



**Form 7**  
[Rule 3.8]

Clerk's Stamp: \$250  
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COURT FILE NUMBER: 2101 -06056

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE: CALGARY

APPLICANT: THREE SISTERS MOUNTAIN VILLAGE PROPERTIES LTD.

RESPONDENT: TOWN OF CANMORE

DOCUMENT: ORIGINATING APPLICATION FOR JUDICIAL REVIEW

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ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

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**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: June 25, 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 8/93 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, which process has been characterized by long delays, 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 Smith Creek area (the "Smith Creek ASP."). The proposed future development within the Smith Creek area complied with the NRCB Approval.
4. The Town Council gave first reading to the Smith Creek ASP and held a public hearing for the ASP, which opened on March 9th, 2021 and closed on March 17th, 2021.
5. On April 27, 2021, Council voted to defeat Bylaw 2021-06 Smith Creek ASP at second reading.
6. Under the provisions of the *Municipal Government Act*, RSA 2000, c.M-26, in particular section 619, the Town Council was required to approve the Smith Creek Area Structure Plan because it complied with the NRCB Order.
7. Alternatively, the Applicant had a legitimate expectation that the Town Council would not summarily reject the Smith Creek ASP at second reading and further that Town Council would properly consider the issue of the Smith Creek ASP's compliance with the NRCB Approval and the Applicant's compliance with the extensive requirements imposed by the Town.
8. The Town erred in the following ways:
  - a. Council failed to comply with its obligations under section 619 of the *Municipal Government Act* RSA 2000, c.M-26 and the statutory regime governing the NRCB Approval;
  - b. Council failed to consider relevant considerations, and in particular, the NRCB Approval;
  - c. 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 the approval of the Government of Alberta;

- ii. concerns about undermining, which issue falls within the authority of the Government of Alberta and is exclusively addressed by a provincial regulatory regime;
  - iii. Town policies which are inconsistent with or violate the NRCB approval; and
  - iv. matters which had been resolved by the Terms of Reference for the ASP adopted by the Town, including the foot print of the Smith Creek ASP.
- d. Council acted with the improper purpose of sterilizing development of the Smith Creek area;
  - e. Council acted outside of its role under the applicable statutory regimes;
  - f. the Town breached the duty of fairness owed to the Applicant by failing to consider the legitimate expectations of the Applicant;
  - g. Council failed to have regard for all of the evidence provided by Three Sisters Mountain Village Properties Ltd. to the Town; and
  - h. Such further and other grounds as may be established at the hearing of this application.

**Remedy sought:**

- 9. The Applicant seeks an Order of the Court:
  - a. Setting aside the decision of Town Council to not approve the Smith Creek ASP;
  - b. Requiring the Town Council to comply with the NRCB Approval and to approve the Smith Creek ASP;
  - c. Declaring that by reason of the NRCB Approval and the *Municipal Government Act*, RSA 2000, c.M-26, in particular section 619, the Town is compelled to approve the Smith Creek 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:**

10. Affidavit of Chris Ollenberger, to be filed;
11. The Certified Record of Proceedings, which has been requested from the Town;
12. Alberta Rules of Court, AR 124/2010, Rule 3.15 and 3.24; and
13. Such further and other evidence as counsel may advise and this Honourable Court may permit.

**Applicable Acts and regulations:**

14. *Municipal Government Act*, RSA 2000, c M-26.
15. *Natural Resources Conservation Board Act*, RSA 2000, c N-3.
16. 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.*