

**TOWN OF PINCHER CREEK
MUNICIPAL SUBDIVISION AND DEVELOPMENT APPEAL BOARD**

DECISION DATE: January 16, 2019

Development Application No. 18-D0044

BEFORE: Town of Pincher Creek Municipal Subdivision & Development Appeal Board (Board)

Members:

Dale Uhrbach (Chair)

Roger McAdam

Don Anderberg

Richard Claude

In the matter of the Municipal Government Act, Revised Statutes of Alberta 2000, Chapter M-26, as amended (MGA);

and in the matter of the Town of Pincher Creek Land Use Bylaw No. 1547 and amendments thereto (LUB No. 1547);

and in the matter of an appeal by: Carswell Planning on behalf of Allan Mathews (landowner)
Pincher Creek, Alberta

from a decision of the Town of Pincher Creek Municipal Development and Subdivision Authority (MDSA), with respect to an application from IROL Canada for a change of use from Retail Store to Cannabis Retail Sales located on Lot 18, Plan 7756AL (806 Main Street) in the Town of Pincher Creek, Alberta, in which the application was DENIED with reasons.

THE INFORMATION PART OF THE HEARING WAS DOCUMENTED

UPON PROVIDING THE appellant with a copy of the exhibits referred to in Appendix A attached hereto and there being no objections to the said exhibits.

UPON WRITTEN NOTICE of the Hearing of the appeal being given in accordance with Section 686 of the MGA.

UPON HEARING at the said Hearing, held in the Town of Pincher Creek on January 3, 2019, the evidence adduced from and submissions made by the persons shown on Appendix B attached hereto.

UPON CONSIDERING the documents shown on a list attached to Appendix A, as being the documents produced and marked as exhibits at the Hearing in the presence of the persons referred to in Appendix B attached hereto.

UPON HEARING the oral representation of the said representatives and having regard to LUB No. 1547, and under the authority vested in the Board pursuant to the MGA, the Board has decided to **UPHOLD the decision of the Development Authority and REFUSE the development application.**

PURSUANT TO Section 687(2) of the MGA, written reasons for this decision have been furnished in this decision.

SUBDIVISION AND DEVELOPMENT APPEAL BOARD



Dale Uhrbach - Chair

**TOWN OF PINCHER CREEK
MUNICIPAL SUBDIVISION AND DEVELOPMENT APPEAL BOARD**

Development Application No. 18-D0044

UPON HAVING HEARD what was alleged by the appellant, and **upon having heard** what was alleged by the Town of Pincher Creek representatives and **upon hearing** others listed in Appendix B of this decision and **upon having read** exhibits noted in Appendix A of this decision, the Board finds the facts to be as follows:

1. On October 18, 2018, Mr. Randy Weins of IROL Canada [*Applicant*], on behalf of Allan Mathews the land owner, submitted Development Application No. 18-D0044 (DA No. 18-D0044) for a change of use on lands legally known as Lot 18, Plan 7756AL [*subject parcel*].
2. DA No. 18-D0044 requested a change of use from Retail Store to Cannabis Retail Sales.
3. The subject parcel is designated as Downtown/Retail Commercial – C1 in the Town of Pincher Creek Land Use Bylaw No. 1547 (LUB No. 1547), Schedule 2, Land Use District Regulations. The application was for a discretionary use which requested waivers from the separation distances and parking requirements as found in LUB No. 1547.
4. On November 20, 2018, the Town of Pincher Creek Municipal Development and Subdivision Authority denied DA No. 18-D0044 with reasons (Exhibit D).
5. On December 4, 2018, the Town of Pincher Creek received a letter from the Bart Carswell of Carswell Planning [*Appellant*] on behalf of the land owner, indicating an appeal of the decision. Reasons for the appeal included (as summarized) the restrictive nature of the Land Use Bylaw in relation to its separation distances from Provincial Health Care Facility, Public Park, Public Recreation Facility, Liquor Store, Cannabis Retail Sales, School and Child Care Facility (Exhibit C).
6. A notice regarding DA No. 18-D0044 was sent to adjacent landowners within 200m of the proposal and referral agencies on October 24, 2018.
7. Five (5) written comments were received from circulated landowners including the Mathew Halton High School. The written submissions were all generally in opposition to the development.
8. The Town of Pincher Creek received comments from the Pincher Creek Emergency Services indicating “Granting of a waiver is not in the interests of the community without some plan by the applicant to mitigate the effect of the waiver”.
9. The MDSA’s reasons for their decision (Exhibit D) reads as follows:
 1. *It is the opinion of the Municipal Development and Subdivision Authority that the development of the Cannabis retail sales (Cannabis Store) interferes with the amenities of the neighbourhood. The proposed development does not comply with the Town of Pincher Creek Land Use Bylaw No. 1547 Standards of Development Schedule 4, section 30. Cannabis Retail Sales (a), (b);*
 - a. *Separation distance of 100 meters for the use of a Public Park i.e.; Central Park on 758 Kettles Street, Public Recreation Facility i.e.; Multi-Purpose Facility - Ice Arena, Curling Rink, Swimming Pool, Water Park, Bike Park, Skateboard Park, Tennis Court and Public Library on 845, 867 and 895 Main Street and Liquor Store i.e.; Anderson's Liquor Inc. on 838 Main Street.*
 2. *Furthermore, the application does not comply with the Separation distance of 200 meters for a School i.e.; Livingstone Range School Division No. 68 (Matthew Halton High School) on 945 Davidson Avenue.*
 3. *And, the development does not comply with the Parking and Loading Space Requirements - Schedule 9;*
 - a. *Section 4; loading space shall be located on the same lot as the building or use for which it is required.*
 - b. *Section 6 - Use; Retail Store, Minimum number of parking spaces required GFA= Gross Floor Area; 1 Space/30.2 m² (325 sq. ft.) GFA (GFA 414 m² /30.2 m² = 13. 7) fourteen (14) off-street parking spaces. Available number of parking spaces as per application for a development permit is eight (8).*

10. At the hearing and in response to a letter from Mathew Halton High School, Mr. Carswell questioned whether the Provincial Building adjacent to the subject parcel was a Provincial Health Care Facility. Mr. Toone, on behalf of the School District, during his presentation clarified that the building contained addiction services which some of his students accessed for treatment.
11. At the hearing, Mr. Carswell acknowledged that the subject parcel is in violation of multiple separation distances as outlined by the land use bylaw. He argued that the Alberta Gaming and Liquor Commission default separation distances are adequate and the Town with its Land Use Bylaw amendment became more exclusive in its application of separation distances from their listed uses. He went on to explain how the provincial Cannabis store license application is lengthy and thorough in its vetting of potential businesses. It was his position that the board could decide in favor of the application because the proposal did not unduly interfere with the amenities of the neighborhood.
12. Mr. Burla responded to Mr. Carswell's presentation and stated that the bylaw is not so restrictive as to not allow Cannabis Retail Stores in the Town and that opportunity exists to establish a business without waivers.
13. At the hearing, Ms. Elliott questioned whether the setback distances could be waived. The chair redirected the question to Mr. Burla. Mr. Burla responded that the Board does have the authority under the LUB No. 1547 to waive separation distances.
14. The Town of Pincher Creek LUB No. 1547, Section 32, Waivers of Bylaw Provisions, states: *At its discretion, the Municipal Development and Subdivision Authority may approve a development that does not comply with one or more provisions of this bylaw if, in its opinion: (a) the proposed development would not: (i) unduly interfere with the amenities of the neighbourhood; or (ii) materially interfere with or affect the use, enjoyment or value of neighbouring properties; AND (b) the proposed development conforms with a use that has been prescribed for that land or building under Schedule 2.*
15. The Town of Pincher Creek LUB No. 1547, Schedule 2, Downtown/Retail Commercial – C1 land use district, lists Cannabis Retail Sales as a discretionary use.
16. The Town of Pincher Creek LUB No. 1547, Schedule 4, Section 30, Cannabis Retail Sales, states:

Cannabis Retail Sales uses are located on a Lot with the following separation distances:

(a) Separation Distance	Uses
100 m	Provincial Health Care Facility, Public Park, Public Recreation Facility, Liquor Store, Cannabis Retail Sales
200 m	School, Child Care Facility

(b) *The separation distance shall be measured from the closest point of the parcel on which the proposed Cannabis Retail Sales is located to the closest point of the Site boundary upon which the other use is located. The separation distance shall not be measured from district boundaries or walls of buildings.*
17. The MGA, Section 687(3) states: *In determining an appeal, the subdivision and development appeal board (a) must act in accordance with any applicable ALSA regional plan; (a.1) must comply with the land use policies and statutory plans and, subject to clause (d), the land use bylaw in effect; (b) must have regard to but is not bound by the subdivision and development regulations; (c) may confirm, revoke or vary the order, decision or development permit or any condition attached to any of them or make or substitute an order, decision or permit of its own; (d) may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw if, in its opinion, (i) the proposed development would not (A) unduly interfere with the amenities of the neighbourhood, or (B) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land, and (ii) the proposed development conforms with the use prescribed for that land or building in the land use bylaw.*

Having regard to the findings of fact, and having regard for the Land Use Policies, Land Use Bylaw No. 1547, the Municipal Government Act and the Subdivision and Development Regulation, the Municipal Subdivision and Development Appeal Board makes the following decision: **UPHOLD the decision of the Development Authority and REFUSE the development application.**

REASONS:

THAT the Subdivision and Development Appeal Board encompasses the findings of fact within these reasons, and as a result:

1. The Board acknowledges that the Alberta Gaming and Liquor Commission through the Gaming, Liquor and Cannabis Act and its Regulation provides for default separation distances under Part 4 Division 1 Section 105(3) of the Regulation. The Board finds that under Section 105(5) of the Regulation that a municipality may in their land use bylaw create their own separation distances from cannabis licensed premises to any use they deem appropriate. The Board finds that the Town of Pincher Creek has enacted a land use bylaw amendment which included separation distances from specific uses as found in Schedule 4 Section 30 of the Town of Pincher Creek LUB No. 1547. When the Board applies these separation distances to the subject property, it finds the proposal violates the required 100m distance from the use of a Public Park (i.e.; Central Park on 758 Kettles Street), Public Recreation Facility (i.e.; Multi-Purpose Facility - Ice Arena, Curling Rink, Swimming Pool, Water Park, Bike Park, Skateboard Park, Tennis Court and Public Library on 845, 867 and 895 Main Street), Liquor Store (i.e.; Anderson's Liquor Inc. on 838 Main Street) and a Provincial Health Care Facility (at 782 Main Street). Further, the proposal violates the required 200m distance from the use of a School (i.e.; Livingstone Range School Division No. 68 - Matthew Halton High School at 945 Davidson Avenue).
2. The Board is also aware that one of the overriding tenants of Federal, Provincial and Municipal law and regulation regarding the legal sale of Cannabis is the protection of children. The Board finds that the Town of Pincher Creek Land Use Bylaw included separation distances from uses where it would be expected that children would frequent including schools, public parks, public recreation facilities and child care facilities. The Board having heard from the public including the Livingstone Range School Division agrees that children should be protected from the incursion of a Cannabis Retail Sales use into an established neighborhood where the amenities of the neighborhood focus on the development of children. At this location it is noted that those amenities include a school, the Town's primary recreation facility, a provincial health care facility, and a public park. Given these amenities, the board is not prepared to grant waivers for the stipulated setback distances.

INFORMATIVE:

The Board having heard from municipal staff and the public believe that the cannabis retail store section of the land use bylaw having been only adopted in October of 2018 should be allowed to be implemented as written. The Board sees ample opportunity within town limits for this use to be developed without the request for waivers. The Board makes no recommendation to have the bylaw reviewed at this time.

APPENDIX A

Exhibits presented at Hearing:

NO.	ITEM
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- A. Notice of Hearing and Subject Parcel Map
 - B. List of Persons Notified
 - C. Letter of Appeal
 - D. Notice of Decision – Refusal with Reasons
 - E. MSDA Request for Decision Package from November 28, 2018
 - E1-E3 Request for Decision
 - E4 Application
 - E5 Letter of Authorization
 - E6-E8 Site Plans
 - E9 100m and 200m Buffers
 - E10 Legal Description
 - E11 Notice of MSDA Meeting
 - E12 Site Location Map
 - E13 Elevation and Floorplan
 - E14 Notification Area Map
 - E15-E18 Persons Notified
 - E19-E20 Letters from Concerned Citizens
 - E21-E26 IROL Letter and Associated Maps
 - E27-E29 Letters from Concerned Citizens
 - F. Authorization Letter for Carswell Planning from Owner
 - G. Excerpt from Town of Pincher Creek Land Use Bylaw 1547
 - H. Letter from Principle of Matthew Halton High School
 - I. Letter from Assistant Principle of Matthew Halton High School
 - J. Letter from Landowner
 - K. Presentation notes from Carswell Planning

APPENDIX B

Persons who gave evidence or made submissions at the Hearing:

CAPACITY	NAME
Town of Pincher Creek Planning Advisor	Mike Burla
Town of Pincher Creek Manager of Legislative Services	August Kollee
Appellant	Bart Carswell
Affected Persons (Gallery)	Donna Mae Elliott Bradley Toone (Livingstone Range School Division Board Chair)