

**FOOTHILLS COUNTY
SUBDIVISION AND DEVELOPMENT APPEAL BOARD
Development Appeal Board Decision**

HEARING DATE: AUGUST 18, 2026

BOARD ORDER: S03/2026

LANDOWNERS/APPELLANTS: NUNO AND CHERIE CANARIO

APPLICANT/AGENT: TOWNSHIP PLANNING + DESIGN INC. – ROBYN ERHARDT

APPEAL AGAINST: THE REFUSAL OF SUBDIVISION APPLICATION F2001-06SW

SUBJECT PROPERTY: PTN. SW 06-20-01 W5M (THE "PROPERTY")

BEFORE: CHAIRMAN, G. BEACOM; BOARD MEMBERS, B. DAYMENT, R. TAYLOR, B. MEYERS, B. SALTMAN, COUNCIL REPRESENTATIVE J. CALLISTER AND RECORDING SECRETARY, M. MICHAUD

DECISION:

Having been satisfied that notice of this hearing was provided in accordance with the Municipal Government Act, R.S.A. 2000, Chapter M-26;

And upon having read the materials provided, and upon having heard the representations from the Appellants, the Appellants Agent, the Planning Officer for Foothills County, and the Subdivision Approving Authority Representative with respect to the appeal filed by the Appellant in accordance with Sections 678 of the Municipal Government Act against the refusal of subdivision application F2001-06SW proposing one new 4.67 +/- acre Country Residential District lot and one new 5.72 +/- acre Country Residential District lot, with a 9.61 +/- acre Country Residential District balance parcel (The "Property").

The Subdivision and Development Appeal Board for the Municipal District of Foothills (the "Board") has decided to:

ALLOW the appeal and OVERTURN the Subdivision Authority's decision to refuse subdivision application F2001-06SW for the creation of one new 4.67 +/- acre and one new 5.72 +/- acre Country Residential District lots from Ptn. SW 06-20-01 W5M.

The application is thereby APPROVED.

CONDITIONS OF APPROVAL:

1. Subdivision to be effected by Plan of Survey, pursuant to Section 657 of the Municipal Government Act, or such other means satisfactory to the Registrar of the South Alberta Land Titles District;
2. It is the applicant's responsibility to provide a Real Property Report or an 'as built' drawing signed and sealed by an Alberta Land Surveyor, certifying the location of the adjacent municipal road(s), septic tank(s) and field(s) and water well(s) within the boundaries of the appropriate properties and that the site plan is surveyed according to municipal setback requirements;
3. Landowners are to fully execute and comply with all requirements as outlined within the Municipal Development Agreement for the purposes of grading and drainage, and any

other necessary municipal and on-site improvements as required by Council and the Public Works department;

4. Proof of adequate water supply to be provided for both new lots proposed, as per the Provincial Water Act, to the satisfaction of the County;
5. Septic Disposal Evaluations to be provided for both new lots proposed, in accordance with Part 2 Section 6(4)(b) of the Matters Related to Subdivision and Development Regulation, to the satisfaction of the Public Works department;
6. Site plan to be provided which identifies building envelopes for both new lots proposed which meets the requirements as outlined in Policy 9 under the Residential section of the MDP2010, to the satisfaction of the Public Works department;
7. Lot Grading/Overland Drainage Plans to be provided for the subject lands, to the satisfaction of the Public Works department;
8. Public Reserve: to be determined by Council, as per Section 666(1) of the Municipal Government Act and the County's Public Reserve Policy (adopted April 18/96);
9. Road acquisition agreement for the purpose of road dedication, to be executed and registered by caveat, concurrent with the Plan of Survey, with respect to an area of land 5.0 metres in width, parallel to the full west boundary of the subject parcel;
10. Road acquisition agreement for the purpose of a road dedication for a future cul-de-sac;
11. An access right of way is to be registered over a portion of the two 15.0 m panhandles;
12. Building envelopes are to be registered as Restrictive Covenants to protect views;
13. Fire Smart principles are to be registered as a Restrictive Covenant on title;
14. Applicant to provide all addressing requirements to the satisfaction of the County's GIS department;
15. Applicant to provide a complete application for development permit with respect to the sea-can currently on the property, and Relaxation of Setbacks for the Secondary Suite to the proposed new Property line which will not meet the requirements of the County's Land Use Bylaw 60/2014, to be submitted to the satisfaction of the County;
16. All accesses to be located and culverts and approaches to be installed to current Municipal subdivision road construction standards, to the satisfaction of the County's Public Works department;
17. Engineered driveways to be provided within the two 15.0 m panhandle portions of both new lots proposed, to be submitted to the satisfaction of the Public Works department;
18. All utility right of way agreements, easements, licenses and installation requirements, to be provided to the satisfaction of the County and utility companies;
19. Landowners are to pay all arrears of taxes on the existing parcels prior to finalization of the subdivision; and
20. Submission of subdivision endorsement fees.

1. APPLICATION HISTORY:

- i. The Planning Officer submitted that the subject property is an existing 20 acre Country Residential District parcel located in Division 2. The property is accessed from 96th Street W, is north of 434 Avenue W and is approximately 5 km east of the Town of Diamond Valley.
- ii. The Planning Officer submitted that the Land Use application that was provided to Council proposed an amendment to the Country Residential District Land Use rules, and if approved by Council was to facilitate the future subdivision of two 5.0 +/- acre Country Residential District lots and one 10 +/- acre County Residential District balance parcel. The application for an amendment to the Country Residential District Land Use rules was refused by Council on March 4, 2026.
- iii. The Planning Officer submitted that because only the Subdivision Approving Authority has the authority to make a decision on a subdivision application, the Appellants submitted their subdivision application.
- iv. The Planning Officer submitted that several changes have been made to the subdivision application, including: proposed new building envelopes; an access right of way from the common approach along the panhandle to a point where access to the south parcel may be achieved; and a proposed road acquisition area for a cul-de-sac turnaround on 96th Street.
- v. The Planning Officer submitted that should the Subdivision Appeal Board approve the subdivision as proposed, a Development Permit application would be required to be submitted for a relaxation of setbacks for the secondary suite, as it would not meet the required setback of 15 m to the south property line. Additionally, a Development Permit application would also be required to be submitted for the existing sea-can.
- vi. The Planning Officer submitted that the application for subdivision was provided by the Appellants on April 9, 2026 and deemed to be complete on April 17, 2026. The application was circulated to agencies including those required by the province for 30 days on April 21, 2026. The application for subdivision was provided to the Subdivision Approving Authority on July 8, 2026 and was refused. The Appellants submitted an appeal on July 24, 2026.
- vii. The Planning Officer submitted that the Subdivision Approving Authority provided the following motion: That the application for subdivision of one (1) new 4.67 +/- Country Residential District parcel and one (1) new 5.72 +/- acre Country Residential District parcel from a portion of SW 06-20-01 W5M, leaving a 9.61 +/- acre Country Residential District balance parcel be refused. Council is of the opinion that the application does not meet the general intent of the South Saskatchewan Regional Plan (SSRP), as it proposes a further built environment in an area not proposed for increased growth and development. In consideration of the criteria of the Residential Section of the Municipal Development Plan 2010(MDP2010), the application does not adequately address the intent of the residential policies with respect to the cumulative effects of the development, suitability of the subject lands for further development and the compatibility with the surrounding large Agricultural District parcels. Additionally, the proposal is not consistent with the growth objectives of the South Central District as identified in the Growth Management Strategy (GMS) and does not meet the requirements of Section 13.1.6.1 of the Land Use Bylaw 60/ 2014 (LUB).

- viii. The Planning Officer submitted that the Board may wish to consider additional development that may include: two additional houses; two additional water wells and septic systems; two (potential) additional secondary suites; an extra driveway; and added traffic.
- ix. The Appellant's Agent submitted that the subject property is located in the South Central District where moderate growth and clustered development is supported. The property is approximately 6 km east of the Town of Diamond Valley boundary and it is located along 96th Street which supports several Country Residential developments and connects directly to Highway 7W. The subject property is on a quarter section with an established pattern of fragmentation. The application aligns with the MDP2010 which directs subdivision to previously fragmented areas and is contextually appropriate with the surrounding residential uses and fragmentation.
- x. The Appellant's Agent submitted that the existing development on the subject property includes the following: a primary dwelling (1886.59 sq. ft.), a detached garage (521.29 sq. ft.), a secondary suite (1342.69 sq. ft.), two sheds (186.43 and 140.36 sq. ft.), a greenhouse (287.18 sq. ft.) and a sea-can used for storage (256.18 sq. ft.). A Development Permit application will be submitted for the sea-can. The following structures will be removed by the landowner: a pole barn, a bus shelter and a hayshed. Should the subdivision be approved, a setback relaxation would be required for the secondary suite. A Development Permit application would be provided to this end. In addition, the landowner would be required to request an additional Development Permit, as they would have an additional accessory building under table 4.2.1.7a of the LUB.
- xi. The Appellant's Agent submitted that prior to submitting the Land Use application, the landowners spoke with nine immediate neighbours and received no opposition and no requests for additional conversations about the site plans. When the Public Hearing occurred, there were a number of letters presented at the Hearing, that are also in the materials that were submitted to the Board. For the subdivision application, three letters were received from landowners in support and four in opposition. There were two area landowners that the Applicants were unable to reach.
- xii. The Appellant submitted that they have lived in the area for over 13 years, having chosen the property carefully, and invested a lot into this property with the intention to make room for family growth. Prior to purchase, the Appellants reviewed the title and sales documents, the planning policies including the MDP2010, the GMS, the LUB and applicable joint planning policies.
- xiii. The Appellant submitted that the property was and remains designated Country Residential. Nothing identified it as protected grassland, a protected viewshed, or land where subdivision could not be considered.
- xiv. The Appellant submitted that they had a full understanding that any proposals would need to satisfy County policies and technical requirements and that neighbours would be heard.
- xv. The Appellant submitted that they did not understand that expectations about views or seclusion would determine the future of their land.
- xvi. The Appellant submitted that they did not understand that neighbours' expectations dictate policy.

- xvii. The Appellant submitted that the proposal is a modest one – two new parcels, resulting in three rural sized parcels – not a dense development.
- xviii. The Appellant submitted that their experience with sheep, goats and cattle demonstrates that the land will support hobby livestock, but not a viable farm.
- xix. The Appellant submitted that their intention is to use the Country Residential land carefully, while preserving the rural character.
- xx. The Appellant submitted that they have worked with Foothills County for more than five years to receive all applicable permits, compliance and planning advice, revising concepts in response to County feedback. The application was not rushed and they did not assume approval.
- xxi. The Appellant submitted that they were transparent and made their intentions known to the neighbours over the years. With guidance from the County, they approached the immediate neighbours and those neighbours thought to be impacted.
- xxii. The Appellant submitted that the Land Use Amendment application was publicly advertised and the Subdivision application was mailed to the adjacent landowners.
- xxiii. The Appellant submitted that, to their understanding, circulation identified no fatal technical concerns.
- xxiv. The Appellant submitted that they do not minimize any concerns, nor treat planning as a vote. They are asking that limited opposition not be mistaken for unanimous community position, and that practical concerns be tested through professional design and enforceable conditions.
- xxv. The Appellant submitted that they have tried to be good neighbours by offering help and inviting discussions about the proposal. They propose retaining trees and landscaping for privacy where practical.
- xxvi. The Appellant submitted that the March land use Public Hearing was difficult and they felt ambushed. Some of the neighbours had misgivings and concerns but did not express or communicate them before the hearing. The first encounter with this opposition occurred during the hearing. The hearing felt subjective, one-sided and did not reflect the history or intentions of the Appellants. They understand why people value views, quiet and privacy, as they value them too. No protected view corridor was identified on title or purchase documents and nothing was observed that might prohibit change.
- xxvii. The Appellant submitted that they are asking that personal concerns be balanced against the planning framework, technical evidence and reasonable conditions.
- xxviii. The Appellant submitted that they are prepared to meet conditions as set out by the Board, including proof of water, septic suitability, grading and drainage plans, building envelopes, road dedications, engineered access, utilities and compliance. They are asking for the opportunity to satisfy these conditions.
- xxix. The Appellant submitted that they would like the application to be evaluated on its planning merits and for the Board to allow the appeal with appropriate conditions.

This will allow them to continue their family plan, while protecting safety, rural character and responsibilities to the community.

- xxx. The Appellant submitted that they are respectfully asking that their home and long term family investment be given the opportunity to move forward responsibly, subject to all appropriate conditions.
- xxxi. The Appellant submitted that the land is actively being used for hobby farming, including finishing and raising cattle.
- xxxii. The Council Representative submitted that the application seemed forced, and advised that Council's concerns included the proposed driveways, the slope stability on the driveways and the potential for adverse impacts to the local water aquifers.

2. POLICY ALIGNMENT:

- i. The Planning Officer submitted that both the application for Land Use as well as the subdivision application were refused as they were deemed to be non-compliant with the (SSRP), the MDP2010 and the LUB, section 13.1.6.1.
- ii. The Planning Officer submitted that the subdivision application does not adequately address the intent of the SSRP as it proposes a further built environment in an area not proposed for increased growth and development.
- iii. The Planning Officer submitted that the subdivision application does not adequately address the MDP2010 residential policies with respect to the cumulative effects of the development, the suitability of the subject lands for further development and the compatibility with the surrounding large Agricultural District parcels.
- iv. The Planning Officer submitted that the proposal is not consistent with the growth objectives outlined in the South Central District of the GMS.
- v. The Planning Officer submitted that the proposal does not meet the requirements of Section 13.1.6.1 of the LUB, which states that approval for a Land Use amendment must be granted prior to subdivision approval.
- vi. The Planning Officer submitted that the Subdivision Approving Authority's decision additionally noted the Residential policies within the statutory MDP2010, which provide that the application does not adequately address the intent of the residential policies with respect to the cumulative effects of the development, suitability of the subject lands for further development and the compatibility with the surrounding large Agricultural District parcels.
- vii. The Planning Officer submitted that with respect to the LUB, and specifically Section 13.1.6.1, the Board is to be aware that a land use amendment must first be granted approval in order to subdivide land in this district into additional lots. No amendment to the LUB was approved for this potential subdivision.
- viii. The Planning Officer submitted that while the LUB does not provide a definition of cumulative effects, the Merriam-Webster Dictionary defines this as "an effect produced by something happening over a long period of time." In considering this definition, the Board must consider whether there is evidence demonstrating that the proposed development, either on its own or in combination with other existing

or approved developments, would result in material adverse impacts that extend beyond normal expectations for the district.

- ix. The Planning Officer submitted that the Policy which formed the basis of the decision of Council as the Land Use Authority which led to the refusal of the subdivision is taken from:
 - a. The SSRP which specifies that land is used efficiently to reduce the amount of area that is taken up by permanent or long term developments associated with the built environment – land is a limited, non-renewable resource and so it should not be wasted. Land use decisions should strive to reduce disturbances on Alberta's landscape;
 - b. The MDP2010 Policy 3 which states that proposals for residential parcels should be developed to be compatible with the surrounding area and existing land uses. Consideration will be given to the density, design, traffic and the visual impact of the proposal on the adjacent lands. Proposals shall be considered on the basis of the following criteria (Section 3.7) – cumulative effects of the development;
 - c. The MDP2010 Residential policy which supports a variety of residential development forms in appropriate locations which serve to minimize the fragmentation of agricultural lands, the impact on the natural environment, and the long term financial implications to the County with Objectives being to ensure the efficient use of land for residential development in order to
 - i. 1.1 Minimize the fragmentation and conversion of agricultural land;
 - ii. 1.2 Maintain rural character and open space environments; and
 - iii. 1.3 Efficiently use existing and new infrastructure, utility systems, and services.
- x. The Appellant's Agent submitted that the proposed plan aligns with the LUB requirements for Country Residential development and has suitable developable areas for single family dwellings.
- xi. The Appellant's Agent submitted that Council was of the opinion that the application does not meet the general intent of the SSRP as it proposes a further built environment in an area not proposed for increased growth and development; however, the SSRP identifies binding and non-binding sections, with Case Law having established that only the regulatory details of the SSRP are in fact binding. The non-binding portions of the SSRP are not intended to have binding legal effects and are statements of policy to inform decision-makers and local government bodies. Council's reasons for refusal did not reference policies or regulations of the SSRP. The refusal only generally states that the application does not comply with the SSRP regarding growth and development in this area, which is not the case. Non-binding sections of the SSRP include: the Introduction; the Implementation Plan, and; the Strategic Plan. Binding sections of the SSRP are the Regulatory Details, which include: Part 1: General; Part 2: Air Quality; Part 3: Conservation Areas; Part 4: Conserved Land; Part 5: Surface Water Quality; Part 6: Recreation and Parks Areas; Part 6.1: Landscape Management; Part 7: Monitoring and Reporting. None of these binding sections apply to the application. If these were applicable, the appeal would need to be heard by the Land and Property Rights Tribunal, as they all include identified provincial interests.
- xii. The Appellant's Agent submitted that with regard to the efficient use of land – this is in the non-binding section of the SSRP – the objective is to minimize the amount of land that is required for development of the built environment over time. The strategy is that all land use planners and decision makers responsible for land use decisions are encouraged to consider the efficient use of land principles.

- xiii. The Appellant's Agent submitted that the SSRP directs land use planning to reduce the rate at which land is converted from an undeveloped state into permanent, built environment. The proposed subdivision is in a fragmented quarter section on a parcel already designated Country Residential. The application efficiently utilizes the CR land to allow infill CR development.
- xiv. The Appellant's Agent submitted that to achieve the efficient use of land principle, the SSRP advises that the minimum amount of land necessary is utilized for new development and built at a higher density than current practice. The subdivision proposes parcel sizes that are slightly smaller than others in the area to minimize the land dedicated to each new lot representing suitable density for the area while efficiently utilizing the parcel and diverting development away from Agricultural land. This principle is intended to accommodate more people and uses on less land while remaining contextually appropriate, which is consistent with this proposal.
- xv. The Appellant's Agent submitted that the SSRP additionally advises that proposals should increase the proportion of new development that takes place within already developed or disturbed lands either through infill, redevelopment and shared use, relative to new development that takes place on previously undeveloped lands. Again, this application promotes infill development on previously developed Country Residential lands to accommodate moderate growth.
- xvi. The Appellant's Agent submitted that the SSRP additionally provides guidance to plan, design and locate new development in a manner that best utilizes existing infrastructure and minimizes the need for new or expanded infrastructure. The existing road infrastructure will be used; the landowner has identified a road dedication for a future cul-de-sac, which will improve access for the entire neighbourhood. Additional municipal infrastructure or servicing is not required to service the two new lots.
- xvii. The Appellant's Agent submitted that with regard to community development in the SSRP, this relates to integrating with Agricultural land. The SSRP notes that you must identify areas where agricultural activities and associated activities should be the primary land use in the region. The Growth Management Strategy and the LUB do achieve that. The GMS identifies this South Central district as supporting moderate growth and the LUB notes that this parcel is already zoned Country Residential.
- xviii. The Appellant's Agent submitted that the GMS considers this district to be the most diverse mix of uses. The subject quarter section was previously subdivided into four lots, limiting its agricultural future in proximity to Country Residential development.
- xix. The Appellant's Agent submitted that the SSRP encourages the employment of appropriate planning tools to direct non-agricultural subdivision and development to areas where such development will not constrain agricultural activities, or to areas of lower-quality agricultural lands. The GMS and the MDP2010 provide this direction, in particular, the MDP2010 Residential and Agriculture protection policies and policies that direct fragmentation to areas such as this that are already fragmented quarter sections. The proposed subdivision is in a fragmented area and includes mitigation measures in place to ensure it will not conflict with surrounding large Agricultural District parcels.

- xx. The Appellant's Agent submitted that in consideration of the Residential Section of the MDP2010 – it is noted that Council did make reference to the Residential Section and it is suggested that the proposal does align with this policy – particularly Section 3.1 and Section 3.4, where there is no impact on the agricultural industry, and this demonstrates an efficient use of land on a parcel that is already zoned Country Residential.
- xxi. The Appellant's Agent submitted that regarding the cumulative effects of development – there is a definition in the MDP2010 that reads, "The combined effects of past, present and reasonably foreseeable land use activities over time on the environment." However, the MDP2010 does not contain a definition of or tools to determine what a "negative cumulative effect" is, and Council gave no indication of how the development would have cumulative negative impacts. There were no concerns from the County's Public Works department regarding the cumulative impacts. Additionally, no circulation comments were received from agencies such as Alberta Transportation or Alberta Environment indicating negative impacts.
- xxii. The Appellant's Agent submitted that the proposal aligns with Policy 3.8 in the Residential Section of the MDP2010 in terms of servicing the development. There is already a municipal road (96th Street) servicing the subject property, and it is additionally suitable to provide access to the proposed subdivision. Again, the Public Works Department had no concerns with the traffic on 96th Street, they supported the two approaches on 96th Street as well as the common approach and only had a recommendation for an engineered driveway for both proposed lots.
- xxiii. The Appellant's Agent submitted that the parcels are not subject to any specific restrictions as outlined in the MDP2010. The proposal additionally aligns with Section 9.2 regarding water and soils being suitable. The application proposes the same type of construction that is already seen on the ridge on adjacent parcels, where they have proven water, successfully developed and have driveways up to this ridge. While recognizing there are different conditions, there are studies that are required to prove this water under the Water Act, and it is requested that the Appellant's be given the opportunity to prove water and meet these policy requirements.
- xxiv. The Appellant's Agent submitted that the proposal also aligns with the GMS in that it is in the South Central district where moderate growth and development, particularly in locations where there is infrastructure, is supported. It also supports cluster developments where appropriate in the South Central district, and the SSRP also indicates that clustered residential development is a suitable way to efficiently use land where you direct a higher number of residences on a smaller area of land to promote this efficient use and to maximize infrastructure and land.
- xxv. The Appellant's Agent submitted that the application aligns with the purpose and intent of the Country Residential District in the LUB. The subject site is suitable for residential development as it is listed under Permitted use for Country Residential districts (Dwelling, single family). The proposed lots will be serviced by individual water wells and wastewater disposal systems. The proposed lots will bring the total lots in the quarter section to 7, which aligns with the parcel density of the Country Residential District (maximum 32 lots per quarter section). The application meets the density requirements and lot size requirements as set out in Section 13.1.6.1.

- xxvi. The Appellant's Agent submitted that the only section under which the proposed subdivision does not comply is Section 13.1.6.1 which states that a person who wishes to subdivide land in this district must first apply for and be granted approval of an LUB amendment to change the parcel size. This is not a use or a definition and is not binding on the Board – the Board may vary this standard.
- xxvii. The Appellant's Agent submitted that with regards to the provision in the LUB which requires an amendment before subdivision, in the previous MGB Board Order 029/17 Palmer v Municipal District of Foothills, the MGB found the requirement for bylaw amendment prior to subdivision to be a subversion of the Act's subdivision process as designed by legislation. Since bylaw amendments are Council decisions, this requirement essentially allows a decision of Council to deny subdivision, which is not the scheme of Division 7 of Part 17 of the Act. This order refers to section 12.1.6.1 which is the same provision for the Agricultural District; however, the same principles apply. Section 13.1.6.1 is not binding on the Subdivision Appeal Board and does not preclude an appeal, as it is not the purpose statement or listed use in the district. If the land use is in place, you should be able to subdivide as outlined in the MGA provided that sound planning principles are followed without requiring a land use amendment.
- xxviii. The Appellant's Agent submitted that the proposal is in alignment with the MGA section 654 in that the land to be subdivided is suitable, complying with the standards of the Country Residential District, the proposal aligns with the SSRP and MDP2010 (statutory plans), and with uses in the LUB under the Country Residential District. Additionally, the proposal aligns with the intent and purpose of the Country Residential District. The subdivision would not interfere with the existing agricultural operations adjacent to the subject property, or the use, enjoyment or value of the neighbouring parcels. The proposal would not negatively impact water or other amenities in the neighbourhood, and would not unduly impact traffic or noise or have other offsite impacts.
- xxix. The Appellant's Agent submitted that as per the MGA, the Board hearing this appeal must have regard for the statutory plans. This proposal does comply with the SSRP, MDP, the GMS and the LUB as well as the Foothills County MDP Residential Policies. The proposal complies with the LUB purpose statement for the Country Residential District and the permitted uses, and the proposal complies with the Subdivision and Development Regulations, including suitable parcel sizes, legal physical access, and is not subject to specific restrictions of the Act.
- xxx. The Appellant's Agent submitted a quote from Section 9.7(2) Planning Law and Practice – referring to the Act, "Even though an application for a discretionary use meets all of the Bylaw's development standards, the application can be refused by the Development Authority if it has a sound planning basis for concluding that the use is inappropriate. It follows that the Development Authority is entitled to allow the development conditional upon the application doing such things, or making such modifications to its plans, as the Development Authority considers appropriate to meet the planning concerns that might otherwise result in a legitimate refusal. In other words, conditions can properly be imposed in discretionary use permits so as to require the applicant to go beyond the development standards provided for in the Bylaw."
- xxxi. The Appellant's Agent submitted a quote from Section 2.2(2) Planning Law and Practice, "The objective of the planning process is to achieve the use and development of land in a manner as consistent with evolving societal values as possible. Currently, the most dominant of these values are (1) to ensure the safe

use of land with the least amount of potential degradation of the environment, (2) to secure the use of all land so as to minimize the negative impact on neighbouring lands, (3) to secure the most cost-effective use of land from the point of view of municipal infrastructure and (4) to recognize and give effect to the public interest element in private land use decisions, but not at the undue expense of private property rights”.

3. ROAD/ TOPOGRAPHICAL CONCERNS:

- i. The Planning Officer submitted that there is one existing approach from 96th Street West which is proposed to be widened into a common approach for access to both the proposed 4.67 +/- acre parcel and the 5.72 +/- acre parcel, via two 15 m wide panhandles. A new standard approach is proposed to be constructed from 96th Street West for access to the balance parcel. Additionally, in response to the Land Use public hearing feedback, the Applicant proposed a road acquisition on 96th Street for a proper turnaround, which uses land from the Applicant's own property. This was proposed to address the lack of space for large vehicles, such as buses and emergency vehicles, to turn around.
- ii. The Planning Officer submitted that Public Works expressed no concerns with the new standard approach location for the balance parcel but noted that it would need to be constructed to current municipal standards. The Public Works department likewise expressed no concerns with the proposed location of the common approach for the proposed parcels, noting that a minimum 15 m separation would be required to adjacent approaches, with a maximum grade of 2% from the road to the property line. As the proposed panhandles contain slopes which appear greater than 15%, Public Works suggested an engineered driveway plan that will need to encompass from 96th Street W to the building envelopes.
- iii. The Planning Officer submitted that the Public Works department would require engineered building envelopes, as the proposed lots appear to contain slopes of 15% or greater. If these are to be included in the building envelope, a slope stability analysis would also be required. Otherwise, building envelopes would need to be set back 30 meters from the top of the slope. Alternatively, the Applicant could provide a grading plan demonstrating slopes at less than 15%.
- iv. The Planning Officer submitted that the subject property is situated on a hilltop with varied landscape, dense trees and open grasslands. The proposed parcels would contain rolling hills, largely grasslands and broad, unobstructed views. The balance parcel would include elevation changes and land that is predominantly covered with mixed trees and consistent vegetation.
- v. The Council Representative submitted that Council's primary concerns related to the proposed side by side driveways, each extending more than a quarter mile, and the ability of emergency vehicles to access the site year-round, given the terrain and existing slopes. Discussion highlighted that Council and area residents may have been more receptive to a proposal creating a single new lot, which would have eliminated the need for setback relaxations for the secondary suite and sea-can. In summary, these were the main concerns that Council addressed at the time of the Land Use application refusal.
- vi. The Appellant's Agent submitted that the existing approach on the south is proposed to be realigned to provide a common approach for Lots 1 and 2. Lots 1 and 2 will be accessed by 15 m panhandles providing legal and physical access to 96th Street W.

- vii. The Appellant's Agent submitted that the balance parcel is proposed to be accessed via a new approach off 96th Street W.
- viii. The Appellant's Agent submitted that a road dedication is proposed at the end of 96th Street W to provide a future turnaround for school buses, snow removal and emergency vehicles.
- ix. The Appellant's Agent submitted that an access right of way has been offered along the double panhandle to a point where access to the south may be achieved for the benefit of the area. This right of way allows the County to take the land should a public road need to be constructed here in the future. It provides access options for long term planning purposes.
- x. The Appellant's Agent submitted that the County's Public Works department did not request a Traffic Impact Assessment be done and had no concerns about the traffic along 96th Street. The proposal of two additional lots is a minor increase in terms of the amount of traffic that is on the Country Residential roads, and it would represent part of the background traffic of about 2.5% that is expected to occur year over year regardless of additional development.
- xi. The Appellant's Agent submitted that 96th Street W is a Maintainable Road Oil (MRO) surface (not gravel) and noted that this would be suitable for rural residential development.
- xii. The Appellant's Agent submitted that the proposed location for panhandles is greater than 30 m wide with space for two 15 m wide panhandles. The Public Works department has recommended engineered driveways, and these will be designed and constructed to the County standards.
- xiii. The Appellant's Agent submitted that based on assessments of the slopes, the proposed building envelopes do not contain slopes in excess of 15%; however, a Lot Grading plan will still be provided as a condition of subdivision to confirm. It meets the requirements of the Country Residential District for setbacks and density under the LUB.
- xiv. The Appellant's Agent submitted that in response to the concerns about driveway lengths, there are other driveways in the area that are long, and this is typical for these types of parcels. Comparisons were shown of other driveways in the area that climb slopes to reach the top of the ridge. The engineered driveways will be designed by an engineer to ensure compliance with the Foothills County standards regarding building driveways on slopes. Many of the other driveways in the area that were not subject to a Development Authority decision would not have had these engineered driveways or even a driveway standard imposed.
- xv. The Appellant's Agent submitted that the elevation change between the neighbouring lands to the north and the proposed lot is approximately 2 m in elevation with sloping toward the northwest. The maximum elevation is 1282 m on the property to the north a downslope to 1268 m on the property to the south of the subject site.
- xvi. The Appellant's Agent submitted that one common approach from 96th Street is proposed, which will connect to individual driveways on their own panhandles to provide legal and physical access to each of the proposed parcels.
- xvii. The Appellant's Agent submitted that the soil index for the area 3H and 3HM and 5 – 50% and 50% for the polygon for the site. There are moderate restrictions with

regard to heat and water suitability for supporting large grassland and suitable agricultural operations.

- xviii. The Planning Officer submitted that there are significant slopes on the property and pointed out that the Board may wish to consider the cumulative effects and the stress this proposal will put on the community.

4. CONCERNS ABOUT WATER:

- i. The Planning Officer submitted that all existing development on the subject property is located within the balance parcel and consists of a dwelling; a secondary suite, detached (Development Permit 24D 054), a garage; a covered pole barn to be removed; a sea-can; a bus shelter to be removed; two sheds; a greenhouse; and a hayshed.
- ii. The Planning Officer submitted that the existing dwellings are serviced on site by a water well and septic system.
- iii. The Appellant's Agent submitted that each new lot will be serviced by individual groundwater wells and private onsite septic services. The proposed lots have suitable area for private septic treatment systems, a house and a well. The balance parcel will retain a water well and septic system.
- iv. The Appellant's Agent submitted that the reconnaissance report indicates that the groundwater has been recharging to suitable levels, with a test rate that is suitable for domestic purposes.
- v. The Appellant's Agent submitted that under the Water Act, each landowner has an equal opportunity and right to prove water as part of their subdivision before development commences. The landowners would be required to provide an assessment and report demonstrating that there is water suitable for domestic purposes and that it does not adversely affect the production of other wells in the area.
- vi. The Appellant's Agent submitted that there is a new house on the ridge, with a letter supplied in the written submissions to the Board. This property lies to the north of the subject property. The landowners request the same opportunity to prove water.
- vii. The Appellant's Agent submitted that the proposal includes two new private water wells for household purposes only, which they are allowed to prove under the Water Act – this does not impose a significant increase that is not contextually appropriate. The area is suitable for residential uses as well, noting the Country Residential designation, it utilizes existing infrastructure, provides a suitable development area within the proposed lots, and integrates within the rural community context. The County's Public Works department had no concerns with the proposed development and did not recommend any additional studies aside from a Lot Grading plan, to determine suitable building envelopes, and if that Lot Grading plan determines slopes in excess of 15%, then Slope Stability studies would be required. This study is to be conducted in subsequent phases to demonstrate this suitability.
- viii. The Appellant's Agent submitted that in accordance with the Water Act, each landowner has the opportunity to prove water on proposed lots prior to subdivision endorsement. The well reports will be conducted as a condition of subdivision. The reporting conducted for each well would also need to conclude

that the addition of the proposed well will not negatively impact existing well users (Section 23(3)(a) of the Water Act). The Reconnaissance Report indicates that there are many suitable wells in the area and the well report for the well on the neighboring property to the north indicates a suitable well.

5. CONCERNS REGARDING AGRICULTURAL USE/ FRAGMENTATION:

- i. The Planning Officer submitted that between 1989 – 2018, the surrounding area was fragmented to a mix of Country Residential properties surrounded by predominantly larger Agricultural parcels.
- ii. The Planning Officer submitted that the land is currently grassland and is being used for pasture.
- iii. The Appellant's Agent submitted that the proposal would result in seven parcels on the quarter section, which is far less than the maximum density provision of 32 Country Residential parcels allowed in Section 13.1.6.1 of the LUB.
- iv. The Appellant's Agent submitted that the application proposes Country Residential infill, as there would be two new Country Residential District lots created from an existing Country Residential District parcel. Additionally, the proposal diverts subdivision to Country Residential land and preserves agricultural land.
- v. The Appellant's Agent submitted that the proposed plan sensitively integrates with the existing Country Residential development and does not impact the existing agricultural land or operations in the area.
- vi. The Appellant's Agent submitted that the two proposed lots represent moderate growth in an existing Country Residential area. This does not add to the amount of Country Residential land. The proposal utilizes existing Country Residential land to support efficient development in the County. Foothills County GIS data indicates that the land use distribution has remained the same since 2020 in that 91.5% of the land is agricultural and 5.6% of the land is residential. The proposed subdivision maintains these percentages while efficiently adding residential development to support the sustainable growth of the County.
- vii. The Planning Officer submitted that approving the subdivision would allow for a wide range of discretionary uses, which could result in the development of additional infrastructure on these smaller parcels.
- viii. The Planning Officer submitted that concerns also apply to the permitted animal units. While the LUB allows up to three animal units per parcel, this does not equate to only three animals. For example, goats are calculated at five per unit, meaning 15 could be permitted.

6. CONCERNS ABOUT VIEWSHED:

- i. The Appellant's Agent submitted that, with regard to preserving rural character and scenic vistas, the first point is to support the identification of critical vistas in the County. The County has not identified any critical vistas in this area, and the views are not protected by policy or by legislation. Regardless, the proposed lots have been intentionally designed to have building envelopes that protect and preserve the vistas for neighbours that will be registered on title through a restrictive covenant to prohibit building in those areas. All development must comply with the Dark Sky Bylaw and the Community Standards Bylaw, and this

would be no exception to these policies. The landowners wish to experience the same views that their neighbours benefit from and they are willing to work with the County and their neighbours to do so respectfully. The lots are contextually appropriate and they maintain the rural character of the area and align with the South Central district mix of uses in the rural setting.

- ii. The Appellant's Agent submitted that with regard to protecting the viewsheds, the proposed lots have been designed with specific and intentional building envelopes to protect the viewshed to the southwest from the nearest home. These building envelopes would be registered on Title by Restrictive Covenant to protect them. The top of the ridge will also be protected by the Restrictive covenant on Title. The proposed building envelopes do not impede the view to the southwest and contain no slopes to build into.

7. CASE LAW EXAMPLES:

- i. The Appellant's Agent submitted that Case Law - Shaikh v Foothills County (Subdivision Authority), 2024 ABLPRT 363 (*in evidence*) where the court determined that compliance with the MDP inherently implied alignment with the SSRP, and the components of the SSRP that contained discussion regarding efficient use of land and suitability are non-binding. Following the court decision, they were redirected back to the LPRT for another appeal hearing. At that re-hearing, the LPRT allowed the appeal for the two additional lots and found that the subdivision would not offend the SSRP and MDP policies aimed at conserving undisturbed agricultural land, in this case, because the subject property was in previously subdivided quarter section that is not used for agricultural and is designated Country Residential in the LUB which is a similar case this this appeal at hand, in that this is likewise Country Residential and would not offend or is in compliance with the SSRP and MDP.
- ii. The Appellant's Agent submitted that Case Law - Shaikh v Foothills County (Subdivision Authority), 2024 ABLPRT 363 (*in evidence*), revealed that the Subdivision Authority refused the application in part because it would result in additional built environment in an area where the SSRP and MDP2010 aim to limit growth and development. The LPRT agreed that the SSRP and MDP2010 aim to limit growth in the broader area in large part to preserve agricultural land; however, both are high level policy documents providing broad direction covering large areas, and neither document prohibits additional residential development. In this case, the specific quarter with the subject land and much of its immediate surroundings are not designated for agricultural use – rather they are in the LUB Country Residential District and are already fragmented. As such, the property is not in agricultural use and has little agricultural potential; the proposed subdivision does not convert agricultural land to residential use. Additionally, the LPRT observes the SSRP and MDP2010 are consistent in directing that efficient use of land includes infilling/ redeveloping already fragmented land. The MDP2010 also contains specific instructions to direct Country Residential development toward already fragmented areas. The policy intent behind this direction is evident: further subdividing already fragmented land can absorb pressure on an area for residential development without converting yet more agricultural land. Essentially, LPRT Order ABLPRT 363 found that Country Residential infill protects agricultural land and represents an efficient use of land in the County, while being supported by the MDP2010 and SSRP.
- iii. The Appellant's Agent submitted that Case Law Reykdal v Municipal District of Foothills No. 31, Subdivision Authority, 2018 ABMGB 72 (*in evidence*), "in respect to the Subdivision Authority's concerns about the proposal's

noncompliance with the cumulative effects section of the MDP2010 – policy 3.7, the MGB finds that the Subdivision Authority did not specify what the concerns are. The proposed subdivision complies with the density provisions of the MD's planning documents, including the direction of development within the Central District of the GMS. Alberta Transportation did not raise any traffic concerns. Thus, the MGB find no evidence illustrating that the proposed subdivision would have a cumulative negative effect." Similarly, the refusal of this application did not specify concerns about cumulative effects, and there is no evidence provided that would suggest that this application would have these negative cumulative effects.

- iv. The Appellant's Agent submitted that in the MGB order 003/19 of Bruch v MD of Foothills, 2019 ABMGB 3 (*in evidence*), the MGB found that the proposal complied with the intent of the SSRP and GMS. The proposal was for an infill Country Residential lot that represented efficient use of land, allowing for development without fragmenting agricultural lands. They indicated that the language of the GMP (Growth Management Strategy) allows for moderate growth in this district and if the intent were to confine that growth to the area between High River and Okotoks as suggested by the Subdivision Authority, the boundaries of the district should have been modified to reflect this. The parcel is adjacent to the South West district, in which minimal growth is expected, but is nevertheless within the South Central district. Further, the infill nature of the proposal and its close proximity to Black Diamond and Turner Valley would make it a location where there is infrastructure nearby and where agricultural operations are less likely to be affected.

8. MITIGATION MEASURES:

- i. The Appellant's Agent submitted that in terms of mitigation measures of the proposal, the Subdivision Authority has the discretion to approve a subdivision and can effectively impose conditions to mitigate offsite impacts and allow the development to proceed.
- ii. The Appellant's Agent submitted that the Board could balance the individual property rights of the applicants with those of the neighbours by approving the subdivision with suitable conditions to mitigate potential offsite impacts.
- iii. The Appellant's Agent submitted that in the residential context, the distance between the homes as proposed would be appropriate. The closest residence would be 95 m away from the residence to the north and down the hill out of their line of sight. Neighbours to the south are over 650 m away. Other neighbours that are further away are screened by vegetation.
- iv. The Appellant's Agent submitted that, as noted by the County's Public Works department, if any of the slopes are identified at greater than 15%, a slope stability study would be completed to establish suitable development areas on the slope.
- v. The Appellant's Agent submitted that additional mitigation measures offered include Fire Smart principles to be registered by a Restrictive Covenant on Title for each lot to mitigate any risk of fire, including:
 - a. Immediate Zone (0 – 1.5m from home): Create a non-combustible "defensible space" to stop embers from igniting the structure. (eg. Gravel, concrete, or bare ground) around the foundation. Remove all vegetation, woody shrubs, trees, mulch and debris. Avoid storing anything combustible (eg. Furniture or firewood) against the house.

- b. Intermediate Zone (1.5-10 m): Reduce the chance of surface fire reaching the home. Use fire-resistant plants and non-combustible landscaping materials (avoid bark mulch or woody debris). Keep grass mowed short and watered; remove dead plants and debris. Store firewood, construction materials, and patio items at least 10 m away.
 - c. Extended Zone (10-30 m): Limit fire intensity and prevent it from building strength. Space evergreen trees at least 3 m apart (measured crown to crown). Prune lower branches (remove those within 2 m of the ground) to eliminate “ladder fuels” that allow fire to climb into tree crowns. Regularly clean up fallen branches, needles, dry grass and other debris.
- vi. The Appellant’s Agent submitted that for emergency vehicle access, the double panhandle area has been graded to reduce slopes for easier access by emergency response vehicles. We note Foothills County does not have a driveway standard in their adopted road standards. As per Public Works’ recommendation, an engineered driveway plan will be submitted to the satisfaction of the County
- vii. The Appellant’s Agent submitted that for offsite impacts such as noise, dogs on the property, conflicts with livestock, operation of equipment and Dark Sky Policy, the proposed parcels will be subject to the same policies and bylaws that control offsite impacts on every parcel in the County. This development will be subject to the Community Standards Bylaw regarding noise, dogs/livestock, and equipment operation, and to the Dark Sky Bylaw to protect the rural night sky.
- viii. The Appellant’s Agent submitted that in terms of livestock, each proposed parcel would be allowed one livestock unit – they are not proposing significant agricultural operations which might have a significant impact on neighbouring properties.
- ix. The Appellant’s Agent submitted that 96 Street W is a dead-end road that does not allow larger vehicles to turn around safely. The landowners are proactively dedicating land for a cul-de-sac turnaround at the end of 96 Street W, to provide a safe turnaround for school buses, snow removal, and emergency vehicles at the southern end of 96 Street W, reducing operational challenges and improving safety.
- x. The Appellant’s Agent submitted that the property already supports 3 +km of page wire around the perimeter. Additional wire fencing will be used to delineate these lots and prevent animals from escaping their confines.
- xi. The Appellant’s Agent submitted that with regard to safety and firearm discharge near homes, the area in a 2 km radius around the subject site is not identified as supporting wildlife that would be suitable for hunting activities. Therefore, adding two lots to an existing Country Residential lot in a fragmented quarter section would not increase the risk in this context.
- xii. The Appellant’s Agent submitted that the suggested conditions as outlined in the agenda package would be appropriate, and the landowner would work to meet the conditions should the subdivision be approved.
- xiii. The Appellant’s Agent submitted that four additional conditions have been submitted to the Board for consideration. These include:
 - 1. A road acquisition agreement for the purpose of road dedication for a future cul-de-sac;

2. An access right of way registered over the panhandles;
 3. Building envelopes registered as a Restrictive Covenant on title to protect views; and
 4. Fire Smart principles be registered as a Restrictive Covenant on title.
- xiv. The Appellant's Agent submitted that the buildings that need to be removed will be removed immediately upon approval or with conditions.
 - xv. The Planning Officer submitted that while Fire Smart is a great principle, restrictive covenants are not enforceable by the County; it is up to the landowner to enforce these. The Appellant's Agent is aware of this.
 - xvi. The Appellant's Agent submitted that as Council's decision does not point to what the cumulative effects are, the Appellants would have no direction in attempting to mitigate these concerns; however, many of the concerns outlined in the meeting can be mitigated, and that the Appellants are willing to communicate and work with the neighbouring landowners to establish appropriate areas for the building envelopes.

9. NEIGHBOURS/ AFFECTED PARTIES IN SUPPORT OF THE APPEAL:

- i. Affected Party A. Gibson submitted that his property is located immediately south of the subject property. He advised that the Appellants had engaged with him early in the process regarding their subdivision proposal, which he considered reasonable and modest in scale. He noted that the proposal includes the construction of a road and turnaround area, which he believes would improve access and maneuverability, particularly for larger vehicles. He further expressed appreciation for the Appellants' efforts to work collaboratively with the County and stated that they had taken steps to make the proposal as beneficial as possible.
- ii. Affected Party A. Campbell submitted that he is a landowner in the area and is fully supportive of the proposed subdivision, which he considers to be an appropriate and beneficial use of the land. He noted that the conversion of larger agricultural parcels to country residential development can often result in the loss of productive agricultural land; however, he believes this proposal represents a responsible approach to land stewardship. He described the Appellants as good neighbours and conscientious stewards of the land, citing their efforts to control invasive weeds for the benefit of surrounding properties. He further stated that the Appellants are valued members of the community who contribute positively in various ways.
- iii. Affected Party J. Watts submitted that he rents the Secondary Suite from the Appellants and is supportive of the proposed subdivision. He advised that, should the subdivision be approved, he intends to purchase one of the proposed lots. He described the Appellants as good neighbours and responsible stewards of the land. He noted that he had previously submitted a letter of support during the Public Hearing when the proposed land use amendment was considered by Council.
- iv. Affected Parties E. & S. Todd elected not to speak; however, the Appellant's Agent advised the Board that the affected party had submitted a letter for review and consideration expressing support for the application as neighbouring landowners.
- v. Affected Party M. Blackmore submitted that he lives down the road from the subject property, as a long time resident of 20 years. Typically, he chooses to stay

neutral in these types of situations; however, he decided to attend in support of the Appellants. He noted that growth and development are inevitable and cautioned against establishing a precedent where neighbouring landowners effectively determine the outcome of these types of proposals, mentioning that limiting reasonable development opportunities could have broader economic consequences for families and the community. Additionally, he acknowledged the Applicant's desire to expand their family legacy and stated that, provided all regulatory requirements and conditions are met, they see no significant concerns with the proposal. He highlighted the proposed bus turnaround as a positive community benefit and described the land contribution for that purpose as a generous gesture.

- vi. Interested Party D. Miller spoke on behalf of the Appellant's team, stating that Council's decision should be overturned as there was no specific evidence that showed that the proposal failed to meet the requirements of the County. She stated that the appeal should be based on applicable bylaws, facts and planning rules, and evidence, not resident complaints or political pressure. Neighbours concerns should be considered, but not as a replacement for planning rules. The proposal did not identify any road, servicing, water, septic, access, fire, drainage, agricultural or other issues. Public Works had no concerns beyond citing rules regarding slopes. The proposal is an infill already zoned County Residential, so it would not be fragmenting any agricultural farmland.
- vii. Interested Party D. Miller submitted that in 2025, Council allowed two other subdivisions on parcels such as this one (skinny 20-acre parcels), and there are many such 20-acre infills in the County, with one being directly north of the subject property. It bears repeating that according to Foothills County's GIS Department, 91.5% of the County's lands are agricultural, while only 5.6% is residential use. This proposal is a modest request of two parcels, not a 20-lot subdivision. She stated that allowing reasonable subdivision helps to share the tax burden. The parcel's skinny shape makes farming impractical.
- viii. Interested Party D. Miller stated that a landowner does not have a legal right to preserve the view across another person's private land. Living in the County does not guarantee that the nearby open fields will remain unchanged. Concerns about people walking on County roads should be treated carefully, as these are transportation corridors, not dedicated walking paths or playgrounds. The presence of children or pedestrians on rural roads cannot by itself justify denying the landowner the ability to subdivide. While traffic is a concern, it is often cited to prevent further subdivision – there should be data to prove those claims. Water is subject to rigorous provincial regulation and must be proven before subdivision can occur. The Applicant should not be held responsible for fires, shootings or other incidents they did not cause. Fire protection, emergency access and related safety matters can be addressed through the Community Standards Bylaw and RCMP. This should not be a reason for refusal. Council's refusal, as stated in the official minutes, did not provide clear reasons showing how this specific application fails the MDP2010, the GMS, or any other plans cited. Similar applications were approved by Council as infill, which contradicts this decision. This proposal is modest and consistent with the surrounding area. Concerns can be managed by subdivision conditions set by the Board.

10. NEIGHBOURS/ AFFECTED PARTIES OPPOSED TO APPEAL:

- i. Affected Party K. Maurer (Kent) submitted that he had reviewed the MDP2010, noting its emphasis on environmental conservation, watershed and habitat protection, and maintaining quality of life for residents. However, he disagreed

with the suggestion that the proposal would not affect neighbouring property values, stating that properties in the area are valued for their peace, quiet, and unobstructed views. He described the existing landscape as consisting of agricultural fields, livestock, and equestrian activities, which contribute to the area's rural appeal. He expressed that he and other local residents value the character of the community and the lifestyle it provides. While acknowledging that the proposed lot would be located approximately 200 to 300 feet from his residence, he stated that this was not consistent with the expectations he had when purchasing his property. He noted he had previously offered to purchase an additional strip of land from the Appellants to establish a greater buffer between the properties, but that proposal was declined.

- ii. Affected Party K. Maurer (Krista) submitted that while she respects the views of their neighbors, she believes their property is among those most directly affected by the proposed subdivision. She explained that they intentionally designed and situated their home to maximize privacy and preserve views of the surrounding landscape. As part of that design, they constructed a curved driveway and buried utility lines to minimize the visual impact of infrastructure on the property. She stated that the Appellants had previously approached them regarding the possibility of aligning with future subdivision plans and had offered financial compensation in that regard. However, they chose not to participate. She expressed concerns regarding water availability in the area. She noted that their existing well, approximately 300 feet deep, is low-producing and has gone dry in the past when used to water newly planted trees. Based on their experience, they questioned the likelihood of successfully locating additional groundwater resources in the area. She does not wish to deny others the opportunity to enjoy the area's views and rural setting. However, they had purchased their property with the understanding that the surrounding open space and low-density character would remain largely unchanged. She expressed disappointment that the proposed development would significantly alter the views, privacy, and rural character they had expected when they acquired the property. She stated that the proposal would substantially change the character of the area and their enjoyment of their property.
- iii. Affected Party K. MacLean submitted that since the Public Hearing on March 4, 2026, the Appellants have not communicated with him, either formally or informally. He noted that no communication has occurred; however, in the interest of fostering a positive working relationship, he expressed a willingness to collaborate with the Appellants to identify solutions that would minimize agricultural fragmentation and benefit all stakeholders in the area. As a geologist and a member of the Association of Professional Engineers and Geoscientists of Alberta for nearly 20 years, he expressed concern regarding the potential unintended consequences of agricultural fragmentation associated with water well development on the subject parcel. He explained that the proposed parcel boundary encompasses a ridge, resulting in water wells being situated at a higher elevation. Publicly available data for the area generally indicate that higher elevations tend to have lower groundwater flow rates than lower-lying lands nearer to the Sheep River. He submitted that this is significant because reduced water availability could necessitate the drilling of additional potable water wells to serve existing and future residents, as well as livestock located on the ridge. While groundwater management falls under the jurisdiction of the Government of Alberta, he suggested that any resulting impacts could also affect Foothills County. He further noted that water production capacity and drainage areas can vary considerably between wells and expressed concern that the development of new wells could adversely affect existing wells in the area. He questioned whether the County would intervene should such circumstances arise. He emphasized that

groundwater assessments should be conducted on a site-specific basis and not generalized across the area, given the unique geological conditions and available data. Accordingly, he recommended that a hydrogeologist be consulted to evaluate the potential impacts of the proposed development.

- iv. Affected Party B. MacLean submitted that despite the extensive technical evidence presented, their position remains unchanged. He and his wife oppose both the proposal and the appeal. Five months ago, when the original subdivision application was considered, numerous neighbouring landowners brought forward legitimate and well-founded concerns. They felt that these concerns had not been addressed. In their view, the Appellants are essentially proposing the same subdivision that was not approved by Foothills County previously and they see no compelling reason for the County to reverse its earlier decision. A primary concern is the continued fragmentation of high-quality agricultural land. The subject property is located on a ridge surrounded by agricultural lands. Historically, these ridge lands were selected for farming and ranching because of their productivity and value. Further subdivision of this land undermines its agricultural purpose and character. They are concerned about the incompatibility of higher-density residential development within an agricultural area. The approval of additional lots would permanently alter the rural landscape through the introduction of more homes, buildings, vehicle traffic, and artificial lighting. They have requested that the Board protect the existing views and rural character of the area by refusing any subdivision that would significantly change the landscape.
- v. Affected Party B. MacLean additionally noted that their most significant concern is wildfire risk. In recent years, several major fires have occurred in the area. One fire north of the subject property required assistance from the Okotoks Fire Department, while another came dangerously close to destroying his property. Significantly, these fires were human-caused. The combination of steep terrain, strong winds, grazing lands, and limited access creates serious challenges for emergency response. Firefighting equipment cannot easily access many areas of the landscape, and a fire in these conditions could spread rapidly. Their greatest concern is the safety of their family, livestock, neighbours, and the homes that cannot be replaced once lost. They believe that rural subdivision proposals should meet the highest standards of planning, safety, and compatibility with the surrounding area. Based on the concerns that remain unresolved, they respectfully submit that this appeal should be denied. While considerable technical and legal evidence has been presented, many local residents do not have the expertise to fully understand or evaluate that information. The proposal before the Board appears materially unchanged from the proposal that was not approved five months ago, and the concerns of neighbouring landowners remain just as valid today as they were then.
- vi. Affected Party C. MacLean submitted that the proposed subdivision would further fragment prime agricultural land that has been actively farmed and ranched for more than 100 years. Their family has raised cattle and stewarded this land for over 50 years. While Foothills County faces significant growth pressures, this area remains relatively intact and unique because generations of dedicated landowners have worked diligently to preserve its agricultural character, rural heritage, and long-term viability. He stated that he was not approached by the Appellants at any point to explain or discuss the proposal, and in fact has never met the Appellants at all. As a geologist with more than 2 decades of experience, he stated that groundwater quantities are variable in Foothills County and the top of this particular ridge is a major concern, as flow regimes differ between the ridge top and the flanks and valleys. Many of the well reports previously described in this meeting were for the flanks and base of the ridge and not on the top, and it should

be expected that the area will see wells going dry – existing neighbours need to be concerned, as the Appellants will be tapping into the same aquifer with the same minimal flow volume. In closing, he asked the Board to outright deny the appeal and to encourage the Appellants to present a better plan that preserves the agricultural nature and quality of the area.

REASONS FOR DECISION

The Board is ALLOWING the appeal and OVERTURNING the Subdivision Authority's decision to refuse subdivision application F2001-06SW for the following reasons:

The Board finds that it has jurisdiction to hear and determine this appeal pursuant to section 678 of the Municipal Government Act. The Board is satisfied that notice of the hearing was provided in accordance with the Municipal Government Act and that all parties who wished to make submissions were afforded the opportunity to be heard. The Board considered the evidence and submissions before it, the applicable statutory plans, the Land Use Bylaw, and the relevant planning considerations raised by the parties.

The Board accepts that the subject lands are already designated and zoned Country Residential and that the proposal is for Country Residential subdivision within an existing fragmented quarter section. The evidence established that the proposed subdivision would create two new rural residential parcels and leave a balance parcel, resulting in a total parcel density well below the maximum density contemplated for the Country Residential District. The Board therefore finds that the application is more properly characterized as infill subdivision within an existing Country Residential area, rather than the premature conversion or fragmentation of productive agricultural land, and is generally consistent with the efficient use of land principles demonstrated within the South Saskatchewan Regional Plan and the Municipal Development Plan 2010.

The Board acknowledges the concerns raised by neighbouring affected parties regarding water supply, traffic, slope stability, emergency access, wildfire risk and agricultural compatibility. Those concerns were relevant and were carefully considered. However, the Board finds that the evidence before it did not establish that two new lots within this previously fragmented area would alone create unacceptable impacts or that the concerns identified could not be addressed through appropriate subdivision conditions. The board further recognized that rural character, views and privacy are not relevant planning considerations.

The Board places weight on the fact that the County's technical review did not identify fatal servicing, access, traffic, or infrastructure deficiencies that would require refusal of the application. Rather, the evidence indicates that the technical matters raised can be addressed through further professional design, reporting, and conditions imposed prior to endorsement of the subdivision. The Board finds that imposing conditions is an appropriate and proportionate planning response in this case.

For these reasons, the Board concludes that the Subdivision Authority's refusal should be overturned.

CLOSING

This decision can be appealed to the Court of Appeal on a question of law or jurisdiction. If you wish to appeal this decision you must follow the procedure found in Section 688 of the Municipal Government Act, R.S.A. 2000 Chapter M-26 which requires an application for leave to appeal to be filed and served within 30 days of this decision.

Dated at the Town of High River, in the Province of Alberta this 1st Day of September, 2026 and signed by the Chairman of the Subdivision and Development Appeal Board who agrees that the content of this document adequately reflects the appeal hearing, deliberations and decision of the Subdivision and Development Appeal Board.

A handwritten signature in black ink, appearing to read 'Gar Beacom', written in a cursive style.

Mr. Gar Beacom, Chairman

RELEVANT LEGISLATION

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

South Saskatchewan Regional Plan (SSRP)

Use Land Efficiently (page 90)

Strategies:

5.1 All land use planners and decision makers responsible for land use decisions are encouraged to **consider the efficient use of land principles** in land use planning and decision making.

1. Reduce the rate at which land is converted from an undeveloped state into permanent, built environment.

2. Utilize the minimum amount of land necessary for new development and build at a higher density than current practice.

3. Increase the proportion of new development that takes place within already developed or disturbed lands either through infill, redevelopment and/ or shared use, relative to new development that takes place on previously undeveloped lands.

4. Plan, design and locate new development in a manner that best utilizes existing infrastructure and minimizes the need for new or expanded infrastructure.

5. Reclaim and/ or convert previously developed lands that are no longer required in a progressive and timely manner.

6. Provide decision-makers, land users and individuals the information they need to make decisions and choices that support efficient land use.

5.2 **Build awareness and understanding of the efficient use of land principles** and the application of land use planning tools that reduce the footprint of the built environment, how they might be applied and how their effectiveness would be measured over time with municipalities, land use decision makers and land users, on both public and private lands.

Agriculture (page 111)

Municipalities are expected to:

8.19 Identify areas where agricultural activities, including extensive and intensive agricultural and associated activities, should be the primary land use in the region.

8.20 Limit the fragmentation of agricultural lands and their premature conversion to other, non-agricultural uses, especially within areas where agriculture has been identified as a primary land use in the region. Municipal planning, policies and tools that promote the efficient use of land should be used where appropriate to support this strategy.

8.21 Employ appropriate planning tools to direct non-agricultural subdivision and development to areas where such development will not constrain agricultural activities, or to areas of lower-quality agricultural lands.

Foothills County Municipal Development Plan (MDP2010)**AGRICULTURE – OBJECTIVES**

1. Make the preservation of agricultural land a priority for the Foothills County.
2. Minimize the loss of agriculturally zoned land by limiting its rezoning to other uses.

AGRICULTURE – POLICY

1. All lands in Foothills County are considered to be agricultural lands unless zoned for other uses.
2. Foothills County supports maintaining the integrity of the agricultural land base and discourages the fragmentation of agricultural land, including the subdivision of land into smaller agricultural parcels.
3. Agricultural uses and industries that support agriculture should be encouraged to locate in the Municipality. Non-agricultural uses should only be permitted on lands where the County judges the proposal to have minimal negative impacts on the agricultural resource.
4. When considering the conversion of agricultural lands to other uses the Municipality shall consider the following:
 - 4.1. Guidance and policy contained within the Municipal Development Plan and other approved plans in the Planning Hierarchy found in Appendix A of this MDP.
 - 4.2. Present or proposed use of lands in the vicinity, including that of confined feeding operations.
 - 4.3. Impact the proposed use will have on the existing or potential agricultural use of the property and properties that may be affected.
 - 4.4. Information contained within the farmland assessment records maintained by the Municipality.
 - 4.5. Response to referrals sent to Provincial government departments.

RESIDENTIAL – OBJECTIVES

1. Ensure the efficient use of land for residential development in order to:
 - 1.1. Minimize the fragmentation and conversion of agriculture land.
 - 1.2. Maintain rural character and open space environments.
 - 1.3. Efficiently use existing and new infrastructure, utility systems, and services.
2. Manage residential development through adopting strategic and statutory plans and other means which provide reasonable assurance to landowners of the intended future development pattern in the MD.
3. Allow for opportunities to apply innovative land use planning and land conservation concepts that improve municipal efficiencies and reduce rural sprawl.
4. Accommodate residential populations in a variety of housing forms in the MD of Foothills.
5. Consider the development of new planned neighbourhoods where the location and infrastructure can support increased intensity of use, such as secondary suites or major home based businesses.
6. Encourage the development of attractive residential environments.
7. Ensure that residential development conforms to environmental and public health guidelines.
8. Implement development controls in order to ensure that all aspects of developments proceed as intended.

RESIDENTIAL – POLICY

3. Proposals for residential parcels should be developed to be compatible with the surrounding area and existing land use. Consideration will be given to the density, design, traffic and the visual impact of the proposal on the adjacent lands. Proposals shall be considered on the basis of the following criteria:
 - 3.1. Impact on agricultural industry, the efficient use of land and the conservation of water.
 - 3.2. Guidance found within this MDP, and other documents as listed in appendix A, Planning Hierarchy.
 - 3.3. Impact on the natural capital of the Municipality.
 - 3.4. Suitability of the land for residential uses.
 - 3.5. Environmental significance of the land and adjoining properties.
 - 3.6. Environmental Impact.
 - 3.7. Cumulative effect of the development;
 - 3.8. Condition of the Provincial and/or Municipal road servicing the proposed development.

Foothills County Land Use Bylaw (60/2014)**13.1 COUNTRY RESIDENTIAL DISTRICT****13.1.1 Purpose and Intent**

To provide for acreage development consistent with the policies outlined in the Municipal Development Plan.

13.1.6 LAND USE REQUIREMENTS

13.1.6.1 A person who wishes to subdivide land in this district into additional lots must first apply for and be granted approval of a land use bylaw amendment.

13.1.6.2 In order to facilitate the purpose and intent of this district and ensure the comprehensive development of country residential uses within the District, the following applies to applications for subdivision:

- a. Parcel Density:
 - i. Maximum one lot per 2.02 ha (5 acres) of existing land contained under the same title to a maximum of 32 lots per quarter section.
- b. Minimum Parcel Size:
 - i. The area in title at the time of passage of this Bylaw; or
 - ii. A parcel of land no less than 0.81 ha (2.0 acres).
- c. Maximum Parcel size:
 - i. 8.49 ha (20.99 ac); or
 - ii. The area in title at the time of passage of this Bylaw.

13.1.6.3 Required Developable Area:

- a. In accordance with Section 9.8 of this Bylaw.

13.1.6.4 Utility Servicing Criteria

- a. Individual wells and individual wastewater disposal systems;
- b. Communal water and communal wastewater disposal systems; or
- c. A combination of a. and b. as determined by Bylaw amending this section.

WATER ACT

- (p) “driller” means a person who is authorized under this Act to drill or reclaim a water well;
 - (q) “drilling machine” means a machine that is designed to be used or is used to drill a water well;
 - (r) “environment” means the components of the earth and includes
 - (i) air, land and water,
 - (ii) all layers of the atmosphere, and
 - (iii) all organic and inorganic matter and living organisms, and the interacting natural systems that include components referred to in subclauses (i) to (iii);
 - (s) “Environmental Appeals Board” means the Environmental Appeals Board established under Part 4 of the *Environmental Protection and Enhancement Act*;
 - (t) “farm unit” means farm unit as defined in the regulations for the purposes of this Act;
 - (u) “give notice” means to give or serve written notice in accordance with section 166;
 - (v) “groundwater” means all water under the surface of the ground whether in liquid or solid state;
 - (w) “household” means a household as defined in the regulations for the purposes of this Act;
 - (x) “household purposes” means the use of a maximum of 1250 cubic metres of water per year per household for the purposes of human consumption, sanitation, fire prevention and watering animals, gardens, lawns and trees;
 - (y) “household user” means a person who is entitled to divert water for household purposes, as described in section 21;
 - (z) “inactive water well” means a water well that is not currently being used but is being maintained for future use;
 - (aa) “inspector” means an individual who has been designated as an inspector under Part 13;
 - (bb) “investigator” means an individual who has been designated as an investigator under Part 13;
- licence and a supplementary interim licence, granted under a predecessor Act that on January 1, 1999 authorizes the drainage, flood control, erosion control, channel realignment or other similar matters, is a deemed approval under this Act that does not have a priority number.
- (2)** Every permit granted under a predecessor Act that on January 1, 1999 authorizes an activity
- (a) in the case of a permit, including an exploration permit, that was issued for a specified period of time, continues as a permit, and the *Water Resources Act*, RSA 1980 cW-5, continues to apply to that permit as if that Act were still in force, and
 - (b) in the case of a permit that does not have an expiry date, is deemed to be an approval under this Act that expires on December 31, 1999.
- (3)** A deemed approval under this section is subject to this Act. 1996 cW-3.5 s20

Household purposes

21(1) Subject to subsection (3) and section 23 and any exemptions specified in the regulations, a person who owns or occupies land that adjoins a river, stream, lake, natural watercourse or other natural water body

- (a) has the right to commence and continue the diversion of the water that adjoins that land for household purposes, whether or not that water is reserved under section 35, and
- (b) may not obtain a licence for the diversion of water that adjoins that land for household purposes.

(2) Subject to subsection (3) and section 23 and any exemptions specified in the regulations, a person who owns or occupies land under which groundwater exists

- (a) has the right to commence and continue the diversion of the groundwater for household purposes, and
- (b) may not obtain a licence for the diversion of the groundwater for household purposes.

(3) The number of households on a parcel of land for the purposes of this section is limited to

- (a) the number permitted under an applicable approved water management plan, or

(b) if there is no applicable approved water management plan, the number permitted by an order of the Minister.

(4) A person who diverts water under subsection (1) or (2) may, without an approval, licence or registration, pump or otherwise convey water to the point of use for household purposes. 1996 cW-3.5 s21

Riparian owner or occupant

22(1) Notwithstanding the common law, a riparian owner, riparian occupant or person who owns or occupies land under which groundwater exists has the right to divert water only in accordance with section 21 and may not divert water for any other purpose unless authorized by this Act or under an approval, licence or registration.

(2) A person described in subsection (1) may commence an action with respect to a diversion of water only in respect of a diversion of water that is not authorized by this Act or under an approval, licence or registration.

(3) Nothing in this Act is to be construed so as to repeal, remove or reduce any rights held at common law by a riparian owner or occupant of land or by a person who owns or occupies land under which groundwater exists, other than the right to the continued flow or diversion of water. 1996 cW-3.5 s22

Household diversions

23(1) If the Director is of the opinion that there is or may be a significant adverse effect on the aquatic environment or on a licensee or traditional agriculture user resulting from a diversion of water pursuant to section 21, the Director may, subject to the regulations,

(a) issue a water management order under section 97, and

(b) declare that a person described in section 21 who did not divert water as described in section 21 prior to the date of the declaration may not, as of the date of the declaration, divert water as described in section 21 from a source of water specified in the declaration or from any sources of water within the water management area specified in the declaration.

(2) The Director must provide notice of a declaration in a form and manner satisfactory to the Director.

(3) If, on or after January 1, 1999, a subdivision of land of a type or class of subdivision specified in the regulations is approved under the *Municipal Government Act*, a person residing within that subdivision on a parcel of land that adjoins or is above a source of water described in section 21 has the right to commence and continue the diversion of water under section 21 only if

(a) a report certified by a professional engineer or professional geoscientist, as defined in the *Engineering and Geoscience Professions Act*, was submitted to the subdivision authority as part of the application for the subdivision under the *Municipal Government Act*, and the report states that the diversion of 1250 cubic metres of water per year for household purposes under section 21 for each of the households within the subdivision will not interfere with any household users, licensees or traditional agriculture users who exist when the subdivision is approved, and

(b) the diversion of water for each of the households within the subdivision under section 21 is not inconsistent with an applicable approved water management plan.

(4) Notwithstanding subsection (3), a person residing within a subdivision as described in subsection (3) has the right to commence and continue the diversion of water under section 21 if

(a) the written consent of the subdivision authority is provided to the Director,

(b) the Director is of the opinion that there are or were extenuating circumstances with respect to the submission of the report under subsection (3), and

(c) the Director has approved in writing the right to divert under section 21. RSA 2000 cW-3 s23;2011 c3 s33

Traditional agriculture user

24(1) A person who owns or occupies land

(a) to which a registration is appurtenant, and

(b) that adjoins a river, stream, lake, natural watercourse or other natural water body, or under which groundwater exists, has the right to commence and continue the diversion of water from the sources authorized in the registration for the purpose of raising animals or applying pesticides to crops, as part of a farm unit, as authorized by the registration.

(2) A person who diverts water in accordance with subsection (1) may, without an approval or licence, pump or otherwise convey water to the point of use on the land that adjoins the source of water, or to an adjacent parcel of land owned by that person if both parcels form part of the same farm unit. 1996 cW-3.5 s24

Combined diversions

25 A person who is entitled to divert water both under section 21 and under section 24 is entitled to divert the water under section 24 as an additional amount of water. 1996 cW-3.5 s25

Diversion under approval or licence

26 A person has the right to commence and continue the diversion of water in accordance with the terms and conditions of a licence issued under this Act, or an approval, in good standing held by that person. 1996 cW-3.5 s26

APPENDIX "A"

PERSONS WHO WERE IN ATTENDANCE, MADE SUBMISSIONS OR GAVE EVIDENCE AT THE HEARING:

	<u>NAME</u>	<u>CAPACITY</u>
1.	K. Furnell	Foothills County Planning Officer
2.	T. Chipchase	Foothills County Planning Officer
3.	J. Callister	Foothills County Council Representative
4.	P. Antle	Foothills County Public Works Representative
5.	R. Erhardt	Appellant's Agent
6.	N. and C. Canario	Appellant/Landowner
7.	B. Estes	Interested Party
8.	K. & K. Maurer	Affected Party
9.	D. Miller	Interested Party
10.	K. MacLean	Affected Party
11.	B. MacLean	Affected Party
12.	A. Gibson & J. McPhee	Affected Party
13.	A. Campbell	Affected Party
14.	J. Watts	Affected Party
15.	E. & S. Todd	Affected Party
16.	M. Blackmore	Affected Party
17.	C. MacLean	Affected Party

APPENDIX "B"

I. DOCUMENTS RECEIVED PRIOR TO THE HEARING AND MADE AVAILABLE AT THE HEARING:

NO. ITEM

1. Submission package from the Foothills County Planning Officer, K. Furnell
2. Submission package from the Applicant/Appellant's Agent, R. Erhardt

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3. Written submissions from C. MacLean, K. MacLean, L. Rogers, E. Todd and K. Maurer

APPENDIX "C"

EXHIBITS MADE AVAILABLE AT THE HEARING

NO. ITEM

1. Presentation by the Foothills County Planning Officer, K. Furnell/ T. Chipchase
2. Presentation by the Applicant/Appellant's Agent, R. Erhardt