

**SUBDIVISION AND DEVELOPMENT APPEAL BOARD
PARKLAND COUNTY**

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HEARING DATE: October 25, 2021
FILE NO.: 21-D-312

Notice of Decision of Subdivision and Development Appeal Board

INTRODUCTION

[1] The Development Authority of Parkland County (the "Development Authority") approved a development permit to move an existing home onto a property to be used as a Dwelling, Single Detached for Mark and Katelyn Roy (the "Applicants") located at Lot 14, Block 3, Plan 2368 TR, Valaspen Place, NW-9-53-1-W5, and municipally described as 14, 53117 RGE RD 14 (the "Lands").

[2] Together, Lester & Deb Wall, Dustin Wood, Tom and Sabrina Charity, Dave Wilding, Ernest & Alma Engler, and Gord & Maureen Legare (the "Appellants") appealed the development permit.

[3] The Subdivision and Development Appeal Board (the "Board") heard the appeal on October 25, 2021 via video conference in accordance with the *Meeting Procedures (COVID-19 Suppression) Regulation*, AR 50/2020.

PRELIMINARY MATTERS

A. Board Members

[4] 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. Exhibits

[5] At the outset of the hearing, the Chair noted that Mr. Lester Wall had submitted three photographs to the Board that were not included in the hearing package. Copies of these three photos were provided by email to all of the parties in attendance at the hearing, and each of the parties confirmed they had received copies of the photos, and had no objection to the photos being added to the hearing package.

[6] The Chair then confirmed that everyone in attendance had the full hearing package, including the additional photos, prepared for the hearing. There was no objection to any of the exhibits. The Board marked the exhibits received as set out at the end of this decision.

C. Miscellaneous

[7] The appeal was filed in time, in accordance with section 686 of the *Municipal Government Act*, RSA 2000, c M-26 (the "MGA").

[8] The Board is satisfied that it has jurisdiction to deal with this matter. There were no objections to the proposed hearing process. There were no preliminary matters raised at the beginning of the hearing.

DECISION OF THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD

[9] The Board dismisses the appeal and allows the Development Permit subject to the same conditions as set out in the Development Permit issued August 25, 2021.

SUMMARY OF HEARING

[10] The following is a brief summary of the oral and written evidence submitted to the Board. At the beginning of the hearing, the Board indicated that it had reviewed all the written submissions filed in advance of the hearing.

Development Authority

[11] The Lands are located at Lot 14, Block 3, Plan 2368 TR, Valaspen Place, NW-9-53-1-W5, and municipally described as 14, 53117 RGE RD 14, Parkland County.

[54] The proposed use is in compliance with the Municipal Development Plan Bylaw 2017-14 (the "MDP"). The MDP supports a range of housing forms to promote the sustainability of Parkland County's communities and the creation of health, accessible and complete rural communities.

[55] The Lands are governed by the Glory Hills Area Structure Plan (the "ASP"). The ASP supports residential use throughout the plan area.

[12] The Development Authority received an application for an 864 square foot dwelling (moved on). The Lands are located in a Country Residential district, where Dwelling, Single Detached is generally a permitted use. However, the Parkland County's Land Use Bylaw (the "LUB"), section 11.7 provides that moving a pre-existing structure onto a parcel is a discretionary use.

[13] The proposed land use conforms with the requirements of the LUB. The proposed development meets all setback requirements provided in the LUB, and there are no minimum or maximum size requirements for a Dwelling, Single Detached.

[14] There are no applicable architectural design requirements, or design guideline requirements for the Lands. The Development Authority confirmed that there are no restrictive covenants on the Lands which require specific design requirements.

[15] The proposed development is consistent with the adjacent land uses. The proposed development is in Valaspen Place. Parcels in the area range in size from 0.52 acres to 10.57 acres. There is a wide array of homes in the area, including one and two storey homes, bungalows, attached and detached garages, and some agricultural buildings. No distinct architectural standard has been established in the subdivision.

[16] The Development Authority granted the development permit on August 25, 2021. In making its decision to approve the development permit, the Development Authority considered the following documents:

1. The Application Form;
2. Description of the proposed improvements to the structure;
3. Land Title;
4. Site Plan;
5. Floor Plan; and
6. Photos of the existing dwelling.

[17] In reaching its decision, the Development Authority also took into consideration the proposed land use, applicable architectural and design guidelines, and adjacent land uses as detailed above. In the Development Authority's view, the proposed development will not unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment, or value of neighbouring properties.

Appellant Lester Wall

[18] Lester Wall lives in the Valaspen Place subdivision, adjacent to the proposed development on Aspen Acres. He is strongly opposed to the proposed development.

[19] When the development permit was granted, he was in shock and disbelief that he would have to fight to keep this type of development out of his subdivision.

[20] The neighbours and taxpayers in the subdivision take pride in their homes, which are valued between \$500,000.00 to \$1,000,000.00, and are 3,000 square feet and up. He noted that there was no amount of work that could be done to the proposed building which would make it acceptable to move into the subdivision.

[21] He was concerned that by allowing the development, the properties in the area would take a drastic drop in value. The Board asked Mr. Wall if he had any valuation evidence to support his assertion. Mr. Wall stated that he had spoken to a real estate agent who assured him that prices would go down, but that it would be hard to get a specific quantum unless someone were selling their property.

[22] Mr. Wall directed the Board to the photos of homes in the package which he stated are all within 100 metres of the proposed development.

[23] In his closing submissions, Mr. Wall raised several additional concerns with the proposed development, related to fill, and suitability for building. He noted that he has lived adjacent to the proposed development for 30 years, and that the previous two owners had to do a significant amount of excavating, filling and movement of soil. He stated that there is an approximately 20-30 foot change in grade, which is being supported by trees that will eventually die, causing the fill to slide down into the pond area. He stated that this renders the property unsafe to build on, and would cause an environmental disaster. In his opinion, until the lot is inspected and environmental reports completed, the lot is unbuildable.

[24] The Board asked Mr. Wall whether he had brought forward any of these environmental concerns over the last seven years since the Roys have owned the property. Mr. Wall stated that it has only been since he received notice of the development permit that he has thought to look at the property. He can see now that the leaves are off the trees how much of the fill has shifted down towards the pond.

Appellant Dustin Wood

[25] Dustin Wood lives in the Valaspen Place subdivision, on Aspen Acres.

[26] Mr. Wood supported and adopted the submissions of Mr. Wall. Mr. Wood noted his primary concern was property value, and that the proposed development did not fit in with the look of the neighbourhood. In response to a question from the Board, he confirmed that he has not received an independent valuation of his property.

Appellants Tom and Sabrina Charity

[27] Tom and Sabrina Charity live in the Valaspen Place subdivision, on Aspen Acres.

[28] The Charitys also adopted the submissions of Mr. Wall and confirmed that they have not received an independent valuation of their property.

Appellant Dave Wilding

[29] Dave Wilding lives in the Valaspen Place subdivision, on Aspen Acres.

[30] Mr. Wilding also adopted the submissions of Mr. Wall, and noted that he was concerned with the look of the building that was being proposed. He also confirmed that he has not received an independent valuation of his property.

Appellants Alma and Ernest Engler

[31] Alma and Ernest Engler have lived in their home on Aspen Acres since 1998.

[32] Mr. Engler stated that he believes that the homes in the area are average homes in Alberta. The proposed home does not live up to the standards of the homes in the area.

[33] Mr. Engler was concerned with the values of the neighbouring properties. He noted that while there are no architectural standards, he understood the standard to be based on the value of the properties in the area. What is being proposed is not adequate for a normal residential home.

[34] In concluding remarks, Alma Engler stated that the County has previously issued approvals on developments that spoil the subdivision, including trees on a neighbouring property that have since become an eyesore.

Applicants – Mark and Katelyn Roy

[35] In their original submission, the Applicants, Mark and Katelyn Roy, noted that the Appellants' appeal form was incomplete as there were 6 homes identified as being appellants, but only 5 signatures on the form. After speaking with staff for the SDAB, they understand that there is only required to be a single appellant.

[36] Mark Roy works in the construction industry, and has experience dealing with a wide array of construction related issues.

[37] The house that the Applicants are proposing to move on to the Lands was built in 1994. In speaking with the County, they are aware that the other homes in the subdivision were built between 1992 and 1999.

[38] Mark and Katelyn Roy have sold their home in St. Albert and intend to move into the proposed development as their future home, with their two children.

[39] The photographs of the home provided to the SDAB are somewhat misleading, as the edge of the house will be facing the backyard. The house has a lot of potential, and they have consulted with architects and retained a designer to work with them on the development. As part of the conditions for approval, they will be putting a new roof on the home and painting the sides and staining the trim. Further, the photographs of the other homes in the subdivision that the Appellant provided to the Board are selective, and attempt to capture those homes from their best angles.

[40] The house is built using modern 2x6 construction methods. While the house is smaller than the neighbouring homes, the Roys prefer a smaller house as it is more environmentally sustainable, easier to maintain, and will last a long time.

[41] In response to questions from the Board, Mark Roy stated that he had consulted with a geotechnical engineer and a structural engineer. In the seven years since they have owned the Lands they have not readjusted the land, but they have installed a fence. The proposed development is 50 feet from the edge of the Lands, and over 80 feet from the slope.

[42] The home will sit on an ICF basement, which will likely be a crawlspace.

[43] In their concluding remarks and in response to the further issues raised by Mr. Wall, Mr. Roy noted that he had retained and would continue to retain all appropriate professionals necessary to ensure the proposed development is done safely. He is going through proper consultation and permitting, and will not be cutting any corners.

FINDINGS OF FACT

[44] The Lands are located at Lot 14, Block 3, Plan 2368 TR, Valaspen Place, NW-9-53-1-W5, and municipally described as 14, 53117 RGE RD 14, Parkland County.

[45] The Lands are located within the CR- Country Residential District of the LUB.

[46] The use of the Lands is a Dwelling, Single Detached.

[47] The development is a discretionary use in the CR District, as it is a previously owned building or structure to be relocated onto an existing residential parcel.

[48] The Appellants are affected persons.

[49] The Applicants are affected persons.

REASONS

Jurisdiction

[50] The Board notes that its jurisdiction is found in section 687(3) of the MGA. In making this decision, the Board has examined the provisions of the LUB and has considered the oral and written submissions made by and on behalf of the Development Authority, the Appellants, and the Applicant.

687(3) *In determining an appeal, the subdivision and development appeal board*

(a) must act in accordance with any applicable ALSA regional plan;

(a.1) must comply with any applicable land use policies;

(a.2) subject to section 638, must comply with any applicable statutory plans;

(a.3) subject to clause (a.4) and (d), must comply with any land use bylaw in effect;

(a.4) must comply with the applicable requirements of the regulations under the Gaming, Liquor and Cannabis Act respecting the location of premises described in a cannabis licence and distances between those premises and other premises;

(b) must have regard to but is not bound by the subdivision and development regulations;

(c) may confirm, revoke or vary the order, decision or development permit or any condition attached to any of them or make or substitute an order, decision or permit of its own;

(d) may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw if, in its opinion,

(i) the proposed development would not

(A) unduly interfere with the amenities of the neighbourhood, or

(B) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land,

- and*
(ii) *the proposed development conforms with the use prescribed for that land or building in the land use bylaw.*

Affected Persons

[51] The first question the Board must determine is whether those individuals who appeared and spoke before the Board are affected persons. The Board notes that there were no objections made on the basis that the Appellants or the Applicants were not affected.

[52] The Appellants all live within the Aspen Acres community, at numbers 10, 11, 12, 13, 15, and 16 respectively. The proposed development is at number 14. Based on their proximity to the proposed development, the Board finds that the Appellants are affected persons.

[53] As the persons whose development permit is under appeal, the Applicants are also affected by this appeal.

Statutory Plans

[54] The Board heard submissions from the Development Authority that the proposed use was in compliance with the Municipal Development Plan Bylaw 2017-14 (the "MDP"). The MDP supports a range of housing forms to promote the sustainability of Parkland County's communities and the creation of health, accessible and complete rural communities. The Board heard no evidence to contradict these submissions, and finds that the application is in compliance with the MDP.

[55] The Lands are governed by the Glory Hills Area Structure Plan (the "ASP"). The Development Authority submitted that the use was in compliance with the ASP because the ASP supports residential use throughout the plan area. The Board heard no evidence contradicting these submissions and finds that the application is in compliance with the ASP.

Land Use District

[56] The Lands are zoned as Country Residential (CR).

Nature of The Use

[57] The Board finds that the proposed use is for a Dwelling, Single Detached. The evidence before the Board was that the proposed development is to move an existing structure on to the site. The Applicants stated that it was their intention to move the existing structure on to the Lands, replace the roof, paint the structure, and stain the trim. The Applicants plan to move into the home with their two children.

[58] A moved-on structure is a discretionary use in the CR District, as set out in section 11.7.2 of the LUB. As the proposed development is a discretionary use, the Board must assess the compatibility of the use applied for with the neighbouring uses.

[59] In its submissions, the Development Authority stated that it considered the compatibility of the development and found that the Dwelling, Single Detached was compatible as the proposed development meets all the requirements setbacks; the Applicant intends to undertake improvements to the structure; and there are no established architectural standards in Valaspen Place, either formally, by way of restrictive covenant, or informally as demonstrated by the variety of existing dwelling types in the subdivision. The Board notes that the Development Authority also commented that the proposed development would not materially interfere with or affect the use, enjoyment or value of the neighbouring parcels of land. The Board notes that the words used by the Development Authority reflect the test for a variance under section 687(3)(d). However, in accordance with the Court's comments in *Lillo's School of Modern Music Ltd. v. Edmonton (City of)*, 2004 ABCA 37, the Board does not read the language of the Development Authority as importing the test for a variance, but rather as the Development Authority commenting on the factors that it considered when it considered the compatibility of the proposed development to the neighbouring uses. Moreover, as set out in *Lillo's*, the Board is aware that the variance standard is more onerous than what the question of compatibility.

[60] The Board first notes that the use is a residential use in a CR district, where the evidence is that the surrounding properties all have dwellings on them. The Board finds this to be a significant factor in the determination of compatibility and notes that, subject to its review below, the fact that the proposed development is a single family dwelling, albeit smaller than the ones pictured, points to a compatibility of land use.

[61] However, the Board wishes to consider the Appellants' concerns to determine whether those concerns impact on the proposed development's compatibility with the neighbouring uses.

[62] In their submissions, the Appellants' primary concern was that the proposed development would adversely affect their property values and did not "fit in" with the nearby homes.

Property Values and Neighbourhood Fit

[63] The Appellants stated that they were concerned about the impact of the proposed development on the value of neighbouring properties. In response to questions from the Board, each of the Appellants confirmed that they had not obtained any independent valuations of their properties, or how these valuations may be affected by the proposed development.

[64] The Appellants' argument was not that the use (dwelling) was not compatible with their uses (dwelling), but rather that the particular dwelling might decrease their property values.

[65] In the Board's view, the concerns of the Appellants regarding potential decreases in property value are not sufficient in and of themselves to justify the denial of a development permit for a Dwelling, Single Detached which otherwise meets the requirements of the LUB. There is no independent evidence before the Board of any adverse impact on the property values of neighbouring parcels of the proposed development. In the absence of evidence about a decrease in property value, the Board does not accept the Appellants' statements as evidence of a decrease in property values. (see *Earth Sciences Inc (E.S.I. Resources Ltd.) v. Calgary (City)*, 1978 AltaSCAD 6).

[66] With respect to the issue of “fit”, the Board accepts the evidence of the Development Authority that there are a variety of existing dwelling types in the subdivision, and the undisputed evidence that there are no established architectural standards in the subdivision. The Board also considered the Applicants’ statement that the proposed dwelling will be given a new roof, and a fresh coat of paint. The Board accepts this evidence. In view of this evidence, the Board is satisfied that the proposed development is compatible with neighbouring uses. The use is a dwelling and the neighbouring uses are also dwellings. While the evidence is that this house is smaller than some of the photographs in the materials presented to the Board, the Board is not persuaded that its size makes it incompatible. Further, the Board notes that the evidence was that the Applicants were going to do work on the outside of the dwelling. The Board is not persuaded by the Appellants’ evidence and argument. The Board finds that the proposed development which is a differently sized dwelling located in an area that has a variety of dwelling types, and in an area without architectural standards, is compatible with the neighbouring uses, which are all residential in nature.

Conclusion

[67] For these reasons, the Board dismisses the appeal and allows the development permit on the same conditions as placed upon the development permit by the Development Authority.

[68] Issued this 8th day of November, 2021 for the Parkland County Subdivision and Development Appeal Board.



Barb Williams, Clerk of the SDAB, on behalf of J. Smith, 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, RSA 2000, c M-26.

APPENDIX “A” REPRESENTATIONS

PERSON APPEARING

1. Rachelle Trovato, Development Authority
2. Lester Wall, Appellant
3. Dustin Wood, Appellant
4. Thomas & Sabrina Charity, Appellants
5. David Wilding, Appellant
6. Ernest & Alma Engler
7. Mark & Katelyn Roy, Applicants

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

October 25, 2021 Agenda Package			
Exhibit	Description	Date	Pages
1.	Agenda Coversheet	October 20, 2021	1
2.	Table of Contents	October 20, 2021	2
3.	Notice of Appeal – Lester & Deb Wall, Dustin Wood, Tom & Sabrina Charity, Dave Wilding, Ernest & Alma Engler, Gord & Maureen Legare	September 15, 2021	3-4
4.	Submission of the Development Authority	October 19, 2021	5-43
5.	Submission of the Appellant – Lester & Deb Wall, Dustin Wood, Tom & Sabrina Charity, Dave Wilding, Ernest & Alma Engler, Gord & Maureen Legare	October 18, 2021	44-62
6.	Additional Submission of the Appellant - Lester & Deb Wall, Dustin Wood, Tom & Sabrina Charity, Dave Wilding, Ernest & Alma Engler, Gord & Maureen Legare	October 20, 2021	63-97
7.	Submission of the Applicant – Mark & Katelyn Roy	October 18, 2021	98-111
8.	Additional Submission of the Appellant – 3 photographs received during hearing	October 25, 2021	n/a