

RE: BYLAW 1354/15
FIRE SERVICES
STURGEON COUNTY, MORINVILLE, ALBERTA

APPLICANTS LIANE MENZEL and ZACHARY MENZEL

RESPONDENT FIRE CHIEF P.J. (PAT) MAHONEY

DOCUMENT APPEAL BRIEF OF THE APPLICANTS

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENT SMITH THOMPSON LAW LLP
Barristers & Solicitors
#301, 10430-61 Avenue
Edmonton, AB T6H 2J3

ATTENTION: BRIAN E. THOMPSON
Phone No.: 780-540-3555
Fax No.: 780-540-3556
File No.: 51153 BET

I. Introduction

1. This matter comes before Council from an oil/gas well blowout that occurred between December 15 through December 17, 2021, (the "Incident") that occurred at 55227 Range Road 255, Sturgeon County, Alberta (the "Lands").

2. The Lands are owned by Zachary and Liane Menzel (the "Menzels"). The Menzels had purchased the Lands and were in the process of building a home on the Lands.

3. On or about February 21, 2021, the Menzels signed a Purchase Agreement (the "Purchase Agreement") with Kimberley General Partner Ltd. on behalf of Kimberley Developments LP operating as Kimberley Homes ("Kimberley Homes").

4. Kimberley Homes retained Summers Holdings Ltd., operating as Summers Drilling, ("Summers Drilling") to drill a water well on the Lands.

5. On December 15, 2021, an employee of Summers Drilling was on site at the Lands drilling a water well for Kimberley Homes. While drilling, Summers Drilling struck a pocket of gas which ignited. Fire crews from Sturgeon County responded to the ongoing fire on the Lands.

6. The fire was deemed under control at 13:33 hours on December 15, 2021. While the fire was controlled, the fire crew were unable to extinguish the well and it was determined that outside assistance would be required.

7. The fire crew contacted Capstone at 1600 hours on December 15, 2021, seeking their assistance in extinguishing the well fire. On December 16, 2021 Capstone came to the Lands and between December 16 through December 17, 2021, Capstone sealed the well and the incident was concluded.

8. A release from liability form was completed, provided to, and accepted by Ian Reeve of Kimberley Homes by Fire Chief Pat Mahoney.

9. Fire Chief Pat Mahoney completed Vehicle Report 08-21-0262 (the "Fire Chief Report"). The Fire Chief Report states that the fire cause determination for the incident was classified as "Accidental – No Intentional Act". Further, in the Fire Chief Report, Fire Chief Pat Mahoney stated:

"Staff from Summers Drilling were carrying out scheduled work activities, had taken all precautions prior to commencing the work. The events that unfolded on the afternoon of December 15, 2021 could not have been predicted and by all accounts from many experts in the oil and gas industry this incident is quite an anomaly."

[TAB 1]

10. On February 28, 2022, Fire Chief Pat Mahoney sent a letter to the Menzels providing a summary of events of the Incident and an invoice for fire services in accordance with Sturgeon County Municipal Fire Services Bylaw 1354-15. The total requested reimbursement to Sturgeon County Emergency Services is \$206,087.45 plus GST. The County is seeking approximately \$216,391.82 inclusive of GST.

II. THE LAW

Sturgeon County Municipal Fire Services Bylaw 1354/15

11. Sturgeon County Municipal Fire Services Bylaw 1354/15 (the "Bylaw") allows for the recovery of firefighting costs. Section 10.1 of the Bylaw reads:

"Where the department has taken any action whatsoever for the purpose of extinguishing a fire or responding to a fire call or incident in or outside the County or for the purpose of preserving life or property from injury or destruction by fire or other incident on land within or outside the County, including any action taken by the department on a false alarm, the Fire Chief may in respect of any costs and expenses incurred by the department in taking such action, if the Fire Chief is of the opinion that grounds for doing so exist, charge any costs and expenses so incurred to the owner or occupant of the land in respect of which the action was taken."

[TAB 2]

12. The Bylaw was enacted pursuant to the *Municipal Government Act*, R.S.A. 2000, c. M-26, as amended (the "MGA") and the *Forest and Prairie Protection Act*, R.S.A. 2000, c.F-19, as amended (the "FPPA").

13. Section 551 of the MGA empowers a municipality to recover expenses and costs necessary to eliminate an emergency from the person who caused the emergency:

551(1) Despite sections 549 and 550, in an emergency a municipality may take whatever actions or measures are necessary to eliminate the emergency.

(2) This section applies whether or not the emergency involves a contravention of this Act, an enactment that the municipality is authorized to enforce or a bylaw.

(3) A person who receives an oral or written order under this section requiring the person to provide labour, services, equipment or materials must comply with the order.

(4) Any person who provides labour, services, equipment or materials under this section who did not cause the emergency is entitled to reasonable remuneration from the municipality.

(5) The expenses and costs of the actions or measures, including the remuneration referred to in subsection (4), are an amount owing to the municipality by the person who caused the emergency. [Emphasis added]

[TAB 3]

14. Under the MGA, a municipality can charge the person who caused the emergency with the charges in relation to eliminating an emergency.

15. Section 2.1 of the FPPA empowers a municipality to recover the expenses and costs necessary to eliminate and fight a fire:

“2.1(1) For the purposes of any provision of this Act that entitles the Minister or any other person to reimbursement from any person responsible for a fire for the costs and expenses of fighting a fire or that requires any such person responsible to reimburse the Minister or any other person for the costs and expenses of fighting the fire,

(a) the person who caused the fire,

(b) the person who directed the lighting of the fire,

(c) the person who was otherwise responsible for the fire,

(d) the person who owned the land on which the fire began and does not establish that the fire ignited or was lit without that person’s consent, express or implied, and

(e) the person who was in control of the land on which the fire began and does not establish that the fire ignited or was lit without that person’s consent, express or implied,

are jointly and severally liable to the Minister or that other person, as the case may be, for the reimbursement of the costs and expenses of fighting the fire.

(2) Subsection (1) does not affect the rights of any of the persons referred to in subsection (1)(a) to (e) under any other law to seek contribution from other persons so referred to who may be liable for the costs and expenses under law.” [Emphasis added]

[TAB 4]

16. Section 2.1(1)(d) and (e) of the FPPA states that the municipality can recover the expenses and costs necessary to eliminate and fight a fire if the person who owned, or was in control of, the land on which the fire began does not establish that the fire ignited or was lit without that person’s consent, express or implied.

17. The MGA and FPPA allow a municipality to recover the costs and expenses of responding to an emergency and or fire, from either the owner or the occupant of the land.

18. The Alberta *Occupiers Liability Act* RSA 2000 C. O-4. Section 1(c) defines an “occupier” as:

- (i) a person who is in physical possession of the premises, or
- (ii) a person who has the responsibility for, and control over, the condition of premises, the activities conducted on those premises and the persons allowed to enter those premises,

[TAB 5]

19. The MGA and the FPPA clearly intend for the municipality to recover the costs from the individual who caused the fire. Sturgeon County’s authority to pass and enforce the Bylaw comes from the MGA and the FPPA. As a result, enforcement of the Bylaw must be in accordance with the governing legislation.

20. The Bylaw states that if the Fire Chief is of the opinion that grounds for doing so exist, the municipality may charge any costs and expenses incurred as a result of fighting the fire, to the owner or occupant of the land where the fire took place.

21. The Fire Chief has not provided any grounds that exist that would allow the County to charge the Menzels for the costs and expenses of responding to the Incident. Presumably the grounds that must exist under the Bylaw are the grounds outlined in the MPA and FPPA; being that the municipality can charge a person who caused the fire or consented to the fire being ignited or lit.

III. APPLICATION OF THE LAW TO THE FACTS

Requirement to Cause the Fire

22. As outlined above, the MGA and the FPPA intend for municipalities to recover the costs and expenses of fighting a fire from the individual who actually caused the fire.

23. What is clear from all parties is that there is no allegation that the Menzels actually caused the Incident. At all relevant times, the Menzels were not on site or part of the drilling process.

24. Fire Chief Pat Mahoney's own conclusion in the Fire Chief Report was that the Incident could not have been predicted and was a complete anomaly. The Fire Chief Report states that Summers Drilling took all precautions prior to commencing the work.

25. The Incident was, for lack of a better term, a freak accident. By all accounts it was not predictable, foreseeable, nor preventable. The Incident was accidental and not caused by an intentional act. Therefore, no party caused the fire within the meaning of the MGA and FPPA.

26. If the Municipality were to find that any party caused the fire, within the meaning of the MGA and FPPA, then Summers Drilling were the party that caused the fire.

27. Further, the FPPA states that a municipality can charge the owner, or the person in control of the lands, if that person does not establish that the fire was ignited or lit without that person's consent, express or implied. The Menzels did not have a contract with Summers Drilling. The Menzels did not consent, expressly or impliedly, to the fire being ignited or lit.

28. If the municipality determines that Summers Drilling did cause the fire, then they did so with the express or implied consent of Kimberley Homes. Summers Drilling was retained by Kimberley Homes to drill the water well on the Lands.

Occupier of the Lands

29. The Bylaw allows the municipality to charge either the owner or the occupier of the land. It would appear the intention of the Bylaw is to charge the individual who had control of the land where the fire occurred.

30. As stated above, the occupier of the Lands is the person who is in physical possession of the premises or has the responsibility for, and control over, the condition of premises, the activities conducted on those premises and the persons allowed to enter those premises.

31. Safety and Site Inspections are governed under clause 11 of the Purchase Agreement as follows:

"In accordance with, Alberta Occupational Health and Safety (OHS) access to construction sites is by appointment only with your Area Sales Manager and/or construction personnel."

[TAB 6]

32. As a result, the Menzels could only access the Lands if they made an appointment with a representative from Kimberley Homes. Clause 11 of the Purchase Agreement further states that Kimberley Homes can fine the Menzels for unauthorized access to the Lands, and can deny access to the Lands at any time.

33. Clause 12 of the Purchase Agreement governs Safety and Purchaser's Liability Re Site Inspections:

"Entrance to the site for inspection or visits by the Purchaser or any invitee or licensee shall be by pass only which shall be issued by the Builder on the request of the Purchaser which pass shall be for a specific date only and shall be signed by all visitors including the purchaser"

[TAB 7]

34. Clauses 11 and 12 of the Purchase Agreement clearly state that Kimberley Homes had control over the Lands and that the Menzel's access to the Lands was controlled and limited by Kimberley Homes.

35. Clause 17 of the Purchase Agreement governs Possession of the Premises:

"It is strictly agreed between the Parties that the Land and Home provided by the Builder may not be possessed and/or occupied by the Purchaser until the Total Price and all other monies payable to the Builder under this Agreement have been received by the Builder or by its solicitor. The Purchaser agrees to adhere to the terms of possession set out in Schedule C of this agreement."

[TAB 8]

36. Schedule C of the Possession Agreement states:

"The Purchaser hereby grants the Builder the possession of the Land for construction of the Home as described in Clause 3 of the Purchase Agreement.

The Builder shall have possession of the Land from the Conditional Removal Date, if all conditions are removed, until the Certificate of Possession is granted by the Builder

The Purchaser acknowledges that their access to the Land will be restricted in accordance with the Agreement in particular Clause 11, Clause 12 and Clause 17 of the Purchase Agreement and the particulars in Schedule E Purchasing Process Guide and Purchaser Acknowledgment Form."

[TAB 9]

37. The Purchase Agreement clearly states that Kimberley Homes was in possession of the Lands. Further, the Purchase Agreement clearly states that Kimberley Homes had the responsibility for, and control over, the condition of Lands, the activities conducted on those Lands and the persons allowed to enter those Lands. As a result, Kimberley Homes would fall under the definition of an occupier as defined under the Alberta Occupiers Liability Act RSA 2000 C. O-4.

38. Further, Fire Chief Pat Mahoney had a representative of Kimberley Homes, Ian Reeve, complete a release from liability form. It would stand to reason that Fire Chief Pat Mahoney's belief was that Kimberley Homes was the occupant, and therefore had the authority to sign the release from liability form.

39. The Menzels did not have control over the Lands and were not in possession of the Lands at the time of the Incident.

40. All of this supports the position that Kimberley Homes was the occupant of the Lands and, therefore, should have been invoiced for the costs and expenses for the fire services under the Bylaw, rather than the Menzels.

IV CONCLUSION

41. It is our position that the grounds to charge a person with the costs and expenses of the fire services under the Bylaw do not exist for any party, and especially not in the case of the Menzels.

42. Further, or in the alternative, if the grounds under the Bylaw do exist, then the Bylaw's authority comes from the MGA and FPPA which clearly intend for the person being charged to be the party who actually caused the Incident.

43. If a party did cause the Incident, then that party was Summers Drilling.

44. Summers Drilling had the express or implied consent of Kimberley Homes to drill the water well which caused the Incident.


45. Further, the Bylaw allows the Fire Chief to charge the owner or occupant of the Lands. Kimberley Homes were clearly the occupant of the Lands and, as a result, if the Fire Chief is of the belief that the grounds under the Bylaw do exist, then Kimberley Homes should be the party charged with the costs and expenses of the fire services under the Bylaw.

46. We respectfully request that the Council remove the charge under the Bylaw to the Menzels.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 29 DAY OF JUNE, 2022.

SMITH THOMPSON LAW LLP

Per:


BRIAN E. THOMPSON
Solicitor for the Plaintiff

TAB 1 - Vehicle Report 08-21-0262



Sturgeon County Emergency Services

Fire Chief :Pat Mahoney

9613-100 Street Morinville AB T8R 1L9

PH : 780-939-8411 FAX : 780-939-8420

Page 1 of 8

Date

Dec 31 21

Vehicle Report 08-21-0262 - Reviewed

COPY

Wednesday, December 15, 2021

Response Loc.: 55227 Range Road 255, Sturgeon County

Resp. Station: County Day Staff

Incident #: 08-21-0262

Municipal Code:

Roll/Folio #:

Response Type: 10 Fire

Initial Time: 13:12:31

Dispatched Time: 13:19:47

On Route Time: 13:20:06

On Scene Time: 13:23:58

Back in Service: 17:23:35

BIS Date: Dec 15 21

Total Dispatch Time: 00:07:16

Chute Time: 00:00:19

Travel Time: 00:03:52

Response Time: 00:04:11

Total Time: 4 hrs 4 min

Attending F.D.: 1234

Latitude: 53.709040

Longitude: -113.663965

Contacts:

| Type | Ow/Oc | Name | Phone / E-Mail |
|------------|-------|---|---|
| Contractor | | Dwight Bulloch President Capstone | Work: (587)600-3253 Cell: (403)863-1642 Work: dwight@capstoneos.com |
| Contractor | | Rob Graefer, CAPSTONE Rob Graefer VP Blowout Recovery | Work: (403)357-9695 Cell: (403)341-5174 |
| Contractor | | Dave Summers Owner Summers Drilling Inc | Work: (780)818-2791 Work: dave@summersdrilling.com |
| Other | | AB Energy Regulator Jenna-lee Natrasony EM Response Co-Ordinator | Cell: (780)806-8267 Work: Jennalee.Natrasony@aer.ca |
| Other | | AB Environment Rick McClelland Emergency Response Officer | Main: (403)813-4722 Main: rick.mcclelland@gov.ab.ca |
| Primary | Own | Kimberley-Homebuilding Experiences Ian Reeve Site Superintendent | Cell: (780)914-7615 Work: Ian@buildwithkimberley.ca |

Resp. Personnel: 11 **Rescues:** 0 **Injuries:** 0 **Fatalities:** 0 **Staff Hours:** 108

Major Occupancy: 95 Not applicable

Area of Origin: 990 Outside Area - unclassified

Level of Origin: 9 Level of Origin - not applicable (includes vehicle)

Sturgeon County Emergency Services

Page 8 of 8

Vehicle Report 08-21-0262 - Reviewed - CONTINUED

COPY

At about 1632 hrs, I once again contacted AB Environment, Mr. McClelland and provided a final update. He advised me he would forward off to AER as well on my behalf. I thanked him for his work and support. He commended us on our efforts over the past three days and safe conclusion.

As work was concluding I again visited homes in proximity to the north of the incident. I met and spoke with four neighboring property owners and advised the site was now secure, safe and operations would be concluding.

At about 1721 hrs, I once again examined the well, is was full to surface level with concrete. At 1723 hrs, all fire apparatus were clear of scene, and loss stop declared.

A release from liability form was complied and provided/accepted by Mr. Ian Reeve of Kimberley Homes.

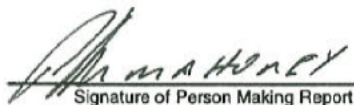
As a result of this incident, fire cause, determination for this fire is being classified as "ACCIDENTAL - NO INTENTIONAL ACT".

Staff from Summers Drilling were carrying out scheduled work activities, had taken all precautions prior to commencing work. The events that unfolded on the afternoon of December 15, 2021 could not have been predicted and by all accounts from many experts in the oil and gas industry this incident is quite an anomaly.

This file is to be considered concluded..

Unit Times

| Unit Name | # Pers. | Dispatch ed Time | On Route Time | Stood Down | On Scene Time | Off Scene | Back in Service |
|-----------|---------|---------------------|---------------------|---------------|---------------------|--------------|--------------------|
| TENDER 5 | 2 | 13:19:47 | 13:20:06 | | 13:23:58 | | 17:23:35 |
| ENGINE 4 | 8 | 13:19:47 | 13:20:06 | | 13:23:58 | | 17:23:35 |
| COMMAND 1 | 6 | 13:19:47 | 13:20:06 | | 13:23:58 | | 17:23:35 |


Signature of Person Making Report


Print Name

780 938 8411
Telephone Number
(During Normal Business Hours)


SCO Number


Designation Number

Dec 17 21
Date of Report

SEVERED IN LINE WITH
SECTION 17 OF THE FOIP ACT

This personal information is being collected under the authority of the Safety Codes Act and will be managed in compliance with the Freedom of Information and Protection Act. Questions about the collection of this information can be directed to the Fire Commissioner's Office, 11th Floor, Commerce Place, 10144 - 102 Street, Edmonton, Alberta T5J 4L4, (780) 427-8392.

**TAB 2 - Sturgeon County
Municipal Fire Services Bylaw
1354/15**

BYLAW 1354/15
FIRE SERVICES
STURGEON COUNTY, MORINVILLE, ALBERTA

BEING A BYLAW OF STURGEON COUNTY, IN THE PROVINCE OF ALBERTA, TO PROVIDE FOR THE PURPOSE OF ESTABLISHING AND OPERATION OF FIRE SERVICES WITHIN STURGEON COUNTY.

WHEREAS, the *Municipal Government Act* being R.S.A. 2000, c. M-26, as amended, provides that Council of a municipality may pass bylaws for municipal purposes respecting the safety, health and welfare of people and the protection of people and property; and

AND WHEREAS, the *Forest and Prairie Protection Act*, R.S.A. 2000, c.F-19, as amended, provides certain additional powers which may be enacted by the Council of a Municipality so that it can enforce the provisions of the said *Forest and Prairie Protection Act*, R.S.A. 2000, c.F-19, as amended, within the boundaries of the Municipality; and

AND WHEREAS, the Council of Sturgeon County wishes to establish and maintain fire services within the County and to provide for the efficient operation of such fire services;

“AND WHEREAS the Council of Sturgeon County acknowledges that the provision of fire and emergency response services is dependent upon a number of factors including the infrastructure, personnel and resources which may be available for such services, competing demands upon such resources, and the large geographic size of the County, and that in the result, the County is unable to provide fire and emergency response services in the same manner or to the same standards which may be available in other jurisdictions, or to provide such services in the same manner or to the same standards in all areas of the County, or to all people within the County.”

NOW THEREFORE, the Council of Sturgeon County in the Province of Alberta, duly assembled, and pursuant to the authority conferred upon it by the *Municipal Government Act*, R.S.A., 2000, c. M-26, with amendments thereto, enacts as follows:

1. SHORT TITLE

- 1.1** This Bylaw is called “Fire Services Bylaw”.

2. DEFINITIONS

- 2.1** “Apparatus” shall mean any vehicle, machinery, device, equipment or material for Firefighting, as well as any vehicle used for transporting firefighters or supplies;
- 2.2** “Chief Administrative Officer” shall mean the Chief Administrative Officer for Sturgeon County pursuant to the *Municipal Government Act*, R.S.A., 2000, c. M-26;
- 2.3** “Council” shall mean the Council for Sturgeon County;
- 2.4** “County” shall mean Sturgeon County;
- 2.5** “Fire Department” shall mean the Sturgeon County Emergency Services and shall include District Fire Stations established and organized pursuant to the provisions of this Bylaw consisting of, inter alia, all persons appointed or recruited to the various positions prescribed herein, all equipment, apparatus, materials and supplies used in the operation, maintenance and administration of the Fire

9. OFFENCES

- 9.1 No person at an Incident shall impede, obstruct or hinder a member of the Fire Department or other person assisting or acting under the direction of the Fire Chief or the member in charge.
- 9.2 No person shall damage or destroy Fire Department apparatus or equipment.
- 9.3 No person at an Incident shall drive a vehicle over any equipment without permission of the Fire Chief or the member in charge.
- 9.4 No person shall obstruct a member carrying out duties imposed by this bylaw.
- 9.5 No person shall falsely represent themselves as a Fire Department member or wear or display any Fire Department badge, cap, button, insignia or other paraphernalia for the purpose of such false representation.
- 9.6 No person shall obstruct or otherwise interfere with access roads or streets or other approaches to any fire alarm, fire hydrant, cistern or body of water designated for firefighting purposes or any connections provided to a fire main, pipe, standpipe, sprinkler system, cistern or other body of water designated for firefighting purposes.

10. RECOVERY OF FIREFIGHTING COSTS

- 10.1 Where the department has taken any action whatsoever for the purpose of extinguishing a fire or responding to a fire call or incident in or outside the County or for the purpose of preserving life or property from injury or destruction by fire or other incident on land within or outside the County, including any action taken by the department on a false alarm, the Fire Chief may in respect of any costs and expenses incurred by the department in taking such action, if the Fire Chief is of the opinion that grounds for doing so exist, charge any costs and expenses so incurred to the owner or occupant of the land in respect of which the action was taken.
- 10.2 The costs and fees to be charged by the Fire Department for services rendered pursuant to this bylaw shall be determined by Council by resolution from time to time and shall be set out in the Sturgeon County Fee and Charges Schedule.
- 10.3 In the event that the owner or occupant of any land within the County shall feel aggrieved by any action taken by the Fire Chief pursuant to Section 10.1, such owner or occupant shall have a period of thirty (30) days from the date of mailing or notice of the action taken by the Fire Chief to appeal to Council for the County the action taken by the Fire Chief and the decision of Council on any such appeal shall be final and binding upon the owner or occupancy of the land and shall not be subject to any further appeal.
- 10.4 In respect of land within Sturgeon County, in the event that the amount levied by the Fire Chief shall not be paid within sixty (60) days after the mailing of a notice by the Fire Chief pursuant to Section 10.1, or in the event of an appeal, within sixty (60) days of the date of mailing of the decision of Council on the appeal, the amount levied and unpaid shall be charged against the land upon which the action was taken as taxes due and owing in respect of that land.

TAB 3 - the *Municipal Government Act*, R.S.A. 2000, c. M-26



Province of Alberta

MUNICIPAL GOVERNMENT ACT

Revised Statutes of Alberta 2000
Chapter M-26

Current as of June 1, 2022

Office Consolidation

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Suite 700, Park Plaza
10611 - 98 Avenue
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- (b) in the case of an action or measure taken under subsection (1)(b), by the person who did not comply with the order under section 546(1) within the time specified in the order.

(6) If the municipality sells all or a part of a structure that has been removed under subsection (1)(b), the proceeds of the sale must be used to pay the expenses and costs of the removal and any excess proceeds must be paid to the person entitled to them.

RSA 2000 cM-26 s549;2022 c16 s9(69)

550 Repealed 2022 c16 s9(70).

Emergencies

551(1) Despite section 549, in an emergency a municipality may take whatever actions or measures are necessary to eliminate the emergency.

(2) This section applies whether or not the emergency involves a contravention of this Act, an enactment that the municipality is authorized to enforce or a bylaw.

(3) A person who receives an oral or written order under this section requiring the person to provide labour, services, equipment or materials must comply with the order.

(4) Any person who provides labour, services, equipment or materials under this section who did not cause the emergency is entitled to reasonable remuneration from the municipality.

(5) The expenses and costs of the actions or measures, including the remuneration referred to in subsection (4), are an amount owing to the municipality by the person who caused the emergency.

RSA 2000 cM-26 s551;2022 c16 s9(71)

Recovery of amounts owing by civil action

552 Except as provided in this or any other enactment, an amount owing to a municipality may be collected by civil action for debt in a court of competent jurisdiction.

1994 cM-26.1 s552

Adding amounts owing to tax roll

553(1) A council may add the following amounts to the tax roll of a parcel of land:

- (a) unpaid costs referred to in section 35(4) or 39(2) relating to service connections of a municipal public utility that are owing by the owner of the parcel;

TAB 4 – Forest and Prairie Protection Act



Province of Alberta

FOREST AND PRAIRIE PROTECTION ACT

Revised Statutes of Alberta 2000
Chapter F-19

Current as of December 9, 2016

Office Consolidation

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- (a) land within the boundaries of an urban municipality where there is no specific provision in this Act to the contrary, and
- (b) land owned by the Government of Canada in respect of which the Minister has not entered into a fire control agreement under section 6(b).

RSA 2000 cF-19 s2;2003 c20 s3;2007 c15 s1

Responsibility for fire fighting expenditures

2.1(1) For the purposes of any provision of this Act that entitles the Minister or any other person to reimbursement from any person responsible for a fire for the costs and expenses of fighting a fire or that requires any such person responsible to reimburse the Minister or any other person for the costs and expenses of fighting the fire,

- (a) the person who caused the fire,
- (b) the person who directed the lighting of the fire,
- (c) the person who was otherwise responsible for the fire,
- (d) the person who owned the land on which the fire began and does not establish that the fire ignited or was lit without that person's consent, express or implied, and
- (e) the person who was in control of the land on which the fire began and does not establish that the fire ignited or was lit without that person's consent, express or implied,

are jointly and severally liable to the Minister or that other person, as the case may be, for the reimbursement of the costs and expenses of fighting the fire.

(2) Subsection (1) does not affect the rights of any of the persons referred to in subsection (1)(a) to (e) under any other law to seek contribution from other persons so referred to who may be liable for the costs and expenses under law.

2003 c20 s4

Delegation of powers

3(1) The Minister may in writing delegate to any employee of the Crown employed in the Minister's Department or to any individual who is a forest officer by virtue of holding any other office any power, duty or function conferred on the Minister by this Act other than the power to make regulations under section 42.

**TAB 5 – The Alberta *Occupiers
Liability Act* RSA 2000 C. O-4**



Province of Alberta

OCCUPIERS' LIABILITY ACT

Revised Statutes of Alberta 2000
Chapter O-4

Current as of December 5, 2019

Office Consolidation

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HER MAJESTY, by and with the advice and consent of the
Legislative Assembly of Alberta, enacts as follows:

Definitions

1 In this Act,

- (a) "common duty of care" means the duty of care of an occupier of premises to visitors provided for in section 5;
- (b) "entrant as of right" means a person who is empowered or permitted by law to enter premises without the permission of the occupier of those premises;
- (c) "occupier" means
 - (i) a person who is in physical possession of premises, or
 - (ii) a person who has responsibility for, and control over, the condition of premises, the activities conducted on those premises and the persons allowed to enter those premises,and for the purposes of this Act, there may be more than one occupier of the same premises;
- (d) "premises" includes
 - (i) staging, scaffolding and similar structures erected on land whether affixed to the land or not,
 - (ii) poles, standards, pylons and wires used for the purpose of transmission of electric power or communications or transportation of passengers, whether or not they are used in conjunction with the supporting land,
 - (iii) railway locomotives and railway cars,
 - (iv) ships, and
 - (v) trailers used for, or designed for use as, residences, shelters or offices,but does not include aircraft, motor vehicles or other vehicles or vessels except those mentioned in subclauses (iii) and (iv) or any portable derrick or other equipment or movable things except those mentioned in subclauses (i) and (v);
- (e) "visitor" means

TAB 6 – Purchase Agreement



PURCHASE AGREEMENT

(For Home Only)

THIS AGREEMENT made the ____ day of 2/21/2021, 20__.

BETWEEN:

**SEVERED IN LINE WITH
SECTION 17 OF THE FOIP ACT**

NAME(s) Zachary and Liane Menzel

ADDRESS [REDACTED] of [REDACTED],

in the Province of [REDACTED], [REDACTED].

TELEPHONE: [REDACTED] (home) [REDACTED] (work)

EMAIL: [REDACTED] ALTERNATE EMAIL: [REDACTED]

(in this Agreement called the "Purchaser")

AND:

NAME: Kimberley General Partner Ltd. on behalf of Kimberley Developments LP operating as Kimberley Homes

ADDRESS: 2355 90B Street SW, EDMONTON, ALBERTA, T6X 1V8

TELEPHONE: 780.430.6775 FAX: 780.988.8266

(in this Agreement called the "Builder")

The Purchaser is the owner or is entitled to become the owner of the following land:

Lot 1 plan 9225519
LOT ____, BLOCK ____, PLAN [Signature] [Signature]

MUNICIPAL ADDRESS: 55227 Range Road 255,
Rural Sturgeon County, in the Province of Alberta.

(in this Agreement called the "Land") Section 17 Township 55 Range 25 W of
4 Meridian

1. SALE PURCHASE

The Builder agrees to sell to the Purchaser and the Purchaser agrees to purchase from the Builder the Home described in Clause 3 of this Agreement subject to the terms of this Agreement.

2. TERMINATION OF AGREEMENT

The Builder may, in its absolute and unfettered discretion, upon providing seven (7) days written notice to the Purchaser at their address shown on this Agreement or sent by email to the Purchaser at their email address shown on this Agreement, cancel or terminate this Agreement. In the event of such termination or cancellation, the Builder's liability to the Purchaser shall be limited to the refund of any monies paid by the Purchaser to the Builder after deducting any reasonable and necessary expenses incurred by the Builder prior to cancellation.

3. CONSTRUCTION

The Builder agrees to construct a home built in accordance with the Alberta Building Code and municipal bylaws in effect at the date of issuance of the building permit for the Home, on the Land by supplying all of the materials and performing all of the work for the construction in accordance with the plans and general specifications which the Builder has in its possession and which blueprints will be completed in the name of the Purchaser and held in the office of the Builder. As the blueprints are prepared and provided by the Builder, the Purchaser understands and agrees that these blueprints are copyright protected and the sole property of the Builder. At any time should a conflict occur between the plans and general specifications the general specifications shall apply (The general specifications are attached as Schedule A to this Agreement). (in this Agreement called the "Home")

The Builder represents and warrants that it is a Registered Builder Member of the Alberta New Home Warranty Program (in this Agreement called the "Program").

Builder Initials

[Signature]

Purchaser(s) Initials

[Signature] [Signature]



7. PRE-POSSESSION OR OCCUPANCY INSPECTION

The Builder shall provide a notice in writing to the Purchaser at least 35 days in advance, advising that on a date to be specified in the notice, the Home will be ready for possession and that an inspection shall take place on the date specified. The Purchaser shall make an inspection of the Home on the date specified together with a representative of the Builder at which time any deficiencies will be deemed noted in writing on a Certificate of Possession. Upon payment of the balance of the Total Price, and any other costs, charges, interest or expenses payable under the terms of this Agreement, the Purchaser shall take possession forthwith and the taking of possession will be deemed to conclusively prove the Home is complete and in full compliance with this Agreement except as to matters noted at the time of the inspection.

The Purchaser acknowledges that if the Builder issues a certificate of substantial performance under the Builders' Lien Act of Alberta, the Builder is required to post the certificate on the Home, in a conspicuous place. The Purchaser agrees that on or after taking possession of the Home this certificate will not be disturbed and will remain in place until the expiration of the time set out in the certificate.

8. ADJUSTMENTS

It is agreed that all payables normally arising out of the construction and completion of the Home shall be paid by the Builder up to the date upon which the Purchaser takes possession unless otherwise stated in this Clause. In particular, the Builder agrees that it will pay all utility connections, course of construction and liability insurance, building permits and surveys, up to the date of possession excepting the following which are to be paid by the Purchaser, namely:
PROPERTY TAXES AND UTILITIES.

The Purchaser authorizes the Builder to act as agent for the Purchaser for the payables outlined in Clause 8.

Effective on the date of possession, the Purchaser agrees that all payables shall be paid by them thereafter.

9. COMPLETION DATE

The Builder agrees to construct the Home in accordance with Clause 3 of this Agreement and to commence construction approximately TBD months after the Purchase Agreement is executed and conditions are removed and to complete construction approximately TBD months following the commencement of construction. The Builder does not guarantee the completion or possession of the Home in this time frame in the event delays occur for which the Builder may not be responsible, or caused by unfavourable weather, strikes, fires, shortages of material or labor, acts of God or any other causes beyond the control of the Builder. If the Land is not yet registered, the timelines denoted as "TBD" will be administered in accordance with Schedule H of this Agreement.

10. EXTRAS, DELETIONS OR SUBSTITUTIONS

Any additions, removals, corrections, variations, substitutions or price changes, if permitted, will be administered in accordance with Schedule D of this Agreement.

If selected materials and components for the Home are not available within reasonable time limits of the Builder's construction schedule then the Purchaser must make an alternate selection from other materials and components offered by the Builder, failing which the Builder reserves the right to make such alternate selections of equal quality which shall be final and binding on the Purchaser. The Builder may make substitutions for equal or better products without notice to the Purchaser.

The Purchaser shall be liable for any additional costs associated with a change in any municipal bylaw or the Alberta Building Code after the Agreement is executed, which effects the Construction of the Home.

The GST in Clause 4 of the Purchase Agreement shall be adjusted as required for extras, deletions or substitutions.

11. SAFETY AND SITE INSPECTIONS

In accordance with, Alberta Occupational Health and Safety (OHS) access to construction sites is by appointment only with your Area Sales Manager and/or construction personnel. The Purchaser is entitled to a maximum of four (4) site inspections. Any additional inspections must be approved by the Builder. The Builder will not grant any site inspections after the flooring is installed. The Purchaser shall not enter the Home unless there are proper steps into the Home and inside the Home between all levels, there are protection railings installed or permanent railings installed and safety sidewalks installed. In accordance with OHS regulations, Purchasers must wear proper personal protective equipment (PPE) including hard hats, eye protection and steel toes for footwear whenever on site. Children under the age of 18 are not permitted on the construction site. Sales personnel will under no circumstance give a key to the Purchaser for private access to the Home. **Unauthorized Access / Entrance to the Home is strictly forbidden and subject to fines from OHS and the Builder.** The Builder reserves the right to deny access to the site at any time.

12. SAFETY AND PURCHASER'S LIABILITY RE SITE INSPECTIONS

The Purchaser understands and agrees that the construction site is potentially hazardous and that the Builder shall not be liable or responsible in any way with respect to any loss, injury or damage suffered by the Purchaser, any member of the Purchaser's

Builder Initials

Purchaser(s) Initials

TAB 7 – Clause 12 of the Purchase Agreement



7. PRE-POSSESSION OR OCCUPANCY INSPECTION

The Builder shall provide a notice in writing to the Purchaser at least 35 days in advance, advising that on a date to be specified in the notice, the Home will be ready for possession and that an inspection shall take place on the date specified. The Purchaser shall make an inspection of the Home on the date specified together with a representative of the Builder at which time any deficiencies will be deemed noted in writing on a Certificate of Possession. Upon payment of the balance of the Total Price, and any other costs, charges, interest or expenses payable under the terms of this Agreement, the Purchaser shall take possession forthwith and the taking of possession will be deemed to conclusively prove the Home is complete and in full compliance with this Agreement except as to matters noted at the time of the inspection.

The Purchaser acknowledges that if the Builder issues a certificate of substantial performance under the Builders' Lien Act of Alberta, the Builder is required to post the certificate on the Home, in a conspicuous place. The Purchaser agrees that on or after taking possession of the Home this certificate will not be disturbed and will remain in place until the expiration of the time set out in the certificate.

8. ADJUSTMENTS

It is agreed that all payables normally arising out of the construction and completion of the Home shall be paid by the Builder up to the date upon which the Purchaser takes possession unless otherwise stated in this Clause. In particular, the Builder agrees that it will pay all utility connections, course of construction and liability insurance, building permits and surveys, up to the date of possession excepting the following which are to be paid by the Purchaser, namely:
PROPERTY TAXES AND UTILITIES.

The Purchaser authorizes the Builder to act as agent for the Purchaser for the payables outlined in Clause 8.

Effective on the date of possession, the Purchaser agrees that all payables shall be paid by them thereafter.

9. COMPLETION DATE

The Builder agrees to construct the Home in accordance with Clause 3 of this Agreement and to commence construction approximately TBD months after the Purchase Agreement is executed and conditions are removed and to complete construction approximately TBD months following the commencement of construction. The Builder does not guarantee the completion or possession of the Home in this time frame in the event delays occur for which the Builder may not be responsible, or caused by unfavourable weather, strikes, fires, shortages of material or labor, acts of God or any other causes beyond the control of the Builder. If the Land is not yet registered, the timelines denoted as "TBD" will be administered in accordance with Schedule H of this Agreement.

10. EXTRAS, DELETIONS OR SUBSTITUTIONS

Any additions, removals, corrections, variations, substitutions or price changes, if permitted, will be administered in accordance with Schedule D of this Agreement.

If selected materials and components for the Home are not available within reasonable time limits of the Builder's construction schedule then the Purchaser must make an alternate selection from other materials and components offered by the Builder, failing which the Builder reserves the right to make such alternate selections of equal quality which shall be final and binding on the Purchaser. The Builder may make substitutions for equal or better products without notice to the Purchaser.

The Purchaser shall be liable for any additional costs associated with a change in any municipal bylaw or the Alberta Building Code after the Agreement is executed, which effects the Construction of the Home.

The GST in Clause 4 of the Purchase Agreement shall be adjusted as required for extras, deletions or substitutions.

11. SAFETY AND SITE INSPECTIONS

In accordance with, Alberta Occupational Health and Safety (OHS) access to construction sites is by appointment only with your Area Sales Manager and/or construction personnel. The Purchaser is entitled to a maximum of four (4) site inspections. Any additional inspections must be approved by the Builder. The Builder will not grant any site inspections after the flooring is installed. The Purchaser shall not enter the Home unless there are proper steps into the Home and inside the Home between all levels, there are protection railings installed or permanent railings installed and safety sidewalks installed. In accordance with OHS regulations, Purchasers must wear proper personal protective equipment (PPE) including hard hats, eye protection and steel toes for footwear whenever on site. Children under the age of 18 are not permitted on the construction site. Sales personnel will under no circumstance give a key to the Purchaser for private access to the Home. **Unauthorized Access / Entrance to the Home is strictly forbidden and subject to fines from OHS and the Builder.** The Builder reserves the right to deny access to the site at any time.

12. SAFETY AND PURCHASER'S LIABILITY RE SITE INSPECTIONS

The Purchaser understands and agrees that the construction site is potentially hazardous and that the Builder shall not be liable or responsible in any way with respect to any loss, injury or damage suffered by the Purchaser, any member of the Purchaser's

DS
Initial
DS

Builder Initials

DS

Purchaser(s) Initials

DS



family or any invitee or licensee of the Purchaser whatsoever suffered by them by an access to the Land or Home resulting from any cause whatsoever during such visit or inspection of the Home prior to delivery of possession by the Builder. The Purchaser also agrees to comply with all occupational health and safety rules and wear hard hats on site or any other safety equipment required by law or the Builder. No person under 18 years of age shall be allowed on site. Entrance to the site for inspection or visits by the Purchaser or any invitee or licensee shall be by pass only which shall be issued by the Builder on request of the Purchaser which pass shall be for a specific date only and shall be signed by all visitors including the Purchaser acknowledging that the Builder is released from all claims for any injury or damage to person, clothing or property while visiting or inspecting the construction site.

DS [Signature]

Initial
DS [Signature]

The Purchaser hereby agrees to indemnify and hold harmless the Builder, its agents, servants, employees and contractors for any loss, injury, damage or any fine resulting from any cause whatsoever arising from such visit or inspection of the home prior to the delivery of possession by the Builder.

13. DEFAULT BY PURCHASER

If the Purchaser shall default in payment of any draw required hereunder or in payment of the Total Price or interest or any part of the payables agreed to be paid by the Purchaser, or should the Purchaser default in the observance or performance of any of the covenants, conditions or provisions of this Agreement, then the Builder may at its sole discretion and option after the happening of such event either declare the whole of the Total Price due and payable or declare this Agreement repudiated by providing seven (7) days written notice to that effect served on the Purchaser or mailed by registered letter addressed to the Purchaser at their address shown on this Agreement or sent by email to the Purchaser at their email address shown on this Agreement. In the event that the Builder declares this Agreement repudiated, on the expiration of the time limit in the notice, the rights and interests hereby created or then existing in favour of the Purchaser or derived under the provision of this Agreement shall cease and determine without any legal proceedings being taken or other act being performed by or on behalf of the Builder and the Purchaser shall have no right to reclaim any monies paid with respect to this Agreement and the same may be retained by the Builder as liquidated damages, without limiting any claim the Builder may have for damages or under any security held by the Builder, without limiting any claim the Builder may have for damages or under any security held by the Builder.

14. DEFAULT BY BUILDER

If the Builder should fail to prosecute the work in accordance with the terms of this Agreement, or fail to make timely payment to sub-contractors or material, or if builders' liens are registered against the Land, or if the Builder should become insolvent or bankrupt, make a general assignment for the benefit of creditors, or if a receiver should be appointed, the Purchaser shall provide a written notice to the Builder requiring it to cure the default, neglect, or event specified in such notice within seven (7) days after the delivery of the notice. Should the Builder fail to comply with the said notice in the time so limited, the Purchaser shall promptly notify the Program of the default.

15. ASSIGNMENTS

No assignment of this Agreement by the Purchaser shall be valid without the written consent of the Builder except to the Program. The Builder may assign this Agreement without the consent of the Purchaser.

16. INTERPRETATION

All words in this Agreement may be read and construed in the plural number instead of the singular if there be more than one Purchaser named and in such case, this Agreement shall be deemed to bind the Purchaser individually, as well as severally and jointly, and also the masculine gender shall be construed to include the feminine or a body corporate where the context of this Agreement so requires. The Builder and Purchaser are collectively called the "Parties".

17. POSSESSION OF PREMISES

It is strictly agreed between the Parties that the Land and Home provided by the Builder may not be possessed and/or occupied by the Purchaser until the Total Price and all other monies payable to the Builder under this Agreement have been received by the Builder or by its solicitor. The Purchaser agrees to adhere to the terms of possession set out in Schedule C of this Agreement. The payment of such money by the Purchaser shall be unconditional excepting for conditions regarding holdbacks under the Builders' Lien Act (if required), such holdbacks shall be held by the Builder's solicitor. Seasonal work or other matters which have not been completed at the time of possession will be identified on the Certificate of Possession and as such no hold backs on seasonal work or other matters will be permitted.

DS [Signature]

Initial
DS [Signature]

18. WARRANTY

The Builder agrees to provide a Home Warranty Insurance Policy as required by the *New Home Buyer Protection Act*, as may be amended from time to time.

19. LICENSED REALTORS AND MLS

Unless a licensed Realtor has been retained in writing by the Builder, the Purchaser hereby undertakes, agrees and represents that the Purchaser has not at any time carried out any negotiations, inspections, or had other dealings with the Builder for the Home described in this Agreement through a licensed Realtor, and that further, no licensed Realtor has been the effective cause of the purchase contemplated in this Agreement.

Builder Initials

DS [Signature]

Purchaser(s) Initials

DS [Signature]

TAB 8 – Clause 17 of the Purchase Agreement



family or any invitee or licensee of the Purchaser whatsoever suffered by them by an access to the Land or Home resulting from any cause whatsoever during such visit or inspection of the Home prior to delivery of possession by the Builder. The Purchaser also agrees to comply with all occupational health and safety rules and wear hard hats on site or any other safety equipment required by law or the Builder. No person under 18 years of age shall be allowed on site. Entrance to the site for inspection or visits by the Purchaser or any invitee or licensee shall be by pass only which shall be issued by the Builder on request of the Purchaser which pass shall be for a specific date only and shall be signed by all visitors including the Purchaser acknowledging that the Builder is released from all claims for any injury or damage to person, clothing or property while visiting or inspecting the construction site.

The Purchaser hereby agrees to indemnify and hold harmless the Builder, its agents, servants, employees and contractors for any loss, injury, damage or any fine resulting from any cause whatsoever arising from such visit or inspection of the home prior to the delivery of possession by the Builder.

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14. DEFAULT BY BUILDER

If the Builder should fail to prosecute the work in accordance with the terms of this Agreement, or fail to make timely payment to sub-contractors or material, or if builders' liens are registered against the Land, or if the Builder should become insolvent or bankrupt, make a general assignment for the benefit of creditors, or if a receiver should be appointed, the Purchaser shall provide a written notice to the Builder requiring it to cure the default, neglect, or event specified in such notice within seven (7) days after the delivery of the notice. Should the Builder fail to comply with the said notice in the time so limited, the Purchaser shall promptly notify the Program of the default.

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The Builder agrees to provide a Home Warranty Insurance Policy as required by the *New Home Buyer Protection Act*, as may be amended from time to time.

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Unless a licensed Realtor has been retained in writing by the Builder, the Purchaser hereby undertakes, agrees and represents that the Purchaser has not at any time carried out any negotiations, inspections, or had other dealings with the Builder for the Home described in this Agreement through a licensed Realtor, and that further, no licensed Realtor has been the effective cause of the purchase contemplated in this Agreement.

Builder Initials

Purchaser(s) Initials

TAB 9 – Schedule C of the Possession Agreement



SCHEDULE C
POSSESSION AGREEMENT

This is Schedule C attached and forming part of the Purchase Agreement between the Purchaser and the Builder.

The Purchaser hereby grants the Builder possession of the Land for construction of the Home as described in Clause 3 of the Purchase Agreement.

The Builder shall have possession of the Land from the Conditional Removal Date, if all conditions are removed, until the Certificate of Possession is granted by the Builder.

The Purchaser acknowledges that their access to the Land will be restricted in accordance with the Agreement in particular Clause 11, Clause 12 and Clause 17 of the Purchase Agreement and the particulars in Schedule E Purchasing Process Guide and Purchaser Acknowledgement Form.

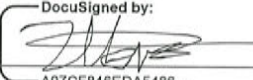
The Purchaser acknowledges and accepts the conditions outlined above.

DocuSigned by:

Purchaser 021F536196474E8...

2/21/2021


Date

DocuSigned by:

Purchaser A97CF846EDA5486...

2/21/2021

Date

Builder Initials

DS


Purchaser(s) Initials

DS DS
