Submissions of the Development Authority for the Town of Strathmore For Subdivision and Development Appeal Board Hearing on March 27, 2025

Appellants:	FOIP Sec. 17(1) [redacted]
Appeal:	Decision of Development Authority Cancelling Permit D24-144
Legal Description of Lands:	Lot 2, Block 1, Plan 921 1782 at 4 Parklane Way (the "Lands")
District:	R3 – High Density Residential District
Date of Submissions:	March 24, 2025

I. INTRODUCTION and SUMMARY

1. The Appellants are appealing the decision of the Development Authority to cancel issuance of development permit D24-144 (the "Development Permit") issued on February 10, 2025 (the "Cancellation Notice").[1]

2. The Development Permit was issued on October 17, 2024 for a Housing, Apartment, with conditions.[2]

3. The Development Authority submits that the SDAB should deny the appeal, and confirm the Cancellation Notice given the following:

    a. **Legislative Authority** – the legislative authority for the Development Authority to cancel the Development Permit is set out in:

        i. ***Municipal Government Act*** s 640(2)(c)(iii), which states that a land use bylaw "must establish a method of making decisions on applications for development permits and issuing development permits including the provision for"…"processing an application for, or issuing, **cancelling,** suspending or refusing to issue, a development permit" and

        ii. **The Town of Strathmore Land Use Bylaw #14-11** s 1.9.12, which states a development permit may be cancelled if it "has been obtained by fraud or misrepresentation **or has been issued in error**". [*emphasis added*]

    b. **Error** – the Development Permit was issued in error. Because the proposed development requires a variance to a development standard (and the variance exceeds 10%,) notice of issuance of the Development Permit should have been provided to adjacent owners of land, and it was not (Land Use Bylaw #14-11 s

[1] Cancellation Notice dated February 10, 2025 [TAB 5, pdf pg 64-65/207]
[2] Development Permit dated October 17, 2024 [TAB 6, pdf pg 67-70/207]

1.9.7(b) and s 1.18.2). Notice was not provided to adjacent landowners, and therefore the issuance of the Development Permit breached this mandatory requirement.

c. **Legal Certainty** – if the Cancellation Notice is not confirmed by the SDAB, this would create uncertainty whether the Development Permit is legally invalid. It would not be clear whether adjacent landowners could now, or in the future, file valid appeals respecting the Development Permit to the SDAB (see discussion of the *1694192 Alberta Ltd v Lac Lac Biche County* case). At the present time, physical construction of the development contemplated under the Development Permit has not commenced.

II. BACKGROUND

A. Ownership, Lands and Application

4. The Brenda Strafford Foundation Ltd is the registered owner of the Lands.[3] The Appellant, Broadstreet Properties, submitted the application for the Development Permit.[4]

5. The Lands are located in the Town of Strathmore (the "Municipality"). The Lands are east of Thomas Drive and an irrigation channel. There is a stormwater pond located to the west of the Lands and a residential high-density development to the south.[5] The lot area of the lands is 17,061.32 m^2 (4.33 acres or 1.71 ha). Map #1 below shows the Lands, identified by the green dashed line.

Map #1

[3] Certificate of Title dated March 20, 2025 [TAB 7, pdf pg 72-73/207]
[4] Development Permit Application dated August 20, 2024 [TAB 8, pdf pg 75-76/207]
[5] High Density Residential District Map [TAB 9, pdf pg 78]

6. The application described the proposed development as a two 4-storey, wood frame multi-family apartment buildings (147 units total) with surface parking, outdoor amenities and site landscaping (the "Proposed Development").[6]

7. The application was determined to be complete on August 30, 2024.[7]

III. LEGAL & LEGISLATIVE SCHEME

A. Municipal Government Act, RSA 2000, c M-26 (the "MGA")

8. The *MGA* provides that all development, subject to exceptions outlined in the land use bylaw, requires a development permit:

> **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.[8]

9. Every municipality to adopt a land use bylaw which may prohibit or regulate and control the use and development of land and buildings.[9] The land use bylaw "must establish a method for making decisions on applications for development permits and issuing development permits for any development, including provision for", among other things, "processing an application for or issuing, cancelling, suspending or refusing to issue, a development permit".[10]

10. A land use bylaw must, unless the district is designated district control, prescribe with respect to each district one or more uses of land or buildings that are permitted in the district, with or without conditions.[11]

11. The land use bylaw may authorize a development authority to decide on an application even though the proposed development does not comply with the development standards (sometimes called regulations) in the land use bylaw, if, in the opinion of the development authority, the proposed development would not unduly interfere with the amenities of the neighbourhood or materially interfere with the use, enjoyment or value of neighbouring parcels of land, if the use conforms to the use prescribed in the land use bylaw.[12]

12. For permitted uses, the *MGA* provides:[13]

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[6] Development Permit Application dated August 20, 2024 [TAB 8, pdf pg 75-76/207]
[7] Completeness Notice dated August 30, 2024 [TAB 10, pdf pg 80/207]
[8] *Municipal Government Act,* RSA 2000, c M-26 ("*MGA*") s 683 [TAB 1, pdf pg 24-25/207]
[9] *MGA* s 640(1)-(1.1) [TAB 1, pdf pg 20/207]
[10] *MGA* s 640(2)(c)(iii) [TAB 1, pdf pg 21/207]
[11] *MGA*, s 640(2)(b)(i) [TAB 1, pdf pg 20/207]
[12] *MGA*, s 640(6) [TAB 1, pdf pg 22/207]
[13] *MGA*, s 643(1) [TAB 1, pdf pg 23/207]

> **642(1)** When a person applies for a development permit in respect of a development provided for by a land use bylaw pursuant to section 640(2)(b)(i), the development authority must, if the application otherwise conforms to the land use bylaw and is complete in accordance with section 683.1, issue a development permit with or without conditions as provided for in the land use bylaw.

13. In respect of an appeal, the *MGA* provides that if a development authority issues a development permit, any person affected by the development permit may appeal to the subdivision and development appeal board or Land and Property Rights Tribunal, as the case may be.[14] Notably:

> **(3)** Despite subsections (1) and (2), no appeal lies in respect of the issuance of a development permit for a permitted use unless the provisions of the land use bylaw were relaxed, varied or misinterpreted or the application for the development permit was deemed to be refused under section 683.1(8). [15]

B. Land Use Bylaw 14-11 (the "LUB")

14. The LUB was adopted on September 17, 2014 and consolidated as of July 29, 2024.[16]

15. The purpose of the R3 High Density District (the "R3 District") is to provide for high density multi-family housing to a maximum of 100 dwellings per hectare.[17]

16. Housing, Apartment is a Permitted Use in the R3 District.[18] Housing, Apartment is defined as "a building designed with one main water, sewer, electrical, telecommunication service and a common entrance to serve the building, and contains three or more dwelling units and other common areas and facilities."[19]

17. The development standards for the R3 District are outlined in sections 4.6.3 and 4.6.4;[20] see more details below.

18. Section 1.9.6.f of the LUB provides that the Development Authority shall refuse an application for a development if the development does not comply with the regulations of the LUB, unless a variance is granted pursuant to section 1.9.7 or 1.9.8 (section 1.9.8 is not relevant to this matter). Section 1.9.7 provides as follows:

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[14] *MGA*, s 685(1)-(2.1) [TAB 1, pdf pg 26-27/207]
[15] *MGA*, s 685(3) [TAB 1, pdf pg 27/207]
[16] Strathmore Land Use Bylaw 14-11 ("LUB 14-11") [TAB 2, pdf pg 31/207]
[17] LUB 14-11, s 4.6.1 [TAB 2, pdf pg 46/207]
[18] LUB 14-11, s 4.6.2.a [TAB 2, pdf pg 46/207]
[19] LUB 14-11, s 2.95 [TAB 2, pdf pg 41/207]
[20] LUB 14-11, s 4.6.3 and s 4.6.4 [TAB 2, pdf pg 46/207]

> **7)** The Development Officer or Approving Authority may vary the requirements of this Bylaw for any Development Permit or Certificate of Compliance, subject to the following conditions:
>
> **a.** The Development shall not unduly interfere with the amenities of the neighbourhood, and shall not materially interfere with the use, enjoyment and value of neighbouring parcels of land.
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> **b.** If the variance exceeds 10%, the Development Officer shall notify adjacent landowners and may publish in the local paper and/or post on site.
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> **c.** Notwithstanding the above variances, the Development Officer or Approving Authority is bound by the use of the adopted land use designation.

19. Section 1.9.6.h provides the Development Officer shall receive applications for development and may refuse an application if the development might have a significant adverse environmental impact.[21]

20. Section 1.9.12 of the LUB empowers the Development Authority to cancel a permit, thereby carrying forward the provisions respecting cancellation under the MGA s 640(2)(c). The LUB s 1.9.12 reads as follows:

> **Wherever it appears** to the Development Officer **that a Development Permit** has been obtain by fraud or misrepresentation or **has been issued in error, the Development Officer may** suspend, **cancel** or amend the Development Permit, as required. [*emphasis added*]

21. Section 1.18.2 provides the following:

> If the application is for a permitted use that requires a variance pursuant to Section 1.9.7 or 1.9.8 of the Bylaw, or is for a discretionary use, the Development Officer shall also issue a notice stating the legal description of the property, civic address, and the nature of the use or development, to be send [*sic*] by ordinary mail to adjacent landowners and may, at the discretion of the Development Officer;
>
> a. Be published in a local newspaper circulating within the municipality
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> b. Be posted conspicuously on the property; or
>
> c. Be published on the Town of Strathmore's website.[22]

22. "Adjacent" is defined in the LUB as following:

[21] LUB 14-11, s 1.19.6.h [TAB 2, pdf pg 47-48/207]
[22] LUB 14-11, s 1,18.2 [TAB 2, pdf pg 38/207]

would be contiguous and abutting if not for an intervening street, lane, river, stream, railway, utility right of way, or land that is identified as reserve land on a Certificate of Title and, including, but not limited to, Municipal Reserve and Environmental Reserve." [23]

C. Revoking or Cancelling a Development Permit

23. Section 640 of the *MGA* provides clear authority for cancelling a development permit issued in error; it contemplates that land use bylaws may provide for the cancellation or suspension of a development permit; the *MGA* leaves it to the land use bylaw to provide the mechanics of cancellation (i.e. how cancellation is to be effected, and by whom).

24. Some land use bylaws authorize the suspension or revocation of a development permit in the case of misrepresentation, non-disclosure of facts, or where the permit was issued in error, and there is "probably nothing illegal about suspending or revoking a permit in such circumstances, since the permit is likely voidable or void in any event".[24]

25. The Alberta Court of Queen's Bench (now King's Bench) confirmed the decision of the development authority to revoke an issued development permit is "clearly a development decision".[25]

26. The Alberta Court of Appeal considered a situation where a development permit, issued in error, was cancelled.[26] The development authority cancelled the development permit and reissued for the correct use, with amended conditions. The SDAB, on appeal, concluded that the City's Land Use Bylaw authorized the development authority to suspend or cancel a development permit that was issued in error, and accepted evidence that the initial permit was issued in error.[27] The Court of Appeal agreed noting the land use bylaw clearly allowed the cancellation and the decision of the SDAB was reasonable.

27. Similarly, the British Columbia Superior Court in *Bignell Enterprises Ltd v Campbell River*, held that municipalities are able to amend and cancel development permits once issued, otherwise there would be no need for a section in the *Municipal Act* that addresses amending or cancelling a permit.[28] The relevant section says, "Where a permit is amended or cancelled, the local government shall file a notice of amendment or cancellation in the manner prescribed…".

IV. REVIEW OF LANDS

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[23] LUB 14-11, s 2.6 [TAB 2, pdf pg 39/207]
[24] Frederick A. Laux and Gwendolyn Stewart-Palmer, *Planning Law and Practice in Alberta,* 4th ed (Edmonton: Juriliber, 2019) ("Laux"), p 9-34 [TAB 11, pdf pg 40]
[25] *Singh v Summer Village of Golden Days* 2007 ABQB 374 at para 12 [TAB 12, pdf pg 84/207]
[26] *Northwest Value Partners Inc v Calgary (City) Subdivision and Development Appeal Board*, 2008 ABCA 250 [TAB 13, pdf pg 87-89/207]
[27] *Northwest Value Partners Inc v Calgary (City) Subdivision and Development Appeal Board*, 2008 ABCA 250 at para 11 [TAB 13, pdf pg 87-89/207]
[28] *Bignell Enterprises Ltd v Campbell River (Municipality of the District)*, 1996 CanlII 8633 (BC SC) at para 69 [TAB 14, pdf pg 95/207]

A. History of Lands and Land Use Bylaws

28. On October 8, 2024, Development Officer advised the Appellant that the Planners were "treating the lot as a legal existing lot, existing prior to the adoption of the LUB 2014 [#14-11] and proceeding." The email continued to advise that the lot size is "an outdated requirement, its an error – there shouldn't be a maximum size in the LUB R3".[29]

29. However, historically, there is no indication that the Lands should not have been subject to the development standards in the LUB regarding lot size.

30. We note that the measurements listed are approximations.

C. W. Hodgson/Karob Developments

31. In the 1980s, the Town was in the process of annexing a portion of NW ¼ 14-24-25-4 in Certificate of Title 160-V-234 consisting of about 74.09 acres north of Park Land Drive and east of Wheatland Avenue and the Western Irrigation District canal (the "Original Lands"). In the 1980s, the Original Lands were owned by Mr. and Mrs. J. W. Freeman.[30]

32. On March 19, 1980, Bylaw #715 was enacted. The relevant provisions of Bylaw #715 were as follows:

    a. Urban Reserve District did not authorize apartments or multi-family dwellings (s 27.0.0).
    b. R2 Residential Two Family District provided for single family and semi-detached dwellings as Permitted Uses and Duplexes as Discretionary Uses and provides minimum site areas (s 13.0.0).
    c. R3 Residential Multi-Family District listed apartments as a Permitted Use (14.0.0) with a maximum density of 125 people per hectare, a site width of 30m and a site length of 34m.
    d. CB Central Business District allowed for various retail uses and has a minimum site area of 232m^2 (s 15.0.0).[31]

33. In April 1981, a proposed Outline Plan Report indicates the Original Lands are designated as "Low Density" under the Calgary Regional Plan but a request was being made the 2.5ha (6 acre) parcel be designated as "High Density". The Original Lands were districted UR – Urban Reserve under the LUB #715 but once the Lands were subdivided, the plan was to redistrict the 2.5ha (6 acre) to CB – Central Business District to accommodate a shopping centre. The remaining 67.92 acres were proposed to be used primarily for residential use under the R2 Residential Multi-Family district (the intention

[29] Strathmore Email re DP Application, October 2024 [TAB 15, pdf pg 97-100/207]
[30] Circulation Memorandum – Proposed Outline Plan [TAB 16, pdf pg 102-148/207]
[31] Bylaw 715 [TAB 3, pdf pg 50-55/207]

may have been R3 not R2). [32] On May 29, 1981, the Calgary Regional Planning Commission approved the Outline Plan.[33]

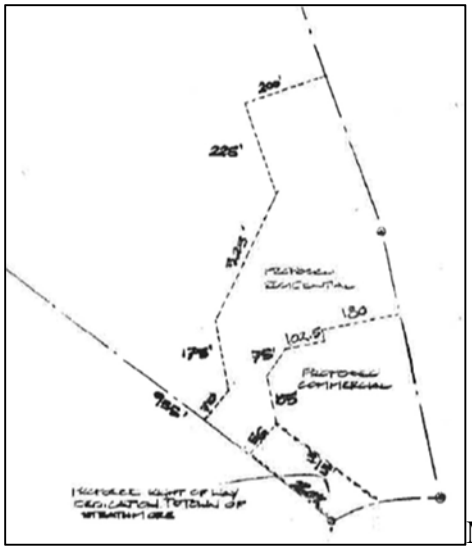
34. On December 2, 1981, the Town adopted Bylaw #756 to amend LUB# 715 to establish a Central Business Mall District (CB-M) and redistrict 2.5ha (6 acre) of the southernly portion of the Lands to CB-M from Urban Reserve with a minimum site are of 1.25 hectares.[34]

35. In December 1989, LUB #89-20 repealed and replaced Bylaw #715.[35] LUB #89-20 did the following:
    a. The CB-M district was amended to DC2 while the Urban Reserve was kept the same[36]
    b. The Original Lands were districted as R3 and DC2.[37]
    c. R3 – Apartment District provided for Apartment Housing of no more than 30 units as a Discretionary Use; that the maximum density will be 75 dwelling per hectare (30.4 per acre); and there was no maximum lot size.[38]
    d. The 2.5 ha (6.17 acre) portion of NW ¼ 14-24-25-W4M was DC2. DC2 provided the "appropriate regulations pertaining to the CB and R3 Districts in the Land Use By-law #89-20 shall apply to the District".[39]

Pakarnyk – Barnbrook Market Development

36. Sometime in early February 1990, Pakarnyk, agent for the Freemans, made an application to subdivide the Original Lands to create three parcels of 4.37acre (1.7 ha), 2.69acre (1.1 ha), and 65acre (26 ha). The application said the proposed use is commercial and residential multi-family for the 4.37 and 2.69 acres and agricultural for the remaining 65 acres. The application indicated the Original Lands were in district DC-2.[40]

[32] Circulation Memorandum – Proposed Outline Plan [TAB 16, pdf pg 102-148/207]
[33] Karob Developments Letter dated June 23, 1981 [TAB 17, pdf pg 150-151/207]
[34] Central Business Mall District Letter dated December 9, 1981 [TAB 18, pdf pg 153-157/207]
[35] Bylaw 89-20 s 2(2) and 3 [TAB 4, pdf pg 58-59/207]
[36] Bylaw 89-20 s 4(1) [TAB 4, pdf pg 60/207]
[37] Land Use Map Bylaw 89-20 [TAB 19, pdf pg 159/207]
[38] Bylaw 89-20 s 150(3) and (4)(a) [TAB 4, pdf pg 62/207]
[39] Bylaw 89-20 s 610(5)(a) [TAB 4, pdf pg 62/207]
[40] Application for Subdivision Approval and Circulation Memorandum [TAB 20, pdf pg 161-164/207]



Map #2[41]

37. On February 7, 1990, Pakarnyk made an application to amend LUB #89-20 to change the zoning to accommodate an 8-acre development on the present DC site for residential and commercial development.[42]

38. On March 2, 1990, the Calgary Regional Planning Commission conditionally approved a subdivision application to create a 4.37 acre (1.8 ha) lot for multi-family housing (the "Lands") and a 2.69 acre (1.1 ha) lot for commercial purposes (Plan 921 1782, Block 1, Lot 1) from the 74 acre (30.24 ha) parcel.[43] The Calgary Regional Planning Commission confirmed the Lands are districted DC-2 district.

39. On March 12, 1990, Pakarnyk made an application for a development permit under LUB #89/20 for proposed residential and commercial development.[44] On March 12, 1990, Parkarnyk, in a letter to the Town, noted for the southerly most 8 acres of the Original Lands, there would be commercial development on about 2.69 acres in the CB District and the residential development would be on the northerly 4.37 acres.[45]

40. On March 16, 1990, Pakarnyk is advised his development application for the commercial development of the 2.69 acre area north of the Original Lands is approved, subject to payment of all development fees.[46] The Town has no record of a development permit being issued.

41. In 2008, LUB #89-20 was amended and the Original Lands are districted as R3 – Apartment District. Apartment Housing (20 or less units) was a Permitted Use and

[41] Architect Site Plan [TAB 21, pdf pg 166-167/207]
[42] Architect Letter dated February 28, 1990 [TAB 22, pdf pg 169-171/207]
[43] Calgary Regional Planning Commission [TAB 23, pdf pg 173-183/207]
[44] Application for Development Permit dated March 12, 1990 [TAB 24, pdf pg 158-187/207]
[45] Architect Site Plan [TAB 21, pdf pg 166-167-207] and Development Permit Application dated March 12, 1990 [TAB 24, pdf pg 185-187/207]
[46] Development Application Letter dated March 16, 1990 [TAB 25, pdf pg 189/207]

Apartment Housing (more than 20 units) was a Discretionary Use (s 150).[47] The maximum density was 75 dwellings per hectare (30.4 dwelling per acre) and there was no maximum site area.

42. On September 16, 2008, the Municipality wrote a letter to the Landowner which confirmed that LUB #89-20 was amended but the Lands were still zoned R3.[48]

43. On September 17, 2014, the LUB #14-11 was adopted and Lands were districted R3 High Density District (the "R3 District") and some of the development standards were different than under the prior LUB #89-20.[49]

B. Review of Development Standards under current LUB

44. Upon review of the Development Permit, it came to the attention of the Development Authority that the Proposed Development did not comply with the maximum site area requirement of the R3 District. The maximum site area is 4,000m^2 but the site plan for the Proposed Development is 17,061.32m^2 (1.71 hectares). The specific requirements for General Site Requirements (Minimum Site Area) state: "The minimum site area shall be 930 m^2, and the maximum site area shall be 4000 m^2." (LUB s 4.6.3(a)).

45. Upon reviewing the entire Development Permit, the following was determined in relation to the development standards for the R3 District:

	Relevant Development Standards for R3	**Proposed Development Application**	**Variance**
Minimum Site Area (s 4.6.3(a))	Minimum - 930m^2 Maximum – 4,000m^2	17,061.32m^2 (1.71 hectares/4.23 acres)	326.52% variance
Minimum Lot Area (s 4.6.3(b))	See below: s 4.6.3(e)	See below	See below
Minimum Site Width (s 4.6.3(c))	30.5m apartment	110.19m	No variance
Minimum Site Depth (s 4.6.3(d))	30.5m for all lots	60.5m /124m	No variance
Habitable Floor Area (s 4.6.3(e))	40m^2 per dwelling unit	79.54m^2	May require a variance if units less than 40m^2
Maximum Number of Dwelling Units (s 4.6.3(f) and 4.6.1)	100 dwelling units per hectare	85.96 dwelling units per hectare (if calculation is based on 1.71 hectare)	If site area is varied, this would also then need a variance

[47] LUB 89-20 s 150 [TAB 4, pdf pg 61/207]
[48] Brenda Strafford Letter dated September 16, 2008 [TAB 26, pdf pg 191-192/207]
[49]High Density Residential District Map, [TAB 9, pdf pg 78/207]

Minimum Yard Setback – Principal Building			
Front (s 4.6.3(g)(i))	6.0m or 4.0m at discretion of Approving Authority if lot is served by rear lane	6.0m	No variance
Rear (s 4.6.3(g)(ii))	7.0m	7.0m	No variance
Side (s 4.6.3(g)(iii))	3.0m	8.0m – 10.0m	No variance
Building Height (s 4.6.3(h)(iv))	14.0m or 4 storeys for Apartment Housing	15.36m	Condition #2 - 9.71% variance granted (under 10%)
Site Coverage (s 4.6.3(g)(i))i))	Maximum site coverage, including accessory buildings shall be 70%	21%	No variance
Parking[50] (& s 4.6.4(a)))	1-bedroom units – 1.0 space/unit - 35 stalls needed	35	No variance
	2-bedroom units – 1.5 space/unit -144 stalls needed	144	No variance
	3 or more-bedroom units – 1.75 space/unit - **Need 28 stalls**	**27**	**Minor variance (under 10%)**
	Visitor Parking – 0.15 spaces/unit -need 22 stalls	22	No variance
Total Parking	229 stalls	228 stalls	Condition #11 – 228 parking stalls Minor variance (under 10%)
Landscaping (s 4.6.4(b)))	Minimum of 30% of site area shall be landscaped	29%	Minor variance (under 10%)

[50] LUB 14-11, s 3.9.1 and Table 3.9A [TAB 2, pdf pg 42-45/207]

C. Cancellation to Address Notice

46. There is no historical information to suggest the site area development standard in the LUB was not intended or is otherwise incorrect (LUB s 4.6.3(a)). In any event, a development authority such as a development officer or, on appeal, the SDAB, must take a land use bylaw at face value; it has "no alternative but to adhere to the Bylaw; it has no power to declare the Bylaw invalid."[51]

47. In this case, the variance to the maximum site area was 326.52%. Although the Use is a Permitted Use, the LUB provides that if there is a variance to the development standards over 10%, notice of issuance of the development permit must be provided to adjacent landowners.

48. Given the variance of over 10%, the Development Officer was required to provide, by mail, notice of the issuance of the Development Permit to adjacent landowners and could provide additional notice in the local paper, by posting on-site or publishing on the Town's website (LUB s 1.9.7(b) and s 1.18.2).

49. In this situation, notice should have been provided to various adjacent landowners including the condominium board of Parkland Place, 2 adjacent landowner to south, and possibly the landowners in Lambert Village.[52]

50. These adjacent landowners should have been advised about the issuance of the Development Permit, the variance, and the right to appeal to the SDAB.

51. In light of this, the Development Authority:

    a. cancelled the Development Permit;
    b. advised the Appellant to reapply; and
    c. provided information to assist with the new application (how the proposed variance shall not unduly interfere with the amenities of the neighbourhood and shall not materially interfere with the use, enjoyment and value of neighbouring parcels of land).

52. A new application would allow the Development Authority to consider the variance and, if approved at over 10%, provide proper notice to affected owners of lands.

53. The Development Authority issued the Cancellation Notice (February 10, 2025) a relatively short time after issuance of the Development Permit (October 17, 2024). The issuance of the Cancellation Notice provides legal certainty, by revoking the Development Permit; if the SDAB were to grant the appeal and set aside the Cancellation Notice, legal uncertainty would result.

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[51] *Boll v Woodlands County Muncipal Planning Commission*, 2016 ABCA 344 at para 8 [TAB 27, pdf pg 195/207]
[52] Map of Adjacent Lands [TAB 28, pdf pg 197/207]

54. The case of *1694192 Alberta Ltd v. Lac La Biche (Subdivision and Development Appeal Board)*[53], *"Lac La Biche"* underscores the legal quagmire that would result if the Cancellation Notice were to be set aside. There too, a development officer discovered that:

    a. A development permit was issued (there for a discretionary use, here for a permitted use with a variance to a standard);

    b. notice of issuance to adjacent landowners was not provided when such notice, under the land use bylaw, was a mandatory requirement.

55. In the *Lac La Biche* case:

    a. The developer commenced construction of the development (approximately 3 months after notice of issuance of the development permit was provided to the applicant);

    b. The development officer, rather than issuing a cancellation notice, purported to issue notice of the development permit to the adjacent landowners four months after notice was provided to the applicant;

    c. The SDAB determined it had a valid appeal before it and--based on concerns from adjacent landowners--granted the appeal and revoked the development permit;

    d. The Court of Appeal outlined the competing considerations embodied in the MGA and land use bylaws between landowner rights and the overall public interest:

> [1] The main issue on this appeal involves balancing the right of a developer to proceed with a development, once approved, with the right of persons affected to contest that development. All development has effects. Disallowance of development also has effects. So land use is regulated by government: Municipal Government Act, RSA 200 c M-26 ("MGA"). Land use bylaws seek to give both developers and others affected a fair chance to be heard in the course of that regulatory process. On the other hand, positive planning and development is desirable and it only works effectively if there is both certainty and finality in that process.

    e. The Court of Appeal went on to further elaborate on the competing considerations arising when there has been a defect in notice of issuance of a development permit:

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[53] *1694192 Alberta Ltd. v Lac La Biche (Subdivision and Development Appeal Board),* 2014 ABCA 319 [TAB 29, pdf pg 199-202/207]

> [31] The possibility of an indefinite appeal period is not a trivial matter. The language of s 24 of the LUB does not suggest an open-ended appeal period geared to actual subjective notice, even to adjacent landowners. This Court has emphasized that appeal periods cannot remain dormant, but potentially viable, until personal awareness as that would inject "incalculable uncertainty into a planning process otherwise designed to achieve both certainty and finality".…
>
> [32] Similarly, however, it does not appear to be logically consistent with the language of the LUB to conclude that the rights of an adjacent landowner to object to development could be swept aside without any notice to that person whatsoever, constructive or otherwise….

56. The net result of the *Lac La Biche* case is that 18 months after the applicant received notice of issuance of a development permit, the Court of Appeal confirmed that the development permit was revoked.

57. By issuing the Cancellation Notice, the Development Authority has effectively:

    a. Eliminated the legal uncertainty respecting:
        i. whether the Development Permit is valid, or
        ii. whether the adjacent landowners could now file an appeal respecting the Development Permit;

    b. Informed the Appellant to reapply for a new development permit which can be processed in the ordinary course;

    c. Ensured that if the Appellant reapplies for a new development permit, the adjacent landowners can be properly notified, and therefore afforded the opportunity to engage in the process, as contemplated in the *MGA* and the LUB.

58. The Development Authority performed an inspection of the subject lands on March 24, 2025. This inspection confirms that there is no apparent commencement of construction of the development approved under the Development Permit; see photographs from the March 24, 2025 inspection.[54]

V. CONCLUSION

59. The SDAB's authority is outlined in section 687(3).[55]

60. The Development Authority has the authority to suspend or cancel a development permit. In this case, the Development Permit was cancelled because although the Development Permit was for a Permitted Use, the failure to provide notice to adjacent landowners of

[54] Photographs (March 24, 2025) by Development Authority, [TAB 30, pdf pg 204-207/207]
[55] *MGA*, s 687(3) [TAB 1, pdf pg 24-26/207]

the greater than 10% variance, raised the concern that the Development Permit could be legally challenged in the future.

61. The Municipality submits the decision of the Development Authority to cancel the Development Permit was proper. The appeal should be refused.