

**SUBDIVISION AND DEVELOPMENT APPEAL BOARD
PARKLAND COUNTY**

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HEARING DATE: August 19, 2019
FILE NO.: 18-D-214

Notice of Decision of Subdivision and Development Appeal Board

INTRODUCTION

[1] The Development Authority of Parkland County approved Development Permit Application 19-D-214 made by Miroslav and Arleta Wodzislawska for stripping, filling, excavation and grading (fill in a low area located at the front of the property) for property located at Lot 9, Plan 9924442 within NE 6-54-27-W4M, municipally described as 9, 54022 Range Road 275-Four Seasons Estates, Parkland County, Alberta (the "Property"). The appellants, Darcey and Korinne McKeage appealed the Development Permit 19-D-214 (the "Development Permit").

PRELIMINARY MATTERS

A. Board Members

[2] At the start of the hearing, the Board asked if anyone in attendance had an objection to the panel hearing the appeal. There were no objections raised regarding the panel members.

B. Exhibits

[3] The Board marked the exhibits as set out at the end of this decision. During the hearing, the Development Authority referred to two further maps showing the wetlands for the Property and surrounding area for the 1950s and the same area today. There was no objection to the acceptance of these two maps, and so the Board has marked them as exhibits as set out at the end of this decision.

C. Miscellaneous

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

[5] 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

[6] The appeal is granted in part. The conditions imposed on the Development Permit are varied. The conditions on the Development Permit set out below are imposed.

1. Before any further development takes place, and in any event no later than October 21, 2019, the applicant must provide to the Development Authority a grading and drainage plan prepared and stamped by a professional engineer confirming the development area and that the development will not adversely affect the existing drainage on either the subject land or the neighbouring lands and in particular will not lead to additional surface water runoff onto the adjacent lands.
2. The proposed development shall conform to the grading and drainage plan referred to in condition 1, and the applicant shall not move, alter or enlarge the development area except where authorized or directed through this permit approval.
3. The development shall not permit surface run-off to flow onto adjacent properties and the applicant shall install all landscaping in a manner to prevent surface run-off onto adjacent properties.
4. The applicant shall locate appropriate safety and traffic signage on and about the subject lands and road accesses.
5. The applicant shall preserve all existing stands of trees and shrubbery outside the development area for environmental and sound attenuation purposes.
6. The applicant shall prevent dust from becoming an annoyance to neighbouring landowners. Required prevention may include, but not be limited to, locating stockpiles to act as barriers and using dust suppression.
7. The applicant shall keep the area subject to the development permit in a clean and tidy condition free from rubbish and non-aggregate debris, including any required screening or buffering to the satisfaction of the Development Authority, at all times.
8. Any proposed changes shall first be submitted for review by the Development Authority. Any changes considered substantial or inconsistent with this approval, as determined by the Development Authority, may require separate development permit approval.
9. Failure to comply with the conditions of this development permit may result in the development permit being cancelled or revoked.

SUMMARY OF HEARING

[7] 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

[8] The Property is located in the CR-Country Residential District and is located at Lot 9, Plan 9924442 within NE 6-54-27-W4M, municipally described as 9, 54022 Range Road 275-Four Seasons Estates, Parkland County, Alberta (the "Property"). The Property is located in the Four Seasons Estates subdivision.

[9] The Applicant applied for a development permit for stripping, filling, excavation and grading (fill in a low area located at the front of the Property) on June 19, 2019. The Development Authority approved the Development Permit with conditions on July 4, 2019.

[10] The Development Authority noted that the Applicant wanted to fill in a low spot on the Property which is 4 feet from the property line, and the area of the low spot is 50 feet wide by 4.5 feet deep. The area of the low spot is approximately 5% of the site coverage.

[11] The use is a discretionary use based on section 11.8.8 of the County's Land Use Bylaw ("LUB") which states:

Unless lot grading is exempted by Subsection 16.2 from the requirement of a development permit, every application for site grading is considered a Discretionary Use within the designated land use district of this Bylaw which affects the subject land.

[12] The Development Authority referred the Board to section 11.8.13(a) which states:

If a person alters the approved lot drainage on a site so that water drains onto adjacent Parcels, that person shall be responsible for corrective drainage structures, including retaining walls, to divert water from neighbouring properties.

[13] The Development Authority relayed to the Board that the Applicant advised that 30 tandem loads of fill may be required to fill the low spot. In approving the Development Permit and imposing the conditions set out in the Development Permit (see page 18/103), the Development Authority determined that the proposed development would not unduly interfere with or affect the use, enjoyment or value of neighbouring properties because:

1. The Applicant must comply with the Development Permit;
2. The Development Area is 4 feet from the east property line;
3. The approximate estimate of material to fill the 50 foot by 4.5 feet area is up to 30 tandem loads; and
4. A grading and drainage plan is not required for minor development and in the opinion of the Development Authority this is a minor development.

[14] In response to Board questions, the Development Authority indicated that the approved plan is the one found at page 92/103. The Development Authority indicated that if the area is filled, the existing drainage should flow onto the road drainage. It is not necessary to confirm the drainage following the in-fill by survey. The Development Authority was not aware of whether there was a ditch or swale or other mechanism for the drainage on the Property near the road. Following completion of the development, if there is a complaint regarding drainage

onto adjacent properties, the Development Authority will confirm if the problem is related to the Applicant's development. If it is, the Applicant will be required to fix it.

[15] In response to Board questions, the Development Authority reviewed two aerial maps with the Board, historical wetland inventory from 1950 and the other recent, both of which show that there are no wetlands on the Property.

[16] The Development Authority indicated that the development would be considered major if it covered a larger area of the property, or if it was on identified environmentally sensitive lands, or if there was major grading on the property.

[17] In response to Board questions, the Development Authority advised that it was not typical for the Development Authority to require as-built surveys and post construction inspections.

Appellant – Korinne and Darcey McKeage by their agent, Ogilvie LLP

[18] The Appellants, Korinne and Darcey McKeage, were represented by Mr. Haldane of Ogilvie LLP, who spoke on their behalf. The Appellants indicated that they were not opposed to the landscaping generally speaking, but as set out in their appeal letter (pages 12/103 and 13/103), they are concerned with the conditions of approval. They wish to ensure that the landscaping is done in a way not to have a negative impact on their property. They have suggested a survey so the surface water will not go to the front of their property and reduce the use, value and enjoyment of their property and on the whole subdivision.

[19] The Appellants presented photos (pages 100/103 to 103/103) showing the low area where the water currently collects. The photo (page 100/103) shows the area in the spring of 2019 where surface water has collected. The next page shows filling in the area. The next photo is in June 2019, where the landscaping is underway. The last photo was taken in August 2019.

[20] The Appellants indicated that the water drains from the east and the west towards the Property. The water from the north side of Fleming Drive (the road adjacent to the Property) drains to the south side of Fleming Drive, where the Property is. The lots on the south of Fleming Drive also drain to the low area.

[21] The Appellants want to be certain that when the work is completed, and the place where water used to collect is filled in, that there is no negative impact to them. They would like to have a survey and approved plan to show that the water will drain to an appropriate location and to have an inspection done after the work is completed to ensure that it complies with the plan. They take no issue with the Development Authority's presentation, but noted that section 11.8.9 of the Land Use Bylaw permits the Development Authority to require a developer to submit a lot grading and drainage plan.

9. The Development Authority may require, as a condition of a development permit, that a developer submit a lot grading and drainage plan to the County for approval.

[22] The Appellants are not aware of any distinction in the Land Use Bylaw for major or minor developments, but the above section permits the Development Authority to require a lot grading and drainage plan. While there may be some additional cost to the Applicant to get a plan and have a surveyor check it, it will cost less than a problem after the fact that has to be remedied.

[23] In response to Board questions, the Appellants advised that the low area extends into the Appellants' property.

[24] In their closing, the Appellants stated that there were no reasons presented in opposition to the plan and survey. The Appellants just want to be certain that there will be no negative effect for them. If the Board does not include conditions, then the Development Permit just indicates that the Applicant has to comply with the stamped plan, which is found at page 90/103. This plan has no details, and therefore, enforcement will be difficult, if not impossible.

Applicant – Miroslaw Wodzislawski

[25] The Applicant stated that he wanted to fill in the low spot on his land to complete the landscaping on the Property. It is currently a slough, and he would like it to be filled in. The project is being slowed down due to the appeal. The Applicant did not make any comments in relation to the Appellants' proposed conditions.

Those speaking against the Appeal – Raymond Eyestone

[26] Mr. Raymond Eyestone spoke in opposition to the appeal. He lives directly across Fleming Drive from the Property. He stated that there is no water coming from the west to the Property. With all of the water this year, there were no concerns with drainage. If the low area was filled in, the water should drain to the south to the larger low spot on the south part of the Property. There is a septic system in front of the Appellants' property which may drain into the low spot on the Property.

[27] He did not see any problems arising from the Applicant's filling in the low spot.

FINDINGS OF FACT

[28] The Property is located at at Lot 9, Plan 9924442 within NE 6-54-27-W4M, municipally described as 9, 54022 Range Road 275- Four Seasons Estates, Parkland County, Alberta.

[29] The Property is located in the CR – Country Residential District under the LUB.

[30] The use stripping, filling, excavation and grading (fill in a low area located at the front of the Property) is a discretionary use in the CR – Country Residential District.

[31] The Appellants are affected persons.

[32] The Applicant is an affected person.

[33] Mr. Eyestone is an affected person.

REASONS

Jurisdiction

[34] 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 as well as considered the oral and written submissions made by the Development Authority, the Appellants and the Applicants.

- 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 clauses (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

[35] Korinne and Darcey McKeage, the Appellants, are affected persons because they are immediately adjacent to the Property, where the development is proposed. Due to their proximity, they are affected by the Development Permit.

[36] The Applicant, Miroslaw Wodzislawska, as the applicant for the Development Permit is affected by the appeal.

[37] Mr. Raymond Eyestone lives across Fleming Drive, immediately across from the Property. Due to his proximity, he is an affected person.

Land Use District

[38] The Property is zoned as CR – County Residential District.

Nature of the Use

[39] The only evidence before the Board, which was accepted by all speakers, was that the development was for “stripping, filling, excavation and grading”. The County’s Land Use Bylaw, section 11.8.8 (cited above in paragraph [11]) states that this use is discretionary unless exempted by section 16.2 of the Land Use Bylaw. There was no evidence that this use was exempted, and the Board finds as a fact that it was not exempted, thus the use requires a development permit, and the use is a discretionary use.

[40] As referenced in *Rossdale Community League (1974) v. Edmonton (Subdivision and Development Appeal Board)*, 2009 ABCA 261, the Board must assess the compatibility of the use applied for with the neighbouring uses.

[14] The object and purpose of a discretionary use is to allow the development authority to assess the particular type and character of the use involved, including its intensity and its compatibility with adjacent uses.

[41] In the present case, the Appellants were not arguing that the development should not proceed, they were arguing for the imposition of further conditions. Therefore, the Board turns its inquiry to the conditions which were sought and assesses whether it should vary the Development Permit to include the two conditions sought by the Appellants.

Proposed Conditions

[42] The Appellants asked the Board to impose the following conditions on the Development Permit:

1. That, prior to any development taking place, the developer provide the Development Authority with a grading and drainage plan (the “Approved Plan”) confirming that the development will not adversely affect the existing drainage on either the subject land and neighbouring lands and in particular will not lead to additional surface water runoff onto the Appellants’ lands; and
2. That the developer provide the Development Authority with a survey confirming the development complies with the Approved Plan once completed.

Condition 1

[43] In considering whether to impose the first condition, the Board noted that the Appellants stated that they did not object to the landscaping being approved, they just wanted to ensure that the development, once completed, did not negatively affect them, particularly given the topography of their land and the Property, and the fact that the low spot was on both of them.

[44] The Board agrees to vary the Development Permit and to add condition 1 for the reasons that follow.

[45] The Board agrees that section 11.8.13.a of the Land Use Bylaw (see paragraph [12]) provides that the person who alters drainage on lands is responsible to ensure that there is no negative effect on the neighbouring lands.

[46] However, the Board notes that the Plan approved by the Development Officer did not contain specifics as to the amount of fill nor did it include an exact location as to where the fill would be placed. Therefore, although the Applicant would be responsible should there be an issue, the lack of specifics on the approved plan means that enforcement would be difficult in the absence of specifics, such as the depth of the hole, the amount of fill required, or the starting elevations and the final expected elevations.

[47] The Board is of the opinion that the imposition of such a condition might impose a cost on the Applicant, and might delay his development. The Board was sympathetic to the Applicant's desire to quickly finish the landscaping. However, the Board finds that 30 trucks worth of fill is significant, and the area (50 feet wide by 4.5 feet deep) is a significant enough area that the slight delay which might be caused by requiring the Applicant to get a grading and drainage plan is outweighed by the assurance – to both the Applicant and the Appellants - that the proposed development will not cause flooding onto the Appellants' property. The Board notes that if the low area is filled with 30 truck loads of fill, that means that an equivalent amount of water would be displaced. The Board is of the view that having a plan should minimize the risk of impact to the Appellants. Should there be some later issue, the Development Authority would have a drainage and grading plan with sufficient specifics that it could determine whether the Applicant followed the plan. The current plan is lacking in such specifics, and the Board is not satisfied that effective enforcement could take place, should there be a later problem.

[48] Further, the area for fill is 4 feet from the Appellants' property. This is very close. If there is an issue, the distance is so small, it is likely the water will flow into the Appellants' land, particularly since the evidence was that the low area is also on the Appellants' land.

[49] The Board also notes that the Applicant did not provide any opposition to the condition, but merely wanted to do the landscaping as quickly as possible. The Board has weighed the risk to the Appellants against the desire of the Applicant to complete the landscaping. In light of the potential impact to the Appellants, the Board is prepared to impose Condition 1 to address the potential impact.

[50] In looking at the wording of the condition suggested by the Appellants, the Board notes that there is no time frame for the Applicant to provide the plan. The Board is of the view that

imposing a timeline provides certainty, which is beneficial in planning matters. Therefore, the Board imposes a modified condition #1, as set out in paragraph [6] above.

[51] In this regard, the Board notes that section 11.8.3(c) and section 11.8.9 both permit the Development Authority, and by extension, the Board to provide information regarding the development proposal, and to impose a condition requiring a drainage and grading plan.

11.8.3. A development permit application for site striping, filling, excavation, grading and/or recontouring (including construction of artificial water bodies and dugouts) shall include the following information:

c) Type of stripping or grading proposed, showing the dimensions of the operation or the area of the land and depth to which the topsoil is to be removed, and the effect on existing drainage patterns.

11.8.9 The Development Authority may require, as a condition of a development permit, that a developer submit a lot grading and drainage plan to the County for approval.

[52] In coming to its conclusion on condition #1, the Board did note the evidence of Mr. Eyestone, who stated that the water should be able to collect and travel south to a larger hole on the south of the Property. The Board accepts that this is Mr. Eyestone's view, but was presented with no specifics of elevation or drainage patterns. The Board notes that having a drainage and grading plan will ensure that drainage can occur without an impact. If the plan confirms that drainage can occur to the south, as Mr. Eyestone suggests, then all parties will have certainty in regard to any drainage impacts.

Condition #2

[53] The Appellants asked the Board to impose a condition that the developer provide a survey confirming that the development, once completed, complies with the proposed plan. While the Board understands the Appellants' desire to have complete certainty in regard to the drainage, the Board is not prepared to impose this condition #2.

[54] The Applicant is required to obtain a drainage and grading plan, which will provide information to the Development Authority if enforcement action is required. However, the evidence of the Development Authority was that it did not require a survey plan to insure compliance, if it required a grading and drainage plan. In the absence of evidence that the County requires this as its standard practice, and in the absence of any evidence that the Applicant will not comply with the grading and drainage plan, the Board is of the view that this condition imposes too great a burden on the Applicant.

Statutory Plans

[55] Under section 687(3)(a.2), the Board must comply with any applicable statutory plans. The Board notes that the Development Authority indicated that the development complies with the County's Municipal Development Plan as the proposed development meets the lifestyle needs of the resident. There was no objection to this statement and the Board finds that the

development complies with the MDP. The Development Authority report also stated that the proposed development is not in conflict with the Atim Creek North Area Structure Plan. There was no objection to this statement and the Board finds that the development complies with the ASP.

[56] Issued this 22nd day of August, 2019 for the Parkland County Subdivision and Development Appeal Board



Barb Williams, Board Clerk on behalf of
Sam Whitehouse, 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.	Kim Kozak	Development Officer, Planning and Development Parkland County
2.	Kevin Haldane, Ogilvie LLP	Counsel for the Appellants, Korinne and Darcey McKeage
3.	Mirosław Wodzislawska	Applicant
4.	Raymond Eyestone	Affected Person

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

Exhibit	Description	Date	Pages
1.	Agenda Package Table of Contents and Agenda	August 15, 2019	n/a
2.	Notice of Appeal	July 25, 2019	12-13
3.	Development Authority Submission	August 13, 2019	15-85
4.	Submission of the Appellant – Korinne and Darcey McKeage	August 12, 2019	87-103
5.	Development Authority Submission - Historic Wetland Inventory Map - 1950	August 19, 2019	n/a
6.	Development Authority Submission - Current Wetland Inventory Map	August 19, 2019	n/a