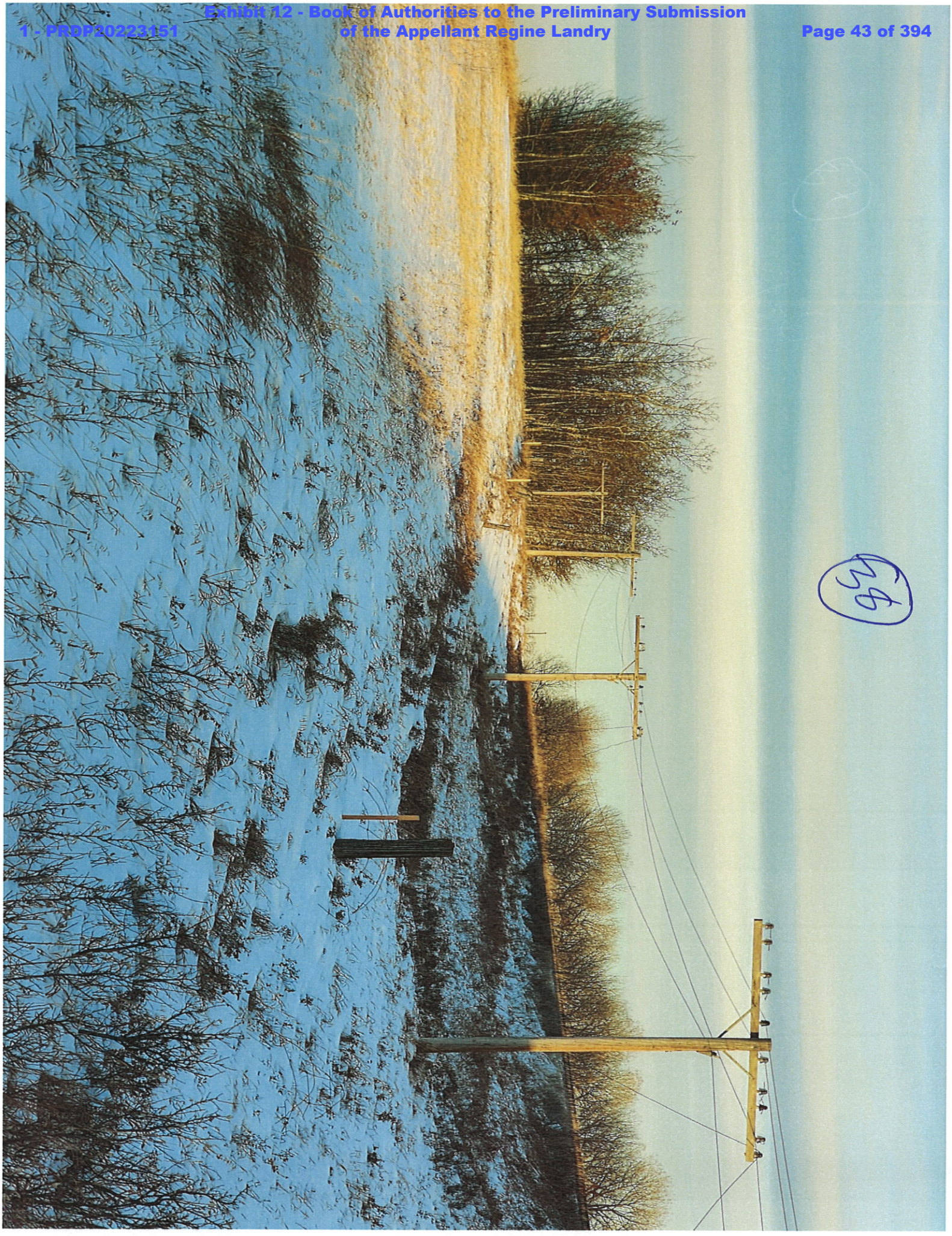


Tab 2

LAND & PROPERTY RIGHTS TRIBUNAL

LAND AND PROPERTY RIGHTS TRIBUNAL

Citation: Lesenko v Lac Ste. Anne County (Subdivision Authority), 2022 ABLPRT 499

Date: 2022-04-07
File No. S22/LACS/CO-004
Decision No. LPRT2022/MG0499
Municipality: Lac Ste. Anne County

In the matter of an appeal from a decision of the Lac Ste. Anne County Subdivision Authority respecting the proposed subdivision of SW 15-54-4 W5 (subject land) under Part 17 of the *Municipal Government Act*, R.S.A. 2000, c M-26 (*Act*).

BETWEEN:

K. Lesenko

Appellant

- and -

Lac Ste. Anne County

Respondent Authority

BEFORE: G. Buchanan, Presiding Officer
D. Mullen, Member
D. Roberts, Member
(Panel)

K. Lau, Case Manager

DECISION

APPEARANCES

See Appendix A

This is an appeal to the Land and Property Rights Tribunal (LPRT or Tribunal). The hearing was held via videoconference, on March 25, 2022 after notifying interested parties.

OVERVIEW

[1] The Appellant objects to 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. The conditions require relocation of an existing access farther from an intersection and an inspection of an existing on-site sewage disposal system.

[2] The LPRT allowed the appeal. It agreed with the Appellant's arguments that the existing access does not raise safety concerns and that relocation of existing accesses does not appear to be required under published County policies. Further, the sewage system is new and was recently approved by the appropriate authorities; the subdivision is far enough removed from the sewage disposal system to satisfy the LPRT that setbacks will be sufficient.

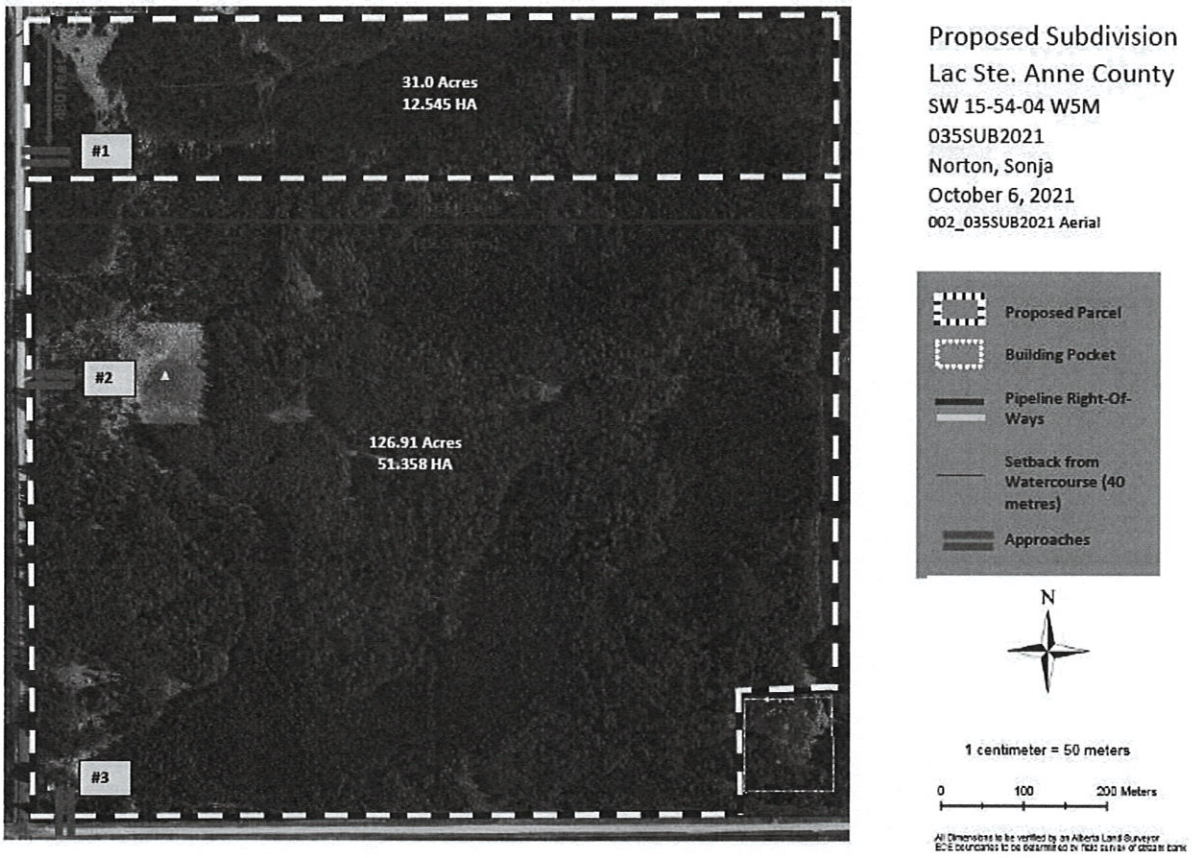
REASONS APPEAL HEARD BY LPRT INSTEAD OF SDAB

[3] Section 678(2) of the *Act* directs subdivision appeals to the LPRT when the subject land is in the Green Area or within prescribed distances of features of interest to Provincial authorities, including a highway, body of water, sewage treatment, waste management facility, or historical site. The distances are found in s. 22 of the *Subdivision and Development Regulation*, Alta Reg 43/2002 (*Regulation*). Subdivision appeals also go to the LPRT when the land is the subject of a licence, permit, approval, or other authorization from various Provincial authorities.

[4] In this case the land is the subject of a licence from the Alberta Energy Regulator and the Minister of Environment and Parks with respect to an abandoned oil well on the property.

PROPOSAL

[5] To subdivide a 31.0 acre parcel from a previously subdivided quarter section (157.91 acres prior to subdivision) to be used for residential purposes.



BACKGROUND

[6] The land to be subdivided is a previously subdivided quarter section in Lac Ste. Anne County (County) bounded on the west by Range Road 43 and on the south by Township Road 542. It consists of 63.903 hectares (157.91 acres) of predominantly flat, uncultivated land containing trees, brush and some wetlands. The Appellant proposes to create a 12.54 hectare (31.0 acre) parcel across the entire northern portion of the quarter section with Range Road 43 forming the western boundary and the remnant parcel to the south.

[7] The subject is districted Agricultural District 1 (AG1) in the County's Land Use Bylaw (LUB) and is identified as Agricultural in the Future Land Use Concept Map of the Municipal Development Plan (MDP).

[8] The SA approved the subdivision subject to the following conditions:

1. All subdivision conditions must be fulfilled within twenty-four months of date of subdivision approval.
2. Pursuant to Section 654 of the Municipal Government Act, R.S.A. 2000, all outstanding property taxes be paid.
3. Pursuant to Section 655 of the Municipal Government Act, R.S.A. 2000, the Owner and/or Developer shall enter into and abide by the provisions of a development agreement with Lac Ste. Anne County to the County's satisfaction and at the Developer's expense. This agreement may include, but not necessarily be limited to:

a) Approach #1: Shall be installed to County Standards as per policy
b) Approach #2: Shall be graveled and brought to County Standards
c) Approach #3: Shall be upgraded to County standards as per policy

Once the above-noted work has been completed on your approach(es), you MUST return your "Final Approach Inspection Form" to the Planning and Development Department to have your approach(es) inspected. The proposed survey (from your surveyor) must be submitted before Public Works can complete the inspection of the approach(es).

4. Pursuant to Section 661 of the Municipal Government Act, R.S.A., 2000, 5.2 metres (17.1 ft.) of road widening adjoining all municipal road allowances is required and may be registered through caveat. Caveat and agreement to be provided by the Surveyor for road widening on Range Road(s) and Township Road(s).
5. This decision shall be valid for two (2) years from the date of issuance; if this decision is appealed (to Subdivision and Development Appeal Board {SDAB} or Municipal Government Board {MGB}), any new decision will be valid for a time specified by the appeal body as listed within a revised decision (SDAB decision or MGB order).
6. Applicant/Landowner is required to submit a survey drafted by an Alberta Land Surveyor. Any alterations to the subdivision design from the date of referral may require a new application and referral process.
7. Developer/Landowner to provide professional verification that on-site sewage disposal system is functioning properly and within the requirements of the Safety Codes Act, or to confirm replacement/upgrade of existing system to one which conforms to provincial and municipal requirements. Cost of Inspection ($235.00).
8. Lac Ste. Anne County will require a blanket drainage easement and restrictive covenant to the County's satisfaction be registered on the parcel within sixty days (60) of the date of this approval to ensure current and future drainage is accommodated to the satisfaction of the Municipality.
9. The Applicant must provide a market value appraisal of the subject land, excluding any and all buildings or improvements, prior to subdivision. This appraisal is used to determine money-in-lieu of Reserves value as per Section 667 of the Municipal Government Act (MGA). A market value appraisal is to be obtained from a licensed Alberta Appraiser as a condition of this subdivision approval. For this application, the land subject to Reserves is 10% of the following: HA (proposed parcel(s))

Reserve Eligible:	*Yes*	**MR Eligible (HA) (total parcel):**	*12.545*
Value per hectare (HA) :	*$8,226.28*	**Land Subject to Reserves (10% of MR Eligible):**	*1.2545*
Amount Owing:	Shall be no more than *$8,226.28*/ha *$10,319.87*		

ISSUES

[9] In all cases, the legislation requires the LPRT to address whether a proposed subdivision complies with the *Act, Regulation*, the provincial Land Use Policies (LUP), uses of land as prescribed in the LUB, standards and requirements in the LUB, and requirements set out in any statutory plans (see section 680(2) of the *Act*). In this case, the parties focused on the following issues:

1. Should the access #3 be required to be moved from its existing location 10 metres (m) from an intersection to be at least 90 m from the intersection as required by Condition 3?
2. Should the existing sewage disposal system be inspected to ensure compliance with Provincial and Municipal requirements as required by Condition 7?

SUMMARY OF THE SA'S POSITION

[11] The subdivision conforms to s. 654 of the *Act* as it appears suitable for the intended use, conforms to the MDP policies and the uses of the Agricultural District in the LUB. This subdivision represents the second parcel out of the quarter, so municipal reserves are required. Since there is no immediate need for reserve land in this remote location, cash-in-lieu of reserves in the amount of $10,319.87 is required, based on 1.2545 hectares of reserves owing at a value of $8,226.68 per hectare.

Access

[12] There are currently two road accesses to the entire subdivided quarter section, referred to as Access #2, which provides access to an abandoned well site, and Access #3, which provides access to a residence in the southwest corner of the quarter.

[13] The SA imposed several conditions to ensure access is appropriate. Access #2 must be graveled and brought to County standards; an additional access road, Access #1, must be constructed to the proposed parcel; finally, Access #3 must be upgraded to County standards. Upgrading Access #3 will involve moving it at least 80 m to the east, since it is currently only 10 m east of the intersection at the southwest corner of the property, and County standards require a minimum separation of 90 m. In support of its position on access setback from intersections, the SA pointed to the "Approach and Culverts Policy" (Exhibit 4R Appendix 8). The SA also confirmed it provided the Appellant with a copy of this policy, along with a copy of its Subdivision Guidebook (Exhibit 5R). The SA stated the Approach and Culverts Policy was located on its website, and during the hearing the SA forwarded a link to the Tribunal.

Sewage disposal system

[14] Condition 7 requires professional verification that the on-site sewage disposal system functions properly and conforms to provincial and municipal requirements. The SA acknowledges the County received a report on October 18, 2021 as part of an application it approved on November 8, 2021. However, that application concerned a development permit for the residence in the southwest corner of the parcel. A new inspection (cost $235) is required as a condition of subdivision owing to the smaller size of the remnant parcel after subdivision. The SA acknowledged in questioning by the Tribunal that the Appellant can provide the same report to the County; however, the County would still have to engage a third party to review the application based on the reduced parcel size of 126.91 acres, and the cost is that of the third-party firm.

SUMMARY OF APPELLANT'S POSITION

Access

[15] The Appellant is willing to accept the conditions concerning Accesses #1 and #2; however, she objects to the condition with respect to Access #3. The Appellant and her late husband purchased the property in 1982, and Access #3 has not changed since then. To her knowledge, no accidents have ever occurred at the intersection, and no safety issues have been identified with the current access road.

[16] The Appellant had spoken with the SA to better understand what she would have to do to subdivide the property. She was provided the Subdivision Guidebook on numerous occasions, but it only speaks to new approaches being required, and does not refer to existing approaches. Nor was the Appellant able to locate any policy requiring a 90 m setback on the County website.

[17] The Appellant spent considerable funds to upgrade the existing access to the southwest corner access road in November 2021, when she moved a dwelling onto that site. She would not have spent those funds had she been aware the access (and driveway) would have to be moved.

Sewage disposal system

[18] With regard to on-site sewage, the Appellant stated a new system was installed in the fall of 2021. It met all relevant codes and received County approval. The system is in the far southwest portion of the property, while the new parcel is in the quarter's most northern portion; as such, the subdivision will have no effect on the current on-site sewage system for the residence.

[19] Finally, the Appellant advised the conditions imposed by the SA will create financial hardship for her and were completely unknown to her at the time of the application for subdivision.

FINDINGS

1. There is no evidence that Access # 3 will create a safety hazard if left in its current location.
2. It is not necessary to re-inspect the on-site sewage disposal system in this case to ensure compliance with relevant standards.

DECISION

[28] The appeal is allowed, and the conditional approval is varied as follows:

1. All subdivision conditions must be fulfilled within twenty-four months of date of subdivision approval.
2. Pursuant to section 654 of the *Municipal Government Act,* R.S.A. 2000, all outstanding property taxes be paid.
3. Pursuant to section 655 of the *Municipal Government Act*, the Owner and/or Developer shall enter into and abide by the provisions of a development agreement with Lac Ste. Anne County to the County's satisfaction and at the Developer's expense. This agreement may include, but not necessarily be limited to:

   a) Approach #1: Shall be installed to County Standards as per policy
   b) Approach #2: Shall be graveled and brought to County Standards

   Once the above-noted work has been completed on your approach(es), you MUST return your "Final Approach Inspection Form" to the Planning and Development Department to have your approach(es) inspected. The proposed survey (from your surveyor) must be submitted before Public Works can complete the inspection of the approach(es).
4. Pursuant to section 661 of the *Municipal Government Act*, 5.2 metres (17.1 ft.) of road widening adjoining all municipal road allowances is required and may be registered through caveat. Caveat and agreement to be provided by the Surveyor for road widening on Range Road(s) and Township Road(s).
5. This decision shall be valid for two (2) years from the date of issuance.
6. Applicant/Landowner is required to submit a survey drafted by an Alberta Land Surveyor. Any alterations to the subdivision design from the date of referral may require a new application and referral process.

7. Lac Ste. Anne County will require a blanket drainage easement and restrictive covenant to the County's satisfaction be registered on the parcel within sixty days (60) of the date of this approval to ensure current and future drainage is accommodated to the satisfaction of the Municipality.
8. The Applicant must provide a market value appraisal of the subject land, excluding any and all buildings or improvements, prior to subdivision. This appraisal is used to determine money-in-lieu of Reserves value as per section 667 of the *Municipal Government Act*. A market value appraisal is to be obtained from a licensed Alberta Appraiser as a condition of this subdivision approval. For this application, the land subject to Reserves is 10% of the following: HA (proposed parcel(s))

Reserve Eligible:	*Yes*	**MR Eligible (HA) (total parcel):**	*12.545*
Value per hectare (HA) :	*$8,226.28*	**Land Subject to Reserves (10% of MR Eligible):**	*1.2545*
Amount Owing:	Shall be no more than *$8,226.28*/ha *$10,319.87*		

REASONS

Access

[29] With regard to Condition #3 and specifically Access #3, the SA relies on the County's Approach and Culverts Policy, which they advise requires the approach to be a minimum of 90 m from the corner of the property. Section 638.2 of the *Act* requires municipalities to publish land use planning policies on their websites:

> 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
> …
> 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).

[30] Section 638.2(3) of the *Act* directs the LPRT to not have regard to any policy not published on the municipality's website. Upon request, the SA provided a link to the County website where it advised the policy requiring the 90 m separation could be located. The Tribunal accessed the link provided but was unable to locate the Approach and Culverts Policy.

[31] The policy does not appear to have been posted on the County website - at least in a way that is readily accessible; however, whether or not it was posted, the policy is not binding on the LPRT as per *MGA* s. 680(2). In this case, even if the policy was posted appropriately, the panel would exercise its discretion to vary it.

[32] The SA did not put forward any evidence that a safety issue was evident at the intersection. The Appellant stated that to her knowledge, which dated from the property being purchased in 1982, there have been no accidents at the intersection; further, the driveway has clear site lines for vehicles entering the roadway from the Appellant's property. The Tribunal notes the SA provided photographs of the access (Exhibit 4R, Appendix 1) which show its existing location and the site lines from the driveway. Based on the Appellant's testimony and the photographic evidence, the Tribunal finds no evidence to suggest that safety is an issue.

[33] The Tribunal also notes the County approved a development permit in the fall of 2021, when the Appellant moved a home onto the southwest corner. If there was a safety issue associated with the location of the access, one would expect it to have been addressed at the Development Permit stage.

Sewage disposal system

[34] The SA stated it requires a safety codes officer to approve the report obtained by the Appellant for her Development Permit, as the acreage of the remnant parcel will decline from 157.91 acres (63.90 hectares) to 126.91 acres (51.36 hectares). The Tribunal notes that in this case, the new parcel will be located across the northern portion of the quarter section, a significant distance from the southwest corner where the sewage system is located.

[35] The sewage system was installed in October/November 2021 and was found to be compliant by the inspection conducted at that time. The new property line is still well over 400 m from the sewage system and does not raise a reasonable concern as to compliance. Accordingly, the Tribunal finds that the compliance certificate condition is not necessary for the subdivision.

Other Approvals

[29] The landowner/developer is responsible for obtaining all applicable permits for development and any other approvals or permits required by other enactments (for example, *Water Act*, *Environmental Protection Act*, *Nuisance and General Sanitation Regulation,* etc.) from the appropriate authority. The LPRT is neither granting nor implying any approvals other than that of the conditional subdivision approval. Any other approvals are beyond the scope of a subdivision appeal.

Dated at the City of Edmonton in the Province of Alberta this 7th day of April, 2022.

LAND AND PROPERTY RIGHTS TRIBUNAL

G. Buchanan, Member

APPENDIX A

PARTIES WHO ATTENDED, MADE SUBMISSIONS OR GAVE EVIDENCE AT THE HEARING

NAME	CAPACITY
K. Lesenko	Appellant
A. Elmi	SA Representative, Development Officer, Lac Ste. Anne County
M. Ferris	SA Representative, Planning and Development Manager, Lac Ste. Anne County

APPENDIX B

DOCUMENTS RECEIVED PRIOR TO THE HEARING

NO.	ITEM
1	Information Package
2R	Land Use Bylaw
3R	Municipal Development Plan
4R	Lac Ste. Anne Submission
4R Appendices 1-13	Lac Ste. Anne Submission

APPENDIX C

DOCUMENTS RECEIVED AT THE HEARING

NO.	ITEM
5R	Subdivision Guidebook
6R	E-mail from the SA with link to policies

APPENDIX D

LEGISLATION

The *Act* and associated regulations contain criteria that apply to appeals of subdivision decisions. While the following list may not be exhaustive, some key provisions are reproduced below.

Municipal Government Act

Purpose of this Part

Section 617 is the main guideline from which all other provincial and municipal planning documents are derived. Therefore, in reviewing subdivision appeals, each and every plan must comply with the philosophy expressed in 617.

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

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

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

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

Section 618.3 and 618.4 direct that all decisions of the LPRT must be consistent with the applicable regional plan adopted under the *Alberta Land Stewardship Act* or the Land Use Policies (LUP).

Land use policies

618.4(1) Every statutory plan, land use bylaw and action undertaken pursuant to this Part by a municipality, municipal planning commission, subdivision authority, development authority or subdivision and development appeal board or the Land and Property Rights Tribunal must be consistent with the land use policies established under subsection (2).
(2) The Lieutenant Governor in Council, on the recommendation of the Minister, may by regulation establish land use policies.

Approval of application

Upon appeal, the LPRT takes on the role of the subdivision authority. Pertinent provisions relative to decisions of the subdivision authority include section 654(1) and (2) of the *Act*. The SA (and by extension the LPRT) cannot approve a subdivision unless convinced that the site is suitable for the intended use, as per section 654(1)(a) of the *Act*.

654(1) A subdivision authority must not approve an application for subdivision approval unless

(a) the land that is proposed to be subdivided is, in the opinion of the subdivision authority, suitable for the purpose for which the subdivision is intended,

(b) the proposed subdivision conforms to the provisions of any growth plan under Part 17.1, any statutory plan and, subject to subsection (2), any land use bylaw that affects the land proposed to be subdivided,

(c) the proposed subdivision complies with this Part and Part 17.1 and the regulations under those Parts, and

(d) all outstanding property taxes on the land proposed to be subdivided have been paid to the municipality where the land is located or arrangements satisfactory to the municipality have been made for their payment pursuant to Part 10.

(1.1) Repealed 2018 c11 s13.

(1.2) If the subdivision authority is of the opinion that there may be a conflict or inconsistency between statutory plans, section 638 applies in respect of the conflict or inconsistency.

(2) A subdivision authority may approve an application for subdivision approval even though the proposed subdivision does not comply with the land use bylaw if, in its opinion,

(a) the proposed subdivision would not

(i) unduly interfere with the amenities of the neighbourhood, or

(ii) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land,

and

(b) the proposed subdivision conforms with the use prescribed for that land in the land use bylaw.

(3) A subdivision authority may approve or refuse an application for subdivision approval.

Conditions of subdivision approval

Section 655(1) of the *Act* details the conditions of subdivision approval that may be imposed by the subdivision authority.

655(1) A subdivision authority may impose the following conditions or any other conditions permitted to be imposed by the subdivision and development regulations on a subdivision approval issued by it:

(a) any conditions to ensure that this Part, including section 618.3(1), and the statutory plans and land use bylaws and the regulations under this Part affecting the land proposed to be subdivided are complied with;

(b) a condition that the applicant enter into an agreement with the municipality to do any or all of the following:

(i) to construct or pay for the construction of a road required to give access to the subdivision;

(ii) to construct or pay for the construction of

(A) a pedestrian walkway system to serve the subdivision, or

(B) pedestrian walkways to connect the pedestrian walkway system serving the subdivision with a pedestrian walkway system that serves or is proposed to serve an adjacent subdivision,

or both;

(iii) to install or pay for the installation of a public utility described in section 616(v)(i) to (ix) that is necessary to serve the subdivision, whether or not the public utility is, or will be, located on the land that is the subject of the subdivision approval;

(iv) to construct or pay for the construction of

(A) off-street or other parking facilities, and

(B) loading and unloading facilities;

(v) to pay an off-site levy or redevelopment levy imposed by bylaw;

(vi) to give security to ensure that the terms of the agreement under this section are carried out.

Subdivision registration

Section 657 of the *Act* guides the registration of subdivision plans.

657(1) An applicant for subdivision approval must submit to the subdivision authority the plan of subdivision or other instrument that effects the subdivision within one year from the latest of the following dates:

(a) the date on which the subdivision approval is given to the application;

(b) if there is an appeal to the subdivision and development appeal board or the Land and Property Rights Tribunal, the date of the decision of the appeal board or the Tribunal, as the case may be, or the date on which the appeal is discontinued;

(c) if there is an appeal to the Court of Appeal under section 688, the date on which the judgment of the Court is entered or the date on which the appeal is discontinued.

...

Land dedication

Section 661 and 662 of the *Act* discuss the authority for the SA to require the dedication of land at time of subdivision as follows:

661 The owner of a parcel of land that is the subject of a proposed subdivision must provide, without compensation,

(a) to the Crown in right of Alberta or a municipality, land for roads and public utilities,

(a.1) subject to section 663, to the Crown in right of Alberta or a municipality, land for environmental reserve, and

(b) subject to section 663, to the Crown in right of Alberta, a municipality, one or more school boards or a municipality and one or more school boards, land for municipal reserve, school reserve, municipal and school reserve, money in place of any or all of those reserves or a combination of reserves and money,

as required by the subdivision authority pursuant to this Division.

Reserves not required

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

(a) one lot is to be created from a quarter section of land,

(b) land is to be subdivided into lots of 16.0 hectares or more and is to be used only for agricultural purposes,

(c) the land to be subdivided is 0.8 hectares or less, or

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

Appeals

Section 678 of the *Act* sets out the requirements for appeal of a decision by the subdivision authority.

678(1) The decision of a subdivision authority on an application for subdivision approval may be appealed

(a) by the applicant for the approval,

(b) by a Government department if the application is required by the subdivision and development regulations to be referred to that department,

(c) by the council of the municipality in which the land to be subdivided is located if the council, a

designated officer of the municipality or the municipal planning commission of the municipality is not the subdivision authority, or

(d) by a school board with respect to

(i) the allocation of municipal reserve and school reserve or money in place of the reserve,

(ii) the location of school reserve allocated to it, or

(iii) the amount of school reserve or money in place of the reserve.

(2) An appeal under subsection (1) may be commenced by filing a notice of appeal within 14 days after receipt of the written decision of the subdivision authority or deemed refusal by the subdivision authority in accordance with section 681

(a) with the Land and Property Rights Tribunal

(i) unless otherwise provided in the regulations under section 694(1)(h.2)(i), where the land that is subject of the application

(A) is within the Green Area as classified by the Minister responsible for the Public Lands Act,

(B) contains, is adjacent to or is within the prescribed distance of a highway, a body of water, a sewage treatment or waste management facility or a historical site,

(C) is the subject of a licence, permit, approval or other authorization granted by the Natural Resources Conservation Board, Energy Resources Conservation Board, Alberta Energy Regulator, Alberta Energy and Utilities Board or Alberta Utilities Commission,

or

(D) is the subject of a licence, permit, approval or other authorization granted by the Minister of Environment and Parks,

or

(ii) in any other circumstances described in the regulations under section 694(1)(h.2)(ii),

or

(b) in all other cases, with the subdivision and development appeal board.

(2.1) Despite subsection (2)(a), if the land that is the subject-matter of the appeal would have been in an area described in subsection (2)(a) except that the affected Government department agreed, in writing, to vary the distance under the subdivision and development regulations, the notice of appeal must be filed with the subdivision and development appeal board.

…

Hearing and decision

Section 680(2) of the *Act* requires that LPRT decisions conform to the uses of land referred to in the relevant land use district of the LUB. It does not require that the LPRT abide by other provisions of the LUB, the MDP or the *Subdivision and Development Regulation*, although regard must be given to them.

680(2) In determining an appeal, the board hearing the appeal

(a) repealed 2020 c39 s10(48);

(a.1) must have regard to any statutory plan;

(b) must conform with the uses of land referred to in a land use bylaw;

(c) must be consistent with the land use policies;

(d) must have regard to but is not bound by the subdivision and development regulations;

(e) may confirm, revoke or vary the approval or decision or any condition imposed by the subdivision authority or make or substitute an approval, decision or condition of its own;

(f) may, in addition to the other powers it has, exercise the same power as a subdivision authority is permitted to exercise pursuant to this Part or the regulations or bylaws under this Part.

(2.1) In the case of an appeal of the deemed refusal of an application under section 653.1(8), the board must determine whether the documents and information that the applicant provided met the requirements of section 653.1(2).
(2.2) Subsection (1)(b) does not apply to an appeal of the deemed refusal of an application under section 653.1(8).
...

Endorsement of subdivision plan

Section 682 guides endorsement of subdivision plans after an appeal board makes a decision.

682(1) When on an appeal the Land and Property Rights Tribunal or the subdivision and development appeal board approves an application for subdivision approval, the applicant must submit the plan of subdivision or other instrument to the subdivision authority from whom the appeal was made for endorsement by it.
(2) If a subdivision authority fails or refuses to endorse a plan of subdivision or other instrument submitted to it pursuant to subsection (1), the member of the subdivision and development appeal board or Land and Property Rights Tribunal, as the case may be, that heard the appeal who is authorized to endorse the instrument may do so.

Subdivision and Development Regulation - Alberta Regulation 43/2002

Relevant considerations

While the LPRT is not bound by the *Subdivision and Development Regulation*, it is the LPRT's practice to evaluate the suitability of a proposed site for the purpose intended using the criteria in section 7 as a guide.

7 In making a decision as to whether to approve an application for subdivision, the subdivision authority must consider, with respect to the land that is the subject of the application,

(a) its topography,
(b) its soil characteristics,
(c) storm water collection and disposal,
(d) any potential for the flooding, subsidence or erosion of the land,
(e) its accessibility to a road,
(f) the availability and adequacy of a water supply, sewage disposal system and solid waste disposal,
(g) in the case of land not serviced by a licensed water distribution and wastewater collection system, whether the proposed subdivision boundaries, lot sizes and building sites comply with the requirements of the *Private Sewage Disposal Systems Regulation* (AR 229/97) in respect of lot size and distances between property lines, buildings, water sources and private sewage disposal systems as identified in section 4(4)(b) and (c),
(h) the use of land in the vicinity of the land that is the subject of the application, and
(i) any other matters that it considers necessary to determine whether the land that is the subject of the application is suitable for the purpose for which the subdivision is intended.

...

Road access

Section 9 deals with road access requirements.

9 Every proposed subdivision must provide to each lot to be created by it
(a) direct access to a road, or
(b) lawful means of access satisfactory to the subdivision authority.

…

ALBERTA LAND USE POLICIES

Land Use Policies were established by Lieutenant Governor in Council pursuant to section 618.4 of the *Act*.

2.0 The Planning Process

Goal

Planning activities are to be carried out in a fair, open, considerate, and equitable manner.

Policies

1. Municipalities are expected to take steps to inform both interested and potentially affected parties of municipal planning activities and to provide appropriate opportunities and sufficient information to allow meaningful participation in the planning process by residents, landowners, community groups, interest groups, municipal service providers, and other stakeholders.
2. Municipalities are expected to ensure that each proposed plan amendment, reclassification, development application, and subdivision application is processed in a thorough, timely, and diligent manner.
3. When considering a planning application, municipalities are expected to have regard to both site specific and immediate implications and to long term and cumulative benefits and impacts.

…

Tab 3

Local Planning Appeal Tribunal
Tribunal d'appel de l'aménagement local

Ontario

ISSUE DATE: August 22, 2019 **CASE NO(S).:** PL180069

The Ontario Municipal Board (the "OMB") is continued under the name Local Planning Appeal Tribunal (the "Tribunal"), and any reference to the Ontario Municipal Board or Board in any publication of the Tribunal is deemed to be a reference to the Tribunal.

PROCEEDING COMMENCED UNDER subsection 17(36) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant:	2094528 Ontario Ltd. and HGT Holdings Ltd.
Appellant:	Innocon Inc.
Subject:	Proposed Official Plan Amendment No. OPA 208
Municipality:	City of Toronto
OMB Case No.:	PL180069
OMB File No.:	PL180069
OMB Case Name:	Innocon Inc. v. Toronto (City)

PROCEEDING COMMENCED UNDER subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant:	2094528 Ontario Ltd. and HGT Holdings Ltd.
Appellant:	Innocon Inc.
Subject:	By-law No. BL 1468-2017
Municipality:	City of Toronto
OMB Case No.:	PL180069
OMB File No.:	PL180070

PROCEEDING COMMENCED UNDER subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant:	2094528 Ontario Ltd. and HGT Holdings Ltd.
Appellant:	Innocon Inc.
Subject:	By-law No. BL 1469-2017
Municipality:	City of Toronto
OMB Case No.:	PL180069
OMB File No.:	PL180071

Heard: August 12, 2019 in Toronto, Ontario

APPEARANCES:

Parties	Counsel
City of Toronto	M. Crawford
2094528 Ontario Ltd. and HGT Holdings Ltd.	D. Bronskill
Innocon Inc.	S. Mahadevan

DECISION DELIVERED BY R. ROSSI AND DAVID BROWN AND ORDER OF THE TRIBUNAL

INTRODUCTION

[1] 2094528 Ontario Ltd. and HGT Holdings Limited (HGT) ("Appellants") are the owners of lands known municipally as 10, 20, 48, 54 and 62 Murray Road in the City of Toronto ("City"). The Appellants have appealed to the Tribunal the decision of City Council to adopt Official Plan Amendment No. 208 ("OPA 208") and Zoning By-law Amendments ("ZBAs") No. 1468-2017 and No. 1469-2017. These instruments impact the Appellants' property ("subject site") related to standards and permissions to guide future development on these lands.

[2] Mark Crawford, Counsel for the City, advised the Tribunal that the City and Innocon (the operator of a concrete batching plant on the subject site) have reached a settlement of their matters that is reflected in revised wording of OPA 208. Innocon's Planning Consultant, Oz Kemal, provided his professional land use planning evidence in support of the settlement. Mr. Kemal reviewed the applicable planning instruments as well as the policies contained therein and opined that the settlement and implementing instrument represent good planning. With all Parties in agreement, the Tribunal allowed Innocon's appeal in part by modifying OPA 208 with the wording that the City and

Innocon proffered in support of the settlement. This document, which reflects not only the Innocon changes but those permitted by the Tribunal in respect of the Appellants' appeals, is Attachment 1 to this decision.

[3] Mr. Crawford also advised the Tribunal that both the Appellants and Innocon have withdrawn their appeals against the two ZBAs. The Tribunal was advised that these ZBAs do not implement any of the land uses or built form policies established by OPA 208. Therefore, with all Parties in agreement, the Tribunal now directs that the appeals against these two instruments are withdrawn.

[4] This information enabled the Parties to pare down their issues to three matters related to OPA 208's implementation: 1) the appropriateness of a requirement for a 30-metre ("m") setback between the subject lands and the westerly-abutting Metrolinx Toronto-Barrie railway corridor that runs north to south; 2) whether the development of future private streets on the subject site should be held to the same standards as public streets; and 3) whether a density cap should be identified in respect of future development of the subject site.

[5] On the matter of the second issue related to public and private streets, the City and the Appellants reached a consensus in the course of the hearing that resulted in mutually-agreeable wording submitted for the Tribunal's consideration (modified language related to public and private streets) to modify OPA 208 as follows:

Section 4. Movement. Public and Private Streets. Policy 4(b):

> New streets should be public streets. Where private streets are appropriate, they will be designed to function as a component and extension of the existing and planned public street network, and may, at the discretion of the City, include improvements such as walkways, cycling routes, landscaping, traffic calming measures, and lighting and pedestrian amenities. Full public access easements along these private streets will be secured through development approvals.

[6] The reply witness statement of Michael Bissett, the Appellants' Planner, includes helpful information related to public and private streets, wherein he expressed his agreement with the affidavit of Eno Udoh-Orok, the City Planner, which reported that "street grid extensions would be preferable" to promote the orderly development of this very large subject site in the years to come. Both Parties agree on the clarifying wording in OPA 208 regarding the inclusion of improvements "where private streets are appropriate" and "at the discretion of the City". This wording is reflected in the modified OPA 208 document attached to these reasons as Attachment 1. This left the Tribunal to adjudicate the remaining two issues: the railway corridor setback and density.

CONTEXT

[7] The subject site is 3.8 hectares in size with 384 m of frontage on the west side of Murray Road. It is a brownfields site. The southern portion of the lands is occupied by a concrete batching plant. The northern portion of the subject site is vacant. The subject site is surrounded by a low-density residential neighbourhood. The subject site's western boundary is adjacent to the aforementioned railway corridor.

[8] In 2016, the City initiated its Murray Road Land Use Study, which assessed the compatibility of established employment uses with various uses permitted by means of the in-force by-law as well as with the adjacent residential uses. The document also considered the possibility of alternative land use options in the study area in accordance with policies in Official Plan Amendment 231 and in the Site and Area Specific Policy 389 ("SASP 389").

[9] Interim Control By-law ("ICBL") No. 71-2016 was enacted to temporarily suspend a number of activities in the study area. ICBL No. 115-2017 was enacted to amend ICBL No. 71-2016 by extending the expiration date of the ICBL to February 3, 2018 to permit the City to complete its work on the Murray Road Land Use Study.

[10] City staff recommended that City Council adopt OPA 208 and the two ZBAs on October 26, 2017, which it did in early-December 2017. OPA 208 removed various permissions and it redesignated the Study Area to *Mixed Use Areas* and *General Employment Areas* as well as introduced several policies related to land use, built form and streets.

[11] It was the opinion of the Appellants' Planner, Mr. Bissett, that the OPA 208 policies should be made "sufficiently flexible" to facilitate development of the subject site. Thus, any future land uses, proposed built forms and corresponding massing would be reviewed and assessed through a future rezoning.

ISSUE 5 – RAILWAY CORRIDOR SETBACK

[12] Policy 2(a)(i) of OPA 208 (Land Use) requires a minimum 30-m setback along the western edge of the adjacent Metrolinx railway corridor. The 30-m setback standard is found in "Guidelines for New Development in Proximity to Railway Operations", Federation of Canadian Municipalities and the Railway Association of Canada, May 2013 ("FCM Guidelines") (Exhibit 1, Tab 12, Page 295). Paragraph 2.3 // Standard Mitigation is instructive in respect of reducing incompatibility issues associated with locating new development in proximity to rail corridors. The 30-m setback is a recognized component of the railways' suggestion of a "package of mitigation measures". The setback is but one of these measures. Others include an earthen berm, acoustical and/or chain link security fence, as well as additional measures for sound and vibration attenuation (page 296).

[13] Read in this context, the City planner's opinion that the 30-m standard is "mandatory" is not borne out by the evidence before the Tribunal. In fact, nowhere in the FCM Guidelines could the panel find any reference to the "mandatory" nature of the setback or language that lifts it above all other safety considerations. In contrast, it is but one mitigative measure that can be pursued alone or in combination with other measures to guarantee safety along the railway corridor. The Tribunal assigned no

weight to the City planner's opinion in this regard and it assigns no weight to her view that "standard" means "mandatory". The Appellants' Counsel David Bronskill successfully rebutted this opinion during his cross-examination of the City's witness through various references to the FCM Guidelines.

[14] OPA 208 (Land Use) Policy 2(a)(i) sections A to E also list other permissible uses within the 30-m setback area: a public or private street; accessory structures; acoustic fencing; landscaped space, and private or publicly accessible open spaces; and pedestrian and cycling facilities and related amenities.

[15] The Appellants have suggested adding an additional item to this list of uses as follows: "non-residential uses that are considered non-sensitive by the City". The City objected to this addition, and it has suggested revised wording as follows that it finds acceptable should the Tribunal find merit with it:

> Reductions in the thirty metre setback may be permitted through a rezoning application where the applicant submits to the City a development viability report bearing the stamp of a fully insured, qualified, professional structural engineer showing how an appropriate level of rail safety is achieved, with such report to be peer reviewed by a rail safety expert retained and reporting to the City, at the expense of the applicant.

[16] The Tribunal heard no persuasive evidence from the City planner to counter the Appellant's planner's opinion on the matter of identifying non-residential uses as item 2(a)(i)(F). Her opinion was simply too inflexible, referring and repeating only the wording of the OPA 208 policies without offering to the Tribunal opinions to justify her position. She also failed to offer any professional insight for the Tribunal as to how or why there was no planning merit in considering the inclusion of wording that would entertain future applications for a reduction in the setback that might include "non-sensitive, non-residential" uses. In contrast, the Appellant's planner cited several examples of how railway corridor reductions have been achieved in the past, and considerable hearing

time was spent on references to the January 20, 2017 decision PL141134 of the Ontario Municipal Board ("OMB") (Exhibit 9), which demonstrated that alternative railway safety mitigation measures through zoning applications along Dupont Street, easily achieved with specific references in Section 8 of that decision and subject to the City's approval.

[17] While the particular circumstances of that case and the resulting decision differ in various ways, the matters related to rail safety, noise, vibration and air quality find common expression in the case at bar. These elements are sufficiently addressed in that decision, and the Tribunal determined therein that these can as easily be captured through a future ZBA application for those lands. The Tribunal is persuaded that the same holds true for the subject site all things considered, and that a rezoning application for the subject site will serve as efficiently and effectively just as it was explicitly identified and enumerated in section 8.4 of the previous OMB decision PL141134.

[18] The panel recognized the good faith which guided the Parties' appearances at the hearing and most notably their willingness to move forward during the various inter-hearing discussions that ensued. On the basis of the Parties' collaborative efforts, the Tribunal will strike proposed item 2(a)(i)(F) and instead add the short paragraph that the City has drafted (as cited in paragraph 15 above). The Tribunal's approval of this wording achieves three things:

1. OPA 208 preserves the 30-m setback to the railway corridor standard within OPA 208 insofar as the subject site is concerned;

2. the Appellants have an assurance that future landowners/Applicants who seek to develop any portion of the subject site abutting the railway corridor will be able to pursue a reduction of that setback standard through a rezoning application, which might include (although not explicitly stated), non-residential uses that the City determines to be non-sensitive; and

3. the City is equipped with an instrument that recognizes the importance of the standard – though not mandatory – setback recommendation *prima facie* as identified in the FCM Guidelines.

ISSUE 7 – DENSITY

[19] The City's Planner noted that the study area "has the ability to attract development on a scale that can achieve efficiency of scale, while being compatible with the surrounding area." Through the City staff's modeling exercise for potential development blocks on the subject site (see the October 2017 City staff report, Exhibit 1, Tab 7, Pages 179-180), it determined that the hypothetical development scenario had a density of 1.2 times the gross lot area, which is "very similar to the density permitted by the in-force Zoning By-laws" (same report). For the sake of flexibility and not knowing the form of any future development that might occur, City staff indicated that it could support a maximum density of 1.5 times the gross lot area subject to a review of infrastructure and transportation capacity as well as any improvements that might be required (Exhibit 3, Paragraph 96).

[20] Beyond this statement, the City's planning witness offered no written opinion or evidence to justify the 1.5 figure. In contrast, Mr. Bissett's witness statement explained that Policies 5(a) and 6(a) of OPA 208 are inconsistent (Exhibit 5, Paragraph 51), noting that Policy 5(a)(iii) provides for a maximum height of 45.72 m within a 45-degree angular plane of the adjacent neighbourhood east of the subject site, whereas Policy 6(a) implies that a floor space index of 1.5 times the area of a lot within the OPA 208 will be permitted. He explained that a massing constructed within a 45-degree angular plane with a height of up to 45.72 m would result in something "well in excess" of 1.5 times the area of the lot.

[21] Mr. Bissett also opined that the modelling options that resulted in the proposed density were based on a "gross density", and OPA 208 is not a gross density. Accordingly, the basis for the 1.5 times density on the subject site as implemented in

OPA 208 "is flawed" (Exhibit 5, paragraph 52) and the density would be higher "on a net basis" to implement the modeling indicated. His statement adds that the modeling does not reflect the actual built form policies that allow for development within the subject site through OPA 208.

[22] None of the opinions of the Appellants' Planner were successfully challenged. The City's planning witness in fact presented no opinions or evidence (in paragraphs 95-97 of her witness statement) to address these inconsistencies; nor were they covered in the submissions of the City's Counsel. The City proposed additional wording in Policy 6(b) of OPA 208 (entered as Exhibit 8) as follows: Shall not exceed a maximum density of 1.5 times the area of "the lands subject to SASP 389." Noting as well that the subject site might develop separately, the revised wording also changed "the lot" to "the lands" to capture all of the lands within SASP 389. The Tribunal was not persuaded, however, that this satisfactorily addressed the concerns raised by the Appellants' Planner related to the capacity of the City to proffer the figure of 1.5 times based on hypothetical modeling with the caveat that no one can know the form of development that might be proposed in the years ahead. The assignment of this figure, even if purporting to offer flexibility above the 1.2 times figure, is not borne out in supportable planning evidence or a rationalized methodology. The Tribunal is unable to see planning merit in the application of a 1.5 time density figure in the context of the statements in Policies 5(a)(iii) and 6(a) as referenced.

[23] Additionally, the Appellants' Counsel submitted persuasively that, if a cap was left in OPA 208, and depending on how the subject site developed in the years ahead, all of the developable capacity with this 1.5 times density cap might accord to one applicant on one portion of the lands all of the development potential, thereby leaving less or none to other future landowners (presuming, as he submitted, that this very large site will develop separately over time).

[24] Notwithstanding the Tribunal's determination that the City has presented no persuasive evidence that there is planning merit to include a 1.5 times density figure in

OPA 208, the Tribunal was mindful of the fact that the Appellant was content to retain the City's 1.5 times density figure as long as additional wording was included in Policy 6(b). The addition of this more permissive language in Policy 6(b) will ensure that the various future owners of portions or parcels of this large subject site will be able to proffer amendments to OPA 208 through the provision of appropriate studies and improvements to infrastructure to the satisfaction of the City with the costs borne by those landowners. The Appellants' proposed additional wording for Policy 6(b) is as follows:

> Shall not exceed a maximum density of 1.5 times the area of the lands subject to SASP 389. This density may be exceeded without an amendment to this Plan, subject to the submission of traffic impact studies and functional servicing and stormwater management reports, to the satisfaction of the City that demonstrate sufficient transportation and servicing capacity exists to accommodate the proposed development and/or identify necessary infrastructure improvements to City infrastructure at the cost of landowner(s), including any necessary cost-sharing agreement between landowners.

[25] The Tribunal prefers this wording to that proffered by the City in Exhibit 8 (and as referenced in paragraph 22) for the reasons stated.

[26] Therefore, where the City's witness was unable to speak supportively of the 1.5 density times provision in OPA 208 beyond the recitation of several generalized planning considerations, and where the Appellants have shown persuasively through the evidence and planning expertise of their witness that such a limit creates problems in terms of future development, the Tribunal will amend Policy 6(b) with the Appellants' proposed wording in paragraph 24 to ensure there is flexibility provided for the future development of the subject site.

DECISION

The Innocon Appeal

[27] The Tribunal allows the appeal of Innocon against OPA 208 in part so as to reflect the revisions adopted by City Council and as reflected in the revised wording presented to the Tribunal:

1. Section 2. Land Use. Policies 2c(i) to (iv)
2. Section 5. Built Form and Building Height. Policy 5(a)
3. Section 7. Infrastructure. Policy 7(a)
4. Section 9. Implementation. Holding 'H' By-laws. Policy 9c(i)

The Appellants' Appeal

[28] The Tribunal allows the Appellants' appeal against OPA 208 in part and modified as follows:

Section 4. Movement. Policy 4(b):

> New streets should be public streets. Where private streets are appropriate, they will be designated to function as a component and extension of the existing and planned public street network, and may, at the discretion of the City, include improvements such as walkways, cycling routes, landscaping, traffic calming measures, and lighting and pedestrian amenities. Full public access easements along these private streets will be secured through development approvals.

[29] Additionally, the Tribunal strikes Policy 2(a)(F) of OPA 208: "non-residential uses that are considered non-sensitive by the City" and the following paragraph is added to this section as requested by the City:

> Reductions in the thirty metre setback may be permitted through a rezoning application where the applicant submits to the City a development viability report bearing the stamp of a fully insured, qualified, professional structural engineer showing how an appropriate level of rail safety is achieved, with such report to be peer reviewed by a rail safety expert retained and reporting to the City, at the expense of the applicant.

[30] The Tribunal amends Section 6. Density. Policy 6(b) with wording to the satisfaction of the Appellants:

> Shall not exceed a maximum density of 1.5 times the area of the lands subject to SASP 389. This density may be exceeded without an amendment to this Plan, subject to the submission of traffic impact studies and functional servicing and stormwater management reports, to the satisfaction of the City that demonstrate sufficient transportation and servicing capacity exists to accommodate the proposed development and/or identify necessary infrastructure improvements to City infrastructure at the cost of landowner(s), including any necessary cost-sharing agreement between landowners

[31] The Tribunal allows the appeals in part as per the attached version of OPA 208, which incorporates the final approved and modified language as adjudicated and revised by the Tribunal (Attachment 1).

[32] This is the order of the Tribunal.

"R. Rossi"

R. ROSSI
MEMBER

"David Brown"

DAVID BROWN
MEMBER

Tab 4

Curtis E. Marble

From: APare@rockyview.ca
Sent: Friday, June 8, 2018 3:52 PM
To: rglandry@shaw.ca
Subject: RE: Development Permit - Regine Landry
Attachments: Landry.pdf

Hi Regina,

I am very sorry for the long delay in getting back to you, the inbox gets so full so fast and I never seem to be able to get back to the beginning.

Yes I do remember our discussions vaguely, Unfortunately planning is correct, as the Licensing of a road for grazing or cultivation purposes is essentially just an agreement to use the land temporarily, therefore if you were constructing a permanent residence the planning rules for setbacks would still apply. The only way to remove those setbacks is to apply for a relaxation (due to the fact that the road will not likely ever be built) or to apply for closure and consolidation of the road allowance into your parcel. As the Trailnet Society owns lands at the west end of your property, there could possibly be opposition to this closure as that would restrict access by them to those tiny parcels, at least from the east. I'm not saying the closure and consolidation is an absolute no, but we would not be able to be sure we could proceed until after the circulation of an application, which then provides is landowner feedback to see if there is opposition or reasons to retain the road allowance. The application fee for a road closure is $2000 and if we are recommending refusal after circulation and you wish to withdraw your application you would be able to get a 60% refund, or you could proceed to council for their approval despite our recommendation, but if so there would be no further opportunity for refund of application fee.

Also to note, the Road Closure process is lengthy and costly, on top of the $2000 application fee, you would be looking at approximately $1500 in survey costs (to prepare closure bylaw), $2500 for the appraisal of the land to determine the value, and then the purchase price of the land. The process usually takes at least 1-1.5years to complete as well.

I hope this information helps, please let me know If I can help further.

ANGELA PARÉ
Engineering Support Technician | Engineering Services

From: rglandry@shaw.ca [mailto:rglandry@shaw.ca]
Sent: Monday, May 28, 2018 7:42 PM
To: Angela Pare
Subject: RE: Development Permit - Regine Landry

Hello Angela,

I met with you in 2016 regarding the road allowance that is beside my property NE-34-27-26-4. I was enquiring about the setback requirements to build a house on my property. I did not make the application at that time as I still had many questions.

I would like to begin building in the next year and today I went to speak to someone in the Planning counter and was advised, as previous, that any structure would need to be 46 metres from the County Road. I asked about the application to lease the road allowance but was advised that even with the leasing of the road allowance, the minimum

setback requirements would remain at 46 metres from the road allowance line and I would have to apply for a relaxation of the distance through your area.

I understood from our previous conversation that the leasing of the land would provide a relaxation of the distance required to build without further application. If this is incorrect, can you explain that process again. I understood from speaking to the Planning area that it would be better to make an application to purchase the road allowance. I understood from the last time we met that this applicatoin is not usually successful.

I would appreciate information on the best options.

Thank you,

Regine Landry
403-999-8748

From: "Regine Landry" <rglandry@shaw.ca>
To: "APare" <APare@rockyview.ca>
Sent: Wednesday, April 6, 2016 5:51:25 PM
Subject: Re: Development Permit - Regine Landry

If possible I would like to come in to speak with you. Do you have any time available on Friday afternoon, April 8, 2016. Thank you.

From: APare@rockyview.ca
To: rglandry@shaw.ca
Sent: Friday, April 1, 2016 1:46:41 PM
Subject: RE: Development Permit - Regine Landry

Good Afternoon Regina,

My name is Angela, I am responsible for the Road Allowance license and closures here with the County. I can definitely meet with you to discuss your options for utilizing the adjacent road allowance to your property, you don't need a development permit, but either a road license or road closure application.

If you would rather discuss options via email I can outline the different ones for you and we can go from there, or you are welcome to come in for a meeting.

I can meet any of the days suggested below please let me know which one and at what time is best for you.

Thank you,

ANGELA PARÉ
Engineering Support Technician | Engineering Services

ROCKY VIEW COUNTY
911 - 32 Avenue NE | Calgary | AB | T2E 6X6
Phone: 403-520-6296
apare@rockyview.ca | www.rockyview.ca

From: Meeting Request [mailto:noreply@rockyview.ca]
Sent: Thursday, March 31, 2016 3:30 PM
To: Lois Holloway
Subject: Development Permit - Regine Landry

Name:
Regine Landry

Email:
rglandry@shaw.ca

Phone:
403-730-8748

Type of Application:
Development Permit

Subject Property:
NE Section 34 - Township 27 - Range 26 - West of 4 Meridian

Preferred Date & Time:
April 7, 8, 9, 10, 15, 16

Questions / Comments:
I am interested in purchasing the road allowance or an agreement to use it.

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ROCKY VIEW COUNTY
Cultivating Communities

Information as depicted is subject to change, therefore Rocky View County assumes no responsibility for discrepancies after date of printing.

N

Printed: Jun 08, 2018

Tab 3

In the Court of Appeal of Alberta

Citation: Landry v Rocky View County (Subdivision and Development Appeal Board), 2025 ABCA 34

Date: 20250205
Docket: 2301-0023AC
Registry: Calgary

Between:

Regine Landry

Appellant

- and -

Subdivision and Development Appeal Board of Rocky View County and Rocky View County

Respondents

The Court:

The Honourable Justice Thomas W. Wakeling
The Honourable Justice Dawn Pentelechuk
The Honourable Justice Bernette Ho

Memorandum of Judgment of The Honourable Dawn Pentelechuk and The Honourable Justice Bernette Ho

Memorandum of Judgment of The Honourable Justice Thomas W. Wakeling Concurring in the Result

Appeal from the Decision of
Subdivision and Development Appeal Board of Rocky View County
Dated the 30th day of December, 2022
(2022-SDAB-019)

Memorandum of Judgment

The Majority:

I. Introduction

[1] The central issue in this appeal is the scope of a *de novo* hearing before a subdivision and development appeal board. Specifically, whether the Subdivision and Development Appeal Board of Rocky View County (the Board) had the jurisdiction to consider all conditions and variances of a development permit issued for a discretionary use, or whether it was limited to considering only those issues raised on appeal.

[2] The appellant Regine Landry purchased land zoned Agricultural, General, situated between the Town of Irricana and the Village of Beiseker, with the dream of one day building a residence and retiring there. The parcel is irregular in shape, a long narrow triangle[1]. The west portion of the parcel is bordered by a walking/pedestrian path owned by Alberta TrailNet Society. The north portion of the land is bordered by an open, undeveloped government road allowance requiring any development to be set back 45-metres (the side yard setback). The south portion is bordered by a Canadian National Railway (CNR) right of way.

[3] Manufactured dwellings are a discretionary use under the County's *Land Use Bylaw* C-8000-2020. Ms Landry applied for a development permit and relaxation of the minimum side yard setback requirement so that her residence could be situated in the middle of the parcel. In response to the development application, CNR recommended to the Development Authority that there be a minimum building setback of 30-metres from the railway and that a 6-foot chain link fence be constructed along the entire length of the southern property line to mitigate safety concerns. Although neither of CNR's recommendations were contained within the applicable land use bylaw, the Development Authority adopted the recommendations, approving Ms Landry's development permit on two conditions, that she:

1) submit a revised plan showing a 30-metre setback between the proposed residence and the CNR right of way; and
2) construct a 6-foot chain link fence parallel to the CNR right of way.

The Development Authority otherwise varied the 45-metre side yard setback to 3 metres.

[4] Ms Landry appealed both conditions of the development permit to the Board arguing compliance with the 30-metre setback would drastically reduce the scope of her usable property and that given the land's rural location, neither the setback nor the chain link fence were necessary to address the safety concerns raised by CNR.

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[1] 280003 Range Road 262 (NE-34-27-26-04). The parcel is located approximately 0.81 kilometres north of Highway 9 on the west side of Range Road 262 and is approximately 1.82 hectares (4.50 acres) in size. Attached as Schedule A is the proposed location of Ms Landry's residence submitted in her development permit application.

[5] In its decision, the Board not only dismissed Ms Landry's appeal, but reversed the Development Authority's decision to relax the side yard setback and revoked the development permit that had been issued to her.

[6] Ms Landry obtained permission to appeal to this Court on two questions of law: ***Landry v Rocky View County (Subdivision and Development Appeal Board)***, 2023 ABCA 189.

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?

[7] As we discuss below, a *de novo* hearing by the Board involves a broad jurisdiction that is not limited to the specific issues raised on appeal. However, if the Board intends to address matters beyond those raised on appeal, the principles of natural justice demand that reasonable notice of the Board's concerns be given to the interested parties and an opportunity to address those concerns must be provided. In these circumstances, Ms Landry did not receive a fair hearing because she received neither. The Board did not advise her of its concerns, and she was deprived of an opportunity to respond to those concerns. Further, there is no evidence on this record to support a legitimate planning objective in the Board's decision to reverse the side yard setback variance granted by the Development Authority.

[8] We allow the appeal, quash the decision of the Board and remit the matter back to the Board for reconsideration.

II. The Board hearing and decision

[9] The Board heard Ms Landry's appeal on November 24 and December 15, 2022. The hearing focused on the two conditions of the development permit, particularly the 30-metre setback from the CNR right of way. In its submissions, the Development Authority referenced CNR's May 2013, *Guidelines for New Development in Proximity to Railway Operations (*Railway Guidelines). The Development Authority explained that CNR's setback recommendation responded to CNR's safety concerns in the event of a train derailment.[2] The fencing recommendation otherwise mitigated the risk of people or animals travelling onto the railway tracks. The Development Authority acknowledged that the recommendations were not regulations within the applicable land use bylaw, nor were they federal regulations required under the *Railway Safety Act*, RSC 1985, c

[2] The Board heard submissions that the railway is a mainline, and that four trains use the railway daily.

32 (4th Supp). Nevertheless, the Development Authority was of the view the two conditions served a valid planning objective relating directly to the safety of site occupants.

[10] Alberta TrailNet Society provided a letter to the Board supporting Ms Landry's appeal of the 30-metre setback from the south property line abutting the railway. It also indicated it "does not support the lease, closure, or sale of the undeveloped open road allowance (TWP RD 280) to the north of the subject lands".

[11] In her submissions, Ms Landry highlighted that compliance with the two conditions added expense and reduced the developable area of her land. She also argued that ss 682.2(1)-(3) of the *Municipal Government Act*, RSA 2000, c. M-26 (*MGA*), mandated that if the Development Authority wished to rely on the Railway Guidelines, it must be adopted as policy and published on the municipality's website, which had not been done. Finally, Ms Landry argued that given the rural location of the parcel, there were no significant safety concerns that warranted imposition of the conditions. She also tendered a letter of support from a neighboring landowner.

[12] Throughout the hearing the Board questioned Ms Landry about various possible locations for her proposed residence. At the end of the first hearing date, Ms Landry accepted the Chair's offer of an adjournment to think about the best options:

> . . . So, if the Board feels that there's a safety issue here and we're trying to work our way through all these -- there's a lot of moving parts on this piece of land. Would you consider the changes that you recommended -- there was a couple that you put forward. One was the change from one to nine in the orientation of the house. That could change, maybe moving it a little back. Would you consider that? Would you want time to consider that? I would just like to know what you would like us to do. We don't want to not give you the opportunity to sit down and think about what would be the best options. (Transcript at 20, l 36 – 21, l 1)

[13] When the hearing reconvened on December 15, 2022, Ms Landry tendered expert evidence from Grete Bridgewater, an expert in rail safety. Ms Bridgewater opined that the rural location of the lands did not require the same safety mitigation as an urban setting. Particularly, her expert report provided that the Railway Guidelines are not mandatory and were never intended to require specific setbacks in rural areas but were aimed at urban developments to "permit dissipation of rail-oriented emissions as well as noise and vibration". The report further provided that there was no history of derailments associated with the lands, and "no factual evidence to [ ] suggest this rural location has any known risk factors". In Ms Bridgewater's view, there was a misunderstanding of the intended purpose and application of the Railway Guidelines, and she "recommended that Rocky View County avoid a general application of the 30-metre setback for

the Landry Property due to its specific context, and [an] upcoming" review of the Railway Guidelines by the Railway Association of Canada and the Federation of Canadian Municipalities.

[14] Ms Landry also submitted that her proposed orientation of the residence would result in only one corner of the residence being exposed to the railway but advised that if the Board felt safety concerns remained, another option was to "mirror the house" to put the garage nearest the railway, thus pushing back the living space. The Board Chair asked the Development Authority's representative, Mr Rebello, to comment on whether that proposal "would make any difference". He said that it would:

> Yes, that would. We have done some due diligence in terms of other municipalities, especially the City of Calgary and how they regulate these uses. What they call it is sensitive uses. So any residential or living areas related to this application. You know, those would be required to be setback from -- I would have a setback distance that the Board deems appropriate. So anything that's non-livable -- as you mentioned, an accessory building or a part of the house which is storage or the garage or a mechanical room, I guess -- would be then appropriate to be in that setback area. (Transcript at 37, ll 13-20)

[15] The Board issued its decision December 30, 2022, dismissing Ms Landry's appeal, overturning the Development Authority's variance of the side yard setback and revoking the development permit in its entirety: Board Order No 2022-SDAB-019.

[16] The Board accepted Ms Landry's argument that it did not have the authority to enforce the Railway Guidelines because they "were not cemented in law or regulation and have not been adopted by the County as formal policy". However, the Board preferred CNR's recommendations over Ms Landry's expert and concluded the 30-metre setback was appropriate.

[17] The Board then considered the relaxation of the side yard setback to 3 metres. The Board concluded it "has concerns with the impact of the proposed development on the future development of the open road allowance" and that it is "not appropriate for the proposed development to be so close to an open road allowance". The Board reviewed the location options put forward by Ms Landry and since none of the options complied with both set back requirements, the Board refused the development permit:

> . . . The Board understands the Appellant's concerns about the associated costs if the proposed development were to be located on the more western portion of the Lands but, in the Board's opinion, the best use of the Lands would be to develop it

in a way that is as respectful as possible of the required setbacks. The Board cannot consider developer costs a primary factor when making its decision.

III. Did the Board err in law by revoking the entire development permit?

Appeals before the Board are de novo hearings

[18] While the *MGA* does not expressly state an appeal before the Board is a *de novo* hearing, this point is settled: ***Mahal & Sons Inc v Edmonton (City of)***, 2022 ABCA 22 at para 17 [***Mahal***], citing Laux and Stewart-Palmer, *Planning Law and Practice in Alberta*, 4th ed (Edmonton: Juriliber, 2019), s 10.4(5)(b) [*Planning Law*]; ***Stewart v Lac Ste Anne (County) Subdivision and Development Appeal Board)***, 2006 ABCA 264 at paras 10-12, 397 AR 185 [***Stewart***]. The real question is what is the scope of a *de novo* hearing before the Board?

[19] There is no universally accepted definition of a *de novo* hearing. Courts in different contexts have interpreted the scope of a *de novo* hearing in various ways. As this Court observed in ***Pacer Construction Holdings Corporation v Pacer Promec Energy Corporation***, 2018 ABCA 113 at para 65 [***Pacer***]:

> It appears, then, that some courts treat a "hearing *de novo*" as "an entirely new case. . . independent of the original case", while other courts use the terminology of "hearing *de novo*" to denote a hearing where "new evidence" or "new grounds" may be considered, while still other courts use the term "*de novo*" to describe that a reviewing court may substitute its own opinion for that of the original decision-maker.

[20] Drawing on ***Pacer*** at paragraphs 64-67, ***Stewart*** at paragraph 11, and ***Mahal*** at paragraphs 18-19, a *de novo* hearing means no deference is owed to the Development Authority and the Board:

- in all but exceptional cases, is not required to review the Development Authority's decision for error and can cure almost all errors of the Development Authority without having to remit the decision;
- can make whatever decision is appropriate on the merits;
- can hear evidence and argument that was not before the Development Authority;
- can take into account circumstances that may have changed since the Development Authority's decision; and,
- can confirm decisions of the Development Authority that it agrees are within the range of reasonable options.

[21] To date, this Court has not addressed the particular question in this appeal: whether the statutory jurisdiction of the Board to conduct a *de novo* hearing on appeal, allows it to determine *all* matters afresh, including matters not raised on appeal.

[22] To answer this question, it is appropriate to start with the words of the *MGA*. The words must be considered in the entire context, in their grammatical and ordinary sense and in harmony with the legislative scheme, its object and the intention of the Legislature: ***Quebec (Human Rights and Youth Rights Commission) v Director of Youth Protection of CISSS A***, 2024 SCC 43 at paras 23, 28 [***Director of Youth***], citing E.A. Driedger, *Construction of Statutes* (2nd ed. 1983), at p. 87, as quoted in ***Rizzo & Rizzo Shoes Ltd (Re)***, 1998 CanLII 837 (SCC) at para 21, [1998] 1 SCR 27; ***Auer v Auer***, 2024 SCC 36 at para 64 [***Auer***]; ***Northern Sunrise County v Virginia Hills Oil Corp***, 2019 ABCA 61 at para 37; ***Edmonton (City of) Library Board v Edmonton (City of)***, 2021 ABCA 355 at para 29 [***Library Board***].

[23] As the Supreme Court of Canada recently clarified in ***Director of Youth*** at paragraph 24, the words or text is the "anchor of the interpretive exercise" which goal is to "find harmony between the words of the statute and its object". The text specifies the means chosen by the legislature to achieve its purposes and may disclose any qualifications to those purposes. "[J]ust as the text must be considered in light of the context and object, the object of a statute and that of a provision must be considered with close attention always being paid to the text of the statute".

[24] In addition to assessing the text and context, "legislative intent can be understood only by reading the language chosen by the legislature in light of the *purpose* of the provision and the entire relevant context" (emphasis added): ***Canada (Minister of Citizenship and Immigration) v Vavilov***, 2019 SCC 65 at para 118, [2019] 4 SCR 653 [***Vavilov***], citing R. Sullivan, *Sullivan on the Construction of Statutes* (6th ed. 2014), at p. 217. "Therefore, the meaning of a provision must have regard to its text, context and purpose: ***Vavilov*** at paras 118-121; ***1193652 BC Ltd v New Westminster (City)***, 2021 BCCA 176 at para 64": ***Library Board*** at para 30; ***Auer*** at para 64.

[25] The statutory framework for land development in Alberta is set out in the *MGA*. This framework "is designed to give effect to the public interest in private land use decisions but not at the undue expense of private rights": ***Library Board*** at para 31, citing ***Love v Flagstaff (County of) Subdivision and Development Appeal Board***, 2002 ABCA 292 at para 23, 222 DLR (4th) 538 [***Flagstaff***]. Municipalities can achieve these broad planning objectives through the creation of statutory plans, land use policies, development regulations and land use bylaws. A land use bylaw "may prohibit or regulate and control the use and development of land and buildings in a municipality": *MGA* s 640(1.1). The land use bylaw must set out the permitted and discretionary uses of the land or buildings: *MGA* s 640(2)(b). A key difference exists between permitted and

discretionary uses: a development permit must be issued if the proposed development is for a permitted use and complies with the land use bylaw, whereas a development permit for a discretionary use is a matter of discretion and need not be issued at all: *MGA* ss 642(1) and (2).

[26] In deciding whether to issue a development permit, a development authority is bound by land use policies, development regulations, land use bylaws, and statutory plans. This ensures "certainty and predictability in planning law. . . The public must have confidence that the rules governing land use will be applied fairly and equally": ***Flagstaff*** at paras 22-29. Even though the issuance of a development permit for a discretionary use is discretionary, the planning "authority must have a sound planning reason for refusing a discretionary use": *Planning Law* s 9.5. In other words, the development authority must operate within the "legal constraints" applicable to the process and to the decision: ***Mason v Canada***, 2023 SCC 21 at paras 10-11, 64, 485 DLR (4th) 583 citing ***Vavilov*** at para 101; ***TransAlta Generation Partnership v Alberta***, 2024 SCC 37 at paras 17, 38, 64.

[27] Ms Landry argues that the Board's jurisdiction is limited to the issues raised by her on appeal (the conditions attached to her development permit) and not the Development Authority's variance of the side yard setback (which was not appealed). In support of her argument, she points to s 686(1) of the *MGA*: "A development appeal is commenced by filing a notice of appeal, **containing reasons**, with the board hearing the appeal" (emphasis added). She argues the Board's mandate under this section is to determine the appeal before it, in keeping with the notice of appeal and the specific **reasons** for the appeal put before the Board. She argues the *MGA* does not contemplate that the Board would re-open the entirety of the Development Authority's analysis.

[28] On appeals concerning discretionary uses, s 687(3)(c) of the *MGA* confers broad jurisdiction to the board hearing the appeal. A board "may confirm, revoke or vary the order, decision or development permit or any condition attached to any of them or make or substitute an order, decision or permit of its own".

[29] There is no provision in the *MGA* linking the Board's jurisdiction on appeal to the reasons for appeal. While setting out grounds of appeal is required by statute, they "do not go to jurisdiction". "No express statement in the statute ties the jurisdiction on appeal to these grounds. And we would not draw that inference . . . [as] the appeal is to be a de novo hearing. That being the case. . . [w]hat happened before is essentially irrelevant, and the grounds of appeal are merely a guide to what the issues at the hearing are likely to be": ***National-Oilwell Canada Limited v Madsen***, 1991 ABCA 335 at para 9, 120 AR 389. We reject Ms Landry's argument that s 686 of the *MGA* circumscribes the Board's jurisdiction to consider only those matters raised on appeal.

[30] The plain wording of s 687(3)(c) signals the Board's jurisdiction to conduct a true *de novo* hearing, meaning it is authorized to determine the matter afresh, making its own decision on the issues with no regard to or deference for the Development Authority's decision. The Board asks, "what is the right decision?"; there is no presumption of correctness on the part of the Development Authority: ***Pacer*** at paras 66-67. As summarized in *Planning Law* at s 10.7(1)(b):

> . . . In short, wherever a discretion has been conferred in a land use bylaw on a development authority, whether it is connection with uses or development standards, a subdivision and development appeal board has power to canvass the merits of the development authority's decision in that regard and substitute its own conclusions. In doing so, however, the board must remain within the confines established by the common law for the exercise of discretion by a statutory tribunal.

[31] It follows that the Board had the jurisdiction to consider the development permit for Ms Landry's proposed discretionary use in its entirety and re-exercise afresh all the discretionary powers of the Development Authority. The Board was not limited to considering only those issues raised on appeal by Ms Landry.

IV. Did the Board give reasonable notice of its intention to revoke the permit, or to consider the impact of the development on the road allowance

Reasonable notice was not given to Ms Landry

[32] "The standard of review for questions of procedural fairness is whether the standard of fairness required by the common law has been met": ***Library Board*** at para 28, citing ***Baron Real Estate Investments Ltd v Edmonton (City)***, 2021 ABCA 64 at para 17; ***Borgel v Paintearth (Subdivision and Development Appeal Board)***, 2020 ABCA 192 at para 11 [***Borgel***].

[33] The content of a duty of procedural fairness is "eminently variable" and highly contextual: ***Baker v Canada (Minister of Citizenship and Immigration)***, [1999] 2 SCR 817 at para 21, 174 DLR (4th) 193 [***Baker***]; ***Vavilov*** at para 77; ***Library Board*** at para 94. On appeal, an issue of procedural fairness will be reviewed, having regard to the context of the hearing itself and the resulting decision, "to determine whether the appropriate level of 'due process' or 'fairness' required by the statute or the common law has been afforded . . . The question is not whether the tribunal's decision was correct but whether the procedure chosen was fair given all the circumstances" (citations omitted): ***Borgel*** at para 11. Several factors are relevant to this determination including the nature of the decision being made, the process followed in making it, the nature of the statutory scheme, the legitimate expectations of the party challenging the decision, and the procedural choices made by the administrative decision maker. Underlying all these

factors, is the participatory rights of the parties which drive the duty of procedural fairness to ensure a fair, open, and full procedure: ***Baker*** at paras 22-27; ***Vavilov*** at para 77.

[34] Importantly, in determining the extent of any duty of fairness, a "significant factor" will be the impact of the decision on the party or parties. "The more important the decision is to the lives of those affected and the greater its impact on that person or those persons, the more stringent the procedural protections that will be mandated": ***Baker*** at paras 25. Whether there has been a prejudicial effect on a party is a key consideration in determining whether a breach of procedural fairness is established: ***Taseko Mines Limited v Canada (Environment)***, 2019 FCA 320 at para 62 [***Taseko***]; ***Library Board*** at para 94.

[35] The Board argues that Ms Landry and her counsel recognized the appeal was a *de novo* hearing and thus, Ms Landry would have or should have known the Board could and was required to address all issues relating to the development permit on appeal, including variance of the side yard setback and whether the permit should have been issued at all. In any event, the Board argues that it never indicated the variance of the side yard setback was accepted or adopted. We disagree. The mere fact that the *MGA* contemplates a *de novo* hearing before the Board does not mean a party faces an "anything goes" predicament. The right to a fair hearing must be regarded as an independent, unqualified right which is grounded in procedural justice which any person affected by an administrative decision is entitled to: ***Cardinal v Director of Kent Institution***, [1985] 2 SCR 643 at para 22, 24 DLR (4th) 44.

[36] While we have determined that the Board has a broad discretion to consider matters not raised on appeal, it is not relieved of ensuring procedural fairness. Having reviewed the transcript of the Board hearing, we are satisfied the Board never alerted Ms Landry to the fact: 1) that it had concerns with the side yard variance granted by the Development Authority; or 2) that it would revoke the development permit if Ms Landry did not provide a proposal for the location of her home that complied with both setbacks.

[37] Proceeding in this manner amounted to a breach of the duty of procedural fairness owed by the Board to Ms Landry. Appellants and other interested parties are not expected to be mind readers. It follows that Ms Landry was deprived of an opportunity to address the Board's concerns. As we do not know what her submissions would have been, it cannot be said they would not have affected the Board's decision to refuse her development permit. It is unquestionable that the refusal had a significant impact on Ms Landry and her ability to use her lands. On the record before us, the prejudicial effect of the Board's failure to give notice of its concerns to Ms Landry establishes not only a breach of procedural fairness, but that a remedy is warranted: ***Taseko*** at paras 62-64.

[38] We otherwise reject the Board's contention that it would be unduly onerous to require it to expressly raise its concerns on any condition or variance that is not the subject of the appeal. Again, while the duty of fairness is variable, it is driven by the context in which it is owed. Here, the Board's concerns about a specific condition or variance were the very reason for its refusal of Ms Landry's development permit and the duty of fairness demanded that she (and all the parties) be given an opportunity to respond to those concerns before a decision was made. As found in ***Baker*** at paragraph 22:

> . . .the purpose of the participatory rights contained within the duty of procedural fairness is to ensure that administrative decisions are made using a fair and open procedure, appropriate to the decision being made and its statutory, institutional, and social context, with an opportunity for those affected by the decision to put forward their views and evidence fully and have them considered by the decision-maker.

The Board did not identify any legitimate planning purpose for revoking the development permit

[39] While we have concluded that the Board enjoys a broad discretion to consider a discretionary development permit afresh, this discretion is not boundless. The Board is tasked with achieving 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. It follows that both 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: *Planning Law* s 10.7(1)(b), fn 263.

[40] The Board's decision fails to identify a legitimate planning reason for reversing the side yard variance. It simply said it "has concerns with the impact of the proposed development on the future development of the open road allowance" and that it is "not appropriate for the proposed development to be so close to an open road allowance".

[41] This is not a case where the Board's reasoning can 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. It is unclear if this letter was before the Board. If it was, it is not contained in the record.

[42] 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. In this instance and on this record, the Board failed to strike the appropriate balance between sound planning in the public interest and unnecessarily restricting Ms Landry from developing her land. The Board cannot simply point to the possibility, no matter how remote, that the road might be developed at some point in the future.

V. Conclusion

[43] A broad and liberal interpretation of s 687 of the *MGA* and the jurisprudence from this Court supports the conclusion that the Board enjoys a broad jurisdiction in conducting *de novo* hearings and can consider the matter afresh, in its entirety and is not restricted to considering only the issues raised on appeal. If the Board is considering the matter afresh and contemplates addressing aspects of the development permit not raised on appeal, procedural fairness compels the Board to provide notice of those aspects or its concerns to the appeal participants and to provide them with an opportunity to respond.

[44] The appeal is allowed, and the Board's decision is quashed. The matter is remitted to the Board for a rehearing, with a direction to consider this Court's comments at paragraphs 39-42.

Appeal heard on October 11, 2024

Memorandum filed at Calgary, Alberta
this 5th day of February, 2025

REGISTRAR
FILED
05 Feb 2025
NC
Court of Appeal of Alberta

Pentelechuk J.A.

Ho J.A.

Wakeling, J.A. (concurring in the result):

I. Introduction

[45] I agree with my colleagues that this appeal must be allowed. I write separately because my path to the same destination differs in some respects from that of my colleagues.

II. Questions Presented

[46] Section 687(3)(c) of the *Municipal Government Act* [3] states that a subdivision and development appeal board hearing an appeal from a decision of a development authority may "confirm, revoke or vary the ... development permit".

[47] Does this provision authorize the Subdivision and Development Appeal Board of Rocky View County to revoke the development permit Rocky View County's development authority issued to Regine Landry when neither the appellant nor the respondent asked it to do so?

[48] If so, did the Rocky View County Board comply with the principles of procedural fairness before revoking Ms. Landry's development permit?

III. Brief Answers

[49] Section 687(3)(c) of the *Municipal Government Act* expressly authorizes a subdivision and development appeal board determining an appeal to "revoke" a development permit. The text could not be clearer.

[50] This is, in effect, what the Rocky View County Board did.

[51] The fact that a statutory delegate has the authority to do something does not relieve it of the obligation to comply with the principles of procedural fairness.

[52] The Rocky View County Board did not comply with the principles of procedural fairness. It failed to give Ms. Landry reasonable notice that it was considering revoking in its entirety the development permit the development authority issued to her.

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[3] R.S.A 2000, c. M-26.

[53] The appeal must be allowed. The Rocky View County's Board decision is cancelled. It must rehear Ms. Landry's appeal. It must do so in accordance with the opinion of this Court.

IV. Key Provisions of the Municipal Government Act

[54] The key provisions of the *Municipal Government Act*[4] are set out below:

> 683 Except as otherwise provided in a land use bylaw, a person may not commence any development unless the person has been issued a development permit in respect of it pursuant to the land use bylaw.
>
> …
>
> 684(1) The development authority must make a decision on the application for a development permit within 40 days after the receipt by the applicant of an acknowledgment under section 683.1(5) or (7) or, if applicable, in accordance with a land use bylaw made pursuant to subsection 640.1(b).
>
> …
>
> 685(1) If a development authority
>
> …
>
> (b) issues a development permit subject to conditions…
>
> the person applying for the permit … may appeal the decision in accordance with subsection (2.1).
>
> …
>
> (2.1) An appeal referred to in subsection (1) or (2) may be made
>
> …
>
> (b) in all other cases to the subdivision and development appeal board.

[4] Id.

…

686(1) A development appeal is commenced by filing a notice of appeal, containing reasons, with the board hearing the appeal.

…

687(1) At a hearing under section 686, the board hearing the appeal must hear

(a) the appellant or any person acting on behalf of the appellant,

(b) the development authority from whose order, decision or development permit the appeal is made, or a person acting on behalf of the development authority

…

(3) In determining an appeal, the board hearing the appeal referred to in subsection (1)

…

(c) may confirm, revoke or vary the order, decision or development permit or any condition attached to any of them or make or substitute an order, decision or permit of its own.

…

689(1) On the hearing of the appeal

…

(b) the Court [of Appeal] may confirm, vary, reverse or cancel the decision.

(2) In the event that the Court cancels a decision, the Court must refer the matter back to the … subdivision and development appeal board, and the … board must rehear the matter and deal with it in accordance with the opinion of or any direction given by the Court on the question of law or jurisdiction.

V. Statement of Facts

[55] Ms. Landry purchased land zoned "Agricultural, General" in Rocky View County.[5]

[56] She wanted to build a residence on it.[6] This was a discretionary use under Rocky View County's Land Use Bylaw.[7]

[57] Ms. Landry applied to the development authority for a development permit.[8] The development authority approved her permit subject to conditions.[9]

[58] Ms. Landry appealed to the Rocky View County Board. She asked it to remove the conditions the development authority imposed.[10]

[59] The Rocky View County Board "upheld" Ms. Landry's appeal.[11] It "overturned"[12] the development permit and "refused"[13] it.

[60] Ms. Landry, with leave of this Court,[14] appeals.

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[5] Rocky View County Subdivision and Development Appeal Board, Decision, ¶ 7. Appeal Record 38.

[6] Id ¶ 4. Appeal Record 38.

[7] Id ¶ 117. Appeal Record 47.

[8] Id ¶ 4. Appeal Record 38.

[9] Id ¶ 8. Appeal Record 38.

[10] Id. ¶ 9. Appeal Record 38.

[11] Id. ¶ 130. Appeal Record 49

[12] Id.

[13] Id.

[14] *Landry v. Subdivision and Development Appeal Board of Rocky View County*, 2023 ABCA 189, ¶ 3 (chambers) per Slatter, J.A. ("Under section 688(3) of the *Municipal Government Act* … to obtain permission to appeal the applicant must demonstrate that the appeal involves a question of law of sufficient importance to merit a further appeal and has a reasonable chance of success. The applicant has met the test on the following issues: (a) When hearing the applicant's appeal of the condition on her development permit, did the Board err in law in revoking the entire permit? (b) Was the applicant given reasonable notice of the Board's intention to revoke the permit, or to consider the impact of the development on the road allowance?").

VI. Analysis

A. There Are Sound Principles for the Interpretation of Statutes

[61] The basic principles governing the interpretation of statutes are straightforward and easy to state and understand.[15]

[62] First, the reader must be cognizant of the context that led to the creation of the contested text. "Context is a primary determinant of meaning".[16]

[63] This obligation requires an adjudicator to become familiar with the entire statute and other statutes on related subjects.[17] "[N]o one should profess to understand any part of a statute ... before he [or she] had read the whole of it".[18]

---

[15] *Abbas v. Ensurance Ins. Co. of Canada*, 2023 ABCA 36, ¶ 48; 477 D.L.R. 4th 613, 643 per Watson & Wakeling, JJ.A. ("The governing principles of statutory interpretation are straight forward and not contentious"); *Equs Rea Ltd. v. Alberta Utilities Comm'n*, 2023 ABCA 142, ¶ 61 ("The governing principles of statutory interpretation are straightforward and provide clear directions to adjudicators") & *Alexis v. Alberta*, 2020 ABCA 188, ¶ 42; 8 Alta. L.R. 7th 314, 333 per Wakeling & Greckol, JJ.A ("The basic approach to a statutory interpretation problem is easy to state"), leave to appeal ref'd, [2020] 3 S.C.R. xii.

[16] A. Scalia & B. Garner, Reading Law: The Interpretation of Legal Texts 167 (2012). See *Commission des droits de la personne et des droits de la jeunesse v. Directrice de la protection de la jeunesse du CISS A*, 2024 SCC 43, ¶ 24 per Wagner, C.J. ("just as the text must be considered in light of the context and object, the object of a statute and that of a provision must be considered with close attention always being paid to the text of the statute, which remains the anchor of the interpretive exercise. The text specifies, among other things, the means chosen by the legislature to achieve its purposes").

[17] *Abbas v. Esurance Ins. Co. of Canada*, 2023 ABCA 36, ¶ 49; 477 D.L.R. 4th 613, 643-44 per Watson & Wakeling, JJ.A. ("an adjudicator must read the entire statute and related statutes. … 'The entirety of the document thus provides the context for each of its parts.'"); *Panama Ref. Co. v. Ryan*, 293 U.S. 388, 439 (1935) per Cardozo, J. ("the meaning of an statute is to be looked for, not in a single section, but in all the parts together and in their relation to the end in view") & *Southwest Water Authority v. Rumble's*, [1985] A.C. 609, 617 (H.L.) per Lord Scarman ("It is not … possible to determine … [the] true meaning [of the contested statutory provision] save in the context of the legislation read as a whole").

[18] *Attorney General v. Prince Ernest Augustus of Hanover*, [1957] A.C. 436, 463 (H.L.) per Viscount Simonds.

[64] Second, an adjudicator must attempt to ascertain the purpose of the text. Text always serves a purpose.[19] The text usually records a statute's purpose.[20]

[65] It is important to acknowledge that the benefit an adjudicator derives from ascertaining the purpose of a text may be limited. The purpose may be expressed in terms too abstract to be helpful.[21] Or, if the text's ordinary meaning is obvious, knowledge of its purpose is of no or little value.

[66] The adjudicator's third task is to identify the ordinary meaning of the text.[22] "Statutory words are uniformly presumed, unless the contrary appears, to be used in their ordinary and usual sense, and with the meaning commonly attributed to them".[23] What meaning would a reasonable

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[19] *The Queen v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295, 331 per Dickson, J. ("All legislation is animated by an object the legislature intends to achieve"); *Abbas v. Esurance Ins. Co. of Canada*, 2023 ABCA 36, ¶ 52; 477 D.L.R. 4th 613, 645-46 per Watson & Wakeling, JJ.A. ("Legislators always pass laws for a purpose") & Frankfurter, "Some Reflections on the Reading of Statutes", 47 Colum. L. Rev. 527, 538-39 (1947) ("Legislation has an aim; it seeks to obviate some mischief, to supply an inadequacy, to effect a change of policy, to formulate a plan of government").

[20] *Abbas v. Esurance Ins. Co. of Canada*, 2023 ABCA 36, ¶ 52; 477 D.L.R. 4th 613, 645-46 per Watson & Wakeling, JJ.A. ("The best indication of a statute's purpose is the statute's text"); *Frank v. Canada*, 2019 SCC 1, ¶ 130; [2019] 1 S.C.R. 3, 71 per Côté & Brown, JJ. ("the best way of discerning a legislature's purpose will usually be to look to the legislation itself") & A. Scalia & B. Garner, Reading Law: The Interpretation of Legal Texts 33 (2012) ("the purpose is to be gathered only from the text itself").

[21] *Alberta Union of Provincial Employees v. Alberta*, 92 C.L.L.C. 14,390 at 14,392 (Alta. Pub. Ser. E ee Rel. Bd. 1990) per Wakeling, Chair ("an abstract statement of purpose will as a rule be less helpful to the adjudicator than one that is specific").

[22] *Abbas v. Esurance Ins. Co. of Canada*, 2023 ABCA 36, ¶ 50; 477 D.L.R. 4th 613, 644 per Watson & Wakeling, JJ.A ("an adjudicator must ask what the plain and ordinary meaning of the contested text is"); *Glamorgan Landing Estates GP Inc. v. City of Calgary*, 2024 ABCA 150, ¶ 100; 71 Alta. L.R. 7th 35, 82-83 per Wakeling, JA. ("for words not defined in the statute or an applicable interpretation enactment, the adjudicator must identify the ordinary meaning of the text and interpret the text in a manner faithful to its ordinary meaning"); *Commission des droits de la personne et des droits de la jeunesse v. Directrice de la protection de la jeunesse du CISS A*, 2024 SCC 43, ¶ 28 per Wagner, C.J. ("The starting point in any interpretive exercise is the text of the provision. In the absence of statutory definitions, what should be focused on is the grammatical and ordinary meaning of the text"); *The Queen v. D.A.I.*, 2012 SCC 5, ¶ 26; [2012] 1 S.C.R. 149, 166 per McLachlin C.J. ("The first and cardinal principle of statutory interpretation is that one must look to the plain words") & *Cozens v. Brutus*, [1973] A.C. 854, 865 (H.L. 1972) per Viscount Dilhorne ("Unless the context otherwise requires, words in a statute have to be given their ordinary natural meaning").

[23] *Caminetti v. United States*, 242 U.S. 470, 485-86 (1917) per Day, J.

reader who uses the language correctly give the text when it was made?[24] Reputable dictionaries provide invaluable assistance to adjudicators.[25]

[67] Fourth, no adjudicator can *ever* give text a meaning it "cannot possibly bear".[26] An interpretation that ignores the ordinary meaning of text blatantly violates the third principle. This is a grievous error. A judge who, in effect, rewrites a statute usurps the role of a legislator. A judge is not a member of the legislative branch. And a judge, like a legislator, must not stray outside the constitutional zone allotted to the judiciary.

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[24] *Alexis v. Alberta*, 2020 ABCA 188, ¶ 47; 8 Alta. L.R. 7th 314, 335-36 per Wakeling & Greckol, J.J.A ("A permissible meaning is one that a reasonable reader who uses the language correctly would give the text at the time of its production").

[25] *Humphreys v. Trebilcock*, 2017 ABCA 116, ¶ 113; [2017] 7 W.W.R. 343, 377 ("authoritative dictionaries … record a range of potential meanings from which the court must select the most suitable for the context"), leave to appeal ref'd, [2017] 2 S.C.R. vii; *Lay v. Lay*, 2019 ABCA 21, ¶ 63; [2019] 2 W.W.R. 254, 275 per Wakeling, J.A. ("Dictionaries compile the ordinary meaning of words that those who use a language correctly understand words to have"), leave to appeal ref'd, [2019] 2 S.C.R. xi & *Cozens v. Brutus*, [1973] A.C. 854, 861 (H.L. 1972) per Lord Reid ("When considering the meaning of a word one often goes to a dictionary").

[26] *The King v. Tran*, 2024 ABCA 241, ¶ 24; 439 C.C.C. 3d 486, 495 ("legal text can never be given a meaning it cannot possibly bear"). See *Abbas v. Esurance Ins. Co. of Canada*, 2023 ABCA 36, ¶ 50; 477 D.L.R. 4th 613, 643 per Watson & Wakeling, JJ.A ("it is a cardinal sin for an adjudicator to give text a meaning it cannot possibly bear"); *Zuk v. Alberta Dental Ass'n.*, 2018 ABCA 270, ¶ 159; 426 D.L.R. 4th 496, 539 ("Words must not be given meanings they cannot possibly bear"), leave to appeal ref'd, [2019] 2 S.C.R. xv; *Jones v. Director of Public Prosecutions*, [1962] A.C. 635, 662 (H.L. 1961) per Lord Reid ("It is a cardinal principle applicable to all kinds of statutes that you may not for any reason attach to a statutory provision a meaning which the words of that provision cannot reasonably bear"); A. Scalia & B. Garner, Reading Law: The Interpretation of Legal Texts 31 (2012) ("A fundamental rule of textual interpretation is that neither a word nor a sentence may be given a meaning that it cannot bear") & H. Hart & A. Sachs, The Legal Process: Basic Problems in the Making and Application of Law 1374 (1994) ("a court should ... not give the words [in a statute] ... a meaning they will not bear"). *Contra, Re Rizzo & Rizzo Shoes Ltd*, [1998] 1 S.C.R. 27 (notwithstanding that Ontario's *Employment Standards Act* only granted termination pay to employees who lost their job as a result of an employer's decision to terminate their employment and that the employees of Rizzo Shoes Ltd. lost their jobs because the creditors of Rizzo Shoes secured a receiving order under the *Bankruptcy Act* and no decision on the part of their employer, the Supreme Court held that the former employees of Rizzo Shoes were entitled to termination pay) & *Holy Trinity Church v. United State*, 143 U.S. 457 (1892) (notwithstanding that a federal law prohibited the importation of aliens "to perform labor of service of any kind" unless a worker fell within an exempted category – professional actors, artists, lecturers, and domestic servants, for example – and the fact that the Holy Trinity Church contracted with an alien – an English pastor – to serve as the rector of the church and a pastor is not an exempted worker, the United States Supreme Court held that the federal law did not apply to pastors).

[68] Fifth, "[i]f the text supports only one plausible meaning, the inquiry is complete".[27] A court must accord the text its obvious meaning.

[69] That the only interpretation possible does not advance the perceived purpose of the enactment or is "contrary to common sense"[28] is irrelevant.

[70] "Purpose never trumps text".[29] An adjudicator can *never* advance an enactment's purpose as a justification for ignoring the plain meaning of the text.[30] "[T]he general object and spirit of the provision at issue can never supplant a court's duty to apply an unambiguous provision of the Act".[31]

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[27] *Abbas v. Esurance Ins. Co. of* Canada, 2023 ABCA 36, ¶ 51; 477 D.L.R. 4th 613, 645 per Watson & Wakeling, JJ.A. See also *Equs Rea Ltd. v. Alberta Utilities Comm'n*, 2023 ABCA 142, ¶ 69 ("if the text bears only one plausible meaning, the inquiry ends"); *The Queen v. McIntosh*, [1995] 1 S.C.R. 686, 697 per Lamer, C.J. ("where no ambiguity arises on the face of a statutory provision, then its clear words should be given effect") & *Black-Clawson Inter. Ltd. v. Papierwerke Waldhof-Aschaffenburg A.G.*, [1975] A.C. 591, 613 (H.L.) per Lord Reid ("In the comparatively few cases where the words of a statutory provision are only capable of having one meaning, that is an end of the matter and no further inquiry is permissible").

[28] *The Queen v. McIntosh*, [1995] 1 S.C.R. 686, 704 per Lamer, C.J. ("where, by the use of clear and unequivocal language capable of only one meaning, anything is enacted by the legislature, it must be enforced however harsh or absurd or contrary to common sense the result may be").

[29] *Vujicic v. Estate of MacEachern*, 2022 ABCA 263, ¶ 70; 51 Alta. L.R. 7th 1, 43 per Wakeling, J.A.

[30] *Ursa Ventures Ltd. v. City of Edmonton*, 2016 ABCA 135, ¶ 85, 91 C.P.C 7th 73, 106 per Wakeling, J.A. ("Overzealous pursuant of an undeniable legislative purpose must not cause one to overlook the limited scope of the words the legislators used"); *The King v. Breault*, 2023 SCC 9, ¶ 26; 481 D.L.R. 4th 195, 207 per Côté, J. ("as laudable and important as the fight against impaired driving may be, it is not permissible, in the pursuit of that objective, to distort the meaning to be given to the text of s. 254(2)(b) *Cr. C.* in the statutory interpretation exercise") & *Re Sound v. Motion Picture Theatre Ass'ns of Canada*, 2012 SCC 38, ¶ 33; [2012] 2 S.C.R. 376, 389 per LeBel, J. ("Although statutes may be interpreted purposively, the interpretation must nevertheless be consistent with the words chosen by Parliament").

[31] *Shell Canada Ltd. v. Canada*, [1999] 3 S.C.R. 622, 642 per McLachlin, J.

[71] Here is the last principle. If the text supports more than one plausible meaning, the adjudicator must "select the option that best advances the purpose that accounts for the text."[32] Justice Duff,[33] one of Canada's outstanding jurists, said this:[34]

> [W]here you have rival constructions of which the language of the statute is capable you must resort to the object or principle of the statute if the object or the principle of it can be collected from is language; ... then the construction which best gives effect to the ... [object] or principle ought to prevail.

[72] These principles are best understood when applied to a real-life scenario.

[73] Suppose community residents complain to their municipal councillors about the noise lawn mowers operated by commercial gardeners create in the evening hours. The excessive noise makes it difficult for their children to fall asleep. The counsellors ask the municipality's law department to draft a bylaw that will be responsive to their constituents' concerns. The law department presents a draft bylaw. It prohibits the operation of lawnmowers for an eleven-hour period commencing at 9:00 p.m. every day from April 1 to October 30. One counsellor asks why the draft does not prohibit the operation of leaf blowers, hedge clippers, and motorcycles that make a lot of noise. The drafter's reply emphasizes that there were no complaints about leaf blowers, hedge clippers, and motorcycles and that the bylaw as drafted is understandable and easy to enforce. There cannot be a debate about whether a machine is a lawnmower. The municipality enacts the bylaw even though the counsellors understood it was imperfect – it did not prohibit all activities that generate enough noise to disturb children's sleep and it captures some activities that generate very little, if any, noise – the operation of electric lawnmowers, for example. An overzealous bylaw enforcement officer responding to a complaint about the operation of a noisy gasoline lawnmower tickets the commercial operator of the noisy lawnmower. While in the same neighborhood, the officer also tickets a homeowner operating his silent push reel lawnmower during the prohibited period. The commercial operator pleads guilty and pays his $250 fine. The operator of the reel push lawnmower pleads not guilty. At trial, the bylaw enforcement officer admits that the

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[32] *Humphreys v. Trebilcock*, 2017 ABCA 116, ¶ 109; [2017] 7 W.W.R. 343, 376, leave to appeal ref'd, [2017] 2 S.C.R. vii.

[33] Justice Duff was one of a very small number of Canadian judges who sat on the Judicial Committee of the Privy Council. See *Judicial Committee Amendment Act 1895*, 58 & 59 Vict., c. 44 (U.K.).

[34] *McBratney v. McBratney*, 59 S.C.R. 550, 561 (1919). See also *Celgene Corp. v. Canada*, 2011 SCC 1, ¶ 21; [2011] 1 S.C.R. 3, 13 per Abella, J. ("The words, if clear, will dominate; if not, they yield to an interpretation that best meets the overriding purpose of the statute") & *The Queen v. D.A.Z.*, [1992] 2 S.C.R. 1025, 1042 per Lamer, C.J. ("the best approach to the interpretation of words in a statute is to place upon them the meaning that best fits the object of the statute, provided that the words themselves can reasonably bear that construction").

defendant's push reel lawnmower made no noise. The defendant admits, in argument, that his push reel lawnmower is a lawnmower. The bylaw court reluctantly convicts. The adjudicator consults Webster's Third New International Dictionary of the English Language Unabridged's definition of lawnmower to determine whether a push reel lawnmower is a lawnmower. Webster's reads this way: "a hand-operated or power-operated machine for cutting grass or lawns". A picture of a push reel lawnmower illustrates the definition. The bylaw court properly concludes that the defendant operated a lawnmower during prohibited hours. The adjudicator is not swayed by the fact that the bylaw did not apply to all sources of noise in residential neighborhoods or that it applied to a type of lawnmower that made no noise. The bylaw was both over and unexclusive relative to the object of the bylaw. According to the adjudicator, the text of the bylaw was clear and that was decisive. The adjudicator was correct.

B. Application of the Statutory Interpretation Principles

1. Overview

[74] It is necessary to review the *Municipal Government Act* [35] in its entirety.

[75] Section 683 of the *Municipal Government Act* states that "[e]xcept as otherwise provided in a land use bylaw, a person may not commence any development unless the person has been issued a development permit in respect of it pursuant to the land use bylaw".

[76] The *Act* assigns to development authorities the responsibility to assess applications for development permits.[36] A council "must, by bylaw, provide for ... a development authority to exercise development powers and perform duties on behalf of the municipality".[37] Those who perform development authority tasks are municipal employees.

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[35] R.S.A. 2000, c. M-26.

[36] Id. s. 683.1.

[37] Id. s. 623(b). See *Zoning Bylaw*, Bylaw No. 20001, s. 7.100.1.1 ("The Development Planner ... must receive all applications ... [and] ... must review each application") & *City Administration Bylaw*, Bylaw No. 16620, s. 32 ("The City Manager is the City's subdivision authority and the City's development authority and may exercise the City's subdivision and development powers and duties") (Edmonton); *Land Use Bylaw*, Bylaw No. IP2007, s. 15(1) ("The Development Authority must administer this Bylaw and decide upon all development permit applications") (Calgary) & *Land Use Bylaw*, Bylaw No. 4168, ss. 3.1(i) ("The Chief Administration Officer is a Development Authority, with powers and duties as set out in this Bylaw or is any other enactment") & 3.2(i) ("A Development Authority may issue a Development Permit") (Medicine Hat).

[77] A person who is dissatisfied with the decision made by a development authority may appeal the decision to a subdivision and development appeal board.[38]

[78] A council "must by bylaw ... establish a subdivision and development appeal board".[39] The *Act* prohibits municipal employees and persons who carry out "subdivision and development powers, duties and function on behalf of the municipality" from serving on a subdivision and development appeal board.[40] A subdivision and development appeal board consists of members of the community who are not municipal employees. Members sit in panels hearing appeals regarding development permits.

[79] This brief overview demonstrates that the functions of development authorities and subdivision and development appeal boards are very different. Municipal employees man the development authorities. They make development permit decision without holding hearings. Community members populate the subdivision and development appeal boards. Subdivision and development appeal boards hear the parties.[41] The voice of the community comes through the decisions of subdivision and development authority appeal boards, not the development authority.

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[38] *Municipal Government Act*, R.S.A. 2000, C. M-26, s. 685.

[39] Id. s. 627(1)(a).

[40] Id. s. 627(4). See *Subdivision and Development Appeal Board Bylaw*, Bylaw No. 18307 ss. 6 ("Councillors, City employees, and members of a municipal planning commission are ineligible as members of the Subdivision and Development Appeal Board") & 12(1) ("The chair may approve hearing procedures of the Subdivision and Development Appeal Board, provided that those procedures do not conflict with the Municipal Government Act") (Edmonton); *The Subdivision and Development Appeal Board*, Bylaw No. 25P95, ss. 4(1) ("The following persons may not be appointed as members of the Board: (a) an employee of the City, (b) a person who carries out subdivision or development powers, duties and functions on behalf of the City, (c) a member of the Calgary Planning Commission, or (d) a member of Council") & 9(1)(c) ("The Board shall have the power to establish such other rules relating to matters of the procedures, operation and conduct of business of the Board as are deemed appropriate by the Board") (Calgary); *The Red Deer Tribunal Bylaw*, Bylaw No. 3680/2072, ss. 19 ("Unless exempted by Council, a person who previously served as a Member, Council member or City employee is ineligible for appointment to the Boards for a period of two years after leaving any of these roles") & 33 ("The Boards are not bound by rules of evidence and may make their own rules governing the practice and procedure applicable to the proceedings including, but not limited to, the admission and distribution of evidence") & *Subdivision and Development Appeal Board Bylaw*, Bylaw No. 3009, ss. 4(2) ("The Appeal Board shall consist of five ... members as follows: (a) Four ... electors of the City of Medicine Hat who shall not be employees or officers of the City of Medicine Hat or members of Council; and (b) One ... member of Council") & 8 ("The Appeal Board may establish procedures governing the conduct of its meetings that are consistent with the provisions of this Act and this Bylaw") (Medicine Hat).

[41] *Municipal Government Act*, R.S.A. 2000, c. M-26, s. 687(1).

When the two statutory delegates entertain different views about the merits of a proposed development, the decision of a subdivision and development appeal board prevails.

[80] One of the objects of the part of the *Municipal Government Act*[42] dealing with planning and development is to ensure that community members who are independent of the municipal development authority and the municipality play a major role in development decisions.

2. The Text Rules

[81] The text of section 687(3)(c) of the *Municipal Government Act*[43] assigns plenary jurisdiction to a subdivision and development appeal board that is hearing an appeal from a decision of a development authority regarding a development permit application.

[82] A subdivision and development appeal board has a number of options.

[83] First, it can "confirm" the development permit. Confirm means "[t]o give formal approval to".[44]

[84] Second, it can "revoke" the development permit. Revoke means "to annul or make void by taking back or recalling; to cancel, rescind, repeal, or review".[45]

[85] Third, it can "vary" – change[46] – the development permit.

[86] Fourth, it can "make a substitute ... permit of its own".

[87] In short, because a subdivision and development appeal board may may revoke a development permit the development authority has issued, the filing of a notice of appeal with a subdivision and development appeal authority puts at risk the very existence of a development

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[42] R.S.A. 2000, c. M-26, Part 17.

[43] R.S.A. 2000, c. M-26.

[44] Black's Law Dictionary 375 (12th ed. B. Garner chief ed. 2024). See also The American Heritage Dictionary of the English Language 386 (5th ed. 2016) ("To make valid or binding by a formal or legal act").

[45] Black's Law Dictionary 1583 (12th ed. B. Garner chief ed. 2024). See also The American Heritage of the English Language 1503 (5th ed. 2016) ("To invalidate or cause to no longer be in effect, as by voiding or cancelling: Her license was revoked").

[46] Black's Law Dictionary 1873 (12th ed. B Garner chief ed. 2024) ("To change in some usu. small way; to make somewhat different").

permit issued by a development authority. The holder of a permit must give careful consideration to the likelihood that a subdivision and development appeal board will revoke a development permit when considering an appeal.[47] Is a bird in the hand worth two in the bush?

[88] The text of section 687(3)(c) is clear. There is no other plausible meaning. As a result, the text rules.

[89] The Rocky View County Board, without question, had the authority to revoke the development permit the development authority issued to Ms. Landry.

[90] There is no need to take into account the purpose that animates section 687(3)(c) – the text is unambiguous.

[91] But I note that this interpretation of section 687(3)(c) of the *Municipal Government Act*[48] advances the object of the provisions – to allow the community a significant voice in the development process. Concordance between the object and means of an enactment is not unusual.[49]

[92] This Court came to the same conclusion in *Mahal & Sons Inc. v. City of Edmonton*[50] when it held that a subdivision and development appeal board "can make whatever decision is appropriate on the merits".

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[47] E.g., *City of Edmonton v. Edmonton East (Capilano) Shopping Centres*, 2016 SCC 47, ¶¶ 6, 8 & 61; [2016] 2 S.C.R. 293, 303-04 & 322 per Karakatsanis, J. ("When reviewing the Company's submissions [in support of its appeal to the Assessment Review Board] and evidence, the City discovered what it determined was an error in its original assessment. …[T]he City informed the Company that it would seek an increase [in the assessed value of its mall] from the Board. In its written submissions to the Board, the City requested that the Board increase the assessed value to approximately $45 million. …. The Board ultimately increased the assessment to approximately $41 million. …. To conclude, it was reasonable for the Board to interpret s. 467(1) [of the *Municipal Government Act*] to permit it to increase the assessment at the City's request. … [T]his interpretation is consistent with the ordinary meaning of 'change' [in section 467(1)] and the overarching policy goal … to ensure assessments are correct, fair and equitable").

[48] R.S.A 2000, c. M-26.

[49] E.g., *City of Edmonton v. Edmonton East (Capilano) Shopping Centres*, 2016 SCC 47, ¶ 46; [2016] 2 S.C.R. 293, 316 per Karakatsanis, J. ("This grammatical and ordinary meaning of s. 467(1) [of the *Municipal Government Act*] is consistent with the purpose of the … [*Municipal Government Act*]").

[50] 2022 ABCA 22, ¶ 18.

[93] It can be safely stated that the authority bestowed on a subdivision and development appeal board by section 687(3)(c) of the *Municipal Government Act* means that the hearing it conducts may be accurately described as a *de novo* hearing.[51]

[94] Other appeal protocols within the *Municipal Government Act*[52] also incorporate the same risk features for the appellant as does section 687(3)(c) of the *Municipal Government Act*.

[95] So does section 687(1) of the *Criminal Code*.[53] It reads this way:

> Where an appeal is taken against sentence, the court of appeal shall, unless the sentence is one fixed by law, consider the fitness of the sentence appealed against, and may on such evidence, if any, as it thinks fit to require or to receive.

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[51] Id. ¶ 17 ("It is well-established that the SDAB decides planning appeals *de novo*"); *Stewart v. Subdivision and Development Appeal Board of Lac Ste. Anne County*, 2006 ABCA 264, ¶¶ 9 & 10; 274 D.L.R. 4th 291, 296 per Berger, J.A. ("In determining the appeal, the Subdivision and Development Appeal Board is authorized, pursuant to s. 687(3)(c), to 'confirm, revoke or vary the order, decision, or development permit ... or make or substitute an order, decision or permit of its own.' It follows that although the *Municipal Government Act* does not expressly state that the hearing before the SDAB is a hearing *de novo*, the statutory provisions point clearly to that conclusion") & *Edith Lake Service Ltd. v. City of Edmonton*, 1981 ABCA 328, ¶ 9; 34 A.R. 390, 396 per Haddad, J.A. ("The proceedings before the Board would take the form of a hearing *de novo* and having regard to the broad statutory powers conferred upon it the Board's jurisdiction would permit it to consider and rule upon the merits"). See also F. Laux, Q.C. & G. Stewart-Palmer, Planning Law and Practice in Alberta 10-39 (4th ed. looseleaf 2019) ("A subdivision and development appeal board hearing is *de novo*. This means that the board should canvas the issues raised afresh and without being hampered by the decision below").

[52] S. 467(1) ("An assessment review board may, with respect to any matter referred to in section 460(5), make a change to an assessment roll or tax roll or decide that no change is required") & (1.1) ("For greater certainty, the power to make a change under subsection (1) includes the power to increase or decrease an assessed value shown on an assessment roll or tax roll"). See *City of Edmonton v. Edmonton East (Capilano) Shopping Centres*, 2016 SCC 47, ¶¶ 6, 8 & 61; [2016] 2 S.C.R. 293, 303-04 & 322 per Karakatsanis, J. ("When reviewing the Company's submissions [in support of its appeal to the Assessment Review Board] and evidence, the City discovered what it determined was an error in its original assessment. ... [T]he City informed the Company that it would seek an increase [in the assessed value of its mall] from the Board. In its written submissions to the Board, the City requested that the Board increase the assessed value to approximately $45 million. .... The Board ultimately increased the assessment to approximately $41 million. .... To conclude, it was reasonable for the Board to interpret s. 467(1) [of the *Municipal Government Act*] to permit it to increase the assessment at the City's request") & id. at ¶ 91, [2016] 2 S.C.R. at 336 per Côté & Brown, JJ. ("The majority characterizes the issue …. as to whether s. 467 of the Act allowed the Board to 'increase the assessment at the City's request' … . We agree that the word 'change' in s. 467(1) should be given its ordinary and grammatical meaning, and that the Board is not precluded from ever increasing an assessment").

[53] *Criminal Code*, R.S.C. 1985, c. C-46.

(a) vary the sentence within the limits prescribed by law for the offence of which the accused was convicted; or

(b) dismiss the appeal.

[96] Justice Ritchie, in *Hill v. The Queen*,[54] held that the offender who filed a sentence appeal faced the risk that the appeal court might increase his or her sentence: "[T]he Court of Appeal has power to increase a sentence when an appeal is taken ... by a person who has been convicted at trial ... [T]his power is in no way dependant upon an appeal being asserted by the Attorney General."

C. The Rocky View County Board Breached the Rules of Procedural Fairness

[97] The Rocky View County Board, in failing to give Ms. Landry reasonable notice that it was considering revoking in its entirety the development permit the development authority issued to her, breached the principles of procedural fairness. I agree with my colleagues' opinion set out in paragraphs 34 to 38 of their judgment.

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[54] (No.2), [1977] 1 S.C.R. 827, 860 (1975). The Court of Appeal of Alberta will not increase a sentence in an offender sentence appeal unless the Crown complies with rule 16.10 of the *Criminal Appeal Rules*, S.I. / 2018-34 and files and serves a notice of variation of sentence stating that "on the hearing of the appeal of the sentence imposed, Her Majesty the Queen intends to argue that the sentence should be increased or otherwise varied". See *The Queen v. Laboucane*, 2016 ABCA 176, ¶ 98; 337 C.C.C. 3d 445, 471 ("Arguably, an intermediate appellate court possesses jurisdiction to adjust sentences to make them lawful and fit, irrespective of which side appeals and puts the case before it. Certainly, no limit on this Court's jurisdiction is specified under s 687 of the *Criminal Code*. Nonetheless, this Court has adopted and applied for many years a fair notice practice under R 853 of the Alberta Rules of Court, Court of Appeal Criminal Rules") *& Rules of the Court of Appeal of Alberta as to Criminal Appeals*, SI/77-174, s. 853 ("(1) In an appeal against sentence by a convicted person, the Attorney-General, if he intends upon the hearing of the appeal to contend that the sentence should be increased or varied, shall, not less then three ... days before the commencement of the sittings of the Court at which the appeal comes to be heard, give notice of such intention in writing to the appellant or his counsel. (2) In any appeal against sentence by either a convicted person or the Attorney-General, the Court of its own motion may treat the whole matter of sentence as open, and on appeal by a convicted person, may increase or vary the sentence, and on an appeal by the Attorney-General, decrease or vary the sentence, provided that notice that such increase or variation is to be considered, is given by the Court so that the convicted person or the Attorney-General may be heard on such disposition").

VII. Conclusion

[98] The appeal is allowed. The Rocky View County Board's decision is cancelled.[55] It must rehear Ms. Landry's appeal in accordance with the opinion of this Court.[56]

Appeal heard on October 11, 2024

Memorandum filed at Calgary, Alberta
this 5th day of February, 2025

REGISTRAR
FILED
05 Feb 2025
NC
Court of Appeal of Alberta

Wakeling J.A.

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[55] *Municipal Government Act*, R.S.A. 2000, c. M-26, s. 689(1)(b) ("On the hearing of the appeal ... (b) the Court [of Appeal] may confirm, vary, reverse or cancel the decision").

[56] Id. s. 689(2) ("In the event that the Court cancels a decision, the Court must refer the matter back to the ... subdivision and development appeal board, and the ... board must rehear the matter and deal with it in accordance with the opinion of or any direction given by the Court on the question of law or the question of jurisdiction").

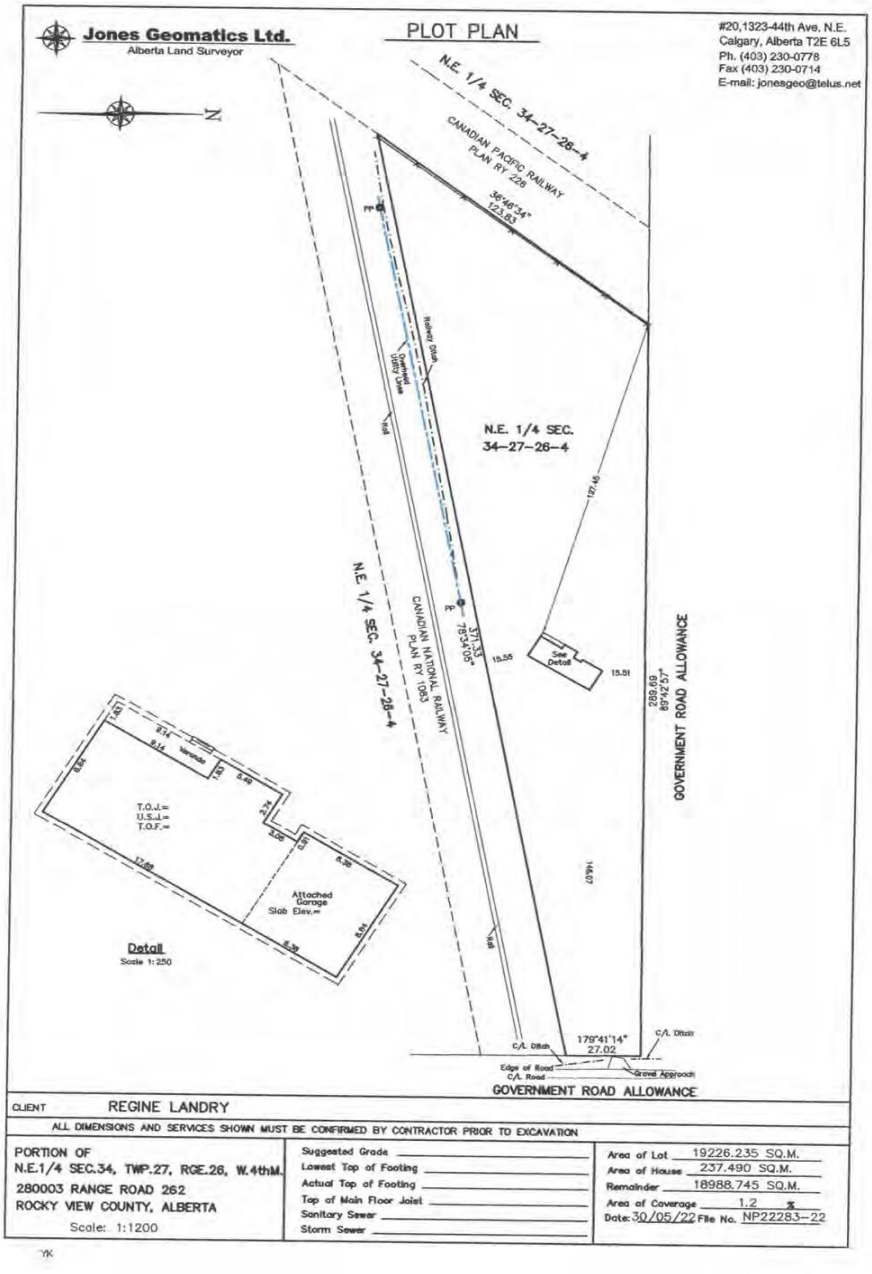
Appearances:

C.E. Marble
L.E. Garvie
for the Appellant

Respondent, Subdivision Development Appeal Board of Rocky View County (not present)

D. Young
for the Respondent, Rocky View County

Schedule A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PLOT PLAN
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Ph. (403) 230-0778
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E-mail: jonesgeo@telus.net
N.E. 1/4 SEC. 34-27-26-4
CANADIAN PACIFIC RAILWAY
PLAN RY 228
36°48'34"
123.63
N.E. 1/4 SEC.
34-27-26-4
127.45
N.E. 1/4 SEC. 34-27-26-4
CANADIAN NATIONAL RAILWAY
PLAN RY 1063
371.35
75°34'05"
See Detail
15.56
15.51
288.69
89°42'57"
GOVERNMENT ROAD ALLOWANCE
T.O.J.=
U.S.J.=
T.O.F.=
Attached Garage Slab Elev.=
Detail
Scale 1:250
179°41'14"
27.02
C/L Ditch
Edge of Road
C/L Road
Gravel Approach
GOVERNMENT ROAD ALLOWANCE
CLIENT REGINE LANDRY
ALL DIMENSIONS AND SERVICES SHOWN MUST BE CONFIRMED BY CONTRACTOR PRIOR TO EXCAVATION
PORTION OF
N.E.1/4 SEC.34, TWP.27, RGE.26, W.4thM.
280003 RANGE ROAD 262
ROCKY VIEW COUNTY, ALBERTA
Scale: 1:1200
Suggested Grade
Lowest Top of Footing
Actual Top of Footing
Top of Main Floor Joist
Sanitary Sewer
Storm Sewer
Area of Lot 19226.235 SQ.M.
Area of House 237.490 SQ.M.
Remainder 18988.745 SQ.M.
Area of Coverage 1.2 %
Date: 30/05/22 File No. NP22283-22

Tab 4

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Submission to Rocky View County Subdivision and Development Appeal Board

We are retained by the law firm, Carbert Waite LLP, for the purpose of providing expert evidence in respect of Regine Landry's appeal to the **Rocky View Subdivision and Development Appeal Board in respect of her appeal of the Development Authority's Decision in application** #PRDP20223151.

Executive Summary

Rocky View County has the sole responsibility for authorizing land use development, including development adjacent to railway property. **Transport Canada has exclusive authority for railway safety for federal railways.**

CN is the landowner of the railway corridor. CN's only role 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.

CN is recommending that a 30 metre setback and security fencing be applied to its adjacent landowner citing the FCM/RAC Guidelines. However,

- The setbacks, referenced from s. 3.3 of the May 2013 *Guidelines for New Development in Proximity to Railway Operations*,[1] **are neither mandatory nor legally enforceable.**
- The Guidelines have not been adopted by the Province of Alberta or Rocky View County.
- The federal railway regulators, Transport Canada and the Canadian Transportation Agency **have never adopted and do not enforce the Guidelines.**
- Much better risk-based approaches and tools are available to municipal planners, including **MIACC's *Risk-based Land Use Planning Guidelines*** which will be discussed in this report.

The Major Industrial Accidents Council of Canada (MIACC) has done extensive research of existing standards, accident statistics and consultation with experts in both Canada and abroad. They have published the *Risk-based Land Use Planning Guidelines* which can help municipalities in their land use planning efforts.

[1] JE Coulter Associates, Dialog, *Guidelines for New Development in Proximity to Railway Operations*, (Prepared for the Railway Association of Canada and the Federation of Canadian Municipalities) May 2013. ("**2013 Guidelines")**

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- The Guidelines provide the basis for developing risk contours around industrial facilities rather than "minimum separation distances" which often misrepresent the level of risk and do not allow for maximizing land value.
- They have determined that a 1 in 1 million (10^{-6}) chances of a fatality to an individual over one year is considered to be acceptable around the globe today and all land uses with lower risk can be allowed without restrictions.

The City of Calgary has adopted a risk-based approach in their *Development Next to Freight Rail Corridors Policy, 2018*[2] which allows for development within 30 m of a freight rail line provided that the proposed development meets its Risk Tolerance Level.

- For residential dwellings the Risk Tolerance Level is 1 in 1 million (10^{-6}) as recommended by MIACC.
- A detailed Baseline Risk Assessment (BRA) was completed for all parcels adjacent to freight corridors with the City limits. This work allowed the City to determine the Maximum Building Width allowed, depending on use, within the proximity envelope (30 m) without requiring a Site-specific Risk Assessment.
- CN's Three Hills subdivision (with City limits) is one of the freight rail corridors assessed. The Landry proposed dwelling is less than the Maximum Building Width established for High Density Uses (including residential dwellings) and would be approved within the 30 m envelope.

The MIACC Guidelines and the City of Calgary's *Development Next to Freight Rail Corridors Policy and Implementation Guide* are well researched and evidence based. They serve as instructive examples for municipalities like Rocky View County in its efforts to safely grow its community while providing employment and maximizing land value and tax benefits.

The Insurance Information Institute publishes mortality statistics showing the one-year odds of fatality from a main-line derailment is 1 in 9,090,964. This represents an even lower risk than the MIACC Guidelines for safe residential development and also a lower risk than the City of Calgary's Risk Tolerance Level for sensitive uses such as hospitals, seniors care facilities, etc.

[2] https://www.calgary.ca/content/dam/www/pda/pd/documents/current-studies-and-ongoing-activities/development-next-to-rail/development-next-to-freight-rail-corridors-policy.pdf

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The Landry proposal was evaluated considering the specific safety, noise and vibration, and trespass risks presented by the site and proposed building.

- The safety risk is a function of setting and building size, rail traffic, train speed, track geometry and rail operations and can be considered extremely low – well below the MIACC and City of Calgary Risk Tolerance Levels.
- The noise and vibration risk is a function of rail noise sources, building size, building orientation, and the willingness of the landowner to sign a noise waiver and can be considered extremely low.
- The trespass risk is a function of setting and population density, adjacent development including the opposite side of CN's rail line, rail crossings and access from the Meadowlark Trail. The examination of these risks drives the overall risk of trespass to an extremely low level. There is no justification for a fence along the rail right-of-way.

In conclusion, Rocky View County, as the sole authority in this matter, having examined the risks involved, should feel comfortable approving the proposal as presented.

Introduction

This report provides a comprehensive analysis of the historical development of railway policy and its relevance to the current matter concerning Regine Landry's property. The history of railway policy is pertinent as it outlines the regulatory framework that governs land use adjacent to railways. This is essential for understanding the legal and safety considerations impacting the Landry property.

The report will cover the evolution of railway regulations, the roles of federal and provincial authorities, and the implications of these policies on adjacent landowners.

Additionally, the report will present conclusions regarding the risk profile of Regine Landry's house, focusing on safety, noise, and trespass risks.

This analysis demonstrates that the risks associated with the Landry property are minimal and are aligned with established guidelines as to acceptable levels of risk for development in proximity to railways. This report concludes that no risk mitigation measures are justified in respect of the Landry property.

In the December 2022 submission for the initial Landry property hearing, our report provided a comprehensive summary of the purpose and intent behind the 2013 Guidelines. We identified that the

Guidelines were developed for **new and large residential developments in urban areas, that are in close proximity to railway operations, and where rail/municipal conflicts are inherent (crossing issues, trespassing issues).** As this report is on the record, we will not duplicate the information, but will build upon that foundation with additional information and analysis.

Background to the Railway Industry

Canada's railway network is one of the largest rail networks in the world. Transport Canada reports that Canada has over 43,000 route-kilometers of track: CN owns and operates over approximately 50% of the track (over 21,000 km) and CP owns and operates 30% of the track (over 13,000 km).[3] The remaining 19% is owned by numerous regional and local railways.[4] Collectively, the railways are responsible for moving approximately 325 million tonnes of freight each year across the country.[5]

This expansive rail network passes through over 2000 municipalities in Canada. Municipalities also play a key role in the Canadian economy. They have been described as the "economic engines of Canada", requiring sustainable growth and development.[6] Together, railways and municipalities have powered the growth and success of the Canadian economy.

Dating back to Confederation and the constitutional division of powers, interprovincial railways (such as CN and CP) have been exclusively regulated by the federal government. The main regulators are the Canadian Transportation Agency (the "**Agency**") and Transport Canada. These federal regulators administer the complex framework of laws and regulations that govern railways. However, the constitution granted the Provinces the exclusive authority over land use planning. This includes development of land uses adjacent to railways.

The regulatory framework is guided by the National Transportation Policy. Key objectives include a "competitive, economic and efficient" national transportation system that meets the **highest practicable safety standards.** Among its other objectives, the transportation system must also advance the well-being of Canadians and enable competitiveness and economic growth in both urban

[3]Transport Canada, *Transportation in Canada 2020 - Overview Report*: *Canada's Rail Network*, online, "https://tc.canada.ca/en/corporate-services/transparency/corporate-management-reporting/transportation-canada-annual-reports/canada-s-rail-network.
[4] Ibid.
[5] Most recent data is from Statistics Canada, "The Daily — Rail transportation, 2023", reports the railways moved 325.6 million tonnes of freight in 2023.
[6] Earth Tech Canada Inc., *Final Report. Proximity Guidelines and Best Practices* (Prepared for the Railway Association of Canada and the Federation of Canadian Municipalities) Markham: August 2007, ("**2007 Guidelines**") at p. 4.

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and rural areas throughout Canada.[7] The Agency has stated that it is clear from the legislative framework and the National Transportation Policy, that a balancing of interests is intended, between the interests of railways and the interests and concerns of communities.[8]

However, this regulatory framework, with its multiple regulators and laws is often not well understood. It is important to carefully review the roles and responsibilities of the relevant parties, as well as the laws that apply to railways and adjacent landowners.

CN, as one landowner, is recommending that a 30 metre setback be applied to its adjacent landowner for the purpose of "derailments". Transport Canada has characterized the measures as "CN recommendations".[9] This report will outline why the 30 metre setback is not applicable or appropriate:

- The setbacks, referenced from s. 3.3 of the May 2013 *Guidelines for New Development in Proximity to Railway Operations*,[10] are not legally enforceable, and have not been adopted by the Province of Alberta or Rocky View County.
- The federal railway regulators, Transport Canada and the Canadian Transportation Agency **have never mandated and do not enforce the Guidelines.**[11] Transport Canada is the sole authority for railway safety which includes jurisdiction over security fencing.
- The 2013 Guidelines are not mandatory. In fact, the 2013 Guidelines provide that where standard mitigation measures are not viable, alternative development solutions may be introduced through assessment processes.
- Much better risk-based approaches and tools are available to municipal planners, including MIACC's *Risk-based Land Use Planning Guidelines* which will be discussed in this report.

[7] See National Transportation Policy in *Canada Transportation Act* (S.C. 1996, c. 10), s. 5.
[8] See for example, Canadian Transportation Agency Decision No. 221-R-2010 (*Groenestein and Wiltshire v AMT*) at para.44; also see Agency Decision No. 35-R-2012 (*Normandeau and Tymchuk v CP*) at para. 40.

[9] See letter from Phil Tataryn of Transport Canada dated July 28, 2022. ("Transport Canada Letter").
[10] See 2013 Guidelines, s. 3.3.
[11] See Transport Canada Letter.

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Part I – Railway Safety and Regulation

Roles and Responsibilities

It is important to review the roles and responsibilities of the relevant parties to better understand the railway regulatory framework. The two agencies with responsibilities for the regulation of the railways regarding noise, vibration and rail safety are the Canadian Transportation Agency and Transport Canada.

Canadian Transportation Agency

The Agency is a quasi-judicial tribunal and economic regulator. It has a broad mandate that includes: "To help ensure that the national transportation system runs efficiently and smoothly in the interests of all Canadians."[12] It regulates federal railways under the authority of the *Canada Transportation Act* (S.C. 1996, c. 10). Key responsibilities include:

- authorizing the construction of new railway lines, yards and rail facilities (including mitigation measures and conditions to be implemented by the railways such as noise mitigation and security fencing);
- authorizing road crossings and utility crossings over railway lines;
- adjudicating noise and vibration complaints; and
- regulating commercial activities with rail shippers.

In addition to balancing the interests of railways and rail shippers, the Agency has developed a high level of expertise in balancing the interests of railways with those of the surrounding communities. This includes its jurisdiction to grant road and utility crossings over railway lines to ensure communities can build the infrastructure needed for their residents. In 2007, the Agency's jurisdiction was expanded to include noise and vibration complaints. Noise and vibration complaints are the primary issue that arises between railways and adjacent landowners/communities. Since that time, the Agency has developed comprehensive Guidelines with collaborative dispute resolution processes to resolve disputes between railways and adjacent landowners/communities.

Transport Canada

Transport Canada is solely responsible to regulate railway safety on railway corridors under the *Railway Safety Act* (RSC 1985, c 32 (4th Supp)). Transport Canada has developed a high level of expertise in

[12] See, www.otc-cta.gc.ca/eng/our-organization/our-mandate.

areas ranging from track standards to operational safety requirements, to training and certification standards for railway employees. Key responsibilities include:

- Track infrastructure standards (track, switches, signals, crossing warning systems, etc.);
- Railway Right of Way Access Control Policy (including the authority regarding regulations for the construction or alteration of fencing);
- Rail equipment standards;
- Locomotive standards and emissions regulations;
- Transportation of dangerous goods regulations and procedures (under the *Transportation of Dangerous Goods Act* 1992 (1992, c. 34**);**
- Rail Operating Rules;
- Clearance standards;
- Grade Crossing regulations and specifications (road crossings over rail lines);
- Safety management systems;
- Railway employee training standards and certifications; and
- Notice of Railway Works.

It must also be noted that most provinces have either adopted Transport Canada standards or harmonized the provincial laws for provincial railways. The Province of Alberta has harmonized its provincial railway laws with the *Railway Safety Act.*

However, Transport Canada does not generally regulate land use adjacent to federal railways, except to the extent required for safe rail operations. This will be further discussed later in this section However, to be clear, the CN recommendations are not the requirements of Transport Canada. **Transport Canada has confirmed to the Rocky View County Administration that it does not mandate the 2013 Guidelines through any Regulations or Standards.**[13] .

Municipalities/Rocky View County

The provinces have exclusive authority over land use planning. This includes zoning and authorization of development near existing railway infrastructure and facilities. The Province of Alberta has delegated this responsibility to municipalities including Rocky View County.

The authority over land use planning does not include the ability to regulate railway safety.

[13] See Transport Canada Letter.

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Neither the Province of Alberta or Rocky View County have adopted the 2013 Guidelines or incorporated the policies into its zoning by-laws.

Canadian National Railway ("CN")

CN is the landowner of the railway corridor. CN's only role is that of an adjacent landowner. CN does neither represents the rail industry n**or exercise the powers of a railway regulator to stipulate conditions of a land use approval**. As a landowner, it has no authority to regulate or impose land use requirements such as setbacks or security fencing onto adjacent landowners.

The Canadian Transportation Agency states, "Railway companies have control over their construction and operations. They should assess and mitigate their impacts on neighbouring areas."[14] This means that measures to mitigate risk are to be taken by CN, on CN's own lands - not on neighbouring properties. Rail safety is first and foremost the responsibility of CN.

Under federal law, CN is required to:

1) Comply with the *Railway Safety Act* and the comprehensive set of safety regulations and standards;
2) Prevent accidents/ mitigate the risks. Railways are governed by the guiding principle: "to do as little damage as possible" in exercising their powers.[15] Railways are required to have comprehensive Safety Management System plans in place to ensure compliance with safety regulations, manage railway incidents/accidents, identify safety concerns, and implement remedial actions.
3) Provide adjacent landowners with notice if they are undertaking work that could cause safety concerns for the adjacent land or landowner (this process will be explained in the following section).

Safety is not regulated through buffers or off-site clearance zones such as those recommended by CN on the Landry property.

Railway safety is regulated exclusively by Transport Canada. Transport Canada regulates the measures to be taken *within* the railway corridor. Transport Canada has strict clearance zones that are contained within the railway corridor. These are discussed below.

[14] See Canadian Transportation Agency, *Guidelines for the Resolution of Complaints over Railway Noise and Vibration* at www.otc-cta.gc.ca/eng/publication/guidelines-resolution-complaints-over-railway-noise-and-vibration.
[15] *Canada Transportation Act,* S.C. 1996, c. 10, s. 95(2).

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Regulation of the Right-of-Way

Setbacks within the Rail Corridor

There have never been "rail safety setbacks" or "safety buffers" in railway safety regulations for land that is adjacent to railway lines. To impose setbacks adjacent to **43,000 kilometres** of track would impact thousands of municipalities and landowners. Setbacks would freeze thousands of acres of land located adjacent to railway lines. In fact, it is unknown where CN's "30 metre setback" originated from. We have not been able to determine its origins or link it to any studies, research, industry standards or other guidelines.

However, there are specific setbacks from the railway line **within the right-of-way** and it important to understand how these safety zones work. For the purpose of this report, a "right-of-way" is the rail corridor that contains the mainline railway track (such as CN's Three Hills Subdivision). The standard right-of-way is 100 feet in width, with the railway track aligned in the centre.)

Clearance Zones for Structures

There is a setback from the track for safety purposes. This "clearance" envelope or zone ("**Clearance Zone**") protects the track on the right-of-way. The entire Clearance Zone is located fully within the standard 100-foot right-of-way, as the horizontal clearance distance is only approximately 16 feet (8 feet on either side of the centre line of track). (See Diagram attached as Appendix 2). No infrastructure or structures are permitted within the Clearance Zone. The envelope is defined by specific dimensions around the railway track to allow for the safe passage of trains over the track. Transport Canada has formalized the clearance standards in: *Standards Respecting Railway Clearances* TC E-05, May 14, 1992 The clearance standards apply to all federal railway tracks, including CN's tracks. The Transport Canada clearance standards are consistent with AREMA and US standards. See Transport Canada Clearance Diagrams in *Standards Respecting Railway Clearances*.

Clearance Location	Vertical Clearance	Horizontal Clearance
Rail Tunnels (TC Regs)	22 feet from the top of the rail	**8 feet from the centerline of track** on either side (total of 16 feet)
bridges, snowsheds, overhead timber bridges (TC Regs)	22 feet from the top of the rail	**8 feet from the centerline of track** on either side (total of 16 feet)

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All Structures Over or Beside the Railway Tracks (TC Regs)	- 22 feet from the top of the rail minimum - 23 feet from top of rail for construction	- 8 feet 4 ¼ inches from the centre of the rail minimum - 18 feet for face of abutment or pier (if no maintenance road required)
CN' additional requirements for customer industrial track it operates on	- 27 feet for overhead wire lines - 23' clear headway above the top of the highest rail	8 feet 6 inches from the centerline of track on either side.
AREMA/US standards for switch stands and platforms (some State variations)		- Switch stands on Main lines– 8'0"- 8'3" - switch stands on secondary lines - 7'6" – 8'3" - switch stands between adjacent track – 6'6" – 8'0" - switch boxes – 3' above rail - railway platforms – 6'2" – 8'6"

For clarity, the Clearance Zone is fully contained within CN's right-of-way (the Three Hills Subdivision) adjacent to the Landry property. It does not extend beyond CN's property boundaries onto the Landry property.

Clearance Zone/Setback for Working near Track

In addition to the Clearance Zone, the railways have working setbacks for persons working in the vicinity of railway track. The setback is best described through railway requirements for working on railway property. This working area is located entirely within the standard right-of-way.

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CPKC's requirements are: no temporary structure, materials, or equipment is permitted closer than **12 feet (3.66 meters**) to the nearest rail of any track. This clearance area/working setback applies to each side of the track. [16]

CN's requirements are: all workers, equipment and material must be at least **5 meters (15 feet)** from the nearest rail of the track with additional allowances for curvature and super elevation.[17] This applies to both sides of the track.

The working clearance area also fits well inside of the standard 100-foot right-of-way. This also means that there is a **permitted work zone** on the right-of-way, outside of the clearance area/working setback.

Outside of the Clearance Zone

If the railway regulatory framework required a 30-metre setback on adjacent lands for "safety buffers", it would only make sense – or functionally work if the entire 100 foot right-of-way was also free and clear of infrastructure, facilities and workers. However, this is not the case.

Railway infrastructure: A standard right-of-way has approximately 50 feet on either side of the centreline of track (100-foot width). All the lands within the right of way are owed by the railway.

There is a significant distance between the Clearance Zone (approximately 8 feet on either side of the track centreline) and the property boundary on each side of the track (50'- 8'=42 feet). Railways use this space to accommodate a variety of structures and facilities, and for staging operations. Examples of the railways infrastructure on these lands include:

- railway bridges, overhead timber bridges;
- snowsheds;
- passenger platforms;
- ramps, piers, loading and unloading docks, warehousing docks;
- railway signal equipment, signal bungalows, radio towers;
- Maintenance roadways (used for track access; operation and staging of vehicles, machinery and equipment for inspections, maintenance, repairs etc.).

[16] CP's Minimum Safety Requirements for Contractors on Rail Property at "www8.cpr.ca/snpevweb/Snp/html/SafetyRegulations.html", s. 6.1.
[17] CN's Safety Guidelines for Contractors and Non-CN Personnel, "Clear Of The Track" s. 3 at contractors-safety-guidelines-en (1).pdf

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Third party infrastructure: In addition, railways have a long history of permitting third party infrastructure to be constructed and maintained over, under or encroaching onto the right-of-way. Examples include:

- at-grade road crossings (highways, paved or gravel roads);
- automated crossing warning systems and gates for road crossings;
- crossing signs including crossbuck signs and stop signs;
- grade separated structures such as overhead bridges; and
- overhead power lines and utility poles.

The public: In the case of road crossings, members of the public continually stop and occupy space within the right-of-way while waiting for trains to pass. As there are 14,000 public crossings and 9,000 private crossings in Canada, the number vehicles stopped at any time on the right-of-way is significant.[18]

Agency orders

Landowners: The Agency has the authority to **grant private road crossings to adjacent landowners** who need to cross the railway line to access their property, under s. 102 and 103 of the *Canada Transportation Act.*

Road Authorities and Utilities: The Agency has the power to grant road and utility crossings as well as parallel encroachments over a railway line. While the utility infrastructure or encroachment must comply with the Clearance Zone specifications, the Agency does not recognize a "safety buffer" or "derailment setback" outside of the Clearance Zone, on the right-of-way. The Agency focuses on the **principle of co-existence of infrastructure on the right-of-way**. The Agency often refers to a long-established principle:

> "In going through the territory of any village, town or city railways should not be an obstacle to the expansion of the residential districts on either side of the track, because such an expansion is to everybody's advantage, railway companies included.....It is true that the railway companies are the owners of their right-of-way; but if they have certain rights as proprietors, there are also certain duties incumbent upon them".[19]

[18]The clearance point at the crossing is the point 2.4 m (approximately 8 feet) beyond the outside edge of the farthest rail as required in the Transport Canada Grade Crossing Standards, s. 10.1.2 pursuant to the *Grade Crossings Regulations* (SOR/2014-275)

[19] *A. Demers, Laprairie v. Grand Trunk Railway Co.,* (1920), 31 C.R.C. 297, on page 299.

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There are two important decisions in Alberta where the Agency ordered third party infrastructure to be installed and maintained on a railway right-of-way (parallel occupations/encroachments). In Decision 124-R-1997, the Agency granted the relocation of a 1.6 kilometre power line within CP's right-of-way, along 103 Street in Edmonton. The relocation was not required by the utility to service its customers, but part of a city "beautification project". The relocation involved an occupancy of a minimum 10-foot width of CP's right-of-way.[20]

In Decision No. 709-R-2006, the Agency granted an order for Atco Gas and Pipelines to construct and maintain two (2) above ground pipeline valves on CP's mainline west of Canmore. The above-ground valve infrastructure was to be connected to a natural gas pipeline. This section of CP's network is among its busiest sections of the railway network with long trains and high speeds. Although CP argued there could be safety issues with having above ground infrastructure on the right-of-way, the Agency granted Atco's application. The Agency indicated that the *Railway Safety Act* applied including the Notice of Railway Works process to address any safety concerns. The Agency also advised that Transport Canada could assist the parties if any issues remained unresolved.[21]

The decisions lead to two key points:

- The Agency allows third-party encroachments and infrastructure onto the railway right-of-way between the Clearance Zone and the railway property boundary. The encroachments can include lengthy parallel occupations on the right-of-way. The Agency does not recognize "safety buffers" in the decisions.
- The Agency and Transport Canada have been equally clear that it is the *Railway Safety Act* that establishes "the authorities, responsibilities, time frames and a formal process for notice, identification and resolution of safety related concerns."[22] Railway safety is not governed by additional layers of regulation outside of the *Railway Safety Act*, such as setbacks on adjacent property.

As a result, it would not make sense for the railway corridor to consist of a Clearance Zone (approximately 16 feet), followed by an infrastructure zone to the railway property line (42 feet on either side of the centre line of track that is vulnerable to railway derailments), followed by a "safety buffer" setback zone on adjacent property.

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[20] See Canadian Transportation Agency Decisions, Decision 124-R-1997, *Application by Edmonton Power Inc.*
[21] Canadian Transportation Agency Decisions, Decision No. 709-R-2006, *Application by ATCO Pipelines*, at para 46
[22] Ibid., at para 37

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See Appendix 2 for Diagram of Zones.

Notice of Railway Works

If there are concerns that the railway is undertaking construction or alterations on the railway line that could impact adjacent land, the appropriate process is the Notice of Railway Works process. Under the Notice of Railway Works regulations, railway companies are required to give a 60-day notice to any affected parties. This process ensures that all persons, who may be affected, are given the opportunity to object to the proposed works, if the person considers that the proposed railway work would prejudice their safety or the safety of their property. Examples of railway works that require Notices include the alteration of bridges and tunnels, road crossings or certain railway line works.

The regulatory framework for Notices of Railway Works includes a robust process under Transport Canada. Transport Canada has the exclusive jurisdiction over railway safety and Transport Canada **has not delegated to municipal planners** a secondary jurisdiction for railway safety– which involves freezing development on 30 metres of land on either side of the right-of-way (**double the width of the railway right-of-way).**

Transport Canada's Role Outside of the Rail Right-of-Way

Transport Canada is primarily focused on regulating railway safety on the railway right-of-way. However, Transport Canada does have a limited authority to regulate or prohibit activities on land adjoining railway lines if those activities threaten safe railway operations.[23] This includes having the power to issue orders for corrective measures when immediate threats to rail safety are identified. Examples of those risks include vegetation or other structures blocking sightlines at rail crossings, danger trees or overhead structures that could fall onto the rail track and constructed drainage systems that would constitute a threat to safe railway operations.

There are no threats that constitute a threat to safe railway operations that apply to the Landry proposed development.

The Role of Transport Canada in Grade Crossing Regulations:

Transport Canada regulates certain distances as prescribed in *Grade Crossing Regulations, SOR-2014* and the Grade Crossing Standards, 2019 which may be required on property adjacent to railway corridors for safety reasons. They include:

- Prescribed stopping distances and signage locations associated with at-grade rail crossings;

[23] *Railway Safety Act,* s. 24-25

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- Sightlines for at-grade rail crossings that must be maintained; and
- Prohibition of an intersecting road or entranceway closer than 30 metres to the nearest rail of an at-grade rail crossing.

There is no at-grade rail crossing that would impact the Landry proposed development.

The Role of Transport Canada in Fencing

Railway right-of-way access control requirements were set out in the *Railway Act* of 1868, which has since been repealed. The Railway Act and subsequent amendments required railway companies to erect and maintain fences on each side of the railway.

"Specifically, it required fencing to prevent cattle and other animals from entering the railway right of way and restricted train speed to 10 m.p.h. in densely populated urban areas unless fencing was in place or an exemption to this requirement was granted. While there continues to be a need for access control measures to be put in place to prevent livestock from entering onto the railway right of way, the major problem today is associated with unauthorized access by pedestrians and vehicles. This is of particular concern considering the likelihood of continued growth in population near lines of railway in urban areas."[24]

The *Railway Safety Act* of 1989 and subsequent amendments thereto replaced in part the *Railway Act of 1868.* The *Railway Right of Way Access Control Policy, July 13, 2006* reflects the objectives of the *Railway Safety Act*. The enabling authority to make regulations concerning the unauthorized access by pedestrians, vehicles and livestock on the railway right of way is provided under the following provisions of the RSA:

Railway Works

- Subsection 7(1) provides the authority to make regulations respecting the construction or alteration of 'railway work", including fencing;
- Paragraph 18(1)(a) provides the authority to make regulations respecting the operation or maintenance of line works; and

Non Railway Operations Affecting Railway Safety

[24] Transport Canada *Railway Right of Way Access Control Policy, July 13, 2006,* p.2

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- Paragraph 24(1)(f) provides the authority to make regulations restricting or preventing, by means of fences, signs or any other means, access to a railway right of way.

Transport Canada prefers to promote rail safety through education and awareness of regulatory requirements regarding railway right of way access control but has the authority to develop regulations, or other means permitted under the RSA, requiring the railways to install access controls where safety risks are identified in their analyses of safety data, and research of trends and emerging risks.

Railways promote the Guidelines which place the onus on adjacent landowners to build fencing rather than facing regulation themselves.

Part II – The Path to the 2007 and 2013 Proximity Guidelines

Nuisance Actions only

Historically, adjacent landowners and communities impacted by rail operations had limited recourse against the railways. The law was well-established that a person suffering from an injury or damage due to **railway smoke, noise, vibrations or other effects**, could only bring a common law action for nuisance against the railway.[25] A nuisance action had many limitations in terms of the costs and remedies. The courts typically award money damages for nuisance actions rather than addressing the root cause such as ordering changes to railway operations or infrastructure. On the other hand, the *Railway Act* permitted the federal regulators to regulate railway operations, but did not allow the railway regulators to provide remedies or compensation to persons or landowners affected by the emissions, noise, vibrations etc.

In this regulatory environment, CN was required to provide notice to adjacent landowners under the Notice of Railway Works process and consult communities if it was constructing new railway lines and yards. However, it was largely able to operate without considering how its operations were impacting adjacent landowners and communities due to its noise, vibration and emissions. This framework began to change in the 1990s as the regulators began investigating and trying to resolve railway noise and vibration issues in communities.[26]

[25] *Canadian National Railway Co. v. Brocklehurst (C.A.),* 2000 CanLII 16794 (FCA), [2001] 2 FC 141 at para 7 citing *Duthie v. Grand Trunk R.W. Co. No. 220* (1905), 4 C.R.C. 304 (Board of Railway Commissioners).
[26] See for example, Canadian Transportation Agency Decisions, Decision No. 691-R-1997, *Complaint by Blackfalds Mobile Park Ltd.* . In April 1993, the Blackfalds Mobile Park Ltd. filed a complaint with the National Transportation

CN developed its own policy of requiring setbacks and berms on adjacent land dating back to the 1980s, but it did not expand beyond being a CN policy.[27] Although CN, used its policy to argue for setbacks at the Ontario Municipal Board, the Board pointed out in at least one decision that the CN requirements had never been formally adopted by the railways, the Province of Ontario or the City of Toronto.[28]

It should be emphasized that setbacks or minimum separation distances around industrial sites are only **one type** of land use method. This method has many limitations as discussed in Part III – Risk and Land Use Planning. For example, guidelines based on risk assessment can provide a sounder basis for establishing fixed standards. In 1995, after extensive research, the Major Industrial Accidents Council of Canada ("MIACC ") issued the *Risk-based Land Use Planning Guidelines.* See Part III for a more in-depth discussion.

Guideline D-6

In 1995, the Ontario Ministry of the Environment established *Guideline D-6 on Compatibility Between Industrial Facilities and Sensitive Land Uses*[29] ("**Guideline D-6**"). Guideline D-6 provided an example of a legal framework that used minimum separation distances, although railways were specifically excluded.[30] The Guideline applied to manufacturing sites that produced emissions such as noise, vibration, odour, dust and others. Industries were classified from Class I (small scale plants) to Class III (large scale manufacturing plants). Examples of Class III plants including those producing paint and varnish, chemicals, resins, and steel manufacturing[31] It recommended:

- Buffering/minimum separation distances between industry and sensitive land use (residential), including a minimum separation distance of 300 metres for the largest Class III industries;[32]
- Studies for "potential influence areas" where adverse effects may be experienced – a distance of 1000 metres for Class III industries;[33]

Agency of Canada (predecessor of the Agency), to investigate noise complaints due to CP's rail operations at the Union Carbide plant in Blackfalds, AB. The complaint continued under the Agency, and Decision No. 691-R-1997.

[27] The history of CN's policies regarding setbacks has been documented in a paper presented by Barnet H. Kussner, and Tiffany Tsun at the Rail Issues Forum in Halifax, Nova Scotia, on August 17, 2011, titled "Development Issues: Rail Corridor Setbacks and CN Guidelines". It was reprinted in Ontario Real Estate Law Developments, September 2011, Number 433. ("**Development Issues**"). See discussion at "C. CN Guidelines for Rail Corridor Setbacks" at p. 3.

[28] Ibid., p. 3, referencing *Himel v. Toronto (City)* [2003] OMBD No. 768.

[29] Ontario Ministry of the Environment, *Guideline D-6 Compatibility Between Industrial Facilities and Sensitive Land Uses,* (July 1995) ("**Guideline D-6**").

[30] Ibid. See Other facilities (1.2.4) for facilities that are excluded such as specific railway exclusions.

[31] Ibid., See Appendix A for Class III facilities.

[32] Ibid., See "Recommended minimum separation distances (4.3)".

[33] Ibid., See "Potential influence areas for industrial land uses (4.1.1)".

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- Environmental warnings for sensitive land uses.[34]

However, Guideline D-6 included a number of important variations to the separation distances:

- it did not require the minimum separation distance to be measured from the outer boundary of the industrial facility; it could be measured from a variety of points. (see s. 4.4)
- mitigation at the industrial source could reduce the minimum separation distance requirements, and
- minimum separation distance could be met partially or entirely on-site. (see 4,2,4) Also, buffers could include berms, walls, fences, vegetation, and/or location and orientation of buildings and activity areas.

This industrial "buffer" methodology was analogous to CN's "setback" policy. CN began taking the position with the Ontario Municipal Board that **its railyards were a "Class III industrial facility",** and that the Guideline D-6 separation distance of 300 metres, and the study area of 1,000 metres should be applied to adjacent property.[35] CN likely began using this standard because the Ontario Municipal Board had rejected CN's company policy of arbitrary requirements.[36]

It is important to note that:

1) CN chose to use guideline standards that were specific to the Province of Ontario rather than a national standard;
2) Guideline D-6 was not designed for the rail industry; it is unknown how applicable the Class III manufacturing sites compare to railways and railyards;
3) CN chose the largest separation distance of a 300 metre setback and a 1,000 metre study area – without the stipulated variations (mitigation at source, and a partial separation distance within the site);
4) CN chose separation distances that were applicable to noise, vibration, odours etc., not distances that were applicable to "safety buffers", accident or derailment data; CN **did not select the evidence-based MIACC *Risk-based Land Use Planning Guidelines;***
5) The separation distance of 300 metres, and study area of 1,000 metres from Guideline D-6 (designed for Class III manufacturing sites re: noise, vibration, odour, dust) found its way into the 2007 and 2013 Guidelines.

[34] Ibid., See "Environmental warnings for sensitive land uses (4.10.6)".

[35] *Development Issues* at p. 3.
[36] Ibid., also see footnotes 27 and 28.

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Agency and Noise Complaints

After the *Canada Transportation Act* was passed in 1996, the Agency began regularly accepting and adjudicating noise, vibration and emissions complaints from members of the public. The Agency believed it had the jurisdiction based upon the governing principle in s. 95, that railway company must do "as little damage as possible" in exercising its rights. The Act also gave the Agency the powers to make inquiries and determine "complaints". The complaints typically focused on rail yard noise and emissions that were impacting nearby residents.

In two key decisions in 1999, the Agency determined that CN was not doing "as little damage as possible" and ordered changes to railway operations:

In Agency Decision No. 391-R-1999, Randy and Sue Taylor filed a complaint arising from the noise, vibration and diesel fumes generated by idling diesel locomotives in CN's St. Thomas Yard. The locomotives (operated by Norfolk Southern) were idling on the yard track for up to 13 to 16 hours per day. The Agency found that the idling locomotives contributed to cracks in the Taylor's living room walls and were preventing family members from sleeping. The diesel fumes made it difficult to open their windows and doors and caused breathing difficulties for their children. The rail operations had become a community issue, as CN was negotiating with local citizens, the City of St. Thomas and the local Member of Parliament.

As a result, the Agency ordered changes to railway operations. In the interim, locomotive idling was limited to 30 minutes in the yard, and a permanent solution in the form of a locomotive relocation plan was to be implemented.[37]

In Agency Decision No. 87-R-1999, numerous residents filed complaints (including a petition signed by 211 community residents) regarding the noise and vibration from CN's Oakville Ontario yard. The noise issues primarily resulted from CN increasing its railcar shunting during the day as well as at night – CN was shunting railcars for 1 to 2 hours after 03:00 a.m. Most of the complainants lived within 100 to 300 metres of the yard.

CN's position was that the Agency had no jurisdiction over noise and vibration complaints. **CN admitted that it had not taken any measures to minimize the sound levels. In addition, it had no protocols or procedures in place to assess sound levels**. As a result, the Agency ordered CN to produce a noise abatement plan and monitoring plan to significantly reduce the sound levels emitted

[37] See Canadian Transportation Agency, Order No. 1999-R-308, *Complaint filed by Randy and Sue Taylor*.

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into the community.[38] CN was required to consider measures such as CN constructed berms and noise barriers, rescheduling or transfer of shunting activities to another location.

The key to the two Decisions was that the Agency was ordering CN to make changes to its operations and mitigate the impacts within the railway property (i.e. CN needed to build berms and noise barriers, or relocating operations), not the adjacent landowners.

However, rather than working with the Agency and community to resolve the issues, CN appealed the decision to the Federal Court of Appeal, challenging the Agency's jurisdiction based upon the historic framework (that the residents could only file common law nuisance actions). The Federal Court of Appeal allowed CN's appeal and determined that the wording of the 1996 Act did not give the Agency jurisdiction over noise complaints. The *Canada Transportation Act* would have to be amended to specifically include noise and vibration complaints.

RAC/FCM 2007 and 2013 Guidelines

After successfully challenging the Agency'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. CN stated its position as:

> "with few exceptions**, railways have no power beyond their rail right of way and cannot control adjacent landowners' land use**"…[A] federal regulator has little or no authority over a **municipal authority whose inadequate planning may have…led to the incompatible land use situation in the first place.**[39]

CN working through the Railway Association of Canada ("RAC") engaged the Federation of Canadian Municipalities ("FCM"). In 2003, the RAC signed a MOU with the FCM to "build common approaches" to prevent and resolve issues "when people live and work in proximity to railway operations."[40]

[38]Canadian Transportation Agency Decisions, Order No. 1999-R-123. *Noise complaint from the operations of CN in its Oakville Yard.*

[39] Excerpt from *Stronger Ties: A Shared Commitment to Railway Safety. Review of the Railway Safety Act (*November 2007) Chapter 7 p. 104, citing CN's submission to the Railway Safety Review Panel.

[40] *Development Issues* at p. 6.

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The key concern for railways is incompatible land use that negatively impacts their operations including:

- adjacent land use that could impact drainage and the integrity of the right-of-way or track;
- ensuring that the 24/7 operations continue uninterrupted (i.e. yard operations); and
- ensuring rail corridors remain unimpeded for rail traffic on a 24/7 basis (i.e. crossings stop road traffic to allow trains unimpeded transit).

It is important to note that the intent of the FCM/RAC was to facilitate consultation and to co-exist in the same community. As a result:

- The Guidelines are not mandatory;
- **the Guidelines are not evidence-based and are very general;**
- They are not a prescriptive formula (i.e. On smaller sites, reduced setbacks should be considered).[41]

It should also be noted that in 2006, Transport Canada brought into effect, **The *Railway Right of Way Access Control Policy*, *July 13, 2006*. The enabling act, *the Railway Safety Act*, Subsection 7(1) gave Transport Canda the authority to make regulations respecting the construction or alteration of 'railway work", including fencing.**

In 2007, the RAC/FCM *Final Report. Proximity Guidelines and Best Practices* ("2007 Guidelines") were released. The 2007 Guidelines primarily framed the railway/proximity issues as issues to be resolved through municipal planning processes and requirements. The list of recommendations for municipalities to implement was comprehensive and lengthy:[42]

- Municipalities are to provide clear direction, stronger regulatory framework, ensure that land development "respects and protects rail infrastructure";
- Municipalities to require building setbacks from rail corridors and yards:
  - Rail yards: 300 metre setback (for residential uses)
  - Mainline: 30 metre setback; 2.5 metre berm height
  - Branch/Spur line: 15 metre setback; 2.0 metre berm height
  - Setbacks should "always be taken from the railway property line, to protect the entire railway right-of-way or yard." [43]

[41] 2007 Guidelines, p. 9; (also see 2013 Guidelines p. 27)
[42] Ibid,, p. 7-10
[43] Ibid., p. 8.

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- Municipalities to require berms/buffers, security fencing for trespass deterrence on adjacent land;
- Municipalities must plan for land uses on each side of a rail corridor or yard to minimizing trespass problems on railway land;
- Municipalities to require studies for noise, vibration, emissions studies and mitigation measures:
    - Freight Rail Yards -studies within 1,000 m
    - Mainline Rail Corridors Secondary Lines - studies within 300 m
    - Branch Lines, Spur Lines - studies within 250 m
- Municipalities to issue rail operations warning clauses and register against land titles, environmental easements;
- Municipalities to minimize the creation of new at grade rail crossings;
- Protection of expansion capacity for rail facilities; and
- Municipalities to consult with railways on a range of issues including projects that could impact drainage patterns.

In contrast, the recommendations for the railways to implement were quite minimal. They focused on compliance with existing legislation such as the *Railway Safety Act* (already required), consultation with stakeholders for new or expanded projects (already required by regulation), increased communications with municipalities; offering rail operations information sessions and tours of facilities to municipal planning staff. What was new? The recommendation that the railways should "get involved in land use planning processes and matters."[44]

It is an unlikely coincidence that the Guidelines were issued in August 2007, just weeks after the amendments to the *Canada Transportation Act* gave the Agency jurisdiction to adjudicate noise and vibration complaints. (June 22, 2007). The legislation permitted the railways to make a "reasonable" amount of noise (versus the "least amount of damage"), taking into account their operational requirements and customer needs. The 2007 Guidelines now gave the railways new arguments based upon better defined standards in the 2007 Guidelines (i.e. 300 metre setback, 1000 metre study area).

[44] Ibid., p. 14.

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2013 Guidelines

In 2013 the 2007 Guidelines were revised. The 2013 was very similar, and the revisions mainly provided more detail around the mitigation measures that municipalities were to require for lands near railway facilities. All the recommendations were actions for the Municipalities to implement:

- Municipalities should establish minimum setback requirements through a zoning bylaw amendment;[45]
- Municipalities should require noise impact studies near railway operations.[46]
- Develop Urban Design Guidelines for development near railway corridors for building layout and design.[47]
- Municipalities should make vibration studies a requirement. [48]
- Develop Urban Design Guidelines for design of berms.[49]
- Careful land use planning on each side of a railway corridor or yard to minimize potential trespass problems for railways.[50]

30 metre Setback Requirement

CN is basing its recommendation for a 30-metre setback on s. 3.3 of the Guidelines. CN claims that the requirement is "**due to health and safety concerns in the event of a train derailment."** Therefore, it is important to carefully consider the wording of the provision.[51]

- The title states "3.3 // BUILDING SETBACKS FOR NEW DEVELOPMENTS" – note that it is not called a "safety buffer" or "derailment buffer";
- It is "a highly desirable development condition", but not a mandatory condition;
- Purpose includes - "permits dissipation of rail-oriented emissions, vibrations, and noise";
- "it accommodates a safety barrier" (a safety barrier is defined as a berm or crash wall), but the setback is not a safety zone itself;
- "On smaller sites, reduced setbacks should be considered" or where "not technically or practically feasible" – setbacks are not prescriptive and should be adapted to specific site conditions;

[45] 2013 Guidelines, p. 27.
[46] Ibid., p. 28.
[47] Ibid., p. 31.
[48] Ibid., p. 34.
[49] Ibid., p. 38.
[50] Ibid., p. 41.
[51] Ibid., p. 27.

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- Nowhere is the word "derailment" found in the section.

To summarize the s. 3.3 provision: it is not mandatory, smaller sites can consider reduced setbacks and site-specific conditions; it is described as a setback to permit emissions, noise and vibration to dissipate. It is not a "derailment" setback. In fact, it is unknown what the source is for the 30 metre and 15 metre setback distances.

Security Fencing Requirement

As CN is recommending fencing along the railway property boundary, it is important to carefully consider the wording of the fencing provision:[52]

- The title states – "3.7 // SECURITY FENCING" – Fencing is for the purpose of security and to prevent trespass onto the railway corridor;
- The fencing requirement is clearly to prevent trespassing from a new development:
    - "Trespassing onto a railway corridor can have dangerous consequences given the speed and frequency of trains.....
    - Other materials may also be considered....ensure there is a continuous barrier to trespassing.

To summarize, s. 3.7 – Security Fencing applies where security fencing is required to prevent trespassing especially in areas with a high risk of trespassing i.e. densely populated urban settings. This scenario is not applicable to the Landry property.

Summary

When the Agency began ordering CN to make changes to its operations and mitigate the impacts of railway emissions, noise and vibration within the railway property, CN successfully challenged its jurisdiction. Although the Agency was granted jurisdiction in 2007, CN was able to reframe the issue through the FCM/RAC Guideline process. Rather than a railway issue to be dealt with on railway property, CN defined it as **a failure of proper municipal planning for adjacent land use**, and through the Guidelines placed the onus on the adjacent landowners to undertake all of the mitigations (setbacks, berms etc.). The Guidelines were not evidenced based, and it is unknown what data and criteria separation distances such as the 30 metre setback were based upon. The RAC has issued an RFP to undertake a major review of the Guidelines in 2025, however, the FCM has declined to participate in the review.

[52] Ibid., p. 41.

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Much better risk-based approaches and tools are available to municipal planners, including MIACC's *Risk-based Land Use Planning Guidelines* which will be discussed next.

Part III – Risk and Land Use Planning

Fixed standards for buffer or transition zones

Buffer zones around industrial sites (particularly hazardous sites) or corridors are one type of land use standard. A buffer zone is an area of land established to separate one type of land use from another with which it is incompatible. Land uses within a buffer zone are limited to ensure that certain uses such as permanent residences and slow-to-evacuate facilities (i.e., schools, hospitals, jails) are located sufficiently far away from the potential accident site so that individuals in the area are not exposed to unacceptable levels of risk. This is sometimes referred to as the principle of transitional land uses between industrial and residential areas, hence the use of the term "transition zone" as a synonym for buffer zone.

Buffer or transition zones are usually defined through "minimum separation distances" between the industrial activity and various categories of surrounding land uses. These distances which determine the dimensions of the buffer zone may be specifically defined in zoning by-laws or regulations on the basis of the anticipated consequences of an industrial accident. Such standards take the form of fixed separation distances to be maintained between industrial activities and other categories of land uses. Industries themselves may also have policies on minimum separation distances.

Unfortunately, the justifications for such standards are often unclear and many standards are simply repeated from one zoning by-law to another.

Fixed standards have the advantage of administrative simplicity since it is relatively easy to verify conformity with the prescribed minimum separation distances between land uses. However, **fixed separation distances do not allow for maximizing land value both in terms of development opportunity and taxes** and often misrepresent the actual level of risk.

Performance zoning

Although fixed standards for buffer zones or minimum distances may be included in zoning by-laws, regulations or other guidance, it is increasingly frequent for municipalities to use more flexible "performance zoning". Performance zoning applies performance standards to each application and

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evaluates the acceptability of a project on the basis of its anticipated impacts on surrounding land use, not on the basis of conformity with predetermined detailed specifications.

Guidelines based on risk assessment are intended to provide a sounder basis for establishing fixed standards i.e. separation distances as defined by risk levels.

Discussion of risk

Risk can be defined as the combination of the probability of occurrence of an undesired event and the possible extent of that event's consequences. In the current case, individual risk (as opposed to societal risk) can be calculated using the following equation:

Risk = Frequency of event (derailment) x Estimated Consequences (fatality)

Individual risk is the annual frequency at which an individual may be expected to sustain a given level of harm (i.e. death) from a mainline derailment.

Since level of individual risk is closely related to the distance from the potential accident source, the evaluation of a specific situation consequently generates a series of "risk contours" associated with various levels of individual risk. Land use planning can take these risk contours into account by determining what land uses are (or are not) appropriate in areas associated with various levels of individual risk (e.g. a higher level of risk may be acceptable for land uses involving the presence of fewer people than land uses which imply higher population densities). In order to propose such land uses, it is first necessary to determine what levels of risk are acceptable.

What is an Acceptable Level of Risk?

Local governments must define what acceptable risk is. Subject matter experts, such as professional engineers and certified risk managers, may inform government decision making but are clear that defining levels of safety is not their role. Rather, acceptable risk must be established and adopted by the local or provincial government after considering a range of social issues. Transport Canada has advised Rocky View County that the recommendations provided by CN are CN recommendations and are not mandated by any Transport Canada regulations or standards. Likewise, CN has no jurisdiction to impose safety standards upon the community outside of their property.

The Major Industrial Accidents Council of Canada (MIACC), established in 1987, is a non-profit, multi-stakeholder organization 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

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published the *Risk-based Land Use Planning Guidelines*[53] which can help municipalities in their land use planning efforts.

The MIACC Guidelines propose the following acceptable levels of risk:

From risk source to 1 in 10,000 (10^{-4}) risk contour:

no other land uses except the source facility, pipeline or corridor

1 in 10,000 to 1 in 100,000 (10^{-4} to 10^{-5}) risk contours:

uses involving continuous access and the presence of limited numbers of people but easy evacuation, e.g. open space (parks, golf courses, conservation areas, trails, excluding recreation facilities such as arenas), warehouses, manufacturing plants

1 in 100,000 to 1 in 1,000,000 (10^{-5} to 10^{-6}) risk contours:

uses involving continuous access but easy evacuation, e.g., commercial uses, **low-density residential areas**, offices

Beyond the 1 in 1,000,000 (10^{-6}) risk contour:

all other land uses without restriction including institutional uses, high-density residential areas, etc.

It is important to note that MIACC states that a 1 in 1 million (10^{-6}) chances of a fatality to an individual over one year is considered to be acceptable around the globe today. It is an extremely small number.

These contours are illustrated in Fig. 2 - MIACC Guidelines for Acceptable Levels of Risk reproduced below.[54]

[53] *Risk-based Land Use Planning Guidelines, MIACC*, June 1995
[54] Ibid. p. 16

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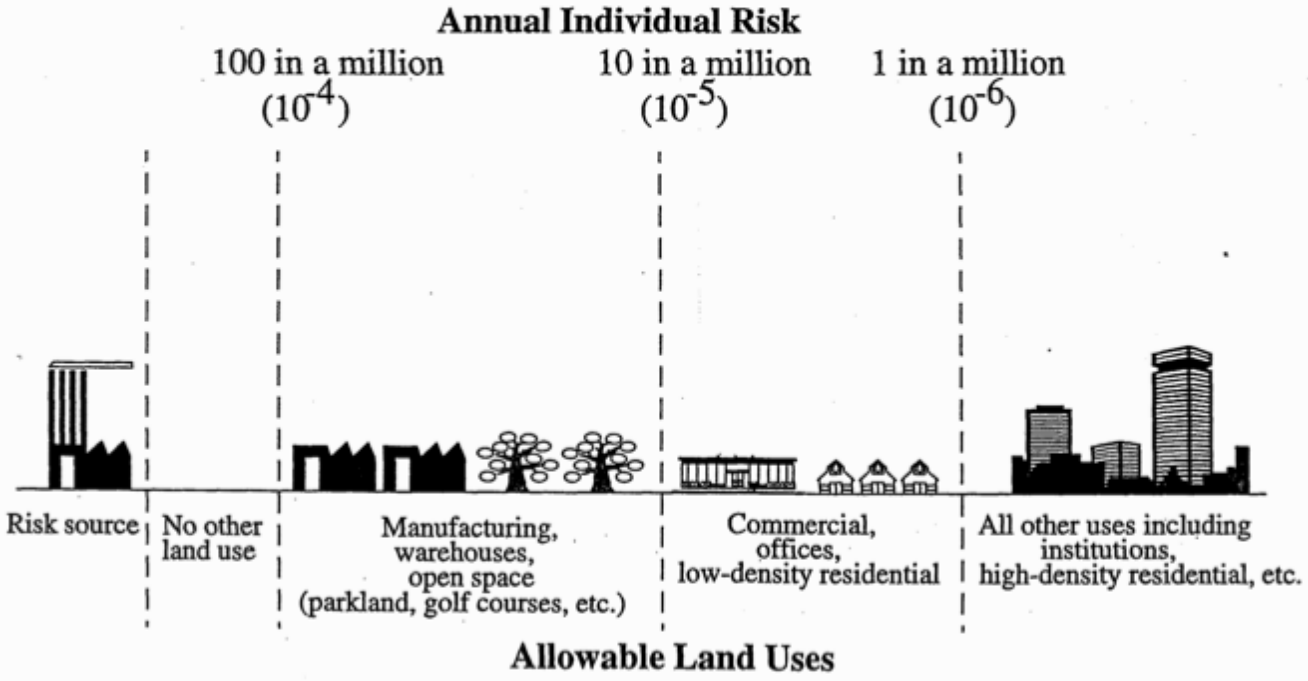
Figure 2: MIACC Guidelines for Acceptable Levels of Risk



According to MIACC, risk levels up to 10^{-4} should not extend beyond the company fence line. Therefore a "Buffer Zone" of company-owned land is required to meet the MIACC criteria for new proposed projects of any type as well as existing installations.

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Canadian Railway Accident Data

Derailments are Rare Events

Derailments are **rare events** main track derailments that impact adjacent residential properties are even more rare. Most derailments occur on non-main track in yards or terminals. Rail is one of the safest modes of transportation.

- Canada's railways are among the safest in North America.
- When accidents do occur, the vast majority are **non-main track** collisions and derailments occurring primarily in **yards or terminals**.
- Most fatalities resulting from railway accidents involve **trespassers walking on the right-of-way track** or vehicle occupants and pedestrians being **struck at crossings**.[55]

A comprehensive evaluation of derailments is beyond the scope of this submission, but an overview of Transportation Safety Board data for 2024 provides invaluable context.[56]

- Total rail accidents across Canada for 2024 was 896; this was down from 2023 accidents totalling 918, and down 12% from the 10-year average of 1021.
- **Only 5%** of accidents involved main track derailments. The proportion of accidents that were main-track derailments in 2024 (5%) was down from the previous year of 6% (2023) and below the 10-year average of 7%. As 5% represents the national figure, the main track derailments that occurred in Alberta would be a fraction of the 5%.
- Most of the accidents were:
    - 39% non-main-track derailment (accidents are typically minor, occurring yards, during switching operations at speeds of less than 10 mph).
    - 19% (167) were crossing accidents (vehicles or pedestrians) at rail crossings.
    - 10% (95) were trespassing accidents.
- For 2024, the majority of main track derailments - 42% (20) involved 1-2 railcars and 19% (9) involved 3-5 railcars. It is important to note that the "derailment" category includes very minor accidents where only 1 or more railcar wheels has come off of the normal running surface.
- **No fatalities resulted from main-track derailments in 2024;**
- Fatalities, continue to be **due to crossing accidents and trespassing**.
    - Trespassing: 56 (2024) - 9 trespass fatalities in Alberta in 2024.
    - Crossing accidents: 12 (2024)

[55] 2013 Guidelines p. 18
[56] Rail Transportation Occurrences in 2024 at "www.tsb.gc.ca/eng/stats/rail/2024/sser-ssro-2024.html"

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- Other: 1 rail exmployee (2024)

This data supports the railway industry's concerns that the key safety issues relate to trespass and grade crossings accidents. Taking into consideration the Transportation Safety Board Data, it cannot be concluded that a "derailment" setback requirement is in any way related to the 2013 Guidelines or rail safety for main-line trains.

Perspective on Risk

It is worthwhile to examine the range of probabilities of fatality associated with various activities and events to provide a perspective on risk. The Insurance Information Institute publishes Mortality Statistics showing the one-year odds of fatality[57].

An excerpt of some of the odds is presented below.

Cause of Death	One-year Odds
Motor Vehicle Accident	8,096
Fire	115,832
Faling Down Stairs	130,654
Drowning	450,511
Airplane Crash	846,024
Cataclysmic Storm (3)	2,467,570
Main-line Derailment	**9,090,964**
Lightning	17,143,115
Earthquake	25,055,321

[57] https://www.iii.org/fact-statistics-mortality-risk

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How do Risk Levels Compare?

The risk of fatality caused by a main-line derailment is 1 in 9,090,964.

MIACC has determined that a **risk level of 1 x 10^{-6} is generally deemed to be acceptable globally and all land uses with lower risk can be allowed without restrictions**.

Closer to home, the City of Calgary ("City") has adopted a risk-based approach in their *Development Next to Freight Rail Corridors Policy, 2018*[58] which allows for development within 30 m of a freight rail line provided that the proposed development meets its Risk Tolerance Level. The purpose of the policy is to ensure that development and re-development reach their full potential (highest, best and safe use) near freight railways within acceptable levels of risk. This is increasingly important as Calgary faces a rapidly increasing population and goals for densification to minimize service costs. The prudent use of these marginalized lands also serves to increase market values and property taxes.

The Policy states:

"Consultation with experts, analyses based on a nationally used risk standard and comparison with other risk tolerance levels have enabled Administration to recommend annual probabilities of a train derailment leading to a fatality is one in 1,00,00 for High Density Uses and one in 3,333,333 for Sensitive Uses as acceptable tolerances respectively."[59]

Please see Appendix 3 for a listing of the City of Calgary's land uses within these categories.

The Policy goes on to state:

"The risk resulting from a train derailment depend on track and operational aspects as well as the size of planned buildings and the resulting likelihood that they would be impacted by a derailment. Mitigation measures should be required based on the risk tolerance established in the City's risk assessment as follows:

- Where the risk for a parcel in 1 in 3,333,333 or less, no additional mitigation measures are required and development can proceed with standard building review process;

[58] https://www.calgary.ca/content/dam/www/pda/pd/documents/current-studies-and-ongoing-activities/development-next-to-rail/development-next-to-freight-rail-corridors-policy.pdf

[59] Ibid. p. 2

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- Where the risk for a parcel is greater than one in 1,000,000 and the proposed development is for a High Density Use in a building that exceeds the *Maximum Building Width* as referenced in Table 1 of the Implementation Guide, *a Site-Specific Risk Assessment* is required;
- Where the risk for a parcel is greater than 1 in 3,333,333 and the proposed development is for a Sensitive Use that exceeds the Maximum Use Width as referenced in Table 1 of the Implementation Guide, a *Site-Specific Risk Assessment is required;*
- Where the risk for a parcel is greater than one in 3,333,333 and the proposed development is for a Sensitive Use in a building that exceeds the *Maximum Use Width* as referenced in Table 1 of the Implementation Guide, *a* Train Impact Structural Review is required."[60]

A detailed Baseline Risk Assessment (BRA) was completed for all parcels adjacent to freight corridors within the City limits. The BRA conducted statistical analysis and data correlations between historical Transportation Safety Board (TSB) freight rail accidents across Canada, historical freight rail traffic (including number of trains, length of trains, speed, tonnage of goods hauled) ad local site conditions including land use zoning, track geometry, track speed and local topography. This work allowed the City to determine the maximum building width allowed, depending on use, within the proximity envelope (30 m) without requiring a Site-specific Risk Assessment.

CN's Three Hills Subdivision (within City limits) is one of the freight rail corridors assessed. The parcels adjacent to the Three Hills Sd. have been designated as having Maximum Building Widths of 644 m for High Density Uses (including residential dwellings) between 54 St. S.E. and the City limits. Please see table below excerpted from *Development next to Freight Rail Corridors Policy – Implementation Guide*[61].

[60] Ibid. p. 3
[61] https://www.calgary.ca/content/dam/www/pda/pd/documents/current-studies-and-ongoing-activities/development-next-to-rail/development-next-to-freight-rail-corridors-policy-implementation-guide.pdf

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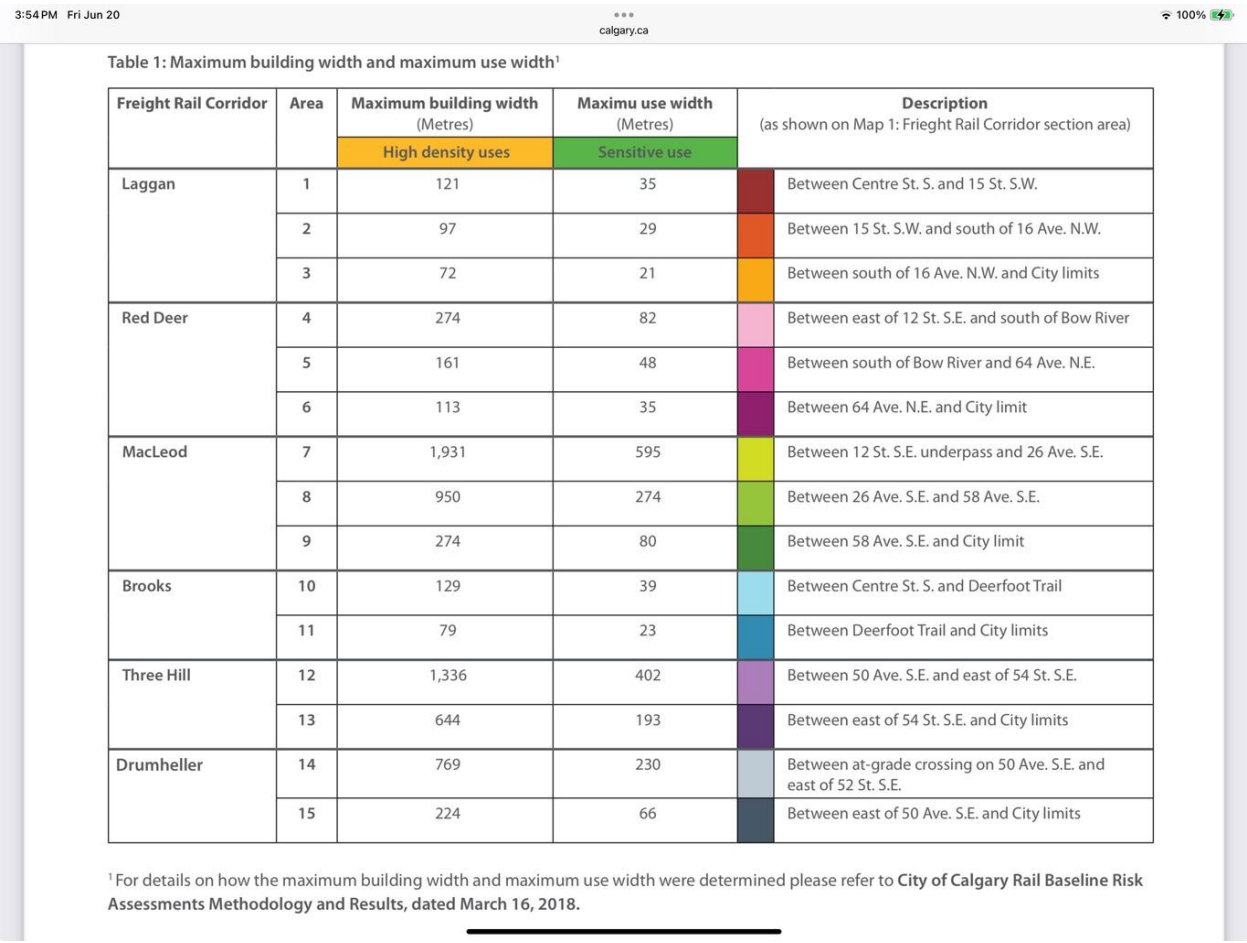

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Table 1: Maximum building width and maximum use width[1]

Freight Rail Corridor	Area	Maximum building width (Metres)	Maximu use width (Metres)	Description (as shown on Map 1: Frieght Rail Corridor section area)
		High density uses	Sensitive use	
Laggan	1	121	35	Between Centre St. S. and 15 St. S.W.
	2	97	29	Between 15 St. S.W. and south of 16 Ave. N.W.
	3	72	21	Between south of 16 Ave. N.W. and City limits
Red Deer	4	274	82	Between east of 12 St. S.E. and south of Bow River
	5	161	48	Between south of Bow River and 64 Ave. N.E.
	6	113	35	Between 64 Ave. N.E. and City limit
MacLeod	7	1,931	595	Between 12 St. S.E. underpass and 26 Ave. S.E.
	8	950	274	Between 26 Ave. S.E. and 58 Ave. S.E.
	9	274	80	Between 58 Ave. S.E. and City limit
Brooks	10	129	39	Between Centre St. S. and Deerfoot Trail
	11	79	23	Between Deerfoot Trail and City limits
Three Hill	12	1,336	402	Between 50 Ave. S.E. and east of 54 St. S.E.
	13	644	193	Between east of 54 St. S.E. and City limits
Drumheller	14	769	230	Between at-grade crossing on 50 Ave. S.E. and east of 52 St. S.E.
	15	224	66	Between east of 50 Ave. S.E. and City limits

[1] For details on how the maximum building width and maximum use width were determined please refer to **City of Calgary Rail Baseline Risk Assessments Methodology and Results, dated March 16, 2018.**

It is important to remember that the overall risk associated with a main-line derailment is 9,090,964 (or 9.09×10^{-6}) which is well below the both the MIACC and City of Calgary criteria for both Sensitive and High Density Uses and the Transportation Safety Board of Canada reports there were zero fatalities or serious injuries due to main-line derailments in Canada in 2024[62].

[62] https://www.bst.gc.ca/eng/stats/rail/2024/sser-ssro-2024.html

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Summary

Using the Mortality Risk Data and City's specific guidance, the proposed Landry development on CN's Three Hills Subdivision would be allowed within the 30 m proximity envelope without additional mitigation measures.

Part IV – Risk and the Landry Proposed Development

The risks to consider when evaluating the Landry development proposal include:

- Safety risk due to derailment
- Noise and Vibration risk due to rail operations
- Trespass risk onto CN right-of-way

Safety Risk

The following factors combine to drive the safety risk due to derailment to an extremely low level – below the annual mortality risk of 1 in 9,090,964 and, certainly, within acceptable risk levels as identified by MIACC and the City of Calgary.

Setting and Type of Dwelling

Population density and safety risk are related according to the MIACC criteria[63]. The Landry property is a relatively small rural property (237.5 sq. m.), single family dwelling, which occupies only 1.2% of the lot. This clearly represents low density.

Furthermore, the Landry proposed dwelling comes in well under the smaller of the two Maximum Building Widths established for the Three Hills Sd. in the City of Calgary study, i.e. 644 m for a residential building within 30 m of CN's property line. Using that guidance, the Landry proposed building would be allowed to be wholly or partially within the 30 m of the same rail line.

[63] Presentation "Risk Based Land Use Criteria", Doug McCutcheon, P. Eng., Professor and Program Director Industrial Safety and Loss Management Program, Faculty of Engineering, University of Alberta.

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Rail Traffic

The level of safety risk varies with the frequency of trains passing by the property. Fewer trains reduce the risk. CN has advised that there are about 4 trains per 24 hours in the area. This is a low frequency when compared to Class 1 mainline traffic of more than 30 trains per 24 hours.

Train Speed

The level of safety risk varies with train speed. The higher the train speed, the higher the risk. CN's Three Hills Subdivision consists of Class 3 track with a maximum train speed of 40 mph. The average speed is likely much lower than 40 mph and represents lower risk.

Track Geometry

The level of safety risk varies with the complexity of track geometry e.g. grade (hills), curves, switches, sidings, multiple tracks. The CN track adjacent to the Landry property is single track, no grade, straight, with no complicating track infrastructure and presents low risk of derailment.

Rail Operations

The level of risk varies with the type and number rail operations conducted at the location. The more complex the operations e.g. rail yards, loading/unloading, train marshalling (making up trains), switching tracks, road crossings, shunting, the higher the risk. Rail operations beside the Landry property are simply pass through and, therefore, low risk.

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Fig. 1 Factors Affecting Safety Risk When Considering Landry Proposal Near CN Rail Line

Noise and Vibration Risk

Noise emissions from railway rolling stock are regulated through standards applied to the design and manufacture of locomotives and railcars, in particular, Locomotive Emissions Regulation SOR/2017-121 promulgated under the *Railway Safety Act* ("RSA") and administered by Transport Canada.

Federal railways, like CN, are regulated by the Canadian Transportation Agency ("Agency") for noise under section 95.1 of the *Canada Transportation Act.* The standard for railway noise is based upon a "reasonableness" test that takes into consideration the railway's customer service obligations as well as the railway's operational requirements. To operate effectively and meet the needs of rail customers, railways typical operate 7x24. The Agency also recognizes that rail volumes fluctuate (increase/decrease) according to customer demands.

Train whistles which are blown for safety reasons to warn of a train's passage are a legal requirement of the *Canadian Rail Operating Rules* administered by Transport Canada pursuant to the RSA and will not be considered by the Agency in noise complaints.

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Rail Noise Sources

Railway noise emissions are generated by a myriad of rail operations with the highest noise levels associated with activities in rail yards (load testing, connecting of rail cars, idling locomotives, switching, etc.). Operations outside of rail yards that contribute to noise levels include shunting (coupling and uncoupling) of rail cars, switching (changing tracks), braking (friction between brake shoes and wheels), etc. Curve squeal occurs when train wheels slip laterally on rails on curved section of track. Locomotive engine noise is louder at higher speeds.

CN's rail operations adjacent to the Landry property does not involve these particularly noisy operations. Consider the following:

- CN has advised that there are currently only about four trains per day going past the property. Fewer trains result in less noise over the 24-hour period.
- The maximum allowable speed on the Class 3 Three Hills Subdivision is 40 mph with the average speed likely being considerably lower. Lower speeds generate less noise.
- The rail traffic is pass through only.
- The track is straight (no curves) and no grade (no braking or powering up associated with hills).

Building Size

The proposed development is small, single-family dwelling (237.5 sq. m.). It is important to note that the entire length of the building will not be exposed to noise from the railway line.

Building Orientation

The proposed building is positioned at an angle, with one corner facing the railway corridor limiting the noise exposure. This orientation places the unoccupied garage facing the rail corridor – not the rooms where residents will be sleeping. This is a commonly accepted noise mitigation.

Waiver

CN often suggests that adjacent landowners agree to noise waivers or noise warning clauses in agreements registered on title. These warning clauses would be included in agreements of Offers to Purchase and Sale or Lease/rental Agreements. In this way, current and future property owners/lease holders acknowledge that rail sound levels may occasionally interfere with some activities of the dwelling occupants. Ms. Landry has expressed willingness to sign such a waiver. This lowers the risk of future potential noise complaints.

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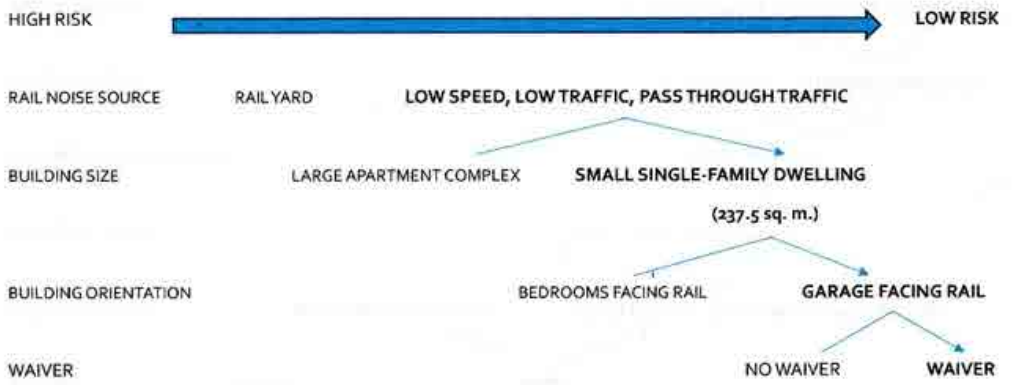
Fig. 2 Factors Affecting Noise and Vibration Risk When Considering Landry Proposal Near CN Rail Line



Trespass Risk

Six-foot chain link fencing is not a derailment mitigation. Protection against damage posed by potential derailments in high-risk settings requires specifically engineered crash barriers. Fencing is solely intended to discourage trespassing on railway rights-of-way in cases of large new residential housing developments or conversions of existing industrial or commercial properties to residential – especially where development exists on both sides of the track which tempts people to cross the rail line. This is typically restricted to more densely populated settings.

The following factors combine to drive the risk of trespassing to an extremely low level which does not warrant the requirement for fencing.

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Setting

The proposed development is for a modest single-family dwelling on a rural lot which is slightly less than 4.3 acres in size. The proposed use is strictly residential with no livestock operations. The surrounding area is largely agricultural and does not represent a source of potential trespassers.

Adjacent Development

The setting is a rural one with no development on the opposite side of the CN rail line which also remains largely agricultural and, therefore, provides no reason to cross the rail line.

Rail Crossings

The adjacent recreational trail on the former CP RPW provides a safe crossing under the CN rail line as part of its trail obviating the need to trespass on the Landry property to cross the CN ROW.

Both the Rocky View County and CN have been proactive and have already placed the responsibility to prevent trespassing squarely on the shoulders of the Meadowlark Trail Society and not the adjacent landowners through various by-laws, development permits and agreements.

Access from Trail

Lastly, the physical characteristics of the trail adjacent to the Landry property and leading to the underpass of the CN rail line further discourages trail users from leaving the trail. The trail sits in a steep ravine below the Landry property and has barbed wire fencing on the flat portion atop the ravine on the former ROW's property.

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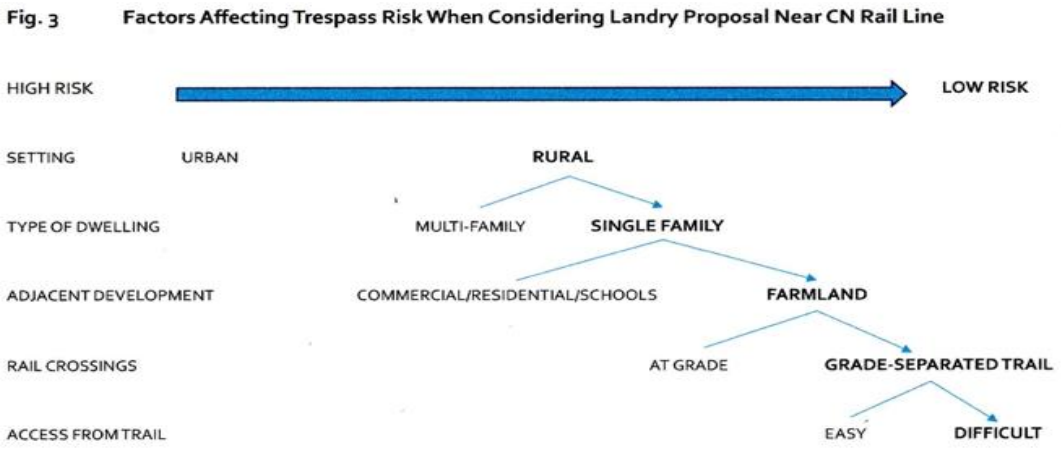

Summary

The assessment of specific safety, noise and vibration and trespass risks associated with the Landry proposal presents extremely low levels of risk which do not indicate the need for mitigation measures.

CVs of the authors are attached as Appendices 4 and 5.

Respectfully submitted on June 27, 2025,

Grete S. Bridgewater, B.Sc., M.E.Des., President

Janice Erion, B.A.(Hons), JD

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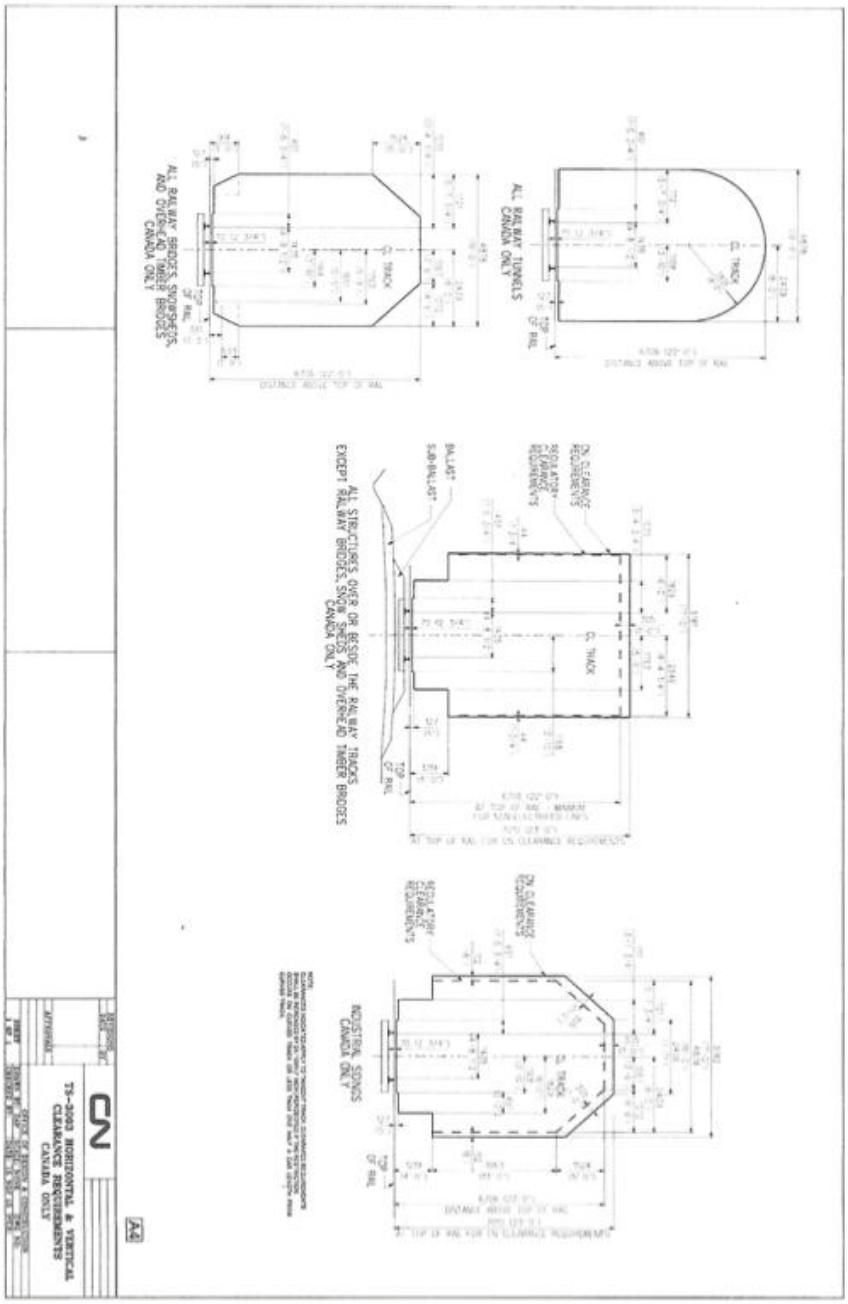
Appendix 1 CN Clearance Diagrams based on Transport Canada



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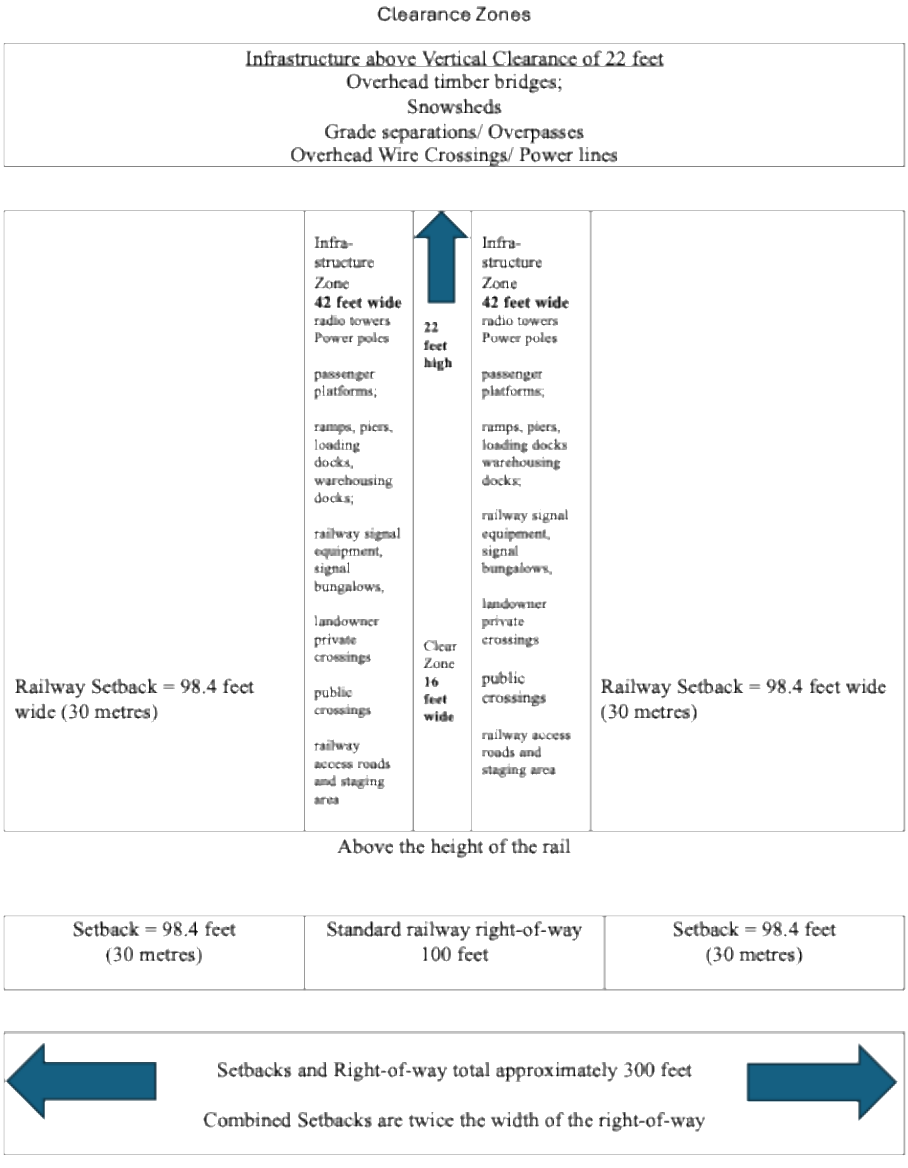
Appendix 2 Diagram of Zones



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Appendix 3 Table 1 Excerpt from the City of Calgary's Development Next to Freight Rail Corridors

Table 1: High Density Residential and Commercial Uses, Sensitive Uses and Noise Susceptible Uses

High Density Residential and Commercial Uses	Sensitive Uses	Noise Susceptible Uses
- Hotel - Live Work Unit - Multi-Residential Development - Multi-Residential Development – Minor - Dwelling Unit - Townhouse - Office - Instruction Facility - Post-secondary Learning Institution - Health Services Laboratory – With Clients - Medical Clinic - Cannabis Counselling - Dinner Theatre - Drinking Establishment – Large - Drinking Establishment – Medium - Drinking Establishment – Small - Night Club - Restaurant: Food Services Only – Large - Restaurant: Food Services Only – Medium - Restaurant: Food Services Only – Small - Restaurant: Licensed – Large - Restaurant: Licensed – Medium - Restaurant: Licensed – Small - Restaurant: Neighbourhood - Artist's Studio	- Addiction Treatment - Assisted Living - Child Care Service - Custodial Care - Emergency Shelter - Home Based Child Care – Class 2 - Hospital - Jail - Residential Care - School Authority – School - School – Private - Temporary Shelter	- Addiction Treatment - Assisted Living - Backyard Suite - Child Care Service - Contextual Semi-detached Dwelling - Contextual Single Detached Dwelling - Cottage Housing Cluster - Custodial Care - Duplex Dwelling - Dwelling Unit - Emergency Shelter - Home Based Child Care – Class 2 - Hospital - Hotel - Jail - Live Work Unit - Manufactured Home Park - Multi-Residential Development - Multi-Residential Development – Minor - Residential Care - Rowhouse Building - School Authority – School - School – Private - Semi-detached Dwelling - Single Detached Dwelling - Townhouses

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Appendix 4 CV of Janice Erion – Responsible for Sections 1 and 2

Janice Erion

BA (Hons), JD

PERSONAL PROFILE

Janice Erion has consulted with Fjord Consulting since 2017. Projects include:

- working with a larger team on a rail proximity framework for the City of Calgary;
- assisting with private railway crossings;
- assisting municipalities in securing approval from the Canadian Transportation Agency for public crossings;
- providing clients with information regarding wide a range of railway regulations including noise and vibration matters.

For 16 years prior to consulting with Fjord Consulting, Ms. Erion was in-house counsel with the Law Department at Canadian Pacific Railway (2000 – 2016).

Ms. Erion worked on a large variety of railway matters including:

- Regulatory applications and approvals for new facilities and infrastructure from the Canadian Transportation Agency. Projects include new railway yards, new railway lines, and a new international tunnel
- Environmental Assessments with the Environmental Programs & Regulatory Department;
- Matters before the Canadian Transportation Agency including noise and vibration complaints, crossing and utility crossing disputes;
- Large infrastructure files including railway line sales, overpass projects, overhead crossings; transload facilities;
- Risk Assessments with Environmental Programs & Regulatory Department and Business Development;
- Commercial agreements including agreements with shortline railways and rail customers.

Ms. Erion worked closely with the Environmental Programs & Regulatory group, the Engineering Department, Business Development Group and Real Estate Department in Canadian Pacific Railway offices across Canada.

EDUCATION

Juris Doctor, University of Calgary, Faculty of Law – 1993

Bachelor of Arts (Honors), University of Calgary – 1990

Mediation (Level 1) – Alberta Arbitration & Mediation Society – 2004

ASSOCIATIONS

Member of Law Society of Alberta since 1994

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Appendix 5 CV of Grete Bridgewater – Responsible for Sections 3 and 4

Grete S. Bridgewater

B.Sc., M. E. Des.

PRESIDENT

gbridgewater@fjord.consulting

PERSONAL PROFILE

Grete is Principal and owner of Fjord Consulting. For 25 years prior to retiring from Canadian Pacific in 2016, Ms. Bridgewater was involved in developing Canadian Pacific's Environmental Program. In her most recent position as Director, Environmental Programs & Regulatory within the Corporate Risk department, she led the development of environmental strategies, policies and programs to address environmental issues and opportunities; risk strategies and assessments of new and emerging activities and operations, including the handling, storage and transportation of dangerous goods (e.g. crude oil), municipal development plans; regulatory review and advocacy, management systems audits and compliance; environmental assessment and approvals for major projects; and resolution of community and stakeholder complaints, including noise and vibration, through mediation and other legal processes.

Ms. Bridgewater worked closely with the CP's Legal, Engineering, Strategy and Operations departments and CP customers/third party operators on comprehensive risk assessments and audits of dangerous goods transload facilities, crossings and developments in proximity to railway infrastructure, mediation of disputes and legal submissions to the Canadian Transportation Agency and other regulatory bodies.

Recent projects include being part of a team delivering a rail proximity framework for the City of Calgary and assisting various municipalities in securing approvals for public crossings over railway lines and providing rail regulatory advice to clients.

EDUCATION

B.Sc. (Biochemistry), McGill University, Montreal, Quebec, 1971

Master of Environmental Design (Environmental Science), University of Calgary, Calgary, Alberta, 1991

AFFILIATIONS/ASSOCIATIONS

Former Chair of the Association of American Railroads Environmental Affairs Committee, Washington, DC

Former Chair of the Railway Association of Canada Environment Committee, Ottawa, ON

Former Member of the Railway Association of Canada's Sustainability Steering Committee, Ottawa, ON

Former Member of the Canadian Transportation Agency Railway Technical Advisory Committee, Ottawa, ON

Former Member of the Federation of Canadian Municipalities-Railway Association of Canada Proximity Steering Committee, Ottawa, ON

Former Chair of Alberta Ecotrust Foundation, Calgary, AB

Tab 5

ROCKY VIEW COUNTY

PLANNING

TO: Subdivision and Development Appeal Board

DATE: September 22, 2022 **DIVISION:** 5

FILE: 07134004 **APPLICATION:** PRDP20223151

SUBJECT: Development Item - Construction of a Dwelling, Manufactured

APPLICATION PROPOSAL: Construction of a dwelling, manufactured, relaxation to minimum side yard setback requirement.

APPLICATION LOCATION: Located approximately 0.81 kilometers (0.50 mile) north of Highway 9 and on the west side of Range Road 262.

VARIANCE REQUESTED:

Regulation	Requirement	Proposed	Variance
Minimum side yard setback requirement	45.00 m (147.64 ft.)	3.00 m (9.84 ft.)	93.3%

DECISION: Approved, subject to conditions.

ADMINISTRATION DECISION SUMMARY: The applicant is requesting a variance to the minimum side yard setback requirement from 45.00 m (147.34 ft.) to 15.51 m (50.89 ft.), a variance of 66 percent, from the northern side property line. The northern property line abuts an undeveloped, but open, County Road allowance. Based on the location of the subject parcel and surrounding road network, administration does not expect the road allowance being developed in the foreseeable future. Also, given the narrow shape of the parcel, administration is understanding of the requested variance given the reasons the applicant has provided in the submitted cover letter.

However, as per the recommendations provided by Canadian National Railway upon file circulation, administration revised the minimum setback requirement from the southern property line abutting Railway Plan RW 31 from 6.00 m (19.69 ft.) to 30.00 m (98.43 ft.). Given the increased setback requirement, administration granted a relaxation from the northern property line from 45.00 m (147.64 ft.) to 3.00 m (9.84 ft.), to permit the applicant sufficient area to relocate the dwelling on the site plan as needed.

DECISION DATE:
August 9, 2022

APPEAL DATE:
August 30, 2022

ADVERTISED DATE:
August 9, 2022

APPEAL:

Submitted by the applicant in relation to Condition #2 (revised site plan with increased setback).

'See attached exhibits'

ROCKY VIEW COUNTY

ANALYSIS:

The applicant is appealing Condition #2 of the approval, which requires the applicant to submit a revised site plan showing a minimum building setback of 30.00 m (98.43 ft.) from the southern property line abutting Railway Plan RW 31. The applicant has stated that the increased setback will result in an increased financial burden as utilities (such as natural gas and electricity) and driveway will need to be extended further than originally planned.

Administration has advised the applicant that the increased setback is directly related to the safety of the occupants of the dwelling, as per the recommendations from Canadian National Railway, taken from *Section 3.3* of *GUIDELINES for New Development in Proximity to Railway Operations*, dated May 2013.

Respectfully submitted,

Justin Rebello

Supervisor
Planning and Development Services

JW/ac,bs

ROCKY VIEW COUNTY

PLANNING

TO:	Staff Report		
DATE:	September 22, 2022	**DIVISION:** 5	
FILE:	07134004	**APPLICATION**: PRDP20223151	
SUBJECT:	Development Item - Construction of a dwelling, manufactured, relaxation to minimum side yard setback requirement		

EXECUTIVE SUMMARY:

The application is for the construction of a dwelling, manufactured, which is listed as a discretionary use under the Agricultural, General District (A-GEN). The subject parcel is undeveloped with no building/structures currently erected. The subject parcel abuts Range Road 262 to the east, Canadian National Railway (CN) corridor (Plan RW 31) to the south, an undeveloped open road allowance to the north (TWP RD 280), and the defunct Canadian Pacific Railway corridor (Plan RY 226) to the west, which is now a pedestrian walking/bicycle path owned by Alberta Trailnet Society.

The applicant is requesting a variance to the minimum side yard setback requirement from 45.00 m (147.34 ft.) to 15.51 m (50.89 ft.), a variance of 66 percent, from the northern property line. Based on the location of the subject parcel and surrounding road network, administration does not expect the road allowance being developed in the foreseeable future. Also, given the narrow shape of the parcel, administration is understanding of the requested variance given the reasons the applicant has provided in the submitted cover letter.

The subject parcel is currently accessed via a dirt road approach off Range Road 262. The dwelling is to be serviced via a new groundwater well and a new private sewage treatment system (septic field). The dwelling is a *Ready To Move* home (RTM), approximately 163.51 sq. m (1.760.00 sq. ft.) in area, to be constructed on a basement foundation, along with an attached rear deck and double car garage.

On June 23, 2022, the subject application was circulated to internal departments and external agencies for their comments. On June 28, 2022, administration received email correspondence from Canadian National Railway (CN) outlining their comments on the application, which can be found in Attachment C of this report. Among the several recommendations made by CN, the most significant were; a minimum building setback of 30.00 m (98.43 ft.) from Railway Plan RW 31, the construction of a 2.50 m (8.20 ft.) high earthen berm, and a 1.83 m (6.00 ft.) high chain link fence along the entire length of the southern property line. The recommendations provided by CN are taken from the document titled *GUIDELINES for New Development in Proximity to Railway Operations*, dated May 2013. CN advised administration that the berm and building setback recommendations are due to safety concerns in the event of a train derailment. The fencing recommendation is to prevent the risk of animals (pets/livestock) and/or people (mainly children) from travelling onto the railway tracks. The other recommendations were made in regard to noise & vibration mitigation.

On July 7, 2022, administration provided email correspondence to the applicant stating the recommendations provided by CN, along with the rationale behind each recommendation and direction moving forward. The applicant responded to administration stating that they will face substantial challenges constructing the berm and revising the building setback, as these requirements will result in significant financial burden and will extend timelines on completing dwelling construction. Administration clarified to the applicant that although the mentioned requirements are not formal regulations in Land Use Bylaw C-8000-2020 or County Servicing Standards, they are seen to serve a valid planning rationale as they are directly related to the safety of the occupants of the parcel.

Administration Resources
Jeevan Wareh, Planning & Development Services

ROCKY VIEW COUNTY

On July 12, 2022, Planning Services conducted an on-site inspection of the subject parcel. No construction of the proposed dwelling had commenced, and the parcel was free of any garbage/refuse. It is to be noted that there are no active bylaw enforcement files on the subject parcel. Several photos of the subject site were taken, most notably; the active CN railway running west to east along the southern property line, the existing fence along the southern property line, the rail crossing to the southeast of the site traversing Range Road 262 (via a bridge), the existing dirt road approach off Range Road 262, the undeveloped road allowance to the north of the site, and the defunct Canadian Pacific Railway corridor (Plan RY 226) to the west. The topography of the site is generally flat, with bunches of trees scattered throughout.

On July 28, 2022, administration received email correspondence from Transport Canada (TC) regarding the circulation comments given by CN. Transport Canada confirmed that the conditions provided by CN are indeed *recommendations*, and not formal regulations required by the Government of Canada as per the *Railway Safety Act*. TC advised that *Section 24* of the *Railway Safety Act* does speak to construction/activities that may "constitute a threat to safe railway operations" but does not include regulations in respect to the safety of uses adjacent to active railways. Please see Attachment 'C' for the email correspondence from Transport Canada.

On August 11, 2022, administration contacted CN requesting if the berm requirement could be waived given the rural context of the site, scale of the proposed development, and the extenuating circumstances of the applicant. CN provided email correspondence the following day confirming that the requirement of the 2.50 m (8.20 ft.) high earthen berm can indeed be waived given the reasons stated above. Administration then contacted the applicant explaining that the berm condition had been removed; however, the building setback requirement shall remain as a minimum safety measure in respect to potential derailments. The applicant was then given the Notice of Decision with all conditions of approval, along with information on how to file an appeal if they wish to do so.

In conclusion, although the minimum building setback requirement of 30.00 m (98.43 ft.) from the southern property line is not a formal County requirement as per Land Use Bylaw C-8000-2020, nor a requirement of Transport Canada as per the *Railway Safety Act*, administration believes that the setback serves a valid planning objective as it directly relates to safety of the site occupants, and does not sub-delegate the Development Authority's discretionary powers, and therefore shall be a condition of approval in accordance with Section 100 b) of Land Use Bylaw C-8000-2020.

ADMINISTRATION DECISION:

Approval, subject to conditions.

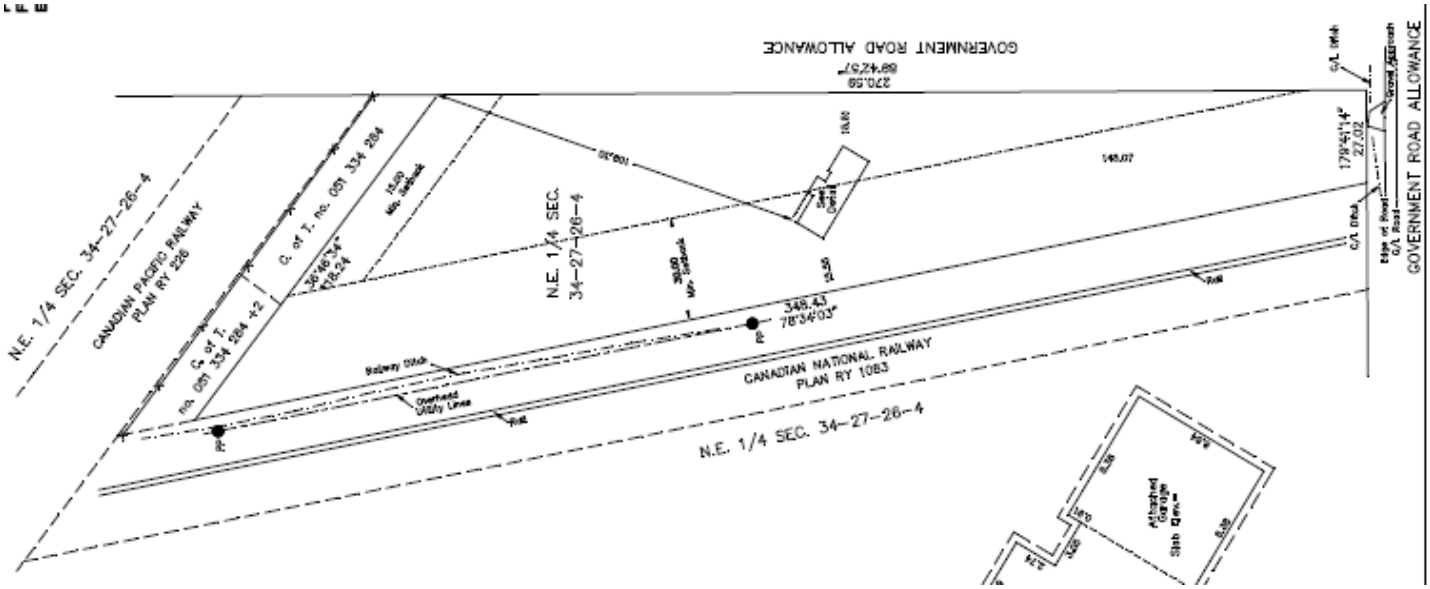
OVERVIEW:

Applicant	-	Landry, Regina
Landowner	-	Landry, Regina
Subject Site (s)	-	280003 RGE RD 262
Site Area	-	1.82 ha (4.50 ac)
Proposal	-	Construction of a dwelling, manufactured, with variances
Surrounding Uses	-	Agricultural & Residential
Applicable Regulations		Land Use Bylaw C-8000-2020, Municipal Development Plan, County Servicing Standards

ROCKY VIEW COUNTY

Figure 1 – Site Location (Regional Context):

Figure 2 – Site Plan (Intended Use Areas):



ROCKY VIEW COUNTY

POLICY / LAND USE BYLAW REVIEW:

Land Use Bylaw C-8000-2020 (LUB):

"Dwelling, Manufactured" means a detached Dwelling Unit consisting of a transportable dwelling that is designed and built to CAN/CSA Standard, to be moved, from one point to another as a single unit, and which is upon its arrival at the site where it is to be located, ready for occupancy except for incidental building operations such as connection to utilities. A Dwelling, Manufactured shall have a minimum GFA of 37.1 m2 (399.34 ft2).

Section 303) A-GEN Agricultural, General District: To provide for agricultural activities as the primary use on a Quarter Section of land or larger or on large remnant parcels from a previous subdivision, or to provide for residential and associated minor agricultural pursuits on a small first parcel out.

Section 304) Discretionary uses: Dwelling Manufactured

Section 306) Maximum Density

a) *On parcels less than 32.4 ha (80.0 ac), a maximum of two Dwelling Units – one Dwelling, Single Detached and one other Dwelling Unit where the other Dwelling Unit is not a Dwelling, Single Detached.*

Section 307) Maximum Building Height

a) *Dwelling Units: 12.00 m (39.37 ft.)*
Height not indicated on building plans, can confirm with applicant/builder. Home looks to be a standard RTM therefore building height should not be of concern.

Section 308) Minimum Setbacks:

- *Front yard setback requirement: 45.00m (147.64 ft.)*
- **Proposed** front yard setback: 145.07 m
- *Rear yard setback requirement: 15.00m (49.21 ft.)*
- **Proposed** rear yard setback: 109.30 m
- *Side yard setback requirement (S1): 6.00m (19.69 ft.)*
- **Proposed** side yard setback (S1): 15.55 m currently (subject to change with revised site plan submittal)
- *Side yard setback requirement (S2): 45.00m (9.84 ft.)*
- **Proposed** side yard setback (S2): 15.51 m currently subject to change with revised site plan submittal)

Section 309) Exceptions

b) *On parcels less than 4.00 ha (9.88 ac), the uses within the R-RUR District shall apply*

Section 100) Conditions of Approval

The Development Authority, in imposing conditions on a Development Permit may:

b) *For a Discretionary Use, impose conditions as deemed appropriate, so long as they serve a legitimate planning objective and do not sub-delegate the Development Authority's discretionary powers.*

ROCKY VIEW COUNTY

VARIANCE SUMMARY:

The variance was discussed, and direction agreed upon at the County development team meeting reflecting a collaborative team approach to decision making.

Variance	Requirement	Proposed	Percentage (%)
LUB 308 Minimum side yard setback requirement	45.00 m (147.64 ft.)	3.00 m (9.84 ft.)	93.3%

ADDITIONAL REVIEW CONSIDERATIONS:

Given that the subject parcel was not created via a formal subdivision file and was rather created via natural fragmentation through the implementation of public works infrastructure (roads and railways), administration is supportive of a setback relaxation given the narrow shape of the parcel. It is also to be noted that the 30.00 m (98.43 ft.) setback set out by CN only applied to dwellings, therefore administration does not believe the setback will significantly hinder future development on the site as other buildings which are not dwellings, that are a listed use under the Agricultural, General District (A-GEN), such as Accessory Buildings, Riding Arenas, Equestrian Centres, etc., may still be allowed to be constructed within the 30.00 m (98.43 ft.) setback from the southern property line.

Administration took into consideration the following excerpts from the document titled *GUIDELINES for New Development in Proximity to Railway Operations*:

Section 1.3) Intended Audience

***Municipalities and Provincial Governments**, to create or update their policies, regulations, and standards related to new development along railway corridors, in order to create more consistency across the country.*

***Municipal staff**, as a tool to better understand the safety, vibration, noise, and other issues related to new development along railway corridors, and to more effectively evaluate and provide feedback on development proposals, particularly when they involve a residential component.*

***Developers and property owners**, of sites in proximity to railway corridors to better understand the development approval process and the types of mitigation measures that might be required.*

Section 1.4.3) Municipal

Municipalities are responsible for ensuring efficient and effective land use and transportation planning within their territory, including consultation with neighbouring property owners (such as railways), in carrying out their planning responsibilities. Municipal planning instruments include various community-wide and area plans, Zoning By-law/ Ordinances, Development Guidelines, Transportation Plans, Conditions of Development Approval, and Development Agreements to secure developer obligations and requirements. Municipal governments have a role to play in proximity issues management by ensuring responsible land use planning policies, guidelines, and regulatory frameworks, as well as by providing a development approvals process that reduces the potential for future conflicts between land uses.

Section 1.4.5) Land Developer / Property Owner

Land developers are responsible for respecting land use development policies and regulations to achieve development that considers and respects the needs of surrounding existing and future land uses. As initiators of urban developments, they also have the responsibility to ensure that development projects are adequately integrated in existing environment.

ROCKY VIEW COUNTY

Section 2.3) Standard Mitigation

In order to reduce incompatibility issues associated with locating new development (particularly new residential development) in proximity to railway corridors, the railways suggest a package of mitigation measures that have been designed to ameliorate the inherent potential for the occurrence of safety, security, noise, vibration, and trespass issues. These mitigation measures (illustrated in FIGURE 2) include a minimum setback, earthen berm, acoustical and/or chain link security fence, as well as additional measures for sound and vibration attenuation.

It should be noted that many of these measures are most effective only when they are implemented together as part of the entire package of standard mitigation measures. For example, the setback contributes to mitigation against the potential impact of a railway incident as well as noise and vibration, through distance separation. The earthen berm, in turn, can protect against the physical components of a derailment (in conjunction with the setback), and provides mitigation of wheel and rail noise, reduces the masonry or wood component (and cost) of the overall noise barrier height, and offers an opportunity for the productive use of foundation excavations. Implementation of the entire package of mitigation measures is, therefore, highly desirable, as it provides the highest possible overall attenuation of incompatibility issues. It should also be noted that implementation of such measures is easiest to achieve for new greenfield development. For this reason, these measures are not intended as retrofits for existing residential neighbourhoods in proximity to railway operations. As well, challenges may be encountered in the case of conversions or infill projects on small or constrained sites, and any implications related to the use of alternative mitigation measures need to be carefully evaluated.

Section 3.3) Building Setbacks for New Developments

- *3.3.1) The standard recommended building setbacks for new residential development in proximity to railway operations are as follows:*

  Principal Main Line: 30.00 m

- *Appropriate uses within the setback area include public and private roads; parkland and other outdoor recreational space including backyards, swimming pools, and tennis courts; unenclosed gazebos; garages and other parking structures; and storage sheds.*

Section 3.4) Noise Mitigation

Noise resulting from rail operations is a key issue with regards to the liveability of residential developments in proximity to railway facilities, and may also be problematic for other types of sensitive uses, including schools, daycares, recording studios, etc. As well as being a major source of annoyance for residents, noise can also have impacts on physical and mental health, particularly if it interferes with normal sleeping patterns. The rail noise issue is site-specific in nature, as the level and impact of noise varies depending on the type of train operations. (see Appendix B for a sample rail classification system). Proponents will have to carefully plan any new development in proximity to a railway corridor to ensure that noise impacts are minimized as much as possible. Generally, during the day, noise should be contained to a level conducive to comfortable speech communication or listening to soft music, and at night it should not interfere with normal sleeping patterns. For building retrofits, while the majority of the guidelines below will apply, special attention should be paid to windows, doors, and the exterior cladding of the building.

Section 3.5) Vibration Mitigation

Vibration caused by passing trains is an issue that could affect the structure of a building as well as the liveability of the units inside residential structures. In most cases, structural integrity is not a factor. Like sound, the effects of vibration are site specific and are dependent on the soil and subsurface conditions, the frequency of trains and their speed, as well as the quantity and type of goods they are transporting. The guidelines below are applicable only to new building construction. In the case of

ROCKY VIEW COUNTY

building retrofits, vibration isolation of the entire building is generally not possible. However, individual elevated floors may be stiffened through structural modifications in order to eliminate low-frequency resonances. Vibration isolation is also possible for individual rooms through the creation of a room-within-a-room, essentially by floating a second floor slab on a cushion (acting like springs), and supporting the inner room on top of it. Additional information regarding vibration mitigation options for new and existing buildings can be found in the FCM/RAC Railway Vibration Mitigation Report, which can be found on the Proximity Project website.

Section 3.6) Safety Barriers

Safety barriers reduce the risks associated with railway incidents by intercepting or deflecting derailed cars in order to reduce or eliminate potential loss of life and damage to property, as well as to minimize the lateral spread or width in which the rail cars and their contents can travel. The standard safety barrier is an earthen berm, which is intended to absorb the energy of derailed cars, slowing them down and limiting the distance they travel outside of the railway right-of-way. The berm works by intercepting the movement of a derailed car. As the car travels into the berm, it is pulled down by gravity, causing the car to begin to dig into the earth, and pulling it into the intervening earthen mass, slowing it down, and eventually bringing it to a stop.

- *3.6.1.1) Where full setbacks are provided, safety barriers are constructed as berms, which are simple earthen mounds compacted to 95% modified proctor. Setbacks and berms should typically be provided together in order to afford a maximum level of mitigation. Berms are to be constructed adjoining and parallel to the railway right-of-way with returns at the ends and to the following specifications:*
    - *Principal Main Line: 2.5 metres above grade with side slopes not steeper than 2.5 to 1*

Respectfully submitted,

Dominic Kazmierczak

Manager
Planning

Concurrence,

Brock Beach

Acting Executive Director
Community Development Services

ATTACHMENTS

ATTACHMENT ‘A’: Development Permit Report Conditions
ATTACHMENT ‘B’: Application Information
ATTACHMENT ‘C’: Maps and Additional information

ROCKY VIEW COUNTY

ATTACHMENT 'A': DEVELOPMENT PERMIT REPORT CONDITIONS

Description:

1. That the construction of a Dwelling, Manufactured, may commence on the subject site, in accordance with the approved site plan, application, and drawings, as submitted by the applicant, as amended, and conditions of approval and includes:
    i. That the minimum side yard setback requirement shall be relaxed from **45.00 m (147.64 ft.) to 3.00 m (9.69 ft.).**
    ii. Ancillary works related to meet conditions of this permit;

Prior to Release:

2. That prior to release of this permit, the Applicant/Owner shall submit a revised site plan showing a minimum building setback from the south property line abutting Plan RW 31, of 30.00 m (98.43 ft.) to the proposed dwelling, manufactured. The plan shall also include:
    i. The location of the required 1.83 m (6.00 ft.) high chain link or wood fence abutting the south property line. Fencing details shall also be submitted, included material type, sizing, dimensions etc.
3. That prior to release of this permit, the Applicant/Owner shall contact County Road Operations with haul details for materials and equipment needed during construction/site development to confirm if Road Use Agreement or permits for any hauling along the County road system, or if an overweight/over dimension permit for travel on the County road system for the subject house move will be required, and to confirm the presence of County road ban restrictions.
    i. The Applicant/Owner shall also discuss the required existing gravel approach alterations in accordance with the County's Servicing Standards. The approach shall be constructed to minimum standards to improve sightlines along Range Road 262.
    ii. The Applicant/Owner shall submit a drawing showing the location of the "hidden approach" sign, located on the east side of Range Road 262 and south of Township Road 280
    iii. Written confirmation shall be received from County Road Operations confirming the status of this condition. Any required agreement or permits shall be obtained unless otherwise noted by County Road Operations.

Prior to Building Occupancy:

4. That prior to building occupancy of the dwelling, the Applicant/Owner shall contact County Road Operations for a post-construction inspection of the upgraded approach for final acceptance, in accordance with the approved approach/sign drawing.
    i. Written confirmation shall be received from County Road Operations confirming the acceptance of the approach.
5. That prior to building occupancy of the dwelling, the Applicant/Owner shall request an inspection from the County, to confirm that the required 1.83 m (6.00 ft.) high chain link fence along the south side property line abutting Plan RW 31 has been installed as per the approved plans.

Permanent:

6. That any plan, technical submission, agreement, matter, or understanding submitted and approved as part of the application, in response to a Prior to Release or Occupancy condition, shall be implemented and adhered to in perpetuity.

ROCKY VIEW COUNTY

7. That there shall be no more than 2.00 m (6.56 ft.) of excavation or 1.00 m (3.28 ft.) of fill adjacent to or within 15.00 m (49.21 ft.) of the proposed building under construction, unless a separate Development Permit has been issued for additional fill.
8. That the dwelling shall not be used as a *Vacation Rental* or for commercial purposes at any time, unless approved by a Development Permit.
9. That there shall be a minimum of two dedicated on-site parking stalls for the subject dwelling unit at all times.
10. That the Applicant/Owner shall take effective measures to control dust on the property so that dust originating therein shall not cause annoyance or become a nuisance to adjoining property owners and others in the vicinity of the area.
11. That no topsoil shall be removed from the site. All topsoil shall be retained on-site and shall be seeded after building construction is complete, as part of site restoration.
12. That the Applicant/Owner shall be responsible for rectifying any adverse effect on adjacent lands from drainage alteration, including stormwater implications from the proposed development. Post-development drainage shall not exceed pre-development drainage.
13. That any lot regrading and placement of material for driveway construction or development is not to direct any additional overland surface drainage nor negatively impact existing drainage patterns in County's road right-of-way of Range Road 262.
14. That if the development authorized by this Development Permit is not commenced with reasonable diligence within 12 months from the date of issue, and completed within 24 months of the issue, the permit is deemed to be null and void, unless an extension to this permit shall first have been granted by the Development Officer.
15. That if this Development Permit is not issued by **February 28, 2023**, or the approved extension date, then this approval is null and void and the Development Permit shall not be issued.

Advisory:

- That a Building Permit and sub-trade permits shall be obtained from Building Services, prior to any construction taking place, using the appropriate checklist and application forms and include any requirements noted on *the Building Code Comments for Proposed Development notice, dated July 11, 2022.*
- That the Applicant/Owner implement basic mitigation measures in the dwelling design and construction in order to limit potential impacts from the railway, as per recommendations from CN to the County, dated June 28, 2022, and should include:
    i. Provision for air-conditioning, allowing occupants to close windows during the warmer months;
    ii. Exterior cladding facing the railway achieving a minimum STC rating of 54 or equivalent, for example, masonry;
    iii. Acoustically upgraded windows facing the railway with appropriate specifications;
    iv. Locating noise sensitive rooms away from the railway side;
    v. Noise barrier and fencing for outdoor play areas.
- 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

ROCKY VIEW COUNTY

dwelling unit located on the subject site, to facilitate accurate emergency response. The municipal address for the subject dwelling unit is *280003 RGE RD 262*.

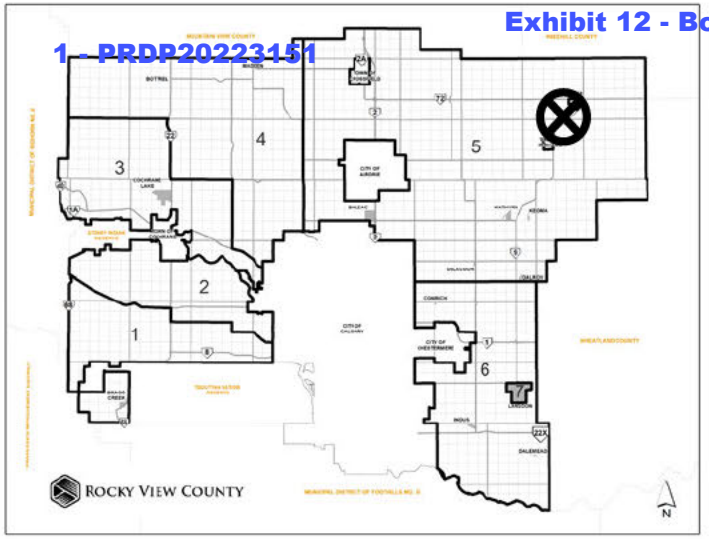
- That the County's Noise Control Bylaw *C-8067-2020* shall be adhered to at all times.
- That during construction, all construction and building materials shall be maintained on-site in a neat and orderly manner. Any debris or garbage shall be stored/placed in garbage bins and disposed at an approved disposal facility.
- That there shall be adequate water and sanitary sewer servicing provided for the proposed dwelling unit.
- That there shall be adequate water servicing provided for the proposed dwelling unit, and it is the Applicant/Owner's responsibility to provide water quantity in accordance with the recommendations found in Module 2 of the document "Water Wells That Last for Generations" published by Agriculture and Agri-Food Canada, Alberta Environment, Alberta Agriculture and Food.
- That the site shall remain free of restricted and noxious weeds and maintained in accordance with the *Alberta Weed Control Act [Statutes of Alberta, 2008 Chapter W-5.1, December 2017].*
- That the Applicant/Owner contact Canadian National Railway Company (CN) for the registration of an environmental easement on title in regard to operational noise and vibration emissions, originating from the active railway line on Plan RY 1083, in favor of CN.
- That any other federal, provincial, or County permits, approvals, and/or compliances, are the sole responsibility of the Applicant/Owner.
- That it is the responsibility of the Applicant/Owner to obtain all necessary Alberta Environment & Park Water Act approvals should the development impact any wetlands.

ROCKY VIEW COUNTY

ATTACHMENT 'B': APPLICATION INFORMATION

APPLICANT: Landry, Regina	**OWNER:** Landry, Regina
DATE APPLICATION RECEIVED: June 10, 2022	**DATE DEEMED COMPLETE:** June 23, 2022
GROSS AREA: 1.82 ha (4.50 ac)	**LEGAL DESCRIPTION:** NE-34-27-26-04
APPEAL BOARD: Subdivision and Development Appeal Board	
HISTORY: No building/planning history noted on the subject parcel.	
PUBLIC & AGENCY SUBMISSIONS: The application was circulated to seven adjacent landowners. At the time this report was prepared, zero letters were received in support or objection to the application, excepting the appeal.	

ATTACHMENT 'C': MAPS AND ADDITIONAL INFORMATION



ROCKY VIEW COUNTY

Location & Context

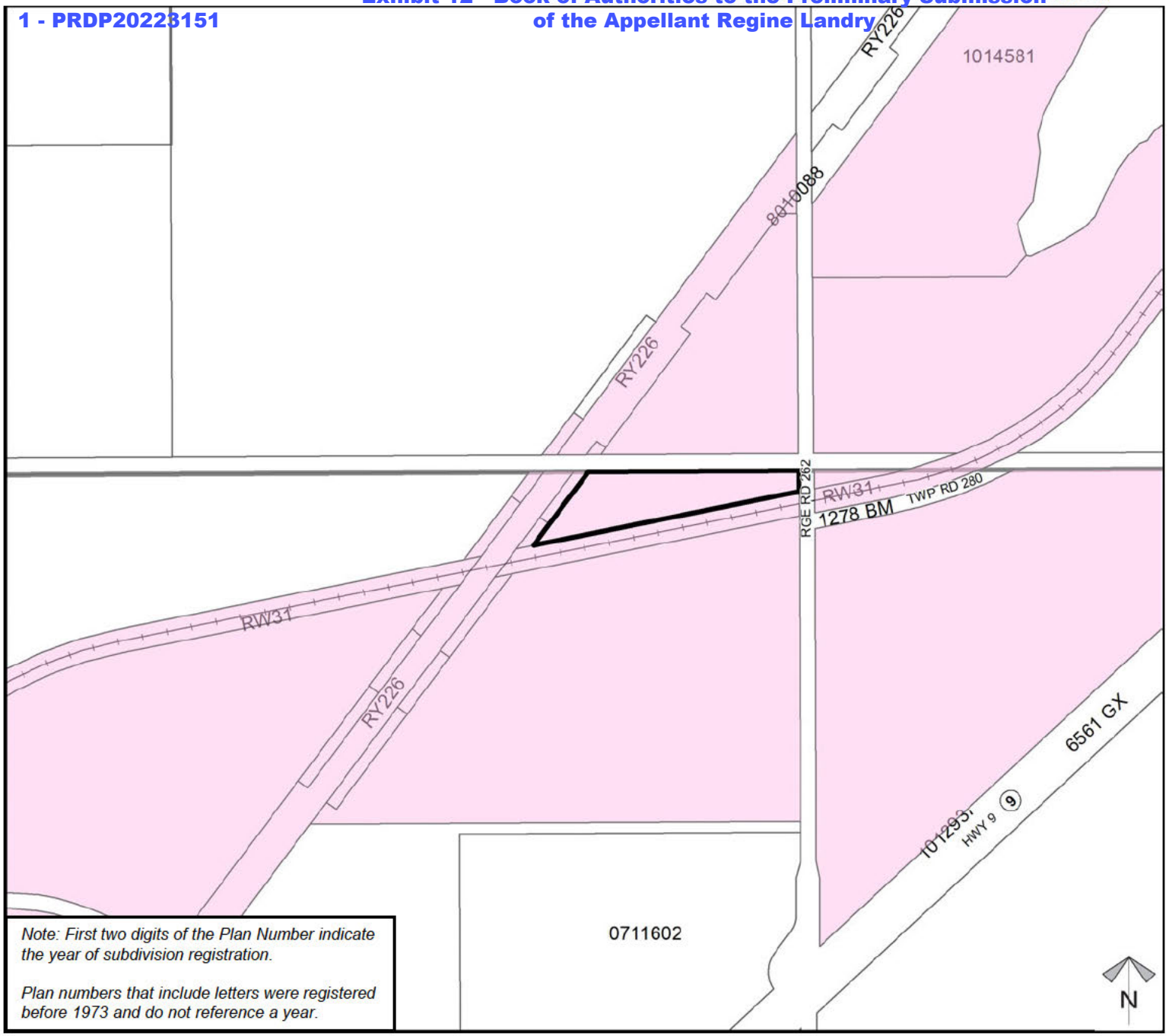
Development Proposal

Construction of a dwelling, manufactured, relaxation to minimum side yard setback requirement

Division: 5
Roll: 07134004
File: PRDP20223151
Printed: Sep 6, 2022
Legal: A portion of NE-34-27-26-W04M

1 - PRDP20223151

ATTACHMENT 'C': MAPS AND ADDITIONAL INFORMATION



ROCKY VIEW COUNTY

Landowner Circulation Area

Development Proposal

Construction of a dwelling, manufactured, relaxation to minimum side yard setback requirement

Legend

Support

Not Support

Note: First two digits of the Plan Number indicate the year of subdivision registration.

Plan numbers that include letters were registered before 1973 and do not reference a year.

Division: 5
Roll: 07134004
File: PRDP20223151
Printed: Sep 6, 2022
Legal: A portion of NE-34-27-26-W04M

ROCKY VIEW COUNTY

Site Aerial

Development Proposal

Construction of a dwelling, manufactured, relaxation to minimum side yard setback requirement

Division: 5
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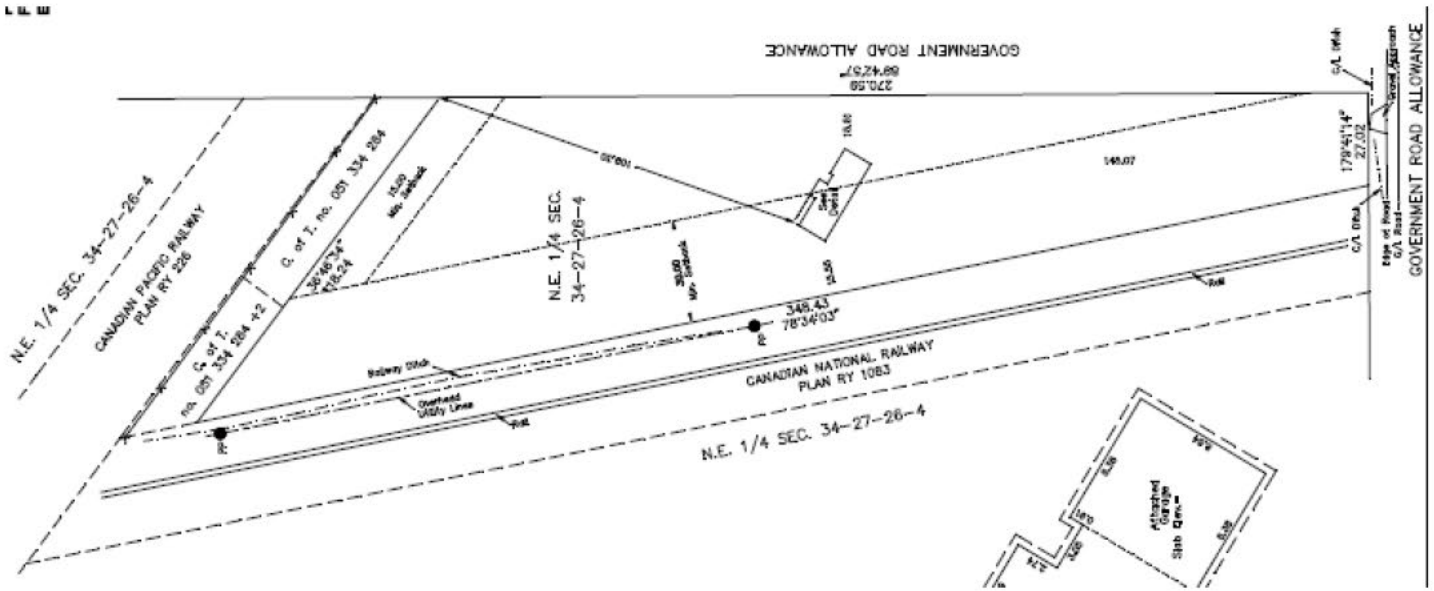
Legal: A portion of NE-34-27-26-W04M

ROCKY VIEW COUNTY

Site Plan

Development Proposal

Construction of a dwelling, manufactured, relaxation to minimum side yard setback requirement



Division: 5
Roll: 07134004
File: PRDP20223151
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ROCKY VIEW COUNTY

Site Photos

CN Railway looking west

Rail crossing at SE corner of parcel

CN Railway looking east

Existing fence along southern property line

Development Proposal

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ATTACHMENT 'C': MAPS AND ADDITIONAL INFORMATION

1 - PRDP20223151

Existing road approach

Pedestrian walkway west of parcel

Undeveloped northern road allowance looking west

Applicant proposed location of dwelling

ROCKY VIEW COUNTY

Site Photos Cont'd

Development Proposal

Construction of a dwelling, manufactured, relaxation to minimum side yard setback requirement

Division: 5
Roll: 07134004
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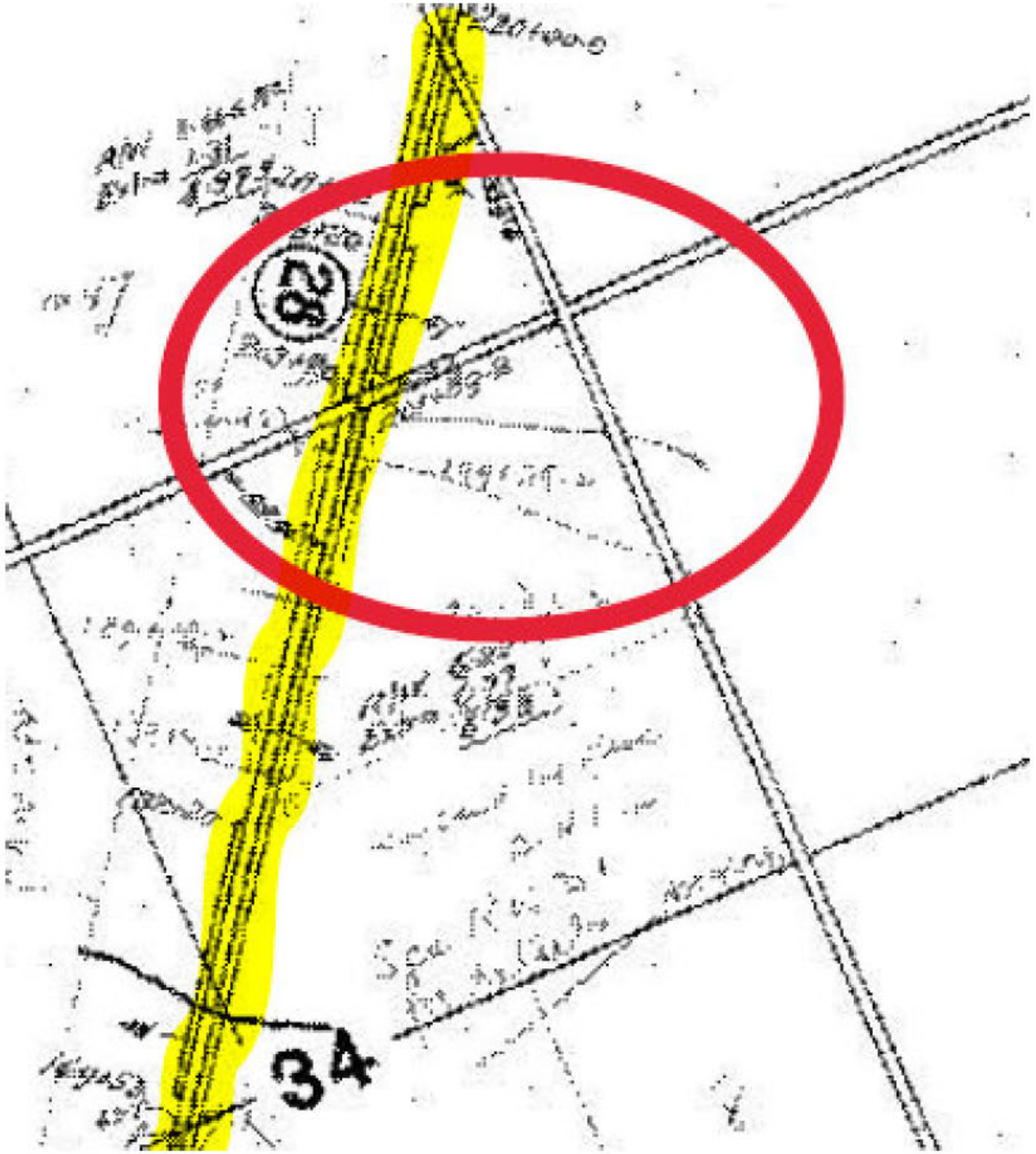
Legal: A portion of NE-34-27-26-W04M

ATTACHMENT 'C': MAPS AND ADDITIONAL INFORMATION

1 - PRDP20223151



ROCKY VIEW COUNTY

Railway Plan
RY 226
(Dated 1910)

Development Proposal

Construction of a dwelling, manufactured, relaxation to minimum side yard setback requirement

Division: 5
Roll: 07134004
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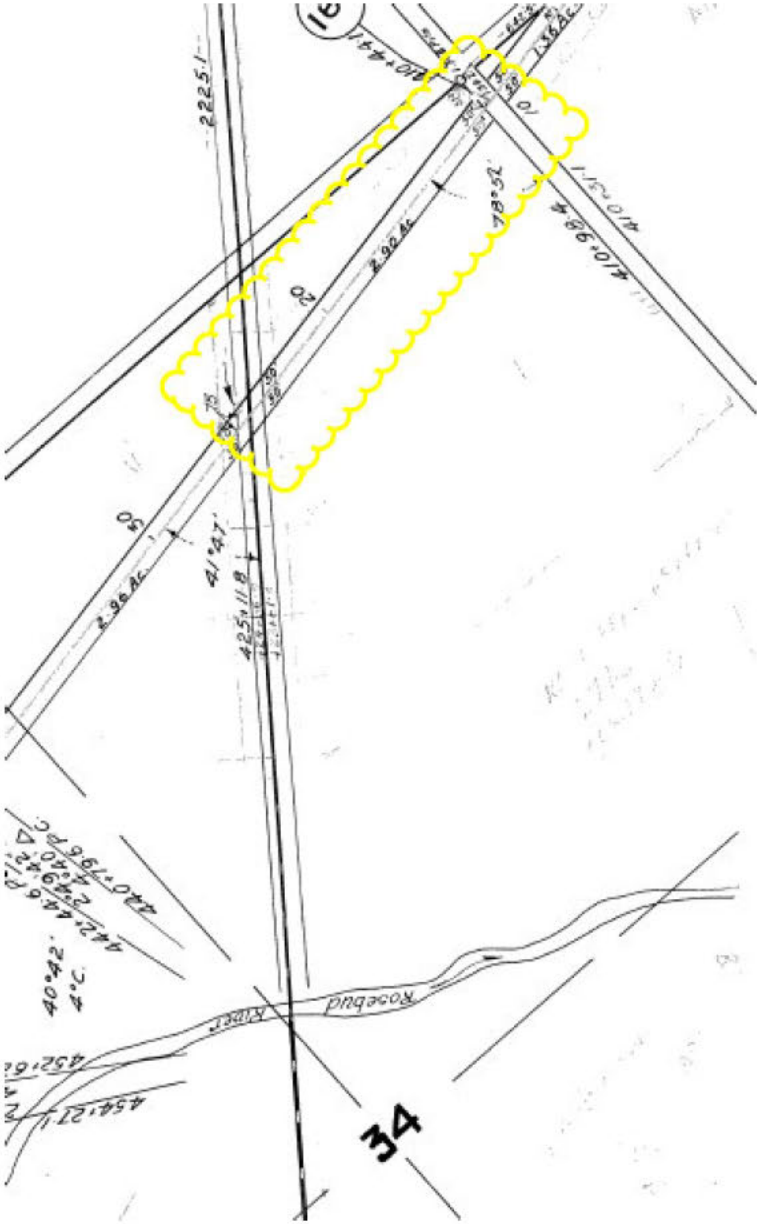

ROCKY VIEW COUNTY

Railway Plan RW 31 (Dated 1913)

Development Proposal

Construction of a dwelling, manufactured, relaxation to minimum side yard setback requirement

Division: 5
Roll: 07134004
File: PRDP20223151
Printed: Sep 6, 2022
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ATTACHMENT 'C': MAPS AND ADDITIONAL INFORMATION

ROCKY VIEW COUNTY

Figure 2

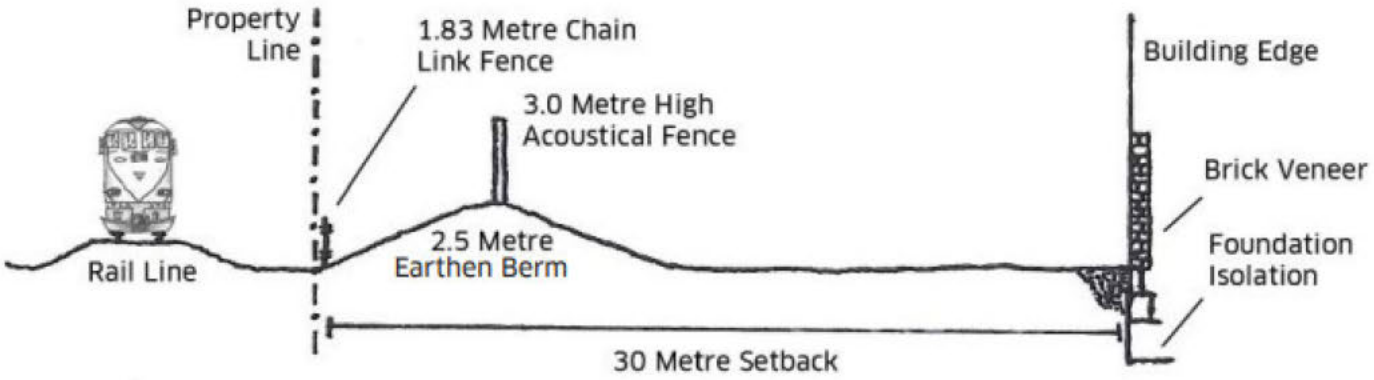

FIGURE 2 // STANDARD MITIGATION FOR NEW RESIDENTIAL DEVELOPMENT IN PROXIMITY TO A MAIN LINE RAILWAY

Development Proposal

Construction of a dwelling, manufactured, relaxation to minimum side yard setback requirement

Division: 5
Roll: 07134004
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Printed: Sep 6, 2022
Legal: A portion of NE-34-27-26-W04M

ROCKY VIEW COUNTY
Cultivating Communities

Notice of Appeal

Subdivision and Development Appeal Board
Enforcement Appeal Committee

Appellant Information			
Name of Appellant(s): Regine Landry			
Mailing Address: 285 West Creek Circle, Chestermere	Municipality: Chestermere	Province: Alberta	Postal Code: T1S1R5
Main Phone #: [redacted]	Alternate Phone #:	Email Address: [redacted]	

Site Information	
Municipal Address: 280003 RGE RD 262	Legal Land Description (lot, block, plan OR quarter-section-township-range-meridian): NE-34-27-26-04
Property Roll #: 07134004	Development Permit, Subdivision Application, or Enforcement Order #: PRDP20223151

I am appealing: (check one box only)

Development Authority Decision	Subdivision Authority Decision	Decision of Enforcement Services
☐ Approval	☐ Approval	☐ Stop Order
☑ Conditions of Approval	☐ Conditions of Approval	☐ Compliance Order
☐ Refusal	☐ Refusal	

Reasons for Appeal (attach separate page if required)

Please see Appendix "A".

Received by Legislative and Intergovernmental Services
August 30, 2022

This information is collected for Rocky View County's Subdivision and Development Appeal Board or Enforcement Appeal Committee under section 33(c) of the Freedom of Information and Protection of Privacy Act (FOIP Act) and will be used to process your appeal and create a public record of the appeal hearing. Your name, legal land description, street address, and reasons for appeal will be made available to the public in accordance with section 40(1)(c) of the FOIP Act. Your personal contact information, including your phone number and email address, will be redacted prior to your appeal being made available to the public. If you have questions regarding the collection or release of this information, please contact the Municipal Clerk at 403-230-1401.

Appellant's Signature

August 30, 2022
Date

CURTIS E. MARBLE
BARRISTER and SOLICITOR

Last updated: 2020 August 07

SCHEDULE "A"

Rocky View Subdivision and Development Appeal Board

In the Matter of:

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

APPEAL REASONS OF THE APPELLANT REGINE LANDRY

Date: August 30, 2022

Submitted by Curtis E. Marble, Barrister and Solicitor

Agent for the Appellant, Regine Landry

SCHEDULE "A"

I. Introduction

1. The Appellant appeals to the Subdivision and Development Appeal Board (the "SDAB" or "Board") the conditions placed upon Development Permit #PRDP20223151 , for the lands described as NE-34-27-26-04; (280003 RGE RD 262) (the "Lands"). This property is owned by the appellant, Regine Landry.

2. The Appellant submits that

   (a) notwithstanding multiple inquiries to the appropriate municipal authorities, she had no proper notice of any requirement for the restrictions placed upon the lands;

   (b) the restrictions placed on her lands are not reasonable and are not required by legislation; and

   (c) such further and other grounds as the appellant may advise.

II. Background

3. The Lands were purchased by Regine Landry, Appellant, in 2009. These lands were purchased 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 set-backs on the lands related to neighbouring roads, or the neighbouring CN railway (the "Railway"). The documents related to this transaction are attached hereto at **Appendix "A"**.

4. 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 hereto at **Appendix "B"**. In reliance on this information, the Appellant prepared and submitted an application for a Development Permit.

5. 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"). In the Application, the Appellant had applied for a Development Permit allowing the construction of a residence on the Lands. The Notice of Decision, while approving the construction of the residence, places certain restrictions on the Appellant's use of the Lands that render much of the land unusable by the Appellant.

6. These conditions include, in particular, that a setback from the Railway of 30 metres is required.

7. The impact of this restriction is a large portion of the lot is rendered unusuable for residential development because the developable area is reduced from approximately 4.5 to approximately 1.3 acres.

8. Given the above, the Appellant respectfully requests a variance of the required 30 metre setback from the Railway. 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.

SCHEDULE "A"

IV. Evidence and Arguments

9. As indicated in the attached **Appendix "A"**, the Appellant received no notice of any restrictions on development of the Lands.

10. The Appellant conducted further due diligence prior to submitting an application prior to submitting an application for a development, including to request , requesting confirmation of the required setbacks. As indicated in **Appendix "B"** the requested setback was only 6 metres. As late as 2021, there was still no indication of the extensive setback now being required by Rocky View County.

11. The Appellant has not been advised of any legislative or safety reasons requiring the 30 meter setback now being imposed. Imposing this setback is a significant prejudice to the Appellants use of the Lands.

V. Summary

12. It is the Appellant's position that there is no legislative or other requirement for the setback imposed by the Decision.

13. In accordance with the factual evidence, this condition should be removed.

VI. Conclusion

14. The Appellant respectfully requests that the condition of the setback from the rail line be removed.

Respectfully submitted on behalf of the Appellant,

CARBERT WAITE LLP

Curtis E. Marble, FCIArb.

Agents for the Appellant

cc: Appellant, by email.

APPENDIX "A"

Lirenman Peterson

BARRISTERS · SOLICITORS · NOTARIES
Suite 300, Notre Dame Place, 255 – 17th Avenue SW, Calgary, Alberta T2S 2T8

Tel: (403) 245-0111 Fax: (403) 245-0115

May 7, 2010 Our file No. 93-639

Regina Landry
[redacted]

Dear Ms. Landry:

Re: Purchase of 4-28-27-34 N.E. County of Rocky View

Further to the above, we are enclosing the updated Certificate of Title showing that all the Vendors encumbrances have been discharged.

As this completes this matter we are now closing our file and trust you will find this to be in order. If we can be of any assistance to you in the future, please do not hesitate to contact the writer.

Yours truly,
LIRENMAN PETERSON

Daniel D. Peterson, Q.C.
DDP/slk
Enls.

Lirenman Peterson

BARRISTERS • SOLICITORS • NOTARIES
Suite 300, Notre Dame Place, 255 - 17th Avenue S.W., Calgary, Alberta T2S 2T8

TEL (403) 245-0111
FAX (403) 245-0115

Our File Number: 93-673
May 7, 2010

Regina Landry
[redacted]

Dear Ms. Landry:

Further to the above, we are enclosing the updated Certificate of Title. As this completes this matter we are closing our file and would like to once again take this opportunity to thank you for allowing us to have been of assistance to you in this matter. If we can be of any help to you in the future, please do not hesitate to contact the writer.

Yours truly,
LIRENMAN PETERSON

PER:

DANIEL D. PETERSON Q.C.
DDP/slk
Encls.

CERTIFIED COPY OF

Certificate of Title

S

LINC
0016 793 663

SHORT LEGAL
4;26;27;34;NE

TITLE NUMBER: 091 379 930
TRANSFER OF LAND
DATE: 15/12/2009

AT THE TIME OF THIS CERTIFICATION

REGINA LANDRY
[redacted]

IS THE OWNER OF AN ESTATE IN FEE SIMPLE
OF AND IN

THAT PORTION OF THE NORTH EAST QUARTER OF SECTION 34
IN TOWNSHIP 27
RANGE 26
WEST OF THE 4 MERIDIAN WHICH LIES TO THE NORTH OF
THE RAILWAY ON PLAN RW 31 AND TO THE EAST OF A STRAIGHT LINE
PARALLEL WITH AND 100 FEET PERPENDICULARLY DISTANT SOUTH EASTERLY
FROM THE CENTRE LINE OF THE SAID RAILWAY ON PLAN RY 226 CONTAINING
1.82 HECTARES (4.5 ACRES) MORE OR LESS

EXCEPTING THEREOUT ALL MINES AND MINERALS
AND THE RIGHT TO WORK THE SAME

SUBJECT TO THE ENCUMBRANCES, LIENS AND INTERESTS NOTIFIED BY MEMORANDUM UNDER-WRITTEN OR ENDORSED HEREON, OR WHICH MAY HEREAFTER BE MADE IN THE REGISTER.

REGISTRATION NUMBER	DATE (D/M/Y)	ENCUMBRANCES, LIENS & INTERESTS PARTICULARS
1008FL .		RESTRICTIVE COVENANT
091 379 931	15/12/2009	MORTGAGE MORTGAGEE - FIRST NATIONAL FINANCIAL GP CORPORATION. 100 UNIVERSITY AVE, SUITE 700 NORTH TOWER TORONTO ONTARIO M5J1V6 ORIGINAL PRINCIPAL AMOUNT: $215,000

THE REGISTRAR OF TITLES CERTIFIES THIS TO BE AN ACCURATE REPRODUCTION OF THE CERTIFICATE OF TITLE REPRESENTED HEREIN THIS 08 DAY OF JANUARY ,2010

Certificate of Title

TITLE NUMBER: 091 379 930

SUPPLEMENTARY INFORMATION
VALUE: $90,000
CONSIDERATION: CASH & MORTGAGE
MUNICIPALITY: ROCKY VIEW COUNTY
REFERENCE NUMBER:
911 024 196
TOTAL INSTRUMENTS: 002

CERTIFIED COPY OF

Certificate of Title

S

LINC	SHORT LEGAL
0016 793 663	4;26;27;34;NE

TITLE NUMBER: 091 379 930
TRANSFER OF LAND
DATE: 15/12/2009

AT THE TIME OF THIS CERTIFICATION

REGINA LANDRY

[redacted]

IS THE OWNER OF AN ESTATE IN FEE SIMPLE
OF AND IN

THAT PORTION OF THE NORTH EAST QUARTER OF SECTION 34
IN TOWNSHIP 27
RANGE 26
WEST OF THE 4 MERIDIAN WHICH LIES TO THE NORTH OF
THE RAILWAY ON PLAN RW 31 AND TO THE EAST OF A STRAIGHT LINE
PARALLEL WITH AND 100 FEET PERPENDICULARLY DISTANT SOUTH EASTERLY
FROM THE CENTRE LINE OF THE SAID RAILWAY ON PLAN RY 226 CONTAINING
1.82 HECTARES (4.5 ACRES) MORE OR LESS

EXCEPTING THEREOUT ALL MINES AND MINERALS
AND THE RIGHT TO WORK THE SAME

SUBJECT TO THE ENCUMBRANCES,LIENS AND INTERESTS NOTIFIED BY MEMORANDUM UNDER-WRITTEN OR ENDORSED HEREON,OR WHICH MAY HEREAFTER BE MADE IN THE REGISTER.

ENCUMBRANCES, LIENS & INTERESTS

REGISTRATION NUMBER	DATE (D/M/Y)	PARTICULARS
1008FL	.	RESTRICTIVE COVENANT

THE REGISTRAR OF TITLES CERTIFIES THIS TO BE AN ACCURATE REPRODUCTION OF THE CERTIFICATE OF TITLE REPRESENTED HEREIN THIS 06 DAY OF MAY ,2010

REGISTRAR OF LAND TITLES

SUPPLEMENTARY INFORMATION
VALUE: $90,000
CONSIDERATION: CASH & MORTGAGE
MUNICIPALITY: ROCKY VIEW COUNTY

APPENDIX "B"

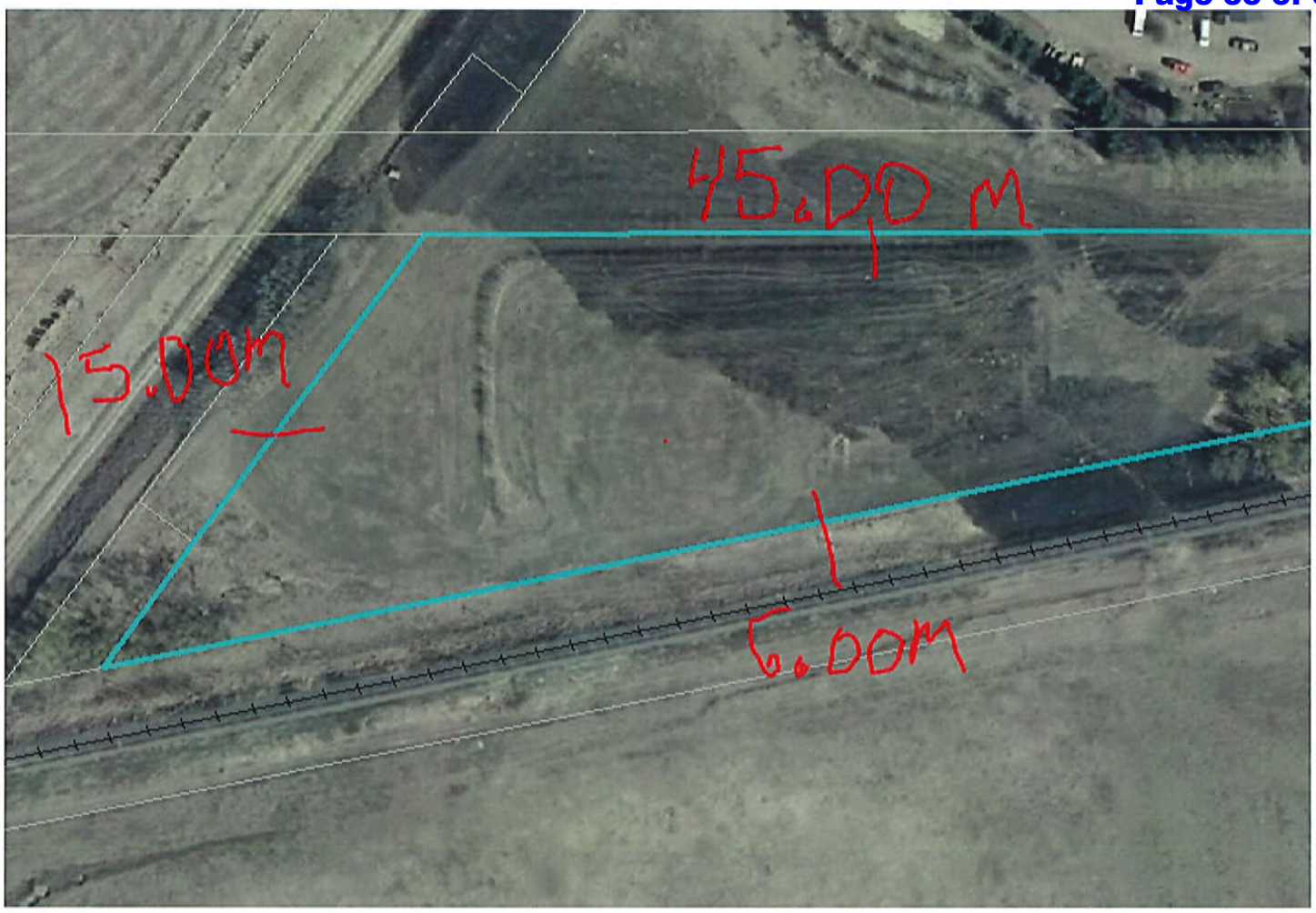
Curtis E. Marble

From: [redacted]
Sent: Friday, July 22, 2022 10:02 AM
To: [redacted]
Subject: FW: Setbacks for NE-34-27-26-W04M - Rocky View County

From: ENeilsen@rockyview.ca <ENeilsen@rockyview.ca>
Sent: April 30, 2021 4:23 PM
To: [redacted]
Subject: Setbacks for NE-34-27-26-W04M - Rocky View County

Hi Regina,

Thank you for your patience in responding to your voicemail earlier in the week. I was waiting to connect with one of my colleagues regarding setbacks and was finally able to hear back regarding how she would interpret setbacks as applied to your property. I have enclosed a map below for your consideration, and it would be my pleasure to provide any further information required. The writing in red indicates how far from each property line a dwelling (or other structure) would need to be located in order to comply with any required setbacks. I hope this helps and please feel free to reach out if we can assist further.



Best regards,

EVAN NEILSEN
Development Assistant | Planning Services

ROCKY VIEW COUNTY
262075 Rocky View Point | Rocky View County | AB | T4A 0X2
Phone: 403-520-7285
ENeilsen@rockyview.ca | www.rockyview.ca

ROCKY VIEW COUNTY

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

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

THIS IS NOT A DEVELOPMENT PERMIT

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

NOTICE OF DECISION

Landry, Regina
[redacted]

Tuesday, August 09, 2022

Roll: 07134004

RE: **Development Permit #PRDP20223151**

NE-34-27-26-04; (280003 RGE RD 262)

The Development Permit application for construction of a dwelling, manufactured and relaxation to minimum side yard setback requirement has been **conditionally-approved** by the Development Officer subject to the listed conditions below **(PLEASE READ ALL CONDITIONS)**:

Description:

1. That the construction of a Dwelling, Manufactured, may commence on the subject site, in accordance with the approved site plan, application, and drawings, as submitted by the applicant, as amended, and conditions of approval and includes:
    i. That the minimum side yard setback requirement shall be relaxed from **45.00 m (147.64 ft.) to 3.00 m (9.69 ft.).**
    ii. Ancillary works related to meet conditions of this permit;

Prior to Release:

2. That prior to release of this permit, the Applicant/Owner shall submit a revised site plan showing a minimum building setback from the south property line abutting Plan RY 1083, of 30.00 m (98.43 ft.) to the proposed dwelling, manufactured. The plan shall also include:
    i. The location of the required 1.83 m (6.00 ft.) high chain link or wood fence abutting the south property line. Fencing details shall also be submitted, included material type, sizing, dimensions etc.
3. That prior to release of this permit, the Applicant/Owner shall contact County Road Operations with haul details for materials and equipment needed during construction/site development to confirm if Road Use Agreement or permits for any hauling along the County road system or if an overweight/over dimension permit for travel on the County road system for the subject house move will be required and to confirm the presence of County road ban restrictions.

ROCKY VIEW COUNTY
262075 Rocky View Point
Rocky View County, AB, T4A 0X2
403-230-1401
questions@rockyview.ca
www.rockyview.ca

i. The Applicant/Owner shall also discuss the required existing gravel approach alterations in accordance with the County's Servicing Standards. The approach shall be constructed to minimum standards to improve sightlines along Range Road 262.

ii. The Applicant/Owner shall submit a drawing showing the location of the "hidden approach" sign, located on the east side of Range Road 262 and south of Township Road 280.

iii. Written confirmation shall be received from County Road Operations confirming the status of this condition. Any required agreement or permits shall be obtained unless otherwise noted by County Road Operations.

Prior to Building Occupancy:

4. That prior to building occupancy of the dwelling, the Applicant/Owner shall contact County Road Operations for a post-construction inspection of the upgraded approach for final acceptance, in accordance with the approved approach/sign drawing.
    i. Written confirmation shall be received from County Road Operations confirming the acceptance of the approach.
5. That prior to building occupancy of the dwelling, the Applicant/Owner shall request an inspection from the County, to confirm that required 1.83 m (6.00 ft.) high chain link fence along the south side property line abutting Plan RY 1083 has been installed as per the approved plans.

Permanent:

6. That any plan, technical submission, agreement, matter, or understanding submitted and approved as part of the application, in response to a Prior to Release or Occupancy condition, shall be implemented and adhered to in perpetuity.
7. That there shall be no more than 2.00 m (6.56 ft.) of excavation or 1.00 m (3.28 ft.) of fill adjacent to or within 15.00 m (49.21 ft.) of the proposed building under construction, unless a separate Development Permit has been issued for additional fill.
8. That the dwelling shall not be used as a *Vacation Rental* or for commercial purposes at any time, unless approved by a Development Permit.
9. That there shall be a minimum of two (2) dedicated on-site parking stall for the subject dwelling unit at all times.
10. That the Applicant/Owner shall take effective measures to control dust on the property so that dust originating therein shall not cause annoyance or become a nuisance to adjoining property owners and other in the vicinity of the area.
11. That no topsoil shall be removed from the site. All topsoil shall be retained on-site and shall be seeded after building construction is complete, as part of site restoration.

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Rocky View County, AB, T4A 0X2
403-230-1401
questions@rockyview.ca
www.rockyview.ca

12. That the Applicant/Owner shall be responsible for rectifying any adverse effect on adjacent lands from drainage alteration, including stormwater implications from the proposed development. Post-development drainage shall not exceed pre-development drainage.
13. That any lot regrading and placement of material for driveway construction or development is not to direct any additional overland surface drainage nor negatively impact existing drainage patterns in County's road right-of-way of Range Road 262.
14. That if the development authorized by this Development Permit is not commenced with reasonable diligence within twelve (12) months from the date of issue, and completed within twenty-four (24) months of the issue, the permit is deemed to be null and void, unless an extension to this permit shall first have been granted by the Development Officer.
15. That if this Development Permit is not issued by **February 28, 2023**, or the approved extension date, then this approval is null and void and the Development Permit shall not be issued.

Advisory:

- That a Building Permit and sub-trade permits shall be obtained from Building Services, prior to any construction taking place, using the appropriate checklist and application forms and include any requirements noted on *the Building Code Comments for Proposed Development notice, dated July 11, 2022.*
- That the Applicant/Owner implement basic mitigation measures in the dwelling design and construction in order to limit potential impacts from the railway, as per recommendations from CN to the County, dated June 28, 2022, and should include:
    i. Provision for air-conditioning, allowing occupants to close windows during the warmer months;
    ii. Exterior cladding facing the railway achieving a minimum STC rating of 54 or equivalent, e.g. masonry;
    iii. Acoustically upgraded windows facing the railway with appropriate specifications;
    iv. Locating noise sensitive rooms away from the railway side;
    v. Noise barrier and fencing for outdoor play areas.
- 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 dwelling unit located on the subject site, to facilitate accurate emergency response. The municipal address for the subject dwelling unit is *280003 RGE RD 262*.
- That the County's Noise Control Bylaw *C-8067-2020* shall be adhered to at all times
- 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 at an approved disposal facility.
- That there shall be adequate water & sanitary sewer servicing provided for the proposed dwelling unit.

ROCKY VIEW COUNTY

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

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

- That there shall be adequate water servicing provided for the proposed dwelling unit, and it is the Applicant/Owner's responsibility to provide water quantity in accordance with the recommendations found in Module 2 of the document "Water Wells That Last for Generations" published by Agriculture and Agri-Food Canada, Alberta Environment, Alberta Agriculture and Food.
- That the site shall remain free of restricted and noxious weeds and maintained in accordance with the *Alberta Weed Control Act [Statutes of Alberta, 2008 Chapter W-5.1, December 2017].*
- That the Applicant/Owner contact Canadian National Railway Company (CN) for the registration of an environmental easement on title in regards to operational noise and vibration emissions, originating from the active railway line on Plan RY 1083, in favor of CN.
- That any other federal, provincial, or County permits, approvals, and/or compliances, are the sole responsibility of the Applicant/Owner.
- That it is the responsibility of the Applicant/Owner to obtain all necessary Alberta Environment & Park Water Act approvals should the development impact any wetlands.

If Rocky View County does not receive any appeal(s) from you or from an adjacent/nearby landowner(s) by **Tuesday, August 30, 2022** , a Development Permit may be issued, unless there are specific conditions which need to be met prior to issuance. If an appeal is received, then a Development Permit will not be issued unless and until the decision to approve the Development Permit has been determined by the Development Appeal Committee.

Regards,

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

ROCKY VIEW COUNTY

DEVELOPMENT PERMIT
APPLICATION

FOR OFFICE USE ONLY	
APPLICATION NO.	PRDP20223151
ROLL NO.	07134004
RENEWAL OF	
FEES PAID	$330.00
DATE OF RECEIPT	June 10, 2022

APPLICANT/OWNER

Applicant Name: Regina Landry	Email: [redacted]
Business/Organization Name (if applicable):	
Mailing Address: [redacted]	Postal Code [redacted]
Telephone (Primary): [redacted]	Alternative: [redacted]

Landowner Name(s) per title (if not the Applicant):	
Business/Organization Name (if applicable):	
Mailing Address:	Postal Code:
Telephone (Primary):	Email:

LEGAL LAND DESCRIPTION - Subject site

All/part of: NE ¼	Section: 34	Township: 27	Range: 26	West of: 4 Meridian	Division: 5
All parts of :		Block:	Plan: 9811839	Parcel Area (ac/ha):	
Municipal Address: 280003 Range Road 262, Rockyview County, AB			Land Use District: A-General		

APPLICATION FOR - List use and scope of work

Residential, single family home with an attached garage. This is a three bedroom bungalow on a basement foundation. There will be a front veranda and back deck. It will be 1760 square feet, 58 x 28, the veranda is 6 feet wide and the garage is 24x24 feet.

Variance Rationale included: ☐ YES ☐ NO ☐ N/A **DP Checklist Included:** ☐ YES☐NO **Name of RVC Staff Member Assisted:**

SITE INFORMATION

a.	Oil or gas wells present on or within 100 metres of the subject property(s)	☑ YES	☐ NO
b.	Parcel within 1.5 kilometres of a sour gas facility (well, pipeline or plant)	☐ YES	☑ NO
c.	Abandoned oil or gas well or pipeline present on the property (Well Map Viewer: https://extmapviewer.aer.ca/AERAbandonedWells/Index.html)	☐ YES	☑ NO
d.	Subject site has direct access to a developed Municipal Road (accessible public roadway)	☑ YES	☐ NO

AUTHORIZATION

I, REGINA GAIL LANDRY (Full name in Block Capitals), hereby certify (initial below):

RL That I am the registered owner **OR** _____ That I am authorized to act on the owner's behalf.

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

RL That I provide consent to the public release and disclosure of all information, including supporting documentation, submitted/contained within this application as part of the review process. I acknowledge that the information is collected in accordance with s.33(c) of the *Freedom of Information and Protection of Privacy Act*.

RL **Right of Entry:** I authorize/acknowledge that Rocky View County may enter the above parcel(s) of land for purposes of investigation and enforcement related to this application in accordance with Section 542 of the Municipal Government Act.

Applicant Signature Regina Landry Date 10-Jun-2022

Landowner Signature Regina Landry Date 10-Jun-2022

LAND TITLE CERTIFICATE

S

LINC	SHORT LEGAL	TITLE NUMBER
0016 793 663	4;26;27;34;NE	091 379 930

LEGAL DESCRIPTION

THAT PORTION OF THE NORTH EAST QUARTER OF SECTION 34
IN TOWNSHIP 27
RANGE 26
WEST OF THE 4 MERIDIAN WHICH LIES TO THE NORTH OF
THE RAILWAY ON PLAN RW 31 AND TO THE EAST OF A STRAIGHT LINE
PARALLEL WITH AND 100 FEET PERPENDICULARLY DISTANT SOUTH EASTERLY
FROM THE CENTRE LINE OF THE SAID RAILWAY ON PLAN RY 226 CONTAINING
1.82 HECTARES (4.5 ACRES) MORE OR LESS
EXCEPTING THEREOUT ALL MINES AND MINERALS
AND THE RIGHT TO WORK THE SAME

ESTATE: FEE SIMPLE

MUNICIPALITY: ROCKY VIEW COUNTY

REFERENCE NUMBER: 911 024 196

REGISTERED OWNER(S)

REGISTRATION	DATE(DMY)	DOCUMENT TYPE	VALUE	CONSIDERATION
091 379 930	15/12/2009	TRANSFER OF LAND	$90,000	CASH & MORTGAGE

OWNERS

REGINA LANDRY
[redacted]

ENCUMBRANCES, LIENS & INTERESTS

REGISTRATION NUMBER	DATE (D/M/Y)	PARTICULARS
1008FL	.	RESTRICTIVE COVENANT

TOTAL INSTRUMENTS: 001

(CONTINUED)

THE REGISTRAR OF TITLES CERTIFIES THIS TO BE AN ACCURATE REPRODUCTION OF THE CERTIFICATE OF TITLE REPRESENTED HEREIN THIS 10 DAY OF JUNE, 2022 AT 04:38 P.M.

ORDER NUMBER: 44684141

CUSTOMER FILE NUMBER: PRDP20223151

END OF CERTIFICATE

THIS ELECTRONICALLY TRANSMITTED LAND TITLES PRODUCT IS INTENDED FOR THE SOLE USE OF THE ORIGINAL PURCHASER, AND NONE OTHER, SUBJECT TO WHAT IS SET OUT IN THE PARAGRAPH BELOW.

THE ABOVE PROVISIONS DO NOT PROHIBIT THE ORIGINAL PURCHASER FROM INCLUDING THIS UNMODIFIED PRODUCT IN ANY REPORT, OPINION, APPRAISAL OR OTHER ADVICE PREPARED BY THE ORIGINAL PURCHASER AS PART OF THE ORIGINAL PURCHASER APPLYING PROFESSIONAL, CONSULTING OR TECHNICAL EXPERTISE FOR THE BENEFIT OF CLIENT(S).

June 10, 2022

To: Rockyview County Development Unit

I will be building a single family residence. This will be a bungalow on a basement foundation.

58 feet long
35 feet wide
24x24 attached garage

I am requesting a relaxation of the road allowance. The property is a long triangle shape and the building envelope gives a very limited location if there was no relaxation. Building within the building envelope would put the house in close proximity to the CP Rail line. This location would then require a very long road approach and increase the cost of the road, electrical and gas lines.

I would like to centralize the house on the property both between north and south and east and west. This would not only be aesthetically pleasing and provide a better view of the surrounding area.

This is raw land and there are no existing buildings or structures on the property. There are two shelter belts on the land; the southeast and southwest corner both parallel to CP Rail line.

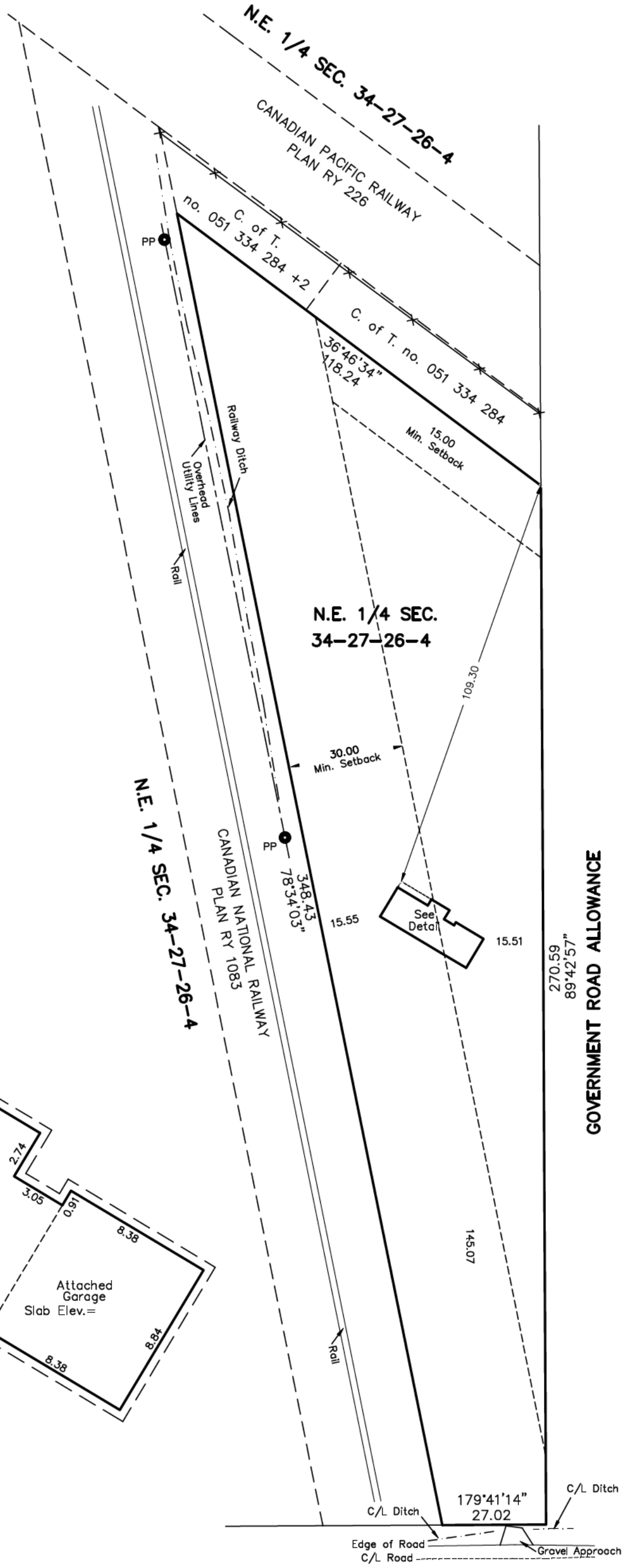
In speaking to the water and septic contractors, both state these utilities can be placed in a variety of locations. The contractor for the septic has viewed the acreage and states it can be either a field or tank and with the location of where I want to build, the septic can be accommodated in a number of locations. The location for drilling the water will be determined after the location for the septic is defined.

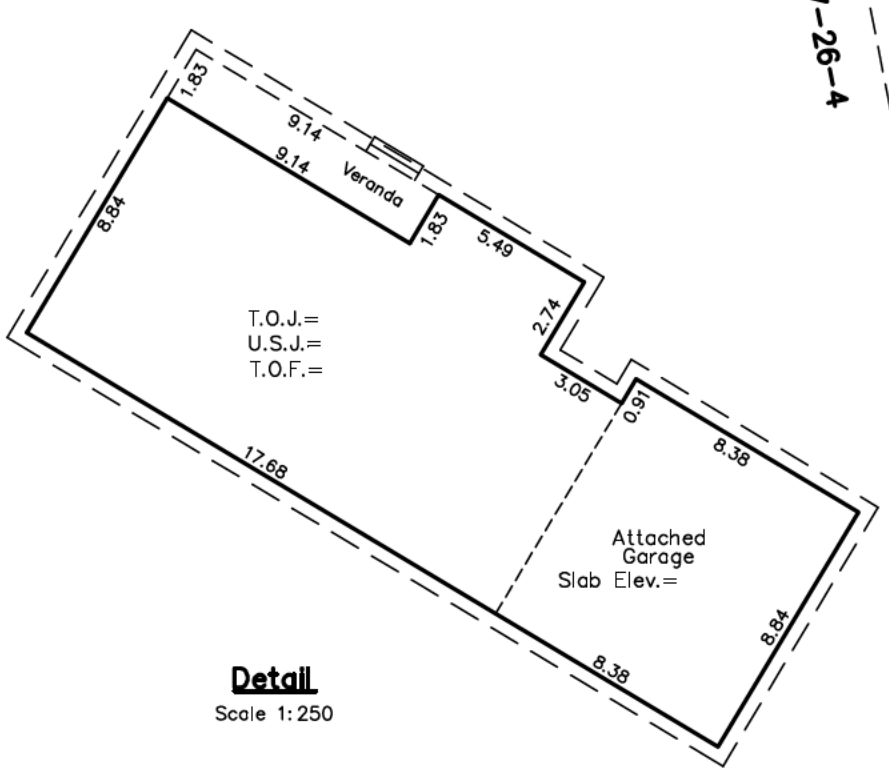
Thank you,

Regina Landry

Jones Geomatics Ltd.
Alberta Land Surveyor
#20,1323-44th Ave. N.E.
Calgary, Alberta T2E 6L5
Ph. (403) 230-0778
Fax (403) 230-0714
E-mail: jonesgeo@telus.net

PLOT PLAN





Detail
Scale 1:250

CLIENT **REGINE LANDRY**

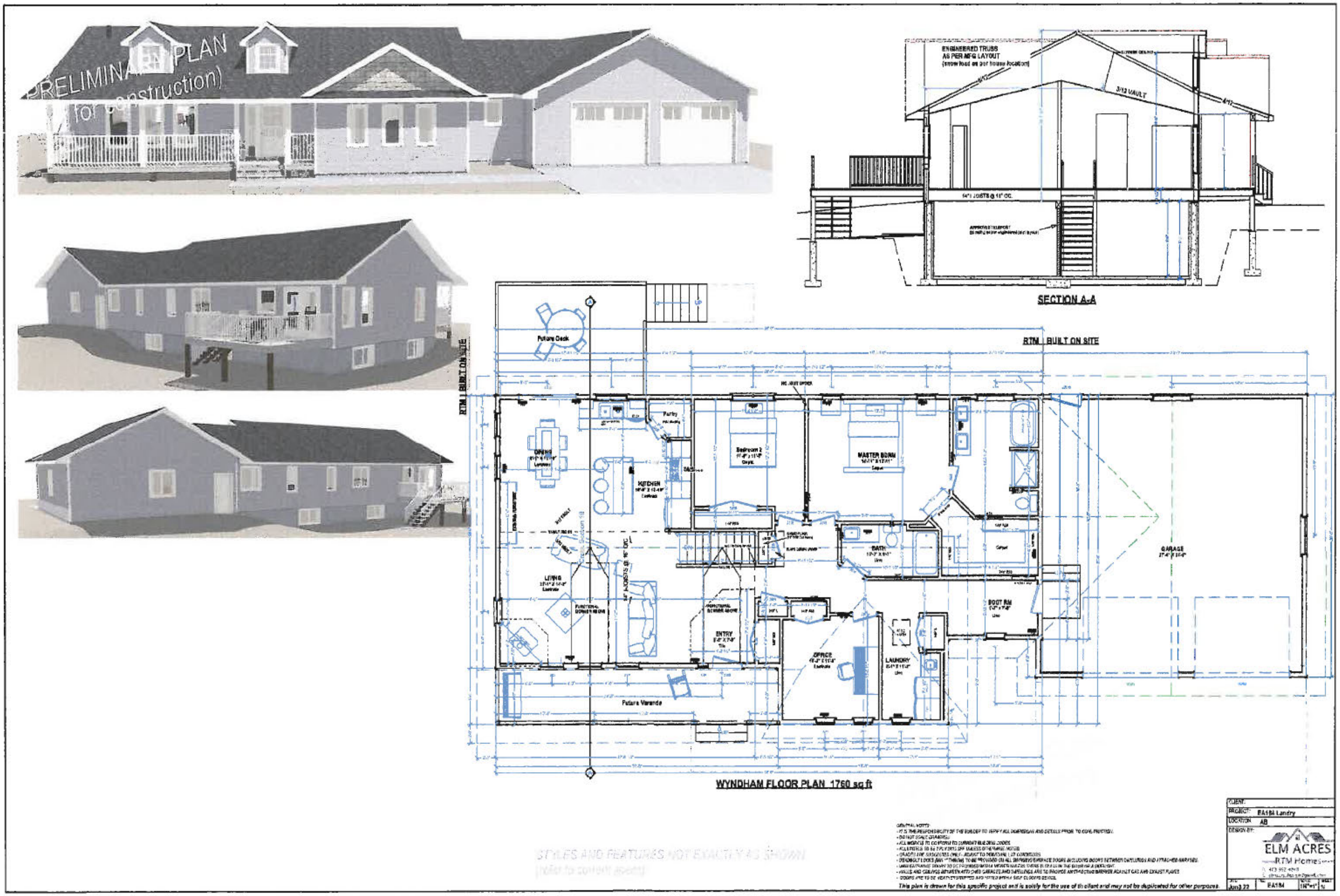
ALL DIMENSIONS AND SERVICES SHOWN MUST BE CONFIRMED BY CONTRACTOR PRIOR TO EXCAVATION

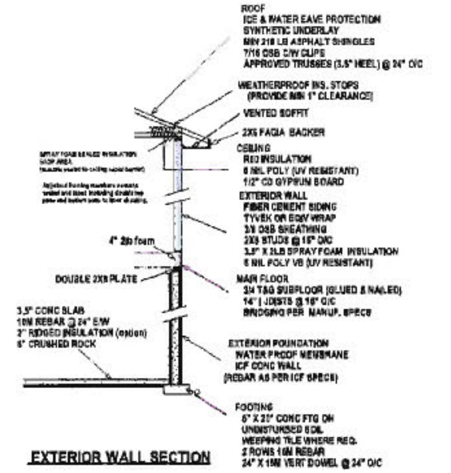
PORTION OF
N.E.1/4 SEC.34, TWP.27, RGE.26, W.4thM.
280003 RANGE ROAD 262
ROCKY VIEW COUNTY, ALBERTA
Scale: 1:1200

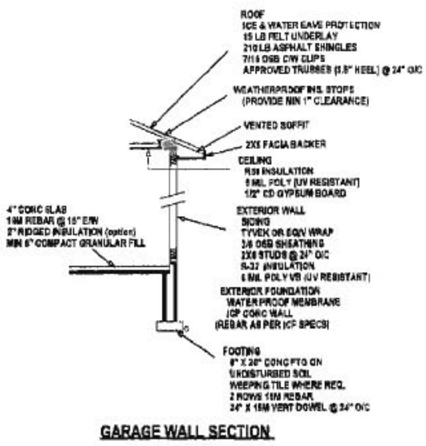
Suggested Grade _____
Lowest Top of Footing _____
Actual Top of Footing _____
Top of Main Floor Joist _____
Sanitary Sewer _____
Storm Sewer _____

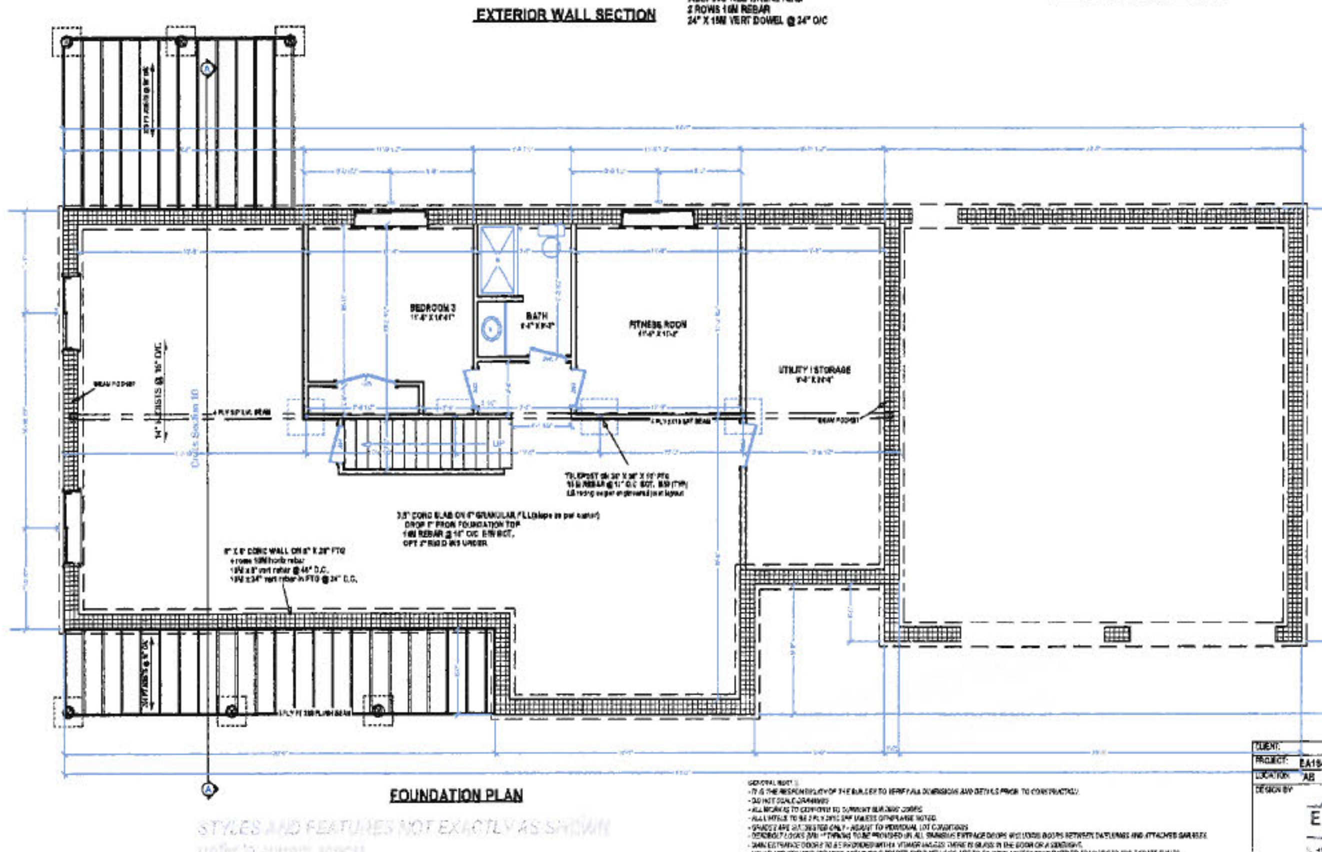
Area of Lot 17379.14 SQ.M.
Area of House 237.490 SQ.M.
Remainder 17141.65 SQ.M.
Area of Coverage 1.2 %
Date: 13/06/22 File No. NP22283-22

YK


PRELIMINARY PLAN (not for construction)
ENGINEERED TRUSS AS PER MFG LAYOUT
3/12 VAULT
SECTION A-A
RTM | BUILT ON SITE
Future Deck
Pantry
DINING
KITCHEN
Bedroom 2
MASTER BDRM
BATH
GARAGE
LIVING
ENTRY
OFFICE
LAUNDRY
BOOT RM
Future Veranda
WYNDHAM FLOOR PLAN 1760 sq ft
STYLES AND FEATURES NOT EXACTLY AS SHOWN
This plan is drawn for this specific project and is solely for the use of th client and may not be duplicated for other purposes.
CLIENT:
PROJECT: EA184 Landry
LOCATION: AB
DESIGN BY:
ELM ACRES
RTM Homes
Jun3 22
EA184







GENERAL NOTES:
- IT IS THE RESPONSIBILITY OF THE BUILDER TO VERIFY ALL DIMENSIONS AND DETAILS PRIOR TO CONSTRUCTION.
- DO NOT SCALE DRAWINGS
- ALL WORK IS TO CONFORM TO CURRENT BUILDING CODES
- ALL LINTELS TO BE 2 PLY 2X10 SPF UNLESS OTHERWISE NOTED.
- GRADES ARE SUGGESTED ONLY - ADJUST TO INDIVIDUAL LOT CONDITIONS

This plan is drawn for this specific project and is solely for the use of th client and may not be duplicated for other purposes.

CLIENT:	
PROJECT:	EA184 Landry
LOCATION:	AB
DESIGN BY	ELM ACRES — RTM Homes —
DATE: Jun3.22	EA184


PRELIMINARY PLAN
not for construction
LEFT SIDE ELEVATION
RIGHT SIDE ELEVATION
BUILT ON SITE | RTM
REAR ELEVATION
RTM | BUILT ON SITE
FRONT ELEVATION
STYLES AND FEATURES NOT EXACTLY AS SHOWN
(refer to current specs)
This plan is drawn for this specific project and is solely for the use of th client and may not be duplicated for other purposes.
PROJECT: EA184 Landry
LOCATION: AB
ELM ACRES
RTM Homes
Jun3 22
EA184

From: Saadia Jamil on behalf of Proximity
To: Jeevan Wareh
Subject: [EXTERNAL] - 2022-06-29_CN Comments_280003 RGE RD 262, Rocky View County AB
Date: June 28, 2022 10:44:06 PM
Attachments: image001.png

Do not open links or attachments unless sender and content are known.

Hi,

Thank you for circulating CN on the subject application. It is noted that the subject site is abutting the CN railway corridor. It should be noted that CN has concerns of developing/densifying residential uses in proximity to our railway right-of-way. CN recommends the following to be implemented as a condition of approval:

1. A minimum 30 metre building setback, from the railway right-of-way, in conjunction with a 2.5 metre high earthen berm;
2. A chain link fence of minimum 1.83 metre height to be installed and maintained along the mutual property line;
3. The following clause to be inserted in all development agreements, offers to purchase, and agreements of Purchase and Sale or lease of each dwelling unit within 300 metres of the railway right-of-way "Warning: Canadian National Railway Company or its assigns or successors in interest has or have a rights-of-way within 300 metres from the land the subject hereof. There may be alterations to or expansions of the railway facilities on such rights-of-way in the future including the possibility that the railway or its assigns or successors as aforesaid may expand its operations, which expansion may affect the living environment of the residents in the vicinity, notwithstanding the inclusion of any noise and vibration attenuating measures in the design of the development and individual dwelling(s). CNR will not be responsible for any complaints or claims arising from use of such facilities and/or operations on, over or under the aforesaid rights-of-way."
4. Registration of an environmental easement for operational noise and vibration emissions, in favor of CN
5. Implementation of certain basic mitigation measures in the dwelling design and construction in order to limit potential impacts, including:
    - Provision for air-conditioning, allowing occupants to close windows during the warmer months;
    - Exterior cladding facing the railway achieving a minimum STC rating of 54 or equivalent, e.g. masonry;
    - Acoustically upgraded windows facing the railway with appropriate specifications;
    - Locating noise sensitive rooms away from the railway side;
    - Noise barrier and fencing for outdoor play areas.

Thanks,

Saadia Jamil

Planner (CN Proximity)
Planning, Landscape Architecture and Urban Design
Urbanisme, architecture de paysage et design urbain

E : proximity@cn ca
1600, René-Lévesque Ouest, 11e étage
Montréal (Québec)
H3H 1P9 CANADA
wsp.com

From: Jeevan Wareh <JWareh@rockyview.ca>
Sent: Thursday, June 23, 2022 7:33 PM
To: Proximity <proximity@cn ca>; beiseker@beiseker com; approvals@rvgc ca; surfacerentals@emberresources com
Subject: PRDP20223151 - Circulation Package
Importance: High

Hello,

Please find enclosed the circulation package for application PRDP20223151. Please respond with any comments on, or prior to **July 14th, 2022**. If no response is received it will be assumed there are no comments.

Thank you,

Jeevan Wareh, T.T.
Development Officer | Planning and Development Services
Rocky View County
262075 Rocky View Point | Rocky View County | AB | T4A 0X2
Phone: 403-520-6333
JWareh@rockyview ca | http://secure-web cisco com/1u0NK_cz14tdpC3_z1zIzloly4jVuG4UDRscWHr4R-8vu7hP8j_zM-wnjHZ_XRlJIqacKWbyGh0R_cL2DLPV8vhgIP59pNd54wnOhC6SvJNzoMzhgodjJxz8zba6OPf5-

From: Tataryn, Philip
To: Jeevan Wareh
Subject: [EXTERNAL] - FW: For Action - FW: Minimum Setback Requirements from Railways - New Dwelling Adjacent to CN Railway
Date: July 28, 2022 9:51:09 AM
Attachments: PRDP20223151-Circulation Package (reduced size).pdf
EXTERNAL - 2022-06-29_CN Comments_280003 RGE RD 262 Rocky View County AB.msg
Importance: High

UNCLASSIFIED / NON CLASSIFIÉ

Hello Jeevan: Thanks for your inquiry regarding an email received by Rocky View County from Canadian National Railway (CN) recommending setback distances and details for construction of a new dwelling adjacent to an active rail corridor. In your inquiry, you asked whether CN's recommendations are also required by Transport Canada (TC) regulations, or are more so recommendations based on best practices.

The recommendations that CN provided may be based on a document published on the Railway Association of Canada (RAC) website, titled "Guidelines for New Developments in Proximity to Railway Operations" dated May 2013. This document was prepared in collaboration with the RAC, Federation of Canadian Municipalities and both national railways, and is intended for use by municipalities, provincial governments, railways, developers and property owners when developing lands in proximity to railway operations, in order to avoid conflicts in the future. The recommendations provided by CN are recommendations, and are not mandated by any TC Regulations or Standards.

Please refer to the following TC Regulations that would apply:

- Railway Safety Act Section 24: Non-Railway Operations Affecting Railway Safety
- Grade Crossings Regulations Sections 24-26: Obstruction of Sightlines

I have appended a link to the RAC website which contains the aforementioned document on constructing in proximity to railway operations.

Proximity Issues

Also please find appended links to the Railway Safety Act, and Grade Crossings Regulations for your information.

The Railway Safety Act (canada.ca)

Grade Crossings Regulations

Please feel free to contact me with any further questions.

Phil Tataryn, P.Eng.
Railway Works Engineer, Surface Directorate
Transport Canada / Government of Canada
philip.tataryn@tc.gc.ca / Tel: 587-434-7605 / TTY: 1-888-675-6863

Ingénieur, Installations Ferroviaires, Direction des surfaces
Transports Canada / Gouvernement du Canada
philip.tataryn@tc.gc.ca / Tél. : 587-434-7605 / ATS : 1-888-675-6863

Transports Canada Transport Canada Canada

From: Jeevan Wareh <JWareh@rockyview.ca>
Sent: Tuesday, July 26, 2022 4:05 PM
To: PNR Civ Av Services / Services Av Civ RPN <CASPNR-SACRPN@tc.gc.ca>
Subject: Minimum Setback Requirements from Railways - New Dwelling
Importance: High

Good Afternoon,

We have received a Development Permit application for a new Dwelling from one of our residents, on a parcel which directly abuts a railway owned by CN Rail. Attached is the application circulation package and a site photo as a reference.

We have been advised by CN that there is a recommendation of a 30.00m setback from the railway corridor, in conjunction with the construction of a berm 2.50m in height. We are hoping to seek some clarification from your department as to whether these stipulations are actual formal *policy requirements* as per Transport Canada regulations or are more so *recommendations* based on best practice measures. I have attached the initial email from CN as well.

If one of your team members are able to please get back to me either via phone or email in a timely manner, that would be much appreciated as the subject landowner is on somewhat of a tight timeline to construct the dwelling.

Look forward to hearing from you soon. Additional information can be provided upon request.

Thanks & have a great day,

JEEVAN WAREH, T.T.
Development Officer | Planning and Development Services
ROCKY VIEW COUNTY
262075 Rocky View Point | Rocky View County | AB | T4A 0X2
Phone: 403-520-6333
JWareh@rockyview.ca | www.rockyview.ca

From: Saadia Jamil on behalf of Proximity
To: Jeevan Wareh
Subject: [EXTERNAL] - 2022-08-12_CN Comments_280003 RGE RD 262 Rocky V ew County AB
Date: August 12 2022 9:12:19 AM
Attachments: image001.png

Do not open links or attachments unless sender and content are known.

Hi Jeevan

Thank you for providing further information on the subject application. Further to our conversation yesterday and given the rural context of the site and small scale of the development we can make an exception to remove the berm requirement.

Thanks

Saadia Jamil

Urbaniste sénior / Sen or Planner (CN Proxim ty)
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E : proximity@cn.ca
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Montréal (Québec)
H3H 1P9 CANADA
wsp.com

From: Jeevan Wareh <JWareh@rockyview.ca>
Sent: Thursday August 11 2022 8:43 PM
To: Saadia Jamil <Saadia.Jamil@cn.ca>
Subject: RE: [EXTERNAL] - 2022-07-19_CN Comments_280003 RGE RD 262 Rocky View County AB

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Hey Saadia

Great speaking with you again today.

As discussed if you are able to please provide an email confirming that the berm recommendation can be **withheld** given the information provided below that would be much appreciated.

- The applicant has stated that the berm will be a significant financial burden on her and would ikely make the purchase and construction of the home unfeasible for her.
- The proposal is solely for a single family home unlike other applications which propose higher density subdivisions (where the berm would be l kely be more applicable).
- The applicant has mentioned in conversation that she is wi ling to construct the fence.
- Administration will be upholding the 0.00m setback requirement. And will be including the basic mitigation measures and restrictive covenant as advisory conditions.

Look forward to hearing back from you soon.

Thanks & have a great evening

Jeevan Wareh T.T.
Development Office | Planning and Development Se vices
Rocky View County
262075 Rocky View Point | Rocky View County | AB | T4A 0X2
Phone 403-520-6333
JWa eh@ ockyv ew.ca | http://secu e-web.c sco.com/1VjkJc5Mo7StdoqO3U3nPEsge3plg-29yYVJCdutIyzk9iHe ZqguU41i yCCbtdJKvs8XkOz2qKpAji4yU7fIYwaBJHQVEkmML5z1sjpVH55DIsNBW2 BlHdp1XmUDFCzpfSFgnoOXo6BoPbNJ eEqPCzugwxHf2UjDi knUcTjw7yw9E3N2Dsm 0Wgw-VjREChiGJAVE1L69MfH7wROuxVdFY8XJtaT4NxqetIhfdtadoqFDeDTqIzD3W0d HWtHFD-kSdFVEX5g8JM04V1WdlQo7vQZWQfCQgefe0-ihe-G0g49WmuSCrIqsMzi/http%3A%2F%2Fwww. ockyview.ca

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From: Saadia Jamil <Saadia.Jamil@cn.ca> **On Beha f Of** Proximity
Sent: July 28 2022 10:00 AM
To: Jeevan Wareh <JWareh@rockyview.ca>
Subject: RE: [EXTERNAL] - 2022-07-19_CN Comments_280003 RGE RD 262 Rocky View County AB

Hi Jeevan

The berm and setback requirements are part of the FCM/RAC guidelines for development in proximity to the railway corridor. They can be reviewed at http://secure-web.cisco.com/1AV_ulkYY00uSZpC1iW_NLL7UCv6MVbeHF_FA2PK7E20zvCKhgXFhWweaviXCCGMnTtHFG2e1LgPW4cSlKpG4VBhlipGp3FMu1uJQd7Yx33JN2EUWcIw_hFxKzpYS0fGNzTj6928mURN4VtPP7gmfAXa9PboiOvWl9dkvOz1qlzKvWM8kQGM7Nm_2clEgNdYkmctCcF3QMYuV4eRd6Lt5vfz5kfPigXSI7F-OghVW5-zw__2IAkJ6TCO8siUQg0_z8LedxNyXVaxZwfo2OWgcWR9QnkNtKSumXm7Mhuf2QsyChPt7RZOid_xUmJ9J6Fin\/http%3A%2F%2Fwww.proximityissues.ca

The Transport Canada requirement relates to a 30 meter setback from an at-grade crossing for a vehicle access.

Thanks

Saadia Jamil

Urbaniste sénior / Sen or Planner (CN Proxim ty)
Planning, Landscape Arch tecture and Urban Des gn
Urbanisme, architecture de paysage et design urbain

E : proximity@cn.ca
1600, René-Lévesque Ouest, 11e étage
Montréal (Québec)
H3H 1P9 CANADA
wsp.com

From: Jeevan Wareh <JWareh@rockyview.ca>
Sent: Friday July 22 2022 3:08 PM
To: Saadia Jamil <Saadia.Jamil@cn.ca>
Cc: Proximity <proximit @cn.ca>
Subject: RE: [EXTERNAL] - 2022-07-19_CN Comments_280003 RGE RD 262 Rocky View County AB
Importance: High

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Hi Saadia

I left you a voicemail earlier however I thought I'd send a quick email as we l. When you have a moment are you able to please give me quick call on my direct line?

Also are you able to please direct me to where I can find and quote the Transport Canada setback & berm requirements as per my applicant's request?

If you could please respond in a timely manner as the applicant is quite concerned of her time ine that'd be great.

Look forward to hearing from you soon.

Regards

Jeevan Wareh T.T.
Development Office | Planning and Development Se vices
Rocky View County
262075 Rocky View Point | Rocky View County | AB | T4A 0X2
Phone 403-520-6333
JW h@ y | h - 1UyOPgGFZv_IU_9_H_BQ_Ig_CGOB_ B8h_E_O_Q76_ g9VH8_ RQC_7_DHCMi_9_H: -
V6TkEoDvf6hOOB_VkgxHQOUNNmAXuTDpYTwSp1WqOImfR4NFsnD81aTBxgiuOY_q8_R9JBOco8_BT3z_Ugnbf_fOa4v7GvJ1GXF9QQn7GuiHJeiGWXgd205NOb3v5_ykQtiUR5n1T9bFERxbT0kGiZXx8FPFOO1O8c9va_ jiuVYWFEq2nMSX_VZ6MOVz9Xt5S_Bh8mbexMzEddYH8MlCinTQlku4Fwdm3_ByGPFgR6gv5Z73fp_uYE7/http%3A%2F%2Fwww. ockyview.ca

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From: Jeevan Wareh
Sent: July 21 2022 11:00 AM
To: Proximity <proximity@cn.ca>
Subject: RE: [EXTERNAL] - 2022-07-19_CN Comments_280003 RGE RD 262 Rocky View County AB

Hi Saadia

Thanks for the confirmation much appreciated.

Transport Canada / Transports Canada

Transportation of
Dangerous Goods

Proximity Issues

Across Canada, cities are expanding. City planners and engineers consider numerous factors when designing roadways and reviewing proposals for new developments or construction. A very important factor to consider and plan for is the transportation of dangerous goods through or near these communities.

Dangerous goods travel through cities via all modes of transportation. To ensure public safety, Transport Canada develops, oversees and ensures compliance with safety standards and regulations for all modes of transportation. In addition to these safety requirements, there are some factors that communities should consider when planning developments to ensure an even higher safety standard.

Taking these additional factors into consideration when planning new construction or developments, especially those adjacent to railways, highways or airports, can help protect citizens in the case of incidents and can increase safety in the day to day lives of Canadians.

Add barriers, fencing and building setbacks around high speed roadways and railways. These can be an effective deterrent for trespassers and can also help protect homes and businesses from noise, vibration or any potential emissions.

Consider the impact increased traffic flow may have to crossings, especially where frequent train traffic is in play. This could determine the type of protection required at the crossing and have financial implications for the city.

Consult with railway companies, provinces, and any other stakeholders when new developments are being considered.

Avoid creating trespassing occurrences by allowing for pedestrian, bicycle and assisted users traffic over the crossings. Plan to create alternative routes to get across highways or tracks.

Ensure the municipality's Emergency Response Plan (ERP) takes into account the dangerous goods being transported within the city limits.

For more information on the proximity issues, please review the Guidelines for New Development in Proximity to Railway Operations.

Canada

Tab 6

GUIDELINES

for New Development in Proximity to Railway Operations

PREPARED FOR
THE FEDERATION OF CANADIAN MUNICIPALITIES
AND THE RAILWAY ASSOCIATION OF CANADA

May 2013

DIALOG®
J.E. COULTER ASSOCIATES LIMITED

Guidelines for New Development in Proximity to Railway Operations

May 2013

These guidelines were developed through the collaboration of the Railway Association of Canada and the Federation of Canadian Municipalities, who work together through the FCM/RAC Proximity Initiative. For further information, please visit our joint website at www.proximityissues.ca, or contact:

The Railway Association of Canada
99 Bank Street, Suite 901
Ottawa, Ontario K1P 6B9

Tel : (613) 567-8591
Fax : (613) 567-6726

Federation of Canadian Municipalities
24 Clarence Street
Ottawa, Ontario K1N 5P3

Tel : (613) 241-5221
Fax : (613) 241-7440

COVER PHOTOS COURTESY OF THE RAILWAY ASSOCIATION OF CANADA

FCM FEDERATION OF CANADIAN MUNICIPALITIES FÉDÉRATION CANADIENNE DES MUNICIPALITÉS

Railway Association of Canada

DIALOG

J.E. COULTER ASSOCIATES LIMITED

FCM FEDERATION OF CANADIAN MUNICIPALITIES FÉDÉRATION CANADIENNE DES MUNICIPALITÉS

Railway Association of Canada

FCM/RAC Proximity Initiative

May, 2013

We are very pleased to present the new *Guidelines for New Development in Proximity to Railway Operations*.

These new guidelines are intended to replace and build on the FCM/RAC Proximity Guidelines and Best Practices Report, which was originally prepared and published in 2004 and reprinted in 2007. Since that time, there have been significant changes in both federal legislation and some provincial land use acts. The original guidelines have been reviewed, edited, and updated with the help and participation of stakeholders from railways, municipalities, and government to reflect the new legislative framework as well as to add a new section of guidelines and best practices that can be applied when converting industrial/commercial property into residential use when in proximity to railway operations.

The *Guidelines for New Development in Proximity to Railway Operations* is intended for use by municipalities and provincial governments, municipal staff, railways, developers, and property owners when developing lands in proximity to railway operations. They are meant to assist municipal governments and railways in reviewing and determining general planning policies when developing on lands in proximity to railway facilities, as well to establish a process for making site specific recommendations and decisions to reduce land-use incompatibilities for developments in proximity to railway operations. A key component is a model review process for new residential development, infill, and conversions in proximity to railways.

The guiding philisophy of this document is that, by building better today, we can avoid conflicts in the future.

Sincere Regards,

Sean Finn

FCM-RAC Proximity Co-Chair
Executive VP Corporate Services
and Chief Legal Officer, CN

Doug Reycraft

FCM-RAC Proximity Co-Chair
Mayor, Southwest Middlesex, ON

ACKNOWLEDGMENTS//

These guidelines and best practices were developed by the FCM/RAC Proximity Initiative with the help and participation of stakeholders from government, freight, passenger, and commuter railway operators, municipal councillors and mayors, municipal urban planners, the Federation of Canadian Municipalities and the Railway Association of Canada.

I would like to especially acknowledge the members of the Guidelines Working Group who gave their time, expertise, and insight in vetting the research, developing the format, and editing the product from start to finish.

Adam Snow (Chair)	Third Party Projects Officer - GO Transit
Nick Coleman	Manager, Community Planning & Development, CN
Orest Rojik	Right-of-Way Representative, CPR
Giulio Cescato	Planner, City of Toronto

And also Daniel Fusca of DIALOG who worked with the team.

The project was initiated and approved through the Steering Committee of the FCM/RAC Proximity Initiative:

Doug Reycraft - FCM Co-chair, Mayor, Southwest Middlesex, Ontario

Sean Finn - RAC Co-chair, Executive VP & Chief Legal Officer, CN

Mike Lowenger - VP, Operations & Regulatory Affairs, RAC

Daniel Rubinstein - Research Officer, FCM

John Corey - Manager, Rail Investigations, CTA

Jim Feeny - Director, Regional Public & Govt. Affairs, CN

Cynthia Lulham - Project Manager, FCM/RAC Proximity Initiative

Cameron Stolz - City Councillor, Prince George, BC

Steve Gallagher - Manager, Ontario Rail Operations, Cando Rail

Pauline Quinlan - Mairesse, Ville de Bromont, QC

Gary Price - City Councillor, Cambridge, ON

Frank Butzelaar - President & CEO, Southern Railway BC Ltd.

Louis Machado - Vice-président adjoint Exploitation, AMT

Randy Marsh - Director, Government & Public Affairs, CP

Adam Snow - Third Party Projects Officer - GO Transit

Heath Slee - Director, East Kootenay RD

Ranjan Kelly - Project Manager, Data Bases & Websites, RAC

Lynda Macleod - Manager, Legislative Affairs, CN

Paul Goyette - Director, Communications & Public Affairs, RAC

Malcolm Andrews - Senior Manager, Corporate Communications, VIA

Mee Lan Wong - Policy Advisor, Transport Canada

Nick Coleman - Manager, Community Planning & Development, CN

We gratefully acknowledge their valued input and support.

Cynthia Lulham
Project Manager, FCM/RAC Proximity Initiative

CONTENTS//

As cities in Canada continue to urbanize, and as they place a greater emphasis on curbing urban sprawl, demand for new forms of infill development is growing, including on sites in proximity to railway corridors.

In particular, commercial and industrial properties in proximity to railway operations, and in some cases the buildings situated on those properties, are increasingly being converted to residential uses. At the same time, both the passenger and freight operations of railways are growing steadily, leading to an increasing potential for conflicts between rail operations and adjacent land uses.

Areas in proximity to railway operations are challenging settings for new development, and in particular, for residential development. It is often difficult to reconcile the expectation and concerns of residents with railway operations. For this reason, developments must be carefully planned so as not to unduly expose residents to railway activities as well as not to interfere with the continued operation of the corridor itself, or the potential for future expansion, as railways play an important economic role in society that must be safeguarded.

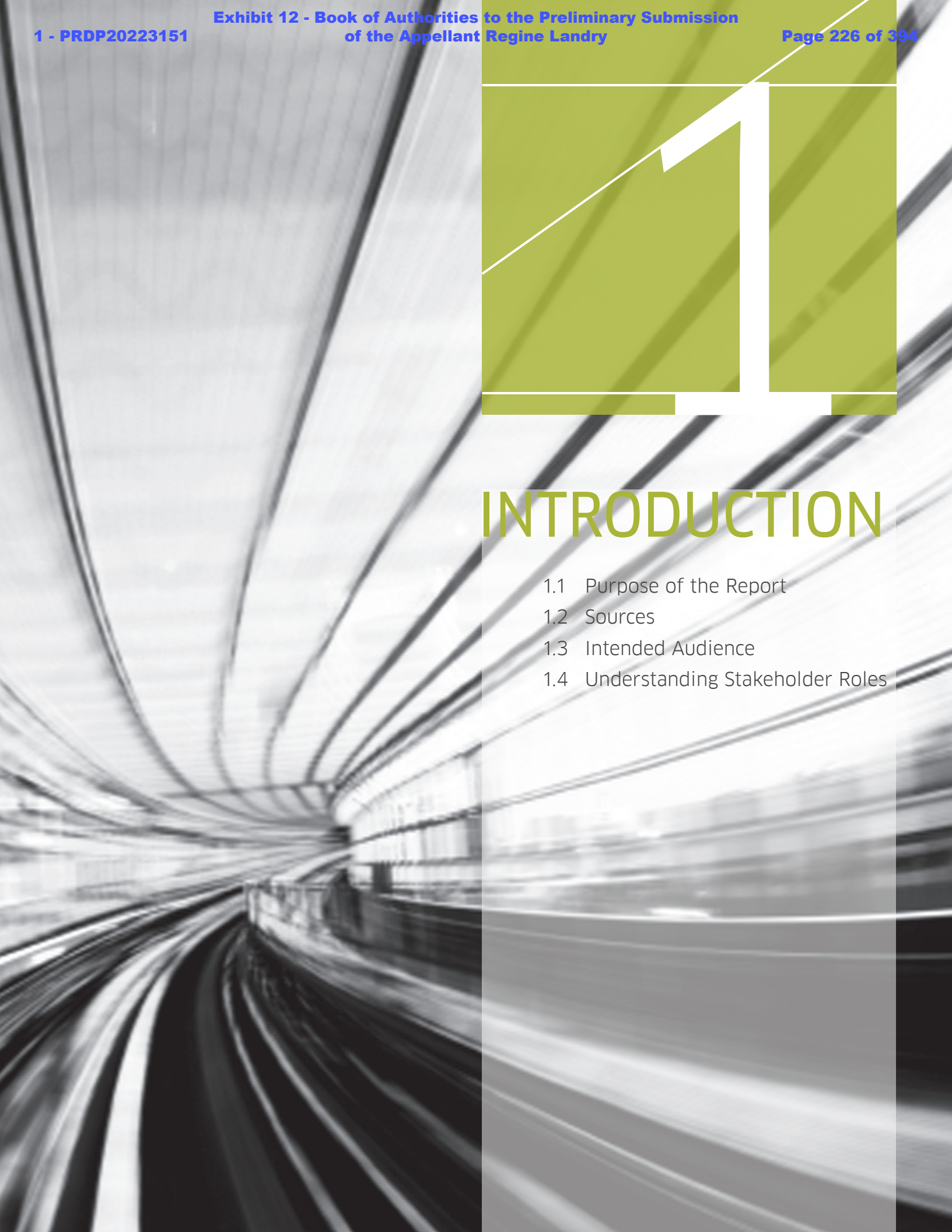
This report strongly recommends that municipalities should take a proactive approach to identifying and planning for potential conflicts between rail operations and new developments in proximity to railway corridors. Prior to the receipt of an application for a specific project, the municipality should have already have identified key sites for potential redevelopment, conversion, or future rail crossings, and will have generated site-specific policies to manage such future change.

To further assist municipalities and other stakeholders, this report provides a comprehensive set of guidelines for use when developing on lands in proximity to railway operations. The intent of the guidelines is to:

- promote awareness around the issues (noise, vibration, safety) and mitigation measures associated with development near railway operations, particularly those associated with residential development;
- promote greater consistency in the application of relevant standards across the country;
- establish an effective approvals process for new residential development, infill, and conversions from industrial/commercial uses that allows municipal planners to effectively evaluate such proposals with an eye to ensuring that appropriate sound, vibration, and safety mitigation is secured; and
- enhance the quality of living environments in close proximity to railway operations.

The report builds on the 2004 FCM/RAC Proximity Guidelines and is intended for use by municipalities and provincial governments, municipal staff, railways, developers, and property owners when new developments in proximity to railway operations are proposed. Information has been assembled through a comprehensive literature/best practices review from national and international sources as well as a consultation process involving planners, architects, developers, and other professionals from across Canada, the USA, and Australia, as well as members of RAC and FCM.

In addition to the detailed guidelines, the report offers a set of implementation tools and recommendations that are meant to establish a clear framework for the dissemination, promotion, and adoption of the guidelines; as well as suggested improvements to the development approval process. A key recommendation is for a new development assessment tool, called a Development Viability Assessment, which will allow municipal planners to better evaluate proposals for residential development in areas where standard mitigation cannot be accommodated due to site constraints.



1

INTRODUCTION

1.0 // INTRODUCTION

Cities are the economic engines of Canada, and our quality of life and economic competitiveness depend on strong municipalities and sustainable municipal growth and development.

Equally important to the economy of Canada, railways ensure the efficient movement of goods and people. In so doing, railways make a vital contribution to the Canadian economy and to the success of Canadian communities. As cities across Canada begin to realize the benefits of curbing urban sprawl, and as consumer demand for more housing in urban centres grows, the push to intensify existing built-up areas, including sites in proximity to railway operations, has grown steadily stronger. At the same time, increased demand for rail service, the high cost of transport fuel, and new sustainability objectives have added new pressure to the railway industry, which is expanding rapidly. When issues related to proximity to railway operations are not properly understood and addressed, the resulting problems can often be intractable and long lasting.

Rail/municipal proximity issues typically occur in three principle situations: land development near rail operations; new or expanded rail facilities; and road/rail crossings. The nature and integrity of railway corridors and yards need to be respected and protected. In addition to noise and vibration, safety, trespass, drainage, and/or blocked crossings are other inherent issues generated when both commnuities and railways grow in proximity to one another. The lack of a comprehensive set of proximity management guidelines, applied consistently across municipal jurisdictions, has greatly amplified these proximity issues in recent years, resulting in some cases in (real and perceived) social, health, economic, and safety issues for people, municipalities, and railways.

In 2003, the FCM and RAC began an important partnership to develop common approaches to the prevention and resolution of issues arising from development occurring in close proximity to railway corridors and other rail operations. Under a Memorandum of Understanding (MOU) agreed to by both parties, a Community-Rail Proximity Initiative was established and a Steering Committee was formed with a mandate to develop and implement a strategy to reduce misunderstanding and avoid unnecessary conflicts arising from railway-community proximity. The result was a framework for a proximity initiative, with the following areas requiring action:

- develop commonly understood proximity guidelines;
- improve awareness among all stakeholders regarding the need for effective planning and management; and
- develop dispute resolution protocols to guide concerned parties when issues emerge.

In 2004 the FCM and RAC Proximity Initiative published a report identifying best practices and guidelines for new developments in proximity to railway operations (reprinted 2007). This document is intended to update and replace that original document, and includes additional best practices and guidelines dealing specifically with residential conversion or infill projects on former industrial or commercial lands. The intent of this report is to provide municipalities with the necessary tools to facilitate decision-making, and to provide a framework for ensuring that new development in proximity to railway corridors is suitably configured to address the various risks and constraints present in railway environments.

Additionally, this report is intended to address the variable nature in the delivery of mitigative measures for new developments in proximity to railway operations across Canadian jurisdictions. A site-specific process is identified whereby the specific site conditions related to a proposed development can be assessed by municipalities in order to determine the mitigation measures most appropriate for that site, especially in locations where standard mitigation cannot be accommodated in a reasonable manner. Additionally, when a development application involves a residential component, the process will help municipalities to decide whether the site is appropriate for such a use. When it comes to safety, all parties must be aware that there are inherent safety implications associated with new developments in proximity to a railway line, and that these implications can often be mitigated, but typically not entirely eliminated. The goal is to establish a common, standardized process, whereby potential impacts to safety in the context of development applications in proximity to rail corridors can be assessed.

Finally, it is desirable for municipalities to take a proactive approach to identifying and planning for potential rail -oriented conflicts prior to the receipt of an application

PHOTO SOURCE: RAILWAY ASSOCIATION OF CANADA

for a specific project. In the context of creating municipal and secondary plans, it behooves planners to identify key sites for potential redevelopment, conversion, or future rail crossings, and to generate site-specific policies to manage this future change.

1.1 // PURPOSE OF THE REPORT

The main objective of this report is to provide a set of guidelines that can be applied to mitigate the impacts of locating new development in proximity to railway operations. It is important to note that these guidelines are not intended to be applied to existing locations where proximity issues already exist, as these locations present their own unique challenges which must be addressed on site specific basis.

The report will:

- provide a framework to better facilitate municipal and railway growth;
- develop awareness around the issues associated with new development along railway corridors, including residential conversion or infill projects, particularly in terms of noise, vibration, and safety;
- provide model development guidelines, policies, and regulations, and illustrate best practices for use and adaptation as appropriate by all stakeholders, most particularly railways, municipalities, and land developers;
- establish a mechanism that allows municipal planners to effectively evaluate the appropriateness of an application to convert industrial or commercial lands in proximity to railway corridors to residential uses, and of other residential infill projects near railway corridors;
- establish a balance between the railway operational needs and the desire of municipalities to facilitate residential and other intensification in existing built-up areas;
- inform and influence railway and municipal planning practices and procedures through the provision of guidelines that ensure planning systems and development approval processes more effectively anticipate and manage proximity conflicts;
- promote greater consistency in the application of guidelines across the country;
- identify strategies to enhance the quality of living environments while reducing incompatibility; and
- inform and influence federal and provincial governments with respect to the development and implementation of applicable policies, guidelines, and regulations.

1.2 // SOURCES

The information in this report has been derived from two primary sources:

- a thorough review of academic literature as well as municipal, state, provincial, and federal policy documents from Canada, the USA, and Australia; and
- extensive stakeholder interviews with municipal planners, railways, provincial and state bureaucrats, developers, and professionals with expertise in a variety of fields including property law, noise and vibration mitigation, and crash wall and berm construction.

A full list of references is provided at the end of this report **(Appendix I)**, in addition to a list of organizations consulted as part of the stakeholder interview process **(Appendix H)**.

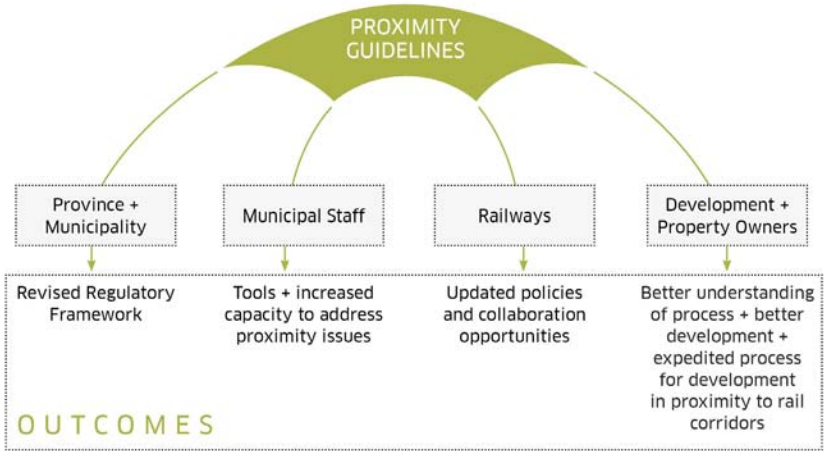


FIGURE 1 // OUTCOMES OF THE GUIDELINES FOR VARIOUS STAKEHOLDER GROUPS.

1.3 // INTENDED AUDIENCE

This report is intended to be used by:

- Municipalities and Provincial Governments, to create or update their policies, regulations, and standards related to new development along railway corridors, in order to create more consistency across the country.
- Municipal staff, as a tool to better understand the safety, vibration, noise, and other issues related to new development along railway corridors, and to more effectively evaluate and provide feedback on development proposals, particularly when they involve a residential component.
- Railways, to update their internal policies regarding development in proximity to railway corridors, particularly residential infill development and conversions, and to provide opportunities for collaboration with stakeholders.
- Developers and property owners, of sites in proximity to railway corridors to better understand the development approval process and the types of mitigation measures that might be required.

1.4 // UNDERSTANDING STAKEHOLDER ROLES

The research associated with this report has revealed the complexity of interaction between public and private agencies and individuals. It further indicated that a lack of understanding of roles and responsibilities has contributed to the problems identified. This section provides a brief overview of these roles. Recommendations for how each stakeholder can assist in the advancement of the goal of reducing proximity issues are found in Section 4.2 Advancing Stakeholder Roles.

1.4.1 Federal

The federal government regulates the activities of CN, CPR, and VIA Rail Canada, and some short line railways that operate interprovincially or internationally. These federal railways are regulated by such legislation as the *Railway Safety Act* (RSA), and the *Canada Transportation Act* (CTA). Applicable legislation, regulations, and guidelines are available from the respective websites.

1.4.2 Provincial

Provinces provide the land use regulatory framework for municipalities through Planning Acts, Provincial Policy Statements or Statements of Provincial Interest, Environmental Assessment Acts, and air quality and noise guidelines (such as the Ontario Ministry of the Environment Noise Assessment in Land Use Planning documents). This legislation generally provides direction on ensuring efficient and appropriate land use allocation and on tying land use planning to sound transportation and planning principles. Generally, provinces also have jurisdiction to establish land use tribunals to adjudicate disputes, although the approach taken by provinces with respect to establishing and empowering such tribunals varies across the country. Additionally, some provinces regulate shortline railways.

1.4.3 Municipal

Municipalities are responsible for ensuring efficient and effective land use and transportation planning within their territory, including consultation with neighbouring property owners (such as railways), in carrying out their planning responsibilities. Municipal planning instruments include various community-wide and area plans, Zoning By-law/ Ordinances, Development Guidelines, Transportation Plans, Conditions of Development Approval, and Development

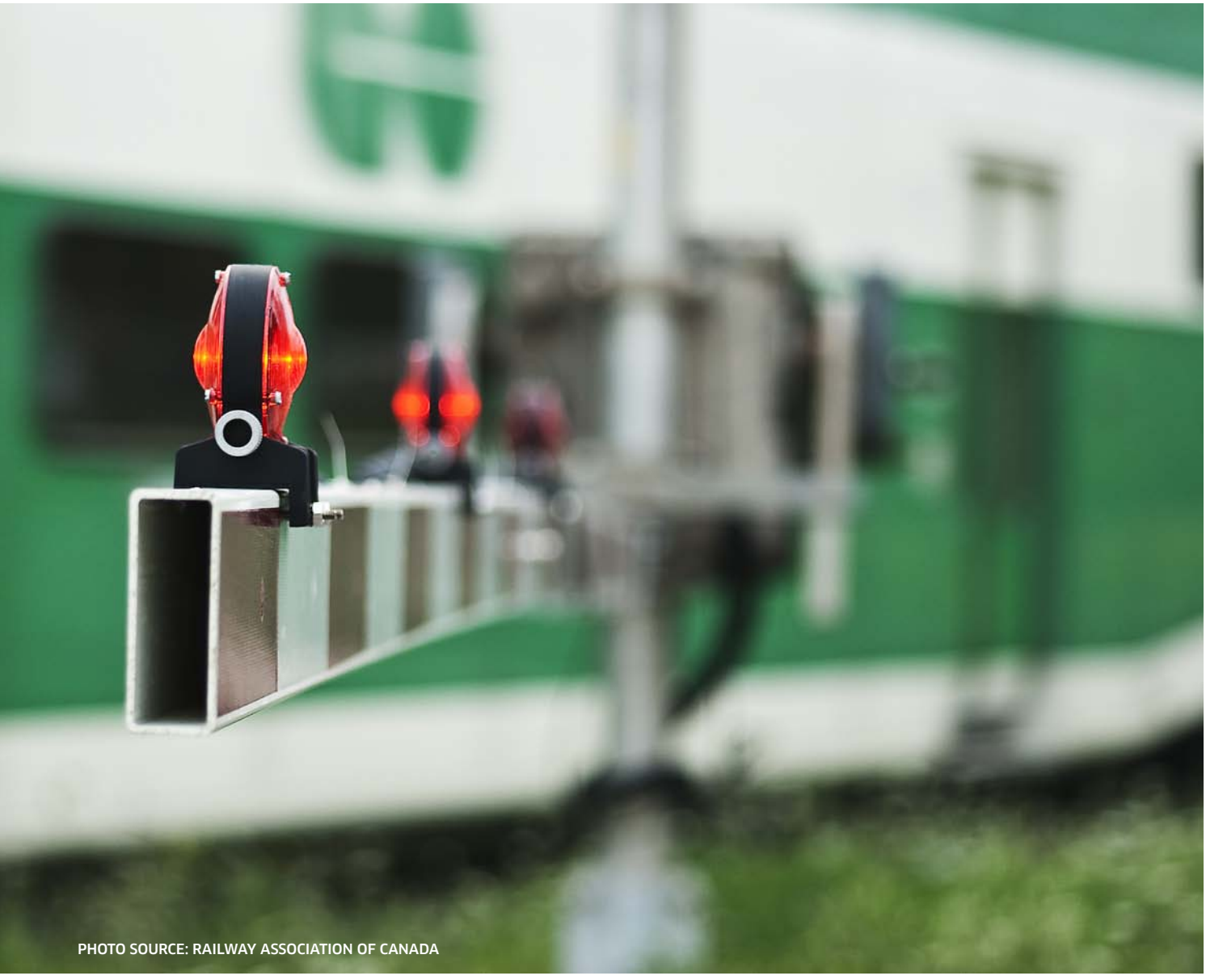


PHOTO SOURCE: RAILWAY ASSOCIATION OF CANADA

Agreements to secure developer obligations and requirements. Municipal governments have a role to play in proximity issues management by ensuring responsible land use planning policies, guidelines, and regulatory frameworks, as well as by providing a development approvals process that reduces the potential for future conflicts between land uses.

1.4.4 Railway

Federally regulated railways are governed, in part, by the requirements of the *Canada Transportation Act* (CTA). Under the CTA, railways are required to obtain an approval from the Canadian Transportation Agency for certain new railway construction projects. Through this process, railways must give notification and consult with interested parties. For existing railway operations, the CTA requires that railways make only such noise and vibration as is reasonable, taking into consideration their operational requirements and the need for the railway to meet its obligation to move passengers and the goods entrusted to it for carriage. Additionally, federal railways are required to adhere to the requirements of the *Railway Safety Act* (RSA), which promotes public safety and the protection of property and the environment in the operation of a railway. Railways also typically establish formal company environmental management policies and participate in voluntary programs and multi-party initiatives such as Direction 2006, Operation Lifesaver, TransCAER, and Responsible Care®.

Both CN and CPR, as well as VIA Rail Canada, and many short line railways across the country, have established guidelines for new development in proximity to their railway corridors, and they have a significant role to play in providing knowledge and expertise to municipal and provincial authorities, as well as developers and property owners.

1.4.5 Land Developer / Property Owner

Land developers are responsible for respecting land use development policies and regulations to achieve development that considers and respects the needs of surrounding existing and future land uses. As initiators of urban developments, they also have the responsibility to ensure that development projects are adequately integrated in existing environment.

1.4.6 Real Estate Sales / Marketing and Transfer Agents

Real estate sales people and property transfer agents (notaries and lawyers) are often the first and only contacts for people purchasing property, and therefore have a professional obligation to seek out and provide accurate information to buyers and sellers.

1.4.7 Academia and Specialized Training Programs

Academic institutions provide training in all fields related to land use planning, development, and railway engineering.

1.4.8 Industry Associations

Industry associations include bodies such as the RAC, FCM, Canadian Association of Municipal Administrators (CAMA), Canadian Institute of Planners (CIP), provincial planning associations, the Canadian Acoustical Association (CAA), and land development groups such as the Urban Development Institute.

2

COMMON ISSUES AND CONSTRAINTS

2.0 // COMMON ISSUES AND CONSTRAINTS

The practice of developing land in close proximity to rail operations, as well as the expansion of rail operations in urban areas, have generated a variety of opportunities...

...as well as challenges for municipalities, developers, and railways, who must work together to balance a variety of sometimes competing goals and aspirations, including:

- the desire to promote excellence in urban design;
- the need, in some cases, to preserve employment lands and protect them from encroaching residential development;
- the growing demand for infill development that promotes the principles of sustainability and smart growth;
- the need to provide sufficient noise and vibration mitigation and safety measures;
- the desire of developers for consistency and clarity in the development process;
- the desire of developers and municipalities to see an improved and streamlined development review process for residential projects in proximity to railway corridors; and
- the necessity of recognizing the significant economic contributions of the railways, and of ensuring their continued ability to provide their services unimpeded.

In addition, it is important to recognize that areas in proximity to railway operations are challenging settings for new development, and in particular, residential development. Railway operations can generate concerns, such as blocked crossings, dangers to trespassers, as well as impacts on the quality of life of nearby residents due to the effects of inherent noise, vibration, and railway incidents . Conversely, developments must be carefully planned so as not to interfere with the continued operation of railway activities, or the potential for future expansion, as railways play an important economic role in society that must be safeguarded.

The most significant constraints related to railway proximity can be broadly categorized as follows:

1. **Inadequate communication** - both formal and informal notification and consultation is lacking between and among stakeholders.
2. **Lack of understanding and awareness of rail/municipal proximity issues** - the issues and regulations affecting rail operations and municipal land use decisions are complex and involve every level of government. Individual stakeholders are not always familiar with the mandate and operating realities of other stakeholder agencies. Rail/municipal proximity issues only arise infrequently for many municipalities, particularly smaller ones, and staff may not be aware of required or appropriate mitigation measures.
3. **Absence of comprehensive or consistent development review** - policies, regulations, and approaches for dealing with land use decisions involving rail proximity issues vary greatly from municipality to municipality, and are lacking detail in most cases. In particular, there is a need for a new development review process that deals specifically with residential development proposals, especially those involving a conversion from commercial or industrial uses, or which are to be located on tight infill sites.

In addition to these common constraints, there are a number of very specific issues which, in some cases, are a result of the constraints, and in others, fuel them. These include issues around safety, noise, vibration, the accommodation of safety mitigation measures, and the accommodation of residential development near railway corridors. Following is a brief summary of some of the

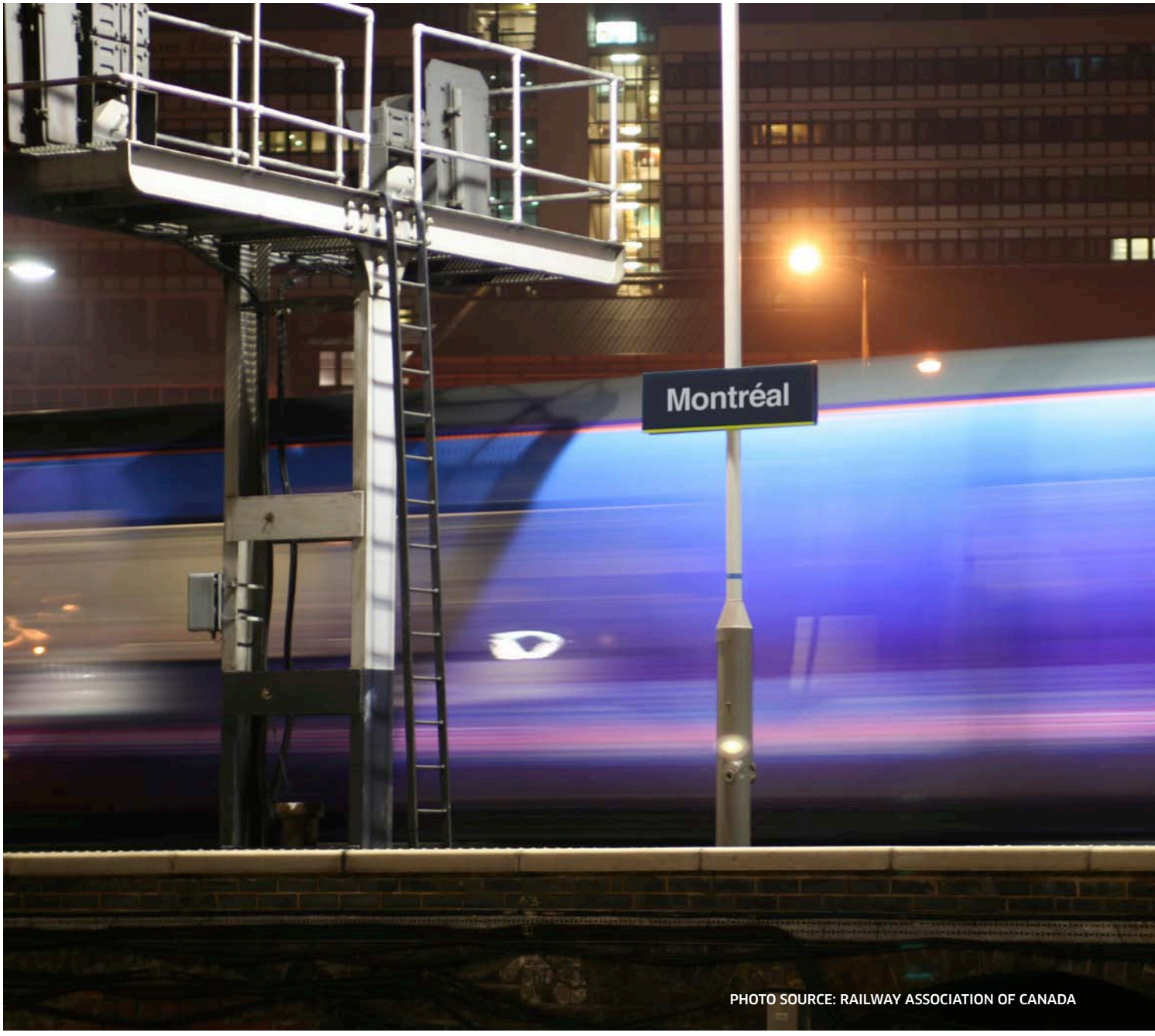


PHOTO SOURCE: RAILWAY ASSOCIATION OF CANADA

more specific issues associated with new development in proximity to railway operations.

2.1 // SAFETY

Safety is a concern which has been expressed by residents living in proximity to railways. In *Stronger Ties: A Shared Commitment to Railway Safety (2007),* a report commissioned as part of a review of the Railway Safety Act, it is noted that rail is one of the safest modes of transportation, and that Canada's railways are among the safest in North America. When accidents do occur, the vast majority are non-main track collisions and derailments occurring primarily in yards or terminals. Only slightly more than 10 percent of railway accidents are collisions or derailments that occur on track between stations or terminals, including branch and feeder lines, although these are the accidents with the greatest consequences in terms of property and environmental damage. Additionally, the number of accidents involving the transportation of dangerous goods has been falling steadily since 1996, even as rail transport of regulated dangerous goods has grown by as much as 60 percent. By far, the greatest number of annual fatalities resulting from railway accidents involves trespassers or vehicle occupants or pedestrians being struck at crossings.[1] As a result, trespassing is at least as great, if not greater a safety concern than is derailment.

2.1.1 Train Derailments

The desire to ensure safety and promote a high quality of life for people living and working in close proximity to railway corridors is a principal objective of railways. As part of that objective, railways have, since the early 1980s, promoted mitigation in the form of a standard setback and berm. These measures have been developed based on a detailed analysis of past incidents and derailments. Together, they contain the derailed cars and allow a derailed train enough room to come to a complete stop. In addition, setbacks and berms also allow for the dissipation of noise and vibration, and have typically been effective at ameliorating the proximity concerns perceived by residents living near railway operations. While these measures are recommended for all types of new development in proximity to railway operations, they have typically only been considered by the railways as a mandatory requirement for residential development. Nevertheless, in some cases where conversion or infill sites are small and cannot accommodate standard setbacks, reduced setbacks may be possible under certain conditions (for example, if the railway line is located in a cut), but in the majority of cases, an alternate form of safety barrier (such as a crash wall) will be required.

Most jurisdictions across Canada have yet to establish a formal requirement for rail corridor building setbacks. In some cases, minimum setback requirements are considered to be too onerous, and are either ignored or subjectively reduced. Ontario, which mandates the involvement of railways on any development proposal in proximity to railway facilities, is the only province where standard setbacks are typically achieved. This creates a perception that developers in that province are treated differently since they bear the additional costs associated with implementing safety mitigation, whereas developers in other provinces do not. In reality, this is simply an outcome of Ontario's stronger regulatory framework for dealing with development in railway environments.

1 Railway Safety Act Review Secretariat. (2007). Stronger ties: A shared commitment to railway safety. Retrieved from the Transport Canada website: www.tc.gc.ca/tcss/RSA_Review-Examen_LSF

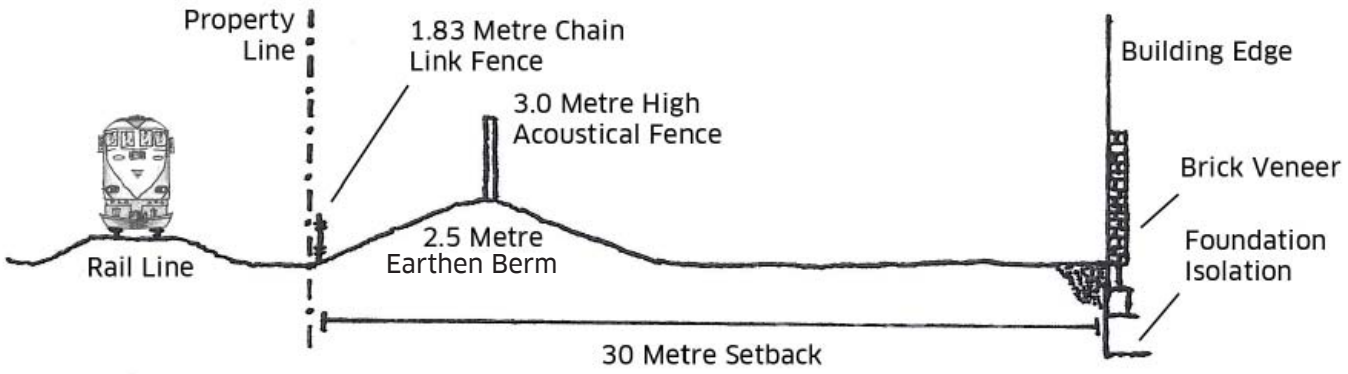


FIGURE 2 // STANDARD MITIGATION FOR NEW RESIDENTIAL DEVELOPMENT IN PROXIMITY TO A MAIN LINE RAILWAY

2.1.2 Crossings

As urban areas grow in proximity to railway corridors, road traffic at existing crossings increases and can lead to demands for improvements to such crossings, demands for additional crossings, or demands for grade separations to accommodate the flow of the traffic from the new development to areas on the other side of the railway. Conversely, Transport Canada and the railways strive to reduce the number of at-grade crossings since each new crossing increases the risk exposure for potential vehicle/train and pedestrian accidents, as well as the related road traffic delays. Grade-separated crossings address both these issues, but are expensive to construct. Safety at railway crossings is a concern for all stakeholders and planning is necessary to consider alternatives to creating new grade crossings, including upgrading and improving safety at existing crossings and grade-separated crossings.

2.2 // NOISE AND VIBRATION

Noise and vibration from rail operations are two of the primary sources of complaints from residents living near railway corridors. Airborne noise at low frequencies (caused by locomotives) can also induce vibration in lightweight elements of a building, which may be perceived to be ground-borne vibration.

There are two sources of rail noise: noise from pass-by trains, and noise from rail yard activities, including shunting. Pass-by noise is typically intermittent, of limited duration and primarily from locomotives. Other sources of pass-by noise include whistles at level crossings[2], and car wheels on the tracks.

Freight rail yard noises tend to be frequent and of longer duration, including shunting cars, idling locomotives, wheel and brake retarder squeal, clamps used to secure containers, bulk loading/unloading operations, shakers, and many others.

Beyond the obvious annoyance, some studies have found that the sleep disturbance induced by adverse levels of noise can affect cardiovascular, physiological, and mental health, and physical performance.[3] However, there is no clear consensus as to the real affects of adverse levels of noise on health.

Ground borne vibration from the wheel-rail interface passes through the track structure into the ground and can transfer and propagate through the ground to nearby buildings. Vibration is more difficult to predict and mitigate than noise and there is no universally accepted method of measurement or applicable guidelines. Vibration evaluation methods are generally based on the human response to vibration. The effects of vibration on occupants include fear of damage to the occupied structure, and interference with sleep, conversation, and other activities.

2.3 // STANDARD MITIGATION

In order to reduce incompatibility issues associated with locating new development (particularly new residential development) in proximity to railway corridors, the railways suggest a package of mitigation measures that have been designed to ameliorate the inherent potential

2 Applicable to federally regulated railways and some provincially regulated railways (notably in Quebec and Ontario). Trains are required to sound their whistles for at least 400 metres before entering a public crossing, unless relief has been granted in accordance with the regulatory process.

3 Berglund, B., Lindvall, T., & Schwela, D. H., eds. (1999). Guidelines for community noise [Research Report]. Retrieved from World Health Organization website: http://www.who.int/docstore/peh/noise/guidelines2.html

for the occurrence of safety, security, noise, vibration, and trespass issues. These mitigation measures (illustrated in FIGURE 2) include a minimum setback, earthen berm, acoustical and/or chain link security fence, as well as additional measures for sound and vibration attenuation.

It should be noted that many of these measures are most effective only when they are implemented together as part of the entire package of standard mitigation measures. For example, the setback contributes to mitigation against the potential impact of a railway incident as well as noise and vibration, through distance separation. The earthen berm, in turn, can protect against the physical components of a derailment (in conjunction with the setback), and provides mitigation of wheel and rail noise, reduces the masonry or wood component (and cost) of the overall noise barrier height, and offers an opportunity for the productive use of foundation excavations. Implementation of the entire package of mitigation measures is, therefore, highly desirable, as it provides the highest possible overall attenuation of incompatibility issues. It should also be noted that implementation of such measures is easiest to achieve for new greenfield development. For this reason, these measures are not intended as retrofits for existing residential neighbourhoods in proximity to railway operations. As well, challenges may be encountered in the case of conversions or infill projects on small or constrained sites, and any implications related to the use of alternative mitigation measures need to be carefully evaluated.

2.3.1 Maintenance

A common issue that emerged through this process was that of the responsibility for maintaining mitigation infrastructure. Currently, there is no standard approach to dealing with the maintenance of mitigation infrastructure. In some cases, as is the current practice in Saskatoon, the municipality takes on this responsibility. Increasingly, however, this is seen as an undue burden on municipal coffers, particularly within the current difficult budgetary climate. In Ontario, there was a time when the railways occasionally took possession of the portion of the berm beyond the fence facing onto the railway corridor, but this land attracted property taxes at residential rates. As such, this practice has largely ended. Commonly, property owners maintain ownership of this portion of land, and are expected to maintain the mitigation infrastructure themselves. This strategy can work for commercial or industrial developments, or in the case of condominium developments, where the land becomes part of the common areas of the condominium and maintenance becomes the responsibility of the corporation. In the case of freehold developments, however, where the responsibility for maintenance lies with individual property owners, it is virtually impossible for them to easily access the side of the berm facing onto the railway corridor, and would be dangerous for them to do so in any case. Recommendations regarding a Mitigation Infrastructure Maintenance Strategy are included in Section 4.1.2 of this report.

2.4 // CHALLENGES ASSOCIATED WITH NEW RESIDENTIAL DEVELOPMENT

Residential development is particularly challenging in the context of a railway environment. As noted above, safety, noise, and vibration issues become more significant when dealing with residential development. Partly, this is because people are more sensitive to these issues in the context of their own homes than in other contexts (work, leisure, etc.). It is also because the negative effects of noise and vibration become more

pronounced when they disturb normal sleeping patterns.

When residential development in proximity to railway corridors occurs on large greenfield sites, dealing with these issues is typically not a challenge, as standard mitigation measures can be easily accommodated, and are quite effective. Residential development becomes significantly more challenging, however, when the context is a small infill site, such as those typically associated with the conversion of commercial or industrial properties. In addition to their small size, these sites are also often oddly shaped, and do not easily accommodate standard mitigation measures such as a setback and berm. In addition, existing commercial buildings that are typically associated with conversions to residential use may not meet current residential building code specifications and for this reason it is very important that proper mitigation measures are implemented for these buildings.

In the case of high-density development, crash walls and extensive vibration isolation become economically feasible, negating the problems associated with small sites. However, where high-density development is not appropriate given the site context, these solutions are not financially feasible for the developer, and a different approach is required. Across Canada, there have been inconsistencies in the way these sites are dealt with, and in some cases, residential development has been allowed with little to no mitigation, which could present proximity issues and concerns to residents in the future.

A major contributing factor with respect to inconsistencies in the application of mitigation measures across Canada is the lack of a clear development approval process for residential development in proximity to railway corridors in most jurisdictions outside of Ontario. A new approach is required that will ensure more consistent outcomes across the country. In particular, municipalities will need to carefully consider the viability of sites for conversion to residential uses, based on criteria such as: existing contextual land use, size of site, appropriateness of high-density development, and the demonstrated effectiveness of alternative mitigation measures. Recommendations regarding a Model Review Process for Residential Development, Infill, and Conversions Adjacent to Railway Corridors can be found in Section 4.1.1 of this report.

3

GUIDELINES

3.0 // GUIDELINES

The intention of these guidelines is to provide a level of consistency in the approach to the design of buildings and their context in proximity to railway corridors, and the type of mitigation that is provided across the country.

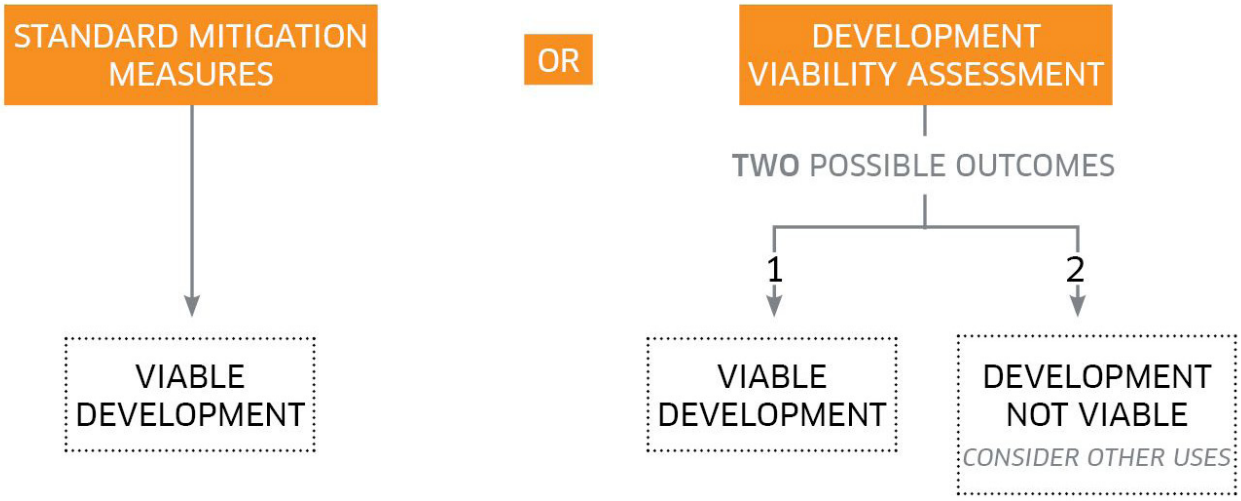


FIGURE 3 // THE DEVELOPMENT VIABILITY ASSESSMENT TOOL IS TO BE USED WHERE STANDARD MITIGATION MEASURES CANNOT BE ACCOMMODATED

The main objective is to mitigate railway-oriented impacts such as noise, vibration, and safety hazards, to ensure that the quality of life of a building's residents and users is not negatively affected. The guidelines are intended to be applied primarily to new residential development but may be useful for all other types of new development as well.

3.1 // PRINCIPLES FOR MITIGATION DESIGN

The following principles for mitigation design should be considered when applying the guidelines below. They are an expression of the intent of the guidelines, and both developers as well as municipalities should have regard for them when designing or assessing new residential development in proximity to a railway corridor.

1. Standard mitigation measures are desired as a minimum requirement.
2. In instances where standard mitigation measures are not viable, alternative development solutions may be introduced in keeping with the Development Viability Assessment process (SEE FIGURE 3).
3. All mitigation measures should be designed to the highest possible urban design standards. Mitigation solutions, as developed through the Development Viability Assessment process, should not create an onerous, highly engineered condition that overwhelms the aesthetic quality of an environment.

3.2 // CONSULTATION WITH THE RAILWAY

Consultation with all stakeholders, including the railways, at the outset of a planning process is imperative to building understanding and informing nearby neighbours. In addition, initiating a conversation with railways can confirm the feasibility of a project and the practicality of proceeding. Key issues or concerns that may need to be addressed will be identified.

- Early contact between the proponent and the railway (preferably in the project's early design phase), is highly recommended, especially for sites in close proximity to railway corridors. This consultation is important in order to determine:
  - » the location of the site in relation to the rail corridor;
  - » the nature of the proposed development;
  - » the frequency, types, and speeds of trains travelling within the corridor;
  - » the potential for expansion of train traffic within the corridor;
  - » any issues the railway may have with the new development or with specific uses proposed for the new development;
  - » the capacity for the site to accommodate standard mitigation measures;
  - » any suggestions for alternate mitigation measures that may be appropriate for the site; and
  - » the specifications to be applied to the project.

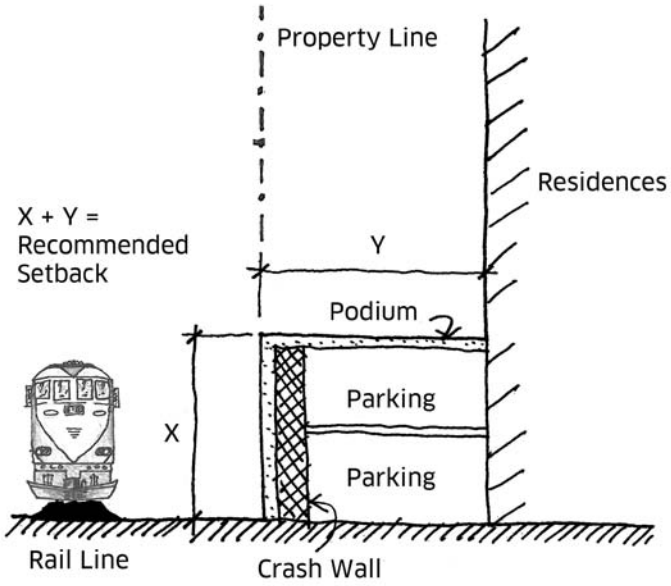


FIGURE 4 // INCORPORATING A CRASH WALL INTO A DEVELOPMENT CAN REDUCE THE RECOMMENDED SETBACK.

3.3 // BUILDING SETBACKS FOR NEW DEVELOPMENTS

A setback from the railway corridor, or railway freight yard, is a highly desirable development condition, particularly in the case of new residential development. It provides a buffer from railway operations; permits dissipation of rail-oriented emissions, vibrations, and noise; and accommodates a safety barrier. Residential separation distances from freight rail yards are intended to address the fundamental land use incompatibilities. Proponents are encouraged to consult with the railway early in the development process to determine the capacity of the site to accommodate standard setbacks (see below). On smaller sites, reduced setbacks should be considered in conjunction with alternative safety measures. Where the recommended setbacks are not technically or practically feasible due, for example, to site conditions or constraints, then a Development Viability Assessment should be undertaken by the proponent to evaluate the conditions specific to the site, determine its suitability for new development, and suggest options for mitigation. Development Viability Assessments are explained in detail in Appendix A.

3.3.1 Guidelines

- The standard recommended building setbacks for new residential development in proximity to railway operations are as follows:
  - » **Freight Rail Yard:** 300 metres
  - » **Principle Main Line:** 30 metres
  - » **Secondary Main Line:** 30 metres
  - » **Principle Branch Line:** 15 metres
  - » **Secondary Branch Line:** 15 metres
  - » **Spur Line:** 15 metres
- Setback distances must be measured from the mutual property line to the building face. This will ensure that the entire railway right-of-way is protected for potential rail expansion in the future.

» Policy Recommendation

Municipalities should establish minimum setback requirements through a zoning bylaw amendment.

- Under typical conditions, the setback is measured as a straight-line horizontal distance.
- Where larger building setbacks are proposed (or are more practicable, such as in rural situations), reduced berm heights should be considered.
- Marginal reductions in the recommended setback of up to 5 metres may be achieved through a reciprocal increase in the height of the safety berm (see Section 3.6 Safety Barriers)
- Horizontal setback requirements may be substantially reduced with the construction of a crash wall (see Section 3.6 Safety Barriers). For example, where a crash wall is incorporated into a low-occupancy podium below a residential tower, the setback distance may be measured as a combination of horizontal and vertical distances, as long as the horizontal and vertical value add up to the recommended setback. This concept is illustrated in FIGURE 4.
- Where there are elevation differences between the railway and a subject development property, appropriate variations in the minimum setback should be determined in consultation with the affected railway. For example, should the railway

FIGURES 5 (LEFT) & 6 (RIGHT) // SETBACK CONFIGURATION OPTIONS FOR OPTIMUM SITE DESIGN

Note that in both scenarios displayed in Figures 5 & 6, the presence of intervening structures between the railway and the outdoor amenity areas may negate the need for a sound barrier. Where a barrier is not required for noise, vegetative or other screening is recommended to provide a visual barrier to the sometimes frightening onset of a high speed passenger train.

tracks be located in a cut, reduced setbacks may be appropriate.

- Appropriate uses within the setback area include public and private roads; parkland and other outdoor recreational space including backyards, swimming pools, and tennis courts; unenclosed gazebos; garages and other parking structures; and storage sheds.

Example setback configurations are illustrated in FIGURES 5 AND 6.

3.4 // NOISE MITIGATION

Noise resulting from rail operations is a key issue with regards to the liveability of residential developments in proximity to railway facilities, and may also be problematic for other types of sensitive uses, including schools, daycares, recording studios, etc. As well as being a major source of annoyance for residents, noise can also have impacts on physical and mental health, particularly if it interferes with normal sleeping patterns.[1] The rail noise issue is site-specific in nature, as the level and impact of noise varies depending on the type of train operations. (see Appendix B for a sample rail classification system). Proponents will have to carefully plan any new development in proximity to a railway corridor to ensure that noise impacts are minimized as much as possible. Generally, during the day, noise should be contained to a level conducive to comfortable speech communication or listening to soft music, and at night it should not interfere with normal sleeping patterns.[2] For building retrofits, while the majority of the guidelines below will apply, special attention should be paid to windows, doors, and the exterior cladding of the building.

3.4.1 Guidelines

- Since rail noise is site-specific in nature, the level and impact of noise on a given site should be accurately assessed by a qualified acoustic consultant through the preparation of a noise impact study. The objective of the noise impact study is to assess the impact of all noise sources affecting the subject lands and to determine the appropriate layout, design, and required control measures. Noise studies should be undertaken by the proponent early in the development process, and should be submitted with the initial proposal.

» Policy Recommendation

Municipalities should consider amending their Official Plan or other appropriate legislation to require noise impact studies as part of any rezoning or Official Plan amendment near railway operations.

- The recommended minimum noise influence areas to be considered for railway corridors when undertaking noise studies are:
  - » **Freight Rail Yards:** 1,000 metres
  - » **Principal Main Lines:** 300 metres
  - » **Secondary Main Lines:** 250 metres
  - » **Principal Branch Lines:** 150 metres
  - » **Secondary Branch Lines:** 75 metres
  - » **Spur Lines:** 75 metres

1 Berglund, B., Lindvall, T., & Schwela, D. H., eds. (1999). Guidelines for community noise [Research Report]. Retrieved from World Health Organization website: http://www.who.int/docstore/peh/noise/guidelines2.html

2 Canada Mortgage and Housing Corporation. (1986). Road and rail noise: Effects on housing [Canada]: Author.

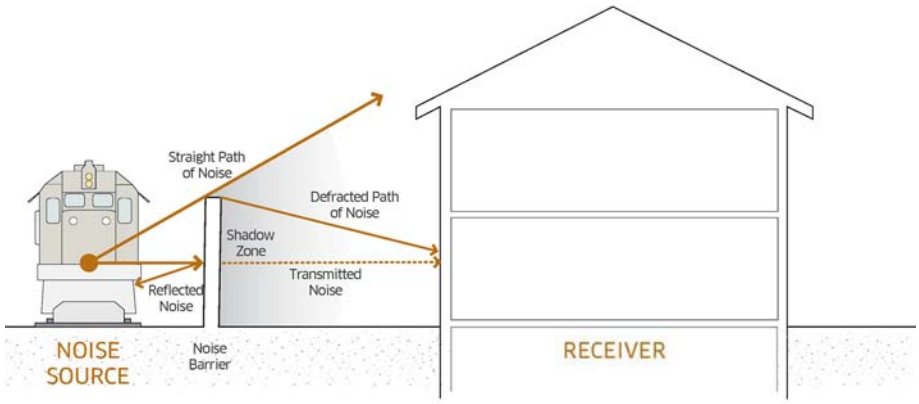


FIGURE 7 // EFFECT OF A NOISE BARRIER ON THE PATH OF NOISE FROM THE RECEIVER TO THE SOURCE. A NOISE BARRIER REDUCES NOISE LEVELS IN THREE WAYS: BY DEFLECTING NOISE OFF OF IT, BY DAMPENING THE NOISE THAT IS TRANSMITTED THROUGH IT, AND BY BENDING, OR DIFFRACTING NOISE OVER IT. THE AREA RECEIVING THE MOST PROTECTION BY THE NOISE BARRIER IS TYPICALLY REFERRED TO AS THE "SHADOW ZONE".

- The acoustic consultant should calculate the external noise exposure, confirm with measurements if there are special conditions, and calculate the resultant internal sound levels. This should take into account the particular features of the proposed development. The measurements and calculations should be representative of the full range of trains and operating conditions likely to occur in the foreseeable future at the particular site or location. The study report should include details of assessment methods, summarize the results, and recommend the required outdoor as well as indoor control measures.
- To achieve an appropriate level of liveability, and to reduce the potential for complaints due to noise emitted from rail operations, new residential buildings in proximity to railway operations should be designed and constructed to comply with the sound level limits criteria shown in AC.1.4 (see AC.1.6 for sound limit criteria for residential buildings in proximity to freight rail shunting yards). Habitable rooms should be designed to meet the criteria when their external windows and doors are closed. If sound levels with the windows or doors open exceed these criteria by more than 10 dBA, the design of ventilation for these rooms should be such that the occupants can leave the windows closed to mitigate against noise (e.g. through the provision of central air conditioning systems).
- In Appendix C, recommended procedures for the preparation of noise impact studies are provided, as well as detailed information on noise measurement. These should be observed.
- It is recommended that proponents consult Section 2.4 of the Canadian Transportation Agency (CTA) report, *Railway Noise Measurement and Reporting Methodology* (2011) for guidance on the recommended content and format of a noise impact study.

3.4.1.1 Avoiding Adverse Noise Impacts through Good Design

Many of the adverse impacts of railway noise can be avoided or minimized through good design practices. Careful consideration of the location and orientation of buildings, as well as their internal layout can minimize the exposure of sensitive spaces to railway noise. Site design should take into consideration the location of the rail corridor, existing sound levels, topography, and nearby buildings. Noise barriers, acoustic shielding from other structures, and the use of appropriate windows, doors, ventilation, and façade materials can all minimize the acoustic impacts of railway operations. Note that many of the design options recommended below have cost and market acceptability liabilities that should be evaluated at the outset of the design process.

3.4.1.2 Noise Barriers

- A noise barrier can effectively reduce outdoor rail noise by between 5dBA and 15dBA, although the largest noise reductions are difficult to achieve without very high barriers. Noise barriers provide significant noise reductions only when they block the line of sight between the noise source and the receiver. Minimum noise barrier heights vary by the classification of the neighbouring rail line.[3] Though the required height will be determined by

3 Note that the height of a noise barrier can be achieved in combination with that of a berm, if present.

FIGURE 8 // PRECEDENT IMAGERY DEMONSTRATING THE INCORPORATION OF URBAN DESIGN AND LIVING WALLS INTO NOISE BARRIERS
SOURCES: (LEFT) WESTFIELD WINDBREAK BY WILTSHIREBLOKE. CC BY-NC-ND 3.0. RETRIEVED FROM: HTTP://WWW.FLICKR.COM/PHOTOS/WILTSHIREBLOKE/3580334228/. (MIDDLE) AUTUMN COLORS BY GEIR HALVORSEN. CC BY-NC-SA 3.0. RETRIEVED FROM: HTTP://WWW.FLICKR.COM/PHOTOS/DAMIEL/47160698/. (RIGHT) IMAGE BY DIALOG.

an acoustic engineer in a noise report, they are typically at least:

- » **Principal Main Line:** 5.5 metres above top of rail
- » **Secondary Main Line:** 4.5 metres above top of rail
- » **Principal Branch Line:** 4.0 metres above top of rail
- » **Secondary Branch Line:** no minimum
- » **Spur Line:** no minimum

Differences in elevation between railway lands and development lands may significantly increase or decrease the required height of the barrier, which must at least break the line of sight. Thus, when not at the same grade, the typical barrier heights are measured from an inclined plane struck between the ground at the wall of the dwelling and the top of the highest rail.

- In keeping with existing railway guidelines for new developments, noise barriers must be constructed adjoining and parallel to the railway right-of-way with returns at each end. They must be constructed without holes or gaps and should be made of a durable material with sufficient mass to limit the noise transmission to at least 10dBA less than the noise that passes over the barrier,[4] at least 20 kg per square metre of surface area. Masonry, concrete, or other specialist construction is preferred in order to achieve the maximum noise reduction combined with longevity. Well-built wood fences are acceptable in most cases. Poorly constructed fences of any type are an unnecessary burden on future residents.
- Consideration should be made to limiting the visual impact of noise barriers in order to maintain a high level of urban design in all new developments, and to discourage vandalism. This can be accomplished by incorporating public art into the design of the barrier, or through the planting of trees and shrubs on the side of the barrier facing the development, particularly where it is exposed to regular sunlight.
- Alternatively, the barrier itself may be constructed as a living wall, which also has the benefit of providing additional noise attenuation. FIGURE 8 provides some examples of how good design practices may be incorporated into the design of noise barriers.

N.B. New barriers constructed on one side of a railway opposite an older neighbourhood without barriers may lead to concerns from existing residents about the potential for noise increases due to barrier reflections. It is common for the characteristics of the noise to change due to frequency, duration, and time of onset, which, combined, may be perceived as a significant increase in noise levels. However, this is not generally supported through onsite measurement, as the train will act as its own barrier to any reflected noise during pass-by.

3.4.1.3 Building Location, Design Orientation, and Room Layout

While low-rise buildings may benefit from shielding provided by topography, barriers, or other buildings, high-rise buildings usually receive less noise shielding, and are, therefore, typically more exposed to noise from

4 Rail Infrastructure Corporation. (November 2003). Interim guidelines for applicants: Consideration of rail noise and vibration in the planning process. Retrieved from http://www.daydesign.com.au/downloads/Interim_guidelines_for_applicants.pdf

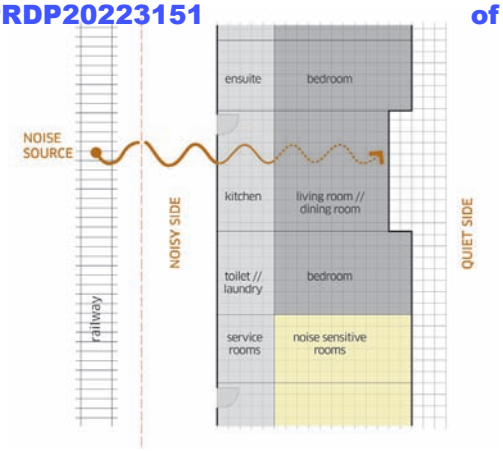


FIGURE 9 // **LOCATING NOISE SENSITIVE ROOMS AWAY FROM RAIL NOISE IN DETACHED DWELLINGS; AND FIGURE 10 (RIGHT) - LOCATING NOISE SENSITIVE ROOMS AWAY FROM RAIL NOISE IN MULTI-UNIT DWELLINGS.** (SOURCE: ADAPTED FROM FIGURE 3.6 IN THE DEVELOPMENT NEAR RAIL CORRIDORS AND BUSY ROADS - INTERIM GUIDELINE BY THE STATE OF NEW SOUTH WALES, AUSTRALIA)

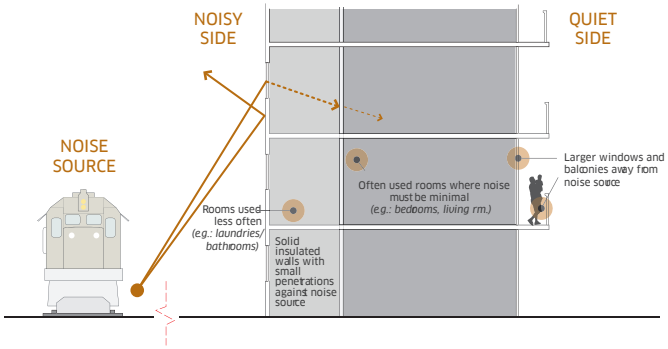


FIGURE 10 // **LOCATING NOISE SENSITIVE ROOMS AWAY FROM RAIL NOISE IN MULTI-UNIT DWELLINGS** (SOURCE: ADAPTED FROM FIGURES 3.5 & 3.6 IN THE DEVELOPMENT NEAR RAIL CORRIDORS AND BUSY ROADS - INTERIM GUIDELINE BY THE STATE OF NEW SOUTH WALES, AUSTRALIA)

» Policy Recommendations

Urban Design Guidelines for development near railway corridors would be a valuable tool in suggesting building layout and design. Alternatively, municipal planners should pay close attention to these issues through a site planning process. Jurisdictions that do not allow comprehensive site planning may wish to consider amendments to their land use planning legislation.

Comprehensive zoning for podiums would be a valuable tool for areas in proximity to railway operations that municipalities have identified for redevelopment. Urban Design Guidelines can also speak to appropriate built form, including podium design, setbacks, step backs etc. At a minimum, municipal planners should secure podium massing as part of a site-specific zoning by-law amendment.

Balconies can be regulated through zoning if administered comprehensively and can be secured as part of a site-specific zoning by-law. Urban Design Guidelines should also speak to appropriate balcony design (e.g. recessed versus protruding balconies).

Urban Design Guidelines should contain comprehensive information on best practices for landscape design, and appropriate types and species of plants.

Urban Design Guidelines can speak to materiality. Some jurisdictions, such as Ontario, allow municipalities to regulate external materials through the site plan process. This practice should be encouraged and jurisdictions that do not currently allow for this should consider making appropriate amendments to their land use planning legislation.

rail operations. In either case, noise mitigation needs to be considered at the outset of a development project, during the layout and design stage.

- One of the most effective ways of reducing the impact of rail noise is through the use of a setback, by increasing the separation between the source of noise and the noise sensitive area. Generally, doubling the distance from the noise source to the receiver will reduce the noise levels by between 3dBA and 6dBA.[5] (See Section 3.3 Building Setbacks)
- The layout of residential buildings can also be configured to reduce the impact of rail noise. For example, bedrooms and other habitable areas should be located on the side of the building furthest from the rail corridor. Conversely, rooms that are less sensitive to noise (such as laundry rooms, bathrooms, storage rooms, corridors, and stairwells) can be located on the noisy side of the building to act as a noise buffer. This concept is illustrated in FIGURES 9 AND 10.
- Minimizing the number of doors and windows on the noisy side of the dwelling will help to reduce the intrusion of noise. In the case of multi-unit developments, a single-loaded building where the units are located on the side of the building facing away from the rail corridor is another potential solution for reducing noise penetration.

3.4.1.4 Podiums

- Outdoor rail noise can be substantially reduced by building residential apartments on top of a podium or commercial building space. If the residential

5 State Government of New South Wales, Department of Planning. (2008). Development near rail corridors and busy roads - interim guideline. Retrieved from http://www.planning.nsw.gov.au/rdaguidelines/documents/DevelopmentNearBusyRoadsandRailCorridors.pdf

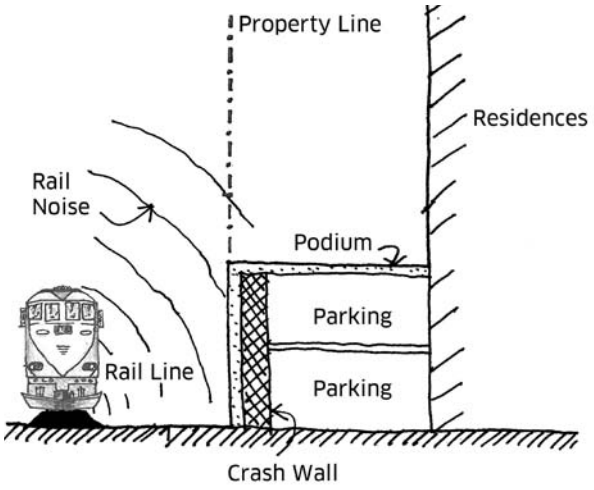


FIGURE 11 // **PODIUMS CAN HELP REDUCE THE AMOUNT OF NOISE THAT REACHES RESIDENCES IF A SETBACK IS USED.** (SOURCE: ADAPTED FROM FIGURE 3.13 IN THE DEVELOPMENT NEAR RAIL CORRIDORS AND BUSY ROADS - INTERIM GUIDELINE BY THE STATE OF NEW SOUTH WALES, AUSTRALIA).

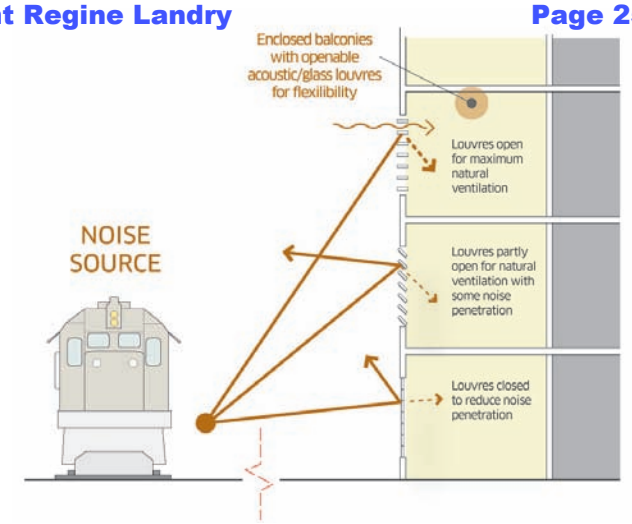


FIGURE 12 // **USING ENCLOSED BALCONIES FACING A RAILWAY CORRIDOR AS NOISE SHIELDS.** (SOURCE: ADAPTED FROM FIGURE 3.16 IN THE DEVELOPMENT NEAR RAIL CORRIDORS AND BUSY ROADS - INTERIM GUIDELINE BY THE STATE OF NEW SOUTH WALES, AUSTRALIA).

tower is set back, then the podium acts to provide increased distance from the railway corridor, thus reducing the noise from the corridor and providing extra shielding to the lower apartments. This concept is illustrated in FIGURE 11.

3.4.1.5 Balconies

- Providing enclosed balconies can be an effective means of reducing the noise entering a building. Where enclosed balconies are used, acoustic louvres and possibly a fan to move air into and out of the balcony space may be installed to address ventilation requirements. This concept is illustrated in FIGURE 12.

3.4.1.6 Vegetation

- While vegetation such as trees and shrubs does not actually limit the intrusion of noise, it has been shown to create the perception of reduced noise levels. Vegetation is also valuable for improving the aesthetics of noise barriers and for reducing the potential for visual intrusion from railway operations.

3.4.1.7 Walls

- In order to reduce the transmission of noise into the building, it is recommended that masonry or concrete construction or another form of heavy wall be used for all buildings in close proximity to railway corridors. This will aid in controlling the sound-induced vibration of the walls that rattles windows, pictures, and loose items on shelving. Additionally, care should be taken to ensure that the insulation capacity of the wall is not weakened by exhaust fans, doors, or windows of a lesser insulation capacity. To improve insulation response, exhaust vents can be treated with sound-absorbing material or located on walls which are not directly exposed to the external noise.

3.4.1.8 Windows

Acoustically, windows are among the weakest elements of a building façade. An open or acoustically weak window can severely negate the effect of an otherwise acoustically strong façade.[6] Therefore, it is extremely important to carefully consider the effects of windows on the acoustic performance of any building façade in proximity to a railway corridor. In addition to the recommendations below, proponents are advised to familiarize themselves with the Sound Transmission Class (STC) rating system, which allows for a comparison of the noise reduction that different windows provide.[7] In order to successfully ensure noise reduction from windows, proponents should:

- ensure windows are properly sealed by using a flexible caulking such as mastic or silicone on both the inside of the window and outside, between the wall opening and the window frame;
- use double-glazed windows with full acoustic seals. When using double-glazing, the wider the air space between the panes, the higher the insulation (50 mm to 100 mm is preferable in non-sealed widows and 25mm in sealed windows). It is also desirable in some cases to specify the panes with different thicknesses to avoid sympathetic resonance or to use at least one laminated lite to dampen the vibration within the window;
- consider reducing the size of windows (i.e. use punched windows instead of a window wall or curtain wall);

6 State Government of New South Wales, Department of Planning. (2008). Development near rail corridors and busy roads - interim guideline. Retrieved from http://www.planning.nsw.gov.au/rdaguidelines/documents/DevelopmentNearBusyRoadsandRailCorridors.pdf

7 The STC rating of a soundproof window is typically in the range of 45 to 54.

- consider increasing the glass thickness;
- consider using absorbent materials on the window reveals in order to improve noise insulation in particularly awkward cases;
- consider using hinged or casement windows or fixed pane windows instead of sliding windows;
- ensure window frames and their insulation in the wall openings are air tight; and
- incorporate acoustic seals into operable windows for optimal noise insulation.

Note that window frame contributions to noise penetration are typically less for aluminum and wood windows than for vinyl frames, as above.[8]

3.4.1.9 Doors

In order to ensure proper acoustic insulation of doors:

- airtight seals should be used around the perimeter of the door;
- cat flaps, letter box openings, and other apertures should be avoided;
- heavy, thick, and/or dense materials should be used in the construction of the door;
- there should be an airtight seal between the frame and the opening aperture in the façade;
- windows within doors should be considered as they exhibit a higher acoustic performance than the balance of the door material; and
- sliding patio doors should be treated as windows when assessing attenuation performance.

8 Note that STC ratings should include the full window assembly with the frame, as frames have been shown to be a weak component, and may not perform as anticipated from the glazing specifications.

3.5 // VIBRATION MITIGATION

Vibration caused by passing trains is an issue that could affect the structure of a building as well as the liveability of the units inside residential structures. In most cases, structural integrity is not a factor. Like sound, the effects of vibration are site specific and are dependent on the soil and subsurface conditions, the frequency of trains and their speed, as well as the quantity and type of goods they are transporting.

The guidelines below are applicable only to new building construction. In the case of building retrofits, vibration isolation of the entire building is generally not possible. However, individual elevated floors may be stiffened through structural modifications in order to eliminate low-frequency resonances. Vibration isolation is also possible for individual rooms through the creation of a room-within-a-room, essentially by floating a second floor slab on a cushion (acting like springs), and supporting the inner room on top of it.[9] Additional information regarding vibration mitigation options for new and existing buildings can be found in the *FCM/RAC Railway Vibration Mitigation Report*, which can be found on the Proximity Project website.

3.5.1 Guidelines

- Since vibration is site-specific in nature, the level and impact of vibration on a given site can only be accurately assessed by a qualified acoustic or vibration consultant through the preparation of a vibration impact study. It is highly recommended that an acoustic or vibration consultant be obtained by the proponent early in the design process, as mitigation can be difficult. It is recommended

9 Howe, B., & McCabe, N. (March 15 2012). Railway vibration reduction study: Information on railway vibration mitigation [Ottawa, ON]: Railway Association of Canada.

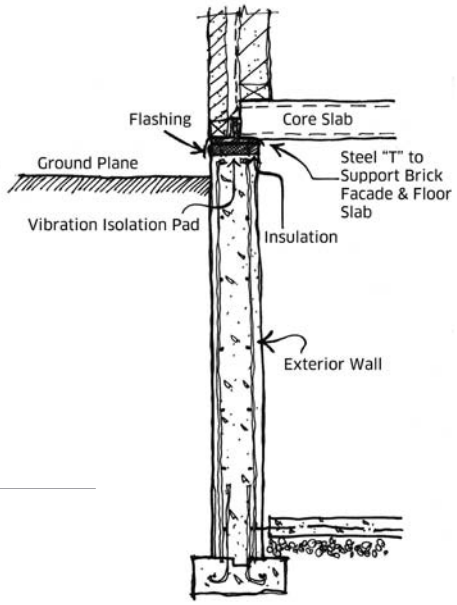


FIGURE 13 // SHALLOW VIBRATION ISOLATION

that the consultant be used to determine whether vibration mitigation measures are necessary and what options are available given the particular conditions of the development site in question. The consultant will employ measurements to characterize the vibration affecting the site in question. In the absence of a future rail corridor not yet operating, estimates based on soil vibration testing are required, although such sites are quite rare.

» **Policy Recommendation**

Municipalities should consider amendments to their Official Plan, where necessary, to make vibration studies a requirement for any zoning by-law amendment and Official Plan amendment applications.

- The recommended minimum vibration influence area to be considered is 75 metres from a railway corridor or rail yard.
- The acoustic consultant should carry out vibration measurements and calculate the resultant internal vibration levels. This should take into account the particular features of the proposed development. The measurements and calculations should be representative of the full range of trains and operating conditions likely to occur at the particular site or location. The study report should include details of the assessment methods, summarize the results, and recommend the required control measures.
- See AC.2.5 for recommended procedures for the preparation of vibration impact studies. These should be observed.
- The important physical parameters that should be considered by the consultant for designing vibration control can be divided into the following four categories:
  - » Operational and vehicle factors: including speed, primary suspension on the vehicle, and flat or worn wheels.
  - » Guideway: the type and condition of the rails and the rail support system.
  - » Geology: soil and subsurface conditions are known to have a strong influence on the levels of ground-borne vibration. Among the most important factors are the stiffness and internal damping of the soil and the depth of bedrock. Experience with ground-borne vibration is that vibration propagation is more efficient in stiff soils. Shallow rock (within a metre or two of the surface) seems to prevent significant vibration. Additional factors such as layering of the soil and depth to the water table, including their seasonal fluctuation, can have significant effects on the propagation of ground-borne vibration.
  - » Receiving building: the vibration levels inside a building depend on the vibration energy that reaches the building foundations, the coupling of the building foundation to the soil, and the propagation of the vibration through the building. The general guideline is that the heavier a building is, the lower the response will be to the incident vibration energy.

3.5.2 Examples of Vibration Mitigation Measures

Full vibration isolation requires a significant amount of specialist design input from both the acoustic consultant

and the structural engineer, and is therefore more suited to larger developments, which exhibit greater economies of scale.

3.5.2.1 Low-rise Buildings

- Vibration isolation of lightweight structures is difficult but possible for below grade floors. Normally, the upper floors are isolated from the foundation wall and any internal column supports using rubber pads designed to deflect 5 to 20mm under load. This concept is illustrated in FIGURE 13. Additionally, the following factors should be taken into consideration when designing vibration isolation for lightweight structures:
  - » Using hollow core concrete or concrete construction for the first floor makes the isolation problem easier to solve.
  - » Thought must be given to temporary wind and earthquake horizontal loads.
  - » A seam is created around the foundation wall that must be water sealed and insulated.
  - » Finishing components such as wood furring cannot be attached either above or below the isolation joint.
  - » All of these special items would likely be carried out by trades untrained in vibration control and therefore, a good deal of site supervision is required.
- Minor vibration control (usually only a 30% reduction) can be achieved by lining the outside of the foundation walls with a resilient layer. This practice takes advantage of the fact that the waves of vibration from surface rail travel mostly on the surface, dying down with depth. To obtain reasonable results, however, the lining must be quite soft and yet be able to withstand the lateral soil pressures present on the foundation wall.

3.5.3.2 Deep Foundation Buildings

- In the case of deep concrete foundations near rail lines, the design of vibration isolation for the surface wave should consider whether or not it is necessary to isolate the base of the building columns and walls. Often, these structures are anchored well below the depth where the surface wave penetrates and there are several levels of parking that the vibration must climb to reach a floor where vibration is of concern. Therefore, unless the rail corridor is running in a tunnel, isolation of deep foundation buildings may only require isolation of the foundation wall away from the structure.
- In severe cases, or locations where the foundation is not deeper than the surface wave, vibration isolation may also be required beneath the columns and their foundations, though it may only be necessary to isolate those portions of the structure located closest to the rail line. Consideration should be given to the differential deflection from one column row to the next, if only part of the building is vibration isolated.
- This is an unusual type of construction, which requires considerable professional supervision. The design is usually a joint effort between the vibration and structural engineers. Some architectural expertise is also needed, particularly for waterproofing the gap at the top of the foundation wall below the grade slab and making sure that there are no inadvertent connections between internal walls on the parking slabs and the vibrating

foundation wall, or between the grade slab and the lowest parking slab if the columns are isolated.

3.6 // SAFETY BARRIERS

Safety barriers reduce the risks associated with railway incidents by intercepting or deflecting derailed cars in order to reduce or eliminate potential loss of life and damage to property, as well as to minimize the lateral spread or width in which the rail cars and their contents can travel. The standard safety barrier is an earthen berm, which is intended to absorb the energy of derailed cars, slowing them down and limiting the distance they travel outside of the railway right-of-way. The berm works by intercepting the movement of a derailed car. As the car travels into the berm, it is pulled down by gravity, causing the car to begin to dig into the earth, and pulling it into the intervening earthen mass, slowing it down, and eventually bringing it to a stop.

3.6.1 Guidelines

3.6.1.1 Berms

- Where full setbacks are provided, safety barriers are constructed as berms, which are simple earthen mounds compacted to 95% modified proctor. Setbacks and berms should typically be provided together in order to afford a maximum level of mitigation. Berms are to be constructed adjoining and parallel to the railway right-of-way with returns at the ends and to the following specifications:
  - » Principle Main Line: 2.5 metres above grade with side slopes not steeper than 2.5 to 1
  - » Secondary Main Line: 2.0 metres above grade with side slopes not steeper than 2.5 to 1

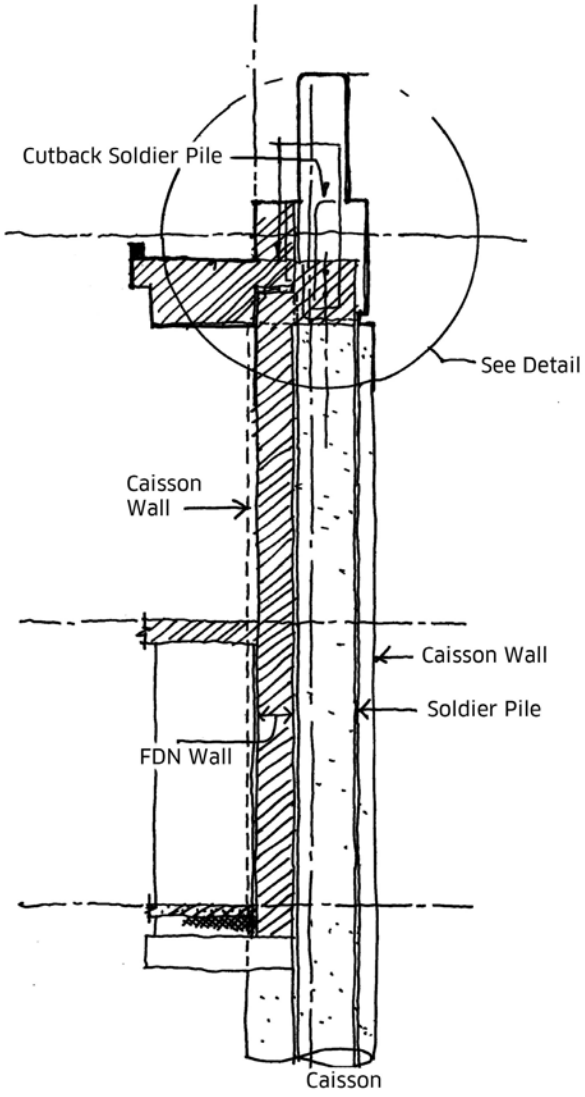


FIGURE 14A // DEEP VIBRATION ISOLATION, COMBINED WITH CRASH WALL.

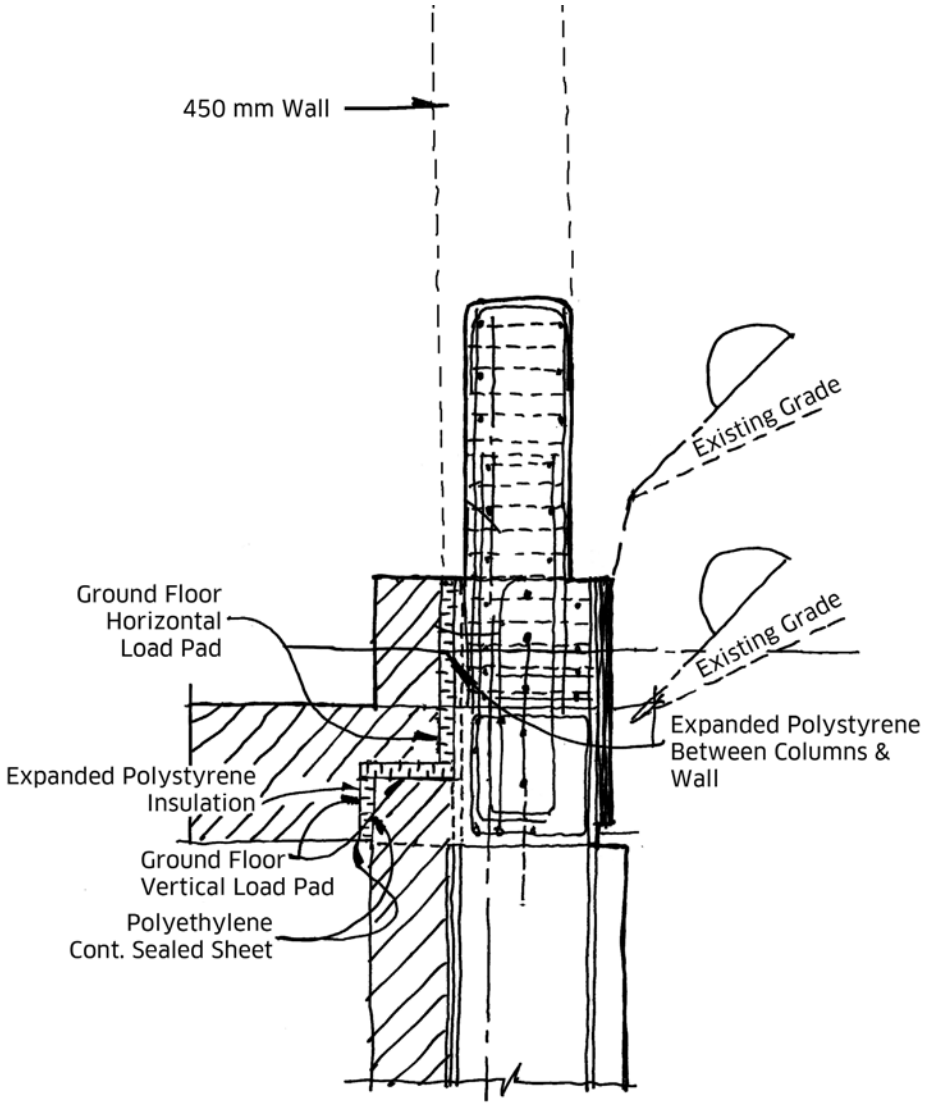


FIGURE 14B // DEEP VIBRATION ISOLATION DETAIL, COMBINED WITH CRASH WALL.

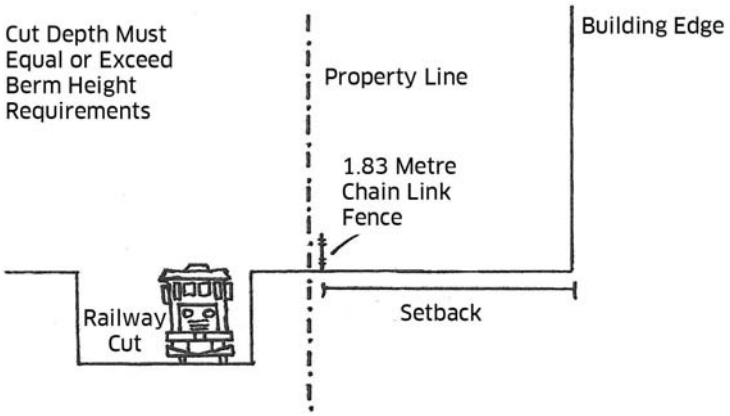


FIGURE 15 // NO BERM IS REQUIRED WHERE THE RAILWAY IS IN A CUT OF EQUIVALENT DEPTH

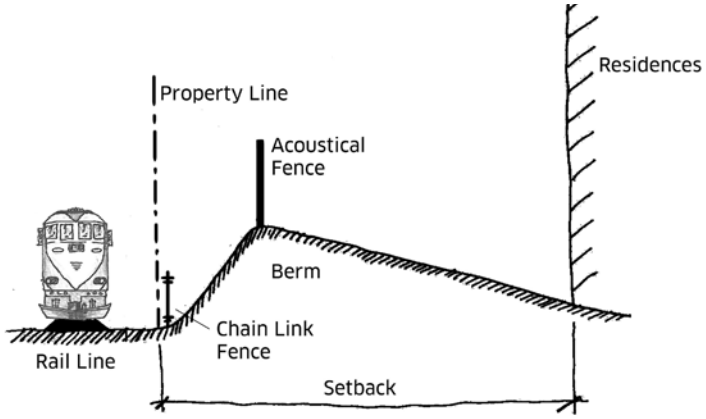


FIGURE 16 // GRADUALLY RETURNING TO GRADE FROM THE TOP OF THE BERM AVOIDS CREATING UNUSABLE BACKYARD SPACE OR BLOCKING SUNLIGHT

- » Principle Branch Line: 2.0 metres above grade with side slopes not steeper than 2.5 to 1
- » Secondary Branch Line: 2.0 metres above grade with side slopes not steeper than 2.5 to 1
- » Spur Line: no requirement

N.B. Berms built to the above specifications will have a full width of as many as 15 metres.

- Berm height is to be measured from grade at the property line. Reduced berm heights are possible where larger setbacks are proposed.
- Steeper slopes may be possible in tight situations, and should be negotiated with the affected railway.
- Where the railway line is in a cut of equivalent depth, no berm is required (FIGURE 15).
- There is no requirement for the proponent to drop back to grade on the side of the berm facing the subject development property. The entire grade of the development could be raised to the required height, or could be sloped more gradually. This may be desirable to avoid creating unusable backyard space, due to the otherwise steep slope of the berm. This concept is illustrated in FIGURE 16.
- Marginal reductions in the recommended setback of up to 5 metres may be achieved through a reciprocal increase in the height of the berm.
- If applicable to the site conditions, in lieu of the recommended berm, a ditch or valley between the railway and the subject new development property that is generally equivalent to or greater than the inverse of the berm could be considered (e.g. a ditch that is 2.5 metres deep and approximately 14 metres wide in the case of a property adjacent to a Principle Main Line). This concept is illustrated in FIGURE 17.
- Where the standard berm and setback are not technically or practically feasible, due for example, to site conditions or constraints, then a Development Viability Assessment should be undertaken by the proponent to evaluate the conditions specific to the site, determine its suitability for development, and suggest alternative safety measures such as crash walls or crash berms. Development Viability Assessments are explained in detail in APPENDIX A.

» **Policy Recommendation**

Urban Design Guidelines may be useful tools for establishing specifications for the proper use and design of berms.

3.6.1.2 Crash Berms

Crash berms are reinforced berms – essentially a hybrid of a regular berm and a crash wall. They are generally preferable to crash walls, because they are more effective at absorbing the impact of a train derailment. This results from both the berm's mass and the nature of the material of which it is composed. Crash berms are also highly cost effective and particularly useful in spatially constrained sites where a full berm cannot be accommodated.

In derailment scenarios other than a head-on or close to head-on interception, the standard earthen berm and setback distance will be more effective in absorbing the kinetic energy of the derailed train than a reinforced concrete crash wall. The reason for this is that anything other than a 90 degree interception of the crash wall will result in some deflection of the energy in the derailing

PHOTO SOURCE: RAILWAY ASSOCIATION OF CANADA

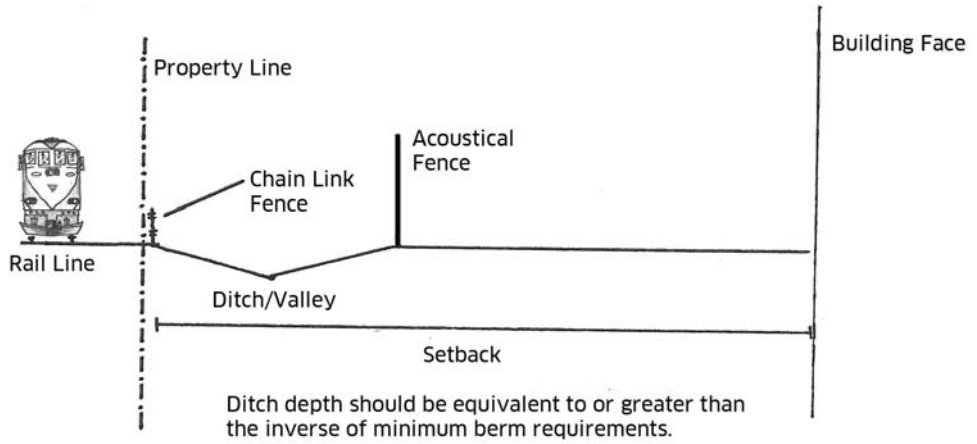


FIGURE 17 // A DITCH OR VALLEY OF EQUIVALENT DEPTH CAN BE USED IN PLACE OF A STANDARD BERM ADJACENT TO A MAIN LINE RAILWAY

train back towards the corridor, thus extending the time and distance of the derailment event. This extension of derailment time and distance results in greater risk of damage to private property along a longer section of the rail corridor, to more lives, and results in more expensive clean up and restoration work within the rail corridor. The preference therefore, is to design "crash berms" which are typically concrete wall structures retaining more earth behind the wall that in-turn provide more energy absorption characteristics (see FIGURE 18).

3.6.1.3 Crash Walls

Crash walls are concrete structures that are designed to provide the equivalent resistance in the case of a train derailment as the standard berm, particularly in terms of its energy absorptive characteristics. The design of crash walls is dependent on variables such as train speed, weight, and the angle of impact, which will vary from case to case. Changes in these variables will affect the amount of energy that a given crash wall will have to absorb, to effectively stop the movement of the train. In addition, the load that a wall is designed to withstand will differ based on the flexibility of the structure, and therefore, on how much deflection that it provides under impact. For these reasons, it is not possible to specify design standards for crash walls. In keeping with existing guidelines developed by AECOM, the appropriate load that a crash wall will have to withstand must be derived from the criteria outlined below.

- When proposing a crash wall as part of a new residential development adjacent to a railway corridor, the proponent must undertake a detailed study that outlines both the site conditions as well as the design specifics of the proposed structure. This study must be submitted to the affected municipality for approval and must contain the following elements:
  - » a location or key plan. This will be used to identify the mileage and subdivision, the classification of the rail line, and the maximum speed for freight and passenger rail traffic;
  - » a Geotechnical Report of the site;
  - » a site plan clearly indicating the property line, the location of the wall structure, and the centreline and elevation of the nearest rail track;
  - » layout and structure details of the proposed crash wall structure, including all material notes and specifications, as well as construction procedures and sequences. All drawings and calculations must be signed and sealed by a professional engineer;
  - » the extent and treatment of any temporary excavations on railway property; and
  - » a crash wall analysis, reflecting the specified track speeds for passenger and/or freight applicable within the corridor, and which includes the following four load cases:
    - i. Freight Train Load Case 1 - Glancing Blow: three locomotives weighing 200 tonnes each plus six cars weighing 143 tonnes each, impacting the wall at 10 degrees to the wall;
    - ii. Freight Train Load Case 2 - Direct Impact: single car weighing 143 tonnes impacting the wall at 90 degrees to the wall;
    - iii. Passenger Train Load Case 3 - Glancing Blow: two locomotives weighing 148 tonnes each plus 6 cars weighing 74 tonnes each impacting the wall at 10 degrees to the wall; and
    - iv. Passenger Train Load Case 4 - Direct Impact: Single car weighing 74 tonnes impacting the

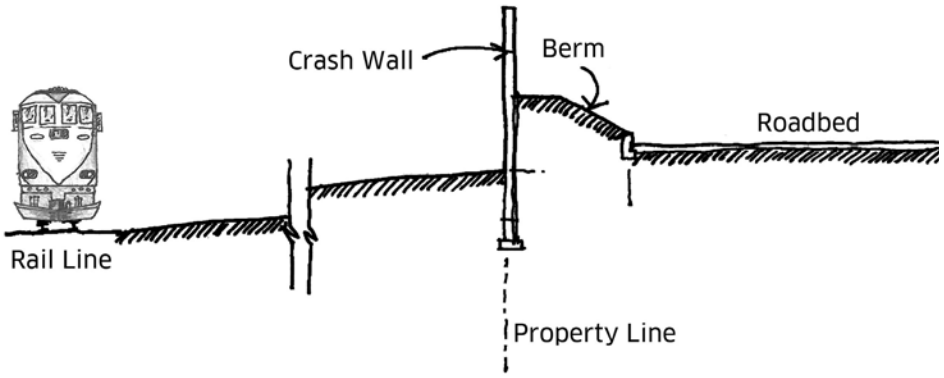


FIGURE 18 // EXAMPLE CONFIGURATION OF A CRASH BERM

wall at 90 degrees to the wall.

- The crash wall design must include horizontal and vertical continuity to distribute the loads from the derailed train.
- To assist in designing the crash wall safety structure, the following should be considered:
    i. The speed of a derailed train or car impacting the wall is equal to the specified track speed;
    ii. The height of the application of the impact force is equal to 0.914 m (3 feet) above ground; and
    iii. The minimum height of the wall facing the tracks is equal to 2.13 m (7 feet) abovethe top of rail elevation.
- For energy dissipation calculations, assume:
    i. Plastic deformation of individual car due to direct impact is equal to 0.3 m (1 foot) maximum;
    ii. Total compression of linkages and equipment of the two or three locomotive and six cars is equal to 3.05 m (10 feet) maximum; and
    iii. Deflection of the wall is to be determined by the designer, which would depend on material, wall dimensions and stiffness of crash wall.

3.7 // SECURITY FENCING

Trespassing onto a railway corridor can have dangerous consequences given the speed and frequency of trains, and their extremely large stopping distances, and every effort should be made to discourage it. This will save lives, reduce emergency whistling, and minimize disruptions to rail service.

3.7.1 GUIDELINES

- At a minimum, all new residential developments in proximity to railway corridors must include a 1.83 metre high chain link fence along the entire mutual property line, to be constructed by the owner entirely on private property. Other materials may also be considered, in consultation with the relevant railway and the municipality. Noise barriers and crash walls are generally acceptable substitutes for standard fencing, although additional standard fencing may be required in any location with direct exposure to the rail corridor in order to ensure there is a continuous barrier to trespassing.

» **Policy Recommendation**

Tresspass issues can be avoided through careful land use planning. Land uses on each side of a railway corridor or yard should be evaluated with a view to minimizing potential trespass problems. For example, schools, commercial uses, parks or plazas should not be located in proximity to railway facilities without the provision of adequate pedestrian crossings.

- Due to common increased trespass problems associated with parks, trails, open space, community centres, and schools located in proximity to the railway right-of-way, increased safety/security measures should be considered, such as precast fencing and fencing perpendicular to the railway property line at the ends of a subject development property.

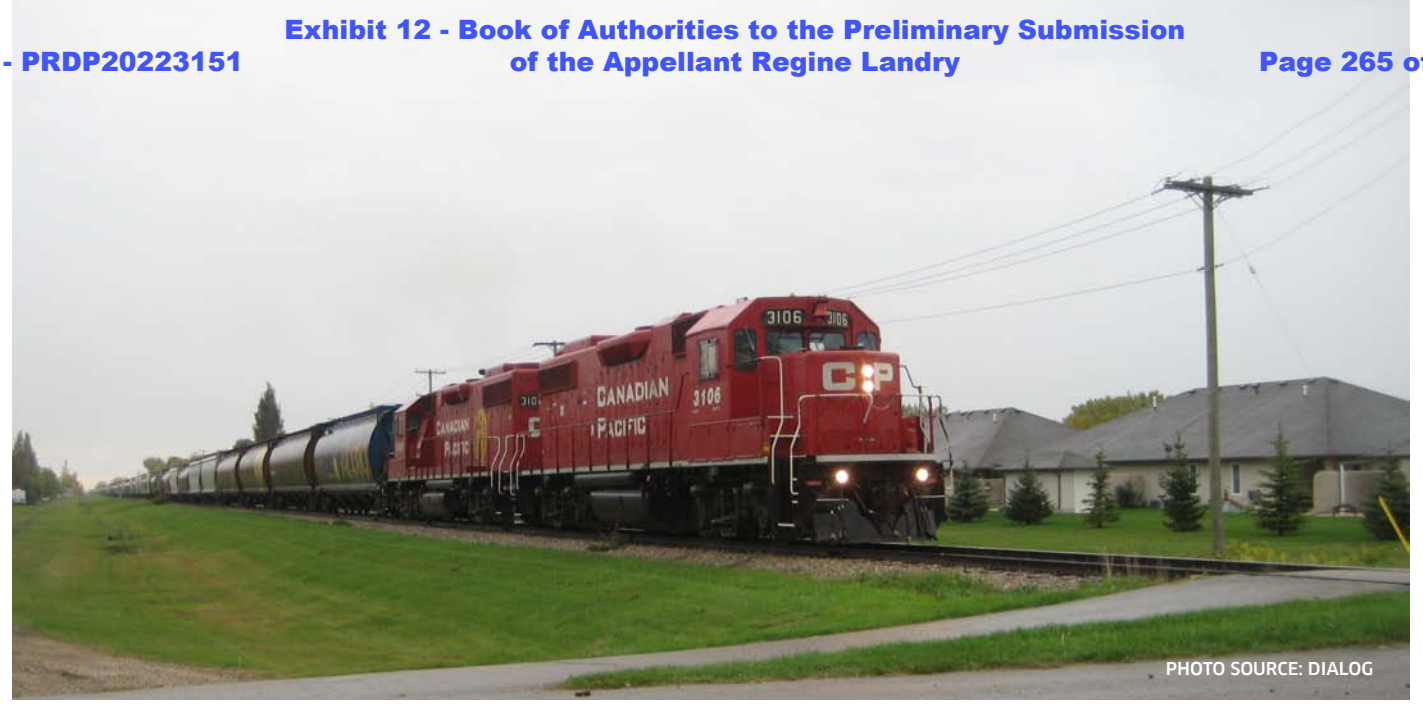


PHOTO SOURCE: DIALOG

3.8 // STORMWATER MANAGEMENT AND DRAINAGE

Stormwater management and drainage infrastructure associated with a development or railway corridor adjustments should not adversely impact on the function, operation, or maintenance of the corridor, or should not adversely affect area development.

3.8.1 GUIDELINES

- The proponent should consult with the affected railway regarding any proposed development that may have impacts on existing drainage patterns. Railway corridors/properties with their relative flat profile are not typically designed to handle additional flows from neighbouring properties, and so development should not discharge or direct stormwater, roof water, or floodwater onto a railway corridor.
- Any proposed alterations to existing rail corridor drainage patterns must be substantiated by a suitable drainage report, as appropriate.
- Any development-related changes to drainage must be addressed using infrastructure and/or other means located entirely within the confines of the subject development site.
- Stormwater or floodwater flows should be designed to:
  - » maintain the structural integrity of the railway corridor infrastructure;
  - » avoid scour or deposition; and
  - » prevent obstruction of the railway corridor as a result of stormwater or flood debris.
- Drainage systems should be designed so that stormwater is captured on site for reuse or diverted away from the rail corridor to a drainage system, ensuring that existing drainage is not overloaded.
- Building design should ensure that gutters and balcony overflows do not discharge into rail infrastructure. Where drainage into the railway corridor is unavoidable due to site characteristics, discussion should be held early on with the railway. If upgrades are required to the drainage system solely due to nearby development, the costs involved should reasonably be met by the proponent. All disturbed surfaces must be stabilized.
- Similarly, railways should consult with municipalities where facility expansions or changes may impact drainage patterns.

3.9 // WARNING CLAUSES AND OTHER LEGAL AGREEMENTS

Warning clauses are considered an essential component of the stakeholder communication process, and ensure all parties interested in the selling, purchasing, or leasing of residential lands in proximity to railway corridors are aware of any property constraints and the potential implications associated with rail corridor activity.

3.9.1 GUIDELINES

- Municipalities are encouraged to promote the use of appropriate specific rail operations warning clauses, if feasible, in consultation with the appropriate railway, to ensure that those who may acquire an interest in a subject property are notified of the existence and nature of the rail operations, the potential for increased rail activities, the potential for annoyance

or disruptions, and that complaints should not be directed to the railways. Such warning clauses should be registered on title if possible and be inserted into all agreements of purchase and sale or lease for the affected lots/units.

- Municipalities are encouraged to pursue the minimum influence areas outlined in the report when using warning clauses or other notification mechanisms.
- Appropriate legal agreements and restrictive covenants registered on title are also recommended to be used, if feasible, to secure the construction and maintenance of any required mitigation measures, as well as the use of warning clauses and any other notification requirements.
- Where it is not feasible to secure warning clauses, every effort should be made to provide notification to those who may acquire an interest in a subject property. This can be accomplished through other legal agreements, property signage, and/or descriptions on websites associated with the subject property.
- Municipalities should consider the use of environmental easements for operational emissions, registered on title of development properties, to ensure clear notification to those who may acquire an interest in the property. Easements will provide the railway with a legal right to create emissions over a development property and reduce the potential for future land use conflicts.
- Stronger and clearer direction is recommended for real estate sales and marketing representatives, such as mandatory disclosure protocols to those who may acquire an interest in a subject property, with respect to the nature and extent of rail operations in the vicinity and regarding any applicable warning clauses and mitigation measures. The site constraints and mitigation measures being implemented should be communicated through marketing and promotional material, signage, website descriptions, and informed sales staff committed to full disclosure.
- Municipalities are encouraged to require appropriate signage/documentation at development marketing and sales centres that:
  - » identifies the lots or blocks that have been identified by any noise and vibration studies and which may experience noise and vibration impacts;
  - » identifies the type and location of sound barriers and security fencing;
  - » identifies any required warning clause(s); and
  - » contains a statement that railways can operate on a 24 hour a day basis, 7 days a week.

  Additionally, studies undertaken to assess and mitigate noise, vibration, and other emissions should be released to potential purchasers for review in order to enhance their understanding of the site constraints and to help minimize future conflict.
- Where title agreements, restrictive covenants, and/or warning clauses are not currently permitted, appropriate legislative amendments are recommended. This may require coordination at the provincial level to provide appropriate and/or improved direction to stakeholders.
- Warnings and easements provide notice to purchasers, but are not to be used as a complete alternative to the installation of mitigation measures.

PHOTO SOURCE: DIALOG

3.10 // CONSTRUCTION ISSUES

Planning for construction of new developments in proximity to railway corridors requires unique considerations that should aim to maintain safety while avoiding disruptions to rail service. The efficiency of the operation of railway services should be maintained and no adverse impacts on the corridor or railway operations should occur during the design and construction of a new development located in proximity to a railway corridor.

3.10.1 GUIDELINES

- Prior to the start of construction of a new development, rail corridor-related infrastructure must be identified and plans adjusted as required to ensure that these features are not adversely affected by the proposed construction. Rail corridor-related infrastructure may include, but is not limited to:
  - » trackage;
  - » fibre optic cables;
  - » retaining walls;
  - » bridge abutments; and,
  - » signal bridge footings.
- No entry upon, below, or above the rail corridor shall be permitted without prior consent from the railway.
- Appropriate permits and flagging are required for work immediately adjacent to railway corridors. The proponent is responsible for any related costs.
- Temporary fencing / hoarding is required, as appropriate, to discourage unauthorized access to the rail corridor. Plans illustrating proposed fencing / hoarding locations as well as any other construction related infrastructure, should be submitted to the approval authority and the relevant railway.
- Cranes, concrete pumps, and other equipment capable of moving into or across the airspace above railway corridors may cause safety and other issues if their operation is not strictly managed. This type of equipment must not be used in airspace over the rail corridor without prior approval from the railway.
- Existing services and utilities under a rail corridor must be protected from increased loads during the construction and operation of the development.
- Construction must not obstruct emergency access to the railway corridor.

IMPLEMENTATION

4

4.0 // IMPLEMENTATION

The following implementation recommendations are intended to provide specific guidance to municipal and provincial governments...

...towards ensuring that the guidelines are consistently and effectively adopted in as many jurisdictions as possible. Processes are identified that may be employed to entrench these guidelines in policy.

4.1 // IMPLEMENTATION MECHANISMS

4.1.1 Model Review Process For New Residential Development, Infill & Conversions in Proximity to Railway Corridors

OBJECTIVE:

Establish a clear and effective process that ensures consistent application of these Guidelines across all jurisdictions in Canada when dealing with new residential development, infill, and conversions.

RECOMMENDATION:

The Model Review Process for New Residential Development, Infill and Conversions in Proximity to Railway Corridors is outlined in FIGURE 19. It is meant to ensure clarity with respect to how railways are to be involved in a meaningful way at the outset of a planning process. Ultimately, the goal is to achieve a much greater level of consistency in the way proposals for new residential development in proximity to railway corridors are evaluated and approved across all Canadian provinces and territories.

The proposed process recognizes that there will be many sites that can easily accommodate the standard mitigation recommended by the railways. In instances where this is the case, it is expected that standard mitigation will be proposed. In urban areas land values and availability have placed greater development pressure on smaller sites close to railway corridors. These sites are less likely to be able to accommodate a standard berm and setback. In this case, a Development Viability Assessment report will be required.[1]

This report, which is explained in detail in APPENDIX A, will provide a comprehensive assessment of the site conditions of the property in question, including an evaluation of any potential conflicts with the new development that may result from its proximity to the railway corridor. It will also evaluate any potential impacts on the operation of the railway as a result of the new development, both during the construction phase and afterwards. It will take into consideration details of the proposed development site, including topography, soil conditions, and proximity to the railway corridor; details of the railway corridor, including track geometry or alignment, the existence of junctions, and track speed; details of the proposed development, including the number of potential residents, proposed collision protection in the event of a train derailment; construction details; and an identification of the potential hazards and risks associated with development on that particular site. Municipalities will use the Development Viability Assessment to determine whether development is appropriate given the site conditions and potential risks involved.

An important component of the new process is the requirement for pre-application consultation with the relevant railway. This will be a critical step towards ensuring a smooth and expedited approval process, and will be an important opportunity to have a frank discussion about development options, as well as to resolve any potential conflicts. It will be during these pre-application consultations that a decision will be made regarding the capacity of the site to accommodate standard mitigation. Where a Development Viability Assessment is required, this will also be an important opportunity for the

1 Again, this report does not recommend that all sites are appropriate for residential development. In cases where the standard setback and berm cannot be accommodated, municipalities should carefully consider the viability of the site for conversion to residential, based on criteria such as: existing contextual land use, size of site, appropriateness of high-density development, and the demonstrated effectiveness of alternative mitigation measures, as determined through the Development Viability Assessment.

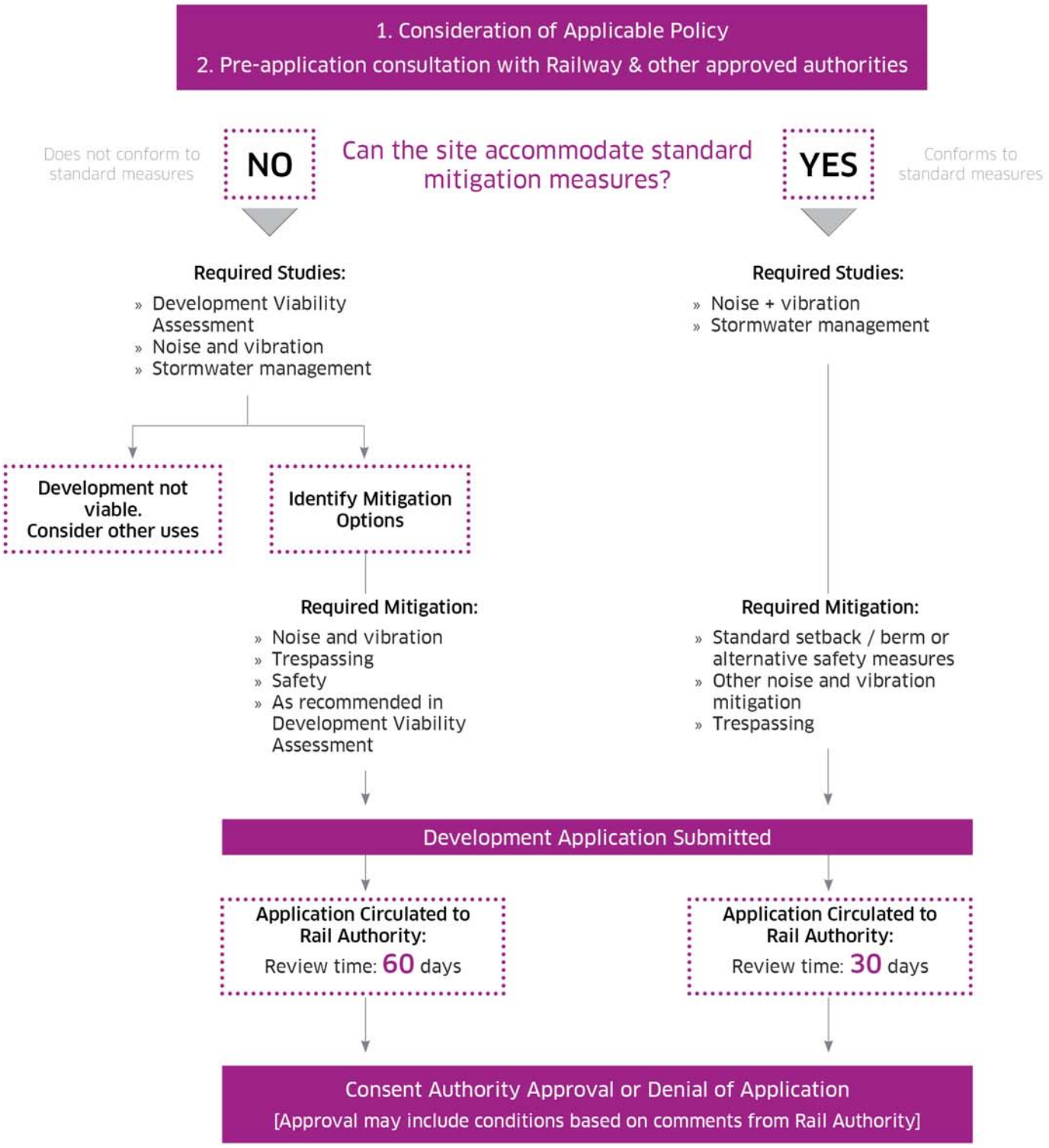


FIGURE 19 // MODEL REVIEW PROCESS FOR NEW RESIDENTIAL DEVELOPMENT, INFILL & CONVERSIONS IN PROXIMITY TO RAILWAY CORRIDORS

applicant to gain a better understanding of the process associated with developing one.

Once a development application has been submitted to the railway for review, it will have 30 days to respond (60 days in cases where a Development Viability Assessment has been required), and indicate any conditions for consideration and negotiation. The final decision as to whether or not to impose those conditions will lie with the approval authority (usually the municipality).

The Model Review Process for New Residential Development, Infill & Conversions in Proximity to Railway Corridors should be adopted by provincial governments, potentially through amendments to existing planning legislation, in order to ensure its consistent application across all municipalities. However, in the absence of provincial interest, the process could be adopted as a bylaw at the municipal level. It is recommended that this process be applicable to any residential development located on land within 300 metres of a railway right-of-way where an official plan amendment, plan of subdivision, or zoning bylaw amendment is required.

4.1.2 Mitigation Infrastructure Maintenance Strategy

OBJECTIVE:

Ensure a consistent and sensible approach to the future maintenance of mitigation infrastructure.

RECOMMENDATION:

Responsbility for the maintenance of berms, chainlink fences, and sound walls should be allocated as follows:

- Landowners should be responsible for maintaining the fence, the sound wall, and that portion of the berm contained within their site.
- In cases where a sound wall is erected, the portion of the berm situated on the side adjoining the railway corridor should be maintained by the railway. However, this should only occur if the property under that part of the berm becomes the property of the railway and has been exempted from all municipal property taxes as a concession to the railways for taking on a maintenance responsibility.

4.2 // ADVANCING STAKEHOLDER ROLES

OBJECTIVE:

To establish clarity regarding the roles and responsibilities of various stakeholders involved in reducing railway proximity issues.

RECOMMENDATIONS:

4.2.1 Federal

- The federal government and the Canadian Transportation Agency are encouraged to use and have regard for this report in proximity dispute investigations with respect to new developments built close to railway operations, and in the development and implementation of any related guidelines, to facilitate a more comprehensive approach that appropriately considers the land use planning framework for new developments along with the rail operations issues.

4.2.2 Provincial

- Provincial Authorities should consider revising their land use planning legislation to incorporate mandatory requirements for early consultations between municipalities, railways, and landowners in advance of

proposed land use or transportation changes, projects, or works within 300 metres of railway operations. The objective of doing so is to facilitate a collaborative approach to site development.

- Provincial Authorities should consider requiring mandatory notice to railways in the case of proposed official plans or official plan amendments, plans of subdivision, zoning by-laws, holding by-laws, interim control by-laws, and/or consent to sever lands, where the subject lands fall within 300 metres of railway operations.
- Provincial Authorities may also wish to empower their municipalities with stronger site plan controls where appropriate, such as:
  - » control of materiality;
  - » site layout and design; and
  - » road widening and land conveyances.
- Provincial Authorities should consider establishing a provincial noise guideline framework that sets impact study requirements (how and when to assess noise sources), and establishes specific sound level criteria for noise sensitive land uses.
- Provincial Authorities should consider amendments to their building codes that support extra mitigation for developments near railway corridors, such as:
  - » vibration isolation & foundation design,
  - » balcony design,
  - » podium design,
  - » drainage,
  - » appropriate fenestration, and
  - » door placement and materiality.
- Provincial Authorities should monitor compliance with relevant regulations and sanction their breach.

4.2.3 Municipal

- Municipalities, land developers, property owners and railways all need to place a higher priority on information sharing and establishing better working relationships both informally and formally through consultation protocols and procedures.
- Municipalities should ensure that planning staff are aware of and familiar with any applicable policies for development in proximity to railway operations (e.g. railway policies and/or guidelines).
- Municipalities are encouraged to provide clear direction and strong regulatory frameworks (e.g. through District Plans, Official Plans, Official Community Plans, Zoning By-laws, etc) to ensure that land development respects and protects rail infrastructure and will not lead to future conflicts. This may include:
  - » Undertaking a comprehensive evaluation of land uses in proximity to railway operations, with a view to minimizing potential conflicts due to proximity, including those related to safety, vibration, and noise. For example, residential development may not be appropriate in low-density areas where lot sizes preclude the possibility of incorporating standard mitigation measures. Additionally, schools or commercial uses located across a railway corridor from residential uses are likely to result in trespassing issues if there are no public crossings in the immediate vicinity;

» Establishing a clear process for evaluating the viability of development proposals on sites that cannot accommodate standard mitigation measures, with a view to determining the appropriateness of the development, and identifying appropriate alternate mitigation measures. See Section 4.1.1 for recommendations on a Development Viability Assessment;

» Establishing implementation mechanisms for mitigation measures, including long-term maintenance requirements if applicable (e.g. legal agreements registered on title). See Section 4.1.2 for recommendations on a Mitigation Infrastructure Maintenance Strategy;

» Undertaking a comprehensive review of site access and railway crossings with a view to ensuring adequate site access setbacks from at-grade crossings (to prevent vehicular blockage of crossings), protecting at-grade road/rail crossing sightlines, implementing crossing improvements, and discouraging new at-grade road crossings;

» Entrenching in policy the protection of railway corridors and yards for the movement of freight and people, including allowing for future expansion capacity, if applicable;

» Planning and protecting for future infrastructure improvements (e.g. grade separations and rail corridor widenings); and

» Respecting safe transportation principles. For example, the assessment of new, at-grade rail crossings should consider safe community planning principles and whether other alternatives are possible, not just simply whether a crossing is technically feasible.

- Municipalities are encouraged to use their planning policy and regulatory instruments (e.g. District Plans, Official Plans, Official Community Plans, Secondary Plans, Transportation Plans, Zoning By-laws/Ordinances, etc.) to secure appropriate railway consultation protocols as well as mitigation procedures and measures.
- As soon as planning is initiated or proposals are known by municipalities, notification and consultation should be initiated for:
  - » Development or redevelopment proposals within 300 metres of rail operations, or for proposals for rail-serviced industrial parks; and
  - » Infrastructure works, which may affect a rail facility, such as roads, utilities, etc.
- Municipal Authorities should consider amendments to their municipal regulatory documents (e.g. Official Plan, Official Community Plan, etc.) as required to implement mandatory noise and vibration studies for developments near railway operations, and to establish specific sound and vibration level criteria for sensitive land uses.
- Municipal Authorities should consider zoning by-law amendments as required to implement aspects of these guidelines, including securing appropriate mitigation measures.

  N.B. A note of caution is required for any systematic zoning by-law amendment. Blanket zoning by-law amendments should only be used to implement portions of this study in areas municipalities have already identified for redevelopment. This should

be applied comprehensively and with study as to their affect. For example, it makes little sense to employ a 30 metre setback in areas that do not have lot depths which can support them. In many cases, it may be more desirable for municipalities to secure mitigation measures in a site-specific manner, through the use of the Development Viability Assessment Tool. However, in employing such an approach, Municipal Planners should be mindful to secure appropriate mitigation measures in a site-specific by-law.

- Municipalities should consider and respect the plans, requirements, and operating realities of railways and work cooperatively with them to increase awareness regarding the railway legislative, regulatory, and operating environment, and to implement consultation planning protocols and procedures for land development proposals and applications.
- Municipalities should work with railways and other levels of government to increase coordination for development approvals that also require rail regulatory approvals (e.g. new road crossings) to ensure that the respective approvals are not dealt with in isolation and/or prematurely.
- Municipalities should be aware of and implement, where feasible, Transport Canada's safety recommendations with respect to sightlines for at-grade crossings. The recommendations include a minimum 30 metre distance between the railway right-of-way and any vehicular ingress/egress. In addition, trees, utility poles, mitigation measures, etc. are not to block sightlines or views of the crossing warning signs or systems.
- Municipal Authorities should consider developing Urban Design Guidelines for infill development near railway corridors. This document already contains a number of suggestions on what such a document could include and how it could be usefully employed.

4.2.4 Railway

- Municipalities, land developers, property owners and railways all need to place a higher priority on information sharing and establishing better working relationships both informally and formally through consultation protocols and procedures.
- As soon as planning is initiated or proposals are known by railways, communication should be initiated to discuss:
  - » transportation plans that incorporate freight transportation issues; and
  - » all new, expanded, or modified rail facilities.
- Railways are encouraged to be proactive in identifying, planning, and protecting for the optimized use of railway corridors and yards.
- Railways are encouraged to develop and/or modify company procedures and practices with respect to increased consultation and formal proximity issues management protocols with the following guidance:
  - » Undertake consultation for projects prior to seeking CTA approval;
  - » When new facilities are built or significant expansions are undertaken, implement on-going community advisory panel discussions with regular meetings. Such panels typically include representation from the railway, the municipality, the community, other levels of government, if applicable, and possibly industry; and,

  - » Railway initiation of long-term business and infrastructure planning exercises, in consultation with municipalities, can facilitate stronger and more effective relationships and partnerships.
- Railways are encouraged to work with municipalities, landowners, and other stakeholders in evaluating and implementing appropriate mitigation measures, where feasible, with respect to new rail facilities located in proximity to existing sensitive development.
- Railways should work cooperatively with municipalities to increase awareness regarding the railway legislative, regulatory, and operating environment.
- Railways should utilize opportunities to get involved in land-use planning processes and matters. Municipal planning instruments can be effective tools in implementing, or at least facilitating the implementation, of long-term rail transportation planning objectives.
- Railways are encouraged to work with industry associations and all levels of government to establish standardized agreements and procedures with respect to all types of crossings.
- Railways are encouraged to pursue implementation of the RAC Railroad Emission Guidelines (See **AE.1.1** for more information).
- Railways are encouraged to integrate transportation planning involving provincial, municipal, Port Authorities, and multiple railways, which is critical to balancing rail capacity upgrades, minimizing community impacts, and ensuring that economic benefits occur.

4.2.5 Land Developer/Property Owner

- Ideally, prospective land developers should consult with the appropriate railway prior to finalizing any agreement to purchase a property in proximity to railway operations. Otherwise, property owners should consult with municipalities and railways as early as possible on development applications and proposals to ensure compliance with policies, guidelines, and regulations, and in order to fulfill obligations of development approvals.
- Enter into agreements with municipalities and/or railways as required to ensure proximity issues are addressed now and into the future and comply with those requirements.
- Property owners should be informed, understand, acknowledge, and respect any mitigation maintenance obligations and/or warning clauses.

4.2.6 Real Estate Sales/Marketing and Transfer Agents

- Real estate sales people and property transfer agents should ensure that potential purchasers are made fully aware of the existence and nature of rail operations and are aware of and understand the mitigation measures to be implemented and maintained.

4.2.7 Academia and Specialized Training Programs

- These institutions should ensure that curriculums incorporate the latest research available to provide future land use planners, land developers, and railway engineers with better and more comprehensive tools and practices to anticipate and prevent proximity conflicts.

4.2.8 Industry Associations

- FCM, having undertaken to produce these guidelines, should continue to act as their steward. As such, a comprehensive strategy should be established to disseminate them to provincial and municipal planners and regulatory bodies, railways, developers, and other property owners. A component of this strategy may include integration at professional events and conferences. A key objective will be to promote their integration into regulatory policy frameworks.
- Other industry associations should ensure their membership is informed and involved in the latest research and proactively engaged in raising awareness and educating their members through seminars and other training programs.

4.3 // DISPUTE RESOLUTION

4.3.1 Background

In the vast majority of cases in Canada, railway company tracks and their stakeholder neighbours coexist seamlessly. However, disputes between railways and stakeholders can occasionally occur. These disputes provide insight into the issues that some stakeholders have experienced with noise, vibration, accidents, historical land use conflicts, and a variety of site-specific conditions that can result from railway operations. These disputes are often expressed through letters of complaint directed to railway, municipal and federal government officials, appeals to the Ontario Municipal Board, court cases, as well as complaints before the Canadian Transportation Agency (Agency).

4.3.2 Local Dispute Resolution Framework

In most disputes, complainants and railways can independently resolve matters by negotiating agreements amongst themselves. Stakeholders are encouraged to have regard for and utilize, where applicable, the Local Dispute Resolution Framework established by the RAC/FCM Dispute Resolution Subcommittee. This dispute resolution process should be considered prior to involving the Agency.

A. The following guiding principles should be considered through the local dispute resolution process:

1. Identify issues of concern to each party.
2. Ensure representatives within the dispute resolution process have negotiating authority. Decision making authority should also be declared.
3. Establish in-person dialogue and share all relevant information among parties.

B. Dispute Resolution Escalation Process

Municipal and railway representatives should attempt resolution in an escalating manner as prescribed below, recognizing that each of these steps would be time consuming for all parties.

1. Resolve locally between two parties using the Generic Local Dispute Resolution Process.
2. Proceed to third-party mediation/facilitation support if resolution not achieved.
3. Proceed to other available legal steps.

C. Generic Local Dispute Escalation Process

1. Face-to-face meeting to determine specific process steps to be used in resolution attempt. A Community Advisory Panel formation should be considered at this point.
2. Determination of which functions and individuals will represent the respective parties. Generally this would include the municipality, the railway, and other appropriate stakeholders.
3. Issue identification:

a) Raised through community to railway. This type of issues could be the result of an unresolved outstanding proximity issue, operational modifications, or changes in rail customer operation (misdirected to railway).

b) Planned railway development that may impact community in the future.

c) Raised through the railway to community. This type of issue could be the result of a municipal government action (rezoning, etc.).

4. Exploration of the elements of the issue. Ensure each party is made aware of the other's view of the issue – a listing of the various aspects/impacts related to the issue.
5. Consult any existing relevant proximity guidelines or related best practices (e.g. this report).
6. Face-to-face meetings between parties representing the issue to initiate dialogue for dispute resolution process. Education, advocacy of respective positions.
7. Attempt compromise/jointly agreed solution. (If not proceed to step B2 above).
8. For Jointly agreed solutions; determine necessary internal, external communication requirements and or requisite public involvement strategies for implementation of compromise.

4.3.3 The Canadian Transportation Agency's Mandate on Noise & Vibration

4.3.3.1 Agency Mandate Under the Canadian Transportation Act CTA)

The Agency is a quasi-judicial administrative tribunal of the federal government that can assist individuals, municipalities, railways, and other parties in resolving disputes.

The amendments to the Act now authorize the Agency to resolve complaints regarding *noise and vibration* caused by the construction and operation of railways under its jurisdiction.

Section 95.1 of the CTA states that a railway shall cause only such noise and vibration as is reasonable, taking into account:

- its obligations under sections 113 and 114 of the CTA, if applicable;
- its operational requirements; and
- the area where the construction or operation is taking place.

If the Agency determines that the noise or vibration is not reasonable, it may order a railway to undertake any change in its railway construction or operation that the Agency considers reasonable to comply with the noise and vibration provisions set out in section 95.1 of the

CTA. Agency decisions are legally binding on the parties involved, subject to the appeal rights.

The amendments to the CTA also grant power to the Agency to mediate or arbitrate certain railway disputes with the agreement of all parties involved, and in some cases in matters that fall outside of the Agency's jurisdiction.

The Agency has developed *Guidelines for the Resolution of Complaints Concerning Railway Noise and Vibration* (Guidelines) They explain the process to be followed and include a complaint form, and can be found through the following link: www.otc-cta.gc.ca/eng/rail-noise-and-vibration-complaints.

4.3.4 Collaborative Resolution of Complaints

The CTA specifies that before the Agency can investigate a complaint regarding railway noise or vibrations, it must be satisfied that the collaborative measures set out in the Guidelines have been exhausted.

Collaboration allows both complainants and railways to have a say in resolving an issue. A solution in which both parties have had input is more likely to constitute a long-term solution and is one that can often be implemented more effectively and efficiently than a decision rendered through an adjudicative process.

Under the Agency's Guidelines, collaborative measures are expected to be completed within 60 days of the railway receiving a written complaint - unless the parties agree to extend the process (The railway must respond to a written complaint within 30 days, and agree on a date within the following 30 days to meet and discuss the resolution of the complaint). To satisfy the collaborative measures requirements of the CTA, the following measures must be undertaken:

- Direct communication shall be established among the parties.
- A meaningful dialogue shall take place.
- Proposed solutions shall be constructive and feasible.
- Facilitation and mediation shall be considered.

Mediation is a collaborative approach to solving disputes in which a neutral third party helps to keep the discussion focused and assists the parties in finding a mutually beneficial solution. The parties jointly make decisions to resolve the disputed issues and ultimately determine the outcome. The mediation process is described below.

4.3.4.1 Mediation

Mediation has successfully resolved disputes with major rail and air carriers, airport authorities, and private citizens. It provides an opportunity for the parties involved to understand each other's perspective, identify facts, check assumptions, recognize common ground, and test possible solutions.

Mediation is an informal alternative to the Agency's formal decision-making process. It can be faster and less expensive, with the opportunity to reach an agreement that benefits both sides. Mediation tends to work well in disputes involving several major transportation service providers. In fact, a number of carriers have mentioned in recent years that they consider mediation their first alternative for dispute resolution.

To initiate a mediation process, contact the Agency and it will contact the other parties to determine if they are willing to participate. If all parties agree to join the process, an Agency-appointed mediator will manage the process. Discussions will take place in an informal setting. Collectively, all of the conflicting issues are addressed in

an attempt to negotiate a settlement.

Mediation must take place within a 30-day statutory deadline, which is much shorter than the 120-day deadline established in the CTA for the Agency's formal dispute-resolution process. The deadline can be extended if all parties agree. A settlement Agreement that is reached as a result of mediation may be filed with the Agency and, after filing, is enforceable as if it were an Order of the Agency. A complete description of the mediation process can be found on the Agency's web site.

All mediation discussions remain confidential, unless both parties agree otherwise. If the dispute is not settled and requires formal adjudication, confidentiality will be maintained and the mediator will be excluded from the formal process.

4.3.4.3 Filing a Complaint with the Agency

The Agency will only conduct an investigation or hear a complaint once it is satisfied that the parties have tried and exhausted the collaborative measures set out above. Should one of the parties fail to collaborate, the Agency may accept the filing of a complaint before the expiry of the above-noted 60 day collaborative period.

In cases where the parties are not able to resolve the issues between themselves or by way of facilitation or mediation, a complaint may be filed with the Agency requesting a determination under the formal adjudication process. The complaint must include evidence that the parties have tried and exhausted, or that one of the parties has failed to participate in, the collaborative measures set out above.

Formal complaints may be filed by individuals, institutions, local groups, or municipalities. When the Agency reviews a complaint, it will ensure that the municipal government is informed of the complaint and will seek its comments.

To avoid reviewing numerous complaints for the same concern(s), the Agency encourages complainants to consult others potentially affected before filing a complaint. This may save time and effort for all parties.

For such group complaints, parties should confirm the list of complainant(s) and who is represented under the group; provide contact information and evidence of authorization to represent; provide a list of the members of the association and their contact information, where there is an organization/association; provide, in the case of an organization/association, the incorporation documents and the a description of the organization/association and its members' interest in the complaint.

The *Guidelines for the Resolution of Complaints Concerning Railway Noise and Vibration* are primarily meant to address noise and vibration disputes with regard to existing railway infrastructure or facilities. For railway construction projects that require Agency approval under subsection 98(1) of the CTA, railways must evaluate various issues, including noise and vibration.

4.3.4.4 Formal Process

In accordance with its General Rules, after receiving a complaint, the Agency ensures that each interested party has the opportunity to comment on the complaint and any disputed issues. In general, the Agency invites the other interested parties to file their answer within 30 days, and then allows the complainant 10 days to reply.

Both complainants and railways are responsible for presenting evidence to support their position before the Agency. The Agency may pose its own questions, request further information, and conduct a site visit

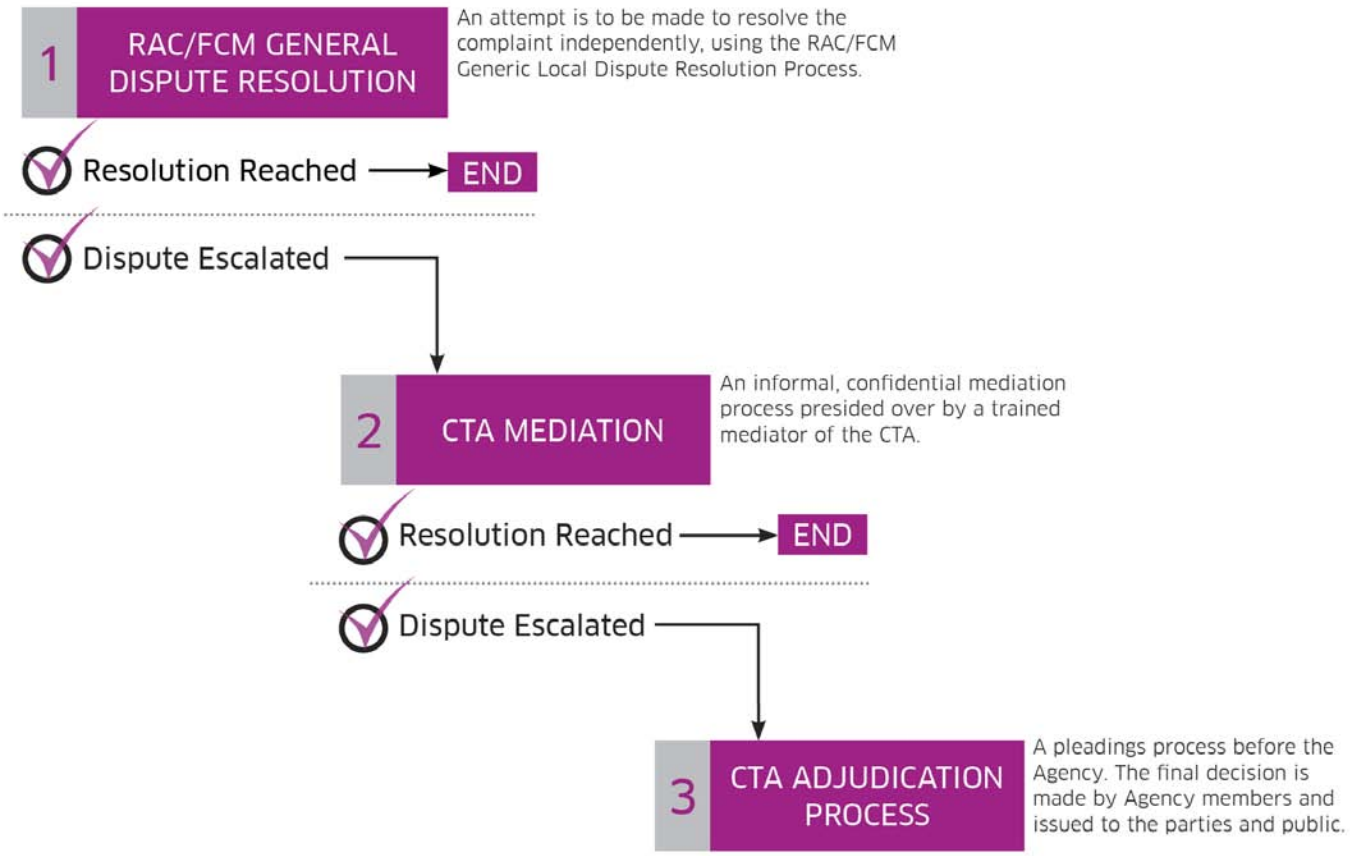


FIGURE 20 // DISPUTE RESOLUTION PROCESS

investigation where necessary.

As an impartial body, the Agency cannot prepare or document a complaint nor can it provide funding to any party for the preparation of a complaint, answer, or reply. The Agency reviews all evidence that it has obtained through its investigation to develop a comprehensive understanding of the circumstances of each case, before rendering its decision or determination.

The Agency strives to process complaints within 120 days of receiving a complete application. However, given the complexities or the number of parties involved in some noise or vibration complaints, this goal may not always be met. In such cases, the Agency will act as expeditiously as possible. Parties are encouraged to continue to work together to seek a resolution even though a complaint may be before the Agency.

When the Agency has reached a decision, the Agency provides it to all parties of the case and posts it on its public web site.

4.3.4.5 More Information

Canadian Transportation Agency
Ottawa, Ontario K1A 0N9
Telephone: 1-888-222-2592
TTY: 1-800-669-5575
Facsimile: 819-997-6727
E-mail: info@otc-cta.gc.ca
Web site: www.cta.gc.ca

For more information on the CTA, the Agency and its responsibilities, or Agency Decisions, and Orders, you can access the Agency's web site at www.cta.gc.ca.

Web site addresses and information on the Agency are subject to change without notice and were accurate at the time of publication. For the most up-to-date information, visit the Agency's web site.

PHOTO SOURCE: RAILWAY ASSOCIATION OF CANADA

5 CONCLUSION

5.0 // CONCLUSION

As the shift continues towards curbing urban sprawl and intensifying existing built-up areas, lands close to railway corridors will continue to become more desirable for development.

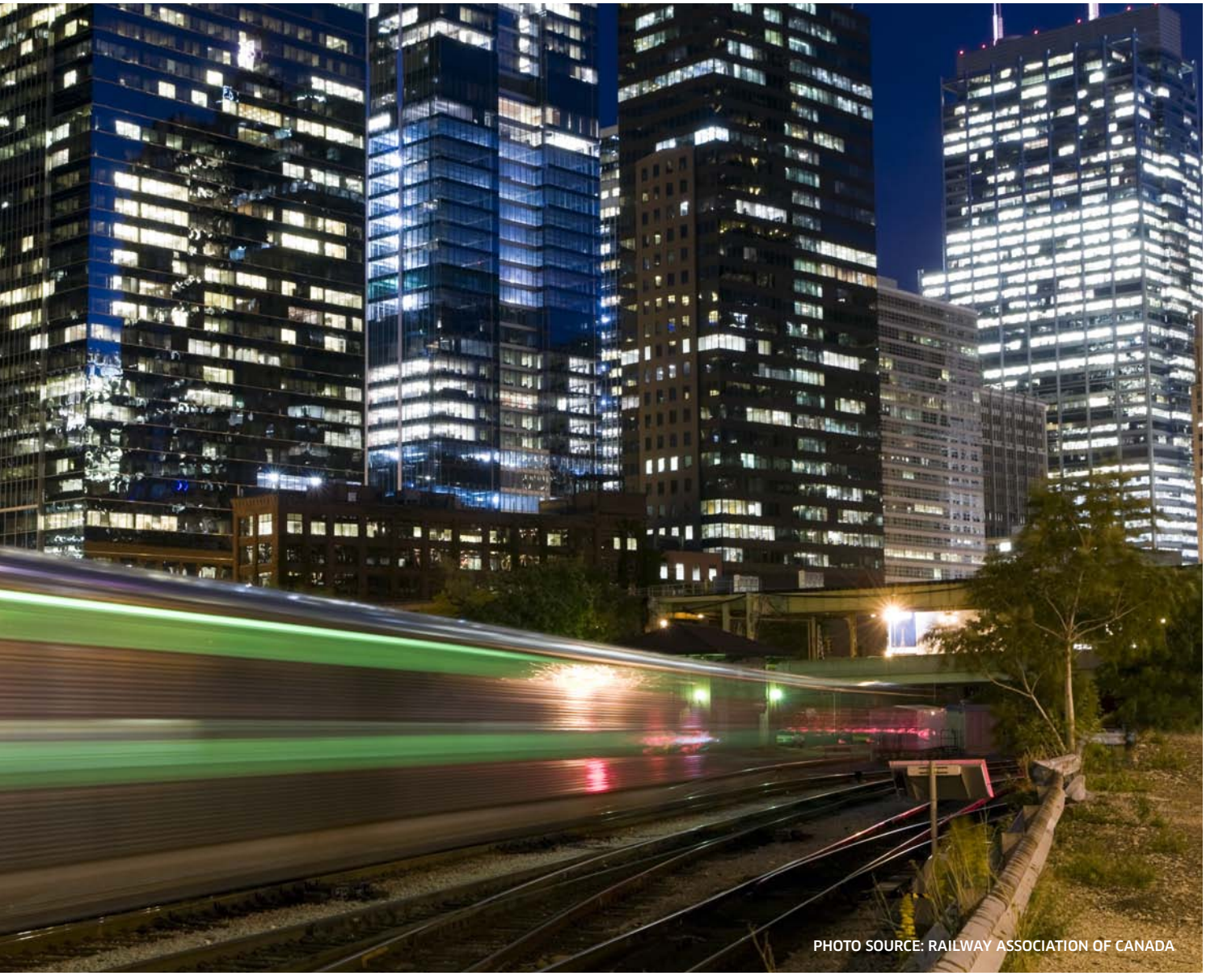


PHOTO SOURCE: RAILWAY ASSOCIATION OF CANADA

The proximity guidelines provided here are intended to help anticipate potential conflicts, improve awareness of development issues around railway operations, and clarify the requirements for new development in proximity to railway operations and activities. They provide strategies that will help to reduce misunderstanding and avoid unecessary conflicts arising between railway operations and nearby new development. The guidelines further provide recommendations to promote a higher level of consistency nationwide with respect to new development approval processes as well as the design of new development projects in proximity to railway operations and their respective mitigation measures.

Topics covered include:

- Common issues and constraints;
- A series of guidelines addressing mitigation design, consultation, setbacks, noise, vibration, safety barriers, security fencing, stormwater management and drainage, warning clauses and other legal agreements, and construction issues;
- Understanding of stakeholder roles; and
- Implementation.

Additionally, the report appendices contain the following:

- A Development Viability Assessment;
- A sample rail classification system;
- Noise and vibration procedures and criteria;
- Recommendations for the evaluation of new rail facilities or significant expansions to existing rail facilities in proximity to residential or other sensitive land uses; and
- A series of national and international best practices.

Careful consideration has been given to provide a balanced approach to new development in proximity to railway corridors that provides a thoughtful response to site-specific constraints, safety, and land-use compatibility. Ultimately it is in the interest of the public and all other parties involved to ensure that when new development is deemed to be appropriate near a railway corridor, the mitigation measures outlined in this report are taken to ensure they are both compatible and safe.

The various stakeholders identified are encouraged to review and establish or update, as necessary, their respective planning instruments and company practices/ procedures. Opportunities should be explored to inject these guidelines into relevant curriculum at education institutions teaching land use planning, civil engineering, and railway engineering, as well as disseminating this information through relevant professional associations.

APPENDICES

APPENDIX A // DEVELOPMENT VIABILITY ASSESSMENT

APPENDIX
GUIDELINES FOR NEW DEVELOPMENT IN PROXIMITY TO RAILWAY OPERATIONS

AA.1 // INTRODUCTION

Development of residential structures in proximity to railway corridors can pose many challenges, particularly in terms of successfully mitigating the various vibration, noise, and safety impacts associated with railway operations. The standard mitigation measures, illustrated below, have been designed to provide proponents with the simplest and most effective solution for dealing with these common issues.

However, in some cases, particularly in already built-up areas of the country's largest cities, development proposals will be put forward for smaller or constrained sites that are not able to accommodate these measures, particularly the full setback and berm. In cases where municipalities have already determined that residential is the best use for these sites, such proposals will be subject to a Development Viability Assessment, the intent of which is to evaluate any potential conflicts that may result from the proximity of the development to the neighbouring rail corridor, as well as any potential impacts on the operation of the railway as a result of the new development, both during the construction phase and afterwards. The proposed development will not be permitted to proceed unless the impacts on both the railway and the development itself are appropriately managed and mitigated. It must be noted that the intention of the Development Viability Assessment tool is not to justify the absence of mitigation in any given development proposal. Rather, it is to allow for an assessment based on the specific and inherent characteristics of a site, and therefore, the identification of appropriate mitigation measures.

As such, the Development Viability Assessment is a tool to assist developers who cannot accommodate standard mitigation measures in assessing the viability of their site for development and in designing the appropriate mitigation to effectively address the potential impacts associated with building near railway operations. The development viability assessment exercise, which should be carried out by a qualified planner or engineer in close consultation with the affected railway, must:

i. identify all potential hazards to the operational railway, its staff, customers, and the future residents of the development;

ii. take into account the operational requirements of the railway facilities and the whole life cycle of the development;

iii. identify design and construction issues that may impact on the feasibility of the new development;

iv. identify the potential risks and necessary safety controls and design measures required to reduce the risks to the safety and operational integrity of the railway corridor and avoid long-term disruptions to railway operations that would arise from a defect or failure of structure elements; and

v. identify how an incident could be managed if it were to occur.

It is strongly recommended that proponents consult with the affected railway when preparing a Development Viability Assessment to ensure that all relevant matters are addressed.

This document establishes the minimum generic requirements that must be addressed as part of a Development Viability Assessment accompanying a development application for land in proximity to railway operations. Proponents should note that there

may be additional topics that will need to be addressed in a Development Viability Assessment, depending on the unique nature of the subject site and proposed development. These additional topics should be determined in consultation with the affected railway and local municipality.

Municipalities should use the results of the Development Viability Assessment to determine whether proposed mitigation measures are appropriate.

The following sections outline basic content requirements for a standard Development Viability Assessment.

AA.2 // SITE DETAILS

The Assessment must include a detailed understanding of the conditions of the subject site in order to generate a strong understanding of the context through which conflicts may arise. At a minimum, the factors to be considered are:

i. site condition (cutting, embankments, etc.);

ii. soil type, geology;

iii. topography;

iv. prevailing drainage patterns over the site; and

v. proximity to the railway corridor and other railway infrastructure/utilities.

AA.3 // RAILWAY DETAILS

It is imperative that details of the railway corridor (or other facility) itself also be evaluated in order to properly determine the potential conflicts associated with a new development in close proximity to railway activities. At a minimum, the factors to be considered are:

i. track geometry and alignment (i.e. is the track straight or curved?);

ii. the existence of switches or junctions;

iii. track speed, including any potential or anticipated changes to the track speed;

iv. derailment history of the site and of other sites similar in nature;

v. current and future estimated usage and growth in patronage (10-year horizon);

vi. details of any future/planned corridor upgrades/works, or any protection of the corridor for future expansion, where no plans are in existence; and

vii. topography of the track (i.e. is it in a cut, on an embankment, or at grade?).

AA.4 // DEVELOPMENT DETAILS

Details of the development itself, including its design and operational components, are important in understanding whether the building has been designed to withstand potential conflicts as a result of the railway corridor, as well as ensuring that the new development will not pose any adverse impacts upon the railway operations and infrastructure. At a minimum, the following information must be provided:

i. proximity of the proposed development to the railway corridor or other railway infrastructure;

ii. clearances and setbacks of the proposed development to the railway corridor; and

iii. any collision protection features proposed for the new development, to protect it in the case of a train derailment.

AA.5 // CONSTRUCTION DETAILS

While it is understood that construction details will not be finalized at the development application stage, there are a number of impacts associated with construction on a site in proximity to a railway corridor that need to be considered prior to development approval. These construction impacts need to be considered as part of the Development Viability Assessment. This portion of the assessment is intended to ensure that the railway corridor, infrastructure, staff, and users can be adequately protected from activities associated with the construction of the development. At a minimum, the following information must be provided:

i. corridor encroachment - provide details with regard to:
    a. whether access to the railway corridor will be required;
    b. whether any materials will be lifted over the railway corridor;
    c. whether any temporary vehicle-crossing or access points are required; and
    d. whether there will be any disruption to services or other railway operations as a result of construction;

Generally, encroachment within a railway corridor for construction purposes is not permitted and alternative construction options will need to be identified.

i. provide details of how the security of the railway corridor will be maintained during construction, (i.e. by providing details about the type and height of security fencing to be used);
ii. provide details of any planned demolition, excavation and retaining works within 30 metres of the railway corridor and specify the type and quantity of works to be undertaken;
iii. services and utilities - provide details of:
    a. whether any services or utilities will be required to cross the railway corridor; and
    b. whether any existing railway services/ utilities will be interfered with; and
iv. stormwater, drainage, sediment, and erosion control - provide details of how any temporary stormwater and drainage will operate during construction, and how sediment and erosion control will be managed.

AA.6 // IDENTIFY HAZARDS AND RISKS

Once details unique to the site, railway corridor, development design, and construction have been determined, the individual risks must be identified and evaluated with individual mitigation measures planned for each. Such risks may include injury or loss of life and damage to public and private infrastructure. At a minimum, consideration must be given to:

i. the safety of people occupying the development and the potential for the loss of life in the event of a train derailment;
ii. potential structural damage to the proposed development resulting from a collision by a derailed train; and
iii. the ability of trespassers to enter into the railway corridor.

APPENDIX B // SAMPLE RAIL CLASSIFICATION SYSTEM

The following table is a general sample classification of rail line types. Proponents are advised to consult with the relevant railway to obtain information on the classification, traffic volume, and traffic speed, of the railway lines in proximity to any proposed development. Contact information for railways is available from the Proximity Project's website (see **APPENDIX G**).

SAMPLE RAIL CLASSIFICATION SYSTEM* (*TO BE CONFIRMED BY RELEVANT RAILWAY)

Main Line *(typically separated into "Principal" and "Secondary" Main Line)*	• Volume generally exceeds 5 trains per day • High speeds, frequently exceeding 80 km/h • Crossings, gradients, etc. may increase normal railway noise and vibration
Branch Line	• Volume generally has less than 5 trains per day • Slower speeds usually limited to 50 km/h • Trains of light to moderate weight
Spur Line	• Unscheduled traffic on demand basis only • Slower speeds limited to 24 km/h • Short trains of light weight

APPENDIX C //
NOISE & VIBRATION PROCEDURES & CRITERIA

AC.1 // NOISE

The rail noise issue is site-specific in nature, as the level and impact of noise varies depending on the frequency and speed of the trains, but more importantly, the impact of noise varies depending on the distance of the receptor to the railway operations. The distance from rail operations where impacts may be experienced can vary considerably depending on the type of rail facility and other factors such as topography and intervening structures.

AC.1.1 // SOUND MEASUREMENT

The type of sound has a bearing on how it is measured. Typical sound level descriptors/metrics for non-impulsive sound events are summarized as follows:

- the A-weighted Sound Level (dBA) is an overall measurement of sound over all frequencies - but with higher weighting given to mid- and higher-frequencies - and provides a reasonable approximation of people's actual judgment of the loudness or annoyance of rail noise at moderate sound levels. Generally, an increase of 10dBA in sound level is equivalent to a doubling in the apparent loudness of the noise;[1]
- the Equivalent Sound Level (Leq), measured in A-weighted decibels (dBA), is an exposure-based descriptor that reflects a receiver's cumulative noise exposure from all events over a specified period of time (e.g. 1 hour, 16 hour day, 8 hour night or 24 hour day). It is the value of the constant sound level that would result in exposure to the same total sound energy as would the specified time varying sound, if the sound level persisted over an equal time interval. This is the commonly used descriptor for impact assessment purposes, and correlates well with the effects of noise on people;
- the Maximum Sound Level (Lmax) is the highest A-weighted sound level occurring during a single noise event. It is typically used in night-time emission limits, as a means of ensuring sleep protection.
- the Sound Exposure Level (SEL) describes the sound level from a single noise event and is used to compare the energy of noise events which have different time durations. It is equivalent to Leq but normalized to 1 second;
- Statistical Sound Levels (Ln%) describe the percentage of time a sound level is exceeded, for example L10%, L50%, etc
- Percent Highly Annoyed (%HA) is an indicator developed by Health Canada to assess the health implications of operational noise in the range of 45 - 75 dB. It is suggested that mitigation be proposed if the predicted change in %HA at a specific receptor is greater than 6.5% between project and baseline noise environments, or when the baseline-plus-project-related noise is in excess of 75 dB.[2]

1 Canada Mortgage and Housing Corporation. (1986). Road and rail noise: Effects on housing [Canada]: Author.

2 Health Canada. (2010). Useful information for environmental assessments. Retrieved from http://www.hc-sc.gc.ca/ewh-semt/alt_formats/hecs-sesc/pdf/pubs/eval/environ_assess-eval/environ_assess-eval-eng.pdf

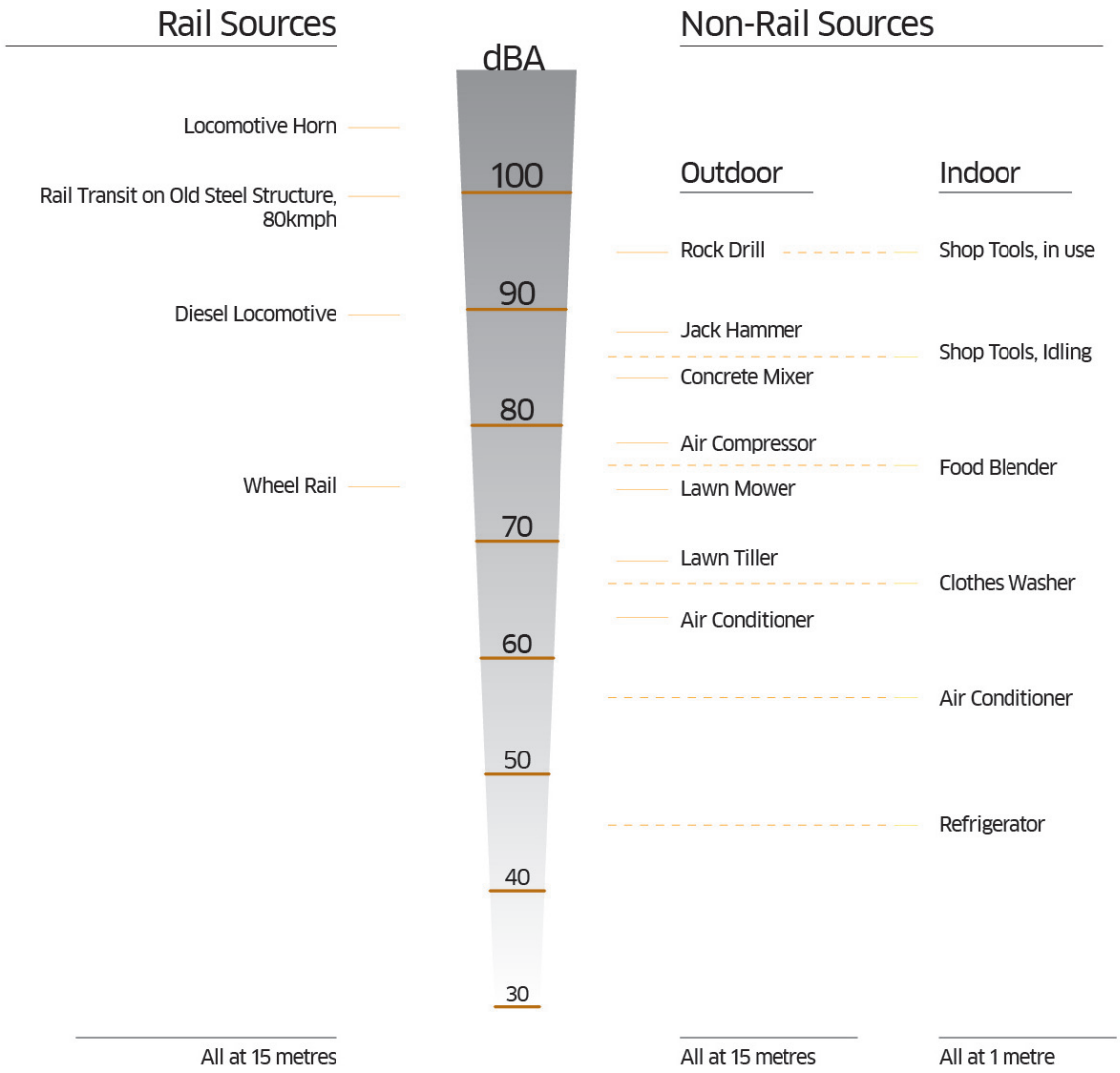


FIGURE 21 - **TYPICAL TRANSIT AND NON-TRANSIT SOURCES OF NOISE, AND THEIR ASSOCIATED DBA** (SOURCE: ADAPTED FROM FIGURE 2-11 IN TRANSIT NOISE AND VIBRATION IMPACT ASSESSMENT BY THE FEDERAL TRANSIT ADMINISTRATION).

AC.1.2 // SOURCES OF SOUND FROM RAILWAY OPERATIONS

Principal sources of noise from existing railway infrastructure include:

- wheels and rails;
- diesel locomotives – much of the noise is emitted at the top of the locomotive and in some cases the noise has a distinctive low-frequency character. Both of these factors make locomotive noise difficult to control by means of barriers such as noise walls or earth mounds, because they have to be quite high in order to break the line of sight, and therefore provide noise attenuation;
- special track forms, such as at switches, crossings, diamonds, signals, and wayside detection equipment, cause higher levels of noise and vibration and tend to be more impulsive;
- bridges and elevated structures due to the reverberation in the structures; and
- other sources including brake squeal, curve squeal, train whistling at railway crossings, bells at stations, shunting of rail cars, coupling, idling locomotives, compression or "stretching" of trains, jointed vs. welded tracks, and track maintenance.

AC.1.3 // RECOMMENDED PROCEDURES FOR THE PREPARATION OF NOISE ASSESSMENT REPORTS FOR NEW RESIDENTIAL OR OTHER SENSITIVE LAND USES IN PROXIMITY TO RAILWAY CORRIDORS

1. Studies should be undertaken by a qualified consultant using an approved prediction model.
2. Where studies are not economically or practically feasible, due for example to the scale of a development or the absence of an available mechanism to secure a study, reasonable and practical measures should be undertaken to minimize potential noise impacts, such as increased building setbacks, noise fencing, and building construction techniques (e.g. brick veneer, air conditioning), etc.
3. Obtain existing rail traffic volumes from railway.
4. Use most current draft plan/site plan and grading plans for analysis.
5. Escalate rail traffic volume data by 2.5% compounded annually for a minimum of 10 years, unless future traffic projections are available.
6. Conduct analysis at closest proposed sensitive receptor. The minimum setback distances based on the classification of the rail line, as specified by the railway should be used for the analysis (see Appendix B for a sample rail classification system). If the closest proposed residential receptor is at the greater distance than the minimum setback distance, then the greater distance may be used.
7. The analysis needs to be conducted at the following locations:
    - Outdoor amenity area receptor. This is usually in the rear yard at a point that is 3 m away from the rear wall of the house. This is typically a daytime calculation;
    - 1st, 2nd, and 3rd storey receptor for

low-rise dwellings. The nighttime calculation should be conducted at the façade where a bedroom could be located. The daytime calculation should be conducted at the façade where the living/dining/family areas could be located; and

- If the building is a multi-storey building the calculations should be conducted at the outdoor amenity areas and at the highest floor of the building.

8. The typical receptor heights are summarized below. These are to be used as a guide only. If the actual receptor heights are known they should be used.
   - Outdoor amenity area: 1.5 m above the amenity area elevation;
   - 1st storey receptor: 1.5 m above the 1st floor finished grade elevation;
   - 2nd storey receptor: 4.5 m above the 1st floor finished grade elevation; and
   - 3rd storey receptor: 7.5 m above the 1st floor finished grade elevation.
9. The analysis should be conducted assuming a 16 hour day (LeqDay) and an 8 hour night (LeqNight).
10. When no relief from whistling has been authorized they should be included in the analysis to determine the mitigation measures to achieve the indoor sound level limits. Whistles are not required to be included in the determination of sound barrier requirements.
11. Any topographical differences between the source and receiver should be taken into account.
12. The attenuation provided by dense, evergreen forest of more than 50 m in depth can also be included in the analysis (assuming it will remain intact).
13. Intervening structures that may provide some barrier effect may also be included in the analysis.
14. The results of this analysis should be compared to the applicable sound level limits listed in AC.1.4 to determine the required mitigative measures for both the outdoor amenity areas and the dwelling. Mitigative measures could include noise barriers, architectural and ventilation components (eg. brick veneer, air conditioning, forced air ventilation, window glazing requirements, etc.)
15. The required sound barrier heights to achieve the guidelines at the outdoor amenity areas can be determined using an appropriate model. The relative location with respect to the source and the receiver is required as well as the grades of the tracks, barrier location, and receptor.
16. The sound barrier needs to be designed taking into consideration the minimum safety requirements of the railway.
17. The architectural component requirements must include the minimum requirements of the railways. The remainder of the components can be determined using the AIF procedures found in the CMHC publication, “Road and Rail Noise: Effects on Housing”, (NHA 5156 08/86)

or the BPN 56 procedures found in the National Research Council publication "Building Practice Note 56, Controlling Sound Transmission into Buildings", September 1995.

18. In preparing the report all of the above information must be included so that the report can be appropriately reviewed. In addition to the above, the report should include the following:
    - Key plan;
    - Site plan/draft plan;
    - Summary of the rail traffic data, including the correspondence from the railways;
    - Figure depicting the location of the sound barrier, including any extensions or wraparounds;
    - Top of barrier elevations;
    - Sample calculations with and without the sound barrier;
    - Sample calculations of how the architectural requirements were determined;
    - Summary table of lots/blocks/units requiring mitigation measures, including lots that require air conditioning and warning clauses; and
    - Any other information relevant to the site and the proposed mitigation.

AC1.4 // RECOMMENDED NOISE CRITERIA FOR NEW RESIDENTIAL OR OTHER SENSITIVE LAND USES IN PROXIMITY TO FREIGHT RAILWAY CORRIDORS

TYPE OF SPACE	TIME PERIOD	SOUND LEVEL LIMIT Leq* (dBA) Rail**	OUTDOOR SOUND LEVEL LIMIT Leq * (dBA)
Bedrooms	2300 to 0700 hrs	35	50
Living/dining rooms	0700 to 2300 hrs	40	55
Outdoor Living Area	0700 to 2300 hrs	***55	N/A

* Applicable to transportation noise sources only.

** The indoor sound level limits are used only to determine the architectural component requirements. The outside façade sound level limits are used to determine the air conditioning requirements.

** Mitigation is recommended between 55dBA and 60dBA and if levels are 60dBA or above, mitigation should be implemented to reduce the levels as close as practicable to 55dBA.

(SOURCE: ADAPTED FROM THE ONTARIO MINISTRY OF THE ENVIRONMENT LU-131 GUIDELINE)

AC.1.5 // RECOMMENDED PROCEDURES FOR THE PREPARATION OF NOISE IMPACT STUDIES FOR NEW RESIDENTIAL OR OTHER SENSITIVE LAND USES IN PROXIMITY TO RAIL YARDS

1. Studies should be undertaken by a qualified consultant.
2. Obtain information from the railway regarding the operations of the freight rail yard in question. This information should include existing operations as well as potential future modifications to the rail facility.
3. Obtain minimum sound levels to be used for each source from the railway, if available. These data should also be verified by on-site observations and on-site sound measurements.
4. Calculate the potential impact of all the sources at the closest proposed residential receptor. This should be at a minimum of 300 m from the closest property line of the freight rail yard.
5. The analysis should be conducted for the worst case hour (Leq 1hr).
6. The calculation may be conducted using ISO 2613-2 or other approved model.
7. Impulsive activities, such as train coupling/uncoupling and stretching should be analyzed using a Logarithmic Mean Impulse Sound Level (LLM) and not included as part of the 1 hour Leq.
8. The analysis may include any attenuation provided by permanent intervening structures as well as vegetation as set out by the prediction model. Topographical differences between the source and receiver should be taken into account.
9. Any tonal characteristics of the sound should be taken into consideration.
10. All analyses should take the proposed grading of the site as well as the grading at the rail yard, particularly when determining the sound barrier heights.
11. The source positions should be determined in consultation with the railway. They should be based on the most likely and reasonable location for that activity.
12. The consultant report shall include the following:
    - Key plan;
    - Site plan/draft plan of the proposed development;
    - Figure depicting the location of each of the sources modeled within the rail yard;
    - Summary table of the source sound levels used in the analysis;
    - Results of the predicted sound levels at various receptors;
    - Results of any on-site sound measurements;
    - Sample calculations with and without any proposed mitigation;
    - Summary table of all lots requiring mitigation;
    - Top of sound barrier elevations, if sound barriers are proposed; and
    - Any other information relevant to the site and the proposed mitigation.

13. The results of the analysis should be compared to the sound level criteria found in AC.1.6. Where an excess exists, mitigation that conforms to applicable stationary source guidelines should be recommended.

AC.1.6 // RECOMMENDED NOISE CRITERIA - RESIDENTIAL OR OTHER SENSITIVE LAND USES IN PROXIMITY TO FREIGHT RAIL SHUNTING YARDS

TIME OF DAY	ONE HOUR Leq (dBA) OR L_{LM} (dBAI)	
	Class 1 Area	Class 2 Area
0700 – 1900	50	50
1900 – 2300	47	45
2300 – 0700	45	45

*These criteria are applicable to any usable portion of the lot or dwelling.

**Class 1 and 2 Areas refer to the typical acoustical environment that can be expected within the development zone. Class 1 Areas are acoustic environments dominated by an urban hum, and Class 2 Areas have the acoustic qualities of both Class 1 and Class 3 Areas (which are rural) For more information, refer to Section 2 of the LU-131 Guidelines issued by the Ontario Ministry of the Environment.

(SOURCE: ADAPTED FROM THE ONTARIO MINISTRY OF ENVIRONMENT LU-131 GUIDELINE)

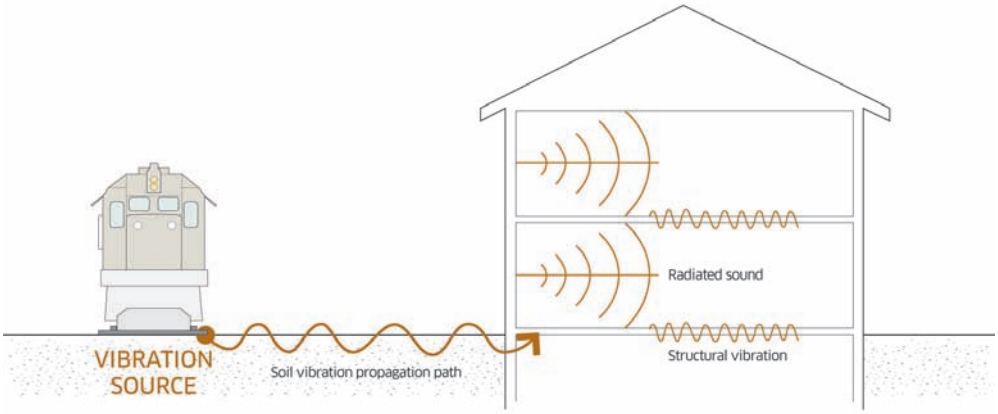


FIGURE 22 // GROUND-BORNE VIBRATION PROPAGATION (SOURCE: ADAPTED FROM FIGURE 7-1 IN TRANSIT NOISE AND VIBRATION IMPACT ASSESSMENT BY THE FEDERAL TRANSIT ADMINISTRATION).

AC.2 // VIBRATION

Vibration caused by passing trains is an issue that affects the structure of a building as well as the liveability of the units inside. In most cases, structural integrity is not a factor. Like sound, the effects of vibration are site-specific and are dependent on the soil and subsurface conditions, the frequency of trains and their speed, as well as the quantity and type of goods they are transporting.

Vibration is caused by the friction of the wheels of a train along a track, which generates a vibration energy that is transmitted through the track support system, exciting the adjacent ground and creating vibration waves that spread though the various soil and rock strata to the foundations of nearby buildings. The vibration can then disseminate from the foundation throughout the remainder of the building structure. Experience has shown that vibration levels only slightly above the human perception threshold are likely to result in complaints from residents.

Vibration in buildings in proximity to railway corridors can reach levels that may not be acceptable to building occupants for one or more of the following reasons:

- irritating physical sensations that vibration may cause in the human body;
- interference with activities such as sleep, conversation, and work;
- annoying noise caused by “rattling” of windowpanes, walls, and loose objects. Noise radiated from the motion of the room surfaces can also create a rumble. In essence, the room acts like a giant loudspeaker;
- interference with the proper operation of sensitive instruments (or) processes; and
- misplaced concern about the potential for structural or foundation damage.

Mitigation of vibration and ground-borne noise requires the transmission of the vibration to be inhibited at some point in the path between the railway track and the building. In some instances, sufficient attenuation of ground vibration is provided by the distance from the track (vibration is rarely an issue at distances greater than 50 metres from the track), or by the vibration 'coupling loss' which occurs at the footings of buildings. However, these factors may not be adequate to achieve compliance with the guidelines, and consideration may need to be given to other vibration mitigation measures. However, railway vibration is not normally associated with foundation damage.

AC.2.1 // GROUND-BORNE VIBRATION NOISE

Vibration is an oscillatory motion, which can be described in terms of its displacement, velocity, or acceleration. Because the motion is oscillatory, there is no net displacement of the vibration element and the average of any of the motion descriptors is zero. The response of humans, buildings, and equipment to vibration is more accurately described using velocity or acceleration. The concepts of ground-borne vibration for a rail system are illustrated in FIGURE 22.

AC.2.2 // PEAK PARTICLE VELOCITY AND THE ROOT MEAN SQUARE

The peak particle velocity (PPV) is defined as the maximum instantaneous positive or negative peak of the vibration signal. Although PPV is appropriate for

evaluating the potential of building damage, it is not suitable for evaluating human responses, as it takes some time for the human body to respond to vibration signals. Because the net average of a vibration signal is zero, the root mean square (RMS) amplitude is used to describe the vibration amplitude.

The criteria for acceptable ground-borne vibration are expressed in terms of RMS velocity in decibels or mm/sec, and the criteria for acceptable ground-borne noise are expressed in terms of A-weighted sound levels.

AC.2.3 // HUMAN PERCEPTION OF GROUND-BORNE VIBRATION AND NOISE

The background vibration velocity level (typically caused by passing vehicles, trucks, buses, etc.) in residential areas is usually less than 0.03mm/sec RMS, well below the threshold of perception for humans, which is around 0.1 mm/sec RMS. In the some cases, depending on the distance, intervening soils, and type of rail infrastructure, the vibration from trains can reach 0.4mm/sec RMS or more. Even high levels of perception, however, are typically an order of magnitude below the minimum levels required for structural or even cosmetic damage in fragile buildings.

Typical levels of ground-borne vibrations are shown in FIGURE 23.

For surface heavy rail traffic, the sound made by the vibration travelling through the earth is rarely significant because of the relatively low frequency content being less audible than the higher vibration frequencies common to surface transit and subways.

The relationship between ground-borne vibration and ground-borne noise depends on the frequency content of the vibration and the acoustical absorption of the receiving room. The more acoustical absorption in the room, the lower will be the noise level. This can be used to mitigate the ground-borne noise impact, but as noted above, is rarely required.

One of the problems in developing suitable criteria for ground-borne vibration is that there has been relatively little research into human response to vibration, in particular, human annoyance with building vibration. Nevertheless, there is some information available on human response to vibration as a function of vibration characteristics: its level, frequency, and direction with respect to the axes of the human body, and duration of exposure time. However, most of the studies on which this information is based were concerned with conditions in which the level and frequency of vibration are constant. Very few studies have addressed human response to complex intermittent vibration such as that induced in buildings by railway corridors. Nonetheless, several countries have published standards that provide guidance for evaluating human response to vibration in buildings. Proponents may utilize the following standards, used internationally, as a reference:

- International Standard ISO 2631-2: 2003 (1989)
- American Standard ANSI S2.71: 2006 (Formerly ANSI S3.29-1983)
- British Standard BS 6472-1: 2008 (1984)
- Norwegian Standard NS 8176.E: 2005
- New Zealand Standard NZS/ISO 2631-2: 1989
- Australian Standard AS 2670-2: 1990

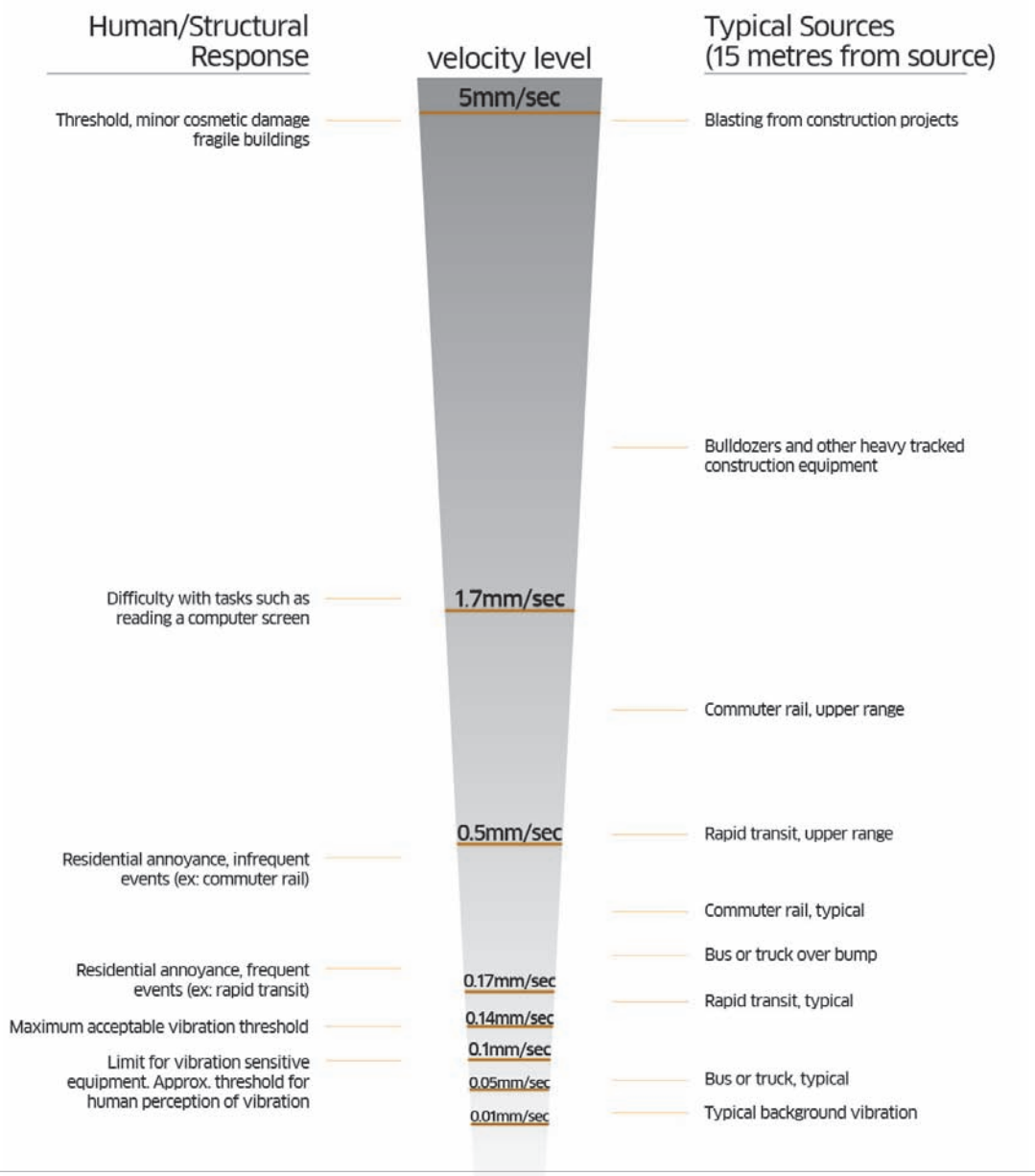


FIGURE 23 // **TYPICAL VIBRATION SOURCES AND THEIR ASSOCIATED VELOCITY LEVELS** (SOURCE: ADAPTED FROM FIGURE 7-3 IN TRANSIT NOISE AND VIBRATION IMPACT ASSESSMENT BY THE FEDERAL TRANSIT ADMINISTRATION).

AC.2.4 // FACTORS INFLUENCING GROUND-BORNE VIBRATION AND NOISE

Factors that may influence levels of ground borne vibration and noise, and that should be considered by the acoustic consultant in the preparation of a vibration impact study are described in the table below.

FACTORS RELATED TO VIBRATION SOURCE	
Factors	**Influence**
Wheel Type and Condition	Wheel flats and general wheel roughness are the major cause of vibration from steel wheel/steel rail systems.
Track/Roadway Surface	Rough track or rough roads are often the cause of vibration problems.
Speed	As intuitively expected, higher speeds result in higher vibration levels. Doubling speed usually results in a vibration level increase of 4 to 6 decibels.

FACTORS RELATED TO VIBRATION PATH	
Factors	**Influence**
Soil Type	Vibration levels are generally higher in stiff clay or well-compacted sandy soils than in loose or poorly compacted or poorly consolidated soils.
Soil Layering	Soil layering will have a substantial, but unpredictable, effect on the vibration levels since each stratum can have significantly different dynamic characteristics.
Depth to Water Table	The depth to the water table may have a significant effect on ground-borne vibration, but a definite relationship has not been established.

FACTORS RELATED TO VIBRATION RECEIVER	
Factors	**Influence**
Foundation Type	Generally, the heavier the building foundation, the greater the coupling loss as the vibration propagates from the ground into the building.
Building Construction	Since ground-borne vibration and noise are almost always evaluated in terms of indoor receivers, the propagation of the vibration through the building must be considered. Each building has different characteristics relative to structure-borne vibration, although, generally, the more massive the building, the lower the levels of ground-borne vibration.
Acoustical Absorption	The amount of acoustical absorption in the receiver room affects the levels of ground-borne noise.

(SOURCE: ADAPTED FROM TABLE 7-2 IN TRANSIT NOISE AND VIBRATION IMPACT ASSESSMENT BY THE FEDERAL TRANSIT ADMINISTRATION).

AC.2.5 // RECOMMENDED PROCEDURES FOR THE PREPARATION OF VIBRATION IMPACT STUDIES FOR NEW RESIDENTIAL OR OTHER SENSITIVE LAND USES IN PROXIMITY TO RAILWAY OPERATIONS

Mitigation can take the form of perimeter foundation treatment and thicker foundation walls and in more severe cases the use of rubber inserts to separate the superstructure from the foundation.

1. Studies should be undertaken by a qualified consultant.
2. Where studies are not economically or practically feasible, due for example to the scale of the new development or the absence of an available mechanism to secure a study, reasonable and practical measures should be undertaken to minimize potential vibration impacts, such as increased building setbacks, perimeter foundation treatment (eg. thicker foundations) and/or other vibration isolation measures, etc.
3. Vibration measurements should be conducted for all proposed residential/ institutional type developments. It is not acceptable to use vibration measurements conducted at other locations such as on the opposite side of the tracks, further down the tracks, etc.
4. The vibration measurements should be conducted at the distance corresponding to the closest proposed residential receptor, or on the minimum setbacks based on classification of the rail line. If the proposed dwelling units are located more than 75 m from the railway right-of-way, vibration measurements are not required.
5. Sufficient points parallel to the tracks should be chosen to provide a comprehensive representation of the potentially varying soil conditions.
6. A minimum of five (5) train passbys (comprised of all train types using the rail line) should be recorded at each measurement location.
7. The measurement equipment must be capable of measuring between 4 Hz and 200 Hz ± 3 dB with an RMS averaging time constant of 1 second.
8. All measured data shall be reported.
9. The report should include all of the above as well as:
    - Key plan;
    - Site/draft plan indicating the location of the measurements;
    - Summary of the equipment used to conduct the vibration measurements;
    - Direction, type, speed (if possible), and number of cars of each train measured;
    - Results of all the measurements conducted;
    - Exceedance, if any; and
    - Details of the proposed mitigation, if required.
10. Ground-borne vibration transmission is to be estimated through site testing and evaluation

to determine if dwellings within 75 metres of the railway right-of-way will be impacted by vibration conditions in excess of 0.14 mm/sec. RMS between 4 Hz. And 200 Hz. The monitoring system should be capable of measuring frequencies between 4 Hz and 200 Hz ± 3 dB, with an RMS averaging time constant of 1 second. If in excess, appropriate isolation measures are recommended to be undertaken to ensure living areas do not exceed 0.14 mm/sec. RMS on and above the first floor of the dwelling.

The following references provide additional insight on methods for measuring ground-borne vibration:

- Hunaidi, O. (1996). "Evaluation of human response to building vibration caused by transit buses". Journal of Low Frequency Noise and Vibration, Vol. 15 No.1, p. 25-42. NRCC Report No. 36963.
- Hunaidi, O. and Tremblay, M. (1997). "Traffic-induced building vibrations in Montreal". Canadian Journal of Civil Engineering, Vol. 24, p.736-753.
- Allen, D.E. and Pernica, G. (1998). "Control of floor vibration". Construction Technology Update No.22, Institute for Research in Construction, NRCC.
- Hanson, C.E., Towers, D.A. and Meister, L.D. (2006). "Transit Noise and vibration impact assessment". FTA-VA-90-1003-06, Office of Planning and Environment, Federal Transit Administration, USA.
- Garg, N. and Sharma, O. (2010). "Investigations on transportation induced ground vibrations". Proceedings of 20th International Congress on Acoustics, ICA 2010, Sydney, Australia.

APPENDIX D //
NEW RAIL FACILITIES AND SIGNIFICANT RAIL EXPANSIONS IN PROXIMITY TO RESIDENTIAL OR OTHER SENSITIVE LAND USES

Federally regulated railways are governed, in part, by the requirements of the Canada Transportation Act (CTA). Under the CTA, railways are required to obtain an approval from the Canadian Transportation Agency for certain railway construction projects. Additionally, federal railways are required to adhere to the requirements of the Railway Safety Act (RSA), which promotes public safety and protection of property and the environment in the operation of railways.

As such, evaluations of new rail facilities or significant rail expansions are conducted in accordance with applicable Federal regulations.

These include but are not limited to the following:

1. **Canadian Transportation Act - section 98**

http://www.cta-otc.gc.ca/eng/railway-line-construction

http://laws-lois.justice.gc.ca/eng/acts/C-10.4/page-34.html#h-51

2. **Railway Safety Act - Part 1 Construction or Alteration of Railway Works**

http://laws-lois.justice.gc.ca/eng/acts/R-4.2/page-3.html#docCont

http://laws-lois.justice.gc.ca/eng/regulations/SOR-91-103/page-1.html

3. **Railway Relocation and Crossing Act**

https://www.otc-cta.gc.ca/eng/publication/relocation-railway-lines-urban-areas

http://laws-lois.justice.gc.ca/eng/acts/R-4/index.html

4. **Canadian Environmental Assessment Act, 2012**

http://laws-lois.justice.gc.ca/eng/acts/C-15.21/index.html

APPENDIX E //
BEST PRACTICES

AE.1 // CURRENT BEST PRACTICES IN CANADA

AE.1.1 // RAILWAY NOISE EMISSION GUIDELINES, RAC (CANADA)

The Railway Association of Canada has prepared Noise Emission Guidelines that will assist in controlling noise emitted by moving rail cars and locomotives.

- The RAC initiative is the first attempt at such a guideline in Canada. Federal agencies have indicated that they support the RAC's efforts and look forward to working with all stakeholders on such initiatives and also that they encourage a blend of maximum levels of noise and annoyance-related approaches in the development of such guidelines.
- The RAC guidelines are based on the following United States Codes of Federal Regulations (CFR): CFR Title 40 - Protection of Environment - Part 201 Noise Emission Standards for Transportation Equipment; Interstate Rail Carriers – July 1, 2002; and, CFR Title 49 Transportation – Part 210 Railroad Noise Emission Compliance Regulations – Oct 1, 2002.
- The guidelines apply to the total sound emitted by moving rail cars and locomotives (including the sound produced by refrigeration and air conditioning units that are an integral element of such equipment), active retarders, switcher locomotives, car coupling operations, and load cell test stands, operated by a railway within Canada. There are exceptions where the guidelines do not apply, including steam locomotives, sound emitted from warning devices, special purpose equipment, and inert retarders.
- Railways and the RAC are encouraged to continue with proactive efforts and partnerships to undertake research and education initiatives that build on and improve the draft noise emission guideline, including incorporating aspects of the subject research.

A summary of the guidelines is below:

NOISE SOURCE	NOISE GUIDELINE - A-WEIGHTED SOUND LEVEL IN dB	NOISE MEASURE	MEASUREMENT LOCATION
All locomotives manufactured on or before Dec. 31, 1979			
Stationary, Idle Throttle setting	73	Lmax (slow)1/	30 m
Stationary, all other throttle settings	93	Lmax (slow)	30 m
Moving	96	Lmax (fast)	30 m
All locomotives manufactured after Dec. 31, 1979			
Stationary, Idle Throttle setting	70	Lmax (slow)	30 m
Stationary, all other throttle settings	87	Lmax (slow)	30 m
Moving	90	Lmax (fast)	30 m
Additional req't for switcher locos manufactured on or before Dec. 31, 1979 operating in yards where stationary switcher and other loco noise exceeds the receiving property limit of	65	L90 (fast)2/	Receiving property
Stationary, Idle Throttle setting	70	Lmax (slow)	30 m
Stationary, all other throttle settings	87	Lmax (slow)	30 m
Moving	90	Lmax (fast)	30 m
Rail Cars			
Moving at speeds of 45 mph or less	88	Lmax (fast)	30 m
Moving at speeds greater than 45 mph	93	Lmax (fast)	30 m
Other Yard Equipment and Facilities			
Retarders	83	Ladjavemax (fast)	Receiving property
Car-coupling operations	92	Ladjavemax (fast)	Receiving property
Loco load cell test stands, where the noise from loco load cell operations exceeds the receiving property limits of	65	L90 (fast)2/	Receiving property
Primary Guideline	78	Lmax (slow)	30 m
Secondary Guideline if 30 m measurement not feasible	65	Lmax (fast)	Receiving property located more than 120 m from Load Cell

1/Lmax= maximum sound level

L90= statistical sound level exceeded 90% of the time

Ladjavemax= adjusted average maximum sound level

2/ L90 must be validated by determining that L10-L99 is less than or equal to 4 dB (A).

Receiving property essentially means any residential or commercial property that receives sound (not owned by the railroad).

AE.1.2 // NOISE ASSESSMENT CRITERIA IN LAND USE PLANNING PUBLICATION LU-131 (ONTARIO, CAN)

This guideline outlines noise criteria to be considered in the planning of sensitive land uses adjacent to major facilities such as roads, airports, and railway corridors. It is the only provincial noise guideline applicable to residential development in Canada.[1] The document stipulates a maximum daytime outdoor sound level from rail noise of 55dBA; 35dBA for sleeping quarters at night; and 40dBA for living and dining rooms during the day. It also stipulates that a feasibility study is required within 100 metres of a Principal Main Line railway right-of-way, and 50 metres of a Secondary Main Line railway right-of-way. A detailed noise study is required when sound levels affecting proposed lands exceed the noise criteria by more than 5dBA. Finally, the guideline also outlines specific mitigation requirements when sound levels exceed certain limits.

AE.1.3 // PLANNING AND CONSERVATION LAND STATUTE LAW AMENDMENT ACT, 2006, BILL 51 (ONTARIO, CAN)

The Planning and Conservation Land Statute Law Amendment Act, 2006, Bill 51 provides a more transparent, accessible, and effective land-use planning process, empowering municipalities with more tools to address a variety of land-use planning needs. The bill allows for greater dissemination of information, participation, and consultation to take place earlier on in the planning process, giving local residents and community leaders more opportunity to play their crucial role in shaping their communities.

Bill 51 requires that notice shall be given to railways in the case of proposed official plans or official plan amendments, plans of subdivision, zoning by-laws, holding by-laws, interim control by-laws, and/or consent to sever lands, where the subject lands fall within 300 metres of a railway line. This is the only piece of provincial legislation in Canada which triggers the notification of railways when land-use changes and/or development is proposed in close proximity to rail lands.

AE.1.4 // GUIDELINE D-6: COMPATIBILITY BETWEEN INDUSTRIAL FACILITIES AND SENSITIVE LAND USES (ONTARIO, CAN)

The role of this guideline is to prevent or minimize the encroachment of sensitive land use upon industrial land use and vice versa. The incompatibility of these land uses is due to the possibility for adverse effects created by industrial operations on sensitive land uses.

Application of this guideline should occur during the land use planning process in an effort to prevent or minimize future land use conflicts. It is intended to apply when a change in land use is proposed. The guideline is a direct application of Ministry Guideline D-1, "Land Use Compatibility" (formerly Policy 07-03).

This guideline defines sensitive land uses as:

- recreational uses which are deemed by the municipality or provincial agency to be sensitive; and/or
- any building or associated amenity area which is not directly associated with the industrial use, where humans or the natural environment may be adversely affected by emissions generated by the operation of a nearby industrial facility. For example, residences, senior citizen homes, schools, day care facilities, hospitals, churches and other similar institutional uses, or campgrounds. Residential land is considered to be sensitive 24 hrs/day.

This guideline does not apply to railway corridors, but does apply to railway yards and other ancillary rail facilities.

Industrial facilities are categorized into three classes according to the objectionable nature of their emissions, physical size/scale, production volumes and/or the

1 Noise Guidelines exist in Alberta, but they are applicable only to the energy sector.

intensity and scheduling of operations. This guideline includes an implementation section that contains requirements or recommendations on the following:

- Potential influence area distances
- Land use planning considerations
- Recommended minimum separation distances
- How to measure separation distance
- Commenting or reviewing land use proposals
- Required studies: noise, dust, and odour
- Additional mitigation measures
- Legal agreements and financial assurance to ensure mitigation
- Redevelopment, infilling and mixed use areas requirements including official status, zoning, feasibility analysis, new use of existing buildings, public consultation, environmental warnings for sensitive land uses, phased/sequential development, and site clean-up & decommissioning.
- Accessory residential use

The recommendations or requirements for incompatible land uses are intended to supplement, not replace, controls which are required by legislation for both point source and fugitive emissions at the facility source.

AE.1.5 // DIRECTION 2006 (CANADA)

Community Trespass Prevention is an initiative of Direction 2006, a Government of Canada and public/private partnership initiated in 1996, with the goal of cutting the number of accidents and fatalities in half within 10 years, by 2006. As part of this initiative, the document, *Trespassing on Railway Lines: A Community Problem-Solving Guide* was developed. This document describes the Community, Analysis, Response and Evaluation (C.A.R.E.) problem solving model that was developed to assist communities in identifying and addressing the underlying causes of trespassing. It provides a step-by-step method of identifying, analyzing and effectively addressing trespassing issues in the community.

Direction 2006 has identified four areas of concentration (the four E's) with respect to crossing and trespass prevention, namely:

Education

Operation Lifesaver's success as a safety program lies in educating people of all ages about the dangers of highway/railway crossings and the seriousness of trespassing on railway property. The methods used to reach the public include the production and distribution of educational related material, early elementary and driver education curriculum activities, civic presentations, as well as media coverage.

Enforcement

Laws are in place governing motorists' and pedestrians' rights and responsibilities at highway/railway crossings and on railway property. Without enforcement, however, they will be ignored and disregarded, and incidents will continue to happen. Therefore, provincial and municipal law enforcement agencies are urged to deal with motorists and pedestrians who disregard these laws and jeopardize their lives as well as the lives of others.

Engineering

Highway/railway crossings, railway property and pedestrian crossings must be kept safe, both physically and operationally, and improvements must be made when needed. To ensure a high level of safety, the administrative process of improving railway rights-of-way needs to be reviewed and changed when needed. At the same time, the public needs to be made more aware of federal, provincial and other programs aimed at improving railway safety.

Evaluation

To maintain the quality of Operation Lifesaver, its effect should be measured against its stated goals. Funds are available for technical and program assistance.

Lessons that can be learned from Direction 2006 include:

- The benefits of multi-stakeholder initiatives to raise awareness of public safety matters and reduce the potential for future incidents.
- Promotion of rail safety improvement, particularly improvement and elimination of at-grade crossings and provision of funding for safety initiatives.

AE.2 // INTERNATIONAL BEST PRACTICES

The international case studies described here have been chosen because they represent examples of jurisdictions which employ a comprehensive approach towards mitigation of rail-related impacts on new residential development that includes the use of proximity guidelines. While Australia stands out as a model for Canadian jurisdictions to look towards when crafting their own policies for development adjacent to railway corridors, the differences between the two contexts should be kept in mind. For example, the Australian context allows for a greater government role in its approach to mitigation because railway infrastructure is largely state owned and operated. This is also the reason why the rail authorities must bear a larger share of the responsibility when it comes to mitigation, than is the case in Canada.

AE.2.1 // NEW SOUTH WALES, AUSTRALIA

New South Wales (NSW), located in southeastern Australia, is the largest Australian state by population, with over 7.2 million inhabitants. It is currently experiencing an extended period of urban renewal, particularly in and around Sydney, the state capital and the most populous city in the country. This renewal has led to increased pressure to develop urban infill sites along railway lines, particularly around existing passenger rail stations. At the same time, transportation by rail (both freight-based and passenger-based), has been growing steadily, generating a need to establish new railway lines in some parts of the state, and leading to an increase in the number of complaints about sound and vibration issues by residents living in proximity to existing lines.

In response to these circumstances, the government of NSW has developed a comprehensive strategy consisting of a series of complementary initiatives to address and manage the environmental impacts of noise and vibration from the state's rail system. These include:

- A *Rail Infrastructure Noise Guideline* that outlines a process for assessing the noise and vibration impacts of proposed rail infrastructure projects, and for determining appropriate mitigation.
- A *new state policy,* called the State Environmental Planning Policy (Infrastructure) 2007 that clearly

articulates a process and requirements for the approval of new residential developments adjacent to existing railway corridors. The policy specifies internal noise levels of 35dBA for bedrooms between 10pm and 7am, and 40dBA for other habitable rooms. It also stipulates conditions under which a rail authority must be notified of a development adjacent to its railway corridors, and gives the authority 21 days to respond.

- New ***planning guidelines*** for development near railway corridors and busy roads that outline procedures for assessing the noise and vibration impacts of existing rail facilities on new residential development, and suggest potential mitigation options.
- New *national rolling stock noise emission standards,* currently under development by the Australasian Railway Association.

Although the *Development Near Rail Corridors and Busy Roads - Interim Guideline* includes recommendations for mitigating against the risk of a derailment, these do not include a mandatory or recommended setback. The State's Director of Policy Planning Systems and Reform suggests that this is because any setback width would be considered arbitrary. Additionally, it is argued that it would be inappropriate to sterilize land adjacent to railway corridors by imposing a setback requirement without compensation or acquisition. In the case of new rail lines under development, it is considered preferable for the infrastructure provider to acquire a corridor wide enough to make accommodations for a buffer. In existing built-up areas around older railway lines, safety is considered on a case-by-case basis through individual risk assessments, although the primary concern of mitigation is the reduction of noise and vibration. It should be noted that developers of new residential buildings in NSW are responsible for all costs associated with providing safety, sound, and vibration mitigation in their developments.

The introduction of the new state policy and planning guidelines has significantly streamlined the development approvals process for new residential development adjacent to railway corridors across the state. The *State Environmental Planning Policy (Infrastructure)* 2007 takes precedence over existing municipal policies within the state, and municipalities must also 'have consideration' for the new guidelines when approving or denying a development application. Failure to do so may result in a decision being overturned by the courts. The privileged position of the rail authorities as adjacent landowners is recognized through the new process, but the 21-day period for providing comments ensures expediency. The state further encourages rail authorities to honour this time limitation through an annual publication of the names of those who consistently fail to meet the deadline. While the process allows for and encourages extensive negotiation, municipal Councils are free to reject the safety recommendations of rail authorities that they feel are unreasonable.

Although the state is still in the process of transitioning into this new system, overall, it is considered thus far, to be a success. The guidelines are heavily used, and new developments are seeing significant benefits, though there are still concerns expressed by residents living in existing housing stock.

AE.2.2 // QUEENSLAND, AUSTRALIA

Queensland, located in northeastern Australia, is the second largest Australian state by area, and the third largest by population, with over 4.5 million inhabitants. It is also home to the country's third most populace city, Brisbane. Regional and metropolitan plans throughout Queensland are calling for Transit Oriented Development (TOD) to address the state's continuing growth and development. These plans typically prescribe more compact urban forms, with higher density development located in the places of greatest accessibility. Increasingly, as in NSW, this has led to greater pressure to develop sites adjacent to railway corridors, generating concerns not only about noise and vibration, but also about the potential impact of new development on railway operations.

In order to properly manage these concerns, a partnership was established between Queensland Rail, Transport and Main Roads (TMR), and the Department of Infrastructure and Planning (DIP), through Growth Management Queensland (GMQ). Through this collaboration, a Guide for development in a railway environment was developed and made available for use by local municipalities and developers. The Guide provides direction for those interested in developing, excavating, or carrying out any other construction activity in or adjacent to a railway corridor, facilities, or infrastructure. It outlines what information must be reviewed and accounted for when undertaking development in a railway environment, which agencies hold jurisdictional responsibility, the applicability of regulatory provisions, the consultation process, and related development parameters. A checklist approach ensures the appropriate steps have been taken to address the matters influencing development in a railway environment, and is complemented by a risk assessment process to assist with the evaluation and refinement of development proposals.

AE.2.3 // CODE OF PRACTICE, RAILWAY NOISE MANAGEMENT, QUEENSLAND RAIL (QUEENSLAND, AUSTRALIA)

Queensland Rail (QR), an Australian government owned corporation, has developed a Code of Practice for Railway Noise Management. The *Code of Practice* is generally a self-imposed set of rules to achieve compliance with the duty to mitigate environmental impacts such as noise and vibration. The self-regulation is similar to the approach to the environment that has been adopted by the Class 1 and other railway companies in Canada.

As part of this *Code of Practice*, QR has developed a "Network Noise Management Plan" that initially involves conducting a statewide noise audit. If "potential noise-affected receptors" are identified then a detailed noise assessment is carried out. Mitigation measures will be implemented where noise levels exceed the EPP levels or if QR cannot achieve compliance with these levels, the railway will strive to comply with QR nominated interim noise levels of 70 dB(A) (24-hour average equivalent continuous A-weighted sound pressure level) and 95 dB(A) (single event maximum sound pressure level).

Queensland Rail has prepared and made available to Queensland local governments "QR Guidelines for Local Governments (and/or other Assessment Managers under the Integrated Planning Act) for Assessing Development Likely to be Affected by Noise from the Operation of a Railway or Railway Activities". These guidelines encourage Queensland local governments to apply noise impact assessments to development applications requiring assessment under the Integrated Planning Act

and which are intended to be located near a railway. The noise impact assessment may require the imposition of conditions on the development to help achieve the required noise levels. Conditions may include devices such as sealed windows and/or double glazing; minimizing the window area facing a noise source; barriers for low level receivers; effective building orientation; or provision of a suitable buffer distance.

Although the Canadian environment differs somewhat from QR (the main difference being that QR is government owned), there are lessons that can be learned, including:

- QR has developed a comprehensive "Network Noise Management Plan" and carries out a detailed noise assessment if potential noise-affected receptors are identified.
- QR has prepared noise impact assessment guidelines to assist local governments in applying guidelines to development applications. The guidelines are comprehensively applied.

AE.3.1 // ROBERTS BANK RAIL CORRIDOR CASE STUDY (BRITISH COLUMBIA, CAN)

The Roberts Bank Rail Corridor (RBRC) represents a 70-kilometre stretch of tracks, connecting Canada's largest container facility and a major coal terminal at Roberts Bank (south of Vancouver) with the North American rail network. Increasing volumes of international freight are shipped as part of Canada's Pacific Gateway, through communities in the Lower Mainland.

The Corridor is comprised primarily of single rail track and currently carries up to 18 trains per day, ranging from 6,000 to 9,500 feet in length. Train traffic volume is expected to increase to 28–38 trains per day by 2021, and it is anticipated that some trains may exceed 12,000 feet in length.

Existing and Future Conditions

The Corridor contains approximately 66 road-rail crossings, of which 12 are overpasses, 38 are public street-level crossings, and 16 are private street-level crossings. Roughly 388,000 vehicles cross the tracks daily, with expected increases to 560,000 vehicle crossings per day by 2021. Future increases in train traffic and vehicular traffic presented infrastructure challenges to the existing street-level rail crossings, impeding the operational efficiency of both rail and road networks. Additionally, the significant volume of trains passing through established communities presented many challenges with respect to noise, vibration, emissions, and safety.

Improving Network Efficiency and Addressing Proximity Issues

In February 2007, the *Roberts Bank Rail Corridor: Road/Rail Interface Study* prioritized the optimal locations for investment in road-rail projects. Careful consideration was also given to selected road closures, network reconfigurations, and traffic management measures designed to maximize benefits to motorists, railways and neighbouring communities. The study also gave consideration to a number of proximity related issues including noise, vibration, emissions, and safety.

The study was a collaborative effort among Transport Canada, British Columbia Ministry of Transportation and Infrastructure, South Coast British Columbia Transportation Authority (TransLink), the Vancouver Fraser Port Authority, and the Greater Vancouver Gateway Council, with contributions from stakeholders

such as corridor municipalities and railway companies. The various agencies turned to the 2007 FCM RAC Proximity Guidelines for direction on addressing issues related to noise and vibration, safety, dispute resolution, and setbacks. The Guidelines were proven to be an effective measure and valuable resource for balancing the needs of the rail agencies, stakeholders, and community members.

Roberts Bank Railway Corridor improvements are intended to:

- Improve the flow of local traffic;
- Improve traffic safety;
- Provide for better access by emergency vehicles during train events;
- Reduce idling of vehicles at level crossings, energy use, and greenhouse gas emissions;
- Reduce or eliminate the necessity for train whistling;
- Enhance the efficiency and safety of rail operations;
- Accommodate the anticipated growth in trade-related traffic; and
- Increase national trade competitiveness by increasing goods-movement along the corridor.

Results and Outcomes

The twelve partners are working proactively to improve road access and safety for local residents by providing alternate routes over increasingly busy railways. In total, eight overpasses and one rail siding project in the RBRC Program will be constructed by 2014. Additional rail improvements will reduce requirements for whistle blowing, close rail crossings to vehicular traffic, and provide an advanced early warning system that will notify drivers of approaching trains.

APPENDIX F // GLOSSARY

Berm

A mound constructed of compacted earth that is situated within the setback area of a property adjacent to a railway line. Berms function of safety barriers, screen undesirable views, and reduce noise.

Crash Wall

A concrete structure often incorporated into the podium of a high-density building adjacent to a railway line that is designed to provide the equivalent resistance in the case of a train derailment as a standard berm.

Noise Impact Study

A study, undertaken by a qualified acoustic consultant, which assesses the impact of all noise sources on a subject property, and determines the appropriate layout, design, and required control measures.

Low Occupancy Podium

A building podium containing non-sensitive uses such parking, retail, or the common elements of a condominium. A low occupancy podium will never contain residential uses.

Railway Corridor

The land which contains a railway track or tracks, measured from property line to property line.

Rail Crossing

A crossing or intersection of a railway and a highway, at grade.

Railway

Any company which owns and operates one or more railway lines.

Railway Line

The physical tracks on which trains operate. Railway lines may be categorized as either a Main Line, Branch Line, or Spur Line, based on the speed and frequency of trains (see Appendix B for a sample rail classification system).

Railway Facility

Any structure or associated lands related to the operation of a railway. Railway facilities include railway corridors, freight yards, and train stations.

Railway Operations

Any activity related to the operation of a railway.

Recommended Setback

The recommended separation distance between a rail corridor and a sensitive land use, such as a residence.

Sensitive Land Uses

A land use where routine or normal activities occurring at reasonably expected times would experience adverse effects from the externalities, such as noise and vibration, generated from the operation of a railway. Sensitive land uses include, but are not limited to, residences or other facilities where people sleep, and institutional structures such as schools and daycares, etc.

STC Rating

STC stands for Sound Transmission Class, and is a single-number rating of a material's or an assembly's ability to resist airborne noise transfer. In general, a higher STC rating indicates a greater ability to block the transmission of noise.

Vibration Impact Study

A study, undertaken by a qualified acoustic or vibration consultant, which assesses the level and impact of vibration on a subject property, determines whether vibration mitigation is necessary, and recommends mitigation options based on the particular conditions of the development site in question.

APPENDIX G // LINKS & OTHER RESOURCES

Railway Association of Canada

www.railcan.ca

(includes relevant government links and links to member railway sites)

Federation of Canadian Municipalities

www.fcm.ca

(includes links to provincial affiliate associations and municipal sites)

RAC/FCM Proximity Project

www.proximityissues.ca

Government of Canada

www.canada.gc.ca

Transport Canada

www.tc.gc.ca

Canadian Transportation Agency

www.cta-otc.gc.ca

Ontario Ministry of the Environment

www.ene.gov.on.ca

Canada Mortgage & Housing Corporation

www.cmhc-schl.gc.ca

Operation Lifesaver

www.operationlifesaver.ca

Safe Communities

www.safecommunities.ca

Queensland Rail

www.corporate.qr.com.au

Queensland Department of Transport and Main Roads

www.tmr.qld.gov.au

New South Wales Department of Planning

www.planning.nsw.gov.au

APPENDIX H // LIST OF STAKEHOLDERS CONSULTED

Municipalities

Borough of Plateau Montreal, City of Montreal

Borough of Riviere-des-Prairies, Pointe-aux-Trembles, City of Montreal

Bureau du Plan, City of Montreal

City of Edmonton

City of Regina

City of Saskatoon

City of Toronto

City of Vancouver

City of Welland

City of Winnipeg

Greater Moncton Planning Commission

Town of Halton Hills

Town of Orangeville

Development Industry

BILD, Policy & Government Relations

Canada Lands Company

Conservatory Group

Hullmark Development

Montreal Design Zone

Namara Developments

Ontario Homebuilders Association

Perimeter Development

Professionals

Aecom

Evans Planning

Goodmans LLP

Jablonsky Ast & Partners

Jade Acoustics Inc.

JSW+ Associates

Canadian Railways & Railroad Operators

Canadian National Railway

Canadian Pacific Railway

Metrolinx

Trillium Railway

International

American Association of Railroads

City of Melbourne, Australia

City of Washington, DC

Government of New South Wales, Australia, Policy Planning Systems and Reform

Surface Transportation Board

Provincial & Federal Ministries & Regulating Agencies

Canadian Transportation Agency

Ontario Ministry of Transportation, Goods Movement Policy Office

Province of Nova Scotia

Saskatchewan Ministry of Municipal Affairs

APPENDIX I // REFERENCES

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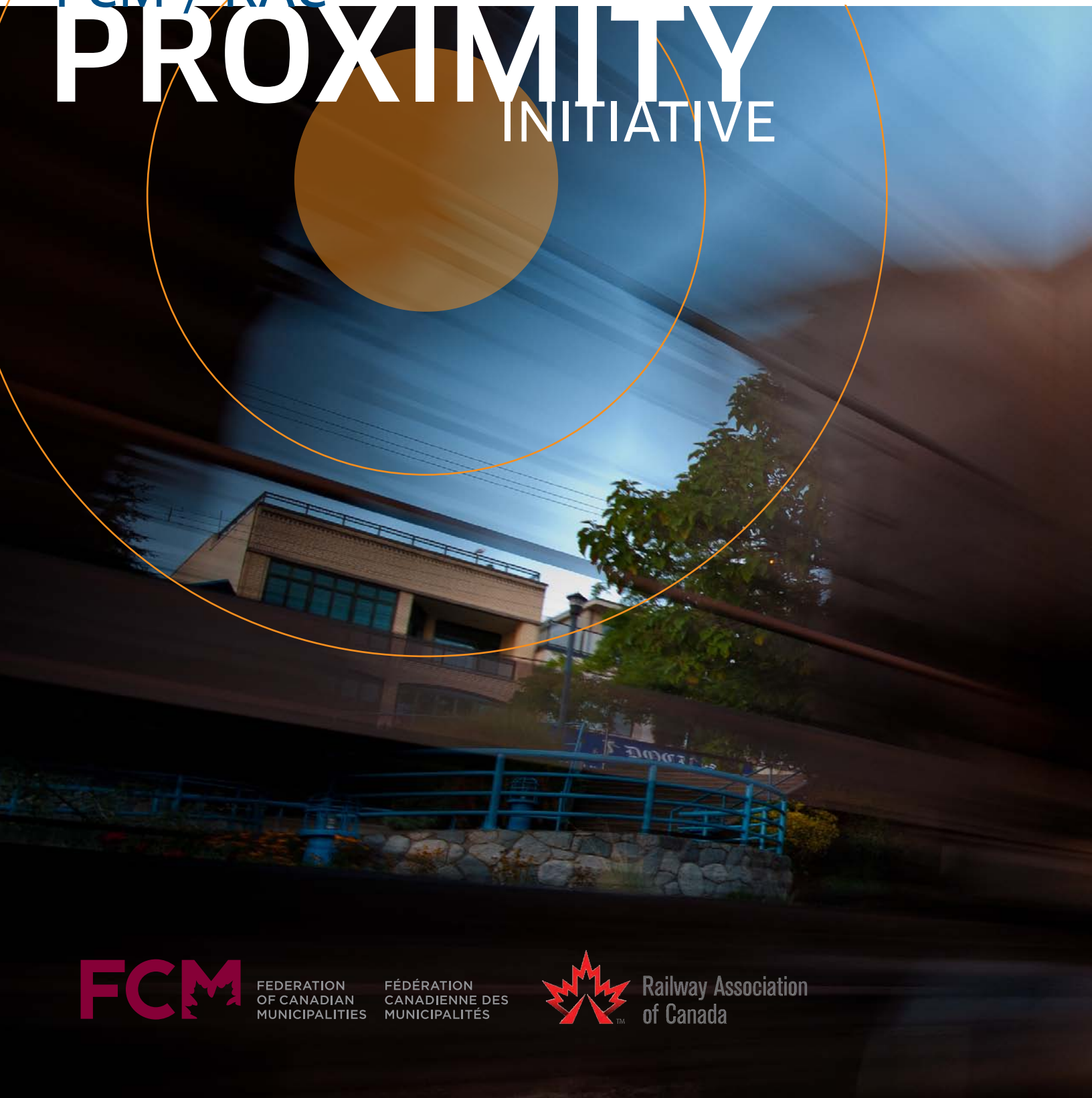
FCM / RAC

PROXIMITY INITIATIVE



FEDERATION OF CANADIAN MUNICIPALITIES
FÉDÉRATION CANADIENNE DES MUNICIPALITÉS

Railway Association of Canada

Tab 7

Calgary

Development Next to Freight Rail Corridors Policy

Development Next to Freight Rail Corridors Policy

1 Introduction

Calgary is a major transportation and logistics hub and is connected to the national rail network through the Canadian Pacific Railway and Canadian National Railway. With increasing volumes and types of goods being transported via freight railways there is an increased awareness across the country for the potential risks of accidents and the physical impacts of train derailments. A municipality should understand the context and risks for development next to a freight railway corridor when making planning decisions, and to ensure any required mitigation measures are incorporated at the time of a project's construction. The context for Calgary was determined through a detailed Baseline Risk Assessment (Assessment) for all parcels adjacent to freight rail corridors.

The most critical areas that need to be considered in terms of mitigating the risks of a derailment are the lands that are most likely to be physically impacted. The risk mitigation policies below are designed to enable appropriate development in these areas by applying a risk management approach. They provide clear guidance on the risk mitigation measures that will be required for certain uses or new developments directly adjacent to the freight railway.

When redevelopment occurs next to a freight railway the effects of noise on residents must also be considered. Clear guidance regarding the mitigation of noise is provided below. The Policy also acknowledges that vibration caused by rail operations can affect adjacent buildings and that mitigation should be considered for potential chemical releases due to accidents. Due to the complex nature of these issues, however, this Policy only provides advisory statements regarding vibration and chemical release.

Details on how to apply the policies and mitigate the risks are provided in the Implementation Guide.

2 Purpose and Objectives

The purpose of this Policy is to promote the vision of the Municipal Development Plan and local area plans to ensure that development and redevelopment reach their full potential near freight railways within acceptable risk levels.

This Policy supports the following objectives:

a) Protection for building occupants and buildings;
b) Mitigation of noise impacts from freight rail operations on residents in buildings near freight railways; and
c) Provide the planning process and landowners with a clear understanding of the potential risks and by doing so remove the need for individual risk assessments for most developments.

3 Applicability of the Policy

This Policy addresses the very specific situation of new development next to freight rail corridors. It is supplemented by the Implementation Guide which provides further detailed guidance on implementing the policies.

a) This Policy supplements other City plans and policies and is to be applied unless other statutory City policies prohibit new development adjacent to the freight railway corridors.
b) This Policy only applies to lands that are at most risk of the physical impacts of train derailments. These lands have been identified as 30 metres on either side of a freight railway corridor in a zone referred to as the *Rail Proximity Envelope (Envelope)* and as described in the Implementation Guide.
c) Land use districts vary along the freight railway corridors and allow for a wide range of potential uses. As not all uses have the same level of risk tolerance, this Policy only applies to High Density Residential and Commercial Uses (High Density Uses) and Sensitive Uses as identified in Table 1.
d) It is important to not burden existing buildings and businesses along the corridors with requirements not originally considered in their design. Therefore, this Policy only applies to new developments and additions to existing developments as well as changes of use to High Density Uses and Sensitive Uses as identified in Table 1 within the 30-metre *Envelope*.
e) The risks addressed in this policy are specific to freight rail operations as determined through the Assessment. Other forms of rail transportation in Calgary include Light Rail Transit lines. As they do not pose the same risk, this Policy does not apply to development and lands solely adjacent to Light Rail Transit.

4 Risk Mitigation

Developments that are within the *Envelope* are exposed to varying levels of risk due to the potential physical impacts of a train derailment based on the physical relationship between each parcel and the rail. To enable appropriate and desired new development, The City must understand the potential risks and subsequent mitigation measures that may be required. With this understanding, The City will be able to provide a consistent basis for decision-making that will support landowners in the development of their lands.

Consultation with experts, analyses based on a nationally used risk standard and comparison of other risk tolerance levels have enabled Administration to recommend annual probabilities of a train derailment leading to a fatality is one in 1,000,000 for High Density Uses and one in 3,333,333 for sensitive uses as acceptable tolerances respectively.

These risk tolerances have been determined based on the following:

- The number of people exposed to the potential risk of a train derailment;
- Ease of evacuation;
- Duration of exposure to the potential risk; and
- The occupants' ability to self-evacuate.

a) The City should utilize the Assessment of the risks to lands adjacent to the freight rail corridors and use this as a consistent basis with which to determine if mitigation measures are required.
b) The risks resulting from a train derailment depend on track and operational aspects as well as the size of planned buildings and the resulting likelihood that they would be impacted by a derailment. Mitigation measures should be required based on the risk tolerance established in The City's risk assessment as follows:
    i. Where the risk for a parcel is one in 3,333,333 or less no additional mitigation measures are required and development can proceed with standard planning review process;
    ii. Where the risk for a parcel is greater than one in 1,000,000 and the proposed development is for a High Density Use in a building that exceeds the *Maximum Building Width* as referenced in Table 1 of the Implementation Guide, a *Site-Specific Risk Assessment* is required;
    iii. Where the risk for a parcel is greater than one in 3,333,333 and the proposed development is for a Sensitive Use that exceeds the *Maximum Use Width* as referenced in Table 1 of the Implementation Guide, a *Site-Specific Risk Assessment is* required;
    iv. Where the risk for a parcel is greater than one in 3,333,333 and the proposed development is for a Sensitive Use in a building that exceeds the *Maximum Use Width* as referenced in Table 1 of the Implementation Guide, a *Train Impact Structural Review is* required.
c) Fatalities also occur when people trespass across the freight rail corridor. To mitigate this risk, new developments adjacent to the freight railway should be physically separated from the corridor by a fence or similar barrier that meets the conditions established in the Implementation Guide.

5 Noise Mitigation

Railway operations by their nature are noisy. The goals of the Municipal Development Plan are to direct future growth of the city in a way that fosters a more compact, efficient use of land, creates complete communities, provides good quality of life for citizens, creates liveable places, and provides safe and healthy communities. In order to achieve these goals and enable development adjacent to the freight rail corridor, it is important to manage the impact of noise associated with freight rail operations as it relates to uses where people live. These uses are identified in Table 1 as Noise Susceptible Uses.

a) Noise mitigation is only required for Noise Susceptible Uses that directly face the freight rail corridor and are located within the *Envelope*.
b) When located within the *Envelope*, noise levels should not exceed 35 dBA (Leq) in bedrooms and 40 dBA (Leq) in all other living spaces.
c) The noise standards can be achieved either through the completion of a noise study or by employing enhanced construction methods.

6 Mitigation Measures

Appropriate measures to mitigate safety and noise risks must be incorporated into new developments and as outlined in the Implementation Guide.

7 Vibration and Chemical Release (Advisory Statements)

Vibration caused by rail operations and potential chemical releases due to train accidents are also aspects that should be considered when developing adjacent to a freight railway corridor. Due to the complex nature of these issues, however, this Policy only provides advisory statements regarding vibration and chemical release.

Vibration

People can be sensitive to vibration generated by freight rail operations. Vibration impacts can include interference with sleep and activities involving concentration, reading and quiet conversation. The impact and mitigation of vibration associated with freight rail operations should be considered when planning and designing developments.

Chemical Release

To further protect the buildings and the building occupants from a potential chemical release due to a rail incident, the incorporation of mitigation strategies into existing and new buildings within the *Envelope* is encouraged.

8 Emergency Response Plan

In the event emergency response is required, access to the incident site is critical.

a) Access points for emergency response in established and new communities should be facilitated through existing public lands, at-grade crossings, roadway openings or adjacent publicly owned open spaces.
b) Private land owners are not required to dedicate portions of their development parcel for the purpose of accessing the freight rail corridor.

9 Review and Monitoring

It is recommended that the Implementation Guide be maintained in consultation with industry stakeholders. It should be reviewed every ten years with annual monitoring to evaluate the risk associated with freight rail operations.

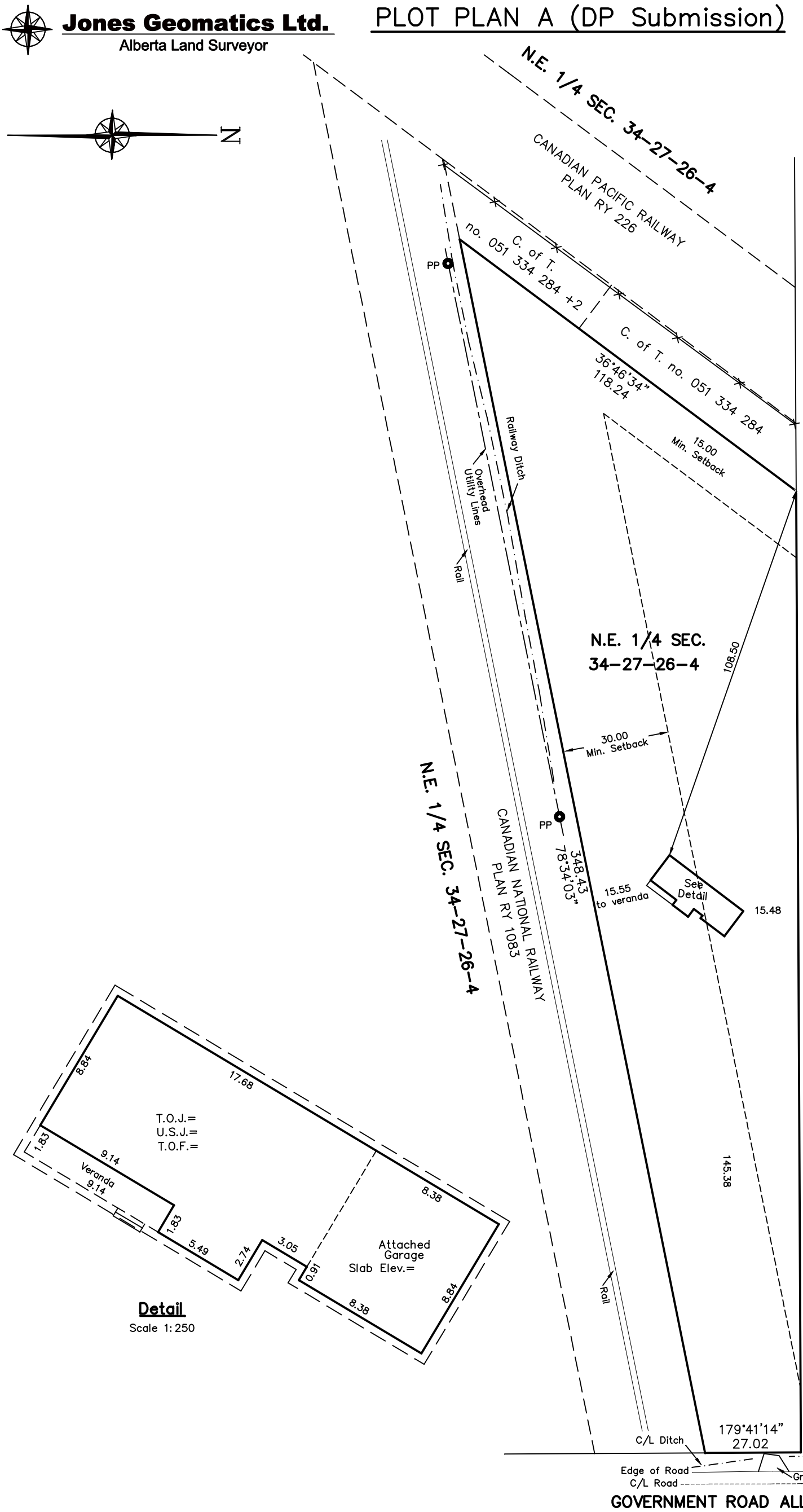
Table 1: High Density Residential and Commercial Uses, Sensitive Uses and Noise Susceptible Uses

High Density Residential and Commercial Uses	Sensitive Uses	Noise Susceptible Uses
- Hotel - Live Work Unit - Multi-Residential Development - Multi-Residential Development – Minor - Dwelling Unit - Townhouse - Office - Instruction Facility - Post-secondary Learning Institution - Health Services Laboratory – With Clients - Medical Clinic - Cannabis Counselling - Dinner Theatre - Drinking Establishment – Large - Drinking Establishment – Medium - Drinking Establishment – Small - Night Club - Restaurant: Food Services Only – Large - Restaurant: Food Services Only – Medium - Restaurant: Food Services Only – Small - Restaurant: Licensed – Large - Restaurant: Licensed – Medium - Restaurant: Licensed – Small - Restaurant: Neighbourhood - Artist's Studio	- Addiction Treatment - Assisted Living - Child Care Service - Custodial Care - Emergency Shelter - Home Based Child Care – Class 2 - Hospital - Jail - Residential Care - School Authority – School - School – Private - Temporary Shelter	- Addiction Treatment - Assisted Living - Backyard Suite - Child Care Service - Contextual Semi-detached Dwelling - Contextual Single Detached Dwelling - Cottage Housing Cluster - Custodial Care - Duplex Dwelling - Dwelling Unit - Emergency Shelter - Home Based Child Care – Class 2 - Hospital - Hotel - Jail - Live Work Unit - Manufactured Home Park - Multi-Residential Development - Multi-Residential Development – Minor - Residential Care - Rowhouse Building - School Authority – School - School – Private - Semi-detached Dwelling - Single Detached Dwelling - Townhouses

Tab 8

Jones Geomatics Ltd.
Alberta Land Surveyor
#20,1323-44th Ave. N.E.
Calgary, Alberta T2E 6L5
Ph. (403) 230-0778
Fax (403) 230-0714
E-mail: jonesgeo@telus.net

PLOT PLAN A (DP Submission)



Detail
Scale 1:250

CLIENT **REGINE LANDRY**

ALL DIMENSIONS AND SERVICES SHOWN MUST BE CONFIRMED BY CONTRACTOR PRIOR TO EXCAVATION

PORTION OF
N.E.1/4 SEC.34, TWP.27, RGE.26, W.4thM.
280003 RANGE ROAD 262
ROCKY VIEW COUNTY, ALBERTA
Scale: 1:1200

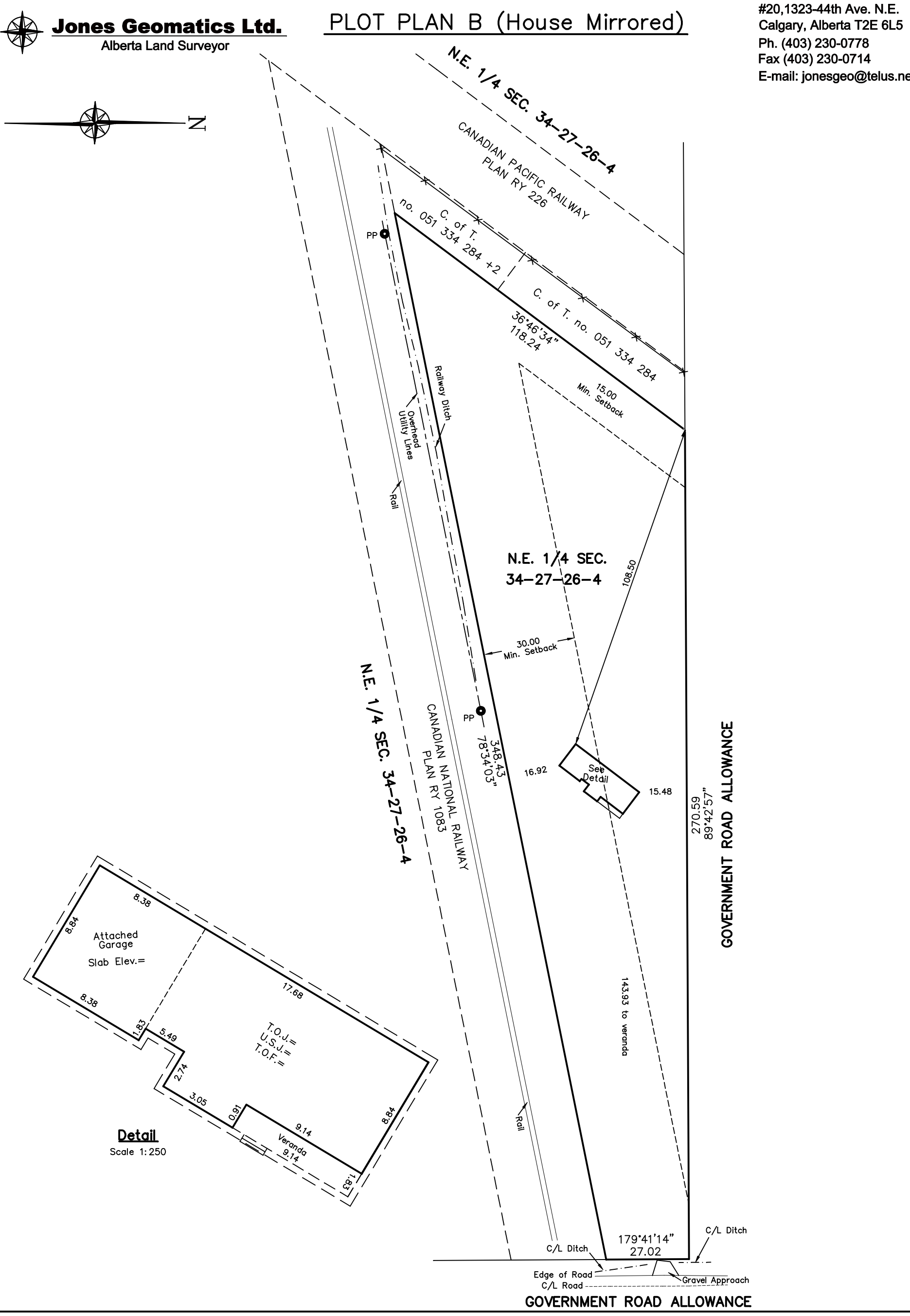
Suggested Grade _____
Lowest Top of Footing _____
Actual Top of Footing _____
Top of Main Floor Joist _____
Sanitary Sewer _____
Storm Sewer _____

Area of Lot 17379.14 SQ.M.
Area of House 237.490 SQ.M.
Remainder 17141.65 SQ.M.
Area of Coverage 1.2 %
Date: 12/07/22 File No. NP22283-22

YK

Jones Geomatics Ltd.
Alberta Land Surveyor
#20,1323-44th Ave. N.E.
Calgary, Alberta T2E 6L5
Ph. (403) 230-0778
Fax (403) 230-0714
E-mail: jonesgeo@telus.net

PLOT PLAN B (House Mirrored)



Detail
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CLIENT REGINE LANDRY

ALL DIMENSIONS AND SERVICES SHOWN MUST BE CONFIRMED BY CONTRACTOR PRIOR TO EXCAVATION

PORTION OF
N.E.1/4 SEC.34, TWP.27, RGE.26, W.4thM.
280003 RANGE ROAD 262
ROCKY VIEW COUNTY, ALBERTA

Scale: 1:1200

Suggested Grade _____
Lowest Top of Footing _____
Actual Top of Footing _____
Top of Main Floor Joist _____
Sanitary Sewer _____
Storm Sewer _____

Area of Lot 17379.14 SQ.M.
Area of House 237.490 SQ.M.
Remainder 17141.65 SQ.M.
Area of Coverage 1.2 %
Date: 12/07/22 File No. NP22283-22

YK

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Alberta Land Surveyor
#20,1323-44th Ave. N.E.
Calgary, Alberta T2E 6L5
Ph. (403) 230-0778
Fax (403) 230-0714
E-mail: jonesgeo@telus.net

PLOT PLAN C (9m NW)

N

N.E. 1/4 SEC. 34-27-26-4

CANADIAN PACIFIC RAILWAY
PLAN RY 226

C. of T. no. 051 334 284 +2

C. of T. no. 051 334 284

PP

36°46'34"
118.24

Railway Ditch

Overhead Utility Lines

Rail

15.00 Min. Setback

N.E. 1/4 SEC. 34-27-26-4

30.00 Min. Setback

100.13

PP

348.43
78°34'03"

22.18 to veranda

See Detail

10.10

CANADIAN NATIONAL RAILWAY
PLAN RY 1083

N.E. 1/4 SEC. 34-27-26-4

270.59
89°42'57"

GOVERNMENT ROAD ALLOWANCE

152.40

Rail

179°41'14"
27.02

C/L Ditch

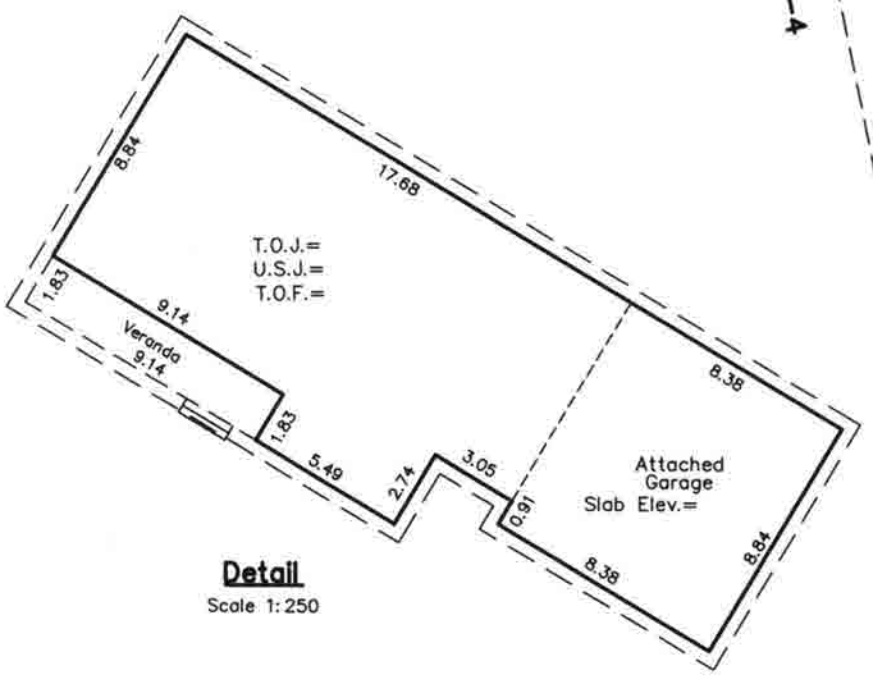
C/L Ditch

Edge of Road

C/L Road

Gravel Approach

GOVERNMENT ROAD ALLOWANCE



Detail
Scale 1:250

CLIENT **REGINE LANDRY**

ALL DIMENSIONS AND SERVICES SHOWN MUST BE CONFIRMED BY CONTRACTOR PRIOR TO EXCAVATION

PORTION OF
N.E.1/4 SEC.34, TWP.27, RGE.26, W.4thM.
280003 RANGE ROAD 262
ROCKY VIEW COUNTY, ALBERTA

Scale: 1:1200

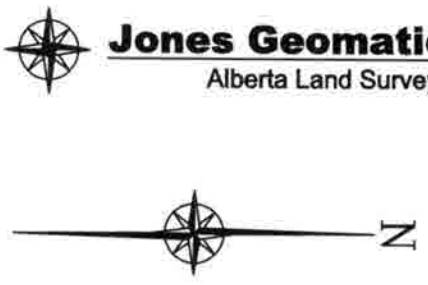
Suggested Grade _____
Lowest Top of Footing _____
Actual Top of Footing _____
Top of Main Floor Joist _____
Sanitary Sewer _____
Storm Sewer _____

Area of Lot 17379.14 SQ.M.
Area of House 237.490 SQ.M.
Remainder 17141.65 SQ.M.
Area of Coverage 1.2 %
Date: 12/07/22 File No. NP22283-22

YK

PLOT PLAN D (Building Envelope)

Jones Geomatics Ltd.
Alberta Land Surveyor
#20,1323-44th Ave. N.E.
Calgary, Alberta T2E 6L5
Ph. (403) 230-0778
Fax (403) 230-0714
E-mail: jonesgeo@telus.net



N.E. 1/4 SEC. 34-27-26-4

CANADIAN PACIFIC RAILWAY
PLAN RY 226

C. of T. no. 051 334 284 +2

C. of T. no. 051 334 284

PP

36°46'34"
118.24

15.00 Min. Setback

Railway Ditch

Overhead Utility Lines

30.00 Min. Setback

45.00 Min. Setback

Rail

Building Envelope Area
0.018ha / 0.044ac

N.E. 1/4 SEC.
34-27-26-4

CANADIAN NATIONAL RAILWAY
PLAN RY 1083

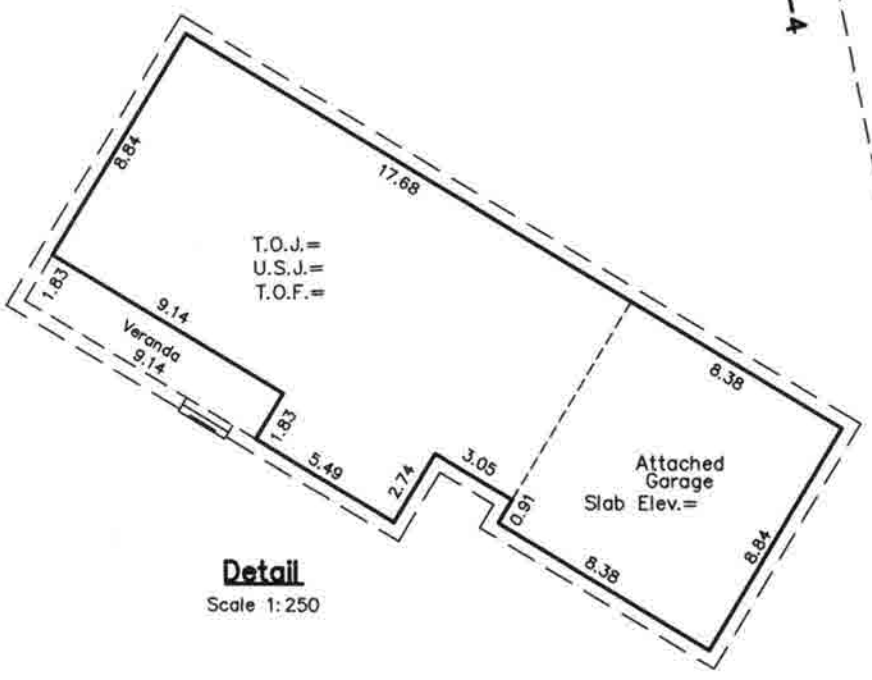
PP

348.43
78°34'03"

N.E. 1/4 SEC. 34-27-26-4

270.59
89°42'57"

GOVERNMENT ROAD ALLOWANCE



Detail
Scale 1:250

Rail

179°41'14"
27.02

C/L Ditch
C/L Ditch
Edge of Road
C/L Road
Gravel Approach

GOVERNMENT ROAD ALLOWANCE

CLIENT **REGINE LANDRY**

ALL DIMENSIONS AND SERVICES SHOWN MUST BE CONFIRMED BY CONTRACTOR PRIOR TO EXCAVATION

PORTION OF
N.E.1/4 SEC.34, TWP.27, RGE.26, W.4thM.
280003 RANGE ROAD 262
ROCKY VIEW COUNTY, ALBERTA
Scale: 1:1200

Suggested Grade _____
Lowest Top of Footing _____
Actual Top of Footing _____
Top of Main Floor Joist _____
Sanitary Sewer _____
Storm Sewer _____

Area of Lot 17379.14 SQ.M.
Area of House 237.490 SQ.M.
Remainder 17141.65 SQ.M.
Area of Coverage 1.2 %
Date: 12/07/22 File No. NP22283-22

YK

Tab 9

1957
*Mar. 15
Oct. 1
1958
**Jun. 9, 10
***Dec. 18

VIC RESTAURANT INCORPORATED (*Plaintiff*) ..... APPELLANT;

AND

THE CITY OF MONTREAL (*Defendant*) ..... RESPONDENT.

ON APPEAL FROM THE COURT OF QUEEN'S BENCH, APPEAL SIDE, PROVINCE OF QUEBEC

Constitutional law—Municipal corporations—By-laws—Validity—Licensing of restaurants and places of amusement—Licence requiring approval of chief of police—Whether delegation of power of municipality—Charter of the City of Montreal, ss. 299, 299a, 300, 300(c).

Courts—Supreme Court of Canada—Jurisdiction—Mandamus for issuance of licence to operate restaurant—Licence would have expired prior to notice of appeal—Restaurant sold prior to argument in this Court—Whether lis remains between parties.

By-law no. 1862 of the City of Montreal, which provides for the licensing of restaurants and establishments licensed by provincial authorities to sell liquor, and which requires the prior approval of, among others, the director of the police department, is not within the powers of the City under its charter. (Taschereau, Fauteux and Abbott JJ., *contra.*)

The plaintiff company applied to the City of Montreal for a renewal of its permits to sell liquor and to operate a restaurant for the year 1955-56, as required by by-law 1862. The director of police refused his approval and the permits were not granted. The plaintiff applied for a writ of mandamus and contended that the by-law was *ultra vires*. The application was dismissed by the trial judge and by the Court of Appeal.

The appeal to this Court was first argued in March 1957, and a rehearing was ordered in October 1957. The business was sold prior to the second argument in this Court. The restaurant had been permitted to operate without a licence in the years 1955, 1956, 1957, however, some ten charges had been laid against it and were held in abeyance pending the determination of this appeal. Leave to amend was asked for the years 1955-58 inclusive.

Held (Taschereau, Fauteux and Abbot JJ. dissenting): The plaintiff was entitled to an order directing that a permit be issued for the year 1955.

Per curiam: The motion for leave to amend the conclusions of the petition should be dismissed.

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*PRESENT: Taschereau, Rand, Locke, Fauteux and Abbott JJ.

**PRESENT: Kerwin C.J. and Taschereau, Rand, Locke, Cartwright, Fauteux, Abbott, Martland and Judson JJ.

***The Chief Justice, owing to illness, did not take part in the judgment.

Per Rand, Locke, Martland and Judson JJ.: The City of Montreal, in regards to the granting or withholding of licences, has the powers and only the powers vested in it by its charter. That charter does not authorize or purport to authorize the delegation to the director of police or to anyone else of the power to fix the terms upon which permits may be granted. The by-law is therefore in this respect beyond the powers of the council. The good government clause in s. 299 of the charter is no warrant for what is being attempted, since ss. 299 and 300 have granted specific authority to the council in respect of the matter.

The by-law contains no directions to the director of police as to the manner in which he is to exercise the discretion given to him and accordingly he could refuse to give his approval upon any ground which he might consider sufficient. For the council to say that before the licence is to be issued the director, in his discretion, may prevent its issue by refusing approval is not to fix the terms but is rather an attempt to vest in the director power to prescribe the terms upon which the right to a licence depends.

The fact that by-law 247 defines the duties of the members of the city police force to include, *inter alia,* the duty to cause the public peace to be preserved and to see that all the laws and ordinances are enforced cannot assist the position of the city in the matter of the delegation of the power vested in council. Nor is the matter affected by the language of s. 57 of the *Interpretation Act* which provides that "the authority to do a thing shall carry with it all the powers necessary for that purpose" since the power to delegate quasi-judicial functions in the matter of licences was not given to the council.

Bridge v. The Queen, [1953] 1 S.C.R. 8, followed; *Merritt v. Toronto,* 22 O.A.R. 205; *Re Kiely,* 13 O.R. 451; *Re Elliott,* 11 Man. R. 358; *Hall v. Moose Jaw,* 12 W.L.R. 693, and *Rex v. Sparks,* 18 B.C.R. 116, approved.

As the sole ground of the refusal was that the director of police had refused to give his approval, the plaintiff was, as of the date of its application for a writ of *mandamus,* entitled to an order directing that a permit be issued for the year 1955.

The fact that the licence year for which the permit was sought had expired before the appeal came before this Court did not affect its jurisdiction to declare the rights of the plaintiff. *Archibald v. De Lisle,* 25 S.C.R. 1; *Coca-Cola Co. v. Matthews,* [1944] S.C.R. 385; *Regent Taxi & Transport v. Congrégation des Petits Frères de Marie,* [1932] A.C. 295, referred to.

Per Rand and Cartwright JJ.: The portions of the by-law which require approval of the director of police are fatally defective in that no standard, rule or condition is prescribed for the guidance of the director in deciding whether to give or to withhold his approval. The effect of the by-law is to leave it to the director, without direction, to decide whether an applicant should or should not be permitted to carry on any of the numerous lawful callings set out in the by-law. The suggestion that because the director is charged with the duty of maintaining the public peace and enforcing the penal laws of the land he is thereby sufficiently instructed as to the standard to be applied and the conditions to be looked for in deciding whether to grant his approval of an application, cannot be accepted.

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The rule that this Court will not entertain an appeal if, *pendente lite*, the subject-matter has ceased to exist or other circumstances have arisen by reason of which the Court could make no order effective between the parties except as to costs, is one of practice which the Court may relax. In the special circumstances of this case, the appeal should be entertained.

Per Taschereau, Fauteux and Abbott JJ., *dissenting:* There was no delegation by the council of its legislative authority. The discretion as to what the by-law shall be should not be confused with the discretion it conferred as to its execution. In order to give full effect to ss. 299 and 300 and to extend and complete the same so as to secure full autonomy for the city and to avoid any interpretation of such sections or their paragraphs which might be considered as a restriction of its powers, the city is authorized by s. 300(*c*) to adopt, repeal or amend and to carry out all necessary by-laws concerning the proper administration of its affairs. This section derogates from the strictness of the principle generally applicable and referred to in *Phaneuf v. Corporation du village de St. Hugues,* 61 Que. K.B. 83.

The by-law gives to each director a precise direction as to the considerations which should guide him in the exercise of the authority conferred and the discharge of the duty imposed upon him by the by-law, and these considerations are none other than the special considerations presiding at the establishment of each department and governing its maintenance and effective operation. It is therefore not open to the director of a department to decide arbitrarily in the case of a request for a permit, and no exception is made in the case of the police department.

There was no conflict between by-law 1862 and the Quebec *Alcoholic Liquor Act*.

The finding of the Courts below that the refusal to approve was not arbitrary, unjust or discriminatory was not shown to have been erroneous.

There was no substance in the objection that the refusal was made by the assistant director of police.

In the present case, the question as to whether this Court should entertain the appeal is not limited to ascertaining whether the Court should adopt the practice followed in cases where there is only a question of costs to be determined but includes as well that of deciding whether the Court has the power to render a judgment different from that which the Court of Appeal could have rendered in similar circumstances. Had the fact of the sale of the restaurant been established before either the Superior Court or the Court of Appeal, as it was before this Court, those Courts would have been powerless to adjudicate on the merits of the original issue.

APPEAL from a judgment of the Court of Queen's Bench, Appeal Side, Province of Quebec[1], affirming a judgment of Prévost J. Appeal allowed, Taschereau, Fauteux and Abbott JJ. dissenting.

J. Ahern, Q.C., for the plaintiff, appellant.

[1] [1957] Que. Q.B. 1.

L. Tremblay, Q.C., and *T. Lespérance,* for the defendant, respondent.

The judgment of Taschereau, Fauteux and Abbott JJ. was delivered by

FAUTEUX J. (*dissenting*):—En avril 1955, la compagnie appelante exploitait un café-restaurant au nº 97 est, de la rue Ste-Catherine, à Montréal, ayant droit d'y servir des liqueurs alcooliques suivant un permis émis pour son bénéfice par la Commission des Liqueurs de Québec, au nom de Vincent Cotroni, l'un des directeurs de la compagnie et, à toutes fins pratiques, maître de l'établissement. Avant la fin du mois, date d'expiration des permis annuels exigés et accordés par la cité pour cette exploitation, l'appelante demanda au directeur des finances de l'intimée de nouveaux permis couvrant l'exercice financier 1955-1956, soit (i) le permis exigé par la section 20 du règlement 1862 pour toute personne qui détient un permis de la Commission des Liqueurs pour la vente des liqueurs alcooliques, et qui de fait en vend, pour consommation sur les lieux et (ii) le permis exigé par la section 8 du même règlement pour un restaurant. Cette demande de l'appelante fut accompagnée de l'offre du montant prescrit pour chacun des cas. Le règlement 1862 vise quelque soixante-et-dix cas, exercice d'activités, usage de choses ou garde d'animaux ou d'articles, où la cité exige un permis dont la demande doit, suivant la nature du permis recherché, être soumise à la considération d'un ou plusieurs services établis par la cité, soit les services d'urbanisme, de santé, d'incendie, de police ou de la division des marchés. L'article 2(B) du règlement statue qu'aucun permis ne peut être émis par le directeur des finances à moins qu'il n'obtienne l'approbation écrite de chacun des directeurs des services concernés. Le directeur du service de la police, l'un des services concernés en l'espèce, refusa son approbation et les permis ne purent être accordés.

L'appelante s'est alors adressée à la Cour supérieure par voie de *mandamus*. Alléguant dans sa demande que le règlement est en partie *ultra vires* de la cité, et que ce refus d'approbation du directeur du service de la police était illégal et arbitraire, elle a conclu à ce que le bien-fondé de ces allégations soit reconnu au jugement et qu'il soit

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enjoint à la cité et à ses officiers d'émettre les permis demandés. La cité plaida particulièrement la validité du règlement et la légalité du refus d'approbation. La Cour supérieure a rejeté les prétentions de l'appelante et cette décision fut confirmée à l'unanimité par la Cour d'appel[1]. D'où le pourvoi devant cette Cour.

A la suite d'une première audition, cette Cour formula trois questions sur lesquelles elle ordonna une réaudition. Cette réaudition eut lieu les 9 et 10 juin derniers. La première se lit comme suit:

> In view of the fact that the licence period in respect of which the *mandamus* was sought would have expired on May 1, 1956, prior to the giving of the notice of appeal to this Court, is there any issue remaining between the parties other than as to costs?

Suivant la jurisprudence citée par M. le Juge Taschereau dans *Switzman v. Elbling and Attorney General of Quebec*[2], aux pages 290 *et seq.*, cette Cour refuse d'entretenir un appel dans les cas où il ne reste autre chose à déterminer entre les parties qu'une simple question de frais; et c'est là la raison d'être de cette première question. La pertinence de cette question est devenue subséquemment encore plus manifeste en raison d'un fait posé par l'appelante elle-même quelque temps seulement avant la réaudition, soit la vente de son exploitation à Pal's Café Inc.

Vu l'avis de la majorité des membres de cette Cour sur ce premier point et que, dans mon opinion, l'appel doit, de toutes façons, être rejeté sur le mérite, je ne vois aucune utilité à discuter de la question. Je dirai, cependant, qu'à mes vues, il ne fait aucun doute qu'entre les parties,—et c'est ce qui doit nous guider dans la détermination de la question,—il ne saurait rester devant la Cour, en raison surtout de l'acte posé par l'appelante elle-même, soit la vente de son établissement, qu'une simple question de frais. Il ne s'agit pas ici d'une référence. Et les questions au mérite, y compris celle de la validité du règlement, sont clairement, dans la présente cause, devenues, entre les parties, des questions purement académiques.

Suivant la *Loi de la Cour Suprême,* S.R., c. 139, cette Cour peut prononcer le jugement et décerner l'adjudication ou autre ordonnance que la Cour, dont le jugement est

[1] [1957] Que. Q.B. 1.
[2] [1957] S.C.R. 285, 7 D.L.R. (2d) 337, 117 C.C.C. 129.

porté en appel, aurait dû prononcer ou décerner. L'art. 541 du *Code de procédure civile* prescrit qu'un jugement doit contenir les causes de la demande et doit être susceptible d'exécution; et l'art. 996, relatif au jugement final en matière de *mandamus,* statue que si la requête est déclarée bien fondée, le juge peut ordonner l'émission d'un bref péremptoire, enjoignant au défendeur de faire l'acte requis. Il me paraît bien évident que si le fait de cette vente s'était présenté et avait été établi, comme il l'a été devant cette Cour, au temps où la Cour supérieure ou la Cour d'appel étaient saisies de cette cause, que ces Cours n'auraient pu adjuger que sur la question de frais. Le fait de cette vente fait disparaître la raison de la demande de *mandamus* et la demande de *mandamus* elle-même. Dans le cas qui nous occupe, la question ne se limite pas à savoir si cette Cour doit adopter la ligne de conduite suivie dans les cas où il n'y a qu'une question de frais à déterminer, mais comprend également celle de savoir si la Cour a le pouvoir de rendre un jugement autre que la Cour d'appel, placée dans les mêmes circonstances, aurait pu rendre.

La situation ici est différente de celle qui se présentait dans la cause de *Switzman v. Elbling and Attorney General of Quebec, supra,* en ce que dans cette dernière, la contestation engagée par l'intervention du Procureur Général sur la validité de la loi attaquée, demeurait sujette à détermination par jugement final.

* * *

Les deux autres questions posées par cette Cour portent sur la validité du règlement et, suivant l'ordre dans lequel elles sont posées, il y sera ci-après référé comme première et deuxième question. Il convient de noter immédiatement que le règlement attaqué vise quelque soixante-dix cas où des permis sont requis, et que, suivant la preuve au dossier, il y a environ soixante-quinze mille demandes de permis faites annuellement à la cité de Montréal.

Ces deux questions sont libellées comme suit:

Does the portion of By-Law 1862 complained of amount to a delegation of legislative authority vested in the City Council to the Director of the Police Department?

If the portion of By-Law 1862 complained of amounts to a delegation of the legislative authority vested in the City Council to the Director of the Police Department, is the by-law *ultra vires* as infringing the principle stated in *Biggar's Municipal Manual,* pp. 238-239; *Meredith*

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and Wilkinson's Canadian Municipal Manual, at p. 265, and *Robson and Hugg's Municipal Manual,* at p. 347. Argument is requested as to the application of the following cases:—

Re Kiely (1887) 13 O.R. 451, *Reg. v. Webster* (1888) 16 O.R. 187, *Merritt v. City of Toronto* (1895) 22 A.R. 215, *Re Elliott* (1896) 11 M.R. 358, *Taylor v. City of Winnipeg,* 11 M.R. 420, *Hall v. City of Moose Jaw* (1910) 12 W.L.R. 693, *Rex v. Sparks* 18 B.C.R. 116, *Bridge v. The Queen* 1953 1 S.C.R. 8.

La deuxième question ne présente aucun problème. Personne, en effet, n'a songé à contester que si le conseil de la cité a, par le règlement en question, délégué à qui que ce soit une autorité législative dont seul il était nanti par la Législature, le règlement est *ultra vires* du conseil.

De plus, et en toute déférence, j'ajouterai immédiatement que les décisions mentionnées, en fin de cette question, bien que s'appuyant sur des principes généralement applicables en la matière, ne peuvent, à mon avis, avoir sur la première question posée par la Cour, aucun caractère décisif; car, ainsi qu'il apparaîtra ci-après, les dispositions de la charte de la cité de Montréal et celles de l'art. 2(B) du règlement de la cité sont toutes deux fondamentalement différentes des dispositions gouvernant l'autorité législative des municipalités concernées dans ces décisions et des règlements qu'elles ont adoptés.

Aussi bien, la seule question qui doit nous occuper, est-elle de savoir si le conseil de la cité a délégué son pouvoir législatif en édictant cet art. 2(B) du règlement 1862, ou, pour être plus précis, si, aux termes de cet article, le conseil de la cité a délégué aux directeurs des services municipaux l'autorité de faire la loi sur les conditions auxquelles un permis peut être obtenu,—ce qui impliquerait une délégation de la discrétion donnée au conseil par la Législature—ou si, au contraire, aux termes de cet article, le conseil de la cité a lui-même fait la loi sur la question, *i.e.,* indiqué ces conditions et conféré aux directeurs de services une autorité et une discrétion relatives à l'exécution de cette loi dans chaque demande de permis. Ainsi qu'il est opportunément précisé dans McQuillin, Municipal Corporations, 3rd ed., vol. 2, no. 10.40:

> There is a distinction between the delegation of power to make a law, which involves a discretion as to what the law shall be, and conferring an authority or discretion as to its execution, to be exercised under and in pursuance of the law. The first cannot be done legally, but there is no objection to the latter.

En somme, la discrétion conférée pour faire un règlement ne peut être confondue avec la discrétion que ce règlement accorde aux fins de son exécution.

Il faut donc considérer l'autorité législative, donnée par la Législature de Québec à la cité de Montréal, en tenant compte de toute règle spéciale d'interprétation établie dans la charte par la Législature, et examiner ensuite l'art. 2(B) du règlement, en l'interprétant, non pas isolément, mais à la lumière des autres ordonnances municipales qu'il incorpore par référence expresse, afin de lui donner son sens, son esprit et sa fin véritables.

La charte de la cité.—L'art. 299 de la charte de la cité de Montréal, 62 Vict., c. 58, donne au conseil de la cité la juridiction la plus étendue pour faire des règlements "concernant la paix, l'ordre, le bon gouvernement et le bien-être général de la cité de Montréal et toutes les matières qui intéressent et affectent ou qui pourront intéresser et affecter la cité de Montréal comme cité et comme corporation, pourvu toutefois que ces règlements ne soient pas incompatibles avec les lois de cette province ou du Canada ni contraires à quelque disposition spéciale de cette charte".

L'article 300, section 22, de la charte décrète:

300. Et, sans limiter les pouvoirs et l'autorité conférés au conseil par l'article précédent, le conseil de la cité, pour les fins et pour les objets compris dans l'article précédent ainsi que pour les matières énumérées dans le présent article, a autorité:

* * *

22. Pour prescrire moyennant quel montant, à quelles conditions et de quelle manière sont octroyés les permis non incompatibles avec la loi et sujets aux dispositions de la présente charte, pourvu qu'aucun permis ne soit octroyé pour plus qu'une année;

L'article 300(*c*) décrète:

300c. Afin de donner plein effet aux articles 299 et 300, *de les étendre et de les compléter de façon à assurer la complète autonomie de la cité et à éviter toute interprétation de ces articles ou de leurs sous-sections, qui pourrait être considérée comme une restriction de ses pouvoirs,* la cité est autorisée à faire, abroger ou amender et mettre à exécution tous les règlements nécessaires concernant la bonne administration de ses affaires, la paix, l'ordre, la sécurité *ainsi que toutes les matières pouvant intéresser ou affecter de quelque manière que ce soit l'intérêt public et le bien-être des citoyens;* pourvu toutefois que ces règlements ne soient pas incompatibles avec les lois du Canada ou de cette province, ni contraires à quelque disposition spéciale de cette charte.

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Les dispositions de cet article, sur lesquelles s'appuie particulièrement le jugement de la Cour d'Appel, dérogent manifestement de la rigueur du principe généralement applicable et auquel Sir Mathias Tellier, alors juge en chef de la province de Québec, référait dans *Phaneuf v. Corporation du Village de St-Hugues*[1], dans les termes suivants:

> En matière de législation, les corporations municipales n'ont de pouvoirs que ceux qui leur ont été formellement délégués par la Législature; et ces pouvoirs, elles ne peuvent ni les étendre ni les excéder.

Dans aucune des décisions, mentionnées en fin de la deuxième question soumise par cette Cour, appert-il que les municipalités dont les règlements furent attaqués aient reçu un semblable pouvoir de la Législature. C'est là une particularité distinguant fondamentalement le pouvoir législatif de la cité de Montréal de celui de ces municipalités. La Législature de Québec ne pouvait en termes plus clairs manifester l'intention d'assurer l'autonomie complète de la cité et de prohiber toute interprétation restrictive du pouvoir législatif conféré.

Le règlement.—L'article 2(B) du règlement 1862 se lit comme suit:

> Art. 2(B) Toute personne désirant un permis en vertu du présent règlement doit faire sa demande au directeur des finances sur la formule requise. Avant l'émission d'un permis, le directeur des finances est requis d'obtenir l'approbation écrite de chacun des directeurs des services concernés. Si cette approbation écrite n'est pas donnée par tous les directeurs concernés, ledit directeur des finances informera le demandeur, par écrit, que le permis ne sera pas émis.

A la suite de l'art. 2(M), apparaît un groupe de sections numérotées de 1 à 70. Chacune d'elles mentionne soit l'exercice d'une activité, soit l'usage ou la garde d'une chose ou d'un animal, où un permis est exigé, et indique le ou les services concernés en l'espèce.

Les services dont il est question dans ces sections sont tous des services municipaux, établis sous l'autorité de la charte de la cité, soit les services de l'urbanisme, des incendies, de police, de santé ou de la division des marchés.

Ce qu'il faut entendre par les expressions "services concernés" ou "directeurs concernés", mentionnées en l'article 2(B), est très clair. Tel que généralement défini, le mot "concerné" et le mot "concerned", apparaissant respectivement dans la version française et dans la version anglaise,

[1] (1936), 61 Que. K.B. 83 at 90.

signifient "intéressé", "affecté", "interested", "affected". C'est là le sens que la Cour d'Appel d'Ontario a donné à ce mot dans *Nichol School Trustees v. Maitland*[1]. Que, dans la réglementation qui nous occupe, les expressions "services concernés" ou "directeurs concernés" signifient "services et directeurs intéressés et affectés", résulte clairement de cette relation qui, en raison des divers hasards, risques ou dangers que peut, suivant l'expérience, comporter, dans la métropole, l'exercice d'une activité déterminée, et en raison du service particulier établi pour y parer, apparaît généralement dans ces sections, entre la nature de l'activité assujettie à un permis et le service particulier qui est déclaré concerné par la demande de ce permis. C'est ainsi que pour le commerce en gros ou en détail de bois, charbon ou huile de chauffage, le conseil prescrit que les services concernés sont ceux de l'urbanisme, d'incendie et de police; et que pour l'exercice des diverses activités où entrent des produits alimentaires, c'est le service de la santé à qui l'autorité et le devoir d'enquêter sur la demande de permis sont donnés et imposés, respectivement.

Il faut attribuer un sens et donner un effet à cette sélection et à cette raison sur laquelle elle se fonde. L'intérêt qu'un service, déclaré intéressé ou affecté par une demande de permis, peut avoir en celle-ci, ne peut être autre que celui pour la promotion duquel ce service est institué et maintenu en opération sous l'autorité de la charte et des règlements où sont définies ses responsabilités propres.

Saisi d'une demande de permis, où le service des incendies et celui de la santé sont déclarés concernés, le directeur du service des incendies comprendra sûrement que, pour donner un sens et un effet à cette réglementation, c'est au regard des responsabilités propres à son service, et non à celles qui sont propres au service de la santé, qu'il doit considérer la demande aux fins de l'approbation recherchée de lui-même.

Le règlement donne donc à chaque directeur de service une direction précise quant aux considérations qui doivent le guider dans l'exercice de l'autorité conférée et l'accomplissement du devoir imposé par ce règlement, considérations qui ne sont autres que celles qui président à

[1] (1899), 26 O.A.R. 506.

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l'institution, au maintien et à l'effective opération du service. En somme, cette direction, donnée par le réglement au directeur du service concerné, est de ne pas approuver la demande de permis si l'approuver serait promouvoir la réalisation de ces hasards, risques ou dangers que le service qu'il dirige a précisément pour mission de prévenir ou combattre. C'est là une condition que le conseil de la cité avait, en vertu des pouvoirs à lui donnés par la Législature, l'autorité d'imposer pour l'obtention d'un permis.

Aussi bien me paraît-il impossible d'admettre qu'en vertu de cette réglementation,—fondamentalement différente, dans sa structure et ses termes, des réglementations considérées dans les causes citées en fin de la deuxième question posée par la Cour,—il soit loisible à un directeur de service de décider arbitrairement de la demande d'un permis. Ce directeur est lié par la directive du conseil et, s'il s'en écarte, il n'exerce plus ni la discrétion ni la juridiction qui lui ont été conférées, et la décision qu'il prétend rendre reste assujettie au pouvoir de contrôle des tribunaux, sinon au pouvoir de contrôle du conseil de la cité sur ses propres officiers.

Le conseil de la cité a non seulement le droit d'émettre des licences, mais il a aussi celui de prélever des argents par l'imposition de taxes; et rien ne s'oppose à ce que ces deux droits soient exercés simultanément dans un même règlement. De fait, le règlement mentionne certains cas d'exercice d'activités, usage ou garde d'animaux ou d'articles, n'offrant aucun de ces risques, hasards ou dangers. Dans ces cas particuliers, il est bien évident que si on applique le règlement tel qu'ici interprété, la demande de permis, vu l'absence de ces risques, hasards ou dangers, devra nécessairement être approuvée. Aussi bien, et en tout respect, je ne vois pas que la mention au règlement de ces cas particuliers puisse justifier le rejet de cette interprétation dans tous les autres cas où—comme dans celui qui nous occupe—ces risques, hasards ou dangers sont présents et où c'est au directeur du service institué pour les conjurer ou les combattre, que doit être soumise la demande d'approbation.

A la vérité, l'appelante a admis la validité des dispositions de l'article 2(B) et des sections 8 et 20, en ce qu'elles exigent l'approbation des directeurs de tous les services y mentionnés, sauf en ce qui concerne celle du directeur du service de la police. Ce service, soumet-elle,—et c'est là, sur la question de délégation, le seul grief invoqué par elle devant toutes les Cours,—n'est l'objet d'aucun contrôle par règlement, contrairement à ce qui est le cas pour les autres services; le conseil de la cité aurait ainsi abandonné à l'arbitraire du directeur du service de la police la détermination des conditions d'obtention de permis.

Rien dans l'article 2(B) n'autorise d'en varier l'interprétation suivant qu'il s'agisse du service de la police ou d'un autre service municipal.

Comme les autres services, celui de la police est établi sous l'autorité de la charte. La section 2 du règlement no 247, règlement qui établit ce service, prescrit en partie ce qui suit, en ce qui concerne le directeur de ce service:

> Il sera de son devoir de faire maintenir la paix publique, d'assurer la protection de la propriété et de voir à ce que les lois et ordonnances soient observées et mises en vigueur. Et chaque fois que quelque infraction à une de ces lois ou ordonnances viendra ou sera portée à sa connaissance, il en fera faire une plainte régulière et verra à ce que les témoignages nécessaires soient produits pour établir la culpabilité des contrevenants ou inculpés.

L'exécution de ce devoir de maintenir la paix publique et de protéger la propriété commence, évidemment, avant que ne soient actuellement violés la paix publique et le droit de propriété. Ce devoir spécifique a donc, en particulier, autant que celui qui est imposé au directeur du service des incendies et à celui du service de santé, un caractère préventif. Et, comme c'est le cas pour les directeurs des autres services, le directeur du service de la police est, en ce qui regarde l'examen et la décision d'une demande de permis, soumis à la même directive quant aux considérations dont il doit tenir compte dans l'exercice de l'autorité et du devoir qui lui sont assignés par le règlement.

Aussi bien, la prétention que le règlement ferait, quant à lui, une exception, et lui permettrait de disposer arbitrairement et à sa convenance des demandes de permis qui lui sont référées par le règlement lui-même, me paraît intenable. Dans l'exercice de son pouvoir discrétionnaire,

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il se peut, dans son cas comme dans celui des autres directeurs de services, qu'il abuse de son pouvoir; mais cet abus ne va pas à la validité de l'établissement de ce pouvoir.

Pour terminer, sur ce point, je dois ajouter que la décision rendue par cette Cour dans *Bridge v. The Queen*[1] n'est, à mon avis, d'aucune assistance à la solution de la question qui nous occupe. Dans cette cause, le conseil de la cité de Hamilton, assumant agir sous l'autorité des arts. 82(3) et 82(*a*) d'une loi intitulée *The Factory, Shop and Office Building Act,* R.S.O. 1937, c. 194, adopta un règlement aux termes duquel il fut particulièrement décrété que le greffier de la cité devait omettre de la liste des ayants-droit de certains permis, ceux qui, "*according to evidence satisfactory to the city clerk*", avaient omis de tenir leurs établissements ouverts, tel qu'autorisé. Considérant les arts. 82(3) et 82(*a*) de la loi précitée, cette Cour a conclu à l'invalidité et M. le Juge Cartwright, parlant pour la majorité, s'en est exprimé comme suit:

> It is within the powers of the Council to prescribe a state of facts the existence of which shall render an occupier ineligible to receive a permit for a stated time; but express words in the enabling Statute would be necessary to give the Council power to confer on an individual the right to decide, on such evidence as he might find sufficient, whether or not the prescribed state of facts exists and there are no such words.

Si, pour donner à l'art. 2(B) du règlement de la cité, comme ci-dessus indiqué, son sens, son esprit et sa fin véritables, on doit adopter l'interprétation précitée, il s'ensuit que le conseil de la cité de Montréal a effectivement indiqué la situation dans laquelle un directeur de service ne doit pas donner son approbation à une demande de permis. Le conseil confère à ce dernier le droit de vérifier, dans chaque cas, si cette situation existe et la décision a prendre doit reposer "on such evidence as is sufficient" et non pas "on such evidence as he might find sufficient." De toutes façons, les dispositions des arts. 82(3) et 82(*a*) de *The Factory, Shop and Office Building Act, supra,* ne donnent, contrairement à ce qui est le cas à l'art. 300(*c*) de la charte de la cité de Montréal, aucune autorité aux cités, villes et villages ayant droit de se prévaloir de cette loi, d'étendre et de compléter l'autorité législative conférée et l'autorité de faire les règlements nécessaires pour assurer

[1] [1953] 1 S.C.R. 8; 104 C.C.C. 170, 1 D.L.R. 305

la bonne administration de leurs affaires. Aussi bien, le *ratio decidendi* dans *Bridge v. The Queen, supra,* ne saurait trouver d'application en la présente cause. Je ne crois pas qu'il y ait lieu de s'attarder à démontrer que, pour assurer la bonne administration de ses affaires et pour rendre possible l'application de ce règlement relatif à l'émission des permis, et disposer annuellement de 75,000 demandes de permis, il était nécessaire pour le conseil de la cité de conférer aux directeurs des services concernés l'autorité pour en disposer conformément à la directive donnée au règlement.

L'appelante a prétendu de plus que la section 20 du règlement 1862 subordonne l'exercice du droit lui résultant du permis de la Commission des Liqueurs, à l'approbation du directeur du service de la police et que pour autant la section est *ultra vires* du conseil de la cité vu que seule, suivant la *Loi des Liqueurs Alcooliques de Québec,* S.R.Q. 1941, c. 255, la Commission des Liqueurs de Québec a le droit d'accorder et d'annuler ce permis et d'en régir les conditions d'exploitation. L'appelante ne conteste pas, cependant, le pouvoir du conseil de la cité de réglementer et contrôler, au point de vue de l'urbanisme, de la santé et de la protection contre l'incendie, comme il l'a fait en la section 20, les restaurants bénéficiant d'un permis de la Commission des Liqueurs. Rien ne paraît justifier l'adoption d'une position différente en ce qui concerne le pouvoir du conseil de la cité de réglementer ces restaurants, au point de vue de la paix, l'ordre public, ou autres autorisés par la charte. La charte de la cité de Montréal et la *Loi des Liqueurs Alcooliques de Québec* ont été édictées par la même Législature. Il serait étonnant que la *Loi des Liqueurs Alcooliques de Québec* ait l'effet de soustraire le détenteur du permis qu'elle autorise, à la réglementation que la Législature autorise les municipalités d'adopter.

Si l'appelante avait raison, il s'ensuivrait que la Commission des Liqueurs pourrait imposer l'établissement de magasins de liqueurs alcooliques dans les quartiers résidentiels de la cité.

La proposition que le refus d'approbation serait arbitraire, partial et injuste a été rejetée par les deux Cours inférieures et le mal fondé de ce rejet n'a pas été démontré.

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L'appelante a également invoqué le fait que ce n'est pas le directeur mais l'assistant-directeur du service de la police qui a considéré la demande des permis sollicités. Le deuxième paragraphe de l'art. 1 du règlement 1862 pourvoit spécifiquement qu'en ce qui a trait à l'approbation préalable d'un directeur de service pour l'émission d'un permis, l'autorité donnée au directeur du service s'étend à toute personne dûment autorisée à le remplacer ou à agir en son nom. La preuve démontre que le directeur Leggett avait autorisé l'assistant-directeur Plante à agir en son nom.

Au mérite, étant d'avis, comme le Juge de première instance et les Juges de la Cour d'Appel, que la requête en *mandamus* est mal fondée, je renverrais l'appel avec dépens.

Quant à la motion faite par l'appelante pour amender les conclusions originaires de sa requête en *mandamus*, et à celle de Pal's Café Inc., pour obtenir la permission d'intervenir, rien n'autorisant de les accorder, je les rejetterais avec dépens.

RAND J:—For the reasons given by my brothers Locke and Cartwright I would allow the appeal and dispose of the matter as proposed by them.

The judgment of Locke, Martland and Judson JJ. was delivered by

LOCKE J.:—The charter of the City of Montreal, certain of the terms of which are to be considered in determining this appeal, is c. 58 of the Statutes of Quebec, 1899, as amended by subsequent legislation.

By s. 1 the word "council", where it appears in the statute, means the council of the City, and by the opening clause of s. 299 it is provided that it shall be lawful for such council:

> to enact, repeal or amend, and enforce by-laws for the peace, order, good government, and general welfare of the city of Montreal, and for all matters and things whatsoever that concern and affect, or that may hereafter concern and affect the city of Montreal as a city and body politic and corporate, provided always that such by-laws be not repugnant to the laws of this Province or of Canada, nor contrary to any special provisions of this charter.

By the same section it is declared that the authority and jurisdiction of the council extends, *inter alia*, to "licences for trading and peddling."

Subsection 22 of s. 300 provides that, for the purposes and objects included in s. 299, the city council shall have authority, *inter alia*:

> To fix the amount, terms and manner of issuing licences, not inconsistent with the law and subject to the provisions of this charter, provided that no licence shall be issued for a longer time than one year.

Subsection 79 of s. 300 declares the power of the council:

> To license, regulate or prohibit musical saloons or establishments where intoxicating liquors are sold and wherein instrumental and vocal music are used as a means of attracting customers.

Section 300*c*. reads:

> In order to give full effect to articles 299 and 300 and to extend and complete the same, so as to secure full autonomy for the city and to avoid any interpretation of such articles or their paragraphs which might be considered as a restriction of its powers, the city is authorized to adopt, repeal or amend and carry out all necessary by-laws concerning the proper administration of its affairs, peace, order and safety as well as all matters which may concern or affect public interest and the welfare of the citizens; provided always that such by-laws be not inconsistent with the laws of Canada or of this Province, nor contrary to any special provisions of this charter.

Under the powers thus vested in the council, by-law 1862 was enacted, providing, *inter alia*, that no person shall operate any industry, business or establishment or carry on any trade within the limits of the city without having previously applied for and obtained from the Director of Finance of the City a permit to do so and paying a stipulated amount for such permit. By subs. (*b*) of art. 2 of the by-law, it is provided that every applicant for a new permit must make an application to the Director of Finance and that, prior to issuing such permit, the director is required to secure the written approval from each of the directors of the department concerned, and that:

> If such written approval is not given by all the directors concerned the said Director of Finance shall inform the applicant in writing that the permit will not be issued.

For the operation of a restaurant and of premises where alcoholic liquors are sold by a person holding a permit from the Quebec Liquor Commission, the approval is required from, amongst others, the Director of the Police Department.

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The appellant company, at the time of the commencement of these proceedings, operated a restaurant on St. Catherine Street East in the city of Montreal. Vincent Cotroni, for the benefit of the appellant company, obtained a permit to sell alcoholic liquors on the premises in question from the Quebec Liquor Commission under the provisions of the *Alcoholic Liquor Act*, R.S.Q. 1941, c. 255, for the licence years 1954-55 and 1955-56. The appellant obtained from the respondent a restaurant permit issued under the terms of s. 8-A of the above mentioned by-law and a permit to sell alcoholic liquors under s. 20 of the by-law for the licence year 1954-55. By its terms that licence would expire on May 1, 1955.

On April 18, 1955, the appellant applied for a renewal of such permits for a further period of one year. These applications were made on forms apparently prescribed by the respondent and upon each of the original applications there appears the following endorsement:

"23 Avr. 1955 refused. P. P. Plante. Police."

By letter dated June 7, 1955, the Director of Finance of the respondent wrote the appellant saying:

> The Director of Department has not given his written approval to the above mentioned application. In conformity with the procedure set forth in By-Law 1862 this permit will not be issued.

The blank before the word "Department" was not filled in but the department referred to was that of the police, as is made clear by the endorsement upon the application.

The proceedings were commenced by an application for a writ of *mandamus* directed against the City of Montreal, directing the City and its competent officers to issue the permits referred to in ss. 8 and 20 of the by-law on the grounds that those portions of the by-law making it a condition of the granting of the licences that the approval of the Director of Police be obtained are illegal and beyond the powers of the respondent, in that they constitute a delegation of the powers given to the respondent and constitute a restraint of trade and of free enterprise. The further declaration was asked to the effect that the refusal of the respondent to issue the permits was arbitrary and unjustified.

The defence aserted the power of the City to prescribe conditions upon which licences should issue, that it was the duty of the Director of Police and the police officers under him to maintain public order, and that the director, in performing the function prescribed by the by-law, was acting in a ministerial and quasi-judicial capacity and that, accordingly, no *mandamus* to the director would lie. It was denied that the provisions of the by-law referred to amounted to a delegation of power by the council and asserted that the applicant had been guilty, *inter alia,* of breaches of the closing laws and permitted prostitutes on the premises and continually violated the law.

At the trial, Leggett, the Director of Police Service, and Plante, the Assistant Director, gave evidence, the latter, of alleged breaches of the law in the above mentioned respects by the applicant, and the former to the effect that he considered these factors in refusing the approval of the application.

The matter came on for hearing before Prévost J. and the application was dismissed.

The present appellant appealed and that appeal was dismissed by the unanimous judgment of a Court[1] consisting of St. Jacques, Hyde and Owen JJ.

While the appellant sought a direction that the permits be issued, the Director of Finance, the person designated by the by-law as the official by which the same were to be issued, was not made a party to the proceedings. It was, no doubt, considered unnecessary to join the Director of the Police Department since it was the appellant's contention that the delegation of authority to that official was *ultra vires.* I mention these circumstances since they are to be considered in determining whether the proceedings taken by way of *mandamus* were appropriate if the appellant should be found to be entitled to the relief asked.

Unless the language above quoted from the first clause of s. 299 of the charte and that of subs. 22 of s. 300 distinguishes the present matter from many cases decided under various municipal Acts in other parts of Canada, the decision of the Court of Appeal in the present matter conflicts with the decisions in Ontario, Manitoba,

[1] [1957] Que. Q.B.1.

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Saskatchewan and British Columbia and, in my opinion, with the judgment of this Court delivered by Cartwright J. in *Bridge v. The Queen*[1].

As to the first clause of s. 299 giving general power to the City council to enact by-laws for the peace, order, good government and general welfare of the City, this is in effect the so-called good government clause which appears in the municipal Acts of the other provinces above mentioned. A provision to the same effect has been part of all municipal Acts in Ontario since 1858 and for varying periods of time in Manitoba, Saskatchewan and British Columbia. If, as I think to be the case, the authority sought to be vested in the Director of Police by by-law 1862 amounts to a delegation by the council of the authority vested in it by the charter, the good government clause is no warrant for what is being attempted since the Act has granted specific authority in respect of the matter by the provisions of ss. 299 and 300 above referred to: *Merritt v. Toronto*[2], *per* MacLennan J.A.; *Taylor v. People's Loan and Savings Corporation*[3], *per* Middleton J.A.

It will be seen from an examination of the by-law that the Director of Finance, by whom both permits would be issued, is forbidden to do so without the written approval of the directors mentioned. It should be said that no question arises as to the requirement that approval of the City Planning and the Health Department was not obtained. The whole controversy relates to the failure to obtain the approval of the Director of Police. As to that official, while the council was authorized to fix the "terms and manner of issuing licences", the by-law contains no directions whatever to the Director of Police as to the manner in which the discretion given to him to approve or refuse to approve applications for licences was to be exercised. Thus, the director might refuse his approval upon any ground which he considered sufficient.

In Meredith and Wilkinson's Canadian Municipal Manual, at p. 265, it is said:

> The exercise of a discretionary power vested in a council cannot, in the absence of statutory authority, be delegated.

[1] [1953] 1 S.C.R. 8 at 13, 104 C.C.C. 170, 1 D.L.R. 305.
[2] (1895), 22 O.A.R. 205 at 215, 216.
[3] (1928), 63 O.L.R. 202 at 209. [1929] 1 D.L.R. 160.

A council may, however, delegate to an officer or functionary merely ministerial matters.

In Robson and Hugg's Municipal Manual, at p. 347, the following appears:

> Discretion confided to council or to the Board of Commissioners of Police cannot be delegated to others, as for example, requiring an applicant for a licence to get the consent of certain persons. *Re Kiely* (1887) 13 O.R. 451; *Rex v. Webster* (1888) 16 O.R. 187.

In my opinion, these are accurate statements of the law.

In *Re Kiely*[1], the validity of a by-law purporting to have been passed under the provisions of the *Consolidated Municipal Act 1883* of Ontario (46 Vict., c. 18) as amended by s. 9 of 49 Vict., c. 37, was questioned. By that section it was provided that the Board of Commissioners of Police might regulate and license, *inter alia,* the owners of livery stables and that the council of any city, in which there was no Board of Commissioners of Police, might exercise by by-law all the powers conferred by the section. Despite the fact that the matter was thus committed to the Board of Commissioners and that there was such a board in the City of Toronto, the council of that City passed a by-law whereby it was declared that it should not be lawful for any person to establish or keep a livery stable until he had procured the consent in writing of the majority of the owners and lessees of real property situate within an area of 500 ft. of the proposed site for such stable. Wilson C.J., by whom the motion to quash was heard, while holding that the by-law was *ultra vires* the council, said that if this were not so it was objectionable:

> because it requires, as a condition precedent to the granting of a licence, that the applicant shall procure the consent of a number of persons in the neighbourhood, thus constituting these persons the judges of the right he asks, and divesting the commissioners of the power which they are required personally to exercise.

In *Regina v. Webster*[2], Ferguson J. referred to and adopted this statement of the law by Wilson C.J. in *Kiely's* case.

In *Merritt v. City of Toronto, supra,* a by-law of the city made under the provisions of s. 286 of the *Municipal Act of 1892,* which granted to the council power to require

[1] (1887), 13 O.R. 451. [2] (1888), 16 O.R. 187.

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any person exercising any trade or calling to obtain a licence, provided that no one might obtain a licence as an auctioneer unless his character should be first reported on and approved by the police.

The statute under which the by-law was passed did not vest in the council any power to require such approval as a condition precedent to the granting of a licence. Speaking generally on the powers of municipal corporations, Osler J.A. said in part (p. 207):

> Municipal corporations, in the exercise of the statutory powers conferred upon them to make by-laws, should be confined strictly within the limits of their authority, and all attempts on their part to exceed it should be firmly repelled by the Courts. *A fortiori* should this be so where their by-laws are directed against the common law right, and the liberty and freedom, of every subject to employ himself in any lawful trade or calling he pleases.
>
> The corporation has chosen to enact, first, that no one shall carry on the respectable business of an auctioneer without a license, and, second, that no one shall have a license to carry on such business unless his character shall be first reported on and approved by the police. The first is within their power; the latter as clearly is not.

The portion of the by-law requiring the approval of the police was considered to be *ultra vires*.

In *Re Elliott*[1], a by-law of the City of Winnipeg passed under the provisions of s. 599 of the *Municipal Act*, R.S.M. 1891, c. 100, as amended by s. 17 of c. 20 of the Statutes of 1894, was considered. By that section, the council of every municipality was empowered to pass by-laws for licensing, inspecting and regulating vendors of milk and dairies and providing that it should be a condition of any such licence that the licensee should submit to the inspection of his dairy by an officer to be appointed by the council. Purporting to act under this authority, the City of Winnipeg passed a by-law which authorized the inspection of dairies by the health officer or veterinary inspector and said:

> if satisfactory to him in all respects he shall direct a licence to issue to such cow keeper, dairyman or purveyor of milk.

upon payment of a specified fee. As to this proviso, Bain J. said (p. 363):

> The inspection of dairies, etc., is purely ministerial work, and may, of course, be performed by the officials employed by the Council for that purpose. But this section hands over to the health officer a duty

[1] (1896), 11 Man. R. 358.

that is more than ministerial. It authorizes him to direct the issue of a licence without any report of the result of the inspection, or any further reference, to the Council; and an official is thus enabled arbitrarily to decide whether an applicant is to receive a license or not. This, it seems, to me, is a delegation of authority that cannot be justified; for the Council has really delegated to an official the judgment and discretion that the Legislature intended and expected that it would exercise itself.

referring, *inter alia,* to *Webster's* case above referred to.

In *Re Taylor and City of Winnipeg*[1], where the same by-law was considered, Taylor C.J. adopted the rule of construction as to the powers of municipal corporations as stated by Osler J.A. in *Merritt's* case but did not refer to the question of delegation though, as indicated by the report, that matter was argued.

In *Hall v. City of Moose Jaw*[2], the by-law considered was passed by the city under s. 95 of the Municipal Ordinance of 1903 which, by s. 95(34) empowered the council of every municipality to pass by-laws licensing, *inter alia,* hackmen. In purported exercise of this power, the by-law provided that:

> no license shall be granted to any driver unless the same has been previously recommended by the chief of police for the city, he certifying to the good conduct and ability of the applicant to fill the position of hack driver.

This proviso, which was added by way of amendment to a by-law passed in 1904, was passed in pursuance of the powers thought to have been vested in the city council by ss. 184 and 187 of the *Cities Act of 1908* (c. 16). Section 184 empowered the council to make regulations and by-laws for the peace, order, good government and welfare of the city and for the issue of licences and payment of licence fees in respect of any business.

Section 187 read:

> The power to license shall include power to fix the fees to be paid for licenses, to specify the qualifications of the persons to whom and the conditions to regulate the manner in which any licensed business shall be carried on, to specify the fees or prices to be charged by the licenses, to impose penalties upon unlicensed persons or for breach of the conditions upon which any license has been issued or of any regulations made in relation thereto and generally to provide for the protection of licensees; and such power shall within the city extend to persons who carry on business within and partly without the city limits.

[1] (1896), 11 Man. R. 420.
[2] (1910), 3 S.L.R. 22, 12 W.L.R. 693.

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Hall applied for a hack licence, tendering the fee prescribed by the by-law, but the chief of police reported against the application and it was refused on this ground. Johnstone J., by whom the action was tried, said in part (p. 697):

> Section 17 of by-law 64 and sec. 37 of by-law 357 impose upon the inspector or chief of police, as the case may be, a judicial duty. Upon the report of either of these officers depends the issue of a license. No licenses can be granted unless and until the inspector in one case, and the chief of police in the other, has reported favourably. These officials are empowered arbitrarily to decide whether an applicant is to receive his license or not. This is clearly a delegation of authority that cannot be justified. The council has clearly delegated to these officials named the judgment and discretion that the legislature intended and expected the council should exercise.

and referred, *inter alia*, to the cases of *Webster*, *Elliott* and *Merritt*.

In *Rex v. Sparks*[1], an application for a writ of prohibition to issue to the police magistrate at Victoria to prohibit the enforcement of a conviction made on an information laid against Sparks for acting as a hack driver without a licence was considered by Murphy J. By s. 3 of an Act relating to the City of Victoria (c. 46, 7 Edw. VII), the council of the city was empowered to make by-laws licensing and regulating hacks, cabs and every vehicle plying for hire and the chauffeurs and drivers thereof. The by-law passed by the city provided that all such drivers must have licences obtained from the chief of police and Sparks' application was refused on the asserted ground that he was not of good character. Murphy J. said in part (p. 118):

> One would hesitate to hold that in common understanding the regulating of the business of hack driving requires that absolute discretion be conferred upon the chief of police to prohibit anyone whom he considered not to be of good moral character from engaging therein; and if this view be correct, I think the sections of the by-law in question invalid under the principles laid down in *Merritt v. Toronto* (1895) 22 A.R. 205. The business of hack driving is not *per se* an unlawful calling. Any individual has a common law right to engage therein, and such right is in no way dependent on his previous character. If the Legislature intended to confer the power here contended for, it would (sic) easily have done so by express words. Where it has intended to confer power to prevent or prohibit the doing of certain acts, it has used apt and clear language, as appears by the words employed in subsection 2 of section 3 of the Act under discussion, being the subsection immediately preceding the one herein relied upon. Further, in said subsection 3, certain conditions are set out which may be imposed as requisites for obtaining a licence. Good moral character, as determined by the absolute discretion of the chief of police, is not amongst such conditions.

[1] (1913), 18 B.C.R. 116, 10 D.L.R. 616, 3 W.W.R. 1126.

In *Bridge v. The Queen*[1], a by-law of the City of Hamilton passed under the provisions of ss. 82 (3) and 82(*a*) of the *Factory, Shop and Office Building Act*, R.S.O. 1937, c. 194 as amended, was attacked. The by-law in question provided that all gasoline stations should be closed at specified hours but provided that the City Clerk, on the recommendation of the Property and License Committee, might issue permits to remain open during times specified in the permit. A term of the by-law said that the occupiers of such shops should be entitled to extension permits "except those occupiers who, according to evidence satisfactory to the City Clerk, have failed to keep their gasoline shops open during the whole of the time or times so authorized by such permits." A further section of the by-law said that the occupiers of gasoline shops should be entitled to emergency service permits, except those who, according to evidence satisfactory to the City Clerk, have failed to keep their shops open for emergency service only during the whole of the time or times authorized by such permits, etc. As to these provisions, our brother Cartwright, who wrote the opinion of the majority of the Court, said in part (p. 13):

> It is next submitted that the provisions in sections 7(2) and 8(2) of the by-law that the clerk shall omit from the list of those entitled to permits such occupiers as have "according to evidence satisfactory to the City Clerk" failed to keep their shops open as authorized, are invalid. With this submission I agree. It is within the powers of the Council to prescribe a state of facts the existence of which shall render an occupier ineligible to receive a permit for a stated time; but express words in the enabling Statute would be necessary to give the Council power to confer on an individual the right to decide, on such evidence as he might find sufficient, whether or not the prescribed state of facts exists and there are no such words.

While our brother Rand dissented, he agreed on this point that a delegation such as this could not be supported.

From the fact that no reference was made to any of the cases decided in other provinces in the reasons for judgment delivered by the trial judge and by the judges of the Court of Appeal[1], I assume that they were not brought to their attention.

[1] [1953] 1 S.C.R. 8, 104 C.C.C. 170, 1 D.L.R. 305.

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It is not suggested that the rules of law for the interpretation of statutes such as those incorporating cities and municipalities differ in the Province of Quebec from those which apply in the other provinces of Canada. The decision of the present matter is, therefore, of general importance throughout this country.

The language of the charter upon which the respondent principally relies is that contained in subs. (22) of s. 300 under which the city has the power:

to fix the amount, terms and manner of issuing licences.

While reference has been made to subs. 79 declaring the power to prohibit establishments where intoxicating liquors are sold and wherein instrumental and vocal music are used as a means of attracting customers, it was not in the exercise of these powers that the licences in question were refused but, as I have stated, simply by reason of the refusal of approval by the Director of Police.

The manner in which the licences are to be issued has been fixed by the by-law by vesting the ministerial act of issuing them in the Director of Finance. The power to fix the terms upon which they are to be issued has been vested in the city council. For that body to say that before the Director of Finance may issue a licence, the Director of Police, in his discretion, may prevent its issue by refusing approval is not to fix the terms, but is rather an attempt to vest in the Chief of Police power to prescribe the terms, or some of the terms, upon which the right to a licence depends. In this case, granted the necessary power had been given to the council by the charter, the by-law might, as pointed out in the judgment of this Court in *Bridge's* case, have prescribed a state of facts the existence of which should render a person ineligible to receive a permit, as by providing that none such shall be granted to persons who were guilty of repeated infractions of the city by-laws as to hours, or of the provisions of the *Quebec Liquor Act* or who permitted prostitutes to congregate on their premises or who were otherwise persons of ill repute. Nothing of this nature appears in this by-law but, as in the cases to which I have referred in the other provinces,

[1] [1957] Que. Q.B.1.

it has been left without direction to the Chief of Police to decide whether the applicant should or should not be permitted to carry on a lawful calling.

As pointed out by Murphy J. in *Rex v. Sparks, supra,* any individual has a common law right to engage in any lawful calling, subject to compliance with the laws of the jurisdiction in which it is carried on and such right is in no way dependent on his previous character.

It is pointed out in the judgment of the Court of Queen's Bench in *Stiffel v. City Montreal*[1], that the function of the police official under a by-law such as this is not merely ministerial but quasi-judicial. This was said as a ground for holding that *mandamus* would not lie against such an official. But that is not the point in the present case where the appellant contends that the portion of the by-law purporting to vest this quasi-judicial function in the Chief of Police is *ultra vires.*

Evidence was given at length at the trial as to the reasons which impelled the director and the assistant director of police to refuse the licences in the present matter. This was undoubtedly relevant to the issue that their conduct in refusing their approval was arbitrary and unjustified, but it was quite irrelevant to the legal question as to whether the portions of the by-law relied upon were *ultra vires.*

The powers conferred upon the council by subs. (22) of s. 300 cannot be distinguished from those conferred the council of the City of Moose Jaw by s. 187 of the *Cities Act* in *Hall's* case. They are no more extensive in my opinion than the powers given to the various councils by the Ontario, Manitoba and British Columbia statutes mentioned in the cases to which I have referred. The point in those cases, as in this, is that the power was not exercised by the council but delegated to some one else.

It is suggested that some support is to be gained for what is, in my opinion, clearly an attempted delegation of power from the fact that by-law no. 247 defines the duties of the Superintendent of Police and the members of the city police force. These include, *inter alia,* the duty to cause the public peace to be preserved and to see that

[1] [1945] Que. K.B. 258.

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all the laws and ordinances are enforced, but these are duties imposed either by statute or under powers given by statute upon police officers in all of the provinces to which I have referred and I am unable, with great respect, to understand how it can be suggested that this assists the position of the respondent in the matter of the delegation of the council's power.

It is further suggested that some further powers are given to the council by s. 57 of the *Interpretation Act*, R.S.Q. 1941, c. 1, which reads:

> The authority to do a thing shall carry with it all the powers necessary for that purpose.

A like provision appears in subs. (b) of s. 28 of the *Interpretation Act of Ontario*, R.S.O. 1950, c. 184, which reads:

> where power is given to any person, officer or functionary to do or to enforce the doing of any act or thing, all such powers shall be understood to be also given as are necesary to enable the person, officer or functionary to do or enforce the doing of the act or thing.

The word "person" is defined to include corporation.

This is merely a restatement of a long established principle of the law which is described in Maxwell on Statutes, 10th ed., p. 361, in the following terms:

> Where an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution. *Cui jurisdictio data est, ea quoque concessa esse videntur, sine quibus jurisdictio explicari non potuit.*

This is an argument that does not appear to have been advanced in any of the cases to which I have referred in the other provinces where the question to be considered has arisen. It cannot, however, assist the position of the respondent since the question is what was the power vested in the council. Since, in my opinion, the power to delegate quasi-judicial functions in the matter of licences was not given to the council, the language of the article does not affect the matter. I may add that if, contrary to the opinion expressed by Murphy J. in *Sparks'* case, the council might without statutory authority provide by by-law that no person having a bad reputation could obtain a licence to carry on business in the city of Montreal, there is no difficulty whatever in amending the by-law to say so in unmistakable terms.

As a matter of interest, I would point out that in the jurisdiction in which *Sparks'* case was decided the charter of the City of Vancouver in the matter of trade licences vests power in the city council to pass by-laws:

> for prohibiting the granting of such licence to any applicant who, in the opinion of the council, is not of good character or whose premises are not suitable for the business.

The Winnipeg charter (c. 87 S.M. 1956) by s. 652(*f*) provides that the power to license or to regulate includes the power:

> to require as a condition precedent to the issue of a license such qualifications on the part of the applicant as to character, fitness, equipment, previous residence in the city or other matter as the council shall prescribe.

This appeal was argued before five members of this Court on March 15, 1957, and judgment was reserved. It was thereafter decided that since none of the cases above mentioned decided in the Courts of other provinces had been referred to in the argument or considered in the Courts below that the case should be re-argued before the full Court. The foregoing portion of my reasons was dictated after the hearing in March of 1957 and before it was decided that there should be a rehearing.

It was contended on behalf of the respondent during the first argument that to give to the Director of the Police Department the right to decide whether or not a permit should be issued did not amount to a delegation of the powers vested in the council and that question has been raised again in the second argument. For the reasons above stated I consider it must be rejected. I agree with what was said by Wilson C.J., Osler J.A., Bain J. and Johnstone J. in the cases I have mentioned.

It was not contended on behalf of the respondent that these cases decided in other provincial Courts were wrong in law. While it was attempted to distinguish them and the judgment of this Court in *Bridge v. The Queen,* the argument completely failed to do so in my opinion. The City of Montreal is a municipal corporation and the council in respect of the granting and withholding of licences to persons engaged in certain classes of business has the powers and only the powers vested in it by its statute of incorporation. That statute does not authorize or purport to

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authorize the council to delegate the power to fix the terms upon which permits may be granted vested in it by ss. 299 and 300 to the Director of the Police Department or to anyone else. It is idle to suggest that such power is merely administrative. I agree with the statement of the law applicable to the construction of such statutes as it is stated by Osler J.A. in *Merritt's* case which I have above quoted. The by-law is therefore in this respect beyond the powers of the council.

As the sole ground upon which the permit of the appellant to operate its restaurant was refused was that the Director of the Police Department had refused his approval, the applicant was, as of the date of its application for a writ of *mandamus*, entitled to an order directing that a permit be issued for the year 1955.

The order of this Court directing the re-argument was made on October 1, 1957, and a further order made on November 15, 1957, required the parties to file new factums by February 1, 1958, and to be prepared to submit oral argument, including, *inter alia*, a discussion of the cases decided in the other provinces of Canada which are above referred to.

On February 17, 1958, the respondent moved before us for leave to adduce evidence by affidavit to show that on July 18, 1957, some four months after the matter had been argued before us, the appellant had sold the restaurant in question to a company named Pal's Restaurant Inc. and the latter company had taken possession and was carrying on a restaurant business on the premises and there selling liquor under a permit from the Quebec Liquor Commission.

On the same date the appellant moved for leave to amend the conclusions of its petition for a *mandamus* by asking that the judgment to be rendered should direct the City to issue permits for the restaurant for the years 1955 to 1958 inclusive on payment of the required fees. This application was supported by an affidavit showing that while the City had refused to issue licences for the years 1955, 1956 and 1957, the restaurant had been permitted to operate. Ten charges, however, had been laid in the Recorder's Court in Montreal against the applicant in respect of such operations, but these procedings had

been held in abeyance apparently pending the determination of this appeal. At the same time Pal's Cafe Inc. applied to this Court for leave to intervene in the appeal on the ground that it had succeeded to the interest of the appellant in respect of the operation of the restaurant and that it contended that the portion of the by-law above discussed was *ultra vires* the Council. Apparently the respondent had also refused a permit to the last-named company for the operation of the restaurant.

Leave was given to the respondent to adduce the further evidence above mentioned and the applications of the appellant and of the proposed intervenant were adjourned to be heard upon the further argument which was directed. The order for such argument directed that the parties be prepared to discuss the further question as to whether, in the circumstances disclosed, there was any matter remaining in dispute between the original parties to the litigation and as to whether the appeal should, on that account, be further considered.

It is necessary in dealing with this question to bear in mind that on the hearing of the application evidence was given for the respondent by the Director and the Assistant Director of the Police Department explaining the grounds upon which the permit for the year 1955 had been refused. It appears that the liquor licence for the premises was held in the name of Vincent Cotroni, a director of the appellant company, on its behalf, and according to the evidence of Plante, the Assistant Director of the Police Department, Cotroni had between the years 1928 and 1938 been convicted of various criminal offences and this fact was apparently one of the reasons which led to the refusal of the permit.

The rights of a petitioner for an order of *mandamus* are, as are the rights of the plaintiff in an action generally, to be tested as of the date of the commencement of the proceedings. Matters of defence arising, however, after proceedings are instituted, but before the answer or defence is entered may be pleaded and matters of defence arising thereafter may, with permission of the Court, be raised.

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The sale of the restaurant had not taken place when this appeal was argued before us in March 1957. At that time it was not contended that the appeal should not be entertained on the ground that the year for which the permit was sought, *i.e.*, 1955, had expired. As to this it may be further said that the year had expired before the judgment of the Court of Queen's Bench was delivered.

It is my opinion that this objection to the disposition of this appeal on its merits should not be entertained. The appellant, in my opinion, has an interest in the subject-matter of this appeal other than as to the costs of the proceedings. I may add that I do not assent to the view that even if its only interest was as to costs this Court has not jurisdiction to hear the appeal or that it should not exercise it in certain circumstances. The question of law as to whether or not the portion of the by-law requiring the consent of the Director of the Police Department was within the powers of the City Council and as to whether the appellant was entitled in the circumstances to a permit for the year 1955 are questions upon which the appellant was entitled to have the opinion of the Courts.

The appellant company, it must be assumed, is one which is entitled to carry on the business of a restaurant keeper and vendor of liquors in the City of Montreal and the evidence for the respondent to which I have referred makes it evident that so long as Cotroni remains a director and officer of the appellant a restaurant licence would not be issued to it for operations in that city. In addition, while the appellant applied for permits for the years 1956 and 1957, these were refused and 10 prosecutions are pending in the Recorder's Court in Montreal against the appellant for operating without a licence in the years 1955, 1956 and 1957. These, as I have stated, have been held in abeyance pending the disposition of this appeal and if the appeal is dismissed convictions will inevitably follow.

The question is not one in my opinion which goes to the jurisdiction of the Court, rather is it a matter of discretion and one to be decided in each case upon the facts

disclosed. In *Archibald v. DeLisle*[1], Taschereau J., who delivered the judgment of the Court, referring to the cases of *Moir v. Huntingdon*[2] and *McKay v. The Township of Hinchinbroke*[3], said (p. 14):

> What we held in those cases is that where the state of facts upon which a litigation went through the lower courts has ceased to exist so that the party appealing has no actual interest whatsoever upon the appeal but an interest as to costs and where the judgment upon the appeal, whatever it may be, cannot be executed or have any effect between the parties except as to costs, this Court will not decide abstract propositions of law merely to determine the liability as to costs.

In *The King v. Clark*[4], an application for leave to appeal from a judgment of the Court of Appeal for Ontario was refused by this Court. The proceedings were in the nature of *quo warranto* for an order that the respondents show cause why they did unlawfully exercise or usurp the office, functions and liberties of a member of the Legislative Assembly of Ontario during and since the month of February 1943. Since the date of the judgment of the Court of Appeal, the Legislative Assembly had been dissolved. Duff C.J., in delivering the judgment of the Court refusing leave, said that since the Legislative Assembly had been dissolved a judgment in the appellant's favour could not be executed and "could have no direct and immediate practical effect as between the parties except as to costs" and said that it was one of those cases where the sub-stratum of the litigation had disappeared.

In the same year in the case of *Coca Cola Company v. Matthews*[5], the appeal was brought by leave of the Court of Appeal for Ontario on the appellant undertaking to pay to the respondent in any event the amount of the judgment and the costs of the trial, the appeal to the Court of Appeal and of the appeal to this Court. The judgment refusing to entertain the appeal was delivered by Rinfret C.J. The ground may be shortly stated as being that this Court will not decide abstract propositions of law even if to determine liability as to costs. The learned Chief Justice referred in his judgment to the decision of

[1] (1895), 25 S.C.R. 1, 15 C.L.T. 355.
[2] (1891), 19 S.C.R. 363.
[3] (1894), 24 S.C.R. 55.
[4] [1944] S.C.R. 69, 1 D.L.R. 495.
[5] [1944] S.C.R. 385, [1945] 1 D.L.R. 1.

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the House of Lords in *Sun Life Assurance Company v. Jervis*[1], where it was a term of the leave granted by the Court of Appeal that the appellant should pay the costs as between solicitor and client in the House of Lords in any event and not to ask for a return of the moneys which had been paid. Viscount Simon L.C. said (p. 113) that in his opinion the Court should decline to hear the appeal on the ground that there was no issue to be decided between the parties and said further:

> I do not think that it would be a proper exercise of the authority which this Court possesses to hear appeals if it occupies time in this case in deciding an academic question which cannot affect the respondent in any way.

In *Regent Taxi & Transport Limited v. Congrégation des Petits Frères de Marie*[2], an appeal from this Court was, by leave, brought before the Judicial Committee. It was a term of the leave granted that the appellants should pay forthwith the damages and costs to the respondent in the Courts, the same in no event to be recoverable and to pay the respondent's costs of the appeal in any event and the damages and costs awarded below had all been paid. Notwithstanding this, the Judicial Committee considered the question whether the claim of the respondent was one to which the period of prescription provided by art. 2261 of the *Civil Code* applied and decided that it did and that the action should have been dismissed, reversing the judgment of this Court.

It does not appear that this decision was brought to the attention of the Court in the case of *The King v. Clark* or the *Coca Cola* case since it is not mentioned in either.

In the present matter it is my opinion that the appellant company was entitled as of right to a declaration that the by-law in the respect mentioned was beyond the powers of the city council and to an order directing that a permit be issued for the operation of the restaurant for the year 1955. While the restaurant has been sold by it, I am further of the opinion that in view of the 10 pending prosecutions for breaches of the by-law in operating it without a licence and further by reason of its right to operate another restaurant in the City of Montreal subject

[1] [1944] A.C. 111, 113 L.J. K.B. 174.
[2] [1932] A.C. 295, 2 D.L.R. 70, 53 Que. K.B. 157.

to the provisions of the portions of the by-law which are within the power of the council the appellant has an "actual interest" within the meaning of that expression as used in *Archibald v. Delisle* and that it cannot be said that the judgment will have no "direct and immediate practical effect" between the parties except as to costs as that expression was used by Sir Lyman Duff in *The King v. Clark*.

My opinion that the matter is one for the exercise of our discretion appears to me to be supported by the language used by the Lord Chancellor in *Sun life Assurance Company v. Jervis*. The question, as I have said, is one of general public interest to municipal institutions throughout Canada. The decisions in the cases of *Kiely* and *Merritt*, the first of which was made more than 80 years ago, have been followed in the three western provinces to which I have referred and adopted, as I have pointed out, in the recognized text books on municipal law. The decision in the present case conflicts with these judgments and, in my opinion, it is in the interest of the due administration of justice that this Court should now pronounce upon the matter. Even if the only issue were as to the costs of the proceedings, it would be my opinion that in this case we should exercise the jurisdiction which we undoubtedly have.

I would allow this appeal and set aside the judgment of the Court of Queen's Bench and of Prévost J. The appellant should have its costs throughout, other than those dealt with in the succeeding paragraph.

I would dismiss the application of Pal's Restaurant Inc. to intervene, with costs, and the application of the appellant for leave to amend the conclusions of its petition, with costs, to be set off against those awarded against the respondent.

CARTWRIGHT J.:—The facts out of which this appeal arises and the course of the litigation are set out in the reasons of my brothers Locke and Fauteux, which I have had the advantage of reading.

The question arises *in limine* whether we should entertain the appeal in view of the facts that the licence the issue of which the appellant sought to compel by *mandamus* would have expired on May 1, 1956, prior to the giving of

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notice to appeal to this Court and that prior to the second argument in this Court the appellant had sold the restaurant in respect of which the licence was required.

It is a rule that this Court will not entertain an appeal if, *pendente lite,* the subject-matter of the litigation has ceased to exist or other circumstances have arisen by reason of which the Court could make no order effective between the parties except as to costs. A recent illustration of the application of the rule is *The Queen ex rel. Lee v. Estevan*[1], in which the oral reasons of the Court are not reported. In that case the Court of its own motion declined to hear the appeal as the licence in respect of which a *mandamus* was sought would have expired some months previously.

However, the rule is, in my opinion, one of practice which the Court may relax. In the case at bar the appeal is brought under s. 36(*b*) of the *Supreme Court Act,* the appeal being from a final judgment of the highest Court of final resort in the province in proceedings for *mandamus,* so that the right of appeal is not dependent on the amount or value of the matter in controversy in the appeal, and no question of jurisdiction arises. The question of law raised for decision is an important one, as is stressed in the reasons of the learned judges in the Courts below, and there have been two arguments, the second of which was called for by the Court after it was apparent that the licence period had already expired. In these special circumstances I agree with the conclusion of my brother Locke that we should entertain the appeal.

The portions of by-law no. 1862 with which we are directly concerned are as follows:

Article 2.—Dispositions générales.

A) Aucune personne ne possédera ou n'exploitera une industrie, un commerce ou un établissement, ne pratiquera ou n'exercera une profession, un commerce ou une activité, n'utilisera un véhicule, un appareil ou une chose, ou ne gardera un animal ou un article ci-après mentionnés dans les limites de la cité de Montréal, à moins d'avoir préalablement demandé et obtenu du directeur des finances un permis à cet effet et payé audit directeur le montant apparaissant en regard de l'activité, de l'animal ou de la chose assujetti à un permis.

[1] [1953] 1 D.L.R. 656.

B) Toute personne désirant un permis en vertu du présent règlement doit faire sa demande au directeur des finances sur la formule requise. Avant l'émission d'un permis, le directeur des finances est requis d'obtenir l'approbation écrite de chacun des directeurs des services concernés. Si cette approbation écrite n'est pas donnée par tous les directeurs concernés, ledit directeur des finances informera le demandeur, par écrit, que le permis ne sera pas émis.

* * *

D) Nonobstant toute disposition contraire, le directeur des finances, sur paiement de l'honoraire requis, peut renouveler tout permis en vigueur à la fin de l'exercice précédent, à moins qu'avis ne soit reçu le ou avant le ler avril ou avant l'émission du permis de l'un des directeurs concernés dans chaque cas, que ce permis ne doit pas être renouvelé.

Penalties are provided for breaches of any provision of the by-law.

The by-law sets out 70 sections some of which contain numerous sub-divisions. In these sections the nature of the activity or thing in respect of which a licence is required and the "departments concerned" are specified.

The appellant applied for licences under clause (*a*) of s. 8 and under s. 20 of the by-law. These read as follows:

Section 8.

a) Restaurant, établissement de produits alimentaires, épicerie en détail, établissement de détail où l'une quelconque des marchandises suivantes est vendue: bonbons, tabac, cigares, cigarettes, produits alimentaires de quelque genre que ce soit et/ou breuvages non alcooliques.

Approbation: urbanisme,
police, santé
Période: annuellement
Transportable: oui
Honoraire: $10.00

* * *

Section 20.

Toute personne qui détient un permis de la Commission des Liqueurs de Québec pour la vente de liqueurs alcooliques, et qui de fait en vend, pour consommation sur les lieux.

Approbation: urbanisme,
incendie, police, santé
Période: annuellement
Transportable: oui
Honoraire: $200.00

Both applications were refused on the ground that the approval of the Director of the Police Department had not been secured.

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The appellant in its *requête* asked the Court, in part:

AUTORISER l'émission d'un bref d'assignation mandamus dirigé contre la Cité de Montréal; sur le mérite DÉCLARER que les mots suivants du paragraphe 2, du règlement 1862 de la cité intimée se lisant comme suit:

"Si cette approbation écrite n'est pas donnée par tous les directeurs concernés, ledit directeur des Finances informera le défendeur que le permis ne sera pas accordé."

et les mots dans le paragraphe 8a dudit règlement:
"Approbation: police";
et les mots dans le paragraphe 20 dudit règlement:
"Approbation: police".

sont nuls, illégaux, *ultra vires* des pouvoirs de l'intimée en ce qu'ils constituent une délégation du pouvoir donné à l'intimée par la loi d'imposer des conditions et restrictions sur l'émission des permis; et comme constituant une entrave au commerce et à la libre entreprise; ORDONNER à la Cité intimée et à ses officiers compétents en la matière d'émettre à la requérante, Vic Restaurant Incorporé, les permis prévus par les sections 8 et 20 dudit règlement 1862, dont elle a demandé l'émission . . .

In view of the manner in which the appeal was presented it seems to me that there is only one question upon which we should express an opinion, that is whether the portions of the by-law which require, as a condition precedent to the issue of permits of the sort applied for by the appellant, the approval of the Director of the Police Department are *ultra vires* of the Council. The argument of the appeal appeared to me to proceed on the assumption that the impugned portions, if *ultra vires,* were severable from the remainder of the by-law and that the provisions requiring the approval of the Directors of the other departments mentioned in s. 8(*a*) and s. 20 were valid. I wish to make it clear that I express no opinion as to the correctness of either of these assumptions.

Turning to the merits of the point which we are called upon to decide, it will be observed that the learned judge of first instance, Prévost J., after examining *Bridge v. The Queen*[1], *Cité de Montréal v. Savich*[2] and certain passages in McQuillin on Municipal Corporations, 3rd Edition, reaches the conclusion that there is no invalid delegation of the authority of the Council because the rules by which the Director of the Police Department is to be guided in

[1] [1953] 1 S.C.R. 8, 104 C.C.C. 170, 1 D.L.R. 305.
[2] (1938), 66 Que. K.B. 124

granting or withholding his approval are stated with sufficient particularity in by-law no. 247 of the respondent concerning the Police Department and in "toutes les lois pénales du Canada et de la Province ainsi que toutes les ordonnances municipales relatives à l'ordre public ou aux bonnes mœurs". The learned judge goes on to hold that it is unnecessary to recite all such laws in the by-law as it is implicit in its terms that the Director shall be guided by them. He says in part:

> Il suffit, dans l'opinion de cette Cour, d'exiger dans le règlement l'approbation du directeur de police pour, par le fait même, dire qu'il doit dans l'octroi ou le refus de son approbation, considérer si celui qui sollicite le permis opère ou non l'entreprise dans le respect des lois et de l'ordre public.

In the Court of Queen's Bench[1], all three of the learned justices wrote reasons in which after the examination of a number of authorities they reached the conclusion that *Cité de Montréal v. Savich, supra,* was rightly decided and that there was nothing in the subsequent jurisprudence which permitted the Court to depart from that decision.

The *Savich* case dealt with by-law no. 432 of the City of Montreal, the predecessor of by-law no. 1862 from which it does not appear to differ in any particular material to the question which we have to decide. The case was decided by a Court composed of Sir Mathias Tellier C.J. and Bernier, Galipeault, St-Jacques, and Barclay JJ. One of the considérants in the judgment of the Court reads as follows:

> Considérant que cette disposition du règlement numéro 432 adopté par la cité de Montréal, qui décrète qu'aucun permis (licence) ne sera accordé par le trésorier de la Cité pour les salles de danse, de concert, de réunions, de représentations théâtrales, d'exhibitions de vues animées, et tout lieu d'amusement quelconque, à moins d'une recommandation écrite du surintendant de police et de l'inspecteur des bâtiments conjointement, ne comporte pas de délégation d'un pouvoir discrétionnaire qu'il appartient au conseil de la Cité d'exercer lui-même;

In the course of his reasons Tellier C.J. says in part:

> Il est incontestable qu'un conseil municipal n'a pas le droit de déléguer ses pouvoirs discrétionnaires, soit en tout soit en partie; il doit les exercer lui-même.
>
> Mais je ne vois aucune délégation de pouvoir dans la disposition citée ci-dessus.
>
> Tout ce qui y est prescrit, c'est que le trésorier de la Cité ne devra pas accorder de permis, sans une recommandation, c'est-à-dire sans un rapport favorable, du surintendant de police et de l'inspecteur des bâtiments.

[1] [1957] Que. Q.B. 1.

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La raison de cette recommandation ou de ce rapport favorable se conçoit facilement: l'intérêt public veut qu'il ne soit accordé de permis, pour une salle de danse, une salle de concert, une salle de réunions, une salle de théâtre, qu'à des personnes recommandables et pour des salles ayant la sécurité et les conditions hygiéniques voulues.

Pas de permis, de la part du trésorier, sans une recommandation ou un rapport favorable. Mais le conseil n'a rien abdiqué de ses pouvoirs. Rien ne l'empêche, lui, le maître, de s'enquérir des raisons de ses deux officiers ou préposés, quand ceux-ci ont cru devoir ne pas accorder la recommandation demandée.

St-Jacques J. says in part:

La licence n'a pu être émise par le trésorier, qui est l'officier désigné par le règlement à cette fin, parce que le chef de police a refusé de donner un certificat d'approbation.

Cette condition imposée par le règlement ne me paraît pas conporter une délégation de pouvoirs qui appartiennent au conseil ou au comité exécutif seulement.

It should be noted, however, that both of these learned judges and Bernier J., who agreed with Barclay J., also based their decision on the ground that the respondent had not asked for the annulment of the impugned provisions of the by-law.

Barclay J., with whom Galipeault J. agreed, says in part:

The learned trial Judge found that this by-law was *ultra vires* and that the City had no right to confer any discretionary power on the Chief of Police. With great respect, I do not agree in that conclusion.

While, in principle, municipal corporations cannot delegate their administrative or constitutional powers, there are exceptions to this rule. Owing to the increasing complexity of modern society and the multiplicity of matters which require a municipality's attention, it has become practically impossible to provide in laws and ordinances specific rules and standards to govern every conceivable situation. To require the recommendation of a building inspector or of a director of police is not in reality a delegation of authority but a matter of legitimate prudence. I am more at ease in thus deciding because this very provision has been before the Court of Review in a case of *Waller v. City of Montreal,* 45 S.C. 15. The then Mr. Justice Greenshields dissented, but not on the ground that the by-law was *ultra vires.* He has since stated in a case of *Jaillard v. City of Montreal* 72 S.C. 112, that he had no fault to find with the delegation to the Chief of Police of the discretionary power to recommend the isue of a licence. There is a similar decision by the late Sir François Lemieux in *Paré v. City of Québec,* 67 S.C. 100.

In *Waller v. Cité de Montréal*[1], an application was made for *mandamus* to compel the issue of a licence for a second-hand dealer. The by-law provided: "qu'aucun tel permis ne sera accordé à moins d'une recommandation écrite du

[1] (1913), 45 Que. S.C. 15.

surintendant de police." The judgments again stress the point that the by-law was not attacked. de Lorimier J. says in part:

La validité du règlement de l'intimée n'est pas mise en question par le requérant.

* * *

Quant au règlement, je le crois extrêmement sage et de tout point valide.

* * *

Il est possible que le règlement aille trop loin, qu'il soit opportun de le changer et les moyens de le faire ne font pas défaut, mais, encore une fois, tant qu'il reste en force, il doit recevoir son application.

Tellier C.J. says in part:

Mais laissant de côté cette question de forme, il faut reconnaître que le règlement de la cité est parfaitement raisonnable dans ses dispositions et spécialement dans celles qui exigent un certificat du surintendant de police. Il est juste, il est sage qu'on soit renseigné sur les mœurs et la conduite de celui qui veut exercer le négoce dont il s'agit dans cette cause et personne n'est mieux qualifié pour donner ce renseignement que le fonctionnaire désigné au règlement.

The majority were of opinion that the refusal of approval by the superintendent of police was not shown to be arbitrary. Greenshields J. dissenting was of opinion that the refusal was arbitrary and that a *mandamus* should be granted.

In *Jaillard v. City of Montreal*[1], Greenshields C.J. appears to have assumed the validity of the by-law and his reasons deal only with the question whether the refusal of approval was arbitrary.

In *Paré v. City of Quebec*[2], the validity of a by-law similar to the one with which we are concerned was attacked. Sir François Lemieux C.J. says in part:

Les corporations municipales n'ont pas, non plus, le pouvoir de déléguer et de se dépouiller de leurs fonctions gouvernementales ou constitutionnelles, de manière à perdre le contrôle sur tels pouvoirs, car il est de principe que les corporations municipales ne doivent jamais perdre le contrôle sur tels pouvoirs.

Mais les corporations municipales, pour leur bon fonctionnement, pour l'administration de leurs affaires, dans l'intérêt de la paix et de la moralité publiques, ont droit de déléguer à leurs officiers les pouvoirs ministériels, ceux de simple administration ou de police.

La délégation de tels pouvoirs s'impose et ne peut être restreinte, surtout dans les cas où il s'agit de la paix et de la moralité publiques.

[1] (1934), 72 Que. S.C. 112. [2] (1928), 67 Que. S.C. 100.

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Si la loi contraignait les corporations municipales à exercer, comme corps, tous les pouvoirs ministériels, ceux de simple administration, ou de police, il en résulterait des inconvénients, des retards préjudiciables à l'intérêt public.

La délégation à des officiers compétents, dans les cas ci-dessus, n'est pas irrévocable, ni absolue, car la corporation municipale n'ayant pas le pouvoir de perdre le contrôle de ses pouvoirs administratifs, a toujours le droit de révoquer les décisions ou actes faits par ses officiers, en vertu de la délégation. Ce pouvoir de révocation est une garantie contre toute décision absolue ou arbitraire de la part des officiers.

In *Stiffel v. Cité de Montréal*[1], referred to in the reasons of St. Jacques J., once again the validity of the delegation to the Director of Police was assumed.

Galipeault J. says at p. 259:

Et il n'est pas soutenu non plus que la Cité, parlant par son conseil, n'avait pas le droit de déléguer en l'espèce les pouvoirs qu'exerce chez elle d'une façon particulière le directeur du service de la police.

On ne contredit pas non plus que ce dernier exerce plus que des pouvoirs ministériels et qu'il jouit de discrétion pour accorder ou refuser un permis relatif à la tenue d'une salle de billard.

I have examined all the cases referred to in the reasons of the learned justices in the Courts below and it is clear that the validity of the delegation with which we are concerned has been decided in some of them and assumed in others. In none of these cases does the decision appear to have turned on the peculiar wording of the charter of the City of Montreal. All of them appear to me to assume the validity and the application to the council of the City of Montreal of the general rule stated by Tellier C.J. in *Cité de Montréal v. Savich, supra,* at p. 128, in the passage which I have already quoted:

Il est incontestable qu'un conseil municipal n'a le droit de déléguer ses pouvoirs discrétionnaires, soit en tout soit en partie; il doit les exercer lui-même.

For varying reasons, some of which appear in the passages I have quoted above, they hold that the rule does not invalidate those portions of by-law no. 1862 which require the approval of the Director of the Police Department as a condition precedent to the issue of certain licences. With the greatest deference, I find myself unable to agree that any of the reasons assigned are sufficient to prevent the application of the general rule.

[1] [1945] Que. K.B. 258.

The applicable rule of law is, in my opinion, correctly stated in the following passages in McQuillin on Municipal Corporations, 3rd ed., vol. 9, p. 138:

> The fundamental rules that a municipal legislative body cannot delegate legislative power to any administrative branch or official, or to anyone, that it cannot vest arbitrary or unrestrained power or discretion in any board, official or person, or in itself, and that all ordinances must set a standard or prescribe a rule to govern in all cases coming within the operation of the ordinance and not leave its application or enforcement to ungoverned discretion, caprice or whim are fully applicable to the administration and enforcement of ordinances requiring licenses or permits and imposing license or permit fees or taxes.

and at pp. 141 and 142:

> Administrative, fact-finding, discretionary and ministerial functions, powers and duties as to licenses, permits, fees or taxes in connection therewith can be and usually are delegated by ordinances to boards and officials. But as stated in the preceding section, any discretion vested in them must be made subject to a standard, terms and conditions established by the licensing ordinance, which must govern the board or official in granting or denying the license or the permit.

These principles accord with the judgment of this Court in *Bridge v. The Queen, supra,* in which the delegation, by by-law, of certain powers to the City clerk was upheld only because the council had provided with sufficient particularity how that official was to proceed in issuing the permits. I refer particularly to the following passage in the report at pages 13 and 14:

> The Council has laid down in the by-law (i) the times during which the permits shall authorize occupiers of gasoline shops to remain open (ii) the proportion of total occupiers who shall make up the groups entitled to receive permits for each Sunday and for each week (iii) that the permits shall be issued to such groups in rotation (iv) that all occupiers shall be entitled to receive permits except those who have failed to remain open in accordance with the permits received by them (v) that the occupiers so failing shall cease to be entitled to permits for a time defined in the by-law. The Council has thus provided with sufficient particularity for the issuing of permits and, in my opinion, the duties imposed upon the City Clerk, (i) to select the occupiers to make up the respective groups, and (ii) to arrange the order of rotation are administrative and are validly imposed.

The impugned provisions of by-law no. 1862 appear to me to be fatally defective in that no standard, rule or condition is prescribed for the guidance of the Director of the Police Department in deciding whether to give or to withhold his approval. It is expressly provided that if that approval is withheld no licence shall issue in respect

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of the activities or things comprised in 41 sections of the by-law, many of which contain a number of subparagraphs which in turn include numerous activities.

I am unable to accept the suggestion that because the Director of Police is charged with the duty of maintaining the public peace and enforcing the penal laws of Canada, of the Province and of the municipality he is thereby sufficiently instructed as to the standard to be applied and the conditions to be looked for in deciding whether to grant his approval of an application.

Out of the hundreds of activities and things for the exercise or possession of which a licence is required the right to which depends on securing the approval of the Director of Police I will mention a few at random with the number of the section in which they are found: a wholesale dealer in coal (10(*a*)), a dealer in canaries (11(*a*)), an itinerant musician (12(*f*)), a second-hand dealer (18(*a*)), an operator of a practice golf range (25(*b*)), a pawn-broker (30), a real estate broker (34), a rooming-house (39), a laundry agent (41), a barber shop (45), an embalmer (49), a phrenologist (57), a common-carrier (61), a bicycle (68).

Any general standard or rule which could be arrived at inductively from a consideration of the multifarious activities and things enumerated in the 41 sections referred to in association with the duties resting upon the Director of the Police Department under by-law no. 247 and the penal laws mentioned above would of necessity be so wide and vague as to be valueless.

The difficulty of formulating any such rule from the suggested sources is illustrated by the differing views expressed in several of the cases to which I have referred above as to what the duties of the Director are. Of these, I will refer to only two.

In the case at bar, Prévost J. in the passage already quoted from his reasons would state the rule by which the Director should be guided as follows:

il doit dans l'octroi ou le refus de son approbation, considérer si celui qui sollicite le permis opère ou non l'entreprise dans le respect des lois et de l'ordre public.

With this may be contrasted the words of Galipeault J. in *Stiffel v. Cité de Montréal, supra,* at p. 259:

> Cest à tort que le demandeur soutient que toute la discrétion du chef de police se limite à la personne du tenancier, et qu'il ne saurait être question pour lui d'empêcher un requérant de bonnes mœurs n'ayant pas de dossier judiciaire l'incriminant, d'ouvrir et de maintenir une salle de billard dans une zone ou un territorie où les commerces ne sont pas prohibés.
>
> Il est bien certain, comme on l'a décidé bien des fois, que les lois et règlements de police d'une cité ne se limitent pas au caractère de l'individu requérant; ses devoirs de police consistent bien à assurer l'ordre et la paix publique, mais ils incluent aussi la protection de la santé publique, la suppression des nuisances, l'assurance du bien-être, du confort et de la tranquillité de la population.

In my respectful opinion neither of these passages states a rule sufficiently definite to be of value, but my purpose in quoting them is to indicate the impossibility of formulating from the available sources, any clear or certain rule. I agree with my brother Locke that the effect of the by-law is to leave it to the Director of the Police Department, without direction, to decide whether an applicant should or should not be permitted to carry on any of the lawful callings set out in the 41 sections referred to above.

For these reasons I am of opinion that the impugned provisions of by-law no. 1862 are invalid.

I would allow the appeal, set aside the judgment of the Court of Queen's Bench and that of Prévost J. and direct that the respondent pay the costs of the proceedings throughout other than the costs of the appellant's motion to amend the conclusions of its petition, which motion should be dismissed with costs. I would dismiss the application of Pal's Restaurant to intervene with costs.

Appeal allowed with costs, Taschereau, Fauteux and Aboott JJ. *dissenting.*

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