

MINUTES OF THE MEETING OF THE PARKLAND COUNTY SUBDIVISION AND DEVELOPMENT APPEAL BOARD HELD IN THE COUNCIL CHAMBERS IN THE COUNTY OFFICE AT PARKLAND COUNTY, ALBERTA ON MONDAY, MARCH 25, 2008.

CALL TO ORDER

The Chairperson, B. Forbes, called the meeting to order at 4:06 p.m.

PRESENT

Members: K. Darby, B. Forbes, T. Melnyk and S. Zelych
Administration: S. Fegyverneki, G. Horsfield, B. McInnis and A. Story
S. Cammidge (Recording Secretary)

ADOPTION OF AGENDA

Moved by K. Darby that the Agenda of the meeting be adopted as presented.

CARRIED UNANIMOUSLY

ADOPTION OF MINUTES

Moved by K. Darby that the minutes of the February 25, 2008 Subdivision and Development Appeal Board meeting be adopted as presented.

CARRIED UNANIMOUSLY

4:10 p.m. Appointment

An appeal of a Stop Order regarding unauthorized development of a multi-parcel country residential subdivision on Lot 3, Block 1, Plan 0524753, N.W. 20-53-27-W4M, Appellant: 1238646 Alberta Ltd. (Len Hudson).

The Chairperson opened the Hearing at 4:13 p.m. The Chairperson noted the absence of two members of the Board: J. Smith, Public Member, and C. Goerz, Councillor, and explained that the two Public Members and two Councillors present at the Hearing constitute a quorum according to County bylaws.

There was no objection to the Board members hearing this appeal and there was no objection to the Secretary of the Board taking part in any private or in-camera sessions with the Board. B. McInnis, Secretary of the Board, advised that she has elected not to take part in the Board's deliberations regarding the subject Hearing.

G. Horsfield provided the background of the subject file.

Submission of Appellant – Len Hudson of 1238646 Alberta Ltd.

The following is a summary of a submission to the Board which also reflects responses to questions from the Board.

In response to a question from the Board L. Hudson indicated that he chose to appeal the Stop Order to obtain an extension within which to comply with the terms of the Stop Order. L. Hudson advised that he was unable to obtain necessary information from the County and has had to procure that information on his own time and at his own expense. L. Hudson made reference to his March 19, 2008 letter to the County requesting cancellation of the Stop Order pending receipt of an executable Development Agreement or alternatively, the granting of a time extension to allow time to obtain and produce the necessary engineering documentation and information.

The Board asked L. Hudson what would be a reasonable time extension and L. Hudson responded that 90 days would be reasonable. The Board asked Administration whether a 90 day extension of the Stop Order would be reasonable. Administration responded that the Stop Order could be extended for a maximum of 90 days as follows:

- within 60 days from the date of the Hearing, the appellant shall obtain and provide to the County all necessary engineering documentation and information. All engineering documentation and information provided by the appellant shall be subject to approval by County staff; and
- within 30 days of approval of the engineering documentation and information by County staff, the terms of the Development Agreement shall be negotiated and the Development Agreement executed by the parties.

The Board asked L. Hudson whether that arrangement would be reasonable and L. Hudson indicated that such an arrangement would be reasonable. L. Hudson indicated that at the end of the 90 day period it would be his expectation that the terms of the Development Agreement be agreed to and the Development Agreement executed. In response to a question from the Board Administration advised that no work can be done on the subject lands until the Development Agreement is entered into and executed by the appellant and the County. Administration advised that the expectation would be that the terms of the Development Agreement be negotiated following approval of the engineering documentation and information. Administration

advised that approval of the engineering documentation and information is contingent on completion of that portion of the Development Agreement which relates to costs of off-site improvements and the necessary security required from the appellant in relation to those costs.

L. Hudson advised that no work has been done on the subject lands since last fall other than engineering testing. The Board noted that a Building Permit was issued on March 5, 2008 for the construction of a single family dwelling. L. Hudson acknowledged this fact and indicated that the construction of the dwelling is separate from the proposed subdivision. L. Hudson indicated that construction of the dwelling will continue but that no other work will be undertaken on the subject lands.

The Board asked L. Hudson if he had any questions and L. Hudson questioned why the County's Planning staff has not made a decision regarding his subdivision approval extension request. L. Hudson noted that the Stop Order makes reference to the subdivision approval extension being in jeopardy if the terms of the Stop Order are not complied with. In response to a question from the Board Administration pointed out that one of the conditions of subdivision approval was the requirement to enter into a Development Agreement with the County. To date, the terms of the Development Agreement have not been negotiated, despite the County preparing a draft Development Agreement for the appellant's review, nor has the Development Agreement been signed by the parties. Administration further indicated that the subdivision approval extension request could be left in abeyance until the terms of the Development Agreement have been agreed upon and the Development Agreement executed. Administration advised that should the terms of the Development Agreement not be agreed upon by the parties, the subdivision approval extension will not be granted. L. Hudson indicated he disagrees with Administration on this point.

The Board asked L. Hudson whether this project was his first subdivision project. L. Hudson indicated he has done a number of subdivisions in the past but that this project is his first multi-parcel subdivision. The Board reiterated to L. Hudson that the Development Agreement is very important. L. Hudson indicated that this is the first time he has been asked to enter into a Development Agreement and it is his opinion that the Development Agreement provided to him by the County contained vague terms and was in draft form. L. Hudson advised that he met with Colin Clish, Supervisor of Technical Services, in September, 2007 to review the Development Agreement. L. Hudson indicated that the amount of security required is unknown and that he needed to obtain engineering information regarding the cost of the off-site improvements. L. Hudson advised that he has retained an engineering firm and most of the information has been obtained.

The Board made reference to the 90 day extension of the Stop Order and the stipulation that no work other than engineering work be carried out on the subject lands. L. Hudson advised that is a "workable proposal". The Board urged L. Hudson to submit the required engineering information and documentation to the County as soon as possible.

Submission of Adjacent Landowner – Gilbert Jespersen

The following is a summary of a submission to the Board which also reflects responses to questions from the Board.

G. Jespersen indicated that he owns land east of the proposed subdivision. G. Jespersen further indicated that he supports Administration's issuance of the Stop Order and believes that developers should be held to the highest level of accountability regarding development in the County.

Submission of Melanie Hudson

The following is a summary of a submission to the Board which also reflects responses to questions from the Board.

M. Hudson advised the Board she is L. Hudson's spouse and presented the Board with written information regarding the appeal of the Stop Order. M. Hudson indicated she is concerned with time and wants to make sure that she and L. Hudson have all the necessary information they need from the County regarding the proposed subdivision.

Summary of Appellant – Len Hudson of 1238646 Alberta Ltd.

The following is a summary of a submission to the Board.

L. Hudson summarized that in his opinion the request of an extension within which to comply with the conditions of the Stop Order is reasonable.

The Chairperson thanked those in attendance and closed the Hearing at 4:50 p.m. No objection was made by those persons present at the Hearing when asked whether the Hearing was conducted in fair manner.

B. McInnis, S. Fegyverneki, G. Horsfield and A. Story left the meeting at 4:50 p.m.

DECISION OF THE BOARD

BOARD'S FINDING OF RELEVANT FACTS:

Based on the relevant information submitted to the Board, the Board finds the following facts:

1. On January 18, 2007 the Subdivision Authority conditionally approved Subdivision Application No. 06-S-084F for the creation of nine (9) residential parcels as a proposed Stage 1 of a new multi-parcel subdivision on Lot 3, Block 1, Plan 0524753, N.W. 20-53-27-W4M.
2. On January 26, 2007 a decision letter regarding the Subdivision Authority's conditional approval of Subdivision Application No. 06-S-084F was sent to Scheffer Andrew Ltd. and 1238646 Alberta Ltd.
3. On February 13, 2007 an appeal of that decision was received from Scheffer Andrew Ltd. on behalf of 1238646 Alberta Ltd. appealing Condition 5, first bullet regarding the upgrading and asphalt surfacing of Range Road 275 north from Township Road 532A to the entrance of the proposed subdivision including the acquisition of any necessary road widening.
4. On March 26, 2007 the Subdivision and Development Appeal Board upheld the decision of the Subdivision Authority including Condition 5, first bullet.
5. On April 4, 2007 a decision letter regarding the Subdivision and Development Appeal Board hearing was sent to the appellant and adjacent landowners.
6. On April 9, 2007 the one (1) year period of conditional subdivision approval commenced as per County policy (*conditional subdivision approval set to expire April 9, 2008*).
7. On June 20, 2007 a letter was received from 1238646 Alberta Ltd. requesting preparation of a Draft Development Agreement regarding Condition 5 of the subdivision approval.
8. On June 25, 2007 a letter was sent by Administration to 1238646 Alberta Ltd. requesting the required \$2,000.00 fee for preparation of a Draft Development Agreement.
9. On July 13, 2007 a letter was received from 1238646 Alberta Ltd. enclosing the requested \$2,000.00 Development Agreement preparation fee.
10. On September 6, 2007 a draft copy of a Development Agreement was prepared by Administration and provided to 1238646 Ltd. (*Please note, Len Hudson of 1238646 Alberta Ltd. has acknowledged meeting with Parkland County Planning staff to discuss the Draft Development Agreement dated September 6, 2007*).
11. On September 21, 2007 a site inspection of the property was completed by Colin Clish, Supervisor of Technical Services, of Parkland County and three (3) photographs were taken evidencing stripping of topsoil and commencement of internal subdivision road construction. Colin Clish verbally advised Len Hudson on-site that a signed Development Agreement by both parties and Engineering design approval are required prior to commencement of additional work.
12. Estimated completion of internal subdivision road and asphalt surfacing (September 22, 2007 to October 31, 2007). No inquiries were made to Parkland County Engineering staff seeking necessary engineering design approvals and no inquiries were made to Parkland County Planning staff regarding completion of the draft Development Agreement.
13. On January 9, 2008 a letter was received from 1238646 Alberta Ltd. requesting a one (1) year extension of the conditional subdivision approval and enclosing the extension fee of \$250.00 (*No decision has been made by Parkland County Planning staff on this extension request*).
14. On February 19, 2008 a site inspection was completed by Stephen Fegyverneki and Jennifer Mazurek of Parkland County. The following improvements and activity was observed on the subject lands:

- construction of internal subdivision road (asphalt surface) complete with approaches and culverts to 9 proposed lots;
 - drainage ditch constructed from east end of internal subdivision road north easterly to claimed watercourse;
 - tree removal and earthwork completed within County ditch along east side of Range Road 272;
 - single family dwelling under construction on south side of internal subdivision road;
 - bobcat digging large hole towards north central portion of the subject lands; and
 - proposed lots stripped of topsoil and topsoil piled towards south central portion of the subject lands.
15. On February 21, 2008 a Stop Order was issued and sent by registered mail to 1238646 Alberta Ltd. regarding the unauthorized development of a multi-parcel country residential subdivision. Len Hudson was advised of the following under the Stop Order:
- 1) enter into the required Development Agreement with Parkland County pursuant to Subdivision File 06-S-084F including providing all necessary security and insurance by March 15, 2008, and
 - 2) submit all necessary application materials, including engineering design, testing, etc. to receive engineering approval for the on-site and off-site improvements related to construction of a multi-parcel residential subdivision to the satisfaction of Parkland County by March 15, 2008.
- or**
- 3) remove all improvements related to the construction of a multi-parcel residential subdivision and reclaim the property to agricultural land, including the adjacent Parkland County ditch to the satisfaction of Parkland no later than March 31, 2008.
16. On March 5, 2008 County Planning staff issued Building Permit No. 08-B0061 for the construction of a single family dwelling on the current unsubdivided property. Parkland County allows the approval of one (1) single family dwelling per property.
17. On March 7, 2008 an appeal of the Stop Order was received from 1238646 Alberta Ltd.
18. On March 11, 2008 notification of the Hearing was sent to the appellant and adjacent landowners.
19. On March 14, 2008 notification of the Hearing was advertised in the local newspaper.
20. On March 19, 2008 a letter was received from 1238646 Alberta Ltd.
21. L. Hudson of 1238646 Alberta Ltd. was present at the Hearing and made a submission to the Board.
22. An adjacent landowner, Gilbert Jespersen, was present at the Hearing and made a submission to the Board.
23. M. Hudson was present at the Hearing and made a submission to the Board.
24. The Board noted that the County has not received an executed Development Agreement from the appellant nor the required security, proof of insurance and estimate from a professional engineer regarding the local improvements as contemplated by the Development Agreement.
25. The Board noted that the unauthorized development on the lands has not been reviewed or approved by the County's Engineering Department as contemplated by the Development Agreement.

Legislation

The Board finds the following legislation relevant:

1. Municipal Government Act, R.S.A. 2000, c.M-26, section 645; and
2. Parkland County Policy PD 001 – Security Practices for Development Permits and Subdivisions.

Reasons

The Board received evidence on a number of issues and will address these issues in the reasons which follow:

The Board upholds the Stop Order for the following reasons:

1. The Board is of the opinion that the appellant was aware of the conditions of approval of Subdivision Application No. 06-S-084F including the condition requiring the appellant to enter into a Development Agreement with the County as evidenced by appellant's request for preparation of the Development Agreement and the payment of the required fee. The Board is of the opinion that despite receiving a draft Development Agreement from the County in September, 2007, the appellant has not obtained nor submitted the necessary engineering information and documentation to the County to facilitate the completion of the Development Agreement.
2. The Board is of the opinion that the appellant was made aware of the unauthorized use of the lands by way of a verbal warning by County staff on September 21, 2007. The Board is further of the opinion that the Stop Order dated February 21, 2008 was issued due to the unauthorized development of the lands and due to the absence of an executed Development Agreement between the parties.
3. The Board is of the opinion that an extension of the Stop Order is reasonable to allow the appellant an opportunity to obtain and submit for approval the necessary engineering information and documentation required to complete the Development Agreement for execution by the parties.

Motion:

Moved by T. Melnyk that the Subdivision and Development Appeal Board uphold the Stop Order dated February 21, 2008. The Stop Order shall be extended for a period of 90 days and shall remain in force and effect until such time as 1238646 Alberta Ltd. has entered into and executed a Development Agreement with Parkland County. Therefore, the following shall apply:

1. Within 60 days from the date of the Hearing, the appellant shall obtain and provide to Parkland County all necessary engineering documentation and information. All engineering documentation and information provided by the appellant shall be subject to approval by Parkland County staff. In the event the submitted engineering documentation and information is insufficient, incomplete or otherwise unacceptable to Parkland County staff, the appellant shall provide further engineering documentation and information as specified by Parkland County staff.
2. Within 30 days of approval of the engineering documentation and information by Parkland County staff, the terms of the Development Agreement shall be negotiated and the Development Agreement executed by the parties.
3. In the event the appellant does not provide all necessary engineering documentation and information as required to the County for approval therefore prohibiting the completion and execution of the Development Agreement, the Stop Order shall remain in force and effect and the County shall take such action as it deems necessary to enforce the Stop Order as against the appellant.

CARRIED UNANIMOUSLY

ADJOURNMENT

Moved by S. Zelych that the meeting be adjourned at 5:00 p.m.

CARRIED UNANIMOUSLY

CHAIRPERSON