SUBDIVISION AND DEVELOPMENT APPEAL BOARD
PARKLAND COUNTY

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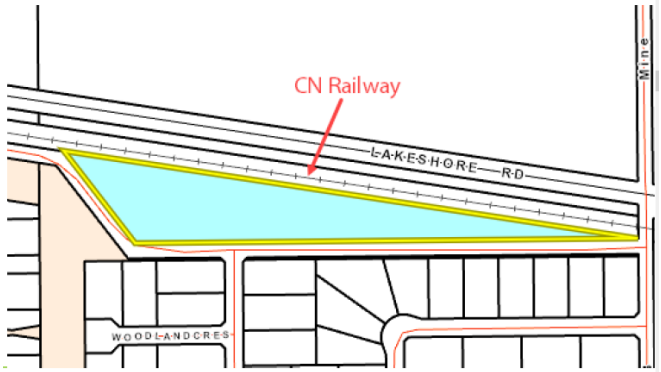
HEARING DATE: June 27, 2024
FILE NO.: PLSP20230644

Notice of Decision of Subdivision and Development Appeal Board

INTRODUCTION

[1] On May 6, 2024, the Subdivision Authority of Parkland County (the "Subdivision Authority") approved a subdivision with conditions for land located at SE-9-53-4-W5 ("the Lands"). The applicant for the subdivision was Jeffrey Kirby, by his agent Scott Olson. The Lands are located in Wabumun, and are adjacent to a CN Railway line.



[2] On May 15, 2024, Jeff Kirby, by his agent Scott Olson, filed an appeal from the decision of the Subdivision Authority.

[3] The Subdivision and Development Appeal Board (the "Board") held the appeal hearing on June 27, 2024, in person.

PRELIMINARY MATTERS

A. Board Members

[4] At the outset of the appeal, the Chair requested confirmation from all parties in attendance that there was no opposition to the composition of the Board hearing the appeal. None of the persons in attendance had any objection to the members of the Board hearing the appeal.

B. Exhibits

[5] At the beginning of the hearing, the Chair confirmed that everyone in attendance had the hearing package prepared for the hearing.

[6] No one at the hearing had any further information they wished to submit.

C. Miscellaneous

[7] There was no request for an adjournment of the hearing.

[8] There were no objections to the proposed hearing process.

DECISION OF THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD

[9] The Board grants the appeal in part and varies the conditions of approval by amending condition 3, condition 4, condition 5 and condition 7 as set out below. The subdivision is now subject to the following conditions:

1.	All existing and proposed approaches must comply with Parkland County's Engineering Design Standards, to the satisfaction of Land Development Engineering. An Approach Application and receipt of associated fees shall be submitted to Land Development Engineering at LDE@parklandcounty.com for: a. construction of the proposed approaches to Lot 1, Lot 2, and the Remnant Lot. Following final inspection of the approach(es), a copy of the approval shall be provided to Planning & Development Services. All surface grading is to be done in a manner that will prevent cross lot drainage conflicts. All approaches shall contain an apron equivalent to the surface of Lakeshore Road. Please contact a Development Engineering Officer prior to construction and to schedule inspection appointments at 780-968-8888.
2.	Pursuant to Parkland County Bylaw No. 01-2007, payment of an off-site road levy is required at $6,074.00 per hectare on the gross titled area of 4.39 hectares. The estimated off-site levy payment is $26,664.86 and shall be payable by Electronic Funds Transfer, cash payment, certified cheque, or bank draft.
3.	In accordance with Section 655(1) of the Municipal Government Act, a Restrictive Covenant prepared to the satisfaction of Parkland County shall be registered against the titles of Lot 1, Lot 2, and the Remnant Lot notifying future owners that a Domestic Groundwater Assessment was not completed as part of the application for subdivision and that any future potential to divert water for household purposes would require the preparation of a report as outlined in Section 23(3)(a) of the Water Act.
4.	Pursuant to Section 655 of the Municipal Government Act, and Policy 9.4.3 of the Parkland County Municipal Development Plan Bylaw 2022-17, a Noise and Vibration Analysis completed by a qualified professional will be required for Lot 1, Lot 2, and the

	Remnant Lot. Any recommendations from the analysis will be registered by Restrictive Covenant against the applicable titles.
5.	Pursuant to Section 655 of the Municipal Government Act, and Policy 9.4.3 of the Parkland County Municipal Development Plan Bylaw 2022-17, an assessment must be completed by a qualified professional addressing whether a berm or other safety measures are required in accordance with the intent of the Guideline. The safety measures (which could include a berm) recommended by the qualified professional, and other recommendations, if any, will be implemented to the satisfaction of the County and in consultation with Canadian National Railways.
6.	Pursuant to Section 655 of the Municipal Government Act, and Policy 9.4.3 of the Parkland County Municipal Development Plan Bylaw 2022-17, the landowner shall install chain-link fencing of minimum 1.83 metre height along the entire northern property line to the satisfaction of the County and in consultation with Canadian National Railways.
7.	Pursuant to Section 9 of the Subdivision and Development Regulation, a Restrictive Covenant prepared to the satisfaction of Parkland County shall be registered against the titles of Lot 1, Lot 2, and the Remnant Lot notifying future owners of the recommendations for residential construction as outlined in the Geotechnical Investigation dated January 21, 2024, and completed by Thurber Engineering Ltd., and the location of the restricted building pocket. The Alberta Land Surveyor shall prepare a schedule to be attached to the Restrictive Covenant showing the restricted building area identified in the report. For clarity, the Restrictive Covenant shall identify that there shall not be any development outside of the restricted building pocket unless the development is supported by the report of a qualified professional, acceptable to the Development Authority, which report indicates that development may occur in a safe manner and if the report contains any recommendations, those recommendations shall be made conditions of any development approval.
8.	The subdivision shall be surveyed and registered with the Registrar of Land Titles, with all plans and documents submitted meeting their requirements. An endorsement fee of $528.00 (subject to change) is payable when the final plan is submitted for endorsement by Parkland County.
9.	Pursuant to Parkland County Bylaw No. 2015-30, the parcels shall be numbered using Parkland County's civic addressing system. Following final inspection of the approach(es), please contact the Current Planner I at 780-968-8888, to request address assignments. Following assignment of civic addresses, please contact Customer Service at 780-968-8888 to order all required address signs. A copy of the receipt confirming purchase of the address sign(s) shall be provided to Planning & Development Services.
10.	Pursuant to Section 654(1)(d) of the Municipal Government Act, any outstanding taxes on the subject property shall be paid or arrangements be made, to the satisfaction of Parkland County, for the payment thereof.

SUMMARY OF HEARING

[10] The following is a brief summary of the oral and written evidence submitted to the Board. At the beginning of the hearing, the Board indicated that it had reviewed all the written submissions filed in advance of the hearing.

Subdivision Authority

[11] The Lands are located at a portion of SE-9-53-4-W5M. The parcel is 4.39 hectares (10.84 acres). The lands are zoned Lakeshore Residential District (LSR) in the County's Land Use Bylaw ("LUB"). The proposed use is Lakeshore Residential. However, the application was not consistent with s. 5.8(3)(a) of the LUB which does not allow for the re-subdivision of existing parcels with the LSR District. The Subdivision Authority exercised its variance power because the proposed subdivision was in alignment with the MDP; was consistent with the parcel size and density of the adjacent lakeshore residential subdivision and the intent of the district was to accommodate small parcel sizes in the context of the area.

[12] The Lands are designed as Rural Agricultural Area in the County's Municipal Development Plan ("MDP"). The application is consistent with Policy 7.1.9(a) and 7.1.9(b) of the MDP, which supports residential uses within lakefront and riparian areas.

[13] The Lands are located within Division 5 near Lakeshore Road and the Highway 44 intersection. The Applicant sought to create two new residential lots near the CN Railway (see page 11 of the Agenda Package). The Application was circulated as identified at page 190 of the Agenda Package. As a result of concerns about the Development Standards for the size of the lot, the boundaries from the original Application were shifted to the east.

[14] The Subdivision Authority circulated the subdivision application as noted at page 43 of the Agenda Package. The circulation included CN Railway, which provided its response (see pages 49 and 210 of the Agenda Package).

[15] The Applicant identified concerns in relation to conditions 3, 4, 5 and 7. Condition 3 requires a restrictive covenant against the lots. The County requires a report showing that a subdivision with 6 or more lots to show that an aquafer can support those additional lots. Since the application identified that the lots would be developed with cisterns, the assessment was not required. However, the restrictive covenant will let future land owners know that if a study is not done, that the land owners are restricted to using a cistern.

[16] In relation to condition 4 (the noise and vibration analysis), this was recommended by CN Rail and supported by Policy 9.4.3 of the MDP. The language of this provision of the MDP states that if the proposed development is in proximity to a rail then it should be done. The Subdivision Authority believes that it is a good idea for this to be done to address concerns about the viability about the lot.

[17] Condition 5 requires the construction of a Safety Berm along the northern property line as indicated under the MDP Policy 9.4.3.d which speaks of set backs. The language of the MDP is

mandatory (it uses the word "shall"). The County obtained a legal opinion about the conditions and has imposed the condition in reliance upon the advice it received.

[18] Condition 7 deals with the requirement to register a restrictive covenant against the Lands to notify land owners about the construction and to identify that there is an area of land which cannot be developed on the area. There is a higher water table in the area. The County defines developable lands as those having a water table below 2.13 m.

[19] In response to Board questions, the Subdivision Authority advised that:

a. The development setback from the rail line is 6 m. If an application for development permission were received, the Development Authority would contact CN Rail again for comments.
b. The Subdivision Authority has not spoken with CN Rail, but has received their written comments. CN is a referral agency and the application was circulated to it.
c. If a future land owner buys the Lands and wishes to drill a well, the future owner is restricted to a cistern unless they can show that a well can support the additional user. Condition 3 supports future landowners.
d. No site inspection was done. They are in the process of re-establishing site visits after COVID.
e. The Subdivision Authority confirmed the Appellant's statement that lowest elevation between the property line and the ditch was 0.5 m.
f. It may be possible to dig a basement for a new house
g. The height of a berm would be evaluated by the County's engineer.
h. The Subdivision Authority suggested that the wording of condition 3 proposed by the Appellant seems okay and was willing to work with the Appellant on that.
i. The contours may provide some mitigation, but there is a safety consideration. Further Policy 9.4.3e of the MDP supports the requirement.
j. In relation to the noise and vibration condition, the intent is to ensure that noise and vibration are not at an unacceptable level. There is no target in the MDP setting a decibel level. The Subdivision Authority would relay upon an expert and work with the Appellant and their consultant regarding the scope of work that is acceptable and that is able to be applied. A consultant would be someone qualified to prepare a noise and vibration analysis like a professional engineer.
k. The Subdivision Authority was not certain if there were berms for the pre-existing subdivisions. However, the Board should consider the application before them and not others.
l. There is not definition for "close proximity" in relation to condition 4.
m. There are a standard list of agencies to whom subdivision applications are sent. When there is any application within 800 m of a CN railway, the Subdivision Authority sends the application to CN for comment.
n. The construction of berms for development in proximity to railways is not standard because there are few applications adjacent to railways. The intention for have a berm for safety is to protect future land owners. In the event of a derailment, there would be some protection for future landowners. The Appellant would hire an engineer to design the berm and the County would approve the drawings. The Subdivision Authority indicated that the requirements would have to align with the

Guidelines. The Subdivision Authority would rely upon its engineering department and CN for specifics.

o. The Guidelines have specifications for berms.

p. Condition 7 aligns with County policy regarding developable land. The County's policy says that land with a shallow water table is deemed undevelopable. The definition of developable land is found in the MDP.

q. The study required by condition 4 is required now so that it can be determined if the lot to be created is viable based upon an acceptable level of noise. Such a study could be required at subdivision or development.

[20] The Subdivision Authority did not make closing comments.

Appellant – Jeffrey Kirby by his Agent, Scott Olsen

[21] Both Jeffrey Kirby and his agent, Scott Olsen, spoke in favour of the appeal. Collectively, they will be referred to as the "Appellant".

[22] The Appellant stated that condition 3 and 7 do not serve a planning objective, and should not be imposed. Conditions should be the product of thoughtful assessment and not the result of a blind application of general authority. The Appellant stated that the context of the Lands was not considered, particularly in relation to conditions 4 and 5 and that no site visit had been conducted, to the best of their knowledge.

[23] In relation to condition 3, the Appellant noted that the availability and adequacy of water supply is a relevant consideration, but the Appellant has met that through the use of cisterns. Further, the Water Act is not a basis upon which the Subdivision Authority can impose conditions because it is not found within s. 655 of the Municipal Government Act. Section 6 of the Matters Related to Subdivision Regulation provides:

> **6(4)** The applicant must submit, as required by the subdivision authority,
>
> (a) if a proposed subdivision is not to be served by a water distribution system, a report that meets the requirements of section 23(3)(a) of the *Water Act*,

[24] In this subdivision, water is to be provided by cisterns, so a report is not required. If the Board wishes to impose this condition, the Appellant has provided alternate language for it.

> In accordance with Section 655(1) of the Municipal Government Act, a Restrictive Covenant prepared to the satisfaction of Parkland County shall be registered against the titles of Lot 1, Lot 2, and the Remnant Lot notifying future owners that a Domestic Groundwater Assessment was not completed as part of the application for subdivision and that any future potential to divert water for household purposes would require the preparation of a report as outlined in Section 23(3)(a) of the Water Act.

[25] In relation to condition 4, in the context of the Lands, there is no need to provide a report regarding vibration and noise. This is not required in the circumstances. Vibration is not association with foundation or other damage and the Building Code does not require such a report. The Lands are suitable for houses by virtue of their zoning. The proposed subdivision

conforms with the uses of land. How any future housing is built is outside of planning considerations. Further, the County does not have any standards about sound due to railways, and there is no empirical number to base a study on. The sound is intermittent and is less obtrusive noise. There are 10 to 15 trains each way per day. At the upper limits, there are 30 per day or 24 during a weekday. The Appellant measured noise using their phone. The base level was 45 to 47 decibels. The Appellant referenced the chart from ACI found at page 414 of the Agenda Package. Based on this information, the Appellant stated that the noise is not a safety issue and is consistent with other properties. If a person buys a property near a railway, they should expect some noise. There is no need to put a caveat on the Lands.

[26] In relation to condition 5, the Subdivision Authority's condition is placed to ensure safety. MIACC is the national and regional standard to assess safety. There is 1 derailment per 1 million main track miles per year. The chance of injury or fatality from derailment is 2.4% and the length of the property is a half a mile. The risk of a person getting hurt along the Lands is 1.2 in 100 million. There is more risk in getting hit by a meteor. Given the low risk, the lands are developable. Further, the site specific conditions were not considered. The Appellant referenced the contours on the Lands (page 419). There is a valley, which is just as good as developing a berm. Further, there was no consideration of the impact of clearing the trees, which would be costly and the trees could function as a safety feature as well. The CN Guidelines are focussed on urban development and are not legislated guidelines. There was no evaluation of the site. The Appellant questioned the content of the legal opinion obtained by the County. If the opinion responded to the question of whether a condition can be imposed, the answer would be yes. However, the MDP allows the context to be looked at and condition 5 does not sufficiently examine the context.

[27] In relation to condition 7, the ground water table does not make the lands undevelopable. The MDP definition is different than that in the LUB, and they must be examined separately. There is a lot of development done in areas where the water table is higher than 2.13 m. The Appellant noted that a caveat preventing development is not appropriate. Their position is that the condition does not serve the planning purpose.

[28] The Appellants argued that CN is not a referral agency, and is only a neighbouring landowners, which does not have the ability to place conditions onto their neighbours.

[29] In response to Board questions, the Appellant stated:

a. The Appellant has no current plans for development.
b. The Appellant objects to the language of condition 7 because it suggests that permitted uses are taken away. It depends how the caveat is written.
c. For condition 3, to be a restrictive covenant, the language has to be negative and restrict the use for cisterns.
d. The document referenced in Policy 9.4.3 is the Guidelines for New Development in Proximity to Railway Operations. It is not a legislated document, but is an aspirational one. CN is not a statutory referral agency.
e. The intent is to sell 2 lots and to keep the furthest east lot.

[30] In closing comments, the Appellant outlined their concern with the berm given that there is no specified standard for the berm. They feel that there is mitigation for safety already there

given the trees, the valley and the straight track. They do not feel there is a safety issue. In relation to the noise and vibration study, they feel that any study should be deferred to the time of a development application. In relation to the developable area, they stated that the LUB does not talk about the water level as impacting developable land. The Lands are not undevelopable from a construction standpoint. They restated their concern that CN is not a legislated referral agency.

David Geddes – Neighbour

[31] David Geddes lives across the street and south of the 2nd proposed lot. He was in support of the proposed subdivision.

[32] He noted that the train does not go very fast near the Lands because it slows down to cross the trestle. There are buildings in Wabumun which are as close or closer to the rail line than might be built on the Lands. The noise levels are not that impactful.

FINDINGS OF FACT

[33] In addition to the specific facts set out under the Board's reasons, the Board finds the following as facts.

[34] The Lands are located at SE-9-53-4-W5, Parkland County, Alberta.

[35] The Lands are zoned Lakeshore Residential District (LSR). The proposed use conforms with the LUB.

[36] The appeal was filed on May 15, 2024.

[37] The Appellant is an affected person and entitled to be heard by the Board.

[38] Mr. Geddes is an affected person and entitled to be heard by the Board.

REASONS

Affected Persons

[39] The Board must determine whether those appearing and speaking before the Board are affected persons. The Board notes that there was no objection made to those making submissions to the Board; however, the Board wishes to review this issue for completeness.

[40] The Appellant is the applicant for subdivision. Under s. 678(1)(a), the Appellant, as the Applicant for subdivision, is entitled to file an appeal. Mr. Geddes is a neighbour who is also entitled to be heard by the Board.

Jurisdiction and Issues to be Decided

[41] In making this decision, the Board has examined the provisions of the MGA, the MDP and the LUB and has considered the oral and written submissions made by and on behalf of those

who provided evidence: the Subdivision Authority and the Appellant. The Board did hear from and consider the submissions of Mr. Geddes, who spoke only to the question of noise from trains.

[42] The Board's jurisdiction is found in section 680(2) of the MGA.

> **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.

[43] The issue in this appeal concerns the Appellant's appeal of conditions 3, 4, 5 and 7 and whether the Board should confirm those conditions, revoke them or vary them.

[44] In deciding this appeal, the Board notes that the proposed use is residential, which conforms to the uses set out in the Lakeshore Residential District (LSR). Therefore, the Board concludes that s. 680(2)(b) is met.

[45] The Board notes that the Appellant did not appeal conditions 1, 2, 6, 8, 9, 10 and neither party made any submissions in relation to those conditions. The Board did not consider those conditions in its decision. The Board will address each of condition 3, 4, 5 and 7 separately in the paragraphs below.

[46] This appeal required the Board to consider Policy 9.4.3 of the MDP (page 156 of the Agenda Package). For ease of reference the Board sets out the full text of the Policy below.

> **9.4.3 Subdivision and Development Requirements Around Railways**
> a) Sensitive or incompatible land uses such as multi-parcel residential subdivision development are discouraged within close proximity of a railway right-of-way.
>
> b) Proposals for sensitive uses, such as residential uses, within close proximity of a right of way should undertake a noise study and incorporate appropriate mitigation measures into the project design. The developer shall thoroughly investigate all available options including alternative site layouts and/or attenuation measures.
>
> c) All proposed development within close proximity of a railway right-of-way may be required to undertake a vibration study and subsequently to mitigate potential adverse effects from vibration that are identified.

d) All proposed development adjacent to railways shall ensure that appropriate safety measures such as setbacks, berms and security fencing are provided to the satisfaction of the County and in consultation with the appropriate railway operator.

e) Where applicable, the County will ensure that sightline requirements of Transport Canada and the railways are addressed.

f) All new developments within close proximity of a railway shall comply with current Federation of Canadian Municipalities and the Railway Association of Canada Guidelines for New Development in Proximity to Railway Operations.

Condition 3

[47] The Subdivision Authority must consider the availability and adequacy of a water supply. The Subdivision Authority stated that condition 3 was imposed to protect future land owners. If a future land owner buys the Lands and wishes to drill a well, the future owner is restricted to a cistern unless they can show that a well can support the additional user. The Subdivision Authority noted that it had no specific concerns in relation to the proposed rewording of condition 3 proposed by the Appellant.

[48] The Appellant stated their concern with condition 3 as drafted by the Subdivision Authority. The Appellant outlined s. 6(4) the Matters Related to Subdivision and Development Regulation and proposed a redrafting of condition 3. The Appellant stated that if the Board were to impose the revised condition 3, they had no objection to the condition.

[49] The Board notes that s. 9(f) of the Matters Related to Subdivision and Development Regulation, the Subdivision Authority, and thus on appeal the Board, must consider the availability and adequacy of a water supply. The evidence before the Board was that the Lands are not to be served by a water distribution system, but instead will be served by cisterns. There was no disagreement between the parties on this point and the Board finds so as a fact. The parties also agree that the Appellant did not prepare a report under s. 23(3)(a) of the Water Act and the Board finds so as a fact.

[50] In light of the absence of a report under s. s. 23(3)(a) of the Water Act, the Board believes that it is prudent to put notification on the title of the newly created lots to advise prospective purchasers that they will be limited to having cisterns unless they undertake a study as required under the Water Act.

[51] The question that remains then is the wording of condition 3. In this regard, the Board notes that both the Appellant and the Subdivision Authority agree with the revised language of condition 3 proposed by the Appellant.

> In accordance with Section 655(1) of the Municipal Government Act, a Restrictive Covenant prepared to the satisfaction of Parkland County shall be registered against the titles of Lot 1, Lot 2, and the Remnant Lot notifying future owners that a Domestic Groundwater Assessment was not completed as part of the application for subdivision and that any future potential to divert water for household purposes

would require the preparation of a report as outlined in Section 23(3)(a) of the Water Act.

[52] The Board has examined the proposed language of condition 3 and notes that it clarifies the intention of notification to future owners of the absence of the Domestic Groundwater Assessment, which was the Subdivision Authority's intention. In the Board's view, the proposed condition addresses the identified concerns and the Board revises the language of condition 3 as set out above.

Condition 4

[53] The Subdivision Authority noted that the need for the Noise & Vibration Analysis was recommended as a condition of approval by CN in their referral comments, given the proximity to the railway. The implementation of this condition is further supported by Parkland County MDP Policy 9.4.3(b) which states:

> Proposals for sensitive uses, such as residential uses, within close proximity of a right of-way should undertake a noise study and incorporate appropriate mitigation measures into the project design. The developer shall thoroughly investigate all available options including alternative site layouts and/or attenuation measures.

[54] The position of the Appellant was that the imposition of condition 4 was excessive, particularly when the language of Policy 9.4.3 is not mandatory. The Appellant argued that the Guidelines reference in Policy 9.4.3 suggest that the issue of vibration should be addressed at the time of development approval. The absence of noise standards suggests that this condition should not be imposed (see pages 431 to 432 of the Agenda Package).

[55] Policy 1.2 of the MDP sets out how the words contained in the MDP should be interpreted:

> SHALL, REQUIRE, MUST, or WILL – directive terms that indicate the actions outlined are mandatory and apply to all situations.
> SHOULD – a directive term that indicates a preferred outcome or course of action but one that is not mandatory.
> MAY – a permissive and/or discretionary term that denotes a choice in applying the policy.

[56] The Board accepts that the word "should" does not denote a mandatory meaning, but that outlines a preferred option. The use of the word "should" denotes to the Board that the object of the word "should" is a "good idea", but the Board could choose not to implement it, if it is convinced by the evidence.

[57] In this case, the Appellant argues that the noise and vibration studies are excessive and ought to be deferred to the time of development.

[58] The Board notes that the Subdivision Authority stated that this condition was imposed to address concerns about the viability of the lots and to ensure safety for future land owners. The Board accepts this as a legitimate concern in relation to the proposed lots. The Lands border the CN rail line and the evidence of the Appellant was that there can be up to 30 trains a day along

the rail line. There was no evidence as to the timing of the trains or the length of the trains. If the trains travel at regular frequencies, there might be one train an hour. However, if the trains travel mostly during the day, there might be many trains in a shorter period, causing noise and vibrations. Having a cluster of train traffic could cause a significant impact in terms of noise and vibration.

[59] The Board does not agree that the noise and vibration study should be deferred to the development permit approval. If there are significant impacts due to noise and vibration, the Board is of the view that such impact ought to be known before a third party buys the lands.

[60] In examining whether to impose the condition, the Board notes that the evidence from the Subdivision Authority was that the LUB does not allow for subdivision of existing parcels within the LSR district. Neither party provided submissions further on this point, but the Board infers that one reason for the inability to subdivide existing parcels might be due to noise or vibration requirements. This factor weighs against removing this condition.

[61] Based on the above reasons, the Board confirms the need for condition 4. However, in reviewing the wording of condition 4, the Board notes that the wording of the condition as imposed references "a Noise and Vibration Analysis completed by a Noise Consultant". Since the condition speaks of a Noise and Vibration Analysis, the Board is not certain whether a "Noise Consultant" would be able to conduct the required vibration analysis. Since both aspects must be completed, the Board amends condition 4 to reflect that the Noise and Vibration analysis must be completed by a professional qualified to complete both aspects (both noise and vibration). Should this require two qualified professionals, then there may need to be two reports.

> Pursuant to Section 655 of the Municipal Government Act, and Policy 9.4.3 of the Parkland County Municipal Development Plan Bylaw 2022-17, a Noise and Vibration Analysis completed by a qualified professional or professionals will be required for Lot 1, Lot 2, and the Remnant Lot. Any recommendations from the analysis will be registered by Restrictive Covenant against the applicable titles.

Condition 5

[62] The Subdivision Authority stated that condition 5 had been imposed for safety reasons based on comments from CN, given the proximity of the rail line. The proposed lots border the CN Line. Further, the language of Policy 9.4.3(d) is mandatory.

> All proposed development adjacent to railways shall ensure that appropriate safety measures such as setbacks, berms and security fencing are provided to the satisfaction of the County and in consultation with the appropriate railway operator.

[63] The Appellant argued that condition 5 was not responsive to the site conditions and that the existence of the trees, as well as the topography (valley) were sufficient. The Appellant also argued that the risk of injury was so slight that this condition was excessive.

[64] The Board accepts that the issue of rail safety is a significant consideration. The Board noted that there might not be berms at other locations along the rail line. However, the current

requirements are as set out in Policy 9.4.3(d) which are mandatory, denoted by the use of the word "shall".

[65] In examining the wording of the condition against the language of Policy 9.4.3(d), the Board notes that the intention is that there be "appropriate safety measures". The Board agrees that there needs to be appropriate safety measures for the protection of the public and future landowners, regardless of how low the risk might be. The Board has reviewed the evidence submitted by the Subdivision Authority (see page 49 of the Agenda Package) which are the comments made by CN in response to the referral. The CN representative states:

> Safety setback of principal buildings from the railway rights-of-way to be a minimum of 30 metres in conjunction with a safety berm. The safety berm shall be adjoining and parallel to the railway rights-of-way with returns at the ends, 2.5 metres above grade at the property line, with side slopes not steeper than 2.5 to 1.

[66] The statement made by the CN representative does not appear to have been based upon the condition of the Lands, but appears to be a more generic response. The Board also notes that the Board was provided with no specific information about the Railway Association of Canada Guidelines for New Development in Proximity to Railway Operations and whether the particular characteristics of the Lands (the ditch, trees and elevation) met this particular guideline. The Board wishes to ensure that safety is addressed as part of the conditions of subdivision. However, the Board is persuaded that the specific mitigation imposed as a condition of subdivision should take into account the specific condition of the Lands. Therefore, the Board amends condition 5 to read as follows:

> Pursuant to Section 655 of the Municipal Government Act, and Policy 9.4.3 of the Parkland County Municipal Development Plan Bylaw 2022-17, an assessment must be completed by a qualified professional addressing whether a berm or other safety measures are required in accordance with the intent of the Guideline. The safety measures (which could include a berm) recommended by the qualified professional, and other recommendations, if any, will be implemented to the satisfaction of the County and in consultation with Canadian National Railways.

Condition 7

[67] The Subdivision Authority stated that condition 7 is a standard condition required when a portion of the lands subject to subdivision have been identified as undevelopable. The MDP identifies at Appendix 2.2 that lands are deemed undevelopable if the water table is 2.13 m or less below ground surface.

[68] The Appellant stated that condition 7 should not be imposed as it extends past the purpose of a geotechnical assessment; or it should be revised to meet the Subdivision Authority's intent.

[69] In reviewing the wording of the restrictive covenant, the Board notes that the language restricts all development outside of the described area. The Board accepts that the MDP defines undevelopable lands as those having a water table of 2.13 m or less, but accepts the Appellant's

submissions that the lands outside that described area may be developable. The Board is of the view that condition 7 should be amended so that it is clear that the restrictive covenant is to provide for notice of the restricted building area, and to make clear that construction outside of the restricted building pocket cannot occur unless supported by the report of a qualified professional that development may occur in a safe manner and the report also provides any recommendations for development outside of the restricted building area. In this way, the concerns of the Subdivision Authority are preserved, but at the same time, the Appellant has the ability to develop, if the Appellant is able to obtain engineering advice that such development is possible. The Board is also of the view that should the engineering report provide recommendations which would enhance safety, those recommendations should be incorporated as conditions of development. Based on this reasoning, the Board amends condition 7 as follows:

> **Condition 7**
> Pursuant to Section 9 of the Subdivision and Development Regulation, a Restrictive Covenant prepared to the satisfaction of Parkland County shall be registered against the titles of Lot 1, Lot 2, and the Remnant Lot notifying future owners of the recommendations for residential construction as outlined in the Geotechnical Investigation dated January 21, 2024, and completed by Thurber Engineering Ltd., and the location of the restricted building pocket. The Alberta Land Surveyor shall prepare a schedule to be attached to the Restrictive Covenant showing the restricted building area identified in the report. For clarity, the Restrictive Covenant shall identify that there shall not be any development outside of the restricted building pocket unless the development is supported by the report of a qualified professional, acceptable to the Development Authority, which report indicates that development may occur in a safe manner and if the report contains any recommendations, those recommendations shall be made conditions of any development approval.

Conclusion

[70] For the above reasons, the Board grants the appeal in part, and varies condition 3, condition 4, condition 5 and condition 7 and approves the subdivision subject the conditions set out at paragraph [9], above.

[71] Issued this 12 day of July, 2024 for the Parkland County Subdivision and Development Appeal Board.

B. Williams, Clerk of the SDAB, on behalf of T. Grenier, Chair
SUBDIVISION AND DEVELOPMENT APPEAL BOARD

This decision may be appealed to the Court of Appeal of Alberta on a question of law or jurisdiction, pursuant to Section 688 of the Municipal Government Act, RSA 2000, c M-26.

APPENDIX "A"
BOARD MEMBERS

	MEMBERS
1.	T. Grenier, Chair
2.	M. Chambers
3.	L. Foy
4.	M. Morin
5.	R. Wiedeman

APPENDIX "B"
REPRESENTATIONS

	PERSON APPEARING
1.	R. Karimi -Boushehri, Current Planner I
2.	J. Leduc, Senior Current Planner
3.	S. Olsen, Agent for the Applicat/Appellant
4.	J. Kirby, Applicant/Appellant

APPENDIX "C"
DOCUMENTS RECEIVED AND CONSIDERED BY THE SDAB:

June 27, 2024 Agenda Package

Exhibit	Description	Date	Page
1.	Agenda Coversheet	June 5, 2024	1
2.	Table of Contents	June 5, 2024	2
3.	Notice of Appeal	May 16 2024	3
4.	Subdivision Authority – Conditional Subdivision Approval	May 6, 2024	7
5.	Hearing Notification	May 21, 2024	12
6.	Subdivision Authority Submissions June 10, 2024	June 4, 2024	14
7.	Subdivision Authority Submissions June 27, 2024	June 17, 2024	149
8.	Submissions from Applicant/Appellant/Agent	June 18, 2024	409