

**ROCKY VIEW COUNTY
SUBDIVISION AND DEVELOPMENT APPEAL BOARD**

Board Order No.: 2019-SDAB-001

File No.: 05322017; REX201807-0689

Appeal by: 2044799 Alberta Ltd.

Appeal Against: Development Authority of Rocky View County

Hearing Date: 2019 January 09

Decision Date: 2019 January 14

Board Members: D. Kochan, Chair
D. Henn, Vice-Chair
I. Galbraith
H. George
W. Metzger

DEVELOPMENT APPEAL DECISION

INTRODUCTION

[1] This is an appeal to the Rocky View County Subdivision and Development Appeal Board (the Board) from a decision of the Rocky View County Development Authority to issue a Stop Order on November 28, 2018 in regards to fill material being placed without the benefit of a development permit at 282099 Township Road 254 (the Lands).

[2] Upon notice being given, this appeal was heard on January 9, 2019 in Council Chambers of Rocky View County's County Hall, located at 262075 Rocky View Point, Rocky View County, Alberta.

DECISION

[3] The stop order issued on November 28, 2018 is varied to allow time for the Appellant to remove all unapproved items. The removal of all unapproved items must commence immediately and be completed no later than February 28, 2019.

BACKGROUND

[4] The Lands are located at NE-22-25-28-W4M, at the south side of Township Road 254 (Highway 564), just west of Range Road 282. The Lands are approximately 26.1 hectares (64.5 acres) in area and are owned by 2044799 Alberta Ltd (the Appellants), a subsidiary of Gas Plus Inc.

[5] The Lands' land use designation is Ranch and Farm, which is regulated in section 43 of the Rocky View County's *Land Use Bylaw C-4841-97* [the *Land Use Bylaw*].

[6] On August 2, 2018, the Board revoked the conditional approval of a development permit for the placement of fill material on the Lands.

[7] On October 12, 2018, Community Peace Officer Ken Janke attended the Lands and observed that the fill material placed on the Lands remained despite no development permit being in place. Janke found this to be in contravention of the *Land Use Bylaw*. .

[8] On November 28, 2018, the Development Authority issued a stop order to the Appellants for the removal of the fill material from the Lands on or before December 31, 2018.

[9] On December 18, 2018, the Appellant appealed the Development Authority's decision. The Notice of Hearing was circulated to 17 adjacent landowners in accordance with the *Municipal Government Act*, RSA 2000, c M-26 (the *MGA*) and Rocky View County Council Policy C-327, *Circulation and Notification Standards*.

SUMMARY OF EVIDENCE

[10] The Board heard verbal submissions from:

- (1) Derek Waugh, Supervisor – Bylaw of Bylaw and Municipal Enforcement, for the Development Authority;
- (2) Matthew Wilson, Manager of Planning & Development Services, for the Development Authority;
- (3) Jeff Fleischer, Manager of Agricultural & Environmental Services, for the Development Authority;
- (4) Tom Stepper, legal counsel, for the Appellants;
- (5) Meb Gilani, owner of 282155 Township Road 254, affected party in opposition to the appeal; and
- (6) Muneer Gilani, affected party in opposition to the appeal.

[11] The Board received no letters in support of or opposition to the appeal.

Development Authority's Submissions

[12] On August 2, 2018, the Appellant received the Board's decision that no development permit for the placement of fill shall be issued.

[13] October 12, 2018, the Development Authority received a complaint that the fill had not been removed from the Lands. An enforcement officer, Ken Janke, attended the Lands and found that the fill was still in place. It did not appear that more fill had been placed.

[14] The Appellant advised the enforcement officer that a new application for fill material would be made. The enforcement officer determined that the Lands had to be brought into compliance before the fill was allowed to be placed.

[15] The normal process for the Development Authority is to conduct investigation to determine whether fill was placed or not. The Development Authority then tries to work with the property owners to get their property into compliance.

Appellants' Submissions

[16] The Appellant contends that the stop order is invalid. The stop order is to stop activity on the Lands as no recent activity has taken place. The conditionally approved permit issued by Rocky View County allowed the Appellant to bring fill onto the Lands. Fill was brought in before the conditions were met but conditions were significant and required time to complete. The Board's later decision did not require the fill to be removed and the Development Authority did not issue a notice to remove the fill.

[17] If the Board does not overturn the stop order, a 60 day adjournment is requested so pending applications and environmental assessments on the Lands can make further progress. There are pending development applications with Alberta Transportation and Rocky View County. These developments for a farm house and farm yard require some degree of fill. With Rocky View County, the application is for a farm house, farm yard, and farm building location permit on the Lands. Alberta Transportation access relocation development permit for the proposed farm yard off the adjacent highway. The Appellant did complete work on this road access prior to a permit being issued.

[18] The Appellant estimates it would take one to two weeks to remove the fill from the Lands.

Meb Gilani's Submissions

[19] Meb Gilani owns property directly adjacent to the Lands.

[20] In 2016, hundreds of truckloads of snow were brought onto the Lands without a development permit. A stop order was issued but the snow melted before action could take place.

[21] In 2018, hundreds of truckloads of fill were placed on the Lands before a permit was issued. The Appellant company, 2044799 Alberta Ltd., is owned by Gas Plus Inc (Gas Plus). Gas Plus wants to build a gas station on the lands. The fill was placed to build a pad for the gas station. The Board refused the Appellant a development permit.

[22] The applications for a farm house and farm yard are an attempt to circumvent to the issues. The Appellant is looking from where they can get approval to obtain a development permit.

[23] Gas Plus has been in the media for using contaminated fill in Calgary.

[24] Gilani has not witnessed any more fill activity on the Lands since August. Based on his photographs from the summer and the recent photographs taken by the enforcement officer, there does not appear to be more fill coming into the Lands.

Muneer Gilani's Submissions

[25] Muneer Gilani is an affected party. He noted the Development Authority's previous determination that the fill placed on the Lands did not meet Rocky View County's requirements.

Development Authority's Rebuttal

[26] The stop order test in section 645 of the *MGA* is two parts. The Board must first determine whether a stop order is appropriate under section 645(1). If it is, then the Board must look to the contents of the stop order in accordance with section 645(2).

[27] The Development Authority issued the stop order correctly. A stop order is not to stop an activity but to stop a non-conformance with the *Land Use Bylaw*. In this case, the stop order addresses a non-conformance on the Lands that has occurred and is still occurring.

[28] The soil samples provided by the Appellant did not meet Rocky View County's requirements. The soil samples speak to sodium absorption ratio but not to hydrocarbons. In this case, the soil samples indicated high salt levels.

[29] The Development Authority confirmed that no new development permit applications for the Lands had been received by the Development Authority as of the date of the hearing.

Appellant's Rebuttal

[30] The Appellant noted that the fill placed on the Lands does not meet the Rocky View County's requirements.

[31] The Gilanis' comments are unsubstantiated and false. The comments are an assault on the Appellant's reputation.

[32] Kidco Construction was contracted to haul and place the fill on the Lands. The fill came from Fish Creek Excavating Ltd. The specific source of the fill was not known by the Appellant.

[33] The soil samples submitted to Rocky View County for analysis were not taken from the soil that was placed on the Lands.

FINDINGS & REASONS FOR DECISION

[34] The Board finds that the stop order was correctly issued pursuant to section 645 of the *MGA*.

[35] The Board finds that adequate notice has been provided to the Appellant to address the removal of fill. Constructive notice was provided to the Appellant by the Board on August 2, 2018. A verification of the need to address that Notice was supplied by the Development Authority on October 12, 2018. An official notice was given for the fill's removal on November 28, 2018.

[36] Over six months has passed since the Board revoked the conditionally approved development on August 2, 2018. During that time no application was made by the Appellant to the Development Authority for a revised development permit. Therefore, the removal of the fill is required.

[37] Given the Board's findings above, the Appellant must take immediate action on the stop order and is permitted a limited timeline to implement and complete the removal of the fill.

CONCLUSION

[38] For the reasons set out above, the stop order issued on November 28, 2018 stands but is varied as noted above to allow the Appellant a limited amount of time to remove the fill from the Lands.

Dated at Rocky View County, in the Province of Alberta on January 14, 2019.



Don Kochan, Chair
Subdivision and Development Appeal Board

EXHIBIT LIST

DOCUMENTS PRESENTED AT THE HEARING AND CONSIDERED BY THE BOARD

NO. ITEM

1. Development Authority's Report to the Board (29 pages)