

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

Board Order No.: 2020-SDAB-001

File No.: 05736201; PRDP20184867

Appeal by: Matt and Shelby Livingstone

Appeal Against: Development Authority of Rocky View County

Hearing Date: 2020 January 08

Decision Date: 2020 January 21

Board Members: Daniel Henn, Chair
Tricia Fehr
Hazel George
Ian Galbraith
Pam Whitnack

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 December 3, 2019. In this decision, the Development Authority conditionally approved a development permit for dwelling, single detached (existing), single-lot regrading and placement of clean fill at 63 Woodland Lane (the Lands).

[2] Upon notice being given, this appeal was heard on January 8, 2020 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 November 30, 2018, Sheldon Appave of Saville Homes Ltd. (the Applicant) submitted a development permit application for dwelling, single detached (existing), single-lot regrading and placement of clean fill on the Lands.

[5] The Lands are located at 63 Woodland Lane (Lot 2 Block 6 Plan 1710725, NW-36-25-03-W5M), are 2.15 acres in size, and owned by Sally Morse (the Owner).

[6] The Lands' land use designation is Residential One and is regulated in section 48 of the Rocky View County *Land Use Bylaw C-4841-97* (the *Land Use Bylaw*).

[7] The Development Authority conditionally approved the development permit application for dwelling, single detached (existing), single-lot regrading and placement of clean fill on February 27, 2019.

[8] On December 3, 2019, the Development Authority issued an Order under section 15.1 of the *Land Use Bylaw*. The Order stated that the Development Authority:

determined that there was an error in the [development permit] relating to the conditions; which did not adequately reflect the intent, request, or subsequent approval of the [development permit]. This resulted in a permit approval that required further clarity. As a result, the Development Authority has decided to modify the issued [development permit], in accordance with section 15.1 of the *Land Use Bylaw* (...)

[9] On December 3, 2019, the Development Authority attached PRDP20184867 with modified conditions to the Order.

[10] On December 13, 2019, Matt and Shelby Livingston appealed the Development Authority's decision to conditionally approve a development permit application for dwelling, single detached (existing), single-lot regrading and placement of clean fill on the Lands. The notice of hearing was circulated to 36 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*.

[11] The Board notes that the Lands' municipal address changed from 67 Woodland Lane to 63 Woodland Lane during the building and development process and that both municipal addresses are used in exhibits submitted to the Board.

[12] Before hearing verbal submissions on January 8, 2020, the Board clarified to all parties that the hearing's purpose was to hear arguments about the Development Authority's December 3, 2019 decision and not the Development Authority's February 27, 2019 decision to issue the original development permit PRDP20184867. The appeal period for the Development Authority's February 27, 2019 development permit closed in March 2019 as per section 686(1) of the *Municipal Government Act*.

SUMMARY OF EVIDENCE

[13] The Board heard verbal submissions from:

- (1) Stefan Kunz, 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) Matt and Shelby Livingstone, the Appellants;
- (5) Sheldon Appave, the Applicant who spoke in opposition of the appeal; and
- (6) Sally Morse, the Owner who spoke in opposition of the appeal.

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

Development Authority's Submissions

[15] A building permit for the dwelling on the Lands was issued by Rocky View County (the County) in November 2017. The intent was to implement a grade change smaller than 1.00 metres (3.28 feet) in the dwelling's immediate proximity and therefore a development permit was not required as per section 33 of the *Land Use Bylaw*.

[16] During construction, additional fill was required and on November 30, 2018 the Applicant submitted a development permit application to approve a grade variance of up to 1.44 metres (4.72 feet) of fill on the Lands. The Development Authority approved the application with conditions on February 27, 2019.

[17] The proposed dwelling complied with all other relevant regulations for the Residential One District as outlined in section 48 of the *Land Use Bylaw*.

[18] On December 3, 2019, the Development Authority modified development permit PRDP20184867 under section 15 of the *Land Use Bylaw*. The conditions of the original approval erroneously referenced a site plan that did not account for the additional fill. The modified conditions were issued to clarify the error as the original application was reviewed with consideration of the request for 1.44 metres (4.72 feet) of fill.

[19] The Applicant submitted an As-Built Grading Survey in July 2019 and a Site-Specific Implementation Plan (SSIP) in September 2019 (and revised in December 2019) to meet the February 27, 2019 conditions of development permit PRDP20184867.

[20] The SSIP identified deficiencies within the development on the Lands that may impact adjacent properties to the east. The SSIP also provided recommendations to mitigate the potential concerns. The Applicant is required to implement the SSIP's recommendations to meet the development permit's conditions of approval.

Matt and Shelby Livingstone Submissions – The Appellants

[21] Matt and Shelby Livingstone live at 65 Woodland Lane which is directly adjacent to the east of the Lands.

[22] The dwelling was built on the Lands built four feet higher than what was approved in the February 27, 2019 site plan.

[23] The County did not follow the appropriate building process. The Appellants were told that a footing elevation report had been completed but when the Appellants submitted an access to information request to the County they were told the footing elevation report did not exist.

[24] The fill and grading on the Lands do not meet the stripping, filling, excavation, and grading regulations outlined in section 33 of the *Land Use Bylaw*. Too much fill was brought in and it contains contaminants.

[25] The fill and grading on the Lands have negatively impacted the Livingstone property by:

- (1) causing damage through erosion;
- (2) flooding of the Appellants' septic field which may fail;
- (3) changing the nature of the area and
- (4) potentially contaminating the area's drinking water.

[26] Matt and Shelby Livingstone have been trying to address their concerns with the County since November 2018 and the Applicant since May 2019.

[27] The Applicant proposed bringing 250 cubic metres (20 truckloads) of fill onto the Lands in their development permit application but according to the Appellants' calculations, approximately 1,000 cubic metres (80 truckloads) of fill was brought to the Lands. The County did not do its due diligence in making sure the correct amount of fill was brought to the Lands.

[28] The Applicant has not met the conditions of the development permit and the required work on the Lands has not taken place within 12 months as required.

[29] Matt and Shelby Livingstone submitted diagrams indicating that the built 1.64 grade of the eastern side slope is much higher than the approved October 2017 0.78 grade. This increased the slope of the driveway which caused a lot of runoff onto their property. The Lands' eastern side slope is taller than Matt Livingstone who is 6'5".

[30] Matt and Shelby Livingstone request that:

- (1) an erosion control plan be instituted;
- (2) the excess fill on the Lands be removed;
- (3) the Lands be regraded no later than June 1, 2020;
- (4) the eastern side slope regraded to no steeper than 13 degrees so a mowing tractor can be used to maintain the grass safely;
- (5) the SSIP be reassessed once the regrading is complete;

- (6) the fill tested immediately for contaminants; and
- (7) the Applicant and Owner meet the conditions of the development permit.

Sally Morse Submissions – the Owner

[31] Sally Morse has owned the Lands since December 2018 and spoke in opposition the appeal.

[32] After moving into the dwelling on the Lands, Sally Morse had a meeting with the Appellants to discuss the fill and possible solutions. One solution the two parties discussed was a retaining wall.

[33] Sally Morse waited for direction from the County and had an SSIP done as required. The SSIP shows that some more gravel is needed on the Lands and that a concrete curve is needed between the Lands and the Appellants' property to help with the grade and drainage. The work recommended by the SSIP will be completed as required by the approved development permit.

[34] Sally Morse has cooperated with the County and has spent thousands of dollars to keep water off the Appellants' Lands, including a significant amount of money on landscaping.

[35] A complaint was received about debris blowing from the Lands and Sally Morse had a temporary fence installed to contain the debris.

[36] The Appellants have down spouts that run onto their own septic field and they had a vehicle running over the septic field during the December 2019 holidays. Sally Morse does not believe that the Appellants take proper care of their septic field and any flooding could be from their own down spouts.

[37] Sally Morse submitted pictures to demonstrate that the grade and landscaping of the eastern side slope has improved greatly from the time the Appellants' pictures were taken.

Sheldon Appave Submissions – the Applicant

[38] Sheldon Appave is the Applicant and spoke in opposition to the appeal.

[39] MPE Engineering conducted a building grade slip in October 2017 certifying that overall subdivision drainage or adjacent subdivision/property drainage will not be affected by the development on the Lands.

[40] A geodetic survey shows the height of the dwelling on the Lands was built at 1313.24 which is lower than the 1313.25 approved by the County.

[41] Only the approved amount of fill was brought to the Lands. The Appellants' calculations did not factor in the fill that was already on the Lands that was used it to backfill around the dwelling.

Matt and Shelby Livingstone Rebuttal – The Appellants

[42] Matt and Shelby Livingstone are appealing the December 3, 2019 development permit, the amount and quality of fill brought onto the Lands, and the Lands' grade. The development on the Lands is negatively impacting their property.

[43] Using the fill that was already on the Lands is a violation the intent of the development permit application and the County's standards. The total amount of fill used on the Lands should be reflected in the development permit application.

[44] The Applicant and Owner did not build the dwelling on the Lands to the October 2017 design. Matt and Shelby Livingstone would like the Lands to be built and graded to what was approved by the County in February 2019.

[45] The Owner's landscapers brought in 110 yards of screened loam that was only spread on the septic field. That is too much loam for what was needed on the Lands.

[46] Matt and Shelby Livingstone would like the development permit to be followed and a new SSIP completed after the excess fill is removed from the Lands and the regrading completed.

Development Authority's Final Comments

[47] The Development Authority had no final comments.

Sally Morse Final Comments – The Owner

[48] The 110 yards of screened loam was distributed throughout the Lands not just on the septic field.

Matt Livingstone Final Comments – The Appellant

[49] 110 yards of screened loam is more than what was needed on the Lands and the excess fill on the Lands needs to be removed.

[50] Matt Livingstone feels he had fair opportunity to present his evidence at the hearing.

FINDINGS & REASONS FOR DECISION

[51] The Board finds that single-lot regrading and placement of fill is a discretionary use in all districts in accordance with section 33 of the *Land Use Bylaw*.

[52] 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*.

[53] 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.

[54] The Board heard no compelling evidence that there was a substantial change between the conditions of the Development Authority's February 27, 2019 and December 3, 2019 decisions on PRDP20184867.

[55] The Board heard no compelling evidence to demonstrate problems with the conditions of the approved December 3, 2019 development permit PRDP20184867. The Board is satisfied that the Appellants' concerns about the amount and quality of fill and the grading of the Lands are addressed in the approved development permit's conditions. The Appellants' concerns that the development permit conditions have not been followed by the Applicant and Owner are enforcement matters that are beyond the Board's jurisdiction.

[56] The Board heard that an SSIP has been conducted for the Lands and that the Applicant is required to implement the SSIP's recommendations in order for the development permit to be issued. The Board is satisfied that implementing the SSIP recommendations and all the development permit conditions will mitigate impact on neighbouring parcels.

[57] 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

[58] 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 January 21, 2020.



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 (58 pages)
2.	3 December 2019 Order submitted by Development Authority (2 pages)
3.	27 February 2019 development permit PRDP20184867 submitted by Development Authority (2 pages)
4.	PowerPoint presentation submitted by Development Authority (6 pages)
5.	Map set submitted by Development Authority (9 images)
6.	Whiteboard diagrams submitted by Appellant (2 images)
7.	Images of 63 Woodland Lane submitted by Owner (9 images)
8.	Calgary climate and averages submitted by Owner (2 pages)
9.	Nutri-Lawn and Sally Morse emails submitted by Owner (2 pages)
10.	Guardian Landscaping estimates submitted by Owner (3 pages)
11.	Roof Peak Information submitted by Applicant (1 page)
12.	Main Floor Information submitted by Applicant (1 page)
13.	Grade Slip memorandum and site plan dated 30 October 2017 submitted by Applicant (2 pages)
14.	Sulphate Concentration in Soil document dated 24 November 2017 submitted by Applicant (1 page)