STRATHMORE
SUBDIVISON & DEVELOPMENT APPEAL BOARD

Case: Subdivision and Development Appeal Board Hearing, Appeal on Cancellation of Development Permit D24-114 – Eagle Heights Development, 4 Parklane Way, Strathmore AB, Plan 9211782, Block 1, Lot 2

File No: 2025-03-03-FILE#02

Appeal by:	Broadstreet Properties
Appeal against:	Cancellation of Development Permit D24-114 Regarding: Eagle Heights Development Property Location: 4 Parklane Way, Strathmore AB Plan 9211782, Block 1, Lot 2 Title Number 081 287 798
Hearing date:	Thursday, March 27, 2025
Decision date:	Thursday, April 10, 2025
Board members:	June Pirie, Chair Ian Anderson Beverley Bell Ethan Chow

DECISION

I. Subdivision and Development Appeal Board:

The Subdivision and Development Appeal Board has those powers and duties as set out in the *Municipal Government Act* and the *Subdivision and Development Appeal Board Regulation* to hear and determine appeals on behalf of the Town of Strathmore in respect to decisions of the Subdivision Authority or Development Authority.

The purpose of a hearing is for the Appellant, Applicant, Respondent and affected person(s) to provide the Board with information for the appeal. The Board must base its decision on planning merits. Affected person(s) were given an opportunity to speak. The order of presentation for this hearing was Respondent, Appellant, and Affected Parties.

II. Description of the Appeal:

The appeal on the cancellation of Development Permit D24-114 (the "Development Permit") was brought before the Subdivision and Development Appeal Board (the "Board") by MLT Aikins LLP on behalf of their client on March 3, 2025. Development Permit D24-114 is for a Development located 4 Parklane Way, Strathmore AB, Plan 9211782, Block 1, Lot 2.

The question before the Board was:

- Did the Development Authority have the authority to cancel the permit?

The Board heard arguments from both the Appellant and Respondent, discussing the Development Authority's power to cancel permits, the impact of the proposed development, and legal considerations, with both sides citing case law. The Appellant argued that that the Development Officer was *functus officio* (unable to reconsider the decision) and therefore the original permit should stand as there was no authority to cancel as it was issued with intent and not in error. The Respondent argued that both the Municipal Government Act and the Town of Strathmore Land Use Bylaw No. 14-11 allows for cancellation in cases of error, and showed how the permit was incorrectly issued.

III. Procedural History:

1. The Subdivision and Development Appeal Board (the "Board") received a Notice of Appeal on March 3, 2025 from the Appellant's Agent, MLT Aikins LLP. Subsequently the hearing date set was set for Thursday, March 27, 2025 at 10:00 a.m., 1 Parklane Drive, Strathmore, Alberta.
2. Notice for the Public Hearing was given in the following ways:
    a. On March 10, 2025, a letter was sent via email to the Appellant and Respondent.
    b. On March 10, 2025, a letter was mailed via Canada Post to the Appellant, Respondent, and Affected Parties.
    c. On March 19 and 26, 2025, the hearing was advertised in the Strathmore Times newspaper.
    d. The hearing notice was posted on the Town of Strathmore's Website and the Strathmore Municipal Building Front Entrance.
    e. The Agenda Package was posted on the Town of Strathmore Website on March 24, 2025, and sent the same day to the Respondent and Appellant via email.
3. The Board received written submissions from the Appellant, the Respondent and two Affected Persons prior to the hearing. All correspondence received prior to the March 27, 2025 hearing was included in the agenda package that was released to all parties and available to the public on March 24, 2025.
4. The agenda package for the March 27, 2025 hearing included the following items:

Attachment I:	Notice of Hearing – Board
Attachment II:	Notice of Hearing – Appellant
Attachment III:	Notice of Hearing – Respondent
Attachment IV:	Notice of Hearing – Affected Persons
Attachment V:	Notice of Hearing – March 19, 2025 Strathmore Times
Attachment VI:	Notice of Hearing – Strathmore.ca
Attachment VII:	Appellant Statement – Notice of Appeal – Received March 3, 2025
Attachment VIII:	Respondent Submission – March 24, 2025 – Town of Strathmore (B6319024x7AF53) – Redacted
Attachment IX:	Appellant Submission – March 24, 2025 - Written Submission – Redacted
Attachment X:	Appellant Submission – Tab 1 LUB R3 District
Attachment XI:	Appellant Submission – Tab 2 Development Permit Review – Redacted
Attachment XII:	Appellant Submission – Tab 3 October 8, 2024 Email Correspondence – Redacted
Attachment XIII:	Appellant Submission – Tab 4 Development Permit Approval – Redacted

Attachment XIV:	Appellant Submission – Tab 5 October to January Email Correspondence – Redacted
Attachment XV:	Appellant Submission – Tab 6 January 24, 2025 Email
Attachment XVI:	Appellant Submission – Tab 7 Cancellation Letter - Redacted
Attachment XVII:	Appellant Submission – Tab 8 Chandler v Alberta Association of Architects
Attachment XVIII:	Appellant Submission – Tab 9 MGA
Attachment XIX:	Appellant Submission – Tab 10 Practice and Procedure
Attachment XX:	Appellant Submission – Tab 11 Coventry Homes
Attachment XXI:	Appellant Submission – Tab 12 Masellis
Attachment XXII:	Appellant Submission – Tab 13 Northwest Value Partners
Attachment XXIII:	Appellant Submission – Tab 14 2015 CGYSDAB 119
Attachment XXIV:	Appellant Submission – Tab 15 Ryan v Moore
Attachment XXV:	Appellant Submission – Tab 16 Strathmore Times
Attachment XXVI:	Affected Person Submission No. 1 – Concerns Expanded – Redacted
Attachment XXVII:	Affected Person Submission No. 2 – Condo Appeal Letter – Redacted

5. On Thursday, March 27, 2025, the Subdivision and Development Appeal Board held a meeting to hear the appeal on the cancellation of Development Permit D24-114.

6. During the Confirmation of Agenda the Clerk requested that a Preliminary Issue for Application Confirmation be added to the agenda as item 3.1. The clerk's office is obligated to bring any emergent items forward for the Board.

7. The Board adopted the March 27, 2025 Subdivision Development Appeal Board Agenda as amended, with 3.1, Preliminary Matter – Additional Submissions added.

8. During the hearing Ms. Grundberg, Counsel for the Respondent, requested that the recording of the hearing not be destroyed as per normal process, and kept in the event the decision goes to the Court of Appeal, as it is process in the MGA for the court to request a transcript. The Board, parties, and Clerk agreed, and the recording will be saved.

IV. Timeline

a. On or about January 15, 2024, the Appellant's purchaser entity entered into an agreement of the purchase and sale with the owner.

b. August 20, 2024 The application for the proposed development and fee of $12,285 was paid.

c. August 30, 2024 The application was determined to be complete by the Development Authority.

d. October 8, 2024 The Appellant confirmed with the Development Authority that no variance was required due to the size of the site. The Development officer confirmed that she had "talked about the lot size with the planners – we're treating the lot as a legal existing lot, existing prior to the adoption of the LUB 2014 and proceeding. It is an outdated requirement, it's an error – there shouldn't be a maximum size in the LUB R3". The Development Authority made the decision not to issue a variance.

e. October 17, 2024, Development Permit D24-114 issued.

f. Following this approval, the purchase conditions were removed and the property is now an unconditional sale.

g. On or around January 24, 2025, tenants on the site were provided an eviction notice due to impending construction activities.

h. Soon after, the Development Authority advised the Appellant that the "tenants currently living on Parklane Way" had requested to come to Town of Strathmore Council as a delegation at the next meeting and that it was thought they were going to complain about the site, the process, their eviction etc.

i. February 5, 2025 a regular meeting of the Town of Strathmore Council was held.

   i. A "delegation" represented by tenants of the property who indicated they received an eviction notice expressed concerns about the impact on biodiversity at the property; and

   ii. Jamie Dugdale, Director of Infrastructure, Operations and Development Services at the Town of Strathmore, indicated they would take away the information and share it with the Development Authority for consideration moving forward; and The Chair of the Council Meeting indicated that the Development Officer and administration will begin to look at everything presented;

   iii. Council at said meeting did not make a decision regarding the permit or request that administration cancel said permit;

   iv. This presentation was also not a formal appeal of the Development Permit and was accepted by Council for information.

j. On or before February 10, 2025, the Development Authority requested a meeting with the Appellant regarding the Development Permit. When it became clear that the Development Authority intended on cancelling the permit, the meeting was ended.

k. February 10, 2025 The Development Authority informed the Appellant by letter that the Development Permit D24-114 had been cancelled.

l. March 3, 2025 an Appeal was filed.

m. On March 10, 2025, a letter was mailed via Canada Post to the Appellant, Respondent, and Affected Parties.

n. On March 19 and 26, 2025, the hearing was advertised in the Strathmore Times newspaper.

o. The hearing notice was posted on the Town of Strathmore's Website and the Strathmore Municipal Building Front Entrance.

V. Preliminary Issues:

9. 3.1 Preliminary Matter – Additional Submissions

   a. The Clerk stated they had received additional information from the Appellant on March 25, 2025. These submissions are labelled:

      i. Exhibit XXVIII – Appellant Submission Tab 17, is the Calgary SDAB decision at issue in Northwest Value Partners Inc v Calgary (Subdivision and Development Appeal Board), 2008 ABCA 250.

      ii. Exhibit XXIX – Appellant Submission Tab 18, is the Traffic Impact Assessment (TIA)

b. The Clerk stated they had received an additional submission from the Respondent on March 26, 2025 labelled:

   i. *Exhibit XXX - Respondent Submission - Cases for SDAB Hearing - March 27, 2025*

c. Before hearing the appeal, the Board needed to clarify the acceptance of this additional information.

d. Copies of the new submissions were made available for inspection.

e. The Chair asked the Appellant if there were any questions or comments on the matter and if they accepted Exhibits XXVIII, XXIX and XXX. The Appellant requested a Recess following the Respondents presentation to further review Exhibit XXX.

f. The Chair asked the Respondent if there were any questions or comments on the matter and if they accepted Exhibits XXVIII, XXIX and XXX. The Respondent had no questions or comments and agreed with allowing for a Recess at the Board's discretion.

g. The Board indicated they were satisfied with accepting the submissions and indicated that the hearing could proceed.

10. At 10:08 a.m. on Thursday, March 27, 2025 the Board commenced with the hearing as scheduled, as there were no procedural issues with the appeal. The appeal was filed on time with payment, in accordance with section 686 of the *Municipal Government Act*.

11. The Chair asked the Appellant, Respondent, and Affected Persons present to state if they had any objection to the composition of the Subdivision and Development Appeal Board. There were no objections to the Board.

12. The Chair confirmed with the Appellant and Respondent that they had received a copy of the Agenda Package for the March 27, 2025 Subdivision and Development Appeal Board meeting.

13. The Chair outlined the purpose of the hearing and how the hearing would be conducted, including the order of appearance of parties.

14. The Chair asked that individual speakers direct their comments to the Board and that if there were any additional submission materials, that copies be left with the clerk. The Chair requested that page numbers in the Hearing Agenda Package be referenced as arguments were made.

VI. Appearances:

15. The Board received submissions from and heard from:

    a. Ms. Cathy Jones as the representative for the Town of Strathmore's Development Authority (Respondent).

    b. Ms. Jeneane Grundberg from Brownlee LLP, as Agent for the Respondent.

    c. Ms. Sierra Heisler from MLT Aikens LLP as Agent for the Appellant.

    d. Mr. Neil Worthington, President Parklane Place Condo Board, as representative for Affected Persons in opposition to the appeal.

    e. Ms. Laura Matheson, Affected Person, written submission in opposition to the appeal.

16. In addition to the above, during the hearing the following individuals also spoke:

    a. Mr. Chuck Procter from the Town of Strathmore Planning and Development Department.

b. Mr. Kris D. Mailman, Chief Executive Officer, Seymour Pacific Developments and Broadstreet Properties (the Appellant) in favor of the appeal.

c. Ms. Rachel Ricard, Director of Land Development, Broadstreet Properties (the Appellant) in favor of the appeal.

VII. Summary of Evidence Presented:

Submission from the Development Authority (Respondent)

17. At the hearing on March 27, 2025, Counsel for the Development Authority, Ms. Jeneane Grundberg began with a clarification on the matter before the Board. She referred to the Appellant's Notice of Appeal and stated that it is worth noting that this hearing is as it relates to the cancellation of the Development Permit, and not the permit itself. The Board will need to consider whether the Town had the authority to cancel the permit.

18. Following initial comments from Counsel, Ms. Cathy Jones provided the background and oral evidence while being supported, as needed, by two senior employees of the Town, Mr. Jamie Dugdale (Town of Strathmore Director of Infrastructure, Operations and Development Services), and Mr. Chuck Procter (Manager of Development Services).

19. Ms. Grundberg then gave an overview and legal summary.

    a. Referring to page 17 of the Hearing Agenda she stated that the authority to confirm the cancellation of a Development Permit is set out in the *Municipal Government Act, section 640 (2)(c)(iii).* This provision is carried forward in the Town of Strathmore *Land Use Bylaw No. 14-11, section 1.9.12*, which states that a Development Permit may be cancelled if it, "has been obtained by fraud or misrepresentation, or has been issued in error."

    b. Ms. Grundberg stated that the Development Authority confirms there has been an error in the issuance of the Development Permit for two (2) reasons:

        i. Firstly, there was a misinterpretation of the variance provision in the relevant R3 District standard respecting maximum site area under the Land Use Bylaw. This initial error by the Development Authority and lack of variation resulted in the second error.

        ii. Secondly, the Development Officer should have issued a notice of issuance of a Development Permit to Adjacent Landowners and did not. This breached a mandatory requirement of the Land Use Bylaw.

    c. Ms. Grundberg stated that the reason that the Board should uphold the cancellation is, *notice.* To ensure certainty and to ensure the opportunity for participation by the affected, Adjacent Landowners in relation to the Development Permit. If the Board were to revoke the cancellation it would not be clear whether the Development Permit was valid or was voidable. She further elaborated that it could be possible that Adjacent Landowners, who may or may not have appeal rights, were not provided proper notice of issuance of the Development Permit. Ms. Grundberg stated because the possibility of notice still exists as there has been no apparent construction initiated on the lands.

20. Ms. Jones presented the background of Development Permit D24-114 on behalf of the Development Authority and shared a map of the adjacent lands. Referring to page 18 of the Hearing Agenda package, Ms. Jones stated:

a. A Development Permit application was received from Broadstreet Properties for 4 Parklane Way on August 20, 2024.

b. The subject lands are situated north of Parklane Drive between the Western Irrigation Canal and the Storm Pond. To the south there is a high density, residential development, consisting of Park Lane Place Condos and Lambert Village. The total area of the lot is 17,061.32 m².

c. The proposed development consists of two (2) four-story, wood-framed, multi-family apartment buildings, which would collectively house 147 units. The development will also include paved parking, outdoor amenities and site landscaping.

d. The application for the Development Permit was deemed complete on August 30, 2024.

21. Ms. Grundberg reviewed the Legislative regulations shown on page 19 of the Hearing Agenda, paragraph 8, 9 and 12, stating:

a. The *Municipal Government Act* maintains that a municipality's mandatory Land Use Bylaw must include provisions for issuing Development Permits, and these provisions may include cancelling, suspending, or refusing to issue a Development Permit.

b. on an application for a permitted use, a Development Permit shall be issued if the Development Permit, complies with the standards in the Land Use Bylaw as per *Municipal Government Act, Section 642*.

c. if there is a noncompliance with a standard or a regulation, then the Development Authority must consider whether a variance should be granted.

d. Rights of appeal are curtailed in a permitted use situation (*MGA, Section 685 (3)*), no appeal lies in respect to a permitted use, unless the provisions of the Land Use Bylaw were relaxed, varied or misinterpreted.

22. Counsel then reviewed Town of Strathmore Land Use Bylaw No. 14-11 referring to:

a. section 4.6.3(f) which states that for the R3 high density district, multifamily housing must be to a maximum of 100 dwellings per hectare;

b. and section 19.6(f), which states that the Development Authority shall refuse an application, unless a variance is granted;

c. and section 1.9.7 which states, a variance may only be granted if the Development Authority evaluates the variance and confirms that its effect shall not unduly interfere with the amenities of the neighbourhood and shall not materially interfere with the use of neighbouring parcels. If the variance exceeds 10%, the Development Officer shall notify Adjacent Landowners and may publish the same in the paper or post on the site.

23. Attention was drawn to the expressed provision in the Land Use Bylaw 14-11 1.9(7)(b) which mandates that if a variance exceeds 10% the Development Officer shall notify Adjacent Landowners.

24. Counsel then directed the Board to Land Use Bylaw 1.9(12) which reads: "Wherever it appears to the Development Officer that a Development Permit has been obtained by fraud or misrepresentation or has been issued in error, the Development Officer may suspend, cancel, or amend the Development Permit as required."

25. It was further argued that Section 1.18(2), states if it's a permitted use that requires a variance pursuant to section 1.9(7) The Development Officer shall issue a notice stating legal description and the nature of the development to be and send by ordinary mail to Adjacent Landowners. This provision is noted twice in the Land Use Bylaw.

26. Reference was then made to page 22 of the Hearing Agenda package where a secondary source was cited as follows; "there is probably nothing illegal about suspending or revoking a permit in such circumstances since the permit is likely voidable."

27. *Singh v Summer Village of Golden Days,* 2007 ABQB 374, was then introduced which related to a dispute with the summer village of Golden Days. The Court of Queen's Bench, dismissed an application for judicial review on the grounds that the applicant did not exhaust their statutory appeal mechanisms prior to seeking judicial review. This can be referenced on paragraph 26 of the Respondent's submission.

28. Ms. Jones provided an overview of the process followed in issuing the original Development Permit. On October 8, 2024, she informed the Appellant that after internal discussions within the municipal lands department, the Development Authority had decided to treat the lot as a legal existing lot prior to the adoption of Land Use Bylaw No. 14-11 in 2014. She clarified for the Appellant in an email that the lot size requirement was an outdated requirement and an error within the Bylaw, and there should not be a maximum size in the R3 District.

29. It was clarified by Ms. Jones, following a question by the Board, that hindsight is 20-20. She stated she now has found that there is no historical evidence that the lands are exempt from any regulation or standards in the Land Use Bylaw so they must follow the lot size requirements for an R3 District.

30. A history of the lands from 1980 to present was provided to the Board.

31. A summary of the standards in the Land Use Bylaw specifically for the R3 apartment district was then provided. Ms. Jones noted that the chart shows the Land Use Bylaw states a maximum site area of 4,000 metres squared and this is where the error in issuing the permit occurred. She stated that the site area exceeds 17,000 metres squared and so there is a required variance of over 326%.

32. Ms. Jones outlined that the municipality takes two (2) approaches to calculate the compliance of a development permit;

    a. The first approach begins by looking at the size of each dwelling there are a few of the smaller studio units that are only 35 metres squared, and therefore under the 40 metres squared.

    b. A second approach involves averaging the size of the units.

33. When evaluating the Development Permit in October 2024 the second approach was used and it was determined that no variance was required.

34. It was further stated that although the proposed development is a permitted use, Land Use Bylaw 14-11 stipulates that there should be a variance. With the variance being over 10%, mandatory notice of issuance of the Development Permit should have been provided to the Adjacent Landowners. This notice was not provided to Adjacent Landowners prior to the permit being issued.

35. Following a review, the Development Authority identified Condominium Board of Park Lane Place, two (2) Adjacent Landowners to the south, and possibly Lambert Village as affected persons.

36. It was argued that a Development Authority, such as a Development Officer, or on appeal, the Subdivision and Development Appeal Board, must take a Land Use Bylaw at face value.

37. The Court of Appeal was quoted as follows: *"...the Development Authority has no alternative but to adhere to the bylaw, it has no power to declare the bylaw invalid."* It was stated that it's a very critical issue to understand Section 4.6.3 (a).

38. Ms. Grundberg next took the Board through case law relating to *Constructive Notice* and the case law respecting the issue of *Estoppel*.

39. It was outlined that Boards and the courts have had to consider this situation where the Development Officer characterizes a Development Permit as a permitted use and an error is later realized. She stated that is where this issue of Constructive Notice arises.

40. In events when notice should have been given following issuance of a Development Permit, but was not given to Adjacent Landowners, then the Constructive Notice extends the appeal period under the *Municipal Government Act, section 686(B)* for Adjacent Landowners. This timeframe depends on discoverability. Which means that the timeframe for an appeal, which is now 21 days, doesn't begin until the neighbour knows, ought to have known or has made inquiries about the issuance of the Development Permit.

41. The Board was referred to *Coventry Homes vs. Beaumont,* 2001 ABCA 49, and *Masellis vs. Edmonton,* 2011 ABCA 157, cases. Exhibit XXX, page 21:

    a. Counsel explained in the Coventry Homes vs. Beaumont case, a Development Permit was issued to an Applicant, but not the neighbours. It was for a permitted use, but the next door neighbour, took the position that the Development Permit should have been varied, because the standards in the Land Use Bylaw prohibited one dwelling being similar or essentially identical in design. The Town had not provided notice, but the neighbour became aware of the development after commencement of construction, so the neighbour filed an appeal. The SDAB revoked the Development Permit because the design was too similar. That called into question, when is the appeal period. Based on this principle of Constructive Notice. The court determined that the appeal period could not run from the date of issuance to the Applicant because that would be unfair to the neighbours. The neighbours didn't know about the Development Permit.

        i. To balance two (2) somewhat competing interests, the interest of the developer to proceed with the development once approved, and the interest of the affected party to contest an approved development. The balance is achieved by recognizing that an interested party should know of the development, yet should have a limited window within which to contest it.

        ii. That is how the court came up with this concept of *Constructive Notice*, and the notion that an Affected Party should be given the opportunity to appeal once they know.

        iii. In *Coventry Homes vs. Beaumont*, the Court ultimately concluded that the neighbours hadn't filed their appeal to the SDAB in time and dismissed the appeal.

    b. In the *Masellis vs. Edmonton*, the City of Edmonton issued a Class "A" permit, thinking it was a permitted use, and then later conceded that a variance was required, and notice should have been given to the neighbours. No notice had been given to the neighbours

because the Development Officer had wrongly assumed it was a variance with no permit. In referencing Exhibit XXX, page 10, paragraph 38, the court recognizes that the neighbours had:

i. as with case law applicable to other forms of limitation, where discoverability is the issue on which the limitation falls to be decided. It is the awareness of an ability to make a claim, of the nature of the harm done, not the awareness of all of the evidence that may be available to support that claim which ordinarily starts the clock.

ii. *Coventry Homes* points out that the MGA attempts to balance the competing interests of the builder or developer, whose interest is to proceed with the development once approved, and the parties affected by the development, whose interest may be to contest an approved development. That balance is achieved by recognizing that an "interested party should know of the development yet should have a limited window within which to contest it": *Coventry Homes* at paras 28-29. That window of opportunity to challenge, said *Coventry Homes*, starts to run when the affected party has actual or constructive notice of the issuance of the development permit.

iii. The court went on to find in this *Masellis v Edmonton* case that none of the neighbours had filed within time that all knew.

42. In this matter, it was stated that Affected Persons could file an appeal based on Constructive Notice. It was the Respondent's position that no construction has commenced at the lands for the development, so that wouldn't trigger notice.

43. It was clarified that the developer can apply again, and the neighbours can be given proper notice, if the development is approved, and if variance is granted.

44. A quote from page 41 was read as follows: "*Finality is thus a compelling consideration and judicial decisions should generally be conclusive of the issues decided unless and until reversed on appeal. However, estoppel is a doctrine of public policy that is designed to advance the interests of justice.*"

45. An excerpt was read from page 36 of Exhibit XXX. "*The preconditions to the operation of issue estoppel are threefold: (1) that the same question has been decided in earlier proceedings; (2) that the earlier judicial decision was final; and (3) that the parties to that decision or their privies are the same in both the proceedings. If the moving party successfully establishes these preconditions, a court must still determine whether, as a matter of discretion, issue estoppel ought to be applied.*"

46. The courts have said, when considering discretion, the factors are open-ended, but at least seven (7) must be considered. Counsel referenced Exhibit XXX, Page 50 and further stated:

a. The Wording of the Statute from which the Power to Issue the Administrative Order Derives

i. The Municipal Government Act and the Land Use Bylaw expressly contemplate that there is an ability to cancel a Development Permit issued in error, so the statute itself, as black and white, said, a Development Permit can be canceled if it's been issued in error. Ms. Grundberg stated that the Board must heed that wording and the purpose of the Legislation.

b. The Purpose of the Legislation

    i. Rights should be afforded not only to the developer if they've been issued a Development Permit, but also in relation to neighbours.

c. The Availability of an Appeal

    i. The Respondent submits that the neighbours don't have actual notice of the development.

    ii. If the Development Permit is cancelled, and if the developer chooses to apply again, the Municipality is ready, willing, and able to consider a new application for the same development, then there would be an ability to appeal.

d. The Safeguards Available to the Parties in the Administrative Procedure

    i. It is possible the neighbours don't even know of the existence of the initial Development Permit.

e. The Expertise of the Administrative Decision Maker

    i. The Development Officer is charged with interpreting the Land Use Bylaw, but the statute, the MGA and the Land Use Bylaw also indicates that the Development Officer may issue a cancellation.

f. The Circumstances Given Rise to the Prior Administrative Proceedings

g. The Potential Injustice

    i. There could well be an injustice if the cancellation of the Development Permit is revoked because neighbours who should have been given notice would not be given notice.

47. It was stated that there are three (3) express legislative provisions arising in the Land Use Bylaw that are pertinent to this matter;

    a. Firstly, there is the legislative provision in relation to the maximum site area that says there must be a variance to that standard.

    b. Secondly, there is the express legislative provision requiring notice to the owners. If notice is not provided that would be a breach of the legislation. She pointed out that this fact is repeated twice in the Land Use Bylaw.

    c. Thirdly, there are the express provisions in both the Municipal Government Act and the Land Use Bylaw outlining that the municipality can cancel a Development Permit if there has been an error in issuance.

48. Reference was made to paragraph 55 of the Respondent's submission. In *1694192 Alberta Ltd. v Lac La Biche (Subdivision and Development Appeal Board)*, 2014 ABCA 319, the developer commenced construction about 3 months after issuance of a development permit was provided to the developer. The Development Officer rather than issuing a cancellation notice, notified the developer and gave notice of the Development Permit to the Adjacent Landowners. The SDAB in this case determined it had a valid appeal before it and based on concerns from Adjacent owners, granted the appeal which revoked the Development Permit.

49. Counsel returned to the main issue on this appeal involving the balancing of the right of the developer to proceed with the development once approved and the right of persons affected to contest that development. Disallowance of development, as does development itself, has effects on land use and is regulated by Government under the Municipal Government Act. Land

use bylaws seek to give both developers and others affected a fair chance to be heard in the course of that regulatory process.

50. In the matter before the Board today, the Development Authority took a different path and cancelled the Development Permit, and by doing so the Development Authority has effectively eliminated the legal uncertainty respecting whether the Development Permit is valid, or whether the Adjacent Landowners could now file an appeal.

51. Counsel stated that this was a difficult decision, but the Development Officer on February 10, 2025, was at a crossroads, and made the decision to cancel. It was argued that is the fairest approach because it recognizes the ability for the neighbours to be involved if the developer applies for a new Development Permit.

52. Counsel submitted that the appeal should be refused and the cancellation of the Development Permit should be supported.

53. Ms. Jones stated that she felt badly about what has occurred. She stated that she knows it is very upsetting for the Appellant and the Adjacent Landowners but when she realized there was an error, she considered the options. She wanted to ensure that the neighbours were given notice of the proposed development and given an opportunity to participate. She stated that is required under the Land Use Bylaw and seems to be the most likely fair process going forward.

54. The Board asked Ms. Jones to explain how the review and subsequent cancellation process occurred, and what initiated it.

55. It was stated that Ms. Jones was advised by her supervisors in February, that she should have the permit reviewed. It was at that point an error was realized and it was clarified that it was not permissible to disregard anything in the Land Use Bylaw. She then contemplated the options and cancelled the permit. At which point, the Appellant was advised to reapply so that the permit could go through the proper processes.

56. The Board requested clarification on an email in the Agenda package that indicated this permit was discussed with the planners, and at that time it was decided to proceed, even knowing that it was well over the size.

57. In reply, it was stated it was very strange that there was a maximum requirement. The Development Authority did not see justification in restricting how big a lot should be. She confirmed she had multiple discussions amongst the department. The municipal planners could not see the reasoning for the size restriction and made the decision to disregard in October 2024.

58. It was stated that the Development Authority is in favor of the project, but a mistake was made, and they are trying to correct that error.

59. The Board asked if reissuing a Development Permit with a variance was considered.

60. In reply, it was stated that the Development Authority had issued the permit, and there wasn't an option to reissue a Development Permit with variance. The Development Authority believed they would have to cancel or suspend the permit as the Department doesn't amend permits as part of its process. It was stated it is best to start fresh.

61. The Board asked if there was anything that could be developed on this lot without a variance. The Board further asked if the Applicant could subdivide and made the lots smaller, so it would comply?

62. In reply, the option to subdivide was not brought forward by the Applicant at the time of application.

63. It was clarified that the only way you could build on this land is with a variance, or subdividing the land to make it smaller. The other option would be to make a textual amendment to the Land Use Bylaw and change maximum size requirement.

64. The Board asked if the Development Permit was cancelled has, or would, the Applicant receive their application fee back?

65. Mr. Procter answered that he was not aware of any refund.

66. The Board asked if there had been any discussion with the Town Council about doing a textual amendment to get rid of the maximum lot size if it was indeed an error?

67. Mr. Procter replied that the discussion with Council has not occurred regarding removing the regulation in question. Although it is flagged on the department's list for review, Strathmore Town Council is unaware of any change at this time.

68. The Board then asked if any other parties had a point of clarification in the Respondent's submissions?

69. Ms. Heisler asked if notice of this appeal went out to all neighbouring Affected Parties and if any notice went out prior to the February 5, 2025 Council meeting.

70. The Clerk confirmed that notice of the hearing went out to the properties that are located adjacent to the property of 4 Parklane Way. She further stated that Council meeting Agendas are released on the Friday before a regular Wednesday Council Meeting, so notice of the item would have been available to the public five (5) days prior to the meeting occurring. Agendas are placed on the Town of Strathmore website for public access and meetings in general are advertised weekly on the Town's social media.

71. The Board asked for clarification as to who signed off on the initial Development Permit.

72. Ms. Jones stated she has the authority to issue permits without oversight.

73. The Board asked for clarification on the timing of the request to review the Development Permit from October 2024.

74. In reply, it was stated that after the February 5, 2025 regular Council Meeting it was advised to have the permit reviewed, which was done immediately.

75. At this point, Counsel brought back additional information to a previously asked question and stated that the 2025 Fees Bylaw does not give clear authority for the municipality or the CAO to waive these types of fees, but if the Appellant were to come forward with a second development, permit application, Administration could make a request to Council, to consider waving the fee for that second Development Permit application.

Submission from the Appellant – Ms. Sierra Heisler (Agent for the Appellant)

76. Next the Board invited the Agent for the Appellant, Ms. Sierra Heisler, to speak on behalf of her client, the Applicant for the property located at 4 Parklane Way, Strathmore, AB, Plan 9211782, Block 1, Lot 2.

77. Ms. Heisler stated that there is a jurisdictional issue to consider, the issue of whether or not the Development Authority had the authority to cancel the Development Permit. If they did not have the right to cancel that Development Permit, it is reinstated.

78. Background was provided on the discussions between the Appellant and the Development Authority to provide context for the length of time the issue has been known. It was stated

that discussions began between the two parties in August of 2023, which is when questions were first raised by the Appellant about the maximum lot size for an R3 District. To which Counsel stated the response from the Development Authority was *"No worries. I have 100% variance power, we can deal with this."*

79. The Appellants wanted to ensure compliance to proceed. If they needed variances, or if they were told they needed variances, they would have applied for those variances.

80. On or around January 15, 2024, the Appellant purchaser entity, which is a bare trustee, entered into an agreement to purchase the property, subject to the condition of obtaining a Development Permit for the proposed development.

81. On August 5, 2024, the Appellant submitted its Development Permit application for the proposed development. The application was deemed complete on August 30, 2024, as previously stated by the Development Authority, and on October 7, 2024, Development Services, together with other departments, completed a review of the Development Permit application.

82. The Board was then referred to a table found on page 242 of the Hearing Agenda that outlined the issues considered with respect to noncompliance or discrepancies and the variances that were to be considered. The table showed the Maximum Building height was under the 10% variance, so it was deemed to be a minor variance, and did not require notice to Affected Parties, with the same being said for the parking and landscaping variances. With respect to the Maximum Lot area, it is indicated that 4,000 metres squared is what was in the Land Use Bylaw. Counsel stated that, however, the Development Authority has intentionally crossed that out, acknowledging the total size to be over 17,000 metres square.

83. Counsel outlined that it was not clear what departments were involved in the Development Permit review, but it seemed comprehensive to her client with engineering and utility comments included.

84. On October 8, 2024, the Development Authority confirmed to the Appellant that the development review had been completed, and that there were no major issues identified.

85. At that time the Appellant specifically requested confirmation that there were no issues with the maximum site area, as the maximum site in the Land Use Bylaw is 4,000 m squared. Ms. Heisler stated that the Development Officer advised they were treating the lot as an existing legal lot prior to the adoption of the Land Use Bylaw in 2014. The Maximum Lot Size was an outdated requirement, an error and there shouldn't be a maximum size in the Land Use Bylaw for an R3 District.

86. It was then argued that this advice showed the intention of the Development Officer. Ms. Heisler stated that the Development Officer intended to issue this Development Permit as was done on October 17, 2024.

87. It was further stated that relying on the approval of the Development Permit from the Development Authority, the Appellant had the purchaser waive the development condition under its purchase agreement, as such, the purchaser's obligation to purchase this property is now unconditional. The Appellant claims that they are in risk of breaching their contractual obligations if the development is not allowed to proceed.

88. On January 24, 2025 the Development Authority advised the Appellant that the tenants currently living at 4 Parklane Way had requested to come to a Town of Strathmore Council meeting.

89. On February 5, 2025, a Regular Meeting of the Town of Strathmore's Council was held. During this meeting, a delegation calling themselves the Strathmore Bird Sanctuary Initiative expressed their concern with the impact of the proposed development on the biodiversity of the area.

90. Following said presentations, the Chair of the meeting indicated that Administration would begin to look into the matter and the Director of Infrastructure Operations and Development Services, Mr. Jamie Dugdale, indicated that his department would take away the information shared by the opposing counsel.

91. The Appellants position outlined that the actions of administration appeared like a fettering of discretion of the Development Authority.

92. The Appellant argued the Development Authority did not have the authority to reconsider the Development Permit application because once the Development Authority made the decision and approved the Development Permit, it became *functus officio*. Ms. Heisler stated that this term means that once an official duty is performed, one cannot then go back, reexamine, or reconsider the matter as set out by the Supreme Court of Canada in the *Chandler v Alberta Association of Architects,* 1989 SCC 41

93. Counsel directed the Board to page 281 and read: "*To this extent the functus officio principle applies. It is based, however, on the policy ground which favors finality of proceedings rather than the rule which was developed with respect to formal judgments of a court, whose decision was subject to full appeal. For this reason I am of the opinion that his application must be more flexible or less formalistic in respect to the decisions of administrative tribunals which are subject to appeal only on a point of law, justice may require the reopening of administrative proceedings in order to provide relief which would otherwise be only available on appeal.*"

94. Counsel argued that the wording in the MGA is that the municipality must establish bylaws including provisions for cancelling. It does not speak to reconsideration.

95. The Appellants outlined there is no express right in the MGA allowing a Development Authority to reconsider permits. She stated that the wording is cancel, it is not reconsider. Cancel refers to striking a permit. Reconsider is reopening a permit to reassess, reanalyze and come to a different conclusion.

96. Administrations have the authority to reopen a decision where there is legislative authority to do so, which may be found in express wording, implied by the nature of the decision-making power in question when it is necessary to correct a clerical error, an accidental error or omission, a misrepresentation or an ambiguity in the decision - which is not the case here.

97. Counsel proposed the Land Use Bylaw's provision for cancellation does not mean, or cannot mean, that the Development Authority has the authority to reconsider a decision.

98. Further, the intent of the Legislature when they drafted the MGA was for the overarching principles of certainty, finality and timeliness of decisions. If the concept of a Development Authority being able to reconsider decisions is brought in, then that undermines that intent,

there would always be the possibility of cancellation with no timeline for when permits could be canceled.

99. Counsel directed the Board to page 310 of the Hearing Agenda where cancelling a permit is restricted to minor clerical errors, accidental slips or omissions or ambiguities, not broad misinterpretations of a bylaw, and that it goes back to the intent of the Development Officer when issuing the approval.

100. Counsel argued that the permit issues did not come to the attention of the Development Authority in February 2025. Rather it was argued that the Development Authority was made aware of issues prior to their determination.

101. Counsel then pointed to page 256 of the Agenda package where correspondence between the Development Authority and the Appellant indicated that between December 2024 and January 2025 while the Development Agreement was being negotiated.

102. The Appellant submitted everything they needed to with their application. They were forthcoming about the maximum lot size and repeatedly asked questions about whether or not they needed variances. There was no attempt to hide or misrepresent anything.

103. It appeared to the Appellant that the Development Officer reconsidered the Development Permit following the Council Meeting and attempted to treat the permit as if it was new application. This re-evaluation led to the Development Authority reaching a different conclusion than the initial review.

104. Counsel directed the Board to the Golden Days case.

105. It was stated that there were two important factors in that case for the Board to consider:

    a. Firstly, the Applicant's application contained a significant error regarding required setbacks. This misrepresentation went to the integrity of the of the application which is an exception to the *functus officio* principle.

    b. Secondly, the decision was in relation to the right to appeal to the Subdivision Development Appeal Board when other remedies exist and not a question if the Development Authority had a right to cancel.

106. Counsel then directed the Board to *Northwest Value Partners Inc. v Calgary (Subdivision and Development Appeal Board),* 2008 ABCA 250, which dealt with a Development Permit that was issued for an office/medical building. It was later determined that that permit was intended for an office building alone, which was a misrepresentation and error identified in the permit.

107. The Board in that instance found that there was no evidence to support the conclusion that the Development Authority, in fact, had reconsidered its original decision. In its decision, the Board accepted the evidence that, pursuant to their Land Use Bylaw, the Development Authority canceled the Development Permit, because the Development Authority determined that the Development Permit had been issued in error. However, distinguishable to this matter, the parties in *Northwest* agreed that a permit could be reinstated by the Development Authority once corrected.

108. Counsel argued that Affected Persons had notice of this development, at the very least, on February 5, 2025. It was well within their right to file an appeal upon knowing of the development, but they instead spoke to Council who passed that information along to the

Development Officer, who reconsidered the Development Permit and decided that it needed to be canceled.

109. It was argued that forcing builders and developers to assume risk arising from an unforced error by a municipality and cancelling a permit would seriously undermine the ability of builders and developers to rely on the authority of the permit. Accepting this as law would unquestionably inject the type of uncertainty into the development process that this court in *Coventry Homes* expressly rejected.

110. It was then argued that it was not open to the Development Officer to cancel the permit so that it could be reconsidered to allow notices to be issued and the appeal period restarted for the Affected Parties.

111. Regarding the issuance of the permit, it was then put to the Board that preconditions for the operation of issue estoppel may have arisen.

112. Counsel proposed that the decision to cancel the Development Permit was made unilaterally. It was alleged that said decision was absent of procedures or discussions, other than allowing the applicant to attend the February 5, 2025 Council Meeting.

113. Counsel shared that her clients have a contractual relationship that is now with the purchaser. She stated that it is the injustice to the Appellant, not the injustice to the Adjacent Landowners that is key.

114. Counsel argued that if an applicant has made a *bona fide* application for the development which the Development Authority issues a permit, it is difficult to see a rationale to permit the cancellation of a permit after the appeal period has lapsed. Particularly if the applicant has expended money and has relied on the permit. If the permit were cancelled in such circumstances, it is likely that an applicant could sue for *negligent misstatement*.

115. The Board was directed to the legal framework and the intent of the land use legislation, specifically *Section 685 sub. 2 of the MGA*.

116. The Appellants clarified their submissions speak to the preliminary jurisdictional issue, and if the Board finds that the Development Authority did not have the right to cancel the Development Permit, then that original Development Permit in existence on February 10, 2025, is reinstated as of that date.

117. If the Board comes to a different conclusion and decides that the Development Authority Officer had the right to cancel the Development Permit, it was proposed that Board retains the jurisdiction to hear the merits of the Development Permit. If the Board was in the opinion that it would not unduly interfere with the amenities of the neighbourhood, or materially interfere with or affect the use and enjoyment of neighbouring parcels of the land, then the permit could continue to stand.

118. It was clarified that development on the site in question will always require a variance. Counsel stated that while the Appellant appreciates that looking at 4,000m^2 to 17,000m^2, looks like a large variance. Ms. Heisler would suggest that it is not as large as it appears, and the development permit was still in compliance with all the other provisions.

119. Counsel for the Respondent asked if there was anything on the record that suggests that the Appellant, Broadstreet Properties, ever requested the return of the Development Permit fee or the growth fee payable to the City of Calgary.

120. Ms. Ricard answered that they did not request a refund of the Development Permit fees or the Calgary Growth strategy, because after they had the meeting on February 10, 2025 where Staff informed them that they would be revoking the Development Permit, they ceased communications with the town, because it became a legal matter.

121. The Board asked Ms. Ricard to clarify the meeting she had referenced.

122. Ms. Ricard stated that before the Town issued the revocation letter, they requested a meeting with Broadstreet staff, and during that online meeting the Town explained they were going to be issuing the Revocation letter. When the Appellant realized the magnitude of what was happening, they ceased the call and future communication with Town staff.

123. Mr. Mailman stated that Broadstreet is a family owned and operated company based out of Campbell River, BC and Vancouver Island. He is the 3rd generation to run the company. The company owns and manages over 16,000 units across BC. Alberta, Saskatchewan, Manitoba, and Ontario. He stated that they have lots of experience. He stated that they manage everything in-house with on-site property management. He stated that they don't market themselves as luxury rental properties, they rent for the masses. He stated they are looking forward to being able to add the town of Strathmore to the over 35 communities they are currently in.

124. It was further clarified that the project intended for 4 Parklane Way will be providing 10% of units as affordable units to the community for 10 years.

125. It was further stated that since the Development Permit was issued the Appellant completed the detailed building engineering – electrical, mechanical, structural, architectural design and concluded civil design. It was stated they went firm on a piece of land that was based on an approval and now are on the hook to buy a piece of property that they are not able to develop. Mr. Mailman stated they are fully committed and ready to start on the site with the proposed timelines to begin in the summer and turn these units over in in the spring of 2026.

126. Ms. Ricard spoke to the concerns that have been raised by community members of the perceived impacts of their proposed development, specifically the two (2) Affected Parties.

127. It was stated traffic is often brought up as a concern by neighbours, and as requested by Strathmore during the Development Permit process, the Appellant has engaged a traffic engineer to complete a traffic assessment. It was stated that the scope of the work and the specific roads and intersections that were studied were determined by the municipality.

128. The traffic engineer assessed peak. A.M. and P.M. traffic volumes. In that analysis, it was determined that the existing hourly traffic of Parklane was 10 cars per hour, and that post development it would be 50 cars per hour. Amounting to a 400% increase. However, it was clarified that Parklane Way is classified as a local road with an operating capacity of 350 to 400 vehicles per hour. It was stated that, therefore, 50 cars per hour is only 12.5% of the maximum capacity that the road is designed to accommodate.

129. It was clarified that street parking is permitted on Park Lane Way, but that is a function of the road specification and design is the municipality's decision. Ms. Richard stated that she did not have the authority to restrict or enforce compliance with street parking bylaws. As a condition of the approved Development Permit, the developer would be required to construct improvements to Park Lane Way, including extending the underground water and sanitary

services, construction of curb, installing a gutter sidewalk on the north side, and building a full cul-de-sac turnaround at the end of the lane.

130. Ms. Ricard stated that the cost of those road improvements would be 100% born by her company, and there would be no contribution from the taxpayers. Additionally, those improvements would make that road safer by having sidewalks for pedestrians on both sides of the street.

131. Regarding comments that the proposed development was being built on top of a wetland, it was shared that the proposed development does not intend to infill any wetland. Plans include a setback of between 15 and 55 metres from the edge of the pond. The development would not impact any of the existing public accesses to Elmer and Phyllis Gray Park, nor restrict the neighbourhood's enjoyment of, or ability to access this area.

132. It was stated that privacy of the neighbours to the south in Park Lane Place Condos will be ensured through the installation of a solid wood panel fence along the shared property line. Additionally, there is a 7-meter landscape buffer between the two (2) properties, with extensive tree plantings. Ms. Richard further stated that a stormwater management plan and design has been completed for this development. Stormwater is not allowed to flow onto adjacent or neighbouring properties. Stormwater will flow to onsite catch basins with a controlled rate of release. Rainwater from roofs and eaves will be directed to the onsite stormwater system.

133. Additionally, a completed a geotechnical investigation of the property concluded that ground conditions are favorable for conventional strip footing foundation with billing permits having been submitted.

134. It was further confirmed that pilings would not be utilized on the site, thereby eliminating concerns about vibrations and noise.

135. Existing service connections from private property to the existing house on the property would be disconnected and capped.

136. Ms. Ricard stated that noise and dust from construction activities is a legitimate concern and to some extent is unavoidable. However, any development, no matter what they were building, would be obligated to adhere to municipal restrictions on working hours, street cleaning and dust control. She stated that her company hires contractors to come and do the work clearing the streets, maintaining the dust. It is all part of the scope of work and included in the contract.

137. The Appellant shared that they have constructed over 100 rental communities across Western Canada over the last 30 years. Ms. Ricard stated that they are experts in what they do.

138. One of the prime objectives of this project is to get the first layer of asphalt down as quickly as possible. Which results in a cleaner site which can be used for staging and parking of trades to reduce dust and tracking of dirt onto the street.

Affected Person in Support of the Appeal – Mr. Neil Worthington

139. Next the Board heard from Mr. Neil Worthington as an Affected Person representing the Park Place Condo Board and is 50 metres of the property located on 4 Parklane Way, Strathmore AB, Plan 9211782, Block 1, Lot 2.

140. Mr. Worthington shared that he was of the opinion that this development is too large at 147 units, when the bylaw states that it should be 40 units.

141. It was clarified that if he had received notice of a variance back in the fall Mr. Worthington may not have taken notice of it, because many people don't understand the process or impacts and he puts trust in the Town to do the right thing and protect their residents.

142. Mr. Worthington stated that the developer should have known that they were requesting a permit for something that was not in line with what was approved for that site, 326% is a large variance that should have caused pause and even though they were told it was legal to not inform residents, Mr. Worthington questioned whether it was right to not do so?

143. Mr. Worthington stated that he would like the permit cancellation to be upheld so that the Developer can re-apply and the residents can go through the proper process to have their voices and concerns heard.

144. The Board asked Mr. Worthington if he had any concerns about the maximum lot size variance in particular.

145. Mr. Worthington stated that he did have a concern and in his opinion it is wrong to increase the units on the land from 40 to 171.

146. The Board stated if the land was subdivided into 4 or 5 parcels you'd still be able to get the same amount of density on there. They asked the Development Authority and the Appellant if that was ever a consideration during the permitting process.

147. Ms. Jones replied that she cannot make suggestions to an applicant on how to change their application. That's up to them to determine how they could do that, how they could work with what they're provided.

148. Ms. Heisler stated that it's been very clear from the start that the Appellant questioned whether the Maximum Lot Size was an issue and they were repeatedly told no, so no other options were explored.

Closing Remarks – Respondent

149. Ms. Grundberg thanked the panel and the Appellant for allowing the submission of the full cases.

150. During closing remarks, the Development Authority reiterated that this appeal is specific to the cancellation of Development Permit D24-114.

151. Ms. Grundberg focused closing remarks on four points:

    a. First, can this type of error be the subject of a cancellation.

        i. the Development Permit itself is not before you. And the core issue here is whether this type of error, the subject of a cancellation, is within your jurisdiction, because the Appellants have tried to cast this as a jurisdictional issue, and I suggest it's not.

    b. Second, is there a financial hardship? And what's the recourse? If there's a financial hardship.

    c. Third, what about the matter of estoppel?

    d. Fourth, what is the overall public interest.

152. Ms. Grundberg reviewed the Appellant's submission regarding the Chandler case, Tab 8 and Tab 10 of their submissions. She stated that the Appellants say that a development officer is *functus officio* and they can't reconsider their decision, because there's no express authority in the legislation.

153. Counsel argued that the caselaw being submitted are general Administrative Law cases dealing with professional discipline and the text is a general Administrative Law text, and they're quite right. Ordinarily a body and entity like the SDAB, can't reconsider. Once a decision is issued in writing.

154. It was argued that in this instance the Development Officer is relying on provisions in the Municipal Government Act that expressly refer to cancellation and that's carried forward again expressly in the Land Use Bylaw relating to cancellation where there is an error.

155. Counsel stated that all of that general principle is out the window because there's express provisions in the Legislation. As Ms. Heisler referred to, there is a principle of statutory interpretation.

156. Ms. Grundberg stated that that statute should not be interpreted in a manner that has an absurd result. Words in a statute are intended to have a meaning. One doesn't ignore those words, nor can one ignore the words in the face of other administrative law principles that might apply in other contexts.

157. The Appellant relied heavily on the Northwest Value case saying that's the kind of error that would give rise to a cancellation, and in that case it is common ground. The Development Officer intended to issue a Development Permit for one thing and it was incorrectly issued for another, there was a typographical error, between what they intended and what was written on the face of the Development Permit.

158. Counsel asked why would that not be the situation here? There's nothing the Respondent would submit on the face of the legislation, where the error relates to an interpretation of the Land Use Bylaw. There was an error arising relating to notice to neighbours.

159. It was then argued that words of a statute are intended to have a meaning and outlined there would be great uncertainty if the challenges that are seen in many of these cases with constructive notice would result. She stated that the Development Officer has said that there may be somewhere between 40 and 60 landowners affected.

160. Counsel drew issue with the Appellants singling out the individuals who came before Council, who are not landowners, but occupants of the land. She stated that they are probably Affected Persons and would be given the right to appeal, but they're only one of many people who are affected.

161. It was argued that an error was made and submitted that Counsel stated why there was an error, and a key consideration is the Development Officer thought she could ignore a standard that she didn't think was relevant in a planning sense. She stated that they had candidly outlined the law for why, that's not appropriate, that once a standard is set, it must be considered.

162. Ms. Grundberg stated that the Development Officer and the Board are obliged to consider the Land Use Bylaw as is and don't get to ignore certain provisions. There might be arguments about why standards should be varied, but they are part of the process. When the error became apparent in February the Development Officer moved quickly to cancel the Development Permit.

163. Counsel stated that this effectively would provide great certainty. Better certainty, if you will, in terms of how parties could be able to participate, etc.

164. On the issue of financial hardship. Ms. Grundberg stated that the Appellant's Counsel said if there is an error that a Development Officer has made, and that is the basis of a cancellation, there could be a lawsuit and damages for negligent misstatement.

165. It was agreed that this was an absolutely correct statement of law. So indeed, the Developer, if at the end of the day they are facing damages, for out-of-pocket expenses or financial hardship they could file a statement of claim against the municipality and claim damages. Ms. Grundberg stated that discussion is for another day because they don't really know whether there is going to be any financial hardship at this point. Because it is open to the Developer to apply for a second Development Permit. They could do so. It's possible and the Development Officer has to be very cautious here, because they can't prejudge another application. Ms. Grundberg stated that it is possible that the developer could end up with a Development Permit that is identical to the Development Permit that was canceled. So there may be no financial damages whatsoever. All of the cost, the time, and expense. Committed by the developer after the issuance of the Development Permit might be able to be relied on in relation to a second Development Permit application, if approved.

166. She stated that it is unknown whether the Developer is facing any financial hardship because they haven't taken any steps to mitigate their damages through application of a second Development Permit.

167. To close the third point of issue estoppel is a small, but important point. Counsel stated that the Appellants suggested that the only parties that should be considered are the parties to the initial communication relating to the Development Permit, and whether the standard would apply. Going to the discretionary factors that must be considered, the Board needs to consider the overall public loss setting not just the communications between the two (2) individuals, and Respondent would submit that the public should not be disadvantaged.

168. It was further argued that the members of the public could be disadvantaged because they have not been given proper notice. Notice that was clearly required, because a variance should have been recognized, and the Development Permit should have been issued on that basis.

169. The *Municipal Government Act* expressly states that Land Use Bylaw may consider provisions relating to cancellation. The Land Use Bylaw carries that forward and says there can be cancellation, not only in situations where there's a misrepresentation at the hand of the developer, but it references errors. There is nothing in the legislation that would suggest an error must be an error unintended by a development officer in terms of how that is applied. In the *Northwest Value* case there is no suggestion at law that an error cannot include an erroneous interpretation of the Land Use Bylaw, and an error in relation to failure to notify innocent third parties.

170. It was outlined that there may be 40 to 60 landowners that could be negatively impacted. Counsel stated that they were talking about a matter of 2 or 3 months. They are talking about a situation where the developer could re-apply. They are talking about a situation where, if the Developer applied for a waiver of a development, permit charge, or any other fees paid that those could be applied to a new Development Permit application, so there wouldn't be unnecessary funds expended.

171. Ms. Grundberg stated that there were some suggestions that a paragraph referenced in the *Masellis* case where Justice Watson was so eloquently talking about the negative impact on terms of a development officer cancelling a decision. But she would suggest, if one were to go back and look at that paragraph in context he is saying that the principle that was not to be

accepted was what was being asserted by the neighbours, and that would have been that there would be an unending appeal period, and he was saying in context that is not tenable in that situation. So that quote was taken, she'd suggest a little bit out of context.

172. Counsel concluded by stating it is very clear how the error was committed, what was on the Development Officer's mind at the time she issued the Development Permit in October. She thought she could ignore the maximum site standard in section 4.6 of the Land Use Bylaw. She clearly could not. She was under that erroneous assumption she did not have to apply that standard. She assumed wrongly that a variance was not required, and she assumed wrongly that the neighbours should not have been given notice. So that is why there has been an error. That is why the cancellation should be supported.

Closing Remarks – Appellant

173. Ms. Heisler stated that what is at issue in this appeal is whether to allow the Development Authority the right to cancel Development Permits that they previously approved. It was argued that by cancelling the permit the Development Authority is assisting Affected Parties with circumventing appeal provisions.

174. Ms. Heisler touched on the issues that were raised by the Affected Party, specifically the concern with the Maximum Lot Size, where in his view there was a large variance. It was mentioned by one of the members of the Board, the applicant could potentially subdivide this lot into. 4 x 4,000 square metre parcels and then have 40 units on each lot, and that gets you 160 units in total in the same area. Where this proposed development is looking at 147.

175. Counsel appreciated Mr. Worthington's candor in respect to receiving notice that a variance had been approved, and that he probably wouldn't have appealed it anyways.

176. Ms. Heisler stated that there is already a means by which Affected Parties, can challenge a Development Permit that has been issued, and that it is the appeal process. She stated that the Appellants take a little bit of issue with the statement that it's bad business that they didn't apply for the variance. Especially when they repeatedly asked whether they needed to have the variance and would have applied for it if they were told they needed it.

177. Counsel turned to the preliminary issue, whether or not this Development Authority, the Development Officer was *functus officio* when she made her decision. It remains their position that it was.

178. Ms. Heisler stated that she appreciated Counsel for the Respondent agreeing that generally that principle does apply to Development Officers and Development Authorities, however, where they deviate is her position that the word cancel within the Municipal Government Act is sufficient to cover reconsideration.

179. It was argued that a full reconsideration of the Development Permit application is exactly what happened here.

180. When Counsel examined the case law that both sides presented there wasn't a single piece of case law that said, yes, you have the right to open back up and reconsider.

181. Ms. Heisler stated that specifically when they talked about that *Northwest* decision, where there was the cancellation of a Development Permit at the SDAB level. Counsel stated that the SDAB in that instance determined it was a manifest error and not a reconsideration. Leave to appeal to the Alberta Court of Appeal on that decision was denied.

182. With respect to financial hardship and the Developers' ability to mitigate damages by reapplying, there are no guarantees in going forward. Resubmission would be an entirely new

application. Ms. Heisler stated that the Development Officer will not be bound by any previous decisions or representations that she's made, she will be able to again reassess, reconsider, look at potentially other factors and approve or not approve with the variances this time, which then could bring appeals from people who, under the original Development Permit, may not be subject to appeal.

183. In order to mitigate damages, Ms. Heisler stated that the Appellants would like the original Development Permit reinstated.

184. Respondents' Counsel also addressed the issue of the public being disadvantaged because the variances and notice of that should have been sent. Ms. Heisler stated that the three cases that were referenced did not allow a Development Officer to cancel the development permit and have proponents reapply.

185. The Board was asked to consider when individuals received notice, or constructive notice, of the actual Development Permit approval. That is when the clock would have started and that is how to balance those competing interests. Ms. Heisler stated that she was not going to spend too much more time on the estoppel issue.

186. Ms. Heisler stated that it is their opinion that the *functus officio* pretty much ends the matter, and that if it is determined as a Board that the Development Authority did not have that authority, then the Development Permit gets reinstated.

187. In the event that the Board finds that the Development Officer did have the authority to cancel the Development Permit, then it is requested that the Board exercises authority under section. 687 (3)(d) of the Municipal Government Act to approve this development, permit.

188. Ms. Heisler stated that the impacts of the development will be minor. The developer will be improving areas, putting in sidewalks, improving the roads. In terms of material interference with the use, enjoyment, or value of neighbouring properties they'll have to comply with bylaws in terms of noise when they're doing their ongoing construction. She further stated that there's going to be a fence to address privacy issues.

189. Counsel stated that there will be an onsite project manager who will be there to assist, this is going to be a well-run building, it is going to be a new building and it's going into an R3 District, which is zoned for this type of construction. While it is hard to have new developments come in and neighbours don't want to live in a construction zone, that is the reality of living in a municipality that is expanding. Said inconvenience is not undue, and does not affect the use and enjoyment of the area.

VIII. Legislative Framework

190. On September 17, 2014, the Town adopted Land Use Bylaw No. 14-11. The Bylaw outlines land use regulations for the Town of Strathmore and is amended from time to time following the processes outlined in the *Municipal Government Act*.

191. The Board has regard for the following sections of Land Use Bylaw No. 14-11:

    a. Authority and Responsibility of the Approving Authority – Section 1.9 (7)(b)

    b. R3 – High Density Residential District – Section 4.6

IX. Decision:

192. In determining this appeal, the Board:

a. Complied with the relevant provincial legislation and land use policies, relevant statutory plans and the Town of Strathmore's Land Use Bylaw No. 14-11.

b. The Board considered all relevant evidence presented at the hearing and considered the arguments made both in favour and opposition to the appeal.

c. The Board considered the merits of the application.

The appeal is granted, and the decision of the Development Authority to cancel Development Permit D24-114 is overturned. The original Development Permit D24-114 will stand as issued.

X. Reasons:

The Board reviewed all evidence and arguments, written and oral, submitted by the Appellant, Respondent, and affected persons and focused on key evidence and arguments relevant to planning considerations in outlining its reasons.

The matter under appeal is the decision by the Development Authority to cancel the Development Permit number D24-114.

193. HISTORICAL INFORMATION

a. The legal lot (17,061.32m2) that is the subject of the cancelled Development Permit was reported by the Development Authority as in a zone R3 area High Density Residential District since September 16, 2008. A letter to the landowner at the time confirmed that LUB #89-20 was amended and the "lands were" designated as R3.

b. On September 17, 2014, the LUB #14 -11 was adopted and the "lands were" districted R3 High Density District and some of the development standards were different than under the prior LUB #89-20. The Board finds it was not indicated if the "subject lot" due to its size was given any exception or if the current landowners at the time were notified of the changes and how the changes impacted any development occurring on their lot without a bylaw change, variance or subdivision.

c. The current proposed development complies with the stated purpose of a R3 – High Density Residential District to provide housing to a maximum of 100 dwellings per hectare. The current Development Permit application provides 85.96 dwellings per hectare therefore is under the maximum allowed. There is a stormwater pond located west of the lot and high-density development to the south.

194. ISSUE Of APPEAL

The issue in front of the Board is whether the Development Authority has the authority to cancel the Developmental Permit D24-114.

The Board heard from both parties, the Respondent and the Appellant, at the hearing and through their written submissions.

The Respondent's (the Development Authority) position is that:

a. There could be legal uncertainty if the Development Permit is not cancelled as the Adjacent Landowners had not been notified originally.

b. There has been an error in the issuance of the Development Permit due to a misinterpretation of the variance provision in the relevant R3 district.

c. The Development Officer should have issued notice of variance of the Development Permit to the Adjacent Landowners and did not.

d. In the Municipal Government Act (MGA) point 9.12 reads "Wherever it appears to the Development Officer that a Development Permit has been obtained by fraud or misrepresentation or has been issued in error, the Development Officer may suspend, cancel, or amend the Development Permit as required."

e. The legal principles related to estoppel were shared. The Board must consider justice for the neighbours who ought to be given the opportunity to participate if they are concerned about the development. This is why the municipality has proceeded by cancelling the Development Permit.

The Appellant (the developer) position that:

f. They have been planning this development for at least 14 months from the time of the original offer to purchase the lot and wanted to ensure compliance. They questioned the need for variance and were told no variance was required and the Development Permit was approved.

g. At a regular Town of Strathmore Council meeting an "opposing delegation" presented. The Chair of the meeting indicated that Administration would begin to look into the matter and the Director of Infrastructure Operations and Development Services, Mr. Jamie Dugdale, indicated that his department would take away the information shared by the opposing counsel. This resulted in the cancellation of the Development Permit D24-114.

h. Once a tribunal has reached a final decision in respect to the matter that is before it, in accordance with its enabling statute, that decision cannot be revisited because the tribunal has changed its mind or made an error within jurisdiction.

i. Presented the legal principle of estoppel that simply prevents arguing a position when it contradicts with what has previously been said.

j. The developer has many financial commitments that have already been completed with regards to the proposed development or in the works since the approval of the Development Permit. Some specifics that have already been completed by the developer are:

    i. The stormwater management plan and design, civil drawings were reviewed and approved by the Town. Stormwater is not allowed to flow onto adjacent or neighbouring properties. Storm will flow to onsite catch basins with a controlled rate of release. Rainwater from roofs and eaves will be directed to the onsite storm system.

    ii. They have completed a geotechnical investigation of the property and ground conditions are favorable for conventional strip footing foundations. They are advanced in the development plans for this property and had already

submitted billing permits. Pilings would not be utilized on the site, thereby eliminating concerns about vibrations and noise.

iii. They engaged a traffic engineer with Bunt and Associates to complete a traffic assessment. Complete traffic study included.

iv. They have detailed building engineering – electrical, mechanical, structural, architectural design and have finished off civil design.

The Adjacent Landowners' position that:

k. They did not receive written notice when the Development Permit was approved and the chance to appeal. Mr. Worthington stated that if he had received notice of a variance back in the fall he may not have taken notice of it, because many people don't understand the process or impacts and he puts trust in the Town to do the right thing and protect their residents. He stated that he would like the permit cancellation to be upheld so that the Developer can re-apply and the residents can go through the proper process to have their voices and concerns heard.

l. During the hearing and through his written submission he indicated his concerns were:

i. how the permitting process was handled with the site being significantly over the maximum site area (size) for a R3 development

ii. the density of the proposed housing complex

iii. the impact of the traffic

iv. impact on storm sewers

v. need for possible fence

vi. the impact of construction on his current housing complex

Conclusion:

195. The Board finds that the Appellant (developer) acted in good faith and made a *bona fide* application.

196. The Appellant brought to light the issue of exceeding the maximum lot size to the Development Authority multiple times and was assured by the Development Authority that the maximum lot size of 4,000 square metres would not apply.

197. In reaching this determination, the Development Authority considered the variance and made the decision not to apply the variance.

198. In all other respects, the proposed development was within the scope of the R3 High Density Residential District and allowable variances.

199. The Development Permit was approved by the Development Authority after thorough consideration and through the appropriate processes.

200. The Board finds in early February, well past the appeal period prescribed by the LUB and MGA, a "delegation" presented to the Strathmore Town Council regarding the development.

201. This presentation resulted in the Council asking for the Development Authority to "consider" the information presented moving forward.

202. In "considering" this information, leadership within the lands department requested a review of the development permit in question.

203. Following said review, the Development Authority made the decision to cancel the Development Permit that was *functus officio*.

204. The Board finds that the decision to cancel the Development Permit D24-114 was based on a reconsideration of information presented at a regular meeting of the Town of Strathmore's council.

205. When the Development Authority later changed their decision and stated a variance should have been requested, they did not offer any other resolution except to cancel an already approved permit. This leaves the Appellant in an uncertain situation as if previous communication and processes had not occurred.

206. Although the Respondent indicated that it would cause delays if the SDAB did not uphold the cancellation, the Board finds that the decision to uphold or revoke the cancellation does not inherently change the processes set out in the legislation and each case needs to be considered on its own merits.

207. While the Board heard the evidence from the Appellant and the Adjacent Landowners about the merits of the proposed development and the concerns regarding the development, the Board finds this information is not the subject of this appeal.

208. Therefore, this information was given limited weight in the decision.

209. The issue for the Board to consider remains the decision to cancel the Development Permit, and whether it was the correct decision made by the Development Authority.

210. In summary, the Board concludes that based on the timeline and the evidence provided at the hearing, that the Development Authority's decision to cancel the Development Permit D24-114 was based on a "reconsideration" of their decision. Even though a reason was stated that the decision was based on "discovering" an error, the Board finds the evidence more compelling that the decision was based primarily on a "reconsideration" following the Town Council meeting held on February 5, 2025.

211. To that end, the Board is exercising its authority as prescribed by section 687(3)(d) to revoke the cancellation and confirm the Development Permit as, in its opinion, (i) the proposed development will not (A) unduly interfere with the amenities of the neighbourhood, or (B) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land and (ii) the proposed development conforms with the use prescribed for that land in the Land Use Bylaw.

212. For the reasons set out above, the appeal is granted, and the decision of the Development Authority to cancel Development Permit D24-114 is overturned. The Development Permit as issued by the Development Authority is upheld.

June Pirie

June Pirie, Chair
Subdivision and Development Appeal Board

April 10/25

Date