

**MUNICIPALITY OF CROWNEST PASS
SUBDIVISION AND DEVELOPMENT APPEAL BOARD**

NOTICE OF DECISION HEARING NO. DP2023-063

BOARD MEMBERS:

Rupert Hewison Glen Girhiny Jim Welsh Evert Vandenberg Evert Van Essen
(Chair)

In the matter of an Appeal whereby a development permit application (DP2023-063) for a Temporary Storage Yard” (including a canvas covered structure, fenced area, three-cargo trailers, two flat deck trailers, three - side by sides, covered lumber and signage, two pick-up trucks, and one recreational vehicle) and for a “shipping container” accessory to an approved use for 5 years on land designated Drive-in Commercial -C-2, legally known as Lot 3, Block 1, Plan 0311 1508, within Blairmore (19215 19 Avenue), was approved by the Development Authority with conditions.

And in the matter of the Appeal in accordance with Section 686 of the Municipal Government Act by:

APPELLANT: Matthew Shepard

And in the matter of an Appeal held under the authority of Sections 627 and 629 of the Municipal Government Act, Revised Statutes of Alberta 2000, Chapter M-26, as amended (MGA).

**THE PUBLIC PORTION OF THE HEARING WAS DOCUMENTED
AS A RECORD OF PROCEEDINGS**

And upon hearing the evidence from and submissions made by the person(s) shown on Appendix B attached hereto, and upon considering the documents shown on a list attached to Appendix A, as being the documents produced and marked as exhibits at the Hearing, and having regard to the South Saskatchewan Regional Plan, the MGA, and the Municipality of Crownsnest Pass Land Use Bylaw No. 1165, 2023 and amendments thereto, the Board has rendered a Decision. The Decision and reasons for the Decision of the Municipality of Crownsnest Pass Subdivision and Development Appeal Board (the Board) after a Hearing duly convened in accordance with Sections 685 and 686 of the MGA on February 5, 2023, at 1:30 p.m. are as follows:

DECISION:

The Board has decided the **Appeal be UPHELD** and the Board **APPROVES** DP 2023-063 for a “**Temporary Storage Yard**” (including a fenced area, three-cargo trailers, two flat deck trailers, three - side by sides, covered lumber and signage, two pick-up trucks, and one recreational vehicle), a **temporary “Canvas Covered Structure”** and a **temporary “Shipping Container, accessory to an approved use”** subject to conditions.

Date: February 14, 2024

Signed:  _____

Rupert Hewison - Chair of the Subdivision and Development Appeal Board

FACTS:

Upon having heard what was alleged by the Appellant and **upon hearing** others listed in Appendix B of this Decision and **upon having read** the Exhibits noted in Appendix A of this Decision, the Board finds the facts to be as follows:

1. The land subject of the appeal [*subject property*] is legally known as Lot 3, Block 1, Plan 031 1508 with a civic address of 12915 19 Avenue, Blairmore.
2. The subject property is designated as Drive-in Commercial within the Municipality of Crowsnest Pass Land Use Bylaw No. 1165, 2023 (LUB. No. 1165).
3. A development permit application (DP2023-063) was submitted by the Applicant, Matthew Shepard, with authorization of the landowner Brian Gallant to the Municipality of Crowsnest Pass on March 28, 2023, and deemed complete on April 3, 2023.
4. The application for a “*temporary storage yard*” and “*shipping container, accessory to an approved use*” (*discretionary uses*) for the placement of one 30m² shipping container for five years was approved with 10 conditions on April 27, 2023 by the Municipal Planning Commission and a Notice of Decision was issued April 27, 2023. A development permit was issued on June 23, 2023 (Exhibit D).
5. Development permit 2023-063 is a temporary permit and is valid for a period of five years.
6. On October 23, 2023, the applicant was contacted by the Assistant Development Officer Ms. Sasha Lassey and was requested to provide a comprehensive listing of items proposed to be stored in the temporary storage yard (Exhibit L31-L32).
7. The landowner, Mr. Brian Gallant replied via email on October 30, 2023 with a list of what was in the yard including three-cargo trailers, two flat deck trailers, three-side by sides, covered lumber and signage, as well as two pick-up trucks and one recreational vehicle which were on site occasionally but not at the present time.
8. A revised request for decision was prepared and presented to the Municipal Planning Commission at the December 13, 2023 meeting (Exhibit F). The Municipal Planning Commission reviewed the permit and revised Development Permit 2023-063 and added the following condition:
 2. *The landowner shall provide an opaque fence for the purpose of screening the “Temporary Storage” from public view, pursuant to the Land Use Bylaw, Schedule 4, section 10.1 and 22. For Greater clarification, all items listed as Temporary Storage other than the approved Shipping Container, shall be screened from public view to the satisfaction of the Development Authority by no later than June 30, 2024.*
9. The appeal was received in writing January 8, 2024 (Exhibit C) with the reasons as summarized:
 1. *We have fully complied with the original DP and have written confirmation from the Development Officer that the site was in compliance with all conditions*
 2. *The site meets the criteria of “Temporary Storage” as described in the Land Use Bylaw, which is the primary use of the site*
 3. *The Municipality has the obligation to uphold the tenants of the development process*

- *Had there been concerns about screening the site, they should have been introduced in the initial discussions.*
 - *Had anyone had an objection, the proper procedure is to file an appeal within the allotted time; there were no appeals to our application.*
 - *Instead, this DP has, by all appearances, been modified to address a concern that has not been justified by the Municipality.*
4. *Upon request by the Municipality in the October 26, 2023, we provided a complete list of the equipment and materials that would be stored on the site, all of which fall within the guidelines of “Temporary Storage”*
 5. *There have been no significant changes to the use of the site from the time that the original DP was issued to the time of the revision.*
 6. *The Municipality has not provided adequate justification for the addition of an extensive screening fence*
 7. *The Municipality has not been specific in the intent and desired outcome of adding the opaque screening*
 8. *Reviewing the cost of opaque fencing solutions that will allow us to enclose a sufficient area, we estimate that it will cost between \$20,000 and \$40,000*
 9. *As stated in the original proposal, we have plans to build a new facility in this location at some point in the future; any fencing that is installed now will likely end up in the landfill as it will interfere with future development of the site*
10. There are no permanent buildings or structures present on the subject property.
 11. The subject property is designated as Drive-in Commercial – C2 in the LUB 1165 and Schedule 2, C-2 Land Use District lists “Temporary Storage Yard”, “Canvas Covered Structure” and “Shipping Container, accessory to an approved use” as discretionary uses in the district.
 12. No evidence was submitted at the hearing or in the written documents listed in Appendix A from adjacent landowners regarding concerns or issues with the development.
 13. At the hearing, the Development Authority representative, Mr. Johan Van Der Bank explained that temporary outdoor storage was a new use in LUB. No. 1165 and the municipality determined that it was necessary to require a detailed list of items to be stored as part of the use to ensure that the use would remain the same over the course of the five-year term of the permit. He stated that if additional items beyond what was included in the list associated with the permit, a new development permit would be required for the additional storage.
 14. At the hearing, Mr. Van Der Bank explained that the additional condition for the construction of a fence could be satisfied by screening the existing storage items from the adjacent residences, excluding the shipping container which had been painted as indicated in Exhibit L37.
 15. Mr. Brian Gallant, the landowner, appeared on behalf of the Mr. Matthew Shepard, who is his employee.
 16. Mr. Gallant explained that development on the lands commenced without a development permit in October 2022 and that time he installed concrete blocks to secure the trailers he had on the subject property. He indicated that in June of 2023, the municipality inspected the painting of the shipping container and at that time all of the current outdoor storage items were on site.

17. Mr. Gallant explained that he felt he was in compliance with the original approved permit and that he was not aware that the request for a comprehensive list of items stored on the property would revise the permit and add a condition for fence to be constructed.
18. Mr. Gallant explained that his future plans include the construction of a building and he felt the requirement to construct a fence would be wasteful as it would likely need to be torn down to accommodate the future building.
19. Within the LUB No. 1165, Schedule 18A, Definitions, *“Temporary storage yard” means development used exclusively for temporary outdoor storage of goods, materials, vehicles or equipment where such storage does not involve the construction of a permanent building, the establishment of business operations on the same site as the temporary outdoor storage, or the material alteration of the existing state of the land. Typical uses include the temporary storage of construction vehicles, equipment and materials and/or a maximum of one recreational vehicle which shall not be occupied or otherwise used as temporary sleeping accommodation.*
20. Within the LUB No. 1165, Schedule 18A, Definitions, *“Shipping Container” means a rectangular steel structure originally used to haul merchandise on a cargo ship to port from where the structure is then transported inland by transport truck and/or rail to its point of destination. Shipping containers may also include box cars and other transport trailers.*
21. Within the LUB. No. 1165, Schedule 18A, Definitions, *“Canvas Covered Structure” means a framework structure covered by any fabric or any similar type of non-rigid sheathing and used to provide outdoor storage.*
22. Within the LUB No. 1165, Schedule 18B, Definitions, *“Use, approved” means a use of land and/or building for which a development permit has been issued by the Development Authority.*
23. Within the LUB. No. 1165, Schedule 14, Shipping Containers / Transport Trailer Regulations, Section 2.5 states *“A shipping container or transport trailer located in the C-1 or C-2 district shall normally be required to be improved (i.e. painted, augmented with landscaping etc.) to the satisfaction of the Development Authority, so as to improve its appearance and compatibility with the land use district. The Development Authority may waive this requirement where it is satisfied that the proposed shipping container or transport trailer will be compatible with existing development on the site and adjacent to the site (i.e. the proposed development does not require painting or is not readily in view).*
24. The MGA, section 687(3) states in part:
 - (3) *In determining an appeal, the board hearing the appeal referred to in subsection (1)*
 - (a.1) *must comply with any applicable land use policies;*
 - (a.2) *subject to section 638, must comply with any applicable statutory plans;*
 - (a.3) *subject to clauses (a.4) and (d), must comply with any land use bylaw in effect;*
 - (a.4) *must comply with the applicable requirements of the regulations under the Gaming, Liquor and Cannabis Act respecting the location of premises described in a cannabis licence and distances between those premises and other premises;*
 - (b) *must have regard to but is not bound by the subdivision and development regulations;*

- (c) may confirm, revoke or vary the order, decision or development permit or any condition attached to any of them or make or substitute an order, decision or permit of its own;
- (d) may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw, if in its opinion,
- (i) the proposed development would not
 - (A) unduly interfere with the amenities of the neighbourhood, or
 - (B) materially interfere with or affect the use, enjoyment, or value of neighbouring parcels of land, and
 - (ii) the proposed development conforms with the use prescribed for that land or building in the land use bylaw.

HAVING REGARD TO THE FINDINGS OF FACT; and having regard for statutory plans, the South Saskatchewan Regional Plan, Land Use Bylaw No. 1165,2023, and the MGA, the Board makes the decision to **UPHOLD** the appeal and The Board has decided the **Appeal be UPHELD** and the Board **APPROVES** DP 2023-063 for a **“Temporary Storage Yard”** (including a fenced area, three-cargo trailers, two flat deck trailers, three - side by sides, covered lumber and signage, two pick-up trucks, and one recreational vehicle), a temporary **“Canvas Covered Structure”** and a temporary **“Shipping Container, accessory to an approved use”** for five years from June 23, 2023 on Lot 3, Block 1, Plan 0311508, subject to the following **CONDITIONS:**

1. The development shall comply with and be carried out and completed in its entirety in accordance with the approved site plan and the development standards and yard setbacks in the Drive-in Commercial (C-2) district, as shown on the site plan submitted with the application:

30m ² Shipping container accessory to Temporary Storage Yard	Standard	Proposed	Variance Requested
Front Yard Setback (129 Street)	Not allowed in the front yard except with approval of MPC	15m Front yard location	Allow front yard location
South Side Yard Setback (19 Ave)	1.2 m	23m	N/A
Rear Yard Setback	1.2m	38m	N/A
North Side Yard Setback (railway)	1.2m	5m	N/A
Maximum Height	4.5m	2.89m	N/A
Lot Coverage (principal and accessory buildings) 1995.6m ²	40% (798.24m ²)	1.5% (30m ²)	N/A

2. The Developer and/or the Landowner shall ensure that any changes to the lot grading maintains positive drainage directing the flow of all surface stormwater away from building foundations towards adjacent streets and lanes without adversely affecting (e.g. erosion, flooding) adjacent properties, roads, lanes, public property, or public infrastructure, including where applicable in such a manner that the post-development rate and volume of surface stormwater drainage from the subject property do not exceed the pre-development rate and volume of surface stormwater drainage. Should retaining walls be required as part of the stormwater drainage system, additional development permits are required, and construction shall be completed by the landowner at no cost to the municipality.

3. The Land Use Bylaw contains development standards and regulations that apply to this development permit and for which the landowner is responsible, at no cost to the Municipality of Crowsnest Pass. These regulations address matters relating to many aspects of the approved development or use e.g., access to the property, lines of sight, public safety setbacks, parking requirements, lot grading, maintaining positive drainage towards abutting roads and/or lanes, outdoor storage, etc. It is the Landowner's and/or Applicant's responsibility to ensure that they are fully aware of all the applicable development standards and regulations in the Land Use Bylaw that may apply to the proposed development or use by contacting the Municipality's Department of Development, Engineering & Operations.
4. This development permit shall be a temporary development permit pursuant to Administration s. 17 in the Land Use Bylaw, and the period for which it shall be valid and during which the use may be operated shall be **five years from the date of issuance of the original development permit (June 23, 2023)**. Please note: Where activities approved under this development permit need to continue beyond the time period for which this development permit is valid, a new development permit application will be required to consider an extension of the timelines. Failure to comply with this condition of following the development permit expiry date or receiving an extension of the expiry date will result in the security deposit being forfeited and enforcement through a Stop Order.
5. Pursuant to Administration s. 17.2 of the Land Use Bylaw:
 - (a) The Municipality shall not be liable for any costs involved in the cessation or removal of any development at the expiration of the permit; and
 - (b) The applicant shall provide a \$2,500 security deposit that will be refunded once the development permit has expired, the Temporary Storage Yard is no longer in use, the Shipping Container has been removed, and the use has been ceased and removed. Failure to pay the security deposit by will result in the enforcement of the condition through a Stop Order and possible fines and penalties being imposed on the landowner / applicant pursuant to the Fees, Rates and Charges Bylaw.
6. The landowner / applicant shall not access the property across CP Rail property or the barrier curb on 129 Street and shall either use 19 Avenue as the access and re-orient the Shipping Container accordingly or shall apply to the Municipality's Transportation Manager for permission to construct a rolled curb access on 129 Street to municipal specifications, by June 30, 2023.
7. Development must be commenced or carried out with reasonable diligence, in the opinion of the Development Officer, within 12 months from the date of issuance of the development permit, otherwise the permit shall be deemed to be null and void.

Important Information & Notes:

- a) The issuance of a Development Permit indicates only that the development to which the Development Permit relates is authorized in accordance with the provisions of the Municipality of Crowsnest Pass Land Use Bylaw and does not in any way relieve or excuse the Landowner and/or the Development Permit holder from obtaining any other permit (including authorization to modify a wetland, safety codes permits e.g. building, electrical, gas, plumbing, etc.), license, or other authorization required by any Federal or Provincial Act or regulation, or under any Bylaw of the Municipality (e.g. a business license), or complying with the conditions of any easement, covenant, agreement, or other instrument affecting the building or land. The Landowner and/or the Applicant is responsible to ensure compliance with these matters.
 - b) The Applicant/property owner is responsible for the following aspects as may be applicable to this development permit, at the sole risk and responsibility of the Applicant/property owner to the exoneration of the Municipality of Crowsnest Pass from any liability related to these matters, and at no cost to the Municipality of Crowsnest Pass:
 - (i) Determining the legal property boundaries and any applicable easements through a survey by an Alberta Land Surveyor before foundations are excavated or poured and before construction proceeds above ground level.
-

- (ii) Ensuring that any structures approved under this Development Permit are constructed such that they are correctly set back from the property boundaries in compliance with the front, rear, and side yard setbacks approved in this Development Permit. The landowner should consult an Alberta Land Surveyor for this purpose.
 - (iii) Ensuring that the development and the associated excavation and/or construction activity approved under this Development Permit shall not disturb, affect, or alter conditions of all utilities and appurtenances, drainage rights-of-way, utility rights-of-way, access rights-of-way, and any easements as they may exist, over, under, or through the Lands. The landowner should consult a professional engineer and/or an Alberta Land Surveyor and/or the relevant utility company / utility owner for this purpose.
 - (iv) Ensuring that the development and/or any associated structures and/or the associated excavation and/or construction activity approved under this Development Permit is undertaken in a manner that does not cause or result in a public safety risk or concern, or a nuisance, disturbance, or damage to adjacent properties and/or roads, lanes, or other municipal infrastructure. The landowner should consult a legal professional, a professional engineer and/or an Alberta Land Surveyor for this purpose.
 - (v) Making suitable arrangements with utility companies for the provision of all services and/or necessary easements for utility rights-of-way.
 - (vi) Notifying Alberta 1st Call at 1-800-242-3447 to arrange for field locating prior to construction, should any excavations be required near utility lines.
 - (vii) Ensuring that permanent structures are located outside the 1:100-year flood plain of any water body. The landowner should consult a wetland assessment practitioner and/or an Alberta Land Surveyor for this purpose.
 - (viii) Ensuring that construction activity approved under this Development Permit does not result in the modification of a wetland without provincial approval. The landowner should consult a wetland assessment practitioner for this purpose.
 - (ix) Ensuring that foundation and drainage systems on a property with an effective grade / slope of greater than 15% are designed in accordance with the recommendations in a slope stability assessment and/or a grading plan / stormwater management plan, as may be applicable, prepared by a professional engineer, and that the same are constructed under the supervision of a professional engineer, to protect the bank from erosion and to ensure slope stability.
 - (x) Ensuring that a 2-meter separation is provided between the water table and footings for the buildings. The landowner should consult a professional engineer for this purpose.
 - (xi) Ensuring that the property is graded in such a manner that positive drainage directing the flow of all surface stormwater away from building foundations towards adjacent streets and lanes is maintained without adversely affecting (e.g. erosion, flooding) adjacent properties, roads, lanes, public property, or public infrastructure, including where applicable in such a manner that the post-development rate and volume of surface stormwater drainage from the subject property do not exceed the pre-development rate and volume of surface stormwater drainage. Should retaining walls be required as part of the stormwater drainage system, additional development permits are required, and construction shall be completed by the landowner at no cost to the municipality. Where an approved stormwater management plan exists, the property must be graded in accordance with the stormwater management plan. The landowner should consult a professional engineer and an Alberta Land Surveyor for this purpose.
 - (xii) Being aware of FireSmart Regulations including the Municipality's FireSmart Bylaw and Safety Codes Permit Bylaw as may be applicable.
- c) As part of the development permit review the Development Officer considered the following items. Relevant conditions were imposed on the development permit, as deemed applicable:

Wildland Urban Interface - Fire Hazard	Non-fuel	Wetlands	N/A
Nuisance Grounds / Areas of Potential Environmental Concern / Wastewater Treatment Plant	N/A	Historic Commercial Overlay / Historic Site	N/A
CNP Heritage Inventory	N/A	Provincial Historic Designation	3p
Flood Fringe	N/A	Area Structure Plan	N/A
High Pressure Gas Main	N/A	Contours / Slope - Reviewed	No issues
Gas Well	N/A	Title Review / CAD / Utilities - Reviewed	No issues
Site Inspection	N/A	Land Use Bylaw No.: 868-2013 Schedules	2-C-2, 4, 14
Parking	N/A	Alberta Transportation	N/A

The Board makes the decision to **UPHOLD** the appeal and **APPROVE** Development Permit Application DP2023-063 for the following **REASONS**:

REASONS:

1. The Board is of the opinion that an appeal hearing is considered a hearing *de novo* as such, the Board considered the relevant evidence presented in writing and at the hearing to render their decision. The Board has determined that the development which was approved under DP2023-063 by the Municipal Planning Commission in April 2023 is representative of the existing development on the subject parcel at the time of the appeal hearing on February 5, 2024. As such, the Board has approved and issued a **new development permit** for the discretionary uses of “Temporary Storage Yard”, “Canvas Covered Structure” and “Shipping Container, accessory to an approved use” for a period of five years from the date of original decision (June 23, 2023) subject to the conditions determined by the Board and listed in the decision.
2. The Board considered the listed uses and definitions contained in LUB 1165 and determined that “temporary storage yard”, “canvas-covered structure”, and “shipping container, accessory to an approved use” are separate and distinct uses within the land use bylaw. The Board has determined that an isolated shipping container cannot be considered for approval without establishing an approved principal use. The Board finds that the use “temporary storage yard” is the principal use of the subject property with the shipping container accessory to the approved principal use. As well, the Board finds that a “canvas-covered structure” is also a listed use and therefore requires a development permit and the Board has granted an approval as part of their decision.
3. The Board finds that the proposed development located on the subject property, which is designated as Drive-in Commercial – C2, is for the purpose of the temporary storage of items by the appellant. The Board is of the opinion that the revision to the permit to comprehensively list the items to be stored on site was a reasonable request to ensure that the size and scale of the outdoor storage would be limited to those items associated with the business only. However, the Board determined that the addition of a condition to require screening in the form of a fence was not reasonable due to the temporary nature of the permit and that no concerns were expressed by the adjacent residential landowners to the south regarding the current storage. The Board has removed the condition requiring the construction of a fence.

INFORMATIVE:

1. The Board recommends that the Municipality of Crownsnest Pass Council consider amending the Land Use Bylaw to include clearer regulations regarding size and scale of “Temporary Storage Yards” including but not limited to the requirement to list all the items to be stored as part of the use as part of the application process.
2. This decision serves as the development approval and no separate development permit will be issued.

APPENDIX A

Documentary Material Submitted to the Board:

EXHIBIT ITEM

- A. Notice of Hearing and Location Sketch Map
- B. List of Persons Notified
- C. Notice of Appeal with reasons
- D. Development Permit dated April 26, 2023 (corrected to June 23, 2023)
- E. Development Permit Application
- F. Request for Decision (December 13, 2023)
- G. Notice of Decision Revision Correction dated December 21, 2023
- H. Notice of Decision Revision Dated December 13, 2023
- I. MPC meeting Minutes April 26, 2023
- J. Submission from the Appellant
- K. Excerpts from the Municipality of Crowsnest Pass Land Use Bylaw 1165 (December 2023)
- L. Submission from Municipal Administration

APPENDIX B

List of persons who gave oral evidence or made submissions at the hearing:

CAPACITY	NAME
Appellants/Applicants:	Brian Gallant on behalf of Matthew Shepard
Municipal Representatives:	Johan Van Der Bank Katherine Mertz Sasha Lassey Ryan Dyck
Gallery	None

IMPORTANT: This Decision of the Subdivision and Development Appeal Board is final and binding on all parties and persons, subject only to Appeal to the Provincial Court of Appeal.