

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, OCTOBER 27, 2008.

CALL TO ORDER

The Chairperson, B. Forbes, called the meeting to order at 4:03 p.m.

PRESENT

Members: K. Darby, B. Forbes, C. Goerz and S. Zelych
Administration: M. Brennan, G. Frank and R. Sider
S. Cammidge (Recording Secretary)

ADOPTION OF AGENDA

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

CARRIED

ADOPTION OF MINUTES

Moved by K. Darby that the Minutes of the October 14, 2008 Subdivision and Development Appeal Board meeting be adopted as amended:

Page 3, Reason 2, last sentence shall read "Therefore, the existing attached garage will remain as an accessory building."

CARRIED

4:10 p.m. Appointment

An appeal of a decision of the Development Authority to conditionally approve Development Permit No. 07-D-030 for lot re-contouring and grading on N.W. 13-52-1-W5M, Municipal Address: 52231 Range Road 11, Applicant: Monika Deneke, Appellant: Dwight Lutz.

The Chairperson opened the Hearing at 4:12 p.m.

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.

R. Sider provided the background of the subject file.

Submission of Appellant – Dwight Lutz

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

D. Lutz indicated that there is a pothole (low area) which is dissected by Section 13 and provided Administration with a drawing of Section 13. D. Lutz owns land directly west of the applicant's land and of Range Road 11. D. Lutz advised that Range Road 11 west of the applicant's land often floods over during the spring. D. Lutz suggested that the pothole collects water from 60 ac or more and believes that the filling done on the applicant's land has reduced the holding capacity of the pothole by 60% to 70%. D. Lutz believes that the 20m³ pond the applicant is to build pursuant Condition 3 of the Development Permit is inadequate. D. Lutz suggested that the applicant be required to pump water from the pothole and disperse it over her land to ensure there is no flooding onto adjacent lands. D. Lutz further suggested that the County require that a Caveat be registered against the applicant's title to this effect.

In response to a question from the Board, D. Lutz advised that in his estimation from observing the applicant's land from Range Road 11, 600 m³ to 700 m³ of fill was brought to the lands. In response to a further question from the Board, D. Lutz indicated that he does not agree with the engineering report submitted by the applicant.

In response to a question from the Board, D. Lutz advised that water in the pothole does not drain away but dries up and further advised if the applicant were required to pump water out of the pothole, the water could be pumped out to the eastern portion of the applicant's lands.

In response to a question from the Board, Administration advised it would be difficult to register a Caveat against title to the applicant's lands as suggested by the appellant. In response to a further question from the Board, Administration advised that the site drainage/grading plan (Condition 5) is subject to approval by the County's Engineering Department.

Submission of Jack Dringenberg

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

J. Dringenberg advised that he owns property directly north of the applicant's property. J. Dringenberg advised that Range Road 11 was not built to standard and that any flooding to the Lutz property is due to the absence of culverts at the two approaches to the Lutz property. J. Dringenberg further advised that in his opinion the amount of water which collects is insignificant as the water drains to Water Courses 2 and 3 into the Town of Stony Plain.

Submission of Rhonda Lutz

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

R. Lutz advised that her driveway crosses the low portion on the Lutz lands and further advised that there is a culvert under the driveway. R. Lutz believes that any water present on the Lutz land is the result of the filling done on the applicant's land.

Submission of Applicant – Monika Deneke

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

M. Deneke advised that complaints were made in 2005 and 2008 regarding work undertaken on her property. M. Deneke provided several photographs of the subject lands. M. Deneke advised that in the spring of 2005, the northwest corner of her property was excavated and large amounts of debris such as concrete blocks and car bodies were found. The debris was removed and the excavated area was filled in with soil excavated from the building site of her home. M. Deneke advised that she was not aware that Development Permit approval was required for this work and eventually the County issued a Stop Order. At the request of the County, M. Deneke obtained an engineering report regarding pre-elevation and post-elevation drawings of the site. M. Deneke advised that there have been no changes to the site since 2005 and believes that there are no issues with flooding.

Summary of Appellant – Dwight Lutz

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

D. Lutz advised that the pothole collects water from 60 or more acres of land and does not drain to Water Courses 2 and 3 as suggested by J. Dringenberg. D. Lutz confirmed that he does have two driveways on his lands – one with a culvert and one without a culvert. D. Lutz indicated that much of the water which accumulates is due to spring run off. D. Lutz reiterated his concerns regarding flooding and advised that he does not agree with the engineering report submitted by the applicant.

No objection was made by those persons present at the Hearing when asked whether the Hearing was conducted in fair manner. The Chairperson thanked those in attendance and closed the Hearing at 5:00 p.m.

A decision on this matter was deferred to later in the meeting.

4:40 p.m. Appointment

An appeal of a decision of the Development Authority to renew Development Permit No. 03-D-171 for sand and gravel resource extraction to include crushing, screening and washing on S.E., N.E. and Pt. S.W. 31-50-3-W5M, Applicant/Appellant: Mixcor Aggregates Inc.

The Chairperson opened the Hearing at 5:04 p.m.

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.

R. Sider provided the background of the subject file.

Submission of Appellant – Gary Zeitner of Mixcor Aggregates Inc.

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

G. Zeitner, General Manager of Mixcor Aggregates Inc. ("Mixcor") advised that the winter hauling hours from September to June are the subject of the appeal. G. Zeitner indicated that these months include the construction season and advised that earlier hauling hours are preferred by Mixcor's customers. G. Zeitner indicated he understands the concerns of the community regarding the gravel industry but believes Mixcor has earned the trust of the local residents.

Submission of Victor Lauder

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

V. Lauder commended Mixcor on its contribution to the local school. V. Lauder cited concerns regarding the safety of children travelling on school busses and indicated that while school busses do not travel Range Road 35, the busses do travel Secondary Highway 627.

Submission of John and Pat Vanderwell

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

P. Vanderwell advised that she and her spouse live on Range Road 43 and commended Mixcor for its diligence in the community. P. Vanderwell expressed concern regarding children travelling on school busses and indicated that if the hauling hours are changed for Mixcor, other operators will request changes to hauling hours. J. Vanderwell concurred with his spouse's comments.

Submission of Garry MacDougall

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

G. MacDougall indicated he owns land adjacent to the Mixcor pit and advised that he travels Range Road 35 daily. G. MacDougall expressed concern regarding the practice of drivers to line up to the pit along Range Road 35 as early as 6:00 a.m. G. MacDougall believes that changing the hauling hours will alleviate the heavy traffic in the morning.

Submission of Richard and Brenda Nelson

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

B. Nelson expressed concern regarding children travelling on school busses. B. Nelson indicated that gravel trucks travelling west on Secondary Highway 627 impede early morning traffic. In response to a question from the Board, B. Nelson advised that she believes the hauling hours should remain as indicated on the Development Permit.

R. Nelson believes that if Mixcor is permitted to change its haul hours, other operators will make the same request of the County. R. Nelson concurred with G. MacDougall's comments regarding the long line of trucks leading to the pit and advised that traffic in the morning is heavier than it is in the afternoon.

The Board clarified that Mixcor is not requesting that the hauling hours be expanded but rather amended to permit hauling two hours earlier in the morning and two hours shorter in the afternoon. R. Nelson and B. Nelson indicated that they are both opposed to this request.

Submission of Sandy Porter

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

S. Porter advised that Porter Ranches Ltd. has a farm operation on Range Road 35 and indicated that the requested hauling hours will have less of an impact on the farming operation. S. Porter indicated that she is also concerned with the safety of children travelling on school busses.

Submission of Roy Samad

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

R. Samad advised that he operates a gravel pit on Range Road 35 and is supportive of Mixcor's request. R. Samad believes that allowing hauling to start two hours earlier in the morning will allow operators to be more competitive in the industry. R. Samad indicated that while safety is a concern, to his knowledge there has not been an accident involving a school bus since 1984.

Summary of Appellant – Mixcor Aggregates Inc.

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

G. Zeitner advised that monitoring drivers is the most difficult issue in the industry but advised that Mixcor has a superintendent on site to monitor activity at the pit and the truck drivers. G. Zeitner clarified that Mixcor is not requesting that the hauling

hours be expanded but amended to allow hauling two hours earlier in the morning. G. Zeitner advised that each operator and each gravel pit should be considered on a site specific basis. G. Zeitner indicated that ending the hauling at 5:00 p.m. allows local residents more recreational time due to the absence of trucks on the roads.

No objection was made by those persons present at the Hearing when asked whether the Hearing was conducted in fair manner. The Chairperson thanked those in attendance and closed the Hearing at 5:50 p.m.

R. Sider left the meeting at 5:52 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 September 8, 2008 the Development Authority conditionally approved Development Permit No. 03-D-171 for sand and gravel resource extraction to include crushing, screening and washing on S.E., N.E. and Pt. S.W. 31-50-3-W5M.
2. On September 26, 2008 an appeal of that decision was received from the applicant, Mixcor Aggregates Inc.
3. On October 14, 2008 notification of the Hearing was sent to the applicant/appellant and adjacent landowners.
4. On October 17, 2008 notification of the Hearing was advertised in the local newspaper.
5. The appellant, Gary Zeitner, General Manager of Mixcor Aggregates Inc. was present at the Hearing and made a submission to the Board.
6. Victor Lauder was present at the Hearing and made a submission to the Board.
7. Pat and John Vanderwell were present at the Hearing and made submissions to the Board.
8. Garry MacDougall was present at the Hearing and made a submission to the Board.
9. Richard and Brenda Nelson were present at the Hearing and made submissions to the Board.
10. Sandy Porter of Porter Ranches Ltd. was present at the Hearing and made a submission to the Board.
11. Roy Samad was present at the Hearing and made a submission to the Board.

Legislation

The Board finds the following legislation relevant:

1. Parkland County Land Use Bylaw No. 15-00, Section 73.

Reasons

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

The Board denies the appeal for the following reasons:

1. The Board heard concerns from members of the community regarding the importance of safety and of limiting the amount of truck traffic while school busses are transporting children to school.
2. The Board further heard that other gravel pits in the area have the same winter hauling hours as stipulated in Development Permit No. 03-D-171. The Board heard community members express concern regarding deviation from established winter hauling hours as it may encourage other operators to request amendments to hauling hours.
3. The Board is of the opinion that the conditions imposed in the Development Permit are adequate and sufficient regarding the development.

Motion:

Moved by K. Darby that the Subdivision and Development Appeal Board deny the appeal and uphold the decision of the Development Authority regarding Development Permit No. 03-D-171.

CARRIED

Motion:

Moved by K. Darby that the Subdivision and Development Appeal Board recommend that Administration undertake a review of hauling hours specific to gravel operations within Parkland County.

CARRIED

An appeal of a decision of the Development Authority to conditionally approve Development Permit No. 07-D-030 for lot re-contouring and grading on N.W. 13-52-1-W5M, Municipal Address: 52231 Range Road 11, Applicant: Monika Deneke, Appellant: Dwight Lutz.

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 September 8, 2008 the Development Authority conditionally approved Development Permit No. 07-D-030 for lot re-contouring and grading on N.W. 13-52-1-W5M, Municipal Address: 52231 Range Road 11.
2. On September 29, 2008 an appeal of that decision was received from an adjacent landowner, Dwight Lutz.
3. On October 14, 2008 notification of the Hearing was sent to the applicant, appellant and adjacent landowners.
4. On October 17, 2008 notification of the Hearing was advertised in the local newspaper.
5. On October 22, 2008 a letter was received from P. Bakker.
6. On October 22, 2008 a letter was received from an adjacent landowner, Arnold Gabel.
7. The appellant, D. Lutz, was present at the Hearing and made a submission to the Board. D. Lutz provided a diagram of Section 13 to the Board.
8. J. Dringenberg was present at the Hearing and made a submission to the Board.
9. R. Lutz was present at the Hearing and made a submission to the Board.
10. The applicant, M. Deneke, was present at the Hearing and made a submission to the Board. M. Deneke provided photographs of the subject lands and of Range Road 11.

Legislation

The Board finds the following legislation relevant:

1. Parkland County Land Use Bylaw No. 15-00, Section 48.

Reasons

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

The Board denies the appeal for the following reason:

1. The Board is of the opinion that there is insufficient evidence to establish that the work undertaken on the applicant's lands to date and the work remaining to be completed on the applicant's lands, will have a negative impact on adjacent lands.
2. The Board is of the opinion that the conditions imposed in the Development Permit are adequate and sufficient regarding the development.

Motion:

Moved by S. Zelych that the Subdivision and Development Appeal Board deny the appeal and uphold the decision of the Development Authority regarding Development Permit No. 07-D-030.

CARRIED

ADJOURNMENT

Moved by K. Darby that the meeting be adjourned at 6:34 p.m.

CARRIED

CHAIRPERSON