

Patricia Maloney & Associates

1636 Queequeg Turnabout, Gabriola, BC, V0R 1X5
Office: 250.247.7956 Mobile: 403.819.8196 Email: pa_maloney@hotmail.com

February 27, 2014

K. Hugh Ham, B.A., LL.B
Barrister and Solicitor
#1 – 5508 1 Street S.E.
Calgary, AB, T2H 2W9

Dear Mr. Ham

Re: Badlands Motorsport Specific Direct Control District DC4 Conformity with Alberta Land Use Policies

This report provides the rationale and reasons why I believe that the Kneehill County Specific Control District DC4 (the "DC4 District") does not conform to the Province of Alberta Land Use Policies (O.C.522/96).

The purpose of the Land Use Policies is to provide direction for the application of consistent approaches in planning efforts. The Province's responsibility extends to managing air, water, and renewable and non-renewable natural resources. Municipalities are given planning authority under Part 17 of the Municipal Government Act 2000 R.S.A c. M-26, as amended (MGA). Municipal planning efforts must compliment provincial policies and initiatives. The land use policies supplement the planning provisions of the MGA. Policies in Sections 4 to 8 have particular application to the content of statutory plans and land use bylaws. However, there are also relevant policies in Sections 2.0 and 3.0. The following provides the section, the policy from the Land Use Policies in italics and the comments on why the Direct Control District DC4 does not comply with the Land Use Policy.

2.0 Planning Process

Policy 2.1

The municipality is expected to take steps to inform both interested and potentially affected parties of municipal planning activities and to provide appropriate opportunities and sufficient information to allow meaningful participation in the planning process by residents, landowners, community groups, interest groups, municipal service providers and other stakeholders.

The municipality is supposed to take steps to inform both interested and potentially affected parties.

This did not occur in the case of the Kneehill DC4 District. The draft bylaw that was advertised in the local papers (copy attached) and on the web site was significantly different from the land use districts that staff circulated (copy attached) prior to the public hearing.

Approximately 10 minutes before the hearing was to commence, staff of Kneehill County provided only one copy of the new draft DC bylaws to one attendee of the public hearing and did not provide copies to any of the other attendees. The proposed revised land use districts were significantly different from what was advertised. The public did not have an effective opportunity to review them and comment on the new drafts. In the end, the Council adopted one of the new draft bylaws without effective public input into the bylaw that was adopted.

In addition, the Council limited the time of the speakers to an unreasonably short time period (3 minutes), would not allow any extended period of time for technical presentations and would not allow

letters from affected individuals unable to attend the hearing to be read into the record, did not ask one question all day of the over 100 presenters. Originally the County indicated that non residents would not be allowed to speak, but in the end they were.

Policy 2.4

In carrying out their planning responsibilities, municipalities are expected to respect the rights of the individual citizens and landowners to consider the impact of any policy or decision within the context of the overall public interest.

Given the amount of opposition to the proposed bylaw, it is very questionable whether the municipality "respected the rights of individual citizens and landowners" to consider the impact of any policy or decision within the context of the overall public interest.

3.0 Planning Cooperation

Policy 3.2

In particular, adjoining municipalities are encouraged to cooperate in the planning of future land uses in the vicinity of their adjoining municipal boundaries (fringe areas) respecting the interests of both municipalities and in a manner which does not inhibit or preclude appropriate long term use or unduly interfere with the continuation of existing uses. Adjoining municipalities are encouraged to jointly prepare and adopt intermunicipal development plans for critical fringe areas: these plans may involve lands which are in both of the adjoining municipalities.

While Section 3 deals with intermunicipal planning, and is not directly related to the DC district, it is very important to note that the Land Use Policies encourage inter-municipal cooperation. The bylaw was passed without consultation with Wheatland County and, in particular, there was no consultation over roadway standards or costs notwithstanding that issue was the subject of one of the points in opposition by the presenters. It is my present understanding that Wheatland County has commenced an intermunicipal dispute pursuant to Section 690 of the Municipal Government Act relative to the impact of DC4 on Wheatland County.

The DC4 District requires that two of the major accesses be provide solely through Wheatland County and while the Wheatland County Councillor for the area spoke about access issues at the public hearing and many other speakers at the public hearing also addressed the access issues, the County did not indicate that they were concerned about the access, the volumes of traffic and the standards of the road. And even though the DC4 District requires a Traffic Impact Assessment, Kneehill County cannot require the road upgrades in the adjoining municipality of Wheatland County be made or paid for by Wheatland County's ratepayers. Those costs are presently unknown but could cost millions of dollars to either or both municipalities.

Policy 3.7

Municipalities are encouraged to work directly with provincial land and resource management agencies in the development of plans and policies on issues of mutual interest. Decisions and approvals affecting land use and development on, near, or with potential to impact provincial resources should be coordinated between these levels of government.

Section 3.7 encourages cooperation with Provincial land and resource agencies but, despite the identification of the Rosebud River Valley as an Environmentally Significant Area and water being a vital resource especially in southern-Alberta, there is no evidence of coordination with Provincial agencies. The issues of storm water runoff and contamination, construction near the top of bank, erosion, sediment, dust, noise and disturbance of the native grasslands and the site, were not circulated to the provincial agencies – or at least there is no evidence of comments from these agencies. The fact that the DC4 District requires an Environmental Impact Assessment as a condition of the subdivision or development is potentially too late in the process to allow proper

evaluation. The provincial and federal agencies should have received and commented upon this prior to the land use redesignation.

4.0 Land Use Patterns

Policy 4.1

Municipalities are encouraged to establish, on a municipal and on an intermunicipal basis, land use patterns which provide an appropriate mix of agricultural, residential, commercial, industrial, institutional, public and recreational land uses developed in an orderly, efficient, compatible, safe and economical manner in keeping with the general policies of this section and the more specific policies found in sections 5.0 to 8.0.

This DC4 District does not provide an appropriate land use mix for the land. Under good planning principles this development is not considered:

- Orderly - the appropriate background work was not required prior to land use designation and the development is situated in an agricultural area, far from a work force or staff housing and is accessed by roads that are incapable of handling the proposed traffic
- Efficient - in that it does not make good use of the land in terms of density; the development will be bringing water and sewer pipes to the site but the development density is very low making very poor use of the infrastructure and demonstrating great inefficiencies of development.
- Compatible with the adjacent agricultural community - it will bring in traffic that will interfere with the local roads and agricultural traffic, and it proposes a development in an area where there are no services.
- Safe – the development is proposed very close to the top of bank for the Rosebud River which is very unstable causing concern for the safety of the future users and property from erosion and landslides

Policy 4.2

Municipalities are encouraged to establish land use patterns which embody the principles of sustainable development, thereby contributing to a healthy environment, a healthy economy and a high quality of life.

The land use pattern of this DC4 District, under good planning principles, is not considered sustainable. While a large portion of the land is river valley, the proposed development also takes a large parcel of good agricultural land out of production and threatens environmentally sensitive lands.

This is NOT contributing, but rather endangering a healthy environment. It is destroying the quality of life of the existing residents of the agricultural community. The LUB appears contrary to policy 4.2 inasmuch as a race track in a river valley does not appear to be consistent with protection of either the water body or the riparian area.

Policy 4.5

Municipalities are encouraged to establish land use patterns which provide the opportunity for a variety of residential environments which feature innovative designs and densities, and which make efficient use of existing infrastructure and public transportation.

The residential options allowed by the DC4 District do not feature innovative design and density or make efficient use of the land, existing facilities, infrastructure and public transportation. The proposed housing is for townhouse/apartment type housing in the form of ownership/timeshare/rental accommodation. The density is very low. The services for these residents are non-existent unless future residents travel great distances. While the applicant may not consider this a place where there will be school aged children, there is nothing that will prevent school aged children from

living in this development but it does not appear that this redesignation was circulated to the school districts, nor has school bussing been considered. There is no public transportation, and it is unlikely that there will ever be any due to the fact that the development is very low density and is located in a very rural agricultural area. In addition, it does not appear that staff accommodation has been considered for this development.

Policy 4.6

Municipalities are encourage to establish and use patterns commensurate with the level of infrastructure and service which can be provided, regardless of whether the infrastructure and services are provided municipally, communally, individual, or by a utility company. Municipalities are encouraged to coordinate the provision of infrastructure and services with neighbouring municipalities.

While it appears that Kneehill County has ensured coordination for the water line for the development, it is clearly evident that no coordination was facilitated with Wheatland County for the coordination of roads, construction of roads, utility or development standards, access routes, inter municipal transfers and payments and agreements. This has obviously not been done or there would not be an intermunicipal dispute lodged.

5.0 The Natural Environment

Policy 5.1

Municipalities are encouraged to identify, in consultation with Alberta Environmental Protection, significant ravines, valleys, streams, corridors, lakeshores, wetlands and any other unique landscape area, and to establish land use patterns in the vicinity of these features, having regard to their value to the municipality and the province.

While Kneehill County has adopted an environmentally significant areas study, and this land, or significant portions thereof, fall into the environmentally significant lands categories, the County has chosen to approve the land use for a development that obviously impacts these environmentally significant areas including the Rosebud River. The land use district does not conform to this Land Use Policy.

Policy 5.2

If subdivision and development is to be approved in the areas identified in accordance with policy #1 municipalities are encouraged to, within the scope of their jurisdiction, utilize mitigative measures design to minimize possible negative impacts.

The DC4 District, which is already approved, does not provide the mitigative measures in the district, it defers it to future studies prior to development or subdivision. However, with the land use approved, there are reasonable expectations of the developer that they will get approval, even though the uses are listed as discretionary. It would have been good and responsible planning to complete the studies on the mitigative measures prior to approving the DC4 District. Without the mitigative measures included in the DC4 District, it does not appear to conform to the Land Use Policies.

Policy 5.3

Municipalities are encouraged to identify, in consultation with Alberta Environmental Protection, areas which are prone to flooding, erosion, landslides, subsidence, or wildfire and to establish appropriate land use patterns within and adjacent to these areas.

There is no record of Kneehill County consulting with Alberta Environmental Protection on the areas prone to flooding, erosion, landslides or subsidence – and it is well known that there are many areas that would fit these categories on the subject property. Because the site has not been vetted through

Alberta Environmental Protection and no mitigation established, it would appear that the proposed land use pattern is completely inappropriate and as such does not conform to the Land Use Policies.

Policy 5.4

If subdivision and development is to be approved in these areas identified in accordance with policy #3 municipalities are encouraged to, within the scope of their jurisdiction, utilize mitigative measures to minimize the risk to health, safety and to loss due to property damage.

Despite the knowledge that the land is subject to subsidence and erosion and the development is proposed very close to the top of the bank, it does not appear that any mitigative measures have been proposed for this development. Unmitigated risk to health and property damage is contrary to the Land Use Policies.

Policy 5.5

Municipalities are encouraged to identify, in consultation with Alberta Environmental Protection, areas of significant fish, wildlife, and plant habitat and to establish appropriate land use patterns designed to minimize the loss of valued habitat within and adjacent to these areas.

As with Policy 5.3, there is no evidence of consultation with Alberta Environmental Protection on the site with regard to fish, wildlife and plant habitat. The adopted Kneehill County Significant Areas Study does identify the area as significant and as such, unmitigated development would be contrary to the Land Use Policies.

Policy 5.6

If subdivision and development is to be approved in the areas identified in accordance with policy #5 municipalities are encouraged to, within the scope of their jurisdiction, utilize mitigative measures to minimize the loss of habitat.

As with Policy 5.4, there were no mitigative measures included in the DC district and as such it does not conform to the Land Use Policies.

6.0 Resource Conservation

6.1 Agriculture

The goal for agriculture is to contribute to the maintenance and diversification of Alberta agricultural industry - the DC district takes good land out of agricultural production. Policy 6.1.1 says that agriculture should remain where it currently exists. A large portion of the subject lands are agricultural and are being proposed for non-agricultural uses. Policy 6.1.2 says that fragmentation of agricultural land should be limited, but the proposed development increases the fragmentation.

Finally, Policy 6.1.3 says that where possible, municipalities should direct non-agricultural development to areas that will not constrain agricultural activities. The municipality could easily have re directed this development away from the agricultural area and the proposed use will constrain the existing agricultural uses in the area by creating congestion on roads that serve agriculture, creating non complimentary uses and taking good agricultural land out of production. These policies are not being met and are not conforming to the Land Use Policies.

6.3 Water Resources

The goal for Water Resources is to contribute to the protection and sustainable utilization of Alberta's water resources, including lakes, rivers, and streams, their beds and shores, wetlands, groundwater, reservoirs and canals. Policy 6.3.2 wants Municipalities to determine appropriate land use patterns in the vicinity of significant rivers. The proposed development is on the bank of the Rosebud River but the proposed land use is a completely inappropriate land use pattern

Policy 6.3.3 addresses the need for mitigative measures to minimize the negative impact on water quality and soil erosion. No mitigative measures have been identified. The DC district and the proposed development do not conform to the Land Use Policies.

6.4 Historical Resources

The goal for Historical Resources is to contribute to the preservation, rehabilitation and reuse of historical resources, including archaeological and palaeontological resources. Given the location of the subject property, the DC district does not address an HRIA and yet this is a critical area for paleontological and archaeological resources. This does not conform to the Land Use Policies.

7.0 Transportation

The goal for transportation policies is to contribute to the safe, efficient and cost effective provincial transportation network. This policy addresses specifically provincial roads. The access routes for this project have not been clarified. The TIA should have been completed prior to redesignation to demonstrate how the development will impact the provincial and municipal road system and especially the roads in Wheatland County, if nowhere else.

8.0 Residential Development

The land use policies direct "well planned residential communities" – the DC4 District allows detached dwellings, duplexes and multi attached dwellings. It does not demonstrate that the development is well planned, high quality and it does not provide adequate and affordable housing. Nothing in the DC district demonstrates that it will meet any of the following goals.

- Policy 8.1 – Municipalities are encouraged to identify the need for housing in their municipality. No study has been completed. And, no consideration has been identified for staff housing
- Policy 8.2 - the Land Use Policies recommend a wide range of housing types which is not demonstrated here
- Policy 8.3 - the Land Use Policies support the intensification of existing developed. This development represents some intensification of the agricultural land but the development is not intense and the density is considered extremely low.

Summary

In summary, Kneehill County has not followed the process for good planning. Using the principles of good planning, including the Land Use Policies, a municipality should ensure that the proposed development is sustainable, environmentally viable and orderly prior to the adoption of the land use designation. In this case, the Area Structure Plan did not provide the background studies or the mitigative measures, but rather both the ASP and the DC4 District deferred the studies and collection of important information to the subdivision and/or development of the site.

It would appear that the County is fully aware that the development may have shortcomings and that they are now trying to backtrack by requiring an EIA, a TIA, site development plan, etc. after the proper planning time has occurred. This arguably has reversed a good planning process by requiring feasibility studies at the end of the process, not the beginning of the process. The last sentence in the last paragraph of section 1.1 of the LUPs states:

Municipalities are expected to design a decision-making system which ensures that the required attention is given to all sections of the Land Use Policies.

If you put the cart before the horse, can you reasonably expect good decisions to result? A good planning process requires that the background studies, the consultation with the Provincial agencies and clear definition of the mitigative measures should have been completed prior to the adoption of

the land use designation.

Also, according to Fred Laux, the author of Planning Law and Practice in Alberta, conditions should not be placed on a land use district that may be considered onerous. The fact that the DC4 District requires a large number of studies, could be considered to be onerous. The DC4 District requires an EIA, TIA, road access route and design, water supply and distribution options, comprehensive site plan, design guidelines for architecture, design guidelines for environmental reclamation and a site servicing analysis for storm, sanitary, gas, power, cable and telephone and other condition issued by the subdivision and development authority. The DC4 District appears to be requiring the key information after the land use has been established rather than as part of the decision making process to determine if the land use is appropriate in the first place.

The Land Use Policies state that:

"Municipalities are expected to design a decision-making system which ensures that the required attention is given to all sections of the Land Use Policies."

It is my opinion that the DC district does not conform to the intent or the content of the Land Use Policies.

I trust that this report provides sufficient justification of why I do not consider that the DC4 District (Kneehill County Direct Control District DC4 for the Badlands Motorsport Resort Development), does not conform to the Alberta Land Use Policies.

Sincerely,

A handwritten signature in black ink, appearing to read 'A. Maloney' with a stylized flourish at the end.

Patricia A. Maloney, MCIP