

Municipal District of Pincher Creek No. 9
MUNICIPAL PLANNING COMMISSION
MD of Pincher Creek Council Chambers
March 4th 2025
6:30 pm
Agenda

- 1. Adoption of Agenda**
- 2. Minutes**
 - a. Meeting Minutes of February 4th, 2025
- 3. Closed Meeting Session**
- 4. Unfinished Business**
- 5. Development Permit Applications**
 - a. Development Permit Application No. 2025-06
Jeffery & Allison Schmode
Lot 1, Block 2, Plan 2312282 within NW 34-8-1 W5
Accessory Building – Secondary Suite & Variance
- 6. Development Reports**
 - a. Development Officer's Report
- Report for February 2025
- 7. New Business**
- 8. Correspondence**
 - a. **ORRSC Periodical – Winter 2025 Exemptions**
- 9. Next Regular Meeting – April 1st, 2025**
- 10. Adjournment**

**Meeting Minutes of the
Municipal Planning Commission
February 4th, 2025 6:30 pm
MC of Pincher Creek Council Chambers**

ATTENDANCE

Commission: Reeve Rick Lemire, Councillors Tony Bruder, Jim Welsch, Dave Cox and John MacGarva

Staff: CAO Roland Milligan, Development Officer Laura McKinnon

Planning
Advisor: ORRSC, Senior Planner Gavin Scott

Absent: Chairperson Jeff Hammond, Member at Large Laurie Klassen

Due to the absence of both the Chairperson and Co-Chairperson, Councillor Jim Welsch chaired meeting.

Councillor Jim Welsch called the meeting to order, the time being 6:31 pm.

1. ADOPTION OF AGENDA

Councillor Dave Cox 25/008

Moved that the agenda for February 4th, 2025, be approved as presented.

Carried

2. ADOPTION OF MINUTES

Councillor Dave Cox 25/009

Moved that the Municipal Planning Commission Meeting Minutes for January 7th, 2025 be approved as presented.

Carried

3. CLOSED MEETING SESSION

Reeve Rick Lemire 25/010

Moved that the Municipal Planning Commission close the meeting to the public, under the authority of the *Municipal Government Act*, Section 197(2.1), the time being 6:32 pm.

Carried

Reeve Rick Lemire 25/011

Moved that the Municipal Planning Commission open the meeting to the public, the time being 6:40 pm.

Carried

4. **UNFINISHED BUSINESS**

5. **DEVELOPMENT PERMIT APPLICATIONS**

- a. **Development Permit Application No. 2024-57**
Jessie Young
SW 20-10-2 W5
Secondary Suite

Councillor John MacGarva

25/012

Moved that Development Permit No. 2024-57, Secondary Suite, be approved subject to the following Condition(s):

Condition(s):

1. That this development meets the minimum provisions as required in Land Use Bylaw 1349-23.
2. That this development meet the requirements of a legal suites within the National Building Code – Alberta Edition

Informative(s):

1. That this suite not be for short-term rentals or tourist home use.

- b. **Development Permit Application No. 2025-03**
Gin Lupton
Ptn of NE 21-6-1 W5
Accessory Building – Variance

Councillor Dave Cox

25/013

Moved that Development Permit No. 2025-03, Accessory Building, be approved subject to the following Condition(s):

Condition(s):

1. That this development meets the minimum provisions as required in Land Use Bylaw 1349-23.

Waiver(s):

1. That a 17m (55ft) Variance be granted from the Minimum Setback from Public Roadways of 30m (98.4ft) to the East for a setback of 13m (42ft).

6. **DEVELOPMENT REPORT**

- a. **Development Officer's Report**

Councillor John MacGarva

25/014

MINUTES
Municipal Planning Commission (MPC)
Municipal District of Pincher Creek No. 9
February 4th 2025

Moved that the Development Officer's Report, for the period January 2025, be received as information.

Carried

7. CORRESPONDENCE

None

8. NEXT MEETING – March 4th, 2025; 6:30 pm.

9. ADJOURNMENT

Member at Large Laurie Klassen

25/015

Moved that the meeting adjourn, the time being 6:44 pm.

Carried

Councillor Jim Welsch
Municipal Planning Commission

Development Officer
Laura McKinnon
Municipal Planning Commission

Recommendation to Municipal Planning Commission

TITLE: DEVELOPMENT PERMIT No. 2025-06 Applicant: Jeffery & Allison Schmode Location: Lot 1, Block 2, Plan 2312282 within NW 34-8-1 W5 Division: 4 Size of Parcel: 3.67 ha (9.07 Acres) Zoning: Agriculture (A) Development: Accessory Building (Secondary Suite) & Variance		
PREPARED BY: Laura McKinnon DATE: January 30, 2025		
DEPARTMENT: Planning and Development		
Signature: 		ATTACHMENTS: 1. Development Permit Application 2025-06 2. Accessory Building Drawing 3. Section 49 - Garden and Secondary Suites 4. GIS Site Plan
APPROVALS:		
		 Roland Milligan
Department Director	Date	CAO
		 Date

RECOMMENDATION:

That Development Permit Application No. 2025-06, for an Accessory Building (Art Studio) with Secondary Suite, be approved subject to the following Condition(s):

Condition(s):

1. That this development meets the minimum provisions as required in Land Use Bylaw 1349-23.
2. That this development meet the requirements of a legal suite within the National Building Code – Alberta Edition

Waiver(s):

1. That a 11.7m (38.3ft) Variance be granted from the Minimum Setback from Public Roadways of 30m (98.4ft) to the North for a setback of 18.3m (60.10ft).
2. That a variance be granted from Section 49.5 (b) “in all districts where listed as a permitted or discretionary use, a secondary suite may be considered (as shown in figures below) as a basement suite, a garage suite under the roof of the principal dwelling, and as a single storey at grade garage suite” and be constructed as a single story at grade accessory building (art studio).

Informative(s):

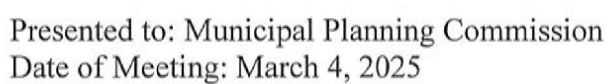
1. That this development not be used as a tourist home or for short-term rental purposes.

Recommendation to Municipal Planning Commission

BACKGROUND:

- On January 30, 2025, the MD accepted the Development Permit Application No. 2025-06 from applicants Jeffery & Allison Schmode. (*Attachment No. 1*).
- This application is to allow for an accessory building (art studio) with a secondary suite (*Attachement No. 2*) – including a setback variance and variance from Land Use Bylaw 1349-23 Section 49.5 (b) (*Attachment No. 3*).
- This application is being placed in front of the MPC because:
 - Within the Agriculture (A) Land Use District, a Secondary Suite and a Variance is a Discretionary Use.
- The applicant is requesting the setback variance due to topography, and this property being surrounded on all three sides by the Setback from Public Roadways requirement (*Attachment No. 4*).
- The applicant is requesting the secondary suite variance, as they already have an attached garage to the residence, but would like a small art studio with a single bedroom for personal use.
- The application was forwarded to the adjacent landowners for comment; no responses were received at the time of this report being written.

Location of Proposed Development





Municipal District of Pincher Creek
P.O. Box 279
Pincher Creek, AB T0K 1W0
Phone: 403.627.3130 • Fax: 403.627.5070

DEVELOPMENT PERMIT APPLICATION

All grey areas will be completed by the Planning Authority

DEVELOPMENT PERMIT APPLICATION NO. 2025-06

Date Application Received Jan 29/25

PERMIT FEE ^{\$100 Permitted} ~~\$150 Discretionary~~

Date Application Accepted Jan 30/25

RECEIPT NO. 65588

Tax Roll # _____

IMPORTANT: This information may also be shared with appropriate government / other agencies and may also be kept on file by those agencies. This information may also be used by and for any or all municipal programs and services. The application and related file contents will become available to the public and are subject to the provisions of the Freedom of Information and Protection of Privacy Act (FOIP). If you have any questions about the collection of this information, please contact the Municipal District of Pincher Creek No. 9

SECTION 1: GENERAL INFORMATION

Applicant: Jeffery & Allison Schmode

Address: 1222 TWP RD 9-0 , MD of Pincher Creek Alberta

Telephone: [REDACTED]

Email: [REDACTED]

Owner of Land (if different from above): _____

Address: N/A

Telephone: _____

Interest of Applicant (if not the owner): N/A

SECTION 2: PROPOSED DEVELOPMENT

I/We hereby make application for a Development Permit under the provisions of Land Use Bylaw No. in accordance with the plans and supporting information submitted herewith and which forms part of this application.

A brief description of the proposed development is as follows:

We will be building our new Home and Garage Combo with a
small Studio Out building with a single Bedroom building.

Legal Description: Lot(s) 1

Block 2

Plan 2312282

Quarter Section ATS REFERENCE: 5;1;8;34;NW

Estimated Commencement Date: May 1,2025

Estimated Completion Date: May 1,2028

SECTION 3: SITE REQUIREMENTSLand Use District: Agriculture - A Division: 4☐ Permitted Use ☒ Discretionary Use**Is the proposed development site within 100 metres of a swamp, gully, ravine, coulee, natural drainage course or floodplain?**☐ Yes ☒ No**Is the proposed development below a licenced dam?**☐ Yes ☒ No**Is the proposed development site situated on a slope?**☐ Yes ☒ No

If yes, approximately how many degrees of slope? _____ degrees

Has the applicant or a previous registered owner undertaken a slope stability study or geotechnical evaluation of the proposed development site?☐ Yes ☐ No ☒ Don't know ☐ Not required**Could the proposed development be impacted by a geographic feature or a waterbody?**☐ Yes ☒ No ☐ Don't think so

PRINCIPAL BUILDING	Proposed	By Law Requirements	Conforms
(1) Area of Site	30,800 sq'		
(2) Area of Building	4200sq'		
(3) %Site Coverage by Building (within Hamets)	N/A		
(4) Front Yard Setback Direction Facing: <u>59M</u>	South	<u>30M (98.4ft)</u>	<u>Yes.</u>
(5) Rear Yard Setback Direction Facing: <u>28M</u>	North	<u>30M (98.4ft)</u>	<u>No - DO Variance given.</u>
(6) Side Yard Setback: Direction Facing: <u>74M</u>	East	<u>30M (98.4ft)</u>	<u>Yes</u>
(7) Side Yard Setback: Direction Facing: <u>187M</u>	West	<u>30M (98.4ft)</u>	<u>Yes</u>
(8) Height of Building	25'		
(9) Number of Off Street Parking Spaces	N/A		

Other Supporting Material Attached (e.g. site plan, architectural drawing)

Acreage Drawings 1 to 4House Drawing Drafts

ACCESSORY BUILDING	Proposed	By Law Requirements	Conforms
(1) Area of Site	2500sq'		
(2) Area of Building	480sq'		
(3) % Site Coverage by Building (within Hamlets)	N/A		
(4) Front Yard Setback Direction Facing: 88M	South	30M (98.4ft)	Yes
(5) Rear Yard Setback Direction Facing: 18M	North	30M (98.4ft)	NO
(6) Side Yard Setback: Direction Facing: 107M	East	30M (98.4ft)	Yes
(7) Side Yard Setback: Direction Facing: 180M	West	30M (98.4ft)	Yes
(8) Height of Building	16.25'		
(9) Number of Off Street Parking Spaces	N/A		

Other Supporting Material Attached (e.g. site plan, architectural drawing)

Studio Out Building Drawing Drafts

SECTION 4: DEMOLITION

Type of building being demolished: N/A

Area of size: N/A

Type of demolition planned: N/A

SECTION 5: SIGNATURES (both signatures required)

The information given on this form is full and complete and is, to the best of my knowledge, a true statement of the facts in relation to this application for a Development Permit.

I also consent to an authorized person designated by the municipality to enter upon the subject land and buildings for the purpose of an inspection during the processing of this application.

DATE: 2025-01-28

Applicant

Registered Owner

Information on this application form will become part of a file which may be considered at a public meeting.

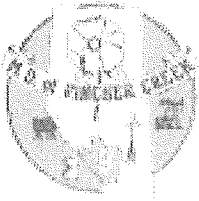
IMPORTANT NOTES:

THE DEVELOPMENT OFFICER MAY REFUSE TO ACCEPT AN APPLICATION FOR A DEVELOPMENT PERMIT WHERE THE INFORMATION REQUIRED HAS NOT BEEN SUPPLIED OR WHERE THE QUALITY OF SUCH INFORMATION IS INADEQUATE TO PROPERLY EVALUATE THE APPLICATION.

1. In addition to completing this application form in its entirety, an application for a development permit shall be accompanied by the following information, where relevant:
 - (a) a lot plan at scale to the satisfaction of the Development Officer showing the size and shape of the lot, the front, rear and side yards, any provision for off-street loading and vehicle parking, access to the site, and the location of public utility lines, waterbodies and treed areas;
 - (b) a scaled floor plan and elevations where construction is proposed;
 - (c) at the discretion of the Development Officer, a Real Property Report as proof of location of existing development and a copy of the Duplicate Certificate of Title indicating ownership and encumbrances;
 - (d) if the applicant is not the registered owner, a written statement, signed by the registered owner consenting to the application and approving the applicant as the agent for the registered owner.
2. A non-refundable processing fee of an amount determined by Council shall accompany every application for a development permit.
3. Failure to complete the application form fully and supply the required information, plans and fee may cause delays in processing the application.
4. All development permits shall contain the following informative:

“ANY DEVELOPMENT CARRIED OUT PRIOR TO THE EFFECTIVE DATE OF THE APPROPRIATE DEVELOPMENT PERMIT IS DONE SOLELY AT THE RISK OF THE APPLICANT AND/OR LANDOWNER.”
5. In accordance with the *Municipal Government Act*, a development authority must, within 20 days after the receipt of an application for a development permit, determine whether the application is complete.

A decision on a completed application must be made within 40 days. After the 40-day period the applicant may deem the application refused and file an appeal within 21 days, of the expiry of the decision date.
6. Every approach to a residence is entitled to a civic address sign, supplied by the municipality. If your location does not already have a sign, please contact the MD Administration Office to make arrangements as soon as your approach has been constructed.



MD of Pincher Creek No. 9

P.O Box 279
1037 Herron Avenue
Pincher Creek Alberta T0K 1W0
(403) 627-3130
Website: www.mdpinchercreek.ab.ca
Email: info@mdpinnercreek.ab.ca

Jeff Schmode

PAYMENT RECEIPT

Receipt Number:	65588
Date:	1/29/2025
Initials:	KO
GST Registration #:	10747347RP

Receipt Type	Roll/Account	Description	QTY	Amount	Amount Owing
General	DEVE	Development Application Fees	N/A	\$150.00	\$0.00

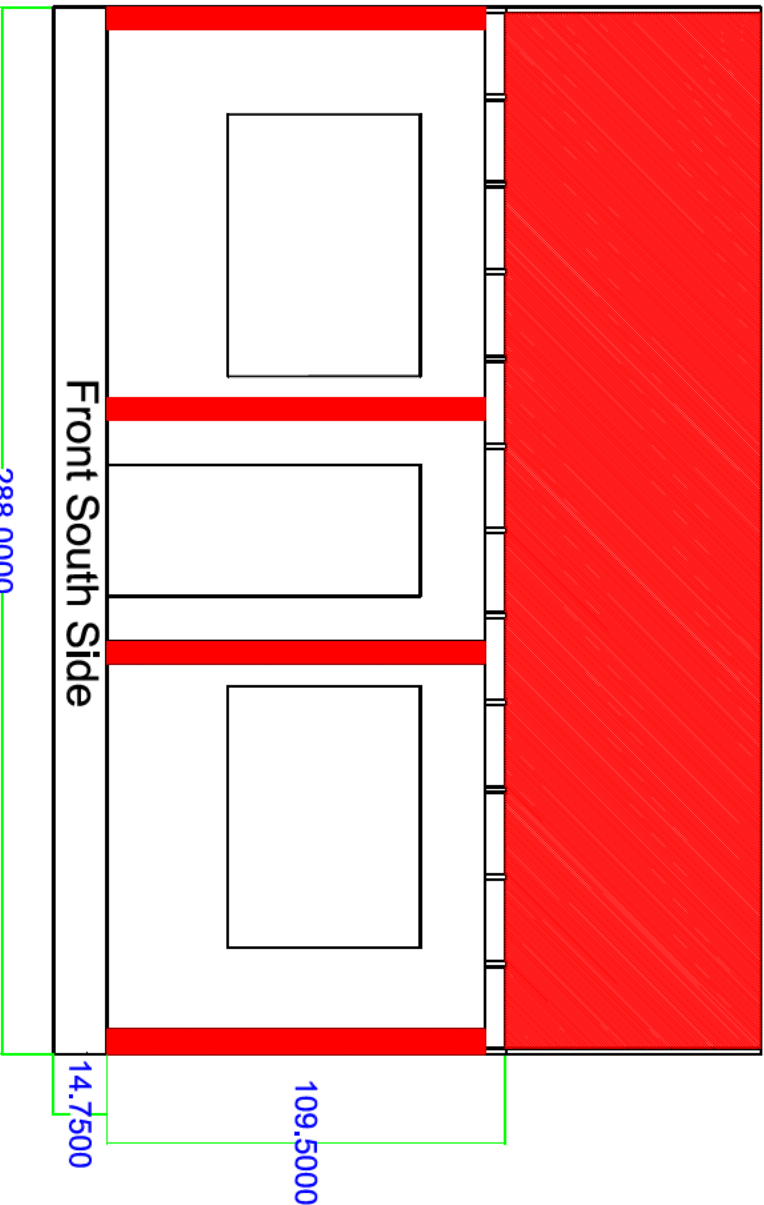
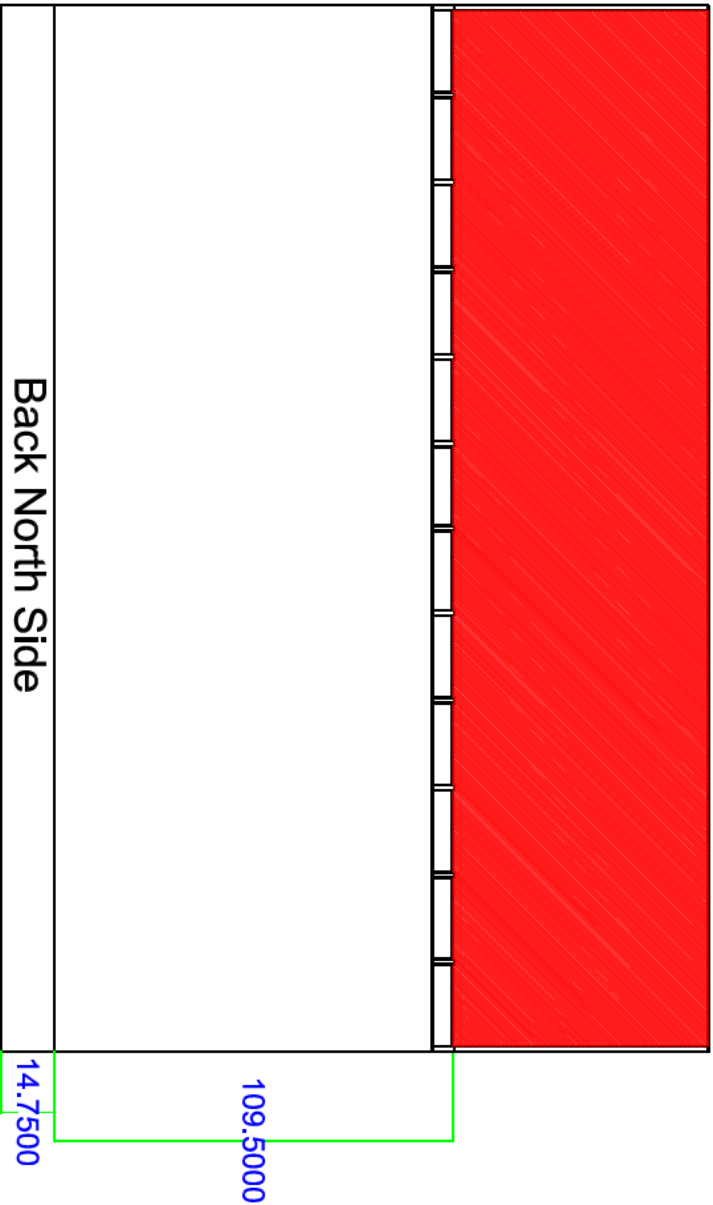
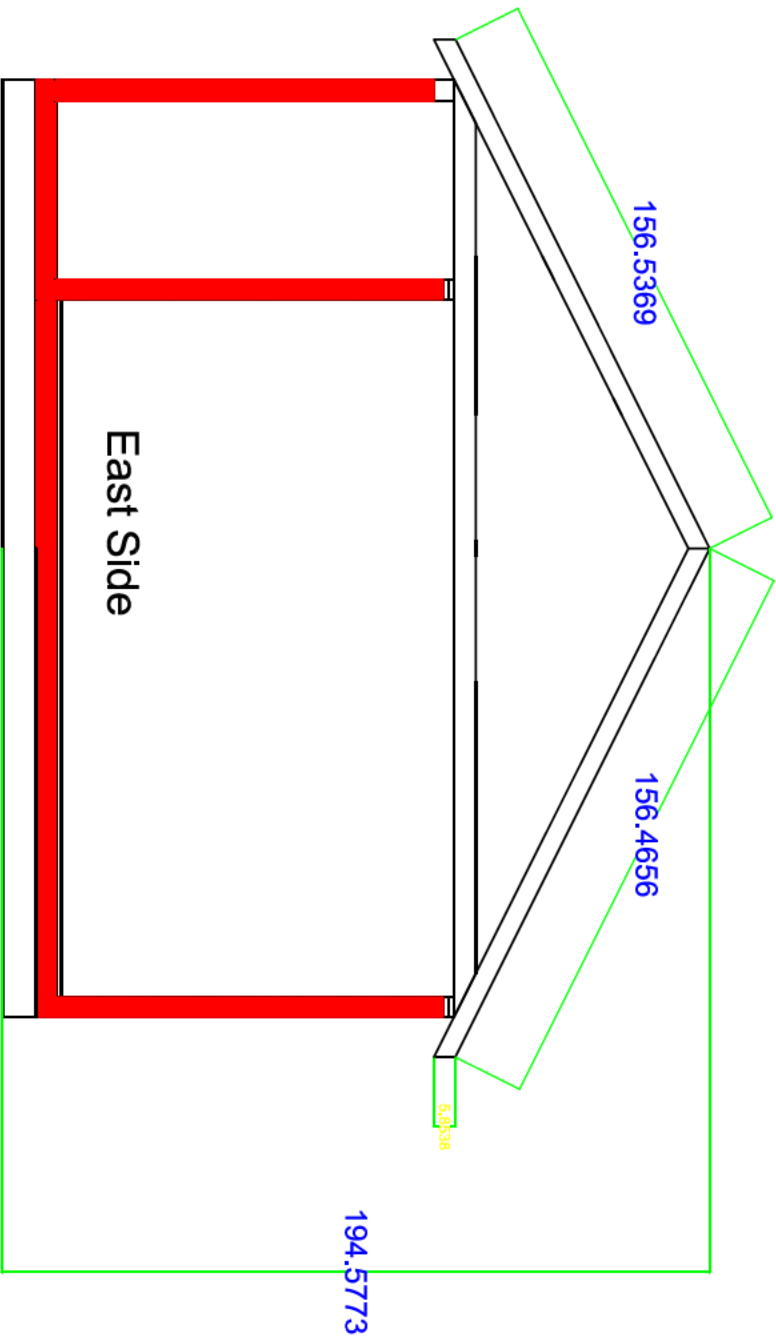
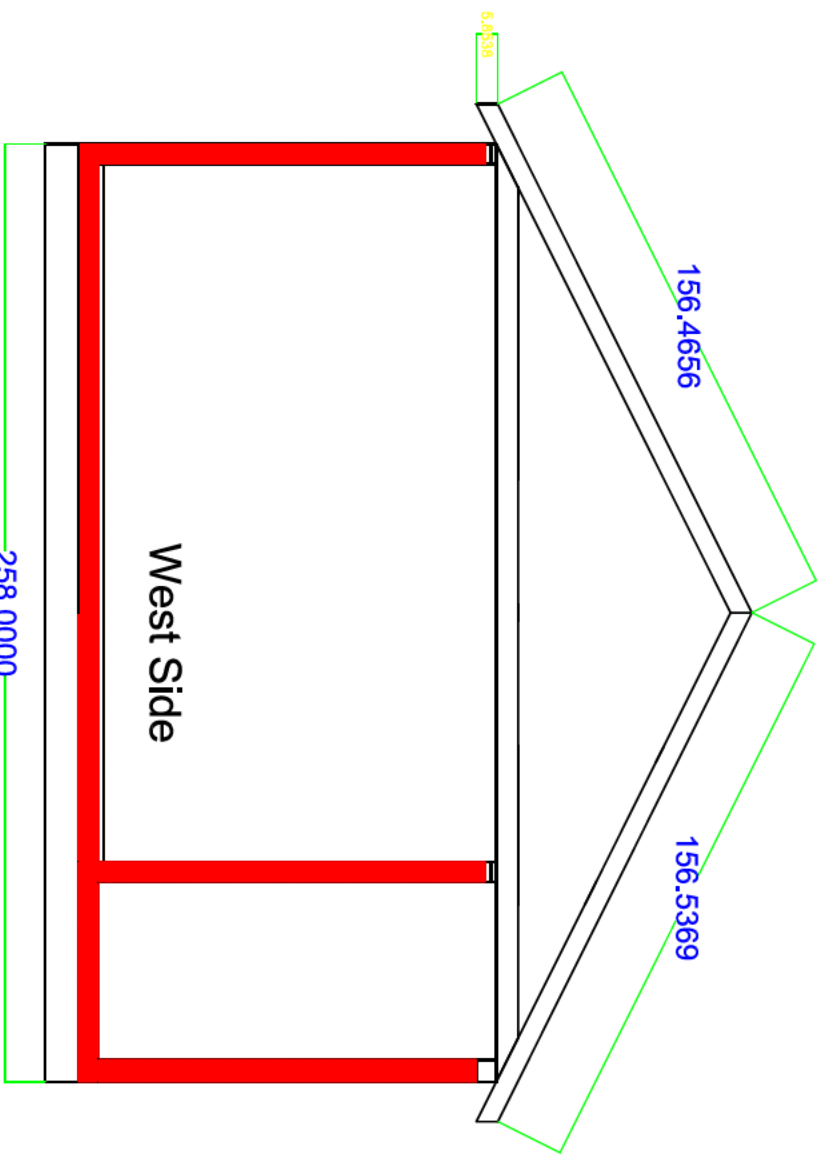
Subtotal:	\$150.00
Discount	\$0.00
GST	\$0.00
Total Receipt:	\$150.00

Visa:	\$150.00
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Total Amount Received:	\$150.00
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SCHMODE 1222 TWP RD 9-0
MD of Pincher Creek, AB

Studio Out Building with Single Bed Room Jan 29, 2025
24' Long x 21.5' Wide x 16.25' Tall



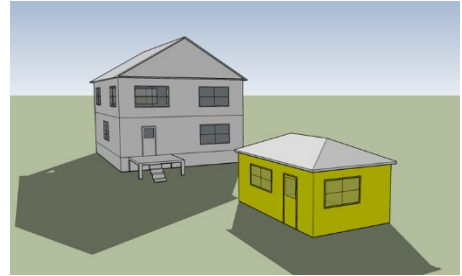
- 48.35 In conjunction with the approved emergency response plan, as a condition of development each individual accommodation site must have an address post equipped with a numbered and color coded sign. Each entrance to the site must contain a key map of the site locations with road names and directional signage.

SECTION 49 GARDEN AND SECONDARY SUITES

GARDEN SUITE

49.1 A Garden suite shall:

- (a) not exceed one (1) storey in height;
- (b) require a development permit which shall expire in 5 years and is renewable once at the discretion of the Development Officer based on the original criteria of the approval and renewable thereafter at the discretion of the Municipal Planning Commission.

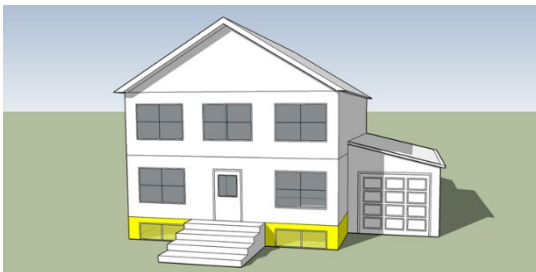


- 49.2 A Garden suite shall be used to house individuals providing care to or receiving care from the resident(s) of the principal building.
- 49.3 Garden suites are subject to National Building Code – Alberta Edition.
- 49.4 The structure being proposed shall be shown to be readily moveable upon expiry of the approval period.

SECONDARY SUITE

49.5 All secondary suites shall meet the following general requirements:

- (a) only one secondary suite may be developed where a 'Single-detached dwelling', 'Modular home', 'Manufactured home', or 'Moved-in dwelling' has been established;
- (b) in all districts where listed as a permitted or discretionary use, a secondary suite may be considered (as shown in figures below) as a basement suite, a garage suite under the roof of the principal dwelling, and as a single storey at grade garage suite.





- (c) in the Agriculture – A, Airport Vicinity Protection – AVP, Grouped Country Residential – GCR, Urban Fringe – UF, Wind Farm Industrial – WFI districts where listed as a permitted or discretionary use, a secondary suite may be considered (as shown in figure below) as a second storey garage suite.



- (d) all required off-street parking shall be designed and developed to the standards set out in Section 56;
- (e) development of a new secondary suite shall meet all requirements of the National Building Code – Alberta Edition and Alberta Fire Code as a condition of approval;
- (f) a secondary suite shall not be separated from the principal dwelling or any part of the title on which the principal dwelling is located through a condominium conversion or subdivision;
- (g) a secondary suite shall not be permitted in a ‘Duplex’, ‘Semi-detached dwelling’, ‘Multi-unit dwelling’, ‘Rowhouse or Townhouse’, ‘Manufactured home park’, or ‘Apartment’;
- (h) the Development Authority, as a condition of approval, may request proof that the utility services to the principal dwelling are capable of carrying the additional load of the proposed secondary suite;
- (i) a secondary suite shall not be developed on the same title as a Home occupation (see Section 47), unless it can be proven to the Development Authority that the impact resulting from the home occupation is limited, adequate parking is provided, and the amenities of the neighbourhood are not negatively affected; and
- (j) the exterior finish of a detached secondary suite, including but not limited to, materials, textures, and colours, shall match or complement the exterior finish of the principal dwelling, to the satisfaction of the Development Authority.

49.6 Existing secondary suites include any suite that existed prior to the passing of this bylaw. In addition to the requirements of Section 49.5 of this Section, excepting thereout the building code requirement of 49.5(d) if it can be proven that the suite was developed prior to December 31, 2006, existing secondary suites shall meet the following requirements;



- (a) an existing secondary suite developed prior to December 31, 2006, shall meet all applicable requirements of the Alberta Fire Code as a condition of approval;
- (b) an existing secondary suite developed after December 31, 2006, shall comply with all National Building Code – Alberta Edition and Alberta Fire Code requirements, including separate heating and ventilation systems for the principal dwelling unit and secondary suite, as a condition of approval;
- (c) an existing secondary suite shall meet all other requirements of this Schedule and any other applicable Section or schedule of this bylaw; and
- (d) should an existing secondary suite be unable to reasonably meet the requirements of this bylaw, to the discretion of the Development Authority, the use of the suite for rental purposes shall not be permitted.

SECTION 50 SURVEILLANCE SUITES

- 50.1 A development permit for a surveillance suite will only be issued if the surveillance suite is clearly compatible with and subordinate to the principal use of the subject parcel. Moreover, in the opinion of the Development Officer or Municipal Planning Commission, as the case may be, the placement of a surveillance suite shall be compatible with all existing, principal development/land uses on adjacent properties and shall not interfere with future principal development/land uses of adjacent properties.
- 50.2 Where a surveillance suite is attached to the building on a site by a roof, an open or enclosed structure, floor or a foundation, it is to be considered a part of the principal building.
- 50.3 The minimum and maximum floor area of any detached surveillance suite shall be 50 m² (538 ft²) and 102 m² (1098 ft²) respectively.
- 50.4 Where a surveillance suite is a manufactured home unit, the following shall apply:
 - (a) the unit shall have a Canadian Standards Association certification or equivalent, proof of which shall accompany the development permit application;
 - (b) the unit shall be secured and skirted to the satisfaction of the Development Officer or Municipal Planning Commission, as the case may be.

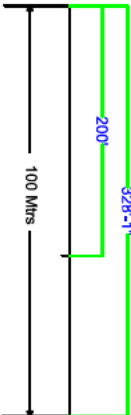
DWELLING UNIT OR SLEEPING UNIT AS AN ACCESSORY USE

- 50.5 When considering an application for “Dwelling Unit as a secondary use” or “sleeping unit as an accessory use”, the Municipal Planning Commission shall, among other factors, consider:
 - (a) the size of the parcel;
 - (b) the impact of the proposed use on the existing water and sewer systems;
 - (c) side yard setbacks in relation to adjacent uses; and
 - (d) potential traffic generation, and parking requirements.



SCHMODE DRAWING #1 LOCATION Accuracy +/- 3 meters

SCALE OF DRAWING



WEST



MAGNETIC NORTH



EAST



MAGNETIC SOUTH



SCHMODE 1222 TWP RD 9-0

MD of Pincher Creek, AB

Road Plan 2765 JK

TWP RD 9-0

TWP RD 9-0

TWP RD 9-0

RR13

RR13

RR13

RR13

1061'-11⁵/₈"
323.68 Mtrs

279.26 Mtrs

91°-3¹/₂"

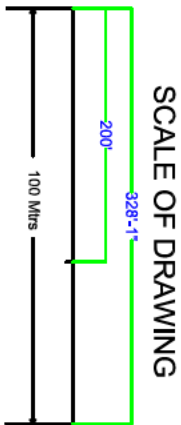
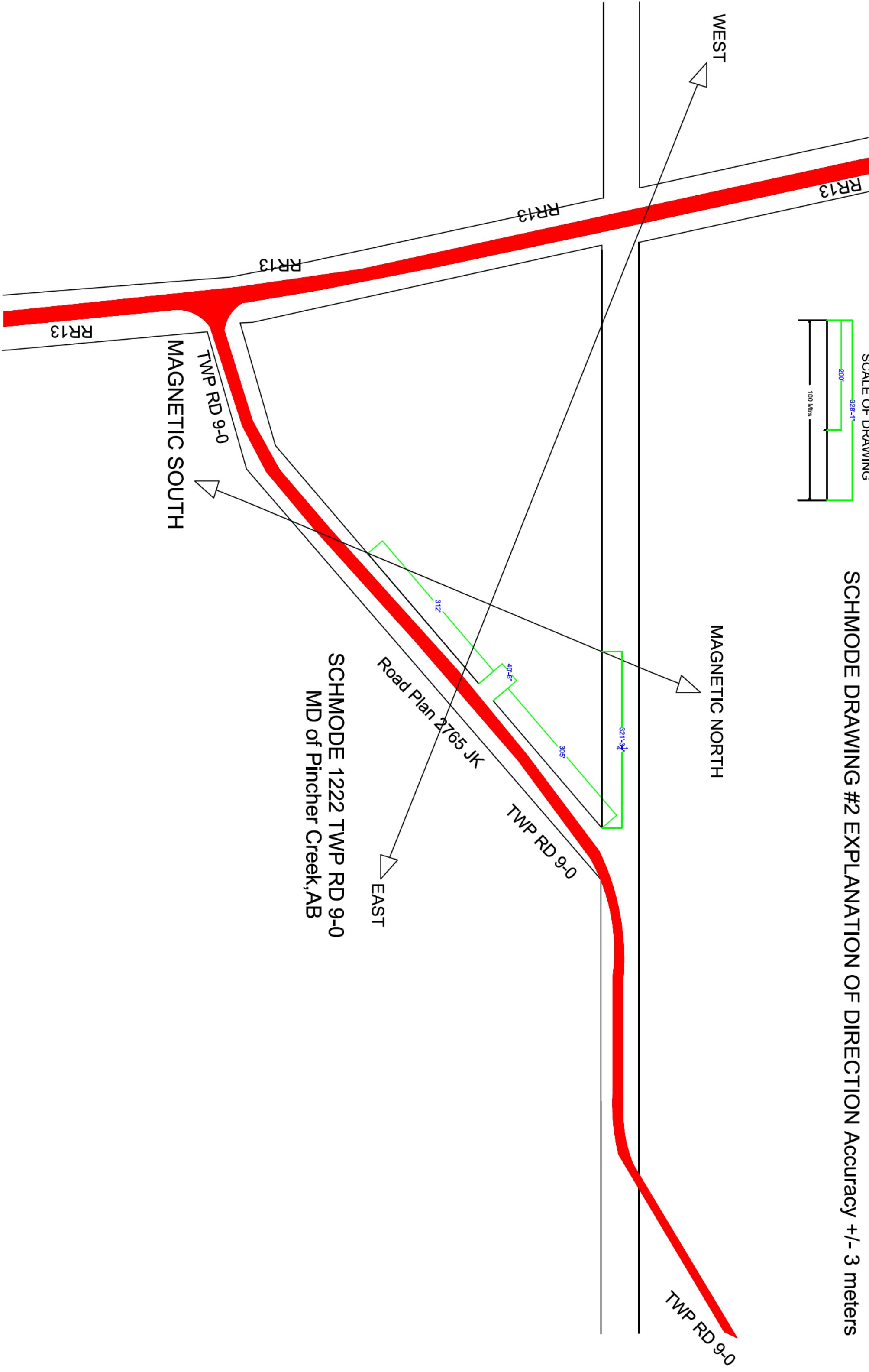
198.32 Mtrs

65°-7¹/₂"

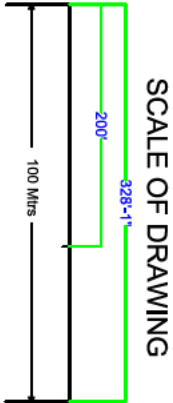
70.84 Mtrs

23°-5"

SCHMODE DRAWING #2 EXPLANATION OF DIRECTION Accuracy +/- 3 meters



SCHMODE DRAWING #3 Location of Buildings Accuracy +/- 3 meters

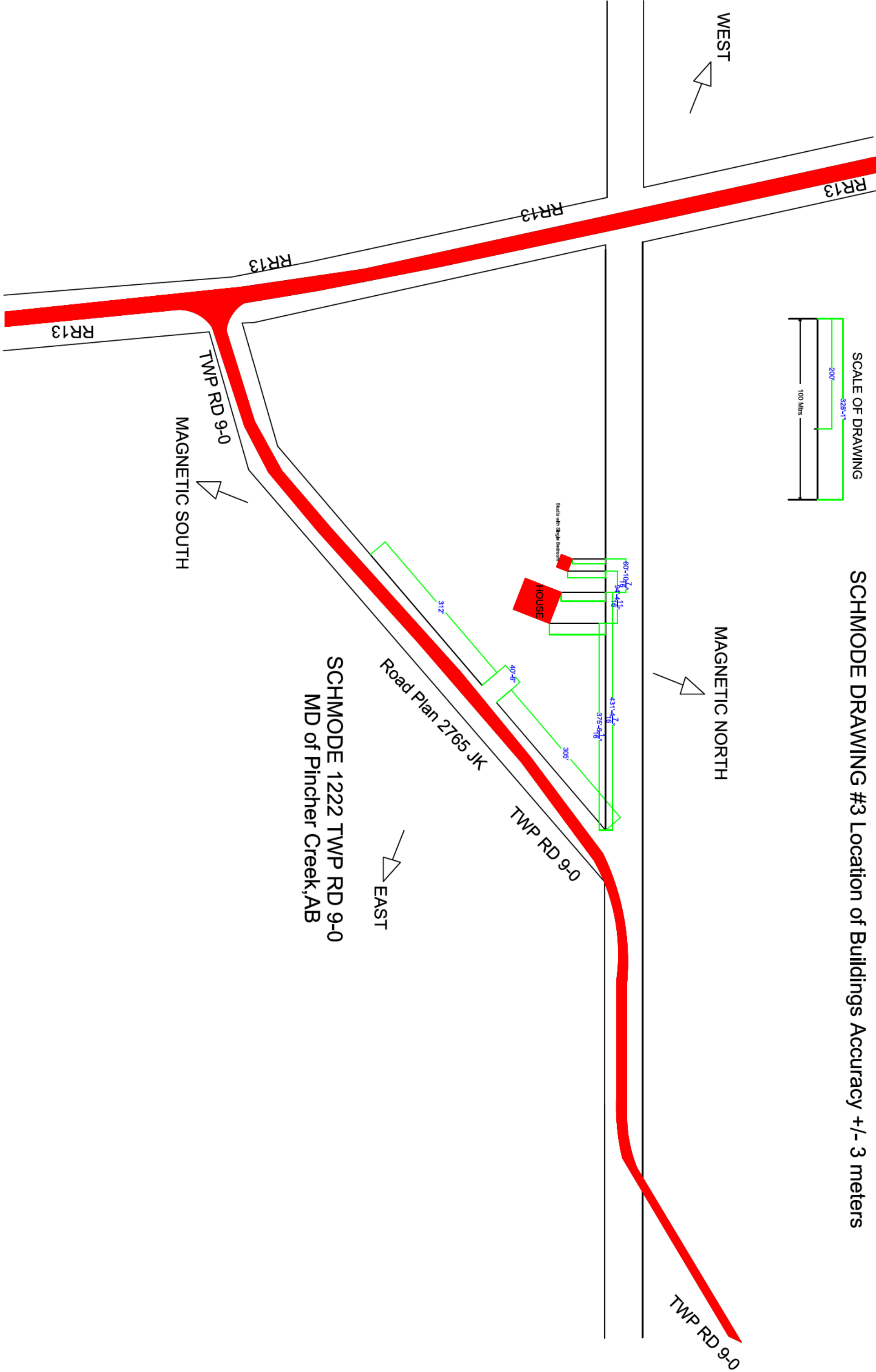


WEST

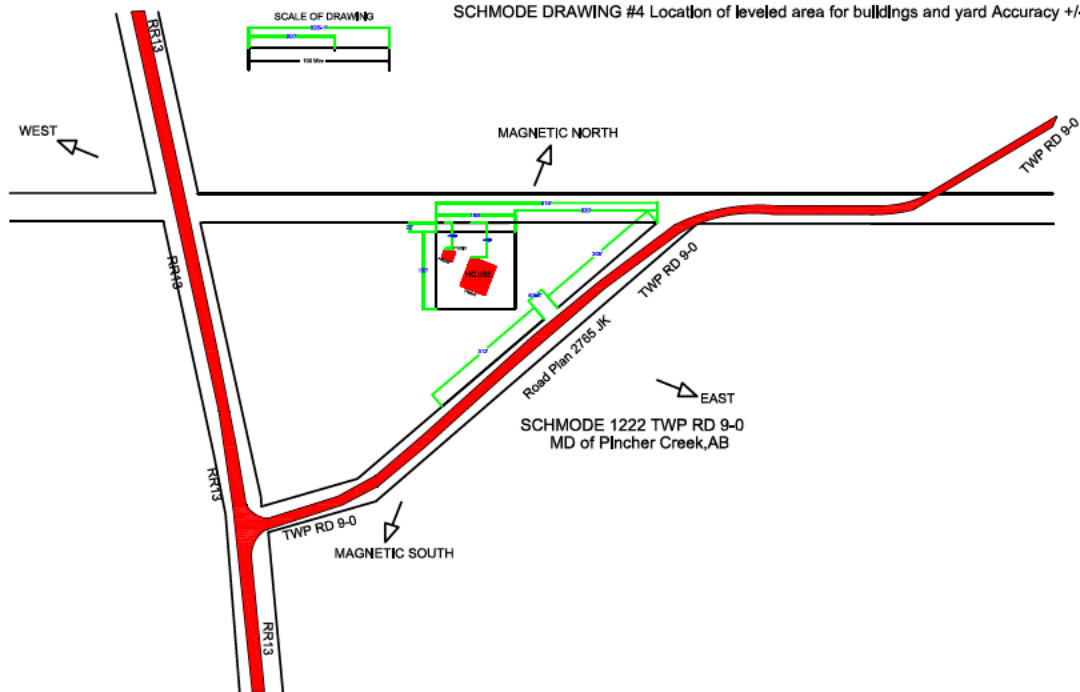
MAGNETIC NORTH

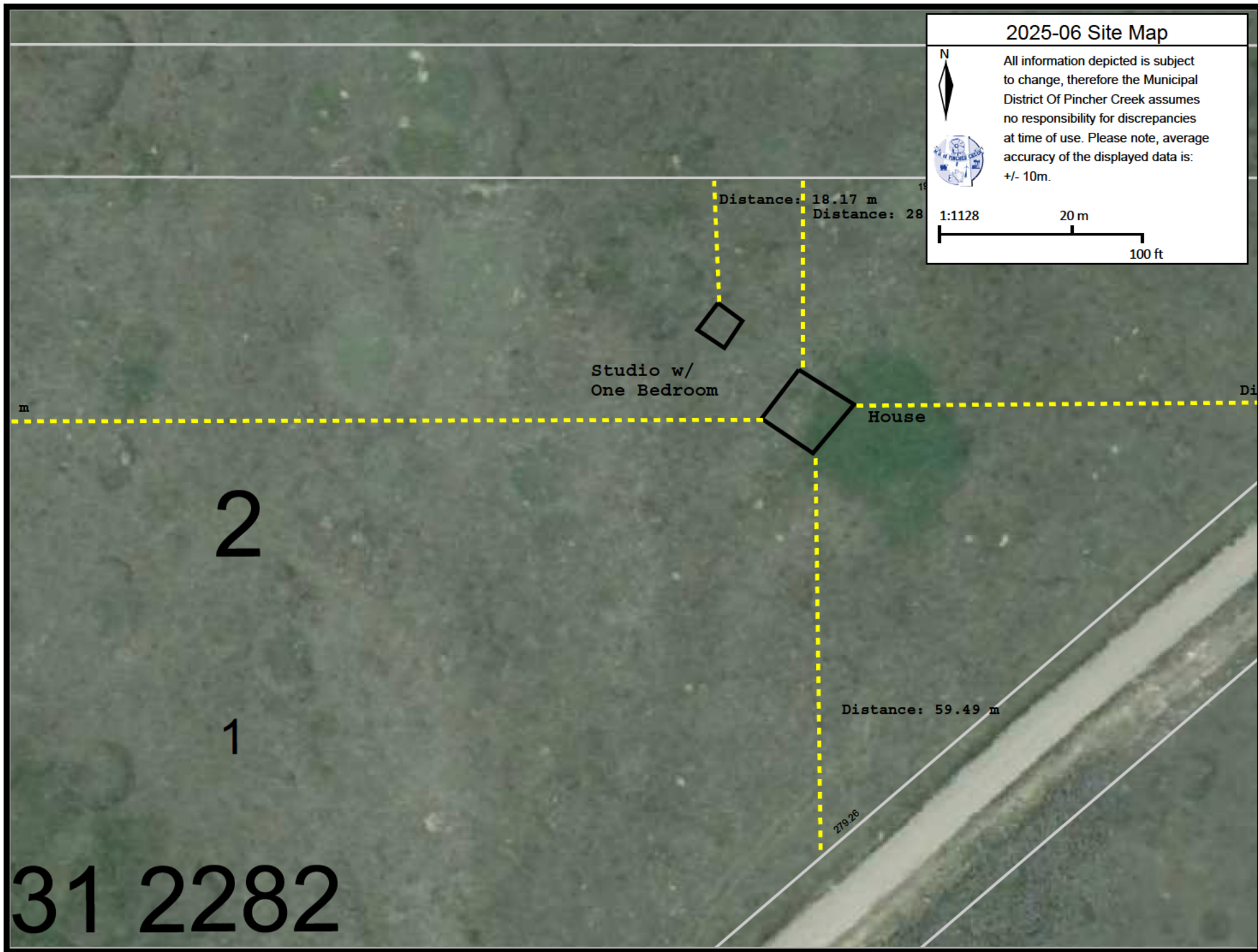
EAST

MAGNETIC SOUTH



SCHMODE DRAWING #4 Location of leveled area for buildings and yard Accuracy +/- 3 meters





2025-06 Site Map

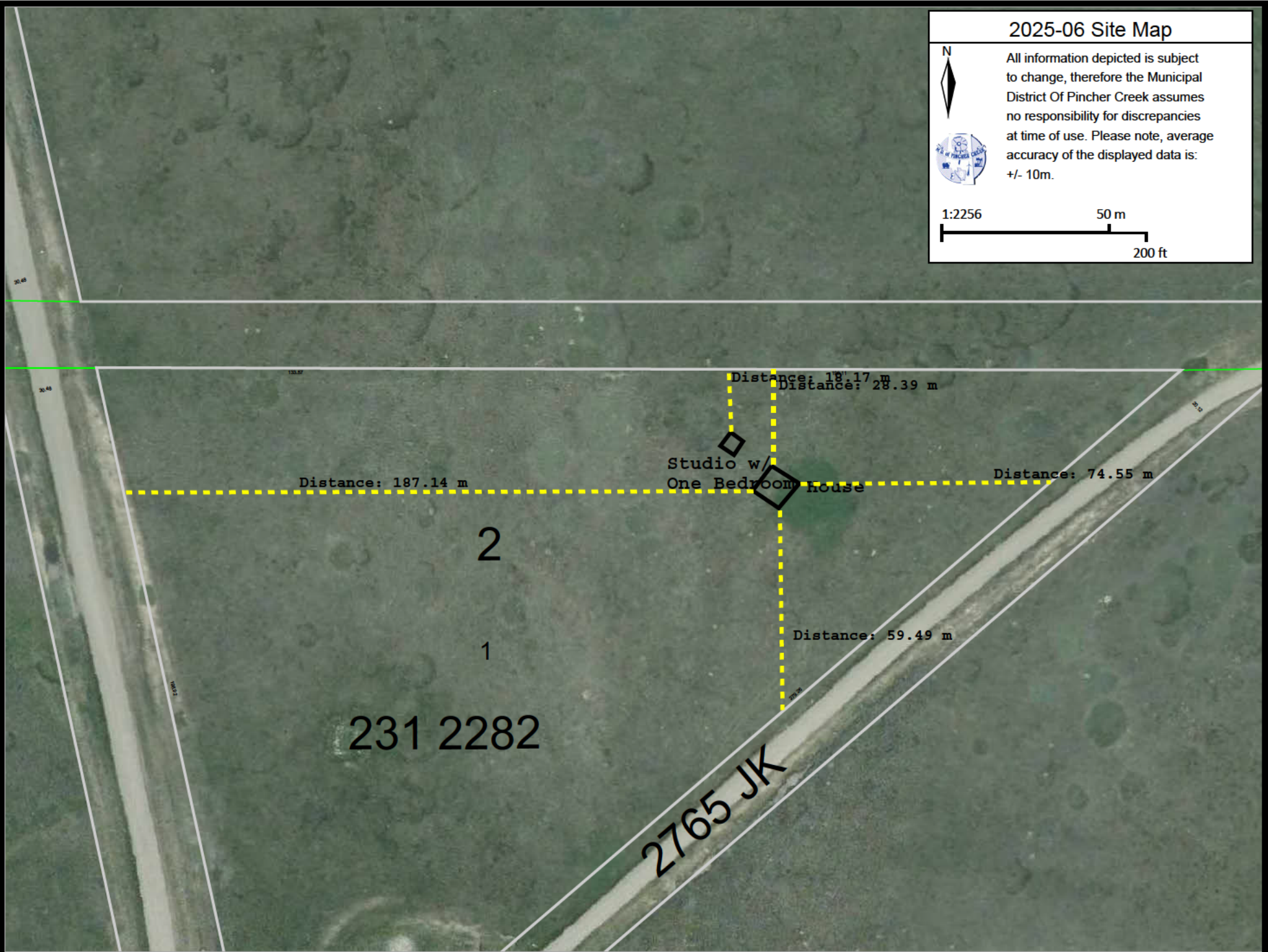


All information depicted is subject to change, therefore the Municipal District Of Pincher Creek assumes no responsibility for discrepancies at time of use. Please note, average accuracy of the displayed data is: +/- 10m.

1:2256

50 m

200 ft



2025-06 Site Map



All information depicted is subject to change, therefore the Municipal District Of Pincher Creek assumes no responsibility for discrepancies at time of use. Please note, average accuracy of the displayed data is: +/- 10m.

1:3500

100 m

200 ft

231 2282

2765 JK

Studio w/
One Bedroom

Distance: 187.14 m

Distance: 18.17 m
Distance: 28.39 m

Distance: 74.55 m

Distance: 59.49 m

DEVELOPMENT OFFICER REPORT

February 2025

Development / Community Services Activities includes:

- Feb 4 Planning, Subdivision & MPC Meeting
- Feb 10 Next Generation 9-11 Meeting
- Feb 10 Dispatch / Monitoring / Mapping Discussion (for CPO)
- Feb 11 Committee & Council Meeting
- Feb 12 Road Upgrades and Development Meeting
- Feb 13 Brownlee's Emerging Trends Session
- Feb 14 South Canadian Rockies Board Meeting
- Feb 17 Family Day
- Feb 24 Rezoning – Landowners Meeting
- Feb 25 Committee & Council Meeting
- Feb 26 CPO Candidate Interview
- Feb 26 Rezoning – Landowners Meeting
- Feb 26 Road Development Meeting
- Feb 27 CPO Candidate Interviews
- Feb 27 Administration Safety Meeting

PLANNING DEPARTMENT STATISTICS

Development Permits Issued by the Development Officer for February 2025

No.	Applicant	Division	Legal Address	Development
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Development Permits Issued by Municipal Planning Commission February 2025

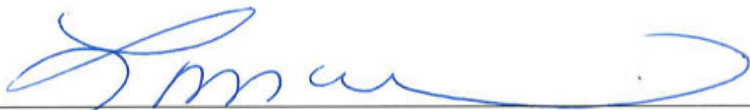
2024-57	Jessie Young	5	SW 20-10-2 W5	Secondary Suite
2025-03	Gin Lupton	3	Ptn of NE 21-6-1 W5	Accessory Building - Variance

Development Statistics to Date

DESCRIPTION		2025 To date (Jan)	2024	2023	2022
Dev Permits Issued	2 – Feb	5 3 -DO 2 -MPC	54 38 -DO 16 -MPC	49 31 -DO 18 -MPC	48 29 – DO 19 - MPC
Dev Applications Accepted	3 – Feb	9	58	54	49
Utility Permits Issued	1 – Feb	2	23	35	12
Subdivision Applications Approved	1 – Feb	1	12	5	8
Rezoning	0 – Feb		1	0	5
DESCRIPTION		2025 to Date (Feb)	2024	2023	2022
Compliance Cert	0 – Feb	0	34	21	32

RECOMMENDATION:

That the report for the period ending February 28, 2025, be received as information.



Prepared by: Laura McKinnon, Development Officer

Date: February 27, 2025

Respectfully Submitted to: Municipal Planning Commission

Exemptions in Planning

Federal and provincial jurisdiction is protected through legislative exemptions, sometimes leaving local approval processes on the sideline.

The paramountcy of the federal and provincial governments is well recognized by municipalities. In many cases, higher-order governments can undertake actions that are exempt from the municipal process applied to non-government proponents of the same activity. Crown entities also exist to deal with matters of a provincial or federal interest, despite that impacts are felt the most locally. Municipalities often retain some ability to influence higher-order processes, and need to understand the various exemptions and processes in order to best fulfill their mandate.

Exemptions Context

Since municipal authority flows from provincial legislation, municipal powers cannot exceed those the province could validly delegate. Hence, any municipal action that conflicts with federal or provincial legislation will be ultra vires. These specific rules are classified as exemptions and can be found throughout many legislative documents.

For the purposes of this periodical, an exemption can simply be defined by the legislative powers established or enacted by the province or federal government that limit the powers provided to municipalities under the *Municipal Government Act*, including the powers under Part 17 Planning and Development. Whereas Part 17 provides broad scope for municipalities to govern subdivision and development, there are many aspects of these processes that are limited in favour of a Crown exception. Still, while a Crown approval will address the predominant aspects of a development, municipalities often retain the ability to address certain matters – either those expressly prescribed to it or matters not dealt with by the higher order government. The result of this multi-jurisdictional approval matrix often leaves questions as to jurisdictional scope and the timing of approvals relative to one another.

This periodical will identify the exemptions found in provincial legislation as well as the federal exemptions and explore the extent to which case law has either protected the Crown or limited the scope of the exemption.

Legislative Framework

Exemptions under Section 14 of the *Interpretation Act* state that the MGA is not binding on His Majesty. Thus, where the province is undertaking development, it is not required to obtain subdivision or development approvals although, in fact, it often does. Where the province has leased or transferred title to another party, that party must comply with the requirements of the *Act*. The federal government and federal government agencies are also exempt.

The legislative enactment of these exemptions are not found in a one stop shopping document but are spread across many federal and provincial Acts and Regulations. One of the most obscure is the *Universities Act* which in Section 62 states that Part 17 of the MGA does not apply to the use or development of real property owned by or leased to a university. This played out in a very real sense for the County of Newell when it was reported to municipal staff that construction was occurring in a remote rural area. Upon inquiry it was found that the construction was for research accommodation of University of Alberta students.

Under Section 618 of the MGA, subdivision or development for roads, wells, or batteries, pipelines, designated Crown lands, and the geographic area of Metis settlements is exempt from the provincial regulations and municipal bylaws under Part 17 of the Act. The *Planning Exemption Regulation* (AR 223/2000)

List of Developments with Exempt Status*

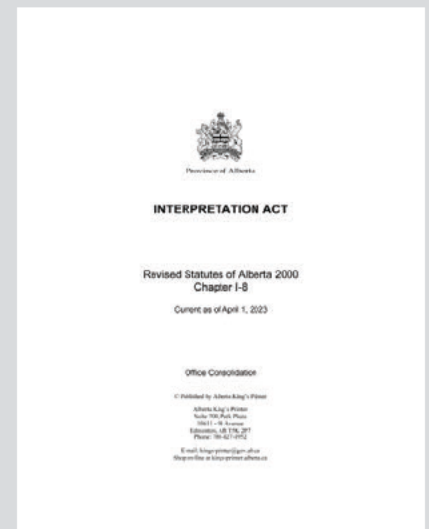
Provincial:

Gravel pits, confined feeding operations, oil and gas, power plants, irrigation, highways, powerlines, universities, provincial recreation development, etc.

Federal:

Airports, railways, ports of entry, telecommunications, navigable waters, military bases, etc.

***Note: This is not a comprehensive list of every exemption but a general list for quick reference only.**



Interpretation Act Revised Statutes of Alberta 2000 Chapter I-8 Section 14 Crown not Bound

No enactment is binding on His Majesty or affects His Majesty or His Majesty's rights or prerogatives in any manner, unless the enactment expressly states that it binds His Majesty.

Municipal Government Act

620 Conditions prevail

A condition of a licence, permit, approval or other authorization granted pursuant to an enactment by the Lieutenant Governor in Council, a Minister, a Provincial agency or Crown-controlled organization as defined in the Financial Administration Act or a delegated person as defined in Schedule 10 to the Government Organization Act prevails over any condition of a development permit that conflicts with it.



Rules on overlapping jurisdiction for feedlots can be found in the ORRSC Spring 2022 Periodical

exempts other developments such as hydro transmission and electric distribution lines and irrigation works undertaken by an irrigation district from the planning provisions.

Under Section 619 of the MGA, where a licence, permit, approval or other authorization is required by the NRCB, ERCB, AER, AEUB, or AUC, these boards have jurisdiction over the decision. But municipalities may have some jurisdiction over a portion of the approval. If there is no direct conflict with provincial legislation, local bylaws can establish rules to address development matters not dealt with by the provincial entity and the two enactments can stand together.

Land Use Context

In the land use application of the exemption sections, each legislated entity must be understood as to whether it allows municipal participation in the approval process. Often the project gives an indication of how the interaction between the federal or provincial governments will be approached. Is the work being driven by the municipality (or one of its citizens) or is the project being driven by the government entity? Where the work is driven by and is directly related to the primary business of the government entity like railways, airports, irrigation districts, transmission lines, pipelines, and provincial highways, no direct local approval will be sought or is legally required. A cursory notice may be sent by the entity beginning the work or they may seek municipal approval for impacts to roads, but no land use process will be triggered.

Where the process is being put forward via a landowner or proponent (on behalf of a landowner) for uses such as telecommunication towers (federal), feedlots (NRCB), power plants (AUC), or major recreational developments (NRCB), overlapping jurisdiction may be applicable. For example, telecommunication tower processing occurs under Innovation, Science and Economic Development Canada who prefer municipalities follow their *CPC-2-0-03 — Radiocommunication and Broadcasting Antenna Systems* protocol (or a locally devised version of the protocol). The process allows for a municipality to put forward rational planning reasons to oppose a proposal, but the reasons or approval are to take the form of a letter of concurrence or non-concurrence and not a municipal permit. Ultimately, the ISSED can override the local preference and issue the tower proponent an approval.

Similarly, guidance is provided for processes involving land use planning under the legislative protections provided by MGA s. 619 and interactions with the AUC, NRCB, AER and ERCB. This guidance simply limits a municipality to processing development permits only where those government agencies under s. 619 have not taken a stance or where their legislation defines the local permit parameters. For example, under the AUC approvals for solar or wind power plants, the agency concedes setback from roadways and lot lines to the municipality who include the rule as conditions to a municipal permit. Lately, it is a struggle for the municipality to be heard and have its jurisdiction recognized by proponents. These local requirements end up being fodder in the AUC appeal process.

Since the adoption of the South Saskatchewan Regional Plan as an overarching plan which both the municipalities and the government agencies listed under s.618 and s.619 must abide, no real challenge has been put forward to question how an entity like the AUC is meeting the balance of shared outcomes for all in the region.

Case Law

In one leading case establishing the limit of the legal status of Crown exemptions, the Application of Hours of Work Act (British Columbia) to Employees of the Canadian Pacific Railway in Empress Hotel, Victoria (City) in 1948 concluded that generally, any activity undertaken by a federal railway company on its lands that cannot be characterized as an integral part of its railway operation in a functional or business sense, is likely subject to provincial planning legislation. This position has been supported in municipal interactions with all kinds of federal and provincial entities ever since. For example, it is not uncommon for rural municipalities to be involved in pipeline installations or electrical substations where the development has aspects that are outside the exemption. Laydown yards, work camps, and offices are uses not directly related to the conveyance of energy and therefore require municipal development permits.

Another wrinkle to the extension of the Crown immunity from Part 17 is the question of whether a lessee of provincial or federal land is shielded from local planning requirements. Simply stated yes, it is in the federal instance, unless the Crown has specifically stated in the lease agreement, that the lessee is not immune from local approvals. In the provincial scenario the lessee is not immune from Part 17 unless the provincial crown remains part of the development and extends its exemption power to cover the lessee.

The MD of Pincher Creek has development approval examples of this through leases at Beauvais Lake and Castle View Ridge (on the Oldman River Dam) where the lessee of Crown recreation land must obtain local approval for development permits. The Crown has done so for both planning and building code reasons citing their lack of capacity to run the processes. This is the opposite of the Crown lease land at Castle Mountain Resort where the Crown has full approval authority of all the ski slope development and the MD only has jurisdiction over the private land at the base of the mountain. Here the sensitivity of the surrounding environment warrants Alberta Environment and Parks oversight out of the Crowsnest Pass provincial office.

Local Impacts

The impact on municipalities is physical, permanent and tangible. Once established the Crown impositions remain locked into the landscape and for many citizens hard to forgive. The City of Brooks recently had a CPKC Rail building erected at the end of their main commercial core adjacent to the Town hall and its associated park. By the time CPKC had decided in its corporate offices that a building was to be added to their operation, the City's

Example of s.619 Paramourncy in Lethbridge County

In 2018, Acestes Ventures Ltd, applied to construct and operate a 22-megawatt solar power plant designated as the Coaldale Solar Project in Lethbridge County. Acestes was advised at the time by Lethbridge County that a re-designation of the land was required because the project did not comply with the County's land use bylaw, as the bylaw of the day prohibited a commercial solar facility on good quality irrigated agricultural lands.

County Council denied Acestes' land re-designation application, stating that it made the protection of high-quality agricultural lands a priority and that irrigated land is a limited resource that it strives to protect from non-agricultural developments.

Despite the County's rezoning refusal, the AUC approved the Acestes project in 2019. The AUC concluded that the project was in the public interest - seemingly putting more weight on the project's close proximity to a substation against the loss of irrigated agricultural land. After the rendering of the AUC decision, Lethbridge County approved a follow-up rezoning application in accordance with s.619(2) & (3) of the MGA.

Example of Planning Exemption Regulation in Vulcan County

The Regulation allows for “exclusive use areas” pursuant to Section 50 of the Condominium Property Act to be established without the requirement for subdivision approval. The intent of this provision was put to test on Travers Reservoir in Vulcan County where the proponent of a simple building condominium (which does not require subdivision approval) attempted to establish hundreds of exclusive use areas for campground sites. The building condo plan was registered but ultimately removed by the Land Titles Office after the fact. Land Titles in their response to cancellation of the registered plan wrote:

“...this letter [is issued] pursuant to s. 187 of the Land Titles Act to inform you that the plan fails to meet the requirements under s.76(1) of the Land Titles Act. Specifically, the plan is in substance a subdivision that requires the approval of a competent authority. Subdivision approval is required for the Plan...”

In this example the stop gap protection for the municipality was exercised by a government department.



ability to cite concerns would legally be set aside and a period of adjustment would begin. Resultant discussion has brought about landscaping, fencing and murals to address the mistake. But imagine if CPKC had simply asked about siting the building prior to giving the orders to do so...the municipality would have suggested an alternative location which, given the land holdings of the company, could surely have been accommodated. Good land use planning is always about weighing options and being sensitive to those that are adjacent.

An example of a process where collaboration resulted in a positive planning outcome occurred in the MD of Pincher Creek where the Alberta Energy Systems Operator (AESO) inquired with the municipality as to where the MD had major planning policies that would be contrary to electrical transmission line development. The MD identified an Area Structure Plan around the Oldman River Reservoir which planned for residential development on the north side of the dam and potential for wind power development on the south side. The AESO needed to be educated on why the MD would prefer transmission development away from residential development but once understood they were able to guide Altalink to not traverse the residential planning area with their infrastructure. Collaboration resulting in recognition of the decades of local planning efforts helped both parties move forward without being fully at odds with each other.

Other situations remain inconsistent and within a grey area of collaboration and varying outcomes. Irrigation districts have the power to create subdivisions for their irrigation works without local approval processes. Often the irrigation districts would proceed with a subdivision and create remnant parcels which would be sold to private landowners. The landowner would then seek to develop a house only to find they had no access or a parcel that failed to meet the minimum standards. Upon denial by the municipality, the complaint of the landowner to the irrigation district would be to either fix the issue or to reimburse them. Irrigation districts have become more open to collaboration where the subdivisions result may be questionable but not always.

Municipalities are encouraged to nurture their relationships with each entity that has exemption legislation. If you have a contact that works collaboratively with a municipality it is well worth the effort to have periodic meetings to discuss and update each other on your individual goings on. This is especially important where the timing of federal and provincial processing and procedures is not readily understood at the local level. Discussion with officials on timely responses in their procedures prove to keep the municipality's involvement relevant rather than being told that a timeline was missed and the response cannot be accepted.

Concluding Remarks

Local land use planning by legal order must understand its place in federal and provincial power structures. Canada is a young country and is continuing to build its infrastructure and federal provincial jurisdiction allows for decision making for the whole to be undertaken on behalf of democratic society. Laux, Frederick A. and Stewart-Palmer, Gwendolyn

Planning Law and Practice in Alberta, Juriliber Limited 2019, concludes their discussion on this topic as follows:

Finally, the proposition can be advanced that, in this day and age, the doctrine of Crown immunity is an anachronism. At a time when equality before the law is entrenched in the Canadian Charter of Rights and Freedoms, R.S.C. 1985, App. II, No. 44, it seems paradoxical that any entity, government or otherwise, should be regarded as being above the law. The doctrine of Crown immunity effects a derogation from the rule of law. Thus, simply stated, every development project ought to meet the requirements of the planning regime, whether public, quasi-public or private. It is hardly an answer to say that to subject the government to its own rules is to unduly impair the government in its operations and, therefore, none of the rules should apply. Indeed, as mentioned previously, as a matter of practice government agencies frequently voluntarily abide by the planning rules. If it can be done voluntarily, should it not be legally required to ensure that all are equal under the law?

Practically, municipalities desire to be included in decisions where subdivision and development processes are overseen by higher levels of government because of the local impacts that these decisions can have regardless of the decision making body. Being heard can provide local insight not attainable from the head offices of governing bodies and their proponents. Nevertheless, it is important that the myriad of exemptions and exclusions to the local planning process are understood by municipalities.

For more information on this topic contact admin@orrsc.com or visit our website at orrsc.com.

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