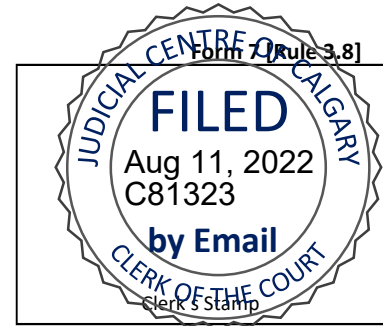


Justice Chambers (JC) – Physical Courtroom 1004

Reminder – Morning Chambers scheduled after July 4, 2022, to be heard on or after September 6, 2022, will be scheduled in person. Please visit:

<https://albertacourts.ca/qb/resources/announcements/hearing-guidelines-pilot-project>



COURT FILE NUMBER 2201- 09261
COURT Queen's Bench of Alberta
JUDICIAL CENTRE Calgary
APPLICANT THREE SISTERS MOUNTAIN VILLAGE PROPERTIES LTD.
RESPONDENT TOWN OF CANMORE
DOCUMENT **ORIGINATING APPLICATION**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT **Rose LLP**
2100, 440 – 2nd Avenue S.W.
Calgary, Alberta T2P 5E9
Attention: David J. Wachowich, Q.C.
Telephone: (403) 776-0505
Email: david.wachowich@rosellp.com
File No.: 10898-001

NOTICE TO RESPONDENTS

This application is made against you. You are the 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 September 29, 2022, ~~or alternatively, October 3, 2022 and October 4, 2022~~
Time 10:00 am
Where Court of Queen's Bench of Alberta Justice Chambers
Before Whom Justice in Motions Court

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

Basis for this claim:

1. The Applicant Three Sisters Mountain Village Properties Ltd. ("TSMV") is the owner and developer of large tracts of land situated within the southern boundaries of the Respondent Town of Canmore ("Canmore") in the Province of Alberta.
2. This land is locally known as "Three Sisters", or the "Three Sisters Land", and extends generally south of the TransCanada Highway, and north of a Rocky Mountain range, and has been the subject-matter of TSMV's residential, recreational, tourism, and commercial development plans for many years.
3. At all material times, the Respondent Canmore has maintained the status of a Town under the *Municipal Government Act*, RSA 2000, c. M-26 ("MGA").

4. The Three Sisters Land was the subject-matter, in 1992, of an "Application to Construct a Recreational and Tourism Project in the Town of Canmore, Alberta", brought before the Natural Resources Conservation Board ("NRCB"). The subsequent NRCB Report and NRCB Order dated November 1992, approved a recreational and tourism project, which was determined to be in the public interest.
5. In reliance upon the NRCB determination and approval, TSMV, while in coordination and communication with Canmore, and its administration, prepared two Area Structure Plans ("ASPs"). The ASPs particularized development projects to be situated on portions of the Three Sisters Land.
6. TSMV anticipated that, once passed by Canmore Town Council on behalf of Canmore, the ASPs would allow for the immediate initiation of subsequent planning applications to facilitate the implementation of the ASPs.
7. Notwithstanding the determination of the public interest and approval by the NRCB, Canmore Town Council on behalf of Canmore rejected, and dismissed, the two ASPs submitted to it by TSMV, on the dates set out below:
 - (a) April 27, 2021 Bylaw 2021-06, "Smith Creek ASP"
 - (b) May 25, 2021 Bylaw 2021-05, "Three Sisters Village ASP" [the "Village ASP"]
8. TSMV has at all times taken the position that both the Smith Creek ASP and the Village ASP were consistent with the NRCB Order, and that Canmore was required to approve each ASP, pursuant to the legal obligations set out in the *MGA*, s. 619(2):

When an application is received by a municipality for a statutory plan amendment,...or other authorization under this Part and the application is consistent with a licence, permit, approval or other authorization granted by the NRCB,...the municipality must approve the application to the extent that it complies with the licence, permit, approval or other authorization...
9. TSMV initiated Appeals of the Canmore Town Council's rejection of the ASPs before the Land and Property Rights Tribunal ("LPRT"), pursuant to the *MGA*, s. 619(5) by filing Notices on the following dates:
 - (a) July 9, 2021 Re: Smith Creek ASP
 - (b) August 6, 2021 Re: Village ASP
10. The hearings before the LPRT were held sequentially in February and March 2022
11. On May 16, 2021, the LPRT issued two Decisions with respect to the appeals, as particularized below, in each case determining that the ASP was consistent with the 1992 NRCB approval, and ordering that Canmore adopt the ASP as submitted:
 - (a) Smith Creek ASP – *Three Sisters Mountain Village Properties Ltd. v Town of Canmore*, 2022 ABLPRT 671, Decision No. LPRT2022/MG0671

(b) Village ASP – *Three Sisters Mountain Village Properties Ltd. v Town of Canmore*, 2022 ABLPRT 673, Decision No. LPRT2022/MG0673

12. Notwithstanding the LPRT Decisions, and TSMV's subsequent demands for compliance with Canmore's public law duty to convene Canmore Town Council and pass the Smith Creek ASP and Village ASP, as directed by the LPRT, Canmore has impliedly or expressly, and unlawfully, refused to pass either or both ASPs.
13. Canmore has taken this position notwithstanding the unconditional, unequivocal, and immediate requirements in law imposed upon Canmore by the LPRT Decisions.
14. On June 13, 2022, Canmore filed two "Applications of Town of Canmore for Permission to Appeal", with respect to each LPRT Decision, at the Alberta Court of Appeal.
15. Each application for permission to appeal specified that Canmore sought in addition "an order in the nature of a stay of proceedings with respect to the LPRT Decision and the order requiring the Applicant Town of Canmore to adopt the ASP", acknowledging Canmore's obligation to pass the ASPs, absent a stay. However, Canmore has since indicated that it will not be applying for a stay.
16. The applications for Permission to Appeal are set to be heard on September 28, 2022.

Remedy sought:

17. As ASP approvals, to which TSMV is entitled, are refused by Canmore, TSMV incurs immediate and irreparable harm. The balance of convenience favours the granting of a remedy, by this Honourable Court.
18. An order that passing the Smith Creek ASP and Village ASP be directed of Canmore, by the immediate convening of Canmore Town Council, and adoption of a motion for ASP approval.
19. Alternatively, that the direction set out in para. 18 above be rendered by way of mandatory injunction, interlocutory mandatory injunction, or alternatively in an order in the nature of *mandamus*.
20. Further, TSMV is entitled to an Order for party-to-party costs, or solicitor and own client costs, and such further and other relief as may be deemed meet by this Honourable Court.

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

21. The Affidavit of Jessica Karpas dated July 29, 2022.
22. The Affidavit of Heather Lee dated July 15, 2022.
23. Such further and other evidence as this Honourable Court may deem required.

Applicable Acts and regulations:

24. *Alberta Rules of Court*, Alta. Reg. 124/2010, Rule 3.8, 3.15.
25. *Judicature Act*, RSA 2000, c. J-2, s. 13(2).

26. *Municipal Government Act*, RSA 2000, c. M-26 (*MGA*), Parts 5, 6, 12, and 17, and specifically s. 619.
27. *Land and Property Rights Tribunal Act*, SA 2020, c. L-2.3.
28. *Natural Resources Conservation Board Act*, RSA 2000, c. N-3.

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 against the Applicant and against all persons claiming under the Applicant. You will be bound by any Order that 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 at the time shown at the beginning of the 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 the material to the Applicant.