

DECISION REPORT

OF THE CITY OF MEDICINE HAT

SUBDIVISION AND DEVELOPMENT APPEAL BOARD HEARING

HELD ON TUESDAY, MAY 30, 2023 AT 12:00 PM

APPEAL #1-2023 – DEVELOPMENT APPLICATION

435 NORTH RAILWAY STREET SE

KRISTA AND STEVE NIEMAN (APPELLANTS)

MEMBERS PRESENT: J. Taylor, Chair
A. Steinke, Vice-Chair
Councillor C. Hider
C. Acton
W. Fischer

STAFF PRESENT: J. Robinson, Interim City Clerk (Secretary to the Board)
S. Bell, Administrative Assistant, City Clerk Dept.
R. Sissons, Manager of Planning
B. Irwin, Planning Officer

INTRODUCTORY COMMENTS

At the commencement of the hearing, the Chair stated that the Board is an impartial body and that the members are not employees of the City of Medicine Hat. He noted that decisions of the Board are based strictly on the evidence presented at the hearing, taking into consideration the relevant legislation. The Chair advised that following the public hearing, the Board will review the issues, and a written decision will be rendered. The Chair further advised that all information provided is public information and was available to all interested parties prior to the public hearing, which was publicly advertised.

Prior to hearing submissions on the merits of the appeal, the Chair asked the Board members if, in their opinion, they may have a conflict of interest or bias that may prejudice their decision with regard to this appeal. There were no concerns expressed. He then asked if anyone present believes or has a concern there may be a conflict of interest or bias shown by any member of the Subdivision and Development Appeal Board which may prejudice any decision with regard to Appeal #1-2023. There were no concerns expressed at that time.

BACKGROUND TO THE APPEALS

On April 12, 2023 the Planning & Development Services approved Development Permit PLDP20230102 on the recommendation of the Municipal Planning Commission subject to the following conditions:

- 1 The Development must be completed in its entirety and must conform to Site Development Plans and any other application materials or reports submitted by the applicant and approved in writing by the Development Authority [or any future revision to such plans approved in writing by the Development Authority]. Unless otherwise stated, all conditions of development approval must be completed prior to the commencement of construction.

- 2 Initiation of construction of the Development or the commencement of the land use must be within 1 year from the date the Development Permit was issued by the Development Authority. Consistent construction progress must be maintained, or at the discretion of the Development Authority, the Development Permit may be cancelled. The Development must be completed in its entirety within 2 years from the commencement of construction. At the discretion of the Development Authority, extensions to completion of construction may be granted.
- 3 Planning & Development Services does not review utility design or related infrastructure code compliance as part of a Development Permit approval. It is the responsibility of the developer to identify and comply with the latest edition of all applicable provincial codes and regulations. As a condition of the Development Permit, it is a requirement that the developer undertake (and document) the following prior to the commencement of construction:
 - a) Contact Utility Safety Partners (utilitysafety.ca) to acquire utility locates to identify utility locations (underground, surface, or overhead) and note the required separations between the development and utilities or telecommunications;
 - b) Review registered Utility Right-of-Ways and the agreements and ensure there are no encroachments or grade changes to any part of the proposed development into any UROWS;
 - c) Contact the City of Medicine Hat Electric Utility (403-529-8262) for allowable separations for buildings, structures, construction, or activities to electrical infrastructure; and
 - d) Contact the City of Medicine Hat Gas Distribution (403-529-8190) to discuss conflicts and request infrastructure alterations. The minimum setback from gas distribution lines is 1 meter, gas transmission or high-pressure lines require additional separation.

It is the responsibility of the developer to ensure any conflict or note outlined on the utility locates or through review is resolved with the affected City of Medicine Hat utility department or external service provider. Any relocation, installation, or expansion of utility services (including but not limited to utility mains, service lines, transformers, or meter locations, etc.) is at the developer's expense and must be to the satisfaction of the respective utility departments. Should the utility department require the development to be relocated or altered, new site plans must be submitted to Planning and Development Services for review and approval.

- 4 The development must meet all current and future applicable legislation, including compliance with Alberta Occupational Health and Safety, Alberta Building Codes, and any other relevant regulations and guiding policies.

Further information is contained in the Background Information Report that was forwarded to the Board members, Planning & Development Services Department, the Applicant and the Appellant on Thursday, May 30, 2023.

APPEAL HEARING

The Secretary advised the Board that Public Notice of the hearing was published in the Saturday, May 13, 2023 edition of the *Medicine Hat News*. Fifty-two notifications were sent out to adjacent/abutting and surrounding property owners, and no submissions were received.

The Board reviewed the Appellant's Notice of Appeal, and the following verbal presentations were then heard.

Brad Irwin, Planning Officer provided an overview of the development application.

- The proposed development is for a change of Use to a Community Shelter at 435 North Railway Street SE. The site is located in the Downtown Mixed Use District in the Land Use Bylaw. Community Shelter is a discretionary use in this district. The proposed Community Shelter complies with the regulations of the Land Use Bylaw. Planning and Development Services referred the application to the Municipal Planning Commission for a decision as the Development Authority for increased transparency.
- The application is for a dry/sober (alcohol and drug free) communal living style with a month-to-month rental for up to a year, mandatory day programing that addresses recovery and participant screening to qualify for the program. The facility has a common area upstairs, holds up to ten beds and has a kitchen which will not be used. Daily meals will be delivered from an off-site community centre kitchen. Staff supervision will be on site 24-7 and ideally the number of renters will be six qualified individuals.
- The proposal for a Community Shelter is supported by Council's Strategic Plan for Community Wellness for the City's most vulnerable, including those struggling with housing insecurity, mental health issues and substance use issues.
- The proposed development aligns with the Guiding Policies of the Municipal Development Plan by supporting some of our more vulnerable residents by providing attainable housing options and by pairing that with social support systems.
- The site is situated in the Mixed Use / Primary Residential Area within the River Flats Area Redevelopment Plan (ARP). The River Flats ARP encourages an innovative mix of uses and adaptive re-use of existing buildings. This proposal is an adaptive reuse of a building and an innovative mix of uses both familiar to the River Flats area in an existing building that is capable of accommodating this use. There is little concern this proposal takes away from North Railway Street's function as a primarily commercial street.
- The Community and Social Development section of the River Flats ARP discusses achieving a socially supportive community in areas such as affordable housing and inclusive community programs and facilities. It encourages a diversity of housing types and options to meet the needs of a diverse population and supporting the social components within the City of Medicine Hat's Social Policy.
- The site is located within the Railway district of the Downtown Redevelopment Plan, which is a non-statutory plan. The land use is viewed as a type of residential and a type of service, and therefore, can be considered in general alignment with the Downtown Redevelopment Plan.
- Available on-street parking is close to the site if needed and a few vehicles could also be accommodated at the rear of the site. In a Mixed-Use District there is no requirement for parking stalls.
- This is not an emergency shelter and any changes to the use would require a new development permit application.
- The type of staffing or occupancy is not regulated by the Planning & Development Services. As a conditions of approval, the development must meet all current and future applicable legislation, including compliance with Alberta Occupational Health and Safety, Alberta Building Codes, and any other relevant regulations and guiding policies.

Kirsten Spek (For the Appellant)

- She and her husband are business and property owners and have invested into the North Railway Revival.
- The applicant's development permit application is the same application submitted in 2022 with slightly different wording. At that time, the location was denied as not a suitable location.
- The applicant failed to complete a proper neighbourhood consultation or create an information packet and notify adjacent property owners of the proposal as a measure of courtesy in an appropriate or responsible manner. This has left much uncertainty and unanswered questions. She feels they have not had the opportunity to have their concerns heard.
- She has concerns that this will create a clustering of social services and that there is no plan to mitigate the risks to the surrounding businesses or to police loitering. They have not shown a clear plan on how their patrons will occupy their time.
- It is not compatible with the adjacent properties which includes bars, liquor stores, retail fronts and kid's dance/art and summer camp facilities.
- There is no research or supporting documentation to prove that the proposal will not take away from North Railway Street's function as a primarily commercial street.
- This approval still allows the applicant the flexibility to operate as an emergency shelter if required as the conditions do not prevent that.

Krista Nieman (Appellant)

- The Briefing Notes from the Municipal Planning Commission meeting lack information and supporting documentation. Unlike the meeting for the application in 2022, there was no request for a good neighbour plan or meeting or for Police support.
- She is concerned about the safety of this community which already faces concerns with drug use and other inappropriate behaviours.
- No information was provided about the Mustard Seed's program structure, intake forms, policies and procedures or staffing requirements. There is no information provided on benchmarks or if any measurable milestones or goals are in place.
- Data collected for the other Mustard Seed locations shows an upward trend in criminal activity. When talking with homeowners and business owners near those locations they all have the same concerns and feel deeply frustrated.

Samantha Lowe, Mustard Seed (Applicant)

- They are here to support the community around the sites and individuals who are experiencing homelessness or insecure housing to get them into a housing focused program.
- A sober facility mitigates a lot of the concerns of a behavior-based shelter where individuals are accepted who use substances or are intoxicated. A sober facility is for the subset of the population who don't experience addiction or substance abuse disorders where a behavior-based shelter may not be appropriate.
- They recognize the concerns raised by the surrounding business, but also that this is a population that is currently not being serviced in Medicine Hat.
- They have policies and procedures, intake forms and screening processes available to them that will be tailored for this location.

- They have very strong ties with the Medicine Hat Police Services who have provided support that they expect will continue.
- Within their Community Centre they have a Wellness Centre that provides wrap-around supports and system navigations. They have advocates who provide support to individuals to make sure they have ID and to assist with funding for housing and health services and to identify those who need a long-term care facility. Those in the dry shelter would have access to these supports.

Bill Nixon, Mustard Seed (Applicant)

- He clarified that the reason the previous application was withdrawn was because it was changed from permanent to temporary. A lot of renovations need to be done to the building and it was not cost effective for a temporary basis.
- This is not an emergency shelter, it is a dry/sober shelter for people who cannot safely be in other shelters.
- The facility in Calgary has a 90% success rate.
- Meals will be delivered from another facility that has a better existing kitchen or the clients will be transported there for their meals.
- There will be no recovery programs run out of this shelter. This is for people who have come out of existing programs and have been referred to this program. The goal is to have them there for about three months and then moved into housing, but it could vary.
- There would be a minimum of two staff overnight and two to three during the day. Staff would consist of Social Workers and people they have trained for this job. There are no security guards, the staff are all trained in non-violent crisis intervention and de-escalation.
- Very few of their clients own vehicles, so there should not be any parking issues.
- They will not move individuals in from other cities. Their clients will be from referrals who meet the qualifications from their existing facilities or other agencies.
- All their facilities are locked and secured and if anyone comes there for shelter who is not part of the program they would be transported to another facility that can take them.
- They have been in discussions with Medicine Hat Community Housing regarding the need for low-income housing in Medicine Hat, but have not considered any other locations.

Darwin Bernhart, Business Owner – Opposes the Development

- Asked for clarification on the potential use of this being used as an emergency shelter. Brad Irwin, Planning Officer responded that the definition of Community Shelter encompasses multiple uses within it, including Emergency Shelter, but that is not the use that is being proposed. Any change to their proposal would require a separate development permit.
- He has concerns about what would happen to people who showed up at their door and aren't allowed in.

Jennifer Janssens, Business Owner – Opposes the Development

- She is concerned for her safety since she was told with the previous shelter that they did not have control of their patrons outside their shelter. Business owners in the area had to clean up blood, needles, feces and bodily fluids in the area around their own property. She is asking

for accountability from the Mustard Seed and that they take on the responsibility for community safety.

- Given what they went through last time, she is asking that they consider a different location.

Andrew McLean, Basic Services Manager, Mustard Seed (Medicine Hat) – Supports the Development

- Clarified that the Champion Centre was not run by the Mustard Seed when it was in operation some time ago. There are differences in the way the Mustard Seed operates compared to the agency that previously ran the Champion Centre.
- They did a great deal of community engagement. He was a participant of the group that distributed pamphlets and spoke with members of the business community.
- He can attest that at the behavior-based shelter they have minimal issues because daily reports are submitted and Community and Social Services rarely has any complaints to raise. They were audited December 6, 2022 and passed with flying colours.
- They will continue to work with Police Services as they currently do with the shelter.

Robert Sissons, Manager of Planning

- When asked for clarification on if this development could morph into an overnight or emergency shelter without the requirement of a further development permit and if conditions should have been added to stipulate that it shall not be used as an emergency shelter and the maximum number of people in the shelter, he stated that under the Land Use Bylaw if the intensity of the use changes, a new development permit would be required at the discretion of the Development Authority.

Robert Buck, Mustard Seed (Medicine Hat) – Supports the Development

- Reiterated that this is a dry/sober shelter and is not for people suffering drug addictions or behavioural based. He believes there is a misunderstanding of what this place will be. There is no place for someone who becomes homeless, due to circumstances such as the economy or job loss, to go. There is a great need for this facility in our community.
- Had they had more of a structured plan in place when they brought this development forward, it may have given the community a better understanding of what they are trying to do. Because they are new to Medicine Hat, he is asking that consideration be given to the phenomenal work that has been done in other cities where they are more established.

Bradie Burns, Mustard Seed (Medicine Hat) – Supports the Development

- They are bringing in staff members 24/7 to help police and monitor the whole radius of the area. They will work with the business owners to resolve any issues as they arise.
- De-escalating situations is much easier in an alcohol/drug free facility.

Tara Pollard, Mustard Seed Wellness Centre Advocate (Medicine Hat) – Supports the Development

- Those who work for the Mustard Seed are also residents and neighbours, the same as the people who come in that are experiencing homelessness from situations that any of us could find ourselves in.

- This is a good location for this facility and there may be job opportunities here as well. There is a misconception about who their clients will be and she believes they are people who want to be involved in the community.

Sharon Jans, Business Owner – Opposes the Development

- They have lost a lot of business over the last few years due to an increase in transients and the opening of SafeLink Alberta beside them. Customers have told them they don't feel safe coming there with people loitering in front of the store. There are already have enough community service facilities in this area.

Matthew Yorley, Mustard Seed (Medicine Hat) – Supports the Development

- It would be an additional thirty-four-minute walk from Kipling Street to North Railway Street to access these services. On average these citizens walk twenty kilometers per day and to choose that as a location would be unsuitable since they need to be in closer proximity to the services they require. This is a perfect location to minimize the impact on their overall physical health and wellbeing as well as enhancing their needs as citizens towards becoming an integrated member of our society.

Katie Kitschke, Senior Director of Housing, Mustard Seed – Supports the Development

- Working with previously homeless people has positively impacted her life and she wouldn't hesitate to live next to this location.
- The biggest change she has noticed is the increased senior demographic in need of this service. They take purposeful steps to ensure the right people are placed into this program and not setting up people who were not the right fit to fail.

Rick Ebel, Business Owner – Opposes the Development

- He has property that he bought for parking that can't be used because the vehicles on it were destroyed by the homeless people. He has lost business because customers don't want to bring their vehicles into this area.

Kirsten Spek – rebuttal

- She has no formed opinions about people suffering addictions, but she is a small business owner.
- It is her understanding from the last session with Community Housing that anybody that wants to be housed can be housed within seven days and if they cannot get you into housing immediately, they will come up with a solution for you. It has been said that this will not be a revolving door, but it was stated at the Municipal Planning Commission meeting that the average person will only be staying for fourteen days.
- There are two bars within close proximity of this location which could be problematic for the residents.

Brad Irwin, Planning Officer – closing comments

- He noted that consideration is for this application only, not the previous one that was quite different.

Bill Nixon, Mustard Seed – closing comments

- All their buildings are secure buildings, so once residents are in for the night they are not allowed to leave. He reiterated that if anyone in this program came back to shelter and had been drinking, they would be sent to the other shelter, they would not be allowed to stay here.

Samantha Lowe, Mustard Seed – closing comments

- She recognizes their concerns and understands that it may be intimidating to have something that may be perceived as threatening to your business being proposed. She reiterated that anyone could be steps away from being homeless, especially given today's economy. We can have vibrant citizens come out of this and get people off the streets.

Kirsten Spek – closing comments

- Their argument is not that this shelter is not needed, it is that there is a better location for this type of operation than the one being proposed.

DECISION OF THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD

The appeal is upheld.

REASONS FOR THE DECISION

The Board reviewed all the evidence and arguments, written and oral, submitted by the parties and focused on key evidence and arguments.

After the hearing was closed, concerns were raised about the perceived impartiality of a member of the Board. These concerns were related to comments or actions which occurred during the hearing. The Board understands and appreciates that as a quasi-judicial administrative tribunal, all participants are entitled to be heard by an objective decision-maker, free from partiality or bias.

Therefore, prior to the Board issuing its decision, Councillor Hider recused herself from the panel hearing this appeal. The Board then re-convened without Councillor Hider, disregarded any prior discussion and deliberation in which Councillor Hider participated, and reconsidered all the evidence and arguments submitted by the parties, written and oral, and focused on key evidence and arguments in outlining its reasons.

This decision is the result of Board discussion and deliberation without the participation of Councillor Hider.

The Board gave no weight to the following evidence:

1. The introduction of C. MacKenzie, member of the Municipal Planning Commission prior to the Chair informing the individual of the conflict and requesting they return to the gallery.
2. The Appellants' police information that was sent into the Clerk of the Board after the close of the hearing. The Board would like to indicate this information was not circulated to members.

The Board gave particular weight to the following evidence:

1. Impact on adjacent properties. Community Shelter is a discretionary use in this district. In addressing the suitability of a discretionary use, the test is whether the proposed use is

reasonably compatible with neighbouring uses or could be made reasonably compatible by imposing conditions on the approval. The Board also reviewed s. 687 (3)(d) of the *Municipal Government Act* which states a board may make an order or decision or issue or confirm the issue of a development permit if, in its opinion, the proposed development would not materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land, and the proposed development conforms with the use prescribed for that land or building in the land use bylaw, and which involves many of the same considerations of impact and compatibility in the context of considering a relaxation or variance.

The Board reviewed the River flats Area Redevelopment Plan, section 9.0 Community and Social Development, that states "Although understood to provide economies of scale and improved delivery models, the clustering of social service agencies and providers has the potential to create unintended negative impacts that prevent residents and business from feeling safe and certain in choosing the River Flats to live or work". The Board gave weight to the oral evidence of the applicant, the Mustard Seed, who confirmed there was clustering of social service agencies as they saw this as a positive attribute for the Development Permit. The Board gave weight to the signatures and accompanying map, letters, comments and presentations from business owners opposed to the Development Permit. The Board gave weight to the Development Authority's submission that listed the current social service components in the downtown area.

The Board concluded that the development would materially interfere with and affect the use, enjoyment, and value of neighbouring parcels of land and is not reasonably compatible with neighbouring uses because the clustering of social service agencies and providers would have the unintended negative impact preventing residents and businesses from feeling safe and certain in choosing the River Flats to live or work.

2. Compatibility with the neighbourhood. The Board reviewed the Downtown Redevelopment Plan (Non-Statutory) and noted the intent of the Railway district in the Downtown Redevelopment Plan is the revitalization of North Railway Street as east "Main Street" of specialty shops and services. That "Up to 5,000 m² of specialty retail space east of the railway tracks could be added, primarily in the form of a new "Artisan/Farmer's Marketplace" coordinated with the renovation of the existing IGA.

The Board reviewed the policies from 3.2.4 Mixed-Use/Primarily Residential area section of the River flats Area Redevelopment Plan, specifically Policy 2 which states "North Railway Street SE shall function as primarily as a commercial street and the side streets (i.e. 2, 3, 4 Street SE) shall function as primarily residential".

The Board concluded that the proposed development was not a specialty shop and service, artisan/farmer's marketplace, and was on a primarily commercial street. As such, the proposed development as a primary residential use is not compatible with neighbouring uses.

3. Clarity of Development. The Board reviewed Land Use Bylaw #4168, section 7.2. Downtown Mixed Use District and noted that a Community Shelter was a discretionary use under section 7.2.3. The Board reviewed the definition of a Community Shelter which is defined as a Development where the Principal Use is to provide temporary shelter for individuals in need of daytime respite and/or overnight sleeping accommodation:
 - (i) where the use operates within a Building;
 - (ii) where individuals may stay within separate living units;

(iii) where individuals may share common kitchen, dining and seating areas, and washrooms; and
(iv) where dwellings or separate living accommodations, office space, and other Accessory Uses may be required to accommodate staff and operate the use.
This use includes but is not limited to daytime or overnight emergency shelters.

The Board gave weight to the development permit application, and answers provided by the Mustard Seed. The Board found there to be a lack of clarity in the intended use of the land and use of the development, the number of beds, if residents would be co-ed, the required staffing, training of staff, building access hours, and floor plans, all of which contributed to the Board being unable to assess the realistic impacts of the intended use on neighbouring uses or to conclude the intended use was suitable for the location.

Despite having heard evidence that use as an emergency shelter would require a new development permit, the Board determined there is sufficient uncertainty with respect to the proposed use of operations and the definition of Community Shelter, which includes but is not limited to daytime or overnight emergency shelters, that the Board declined to exercise its discretion to refuse the appeal and approve the development.

Dated this 14th day of June 2023



JESSICA ROBINSON, INTERIM CITY CLERK
BOARD SECRETARY

cc. Steve and Krista Nieman (Appellants)
Mustard Seed (Applicant)
Amanda Young, City Planner and Director of Development Services