

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

Board Order No.: 2020-SDAB-007

File No.: 06713066 PL20190098

Appeal by: Robyn Weiss and B. Donald Barbor

Hearing Date: 2020 June 03

Decision Date: 2020 June 18

Board Members: Daniel Henn, Chair
Tricia Fehr
Hazel George
Morrie M. Goetjen
Wendy Metzger

SUBDIVISION 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 Subdivision Authority issued March 10, 2020. In this decision, the Subdivision Authority approved a subdivision application to create a \pm 1.60 hectare (\pm 3.95 acre) parcel with a \pm 2.82 hectare (\pm 6.97 acre) remainder at 262067 Poplar Hill Drive (Lot 13, Block 9, Plan 1511599; SW-13-26-03-W5M) (the Lands).

[2] Upon notice being given, this appeal was heard electronically on June 3, 2020 in accordance with the Meeting Procedures (COVID-19 Suppression) Regulation, Alberta Regulation 50/2020 (the Regulation).

DECISION

[3] The appeal is denied and the decision of the Subdivision Authority is upheld.

BACKGROUND

[4] On July 19, 2019, Robyn Weiss and Barrie Barbor (the Appellants) submitted a subdivision application to create a \pm 1.60 hectare (\pm 3.95 acre) (Lot 1) parcel with a \pm 2.82 hectare (\pm 6.97 acre) remainder (Lot 2) on the Lands.

[5] The Lands are located at 262067 Poplar Hill Drive (Lot 13, Block 9, Plan 1511599; SW-13-26-03-W5M), are \pm 4.42 hectares (\pm 10.92 acres) in size, and are owned by Robyn Weiss and Barrie Barbor.

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

[7] On March 10, 2020, the Subdivision Authority approved a subdivision application to create a \pm 1.60 hectare (\pm 3.95 acre) parcel with a \pm 2.82 hectare (\pm 6.97 acre) remainder on the Lands. Under section 678 of the *Municipal Government Act*, RSA 2000, c M-26 (the Act), the original appeal deadline of the Subdivision Authority's decision was March 31, 2020.

[8] On March 31, 2020, the Minister of Municipal Affairs issued Ministerial Order 22/20 which extended the appeal deadline under section 678 of the Act to October 1, 2020. This was in response to the COVID-19 pandemic.

[9] On April 17, 2020, the Minister of Municipal Affairs issued Ministerial Order 36/22 rescinding Ministerial Order 22/20 and restoring the appeal deadline under section 678 of the Act to 21 days after the decision of a Subdivision Authority on a subdivision application.

[10] Ministerial Order 36/22 included a provision extending any appeal period that fell between March 25, 2020 and April 17, 2020 by a further 21 days. Therefore the effective appeal period for the Subdivision Authority decision considered in this Board decision ended on May 8, 2020.

[11] On May 4, 2020, Robyn Weiss and B. Donald Barbor submitted an appeal of the Subdivision Authority's conditions of approval for a subdivision application to create a \pm 1.60 hectare (\pm 3.95 acre) parcel with a \pm 2.82 hectare (\pm 6.97 acre) remainder on the Lands. The notice of hearing was circulated to 165 adjacent landowners in accordance with the Act and Rocky View County Council policy C-327, Circulation and Notification Standards.

[12] Members of the general public were given notice on how to participate in the hearing in accordance with the Regulation.

[13] The Board opened a hearing for this appeal at 9:00 am on June 3, 2020. The hearing was conducted for approximately ten minutes when the Chair of the Board was notified that the livestream of the hearing on Rocky View County's website was down. The Chair immediately stopped the hearing as required by section 3(1)(a) of the Regulation which requires that the public be able to hear the meeting as it occurs.

[14] The Clerk was unable to determine at what point the hearing's livestream went down and therefore the Board started the hearing again to ensure the public's access to the full hearing as it occurs as required by section 3(1)(a) of the Regulation.

[15] The summary of evidence in this decision reflect the submissions provided in the recommenced hearing. No evidence provided in the suspended hearing was considered by the Board in its decision.

SUMMARY OF EVIDENCE

[16] The Board heard verbal submissions from:

- (1) Jessica Anderson, Senior Planner for the Subdivision Authority; and
- (2) Robyn Weiss, the Appellant.

[17] The Board received no letters in support or opposition of the appeal.

Subdivision Authority's submissions

[18] The Subdivision Authority approved the subdivision application to create a ± 1.60 hectare (± 3.95 acre) parcel (Lot 1) with a ± 2.82 hectare (± 6.97 acre) remainder (Lot 2) and approved amendments at the Appellant's request with respect to access to Lot 1. Access to Lot 1 through an existing panhandle road with registration of an access easement was approved.

[19] On April 28, 2020, Rocky View County Council approved a deferral of the Transportation Off-Site Levy on Lot 2.

[20] On May 4, 2020, the Appellant submitted an appeal that the Subdivision Authority interpreted to be an appeal of conditions 4 and 9 of the Subdivision Authority's decision. These conditions refer to requirements to tie-in for connection to the Rocky View Water Co-op and the need to provide cash-in-lieu for municipal reserve.

[21] Policy 8.9.1 of the Bears paw Area Structure Plan requires the provision of water to subdivisions. Water options for the proposed subdivision include connecting to the Rocky View Water Co-op or providing services via groundwater.

[22] To delay the purchase of water capacity would be inconsistent with the Bears paw Area Structure Plan, County Policy C-411 Residential Water and Sewer Requirements, and the County Servicing Standards Table 600A.

[23] Per section 663 of the *Municipal Government Act*, the proposed subdivision is not exempt from providing municipal reserve. Neither lot holds future subdivision potential under the current Bears paw Area Structure Plan and technical constraints also limit future subdivision of the Lands. The goal is to collect municipal reserve at the time of final subdivision.

[24] Municipal reserve has not previously been collected for the Lands, it was deferred at the time of the original subdivision. It is within the Board's discretion to defer paying municipal reserve for either or both proposed lots.

[25] It is the County's standard to collect the cash-in-lieu in one lump sum.

[26] Section 666 of the *Municipal Government Act* allows the County to collect up to 10 per cent of the Lands for municipal reserve, for things like pathways, parks, and open spaces. When a subdivision application is reviewed, an assessment is done to determine if those amenities are needed in the area. If not, municipal reserve is taken as cash-in-lieu for other amenities in the County.

Robyn Weiss submissions – the Appellant

[27] Robyn Weiss does not agree with the interpretation that the appeal includes condition 4 of the Subdivision Authority's decision. Robyn Weiss is a member of the Bearspaw Water Co-op, has paid \$35,000 to join, and has confirmed the Co-op has capacity to handle the proposed subdivision. An additional \$20,000 must be paid to tie-in and dig a trench to the Lands from the Co-op.

[28] Robyn Weiss does not agree with the Subdivision Authority's decision to bring up the water servicing condition of approval at the hearing. The point made in the notice of appeal was that if all the initial monies put into the lot is added up then the value is \$700,000. The lot could be sold for only \$360,000.

[29] Robyn Weiss is happy to pay municipal reserve on Lot 1 but does not think municipal reserve needs to be paid for Lot 2 (the remainder) at this point as there are future development opportunities.

[30] The 20 acre parcel that is parallel to the Lands has already applied for rezoning to R-1 and has put in a conceptual plan. When this happens the existing road on the Lands will be the main road for the development. The Lands will be part of the cul-de-sac development and backs onto Silverhorn where there will be future development of two acre parcels.

[31] The purpose of municipal reserve is that it is taken for future amenities in the community but there are no amenities in the area and the money is not put into the community. In-lieu of cash, a strip of land along the Lands could be taken to connect to the walking paths at Silverhorn. Robyn Weiss uses the paths at Silverhorn everyday, they can be accessed from the back gate of the Lands. The Lands are a good tie-in for walking path access.

[32] The area is not being developed for agricultural purposes, people want a big house and two acres of lawn where they can watch their children play and have access to amenities available in a town or city.

[33] The appeal is only about paying the municipal reserve on the existing 6 acre lot (Lot 2-the remainder) where there will be more development.

[34] Robyn Weiss has done a good job subdividing, has spent \$5,000 on matching two rail fencing for the next 4 acre parcel, \$12,000 on the prior lot for the trees and entryway. Funds are being spent on bettering the community, which is needed in the area.

[35] Three alternative solutions were provided in the notice of appeal and Robyn Weiss is willing to provide the land. The go-to of Rocky View County is to collect money and Robyn Weiss does not see where the money is being used.

[36] Robyn Weiss found the hearing challenging and was unsure if the Board received the submitted material, including maps, and was unsure if more pictures should have been submitted to support the appeal.

[37] Robyn Weiss is new to the process and the electronic hearing process is new to Rocky View County and is not sure if there should be a redo. Talking over the phone at the hearing is an unusual circumstance and is new to everyone.

[38] Robyn Weiss indicated that she felt better about the hearing after the Chair confirmed that the Board felt it had enough information to close the hearing.

FINDINGS & REASONS FOR DECISION

[39] The Board finds it has the authority to make a decision on this matter pursuant to section 680(2)(e) of the *Municipal Government Act*.

[40] 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 subdivision, sound planning considerations, the merits of the application, and all applicable legislation, plans, and policies.

[41] The Board heard that the Appellant agreed with condition of approval 4 of the Subdivision Authority's decision and did not consider this water servicing condition to be under appeal. The Board heard no evidence that condition of approval 4 violated any statutory policy in regards to water servicing and therefore did not consider it as an issue under appeal.

[42] The Board was not persuaded by the Appellant's evidence about the future subdivision capacity of Lot 2 and is satisfied that the Lands hold no more subdivision potential under the Bearspaw Area Structure Plan. As a result, the Board is satisfied that municipal reserve must be taken on both lots as part of the approved subdivision.

[43] The Board was not satisfied with the evidence provided that municipal reserve should be taken as land to be used for a purpose as required in section 671(2) of the *Municipal Government Act*. The Board is satisfied that taking municipal reserve as cash-in-lieu is appropriate for the Lands.

CONCLUSION

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

Dated at Rocky View County, in the Province of Alberta on June 18, 2020.



Daniel Henn, Chair
Subdivision and Development Appeal Board

EXHIBIT LIST

Documents presented at the hearing and considered by the Board

NO.	ITEM
1.	Subdivision Authority's Report to the Board (77 pages)