

IN THE MATTER OF THE *Municipal Government Act* being Chapter M-26 of the Revised Statutes of Alberta 2000 (Act).

AND IN THE MATTER OF A SUBDIVISION APPEAL lodged by Norcan Group on behalf of Jackfish Lake Land Corporation (Appellant).

BEFORE:

Members:

T. Golden, Presiding Officer
R. Irwin, Member
D. Thomas, Member

Case Manager:

K. Lau

This is an appeal to the Municipal Government Board (MGB) from a decision of Parkland County Subdivision Authority (SA), respecting the proposed subdivision of SW 21-52-2-W5M. Upon notice being given to the interested parties, a hearing was held in the City of Edmonton, in the Province of Alberta, on September 30, 2011.

ORGANIZATION OF DECISION

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OVERVIEW

[1] In addition to determining if the subdivision meets the requirements of the Act, Regulation, and local planning documents, the MGB must determine if the conditions imposed by the SA are appropriate for this subdivision. Specifically, the appeal focused on the need to pave a County road, to dedicate road right-of-way through one of the 10 residential lots to provide for future connectivity to adjacent lands and the contents of a development agreement.

JURISDICTION OF THE MGB

[2] This appeal is before the MGB because Jackfish Lake is adjacent to the land that is the subject of the application for subdivision. Section 678 of the Act directs appeals to be lodged with the MGB when the subject land is within the distance of a body of water as set out in the *Subdivision and Development Regulation 43/2002* (Regulation). Section 5(5)(e) of the Regulation sets this distance as any land adjacent to or that contains the bed and shore of a river, stream, watercourse, lake or other body of water.

PROPOSAL

[3] To subdivide ten (10) residential parcels, three (3) conservation reserve parcels, and various Public Utility Lots (PUL), Environmental Reserve (ER) and Municipal Reserve (MR) parcels from an unsubdivided quarter section of 160 acres.

PRELIMINARY MATTER

SA's Position

[4] At the beginning of the hearing, the SA raised the preliminary matter of the timing of the appeal. The decision from the SA is dated July 15, 2011, which would mean the appeal period expired August 3, 2011. The appeal letter was received by the MGB August 5, 2011 which makes the appeal late; accordingly, the MGB is unable to hear the appeal.

Appellant's Position

[5] The Appellant stated that while the SA's Decision is dated July 15, 2011, the postmark on the envelope it was received in is July 21, 2011. In their view, the appeal period was extended to August 9, 2011; thus, their appeal is not late and the MGB can hear it.

Decision

[6] The appeal was lodged within the appeal period and is properly before the Board.

Reasons

[7] The Act is clear with regards to the timing of an appeal. Section 678(2) detail the timeline for an appeal as "[a]n appeal under subsection (1) may be commenced by filing a notice of appeal within 14 days after receipt of the written decision of the subdivision authority...". Section 678(3) further states "For the purpose of subsection (2), the date of receipt of the decision is deemed to be 5 days from the date the decision is mailed."

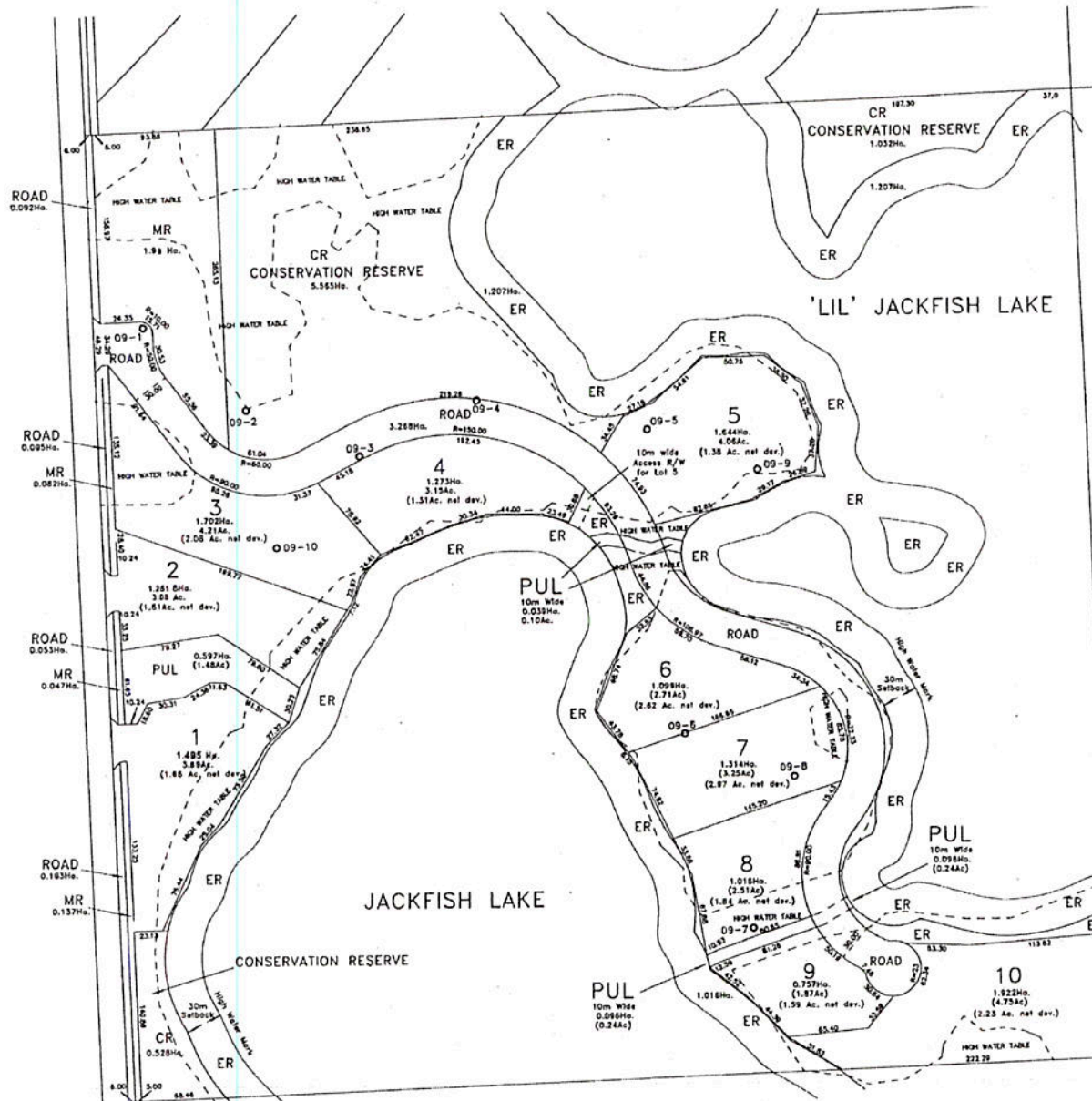
[8] The MGB had two pieces of evidence before it regarding the timing of the appeal: the SA's decision dated July 15; and the postmarked envelope of July 21. The MGB accepts the postmarked envelope shows the date the SA's Decision letter was mailed as July 21 making the appeal period expire on August 9, 2011. The appeal received at the MGB August 5, 2011 within the appeal period.

MERIT HEARING

BACKGROUND

[9] The land to be subdivided is a previously unsubdivided quarter section situated in Parkland County, located between the north shore of Jackfish Lake and the south shore of Little Jackfish Lake, south of the Hamlet of Carvel. The western boundary of the subject parcel is Range Road 24. Township Road 524 is one half mile to the north. Highway 770 is over half a mile to the east.

[10] The SA noted that an outline plan was submitted showing ten residential lots of no less than 0.76 ha (0.87 ac) in size with private on-site services. There will be 7.1 ha (17.5 ac) dedicated as either a Land Trust or as Environmental Reserve Easement (ERE). Environmental Reserves (ER) in the amount of 10.7 ha (26.4 ac) and 2.3 ha (5.6 ac) of Municipal Reserves (MR). The tentative plan is as follows.



[11] The subject lands are located within the Jackfish and Johnny's Lakes Wetland Complex which is an area of Local Environmental Significance. These areas are staging/breeding areas for waterfowl. The lake currently has a collapsed walleye fishery, and the lakes and wetlands are moderately sensitive, as they are impacted by shore line alteration, erosion (siltation), and introduction of nutrients and agricultural chemicals.

[12] The terrain on the subject parcel is rolling with slopes ranging from 12-27 degrees, and large areas are covered by the water bodies. There is some flood-susceptible land, but it is all contained within lands proposed as ER on the tentative plan of subdivision. The lands are within the Country Residential Core designation in the Municipal Development Plan (MDP) and within the "CRR – Country Residential Restricted" and "PC-Conservation" Districts of the Land Use Bylaw (LUB). The subject lands also are within the Jackfish Lake Area Structure Plan (ASP).

[13] The SA conditionally approved the proposed subdivision by letter dated July 15, 2011.

[14] The Appellant appealed the decision to the MGB. The appeal focused on Conditions 3(b) and 13. Condition 3(b) requires the internal road to be extended throughout the proposed subdivision to the adjoining quarter. However, the Appellant argued this requirement is contrary to the intent of the development and departs from the design of previous subdivisions in the area of Jackfish Lake. The Appellant also argued that Condition 13, which requires the development agreement, is too vague.

[15] The conditions that were the primary focus of the appeal are highlighted in bold:

1. Pursuant to Section 654(1)(d) of the Municipal Government Act, all outstanding property taxes to date are to be paid. Pursuant to Parkland County Policy PD 020, if the subdivision is registered at Land Titles after December 31 and prior to the tax payment deadline (normally June 30), the applicant must prepay the property taxes that would be due on or before the above noted deadline.
2. The lots shall be numbered using the County's rural addressing system. Please contact the Planning Department at 780-968-8443 to obtain all required municipal addresses. The legal base shall be completed by the Surveyor and referred to Planning & Development Services for log numbering approval prior to preparation of the Development Agreement and submission of detailed engineering design to the County.
3. **Pursuant to Section 7 of the Subdivision and Development Regulation, and to Parkland County requirements, the June 21, 2011 tentative plan shall be revised accordingly:**
 - a. the Tentative Plan of Subdivision revising the road widening width to 5.0 metres and the Municipal Reserve (MR) buffer strip to 6.0 meters in width. Once this revision is completed, the land calculation chart will have to be updated to reflect the area changes on the map;

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122 to provide guidelines and recommendations for development on and adjacent to the identified slopes.

6. Pursuant to Section 7 of the Subdivision & Development Regulation, Restrictive Covenants prepared to the satisfaction of the Manager of Planning & Development Services shall be registered against all approved residential lots identifying a suitable and contiguous 0.4 ha (1.0 ac) building pocket on each lot that implements the recommendations of the numerous professional geotechnical and biophysical recommendations for all approved residential lots. The Restrictive Covenant for Lot 5 shall include a setback distance from the crest of the slope is no less than 10 metres for any buildings and the restriction on fill or excavating within the said lands. The building pockets shall not contain any lands that have been identified to contain high water table or slopes over 15%.
7. Pursuant to Section 7 of the Subdivision & Development Regulation, the developers will continue work with Alberta Community Development to determine if that agency has any concerns about the subject lands from an historical, archaeological or related perspective and to determine if there is a requirement to complete a Historical Resources Impact Assessment and mitigative studies. Confirmation of discussions and subsequent information/revisions to the Tentative Plan of Subdivision shall be to the satisfaction of the Manager of Planning & Development Services prior to requesting a Development Agreement.
8. Pursuant to Section 7 of the Subdivision and Development Regulation, a Restrictive Covenant prepared to the satisfaction of Parkland County, shall be registered against all approved residential and PC districted lots notifying future landowners of the contents and recommendations of the Biophysical Assessment prepared by Bruce Thompson and Associates Inc. dated January 2011 and implements a "residents' Environmental Code of Conduct", to provide an increased awareness and environmental protection expectation for all future residents within the subdivision. The "Residents' Code of Conduct" shall also address that encroachments/development shall not be allowed within the Environmental Reserve Buffer except as permitted by the Jackfish Lake Area Structure Plan as well as restricting the entry of nutrients and other deleterious substances into the lakes from surface water runoff. Please refer to the Environmental Management Objectives included in the Biophysical Assessment for guidance.
9. Pursuant to Section 7 of the Subdivision & Development Regulation, a Restrictive Covenant prepared to the satisfaction of the Manager of Planning & Development Services shall be registered against all the PC districted lots approved restricting the use provision "Convenience Retail Service" on the subject lands.
10. Pursuant to Section 664(2) of the Municipal Government Act, Environmental Reserve Easements prepared to the satisfaction of the Manager of Planning & Development Services shall be registered against all PC districted lots. Alternatively and pursuant to Section 655 of the Municipal Government Act and Section 7 of the Regulation, the PC districted lots may be donated to an accredited Land Trust for conservation

purposes. If the lands are donated to a land trust, the Environmental Reserve Easement shall not be required to be registered against the PC districted lots. The developer shall provide Parkland County with a copy of the donation/transfer of title or other documentation that is acceptable to the Manager of Planning & Development Services.

11. Pursuant to Section 655 of the Municipal Government Act, the developers shall complete an Environmental Protection Plan (containing erosion control and tree protection measures) by a certified professional that contains the Environmental Management Objectives outlined in the Biophysical Assessment prepared by Bruce Thompson and Associates Inc. dated January 2011. This Environmental Protection Plan will be completed to the satisfaction of the Manager of Planning & Development Services prior to commencement of construction and the developers implement those recommendations during the construction of the development.
12. Pursuant to Section 655 of the Municipal Government Act, the owner shall develop and implement a Fire Prevention Plan for the subject lands to the satisfaction of the Fire Chief.
13. Pursuant to Section 655 of the Municipal Government Act, the owner shall enter into a Development Agreement with the Council for Parkland County addressing all off-site and on-site improvements which will include, but may not be limited to:

Off-Site

- a. any revisions to the Traffic Impact Assessment (TIA) that may be necessary and/or other similar technical evaluations as determined by the Manager of Engineering Services and completed to the Manager's satisfaction, for the proposed development that evaluates the traffic of Range Road 24 from the most northerly proposed entrance to the subdivision north to Township Road 524 and east to Highway 770 to a Residential Collector Standard. Possible road and/or intersection upgrades at the intersection of Highway 770 and Township Road 524 or other additional upgrades as per the recommendations of the completed and accepted TIA may be required. The proposed location for the access point to the subdivision be reviewed with the Engineering Department to ensure that sight distances are acceptable.
- b. hard surfacing of Range Road 24 south from Township Road 524 to the southerly quarter line for the subject lands will be required as a minimum to service the development; other off-site road improvements may be required once a detailed TIA and surface condition ratings of Township Road 524 have been completed.
- c. any off-site drainage improvements associated with the off-site road work as required by the Manager of Engineering Services, as applicable;

- d. any off-site traffic signage installation or removal associated with the off-site road work as required by the Manager of Engineering Services, as applicable.

On-Site

- e. construction and asphalt surfacing of the proposed internal subdivision road and cul-de-sac to a Residential Local Standard with asphalt surfacing, including the construction of the said road to the east quarter section boundary. The developers shall dedicate any necessary easements to accommodate the construction of any temporary turn-arounds if required;
 - f. removal of any existing approaches to Range Road 24 from the subject lands upon completion of the new internal roadways as required by Engineering Services;
 - g. preparation of a detailed storm water management plan that incorporates the Environmental Management Objectives of the Biophysical Assessment prepared by Bruce Thompson and Associates Inc. dated January 2011. Furthermore, additional precautions are to be included to limit the amount of pollution, nutrient, and sedimentation that would impact the adjacent lakes. These precautions include a Sediment Trap and Sediment Control Facility. The developers shall incorporate these functions into the final storm water management plan;
 - h. construction of any necessary related off-site and on-site improvements will be required. The developers shall dedicate all required lands within Public Utility Lots to accommodate storm water management improvements as to be determined through detailed engineering design. The developers shall acquire all necessary approvals of Alberta Environment and/or other provincial or federal regulatory to complete the proposed wetland compensation within the development;
 - i. construction of a mail box pull out;
 - j. construction and asphalt surfacing of approaches to each lot;
 - k. submission of all necessary drainage easements, servicing easements and restrictive covenants where required;
 - l. erection of environmental reserve signage as required;
 - m. pursuant to Community Standards Bylaw No. 28-2010 the installation of subdivision and rural addressing signage. Please contact the Public Works Department at 780-968-8454 to order all required signs; and
 - n. installation of power, telephone and gas services.
14. Pursuant to Section 661 of the Municipal Government Act, all required 5.0 metre wide road widening shall be dedicated westerly boundary adjacent to Range Road 24 as shown on the revised tentative plan to ensure a minimum 30.0 metre right-of-way.

15. Pursuant to Sections 661 and 664 of the Municipal Government Act, all Environmental Reserve and Municipal Reserve, as depicted on the final tentative plan or required by this approval, shall be dedicated.
16. The subdivision shall be registered in a manner acceptable to the Registrar of Land Titles. Land Titles will require a Plan of Survey. The Alberta Land Surveyor and Consulting Engineer(s) shall ensure that no residential lot contains less than 0.4 ha (1.0 ac) of contiguous developable land. An endorsement fee of \$250.00 per residential lot is payable to Parkland County when the plan is submitted for endorsement. No fee is charge for reserves and public utility lots.

ISSUES

[16] In all cases, the legislation requires the MGB to address whether a proposed subdivision complies with the Act, Regulation, Provincial Land Use Policies (LUP), uses of land as prescribed in the LUB, the policies in the LUB, and the requirements set out in any statutory plans. In this particular case, the parties focussed on the following issues:

1. Does the MGB have authority to specify the contents of a Development Agreement upon appeal?
2. Is a revised Traffic Impact Assessment required as a condition of subdivision?
3. Is it appropriate to require the paving of Range Road 24 to the south quarter section boundary as a condition of subdivision?
4. Is the through road plan dedication through Lot 10 required as a condition of subdivision?
5. Does the subdivision plan meet the other requirements of the Act, Regulation, and local planning documents?

ISSUE 1: Does the MGB have the authority to specify the contents of a Development Agreement upon appeal?

Sub-issue a: If so, is the Development Agreement condition too vague?

SUMMARY OF THE SA's POSITION

Development Agreement/Levies/Recoveries

[17] Pursuant to Section 655 of the Act, SA determined that the developer should enter into a Development Agreement with Council to address the off-site and on-site improvements. Various items are to be covered by the development agreement including, but are not limited to, the following:

1. upgrading and surfacing Range Road 24,
2. construction and surfacing of the internal subdivision road,

3. the construction and surfacing of approaches to each lot,
4. the preparation of a detailed storm water management plan and the construction of any necessary improvements,
5. the submission of all necessary right-of-way plans and easements,
6. signage of the environmental reserve and conservation reserve areas,
7. development of an Environmental Protection Plan,
8. a Residents' Environmental Code of Conduct,
9. a Fire Protection Plan,
10. preparation of all documentation, and
11. the installation of subdivision and rural addressing signage.

[18] Development Agreements, the SA argued, have requirements and provisions set by Council. The SA's only discretion is whether or not to impose a condition that the proponent of a subdivision be required to enter into a development agreement. The SA in its decision cannot set the terms of the Development Agreement, at least not without Council's consent. These provisions are not subject to appeal. The MGB's jurisdiction on subdivision appeals is limited to reviewing the discretionary power exercised by the SA.

[19] The SA then stated that if the previous argument does not persuade the MGB, the Appellant's response to the August 3, 2011 letter should be considered. The Appellant stated that the terms of the development agreement:

"are vague much more so than the developer can accept. In particular, the requirement to pave Range Road 24 to the south extent of the quarter section and a dead end cul-de-sac (internal road) to the east adjoining quarter section boundary and well past the point where needed for access, the requirement for a non-defined off-site drainage improvements, and possible revisions to a Traffic Impact Assessment that the County may or may not require".

[20] The SA continued that the reason for the vagueness of the terms in the Development Agreement is that it is negotiated with Council, not set by the SA.

SUMMARY OF THE APPELLANT'S POSITION

Vague Conditions within the Development Agreement

[21] The Appellant suggested the MGB does have authority to specify the contents of a development agreement. In this case, the Condition 13 requiring the development agreement is so vague and canvasses so many items that the Developer cannot plan appropriately.

[22] Further, once an appeal period has expired, the developer has little influence on the municipality when it comes to negotiating a development agreement. The condition regarding

the development agreement was not well defined and before the appeal period expires clarification is requested, specifically about the items below.

Request for a new Traffic Impact Assessment

[23] The way the TIA requirement is described in Condition 13 leaves a lot of room for variance. The County did not provide the developer with any guidelines for preparing a TIA nor how it would differ from the TIA completed for AT. There is no County Policy for the content, format or scope of a TIA. The Appellant opined that it is inappropriate to have a TIA as a development agreement requirement beyond the appeal period of a subdivision approval. The developer questioned how much time the County required to review the TIA as they have already had it for two years.

Access Management

[24] The conditional approval makes it clear that the County has not deemed the access to the internal road nor the access to proposed Lots 1 and 2 satisfactory. This means that changes can be made to the designs, without mind for the outline plan. With the terms of the agreement being so open, the Appellant requested that the appeal period remain open until a draft development agreement is prepared.

FINDING – ISSUE 1

1. The MGB has authority to confirm, revoke or vary any condition imposed by the SA, including terms within a development agreement.

MGB REASONS

Development Agreement and MGB's Jurisdiction

[25] The SA argued that the terms of a development agreement are not within the MGB's jurisdiction. While the SA's argument did not cite *Planning Law and Practice* 3rd Edition by F. Laux, it appears part of their argument is found on page 13-18 where it is stated that:

... a strong case can be made out that the terms of a proposed s. 655 agreement are a matter of discretion on the part of the council of the municipality and not subject to appeal. The argument is based on the proposition that a board's jurisdiction on subdivision appeals is limited to reviewing the discretionary power exercised by the subdivision authority...

However, previous to this paragraph Professor Laux argues that:

...a condition requiring an applicant to enter into a s. 655 agreement has the effect of incorporating by reference the specific terms of the agreement that the municipality puts forth for signature. Thus each term may be viewed as a separate condition of subdivision approval which the board may confirm, revoke or vary as with any condition under appeal...

Professor Laux continues after giving both options as stating while waiting a court ruling, he is of the opinion that the appeal board has "broad powers to examine all elements of a subdivision approval, including the content of a section 655 agreement, to better ensure a fair and just result".

[26] The Act in section 680(2)(e) states that the MGB "may confirm, revoke or vary... any condition imposed by the subdivision authority or make or substitute an approval, decision or condition of its own". The MGB interprets this to mean all conditions are before the Board upon appeal, and agrees with Professor Laux's comment that this interpretation is more likely to ensure a fair and just result. In this case, the Appellant was concerned mainly with the terms about a TIA and access, which are considered below.

ISSUE 2: Is a revised Traffic Impact Assessment required as a condition of subdivision?

SUMMARY OF THE SA's POSITION

TIA

[27] The SA explained that the County's Engineering Services requested detailed information to address all internal and external improvements including an updated TIA. The Development Agreement also suggested that a revised TIA may be required as the one provided with the outline plan supported the developers' original plan for a 45-unit bareland condominium with a private marina and boat launch. As a courtesy, the SA did not require a revised TIA with the application as it could also be requested in the Development Agreement. Since the original proposal was abandoned, some of the roadway features may change, and resulting off-site road upgrades may impact the existing drainage for the area. Without a revised TIA, this information is unavailable.

SUMMARY OF THE APPELLANT'S POSITION

[28] The requirement for another TIA is unreasonable. The Appellant noted that the original TIA was for a 45-lot subdivision and a 10-lot subdivision would not require more than the original TIA recommendation. The TIA was acceptable to Alberta Transportation (AT) and the County has had the TIA in its possession for several years. The County has had a reasonable

amount of time to review the TIA or advise them what else was required in support of the subdivision application.

FINDING – ISSUE 2

2. A limited TIA that addresses the impact on Range Road 24 may be required.

MGB REASONS

Traffic Impact Assessment/Upgrades

[29] The original TIA contemplated 45 lots addressing Township Road 524 and Highway 770, but not Range Road 24. The TIA stated the intersection with 45 lots is acceptable. The impact of 10 lots will not exceed that of 45 lots and is likewise acceptable. The MGB recognizes that the County is the road authority for Range Road 24, which is not contemplated in the original assessment. Therefore, it finds that the most that may be required under a development agreement is a limited TIA that examines the anticipated impact of the revised 10 lot proposal on Range Road 24 and the intersection of Range Road 24 and Township 524. In other words, if a TIA is required, its scope should be limited to. Any upgrades required as a result of the TIA should be fair and proportionate for the development.

ISSUE 3: Is it appropriate to require the paving of Range Road 24 to the south quarter section boundary as a condition of subdivision?

SUMMARY OF THE SA's POSITION

[30] The SA's representative explained that the County has a "pavement to pavement" policy for all new multi-parcel subdivisions. The MDP requires new development and associated infrastructure to pay for itself so as not to burden ratepayers. Thus, its policies require subdivision and development to pay the full cost of supporting the infrastructure. MDP Policy 10.12, in particular, states that all off-site access and internal roads serving a multi-parcel residential or industrial subdivision shall be paved to the satisfaction of Parkland County. Paving Range Road 24 to the south quarter section line is necessary so that the lands to the south would not be required to pave a road that is part of the current developers' responsibilities.

[31] As such, Range Road 24 is to be paved from the entrance of the subdivision to Township 524. While not normally permitted, Engineering Services is prepared to allow direct access for Lots 1 and 2 to Range Road 24 instead of accessing the internal road because it is a dead end road. However, paving is also required south from the internal subdivision road to the quarter section line.

SUMMARY OF THE APPELLANT'S POSITION

[32] The Appellant questioned Condition 13(a) of the approval which required the upgrading and paving of Range Road 24. The Jackfish Lake ASP states that the road is to be constructed to a local road standard, and that Range Road 25 is the collector road. The design standard provided by the County is a collector roadway standard, designed for an 80 km per hour speed limit instead of to the local road standard with a 60 km per hour speed limit on a dead end road. This was not part of the Tranquil Waters proposal, and runs contrary to their objectives, which are to be sensitive to the environment, quiet, and exclusive. Through roads will result in increased traffic, creating more noise and opportunities for road run-off to pollute the lake.

[33] The SA in its conditions has required that road widening, development and paving occur to the south boundary of the quarter-section, even though all the traffic from the Tranquil Waters internal road will be northbound on Range Road 24. The Appellant maintained that this requirement is in excess of what is required to serve Tranquil Waters and is contrary to the Act. Section 655(1)(b)(i) states that the developer has to pay for the construction of a roadway to provide access to the subdivision and section 662(1) allows a municipality to require a developer to provide part of a parcel for road dedication. The Appellant directed the Board's attention to page 14-5 of Professor Fred Laux's book, *Planning Law and Practice*, January 2010 edition:

"There must be a relationship between the land taken under section 662 and the roadway and utility land needs of the subdivision.

Further to this, Professor Laux states that

"this section demands a correlation between the burden to be imposed on a developer and the benefit that his development will receive".

In addition, the Appellant illustrated for the Board that section 662(3) prohibits a municipality from acquiring more land than is necessary to service the subdivision.

[34] Paving Range Road 24 south of the entrance to Tranquil Waters does not benefit the Appellant; it benefits other landowners. Further, the accesses to Lots 1 and 2 are within the parameters of the land use district, and do not require paving. The Appellant does not oppose providing land for road widening; however, the expense involved in upgrading and improving the road south is not justified as the benefit to them is minimal. The Appellant requests that the requirement to improve Range Road 24, beyond a reasonable distance south of the internal road intersection, be removed. Furthermore, the contribution for other off-site improvements should be proportionate to the benefit derived by Tranquil Waters.

FINDING – ISSUE 3

3. The paving of Range Road 24 to the south boundary is not required as a condition of subdivision; paving is only required to the north boundary of Lot 2.

MGB REASONS

Range Road 24 Requirements

[35] The SA required Range Road 24 to be paved from Township Road 524 to the southern boundary of the quarter section line. The Appellant requested the improvements not be required past a reasonable distance south of the internal road intersection. The MGB agrees with the Appellant and Professor Laux that there should be a reasonable correlation between the burden imposed on the developer and the benefit the development will receive. In this case, the Tranquil Waters development will receive little or no benefit from paving the segment of Range Road 24 south of its intersection with the internal access road. As Range Road 24 is a dead end road, most traffic from the Tranquil Waters development will use the road segment north of the intersection. It is true that lots 1 and 2 will access Range Road 24 directly on its southern segment, but these two lots alone would not require the paving of Range Road 24 to provide safe and proper access. In the MGB's view, a fair and reasonable requirement under these circumstances is that Range Road 24 be paved from Township Road 524 to the north boundary of Lot 2. This arrangement will provide paved access to the internal road intersection and a short distance to the south beyond.

[36] Condition 13 required that Range Road 24 be upgraded to a Residential Collector Standard. However, the MGB sees no justification for this requirement. In this regard, the MGB notes that the ASP states Range Road 25 is the minor collector road (Policy 4.9.3) and all other roads are to be county roads (Policy 4.9.5).

[37] There was no disagreement between the parties with regards to the road widening requirement. The MGB maintained the requirement in the conditional approval to dedicate the land for the full length of Range Road 24 for eventual improvement or widening.

ISSUE 4: Is the through road plan dedication through Lot 10 required as a condition of subdivision?

SUMMARY OF THE SA's POSITION

[38] The County's Engineering Services requested detailed information to address servicing including: plans and drawings for the construction of the internal subdivision road and the location of services to a Residential Local Road standard with possible extension through proposed Lot 10 to provide future connection to the SE 21-52-2-W5M. The extension of the

internal subdivision road may require consultation and approval from Alberta Environment as it appears to cross a wetland. Feedback on these plans will be provided by Engineering Services prior to drafting the Development Agreement to ensure all required improvements are included.

[39] Parkland County's Fire Chief has indicated that he does not support the development of multi-parcel subdivision with one point of access to the subdivision. For emergency response purposes, it is better to have at least two accesses into a multi-parcel subdivision in case one of the accesses is blocked. In response, the SA required a future connection through proposed Lot 10 to SE 21 and recommended that the developers develop a Fire Protection Plan.

[40] Based on the above comments, the SA determined that the subdivision road should be fully constructed through Lot 10 to provide access to SE 21. The decision is supported by County Administrative Policy PD-033 which describes an outline plan as a non-statutory framework to ensure that future road networks and lot servicing will be efficient, practical and provide adequate linkages to adjacent properties. The SA also relied on Section 7.2.3 of the County's Subdivision Development Standards, which states:

"the residential local road classification is applicable to internal residential subdivision roads that, in addition to providing property access, interconnect two or more residential access roads and/or provide the main access to and from the subdivision to the County road system or other subdivisions."

[41] A second access is therefore required. However, owing to water bodies and existing development, the locations of potential roadway connections to adjacent lands are limited to SE 21 or NE 16. Although Alberta Transportation currently will not allow an additional intersection on Highway 770, a future connection might be possible. The SA believed that the most logical solution is construction of a connection through to SE 21. If this connection were constructed with the balance of the subdivision, future owners would be aware of the potential for a future roadway and additional traffic should SE 21 develop.

[42] In support of extending the internal road, section 10 of the MDP states that "new development must be managed so that associated infrastructure pays for itself and does not result in a burden on ratepayers". Developers are responsible for full installation and construction of all infrastructure needed to support the proposed subdivision. This includes connecting roadways to adjacent quarters and the upgrade and paving of Range Road 24 to provide access to NW 16.

[43] While the Appellant stated in the Notice of Appeal to the MGB that the requirement to extend the road is contrary to the intent of the developer, the SA stated that the tentative plan includes a 30 metre road right-of-way identified through the northern portion of Lot 10 showing the intention of providing an eventual connection. In response to the Appellant's arguments that a second access was extraordinary, the SA reviewed all other multi-parcel subdivisions along the shores of Jackfish Lake. There are only two subdivisions that have one access to the subdivision.

These subdivisions are constructed on peninsulas and cannot be considered typical subdivision designs.

[44] The SA submitted that the tentative plan of subdivision meets County standards, but requires minor revisions. The revisions include revising the roadway plan to include the extension of the internal subdivision road to the east boundary of the quarter section. With the requirement to construct a roadway, rather than dedicate a right of way, the location of the road might reduce the 0.4 hectare (1.0 acre) building pocket on Lot 10, and might eliminate this as a viable parcel. If this occurs, Lots 6 through 9 will need to be enlarged, and the lot lines adjusted on these parcels prior to endorsement.

SUMMARY OF THE APPELLANT'S POSITION

[45] As part of the Land Use Bylaw amendment and subdivision application process, the Appellant prepared an outline plan. The Appellant has a different view than the County on the status of outline plans. The County has the view that an outline plan is a living document with no legal standing and is only applicable to the application at hand. The Appellant agrees that an outline plan does not have the same legal standing as an ASP. However, when an outline plan has similar or more detailed content than the ASP and is used as part of a land use bylaw application, and referred to at the public hearing, some weight should be given to the document. Substantive changes like realigning roads would change the nature of the proposed subdivision.

[46] The SA decided to amend the subdivision layout and extend what was a cul-de-sac at Lot 10 to a road connecting to the adjoining east quarter section. In the two year process of subdivision, the Appellant was not advised of the comments made by either Engineering or the Fire Chief, and were given no indication that this was contemplated until they were advised of Administration's recommendation to the SA.

[47] The Appellant questioned that change. The MDP does not refer to through roads or connectivity to adjoining lands as a basic or core planning objective. Subdivisions in proximity to Jackfish Lake are almost exclusively cul-de-sac and crescent pattern and are not connected. Internal reviews by the County's Planning Department on both versions of the outline plan did not highlight a need for a through road. The Appellant believes that the through road is a discretionary requirement, rather than a core planning objective of the County.

[48] The extension of the cul-de-sac to the east property line is in conflict with the Jackfish Lake ASP. Section 7 of the ASP is clear that roads are to be internal other than minor collector roads and Highway 770. If the Tranquil Waters roadway connects through to the other quarter section and, over time to Highway 770, it would have the effect of creating a short-cut and avoiding the designated roadways in the statutory plan. The Jackfish Lake ASP also calls for the balance of the transportation network to have consideration for the development of adjoining lands and where possible, to not route traffic through existing developed local roads. A

connecting roadway would funnel additional traffic through Tranquil Waters onto Range Road 24 or if an intersection is allowed, over to Highway 770.

FINDING – ISSUE 4

4. The road plan through Lot 10 is required as a condition of subdivision.

MGB REASONS

Lot 10 Road/Cul-de-sac Requirement

[49] The MGB finds that the requirement of the connector road to the adjacent lands is an element of good planning, safety and risk mitigation. This requirement may not be stated in the MDP or ASP, but is a good planning practice. This through road is not required to be constructed now, but its dedication at time of subdivision provides options for the future.

[50] In response to the Appellant's argument that other subdivisions were not required to connect with adjacent lands, the MGB accepts the SA's explanation. Many of the previous subdivisions that were referred to by the Appellant were not able to connect to adjacent lands due to the topography and site characteristics. In any case, the Board is not bound by previous subdivision applications and is only considering the matter under appeal.

[51] In considering the requirement for dedication of a roadway access from this subdivision to the adjacent quarter, the MGB looked to section 617 of the Act which discusses the purpose of the Planning Part of the Act. The purpose, in part, is to achieve orderly development, use of land and patterns of human settlement "without infringing on the rights of individuals for any public interest except to the extent that is necessary for the overall greater public interest". Further to this, the Provincial Land Use Policies adopted under section 622 of the Act give a more detailed explanation of the intent of land use planning policies in Alberta.

[52] Specifically, in section 2.0, titled The Planning Process, the policies explain that when considering a planning application, both site specific and immediate implications as well as the long term and cumulative benefits and impacts need to be weighed. Secondly, section 4.0 Land Use Patterns' Goal is "to foster the establishment of land use patterns which make efficient use of land, infrastructure... which contribute to the development of healthy, safe, and viable communities". Further, 7.0 Transportation's Goal is to "contribute to a safe, efficient, and cost effective provincial transportation network". The MGB finds that while the local planning documents may not detail the importance of providing for connectivity with adjacent lands it is both good planning practice and the intent of the planning policies of the Act and Provincial Land Use Policies to ensure the safety of the residents. This is achieved by providing an option for two points of access for emergency vehicles. As well, the connectivity to the adjacent quarter

will contribute to the provincial transportation network by ensuring that when the adjacent land develops there is an alternate access road other than to a provincial highway.

[53] In light of the above considerations, the Board finds that while the requirement for a through road may not have been what the developer intended, this condition is outweighed by the benefit to current and future residents and to the greater public interest.

ISSUE 5: Does the subdivision plan meet the other requirements of the Act, Regulation, and local planning documents?

SUMMARY OF THE SA's POSITION

Background

[54] The subdivision application is consistent with Policy 3.1 of the MDP, Policy 4.7 of the ASP and Section 5.3(3) of the LUB which require lots to be a minimum of 0.4 hectares (1.0 acre) in size. Policy 2.2.1 of the ASP provides guidance for future subdivision and development constraints, which include high water table, flooding, slopes, and groundwater availability. The ASP states that "areas that are determined to have the occurrence of any of these limiting factors will not be permitted to be development." The ASP further states "there shall be no new subdivision of lands that fail to meet Alberta Environment's Guidelines for the evaluation of subdivision..." with the constraints or limiting factors as noted above. The Appellant has met these policies by identifying a significant portion of the undevelopable areas for dedications as ER and re-designation to PC-Conservation. The proposed plan is consistent with the density in the ASP.

Site Suitability

[55] The proposed subdivision is supported by a detailed outline plan that illustrates how the entire titled area will be developed and/or conserved. A detailed geotechnical evaluation was required as there are unique physical characteristics on these lands. The evaluation identified 1.0 acre of suitable and contiguous building pockets outside of high water table areas and slope areas for each approved residential lot. A test was completed for the subject lands to determine the factor of safety against slope failure and to provide building development guidelines. The slopes on the subject lands range from less than 15 percent to 50 percent. The report containing the slope information and development guidelines should be registered on title with the identified building pockets.

[56] During the soil testing for suitability of septic systems, it was demonstrated that not all the lots are suitable for conventional systems. Restrictive covenants are required to be registered against the titles for all approved residential lots and the remnant lots to limit private sewage treatment to holding tanks; however, a future landowner could also undertake soil testing to

prove suitability for a conventional system. The use of holding tanks or, other private sewage treatment systems if there is a soil test, is in keeping with Policy 4.8.1 of the ASP which is intended to ensure the integrity of the lake water quality.

[57] A hydrogeology study was completed, which stated that all lots can be supplied with groundwater for residential use without impacting the underlying aquifer or adjacent landowners. With respect to a Storm Water Management Plan (SWMP), Alberta Environment approvals may be required if the final design includes the use of wetlands. The SA required a detailed SWMP as a part of the development agreement.

Biophysical Assessment

[58] The Appellant completed a Biophysical Assessment which stated that there are areas that should be conserved through thoughtful subdivision design, and set out requirements for the development agreement. The assessment stated that there may be significant tree stands on the parcel and recommended a Tree Protection Plan. An Environmental Protection Plan that included the environmental objectives of the Assessment was recommended. The Plan could be used to develop a Residents' Environmental Code of Conduct. This Code of Conduct would be registered on the titles of all approved lots to educate the future landowners. Finally, the SA required confirmation if a Historical Resources Impact Assessment has been requested by Alberta Culture and Community Services.

Environmental Reserve and PC-Conservation District

[59] Section 4.7.10 and 2.2.1 of the Jackfish Lake ASP requires a minimum dedication of 30 metres of land from any lake shore as Environmental Reserve. The SA explained that the proposed subdivision meets this requirement for provision of a 30 metre wide Environmental Reserve (ER) buffer.

[60] Convenience Retail Service is a discretionary use within the PC-Conservation District in the County's LUB. Convenience Retail is defined as drug stores, gas bars and small food stores. Administration does not believe that this use is appropriate for a parcel adjacent to Jackfish and Little Jackfish Lakes. The outline plan also had the PC – Conservation lands identified for either dedication to a land trust for conservation, or for conservation through an environmental reserve easement. A restrictive covenant, registered on title, could remove the use for the parcel.

Municipal Reserve

[61] The full amount of Municipal Reserve (MR) owing - 10% of the gross developable area of the quarter section - will be dedicated as land to the satisfaction of the Manager of the Planning and Development Department.

Alberta Environment

[62] The SA noted that all provincial approvals be obtained from Alberta Environment and Public Lands for the alteration of wetlands and subdivision construction.

SUMMARY OF THE APPELLANT'S POSITION

Background

[63] The Appellant explained that the Tranquil Waters development was initiated in 2008 as a higher density cluster development of 45 lots. In 2010, a revised outline plan was submitted and revisions occurred prior to the submission of the subdivision application. Supporting materials and reports were updated to reflect a 10-lot development. A land use bylaw amendment was also required, and the amendment required that submission of revised outline plan and updated engineering reports. These materials detailed lot dimensions, displayed the road network, areas of high water table, and environmentally sensitive lands. Then, after the amendment, subdivision was applied for using the outline plan and documentation that was provided to Council.

[64] The Tranquil Waters subdivision is a "Traditional Country Residential" subdivision and is as described in the MDP. It conforms to the density, lot area and building site requirements of the Jackfish Lake ASP. Tranquil Waters meets or exceeds all requirements of the Country Residential Restricted (CRR) district and all proposed uses are permitted or discretionary within this land use district. As part of the Land Use Bylaw amendment and subdivision application process the Appellant prepared an outline plan.

FINDING – ISSUE 5

5. The subdivision, with the conditions of approval, meets the requirements of the Act, Regulation, LUP, and local planning documents.

MGB REASONS – See Summary and Reasons

DECISION

[65] The appeal is allowed, in part, and the decision of conditional approval of the SA is varied as follows:

1. Pursuant to Sections 654(1)(d) and 655(1)(a) of the *Municipal Government Act*, all outstanding property taxes to date are to be paid. Pursuant to Parkland County Policy 020, if the subdivision is registered at Land Titles after December 31 and prior to the tax payment deadline (normally June 30), the applicant must prepay the property taxes that would be due on or before the above noted deadline.

2. The lots shall be numbered using the County's rural addressing system. Please contact the Planning Department at 780-968-8443 to obtain all required municipal addresses. The legal base shall be completed by the Surveyor and referred to Planning & Development Services for lot numbering approval prior to preparation of the Development Agreement and submission of detailed engineering design to the County.
3. Pursuant to Section 7 of the *Subdivision and Development Regulation* and to Parkland County requirements, the June 21, 2011 tentative plan shall be revised accordingly:
 - a. The revised Plan of Subdivision shall show road widening width of 5.0 metres and the Municipal Reserve (MR) buffer strip of 6.0 meters in width. Once this revision is completed, the land calculation chart will have to be updated to reflect the area changes on the map;
 - b. The revised Plan of Subdivision shall show the extension of the internal subdivision road with cul-de-sac to the eastern extent of the quarter section through proposed lot 10 so that a future connection can be made to the SE 21-52-2 W5M. This will result in the reduction of the area for proposed Lot 10. The remaining area for Lot 10 may not contain at least 1 acre of contiguous developable land/building pocket. If that is the case, then Lot 10 will not be approved and the areas for Lots 6-9 will be increased to absorb any remaining lands once the internal road is extended to the east;
 - c. The revised Plan of Subdivision shall show any lands to the north of the internal subdivision road and south of the Environmental Reserve (ER) buffer strip should be incorporated into the ER buffer (i.e. north of lots 6-10). Credit will be given to the dedication of this area and the MR owing will be adjusted accordingly upon approval of the Final Survey;
 - d. The revised Plan of Subdivision shall include an accurate calculation of all land areas being developed and conserved. This calculation must be completed to ensure that the entire titled area is accounted for so that the appropriate MR owing can be dedicated. The Development Statistics chart on Map 1 of 4 Tentative Plan of Subdivision will be updated to the satisfaction of the Manager of Planning & Development services. Please note, as per Administrative Policy C-PD-15 "Dedication of Municipal Reserve" Section 6, "land dedicated towards Environmental Reserve, Environmental Reserve Easement, Conservation Easement, or Public Utility Lot (PUL) shall not be considered as compensation for MR owing". Therefore, the final MR calculations shall not include the areas to be dedicated as PUL for storm water management; and
 - e. The revised Plan of Subdivision shall show any outstanding MR owing. The MR will be dedicated as land and to the satisfaction of the Manager of Planning & Development Services.

4. Pursuant to section 651.1 of the *Municipal Government Act*, and section 7 of the Subdivision & Development Regulation, a Restrictive Covenant be prepared to the satisfaction of the Manager of Planning & Development Department regarding sewage systems. This Restrictive Covenant will notify future owners of the soil percolation information supplied with the application that determined that a traditional/conventional disposal septic tank to field of private sewage disposal system may not be suitable given limiting factors at the time of geotechnical evaluation of the subject lands. This Restrictive Covenant shall be registered against each approved lot so that further site specific testing can be completed at the time of lot development as noted within the Soil Permeability and Percolation Testing Report by Hagstrom Geotechnical Services Ltd. and dated January 5, 2011 File No. H0803-122.
5. Pursuant to section 651.1 of the *Municipal Government Act*, and section 7 of the Subdivision & Development Regulation, a Restrictive Covenant be prepared to the satisfaction of the Manager of Planning & Development Services regarding slope stability. This Restrictive Covenant shall be registered against each approved lot notifying future landowners of the contents and recommendations in the Slope Stability Assessment prepared by Hagstrom Geotechnical Services Ltd. dated September 8, 2010 File Number H0803-122 to provide guidelines and recommendations for development on and adjacent to the identified slopes.
6. Pursuant to section 651.1 of the *Municipal Government Act*, and section 7 of the Subdivision & Development Regulation, Restrictive Covenants be prepared to the satisfaction of the Manager of Planning & Development Services regarding building pockets. The Restrictive Covenants shall be registered against all approved residential lots identifying a suitable and contiguous 0.4 ha (1.0 ac) building pocket on each lot that implements the recommendations of the numerous professional geotechnical and biophysical recommendations for all approved residential lots. The Restrictive Covenant for Lot 5 shall include a setback distance from the crest of the slope no less than 10 metres for any buildings and the restriction on fill or excavating within the said lands. The building pockets shall not contain any lands that have been identified to contain high water table or slopes over 15%.
7. Pursuant to Section 7 of the *Subdivision and Development Regulation*, the developers will continue to work with Alberta Community Development to determine if that agency has any concerns about the subject lands from an historical, archaeological or related perspective and to determine if there is a requirement to complete a Historical Resources Impact Assessment and mitigative studies. Confirmation of discussions and subsequent information/revisions to the Tentative Plan of Subdivision shall be to the satisfaction of the Manager of Planning & Development Services prior to requesting a Development Agreement.

8. Pursuant to section 651.1 of the *Municipal Government Act*, and section 7 of the *Subdivision and Development Regulation*, a Restrictive Covenant be prepared to the satisfaction of the Parkland County, regarding the Biophysical Assessment. The Restrictive Covenant shall be registered against all approved residential and PC districted lots notifying future landowners of the contents and recommendations of the Biophysical Assessment prepared by Bruce Thompson and Associates Inc. dated January 2011. The Restrictive Covenant shall implement a "Residents' Environmental Code of Conduct", to provide an increased awareness and environmental protection expectation for all future residents within the subdivision. The "Residents' Code of Conduct" shall also address that encroachments/development shall not be allowed within the Environmental Reserve Buffer except as permitted by the Jackfish Lake Area Structure Plan as well as restricting the entry of nutrients and other deleterious substances into the lakes from surface water runoff. Please refer to the Environmental Management Objectives included in the Biophysical Assessment for guidance.
9. Pursuant to section 651.1 of the *Municipal Government Act*, and section 7 of the *Subdivision and Development Regulation*, a Restrictive Covenant prepared to the satisfaction of the Manager of Planning & Development Services shall be registered against all PC districted lots approved restricting the use provision "Convenience Retail Service" on the subject lands.
10. Pursuant to Section 664(2) of the *Municipal Government Act*, Environmental Reserve Easements, which shall be prepared to the satisfaction of the Manager of Planning & Development Services, shall be registered against all PC districted lots. Alternatively, the PC districted lots may be donated to an accredited Land Trust for conservation purposes. If the lands are donated to a land trust, the Environmental Reserve Easement shall not be required to be registered against the PC districted lots. The developer shall provide Parkland County with a copy of the donation/transfer of title or other documentation that is acceptable to the Manager of Planning & Development Services.
11. The developers shall complete an Environmental Protection Plan (containing erosion control and tree protection measures) by a certified professional that contains the Environmental Management Objectives outlined in the Biophysical Assessment prepared by Bruce Thompson and Associates Inc. dated January 2011. This Environmental Protection Plan will be completed to the satisfaction of the Manager of Planning & Development Services prior to commencement of construction and the developers implement those recommendations during the construction of the development.
12. The owner shall develop and implement a Fire Prevention Plan for the subject lands to the satisfaction of the Fire Chief.

13. Pursuant to Section 655(1)(b) of the *Municipal Government Act*, the owner shall enter into a Development Agreement with the Council for Parkland County addressing all off-site and on-site improvements which will include, but may not be limited to:

Off-Site

- a. any revisions to the Traffic Impact Assessment (TIA) that may be necessary and/or other similar technical evaluations as determined by the Manager of Engineering Services and completed to the Manager's satisfaction, for the proposed development that evaluates the traffic of Range Road 24 from the most northerly proposed entrance to the subdivision north to Township Road 524. Possible road and/or intersection upgrades at the intersection of Range 24 and Township Road 524 or other additional upgrades as per the recommendations of the completed and accepted TIA may be required. The proposed location for the access point to the subdivision be reviewed with the Engineering Department to ensure that sight distances are acceptable.
- b. hard surfacing of Range Road 24 south from Township Road 524 to the northern boundary of Lot 2; other off-site road improvements may be required once a detailed TIA and surface condition ratings of Township Road 524 have been completed.
- c. any off-site drainage improvements associated with the off-site road work as required by the Manager of Engineering Services, as applicable;
- d. any off-site traffic signage installation or removal associated with the off-site road work as required by the Manager of Engineering Services, as applicable.

On-Site

- e. construction and asphalt surfacing of the proposed internal subdivision road and cul-de-sac to a Residential Local Standard with asphalt surfacing, including the construction of the said road to the east quarter section boundary. The developers shall dedicate any necessary easements to accommodate the construction of any temporary turn-arounds if required;
- f. removal of any existing approaches to Range Road 24 from the subject lands upon completion of the new internal roadways as required by Engineering Services;
- g. preparation of a detailed storm water management plan that incorporates the Environmental Management Objectives of the Biophysical Assessment prepared by Bruce Thompson and Associates Inc. dated January 2011. Furthermore, additional precautions are to be included to limit the amount of pollution, nutrient, and sedimentation that would impact the adjacent lakes. These precautions include a Sediment Trap and Sediment Control Facility. The developers shall incorporate these functions into the final storm water management plan;
- h. construction of any necessary related off-site and on-site improvements will be required. The developers shall dedicate all required lands within Public Utility Lots to accommodate storm water management improvements as to be determined through detailed engineering design. The developers shall acquire all necessary

- approvals of Alberta Environment and/or other provincial or federal regulatory to complete the proposed wetland compensation within the development;
- i. construction of a mail box pull out;
 - j. construction and asphalt surfacing of approaches to each lot;
 - k. submission of all necessary drainage easements, servicing easements and restrictive covenants where required;
 - l. erection of environmental reserve signage as required;
 - m. pursuant to Community Standards Bylaw No. 28-2010 the installation of subdivision and rural addressing signage. Please contact the Public Works Department at 780-968-8454 to order all required signage; and
 - n. installation of power, telephone and gas services.
14. Pursuant to Section 661 and 662 of the *Municipal Government Act*, all required 5.0 metre wide road widening shall be dedicated westerly boundary adjacent to Range Road 24 as shown on the revised tentative plan to ensure a minimum 30.0 metre right-of-way.
15. Pursuant to Sections 661 663, and 664 of the *Municipal Government Act*, all Environmental Reserve and Municipal Reserve, as depicted on the final tentative plan or required by this approval, shall be dedicated.
16. The subdivision shall be registered in a manner acceptable to the Registrar of Land Titles. Land Titles will require a Plan of Survey. The Alberta Land Surveyor and Consulting Engineer(s) shall ensure that no residential lot contains less than 0.4 ha (1.0 ac) of contiguous developable land.
17. An endorsement fee of \$250 per residential lot is payable to Parkland County when the plan is submitted for endorsement. No fee is charged for reserves and public utility lots.

[66] **FURTHER, the Appellant shall provide documentation to Parkland County to demonstrate that the above noted conditions have been met, prior to the endorsement pursuant to sections 657 and 682 of the Act.**

[67] **AND FURTHER, this decision is valid for a period of one year from the date of this Order.**

MGB SUMMARY & REASONS

Other Considerations and Remaining Conditions

[68] The conditions of approval were largely reproduced from the SA's decision with occasional alterations in wording to make them read more clearly. Most of the conditions of subdivision were not discussed in detail by the parties, who focused mainly on the few

conditions to which the Appellant objected. The MGB is generally satisfied that the authority to impose the conditions is to be found in sections 617 and 654 of the Act and section 4 of the LUP – though it would have been helpful for the SA to indicate any other applicable sections of the Act.

[69] The Board accepts the parties' representations that the subdivision, subject to the conditions of approval, complies with the relevant portions of the Act, Regulation, LUP, MDP, ASP, and LUB. In particular, the MGB accepts that once the conditions are completed, the sites are suitable for their intended uses; accordingly, it approved the subject application subject to the listed conditions.

Other Approvals

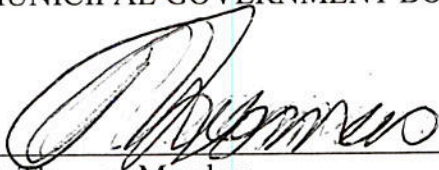
[70] The landowner/developer is still responsible for any and all applicable permits for development from the appropriate development authority. The MGB is not granting nor implying any approvals other than that of the conditional subdivision approval. Any other development approvals are beyond the MGB's jurisdiction.

It is so ordered.

No costs to either party.

DATED at the City of Edmonton, in the Province of Alberta, this 19th day of March 2012.

MUNICIPAL GOVERNMENT BOARD



D. Thomas, Member

APPENDIX "A"

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

NAME	CAPACITY
F. Florkowich	Appellant
V. Moroz	Appellant
R. Neufeld	Appellant
R. Andriuk	Appellant
D. Paulichuk	Appellant
C. Kortmeyer	SA Representative

APPENDIX "B"

DOCUMENTS RECEIVED PRIOR TO THE HEARING:

NO.	ITEM
1	Information Package (including Jackfish Lake ASP, Parkland County MDP and LUB)

APPENDIX "C"

DOCUMENTS RECEIVED AT THE HEARING.

NO.	ITEM
2A	Outline Plan and Documents
3A	Plan of Subdivision
4A	Postmarked Envelope
5R	Area Map
6R	County Policy
7R	Roadway Standards
8A	Photos
9A	Appellant's Submission
10R	SA's Submission

APPENDIX "D"

LEGISLATION

The Act and associated regulations contain criteria that apply to appeals of subdivision decisions.

Municipal Government Act

Section 617 is the main guideline from which all other provincial and municipal planning documents are derived. Therefore, in reviewing subdivision appeals, each and every plan must comply with the philosophy expressed in 617.

617 The purpose of this Part and the regulations and bylaws under this Part is to provide means whereby plans and related matters may be prepared and adopted

- (a) to achieve the orderly, economical and beneficial development, use of land and patterns of human settlement, and*
- (b) to maintain and improve the quality of the physical environment within which patterns of human settlement are situated in Alberta,*

without infringing on the rights of individuals for any public interest except to the extent that is necessary for the overall greater public interest.

Upon appeal, the MGB takes on the role of the subdivision authority. Pertinent provisions relative to decisions of the subdivision authority include Section 654(1) and (2) of the Act. The SA (and by extension the MGB) cannot approve a subdivision unless convinced that the site is suitable for the intended use, as per section 654(1)(a) of the Act.

654(1) A subdivision authority must not approve an application for subdivision approval unless
(a) the land that is proposed to be subdivided is, in the opinion of the subdivision authority, suitable for the purpose for which the subdivision is intended,

- (b) the proposed subdivision conforms to the provisions of any statutory plan and, subject to subsection (2), any land use bylaw that affects the land proposed to be subdivided,*
- (c) the proposed subdivision complies with this Part and the regulations under this Part, and*
- (d) all outstanding property taxes on the land proposed to be subdivided have been paid to the municipality where the land is located or arrangements satisfactory to the municipality have been made for their payment pursuant to Part 10.*

(2) A subdivision authority may approve an application for subdivision approval even though the proposed subdivision does not comply with the land use bylaw if, in its opinion,

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

and

- (b) *the proposed subdivision conforms with the use prescribed for that land in the land use bylaw.*

Section 655 of the Act details the conditions that can be imposed on a subdivision approval.

655(1) A subdivision authority may impose the following conditions or any other conditions permitted to be imposed by the subdivision and development regulations on a subdivision approval issued by it:

- (a) any conditions to ensure that this Part and the statutory plans and land use bylaws and the regulations under this Part affecting the land proposed to be subdivided are complied with;*
- (b) a condition that the applicant enter into an agreement with the municipality to do any or all of the following:*
 - (i) to construct or pay for the construction of a road required to give access to the subdivision;*
 - (ii) to construct or pay for the construction of*
 - (A) a pedestrian walkway system to serve the subdivision, or*
 - (B) pedestrian walkways to connect the pedestrian walkway system serving the subdivision with a pedestrian walkway system that serves or is proposed to serve an adjacent subdivision, or both;*
 - (iii) to install or pay for the installation of public utilities, other than telecommunications systems or works, that are necessary to serve the subdivision;*
 - (iv) to construct or pay for the construction of*
 - (A) off-street or other parking facilities, and*
 - (B) loading and unloading facilities;*
 - (v) to pay an off-site levy or redevelopment levy imposed by bylaw;*
 - (vi) to give security to ensure that the terms of the agreement under this section are carried out.*

(2) A municipality may register a caveat under the Land Titles Act in respect of an agreement under subsection (1)(b) against the certificate of title for the parcel of land that is the subject of the subdivision.

(3) If a municipality registers a caveat under subsection (2), the municipality must discharge the caveat when the agreement has been complied with.

Section 661 and 662 of the Act discuss the authority for the SA to require the dedication of land at time of subdivision as follows:

661 The owner of a parcel of land that is the subject of a proposed subdivision must provide, without compensation,

- (a) to the Crown in right of Alberta or a municipality, land for roads, public utilities and environmental reserve, and*

(b) subject to section 663, to the Crown in right of Alberta, a municipality, one or more school boards or a municipality and one or more school boards, land for municipal reserve, school reserve, municipal and school reserve, money in place of any or all of those reserves or a combination of reserves and money, as required by the subdivision authority pursuant to this Division.

662(1) A subdivision authority may require the owner of a parcel of land that is the subject of a proposed subdivision to provide part of that parcel of land for the purpose of roads, public utilities or both.

(2) The land to be provided under subsection (1) may not exceed 30% of the area of the parcel of land less the land taken as environmental reserve or as an environmental reserve easement.

(3) If the owner has provided sufficient land for the purposes referred to in subsection (1) but the land is less than the maximum amount authorized by subsection (2), the subdivision authority may not require the owner to provide any more land for those purposes.

Section 666 of the Act describes when reserves can be taken and the form that they can be taken in.

666(1) Subject to section 663, a subdivision authority may require the owner of a parcel of land that is the subject of a proposed subdivision

(a) to provide part of that parcel of land as municipal reserve, school reserve or municipal and school reserve,

(b) to provide money in place of municipal reserve, school reserve or municipal and school reserve, or

(c) to provide any combination of land or money referred to in clauses (a) and (b).

(2) The aggregate amount of land that may be required under subsection (1) may not exceed the percentage set out in the municipal development plan, which may not exceed 10% of the parcel of land less the land required to be provided as environmental reserve and the land made subject to an environmental reserve easement.

(3) The total amount of money that may be required to be provided under subsection (1) may not exceed 10% of the appraised market value, determined in accordance with section 667, of the parcel of land less the land required to be provided as environmental reserve and the land subject to an environmental reserve easement.

(4) When a combination of land and money is required to be provided, the sum of

(a) the percentage of land required under subsection (2), and

(b) the percentage of the appraised market value of the land required under subsection (3)

may not exceed 10% or a lesser percentage set out in the municipal development plan.

Section 678 sets out the requirements for appeal of a decision by the subdivision authority.

678(1) The decision of a subdivision authority on an application for subdivision approval may be appealed

- (a) by the applicant for the approval,*
- (b) by a Government department if the application is required by the subdivision and development regulations to be referred to that department,*
- (c) by the council of the municipality in which the land to be subdivided is located if the council, a designated officer of the municipality or the municipal planning commission of the municipality is not the subdivision authority, or*
- (d) by a school board with respect to*
 - (i) the allocation of municipal reserve and school reserve or money in place of the reserve,*
 - (ii) the location of school reserve allocated to it, or*
 - (iii) the amount of school reserve or money in place of the reserve.*

(2) An appeal under subsection (1) may be commenced by filing a notice of appeal within 14 days after receipt of the written decision of the subdivision authority or deemed refusal by the subdivision authority in accordance with section 681

Section 680(2) of the Act requires that MGB decisions conform to the uses of land referred to in the relevant land use district of the LUB. It does not require that the MGB abide by other provisions of the LUB, the MDP or the *Subdivision and Development Regulation*, although regard must be given to them.

680(2) In determining an appeal, the board hearing the appeal

- (a) must act in accordance with any applicable ALSA regional plan;*
- (a.1) must have regard to any statutory plan;*
- (b) must conform with the uses of land referred to in a land use bylaw;*
- (c) must be consistent with the land use policies;*
- (d) must have regard to but is not bound by the subdivision and development regulations;*
- (e) may confirm, revoke or vary the approval or decision or any condition imposed by the subdivision authority or make or substitute an approval, decision or condition of its own;*
- (f) may, in addition to the other powers it has, exercise the same power as a subdivision authority is permitted to exercise pursuant to this Part or the regulations or bylaws under this Part.*

Alberta Subdivision and Development Regulation - Alberta Regulation 43/2002

While the MGB is not bound by the *Subdivision and Development Regulation*, it is the MGB's practice to evaluate the suitability of a proposed site for the purpose intended using the criteria in Section 7 as a guide.

7 In making a decision as to whether to approve an application for subdivision, the subdivision authority must consider, with respect to the land that is the subject of the application,

- (a) its topography,*
- (b) its soil characteristics,*
- (c) storm water collection and disposal,*
- (d) any potential for the flooding, subsidence or erosion of the land,*
- (e) its accessibility to a road,*
- (f) the availability and adequacy of a water supply, sewage disposal system and solid waste disposal,*
- (g) in the case of land not serviced by a licensed water distribution and wastewater collection system, whether the proposed subdivision boundaries, lot sizes and building sites comply with the requirements of the Private Sewage Disposal Systems Regulation (AR 229/97) in respect of lot size and distances between property lines, buildings, water sources and private sewage disposal systems as identified in section 4(4)(b) and (c),*
- (h) the use of land in the vicinity of the land that is the subject of the application, and*
- (i) any other matters that it considers necessary to determine whether the land that is the subject of the application is suitable for the purpose for which the subdivision is intended.*

Section 9 deals with Road Access.

9 Every proposed subdivision must provide to each lot to be created by it

- (a) direct access to a road, or*
- (b) lawful means of access satisfactory to the subdivision authority.*

ALBERTA LAND USE POLICIES

Land Use Policies were established by LTG pursuant to section 622 of the Act. These policies apply in this case, since there is, as of yet, no applicable Alberta Land Stewardship Act (ALSA) regional plan.

2.0 THE PLANNING PROCESS

Goal

Planning activities are to be carried out in a fair, open, considerate, and equitable manner.

Policies

2. Municipalities are expected to ensure that each proposed plan amendment, reclassification, development application, and subdivision application is processed in a thorough, timely, and diligent manner.

4.0 LAND USE PATTERNS

Goal

To foster the establishment of land use patterns which make efficient use of land, infrastructure, public services, and public facilities; which promote resource conservation; which enhance economic development activities; which minimize environmental impact; which protect significant natural environments; and which contribute to the development of healthy, safe, and viable communities.

7.0 TRANSPORTATION

Goal

To contribute to a safe, efficient, and cost effective provincial transportation network.

MUNICIPAL BYLAWS AND STATUTORY PLANS

Municipal Development Plan

3. Residential Development

Goal

The County supports appropriately located and serviced country residential subdivisions as the residential option to meet the diverse housing and lifestyle needs of its residents.

Objectives

- Promote the development of a range of housing types and locations, capable of meeting the diverse needs of County residents.
- Mitigate conflicts with agricultural uses.
- Ensure that country residential development conforms to environmental and public health guidelines and regulations.
- Retain the character, amenities, and quality of life aspects of existing country residential subdivision while encouraging more diversity.

Outline Plan Required

- 3.1 Multi-parcel residential subdivisions shall comply with the provisions of an applicable Area Structure Plan (Map 3) or an Outline Plan for the entire ¼ section will be required.

...

Biophysical Assessment Required

- 3.2 Notwithstanding Policy 3.1 and pursuant to Policy 6.2, an Outline Plan prepared in support of a Multi-parcel residential subdivision shall include a Biophysical Assessment for a site proposed for a Multi-parcel subdivision or major development if all or part of the site is located within areas defined as environmentally significant in the Environmental Conservation Plan (see Map 5), and may be required within 0.8 km of areas defined as environmentally significant in the Environmental Conservation Plan, or if the site contains natural features such as sloughs or extensive tree cover.

**Infrastructure Improvements
Paid For**

- 3.4 New Multi-parcel residential subdivisions shall be required to provide and pay for infrastructure and servicing improvements, including paving of internal subdivision roads and off site access roads to the closest paved County or provincial road (pavement to pavement).

Traditional Country Residential Criteria

- 3.10 Traditional country residential subdivision in the Country Residential Core Policy Area may be supported if all the following criteria are met.
- a) Parcel size is a minimum of 0.8 hectares (2.0 ac) and a maximum of 4.0 ha (10.0 ac);
 - b) Each parcel must contain 0.8 ha (2.0 ac) of contiguous developable land for a building site and can accommodate on-site sewage disposal and water services.
 - c) It can be demonstrated to the satisfaction of the County and Alberta Environment that each lot can be serviced with an on-site water well or cistern and a private sewage disposal system; and
 - d) Access roads to subdivisions, and internal subdivision roads, are paved.

Outline Plan Required

- 3.11 Multi-parcel residential subdivisions shall prepare an Outline Plan as per the requirements of the County in advance of a rezoning and/or a subdivision application.

10 Transportation and Utilities

Goal

The County supports maintaining safe and efficient roadway and utilities systems.

Transportation Policies

Paved Roads

- 10.12 All off-site access and internal roads required to serve a Multi-parcel residential or industrial subdivision shall be paved to the satisfaction of Parkland County.

Road Widening

- 10.16 Road widening for municipal roads may be required at the time of subdivision and the widening shall apply to new parcels as well as the remnant.

Jackfish Lake Area Structure Plan

4.7 Additional Lake Development

Objectives

To protect the water quality of the lake by effectively managing the lake use and watershed activities.

To preserve and enhance the natural environment, wildlife and fish habitats, particularly through the management of any activities which contribute to environmental degradation and watershed and lake contamination.

To promote the protection of fish and wildlife habitats by designating areas of environmental significance.

To consider appropriate (residential) development provided that it does not contribute to the degradation of the lake environment.

To accommodate future development based on the study area's ability to sustain further development.

To maintain high quality recreation experience at Jackfish Lake as it relates to appropriate densities and concentrations of lake-oriented recreational development.

- 4.7.10 The irregular nature of the Jackfish lake shoreline works against the imposition of a conceptual subdivision standard, such as cluster design over linear design. Given the irregular shoreline, as subdivisions are applied for on specific parcels of land, a proposed subdivision design will be evaluated in relation to the characteristics of the shoreline of the subject parcel, with the intention of creating as large an environmental reserve parcel as practically possible to provide the necessary buffer between lots to be subdivided and

the lake. At the time of subdivision a minimum 30 meter environmental reserve shall be dedicated between the lake and any newly created parcel.

- 4.9.3 Range Road 25 shall serve as a minor collector. Upgrading of this road to a higher standard will require consideration to prevent surface run off into the lake during construction.
- 4.9.5 The balance of the transportation network for the Plan area shall consist of internal local and county roads providing access between individual developments and identified collector and arterial roads.

Land Use Bylaw

5.3 CRR – Country Residential Restricted District

.3 Subdivision

- a) Parcel Area Requirement (for purposes of new parcel creation only)
 - (i) Manufactured home, single wide and dwelling, singled detached shall have a minimum parcel area of 0.4 ha (1.0 ac) and a maximum parcel area of 2.4 ha (6.0 ac) for a single parcel or multi-parcel residential subdivision, unless greater area is required to include shelterbelts, buildings or other improvements related to the residential component of a farmstead. Minimum mean parcel width shall be 30.0 m (98.5 ft) for parcels less than 1.0 ha (2.5 ac). For parcels of 1.2 ha (3.0 ac) or greater within the Jackfish Lake Area Structure Plan the minimum mean parcel width shall be 60.0 m (197.0 ft).
 - (ii) For a residential parcel, the maximum width: depth ratio for a parcel shall be 1:4.
 - (iii) For all other Permitted and Discretionary Uses, the minimum and maximum parcel area requirements shall be determined by the Subdivision Authority.
- b) Parcel Density Requirement (for purposes of new parcel creation only)
 - (i) For a manufactured home, single wide and dwelling, single detached parcel density requirements shall be a maximum of one (1) parcel per 1.2 ha (3.0 ac) of contiguous developable land. For the purposes of this section, net hectares of contiguous developable land shall be determined as those lands meeting the criteria for country residential subdivision less land is required for environmental and municipal reserves and roads.
 - (ii) For all other Permitted and Discretionary Uses, the parcel density requirement shall be determined by the Subdivision Authority.

Section 8 Parks and Services

8.1 PC – Conservation District

1. Purpose

To provide for the preservation of environmentally sensitive and significant areas and lands having significant natural capability for conservation, passive recreation and education.

