

SUBDIVISION AND DEVELOPMENT APPEAL BOARD OF
MOUNTAIN VIEW COUNTY

DECISION

Hearing held at: Mountain View County Office
Council Chambers

Date of Hearing: March 21, 2025

Members Present: Alan Miller – Chair
Gil Hegel
James Smith
Keith Branter
Kim Walton

Basis of Appeal: This is an appeal from a Development Permit for an Industrial Storage and Warehousing – Shipping Containers, Equipment and Recreational Vehicles (The **“Proposed Development”**) on S 23-29-1 W5M, Plan 0612508, Block 1, Lot 8 (The **“Lands”**) refused by Mountain View County’s Administrative Subdivision and Development Approving Authority (the **“Approving Authority”**) on February 11, 2025 (The **“Development Permit”**). The Appellant stated the following as the Reason for Appeal, amongst others contained within the Notice of Appeal:

- The Developer did not have the correct information on the Proposed Development when making their determination as to whether to support the file or not.
- There was no way to contact some companies/owners.

Appellant/Applicant: Denver Saint

Landowner: Payless Disposal Inc. c/o Denver Saint

Respondent: Mountain View County

Description of Application

On March 21, 2025, the Subdivision and Development Appeal Board (the **“Board”**) opened the appeal hearing for the appeal filed by the Appellant in regard to a Development Permit refused for an Industrial Storage and Warehousing – Shipping Containers, Equipment and Recreational Vehicles (the **“Proposed Development”**) on S 23-29-1 W5M, Plan 0612508, Block 1, Lot 8 (the **“Lands”**) pursuant to Section 686 and Section 687 of the ***Municipal Government Act***, R.S.A. 2000 Chapter M-26, as amended. The Development Permit was refused by the Administrative Subdivision and Development Approving Authority on February 11, 2025 (the **“Development Permit”**).

The Notice of Development Appeal was filed by the Appellant with the Board on February 24, 2025 (the **“Notice of Appeal”**).

Summary of the Appellants Position:

1. The Appellant submitted for the Board that they have owned the property for over ten years and that although they operate another business as Payless Disposal Incorporated, there is no intention to use the lands for anything related to their waste management business;
2. The Appellant provided a lengthy review of other properties located outside of the Mountain View County jurisdiction that have successfully transitioned their lands to house numerous shipping containers intended for storage;
3. The Appellant submitted for the Board that the Proposed Development would have significant economic development value and outlined comparable developments that have successfully contributed to their local economy;
4. The Appellant outlined the history of development on the Lands, specifically that they had previously applied for a development permit on the parcel, in compliance with the Restrictive Covenant on title, and received approval for that development permit following an appeal by adjacent landowners.
5. The Appellant submitted that he complied with the direction provided by Mountain View County by reaching out numerous times to the developer of the Lands, Shelly Eastman, but was unable to make contact with the developer to provide the clarity needed to receive her approval.
6. The Appellant submitted that he received support from four of the parcels listed under the Restrictive Covenant to proceed with his Proposed Development and was unable to make contact with other owners due to the inaccessibility of contact information for those parcels.
7. The Appellant refuted any claims placed by those speaking in support of the Respondent that the Proposed Development would have any material impact to the aesthetic or property value of other lands in the area and submitted that the Proposed Development would actually have a benefit to the area due to the enhanced security provisions that are proposed.
8. The Appellant submitted that claims by those in support of the Respondent that the Proposed Development should not be permitted due to it being in competition with other businesses in the area is not relevant and should not be a consideration of the appropriateness of the Proposed Development.

Summary of the Respondent:

1. The Respondent submitted for the Board that the Appellant received an initial development permit that allows for a maximum of two shipping containers, which is also the maximum permitted by the County's Land Use Bylaw;
2. The Respondent confirmed that a Restrictive Covenant was placed on the title of the Lands, and other lands within the business park in 2006 which provides restrictions in addition to the County's Land Use Bylaw.
3. The Respondent outlined that the Restrictive Covenant requires for the Appellant to receive approval from the Rainbow Highway Industrial Park Design Approval Committee. The Respondent further clarified that in the event that the Appellant was unable to do so, the County's Land Use Bylaw requires for the Appellant to receive written approval from all landowners subjected to the Restrictive Covenant.
4. The Respondent submitted that the Appellant was unable to meet the requirements of the Restrictive Covenant or County's Land Use Bylaw as they only provided confirmation of approval from four of the twelve landowners subject to the Restrictive Covenant.
5. The Respondent confirmed that the Approving Authority denied the Proposed Development under Section 9.4 (2) of the County's Land Use Bylaw which requires for the Development Permit application to be denied unless written consent from all landowners affected by the Restrictive Covenant is received.
6. Those speaking in support of the Respondent submitted that the Proposed Development will have an adverse impact on adjacent properties and raised concerns such as lack of consideration for grading and building code requirements, potential for decreased property

values and security issues that may increase if the Proposed Development were to be approved.

Findings of Fact:

1. The Lands are located at S 23-29-1 W5M, Plan 0612508, Block 1, Lot 8;
2. The Lands are a 2.12-acre parcel designated as Business Park District (I-BP) by Mountain View County Land Use Bylaw No. 10/24;
3. The Lands contain an existing Industrial Storage and Warehousing business for the purpose of storage of recreational vehicles, bins and containers as approved by a Development Permit issued in 2016.
4. The Proposed Development would see the development of 227 spots to place storage containers of various lengths between 20' and 40'.
5. The Proposed Development is classified as Industrial Storage and Warehousing – Shipping Containers, Equipment and Recreational Vehicles which is defined by Mountain View County Land Use Bylaw No. 10/24 as ‘development used for either indoor or outdoor storage, warehousing, distribution or trans-shipment of raw materials, partially processed or finished goods, manufactured products, or equipment’.
6. The Proposed Development is a discretionary use within the Business Park District (I-BP) as outlined by Mountain View County Land Use Bylaw No. 10/24.
7. The Lands are located within the Rainbow Highway Industrial Park;
8. The Lands, along with other parcels of land within the Rainbow Highway Industrial Park, contain a Restrictive Covenant registered to title as instrument 061 294 973.
9. The Restrictive Covenant states that the owner of the Rainbow Highway Industrial Park “intends to impose on each and every Building Lot a scheme of mutually enforceable restrictions, with respect to the use and improvement of the Lands and the construction, use and improvement of the buildings thereon in order to preserve the integrity of the development and value of the Lands”;
10. Section 1.1 of the Restrictive Covenant states that “it is a requirement that all development in Rainbow Highway Industrial Park receive the approval from the Design Approval Committee of Rainbow Highway Industrial Park”;
11. Section 1.4 of the Restrictive Covenant states that “Development Permit Application drawings must be approved prior to submission to the County of Mountain View...All drawings submitted to the County of Mountain View must bear the approval stamp signed and duly noted by David Stricker.”
12. The Board accepts the submission from the Respondent that Mr. David Stricker has passed and is therefore unable to provide his approval as required by the Restrictive Covenant;
13. Section 9.4 (2) of Mountain View County Land Use Bylaw No. 10/24 states that “Caveats in respect of Restrictive Covenants or Restrictive Covenants (whether or not the County is a party to the Restrictive Covenant) shall be reviewed as part of processing a Development Permit Application: (a) if a proposed development does not comply with a restriction in a Restrictive Covenant that is more restrictive than provisions of the Land Use Bylaw: (ii) the Applicant shall obtain written consent from all landowners affected by the same Restrictive Covenant and submit the written consent”;
14. Section 9.4 (2)(b) of Mountain View County Land Use Bylaw No. 10/24 states that “the Approving Authority shall not approve a Development Permit application if the applicant does not provide written consent from all the landowners affected by the same Restrictive Covenant”;
15. Mountain View County’s Administrative Subdivision and Development Approving Authority refused the Proposed Development on February 11, 2025.
16. The Board accepts the submissions from both the Appellant and the Respondent that the Appellant was unable to acquire approval from the Owner of the Restrictive Covenant, nor able to acquire written consent from all landowners affected by the Restrictive Covenant. The

- Board accepts the evidence provided that the Appellant has provided the written consent of four landowners from a total requirement of twelve landowners;
17. The Board accepts the acknowledgement by the Appellant that they were aware of the Restrictive Covenant on title and has attempted to meet its requirements and those contained within Mountain View County Land Use Bylaw No. 10/24 but has been unable to make contact and receive approval from all required landowners.
 18. Mountain View County's Administrative Subdivision and Development Approving Authority refused the Proposed Development on February 11, 2025.

Decision:

The decision of the Subdivision and Development Appeal Board is to **deny the appeal** and **uphold the decision** of the Administrative Subdivision and Development Approving Authority. The decision of the Board is to **refuse Development Permit PLDP20240298**.

Reasons for Decision:

1. The Board determined that the Lands and Proposed Development are subject to requirements presented in the Restrictive Covenant registered to title which requires approval from the Design Approval Committee of Rainbow Highway Industrial Park prior to proceeding with Mountain View County consideration of the Proposed Development.
2. The Board determined that the Appellant did not provide confirmation that the Design Approval Committee of Rainbow Highway Industrial Park has approved the Proposed Development.
3. The Board determined that Section 9.4 (2) of Mountain View County Land Use Bylaw No. 10/24 provides direction that as the Proposed Development is not compliant with that requirement in the Restrictive Covenant that the Appellant is required to obtain written consent from all landowners affected by the same Restrictive Covenant. The Board accepts the determination from the Appellant and Respondent that this requirement has not been met.
4. The Board determined that there was insufficient rationale provided by the Appellant to justify the Board varying section 9.4 (2)(b) of Mountain View County Land Use Bylaw No. 10/24 which explicitly requires for an Approving Authority to deny a Development Permit application if the applicant does not provide the required written consent from all landowners affected by the Restrictive Covenant.

Evidence:

The Board considered the following evidence in making its decision:

1. The Agenda and Notice of Appeal;
2. Report and verbal presentations to the Subdivision and Development Appeal Board including all attachments presented to the Board by the Appellant/Applicant and those in support of the Appellant/Applicant;
3. Report and verbal presentations to the Subdivision and Development Appeal Board including all attachments presented to the Board by the Respondent and those in support of the Respondent;
4. ***Municipal Government Act***, R.S.A. 2000, Chapter M-26;
5. ***Subdivision and Development Regulation***, Alberta Regulation 43/2002;
6. Mountain View County Land Use Bylaw No. 10/24;
7. Mountain View County Municipal Development Plan No. 20/20.

Appeals:

If you wish to appeal this decision, you must follow the procedure prescribed in Section 688 of the ***Municipal Government Act*** as follows:

Section 688(1)

An appeal lies to the Court of Appeal on a question of law or jurisdiction with respect to

- (a) a decision of the Subdivision and Development Appeal Board.

Section 688(2)

An application for permission to appeal must be filed and served within 30 days after the issue of the decision sought to be appealed, and notice of the application for permission to appeal must be given to

- (a) the Municipal Government Board or the Subdivision and Development Appeal Board, as the case may be; and
- (b) any other persons that the judge directs.

Section 688(3)

On hearing the application and the representations of those persons who are, in the opinion of the judge, affected by the application, the judge may grant permission to appeal if the judge is of the opinion that the appeal involves a question of law of sufficient importance to merit a further appeal and has a reasonable chance of success.

Section 688(4)

If a judge grants permission to appeal, the judge may:

- (a) direct which persons or other bodies must be named as respondents to the appeal,
- (b) specify the questions of law or the questions of jurisdiction to be appealed, and
- (c) make any order as to the costs of the application that the judge considers appropriate.

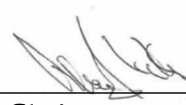
Section 688(5)

If an appeal is from a decision of a subdivision and development appeal board, the municipality must be given notice of the application for permission to appeal and the board and the municipality

- (a) Are respondents in the application and, if permission to appeal is granted, in the appeal, and
- (b) Are entitled to be represented by counsel at the application and, if permission to appeal is granted, at the appeal.

**SUBDIVISION AND DEVELOPMENT APPEAL
BOARD OF MOUNTAIN VIEW COUNTY**

Per:



Chair

Date Signed: April 1, 2025