

**MINUTES OF THE PARKLAND COUNTY SUBDIVISION & DEVELOPMENT APPEAL BOARD HELD IN THE COUNCIL CHAMBERS IN THE COUNTY OFFICE AT PARKLAND COUNTY, ALBERTA ON SEPTEMBER 25, 2017**

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**CALL TO ORDER**

The Chairperson, J. Smith, called the meeting to order at 4:05 pm.

**PRESENT**

Members: J. Smith, P. Kobasiuk, J. Philpott, G. MacDougall and D. Mattson

Clerk: D. Tymchyshyn, Manager/Chief Legislative Officer

Counsel for the Board: G. Stewart-Palmer

Recording Secretary: L. Tyerman

**ADOPTION OF AGENDA**

Moved by D. Mattson that the September 25, 2017 Agenda be adopted, as presented.

Carried

**ADOPTION OF MINUTES**

Moved by D. Mattson that the Minutes of the July 10, 2017 meeting be adopted, as presented.

Carried

**NEW BUSINESS**

**4:10 p.m. Appointment**

An appeal of a decision of the Subdivision Authority to refuse Subdivision Application No. 17-S-009 for the creation of one 7.045 acre residential parcel located at Plan 0224682 Block 1 Lot 2, NW-18-52-26-W4, Municipal Address 52229 Rge Road 270.

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

The Chairperson asked if anyone affected by the appeal had any objections to the Board members hearing the appeal; there were none.

**Present Administration Staff**

M. McInnes, Planner

The Chairperson introduced D. Tymchyshyn, Clerk to the Subdivision & Development Appeal Board. The Chairperson advised that it is the Board's practice to have the Clerk participate in private discussions with the Board and asked those present if there were any objections; there were none. The Clerk introduced the Appeal into the record.

The Chairperson asked if any affected party present planned to provide any written materials not provided to the Clerk in advance of the hearing. M. Krause came forward with a one page letter in support of the appeal which was considered by the Board and accepted.

**Submission of the Subdivision Authority**

M. McInnes presented the Report of the Subdivision Authority outlining the reasons for refusal of Subdivision Application No. 17-S-009. The application proposes to create one 7.045 acre (2.85 hectare) residential parcel to accommodate the existing residence and yard site and one 109.565 acre (44.34 hectare) remnant agricultural parcel. The current parcel is used for extensive agriculture. The Application proposes the creation of an 11<sup>th</sup> parcel, there are currently 10 parcels on the quarter

section. The Subdivision Authority determined that the proposed subdivision is inconsistent with the County's Land Use Bylaw and Municipal Development Plan, which allows 3 parcels on a quarter section that is districted Agricultural. There is an existing single detached dwelling with a detached garage, four agricultural accessory buildings and one small accessory building on the parcel, all to remain on the proposed residential parcel (Lot 3). No development permits are required at this time. The dwelling is serviced via a well and open surface discharge & septic tank. If the application were approved, an inspection of the existing system would be required to confirm compliance with the Alberta Private Sewage Regulation; updated/alterations of the system may be required. In 2011 a similar application was submitted by the Applicant. The Application was refused for the same reasons and subsequently appealed to the SDAB. The SDAB denied the appeal and upheld the decision of the Subdivision Authority.

### Submission of the Appellant

Yvon Brochu, of Quillcorp Inc. advised that Mr. Arcand and Ms. Young are a military couple and a farm family. The proposed subdivision would permit Mr. Arcand and Ms. Young to own the proposed Lot 3 outright. The proposed subdivision would not take any good agricultural land out of production, as only the proposed Lot 3 would be subdivided. The proposed Lot 3 is not used for agricultural purposes.

Ken Lewis, owner of Lewis Farms advised that the Parcel was initially owned by the Paul family, who rented the northernmost 80-acre portion of the quarter section to Lewis Farms. Mr. Arcand also rented the proposed Lot 3 from the same landowner. In 2000, Lewis Farms, Mr. Arcand, and Ms. Young purchased the parcel from the previous landowner.

David Arcand, who resides on proposed Lot 3, said that he and his wife agreed to jointly purchase the parcel with Lewis Farms because they were advised by the County that subdivision of the parcel would likely be possible in five years. They made an application in 2012, but it was refused. They were told to try again in another five years. Mr. Arcand also advised that he and Ms. Young purchased the property because it offered peace and quiet for Ms. Young, who suffers from PTSD as a result of her military service. Due to the recent increase in air traffic at the Parkland Airport, the property no longer provides the peace and quiet it once did, and Ms. Young would like to move. The co-ownership with Lewis Farms makes it difficult, if not impossible, to sell the proposed Lot 3.

### **Recess**

The Chairperson called a recess at 4:37 p.m.

The Chairperson called the meeting to order at 4:42 p.m.

When questioned by the Board, Mr. Brochu said that a Preliminary Groundwater Potential Study showed that there was insufficient water for an additional residence on the remnant lot. He advised that it would not be an issue to build a cistern for an additional residence, and that it is quite commonly done. He stated that the well located on proposed Lot 3 has sufficient water.

When questioned by the Board, Ms. McInnes advised that the limit on the number of permitted subdivisions applies to the original quarter section, but could not point to any definitions of "original quarter section" in any planning document.

When questioned by the Board, Ms. McInnes said that the original subdivision of the quarter configured two 40 acre parcels. One parcel was further subdivided into 8 residential parcels (Shady

Acres) and a Municipal Reserve. The remaining 40 acres became an agricultural parcel with 1 residence.

**Closing Remarks of the Appellants**

Mr. Brochu said that Mr. Lewis and Mr. Arcand would agree to conditions placed on an approved subdivision.

The Chairperson asked those in attendance if they felt they had received a fair hearing; there were no concerns.

The Chairperson asked if the Board was satisfied with the amount of information received at the hearing; the Board members agreed they were satisfied with the amount of information received.

**ADJOURNMENT**

The Chairperson closed the hearing at 5:01 p.m.

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**CALL TO ORDER**

The Chairperson, J. Smith, called the meeting back to order at 5:06 p.m. with all Board Members present.

**NEW BUSINESS**

**5:00 p.m. Appointment**

An appeal of a decision of the Development Authority to approve Development Permit No. 17-D-450 for a Variance (Dwelling, Single Detached with side yard variance from 3 m to 1.5 m)(Demolish Existing Cottage) located at Lot 26, Plan 6973 MC Sunset Beach, NE-31-53-5-W5 Municipal Address 26, 53532 Rge Rd 55.

The Chairperson opened the Hearing at 5:07 p.m.

The Chairperson asked if anyone affected by the appeal had any objections to the Board members hearing the appeal; there were none.

**Present Administration Staff**

K. Kozak, Assistant Development Officer

C. Thomas, Manager, Development Planning

The Chairperson introduced D. Tymchyshyn, Clerk to the Subdivision & Development Appeal Board. The Chairperson advised that it is the Board's practice to have the Clerk participate in private discussions with the Board and asked those present if there were any objections; there were none. The Clerk introduced the Appeal into the record.

The Chairperson asked if any affected party present planned to provide any written materials not provided to the Clerk in advance of the hearing. No one present came forward.

### Submission of the Development Authority

Ms. Kozak read the Administrative Report into the record and provided details related to the file. Ms. Kozak told the Board that the subject property is located within the Lakeshore Residential District. The Development Permit Application was submitted on August 15, 2017, for a Dwelling, Single Detached. The Applicant further requested the side yard setback variance on August 22, 2017. The subject land (Lot 26) is of 0.143 acres in size. The proposed dwelling is of 93.08 sq. m (1002 sq. ft.) in size. 4.5 meters from the west property line and 1.5 meters from the east property line. Property to the east is undeveloped and surrounded by mature trees. The size of the lot restricts the size of the building pocket, 753 sq. feet. The subject property has less desirable land to develop due to an embankment on the property, therefore a side yard variance was issued due to undue hardship from the embankment.

### Submission of the Appellant

Mr. Allen Wong and Mr. Ken Chow spoke on behalf of the Appellants. They are the owners of Lot 27. Mr. Wong indicated that:

- On August 31, 2017, Mr. Hahn (the Applicant) had served the Appellants with a letter which stated that he had obtained an approved Development Permit and would begin work immediately.
- Upon appealing the permit the Appellants were made aware that Mr. Hahn had been issued a Discretionary Development Permit on September 1, 2017.
- The family has owned Lots 27, 28 and 29, adjacent lake front lots at Sunset Beach for over 40 years. The 4 current owners are the adult children of the previous owners, Mr. Yuen and Amy Wong.
- A cottage sits on Lot 28 with its own septic tank. A garage sits on Lot 29.
- A small boathouse sits on Lot 27, which is otherwise empty.
- The value of Lot 27 as a standalone lot is diminished by relaxing the 3 metre setback. It is highly unlikely that the 3 metre setback rule would be relaxed if either the Appellants or a future owner sought permission to build a house, especially if the setback had already been relaxed to 1.5 meters for Mr. Hahn's lot. The Appellants claim the value of Lot 27 is diminished because they were in the latter stages of negotiations with a potential buyer for Lot 27. The buyer withdrew their offer when the setback issue was disclosed.
- Relaxing the 3 metre setback poses a fire hazard.
- Mr. Hahn has concerns regarding the trees on Lot 27 because they are too close to his new house, yet he wants the setback relaxed so that he can build closer to the trees.
- There were good reasons the County adopted the new Land Use Bylaw. In the interest of good planning the bylaw must be adhered to so that development can proceed in an orderly and safe manner.
- Mr. Hahn is in violation of the terms of his Development Permit which states: "You are hereby authorized to commence the development outlined above on or after September 16, 2017, provided that all conditions of approval are complied with and no appeal is received."
- Mr. Hahn attempted to intimidate the Appellants by threatening a lawsuit if they did not withdraw their appeal.
- The Appellants let the Hahns use the septic tank located on Lot 27 for 24 years.
- Mr. Hahn made a written offer to purchase Lot 27, the Appellants felt that the offer was significantly below market value.
- At no time did Mr. Chow imply that the owners would sign an agreement to relax the setback rule. Mr. Chow advised Mr. Hahn that he did not fully understand what Mr. Hahn was requesting and how much of his house was affected. Mr. Hahn offered to hand deliver the

information along with the agreements for the owners to sign. He delivered the documents on August 31, 2017.

- According to the drawing that Mr. Hahn provided, approximately  $\frac{3}{4}$  of his cottage will violate the 3 metre setback.
- Mr. Hahn recently offered again to purchase Lot 27 when he discovered that the Appellants had a potential buyer. The Appellants feel this was a stall tactic to get through the appeal deadline.

### **Submission of the Applicant**

Mr. Hahn told the Board that he has appeared in various levels of Court on several occasions. Mr. Hahn confirmed with the Board Members that they had read his submissions in the agenda package. Mr. Hahn submitted the following comments:

- He and his wife would have liked to keep the original cottage but the foundation had become rotten.
- Before purchasing Lot 26, Mr. Hahn visited the County offices and spoke to staff who at that time informed him that if rebuilt, the side yard setback for a cottage on the property would be 1.5 metres. In 2009 the Land Use Bylaw was changed to allow a 3 metre side yard setback.
- During a meeting with Planning and Development staff in August of 2017, Mr. Hahn argued that he should be allowed a 1.5 metre setback due to constraints on the property caused by the embankment.
- The average setback for the east side yard is 3 meters and 6 inches, that this is the measurement that should be used, not the narrowest point.
- Mr. Hahn provided background information with respect to the conflict with the Appellants over his use of the septic tank on Lot 27. Mr. Hahn said that his wife had repeatedly asked the Appellants if they would like reimbursement for use of the septic tank.

Mr. Hahn provided the Board and Appellants with copies of a document - a real estate listing for the Appellant's other two lots for sale. The Appellants indicated that while they were okay with the additional document being added as an exhibit, they did not see how it pertained to the appeal matter.

Mr. Hahn continued his presentation, and made the following statements:

- He disagrees with Mr. Wong's statement found on page 149 of the agenda package which states that the building pocket could be pushed further back by cutting into the embankment.
- Trees will cause more damage if they are farther away from buildings. It is safer to have trees closer to the building so that instead of falling down onto the building they will lean against the house.
- Mr. Hahn conducted internet research which told him that he is required to notify the adjacent landowners of any potential tree issues. This is so that in the event a tree falls he is not liable.
- At a meeting with the General Manager of Development Services he was given the Development Permit "on the spot".
- Mr. Hahn acknowledged that when the Development Permit was appealed he should have stopped work on the cottage. He indicated that he misunderstood and believed he was able to begin work right away.
- Mr. Hahn said that Mr. Wong did not speak to him as claimed regarding the purchase of Lot 27.

- Mr. Hahn feels that on average the setback from Lot 27 is 3 metres and 6 inches.

When questioned by the Board on the stage of development of his cottage, Mr. Hahn told the Board that he has poured the basement. When Mr. Hahn was informed that there had been an appeal filed against his permit he continued work on his cottage.

When questioned by the Board, Mr. Hahn told the Board that he had initially applied for a 3 metre setback. After the area had been staked out it was discovered that there would only be 3 feet in which to push a wheelbarrow along one side of the cabin. Mr. Hahn said that the previous cabin was on the same angle, and the new design is about the same size. Mr. Hahn said that he and his wife did not consider downsizing the cabin as they have family and friends who come to visit and therefore need the space.

When questioned by the Board, Mr. Hahn answered that the contractor who poured the basement believes the cabin will be 4 inches further from the property line than what was approved (1.5 metres).

When questioned by the Board, Ms. Kozak answered that in order for Mr. Hahn to cut into the embankment to push the cabin further from the east property line he would need to obtain a development permit for stripping and grading. There may also be concerns from an environmental perspective due to the cabins proximity to the lake.

When questioned by the Board, Mr. Thomas stated that there is no provision for "grandfathering" the previous cabins dimensions and setbacks to the new development. It is considered a "fresh permit".

#### Closing Remarks of the Applicant

Mr. Hahn declined to provide any closing remarks.

#### Closing Remarks of the Appellants

Mr. Chow said that Appellants found out the County bylaws forbade the use of a septic tank on a neighbour's lot. Regarding Mr. Hahn's statements that the 3 foot setback of the previous cabin was not of a concern previously, Mr. Chow argues that Lot 27 was empty at the time. Lot 27 stands alone with its own separate title and this 1.5 metre setback would affect the value of the lot. The embankment is not as steep as Mr. Hahn has indicated. A photo submitted by the Appellants on page 188 of the agenda package shows that there is substantial room on the west side of the property where the embankment is. It is the Appellants position that there would have been room to move the cottage further west towards the embankment. Regardless of the physical constraints, cottages should be built to land use and bylaw specifications. Oftentimes when trees break they break at the top, so Mr. Chow does not agree with Mr. Hahn's statements that building closer to the trees is safer. The Appellants submit that Mr. Hahn knowingly did not comply with the stipulations of the Development Permit, in particular the date in which he could begin construction. The Appellants submit that the potential buyer of their lot back out of the deal due to the set back variance.

Mr. Wong submitted that the location of Mr. Hahn's cottage was not an issue in the past. The Appellants have begun trying to sell the adjacent lot in the last 2 years, the reduced side yard setback affects the marketability and value of the adjacent lot. The Appellants realtor contacted Parkland County when she found out that the septic system on Lot 27 serviced Lot 26. Parkland

County Administration advised that this is not allowable under current County policies. When surveyors were hired to determine the property lines, it was decided that Lot 26's use of the septic system on Lot 27 was illegal. Mr. Wong submitted that it was not the Appellants who forced Mr. Hahn to discontinue use of the septic system, this was a decision made by Parkland County. The Appellants made an attempt to get into contact with the Hahns to offer to sell Lot 27 to them, prior to listing the property with a realtor. The Appellants feel that Mr. Hahn attempted to prevent them from appealing his Development Permit. Mr. Hahn demolished his existing cottage in August 2017, and began pouring footings for his new cottage in September 2017.

**Final Closing Remarks of the Applicant**

Mr. Hahn said that he disagreed with the Appellants statement that he could have built the cottage closer to the embankment towards the west of the property.

**Final Closing Remarks of the Appellants**

Mr. Chow submitted that Mr. Hahn could have easily moved the foundation over toward the trees, which would result in the building moving away from the property line from Lot 27. Mr. Hahn has always had the opportunity to redesign, re-orientate or downsize his cottage.

The Chairperson asked those in attendance if they had any concerns with the process of the hearing. There were none.

The Chairperson asked the Board Members if they felt they had received sufficient information to make a Decision. The Board agreed that it had.

The Chairperson closed the hearing at 6:41 p.m.



Chairperson