

**SUBDIVISION AND DEVELOPMENT APPEAL BOARD
PARKLAND COUNTY**

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DATE: August 21, 2017
FILE NO.: 17-S-028

Notice of Decision of Subdivision and Development Appeal Board

INTRODUCTION

[1] The Subdivision Authority of Parkland County approved a subdivision application for 5-51222 Range Road 270, legally described as NE-13-27-51-W4 (the "Parcel") with conditions on July 10, 2017. The Appellant, Carole LaPointe, appealed four of the nine conditions imposed by the Subdivision Authority.

PRELIMINARY MATTERS

A. Board Members

[2] At the outset of the appeal, the Chair requested confirmation from all parties in attendance that there was no opposition to the composition of the Board hearing the appeal. None of the persons in attendance had any objection to the members of the Board hearing the appeal.

B. Additional Materials

[3] The Appellant submitted one additional exhibit at the outset of the hearing, which has been marked as Exhibit 6 on the list of exhibits at the end of this decision. The Subdivision Authority submitted a map, marked as Exhibit 7 on the list of exhibits at the end of this decision.

C. Miscellaneous

[4] The Board marked the exhibits as set out on the list at the end of this decision.

[5] The appeal was filed on time, in accordance with Section 678(2) of the Municipal Government Act, R.S.A. 2000, c.M-26 (the "Act").

[6] The Board is satisfied that it has jurisdiction to deal with this matter. There were no objections to the proposed hearing process.

DECISION OF THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD

[7] The Board denies the appeal, but has varied conditions 2(d), 5 and 8. The wording of condition 2(d) is modified and conditions 5 and 8 are merged into the following modified condition 5. The previous condition 8 is repealed. The modified conditions are set out below:

Condition 2: Pursuant to Section 655 of the Municipal Government Act, the landowner shall complete the following with respect to approaches and ditching:

- (d) a drainage plan must be submitted to the County prior to endorsement to show that each lot's storm surface run off will not unduly impact other lots. The drainage plan must be prepared by a qualified technical engineering consultant.

Condition 5

5. Pursuant to Section 7 of the Subdivision and Development Regulation, a restrictive covenant prepared to the satisfaction of the County shall be registered against Lots 1, 2 and 3 which notifies future owners that, as determined by the Parkland Geo-Environmental Ltd. Geotechnical Investigation Report dated November 1, 2016:

- a. soil percolation information supplied with the application determined that a conventional sewage disposal septic tank to field may not be suitable given high shallow water table conditions and percolation rates determined within portions of the subdivision; and
- b. geotechnical and shallow water table information supplied with the subdivision application determined that a portion of the property contains high shallow water conditions (<2.13 m from ground surface).

The Alberta Land Surveyor or Geotechnical Engineer shall prepare a schedule for each lot to the satisfaction of the County that is to be attached to the Restrictive Covenant clearly showing the dimension and area of the identified shallow water table area.

[8] All other conditions imposed by the Subdivision Authority (Condition 1, Condition 2(a), (b) and (c), Condition 3, Condition 4, Condition 6, Condition 7 and Condition 9) remain as imposed by the Subdivision Authority.

SUMMARY OF HEARING

Subdivision Authority

[9] The Board first heard from the Subdivision Authority.

[10] The Parcel is a 29 acre parcel governed by the provisions of the Woodbend-Graminia area structure plan (ASP). The Parcel is zoned country residential (CR). As a result, the Parcel can be subdivided into lots as small as 2 acres. Due to the higher densities which are permitted for land zoned country residential, more rigorous planning is required to understand the capacity and constraints of the Parcel, especially where it is known to have wetlands. The Parcel is the remnant of the quarter section. The Applicant wishes to subdivide the Parcel into three lots. Proposed Lot 1 is where the existing house and some outbuildings are located. Proposed Lots 2 and 3 have no buildings. Each of the lots is approximately 8 acres in size, with proposed Lot 1 being the largest at 3.84 hectares (9.489 acres). The area identified in cross-hatching (page 308 of 390) south of Township Road 512A has a shallow water table which is closer than 2.13 meters to the surface. A water table close to the surface presents constraints because buildings may be subject to flooding, especially where private septic systems are required. The Parcel is governed by the Core Country Residential provisions of the County's Municipal Development Plan, Bylaw 37-2007 (the "MDP"). The County's MDP requires an outline plan (Section 2.6) (page 108 of 390) and Policy 2.8 (page 109 of 390). The Applicant prepared an outline plan for the Parcel which is included in the package (page 117 of 390 to page 141 of 390).

[11] The Applicant appealed four conditions imposed by the Subdivision Authority. The conditions were imposed to mitigate development concerns and to allow for subdivision and future development to occur. The conditions imposed are in compliance with the provisions of the *Municipal Government Act*, R.S.A. 2000, c.M-26 (the "MGA") and the Regulations and the *Water Act*.

Condition 2(a)

[12] Condition 2(a) requires a road plan. The Subdivision Authority identified concerns with the sightlines due to the curvature of the road and the tree stands along the road. This condition was imposed to address safety concerns for the County as well as adjacent owners. If the road meets the engineering standards, it is fine. If not, an engineered road plan is required. This is in accordance with Section 7(e) of the Subdivision and Development Regulation, AR 43/2002 (the "Regulation").

Conditions 2(b) and 2(c)

[13] Condition 2(b) and 2(c) address the space between approaches and the design standards of the approaches require construction to be done to County standards to minimize road wear and tear. These conditions were imposed pursuant to Section 7(d) of the Regulation.

[14] In response to Board questions, the Subdivision Authority advised that the engineering design standards require 40 meters between driveways.

Condition 2(d)

[15] Condition 2(d) addresses the need for a drainage plan. This is a standard condition for all multi-lot subdivisions to ensure the grading of the new lots addresses storm water drainage and that the water will flow to ditches. It protects the Parcel and adjacent lands from flooding. Such a drainage plan may be submitted with the application or may come after as a condition of subdivision. It is a requirement of provincial legislation and the plan needs to be in place for when non-permeable surfaces are placed upon the lands. This is imposed pursuant to Section 7(c) of the Regulation and is a standard condition of subdivision.

Condition 4

[16] Condition 4 addresses the requirement to have a Certificate of Compliance for the private septic system to ensure compliance with the Private Sewage Disposal System Regulation. The septic inspector will need to provide assurance to the County that the system is compliant with property boundaries. This condition was imposed pursuant to Section 7(g) of the Regulation.

[17] In response to questions from the Board, the Subdivision Authority advised that a certificate had been provided by the Applicant on November 3, 2016 (page 148 of 390), but the report dealt with the compliance of the septic system on the Parcel prior to subdivision. The new certificate will assess the compliance of the septic system in regard to the boundaries of proposed Lot 1.

Condition 5

[18] Condition 5 requires a restrictive covenant to be registered against all three proposed lots to advise future owners of the high shallow water table conditions and percolation rates. It will also provide notice regarding ground conditions concerning the installation of private sewage disposal systems. This restrictive covenant will be imposed by the County under its authority found in Section 651.1 of the MGA. The Subdivision Authority stated that Alberta Health Services does not support the use of holding tanks as the lack of servicing and maintenance may lead to unlawful, open discharge which can create a public health nuisance (page 164 of 390). The drill results from the Parkland Geo Report recommends the use alternate septic systems on the land (page 179 of 390). This condition was imposed under Section 7(a) and 7(f) of the Regulation.

Condition 8

[19] Condition 8 also requires a restrictive covenant to notify future owners of the high shallow water conditions and requires a schedule prepared by an Alberta Land Surveyor showing the dimension and area of the identified shallow water table area. This condition notifies potential purchasers and the Development Authority about development constraints due to a shallow water table and that buildings in that area might be at greater risk of flooding. The proposed lots meet the requirement of the MDP which require a minimum of 2 acres of developable lands. This condition protects the Applicant, future owners and the County by identifying the contiguous acres of developable lands. This condition was imposed pursuant to Section 7(a) and 7(b) of the Regulation.

[20] In response to questions from the Board about whether there are any inconsistencies between the MDP and the ASP, the Subdivision Authority advised that the Outline Plan was required to ensure that the proposed subdivision was in compliance with the ASP, which it is. In response to further questions regarding the water bodies, the Subdivision Authority provided the Board with information about the Wetland Inventory Map and Historic Wetland Inventory Maps (pages 318 of 390 and 319 of 390). The Subdivision Authority could not advise how close to the surface the water was, but indicated that the drill hole results in the Parkland Geo Report confirmed a high water table. The Subdivision Authority provided further information regarding the categories of wetlands, advising that the wetlands on the proposed lots are of moderate wetland valuation.

[21] In response to Board questions, the Subdivision Authority advised that a sight line and drainage report is required. It may be asked for at the time of Application. However, by doing it as a condition of subdivision, it allowed for further due diligence to be conducted and reduced the upfront cost to the Applicant. Due to the curvature of the road, the Subdivision Authority is asking the Appellant to confirm that the curvature is safe. The Subdivision Authority did not require a traffic impact assessment because it was excessive given the small number of lots to be created.

[22] In response to Board questions, the Subdivision Authority advised that the restrictive covenant conditions addressing the septic system and high water table is to provide notification about a concern about the high water table and the possible constraints on the land. The restrictive covenant is legally binding and the Municipality would have to consent to its removal. The restrictive covenant provides notice to future land owners. The Subdivision Authority advised that it could only be done by way of restrictive covenant and the Subdivision Authority was not comfortable endorsing the subdivision without notification on title. A restrictive covenant protects the Municipality, future owners as well as the current land owner. There is no other way to provide notice without registering a covenant on title.

[23] In response to Board questions, the Subdivision Authority advised that a drainage report is a standard condition on any multi lot subdivision.

[24] In response to Board questions, the Subdivision Authority advised that Condition 4 has been placed to ensure that the private sewage disposal system is in compliance with the proposed boundaries. The Subdivision Authority does not anticipate the replacement of the system, but the Subdivision Authority requires written assurance that the system is in compliance with the proposed boundaries. This is a standard condition on any privately serviced subdivision.

[25] The Subdivision Authority advised that the intent of Condition 8 is to provide notification of the constraints. Condition 8 advises with regard to the building pockets and the potential for flooding. Condition 5 provides notice of the septic system and ground water issues.

[26] In response to questions from the Board to the Subdivision Authority about whether the registration and Parkland Geo report itself would be sufficient so that a surveyor would not be required, the Subdivision Authority advised that a surveyor is required to prepare the plan. The surveyor has all of the documents and it would be too much to register the Parkland Geo Report. The restrictive covenant is asking for a summary of the mapping by the Land Surveyor. The schedule would provide a legal description of the lands and identify a map containing the areas which are subject to the high water. The Subdivision Authority advised that the mapping must be prepared by a Land Surveyor and not an engineer. The Subdivision Authority advised that the information received from Parkland Geo advises that there is high water on all three lots.

Appellant Carole LaPointe

[27] The Board next heard from the Appellant, Carol LaPointe, and her brother Randy Hennig. The Appellant indicated that the Parcel is 25.99 acres and the adjacent township road has a posted speed limit of 60 kilometers. The lots to the north of the Parcel (north of the

township road) are 5 - 9 acres each and have a low chance of further subdivision. Following the requirement by the County, the Applicant prepared an Outline Plan in January 2017.

[28] The Appellant is appealing Conditions 2(a) and (d), 4, 5 and 8.

[29] The Appellant is particularly concerned about the requirement for a restrictive covenant. It is her submission that the County is using restrictive covenants in an inappropriate way due to the difficulty in removing a restrictive covenant from the title and the negative impacts a restrictive covenant would have on the sale of the parcel. The Appellant stated restrictive covenants are a strong deterrent to potential buyers because the potential buyers do not understand the impact of restrictive covenants. The Appellant questioned whether the restrictive covenant needed to be placed on all three proposed lots.

Condition 2(a)

[30] In regard to Condition 2(a), the Appellant questioned the need to have a plan prepared by a qualified technical engineering consultant. She suggested that the County engineer could suggest suitable locations for the approaches. Although she recognizes the importance of sightlines, the posted speed limit for the township road is only 60 kilometers per hour. Based on the information provided from Alberta Infrastructure regarding line of sight distance requirements (page 335 of 390), the distances between the existing approaches (the approach to the residence, and the two field approaches) well exceed the minimum stopping sight distances (page 338 of 390). The field approaches to Lots 2 and 3 have been there for 40 years. The shortest distance is from Lot 3 west, which is 104 meters, which is still greater than the 85 meters required. The Appellant questioned why there was a need to hire a consultant to show what everyone already knew.

[31] The Appellant advised that from the neighbour to the west to the Lot 1 approach is 166 meters. Between Lot 1 to Lot 2 is 166 meters and between Lot 2 to Lot 3 is 147 meters.

Condition 2(d)

[32] The Appellants were of the view that Condition 2(d) was unnecessary. The field approaches have been on proposed Lots 2 and 3 for 40 years without drainage issues. There is no water accumulation even in spring, which is confirmed by the neighbour who lives across the road to the east (page 386 of 390) and by Mr. Hennig, who has farmed the land (pages 384 of 390 and 385 of 390). If there is development on the new lots, that development would change the effect of the engineering report, which suggests that there is no value in getting that report.

Condition 4

[33] In regard to Condition 4, the Appellant obtained a private sewage disposal permit (page 148 of 390). She questioned why there was a need to obtain a second approval.

[34] In response to questions from the Board, the Subdivision Authority advised that the requirement was to ensure compliance of the sewage disposal location with the new lot lines of the proposed lots.

Condition 5

[35] With regard to Condition 5, the Appellant questioned the need for the restrictive covenant, indicating that the County has a good process to manage the type of septic system required (page 350 of 390). Anyone planning to install a private sewage disposal system must apply to the County. Owners can only use certified contractors on a list available from the Government of Alberta. This condition is not required as all concerns will be dealt with at the stage that someone wishes to place a private sewage disposal on one of the proposed lots. The site evaluation requirements are set out in part 7 of the Private Sewage Systems Standard of Practice. Gavin Mayer, who prepared the report for Parkland Geo, stated that every site tested met all the requirements except for bore hole number 5. The Appellant asked for the removal of Condition 5 on the basis that it is not required and conflicts with well-established practice.

Condition 8

[36] In regard to Condition 8, the Appellant questioned the need to have a restrictive covenant showing the high shallow water conditions. Each parcel has more than the minimum amount of developable land. The bore holes done in 2016 showed water, but only because 2016 was the wettest year in the last 12 years and October had double the normal amount of precipitation. The Appellants submitted that due to the unusual amount of precipitation (page 357 of 390 and page 359 of 390), 2016 was not a normal year and the condition should not be imposed as a result of that.

[37] The Appellant also reviewed the bore hole data (Exhibit 6) advising that the holes were drilled at different elevations. The elevation difference between bore hole 16-01 and 16-04 is 11 feet. Page 128 of 390 shows the topographical map of the area. The Appellants stated that Mike McCormick of Parkland Geo indicated that there could be 0.5 meter fluctuation of the results. A change of 0.29 meters would have made all of the bore holes acceptable. In the Appellant's view, there is no need for a restrictive covenant or for a Land Surveyor to survey the area. Further, Lot 1 does not need to have the restrictive covenant.

[38] In response to Board questions, the Appellant advised that none of the three approaches have culverts as there is insufficient ditching to cover over the culvert.

FINDINGS OF FACT

[39] The Site is located at NE-13-27-51-W4, municipally described as 5-51222 Range Road 270.

[40] The Site is zoned Country Residential District in Parkland County Land Use Bylaw 20-2009, as amended.

[41] As the applicant for subdivision, the Appellant is entitled to appeal the decision of the Subdivision Authority.

REASONS

[42] The Board notes that its jurisdiction is found in section 680(2) of the Municipal Government Act. In making this decision, the Board has examined the provisions of the County's Land Use Bylaw ("LUB"), and has noted the County's Municipal Development Plan, and the Glory Hills Area Structure Plan, and the provisions of the Parkland County Land Use Bylaw as referenced in the Development Authority's Report. The Board has also considered the oral and written submissions made by the Appellant and Mr. Hennig and the Subdivision Authority.

680(2) In determining an appeal, the board hearing the appeal

- (a) must act in accordance with any applicable ALSA regional plan;*
- (a.1) must have regard to any statutory plan;*
- (b) must conform with the uses of land referred to in a land use bylaw;*
- (c) must be consistent with the land use policies;*
- (d) must have regard to but is not bound by the subdivision and development regulations;*
- (e) may confirm, revoke or vary the approval or decision or any condition imposed by the subdivision authority or make or substitute an approval, decision or condition of its own;*
- (f) may, in addition to the other powers it has, exercise the same power as a subdivision authority is permitted to exercise pursuant to this Part or the regulations or bylaws under this Part..*

Status of the Appellant

[43] The Appellant is the applicant for subdivision. Under section 678(1)(a), the applicant is entitled to appeal the decision of the Subdivision Authority.

ALSA Regional Plan

[44] There is no ALSA regional Plan.

Statutory Plans

[45] The evidence of the Subdivision Authority was that the proposed subdivision conformed to the requirements of the County's MDP and the requirements of the multi-parcel country residential use provisions of the Woodbend-Graminia Area Structure Plan. The Appellant did not contest the subdivision on this ground and provided no evidence in regard to the statutory plans. The Board accepts the evidence of the Subdivision Authority in relation to the compliance of the subdivision with the statutory plans.

Uses for the Proposed Lots - Land Use Bylaw

[46] The Parcel is zoned County Residential (CR) District. The proposed use is country residential, so the proposed use conforms with the Land Use Bylaw.

Land Use Policies

[47] The Board heard no evidence that the proposed subdivision was in conflict with the Land Use Policies.

Subdivision and Development Regulations

[48] The Board must have regard for, but is not bound by the Regulation.

[49] This appeal focuses on four conditions imposed by the Subdivision Authority as a result of the Subdivision Authority's consideration of the Regulation.

[50] Condition 2(a) was imposed as a result of safety concerns arising from sightlines on the township road. The purpose of the condition is to obtain confirmation that the road meets engineering standards, and if not, then the Appellant will be required to prepare an engineered road plan. The Appellants argued against the condition on the basis that the road speed on the township road is only 60 kilometers per hour and the information provided about sign distances from Alberta Infrastructure shows that there are sufficient sight distances.

[51] The Board accepts the evidence of the Subdivision Authority, as evidenced in the photographs, that there is a curve in the road, and there are tree stands along the road. The Board has considered the evidence presented and is not prepared to waive Condition 2(a). The obligation is for the applicant to provide a detailed plan identifying sightlines to ensure safety along the road. The Board notes that this condition is not particularly onerous, and the only time such a condition can be imposed is at the time of subdivision. This condition assures that the users of the township road, whether from the lots currently in existence along the road, or those to be created by this subdivision will have adequate sightlines, so that there are no dangers created by the creation of the proposed lots.

[52] Condition 2(d) was imposed to ensure that the storm surface run off will not impact other lots. The Board accepts the evidence of the Appellant that once there is development, the configuration of the lots may change. However, the Board is of the view that this condition is necessary to ensure that when the 3 lots are created one or more of those newly created lots does not create a nuisance for the other lot or lots due to the surface drainage from that lot flowing onto another of the newly created lots. The Board notes that the language of the condition as drafted by the Subdivision Authority is worded in such a way that any impact on the other lots would prevent the subdivision from being endorsed. Although the Board agrees with the imposition of the condition, it is of the view that wording needs to be modified slightly to reflect the fact that the impact of storm surface run off should be undue, before it can prevent the subdivision from being endorsed. Therefore, this condition is modified as set out in paragraph [7].

[53] Condition 4 was imposed by the Subdivision Authority to ensure that the private sewage system is properly sited within what will be Lot 1. The Board acknowledges that the Appellant obtained a report in November, 2016. However, that report certifies the location of the system on the Parcel in its unsubdivided state. Condition 4 ensures that the system will not be encroaching onto the newly created Lot 2. The Board is of the view that this condition is not onerous and ensures that there will not be problems with possible encroachment issues in future. For these reasons, the Board is not prepared to alter or remove this condition.

[54] Conditions 5 and 8 can be examined together. These conditions require that a restrictive covenant be placed against the title of all 3 proposed lots to notify future owners about the shallow water table. Condition 5 is to provide notification that conventional sewage disposal septic tanks may not be suitable. Condition 8 deals with the high water table as it impacts on possible development constraints. It appeared to the Board that the Appellant's concerns were with the registration of a restrictive covenant as notice to future owners and the possible impact that the restrictive covenant would have on future purchasers. However, the Board accepts the evidence of the Subdivision Authority that the restrictive covenants are to provide sufficient information to future owners about both the impact on private sewage systems as well as possible development constraints due to the high water table. The Board agrees that there should be notice to future purchasers, especially since the results came from the Appellant's own report. The Board does note that 2016 was a wet year (perhaps wetter than it has been in the recent past). However, neither the Board, nor the Appellant can control the weather, and should there be future wet years, any prospective purchaser will be notified of the risks. The Board is of the opinion that this is of benefit to all parties involved: the Subdivision Authority, the Appellant and any future owners. The Board notes that the conditions can be reworded to make them clearer and the Board has done so in its revised condition 5 in paragraph [7] above.

[55] For the above reasons, the appeal is denied and the conditions varied as provided in paragraph [7] above.

Issued this 1st day of September, 2017 for the Parkland County Subdivision and Development Appeal Board



 Richard Underwood, Chair
SUBDIVISION AND DEVELOPMENT APPEAL BOARD

This decision may be appealed to the Court of Appeal of Alberta on a question of law or jurisdiction, pursuant to Section 688 of the Municipal Government Act, R.S.A. 2000, c.M-26. This section requires an application for leave to be filed with the Court of Appeal of Alberta within 30 days of receipt of this decision.

APPENDIX "A"
REPRESENTATIONS

PERSON APPEARING

1. Karen Oxley, Parkland County
2. Carole Lapointe, Appellant
3. Randy Hennig, on behalf of the Appellant

APPENDIX "B"
DOCUMENTS RECEIVED AND CONSIDERED BY THE SDAB:

| Exhibit | Description | Date | Pages |
|---------|--|-----------------|---------|
| 1. | Table of Contents and Agenda | August 15, 2017 | 1 |
| 2. | Notice of Appeal – Carole Lapointe | July 28, 2017 | 91-92 |
| 3. | SDAB Clerks Report | August 14, 2017 | 93-97 |
| 4. | Submission of the Subdivision Authority | August 11, 2017 | 98-321 |
| 5. | Appellant Submission – Carole Lapointe | August 14, 2017 | 322-390 |
| 6. | Elevation Difference from Borehole 16-01 Measured in Meters | August 21, 2017 | |
| 7. | Parkland County map SDAB Hearing Subdivision Application 17-S-028 | August 21, 2017 | |