

Introduction

Since 2009, Dunvegan Gardens has illegally operated its retail Garden Centre, and other business ventures without appropriate Development Permits or a Business License at the end of a rural dirt road, in a district that is designated as a quiet country residential living district, to the detriment of the Draper Residents who moved to Draper for quiet country living and who are forced to experience the nuisance of noise, dust and safety concerns.

Since 2011, Dunvegan Gardens has refused to comply with a Stop Order that ordered its removal and two Subdivision and Development Appeal Board (the “SDAB”) decisions, to the detriment of the Draper Residents of the area. Up to now, political interference on behalf of Dunvegan Gardens and its own internet misinformation campaigns have successfully blocked the enforcement against what we consider to be one of the biggest bylaw breakers operating in the Region.



This Dunvegan Gardens' dump truck is driving on Garden Lane on September 30, 2017, leaving the Subject Lands with a load of dirt materials, in contravention of a Stop Order and SDAB decisions of March and September of 2011, and without a Development Permit. The RMWB has never stopped this activity, despite the activity being constant since 2011's SDAB decisions and the fact that this activity was determined to be a nuisance and safety issue in the district.

Between 2007 and 2009, the a prior RMWB Administration made several major errors by permitting the construction of buildings without Variances that are about 13 times their legal sizes and did not prohibit Dunvegan Gardens from moving its large retail and industrial

businesses to Draper. During that period, although Dunvegan Gardens had applied to bring the retail, Garden Centre and other business ventures to Draper, it did not obtain the required Permits, as such Uses are illegal in Draper. Despite not receiving the required Permits, Dunvegan Gardens moved the illegal businesses to Draper anyway, without legal authority.

Since 2011, when the SDAB upheld a Stop Order and ordered the removal of all activities and equipment other than the vegetable garden, the former RMWB Administrations have not enforced the decision, or taken ownership of their own mistakes, but have illegally assisted the business of Dunvegan Gardens, illegally subsidized it when other businesses are required to operate in legal zones, and have tried unsuccessfully to legalize Dunvegan Gardens' operations by attempting to change the Character of the Draper district, without the support of the Draper Residents who see no logic in mixing polar contrasting Uses with the existing legal Uses. Over the course of about 8 years, Residents have fought against this attempt and have lost trust in many of the prior Administrations of the RMWB, whose motives seem to be more focused on covering for their own mistakes and ineptitude and less about ensuring that the laws related to the Draper Community are realized and protected.

After reviewing the RMWB report related to this matter, released publicly on April 6, 2018, the Draper Residents have been given a new hope that the RMWB does recognize that the laws of the land exist in the RMWB. We hope this approach that the RMWB Administration continues as that prior lack of respect for our laws by our own Administration has been one of the most frightening things about this whole event, these past ten years. We as a people are only free if our laws apply to everyone.

This document is a response by Residents of Draper who are in opposition to the applications of Dunvegan Gardens to legalize its many existing business activities in Draper and to expand the scope of such business ventures. This is the latest in a long story that started in 2005 and has continued to present day with a business that has an "anything for a buck" business plan. We have reviewed the Direct Control applications and the presentation boards created for Dunvegan Gardens' benefit and believe that these applications are a perversion of the basic concept of Direct Control zoning. Normally, Direct Control is used to protect the surrounding properties from unlimited "Uses" by one landowner. These applications are designed to do the opposite, which is better characterized as an effort to create a "No Control" zone within our residential Community.

This report was created by the Residents of Draper, who have spent time and money to move to Draper with the expectation of quiet country residential living on large acreages and who have been asking for compliance and Land Use Bylaw infraction enforcement since 2009. Most Draper Residents are long term residents of the Region, who moved to Draper as a "final destination", and who will not be leaving the area once they have retired from work. The Draper Residents who do not support the legalization of the Dunvegan Gardens Subject Lands (being the 60 Acres at issue in this matter, including 128 Garden Lane) and the "Uses" which are the issue of these amendment applications, want to ensure that the information contained in this document and its attachments are on the record. We believe that these amendment applications are less about "Direct Control" and more about "No Control", as it attempts to create a zone without restrictions, regardless of the existing Character and location of the Subject Lands

We are very aware that some members of Council are advocates of Dunvegan Gardens and have publicly supported the business in Draper. Many, if not all of you have been approached by Mr. Friesen, Director of Dunvegan Gardens, both before and after the last Municipal election and have heard his “version” of the facts. However, we recognize that some of you may not be aware of the illegality of the business due to the incorrect information that Brad Friesen and Dunvegan Gardens have spread throughout the Region in the past 8 years, in an effort to avoid the law and its enforcement.



Unfortunately, Counsellor Jeff Peddle, pictured posing beside Brad Friesen in the bottom right corner and below, is promoting a business venture at the Subject Lands that was commenced in the fall of 2017 called “Winter Wonderland”, that began after the last Municipal election, without a Development Permit or permission and which brought many non-residents of Draper to the location. Draper Residents have never been approached by Jeff Peddle to discuss “our version” of the facts. We therefore assume and hope that Counsellor Peddle thought that this was a legal retail business that he was promoting, despite the email that he received from Mr. Friesen on September 30, 2017, that identified the forthcoming Amendment applications, discussed below.



The Residents who moved to Draper to live there are not against the various business operations of Dunvegan Gardens. We are however against the current location of these businesses, the blatant disregard that Dunvegan Gardens has for the rule of law and its archaic attitude that laws only apply to those who do not have political influence.

For the reasons discussed below, we believe that in the circumstances:

- 1) It is beyond the jurisdiction of Council to amend the Draper Area Structure Plan;
- 2) It is beyond the jurisdiction of Council to amend the Land Use Bylaw (for 2 separate reasons);
- 3) there is no Proper Planning Purpose to justify such amendments; and
- 4) the Bias and Bad Faith experienced over the past 7 years associated with the matter that we as Residents have experienced prevents either amendment from being legal.

Background Facts

All the Residents in the area that are and have been negatively affected by this matter purchased land and/or built homes in Draper **prior to** Dunvegan Gardens arrival in our district in 2005. Dunvegan Gardens has been telling everyone who will listen that it was in the area first, but that is not a true statement. The facts contained herein are based on personal, eye witness information and the attached documentation. Draper is a separate district in the RMWB and not a neighbourhood of Fort McMurray. It is in the Rural Service Area and has no infrastructure. The Subject Lands related to these amendments are in a floodplain area and have been used, up to the point that Dunvegan Gardens moved its retail Garden Centre to Draper, as the only agricultural lands in Draper, or possibly the RMWB for that matter.

The only road into Draper is Draper Road. Dunvegan Gardens' vehicles and customers must drive past residences located on Draper Road and Garden Lane to access the Subject Lands, which are situated at the end of Garden Lane.

We are providing this information as we want to ensure that Council receive all the information of this matter that we believe is relevant.

Most of these facts identified below relate to the issues of a lack of a proper planning purpose or the existence of bias or bad faith and include a long history of what we consider to be an illegal attempt by a prior RMWB Administrations to legalize a group of “Uses” which has been promoted, supported and allowed to be established without Development Permits, commencing in 2007. These “Uses” are however allowed in several other zones, including the Highway Commercial (C4) zones or Business Industrial (BI) zones of the RMWB, and not a district that was designated as quiet country residential large lot acreages and small vegetable gardens.

It seems appropriate to therefore start with the facts, to give greater meaning to the legal issues raised below in relation to these amendment applications.

The LUB and the Small Holdings district

The Subject Lands are in the Small Holdings district, which is regulated in Section 120 of the LUB, and includes the following “Uses”:

120. SH Small Holdings

[...]

120.2 Permitted Uses

The following are permitted uses:

Accessory Building

Essential Public Service

Home Occupation

Manufactured/Modular Home

Park

Public Use

Public Utility

Satellite Dish Antenna

Single Detached Dwelling

120.3 Discretionary Uses - Development Officer

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

Amateur Radio Antenna

Family Care Dwelling

Home Business

Market Garden

Temporary Building or Structure

120.4 Discretionary Uses - Planning Commission

The following are uses that may be approved by the Municipal Planning Commission:

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

*Resort Facility

[...]

120.6 Additional Provisions

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

[...]

(b) no conflict will result with adjacent land owners;

[...]

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

This existing Development Permit for the Subject Property is a Market Garden, a Discretionary Use - Development Officer "Use" category of Section 120.3, which is defined as:

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

The district was determined by the Subdivision and Development Appeal Board (the "SDAB") in 2011 to be a residential district when it upheld a Stop Order related to the Subject Lands (discussed in more detail below), and has as its Permitted Uses, residential structures such as: single family dwellings, modular and manufactured homes and accessory buildings. The Market Garden, for which Dunvegan Gardens has a Development Permit to grow fruits and vegetables, is a "Use" listed in the Discretionary Use – Development Officer category of Section 120.3 of the LUB.

As the sign related to the amendments posted on Garden Lane suggests, a general retail store Use, a Greenhouse/Plant Nursery (Garden Centre) Use, a Major Food Service Use, an office Use and a farm agritainment Use (which seems to already be captured in the LUB definitions as "Commercial Recreation Facility, Outdoor", a "Commercial Recreation Facility, Indoor" Uses

and Animal Service Facility Major and Minor), are all “Uses” that are not contained as allowable “Uses” in the Small Holdings district (Exhibit 1).

These “Uses” are listed as allowable in several other districts in the RMWB, including, Commercial Highway (C4) lands (Section 108 of the LUB) and Business Industrial (Section 111 of the LUB), and mostly in the Commercial Hamlet district (Section 110 of the LUB). We will outline these sections in more detail in our discussion of proper planning purposes and the requirements of a Direct Control district.

The Existing Area Structure Plan

The existing Area Structure Plan (Highway 69/Clearwater River Valley Area Structure Plan), which was considered when drafting the Land Use Bylaw (the “LUB”), identifies that there was no intention of turning Draper into a commercial, retail or industrial zone. The primary intent was to establish quiet residential acreages, with some Market Gardens.

Two of the affected Draper Residents, Lyle Hueser and Nancy Hueser, took part in the public consultations leading up to the creation of the existing Area Structure Plan (the “ASP”). They have confirmed that there was an intention at that time to create a Character for the district with large acreages without high densities and no intention to create nuisance and high traffic frequency such as that experienced by Dunvegan Gardens’ customer and its own commercial traffic.

Purchase of Subject Lands

In 2005, Dunvegan Gardens (AB) Ltd. purchased 60 acres in Draper, being the Subject Lands, and a small market garden which sold vegetables from the Greys for a total of \$400,000.00 (Exhibit 2). At that time, commercial and industrial lands would have been in the neighbourhood of \$500,000 to \$800,000 per acre in the appropriate districts. Bob Grey has told Draper Residents that when they sold the Subject Lands to Dunvegan Gardens, it was on the condition that the new owner would not develop the property beyond that of a vegetable garden. The price paid by Dunvegan Gardens was conditional on the property’s zoning and legal uses, being crop agriculture. When the Greys originally bought the property from the Provincial government, it was only supposed to be used for market gardening. Bob Grey developed the property on that basis and loved the property and said that he sold his right arm when he sold that property to Dunvegan Gardens.

The Subject Lands are located in the Small Holdings district, in the Community of Draper. As stated above, a Market Garden is defined in the LUB as the growing of fruits and vegetables for commercial purposes.

The pictures of the Greys’ Market Garden and vegetable crops (Exhibit 3) identify the extent of the agriculture activities that were ongoing in Draper when the Area Structure Plan and LUB were drafted. The Greys provided Draper Residents with copies of these pictures, which identify the pride that they had in their property and their market gardening.



The drafters of the LUB and the Area Structure Plan never intended on large commercial and retail operations to be placed on these agricultural lands that employed 70 to 100 people during the summer months or attracted 1,000's of customers. This land was never intended to generate high profit margins for its owners or be a substitute for legitimate commercial zones located in more appropriate locations of the Region.

Dunvegan Gardens at that time operated its retail and Garden Centre on Gregoire Drive, in a C4 Zone and operated the Market Garden on the Subject Lands out of the building that the Greys built.



These two basic business operations were mutually exclusive and could be operated at different locations simultaneously without impedence. The Greys did just that when they operated the Market Garden in Draper and the Garden Centre in Gregoire, prior to the sales to Dunvegan Gardens.

1st Greenhouse building Development Permit

In 2007, without the required Variance, the Regional Municipality of Wood Buffalo (“RMWB”) issued Dunvegan Gardens a Development Permit (2006-0140) in error for a Greenhouse building under the category of an Accessory Building, in accordance with Section 120.2 of the LUB. The rules of the LUB require that the maximum site coverage for an accessory building on a lot in the Small Holdings district be no greater than 350.0 m², or approximately 3,767.5 square feet, in accordance with Section 50.7 of the LUB, which states in part as follows, with emphasis:

50.7 In residential districts, the maximum site coverage for accessory buildings shall be:

- (a) in urban residential districts, 12% of the lot area or 60.0 m², whichever is greater;
- (b) in all other residential districts, 12% of the lot area or 140.0 m², whichever is less, for parcels under 2.0 hectares. For parcels 2.0 hectares and larger, the maximum site coverage of accessory buildings shall be 350.0 m²;

These initial greenhouse buildings were 15,000 square feet (Exhibit 4).

The maximum Variance that the RMWB had the legal right to allow was 2% in accordance with Section 28 of the LUB. A development that required a larger Variance was only within the jurisdiction of the SDAB. The Permit was granted without a Variance and without an application to the SDAB.

The LUB also requires that before an Accessory Building Permit can be issued, there must 1st be issued a Development Permit for a “Use”, in accordance with Section 50.10 of the LUB, which states with emphasis:

50. Accessory Buildings and Uses

50.10 An accessory building shall not be developed or approved on a lot prior to the issuance of a development permit for the principal building or use on the lot.

Dunvegan Gardens never obtained such a “Use” Permit, although, as discussed below, the RMWB took the position in 2011, as did we when we were provided details of the Permit in 2011 through a FOIP application, that the legal “Use” was the Market Garden that Dunvegan Gardens had purchased in 2005 from the Greys. An Accessory Building must also only be exclusively devoted to the principal “Use”, so the building was not allowed to be used for multiple “Uses”, in accordance with the LUB definition of an “Accessory Building”:

ACCESSORY BUILDING OR USE means a building or use which is subordinate to, exclusively devoted to, and located on the same site as the principle building or use.

Where a structure is attached to a principal building on a site by a roof, an open or enclosed structure, a floor or foundation, or any structure below grade allowing access between the building and the structure, it is considered part of principal building and shall meet all the requirements of that building.

As the greenhouse buildings were issued as a “Permitted Use” accessory building, that lacked the Variance required due to excessive size, **no notice of the Permit being issued was ever made public.** The LUB identifies in Section 27.5 that a Development Permit comes into effect 14 days after its issuance, however, the publication of the notice of the issuance of a Development Permit, other than a Permitted Use development not involving a Variance is required in accordance with Section 29.1 of the LUB. **A Development Permit can be appealed within 14 days of the notice of the issuance being published, as per 30.1 of the LUB. However, if the development is never published and the public is not told of the details related therein, then notice has not occurred.** The Courts have ruled to remove developments when no notice is provided to the public or affected parties.

The 1st 15,000 square foot greenhouse was destroyed in a wind storm later in 2007. A new Development Permit was required for any replacement greenhouse buildings. A new Development Permit was sought for a replacement Accessory Building.

2nd Greenhouse building Development Permit

Replacement greenhouse buildings were constructed the following year after the RMWB issued Dunvegan Gardens a Development Permit for an Accessory Building (2008-0138) (Exhibit 5), again without proper notice to the public due to the “Permitted Use” categorization of the Permit and erroneously without obtaining the required Variance related to excessive size. The Development Officer who issued this Accessory Building Development Permit at that time was Jamie Doyle. As he is currently the Director of Planning and Development and Bylaw Services at the RMWB, we are sure that he would confirm this fact, as identified in Exhibit 5).

The Non-Existent “Garden Centre” and “Building” Development Permit

In 2009, Dunvegan Gardens applied for a Development Permit to build a building at 128 Garden Lane at a cost of \$1,200,000.00 (Exhibit 6). The a prior Administration of the RMWB, without a required Accessory Building Development Permit (a requirement of Section 50.7 discussed above) and the Variance required from the Subdivision and Development Appeal Board, issued Dunvegan Gardens a “Use” Permit to conduct only the Market Garden activity (a Discretionary Use - Development Officer category activity (see Exhibit 6, Par. 1 on Page 2) at 128 Garden Lane. This is not the activity that Dunvegan Gardens identified would be the intended “Use” in the building. In issuing this Permit, the RMWB Administration at that time erred and breached the LUB in several ways, including:

- 1) No “Accessory Building” Development Permit was issued for the construction of the building, despite the obvious conclusion that this application related to a building and despite the building conditions of the Permit, including the construction of over 100 paved parking stalls;
- 2) No Variance for the Permit was issued even though it was a “building” Development Permit and not a “Use” Permit and the size requirements of the lot were again ignored as the maximum site coverage of the lot was already been exceeded with the greenhouse buildings constructed the previous year, with the result that the total building size of 128 Garden Lane was exceeded by over 13 times (an estimated 50,000 square feet presently); and
- 3) No notice was ever provided to the public about this building construction, despite the requirements to do so under the LUB for at least two reasons, being the requirement for a Variance due to excessive size and the “Use” Permit being issued as a Discretionary Use Permit (Section 29.1 of the LUB, identified above).

Upon completion in 2009, Dunvegan Gardens did not limit the “Use” of this buildings to the exclusive Market Garden activity, which is the growing of fruits and vegetables, but conducted multiple non-allowable commercial activities on the Subject Lands and in the buildings, without Development Permits, most of which continues to present day, such as:

- 1) a retail store and a retail Garden Centre otherwise defined in the LUB as a “Greenhouse/Plant Nursery” that buys wholesale products for resale as retail;
- 2) a landscaping company;
- 3) stockpiling of materials;
- 4) a petting zoo;
- 5) U-Haul (removed in the fall of 2010);
- 6) a snow removal business;
- 7) an RV Park for its transient staff;
- 8) a mechanic shop;
- 9) a wedding location;
- 10) a dog obedience training course; and
- 11) many other things, including marketing campaigns that Dunvegan Gardens calls “agritainment”, designed to increase its business through promotional (discussed below).

Up to the year 2009, the Garden Centre of Dunvegan Gardens had been located on Gregoire Drive in Fort McMurray, in an appropriate Commercial Highway (C4) district of Section 108 of the LUB.

The “centre piece” of the Dunvegan Gardens retail activity in Draper is the retail Garden Centre, which is shown below. It exists without a Development Permit to conduct such a “Use” (and which is only allowed in a Business Industrial, Highway Commercial (C4) or Hamlet Commercial districts of the RMWB) and which has existed for over 8 years in buildings which are built without Variances, even though they are approximately 13 times the legal allowable size for the district.



A Garden Centre is referred to in the LUB as a “Greenhouse/Plant Nursery” and is a retail commercial “Use” as it allows all items being sold to be purchased from wholesales for immediate resale, is allowed in certain commercial zones in the RMWB, but not in Draper. The definition in the LUB states:

GREENHOUSE/PLANT NURSERY means development for the growing, acclimatising, 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.

The existing retail Garden Centre and associated greenhouse buildings in Draper is estimated, based on application data, to be approximately 50,000 square feet. It should be noted that a 4,000 square foot convenience store for the resident neighbourhood would not be allowed in the Draper district due to the size of the building being greater than the maximum site coverage of 3,767.5 square feet (without a Variance) and the use being a non-allowable “Use” in the district.



This is a common sight on Garden Lane. This company, "Bron and Sons Nursery Co", is a Nursery grower and supplier from Grand Forks, British Columbia



Bylands Nursery, from Kelowna, British Columbia, lists 3 retail stores on its website that it supplies in the RMWB region, including Home Hardware, Burnco Landscaping and Dunvegan Gardens of Garden Lane. Seeing trucks like this is a regular sight on Garden Lane.

It was noticed in 2013 that the Tax Assessment for 128 Garden Lane, being the 20 acre parcel of the Subject Lands that operated the 50,000 Garden Centre was only being assessed taxes based on a property value of \$9,160.00, resulting in a property tax of \$30.11 (Exhibit 7). When a Resident enquired as to why one of the largest retail stores in the RMWB Region only paid a nominal tax, the tax assessor identified that they had no record of a building being built on the land and thought that the land was used as a vegetable garden. Dunvegan Gardens should have

known that the property was worth more than \$9,160.00, as that same year, it listed the 40 acre vacant land adjacent to the Garden Centre that it used to grow vegetables with a sale price of \$2,500,000.00 (Exhibit 8).

To demonstrate the Character of the Small Holdings district, the current LUB contemplates that a landowner cannot even have a “Home Business” Development Permit unless it is confirmed that it will not interfere with the neighbourhood, and requires the goods that are sold to be produced on site, not shipped in for resale. Prior to the latest amendments to the LUB, in a rural residential district, such as the Small Holdings district, the customer traffic for a “Home Business” is restricted and the business can only have 2 non-resident employees (Exhibit 9). Dunvegan Gardens has one of the largest retail store in the RMWB at the end of a dirt road that has not even passed the rural residential standards (discussed below).

We believe that a crucial piece of information that explains what we see as bias behaviour of previous Administrations of the RMWB (discussed below), is that when Dunvegan Gardens applied for this Development Permit in 2009, it also provided the RMWB with its business plan and building specifications (Exhibits 10 and 6), which outlined most of the activities that it has conducted on the Subject Lands, without Development Permits, permission or notice to other affected land owners or Draper Residents.

U-Haul Stop Order

In 2010, without first seeking a Development Permit, Dunvegan Gardens brought a U-Haul franchise to its property on Garden Lane. A Stop Order was issued. Dunvegan Gardens’ response was to appeal the Stop Order (Exhibit 11) and apply to amend the LUB to include an industrial lay down yard, to legalize its illegal activity, and a few other commercial Uses. The letter accompanying the application to amend the LUB, written by Brad Friesen, was submitted with the application and identified that the reason for the amendment was to increase business and profits, which states with emphasis:

“This like every other application for changing in zoning or any other land designation brings with it one assumption someone trying to make more money. Well, in this case, **we do look at what we can do to further our business interests here at our present location in Fort McMurray. We have land which most people would be envious of.** Because of this, **we have looked at areas we could further our business** and this is where we are today with this application. (Exhibit 12).

Mr. Friesen was mistaken in that the present location he referred to was not in Fort McMurray, it is in Draper. Otherwise, this is the most honest statement we have ever seen Brad Friesen make. It is just about the money and increasing profits. Unlike these amendments at issue in this matter, RMWB administration at that time did not bring this U-Haul application to Council. Dennis Peck, the then Director of Planning and Development, identified at that time that the amendment was contrary to the Character of the district and the Area Structure Plan and had no proper planning purpose. Dunvegan Gardens removed the U-Haul business on the day of the SDAB Hearing and the matter was dropped.

We are also not “envious” of the Subject Lands, as it is prime agricultural crop lands in a flood plain, without much commercial value if used for its designated purpose, and it is not located in the downtown commercial core of Fort McMurray.

It is worth noting that in a letter written by Brad Friesen to the SDAB related to Dunvegan Garden’s Appeal of the U-Haul Stop Order, dated November 3, 2010, it contained a threat that would be made time and time again over the years. That being, if Dunvegan Gardens was not able to carry on business as it saw fit, it would be forced to leave the community:

“The denial of either of these permits would have a severe negative impact on our ability to do business both in the present and in the future to the point where **we have to leave the community**” (Exhibit 13).

Although the U-Haul was removed from Draper, neither Dunvegan Gardens or U-Haul “left” the Community.

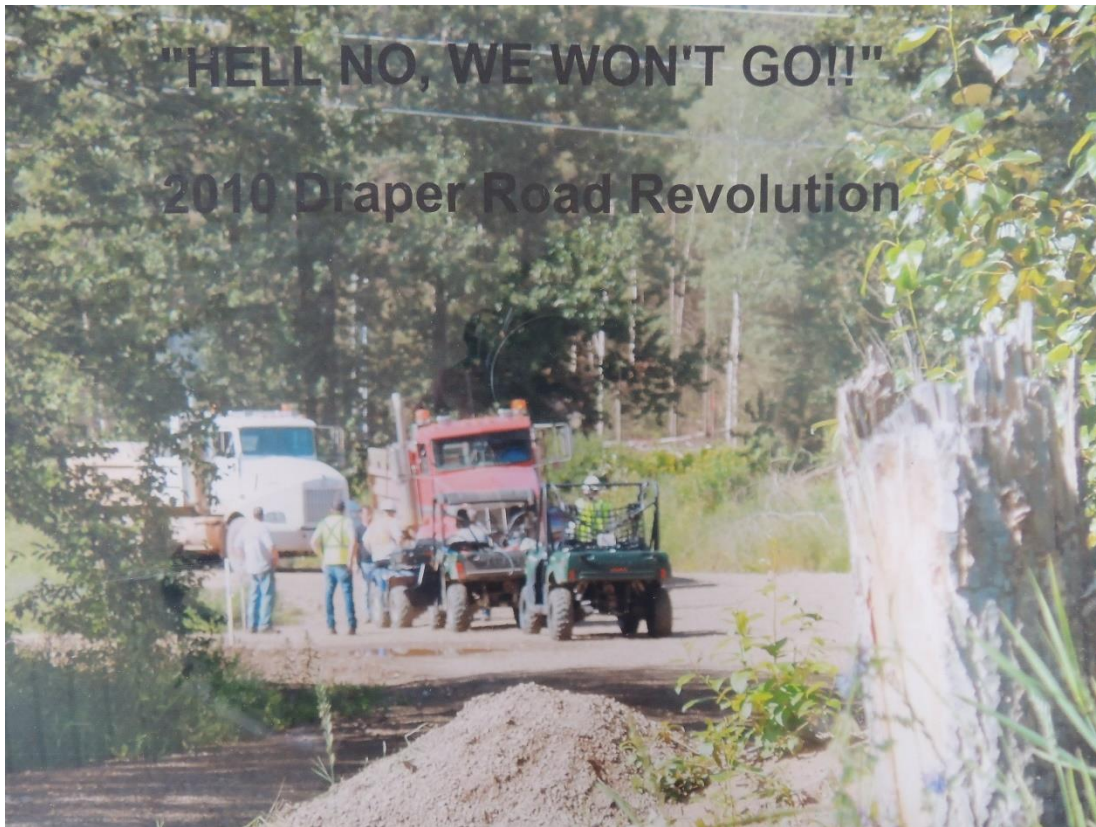
One of the reasons that Dunvegan Gardens never left Draper was because it continued to gross millions of dollars in its many lucrative business ventures that it operated illegally in Draper, including transactions with the RMWB, discussed in more detail below.

Another reason Dunvegan Gardens never ceased its illegal operations is because former Mayor Melissa Blake was a supporter. In the same letter to the SDAB, Brad Friesen wrote:

“in the words of Melissa Blake, ‘Dunvegan Gardens is an essential small business in our region, and an integral corporate citizen in our community’” (Exhibit 13).

The Residents Meet with the RMWB in 2010

By 2010, the Draper Residents were fed up with the illegal activities in Draper that were being ignored by the RMWB Administration. This created frustration and led to various actions, including a road block in the summer of 2010, which is documented in the below picture and which is proudly displayed on a Draper Resident’s garage wall.



On October 28, 2010, the RMWB, including the acting CAO and the Director of Planning and Development, met with Draper Residents to discuss the RMWB's apparent lack of enforcement in the Draper district. The RMWB representatives told Residents at that time that they would be taking the necessary steps to remove such entities who were breaking the LUB, starting with the "peaks" of the pyramid, the peaks being safety to person issues and large nuisances.

As it relates to the other few LUB infractions in Draper at the time, the RMWB fulfilled its promise in part and removed many of the other illegal operations in Draper. As it relates to Dunvegan Gardens and the Subject Lands, the several previous RMWB Administrations have done quite the opposite and allowed Dunvegan Gardens to operate without impediment and has assisted in the promotion of its illegal businesses in several manners, including the issuance of illegal haul permits over the years that were a breach of two SDAB decision in 2011.

The Stockpiling SDAB Decision of Draper

In early 2011, despite the then Administration's representations to Draper Residents in October of 2010 that the RMWB was going to "give them back their community", the RMWB issued Dunvegan Gardens a Development Permit on the Subject Property for stockpiling of dirt under the guise of categorizing it as an "intensive agriculture" activity. One of Dunvegan Gardens' main businesses is a landscaping company that in part moves dirt, processes it and sells it. It was estimated in the Permit that up to 80,000 loads of dirt would be shipped by dump truck to 128 Garden Lane, using Garden Lane and Draper Road. The Permit was appealed by many Draper Residents.

The SDAB overturned the Development Permit in its decision of March 2011, on the basis that stockpiling is not an activity that was allowed in the Small Holdings district, and it is a nuisance and a safety issue for affected landowners (Exhibit 14). Dirt hauling, and processing is not an agricultural pursuit, it is an industrial and landscaping pursuit.

However, the stockpiling did not cease on the Subject Lands. Attached as Exhibit 15 is a picture taken by a Resident on September 30, 2017, of a Dunvegan Gardens' dump truck, driving on Garden Lane, away from the Garden Centre, with a full load of dirt materials, going to a job site. This type of contravention of the law by Dunvegan Gardens is a constant.

The September 2011 SDAB Decision and Stop Order

In June of 2011, the RMWB issued Dunvegan Gardens a Stop Order to cease its landscaping and stockpiling activities at 128 Garden Lane (Exhibit 16). The Stop Order included the statement that the Small Holdings district was a residential district as part of its rationale. The Stop Order was appealed by Dunvegan Gardens solely on the issue of whether the Small Holdings district was residential (Exhibit 17, last sentence on Page 1). Jamie Doyle was the Development Officer who issued the Stop Order and can confirm these facts.

The Stop Order did not identify that the 50,000 square foot Garden Centre and retail store that was commenced in 2009 were illegal and not allowable in the Small Holdings district, despite its illegality and the lack of a Development Permit.

Prior to this Stop Order being issued, in the Spring of 2011, Carol Thebuge, the then Director of Planning, told Draper Residents in a meeting that they had asked Dunvegan Gardens to relocate the retail store and Garden Centre to an appropriate location, but that Dunvegan Gardens had refused to do so. When asked, Ms. Thebuge identified that the RMWB was not prepared to pay for the cost to relocate the oversized buildings that it had allowed to be built in Draper without compliance with the LUB. The legal Counsel for the RMWB at that time in 2011, confirmed in a meeting with Draper Residents that the retail store was illegal. This issue had also been discussed with Dunvegan Gardens at that time as one of its employees had told Draper Residents that the RMWB had threatened Dunvegan Gardens with the removal of its retail store if it did not cease its landscaping activities in Draper in the Spring of 2011.

The RMWB Report to the Subdivision and Development Appeal Board (the "SDAB") at the appeal Hearing listed the existing Development Permits and the "Uses" that Dunvegan Gardens were allowed to conduct on the Subject Lands. Jamie Doyle read this Report to the SDAB and can confirm this information. The Report stated that Dunvegan Gardens' Market Garden activity was the only approved "Use" of the Subject Lands and that the greenhouses buildings were solely accessory buildings to the primary "Use", being the Market Garden "Use" (Exhibit 18).

The Draper Residents agreed with this legal position, as they had come to the same conclusion, upon reviewing the Development Permits for the first time, when they obtained copies of the Permits earlier in the 2011 year through a FOIP application. Although the buildings located on the Subject Lands far exceeded the allowable sizes of Accessory Buildings, so long as the buildings were only being used to grow vegetables or fruit, the Residents believed that this

activity would not be enough of a nuisance to justify appealing the Building Permits based on their illegal and excessive sizes.

The RMWB Report to the SDAB also identified that Dunvegan Gardens had a Garden Centre, tree nurseries, market garden, a gift shop and a landscaping operation located on the property. As stated above, despite there being no Development Permits to support these “Uses”, the RMWB did not include these “Uses” in its Stop Order.

Thankfully, in its decision, the SDAB upheld the Stop Order in its entirety and additionally ordered that all commercial equipment and materials unrelated to the Market Garden (the only “Use” for which a Development Permit existed) were to be removed (Exhibit 19). As the RMWB had identified that the Market Garden Development Permit was the only “Use” Permit that Dunvegan Gardens had, the SDAB ordered the removal of everything else. This decision by the SDAB was a correct judgment, and it was not appealed. To summarize, the SDAB decision of 2011 stated the following:

- 1) All landscaping and stockpiling activities are to cease in Draper;
- 2) All commercial materials and equipment unrelated to the Market Garden are to be removed from Draper; and
- 3) The Small Holdings district is a residential district.

Nothing in the decision of the SDAB of 2011 indicated that any of the other commercial activities, including the retail store and Garden Centre, which had been identified by Jamie Doyle at the Hearing to exist without Development Permits, were excluded from this Order of removal. The RMWB at the SDAB hearing had identified that these activities existed and that they did not have Development Permits to conduct such activities. The SDAB amended the Stop Order and ordered the removal of all these activities, excepting the Market Garden activity of growing fruits and vegetables.

But despite the RMWB issuing the Stop Order, subsequent RMWB Administrations over the years did not stop any of these activities of Dunvegan Gardens, which continued all such activities unimpeded on Garden Lane. Heavy truck and landscaping equipment continue to operate out of Dunvegan Gardens operations in Draper and the customer traffic to the illegal store and events continue to increase. The landscaping operation remains (as many of the landscaping supplies remain on site), the stockpiling continues, and the retail Garden Centre and retail store remains open and continue to expand up to the date that this document was created. Numerous, documented, and consistent complaints to the various RMWB Administrations, by Residents went ignored for years, despite absolute constant proof being provided to the RMWB in the form of pictures and written analysis. Attached as Exhibit 20 is but a mere sample of what has been witnessed over the years.



Despite the SDAB ordering such activities to be illegal in Draper, despite the RMWB receiving many examples of similar infractions and never acting on the complaints for years, despite there being no Development Permit to conduct such an activity, and despite Dunvegan Gardens denial that it is doing exactly what this picture identifies, this Dunvegan Gardens' pickup truck is driving on Garden Lane, on November 29, 2017, away from the Garden Centre, with a load of sod, as Dunvegan Gardens continues to contravene the law by storing its landscaping materials and equipment and operating its landscaping business in Draper.



The same photo expanded to show the "Dunvegan Gardens" logo on the dirty passenger door of the vehicle, in case anyone wants to pretend that this is not one of its pickups. Similar sights are seen between 100 and 200 times a day.

In a meeting with Carol Theborge and the then Mayor, Melissa Blake in March of 2012, it was stated to Draper Residents that the RMWB did not like the decision of the SDAB in September of 2011. The former Mayor had also written a letter prior the SDAB Decision being rendered that stated that the LUB infractions would be removed, but failed to identify that the retail store and Garden Centre were part of the illegal activities to be removed (Exhibit 21).

RMWB Contraventions, Threats and Harassment

It was after the SDAB decision in September of 2011 that the then RMWB Administration also started to contravene the LUB and the *Municipal Government Act*. To ignore an infraction is one thing, to breach an SDAB Decision is quite another. In this instance, the RMWB breached two SDAB decisions and contravened the March 2011 SDAB Order concerning stockpiling, which is a breach of Section 557 of the *Municipal Government Act* (the “MGA”), which states:

General offences

557 A person who contravenes or does not comply with

[...]

(a.5) a decision of a subdivision and development appeal board or the Municipal Government Board under Part 17,

[...]

or who obstructs or hinders any person in the exercise or performance of the person’s powers under Part 17 or the regulations under Part 17, is guilty of an offence.

The RMWB did this by issuing Dunvegan Gardens Haul Permits year after year to deliver landscaping materials for the purpose of stockpiling to its Garden Centre on Garden Lane. Exhibit 22 contains only a sample of some of the Haul Permits issued over the years. This was also a contravention of its own Stop Order and a breach of the SDAB decision of March, 2011.

The minimum fine for anyone breaching an SDAB decision is \$1,000.00 per day (Exhibit 23). These illegal Haul Permits were in existence for years, despite the safety and nuisance complaints of the legal Residents. This was to the detriment to Draper Residents who had bought lands, built homes and relied on the law and the RMWB.

There were also several RMWB officials who interfered with the enforcement of the Stop Order of 2011. At one point, several bylaw enforcement managers even threatened Residents to “back off” with their complaints on the basis that if they did not, they would be themselves “enforced against”, despite there not being any enforcement issues on their properties. Residents later found out that one of the main “enforcement” officers who had been threatening residents was in fact personal friends of Brad Friesen, Director of Dunvegan Gardens.

True to their word, the Residents were in fact “enforced” against in that several were issued warnings for various “infractions”, including having a fence that was 1 ¼ inches high, grass being too high and having a Sea can as a shed (Exhibit 24). Meanwhile, the trucking that Dunvegan was conducting and which had been determined to be a safety and nuisance issue in March of 2011 continued unimpeded, with the blessing of the then RMWB Administration in the form of illegal Haul Permits and a “blind eye”.

During the relevant period after the SDAB decision of 2011, the RMWB and Dunvegan Gardens continued to do business together, with millions of dollars changing hands in money and services. When Residents FOIP’ed Dunvegan Gardens operations in Draper in late 2010, they obtained documentation that identified that just for the period between 2007 and 2010, Dunvegan Gardens had millions of dollars in contracts in the RMWB (Exhibit 25).

After this period, the RMWB continued to do business with Dunvegan Gardens. The RMWB also purchases items at the illegal retail store/Garden Centre (Exhibit 20, Pages 9 and 10). Despite this, Dunvegan Gardens had not obtained a Development Permit or a valid business license to operate its landscaping activity or Garden Centre on the Subject Lands (Exhibit 26).

Infrastructure and Illegal Commercial and Customer Traffic

Traffic statistics have been calculated by the Draper Residents through their own traffic studies. It is estimated that **Dunvegan Gardens' own illegal landscaping and stockpiling commercial traffic in Draper is between 100 to 200 vehicles a day**, using Draper Road and Garden Lane on the way to the Subject Lands. **This includes traffic that can start around 5am and can go late into the evening, even after the 11pm nuisance bylaw restrictions.** As stated above, Exhibit 20 represents a mere sample what has been witnessed over the years. **Customer traffic has been determined to be, through several video studies that were conducted, that on average, there is a customer vehicle driving on Garden Lane every 24 or 25 seconds** (Exhibit 27 and Video Exhibit 1). Based on such frequency and the number of legal Residents, **the Draper Residents estimate that 80% of all traffic entering Draper relates to the illegal commercial traffic of Dunvegan Gardens' operations in Draper.**

The RMWB did its own traffic analysis in the Summer of 2017, when it issued a document that identified that the Garden Centre generated 46 customer vehicles an hour on average during peak hours, which would translate into a customer vehicle using Draper Road and Garden Lane every 39 seconds, either going to, or leaving the Subject Lands (Exhibit 28). During promotional campaigns, otherwise known as "Special Events" (discussed below), the customer traffic can be in the thousands during one day. To put these statistics into context, the individuals who live in Draper who used to operate legitimate Market Gardens in Draper confirm that on a busy day, in the peak of the growing season, 50 customers a day was a great day.

The road known as Garden Lane has not even passed the rural residential standards test in relation to its intended use, as a road for Residents in a quiet country residential neighbourhood. This assertion is supported by the continued existence of a Development Agreement registered against the Subject Lands (Exhibit 29). Garden Lane, and perhaps Draper Road, is not anywhere near the road standard required for Business Industrial or the Highway Commercial districts (Exhibit 30, Engineering Services Standards and Development Procedures, updated June 2017, Page 4-5 and Typical Rural Approaches) and yet Draper's roads must endure such traffic.

Pictures and videos are attached (as Exhibits 27 and 31 and Video Exhibit 1) to show the frequency of traffic and the dust problems associated with "plunking" a major commercial operation in the middle of a narrow road (Exhibit 32) designed to be for residents of a quiet country district and the odd purchaser of a few vegetables during summer months.

The district of Draper also does not have its own water supply, gas supply or sewer system. Residents who bought in Draper with an expectation of having the rural quiet character have done so at an additional expected cost, being the cost of installing septic systems, having water shipped into holding tanks and purchasing propane.

Dunvegan Gardens is open almost every day. There is a reason that the Residential homes in the area have "No Trespassing" signs posted at the front of their driveways, including the driveways

of Dunvegan Garden's retail store at 128 Garden Lane and at the home of the Friesens at 116 Garden Lane (Exhibit 33 trespass sign pictures). Customers drive on an almost daily basis into the Residents' yards in Draper looking for Dunvegan Gardens retail store and Garden Centre.

Envision Wood Buffalo Plan

In 2010, the RMWB passed a document entitled the "Envision Wood Buffalo Plan". The portion that relates to Draper is reiterated in the 2010 draft of the ASP (Exhibit 34, Page 2) and all other subsequent drafts, including the last "final Draft" of the Draper ASP of November, 2015 (Exhibit 34, Page 180). The Envision Wood Buffalo Plan that was adopted by Council in 2010 and identifies that the Draper vision is:

"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."

Special Events Land Use Bylaw Amendments

The Residents of Draper have many examples over the years of various RMWB Administration's willingness to provide Dunvegan Gardens with preferential treatment. The "Special Event" bylaw amendments are just such an example.

In the summer of 2012, the RMWB and Dunvegan Gardens started to advertise a Country Fair that was being held at the Dunvegan Gardens' location in Draper. This event was not for the Draper Residents, but for others who wanted to host their event at the business address of Dunvegan Gardens at the Subject Lands. No Development Permit was issued and the Land Use Bylaw did not support this type of activity as the event was being conducted on private lands. This was an example of the marketing strategy that Dunvegan Gardens had identified as "Agritainment" in its business plan when it applied for a Development Permit in 2008 (Exhibit 35).



During one of Dunvegan Garden's Special Event brought with it approximately 3 km's of vehicles that blocked Residents for several hours.

These Agritainment “events” are something that the legitimate farming industry developed to create more customer traffic in their own commercial districts. This is nothing more than retail marketing or promotions. Dunvegan Gardens took the idea that farmers developed to increase customer traffic and their businesses and applied it to its Garden Centre/retail business. The documents that were included in the 2008 Development Permit application that was never granted included the following statements:

“The lure of agritainment.”

“What is a marketing plan?”

“The major goals of marketing are to make customers aware of your business, motivate them to visit you and encourage them to buy more when they do.”

“You should be spend – variety of promotional strategies like contests, parades, community booths, maps, tourism, cooperative efforts, sponsorship of local teams, hiring publicity person, hosting local nonprofit event, cross promotion with other businesses and more.”

“Food concessions are one the biggest selling opportunities on the farm.”

Despite the lack of a Development Permit and the legal right to do so, Executive Director of Planning, Carol Theberge, issued a non-profit group a Development Permit to hold a Halloween event at the Subject Lands in 2012 and ensured that the issuance of this Permit was advertised in the local newspaper, in advance of any amendment to the Land Use Bylaw or the issuance of the legal Development Permit (Exhibit 36).

A few days prior to the event, Council passed a “one-time” amendment to the Land Use Bylaws for the Subject Lands only to allow the one-time Halloween event to occur, despite such an amendment being in contravention of the existing Area Structure Plan and the Municipal Development Plan (Exhibit 37), based on inconsistency. The group that held this Halloween event at Dunvegan Garden that year decided to hold the event at another location in Fort McMurray after that year, and has done so ever since. In 2013, Dunvegan Gardens held its Easter Egg Hunt Special Events at Heritage Park in Fort McMurray, proving that the Subject Lands are not necessary or unique to have a promotional event.

In 2013, the Council again amended the Land Use Bylaw to allow “Special Events” to occur in the RMWB on private property. This time the amendment related to the entire RMWB, and not just the Subject Lands. The administration claimed that the purpose of the amendment was to create a method in which events could be regulated and to address certain issues, such as safety and traffic congestion, with a lengthy application form to ensure safety.

Sadly, such motives were nothing more than a pretense to satisfy the requirements necessary to justify the amendment, as it was discovered the second year (2015) after the amendment that the then Administration of the RMWB had not even asked Dunvegan Gardens to fill out an application the first year after the amendment passed by Council. The rationale that the then Administration had presented to Council to justify the amendment seems to have been for “show” only.

The Development Officer, Ilzett Thomson, granted the Permit in 2015 without obtaining the necessary safety and traffic management plan, despite such documentation being a requirement of obtain such a Permit, without discretion (Video Exhibit 2, at 19:20 of the video). Ms. Tompsen based her decision in part on the fact that the Development Officer who had granted the same Permit the previous year in 2014 had not obtained such documentation (39:00 of the SDAB video). This, despite the RMWB Administration's representations to Council the previous year that this safety requirement was the entire reason for creating the LUB amendment. The result was an event with multiple contraventions of the Permit and basic traffic and safety requirements, which can be viewed on the attached Youtube video (Video Exhibit 3).

Ms. Tompsen also believed that the Permit was compatible with the Garden Centre activity of the property (Video Exhibit 2, at 24:50). The fact that the Garden Centre was an illegal activity without a Development Permit that belonged in a larger commercial zone with proper infrastructure, instead of a quiet rural residential district, it seemed was beyond her comprehension. Ilzett Thomson was also a member of the Draper ASP team, discussed in detail below.

During the Council meetings related to the 2013 amendment, it was clear that this amendment was specifically being undertaken to accommodate Dunvegan Gardens' Agritainment activities, with former Mayor Melissa Blake making several comments about the Dunvegan Gardens' events during the meetings. Residents applied to the Court for a Judicial Review on several grounds and that matter is still pending before the Court.

Prior to these amendments and thereafter, Dunvegan Gardens has continued to hold events at its location that has increasingly created nuisance for the legal residents of the Draper Area, including an annual Easter Egg Hunt that brings thousands of non-Draper residents to the area each year and which have led to 3km traffic jams that have blocked Residents from access to their properties for hours at a time (Exhibit 27 and Video Exhibit 4).

Despite several safety and nuisance infractions that were in contravention of the terms of the Development Permits related to this event each year, previous RMWB Administrations continued to issue the same Permit over a 3 year period, ignoring the complaints and concerns of Residents. The safety to persons risks associated with holding such events included no proper walk-ways, roads or parking to accommodate the 1,000's of customers who attended each event.

It is noted that other entities and groups have consistently held events throughout the RMWB region in parks, schools and other public locations. These venues are readily available and have proper road infrastructure and parking. They also do not create nuisance to the degree experienced by Draper Residents during a Dunvegan Gardens event.

Defamation of a Draper Resident

In 2011, prior to the issuance of the 2011 Stop Order, Dunvegan Gardens started a "Save Dunvegan Gardens" facebook page with two intentions. The first was to garner support from its non-resident customers in an effort to avoid the enforcement of the law. The second reason was to defame one of the direct neighbours of Dunvegan Gardens, Andrew Thorne, who lives on Garden Lane and experiences all the traffic of this illegal business, in an effort to diminish his reputation and deflect responsibility for the illegal nuisances that Dunvegan Gardens had created.

This defamation included misrepresenting the facts about the illegality of the business and trying to make it look like Andrew Thorne was the one trying to change the law to make Dunvegan Gardens operations in Draper illegal. There was also a great deal of defamatory comments that could be described as “general character assassination”.

Dunvegan Gardens handed out post cards to its customers that attended the store in Draper that invited people to “join us on facebook at ‘Save Dunvegan Gardens’” (Exhibit 38).

This defamation has carried on up to the present day, despite the numerous SDAB decisions that have identified the illegal activities of Dunvegan Gardens. The misinformation created by Dunvegan Gardens and Brad Friesen prompted some individuals of the public to threaten Draper Residents with physical harm, on Dunvegan Gardens own facebook page.

The latest campaign conducted at the end of 2016 and 2017 involved the use of “internet trolls” who posted various pictures of Andrew Thorne and his business and portrayed him as a Nazi, among other deplorable things.

Support Dunvegan Gardens <https://www.gofundme.com/support-dunvegan-gardens>



Diane Slater, long term resident of the community and local business advocate, had warned the Draper Residents that Brad Friesen had enquired with one of her friends about doing an internet campaign for him. She was not impressed to say the least as she had become aware of the facts surrounding the matters at Dunvegan Gardens.

Dunvegan Gardens encouraged a few internet trolls to create another internet campaign in relation to its 2016 Stop Order which led to another facebook page and further defamation (Exhibit 39).



This is just an example of what was on the internet

The Thorne's warned the lawyer acting for Dunvegan Gardens to remove all such defamatory comments and untrue statements in a letter (Exhibit 40).

The Thornes did not receive any indication that Dunvegan Gardens asked anyone to remove its name or that of the Draper Residents from the internet sites. The internet bullying against them continued, up to the present day.

There is currently an ongoing police investigation and we have been given permission to disclose to you that various criminal charges are pending.

Civil Suit against the RMWB and Dunvegan Gardens

In early 2013, after witnessing continued nuisance related to the illegal operations of Dunvegan Gardens and the breaches of the then Administration of the RMWB in relation to the 2011 Stop Order, the direct neighbours of Dunvegan Gardens on Garden Lane, Andrew Thorne and Jodi Thorne, commenced an action against Dunvegan Gardens for nuisance and defamation and against the RMWB for bad faith, misfeasance in public office and negligence. The thousands of hours necessary to run such a file was outweighed by the infringement of property rights and life savings that were at risk. Many other residents wanted the action to be a class action, but the Thornes did not want the responsibility to the Community and chose to act alone in the matter.

For her part, the individual who initially operated the "Save Dunvegan Gardens" on behalf of Dunvegan Gardens also got sued. In its defense, Dunvegan Gardens stated that if there was any liability as a result of defamation, it was not Dunvegan Gardens' responsibility, but it was in part the responsibility of the individual who operated the "Save Dunvegan Gardens" facebook page.

At present, a third amendment to the Statement of Claim is prepared for filing as neither Dunvegan Gardens or the RMWB have discontinued or altered the behaviour that led to the lawsuit being commenced.

Dunvegan Gardens continues its nuisance and defamation. Dunvegan Gardens' lawyer, Sandra Hawes, even threatened Andrew Thorne and Jodi Thorne in a letter sent a few weeks prior the issuance of the 2016 Stop Order (Exhibit 41).

The New Draper Area Structure Plan and the Municipal Development Plan

Prior to the SDAB decisions of 2011, the RMWB had a Draper Area Structure Plan team formed to finalize a new Area Structure Plan for Draper (the "ASP"). Between 2009 and present day, this has not yet been accomplished, despite many documented "final" drafts, approval by the majority of Draper Residents and many documented scheduled Council Meeting dates to get the Draper ASP approved, more specifically discussed below. To provide context to this duration of time, it is noted that the first Area Structure Plan that included the Draper district took 4 months to complete (Exhibit 42).

In 2009, the RMWB decided to solidify new Area Structure Plans for all the districts. Many of the other districts of the RMWB have completed Area Structure Plans, many in 2012 and 2013 (Exhibit 43). But not Draper, despite it being ready to go to Council in 2010 and the draft being approved by the Draper Community (Exhibit 44, Page 2 to 4).

Initially, the ASP drafts identified the basic concept of preserving the rural residential character, with emphasis on single family dwellings on large acreages. In 2009, the Residents were told that they were key stakeholders of the ASP development process (Exhibit 44, Page 1).

In May of 2010, Residents were told that the draft was completed. About 40 people attended the meeting, approved the draft and were told that it would be going to Council for approval. The guiding principle and objective of that Draft ASP was to "maintain the current residential forms", "preserve the rural character of the community" and to "accommodate limited single family housing". But that Draft of 2010 that was ready to be approved never went to Council. Year after year, further meetings were held. Residents did not understand what was holding up the process and constantly raised this point at the many meetings that were held by the ASP team. The ASP team never disclosed to the Draper Residents that its goal was to legalize Dunvegan Gardens' illegal commercial activities in Draper, which is something that Draper Residents found out about later.

Slowly, the residents became aware that the ASP team was "slipping" "Uses" into the ASP drafts that were not consist with the existing legal Character of the community and were trying to characterize the illegal retail and industrial business of Dunvegan Gardens as "agricultural" activities and "Uses" (Exhibit 45). But these illegal activities are not agricultural "Uses", but retail "Uses", involving the purchase and resale of wholesale products, like any other retail store. The Residents consistently said "no" to these Uses and asked that they be removed, and wanted enforcement of the existing Land Use Bylaws.

The Residents eventually learned that the RMWB ASP team was making efforts to legalize the illegal businesses of Dunvegan Gardens located in Draper, while at the same time, avoiding

enforcement of the same activities that were creating a great nuisance and safety issues to the legal Residents. **The Residents believe that the first part of the test of issuing a Permit for any non-residential activity in Draper, is: will this interfere with the quiet, use and enjoyment of the residential neighbours of Draper or interfere with the quiet country residential Character of Draper?** The applicable LUB sections clearly were drafted in such a fashion.

At one point in 2015, after the then ASP team sent a revised draft to Residents on July 2, 2015, they received numerous complaints about inserting details not discussed and the concern about the legalizing of Dunvegan Gardens illegal operations. Comments from Residents included the following:

- 1) "I understood that the last meeting was to clarify one issue. The question is: if we are going to introduce these new policies which have not been raised for discussion, and which I believe could have great effect on our community, is a survey sufficient when previous discussions were facilitated to discuss such matters with all members of the Draper community?"

Who proposed such changes [...] and where were these changes proposed?" (Exhibit 44, Page 6).

- 2) "So the real question is why are these provisions necessary and why were they added at the last minute without proper consultation with other Draper Residents and under the guise that these issues had been discussed at the last meeting when they were never discussed" (Exhibit 44, Page 9).
- 3) "I find it rather disheartening that additional provisions have been added and are deemed topics that were previously discussed at meetings, when they were not. I have attended almost every meeting and have been updated on all topics and find this new agenda to be very supportive of only one resident, not the entire community of Draper" (Exhibit 44, Page 12).
- 4) "I apologize for not getting back to you sooner but I needed some time to digest the information that you gave me and then needed a few more days to calm myself down. To say that I am disappointed with the revisions made to the ASP (that was last presented as virtually complete I might add) is a gross understatement. I am once again asking myself the question of ... why? Why is one resident given the freedom to impose his personal commercial pursuits on the rest of our community by allowing him to inject policy into the ASP at this late in the game? Why is it that the very things that we have made very clear every step of this process that we do not want in our neighbourhood (commercial activity) suddenly emerge in the policy as being permitted under the guise of allowable home based business or agriculture activity?" (Exhibit 44, Page 13).
- 5) "I am concerned with the number of the last minute additions to the proposed Draper Area Structure plan and would like to have an opportunity to discuss them @ a meeting with my neighbours. It is obvious to me that some residents get preferential treatment, while others have to struggle to receive fair treatment" (Exhibit 44, Page 18).

- 6) “I am so disappointed having to write this response whilst on my vacation. It is not only my personal family time that is being used, but also has aggravated my mind over the past several days since I initially read the email. I am further disappointed that having to write these responses, appeals, etc. over the past 9-10 years has collectively utilized a significant amount of overall family and personal time unnecessarily. I have had to change trips out of town, modified schedules, etc. so I can personally participate in repeated appeals from various citizens in the Draper area who want to sustain their quiet, country lifestyle”

“When we moved down here (Draper), we undertook our due diligence and spoke with the Director, Manager, as well as the area planner from Planning and Development from Draper to ensure that this area would remain as a quiet residential neighbourhood We were assured that any development would suit the character and nature of the residential acreage lifestyle, particularly due to the majority of land being in the floodplain as well as the fact that there was not requisite infrastructure and multiple modes of transportation to and from the community.”

At present, the current bylaws are not being enforced, despite having various Subdivision Appeal Rulings and complaints from community citizens. I am not sure why this particular business (Dunvegan Gardens) is being provided with such leeways on their operations” (Exhibit 44, Page 19).

- 7) I’ve been a resident of Draper since 1999 and was a part of a [...] from the mid 80’s up until 2005 on Garden Lane. The family was involved with the initial workshops that created the first Area Structure Plan (ASP) for the Draper area in 1999 and it involved many weeks of discussion and hard work to perfect. The concept was country living on large acreages with small pursuits in agriculture and home based business with no nuisance noise or smells to interrupt the quality of living. I really liked the concept that was created for the area and I built my home on River Bend Close in 1999.”

The majority of residents still support and approve this old ASP, we’ve built our homes here based on an ideal you no longer seem keen on protecting. Why are we re-evaluating an ASP that the majority of residents still support? It seems as though you’re trying to fabricate details in the ASP to support commercial activity. Being a business owner and land development myself, I’m not in support of this at all. Greed should not be the driving force of our area structure plan: quality of living should be.

Is commercial business what the municipality supports? Does the RMWB have a hidden agenda? If so, you should let the Draper residence know.

It’s getting pretty tiring as a resident and one of the forefathers of development in this area, when commercial companies are constantly trying to change the bylaws to suit their needs, when they were illegal and never had proper permission to do what they are doing in the first place.

The commercial activity like Dunvegan’s landscaping, department store and aggregate supply company should be removed from this area” (Exhibit 44, Pages 21 to 23).

- 8) "Policies X, XX, XXX and IV are of great concern because a lot of these ideas have not been discussed with residents and seem to have been included to serve the commercial pursuits of one resident of Draper Road" (Exhibit 44, Page 24).
- 9) "I do feel that I have totally wasted my time attending the February and June meeting as there are many points included in this package that were never discussed by the group in attendance at either meeting. The group made it perfectly clear that commercial/industrial activity that was not allowed in our previous ASP, was not to be included in the new ASP. Better wording was requested in the new ASP to ensure that it was perfectly clear what activity was allowed and what was not" (Exhibit 44, Page 25).

Meanwhile, 4 or 5 other illegal business ventures in Draper, for the most part, were all enforced against and shut down by the then RMWB Administration.

Correspondence of Muhammad Mughal, a long term member of the ASP team during the relevant period, up to September of 2015, was obtained by Draper Residents through the FOIP process. This documentation, such as that found in Exhibits 44, 46 and 47, contains many time lines and corresponding documentation that supports the Residents' concerns related to the ASP team and the ASP's motives.

As evidenced in this documentation, the number of times that the final Draper ASP draft was ready to be submitted to Council for approval, included:

- 1) after June 24, 2010;
- 2) March 8, 2012;
- 3) April 26, 2012;
- 4) August, 2012;
- 5) November 9, 2012;
- 6) February 25, 2013;
- 7) May 13, 2013;
- 8) June 24, 2013;
- 9) November 8, 2013;
- 10) after May 26, 2014;
- 11) June 24, 2014;
- 12) November 25, 2014;
- 13) June 2015;
- 14) November 2015;
- 15) December 2015; and
- 16) February 2016 (Exhibit 46).

The number of times that the ASP team met with the Draper Residents:

- 1) November 23, 2009;
- 2) January 12, 2010;
- 3) June 24, 2010;
- 4) May 2, 2011;
- 5) March 12, 2012;
- 6) February 25, 2013;

- 7) April 22, 2013 (cancelled);
- 8) February 12, 2014;
- 9) May 28, 2014;
- 10) June 17, 2014;
- 11) February 12, 2015;
- 12) June 11, 2015;
- 13) November 19, 2015;
- 14) November 26, 2015;
- 15) February, 2016 (Exhibit 47).

It is noted that none of the customers of Dunvegan Gardens were ever invited to these meetings, as they are not relevant to the development process of the Draper Area Structure Plan, regardless of how badly Mr. Brad Friesen wants his customers to control the situation through the control of the Ward 1 Fort McMurray Counsellors that sit on Council, discussed in more detail below.

The number of drafts of the Draper Area Structure Plans (Exhibit 34) that were provided to Draper Residents:

- 1) July 6, 2010;
- 2) March 13, 2012;
- 3) May 28, 2014;
- 4) January 30, 2015;
- 5) February 12, 2015;
- 6) June 11, 2015;
- 7) July 2, 2015;
- 8) November 9, 2015;
- 9) November 19, 2015;
- 10) December 24, 2015;
- 11) February, 2016 (prepared by the Residents themselves).

All the draft ASP documents contain wording that supports the quiet country living of the residential community, **but the drafts, especially the later ones, all ignored this fundamental concept when attempting to label the new “Uses” that would bring nothing but nuisance to residents.** At one point, without input, the ASP team even attempted to re-characterize the Dunvegan “Uses” as “Permitted or Primary Uses” in the district, when in fact, they were not even listed as “Discretionary Uses” in the Small Holdings district (Exhibit 48), and without any public consultation.

The ASP team was well aware of the actual “Uses” of the Subject Lands at an early stage. For example, in 2012, Muhammad Mughal, member of the ASP team since 2009, prepared a Briefing Note to Council, dated December 3, 2012. In that report, he identified that “local economic activities in Draper are limited to Dunvegan Garden which includes a garden centre, market garden, gift shop and landscaping business” (Exhibit 49). Despite the legal requirement to inform Council of all relevant facts, this Briefing Note to Council did not disclose at that time that the only activity with a Development Permit was a Market Garden or that the other activities had been ordered to be removed in September of 2011 by the SDAB. And yet, the ASP team never labeled any of these items as anything but agriculture in the meetings with the public or in its draft ASP’s.

After each public meeting, the RMWB ASP team would “go back to the drawing board” make further changes, and come back with further drafts, that still attempted to legalize Dunvegan Gardens, using different terminology, without Resident input and without any discussion from one meeting to the next. Dunvegan Gardens never made any public comments at any of these meetings that would identify that they wanted its illegal businesses legalized through the ASP. Brad Friesen, Director of Dunvegan Gardens, consistently took the position that Dunvegan Gardens was always legal in Draper.

On March 12, 2012, Dunvegan Gardens made the following comments in a feedback form related to the latest ASP draft:

“The residents of Fort McMurray want to make great records as a “community in Bloom” community and there aren’t any other local options where you can obtain quality stock in order to enhance their yards and the community. Therefore, we are happy to hear that this updating of the ASP will not negatively impact Dunvegan Gardens and Greenhouse” (Exhibit 45).

We take this as an admission that the landscaping materials, ordered to be removed from Draper, had not been removed as ordered in September of 2011 by the SDAB.

In another comment made at the same time, Dunvegan Gardens stated:

“Dunvegan has spent millions of dollars building up and spending lots of money to promote their business. This is demonstrated by the number of people who want to come to the gardens and the greenhouse. Once Dunvegan’s lease was up in the Gregoire area, it only made sense they move closer to their core business operations. They did go through the Municipality to develop their greenhouse as well as their lands. This was in their original business plan and the Municipality knew what their proposed plans were” (Exhibit 45).

It is the Residents opinion, that this is the key to the motivation of the previous RMWB Administrations to support an illegal business, all these years, contrary to the SDAB decisions of 2011 and the latest attempt to rezone the Subject Lands. The Administration of the RWMB at that time was aware of all of these intended “Uses” when the application was made in 2008 and should have rejected the application, but instead allowed a “Garden Centre” building to be built without a Development Permit or the legal right to do so.

Some assistance in the form of the political interference of the Mayor and at least one other Counsellor also assisted in keeping the illegal business open all these years. Former Mayor Blake even promoted Dunvegan Gardens’ store on a local radio station at a time when she knew that it was not legal.

The “plan” was to allow Dunvegan Gardens’ illegal business to continue, and to legalize the illegal business without Resident disclosure in the new ASP. Fortunately, as one Resident later stated at an ASP meeting, the residents were not “that stupid” and the RMWB ASP team was unable to realize on its plan of legalization of a business that is in complete contrast to the

Character of the district. But this point will be discussed in more detail below in relation to the issues of bias, bad faith and proper planning purpose of these proposed amendments.

Residents believed and voiced their concerns that these Uses being inserted were retail, industrial and commercial in nature to the extent that they were far outside the scope of the Character of the Draper district, at every occasion. Each time, the ASP team would deny such motives and “try again” to legalize the businesses through new ASP draft terminology.

In October of 2011, the RMWB passed a Municipal Development Plan (Exhibit 37), that identified in relation to Draper, on page 78, the following:

“Protected Character of the Residential Communities”: “there are communities in the region that are not intended to develop into communities that offer a wide range of housing options, land uses, or services. These communities including Draper [...] are almost entirely residential in nature with a specific form of development and a consistent, prevailing density. These communities will be protected from development that would adversely impact their existing character. Growth will be accommodated only to the extent of capacity, that is, where there is the ability to extend the existing pattern of development within the boundaries of the community.”

“Preserve residential character of Draper”: “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 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.”

This document contains very specific wording that clearly sets out the Character of the district of Draper, and what is to be protected. There is nothing about installing one of the largest retail stores in the region, a Walmart or a Canadian Tire. It specifically states that Draper is not intended to be developed into a community that offers a wide range of housing options, land uses, or services. Draper is not even permitted to be developed with various housing options, much less activities that are in line with commercial, retail or industrial “Uses”. The wording of this Statutory Plan is not inconsistent with the current Area Structure Plan (Highway 69/Clearwater River Valley Area Structure Plan).

The Municipal Development Plan also identifies Draper as an “Area of Stability” on Page 50, and that “areas of Stability are locations where rapid growth is not desired and where the existing character and structure of the community is to be respected” (Exhibit 37).

Despite the requirement under the *Municipal Government Act* to ensure that the new ASP was consistent with the Municipal Development Plan (discussed in more detail below), the ASP team continued to push Dunvegan Gardens’ activities as agricultural “Uses”. The residents consider that the ASP team was acting in a bias and partisan manner. The ASP team appeared completely “deaf” to the concept that the businesses were not agricultural pursuits and that they were of great nuisance due to their nature and size of the operations.

At one point during a meeting with the ASP team, Residents had to explain to them that the Greenhouse/Plant Nursery (which is the LUB definition of a Garden Centre) was not an agricultural "Use", but a retail industrial "Use" as it involved the selling of retail goods like any other retail business. After pointing out that the Greenhouse/Garden Centre was a "Use" only allowed in the Highway Commercial, Business Industrial and Commercial Hamlet districts of the LUB, an ASP team member had to actually look it up in the LUB, in front of the Residents to confirm such information.

In its last version of its draft ASP issued in November of 2015, the ASP team even added activities of an agricultural nature that had no realistic place in this part of the Province, much less the residential area of Draper. Such Uses included pig farming, fish farming and the use of Aerial spraying, which of course had never been discussed with Draper Residents. No such activities have ever been conducted in the region.

At times during this long process, the ASP team would ask for a survey to be completed. Many Residents completed the surveys, but the results were consistently ignored. In January of 2016, the Residents had finally had enough of the misrepresentations of the ASP team and returned a survey with an added note that stated: "I want the existing Area Structure Plan of 1999 and the existing Land Use Bylaws that relate to the Draper to remain unchanged. I do not want any of the amendments contained in the December 24, 2015 draft to remain. I want enforcement of the existing Land Use Bylaws" (Exhibit 50 is an example of the Survey, which we estimate 80% of the participants signed and provided to the ASP team). Exhibit 50 was supposed to be a survey about the various definitions related to commercial activities, such as the retail Garden Centre, but that got left off of the survey and added to the ASP draft as if it had already been discussed and agreed to, which it had not.

Through the FOIP information of Muhammad Mughal, Draper Residents learned that the ASP team had had separate meetings with Brad Friesen, Director of Dunvegan Gardens, to determine how to make the Subject Lands more profitable (Exhibit 48). This explained in part why the ASP team was always inserting "Uses" into the documents that were never discussed in public, but which were always being added to the draft ASP.

The Residents now know, as a result of the FOIP documentation obtained in the year 2017, that the ASP team had been misrepresenting themselves to Draper Residents for a number of years during this process. For example, at a meeting on February 12, 2014, Residents walked in to the meeting to find a board with the list of "Uses" intended for the Small Holdings district. "Intensive Agriculture", which is in the LUB as a "Discretionary Use - Planning Commission" Use was listed as a "Permitted Use". Likewise, "Single Detached Housing" was removed from the "Permitted Use" category and was now listed as a "Discretionary Use".

When a Resident questioned the ASP team about it, a team member changed it on the board claiming that it was an error (the attached pictures in Exhibit 51 show the different marker colour that was used to make the requested change). Residents now have access to an email between ASP team members dated March 17, 2015 whereby it was disclosed that the ASP team, despite overwhelming conversations with Draper Residents to the contrary, intended on replacing the residential character of the Small Holdings district with "Intensive Agriculture" as the primary "Use" in the Small Holdings district (Exhibit 48).

This fundamental change, done without public consultation or knowledge, could have had something to do with the fact that there is a statute in Alberta entitled the *Agricultural Operation Practices Act* that prevents nuisance civil suits against someone who is conducting a legitimate agricultural operation and who is compliant with the Land Use Bylaw. As stated above, such a lawsuit was already underway against both Dunvegan Gardens for nuisance and the RMWB for acting in bad faith and negligence.

This, even though the majority of Draper Residents had built homes in the district and the fact that any such change would have been, if successful, inconsistent with the Municipal Development Plan, a contravention of the MGA and a complete change to the Character of the Draper district, without Draper Resident endorsement.

At one point, after meeting with Residents, **Muhammad Mughal voiced his concern to another ASP team member and stated that what the ASP team was doing should stop (Exhibit 52). He identified that the team was adding policies that conflicted with the discussions and facts that were presented to Residents at the last ASP meeting and that 98% of the Draper Residents wanted to see the community composed as primarily residential units on large acreage lots.** Sometime in 2014 or 2015, the ASP team told Draper Residents that it was receiving pressure to complete the Draper ASP and send it to Council as soon as possible. That completion never occurred.

After several further years of attempts to legalize Dunvegan Gardens without Resident approval, the Residents finally had enough and created their own draft ASP, which was presented to the ASP team in February of 2016. Despite the then Director of Planning and Development, Bradley Evanson, stating that the ASP for Draper was going to Council as soon as possible, no version of the ASP was provided to Council, not during a public Council Meeting, in any event.

After the ASP team leader had made false statements during a meeting in November of 2015 to the Residents during an ASP meeting, the Residents recorded an audio of the last meeting in February of 2016 which is provided herein (Audio Exhibit 1). During that meeting, the mistrust of the ASP team, the issue of misrepresentation to Residents, and the introduction of the Residents version of the Draper ASP was addressed.

As an example of what occurred at the last ASP meeting, some of the comments made by some of the Residents included:

- 1) Daphne van t'Wout, after being frustrated by the comments being made by the ASP team, stated at 12:06 of the audio recording:

“Can I just stop you because I am tired. I have been here 10 minutes, 20 minutes and I am tired of listening to it already. Your survey got returned to you because your survey was an insult to us. That’s why you got so many back like that. When we left here at this last meeting that survey was supposed to include definitions with regards to Intensive Agriculture, Market Garden and a whole bunch of stuff, and instead it just came out as Recreation only.

And your definitions got inserted into your final draft, so your residents were angry. That's why you got them back like that. That basically said, your survey is crap. And that's why we handed it back to you. Your question there, are these the Uses you are looking for, what do you want? Here, here's what we want. We did it ourselves. We have an area structure plan, I have 18 people in this room right now that have signed off on it and said we'll go for it. Go for it, this is what we want. We took your area structure plan that you gave us on November 19th, we made the changes to it that we are in agreement for, there it is, done. Take it to Council and see if they want to pass it. We're done. You say this is a one year timeline. We've been at this for 5 years! There is an agenda here! We're not stupid! We know exactly what the agenda is and we're done. We're done with this. I stand up here and listen to you say 'there's a discrepancy'. There's a discrepancy, do you think? Did you see the definitions that you sent to us? I'm angry! I'm done! I'm done!! There has been an agenda here for 5 years! Do you want to see it, here it is....".

Daphne van t'Wout then proceeded to give copies of the Draper Area Structure Plan that was prepared by the Residents to the ASP team, the Director of Planning and Development and the Executive Director of Planning, along with the few other Draper Residents who supported the commercialization of Draper, including Brad Friesen and the few other people that the Residents refer to as the "Stop Order club".

After explaining the Residents' Draft ASP, which promoted the original 1990's concept of quiet, use and enjoyment of residents on large lot acreages and market gardens and which was not inconsistent with the terms of the relevant portions of the Municipal Development Plan, Ms. van t'Wout went on to say, in relation to Dunvegan Gardens illegal businesses in Draper, at 15:42 of the audio recording:

"What you are asking us to do as residents, and we have been fighting this for 6 years, longer, 6 years, fighting this, and you say this is already in our community. Yes it is. But don't take the Municipality's lack of enforcement as a sign that we are OK with it, or that it is acceptable in our neighbourhood. Just because its already there we are not willing to accommodate it. We might have a 'crack house' too but we're not putting that in our Area Structure Plan either. OK? [...] No, not a snow ball's chance in hell are you going to get us to agree with this, not a chance..."

2) At 18:20 of the audio recording, Ms. van t'Wout also stated:

"Not only did you legitimize everything that we have been fighting against, it was an insult! We have been fighting for 5 years against the very definitions that you just inserted into our Area Structure Plan"

3) John Archer, Resident stated at 18:45 of the audio recording:

"We wanted you to listen buddy! We just wanted you to listen for 6 years!"

4) Andrew Thorne stated at 29:50 of the audio recording:

“There is no trust here.”

- 5) Tracey DeMartin asked, in relation to the new commercial activities that the ASP team had put into the ASP without discussion at 33:50 of the audio recording:

“Why are you fighting so hard to include this? Why are you changing it?”

- 6) Jodi Thorne stated at 33:58 of the audio recording:

“One person has this stuff down there.”

- 7) Andrew Thorne asked at 34:02 of the audio recording:

“Who told you to put this in?”

- 8) Daphne van t’Wout asked at 34:12 of the audio recording:

“Why are you not listening to the majority on this?”

- 9) At 1:19:03 of the audio recording, the following comments were made:

Jodi Thorne: We are only asking that the existing bylaw be upheld and not changed to legalize something that is not presently legal. If he is legal right now, nothing that we put in this will affect him, because he’s grandfathered. He claims he is legal. This won’t affect him. Why are we changing it and why is this team insisting”

Dino DeMartin: “Fighting so hard for it.”

Jodi Thorne: “... that we change?...”

Dino DeMartin and Daphne van t’Wout in unison: “fighting so hard for him.”

Dino DeMartin: “I have never seen anybody fight so hard.”

Despite the reassurances year after year that the majority of Draper Residents would decide the terms of the ASP that went to Council, the ASP Team, when cornered, did not dispute anything that the Residents said at this last meeting or offer an explanation (Exhibit 44, Page 1).

Even a member of the ASP team agreed in the February 2016 meeting that the ASP team leader had said something in the November 2015 meeting that he later denied saying about the insertion of a commercial activity into the ASP draft.

During this February meeting, the ASP team never denied its attempt to legalize Dunvegan Gardens. Not once did they deny the allegations. They did however consistently try to deflect the topic to completely irrelevant issues. To say that most residents of Draper do not trust the RMWB ASP team would be an understatement of grand proportions.

And what kind of unreasonable things were the Residents of Draper asking for in their ASP? The continuation of what was promised to them when the RMWB passed the existing ASP and applicable LUB. Not some sort of contrasting industrial/commercial/retail 60 acres zone at the end of one of the district's dirt roads and that creates nothing but nuisance and destroys any semblance of what a quiet country residential large lot acreage community entails.

In May of 2015, Dunvegan Gardens' lawyer, Sandra Hawes, informed Andrew Thorne and Jodi Thorne, with such certainty, and not with a tone of speculation, that the RMWB was going to legalize Dunvegan Gardens. Such a comment certainly caused the Thornes to speculate as to who had been providing Ms. Hawes with such information within the RMWB at that time.

Eventually, Brian Moore, the Executive Director of Planning at the time, confirmed that the ASP team was attempting to obtain "consensus" in the draft ASP. In other words, the RWMB was trying to figure out a way, without disclosure to the community of Draper, to legalize the illegal activities of Dunvegan Gardens in Draper that the RMWB had "allowed illegally" to be conducted all these years. Up to that point, no admission was ever provided that identified this motive.

Meeting with Counsellors

After that last ASP meeting in February of 2016, there was a concern that the ASP team and Planning and Development would not be presenting an accurate Draper ASP to Council that represented the intentions of the Community of Draper or that had been endorsed by the Community. The Draper Residents decided to approach Counsellors for the first time since 2011, in an attempt to provide the facts and voice their concerns and to ensure that when the Draper ASP did make it to Council, the Council would have all the facts, as there was a concern that information was not being provided to Council about the issues in Draper.

Upon meeting with several Counsellors in 2016, it became apparent that they had been given no information about any of the issues in Draper as it related to Dunvegan Gardens. Residents presented a brief history of the issue and identified what they wanted in the ASP for Draper. As LUB enforcement is the responsibility of Administration, Councilors were not asked by Draper Residents to interfere in that process to obtain compliance in Draper.

It did not go unnoticed that almost 2 years have passed since the then Administration last told the Draper Residents that it was going to be proceeding forthwith to Council with the ASP for approval. There does not seem to be a valid reason for the delay in seeking approval from Council, other than the fact that the last Council was made aware of the concern of the Draper Residents and all the relevant facts.

The 2016 Stop Order

After 5 years of complaints related to the vast illegal activities of Dunvegan Gardens, and about a year after the Executive Director of Planning, Brian Moore, identified that Dunvegan Gardens activities in Draper were illegal, in September of 2016, the RMWB issued Dunvegan Gardens a Stop Order related to its retail store, illegal landscaping and stockpiling and the keeping of animals. The Stop Order was appealed on the basis that the activities, in the opinion of Dunvegan Gardens, were legal, and a Hearing with the SDAB was set for February of 2017.

The Stop Order contained, in the opinion of Draper Residents, several “new” false statements related to the existing Dunvegan Garden Development Permits, that contradicted previous representations made by the RMWB and the SDAB Decision of 2011 on point and the LUB.

Prior to the Hearing, in January of 2016, several newspaper articles appeared locally that identified that the RMWB had attempted several times to revoke the Stop Order after its issuance on the condition that Dunvegan Gardens apply for a Direct Control amendment to the LUB (Exhibit 53). David Leflar, Legal Counsel for the RMWB confirmed with a Draper Resident on June 1, 2017 that it was he that had suggested that Dunvegan Gardens make such an application and had agreed to revoke the Stop Order on that basis.

The “deal”, proposed by the RMWB, between Dunvegan Gardens and the RMWB Administration at that time was conditional on obtaining Council approval. It is the Residents understanding that it is not the Council’s role to control the Administration’s day-to-day duties, as per Subsection 201(2) of the *Municipal Government Act* (the “MGA”), which states:

Part 6

Municipal Organization and Administration

Council’s principal role in municipal organization

201(1) A council is responsible for

- (a) developing and evaluating the policies and programs of the municipality;
- (b) making sure that the powers, duties and functions of the municipality are appropriately carried out;
- (c) carrying out the powers, duties and functions expressly given to it under this or any other enactment.

(2) A council must not exercise a power or function or perform a duty that is by this or another enactment or bylaw specifically assigned to the chief administrative officer or a designated officer.

Logically, by the then Administration seeking Council approval, this identified that it must have been Counsellors who had pushed for such enforcement against Dunvegan Gardens, which led to the issuance of the Stop Order, after 7 years of infractions. Otherwise, Council would not have been asked to approve the deal to revoke the Stop Order.

The media reported that the then Council had not approved this move by Administration to make a deal with Dunvegan Gardens and that it wanted the Stop Order Hearing to proceed. Mr. Brad Friesen, Director Dunvegan Gardens was quoted in the media as stating that he no longer trusted Council and made claims that he was more popular than the Counsellors and alluded to them not getting re-elected if they did not support him (Exhibit 53, Page 6).

This deal to revoke the Stop Order of 2016, offered by the then RMWB Administration several occasions, was done despite the knowledge that the vast majority of Draper Residents had said “no” to such a change to the Character of the Draper community.

The media articles, contained in part, the following statements:

“Friesen notes he received a call on Tuesday afternoon saying the RMWB would drop the stop work order following an inspection of the premises on Thursday, however, a few hours later he received a call from the Municipality’s lawyer telling him the deal was off the table.”

“Antoniak notes re-zoning has been suggested to Friesen on several occasions.”

“The municipality has proposed Friesen apply to rezone his land as a Direct Control District, Antoniak said. The rezoning application usually takes about six months, and would come before council for a vote.”

“Friesen said he was open to the idea, and had worked out a deal with administration to drop the stop work order if he applied for rezoning.”

“However, on Tuesday his lawyers told him that council had rejected the idea during their in camera meeting, preferring to wait for the SDAB ruling in February.”

"They don't want to work with me on rezoning right now, so why would I work with them on rezoning right now?" Friesen said. "We'll deal with that after the SDAB." Friesen said he is also wary of rezoning the property as a Direct Control District, since this would give council control over development on the land.”

"They want me to rezone it as direct control, so why would I trust council?" he said. "I've got no faith in them."""

After the Stop Order was issued against Dunvegan Gardens in September of 2016, it sought the assistance of several individuals to start another internet campaign to create support for its pending SDAB Hearing. This led to a trip in 2017 to the Fort McMurray Courthouse to address a contempt of Court application, and then on to Dunvegan Gardens for another picture, below.



2 hrs · 🌐

The Dunvegan Defenders!



1 Share



Like



Comment



Share

Dunvegan Gardens also started a petition that it distributed across the City of Fort McMurray. Apparently, Dunvegan Gardens was unaware that a petition is not an appropriate means of avoiding a Stop Order or as a means of changing the zoning of an area, as per Subsection 232(2) of the MGA, as **rezoning involves property rights of the individual affected landowners, as opposed to the customers of an illegal retail store as it involves property rights.**

Public misinformation and incorrect information was again the strategy as people were asked to sign the petition, but were not provided with the facts surrounding the matter (Exhibit 54). The incorrect information that was circulated to the public at the time of the petition included the false statements that the operations of Dunvegan Gardens in Draper were all legal and that it had a Development Permit for its Garden Centre.

Although the petition was never submitted to the RMWB or the SDAB, Dunvegan Gardens claimed to have obtained 15,000 signatures. If true, this information supported the allegations of the Draper Residents, who had claimed for years that the illegal business had been attracting such traffic to its residential district.

The SDAB decision of 2017

Despite Dunvegan Gardens' position that it was legal and had the necessary Development Permits, the SDAB ruled that the retail store, the Garden Centre (defined as a "Greenhouse/Plant Nursery in the LUB) and the animals that were not domestic pets or that were used for commercial purposes, were illegal in Draper and had to be removed (Exhibit 55, Paragraphs 144, 145, 153 and 154).

Despite this decision, nothing has changed, at least up to this document being finalized in March of 2018. The RMWB has not enforced any portion of the SDAB decision. There are even new business ventures being conducted, such as a dog obedience course being offered in the evenings, despite the clear wording the SDAB decision that stated that Dunvegan Gardens was not allowed to make money of animals in the Small Holdings district (Exhibit 56). **The retail store was given time to relocate. Dunvegan Gardens exceeded this timeline and again breached the SDAB decision and remained open after the SDAB deadline.**

The Application to Amend the Land Use Bylaws and the Existing Area Structure Plan

Dunvegan Gardens' main defense in the law suit against it related to nuisance is that the activities are legal and that they have valid Development Permits. Likewise, the RMWB ASP team had been pushing "agriculture" and "tourism" in the drafts of the Draper Area Structure Plan to accommodate Dunvegan Gardens' existing activities.

First, Dunvegan Gardens has been denying illegality for years, and at the same time has consistently sought the intervention of RMWB officials and politicians to prevent enforcement and obtain legalization. The Direct Control "deal" was discussed and agreed upon by the RMWB and Dunvegan Gardens prior the SDAB Hearing and decision in 2017. Why would a business that truly believed that it was legal ever make such a deal or react in such a fashion and call the Council untrustworthy when the deal was called off by Council? It is the opinion of the Draper Residents that Dunvegan Gardens had known for years that it was not legal when it moved its Garden Centre from the Commercial Highway (C4) zone in Gregoire to Draper and that the business plan has always been to convert this property into a more valuable zoning to benefit the business, and not the Draper community.

Second, it is the opinion of the Draper Residents that the RMWB ASP team had for years attempted to characterize the Dunvegan Gardens illegal commercial "Uses" as "agricultural" or "tourism" Uses. By making an offer to drop the Stop Order prior to the SDAB Hearing, the RMWB Administration at that time inadvertently acknowledged that it knew that such illegal uses were not agricultural or tourism in nature and that an amendment to the existing ASP to include a list of commercial uses such as retail, retail Garden Center, office, warehouse, to name just a few, would be required to legalize the existing businesses. This completely contradicted the ASP team's representations to the community of Draper over a 7 year period.

Presently, none of the items being purchased from wholesalers and resold at the store are legal in Draper and there are no Development Permits that have been issued, or could have been issued, to legalize this business.

The Current Economy of the RMWB

Since 2014, the economy in the RMWB has suffered due to the reduction of the oil prices. Many oil plants in the area that relied on higher oil prices that operate using the SAGD process of extraction found that they were operating at a loss. Many people have since been laid off and the number of available jobs have been reduced significantly.

Between the end of the 1990's and 2008, the RMWB was in a constant state of expansion. The population of Fort McMurray more than doubled during this period. When the American finance industry collapsed in 2008, the American recession that followed affected the Canadian economy. Fortunately, oil prices at that time continued to increase and the region enjoyed an economic "reality bubble" of low interest rates and simultaneous job creation and prosperity. New oil production facilities were constantly being developed in the Region.

In 2014, after OPEC decided not to reduce its supply of oil production in the Middle East, the result was a significant reduction in oil prices and almost overnight the local economic activity plummeted as oil facilities that had a high cost of production ceased production and laid off employees and contractors.

The size of the population of the RMWB, including the project accommodations for the oil companies, according to the last few census, found on the RMWB website, is as follows:

2010: 104,338
2012: 116,407
2015: 125,032
2016: 103,880

There is no indication that the local economy has stabilized and it is expected that the population will continue to drop as there is no sign of an economic recovery at this time.

Many businesses in the region have ceased operations, gone bankrupt or relocated to other areas. Commercial rent rates that peaked in 2014 have now declined by 30% to 50% of their peak rate. Rents in the retail district that were \$50 per square foot are now in the range of \$22 per square foot.

The RMWB Existing Strategy of Commercial Land Development in the Region

As stated above, there are various documents that have been created and approved by the RMWB that identifies Draper as a quiet country residential district. This includes: the Municipal Development Plan (Exhibit 57), the Envision Wood Buffalo Plan, and the existing Area Structure Plan.

There are also several documents that identify the RMWB's established plans related to commercial development of lands in the Region. The Strategic Plan 2015 - 2017 was approved by Council on May 26, 2015 (Exhibit 58). The document states in part:

"The Strategic Plan addresses the steps the Municipality will take over the next three years, from 2015 – 2017, to address the vision and the goals of our longer-term Municipal Development Plan (MDP). Each goal and strategy within our three-year Strategic Plan aligns with one or more of the strategies from the MDP. Council's Strategic Plan sets the direction for the next three years and clarifies the important goals and accomplishments that are needed to continue to build the Region."

The document also states that the commercial development facilitation to be completed by 2017 included the following:

- Initial development of Prairie Creek Business Park.
- Initial development of Parson Creek town centre site.
- Initial development of Saline Creek commercial development site.
- South side Highway 69 industrial.

There is no mention in the Strategic Plan for the development of a 60 acre commercial zone in Draper or any reference to changing its residential Character.

The RMWB current zoning maps also identify the areas that are intended to be used for the future Urban Expansion and Rural Developments (Exhibit 59) in the region. New Highway Commercial districts and Business Industrial districts continue to be developed within these designated areas.

For example, Land Use Bylaw Amendment - Lot 2, Block 1, Plan 082 0549 - Bylaw No. 14/026 was brought to Council in 2014 (Exhibit 60). The purpose of the amendment was to re-designate Urban Expansion (UE) land to that of Commercial Industrial (C4) and Business Industrial (BI) districts just south and East of the RMWB airport. The rationale of the amendment was in part as follows:

“The area to the south and west of Fort McMurray Airport has been identified for commercial and industrial land uses in the 2011 Municipal Development Plan.”

This application is consistent with the long-term planning for the Southlands area. It will enable higher order development on the site which is expected to improve on the current standard of development along this stretch of Highway 69. A Traffic Impact Assessment has been conditionally approved and servicing details will be addressed at future stages of development.”

The Municipal Development Plan also identifies the locations where the future commercial zones are to be developed through the establishment of Urban Expansion and Rural Development zones (Exhibit 57, Pages 63 and 88, which are identified in the maps attached as Exhibit 59, Maps 7 and 8). At the time that these plans were established, the RMWB expected the population of the Region to expand to a population of 200,000 citizens. With a reduction in the population and with a shrinking economy, these strategic plans may have been excessive. Many of these designated lands may never be utilized.

The Availability of Highway Commercial (C4) and Business Industrial Lands for Sale and Lease

Ten to fifteen years ago, commercial land was in very low supply, and great demand, as rent rates continued to increase. Since 2014, that demand has significantly decreased as the local economy has suffered.

There are several lots that are currently for sale that have the Highway Commercial (C4) and Business Industrial (BI) zoning (Exhibit 61 Listings). There are also many opportunities to rent lands with such zoning. Available lots vary in sizes, and larger lots with a size of 20 acres or more are available. Dunvegan Gardens currently rents a property in the commercial district called the Prairie Creek Industrial Park that has plenty of land for sale and lease that is properly

zoned for all of its business ventures. Perhaps Dunvegan Gardens should readopt the business strategy it referred to in 2012 when it is stated “it only made sense they move closer to their core business operations”, and consolidate its operations in that legal zone.

There are also many public recreational facilities in the Region (Exhibit 61, commencing on Page 139). The RMWB also has developed a Master Plan document entitled the “Wood Buffalo Regional Indoor Recreation and Community Facilities Master Plan” to ensure that such developments are strategically maintained and planned. Accordingly, many non-profit organizations have many options to create and host a variety of events in existing locations.

The Dunvegan Gardens 2017 Municipal Election Stunt

Brad Friesen threatened Council in the January 2016 media article on the eve of the SDAB Hearing that he instigated by appealing the RMWB Stop Order, by stating:

“If we get run out of town and we got all those signatures, it’s going to tell all the council and mayor, and any of them that wish to go for re-election, they likely will not get in, because we will have more signatures on our petition to keep us around than any of them got in the last election.”

Mr. Friesen was referring to his petition that he claimed had 15,000 signatures, although the petition was never produced at the SDAB Hearing. Apparently, Mr. Friesen is now operating on the assumption that he and Dunvegan Gardens were more popular than Council. The fact that most who signed his petition were unaware of the issues, the fact that most signatures were obtained through false pretenses and that fact that most signatures were obtained through solicitation, were apparently irrelevant considerations in Mr. Friesen’s mind.

True to his word, Mr. Friesen and Dunvegan Gardens sent an email to each of the individuals running for Council on September 30, 2017, which stated:

“Good Afternoon,

I am writing to you in regards to the rezoning of Dunvegan Gardens 128 Garden Lane property. As Fort McMurray is about to vote in a new mayor and council, we feel it is important we know all the candidates views on this topic.

Last winter we had over 15,000 signatures on a petition to keep the business here in Fort McMurray all signed by local residents. We're working on rezoning our property with the RMWB. With this in mind, we are going before council in October for this. We would like to know if you are in support of this application or not and please give us a reason for your answer. We would also appreciate your reply by Tuesday October 3, 2017 as we would like to share this with our social media followers since they are also curious to know who/ who doesn't support this.

Thank you,

Brad Friesen
Dunvegan Gardens (AB) Ltd.
VP of Operations, NCSO”

For the record, Dunvegan Gardens does not operate in Fort McMurray. It operates in Draper. We also take issue with the assertion that the petition was signed by “local residents”. There may have been a few members of the community who have signed it (that we have known and who are referred to as the “Draper Stop Order club”), but most Draper residents oppose this illegal business and the manner in which the RMWB has supported it.

REASONS WHY THE “PROPOSED” AMENDMENT TO THE AREA STRUCTURE PLAN IS NOT LEGAL

There are at least 2 reasons in our opinion why the amendment to the existing Area Structure Plan being proposed cannot legally be passed by Council.

The Proposed Amendment to the Existing Area Structure Plan is Inconsistent with the Municipal Development Plan, being the Other Statutory Plan

The first reason relates to the requirement of consistency between the Statutory Plans, as set out in the *Municipal Government Act*. The amendment to the existing ASP that has been proposed would allow various commercial uses in Draper that are not presently supported by the existing ASP, but which would currently be allowed in the Highway Commercial and Business Industrial districts. Accordingly, this proposed amendment to the existing Area Structure Plan related to Draper is not within the jurisdiction of Council, as **the amendment would result in an inconsistency with the Municipal Development Plan and that is therefore not permitted by law (Paragraph 633(3)(b) of the *Municipal Government Act*.**

An Area Structure Plan and Municipal Development Plan are both defined as “Statutory Plans” in the *Municipal Government Act*. A Statutory Plan is defined in Paragraph 616(dd) of the MGA as follows:

616(dd) “**statutory plan**” means an intermunicipal development plan, **a municipal development plan**, an **area structure plan** and an area redevelopment plan adopted by a municipality under Division 4;

The MGA requires that all statutory plans must be consistent. The MGA, up until recently, stated in Section 638 that:

Plans consistent

638 All statutory plans adopted by a municipality **must** be consistent with each other.

But that rule has been moved in an amendment to Paragraph 633(3)(b) and Section 638 has been amended to not only maintain that rule, but to prioritize the provisions of the Municipal Development Plan over the terms of an Area Structure Plan, and states now in Subsection 638(2):

638(2) In the event of a conflict or inconsistency between

(a) a municipal development plan, and

(b) an area structure plan or an area redevelopment plan,

the municipal development plan prevails to the extent of the conflict or inconsistency.

The rules about rezoning an area as Direct Control are limited as any amendment is limited by the terms of, and must be consistent with, the Statutory Plans, which includes the existing ASP and the Municipal Development Plan. Subsections 641(1) and (2) of the MGA states:

Designation of direct control districts

641(1) The council of a municipality **that has adopted a municipal development plan**, if it wishes to exercise particular control over the use and development of land or buildings within an area of the municipality, **may in its land use bylaw designate that area as a direct control district**.

(2) If a direct control district is designated in a land use bylaw, the council may, **subject to any applicable statutory plan**, regulate and control the use or development of land or buildings in the district in any manner it considers necessary.

That is why, in our opinion, the RMWB ASP team has tried so often and for so long to change the ASP to legalize Dunvegan Gardens' business in Draper and characterized it as Agriculture. The MGA provision about consistency means that the Statutory Plans must not contradict each other. But these "Uses" being proposed are not agricultural in nature.

The Municipal Development Plan, Bylaw No. 11/027, adopted in October of 2011, outlines the zoning restrictions related to Draper. As stated above, in relation to Draper, the Plan requires that the Residential Character of Draper be protected, as stated on Page 78 (Exhibit 37) of the document:

"Protected Character of the Residential Communities": "there are communities in the region that are not intended to develop into communities that offer a wide range of housing options, land uses, or services. **These communities including Draper [...]** are almost entirely residential in nature with a specific form of development and a consistent, prevailing density. These communities **will be protected from development that would adversely impact their existing character**. Growth will be accommodated only to the extent of capacity, that is, where there is the ability to extend the existing pattern of development within the boundaries of the community."

"Preserve residential character of Draper": "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 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.”

This document contains very specific, absolutely restrictive wording that clearly set out the Character of the district of Draper, and what is to be protected and what is prohibited. It specifically states that the district is not intended to be developed into a community that offers a wide range of housing options, land uses, or services. Draper is not even permitted to be developed with various housing options, much less activities that are commercial, retail or industrial uses, such as those that are proposed to legalize the Subject Lands.

The Municipal Development Plan also states on page 78 that agricultural land is to be protected from fragmentation. On Page 54 of the Municipal Development Plan, it repeats this idea of protecting agricultural operations (Exhibit 57, Page 54). The Subject Lands represent most of agriculture lands in Draper. This is another inconsistency with the proposed amendments.

It is also worth noting that on page 128 of the Municipal Development Plan, it states that the RMWB will preserve the limited agricultural land available in the region (Exhibit 62). As the Subject Lands include the only vegetable garden in the region that operates commercially, the amendment to the existing ASP would seem to be in contradiction with this wording as well.

The Municipal Development Plan further identifies Draper as an “Area of Stability” on Page 50, and that “areas of Stability are locations where rapid growth is not desired and where the existing character and structure of the community is to be respected” (Exhibit 37).

The amendment to the existing ASP is inconsistent with the requirements of the Municipal Development Plan and therefore is a contravention of the MGA. The amendment requires the existing ASP to suddenly allow a 60 acre retail/industrial park to be “plunked” down at the end of a residential road in the rural residential district. Dunvegan Gardens, without Development Permits, has one of the largest retail businesses in the region that attracts thousands of customers and commercial traffic to it in Draper each year. This is an interference with the quiet use and enjoyment of the legal residents who moved and built in Draper to enjoy large lot acreages and it is a nuisance not contemplated by the Character of the district. It is not agriculture and it is not tourism. It is customer attractions or promotions bringing people to the retail store. Even if it was one of these two classifications, such a “Use” is still not permitted if it interferes with the Residential Character of the Community.

It is noted that the wording of the Municipal Development Plan is not inconsistent with the current Area Structure Plan (highway 69/Clearwater River Valley Area Structure Plan).

It is also noted that the Envision Wood Buffalo Plan of 2010 states:

“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.”

This proposed amendment to the ASP would also contradict this Plan as well, as it is a noisy commercial usage that creates nuisance that brings non-residents to the Community. There is nothing in this statement or such Plan that contemplates a commercial zone such as that proposed.

The Proposed Amendment to the Existing Area Structure Plan has No Proper Planning Purpose

An amendment to an Area Structure Plan or another Statutory Plan must be the result of proper planning. This is the law. This amendment to the existing Area Structure Plan was only proposed to ensure that the proposed amendment to the Land Use Bylaw is consistent with the Area Structure Plan, not for proper planning purposes.

The purpose of a Statutory Plan is to first plan where economic development is to take place in a region and thereafter pursue economic development within the parameters of the Plan. A Plan may be amended upon taking into account the proper planning considerations.

However, to attempt to amend a Plan whenever an economic opportunity arises for one entity without taking into account the planning considerations or the other provisions of the Statutory Plan is the opposite of planning. The concepts in this sentence, like the previous paragraph, are rules taken directly out of the relevant case law in Alberta.

In this instance, Dunvegan Gardens already operated the business in a proper location that it now wants to legalize in Draper. That 1st location on Gregoire Drive was zoned Highway Commercial (C4) and was an appropriate and legally zoned location for such business. In 2012, Dunvegan Gardens wrote the following in relation to its true motivation for moving its retail and Garden Centre to Draper, with emphasis added:

“Dunvegan has spent millions of dollars building up and spending lots of money to promote their business. This is demonstrated by the number of people who want to come to the gardens and the greenhouse. **Once Dunvegan’s lease was up in the Gregoire area, it only made sense they move closer to their core business operations.** They did go through the Municipality to develop their greenhouse as well as their lands. This was in their original business plan and the Municipality knew what their proposed plans were” (Exhibit 45).

These applications to amend the Land Use Bylaw and the existing Area Structure Plan have the same motivation. It is an opportunity for one business entity to make larger profits by using land zoned for a less profitable activity and with a cheaper value, at the expense of the legal Residents of Draper, whereas any comparable competitor would have had much higher costs to acquire land with the appropriate zoning.

The properly zoned land necessary to accommodate this type of business is currently available in several locations. According to the sign posted on the Subject lands, the amendments relate to creating a 60 acre zone whereby Dunvegan Gardens can operate the following:

- 1) Retail Store;
- 2) Food Service, Major Restaurant;
- 3) Office;
- 4) Farm Agritainment; and
- 5) Greenhouse/Plant Nursery or Garden Centre, which is a retail store (as decided by the SDAB in 2017).

The RMWB survey also identifies several other Uses that are not contained on the sign, which include:

- 1) Intensive Agriculture that includes the use of animals and livestock for commercial purposes;
- 2) Commercial Recreation Facility, Outdoor, that includes such things such as amusement parks, go-cart tracks and mini-golf; and
- 3) Events for things such as weddings, birthdays and parties, among other things.

Dunvegan Gardens also added “Breweries, Wineries and Distilleries” to the list in its Applications, just recently.

“Farm Agritainment”, Events and Special Events, as it is defined in the proposal, is very similar to the definitions of Commercial Recreation Facility, Outdoor and Indoor, and Animal Service Facility Major and Minor, which are defined in the LUB as:

ANIMAL SERVICE FACILITY, MAJOR means development for the purposes of treatment, boarding, training, or grooming of animals and includes retail sales of associated products. This may include such uses as veterinary clinics, grooming, boarding and breeding kennels, impounding and quarantining facilities, and animal shelters, but does not include the sale of animals.

ANIMAL SERVICE FACILITY, MINOR means development for the purposes of out patient care treatment and grooming of animals and includes retail sales of associated products. Typical uses are pet grooming salons and small animal veterinary clinics.

COMMERCIAL RECREATION FACILITY, INDOOR means a facility in which the public participate in recreational activity, and without limiting the generality of the foregoing, may include amusement arcades where more than five mechanical or electronic games are provided, billiard or pool halls, bowling alleys, fairs, racquet courts, roller skating, gymnasiums and simulated golf.

COMMERCIAL RECREATION FACILITY, OUTDOOR means a development providing facilities for entertainment and amusement activities which primarily take place out-of-doors, where patrons are primarily participants. Typical uses include amusement parks, go-cart tracks, and simulated golf establishments.

Surely these definitions are close enough in nature that it could accommodate “Farm Agritainment”, if any alteration is even required to do so.

All of these “proposed” Uses of the Subject Lands, along with many of the other illegal “Uses” that are being conducted on the Subject Lands, are already allowed in various zones with the RMWB’s districts, including Commercial Highway (C4), which includes:

108. C4 Highway Commercial District

108.1 Purpose

The purpose of this District is to provide for the development of commercial and related uses which require large sites, and locations along primary highways, secondary highways, and urban arterials, that are intended to serve Wood Buffalo residents and the traveling public.

108.2 Permitted Uses*

The following are permitted uses:

Accessory Building

Animal Service Facility, Minor

Automotive and Equipment Repair

[...]

Commercial Recreation Facility, Indoor and Outdoor

[...]

Park

Parking Lot/Structure

Retail, Convenience

[....]

108.3 Discretionary Uses - Development Officer

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

[...]

Farmers/Flea Market

Food Service, Drive-In or Drive-Through

Food Service, Major Restaurant

Food Service, Minor Restaurant

Food Service, Mobile Catering

Food Service, Take Out Restaurant

[...]

Liquor Store

[...]

Nightclub

Office

Project Accommodation

[...]

108.4 Discretionary Uses - Planning Commission

The following are discretionary uses that may be approved by the Municipal Planning Commission:

[...]

Animal Service Facility, Major

[...]

Carnival

[...]

Contractor, General

[...]

Greenhouse/Plant Nursery

[...]

Spectator Sports Facility

108.6 Additional Provisions (Which apply to BI lands in the TaigaNova Business Park)

[...]

(d) Discretionary Uses – Development Officer

Notwithstanding section 108.3, the following are discretionary uses that may also be approved by the Development Officer:

Accessory Building

Animal Service Facility, Major & Minor

[...]

Automotive and Equipment Repair

[...]

Carnival

[...]

Commercial Recreation Facility, Indoor

[...]

Greenhouse/Plant Nursery

[...]

Office, if located above first level

Park

Parking Lot/Structure

[...]

Retail Store, Convenience

(e) Discretionary Uses – Planning Commission

Notwithstanding section 108.4, the following are discretionary uses that may be also be approved by the Municipal Planning Commission:

Farmers/Flea Market

The Business Industrial (BI) zone also allows such uses sought to be included into Draper's Rural Residential district:

111. BI Business Industrial District

111.1 Purpose

The purpose of this district is to provide for the development of a wide range of compatible commercial businesses and general industrial uses in the Urban Service Area, and in the hamlets of the Rural Service Area, which do not adversely affect surrounding non-industrial uses through the generation of emissions, noise, odors, vibrations, heat, bright light or dust.

111.3 Discretionary Uses - Development Officer

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

Accessory Building

Animal Service Facility, Major and Minor

[...]

Automotive and Equipment Repair and Storage

[...]

Contractor, General and Limited

[...]

Drinking Lounge, Major

Drinking Lounge, Minor

[...]

Food Service, Drive-In or Drive-Through

Food Service, Minor Restaurant

Food Service, Mobile Catering

Food Service, Take Out Restaurant

Fleet Service

[...]

General Industrial

[...]

Office

Parking Lot/Structure

Project Accommodation

[...]

Retail Store, Convenience

[...]

Warehouse and Storage

111.4 Discretionary Uses Planning Commission

The following are discretionary uses that may be approved by the Municipal Planning Commission:

[...]

Bulk Oil and Chemical Storage

Carnival

[...]

Spectator Sports Facility

[...]

111.9 Additional Provisions (Which apply to BI lands in the TaigaNova Business Park)

[...]

c) Discretionary Uses

Notwithstanding section 111.3, the following are discretionary uses that may also be approved by the Development Officer:

[...]

Carnival

Greenhouse/Plant Nursery

[...]

Office

Park

[...]

d) Discretionary Uses Planning Commission

Notwithstanding section 111.4, the following are discretionary uses that may also be approved by the Municipal Planning Commission:

[...]

Food Service, Drive-In or Drive Through

Food Service, Major Restaurant

Food Service, Minor Restaurant

Food Service, Mobile Catering

Food Service, Take Out Restaurant

There is currently land available, for sale or rent, in large quantities, in the RMWB region that is perfectly suitable for this type of development (Exhibit 61), including several properties that are over 20 acres in size.

There are also other areas that have been designated in the RMWB Region for commercial expansion, much of which has highway access, which are identified as UE and RD zones (Exhibit 59, Maps 7 and 8) that are currently adjacent to new Commercial Highway (C4) and Business Industrial districts.

The Garden Centre, retail store, office, restaurant and Farm Agritainment do not need the vegetable garden or the corn maze to exist. These activities are mutually exclusive.

Dunvegan Gardens has three main businesses that it operates in Draper:

- 1) Landscaping and stockpiling, using commercial vehicles and dump trucks;
- 2) A Garden Centre/retail store and its promotional campaigns; and
- 3) A Market Garden that grows a few vegetables for sale and a corn maze.

The law of Alberta related to the test to determine if proper planning purpose exists for an amendment, is that it is only legitimate if an amendment is done solely for proper planning purposes.

A following is a list of brief reasons why this amendment to the Area Structure Plan is not for proper planning purposes, in the opinion of the Draper Residents who oppose it:

- 1) There are other zones available for all of these retail/industrial/commercial “Uses”, in some cases, all in the same appropriate zones, in the urban service areas of the Region. The purpose of a Statutory Plan is to first plan where economic development is to take place in a region and thereafter pursue economic development within the parameters of the Plan. This proposed amendment is not based on such a circumstance.
- 2) There are lands available for rent and sale in such proper commercial zones, along with many parks and recreational facilities with proper access and infrastructure components that would be better suited for these “events” that Dunvegan Gardens has used to promote its business activities. In 2013 Dunvegan Gardens held its Easter Egg hunt at the Heritage Park in Fort McMurray.
- 3) There is no proper infrastructure anywhere near the Subject Lands, including proper roads, water lines or sewer lines. The Subject Lands are located in the Rural Service area of the Region. It is in a floodplain area and it contains soil that is best suited for growing vegetables. The road called Garden Lane was never intended to be used with such frequency and still does not meet rural residential standards. The other properties in the RMWB Region that have the proper zoning are not lacking the appropriate infrastructure.
- 4) The Subject Lands are at the end of a dirt road that is used by Residents who are supposed to have the right to large lot quiet country residential living on large acreages, which of course, is “out the window” with respect to safety and nuisance due to the high volume of traffic. The existing legal uses of the district and the proposed “Uses” greatly contrast with each other, with contradictory intensities and effects.
- 5) In almost 8 years, none of the draft Area Structure Plans created by the ASP team, ever contemplated the proposed “Uses” as a possible use of the lands in Draper (Exhibit 34).
- 6) The only commercial activity not in the application is the kitchen sink, but then again, that would be in the restaurant. This is not a plan for a specific business. This is a plan to make money by rezoning an area so that it is worth more money in subdivisions and resales (Exhibit 8).
- 7) This development is not for the Residents of Draper, it is for the Owners of the Subject Lands and for the non-resident customers of Dunvegan Gardens. Most Draper Residents do not even shop at Dunvegan Gardens out of disgust and out of principal. Draper Residents are not 2nd class citizens to Fort McMurray residents. Draper is not a neighborhood of Fort McMurray. It is a separate Community. Over the past 8 years, Dunvegan Gardens has been “stealing” something that does not belong to them from Draper Residents, being quiet use and enjoyment of their properties as they were designed and planned to be enjoyed. The major service industries contemplated in the

RMWB Region are contemplated to be in the City of Fort McMurray, where the infrastructure exists, including ample roadways, water and sewer.

- 8) As this essentially is the only agricultural land in the Region, replacing it with a 60 acre Commercial Highway (C4) district or a Business Industrial (BI) district is in contravention with the Statutory Plans.
- 9) Would these applications to amend the LUB and the ASP even be considered if Dunvegan Gardens did not already operate these commercial “Uses” illegally on the Subject Lands, without enforcement? Not likely, not with so many other available locations that are better suited with proper infrastructure. Dunvegan Gardens already operated its Garden Centre at another location and nothing is preventing it from doing so again. The proposed amendments, if passed, would bring very contradictory types of “Uses” to a quiet country residential district, that will have the effect of changing the Character of the district. There is a lack of logical planning existing with these proposals.
- 10) Planning law and zoning is not supposed to be perverted for the purposes of increasing the profit margin of illegal businesses at the expense of others. In 2012, it was Dunvegan Gardens that stated in writing that “Once Dunvegan’s lease was up in the Gregoire area, it only made sense they move closer to their core business operations.”
- 11) The illegal activities being conducted on the Subject Lands are a major nuisance. To provide perspective, a Home Business, that is allowed in the district, has strict guidelines concerning customer traffic and activity. You could not find two more contrasting Uses than that proposed and the current allowable legal “Uses”, which dictate quiet “Uses”.
- 12) The proposed “Uses” are not of a “unique form or nature not contemplated or reasonably regulated by another district”, which is a requirement for rezoning an area as Direct Control. On the contrary, the proposed “Uses” fit perfectly within several of the commercial zones identified above, such as the Commercial Highway (C4) and Business Industrial districts. The existing legal “Use”, being the Market Garden, is already allowed on the Subject Lands and is mutually exclusive to the other current illegal “Uses” that are proposed to be legalized.
- 13) Amending a Land Use Bylaw or a Statutory Plan for the purposes of legalizing a “Use”, is not a proper planning purpose. After 8 years of illegally using the Subject Lands in such a manner, this amendment has clearly been made to legalize the existing illegal “Uses”. Timing is everything.
- 14) The Residents of Draper, with an overwhelming majority, have already participated in the process of creating the terms of its new Area Structure Plan and it does not include any of the proposed “Uses”. Were the Draper Residents being unreasonable all those years asking that their quiet country residential district be maintained? We do not believe so.
- 15) The Subject Lands are not necessary for the “Uses” that have been proposed. These “Uses” can be conducted on other lands in many commercial zones.

- 16) These amendments were proposed by the previous Administration of the RMWB on the basis that Administration would revoke a Stop Order upon Dunvegan Gardens making the application to rezone for Direct Control, without Council approval.
- 17) The various Administrations of the RMWB knew for years that the illegal “Uses” existed on the Subject Lands and purposely avoided enforcement, despite the constant requests and complaints from Residents and the safety concerns related to traffic and noise. In fact, the previous Administrations of RMWB took steps to allow it to grow its business ventures bigger each year.
- 18) Several previous RMWB Administrations breached the SDAB decisions of 2011 by issuing illegal Haul Permits to Dunvegan Gardens’ Garden Centre for stockpiling dirt materials. The minimum fine per day for anyone who allows or permits someone to contravene a Stop Order or an Order is guilty of a minimum fine of \$1,000.00 per day (as per Section 37A and 37.2 of the LUB).
- 19) Over the years, the RMWB has done millions of dollars in business with Dunvegan Gardens, despite Dunvegan Gardens not having a Development Permit or business license in relation to such business.
- 20) The Draper Residents spent about 8 years formulating a new Area Structure Plan that was supposed to go to Council many times. There were many public consultations and drafts created. The public consultation the RMWB conducted in this instance involved only a survey being circulated during a vacation month, looking for public feedback.
- 21) The population and economy has been in the decline the past few years. There is no need to expand on the existing commercial lands available in the region. This is not a situation where there are no other options or lands available in appropriate locations. At a time when there is a local shrinking population and economy and there is no demand for new commercial lands to be created, expanding the commercial zones in the RMWB, when other appropriate and designated lands are available and that have not yet been used, is not appropriate.
- 22) The timing of these amendment proposals is suspect. After 8 years of operating illegally in Draper, these Amendments have been prompted only by the decision of the SDAB and the invitation of the RMWB’s Administration of last year.
- 23) A Direct Control amendment is not possible in this instance as the proposed changes contradict the Statutory Plans, in contravention of Section 118.1 of the LUB and Section 641 of the MGA (discussed below), thus making such an amendment beyond the jurisdiction of Council.
- 24) In accordance with Section 118.1 of the LUB, Direct Control is only to be used where the control by other districts would be inappropriate or inadequate. As all the proposed Uses are listed as allowable uses in several existing districts, Direct Control is not appropriate.
- 25) A previous RMWB Administration allowed Dunvegan Gardens, in error, to set up a very large Garden Centre in a residential district in 2009, and then spent years avoiding

enforcement while an ASP team tried to legalize such infractions in a new ASP, in contravention of the wishes of the vast majority of the affected Residents, time and time again. To what end? To avoid a lawsuit with Dunvegan Gardens or to satisfy the wants of at least one existing Counsellor and former Mayor Blake and a few members of Administration who felt that they were empowered to make law, not enforce it. Then, the RMWB offered to revoke a Stop Order that Council apparently ordered to be issued. When Council said “no” to the revocation of the deal, the content of an “in camera” Council meeting was published in the media. For what purpose? To pressure Counsellors into submission? For whatever reason, it seems inconceivable that these amendments being proposed are being supported solely for proper planning purposes.

- 26) Planning law relates to the planning of human settlement. It does not seem conceivable that it is proper planning to create an ASP and LUB in 1999 only to completely rewrite them to accommodate an illegal business that moved into the district less than 10 years later with RMWB knowledge, after all of the affected Residents of Draper had already moved in at great expense in contemplation of a completely different Use and Character for the area.
- 27) How would the RMWB’s administration have responded to the Greys if they had asked, prior to the sale of the Subject Lands in 2005, to convert their 60 acres vegetable garden, located in a flood plain zone without any proper infrastructure, adjacent to the Clearwater Heritage River, in a quiet country residential district, into a zone that is best described as a Business Industrial or Highway Commercial (C4) district? What prompted the RMWB to attempt to change the zoning to legalize the current illegal activities of Dunvegan Gardens in Draper through a new ASP? The answer to both questions can best be summarized as such: but for the 50,000 square foot buildings the RMWB allowed to be built on the subject Lands in breach of the LUB and with political interference, these applications would not have even been considered by the RMWB Administration. Neither of these factors form any part of the necessary proper planning purpose that is required to amend the ASP.

REASONS WHY THE “PROPOSED” AMENDMENT TO THE LAND USE BYLAW IS NOT LEGAL

There are at least 2 reasons why the amendment to the Land Use Bylaw related to the Subject Lands, which are in the district of Draper, cannot be passed legally by Council, in our opinion.

The Proposed Amendment to the Land Use Bylaw related to the Draper District is Inconsistent with the Statutory Plans

The first reason relates to the requirement that the LUB be consistent with the Statutory Plans, as set out in the *Municipal Government Act*. The amendment to the existing LUB that has been proposed would allow various commercial “Uses” in Draper that are not presently supported by the existing ASP or the Municipal Development Plan, but which would currently be allowed in the Highway Commercial and Business Industrial zones. Accordingly, the Residents believe that this amendment to the existing Land Use Bylaw related to Draper is not within the jurisdiction of

Council, as the amendment would result in an inconsistency with the Statutory Plans and not permitted by law.

As stated above, the Area Structure Plan and Municipal Development Plan are both defined as “statutory plans” in the *Municipal Government Act*, in accordance with Paragraph 616(dd) of the MGA.

The Statutory Plans, as discussed above, contain very specific, absolutely restrictive and prohibitive wording that clearly set out the residential Character of the district of Draper, and identifies what is to be protected and prevented. It specifically states that the district is not intended to be developed into a community that offers a wide range of housing options, land uses, or services. Draper is not even permitted to develop into various housing options, much less activities that are commercial, retail or industrial uses, such as those found in the Commercial Highway or Business Industrial zones of the RMWB.

Failure to Meet the Requirements of Direct Control and the Amendment to the Land Use Bylaw

It is the opinion of the Draper Residents that this LUB amendment is beyond the jurisdiction of Council, to accommodate the proposed “Uses”, as the Direct Control rules of the LUB and the MGA have not been met.

Land Use Bylaw Restrictions

Section 118.1 identifies the purpose concerning the Direct Control district in the LUB, which states:

DC Direct Control District

118.1 Purpose

The purpose of this district is to provide for the creation of specific land use regulations where the circumstances are such that control by other districts would be inappropriate or inadequate, having regard to any applicable statutory plans, existing or future surrounding developments and the public interest.

Subsection 118.2(a) of the LUB contains the restrictions of amending a district to Direct Control, which states:

118.2 Application

(a) This district **shall only be applied** where the following conditions are met:

- (i) the development is, in the opinion of Council, considered **appropriate for the site, having regard for the policies and objectives of any statutory plan and compatibility with the scale and character of surrounding development;**

- (ii) **the use of any other district to accommodate the development would, in the opinion of Council, result in potential conflicts with existing or future surrounding developments, should the full development potential of such district be utilized; or**
- (iii) **the development is of a unique form or nature not contemplated or reasonably regulated by another district.**

Beside the inconsistency with the Statutory Plans, which is discussed above, this type of amendment for this particular development is not intended to be instigated when there is another district that exists that is appropriate or adequate for such a development.

This is not the appropriate location for this type of development, given the existing Statutory Plans and the Character of the District of Draper and its lack of compatibility with the proposed “Uses”. The existing surrounding developments in the rural residential district of Draper could not be any more “polar opposite” to the proposed “Uses”. The Subject Lands are also in a floodplain area, that is adjacent to the Clearwater River, a designated Heritage river.

Attached as Exhibit 63 (flooding pictures and map) are pictures of the flooding that can occur on Garden Lane, which cover the only road available to the customers of Dunvegan Gardens and its own commercial traffic, along with the Municipal Flood Plain map, which identifies that the Subject Lands are entirely in a flood plain.



Garden Lane looking South during a spring flood.

The proposed “Uses” are however very appropriate for other commercial zones that are designed precisely for these types of “Uses”. In this instance, the infrastructure is better suited in other more appropriate commercial zones that have water, sewer and appropriate roads. As well, the “Uses” contemplated to be added to the Draper district are already listed as allowable “Uses” in at least two of the commercial zones, such as the Commercial Highway and Business Industrial zones, and such lands are currently available for development.



Brad Friesen stops after a customer drove off Garden Lane's narrow road into a deep ditch and gets stuck.

Dunvegan Gardens has already operated the Garden Centre and retail store business in the Commercial Highway zone of Gregoire Drive that it now wants to legalize in Draper.

There is nothing unique about the proposed development. It is merely a group of separate "Uses" that can be operated in different locations, as they are mutually exclusive operations that do not require each other to exist. The Market Garden with its corn maze can continue to exist in the vegetable agricultural location of the Subject Lands. The retail store, Garden Centre, landscaping, restaurant, vehicle repair business, RV park, dirt hauling and trucking, office, restaurant and promotional events with and without animals can all be operated in one of several of the appropriate zones designed for commercial operations that have better roads, infrastructure and are surrounded by other businesses and which can accommodate the large amount of traffic that can be generated by such businesses.

This whole matter, from the beginning in 2009, is based on the motivation of Dunvegan Gardens to increase its profit margins by moving its many business ventures to a less expensive location, at the cost of the legal Draper Residents. We have no doubt that Dunvegan Gardens will not be as profitable if it is forced to operate its business ventures legally in separate and appropriate locations, but the profitability of operating a business is not a factor in determining the proper planning of a district. If Dunvegan Gardens wants to operate its businesses with an "anything for a buck" philosophy, then it must do so within the rules and laws of the RMWB.

Meanwhile, even though the Draper Residents have been told for years that they are key stakeholders in the development process for a new ASP for Draper, the vast majority's position has been ignored. A position based on maintaining the quiet country lifestyle that drew them to the area in the first place. Not an unreasonable position to take in the development process in a district with such a Character.

Statutory Plan Restrictions

The *Municipal Government Act* also has restrictions that limit the ability of a Municipality from amending a Land Use Bylaw to create a Direct Control district. Subsections 641(1) and (2) of the MGA states:

Designation of direct control districts

641(1) The council of a municipality that has adopted a municipal development plan, if it wishes to exercise particular control over the use and development of land or buildings within an area of the municipality, may in its land use bylaw designate that area as a direct control district.

(2) If a direct control district is designated in a land use bylaw, the council may, subject to any applicable statutory plan, regulate and control the use or development of land or buildings in the district in any manner it considers necessary.

As stated, Direct Control can only be adopted if the Municipality has adopted a Municipal Development Plan. That occurred in October of 2011, a month after Dunvegan Gardens was ordered by the SDAB to remove from the Subject Lands all commercial equipment and materials not being used in the activity of growing fruits and vegetables. The members of Council that adopted unanimously the Statutory Plan included current Counsellors Phil Meagher and Mike Allen and Mayor Don Scott (Exhibit 64).

There are two Statutory Plans that relate to the strategic planning of Draper, the Area Structure Plan and the Municipal Development Plan. As identified in Section 638 of the *Municipal Government Act*, the Statutory Plans must be consistent with each other and if they are not, the Municipal Development Plan takes precedence.

Subsection 641(2) restricts the Direct Control district in that such a district must conform to the terms of the Statutory Plans of the Municipality. In this instance, there are several provisions of the Statutory Plans that prevent these proposed amendments from being adopted in part or their entirety.

As identified on Page 78 of the Municipal Development Plan (Exhibit 37), Draper is to be preserved and protected as a residential district that does not allow any developments that would adversely impact its residential rural Character:

“Protected Character of the Residential Communities”: “there are communities in the region that are not intended to develop into communities that offer a wide range of housing options, land uses, or services. These communities including Draper [...] are almost entirely residential in nature with a specific form of development and a consistent, prevailing density. These communities will be protected from development that would adversely impact their existing character. Growth will be accommodated only to the extent of capacity, that is, where there is the ability to extend the existing pattern of development within the boundaries of the community.”

“Preserve residential character of Draper”: “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 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.”

The provisions of protection in this document are very clear and unambiguous. Draper is not even allowed to have a wide range of housing options, much less a commercial zone with a large retail store that brings 1,000's of customers to its location each month.

Likewise, the fragmentation of lands suitable for agriculture is to be avoided. Yet, the Subject Lands are agricultural lands that the proposed amendment to the LUB seek to rezone. The Subject Lands are even restricted from being subdivided for other purposes. There is a reason that Dunvegan Gardens did not pay much for the 60 acres in 2005.

It is also noted that on Page 128 of the Municipal Development Plan, it states that 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” (Exhibit 62). Yet, this proposed amendment to the LUB, that the RMWB Administration of last year requested, completely contradicts this intention to promote local food production, concerning the Region's only agricultural crop lands.

The Municipal Development Plan further identifies Draper as an “Area of Stability” on Page 50, and that “areas of Stability are locations where rapid growth is not desired and where the existing character and structure of the community is to be respected” (Exhibit 37).

The other Statutory Plan, the existing Area Structure Plan or “ASP” (Exhibit 65), as identified above, also indicates that there is no intention of turning Draper into a commercial, retail or industrial zone. The primary intent is to establish quiet country or rural residential acreages, with some Market Gardens.

The zoning intention of Draper in the ASP is to maintain the rural residential Character with large acreages, no high densities and no intention to create nuisance and high traffic frequencies.

The proposed amendment to the LUB (which contemplates the continued high customer traffic, Dunvegan Garden commercial traffic and noise emanating from its retail and commercial operations on the Subject Lands) is not consistent with the provisions of the ASP or the Municipal Development Plan.

**REASONS WHY THE “PROPOSED” AMENDMENTS TO THE AREA STRUCTURE
PLAN AND THE LAND USE BYLAW ARE JOINTLY NOT LEGAL:
THE EXISTENCE OF BIAS AND BAD FAITH**

Whenever a municipal administration takes a partisan approach to the development process, it is considered to be “Bad Faith” and is grounds to strike such a LUB amendment in the form of a judicial review. Frankness and impartiality are indicia of Good Faith, which is a requirement in every stage of the development process. This is the law of Alberta, as identified in the relevant case law.

If Bias is shown to have existed at any time during the development process, then the amendment is illegal. Bias on behalf of a statutory delegate is grounds for a judicial review as it is not permitted at any stage in the development process. The Courts have also determined that Bias exists if the conduct of the RMWB in the past 7 years raises a reasonable apprehension of bias in the mind of an objective observer. An amendment to settle a dispute between neighbours or a Municipality has also been determined to be bias.

In this situation, in our opinion, the proposed amendments to the Area Structure Plan or the Land Use Bylaw cannot be viewed in isolation as a separate isolated event of the RMWB or Draper. The encouragement and errors of the RMWB in allowing illegal activities and buildings to be constructed between 2007 and 2009, the ongoing legal battle for nuisance and bad faith, the 8 years of the RMWB trying to legalize Dunvegan Gardens through a new ASP by calling the same activities agricultural “Uses” and the unwillingness to enforce 2 SDAB Stop Orders and an SDAB Development Permit decision that took the form of enabling and assisting Dunvegan Gardens to break such quasi-judicial boards’ decisions, are all relevant in this matter. The only reason that these amendments were proposed is the result of all of these related events and behaviours.

The following are a list of facts or actions that, in the opinion of the Draper Residents, denote the existence of bias or bad faith over the past 9 years, commencing in 2007, up to the matter related to the 2016 Stop Order:

- 1) The RMWB issued Dunvegan Gardens 3 Development Permits that resulted in:
 - a) allowing Dunvegan Gardens to build structures that far exceeded the maximum size requirements of the district without variances;
 - b) allowing non-allowable “Uses” to be conducted in Draper without legal authority;
 - c) failing to notify in any manner anyone who was affected or who had a legal right to notice and a right to appeal the illegal Development Permits;
 - d) never revoking such Development Permits despite the legal authority to do so;
 - e) never including the Garden Centre in a Stop Order despite being fully aware of its presence in Draper without a Development Permit;
 - f) failing to comply with, and in fact breaching, at least 2 SDAB decisions, contrary to the LUB and the MGA, which required the removal of all non-Market Garden activities, including the Garden Centre and retail store; and
 - g) identifying, through former Mayor Melissa Blake and Executive Director Carol Theburge, that the RMWB did not like the decision of the SDAB in 2011 and believing that it had the legal right to ignore and breach the SDAB Orders of 2011.

- 2) Despite having a new ASP draft in 2010 that was consistent with the wishes of Draper Residents and that was reasonable, considering the existing Character of the Community, the RMWB ASP team failed to bring the wishes of the vast majority of Draper Residents to Council, over an almost 8 year period, while other similar districts completed their new Area Structure Plans. What reasonable conclusion can be drawn by Draper Residents after 8 years of the new ASP process?
- 3) The RMWB Administration of last year suggested that Dunvegan Gardens make an application to amend the Area Structure Plan despite knowing that such changes would be inconsistent with the Municipal Development Plan, in contravention of the MGA. The RMWB is only allowed, in accordance with Subsection 641(1) of the MGA, to consider a Direct Control district if it has adopted a Municipal Development Plan. Subsection 641(2) of the MGA limits the RMWB's ability to create a Direct Control district in that it must not breach the terms of the Municipal Development Plan. Last year's Administration ignored this jurisdictional requirement and the terms of the Municipal Development Plan when it offered to revoke the Stop Order that started this latest effort to avoid enforcement.
- 4) The RMWB Administration of last year suggested that Dunvegan Gardens make an application to amend the LUB to allow for a Direct Control zone, despite the requirement that it only be for a unique activity, when no activity requested to be legalized is unique or not already allowable in other commercial zones.
- 5) A previous RMWB Administration suggested that it would be taking the 2015 draft ASP to Council on the basis that the Residents of Draper had endorsed it, which would not be a true statement.
- 6) The Chief Administrative Officer conducted interviews with the media identifying that it was Council who had rejected the idea of revoking the 2016 Stop Order against Dunvegan Gardens and amending the LUB to include a Direct Control zone on the Subject Lands. The news releases occurred during the Dunvegan Gardens' petition circulation in Fort McMurray and just prior to the SDAB Hearing of February, 2017. In the past, the RMWB has consistently and knowingly left the Draper Residents to deal with the negative reaction of the non-Draper public who are customers at the illegal Dunvegan Gardens store and who do not know the facts or who do not care.
- 7) The RMWB Administration in 2008 was fully aware of the plans for the Subject Lands of Dunvegan Gardens when it made its applications in 2008, and yet there does not seem to be any indication that the RMWB informed Dunvegan Gardens that such Uses were not legal in the rural residential district.
- 8) The former Mayor of the RMWB, Melissa Blake, despite knowing that the business was illegal frequently shopped at the illegal retail store and Garden Centre in Draper and even advertised and promoted the business in the summer of 2016 on the local radio station.
- 9) During the ASP community meeting in February of 2016, one of the ASP team admitted that one of its members had lied to Residents about a "Use" that was inserted into the

ASP without consultation that was later determined by the SDAB to be a retail “Use” and not an agricultural activity.

- 10) The ASP team lied to the Draper Residents on more than one occasion about their hidden agenda to legalize Dunvegan Gardens, in contravention of the MGA.
- 11) Despite being told by the ASP team that the Draper Residents were key stakeholders in the creation of the new ASP, the reasonable requests of the majority of Residents for enforcement of the laws and the maintaining of the existing rules were consistently ignored.
- 12) The ASP team adding policies and facts to the draft ASP’s that were not discussed with Residents that were contrary to the wishes of the Residents.
- 13) Despite requesting and receiving several Residential surveys, including the survey provided to the ASP team in January of 2016 that asked for the existing ASP to be upheld and the LUB enforced, the ASP team ignored these results.
- 14) While other Residents of Draper have been enforced against for much less significant LUB infractions, Dunvegan Gardens has been allowed to continue, despite the numerous larger and illegal activities being conducted without Development Permits, the SDAB decisions that have ordered enforcement and which cannot be disregarded and activities which have created safety to persons issues.
- 15) The RMWB ASP team trying to make Intensive Agriculture a “Permitted Use” in the Small Holdings district, thereby circumventing affected neighbours’ rights to object, in accordance with Section 120.6 of the LUB, when in fact, the Uses were commercial/retail/industrial in nature and in law.
- 16) The RMWB ASP team adding agricultural “Uses” to the Draper ASP that are not reasonably possible, practical or that have never been conducted in Draper, such as aerial spraying, fish farming or pig farming, all without consultation with the Draper Residents in an effort to cloud or mask an attempt to include the illegal business operations of Dunvegan Gardens.
- 17) The RMWB Administration of last year trying to change, through its suggestions, the zoning to Direct Control at the Subject Lands, and thereby circumventing the rights of adjacent land owners and Residents who have the right to quiet country rural residential living by removing the protection of the nuisance provisions contained within Section 120.6 of the LUB, and other similar provisions.
- 18) The RMWB ASP team trying to classify a Garden Centre and retail store in the ASP process as an agricultural pursuit when it is a retail/industrial commercial activity, that has now been determined by the quasi-judicial SDAB to be retail activities.
- 19) Previous RMWB Administrations issuing illegal Haul Permits to assist Dunvegan Gardens to haul illegal stockpiling materials to its illegal Garden Centre in Draper, in contravention of the MGA, the LUB and two SDAB decisions from 2011.

- 20) The RMWB creating amendments to the LUB to legalize Dunvegan Gardens promotional campaigns at the Garden Centre and issuing an illegal Development Permit prior to such amendments, designed to encourage further customer traffic.
- 21) The RMWB doing millions of dollars in business with Dunvegan Gardens at a time when the RMWB knew that Dunvegan Gardens did not have a valid business license, was operating illegally in Draper and had no Development Permits to support such activities.
- 22) The RMWB ignoring the nuisance requirements contained in Section 120.6, every time that Dunvegan Gardens applied for a Development Permit over the years, when such Section is designed to protect the rights of adjacent land owners and Residents to have quiet country rural residential living in Draper.
- 23) The RMWB over the years consistently failing to provide Residents with the required notice and details, which is a requirement of the LUB, concerning Development Permits issued to Dunvegan Gardens in relation to activities and buildings in Draper.
- 24) The RMWB last year purposively withheld details from Draper Residents about Dunvegan Gardens' 2006 Accessory Building Development Permit that was the subject of the SDAB Stop Order Hearing in 2016, after a Resident requested such information, in contravention of the MGA and the LUB that obligates notice, and which was contradictory to RMWB representations made earlier at the SDAB Stop Order Hearing in 2011.
- 25) The RMWB allowing politicians to influence and affect the enforcement of an illegal business, contrary to Subsection 201(2) of the MGA. It appears that at least one Counsellor must have influenced Administration to attempt to revoke the 2016 Stop Order.
- 26) Allowing Dunvegan Gardens and Brad Friesen to obtain Development Permits when there is an existing breach of the 2016 Stop Order, when it is the policy of the RMWB that anyone with an existing Stop Order issued against a property is prevented from obtaining of a Development Permit.
- 27) The RMWB Administration of last year suggesting that Dunvegan Gardens amend the ASP and change the zoning of the Subject Lands to Direct Control, when the "Uses" at issue can be conducted in various appropriate zones that are in plentiful supply within the RMWB.
- 28) The RMWB administration of last year suggesting that Dunvegan Gardens make applications to amend the ASP and LUB to legalize its current operations in Draper with the promise that it would revoke its Stop Order, with the possible effect that it would interfere with the outcome of an existing lawsuit between Residents, Dunvegan Gardens and the RMWB.

- 29) The RMWB Administration of last year suggesting a Direct Control zoning, in contravention of the Statutory Plans and on the promise that it would revoke a Stop Order and ignore another, maybe an attempt to avoid a law suit with Dunvegan Gardens, as the RMWB was fully aware of the plans that Dunvegan Gardens had for the Subject Lands when it allowed Dunvegan Gardens to construct a number of buildings without valid Development Permits. This, despite the statutory obligation of the RMWB to ensure that the planning laws, including the provisions of the LUB, be enforced and upheld for all Residents.
- 30) The RMWB over the years enforcing against all other infractions in Draper, except Dunvegan Gardens, the biggest infraction in the area and one of the more significant infractions involving safety to persons.
- 31) The RMWB in the past threatening to enforce against Residents who have complained about Dunvegan Gardens and issuing warnings related to them for insignificant infractions.
- 32) After almost 9 years of allowing a business to operate illegally in Draper, the RMWB has taken many improper steps on numerous occasions, to avoid the embarrassment associated with the truth of this matter becoming known. If the RMWB were to enforce against Dunvegan Gardens and have the Garden Centre removed from Draper, the RMWB, prior to the current Administration, may have been afraid that this would lead the public to scrutinize the RMWB, its ethics, its lack of legal jurisdiction and its choice to allow an illegal business to operate at the expense of legal Residence and the legal business competitors of Dunvegan Gardens.

PUBLIC POLICY CONSIDERATIONS

While public policy considerations are not necessarily relevant to the matter of whether an amendment to an Area Structure Plan is lawful, the Draper Residents are compelled to make a few comments in this regard due to the exceptional circumstances involved in this situation.

Is this the Message you want to send to other Local Businesses?

Considering the order of events, and the behaviour of Dunvegan Gardens during the past 8 years, is this the message that you want to send to the citizens and businesses of the Region?

Rewarding a business that has:

- 1) consistently ignored the zoning laws;
- 2) consistently commenced new business operations without proper Permits in the wrong zone;
- 3) illegally moved its retail store without permission to a quiet country residential district;
- 4) ignored the Orders of the RMWB and the SDAB;

- 5) sought public support without honesty and without taking responsibility for its own actions;
- 6) sought political and Administrative favouritism to avoid enforcement;
- 7) defamed adjacent land owners who objected to such illegal activities and nuisance;
- 8) used the internet to spread misinformation and defamation, instead of arguing its case in the appropriate forums of law;
- 9) threatened Council in the media to obtain an amendment to legalize its business;
- 10) operated its businesses from an illegal location for years and enjoyed a huge competitive advantage over its direct competition, including other landscaping companies competing for RMWB contracts, retail stores and stores with a Garden Centre, making millions in gross sales when most businesses in the Region would be happy to obtain just a portion of such amounts;
- 11) failed to pay its fair share of the commercial property taxes necessary to maintain the Community and the Region; and
- 12) consistently threatened to shut down its business if it is not able to continue illegally in the wrong zone and claiming that it cannot be profitable in a legally zoned area, without evidence or justification.

Every business owner in the Region would love to be able to pay less rent or own the land where it operates its business. But the laws are supposed to apply to everyone. To allow a business to “muscle” into a district and change the entire Character of the district to benefit itself financially, when more suitable lands are readily available, seems to be an attack on the basic concept of zoning and the respect due to other owners in the area who have relied on the laws when purchasing their own properties and homes.

Such behaviour cannot be rewarded or encouraged. The laws must apply to everyone. Not just to those who do not have the audacity to do what Dunvegan Gardens has done all these years. If Dunvegan Gardens were to be successful in turning 60 acres of vegetable crop agricultural lands in a rural residential large lot acreage district into retail and commercial lands, then every other business owner in the Regions should be afforded the same treatment and the long-range planning and enforcement departments of the Planning and Development department of the RMWB should be closed to save money as their roles in our Community are clearly meaningless.

The wishes of the majority of the Draper Residents should be respected. Laws are designed to protect a community. Otherwise, what is the point of having public consultations and separate districts? Public consultations are not to be treated as a “hoop to be jumped through” or a technicality that is part of a process that can be disregarded and ignored. That is not legal. That is not part of the proper planning purpose process.

Likewise, the RMWB should not be in the business of subsidizing a business at the expense of all other competitors. Legal businesses are required to pay fair market value rent, pay commercial rate property taxes, comply with zoning laws and obtain Building and Development Permits when they build or renovate. When a business breaches a provision of the LUB, the RMWB seeks enforcement and ensures compliance and should do so every time.

The RMWB should also not be doing business with a corporation that does not have a valid Development Permit or Business License. It is not legal or appropriate.

What are the Residents of Draper Supposed to Think?

And what about the Draper Residents who bought land and built homes legally and who had expectations of living in a quiet country large acreage residential district and who did so in reliance of the ASP and the LUB, and later the, Municipal Development Plan, among other strategic planning documents?

When the Residents dared to complain to the RMWB in 2010 about the nuisance, noise and illegal businesses being conducted on the Subject Lands, they experienced the following:

- 1) the RMWB refused to issue a Stop Order against the Garden Centre and retail store in 2011;
- 2) when the SDAB ordered everything but the Market Garden to be removed, the RMWB in 2011 ignored the decision and even breached the order and encouraged illegal growth for years of the illegal business ventures of Dunvegan Gardens;
- 3) Bylaw enforcement officials who were friends with Dunvegan Gardens threatened Draper Residents with their own enforcement if they did not stop complaining about the nuisance, which included safety to persons, and health issues related to dust;
- 4) The RMWB in 2013 changed the law to legalize Dunvegan Gardens promotional campaigns that resulted in thousands of customers arriving at the Subject Lands over short periods of time;
- 5) After the SDAB decision of 2011, the RMWB ASP team tried to change the law in Draper through a new ASP to legalize Dunvegan Gardens, by calling its business “agricultural” and not retail or industrial, despite the contrasting Uses with the residential Character of the district;
- 6) Over a 7 year period, the RMWB ASP team ignored the Draper Residents right to create the laws that govern the district in relation to the new ASP, making them feel like 2nd class citizens to the Fort McMurray customers that frequent the community illegally, all these years;
- 7) At times, the RMWB also publicized with the media certain events, with the intention, in our opinion, to embarrass Draper Residents into submission; and

- 8) Despite having issued a Stop Order in 2016, the RMWB Administration of last year offered to revoke it and asked several times for Dunvegan Gardens to apply to rezone the Subject Lands and Direct Control.

FEEDBACK RELATED TO THE DUNVEGAN GARDENS' WRITTEN APPLICATION DOCUMENTATION

We have received a copy of the documents prepared by IBI Group on behalf of Dunvegan Gardens and have viewed the Boards related to the Open House that it conducted on February 27, 2018. In that regard, we have several comments to make in that regard.

The IBI Consultant who is acting for Dunvegan Gardens asked us for our feedback and invited us to its Open House, but we did neither, as these are essentially not proposed Uses, but existing Uses, for the most part, which are neither small nor agricultural pursuits, and which have eroded the Character of the Draper Community. We understand the concept and strategy completely. Continue to confuse the issue by relabeling the Uses in an effort to avoid the facts and the nuisance issue. This is not a “zebra” we are talking about, it is a “horse”, and painting stripes on a horse does not change that.

1. Lack of Infrastructure in Existence Ignored

We note a complete lack of detail related to the required infrastructure necessary to create a commercial zone. As stated above, that is because there is very little in existence. The Road is not yet up to rural residential standards (see Exhibit 29). As discussed above, the various minimum requirements for a commercial road have also not been address (see Exhibit 30). There is also the ridiculous notion of setting this up in a flood plain, as discussed above in more detail. The RMWB noted a lack of information with respect to this issue for a reason.

2. Quoting or Relying on a Non-Existent Area Structure Plan

There is at least 2 pages, starting in paragraphs 5.3.1, on pages 7 and 8 of the ASP Amendment document that relies on the Draper Area Structure Plan, which does not exist, except as a failed draft document. Highway 69/Clearwater Valley Area Structure Plan exists, the other does not. As discussed in great detail above, this was never brought before Council

3. References to the Municipal Development Plan Lack the Relevant and Specific Details

While certain provisions of the Municipal Development Plan are referenced on Page 3 of the document related to the amendment to the existing ASP, the only provisions referenced are general in nature and refer to overall growth management, responsible development, economic resilience and recreation. But it misses the whole point of the document by not taking these very basic concepts, that are most likely in every Municipal Development Plan in Alberta's communities, and plugging them into the specific provisions of the RMWB Municipal Development Plan that identify where these growths will occur in the RMWB. This, of course, is the whole point of having a Plan.

In other words, Dunvegan Gardens, through its planning consultant, has failed to address the RMWB chosen specific locations or areas that have been identified for such commercial developments, such as the newly designated commercial lands near the airport. Likewise, the missing relevant sections of the Municipal Development Plan also identify in the Plan that Draper is clearly designated as an area that is not to be disturbed or changed, but protected from such commercial developments, as discussed in great detail above. Exhibit 37 contain pages 50 and page 78 and Exhibit 62 contains page 128 of the Plan, all of which are relevant to Draper and have clear language that identifies that Draper is a protected quiet country living Community without commercial development above small agricultural pursuits and Home Businesses.

4. Miscellaneous Comments

To be clear, the SDAB ruled last year that Dunvegan Gardens has a retail store and a Garden Centre on site, which are retail activities that belongs in the retail or other industrial zones of the RMWB, such as C4 or Business Industrial zones. As stated above, there seems to be an aversion to defining these retail activities in the documents in support of these applications. Calling the activities or Uses “village Commercial/Community Greenhouse” is misleading and a misrepresentation of reality. This tactic is what the Draper Residents experienced all these years from the Draper ASP team. Calling something small or an agriculture pursuit when it was nothing more than a large retail store, or one of many promotion or marketing events.

You will note, unlike most such applications that include artists’ renditions of the concept being proposed, this one includes actual pictures of what has existed in Draper for almost 9 years, without Development Permits. That is one of the reasons that very few Draper Residents attended the open house hosted by Dunvegan Gardens in February, 2018. What more do we need to know? Dunvegan Gardens set this up without proper authority, permission or regard for its neighbours and now wants to legalize it for no other reason that because it owns the lands.

As the RMWB’s report noted, there is no thought or information in the Applications concerning the impact on the other Residents of Draper. This is because Dunvegan Gardens does not care of this effect and never has.

The Applications for Amendment also identifies that Dunvegan Gardens wants to be able to expand the Subject Lands zoning beyond the subject lands, at its own discretion, at some time in the future. Dunvegan Gardens’ lawyer, Sandra Hawes, in 2015, told adjacent neighbours, the Thornes, that Dunvegan Gardens would eventually be surrounding their home with commercial Uses. The very idea that Dunvegan Gardens would be allowed to expand its commercial zoning at its own discretion without consideration of others and without checks and balances, gives the Residents great insight into the character of the directing minds of Dunvegan Gardens.

Dunvegan Gardens should have bought land in the appropriate districts with all the money that it made in the 2000’s when Fort McMurray was expanding and while it was working for developers and the RMWB.

As of April 11, 2018, the date that this Submission is given to Council, Dunvegan Gardens illegal Garden Centre and other illegal activities in Draper remain, despite the latest SDAB decision that ordered that it be shut down on March 16, 2018.