

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

Board Order No.: 2019-SDAB-064

File No.: 06712074; PRDP20193187

Appeal by: Jim Blum

Appeal Against: Development Authority of Rocky View County

Hearing Date: 2019 December 20

Decision Date: 2020 January 2

Board Members: D. Henn, Chair  
T. Fehr  
H. George  
M. Goetjen  
W. Metzger

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**DEVELOPMENT APPEAL DECISION**

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**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 12, 2019. In this decision, the Development Authority conditionally approved a development permit for single-lot regrading and placement of clean fill, the construction of berms, and the installation of a culvert at 103 North Valley Bay (the Lands).

[2] Upon notice being given, this appeal was heard on December 20, 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 in part and the decision of the Development Authority is varied. A development permit shall be issued subject to the following conditions:

**Description:**

- 1) That single-lot regrading and the placement of clean fill, the construction of berms, and the installation of a culvert shall be permitted in general accordance with the approved drawings and the conditions of this permit.

**Prior to Issuance:**

- 2) The Applicant/Owner shall submit an Irrevocable Letter of Credit or Refundable Security, in the amount of \$20,000, to be deposited with the County to ensure that conditions of this permit are met. If conditions of this permit are not met, the County may use the funds, enter onto the described land, and carry out the work necessary to meet the conditions.
- 3) The Applicant/Owner shall submit a revised site plan demonstrating that the proposed fill and regrading occurs entirely within the boundaries of the Lands and does not interfere with adjacent properties and County infrastructure, to the satisfaction of the County.
- 4) The Applicant/Owner shall remove all fill placed around the low area, within the County road right-of-way (ROW), and any portion of the berms constructed within the road ROW. Once the fill has been removed, the Applicant/Owner shall:
  - i. contact County Transportation Services for an inspection of the road ROW. Written confirmation shall be obtained from County Transportation Services and provided to the Development Authority once the inspection has passed.
- 5) The Applicant/Owner shall submit a site-specific storm water implementation plan for the Lands, in accordance with the Bearspaw-Glenbow Master Drainage Plan and County Servicing Standards. The report shall be stamped by a qualified professional and shall:
  - i. confirm both pre- and post-development site grading in the vicinity of the work;
  - ii. evaluate possible impacts the proposed placement of fill will have on adjacent lands and County infrastructure. The report shall provide mitigating measures, if necessary, for any impacts the work may have on adjacent lands and County infrastructure; and
  - iii. provide Erosion and Sedimentation Control (ESC) measures for the proposed activities, identifying all necessary ESC measures to be implemented to prevent the transfer of dust and silt to the roadside ditch and neighboring properties, in accordance with County Servicing Standards.
- 6) The Applicant/Owner shall provide visual confirmation that the fill does not contain construction rubble or any hazardous substances, including but not limited to: large concrete, rebar, asphalt, building materials, organic materials, or other metal.
  - i. If the fill contains any construction rubble or any hazardous substances, the fill shall be screened or removed from the Lands, to the satisfaction of the County.
- 7) The Applicant/Owner shall contact County Road Operations with haul details for materials and equipment needed during construction/site development to confirm if Road

Use Agreements will be required for any hauling along the County road system and to confirm the presence of County road ban restrictions.

- i. Written confirmation shall be received from County Road Operations confirming the status of this condition. Any required agreement or permits shall be obtained unless otherwise noted by County Road Operations.

**Permanent:**

- 8) That for all areas where over 1.2 m of fill is placed, the Applicant/Owner shall provide a Deep Fill Report, prepared by a qualified professional, providing the compaction testing of the fill and general recommendations for the suitability of different types of building foundations as there is potential that future landowners could construct a structure over the filled area.
- 9) That upon completion of the proposed development, the Applicant/Owner shall submit an as-built survey, confirming that the development proposal and post grades align with the supporting technical submissions for the file.
- 10) 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 condition shall be implemented and adhered to in perpetuity.
- 11) That the Applicant/Owner shall be responsible for rectifying any adverse effect on adjacent lands from drainage alteration.
- 12) That the Applicant/Owner shall take effective measures to control dust in the regrading area of the Lands, so that dust originating therein shall not cause annoyance or become a nuisance to adjoining property owners and others in the vicinity.
  - i. That if at any time the removal or handling of the fill creates a visible dust problem, the removal or handling of the fill shall cease immediately until remedial measures are taken.
- 13) That any material entering to or leaving from the Lands, shall be hauled on/off in a covered trailer/truck, which will prevent blowing of dust/small rocks onto the road or cause issues with other vehicles on the road.
- 14) That with the removal of any fill, the Applicant/Owner shall take whatever means necessary to avoid the transfer of dirt onto public roadways.
- 15) That the clean-up of any mud tracking and/or dirt that enters onto adjacent highway and/or County roads during hauling shall be the responsibility and cost of the Applicant/Owner for clean-up.
- 16) That no topsoil shall be removed from the Lands.
- 17) That the fill shall not contain construction rubble or any hazardous substances, including but not limited to large concrete, rebar, asphalt, building materials, organic materials, or other metal.

- 18) That the Lands shall be maintained in a neat and orderly manner at all times to the satisfaction of the Development Authority.
- 19) That the proposed graded area, if possible, shall have a minimum of six 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.

**Advisory:**

- 20) That the Applicant/Owner shall be responsible for weed control and shall at all times adhere to the regulations in the *Alberta Weed Control Act*, RSA 2008, c W-5.1.
- 21) That should there be any work to impact any wetlands, the Applicant/Owner shall obtain all Alberta Environment (AE) approvals and permits for working in and/or near wetlands. A copy of all applicable AE approvals or written verification from AE that approvals are not required shall be provided before commencing any work.
- 22) That any other government permits, approvals, or compliances are the sole responsibility of the Applicant/Owner.
- 23) That if the development authorized by this development permit is not completed within 12 months of the date of permit issuance, the permit is deemed to be null and void.
- 24) That if this development permit is not issued by **JULY 31, 2020** or the approved extension date, then this approval is null and void and the development permit shall not be issued.

***Note: That the Applicant/Owner shall be responsible for all Alberta Environment approvals/compensation as there may be wetlands on site that could be impacted by the proposed placement of topsoil.***

**BACKGROUND**

[4] On September 6, 2019, Daniel Aljalgah (the Applicant) submitted a development permit application for single-lot regrading and placement of clean fill, the construction of berms, and the installation of a culvert.

[5] The Lands are located at 103 North Valley Bay (Lot 31 Block 2 Plan 9910521, NE-12-26-03-W5M), are 1.60 hectares (3.95 acres) in size, and owned by Daniel and Nour Aljalgah.

[6] The Lands' land use designation is Residential Two and is regulated in section 50 of the Rocky View County *Land Use Bylaw C-4841-97* (the *Land Use Bylaw*).

[7] On November 12, 2019, the Development Authority conditionally approved single-lot regrading and placement of clean fill, the construction of berms, and the installation of a culvert on the Lands.

[8] On December 2, 2019, Jim Blum appealed the Development Authority's decision to conditionally approve single-lot regrading and placement of clean fill, the construction of berms, and the installation of a culvert on the Lands. The notice of hearing was circulated to 37

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) Sandra Khouri, Planner, for the Development Authority;
- (2) Sean MacLean, Supervisor Planning and Development, for the Development Authority;
- (3) Noor Mirza, Municipal Engineer, for the Development Authority;
- (4) Jim Blum, the Appellant;
- (5) David Miner, in support of the appeal;
- (6) Theo Smit, in support of the appeal; and
- (7) Daniel Aljalgh, the Applicant who spoke in opposition of the appeal.

[10] The Board received two letters in support of the appeal from:

- (1) Len Persinger; and
- (2) Theo Smit.

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

### *Development Authority's Submissions*

[12] In preparing for the appeal hearing, it was brought to the Development Authority's attention that work had been done on the Lands outside of the conditionally approved development permit. The Development Authority attended and inspected the Lands on December 18, 2019.

[13] The Development Authority submitted a revised set of approval conditions to reflect the findings of the December 18, 2019 inspection. The Development Authority confirmed that a County road right-of-way had been filled in and that the fill contained unauthorized debris such as concrete.

[14] Stripping and grading is a discretionary development under all districts in the *Land Use Bylaw* and significant care must be made to ensure that drainage patterns are not altered in such a way as to cause off-site impacts.

[15] The Lands are within the Bearspaw-Glenbow Master Drainage Plan and the Development Authority ensured its proposed conditions conformed with that plan.

*Jim Blum Submissions – The Appellant*

[16] Jim Blum lives at 31 North Valley Boulevard and lives directly south and across the street from the Lands.

[17] Blum represents several neighbours impacted by the development and support the appeal.

[18] Fill has been imported to the Lands as early as 2009 and an extensive amount of work has been done. He approximates that over 5,000 yards of fill have been placed on the Lands since 2009. The fill is not clean and contains debris. Despite earlier complaints by neighbours, the County did not issue a stop order until September 2019.

[19] A berm has been built too close to the County road and the County ditches have been filled in. Blum approximates that portions of the Lands have been raised at least seven feet.

[20] Blum and the neighbours have concerns about the negative impacts the work has had on the area's drainage and that the filled-in ditches will cause snow drifting on the road.

[21] They would like the privacy berms to be pushed back onto the property and for the County roads to be rebuilt.

[22] Blum was satisfied with the new conditions proposed by the Development Authority at the hearing.

*David Miner Submissions*

[23] David Miner lives at 131 North Valley Bay and supports the appeal.

[24] Because so much work has already been done on the Lands, the neighbours did not request refusal of the development permit application. So much fill was imported to the Lands that bringing the Lands back to grade would also have a negative impact on the community. Miner would like to see the work complete and the area's drainage restored.

[25] Miner agreed with the Development Authority's new proposed conditions.

*Theo Smit Submissions*

[26] Theo Smit lives at 107 North Valley Bay and supports the appeal.

[27] Smit has no fundamental concerns with the development but opposes the location of the berms and filled-in ditches.

[28] The conditions proposed by the Development Authority at the hearing should have been included with the original approval.

*Daniel Aljalgah Submissions – The Applicant*

- [29] Daniel Aljalgah owns the Lands and spoke in opposition to the appeal.
- [30] The development is needed to increase the Lands' privacy and the Lands are the low point in the area so some regrading has been done to protect the home in the long term.
- [31] A culvert double the size of the standard will be installed to protect the area's drainage in the long term.
- [32] Aljalgah understands he needs to move the berms away from the County road and will complete that work when permitted.
- [33] Aljalgah is regrading the Lands to make sure water stays on the Lands and does not negatively impact neighbours.
- [34] Aljalgah agreed to the revised conditions proposed by the Development Authority submitted at the hearing.
- [35] Aljalgah has owned the Lands since 2002 and approximates that 100 loads of fill have been brought in. Aljalgah did not know the source of the unauthorized concrete found in the fill on the Lands.

*Jim Blum Rebuttal*

- [36] The ditches in the neighbourhood do not drain very well and there is an overall drainage problem in Bearspaw.
- [37] Blum estimates that over 500 truckloads of fill have been brought to the Lands and that no more fill should be placed.

*Development Authority's Final Comments*

- [38] The Development Authority had no final comments for the Board.

*Daniel Aljalgah Final Comments*

- [39] More fill will need to be imported to the Lands once the berm is pushed away from the County road as the berm will drop in elevation.

*Jim Blum Final Comments*

- [40] Jim Blum had no final comments for the Board.



## FINDINGS & REASONS FOR DECISION

[41] The Board finds that single-lot regrading and the placement of clean fill, the construction of berms, and the installation of a culvert are discretionary uses in all land use districts in accordance with the *Land Use Bylaw*.

[42] 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*.

[43] 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.

[44] The Board heard evidence that regrading work has taken place on the Lands that has filled in a County road right-of-way and imported fill with unauthorized debris. The Board is satisfied that the modified development permit conditions will rectify the negative impacts on the area's drainage and mitigate impact on adjacent properties. The Board is satisfied that all parties agreed to the modified development permit conditions at the hearing.

[45] The Board is satisfied that the modified development permit conditions will bring the Lands into compliance with the Bears paw-Glenbow Master Drainage Plan.

[46] 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

[47] For the reasons set out above, the appeal is allowed in part and the decision of the Development Authority is varied.

Dated at Rocky View County, in the Province of Alberta on January 2, 2020.



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Daniel Henn, Chair  
Subdivision and Development Appeal Board



**EXHIBIT LIST****DOCUMENTS PRESENTED AT THE HEARING AND CONSIDERED BY THE BOARD**

<b>NO.</b>	<b>ITEM</b>
1.	Development Authority's Report to the Board (37 pages)
2.	Revised proposed condition set submitted by Development Authority (4 pages)
3.	Images submitted by Development Authority (5 pages)
4.	PowerPoint presentation submitted by Appellant (7 pages)
5.	Handout submitted by Applicant (3 pages)
6.	Images submitted by Applicant (9 pages)
7.	Map submitted by Applicant (1 page)
8.	Letter of support from L. Persinger (2 pages)
9.	Letter of support from T. Smit (6 pages)

