

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

Board Order No.: 2019-SDAB-062

File No.: 06515002; PRDP20193746

Appeal by: Helen Ohlhauser and Kirsten Friesen

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 October 29, 2019. In this decision, the Development Authority conditionally approved a development permit for a commercial communications facility, type C, (proposed tower) at 262008 Range Road 13 (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 denied and the decision of the Development Authority is upheld.

BACKGROUND

[4] On September 19, 2019, LandSolutions LP (the Applicant) submitted a development permit application on behalf of Rogers Communications Canada Inc. (Rogers) for a commercial communications facility, type C. The Lands are owned by Archibald Franklin Bushfield.

[5] The Lands are located at 262008 Range Road (SW-15-26-01-W5M) and are 187.97 acres in size.

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

[7] On October 29, 2019, the Development Authority conditionally approved a commercial communications facility, type C, on the Lands.

[8] On November 19, 2019, two separate affected party appeals were filed with the Clerk of the Board. Helen Ohlhauser and Kirsten Friesen each appealed the Development Authority's decision to conditionally approve the commercial communications facility, type C. The Board heard the appeals together and this board order is the decision for both appeals.

[9] The notice of hearing was circulated to 79 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

[10] The Board heard verbal submissions from:

- (1) Xin Deng, Planner, for the Development Authority;
- (2) Sean MacLean, Supervisor Planning and Development, for the Development Authority;
- (3) Helen Ohlhauser, the first Appellant;
- (4) Kirsten Friesen, the second Appellant;
- (5) Billy Peshke, in support of the appeal; and
- (6) Brenden Smith, Strategic Project coordinator with LandSolutions LP, for the Applicant and in opposition of the appeal.

[11] The Board received one letter in support of the appeal from Nadeem Ahmad.

[12] The Board received no letters in opposition of the appeal.

Development Authority's Submissions

[13] The proposed tower is a discretionary use in a Ranch and Farm District in accordance with section 43 of the *Land Use Bylaw*.

[14] Industry Canada is the approving authority for the proposed tower. They require applicants to consult with the local approving authority and the public as a part of the application process.

[15] The Development Authority reviewed the application to ensure the proposal meets the criteria laid out in County Procedure 308 "Guidelines to Evaluate Commercial Communications Facilities." Criteria includes location, setback, height, colour, and potential for co-location on other structures.

[16] There are no dwellings within 500 metres or other commercial communications facilities within 2,000 metres of the proposed tower. The proposal meets setback requirements and was therefore approved.

[17] Alberta Transportation has issued a roadside permit authorizing the proposed tower.

[18] The Development Authority did not circulate the city of Calgary residents for the notice of approval but the Applicant did during the application process.

Helen Ohlhauser Submissions – First Appellant

[19] Helen Ohlhauser submitted a petition with her appeal with the signatures of residents who are opposed to the proposed tower.

[20] It is well known that the intersection of Highway 566 and Range Road 13/Centre Street is very dangerous. Alberta Transportation has plans to upgrade Highway 566 to a divided expressway, including an interchange at the northeast junction where the tower is proposed to go.

[21] Ohlhauser would like the proposed tower placed at an alternate location that is less intrusive and not overbearing to neighbours.

[22] Ohlhauser is concerned that she and other neighbours did not receive the August 7, 2019 public notification package or the October 29, 2019 letter sent by Rocky View County indicating the development permit had been approved. She is concerned the development process has not been transparent or accountable.

[23] Due to Ohlhauser's past professional occupation with Alberta Health Services, she is aware of the dangers posed by accumulated electromagnetic radiation from the proliferation of towers.

[24] The Federal Communications Commission (FCC) regulates all wireless applications and is very permissive compared to other governments (e.g. Europe). For example, France has banned Wi-Fi in nursery schools.

[25] There is a general lack of awareness of the impacts of 5G technology on the human body. One of the biggest sources of electromagnetic radiation comes from the many cell towers.

[26] Industry Canada's Safety Code 6 regulations govern radio frequencies and have not changed since they were introduced 25 years ago. They do not reflect the latest knowledge of safe levels of radiation. Thousands of conflict-free scientists all over the world are speaking out on the dangers of 5G and calling for extremely outdated safety limits to be updated.

[27] Ohlhauser challenges Rogers' argument that more cell coverage is needed in the area. She and her neighbours have not experienced problems with coverage at their homes or in their vehicles. She suggests the proposed tower be put on hold for an alternate location that is more industrial in nature and away from residential homes then revisited when the Livingston and Carrington communities are developed.

[28] Ohlhauser would like the tower to be at least 1.6 kilometres away from residential areas and would like to cooperate with the County and Rogers to find a suitable location where health is protected and adequate service provided. She stated that she did not make her 1.6 kilometre request on any specific evidence.

[29] In speaking with neighbours it is their opinion that the cell tower will cause property assessments to drop.

Kirsten Friesen Submissions – Second Appellant

[30] Kirsten Friesen's family purchased their property to get away from the city and commercial developments.

[31] Friesen is concerned about the proposed tower's visual impact as they will be able to see it from their front porch. She also has concerns about the impact of the aeronautical obstruction marking requirements (e.g. lights and painted markings).

[32] Friesen is concerned about the negative effect the proposed tower will have on property values and the area's natural habitat. The lighting, fencing, and additional facilities will deter wildlife from moving through the area.

[33] Friesen would like to see the proposed infrastructure co-located where there is already a disturbance.

[34] The Lands are zoned Ranch and Farm and have not been re-designated for commercial use.

[35] She has concerns about the tower's negative health impacts. She believes Safety Code 6 states that towers should be at least 500 metres from houses but is worried that will change as new research is conducted.

[36] The junction of Highway 566 and Range Road 13 is a very dangerous intersection. Adding more traffic, fences, buildings, and maintenance vehicles increases the risks of accidents at that location. The increase in the area's service will cause more distracted driving.

[37] Friesen feels the process used for consulting and notifying local residents lacked transparency and information.

[38] Friesen would like to know if any other alternative locations were offered and requests that the proposed tower be moved one kilometre east of the proposed site where it would not be seen by Calterra Residents and where there is a pre-existing driveway and RV storage lot.

Billy Peshke Submissions

[39] He lives in CalTerra Estates and has been selling county residential homes in Rocky View County for 17 years. He supports the appeal.

[40] Infrastructure like power lines and cell towers are deterrents for potential buyers.

[41] He is worried about the proposed tower's negative visual and health effects.

[42] He did not receive any notification about the application or decision but did receive the notice of appeal.

Brenden Smith Submissions – The Applicant

[43] Brenden Smith is with LandSolutions LP and is representing the Applicant. He opposes the appeal.

[44] Federal policy CPC-2-0-03 Section 4.2 established by Industry Canada states that questions about need for service, potential impacts on property values, and concerns about Safety Code 6 are not relevant factors when reviewing applications.

[45] Rogers relies on microwave technology that requires clear line of sight between towers which is why a taller tower is needed.

[46] The closest dwelling is at least 800 metres away from the proposed tower location and artist renderings show the minimal visual impact the tower will have. The lattice design of the tower and the fact that no aeronautical lighting is needed will help minimize the visual impact.

[47] They provided their application notification packages to the County who mailed it out to landowners within 1.6 km of the proposed tower. Rogers did not receive any opposition to the application during the initial public consultation.

[48] Alberta Transportation approved a roadside development permit for the proposed tower and the proposal meets setback requirements to the highway and interchange.

[49] The proposal fits the land use requirements of the *Land Use Bylaw*.

[50] A variety of factors impact the location of a tower, including:

- (1) latest technology requires infrastructure be close to users;
- (2) planned in conjunction with other wireless facilities/sites;

- (3) must be in small geographical area to enhance wireless services;
- (4) proper land use designation;
- (5) willing landowner to host the facility;
- (6) access to power;
- (7) setbacks to power lines, roads, property lines, etc.; and
- (8) topographical constraints.

[51] It is inconclusive whether or not towers have a positive or negative impact on property values and the federal government does not consider it a relevant factor.

[52] All towers in Canada must comply with Health Canada's Safety Code 6. Safety Code 6 was last updated in 2015 and all towers must meet the standards right away, there is no grandfathering.

[53] Safety Code 6 is based on peer-reviewed scientific research consistent with the science-based standards used elsewhere in the world. There is no scientific basis for more stringent requirements outside of Safety Code 6. Health Canada continues to monitor ongoing worldwide research and confirmed this to the Applicant by email on July 31, 2019.

[54] The 500 metre buffer zone between a tower and residential dwellings comes from County policy and is not based on health or safety reasons.

[55] Access to reliable high speed wireless service is considered a basic right of Canadians as established by the Canadian Radio-television Telecommunications Commission (CRTC). There is a push from the federal government to ensure that rural areas and major transportation corridors have access to telecommunications.

[56] The proposed tower has no lights on it so there will be no impact on birds. Rogers workers are trained to protect endangered species and their habitats.

[57] The construction process of towers usually takes about six weeks. Once construction is completed, on average one truck will go to the Lands once every three months for maintenance purposes.

[58] The Applicant requests that the Board issue a development permit for the proposed facility and that a concurrence letter be issued to satisfy federal requirements.

Helen Ohlhauser Rebuttal – First Appellant

[59] Ohlhauser reiterated her statements made in the conclusion of her presentation. She believes there are other locations that will not affect dwellings while providing service. One example would be a couple miles east where the proposed cemetery will be.

Kirsten Friesen Rebuttal – Second Appellant

[60] The proposed tower will not provide extra service to local residents as Calterra Estates residents use internet service from Xplornet, not Rogers.

[61] Ohlhauser thinks it would be better to upgrade the two existing towers in the area to accommodate the new infrastructure rather than building a third tower.

[62] Ohlhauser believes that an alternate location should be chosen.

FINDINGS & REASONS FOR DECISION

[63] The proposed commercial communications facility, type C, is a discretionary use in a Ranch and Farm District in accordance with section 43 of the *Land Use Bylaw*.

[64] 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*.

[65] The Board finds that the proposed commercial communications facility, type C, meets the setback and design regulations of the *Land Use Bylaw* and County Procedure 308 "Guidelines to Evaluate Commercial Communications Facilities". The Board is satisfied that the Highway 566 corridor is an appropriate location for this structure and that Alberta Transportation has approved the proposal.

[66] The Board heard the Appellants' 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 tower application.

[67] The Board is satisfied the proposed commercial communications tower, type c, is further away than 500 metres from a dwelling and 2,000 metres from the nearest commercial communications facility and heard no evidence to substantiate the concerns about health and property values.

[68] 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.

[69] The Applicant 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 Applicant. The Board's decision to deny the appeal and uphold the Development Authority's decision to 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.

[70] 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

[71] For the reasons set out above, the appeal is denied and the decision of the Development Authority is upheld.

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 (61 pages)
2.	PowerPoint presentation submitted by Development Authority (10 pages)
3.	PowerPoint presentation submitted by H. Ohlhauser (10 pages)
4.	PowerPoint presentation submitted by K. Friesen (14 pages)
5.	Handout submitted by K. Friesen (2 pages)
6.	PowerPoint presentation submitted by Applicant (18 pages)
7.	Letter of support from Nadeem Ahmad (1 page)