

**SUBDIVISION AND DEVELOPMENT APPEAL BOARD
PARKLAND COUNTY**

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HEARING DATE: November 5, 2018
FILE NO.: 18-D-339

Notice of Decision of Subdivision and Development Appeal Board

INTRODUCTION

[1] The Development Authority of Parkland County (the "County") refused a development permit application made by Mr. Robert Briggs of Glen Lynn Engineering on behalf of DBJ Investment Holdings Inc. (the "Appellant") for a single detached dwelling and a detached garage at SE-20-53-26-W4 (the "Site").

[2] DBJ Investment Holdings Inc. appealed the refusal of Development Permit Application 18-D-339. DBJ Investments Holdings Inc. was also the applicant for the development permit. In this decision, DBJ Investments Holdings Inc. will be referred to as the Appellant.

PRELIMINARY MATTERS

A. Board Members

[3] At the start of the hearing, the Board asked if anyone had an objection to the panel hearing the appeal. There were no objections raised regarding the panel members.

B. Exhibits

[4] The Board marked the exhibits as set out at the end of this decision. No further documents were submitted during the hearing.

C. Miscellaneous

[5] The appeal was filed in time, in accordance with section 686 of the *Municipal Government Act*, RSA 2000, c M-26 (the "MGA").

[6] The Board is satisfied that it has jurisdiction to deal with this matter. There were no objections to the proposed hearing process. There were no preliminary matters raised at the beginning of the hearing.

DECISION OF THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD

[7] The appeal is denied.

SUMMARY OF HEARING

[8] 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.

Development Authority

[9] The Site is located within the Agriculture/Nature Conservation (ANC) District ("ANC") and in the Atim Creek/Big Lake Floodplain Overlay (section 10.2 of the County's Land Use Bylaw 2017-18 ("LUB")) (the "Overlay"). The Site is 90 acres in size and is near the Lois Hole Centennial Park. The Site is north of the Yellowhead Highway and east of Highway 44. There is an existing golf course on the Site. There is a club house with a parking lot and an existing single wide manufactured home. Access to the Site is via Range Road 264 which dead ends before the Site and the Site is accessed from Range Road 264 via a private driveway.

[10] The Development Authority deemed the application complete on August 8, 2018 and issued the Development Permit decision on September 12, 2018. The development permit application was for a new two-storey single detached dwelling and a new detached garage. The existing single-wide manufactured home was to be left on the Site and used as a guest house. Water service was to be via trucked-in water and cistern, and a private sewage disposal was to be via a septic tank and field.

[11] The Development Authority rejected the application as, within the Overlay, the uses of a new single detached dwelling and detached garage are neither a permitted nor a discretionary use.

[12] The Development Authority submitted that the proposed use was not supported by the Overlay. The Overlay applies to:

10.2.1(a) ...those lands identified as within the Atim Creek Floodplain Area, which is defined as the 1:100 year Floodplain plus 0.5 m consistent with the "Big Lake Basin Task Force Floodplain Delineation for Atim Creek from Campsite Road to Big Lake Study" (Sameng, March 2007) as shown on Schedule "G" of the Land Use Bylaw; and

10.2.1(b)...those lands identified as within the Big Lake Floodplain Area, which is defined as the 1:100 year Floodplain (653/30 m ASL) plus 0.5 m (653.80m ASL) consistent with the "Big Lake Basin Task Force Floodplain Delineation for Atim Creek from Campsite Road to Big Lake Study" (Sameng, March 2007) as partially shown on Schedule "G". (See page 119 of 269 of the Exhibits)

[13] The Development Authority considered section 10.2.2 of the Overlay which provides in subsections (c) and (d) that the only uses for the Overlay area are discretionary uses. Further, the only possible uses listed in section 10.2.2 which may be applicable are uses existing at the time the LUB was passed and alterations or the reconstruction of an existing building or structure within the building footprint that existed at the time of passing by the LUB. The Development Authority indicated that although section 10.2.2 of the Overlay provides for other uses, these are not applicable to the proposed use in this appeal.

[14] The Development Authority indicated that the new single detached dwelling and garage are not an existing uses approved by the County before the LUB was passed. The new buildings cannot be considered an alteration or reconstruction of an existing building within an existing building footprint that existed at the time of the passage of the LUB. Since the proposed development does not fall into the uses in 10.2.2(c) or (d), the use is neither permitted nor discretionary.

[15] The Development Authority responded to the Appellant's argument that the development pocket is on a high elevation "island" above the floodplain elevation, so that it is not contained within the Overlay. The Development Authority rejected this argument based upon the history of the Overlay and referral comments from Alberta Environment and Parks and Parkland County Fire Services and Engineering.

[16] The floodplain area in the Overlay shows some high elevation "islands" which are contiguous to the outside lands. There are many points in the Overlay where there may be "islands" of higher elevation. The rationale for the inclusion of these "islands" is that should there be a flood, these high elevation "islands" will still need access roads and the access road would need to be built higher for levels of safety. If the high elevation "islands" were developed, the cumulative impact from filling in the wetlands would be significant. Further, the referral comments indicate concerns about the proposal to develop on this high elevation "island".

[17] Further, if the Appellant were to develop the Site, the Appellant would be responsible to construct and design the access road to County road standards, at the Appellant's cost. There is a lack of municipal servicing to the area. The County does not support the use of on-site septic fields due to the soil and environmental features of the Site.

[18] The Development Authority specifically noted that the comments from Alberta Environment and Parks stated that any high spot is part of the floodplain and that Alberta Environment did not support any access road to a high elevation "island" within a floodplain.

[19] The Development Authority stated that the development is not supported by the County's Municipal Development Plan, Bylaw 2017-14 ("MDP") or the Big Lake Area Structure Plan, Bylaw 17-91 ("ASP"). The MDP identifies these lands as Environmentally Significant Area and High Priority Landscape. New development in these areas may be undertaken only upon careful consideration of unique environmental and landscape characters of the area, in accordance with the relevant LUB regulations.

[20] The ASP provides that the Site is located within the Wetlands Conservation Area and Recreation Area in Map section 4.2. New residential development is not contemplated within

either of these districts. Further, section 4.4 provides that all new development within the ASP area must connect to municipal services to the greatest extent possible. The on-site servicing (cistern, holding tank and septic field) proposed by the Appellant is not consistent with the goals of the ASP.

[21] In response to Board questions, the Development Authority stated that the existing use on the Site is a manufactured home used by the land owner or leased out for residential purposes. The proposed dwelling is a different use than the manufactured home. The existing manufactured home is being accessed by a private driveway. The existing manufactured home is being serviced by on-site septic and water systems.

Appellant DBJ Investment Holdings Ltd.

[22] Mr. Maxime Belanger of Sameng Inc. ("Sameng") spoke first on behalf of the Appellant. He stated that the Appellant does not agree with the submission of the Development Authority and believes the development can be approved with conditions. The proposal is to put a 3,000 ft² home on a high elevation point within the Site. The Appellant selected the location for the single detached dwelling at the highest point on the Site so as to get as high above the floodplain as possible. He indicated that the Appellant has a slightly different location for the access road than identified by the Development Authority, but the Appellant will change the access road as required, if the development is approved. Range Road 264 ends at the intersection of the parcel. Currently, a private driveway connects the parcel to Range Road 264.

[23] The Appellant stated that the Site is just outside of the Environmentally Sensitive Area. However, even if the Site is located within the Environmentally Sensitive Area identified in the MDP, the MDP does provide that there can be country residential within the Environmentally Sensitive Area and the proposed development fits into a country residential use.

[24] Although the Site is within the High Priority Area identified in the MDP, the Appellant seeks to build a single detached dwelling and not a full residential subdivision. Therefore, the impact on the environment is negligible. In relation to the ASP, discretion can be exercised to support the use.

[25] The Appellant agrees the Site is districted ANC. However, the Appellant disagrees with the Development Authority on the application of the Overlay to the Site. The Appellant states that the Overlay does not apply due to the description of the floodplain. The 1:100 year floodplain is 653.3 m plus 0.5 m. The boundaries are intended to be used as an indicator, and the actual boundaries are to be determined by an engineer. The floodplain area in the Overlay shows some "islands" which are not contiguous to the outside lands. Mr. Belanger for the Appellant stated he does not understand why some areas are included and some are not. He suggested there was no reason for the inclusion or exclusion of certain lands from the floodplain area. He stated that the study used to create the floodplain was done by Sameng, the company he now works for.

[26] In 2003, Sameng did a floodplain delineation study for the existing golf course on the Site. High resolution LIDAR was done to capture the data. The study calculated the ground elevations. There is a difference between the 2007 levels and those captured today due to

improving technology. The blue areas are in the floodplain at 653.3 m (see page 129/269 and 254/269 of the Board's materials). The balance of the areas identified is outside of the floodplain because they are high elevation "islands". In the event of a 1:100 year flood, these lands would be safe. However, the dwelling would be surrounded by water unless the access road is raised. The location for the proposed single detached dwelling is 1.7 m above the floodplain.

[27] The Overlay should not apply to the proposed development and the Appellant should be able to build a single detached dwelling on the Site.

[28] In relation to servicing, the Appellant noted that the ASP mentions that servicing should be municipal servicing "to the greatest extent possible", but there is no requirement that the development connect to municipal servicing. This is a single detached dwelling and not a full subdivision. It is not financially viable to connect to municipal servicing for one house. It will cost \$200,000 for the residence to connect to municipal water services, and an additional \$200,000 to connect to municipal sewer services. Mr. Belanger for the Appellant suggested that a private water cistern and private sewage disposal is sufficient.

[29] In relation to the access road, it should be above the floodplain. In order to construct the access road above the level of the floodplain, the Appellant would have to add 800 m³ of fill, which is not significant. This amount of fill would raise the ground level by 2 m. Most of the land requires only 1 m of fill to bring it to a level above the floodplain. Sameng has a Wetland Engineer on staff, and if required, it would send the Wetland Engineer to determine if there are wetlands on the Site.

[30] There is a negligible amount of water which would be coming from the proposed development (.002%), as compared to the amount of floodwater which would come from Big Lake.

[31] The Appellant stated that the comments made by Alberta Environment and Parks are not founded in legislation. The Appellant does not agree that there would be a significant impact from the development within the floodplain or the resulting need for an access road.

[32] The Appellant stated that if there was a 1:100 year flood, the water would not rise quickly, but would rise 8 cm/hour.

[33] The Appellant argued that the development of the house and garage should be allowed. It is in accordance with the provisions of the MDP and ASP. The restrictions should not apply because the land is located above the floodplain and the impacts are negligible.

[34] In response to Board questions, Mr. Belanger for the Appellant stated that Range Road 264 is in the floodplain, and it does not make sense to build an access road higher than Range Road 264, although this is a condition which could be discussed with the Board. He also stated that he had considered other impacts from the infill required to build the access road (such as preventing or trapping drainage). He indicated that the area is in the floodplain of Big Lake, and therefore the water will rise at the same time everywhere. The access road would not create a dam which would prevent water flow.

[35] Mr. Robert Briggs from Glen Lynn Engineering Ltd. spoke on behalf of the Appellant. He was hired by the Appellant to make the development permit application to the County. He stated that the intention was to leave the manufactured home on the Site to be used as a guest house. Mr. Dick Wong (the Appellant) and his family would move into the main house. Both the house and the manufactured home would remain on the Site. The location proposed for the main house is a better location.

[36] Mr. Brian Wong, Mr. Dick Wong's son stated that their family had dreamed about building a place for their father to retire for a long time. He does not understand why they cannot build a small house and access road to make that happen. The proposal is not for an industrial use on the land, just a house to use the land in the summertime to enjoy the golf course.

[37] Mr. Dick Wong told the Board that he bought the land for his family and his plan is to build a place where his children can come on the weekends and they can enjoy it together as a family. When he first bought the Site, it was zoned country residential, and as such, he could build a house. He did not get notice of the change in zoning from country residential to ANC. He hopes the Board will let him build a house and allow him to enjoy it on weekends.

FINDINGS OF FACT

[38] The Site is located at SE-20-53-26-W4.

[39] The Site is zoned Agriculture/Nature Conservation (ANC) District.

[40] The provisions of the Atim Creek/Big Lake Floodplain Overlay (section 10.2 of the LUB) apply to the Site.

[41] The use of single detached dwelling and detached garage is neither permitted nor discretionary under section 10.2 of the LUB.

[42] The Appellant is an affected person.

REASONS

Jurisdiction

[43] The Board notes that its jurisdiction is found in section 687(3) of the MGA. In making this decision, the Board has examined the provisions of the MDP, ASP and LUB as well as considered the oral and written submissions made by the Development Authority and the Appellant.

687(3) In determining an appeal, the subdivision and development appeal board

(a) must act in accordance with any applicable ALSA regional plan;

(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 clause (d), must comply with any land use bylaw in effect;*
- (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.*

Affected Persons

[44] The first question the Board must determine is whether the Appellant is affected. The Appellant, DBJ Investment Holdings Ltd. is the Applicant for the permit and as such is affected by the appeal.

Statutory Plans

[45] The Board sets out its analysis of the statutory plans in the following paragraphs. However, due to the Board's decision in relation to land use, the Board's assessment of the statutory plans is not determinative of the issue of whether to grant the appeal. The Board has included its analysis of the statutory plans for reasons of completeness of the decision.

[46] The Board heard submissions from the Development Authority that the proposed use was not supported by the MDP or the ASP because new development in these areas may be undertaken only upon careful consideration of unique environmental and landscape characters of the area, in accordance with the relevant LUB regulations. The Development Authority argued that under the ASP new residential development is not contemplated within the Wetlands Conservation Area and Recreation Area. Further, the Development Authority argued that new development must connect to municipal services to the greatest extent possible. By contrast, the Appellant argued that the policies contained in the MDP and ASP do not prevent the proposed development; rather, the Development Authority has the discretion to approve the development, provided that the relevant considerations are taken into account.

[47] The Board notes that the MDP provides that new development can be undertaken in the Environmentally Significant Areas and the High Priority Landscape areas, upon careful consideration of unique environmental and landscape characteristics. The Board finds that the MDP does not prohibit the proposed development, but does require careful consideration of the significant features, including biophysical impact assessments as required by Policy 7.1.4 of the MDP.

[48] The ASP requires connection to municipal services to the extent possible. The Wetlands Conservation Area and Recreation Area contains no specific reference to residential development. The absence of specific reference to residential development raises the question as to whether the proposed residential use is in compliance with the ASP. The Board concludes that the proposed residential development is not in compliance with the ASP. Since there are specific references to permissible residential uses in other areas within the ASP, the Board interprets the absence of clear language authorizing residential uses in the Wetlands Conservation Area and Recreation Area as an indication that such residential uses are not in compliance with the ASP.

Land Use District

[49] The Site is zoned as ANC. There is no dispute between the parties that the Site is located within the ANC District.

[50] The parties disagree over whether the Overlay applies to the Site. The Development Authority argues that the Site is governed by the Overlay because it is located within the floodplain area identified in Schedule "G". The Appellant argues that the Site does not fall within the floodplain area because it is a high elevation "island", and does not fall within the area to which the Overlay applies.

[51] The Board must determine whether the Overlay applies to the Site, as this determination will affect whether the Board can approve the use or not.

[52] Section 10.2.1 provides that the Overlay applies to the following areas:

10.2.1 Application

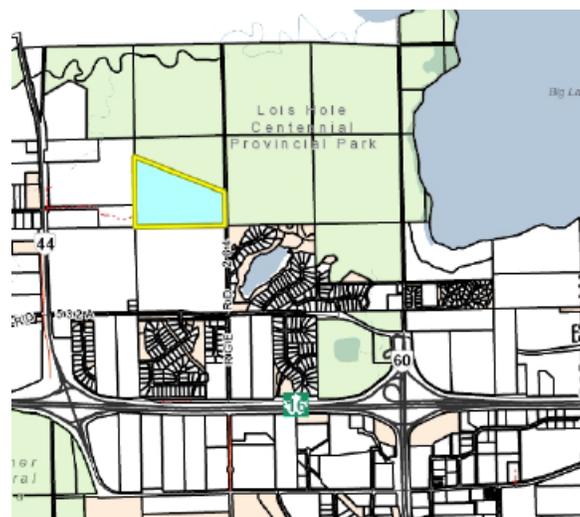
a) This overlay applies to those lands identified as within the Atim Creek Floodplain Area, which is defined as the 1:100 year Floodplain plus 0.5 m consistent with the 'Big Lake Basin Task Force: Floodplain Delineation for Atim Creek from Campsite Road to Big Lake Study' (Sameng, March 2007) as shown on Schedule G" of the Land Use Bylaw; and

b) This overlay applies to those lands identified as within the Big Lake Floodplain Area, which is defined as the 1:100 year Floodplain (653.30 m ASL) plus 0.5 m (653.80 m ASL) consistent with the 'Big Lake Basin Task Force: Floodplain Delineation for Atim Creek from Campsite Road to Big Lake Study' (Sameng, March 2007) as partially shown on Schedule G."

[53] The Board attaches a portion of Schedule "G" (page 185/269). The Site is identified by the black star (as confirmed by the diagram below which was excerpted from page 127/269).



[54] The location of the Site is shown in the diagram below:



[55] The Development Authority argues that the Overlay applies because the Site falls within the area identified in Schedule "G" (in other words, the Site falls within the "green" area shown on Schedule "G"). The Appellant argues that the Overlay does not apply because the Site is above the elevations of the floodplain, despite the fact that the Site itself falls within the green area.

[56] The Board must examine both the words of s. 10.2.1 and Schedule "G" to interpret whether the Overlay applies.

[57] Looking at the words of section 10.2.1(a), the wording indicates that in regard to the Atim Creek Floodplain, the overlay applies to the floodplain area as shown in Schedule "G". Section 10.2.1(a) does not set out the elevation (by reference to numbers) which defines the floodplain. Rather, the words merely indicate that it is the floodplain "consistent with the Big Lake Basin Task Force: Floodplain Delineation for Atim Creek from Campsite Road to Big Lake Study' (Sameng, March 2007)". The Appellant did not provide any information from that study for the Board's consideration. In fact, the Appellant stated that someone from the Sameng firm did the study, but Mr. Belanger did not know why certain areas were included within the floodplain area.

[58] In regard to section 10.2.1(a), the Board finds that the Site falls wholly within the green area on Schedule "G". There is no inconsistency between the plan in the Schedule and the words of section 10.2.1(a). The Board finds that the intention of section 10.2.1(a) is that the Overlay applies to the area identified in green in Schedule "G".

[59] Looking at the words of section 10.2.1(b), these words also identify that the Overlay applies to the area shown in green in Schedule "G". However, section 10.2.1(b) specifies that the Big Lake Floodplain Area is defined as the 1:100 year Floodplain plus 0.5 m. Unlike section 10.2.1(a), this section specifies the elevation in meters.

[60] The Appellant argues that because the proposed development site is above the elevation set out in 10.2.1(b), the Overlay does not apply. The Board does not accept that argument. The Board notes that the Schedule "G" includes certain pockets which are circled by "green" and these pockets are not contiguous with the outside lands. If the intention had been to exclude the Site as a high elevation "island", it could have been done as part of the Overlay as was done with some of the other excluded areas. However, it was not. The entirety of the Site is identified in the "green" area of Schedule "G".

[61] Although the Appellant argued that the Site should not be included, it did not provide any evidence for the Board's consideration as to why the Site was included, and this was despite the fact that Sameng, which spoke for the Appellant at this hearing, had prepared the 2007 report.

[62] The Board also notes that the purpose of the Overlay is to provide for "safe and efficient use of lands". The Board is not persuaded on the evidence and argument provided by the Appellant that safety would be achieved if development were permitted on a high elevation "island", with a significant portion of the balance of the Site is within the Floodplain area. If there were a flood, the residents of the single detached dwelling could be stranded. The Board is concerned about safety because the evidence was that the access road would have to be

built up as well so that the users of the single detached dwelling could leave the dwelling in the event of a flood. A flood could wash away the access road, leaving the residents stranded.

[63] There is no inconsistency between the wording of section 10.2.1 and Schedule "G". Both subsections (a) and (b) indicate that the Overlay applies to the "lands...shown on Schedule "G"". The Appellant has provided no compelling evidence or argument as to why the Overlay should not apply.

[64] The Board has also considered the argument raised that the wording on Schedule "G". The last paragraph states:

Due to the map scale, this map does not represent the precise boundaries of the 100 year floodplain of Atim Creek/Big Lake. It is intended to be used only as an indicator of areas of concern. Floodplain boundaries and flood construction levels must be determined for any application by a qualified professional engineer who certifies, subject to conditions contained within the report, that the land may be used safely for the intended use.

[65] The Board interprets this paragraph as a notification to those who wish to develop that they should seek professional advice regarding a specific project. The Board is of the opinion that the paragraph does not affect the application of the Overlay to the Site. It is identifying that the boundary (i.e., the outer edges of the Overlay area) may not be located precisely at the boundary lines identified in Schedule "G". The Site is wholly within the "green" area. The Board interprets "boundary" to mean a line that marks the limits of an area or a dividing line. In this case, the boundary separates the edge of the Overlay area from areas to which the Overlay does not apply. If the drafters had meant the reference to mean "elevation", it could have done so.

[66] The Board notes that Mr. Dick Wong, the Appellant stated that when he bought the Site, it was zoned country residential, and that he had no notice of the rezoning. The Board has no authority to examine the circumstances of the rezoning, and must accept the LUB as it exists on the date of the hearing (see *Coffman v. Ponoka (County No. 3)*, 1998 ABCA 269; *Mather v. Gull Lake (Summer Village of)*, 2007 ABCA 123; *Boll v. Woodlands County Municipal Planning Commission*, 2016 ABCA 344).

[67] Based upon the evidence provided, the arguments made, and using the evidence and argument in the Board's interpretation of section 10.2.1, the Board finds that the Site falls within the Overlay.

[68] Having determined that the Site is governed by the provisions of the Overlay, the question is whether the proposed development is either permitted or discretionary. The Board notes that section 10.2.2 states:

Regardless of the underlying land use district, only the following uses shall be considered on a discretionary basis within the Atim Creek/Big Lake Floodplain Overlay

[69] The Board interprets this to mean that even though the ANC district lists single detached dwelling as a permitted use, only the uses set out in section 10.2.2 may be considered for the

Overlay area, and those uses are all discretionary. The Board notes that the only possible uses listed within section 10.2.2 which may apply are found in section 10.2.2(c) and (d): "existing uses, provided such uses were approved by the County prior to the passing of this Bylaw" and "alterations or the reconstruction of an existing building or structure may be permitted within the building footprint that existed at the time of passing of this Bylaw". The Board finds that none of the other uses listed in section 10.2.2 are applicable to this application.

[70] The Board finds that the proposed development falls within neither of the two possible uses in section 10.2.2. The proposed use is not "existing". The proposal is to build a new single family residence and a new garage. Thus, this section does not give the Board authorization to approve the development permit. The proposed use is not an alteration or reconstruction of an existing building or structure. As set out above, it is for a new single family residence and a new garage.

[71] The Board has no authority to vary uses as provided for in the LUB. Since the proposed use is neither permitted, nor discretionary in the ANC district as refined by the Overlay, the Board has no jurisdiction to approve the development permit.

[72] As a result of the Board's conclusion, there is no need to examine the impact of servicing and whether it is permissible for the proposed development to have independent servicing, or whether it must connect to municipal services.

[73] Since the Board has no authority to approve the use, the appeal is denied.

[74] Issued this 20th day of November, 2018 for the Parkland County Subdivision and Development Appeal Board



Christine Beveridge, SDAB Clerk
Dylan Smith, 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"
REPRESENTATIONS

PERSON APPEARING

1. Feinan Long, Development Planner
2. Maxime Belanger, Sameng Inc.
3. Robert Briggs, Glen Lynn Engineering Ltd.
4. Mr. Dick Wong, DBJ Investment Holdings Ltd.
5. Mr. Brian Wong

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

Exhibit	Description	Date	Pages
1.	Agenda Package Table of Contents and Agenda	November 1, 2018	N/A
2.	Notice of Appeal	September 27, 2018	112-115
3.	Signed Waiver Form	October 10, 2018	116
4.	Submission of the Development Authority	October 25, 2018	117
5.	Submission of the Appellant	October 29, 2018	236-269