



Special Council Meeting

Jubilee Centre Council Chamber
9909 Franklin Avenue, Fort McMurray, AB T9H 2K4

Tuesday, May 15, 2018
6:00 PM

Agenda

1. **Call to Order - In 7th Floor Boardroom at 4:00 p.m.**

2. **In-Camera Session**

2.1. Advice from Officials

In Camera pursuant to section 24(1) of the *Freedom of Information and Protection of Privacy Act*.

Reconvene in Public - In Council Chamber at 6:00 p.m.

3. **Unfinished Business**

3.1. Bylaw No. 18/007 - Land Use Bylaw and Highway 69/Clearwater River Valley Area Structure Plan - Redistricting, General Text and Map Amendment

1. THAT Bylaw No. 18/007, being a Land Use Bylaw - Redistricting, General Text, and Map Amendment and Highway 69/Clearwater River Valley Area Structure Plan – General Text and Map Amendment, be read a second time.

2. THAT Bylaw No. 18/007 be read a third and final time.

Adjournment



COUNCIL REPORT

Meeting Date: May 15, 2018

Subject: Bylaw No. 18/007 - Land Use Bylaw and Highway 69/Clearwater River Valley Area Structure Plan - Redistricting, General Text and Map Amendment

APPROVALS:

Annette Antoniak

Director

Deputy Chief Administrative Officer

Chief Administrative Officer

Recommended Motion:

1. THAT Bylaw No. 18/007, being a Land Use Bylaw - Redistricting, General Text, and Map Amendment and Highway 69/Clearwater River Valley Area Structure Plan – General Text and Map Amendment, be read a second time.
2. THAT Bylaw No. 18/007 be read a third and final time.

Summary:

On April 11, 2017 the Planning and Development department received an application for a Land Use Bylaw Amendment (2017-LU-00003) and Area Structure Plan Amendment (2017-LU-00004) to redistrict two properties from SH - Small Holdings District (SH) to DC - VC Direct Control Village Commercial District (DC-VC). The amendments refer to the Subject Area (Attachment 1) which consists of two parcels in the Draper community (Table 1). The applicant is Brad Friesen, who has submitted the amendments on behalf of the property owners.

Table 1: Subject Area Properties

Civic Address	Legal Address	Property Owner
128 Garden Lane	Lot 6, Plan 992 0950	Dunvegan Gardens (Fort McMurray) Ltd.
<i>none</i>	Lot 5, Plan 992 0950	Grandma's Attic Ltd.

The Subject Area falls within the SH under Land Use Bylaw 99/059 (LUB) and is within the scope of the Highway 69/Clearwater River Valley Area Structure Plan (ASP) passed by Bylaw 99/058. Given the extensive development history of the Subject Area, a *Supplemental Document* (Attachment 2) has been prepared, which includes additional information and analysis pertaining to the application.

Background:

On September 23, 2016 a Stop Order (Attachment 3) was issued by the Municipality for contraventions of the Land Use Bylaw (LUB) 99/059 within the Subject Area. The Stop Order included contraventions such as: Unauthorized Commercial Landscaping, Unauthorized Sale of Goods, and Unauthorized Farm Animals. The Stop Order was appealed by Mr. Friesen and was heard by the Subdivision and Development Appeal Board (SDAB) on February 16, 2017. The SDAB decision (Attachment 4) upheld the Stop Order in relation to the sale of goods, but the SDAB varied the order to provide the appellant one (1) year, until March 16, 2018, to obtain the required development permits for the retail sale of goods.

To obtain a development permit, the SDAB acknowledged that amendments to the Land Use Bylaw 99/059 are required. The proposed amendment to the Land Use Bylaw conflicts with the policies and vision of the Highway 69/Clearwater River Valley Area Structure Plan, therefore amendments to the ASP have also been proposed. The LUB Amendment (Attachment 5) includes the following:

1. Redistricting 128 Garden Lane (Lot 6, Plan 992 0950 and Lot 5, Plan 992 0950) from SH Small Holdings District to DC Direct Control District;
2. The proposed DC Direct Control District includes Permitted Uses, Discretionary Uses - Development Authority, and site provisions; and,
3. Text amendments to “Part 5 General Regulations” of the Land Use Bylaw.

The Highway 69/Clearwater River Valley Area Structure Plan (ASP) amendment (Attachment 6) includes:

1. Text amendments that add two new policies;
2. Text amendment to one existing policy; and,
3. An amendment to an exhibit that revises Map 6 - Development Concept.

The amendment application was submitted on April 11, 2017. Following the first submission, a detailed review process and discussions with the applicant took place. On January 9, 2018 Administration received the second submission. Comments were

provided to the applicant on January 15, 2018 and a third submission was received on January 22, 2018. After review, comments were provided to the applicant on February 5, 2018. The applicant then submitted their fourth submission, which they identified as their final submission, on February 9, 2018. The applicant hosted a public open house on February 27, 2018 and comments summarizing feedback of the event were provided to the RMWB on March 2, 2018. The Municipality has since undertaken a substantial analysis of all information submitted by the applicant and community.

Rationale for Recommendation:

A function of an Area Structure Plan (ASP), which is a statutory document, is to establish a vision for a neighbourhood. The Land Use Bylaw (LUB) implements that vision by regulating where and how development takes place. When a Municipality reviews an application to amend either of those documents, it must endeavor to ensure the proposed changes do not unduly interfere with the amenities of an area or, materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land. Further, an important principle of land use planning is to achieve safe and orderly development where complimentary uses are located in such ways that potential land use conflicts are minimized. Taking the above into consideration, the Municipality recommends refusal of Land Use Bylaw Amendment (2017-LU-00003) and Area Structure Plan Amendment (2017-LU-00004) specific to Lot 6, Plan 992 0950 and Lot 5, Plan 992 0950. The reasons for refusal have been briefly outlined below and are explored in more detail in the appropriate sections of Attachment 2.

1. Direct Control Districts are intended to provide Council with maximum flexibility and high level of control over proposed development on a site. The applicant's proposed Direct Control District is more accurately described as a site-specific land use district, limiting Council's degree of control and taking development decisions out of a transparent, public hearing process. *Section 4.3.1 of Attachment 2*
2. Administration has the following concerns regarding the permitted and discretionary uses within the applicant's proposed DC Direct Control District:
 - 2.1. A total of **twelve** new Uses within the applicant's Direct Control District have been proposed which are not within the Small Holdings District. There is an absence of supporting documentation and rationale indicating why those uses are proposed and whether those uses were supported by the Draper neighbourhood. *Section 4.3.2 of Attachment 2*
 - 2.2. A total of **three** uses in the proposed Direct Control District currently do not exist in the Land Use Bylaw. The amendment does not include definitions of the uses and only one of those uses includes provisions for the "General Regulations". Provisions under "Part 5 General Regulations" are essential to provide guidance to the Development Authority when reviewing development permit applications *Section 4.3.2.4 of Attachment 2*

- 2.3. Several proposed permitted land uses do not currently have provisions under “Part 5 General Regulations”. These provisions guide the Development Authority when reviewing development permit applications to determine whether any negative impacts of the development are properly mitigated and to reduce potential land use conflicts with the surrounding neighbourhood. *Section 4.3.4.1 of Attachment 2*
- 2.4. The applicant’s proposed Direct Control District does not specify whether the proposed Permitted Uses are for Council or the Development Authority to approve. *Section 4.3.2.5 of Attachment 2*
- 2.5. The applicant has proposed **11** new commercial uses in their Direct Control District. These uses are not currently contemplated in the Small Holdings District, which has an existing rural residential character. The applicant has provided insufficient documentation and feedback from Draper residents supporting the addition of commercial land uses in a rural residential area. *Section 4.3.2 of Attachment 2*
3. The applicant is proposing “Additional Provisions” in Section (5)(c) of their Land Use Bylaw amendment, which allows neighbouring parcels of land under the same ownership the ability to transfer development potential from one lot to the next. The applicant has not provided any supporting documentation regarding whether this will have an impact on the surrounding neighbourhood and the extent of the lands this provision would apply to. The Municipality does not support additional intensification of land beyond the current provision of the Land Use Bylaw without proper justification. *Section 4.3.3 of Attachment 2*
4. The applicant’s submission proposes additional regulations to “Part 5 General Regulations” of the Land Use Bylaw. The Municipality was not provided with any supporting documentation to determine if the proposed provisions represent best practice or whether the proposed regulations are appropriate to control, limit, and mitigate potential land use conflicts. *Section 4.3.4 of Attachment 2*
5. The applicant has proposed text amendments to “Part 5 General Regulations” Section 76.7 and 76.8 of the Land Use Bylaw to allow livestock, fowl, or furbearing animals for all lots in Draper that meet the current Land Use Bylaw provisions. The applicant has not provided supporting feedback from the residents agreeing with this activity that could create potential land use conflicts. *Section 4.3.4.2 of Attachment 2*
6. The proposed Area Structure Plan (ASP) amendment does not provide proper guidance for the wide array of proposed activities, many of which are new and may conflict with surrounding properties. *Section 5 of Attachment 2*
7. The proposed Area Structure Plan (ASP) amendment does not adequately mitigate negative impacts on surrounding properties. *Section 5 of Attachment 2*

8. The proposed Area Structure Plan (ASP) amendment does not adequately demonstrate how a key Municipal Development Plan (MDP) objective C.2.1 and ASP policy 5.2 is being met: that the rural residential character of Draper will be preserved. *Section 5 of Attachment 2*
9. The proposed Area Structure Plan (ASP) amendment does not adequately demonstrate how a key Municipal Development Plan (MDP) objective 4.4.1 is being met: that the Municipality's limited supply of agricultural land will be preserved. *Section 5 of Attachment 2*
10. The Municipality conducted a survey of Draper residents from July 26, 2017 to August 18, 2017, asking individuals to provide feedback on the applicants proposed uses. Of the 61 responses received from Draper residents, a majority did not support commercial activities included in the amendment proposal. *Figure 2 of Attachment 2*

Based on the above, the Municipality recommends refusal of Land Use Bylaw Amendment (2017-LU-00003) and Area Structure Plan Amendment (2017-LU-00004) specific to Lot 6, Plan 992 0950 and Lot 5, Plan 992 0950.

Strategic Priorities:

Pillar 1 - Building Responsible Government
 Pillar 4 - Building an Effective Land Strategy
 Responsible Government

Attachments:

1. Bylaw No 18007
2. Map 6 - Attachment 1 to Bylaw
3. Subject Area Map
4. Supplemental Document
5. Stop Order September 23, 2016
6. Subdivision and Development Appeal Board Decision 2016-005
7. Land Use Bylaw Amendment Application
8. Highway 69 Clearwater River Valley Area Structure Plan Amendment

BYLAW NO. 18/007

BEING A BYLAW OF THE REGIONAL MUNICIPALITY OF WOOD BUFFALO TO AMEND THE HIGHWAY 69/CLEARWATER RIVER VALLEY AREA STRUCTURE PLAN BYLAW NO. 00/058 AND LAND USE BYLAW NO. 99/059

WHEREAS Section 633 of the *Municipal Government Act* authorizes Council to enact a bylaw adopting an area structure plan;

WHEREAS Section 639 of the *Municipal Government Act* authorizes Council to enact a bylaw adopting a Land Use Bylaw.

AND WHEREAS Section 191(1) of the *Municipal Government Act* authorizes Council to amend or repeal any bylaw;

NOW THEREFORE, the Council of the Regional Municipality of Wood Buffalo, in the Province of Alberta, hereby enacts as follows:

LAND USE BYLAW AMENDMENTS

1. Land Use Bylaw No. 99/059 is amended as set out in section 2 to 6 of this bylaw.
2. The following new section 212 is added to Part 6:

212. DC-VC Direct Control Village Commercial District

212.1 Purpose

The purpose of this District is to establish a special land use and associated development regulations to accommodate a community focused greenhouse commercial establishment. The district is intended to provide the Municipality with the necessary control over the nature and location, site design, and appearance of developments on the site.

212.2 Permitted Uses

The following are permitted uses:

Accessory Building and Uses
Breweries, Wineries and Distilleries
Commercial Recreation Facility, Indoor
Commercial Recreation Facility, Outdoor
Community Service Facility
Community Garden

Events/Special Events
 Food Service, Major Restaurant
 Food Service, Minor Restaurant
 Greenhouse/Plant Nursery
 Home Business
 Intensive Agriculture
 Keeping of Animals (Petting Zoo)
 Manufactured/Modular Home
 Market Garden
 Office
 Park
 Public Use
 Retail Store, General
 Temporary Building or Structure
 Warehouse and Storage

212.3 Discretionary Uses – Development Officer

The following are discretionary uses that may be approved by the Development Officer:

Amateur Radio Antenna
 Bed and Breakfast
 Campground
 Country Inn
 Essential Public Service
 Family Care Dwelling
 Home Occupation
 Kennel
 Parking Lot/Structure
 Public Utility
 Retaining Wall
 Resort Facility
 Satellite Dish Antenna
 Single Detached Dwelling

212.4 Site Provisions

In addition to the General Regulations contained in Part 5, the following standards shall apply to every development in this District.

- | | | |
|-----|-----------------------|---|
| (a) | Lot Area (minimum): | 2.0 ha |
| (b) | Front Yard (minimum): | 7.6 m for principal buildings
15.0 m for all other buildings and
structures |

- (c) Side Yard (minimum): 5.0 m for principal buildings
10.0 m for all other buildings and structures
- (d) Rear Yard (minimum): 7.6 m for principal buildings
15.0 m for all other buildings and structures
- (e) Building Height (maximum): 12.0 m

212.5 Additional Provisions

Direct Control Village Commercial development shall only be allowed if the Development Authority is satisfied that the following requirements are met:

- (a) The use Intensive Agriculture shall only be permitted on lots larger than 4.0 ha in area.
- (b) Adequate access exists to a public road;
- (c) The developer will be responsible for constructing all internal roads;
- (d) The keeping of animals, birds and livestock shall be in compliance with Section 91.0 Additional Provisions: Intensive Agriculture. Where there are multiple lots adjacent to each other owned by a single person the total allowed units of livestock will be determined on the basis of the total combined lot areas. Grazing areas are to implement adequate fencing and buffering to ensure the safe on-site confinement of animals and to reduce the noise and visual impacts on neighboring properties. All grazing areas shall provide adequate measures for the disposal of animal waste to the satisfaction of the Development Authority and the Regional Health Authority.
- (e) The development can be serviced with water and sanitary sewage in compliance with the *Nuisance and General Sanitation Regulation* and the *Private Sewage Disposal System Regulation*.
- (f) The development meets the requirements of Section 60 – Development in the Flood Plain (Clearwater River/Athabasca River Flood Plain Area) and Section 61 – Development Near Water Bodies and Water Courses, of this Bylaw.
- (g) Parking shall be provided in accordance with Part 7.
- (h) Garbage and waste materials shall be stored in weather proof and animal proof containers and shall be visually screened from adjacent sites and public areas to the satisfaction of the Development Authority.

- (i) Outdoor Landscaping Material Storage Bins
 - (i) Retaining walls will be a maximum height of 2.44 m.
 - (ii) All new landscape materials storage bins will require approval by the Development Authority
- 3. The lands described legally as Lot 6, Plan 992 0950 and Lot 5, Plan 992 0950 are re-designated as the DC-VC Direct Control Village Commercial District, and all applicable maps are amended accordingly.
- 4. The following is added as a new section 92.1 in Part 5 General Regulations:

92.1 Breweries, Wineries, and Distilleries

92.1.1 – A site containing a brewery, winery and distillery shall comply with the following:

- (a) Shall be a property or building in which beer, wine, spirits and other alcoholic beverages are manufactured using products grown onsite or imported in;
- (b) Shall have designated areas for the production process, canning, bottling and for the storage of finished product for sale on site or for shipping;
- (c) Shall have designated hospitality areas for private groups, for sampling, tasting and consumption;
- (d) Product manufactured onsite must be available to be sold onsite, for any lawful consumption both on and off the premises;
- (e) A Brewery, Winery and Distillery can be combined with a Restaurant and/or Drinking Establishment to provide an increase of the public space for consumption of food and beverages onsite, but shall not exceed the maximum capacity of the Use it is combined with;
- (f) Where a public space is provided, it does not open on to a residential district, except for emergency exits, loading bay doors and non-operable windows;
- (g) Outdoor Public Space shall not be located next to a Residential Land Use;
- (h) No noxious odours, dust or waste shall be generated in excess of the Use characteristics or in excess of development permit condition requirements;
- (i) All manufacturing and storage of equipment, materials and product must be contained within an enclosed structure;

(j) All parking must comply with the requirements of Part 7; and

(k) All exterior Landscaping must comply with the requirements of Part 5 General Regulations section 72, and must be in conformance with the principles of Crime Prevention Through Environmental Design.

5. Section 76.7 is deleted and replaced with the following:

No livestock, fowl or fur-bearing animals, other than domestic pets, shall be permitted in any residential districts, provided however that:

(a) horses, donkeys, goats, llamas, alpacas, and other similar animals may be kept as pets or for personal enjoyment on lots of greater than 0.809 hectares in residential districts located in Sapræ Creek, Conklin, Draper, Janvier and Anzac; and

(b) a maximum of (3) three horses is permitted on any single lot, where the Development Authority is satisfied that the animals are confined within a fence constructed to the satisfaction of the Development Authority.

6. Section 76.8 is deleted and replaced with the following:

Notwithstanding section 76.7, on residential lots in the hamlets of Conklin, Draper and Janvier the keeping of animals, including livestock, is permitted at the discretion of the Development Authority in accordance with the provisions of Section 91A.

AREA STRUCTURE PLAN AMENDMENTS

7. The Highway 69/Clearwater River Valley Area Structure Plan adopted by Bylaw No. 99/058 is amended as set out in sections 8 to 11 of this bylaw.

8. The following is added at the end of Section 4.9 Future Development Potential:

Located within the flood plain below 250m there is an opportunity to develop a Village Commercial / Community Greenhouse development that supports and is supported by the local community and visitors to the region. The development will provide an opportunity for visitors to purchase locally sourced fresh produce and onsite processed food and beverage goods. The development will also offer recreational activities that are borne out by its proximity to the Clearwater River and the natural areas that surround the site.

9. The following is added to Section 5.2 Land Use:

**Section 5.2.12
Village
Commercial /
Community
Greenhouse**

Located within the flood plain below 250m contours. Allow for parcels a minimum of 2.0 ha (5 acres) on Map 6 – Development Concept. The intent of the Village Community Greenhouse Commercial is to promote a local community establishment that promotes sustainable agricultural development and active involvement with the local residents and visitors through recreational activities, onsite education, special events and retail of locally grown produce. Onsite processed food and beverage goods will also be available in the form of fruit wine, leather and dairy products.

In general, development will allow for, but not limited to, Intensive Agriculture, Campgrounds, Keeping of animals, Market Gardens, Recreational Use and Single Family Dwelling.

10. Section 5.3.3 Location and Significance of the 250 Meter Contour is deleted and the following is substituted for it:

5.3.3 Utilize the estimated 250 meter contour shown on Map 6 – Development Concept as a guideline in determine what lands above 250 meter contour may be designated for country residential and lands above 250 meter would remain designated for small holdings and village commercial / community greenhouse. Notwithstanding this, if a private property owner can prove through a legal survey he actual location of the 250 meter contour the RMWB may consider their application for subdivision and development without requiring an amendment to either the Land Use Bylaw or this Area Structure Plan.

11. Map 6 is deleted and replaced with the version of map 6 that is Attachment 1 to this Bylaw 18/007.

COMING INTO FORCE

12. This bylaw comes into force when it is passed.

READ a first time this 10th day of April, A.D. 2018.

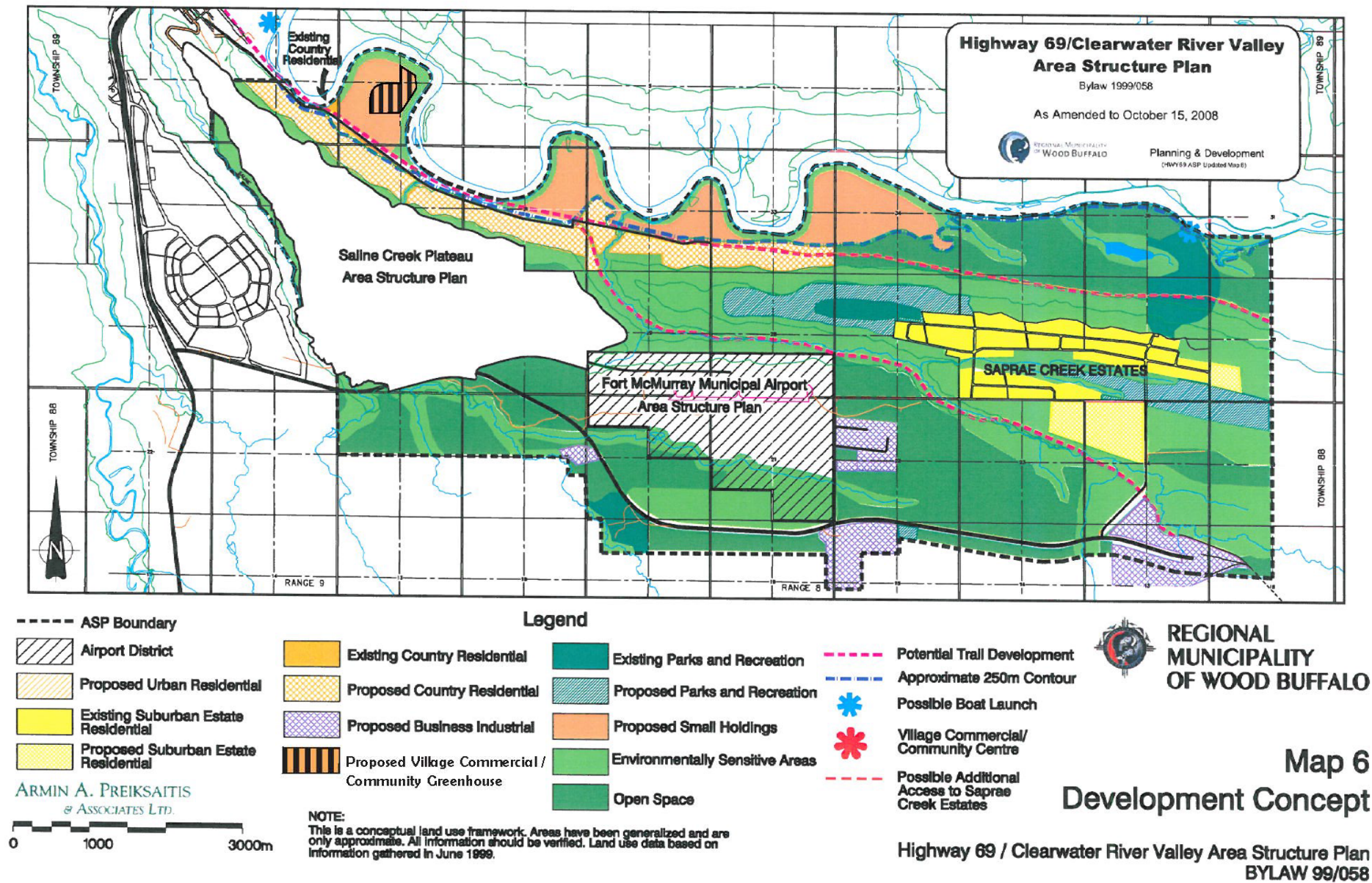
READ a second time this _____ day of _____, A.D. 2018.

READ a third and final time this _____ day of _____, A.D. 2018.

SIGNED and PASSED this _____ day of _____, A.D. 2018.

Mayor

Chief Legislative Officer

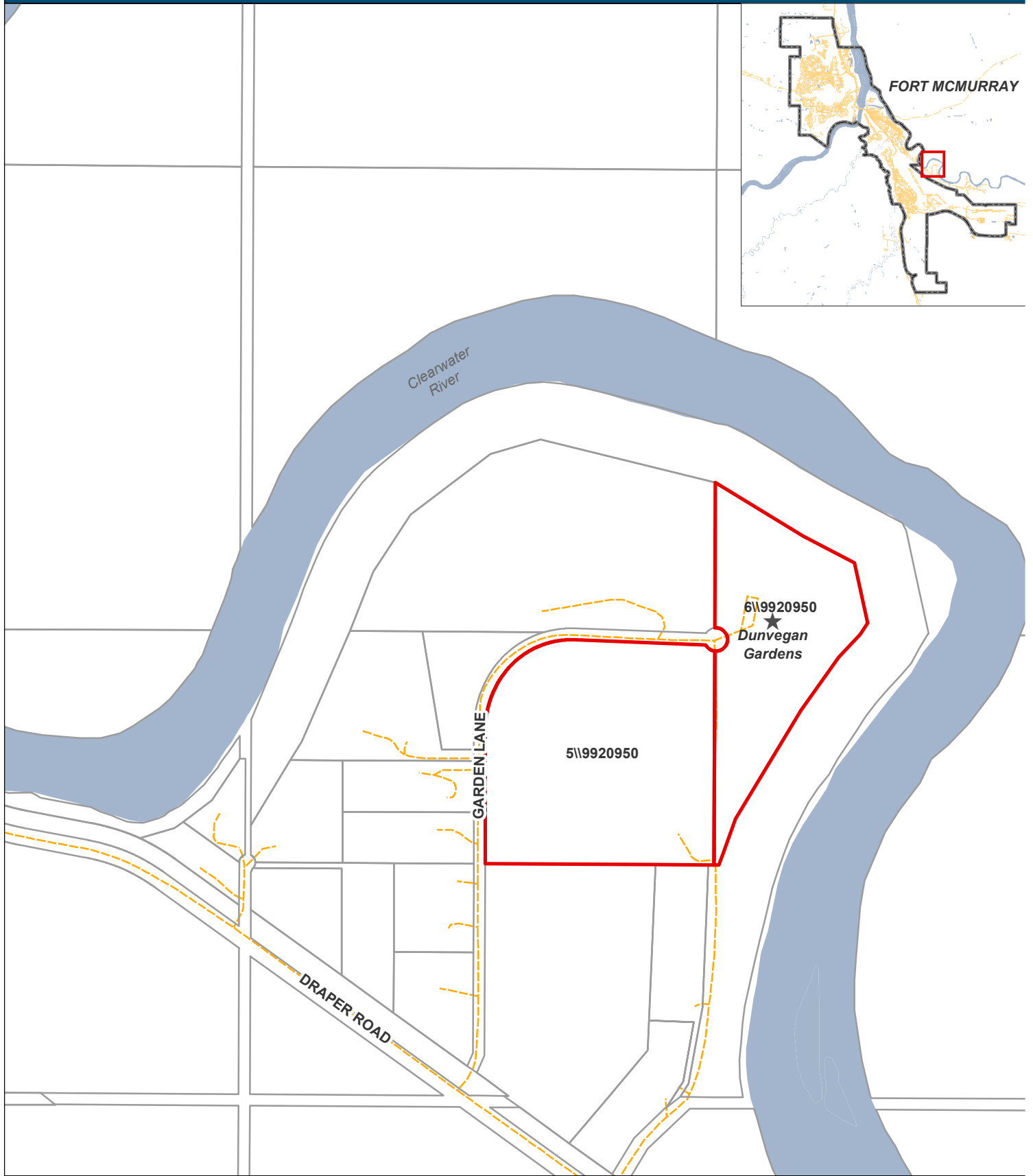


Attachment: 2. Map 6 - Attachment 1 to Bylaw (DVG LUB and ASP Proposed Amendment)

SUBJECT AREA MAP

Lots 5-6, Plan 992 0950

Attachment 3



Attachment: 3. Subject Area Map (DVG LUB and ASP Proposed Amendment)

- Subject_Area
- Roadways
- Survey_Parcels
- Water_Bodies
- ★ Landmarks

1 cm = 90 meters



Attachment 4: Supplemental Document



Dunvegan Gardens circa 2005

The Canadian Institute of Planners (CIP) states:

“Planning means the scientific, aesthetic, and orderly disposition of land, resources, facilities and services with a view to securing the physical, economic and social efficiency, health and well-being of urban and rural communities.”¹

Safe and orderly development is at the centre of planning in the Regional Municipality of Wood Buffalo. As a profession, a planner seeks to ensure land uses are compatible with one another and that they do not negatively impact adjacent and surrounding properties. When considering future development, a planner must follow the Municipal Government Act (MGA) and be consistent with Provincial Policies.

The purpose of this *Supplemental Document* is to provide the reader with information regarding:

1. a description of relevant planning concepts;
2. a background of the Land Use Bylaw 99/059 and Highway 69/Clearwater River Valley Area Structure Plan amendments;
3. a history of the properties that are the subject of this application;
4. an in-depth analysis of the application; and,
5. the rationale for recommending refusal of the application.

The recommendations and rationale contained here-within are based on; an objective review of the application submitted by the applicant, the existing Land Use Bylaw (LUB) and Highway 69/Clearwater River Valley Area Structure Plan (ASP), the public open house conducted by the applicant, and results of the survey conducted by Administration to receive feedback from the residents of Draper. The history of the property was not taken into account when reviewing this application. It has been included in this document to provide the reader with an understanding of the context of the site. This document is intended to provide a detailed, objective and factual picture of how the Municipality reached the recommendations and conclusions presented in this report.

¹ Canadian Institute of Planners, *About Planning* (2018).

1 Planning 101

The following section provides an overview of relevant planning terms and documents to help the reader better understand the content and rationale contained in this report. It also covers some key terms included in the application itself, and arms the reader to look at the application from a land use planning perspective.

1.1 The Land Use Bylaw

Under section 639 of the Municipal Government Act (MGA), every municipality must pass a Land Use Bylaw. The role of a land use bylaw is to regulate and control the use and development of land and buildings in a municipality². In accordance with section 640(2)(a) of the MGA, a Land Use Bylaw must divide the entire municipality into land use districts. There are two types of districts; the first are “conventional” districts and the second “direct control” districts³.

1.1.1 Conventional Districts

In the Regional Municipality of Wood Buffalo’s Land Use Bylaw, conventional districts are the most common. These districts contain a Purpose section, Permitted Uses, Discretionary Uses, and Site Provisions that apply to all development in that district.

1.1.2 Direct Control Districts

Generally stated, the purpose of a Direct Control District (DC) is twofold; firstly, to provide maximum flexibility in terms of land use and development proposals, and secondly, provide Council with a high level of control over the proposed development. Flexibility is especially beneficial when factors such as economic conditions, technology, societal values and trends are constantly changing. Specific to this application, flexibility is valuable when the industry the applicant wishes to participate in is constantly changing. In contemporary land use districts, where the land uses are static, it becomes difficult to respond to changes in operation and business models as the owner is limited to the uses contemplated in the applicable land use district.

1.1.3 Permitted and Discretionary Uses

Permitted uses generally meet the purpose statement of a land use district. They are perceived to have minimal impact on adjacent and surrounding properties, since they reflect the intent and character of the area. Additionally, the Development Authority **must** approve a permitted use, with or without conditions, if the proposed use or development meets all additional provisions of the LUB, such as setbacks from property lines and the height of a proposed development. An example of a permitted use would be a Single-Detached Dwelling in a residential district where the purpose of that district is to allow for low density residential development.

Discretionary uses, in contrast, are additional uses contemplated in a

² Section 640(1) of the Municipal Government Act

³ Frederick A. Laux, Q.C., *Planning Law* (Edmonton, Alberta: Juriliber Limited, 2010), 6-3.

land use district which still respects the character of the area, but may impact adjacent and surrounding properties if not properly mitigated. When reviewing applications for discretionary uses, development officers must ensure the proposed development will not adversely affect the **use, enjoyment and amenity** of the neighbourhood. Discretionary uses can be approved by the Development Authority, with conditions, and can be appealed by concerned neighbours. An example of a discretionary use would be a home business in a low density residential neighbourhood. In this instance the Development Authority must be satisfied the proposed business will not have a detrimental impact on the area.

1.1.4 Definition of Development

It is important to understanding that development is not limited to constructing a new building, but also includes how a building or land is used and the intensity of that use. Land Use Bylaw 99/059 defines Development as:

- “(a) an excavation or stockpile and the creation of either of them;*
- (b) a **building** or an **addition** to or replacement or repair of a building and the construction or placing of any of them in, on, over or under land;*
- (c) **change of use of land or a building** or an act done in relation to land or a building that results in or is likely to result in a change in the use of the land or building; or*
- (d) a **change in intensity of use of land or a building** that results in or is likely to result in a change in the intensity of use of the land or building.”*

Emphasis Added

Unless stated otherwise in the Land Use Bylaw, all development, as defined by the Land Use Bylaw, requires a Development Permit.

1.2 Area Structure Plans

Section 633(1) of the Municipal Government Act states:

“633(1) For the purpose of providing a framework for subsequent subdivision and development of an area of land, a council may by bylaw adopt an area structure plan.”

In the RMWB, an Area Structure Plan (ASP) also includes a vision for an area of land and is developed based on extensive engagement and discussions with the community. Section 633(2) of the MGA also requires:

- “(2) An area structure plan*
- (a) must describe*
 - (i) the **sequence of development** proposed for the area,*
 - (ii) the **land uses proposed** for the area, either generally or with respect to specific parts of the area,*
 - (iii) the **density of population** proposed for the area either generally or with respect to specific parts of the area, and*
 - (iv) the general location of **major transportation routes** and*

public utilities,
and
(b) may contain **any other matters**, including matters relating to reserves, as the council considers necessary.”

Emphasis added

1.3 Planning Principles

When the Development Authority is evaluating a development application, the provisions of the Land Use Bylaw and principles of statutory documents (for example, Area Structure Plans) guide how and where development takes place. In some instances, these documents do not provide sufficient guidance. The Development Authority then needs to use their discretion and planning expertise to inform their decision or recommendation. Some key principles for decision making are:

1. Development should not:
 - a. Unduly interfere with the amenities of the neighbourhood; and,
 - b. Interfere with the use, enjoyment, or value of neighbouring properties,
- and
2. Decisions should be in the public interest and respect the diversity, needs, values, and aspiration of the public.⁴

Some of these principles are incorporated into the Municipal Government Act (MGA) itself. For example, section 640(6) reads as follows:

“A land use bylaw may authorize a development authority to decide on an application for a development permit even though the proposed development does not comply with the land use bylaw or is a non-conforming building if, in the opinion of the development authority,

- (a) the proposed development would not*
- (i) unduly interfere with the **amenities of the neighbourhood**, or*
 - (ii) materially interfere with or affect the **use, enjoyment or value** of neighbouring parcels of land,*
- ...”*

Emphasis added

These same principles are repeated in section 28.1 of Land Use Bylaw 99/059, which reads as follows:

“28.1 Variance to Regulations (Bylaw No. 02/081)

The Development Authority may, subject to Section 28.2, allow a variance and approve a development permit for a permitted or discretionary use, with or without conditions, which does not comply with the regulations to this Bylaw provided that the Development Authority determines that:

- (a) the proposed variance would not result in a development that will:*
- (i) unduly interfere with the **amenities of the neighbourhood**;*

⁴ Canadian Institute of Planners, *Codes of Professional Conduct* (2018).

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

Emphasis added

Similarly, section 120.6 of Land Use Bylaw 99/059 contains additional provisions for the Small Holdings District that state:

“120.6 Additional Provisions

Small Holdings development shall only be allowed if the Development Authority is satisfied that:

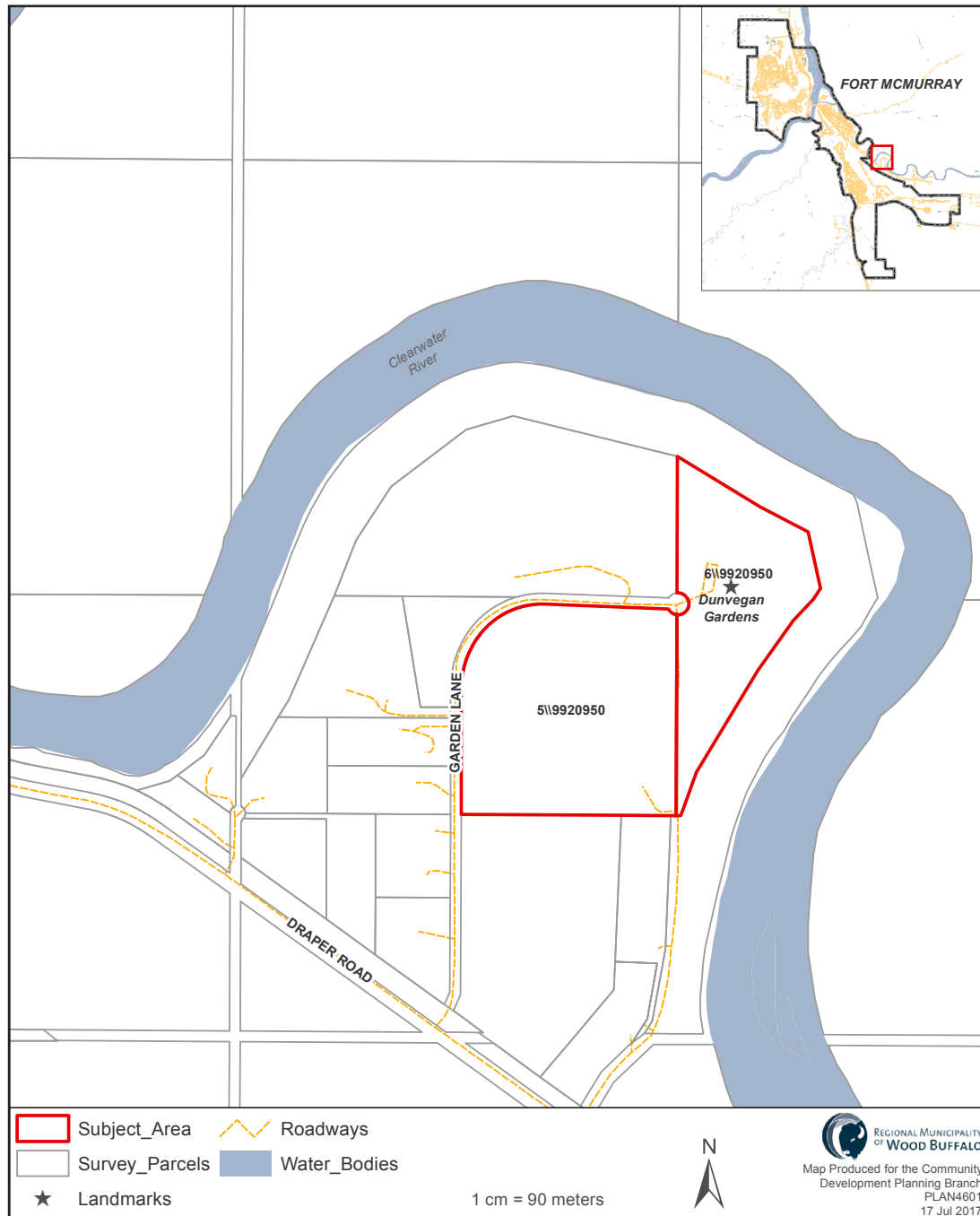
- (a) adequate access exists to a public road;*
- (b) no conflict will result with adjacent land owners;*
- (c) the developer will be responsible for constructing all internal roads...”*

Emphasis added

The above principles were used as a lens when examining the amendment application. Looking at what impact the proposal may have on adjacent properties was a basis of the analysis.

2 Historical Context

Please note, the historical context of the property was **not** a basis for Administration's recommendation regarding this application. An understanding of the history of the property and operations is helpful to understand why an amendment application was necessary, and to some degree, the application itself.



128 Garden Lane, legally described as Lot 6, Plan 992 0950 and Lot 5, Plan 002 0950 is in Draper on the riverside of Draper Road (Figure 1). Originally owned by the Province of Alberta, the properties were purchased by Robert and Bernice Grey in 1999. The Greys operated a popular market garden, known as Grey's Gardens, which consisted of selling produce grown on-site, that could be purchased either



Figure 2 - Grey's Garden

through a U-pick system, or from a small stand (Figure 2). The market garden continued operation by the Greys until the property was purchased by Dunvegan Gardens (Fort McMurray) Ltd. in 2005. Later, Lot 5, Plan 992 0950 was purchased by Grandma's Attic Ltd. The timeline showing property ownership is shown in Figure 3.

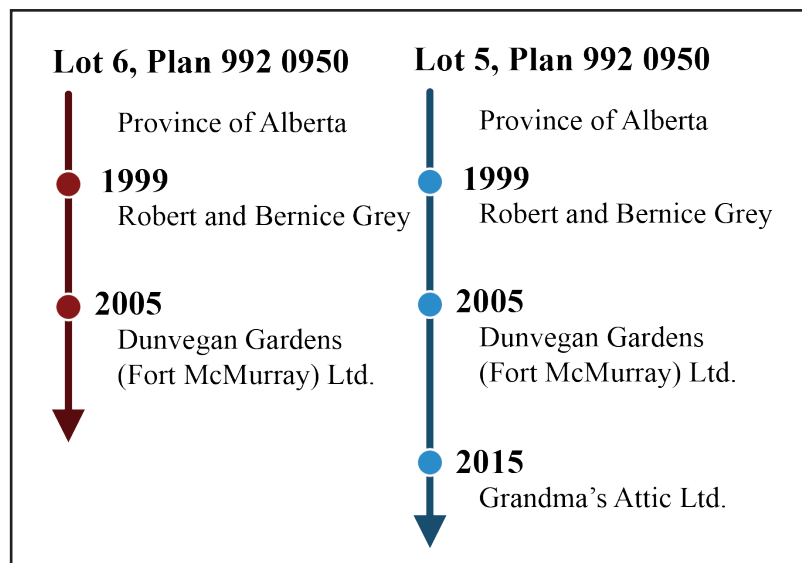


Figure 3 - Ownership Timeline

In 1982, Robert Grey and Clarence Satre opened MacKenzie Market and Greenhouses, a Farmer's Market at 384 Gregoire Drive. They sold bedding and house plants from Mr. Satre's Hasting's Lake Gardens (based in Spruce Grove, Alberta) and fresh vegetables from Grey's Gardens. They also sold eggs, honey, and prepared meats. In 2001, MacKenzie Market and Greenhouses was purchased by Dunvegan Gardens and in 2009, they moved the operation from 384 Gregoire Drive to the Draper location, without a Development Permit. This sequence of events is shown in Figure 4 below.

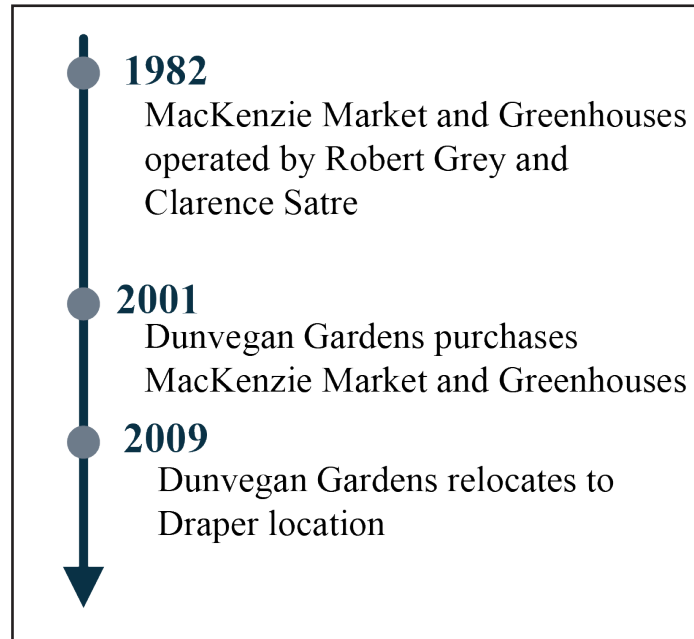


Figure 4 - Sequence of Events

2.1 Development Activity Timeline

The history of development activity on the subject properties is extensive. The timeline below outlines key land use planning and development activities, and does not include any electrical, gas, building permits, or similar permits, that do not fall within the scope of the Land Use Bylaw.



2007

DP 2006-0140 Development Permit for Accessory Building (Greenhouse)

The Development Permit approved an “Accessory Building (Greenhouse)” as a Permitted Use in the SH (Small Holdings) District. Condition 12, which required a Development Completion Certificate remains outstanding and was not completed. Figure 5 indicates the structures approved by this Development Permit.

- February 10, 2006 Development Permit Application received for “Greenhouses”. Application underwent a two week circulation period to internal and external stakeholders.
- April, 2006 The applicant was advised additional geotechnical information was required.
- September, November, December 2006 The outstanding information was discussed with the applicant.
- January 10, 2007 Site visits confirmed the greenhouses had been constructed without permit approval. The applicant was informed the outstanding information must be provided by January 31, 2007 or the development would be subject to enforcement.
- February 7, 2007 The required information was submitted and the development permit was approved.



Figure 5 - Development Permit 2006-0140

2007

DP 2007-0287 Development Permit for Stockpiling

This permit allowed the applicant to remove soil from Parcel F, now known as the Stone Creek Subdivision, and stockpiled at 128 Garden Lane. In the application, the 100,000-300,000 cubic metres of material was intended to be “screened later” and used to “build up ground around the area” for the use of the applicant.

- March 8, 2007 Development Permit application was submitted for stockpiling. The application underwent a one-week circulation period to internal and external stakeholders.
- March 19, 2007 The Development Permit was approved

2008

DP 2008-0138 Development Permit Accessory Building (Greenhouse)

This permit approved an “Accessory Building (Greenhouse)”. This use is identical to the original 2006 Permit, number 2006-0140. The approved structures under this development permit is shown in Figure 6.

- January 30, 2008 Development Permit application was received for a “Garden Shop to house tools of our trade, chemicals + pet supplies”. Following a circulation period, comments received initiated the requirement for revisions.
- July 9, 2008 The Development Permit was approved



Figure 6 - Development Permit 2008-0138

2009

DP 2008-0138R Market Garden – Accessory Building

Development Permit 2008-0138 was revised. The approved plans were identical to the original permit, however the project description changed from “Accessory Building (Greenhouse)” to “Market Garden – Accessory Building”. There were also additional development permit conditions.

- May 1, 2009 Since the approved use changed from Accessory Building (a permitted use) to a Market Garden (a discretionary use) the permit approval was advertised. The development permit decision was not appealed.

2010

Stop Order for Development without Development Permit Approval

Stop Order was issued to Dunvegan Gardens for Contraventions of Land Use Bylaw 99/059 – Development Without Development Permit Approval. Site visits indicated that a “Storage Facility” (U-Haul storage and rental drop-off) had been operating without Development Permit Approvals. Dunvegan Gardens appealed the Stop Order, however later withdrew their appeal after meeting the requirements of the Stop Order.

2011

DP 2010-1849 – Intensive Agriculture (Stockpiling) OVERTURNED

The intent of the application was to take between 300,000 and 400,000 cubic meters of soil from Abrahms Land to the subject property, where the applicant would screen it for “public and contracting sales for new and established housing or commercial projects.”

- October 28, 2010 A Development Permit application was submitted for “Stockpile – for processing previous stock pile”.
- January 21, 2011 The application was approved as “Intensive Agriculture (Stockpiling)”. As a Discretionary Use in the SH Small Holdings District, the approval was advertised on January 28, 2010 and was appealed.
- March 3, 2011 The Subdivision and Development Appeal Board (SDAB) Appeal Hearing was held.
- March 11, 2011 The SDAB overturned the decision, refusing the Development Permit on March 11, 2011. The reason is as follows: “The Subdivision and Development Appeal Board feels the development does not qualify as a discretionary use under the land use designation for this area. The Subdivision and Development Appeal Board also feels this development would negatively impact the use, enjoyment, safety and value of the neighbourhood and adjacent properties.”

2011

2011-DP-01030 Development Permit for “Freestanding Sign (2.4 x 1.2) and Freestanding Sign (2.4 x 1.2) and Freestanding Sign (2.4 x 1.2)”

The application was for three Freestanding Signs located on the property.

- June 8, 2011 Development Permit Application was received.
- June 10, 2011 The Development Permit was approved with conditions.

2011

Variance Certificate

A variance application was submitted to allow a fence at a height of 2.209m to remain. The maximum height for a fence is 2.0m.

2011

2011-DP-01843 Development Permit for Temporary Use for Chateau Boo

A Development Permit for “Temporary Use (Chateau Boo)” as a Discretionary Use in the SH Small Holdings District was approved on October 7, 2011.

- October 6, 2011 A Development Permit application was submitted.
- November 1, 2011 Given the development permit was issued on a temporary basis, the use was not to extend beyond November 1, 2011.

2011

Stop Order for Contravention of Land Use Bylaw 99/059 – Development without an Approved Development Permit – Illegal Storage of a Restricted Motor Vehicle.

- May 9, 2011 A site visit confirmed the presence of a landscaping business on the property and exceeded the number of recreational vehicles and commercial vehicles allowed.
- June 22, 2011 The Stop Order was appealed to the Subdivision and Development Appeal Board (SDAB).
- August 18, 2011 The Subdivision and Development Appeal Board (SDAB) Appeal Hearing was held.
- September 2, 2011 The SDAB Decision 2011-012 upheld the Stop Order but varied it to apply to the entire Site owned by the appellant and required the removal of commercial landscaping business and commercial equipment and materials.
- September 22, 2011 Site inspection pertaining to the Stop Order were conducted to ensure the Order had been complied with.
- October 11, 2011 Site inspections pertaining to the Stop Order were conducted to ensure the Order had been complied with.

2011

Warning

A Warning was issued to Dunvegan Gardens for Contravention of Signage Bylaw No. 01/068 in response to a complaint. The applicant had installed a “Third Party Identification Sign” which is not permitted in the CR – Country Residential District.

2011

2011-DP-01069 Development Permit for Third Party Identification Sign REFUSED

A Development Permit application was refused because the sign was in excess of the allowed 250.0m of the business which the sign refers to in the Rural Service Area Sign District Chart.

- June 13, 2011 A Development Permit application was submitted.
- October 28, 2011 The decision was advertised.

2012**2012-LU-00007 Land Use Bylaw Amendment Application REPEALED**

The application was to conduct an Easter Egg Hunt on March 31, 2012.

- September 5, 2012 Land Use Bylaw Amendment Application was received.
- September 7, 2012 The application was circulated to internal and external stakeholders for comment. Approval was recommended.
- October 23, 2012 Land Use Bylaw Amendment was passed by Bylaw No. 12/039.
- June 11, 2013 Bylaw No. 12/039 was Repealed and replaced by Bylaw No. 13/014

2014**2014-DP-00322 Development Permit for “Dunvegan Gardens – Easter Egg Hunt”**

A Development Permit was issued for a Special Event – Easter Egg Hunt, which was approved under Land Use Bylaw 99/059 Part 5 – General Regulations Section 300 – Special Events. No additional conditions were added to the permit.

- March 17, 2014 A Development Permit application was submitted.
- April 1, 2014 Development Permit was issued.

2014**2014-DP-00164 Development Permit for “Intensive Agriculture (Sod Farm & Tree Farm)”**

The application was approved as “Intensive Agriculture (Sod Farm & Tree Farm)”.

- February 19, 2014 A Development Permit application was submitted for “Intensive Agriculture – Sod Farm, nursery/tree farm Animals, etc.”.
- May 5, 2014 The Development Permit was approved and issued. The development permit approval was appealed to the Subdivision and Development Appeal Board (SDAB).
- August 28, 2014 The SDAB heard the appeal.
- September 12, 2014 The SDAB upheld the permit approval but varied the conditions. The approval was limited to include only growing sod from seed and trees from seed or saplings.

2014

2014-DP-00162 Development Permit for “Intensive Agriculture (Sod Farm & Tree Farm)”

The application was approved as “Intensive Agriculture (Sod Farm & Tree Farm)”.

- February 19, 2014 A Development Permit application was submitted for “Intensive Agriculture – Sod Farm, nursery/tree farm Animals, etc.”.
- May 5, 2014 The Development Permit was approved and issued. The development permit approval was appealed to the Subdivision and Development Appeal Board (SDAB).
- August 28, 2014 The SDAB heard the appeal.
- September 12, 2014 The SDAB upheld the permit approval but varied the conditions. The approval was limited to include only growing sod from seed and trees from seed or saplings.

2015

2015-DP-00025 and 2015-DP-00025R Development Permit for “Easter Egg Hunt”

The application was to conduct an Easter Egg Hunt on April 4th, 2015

- January 21, 2015 Development Permit Application was received.
- February 17, 2015 The Development Permit Application was approved and later revokes and re-issued with revised conditions. This was done as a result of information pertaining to traffic flow at the previous year’s event, received by Planning and Development after the issuance of the original permit.
- March 2, 2015 The revised Development Permit Application was approved (R2015-DP-00025). The Development Permit was advertised and appealed to the Subdivision and Development Appeal Board (SDAB).
- April 1, 2015 The SDAB heard the appeal.
- April 2, 2015 The SDAB Decision (2015/005) was to uphold the Development Permit approval but with additional conditions. The board felt that appellants reasons for appeal was because of a lack of conditions, and the board felt with the additional conditions, those concerns would be addressed.

2016

2016-DP-00022 Development Permit for “Special Event – Dunvegan Gardens 6th Annual Easter Egg Hunt” CANCELLED

The application was to conduct an Easter Egg Hunt on April 4th, 2016

- January 27, 2016 Development Permit Application was received.
- March 2, 2016 Development Permit was approved.
- March 10, 2016 The approved Development Permit was cancelled. The notice of development permit cancellation reads as follows:

“The applicant did not disclose that there were problems with the event in the year 2015 included non compliance with Section 18(d) and (i) of the Subdivision and Development Appeal Board decision dated April 2, 2015 (File Number; SDAB 2015/005) which read as follows:

18(d) No Parking is allowed on the Garden Lane, Draper Road or any other adjacent or neighbouring properties.

18(i) The special event shall take place on Saturday, April 4, 2015 only between hours of 11:00 a.m. and 3:00 p.m., excluding time to setup and dismantle the Special Event.”

2016

2016-DP-00091 Development Permit for “Special Event – Dunvegan Gardens 6th Annual Easter Egg Hunt”

The application was to conduct an Easter Egg Hunt on April 4th, 2016

- March 3, 2016 Development Permit Application was received.
- March 10, 2016 Development Permit was approved. There were additional conditions added that differ from the first application (2016-DP-00022).

2016

2016-DP-00453 Development Permit for “Demolition”

The demolition permit follows the 2016 Wildfire.

- July 13, 2016 Development Permit Application was received.

2016

Stop Order for Contravention of Land Use Bylaw 99/059

The Stop Order was issued on September 23, 2016 and identified seven items that were the subject of the Stop Order. These include:

1. Unauthorized Commercial Landscaping
2. Unauthorized Commercial Landscaping Materials Stockpiling
3. Unauthorized Retaining Wall
4. Unauthorized Sale of Goods
5. Unauthorized Farm Animals
6. Unauthorized Park
7. Unauthorized Electrical Panels

2016

October 7, 2016 The Stop Order was appealed to the Subdivision and Development Appeal Board (SDAB).

February 16, 2017 The Subdivision and Development Appeal Board (SDAB) Appeal Hearing was held.

March 16, 2017 The SDAB Decision was made to uphold but vary the Stop Order. The decision was to:

1. Revoke items 1: Unauthorized Commercial Landscaping, 2: Unauthorized Commercial Landscaping and Materials Stockpiling and 3: Unauthorized Retaining Wall of the stop order

2. Varies item 4: Unauthorized Sale of Goods of the stop order as follows:

The Appellants have one year from the date of this decision to obtain a development permit to permit the General Retail Store, which will require a rezoning. If the Appellants do not obtain a development permit within the time specified in this paragraph, they are to cease the sale of any unauthorized good from being available for sale at the end of the one year period. March 16, 2018

3. Varies item 5: Unauthorized Farm Animals of the stop order as follows:

To the extent that the animals are licensed by the Municipality, the stop order is cancelled in relation to those animals. The Appellants are able to keep those animals licensed by the Municipality without a development permit. For those animals which are licensed, the Appellants must not use them for commercial purposes, which means that they cannot sell eggs or other by-products of the animals, nor can the Appellants charge to see the animals. The stop order continues to apply to any animal not licensed with the Municipality. The stop order is varied to specifically exclude the fish and the bees on site from the provisions of the stop order.

4. Varies item 6: Unauthorized Park of the stop order as follows:

The Appellants must obtain a development permit for the park within three months from the date of the decision. If the Appellants do not obtain a development permit within the time specified in this paragraph, they are to remove those features at the end of the three month period. The Appellants must cease the use of the park until they have obtained a development permit.

5. Confirms item 7: Unauthorized Electrical Panels of the stop order but directs the Municipality:

The Municipality has two weeks from the date of issuance of this decision to inspect the site to ensure that the electrical panels have been removed.

2017**2016-DP-00599 Development Permit for “Outdoor Recreation Facility”**

The application was approved as an Outdoor Recreation Facility.

- July 22, 2016 Development Permit Application was received.
- August 18, 2016 The application was circulated to internal and external stakeholders for comment.
- October 14, 2016 Additional information was requested.
- March 31, 2017 The requested additional information was provided and the application was re-circulated to internal and external stakeholders.
- July 5, 2017 The Development Permit was approved with conditions.
- July 14, 2017 The Development Permit approval was advertised and no appeal was received.

2017**2017-DP-00312 Development Permit for “Special Event – Dunvegan Easter Egg Hunt”**

The application was to conduct an Easter Egg Hunt.

- March 2, 2017 Development Permit Application was received.
- March 15, 2017 The application was circulated to internal and external stakeholders for comment.
- March 27, 2017 The Development Permit was approved with conditions.
- March 31, 2017 The Development Permit approval was advertised and no appeal was received.

2017**2017-DP-01093 Development Permit for “Special Event – Annual Birthday Bash” VOID**

The application was to conduct an Easter Egg Hunt.

- June 19, 2017 Development Permit Application was received.
- June 21, 2017 Application was VOID and cancelled by the applicant

2018**2018-DP-00055 Development Permit for “Special Event – Dunvegan Gardens Easter Egg Hunt”**

The application was to conduct an Easter Egg Hunt on March 31, 2018

- February 7, 2018 Development Permit Application was received.
- February 8, 2018 The application was circulated to internal and external stakeholders for comment.
- March 6, 2018 The Development Permit was approved with conditions.

2018

2016-DP-00533 Development Permit for “2 Greenhouse Quonsets – Accessory Building” REFUSED

The application was for “2 Greenhouse Quonsets – Accessory Building”

- July 19, 2016 Development Permit Application was received.
- August 4, 2016 Additional information was requested and was not received.
- March 9, 2018 The Development Permit was refused for the following reasons:

1. When reviewing this application, the development authority took guidance from the Land Use Bylaw 99/059, the Subdivision Development and Appeal Board decision 2016-005 and the following provision of the Land Use Bylaw: section 50.7 (b) “...for parcels 2.0 hectares and larger, the maximum site coverage of accessory buildings shall be 350.0 m².”
2. The applicant is proposing accessory buildings that are larger than the maximum size limitation prescribed in the above quoted section 50.7 (b).
3. In accordance with section 50.7, the maximum allowable size for an accessory building in a residential district on a parcel of land exceeding 2.0 hectares is 350.0m². The applicant has proposed construction of two accessory buildings, both of which are 412.3m² for a total of 824.6m². The total proposed accessory buildings exceed the approval authority by 474.6m², representing a potential variance of 135 %.
4. Since the proposed development is beyond the size limitation imposed by section 50.7 (b), Planning and Development cannot support this application.

March 29, 2018 Administration received notice the Development Permit Refusal had been appealed by the applicant.

April 5, 2018 Administration received notice from the Subdivision and Development Appeal Board a hearing has been scheduled for April 19, 2018.

3 Background of the Application

The following section provides a description of the amendment application and why an amendment application was required. It begins by describing the Subdivision and Development Appeal Board Decision, which recognized amendments would be required, and concludes with a description of the review process.

3.1 Subdivision and Development Appeal Board Decision 2016-005

A Stop Order was issued by the Municipality on September 23, 2016 against 116 and 128 Garden Lane for unauthorized use of land, including but not limited to, the operation of a retail store. Following an appeal by the land owners, a hearing at the Subdivision and Development and Appeal Board (SDAB) was held on February 16, 2017. The hearing resulted in decision SDAB 2016-005 issued by the Board on March 16, 2017.

An item of specific importance to the background of how the amendment application came to be is found in Section 145 of the SDAB decision, which reads as follows:

*“[145] As the Board understands that Mr. Friesen believed he had development approval for the sale of goods, it upholds the stop order on this point, but varies the time for compliance. The Board grants the Appellants a **one year period** from the date of issuance of this decision to obtain a development permit for **General Retail Store use**. As that use is neither permitted nor discretionary in the Small Holdings District, **the Site will have to be redistricted**. The Board is of the view that one year is a sufficient time to obtain a redistricting which would allow the General Retail Store use. If the Appellants do not obtain a development permit by the time specified in this paragraph, they must cease the General Retail Store use at the end of that one year period.”*

Emphasis added

By varying the time for compliance by one year, until March 16, 2018, it provided the land owner the opportunity to obtain a development permit for Retail Store, General. Since the SDAB is not authorized to add a land use to a district, the board identified that an amendment and proper development permits would be required to continue the retail sale of goods on the property.

3.2 Application Submittal and Review

The applicant (Mr. Friesen) submitted an initial incomplete application for the required amendments on April 11, 2017. Planning and Development has since circulated applications, sent out notices to the Draper community, conducted a survey, and provided guidance to the applicant to produce a complete amendment application.

Table 1: Selected Key Dates and Activities

September 23, 2016	Stop Order Issued
February 16, 2017	SDAB Heard the Appeal
March 14, 2017	Administration met with the applicant at his request to discuss the amendment process
March 16, 2017	SDAB Decision 2016-005 was issued
March 24, 2017	Pre-application meeting for amendment application with applicant
April 11, 2017	First Submission: Amendment application submitted, but was incomplete
July 7, 2017	Administration circulated the incomplete application for comments
July 25, 2017	A circulation package was hand delivered to Draper residents with a survey to receive feedback. Due date for survey was August 18, 2017
October 13, 2017	Administration met with the applicant and recommended the applicant seek a professional to help complete a formal application.
December 5, 2017	Administration met with the applicant and IBI, the consultant, to discuss the application.
January 9, 2018	Second Submission: Received a complete application
January 11, 2018	Meeting between Administration and the applicant to discuss the submission. Detailed notes were provided to the applicant on January 15, 2018.
January 22, 2018	Third Submission: received revised submission
February 5, 2018	Comments are provided to the applicant.
February 9, 2018	Fourth Submission: the applicant submitted the final amendment documents and confirmed this was their final submission for presentation to Council. Minimal changes were made from the third submission and Administration's comments were not addressed.
February 27, 2018	The applicant held a public open house which was observed by Administration.

As stated by the applicant, the purpose of the proposed amendment submitted to the Municipality is:

1. "...to add a Direct Control District to enable the land uses associated with a community focused greenhouse commercial establishment," and;
2. "...[the purpose of an amendment] to the Highway 69/Clearwater Valley Area Structure Plan (ASP) is to add a Direct Control District to the ASP to enable the land uses associated with a community focused greenhouse commercial development."

A first draft of a complete application was received by the Planning and Development Department on January 9, 2018. After review and comments

were provided by the Development Authority, a second draft submission was received on January 22, 2018. Comments issued to the applicant resulted in the third and final amendment application package authored by the applicant's consultant on February 9, 2018. As directed, the applicant hosted a public open house on February 27, 2018 and Planning received open house summary comments from the applicant on March 2, 2018. Since this time, Planning has conducted a comprehensive review of all materials submitted by the applicant, analyzed additional submissions from the applicant, and reviewed and analyzed survey results of the Draper community conducted by the Municipality; this is discussed further in the following sections.

4 Analysis of the Proposed Land Use Bylaw Amendment Application

An application to amend the Land Use Bylaw can have substantial impact to lands within new and existing neighbourhoods. For instance, the subject area is traditionally a low density, large lot residential and agricultural area. A commercial land use could have a significant impact on the area and surrounding properties by increasing traffic, servicing requirements, and creating additional noise, vibration, dust, smoke, and odors.

The intent of the amendment submitted by the applicant is to rezone the subject area from SH Small Holdings District to DC# Direct Control District. This section will include:

1. a description of the existing Small Holdings District;
2. existing land uses in the Small Holding District versus proposed land uses in the Direct Control District; and,
3. a discussion on the impact the proposed uses could have on surrounding properties.

It is the intent of Administration to provide a transparent, analytical review of the application to help the reader understand the process and rationale used to reach the recommendation for refusal.

4.1 SH Small Holdings District

As stated in section 120 of the LUB,

*“The purpose of the Small Holdings District is to provide **large lot acreages** intended for **residential, small scale agricultural pursuits** and other compatible uses on land that are potentially susceptible to flooding which are located below the 250 m contour.”*

Emphasis added

All lands in Draper located north of Draper Road (riverside) are zoned SH Small Holdings. As such, the character of the area consists of large lot residential uses. However as discussed in the historical context, the Garden Lane area of Draper, where Dunvegan Gardens is currently located, has been utilized as a small scale agricultural area. This is consistent with the size of land parcels within this area which limits the number of lots and reduces potential impact to adjacent and surrounding property owners.

4.2 Existing Versus Proposed Land Uses

The existing land uses and proposed land uses are outlined below:

Table 2: Existing SH Small Holdings District

Permitted Uses	Discretionary Uses – Development Officer	Discretionary Uses – Planning Commission
Accessory Building Essential Public Service Home Occupation Manufactured/Modular Home Park Public Use Public Utility Satellite Dish Antenna Single Detached Dwelling	Amateur Radio Antenna Family Care Dwelling Home Business Market Garden Temporary Building or Structure	Bed & Breakfast *Campground (Bylaw No. 04/012) Community Service Facility Country Inn *Guest Ranch *Intensive Agriculture (*as per Section 76.7 keeping of animals) *Kennel *Outdoor Recreation Facility Deleted (Bylaw No. 04/012) *Resort Facility

The applicant has included **12** new uses not currently contemplated in the Small Holdings District, which are shown below. The uses in red are additions, while the uses in black are existing. A commentary on the new proposed uses is explored further under the *Applicants Submission* section.

Table 3 Proposed DC# - Direct Control District

Permitted Uses	Discretionary Uses – Development Authority
Accessory Building and Uses <i>Breweries, Wineries and Distilleries</i> <i>Commercial Recreation Facility, Indoor</i> <i>Commercial Recreation Facility, Outdoor</i> Community Service Facility <i>Community Garden</i> <i>Events/Special Events</i> <i>Food Service, Major Restaurant</i> <i>Food Service, Minor Restaurant</i> <i>Greenhouse/Plant Nursery</i> Home Business Intensive Agriculture (on lots larger than 4 hectares) (*as per Section 91.0 Additional Provisions: Intensive Agriculture) <i>Keeping of Animals (Petting Zoo) (*as per Section 91.0 Additional Provisions: Intensive Agriculture)</i> Manufactured/Modular Home Market Garden Office Park Public Use <i>Retail Store, General</i> Temporary Building or Structure <i>Warehouse and storage</i>	Amateur Radio Antenna Bed and Breakfast Campground Country Inn Essential Public Service Family Care Dwelling Home Occupation Kennel Parking Lot/Structure Public Utility <i>Retaining Wall</i> Resort Facility Satellite Dish Antenna Single Detached Dwelling

Red colour indicates new proposed land uses as per the amendment application

4.3 Analysis of Land Use Bylaw Amendment Application

The review and analysis provided in this section is specific to the applicant's final Land Use Bylaw amendment submission received by the Municipality on February 9, 2018. As previously noted, the applicant is proposing to redistrict the subject area from a SH Small Holdings District to a new DC Direct Control District. The proposed DC Direct Control District:

1. provides uses (permitted uses and discretionary uses – development authority);
2. adds new uses to the Land Use Bylaw ("*Breweries, Wineries and Distilleries*", "*Community Garden*", and "*Keeping of Animals*");
3. adds additional provisions to the new district;
4. proposes text amendments to "*Part 5 General Regulations*"; and,
5. amends a land use map.

Taken together, the review will largely formulate the Municipality's rationale and recommendations specific to the proposed Land Use Bylaw amendment.

4.3.1 Proposed DC# - Direct Control District

The DC Direct Control District submitted by the applicant is not a pure Direct Control District, in the sense that it includes many permitted and discretionary uses. As described in section 1.1.2 of this document, a Direct Control District is intended to provide Council with a high degree of control for the development of lands. In a true Direct Control District it is Council, not a Development Officer, who reviews a development permit application to determine whether the proposal is appropriate. Additionally, a Direct Control District provides a high degree of transparency for decision making as all development permits are subject to a public hearing process, which is not required when an application is subject to approval by a Development Officer.

A pure Direct Control District provides flexibility to the applicant, since they are not restricted to a list of pre-determined uses, as is the case in a conventional district. However, by including permitted and discretionary uses, the proposed Direct Control District provides the applicant with certainty, regarding what types of uses and developments can occur on the subject lands. This provides the applicant with significant benefits at the cost of Council's flexibility and control.

During a meeting on January 11, 2018 administration recommended the applicant propose a true Direct Control District (without uses) so all development decisions would be made by Council. Administration also commented that the certainty the applicant was seeking could rest in specific policies residing in their Area Structure Plan (ASP) proposed amendment. A pure Direct Control District, without the inclusion of specified uses, provides flexibility for the applicant, while still providing Council and the community with a substantial amount of transparency and control over appropriate land use activities when reviewing applications.

4.3.2 Proposed Permitted and Discretionary Uses

A development permit application for a Permitted Use cannot be refused and is not subject to appeal so long as the application meets all applicable provisions of the Land Use Bylaw. Conversely, Discretionary Uses are often an activity or development that may have an adverse impact on adjacent properties. As such, the Development Authority can exercise their discretionary and refuse a development or use proposal, and stakeholders have a right to appeal a decision of the Development Authority. This principle is pivotal when analyzing the applicant's proposed Direct Control District.

As identified in section 4.2 of this supplemental document, the applicant is proposing twelve (12) new uses not currently contemplated in the SH – Small Holdings District. The new uses are identified in Table 3.

Table 4 Proposed New Uses

Proposed Use	Use Defined in the Bylaw?	Proposed as Permitted or Discretionary	Does the Use have General Regulations?
Breweries, Wineries and Distilleries	No	Permitted	Proposed Regulations
Commercial Recreation Facility, Indoor	Yes	Permitted	No
Commercial Recreation Facility, Outdoor	Yes	Permitted	No
Community Garden	No	Permitted	No
Events/Special Events	Yes	Permitted	Yes
Food Service, Major Restaurant	Yes	Permitted	No
Food Service, Minor Restaurant	Yes	Permitted	No
Greenhouse/Plant Nursery	Yes	Permitted	No
Keeping of Animals (Petting Zoo)	No	Permitted	Proposed existing regulation for control
Retail Store, General	Yes	Permitted	No
Warehouse and Storage	Yes	Permitted	No
Retaining Wall	Yes	Discretionary – D.O.	Yes

Of the applicant's proposed **twelve (12)** new uses not currently contemplated in the SH - Small Holdings District, **eleven (11)** of those uses are proposed as Permitted Uses, and one a Discretionary – Development Officer (D.O.) approval authority. All **eleven** of the proposed Permitted Uses are considered **commercial** in nature. Additionally, **three (3)** of the proposed uses are not currently defined in the Land Use Bylaw (LUB), and no definitions have been proposed. Lastly, of the last **three (3)** proposed new uses, only one (*Breweries, Wineries, Distilleries*) has proposed general regulations for “*Part 5 General Regulations*” of the LUB.

Upon reviewing of the applicant's submission, Administration has identified several concerns regarding the proposed uses.

4.3.2.1 Increase in Land Use Intensity

The proposed uses constitute a substantial increase in land use intensity in an area that is intended for large lot residential and small scale agricultural activities. This could result in an increase in traffic, servicing requirements, and additional noise, vibration, dust, smoke, and odors. No additional information (for example, a Traffic Impact

Assessment (TIA)) has been provided to justify or support this increase in intensity of uses.

4.3.2.2 *Commercialization of the Land*

The applicant's proposed Direct Control District includes eleven new uses that represent a commercialization of the land. These uses are all included as Permitted Uses in the applicant's proposed district. The concern regarding an inclusion of 11 commercial uses as permitted means that the applicant has the explicit right to use the property for all the listed commercial activities included with their proposed district.

4.3.2.3 *Conflicting Land Uses*

The applicant has proposed potentially conflicting land uses without any explanation of what mitigative measures will be used to reduce conflict with neighbouring properties. The increase in commercial land uses represent the highest level of potential land use conflict as they are all substantially commercial in nature, such as food service major and retail store, general. By being permitted, the Development Authority or Council have no authority to refuse a proposed development if it meets standard provisions of the bylaw, regardless of the potential impact to surrounding and adjacent properties. Additionally, if all the uses are approved as Permitted Uses, the surrounding and adjacent property owners will have no right to appeal a development permit decision, should there be concerns regarding impact. As such, Planning and Development does not support the inclusion of commercial uses in a land use district that does provide Administration or Council the discretion to mitigate the potential use.

4.3.2.4 *New Uses without Supporting Documentation and Provisions*

The applicant has also proposed **three (3)** new uses not currently considering in the Land Use Bylaw. These include "*Breweries, Wineries, and Distilleries; Community Garden; and Keeping of Animals*". While reviewing the proposed uses, Administration found the applicant did not include definitions of the uses, which is necessary to properly assess the potential impact of the use on the surrounding and adjacent properties. As such, Administration does not have enough information to critically assess the appropriateness of the proposed uses being added to the Land Use Bylaw.

4.3.2.5 *Approval Authority in the Proposed DC Direct Control District*

Administration also has concerns regarding the lack of clarity provided in the proposed Direct Control District. The applicant has proposed discretionary uses as development officer approval authority, meaning an application made for such uses is not required to go to Council for approval. However, the list of Permitted Uses included by the applicant does not identify who has the authority to make decisions on the application. As it currently reads, should Council approve the proposed amendment, the land owner would effectively be granted the right

to operate all the Permitted Uses on the property without additional consent from the Development Authority, so long as the proposed uses meet all other provisions of the Land Use Bylaw. This leaves very little room for the Development Authority to provide oversight to an application and mitigate any land use conflicts with surrounding and adjacent properties. This is not supported by Administration.

4.3.2.6 Survey Responses

Up to this point, Planning has noted that concerns exist over the permitted commercial uses included in the applicant's amendment proposal, and the potential impacts that could occur to the surrounding and adjacent lands. Planning and Development identified the potential concern early in the review. Given the lack of information in the initial application, Planning and Development drafted a survey and hand delivered them to the property owners in Draper on July 26, 2017 until August 18, 2017. The survey presented the information to the residents, including the uses proposed by the applicant, and ask if they supported the proposed uses. Results are outlined in Table 4.

Table 5 Survey Response Results

Proposed Uses	Suitable		Not Suitable		No Reply	
	Number of responses	%	Number of responses	%	Number of responses	%
Support Direct Control	16	26.23	41	67.21	4	6.56
Intensive Agriculture	20	32.79	40	65.57	1	1.64
Kennel	18	29.51	42	68.85	1	1.64
Market Garden	58	95.08	3	4.92	0	0.00
Bed and Breakfast	21	34.43	40	65.57	0	0.00
Campground	17	27.87	44	72.13	0	0.00
Resort Facility	17	27.87	44	72.13	0	0.00
Park	25	40.98	35	57.38	1	1.64
Commercial Recreation...	19	31.15	42	68.85	0	0.00
Country Inn	17	27.87	44	72.13	0	0.00
Farm Agritainment	22	36.07	39	63.93	0	0.00
Events and Special Events	22	36.07	38	62.30	1	1.64
Greenhouse/Plant Nursery	24	39.34	37	60.66	0	0.00
Home Occupation	26	42.62	34	55.74	1	1.64
Principal Building or Use	24	39.34	35	57.38	2	3.28
Accessory Building or Use	21	34.43	38	62.30	2	3.28
Retail Store, General	21	34.43	39	63.93	1	1.64
Office	19	31.15	42	68.85	0	0.00
Food Service/Restaurant	17	27.87	44	72.13	0	0.00

Based on the result of the survey, Draper residents support the idea of a Market Garden, which is defined in the LUB 99/059 as:

“MARKET GARDEN – means the growing of vegetables or fruit for commercial purposes.”

As noted in the historical context of this report, the resident’s support the idea of the former owner’s business Grey’s Garden, which grew and sold vegetables on the land. However, when looking further into the commercialized uses proposed for the site, it is relatively clear that a majority of resident’s (over 50%) do not support the proposed intensification of land.

Planning has provided an in-depth analysis of the proposed uses included in the applicant’s amendment. As a synopsis, Planning provides the following commentary regarding the proposed uses:

1. Additional uses, not currently afforded to the applicant in the SH Small Holdings District, have been proposed;
2. The application includes uses that are not currently contemplated in the Land Use Bylaw;
3. There is a lack of clarity surrounding the justification of the uses;
4. There exists a lack of general guidance for the issuance of development permits;
5. It is not clear in the proposed district who has the authority to issue development permits for the proposed uses; and,
6. The potential impact of the uses, additional provisions, and general regulations contemplated by the application.

4.3.3 Proposed Additional Provisions

The applicant is proposing “Additional Provisions” in Section (5)(c) of their Land Use Bylaw amendment, which allows neighbouring parcels of land under the same ownership the ability to transfer development potential from one lot to the next. The provision is proposed as follows:

“The keeping of animals, birds and livestock shall be as per Section 91.0 Additional Provisions: Intensive Agriculture. Where there are multiple lots adjacent to each other owned by one owner, the total allowed units of livestock will correspond to the total lot area combined. Grazing areas are to implement adequate fencing and buffering to ensure the safe on-site confinement of animals and to reduce the noise and visual impacts on neighbouring properties. All grazing areas shall provide adequate measures for the disposal of animal waste to the satisfaction of the Development Authority and the Regional Health Authority.”

Administration has interpreted this to mean that an owner of multiple adjacent lots is able to transfer the development potential from one lot onto the other. The applicant has not provided any supporting documentation regarding whether this will have an impact on the surrounding neighbourhood and the extent of the lands this provision

would apply. The Municipality does not support additional intensification of land beyond the current provision of the Land Use Bylaw without proper justification.

4.3.4 Proposed Text Amendments to “Part 5 General Regulations”

The amendment application also included additional provisions and amendments to existing provisions in “Part 5 General Regulations” of the Land Use Bylaw. Administration has concerns with the proposed amendments and additions, but also the lack of additional provisions to help mitigate and control the proposed uses.

4.3.4.1 Permitted Commercial Uses

As shown in Table 3, **eight (8)** of the proposed Permitted Uses that are commercial in nature do not currently have general regulations in the Land Use Bylaw. These uses do not have specific general regulations in the LUB because those uses are currently only allowed in commercial land use districts. In these districts, a commercial use is appropriate and there is sufficient separation from residential districts where impact could be a concern. These commercial uses that are currently in the LUB are also only discretionary uses throughout the Municipality, so the Development Authority can assess impact and suitability of the use before approval. Should this amendment application be approved, a development permit application for these uses would result in little ability to mitigate potential impact with neighbouring land uses.

4.3.4.2 Proposed New Provisions in “Part 5 General Regulations”

The applicant has also identified general regulations for their proposed use “*Breweries, Wineries, and Distilleries*”. While Planning has reviewed the proposed general regulations, there is no supporting information to justify whether these proposed general regulations reflect best practice, or are appropriate for the RMWB. As such, additional information is required to determine whether the regulations will mitigate potential land use conflicts.

4.3.4.3 Amendments to Existing Provisions in “Part 5 General Regulations”

The applicant has proposed text amendments to “Part 5 General Regulations” Section 76.7 and 76.8 of the Land Use Bylaw. These two sections currently exist as follows:

*“76.7 No livestock, fowl or fur-bearing animals, other than domestic pets, shall be permitted in any residential districts, except for horses, donkeys, goats, llamas, alpacas, and other similar such animals, kept as pets and/or for personal enjoyment, at Sapræ Creek, Conklin, Janvier, Anzac and **deleted (Bylaw No. 01/043)** whereby parcels greater than 0.809 ha are permitted a maximum of (3) three horses, conditional upon the horses being confined within a fence constructed to the satisfaction of the Development Officer. **Deleted (Bylaw No. 00/011)**”*

And,

“76.8 Notwithstanding section 76.7, on residential lots in the hamlets of Conklin and Janvier, the keeping of animals, including livestock, is permitted at the discretion of the Development Authority in accordance with the provisions for Intensive Agriculture contained in Section 116.6 of this Bylaw.”

The proposed amendment seeks to add the term **“Draper”** to the list of areas that allow for certain types of animals to be kept as pets and/or for personal enjoyment. The applicant identified this to administration early in their application. Initial discussions with the applicant provided the suggestion that if the applicant were to seek the opportunity to keep animals both for personal and commercial purposes, the regulation should be specific to the subject area, Lot 5 and 6, Plan 992 0950. However, the applicant’s proposal seeks to change this to allow the keeping of animals for all of Draper without evidence suggesting residents of Draper support this change. Therefore, Administration cannot support the amendment to section 76.7 and 76.8 without input from residents in Draper.

Generally, when it comes to the *“Part 5 General Regulations”* text amendment, Administration has the following concerns:

1. The proposed land uses do not have proper regulation through the “Part 5 General Regulations” section of the Land Use Bylaw;
2. The Regional Municipality of Wood Buffalo does not define “Draper” as a hamlet;
3. The applicant’s proposed general regulation for the use *“Breweries, Wineries, and Distilleries”* has been proposed without any supporting documentation to determine if the regulations are appropriate and mitigate land use conflict; and,
4. The proposed text amendment to section 76.7 and 76.8 represents a change that will impact all Draper residents and no feedback has been provided to administration to determine if the residents support this change.

Taking all of the above analysis of Section 4 of this report, administration does not support the applicant’s proposed LUB amendment.

5 Analysis of the Proposed Highway 69/Clearwater River Valley Area Structure Plan Amendment

In order for the Applicant's proposed land uses to be supported by the statutory plan currently in effect in the area, an amendment to the Highway 69/Clearwater River Valley Area Structure Plan (ASP) is necessary. The Development Concept and several policies presented in the ASP conflict with the Applicant's proposal because they do not envision the array of land uses being proposed. Amendments to such statutory plans are infrequent (this ASP has only been amended 7 times in the last 18 years), and when they do occur, they require thorough review and consideration because they reflect the community's overall vision for future development.

To support a re-districting of Dunvegan Gardens to Direct Control, the ASP would have to be amended to:

1. Ensure consistency between the ASP, Municipal Development Plan (MDP), and the activities contemplated by the Applicant; and,
2. Ensure guidance is given for the range of activities contemplated by the Applicant.

Since the ASP does not contemplate all the activities proposed by the Applicant, it does not provide appropriate guidance for those activities. At the time the ASP was written, the area of Dunvegan Gardens was agricultural in nature. To ensure agricultural land be protected and to better control flood hazard lands, the ASP called for the Small Holdings (SH) District to be added to the Land Use Bylaw. The Development Concept (Map 6 of the ASP) was influenced by existing land use patterns, for example, Grey's Gardens operated by Robert and Bernice Grey, so the subsequent SH District enabled agricultural activities to continue. However, the ASP and the SH District did not enable the wider array of activities now being proposed.

What follows is a breakdown of important components of the Applicant's submission, omissions, and Administration's position on each. Administration cannot support this amendment application for the following key reasons:

1. The proposal does not provide proper guidance for the wide array of proposed activities, (see Section 5.2 for more information);
2. The proposal does not adequately demonstrate how negative impacts on surrounding properties will be mitigated (see Section 5.2 for more information);
3. The proposal does not adequately demonstrate how a key MDP and ASP objective is being met: that the rural residential character of Draper will be preserved (see Section 5.3 for more information);
4. The proposal does not adequately demonstrate how a key MDP objective is being met: that the Municipality's limited supply of agricultural land will be preserved (see Section 5.3 for more information); and,
5. The proposal does not address other policies in the ASP that should be amended to more fully support and guide the proposed activities (see Section 5.4 for more information).

5.1 Purpose of the Small Holdings Designation in the Area Structure Plan

The current purpose of Small Holdings, as described in the ASP, is to:

“Designate lands in the flood plan below the 250 m contour for small holdings with a minimum parcel size of 2.0 ha (5 acres) on Map 6 – Development Concept. The intent of the small holdings designation is to avoid the fragmentation of parcels that are suited for market gardening and provide for acreages with larger lots on lands that are susceptible to flooding as not to put excessive numbers of residents at risk and make flood proofing difficult. A list of permitted and discretionary uses along with specific development regulations will be included within a new small holdings district through an amendment to the Land Use Bylaw. Generally, the proposed district would allow for acreage development with the keeping of animals and horticultural uses. Golf courses, bed and breakfast establishments, resorts and other private recreational development could be considered as discretionary uses.”⁵

Given the agricultural and rural residential activities that existed when the ASP was written in 1999, this purpose statement envisions a very different style of development than is now being proposed – one that is less intensive, less diverse, and less impactful on adjacent properties. To accommodate the activities now being proposed by the Applicant, a new designation with a new purpose and associated guiding policies would be necessary in the ASP.

5.2 The Content of the Amendment Application and How It Differs from the Existing Area Structure Plan

The Applicant’s proposed amendment to the ASP includes removing Dunvegan Gardens from Small Holdings and creating a unique land use designation known as “Village Commercial / Community Greenhouse.” All other existing designations in the ASP (such as Small Holdings) would continue to exist, but only the new “Village Commercial / Community Greenhouse” designation would apply to Dunvegan Gardens. As per the Applicant’s submission, the new “Village Commercial / Community Greenhouse” designation would include, but not be limited to:

- Expansion of outdoor events incorporating patios, event lawns, and gardens to host gatherings and events,
- Local food and beverage processing, packaging and sales,
- Petting zoos and animal interaction venue,
- Food concessions,
- Country store and market and,
- Farm life activities and events.

The Applicant proposes adding new policies to the ASP in support of the new “Village Commercial / Community Greenhouse” designation which further describe the intent being “to promote a local community establishment that

⁵ Regional Municipality of Wood Buffalo, *Highway 69/Clearwater Valley Area Structure Plan* (Armin A. Preiksaitis & Associates Ltd., 2000), 5-3.

promotes sustainable agricultural development and active involvement with the local residents and visitors through recreational activities, onsite education, special events and retail of locally grown produce. Onsite processed food and beverage goods will also be available in the form of fruit wine, leather and dairy products.” The policy provides some guidance on the kinds of land uses that would be allowed, including, but not limited to, “Agricultural Intensive, Campgrounds, Keeping of animals, Market Gardens, Recreational Use and Single Family Dwelling.”

One of the primary goals of the ASP, as indicated in Section 5.2, is to “ensure orderly, efficient, environmentally sound and compatible land uses within the ASP area.” Of note is the need for *compatibility*, and the ASP goes on to state that a main objective of this goal is to “minimize potential land use conflicts.” The Applicant’s submission introduces a wide array of land uses that have the potential to create conflict with surrounding residential land uses. The proposal contains limited solutions to mitigate potential conflicts, and offers no parameters for the activities proposed.

It is important for parameters and mitigation solutions to be set out, given how the proposed land uses differ substantially from the established character of the area. Since current activities on-site are already causing conflicts with the surrounding area, it is essential that more attention be paid to mitigating the effects of the proposed activities so that the situation does not worsen.

The Applicant’s submission recognizes that development parameters and considerations need to be incorporated, and proposes a series of development policies that future development must adhere to in order to mitigate effects on surrounding properties. They state that Dunvegan Gardens will consider the following:

1. Enhancement of the agricultural character of the area;
2. Landscape buffering;
3. Separations and setbacks; and,
4. Other applicable municipal bylaws and requirements.

The submission goes on to outline the policies in more detail:

1. Lighting is to be shielded and directed towards the interior of the site and away from adjacent properties;
2. All activities are events are to comply with RMWB Noise bylaws;
3. Litter is to be collected and controlled through various means including screened collection and storage areas and regular off-site disposal;
4. Existing vegetation buffers are to be protected and repaired;
5. Where no vegetation buffer exists a 5m landscaped buffer is to be developed between Dunvegan Gardens and other properties;
6. Signage is to be developed in compliance with RMWB bylaws;
7. Screening of exterior storage area is to be developed with vegetated/ landscaped screening or fencing; and,
8. Dust is to be controlled in compliance with RMWB bylaws.

However, the Applicant does not indicate where these policies would be added to the ASP, making it difficult to know how they would be implemented. Even if these policies were added to the ASP, they do not provide suitable

parameters for the proposed activities or go far enough in mitigating possible effects. Considering the rural setting and proximity to adjacent residences, it is appropriate that some parameters be set to limit the size and scale of activities, prescribe appropriate locations for them, and identify parking and traffic solutions to ensure compatibility. Presently, the submission does not adequately demonstrate how the Applicant will minimize potential conflicts with the rural residential character of the area.

This is particularly concerning because many of the proposed activities are either new to the Draper area, new to the Land Use Bylaw, or new to the ASP. It is good planning practice to ensure that potentially contentious activities are well-regulated (i.e. activities which are likely to bring additional traffic to the area, or change the visual appearance and/or character of the area). This amendment application does not provide suitable comfort for decision-makers or community members that on-site activities will have limited impacts. Given the lack of guidance being provided for the proposed activities, Administration cannot support this amendment application.

5.3 Other Unsatisfactory Aspects of the Application

While the issues above constitute some of the primary concerns with this proposal, there were other areas that were inadequately addressed, which are identified below:

1. The submission highlights policies in the ASP and MDP which the proposal complies with, but does not demonstrate how a key objective in either plan is being met: that the rural residential character of Draper be preserved. Section 5.2 of the ASP not only requires compatible development, but states that there is a need to “promote a pattern of land uses that will not restrict existing residences⁶”. The proposal indicates that this key objective is being complied with, but offers little reassurance that nearby residences will be unaffected. Furthermore, the MDP spells out this key objective in even more direct terms, with Policy C.3.1 being entitled “Preserve residential character of Draper⁷”. However, the application does not address this policy, which is concerning, as it is the key MDP policy for Draper. Readers should be mindful that Policy C.3.1, while offering support for local economic development and enhanced recreational opportunities, must be read with the title in mind: recreational and economic developments should only be supported when they do not threaten the existing residential character.
2. The submission indicates that the agrarian character of the area will be preserved, but the majority of activities proposed on-site are not agrarian and would involve re-purposing of agricultural land. Given that there is limited agricultural land available in the Municipality, and that Policy 4.4.1 of the MDP calls for preserving this land, it is unclear how the introduction of several uses requiring physical

⁶ Regional Municipality of Wood Buffalo, *Highway 69/Clearwater Valley Area Structure Plan* (Armin A. Preiksaitis & Associates Ltd., 2000), 5-1.

⁷ Regional Municipality of Wood Buffalo, *Municipal Development Plan* (2011), 78.

structures and parking areas accomplishes this goal. Put another way, how will agricultural land be preserved if new buildings are to be erected? The application does not provide any limitations on size or location of buildings, making it difficult to assess whether agricultural land will be preserved. The application has missed an opportunity to describe how agricultural pursuits will be protected and enhanced, and provides no reassurances that lost land will not be detrimental. This is especially critical to address because the application states that it is compliant with this policy.

3. The submission indicates that the future vision for the site is one that will support (and be supported by) the local community. Public reaction to the proposed amendments have been mixed, with the majority of respondents to a survey administered by the RMWB in July 2017 showing no support for this proposal. This survey was administered to each Draper household, and garnered 61 responses from 42 properties. Therefore, it should be considered alongside the results of the Applicant's open house held on 27th February 2018, which showed support from 9 participants. Given these negative reactions from Draper residents, it is critical for the submission to show how impacts from the proposed activities will be mitigated.
4. The rationale for many proposed activities in the submission is lacking. A strong rationale is beneficial in determining the purpose, and garnering support for, the activities proposed on-site. Administration cannot responsibly support the introduction of an array of activities – some new or contentious – without a rationale.
5. Inclusion of policies from the draft Draper ASP are unnecessary, as this is an un-approved plan and therefore not current Council-endorsed policy. Draft bylaws cannot be relied upon as they are still subject to change. The application must be reviewed according to bylaws that are in effect.

Since these components were not adequately addressed in the submission, Administration cannot support this proposal.

5.4 Components of the Area Structure Plan Not Addressed

It is important for ASPs to be read comprehensively, because policies throughout the document can affect a given property. To ensure that the application had considered all aspects of development, the following policies would also have to be addressed:

1. Policy 5.2.7 and 5.2.9 are policies in a section that governs how commercial and industrial development should occur. This section would be the logical place for new policies guiding the commercial activities proposed in the submission, but no new policies were proposed. Given that there are 11 commercial activities proposed on-site, this is a significant omission. This does not provide a reasonable level of assurance to community members or decision-makers, who rely on such policies to reduce impacts on residential properties. Impacts from commercial operations can vary widely,

based on the size of the operation, number of employees, physical scale of buildings, location, available parking, associated customer and delivery traffic, and proximity to major roadways.

2. Policy 5.3.10 discourages development in areas that are prone to flooding or any other natural or human-induced hazards. The submission does not address this issue, which is cause for concern given the significant amount of new development proposed on-site. Generally, the intensification of properties in flood-prone areas is discouraged because it exposes more private property to damage. Additionally, flood-proofing measures such as raising the elevation of a property can have significant upstream impacts if the elevated area is so large that it displaces water and worsens flooding upstream. Since the ASP identifies the subject properties as being in a flood-prone area, the lack of attention to flooding issues is concerning, particularly given the significant amount of development contemplated on-site.
3. Policy 5.3.14 requires developers to consider the guidelines contained within the Management Plan for the Clearwater Heritage River. The submission does not confirm whether these were considered in the amendment application.
4. Section 5.4 aims to provide residents of the RMWB and visitors with recreational opportunities, and policy 5.4.1 directs recreational activities to preferred areas (shown on Map 6). The subject properties are not identified as a preferred location for recreational uses, but their current Small Holdings designation does allow some. Therefore, this section would have been the logical place for some policies identifying the subject property's proposed role as a provider of community-wide recreational activities. Additional policies could have also been added, placing parameters on the activities so that impacts on the surrounding community could be mitigated.

Since these components were omitted in the submission, Administration cannot support this proposal.

6 Rationale and Recommendations

The Municipality's rationale and recommendations listed in this section are based on all the information submitted by the applicant, the feedback from the survey and responses received by the Municipality and the applicant's public engagement feedback.

When a Municipality reviews an application to amend the existing Land Use Bylaw and Area Structure Plan, it must endeavor to ensure the proposed changes do not unduly interfere with the amenities of an area or, materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land. Further, an important principle of land use planning is to achieve safe and orderly development where complimentary uses are located in such ways that potential land use conflicts are minimized. Taking the above into consideration, the Municipality recommends refusal of Land Use Bylaw Amendment (2017-LU-00003) and Area Structure Plan Amendment (2017-LU-00004) specific to Lot 6, Plan 992 0950 and Lot 5, Plan 992 0950.

1. Direct Control Districts are intended to provide Council with maximum flexibility and high level of control over proposed development on a site. The applicant's proposed Direct Control District is more accurately described as a site-specific land use district, limiting Council's degree of control and taking development decisions out of a transparent, public hearing process.
2. Administration has the following concerns regarding the permitted and discretionary uses within the applicant's proposed DC Direct Control District:
 - 2.1. A total of **twelve** new Uses within the applicant's Direct Control District have been proposed which are not within the Small Holdings District. There is an absence of supporting documentation and rationale indicating why those uses are proposed and whether those uses were supported by the Draper neighbourhood.
 - 2.2. A total of **three** uses in the proposed Direct Control District currently do not exist in the Land Use Bylaw. The amendment does not include definitions of the uses and only one of those uses includes provisions for the "General Regulations". Provisions under "Part 5 General Regulations" are essential to provide guidance to the Development Authority when reviewing development permit applications.
 - 2.3. Several proposed permitted land uses do not currently have provisions under "Part 5 General Regulations". These provisions guide the Development Authority when reviewing development permit applications to determine whether any negative impacts of the development are properly mitigated and to reduce potential land use conflicts with the surrounding neighbourhood.
 - 2.4. The applicant's proposed Direct Control District does not specify whether the proposed Permitted Uses are for Council or the Development Authority to approve.
 - 2.5. The applicant has proposed **11** new commercial uses in their Direct Control District. These uses are not currently contemplated in the Small Holdings District, which has an existing rural residential character. The

applicant has provided insufficient documentation and feedback from Draper residents supporting the addition of commercial land uses in a rural residential area.

3. The applicant is proposing “Additional Provisions” in Section (5)(c) of their Land Use Bylaw amendment, which allows neighbouring parcels of land under the same ownership the ability to transfer development potential from one lot to the next. The applicant has not provided any supporting documentation regarding whether this will have an impact on the surrounding neighbourhood and the extent of the lands this provision would apply to. The Municipality does not support additional intensification of land beyond the current provision of the Land Use Bylaw without proper justification.
4. The applicant’s submission proposes additional regulations to “Part 5 General Regulations” of the Land Use Bylaw. The Municipality was not provided with any supporting documentation to determine if the proposed provisions represent best practice or whether the proposed regulations are appropriate to control, limit, and mitigate potential land use conflicts.
5. The applicant has proposed text amendments to “Part 5 General Regulations” Section 76.7 and 76.8 of the Land Use Bylaw to allow livestock, fowl, or furbearing animals for all lots in Draper that meet the current Land Use Bylaw provisions. The applicant has not provided supporting feedback from the residents agreeing with this activity that could create potential land use conflicts.
6. The proposed Area Structure Plan (ASP) amendment does not provide proper guidance for the wide array of proposed activities, many of which are new and may conflict with surrounding properties.
7. The proposed Area Structure Plan (ASP) amendment does not adequately mitigate negative impacts on surrounding properties.
8. The proposed Area Structure Plan (ASP) amendment does not adequately demonstrate how a key Municipal Development Plan (MDP) objective C.2.1 and ASP policy 5.2 is being met: that the rural residential character of Draper will be preserved.
9. The proposed Area Structure Plan (ASP) amendment does not adequately demonstrate how a key Municipal Development Plan (MDP) objective 4.4.1 is being met: that the Municipality’s limited supply of agricultural land will be preserved.
10. The Municipality conducted a survey of Draper residents from July 26, 2017 - August 18, 2017, asking individuals to provide feedback on the applicants proposed uses. Of the 61 responses received from Draper residents, a majority did not support commercial activities included in the amendment proposal.
11. The proposal does not address other policies in the ASP that should be amended to more fully support and guide the proposed activities.

Based on the above, the Municipality recommends refusal of Land Use Bylaw Amendment (2017-LU-00003) and Area Structure Plan Amendment (2017-LU-00004) specific to Lot 6, Plan 992 0950 and Lot 5, Plan 992 0950.

7 Considerations

While Administration has recommended refusal of the proposed Land Use Bylaw and Highway 69/Clearwater River Valley Area Structure Plan amendment, Council has the authority to make their own decision based on their objective review of the facts presented. As such, Planning and Development has provided some additional considerations that Council should be aware of prior to rendering a decision on the proposed amendments. These considerations have not been fully explored and only represent a very high level of potential outcomes.

1. The RMWB Safety Codes has made Planning aware that the current structure onsite used for commercial retail purposes, when approved, was only intended for warehousing and storage. As such, any approval of a higher-level occupancy of a structure would require safety codes review and approval to ensure public safety is maintained.
2. The scale and intensity of the potential development is proposed on potentially environmentally sensitive lands. A proper bio-diversity assessment is required to determine the level of sensitive to the natural surrounding landscape. This report will also determine the appropriate amount of development for the lands.
3. The approval of intensified uses on the site may trigger the requirement for infrastructure upgrades in the area.
4. The applicant has not provided a Traffic Impact Analysis (TIA) to determine whether the existing road infrastructure could accommodate the potential intensification of land contemplated by the proposed amendment.
5. Concerns over fire water and access will need to be addressed if intensification is to occur.
6. Approval of the proposed amendments will most likely result in a reduction in the use and enjoyment of neighbouring parcels.
7. Conflict with existing Area Structure Policies will continue to remain unaddressed.
8. Approval of the proposed amendments has the potential to change the entire character of the Draper area.
9. Further authorization of development on potential flood hazard lands as the Province has yet to clarify whether the lands are considered within the flood plain.



REGIONAL MUNICIPALITY
OF **WOOD BUFFALO**

STOP ORDER

Pursuant to Section 645

Municipal Government Act, R.S.A. 2000, c. M-26, As Amended

September 23, 2016

*Delivered in Person or by
Registered Mail*

Dunvegan Gardens (AB) Ltd.

128 Garden Lane,
Fort McMurray, AB
T9H 0B6

Dunvegan Gardens (Fort McMurray) Ltd.

Box 514, Fairview AB T0H 1L0
Owner of Plan 9920950, Lot 6/ 128 Garden Lane

Bradley Friesen and Terri Friesen

PO Box 6613, Fort McMurray AB T9H 5N4
Owner of 062 6798, Block 1, Lot 14/ 116 Garden Lane

Grandma's Attic Ltd.

Box 514, Fairview AB T0H 1L0
Owner of Plan 992 0950, Lot 5/no municipal address
Owner of Plan 0626798, Block 1, Lot 13/116 Garden Lane

RE: CONTRAVENTION OF LAND USE BYLAW 99/059

128 Garden Lane (Lot 6, Plan 9920950)
116 Garden Lane (Lot 13, Block 1, Plan 0626798)
116 Garden Lane (Lot 14, Block 1, Plan 0626798 and Lot 5, Plan 9920950)

In my capacity as a Development Authority for the Regional Municipality of Wood Buffalo, I Tanuj Grover am hereby issuing a STOP ORDER.

In this STOP ORDER:

“MGA” means the *Municipal Government Act* of the Province of Alberta

“Municipality” means the Regional Municipality of Wood Buffalo

“Lands” means the Lands municipally and legally described as follows:

128 Garden Lane (Lot 6, Plan 9920950)

116 Garden Lane (Lot 13, Block 1, Plan 0626798)

116 Garden Lane (Lot 14, Block 1, Plan 0626798 and Lot 5, Plan 9920950)

“LUB” means Bylaw 99/059, the Municipality’s Land Use Bylaw

“SDAB” means the Municipality’s Subdivision and Development Appeal Board

This STOP ORDER is issued under the authority of Section 645 of the *MGA* with respect to certain hereinafter described unauthorized developments and uses on the Lands contrary to the LUB, the *MGA*, and decisions of the SDAB.

The *MGA* provides that no person shall undertake a development that is contrary to a land use bylaw. The LUB provides that no person shall undertake development unless a development permit has first been issued, and that any development must be in accordance with the terms and conditions of a development permit. Further, the *MGA* and LUB provide that on finding that a development or land use is not in accordance with the *MGA*, or the LUB, or a development permit, a development authority may issue a written order to the owner, person in possession of the land or building or the person responsible for the contravention, or any or all of them, to stop the development or use of the land or building in whole or in part as directed, demolish, remove or replace the development, or carry out any other actions required so that the development or use of the land or building complies with the *MGA*, the LUB, a development permit or a subdivision approval.

The Lands are located within an area of the Municipality that is zoned “Small Holdings District” under the LUB. Although the Lands are owned by separate legal parties, the person who has represented himself to be in possession of all of the Lands and therefore responsible for the contraventions on all of the Lands is Brad Friesen who uses the Lands for the operation of the commercial entity locally known as “Dunvegan Gardens”. The SDAB considered these Lands in Order 2011-012 and has held that all four parcels constitute one site for the purpose of enforcement. As such, this Stop Order is being issued to Mr. Friesen as well as the legal owners of the Lands (hereinafter collectively and separately referred to as the “Recipient”).

TAKE NOTICE THAT at present the development and use of the Lands does not comply with the LUB and orders of the SDAB in the following respects:

1. **Unauthorized Commercial Landscaping** - Site visits on July 8, 2016 and July 13, 2016 confirmed the presence of a landscaping business on the Lands (see attached July 13

Photos #70, 75, 77 and 79). Landscaping falls under the LUB definition of “General Contractor” and is neither a permitted nor a discretionary use in the Small Holdings District. Furthermore, the Recipient was issued a Stop Order on June 9, 2011 which addressed commercial landscaping and which, upon challenge, was upheld by SDAB Order 2011-012 on September 2, 2011. The SDAB ordered the Recipient to “cease all activity related to the commercial landscaping business” and determined that “the operation of a commercial landscaping business and storage of landscaping equipment and materials is not within the existing development permit for a market garden”.

2. **Unauthorized Commercial Landscaping Materials Stockpiling-** Site visits on July 8, 2016 and July 13, 2016 confirmed that there is storage and stockpiling of commercial landscaping materials on the Lands that is not permitted (see attached July 8 Photos # 10, 13 and 14 and July 13 Photos #3, 8, 25, and 27). In SDAB Order dated March 11, 2011, the SDAB overturned DP 2010-1849 for Intensive Agriculture (Stockpiling) noting “the “development does not qualify as a discretionary use” and that “this development would negatively impact the use, enjoyment, safety and value of the neighbourhood and adjacent properties”. Further, in SDAB Order 2014-018, a decision on the appeal of the conditions imposed on the development permits for Intensive Agriculture (Sod Farm Tree Farm) issued for the Lands, the SDAB ordered that the Recipient could not truck dirt for the purposes of building up the lands or for purposes related to the Intensive Agriculture and that the Recipient must deposit any excess fill on a site approved by the Municipality.
3. **Unauthorized Retaining Wall** – Site visits on July 8, 2016 and July 13, 2016 confirmed the unauthorized development of retaining walls without building permits and contrary to s. 74.4 of the LUB (see the attached July 13 Photos #3, 5, 8, 12, 25, and 27).
4. **Unauthorized Sale of Goods** - Site visits on July 8, 2016 and July 13, 2016 confirmed that the retail store on the Lands is selling more than locally grown vegetables and fruits, as requested in the original application for Accessory Building (Greenhouse) and approved in the subsequent Development Permit 2006-0140 issued on February 7, 2007 (see attached July 13 Photos #29, 30, 33, 35, and 37 - 44). Development Permit 2006-0140 only approved the sale of “Bedding Plants, Nursery and Vegetables”. A Greenhouse use only permits the sale of bedding, household and ornamental plants and related products. Further, the items observed for sale do not comply with Development Permit 2008-0138 which permits a Market Garden. A Market Garden use only permits the growing of vegetables or fruit for commercial purposes. Additionally, SDAB Order 2014-018, which was an appeal of a development permit for Intensive Agriculture (Sod Farm Tree Farm), held that the Recipient could not truck in mature trees or sod for the purposes of re-sale. The goods observed for sale and shown in the attached pictures constitute a General Retail Store use which is neither a permitted or discretionary use in the Small Holdings District.

5. **Unauthorized Farm Animals** - Site visits on July 8, 2016 and July 13, 2016 confirmed the presence of farm animals (see attached July 8 Photos #1 and 12; July 13 Photos #1, 4, 5, 34, and 36). Pursuant to s. 76.7 of the LUB, keeping livestock, fowl, or fur-bearing animals other than domestic pets is a discretionary use in the Small Holdings District and the Recipient does not have a permit for keeping any animals.
6. **Unauthorized Park** – Site visits on July 8, 2016 and July 13, 2016 confirmed the presence of pedal bikes and the development of a pedal bike course (see attached July 13, 2016 Photos #10, 13, 14, 15, 17, 19, 20, 21, 23). Although a Park is a permitted use in the Small Holdings District, the Recipient does not have a development permit for such use.
7. **Unauthorized Electrical Panels** – Site visits on July 8, 2016 and July 13, 2016 confirmed the presence of unauthorized electrical panels (see attached July 13 Photo #24). The Recipient does not have the proper electrical permits for these panels.

ACCORDINGLY, THE RECIPIENT IS ORDERED TO DO THE FOLLOWING:

1. Commercial Landscaping

As outlined in paragraph #1 above, commercial landscaping is not authorized on the Lands. Therefore the Recipient is ordered to immediately cease all commercial landscaping and any associated activity on the Lands including, but not limited to: storage and maintenance on the Lands of any vehicles and equipment associated with commercial landscaping; storage and stockpiling of any fill or other landscaping materials on the Lands; and the hauling of any equipment or materials associated with commercial landscaping to or from the Lands.

2. Commercial Landscaping Materials Stockpiling

As outlined in paragraph #2 above, commercial landscaping materials stockpiling is not authorized. Therefore the Recipient is ordered to remove from the Lands all stockpiles of landscaping material and fill, including but not limited to any dirt, fill, rocks, gravel or other materials used for commercial landscaping by 4pm on December 31, 2016.

3. Retaining Wall

As outlined in paragraph 3 above, the retaining walls on the Lands are not permitted. Therefore the Recipient is ordered to:

- a. Apply for and obtain all necessary permits and approvals for retaining walls by 4pm on November 18, 2016; or

- b. Demolish and remove the retaining walls by 4pm on December 31, 2016.

4. Unauthorized Sale of Goods

As outlined in paragraph #4 above, there are goods being sold contrary to the permit and LUB. Therefore the Recipient is ordered to:

- a. Immediately cease the sale of any unauthorized goods; and
- b. Remove all goods not authorized for sale under Development Permit 2006-0140 from being available for sale by 4:00 pm on December 31, 2016.

5. Unauthorized Farm Animals

As outlined in paragraph #5 above, the keeping of livestock on the Lands is unauthorized. Therefore the Recipient is ordered to remove from the lands by 4:00 pm on December 31, 2016 all livestock, fowl and fur-bearing animals that are not authorized and licensed domestic pets.

6. Unauthorized Park

As outlined in paragraph #6 above, the use of the Lands as a Park under the LUB is not permitted. Therefore the Recipient is ordered to:

- a. Immediately remove all pedal bikes and restore the Lands to remove any development associated with the pedal bikes and discontinue use of the Lands as a Park until the Recipient has obtained all necessary permits and approvals for which a the complete application has been received by the development authority not later than 4:00 pm on December 31, 2016; or
- b. Immediately remove all pedal bikes, restore the Lands to remove any development associated with the pedal bikes and discontinue any use of the Lands as a Park by 4:00 pm on December 31, 2016.

7. Unauthorized Electrical Panels

As outlined in paragraph #7 above, the electrical panels on the Lands are not permitted. Therefore, the Recipient is ordered to:

- a. Immediately cease the use of all unauthorized electrical panels until the Recipient has obtained all necessary permits and approvals the complete application for which must be received by 4:00 pm on October 30, 2016; or
- b. Immediately cease all use of all unauthorized electrical panels and remove all unauthorized electrical panels by 4:00 pm on December 31, 2016.

TAKE NOTICE THAT in the event the Recipient of this Stop Order fails or refuses to comply with this Stop Order within the timelines provided, the Municipality has the authority to enter onto the Lands and take any action necessary to carry out the order pursuant to Section 646 of the *MGA*. In addition, the Municipality may register a caveat on the certificate of title for the Lands in respect of this Stop Order pursuant to Section 646. The Municipality may also seek an injunction or other relief from the Court of Queen's Bench of Alberta pursuant to Section 554 of the *MGA*.

FURTHER TAKE NOTICE THAT the Municipality has the authority to add all the costs and expenses for carrying out the Stop Order to the tax roll for the Lands pursuant to Section 553(1)(h.1) of the *MGA*. Also be advised that pursuant to the LUB, you may be subject to fines for breach of the LUB and/or failure to comply with the Stop Order.

You are hereby advised that you have the right to appeal this Stop Order to the SDAB pursuant to Section 645(3) of the *MGA*. If you wish to exercise this right, then your written notice of appeal together with the applicable fee must be received by the Secretary of the SDAB within fourteen days of receipt of this Order. The address for filing an appeal is:

Secretary, Subdivision and Development Appeal Board
Regional Municipality of Wood Buffalo
9909 Franklin Avenue, 7th Floor
Fort McMurray, AB T9H 2K4

**ISSUED BY THE REGIONAL MUNICIPALITY OF WOOD BUFFALO
THIS 23rd DAY OF SEPTEMBER, 2016**

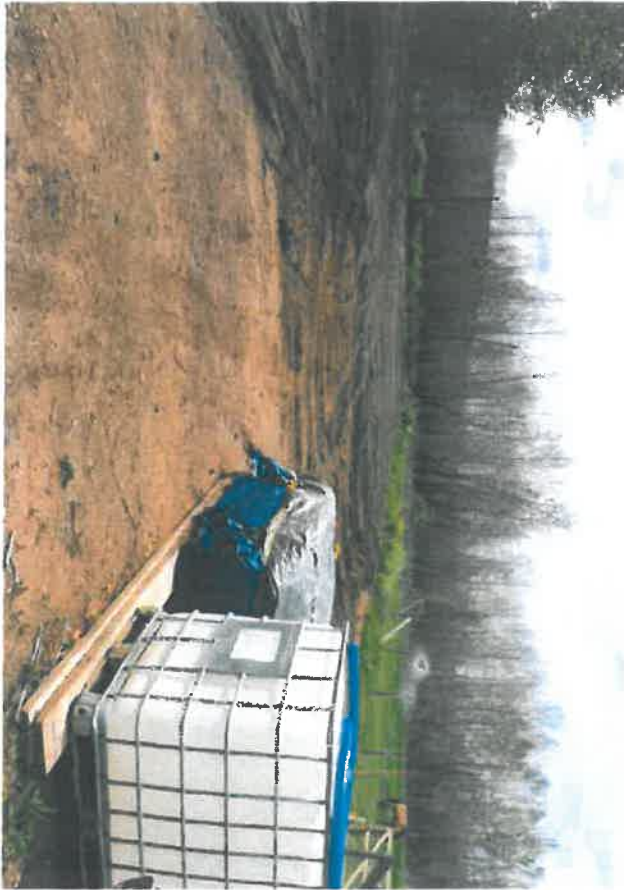
Per:



Tanuj Grover
Development Authority
Planning & Development Department
Regional Municipality of Wood Buffalo
P: 780-793-1116
Tanuj.Grover@rmwb.ca

Att: Photographs from July 8, 2016 Inspection
Photographs from July 13, 2016 Inspection





#2



#4

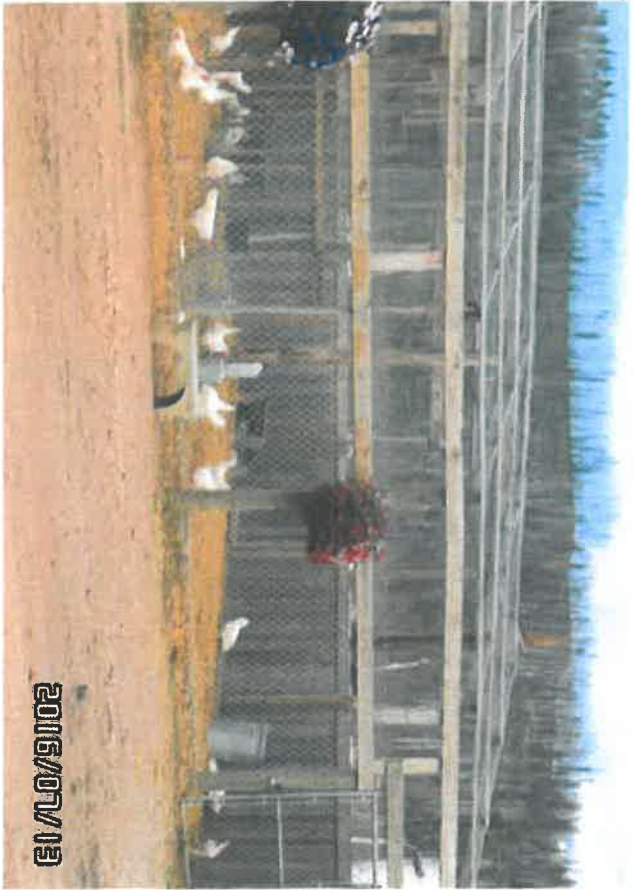






Attachment 5: Stop Order

Attachment: 5. Stop Order September 23, 2016 [Revision 1] (DVG LUB and ASP Proposed Amendment)









E1/L0/9102



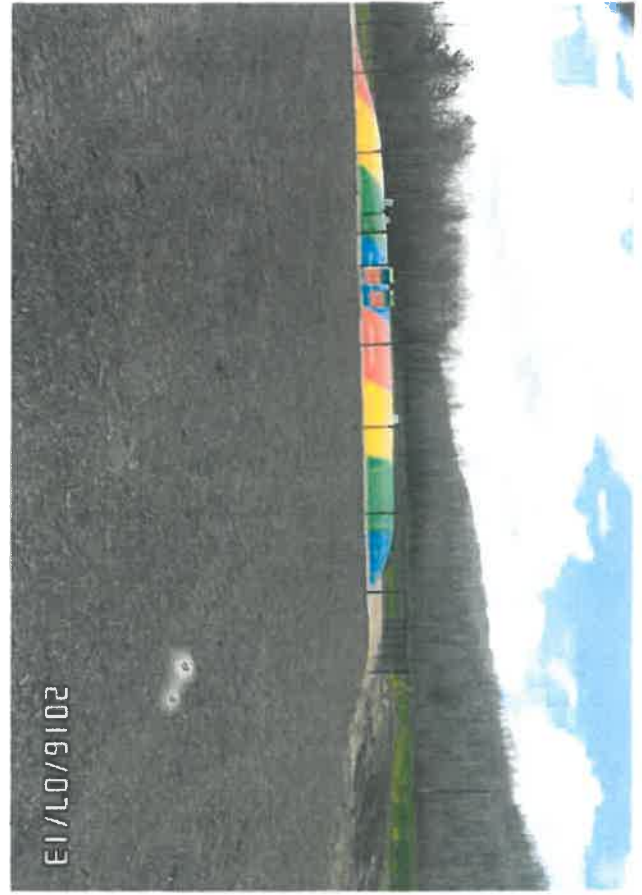
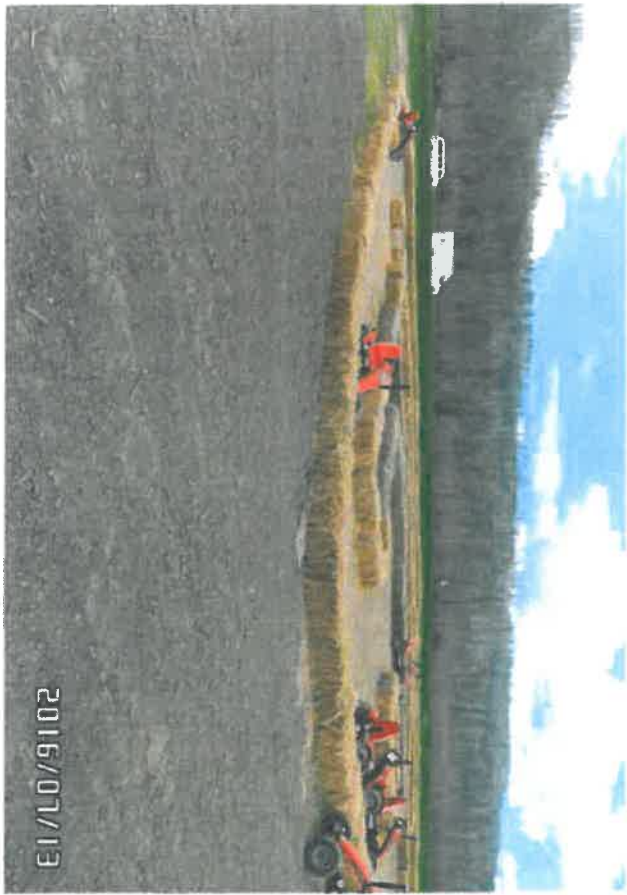
E1/L0/9102



E1/L0/9102

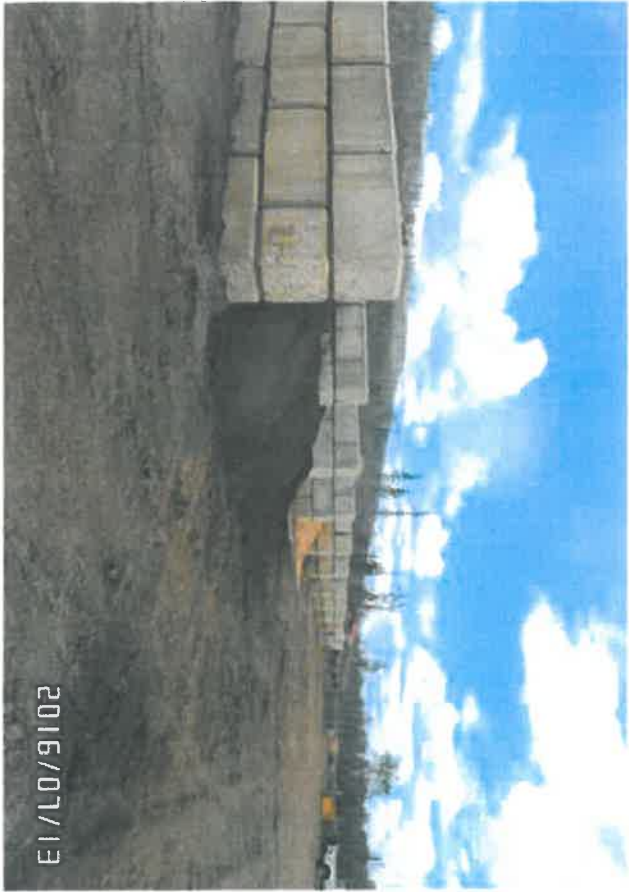


E1/L0/9102



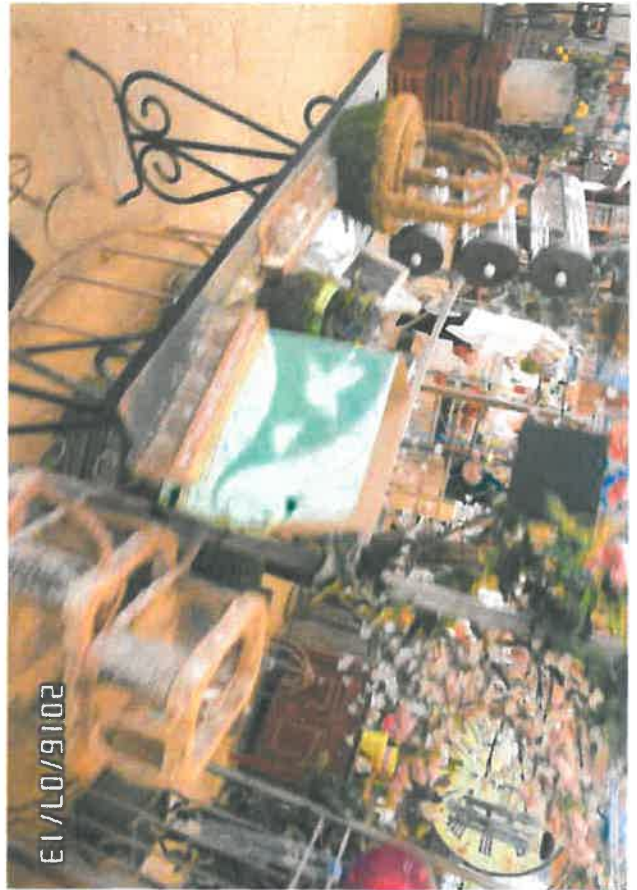
Attachment 5: Stop Order

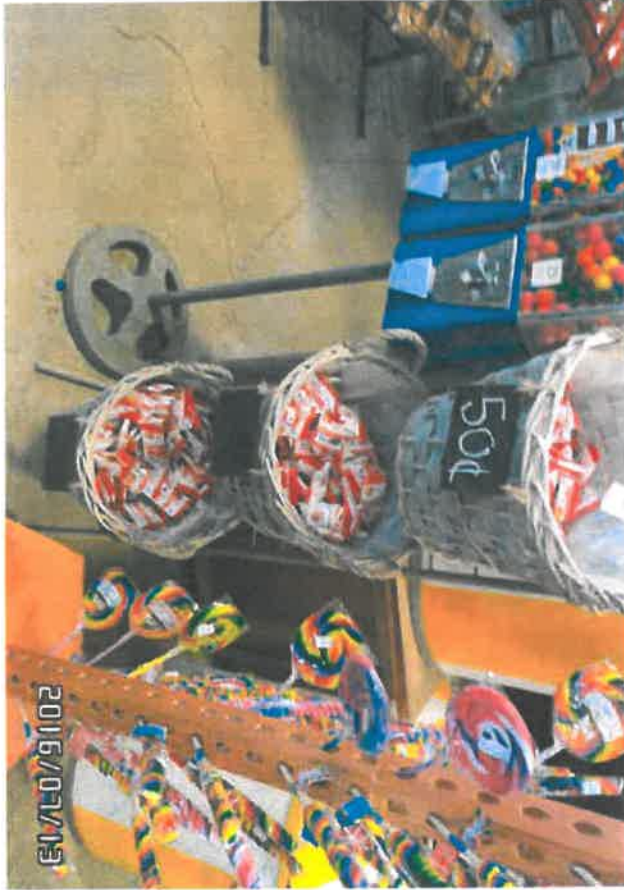




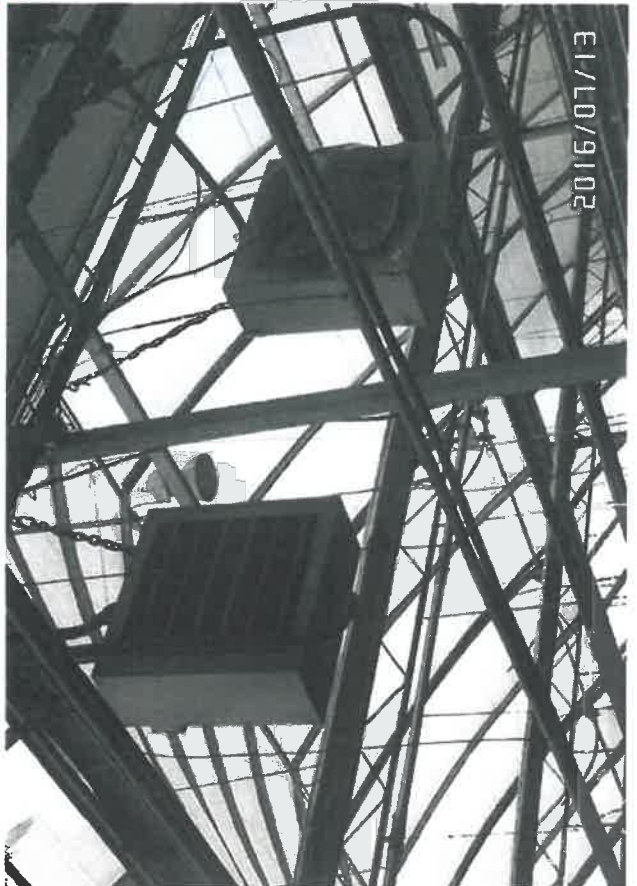
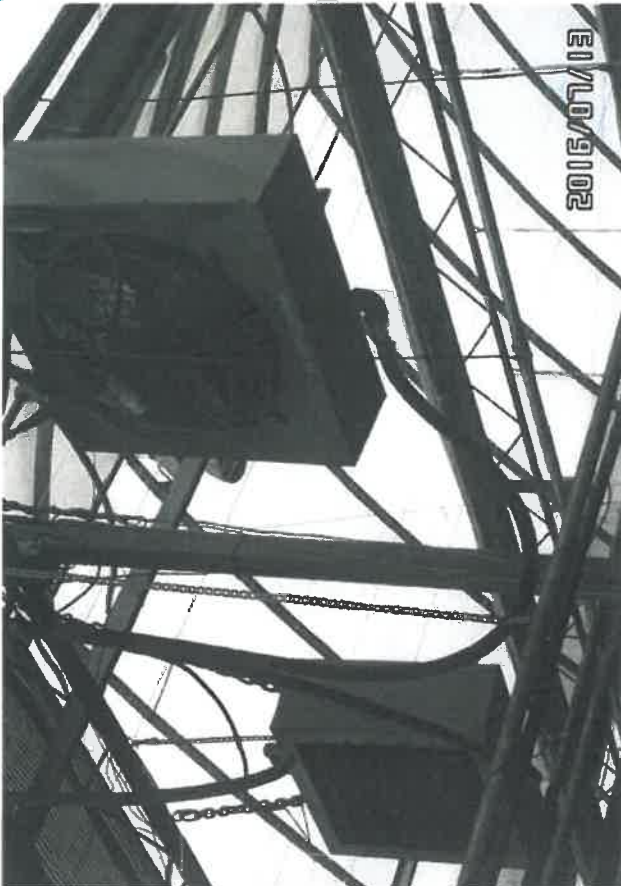


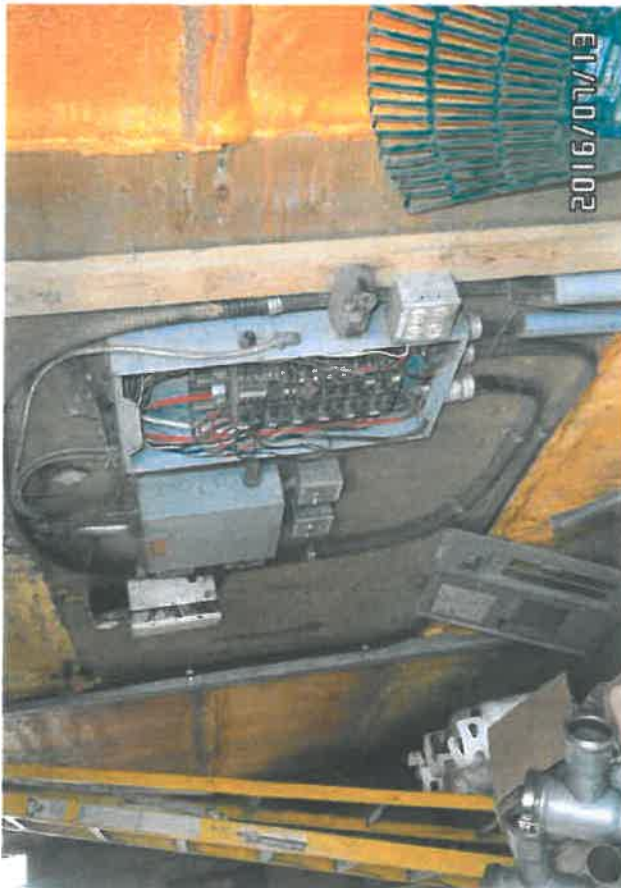
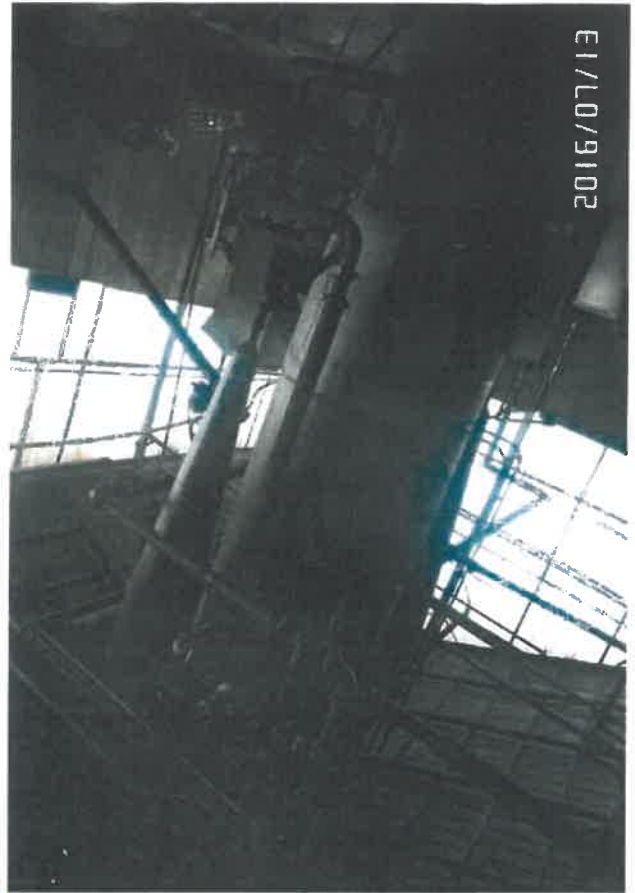


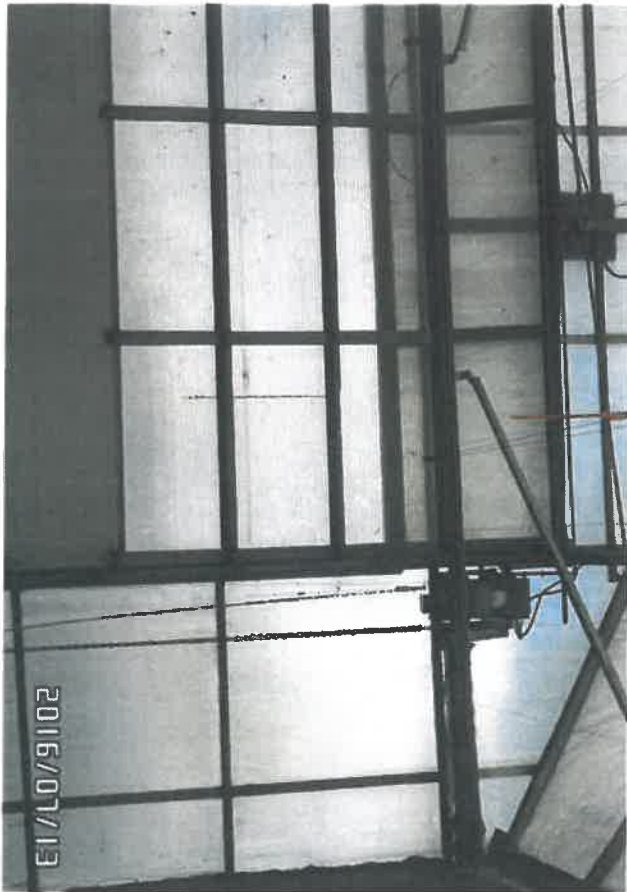


















Attachment 5: Stop Order



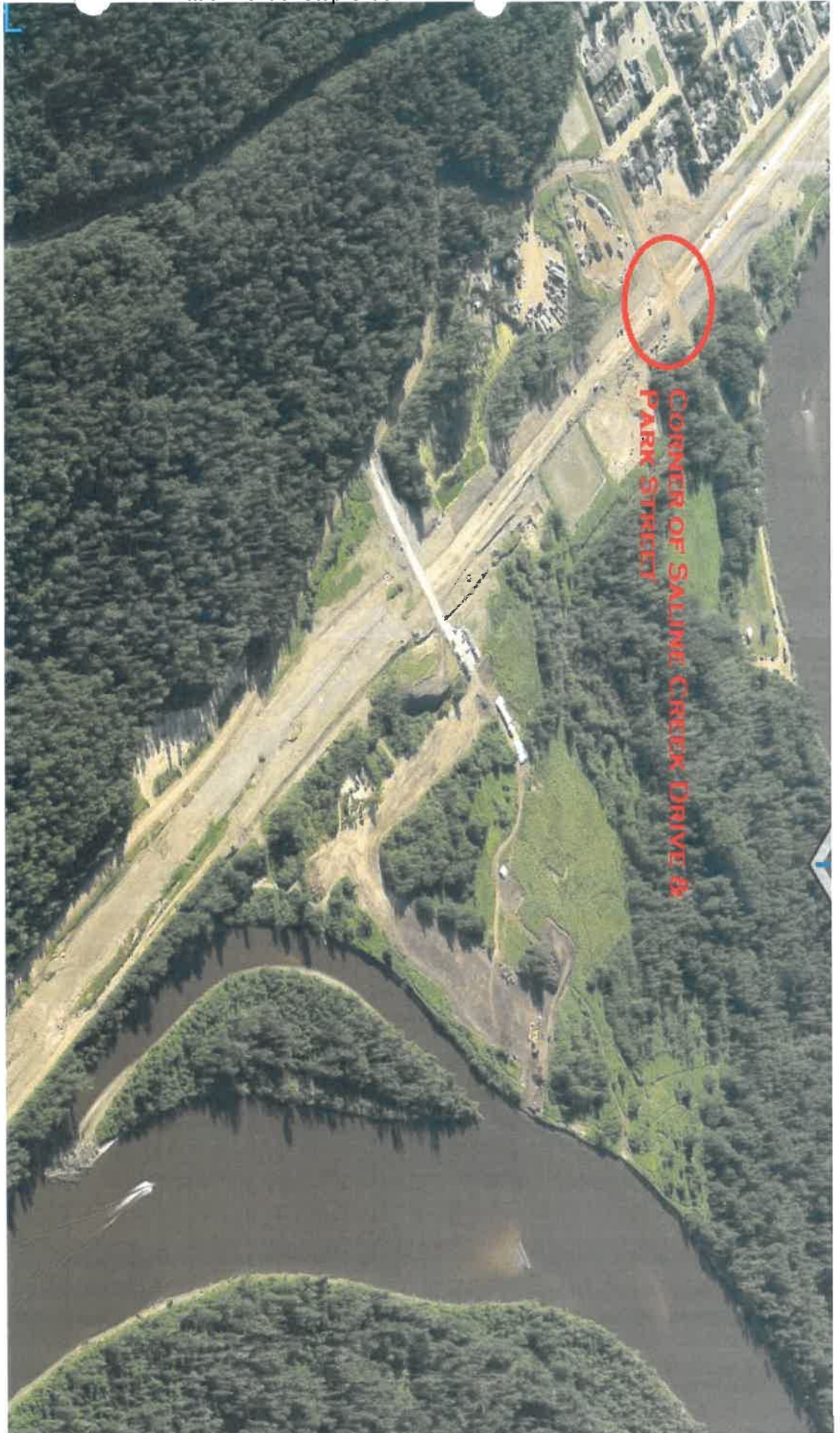




Attachment: 5. Stop Order September 23, 2016 [Revision 1] (DVG LUB and ASP Proposed Amendment)



Attachment: 5. Stop Order September 23, 2016 [Revision 1] (DVG LUB and ASP Proposed Amendment)



Attachment: 5. Stop Order September 23, 2016 [Revision 1] (DVG LUB and ASP Proposed Amendment)

AFFIDAVIT OF SERVICE

I, Tanuj Grover, a Development Officer of the Regional Municipality of Wood Buffalo, in the Province of Alberta.

MAKE OATH AND SAY AS FOLLOWS:

1. That, I did on Friday, the 23rd day of September, 2016, at the hour of 1:25pm o'clock in the afternoon served Brad Friesen, with a copy of the said Stop Order.

(a) delivered an original, thereof personally to and leaving the same with him.

In the Regional Municipality of Wood Buffalo, in the
Province of Alberta.

SWORN, in the City of Fort McMurray,

In the Province of Alberta, the 26th

Day of September, 2016.

Velvet MacGillivray

)
)
)
)



Tanuj Grover

I, Tanuj Grover, a Development Officer of the Regional Municipality of Wood Buffalo, in the Province of Alberta.

1. That, I did on Friday, the 23rd day of September, 2016, at the hour of 1:25pm o'clock in the afternoon served Brad Friesen, with a copy of the said Stop Order.

In the Regional Municipality of Wood Buffalo, in the Province of Alberta.

Valuet Mac Gillivray

Tanuj Grover

NOTICE OF DECISION OF THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD

FILE NO SDAB 2016-005

CONTRAVENTION: Unauthorized Developments and Uses on the Lands

APPEAL: An appeal from stop order dated September 23, 2016 by
Dunvegan Gardens (AB) Ltd.
Dunvegan Gardens (Fort McMurray) Ltd.
Bradley Friesen and Terri Friesen
Grandma's Attic Ltd.

LAND USE DESIGNATION: Small Holdings

LEGAL DESCRIPTION: Lot 6, Plan 992 0950
Lot 13, Block 1, Plan 062 6798
Lot 14, Block 1, Plan 062 6798
Lot 5, Plan 992 0950

CIVIC ADDRESS: 116 Garden Lane, Fort McMurray Alberta
128 Garden Lane, Fort McMurray, Alberta

IN THE MATTER OF AN APPEAL filed with the Regional Municipality of Wood Buffalo Subdivision and Development Appeal Board pursuant to Sections 685 and 686 of the *Municipal Government Act*, R.S.A 2000, c. M-26 (the "MGA"). Preliminary hearings were held November 3, 2016 and December 19, 2016. The Appeal Hearing was held on Thursday, February 16, 2017 in the Jubilee Centre, Council Chamber, 9909 Franklin Avenue, Fort McMurray, Alberta.

BEFORE: D. Secord, Chair
A. Austin
A. Gauthier
A. McKenzie
N. Messer
S. Schaffer

Administration:

S. Soutter, Clerk for the Subdivision and Development Appeal Board

G. Stewart-Palmer, Shores Jardine LLP, Counsel for the Subdivision and Development Appeal Board

PRESENT:**For the Appellants:**

R. Noce, Q.C., Miller Thompson LLP

S. Hawes, Miller Thompson LLP

B. Friesen, Appellant

For the Respondent:

J. Agrios, Q.C., Kennedy Agrios LLP

B. McMurdo, Regional Municipality of Wood Buffalo

C. Booth, Regional Municipality of Wood Buffalo

- [1] This appeal concerns the appeal of a stop order issued by the Regional Municipality of Wood Buffalo (the “Municipality”) on September 23, 2016. The stop order was appealed by Dunvegan Gardens (AB) Ltd., Dunvegan Gardens (Fort McMurray) Ltd., Bradley Friesen and Terri Friesen, and Grandma’s Attic Ltd. (collectively the “Appellants”).
- [2] At the start of the merit hearing, the Chair requested confirmation from all parties in attendance that there was no opposition to the composition of the Board hearing the appeal. None of the persons in attendance had any objection to the members of the Board hearing the appeal.
- [3] At the beginning of the hearing on February 16, 2017, the Board marked the exhibits as set out at the end of this decision. In the course of the hearing, Exhibits 12, 13, 14 and 15 were submitted and marked. There was no objection to the marking of these exhibits.

Preliminary Hearings – Setting Hearing Dates

- [4] There were two preliminary hearings in this matter. On November 3, 2016, the Board held a preliminary hearing to set the dates for the hearing. The Board issued a written decision setting a date for the merit hearing in relation to the November 3, 2016 preliminary hearing.
- [5] The Board convened a second preliminary hearing on December 19, 2016 to deal with scheduling following a request for postponement. The Board issued a written decision setting a date for the merit hearing in relation to the December 19, 2016 preliminary hearing.
- [6] This decision deals with the merits of the appeal which was heard in its entirety on February 16, 2017.
- [7] The Board outlined to the parties the process to be followed at the hearing. There was no objection to the process.

Preliminary Matters on February 16, 2017

- [8] As a preliminary matter, Mr. Noce advised that the firm representing the Municipality had been involved in drafting a 2011 decision of the Board. That decision was in relation to a stop order appeal by one of the Appellants to this appeal. The Appellants in the current appeal had no objection to counsel for the Municipality continuing to act, despite her firm's previous assistance to the Board. However, the Appellants would object if counsel raised any issue about interpreting the 2011 Board decision.
- [9] Ms. Agrios advised that a lawyer from her office had acted for the Board in 2011 in relation to a stop order concerning Dunvegan Gardens. She contacted counsel for the Board, counsel for the Appellants and Mr. Thorne, who is representing a number of affected neighbors. All advised that they did not have any objection to her appearing for the Municipality. She stated that the Appellants' stipulation was new to her, but that she did not have any concerns with that stipulation.
- [10] As a second preliminary matter, Mr. Noce placed an objection on the record that neither of the two individuals who would be speaking for the Municipality (Mr. McMurdo or Mr. Booth) were on site on July 11 or July 13, 2016 and neither were authors of the stop order. The Appellants objected to their evidence on the basis they have no personal knowledge about what was done in relation to the inspection or the issuance of the stop order. The Appellants' written submissions contained the following objections:
- a. The lack of reports or notes from the site inspection. The Appellants objected to the Municipality's evidence and submitted that the Board should place no weight on the Municipality's evidence because there was no report or notes taken in the site inspection;
 - b. The stop order was not created contemporaneously with the inspections. The Appellants argued that the Board should place no weight on the stop order because it was not created contemporaneously with the inspections;
 - c. The stop order does not identify where the alleged breaches occurred. The Appellants argued it was vague and uncertain and the Board should overturn it on this basis.
- [11] Ms. Agrios responded that the Board can accept hearsay evidence and decide what weight to put on that evidence. One of the two employees who did the site inspection and issued to the stop order is no longer with the Municipality and the other is on short term disability leave.

SUMMARY OF EVIDENCE AND ARGUMENT:

- [12] The following is a brief summary of the oral and written evidence presented to the Board.

Municipality

[13] The Municipality urged the Board to remember that this was a stop order appeal and not an appeal related to the refusal of a development permit. The authority for issuing a stop order is section 645 of the MGA. A stop order can be issued for a development not in accordance with the MGA, the Land Use Bylaw or the conditions of the development permit. Under both the MGA and the Land Use Bylaw, development requires a permit, with only limited exceptions. In July of 2016, the Municipality did two inspections. There were a number of developments without development permits, so the stop order was issued. There are seven items that the Municipality identified as developments without permits:

1. Unauthorized commercial landscaping;
2. Unauthorized commercial landscaping material stockpiling;
3. Unauthorized retaining walls;
4. Unauthorized sale of goods;
5. Unauthorized farm animals;
6. Unauthorized park; and
7. Unauthorized electrical panels.

[14] On behalf of the Municipality, Mr. McMurdo went through each item.

Unauthorized Commercial Landscaping

[15] Mr. McMurdo referenced the July 13, 2016 photographs 8, 25 and 27 and photographs 70, 75 and 77 as evidence in support of the stop order. He stated that the 2011 decision of the Board provided a list of equipment allowed to remain on site. The photographs he identified showed landscaping (a Contractor General Use) and equipment which was not authorized by the previous Board decision.

Unauthorized Commercial Landscaping Material Stockpiling

[16] The Appellants have multiple bins of different materials used for commercial pursuits as identified in the photographs. In 2014, the Board granted a development permit for Intensive Agriculture -Sod Farm and Tree Farm, but stockpiling was not permitted as part of that decision.

Unauthorized Retaining Wall

[17] The bins in which the stockpiled materials are contained have been defined by the Municipality as a retaining wall. Anything over one metre requires an engineering report. Although no development permit is required, anything over one metre in height is subject to a Safety Code review. These are shown in the July 13, 2016 photographs #3, 5, 8, 12, 25, and 27.

Unauthorized Sale of Goods

- [18] The July 13, 2016 photographs 29, 30, 33, 35 and 37 to 44 show the sale of goods. The only retail that is approved is that of a market garden to be used for the selling of fruits and vegetables. Mr. McMurdo stated that the photographs show the sale of various objects including children's toys, candies, etc. which are not within the scope of permitted sales for market gardens.

Unauthorized Farm Animals

- [19] Mr. McMurdo referenced the July 13, 2016 photographs 1, 12 and 34-36, showing various animals on site which do not have approval.

Unauthorized Park

- [20] The Appellants submitted an application for a park in July 2016. The information submitted included requests for approval for picnic tables, tether balls, croquet, and snow-shoeing in the winter. Also included was a pedal bike track and a jumping pillow. Mr. McMurdo referenced the July 13, 2016 photographs 10, 13, 14, 17, 19, 20, and 21. The development permit application had deficiencies which have not been remedied to date.

Unauthorized Electrical Panels

- [21] Mr. McMurdo stated that the Appellants have indicated the unauthorized electrical panels have been removed, but the Municipality has not had an opportunity to inspect them.
- [22] In response to questions from the Board, Mr. McMurdo could not specifically identify what products are in the bins, but stated generally that there was road crush, gravel, aggregate, mulch, top soil and a variety of landscaping materials. Mr. McMurdo confirmed that he had not taken any measurements of the walls but believed that they were in excess of one metre.
- [23] Mr. McMurdo had no listing of the number of animals on site, but confirmed that the animals were on 116 Garden Lane and 128 Garden Lane.
- [24] Mr. McMurdo could not comment as to whether the bins were those as approved by the Municipality following the 2011 inspection referenced in Exhibit 9, Mr. Thorne's materials at page 956. Mr. McMurdo confirmed that the Municipality had not done any lateral load measurements for the retaining walls.
- [25] Mr. McMurdo was not certain whether the goods identified were being stored or were for sale. He did not have the listing of deficiencies for the development permit application for the park.
- [26] Mr. McMurdo provided a list of permits which have been approved for the subject properties, of which the most relevant ones are:
- a. 2006 development permit (2006-0140) for an accessory building (greenhouse);

- b. 2008 development permit (2008-138R) for an accessory building (greenhouse);
- c. 2011 development permit for an accessory building; and
- d. 2014 development permit (2014-018) approved by the Board for Intensive Agriculture - Sod Farm and Tree Farm).

[27] In addition, there were various permits for special events including an Easter Egg Hunt.

Municipality's Summary

- [28] Many of the submissions by the individuals were not relevant. The sole question before the Board is whether there are unauthorized uses which are those without development permits. The Appellants did not dispute the accuracy of the photographs submitted by the Municipality. The Board heard from Mr. Friesen's customers and neighbors. Their statements support the fact that there are ongoing developments which the Municipality submits are operating without permits. Commercial landscaping is ongoing on the site. The Municipality referenced the difference in operations between the Prairie Creek Laydown Yard (Exhibit 14) and the size of the operations at 128 Garden Lane (Exhibit 15).
- [29] The Municipality urged the Board to review the photographs provided in support of the stop order, in addition to the evidence from the Appellants' customers and employees as found in the Appellants' rebuttal materials. Those letters reference buying trees and shrubs, which is what occurs in a landscaping business. In 2011, the Board confirmed there was to be no stockpiling on site, although the photographs show evidence of stock piles.
- [30] The question of whether permits could be issued is a separate issue from whether there were permits in place at the time of the issuance of the stop order. Although there was evidence of a haul permit being issued, there was no development permit for stockpiling. The bins, whether they are retaining walls or not, are a development requiring a permit. The retail use is not approved. There is no approval for a Greenhouse which is a separate use class under the Land Use Bylaw. The Appellants cannot obtain a permit for a Greenhouse use because it is neither a permitted nor discretionary use in the Small Holdings District.
- [31] The three development permits issued are for accessory building - greenhouse, and are not for a greenhouse use. The 2006 development permit (2006-0140) restricts what is to occur to the production of bedding plants, nursery and vegetables. The 2008 permit (2008-138R) is also for a greenhouse building and not the use of Greenhouse. Although the Appellants referred to the letter at page 128 of their submissions (exhibit 8, Appellants' materials), this letter was not stamped as approved by the Municipality. It is not part of the Municipality's approval.
- [32] Estoppel does not apply where someone carries on a use without enforcement or a development permit. Just because the Appellants have been allowed to operate without a development permit for some time does not mean they are allowed to keep going nor does this engage the principles of estoppel.
- [33] The Municipality confirmed that bee-keeping is not part of the stop order. The Municipality is not trying to stop legal uses on the property. The legal market garden and the legal Intensive

Agriculture -Sod Farm and Tree Farm can continue. This stop order has nothing to do with whether the Appellants are a good or bad business or a good citizen. The question is whether they have permits. There is evidence of unauthorized developments on the site.

- [34] The Municipality argues that the Appellants have a “General Retail Store” use, and are selling products other than those permitted under the approved development permits. The Municipality’s position is that the Appellants are selling more than locally grown vegetables and fruits and that Development Permit 2006-0140 permits only the sale of “Bedding Plants, Nursery and Vegetables”. The evidence submitted by the Appellants as part of their rebuttal includes customer information which confirms that there is a landscaping business occurring and that there are general retail items on sale at the store. That evidence also confirms that there are animals on site that the customers visit and that there is a park and other amenities available for the customers. The evidence supports the fact that what is occurring on the site is a garden centre, which is beyond the scope of what has been approved as a market garden. The Municipality urged the Board to uphold the stop order.

Appellants

- [35] The Appellants stated that the definition of Small Holdings is relevant as it will characterize what is appropriate in the area.
- [36] The Appellants argued that the Municipality knew about the uses for a significant period of time and did nothing about it. Further, the Municipality failed to provide a full report. Although the Municipality had suggested that the Board can draw reasonable inferences from the photographs, without notes or details of what was inspected on site, the photographs are of little weight. The Appellants argued that the Municipality presented no evidence to support its position. The Municipality had no evidence of:
- a. the height of the retaining walls;
 - b. the pressures on the lateral walls; and
 - c. what items were for sale.
- [37] The Appellants argued that it took two to three months from the inspection to the issuance of the stop order. Since the individuals who did the site inspection were not called by the Municipality, it is possible that Mr. Friesen may have provided an explanation and the inspectors had approved what was on site. No details were linked to the stop order. The Appellants argued that the stop order is vague and uncertain because there is no connection in time and no reliability because there are no notes to support this stop order.
- [38] The Appellants stated that there is no commercial landscaping operating on site. The Appellants would have no objection if the SDAB wishes to uphold this element of the stop order. All of the uses relate to the Market Garden and the equipment on site has been approved by the Municipality. If the Municipality wants to inspect it, it can.
- [39] The same position goes for the material stockpiling. Any stockpiling on site is for the Market Garden. The photographs showing the bulk bins are related to the Market Garden. If the Board

wants to indicate that there can be no commercial stockpiling, the Appellants had no objection to that position.

- [40] The Appellants' position is that what the Municipality characterizes as "retaining walls" are bins. The Municipality has presented no evidence of the height of the bins. The Appellants disagreed with the position of the Municipality that the Board could look at the height of the bins and the height of the equipment and draw a conclusion that it was more than one metre. The Appellants argued that there was no evidence to support the conclusion. Moreover, the Appellants took the position that the bins were the same ones as approved in 2011 and 2012 by the Municipality as part of the "vehicles and equipment ... necessary to the operation of the Market Garden" (see Exhibit 8, Appellants' materials, page 116 and 191, and Exhibit 9, Mr. Thorne's materials pages 952, 954 and 956). In 2011, the issue of commercial landscaping was before the Board. The Municipality's report to the SDAB properly identified that the Appellants were operating a garden centre greenhouse and the Municipality is estopped from saying otherwise. (see Exhibit 9, Mr. Thorne's materials, page 180)
- [41] In regard to the animals, the Appellants take the position that under the Small Holdings District, the Appellants are allowed to have animals on site. Further, there is no specific evidence as to the nature and number of animals on site. The Municipality failed to establish what or where the breach is. Further the Land Use Bylaw allows for the use. The Board must make a decision whether there is sufficient evidence to establish the breach or whether the zoning permits the use.
- [42] In regard to the park, the Appellants argued that there is no evidence about an improper use. The Appellants recognize that they need a permit and have submitted an application. The Municipality has not told the Appellants what the deficiencies are. Although there is no permit for a park, the Appellants can operate a park-like atmosphere without charging a fee.
- [43] The Appellants provided argument in relation to the legal principle of estoppel. They argued that the Municipality is estopped from raising any allegation in regard to a breach. The Appellants argued that the Municipality has been aware of the uses for some time. The Municipality's knowledge prevents it from later saying that there is a breach. The Appellants argued that the legal principle of estoppel applies to:
 - a. The retaining wall and storage bins. These are the same bins which are identified in 2012 and approved by the Municipality in 2011 and 2012.
 - b. This also applies to the sale of goods, which has been ongoing for several years.

- [44] The Appellants' position is that everything on site is in compliance with the permits issued as well as with the Land Use Bylaw and statutory plans of the Municipality. The Appellants urge the Board to reject the stop order on the basis of the Municipality's poor handling of the procedural manners in relation to the stop order. The fact that the stop order affects the Appellants' livelihood means that the Board should not be relying upon inference to make a determination of breach. Due to the procedural failings, including the failures in the inspection process and the failure to provide relevant evidence, means that the elements of the stop order should not be upheld.
- [45] Mr. Friesen stated that other garden centres, including Greenland, Lawlish and Kuhlmanns, all in the Edmonton area, are all similar, but that he pays more taxes than they do. He stated that he had a 15,000 person petition in support of letting him stay where he is located. He did not have a copy of the entire petition with him, but in response to a Board request, he indicated he would provide it. In relation to the petition, the Municipality had no objection to the Board accepting a copy of the petition but argued that it was not relevant. Mr. Friesen added that he had maintained Garden Lane, a public road, for a period of time.
- [46] In response to questions, Mr. Friesen confirmed that he had not appealed the Board's 2011 decision in relation to the Intensive Agriculture -Sod Farm and Tree Farm development permit. Mr. Friesen also confirmed that they were not disputing the accuracy of the photographs which had been submitted by the Municipality.
- [47] He confirmed that there were eleven bins on site but he did not have the dimensions or the height. He indicated that all of the animals on site are registered with the Municipality. This includes the chicken, sheep, pigs, and rabbits. He takes in birds that people do not want. He also has fish inside the shop. Mr. Friesen stated that he does not operate a petting zoo. He stated that if school groups come, they can interact with the animals.
- [48] He confirmed that there is no development permit for the park. He confirmed that the July 13, 2016 photographs 21 and 23 show a jumping pillow. Mr. Friesen confirmed that there are approximately 6-8 pedal bikes on the property. He also confirmed that there are goods other than fruits and vegetables for sale at the store. Mr. Friesen confirmed that there was no significant change in his operations between July 2016, and September 2016.
- [49] In response to Board questions, Mr. Friesen indicated that he sells eggs from the chickens on site, which is typical of a market garden. He does not charge for petting the animals. Mr. Friesen stated that he has installed no permanent structures for the park. The Appellants' position is that it has no issue with respect to the commercial landscaping or the materials stockpiling because it is not undertaking those operations. Its position is that it had approval from 2011 and 2012 regarding the storage bins which were allowed, and are attached to the market garden. The sale of goods is attached to the greenhouse use which is part of the accessory building (greenhouse) development permit. The Appellants' position is that they asked for a larger greenhouse and for the related sales (see Page 126 of its materials).

- [50] The Appellants confirmed it has no permit for the park, although an application has been submitted and is presently in the process of being reviewed. The electrical panels have been removed and the Municipality is able to inspect.
- [51] Mr. Friesen stated that he had ten to twelve people employed on the two properties during peak season and five people during off-peak season.
- [52] Mr. Friesen was not certain whether his rebuttal materials came from employees or customers of Dunvegan Gardens.

Appellants' Summary

- [53] The Appellants argued that the Municipality cannot both object to the evidence of the individuals who spoke before the Board, and then rely upon it. The Board must determine if they accept the statements put in by those who spoke in favour of the appeal. Lay people do not always accurately describe developments. The temporary employees who work off-site are working on locations at job sites and not at the Dunvegan Gardens' site.
- [54] There has been a greenhouse use in place since the 1970s. Issue estoppel does exist and the criteria have been satisfied. The Municipality is trying to collaterally attack previous decisions. Intensive Agriculture is a discretionary use and permits greenhouses. The fact that the greenhouse has been in place since the 1970s raises issue estoppel.
- [55] In regard to the retaining walls, they were approved since 2011 and 2012 and they cannot be attacked at this time. The question of the intention of the Small Holdings District has never been answered by the Board and this may be a time where the Board may want to make that decision. It needs to be answered to deal with the question of the animals on site.

Those Speaking in Favour of the Appeal

- [56] The Board heard from persons speaking in favour of the appeal. After the first speaker, the Municipality objected to the evidence on the basis that the speaker was not affected. Due to the large number of registered speakers, the Board decided that rather than caucus after each speaker to determine their status as affected or not, it would hear the evidence from the various speakers who had registered to present to the Board. The Board, in its written decision, would identify whether the speakers were affected parties and whether the Board would be considering their evidence. If the Board determined that the speaker was not affected, it would not consider the evidence.

Joel Beatson

- [57] Mr. Beatson is a member of the Alberta Greenhouse Growers Association as well as Landscape Alberta. He supported the Appellants because the cessation of operations by Dunvegan Gardens would affect their (Association) membership. He stated that there is no definition for garden centre and that all garden centres grow plants and have retail operations. Giftware sales are key and product lines expand.

Jason Kachur

- [58] Mr. Kachur raises bees on the Appellants' lands. He is the only commercial beekeeper in the Municipality. He currently has 16 hives on the land. He legally sells the honey and beeswax candles from his operations. Without Dunvegan Gardens, he would have to exterminate approximately one million bees and his business.

Frances Jean

- [59] Ms. Jean is a customer of Dunvegan Gardens and they are a customer of her business. There are inconsistencies in the information provided by the Municipality. She questioned why the Municipality would tax the Appellants if they are operating an illegal business and why the Municipality would contract with them.

Chris Diprose

- [60] Mr. Diprose is an employee of Dunvegan Gardens who would be unemployed if the business were shut down. Dunvegan Gardens employs 24 full time workers and 100 seasonal workers. The greenhouse is one operation and the landscaping is another.

William Leonard

- [61] Mr. Leonard is an employee of Dunvegan Gardens. If it closes he will lose his job. Dunvegan Gardens provides information about what being on a farm is like.

Rick Kirschner

- [62] Mr. Kirschner is the executive director of a charity with KAOS Radio who works in partnership with Dunvegan Gardens. Mr. Kirschner spoke about the social good demonstrated by Dunvegan Gardens.

Michael Bayot

- [63] Mr. Bayot is an employee of Dunvegan Gardens. He provided an overview of the history of the operations of Dunvegan Gardens and spoke of other greenhouse operations in Alberta.

Phil Osborne

- [64] Mr. Osborne has known both the Friesens and the Thornes for several years. He was in favour of there being a resolution to this problem.

Gord Gallant

- [65] Mr. Gallant is a supplier to Dunvegan Gardens. He lives in St. Albert and sells retail goods to garden centres including Dunvegan Gardens. If Dunvegan Gardens is shut down, it will affect his income. He sells approximately \$25,000 to \$30,000 of goods to Dunvegan Gardens.

Tanya Brittain

- [66] Ms. Brittain runs a local preschool. She takes her students on field trips to Dunvegan Gardens for the corn maze, and other events.

Tony Piche

- [67] Mr. Piche lives in Draper. He supports Dunvegan Gardens and shops there. He is unhappy with the Municipality.

Dave Friesen

- [68] Mr. Friesen is Mr. Brad Friesen's uncle. He spoke in favour of the operation and shared the family's experience creating its operations.

Ramona Morrison

- [69] Ms. Morrison partners with Brad Friesen in fundraising for various activities. She would like the matter resolved.

Scott Fry

- [70] Mr. Fry is an employee of Dunvegan Gardens who will lose his job if Dunvegan Gardens ceases operations. Dunvegan Gardens did road maintenance on Garden Lane in the mid 2000s.

Hayley Russell

- [71] Ms. Russell and her father work at Dunvegan Gardens. If Dunvegan Gardens ceases operations, they will lose their jobs and her dad won't be able to support their family.

Mohammad Dogar

- [72] Mr. Dogar is a community worker who supports Dunvegan Gardens.

Gus Gianis

- [73] Mr. Gianis is a long term customer. He spoke in favour of the work that Dunvegan Gardens had done for him with regard to lawn maintenance.

Victor Hawes

- [74] Mr. Hawes lives on Riverbend Close. It was nice to go to Dunvegan Gardens to see the animals in a natural environment.

Frank Creasey

- [75] Mr. Creasey is a member of Fort McMurray Tourism. He supports Dunvegan Gardens as Dunvegan Gardens has positive tourism qualities.

Jim Rogers

- [76] Mr. Rogers stated he lives in Draper and is the president of the Waterways Residents' Association. He supports Dunvegan Gardens.

Those speaking against the appeal

Andrew Thorne

- [77] Mr. Thorne lives adjacent to one of the properties which is the subject of the stop order. He spoke on behalf of those individuals set out in Exhibit 3.
- [78] The Small Holdings District is a residential district which allows market gardens but does not allow a garden centre, which is a retail industrial use. The Board decision in 2011 required all on-site equipment to be used for a market garden. Any other equipment was to be removed from the site (see Exhibit 9, Mr. Thorne's materials, pages 172, 184). The market garden approval allows only the sale of fruits and vegetables but not a garden centre. He referred the Board to the approximately 1,800 photographs in his materials (Exhibit 9, Mr. Thorne's materials). He stated that dump trucks are constantly coming and going on Garden Lane which creates a nuisance. He argued that the petition is irrelevant to the question before the Board.
- [79] The bins have no business being on the list because they are not used to grow fruits and vegetables (see Exhibit 9, Mr. Thorne's materials page 158). In response to the argument about estoppel, the case found on page 981 of his materials (*Black Diamond (Town) v. 1058671 Alberta Ltd. Inc.*, 2015 ABCA 169) sets out the test for estoppel.
- [80] On questioning he confirmed that some of the photographs he has submitted are from 2016 and that all are dated.

DECISION

- [81] The Board makes the following decision in regard to the stop order.
- [82] The Board revokes items 1, 2 and 3 of the stop order: Unauthorized Commercial Landscaping, Unauthorized Commercial Landscaping and Materials Stockpiling and Unauthorized Retaining Wall.

- [83] The Board confirms item 4 of the stop order - Unauthorized Sale of Goods, but varies the time set out at page 5 of the stop order as follows. The Appellants have one year from the date of this decision to obtain a development permit to permit the General Retail Store, which will require a rezoning. If the Appellants do not obtain a development permit within the time specified in this paragraph, they are to cease the sale of any unauthorized goods and remove those goods from being available for sale at the end of the one year period.
- [84] The Board confirms item 5 of the stop order order – Unauthorized Farm Animals, but varies it as follows. To the extent that the animals are licensed by the Municipality, the stop order is cancelled in relation to those animals. The Appellants are able to keep those animals licensed by the Municipality without a development permit. For those animals which are licensed, the Appellants must not use them for commercial purposes, which means that they cannot sell eggs or other by-products of the animals, nor can the Appellants charge to see the animals. The stop order continues to apply to any animal not licensed with the Municipality. The stop order is varied to specifically exclude the fish and the bees on site from the provisions of the stop order.
- [85] The Board confirms item 6 of the stop order – Unauthorized Park, but varies the time set out at page 5 of the stop order as follows. The Appellants must obtain a development permit for the park within three months from the date of the decision. If the Appellants do not obtain a development permit within the time specified in this paragraph, they are to remove those features at the end of the three month period. The Appellants must cease the use of the park until they have obtained a development permit.
- [86] The Board confirms item 7 of the stop order – Unauthorized Electrical Panels. The Board directs that the Municipality has two weeks from the date of issuance of this decision to inspect the site to ensure that the electrical panels have been removed.

FINDINGS OF FACT

- [87] The Board makes the following findings of fact.
- [88] The following speakers are affected by the stop order:
- a. Jason Kachur;
 - b. Chris Diprose;
 - c. William Leonard;
 - d. Michael Bayot;
 - e. Scott Fry;
 - f. Hayley Russell; and
 - g. Andrew Thorne.
- [89] The following speakers are not affected by the stop order:

- a. Joel Beatson;
- b. Frances Jean;
- c. Rick Kirschner;
- d. Phil Osborne;
- e. Gord Gallant;
- f. Tanya Brittain;
- g. Tony Piche;
- h. Dave Friesen;
- i. Ramona Morrison;
- j. Mohammad Dogar;
- k. Gus Gianis;
- l. Victor Hawes;
- m. Frank Creasey; and
- n. Jim Rogers.

- [90] Mr. McMurdo's oral evidence, the stop order and the Municipality's supporting photographs are relevant to the issues before the Board.
- [91] The Municipality has not established that there is unauthorized commercial landscaping, unauthorized commercial landscaping materials stockpiling or unauthorized retaining walls.
- [92] The Appellants have animals on the site. As of the date of the hearing, the Appellants do not have a development permit for the "keeping of animals".
- [93] The Appellants have a park development on the site. As of the date of the hearing, the Appellants do not have a development permit for the park.
- [94] The Appellants are selling general retail goods, including children's toys, candy, knick-knacks, etc. on the site. The sale of these goods goes beyond the approved uses of bedding plants, nursery, vegetables and fruits.

REASONS FOR THE DECISION:

Preliminary matters

- [95] The Board heard the Appellants' preliminary arguments in relation to the Municipality's evidence. The Appellants had the following objections:
 - a. the Board should not hear from the Municipality because Mr. McMurdo did not conduct the site inspection;
 - b. the Board should place no weight upon the evidence because there was no report or notes taken in the site inspection; and
 - c. the Board should place no weight on the stop order because it was not created contemporaneously with the inspection;

- d. the Board should overturn the stop order because it does not identify where the alleged breaches occurred.

Objection 1

- [96] Mr. Noce placed an objection on the record that neither of the two individuals who would be speaking for the Municipality (Mr. McMurdo or Mr. Booth) was on site on July 11 or July 13, 2016 and neither were authors of the stop order. The Appellants objected to their evidence on the basis they have no personal knowledge about what was done in relation to the inspection or the issuance of the stop order. Ms. Agrios responded that the Board can accept hearsay evidence and decide what weight to put on that evidence. One of the two employees who did the site inspection and issued the stop order is no longer with the Municipality and the other is on short term disability leave.
- [97] Section 629 of the MGA permits the Board to accept any evidence it considers proper, whether admissible in a court or not, and the Board is not bound by the laws of evidence. The Board finds that the evidence given by Mr. McMurdo is relevant to the issues before this Board. Moreover, his evidence was supported by the Municipality's photographs. The Appellants did not take issue with the accuracy of the photographs.
- [98] The Board accepts the evidence of Mr. McMurdo as relevant, although he did not conduct the site inspection.

Objection 2

- [99] The Appellants' written materials included an objection to the Board accepting the Municipality's materials because there were no notes or report of the inspections. Although Mr. Noce stated that there may have been a conversation between the municipal inspectors and Mr. Friesen, when Mr. Friesen gave evidence, he did not indicate that there had been any such discussions. The Board is not bound by the strict rules of evidence and finds the stop order and the Municipality's supporting photographs relevant to the issues before the Board. The Appellants were able to test the evidence by questioning the municipal representatives on the evidence.
- [100] The Board finds that this meets the obligation of procedural fairness and accepts this evidence.

Objection 3

- [101] The Appellants' written materials included an objection to the Board placing weight on the stop order because it was not created contemporaneously with the inspection. During the hearing, Mr. Friesen was asked if there had been any change in his property between the date of the inspection and the date of the stop order. He confirmed that there was none. In light of this statement, the Board does not accept this objection to putting weight on the stop order.

Objection 4

- [102] The Appellants' written materials included an objection to the Board placing weight on the stop order because it does not identify where the alleged breaches occurred. The Board notes that the Municipality's written submissions included maps identifying where the impugned activities were occurring. During the hearing, those providing evidence did not have any question about where the activities were being carried out. The Board was able to identify, using both the oral testimony and the written submissions, where the activities were being carried out.

- [103] Therefore, the Board does not accept this objection to putting weight on the stop order.

Analysis

- [104] The Board notes that its jurisdiction is found in section 687(3) of the MGA. In making this decision, the Board has examined the provisions of the Municipality's Municipal Development Plan and the Highway 69/Clearwater Valley Area Structure Plan. The Board notes that the Draper Area Structure Plan is not yet approved. As a result, the Board has not considered its terms, as they are not yet in force. The Board has examined the provisions of the statutory plans submitted by the parties but note that they are silent on the issue of whether the impugned uses are occurring on the site, or whether the Appellants have development approval for those uses. As a result, the Board has given them little weight in its deliberations.
- [105] The Board has also considered the oral and written submissions made by the Appellants, the Development Authority and the persons who have made oral submissions and were found to be affected, as set out below.

Who Is Affected?

- [106] The Board is aware that under section 687(1)(d), the Board must hear from persons affected by the order. The Board heard from a number of speakers and the Municipality raised an objection to their evidence being accepted by the Board on the basis that they were not affected. The Municipality did not object to the evidence of Mr. Kachur, who raises bees on 116 Garden Lane.

[107] Due to the challenge to the status of the speakers raised by the Municipality, the Board must first determine whether the speakers are affected, and if so, which ones.

[108] The Board finds that the following speakers are affected by the stop order:

- a. Jason Kachur;
- b. Chris Deprose;
- c. William Leornard;
- d. Michael Bayot;
- e. Scott Fry;
- f. Hayley Russell; and
- g. Andrew Thorne.

Speakers (a) through (f) from paragraph 91

[109] The Board finds that the speakers set out in paragraph [108] (b) to (f) are affected persons because they are employees of the Appellants. If the Appellants cease operations or change operations significantly as a result of the stop order, these speakers will lose their jobs. The Board finds that this makes them affected by the stop order. The Board received their evidence and considered it during its deliberations. The Board finds Mr. Kachur affected because he has his bees on the site and therefore is directly affected by item 5 of the stop order.

Speaker (g) from paragraph 91

[110] Mr. Thorne lives adjacent to one of the properties which is the subject of the stop order. Under section 687(1)(c), the Board must hear from any other person who was given notice of the hearing and who wishes to be heard, or a person acting on behalf of that person. The Board finds that Mr. Thorne falls under the provisions of section 687(1)(c). The Board also finds Mr. Thorne affected as he lives adjacent to the properties where impugned activities are occurring. The Board considered Mr. Thorne's submissions during its deliberations. Mr. Thorne's comments were also made on behalf of other landowners in the vicinity. The Board accepts his comments on their behalf as well.

All Other Speakers

[111] The Board finds the following speakers are not affected by the stop order:

- a. Joel Beatson;
- b. Frances Jean;
- c. Rick Kirschner;
- d. Phil Osborne;
- e. Gord Gallant;
- f. Tanya Brittain;
- g. Tony Piche;
- h. Dave Friesen;

- i. Ramona Morrison;
- j. Mohammad Dogar;
- k. Gus Gianis;
- l. Victor Hawes;
- m. Frank Creasey; and
- n. Jim Rogers.

[112] The Board thanks these people for their interest in the hearing and for taking the time to come to the hearing and to speak at the hearing. However, the Board finds that the speakers referenced in paragraph [111] do not have a sufficient connection to the site or to the impugned activities to make them affected. Therefore, the Board did not take their comments into consideration during its deliberations.

Merits of the Appeal

[113] The Appellants appeal the stop order issued by the Municipality on September 23, 2016 in relation to seven activities which the Municipality claims are developments without permits. The Board will address them individually.

1. Unauthorized Commercial Landscaping

[114] The Municipality argued that photographs 8, 25 and 27 from July 13, 2016 show a number of bins with various materials including mulch, soil, landscaping materials which illustrate the commercial application of the material. Photographs 70, 75, 77 and 79 from July 13, 2016 show significant packaged materials stored and sold on the premises. The Municipality argued the photographs were evidence of Contactor General use, which is not a discretionary use in the Small Holdings district. In 2011, the Municipality issued a stop order, which the SDAB upheld. Through the SDAB decision, the Municipality was able to go onto the site and identify the equipment that was used for the approved use of Market Garden and a number of machinery for the Market Garden. However, Mr. McMurdo was not on site, and was not able to provide any further details regarding the impugned use than the photographs. He was unable to state whether the materials identified in the July 13, 2016 photographs 70 and 75 were for use in the Market Garden.

[115] The Board notes that the Appellants denied operating a commercial landscaping business on the site. They had no objection to the Board upholding the stop order in relation to item 1 because of that fact. They argued that the equipment on site was approved by the Municipality in 2011 and 2012. Their position was that everything on site relates to the Market Garden.

[116] The Board examined the photographs submitted by Mr. Thorne which show pictures of trucks along what appears to be Garden Lane.

[117] “Contractor, General” is defined under the Land Use Bylaw as follows:

CONTRACTOR, GENERAL means development used for industrial service support and construction. Typical uses include oilfield support services, laboratories, cleaning and maintenance contractors, building construction, landscaping, concrete, electrical, excavation, drilling, heating, plumbing, paving, road construction, sewer or similar services of a construction nature which require on-site storage space for materials, construction equipment or vehicles normally associated with the contractor service. Any sales, display, office or technical support service areas shall be accessory to the principal general contractor use.

- [118] For the Board to uphold the stop order in relation to item 1, the Board must accept that the Municipality has established that there is commercial landscaping (which falls under a “General Contractor”) use occurring on the site. On the basis of the evidence submitted, the Board does not find that the Municipality has established that there is a “General Contractor” use occurring on the site.
- [119] In regard to photographs 70, 75, 77 and 79 from July 13, 2016, the Board finds they are not sufficient to establish that there is a General Contractor use, namely commercial landscaping occurring. Other than the photographs, which are not particularly clear or detailed, the Municipality could not provide a description of the materials in the bags, or on the pallets. There was no information as to the number of bags or pallets, or any other details assist the Board in determining if commercial landscaping was occurring. The photographs submitted by Mr. Thorne (Exhibit 9, for example at pages 119-124) do show trucks on Garden Lane, but they are insufficient to evidence a commercial landscaping operation on the site. There is nothing in the photographs linking specifically the Appellants to the trucks. In the absence of better or more specific evidence, the Board is not convinced that the evidence submitted to it supports a conclusion that the Appellants are operating a commercial landscaping operation. The bins are addressed below.
- [120] Therefore, the Board revokes item 1 of the stop order.

2. Unauthorized Commercial Landscaping Materials Stockpiling
3. Unauthorized Retaining Wall

- [121] These two items are related, so the Board will be addressing them together.
- [122] The Municipality relied upon the July 8, 2016 photographs 10, 13 and 14 and the July 13, 2016 photographs 3, 8, 25 and 27 in support of its position that there was unauthorized commercial landscaping materials stockpiling and unauthorized retaining walls on the site. The Appellants’ position (see Exhibit 8, Appellants’ materials, pages 10-11) was that the July 8, 2016 photographs depict soil used to repair and re-landscape burned out areas of the site following the wildfire. The photographs from July 13, 2016 show bulk bins used to hold coal, sand, gravel, mulch and topsoil used in the market garden and to maintain the parking lot and the binds has passed inspection on several occasions (See Exhibit 8, Appellants’ materials, Tab 12). As indicated above, Mr. McMurdo was not on site, and was not able to clarify for the board whether the materials in the bins or the stockpiles would be used in the Market Garden or what they would be used for.

- [123] The Board finds that the Municipality has not established that there is unauthorized commercial landscaping materials stockpiling or unauthorized retaining walls for the following reasons.
- [124] In regard to the photographs taken on July 8, 2016, the Board does not find that they show commercial stockpiling. The Board notes the burned trees in the background of those photographs. The Board accepts the Appellants' explanation that these photographs show the soil used by the Appellants following the wildfire. The Board finds these photographs do not establish an unauthorized commercial landscaping stockpile.
- [125] In relation to the July 13, 2016 photographs, the Board notes that in June 2011, the Municipality issued a stop order against Dunvegan Gardens (AB) Ltd., one of the Appellants in this appeal. That stop order was issued on the basis that Dunvegan Gardens (AB) Ltd. was carrying out Landscaping, without a development permit, and that there were more vehicles than authorized on the site. Dunvegan Gardens (AB) Ltd. and Brad Friesen appealed the stop order to the SDAB, which heard the appeal and issued its decision September 2, 2011. (see Exhibit 9, Mr. Thorne's materials, pages 170-174, 183-188). Its decision stated at page 2:

The Appellant is ordered to cease all activity related to the commercial landscaping business and to remove all commercial equipment... and materials... from the site by 4 p.m. on September 15, 2011, provided that equipment and materials used for the market garden business as determined and confirmed in writing by the Municipality may remain on the Site.

- [126] In its reasons, the Board indicated all equipment used for commercial landscaping had to be removed. However, an exception would be for equipment used for the market garden business (which had a development permit) that the Municipality confirmed in writing is for use in the market garden business.
- [127] On September 20, 2011, the Municipality conducted an inspection to determine which vehicles and equipment could remain on site. The Municipality issued a letter dated October 11, 2011 (see Exhibit 8, Appellants' materials, page 166 and Exhibit 9, Mr. Thorne's materials, page 952) setting out the list of vehicles and equipment the Municipality concluded were necessary to the operation of the Market Garden. Of note is #23 of that list: "Stockpile – used for customers, gardens on site, and the beautification of the property– photo on page 24 of attachment." Photograph 24 in the Appellants' materials is indecipherable as is page 231 of Exhibit 8 which also references the stock pile. However, Exhibit 9, Mr. Thorne's materials at page 954 includes a letter dated May 18, 2012 from the Municipality to Dunvegan Gardens. That letter references an April 3, 2012 site inspection and again lists the vehicles and equipment that the Municipality agreed was needed to conduct the Market Garden operations. Again, #23 of that list includes the same description as the letter from October 11, 2011. It also lists as item 16 – "Light Bulk Storage – used to store and sell minor quantities for the market garden clients" and references the photograph at page 17. The photograph relating to that item is found at Exhibit 9, Mr. Thorne's materials, page 956. That photograph is entitled "Light Bulk Storage – used for market

garden” and shows what looks to be the same bins as shown in the Municipality’s July 13, 2016 photographs, #3, 8, 25 and 27.

[128] There was no evidence presented by the Municipality which established that the “Light Bulk Storage” accepted by it in 2011 and 2012 was different from what is shown on the July 13, 2016 photographs, #3, 8, 25 and 27. In the absence of evidence establishing that there is a development beyond what was accepted as part of the approved Market Garden use in 2011 and 2012, the Board finds the Municipality has not established there is unauthorized development. Although the Appellants have argued that the legal principle of issue estoppel applies, the Board finds that it is not necessary to make that decision and therefore does not decide whether issue estoppel applies. The Board does note that issue estoppel requires the same parties and notes the differences in parties between the 2011 stop order and the 2016 stop order.

[129] “Retaining wall” is defined under the Land Use Bylaw as follows:

RETAINING WALL means a structure constructed to withstand lateral pressure in order to hold back earth, loose rock, or similar materials, but does not include a foundation wall (Bylaw No. 04/012)

[130] The Municipality originally argued that the “bins” on site which hold the stockpiled materials are “retaining walls” and that any retaining wall over one metre in height requires an engineering report and is subject to a Safety Code review. The “retaining walls” are shown in the July 13, 2016 photographs #3, 5, 8, 12, 25, and 27. In its summary, the Municipality argued that the bins, whether they are retaining walls or not, are a development requiring a permit. The Appellants argued that these structures are not retaining walls, and in any event, have been previously approved by the Municipality, so the Municipality is estopped from asserting they cannot stay.

[131] The Stop Order states:

Site visits... confirmed the unauthorized development of retaining walls without building permits and contrary to s. 74.4 of the LUB....

[132] Section 74.4 of the Land Use Bylaw states:

Any retaining wall over 1.0 m in height must be designed and inspected after construction by a professional engineer. The land owner shall provide to the municipality the design and inspection report, both bearing the seal and signature of a professional engineer.

- [133] In deciding whether these bins are “retaining walls” under the Land Use Bylaw, the Board has reviewed the definition. A “retaining wall” is a structure constructed to withstand lateral pressure in order to hold back earth, loose rock, or similar materials. The Board is aware that typically retaining walls hold back earth from moving, and are often located near a slope. The photographs show that these bins are not located near a slope. Rather they are freestanding, and the evidence before the Board was that they are used to hold materials (like mulch, etc.) used for the market garden.
- [134] The Board finds that these bins do not meet the definition of “retaining wall”. Their function is storage, and not to hold back earth from movement. Because they do not meet the definition of “retaining wall”, the Board finds section 74.4 of the Land Use Bylaw not to be applicable.
- [135] The Board notes that the stop order references “retaining walls without **building permits**” (emphasis added). This Board deals only with the Land Use Bylaw, and not the *Safety Codes Act*. The bins may be structures requiring building permits, but this Board has no jurisdiction to consider infractions of the *Building Code* or to make determinations of whether the bins do not have building permits or any remedy to flow from that.
- [136] As a result of the above conclusion, the Board does not need to address the question of whether the principle of issue estoppel applies.

4. Unauthorized Sale of Goods

- [137] “Retail Store, General” is defined under the Land Use Bylaw as follows:

RETAIL STORE, GENERAL means development used for the retail sale of consumer goods from within an enclosed building, but does not include a liquor store. This type of retail store may include food preparation and consumption areas with a maximum capacity of twelve persons.

- [138] The Municipality argues that the Appellants have a “General Retail Store” use, and are selling products other than those permitted under the approved development permits. The Municipality’s position is that the Appellants are selling more than locally grown vegetables and fruits and that Development Permit 2006-0140 permits only the sale of “Bedding Plants, Nursery and Vegetables”. Mr. Thorne’s position is that the Appellants have approval for a “market garden”, which limit the use to the growing and selling of vegetables and fruits, but does not give the Appellants the ability to sell bedding plants, etc. The Appellants argue that they have been approved as a garden centre greenhouse and the Municipality is estopped from asserting otherwise due to the 2014 SDAB decision.
- [139] The Board notes that what is being addressed under item 4 of the stop order are the general retail sales. The Board notes that the Appellants have development approval for Intensive Agriculture – Sod Farm and Tree Farm. The discussion under this item does not affect that approval.

- [140] The Board finds that the Appellants are selling general retail goods, including children's toys, candy, knick-knacks, etc. (see Exhibit 10, July 13, 2016 photographs 29, 30, 33, 35, 37-44 and for example, Exhibit 11, Appellants' Rebuttal, pages 16, 17, 24). The Board finds that these goods go beyond the approved uses of bedding plants, nursery, vegetables and fruits.
- [141] The Board must review the terms of the previously issued development permits to determine if they authorize the sale of the above goods which are general retail in nature. Development Permit 2006-0140 lists "Accessory Building (Greenhouse)" as the approved development. The supporting information (Municipality's materials, page 6D-10) state that permission is sought to construct a greenhouse for the production of bedding plants, nursery and vegetables. This permit does not authorize General Retail Store use. Development Permit 2008-138R lists "Market Garden - Accessory Building" as the approved development. Given the description of the use as "accessory building", this permit does not authorize General Retail Store use. The SDAB Order in 2014 (SDAB-2014-018) granted development permits 2014-00162 to 2014-00165 for Intensive Agriculture (Sod Farm Tree Farm) for the site.
- [142] The Appellants argue that they have development approval for a "greenhouse", relying upon the Board's Order in SDAB 2014-018. In that decision, the Board found that "there has been a greenhouse or similar use on the property since at least the 1970s", which was based upon the submissions that the developer operated a "greenhouse and market garden from the property" and "there has been agricultural uses on the property as far back as the 1970s". The Board in 2014 did not reference the use "Greenhouse/Plant Nursery", instead referring to "greenhouse". "Greenhouse/Plant Nursery" is a defined term in the Land Use Bylaw and means "development for the growing, acclimatizing, propagating, harvesting, displaying and selling of bedding, household, and ornamental plants and may include accessory uses related to the storing, displaying and selling of gardening, nursery and related products". "Greenhouse/Plant Nursery" is neither permitted nor discretionary in the Small Holdings District. The issue before the Board in 2014 was the question of an Intensive Agriculture - Sod Farm and Tree Farm use. Since the issue of whether the Board in 2014 did not have to determine the scope of the development permits issued to the Appellants, this Board finds that the issue which is before this Board was not squarely before that Board and that statement does not bind this Board.
- [143] In addition, the Appellants argued that they had an approved "Greenhouse" based upon the materials submitted to the Municipality in 2008 in support of their development permit application for 2008-0138R (see Exhibit 8, Appellants' materials, page 126). The Board understands this document to be a statement of the Appellants intentions for future development on the Site. However, the Board notes that this page was not stamped by the Municipality (as compared to Exhibit 8, page 112) nor does it indicate any Municipal acceptance of the contents of that letter.

- [144] The Board understands that Mr. Friesen might have believed that he had development approval for the sale of goods. However, the Board has to base its decision on the evidence before it. Based on the permits which have been submitted to this Board (2006-1040, 2008-138R and 2014-00162 to 2014-00165), the Board finds that the Appellants do not have a development permit for Greenhouse/Plant Nursery”, nor do they have a permit for “General Retail Store”. The Board also finds that these 2 uses (General Retail Store and Greenhouse/Plant Nursery) are neither permitted nor discretionary in the Small Holdings District. Although Mr. Thorne argued that the Appellants are approved for a “Market Garden”, and are thus restricted to the sale of vegetables and fruit, the Board also finds that the Appellants have development approval for the sale of “Bedding Plants, Nursery and Vegetables”. Thus, the Appellants have development approval for the sale of bedding plants, nursery, vegetables, and fruit. The Board finds that the sale of goods other than bedding plants, nursery, vegetables and fruit goes beyond the approved use for the site.
- [145] As the Board understands that Mr. Friesen believed he had development approval for the sale of goods, it upholds the stop order on this point, but varies the time for compliance. The Board grants the Appellants a one year period from the date of issuance of this decision to obtain a development permit for General Retail Store use. As that use is neither permitted nor discretionary in the Small Holdings District, the Site will have to be redistricted. The Board is of the view that one year is a sufficient time to obtain a redistricting which would allow the General Retail Store use. If the Appellants do not obtain a development permit by the time specified in this paragraph, they must cease the General Retail Store use at the end of that one year period.

5. Unauthorized Farm Animals

- [146] Section 120.4 of the Land Use Bylaw provides that “keeping of animals” is a discretionary use (as per section 76.7 of the Land Use Bylaw), which is to be approved by the Planning Commission. Section 76.7 states:

76.7 No livestock, fowl or fur-bearing animals, other than domestic pets, shall be permitted in any residential districts, except for horses, donkeys, goats, llamas, alpacas, and other similar such animals, kept as pets and/or for personal enjoyment, at Saprae Creek, Conklin, Janvier, Anzac and **deleted (Bylaw No 01/043)** whereby parcels greater than 0.809 are permitted a maximum of (3) three horses, conditional upon the horses being confined within a fence constructed to the satisfaction of the Development Officer. **Deleted (Bylaw No. 00/011)**

- [147] The wording of section 76.7 of the Land Use Bylaw is not clear, and the Board must interpret the restrictions contained within it. Section 120.4 suggests that the keeping of animals is a discretionary use in the Small Holdings District, provided that the “keeping of animals” complies with section 76.7. The Board reads section 76.7 as being divisible into two sections. The first deals with the general rule relating to no animals in residential districts, except for domestic pets. The second permits the keeping of larger animals in Sapræ Creek, Conklin, Janvier and Anzac with limitations on the number of animals and the size of the parcel. The below reflects what the Board understand the intention of section 76.7 to be.

No livestock, fowl or fur-bearing animals, other than domestic pets, shall be permitted in any residential districts,

except for horses, donkeys, goats, llamas, alpacas, and other similar such animals, kept as pets and/or for personal enjoyment, at Sapræ Creek, Conklin, Janvier, Anzac and ... whereby parcels greater than 0.809 are permitted a maximum of (3) three horses, conditional upon the horses being confined within a fence constructed to the satisfaction of the Development Officer. ...

- [148] The Appellants have suggested that the nature of the Small Holdings District needs to be addressed by the Board in order to determine this question of the keeping of animals by the Appellants. The Board does not believe that an extensive discussion regarding the full scope of the Small Holdings District is required to answer this issue. Section 76.7 clearly indicates that no “livestock, fowl or fur-bearing animals” are permitted in a residential district (except as authorized). Section 120.1 of the Small Holdings District sets out the purpose of the District:

The purpose of this district is to provide large lot acreages intended for residential, small scale agricultural pursuits and other compatible uses on land

- [149] The permitted uses include Single Detached Dwelling, Manufactured/Modular Home and Home Occupation, in addition to other uses. No agricultural uses are permitted uses, although they are discretionary in the District. The Board is not required to describe the nature of the Small Holdings District. It need only determine if the district is “residential”. In light of the language of section 120.1 and the list of permitted uses, the Board finds that the Small Holdings District includes residential for the purposes of section 76.7. The Board is not addressing the question of the nature of the Small Holdings District for any other purpose because it is not required to answer this question for the purpose of this hearing.
- [150] The Board notes that section 76.7 addresses livestock, fowl or fur-bearing animals. Therefore, the Board varies the stop order to specifically exclude the fish kept by the Appellants from the stop order provisions.
- [151] The Board finds that there is no evidence that the Appellants have a development permit for “keeping of animals”. The question is whether the animals are “domestic pets”. The

photographs submitted by the Municipality (Exhibit 10, photographs July 8, 2016 #1 and 12, July 13, 2016, #1, 4, 5, 34, and 36) show animals on the site. The Appellants' rebuttal materials (Exhibit 11) include letters from customers or persons who have attended at the site to visit and pet the animals. These letters reference chickens, pigs and rabbits (Rebuttal, page 5), guinea pigs (Rebuttal, page 7), a fish pond (Rebuttal, page 11) and birds (Rebuttal, page 22). Mr. Friesen acknowledged these animals on site, but argued that they were all "registered" with the Municipality as domestic pets. He also indicated that he sold the eggs from the chickens at the store. Although Mr. Friesen stated that the animals were "registered" with the Municipality, the Board finds that he meant "licensed" by the Municipality.

- [152] The Board notes there is no definition of "livestock, fowl or fur-bearing animals" in the Land Use Bylaw. The Board interprets "fowl" in accordance with its ordinary meaning and finds that "fowl" includes chickens, roosters, ducks, etc. The Board interprets "livestock" to include pigs and sheep.
- [153] The Board notes that Mr. Friesen has stated that he has "registered" all of the animals on site as domestic pets. Mr. Friesen stated he sells the eggs from the chickens. In addition, the Board notes at Exhibit 9, Mr. Thorne's materials, page 824, there is evidence that the Appellants charge for the "Guided Tour in Farm Animals" – see item 1 (School Fieldtrip Program) and item 2 (Fall Blast Program). The Board does not agree that one makes a profit from a domestic pet.
- [154] The Board varies the stop order as follows. To the extent that the animals are licensed by the Municipality, the stop order is cancelled in relation to those animals. The Appellants are able to keep those licensed animals without a development permit because they are domestic pets. For those animals which are licensed, the Appellants must not use them for commercial purposes. This means the Appellants cannot sell eggs or other by-products of the animals, nor can the Appellants charge to see them. The stop order continues to apply to any animal not licensed with the Municipality.
- [155] The Board also heard from Mr. Kachur who indicated that he keeps his beehives on the site. The Board is choosing at this time not to vary the stop order to include Mr. Kachur's bees because the Board is concerned that including the bees into the stop order may create difficulty for their ongoing placement on the lands and Mr. Kachur made a compelling case regarding the need for bees in our ecosystem. However, the Board notes that it is possible to obtain a development permit for the keeping of bees, and urges Mr. Kachur to legitimize this use by obtaining a development permit.

6. Unauthorized Park

[156] “Park” is defined under the Land Use Bylaw as follows:

PARK means development of land for recreational activities for the general public which do not require major buildings or facilities, and includes picnic areas, playgrounds, pedestrian and bicycle paths, landscaped areas and public washrooms.

- [157] The Board heard evidence from the Municipality that there was a jumping pillow as well as a pedal bike pathway. These items were set out in the July 13, 2016 photographs 10, 13, 14, 17, 19, 20, and 21. Although the Appellants did not explicitly confirm that the pedal bike was used by customers or the public, the evidence submitted by the Appellants included testimonials by a number of customers who indicated that they use the park facilities, including a corn maze (including Exhibit 10, Appellants’ Rebuttal, page 10, 11, 16). The Board finds that there is sufficient evidence to establish that the Appellants are permitting members of the public to utilize the jumping pillow, the corn maze as well as the bike park. The Board finds there is a park (as defined in the Land Use Bylaw) occurring on the site.
- [158] The next question is whether there is a development permit for the development (here, the park). Mr. Friesen confirmed that he had applied for a development permit for the park in August of 2016, but had not yet received approval. In their Rebuttal, the Appellants confirm they do not have a development permit for a park. The Board accepts the Appellants’ statement that there is no permit issued as establishing that there is no development permit issued for the park.
- [159] The Board upholds the stop order in relation to Point 6 (unauthorized park), but is prepared to grant an extension to the Appellants of three months from the date of the decision in order to allow them to get their permit. If the Appellants do not obtain a development permit within the time specified in this paragraph, they are to remove those features at the end of the three month period. The Appellants must cease the use of the park until they have obtained a development permit.
- [160] The Board noted that there was some dispute as to whether the Municipality provided specific information to the Appellants about the deficiencies in the development permit application. The Board is of the view that granting further time for the Appellants to obtain approval will give both the Appellants and the Municipality time to work through the details. If the Appellants are able to satisfy the outstanding items, the Municipality may be able to issue a permit before the three month period expires.
- [161] As an aside, the Board notes that the Appellants applied in August 2016 for a development permit. More than 40 days has passed since the application and the Appellants could have appealed the deemed refusal to this Board. Had this been done, the question regarding development approval for the park could have been resolved some time ago.

7. Unauthorized Electrical Panels

- [162] The Appellants stated that they removed the electrical panels and were prepared to allow the Municipality access to inspect the property to ensure that they had been removed. The Municipality stated that it had not had the opportunity to inspect the property to confirm the removal of the electrical panels.
- [163] In light of the above statements, the Board varies the stop order in regard to item 7. The Board directs that the Municipality has two weeks from the date of issuance of this decision to inspect the site to ensure that the electrical panels have been removed. If the Municipality determines that the unauthorized electrical panels have not been removed, the Municipality may take whatever enforcement action that it determines appropriate.
- [164] Before the close of the hearing, the Board asked the parties if they would agree that the Board could provide the decision 31 days after the end of the hearing, rather than the 15 days set out in section 687(2) due to the length of the hearing and the amount of written materials submitted for the Board's consideration. All parties agreed. The Board thanks the parties for their consideration in giving the Board sufficient time to review the materials and prepare the decision.
- [165] During the hearing, Mr. Friesen referred to the petition which had been signed by members of the community in support of the Appellants. The Board had asked for a copy of the petition to be delivered after the close of the hearing. One week after the hearing closed, Mr. Friesen delivered a copy of the petition to the Board Clerk. Counsel for the Municipality objected to the Board accepting this information after the conclusion of the hearing. Mr. Thorne had no position on the Board's acceptance of the petition. Counsel for the Appellants did not provide his position. The Board has decided not to accept the full petition as evidence. Although the Board understands that those persons who signed the petition were showing their enthusiasm and support for the Appellants, the issues before the Board revolve around whether the Appellants have development permits for the uses outlined in the stop order and the Board has focused on that aspect of the evidence.
- [166] It is so ordered.
- [167] The decision of the Subdivision and Development Appeal Board is final and binding on all parties, subject only to appeal to the Court of Appeal under Section 688 of the *Municipal Government Act*, R.S.A 2000, c. M-26

Dated at the Regional Municipality of Wood Buffalo in the Province of Alberta, this 16th day of March, 2017.

CHAIR:

David Secord
Dave Secord

SDAB-2016-005

APPENDIX “A”**DOCUMENTS RECEIVED AND CONSIDERED BY THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD:**

Exhibit #	Description	Filing Date
	Subject Area Map	2016-10-14
1.	Notice of Appeal (5 pages)	2016-10-07
2.	Stop Order Dated September 23, 2016 (30 pages)	2016-10-12
3.	Agent Authorization – Andrew Thorne (7 pages)	2016-10-31
4.	Board Decision SDAB 2016-005-P 2016-11-03 (12 pages)	2016-11-18
5.	Record of Proceedings – Conference call 2016-11-03 (3 pages)	2016-11-18
6.	Hearing Notification Dated 2016-12-30 (3 pages)	2016-12-30
7.	Record of Proceedings – Conference call 2016-12-19 (2 pages)	2016-12-30
8.	Appellants Submission (258 Pages)	2017-01-26
9.	Affected Party Submission – Andrew Thorne	2017-02-02
	- Letter of Introduction (5 Pages)	
	- Argument (1035 pages)	
	- Audio File – Draper ASP 2016-02-18	
	- Statutes – Land Use Bylaw and Municipal Government Act of Alberta	
	- Video (28 videos)	
10.	Municipality Submission	2017-02-02
11.	Appellants Rebuttal (9 pages)	2017-02-09
	- Supplementary material (114 pages)	
12.	Written Submissions received via email (22 emails)	16-02-2017
13.	Submission of Jason Kachur	16-02-2017
14.	Aerial View Prairie Creek Laydown Yard (Municipality Submission)	16-02-2017
15.	Aerial View 116 Garden Lane (6 pages)	16-02-2017

Attachment: 6. Subdivision and Development Appeal Board Decision 2016-005 (DVG LUB and ASP Proposed Amendment)

APPENDIX “B” REPRESENTATIONS

<u>PERSON APPEARING</u>	<u>CAPACITY</u>
1. J. Agrios, Q.C.	- Kennedy Agrios LLP, counsel for the Municipality
2. B. McMurdo,	- Regional Municipality of Wood Buffalo
3. R. Noce, Q.C.,	- Miller Thompson LLP, counsel for the Appellants
4. S. Hawes,	- Miller Thompson LLP, counsel for the Appellants
5. B. Friesen	- Appellant
6. Joel Beatson	- Associate
7. Jason Kachur	- Business Owner - Beekeeper
8. Frances Jean	- Resident
9. Chris Diprose	- Employee
10. William Leonard	- Employee
11. Rick Kirschner	- Resident
12. Michael Bayot	- Employee
13. Phil Osborne	- Resident
14. Gord Gallant	- Resident
15. Tanya Brittain	- Resident, Business Owner
16. Tony Piche	- Resident
17. David Friesen	- Relative
18. Ramona Morrison	- Resident
19. Scott Fry	- Employee
20. Hayley Russell	- Employee
21. Mohammed Dogar	- Resident
22. Gus Gianis	- Resident
23. Victor Hawes	- Resident
24. Frank Creasey	- Resident
25. Jim Rogers	- Resident
26. Andrew Thorne	- Adjacent Property Owner

Regional Municipality of Wood Buffalo

Land Use Bylaw Amendment

Dunvegan Gardens

Lot 5, Plan 992 0950 & Lot 6, Plan 992 0950

Attachment: 7. Land Use Bylaw Amendment Application (DVG LUB and ASP Proposed Amendment)



Prepared for Dunvegan Gardens (Fort McMurray) Ltd.
by IBI Group

February 2018

Table of Contents

1	Introduction	1
1.1	Purpose	1
1.2	Proponent of the Amendment	1
2	Background	1
2.1	Amendment Location	1
2.2	Planning Context	1
2.3	Existing Development	1
3	Land Use Bylaw Amendment	2
3.1	Proposed Amendment	2
3.2	Amendment Rationale	2
3.3	Policy Context	2
3.4	New Direct Control District	2
3.5	Text Amendments	5
3.6	Exhibit Amendments	6
	Appendix A – Proposed Figures	7

1 Introduction

1.1 Purpose

The purpose of this amendment to the Regional Municipality of Wood Buffalo (RMWB) Land Use Bylaw (LUB) is to add a Direct Control District and enable the land uses associated with a community focussed greenhouse commercial establishment.

1.2 Proponent of the Amendment

IBI Group is submitting this proposed LUB amendment on behalf of Dunvegan Gardens (Fort McMurray) Ltd., who is the Registered Owner of the subject lands.

2 Background

2.1 Amendment Location

The proposed amendment will apply to the lands located at 128 Garden Lane (Lot 5, Plan 992 0950 & Lot 6, Plan 992 0950). These lands are situated in the northwest area of the Airport Lands Land Use Districts plan. The location of the proposed amendment is illustrated in **Map 10 – Airport Lands Land Use Districts**.

2.2 Planning Context

The proposed amendment area is located in a cluster area of Small Holding Districts located within the northwest of the Draper Region bordered by the Draper Road and Country Residential Districts to the south and Environmental Protection area and the Clearwater River to the north.

2.3 Existing Development

Dunvegan Gardens currently operates under the Small Holdings District. Small Holding Districts are for the purpose of providing large lot acreages intended for residential, small scale agricultural pursuits and other compatible uses.

Dunvegan Gardens is a local business that has been operating a small scale agricultural and market garden operation serving the RMWB region for over 40 years.

3 Land Use Bylaw Amendment

3.1 Proposed Amendment

This LUB amendment proposes to add a new Direct Control District to enable a broader range of permitted land uses. This new Direct Control District proposes to establish a special land use district to accommodate community focused greenhouse commercial uses on a site specific basis. The District is intended to provide the RMWB with the necessary control over the nature and location, site design, and appearance of development on the site.

The location of the proposed amendment is illustrated in **Map 10 – Airport Lands Land Use Districts and Figure 1 – Redistricting Plan**.

3.2 Amendment Rationale

The amendment to the LUB is allow for a local community focussed business to continue operating in a manner that is in keeping with the permitted uses and site provisions and regulations of the Regional Municipality of Wood Buffalo (RWMB) Land Use Bylaw.

3.3 Policy Context

A corresponding Amendment to the Highway 69 / Clearwater Valley Area Structure Plan has been submitted along with this application.

3.4 New Direct Control District

The proposed new DC# - Direct Control District is as follows:

SECTION ### DC-## – DIRECT CONTROL DISTRICT**(1) PURPOSE**

The purpose of this District is to establish a special land use and development regulations to accommodate a community focused greenhouse commercial establishment on a site specific basis. The district is intended to provide the Municipality with the necessary control over the nature and location, site design, appearance of development on the site.

(2) Permitted Uses

The following are permitted uses:

Accessory Building and Uses
 Breweries, Wineries and Distilleries
 Commercial Recreation Facility, Indoor
 Commercial Recreation Facility, Outdoor
 Community Service Facility
 Community Garden
 Events/Special Events
 Food Service, Major Restaurant
 Food Service, Minor Restaurant
 Greenhouse/Plant Nursery
 Home Business

Intensive Agriculture (on lots larger than 4 hectares) (*as per Section 91.0 Additional Provisions:

Intensive Agriculture)

Keeping of Animals (Petting Zoo) (*as per Section 91.0 Additional Provisions:

Intensive Agriculture)

Manufactured/Modular Home
 Market Garden
 Office
 Park
 Public Use
 Retail Store, General
 Temporary Building or Structure
 Warehouse and storage

(3) Discretionary Uses – Development Authority

The following are uses that may be approved by the Development Authority:

Amateur Radio Antenna
 Bed and Breakfast
 Campground
 Country Inn
 Essential Public Service
 Family Care Dwelling
 Home Occupation
 Kennel
 Parking Lot/Structure
 Public Utility
 Retaining Wall
 Resort Facility
 Satellite Dish Antenna
 Single Detached Dwelling

DRAFT

(4) SITE PROVISIONS

In addition to the General Regulations contained in Part 5, (of the Land Use Bylaw), the following standards shall apply to every development in this district.

- a) Lot Area (minimum): 2.0ha
- b) Front yard (minimum): 7.6m for principle buildings
15.0m for all other buildings and structures
- c) Side Yard (minimum): 5.0m for principle buildings
10.0m for all other buildings and structures
- d) Rear Yard (minimum): 7.6m for principle buildings
15.0m for all other buildings and structures
- e) Building Height (maximum): 12.0m

(5) ADDITIONAL PROVISIONS

Development Authority must be satisfied that:

- (a) Adequate access exists to a public road.
- (b) The developer will be responsible for constructing all internal roads.
- (c) The keeping of animals, birds and livestock shall be as per Section 91.0 Additional Provisions: Intensive Agriculture. Where there are multiple lots adjacent to each other owned by one owner, the total allowed units of livestock will correspond to the total lot area combined. Grazing areas are to implement adequate fencing and buffering to ensure the safe on-site confinement of animals and to reduce the noise and visual impacts on neighbouring properties. All grazing areas shall provide adequate measures for the disposal of animal waste to the satisfaction of the Development Authority and the Regional Health Authority.
- (d) The development can be serviced with water and sanitary sewage in compliance with Nuisance and General Sanitation Regulation of the Public Health Act and the Alberta Private Sewage Treatment and Disposal Regulations.
- (e) The development meets the requirements of Section 60 – Development in the Flood Plain (Clearwater River/Athabasca River Flood Plain Area) and Section 61 – Development Near Water Bodies and Water Courses, of this Bylaw.
- (f) Parking shall be provided in accordance with Part 7.
- (g) Garbage and waste material shall be stored in weather proof and animal proof containers and shall be visually screened from adjacent sites and public areas to the satisfaction of the Development Authority.
- (h) Outdoor Landscaping Material Storage Bins
 - (i) Retaining walls will be a maximum height of 2.44m (8ft).
 - (ii) All new landscape material storage bins will require approval by the Development Authority

3.5 Text Amendments

The following text will be added to Part 5 General Regulations of the Regional Municipality of Wood Buffalo Land Use Bylaw;

Part 5 General Regulations

56 *Breweries, Wineries and Distilleries*

Breweries, Wineries and Distilleries shall comply with the following regulations:

- 56.1 *A property or building in which beer, wine, spirits and other alcoholic beverages are manufacture using products grown onsite or imported in;*
- 56.2 *Which has designated areas for the production process, canning, bottling and for the storage for intent of sold on site or for shipping;*
- 56.3 *That has a designated hospitality areas for private groups to access for sampling, tasting and consumption.*
- 56.4 *That product manufactured onsite be available to be sold onsite for consumption on and off the premises;*
- 56.5 *A Brewery, Winery and Distillery can be combined with a Restaurant and/or Drinking establishments to provide an increase of the public space for consumption of food and beverages onsite, but shall not exceed the maximum capacity of the Use it is combined with.*
- 56.6 *that where a public space is provided that does not open on to a residential district, except for emergency exits, loading bay doors and non-operable windows.*
- 56.7 *That Outdoor Public Space shall not be located next to a Residential Land Use;*
- 56.8 *That no noxious odours, dust or waste be generated in excess of the Use characteristics or does not comply with Development Permit Application requirements;*
- 56.9 *That all manufacturing and storage of equipment, materials and product be contained within an enclosed structure;*
- 56.10 *That all parking meets the requirements of Part 7 of the Land Use Bylaw.*
- 56.11 *That all exterior Landscaping meets the requirements of Part 5 of the Land Use Bylaw and in conformance of Crime Prevention Through Environment Design principles.*

Prepared for Dunvegan Gardens (Fort McMurray) Ltd.

The following text will be deleted and replaced with;

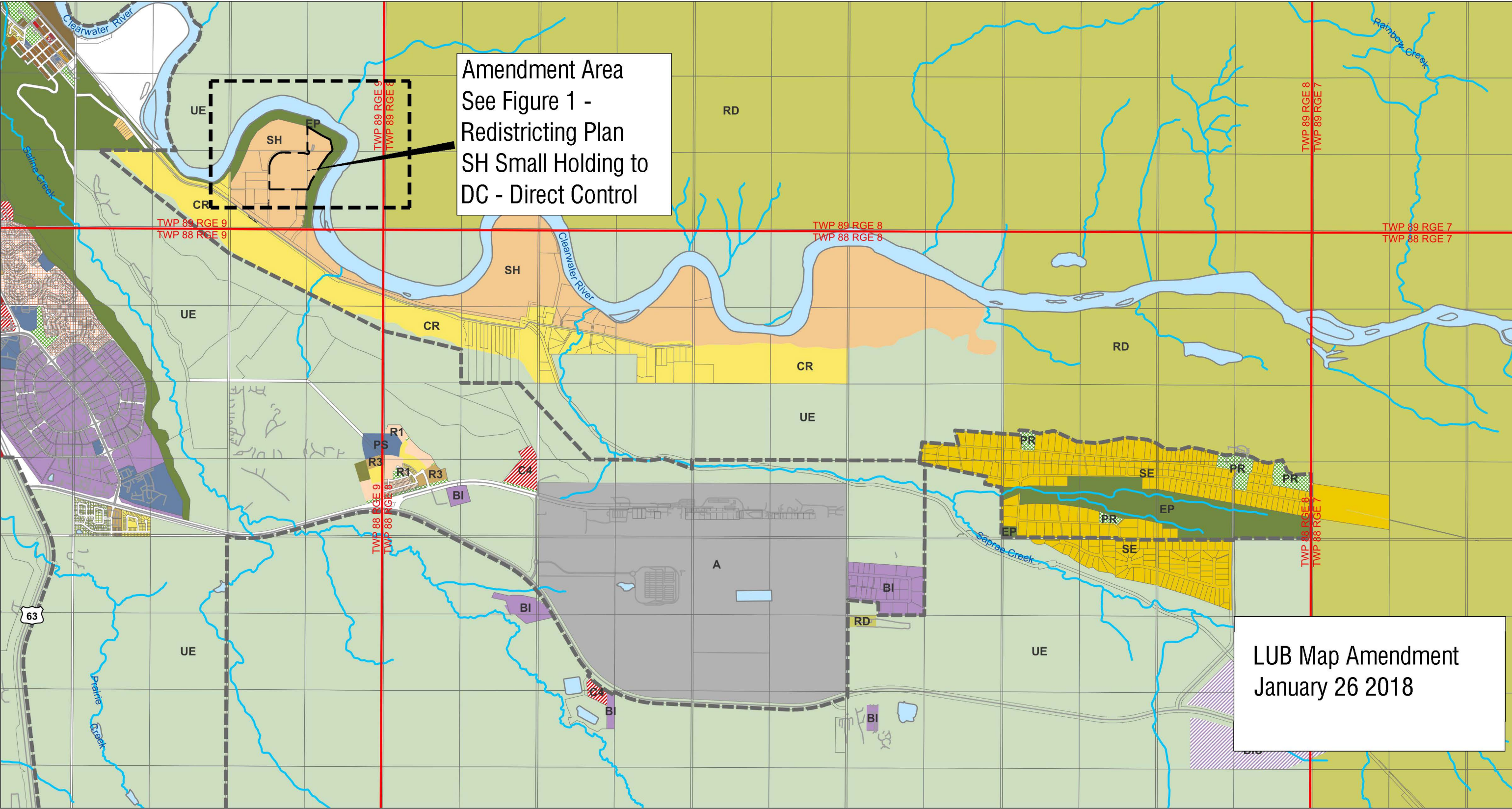
- 76.7 Delete “No livestock, fowl or fur-bearing animals, other than domestic pets, shall be permitted in any residential districts, except for horses, donkeys, goats, llamas, alpacas, and other similar such animals, kept as pets and/or for personal enjoyment, at Sapræ Creek, Conklin, Janvier, Anzac and deleted (Bylaw No. 01/043) whereby parcels greater than 0.809 ha are permitted a maximum of (3) three horses, conditional upon the horses being confined within a fence constructed to the satisfaction of the Development Officer. Deleted (Bylaw No. 00/011).”
- 76.7 *Replace with “No livestock, fowl or fur-bearing animals, other than domestic pets, shall be permitted in any residential districts, except for horses, donkeys, goats, llamas, alpacas, and other similar such animals, kept as pets and/or for personal enjoyment, at Sapræ Creek, Conklin, **Draper**, Janvier, Anzac and deleted (Bylaw No. 01/043) whereby parcels greater than 0.809 ha are permitted a maximum of (3) three horses, conditional upon the horses being confined within a fence constructed to the satisfaction of the Development Officer. Deleted (Bylaw No. 00/011).”*
- 76.8 Delete “Notwithstanding section 76.7, on residential lots in the hamlets of Conklin and Janvier, the keeping of animals, including livestock, is permitted at the discretion of the Development Authority in accordance with the provisions for Intensive Agriculture contained in Section 116.6 of this Bylaw.”
- 76.8 *Replace with “Notwithstanding section 76.7, on residential lots in the hamlets of Conklin, **Draper** and Janvier, the keeping of animals, including livestock, is permitted at the discretion of the Development Authority in accordance with the provisions for Intensive Agriculture contained in Section 116.6 of this Bylaw.”*

3.6 Exhibit Amendments

- a) Substituting “**Map 10 – Airport Lands Land Use Districts**”, with “**Map 10 – Airport Lands Land Use Districts**”, appended herewith.

Appendix A – Proposed Figures

Map 10 – Airport Lands Land Use Districts Plan
Figure 1 – Redistricting Plan



Land Use Districts - Rural Service Area

- | | | | | |
|----------------------------------|---|--|---|--------------------------------|
| A Airport | C4 Highway Commercial | GD Gateway District | R2 Low Density Residential | SE Suburban Estate Residential |
| BI Business Industrial | CR Country Residential | PR Parks and Recreation | R3 Medium Density Residential | SH Small Holdings |
| BIU Business Industrial Unserved | DC Direct Control | PS Public Service | R5-MU Apartment & Commercial Mixed Use | UE Urban Expansion |
| C1 Community Commercial | DC-R3 Direct Control Medium Density Residential | R1 Single Detached Residential | RD Rural District | |
| C2 Mixed/Transitional Commercial | DC-UER Direct Control Urban Estate Residential | R1M Mixed Form Single Detached Residential | RMH Manufactured Home Residential | |
| C3 Shopping Center Commercial | EP Environmental Protection | R1S Single Family Small Lot Residential | RMH-2 Small zero lot line Manufactured Home | |

AIRPORT LANDS
LAND USE DISTRICTS

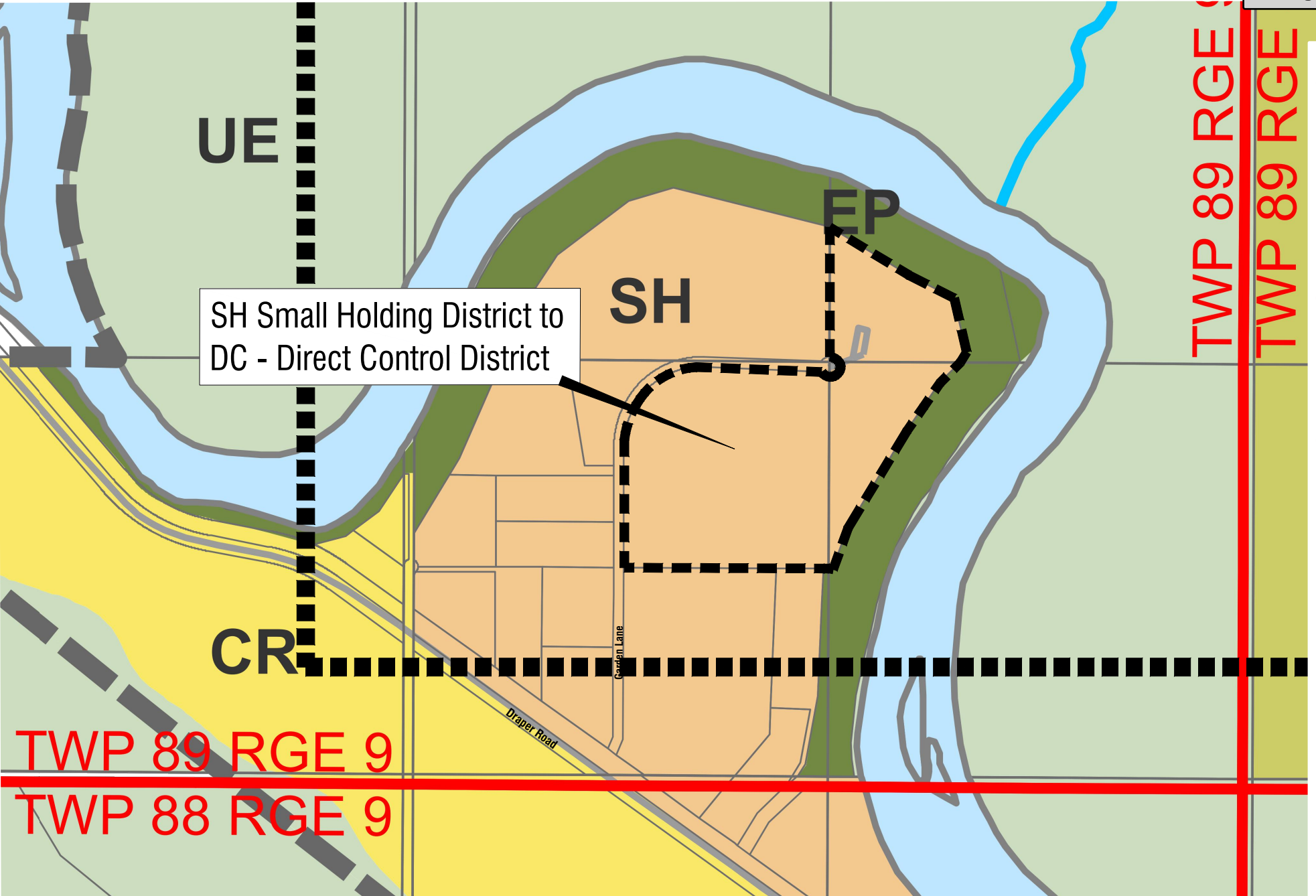
Amendment Date: November 25, 2014



1 cm = 380 meters
December 08, 2017
Map produced for
Community Development Branch

SCOTT CARNALL
Friday, February 09, 2018 10:58:08 AM

J:\114626_DWG\PLS 9 Drawings\Planning\Current Land Use Amendment\Submission\SUB1_ Redistricting_2018_02_08.dwg



3.1.g

Attachment: 7. Land Use Bylaw Amendment Application (DVG LUB and ASP Proposed Amendment)

[B]
IBI GROUP PROFESSIONAL
SERVICES (CANADA) INC
300 – 10830 Jasper Avenue
Edmonton AB T5J 2B3 Canada
tel 780 428 4000 fax 780 426 3256
ibigroup.com

DUNVEGAN GARDENS LOT 5, PLAN 992 0950 & LOT 6, PLAN 992 0950

From: SH (Small Holding District)
To: DC## (Direct Control District)

DATE: February 9, 2018
DESIGNED BY: SC
DRAWN BY: SC
CHECKED BY: MM
SCALE: NTS
JOB NUMBER: 1146



ASP Amendment

Highway 69/Clearwater Valley Area Structure Plan Amendment

Attachment: 8. Highway 69 Clearwater River Valley Area Structure Plan Amendment (DVG LUB and ASP Proposed Amendment)



Prepared for Dunvegan Gardens (Fort McMurray) Ltd.
by IBI Group

February 2018

Table of Contents

1	Introduction	1
1.1	Purpose.....	1
1.2	Proponent of the Amendment.....	1
2	Background	1
2.1	Amendment Location	1
2.2	Planning Context.....	1
2.3	Development Context & Existing Development.....	1
3	Existing Development Description	2
4	Development Vision	2
5	Amendment to Bylaw	3
5.1	Proposed Amendment	3
5.2	Amendment Rationale	3
5.3	Policy Context	3
5.3.1	Municipal Development Plan	3
5.3.1	Highway 69 / Clearwater Valley Area Structure Plan	7
5.3.1	Draper Area Structure Plan.....	7
6	Development Vision	9
7	Development Policies.....	9
8	Impacts	10
9	Land Use Bylaw Amendment	10
10	Amendment to ASP	10
10.1	Text Amendments.....	10
10.2	Exhibit Amendments	11
	Appendix A – Proposed Figures	1

1 Introduction

1.1 Purpose

The purpose of this amendment to the Highway 69/Clearwater Valley Area Structure Plan (ASP) is to add a Direct Control District to the ASP to enable the land uses associated with a community focussed greenhouse commercial development.

1.2 Proponent of the Amendment

IBI Group is submitting this proposed ASP amendment on behalf of Dunvegan Gardens (Fort McMurray) Ltd., who is the Registered Owner of the subject lands.

2 Background

2.1 Amendment Location

The proposed amendment will apply to the lands located at 128 Garden Lane (Lot 5, Plan 992 0950 & Lot 6, Plan 992 0950). These lands are situated in the northwest area of the plan. The location of the proposed amendment is illustrated in **Map 6 – Development Concept and Figure 1 – Amendment Area**.

2.2 Planning Context

The ASP was initially approved through the adoption of Bylaw 99/058 on January 25, 2000, and subsequently amended. Most recently, Bylaw 07/069 changing the land use in the southwest sector of the of the plan area, near the Fort McMurray Municipal Airport from “Open Space” to “Business Industrial”.

2.3 Development Context & Existing Development

The ASP area is bounded on the north by the Clearwater River; on the south of Highway 69; on the west by Saline Creek; and on the east by a line 800m beyond the eastern edge of Sapræ Creek Estates.

3 Existing Development Description

Dunvegan Gardens is a destination local greenhouse and agricultural business that encompasses a blend of commercial / retail, entertainment, education and tourism to provide a fun, exciting and memorable experience for customers and visitors of all ages.

Dunvegan Gardens is a local business that has been providing garden centre products for 41 years and in the past 20 years Dunvegan Gardens has expanded their offerings to include hosting events and providing products and experiences that respond to local needs and broader trends such as:

- “farm to trade” culture;
- support for locally produced products and businesses;
- direct farm marketing;
- “agri-tainment” – tours, seasonal festivities, interactive events, etc.;
- “U-pick” and community gardens;
- Sustainable living – lowering our carbon footprint.

The site has been operating a local garden centre that encompasses retail sales of plants, garden and landscape products, providing a hosting venue for community and private events along with market gardens and community garden plots.

The site has an agrarian character with an “outpost” style main building, providing the main visual focus of the site. The other portions of the site are developed with various support and activity structures.

Over the years, Dunvegan Gardens has matured into a place of recognition and civic pride for the community of Fort McMurray.

4 Development Vision

The overarching vision is to retain the agricultural/horticultural related focus of the site, while adding related activities and business opportunities that respond to new trends in the greenhouse and agri-tainment industry.

These opportunities could include but are not limited to:

- expansion of outdoor events incorporating patios, event lawns and gardens to host gatherings and events;
- local food and beverage processing, packaging and sales;
- petting zoos and animal interaction venue;
- food concessions;
- country store and market;
- farm life activities and events.

The agrarian character of the area will not only be preserved, but serve as the basis of future development and adaptation of the site. As the site evolves over time, new structures and buildings may be developed, re-purposed and re-positioned. With this opportunity, it is recognized that development parameters and considerations need to be incorporated.

5 Amendment to Bylaw

5.1 Proposed Amendment

This ASP amendment proposes to add a new Village Commercial / Community Greenhouse to 5.2 Development Land Uses section of the ASP.

The Village Commercial / Community Greenhouse will provide a community focal point for the future development of the Draper area. Promoting community development through hosting local events and educational courses. There will be a variety of recreational activities that are in-keeping with the farm experience. There will also be a commercial greenhouse retail store promoting fresh and locally grown produce and processed goods.

The predominant land uses in the ASP area are parks & recreation, and open space with a significant portion of the ASP lands being recognized as Environmental Protection. Suburban Estate and Country Residential land uses are located where residential development is feasible. The Small Holdings land use designation allows for residential and small scale agricultural pursuits on lands susceptible to flooding, in lands located adjacent to the Clearwater River.

Business Industrial land uses are found at strategic locations with good roadway access in the south portion of the plan area.

The location of the proposed amendment is illustrated for the Highway 69 / Clearwater Valley ASP in **Map 6 – Development Concept**.

5.2 Amendment Rationale

The amendment to the ASP is allow for a local community focussed business to continue operating in a manner that is in keeping with the permitted uses and site provisions and regulations of the Regional Municipality of Wood Buffalo (RWMB) Land Use Bylaw.

5.3 Policy Context

The proposed amendment complies with the vision, goals, objectives and policies of the following relevant statutory plans. A demonstration of compliance with relevant policies is provided in the following sub-sections.

5.3.1 Municipal Development Plan

This amendment complies with the following policies of the Municipal Development Plan (MDP):

POLICY	AMENDMENT COMPLIANCE
Regional Growth Management R.3 Regional Conservation and Recreation R.3.2 – pg.54. <i>As the regional population grows, the maintenance and expansion of existing recreational areas as well as the establishment of new recreational areas will be necessary. An integrated regional recreational strategy will help bring opportunities for all residents to enjoy the region's natural surroundings. Many existing recreational areas can be expanded while some of the region's lakes will be explored for opportunities to develop new recreation with the potential for cottage development, recreational lodges, boat launches, day use areas and campgrounds.</i>	<p>Dunvegan Gardens enables a unique recreational opportunity for local residents and visitors to the RWMB region, providing a variety of outdoor recreational activities for all ages.</p> <p>This amendment will provide opportunities to have all year round outdoor recreational and educational activities.</p> <p>Due to its proximity to the Clearwater River, providing supporting recreational activities will enhance the experience of the visitors.</p>

POLICY	AMENDMENT COMPLIANCE
<p>Urban Growth Management U.3.3 Promote recreational development around the Clearwater River and SnYE – pg.67.</p> <p><i>The Clearwater River and SnYE within the City Centre offer the urban area's best opportunities for recreation and leisure, both water- and non-water-based. The Municipality will promote development of new urban recreational facilities, parkland, and related recreation in these areas. Furthermore, the Municipality will promote MacDonald Island as a major gathering place for public activities and facilities related to sports, recreation, and leisure.</i></p>	<p>Dunvegan Gardens backs on the Clearwater River's wooded embankment area, providing a stopping point opportunity for users of the trail network.</p>
<p>Responsible Development 1.4.3 Mitigate flood hazards – pg.95.</p> <p><i>Some settlement areas in the region fall within a flood hazard zone, posing a risk to residents and property. The Municipality and Province have identified flood prone areas and, where appropriate, these lands will be set aside as Environmental Reserve or protected through flood abatement strategies. While restrictions can be applied regarding the development of new settlement areas and other forms of development in flood hazard zones, innovative mitigation solutions for existing development may allow for redevelopment in specific areas.</i></p>	<p>Dunvegan Gardens is situated on natural and cultivated farm land which allows natural drainage in flooding conditions. There is minimal fixed structures and residential uses on the lands that are more susceptible to flood events.</p>
<p>Economic Resilience 3.1 Diversified Regional Economy 3.1.1 – pg.112.</p> <p><i>Wood Buffalo is experiencing a shortage in commercial and retail services that results in residents spending their money on goods and services outside of the region. In the commercial sector, the most notable gaps include accommodation, arts and entertainment, health care, and education services. New retail opportunities are also in significant demand as limited shopping is available throughout the region. The Municipality will strive to ensure there is an adequate supply of land for commercial and retail development and will work to attract and retain businesses that fill identified gaps in the commercial and retail sectors.</i></p>	<p>The proposed amendment will allow for a local business to continue to providing a variety of recreational activities and local goods for the residents and visitors to the RWMB region.</p> <p>Local businesses supported by the local community are important to the RWMB and its trade area.</p>
<p>Environmental Stewardship 2.1 Healthy Ecosystems that Support Biodiversity – pg.100.</p> <p><i>Healthy and well-functioning ecosystems support the region's rich biodiversity, its economic development, an outdoor lifestyle, and the overall well-being of residents. As the population and economy grows, associated development is placing increased pressure on the natural environment. Protecting and managing the natural environment, as well as minimizing the impact of development, is fundamental to achieving a sustainable future for our region. Action on the environment often requires a multi-jurisdictional approach, with the coordination and collaboration of different levels of government, industry, and private landowners.</i></p>	<p>Dunvegan Gardens has created variety of uses that are appropriate to its location through sustainable farming and raising livestock.</p>

POLICY	AMENDMENT COMPLIANCE
<p>Environmental Stewardship</p> <p>2.2. Taking Action on Climate Change – pg.102.</p> <p><i>Energy used by our region's industry, buildings, and vehicles generate greenhouse gases (GHGs) that contribute to climate change. The Municipality shares in many of the responsibilities for managing risks associated with a changing climate.</i></p> <p><i>By promoting and adhering to green practices, the region will reduce GHG emissions, and help residents and businesses save on energy costs. As the region expands, so will its energy requirements. Addressing the energy challenge will be important to the region's future prosperity. While the Municipality, along with other levels of government, industry and other stakeholders, can strive towards the reduction of GHG emissions, it is still important to address climate change adaption through effective collaboration, monitoring, and risk management practices.</i></p>	<p>Dunvegan Gardens has built their reputation on using sustainable agricultural methods to grow its produce and raise their livestock.</p> <p>They also pride themselves on educating and enabling visitors and customers on how to use those techniques in their own private and community gardens.</p>
<p>Home & Belonging</p> <p>4.1.1 Encourage a mix of land uses – pg. 122</p> <p><i>Integrating housing, retail, business, institutions, and recreation creates a more dynamic environment where residents travel short distances for daily services.</i></p> <p><i>Mixed use development and compact form provide for the most efficient and cost-effective use of land and infrastructure, and allow for the widest range of mobility options. The Municipality will promote a mix of uses in communities and neighbourhoods and encourage compact, mixed-use development where appropriate, primarily in urban neighbourhoods and in the core areas of rural communities.</i></p>	<p>Dunvegan Gardens provides an opportunity for a more diverse mixture of land uses within the area, by providing and diversifying the recreational and commercial attractions on the site.</p>
<p>Home & Belonging</p> <p>4.1.5 Enhance access to recreation – pg.123.</p> <p><i>The need for recreational opportunities will increase as the region continues to grow. The Municipality will provide more access to recreation facilities in urban neighbourhoods and rural communities based on assessed needs and population size, while supporting recreation programs and local sports teams for families and individuals of all ages. The Municipality will also develop multi-use, all-season facilities whenever possible and work to optimize the use of land for both active and passive recreation.</i></p>	<p>Dunvegan Gardens offers unique all-season recreation opportunities for the community.</p>
<p>Home & Belonging</p> <p>4.4.1. Promote access to local food – pg.128.</p> <p><i>Local food production and distribution can provide reliable, secure access to healthy food while helping build a sense of community. It can also help address the challenges associated with food delivery in remote areas of the region, making food more readily available and affordable. The Municipality will promote local food production through land use policies and regulations that allow opportunities for growing, processing, and distributing food, such as backyard and community gardens, greenhouses, markets, and by preserving the limited agricultural land that exists in the region. The Municipality will also support farmers' markets as social gathering places with the potential of attracting vendors and buyers from neighbouring communities and municipalities.</i></p>	<p>Dunvegan Gardens already prides itself on providing locally grown produce that is available in an already known community gathering space.</p> <p>In addition, local community gardening plots are provided to enable local good growing production.</p>

POLICY	AMENDMENT COMPLIANCE
<p>Vibrant Culture 5.2.3 Promote public events and festivals – pg.137. <i>Public events and festivals increase exposure to arts and culture among residents and visitors alike and help instill a sense of community. The Municipality will promote public events and festivals throughout the region and throughout the year. Appropriate space that promotes convenient access will be made available for major attractions, events, and festivals, such as winter carnivals, Métis and First Nations celebrations, and multicultural events. Through the collaboration of many stakeholders, the region will strive to host large national and international events that stimulate local economic development and raise the profile of Wood Buffalo. In communities and neighbourhoods, the Municipality will support street and block parties, local fairs, and other events that promote social interaction and cohesion.</i></p>	<p>Dunvegan Gardens proposes to add more special events to their palette of activities and services. Located in a natural environment, the site can host a broad variety of events, such as weddings, educational activities and cultural days.</p>
<p>Vibrant Culture 5.3 Culture of the Outdoors – pg.138. <i>Wood Buffalo is characterized by a culture of the outdoors, including activities such as hiking, camping, fishing, and off-road vehicle use. For many residents, access to outdoor activities was a factor in choosing to settle in the region. For others, it may be what attracts them to the region as visitors or tourists. A culture of the outdoors sets the region apart from many other municipalities and can be promoted as such, enhancing quality of life for individuals and families and promoting healthy lifestyles.</i></p>	<p>Dunvegan Gardens backs onto the wooded embankment of the Clearwater River, providing a natural location for outdoor activities, allowing visitors to experience outdoor culture & life all within a short distance from the urban center.</p>
<p>Vibrant Culture 5.4 Regional Pride – pg.140. <i>Pride of place emanates from the quality of the natural and built environment and can be shaped through high standards of design. A cohesive identity founded in regional pride can help communicate a better, more complete understanding of who we are to the world, while addressing misconceptions about the region. Community placemaking can reinforce the region's identity by creating a sense of community, fostering local pride in a neighbourhood, and improving public awareness of the community's context. Neighbourhood and community design, which includes public spaces, streetscapes, and built forms, is another major ingredient for a region's expression of identity. And finally, pride is also reflected in the position the region holds as a player on the national and global scene and the achievements of its residents.</i></p>	<p>Dunvegan Gardens has a place of pride in the community through their ongoing support of community events.</p>

5.3.1 Highway 69 / Clearwater Valley Area Structure Plan

This amendment complies with the following policies of the Highway 69/Clearwater Valley Area Structure Plan (ASP):

POLICY	AMENDMENT COMPLIANCE
5.2 Land Use <i>Ensure orderly, efficient, environmentally sound and compatible land uses within the ASP area.</i>	The land use associated with the Dunvegan Gardens are compatible and appropriate for the Draper Area.
5.3 Environmental Protection 5.3.4 Development Permit Requirements for Lands Located between 248 – 250 Meter Contour <i>Consistent with policies in the approved Land Use Bylaw, not permit buildings below the 248 m contour. Applications for development below 248 m and 250 m contours shall follow the provisions of the Land Use Bylaw as approved. Developers are also encourage to consult guidelines on floodproofing contained in Section 5 of the Slope Stability and Soil Suitability Study prepared by Tarracon Geotechnique Ltd., included as Appendix E of the ASP.</i>	All development permitted will be required to consult and comply with guidelines of the Slope Stability and Soil Suitability Study.
5.4 Parks and Recreation 5.4.2 Campground Development <i>Allow for expansion of the Rotary park Campground and consider proposals from private interests and public / private partnerships to develop a campground with full R.V. hook ups at the Texaco stocked ponds to meet the demand for more camping facilities in the region.</i>	The proposed amendment will allow for a new campground area and to increase the campground inventory in the region.

5.3.1 Draper Area Structure Plan

This amendment complies with the following policies of the Draper Area Structure Plan (ASP):

POLICY	AMENDMENT COMPLIANCE
Protecting Character of Residential Communities C.3.1 Preserve residential character of Draper – pg.16. <i>Draper is a small community adjacent to Fort McMurray composed primarily of residential units on large acreages. The Municipality will require that development be consistent with the existing pattern of acreage on large lots in flood risk areas while avoiding the fragmentation of lands suitable for agricultural uses. Country residential styled development may be allowed in the areas that are considered environmentally sound. Emphasis will be placed on protecting and preserving the natural environment, enhancing recreational opportunities, and providing for local economic development.</i>	<p>The proposed amendment will complement the existing pattern in existing and future developments.</p> <p>Future development shall follow the provisions of the Land Use Bylaw as approved. Floodproofing guidelines contained in the Section 5 of the Slope Stability and Soil Sutable Study will be incorporated.</p>

POLICY	AMENDMENT COMPLIANCE
<p>Draper's Vision – pg.18.</p> <p><i>"Draper is a close knit, quiet community characterized by residential acreages and the ever-changing Clearwater River. An abundance of green space offers many residents the chance for market gardening and home based businesses, and offers our children a wonderful environment in which to play. Indoor and outdoor recreational opportunities, including trails, are enjoyed by residents and people from all over the region. At the heart of Draper is a central facility where our residents can gather and enjoy social events and creative pursuits. Our community infrastructure, especially our roads, is well maintained."</i></p>	<p>Dunvegan Gardens provides a community attraction for the local residents to visit for a variety of commercial and recreational uses, while providing a community focal point for social events.</p> <p>Dunvegan Gardens can take the opportunity to serve as a special and unique local commercial hub for the Draper area.</p>
<p>2.2 Maintain the existing development pattern</p> <p><i>2.2.6: The primary use of the land shall be in the form of large-lot residential acreages and agricultural pursuits. pg.20.</i></p>	<p>Dunvegan Gardens is a business that is developed around productive land for growing crops and maintaining livestock for the growing of fresh sustainable produce, dairy products and the processing of food and beverages.</p>
<p>2.2 Maintain the existing development pattern</p> <p><i>2.2.9: Intensive agriculture may be considered on lots larger than four (4) hectares. pg.20.</i></p>	<p>The 2 parcels associated with the amendment areas are both greater than 4 hectares. Intensive agriculture plays a strong role in the operation of Dunvegan Gardens.</p>
<p>4.2 Provide access to the Clearwater River</p> <p><i>4.2.1: The Municipality will work with residents, senior levels of government and other stakeholders to investigate potential public access points to the Clearwater River. pg.31.</i></p> <p><i>(a) Access points will be for public use and non-commercial in nature and may:</i></p> <p><i>(i) Include amenities such as boat launches, staging areas and parking;</i></p> <p><i>(ii) Utilize existing road allowances where appropriate; and</i></p> <p><i>(iii) Be shared with emergency services users.</i></p>	<p>Dunvegan Gardens is a prime location for access to the Clearwater River with the lots backing on to the wooded embankment.</p> <p>The site would be an ideal location for connectivity to the river through boat launches and the trail connections.</p>
<p>Generalized Land Use Concept Plan</p> <p>Small Holdings Area</p> <p><i>The purpose of this classification is to provide for the development of a mix of large lot acreage intended for residential, agricultural pursuits, and other compatible uses on lands that are potentially susceptible to flooding.</i></p>	<p>Dunvegan Gardens proposes to build on the current land use and develop agricultural pursuits that are in keeping with its surroundings.</p> <p>Other compatible uses will be that of harvesting the produce grown on the lands to sell as picked or processed into foods and beverage state and sold in the greenhouse store.</p>

6 Development Vision

The overarching vision is to retain the agricultural/horticultural related focus of the site, while adding related activities and business opportunities that respond to new trends in the Agri-tainment industry.

The opportunities could include but are not limited to:

- expansion of outdoor events incorporating patios, event lawns and gardens to host gatherings and events;
- local food and beverage processing, packaging and sales;
- petting zoos and animal interaction venue;
- food concessions;
- country store and market;
- farm life activities and events.

The agrarian character of the area will not only be preserved, but serve as the basis of future development and adaptation of the site. As the site evolves over time, new structures and buildings may be developed, re-purposed and re-positioned. With this opportunity, it is recognized that development parameters and considerations need to be incorporated.

7 Development Policies

The integration of land uses associated with Dunvegan Gardens is to take in consideration the following:

- Enhancement of the agricultural character of the area;
- Landscape buffering;
- Separations and setbacks;
- Other applicable municipal bylaws and requirements.

The following outlines the proposed development policies:

- Lighting is to be shielded and directed towards the interior of the site and away from adjacent properties;
- All activities and events are to comply with RMWB Noise bylaws;
- Litter is to be collected and controlled through various means including screened collection and storage areas and regular off-site disposal;
- Existing vegetation buffers are to be protected and repaired;
- Where no vegetation buffer exists a 5 m landscaped buffer is to be developed between Dunvegan Gardens and other properties;
- Signage is to be developed in compliance with RMWB bylaws;
- Screening of exterior storage area is to be developed with vegetated/landscaped screening or fencing;
- Dust is to be controlled in compliance with RMWB bylaws.

8 Impacts

There will be no statistical impacts due to the proposed amendment. The proposed land use change is shown in Map 6 – Development Concept and in Figure 1 – Amendment Area.

9 Land Use Bylaw Amendment

A Land Use Bylaw Amendment in the form of a Direct Control District will be submitted in conjunction with and to support this ASP Amendment.

10 Amendment to ASP

The Highway 69/Clearwater Valley ASP (Bylaw 07/069 as amended) shall be amended by the following text amendments and exhibit amendments see **Map 6 – Development Concept**.

10.1 Text Amendments

The following text will be added to the Highway 69/Clearwater Valley ASP;

4.9 Future Development Potential

Located within the flood plain below 250m there is an opportunity to develop a Village Commercial / Community Greenhouse development that supports and supported by the local community and visitors to the region. The development will provide an opportunity for visitors to purchase locally sourced fresh produce and onsite processed food and beverage goods. The development will also offer recreational activities that are borne out by its proximity to the Clearwater River and the natural areas that surround the site.

5.2.11 Village Commercial / Community Greenhouse

Located within the flood plain below 250m contours. Allow for parcels a minimum of 2.0 ha (5 acres) on Map 6 – Development Concept. The intent of the Village Community Greenhouse Commercial is to promote a local community establishment that promotes sustainable agricultural development and active involvement with the local residents and visitors through recreational activities, onsite education, special events and retail of locally grown produce. Onsite processed food and beverage goods will also be available in the form of fruit wine, leather and dairy products.

In general, development will allow for, but not limited to, Agricultural Intensive, Campgrounds, Keeping of animals, Market Gardens, Recreational Use and Single Family Dwelling.

The following text will be deleted and replaced with;

- 5.3.3 Delete “Utilize the estimated 250 meter contour shown on Map 6 – Development Concept as a guideline in determine what lands above 250 meter contour may be designated for country residential and lands above 250 meter would remain designated for small holdings.”

Replace with “Utilize the estimated 250 meter contour shown on Map 6 – Development Concept as a guideline in determine what lands above 250 meter contour may be designated for country residential and lands above 250 meter would remain designated for small holdings and village commercial / community greenhouse.”

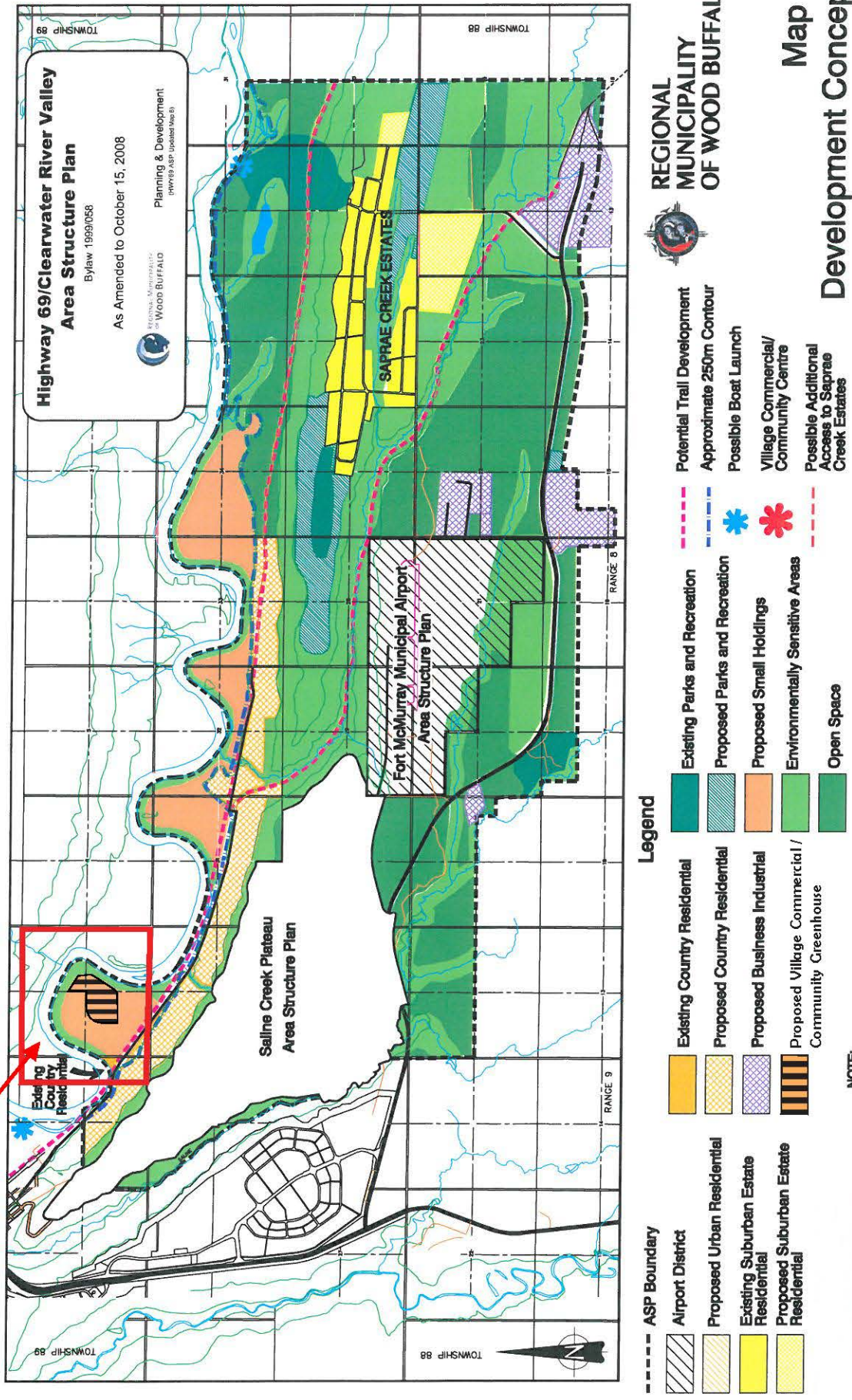
10.2 Exhibit Amendments

- a) Substituting “Map 6 – Development Concept”, with “Map 6 – Development Concept”, appended herewith.

Appendix A – Proposed Figures

Map 6 – Development Concept
Figure 1 – ASP Amendment Area

See Figure 1 - Amendment Area





IBI GROUP PROFESSIONAL SERVICES (CANADA) INC
300 – 10830 Jasper Avenue
Edmonton AB T5J 2B3 Canada
tel 780 428 4000 fax 780 426 3256
ibigroup.com

HIGHWAY 69 / CLEARWATER VALLEY ASP

FIGURE 1 - AMENDMENT AREA

DATE: February 9, 2018
DESIGNED BY: SC
DRAWN BY: SC
CHECKED BY: CCB
SCALE: NTS
JOB NUMBER: 1146

