

Form 7
[Rule 3.8]COURT FILE NUMBER: 2101 -08433

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE: CALGARY

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\$250

APPLICANT: THREE SISTERS MOUNTAIN VILLAGE PROPERTIES LTD.

RESPONDENT: TOWN OF CANMORE

DOCUMENT: ORIGINATING APPLICATION FOR JUDICIAL REVIEW

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENTSHORES JARDINE LLP
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FILE NO.: 2269-00001 WWS/GSP**NOTICE TO THE RESPONDENT**

This application is made against you. You are a Respondent.

You have the right to state your side of this matter before the Court.

To do so, you must be in Court when the application is heard as shown below:

Date: July 22, 2021
 Time: 10:00 am
 Where: Calgary Courts Centre
 Before: Justice in Chambers

Go to the end of this document to see what you can do and when you must do it.

To appear by video:<https://www.albertacourts.ca/qb/court-operations-schedules/scheduling>**Civil Chambers - Virtual Courtroom 58 (CCC QB)****To appear by telephone:**

Dial in Number: 780-851-3573

Access code: 968 555 507

Basis for this claim:

1. In 1992, the Natural Resources Conservation Board ("NRCB") approved the development of a recreational and tourism project (the "Project") within the boundaries of the Town of Canmore (the "Town"), subject to conditions. The NRCB described the approval in its Decision Report 9103, dated November 25, 1992 (the "NRCB Approval"). The NRCB Approval was authorized by the Lieutenant Governor through Order in Council 08/1993 dated January 6, 1993. The Town does not have the authority to refuse applications respecting land use planning which are consistent with the NRCB Approval.
2. The Applicant, and the predecessor owners of the Project, have endeavoured to obtain planning approvals for the Project from the Town. The process has been characterized by long delays, and unauthorized and unnecessary impediments and procedures designed to frustrate the Project.
3. Between 2017 and 2020, the Applicant worked with the Town to develop a new area structure plan for lands within the Project called the Three Sisters Village (the "Three Sisters Village ASP."). The proposed future development within the Three Sisters area complied with the NRCB Approval.
4. On February 9, 2021, Town Council gave first reading to the Three Sisters Village ASP. Town Council then held a public hearing for the Three Sisters Village ASP, which opened on March 9, 2021 and closed on March 17, 2021.
5. On April 27, 2021, Town Council unilaterally and without any consultation with the Applicant made significant amendments to the Three Sisters Village ASP. Town Council then approved second reading of the amended Three Sisters Village ASP.
6. On May 11, 2021, Town Council made further amendments to the Three Sisters Village ASP but postponed third reading because of concerns expressed by the Applicant in a letter to the Town. The postponement was to allow the Town's administrative staff (the "Town Administration") and the Applicant to discuss the implications of the amendments within narrow parameters set by Town Council and to allow the Town Administration to advise Town Council on planning matters.
7. On May 25, 2021, Town Council made further amendments to the Three Sisters Village ASP, some of which appear to be partially in response to advice given to them by Town Administration following discussion with the Applicant. Town Council made other amendments without discussion or consideration of the concerns expressed by the Applicant. Again, a number of these amendments were outside the authority granted to the Town under the *Municipal Government Act*. Town Council then voted to defeat the Three Sisters Village ASP at third reading on May 25, 2021, referring to irrelevant considerations, matters outside the Town's authority and for reasons that had been addressed by the amendments already adopted by Town Council.
8. Under the provisions of the *Municipal Government Act*, in particular section 619, Town Council was required to approve the Three Sisters Village ASP because the ASP complied with the NRCB Approval.

9. Alternatively, the Applicant had a legitimate expectation that Town Council would not summarily reject the Three Sisters Village ASP at third reading and further, that Town Council would properly consider the issue of the Three Sisters Village ASP's compliance with the NRCB Approval and the Applicant's compliance with the extensive requirements imposed by the Town.
10. The Town erred in the following ways:
 - a. Town Council failed to comply with its obligations under section 619 of the *Municipal Government Act* and the statutory regime governing the NRCB Approval;
 - b. Town Council failed to consider relevant considerations, and in particular, the NRCB Approval;
 - c. Town Council considered irrelevant considerations, including but not limited to
 - i. concerns about the adequacy of the wildlife corridor, which wildlife corridor fell within the authority of the Government of Alberta and had been approved by the Government of Alberta;
 - ii. concerns about undermining, which concerns fell outside the authority of the Town to consider under Part 17 of the *Municipal Government Act*, by reason of section 3(1) of the *Canmore Undermining Review Regulation*, AR 34/2020;
 - iii. Town policies which are inconsistent with or violate the NRCB Approval;
 - iv. seeking to extract for no compensation, and without statutory authority, additional affordable housing beyond that which had been voluntarily proffered by the Applicant as part of the Three Sisters Village ASP; and
 - v. matters which had been resolved by the Terms of Reference adopted by the Town for the ASP, including the footprint of the Three Sisters Village ASP.
 - d. Town Council acted with the improper purpose of limiting development of the Three Sisters area;
 - e. Town Council acted outside of its role under the applicable statutory regimes;
 - f. The Town breached the duty of fairness owed to the Applicant, including
 - i. failing to consider the legitimate expectations of the Applicant; and
 - ii. acting in a manner that gave rise to a reasonable apprehension of bias; or alternatively, acting with a closed mind.
 - g. Town Council failed to have regard for all the evidence provided by the Applicant to the Town; and
 - h. Such further and other grounds as may be established at the hearing of this application.

Remedy sought:

11. The Applicant seeks an Order of the Court:
 - a. Setting aside the decision of Town Council to not approve the Three Sisters Village ASP;
 - b. Requiring the Town Council to comply with the NRCB Approval and to approve the Three Sisters Village ASP;
 - c. Declaring that by reason of the NRCB Approval and the *Municipal Government Act*, in particular section 619, the Town is compelled to approve the Three Sisters Village ASP;
 - d. Abridging time for service of this Originating Application for Judicial Review, if required;
 - e. Providing direction, as a preliminary matter, as to service on other persons or parties who may potentially be directly affected by this application;
 - f. Such further and other relief as this Court deems just; and
 - g. Costs of this application.

Affidavit or other evidence to be used in support of this application:

12. Affidavit of Chris Ollenberger, to be filed;
13. The Certified Record of Proceedings, which has been requested from the Town; and
14. Such further and other evidence as counsel may advise and this Honourable Court may permit.

Applicable Acts and regulations:

15. *Alberta Rules of Court*, AR 124/2010, Rules 3.15 and 3.24.
16. *Municipal Government Act*, RSA 2000, c.M-26.
17. *Natural Resources Conservation Board Act*, RSA 2000, c.N-3.
18. *Canmore Undermining Review Regulation*, AR 34/2020.
19. Order in Council, 08/1993.

WARNING

You are named as a Respondent because you have made or are expected to make an adverse claim in respect of this Originating Application. If you do not come to Court either in person or by your lawyer, the Court may make an order declaring you and all persons claiming under you to be barred from taking any further proceedings as against the Applicant and against all persons claiming under the Applicant. You will be bound by any order the Court makes, or another order might be given, or other proceedings taken which the Applicant is entitled to make without any further notice to you. If you want to take part in the application, you or your lawyer must attend in Court on the date and time shown at the beginning of this form. If you intend to rely on an Affidavit or other evidence when the Originating Application is heard or considered, you must reply by giving reasonable notice of that material to the Applicant.

NOTICE TO

Minister of Justice and Solicitor General of Alberta

Pursuant to Rule 3.15, Notice of the within Originating Application is hereby given.