

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

Board Order No.: 2019-SDAB-002

File No.: 04212004; PRPD20183928

Appeal by: Harold Boldt
Elvira Boldt

Appeal Against: Development Authority of Rocky View County

Hearing Date: 2019 January 09

Decision Date: 2019 January 23

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 issued November 27, 2018. In this decision the Development Authority conditionally approved a development permit for the single-lot regrading and the placement of clean fill at 241191 Boundary Road (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 appeal is allowed and the decision of the Development Authority is varied. A development permit is conditionally approved subject to the following conditions:

Description:

1. That single-lot regrading and the placement of clean fill, approximately 35,000.00 cubic metres, shall be permitted in general accordance with the drawings

submitted with the application and the conditions of this permit.

Prior to Issuance:

2. That prior to issuance of this permit, the Applicant/Owner shall confirm whether topsoil from offsite is being used on the subject site land, and if so, shall submit a stamped and endorsed statement from a Professional Agrologist, or Certified Crop Advisor, confirming the soil quality improvements achieved by the proposed addition of topsoil. The anticipated agricultural benefits must be identified.

Note: If topsoil is not being imported onto the subject property, this condition is null and void.

3. That prior to issuance of this permit, the Applicant/Owner shall confirm whether topsoil from offsite is being used on the subject land, and if so, shall submit a soil testing analysis completed on the proposed topsoil that includes where the topsoil originated from and confirms that:

- i. Texture is balanced and not over 40.00% clay;
- ii. Organic matter is a minimum of 3.00%, and equal to or greater than the organic matter of the soil on the application site;
- iii. SAR/EC rating is at least "good"; and
- iv. PH value is in the "acceptable" range for crop growth.

Note: If topsoil is not being imported onto the subject property, this condition is null and void.

4. That prior to issuance of this permit, the Applicant/Owner shall enter into a Road Use Agreement with Wheatland County if required. A copy of the issued agreement or confirmation that an agreement is not required shall be submitted to the County prior to release.

Permanent:

5. That any plan, technical submission, agreement, matter, or understanding submitted and approved as part of the application or in response to a Prior to Issuance or Occupancy condition shall be implemented and adhered to in perpetuity.
6. That it shall be the responsibility of the Applicant/Owners to ensure the fill has been placed in a safe manner that does not cause slope stability issues, slumping, or any other related safety issues.
7. That no topsoil shall be removed from the site.
8. That the Applicant/Owners shall ensure no organic material is buried and capped in a manner that will cause methane gas related issues.
9. That the fill shall not contain large concrete, rebar, asphalt, building materials, organic materials, or other metal.
10. That the Applicant/Owners shall take effective measures to control dust on the parcel so that dust originating therein shall not cause annoyance or become a nuisance to adjoining property owners and others in the vicinity.
11. That if no future development of the proposed graded area occurs, the proposed graded area shall have a minimum of six (6) inches of topsoil placed on top,

which shall then be spread and seeded to native vegetation, farm crop, or landscaped to the satisfaction of the County.

12. That the subject land shall be maintained in a clean and tidy fashion at all times, and all waste material shall be deposited and confined in an appropriate enclosure. All waste material shall be regularly removed from the property to prevent any debris from blowing onto adjacent property or roadways. That all garbage and waste shall be stored in weatherproof and animal proof containers and be in a location easily accessible to containerized garbage pickup.

Advisory:

13. That the site shall remain free of restricted and noxious weeds and maintained in accordance with the Alberta Weed Control Act.
14. That at no point shall there be any alterations made to the site grade of the land, which will affect the current drainage or operation of the Western Irrigation District works.
15. The Applicant/Owner shall contact ATGO Gas (southlandadmin@atcogas.com) at least 21 days in advance of work commencing to provide an agreement with the following information to obtain consent to do work:

- i. ATCO Gas requires the following information to process the request for a crossing and/or proximity Agreement within the 30M Controlled Area referenced on the Alberta 1st Call as a CONFLICT:
 - a. Contact information: Name, Phone Number and Email, if available;
 - b. Titleholder of Land, if different from Contact;
 - c. Survey Plan and/or 1st Call Locate Sketch;
 - d. Legal Land Description [e.g. NE 32-30-15-W4M and/or Lot/Block/Plan];
 - e. Brief description of proposed work including what type of equipment to be used:
Note: If crossing of the ATCO Gas Facilities is expected, the location should be indicated on the sketch plan.
 - f. If working occurs in proximity and/or parallel to the ATCO Gas Facilities, please provide the approximate distance from the work area to ATCO's facilities.
- ii. If the landowner has any questions regarding the above, they can contact 403-245-7845.

16. The Applicant/Owner shall contact Ember Resources in advance of any work commencing if work is to cross/encroach on any of the following:

- i. Right of Way: 10-11 WELL TO 9-12-24-27 W4M P/L (57358-255)
- ii. Right of Way: 16-1 WELL TO 2-13-24-27 W4M P/L (57358-257)

If the work is going to cross/encroach on any of the above, the Applicant/Owner is to use Earth Berm or Rig Mats, and shall contact the Ember Resources Field Foreman before work is to commence at 403-507-5858.

17. That any other government permits, approvals, or compliances are the sole responsibility of the Applicant/Owners.
 - i. The Applicant/Owner shall submit a copy of an approved Roadside Development Permit from Alberta Transportation, once obtained.
18. That if the development authorized by this Development Permit is not completed within six months of the date of issuance, the permit is deemed to be null and void.

That if this Development Permit is not issued by JUNE 30, 2021, or the approved extension date, then this approval is null and void and the Development Permit shall not be issued.

BACKGROUND

[4] On September 27, 2018, Harold Boldt and Elvira Boldt (the Appellants) submitted a development permit application to add fill in nine areas on the Lands in order to reclaim alkaline soils caused by continuous overland flooding.

[5] The Lands are located at NE-12-24-27-W4M, approximately 0.81 kilometres east of Range Road 270 and on the south side of Highway 1. The Lands are approximately 56.80 hectares (140.36 acres) in area and are owned by the Appellants

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

[7] On November 27, 2018, the Development Authority approved a development permit with prior-to-issuance conditions, including condition number two (Condition 2) which states:

"That prior to issuance of this permit, the Applicant/Owner shall submit a site grading plan and a letter from a professional engineer confirming that the placement of fill will have no impacts on adjacent lands or road infrastructure. Site drawings shall be submitted showing the extent of proposed work (with dimensions) and pre and post site grades. The plan drawings shall confirm pre-placement of fill grades, existing grades, and proposed finished grades of the parcel, and confirmation that fill placement will not impact adjacent lands or road infrastructure. If the fill depth exceeds 1.20 m (3.94 ft.) a Deep Fill Report shall be submitted."

[8] On December 18, 2018, the Appellant appealed the Development Authority's decision. The Notice of Hearing was circulated to 41 adjacent landowners in accordance with the *Municipal Government Act*, RSA 2000, c M-26 and Rocky View County Council Policy C-327, *Circulation and Notification Standards*.

SUMMARY OF EVIDENCE

[9] The Board heard verbal submissions from:

- (1) Oksana Newman, Planner, for the Development Authority;
- (2) Gurbir Nijjar, Municipal Engineer, for the Development Authority; and

(3) Harold Boldt and Elvira Boldt, the Appellants.

[10] The Board received no letters in support of the appeal.

[11] The Board received one letter in opposition to the appeal from Brian D. Huculak and Gloria A. Huculak, owners of 241043 Range Road 270.

Development Authority's Submissions

[12] The proposed development is single-lot regrading and the placement of fill. Section 33.1 of the *Land Use Bylaw* states that all stripping, filling, excavation, grading and/or re-contouring requires a development permit.

[13] In their development permit application, the Appellants indicated that commercial development to the east of their land has created drainage issues on the Lands. The Appellants identified nine locations across the Lands that would receive fill. These low spots would be filled in order to mitigate the additional water on their property and thereby improve farmability on the Lands.

[14] A review of County mapping shows several wetlands on the site, including in the areas where the Appellants propose to place fill.

[15] The Lands are on the eastern border of Rocky View County and accessed through Range Road 270. Wheatland County is directly to the east of the Lands. Range Road 270 is maintained by Wheatland County. This is a public roadway with an open road allowance so no user agreement exists between Wheatland County and Rocky View County.

[16] Wheatland County is also responsible for the Wheatland Industrial Park which is a development to the east of the Lands. This industrial park is potentially the source of the flooding.

[17] The Development Authority has requested information from Wheatland County regarding storm water management reports for the road improvement on Range Road 270 that was completed. This is expected in mid-January. These reports will not include information about the industrial park's storm water management plan.

[18] Based on the information that the Development Authority does have, it appears that the industrial park's storm water pond has an outlet that goes to Range Road 270. The water should then flow south along the Range Road 270's ditch.

[19] Approval from Alberta Environment is required before a development that may impact a wetland can take place. Alberta Environment has an aquatic biologist who would complete a detailed assessment of the lands proposed for development. Should the development impact the water in any way, a wetland assessment by a professional is then required. This assessment is paid for by the individual making the impact.

[20] In this case, the proposed fill will likely have an impact on the water on the Lands. Therefore, the Development Authority requires more information to determine that impact.

[21] The Development Authority cannot speak to what Wheatland County requires in the way of storm water management or at what stage the Alberta Environment approvals are at.

[22] The Development Authority is taking this matter seriously as it affects a Rocky View County resident. They are still pursuing this issue with Wheatland County and hopefully they can have meaningful discussions with Wheatland about how to address the problems the Appellants' are facing.

[23] The Development Authority clarified with the Board that in light of Condition 5 page 11 of their report to the Board, which requires the Appellant to obtain a permit to haul on Wheatland County's road, condition 6 could be removed if a development permit was granted.

Appellants' Submissions

[24] The Appellants live on the west side of Range Road 270, also known as Boundary Road. The proposed development is an attempt to treat the soil alkali and excess water on the Lands. The Appellants still actively farm the Lands.

[25] The Appellants believe the some of the prior-to-issuance conditions are unfair requirements, both in terms of effort and cost, because the reason the development permit is being sought is to address problems on the Lands caused by other off-site development and grading activities.

[26] The discussion of Wheatland Industrial Park development started in 2004. This development is in Wheatland County, bordered by Range Road 270 and Highway 1, and is uphill of the Lands. The Appellants were not informed of these initial meetings where the property designation was changed farm land to heavy industrial. After discovering the proposed development, the Appellants studied the proposal and presented their concerns at the Wheatland County Hearing.

[27] An aerial photo of the area in 2002 shows that there are no sloughs in the area. There were wet years where there were occasional sloughs. The water would typically run overland and down the Highway 1 ditch, to the east ditch of Range Road 270, and then south to a low point in the Lands. In these occasions, the low point would fill up. The water would flow through a culvert, crossing Range Road 270, and puddle on the Lands. However, these sloughs were present only in the spring and there was no long term damage as a result of this water flow.

[28] In 2007, ground broke on the industrial park development. Drainage impacts on the Lands began in the spring of 2008.

[29] In 2011, the Appellants received a letter from Wheatland County. The letter stated that Wheatland County made a mistake and the storm water pond was not large enough for the amount of water coming onto the site. The letter included a water flow designation that showed the water flowed from north to south and not east to west.

[30] An aerial photo of the area in 2012 shows the industrial park development is largely completed. Sloughs and salinization had developed and grown substantially. The drainage from the industrial park development had a significant impact on the land available for farming on the Lands.

[31] An aerial photo of the area in 2014 shows that sloughs had grown exponentially. The new acreage adjacent to the southeast corner on the Lands had built a berm to combat the onslaught of water from the industrial park. The Appellant's believe that a development permit

for this berm was only granted after it was completed. The berm was built without any consultation with the neighbors. This action caused further damage to the Lands due to restricted flow of water.

[32] The Lands are actively used for crop production. However, the most recent aerial photo of the Lands (taken in 2015) shows that the southeast corner of the Lands is now unavailable for farming because of the sloughs.

[33] When the industrial park was developed, the top soils were removed and ditches and roads were built. The removal of the soils affected the ability of the land in the area to absorb water. The remaining clay sheds the water. The developer also made changes to the highway ditch. Before the culvert was a foot higher than the ditch so water would run south on the east ditch. The developer built a berm in the east ditch so all highway water goes through the culvert to the Appellant's property.

[34] The industrial park's storm water pond is generally ineffective. It does not have enough capacity for the water that drains into it. The developer of the industrial park has, at times, opted to empty the pond via sprinklers onto the Highway 1 berm. The excess water flows under Range Road 270 and onto the Lands. Other times, the upper storm water pond was emptied via hose onto the south side of the industrial park development. This also flows down to Range Road 270, south to the neighbors on the southeast corner of the Lands. The water flows to the east side of Range Road 270, through the culvert, and onto the Lands.

[35] In the worst cases of rain or snow melt, the water overflows from the pond, over Range Road 270, and onto the Lands. This excess water flow has damaged the road.

[36] The constant flooding has resulted in alkali damage to the Lands, as shown by the aerial map and other photos of the Lands.

[37] Under the conditions of the development permit granted by the Development Authority, the Appellants are required to complete a grading plan and provide a letter confirming there will be no harm to adjacent land owners or infrastructure. The Appellants would also be obligated to pay to correct any damage caused by the development. However, Rocky View County, Wheatland County and Wheatland Industrial Park have not been held to account for their failure to manage the water on their own development. The Appellants' neighbour likewise is not being held accountable for the damage done to the Lands by building a berm without a permit.

[38] The Appellants estimate that the industrial park development, in addition to the neighbour's berm, has cost them approximately \$75,000 plus in labor and crop losses. This amount does not include damage to the Lands. The conditions of this development permit would require the Appellants to spend another \$15,000 to \$20,000 for a survey.

[39] The Appellants wish to top dress the Lands without significant additional cost. The current development conditions imposed by the Development authority would create a significant additional cost for the Appellants.

[40] The proposed development is likely be a short term solution as water will still come onto the Lands. The Appellants suggest a meeting with all the affected parties to engineer a long-term solution for the area.

[41] The Appellants have not sourced the fill material yet. They have also not received a response from Alberta Environment yet.

[42] The lake on the Lands is filled from the adjacent canal. Engineers have looked at the lake and determined that the clay under the lake is good. The lake is not adding to the flooding problem.

FINDINGS & REASONS FOR DECISION

[43] The Board finds it has the authority to make a decision on this matter pursuant to section 687(3)(d) of the *Municipal Government Act*.

[44] Single lot re-grading and the placement of fill is a discretionary use in the Ranch and Farm, in accordance with section 43 of the *Land Use Bylaw*.

[45] The wetlands identified by the Development Authority are not natural wetlands. As evidenced by the Appellant's aerial photos, these wetlands have likely been manufactured by development within Wheatland County. The photographs for Range Road 270 show that there is no ditch that is able to accommodate the industrial park's storm water pond runoff.

[46] The proposed development is unlikely to negatively impact the neighbouring properties. These properties have already completed development to their lands to mitigate the water issues.

[47] Given the above findings and pursuant to section 687(3)(d) of the *Municipal Government Act*, the Board finds that the proposed development would not unduly interfere with the amenities of the neighbourhood, or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land. The Board also finds the proposed development conforms to the use prescribed for the Lands in the *Land Use Bylaw*.

[48] The development permit issuance date is extended to June 30, 2021 to allow time for all parties, including Rocky View County and Wheatland County, to address the underlying problem causing the excess water flowing

CONCLUSION

[49] For the reasons set out above, the appeal is allowed and the decision of the Development Authority is varied. A development permit is conditionally approved subject to the above-noted conditions.

Dated at Rocky View County, in the Province of Alberta on January 23, 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 (55 pages)
2.	Appellant's power point presentation (21 pages)
3.	Letter of Opposition (2 pages)
4.	Excerpt of Letter from Wheatland County provided by the Appellants (2 pages)