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NATURAL RESOURCES CONSERVATION BOARD

NRCB AOPA REVIEW HEARING
A&D CATTLE LTD./LA21037

P R O C E E D I N G S

Volume 1
July 7, 2022
(Via videoconferencing)

1 Natural Resources Conservation Board Proceedings taken
2 virtually.

3

4 Volume 1

5 July 7, 2022

6

Peter Woloshyn
7 Walter Ceroici
8 Sandi Roberts

Chair
Commission Member
Commission Member

8

9 William Kennedy

Commission Counsel

9

10 Laura Friend
Janet Harvey
11 Sylvia Kaminski
Carolyn Taylor
12 Makram Elhakim

Commission Staff
Commission Staff
Commission Staff
Commission Staff
MNP Technologies

12

13 Fiona Vance
14 Joe Sonnenberg
Andy Cumming

For NRCB Field Services
NRCB Field Services
NRCB Field Services

15

16 Cody Metheral
Adrian van Huigenbos

For A&D Cattle Ltd.
A&D Cattle Ltd.

16

17 Shauna Finlay
Derrick Krizsan
18 Diane Horvath
Cindy Chisholm

For MD of Willow Creek
MD of Willow Creek
MD of Willow Creek
MD of Willow Creek

18

19 Janice Agrios
Adrian Pedro
20 Keli Sandford
Gavin Scott

For Town of Fort Macleod
Town of Fort Macleod
Town of Fort Macleod
Town of Fort Macleod

21

22 Wade and Kaitlyn Conner

In their own stead

22

23 Dwain and Victoria Lewis

In their own stead

23

24 Lorelee Vespa CSR(A) CRR RPR
Eveliene Symonds, CSR(A)

Official Court Reporters

25

1 (PROCEEDINGS COMMENCED AT 9:00 A.M.)

2 THE CHAIR: Good morning to everyone. My name
3 is Peter Woloshyn. I'll be chairing the Panel today
4 for the NRCB to hear the review of approval officer's
5 Decision LA21037 for A&D Cattle. We really do
6 appreciate you all accommodating the Board's request to
7 hold a hearing today.

8 Before we begin the formal part of the hearing, I
9 would like to pay tribute to and have an Indigenous
10 land acknowledgement. I want to take a moment to
11 respectfully acknowledge that we are coming together
12 online from the traditional lands of Treaties 6, 7, and
13 8. I recognize the many First Nations, Métis and Inuit
14 whose footsteps have marked these lands for centuries
15 and share a deep history with this land. And we are
16 spread across today, I think, all three treaties, if I
17 have it right, so all treaty areas.

18 To help you identify the Panel, we have Zoom
19 backgrounds with a mountain scene, as you see on my
20 screen, for the three Panel members who I'll introduce
21 briefly. And our staff have -- the Board staff also
22 have backgrounds that have an NRCB logo on them. So it
23 will be relatively easy to identify us folks I hope.

24 I'd like to briefly introduce my Panel members
25 today.

09:01

09:02

1 Sandi Roberts. Can Sandi -- hi, Sandi.
2 Ms. Roberts is an agricultural engineer, and she was an
3 approval officer with the NRCB until 2010, and has been
4 a municipal councillor for the Town of Carstairs, and
5 was an instructor a number of times with Olds College.

6 Mr. Ceroici. Everyone can see Mr. Ceroici.
7 Perfect.

8 Walter has extensive experience in the development
9 of environmental risk management tools and groundwater
10 assessment policies to support sustainable livestock
11 and industry development, and he acquired that through
12 his past work at Alberta Environment and Parks and
13 during his tenure as lead of NRCB Science and
14 Technology division. So Walter's an acting Board
15 member and was on staff for a number of years with the
16 NRCB and since retired.

09:02

17 Again, my name is Peter Woloshyn. I grew up on a
18 forage and beef farm near Devon, close to Edmonton. I
19 was appointed CEO of the NRCB in May of 2006 and up
20 until my appointment as Chair in December of 2017. I
21 have a background in resource economics, crop
22 insurance, policy development, and have led research
23 divisions with Alberta Agriculture in crops and
24 livestock area.

09:03

25 We also have assisting the Panel, Mr. Kennedy. So

1 Mr. Kennedy -- I think his screen is off right now.
2 There he is. Hello, Mr. Kennedy, good morning.
3 General counsel for the Board, and a little shout out
4 to Bill. He's now in his 30th year with the NRCB. So
5 we've been just delighted and it's been a privilege
6 having Bill with us.

7 Ms. Friend, also a longtime Board staff member,
8 manager of review. So you've all met her with all of
9 the dealings to get this hearing up and running. And
10 thanks to you, Laura, for that. And Laura's been with
11 the NRCB for 20 years now.

12 So if you have any difficulties during the
13 hearing, we'd ask you to phone or text Laura --
14 Ms. Friend -- and you can do that at -- if you don't
15 have the number already, maybe take this down just in
16 case -- that number is 403-620-8294, and she can help
17 you and that may involve getting MNP involved.

18 But depending on the issue, we may have to pause
19 the hearing until everybody gets fully connected again.
20 It seems to be working now, so we'll cross our fingers
21 on the technology.

22 For Field Services today, we have Joe Sonnenberg,
23 the approval officer who handled the application. Good
24 morning, Mr. Sonnenberg. Ms. Fiona Vance, chief legal
25 officer for Field Services, who will be representing

09:04

09:04

1 the approval officer. And Mr. Andy Cumming who is
2 director of Field Services on the application side.
3 Good morning, Mr. Cumming.

4 And we have two staff that I think are coming on
5 now -- yes, I see them there -- who are doing our
6 virtual onscreen document management, and they are our
7 rock stars for document management. They are
8 Ms. Taylor and Ms. Kaminski. So Sylvia Kaminski and
9 Carolyn Taylor, good morning.

10 So when you want a document on screen when
11 you're -- if you're giving direct evidence as an
12 example, and you'd like a document up, you can please
13 let us know what the document number is by exhibit, and
14 we'll do that in a minute, but by the exhibit number
15 and then the pdf page number. And it really helps if
16 we have the actual pdf page number.

09:05

17 So some documents that we've had submitted have
18 multiple pages, multiple attachments. So if it's
19 attachment -- in an attachment with a page Number 60,
20 it's going to be pretty tough for us to find. That
21 entire document should have a 1 through, say, 900 pdf
22 numbers on it and just tell us it's pdf Number 122 if
23 that's the number, as an example. It really helps our
24 document managers get to that document and page number
25 quickly. And if you give them that information, I can

09:06

1 assure you they will have it up quickly. They are very
2 good at this.

3 And our MNP Zoom host for the hearing,
4 Mr. Mak Elhakim, with Meyers Norris Penny, and MNP
5 provide the NRCB with our IT support, and he'll be
6 overseeing the technical matters for the virtual
7 hearing today and has already done that this morning.
8 So welcome, Mr. Elhakim, and thank you.

9 Our court reporters for today from
10 Amicus Reporting will be providing a transcript for the
11 hearing, which is very useful. Welcome back,
12 Ms. Vespa. We're thrilled to have you back with us.
13 She's old hand with the NRCB now on a number of our
14 hearings.

09:06

15 And welcome to, I think, a first time for NRCB
16 hearings, Ms. Symonds, But she'll begin this afternoon.
17 I suppose we can introduce her later -- or are you
18 going to be handling the whole day, Ms. Vespa?

19 Oh, you are. Okay. Perfect. Well, thank you,
20 and welcome back.

09:07

21 During the hearing --

22 (DISCUSSION OFF THE RECORD)

23 THE CHAIR: I think we're back and ready to
24 go.

25 So I just need to get my screen organized here.

1 Just give me one second.

2 THE COURT REPORTER: Mr. Chair, the last we heard was
3 "During the hearing."

4 THE CHAIR: Yeah, I just have to find it on my
5 screen. All right. Thank you.

6 So where I was going with that is we do need you
7 to identify yourself when you're speaking so the court
8 reporters can record who is speaking, and if you could
9 do that very clearly. And when you're speaking, if you
10 could speak, you know, fairly slowly and clearly so
11 that it gives the court reporters a chance to get the
12 transcript right, we'd really appreciate it.

13 Ms. Vespa, as usual, don't hesitate to interrupt
14 us if you are having trouble either hearing or keeping
15 up with someone if someone is speaking too quickly.

16 The NRCB has provided a YouTube link as well on
17 its website for members of the public to observe. The
18 link is on NRCB's main web page. And, also, the
19 meeting is being recorded and will be saved on NRCB's
20 YouTube channel. So if you have someone that you were
21 hoping could listen in, you could forward that
22 information to them as the hearing progresses.

23 There's members of the media. Is Ms. Harvey
24 online or is she on YouTube? I am not sure. But our
25 communications person is Ms. Janet Harvey. So if there

09:09

09:09

1 is any members of the media that would like to do any
2 interviews or have any questions, she can be reached by
3 email at janet.harvey@nrcb.ca. Alternatively, her cell
4 number is 780-720-2317. If you can't get ahold of her,
5 you could also text Laura and she'll help you out.

6 So the purpose of the hearing is to review
7 Decision LA21037 that was dated April 1 of this year,
8 2022, and that was issued by approval officer
9 Joe Sonnenberg.

10 The confined feeding operation, or CFO, is located 09:10
11 at NE 27-8-26, West of the 4th Meridian, in the
12 Municipal District of Willow Creek, and it's roughly
13 2 1/2 kilometres from the Town of Fort Macleod.

14 The approval officer denied the application to
15 construct a new 2,000 head beef finisher CFO, and he
16 ruled that the application was inconsistent with the
17 intermunicipal development plan that was in place as of
18 March 9, 2022.

19 We received three requests for review and they
20 were received by the filing deadline of April 26. 09:11
21 Those were from the MD of Willow Creek; from the
22 operator, A&D Cattle; and from directly affected party
23 neighbour, Mr. Dwain Lewis.

24 Portions of the public record maintained by the
25 approval officer were provided on April 29th of 2022,

1 and rebuttals were received within the filing deadline
2 of May 3, 2022, from directly affected parties Wade and
3 Kaitlyn Conner, and the Town of Fort Macleod. All
4 submissions for the hearing and replies were received
5 by the filing deadlines.

6 So your participation at the hearing is important
7 to the Panel. We look forward to the information that
8 you'll be providing, and recognize that our decision
9 will have a significant impact on your community. We
10 take this responsibility very seriously.

09:11

11 The process that we follow is inherently formal.
12 It is a quasi-judicial proceeding, so a certain level
13 of formality is appropriate, in our view. However, we
14 recognize that some parties are not used to the
15 process. And to minimize the formality to the extent
16 possible, we want to have participants comfortable in
17 presenting the information to the Panel and able to ask
18 questions when they need to.

19 We do have two external parties represented by
20 legal counsel who are undoubtedly familiar with
21 tribunal processes. Several other parties are not
22 represented by legal counsel.

09:12

23 You know, you may be unsure at times about the
24 process, but the Board encourages you to ask questions
25 at any time if you're not sure about where we're at in

1 the process or when you're allowed to interject, and do
2 that at any point. I'll do my best to answer your
3 question, or we can get Mr. Kennedy to help you out,
4 and if necessary -- Mr. Kennedy has done this many
5 times before -- we can have a short break and he can
6 just kind of get you up to speed a bit and it's not an
7 issue at all. We want to make sure that you're
8 comfortable so that we get the information we need to
9 make the best decision we can.

10 So in terms of the brief overview for the
11 hearing -- and you may have hopefully read some of the
12 background information that we have for our hearings,
13 but we will register all the parties, and then each
14 participant will have an opportunity to address any
15 preliminary matters that you have, if any.

16 Once that's done, we'll begin with the evidentiary
17 or direct evidence portion of the hearing. And in this
18 hearing, the Board believes it's beneficial for NRCB's
19 Field Services to present their direct evidence first,
20 followed by A&D Cattle, then the MD of Willow Creek,
21 the Town of Fort Macleod, and then directly affected
22 neighbours.

23 When it's your turn to provide evidence, you'll be
24 sworn in or affirmed -- it's your choice -- by the
25 court reporter. And once you're sworn in or affirmed,

09:13

09:13

1 any new written evidence that you want us to consider
2 may be entered into the record on request. We then
3 give you a chance to highlight and expand upon any
4 points in your submission that you feel are
5 particularly significant.

6 You don't need to reread your submissions, we've
7 all read the submissions, but there is undoubtedly some
8 pieces of that submission that you would like to
9 highlight for the Board or clarify further.

10 After you've presented that evidence, you'll be
11 open to questions or cross-examination by other
12 parties, NRCB field services included, and the Board
13 counsel and Panel members.

09:14

14 Now, once the questioning is complete, the party
15 that presented evidence will have an opportunity to
16 introduce any redirect evidence, which essentially
17 gives you a chance to submit anything further that you
18 may want to provide based on the questions that were
19 posed to you during the cross-examination portion. And
20 if you believe there's some information that the Panel
21 should have, that would be your opportunity to provide
22 it after you're questioned.

09:14

23 Once we've completed direct evidence and
24 questioned by all parties, A&D Cattle, you have the
25 opportunity to provide some rebuttal evidence, and if

1 you provide rebuttal evidence, other parties will be
2 given opportunity to ask some questions on that.

3 And then, lastly, everybody will have opportunity
4 for final argument. These are not obligations, they're
5 not requirements, but they're opportunities if you wish
6 to take advantage of them.

7 So just before we get into the next piece, based
8 on the process for the hearing, is everyone familiar
9 with the process and do you have -- or do you have any
10 questions that you'd like to ask at this point?

09:15

11 Okay. Hearing none.

12 We'll be taking a few breaks today, and I'll try
13 to time those at sort of convenient breaks where
14 somebody -- if we have a panel that's going to change
15 over to the next panel, we'll do it then rather than
16 try to interrupt somebody in the middle of a panel
17 discussion, and we'll have a lunch break as well. I'll
18 be specific about how long those breaks are, and we are
19 pretty committed to the return times just to make sure
20 that we can get done on time.

09:15

21 We hope to be done between 4 and 5 today, so I
22 guess I'd like to quickly ask, is there anyone that
23 would have other commitments or have trouble staying to
24 at least 5 if we need until 5:00 to complete today. I
25 see no hands up or I hear no objections. All right.

1 And, Ms. Vespa, that works for you as well? Good.

2 I see you nodding. Yeah. Thank you.

3 And Mr. Elhakim with MNP?

4 MR. ELHAKIM: Yes, no problem.

5 THE CHAIR: So if we lose those two, we're in
6 trouble, so we have no virtual. So I wanted to
7 confirm. Okay. Thank you very much.

8 So document managers, if you could flip to, on the
9 screen, the participant registration. Those are the
10 parties that I believe are online now, and those are
11 the parties that we have registered so far. I would
12 ask if there any errors, mistakes, to let us know now,
13 and I think we can forward this document also to
14 Ms. Vespa so she has spellings of all the parties.

09:16

15 So we have representatives and the people
16 providing evidence for the approval officer,
17 A&D Cattle, Willow Creek, Town of Fort Macleod, and
18 then the neighbours, affected parties, Mr. and
19 Mrs. Conner and Mr. and Mrs. Lewis.

20 If I have any errors there, please let me know
21 now, or if I missed anybody that is participating today
22 that should be on this list.

09:17

23 MS. VANCE: Mr. Chair, this is Fiona Vance,
24 counsel for Field Services. Mr. Andy Cumming will be
25 briefly giving some evidence, so he should be added to

1 this list.

2 THE CHAIR: Thank you. So, Ms. Vespa, can we
3 add Mr. Andy Cumming? Thank you.

4 Any others? Hearing none. Perfect. We have
5 that. Thank you, document managers.

6 So before we get started on the evidentiary
7 portion, are there any preliminary matters that anyone
8 would like to address, procedural, legal, or others?

9 Hearing none.

10 We'll adopt an exhibit list. So Ms. Friend
11 prepared an exhibit list and posted it on the website
12 with exhibit numbers. Document managers, if you could
13 bring up that list, that would be great. There we go.

09:18

14 So we have 26 exhibits so far, at least, and what
15 I'd like to do is just through approval or at least no
16 objection adopt this exhibit list as our exhibit list
17 for the hearing.

18 Are there any objections to adopting this list as
19 the exhibit list, which is also available on the
20 website.

09:19

21 I see none and I hear no objections, so that makes
22 it easy, and we'll be referring to those throughout the
23 day.

24 Okay. So we can take that down. Thank you,
25 document managers.

1 Okay. Perfect. So we'll get started with the
2 evidentiary portion of the hearing, and as I mentioned
3 earlier, we would start with Field Services and
4 approval officers.

5 So, Ms. Vance, I'll pass the mic over to you, and
6 you can proceed.

7 MS. VANCE: Thank you so much. So my name is
8 Fiona Vance. I'm legal counsel for Field Services and
9 the approval officer and --

10 THE CHAIR: Ms. Vance, sorry, I should have
11 asked. I figured you might, but we should probably
12 either now or you can ask for swearing in for
13 Mr. Sonnenberg.

09:19

14 MS. VANCE: Yes, I will get there.

15 THE CHAIR: Okay. Perfect. Thank you.

16 MS. VANCE: Thank you. I may need reminding.

17 THE CHAIR: Well, I usually do, so that's why.

18 MS. VANCE: Ms. Vespa is also very good at
19 reminding.

20 THE CHAIR: Yeah, okay.

09:20

21 MS. VANCE: Thank you for the opportunity to
22 present some evidence today.

23 Just for clarity to couch some context around the
24 evidence you will hear, the approval officer and NRCB
25 Field Services are not taking a position on what I

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Examined by Ms. Vance

1 would consider to be the main issues today.

2 So we're not taking a position on whether the
3 policy of using the MDP or IDP in place at the time of
4 decision should remain. We are also taking no position
5 on whether the Board should uphold, vary, or overturn
6 the approval officer's decision.

7 However, there has been some suggestion about
8 possible delay on the part of the approval officer in
9 issuing his decision. That is Issue 3 as identified by
10 the Board in Exhibit 17, which is the RFR decision. It
11 touches on procedural fairness, and we are entitled to
12 respond to that.

13 And so to that end, I will be calling
14 Mr. Joe Sonnenberg, the approval officer. And to
15 provide context and also to answer any questions that
16 parties or the panel may have, I will also call
17 Andy Cumming to give some evidence.

18 So, at this point, Ms. Vespa, I wonder if we could
19 have those two witnesses affirmed or sworn in.

20

21 **J. SONNENBERG, A. CUMMING (For NRCB Field Services),**
22 **affirmed**

23 **MS. VANCE EXAMINES THE PANEL:**

24 Q. So I'm going to start with Mr. Sonnenberg.

25 And, again, for a bit of context and to understand

09:20

09:21

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1 where these questions are coming from, I am not
2 planning to review the life of this file day by day.
3 In my view, the Board has lots of factual information
4 about this, which we will refer to. Several exhibits
5 have this in, and I feel an oral testimony of
6 day-by-day rehashing would not be particularly helpful
7 to the Board and maybe not an efficient use of hearing
8 time. So I will ask Mr. Sonnenberg to point out some
9 clarifications, and then, of course, he will be
10 available to answer questions.

09:22

11 So, Mr. Sonnenberg, I wonder -- we'll start with
12 some easy questions for you. What is your position at
13 the NRCB?

14 **A. MR. SONNENBERG: So I'm an approval officer out of**
15 **the Lethbridge office.**

16 **Q. And how long have you been in that position?**

17 **A. MR. SONNENBERG: Just over five years.**

18 **Q. So I'd like to ask you some general questions about**
19 **processing application files, and my purpose in asking**
20 **these is to assist the Board in understanding the life**
21 **of a given application file. So setting amendments**
22 **aside, what types of permits do you see applied for?**

09:23

23 **A. MR. SONNENBERG: So in general, we see a mixture of**
24 **approvals, registrations, and authorizations, which are**
25 **essentially just varying from bigger applications where**

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1 animals are being added to small applications where
2 maybe it's just an addition to a barn or something like
3 that at an existing site.

4 Q. And if you're able to answer this question, could you
5 give a ballpark estimate of how many files you see in a
6 given year?

7 A. MR. SONNENBERG: So, yeah, it would generally be
8 around 20 per year with a range of about 15 to 35.

9 Q. And, again, if you can answer this, what portion of
10 those applications are approval applications?

09:24

11 A. MR. SONNENBERG: It varies a little bit, but for
12 me, I would say around 75 percent.

13 Q. Okay. Thank you. So the file in question was an
14 approval, so let's just focus on those for a moment.
15 And I do recognize there is no such thing as a typical
16 application, but in general, could you, please, tell
17 the Board the steps that you go through in processing
18 an application?

19 A. MR. SONNENBERG: Yeah. So in general, we start out
20 following, well, what AOPA lays out, so it's a two-part
21 application process. So what gets the ball rolling is
22 we would receive a Part 1 early in the process. So
23 that's -- the applicant submits it and gives us an idea
24 of what they're looking to build, the size of the CFO.

09:24

25 At that point, we provide information to the

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1 applicant. They need to proceed. So maybe the
2 application forms include things like measurements of
3 MDS; we do our land-base requirements; if they have
4 questions, we try to answer them to the best of our
5 ability at that point; setbacks, other requirements.

6 So once they have the application paperwork, it's
7 kind of up to them to get it submitted and filled out,
8 come up with a plan and get all the information in to
9 us.

10 And when we have it, we kind of try to determine
11 if it's all there. It's not an intensive investigation
12 at this point, but, you know, we try to make sure it
13 looks like there's enough manure lands, it looks like
14 it meets AOPA.

09:25

15 And then once we've kind of determined that, we
16 proceed to the deem and complete stage when it will --
17 courtesy letters are sent to neighbours, it appears in
18 the local newspaper.

19 And then 20 business days to get our responses
20 back, give it a few days for coming in by mail, make
21 sure we provide all those responses for their -- for
22 the applicant's review and possible response.

09:25

23 And then we kind of get to the point where we
24 start processing these things and do a more in-depth
25 assessment, so...

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1 Q. And eventually issuing a decision?

2 A. **MR. SONNENBERG:** Yeah. And then I guess our
3 objective, as laid out, is we try to issue a
4 decision -- whether, you know, approved or denied --
5 within 65 business days. And, yeah, obviously that
6 varies a little bit seasonally between files, so...

7 Q. And, Mr. Sonnenberg, just to be clear, filing a Part 2
8 application is different from a file being deemed
9 complete; is that fair to say?

10 A. **MR. SONNENBERG:** Yeah, for sure, because when it
11 comes in, we need to set aside some time to review it
12 for sure, make sure all the papers there, go through.

13 And so, yeah, the date can vary. You know, best
14 case scenario, sometimes it's within a couple of days,
15 but often it might take a week, week and a half before
16 we have time to review.

17 Q. And, in general, from your five years of experience, is
18 processing an application for a new CFO any different
19 from processing an application to expand an existing
20 CFO?

21 A. **MR. SONNENBERG:** Yeah. So, again, it's variable
22 for sure. Each is different, but in general a new CFO
23 is a little more in depth. We don't have the
24 background information. Most likely, you know, we've
25 never done risk screening for the site. We just don't

09:26

09:27

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1 **have background documents. So, in general, a new site**
2 **will be a little bit more time consuming than an**
3 **existing site.**

4 **Q. Thank you. I will now move to ask you what could be**
5 **considered blunt questions, but I think we all would**
6 **like the answers to those.**

7 **So, the first question, in processing application**
8 **LA21037, did you at any time intentionally delay the**
9 **release of your decision?**

10 **A. MR. SONNENBERG: No, there was no intentional**
11 **delays.**

09:27

12 **Q. And did you know when the Board's Double H decision was**
13 **going to be released?**

14 **A. MR. SONNENBERG: No. It wasn't something I was**
15 **tracking at the time.**

16 **Q. Do you recall when you found out about the MD of**
17 **Willow Creek passing third reading on the IDP?**

18 **A. MR. SONNENBERG: Yeah. So I had processed most of**
19 **this application. We were in the internal review**
20 **process, which spans about four to five business days.**
21 **And in that time, I was notified that the IDP had**
22 **likely been implemented.**

09:28

23 **Q. And who notified you of that?**

24 **A. MR. SONNENBERG: The manager of approvals during**
25 **the review process, so...**

J. SONNENBERG, A. CUMMING

Examined by Ms. Vance

1 Q. Mr. Cumming?

2 A. **MR. SONNENBERG:** Yeah, Andy.

3 Q. So some time, obviously, has flowed under the bridge
4 since you issued this decision. So in preparing for
5 your testimony today, what did you do to prepare?

6 A. **MR. SONNENBERG:** So I tried to review all the
7 documents that I have here, just went through any notes
8 I have on call logs. And it's been eight months, but I
9 refreshed everything to the best of my ability and,
10 yeah, so I think I've reviewed everything that I could
11 here.

12 Q. Thank you.

13 MS. VANCE: Document manager, could you kindly
14 bring up Exhibit 21. Exhibit 21 is the NRCB's
15 submission in this review, and I am -- when we get
16 there, I'm looking for pdf page 4.

17 Thank you.

18 Q. Have you had an opportunity to review this submission?

19 A. **MR. SONNENBERG:** Yes, I have.

20 Q. And specifically the chronology section.

21 MS. VANCE: If you could just scroll down a
22 little bit. There it goes.

23 Q. So it goes from paragraph 4 through 23. You reviewed
24 this as well?

25 A. **MR. SONNENBERG:** Yes.

09:29

09:29

J. SONNENBERG, A. CUMMING

Examined by Ms. Vance

1 Q. So at the time this submission was made, which was
2 May 26, were you available at the NRCB offices to
3 review this before it went out?

4 A. **MR. SONNENBERG:** No, I was not.

5 Q. And what was the reason for that?

6 A. **MR. SONNENBERG:** I was away on a leave.

7 Q. Okay. So I'd like you to take some time and tell the
8 Board, is there anything in this chronology section
9 that, to the best of your knowledge, is inaccurate?

10 A. **MR. SONNENBERG:** So if we could -- document
11 manager, if we could, please, scroll down to Bullet 17.

12 In general, I think everything is -- seems to be
13 in place, but on 17, it indicated the applicant
14 contacted me and advised there was an issue where he
15 drew the well.

16 And that's not true. I contacted the applicant
17 with questions about the well.

18 Q. Okay. Thank you.

19 A. **MR. SONNENBERG:** Aside from that, I think
20 everything looks feasible.

21 Q. Okay. If anything occurs to you later, we can always
22 bring this document back up.

23 MS. VANCE: Thank you, document manager.

24 Could we kindly have Exhibit 22, now?

25 Exhibit 22 is the first submission from A&D Cattle

09:30

09:30

J. SONNENBERG, A. CUMMING

Examined by Ms. Vance

1 in this review dated May 26, and I am looking for pdf
2 page 6 through 8.

3 Q. Mr. Sonnenberg, have you had an opportunity to review
4 the information on these pages?

5 A. MR. SONNENBERG: Yes, I did.

6 Q. So this appears to be a summary of events over the time
7 period. Is there -- as you've reviewed this, is there
8 anything in here that you feel is not accurate?

9 A. MR. SONNENBERG: Most -- most of it seems to follow
10 my memory as well. I just have, like, some
11 clarifications on a couple of the points.

12 If we could scroll down to the November 24th date.
13 Yeah, there we are.

14 So I don't have a great recollection of -- of this
15 call. Sorry, I'm just taking a look here. Just making
16 sure I remember it as I read it the other day.

17 Yeah, so I do not remember at least the portion of
18 saying where there's more statements of concern during
19 December, or as a result of doing notice then.

20 So maybe I wasn't super clear on how I would
21 normally understand it, but normally when I kind of
22 explain this, it's more about just the public notice
23 and making sure everyone has a fair chance to be able
24 to comment on it.

25 So maybe not incorrect; it could just be the way

09:31

09:32

J. SONNENBERG, A. CUMMING

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1 I -- a misunderstanding or maybe I didn't explain
2 things clearly, but that's one thing.

3 Q. Are there any others?

4 A. MR. SONNENBERG: And then if we scroll down to
5 January 5th. So it states the first statement of
6 concern. And this isn't fully accurate, but this kind
7 of is an internal thing I thought I could explain, is I
8 did send the Alberta Environment and Parks' response to
9 the applicant right away, and this was more as a
10 courtesy than anything because I know the process for
11 getting water can be quite time consuming.

09:33

12 So I just kind of wanted to give them the benefit
13 of the doubt and get that ball rolling. So everything
14 else I didn't send till the end because I didn't quite
15 see the same timeframe for follow-up.

16 And also just -- yeah, yeah. So I mean that's the
17 basic thing. So the rest of it was sent later on, but.
18 So it wasn't a statement of concern; it was a referral
19 response.

20 Q. For January the 5th?

09:34

21 A. MR. SONNENBERG: Yeah.

22 Q. Okay. Are there any other items you wish to clarify?

23 A. MR. SONNENBERG: I think I got everything from that
24 section. If we could scroll down to March 21st.

25 So the conversation -- you know, it's been a long

J. SONNENBERG, A. CUMMING

Examined by Ms. Vance

1 time since March here, but I'm pretty sure I would not
2 have said I'd be able to get his permit accepted.

3 So I'm just saying I might have explained the
4 Board process, and maybe some stuff was lost in
5 translation. But I mean, I would have said the route
6 to getting accepted would be through requesting a Board
7 review and that the rest of my decision, IDP was kind
8 of out of my control, so...I think that about sums up
9 that section.

10 Q. Thank you. Are there any other items in this -- these
11 three pages that you wanted to clarify?

12 A. MR. SONNENBERG: Not at this point. I think that's
13 all that comes to mind immediately, so...

14 Q. Okay. Thank you. And just briefly to clear it up, the
15 pdf pages 9 and 10, if we could just move to those.

16 So these appear to be reproduction of text from
17 emails on November 16, March 14, and then further down
18 the page March 16. And I just wanted to, you know,
19 ask, is there anything in here -- does this kind of
20 square with what you have against your own file?

21 A. MR. SONNENBERG: Yeah. They look like the same
22 emails that were sent. I didn't notice anything that
23 was different.

24 Q. Okay. Thank you.

25 MS. VANCE: Document manager, kindly

09:35

09:35

J. SONNENBERG, A. CUMMING

Examined by Ms. Vance

1 Exhibit 26. And so this is the second submission from
2 A&D Cattle. It would be their reply submission and the
3 review, starting, when we get there, at pages -- pdf
4 page 1. Perfect.

5 Q. And so there's two pages of sort of chronology -- at
6 least a response to chronology. Have you had a chance
7 to review this chronology?

8 A. **MR. SONNENBERG:** Yes, I have.

9 Q. And I'm going to ask you the same thing. Is there
10 anything in these pages that you think is inaccurate or
11 needs clarifying?

12 A. **MR. SONNENBERG:** In terms of these pages, most of
13 it is kind of fairly accurate, I would say, but -- I
14 would say there's some misleading text in terms of the
15 dates and just the time that had passed between us
16 receiving things and deeming complete and issuing
17 decision.

18 So, as an example, on the first page, Bullet
19 Number 1 in Approval Officer Chronology where we have
20 February 2nd as the deadline and then jumping to the
21 conclusion, February 7th, you know, is a long way for
22 these responses. It's pretty standard to wait until a
23 couple of days after the deadline to make sure nothing
24 has come in post-marked and --

25 So, I mean calling things like that a delay, I

09:36

09:37

J. SONNENBERG, A. CUMMING

Examined by Ms. Vance

1 think, is a little bit of a misnomer. It's not like
2 I'm working on one file here, so...

3 Q. Okay. Are there any other points?

4 A. MR. SONNENBERG: And just some of the dates that I
5 guess if we get into -- sorry, flipping my
6 page here -- down to Bullet 3 in kind of the second
7 half of the first Bullet (a). The 2 there threw me
8 off, but.

9 Q. Okay.

10 A. MR. SONNENBERG: Is that where I was?

09:38

11 Yeah. So just saying the application was
12 completed December 3rd also would be -- again, that's
13 when I received application paperwork for some changes
14 to the application. It doesn't mean it would have
15 been, like, deemed complete, just to be clear.

16 Based on that date and newspaper cutoffs, like,
17 best case scenario, if I would have had a lot of time
18 on my hands, public notice could have been done
19 December 15th if we had no other guidance and we
20 weren't worried about doing notice over the Christmas
21 holidays and that sort of a thing.

09:39

22 So just to clarify, deemed complete is a little
23 different from when an application is completed.

24 And, yeah, I think that was the majority of it
25 aside from maybe some discussion about the Christmas

J. SONNENBERG, A. CUMMING

Examined by Ms. Vance

1 closure dates. But I mean that's something I would not
2 be able to provide a lot of feedback on at this point,
3 so...

4 MS. VANCE: Okay. If we could just move down
5 to pdf page 4.

6 Q. Sorry. I should just -- that's it for clarifications
7 of that section?

8 A. MR. SONNENBERG: Yeah, I believe, so...

9 Q. Okay, thank you. So pdf page 4. So in this, A&D is
10 suggesting that you could have delivered your decision
11 as early as February 22nd.

09:40

12 And I believe in the submission from the MD of
13 Willow Creek, they suggest March 4th. So I'm just --
14 you know, looking back, do you think that would have
15 been possible for you?

16 A. MR. SONNENBERG: And at that time, neither of those
17 dates would have been remotely possible.

18 Q. Okay. Why is that?

19 A. MR. SONNENBERG: Basically I was still waiting for
20 information. There was a lot of other files on my desk
21 I was reviewing, kind of in the order as I received
22 information.

09:40

23 I believe I had around a dozen different
24 applications I was working on at that one point in time
25 in different stages of completeness. There's no way,

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1 like even if I had time getting it out on that
2 timeframe, just the time you write these documents, do
3 all the technical review on one -- especially one that
4 has statements of concern and neighbours bring up some
5 things that we have to consider, it's just not
6 feasible.

7 Q. So when they suggest that there were unwarranted
8 delays, how do you respond to that?

9 A. MR. SONNENBERG: I respond there definitely was no
10 delay, definitely nothing intentional.

09:41

11 And in terms of timing, if anything, I'd actually
12 say this one probably got out a little quicker than it
13 could because we were -- I think most of our
14 organization was working full hands on deck trying to
15 get caught up at this point, so...

16 Q. Okay. Thank you very much.

17 MS. VANCE: If we could -- document manager,
18 you can close that and maybe just bring up Exhibit 1,
19 briefly, pdf page 1. Exhibit 1, I am hoping, is the
20 decision summary of the approval officer. There it is.
21 And, yeah, we even have it on the screen.

09:41

22 Q. So the fourth full paragraph that starts the "Part 2
23 application was submitted." I'm just going to give you
24 a moment to re-read this paragraph.

25 A. MR. SONNENBERG: Yeah.

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Examined by Ms. Vance

1 Q. So is there anything you wanted to add in terms of the
2 holiday closure? Or is this paragraph representative
3 of why there was no public notice over that time?

4 A. MR. SONNENBERG: I guess the thing I could be
5 more -- a little more clear on in it is, yeah, the
6 Part 2 came in on December 3rd. That doesn't mean I
7 could have ran public notice on December 3rd.

8 Just looking back at my calendar, even it appeared
9 that though I had a block of time around December 9th,
10 I actually wouldn't have had any time at all to start
11 looking at this.

09:42

12 So as I kind of mentioned before, best-case
13 scenario for deemed complete in terms of how we define
14 that in AOPA would have been December 15th.

15 And then, otherwise, yeah, the holiday closure
16 text, I -- I put in as I do think it's unfortunate the
17 way the dates worked up if I was looking at this from
18 Mr. van Huigenbos's point of view.

19 And I wanted to just to be totally open with
20 partially why this happens and that I really have no
21 control on some of the dates.

09:43

22 But, yeah, just trying not to hide anything on our
23 process here, so...

24 Q. Yeah, thank you very much.

25 And I think we've spoken a little bit about -- you

J. SONNENBERG, A. CUMMING

Examined by Ms. Vance

1 can take Document Exhibit 1 down, thank you.

2 We have spoken a little -- you have spoken a
3 little bit about what I would call the alleged
4 December delay period, and thank you for your testimony
5 on that.

6 The second period that sort of has been questioned
7 is the January 5th through April 1st period. And
8 you've spoken a little bit about being busy and having
9 files on your desk. Is there anything else you would
10 wish the Board to know about that time?

09:43

11 **A. MR. SONNENBERG:** I think just in that time period,
12 I was around the office -- yeah, I was around the
13 office. I mean, we were working full out.

14 If anything, I would say I was probably out of the
15 office less than normal, you know, as that goes when
16 you're in the busy season. But -- but, yeah, and if
17 anything, I did have some outside help from other
18 approval officers and stuff on this file even. So
19 we -- we were trying to get it out in a very timely
20 fashion, so...

09:44

21 **Q.** Okay. That's the last question I have for you.

22 Is there anything else that I have not asked you
23 that you would want the Board to know?

24 **A. MR. SONNENBERG:** Not that I can think of at this
25 time.

J. SONNENBERG, A. CUMMING

Examined by Ms. Vance

1 Q. Okay. Thank you very much.

2 My plan was to have Mr. Sonnenberg questioned by
3 the other parties at this time. However, I'm also
4 happy to have Mr. Cumming move forward with his direct.
5 I'm in the Panel's hands on that?

6 THE CHAIR: Why don't we move forward with
7 Mr. Cumming? I'm guessing it's not going to be a long
8 question period anyway; right?

9 MS. VANCE: That --

10 THE CHAIR: So let's do that.

09:44

11 MS. VANCE: -- should be nice and brief.

12 THE CHAIR: Thank you.

13 Q. MS. VANCE: Okay. Mr. Cumming, thank you for
14 attending. You already have been affirmed so that was
15 good.

16 Again, nice soft questions for you. What is your
17 position at the NRCB?

18 A. MR. CUMMING: I am the director of Field
19 Services applications with the NRCB.

20 Q. And how long have you held that position?

09:45

21 A. MR. CUMMING: I don't know exactly, but it's
22 been quite a number of years.

23 Q. Like, 20 years?

24 A. MR. CUMMING: No. My title has changed over the
25 20-plus years that I've been with the NRCB, but my

J. SONNENBERG, A. CUMMING

Examined by Ms. Vance

1 title of director of Field Services applications, I
2 think, I've had since around about 2017, but I'm not a
3 hundred percent certain on that.

4 Q. Okay. Thank you for that clarification.

5 So you've been director for a while and you have
6 certainly been with the NRCB for a while and you've
7 processed some applications yourself as an approval
8 officer. And you heard Mr. Sonnenberg give some
9 testimony about his understanding of the steps on an
10 average file, if there is even such a thing.

09:45

11 And I was wondering if you wanted to speak maybe
12 to some of the parts of those steps that are within or
13 without the control of the approval officer.

14 A. MR. CUMMING: Certainly, I can -- I can try to
15 elaborate a little bit on that.

16 Our application process consists of a two-part
17 application form. The Part 1 form essentially declares
18 the intent of the applicant to do something.

19 There is an allowance of six months which can be
20 extended up to a full year for the applicant to then
21 provide a Part 2 application. The Part 2 application
22 would contain the -- excuse me -- the technical
23 information to support how what is being proposed can
24 meet the AOPA requirements. That timeframe is totally
25 outside of the control of the approval officer, and

09:46

J. SONNENBERG, A. CUMMING

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1 that's obviously within the -- the applicant's control.

2 So the number of applications that an approval
3 officer receives at any one particular time or the NRCB
4 as a whole is totally outside of the control of any
5 approval officer.

6 So we have historically seen a little bit of
7 seasonality when -- with the number of applications
8 that we receive with more coming sort of over the
9 winter months when farming activities are a little
10 slower and generally slightly fewer coming during the
11 summer months.

09:47

12 However, as always, there are exceptions to that.

13 What we've also seen is that the complexity of the
14 applications is outside of the approval officer's
15 control, and it depends on whether the applicant is
16 proposing to construct the confined feeding operation
17 of -- for various facilities.

18 My screen is jumping around, so I'm not sure who's
19 doing that.

20 So the information that gets provided to the
21 approval officer generally when -- when the application
22 is deemed complete, our approval officers will do
23 a -- a quick overview of the information in the
24 application to see that there's sufficient information
25 there so that they can start to process that

09:48

J. SONNENBERG, A. CUMMING

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1 application. And then that will go out to the public
2 notice, assuming it's a registration or an approval
3 application.

4 There may be things that -- that come up either
5 through responses that are received relating to that
6 application or when the approval officer is going
7 through the information that would require additional
8 information to be supplied by the applicant to support
9 what is being proposed.

10 This could be, you know, the inclusion of
11 additional lands for manure application, it could be to
12 provide additional details related to some sort of
13 a liner or naturally occurring particle layer
14 (phonetic), things like that.

15 The other thing that is somewhat out of the
16 control of the approval officer -- I sort of touched on
17 it -- is -- is the number of applications that -- that
18 come in at any particular time.

19 Certainly, our objective and our performance
20 measurement is to try and issue our decisions --
21 85 percent of the decisions within 65 working days of
22 deeming the applications complete. So our approval
23 officers do their best to account for that and to
24 process the applications within that timeframe.

25 Sometimes we are delayed by getting responses from

09:49

09:49

J. SONNENBERG, A. CUMMING

Examined by Ms. Vance

1 referral agencies and municipalities. It's not often,
2 but sometimes we do get delayed by them. So those are
3 also outside the control of our approval officers.

4 So, generally, whilst they do have some control,
5 there are many factors in the day-to-day working and
6 processing of applications that are outside of their
7 control.

8 I hope that paints a little bit of an overall
9 picture of how applications are processed.

10 Q. Yeah, thank you very much for that.

09:50

11 I'm going to ask you a similar set of questions to
12 Mr. Sonnenberg, but I think an abbreviated version,
13 because this was not your file. You were not the
14 approval officer. But I wanted to talk a little bit
15 about clarification of the chronology.

16 So this is Exhibit 26, which we saw a few minutes
17 ago. This is the second submission from A&D Cattle
18 starting on pdf page 1 and 2. Yes. So, again, moving
19 down a little bit, the chronology here, have you had an
20 opportunity to review this version of the chronology?

09:51

21 A. MR. CUMMING: I have.

22 Q. And is there anything you would like to clarify?

23 A. MR. CUMMING: Yes. If we can go to the next
24 page, please, Item Number 4 and there's (a) and (b).
25 This section here talks more about the office closure

J. SONNENBERG, A. CUMMING

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1 and makes several statements that aren't correct.

2 The office closure in December, at the end of last
3 year, the Christmas closure took place and the office
4 was closed effectively December 24th through
5 January the 3rd inclusive and not as set out in that
6 chronology there.

7 December the 24th was the Christmas floater. The
8 27th is the date in lieu of the Christmas day, the 28th
9 was the date in lieu of Boxing Day, the 29th to the
10 31st is the Christmas closure, and January the 3rd is
11 the day in lieu of New Year's Day.

12 Q. And why do we close for December 29th through 31st?

13 A. MR. CUMMING: That is a Government of Alberta
14 decision to have a Christmas closure at that period.
15 There is a Government of Alberta policy relating to
16 that.

17 Q. Okay. Thank you.

18 I think those are all the questions I had on
19 chronology.

20 If we could -- I think this might be my last
21 question. Exhibit 21, this is the -- there it is
22 before, I can even tell you what it is. It is the
23 submission of the NRCB Field Services. Could we,
24 please, go to pdf page 104.

25 So this is part of an excerpt of the 2020, 2021

09:52

09:53

J. SONNENBERG, A. CUMMING

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1 annual report from the NRCB and on the top right
2 paragraph there, it talks about the: (As read)

3 "...goal of issuing 85 percent of the
4 decisions within 65 working days of the
5 date at which the application is deemed
6 to be complete."

7 So my question to you is where did this 65 working days
8 come from?

9 **A. MR. CUMMING:** The performance target which
10 you've just read out there was developed in the early
11 2000s, and it's a performance target that takes into
12 account the different types of applications that we
13 deal with -- namely authorizations, registrations, and
14 approvals -- and tries to come up with a target whereby
15 we can measure quite easily from performance side, and
16 that is that we are going to issue 85 percent of those
17 decisions within that 65 working day timeframe from the
18 date the application is deemed to be complete.

09:53

19 The 85 percent takes into account that some
20 applications may get delayed either by request of the
21 applicant or through some other matter and may take
22 longer than that.

09:54

23 **Q.** Thank you very much. Those are all my questions for
24 you, Mr. Cumming.

25 Mr. Sonnenberg and Mr. Cumming, I would ask you to

J. SONNENBERG, A. CUMMING**Cross-examined by Ms. Finlay**

1 respond to the questions posed by other parties, Board
2 counsel and the Board.

3 **THE CHAIR:** Thank you, Ms. Vance,
4 Mr. Sonnenberg, Mr. Cumming.

5 So we'll begin with questions from
6 MD Willow Creek. Ms. Finlay, do you have any
7 questions?

8 **MS. FINLAY:** I have a few questions, but on my
9 order -- okay. Then A&D Cattle near the end. Okay.
10 That's fine.

09:55

11 **MS. FINLAY CROSS-EXAMINES THE PANEL:**

12 **Q.** So I have one or two questions. I don't have a lot of
13 questions. I want to first ask a question about the
14 Christmas break.

15 If I could ask for Exhibit 1 to be put up. Pdf
16 page 1 of Exhibit 1.

17 Mr. Sonnenberg, this decision summary is intended
18 to inform the parties, to whom it is provided, your
19 process for processing and making a decision; is that
20 correct?

09:56

21 **A. MR. SONNENBERG:** **Yes. Yeah.**

22 **Q.** Okay. And it's intended to provide an explanation to
23 those parties of how you processed the application and
24 then what your ultimate decision is; is that correct?

25 **A. MR. SONNENBERG:** **That is the intent, yes.**

J. SONNENBERG, A. CUMMING**Cross-examined by Ms. Finlay**

1 Q. Okay. And, sir, if I could just get you to turn your
2 attention to the fourth paragraph on that page that
3 begins with the "Part 2 application was submitted on
4 December 3rd"?

5 **A. MR. SONNENBERG: Yeah.**

6 Q. And you reviewed this with Ms. Friend (verbatim).

7 In that second sentence and in the subsequent
8 sentence, so the next two sentences, you talk about the
9 delay between December 3rd and January 5th. You see
10 that there?

09:57

11 **A. MR. SONNENBERG: Yeah.**

12 Q. Okay. And would you agree with me that the only reason
13 you give for that delay in timing is the accommodation
14 of the NRCB's holiday closure; is that right?

15 **A. MR. SONNENBERG: Yeah, that's the only aspect of it
16 I included in here that kind of just doesn't occur on
17 every other file. It's unique to this file for me,
18 so...**

19 Q. Okay. Okay. And the holiday closure, we've heard and
20 we've reviewed, that was to -- that was from the 24th
21 of December to January 2nd; is that right? Did I hear
22 that right?

09:57

23 **A. MR. CUMMING: Perhaps I can answer that question
24 for you.**

25 Q. Sure.

J. SONNENBERG, A. CUMMING

Cross-examined by Ms. Finlay

1 **A. MR. CUMMING:** The first -- first day the office
2 was closed is December the 24th, and the closure
3 continues through and includes January the 3rd.

4 **Q.** Okay. And is there a policy or anything that provides
5 guidance to you with respect to processing in
6 December that goes beyond those holiday closure dates?

7 **A. MR. SONNENBERG:** Indirectly, I suppose, the way we
8 do the public notice, we select the most -- how would
9 you put it -- the most effective local newspaper we
10 can.

09:58

11 So, indirectly, that would impact when we do the
12 dates due to their cutoff times for getting the notices
13 in and -- for what date that paper is published on.

14 **Q.** Okay. But there's nothing that says to you, if it's in
15 December, then just wait until January? There's
16 nothing that provides you with that type of guidance;
17 correct?

18 **A. MR. SONNENBERG:** No, we've been giving that
19 guidance internally as direction for management in the
20 past and with the justification being it's not fair to
21 neighbours for us not to be in the office when the
22 files out to public notice.

09:59

23 **Q.** Right. And that has to do with being in the office
24 between December 24th and January 3rd; correct?

25 **A. MR. SONNENBERG:** Yeah.

J. SONNENBERG, A. CUMMING

Cross-examined by Ms. Finlay

1 Q. Yeah. Okay. So you want to make sure that you time it
2 so that that public notice goes out at a time when you
3 will be in the office?

4 A. **MR. SONNENBERG:** Yeah, I believe that's the
5 intention.

6 Q. Okay. And so maybe I can ask you this next question.
7 The Part 2 application, you said there was additional
8 information that you received after December 3rd that
9 related to the completeness of the application. Did I
10 hear that right?

11 A. **MR. SONNENBERG:** No. This is a -- I don't remember
12 a hundred percent. I do know, though, that the paper
13 was submitted on December 3rd, but that doesn't mean
14 I'd, like, reviewed the paperwork and determined it was
15 all there on December 3rd. That was just the day it
16 was submitted -- or the last information, I should say.

17 Q. Okay. And did you need to get any additional
18 information from the applicant prior to January 5th to
19 determine that the application was complete?

20 A. **MR. SONNENBERG:** I do not believe so, but I can't
21 remember for certain.

22 Q. Okay. Okay. Thank you very much. I'm finished with
23 that exhibit.

24 I just want to ask you one or two questions about
25 the technical document. And we don't need to bring it

10:00

10:00

J. SONNENBERG, A. CUMMING

Cross-examined by Ms. Finlay

1 up yet, but I just wanted to better understand the
2 purpose of that technical document.

3 That's the document that reflects the work that
4 you've done to review an application; is that correct?

5 A. MR. SONNENBERG: Well, it reflects the -- at least
6 the part we want to be publicly available and publicly
7 clear just to give our kind of decision-making process
8 a good amount -- what do you -- how do I put it?

9 Q. Transparency?

10 A. MR. SONNENBERG: Yeah, that's what I'm looking for.
11 We just try to have the information in there. There's
12 lots, you know, often that's done behind. You know, we
13 don't include absolutely every air photo we look at and
14 thing we review.

10:01

15 But in general, we try to provide that minimum
16 amount of information so anyone who looks at the
17 application can understand why we made the decision we
18 did.

19 Q. Okay. And that technical document provides commentary
20 and then the dates of that commentary; correct?

10:01

21 A. MR. SONNENBERG: I'm not sure what you mean on "the
22 dates of that commentary."

23 Q. Okay. I want to be fair to you. So let's take you to
24 an exhibit.

25 If we could pull up Exhibit 20, and if we could

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1 pull up -- if we could start with page 9 of the pdf.

2 So in this technical document -- and maybe I could
3 just get us to -- you'll see that there are sort of
4 these little comment boxes here.

5 **A. MR. SONNENBERG: Okay.**

6 **Q. Do you see those?**

7 **A. MR. SONNENBERG: Yeah.**

8 **Q. Are you familiar with those?**

9 **A. MR. SONNENBERG: I'd seen this document, I guess**
10 **submitted, yeah.**

10:02

11 **Q. Okay. So if we could just maybe scroll down to the**
12 **next page. Okay. That's great.**

13 So this, then, is the summary of comments that
14 appear on the full page photo. Do you understand that?

15 **A. MR. SONNENBERG: Oh yeah, yeah. That makes sense.**

16 **Q. Okay. And then next to that, we are provided with, it**
17 **looks like, the dates that those comments are made.**

18 **A. MR. SONNENBERG: Okay.**

19 **Q. Have you seen this type of a thing before?**

20 **A. MR. SONNENBERG: I have seen it maybe in a**
21 **different version when we're in the documents but**
22 **not --**

10:03

23 **Q. Right.**

24 **A. MR. SONNENBERG: -- this way.**

25 **Q. Okay. Okay. So do you have any information that would**

J. SONNENBERG, A. CUMMING

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1 suggest that those dates for those comments are
2 incorrect?

3 **A. MR. SONNENBERG:** That's something I couldn't --
4 could not collaborate back to that timeframe, but I
5 would imagine they would be.

6 **Q.** Okay. So you'd agree with me that this document
7 provides us with some information of the chronology for
8 your review of this application?

9 **A. MR. SONNENBERG:** Yeah. Yeah, I think we could
10 infer that.

10:03

11 **Q.** Okay. If I can just take a minute, I think those are
12 all my questions. I just want to take a minute to
13 confirm that.

14 **THE CHAIR:** That's fine.

15 **MS. FINLAY:** I don't have anything further.
16 Thank you.

17 **THE CHAIR:** Thank you, Ms. Finlay.

18 And just to be clear, I may not have outlined this
19 in the start, but if I did, this repetition may be
20 worth it.

10:05

21 So in terms of the order of questioning, we'll go
22 MD Willow Creek, Town of Fort Macleod, Mr. and
23 Mrs. Conner, Mr. and Mrs. Lewis, A&D Cattle, Board
24 staff, then Panel. So, clearly, when you're up, you
25 wouldn't be questioning, but other than that, this will

J. SONNENBERG, A. CUMMING

1 be the order we'll go through.

2 So next up will be Town of Fort Macleod,

3 Ms. Agrios.

4 MS. AGRIOS: I have no questions.

5 THE CHAIR: Okay. Thank you.

6 Mr. and Mrs. Conner?

7 MR. CONNER: We have no questions.

8 THE CHAIR: Okay. Thank you.

9 Mr. and Mrs. Lewis?

10 MR. LEWIS: No questions.

10:06

11 THE CHAIR: Mr. Metheral, A&D Cattle? Hello.

12 You're not coming up on screen there. We've got just a
13 blank. Is your video on?

14 MR. METHERAL: We're getting an alert that
15 suggests we can't post our video because the host has
16 stopped it.

17 THE CHAIR: Oh. Okay.

18 MR. METHERAL: Thank you, Mr. Chair.

19 We were curious if we could have a quick pause for
20 a bio break here.

10:07

21 THE CHAIR: Well, I mean, I guess I don't want
22 to have an accident while we're talking. It's a bit
23 early, but I certainly don't want to have an accident.

24 I mean, what is your length of questioning that
25 you expect for Field Services?

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1 MR. METHERAL: Well, perhaps due to the magnitude
2 of our questions, we don't want to be interrupted.

3 THE CHAIR: So are you looking -- can you give
4 me just a rough estimate on time?

5 MR. METHERAL: I would say five minutes.

6 THE CHAIR: No, I mean for the questioning.

7 MR. METHERAL: Oh, for the questions themselves.
8 Six pages.

9 THE CHAIR: Okay. So let's -- Ms. Vance, are
10 you -- yes, Ms. Vance?

10:07

11 MS. VANCE: Yeah, if we're going to take the
12 break, I just wanted to remind Mr. Sonnenberg and
13 Mr. Cumming that they should not talk to each other or
14 to me or to anybody else about your evidence until
15 you're done being questioned.

16 THE CHAIR: Thank you, Ms. Vance.

17 MS. VANCE: Thank you.

18 THE CHAIR: Mr. Sonnenberg, Mr. Cumming, you
19 heard Ms. Vance?

20 Perfect. Okay. Great.

10:08

21 So it's 5 after 10 on my watch, so 10 after 10,
22 we'll return. Thanks.

23 MR. METHERAL: Thank you.

24 (ADJOURNMENT)

25 THE CHAIR: Ms. Friend has notified me that my

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1 Citizen Ecosmart solar watch is behind a bit. That's
2 probably not because of the sun; it's probably because
3 I had it set a little off.

4 So I'll use my cell phone for time for the rest of
5 the day. So thanks for that reminder, Ms. Friend.

6 So, obviously, if you're using your cell phones, I
7 was probably a little tight on the five minutes. So
8 I've got 10:13 on my cell now, and I hope everyone
9 else's cell or watches say 10:13. So I'll use my cell
10 from now on for timing, especially for quick breaks,
11 because it makes it a bit short. So thanks for
12 accommodating.

13 Mr. Metheral, you can begin, please. Thank you.

14 **MR. METHERAL CROSS-EXAMINES THE PANEL:**

15 Q. Thank you, Mr. Chair.

16 We would direct our first round of questions to
17 Mr. Sonnenberg, and then perhaps move on to
18 Mr. Cumming.

19 I appreciate your update, Mr. Sonnenberg, talking
20 to us a little bit about your experience with the NRCB.

21 Just to clarify, do you review your perhaps
22 deliverables or statistics with your manager on this
23 65-day process?

24 A. **MR. SONNENBERG:** I'm not a hundred percent sure
25 what you're getting at, but this -- this permit was

10:13

10:13

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1 **issued within the 65 days, if that's what you're**
2 **interested in.**

3 **Q.** **Yeah, in general, the idea that you're achieving your**
4 **65-day timeframe on your applications, is that reviewed**
5 **with your manager annually or over time?**

6 **A. MR. SONNENBERG:** **I think so. I -- I don't know if**
7 **I've had too many that have went over it, so...**

8 **Q.** **Okay. And you would suggest that this spring was a**
9 **busy year for you when it comes to applications,**
10 **approvals, and authorizations?**

10:14

11 **A. MR. SONNENBERG:** **Yeah. Last fall and this spring**
12 **were definitely busy time of year, yeah.**

13 **Q.** **Abnormally busy?**

14 **A. MR. SONNENBERG:** **Well, I mean, based on five years,**
15 **it's busy.**

16 **Q.** **Okay. Can you maybe describe a little bit how you**
17 **supported the producer through the approval process,**
18 **perhaps starting in as early as July, August?**

19 **A. MR. SONNENBERG:** **I don't remember a ton**
20 **specifically. I'm sure I would have tried to answer**
21 **any questions on the application process. I know I**
22 **made the site visit out there early November. I don't**
23 **remember withholding any assistance.**

10:15

24 **Q.** **No, certainly not. What were your original**
25 **communications? Were they through phone and email**

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1 communications?

2 **A. MR. SONNENBERG:** **I can't say that far back what our**
3 **initial contact would have been.**

4 **Q.** I'm just trying to understand how -- I -- it's
5 understood that you provided some of the NRCB
6 application forms, the Part 1, Part 2, some of the
7 technical documents, waivers and calculations. I'm
8 just curious when those were delivered to the producer?

9 **A. MR. SONNENBERG:** **Yeah, and I think you had just**
10 **said he submitted Part 1 in July, so I would imagine**
11 **around that timeframe. I'm sure I would have taken**
12 **forms out again in November if he didn't already have**
13 **them. I just can't recall.**

10:16

14 **Q.** That's fine. Just to understand that you were
15 supporting his application and that some of this
16 material was delivered as early as July? Do you agree
17 with that?

18 **A. MR. SONNENBERG:** **It's possible. Yeah, I can't**
19 **remember for sure, but I would have provided material**
20 **whenever it was requested.**

10:16

21 **Q.** Okay. Thank you.

22 When we look at the submissions that were
23 submitted on behalf of the NRCB, perhaps on behalf of
24 yourself, did you -- do you feel comfortable that the
25 information is your position in those submissions?

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1 **A. MR. SONNENBERG:** For the most part, details,
2 obviously, I mean, I'm not saying I remember everything
3 a hundred percent, but it looked plausible aside from
4 that one bullet I clarified earlier where I know I had
5 contacted Mr. van Huigenbos there. So I know there was
6 an error there, and that one stuck out to me, but.

7 **Q.** Okay. And I believe Ms. Vance identified a document.
8 It was a submission from the Board or from the Field
9 staff, but you were away on leave, so you didn't
10 actually review that document?

10:17

11 **A. MR. SONNENBERG:** Not at the time, no.

12 **Q.** I see. Just to clarify, you have in the past,
13 permitted facilities for 2,000 head beef feedlots --
14 for, we'll say, beef feedlot?

15 **A. MR. SONNENBERG:** I've permitted a lot of feedlots.
16 I'm sure some of them have been 2,000 head.

17 **Q.** Do you have any idea what the largest CFO that you've
18 permitted, what size that could be, or could maybe
19 illustrate what you think would be the largest CFO
20 you've ever permitted?

10:18

21 **A. MR. SONNENBERG:** Probably, I don't know, somewhere
22 in the 20 to 25,000 head range. I can't say for
23 certain, but.

24 **Q.** Okay. And whose responsibility is it to review the MDP
25 or IDP as these applications come in? Do you believe

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1 it's the onus of the producer or yourself.

2 **A. MR. SONNENBERG:** To some extent, I mean if a
3 producer is looking at a piece of land or something
4 like that, I would suggest they look at zoning and
5 stuff. But I mean, if otherwise I've just received an
6 application, I do it in the application, like at the
7 time we're processing it.

8 **Q.** Right. Okay. If we can just switch gears here to the
9 application review process. So it's understood that
10 you received an engineering report and waivers and all
11 of the technical documents that you needed to make your
12 decision?

10:19

13 **A. MR. SONNENBERG:** Like, when I -- sorry, you're
14 going to have to clarify what you mean there. Sorry, I
15 didn't quite catch what we're looking for.

16 **Q.** The question was related to the technical information.
17 Did you receive all of the technical information you
18 needed to make your decision?

19 **A. MR. SONNENBERG:** Yes. In the end I did, yeah.

20 **Q.** Was there anything that exceeded the six-month timeline
21 in AOPA to submit the information to complete the
22 Part 2? Did that timeline get exceeded?

10:19

23 **A. MR. SONNENBERG:** To the best of my knowledge, it
24 did not.

25 **Q.** Okay. And maybe help us better understand when the

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1 documents -- when the documents were submitted to you
2 in November, did you review the documents in their
3 entirety but not necessarily review them for AOPA
4 content? Does that make sense?

5 **A. MR. SONNENBERG:** If you mean like when we look at
6 it when it first comes in, we try our best to just
7 check if the information is there. It's not an
8 intensive comb-through, but if there's something
9 blatantly missing, we try to identify it so there's not
10 delays later in the process, or we don't have to redo
11 public notice later on.

10:20

12 **Q.** Right. Okay. Do you recall when you completed the
13 actual review of this application? Can you recall the
14 timeframe where you're actually comparing the submitted
15 documents to the AOPA requirements?

16 **A. MR. SONNENBERG:** It would have been into late
17 February into March, I believe. I would have started
18 earlier as I had time, just as the way I work through
19 things. But the bulk of it was done in that timeframe.

20 **Q.** Okay. We see a submission, an email submission from
21 you that suggests that you needed more information
22 about the location of the water wells and the manure
23 land spreading. That email came in March 14th. Do you
24 recall that email?

10:21

25 **A. MR. SONNENBERG:** When I was reviewing here I saw

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1 it, yeah.

2 Q. When it comes to the public notice process, would you
3 have reviewed the MDP prior to submitting this document
4 for public notice -- submitting the application for
5 public notice?

6 A. **MR. SONNENBERG:** No. No, not necessarily, unless
7 it was in an area where I maybe knew there was some
8 exclusion zones or something.

9 In general, I mean, we skim it but nothing in
10 depth.

10:22

11 Q. And then when it comes to the internal review of your
12 decisions, who helped you with your review of this
13 application?

14 A. **MR. SONNENBERG:** It would have been two other
15 approval officers, manager of applications, Andy there,
16 and I think Fiona, I'm sure, like, our legal counsel
17 that had a look at it.

18 Q. Okay. Then the permit was issued and posted on the
19 NRCB website on April 1st?

20 A. **MR. SONNENBERG:** Yes.

10:23

21 Q. Okay. When you deem an application complete, is it
22 related to the public notice process? Are they
23 interlinked?

24 A. **MR. SONNENBERG:** For an approval application, they
25 are, because they do go in the newspaper, so in

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1 **circulation in the community.**

2 **Q.** Is that an NRCB policy that the deeming complete date
3 is reflected in the public notice date?

4 **A. MR. SONNENBERG:** **It's how we phrase it. So I mean**
5 **"deemed complete" is when we put the public notice in.**
6 **That's when we start the 20-day countdown for public**
7 **and municipal feedback and all that stuff.**

8 **Q.** Okay. Can an application be deemed complete without
9 going to public notice?

10 **A. MR. SONNENBERG:** **Yeah. Yeah, an application could**
11 **be. Not for an approval, though. But for, you know,**
12 **an authorization could.**

13 **Q.** Okay. An authorization could. An approval can't be
14 deemed complete without going to public notice? They
15 can't be separated?

16 **A. MR. SONNENBERG:** **I'd say the terminology goes along**
17 **with the public notice.**

18 **Q.** Okay. And you're familiar with the Board decision
19 regarding Double H Feeders?

20 **A. MR. SONNENBERG:** **Familiar, but not well versed in**
21 **it.**

22 **Q.** Okay. It's understood that that virtual hearing was
23 held on February 10th, 2020, and it talks -- gives the
24 approval officer some guidance on how IDPs and MDPs
25 should be considered.

10:24

10:25

J. SONNENBERG, A. CUMMING**Cross-examined by Mr. Metheral**

1 How did that decision have an impact on your
2 review of this application?

3 **A. MR. SONNENBERG:** We don't necessarily use past
4 **Board decisions as precedents 100 percent, but it gave**
5 **us just direction that we should be looking at all**
6 **applicable planning documents that are in effect, so...**

7 **Q.** Okay. So that document came into -- or we saw the
8 results from the Board hearing on March 17th? Would
9 you agree with that date?

10 **A. MR. SONNENBERG:** It sounds about right. I can't
11 remember exactly but somewhere in there.

10:26

12 **Q.** Okay. So prior to March 17th or perhaps around the
13 adoption when the municipalities adopted the IDP, which
14 document were you looking at when you were reviewing
15 A&D Cattle's application?

16 **A. MR. SONNENBERG:** I would have just been looking at
17 the MDP that was in effect at the time for the
18 Municipal District of Willow Creek there, so...

19 **Q.** Can we try and clarify what those dates are exactly?

20 **A. MR. SONNENBERG:** Which dates are you interested in?

10:26

21 **Q.** So on March 19th -- and I'd love to hear from others if
22 I'm wrong -- it's understood that the municipality
23 adopted the IDP.

24 **MR. VAN HUIGENBOS:** March 9th.

25 **Q. MR. METHERAL:** Sorry, on March 9th, it's

J. SONNENBERG, A. CUMMING**Cross-examined by Mr. Metheral**

1 understood the municipality adopted the IDP, and on
2 March 17th, we heard from the Board.

3 So just to clarify, prior to March 9th, you would
4 have been looking at the MDP for guidance?

5 **A. MR. SONNENBERG:** **I would have been interpreting it,**
6 **like we do on every AOPA application.**

7 **Q.** Okay. If we can talk a little bit about the
8 application and the review of the application. When
9 did you start the review of the application?

10 Perhaps I already asked this question, but when do
11 you believe was the first day that you actually
12 started -- when you actually compared the AOPA
13 technical requirements to the application?

10:28

14 **MS. VANCE:** I'm going to object because I do
15 believe you have asked that question.

16 **MR. METHERAL:** Yes. My challenge with this,
17 these timeline questions, is we are -- the timelines of
18 this discussion are crucial to this application. So
19 please be patient as I try to work through these
20 timelines.

10:28

21 But I believe I can move on from that. I believe
22 you answered, later in February.

23 File manager, if you can pull up Exhibit 21,
24 page 5 for me, please. I'd like to ask Mr. Sonnenberg
25 about his visit with the MDP of Willow Creek.

J. SONNENBERG, A. CUMMING**Cross-examined by Mr. Metheral**

1 Page 5.

2 Q. Bullet 13 suggests that on January 5th and 6th, you
3 visited with the manager of Willow Creek. Can you
4 maybe --

5 A. **MR. SONNENBERG:** Well -- sorry.

6 Q. Can you describe that -- can you better describe that
7 interaction for us?

8 A. **MR. SONNENBERG:** I believe we exchanged phone
9 calls, which is pretty standard on most applications,
10 and I don't remember when we discussed each thing, but
11 I do know the municipality had some earlier feedback on
12 some kind of unique road allowances and
13 property line sort of information on this one.

10:30

14 I don't remember if that was the exact timing, but
15 it was -- yeah, just kind of discussing general project
16 information, so...

17 Q. Okay. Do you know what occurred on January 5th, which
18 would have been different than January 6th?

19 A. **MR. SONNENBERG:** I think we just would have had
20 ongoing discussions, and I think there was some -- just
21 emails back and forth.

10:30

22 Q. Okay. So it was a phone conversation; it wasn't a
23 visit at the municipal office?

24 A. **MR. SONNENBERG:** No.

25 Q. Okay. And you were reviewing some of the County's

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1 requirements, the land use documents?

2 A. MR. SONNENBERG: We -- at that point in time, we
3 request any applicable feedback, essentially. So, I
4 mean we try to uphold things like property line
5 setbacks, easements. You know, if the County has good
6 planning concerns, we try to have that back and forth
7 early on, so we have all the information we can to try
8 to make the best decision.

9 Q. Okay. And that -- those requirements, they're found in
10 the MDP? These are the MDP requirements or land use
11 planning provisions?

10:31

12 A. MR. SONNENBERG: The main thing we do consider
13 under AOPA is the municipal development plan, but other
14 considerations are given to things -- land use, bylaw
15 related, and even land ownership. Sort of, like,
16 everything that you may consider a normal development
17 permit can come up on AOPA applications.

18 Q. Okay. Did the County give any indication that this
19 application met their municipal development plan at
20 that time?

10:32

21 A. MR. SONNENBERG: I can't recall at that point in
22 time.

23 Q. Okay. And then, of course, you reviewed the IDP at the
24 end of April -- or, sorry, at the -- no, the IDP was
25 available for you at the end of April when it was

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1 provided to you from the municipality.

2 **A. MR. SONNENBERG:** I believe you mean in March.

3 **Q.** March? Oh, sorry, of course. End of March.

4 **MR. METHERAL:** Okay. File manager, I'd just like
5 to ask some questions about the NRCB's internal review
6 policy. If we can open Exhibit 22, page 9 just to
7 clarify a few points.

8 **Q.** Yes. At the bottom of the page. Yes, so the bottom of
9 the page, we see a submission from Mr. van Huigenbos
10 that is a cut and paste of some emails that were sent
11 back and forth to you guys. Are you familiar -- I
12 guess you confirmed you're familiar with these emails?

13 **A. MR. SONNENBERG:** Yeah.

14 **Q.** Okay. If we look at March 16th email, Adrian is asking
15 to you how long does the decision normally take, and
16 your response was "Typically 3 months or so" and then
17 specifically that you're hopeful to have it out in the
18 next three weeks or so, but no promises, as it's
19 contingent on internal review and a few other factors.

20 Can you maybe describe what point in the process
21 you were at? This appears to suggest that your
22 document had been -- was in internal review at this
23 time.

24 **A. MR. SONNENBERG:** Yeah, I won't be able to remember
25 specific what date I sent it to review, but it would

10:33

10:34

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1 have been right in that timeframe where I would have
2 been just completing the final touches and getting it
3 out for a look-through. So a few factors, just to give
4 you some clarification. It could just be staff
5 availability when other people have time to look
6 through it, when your field office admins have time to
7 and print and finalize stuff.

8 So it's not exactly just, you know, I can decide
9 I'm going to issue a permit and have it all ready to go
10 in a half hour, so...

10:35

11 Q. No, certainly. But do you send that decision to your
12 team as one email? The whole document is for their
13 review?

14 A. **MR. SONNENBERG:** Yeah, typically it's three
15 documents: decision summary, a permit, and a technical
16 document. So, in this case, I would have sent out, you
17 know, the technical document and the decision summary.

18 Q. Okay. But one email?

19 A. **MR. SONNENBERG:** I'm not sure what you mean by "one
20 email." Like...

10:36

21 Q. Would those documents have been included in one email?

22 A. **MR. SONNENBERG:** Oh, no, it's just we have them on
23 an internal database, so it's just you give people
24 directions to where they are, so...

25 Q. Okay. Thanks for clarifying that.

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1 Do you know the date that you provided or asked
2 your team members to look at those documents?

3 **A. MR. SONNENBERG:** **No, I do not.**

4 **Q.** Is that something that we could get our hands on?
5 Would there be a correspondence where you provided
6 direction?

7 **A. MR. SONNENBERG:** **Yeah, I'm sure we could with some**
8 **time go back and find it but, I would suggest it's not**
9 **going to have any bearing on what you're getting at**
10 **here, so...**

10:36

11 **Q.** The decision summary itself, if you were to have sent
12 that out -- and we're talking in March -- would you
13 have been looking at the municipal development plan at
14 that time?

15 **A. MR. SONNENBERG:** **Yeah, yeah, I would have already**
16 **looked at the municipal development plan on the date I**
17 **would have been doing that section.**

18 **MR. METHERAL:** Okay. File manager, can we jump
19 to Exhibit 1, page 3.

20 **Q.** This is from the decision summary, down to, yes, your
21 Number 5. I won't take the Board's time, but in
22 essence, this would suggest that the application is
23 consistent with the municipal development plan. Would
24 you agree with that?

10:37

25 **A. MR. SONNENBERG:** **That's -- yeah.**

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1 Q. Okay. And if we were to look at the AOPA requirements
2 below, the document does meet all the technical
3 requirements under AOPA?

4 **A. MR. SONNENBERG: Yes, it did with all the**
5 **supplemental information provided.**

6 Q. Okay. So then the document that you sent to your
7 colleagues or asked your colleagues to review, that
8 would have been an approval?

9 **A. MR. SONNENBERG: Yeah, the application would have**
10 **been approved.**

10:38

11 Q. Okay. Therein lies a request from A&D. We would like
12 to know exactly the date that you reviewed the
13 application, the MDP, and when you approved it for
14 review. So we would like that date to be clarified.

15 **A. MR. SONNENBERG: Well, for that date, as far as the**
16 **AOPA is concerned, it would be the date the permit was**
17 **issued, so April 1st, but that's maybe not what you're**
18 **looking for there.**

19 Q. Not exactly. I'd like to now move on to some of the
20 NRCB office closure and some of the delays that
21 A&D Cattle believe occurred. This has been reviewed by
22 you guys. Just to confirm --

10:39

23 **THE CHAIR: Just to interrupt, there's been a**
24 **request for an undertaking, I think. I think that's**
25 **what I'm hearing. Ms. Vance, is there an objection to**

J. SONNENBERG, A. CUMMING**Cross-examined by Mr. Metheral**

1 the undertaking? Because it's, I think, left in
2 nowhere land right now.

3 MS. VANCE: Yeah, I was wondering where that
4 might go. I am not clear on what the undertaking is
5 asking, to be honest.

6 THE CHAIR: Mr. Metheral?

7 MS. VANCE: And whether Mr. Sonnenberg maybe
8 answered it with his answer. I'm not sure.

9 MR. METHERAL: Okay. We would like clarification
10 on this point. Can we provide the Board with some
11 written direction on what that undertaking is to make
12 it formal?

13 THE CHAIR: Well --

14 MS. VANCE: I would like to know what it is
15 now so that I can get going on it.

16 THE CHAIR: Yeah, I mean, and you know,
17 depending on what it is, there may be an objection, so
18 the quicker the better.

19 What I think I heard was what date was the then an
20 approval circulated for review to the other staff -- do
21 I have that -- did I hear that right?

22 MR. METHERAL: Yes.

23 THE CHAIR: Okay. And whether that's able to
24 be tracked down, I don't know.

25 Ms. Vance, are you agreeable to at least

10:40

10:40

J. SONNENBERG, A. CUMMING

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1 attempting to track that date down, or is that
2 something that you feel is -- or are you objecting,
3 actually?

4 MS. VANCE: I'm not objecting. I imagine that
5 would be pretty quick to track down. I could probably
6 do that during a break.

7 THE CHAIR: Okay. Thank you very much.

8 **UNDERTAKING - TO ADVISE THE DATE THAT**
9 **MR. SONNENBERG REVIEWED THE**
10 **APPLICATION, THE MDP, AND WHEN HE**
11 **APPROVED IT FOR REVIEW (UNDERTAKING**
12 **FULFILLED AT PAGE 94)**

10:41

13 THE CHAIR: All right, Mr. Metheral, continue.

14 MR. METHERAL: Thank you.

15 Q. If we were to look at the office closure, just to
16 clarify, Joe, do you recall that the office closure was
17 from December 24th to January 3rd?

18 A. MR. SONNENBERG: I think that's what we've decided
19 on. I couldn't remember for sure, but I think that's
20 what the expert said.

10:41

21 Q. Right. Okay. And you were provided direction about
22 the office closure through NRCB, perhaps, email that
23 those would be closure dates?

24 A. MR. SONNENBERG: I don't remember in particular how
25 we would have been made aware of it this year. It's

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1 generally just something we keep an eye on, and we try
2 to get things out for public notice around that time.
3 So I don't remember specific dates or how we
4 were -- came to that conclusion, but....

5 Q. Okay. And did you discuss the office closure dates
6 with your manager?

7 A. MR. SONNENBERG: I can't recall, but it's something
8 we would often discuss internally, so I'd say it's
9 likely.

10 Q. Okay. And did you discuss the reason why you delayed
11 the public notice because of those closures with your
12 manager?

13 A. MR. SONNENBERG: We've -- we've discussed that in
14 the past, yes.

15 Q. Do you know when you would have discussed that reason
16 for delay?

17 A. MR. SONNENBERG: I don't know what delay you would
18 be referring to, but in terms of why we don't do public
19 notice over Christmas, it's -- I think we may have even
20 touched on this earlier, but, you know, you want to
21 have someone in the office so if a neighbour has
22 concerns or wants to call in, at least we can answer
23 questions on the application and give them a fair shake
24 at providing feedback.

25 Q. Okay. I just would ask the file manager -- sorry,

10:42

10:43

J. SONNENBERG, A. CUMMING**Cross-examined by Mr. Metheral**

1 quick pause here. This is information I just would
2 like Joe to respond to, and it's new to me.

3 THE CHAIR: Sorry, new information? Is there
4 new information that we're --

5 MR. METHERAL: It's a new exhibit. I'm just
6 trying to pull up the exhibit. It is Exhibit...

7 THE CHAIR: I'm just trying to understand.
8 We're still dealing with Exhibits 1 to 26, which are
9 not new; is that correct?

10 MR. METHERAL: No, it's not new, it's just a new
11 piece that I would like to look at. Exhibit 22,
12 page -- page 9.

10:44

13 Q. Okay. So your decision summary states that on
14 December 3rd, there was a decision made to delay the
15 public notice until January 7th, and I believe earlier
16 in your testimony --

17 MS. VANCE: I'm just going to object to that.
18 I want to make sure that the context that you're
19 providing is factually accurate. I do not believe that
20 is actually what the decision summary says.

10:45

21 MR. METHERAL: Okay. Let's pull up Exhibit 1,
22 page 1 to refresh our memory, down to Part 2. A little
23 up. There we go.

24 Q. So, again, this is the public notice delay. So it's
25 understood that the document was submitted

J. SONNENBERG, A. CUMMING**Cross-examined by Mr. Metheral**

1 on -- documents were submitted on December 3rd and that
2 the reason there was a delay was to accommodate NRCB's
3 holiday closure and that the public notice occurred on
4 January 7th -- sorry, January 5th. Are we in agreement
5 January 5th is the date?

6 **A. MR. SONNENBERG: It was officially deemed complete**
7 **January 5th, yeah.**

8 Q. Okay. Early in your testimony, you suggested that you
9 wouldn't have been able to do public notice until
10 perhaps December 15th or 16th by your count, by
11 your -- after reviewing, you suggested that
12 January (verbatim) 15th or 16th would have been as
13 early as you could have completed public notice.

14 **A. MR. SONNENBERG: Yeah, that would have been**
15 **whatever day the newspaper would have ran.**

16 MR. METHERAL: Okay. Now can we go back to
17 Exhibit 22, page 9. Okay.

18 Q. And it would be the second submission here,
19 November 16th. Are you familiar with this email?

20 **A. MR. SONNENBERG: Yeah.**

21 Q. And it looks like you sent Adrian two emails because of
22 perhaps some computer issues, but specifically, if we
23 look at the second email.

24 **A. MR. SONNENBERG: Yeah.**

25 Q. There's a correspondence here where you are talking

10:47

10:47

J. SONNENBERG, A. CUMMING**Cross-examined by Mr. Metheral**

1 about -- you're asking for additional information like
2 the engineering report.

3 **A. MR. SONNENBERG: Yeah, correct.**

4 **Q.** You're a bit short on perhaps manure spreading lands.
5 You indicated he was short on manure spreading lands,
6 and it would be helpful if additional lands were made
7 available, and that you included a template.

8 **A. MR. SONNENBERG: Okay.**

9 **Q.** Okay. If we were to read the last sentence, it says:
10 (as read)

11 "I have started preparing the public
12 notice and is very close to ready to
13 go."

14 **A. MR. SONNENBERG: Yeah.**

15 **Q.** Why do you believe back in as early as November 16th,
16 that you were ready for the public notice process at
17 that time?

18 **A. MR. SONNENBERG: Because if I would have got all
19 the documents within like a day or two of
20 November 16th, I still could have managed to get the
21 public notice in that -- like for last year, but I
22 didn't get all of the details within enough days.**

23 But I was trying to move it along as quick as we
24 could, just cognitive of the upcoming Christmas closure
25 dates.

10:48

10:49

J. SONNENBERG, A. CUMMING

Cross-examined by Mr. Metheral

1 Q. The details were provided to you -- the missing details
2 were provided to you as early as November 29th and a
3 minor change was done on the 30th. You weren't
4 prepared to issue public notice in November at all?

5 A. MR. SONNENBERG: As you remember, we discussed when
6 I got the details, like, even November 29th, or
7 whatever you suggest it is, it's not -- you can't
8 publish public notice that week; it needs to get into
9 the newspaper. Their deadline I believe for that one
10 is on a Friday at some point, and then it wouldn't even
11 appear until the following week.

10:50

12 Q. Did you express those requirements for public notice to
13 the applicant?

14 A. MR. SONNENBERG: I can't recall.

15 Q. So --

16 A. MR. SONNENBERG: But we process applications as
17 they come in, and I can tell you, it's not like I have
18 one application coming in at the time. I have had
19 many, many on my desk and you just work on them as
20 people submit stuff.

10:50

21 Q. And do you need a completed application, then, before
22 you deem the application complete?

23 A. MR. SONNENBERG: Yes.

24 Q. And you didn't feel like it was completed by
25 November 30th?

J. SONNENBERG, A. CUMMING

Cross-examined by Mr. Metheral

1 **A. MR. SONNENBERG:** I don't remember the exact dates,
2 but, yeah, there were details missing we needed in
3 order to call it "deemed complete."

4 **Q.** And how often is the paper -- the public notice for
5 Willow Creek -- the Fort Macleod Gazette, how often is
6 that published?

7 **A. MR. SONNENBERG:** I believe it's weekly.

8 **Q.** So considering you had the application in part in
9 November, mid November, and you received the rest of
10 the application, including the technical requirements
11 from the engineer by the end of November, is it still
12 your position that December 16th was the earliest that
13 you can --

14 **A. MR. SONNENBERG:** Yeah, I would not have had time to
15 review the information. I looked back at my calendar
16 and it just would not have been even remotely possible,
17 because everyone was trying -- everyone's trying to
18 beat the rush that time of year. I mean, that's --
19 it's a lot of paperwork we're going through.

20 **Q.** You just testified that the Gazette publishes weekly?

21 **A. MR. SONNENBERG:** I said to the best of my
22 knowledge. I don't even remember the exact dates, but
23 I know you can't just get it in that date. There's a
24 lead-up. And I do believe it was weekly and I believe
25 the cutoff was a Friday, but could be off on what days

10:51

10:52

J. SONNENBERG, A. CUMMING**Cross-examined by Mr. Metheral**

1 **are which.**

2 **MR. METHERAL:** Okay. File manager, could we open
3 Exhibit 1, page 1?

4 **Q.** Again, to justify the closure -- the NRCB's office
5 closure and why the delay, it was intended to allow the
6 public to complete -- the public notice to be completed
7 in a time when neighbouring residents and landowners
8 would be allowed to see the notice.

9 Okay. And then there's a second part to that, to
10 when the NRCB offices would be open to take enquiries. 10:53

11 Does the NRCB use any other means to display
12 public notice aside from the local papers?

13 **A. MR. SONNENBERG:** **It's also shown on our website.**
14 **But AOPA does direct the newspaper advertisement.**

15 **Q.** Okay. The second part of this piece suggests that the
16 NRCB offices would be open to take enquiries.

17 Due to the COVID restrictions, it's understood
18 that the NRCB field offices were and continue to be
19 closed to the public in 2020 -- since 2020. Was the
20 NRCB field office open to the public in December of 10:54
21 2021?

22 **A. MR. SONNENBERG:** **I don't believe it was, but for**
23 **clarification, maybe the wording of that sentence isn't**
24 **absolutely perfect, but I mean, NRCB offices were**
25 **running remotely. And if we were in business hours and**

J. SONNENBERG, A. CUMMING

Cross-examined by Mr. Metheral

1 you phoned our office phones, we received all those
2 phone calls, and we -- that's how we requested new
3 enquiries.

4 Q. Okay. So field staff were working from home? Can you
5 describe how you were communicating with the public
6 through -- remotely?

7 A. MR. SONNENBERG: Like, generally, phone calls, site
8 visits, emails, occasional Zoom calls. Whatever they
9 were comfortable with for the most part.

10 Q. Okay. Do you believe you had all the tools that were
11 required to communicate with the public regarding
12 public notice?

10:55

13 A. MR. SONNENBERG: When I would have my work
14 cellphone on, they could get ahold of me. So yeah.

15 Q. Okay. So the requirement for the office to be open is
16 a bit misleading?

17 A. MR. SONNENBERG: I'd say not because, I mean, would
18 you be happy if someone's building next to you, you
19 tried to phone and you can't get ahold of them, right?
20 Because office open is -- you know, people have to be
21 working to answer a phone.

10:56

22 Q. The question is more related to your -- you have the
23 ability to answer public notice, but the NRCB field
24 office does not have to be open to do that?

25 A. MR. SONNENBERG: That is accurate.

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Cross-examined by Mr. Metheral

1 Q. Okay. Were you working from December 3rd -- were you
2 working remotely from December 3rd to December 24th?

3 A. **MR. SONNENBERG:** Yeah, I believe so. I might have
4 been off the odd day here and there, kind of like a
5 normal thing, but, yeah, we were operating.

6 Q. Okay. So the December 3rd to the December 24th
7 timeframe is approximately 16 work days. Would you
8 agree, then, that the delay of the public notice
9 delayed the process by 16 days?

10 A. **MR. SONNENBERG:** Absolutely not. As discussed
11 about four times already, December 15th would have been
12 the best case scenario for public notice. And for
13 clarification, that time of year, I do recall I would
14 not have had any time to work on it, any significance
15 anyway because we were -- there was a lot of files in
16 before. So -- so there was no -- there might be a
17 perceived delay, but there was no actual delay.

18 Q. The actual delay is very important to A&D Cattle.

19 A. **MR. SONNENBERG:** Yeah, and I understand the
20 unfortunate timing of how these things correlated, but
21 there was no actual delay.

22 **MR. METHERAL:** File manager, can we pull up
23 Exhibit 22, page 7. If we were to look at the comments
24 from Mr. van Huigenbos, he states that: (as read)
25 "Joe said it was NRCB policy to have

10:57

10:58

J. SONNENBERG, A. CUMMING

Cross-examined by Mr. Metheral

1 office closure and implied that the NRCB
2 has seen more statements of concern when
3 public notice happens during December."

4 That's from the first paragraph.

5 Would you agree that those two statements from your
6 decision summary and Mr. van Huigenbos's appear to
7 contradict each other?

8 **A. MR. SONNENBERG:** Well, I would say he is saying
9 I -- what is the exact wording you just used there --
10 "implied," and, you know, I didn't imply that
11 intentionally at all; that would have been his
12 interpretation. And, you know, I take responsibility
13 if maybe I could have communicated things clearer.
14 It's sometimes tough to get things across, but.

11:00

15 **Q.** Do you remember making the comment about why it would
16 be -- why December might not be a good month for public
17 notice?

18 **A. MR. SONNENBERG:** In general, and I've been asked
19 that -- I would respond that we're just not available
20 to answer the phone, the office isn't open. And maybe
21 as far as, like, it's just -- yeah, that's about all I
22 can recall. I don't have anything more than that.

11:00

23 **Q.** Okay. I'd like to move on to Exhibit 22, page 1, some
24 of the details about the application.

25 **THE CHAIR:** Mr. Metheral, how much longer do

J. SONNENBERG, A. CUMMING**Cross-examined by Mr. Metheral**

1 you expect for Mr. Sonnenberg and/or Mr. Cumming?

2 MR. METHERAL: I'm on page 4 of 6.

3 THE CHAIR: Okay. Great. You know what, to
4 the extent possible, if you can have your questions
5 succinct and pointed, that would be great, but please
6 proceed.

7 MR. METHERAL: Okay.

8 If we were to -- sorry, 20 -- sorry, is this
9 Exhibit 22, page 1? Can we scroll down the page?

10 Sorry, this must be Exhibit 26, page 1.

11:02

11 Q. Yes, here we go. Sorry, "Approval Officer Chronology,"
12 Item Number 1.

13 Earlier, you had -- in your testimony, you had
14 referred to this document that was submitted that
15 discusses approval officer chronology, and you had kind
16 of clarified some of the timelines. The statements of
17 concern deadline was February 2nd. Would you agree
18 with that?

19 A. **MR. SONNENBERG:** **Yeah.**

20 Q. Okay. And then you had indicated in your decision
21 summary that you had, a couple of days later, sent the
22 statements to the applicant. So that would have been
23 February 7th.

11:03

24 A. **MR. SONNENBERG:** **Yeah, that sounds about right.**

25 Q. But you don't agree that this should be considered a

J. SONNENBERG, A. CUMMING

Cross-examined by Mr. Metheral

1 delay?

2 A. MR. SONNENBERG: No, it's typical process to see if
3 anything else comes in by mail. And also, I think it's
4 just we need time to compile when public notice is
5 over.

6 Again, we have many applications ongoing at the
7 same time and we try to send these things in as we can.
8 But three to five days, I would say, is pretty typical.

9 Q. On that note, and with that prompt, did you reach out
10 to Mr. van Huigenbos to initiate this exchange of
11 statements of concern?

11:04

12 A. MR. SONNENBERG: No. No. He had phoned me. I
13 think he was just trying to keep the process moving
14 like a lot of applicants do, so...

15 Q. So in his opinion, perhaps this was -- he was checking
16 in on the status of this review and was wondering why
17 this material wasn't available for him to comment on?

18 A. MR. SONNENBERG: Yeah. And if we would have
19 discussed, I think there's a decent chance I would have
20 explained we wait for things to come in, but I can't
21 recall for sure, but it's pretty typical.

11:04

22 Q. Okay. On page 3 -- if we can scroll down on page 3, to
23 page 3.

24 March 10th. Let me just confirm where I'm at
25 here. So there was some communication about missing

J. SONNENBERG, A. CUMMING

Cross-examined by Mr. Metheral

1 information, and that email correspondence started on
2 March 10th, and it specifically asks about the
3 location -- sorry, phone call on March 10th. It
4 specifically asked about the location of the water
5 wells.

6 Were you on site in November?

7 **A. MR. SONNENBERG:** Yes, I was.

8 **Q.** Did you look for or verify the location of the water
9 wells at that time?

10 **A. MR. SONNENBERG:** I did not, and I guess I could add
11 clarification that it was maybe my misunderstanding at
12 the time when I first took the documents that both
13 wells were to be decommissioned.

14 And, yeah, later on, I -- yeah, I kind of -- I
15 will admit that was missed. But also at the time, it's
16 just the one well -- yeah, yeah.

17 No, it's basically, that was my bad.

18 **Q.** Okay. And the producer had submitted some drawings
19 that illustrated the location of the water wells?

20 **A. MR. SONNENBERG:** Yeah, in that case too, I just had
21 a little bit of tough time with the -- when I got back
22 a few months later being able to tell which dot. So it
23 was just providing clarification just -- just the size
24 of some of the font and their photo quality.

25 **Q.** Okay.

11:05

11:06

J. SONNENBERG, A. CUMMING

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1 A. MR. SONNENBERG: And the other factors, just the
2 pens that were added December 3rd that changed the site
3 significantly, and that's something I obviously wasn't
4 aware of on November 3rd, and it just did not occur to
5 me until later on when I was reviewing the information,
6 so...

7 Q. Okay. I'd like to move on to some comments about
8 cultivated land. If we could look at Exhibit 2,
9 page 9. Oh, that can't be right. Exhibit 22, page 9.
10 Down to the March 16th email.

11:07

11 The second bullet suggests that you were looking
12 for lands that were not cultivated. Sorry, the
13 March 16th suggests non-farmed areas removed, and the
14 March 14th email looks for -- to compensate for areas
15 that were not cultivated. Why was the farming practice
16 important to you for this application?

17 A. MR. SONNENBERG: Well, in this case, I did have
18 some internal assistance.

19 Like I said, we were trying to get these
20 applications processed as quick as we could at the
21 time. But when I have since reviewed it, there's
22 definitely -- you know, so maybe non-farmed isn't fully
23 accurate, but there is setbacks, there's wetland areas,
24 there's areas with slopes that wouldn't necessarily be
25 suitable for manure spread. So those are all removed

11:08

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1 when you tally up what is available for every
2 application.

3 Q. Wouldn't you agree, though, that AOPA talks about soil
4 classification for land base?

5 A. **MR. SONNENBERG:** Yeah, for sure.

6 Q. Okay. Did you provide Mr. van Huigenbos with the
7 land-base calculations?

8 A. **MR. SONNENBERG:** I'm sure I would have. I don't
9 recall exactly what I would have provided, but we
10 generally set that along with the Part 2.

11:09

11 Q. Okay. And did he meet your requirements? You asked
12 for a certain amount of acres.

13 A. **MR. SONNENBERG:** At a quick glance, just some of
14 the landowners give a little bit of optimistic view of
15 what was available for manure spreading.

16 Q. So you provided that calculation first, but you didn't
17 consider the setbacks at that time?

18 A. **MR. SONNENBERG:** I would suggest -- I mean, we --
19 we provided the applicant -- we say, you know, it needs
20 to be spreading land. It's kind of up to an applicant
21 to make sure they provide lands that are suitable for
22 manure. So we kind of just take their word for it.

11:10

23 And then in the Part 2, I mean, we look at it much
24 more closely. And in this case, where we deemed he was
25 a little short. Some of it wasn't suitable. We had

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Cross-examined by Mr. Metheral

1 **the opportunity to provide us more.**

2 **Q. Okay. But you've indicated that it's not suitable**
3 **because of the farming practices.**

4 **A. MR. SONNENBERG: You could interpret it that way.**

5 **Q. Is it possible that he provided you enough land base**
6 **that this calculation could have proceeded based on**
7 **soil classification?**

8 **A. MR. SONNENBERG: In a hypothetical world where**
9 **maybe you remove wetlands and slopes and setbacks to**
10 **neighbours and waterbodies, but in reality, it's very**
11 **rare where every acre on a quarter section is available**
12 **for spreading.**

11:10

13 **Q. And you did that detailed calculation?**

14 **A. MR. SONNENBERG: That was done internally. I ended**
15 **up having some assistance with it. But, yes, those**
16 **detailed calculations were done using aerial**
17 **photographs and measurements.**

18 **Q. You delineated riparian area using air photos?**

19 **A. MR. SONNENBERG: In general, yes, that's how we**
20 **would do it. We also drive by some of the fields, but,**
21 **I mean, air photos usually give you a pretty good idea**
22 **of what's available for spreading.**

11:11

23 **Q. When you were on your site visit, did you look at the**
24 **land base that he had indicated?**

25 **A. MR. SONNENBERG: I looked at the home -- like, his**

J. SONNENBERG, A. CUMMING

Cross-examined by Mr. Metheral

1 home quarter there.

2 Q. And so you were confident you could delineate riparian
3 areas from a drive-by setting and Google Earth review?

4 A. **MR. SONNENBERG:** I'd say in that case, there's
5 **definitely some areas that you can delineate as not**
6 **suitable for spreading based on an air photo.**

7 Q. Okay. Well, in this case, this action, the request for
8 more information to determine water well location and
9 to question the farming practices resulted in a six-day
10 delay from March 10th to 16th.

11:12

11 Had these details been collected earlier, do you
12 think this delay could have been avoided?

13 A. **MR. SONNENBERG:** I'd say if those details were
14 collected earlier, it just would delay me getting out
15 for notice on the other end, because, I mean, you only
16 have so much time when we look at these. So there is a
17 perceived delay, but there was no actual delay.

18 Q. Again, these actual days are important to the
19 applicant.

20 Just a quick question. Were you away on holidays
21 at any time in December?

11:13

22 A. **MR. SONNENBERG:** Christmas closure is discussed
23 earlier.

24 Q. Okay. How about during the public review process from
25 January until April?

J. SONNENBERG, A. CUMMING

Cross-examined by Mr. Metheral

1 **A. MR. SONNENBERG:** I may have had a couple of days
2 off, but it would have been less than -- I was actually
3 working, if anything, way more than we normally would.

4 **Q.** Okay. And did you include the Town of Fort Macleod as
5 a directed (verbatim) affected party?

6 **A. MR. SONNENBERG:** Initially, I did not.

7 **Q.** Why is that?

8 **A. MR. SONNENBERG:** So we request addresses and who
9 lives within the prescribed radius, so directly
10 affected radius from the farm. And at the time, it
11 didn't fall into that radius, and there was no planning
12 documents that would have brought them into the fold,
13 so -- prior to March 9th.

11:14

14 **Q.** So when would you have exactly determined affected
15 party status?

16 **A. MR. SONNENBERG:** Well, it depends. If you live
17 within the prescribed distance of a CFO, you're
18 automatically presumed, you know, to be directly
19 affected. Other -- other people can make a case,
20 though.

11:14

21 So, you know, if Town of Fort Macleod would have
22 wanted to, let's say, respond to the public notice,
23 maybe they would have made a case, and you find them
24 directly affected. Or in other cases, people who draw
25 water downstream of a site. There's a lot of other

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Cross-examined by Mr. Metheral

1 factors.

2 So it's kind of a -- during the same review
3 process when we're looking at MDP, we're looking at the
4 technical documents. That's when we make those
5 decisions.

6 Q. Okay. Thank you, Joe -- or thank you, Mr. Sonnenberg,
7 for your time. That would conclude my questions for
8 you.

9 I would ask to speak to Mr. Cumming for -- to
10 clarify a few points.

11:15

11 THE CHAIR: Mr. Cumming is ready.

12 Q. MR. METHERAL: Yes, hi.

13 I'd like some -- just some clarification on NRCB
14 65-day delivery policy. Just to confirm, that's an
15 internal NRCB policy?

16 A. MR. CUMMING: Are you talking about the
17 performance measure that I provided evidence on
18 earlier? It is an NRCB performance measure.

19 Q. Okay. And perhaps I missed this, but the 65 days, how
20 did you arrive at the 65-day number?

11:16

21 A. MR. CUMMING: Back in the early 2000s, I did
22 some calculations based on the information that we had
23 at the time to develop and propose that to our
24 management group, and the management group accepted it
25 and adopted it as a performance measure for the NRCB.

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Cross-examined by Mr. Metheral

1 Q. Okay. It appears like, though, that the approval
2 officer can delay the start of the countdown. Is that
3 accurate?

4 A. MR. CUMMING: The performance measure is from
5 the date that the application is deemed complete, so
6 I -- I don't know what you mean by "delay the start of
7 the countdown."

8 Q. Well, it's A&D's position that this application was
9 complete in November and would like the countdown to
10 have started when the submission was finished. But the 11:17
11 NRCB chose to delay the start date until the deemed
12 complete day, until January 5th.

13 Can you explain why that countdown is relevant, if
14 the approval officer can simply delay the start date?

15 A. MR. CUMMING: Perhaps a better way to respond to
16 this is to look at the approvals policy that we have.
17 And I must apologize, because I don't know what the
18 exhibit number is, but I do have the section number
19 and, again, we'd have to look at that.

20 But it's Section 7(11)(3), which essentially 11:18
21 says -- and this is for approvals and registration
22 applications. And it refers to Sections 19(4) and
23 21(3)(a) of AOPA: (as read)

24 "Persons may apply for directly affected
25 parties within 20 working days after an

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1 approval officer has deemed an
2 application for an approval or
3 registration to be complete. Approval
4 officers will consider the date the
5 public notice appears in the local paper
6 as the official date the application is
7 deemed to be complete. This approach
8 ensures that all parties have the full
9 20 working days to respond after being
10 notified of the application."

11:18

11 MS. VANCE: I might just step in to assist. I
12 believe that that portion of the approvals policy is
13 contained within Exhibit 11.

14 A. MR. CUMMING: Thank you.

15 THE CHAIR: Unless other parties need it, I
16 think from the Board's perspective, we're good.

17 Q. MR. METHERAL: Okay. So to confirm,
18 Mr. Sonnenberg has said that the earliest that public
19 notice could be maintained, in his opinion, was perhaps
20 December 16th -- 15th, 16th. Do you recall that date?

11:19

21 A. MR. CUMMING: I recall that Mr. Sonnenberg
22 mentioned that. I believe that the Macleod Gazette
23 gets published on a Wednesday, so I believe that date
24 would be the 15th.

25 Q. The 15th. Okay. So it's an internal NRCB policy that

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Cross-examined by Mr. Metheral

1 requires that these notifications go out according to
2 publication dates for local newspapers. So in essence,
3 then, we can argue that this application was delayed
4 based on an NRCB policy.

5 **A. MR. CUMMING:** I -- I disagree with that. We
6 have an internal practice that has been a long-standing
7 practice since the early 2000s, again, where notice is
8 not provided if it's -- not provided if it will fall
9 over the Christmas break.

10 And that -- that internal practice came about
11 after getting a lot of feedback from parties when we
12 originally started AOPA and we did provide notice over
13 that break.

11:20

14 So the decision was made that it would be
15 the -- we would delay decision until as soon as
16 possible after the Christmas break if notice was going
17 to fall over that Christmas break.

18 **Q.** I'd like to speak to the Christmas break timeframe in a
19 bit. Specifically now, I'm focusing on the NRCB's
20 decision to wait for public notice until it reflected
21 on the Gazette submission date. Would you agree the
22 NRCB delayed this application until it reflected on the
23 publication date?

11:21

24 **A. MR. CUMMING:** No, I wouldn't agree that we
25 delayed the decision. I think that the -- the policy

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Cross-examined by Mr. Metheral

1 is quite clear that 7(11)(3) as that the date the
2 application would be deemed complete would be the date
3 that the notice was published in the paper.

4 Q. The notice could not be published until it reflected on
5 the Gazette submission timelines; is that accurate?

6 A. MR. CUMMING: The public notices -- as I've
7 mentioned a little earlier, and I think I've already
8 answered this question, when the notice is published in
9 the newspaper, that would be the date that the
10 application would be deemed complete.

11:22

11 Q. And the NRCB waits to reflect publication dates, yes or
12 no?

13 A. MR. CUMMING: I -- I don't know what your
14 question is. I think I've already answered it several
15 times.

16 Q. Joe indicated that he could have published on the 16th.
17 Did he delay publishing this application until at least
18 the 16th?

19 A. MR. CUMMING: No, I believe what Mr. Sonnenberg
20 said is that if -- if he had received this decision or
21 the -- the application, the Part 2 application on
22 December the 3rd, that the very earliest that it would
23 be possible to publish in the newspaper given the
24 timeframes that are required to provide the information
25 to the newspaper would be December the 15th.

11:23

J. SONNENBERG, A. CUMMING**Cross-examined by Mr. Metheral**

1 However, because of our practice not to have
2 notice cover that Christmas break, the notice was
3 actually placed on January the 5th in the Macleod
4 Gazette.

5 Q. I'm not looking for the justification. I'm looking to
6 better understand if NRCB policy delayed this
7 application to reflect the Gazette timeframe.

8 MS. VANCE: I'm just going to object --

9 THE CHAIR: Ms. Vance, please --

10 MS. VANCE: I believe the question has been
11 answered and asked a number of times, and I was going
12 to jump in on the previous question, but I waited.

13 And some of these questions are more appropriate
14 for Mr. Sonnenberg, who you've already questioned. So
15 just bear that in mind, please.

16 THE CHAIR: Ms. Vance, thank you. I would
17 agree, and I was going to ask Mr. Metheral as well, you
18 know, from the Board's perspective from terms of
19 information we need, I believe we have heard the
20 question and answer a number of times.

21 So if you could please move on to your next
22 question, it would be appreciated.

23 MR. METHERAL: Okay.

24 Q. The next question is about the timeframe for NRCB
25 office closure from -- I understand you corrected it to

11:24

11:24

J. SONNENBERG, A. CUMMING**Cross-examined by Mr. Metheral**

1 be December 24th until January 3rd.

2 **A. MR. CUMMING:** That's included, yes. Both of
3 those dates are included.

4 **Q.** Is December 24th a statutory holiday?

5 **A. MR. CUMMING:** The way that the Province does it,
6 it's -- December 24th is the floater day for the
7 Christmas day.

8 **Q.** A floater day for Christmas day? What about --

9 **THE CHAIR:** Excuse me, Mr. Metheral. I
10 believe the -- if I have it right, Mr. Cumming answered
11 the Christmas closure days, including the statutory
12 days, the days in lieu, and the floaters in a previous
13 answer. So if there's a new question, maybe we could
14 have that.

15 **MR. METHERAL:** Yes.

16 **Q.** I'm trying to determine if the closure period delayed
17 my applicant's review. Does January -- does
18 December 29th, 30th, and 31st -- how would you describe
19 those days? They're not statutory holidays. How does
20 the Government view those days?

21 **MS. VANCE:** I believe that has also been
22 answered. And in terms of do you think this delayed, I
23 think that's a piece for argument rather than evidence.
24 We're trying to -- anyway.

25 **MR. METHERAL:** Okay. Perhaps I'll move on. But

11:25

11:26

J. SONNENBERG, A. CUMMING

Cross-examined by Mr. Metheral

1 for the Board's position, I am trying to determine if
2 NRCB and Government practice delayed my client's
3 application.

4 Q. Mr. Cumming, can you confirm the location of the NRCB
5 field office in Lethbridge?

6 A. **MR. CUMMING:** It's at the Agriculture Centre off
7 of 1st Avenue south. It's actually in the county.

8 Q. Is that a provincial building or a federal building?

9 A. **MR. CUMMING:** We are located in the provincial
10 wing of the federal building.

11:27

11 Q. Is the NRCB field office open to the public?

12 A. **MR. CUMMING:** I'm not sure. Are you talking
13 about specific dates? Are you talking about right now,
14 or are you talking about when?

15 Q. Is the NRCB field office open to the public today?

16 A. **MR. CUMMING:** Yes.

17 Q. Was the NRCB field office open to the public in
18 December of 2021?

19 A. **MR. CUMMING:** I don't believe it was.

20 Q. It was?

11:27

21 A. **MR. CUMMING:** No, I said I don't believe it was.

22 Q. Thank you. The field staff have been working remotely
23 since early 2020. Do you believe the field staff have
24 the tools they need to complete their job remotely?

25 A. **MR. CUMMING:** I do believe so.

J. SONNENBERG, A. CUMMING**Cross-examined by Mr. Metheral**

1 Q. Okay. Thank you for your time, Mr. Cumming. That
2 would conclude my questions for the...

3 THE CHAIR: Okay. Thank you, Mr. Metheral,
4 Mr. van Huigenbos.

5 MS. VANCE: Mr. Chair, I'm sorry to interrupt.
6 I do have a possible response to the undertaking --

7 THE CHAIR: Oh, okay.

8 MS. VANCE: -- if that would be helpful.

9 I understood the undertaking was the date that the
10 then approval was sent out for internal review. I'm
11 not here to give evidence. I'm happy to let
12 Mr. Sonnenberg do it, but he would have to search his
13 emails as well. I was fortunate enough to be copied on
14 that email, and I can tell you that it was March the
15 16th.

11:28

16 THE CHAIR: So March the 16th is when the
17 decision was circulated for further review by other
18 approval officers. Do I have that right?

19 MS. VANCE: Yes.

20 THE CHAIR: Thank you. Mr. Metheral, you
21 heard and understood? Is Zoom still online?

11:29

22 MR. METHERAL: Yes, we're on, and just one minute
23 to better understand that response.

24 THE CHAIR: Just more curious as long as you
25 heard the response. You'll have an opportunity in

J. SONNENBERG, A. CUMMING**Cross-examined by Mr. Metheral**

1 closing or final argument. I think you're closed --
2 you indicated you're closed with your questions, so
3 we're ready to move on.

4 MR. METHERAL: Sure.

5 THE CHAIR: So, Mr. Kennedy, do you have any
6 questions?

7 MR. KENNEDY: I thought if Mr. van Huigenbos,
8 A&D Cattle, had questions from arising from the
9 undertaking, this would be the time to do that. I
10 think they were purely asking for the date. I don't
11 know whether any questions might arise from that.

12 THE CHAIR: Yeah, sorry, my assumption is they
13 asked for the date, and that's what was provided, so I
14 didn't see other questions.

15 Mr. Metheral, did you have a question about the
16 date?

17 MR. METHERAL: No, that answers our questions.
18 Perhaps if we can add that to public record, the email
19 or correspondence, that would be great.

20 THE CHAIR: That will be part of the
21 transcript and part of --

22 MR. KENNEDY: Well, I'm not sure --

23 THE CHAIR: Is that going to be an exhibit?

24 MR. KENNEDY: I suspect it may not -- I mean,
25 internal deliberations on these things are often not

11:30

11:30

J. SONNENBERG, A. CUMMING**Questioned by Mr. Ceroici**

1 made as exhibits, so...

2 MS. VANCE: Yeah, the undertaking was not to
3 introduce a piece of exhibit, which I cannot do anyway.
4 It would have to go through Mr. Sonnenberg.

5 And I would agree with Mr. Kennedy. This is not
6 something we would likely be inclined to give a copy of
7 anyway, but I can tell you the date, which is
8 March 16th.

9 MR. METHERAL: Thank you.

10 THE CHAIR: I think we're good, thank you.

11:31

11 Mr. Kennedy?

12 MR. KENNEDY: I have no questions, Mr. Chair.

13 THE CHAIR: All right. Thank you.

14 Ms. Roberts?

15 MS. ROBERTS: Mr. Chair, I have no questions.

16 THE CHAIR: Mr. Ceroici?

17 MR. CEROICI: Yes, I have just hopefully a short
18 question.

19 **MR. CEROICI QUESTIONS THE PANEL:**

20 Q. On the issue of completeness of a permit, I just wanted
21 to get maybe a little more explanation on what does it
22 mean when a permit is complete in the review process?

11:31

23 A. **MR. CUMMING:** **Is that question directed at me,**
24 **Mr. Ceroici? Will I answer it?**

25 Q. Yes. Yes, please.

J. SONNENBERG, A. CUMMING

Questioned by Mr. Ceroici

1 A. MR. CUMMING: Thank you. I think I touched on
2 this when -- when I gave evidence initially, but
3 essentially what we are looking at when we determine an
4 application to be complete, that there is sufficient
5 information included in that application for it to
6 start to be processed.

7 It does not preclude that more information may be
8 required as questions or further review of the
9 application may generate some questions. But it -- in
10 order to be deemed complete, it would have to have
11 sufficient information for it to begin to be processed.
12 I trust that would answer your question.

13 Q. So I guess I just want to probe a bit about -- about
14 the missing water well information and the extra
15 acreages for manure spreading.

16 So would that be considered information required
17 to decide if an application is complete, or would it be
18 considered information that could -- you know, would be
19 required later on after further analysis?

20 A. MR. CUMMING: So typically with applications, we
21 will see and there will be an overview done to see that
22 there has been some lands provided for manure
23 application, assuming that that's how they are
24 proposing to utilize that manure.

25 When it comes down to the detailed review of those

11:32

11:33

J. SONNENBERG, A. CUMMING

Questioned by The Chair

1 lands, that's when things such as slopes, waterbodies,
2 setbacks from property lines and -- and things like
3 that would be looked at in -- in far greater detail,
4 and it's at those points in time when additional
5 information may be required.

6 We have had situations as well in the past with --
7 with some applications where information has changed
8 over time, and so that -- that information would then
9 come in and add to or change what -- what was included
10 in the original application.

11:34

11 Q. Okay. Thanks very much, Mr. Cumming. I have no
12 further questions.

13 THE CHAIR: Okay. I have just a couple of
14 questions.

15 THE CHAIR QUESTIONS THE PANEL:

16 Q. Mr. Sonnenberg, you indicated that, I believe, on
17 December 21st, you sent a letter to parties as a
18 courtesy -- I think I have that right -- indicating
19 that public notice would occur on January 5th. Do I
20 have that right?

11:34

21 A. MR. SONNENBERG: That -- that sounds -- sounds
22 about right. I don't remember the exact date, but it
23 did go out particular the closure.

24 Q. So my understanding, then, and also based on what
25 Mr. Ceroici has asked, then, if you were able to

J. SONNENBERG, A. CUMMING**Questioned by The Chair**

1 provide that letter on December 21st that notice would
2 be coming January 5th, the application would have
3 been -- you know, from your perspective is complete on
4 the 21st, because you know already you can issue the
5 notice on January 5th. Is that fair?

6 **A. MR. SONNENBERG: Yeah. Yeah, that's fair.**

7 **Q.** And so the reason that those dates were linked later is
8 more for, I suppose, (a) administrative purposes to
9 start the clock but also to tie the deemed complete to
10 the timelines that the legislation allows for public
11 notice. Is that fair?

12 **A. MR. SONNENBERG: Yes, hundred percent.**

13 **Q.** Okay. Thank you.

14 Mr. Cumming, we heard a lot about Christmas
15 closure and timelines and the reasons and just a couple
16 of quick questions surrounding that. It's a government
17 policy, yes, but NRCB doesn't have to follow and we
18 don't necessarily follow -- I work for the same
19 organization -- all government policy when it comes to
20 human resource type policies, but we have on this one,
21 and do you recall why?

22 **A. MR. CUMMING: I do not recall the exact details**
23 **why, no. Sorry.**

24 **Q.** Okay. And part of it might revolve around some
25 questions from Mr. Metheral around working remotely and

11:35

11:36

J. SONNENBERG, A. CUMMING

Questioned by The Chair

1 working from the office, but, you know, my recollection
2 is that offices need to be open if we use them, and
3 they're shut down, and we use many provincial
4 buildings. That might be a reason.

5 I'm not here to provide some evidence, but I'm
6 just sort of thinking out loud for a little bit partly
7 because we all work for the NRCB in the end. But the
8 interesting part is working remotely and working from
9 the office, are those the same thing, in your mind?

10 **A. MR. CUMMING:** Yes. Yeah, the physical location
11 of where the person is sitting and doing the work would
12 be different but that they would be doing the same work
13 and having the same access to NRCB resources, data
14 basis, things like that, yes, they would have that from
15 both locations.

11:36

16 **Q.** And over the last two years of working remotely, you
17 haven't -- or have you seen issues around getting the
18 job done, responding to clients?

19 **A. MR. CUMMING:** No. In fact, our approval
20 officers and all of our staff have been very positive
21 about communications with -- with clients. We do
22 have -- or we have had a pandemic response plan in
23 place, which does give guidance with respect to
24 meetings and -- and things like that, but respect is
25 being provided through the period that we had the COVID

11:37

J. SONNENBERG, A. CUMMING**Questioned by The Chair**

1 **outbreak.**

2 Q. And so my earlier question, working remotely is sort of
3 the same as a facsimile of working from the office, so
4 would that mean that during Christmas closure if we're
5 working remotely, would staff be expected to work
6 differently or be working because they're working
7 remotely rather than from the office that is closed?

8 A. **MR. CUMMING:** I'm not sure that I fully
9 understand your question. I think what I'm
10 understanding from you is that if there's a Christmas
11 closure, would we expect staff, if they were in the
12 remote location, to work on their Christmas closure,
13 and the answer would be no.

11:38

14 Q. Yeah, that was my question.

15 A. **MR. CUMMING:** It would be the same -- it would
16 be the same as a statutory holiday. We wouldn't expect
17 staff to work in the office on a statutory holiday, and
18 we would not expect them to work remotely on a
19 statutory holiday.

20 THE CHAIR: Okay. Thank you. Those are my
21 questions.

11:38

22 Ms. Vance do you have any redirect?

23 MS. VANCE: I don't. Thank you, sir.

24 THE CHAIR: Okay. Well, thank you. So we're
25 sort of at a natural break potentially, because we've

1 got --

2 Mr. Metheral, you and Mr. van Huigenbos are up
3 next, but it's a little bit early -- I'm not sure if
4 lunch is in Lethbridge. I think it was going to be
5 delivered, I'm not sure if it's ready or not. I'm just
6 trying to figure out if we should kind of start the
7 next section, because --

8 Mr. Sonnenberg, Mr. Cumming, by the way, thank
9 you. You are now released from the panel.

10 (PANEL STANDS DOWN)

11:39

11 THE CHAIR: So it's whether or not we kind of
12 start the next section with A&D Cattle. Can anybody
13 advise if lunch is ready for Lethbridge? I think we
14 had some lunch coming in, so...

15 MS. VANCE: They just took my order, so I
16 would think it's not here yet. Unless they're very
17 good.

18 THE CHAIR: Okay. Okay. Well, I think we
19 ought to start then to use the time effectively, but,
20 Mr. Metheral, we'll have sort of the same rule. We'll
21 probably need to -- I'm guessing we'll need to break in
22 between, so Mr. van Huigenbos will be under oath at
23 that time.

11:39

24 So let's start with direct evidence.

25 Mr. Metheral, if you're ready to go -- I presume you're

1 ready to go.

2 MR. METHERAL: Yes.

3 THE CHAIR: And we'll kind of aim for noon,
4 but I guess I'll look for a hand up or perhaps,
5 Ms. Friend, if you find out earlier through text or
6 something if there's an obvious time we can break in
7 terms of lunch at Lethbridge, because I think we have
8 quite a few people at Lethbridge office.

9 Sorry, please proceed.

10 MR. METHERAL: Okay. So Adrian and I will -- are
11 in the same room. I will try and present some of the
12 questions for him to respond to.

13 THE CHAIR: Right. And, Mr. Metheral, you're
14 not presenting any direct evidence because we need to
15 have the court reporter swear in -- so the court
16 reporter will need to swear in Mr. van Huigenbos for
17 sure, and if you're presenting evidence, I think we
18 need you to be sworn in as well.

19 MR. METHERAL: We were uncertain how this would
20 be best suited for the Board. Certainly,
21 Mr. van Huigenbos and I worked on these documents
22 together. He and I are both capable of responding to
23 the material presented. Perhaps --

24 THE CHAIR: I guess if you're doing more than
25 asking questions and if you're going to be answering

11:40

11:41

C. METHERAL, A. VAN HUIGENBOS

Examined by Mr. Metheral

1 some of our questions, then you need to be sworn in.
2 So if the answer to those is yes, this gets you sworn
3 in.

4 MR. METHERAL: If it benefits the Board, I can
5 certainly answer questions, and so perhaps I should.

6 THE CHAIR: Well, you need to tell me that.
7 I'm just asking the question.

8 MR. METHERAL: Yes.

9 THE CHAIR: Okay. So, Court Reporter, please
10 swear in both. Don't tell me we lost --

11 THE COURT REPORTER: No, I'm here.

12

13 **C. METHERAL, A. VAN HUIGENBOS** (For A&D Cattle Ltd.),
14 **affirmed**

15 **MR. METHERAL EXAMINES THE PANEL:**

16 THE CHAIR: The floor is yours, Mr. Metheral.

17 MR. METHERAL: If I can be in the screen here.

18 Q. Mr. van Huigenbos, how long have you lived in the
19 Fort Macleod area?

20 A. **MR. VAN HUIGENBOS: I was born in 1999 and I've lived**
21 **in Fort Macleod my whole life.**

22 Q. Okay. And when did you buy your property?

23 A. **MR. VAN HUIGENBOS: We bought it in the spring of 2021**
24 **and we got possession in September of 2021.**

25 Q. Okay. And why do you think it's important to ask the

11:41

11:43

C. METHERAL, A. VAN HUIGENBOS

Examined by Mr. Metheral

1 Board for a review of this decision?

2 **A. MR. VAN HUIGENBOS:** There were goals I was working
3 toward, and I feel that I was not treated fairly and
4 with enough -- wasn't treated fairly by the NRCB.

5 **Q.** Okay.

6 **MR. METHERAL:** File manager, can we pull up
7 Exhibit 22, page 6? That's right.

8 **Q.** So to provide a bit of evidence on your behalf, if we
9 can go through your submission here. Please confirm --
10 I asked you to complete a timeline that you believed
11 was -- that you believe illustrated your activities
12 with the NRCB?

11:44

13 **A. MR. VAN HUIGENBOS:** Yes, that's my timeline. I
14 completed it with you, yes.

15 **Q.** And to confirm, you submitted your application on
16 July 17th. Engineering work proceeded in September, a
17 submission of an engineering report on October 19th,
18 or, perhaps, the engineers working on October 19th.
19 And then to confirm, Joe -- Mr. Sonnenberg was on site
20 on November 3rd?

11:44

21 **A. MR. VAN HUIGENBOS:** Yes.

22 **Q.** Okay. At that time, I'm trying to understand awareness
23 about the municipal development plan and perhaps
24 changes that the county and town were going through.

25 You indicate here that you did discuss the town

C. METHERAL, A. VAN HUIGENBOS

Examined by Mr. Metheral

1 and the county's proposed intermunicipal development
2 plan. Do you recall that visit?

3 **A. MR. VAN HUIGENBOS: Yes.**

4 **Q. And do you recall that discussion about the IDP?**

5 **A. MR. VAN HUIGENBOS: Yes, I talked to Joe about it and**
6 **he was aware that it was coming into place, and -- or**
7 **that there was the talk of negotiations between the**
8 **town and the MD.**

9 **And he also told me that there was another client**
10 **of his that was also having the same problems -- or was**
11 **also affected by it.**

11:45

12 **Q. Okay. And did you feel any pressure to get your**
13 **application through the system as quickly as you could?**

14 **A. MR. VAN HUIGENBOS: Yes. I had quite a bit of**
15 **pressure and felt the need to get the permit done.**

16 **Q. And then in November, we see some submissions and some**
17 **response from the NRCB about the engineering report,**
18 **manure spreading lands, but, ultimately, everything was**
19 **submitted on November 23rd. Is that accurate?**

20 **A. MR. VAN HUIGENBOS: Yes. And then I was told that the**
21 **public notice could not happen in 2021, so at that**
22 **point, I decided, since I was waiting anyway, I would**
23 **add four more corrals, and this was completed, I**
24 **believe it was in end of November, and the -- all this**
25 **information was in on December 3.**

11:46

C. METHERAL, A. VAN HUIGENBOS

Examined by Mr. Metheral

1 Q. Okay. So some minor changes were completed to your
2 application, but it was based on Joe's direction that
3 public notice wouldn't occur in December. Is that
4 accurate?

5 **A. MR. VAN HUIGENBOS: Yes. If public notice was still**
6 **going to go through, I would never have made any**
7 **changes and I would have had all my -- all my documents**
8 **in on the 23rd, and it would have been deemed complete**
9 **at that time.**

10 Q. Okay. And it's your position here that you, on
11 December 3rd, you had sent in what would be kind of a
12 final email that said there's nothing more that I'll be
13 submitting. You approved the application as you had
14 submitted it?

11:47

15 **A. MR. VAN HUIGENBOS: Yes. The NRCB asked me if that's**
16 **all and said that they -- they had it all, so I**
17 **confirmed with them, yes.**

18 Q. Okay. Moving forward into January, we saw that Joe
19 provided you with some statements of concern, and
20 perhaps referrals. The first one came quite quickly,
21 January 5th, but there was -- there's an indication
22 here that he told you he would send these comments as
23 soon as you were to get them -- or as soon as he was to
24 get them; is that accurate?

11:48

25 **A. MR. VAN HUIGENBOS: Yes. So on January 5, Joe -- I**

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Examined by Mr. Metheral

1 believe Joe had called me, unless it was through an
2 email -- no, we had a phone call, and we discussed that
3 first concern, which was from Alberta Environment, and
4 we had discussed that the concerns would come in to me
5 as soon as I -- as they came into the NRCB. That way I
6 could have a quick chance to look at it and keep the
7 ball rolling as fast as we could.

8 Q. Okay. So you believed he was working as diligently as
9 he could to get your application reviewed and through
10 the approval process?

11:49

11 A. MR. VAN HUIGENBOS: In the beginning, when he came for
12 the site visit, I believed that he was doing a good
13 job. He helped me with filling out the paperwork.
14 Throughout the permitting process, I lost faith. I
15 never received any phone calls. I was always making
16 the phone calls.

17 I had people telling me that, hey, this is taking
18 too long, something is not right. I said, well, I need
19 -- he told me he's doing this, so I believed it, but as
20 time went on, it took quite long.

11:50

21 On March 10, I called Joe, seeing where the permit
22 was, how far it was, didn't hear anything back from him
23 for a month, or since the January -- February 7 phone
24 call, and I just wanted to see how far things were. At
25 that phone call, he asked for more information about

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1 the water well and the manure spreading lands.

2 This -- this made me think was I the one that
3 should be doing the work or at what point was Joe going
4 to ask me for this information. Like, if I didn't call
5 him that day, how long was he going to wait? Yeah.

6 Q. So to clarify, you initiated contact with Joe asking
7 about the statements of concern, and it was only then
8 that you felt like you prompted Joe into sending you
9 those statements for review?

10 A. **MR. VAN HUIGENBOS:** Yes, I called him and then that's
11 when he said, "Oh, I'll send them out later in the
12 day."

11:51

13 Q. Okay. So from February 7th to March 10th, the process
14 has -- basically the review process -- sorry. After
15 February 7th, the statements of concern are in and it's
16 now more of a review process. So when you reached out
17 a month later, did you have some expectations that the
18 permit would have been complete?

19 A. **MR. VAN HUIGENBOS:** Yes, I was hoping to hear that he
20 was very close to a decision, and that, in the next
21 week or so, I would be getting an approval.

11:51

22 Q. Okay. So the idea that you prompted Joe and then he
23 asked for more information regarding the water wells
24 and land base, does that seem like something that could
25 have been done perhaps in January or February?

C. METHERAL, A. VAN HUIGENBOS

Examined by Mr. Metheral

1 **A. MR. VAN HUIGENBOS: Yes, most definitely.**

2 **Q. Because what we're finding out here is that these minor**
3 **delays really impacted the outcome of your decision?**
4 **Would you agree with that?**

5 **A. MR. VAN HUIGENBOS: Yes.**

6 **Q. Okay. Let's maybe talk about your communication with**
7 **the municipality. When did you become aware that the**
8 **municipality had approved the IDP?**

9 **A. MR. VAN HUIGENBOS: So I became aware when I spoke**
10 **with Derrick about the adoption of IDP in March '22.**

11:53

11 **Q. And then you received your decision on April 1st, and**
12 **you reached out to the NRCB, both the approval officer,**
13 **and the director?**

14 **A. MR. VAN HUIGENBOS: Yes.**

15 **Q. Is that accurate? And you expressed your concern about**
16 **the decision?**

17 **A. MR. VAN HUIGENBOS: Yeah.**

18 **Q. Okay. I think that would -- you did ask a little bit**
19 **about office closure and were provided the reasons why**
20 **some of the delays occurred?**

11:53

21 **A. MR. VAN HUIGENBOS: Yes, I called -- or had a chat**
22 **with Andy and, yeah, he stated what we've been hearing**
23 **the last little bit. And Andy also told me that it was**
24 **unfortunate -- the timing of this permit was very**
25 **unfortunate for me.**

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1 Q. Okay. On that note, did you feel like -- sorry, I lost
2 my page here. Here we go.

3 When we look at the December delay, do you feel as
4 part of the public and a producer that can ask for a
5 timely decision, do you feel that the December delay
6 was appropriate considering there were working days in
7 December where the public could have provided notice?

8 **A. MR. VAN HUIGENBOS:** No, I -- I believe that in
9 December there was lots of time when neighbours could
10 have a time to look at it. I don't believe that in
11 NRCB, in the rules it says that they have to be 20
12 consecutive days.

11:55

13 So what could have happened is the public notice
14 could have gone for, for example, ten days in
15 December and ten days after with a space, a break
16 during Christmas.

17 Q. As a member of the public, that makes sense to you,
18 that --

19 **A. MR. VAN HUIGENBOS:** Yes.

20 Q. -- the public notice could have proceeded irregardless
21 of the NRCB closure?

11:55

22 **A. MR. VAN HUIGENBOS:** Yes.

23 Q. I might ask you a little bit about the way Joe was
24 supporting -- or Mr. Sonnenberg was supporting your
25 application. What did he provide you to start with?

C. METHERAL, A. VAN HUIGENBOS

Examined by Mr. Metheral

1 A. MR. VAN HUIGENBOS: So he provided me the information
2 to fill out on the Part 1. I believe Sylvia gave me
3 the Part 1 information. I filled that out. Then that
4 prompted discussions with Joe -- Mr. Sonnenberg, and we
5 got the soil testing done. And then the discussions
6 between the engineer and Joe -- Mr. Sonnenberg and
7 myself were started, which was in October.

8 In November, I sent out -- or end of October, I
9 believe, I sent out my first Part 2 which had -- was
10 not all the way complete, so that prompted Joe to come
11 out, do a site visit, help me fill out the Part 2
12 information to skip having to send emails back and
13 forth fixing information.

11:56

14 At this time, I felt confident in Joe --
15 Mr. Sonnenberg, that he was doing a good job and was
16 working for me. But as time went on, it felt like I
17 was not a priority anymore.

18 Q. Did it feel like the approval officer had taken
19 responsibility in any way for the completeness of your
20 application?

11:57

21 A. MR. VAN HUIGENBOS: No. It's -- I ended up getting a
22 denial and there -- all the blame goes on to AOPA rules
23 and regulations and time and that it was completed in
24 61 days out of their goal of 65. I -- I understand
25 that. But that -- that timeline was too long for me,

C. METHERAL, A. VAN HUIGENBOS

Examined by Mr. Metheral

1 and it ended up a denial.

2 Q. Okay. Did the approval officer ever talk to you about
3 the municipal development plan --

4 A. MR. VAN HUIGENBOS: Yes.

5 Q. -- in 2021?

6 A. MR. VAN HUIGENBOS: Yes, we had -- we had discussed it
7 at the site. So the MDP -- it was in line with the MDP
8 and DP, yes, and that -- because my permit was
9 in line with the MDP, that prompted public notices and
10 to continue working on my permit. And if -- if my
11 permit was not in line with the MDP, I would have had a
12 denial way sooner.

13 Q. Would the approval officer have even proceeded with the
14 public notice if the application was not consistent
15 with the MDP?

16 A. MR. VAN HUIGENBOS: No.

17 MS. VANCE: I'm going to object to that
18 question, because I don't think that's evidence that
19 Mr. van Huigenbos can give. That was a question about
20 the approval officer. But you've already answered it,
21 so...

22 Q. MR. METHERAL: I wish I would have asked the
23 approval officer.

24 Was there anything that would talk about a denial
25 in any form or fashion?

11:58

11:59

C. METHERAL, A. VAN HUIGENBOS

Examined by Mr. Metheral

1 **A. MR. VAN HUIGENBOS:** No.

2 **Q.** Okay. And as far as you're aware, you were required to
3 submit, based on the MDP, and no other information was
4 required. It was -- in essence, the application was
5 out of your control?

6 **A. MR. VAN HUIGENBOS:** Yes. It was -- I understand that
7 Joe was looking at the MDP and basing it off of that.

8 **Q.** Okay. I would offer to the Board that those are the
9 end of our submissions and testimony. We are available
10 to answer some of the written submissions. I don't
11 think the Board wants us to go through those details at
12 this time.

12:00

13 **THE CHAIR:** Thanks, Mr. Metheral. And, yes,
14 we've all read them thoroughly, so thanks for your
15 comment and appreciate you being succinct on your
16 direct.

17 So we will proceed with some questions, and I'm
18 just kind of waiting for a potential break. We might
19 get through anyway before lunch break.

20 But MD of Willow Creek, Ms. Finlay, do you have
21 any questions for A&D Cattle?

12:00

22 I'm not sure if Ms. Finlay -- I'm just looking for
23 her icon here. Is Ms. Finlay on? I see MD of
24 Willow Creek. I'll loop back.

25 Ms. Agrios, Town of Fort Macleod?

C. METHERAL, A. VAN HUIGENBOS

Examined by Mr. Metheral

1 MS. AGRIOS: No questions from me.

2 THE CHAIR: Okay. Thank you.

3 Mr. and Mrs. Conner?

4 Oh just I see Ms. --

5 MR. CONNER: Yeah, I don't think we have any
6 questions.

7 THE CHAIR: Okay. And, sure. Are you certain
8 about that? I was going to loop back to Ms. Finlay. I
9 see that she's here now. So why don't you just take
10 one minute, and I'll get back to you.

12:01

11 Ms. Finlay, do you have any questions?

12 MS. FINLAY: No questions, sir.

13 THE CHAIR: Oh, okay. Thank you.

14 So I'm back to you, Mr. and Mrs. Conner.

15 MR. CONNER: There. Can you hear me now?

16 THE CHAIR: Yeah, there you go. Yeah.

17 MR. CONNOR: Okay.

18 THE CHAIR: I can see you looking for the mute
19 button. No problem.

20 MR. CONNER: No, we don't have any questions
21 for Mr. van Huigenbos.

12:02

22 THE CHAIR: Okay. And Mr. and Mrs. Lewis?

23 MR. LEWIS: No questions.

24 THE CHAIR: Okay. Ms. Vance?

25 MS. VANCE: Just, I hope, two quick questions.

C. METHERAL, A. VAN HUIGENBOS

Cross-examined by Ms. Vance

1 These are for Mr. van Huigenbos.

2 **MS. VANCE CROSS-EXAMINES THE PANEL:**

3 Q. In your testimony, you spoke of pressure to get your
4 application through the system. You'll agree that that
5 pressure did not come from Mr. Sonnenberg?

6 A. **MR. VAN HUIGENBOS:** No. I -- I wanted to get the
7 permit done myself. I want -- tried to put a bit of
8 pressure on and made frequent phone calls. Never did
9 I, from the time the application was deemed complete,
10 so which is January 5 to the day -- or till the --
11 April 1, I did not receive a phone call from Joe, even
12 when he needed information. I got a phone call from
13 Joe on April 1 saying that my permit was denied.

12:03

14 Q. And you understand, you'll agree with me, that
15 Mr. Sonnenberg works for the NRCB, not for you?

16 A. **MR. VAN HUIGENBOS:** I understand that he works for the
17 NRCB as representing my application and being that it
18 is -- the NRCB is the only option for producers to get
19 their permit. This would mean that they should -- the
20 NRCB should be trying their best to meet the producer's
21 goals.

12:04

22 If -- I understand -- I understand I was not
23 paying Joe, but there is a level of -- "service" is not
24 the word -- a level of expectation that I believe the
25 NRCB should meet when working with producers/clients.

C. METHERAL, A. VAN HUIGENBOS**Questioned by Mr. Kennedy**

1 Q. Thank you. Those are my questions.

2 THE CHAIR: Thank you, Ms. Vance.

3 Mr. Kennedy?

4 MR. KENNEDY: Yes.

5 **MR. KENNEDY QUESTIONS THE PANEL:**

6 Q. I only have a couple of questions, and they're both for
7 you, Mr. van Huigenbos, and just to clarify the
8 evidence you gave in your direct. And part of it may
9 be a follow-up or a partial follow-up in the question
10 posed to you by Ms. Vance.

12:05

11 Two things that you mentioned: One is you said
12 people were telling you that the processing of the
13 application was taking too long. Who told you that?

14 A. MR. VAN HUIGENBOS: So I had a phone call with my dad,
15 and he suggested that the -- the approval officer was
16 delaying and taking his time. I just that day -- that
17 was the day I had a phone call with him, and then
18 I -- it -- that was when he asked for more information.

19 And I've had my -- I've had a brother that said --
20 he -- should I say it? He is a member -- so he also
21 was really pushing for my permit, but I don't want to
22 get him in difficult position. So -- but he was really
23 for my permit, and he -- yes. So there was several
24 people.

12:05

25 Q. When you say "several," so it was your brother and your

C. METHERAL, A. VAN HUIGENBOS

Questioned by Mr. Kennedy

1 father. Anybody else?

2 **A. MR. VAN HUIGENBOS:** And then I have other brothers
3 representative -- another -- a neighbour, a
4 representative of the MD of Willow Creek. They were
5 all wanting me to get the permit done and have it go
6 fast to get a decision.

7 **Q.** And in terms of explanation, understanding of the NRCB
8 process, what expertise do these people possess?

9 **A. MR. VAN HUIGENBOS:** So my dad, he's applied for
10 permits, and so has my -- I have another brother
11 that's -- I have two other brothers that are -- have
12 feedlots. They've gone through the NRCB process, and
13 they've got their permit. This one, I applied -- I put
14 in my Part 1 on July 19th. I had all my information in
15 on November 3.

16 **Q.** And, sorry, I'm going to stop you, because that's not
17 my question. My question was related to who was
18 telling you that the NRCB process was taking too long?

19 **A. MR. VAN HUIGENBOS:** Okay. Yeah, so that was my dad
20 and some brothers and other feedlot owners.

21 **Q.** Okay. And then at one point in your evidence, it
22 seemed to me that in 2021, somebody advised you -- and
23 I think you said the name Derrick -- advised you of the
24 IDP process that was in development.

25 **A. MR. VAN HUIGENBOS:** Yes.

12:07

12:07

C. METHERAL, A. VAN HUIGENBOS

Questioned by Mr. Kennedy

1 Q. And I also got the sense that you, at that stage,
2 identified that advice as creating a deadline for your
3 application to be approved. Did I hear that correctly?

4 A. MR. VAN HUIGENBOS: So I talked to Derrick. He is
5 from the MD of the Willow Creek. That phone call with
6 him was because I received a phone call from Joe saying
7 that my permit would be denied -- was going to be
8 denied. I received that phone call on the 17th or the
9 18th of March, I believe. I tried to call Derrick that
10 weekend -- or Friday, but it was too late.

12:09

11 So then I got ahold of him on Monday, and that's
12 where he said, Well, your permit should not get a
13 denial, because he's, like, the IDP was not fully
14 adopted yet.

15 It -- what happened is the MD, they did their
16 first, second, and third reading, but the IDP was not
17 adopted as in was never signed by the Minister of
18 Agriculture, I believe, or Environment had to sign that
19 first. So that's where he said that you should not be
20 receiving a denial.

12:09

21 Q. Okay. I thought I heard in your earlier -- in your
22 direct that that conversation with Derrick might have
23 taken place in 2021. I gather from your comments that
24 you did not have --

25 A. MR. VAN HUIGENBOS: No.

C. METHERAL, A. VAN HUIGENBOS**Questioned by Ms. Roberts**

1 Q. -- that conversation with Derrick?

2 A. **MR. VAN HUIGENBOS:** No. That was in March of 2022.

3 Q. **MR. KENNEDY:** Okay. Thank you. And those are
4 my questions, Mr. van Huigenbos, Mr. Chair.

5 **THE CHAIR:** Okay. Thank you, Mr. Kennedy.

6 Mr. Ceroici?

7 **MR. CEROICI:** I don't have any questions, thank
8 you.

9 **THE CHAIR:** Ms. Roberts?

10 **MS. ROBERTS:** Yeah, I have a question or two. 12:10

11 **MS. ROBERTS QUESTIONS THE PANEL:**

12 Q. Mr. van Huigenbos, you had said that you had purchased
13 the property in the spring of '21, but you did not get
14 possession of it until September '21; is that correct?

15 A. **MR. VAN HUIGENBOS:** Correct.

16 Q. Okay. So can you just explain to me, then, if you
17 actually didn't have full possession of the property,
18 how you were able to submit a Part 1 application on
19 July 17, 2021?

20 And in your chronology -- chronology you talk 12:10
21 about September 1 as being -- as having the report on
22 soil samples done, so presumably those soil samples
23 were done prior to you having possession of the
24 property.

25 So can you just explain to me how that all worked

C. METHERAL, A. VAN HUIGENBOS

Questioned by Ms. Roberts

1 out?

2 **A. MR. VAN HUIGENBOS:** So in spring or summer -- I forget
3 which month it was, maybe June or so -- we ended up
4 getting -- yeah, our bid was the highest, and we got --
5 we got the property.

6 I got a waiver from the owner -- previous owner
7 allowing me to put in a Part 1 application and to do
8 soil samples on the property. So that's how I ended up
9 starting on the permit earlier. I felt the need to
10 start earlier and wanted it to get complete, and it
11 ended up taking a very long time.

12:11

12 The September one was the day we got possession,
13 and I also believe that was the day that the driller
14 came out to start drilling, if I'm not mistaken. So
15 that's what I mean. September 1, the driller was
16 there.

17 **Q.** Okay. Thank you. It's also my understanding that this
18 IDP has -- says that within the exclusion zone, no new
19 or expansion to existing CFOs are allowed.

20 Now, if this Board did overturn the approval
21 officer's decision and permitted what you're asking
22 for, 2,000 head beef feedlot, does it cause you any
23 concern for the operation's future that the IDP says no
24 expanding CFOs?

12:12

25 **A. MR. VAN HUIGENBOS:** So this is where I -- originally,

C. METHERAL, A. VAN HUIGENBOS

Questioned by Ms. Roberts

1 my dad had told me apply for 1,000 head feedlot, and
2 I -- I felt the need for 2,000. I did a 2,000 head
3 feedlot. And I -- I understand that unless I'm
4 upgrading and modernizing, I won't be able to add more
5 numbers.

6 This is not -- at this point, it is not much of a
7 concern, since I'm happy with 2,000 head at this point.
8 I'm a young farmer, and I'm not planning to become a
9 big guy in -- in a year or two.

10 I -- we paid over market value on the property,
11 and now we've received extra costs on -- on Board
12 review, time, hiring people to help me. So using -- or
13 having all these extra costs, I -- I don't know how I
14 would be able to pay for that without getting income
15 from a feedlot.

12:13

16 But concerning the question, down the road, if
17 I -- I won't be able to upgrade -- or expand, then
18 having to look for another location with another
19 feedlot and using this as a starter feedlot or
20 something, I could accommodate that. Hopefully down
21 the road if I -- if all goes well.

12:14

22 Q. And one last question. When -- do you recall when you
23 were aware that this IDP process had begun and that
24 this land you were either considering to purchase or
25 had already purchased, depending on the timing, was

C. METHERAL, A. VAN HUIGENBOS

Questioned by Ms. Roberts

1 located on the mapping within this CFO exclusion zone?

2 A. MR. VAN HUIGENBOS: So when I bought the property, I
3 heard -- it didn't occur to me really that you are
4 going to be in there and you won't be able to get a
5 feedlot. I knew that town was working with the MD and
6 that there was a little bit of a battle, let's say, on
7 who gets what, but it never occurred to me that town
8 would get so much say that far outside of town. It's
9 1 1/2 mile added onto town's already big boundaries.

10 And I'm not even -- if we go with the southwest
11 winds, I'm not even really downwind of where town is
12 located right now. Maybe in many, many years when town
13 develops lots, I may potentially be downwind, but at
14 this point, I'm not anywhere close to downwind of them.

15 And I can't even -- when I looked at the property
16 you don't even know town is there. There's actually a
17 big hill in the way. So you can't -- unless you really
18 look at Google Maps and you measure it out, you don't
19 know where town is.

20 So -- so when I bought the place, I didn't
21 have -- didn't know what was going on and it wasn't
22 till -- I think January is when I really started seeing
23 the full extent of, hey, I'm in here and this could
24 affect me. But at that point, I still didn't believe
25 that the town and MD would come to an agreement with

12:15

12:16

C. METHERAL, A. VAN HUIGENBOS

Questioned by Ms. Roberts

1 the boundary I'm in. I believe that it would be cut
2 off a half a mile or so.

3 And with that, the reason I believe that is
4 because they only went southwest of Fort Macleod and
5 any other direction north, east, or west, they didn't
6 go -- they didn't even go half a mile that way. So I
7 thought it's a little bit crazy almost that they went
8 that far just to the southwest. I thought we don't
9 only receive or only get southwest winds out here. So
10 I thought this is --

12:17

11 Q. And then just a follow-up question to that, then. Had
12 you seen any public notices or were you aware of or did
13 you attend any public hearings with regard to the
14 proposed IDP?

15 A. MR. VAN HUIGENBOS: So I did attend a public hearing
16 prior to -- so prior to March so I think it was
17 maybe -- middle of February I would have seen the
18 notices in the paper, toward the end of February, that
19 there was hearings for the town and MD.

20 I did not attend the MD public hearing. I did
21 attend the town public hearing. We went there with
22 several neighbours, all within a half a mile or last
23 quarter all the way along. If you follow -- if town
24 would have backed off half a mile, all of us neighbours
25 would have not been in the CFO exclusion area. And we

12:18

C. METHERAL, A. VAN HUIGENBOS

Questioned by Ms. Roberts

1 went to town, and the town listened but did not really
2 accommodate any of our requests.

3 I -- so I stated, when it was my turn to speak, I
4 said that town was shutting down an industry, and they
5 said, Well, we're not shutting down, we're just
6 stopping. If you're there, you're allowed, if you're
7 not, then no more new feedlots or CFO exclusions.

8 So then I asked them, Well, if you'd cut back half
9 a mile, all of us would be happy, we'd all go home.
10 She said, Well, that wouldn't be -- then a councillor
11 wanted to reply. She said, That wouldn't be fair to
12 everyone else that would still be in it.

13 And I said well, no one else that's in that --
14 that mile is here. It's just everyone that's on that
15 last half mile. And then she didn't know what to say.
16 And I thought, Well -- later I thought, Well, if we're
17 going to talk about fair, then I think we should be
18 going 1 half miles all the way around town, not only
19 southwest.

20 But town, they went and they put it in
21 through -- there was another neighbour that they said,
22 Well, we'll consider your request, but in that same
23 night, they passed Hearing Reading 1, 2, and 3 without
24 any discussion or any idea of looking to accommodate
25 any requests.

12:19

12:19

C. METHERAL, A. VAN HUIGENBOS**Questioned by The Chair**

1 Q. Okay. Thank you, Mr. van Huigenbos.

2 MS. ROBERTS: Mr. Chair, that's all my
3 questions.

4 THE CHAIR: Good old mute.

5 I'm sorry, just a quick couple of follow-ups.

6 **THE CHAIR QUESTIONS THE PANEL:**

7 Q. One is, the meeting you were just speaking about to
8 Ms. Roberts that you attended on the IDP with the town.
9 When was that meeting? You may have said it, but I
10 just missed it.

11 A. MR. VAN HUIGENBOS: The beginning of March. It
12 was -- I think it was the 1st or 2nd of March. The MD
13 had theirs the end of February, and then the town had
14 theirs the beginning of March.

15 Q. Of 2022?

16 A. MR. VAN HUIGENBOS: Yeah, 2022, yes.

17 Q. And that meeting was to gain input on the IDP or to
18 tell you that it was done?

19 A. MR. VAN HUIGENBOS: There was never a meeting to gain
20 input. These were just readings.

21 Q. It was a council meeting on the readings?

22 A. MR. VAN HUIGENBOS: It was a council meeting and they
23 were doing the readings and they passed Reading 1, 2,
24 and 3.

25 Q. Thank you. And just a quick follow-up question. We

12:20

12:21

C. METHERAL, A. VAN HUIGENBOS**Questioned by The Chair**

1 had asked parties and, of course, A&D, if the Board
2 were to, you know, find that the IDP was relevant, what
3 would be the potential reasons that it be approved
4 despite an inconsistency with the IDP, and you provided
5 four bullet points.

6 Number 3 is other non-agricultural activities were
7 encouraged within IDP, but no reasons of CFO growth.
8 So we'll hear potentially from the County and the town
9 about their rationale to the exclusion zone, so I'm not
10 going to ask you that.

12:22

11 But on Number 4, you state AOPA provides the
12 appropriate protection to neighbours and the
13 environment for setting the CFO. So the MDS is used to
14 do that, you're correct, but the exclusion zones are
15 used for perhaps other purposes.

16 So is there something you want to add to that in
17 terms of if there is an exclusion zone and there's
18 development in the future, what is it the Board might
19 want to think about in terms of why or why not your
20 operation may provide or perhaps be more of a nuisance
21 to development that might approach you over the future?
22 Or why it will not be a nuisance to that development
23 that might approach you in the future?

12:22

24 **A. MR. VAN HUIGENBOS: So are you wondering about the**
25 **feedlot development compared to other developments?**

C. METHERAL, A. VAN HUIGENBOS

Questioned by The Chair

1 Q. Well, or just specifically why your feedlot ought to be
2 approved despite an inconsistency?

3 A. MR. VAN HUIGENBOS: So like I said already, I'm not
4 directly downwind or upwind of town, and it's a 2,000
5 head feedlot. We're not talking 25,000 head feedlot
6 with lots of smell and all of that.

7 Town, in their IDP, or in the IDP, it's mentioned
8 that the town never -- or is not planning to develop on
9 the other side of the proposed highway that they have
10 going in that area. So they are never planning to
11 develop close to my land.

12 So -- and another thing, if town would smell me,
13 being southwest, we also receive north and east winds,
14 but the town has argued -- or the IDP argues by
15 only -- by not adding any CFO exclusion on those sides
16 of town that -- from the north and the east, you don't
17 smell feedlots; only from southwest.

18 Q. Okay. Thank you --

19 MR. METHERAL: Mr. Chair, can I support your
20 question on that?

21 THE CHAIR: Well, you can -- I mean, you're
22 providing testimony, so I mean you can add to it. I'm
23 not sure I'm looking for support to my question. If
24 you have further to -- in terms of an answer to Mr.
25 van Huigenbos, continue.

12:23

12:24

C. METHERAL, A. VAN HUIGENBOS

Questioned by The Chair

1 A. MR. METHERAL: I think your question asked why --
2 if this application were to be approved, what other
3 impacts it might have on that area or that development,
4 the zone?

5 Can we pull up the -- it's page 4 of Exhibit 22.

6 So with this submission, we did include a picture
7 of the IDP and the area identified as a CFO exclusion
8 zone. We hope the Board does consider this map and the
9 location of the CFO. It is right on the boundary.

10 Had it been on the other side of the
11 property line, which is only a few...

12 A. MR. VAN HUIGENBOS: 100 metres.

13 A. MR. METHERAL: ...100 metres away, this would
14 have been in another quarter and we might not be having
15 this discussion.

16 So what we did notice about the IDP -- and I'd
17 love to question the town and municipality about this,
18 is this CFO exclusion zone seems to accommodate the
19 development of the highway. While it does mention
20 odour and prevailing winds perhaps, we do know that
21 there is accommodation for highway.

22 So, on that note, this facility is actually
23 further southwest of that highway. It won't be inside
24 or near that highway. So when we talk about impact of
25 other facilities or other developments, I think this

12:25

12:26

1 falls out of that zone.

2 And a curiosity, which I'll ask, is that this zone
3 appears only -- the exclusion zone appears only to
4 impact CFOs. While the municipality does promote
5 agriculture, CFOs are targeted. The IDP does promote
6 things like commercial growth, solar farms, wind farms,
7 but I would question why an exclusion zone isn't
8 included for those?

9 If we were to put a solar farm where the new
10 highway was going, I don't think that would be proper
11 planning. So I would like to --

12 Q. I'll maybe just stop you there. I'm the wrong guy to
13 ask, so you'll have an opportunity to ask the town and
14 the MD after lunch.

15 So I think -- unless you have other comments to
16 add in terms of the CFO facility itself, my questions
17 have been asked and answered. Thank you.

18 MR. METHERAL: No, very good. Thanks.

19 Q. And did you have any redirect because that's the end of
20 the questions? Did you have any redirect based on the
21 questions that were asked you?

22 MR. METHERAL: Not at this time, thanks.

23 THE CHAIR: Okay. All right. Thank you.

24 (PANEL STANDS DOWN)

25 THE CHAIR: And maybe lunch is cold now in

12:27

12:27

1 Lethbridge. I hope not, but I think this would be an
2 appropriate time to break. I assume things are ready
3 for everyone.

4 Just before we do that, Ms. Agrios and Ms. Finlay,
5 how long on your direct do you think you will be? I'm
6 just trying to figure out if we need to scrunch lunch
7 at all or not.

8 MS. FINLAY: I can address that. I can tell
9 you that in direct I don't expect to be very long.
10 Obviously, we'll address a couple of the things that
11 came up this morning and get that direct evidence out
12 so that we're as efficient as possible, but I would say
13 like half an hour would be generous.

12:28

14 I think it will probably be less than half an hour
15 in direct, and otherwise they'll be available for
16 questions from the parties.

17 THE CHAIR: Questions, of course, yeah. And,
18 Ms. Agrios?

19 MS. AGRIOS: Less than 10 minutes.

20 THE CHAIR: Okay. I think we're going to be
21 fine for time. We've said that before. So I hope I'm
22 right here. Let's break -- is 45 minutes or an hour --
23 I'm not sure if anybody has to run out or not, but if
24 45 minutes works for everyone, we could reconvene at
25 1:15. Is there any objections to that? Can people

12:28

1 make that work for lunch?

2 MS. FINLAY: No objections.

3 MS. AGRIOS: I have no objection.

4 THE CHAIR: Let's start back at 1:15. And,
5 Panel members, I think there is a breakout room we can
6 get to, maybe not right away, but maybe just enter
7 there and we'll hook up a little bit over the lunch
8 hour.

9 Thank you very much. See you at 1:15, everyone.

10 (PROCEEDINGS ADJOURNED AT 12:29 P.M.)

12:29

11

12 PROCEEDINGS ADJOURNED TO 1:15 P.M.

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D. KRIZSAN, C. CHISHOLM, D. HORVATH

1 Volume 1
2 July 7, 2022
3 P.M. Session

4

5 (PROCEEDINGS RESUMED AT 1:18 P.M.)

6 THE CHAIR: Okay. Let's get started. We
7 completed direct evidence and questioning for
8 A&D Cattle, and next on the list is MD of Willow Creek.
9 And, Ms. Finlay, are you ready to present?

10 MS. FINLAY: Yes, if perhaps we could get a
11 screen up that shows the MD of Willow Creek and Diane
12 and then myself. So are all those people -- if they
13 can all turn on their video?

13:19

14 THE CHAIR: Now, we may not be able to have
15 them all show up at one spot. Is that okay or --

16 MS. FINLAY: That's fine. That's fine.

17 THE CHAIR: Okay.

18 MR. FINLAY: Perhaps what we can do is proceed
19 to have Mr. Derrick Krizsan, Cindy Chisholm, as well as
20 Diane Horvath sworn in.

13:20

21

22 D. KRIZSAN, C. CHISHOLM, D. HORVATH (For MD of Willow
23 Creek), affirmed

24 THE CHAIR: Ms. Finlay, I would say just
25 before you get started. I think it's Ms. Chisholm that

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Examined by Ms. Finlay

1 is a little difficult to hear.

2 A. MS. CHISHOLM: I'll make sure the mic is right in
3 front of my mouth. Is that better?

4 THE CHAIR: Marginally. Still a little quiet,
5 for sure.

6 A. MS. CHISHOLM: I'll do my best to talk louder.

7 THE CHAIR: Thank you.

8 A. MS. CHISHOLM: Thank you.

9 MS. FINLAY: Thank you.

10 MS. FINLAY EXAMINES THE PANEL:

13:22

11 Q. I don't think that we'll be too long this morning
12 before we open it up for cross-examination, but I just
13 wanted to have you all address a couple of questions.

14 This first question perhaps I can ask Derrick or
15 Cindy to respond to.

16 Can you, please, tell the Panel about any public
17 meetings or meetings with the public with respect to
18 the IDP process with the Town of Fort Macleod that
19 preceded the process before the Land and Property
20 Rights Tribunal?

13:22

21 A. MS. CHISHOLM: I can speak to the open house that
22 was held in the town of Fort Macleod in council
23 chambers on June 11th of 2019. And public was notified
24 of that. Addresses were given to ORSC of all the
25 landowners within the MD, and those notifications were

D. KRIZSAN, C. CHISHOLM, D. HORVATH

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1 sent out, and also there was publication in the
2 newspaper -- the local newspaper, the Fort Macleod
3 Gazette.

4 Q. Thank you. I refer to the Land and Property Rights
5 Tribunal process. Derrick, can you speak to the
6 engagement of that process as it relates to the
7 development of the IDP between the MD of Willow Creek
8 and the Town of Fort Macleod?

9 A. MR. KRIZSAN: You bet. The town and the MD had
10 been engaged for -- prior to my arrival in September of
11 2019 through an IDP process. It was -- the two
12 communities went through mediation process, and
13 mediation was not successful. And the parties applied
14 to the Minister of Municipal Affairs for this matter
15 to -- to proceed to the Municipal Government Board, as
16 a decision could not be reached.

13:23

17 And so the ministerial order was issued.
18 MSD 04521 was issued on May 17th, 2021, referring the
19 matter to the Municipal Government Board for
20 recommendation.

13:24

21 Q. And the Municipal Government Board became the Land and
22 Property Rights Tribunal; is that correct?

23 A. MR. KRIZSAN: It did, yes.

24 Q. And can you tell me about the public notification
25 process that was provided in connection with that LPRT

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Examined by Ms. Finlay

1 process?

2 A. MR. KRIZSAN: From the -- from the time that
3 the -- the process was turned over to the Land and
4 Property Rights Tribunal, both communities provided
5 address information, the name information of all the
6 affected parties within an area that the Land and
7 Property Rights Tribunal deemed to be appropriate.

8 All that information was provided to the -- to the
9 Tribunal, who then distributed notifications and public
10 notices from that point forward.

13:25

11 Q. Okay. And in connection with that process, were there
12 documents that the MD posted on its website in
13 connection with that process?

14 A. MR. KRIZSAN: Yes, I believe both the town and
15 the MD were required to post notices and information
16 pertaining to the process as well as there were --
17 there were display ads placed in the Fort Macleod
18 newspaper, Fort Macleod Gazette, indicating that if
19 residents had any questions, that they were to contact
20 the town or the MD to -- to seek questions to their
21 enquiries.

13:25

22 Q. And can you tell me around what the timeframe was of
23 that public notice and the posting of those notices on
24 the MD's website?

25 A. MR. KRIZSAN: Well, those -- those -- all the

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1 public notices, we posted them as the -- as the LPRT
2 required. There was a number of them, including the --
3 the final draft through correspondence with LPRT. We
4 received notice that we were to post the -- the draft
5 documents on our website and make them available at our
6 offices.

7 Q. And did that posting include previous versions of IDPs?

8 A. MR. KRIZSAN: I can't recall. I think it was
9 the most current version that was to be -- that was to
10 be posted, if I recall correctly.

13:26

11 Q. Thank you.

12 MS. FINLAY: If I could -- just one second.

13 If I could -- if I could have Exhibit 19 brought
14 up. And, actually, I think page 2 of the pdf. Great.
15 Thank you.

16 Q. Mr. Krizsan, could I just ask you to review what is
17 identified as paragraph 2?

18 MS. FINLAY: So if we could just scroll up a
19 little bit in the document so that the whole
20 of paragraph 2 is available. That's great, that's
21 great, thank you.

13:27

22 Q. Mr. Krizsan, could you, please, review that paragraph?

23 A. MR. KRIZSAN: Okay. Yes.

24 Q. Okay. Can you, please, tell me, the first sentence
25 indicates that the town and the MD reached an agreement

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Examined by Ms. Finlay

1 with respect to the form of the IDP on November 19th,
2 2021. Can you tell me what needed to occur in order
3 for that form of the IDP to be formally adopted by the
4 MD?

5 A. MR. KRIZSAN: In order for that to be adopted in
6 accordance with the *Municipal Government Act*, there
7 would have to be a first reading, a public hearing, and
8 then the second and third readings.

9 Q. And between November 19th and the third reading, were
10 there changes and steps that needed to be completed,
11 and can you describe them?

12 A. MR. KRIZSAN: There was some additional
13 municipal matters between the two communities that were
14 continually ongoing, a water services agreement that
15 was negotiated between the two communities, which was
16 concluded on or about January 19th or 20th, I believe.
17 But in interim, the MD's first reading was conducted on
18 January 19th to consider that bylaw.

19 At that meeting, the MD set a public hearing date
20 for February 23rd, and at that meeting, we became aware
21 there were additional amendments to -- requested as
22 a result of the agency notifications that we sent out.
23 We received a notice back from the NRCB that there was
24 some suggestions in wording that they wanted to amend
25 the -- suggestions for amendment to the IDP.

13:28

13:29

D. KRIZSAN, C. CHISHOLM, D. HORVATH

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1 So that public hearing on February 23rd was
2 recessed without the second and third reading, because
3 we understood that the town's public hearing was being
4 conducted on February 28th as well, and we
5 were -- didn't want to go ahead and adopt a document
6 until after we were certain that there was no further
7 amendments coming from the town as well.

8 On March 9th, that -- that public hearing was
9 recessed until March 9th, and at that meeting, the
10 amendments were considered. And second and third
11 readings were passed, and the bylaw was officially
12 adopted.

13:30

13 Q. Great. Thank you.

14 So just to confirm, the form of the IDP as of
15 November 2021 was not the same one as was finally
16 adopted?

17 A. MR. KRIZSAN: It was not. There was an
18 amendment that was proposed by the -- suggested by the
19 NRCB and was considered by both municipalities and were
20 adopted as part of the final IDP.

13:31

21 Q. Okay. Perhaps I can ask -- maybe I'll address this
22 now. Previously in this hearing, you heard some
23 commentary from -- some evidence from Mr. Huigenbos
24 about a conversation that he'd had with you.

25 First of all, do you recall when that conversation

D. KRIZSAN, C. CHISHOLM, D. HORVATH

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1 might have occurred?

2 **A. MR. KRIZSAN:** Yes, on March 22nd.

3 **Q.** Okay. Of 2022?

4 **A. MR. KRIZSAN:** That's correct.

5 **Q.** Okay. And can you tell me what you recall of that
6 conversation?

7 **A. MR. KRIZSAN:** Sure. I received the phone call
8 from Mr. Huigenbos late in the afternoon on March 22nd
9 and had indicated to him that the IDP was adopted on
10 March 9th and also indicated as this matter was under
11 the purview of the Land and Property Rights Tribunal, I
12 was not certain as to how that process would affect the
13 adoption of the IDP.

13:32

14 And it wasn't until later that we received a
15 letter that was issued by the Land and Property Rights
16 Tribunal on March 23rd and that was sent to the
17 Minister -- I believe it was -- the letter from the
18 Minister was dated April 7th and indicating that the
19 Minister agrees with the recommendations of the
20 Tribunal. And we received that on April 14th.

13:33

21 So I did, indeed, have a conversation with
22 Mr. Huigenbos and indicated that although the IDP was
23 adopted, we were not certain how that process is
24 impacted with -- with this process being under the
25 purview of the LPRT.

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Examined by Ms. Finlay

1 Q. Okay. And just so that we're very clear, did you say
2 to Mr. Huigenbos that you thought the NRCB had
3 incorrectly or should not have refused the application
4 or the approval?

5 **A. MR. KRIZSAN:** I don't remember the exact words I
6 used, but I don't believe I used those words. I -- the
7 uncertainty surrounding how this -- the adoption of the
8 IDP and the LPRT raised some questions in my mind as to
9 what the official adoption date or what the Minister
10 was going to say in terms of the -- this -- the
11 adoption of the IDP by the two communities.

13:34

12 Q. Thank you.

13 Now, if I could just ask -- Ms. Horvath, if I
14 could ask you -- I could ask you one or two questions.
15 Can you tell the Tribunal generally the purpose of and
16 the role of having a CFO exclusion area in an IDP?

17 **A. MS. HORVATH:** Yeah, normally IDP exclusion areas
18 are considered by urban and rural municipalities. We
19 don't -- we sometimes will find them between rural and
20 rural municipalities, but the idea behind them is to
21 limit and -- the severity of any nuisances that may be
22 produced by confined feeding operations.

13:34

23 Q. I'm just going to stop you right there. Can you hold
24 on for one second? I'm really sorry.

25 Sorry, I really apologize.

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Examined by Ms. Finlay

1 Sorry, please continue.

2 **A. MS. HORVATH:** I mean, I think one of the
3 comments I'd heard earlier was why do we -- why as
4 municipalities do we only look at confined feeding
5 operation exclusion zones and not other types of
6 development; for example, industrial or group country
7 residential?

8 And if, given that opportunity in some of the
9 other provincial legislation, AOPA allows for
10 municipalities to have input into the approvable
11 process through these CFO exclusion zones and,
12 therefore, municipalities, both urban and rural,
13 utilize them to their benefit.

13:36

14 **Q.** So if I could ask you to speak specifically to the
15 planning considerations in this IDP that relate to the
16 establishment of the CFO exclusion zone and the
17 particular location that it is -- that it's been put
18 into place.

19 **A. MS. HORVATH:** I may defer this to Mr. Krizsan.
20 Again, I also entered the process late, and I
21 understand there was many versions of what the CFO
22 exclusion area may look like until it was finally
23 decided upon. So perhaps if Derrick could provide some
24 information on that, that might be more relevant.

13:37

25 **A. MR. KRIZSAN:** Certainly. Like any negotiation,

D. KRIZSAN, C. CHISHOLM, D. HORVATH

Examined by Ms. Finlay

1 there's two opposing views, and, over a course of time,
2 compromises are made.

3 There was a significant change in the size of
4 the -- reduction in size of the exclusion zone from the
5 first draft that we saw to where we ended up,
6 and -- but that's a pretty typical type process for
7 these types of negotiations.

8 Q. And either Diane or Derrick, can you speak to some of
9 the planning considerations? I guess, to some degree,
10 we'll have to wait for the town also to speak to that,
11 but any of the planning considerations that support the
12 fact that this is a reasonable -- or it is the CFO
13 exclusionary that was agreed to. So specifically the
14 planning considerations.

13:38

15 A. MS. HORVATH: I think I can probably answer that
16 one as well, and maybe if Derrick or Cindy has
17 something to add to that.

18 I think things that were considered when we're
19 looking at CFO exclusion zones are the types of
20 development that is in close proximity. So in this
21 case, there were fewer CFOs in this location.

13:38

22 Part of the discussions between the two
23 municipalities was this water agreement that was
24 considered, and, in such, which would allow water to be
25 extended into the municipal district in this location

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Examined by Ms. Finlay

1 which again would promote residential or
2 non-residential development and that would not be
3 agriculturally-related. So, again, that could cause
4 conflict, I guess, between additional CFOs in this
5 location.

6 There is a map that is provided by the town within
7 the IDP that does show all of the existing CFOs in
8 close proximity to the town, as well as their minimum
9 distance separation to each -- between them.

10 So, again, there is a large concentration to the
11 north and to the east of the community, and as such,
12 with the size of Fort Macleod, which has 9 square miles
13 within its boundaries, some of those -- the river is
14 also to the north. So there is some topography that
15 was taken into consideration when this CFO exclusion
16 zone was considered by both municipalities.

13:39

17 Q. Great. Thank you. That's all the additional evidence
18 that we intend to provide, but at this point if the MD,
19 Derrick, and Cindy, as well as Diane, could answer the
20 questions of any of the other parties as well as the
21 Panel, that would be great.

13:40

22 THE CHAIR: Thank you, Ms. Finlay. Thank you,
23 panel.

24 Ms. Agrios, do you have any questions?

25 MS. AGRIOS: I do have a few questions for

D. KRIZSAN, C. CHISHOLM, D. HORVATH

Cross-examined by Ms. Agrios

1 Mr. Krizsan.

2 **MS. AGRIOS CROSS-EXAMINES THE PANEL:**

3 Q. And these are some more just specific questions
4 relating to the public notices that were provided
5 regarding the IDP process. And so if I could have put
6 up Exhibit 19, page 63.

7 So, firstly, Mr. Krizsan, you can confirm, then,
8 that on November 19th, 2021, the town and the MD
9 reached an agreement with respect to the form of a
10 draft IDP; correct?

13:41

11 A. MR. KRIZSAN: Yes.

12 Q. And that particular draft of the IDP, that was posted
13 to both the MD's website and the town's website either
14 on November 19th or within a day or two after?

15 A. MR. KRIZSAN: I believe so. That's correct,
16 yeah.

17 Q. And if I could then have you go -- we'll go to page 65
18 in Exhibit 19. And you can see this is cover page of a
19 draft intermunicipal development plan, November 2021.
20 So can you confirm that this would have been the
21 version posted to -- posted to the MD's website on or
22 shortly after November 19th of 2021?

13:42

23 A. MR. KRIZSAN: That appears to be the version,
24 correct.

25 Q. Okay. And I know you indicated -- and I appreciate

D. KRIZSAN, C. CHISHOLM, D. HORVATH

Cross-examined by Mr. Conner

1 that there were some changes that were made to the
2 draft IDP between November 19th and when it was finally
3 adopted on March 9th, but I'd like to go to page 78 now
4 in Exhibit 19.

5 And so you'll see the map of the CFO exclusion
6 area. And I take it that you can confirm that the CFO
7 exclusion area, that was not changed between
8 November 19th and final adoption on March 9th?

9 **A. MR. KRIZSAN: That's correct.**

10 **Q.** Okay. Thank you. Those are my questions.

13:43

11 **THE CHAIR:** Thank you, Ms. Agrios.

12 Mr. and Mrs. Conner, do you have any questions?

13 **MR. CONNER CROSS-EXAMINES THE PANEL:**

14 **Q. MR. CONNER:** The only question we had really
15 was in relation to, more or less, that the town just
16 talked about was the fact that the MD was working on an
17 IDP CFO setback zone and more or less had the draft
18 done in November but still put in a letter of support
19 to A&D Cattle to more or less backing them.

20 I was more or less just wondering why they would
21 work on having a setback zone and then still supporting
22 A&D for having a review of decision, like what their
23 purpose was on that, but.

13:43

24 I don't know if this is the right time to ask this
25 question, but...

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Cross-examined by Mr. Metheral

1 A. MR. KRIZSAN: Certainly, I can answer that. The
2 letter of support that the MD provided by way of
3 council resolution was related to the process, and no
4 other reason.

5 They believe that, based upon the information that
6 Mr. Huigenbos provided to council, that there appeared
7 to be an unusually long time -- period of time taken to
8 review what appears to be -- what appeared to be a
9 relatively simple application.

10 And so it was not -- it was a very specific letter
11 of support and it was concerned about process and no
12 other reason.

13 Q. That was the only concern we had was more or less the
14 letter of support on one side only. But other than
15 that, I don't think we have anything.

16 THE CHAIR: No other questions?

17 MR. CONNER: No, nothing now, no.

18 THE CHAIR: Mr. and Mrs. Lewis?

19 MR. LEWIS: No, not yet.

20 THE CHAIR: Mr. Metheral.

21 MR. METHERAL CROSS-EXAMINES THE PANEL:

22 MR. METHERAL: Hello?

23 THE CHAIR: Yes.

24 Q. MR. METHERAL: Yes. Hi. We do have a couple of
25 quick questions.

13:44

13:45

D. KRIZSAN, C. CHISHOLM, D. HORVATH

Cross-examined by Mr. Metheral

1 Just to confirm, we see some adoption -- some
2 readings and some adoptions. What would be the
3 official date, then, that we should consider the IDP
4 was adopted by the municipality?

5 **A. MR. KRIZSAN:** The final third reading was
6 undertaken on March the 9th.

7 **Q.** And you spoke about the Minister signing off. What's
8 the relevance there?

9 **A. MR. KRIZSAN:** Well, this process was during
10 the -- from the time period of May 17th, 2021, until we
11 received the concluding letter from the LP -- from the
12 Minister on April 14th, 2022. This matter was under
13 the purview of the -- the Municipal Government Board,
14 which later became the Land and Property Rights
15 Tribunal.

13:46

16 And so this process is, you know -- frankly, was
17 very new to us, and we were not certain how the -- what
18 impact the consideration of this -- the adopted IDPs
19 would have -- when the final adoption date would be.
20 Would the Minister have to approve it?

13:47

21 Would the Land and Property Rights Tribunal have
22 to issue a recommendation for approval, but the
23 correspondence we received on April 14th indicated that
24 the -- that the Minister accepts the recommendations
25 of -- of the -- that the Minister agrees with the

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Cross-examined by Mr. Metheral

1 recommendation of the Tribunal that the MD and the town
2 were able to successfully complete and adopt an IDP.

3 Q. Thank you. You suggested that that letter was dated
4 April 14th?

5 A. MR. KRIZSAN: The letter from the -- let me just
6 check my date here.

7 The letter -- the Land and Property Rights
8 Tribunal correspondence was dated March 23rd. The
9 letter was sent by the Minister which contained the
10 LPRT correspondence on April 7th, and the communities
11 received it on April 14th.

13:48

12 Q. Okay. These dates are after March 9th. Are any of
13 these dates relevant? Should we be actually looking at
14 some of the approval dates from the Minister?

15 A. MR. KRIZSAN: Based upon the correspondence,
16 upon review of the correspondence on April 14th, I
17 don't believe those dates are relevant, given that the
18 Minister simply agrees with the Land and Property
19 Rights Tribunal notice that the MD and the town have
20 adopted the IDPs. And so I don't believe that those
21 dates are relevant today. The relevance is with
22 respect to the conversation that I had with
23 Mr. Huigenbos on March 22nd.

13:49

24 At that time, we were unaware of what impacts, if
25 any, the LPRT and the Minister's decision would have on

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Cross-examined by Mr. Metheral

1 the adoption of the IDP, but the correspondence is
2 quite clear that there is no impact on that March 9th
3 adoption date.

4 Q. Okay. Can you maybe clarify the need for a tribunal?
5 It was just because you were new to the process?

6 A. MR. KRIZSAN: No. The two communities had been
7 in the process of negotiating the IDP, they entered a
8 voluntary mediation, and the communities agreed that
9 the mediation was not proceeding in an expeditious
10 fashion so an application was made to the Minister to
11 take this matter to the Municipal Government Board. At
12 that -- at that point in time, it fell under the Land
13 and Property Rights Tribunal process.

13:49

14 Q. Okay. If a tribunal was needed to get you guys to work
15 together, shouldn't their signoff have a priority,
16 then?

17 MS. FINLAY: I'm going to object to that
18 question. From my perspective, that's a legal
19 conclusion that you're asking the witness to draw.
20 He's not qualified to give a legal opinion.

13:50

21 MR. METHERAL: Is there anybody from the
22 municipality that can answer that question?

23 MS. FINLAY: We can certainly address it in
24 argument.

25 MR. METHERAL: Thank you.

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Cross-examined by Mr. Metheral

1 Q. Moving on to the exclusion zone itself, let's pull that
2 exhibit up. I think we found it on Exhibit 19,
3 page 65. Oh, sorry, page 78.

4 A. MR. KRIZSAN: Yes.

5 Q. Okay. In this illustration, we see the town boundary,
6 and that's identified by the green area. Is that
7 accurate?

8 A. MR. KRIZSAN: That appears to be correct, yes.

9 Q. Okay. And we see an exclusion zone in the town
10 boundary. Is that accurate?

13:51

11 A. MR. KRIZSAN: Correct.

12 Q. Okay. And we see an exclusion zone that extends south
13 and west?

14 A. MR. KRIZSAN: Yes.

15 Q. Okay. Can you help confirm why there's no CFO
16 exclusion zone on the east and north side of the town?

17 A. MR. KRIZSAN: Through the process of
18 negotiation, this was where the two councils landed and
19 the town felt -- my memory, if my memory serves, the
20 town felt that this was the most important area for the
21 exclusion zone given the southwest winds, was what was
22 indicated to us through the negotiations.

13:52

23 This area was significantly smaller from the first
24 version. I believe at one time, the exclusion zone was
25 2 miles -- at least 2 1/2 miles surrounding the town,

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Cross-examined by Mr. Metheral

1 and through the process of negotiation, this version
2 was deemed to be the most appropriate by the town.

3 Q. Sorry. To confirm, you say 2 1/2 miles outside the
4 city boundary?

5 A. MR. KRIZSAN: That's correct. That was the
6 version that was reviewed at the open house in June of
7 2019.

8 Q. Okay. To confirm, then, the IDP appears to only be 2
9 miles outside of the town boundary. How would a
10 2 1/2-mile exclusion zone fit that map?

13:53

11 A. MR. KRIZSAN: Well, this is the -- this is the
12 final version. The -- and that intermunicipal
13 development plan boundary that's a consultation
14 boundary, that's where the information is shared by the
15 MD with the town regarding development, land use bylaw
16 amendments, et cetera.

17 The June 2019 version -- was it larger, Cindy?
18 I'll just check in our -- yes, the boundary on the --
19 on the west side was as it is exists -- or, sorry, on
20 the east side is 2 miles. The boundary on the west
21 side was 2 1/2 miles. The boundary on the south was 3
22 miles. And the boundary on the north was 2 miles.

13:54

23 So through the process of negotiation, that
24 intermunicipal development plan boundary was reduced to
25 the size as shown on this map.

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Cross-examined by Mr. Metheral

1 Q. I see. And to accommodate the large area to the
2 southwest, the reason for that exclusion zone there is
3 because of the winds?

4 MS. FINLAY: I think to some degree some of
5 these questions would have to also be posed to the
6 town. I think this witness can only answer questions
7 as it relates to the MD's position and reasoning on
8 these.

9 Q. MR. METHERAL: Well, perhaps I can hear the
10 municipality's and town's position on why.

13:55

11 A. MR. KRIZSAN: That -- the prevailing winds
12 was -- we were -- if my memory serves, the predominant
13 factor here was the prevailing wind.

14 Q. Okay. And it appears to be quite lopsided.

15 This was -- in the IDP, it also was -- I'm also
16 aware of an interchange, a large highway. This seems
17 to also fit the CFO exclusions and also seems to fit
18 where that highway will be constructed. Is that
19 accurate?

20 A. MR. KRIZSAN: There is a conceptual plan that
21 Alberta Transportation has as a bypass around the town
22 of Fort Macleod that would be included within this --
23 the south portion of the town of Fort Macleod as well
24 as through the -- the southeast quadrant of the town
25 itself, yes.

13:55

D. KRIZSAN, C. CHISHOLM, D. HORVATH

Cross-examined by Mr. Metheral

1 Q. Okay. And maybe, lastly, we see a map distinctly
2 outlining CFO exclusion zones. Why are there no other
3 exclusion zones that talk about limiting or
4 encouraging -- maybe "exclusion" isn't right. Why are
5 there no other maps that indicate exclusion areas for
6 other industrial or commercial or other growth?

7 A. MR. KRIZSAN: Through the IDP process, there is
8 a great deal of flexibility for communities to address
9 numerous different types of issues, and -- and for this
10 particular IDP, a CFO exclusion area was the primary
11 issue that was brought forward by -- by the town.

13:56

12 There are other maps in the town. I believe we
13 have a map that indicates, if I'm not incorrect,
14 important intersections and transportation routes. But
15 insofar as a map for exclusion zone, this is the only
16 map that appears in that IDP.

17 Q. Okay. So is it plausible, then, we could see a
18 large-scale wind or solar farm in the location of where
19 the proposed highway is going to be?

20 A. MR. KRIZSAN: Could you repeat that question?

13:57

21 Q. Without any clear direction for some of this stuff, is
22 it possible that we could see the construction of a
23 large industrial scale wind or solar development where
24 the proposed road network is going to be?

25 A. MR. KRIZSAN: The approval of wind and solar

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Cross-examined by Mr. Metheral

1 is -- is through the Alberta Utilities Commission.
2 Municipalities have very little input. But I would
3 suspect that that type of development in that location
4 would be unlikely.

5 Q. But there's no restrictions in your IDP?

6 A. MR. KRIZSAN: There's -- there's no
7 restrictions; however, wind development in proximity to
8 the town of Fort Macleod airport would lead to concerns
9 by the AUC for safety of aviation and -- and I -- and I
10 doubt that type of application would be -- would be
11 approved at that location.

13:58

12 Q. Okay. But you believe that it's appropriate to have a
13 CFO exclusion zone but not exclusion zones or areas for
14 other developments?

15 A. MR. KRIZSAN: We have a land use bylaw
16 that -- that permits certain development, makes certain
17 development discretionary and prohibits certain
18 development, but there are certain types of development
19 that fall out of our ability to regulate such as wind
20 and solar.

13:59

21 Q. Okay. I guess, lastly, when we talk about prevailing
22 winds, why does the 1.5 -- how did the -- how did the
23 process arrive -- how did the review process arrive
24 that 1.5 kilometre -- 1.5 miles was an appropriate
25 distance to mitigate the impacts of CFOs in the

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Cross-examined by Mr. Metheral

1 exclusion zone?

2 A. MR. KRIZSAN: Through the process of
3 negotiation, the -- the two communities, where we
4 started, was a much larger area from the town's
5 perspective and a much -- very much smaller area from
6 the MD's perspective. And through the process of
7 negotiation, that existing version was adopted by both
8 communities.

9 It was a matter of -- it was a matter of trying to
10 seek the best possible solution inter-municipally while
11 trying to balance potential loss of opportunity for
12 development by -- by our agricultural community.

13 Q. Okay. Prevailing winds suggests a scientific tone, but
14 you're saying that this was more of a negotiation
15 between the public. Was there any science that helped
16 you arrive at this conclusion?

17 MS. FINLAY: That's not -- that's not
18 accurately what -- that's not what he said. That
19 wasn't his evidence.

20 MR. METHERAL: Let me rephrase.

21 Q. Was science used to arrive at the 1.5 mile setback?

22 A. MR. KRIZSAN: What we used was the experience of
23 the Town of Fort Macleod and the knowledge of their
24 local conditions and community.

25 Q. Their experience. What type of experience would allow

14:00

14:01

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Cross-examined by Mr. Metheral

1 someone to take make that sort of judgment?

2 MS. FINLAY: Are you asking him to speak for
3 the Town of Fort Macleod?

4 MR. METHERAL: Perhaps that's a better
5 question -- you're right. Perhaps that's a better
6 question for the Town of Fort Macleod. Thank you.

7 Q. And just to confirm, earlier, you were presented with
8 this map. You said -- you were asked if this map came
9 from the November 21st draft, which was published on
10 your web page?

14:02

11 A. MR. KRIZSAN: Yes.

12 Q. Good. It was published on your November 21st web page,
13 and I believe the question was whether the CF0 area had
14 changed. And I believe your response was that there
15 were no changes to this map between November and today.

16 A. MR. KRIZSAN: Correct.

17 Q. Okay. I also understood that the public notice and
18 readings occurred in March of 2021 -- sorry, 2022. How
19 did the town -- or how did the municipality consider
20 that feedback when you talk about give and take and not
21 changing the draft CF0 exclusion zone?

14:02

22 A. MR. KRIZSAN: Through the course of a public
23 hearing, the public has an opportunity to provide
24 comments to council on draft bylaws, and there were a
25 number of individuals in attendance who discussed the

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Cross-examined by Ms. Vance

1 IDP with council. And council heard those comments,
2 the -- and considered amendments that were proposed by
3 the NRCB at that meeting and then further at the
4 March 9th meeting when the -- when the public hearing
5 was resumed.

6 So there's an opportunity for the public to
7 communicate their thoughts regarding draft bylaws.

8 Q. So they were able to provide their comments, but,
9 ultimately, there were no changes to the proposed
10 exclusion zone?

14:04

11 A. MR. KRIZSAN: To the exclusion zone, no. There
12 was to the draft document, though.

13 Q. Okay. Thank you. That would conclude my questions,
14 Mr. Chair. Thank you.

15 THE CHAIR: Thank you, Mr. Metheral.

16 Ms. Vance, does Field Services have any questions?

17 MS. VANCE: Yes, very short questions.

18 **MS. VANCE CROSS-EXAMINES THE PANEL:**

19 Q. This was Mr. Krizsan's evidence characterizing the NRCB
20 as suggesting proposed changes. Now, this question may
21 be more appropriately answered by Ms. Horvath, so
22 whoever can answer this.

14:04

23 Isn't it true that the NRCB did not propose
24 changes but rather encouraged clarification?

25 A. MS. HORVATH: I would say you are correct.

D. KRIZSAN, C. CHISHOLM, D. HORVATH

Questioned by Mr. Kennedy

1 MS. VANCE: Thank you. That's my question.

2 THE CHAIR: Thank you, Ms. Vance.

3 Mr. Kennedy?

4 MR. KENNEDY: Thank you.

5 **MR. KENNEDY QUESTIONS THE PANEL:**

6 Q. I only have a couple of questions, and I'm not sure who
7 from the MD is best suited to answer them, so I'll
8 simply ask the questions and leave it to you.

9 So in Exhibit 20, pdf page 2, so this is your
10 submission to the hearing, and you start off your
11 submissions saying: (as read)

12 "If the decision to deny the approval
13 proceeded without delay resulting from
14 either -- and you list two items, (a)
15 and (b) -- 1(a) and (b) -- then Willow
16 Creek takes no position on the issuance
17 of the approval."

18 I think the Panel might be interested in why you would
19 take a position in any event.

20 And in terms of a little background. It's pretty
21 common that we get municipal participation -- municipal
22 government participation in situations where they are
23 taking issue with the Board's approval of a CFO
24 application. But I think it's fair to say this is the
25 first time the Board will have seen a municipality

14:05

14:06

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Questioned by Mr. Kennedy

1 coming forward advocating for an approval of an
2 operation.

3 So my question simply is why are you taking -- why
4 does the municipality take a position on the NRCB's
5 decision -- approval decision?

6 **A. MR. KRIZSAN:** Could -- could you repeat that,
7 **Bill?** I'm not quite sure -- thank you.

8 **Q.** So as we see the introduction, so paragraph 1, it says
9 if these two items -- if these two possible sources of
10 delay don't exist, then the municipality takes no
11 position on the Board's consideration and decision to
12 deny this approval.

13 And my question to the municipality is why are you
14 taking a position in any event?

15 **A. MR. KRIZSAN:** Well, as indicated in our -- in
16 our request for review, our concern is about process.
17 And if the Board determines that -- that the process
18 has been followed and that the applicant received a
19 fair review of his application and a timely review,
20 then we have -- take -- then we are neither in favour
21 or -- or opposed to the decision of the Board. Our
22 concern here is -- is process.

23 **Q.** So and not to be difficult, but the MD has a process if
24 you're receiving an application. The NRCB process,
25 which we've heard much of this morning, we heard about

14:07

14:08

D. KRIZSAN, C. CHISHOLM, D. HORVATH

Questioned by Mr. Kennedy

1 the NRCB's process. What specifically is the MD's
2 concern with respect to the NRCB's consideration of
3 this particular application, and how does that affect
4 the municipality?

5 A. MR. KRIZSAN: Unlike the NRCB, the MD's process
6 for review and approval of development applications
7 is -- is very specifically defined within the *Municipal*
8 *Government Act*. There are very specific dates and
9 timelines that the municipality must meet.

10 This -- the same process, from what we've heard,
11 is, you know, a guideline that -- that 85 percent or
12 80 percent of the applications should be reviewed
13 within -- or be approved within 65 days. That -- that
14 seems a bit different than what municipalities
15 are -- are required to do. And understanding, of
16 course, that the NRCB is not a municipality.

14:09

17 But these types of timelines arise -- lead to
18 situations that we see here. Some of our ratepayers,
19 the clarity on when they can receive an approval,
20 it's -- it's not clear.

14:10

21 And certainly we believe that the NRCB would
22 benefit from more strict timelines and -- which would
23 enable our citizens, who make applications, to -- to be
24 able to be sure that they don't have to make repeated
25 phone calls to see that a process continues on a path

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Questioned by Mr. Kennedy

1 to decision. And so our concern is -- is with process
2 specifically.

3 Q. And am I fair to say -- so I made the observation that
4 this is a bit of a unicorn in that it's unique. I've
5 never seen it before, and I think it's fair to say I'm
6 relatively familiar with the municipal participation in
7 NRCB reviews.

8 Do you think what the municipality has done here
9 in terms of an intervention is in the ordinary course
10 of municipal responsibility?

14:11

11 A. MR. KRIZSAN: Well, oftentimes, you know, we are
12 placed in a position where we do not have authority for
13 many of the developments that occur within our
14 municipalities, NRCB being one, processes defined by
15 the Alberta Utilities Commission being another. And
16 so, often times, we are thrown into these types of --
17 into these types of situations where we have little
18 authority to comment or regulate.

19 Our concern is -- and I believe that the MD's
20 position on NRCB regulation of feedlots and confined
21 feeding operations is long -- long understood by those
22 in the industry. Our concern is is that the rules of
23 the game should be well understood, particularly by the
24 applicants.

14:11

25 These are costly applications. Many of them have

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Questioned by Mr. Kennedy

1 **timelines involved for their operations, and we have**
2 **concerns that the process must be fair and consistent.**

3 **Q. So, essentially, your intervention deals with oversight**
4 **of the NRCB timelines; is that fair?**

5 **A. MR. KRIZSAN: That's our primary concern in this**
6 **case.**

7 **Q. And in paragraph 2 you say, "although there was ample**
8 **time to review the application." And then you go on.**

9 **And how did you come to the conclusion of what**
10 **"ample time to review the application" was? What**
11 **sources did you access, who did you speak to, and why**
12 **did you come to the conclusion that you did?**

13 **A. MR. KRIZSAN: We have -- we are made aware of**
14 **these applications when we receive Part 1 and Part 2**
15 **applications from the approval officer. We're given**
16 **opportunity to provide comment.**

17 **So part of this comes from our own observations,**
18 **but also from information provided by the applicant,**
19 **and some of the experience that we've had with**
20 **other -- other applications through time.**

21 **Q. So this application, I think we saw that it kind of met**
22 **the performance measures that the NRCB has in place.**
23 **How many other instances have there been where the MD**
24 **of Willow Creek has stepped forward and said, "We want**
25 **to talk about your timelines?"**

14:13

14:13

D. KRIZSAN, C. CHISHOLM, D. HORVATH

Questioned by Mr. Kennedy

1 **A. MR. KRIZSAN:** As far as I know, this is the
2 first time, given -- given the circumstances
3 surrounding this -- the adoption of the IDP.

4 **Q.** And when did you first become concerned about the
5 timelines associated with this application?

6 **A. MR. KRIZSAN:** Well, we were aware that there was
7 this and other applications that have been submitted.
8 And, of course, we don't receive information on the
9 decision until after the fact, and I became aware of
10 the timeline for this situation on March 22nd when the
11 applicant contacted us. 14:14

12 **Q.** And so that's the first time you had any concern
13 about -- despite the ample time to review, there were
14 delays -- inappropriate delays?

15 **A. MR. KRIZSAN:** That was the -- the information
16 that the applicant provided to us following March 22nd,
17 and based upon the information that we received from
18 him, the council felt that there was a need to express
19 our concerns about timelines.

20 **Q.** So is it fair to say you're relying on communications 14:15
21 from Mr. van Huigenbos about the timing of the NRCB
22 review as opposed to other sources or to the exclusion
23 of other sources?

24 **A. MR. KRIZSAN:** That was the only source of
25 information -- primary source of information that we

D. KRIZSAN, C. CHISHOLM, D. HORVATH

Questioned by Ms. Roberts

1 had with respect to this matter, yes.

2 Q. And when did you first reach out to the approval
3 officer and express concerns about the timeliness of
4 the review process?

5 A. MR. KRIZSAN: Perhaps I could turn this to
6 Cindy Chisholm for answering.

7 Q. Sure.

8 A. MS. CHISHOLM: Yes, I believe it was March 22nd
9 of 2022. That's emails between myself and
10 Joe Sonnenberg.

14:16

11 Q. And before you sent that email, did you have a
12 discussion about the timeliness of the NRCB review
13 process?

14 A. MS. CHISHOLM: Not myself, I have not.

15 Q. Are you aware of anybody else within the municipality
16 that might have?

17 A. MS. CHISHOLM: Not that I am aware of.

18 Q. Thank you, panel. Those are my questions.

19 Thank you, Mr. Chair, for your indulgence.

20 THE CHAIR: Ms. Roberts, do you have any
21 questions?

14:16

22 MS. ROBERTS: I have one question.

23 MS. ROBERTS QUESTIONS THE PANEL:

24 Q. A couple of times comments were made about amendments
25 to the IDP resulting from NRCB input. Ms. Vance

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Questioned by Ms. Roberts

1 commented or made a comment about that they were for
2 clarification.

3 Can someone tell us what those amendments are?
4 I'm curious.

5 A. MS. HORVATH: I can probably speak to that.

6 Again, what our process is when we are adopting a
7 new planning document is we do circulate to agencies,
8 NRCB, Alberta Transportation, in this case, the school
9 district as well that's within the close confines.

10 The response back from Mr. Cumming was, as
11 indicated, that he takes no position on the IDP one way
12 or the other. But for clarification for their approval
13 officers to review applications in accordance with our
14 IDP or MDP, he indicated that we had in our
15 Section 4 -- and I don't have the page number here, I'm
16 sorry -- of our intermunicipal development plan which
17 speaks about confined feeding operations, we had
18 previously referred to approvals, meaning everything,
19 as in registration approvals. And he indicated that
20 permits would be a more appropriate verbiage that would
21 make it more all-encompassing. And the second one was
22 clarification on future expansions of permits.

23 So, previously, we had indicated that new confined
24 feeding operations were not to be established as well
25 as anything beyond their current animal numbers. And

14:17

14:18

D. KRIZSAN, C. CHISHOLM, D. HORVATH

Questioned by Mr. Ceroici

1 so that was a little bit clunky language so it was
2 changed to be quite clear in our first policy 3.1. And
3 it was to read: (as read)

4 "New confined feeding operations and
5 expansions to existing permits which
6 would increase livestock numbers are not
7 permitted within the confined feeding
8 operation policy area."

9 Q. Okay. And so these clarifications to the IDP
10 had -- then had nothing to do with the outline of the
11 CFO exclusion zone; is that correct?

14:19

12 A. MS. HORVATH: It was just wording changes, not
13 map changes.

14 MS. ROBERTS: Okay. Thank you.

15 That's all my questions, Mr. Chair.

16 THE CHAIR: Thank you. Mr. Ceroici?

17 MR. CEROICI: I do have one question for
18 Mr. Krizsan.

19 **MR. CEROICI QUESTIONS THE PANEL:**

20 Q. Just maybe to follow up on Bill's probing a bit about
21 the expertise of the town to get involved or comment or
22 make suggestions with respect to the suitability of a
23 particular CFO.

14:19

24 In Exhibit 20, the MD indicates that -- there's a
25 suggestion that the -- this A&D Cattle application may

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Questioned by Mr. Ceroici

1 not be complex.

2 I just wanted to maybe probe a bit as to what
3 expertise was relied upon to make, you know, that
4 statement or that suggestion?

5 A. MR. KRIZSAN: What section is that?

6 Q. It's 9 -- sorry -- 10.

7 A. MR. KRIZSAN: I think that was a judgment
8 that -- that the MD used based upon review of prior
9 applications.

10 This is a relatively small feedlot operation, not
11 terribly complex in terms of size or location or
12 topography, and given the location and the size, it
13 really -- given the -- compare a number of applications
14 that we've seen that are significantly larger or have
15 challenges, including topography or transportation,
16 et cetera, it was the consensus of -- of the council
17 and the staff that this was a relatively simple
18 application.

14:21

19 Q. So, essentially, it's a best-case scenario without
20 really, you know, considering other potential factors
21 of -- other complexities involved in the application
22 process that you may not have been aware of or those
23 types of issues; is that correct?

14:21

24 A. MR. KRIZSAN: Based upon the information we had.

25 Q. Okay.

D. KRIZSAN, C. CHISHOLM, D. HORVATH

Questioned by The Chair

1 **A. MR. KRIZSAN:** We were unaware of any
2 complexities that may have arisen as a result of -- of
3 the questions, but from what we saw of the Part 1 and
4 Part 2 applications, it appeared to be to us relatively
5 simple.

6 Q. Okay. Thank you, Mr. Krizsan.

7 MR. CEROICI: I have no further questions.

8 THE CHAIR: Thank you, Mr. Ceroici.

9 I have one question.

10 THE CHAIR QUESTIONS THE PANEL:

14:22

11 Q. Mr. van Huigenbos raised an issue around the highway
12 that is proposed by the Alberta Transportation, and I
13 think, Mr. Krizsan, you answered a question that, based
14 on the highway that it would be in the exclusion zone
15 on the southern -- or near the southern portion.

16 I presume, then, it would fall between the
17 proposed site for this CFO and the town of
18 Fort Macleod; is that right?

19 A. **MR. KRIZSAN:** That's correct.

20 Q. And does it primarily go east-west, then, or?

14:23

21 A. **MR. KRIZSAN:** It does. From the west boundary,
22 it travels southeast to the south boundary, and then it
23 extends from the southeast -- southwest boundary of the
24 town to the -- to the northeast to reconnect to
25 Highway 3.

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Re-examined by Ms. Finlay

1 **So it's a loop around the south edge of the town.**

2 Q. Okay. All right. So probably -- that's great
3 clarification.

4 I might ask the town, then, if there's any
5 development -- or is the town boundary right to the
6 southern end of the CFO exclusion zone?

7 **A. MR. KRIZSAN: I believe on that map, it is**
8 **outlined, the town boundary.**

9 Q. Yes, but does it go right to the southern edge of the
10 exclusion zone?

14:24

11 **A. MR. KRIZSAN: It does not, no.**

12 Q. It does not. So is there municipal plans to develop
13 residential or other activities that would be in
14 conflict with a CFO south of the highway up to the edge
15 of the exclusion zone?

16 **A. MR. KRIZSAN: As far as I'm aware of, no.**

17 THE CHAIR: Okay. Thank you. I have no
18 further questions.

19 Ms. Finlay, do you have any redirect?

20 MS. FINLAY: Just give me a minute.

14:24

21 THE CHAIR: Sure.

22 **MS. FINLAY RE-EXAMINES THE PANEL:**

23 Q. Mr. Krizsan, can you perhaps just describe -- maybe
24 I'll just back up for a minute.

25 Is there a council resolution that relates to this

1 request for review?

2 **A. MR. KRIZSAN:** I would have to check our records,
3 but I believe we did have a resolution, yes.

4 **Q.** Okay. Who was it that directed you to -- that made the
5 decision with respect to the participation of the MD of
6 Willow Creek in this review?

7 **A. MR. KRIZSAN:** Council of the MD of Willow Creek.

8 **Q.** Thank you. Those are my questions.

9 **THE CHAIR:** Thank you.

10 Any follow-up or questions of Ms. Finlay based on
11 redirect?

14:26

12 Hearing none.

13 Okay. Well, thank you very much, Ms. Finlay and
14 to your panel. The panel is now released, and thank
15 you very much.

16 (PANEL STANDS DOWN)

17 **THE CHAIR:** So we turn to Town of
18 Fort Macleod.

19 Ms. Agrios, the virtual floor is yours if you and
20 your panel are ready?

14:26

21 **MS. AGRIOS:** Yes. Thank you.

22 My name is Janice Agrios. I am counsel for the
23 Town of Fort Macleod, and the witnesses on behalf of
24 the town are Adrian Pedro, who is the town's director
25 of operations, Kelly Sanford who is the town planning

A. PEDRO, K. SANFORD, G. SCOTT

Examined by Ms. Agrios

1 and development officer, and Gavin Scott who is a
2 senior planner with the Old Man River Regional Services
3 Commission.

4 And so I'd ask that the witnesses be sworn.

5

6 A. PEDRO, K. SANFORD, G. SCOTT (For Town of Fort Macleod),
7 affirmed

8 MS. AGRIOS EXAMINES THE PANEL:

9 Q. Thank you. Now, I'm just going to outline how I
10 propose to proceed in the interest of making this as
11 efficient as possible.

14:28

12 The town's submissions are at Exhibit 19 and so my
13 proposal is to just briefly review some of the
14 attachments in that exhibit and just direct the Board's
15 attention to some of those exhibits?

16 I will then have Mr. Scott outline the planning
17 rationale for the CFO exclusion area and then, of
18 course, all of the witnesses will be available to
19 respond to any questions about the exhibits.

20 THE CHAIR: That sounds like a great plan.

14:29

21 Thank you very much.

22 MS. AGRIOS: Thank you.

23 So the first document, and these are all in
24 Exhibit 19, and so the first page, it's pdf
25 page number 13.

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1 And so then just again for the Board's reference,
2 this is the final version of the IDP that was adopted
3 by both the town and the MD.

4 And if I could then go to page 15. For the
5 Board's reference, again, you'll see with respect to
6 the town, you can see at the bottom there's an
7 indication as to dates of the first, second, and third
8 reading, and the final adoption date of February 28th,
9 2022.

10 On page 16 -- and, again, this is with respect to
11 the MD now, you'll see the dates of first, second, and
12 third reading, final adoption date of March 9th, 2022.

14:30

13 I now turn to page 63 in the pdf. And page 63,
14 and the pages that follow are the correspondence that
15 was leading up to adoption of the IDP by both the town
16 and the MD. And so you'll see there's the email
17 exchanges that were occurring on November 19th, 2021,
18 indicating the agreement reached between the town and
19 the MD with respect to a draft IDP.

20 That is followed by -- and if you'll bear with me,
21 I did not note the page number -- it is page 65. 65 in
22 the pdf, that is the version, the draft that had been
23 agreed to in November 2021 and was the version that was
24 posted to both the town and the MD's website on or
25 within a day or two after November 19th of 2021.

14:30

A. PEDRO, K. SANFORD, G. SCOTT

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1 As you've heard, there were some amendments based
2 on a circulation and some of the feedback. The CFO
3 exclusion area from the November 2019 draft is at
4 page 778 of the pdf, and that is the version that was
5 posted in November of 2019, and that remains the same
6 throughout.

7 If you go to page 103 in the pdf, and, again, this
8 is correspondence from myself going to the Land and
9 Property Rights Tribunal, and as you heard from
10 Mr. Krizsan, actually, there was the delay or the lag
11 time between November of 2019 and the adoption because
12 there were steps that needed to be taken in order to
13 have the IDP adopted.

14:32

14 And so that is all I wanted to say in terms of the
15 documents that I wanted to draw to the Board's
16 attention.

17 I will now turn it over to Mr. Scott and ask that
18 he address the planning rationale for the CFO exclusion
19 area.

20 **A. MR. SCOTT:** **Thank you, Janice.**

14:32

21 **The planning rationale for the exclusion zone, I**
22 **guess a few things that have been said prior to by both**
23 **Mr. Krizsan and Diane Horvath really do cover off the**
24 **nature and basis of the beast of what is a exclusion**
25 **zone for CFOs.**

A. PEDRO, K. SANFORD, G. SCOTT

Examined by Ms. Agrios

1 The question of whether or not they're scientific,
2 I would say that that is unlikely as these are
3 political processes for the most part.

4 Prevailing wind is one of the key factors in the
5 design of these things, and prevailing wind, as a
6 planner, in my estimation, is much larger and perhaps a
7 rationale as to why we started with a larger format for
8 capturing who should be in the exclusion zone. But as
9 political process take place, that gives you what you
10 have currently for the boundary.

14:33

11 The exclusion zone certainly is not an uncommon
12 feature in IDP. It is common across hundreds of
13 municipalities in Alberta. And as such, it is one of
14 the few mechanisms the AOPA provides us in controlling
15 feedlots around communities.

16 And as one of the few mechanisms, it is certainly
17 taken seriously by municipalities in negotiation, and
18 as a result, very few would avoid the opportunity to
19 implement.

20 So that's my answer to that question. Thank you.

14:34

21 Q. And, Mr. Scott, I'm going to ask you to comment on one
22 other aspect of the IDP.

23 MS. AGRIOS: And if we could go to, it's in
24 Exhibit 19, page 32 of the pdf, and this is the
25 "Servicing Policy Area" map.

A. PEDRO, K. SANFORD, G. SCOTT

Examined by Ms. Agrios

1 Q. And, Mr. Scott, could you just comment again on how the
2 servicing policy area -- how that area relates to the
3 CFO exclusion area? Are they covering different areas
4 or similar?

5 A. MR. SCOTT: They are exactly the same except
6 that the town boundary is not included in the servicing
7 area, as the servicing area was meant for the town to
8 provide water to that area indicated in the hatch.

9 Q. Yes.

10 A. MR. SCOTT: As such, with the negotiation
11 between the two councils, it was identified that if the
12 MD was going to give up a portion of land for CFO
13 exclusion, something was to be given in return, and
14 that was to provide water to a certain area of the
15 plan, being the exclusion zone.

16 From that, you can understand that with water
17 capabilities, you could expect a furtherance of
18 residential development, perhaps other development,
19 depending on the processes that would follow. Thank
20 you.

21 Q. Yes. And thank you, Mr. Scott. Those are all my
22 questions for you.

23 And, Mr. Chair, that is all the direct evidence on
24 behalf of the town, so the town's witnesses are
25 available to answer any questions.

14:35

14:35

A. PEDRO, K. SANFORD, G. SCOTT

Cross-examined by Mr. Metheral

1 THE CHAIR: Thank you, Ms. Agrios.

2 Ms. Finlay, do you have any questions for the
3 town?

4 MS. FINLAY: No, we have no questions. Thank
5 you.

6 THE CHAIR: And Mr. and Mrs. Conner?

7 MR. CONNER: No, we have no questions.

8 THE CHAIR: Mr. and Mrs. Lewis?

9 MR. LEWIS: No.

10 THE CHAIR: Mr. Metheral?

14:36

11 **MR. METHERAL CROSS-EXAMINES THE PANEL:**

12 MR. METHERAL: Yes, hi. You can hear us?

13 THE CHAIR: Yes, we can.

14 Q. MR. METHERAL: We appreciate the municipality's
15 review of our questions or responses to our questions,
16 and we'd like to forward the majority of them on to the
17 town also.

18 So to confirm, the official date that the town
19 adopted the IDP was February 28th; is that accurate?

20 A. MR. SCOTT: **That's correct.**

14:37

21 THE COURT REPORTER: Sorry, was that Mr. Scott? Did
22 you answer? Was it --

23 A. MR. SCOTT: **Yes.**

24 THE COURT REPORTER: Sorry. Okay. Thank you.

25 THE CHAIR: Scott, yes.

A. PEDRO, K. SANFORD, G. SCOTT

Cross-examined by Mr. Metheral

1 **MR. METHERAL:** I would direct my questions to
2 Mr. Scott.

3 **Q.** We'll move on from the questions about the Alberta
4 Environment and Minister.

5 Perhaps, though, we could ask a bit about why the
6 exclusion zone -- there is no CFO exclusion zone on the
7 east side of the town.

8 **A. MR. SCOTT:** **I believe I did answer that**
9 **question. This is a political negotiation. At one**
10 **time, it was included. There was a large boundary**
11 **included around the entire town. And as negotiations**
12 **happened, that boundary was reduced.**

14:37

13 **Q.** Okay. And, again, to the -- it's larger to the west,
14 southwest. Again, a political negotiation is how we
15 ended up with that area?

16 **A. MR. SCOTT:** **Yes.**

17 **Q.** Okay. And the exact distance of 1.5 miles, how did we
18 end up with that setback from the town boundary?

19 **A. MR. SCOTT:** **Same process.**

20 **Q.** And what was it based on, the 1.5 mile?

14:38

21 **A. MR. SCOTT:** **Negotiation.**

22 **Q.** Where does the prevailing winds come in?

23 **A. MR. SCOTT:** **Through a discussion that was held**
24 **in camera with council.**

25 **Q.** Did town council bring in an expert to talk about

A. PEDRO, K. SANFORD, G. SCOTT

Cross-examined by Mr. Metheral

1 prevailing winds?

2 A. MR. SCOTT: Not to my knowledge.

3 Q. Does the town have anybody in employment that is an
4 expert in wind direction or climatologist?

5 A. MR. SCOTT: Not to my knowledge.

6 Q. So then who would have provided the recommendations
7 from the town for 1.5 miles setback?

8 A. MR. SCOTT: Town council.

9 Q. Are any of the council members experts in weather
10 patterns?

11 A. MR. SCOTT: They may be. I don't know.

12 Q. Why do you think -- why do you suppose town council
13 picked prevailing winds to -- as a reason for their
14 setbacks?

15 A. MR. SCOTT: Prevailing winds is a typical
16 discussion regarding a noxious odour problem with this
17 industry. So, again, like I said, the prevailing wind,
18 from my point of view, would have been much larger as
19 an advisor, but this was negotiated downwards from
20 there.

21 Q. I see. Much larger. So the prevailing winds bring
22 dust and odour from CFOs? That's the logic?

23 A. MR. SCOTT: I believe so.

24 Q. Did they provide any other reasons other than
25 nuisances -- CFO nuisances as to how or why the setback

14:39

14:40

A. PEDRO, K. SANFORD, G. SCOTT

Cross-examined by Mr. Metheral

1 was determined?

2 **A. MR. SCOTT:** Not to my knowledge.

3 **Q.** Does the town realize the AOPA addresses odour and dust
4 from CFOs?

5 **A. MR. SCOTT:** The town was given the opportunity
6 to understand issues under AOPA as well as a full
7 understanding of the MDS and its pseudoscience.

8 **Q.** You believe that AOPA is based on pseudoscience?

9 **A. MR. SCOTT:** I believe MDS is.

10 **Q.** And what is your belief on how your councillors
11 determined the setback? How is their science made?

12 **A. MR. SCOTT:** Politically based, not
13 scientifically based.

14 **Q.** Thank you. Can we have a minute here?

15 **THE CHAIR:** Just take a minute.

16 **MR. METHERAL:** Sorry for the delay. This
17 information is critical to us, and we wanted to make
18 these questions pointed.

19 **Q.** Mr. Scott, when we talk about prevailing winds, was
20 there any studies or technical information that was
21 provided to council on what a prevailing wind is?

22 **A. MR. SCOTT:** No.

23 **Q.** So do we even know what the prevailing wind is for the
24 town of Fort Macleod?

25 **A. MR. SCOTT:** As answered, I preferred that it

14:41

14:43

A. PEDRO, K. SANFORD, G. SCOTT

Cross-examined by Mr. Metheral

1 **was a much larger area.**

2 Q. AOPA provides us with some direction on how to
3 calculate MDS. For this application, the CFO size is
4 2,000 head, and that makes the setback of about
5 4,268 feet. The exclusion zone that you've created is
6 over -- is approximately 8,000 feet. And, sorry, this
7 is to Category 4 residences.

8 Do you have any idea if there will be developments
9 in the intermunicipal development plan area? Does the
10 town plan to develop in the CFO exclusion -- sorry.
11 Let me repeat. Does the plan town (verbatim) to
12 develop in the intermunicipal development plan area?

14:44

13 **A. MR. SCOTT: The town does not.**

14 Q. Does the town plan to build any residences in the
15 CFO -- or in the intermunicipal development plan area?

16 **A. MR. SCOTT: I should clarify. The**
17 **intermunicipal development plan area does include the**
18 **town boundary. So the answer is, yes, they do plan to**
19 **build.**

20 Q. Okay. The developments that would occur, residents
21 that are built, if there are any, would be based on the
22 municipality; the municipality would be permitting
23 those residences.

14:45

24 **A. MR. SCOTT: Which municipality?**

25 Q. The Municipality of Willow Creek?

A. PEDRO, K. SANFORD, G. SCOTT

Cross-examined by Mr. Metheral

1 **A. MR. SCOTT:** **In the CFO exclusion zone, that is**
2 **correct.**

3 **Q.** Okay. So based on the site that we have here,
4 approximately -- I'm just guessing here, was it 3 miles
5 from your house to the town?

6 **MR. VAN HUIGENBOS:** Closest residence, 2.8.

7 **Q. MR. METHERAL:** 2.8 miles from the
8 residence -- sorry, it's about 2.8 miles from the
9 CFO -- proposed CFO to the town boundary?

10 **MR. VAN HUIGENBOS:** To the town residence. 14:46

11 **MR. METHERAL:** To the town residence. This would
12 suggest that there's ample room under AOPA for this
13 type of facility. Why should a CFO exclusion zone be
14 in place if AOPA -- if there's no impact from -- as
15 looked at from AOPA?

16 **A. MR. SCOTT:** **I think you're trying to ask --**
17 **have me answer a question that was politically answered**
18 **by the negotiation of the town and the MD.**

19 **Q.** Okay. We won't proceed further on that line of
20 questioning. I can see the dilemma you're in. 14:46

21 Lastly, when we talk about odour and dust from
22 agricultural operations, there is actually a
23 feedlot -- or, sorry, an auction market located inside
24 the town boundary.

25 Why does a CFO exclusion zone -- why is it

A. PEDRO, K. SANFORD, G. SCOTT

Questioned by Mr. Ceroici

1 appropriate when there is already an acceptance for
2 agricultural activities even within the town of Fort
3 Macleod?

4 A. MR. SCOTT: The auction mart is not regulated
5 by NRCB, and the numbers of animals at that location do
6 not meet the threshold of an NRCB approval.

7 Yes, if possible, that is in a bad location, and,
8 in my opinion, it would be nice to be moved, not likely
9 in the near future.

10 Q. Thank you for your responses. I would conclude my
11 questioning. Thank you, Mr. Chair.

14:48

12 THE CHAIR: Thank you, Mr. Metheral.

13 Ms. Vance, do you have questions on behalf of
14 Field Services?

15 MS. VANCE: I do not. I do not, thank you.

16 THE CHAIR: Okay. Thank you.

17 Mr. Kennedy, do you have questions?

18 MR. KENNEDY: I do not. The questions I had
19 have all been addressed. Thank you.

20 THE CHAIR: Mr. Ceroici.

14:48

21 MR. CEROICI: Just a minor clarification.

22 **MR. CEROICI QUESTIONS THE PANEL:**

23 Q. I'm not sure who to address the question to, but it
24 relates to the last page of Exhibit 19 where it refers
25 to -- suggest that the review is inconsistent with the

A. PEDRO, K. SANFORD, G. SCOTT

Questioned by Mr. Ceroici

1 agreement to the CFO exclusion area with the MD. And
2 it carries on in Bullet 44 -- sorry, it would be the
3 last page of the main submission. I don't know it -- I
4 think it's page 9. It's Bullet 44. Thank you.

5 There it talks about -- suggests that the MD's
6 agreement to the IDP, including the CFO exclusion zone,
7 pre-dated submission of the Part 2 application on
8 December 3rd.

9 So is there a suggestion there by the town that
10 somehow the IDP should have had precedence over the
11 municipal development plan at that point? I'm not sure
12 what the reason for that statement is.

13 MS. AGRIOS: I can respond, sir, because that
14 does come from the legal argument that I drafted. And
15 the basis for that statement, it simply refers to the
16 MD's position.

17 And the MD, as of November 19th, had agreed to a
18 CFO exclusion area, so it seemed inconsistent that the
19 MD would then subsequently be supporting a CFO in an
20 exclusion area that they had previously agreed to.

21 MR. CEROICI: So, legally, there's no obligation
22 or no impact on the existing MDP; is that correct?

23 MS. AGRIOS: Once adopted, it does.

24 MR. CEROICI: Yes, but not at this point?

25 MS. AGRIOS: Not as of that point in time,

14:49

14:50

A. PEDRO, K. SANFORD, G. SCOTT

Questioned by Ms. Roberts

1 that's correct. So it was simply commenting on the
2 MD's support -- the support for it, and the support did
3 seem to be inconsistent with the MD having already
4 agreed.

5 And, again, it still had to work its way through a
6 process. So there's necessarily a time lag between
7 when the agreement is reached and between when there
8 can be advertising and three readings of the bylaw in a
9 public hearing, but in that intervening timeframe, it
10 does seem inconsistent that the MD would then support a
11 CFO when they've already reached an agreement and are
12 in the process of passing the necessary bylaws to
13 implement that agreement.

14 MR. CEROICI: Okay. Thank you.

15 That's all my questions, Mr. Chair.

16 THE CHAIR: Okay. Thank you.

17 Ms. Roberts?

18 THE COURT REPORTER: Ms. Roberts, you're muted.

19 Ms. Roberts, you're muted.

20 MS. ROBERTS: Thank you.

21 **MS. ROBERTS QUESTIONS THE PANEL:**

22 Q. I have one question and it's with regard to planning,
23 so probably Mr. Scott's perhaps to answer.

24 I would like to know how the town plans for future
25 expansion are considered when you're working towards

14:51

14:51

A. PEDRO, K. SANFORD, G. SCOTT

Questioned by The Chair

1 developing an IDP with the county, and how that all
2 kind of fits together with the CFO exclusion zone and
3 such.

4 A. MR. SCOTT: Well, early on in the process, it
5 was clearly discussed between the town and the MD that
6 the MD certainly should not expect an annexation on
7 behalf of the town at any time soon. We have ample
8 land within the boundaries of the town to grow. That
9 growth will extend to the southern boundary with
10 residential, so that was discussed, as well as other
11 growth plans that had been provided in our own MDP and
12 other concept plans that had been drafted for
13 consideration by town council, all of which was
14 discussed with the MD to give an indication of what
15 exactly the town would look like out into the future as
16 far as its own internal growth.

14:52

17 Q. Thank you.

18 MS. ROBERTS: That's all, Mr. Chair.

19 THE CHAIR: Thank you.

20 **THE CHAIR QUESTIONS THE PANEL:**

14:52

21 Q. So, Mr. Scott, just to follow up on Ms. Roberts'
22 question, then, and also I guess a follow-up to a
23 question I have with the MD about development, you've
24 answered that part.

25 So it seems to me -- I just want you to confirm

A. PEDRO, K. SANFORD, G. SCOTT

Re-examined by Ms. Agrios

1 whether my understanding is correct or not, it seems to
2 me that the exclusion zone is a method or politically
3 agreed-to, as you put it, distance for excluding CFOs
4 to protect the existing town, but not future
5 development -- or development within the existing
6 boundaries of the town, not future development or
7 future potential annexations?

8 **A. MR. SCOTT:** I think that would be true, and
9 yet the exclusion zone would also protect MD residents,
10 which you have a few here today.

14:53

11 Anybody building a residence in the proximity of
12 this exclusion zone, those MD residents would also be
13 protected.

14 Q. Thank you. Thank you very much.

15 **THE CHAIR:** Ms. Agrios, do you have any
16 redirect based on questions?

17 **MS. AGRIOS:** Yes, sir, I did have just a few
18 questions.

19 **MS. AGRIOS RE-EXAMINES THE PANEL:**

20 Q. The first one -- and if we could go to Exhibit 19,
21 page 28, this is the CFO exclusion area map.

14:54

22 And, Mr. Scott, I just wanted to clarify, there
23 was some questions of you as to whether or not it would
24 be the MD dealing with permitting in the CFO exclusion
25 area.

A. PEDRO, K. SANFORD, G. SCOTT

Re-examined by Ms. Agrios

1 I just wanted to clarify, based on the map,
2 firstly, the extent of the CFO exclusion area and,
3 again, who would be dealing with permitting within the
4 CFO exclusion area?

5 A. MR. SCOTT: Yeah. So, quite clearly, there's
6 two jurisdictions here within the town boundary,
7 decisions made by the town and within the MD of
8 Willow Creek side of things, the decisions would be by
9 the MD of Willow Creek.

10 Q. Thank you. Now, there was also, through questioning,
11 discussion about how the CFO exclusion area is, to some
12 extent, a political process.

14:54

13 As a planner -- and I believe you touched on this,
14 but I just want to make sure that we -- that I heard
15 this correctly -- as a planner, what would have been
16 your recommendation with respect to the size of the CFO
17 exclusion area?

18 A. MR. SCOTT: Now you're trying to make me a
19 politician.

20 Certainly, we started from a point of view of what
21 was the maximum extent that we've seen in other
22 municipalities that was acceptable to the NRCB.

14:55

23 I had understood from conversations with other
24 planners, and perhaps even with the input from Andy,
25 that should a municipality seek to go out beyond

A. PEDRO, K. SANFORD, G. SCOTT

Re-examined by Ms. Agrios

1 5 miles, that may be viewed by the NRCB as being an
2 egregious distance.

3 So we did start at 3 miles in the south and the
4 west and 2 miles on the north and the east. Those
5 parameters were working parameters, but not necessarily
6 recommendations.

7 Certainly, from the point of view of prevailing
8 winds and the guesswork having to go into those, I do
9 prefer a much larger boundary than was finally adopted.

10 Q. Thank you. And my last question, and if we could go to
11 page 27 of Exhibit 19.

14:56

12 And so this is dealing with some of the policy
13 related to the CFO, and I'm looking specifically at
14 Policy 3.8. And, again, it's dealing with the
15 obligation of the MD to update its MDP.

16 And I appreciate that you aren't representing the
17 MD and that you're not here as a politician, but as a
18 planner, given the servicing that's being extended into
19 the CFO exclusion area, what type of development would
20 you expect to see when the MD updates its MDP?

14:57

21 A. MR. SCOTT: I don't expect the MD to
22 physically define what is the potential for growth
23 there, be it residential, commercial or industrial.

24 I think the plan left itself open to that coming
25 forward through natural processes whereby they would

A. PEDRO, K. SANFORD, G. SCOTT

Re-examined by Ms. Agrios

1 circulate to us as proposals came forward, that it
2 wouldn't necessarily have to be residential although
3 the implementation or introduction of water, and water
4 was meant for household use.

5 Q. Thank you, Mr. Scott. Those are my questions, and that
6 concludes all of the evidence on behalf of the -- on
7 behalf of the town.

8 THE CHAIR: Thank you, Ms. Agrios.

9 Did anyone have a follow-up question based on that
10 redirect?

14:57

11 MS. FINLAY: We do not.

12 THE CHAIR: Okay. And hearing nobody else, I
13 think we're done.

14 Thank you very much, Ms. Agrios, and to your panel
15 as well. Appreciate the input. Thank you very much.

16 (PANEL STANDS DOWN)

17 THE CHAIR: So, Mr. and Mrs. Conner, it is
18 your opportunity to provide direct evidence or
19 statements that you'd like to make in terms of this CFO
20 permit application.

14:58

21 Now, I just see Shauna Finlay's, kind of, box up
22 here, I'm not sure if we can get back to the -- let's
23 see. Here we go.

24 Now, Mr. and Mrs. Conner, you're there?

25 MR. CONNER: Yes.

W. CONNER

1 THE CHAIR: Okay. Were you wanting to speak
2 to the application?

3

4 **W. CONNER** (For Mr. and Mrs. Conner), affirmed

5 MR. CONNER: We don't have much more for
6 direct evidence. We, more or less, just have what was
7 on my rebuttal. I think it's Exhibit 15. More or less
8 just the main concerns in regards to water leaching,
9 contamination, water usage, and just the smell all
10 around.

14:59

11 We reside outside of Fort Macleod, but we do work
12 in town and we do have kid activities in town, and
13 we've talked to numerous people that have been affected
14 just from the manure spreading on adjacent lands, and
15 so those are kind of our main concerns anyway. But...

16 THE CHAIR: Thank you. Is that all?

17 MR. CONNER: Yeah. I don't think -- there's no
18 point in really reading back through it, I don't think,
19 is there?

20 THE CHAIR: No. I mean, if you want that to
21 stand on it, that is no problem at all. We don't need
22 to reread it into the record, we have it in the record,
23 we've all reviewed it. So that's fine.

14:59

24 MR. CONNER: Okay.

25 THE CHAIR: Thank you very much.

W. CONNER

1 You know what I didn't do is have Ms. Vespa swear
2 or affirm you in, and that was my fault, because you're
3 not represented, so it's my job. I think we could
4 probably still do that now in case there's any
5 questions.

6 Ms. Vespa, maybe you can make it past tense? Was
7 there anything that he has said?

8 THE COURT REPORTER: Yes, I can take care of that.
9 Thank you.

10 THE CHAIR: Perfect. Ms. Vespa bails me out
11 again. 15:00

12 Excellent. Thank you. So opportunity for some
13 questions to you, Mr. Conner.

14 MD of Willow Creek, Ms. Finlay. Anything?

15 MS. FINLAY: No questions, sir.

16 THE CHAIR: Thank you.

17 Ms. Agrios?

18 MS. AGRIOS: No questions.

19 THE CHAIR: Mr. and Mrs. Lewis?

20 MR. LEWIS: We sent in a statement of our
21 concerns already. I guess we don't need to go over
22 that -- 15:01

23 MR. CONNER: I think it's just if you have
24 questions for us.

25 THE CHAIR: Yeah, I'll give an opportunity for

W. CONNER

1 that. This is really if you have a question for the
2 Conners.

3 MR. LEWIS: No, I don't.

4 THE CHAIR: Okay. Thank you.

5 Mr. Metheral?

6 MR. VAN HUIGENBOS: No, we don't have any questions.

7 THE CHAIR: Ms. Vance?

8 MS. VANCE: No questions.

9 THE CHAIR: Mr. Kennedy?

10 MR. KENNEDY: And I have no questions, thank
11 you.

15:01

12 THE CHAIR: Ms. Roberts?

13 MS. ROBERTS: I have no questions, Mr. Chair.

14 THE CHAIR: Mr. Ceroici?

15 MR. CEROICI: And I have no questions either,
16 thank you.

17 THE CHAIR: Well, you're getting off pretty
18 light here, Mr. Conner. I should just ask you a
19 question just because.

20 MR. CONNER: Might as well, eh?

15:02

21 THE CHAIR: No, I have no questions. It's
22 pretty clear. Thank you very much for your
23 participation today. Thank you.

24 MR. CONNER: Thank you.

25 THE CHAIR: Mr. and Mrs. Lewis, now is your

D. LEWIS

1 opportunity to present any evidence or sort of
2 reinforce something that you've already submitted that
3 you'd like the Board to pay particular attention to.
4 So this is your opportunity. Take it away.

5 MR. LEWIS: Okay. Thank you.

6 THE COURT REPORTER: Excuse me, Mr. Chair. Did you
7 want him sworn in?

8 THE CHAIR: Please swear him in first. Thank
9 you.

10 THE COURT REPORTER: Thank you.

15:03

11

12 **D. LEWIS (For Mr. and Mrs. Lewis), affirmed**

13 THE COURT REPORTER: And if I could just ask you to
14 speak up, sir.

15 THE CHAIR: Yes, I was going to do that. It
16 is a little bit difficult to hear you, Mr. Lewis. So
17 if you could -- and even perhaps -- it's probably --
18 the microphone is probably in the camera at the front
19 of that room. So if you need to move up a little bit,
20 that might help as well. Go ahead.

15:03

21 A. MR. LEWIS: Okay. We have our concerns, we
22 sent them in already. You have them on record.

23 I had a couple of things I wanted to bring up.
24 When they're talking about the distance of this
25 feedlot -- this proposed feedlot and their distance,

D. LEWIS

1 according to the maps we have, it's 1 mile from the
2 town -- from the town boundaries.

3 THE CHAIR: Okay. So I would presume in
4 questions, somebody will ask you about where you got
5 that information and how you measured it. I'll allow
6 the A&D to do that in a second.

7 But please proceed if you have other points to
8 make.

9 A. MR. LEWIS: In the discussions about the wind
10 and the wind experts, and if you were to ask Vestas out
11 there, I'm sure they could tell you exactly how many
12 days out of the year the wind blows from the southwest.

15:04

13 THE CHAIR: So, sorry, you're asking a
14 question of?

15 A. MR. LEWIS: Previous, there was the discussion
16 about the wind, and they were asking who was an expert
17 about the wind direction out there.

18 THE CHAIR: Okay.

19 A. MR. LEWIS: And I was saying, if you talk to
20 Vestas, they have all the wind mills out there, they
21 could tell you exactly how many days out of the year we
22 have a southwest wind out there, which would eliminate
23 the problem of not having an expert on wind there.

15:05

24 THE CHAIR: Okay. Thank you. And are there
25 other points that you wanted to make, Mr. Lewis?

D. LEWIS

1 **A. MR. LEWIS:** **No, that's -- that's good for now.**

2 **THE CHAIR:** Okay. Well, thank you very much.

3 Ms. Finlay, did you have any questions for

4 Mr. Lewis?

5 **MS. FINLAY:** I do not, thank you.

6 **THE CHAIR:** Ms. Agrios?

7 **MS. AGRIOS:** No questions.

8 **THE CHAIR:** Thank you.

9 And the Conners, do you have a question for

10 Mr. Lewis?

15:07

11 **MR. CONNER:** No, we have no questions.

12 **THE CHAIR:** Mr. Metheral?

13 **MR. VAN HUIGENBOS:** Not a whole lot of questions

14 concerning how far away I am from town boundaries. I

15 just quickly tried to look it up on Google Maps here --

16 **THE CHAIR:** Well, I think, yeah, I mean, I

17 think, you know, really it was for Mr. Lewis. I think

18 he's made an assertion.

19 Perhaps in your closing, you can address, you

20 know, distances that you're aware of or clarify what

21 you want to clarify in terms of the distances.

15:08

22 So this is your opportunity to ask Mr. Lewis

23 question, but in your final, you might want to do that.

24 **MR. VAN HUIGENBOS:** Sure. Yeah, then I don't have a

25 whole lot of questions, then, about anything that was

D. LEWIS

1 stated.

2 THE CHAIR: Okay. Sorry. It's about process
3 again, right?

4 MR. VAN HUIGENBOS: Yeah.

5 THE CHAIR: Okay. Thank you.

6 Ms. Vance?

7 MS. VANCE: I don't have any questions. Thank
8 you.

9 THE CHAIR: Okay. And Mr. Kennedy?

10 MR. KENNEDY: And I have no questions. Thank
11 you.

15:08

12 A. MR. KRIZSAN: Mr. Chair?

13 THE CHAIR: Oh, yes.

14 A. MR. KRIZSAN: **Sorry to interrupt. Shauna Finlay
15 just emailed me, and she was -- she's got bumped out of
16 the meeting. She'd like to get back in.**

17 THE CHAIR: Ah, yes. Let's do that. Oh,
18 there we are. Ms. Finlay, you're back.

19 MS. FINLAY: Sorry. Yes, Ms. Friend kindly let
20 me back in, so thank you.

15:09

21 THE CHAIR: Okay. Perfect. Sorry about that.
22 I'm not sure what happened, but -- oh, are you still
23 there? Is it all good? Okay. Perfect. Thanks.

24 Okay. And, Panel, any questions from the Panel?

25 MR. CEROICI: Just one question for Mr. Lewis.

D. LEWIS**Questioned by Mr. Ceroici**

1 **MR. CEROICI QUESTIONS THE WITNESS:**

2 Q. I'm just curious about in the RFR -- the RFR
3 submission, Exhibit 10, he indicates that they are
4 they -- they feed a large number now, probably close to
5 1,000 and by adding another 2,000 -- I was wondering
6 where -- the source of the 1,000 number.

7 A. MR. LEWIS: I was talking about the water in
8 that area. And there's already a calf feedlot in there
9 that probably had approximately a thousand head
10 already, and it's going to draw more on that same water
11 supply. 15:10

12 Q. Okay. So to be clear, you're referring to a different
13 operation of a thousand?

14 A. MR. LEWIS: Yes. It's different from this,
15 but they're both side by side.

16 Q. Okay. Thanks for the clarification. That's all my
17 questions.

18 THE CHAIR: Okay. Thanks, Mr. Ceroici.

19 And, Ms. Roberts, did you have a follow-up?

20 MS. ROBERTS: I have no questions. 15:10

21 THE CHAIR: Okay. And, Mr. Ceroici, you've
22 asked the question I was thinking about as well, so
23 thank you.

24 (WITNESS STANDS DOWN)

25 THE CHAIR: Okay. Well, and I don't believe

1 there will be any redirect. I think I have that right,
2 Mr. Lewis. I think you had just the one quick question
3 from Mr. van Huigenbos. So I think we can move on
4 to -- and thank you very much for your participation
5 today, both Mr. and Mrs. Lewis.

6 Mr. Metheral, did you and Mr. van Huigenbos have
7 any rebuttal evidence that you want to present today?
8 And if you do, we'll need to swear you back in.

9 MR. VAN HUIGENBOS: No rebuttal.

10 THE CHAIR: Oh, okay. No rebuttal.

15:11

11 And, Mr. Metheral, that's for both parties?

12 MR. METHERAL: Sorry. This isn't the closing
13 statements?

14 THE CHAIR: No.

15 MR. METHERAL: Okay. No rebuttal. Thanks.

16 THE CHAIR: Okay. Thank you very much.

17 But now it is your turn again. So in closing
18 argument -- we can move to closing argument with
19 A&D Cattle, Mr. van Huigenbos and Mr. Metheral.

20 MR. METHERAL: We've accumulated some additional
21 thoughts and positions based on the back and forth that
22 we've seen.

15:12

23 Would the Board be able to give us -- give me ten
24 minutes to add some of these arguments to my closing
25 statement? Because I wasn't prepared -- I didn't know

1 what I didn't know.

2 THE CHAIR: And I think, you know, I mean,
3 we're kind of combining the previous section with this
4 one.

5 And, Mr. Kennedy, if I've got this wrong, maybe
6 just step in, but, you know, the rebuttal evidence, you
7 know, there's an opportunity for you. It's really in
8 response to what you've heard throughout the day. And
9 if that's largely what it is, I think this is your
10 opportunity and Mr. Kennedy.

15:12

11 MR. KENNEDY: Yeah, so rebuttal evidence is the
12 opportunity to advance evidence that would rebut the
13 evidence brought forward from other parties during the
14 course of the hearing. And typically it's -- well,
15 it's -- in our proceedings or in our AOPA proceedings,
16 it's not commonly used, because it's not -- folks don't
17 find it necessary. But clearly if you have -- you
18 think you need to rebut some of the evidence you've
19 heard, this is your opportunity.

20 And then final argument is just that, is you don't
21 get to introduce new evidence. You can refer to the
22 evidence that has been introduced during the course of
23 the proceeding and advocate how you would like the
24 Board to consider that evidence and the outcome that
25 you would like to achieve through your participation.

15:13

1 Is that helpful?

2 MR. METHERAL: I'm more focused on final
3 arguments and -- and having a bit of time to prepare --
4 ten minutes to prepare for my final argument. Are we
5 talking about this now?

6 THE CHAIR: We are -- I think we are, you
7 know, on schedule --

8 MR. METHERAL: (Indiscernible).

9 THE CHAIR: -- No, I think we are on -- we are
10 on schedule, and I think it is appropriate to have a
11 bit of a break -- post lunch break, anyway. I have no
12 issue with taking, you know, until 3:30, give you a bit
13 of time, and then that will give everyone a bit of time
14 to kind of get their notes together. If there's no
15 objections, break until 3:30 and then complete the
16 hearing with closing arguments. Are there any
17 objections to doing that.

18 MS. VANCE: No objections here.

19 THE CHAIR: Okay. Let's break for just over
20 15 minutes and re-adjourn at 3:30.

21 (ADJOURNMENT)

22 THE CHAIR: Welcome back, everyone.

23 It is just past 3:30. I don't see Mr. Metheral,
24 he's first up, but I see Mr. van Huigenbos. Oh, there
25 we are.

15:14

15:14

1 So, Mr. van Huigenbos, are you going to be
2 presenting as well or Mr. Metheral? Or is it just you?

3 MR. VAN HUIGENBOS: Yeah, it's probably going to be
4 mostly Cody -- or Mr. Metheral.

5 THE CHAIR: Okay. I see everybody's name
6 plate is up, and I'm sort of making the assumption
7 everybody is ready to roll and perfect. We kind of
8 stick to these times, and you folks today have been
9 really good with that, so I really do appreciate it.
10 It really makes the day run smoothly, so thank you.
11 Okay. That little flash is perfect. Thanks. Thanks,
12 everyone.

15:34

13 Okay, Mr. Metheral, closing arguments.

14 MR. METHERAL: Great. This is what I've been
15 looking forward to. Feels like a long day in this
16 seat.

17 Okay. I would present some closing arguments, and
18 Mr. van Huigenbos would follow up with a small piece
19 also.

20 So, we would like to thank the Board and other
21 participants that have supported this Board review
22 today.

15:35

23 A&D Cattle started this application process about
24 a year ago, and I know they are looking forward to a
25 final decision on this issue.

1 In summary, A&D Cattle state the following: It's
2 our position that this application was quite
3 straightforward. It met all the technical and planning
4 requirements that were submitted back in November of
5 2021. There were no changes to the application after
6 November 30th, 2021.

7 However, through no fault by A&D Cattle, the
8 application saw unwarranted delays associated with the
9 review process. Some of these delays were intentional
10 and some perhaps not.

11 A&D Cattle believe the decision to delay public
12 notice due to the NRCB office closure was
13 inappropriate. NRCB office closure was at the end of
14 December and into January of 2022. However, this
15 policy delayed the review process and ultimately
16 delayed the approval officer's decision.

17 It's our position there were 16 working days in
18 December prior to the NRCB office closure. The
19 approval officer justified the December delay,
20 suggesting it was important for staff to be available
21 and that field office be open in case there's public
22 review -- in case public review is warranted.

23 However, it's understood that the Lethbridge field
24 office has been closed since 2020 due to COVID
25 restrictions, and NRCB field office was not open in

15:36

15:36

1 December of 2021.

2 While AOPA does require 20 days for public notice,
3 it does state that these days need to be consecutive
4 nor that the notice period be delayed to accommodate
5 statutory holidays for government days off.

6 The approval officer and the director confirmed
7 that the AOPA approval officer was working remotely and
8 had all the tools he needed to communicate with the
9 public. Therefore, A&D Cattle believe that the
10 argument provided to delay this decision was not
11 suitable.

15:37

12 During this hearing, we also heard new testimony
13 that the approval officer had to accommodate the
14 publication dates for the Fort Macleod Gazette. I
15 believe Mr. Cumming mentioned that Friday was the
16 deadline for the following Wednesday date publication.

17 In this -- in this case, A&D Cattle would accept
18 that the public notification could have been moved to
19 as early as December 8th. This calculates to 12
20 working days' delay in December.

15:38

21 Mr. Sonnenberg agreed that he could have met
22 publication dates in December; however, his main
23 argument was still based on the NRCB office closure
24 policy.

25 Equally important to Mr. van Huigenbos is that he

1 was not aware of the NRCB closure policy until it was
2 mentioned to him in December. Given a deadline,
3 Mr. van Huigenbos could have adjusted his submissions
4 to meet any deadline given to him. But how should he
5 have known this? As late as November 16th in his
6 email, the approval officer was talking about
7 proceeding with public notice. Okay?

8 A&D Cattle also believe there were delays during
9 the review process itself. For example, the approval
10 officer was required to be prompted in order to provide 15:39
11 statements of concern, and, again, checking on the
12 status of the application, there was a request for
13 additional information. It's estimated there were over
14 40 working days from January, February, and into March,
15 and yet it's as late as March 14th where we see the
16 approval officer is looking for more information.

17 A&D Cattle -- A&D Cattle was disappointed that the
18 approval officer was still collecting information that
19 could have been easily collected earlier.

20 A switch in gears, I've made an effort to better 15:39
21 understand the approval officer when he asked for an
22 internal review of his decision, and let me explain
23 why.

24 I asked the Board to consider that the approval
25 officer had already made his decision. It was an

1 approval, which was sent for internal review prior to
2 the adoption of the IDP by the County. It was
3 determined that this process review was initiated by
4 March 16th, so it's likely that the approval officer
5 had made his decision prior to that date.

6 I would like the Board to consider when the
7 approval officer actually made his decision. The issue
8 date becomes less relevant because AOPA speaks about
9 when the approval officer determines if the MDP or
10 other planning tools are considered. This logic would
11 determine that as the approval officer went through the
12 review process, he made his decision prior to
13 March 16th.

14 Regarding the appropriateness of the IDP and CFO
15 exclusion zone, testimony was given that the CFO
16 exclusion zone is based on a negotiation between the
17 town and county. The distance from the town and
18 direction of the CFO exclusion zone was set based on
19 prevailing winds because of the potential for nuisance
20 from other CFOs. It was determined without scientific
21 merit or documentation; however, we know that AOPA
22 addresses nuisance and impact from neighbours.

23 Without clear, scientific reasoning, how can the
24 municipality reasonably adopt an exclusion zone that is
25 fair and appropriate?

15:40

15:41

1 In conclusion, the A&D Cattle would suggest that
2 their feedlot application experienced unwarranted
3 delays throughout the NRCB process and had these delays
4 not occurred, it is likely that the application could
5 have been assessed based on the MDP which was in place
6 prior to March 9th.

7 In total, we estimate about 28 days of delay.
8 Perhaps these dates are up for negotiation, but the
9 point is, without the delays, it is possible that the
10 approval officer could have issued his decision in
11 February.

15:42

12 Further, had the approval officer been efficient,
13 as some of his other actions, the decision could have
14 been even earlier than that.

15 A&D looks forward to the Board's decision and
16 requests that the Board reverse the approval officer's
17 decision and it grant an approval for the site.

18 Thank you. Thank you. I would pass -- I would
19 like to hear from Mr. van Huigenbos with his thoughts
20 as a final argument, too.

15:43

21 THE CHAIR: Mr. van Huigenbos.

22 MR. VAN HUIGENBOS: So a little bit of a background on
23 myself. I was born on a family farm northwest of Fort
24 Macleod. I lived there until we moved off in 2017 when
25 my dad sold the farm.

1 On June 9, 2015, I broke my back, burst my spleen
2 and fractured one of my ribs when a loader bucket
3 landed on me. Spent ten days in the hospital and left
4 the hospital with a back brace and was not allowed to
5 lift more than five pounds for half a year.

6 A month and a half later, I was working on the
7 farm driving equipment. Two months later, I was doing
8 the same work as I was doing before -- excuse me
9 here -- before my accident, just being a little more
10 careful.

15:44

11 In 2017, my dad sold the farm to my brother, and I
12 was hoping myself that one day I'd be an owner on the
13 farm but that didn't happen because my brother took the
14 farm a long ways, and it wasn't possible for me to
15 become owner there. So I had to start looking for my
16 own place.

17 I started driving around and looking at my
18 neighbours' places and we found a farm, a neighbour or
19 someone that wanted to sell, but all of a sudden -- he
20 was looking to sell in spring, but all of a sudden he
21 sold to his neighbour.

15:45

22 In the spring of 2021, the NE 27-8-26-4 went up
23 for bids. We ended up -- knowing that it had a
24 potential for a small feedlot and that it was quite a
25 ways away from town, we put in a bid that was well over

1 market value and ended up getting it. We spent some
2 money to get the soil tested and engineered and waited
3 a long time to get a decision. It was not easy for us
4 to wait this long to get a decision, but it got harder
5 after we found out it got denied.

6 The denial was very hard on my wife and me since
7 our second child is on the way and we live in an old
8 small house that doesn't have room for a growing
9 family.

10 Starting a feedlot would give us a good income and
11 then we'd be able to build a new house. This denial
12 made it feel like we had no more future and that we
13 would have to sell and move back to town. We had one
14 chance to get our permit and that was to have a Board
15 review, which we are having right now.

15:45

16 This costed a large sum of money to hire
17 Cody Metheral and many hours collecting information.
18 Between the denial and this Board review, there are
19 many days that I was frustrated, disappointed,
20 depressed, angry. I don't know what we'll do if we
21 don't get this permit. This application is for a small
22 feedlot and cannot be compared to a 25,000 head
23 feedlot.

15:46

24 According to the AOPA, the footprint of a 2,000
25 head feedlot is 500 metres, but the economical impact

1 of this would be a lot -- would be much greater. The
2 surrounding land increases in value due to manure and
3 demand. Everyone benefits when a small local business
4 gets ahead. Thank you.

5 THE CHAIR: Thank you, Mr. van Huigenbos and
6 Mr. Metheral. Much appreciated.

7 Ms. Vance, do you have any closing arguments?

8 MS. VANCE: I do. Thank you, Mr. Chair.

9 And thank you to Mr. Metheral and
10 Mr. van Huigenbos for your submissions in front of me. 15:47

11 As our written submission says, the NRCB Field
12 Services and the approval officer aren't taking a
13 position on the outcome or remedy of this hearing
14 today, and I'll refer the Board to our written
15 submissions, which is at Exhibit 21.

16 I don't see any utility in repeating information
17 that is already before the Board. And, for the most
18 part, you will recall that our submission provides
19 relevant information without taking a stand. And, of
20 course, the one exception relates to the alleged delay, 15:48
21 which is a word that has been used in many different
22 senses today.

23 You've heard evidence from Mr. Sonnenberg on his
24 recollection of how this application file unfolded.
25 You've heard that he, in no way, deliberately,

1 improperly, or unnecessarily delayed issuing this
2 decision.

3 Not only do approval officers handle multiple
4 files at once, but, of course, many of the hiccups that
5 may happen in a file are not entirely under their
6 control either.

7 Mr. Sonnenberg told us today that he was trying to
8 get this one out the door. He told us he was working
9 in the ordinary course. And I observed that he issued
10 his decision within the 65-day -- working-day
11 performance goal that -- that we have internally here
12 at the NRCB.

13 Still on the issue of the timelines, I might just
14 reply to A&D Cattle specifically.

15 It was suggested that the approval officer made
16 his decision on a date other than April 1st. I would
17 say, first of all, that this is a brand-new argument
18 that nobody has seen in this proceeding today. And I
19 suppose I can just say that there is no evidence to
20 support that. The evidence is that the approval
21 officer made his decision, issued it on April 1st.

22 In relation to the holiday closure, I think that
23 has been well covered in testimony. Of course, if the
24 Board feels that the longstanding practice at the NRCB
25 of not having public notice bridge that holiday

15:49

15:49

1 closure -- if that is no longer a valid or reasonable
2 practice, we, of course, welcome guidance from the
3 Board on how this can still protect the integrity of
4 public notice and public input on which the NRCB so
5 greatly relies.

6 There also appears to be some misunderstanding on
7 the part of Mr. van Huigenbos and perhaps even on the
8 part of the MD of Willow Creek as to the role of the
9 NRCB. And I think I can speak for our organization to
10 say that we do strive to get out there and provide
11 information on the NRCB, and we would be happy to
12 continue to do that.

15:50

13 The NRCB is a regulator. Our staff do their job
14 under AOPA, which is a statute, that governs their
15 actions. The NRCB, as a regulator, is an independent
16 arm's-length agency of the Government of Alberta. We
17 do not act or represent producers. We do not act for
18 or represent municipalities or environmental groups; we
19 simply do our job under AOPA.

20 And, finally, there was some suggestion that
21 Mr. Sonnenberg was not as efficient as he has been in
22 other files or maybe not as efficient as other approval
23 officers have been on other files.

15:51

24 A&D made this argument, and the MD of Willow Creek
25 also argued that this file should have been processed

1 in the same manner and timeline as Double H. That was
2 the decision that they used.

3 And the two arguments -- the two decisions that
4 A&D cited, I would observe that one wasn't even issued
5 by this approval officer.

6 And it's not quite comparing apples to oranges,
7 but I'm thinking it would be like trying to find two
8 apples that are exactly the same in an orchard full of
9 apples. This is really an impossible thing to do. The
10 NRCB has issued thousands of decisions over the past
11 years and they are all different, I believe.

15:52

12 You've listened to Mr. Sonnenberg speak, and
13 Mr. Cumming as well, about how each file is different.
14 And you've also heard that he had a dozen or so files
15 on his desk at that time.

16 I submit that, given the evidence that is before
17 the Board, there is no merit to the suggestion that
18 there was unwarranted delay in this matter. Otherwise,
19 as stated before, we do not take a position on the
20 other issues under consideration. Thank you.

15:52

21 THE CHAIR: Thank you, Ms. Vance.

22 Ms. Finlay, MD Willow Creek?

23 MS. FINLAY: Hello?

24 THE CHAIR: Hello. It's all working.

25 MS. FINLAY: So the MD of Willow Creek's

1 submissions on this matter are at Exhibit 20. And I
2 don't propose to read through those. The Board is
3 capable, and as the Chair has indicated, those
4 submissions have already been reviewed, and so I don't
5 propose to do that. But I do want to address a couple
6 of points and highlight a few points in our
7 submissions.

8 The first thing that I wanted to address relates
9 to Willow Creek's participation in this proceeding.
10 Municipalities may not have participated in these
11 proceedings in the same way as Willow Creek in this
12 proceeding, but there's nothing that precludes them
13 from doing so.

14 And, in fact, in other types of regulatory
15 proceedings, municipalities do participate, and they do
16 so to support in some cases their constituents. For
17 instance, when there are routing decisions for power
18 lines through certain areas, residents will often
19 intervene, but sometimes so does the municipality.

20 So our submission is there's nothing inappropriate
21 or contrary to legislation or otherwise with respect to
22 Willow Creek intervening here.

23 Its concerns are limited, and they're limited to
24 the process and, in part, part of what the review
25 process allows the municipality to do is obtain more

15:53

15:54

1 information about that process and ask questions about
2 that process.

3 And the Willow Creek's position is narrow. If
4 that delay -- or if any of the delays were in the
5 ordinary course or they're the delays that result from
6 ordinary processing, then Willow Creek takes no
7 position on the issuance of the approval.

8 Specifically, it was concerned about intentional
9 delay resulting from the two things that are identified
10 in paragraph 1, which are that it would have been
11 delayed by the pending approval of the IDP or that it
12 was delayed to account for the pending decision with
13 respect to Double H Feeders.

15:55

14 And so through these proceedings today, we've had
15 lots of evidence on the nature of any delays. And the
16 reality is there were some delays. The real issue is
17 were they inordinate? Were they unreasonable? And
18 this Board will have to determine if that's the case.

19 I think the other thing I really wanted to point
20 out and direct your attention to is the technical
21 document from the approval officer, which is an
22 attachment to the Willow Creek submissions.

15:56

23 And the only thing that I want to say about that
24 is that I invite you to review it. As Ms. Vance just
25 stated point, you review -- the NRCB receives many of

1 these applications. There are thousands of decisions
2 on them. And, of course, you review these on a regular
3 basis. And I think you are in a very good position to
4 review that technical document and come to your own
5 conclusion about how that review proceeded and when
6 most of the review was done. And you're in a good
7 position to determine, again, whether there's any
8 suggestion or whether it's valid that there were delays
9 that were inordinate.

10 So that's what I wanted to say about that.

15:56

11 The other point that I wanted to make about
12 Willow Creek's participation is that, of course, these
13 decisions -- and I believe that's why municipalities
14 are affected parties and able to initiate reviews is
15 because, of course, these decisions do have an impact
16 on them and on the communities and ratepayers that
17 reside within them.

18 And so Willow Creek understands that the NRCB is a
19 provincial regulator. They understand that. But those
20 decisions and those processes do have an impact on the
21 municipality, on what occurs in the municipality, and
22 it has an impact on the ability of its residents to
23 make a living. And that's not to say that in this
24 case, the application should go one way or the other.
25 That's the tough decision that you have to make.

15:57

1 But to suggest that the municipality has no
2 interest in ensuring and understanding the process
3 through which those decisions are made is not accurate.
4 They do have an interest in that.

5 The last thing that I want to touch on very
6 briefly is the question of when the approval officer
7 should have considered compliance with the IDP. And
8 what I want to say with respect to that is simply you
9 have our submissions on that. It is conceded that the
10 decisions that we've referred to at least with respect
11 to the consideration of compliance with land use
12 bylaws, yes, there are decisions that suggest that
13 changes after an application has been made do not
14 apply.

15 But it's fully conceded that in the case of both
16 *Love v. Flagstaff* and *Boyd*, both of those did deal with
17 permitted uses or what uses they were permitted for a
18 short period of time within which the application was
19 made.

20 The reality is, at least with the work that I did,
21 I could not find a comparable situation to this, and I
22 would certainly submit that this isn't a circumstance
23 where the applicant has a vested right as of the date
24 that they make an application. It is a discretionary
25 application, and an approval officer has to make a

15:58

15:59

1 determination based on all the information that they
2 have whether or not they're going to grant the
3 application.

4 The only thing that I would highlight, though, is
5 the wording of Section 20, which is, of course, the
6 section of AOPA that requires the consideration of
7 compliance with an MDP. And, of course, it does say
8 "MDP." I'm not going to go into the debate that
9 occurred during the hearing of the Double H Feeders
10 decision. I think an MDP does have to comply with an
11 IDP, and, therefore, I don't disagree with a finding
12 that says, effectively, when you've made an IDP
13 revision, your MDP is required to be compliant.

16:00

14 But when you look at how the review process is to
15 occur, it does seem to suggest that that review process
16 occurs before the application goes out to the public,
17 because if it is non-compliant with the MDP, then it
18 gets denied. And if it is compliant, then you go on
19 with the public notice.

20 And so certainly one conclusion that this Board
21 could come to is that that is the appropriate time to
22 consider whether there's compliance with an IDP.

16:00

23 And other than that, I'm certainly to open to
24 answering any questions, but those are our final
25 arguments.

1 THE CHAIR: Thank you, Ms. Finlay.
2 We'll move to the town of Fort Macleod.
3 Ms. Agrios?

4 MS. AGRIOS: Thank you. And for the Board's
5 reference, the town submissions are found at
6 Exhibit 19, and that is primarily where I will be
7 referring to various pages in that submission.

8 This development is within the CFO exclusion area
9 as identified in the town of Fort Macleod/MD of
10 Willow Creek intermunicipal development plan. Both
11 municipalities agreed to the CFO exclusion area on
12 November 19th of 2021. There was time required after
13 that date in order to implement the agreement, and so
14 both the town and the MD gave first reading to the IDP
15 bylaw in late January of 2022. The town passed its IDP
16 bylaw February 28th of 2022, and the MD passed it on
17 March 9th of 2022.

16:01

18 Now, in Mr. van Huigenbos's submission -- so I'll
19 just give you the reference; it's at Exhibit 22,
20 page 6 -- he acknowledges that he was aware of the IDP
21 as of November 3rd. And according to his submission,
22 Joe Sonnenberg, approval officer, came for a site visit
23 and helped fill out the Part 2 application.

16:02

24 We also discussed the town of Fort Macleod and the
25 MD of Willow Creek's proposed IDP.

1 As stated I would like to see that this
2 application gets a decision soon.

3 So he was aware that there was an IDP coming as of
4 early November and prior to submission of the Part 2
5 application.

6 In addition, as you heard, the draft IDP that
7 references the CFO exclusion area, that was publicly
8 posted to both the towns and the MD's website on or
9 within days of November 19th of 2021. And, again, that
10 showed the CFO exclusion area, which was ultimately
11 passed.

16:03

12 And so it could not have been a surprise to the
13 applicant that there was a CFO exclusion area that
14 ultimately was adopted. I say "he." He was aware that
15 something was coming early November, 2021. It was
16 publicly made available in later November 2021 all
17 prior to submission of the Part 2 application.

18 As you also heard today, the IDP, in fact, had
19 been in process going back to 2019, and the original
20 versions of the IDP were proposing a much larger CFO
21 exclusion area. And you heard that the MD, in fact,
22 had an open house going back to 2019.

16:04

23 So, again, this was publicly known and publicly
24 out there that there was a CFO exclusion area under
25 discussion between the town of MD and had been for a

1 number of years.

2 I want to address the arguments regarding timing
3 and at what point in time -- or what bylaws the
4 approval officer should consider and at what point in
5 time. And these points are addressed in my submissions
6 at paragraphs 33 to 41, and that starts at page 7 of
7 the pdf Exhibit 19.

8 And so the starting point is that land use
9 decisions are made as of the date -- the bylaw is in
10 effect as of the date of the decision, not the date of
11 the application. 16:05

12 And I have cited cases to this effect
13 at paragraph 34, and those are found on pages 7 and 8
14 on the pdf at Exhibit 19.

15 In its submissions, the MD referenced the *Boyd*
16 *Builders* case and made a suggestion that the decision
17 should be based on the law enforced at the time of the
18 application. *Boyd* is distinguishable from the present
19 case. It did have very unique facts in *Boyd*.

20 To begin with, in *Boyd*, the new bylaw -- so the
21 bylaw changed because of a process in place in Ontario
22 for adoption of bylaws. The new bylaw actually wasn't
23 even in effect at the time of the decision. So it
24 wasn't in effect at the time of the application; it
25 wasn't in effect at the time of the decision, so 16:05

1 clearly not applicable.

2 The more important point for *Boyd* is there was an
3 express finding of bad faith. And so in *Boyd*, the
4 Court had found that the purpose of passing the bylaw
5 was in order to defeat a particular -- that particular
6 application.

7 In this case, we don't have those facts. There's
8 no suggestion of bad faith with respect to the IDP.
9 The IDP had been in process for years prior to this
10 application. It was agreed to prior to the Part 2
11 application.

12 And an IDP is something that's mandated by the
13 *Municipal Government Act*. So, in fact, what the town
14 and MD were in the process of doing was following the
15 requirements imposed on them by the *Municipal*
16 *Government Act* to adopt an IDP.

17 The IDP had also cited the decision of
18 *Love v. Flagstaff* as a supporting -- again, citing that
19 decision to support that the decision should be based
20 on the bylaws as of the date of the application.

21 The MD, I submit, has misinterpreted the *Love*
22 decision. So *Love* was dealing with a change in facts
23 post application; it was not dealing with a change in
24 the law. And so the *Love* decision, the Court found
25 that a subsequent change in facts cannot defeat a

16:06

16:06

1 permitted use application, but it does not deal with
2 the impact of a subsequent change in the law.

3 And, of course, I've cited all the cases that say
4 with respect to changes in the law, it's the law in
5 effect at the time the decision is rendered.

6 Lastly, and perhaps most importantly, is that both
7 the *Boyd* decision and the *Love* decision are based on
8 permits that the applicant was entitled to as of right.
9 So the Court was able to find that the applicant's
10 rights crystalized when the application was made,
11 because as soon as the application is made, the
12 applicant is entitled to a permit.

16:07

13 That is not the case with respect to an
14 application for an approval under AOPA. The approval
15 officer does have discretion whether to approve or
16 deny. And Ms. Finlay, I believe, quite fairly conceded
17 that an applicant under AOPA does not have a vested
18 right or a crystalized right as of the date of the
19 application.

20 And so, therefore, the usual law -- and that is
21 that the decision is based on the law in effect at the
22 time of the decision -- that is what's applicable.

16:08

23 So it's my submission that the approval officer
24 was correct to deny the approval based on the IDP CFO
25 exclusion area that was in effect as of the date of the

1 decision.

2 And so we now come to the NRCB and what should the
3 NRCB do, because, of course, this Board is not bound by
4 the IDP. But, nevertheless, I submit this Board should
5 follow the IDP unless there are sound reasons not to do
6 so.

7 And you heard from both planners, Ms. Horvath and
8 Mr. Scott, as to the planning rationale for the CFO
9 exclusion area, and some of it is actually discussed in
10 the IDP itself, some of it is discussed in the
11 submissions.

12 And so as a starting point, the land in the south
13 corner of the town is designated as future residential
14 in the town's MDP. That is found at Exhibit 19, starts
15 at page 138. The land use map is at page 139 -- these
16 are the pdf page numbers -- 139, and there are the land
17 use descriptions at page 140.

18 And so as a starting point, again in recognition
19 of the future planned residential within the town, and
20 as you've heard the prevailing winds, the CFO exclusion
21 area was confined to the southwest corner of the IDP
22 plan area. So the idea was to try to balance the needs
23 of agricultural users with residential uses. And so
24 when you look at the IDP, again as Mr. Scott indicated,
25 it did start with a complete -- a complete circle

16:09

16:09

1 around the town but that was reduced, and so it was
2 reduced again to the area where the future planned
3 residential is within the town. It was based on the
4 prevailing winds and, therefore, confined to just a
5 portion of the IDP area.

6 The IDP recognizes existing CFOs, and it also
7 preserves existing policies for ILOs. The point is or
8 the purpose is to minimize conflicts and nuisances
9 between CFOs and residential uses. It does represent a
10 compromise reached between the town and the MD as to 16:10
11 reasonable restrictions for CFOs. And, as Mr. Scott
12 described it, it was a political negotiation.

13 As a planner, he would have recommended, or he did
14 recommend, a larger area, but it was part of a
15 political negotiation, and part of that negotiation and
16 what you see in the IDP was there is an area designated
17 as a CFO exclusion area, but that same area also now
18 qualifies for municipal services from the town.

19 Now, this is important because there was -- and I
20 did hear some discussion regarding the highway -- or 16:11
21 the future planned highway and future development plans
22 in the MD.

23 Exhibit 19, page 32, that is where the servicing
24 area is set out. And as you've heard, the introduction
25 of services into the CFO exclusion area provides an

1 opportunity for future residential development. And so
2 this includes areas south of the future planned highway
3 as well because those areas also qualify for future
4 servicing.

5 And so given the potential for servicing as you've
6 heard, there is an expectation for eventual residential
7 development in this area.

8 So what you have is the town's MDP, future
9 residential development in the south corner of the
10 town, and you also have now an IDP that provides for an
11 extension of services into the CFO exclusion area and
12 that provides an opportunity for future residential
13 development in the County -- sorry, in the MD as well.

16:12

14 And so based on the foregoing, the town's request
15 is that this Board uphold the approval officer's
16 decision to deny the application based on the property
17 being located within the CFO exclusion area.

18 I'd be happy to answer any questions. Those are
19 all my submissions.

20 THE CHAIR: Sorry about that. On mute.

16:13

21 Thank you, Ms. Agrios.

22 Do Mr. and Mrs. Conner have any closing argument?

23 MR. CONNER: Not much. More or less just to
24 touch on Ms. Agrios' town (verbatim), on the fact that
25 we believe if you were going to pay above market value

1 for land and do a bunch of research and put money in
2 and invest, create a feedlot, that you would have
3 initially talked with somebody at the MD. It's not
4 like the IDP is a new process that's only been around
5 for six months or a year; it's been around for a few
6 years.

7 And so you think that you would have -- because,
8 eventually, you'd need a development plan or something
9 with the MD to construct buildings and everything for a
10 feedlot, that you would have been in initial
11 conversation where this IDP would have been brought
12 up, and I think that would have saved a lot of
13 heartache. But that's kind of our only finishing
14 comment, I guess.

15 THE CHAIR: Okay. Thank you, Mr. Conner.

16 Mr. Lewis.

17 MR. LEWIS: Yes, I just want to comment as a
18 person who is going to be living out there, and what an
19 impact it's going to have on the community out there.

20 First concerns are our health, our air quality,
21 our water quality, and quantity, the odour and dust,
22 our property values. And the big thing is manure
23 management.

24 Where we live, the land based for manure spreading
25 will be to the north, the west, and the south of us.

16:14

16:14

1 So we're completely surrounded by land that's going to
2 have manure on it eventually. And that's my concern,
3 just as a person who is -- who is living out there and
4 wants to stay living out there. Thank you.

5 THE CHAIR: Thank you, Mr. Lewis.

6 So, Mr. van Huigenbos, Mr. Metheral, you have an
7 opportunity for reply to the arguments made after your
8 submission on closing argument. Did you have anything
9 in reply?

10 MR. METHERAL: Yes, hi.

16:15

11 I do have a couple of quick comments.

12 We do appreciate that the NRCB field staff have
13 asked the Board to review the NRCB office closure
14 policy. We are in a strong belief, and we will
15 reiterate, this policy resulted in a direct delay of
16 the approval process -- a review of this application,
17 full stop.

18 The NRCB provided justification for the policy,
19 but A&D Cattle do not believe their argument has merit.

20 The approval officer had all of the tools he
21 needed to do his job in December.

16:16

22 A&D Cattle do appreciate the arguments from
23 Ms. Finlay regarding when an approval officer should
24 consider the appropriateness of an MDP. This topic was
25 not really explored today in the hearing, but I think

1 Ms. Vance will find the basic arguments in the County's
2 submission, Exhibit 20.

3 Like the NRCB office closure policy, we would
4 encourage the Board to fully explore when the approval
5 officer actually reviewed the MDP and issued his
6 decision. Perhaps it is before the issue date. I
7 would repeat that. We would encourage the Board to
8 fully explore when the approval officer considered the
9 MDP. It is possible that it was prior to having the
10 team review the document through the internal review
11 process and not when it issued. 16:17

12 Ms. Agrios, I'm sure I said that wrong, would
13 suggest that Mr. van Huigenbos was aware of the IDP as
14 being discussed, and that he should not be surprised by
15 the CFO exclusion zone. After three years of
16 negotiation, including a provincial tribunal with
17 multiple CFO exclusion zones and multiple IDP areas,
18 neither the town nor the County's historic actions
19 would suggest that there was anything tangible from
20 A&D Cattle for them to consider. 16:18

21 I would conclude those comments for now.

22 Thank you.

23 THE CHAIR: Very well. Thank you,

24 Mr. van Huigenbos and Mr. Metheral.

25 Well, that concludes the evidentiary

1 cross-examination, closing arguments, so, essentially,
2 the hearing process.

3 I'd just like to close with a few comments and a
4 few thank yous, if you don't mind, and we are just
5 after quarter after 4. So one of my first thank yous
6 is for folks keeping focused and time so we could
7 complete the hearing in one day.

8 And on behalf of the entire Panel, I would like to
9 thank everyone for their participation in the review
10 process. You know, no doubt, these are a little
11 intimidating and we heard a little bit of emotional
12 evidence given by -- or testimony given by
13 Mr. van Huigenbos, and so -- and one of the neighbours.
14 It is a formal process that you're not used to, not
15 comfortable with necessarily, so we really appreciate
16 the fact you came out, you gave it your best and you
17 provided information for us that will be extremely
18 useful in reaching our decision.

16:19

19 Field Services, thank you for bringing
20 your -- well, for legal counsel. And, Mr. Cumming and
21 for Mr. Sonnenberg, much appreciate your submissions
22 and your evidence and cross-examinations today.

16:20

23 Ms. Kaminski and Taylor, I think you would agree
24 with me, once again, when exhibits were asked for by
25 page number, it's almost instantaneous. It's hard to

1 believe that there's actually human beings behind the
2 scenes doing this. It just seems like it's just a
3 computer generating this. So thank you very much to
4 our document managers. It really makes our job easier,
5 and it makes the hearing process run smoothly when we
6 have the documents up on the screen so everybody can
7 see what we're referring to as we move along. So thank
8 you very much.

9 Ms. Vespa, once again, a great job on keeping me
10 in line and also the transcripts, which will be coming
11 out very shortly, but thank you very much for the hard
12 work on court reporting.

13 And also to Mr. Elhakim from MNP in ensuring that
14 our Zoom virtual platform operated flawlessly today.

15 And on behalf of the Board, I would like to thank
16 Ms. Friend and Mr. Kennedy. The hearing is arranged
17 and works because of Ms. Friend's behind-the-scenes
18 work. Thank you very much.

19 And, of course, the Panel relies heavily on
20 Mr. Kennedy and his questioning and also his advice
21 through the whole process for the Panel. So thank you
22 very much to both of you.

23 And as I've said, we have received a lot of
24 helpful information through both direct evidence and
25 through the cross-examinations. We will consider the

16:20

16:21

1 information in reaching our decision. We will provide
2 a decision to all parties in written form with reasons.

3 Our longstanding performance target -- I know we
4 talked a lot about performance targets today, but for
5 the Board is to issue it within 30 working days, which
6 is roughly six weeks, and I see no reason that we won't
7 issue our decision prior to that deadline on this file
8 as well.

9 So that brings us to the conclusion of the
10 hearing. A big thanks once again to all of you folks
11 for the participation in the hearing. We understand
12 that it is -- you know, will be impactful for the
13 community. We take it seriously, and we will be
14 issuing our decision, as I say, within the six weeks.

15 So thank you very much, and the hearing is now
16 adjourned.

17 (PROCEEDINGS ADJOURNED AT 4:22 P.M.)

18 _____
19 PROCEEDINGS CONCLUDED
20 _____

21
22
23
24
25

16:22

1 Certificate of Transcript

2

3 We, the undersigned, hereby certify that the foregoing
4 pages 1 to 233 are a complete and accurate transcript of
5 the proceedings taken down by us in shorthand and
6 transcribed from our shorthand notes to the best of our
7 skill and ability.

8 Dated at the City of Calgary, Province of Alberta, on
9 July 7, 2022.

10

11

12

"Lorelee Vespa"

13

Lorelee Vespa, CSR(A) RPR CRR

14

Official Court Reporter

15

16

"Eveliene Symonds"

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Eveliene Symonds, CSR(A)

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Official Court Reporter

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23	and when HE approved it for review (undertaking	
24	fulfilled at page 94)	
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