



LAND AND PROPERTY RIGHTS TRIBUNAL

Citation: Bates v Clearwater County (Subdivision Authority), 2025 ABLPRT 254

Date: 2025-05-29

File No. S25/CLEA/CO-004

Decision No. LPRT2025/MG0254

Municipality: Clearwater County

In the matter of an appeal from a decision of the Clearwater County Subdivision Authority (SA) respecting the proposed subdivision of NE 24-38-05 W5M (subject land) under Part 17 of the *Municipal Government Act*, RSA 2000, c M-26 (*Act*).

BETWEEN:

D. and L. Bates

Appellant

- and -

Clearwater County Subdivision Authority

Respondent Authority

BEFORE: D. Roberts, Presiding Officer
G. Sokolan, Member
L. Yakimchuk, Member
(Panel)

K. Lau, Case Manager

DECISION

APPEARANCES

See Appendix A

This is an appeal to the Land and Property Rights Tribunal (LPRT or Tribunal). The hearing was held by videoconference, on April 4, 2025, after notifying interested parties.

OVERVIEW

[1] This appeal concerns a subdivision approval of a +/-7.0-acre Country Residence (CRA) District parcel from a previously unsubdivided Agricultural (A) District quarter section in Clearwater County (County). The CRA district has a maximum parcel size of 7.0 acres and does not allow for any agricultural use on a commercial scale. The Appellant applied for the creation of a 19.82-acre parcel, submitting the additional acreage was provided for in the Municipal Development Plan (MDP) when required to encompass existing residential amenities and facilities, such as shelter belts, wastewater and water services and driveways associated with the farmstead.

[2] The SA approved the subdivision with a reduced parcel size of 7.0 acres, noting the open discharge sewage system did not comply with the minimum setback distance from property lines and would likely need to be replaced. Additionally, some existing agricultural assets, such as livestock pens and a shop/barn were not considered residential amenities. The Appellant appealed the decision based on the reduced parcel size, requesting the originally proposed 19.82-acre parcel.

[3] The LPRT recognized the improvements could be used as ancillary to residential use and that the lands contained within the requested parcel are functionally separated from the balance of the quarter section, having already been removed from cultivation and or use as pastureland. Additionally, the calving pens and shop/barn are operationally tied to the farmstead through the extension of power and water services. Retaining them with the balance of the quarter section would likely mean they would no longer be used and fall into disrepair, whereas increasing the parcel size to 19.87 acres preserves flexibility for redistricting the parcel to an agricultural land use in the future.

REASONS APPEAL HEARD BY LPRT

[4] Section 678(2) of the *Act* directs subdivision appeals to the LPRT instead of a subdivision and development appeal board when the subject land is in the Green Area or within prescribed distances of features of interest to Provincial authorities, including a highway, body of water, sewage treatment, waste management facility, or historical site. The distances are found in s. 26 of the *Matters Related to Subdivision and Development Regulation*, Alta Reg 84/2022 (*Regulation*). The LPRT also hears subdivision appeals when the land is the subject of a licence, permit, approval or other authorization from various Provincial authorities.

[5] In this case, the following circumstances apply to the subject land

| | |
|----------------------------------|--|
| Licensing or Approving Authority | Subject of a licence from the Alberta Energy Regulator (AER) Pipeline License # AB00025929-1 |
| Body of water | Wetlands are on the eastern portion of the subject quarter section |

PROPOSAL

[6] To subdivide a +/- 20-acre parcel from a previously /unsubdivided quarter section to be used for residential purposes.



BACKGROUND

[7] The land to be subdivided is a previously unsubdivided quarter section in Clearwater County (County), approximately 2 miles south of Highway 11 and 0.5 miles east of Highway 761, along Township Road 38-4. The proposed parcel consists of +/- 8 hectares (20 acres) of land in the north central portion of the quarter, developed with a residence, an abandoned residence, agricultural outbuildings and improvements (including water and power service lines), and existing shelterbelts. It is serviced with an open discharge septic system and two ground water wells. Access to each of the proposed parcel and the balance of the quarter section exists from Township Road 38-4. A field access to the residual parcel also exists from Range Road 5-0. The western portion of the quarter section is cultivated; the eastern portion is pasture with some smaller treed areas and some wetlands.

[8] The subject quarter is designated Agricultural District (A) in the Land Use Bylaw (LUB) and the new parcel is proposed to be redesignated to Country Residential Agricultural District (CRA). Surrounding lands are predominantly agricultural with a CRA parcel having been subdivided from several quarter sections, including the adjacent quarters to the west and to the south.

[9] The SA approved the subdivision application with a reduced parcel size of +/- 7.0 acres to comply with the maximum parcel size allowed in the CRA district, subject to the following conditions:

1. The applicant(s) shall submit to Clearwater County either a Plan of Subdivision or a Descriptive Plan acceptable to the Land Titles Office. An Alberta Land Surveyor must prepare said plan.

Final configuration of this conditionally approved 7.0-acre parcel shall be to the satisfaction of Clearwater County. Prior to registration of the plan, it shall be submitted to Clearwater County for review.

2. Prior to registration of the aforementioned instrument, it shall be submitted to Clearwater County for endorsement. The applicants should note that an endorsement fee of \$350.00 is required, and that endorsement will be withheld pending the satisfactory completion of all conditions of subdivision.
3. Payment of all outstanding property taxes, if any, or satisfactory arrangements for payment to be made with Clearwater County.
4. The applicant(s) shall enter into an agreement for future acquisition of land for road widening to the satisfaction of the County. This agreement will serve to provide the legal basis for the County to acquire the north and east 5.18 metres (17 ft.) throughout the NE 24-38-05 W5M for road widening purposes, at such time that it is deemed necessary by the Council of Clearwater County. Said agreement shall be registered with Land Titles by caveat against the proposed parcel and the remainder of the quarter section.
5. The applicant(s) shall be responsible, at their sole expense, to
 - a. Provide written approval from a certified installer that the existing open discharge septic system has been inspected and approved to comply with Alberta Safety Codes, OR,
 - b. Provide written approval from a certified installer that the existing open discharge septic system has been decommissioned and replaced with a new system that meets all required setbacks and complies with Alberta Safety Codes.

The applicant(s) are herein advised that the Plan will not be endorsed by Clearwater County until such time that the Planning Department has received a copy of the said approval indicating compliance of the septic system with Alberta Safety Codes.

6. The applicant(s) shall be responsible, at their sole expense, to permanently remove the old home from the property, OR covert the old home into an ancillary building.

The applicant(s) are herein advised that the Plan will not be endorsed by Clearwater County until such time that the Planning Department has completed a site inspection to verify and document the home has been removed from the property or convert into an ancillary building, being a storage facility only.

[10] The Appellant appealed the SA's decision, seeking approval for the creation of a 19.82-acre parcel, surveyed to include the existing home, shop, infrastructure, trees, fence lines, septic and water.

ISSUE

[11] The LPRT must consider requirements under the *Act*, *Regulation*, the Provincial Land Use Policies (LUP), the Land Use Bylaw (LUB), and any statutory plans. (see ss. 680(2), 618.3 and 618.4(1) of the *Act*). Against this general regulatory backdrop, the parties focused on the following particular issue:

1. Should the LPRT exercise its discretion to approve a +/-20-acre parcel which exceeds the 7-acre maximum parcel size for CRA parcels?

SUMMARY OF THE SA'S POSITION

[12] The SA submitted this application is for the subdivision of a CRA first parcel out of a quarter section designated as Agricultural District in the LUB. Section 10.2.1 of the MDP directs that a total of two titled parcels are allowed to be created in such a quarter section.

[13] A first residential parcel out of a quarter section is evaluated according to the provisions of s. 13.4(4) - Country Residential Agricultural District "CRA" of the LUB which has the purpose of accommodating and regulating traditional country residential agricultural parcels with minor agricultural pursuits that are for the exclusive use and enjoyment of the occupants of a lot or for the routine care and upkeep of the lot.

[14] In keeping with MDP s. 10.2.4(a), the Appellant requested an approximate 20-acre residential parcel to encompass the existing yard site, septic system and shelterbelts. Section 10.2.4 directs as follows:

For a residential parcel in the Agriculture District of the Land Use Bylaw that includes all or part of an existing farmstead, the parcel size shall be no less than 1.01 hectares (2.25 acres) and no greater than 2.83 hectares (7 acres) unless a larger parcel size is deemed necessary by the Subdivision Authority to:

- a) encompass existing residential amenities and facilities, such as shelter belts, wastewater and water services and driveways associated with the farmstead;

or

- b) to accommodate a subdivision based on fragmentation.

[15] In this case, the existing septic system does not meet the required setback distance to the north property boundary and will likely need to be replaced unless a variance is granted by Safety Codes. Clarification regarding the required minimum 90 m setback to a property line indicated a variance for the open discharge system may be permissible following inspection by a certified installer, because in this case it encroaches onto a roadway rather than a residential area. Administration recommended the MPC reduce the subdivision in size to more closely align with s. 10.2.4 and provided a set of recommended conditions to be applied to the subdivision approval.

[16] The SA, which is the Municipal Planning Commission (MPC), considered and denied a motion to approve the proposed +/-20-acre parcel. Some MPC members felt it did not meet s. 10.2.4 or s. 6.2.3 of the MDP. The latter section identifies the servicing requirements for any residential parcel, including the requirement that, where a private septic system is proposed, there is sufficient area necessary to provide the proposed system. The MPC decided on a 7.0-acre parcel with discretion for the Appellant to include either the residence and septic system (given its Safety Codes inspection and approval) or the residence and shop/barn with a new septic system installed. The shop/barn and corrals were not considered residential amenities.

[17] The SA's representative acknowledged this appeal is an opportunity for the Appellant to present their case to the LPRT and identified a number of other provisions in the MDP it wished the LPRT to consider when coming to its decision. These focused on:

- the County's goals when considering subdivision of land, including providing opportunities for a variety of parcel sizes to accommodate land uses in a fair and consistent manner and to accommodate housing options for a growing population (s. 10.1.1 and 10.1.2);
- the location of parcels within the subject quarter that minimize impacts on natural capital and adjacent agricultural operations and that affect lands with the lowest agricultural capability, and use the least amount of cultivated land or pastureland (s. 10.2.9 and 10.2.10); and
- providing direction that MDP policies be implemented, considering off-site impacts on nearby land uses, the environment and school and health care systems as well as site suitability, scale and density, and traffic requirements and impacts when making subdivision decisions (s. 14.2.4, 14.2.5 and 14.2.6).

[18] In answer to questions, the SA identified County procedure for dealing with first parcel out subdivisions instructs Administration to redesignate the newly subdivided parcel post-approval, noting in this case, the Appellant requested redesignation to the CRA district. The Appellant's suggested future use of the proposed parcel for small scale agriculture, such as a sheep operation, does not align with the intent of the CRA district which defines minor agricultural pursuits for the exclusive use and enjoyment of the occupants of a lot.

[19] In answer to questions, the SA qualified the approval of Subdivision Application 21/3658, referenced by the Appellant as being similar to the subject application, as an application for a second subdivision within that quarter section, considered in the context of s.10.2.2 of the MDP, which reads as follows:

Notwithstanding 10.2.1, Clearwater County may approve one additional subdivision in a quarter section for residential or non-residential use subject to the proposed parcel being redesignated to the designation applicable to the use under the Land Use Bylaw. The land use redesignation must be approved prior to the subdivision application being approved.

The proposed parcel in that application represented the third title being created in the quarter and had been redesignated to the CRA district by Council on July 25, 2023, prior to the subdivision application being considered on September 22, 2023. Further, the oversized parcel created in that application complied with s.10.2.4(a) of the MDP.

SUMMARY OF ALBERTA TRANSPORTATION AND ECONOMIC CORRIDORS' (ATEC) POSITION

[20] Upon review of the circulated application, ATEC indicated the requirements of s. 18 of the *Regulation* were met, therefore no variance is required. The municipality is in a position to decide the application and any appeal of this decision can be dealt with by the local SDAB. However, the department expects the municipality to mitigate the impacts from this proposal to Highway 761, pursuant to Policy 7 of the Provincial Land Use Policies and s. 648(2)(c.2) of the *Act*.

SUMMARY OF ADJACENT LANDOWNERS' POSITIONS

[21] One letter of support for the proposed +/-20-acre parcel was received from an adjacent landowner and long standing member of the community, who has rented and is currently using some of the quarter's pasture land. They identified the main value of the residual parcel is in the pasture and hay land, rather

than the satellite calving pens or shop/barn which would be dependent on utilities coming from the proposed +/-20-acre parcel.

[22] Additionally, the Appellant provided a “Support of Acreage Appeal” letter they had drafted and asked neighbours to sign, indicating the signatory’s full support of a 20-acre parcel for minor agricultural pursuits encompassing accompanying shelterbelts, roadways, underground and above ground utilities, as well as the shop/barn. This letter was signed by 18 individuals.

SUMMARY OF APPELLANT’S POSITION

[23] The Appellant submitted their requested oversized acreage meets the spirit and intent of s. 10.2.4 of the MDP, characterizing the proposed +/-20-acre parcel as being naturally fragmented from the balance of the quarter section by the existing residential amenities and facilities such as shelter belts, wastewater, water services and driveways associated with the farmstead. In support of this position, the Appellant submitted an aerial photo (Exhibit 10A) and a video (Exhibit 11A) identifying the water services and driveways associated with the farmstead.

[24] The Appellant identified the shop/barn at the south end of the proposed parcel as being integral to the farmstead, noting it was constructed as a shop with 16-foot high walls enabling it to be used primarily as a shop for maintenance on work trucks, oil changes, as well as daily upkeep that goes with country living. Barns are typically built with 12 foot high walls. The underground utilities that service the shop and the livestock pens that were built in close proximity to the main residence come from within the farmyard site.

[25] The pens were built to keep a close eye on the animals day and night when the quarter section in its entirety housed a large scale cattle operation. These pens can continue to be used for a minor agricultural pursuit. To support this concept, the Appellant provided a professional opinion from Stolz Williams Consulting regarding the viability of a small sheep operation (Exhibit 5A). This opinion indicated the +/-20-acre site appears to be well suited for such an operation as it is already set up with necessary infrastructure and shelterbelts surrounding the proposed property.

[26] The Appellant indicated they are not intending to implement such a minor agricultural pursuit immediately upon the subdivision being approved and indicated their desire to further subdivide the parcel in the future, allowing their children to remain in the country and on some of their family land.

[27] The Appellant submitted similar over-sized parcels have received subdivision approval in the past. They provided a copy of the Notice of Decision and MPC Agenda Item for Subdivision Application 21/3658 which was approved by the MPC on September 22, 2023. The application was very similar to the Appellant’s application, involving the creation of a +/- 20.0 acre developed Country Residence Agricultural District “CRA” parcel as the second parcel out of the quarter section. The reason for the oversized parcel was to accommodate existing buildings, services and shelterbelts. The farmable field area included in the +/-20-acre parcel, to the west of the developed yard site was considered to be as conducive or more conducive to the developed yard site than it was to the remainder of the quarter section. The landowner intended to keep the existing first residential undeveloped parcel in the west central portion of the quarter to be able to pass down a portion of the original quarter to family. (Exhibits 6A and 7A).

[28] In summary, the Appellant indicated their agreement with all of the proposed conditions of the subdivision approval, with the obvious exception of the approved 7-acre parcel size.

FINDINGS

1. Considering the evidence presented, the LPRT finds it appropriate to vary the minimum parcel size of the CRA land use district and approve the subdivision of a 19.82-acre parcel as a first parcel out of the subject quarter section.

DECISION

[29] The appeal is allowed. The size of the proposed parcel is increased to the proposed 19.82 acres and is approved subject to the following conditions:

1. The applicant(s) shall submit to Clearwater County either a Plan of Subdivision or a Descriptive Plan acceptable to the Land Titles Office. An Alberta Land Surveyor must prepare said plan.

Final configuration of this conditionally approved +/- 19.82-acre parcel shall be to the satisfaction of Clearwater County. Prior to registration of the plan, it shall be submitted to Clearwater County for review.

2. Prior to registration of the aforementioned instrument, it shall be submitted to Clearwater County for endorsement. The applicants should note that an endorsement fee of \$350.00 is required, and that endorsement will be withheld pending the satisfactory completion of all conditions of subdivision.
3. Payment of all outstanding property taxes, if any, or satisfactory arrangements for payment to be made with Clearwater County.
4. The applicant(s) shall enter into an agreement for future acquisition of land for road widening to the satisfaction of the County. This agreement will serve to provide the legal basis for the County to acquire the north and east 5.18 metres (17 ft.) throughout the NE 24-38-05 W5M for road widening purposes, at such time that it is deemed necessary by the Council of Clearwater County. Said agreement shall be registered with Land Titles by caveat against the proposed parcel and the remainder of the quarter section.
5. The applicant(s) shall be responsible, at their sole expense, to:
 - c. Provide written approval from a certified installer that the existing open discharge septic system has been inspected and approved to comply with Alberta Safety Codes, OR,
 - d. Provide written approval from a certified installer that the existing open discharge septic system has been decommissioned and replaced with a new system that meets all required setbacks and complies with Alberta Safety Codes.

The applicants are herein advised that the Plan will not be endorsed by Clearwater County until such time that the Planning Department has received a copy of the said approval indicating compliance of the septic system with Alberta Safety Codes.

6. The applicants shall be responsible, at their sole expense, to permanently remove the old home from the property, OR covert the old home into an ancillary building.

The applicants are herein advised that the Plan will not be endorsed by Clearwater County until such time that the Planning Department has completed a site inspection to verify and document the home has been removed from the property or convert into an ancillary building, being a storage facility only.

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

[31] AND FURTHER, this decision is valid for a period of one year from the date of this Order. Under section 657(4) of the *Act*, if the plan of subdivision or other instrument is not submitted to the subdivision authority within the time prescribed by section 657(1) or any longer period authorized by council, the subdivision approval is void.

REASONS

[32] Section 617 of the *Act* provides for the adoption of plans to achieve the orderly, economical and beneficial development of land and patterns of human development. In preparing and adopting its MDP, the County underlined its desire to limit infringement on agricultural operations in areas where agriculture is the primary use.

[33] The LPRT recognizes that in general the smaller parcel sizes contemplated for residential uses are consistent with the policy intent of the MDP to minimize the impact of subdivision on natural capital and the conversion of cultivated land and pasture to residential uses. In this case, the Appellant applied for a larger parcel than would ordinarily be contemplated for a residential first parcel out. However, the LPRT is persuaded that the unique circumstances of this case justify the use of its discretion to relax the usual restrictions on parcel size for residential first parcels out.

[34] First, although the barn and related developments to be accommodated by the larger area are suitable for a small commercial agricultural operation, they may also be used as ancillary structures to the intended residential use.

[35] Second, the LPRT distinguishes between the agricultural cultivation/pasture use of the balance of the quarter section and the agricultural assets within the proposed +/-19.82-acre parcel, finding the two components already functionally and operationally separated from each other. Functionally, the proposed +/-19.82-acre parcel is isolated from the balance of the quarter to the west and east by shelterbelts, and the land it includes has already been removed from cultivation or use as pasture.

[36] The agricultural assets are also operationally integrated with the farmstead by the underground and overland servicing connections originating from the residence. Additionally, access to the pens and shop/barn has been developed through the farm site. The LPRT finds the shop/barn to be primarily configured as a shop and considers it to be a residential amenity. The use of these assets by a future renter or owner of the balance of the quarter seems unlikely. Therefore, if a 7 acre parcel were approved to exclude the agricultural infrastructure (pens, serviced with water and power and the shop/barn) from the proposed parcel and include them with the balance of the quarter section instead, they would likely be abandoned and fall into disrepair.

[37] In contrast, including these assets within the proposed parcel and increasing its size to 19.82 acres preserves flexibility for them to be used for agricultural pursuits in the future with redesignation to an appropriate land use district, such as the Intensive Agriculture District. Preserving this flexibility aligns with the County's desire to retain agricultural land and potential. The associated agricultural assets could

serve as an incentive to return the parcel to agricultural production. While the LPRT acknowledges there is no certainty that such a redesignation would be pursued by either the Appellant or a future owner, a 7.0-acre CRA parcel would present no opportunity for commercial agricultural use in the future.

[38] In summary, the LPRT finds sufficient planning rationale to exercise its discretion and approve the subdivision of a 19.82-acre parcel from the quarter section. The LPRT considered the MDP policies referenced by the SA and finds both the +/-19.82 acre and 7-acre parcel configurations to equally meet their intent. While the 7-acre parcel is notably smaller than the +/-19.82-acre parcel, the land that would not be included in the smaller configuration has already been removed from cultivation and/ or use as pasture land.

[39] The appeal is granted, subject to the conditions of approval provided by the SA.

Other Approvals

[40] The landowner/developer is responsible for obtaining all applicable permits for development and any other approvals or permits required by other enactments (for example, *Water Act*, *Environmental Protection Act*, *Nuisance and General Sanitation Regulation*, etc.) from the appropriate authority. The LPRT is neither granting nor implying any approvals other than that of the conditional subdivision approval. Any other approvals are beyond the scope of a subdivision appeal.

Dated at the City of Chestermere in the Province of Alberta this 29th day of May 2025.

LAND AND PROPERTY RIGHTS TRIBUNAL

(SGD) D. Roberts, Member

APPENDIX A

PARTIES WHO ATTENDED, MADE SUBMISSIONS OR GAVE EVIDENCE AT THE HEARING:

| NAME | CAPACITY |
|--------------|--|
| S. Bates | Appellant |
| L. Bates | Appellant, Observer |
| B. Haagsma | Land Surveyor, Agent for the Appellant |
| K. Gilham | Clearwater County, Representative for the SA |
| D. Bisson | Clearwater County, Representative for the SA |
| D. Pohl | Clearwater County Subdivision Approval, Observer |
| A. Hawkings | Clearwater County Subdivision Approval, Observer |
| D. Connelly | Clearwater County Subdivision Approval, Observer |
| A. Williams | Clearwater County Subdivision Approval, Observer |
| B. Morgan | Clearwater County Subdivision Approval, Observer |
| M. Burton | Clearwater County SDAB, Observer |
| T. Haight | Clearwater County SDAB, Observer |
| C. Marcyniuk | ATEC, Observer |
| M. Booth | Adjacent Landowner, Observer |
| D. Howard | Adjacent Landowner, Observer |
| C. Howard | Adjacent Landowner, Observer |

APPENDIX B

DOCUMENTS RECEIVED PRIOR TO THE HEARING:

| NO. | ITEM | |
|-----|--------------------------------------|----------|
| 1A | Notice of Appeal | 18 pages |
| 2R | Background Information Package | 55 pages |
| 3A | Appeal Support Letter | 1 page |
| 4A | Support Signatures of Acreage Appeal | 2 pages |
| 5A | Expert Opinion of SWC Consulting | 3 pages |
| 6A | Application Approval 2023 | 1 page |
| 7A | MPC Agenda | 5 pages |
| 8A | Photo of West Boundary View | 1 page |
| 9A | Photo of South Boundary View | 1 page |
| 10A | Aerial Image | 1page |
| 11A | Video presentation of 20 Acre parcel | |

APPENDIX C

DOCUMENTS RECEIVED AT THE HEARING:

| NO. | ITEM | |
|-----|---|-----------|
| 12R | Development Officer's Report | 3 pages |
| 13A | Appellant Statement | 1 page |
| 14R | Clearwater County Municipal Development Plan May 9,2023 | 90 pages |
| 15R | Clearwater County Land Use Bylaw – Bylaw N0. 714/01 | 225 pages |
| 16R | Clearwater County Township Current Land Use Districts | 63 pages |

APPENDIX D

LEGISLATION

The *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 reproduced below.

Municipal Government Act

Purpose of this Part

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.

Section 618.3 and 618.4 direct that all decisions of the LPRT must be consistent with the applicable regional plan adopted under the *Alberta Land Stewardship Act* or the Land Use Policies (LUP).

ALSA regional plans

618.3(1) Anything done by any of the following under a provision in this Part or a regulation under this Part must be done in accordance with any applicable ALSA regional plan:

- (a) a municipality;
 - (b) a council;
 - (c) a municipal planning commission;
 - (d) a subdivision authority;
 - (e) a development authority;
 - (f) a subdivision and development appeal board;
 - (g) the Land and Property Rights Tribunal;
 - (h) an entity to which authority is delegated under section 625(4).
- (2) If there is a conflict or an inconsistency between anything that is done under a provision of this Part or a regulation under this Part and an applicable ALSA regional plan, the ALSA regional plan prevails to the extent of the conflict or the inconsistency.

Land use policies

618.4(1) Every statutory plan, land use bylaw and action undertaken pursuant to this Part by a municipality, municipal planning commission, subdivision authority, development authority or subdivision and development appeal board or the Land and Property Rights Tribunal must be consistent with the land use policies established under subsection (2).

(2) The Lieutenant Governor in Council, on the recommendation of the Minister, may by regulation establish land use policies.

Approval of application

Upon appeal, the LPRT 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 LPRT) 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 growth plan under Part 17.1, 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 Part 17.1 and the regulations under those Parts, 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.

(1.1) Repealed 2018 c11 s13.

(1.2) If the subdivision authority is of the opinion that there may be a conflict or inconsistency between statutory plans, section 638 applies in respect of the conflict or inconsistency.

(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.

(3) A subdivision authority may approve or refuse an application for subdivision approval.

Conditions of subdivision approval

Section 655(1) of the *Act* details the conditions of subdivision approval that may be imposed by the subdivision authority.

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, including section 618.3(1), 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 a public utility described in section 616(v)(i) to (ix) that is necessary to serve the subdivision, whether or not the public utility is, or will be, located on the land that is the subject of the subdivision approval;
- (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.

Subdivision registration

Section 657 of the *Act* guides the registration of subdivision plans.

657(1) An applicant for subdivision approval must submit to the subdivision authority the plan of subdivision or other instrument that effects the subdivision within one year from the latest of the following dates:

- (a) the date on which the subdivision approval is given to the application;
- (b) if there is an appeal to the subdivision and development appeal board or the Land and Property Rights Tribunal, the date of the decision of the appeal board or the Tribunal, as the case may be, or the date on which the appeal is discontinued;
- (c) if there is an appeal to the Court of Appeal under section 688, the date on which the judgment of the Court is entered or the date on which the appeal is discontinued.

...

Reserves not required

663 A subdivision authority may not require the owner of a parcel of land that is the subject of a proposed subdivision to provide reserve land or money in place of reserve land if

- (a) one lot is to be created from a quarter section of land,
- (b) land is to be subdivided into lots of 16.0 hectares or more and is to be used only for agricultural purposes,
- (c) the land to be subdivided is 0.8 hectares or less, or
- (d) reserve land, environmental reserve easement or money in place of it was provided in respect of the land that is the subject of the proposed subdivision under this Part or the former Act.

Appeals

Section 678 of the *Act* 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

- (a) with the Land and Property Rights Tribunal
 - (i) unless otherwise provided in the regulations under section 694(1)(h.2)(i), where the land that is subject of the application
 - (A) is within the Green Area as classified by the Minister responsible for the Public Lands Act,
 - (B) contains, is adjacent to or is within the prescribed distance of a highway, a body of water, a sewage treatment or waste management facility or a historical site,
 - (C) is the subject of a licence, permit, approval or other authorization granted by the Natural Resources Conservation Board, Energy Resources Conservation Board, Alberta Energy Regulator, Alberta Energy and Utilities Board or Alberta Utilities Commission,or
 - (D) is the subject of a licence, permit, approval or other authorization granted by the Minister of Environment and Parks,or
 - (ii) in any other circumstances described in the regulations under section 694(1)(h.2)(ii),
- or
- (b) in all other cases, with the subdivision and development appeal board.

(2.1) Despite subsection (2)(a), if the land that is the subject-matter of the appeal would have been in an area described in subsection (2)(a) except that the affected Government department agreed, in writing, to vary the distance under the subdivision and development regulations, the notice of appeal must be filed with the subdivision and development appeal board.

...

Hearing and decision

Section 680(2) of the *Act* requires that LPRT decisions conform to the uses of land referred to in the relevant land use district of the LUB. It does not require that the LPRT 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) repealed 2020 c39 s10(48);
 - (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.
- (2.1) In the case of an appeal of the deemed refusal of an application under section 653.1(8), the board must determine whether the documents and information that the applicant provided met the requirements of section 653.1(2).
- (2.2) Subsection (1)(b) does not apply to an appeal of the deemed refusal of an application under section 653.1(8).

...

Endorsement of subdivision plan

Section 682 guides endorsement of subdivision plans after an appeal board makes a decision.

- 682(1) When on an appeal the Land and Property Rights Tribunal or the subdivision and development appeal board approves an application for subdivision approval, the applicant must submit the plan of subdivision or other instrument to the subdivision authority from whom the appeal was made for endorsement by it.
- (2) If a subdivision authority fails or refuses to endorse a plan of subdivision or other instrument submitted to it pursuant to subsection (1), the member of the subdivision and development appeal board or Land and Property Rights Tribunal, as the case may be, that heard the appeal who is authorized to endorse the instrument may do so.

Matters Related to Subdivision and Development Regulation - Alberta Regulation 84/2022

Application referrals

Section 7 of the *Regulation* deals with application referrals.

7

...

(6) On an application for subdivision being determined or deemed under section 653.1 of the *Act* to be complete, the subdivision authority must send a copy to

....

- (e) the Deputy Minister of the Minister responsible for administration of the *Public Lands Act* if the proposed parcel
 - (i) is adjacent to the bed and shore of a body of water, or
 - (ii) contains, either wholly or partially, the bed and shore of a body of water;

Relevant considerations

While the LPRT is not bound by the *Subdivision and Development Regulation*, it is the LPRT's practice to evaluate the suitability of a proposed site for the purpose intended using the criteria in section 9 as a guide.

9 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.

...

Road access

Section 11 deals with road access requirements.

11 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.

...

Distance from highway

18 Subject to section 20, a subdivision authority shall not in a municipality other than a city approve an application for subdivision if the land that is the subject of the application is within 1.6 kilometres of the centre line of a highway right of way unless

- (a) the land is to be used for agricultural purposes on parcels that are 16 hectares or greater,
- (b) a single parcel of land is to be created from an unsubdivided quarter section to accommodate an existing residence and related improvements if that use complies with the land use bylaw,
- (c) an undeveloped single residential parcel is to be created from an unsubdivided quarter section and is located at least 300 metres from the right of way of a highway if that use complies with the land use bylaw,
- (d) the land is contained within an area where the municipality and the Minister of Transportation have a highway vicinity management agreement and the proposed use of the land is permitted under that agreement, or
- (e) the land is contained within an area structure plan satisfactory to the Minister of Transportation at the time of the application for subdivision and the proposed use of the land is permitted under that plan.

ALBERTA LAND USE POLICIES

Land Use Policies were established by Lieutenant Governor in Council pursuant to section 618.4 of the *Act*.

2.0 The Planning Process

Goal

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

Policies

1. Municipalities are expected to take steps to inform both interested and potentially affected parties of municipal planning activities and to provide appropriate opportunities and sufficient information to allow meaningful participation in the planning process by residents, landowners, community groups, interest groups, municipal service providers, and other stakeholders.
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.
3. When considering a planning application, municipalities are expected to have regard to both site specific and immediate implications and to long term and cumulative benefits and impacts.

...

6.0 Resource Conservation

6.1 Agriculture

Goal

To contribute to the maintenance and diversification of Alberta's agricultural industry.

Policies

1. Municipalities are encouraged to identify, in consultation with Alberta Agriculture, Food and Rural Development, areas where agricultural activities, including extensive and intensive agricultural and associated activities, should be a primary land use.
2. Municipalities are encouraged to limit the fragmentation of agricultural lands and their premature conversion to other uses, especially within the agricultural areas identified in accordance with policy #1.
3. Where possible, municipalities are encouraged to direct non-agricultural development to areas where such development will not constrain agricultural activities.

...

7.0 Transportation

Goal

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

Policies

1. Municipalities are encouraged to identify, in consultation with Alberta Transportation and Utilities, the location, nature and purpose of key transportation corridors and facilities.
2. Municipalities are encouraged to minimize negative interactions between the transportation corridors and facilities identified in accordance with policy #1 and the surrounding areas and land uses through the establishment of compatible land use patterns.

3. If a subdivision and development is to be approved in the vicinity of the areas identified in accordance with policy #1, municipalities are encouraged to employ appropriate setback distances and other mitigative measures relating to noise, air pollution, and safety, to limit access, and to enter into highway vicinity agreements with Alberta Transportation and Utilities.

MUNICIPAL BYLAWS AND STATUTORY PLANS

CLEARWATER COUNTY'S MUNICIPAL DEVELOPMENT PLAN (MOP)

5.2.3 Subdivision & Development on Agriculture Land

Each subdivision or development application shall be assessed and decided upon on a case by case basis. In evaluating subdivision or development proposals that affect agricultural land, the agricultural quality of the land is one of a number of factors that Clearwater County will consider. Additional items to be considered include the following:

- (a) the nature and extent of farming activities in the local area;
- (b) the nature and extent of non farming activities in the local area;
- (c) the Farmland Assessment Rating, or alternative documentation as prepared by a qualified professional and agreed to by the County, of the land within the title to be subdivided or developed and adjacent lands;
- (d) the proposed use of land;
- (e) the reasonable availability of alternative locations for the proposed subdivision or development; and
- (f) additional criteria as determined by the Development Authority.

5.2.4 Agricultural Operations

In making decisions on proposed land redesignations, subdivisions or developments in areas of the County where agriculture is the primary use, Clearwater County should seek to limit infringements on agricultural operations except where otherwise provided for in the MDP.

6.2 General Residential Development Considerations

- 6.2.1 Recognizing residential development will be required to accommodate future population growth and to help sustain community infrastructure, especially schools, Clearwater County views that residential development which is appropriately located and designed to the satisfaction of the County is compatible within the rural area, including adjoining and nearby agricultural operations and other residences.

- 6.2.2 When considering a proposed residential subdivision, Clearwater County will require that the proposed subdivision applicant demonstrate:

- (a) the site has attributes suitable for residential development;
- (b) is appropriately located and designed such that it effectively embraces, and conserves where appropriate, the visual and environmental qualities of the area, including topography, landscapes, water features, native habitat and biodiversity values;
- (c) mitigating strategies to minimize impacts on natural resources, including productive agricultural land, water, aggregate and energy resources; and
- (d) the proposal can be reasonably served by community and physical infrastructure.

- 6.2.3 Clearwater County shall require that each parcel to be approved for a residential development:

- (a) has legal access and year-round physical access developed to meet applicable standards and connected to a Provincial highway or County maintained roadway;
- (b) has a minimum 0.4 hectares (1 acre) developable area;

- (c) where a private septic system and a private water system are proposed, there is sufficient area necessary to provide the proposed private system(s);
- (d) has a water table at a depth of at least 2 metres (6.56 ft), unless a qualified professional can demonstrate to the satisfaction of the County that a water table closer to the surface will not unduly impact the development; and
- (e) is serviced in accordance with provincial regulations and any applicable County standards or policy.

10.2.1 Number of Permitted Parcels in Quarter Sections Designated Agriculture District

In a quarter section designated Agriculture District as per the Land Use Bylaw:

- (a) the maximum number of titled parcels that are allowed to be created in a quarter section shall be two (2). This number includes one (1) additional parcel and the balance or remainder of the quarter section.

10.2.4 Number of Permitted Parcels in Quarter Sections Designated Agriculture District

For a residential parcel in the Agriculture District of the Land Use Bylaw that includes all or part of an existing farmstead, the parcel size shall be no less than 1.01 hectares (2.25 acres) and no greater than 2.83 hectares (7 acres) unless a larger parcel size is deemed necessary by the Subdivision Authority to:

- (a) encompass existing residential amenities and facilities, such as shelter belts, wastewater and water services and driveways associated with the farmstead;
- or
- (b) to accommodate a subdivision based on fragmentation.

10.2.5 Legal and Physical Access

All new parcels created shall have safe and functional access to a Provincial highway or a County maintained roadway.

11.2.17 Water and Wastewater Services

Clearwater County shall require all development to meet provincial standards and regulations respecting the provision of water and wastewater services.

CLEARWATER COUNTY'S LAND USE BYLAW (LUB) NO. 714/01

13.4.4 Country Residence Agricultural District "CRA"

The general purpose of this district is to accommodate and regulate traditional Country Residential Agriculture parcels with minor agricultural pursuits.

13.4.4(C) Acceptable Lot Size

- 1. For residential use, 1.46 to 2.02 hectares (3.6 to 5.0 acres) unless:
 - (a) an applicable statutory plan or outline plan in accordance with Section 6.2.20 of the Municipal Development Plan (2010) provides for a parcel size between 1.62 to 2.83 hectares (4 to 7 acres) with a minimum mean lot width of 50 metres (165 feet).