

# REGIONAL SUBDIVISION AND DEVELOPMENT APPEAL BOARD

UNIT B 4730 ROSS STREET  
RED DEER AB T4N 1X2  
403-343-3394

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October 18, 2021

## NOTICE OF DECISION

**RE: Appeal of Development Permit Application 2021-12 for a development of a “Home Dwelling – Sea-can Off Grid Dwelling” on the lands described as Lot 1, Block 15, Plan 101 1734 that is located in the Village of Carbon.**

### SUMMARY OF APPEAL

This is an appeal of a development permit approval for a dwelling unit. The dwelling unit was conditionally approved without the addition of a pool and with approval of a temporary fence.

The Appellant, Ngqabutho ‘Chrispen’ Sibanda, appealed the approval for reasons pertaining to (1) undefined process which led to delays and added costs, (2) approval of temporary fencing despite the bylaws allowing for fencing without a development permit, (3) the lack of approval of the swimming pool, (4) lack of responses regarding the appeal fee payment.

Notice of the appeal was provided to interested parties and a hearing was held on October 7, 2021.

Hearing Panel: Karen Howley, Chair  
Heather Ryan, Board Member  
Julia King, Board Member

SDAB Clerk: Anika Drost  
Craig Teal

### BACKGROUND OF THE APPLICATIONS

The Development Authority approved a dwelling unit without pool (Development Permit 2021-12) on August 12, 2021 on the lands described as Lot 1, Block 15, Plan 101 1734. The subject property is designated Single-Detached Residential District (R-1) within the Land Use Bylaw (LUB). The Appellant received the notice of decision via email on August 23, 2021.

The Development Authority approved the development subject to the following conditions:

1. Applicant to obtain approved building permit and inspection from Palliser Regional Municipal Services.
2. Applicant to obtain approved plumbing and/or sewage disposal permit and inspection from Palliser Regional Municipal Services.
3. Applicant to obtain approved electrical permit and inspection from Palliser Regional Municipal Services.
4. Applicant to obtain approved gas or propane hook-up permit and inspection from Palliser Regional Municipal Services.
5. Obtain Fire Safety Codes inspection through Village of Carbon.
6. Comply with Village of Carbon Land Use Bylaw 2018-804: R-1 District
7. Applicant has permission to place temporary fencing around property.
8. Applicant may NOT build swimming pool at this time. All permitting and approvals must be completed for the Swimming pool to be placed on the property.
9. Must adhere to all federal, provincial, or other municipal legislation, or the conditions of any easement, covenant, building scheme or agreement affecting the building of land. The operation of all uses shall comply with the environment and public health performance standards of the Provincial Government.

An appeal was filed with the Regional Subdivision and Development Appeal Board on September 7, 2021. The appeal was specifically in regards to conditions 7 and 8. Affected parties were notified of the appeal and the appeal hearing on September 20 and 27, 2021, with public notifications being distributed on September 29, 2021.

## **MERIT HEARING**

### **Summary of the Development Authority's Submissions**

#### Swimming Pool

The Development Authority stated that the development permit application did not clearly state that the application was for a dwelling unit and a pool. The pool was only referred to in the drawings as being developed at a future date.

With the sea-can project being a new type of development to the Town, the Municipal Planning Commission felt that the approval of the home would come before the pool. There were additional concerns around approval of a sea-can pool. In-ground pools are not common in the Village and have not been adequately addressed in the LUB. This is the first development of such nature for the Village. During questioning, the Development Authority stated that it would be expected for a pool to be part of a dwelling unit application, and be approved under the same development permit. However, the Development Authority stated that if a secondary suite was being applied for in addition to a dwelling unit, the application form would also have

to clearly state the intention to have a dwelling unit with a secondary suite in order to be considered for such use.

The Development Authority indicated that a development permit application could have been amended after being submitted to the Village, but the Appellant never provided an amended application to clearly state the pool as being part of the application. With the current approval, the Appellant would have to submit a new application to receive a development permit for the pool.

The Development Authority confirmed that the LUB has no specifics about the size, type and material used for swimming pools. The only specification relating to pools within the LUB is the fencing around a pool that is tied to the Safety Codes requirements. The Development Authority emphasized that the pool should be a separate application as sea-can builds are not part of the current LUB provisions.

### Fencing

The Development Authority informed the Appellant that a request for temporary construction fencing needed to go to the Municipal Planning Commission as at the time of the request, the Appellant was not the landowner. It was understood that a temporary construction fence was to be placed in order to insure the construction materials on the property. The Development Authority explained that although the Appellant may have taken possession of the property, ownership was not changed until September 13, 2021. Ownership is done through the registration and updating of the land title certificate, which is done at the Land Titles Office. Since there was a delay for the certificate of title to be updated, the Village was still the registered landowner and had to grant approval of the temporary fencing to the Appellant, who had merely taken possession and not ownership of the land at that time. The Development Authority emphasized that the fence needed to remain temporary for the time being until ownership of the land was changed.

After the Appellant had indicated interest in placing a permanent fence on the property, the Development Authority informed him that a 6 foot fence around the entire property did not comply with the LUB. Section 39 of the LUB restricts permanent fencing in the front yard of a corner lot to no taller than 3.28 feet unless it is see-through, in which case a 4 foot fence may be installed. A 6 foot fence may only be installed in the rear or side yards. Alternatively, a development permit application would need to be applied for.

Since the ownership of the property has now changed and the Appellant is the registered landowner of the property, the Appellant may proceed with constructing a permanent fence on the property, as long as it complies with the LUB requirements.

## Process / Costs

The Development Authority stated that the development permit process and requirements are defined through the checklist and rules page that the Village provides through its application process. There has been some miscommunication that has led to confusion about the process. The Development Authority confirmed that there have been some delays which occurred due to the proposed development being a new age build. Since sea-can developments are a new type of development for the Village, the Development Authority wanted to ensure the application received adequate review. The Development Authority acknowledged that there may have been additional costs to the Appellant due to the lengthier development permit process, but stated that the Village also incurred additional costs through his application and wanted to reduce these by working with the Appellant rather than to have the application go to an appeal hearing.

## **Summary of the Appellant's Submissions**

### Swimming Pool

The Appellant appealed the approval of the development permit as it did not include the pool that was proposed to be part of the development. The mechanical and electrical systems, the plumbing, the structural supports and the required excavation of the pool and the dwelling are all interconnected, which is one of the primary reasons the applicant intended both to be under one approval.

The proposed built is a green built and can be categorized as a LEED (Leadership in Energy Environmental Design) building, for which it is imperative that the construction phases support the planned future expansion.

The Appellant stated that there is only one drawing that shows the pool as "future pool area", all other drawings submitted show the pool as "pool area". He emphasized that at the time the drawings were created, he was unable to conduct a survey of the property which would have allowed him to specify the exact location of the pool on the drawings. As such, the pool was indicated as "future pool area" on drawing A-00 (Tab B, p. 13 of the Agenda Package). This was due to conceptual reasons to show the general location of the pool, not to indicate that the pool was not part of the development permit application. The intent was for the pool to be part of the application, which is why it is located on all drawings, including drawings A-3 and A-1 (Tab B, p. 9 and 15 of the Agenda Package).

The dwelling and the pool will be welded and shipped, a crane will need to be obtained to place the sea-cans onto the property. The Appellant stated that it was always the intent to have the pool and dwelling placed on the property at the same time, as there is a significant cost associated with renting the crane for the placement of the sea-cans on the property. Removing

the pool from the application should have been discussed with the Appellant prior to reaching a decision on the application.

The Appellant stated that he was never informed that the pool had to be applied for separately, or that there was a concern with the pool being labeled “future pool area” on one of the drawings. The Appellant was surprised that the pool was excluded from the approval, despite everything else on the drawings being approved. The Appellant argued that if the Development Authority was approving everything on the drawings without stating all the specific components on the application form, the pool should have also been approved as it was also located on the drawings.

The Appellant argued that the fact that the dwelling and the pool are proposed to be made out of a sea-cans, should not change the Development Authority’s acting on the approval. Sea-can is just another way of saying corrugated metal, it is merely a different type of material and does not change the development applied for.

### Fence

After further discussion, the Appellant recognizes that he is now able to construct a permanent fence in compliance with the LUB or a temporary fence for construction purposes.

### Process / Costs

The Appellant raised concerns about the Village’s unclear process. He stated that the development permit process was never clearly outlined and that contradictory information has delayed progress on the project. Additional information was requested with some delay and some of the requests could not be satisfied because the Appellant could not proceed with having the land surveyed.

The Appellant expressed frustration that even though some items were not included as part of his application – i.e. the possible addition of a septic tank – it was considered by the Development Authority and discussed with the Appellant, without prior consultation or verification of the third party information by the Appellant.

Many cost factors need to be considered for the development of a green built, which included the repurposing of materials and items. As part of the green built and its associated costs, the Appellant has to obtain materials as they become available instead of purchasing them as needed. However, without a fence around the perimeter of his property, he was unable to insure the materials and incurred additional cost to rent a storage unit. He was instructed that the fence needed to be approved by the Municipal Planning Commission. The Appellant stated that he now understands why approvals were necessary.

## KEY FINDINGS OF FACT

The Board makes the following key findings:

1. The swimming pool was indicated on the drawings submitted by the Appellant as part of the development permit application. The pool area is indicated and labeled on drawings A-00, A-1, A-2, A-3, and M-1 (Tab B, p. 9, 11, 13, 15, and 18 of the Agenda Package). The pool forms part of the development permit application applied for by the Appellant.
2. The subject development is located within the R-1 Single-Detached Residential District of the Land Use Bylaw.
3. “Accessory Building or Structure” and “Dwelling – Single-Detached” are permitted uses within the R-1 Single-Detached Residential District of the LUB and reflect the use of the swimming pool and the proposed dwelling unit.
4. The Appellant is permitted to erect a permanent fence on the property in accordance with the LUB provisions. Should a height variance be requested, a development permit application needs to be submitted to the Village of Carbon.
5. The Appellant is permitted to erect a temporary construction fence on the property to secure the construction materials.
6. The concerns about the Village’s unclear development permit process does not fall within the Board’s jurisdiction and is not a valid matter of the subject appeal.
7. Matters regarding the Village’s fee schedule regarding the development permit fee and the subdivision and development appeal fee do not fall within the Board’s jurisdiction. The fee bylaw is set and approved by Council.

## DECISION

The appeal filed by Ngqabutho ‘Chrispen’ Sibanda is allowed and the decision of the Development Authority is modified as follows:

Development Permit 2021-12 for a “Dwelling – Single-Detached” and “Accessory Building or Structure” (Swimming Pool) is conditionally approved under the provisions of Land Use Bylaw 2018-804.

Permit Number:	2021-12
Legal Address:	1 Diamond Valley Close
Proposed Use:	“Dwelling – Single-Detached” and “Accessory Building or Structure”

Conditions:

1. Applicant to obtain approved building permit and inspection from Palliser Regional Municipal Services.
2. Applicant to obtain approved plumbing and/or sewage disposal permit and inspection from Palliser Regional Municipal Services.
3. Applicant to obtain approved electrical permit and inspection from Palliser Regional Municipal Services.
4. Applicant to obtain approved gas or propane hook-up permit and inspection from Palliser Regional Municipal Services.
5. Obtain Fire Safety Codes inspection through Village of Carbon.
6. Comply with Village of Carbon *Land Use Bylaw 2018-804*: R-1 District.
7. Applicant may place a temporary construction fence around the perimeter of the property. The fence shall be located entirely within the property boundaries and shall not exceed 8 feet in height. The fence shall be removed within 7 calendar days of the date that the construction of the dwelling is complete.
8. The outdoor swimming pool shall be secured from unauthorized entry using the dwelling and fence to create an enclosed perimeter. The fence used for this purpose shall be at least 6 feet in height and no more than 8 feet in height. The fence shall be located entirely within the property and shall not extent into the front yard of the lot.
9. Must adhere to all federal, provincial, or other municipal legislation, or the conditions of any easement, covenant, building scheme or agreement affecting the building of land. The operation of all uses shall comply with the environment and public health performance standards of the Provincial Government.

## **REASONS FOR DECISION**

### Swimming Pool

The Board finds that the swimming pool was part of the initial development permit application and was excluded from the development permit as per initial condition 8 of the August 12, 2021 approval. The Board acknowledges that the Appellant intended for the pool to be considered under the same development permit application as the dwelling unit, to reduce project costs of the development.

Although the development permit application form submitted by the Appellant does not specifically indicate the addition of a pool, the swimming pool was clearly marked on all drawings that were submitted to the Board as part of the Development Authority's submissions. No evidence was provided to confirm that the Appellant's intent was not to have the pool as part of the initial development application, nor was any evidence provided to demonstrate that the Development Authority sought clarification about the matter from the Appellant.

The Board emphasizes that the Development Authority noted that a pool would likely be considered as part of a dwelling unit application if it was of a more conventional nature.

The fact that the swimming pool is made out of a sea-can rather than a more conventional swimming pool material, does not preclude the swimming pool to be treated as a typical swimming pool application. The Board acknowledges that an in-ground swimming pool is not a typical development for the Village. However, the rarity of this type of development within the community and the lack of specific swimming pool policies under the LUB does not render the swimming pool to be excluded from a development permit application.

The Board finds that the swimming pool is an accessory use to the principal dwelling and falls within the "Accessory Building or Structure" definition of the LUB, which states:

- (a) A structure separate and subordinate to the principal building, the use of which is incidental to that of the principal building and is located on the same parcel of land (i.e. detached garage, shed, workshop in a residential land use district);
- (b) all accessory buildings shall adhere to the requirements of Section 37.

Section 27 (R-1 – Single-Detached Residential District) of the LUB states that both the "Accessory Building or Structure" use and the "Dwelling – Single-Detached" use are permitted uses under the R-1 District. The Board finds that the approval of the pool does not increase the density or intensity of the property. The Board is satisfied to include the pool within the approval and highlights that the Appellant is required to adhere to the required LUB provisions for "Accessory Building or Structure". These requirements include the required setbacks, as well as obtaining the necessary permits and inspections to be in compliance with the applicable Safety Codes' requirements.

### Fencing

The Board acknowledges that there was miscommunication and misunderstanding between the Appellant and the Development Authority as to the possession and ownership of the land and the thereby created concerns about the erection of a temporary or permanent fence.

The Board is satisfied that the Appellant now has ownership of the property as per the registered certificate of title, and is permitted to build a temporary construction fence or a permanent fence as per LUB requirements.

The Board finds that there are no further disputes between the parties regarding the fencing matter.

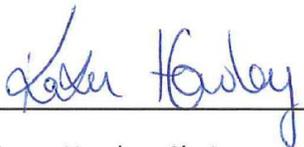
Process / Costs

The Board finds that the Village's development permit application process and handling of its incomplete applications, as well as the costs associated with the process are outside the Board's jurisdiction and would need to be dealt with by the Village of Carbon. The fees are set through a fee bylaw that is approved by Council. The Board did not consider these to be a valid reason and matters for the purposes of the subject appeal hearing of Development Permit 2021-12.

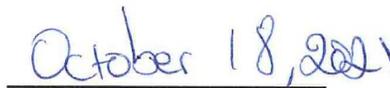
**CLOSING:**

This decision can be appealed to the Court of Appeal on a question of law or jurisdiction. If you wish to appeal this decision you must follow the procedure found in section 688 of the Municipal Government Act which requires an application for leave to appeal to be filed and served within 30 days of the date of this decision.

Dated at the City of Red Deer, in the Province of Alberta this 18<sup>th</sup> day of October, 2021 and signed by the Chair on behalf of all three panel members who agree that the content of this decision adequately reflects the hearing, deliberations and decision of the Board.



Karen Howley, Chair



Date

**APPENDIX “A”**

PARTIES WHO ATTENDED, MADE SUBMISSIONS, OR GAVE EVIDENCE AT THE HEARING:

<u>Name</u>	<u>Capacity</u>
Ngqabutho ‘Chrispen’ Sibanda	Appellant
Vanessa Van der Meer	Development Authority

## **APPENDIX “B”**

### DOCUMENTS RECEIVED PRIOR TO THE HEARING:

<u>Reference Tab</u>	<u>Item</u>
TAB A	Notice of Appeal
TAB B	Application
TAB C	Development Permit Issued
TAB D	Information Provided by Development Authority
TAB E	Notices
TAB F	Development Authority’s Supplementary Submissions