

**DECISION REPORT****OF THE CITY OF MEDICINE HAT****SUBDIVISION AND DEVELOPMENT APPEAL BOARD HEARING****HELD ON THURSDAY, MAY 16, 2024, AT 12:30 PM****APPEAL #1-2024 – DEVELOPMENT APPLICATION****1064 1<sup>ST</sup> STREET SW.****JAYNE AND ALLEN HAYLE (APPELLANTS) ON BEHALF OF THE HARLOW COMMUNITY**

**MEMBERS PRESENT:** J. Taylor, Chair  
A. Steinke, Vice-Chair  
Councillor C. Hider  
C. Acton  
W. Fischer

**STAFF PRESENT:** L. Sibanda, Legislative Coordinator, (Secretary to the Board)  
S. Seitz, Administrative Assistant  
J. Popoff, City Planner Director of Planning  
J Genge, Senior Planner  
B. Irwin, Planner

**INTRODUCTORY COMMENTS**

The Board Chair introduced the Board and city staff members present. He also advised that audio or video recordings of the hearing is not permitted.

At the commencement of the hearing, the Chair stated that the Board is an impartial body and that the members are not employees of the City of Medicine Hat. He noted that decisions of the Board are based strictly on the evidence presented at the hearing, taking into consideration the relevant legislation. The Chair advised that following the public hearing, the Board will review the issues, and a written decision will be rendered within 15 days. The Chair further advised that all information provided is public information and was available to all interested parties prior to the public hearing, which was publicly advertised. He also stated that both sides will have the opportunity state their case and to ask questions of each other.

Prior to hearing submissions on the merits of the appeal, the Chair asked the Board members if they may have a conflict of interest or bias that may prejudice their decision regarding this appeal. There were no concerns expressed. He then asked if anyone present believes or has a concern that there may be a conflict of interest, or bias shown by any member of the Subdivision and Development Appeal Board which may prejudice any decision regarding Appeal #1-2024. There were no concerns expressed from anyone present.

## **BACKGROUND TO THE APPEAL**

On December 18, 2023, an application for Development Permit PLDP20230923 was submitted, and subsequently approved on March 27, 2024, by the Development Authority for the development of a Multiple Unit Residential Development.

Under the previous Land Use Bylaw No. 3181, the site was zoned Single Family Residential District (R-1). During the adoption of the current Land Use Bylaw No. 4168 in 2013, a city-wide rezoning resulted in the rezoning of this site to Mixed Use District. Included in the application was an Overall Site Plan, Exterior Elevations, Landscape Plan, Utility Plan/ Storm Water Management Plan, Grading/ Surface Plan, floor plans, building sections, a Traffic Impact Assessment, and site contamination statement.

*Note: The floor plans were not included in the Agenda Package for the appeal.*

These documents were circulated on January 21, 2023, for two weeks to the Technical Coordinating Committee for, commenting and reviewing of any technical issues that may arise.

On January 19, 2024, a sign was placed on the site for one month, and public comments were accepted for 3 weeks, closing on February 9, 2024. Information on the Development Permit Application was uploaded on the city website with further details on the proposal on under the Development Notifications Page.

A sign with an advert of the proposal was placed on the property on January 19, 2024, having been created by the Planning Department to inform, clarify, and allow public review and comment, as directed by Council. Further to this, public comments were accepted by Planning for a 3-week period ending February 9, 2024.

The Development Permit was approved on March 27, 2024, after a submission by the applicant, of the revised drawings on February 28, 2024, and the Traffic Impact Assessment on March 22, 2024.

## **APPEAL HEARING**

The Secretary advised the Board that Public Notice of the hearing was published in the Saturday, May 4<sup>th</sup>, 2024, edition of the *Medicine Hat News*. One hundred and sixty notifications were sent out to adjacent/abutting and surrounding property owners, and the interested parties listed in the petition. She also advised that the procedure is that representatives from Planning, Building and Development Services will provide an introduction and overview, the appellant's representatives will be given the opportunity to speak in support of the appeal, any other interested persons will be given the opportunity to address the Appeal Board, the appellant or their representatives will be given the opportunity for rebuttal. Parties will then provide their closing comments and the Board will confirm whether they have received enough evidence to make a decision. The Board will then consider the appeal in a closed session. A decision in writing will be provided within 15 days. Details of the appeal included in the appeal package were provided to the appellant and the Board members on Monday May 13, 2024.

Brad Irwin, Planner, provided an overview of the development application.

- The presentation was opened by an overview of the Legislative Process for Land Use Planning and Development Permit applications, and responsibilities of the Development Authority.
- A map was shown of the site location. The subject site is a vacant piece of land located at 1064 1<sup>st</sup> Street SW and lies near the west end of 1<sup>st</sup> Street SW on the perimeter of the Harlow neighbourhood.
- Under the previous Land Use Bylaw 3181 (1998-2013), the site was zoned Single Family Residential District (R-1).
- During the adoption of the current Land Use Bylaw 4168 in 2013, a city-wide rezoning would have taken place to reflect the new Districts in the Land Use Bylaw, resulting in this site zoned to Mixed Use District.
- During the Land Use Bylaw review stages, Planning would have received feedback about zoning from the City's Land and Properties group about the properties under their management. There would have been discussions on site suitability for different uses, and planning policy at the time would have been considered in the decision-making process.
- Directly adjacent to the north, northeast, and northwest of the site lies some Low-Density Residential properties. Adjacent to the east there are more Low-Density Residential sites and an Open Space site used as a public park. Adjacent to the west and southwest (across 1st Street SW) are two Highway Commercial sites. The Highway Commercial site on the north side of 1st Street SW is adjacent to Low Density Residential sites.
- Adjacent to the south and southeast across 1 Street SW there are large vacant parcels that currently have no zoning designation. Further to the north lies some more Low-Density Residential sites, and beyond that the flood mitigation berm and South Saskatchewan River. Further to the east next to the public park is a Medium Density Residential site, and next to that is a large Mixed-Use site. There are Low Density Residential sites adjacent to these sites.
- Further to the southwest across 1st Street SW there is a large Medium Density Residential site, a few smaller Medium Density Residential sites, multiple Low Density Residential sites, an Open Space site for green space, and a few Community Services parcels including the Medicine Hat Regional Hospital.
- Further to the west and northwest is the Trans-Canada Highway, with the Medicine Hat Water Treatment & Power Plant across the Highway. The Harlow West Trail begins directly adjacent to the northwest of subject site and loops around the Harlow community along the flood berm, as well as loops underneath the Trans-Canada Highway near the river and continues up past the water treatment plant and up towards the new recreational City Pump Track. Noble Park is situated directly adjacent to the east of the subject site, which is also the site of the closest bus stop. Kiwanis River Park is north down Red Deer Drive SW and includes another local playground in the Harlow community.
- Site photos and aerial shots were provided to help add context to the area.

- Later in his presentation, the Planner showed site photos of similar developments within the city of Medicine Hat, that accommodated medium density residential development in line with the How we Grow and Liveable Neighbourhoods policies in the Municipal Development Plan.
- The Planner noted the following points:
  - The Land Use Bylaw is the regulatory planning document to which the development must conform to. It sets out council-approved parameters for development to provide certainty of outcomes to the public and developers.
  - The decision to approve this Development Permit was made in support of Council's Strategic Plan to provide a variety of housing options for the community, and was guided by the Municipal Development Plan, the proposal was aligned to the City Resources coupled with the community needs, to maximize needs over wants and maximize infill development.
  - The myMH Master Plan, is the city's Municipal Development plan adopted by Council in 2020 and encompasses a long-range vision for the future growth and development of our community, with the intent to establish goals, policies, and concepts for the purpose of providing long-term guidance for our community, including our City Council, city administration, developers, and the public.
  - The first of the five strategies of this plan is the Livable Neighborhoods strategy, which addresses residential neighborhoods and how they should grow. This land is vacant and the last lot of the community to be developed. Once developed, this neighborhood will be at full build-out and a complete community.
  - Policy 2 mentions how low density residential is located within the interior of the neighborhood, and medium density or higher density residential located on the perimeter of the neighborhood along a major street. As seen in the site context presentation, this site is on the perimeter of the Harlow community and abutting 1st Street SW, a major road. The subject site is ideal to accommodate medium density residential developments indicated by Policy 2a and 2b of Livable Neighborhoods in the Municipal Development Plan.
  - A Traffic Impact Assessment was conducted by professional engineers at a request of the Municipal Works Department to ensure the ability of the road system to accommodate the increased traffic. The result concluded no key issues arising from this development, and that the traffic being generated by this development is minor compared to background traffic and the growth in background traffic.
  - Policy 5 mentions that neighborhoods should include a variety of housing types and designs that support shifting demographics and family structures, support all ages and abilities, and support a variety of income levels and ownership structures. This apartment proposal provides all the above to the Harlow community by offering condominium structured apartments supportive of shifting demographics and family structures, supportive of all ages and abilities and targets a variety of income levels among a single-family home area, which promotes a Livable Neighborhood outlined in the Municipal Development Plan.

- The proposal of forty-eight units on this site is helping meet the policies of the Municipal Development Plan by maximizing the density of the site to its full potential, promoting the most efficient use of city services, all while remaining compliant with the regulations of the Land Use Bylaw. The technical reviews and studies for the proposal, are supported by policies within the Municipal Development Plan, thereby rendering this application approvable.
- The concerns around increased density for the community has been acknowledged, and the proposed density is in alignment with the Municipal Development Plan policies around maximizing infill and adding density.
- Under Policy 5(4), the city is tasked to facilitate and streamline urban development. By creating open, direct, and regular dialogue with the development industry the City can ensure land use regulations and city policies or procedures support redevelopment. The proposal for apartments on this site, is in alignment with the Plan and open communication with the developer has ensured the proposal is compliant with the regulations and helps achieves the goals of increasing density outlined in the Municipal Development Plan.
- A vacant, derelict, or underutilized site tends to have a negative impact on the surrounding area in several ways. The proposal is taking a vacant, underutilized site and developing it to its upper end potential of a 48-unit residential development, while still complying with land use regulations. It is a prime example of breathing new life for old spaces and is one of the key goals for infill strategy, which provides a significant benefit to the community.
- The proposed use is a residential use in the context of a surrounding residential neighborhood and is compatible and consistent with promoting the residential component of the neighborhood. Their parking is off the lane, which allows the building to be pushed up as much as possible and provide a buffer between the low-density properties. There is access to the Harlow Trail system across the street, as well as a direct route to downtown Medicine Hat by 1 Street SW and ease of access to get to the north and south parts of the city via the Trans-Canada Highway. The building has an asphalt shingle roof and is made mainly of horizontal siding. The building materials are consistent with the appearance of the neighborhood and the materials used throughout the Harlow community. The proposal complies with the purpose statement of the Mixed-Use District to encourage densification.
- Thirty-four parking stalls per building are proposed, totaling sixty-eight stalls for the entire site, four of which are barrier-free stalls. This allows for at least one stall per unit (actual number is 1.4 stalls / unit), which is adequate parking and above industry standards. Where additional parking is required, there is available on-street parking across Greenwood Court adjacent to the west, as well as off-street parking along Red Deer Drive and 1st Street SW.
- Concerns were identified with the height of the building creating shade on the neighbourhood. The city's Land use bylaw does not measure or regulate shade, and shade and sunlight appear to be one of the common topics in many urban-design discussions. A report was prepared to better understand the extent of the shadowing for this proposal, both by planning staff and the developer's architect, and the studies have shown similar results, indicating

- implications during the winter months around the winter solstice for some of the properties to the north of the site. Planning acknowledges the shadow implications a 4-storey building has and understands the value of providing sunlight access in cold-weather, and that has a value in urban design, however there is need to determine if that value is more important than any other in city planning. If the city's priority is avoiding new shadow impacts, costs are involved as this makes buildings smaller, oddly shaped, and more expensive to build. These things are in direct contravention with what the city is trying to achieve through its Municipal Development Plan.
- Planning staff followed the legislative processes and rendered a decision on behalf of the city, in alignment with the Municipal Development Plan, complied with the Land Use Bylaw, and addressed issues and concerns identified through the development permit process. Planning staff acknowledges the implications of the development to be common to any development, including shadowing, reduction of privacy, parking, and increased traffic, however studies and technical reviews were conducted to inform an understanding of the implications. Planning staff understood the implications based on these results and deemed the permit approvable.
  - This concluded the presentation from Administration.

### **Brock Hale: Representative of the Appellant**

Presenter's parents live next to the proposed development site. He gave a background to the appeal, noting that:

- The Development was not brought before the Municipal Planning Commission.
- The community is not opposing the development but looking to converse on a more suitable development.
- A petition was submitted with more than 190 signatures, with about 120 being Harlow residents.
- The appellant's presentations will address all the points addressed on the SDAB (Subdivision and Development Appeal Board) Appeals page on the Medicine Hat Website, and more.
- Major concerns like privacy, noise, shadowing, traffic and more ignored in the consideration of the development in question.
- Displayed 3D rendering of the proposed building.
- Opened floor to other presentations.

### **Brian Brown: Representative of the Appellant - Parking**

- The presenter is a neighbour to the site who made a presentation regarding the parking issue. He highlighted the inadequacy of parking space for residents considering on average one household would have 2 or more cars, with the need to sometimes make space for visitor parking.
- Photos and videos were displayed of similar developments on the Span West website, which all have considerable parking compared to the subject development.
- The presenter also played a video illustrating a parking scenario on the lot based on the measurements provided in the architectural plans.

- Illustrated that the width of the alley between his property and the development measuring between 18 – 20 ft, which potentially exposes his fence to damage as the width of the alley is potentially the only space that allows vehicles to enter and exit the proposed outdoor parking stalls.
- Reference was made to two similar developments in the city, noting that both had ample parking space within the property.
- Made efforts to inquire from the city who would pay for any potential damages to damaged fences emanating from this limited parking space, and the response was that an individual bearing loss would have to resort to their insurance.
- The Chair asked if the Board had any questions for the Presenter.

**Question 1:** During the development process and prior to the rendering of a decision by the development authority, were any community members engaged to discuss the project and its implications.

**Response:** Notices not received, and no engagement was afforded with the city and attempts to request meetings with the city were futile.

**Questions 2:** Were any diagrams provided of how wide the parking stalls are on the proposed site?

**Response:** Information on parking measurements was obtained from the Span West website and got more information from the city. The stalls are 20 ft. long with the handicap and non handicapped stalls measuring 8 and 9 ft. respectively.

**Question 3:** Were the drawings in your presentation the actual drawings for the Medicine Hat projects or were they from the website?

**Response:** These are the official drawings from the Span West website on the Medicine Hat project.

**Question 4:** Is the back alley staying with the development?

**Response:** Yes

**Question 5:** Based on the details on page 42 on the Agenda Packet, can you confirm that the lane is 20 ft. in width?

**Response:** 6 metres wide, and traffic has been pushed up the traffic an extra metre to the South to make it 7 metres.

**Question 6:** What is the minimum functional width of a drive isle that serves 90-degree parking?

**Response:** 7 metres or 23 feet for a parking lot.

### **Kim Large – Appellant’s Representative – Drainage**

- Made a presentation regarding drainage problems in Harlow and highlighted that this community currently has drainage and overland flooding issues.
- She played a few videos of residents physically clearing drainages, illustrated incidents of frozen drains and overland flooding.
- On several occasions the city had come to thaw frozen drains, but no permanent solution was provided to address the drainage problems in Harlow.

- Concerns over ageing drainage infrastructure have been raised with the city for years to no avail.

No questions arose from this presentation.

**Patty Jo Foliot: Representative of the appellant – Traffic**

- The Traffic study was conducted by a company engaged by the developer and is allegedly based on 2022 figures, before the completion of the Highway 1 realignment project.
- The report is not indicative of the actual impact the new buildings will have on traffic flow in the area. The Red Deer Drive South and North intersections are not compliant with Alberta Transportation's requirement of at least 75 metres from centre line to centre line, therefore adding a parking lot exit on Red Deer North will increase congestion on an already congested intersection.
- Bylaw 4346 is violated by the proposed development in that the projected 68 vehicle parking allotment leaves no additional parking except for lining the sides of both Greenwood Court SW and Red Deer Drive North and 1<sup>st</sup> St SW., thereby causing congestion and major safety concerns for both vehicles and pedestrians.
- Video played in illustration of the above point.
- Parking along 1<sup>st</sup> Street SW beginning at the playground zone to the off-ramp to Highway 1 would not meet Municipal standards as it is too narrow.
- Fear of a greater risk of fatal incidents at the pedestrian crosswalk at the intersection of 1<sup>st</sup> Street SW and Red Deer Drive South, as has been the case before.
- The Presenter left a question on how Emergency Vehicle Access response times would not be negatively impacted considering the traffic congestion issue?

**Question:** Mr. Irwin, you mentioned a consultation with emergency response, can you elaborate?

**Response:** Notifications sent out to through the Technical Coordinating Committee, as part of the requirements in the Alberta Building Code and the National Fire Code requires emergency service providers to visit the site and check lane width. Their comments brought up no issues and this was considered in reaching the overall decision.

**Question:** Can the appellants access the emergency report?

**Response:** The Alberta Building Code is a public document and inquiry would be made with Fire Services on the location of this information.

Hearing took recess for 10 minutes.



### **Brian Brown: Appellant's Representative - Sunlight/Shadow Concerns**

- The shadow study by the City of Medicine Hat notes that adequate sunlight is available for surrounding residential spaces for maximum use in the summer, spring and fall afternoons and evenings.
- Shadowing concerns brought up with the city who would conduct a shadowing study.
- Condominium development on south side therefore has an over whelming shadow effect on the community.
- Proposed building listed at 40 ft., but the actual height is 55 ft.
- Study is not fully reflective of the major shadowing impact that this project will have on the current residents' homes and yards during the winter months (October to March).
- In November, the neighboring property to the development enjoys an average of 270 sun hours. The condominium units will significantly reduce this to 60 sun hours in the same month, resulting in 78% less sun time.
- Shadowing in December and January is like November.
- Presenter projected a few slides illustrating the shadowing study that was conducted using the same software (Shade Map) that the city used in their report.
- Sun hours as researched by the appellant's representatives would be reduced to 1 hour 10 minutes in November, 45 minutes in December, 55 minutes in January and 1 hour 40 minutes in February.
- Another impact of the shadowing effect was noted to be the potential adverse impact on the use and enjoyment of green energy, such as solar power that would not be as effective given the limited sunshine need for more thermal heating in the winter, reduced Vitamin D and snow melting on the driveways.
- Site not suitable as it too is close to homes, the space is not big enough and the impacts of the condominium on the neighbourhood will be irreversible.

**Question:** Did I hear you correctly that the City's Shadow Study was for a 40 ft. building?

**Response:** That is what they showed us that the study was at 12 metres. It was still very impactful, but it was not the right height.

### **Jane Hale: Appellant – Privacy Concerns**

- The Presenter is an adjacent neighbour to the proposed development site.
- Her presentation included some illustrations of her family enjoying activities in their backyard, and a progressive presentation of how they worked hard over years to build their backyard to what it is now.
- The development is not consistent with the City's guidelines that state "maintain the privacy of and new residents and existing neighbours."
- Completion of the development site would result in more balconies facing the low-density residential area, in comparison to single family homes or duplexes.

No questions arose from this presentation.

**Allen Hale: Applicant – Privacy**

- Presented Medicine Hat Land Use Bylaw 4168, that speaks to building design, character, and appearance.
- Length of the appeal emanating from a lack of answers from the city during the development process.
- Shared a sentiment that privacy was not addressed as most buildings of this nature would be separated from neighbors by a parking lot, green space, and roadways.
- Privacy not considered as claimed in the staff report.
- Multiple places in the Bylaw talk about the importance of privacy and the need to mitigate it, but this was not directly addressed to mitigate privacy impact.
- The height of the building very invasive in nature and will force neighbourhood to remain closed up.

No questions arose from this presentation.

**Dylan Parker: Appellants' Representative – Infill Concerns**

- Good infill practices listed on City's website to include respecting the design of the existing developments, maintaining privacy of new residents, sensitively increasing the number of residents and the use of good overall urban design practices.
- Span West's existing projects follow good overall design practices, as they are characterized by ample green and parking spaces, surrounded by buildings that are compatible in scale and do not directly hinder walkability in the neighborhood. This is not the case with the current development.
- Infill development is described on the Medicine Hat website as the process of developing vacant or underutilized land within existing mature urban areas or the replacement of existing homes.
- Presenter highlighted the good infill practices as stated on the City of Medicine Hat's website.
- Explained missing middle concept in relation to Medicine Hat as having negative effects on the surrounding community.

No questions arose from this presentation.

**Troy Hale: Appellant's Representative – Strong towns concerns**

- Former resident speaking to Strong Towns concern, highlighting an important priority of the Strong Towns Community Action Lab, to be building community dialogue.
- The Strong Towns Approach relies on small incremental investments instead of large transformative projects. The development exposing community to a radical change which is contrary to this notion.
- Emphasizes resiliency of result over efficiency of execution. Development effected with no involvement of the affected community.
- Is designed to adapt to feedback – No regard given to feedback from the community on their concerns.
- Is inspired by bottom-up action and not top-down system – Development approved without much consideration of the community's opinion or concerns.

- Seeks to conduct as much of life as possible at a personal scale – Community is needs not put first.
- Is obsessive about accounting for its revenue expenses, assets, and long-term liabilities – The project must not be entirely based on making money but must be about serving the people.

No questions arose from this presentation.

### **Brock Hale: Appellant's Representative – Closing Remarks**

- myMH shows Harlow to be general Urban in the city's Master Plan – mature low-density areas, largely residential, various housing types, etc. Proposed design not compatible to the existing single-family homes.
- The height exceeds the acceptable building height as the height of the building would exceed 60 ft. thereby failing to fit in the character of adjacent homes. Reference made to the Land Use Bylaw.
- The purpose of a mixed-use zoning stipulates a maximum of 4 storeys, which this development is inconsistent with as the 4 storeys exceed an acceptable height.
- Further to that, project is not aligned to city's Master Plan in many ways including compatibility, shadowing etc.
- Parcel of land rezoned to mixed use without any notification to the community in 2013.

No questions arose from this presentation.

### **Other Interested Parties**

#### **Cynthia Fehr**

- Speaking to oppose appeal as per the register signed on 16 May 2024.
- Apologizing to Applicant and applauded buildings and reviews.
- Speaking to nondisclosures and miscommunications to be the reason for the appeal.

#### **Bradley Hale**

- Speaking in support of the Appeal as per the register signed on 16 May 2024.
- Raised concern on sending the development out of province and not affording local companies and local businesses a chance.

#### **Janae Hale**

- Speaking against the Appeal as per the register signed on 16 May 2024
- No amenities to accommodate the proposal for this development to accommodate low income and affordable housing.
- Will this be an affordable location for low income and affordable housing?
- Appeal not entirely on personal issues but also based on safety issues considering that 1<sup>st</sup> Street is a busy street and is the only road leading to the highway.
- There are minimums for interior designs and the Presenter expressed that it is not good to live in the minimum.

**Cindy Parker**

- Speaking in support of the Appeal as per the register signed on 16 May 2024.
- Parking is a problematic issue due to the design of the neighborhood and resident's resort to parking on this back lane.
- There is no space for snow removal and snow often shovelled onto the roadway.
- The design of the proposed development has nothing backing it from the single-family neighborhood.

**Josh Remail - Applicant**

- Applicant gave background to the proposed development.
- Infill projects often the best projects when done right.
- All reports were in place as required and the project requirements were met, hence the project was approved.
- Storm water management report proves that flooding in the area will be reduced as underground tanks will be installed that will slowly release the water into the storm water system from the proposed property and the alley.
- Main question in contrast to many differing opinions is what the land is zoned for, discretionary use, and may be used as well for a permitted use.
- Condominium will have a snow removal facility and will contribute to keeping the area clean.
- Gave an alternative scenario that evidenced that the building would eventually become a part of the neighborhood and serve as an alternative to stay in the same area without necessarily having to be in a single-family home.
- Introducing the missing group of people, and adds value to the community, which may be a perspective that is hard to see in the present.
- Everything measuring right for an infill project.

**Questions pertaining to neighbourly development.**

1. Had you not considered keeping the garbage inside the building rather than along the lane?

**Response:** Followed the rules as stipulated in the technical review process by the City of Medicine Hat in making this consideration.

2. There are more units than there is covered parking, 4 parking stalls short. Parking stalls on the north side probably will not get any winter sun. The access into the building is through an uncovered outdoor staircase, which may be dangerous ice-covered staircase to get to the vehicle?

**Response:** Only the 4 people parking outside would use the back but everyone else would be down at the elevator level.

3. How do people from the handicap parking stalls come inside the building without using the staircase?

**Response:** They use the parking ramp on the front of the building.

4. Why wouldn't you put the handicap parking inside the building?

**Response:** Because it is also for public handicap parking, so it its inside it would be locked. The reason the parking is at the back was an effort to have the parking stalls as far away from the residents as possible.

5. The orientation of these building projects the balconies into the neighbourhood, if you turn them 90 degrees, the balconies will more likely face each other. The outdoor location of the staircase poses a safety issue, there is a CEPTED issue, there is a potential compliance with the LUB issue, S524(5) deals with CEPTED issues.

6. Is that a public safety issue, that a staircase is at the back of the building?

**Response:** If it is an uncovered external staircase, if it risks being covered with ice and snow without any winter sun, the principles of CEPTED would confirm that.

7. You mentioned the permitted use, certainly a permitted use could be built to 4 storeys, but would you agree that it is extremely improbable that a 4-storey commercial building would be built at a site coverage of 45% recognizing that most strip malls rarely exceed 23 to 25%.

**Response:** It is very possible that is why I am offering my caution.

8. You mentioned that the application meets all the requirements of the Bylaw. The one thing I could not figure out was if there were any floor plans submitted with this application, so I could not confirm the information that is with the application. How many one-bedroom apartments are there?

**Response:** There is 4, possibly 6.

9. So, then the balance would be 2-bedroom apartments?

**Response:** Yes

10. Did you consider the visitor parking, would they park at the back of the building or not?

**Response:** They will, yes.

11. That will not be assigned to residents, that parking?

**Response:** Correct. Some of it will, but some of it will be visitor.

12. What assurance will the neighborhood have that, that will persist over time. The minute that you turn into a condominium corporation, there is a condominium bylaw, you typically have new actors and new people who have no familiarity with the conversations, or the discussion carried on today, how would you implement that?

**Response:** I think that if you wanted to add or subtract parking stalls, that would have to come from the development authority.

13. Not unless it is a condition that comes with the development permit that x number of parking stalls must be reserved for public parking.

**Response:** We certainly can put that on paper.

14. What is the assumption about the design storm for the subdivision, we have heard that there are surface drainage issues that arise because the storm sewer is designed for specific design storm, for example 2 years. Is this a 5-year storm sewer.

**Response:** I think the city would be better at it.

15. Can you describe to me the adequacy of the current storm sewer system in this area, and how the development is likely to affect that? Is the storm sewer designed for a 2 year or 5 storm? Are any measures proposed to ameliorate the storm sewer situation?

**Response:** Storm sewer site drainage was provided to the city as part of the reviews. The design was a 1 in 100-year event, they are storing the 1 in 100-year event on site. When we look at site like this, we look at predevelopment flows, we are not looking at the existing systems of the site. This development is not intensifying the issue with the post development, being one building is built. The flows in a major event are not going to be higher than the current conditions, being predevelopment.

16. How do you capture a 1 in 100 event year on this site?

**Response:** Through underground storage?

17. A tank in other words?

**Response:** They have oversize piping; I believe it is a metre in diameter that is storing roughly a ballpark of 50 cubes

18. At what point is that discharged?

**Response:** The predevelopment discharge rate is about 15 litres per second and change, and the post development rate is about 12.8 litres per second. They are constricting through the pipe system as it enters the municipal system.

### **Allen Hale: Appellant**

To respond to the Applicant, the many scenarios given today are not worst-case scenarios but just scenarios.

- The property across 1<sup>st</sup> Street opposite the building was displayed earlier, and has been said not to have any zoning designation, what are they planned for?

**Response:** Not certain I answer that question, I can only deal with the land use in the regulation of developments on properties. I am not familiar with all vacant properties in the city especially if they are not zoned and have no designation.

- So, Council can choose to zone it as they choose essentially?

**Response:** If that was a piece of land that was in the interest of council to look at and see the purpose of and what the future is of it, then that would be something that council could look at.

We were of the understanding that on Red Deer Drive, going south, that on the west side was zoned for an interchange of 1<sup>st</sup> Street and the Number 1 Highway and the city would not sell the current piece of land until they see what is happening with the interchange, but this was before the rezoning.

The storm drains coming down the hills of Red Deer Drive run down to the buildings, when there are flash floods, I have seen it come across that lot over a foot and a half deep, water and hail, that comes across and goes down the alley between Red Deer Drive and Greenwood Court. It would wash the alley a foot deep. That water is going

to be coming down this building, I do not know what is going to happen with those front doors. I cannot see an underground storage holding that.

- There is a big question on the value issue that the city feels the value of the neighboring properties will increase. And we would like an opportunity to discuss with the city once that is determined.

### **Brad Irwin: City Planner - Closing Comments**

- In response to the allegation that the Development Authority used different number for the shadowing assessment: The shadow program works in this way- The elevation is based on the building centre, that how the software works, so if you drop the height of the building, then the height of the building is added to the elevation beneath the centre of the building, so it's almost like an average.
- The site is slopped to the north, and we chose 40 ft as our height because the south end of the building is 40 ft. tall. With the sun's location more south in the colder months, we figure that would be the best representation of what the shadow would indicate on the adjacent properties.
- The intent of the study was not to dictate an exact depiction on the shadowing because the software does not consider elevation change or roof slope, it just gives a general idea and indication of the shadowing as we wanted to see a general idea.
- To address the parking issue: Bottom picture on page 48, drawing number 167801-p1 in the Agenda Package shows the parking stall length and lane width to be 6 metres for the lane and 7 metres for the distance from the lane to the sidewalk.
- In relation to the backyard suites and the Land use bylaw, and the River Flats in Riverside, those are different sections of the Land Use Bylaw and those sections do not regulate apartments or anything within the Mixed-Use District.
- The information on Strong Towns was correct, but one key feature of the Strong Town is maximising development on lots including increasing site coverage and removing parking standards and using infrastructure efficiently.
- We acknowledge that there are concerns on privacy, however the development application was reviewed for conformance with the regulatory Land Use Bylaws and the alignment with policy contained in Municipal Development Plan. The Municipal Development Plan contains several policies relating to infills and expands on those strategies. Both Land Use Bylaw and Municipal Development Plan are Council documents that go through extensive research and public engagement, the infill practices are expanded more in the Municipal Development Plan not just the city website.
- Most of the parking is underground so that the building was pushed forward as much as possible.
- There is a powerline at the front of this property that restricts where the building can go so this is what worked best in the interest of all parties.

**Question:** Why is the site plan not consistent with the drawing you just referred to?

**Response:** These are not the final drawings; the permit is approved but there are a couple of minor revisions required. These drawings were the sent submission.

**Brock Hale: Appellant's Representative Closing Remarks**

- A lot of this development has been said to fit with the bylaws, Municipal Development Plan and myMH but we have proved it does not fit.
- We would like to work with the city to find a project that best fits with the Municipal Development Plan, myMH and the Bylaw.

**DECISION OF THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD**

**FINDINGS OF FACT**

- The land is located at 1064 1<sup>st</sup> Street SW.
- The land is designated Mixed Use District in the Land Use Bylaw.
- On December 18, 2023, Application for Development Permit PLDP20230923 was submitted, and subsequently approved on March 27, 2024, by the Development Authority for the development of 48 units.

**Stated Grounds of Appeal**

- The Appellant states the grounds for their appeal as follows:
  - The development is non-compliant with the Land use bylaw- does not fit under zoning purpose for Mixed Use District Bylaw 4168 part 7.1.1.
  - The site context is inappropriate for the proposed development in relation to surrounding properties.
  - The land is unsuitable for the proposed use as it lacks green space as the lot will entirely be consumed by the two structures and parking lot.
  - The building mass is too large for the site in relation to the surroundings.
  - Using the per hectare calculation, as per Bylaw 4168 part 6.3.4.3, the development calculates on the upper end of the acceptable density regardless that the land was zoned for medium residential.
  - Privacy arises from twenty-four rear facing balconies on a 4-storey overlooking directly into neighboring back yards.
  - Shadowing arises from the development's elevated location in proximity to the neighborhood.
  - Pedestrian safety is compromised as there will be no access to 1st Street.
  - The parking plan is unrealistic due to its proximity to adjacent property lines thereby posing a risk of damage to adjacent properties.



- Adverse impact on traffic flow due to an addition of forty-eight dwelling units and sixty-eight vehicles within one hundred meters of the already dangerous and confusing highway intersection.
- Noise and light pollution are a possible effect due to an additional forty-eight dwelling units, forty-eight air conditioning units, boilers, balcony lights and parking garages.
- Exacerbation of already existing environmental issues as the land was previously available for moisture absorption and now to be occupied by two buildings.
- The project is inconsistent with Medicine Hat's good infill practices as it is not:
  - A) Respectful of the design of existing developments
  - B) Maintain the privacy of new residents and existing neighbors.
  - C) Sensitively increase the number of residents
  - D) Use good overall design practices.
- Project incompatible with Medicine Hat's Master Plan.
- Project inconsistent with Medicine Hat's Strong Towns advocacy.

**MEMBERS PRESENT:** J. Taylor, Chair  
A. Steinke, Vice-Chair  
C. Acton  
W. Fischer  
**(See Appendix "A")**

The Board reviewed all the evidence and arguments, written and oral, submitted by the parties and focused on key evidence and arguments.

In making its decision, the Board considered the Municipal Government Act, the Land Use Bylaw, and the oral and written submissions provided by the Development Authority, the Appellants, and those who spoke at the Hearing.

The Board determined that the development meets the requirements of the Land Use Bylaw and is allowed as per the zoning designation of the property and sees no reason for the project not to proceed subject to additional conditions.

**The Board therefore denies the Appeal, confirms the decision of the Development Authority, and adds the following conditions as Conditions 9, 10 and 11 and Note 2 and 3 to the Development Permit.**

**Conditions:**

9. The 90-degree parking stalls adjoining the lane must be not less than 6.0 m in length and the drive aisle/ lane serving these stalls must be not less than 7.0 m in width, and the final site plan and any related drawings, as approved, must show these requirements.

10. The external staircases on the north side of the two apartment buildings must be contained either inside the buildings or covered with a roof and enclosed with walls to the satisfaction of the Development Authority, and the final plans and drawings must be provided, and as approved, must show these changes to address this requirement. (See Note 2).
11. Waste bins must be located either inside each of the two apartment buildings until they are serviced, or alternatively that a building or buildings similar to a garage be provided to enclose and secure the bins until they are serviced, and the final plans and drawings must be provided, and as approved, must show these changes to address this requirement. (See Note 3).

### **Note**

2. The external staircases are located on the north side of the buildings and will receive little or no winter sun. As such, there is some risk to anyone using these staircases. Having regard to CPTED principles and related public safety matters (as referenced in Section 5.24.5(9) of the Land Use Bylaw) and recognizing that this development is a discretionary use in the Land Use Bylaw, the Board believes these staircases should be enclosed or located inside the two apartment buildings.
3. Outdoor waste bins along the northern boundary of the site serve forty-eight dwelling units and risk being a nuisance to the neighboring properties. These risks may be exacerbated by vandalism and common wind directions. Indoor waste bins seek to reduce the risk of vandalism and nuisance to these properties.

Dated this 31<sup>st</sup> Day of May 2024.

### **REASONS FOR THE DECISION**

Issues presented by the Appellant's Representatives and Appellant and Response of the Board

#### **Parking**

Appellant's Representative was concerned that a 6 m wide alley would be too narrow to safely turn without hitting fence.

**Response:** The lane functionally will be widened from 6 m to 7m wide, and this will be confirmed in the conditions of approval.

#### **Drainage**

Appellant's Representative was concerned with drainage issues, especially overland flooding.

**Response:** The drainage issues are already existing. The development will retain and delay the release of storm water thus improving drainage. Further concerns should be raised with Municipal Works and the Environmental Utilities Departments.

### **Traffic**

Appellant's Representative was concerned that the traffic study was completed for the Highway 1 realignment project.

**Response:** Municipal Works completed a traffic study specific to this development and it showed no significant impacts to traffic flow or volume.

### **Appellant's Representative raised safety concerns.**

**Response:** There is no evidence to support this concern.

### **Appellant's Representative suggested traffic congestion would affect Emergency Response times**

**Response:** There is no evidence to support this concern. The traffic study does not suggest that there will be traffic congestion. The Technical Co-ordinating Committee reviewed the development with respect to the National Fire Code and Alberta Building code. Their findings were that there would be no effect.

The safety issue of children crossing the road is manageable as the bus stop is set at the back of the alley.

### **Sunlight/Shadow**

Appellant's Representative was concerned with the shadow the building would create and used the same software the Planning Department used.

**Response:** Whether the study of the Planning Department or the Appellant's Representative is used, the shadowing will affect two homes and only for a small portion of the calendar year. Moving the building as far forward on the lot mitigated this concern.

### **Privacy**

The Appellants were concerned with privacy posed by a 4-storey next to single family homes.

**Response:** The Planning Department provided ample examples of situations like this that already exist in the city. Again, reasonable mitigation was made by moving the building as far forward as possible.

### **Infill**

The Appellant's Representative was concerned that the project does not follow good infill practices.

**Response:** The development follows the Land Use Bylaw and meets all the requirements.

### **Strong Towns**

The Appellant's Representative was concerned that the project does not follow the Strong Towns policy of the City.

**Response:** Action Labs were completed by the city and feedback was accepted. This development is not a radical change. It is incremental as it is one property in the neighborhood. Again, the development meets the requirements of the Land Use Bylaw.

**Reference to other neighborhoods**

Not relevant to the facts in issue as some examples are from suburban lots and are not comparable to an infill lot as in the present circumstances.

Lovejoy Sibanda  
Lovejoy Sibanda, SDAB Clerk, on behalf of  
Jim Taylor, Chair  
SUBDIVISION AND DEVELOPMENT APPEAL BOARD

cc. Jane and Allen Hale (Appellants)  
Josh Remai (Applicant)  
Brad Irwin, Planner

## **APPENDIX “A”**

A few days after the close of the public hearing on May 16, 2024, representatives of the Appellants contacted the Municipality and raised various procedural concerns respecting the participation of C. Hider in the proceedings.

Upon receipt of the concerns, C Hider reviewed the allegations and did not participate in further deliberations with the SDAB. C. Hider offers the following statement:

“I have decided to recuse myself from further involvement in this matter. I did leave the public hearing briefly for about 5 minutes. I realize now I should have asked the Chair to direct a recess. At the time, I did not appreciate that my absence from the hearing could pose problems. I apologize to the SDAB members and other present for any concern or inconvenience caused.”

Because Councillor Hider has recused herself, the balance of the SDAB when considering this matter have come to their conclusions in the decision. Parties affected by this decision should rest assured that Councillor Hider did not have any influence on, or otherwise impact the final decision in this matter.

The representatives of the Appellants also referenced the possibility that the Municipality’s planning staff gathered with the SDAB after the close of the hearing. The SDAB confirms that the Planning and Development staff did not meet privately with the SDAB.