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| COURT FILE NUMBER  | 2101 - 06388   |
| COURT  | COURT OF QUEEN'S BENCH<br>OF ALBERTA   |
| JUDICIAL CENTRE  | CALGARY  |
| PLAINTIFF  | ATB FINANCIAL  |
| DEFENDANT  | ALBERTA FOOTHILLS PROPERTIES LTD.  |
| APPLICANT  | FTI CONSULTING CANADA INC., in its capacity<br>as the Court-appointed Receiver of ALBERTA<br>FOOTHILLS PROPERTIES LTD.   |
| DOCUMENT   | <b>APPLICATION FOR ADVICE AND DIRECTION</b>  |
| ADDRESS FOR SERVICE<br>AND CONTACT<br>INFORMATION OF PARTY<br>FILING THIS DOCUMENT | MLT AIKINS LLP<br>Barristers and Solicitors<br>2100, 222- 3rd Avenue S.W.<br>Calgary, Alberta T2P 0B4<br>Phone: 403.693.5420 / 4311<br>Fax: 403.508.4349<br>Attention: Ryan Zahara / Kaitlin Ward<br>File: 0052752.00004 |



\$50.00  
COM  
Sep 29, 2021



**NOTICE TO THE RESPONDENTS**

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 attend Court by videoconference or phone when the application is heard as shown below:

|         |                                    |
|---------|------------------------------------|
| Date:   | September 29, 2021                 |
| Time:   | 2:00 p.m.                          |
| Where:  | Calgary Courts Centre – via Webex. |
| Before: | The Presiding Justice              |

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

**Remedy claimed or sought:**

1. The Applicant, FTI Consulting Canada Inc., in its capacity as the court-appointed receiver (the “**Receiver**”) of Alberta Foothills Properties Ltd. (“**AFPL**”), brings this application (the “**Application**”) for advice and directions to determine whether the receivership order (the “**Receivership Order**”) dated May 17, 2021, stays the Town of Okotoks (the “**Town**”) from enacting certain bylaws that rescind a previous bylaw approving a development plan and another bylaw that rezones the lands owned by AFPL while the Receiver is attempting to sell those lands.
2. The Receiver also applies for a Sealing Order substantially in the form attached hereto as **Schedule “A”**:
  - (a) abridging the time for, and validating service of, this Application and materials filed in support on the parties set out in the Service List attached hereto as **Schedule “B”**, if necessary, and dispensing with service on any party not served;
  - (b) sealing the Confidential Supplement to the First Report of the Receiver, dated August 30, 2021 (the “**First Report**”); and
  - (c) Such further and other relief as the Receiver may request and this Honourable Court may grant.

**Basis for this Relief:**

**Background**

2. Capitalized terms not otherwise defined herein shall have the meaning given to them in the First Report.
3. AFPL’s primary asset is approximately 145 acres of land (the “**Property**”) located on the south end of the Town. AFPL’s plan for the Property includes a seven-phase development referred to as the Wind Walk Development (the “**Development**”). To facilitate the Development, AFPL developed the Wind Walk Area Structure Plan (the “**Wind Walk ASP**”), which the Town approved in a bylaw dated June 26, 2017.

4. The Wind Walk ASP is the development road map for the Property. It sets out the sequence of development for the Property, the proposed land uses, the proposed population density, and the location of major transportation routes and public utilities.
5. Under the Wind Walk ASP, AFPL obtained the Town's approval to rezone the Property to residential lands in August 2017, and further obtained the Town's approval of a subdivision plan for Phase I of the Development in February 2019 (the "**Subdivision Plan**"). The Subdivision Plan was valid for one year, and subsequently extended to September 30, 2020.
6. AFPL was unable to meet the Town's conditions imposed on the Subdivision Plan, and the Subdivision Plan was not extended beyond September 30, 2020. AFPL was unable to secure the necessary financing to complete Phase I of the Development, estimated to cost \$14.6 million, or the rest of the Development, estimated to cost over \$48 million. AFPL listed the Property for sale in August 2019, but the listing has not yet resulted in a sale.
7. AFPL was eventually placed into receivership on May 17, 2021 after defaulting on its loan obligations to ATB Financial ("**ATB**"), its primary secured creditor. As of the date of the Receivership Order, AFPL owed ATB approximately \$14 million.

### **The Town's Proposed Bylaws**

8. On May 28, 2021, the Receiver contacted the Senior Planner for the Town to advise of its appointment and intention to continue listing the Property for sale, with the aim of finding a buyer capable of developing the Property. During this discussion, the Town did not advise the Receiver of any intention to change the land use designation of the Property, or to rescind the Wind Walk ASP.
9. At the June 14, 2021 Town Council Meeting (the "**June 14 Meeting**"), the Town introduced Bylaw 20-21, which proposed to rescind the Wind Walk ASP in its entirety (the "**ASP Bylaw**"). The agenda for the June 14 Meeting was amended to include the ASP Bylaw after the Receiver's discussion with the Town's Senior Planner.
10. At the June 28, 2021 Town Council Meeting, the Town also introduced Bylaw 19-21, which proposed to rezone the Property from residential lands to agricultural holding lands (the "**Land Use Bylaw**", and together with the ASP Bylaw, the "**Proposed Bylaws**").

11. Together, the Proposed Bylaws prevent any further development on the Property, either under the Wind Walk ASP or otherwise.
12. The Receiver was advised of the Town's intention to enact the Proposed Bylaws on June 21, 2021, by letter from legal counsel for the Town.
13. On July 13, 2021, the Receiver's legal counsel wrote to the Town's legal counsel advising of the Receiver's opposition to the Proposed Bylaws.
14. Also on July 13, 2021, the Receiver and ATB made formal written submissions to the Town opposing the Proposed Bylaws.
15. The Town has not provided any substantive reason and did not put forward any basis for why it needs to rescind the Wind Walk ASP at this time. The Town has other options available to it other than simply rescinding the Wind Walk ASP in its entirety.
16. The Receiver and ATB also attended a public hearing on July 19, 2021 and made oral submissions opposing the Proposed Bylaws.

### **Delayed Sales Process**

17. On May 23, 2021, the Receiver initiated a sales process for the Property by engaging NAI Advent to act as the selling agent (the "**Selling Agent**"), with a mandate to launch a marketing and sales process in mid- to late-June.
18. However, upon receiving notice of the Proposed Bylaws on June 21, 2021, and after discussions with the Selling Agent, given the uncertainty surrounding the Proposed Bylaws and their significant impact on the Property, the Receiver postponed the launch of the marketing and sales process (the "**Sales Process**").
19. In its discussions with the Selling Agent and interested stakeholders, the Receiver heard a number of concerns that the Proposed Bylaws would significantly impair the value of the Property due to increased uncertainty about the land use designation for the Property.
20. The Receiver believes that any change to the current land use designation may have a significant negative impact on the value of the Property of the Debtor.

### **Application for Advice and Direction**

21. The Receivership Order prohibits third parties from interfering with the Receiver's efforts to market and sell the Property; prevents third parties from exercising all rights and remedies with respect to the Property; and prevents third parties from altering any right, licence or permit held by the Debtor.
22. However, the case law provides little guidance on whether the stay of proceedings under the Receivership Order extends to a municipality enacting bylaws that substantially change the nature of a debtor's property.
23. After discussions with the Town, the Town and the Receiver agreed that the Receiver would bring this application for advice and direction to determine whether the Receivership Order prevents the Town from enacting the Proposed Bylaws. The Town has deferred a third and final reading of the Proposed Bylaws until this Application has been heard and determined.

### **Miscellaneous**

24. The Receiver relies on the terms of the Receivership Order, and in particular, paragraphs 3(k), 9, and 11.
25. The Receiver relies on such further and other grounds as counsel may advise and this Honourable Court may permit.

### **Material or evidence to be relied on:**

26. Pleadings and proceedings in the within Action;
27. First Report of the Receiver dated August 30, 2021, to be filed concurrently with this Application;
28. The Confidential Supplement to the First Report dated August 30, 2021; and
29. Such further and other materials or evidence as counsel may advise and this Honourable Court may permit.

**Applicable rules:**

30. Rules 6.3, 6.9, 6.28 and 11.27 of the *Alberta Rules of Court*, Alta Reg 124/2010; and

31. Such further and other rules as counsel may advise and this Honourable Court may permit.

**Applicable Acts and regulations:**

32. *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, sections 243 and 249; and

33. Such further and other acts and regulations as counsel may advise and this Honourable Court may permit.

**Any irregularity complained of or objection relied on:**

34. None.

**How the application is proposed to be heard or considered:**

35. By Webex.

**SCHEDULE "A"**

COURT FILE NUMBER 2101 - 06388  
COURT COURT OF QUEEN'S BENCH  
OF ALBERTA  
JUDICIAL CENTRE CALGARY  
PLAINTIFF ATB FINANCIAL  
DEFENDANT ALBERTA FOOTHILLS PROPERTIES LTD.  
APPLICANT FTI CONSULTING CANADA INC., in its capacity  
as the Court-appointed Receiver of ALBERTA  
FOOTHILLS PROPERTIES LTD.  
DOCUMENT **SEALING ORDER**  
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT MLT AIKINS LLP  
Barristers and Solicitors  
2100, 222- 3rd Avenue S.W.  
Calgary, Alberta T2P 0B4  
Phone: 403.693.5420 / 4311  
Fax: 403.508.4349  
Attention: Ryan Zahara / Kaitlin Ward  
File: 0052752.00004



**UPON** the Application (the “**Application**”) of FTI Consulting Canada Inc. (the “**Receiver**”), in its capacity as the court-appointed receiver of Alberta Foothills Properties Ltd. (“**AFPL**”), pursuant to the receivership order granted on May 17, 2021; **AND UPON** reading the First Report of the Receiver, dated filed August 30, 2021 (the “**First Report**”), filed; **AND UPON** reading the Confidential Appendices to the First Report, dated August 30, 2021 (the “**Confidential Appendices**”), unfiled; **AND UPON** reading the Affidavit of Service of Joy Mutuku; **AND UPON** hearing counsel for the Receiver, the Town of Okotoks, ATB Financial, and for any other parties who may be present; **IT IS HEREBY ORDERED AND DECLARED THAT:**

1. The time for service of notice of this Application is hereby abridged and service thereof is deemed good and sufficient.
2. Part 6, Division 4 of the *Alberta Rules of Court* does not apply to the Application and the Clerk of the Court is hereby directed to seal the Confidential Appendices, attached as a confidential supplement to the First Report (the “**Confidential Supplement**”).

3. The clerk of the Court is hereby directed to seal the Confidential Supplement and the Layton Affidavit on the Court file until the earlier of:

- (a) an Order of this Court directs that the Confidential Supplement be filed in this Action, and
- (b) a Sale of the last of the Debtor's assets (the "Assets") by the Receiver has closed and the Receiver files a receiver's certificate with the Clerk of the Court confirming a sale of the last of the Assets has closed.

4. The Confidential Supplement shall be sealed and filed in an envelope containing the following endorsement thereon:

THIS ENVELOPE CONTAINS CONFIDENTIAL SUPPLEMENT TO THE FIRST REPORT OF THE RECEIVER DATED AUGUST 30, 2021. THE CONFIDENTIAL SUPPLEMENT TO THE FIRST REPORT OF THE RECEIVER IS SEALED PURSUANT TO AN ORDER ISSUED BY THE HONOURABLE JUSTICE \_\_\_\_\_ DATED SEPTEMBER 29, 2021, AND IS NOT TO BE PLACED ON THE PUBLIC RECORD OR MADE PUBLICLY ACCESSIBLE UNTIL THE FILING OF THE RECEIVER'S CERTIFICATE REFERRED TO THEREIN.

5. Any person may apply, on reasonable notice to the Receiver and any other person likely to be affected, to vary or amend the terms of paragraph 3 of this Order.

6. Service of this Order shall be deemed good and sufficient by:

- (a) Serving same on:
    - (i) the persons listed on the Service List created in these proceedings;
    - (ii) any other person served with notice of the Application for this Order;
    - (iii) any other parties attending or represented at the Application for this Order;
- and

- (b) Posting a copy of this Order on the Receiver's website at: <http://cfcanada.fticonsulting.com/AFPL/> and service on any other person is hereby dispensed with.

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J.C.C.Q.B.A

**SCHEDULE "B"**

COURT FILE NUMBER: 2101-06388

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFF ATB FINANCIAL

DEFENDANT ALBERTA FOOTHILLS PROPERTIES LTD.

APPLICANT FTI CONSULTING CANADA INC., in its capacity as the Court-appointed Receiver of ALBERTA FOOTHILLS PROPERTIES LTD.

**SERVICE LIST**  
(Updated August 27, 2021)

| PARTIES   | ROLE / REPRESENTATION   | SERVICE VIA |
|---|---|-------------|
| <p><b>FTI Consulting Canada Inc. (Receiver)</b><br/>1610, 520 - 5 Ave SW<br/>Calgary AB T2P 3R7</p> <p><b>Attn: Deryck Helkaa / Dustin Olver / Brett Wilson</b></p> <p><a href="mailto:deryck.helkaa@fticonsulting.com">deryck.helkaa@fticonsulting.com</a><br/><a href="mailto:dustin.olver@fticonsulting.com">dustin.olver@fticonsulting.com</a><br/><a href="mailto:brett.wilson@fticonsulting.com">brett.wilson@fticonsulting.com</a></p> | <p><i>Counsel to the Applicant, FTI Consulting Canada Inc.</i></p> <p><b>MLT Aikins LLP</b><br/>2100 Livingstone Place<br/>222 - 3<sup>rd</sup> Avenue SW<br/>Calgary, AB T2P 0B4</p> <p><b>Attn: Ryan Zahara / Kaitlin Ward</b></p> <p><a href="mailto:rzahara@mltaikins.com">rzahara@mltaikins.com</a><br/><a href="mailto:kward@mltaikins.com">kward@mltaikins.com</a></p> | Email       |
| <p><b>ATB Financial</b><br/>Suite 600, 585 8<sup>th</sup> Avenue SW<br/>Calgary AB T2P 1G1</p> <p><b>Attn: Trina Holland / John Sullivan / Alexandra Dudek</b></p> <p><a href="mailto:tholland@atb.com">tholland@atb.com</a><br/><a href="mailto:jsullivan@atb.com">jsullivan@atb.com</a><br/><a href="mailto:adudek@atb.com">adudek@atb.com</a></p>  | <p><i>Counsel to the Plaintiff, ATB Financial</i></p> <p><b>Fasken Martineau DuMoulin LLP</b><br/>3400, 350 - 7<sup>th</sup> Avenue SW<br/>Calgary, AB T2P 3N9</p> <p><b>Attn: Travis Lysak / Mihai Tomos</b></p> <p><a href="mailto:tlysak@fasken.com">tlysak@fasken.com</a><br/><a href="mailto:mtomos@fasken.com">mtomos@fasken.com</a></p>                                | Email       |
| <p><b>Alberta Foothills Properties Ltd.</b></p>   | <p><i>Counsel to the Defendant, Alberta Foothills Properties Ltd.</i></p>   | Email       |

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|---|--|-------|
|   | <p><b>Miles Davison LLP</b><br/>900, 517 - 10th Avenue SW<br/>Calgary, Alberta T2R 0A8</p> <p><b>Attn: Terry Czechowskyj, Q.C.</b></p> <p><a href="mailto:tczech@milesdavison.com">tczech@milesdavison.com</a></p>                                   |       |
| <p><b>1367803 Alberta Ltd.</b><br/>c/o Registered Office<br/>2205, 500 - 4<sup>th</sup> Avenue SW<br/>Calgary, AB T2P 2V6</p> <p><b>Attn: Douglas V. Allison</b></p> <p><a href="mailto:doug@allison-associates.ca">doug@allison-associates.ca</a><br/><a href="mailto:kathy@allison-associates.ca">kathy@allison-associates.ca</a></p> <p><b>Attn: Drew Atkins</b><br/>c/o 3505 - 18 Street SW<br/>Calgary, AB T2T 4T9</p> <p><a href="mailto:Drew.bland@mac.com">Drew.bland@mac.com</a></p> |  | Email |
| <p><b>Ackroyd LLP</b><br/>#1500 10665 Jasper Avenue<br/>Edmonton, AB T5J 3S9<br/>Fax: 780-423-8946<br/><a href="mailto:stymiak@ackroydlaw.com">stymiak@ackroydlaw.com</a></p> <p><b>Attn: Ifeoma M. Okoye</b></p> <p><a href="mailto:iokoye@ackroydlaw.com">iokoye@ackroydlaw.com</a></p>   |  | Email |
| <p><b>771981 Alberta Ltd.</b></p>   | <p><i>Counsel to 771981 Alberta Ltd.</i></p> <p><b>Borden Ladner Gervais</b><br/>1900, 520 - 3<sup>rd</sup> Avenue S.W.<br/>Calgary, AB T2P 0R3</p> <p><b>Attn: Paul S. Taylor</b></p> <p><a href="mailto:pataylor@b1g.com">pataylor@b1g.com</a></p> | Email |

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|---|--|------------|
| <p><b>M. Holmes Holdings Limited</b><br/>c/o Primary Agent for Service<br/>2205, 500 - 4<sup>th</sup> Avenue SW<br/>Calgary, AB T2P 2V6<br/><b>Attn: Douglas V. Allison</b></p> <p><a href="mailto:doug@allison-associates.ca">doug@allison-associates.ca</a><br/><a href="mailto:kathy@allison-associates.ca">kathy@allison-associates.ca</a></p> <p>c/o Head Office<br/>100-80 Jutland Road<br/>Toronto, ON M8Z 2H1</p> <p><b>Attn: Briand Lund</b></p> <p><a href="mailto:brian@financial-logic.com">brian@financial-logic.com</a></p> |  | Email      |
| <p><b>The Town of Okotoks</b><br/>P.O. BAG 20<br/>Okotoks, AB T1S 1K1</p>   | <p><i>Counsel to The Town of Okotoks</i></p> <p><b>Caron &amp; Partners LLP</b><br/>21st Floor, Fifth Avenue Place, West Tower<br/>2120, 237 - 4th Avenue SW<br/>Calgary, AB T2P 4K3</p> <p><b>Attn: Jennifer D. Sykes</b></p> <p><a href="mailto:jsykes@caronpartners.com">jsykes@caronpartners.com</a></p> | Email      |
| <p><b>Department of Justice Canada</b><br/>510, 606 - 4th Street SW<br/>Calgary, AB T2P 1T1</p> <p><b>Attn: Jill Medhurst</b></p> <p><a href="mailto:jill.medhurst@justice.gc.ca">jill.medhurst@justice.gc.ca</a></p>   |  | Email      |
| <p><b>Canada Revenue Agency</b><br/>220 4<sup>th</sup> Avenue SE<br/>Calgary, AB T2G 0L1</p> <p>Fax: 403-264-5843</p>   |  | Fax / Mail |
| <p><b>Office of the Superintendent in Bankruptcy</b><br/>639 Fifth Avenue SW, Suite 400</p>   |  | Email      |

|   |  |  |
|---|--|--|
| <p>Calgary, Alberta T2P 0M9</p> <p><b>Attn: Crystal Knott</b></p> <p><a href="mailto:Crystal.Knott@canada.ca">Crystal.Knott@canada.ca</a></p> |  |  |
|---|--|--|