LAND AND PROPERTY RIGHTS TRIBUNAL

Citation: Ostapchuk v County of Wetaskiwin No. 10 (Subdivision Authority), 2025 ABLPRT 65

Date: 2025-02-13
File No. S24/WETA/CO-017
Decision No. LPRT2025/MG0065
Municipality: County of Wetaskiwin

In the matter of an appeal from a decision of the County of Wetaskiwin No. 10 Subdivision Authority (SA) respecting the proposed subdivision of SW 27-46-3-W5 (subject land) under Part 17 of the *Municipal Government Act*, RSA 2000, c M-26 (*Act*).

BETWEEN:

T. Ostapchuk

Appellant

- and -

County of Wetaskiwin No. 10 Subdivision Authority

Respondent Authority

BEFORE: P. Yackulic, Presiding Officer
D. Thomas, Member
G. Dziwenka, Member
(Panel)

K. Lau, Case Manager

DECISION

APPEARANCES

See Appendix A

This is an appeal to the Land and Property Rights Tribunal (LPRT). The hearing was held by videoconference, on September 4, 2024, after notifying interested parties. Additional submissions were accepted until October 4, 2024.

OVERVIEW

[1] This appeal concerns the conditional approval of a subdivision to subdivide five lots within an unsubdivided quarter section located in the County of Wetaskiwin No. 10 (County). The Appellant objected to conditions requiring municipal and environmental reserves and completion of a report by a qualified professional to confirm adequate water supply. With respect to reserves, the Appellant asked for the proposed subdivision to be reduced from five lots to four so as to reduce the amount of municipal reserves (MR) that can be taken. He also requested that environmental reserve easement (ERE) be taken instead of environmental reserve (ER), which would avoid the requirement to allow public access.

[2] The SA had no concerns with the revised proposal for four lots instead of five, and the LPRT accepts the revised proposal is appropriate. If anything, it will reduce potential effects associated with increased density, including potential effects on the environment and groundwater, which adjacent landowners raised as concerns. Although the revised proposal does not bring the application within the exemptions from reserves established by the *Act*, the LPRT found it appropriate to take money in place of MR on the smallest lot and defer MR on the remaining three lots until future subdivision.

[3] The SA also agreed to ERE rather than ER to protect an environmentally sensitive area adjacent to a watercourse which fragments the existing parcel. The LPRT agrees that dedication of ER is not needed to allow for public access in this case and ordered an ERE extending 50 m from the environmentally sensitive area adjacent to the watercourse, as agreed to by the parties.

[4] The LPRT found it would not be appropriate to remove the condition requiring a groundwater report. However, the County advised it accepts cisterns as an alternative to wells for residential use; therefore the SA's condition was amended to impose a restrictive covenant require installation of a cistern when a house is built unless an appropriate water report is provided to the County to show there is sufficient groundwater to sustain a well for residential use without negative impacts existing well users.

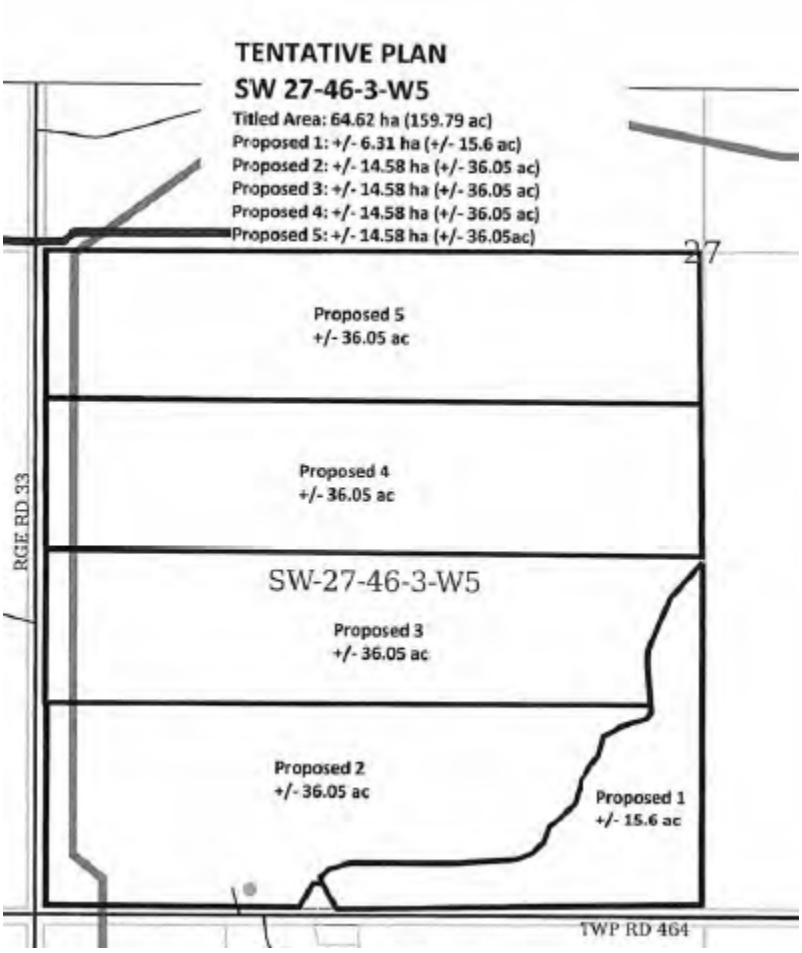
REASON APPEAL HEARD BY LPRT

[5] 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 license, permit, approval or other authorization from various Provincial authorities.

[6] In this case, the subject land contains a portion of a body of water or watercourse, namely Battle Creek, which is in the southeast portion of the parcel.

PROPOSAL

[7] The proposed subdivision is to create four lots of 36.05 acres each (proposed lots 2 to 5) and one lot of 15.6 acres (proposed lot 1) from an unsubdivided quarter section of 160 acres. Proposed Lots 2 to 5 are east-west oriented blocks on the north-west side of Battle Creek, while Proposed Lot 1 lies on the other side of the Creek in the south-east corner of the quarter.



BACKGROUND

[8] The western boundary of the subject site is adjacent to Range Road 33 and the south boundary is adjacent to Township Road 464. The quarter section is mostly treed and contains Battle Creek as well as two seasonal draws that drain into it.

[9] Proposed Lot 1 is a vacant, roughly triangular area of land in the south-east corner of the quarter section and is fragmented from the balance by Battle Creek. Proposed Lot 2 lies along the southern boundary of the quarter on the west side of the Creek and is partially developed with an abandoned yard site. Proposed Lots 2, 3, 4, and 5 lie progressively northward and are also vacant. Battle Creek runs along the eastern boundaries of Lots 2 and 3, while Lots 4 and 5 are not influenced by the Creek or wetlands.

[10] The SA approved the subdivision subject to the following conditions of approval:

1. That the plan of subdivision be revised to include an Environmental Reserve parcel as recommended in the Biophysical Assessment prepared by CPP Environmental and as shown on the attached Schedule A.
2. That prior to endorsement of an instrument affecting this plan, approaches, including culverts and crossings to the proposed parcels be provided at the. owner's and/or developer's expense and to the specifications and satisfaction of the County of Wetaskiwin No. 10 and pay the required fees, in accordance with County of Wetaskiwin No. 10 Municipal Policy 61.1.1 - *Approach Installation.*

3. That prior to endorsement of an instrument affecting this plan, the registered owner and/or developer pay a road contribution fee of $2,000.00 for each of the proposed parcels, excepting proposed parcel 1 in accordance with County of Wetaskiwin No. 10 Municipal Policy 61.1.15 - *Per Lot Road Contribution,* for a total of $8,000.00 payable to the County of Wetaskiwin No. 10.

4. That in accordance with Sections 661, 666, and 667 of the Municipal Government Act, prior to endorsement of an instrument effecting this plan, money-in-place of Municipal Reserve be provided equal to 10% of the area of proposed parcels 1, 2, 3, and 4. The amount has been calculated as follows:

   Total area of the proposed parcels 1, 2, 3 and 4 = tbd
   10% of the area of the proposed parcel(s) = _ tbd
   Estimated market value per ac. -= $1600/ac
   Money-in-place of reserve = 10% area x market value= $tbd.
   This sum of money shall be forwarded to the County of Wetaskiwln No. 10 and accounted for by them in accordance with Section 671(4) of the Municipal Government Act.

   NOTE: The above amount is calculated based on the tentative pion of subdivision submitted to, and cconditionally approved by the Subdivision Authority. All areas ore to be verified based on the instrument prepared by an Alberta Land Surveyor prior to paying the amount to the County. If the amount calculated above is incorrect due to a miscalculation in the area of the parcel, and if the wrong amount is paid, final approval of the plan of subdivision moy be delayed pending resolution of the outstanding amount.

5. That prior to endorsement of an instrument affecting this plan, the registered owner and/or developer prepare a Restrictive Covenant pursuant to section 651.1 of the *Municipal Government Act,* R.S.A. 2s000, *c.* M-26, as amended, and Section 10.23.6 of the County's *Land Use Bylaw 2017/48,* as amended, which shall be registered by way of caveat against the Certificate of title of proposed parcels 1, 2, 3, 4 and 5. This Restrictive Covenant shall, amongst other items,
   a. prohibit the clearing or removal of more than 20% of the existing natural vegetation on each of the parcels, shown on the aerial photograph attached hereto as Schedule B; and
   b. prohibit development within 50 m of the boundary of a creek, stream or ravine.

6. That prior to endorsement of an instrument affecting this plan, the applicant provide the Subdivision Authority with a report by a qualified professional engineer, geologist, or geophysicist that satisfies Section 23(3)(a) of the Water Act, indicating that there is sufficient ground water available on the site to provide 1250 cu. m of water per year to each household on each proposed parcel within the subject quarter section without affecting water available to existing licensed and traditional users.

7. That taxes are fully paid when final approval (endorsement) of the instrument affecting the subdivision is requested, in accordance with section 654(1)(d) of the *Municipal Government Act,* R.S.A. 2000, c. M-26, as amended.

NOTES FOR INFORMATION PURPOSES ONLY: (These are not conditions of approval)

1. All approaches must be constructed to the specifications required by the County of Wetaskiwin No. 10. On completion of construction of the road and approaches, please contact the County of Wetaskiwin No. 10 at (780) 352-3321. All payments for inspections must be received by the County prior to any site inspections. Please note that the County's requirements for culverts and approaches is attached to this decision as Schedule C.

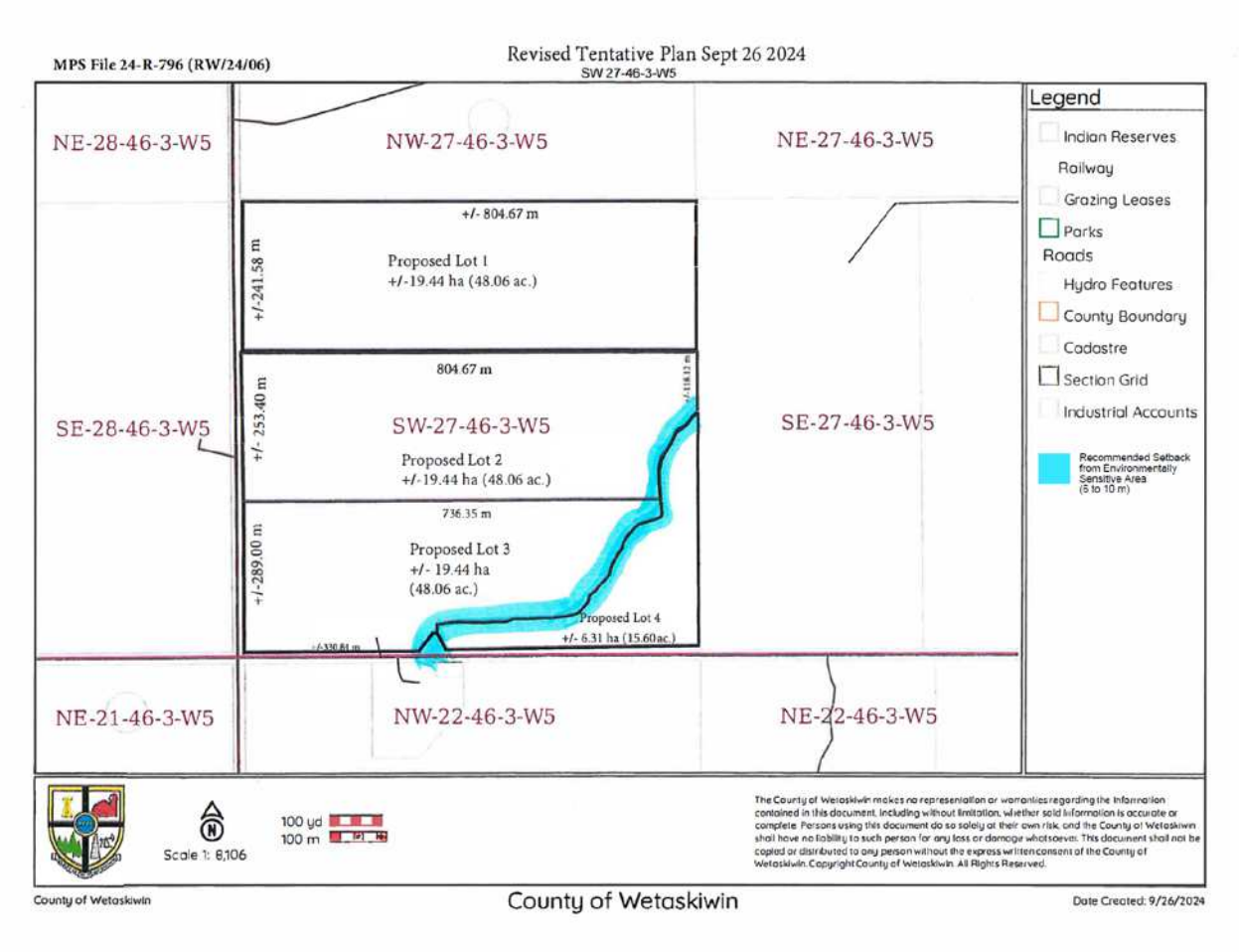
2. In order to expedite consideration of the final approval and endorsement of this proposal, a letter from the County of Wetaskiwin No. 10 indicating that Conditions #2, #3, #4, #5, #6 and #7 should accompany any request for final approval or endorsement.
3. The subdivision is being approved because 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, and the proposal is considered by the Subdivision Authority to conform to the provisions of the County of Wetaskiwin No. l0's Municipal Development Plan and Land Use Bylaw. The Subdivision Authority has not verified the availability of water on-site or the suitability of the soils on the site for sewage disposal; however, trucking services for such are available in the region. The matters listed in Section 9 of the *Matters Related to Subdivision and Development Regulation,* AR 84/2022, and submissions made by adjacent landowners were considered with care.
4. It is the landowner's responsibility to ensure they contact Utility Safety Partners (formerly Alberta One Call) at 1-800-242-3447 to ensure no facilities are disrupted.
5. FortisAberta is the Distribution Wire Service Provider for this area. The Developer can arrange the installation of electrical services for this subdivision through FortisAlberta. Please contact 310-WIRE to make an application for electrical services.
6. Journey Energy Inc. notes that access to wellsite leases that run through the new parcel must not be impeded in any way. Journey Energy Inc. further notes that if the current approach and road is intended to be used for access into the new parcel, prior written consent be obtained from Journey Energy Inc.
7. All new and existing private sewage disposal systems must meet the requirements of the *Private Sewage Disposal Regulation,* AR 229/1997. In this regard please contact an accredited private sewage inspector or the County's Safety Codes Officer before any sewage system is either constructed or altered. Alternatively, the owner/developer may provide the County of Wetaskiwin No. 10 with a variance to this requirement from the municipality's Safety Codes Officer.
8. The proposed subdivision may be affected by a permanent, naturally occurring body of water or watercourse. The Province has an interest in the Crown ownership of Provincial waterbodies/or Public Land boundaries in Alberta. *Development or water diversion may not occur in waterbodies, watercourses, or Public Lands without prior consultation and approval from Alberta Environment & Protected Areas and/or Alberta Forestry & Parks and may require review in accordance with the* Public lands Act, *R.S.A. 2000, c. P-40, as amended.* If you have any questions about development on or near water bodies, watercourses, or public land please contact Alberta Environment & Protected Areas and/or Alberta Forestry & Parks prior to undertaking any activity within or near the wetland.
9. In accordance with section 657 of the *Municipal Government Act,* R.S.A. 2000, c. M-26, as amended, this decision is valid for one (1) year. If you are unable to complete your subdivision approval prior to the end of the one-year period, contact our office before your file expires to begin the extension request process. The extension request and fee ($350.00 + GST) must be received before the file expires. Once a file has expired, an extension request cannot be processed, and a new subdivision application will be required.
10. The following information *is* provided as required by Section 656(2)(a) of the *Municipal Government Act.* Any appeal of this decision lies to the land and Property Rights Tribunal, whose address is 1229 - 91 Street SW, Edmonton, Alberta, T6X 1E9 (phone 780-427-4864).
11. The Subdivision Authority for the County of Wetaskiwin No. 10 is "the Council of the County of Wetaskiwin No. 10.

[11] The Appellant appealed three conditions of the approval:

- Condition 1 – requested an environmental reserve easement instead of environmental reserve;

- Condition 4 – requested to subdivide 4 lots instead of 5 to reduce the municipal reserve requirement;
- Condition 6 – the density increase should have little effect on any other wells

[12] The revised Plan of Subdivision was submitted after the hearing as follows:



ISSUES

[13] 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) and 618.4(1) of the *Act*). Against this general regulatory backdrop, the parties focused on the following issues:

1. Should the proposed subdivision be modified from five lots to four lots?

2. Is it appropriate to require a condition to prove that there is adequate water? If so, what is the appropriate wording of the condition?

3. Should money in lieu of MR be required as stated in condition 4?

4. Is the dedication of ER necessary or would ERE be more appropriate?

5. Should a per lot road contribution fee be applied and if so, how much should the fee be?

SUMMARY OF THE SA'S POSITION

Revised Plan of Subdivision

[14] The SA and County have no objection to the Appellant's proposal to reduce the number of requested lots from 5 to 4, which would reduce density without changing the proposed use.

Water supply

[15] Condition 6 requires the Appellant to provide the SA with a report from a qualified professional that satisfies s. 23(a) of the *Water Act* – i.e., this report must indicate there is sufficient ground water available on the site to provide 1250 cubic metres of water per year to each household on each proposed parcel within the subject quarter section without affecting water available to existing licensed and traditional users. While a water report is not always required by the County, it is appropriate for this application. The adjacent landowners have identified adequate ground water as a major concern. If there is insufficient groundwater, cisterns could also be allowed on the parcels.

Money in lieu of Municipal Reserves

[16] Condition 4 requires that money be paid in place of MR equal to 10% of the area of proposed parcels 1 to 4 as per the original proposal. Proposed lot 5 would be considered the first parcel out and MR can be waived for this lot. The amount is to be calculated by multiplying 10% of the area of the affected parcels by the per acre market value.

ER

[17] Condition 1 requires that the plan of subdivision be revised to include dedication of ER around the banks of the creek in the southeast corner of quarter section, as recommended in the biophysical assessment prepared by the environmental consultant CPP Environmental to protect the environmentally sensitive areas. This report recommends a 10 m development setback from the top of the banks of the Battle River Creek, which is less than the 50 m setback from the boundary of a stream required by s. 10.22.3 of the Watershed Protection District in the LUB.

[18] The SA does not object to the Appellant's request for ERE rather that ER; however, if ERE is required, it should reflect 50 m from the boundary of the water body to be consistent with the LUB

Road contribution fee

[19] Condition 3 requires a Per Lot Road Contribution in accordance with the County of Wetaskiwin Municipal Policy 61.1.15. The required fee is $2,000 per proposed parcel, excepting out Parcel 1, for a total of $8,000.

SUMMARY OF ADJACENT LANDOWNERS' POSITIONS

Water supply

[20] Adjacent landowners are primarily concerned with the availability of groundwater, and one adjacent landowner has already experienced problems with their well in terms of quality and quantity of available water. Adding four households will result in the aquifer no longer being able to sustain water use by the existing households and agricultural users.

ER

[21] The adjacent landowners agree with the Appellant that it is not appropriate to allow public access to the lands near the Creek. As such, they support an ERE rather than dedication of ER.

Road contribution fee

[22] Traffic on adjacent roads leading to the proposed subdivision is already heavy. The proposed lots will add more pressure on the roads and exacerbate issues with their maintenance, which is already inadequate.

SUMMARY OF THE APPELLANT'S POSITION

Revised Plan of Subdivision

[23] The Appellant requested the number of proposed lots be amended from five to four, as stated in Condition 4, arguing the requested density would not have a significant effect on neighbouring uses or properties.

Water Supply

[24] The requirement in Condition 6 for a report per s. 23(a) of the *Water Act* is not needed and should be removed. The Alberta water well information data base shows the most recent four water wells drilled adjacent to the subject land have an average production rate of twelve gallons per minute – which is plenty for household service. Further, the proposed density increase is small and the area has fewer water wells than other areas close by. These circumstances show there is sufficient ground water available to support the proposed parcels' intended use without affecting existing wells; as such, the report required in Condition 6 is superfluous.

Municipal Reserves

[25] The reduced density in the revised proposal should avoid the requirement for MR, since three parcels will be larger than forty acres, and the fourth small parcel can be considered the first parcel out.

ER

[26] Condition 1 should be amended to require an ERE agreement rather than dedication of ER. Unlike ER, ERE does not give a public right of access, and the Appellant would like to keep the public off the area around the creek. The Appellant has no objection to ERE extending 50 m back from the water body.

FINDINGS

1. It is appropriate to reduce the proposed number lots from five lots to four.
2. Groundwater supply is a major concern; therefore cisterns or an adequate water report is required.
3. Money in place of MR should be payable on the smallest lot, and MR should be deferred on the balance.
4. ERE is appropriate extending 50 m from both boundaries of the creek, consistent with the development setback in LUB s. 10.22.6(d).
5. The per lot road improvement fee is in keeping with the County policy and is appropriate as a condition for this subdivision.
6. The site that is the subject of the application is suitable for use proposed for the site, subject to the conditions of approval.

DECISION

[27] The appeal is allowed, in part, and the decision of conditional approval of the SA is approved with amendments as follows:

1. That the plan of subdivision be revised to include an Environmental Reserve Easement and four lots as shown on the attached Schedule A.

2. That prior to endorsement of an instrument affecting this plan, approaches, including culverts and crossings to the proposed parcels be provided at the. owner's and/or developer's expense and to the specifications and satisfaction of the County of Wetaskiwin No. 10 and pay the required fees, in accordance with County of Wetaskiwin No. 10 Municipal Policy 61.1.1 - *Approach Installation.*

3. That prior to endorsement of an instrument affecting this plan, the registered owner and/or developer pay a road contribution fee of $2,000 for each of the proposed parcels, excepting proposed parcel 1 in accordance with County of Wetaskiwin No. 10 Municipal Policy 61.1.15 – Per Lot Contribution for a total of $6,000 payable to the County of Wetaskiwin No. 10

4. That in accordance with Sections 661, 666, and 667 of the *Municipal Government Act*, prior to endorsement of an instrument effecting this plan, money-in-place of Municipal Reserve be provided equal to 10% of the area of proposed parcel 4. The amount will be calculated on the surveyed area less the land taken as ERE as shown in the following example:

   Total area of the proposed parcel 4 = 15.60 acres
   10% of the area of the proposed parcel(s) = 1.56 acres
   Estimated market value per acre of the existing parcel = $1600/ac
   Money-in-place of reserve = 1.56 acres x $1600= $2496
   This sum of money shall be forwarded to the County of Wetaskiwin No. 10 and accounted for by them in accordance with Section 671(4) of the *Municipal Government Act.*

   NOTE: The above amount is calculated based on the tentative pion of subdivision submitted to, and conditionally approved by the Subdivision Authority. All areas are to be verified based on the instrument prepared by an Alberta Land Surveyor prior to paying the amount to the County. If the amount calculated above is incorrect due to a

miscalculation in the area of the parcel, and if the wrong amount is paid, final approval of the plan of subdivision may be delayed pending resolution of the outstanding amount.

5. That prior to endorsement of an instrument affecting this plan, the registered owner and/or developer prepare a Restrictive Covenant pursuant to section 651.1 of the *Municipal Government Act,* R.S.A. 2s000, *c.* M-26, as amended, and Section 10.23.6 of the County's *Land Use Bylaw 2017/48,* as amended, which shall be registered by way of caveat against the Certificate of title of proposed parcels 1, 2, 3, and 4. This Restrictive Covenant shall, amongst other items,
    a. prohibit the clearing or removal of more than 20% of the existing natural vegetation on each of the parcels, shown on the aerial photograph attached hereto as Schedule B; and
    b. prohibit development within 50 m of the boundary of a creek, stream or ravine.

6. That prior to endorsement of an instrument affecting this plan, the registered owner and/or developer prepare a Restrictive Covenant pursuant to section 651.1 of the *Municipal Government Act*, which shall be registered by way of caveat against the Certificate of Title of proposed parcels 1, 2, 3, and 4. This Restrictive Covenant shall be worded to the County's satisfaction to require cisterns on each of the parcels unless a report by a qualified professional engineer, geologist, or geophysicist is provided satisfying s. 23(3)(a) of the *Water Act*, indicating

    the diversion of 1250 cubic metres of water per year for household purposes under section 21 for each of the households within the subdivision will not interfere with any household users, licensees or traditional agriculture users who exist when the subdivision is approved, and

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

7. That taxes are fully paid when final approval (endorsement) of the instrument affecting the subdivision is requested, in accordance with section 654(1)(d) of the *Municipal Government Act,* R.S.A. 2000, c. M-26, as amended.

8. Pursuant to s. 664 of the *Municipal Government Act* the landowner and County enter into an environmental reserve easement agreement to protect 50 m from the boundary of the banks of the creek.

9. Pursuant to section 669 of the *Municipal Government Act*, deferred reserve caveats for the balance of the municipal reserve owing are to be registered on lots 1, 2 and 3 concurrently with the subdivision registration. Deferred Reserve Caveats to be to the satisfaction of the County of Wetaskiwin No. 10.

[28] FURTHER, the Appellant shall provide documentation to the County of Wetaskiwin No. 10 to demonstrate that the above noted conditions have been met, prior to the endorsement pursuant to sections 657 and 682 of the *Act*.

[29] 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

Issue 1 – Revised Plan of Subdivision

[30] The SA had no objection to the Appellant's revised plan of subdivision, which retains the intended use, but reduces the number of requested lots from 5 to 4. As noted by the SA, a lower density will have a correspondingly lower impact on ground water and road use as compared to the original proposal – which adjacent landowners have raised as concerns. As such, the LPRT considers the revised plan of subdivision to be appropriate. A map of the new proposal is attached.

[31] The Appellant expected the reduction will reduce the amount of MR payable at this time since the *Act* exempts reserves for first parcels out and lots of 16.0 ha or more. This aspect of the application is considered in issues 3 and 4.

Issue 2 – Water supply

[32] Section 9(f) of the *Matters Related to Subdivision and Development Regulation* mandates that in making a decision as to whether to approve a subdivision application, the SA must consider, with respect to the subject land, the availability and adequacy of a water supply.

[33] In this case, the Appellant acknowledges the importance of water supply, but argues a water report from a qualified professional is unnecessary given the small number of parcels proposed and provincial data showing productive, recently drilled wells in the area. The LPRT does not accept this position. Water supply is a sensitive issue in the area and the existence of producing wells nearby does not necessarily imply the proposed parcels have a suitable supply or that additional wells will not impact neighbouring users. The LPRT finds a report from a qualified professional showing the requirements of s. 23 of the *Water Act* are satisfied is required to provide adequate assurance that the site has a suitable ground water supply for the intended use.

[34] Having said this, the SA indicated that cisterns would be an acceptable alternative for provision of household water. Therefore, Condition 6 is amended to require a restrictive covenant under s. 651.1 of the *Act* to require a cistern when a house is being built unless a report is provided to show an appropriate supply of groundwater exists. To give adequate notice to potential purchasers or developers, the restrictive covenant must be registered by caveat on the Certificate of Title of each of the new parcels indicating that when a house is built, a cistern would be required unless a water report is completed to the satisfaction of the County.

Issue 3 – Should money in lieu of municipal reserve be required as stated in Condition 4?

[35] Section 663 prevents the SA from taking reserves in the following circumstances

> (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.

[36] In this case, none of the exemptions apply, since (a) more than one lot is to be created, (b) the land is to be subdivided into 4 lots, one of which is less than 16 ha, (c) the land to be subdivided is greater than 0.8 ha, (d) reserves have not been provided previously. Since none of the relevant circumstances apply, the LPRT finds it appropriate to direct that money in place of MR be paid accordance with ss. 666 and 667 of the *Act* on the smallest lot, but deferred until future subdivision for the larger ones. A deferred reserve caveat on the to be registered on the larger parcels will provide notice to potential purchasers that reserves have not yet been paid in respect of those lots.

Issue 4 - Is the dedication of ER necessary or is ERE appropriate?

[37] As noted above, the circumstances listed in s. 663 do not prevent the SA from taking reserves in this case; therefore, the SA is entitled to take ER. However, the SA's requirement for ER along the water course would transfer the reserve land to the municipality and allow public access, which none of the parties favour. The *Act* contemplates such circumstances by allowing the SA to enter into an ERE instead of taking ER; ERE does not provide a public right of access and is therefore preferable to the Appellant and adjacent landowners. The SA did not object to ERE, since the objective of the County policies in this case is to protect the waterway rather than to provide public access and the County has no need to take ownership of the land. A requirement for ERE is also consistent with past approvals issued by the County. Under these circumstances, the LPRT accepts that ERE is appropriate.

[38] The County requested that if ERE is imposed instead of ER, then the setback should be consistent with the development setback prescribed in s. 10.22.6(d) of the LUB for land in the Watershed protection District (WP). This provision states that no development shall be located within 50 m of a boundary of a creek, stream or ravine. The Appellant had no objection to the 50 m distance for ERE, which is roughly in line with the 10 m. setback from top of bank recommended in the biophysical report. Accordingly, the LPRT accepts ERE extending 50 m from the boundary of the creek is appropriate.

Issue 5 - Should a per lot road fee be applied and if so, how much should the fee be?

[39] The SA requests the Appellant either pay the per lot contribution required in Condition 3 or enter a development agreement to upgrade the developer's portion of the road to County's standards - as authorized in *Act* s. 655(1).

[40] The purpose of County Policy 61.1.15 – Per Lot Road Contribution is to better accommodate higher densities proposed in rural areas. County Policy 6.1.5 outlines instances where the landowner is required to pay a road contribution fee. Section 2.7.1 states that, excepting the first parcel out, an applicant shall be subject to a per lot road contribution fee. Section 2.2.2 notes that the Per Lot Road Contribution fee is $2000 per lot. This amount was established in consultation with industry experts and the County's Public Works Department.

[41] The LPRT accepts that this fee should be paid for this subdivision. It is consistent with County Policies, has been applied consistently to new subdivisions, and the Appellant did not object to paying it instead of entering into a development agreement. The LPRT heard concerns from adjacent landowners that roads are already strained, and the LPRT accepts the fee as reasonable and proportionate cost for road upgrades to serve the additional parcels.

Other Approvals

[42] 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 Edmonton in the Province of Alberta this 13th day of February, 2025.

LAND AND PROPERTY RIGHTS TRIBUNAL

_____

(SGD) P. Yackulic, Member

APPENDIX A

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

NAME	CAPACITY
T. Ostapchuk	Appellant
J. Dauphinee	Municipal Planning Services, Subdivision Authority
L. Jacobsen	County of Wetaskiwin – Development Planner
S. Hipkiss	County of Wetaskiwin - Director, Planning and Development
M. Wheale	Affected Party

APPENDIX B

DOCUMENTS RECEIVED PRIOR TO THE HEARING:

NO.	ITEM
1A	Notice of Appeal
2R	Information Package
3R	County of Wetaskiwin – Municipal Development Plan
4R	County of Wetaskiwin – Land Use Bylaw
5AP	Email response – Sweetenham
6AP	Email response - Wheale

APPENDIX C

DOCUMENTS RECEIVED AFTER THE HEARING:

NO.	ITEM
7R	Stepping Back from the Water Guide 2012
8R	Response Letter
9R	Revised Tentative Plan

APPENDIX E

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).

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.

Land dedication

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 and public utilities,
(a.1) subject to section 663, to the Crown in right of Alberta or a municipality, land for 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.

Roads, utilities, etc.

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.

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.

Environmental reserve

664(1) Subject to section 663 and subsection (2), 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 as environmental reserve if it consists of

(a) a swamp, gully, ravine, coulee or natural drainage course,

(b) land that is subject to flooding or is, in the opinion of the subdivision authority, unstable, or

(c) a strip of land, not less than 6 metres in width, abutting the bed and shore of any body of water.

(1.1) A subdivision authority may require land to be provided as environmental reserve only for one or more of the following purposes:

(a) to preserve the natural features of land referred to in subsection (1)(a), (b) or (c) where, in the opinion of the subdivision authority, those features should be preserved;

(b) to prevent pollution of the land or of the bed and shore of an adjacent body of water;

(c) to ensure public access to and beside the bed and shore of a body of water lying on or adjacent to the land;

(d) to prevent development of the land where, in the opinion of the subdivision authority, the natural features of the land would present a significant risk of personal injury or property damage occurring during development or use of the land.

(1.2) For the purposes of subsection (1.1)(b) and (c), "bed and shore" means the natural bed and shore as determined under the Surveys Act.

(2) If the owner of a parcel of land that is the subject of a proposed subdivision and the municipality agree that any or all of the land that is to be taken as environmental reserve is instead to be the subject of an environmental reserve easement for the protection and enhancement of the environment, an easement may be registered against the land in favour of the municipality at a land titles office.

(3) The environmental reserve easement

(a) must identify which part of the parcel of land the easement applies to,

(b) must require that land that is subject to the easement remain in a natural state as if it were owned by the municipality, whether or not the municipality has an interest in land that would be benefitted by the easement,

(c) runs with the land on any disposition of the land,

(d) constitutes an interest in land in the municipality, and

(e) may be enforced by the municipality.

(4) An environmental reserve easement does not lapse by reason only of

(a) non-enforcement of it,

(b) the use of the land that is the subject of the easement for a purpose that is inconsistent with the purposes of the easement, or

(c) a change in the use of land that surrounds or is adjacent to the land that is the subject of the easement.

(5) When an easement is presented for registration under subsection (2), the Registrar must endorse a memorandum of the environmental reserve easement on any certificate of title relating to the land.

(6) Despite section 48(4) of the Land Titles Act, an easement registered under subsection (2) may be removed only pursuant to section 658(3.1).

(7) An environmental reserve easement is deemed to be a condition or covenant for the purposes of section 48(4) and (6) of the Land Titles Act.

(8) Subject to subsection (7), this section applies despite section 48 of the Land Titles Act.

(9) A caveat registered under this section prior to April 30, 1998 is deemed to be an environmental reserve easement registered under this section.

Municipal and school reserves

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 all land required to be provided as conservation reserve or environmental reserve or 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 all land required to be provided as conservation reserve or environmental reserve or made subject to an environmental reserve easement.

(3.1) For greater certainty, for the purposes of calculating the 10% under subsection (2) or (3), the parcel of land includes any land required to be provided under section 662.

(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.

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

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.

MUNICIPAL BYLAWS AND STATUTORY PLANS

Land Use Bylaw 10.22 - Watershed Protection District (WP)

10.22.1 Purpose

The purpose of the Watershed Protection District (WP) is to reduce flooding, improve water quality, and maintain wildlife habitat by encouraging the maintenance of natural vegetation adjacent to watercourses and in important watershed areas.

10.22.2 Permitted Uses

a) Agriculture, Extensive - subject to the restrictions on land clearance set out in Section 10.21.6.
b) Dwelling, Detached
c) Dwelling, Modular – New
d) Dwelling, Mobile – New
e) Buildings and uses accessory to the above

10.22.3 Discretionary Uses

a) Intensive Livestock Operation
b) Bed and Breakfast
c) Recreational, Extensive
d) Public Utility
e) Dwelling, Modular – Used
f) Dwelling, Mobile – Used
g) Dwelling, Moved-in
h) Secondary Suite
i) Greenhouse
j) Veterinary Clinic
k) Recreational Units Use (greater than 32.0 ha (80 ac), where no dwelling exists – maximum 3 year permit. If the landowner wishes the use to continue, they must re-apply for the use prior to the expiry of the permit).
l) Apiary (amended by Bylaw 2019/44)
m) Offsite Home Occupation (Type 1) (amended by Bylaw 2019/55)
n) Offsite Home Occupation (Type 2) (amended by Bylaw 2019/55)
o) Onsite Home Occupation (Type 1) (amended by Bylaw 2019/55)

10.22.6 Setbacks

d) No development shall be located within 50 m (164 ft) of a boundary of a creek, stream or ravine.

10.22.7 Maintenance of Natural Vegetation

When a lot is created under section 10.22.5 (c):
a) no more than 20% of its natural vegetation shall be cleared or removed, and
b) the Subdivision Authority may require, as a condition of subdivision approval, that a restrictive covenant, conservation easement, or similar agreement be registered on the title to enforce the restrictions on clearance of natural vegetation.

County of Wetaskiwin Policies – Policy 61.1.15 – Per Lot Road Contribution

2.2 Per Lot Road Contribution Fee:

2.2.1. Road Contribution fees shall help with the improvement of County public roads required to give access to the development or subdivision, however, the payment of the fee does not guarantee immediate improvement including pavement of such roads and any improvements may be subject to the availability of matching, contributing or otherwise budgeted funds. It shall be recognized that Road Contribution fees may only be a portion of the funds needed for any improvement, but such funds shall be managed in such a way to maximize the benefit to such roads.

2.2.2. The Per Lot Road Contribution Fee ($2,000.00 per lot) has been previously established in consultation with industry experts and the County's Public Works Department and has over the past two years been accepted by Developers as a reasonable per lot fee for funds towards maintenance and/or improvement of County roads providing direct or indirect access to the proposed multi-lot subdivision.

2.2.3. The per lot fee amount shall be reviewed by Administration to take into account the industry standard cost increases for contracts, materials and labour on an annual basis. Any proposed adjustments to the amount shall be calculated by a qualified engineering firm prior to consideration by Council as a part of regular Policy review practices.