



# Municipal District of Bighorn No. 8

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## DECISION OF THE SUBDIVISION/DEVELOPMENT APPEAL BOARD

**Hearing: Monday, November 25, 2019**  
**Development Permit 69/19 (Appellant)**

### **I. Decision**

The appeal before the Subdivision and Development Appeal Board (SDAB) was brought by Bob Ellard of Ellard Design Group on behalf of Diamond C Land & Cattle Inc.

On October 2, 2019, the Development Authority issued a Notice of Refusal for an application by Bob Ellard of Ellard Design Group (the "Appellant") for a variance to the width of a driveway approach located on Lot 5, Block 8, Plan 1510262 (133 River's Bend Way, Hamlet of Dead Man's Flats), hereinafter referred to as "the subject property". The property is owned by the Diamond C Land & Cattle Inc. (President, Clint Cawsey). The subject property has a land use designation of Hamlet Residential Serviced District (R1-S). The development of a driveway approach on the subject property is regulated by Section 3.6.4 of the M.D. of Bighorn Land Use Bylaw No. 09-Z/18 for driveway width and approaches within the municipality.

The Development Authority's Notice of Refusal cites Section 3.6.4 of the Land Use Bylaw and notes the Appellant's request for an 8.2 metre wide driveway approach exceeds the maximum width of 6.7 metres by 1.5 metres. The proposed variance of 1.5 metres requires a 23% relaxation to Section 3.6.4 of the Land Use Bylaw. The variance for the driveway is greater than can be approved by the Development Officer pursuant to Section 41.3.3 (a) of Land Use Bylaw or the Municipal Planning Commission pursuant to Section 41.3.2 (a) of the Land Use Bylaw.

As part of the Notice of Refusal, the Development Officer requested the driveway approach be modified to comply with the maximum width of 6.7 metres at the front property line of the subject property; and that proof of such modification shall be provided to the M.D. of Bighorn by November 30, 2019. Prior to any modification work proceeding within the approach area (municipal/public property), a permit must be obtained from the M.D. of Bighorn Operations Department.

The hearing commenced and concluded on November 25, 2019.

For the reasons outlined below, the Subdivision and Development Appeal Board (the "Board") upholds the decision of the Development Officer and orders the Appellant to comply with the Notice of Refusal for Development Permit Application No. 69/19. The Board's conditions of approval are:

1. In accordance with Section 3.6.4 of the Land Use Bylaw, the driveway will be modified to comply with the maximum width of 6.7 metres at the front property line of the subject property;
2. The modification will remove 1.5 metres from the driveway approach on the left side of the subject property as shown on Schedule 1 attached to this Decision.
3. The area of land created by the removal of the driveway approach shall be landscaped with gravel crush material currently used in the side yard of the subject property.

4. The Appellant shall complete the modification to the driveway and provide proof, consisting of photographs and site plan, to the M.D. of Bighorn by February 5, 2020, all to the satisfaction of the Development Officer.
5. Prior to any modification work proceeding within the approach area (municipal/public property), a permit must be obtained from the M.D. of Bighorn Operations Department.

## **II. Background**

The Board heard an appeal from Bob Ellard of Ellard Design Group (the “Appellant”) for a variance to the width of a driveway approach located on Lot 5, Block 8, Plan 1510262 (133 River’s Bend Way), with respect to the Development Officer’s Notice of Refusal issued on October 7, 2019 for Development Permit application 69/19. The Appellant is seeking a variance to the width of the driveway on the subject property.

The Notice of Refusal was based on:

1. Development Permit 69/19, for driveway approach width variance on the subject property was refused by the Development Officer as the proposed width requires variance 1.5 metres or 23% above the maximum driveway approach width of 6.7 metres stipulated in Section 3.6.4 of the Land Use Bylaw.
2. The requested variance for the driveway approach is greater than can be approved by the Development Officer pursuant to Section 41.3.3 (a) of Land Use Bylaw or the Municipal Planning Commission pursuant to Section 41.3.2 (a) of the Land Use Bylaw.

Based on these facts, the Development Officer issued a Notice of Refusal for Development Permit Application 69/19. The landowner’s agent, Bob Ellard (the “Appellant”) submitted an appeal of the Development Officer’s decision that was received by the Secretary of the Subdivision and Development Appeal Board on October 28, 2019.

The appeal hearing by the Board was held on November 25, 2019, at the M.D. Administration building in the Hamlet of Exshaw. The Board heard from the Appellant, Bob Ellard. The Board also heard from Development Officer Janice Thompson on the Officer’s Notice of Refusal. Several documents were submitted to the Board, as follows:

- Copy of the Notice of Refusal, date of issue: October 7, 2019 for Development Permit Application 69/19;
- Copy of the Letter of Appeal from the Appellant was received October 28, 2019;
- Map showing the location of the Subject Property;
- Site Plan from the Compliance Assessment RPR of the subject property showing dimensions of 8.2 metres, 6.7 metres and 1.5 metres on the driveway approach;
- Photographs of the driveway and driveway approach on the subject property showing the above dimensions;
- Excerpts from the Land Use Bylaw 09-Z/18 (Section 3.6. Driveway Approach, including Section 3.6.4. and Section 41 Variance Powers of the Development Authority);
- Copy of the Certificate of Title;
- Development Permit Application Receipt Record.

## Issues Raised

The Board and Appellant discussed the following reasons for the appeal:

- The Appellant told the Board the design and layout of the stairs coming from the house had been modified and the concrete contractor had poured an extra five feet of concrete. He noted that he was unaware of the extra width of the driveway until a Real Property Report (RPR) was prepared for the property.
- The Appellant stated the concrete was poured in August 2018 and that the contractor did not consult with the property owner prior to concrete pour and did not have permission to widen the driveway. The Appellant said modifying the driveway now would be costly. He then told the Board the driveway currently does not reduce street parking.
- Chair Anderson asked the Appellant to explain how the driveway would not reduce on-street parking. Mr. Ellard told the Board that only two cars could fit on the road between the two neighbouring houses and even if the driveway width was reduced by five feet, it would not be enough for a third car to fit on the street. Mr. Ellard added that the RPR that was prepared does not address the driveway and when he inquired with the surveyor, the response was that the municipality is responsible for driveways. He said property owners need a way to seek compliance.

## III Reasons for Decision / Findings of Fact

The reasons for the Board's decision to refuse the variance are:

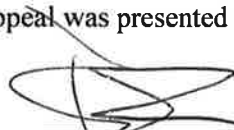
- The proposed variance for the driveway approach would interfere with the amenities of the area or materially interfere with or affect the use, enjoyment, or value of neighbouring parcels of land.
- The Board was concerned that the 8.2 wide driveway on the subject property would restrict public street parking as the additional 1.5 metres would give vehicles less area on the street in which to park.
- The modification to the driveway approach to 6.7 metres in width allows the majority of the driveway width to remain as it is currently constructed.

The findings of facts are as follows:

- The subject property has a land use designation of Hamlet Residential Serviced District (R1-S).
- The development of a driveway approach on the subject property is regulated by Section 3.6.4 of the M.D. of Bighorn Land Use Bylaw No. 09-Z/18 for driveway width and approaches within the municipality.
- The constructed driveway approach is 8.2 metres wide.
- No letters or verbal support for the appeal was presented at the hearing.

December 9, 2019

DATE



CHAIRMAN,  
SUBDIVISION/DEVELOPMENT APPEAL BOARD

A decision of the Subdivision/Development Appeal Board is final and binding on all parties and persons subject only to an appeal upon, or questions of jurisdiction or law pursuant to, Section 688 of The Municipal Government Act, SA 2000, as amended. An application for leave to appeal to the Appellate Division of the Court of Alberta shall be made to a judge of the Appellate Division within THIRTY (30) days after the issue of the order, decision, permit or approval sought to be appealed.



ALBERTA LAND SURVEYOR'S REAL PROPERTY REPORT

**LEGAL DESCRIPTION**

LOT 5, BLOCK 8, PLAN 1510262

**MUNICIPAL ADDRESS**

133 RIVER'S BEND WAY  
DEAD MAN'S FLATS  
M.D. OF BIGHORN No. 8

**PREPARED FOR**

CLINT CAWSEY

**NOTES**

- The survey was completed on May 16, 2019.
- A title search was performed on May 30, 2019.
- Unless otherwise specified, distances are taken to foundation and are in metres.
- Lot area 739.7 m<sup>2</sup>
- Footprint 158.2 m<sup>2</sup> 21.4 % (Dwelling)  
Cantilever 1.1 m<sup>2</sup> 0.1 %
- Fences: None.
- Eave measurements are to fascia.
- Deck and stair measurements are to extents of walking surface.
- Registered interests (excluding encumbrances):  
131 324 011 CAVEAT RE: DEVELOPMENT AGREEMENT  
151 030 059 CAVEAT RE: RESTRICTIVE COVENANT  
151 030 062 URW PLAN 151 0263

Certification: I hereby certify that this report, which includes the attached plan and related survey, was prepared and performed under my personal supervision and in accordance with the the Alberta Land Surveyors' Association's Manual of Standard Practice and supplements thereto. Accordingly, within those standards and as of the date of this report, I am of the opinion that:

- the plan illustrates the boundaries of the property, the improvements as defined in Part D, Section 8.5 of the Alberta Land Surveyors' Association's Manual of Standard Practice, and registered easements and rights-of-way affecting the extent of the title to the property;
- the improvements intended to be on the property are entirely within the boundaries of the property;
- no visible encroachments exist on the property from any improvements situated on an adjoining property;
- no visible encroachments exist on registered easements or rights-of-way affecting the extent of the property.

Purpose: This report and related plan have been prepared for the benefit of the property owner, subsequent owners, and any of their agents for the purpose of a real estate transaction.

Copying is permitted only for the benefit of these parties. Where applicable, registered easements and utility rights-of-way affecting the extent of the property have been shown on the plan. Unless shown otherwise, property corner markers have not been placed during the survey for this report. The plan should not be used to establish boundaries because of the risk of misinterpretation or measurement error by the user. The information shown on this report reflects the status of this property as of the date of survey only. Users are encouraged to have the Real Property Report updated for future requirements.

Lot boundaries have been determined prior to the survey completion date shown above. Therefore the present condition of survey evidence might be significantly different than that shown.

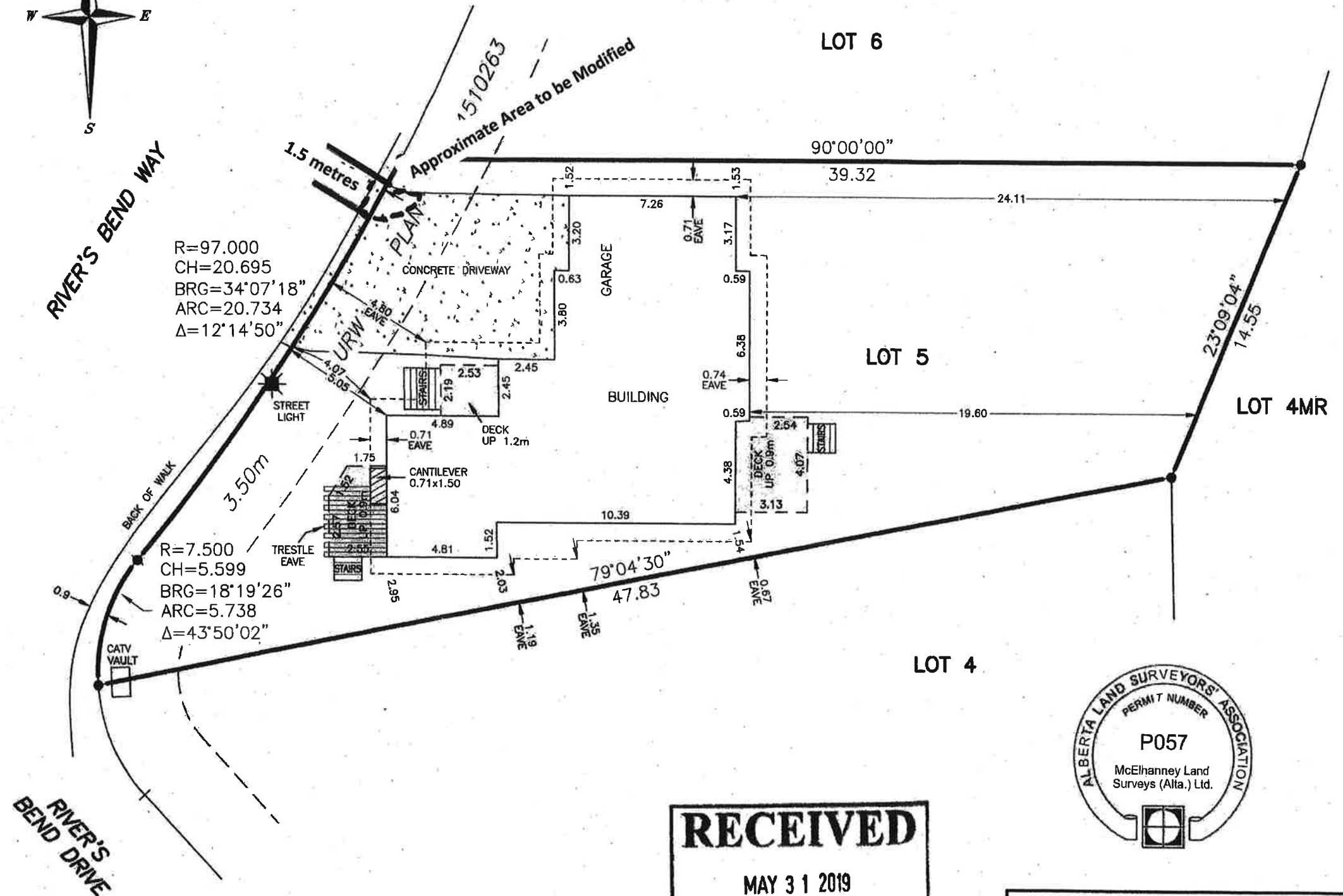
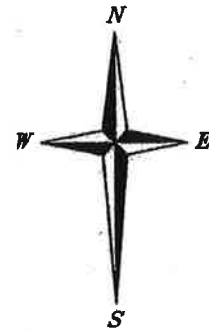
Dated this 30th day of May, 2019.



Warren Lippitt, Alberta Land Surveyor

This document is not valid unless it bears an original signature and a permit stamp in a different colour than this document.

SCALE = 1:200



DRAWN BY: JP MAY/30/2019 CHECKED BY: WL

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**RECEIVED**  
MAY 31 2019  
MUNICIPAL DISTRICT  
OF BIGHORN



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