

**PALLISER INTERMUNICIPAL  
SUBDIVISION AND DEVELOPMENT APPEAL BOARD**

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HEARING DATE: January 12, 2022  
FILE NO.: 2022-00001

**Notice of Decision of the Board**

**INTRODUCTION**

[1] On November 3, 2021, the Development Authority of County of Paintearth No. 18 (the "Development Authority") issued a development permit (the "Development Permit") in relation to the placement and location of a hopper bottom bin yard (the "Development") on property legally described as SW-5-40-14-W4M (the "Lands") in County of Paintearth No. 18, Alberta.

[2] On November 26, 2021, the Palliser Intermunicipal Subdivision and Development Appeal Board (the "Board") received an appeal from Jason T. Felzien and Shauna Ann Felzien (the "Appellants").

[3] The Board heard the appeal on January 12, 2022 via videoconference in accordance with the Meeting Procedures (COVID-19 Suppression) Regulation, AR 50/2020.

**PRELIMINARY MATTERS**

**A. Board Members**

[4] At the outset of the appeal hearing on January 12, 2022, the Chair requested confirmation from all parties in attendance that there was no opposition to the composition of the Board hearing the appeal. None of the persons in attendance had any objection to the members of the Board hearing the Appeal.

**B. Exhibits**

[5] At the beginning of the hearing, the Chair enquired if everyone in attendance had received the Agenda Package. Upon one attendee indicating they had not received the Agenda Package, the Chair requested the Clerk to immediately forward a copy of the Agenda Package to that attendee, and this was done. The Board marked the exhibits as set out at the end of this decision (Agenda Package, Exhibits 2-5) received in accordance with the submission deadlines.

[6] At the beginning of the hearing, the Chair asked whether any of the persons in attendance had any further information or evidence which they wished to submit to the Board

for the hearing. The Appellants advised that they had sent to the Clerk immediately before the hearing a package of twenty-six letters which showed the support of neighbouring properties for the development.

[7] The Board gave an opportunity for the Development Authority to review the information. Upon the Development Authority's review of the information, the Development Authority indicated that a number of the persons whose names were reflected in the letters were on the list of persons notified by the Board of the hearing. The notice was sent in mid-December before the deadline for submissions. The Development Authority asked how the named individuals were affected so that it was clear on the record.

[8] Mr. Jason Felzien advised the Board that the named individuals had land at the distances from the Lands as set out below.

Name	Distance from the Lands
Karlee Kuefler	3 kilometers
Mitchel Kuefler	3 kilometers
Grant Kuefler	3 kilometers
Joey Felzien	2 kilometers
Sarah Felzien	2 kilometers
Richard Brown	1.5 kilometers
William (Bill) Brown	2 kilometers
Barry Jackson	3 kilometers
Carol Morel	3 kilometers
Brian Perrault	5 kilometers
Gerard and Donna Fetaz	3 kilometers
Doug and Lynne Potter	7 kilometers
Wade Meyer and Carol Meyer	2 kilometers
Alden Fuller	3 kilometers
Kelly and Charmaine Fuller	8 kilometers
Scott Keichinger with Keichinger Farms Inc.	2 kilometers
Raymond Brown and Kathleen Brown	4 kilometers
Doreen Brown	1 kilometers
Dwayne Felzien and Carmen Felzien	0 kilometers
Tyler Smith	2 kilometers
Katrina Smith	2 kilometers
Donald Coulthard	5 kilometers
Christopher Blumhagen	5 kilometers
Greg Jackson	3 kilometers
Curtis Jackson	3 kilometers
Kayla Jackson	3 kilometers

[9] The Chair asked Mr. Jason Felzien about the handwritten notations marked on the letters from neighbouring landowners, noting that the handwriting on all of the letters looked the same. Mr. Jason Felzien advised that he completed the letters based on discussions with the named individuals and that they gave him permission to do so and supported the placement of the grain bins on the Lands.

[10] Mr. Jason Felzien also advised that the following of the named individuals in the letters drive on Range Road 145:

Kelly and Charmaine Fuller, Tyler Smith, Katrina Smith and Chris Blumhagen.

[11] In providing its position about the admission of the 26 letters, the Development Authority advised that it was difficult to determine whether the individuals named are affected. However, the Development Authority noted that four of the letters were identified as being people who used Range Road 145. The Development Authority advised that it is important to examine the weight to be given to this evidence. If these individuals are only using the road, their use and enjoyment may not be as impacted. The Development Authority also noted that the letters are in stock form and had been completed by Mr. Jason Felzien. The Development Authority indicated that the fact that it was a stock letter spoke to the weight of the information. The Development Authority did not object to the Board accepting the letters as evidence.

[12] Having heard from the Development Authority that it had no objection to the Board accepting as an exhibit the letters of support, the Board has marked them as Exhibit 6. The Board acknowledged the comments made by the Development Authority in relation to the weight to be given to these letters. The discussion of the Board's examination of the information contained within the letters and any weight to be attributed to them will be addressed under the Board's reasons below.

[13] Also at the beginning of the hearing, Mr. Dwayne Felzien stated that he had further information which he wished to submit to the Board for the Board's consideration. His information included a map, a brochure from Capital Power and an email from Michael Sheehan of Capital Power dated December 16, 2021 16.18 addressed to Dwayne Felzien and Jason Felzien. The Development Authority indicated that it was requesting a recess to review the material submitted by Mr. Dwayne Felzien. The Board granted the Development Authority a short adjournment to review this information.

[14] Following its review of these materials, the Development Authority advised that it was not opposing the materials being accepted by the Board as an exhibit, but reserved its right to speak to the information contained within the documents and provide a response. Therefore, the Board marked the documents received from Mr. Dwayne Felzien as Exhibit 7.

### **C. Adjournment**

[15] At the beginning of the hearing, the Board asked if anyone in attendance was requesting an adjournment. No requests for an adjournment were made at that time.

[16] Near the end of the hearing, Mr. Dwayne Felzien made submissions to the Board as an affected person. When making his submissions to the Board, Mr. Dwayne Felzien indicated to the Board that he had concerns about the notices that the Board had provided. Mr. Dwayne Felzien advised that he ought to have been given notice because of where he lives. He stated that he did not receive notice and he was concerned about notices being provided to other people. He did not indicate to the Board that he was asked to speak for any other landowner and the Board concludes that he was speaking only on his own behalf. Despite his statements of concern about notice, Mr. Dwayne Felzien did not request an adjournment at any time during

his presentation or thereafter. During his presentation, Mr. Dwayne Felzien noted that there was a significant amount of public input to the appeal.

[17] Although Mr. Dwayne Felzien did not request an adjournment, the Board wishes to comment upon his statements about notice. The Board notes that at the beginning of the hearing, the Board asked all of those in attendance whether any persons in attendance wished to have an adjournment. Mr. Dwayne Felzien was present at the beginning of the hearing and throughout the hearing, but did not request an adjournment at any time.

[18] Since Mr. Felzien at no time requested an adjournment, the Board was not called upon to grant one. The Board notes that Mr. Dwayne Felzien was in attendance at the hearing. Thus, even if notice had not been provided to him, Mr. Dwayne Felzien was in attendance at the hearing and was able to provide the Board with a fulsome expression of his position and evidence in light of his submission of materials, as well as his oral submissions.<sup>1</sup>

[19] The Board is of the opinion that there has been no procedural unfairness to Mr. Dwayne Felzien.

#### **D. Miscellaneous**

[20] The Board is satisfied that it had jurisdiction to deal with this matter.

[21] There were no objections to the proposed hearing process.

[22] There were no preliminary matters raised at the beginning of the hearing.

[23] At the beginning of the hearing, Mr. Dwayne Felzien advised that he was not represented by Mr. Haldane, Counsel to the Appellant, Mr. Jason Felzien.

#### **DECISION OF THE BOARD**

[24] The Board denies the appeal. The Board grants the Development Permit and amends the conditions imposed by the Development Authority as follows:

1. The development must meet all district and general requirements of the County of Paintearth No. 18 Land Use Bylaw 698-21 including but not limited to setbacks from property lines, water bodies, brinks of slopes and municipal roads with a twenty-five foot variance granted to the front yard setback from one hundred feet to seventy-five feet from the center line of Range Road 145.

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<sup>1</sup> The Board notes that Mr. Dwayne Felzien stated that he was not aware of the appeal hearing until the day before the hearing on January 11, 2022. The Board notes that the email submitted by Mr. Dwayne Felzien is dated December 16, 2021 and is an email from Mr. Sheehan of Capital Power addressed to Mr. Jason Felzien and Mr. Dwayne Felzien. The Board was advised that Mr. Jason Felzien is the son of Mr. Dwayne Felzien. The Board is not convinced that Mr. Jason Felzien would not have advised his father about the upcoming appeal at or about this time, as the appeal had been filed November 26, 2021 and this email followed this date as well as the fact that Mr. Dwayne Felzien participated in the application for this Development Permit.

2. No later than February 28, 2022, the Applicant shall advise the Development Authority if the Applicant will be relocating the bins and obtaining a geotechnical report, as set out below.
3. If the Applicant will be locating the bins are to be located using the twenty five foot variance identified in section [24]1., the Applicant shall, no later than May 30, 2022, provide the Development Authority with a geotechnical report signed and sealed by an Engineer confirming the following:
  - a. The new location of the bins is safe, secure and appropriate for the development and associated activities, including loading and unloading of bins;
  - b. Details of how the base below each bin is to be prepared to ensure a secure and stable installation, consistent with the manufacturer's recommendations and best practices; and
  - c. Details of the required placement and anchoring of the bins to ensure they are safe and secure and consistent with the manufacturer's recommendations and best practices.
4. No later than August 31, 2022, the Applicant must relocate the existing grain bins as specified in Condition 1.
5. No later than August 31, 2022, the Applicant shall install a guard rail suitable for roadside protection (i.e., Alberta Traffic Supply galvanized steel lengths – example pictured) between the Development and Range Road 145, that would extend the entire length of the Development.



6. The Development must conform to any and all pertinent municipal, provincial or federal regulations and guidelines in accordance with Section 8-1.c of Land Use Bylaw 698-21.

Conditions (As provided for in the Development Permit issued November 3, 2021)

1. The issuance of this Development Permit indicates only that the development to which the Permit relates is authorized in accordance with the provisions of the County of Paintearth No. 18 Land Use Bylaw and does in no way relieve or excuse you from obtaining any other permits, license or other authorizations required by any Act or regulation, or under any other Bylaw, or complying with the conditions of any easement, covenant, agreement, or other instrument affecting the building or land.
2. Unless otherwise indicated within the permit conditions, the Development Permit becomes automatically null and void if the development authorized by this Permit is not commenced within 12 months of the date of issuance, unless an extension has been granted by the Development Authority. If no extension has been granted you will be required to reapply for a new Development Permit in the manner prescribed in the County of Paintearth No. 18 Land Use Bylaw.
3. By issuing notice in writing the Development Officer may suspend, revoke, or modify this Development Permit if there is:
  - a contravention of the terms and conditions of this Development Permit, and/or
  - a contravention of the provisions of the County of Paintearth No. 18 Land Use Bylaw, as amended.
4. Under Condition 1 – Setbacks – for the Agricultural District you must observe:
  - 75 feet from the centerline of any County road (variance granted); and
  - 50 feet from the property boundary as a side yard; and
  - 50 feet from the rear property edge as a rear yard; and Slopes - equal to the vertical depth of the valley.
5. This permit is in effect as of the above date and all the conditions noted above are hereby required to commence construction. Any construction commenced prior to meeting such conditions is at the entire risk of the applicant who may incur remediation costs.

## **SUMMARY OF HEARING**

[25] 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.

### **Submissions of the Development Authority**

[26] The Development is located on property legally described as SW-5-40-14-W4M in County of Paintearth No. 18, AB. The Lands are located within the Agricultural District (the "A District") of the County's Land Use Bylaw 698-21 (the "LUB") (see Agenda Package, page 172/336).

[27] The setback specified in the LUB applies to this development. The variance and the conditions imposed in the development permit are appropriate and support the purpose of the

setback. The purpose of the setback is to provide for safety considerations and future planning issues. There will be negative effects if the development remains as it is and there will be material and undue interference with the amenities of the neighbourhood.

[28] Mr. Dwayne Felzien has an ownership interest in the bins and made the application for the development permit.

[29] The Development Authority reviewed Tabs F and G of the Agenda Package (starting at page 170/336). The plans at page 170/336 are not to scale, but give the general idea of where the grain bins are located. They are located to the east of Range Road 145. Although the plan is not to scale, the measurements are correct. These bins are hopper bottom bins and have a conical shape. The Lands are agricultural lands located close to the intersection of Range Road 145 and Township Road 400. Tab G of the materials shows that the Lands had previously been used as an oilwell site. Tab M of the Agenda Package (pages 231/336 to 232/336) shows that to the east of the bin yard, the Appellants have the residential portion of the Lands. The buildings which form the residential portion of the Lands are not at issue in this appeal. The bin yard is located to the east of Range Road 145 and has two access points: one to the north and one to the south, both located on Range Road 145. Page 233/336 of the Agenda Package sets out the measurements and distances.

[30] Section 6.1 of the LUB provides for an exemption from obtaining a development permit. Accessory farm structures do not require a development permit if they meet the required setbacks. Section 46.3.c of the LUB sets out the regulations for the grain bins. A bin yard must be at least 100 feet from the center line of any County road serving as the primary access approach. Range Road 145 provides the primary access. Therefore, in order for the development to be exempt from the requirement for a development permit, the bin yard must be setback 100 feet from the center line of Range Road 145.

[31] The Development Authority referenced Exhibit N of the Agenda Package and noted particularly Diagram 4 showing an intersection diagram. This diagram shows the required degree of setback from an intersection, here the intersection of Township Road 400 and Range Road 145.

[32] Referencing paragraphs 56 to 63 of its submissions, the Development Authority asked the Board to consider the definition of 'setback' and the purpose of setbacks. The setback distance is the distance from the property line but in this instance is used to reference the distance from the center line of the road to the structure (grain bins). The purpose of the setback is multifaceted. The main purposes of setbacks include aesthetics, privacy, securing light and green space, visual clearance for automobiles at intersections, street and road widening and protection of unstable embankments (see paragraph 50 of the Development Authority submissions).

[33] The Development Authority referenced the *Edmonton Library Board v. Edmonton* case found at Tab E of its materials starting at page 145/336 of the Agenda Package. The Development Authority noted that Court of Appeal stated that development standards may serve one or more planning purposes including utilitarian, safety, privacy, environmental, aesthetic and social purposes (see paragraph 52 of the *Edmonton Library Board v. Edmonton* case, page 156/336 of the Agenda Package). The Court of Appeal indicated that setbacks can also relate to separation

distances for safety purposes. The Development Authority submitted that the setback in this case is necessary for safety.

[34] The separation distance considered by the Court of Appeal in the *Edmonton Library Board* case was between a retail cannabis store and a library. The purpose of the separation in that case was social and the intention was to manage the incompatibility between the two uses. In this case, the purpose of the setback is about safety and to allow for future planning (see page 282/336). One can see the bins on the diagram at page 282/336. The pink line is the center line of Range Road 145. The road includes the traveling surface of the road. In addition, it includes land on either side of the road which is used for maintenance, road widening, etc. The entire road right of way is 66 feet. The distance from the center line to the end of the road right of way is 33 feet. The bins are four feet from the boundary of the road right of way. The road surface is 21 feet wide. Due to the County's concerns about safety, particularly how close the bins are to the road right of way, the Development Authority believes that the purpose of the setback is for safety.

[35] The Development Authority referred the Board to the images at Tab Q (page 286/336). The development permit as issued already provides a variance. The LUB requires a 100 feet setback from the center of the roadway. The development is currently located 37 feet from the center of the roadway. The purpose of the setback is for safety and planning issues and it is required to have an appropriate setback. The Development Authority advised that if the setback is not at the seventy-five foot setback as provided in the development permit, then 100 feet of setback is appropriate.

[36] Of the letters marked as Exhibit 6, only four letters were identified as the landowners using Range Road 145. Moreover, the letters are not specific. There is no indication in those letters of specific impact or why there is no negative impact. The letters simply state that there is no impact, but do not speak to safety concerns. There is no reference to the bins falling or safety or the proximity of the bin yard to the intersection. These letters do not speak to road widening, maintenance or utilities being placed along the road. The Development Authority noted that in the *Edmonton Library Board* case, the Court of Appeal noted that the Board must be satisfied that there would not be "negative effects". The Court of Appeal also advised that the Board must articulate why a variance should be granted. The Development Authority referenced paragraphs 60, 64 and 66 of the *Edmonton Library Board* case. The party requesting a variance must articulate why a variance should be granted and opponents to it should advise why a variance should not be granted. It is insufficient to simply state that there is no harm.

[37] In relation to the email in Exhibit 7, Mr. Sheehan speaks to the fact that Range Road 145 will be used to move materials for the wind turbines which are the subject of a different development permit within the County.

[38] In relation to the map attached to Exhibit 7, the map is cut in half. Turbine 19 is at the crease of that map and is difficult to see. The Development Authority included a full map and the actual route for construction materials at Exhibit BB of the Agenda Package. The Development Authority noted that it is the County that determines the haul routes and that the routes for the Capital Power development are not finalized. However, the County intends for Capital Power to use Range Road 145 so that the conversation referenced in the email of December 9, 2021 is dated.



[39] Mr. Pawsey, the County's Development Officer, has been the Development Officer at the County since 2008. Agricultural buildings in the County are exempt from development permits, provided that they meet setback distances within the LUB. He referenced Tabs P and Q of the Agenda Package. The County's concern is in relation to safety. He has been at the Lands a number of times over the years. The issue of the development permit for the bin yard has been a long-standing issue for the County. If the development was located over 100 feet from the center line of Range Road 145, there would be no need to obtain a development permit.

[40] Mr. Pawsey advised that safety is the County's foremost consideration. The bin yard is too close to Range Road 145. Township Road 400 is an arterial road with a one hundred foot right of way. Range Road 145 has a 66 foot right of way. Given the road surface of approximately 21 feet, there is 23 foot of ditch and ditch slope, which is only approximately eight steps. Therefore, it is eight steps from the edge of the road and then four feet to the bins. In summary, the bins are only about nine paces from the edge of the road.

[41] Most county ditches have back slopes. A back slope in a ditch allows for water to drain through the ditch system and also provides a measure of safety in the event a car goes into the ditch. In this case, there is no back slope on the ditch so that if a vehicle left the road, it would run into the bin. Should the bins fall, they would fall into the right of way and into the road. If they topple, they would be located fully in the ditch and on the road surface. The bins are 35-40 feet tall.

[42] The Development Authority expressed a concern about the bins having an unstable base. The entire site was an oil field site at one time. Neither the landowner nor the County have any record of what was on that oil site. There were filled-in sumps, but no records as to where they were.

[43] The Development Authority has concerns about ground stability and the bins toppling, given this significant development. Given the concern about the ground stability, the Development Authority determined that a geotechnical report was required to determine what is under the ground, whether the bins have a stable base, what is the anchoring and whether the ground is undisturbed. This gravel is not compacted. The Development Authority noted these bins are not flat bottom bins and indicated that the hopper bins have a higher center of gravity, and are therefore less stable.

[44] The Development Authority noted that the County received emails from Mr. Dwayne Felzien about near misses at the intersection of Range Road 145 and Township Road 400. The County has put up traffic control devices at that intersection.

[45] The guard rails are required for safety purposes. The County does maintenance in the ditches and the setback would allow workspace for vehicles to work in the ditches. The road right of way provides a temporary workspace enhancing the ability to work in the ditches. Because there is no back slope, this is an important feature.

[46] The County needs to provide for future road widening. Having the setback allows for widened roads, and school bus routes, etc. Moreover, having the setback allows for future planning for utility installations, such as ATCO which can install shallow utilities two feet inside

the right of way. If the development is located where it is currently sited, it would limit the County's ability to widen the road or may impair the placement of powerlines, etc.

[47] As shown at Tab BB, the Halkirk Wind Project has a projected delivery route for turbine components and concrete trucks using Range Road 145. Turbine 19 is located in proximity to Range Road 145. The materials for Turbine 19 can only be delivered via Range Road 145. The County has designed a one-way system so that large trucks will not pass each other. The trucks will come from Township Road 400, go up Range Road 145 and then exit via Township Road 402. There will be a significant amount of traffic utilizing Range Road 145. The delivery route for the turbines, etc will require the widening of many intersections to accommodate the turning of vehicles because the truck and trailer delivering turbine blades will be approximately 200 feet long. Range Road 145 will be used heavily and traffic control for the County is key.

[48] The 75 foot setback is appropriate because it would limit the likelihood of a grain bin falling into the travelling portion of the road. The setback is appropriate to provide safety to the County, the neighbours and the travelling public.

[49] In response to Board questions, the Development Authority advised that the Halkirk Wind Project is expected to proceed in 2023. The application is currently before the Alberta Utilities Commission to reduce the number of turbines from seventy-three to thirty-five. The Development Authority advised that the Halkirk Wind Project was provided as an example of the County's desire to plan for roads and utilities. The County is trying to plan for future events.

[50] The Development Authority advised that to allow the development to remain as sited will have negative effects. The County's concerns are not fearmongering. There are significant consequences given the safety concerns and with regard to limiting future development potential. The grain bins have always been required to meet setback requirements and have never met them, whether in 2014 or today. The County must preserve the safety of the roads and allow for widening, maintenance and the installation of utilities for the overall greater public interest (see Section 617 of the Municipal Government Act). The road is a publicly used road. The development limits the safety of the road and the development potential. Comments made by the Appellants that there are no negative effects are not true. There have been no accidents, but there have been near misses on the road. This was referenced in the last hearing before the Board and in the materials. This development is close to Range Road 145 and is the only one that might limit the development of the road. In relation to the comments about *Love v. Flagstaff*, that case dealt with a permitted use for two residences which was denied because of a proposed animal operation. The development in question has never been onside with the LUB and has not met the exceptions found within the Land Use Bylaw. There is no development permit in place. The variance is to serve the planning purposes outlined.

[51] The Development Authority urged the Board to look at the twenty-six letters and where those landowners are located in relation to the Lands before determining the weight of that evidence. They are stock letters. The Development Authority noted concerns about statements made by Mr. Dwayne Felzien about the inconsistency of whether he is a neighbour or whether he is somebody intimately involved in the project and the development. As a result, the Development Authority urged the Board to place little weight on his comments. The Development Authority advised that comments about other developments are not relevant to the question of this development permit appeal. The evidence on grandfathering is not before this Board. The

Development Authority noted that Mr. Felzien's comments in relation to notice should have little weight because the hearing was not adjourned and Mr. Felzien did not request an adjournment. The Development Authority advised that there is no evidence that notice has not been provided to the landowners and in fact the number of landowners who have been given notice and who have attended are significant.

[52] In response to Mr. Jason Felzien's comments, the Development Authority advised that there is no evidence of the County attempting to intimidate any landowner within the County. In relation to the geotechnical report, Tab Y of the materials addresses the question of the geotechnical report. The discussion has always been about how far back from the center line to move the bins. If there was no issue with the geotechnical report, it would not be a ground of appeal. The Development Authority never made any comments about the manufacturer of the bins because that is irrelevant. The development is a bin yard and enforcement had been placed on hold until the new LUB was passed. This bin yard is a concentration of bins for trucking, harvesting and moving and storing of grain. It is not seasonal. Bin yards can be in operation all the time as the farmers' contracts require and the constant use gives rise to the safety concerns.

### **Submissions of the Appellants Jason T. Felzien and Shauna Ann Felzien**

[53] At the beginning of the hearing, Counsel for the Appellants advised that the Appellants would not be advancing their first ground of appeal, that the development can be in existence without a development permit (the lawful non-conformity argument). The appeal is dealing solely with the request for a variance.

[54] The use of the Lands is a permitted use – agricultural. The bin yard is accessory to a permitted use and is in compliance with the regulations of the Agricultural District.

[55] The only question before the Board is the "negative effect question" as raised by the Court of Appeal in the *Edmonton Library Board* case. The question for the Board to answer is what negative effect is caused by allowing the grain bins to exist at the present location versus imposing the setbacks required by the LUB.

[56] The grain bins have been there for eight years. However, in the eight years they have been there, there have been no issues. The Appellants noted that the Development Authority had gone through the photographs of the development. The Appellants referenced Section 617 of the Municipal Government Act found in the Agenda Package at page 53/336. Section 617 of the Municipal Government Act, located at page 77/336 of the Agenda Package, reflects the balancing required between the overall public interest and the general principles that there should not be an infringement on the rights of individuals except to the extent necessary.

[57] The variance allows for relaxation from rigid rules in the LUB. No one is affected by the placement of the grain bins in their current locations.

[58] The question for the Board is whether the grain bins can be located where they are or whether they should be moved further from the road. The Court of Appeal in the *Edmonton Library Board* case speaks to what evidence the Board might consider about the negative effects of a proposed development. The Appellants referenced paragraphs 49 and 50 at page 55/336 of the Agenda Package. The Board has wide discretion to determine whether the interference is

undue or material. Because the bins have been in existence for a number of years, the Board has evidence as to whether they have an impact. There are letters from neighbours indicating that there are no negative effects from the location of the grain bins.

[59] One of the conditions imposed in the Development Permit is the requirement for a geotechnical report. The location where the bins are currently located is the only feasible location for the bins on the Lands. In the event that the Appellants must move the bins, they will not move them to the location set out in the development permit because the bins will fall over. The portion of the Lands that is stable is where the bins are currently located.

[60] The Appellants would accept a condition to provide a geotechnical report saying the bins are stable where they are located and that there is no reasonable concern that they would fall over.

[61] The Appellants referenced pages 22/336 to 24/336 of the Agenda Package showing the marketing materials from the manufacturer including the anchoring requirements. Page 25/336 of the Agenda Package sets out the height of the bins. In response to Board questions, the Appellants confirmed that the bins are the 7820s which are twenty-one feet in diameter with six rings and are 40 feet tall. The minimum auger requirement is 63 feet. The Appellants advised that it has done what the manufacturer recommends for installation and that the bins are located on the most stable location on the Lands.

[62] The Development Authority's concerns are fearmongering. There is no reason to require the bins to be located 75 feet from the road right of way to ensure that they do not fall within the road right of way.

[63] In referencing the twenty-six letters in support, the Appellants refuted the County's concerns, indicating that the criticism the County raises about the letters is unfair. The letters cannot say that the persons are worried about something that they are not worried about.

[64] The Appellants and his family have farmed the Lands in the areas for over one hundred years. The people who care most about what goes on at the location and whether the setbacks affect them are before the Board to say that there is no negative effect.

[65] The Appellants referenced the case of *Love v. Flagstaff* and indicated that the evidence before the Board is merely speculation that the bins could be a problem. Further, the *Flagstaff* case stands for the proposition that the proponent of a permitted use can rely upon what is in the LUB and should not have its development rights hindered by any other use. In that case, there was a setback between a confined feeding operation and a permitted development. Here a discretionary wind farm is being used to prevent a permitted accessory use. There should not be a restriction on the Appellants' development rights today.

[66] In response to Board questions about the sixty-three foot auger requirements, Mr. Jason Felzien advised that the length of the auger is the size required to fill the bin and not the anchor requirements for the bin.

[67] Mr. Felzien advised that Ms Carol Morel, one of the neighbours referenced in the letters at Exhibit 6 advised that she wished the last sentence of her letter to be struck as she felt it was not her place to say whether movement of the bins would impact others.

[68] Mr. Jason Felzien advised that the only negative comment from neighbours was the letter from the Blumhagens (exhibit 5). He also mentioned that eight neighbours did not wish to sign a letter for fear of being targeted by the County for speaking out against developments. Mr. Haldane on behalf of the Appellants advised that the concerns of the Blumhagens was related to process and not in relation to the negative effects. He also stated that the Blumhagens' land is on the south side of Township Road 400 and it is difficult to see how the development would negatively affect their lands as they are 1 mile away.

[69] The Board asked the Appellants about why the geotechnical report was not provided when it was referenced in 2018 and 2019. The Appellants advised that the report was for lands other than where the bins are located. It was a "non-starter" to move the bins onto that land because in their view no other portion of the Lands are suitable for the bin yard. They are reluctant to provide a report that says that the bins will fail if they are put some place else. Further, they do not wish to have the additional expense to provide the report until directed to do so by the County.

[70] In closing comments, the Appellants stated that most of the County's evidence is irrelevant. The appeal is about leaving the development as sited. The bins have been in existence for seven years without negative effect. The Board is not bound by the strict rules of evidence and may accept the evidence of the neighbours (exhibit 6). The safety concerns about the near miss was an accident three miles west of the bins on Range Road 140 and the location of the bins is not a concern about visibility on Township Road 400. This is a simple appeal on how to exercise a variance power and that the development has existed for years with no negative effect and has the support of neighbouring landowners. The Appellants advised that there are no demonstrable negative effects and it is only speculation that there are any concerns.

### **Submissions from Those Speaking in Favour of the Appeal**

[71] Mr. Dwayne Felzien, the father of Mr. Jason Felzien, spoke in favor of the appeal. He stated that he had received SDAB training. He noted concerns in relation to irrelevant considerations, but did not specify what those concerns are. Mr. Felzien also commented that five days' notice of the hearing was not provided. Up until this past Friday, people did not know about the process. He was also concerned that people were not aware of the hearing. He is a local neighbour and owns lands west and north of the Lands. He was involved in the previous stop order hearing in June of 2021 and was part of the request for grandfathering. He was at the hearing as a neighbour and community member. He stated he was not notified by the County of this hearing. He asked the Board whether they had reviewed the application for grandfathering and the Board advised that the Board is only receiving information which is part of the Agenda Package and has not reviewed anything outside of the Agenda Package.

[72] The bins were built in 2013 and 2014. Based upon conversations with the County, he understood that the County had never enforced grain bin yard setbacks and that the standard was to put the bins wherever the community standard was.

[73] He questioned whether the Halkirk Wind Project would continue. Turbine 19 along Range Road 145 may be moved. In reference to the letter from Mr. Sheehan of Capital Power, he stated that Mr. Sheehan advised him that Capital Power was unlikely to use Township Road 400, because of the high traffic and that if Capital Power did have to widen Range Road 145, it would be on the west side so the grain bin location on the east side of Range Road 145 would be alright.

[74] The setback from Township Road 400 is in excess of County requirements. The pictures provided in the Development Authority's submissions about bins blowing over are from the US tornado belt. He has had three bins fall over, all of which were flat bottomed and unanchored. He wants to continue to work with the County and support the community. Nowhere else in the County is there a guard rail and if the bins are moved further to the east the auger length will not work.

[75] It was astonishing to him that forty-two people participated in this hearing and that thirty-eight of those were in support of the development. The two people with concerns may have legitimate concerns but they do not farm on the north side of Township Road 400. He respects their concerns but they have never previously stated their concerns to him.

[76] In response to Board questions about the number of grain bins, he indicated that although there has been a reference to eight grain bins, there are nine grain bins in the pictures submitted. The stop order was allegedly issued for eight grain bins because the County told him that one of the bins was manufactured in Camrose and was therefore not included.

## **FINDINGS OF FACT**

[77] In addition to any facts found by the Board which are set out in its reasons, the Board makes the following findings of fact.

[78] The Lands are located at County of Paintearth No. 18 and legally described as SW-5-40-14-W4M.

[79] The Lands are located within the Agricultural District (the "A District") of County of Paintearth No. 18.

[80] The development was constructed in 2014. The development is approximately 37 feet from the centreline of Range Road 145. At no time did the Appellant or the Development Authority demonstrate that the Appellant had ever possessed a development permit. In response to questions from the Board, it was confirmed that at no previous time had a development permit been issued.

[81] The Appellants are affected persons.

[82] Mr. Dwayne Felzien is an affected person.

[83] Those persons named within Exhibit 6 are affected persons. The weight of their evidence is set out in the reasons below.

[84] S. and D. Blumhagen are affected persons.

## **REASONS**

### **Jurisdiction**

[85] The Board notes that its jurisdiction is found in section 687 of the MGA. In making this decision, the Board has considered the oral and written submissions made by the Development Authority, the Appellants, and those who spoke in favour of the appeal and the written submissions.

- 687(3) In determining an appeal, the subdivision and development appeal board
- (a) repealed;
  - (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 (a.4) and (d), must comply with any land use bylaw in effect;
  - (a.4) must comply with the applicable requirements of the regulations under the Gaming, Liquor and Cannabis Act respecting the location of premises described in a cannabis licence and distances between those premises and other premises;
  - (b) must have regard to but is not bound by the subdivision and development regulations;
  - (c) may confirm, revoke or vary the order, decision or development permit or any condition attached to any of them or make or substitute an order, decision or permit of its own;
  - (d) may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw if, in its opinion,
    - (i) the proposed development would not
      - (A) unduly interfere with the amenities of the neighbourhood, or
      - (B) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land,
    - and
    - (ii) the proposed development conforms with the use prescribed for that land or building in the land use bylaw.

### **Affected Persons**

[86] The first question the Board must determine is whether those appearing and speaking before the Board are affected persons. The Board notes that there was no objection made to those making submissions to the Board. However, for completeness, the Board will address this issue in its reasons.

[87] As the Appellants' Lands are subject to the Development Authority's decision, the Appellants Jason T. Felzien and Shauna Ann Felzien are affected by this appeal.

[88] The Board notes that Mr. Dwayne Felzien owns land north and west of the Lands. As a result of his proximity to the Lands, the Boards find him to be affected by the development.

[89] The Blumhagens are also in proximity to the proposed development being located south of Township Road 400, 1 mile away. Due to their proximity, the Board finds them to be affected persons.

[90] The Board notes that there are twenty-six named individuals within Exhibit 6. The Board notes that many of the individuals are listed as having the same legal address and the Board concludes from that that they are two or more owners of the same property. In assessing whether the individuals are affected, the Board has considered that the distances between their properties and the Lands range from 0 kilometers from the Lands to 8 kilometers from the Lands and the Board notes that the evidence that it received was that only four of those named individuals utilized the road.

[91] The Board is not bound by the strict rules of evidence and thus is able to determine if it will accept the letters as evidence. The Board has some concerns about whether the persons are affected, particularly given the distance of some of the individuals from the Lands. The Board noted that 5 of the named individuals are 5 or more kilometers from the Lands, and many more are 3 km from the Lands. In considering whether the individuals are affected, the Board notes that the County did not object to the admission of the letters. Having considered all of the evidence on the point, the Board is prepared to find that the individuals named in the letters are affected as being in relative proximity to the proposed development.

[92] Despite accepting that these individuals are affected, the Board has considered the Development Authority's submission about the weight to be given to the letters as evidence of "detrimental effects" or the absence of such "detrimental effects". The Board does not find the letters particularly persuasive evidence for the following reasons. The letter is a "form letter" which was prepared by Mr. Jason Felzien and not the neighbouring individuals themselves. The individuals listed did not provide their own words and since the words were provided by the Appellants, the Board does not find that to be particularly compelling evidence of these individuals' views. Further, the individuals did not sign the letters. They were annotated by Mr. Jason Felzien based upon telephone calls. The letters with date notations are all noted as being completed on January 11, 2022, the day before the hearing, which would not reflect a significant consideration of the issues by these individuals. The Board does note that the notice of the hearing was sent out to neighbouring owners on or about December 13<sup>th</sup>, 2021, well before the submission date of January 5, 2022. Further, the Board noted that although there were approximately twenty-six people in attendance at the hearing, the only person from the 26 individuals who spoke was Mr. Dwayne Felzien, the father of the Appellant, Mr. Jason Felzien.



## **Issues to be decided**

[93] Since the Appellants withdrew their first ground of appeal (that the development is a lawful non-conforming use that does not require a permit), the Board does not need to consider that argument.

[94] The following issues need to be addressed:

1. What is the use?
2. Is there a setback requirement and if so, what is that requirement?
3. Does the development meet the setback requirement?
4. If not, should the Board exercise its variance powers under Section 687(3)(d) of the MGA to vary the setback requirements?
  - a. Would the development unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land?
5. Should the Board waive the requirement for a geotechnical report?
6. Should the Board waive the requirement for a guard rail?
7. Should the Board vary the time for compliance?

### **What is the use?**

[95] There was no dispute between the parties that the use is a bin yard and the Board finds so as a fact. Further, there was no dispute between the parties that a bin yard is an accessory use to an agricultural use and the Board finds so as a fact. The Board notes that the Lands are zoned Agricultural and that agricultural uses are permitted uses within the Agricultural District. Therefore, this bin yard is an accessory to a permitted use.

### **Is there a setback requirement and if so, what is that requirement?**

[96] The LUB, Section 46.3.c provides that the setback for a bin yard from the center line of an access road is 100 feet and the Board finds so as a fact.

### **Does the development meet the setback requirement?**

[97] The uncontroverted evidence before the Board was that the bins are located 37 feet from the center line of Range Road 145. The Board finds as a fact that the bins are setback 37 feet.

[98] Given the Board's finding that the LUB requires a setback distance of one hundred feet, the Board finds as a fact that there is a deficiency of 63 feet from the LUB setback requirements and that the bins do not meet the LUB setback requirements.

### **If not, should the Board exercise its variance powers under Section 687(3)(d) of the MGA to vary the setback requirements?**

**Would the development unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land?**

[99] The Development Authority varied the setback distance from 100 feet to 75 feet. The Appellants have argued that it should be allowed to leave the bins in their current location with a setback deficiency of 63 feet. In essence the Appellants argue for a variance of 63 feet. The Development Authority has argued that the setback should be at 75 feet (a variance of 25 feet), or at the 100 feet set out in the LUB (with no variance).

[100] Both parties agree that the setback distance is a regulation, not a use. Therefore, the Board has the authority, if persuaded by the evidence presented to it, to exercise the variance power granted to it under Section 637(3)(d) of the *Municipal Government Act*. The question for the Board is whether it is of the opinion that there has been no material interference with the amenities of the neighbourhood or no material interference or effect on the use, value and enjoyment of neighbouring parcels arising from the deficiency in the setback.

[101] The Board heard a significant amount of submissions from both parties about the effect of the recent Court of Appeal case in *Edmonton Library Board v. Edmonton*, cited by both the Development Authority and the Appellants in their submissions (both oral and written).

[102] The Board notes that the Court of Appeal has indicated that in relation to the question of onus, the Appellants do not have an onus to justify the variance. Rather, the Board is entitled to weigh the evidence submitted in favour of and in opposition to the request for the variance in order to come to its opinion about whether to grant the variance.

[103] The Board notes that the Court of Appeal has confirmed that there are multiple reasons for the imposition of development standards which include matters such as utilitarian, safety, privacy, environmental, aesthetic and social purposes (see paragraph 52 of the *Edmonton Library Board v. Edmonton* case, page 156/336 of the Agenda Package). The Board notes that the Court of Appeal has confirmed that the Board has wide discretion when considering a request for a variance.

[104] Both parties referenced section 617 of the MGA for the proposition that the rights of individuals are not to be constrained, except for the overall greater public good. The Development Authority argued that the concerns of safety and future planning considerations are concerns in relation to the greater public good and that the greater public good requires the imposition of the setbacks. The Appellants referenced section 617 of the MGA arguing that their development rights should not be constrained and that the County's concerns regarding safety and future development were speculative and did not justify the limitation on the Appellants' rights.

[105] In this case, the Development Authority argued that the setback distance (at 100 feet or at 75 feet) was required for two reasons:

- a. safety; and
- b. future planning considerations.

[106] In relation to safety, the Development Authority advised that given the height of the bins (40 feet) and their placement 37 feet from the center line, if the bins were to topple, the bins could fall on the travelling surface of Range Road 145. The Development Authority noted that Mr. Dwayne Felzien had brought to the County's attention near misses near the Lands. The Development Authority argued that due to the safety concerns stated at paragraphs [34], and [40] to [48] and [50] above, the setback should be maintained.

[107] The Development Authority argued that the setback requirements are necessary for future planning. Future planning included the accommodation of future developments such as the Halkirk 2 Wind Farm and the installation of utilities. Moreover, the Development Authority argued that maintenance, repair and other obligations are required to be accommodated within the setback distances.

[108] By contrast, the Appellants referenced the twenty-six letters that it had submitted from neighbouring property owners. The Appellants argued that the bins had been there for seven years and that there had been no safety concerns in that time. Their conclusion was that the Board can be assured that there are no safety considerations. The past seven years' history should give the Board comfort that the bins can remain as they are currently located without any concern. The Board has had very careful regard to the evidence on both sides and weighed the considerations raised by the County (safety, future planning considerations) against the considerations raised by the Appellants (absence of impact on use, value and enjoyment).

[109] In weighing the evidence, the Board notes that the uncontested evidence was that there are 9 bins in the bin yard and that they are each approximately 21 feet in diameter and are each approximately 40 feet high and the Board finds this as a fact.

[110] Given the size of the bins at 21 feet in diameter and their height, the Board notes that each bin would far exceed the size of most passenger vehicles. Further, if the bin were filled, even partially, with grain the weight of the bin would be significant. Further, the Board notes that if one of the legs of one of the bins were to fail, the bin would or could fall across the travelling surface of the road, given its size.

[111] The Board has significant concerns regarding safety, given the size of the bins, particularly in light of their location so close to Range Road 145. The Board notes that the risk of an incident occurring may be low; however, should an incident or accident occur, the results could be catastrophic. The size and weight of the bins would be very significant should they fall. Should the bins fall onto a vehicle or a pedestrian or person using the road or ditch (like someone passing on horseback), there could be significant injury, or possibly death. The Board is of the opinion that the imposition of the set back standard was done to address these safety concerns. The Board notes that section 617 of the MGA contemplates that private rights may be constrained for the greater public good, and the Board finds that setbacks for safety reasons of those using the road would meet that greater public good. As a result, the Board finds that the safety considerations are weighty concerns that the Board finds persuasive.

[112] In determining whether to exercise its variance power, the Board considered the evidence that the ditches along Range Road 145 have no back slope. The images of the ditch provided by the Development Authority show that the travelling surface of the road is at almost the same level as that of the ditch. The Development Authority raised concerns about a vehicle or a piece

of farm equipment veering into the ditch and damaging the legs of the bins, causing the bin to fall. The Board accepts these concerns raised by the Development Authority, given the flat ditch at this location along Range Road 145.

[113] The Board has considered the Appellants' comments that the bins have been in their location for seven years, without incident. The Board notes that this argument appears to be that since nothing happened in the past, nothing could happen in the future. The Board weighs this approach against the more cautious approach advanced by the Development Authority and prefers both the evidence and the approach of the Development Authority. As indicated above, the Board is swayed by the fact that a consideration of the negative impacts and addressing them is a more cautious approach. Such an approach considers the impacts and attempts to eliminate them. As indicated above, while a grain bin tipping over may not be a common occurrence, the impact and effects of such an occurrence would be catastrophic if the bins fell into the travelling area of Range Road 145. If the bins were able to remain in their current location, their proximity to the road surface would make this event possible, while locating them further away reduces or eliminates this risk.

[114] The Board is of the opinion that safety considerations which apply not only to the Appellants, but also to the neighbours and any County residents and others drivers who pass on Range Road 145 are significant and that the impacts of safety in the Board's opinion should be weighted more heavily than a comment that the bins as sited do not affect the neighbouring use of lands.

[115] In coming to this conclusion, the Board considered the Appellants' evidence of neighbour statements that the neighbours were of the opinion that the present location of the bins has had no effect on their use and enjoyment of their property, nor did they think that their use, enjoyment and value of their property would improve if the grain bins were moved. The Board accepts that the neighbours believe that their use and enjoyment has not been affected. However, the Board prefers the evidence of impact submitted by the Development Authority for the following reasons:

- a. The statements of the neighbours speak to their use and enjoyment, which the Board has to weigh against the safety concerns raised by the Development Authority. The Board is of the opinion that safety concerns should be weighted more heavily than use and enjoyment concerns.
- b. The neighbours' statements speak to use and enjoyment, but that is only one of the considerations in section 687(3)(d). The other consideration is whether there would be an undue interference with the amenities of the neighbourhood, on which point the neighbours did not provide any evidence. The Board considers safety to be an amenity to the neighbourhood and having regard for the considerations of safety raised by the Development Authority, the Board finds that the impact on safety by leaving the bins in their current location would be an undue interference with the amenity of safety.

[116] The Board has also considered the evidence of S & D Blumhagen (page 336/336 of the Agenda Package). The Board notes that they are located 1 mile south of the Lands and the Board has concluded that they are affected due to their proximity to the Lands. Although there was some attempt to discount their concerns because they live south of the Lands, the Board notes that they are relatively close (1 mile away) and are, in fact, closer than a significant number of

the neighbours who wrote in support of the Appellants. The Blumhagens are also concerned about safety. Their letter was not a form letter, and expressed their particular concerns. The Board found their letter persuasive in relation to safety concerns about the bins.

[117] The Board has also considered the Development Authority's comments that the purpose of the setback was to accommodate future planning considerations, such as road widening, road maintenance and the installation of utilities. While the Appellants and Mr. Dwayne Felzien argued that the Capital Power Halkirk 2 project is not certain to proceed, the Development Authority stated that Halkirk 2 was proceeding to Alberta Utilities Commission approval and there was an expected target date for the development of 2023, which was supported by the email from Mr. Sheehan to Mr. Dwayne Felzien (Exhibit 7).

[118] If the Capital Power Halkirk 2 project proceeds and includes Turbine 19, the Board notes that the uncontroverted evidence was that the trucks hauling the turbine blades would be approximately 200 feet in length. These are significantly sized vehicles which may require the widening of Range Road 145 and if the bins remain in their current location, it may affect the road widening. The Board notes that Mr. Dwayne Felzien stated that Capital Power told him that it would widen Range Road 145 on the east side only. However, given the size of the vehicles, the Board is not convinced that Range Road 145 would be widened on only one side. Further, the Board notes that Mr. Pawsey provided evidence that Capital Power would use Range Road 145 as part of its haul routes. Although Mr. Dwayne Felzien stated that he had been told that Capital Power was going to use a different route, the Board prefers the evidence of Mr. Pawsey about the road use agreement because the County had entered or will enter a road use agreement with Capital Power. Its business connection with Capital Power provides the Board with more specific evidence about the details of road usage. While Mr. Felzien may have spoken with Capital Power representatives, he will not be entering an agreement with Capital Power and therefore may not be aware of as many specifics about the haul route as the County would know.

[119] Even if the Capital Power Halkirk 2 project does not proceed, the County may still widen the road for other reasons and the County still has obligations for maintenance of the road and the ditch. The Board recognizes that the rights of the Appellants to develop should not be constrained except to the extent required for the overall greater public interest, but the Board finds that the considerations of road widening, the ease and efficiency of the transportation network, the ability of the County to provide utilities to its citizens are all matters of the greater public interest. These "planning considerations" serve the greater public interest and may be negatively affected should the bins remain in their current location. The Board considers these considerations as significant and weights them heavier or more heavily that it does the comments made by the neighbours that their use and enjoyment is not affected by the bins.

[120] Having considered the evidence presented to the Board, the Board is of the opinion that the evidence overwhelmingly favours the position of a significant setback distance. The setback contained within the development permit is 75 feet. Although the Board heard the Development Authority indicate that if 75 feet was insufficient the Development Authority was prepared to support a setback of 100 feet, the Board is of the view that the 75 feet, as imposed by the Development Authority, should be sufficient to address the concerns identified above. Given the 40 foot height of the bins, a setback of 75 feet would provide a margin of safety if a bin toppled and the bin would not fall into the travelling surface of the road. Moreover, a setback of 75 feet would mean that the ditches and rights of way would open for maintenance and utility installation.

Therefore, the Board finds that the 75 foot setback from the center line of Range Road 145 should be maintained. The Board is of the opinion that it should not grant a variance beyond the 25 foot variance granted by the Development Authority and is of the opinion that leaving the bins as they are currently located (thus granting a variance of 63 feet) would unduly interfere with the amenities of the neighbourhood.

### **Should the Board waive the requirement for a geotechnical report?**

[121] Having concluded that the bins should be set back 75 feet from the centre line of Range Road 145, the Board must consider the Appellants' request to waive the requirement for a geotechnical report for the new location of the bins.

[122] The uncontested evidence before the Board was that the Lands upon which the bins are located was a former oil field site and that neither the Development Authority nor the Appellants has any records as to the stability of those lands. Given the significant size of the bins and the number of bins (9), the Board is of the opinion that a geotechnical report assessing the stability of the future location of the bins will be required in order to address potential safety concerns.

### **Should the Board waive the requirement for a guard rail?**

[123] The evidence of the Development Authority was that a guard rail should be installed. The Appellants objected to the guard rail indicating that theirs would be the only location within the County for which a guard rail is required.

[124] The question before the Board is not whether other developments require a guard rail. Rather, the Board must determine whether a guard rail is required at this location for this development.

[125] The Board is of the opinion that in light of the very shallow ditches and the absence of a back slope on the ditch, having a guard rail will assist in the safety considerations that have been commented upon by the Development Authority. A guard rail would assist in keeping a vehicle that has left the travelling portion of the road from hitting the legs of the grain bins and would enhance safety.

[126] For that reason, the Board requires that a guard rail be placed along the property line to the right of way. The Board notes that this should be completed when the bins are moved to their final location as specified in the decision at paragraph [24].

### **Should the Board vary the time for compliance?**

[127] The Board recognizes that it may take the Appellants some time to empty the bins and make arrangements to move the bins, as well as to obtain a geotechnical report. Given the statements made during the hearing that if the Appellants are not given permission to leave the bins as sited, they will remove them from the Lands, the Board is of the view that having the Appellants tell the Development Authority no later than February 28, 2022 whether they will be obtaining a geotechnical report and moving the bins to the location as provided for in this decision is a reasonable first step. If the Appellants are going to get a geotechnical report and relocate the bins elsewhere on the Lands, it is not onerous to advise the Development Authority of this by

no later than February 28, 2022. If the Appellants are going to remove the bins from the Lands, they must also advise the Development Authority of their intention no later than February 28, 2022 and must remove the bins by August 30, 2022. The Board is of the view that an August 30, 2022 date for removal provides a reasonable time for the Appellants to empty the bins and make arrangements for a new location for the bins, while not affecting their ability to farm.

[128] If the Appellants advise the Development Authority that they will be moving the bins on the Lands and obtaining a geotechnical report, the Appellants must provide the geotechnical report to the Development Authority by May 30, 2022. This two-stage process gives the Appellants approximately two months to decide if they will be relocating the bins on the Lands, and a further three months from that date to provide the actual geotechnical report. The Board is of the view that giving the Appellants approximately five months to provide the geotechnical report is sufficient.

[129] If the Appellants are going to relocate the bins on the Lands, they must move the bins by August 31, 2022. The Board is of the opinion that the times set out for compliance allow the Appellants sufficient time to empty the bins and to move them into their new location. The Board was mindful that the timing of the moving of the bins should not be during seeding, haying or harvesting. The deadline of August 31, 2022 provides the Appellants with approximately seven months within which to make arrangements to have the bins moved and the appropriate arrangements made for their transportation and anchoring.

[130] Issued this 21 day of January, 2022 for the Palliser Intermunicipal Subdivision and Development Appeal Board.



J. Wallsmith, Clerk of the ISDAB, on behalf of K. Hodgson, Chair  
 PALLISER INTERMUNICIPAL 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 PRESENTING TO THE BOARD**

1.	Alifeyah Gulamhusein, Counsel for the Development Authority
2.	Todd Pawsey, Development Authority
3.	K. Haldane, Counsel for Jason T. Felzien and Shauna Ann Felzien
4.	Jason Felzien, Appellant
5.	Dwayne Felzien

**APPENDIX "B"**  
**DOCUMENTS RECEIVED AND CONSIDERED BY THE ISDAB**

Exhibit	Description	Date	Page #
1.	Agenda	January 12, 2022	1
2.	Appeal of Decision Dated November 26, 2021 (2 pages)	November 26, 2021	2-3
3.	Appellants' Appeal Materials (91 pages)	December 20, 2021	4-94
4.	County of Paintearth Submissions (241 pages)	January 5, 2022	95-335
5.	Letter S. and D. Blumhagen to J. Wallsmith (1 page)	January 5, 2022	336
6.	Letters of Support (26 pages)	January 11, 2022	
7.	Capital Power Project Update Brochure (4 pages) Capital Power Proposed Map (1 page) Email M. Sheehan to D. Felzien, J. Felzien (2 pages)	November 2021  November 9, 2021 December 20, 2021	