

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

Board Order No.: 2019-SDAB-059

File No.: 06704007; PRDP20193520

Appeal by: Rogers Communications Inc. c/o LandSolutions LP

Appeal Against: Development Authority of Rocky View County

Hearing Date: 2019 December 11

Decision Date: 2019 December 20

Board Members: D. Henn, Chair
T. Fehr
H. George
M. Goetjen
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 7, 2019. In this decision, the Development Authority refused a development permit for a proposed commercial communications facility, type C, (proposed tower) relaxation of the minimum front yard setback at 260016 Canning Lane (the Lands).

[2] Upon notice being given, this appeal was heard on December 11, 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 revoked. A development permit shall be issued subject to the following conditions:

Description:

- 1) That a telecommunications tower for a commercial communications facility, type C, may be situated on the Lands in accordance with the approved site plan and details submitted with the application, and includes the following:
 - a. placement of one self-supporting telecommunications tower, approximately 70.00 metres high;
 - b. placement of an equipment shelter; and
 - c. security fencing for the tower facility.
- 2) That the front yard setback requirement for the commercial communications facility, type C, is relaxed from **45.00 m (147.64 ft.) to 1.80 m (5.91 ft.)**.
- 3) That the side yard setback requirement for the commercial communications facility, type C, is relaxed from **60.00 m (196.85 ft.) to 48.5 m (159.12 ft.)**

Prior to Issuance:

- 4) The Applicant is required to provide a \$10,000 security for the road approach as per County Council policy C-407, *Subdivision and Development Security Requirements*.

Prior to Occupancy:

- 5) The Applicant shall be required to arrange for inspection and approval by County Road Operations.

Permanent:

- 6) That no topsoil shall be removed from the Lands.
- 7) That all commercial communication facilities shall be neutral in colour and blend with the surroundings. Mitigation of the visual aspects of the facility should include painting, decorative fencing, screening, and landscaping, and should not clash with the sky or landscape.
- 8) That should the commercial communication facilities become deactivated or unused, the commercial communication facilities shall be removed from the Lands within six months of becoming deactivated or unused.
- 9) Light shielding shall be considered to minimize the impact of the lighting to adjacent communities.
- 10) That the Applicant shall construct the proposed approach as per County servicing standards. Upon completion, the Applicant shall contact County Road Operations for final acceptance the approach.
- 11) If any fill materials are to be hauled to or from the Lands, the Applicant shall contact County Road Operations to confirm the requirements for Road Use Agreements or hauling permits.

- 12) That any plan, technical submission, agreement, or other matter submitted and approved as part of the development permit application or submitted in response to a prior to issuance or occupancy condition, shall be implemented and adhered to in perpetuity.

Advisory:

- 13) That the Applicant shall contact County Road Operations for any shallow utilities and allowances, and shall provide haul details of equipment, materials, and vehicles, to determine if a Road Use Agreement and/or a Road Data Permit is required with the County for the use of the County road system to haul to/from the Lands.
- 14) That any other federal, provincial or County permits, approvals, and/or compliances, are the sole responsibility of the Applicant.
- 15) That this approval shall become null and void if not issued by **January 31, 2020**.
- 16) That if the development authorized by this development permit is not commenced with reasonable diligence within 12 months from the date of issue, and completed within 24 months of the issue, the permit is deemed to be null and void, unless an extension to this permit shall first have been granted by the Development Authority.

BACKGROUND

[4] On September 25, 2019, LandSolutions LP submitted a development permit application on behalf of Rogers Communications Inc. for a commercial communication facility, type C, relaxation of the minimum front yard setback.

[5] The Lands are located at 260016 Canning Lane (Block A, Plan 2374 JK; SW-04-26-03-W5M) and located on the south side of Highway 1A, near the junction of Highway 1A and Canning Road. The Lands are 6.90 acres in area and are owned by Vi Luong Truong and Ka Man Leung.

[6] The Lands' land use designation is Agricultural Holdings and is regulated in section 46 of the Rocky View County *Land Use Bylaw C-4841-97* (the *Land Use Bylaw*).

[7] On November 7, 2019, the Development Authority refused to grant a development permit for a proposed commercial communications facility, type C, relaxation of the minimum front yard setback requirement for the following reasons:

- 1) The proposed commercial communications facility, type C (equipment cabinet), exceeds the minimum front yard setback requirement as per section 43.6 of the *Land Use Bylaw*.

Permitted: 45.00 m (147.64 ft.); Proposed: 1.80 m (5.91 ft.)

- 2) The proposed commercial communications facility, type C, exceeds the minimum setback from an existing dwelling requirement as defined in section 3.c of Procedure 308 – Guidelines to Evaluate Commercial Communications Facilities.

Discretionary: 500.00 m (1,640.42 ft.); Proposed: 290.00 m (951.44 ft.)

- 3) The proposed commercial communications facility, type C, exceeds the minimum setback from a road right of way requirement as defined in section 3.c of Procedure 308 – Guidelines to Evaluate Commercial Communications Facilities.

Permitted: 35.00 m (114.83 ft.); Proposed: 5.60 m (18.37 ft.)

- 4) The proposed commercial communications facility, type C, exceeds the minimum setback from an existing commercial communications facility requirement as defined in section 3.c of Procedure 308 – Guidelines to Evaluate Commercial Communications Facilities.

Discretionary: 2,000 m (6,561.68 ft.); Proposed: 880.00 m (2,887.14 ft.)

[8] On November 12, 2019, the Appellant appealed the Development Authority's decision. The Notice of Hearing was circulated to 40 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 Newmen, Planner, for the Development Authority;
- (2) Sean MacLean, Supervisor Planning and Development, for the Development Authority;
- (3) Brenden Smith, Strategic Project Coordinator with LandSolutions LP, for the Appellant; and
- (4) Christine Elford, in opposition of the appeal.

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

[11] The Board received five letters in opposition of the appeal from:

- (1) Eric Carstens and Anita Krebs;
- (2) Almeda and Jack Sawatzky;
- (3) Viorel and Natalia Mamaliga;
- (4) Raymond and Maureen Lucko; and
- (5) Gabor Csonka and Bogi Gyorfi.

Development Authority's Submissions

[12] The proposed tower is a discretionary use in an Agricultural Holdings District in accordance with section 46 of the *Land Use Bylaw*.

[13] The closest dwelling to the proposed tower is 290 metres away, requiring a 42.00% relaxation from the 500 metre buffer zone outlined in County Procedure 308 "Guidelines to Evaluate Commercial Communications Facilities". There are eleven dwellings within the 500 metre buffer zone.

[14] In accordance with Procedure 308, the location of the proposed tower requires an 84.00% relaxation for the road right of way setback and a 56.00% relaxation for the setback from an existing tower.

[15] The Development Authority uses Procedure 308 as a guideline when reviewing proposed tower applications and can use its discretion to vary from the procedure. Given that the application proposes relaxations to all of the recommendations contained within section 3.c of Procedure 308, the Development Authority did not use its variance authority and refused the application.

[16] The proposed front yard setback requires a 96.00% relaxation in accordance with section 46.5 of the *Land Use Bylaw*. The Development Authority could not approve the application because the front yard setback request exceeds their variance authority of 25.00% outlined in section 12.1 of the *Land Use Bylaw*.

[17] The proposed tower is located approximately 48.5 metres from the Highway 1A right of way, which does not meet the setback requirement in the *Land Use Bylaw*. This request requires a 19.17% relaxation which is within the Development Authority's variance authority of 25.00%. This relaxation was not listed as a reason for refusal.

[18] Industry Canada is the approving authority for the proposed tower and requires that the Applicant consult with the local jurisdiction and the public. The County uses the development permit application process to provide their input on applications and the federal government gives a lot of weight to the input of the local jurisdiction.

Brenden Smith Submissions – the Appellant

[19] Brenden Smith works for LandSolutions LP and is representing the Appellant.

[20] The Applicant tried to meet the County's setback requirements when choosing a location for the proposed tower even though final approval of the tower is federal jurisdiction.

[21] The federal government does not consider concerns about health, impacts on property value, and need for towers to be relevant factors when reviewing a proposed tower application.

[22] The number of Canadians consuming mobile data is increasing and demands a stronger network and new infrastructure. The newest technology requires infrastructure to be in neighbourhood centres and residential areas.

[23] The developable area of the Lands is limited due to a wetland and the setback requirement from Highway 1A.

[24] Highway 1A serves as a buffer between the proposed tower and the homes to the north.

[25] A benefit of the lattice design is that it minimizes the visual impact of the proposed tower.

[26] The federal regulator requires Rogers to try to co-locate their infrastructure with other providers. AltaLink declined Rogers' request to co-locate on their nearby tower.

[27] The following factors were considered when choosing the proposed tower location:

- (1) the need to be close to wireless users for technical reasons;
- (2) planning in conjunction with other wireless facilities/sites;
- (3) supportive land use required;
- (4) need to find a willing landlord;
- (5) access to power;
- (6) setbacks to power lines, roads, property lines, etc.; and
- (7) topographical constraints.

[28] The location was chosen to be as far from dwellings as possible while meeting the setback requirement from Highway 1A.

[29] The aeronautical lighting is required by Transport Canada and the lighting is shielded so that the light is directed upwards away from the homes down below.

[30] Industry Canada commissioned a study called the Townsend Report that found it inconclusive whether or not towers have positive or negative impacts on property value. Industry Canada does not consider possible impact on property values when it reviews applications.

[31] The proposed tower would be below the approach lane for airplanes at the Springbank Airport. Navigation Canada indicated it had no objections to this proposed tower.

[32] Industry Canada enforces Health Canada's regulations (Safety Code 6: Radiofrequency Exposure Guidelines) which protect the health of the public. Safety Code 6 was revised in 2015 and will likely be reviewed again soon. Whenever Safety Code 6 is updated by Health Canada, all towers must meet the new standards, there is no grandfathering.

[33] Industry Canada does not consider health a relevant matter for evaluating a proposed tower location, as long as Safety Code 6 is followed.

[34] The proposed tower has been designed and built to engineering standards. There was a wind load study done during the design of the proposed tower.

[35] The Canadian Radio-television and Telecommunications Commission (CRTC) considers it a basic right of Canadians to have access to high-speed wireless internet. The proposed tower will help enhance network capacity and coverage, improving access to emergency services, and providing additional internet options for rural residents.

[36] The proposed tower site is located within Build Area G in the Glenbow Ranch Area Structure Plan which includes policy support for commercial communications facilities.

[37] If this application is refused federally, there is an appeal process that is used for certain situations but it is not a straightforward process. If Industry Canada refuses the application based on the County's input, Rogers would likely reapply with a new proposed location.

Christine Elford Submissions

[38] Christine Elford lives within 310 metres of the proposed tower location and is opposed to the appeal.

[39] The proposed tower will have serious health impacts on her and her family and the other dwellings within the 500 metre buffer zone.

[40] Elford is concerned that ice and snow accumulated on the proposed tower will blow off and cause dangerous debris on Highway 1A, Glendale Road, and the properties below. Glendale Road is very busy with vehicle traffic and pedestrians. Elford has not seen debris come off the existing AltaLink tower but the proposed tower is taller and a different design.

[41] Elford objects to health concerns not being considered relevant by the Appellant and Industry Canada.

[42] Elford has no evidence to support her health concerns but assumes that the 500 metre buffer zone was set for health and safety reasons.

Appellant's Rebuttal

[43] The 500 metre buffer zone is not established by the federal government, it is a County guideline that is set for what the Appellant interprets as political reasons. The 500 metre buffer zone would not be based on any health or safety reasons.

[44] The proposed conditions of approval put forward by the Development Authority are quite standard, the Appellant and his Rogers colleague had no objections.

[45] If the Board approves the development permit application, the Appellant requested that the Board also direct the Development Authority to write a concurrence letter to Industry Canada. A concurrence or non-concurrence letter is the input that Industry Canada is looking for, not necessarily a development permit approval.

Development Authority's Closing Comments

[46] The Development Authority has provided a concurrence letter in the past for commercial communications facility, type C, applications that were approved through the development permit application process.

Appellant's Closing Comments

[47] The Appellant had no closing comments.

FINDINGS & REASONS FOR DECISION

[48] The proposed commercial communications facility, type C, is a discretionary use within an Agricultural Holdings District in accordance with section 46 of the *Land Use Bylaw*.

[49] 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*.

[50] The Board reviewed all evidence and arguments, written and oral, submitted by the parties and focused on the most relevant evidence and arguments in outlining its reasons. The Board also considered the context of the proposed development, sound-planning considerations, the merits of the application, and all applicable legislation, plans, and policies.

[51] The Board finds the Lands are in Build Area G and are therefore appropriate for a commercial communications facility, as outlined in section 20.21 of the *Glenbow Ranch Area Structure Plan*.

[52] The Board finds that the setback relaxations are required due to the limited developable area of the Lands which is impacted by topography, a wetland, and the setback requirement from Highway 1A. The Board finds that the Highway 1A corridor is an appropriate location for this structure and that Alberta Transportation issued a roadside permit for the proposed commercial communications facility, type C. The Board is satisfied that the front yard set back relaxation will not have undue impact on adjacent parcels or Canning Lane.

[53] The Board heard concerns about the health impacts of the proposed commercial communications facility, type C, and is satisfied that Industry Canada will follow Health Canada's regulations as outlined in Safety Code 6 when reviewing the proposed Rogers' application.

[54] The Board heard no compelling evidence that the proposed commercial communications facility, type C, will have a negative impact on property value and is satisfied that the design of the tower will minimize the visual impact of the tower.

[55] The Appellant requested that the Board issue a concurrence letter or direct the Development Authority to issue a concurrence letter to meet federal regulations. The Board finds that its authority is limited to determining the validity of the development permit pursuant to the *Municipal Government Act* and may not direct the Development Authority to provide a concurrence letter for the Appellant. The Board's decision to allow the appeal and issue the development permit for a commercial communications facility, type C, on the Lands should be taken as constituting its concurrence with the project for the purpose of satisfying federal requirements.

[56] Given the above findings and pursuant to section 687 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*.

CONCLUSION

[57] For the reasons set out above, the appeal is allowed and the decision of the Development Authority is revoked. A development permit shall be issued subject to the above-noted conditions.

Dated at Rocky View County, in the Province of Alberta on December 20, 2019.



Daniel Henn, 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 (204 pages)
2.	PowerPoint presentation submitted by Appellant (16 pages)
3.	Development Permit Report submitted by Development Authority (15 pages)
4.	PowerPoint presentation submitted by Development Authority (12 pages)
5.	Letter of opposition from Eric Carstens and Anita Krebs (2 pages)
6.	Letter of opposition from Almeda and Jack Sawatzky (1 page)
7.	Letter of opposition from Viorel and Natalia Mamaliga (1 page)
8.	Letter of opposition from Raymond and Maureen Lucko (1 page)
9.	Letter of opposition from Gabor Csonka and Bogi Gyorfı (1 page)