

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

Board Order No.: 2019-SDAB-006

File No.: 04608059; PRPD20184593

Appeal by: Larry Stewart
Sylvia Stewart
Cathy Connolly
Paul Guthrie
Bill Bobenic
Allison Bobenic
Cameron Wallace
Pat Wallace

Appeal Against: Development Authority of Rocky View County

Hearing Date: 2019 February 20

Decision Date: 2019 March 07

Board Members: D. Kochan, Chair
D. Henn, Vice-Chair
I. Galbraith
H. George
S. Hartley

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 January 8, 2019. In this decision the Development Authority conditionally approved a development permit for regrading and placement of clean fill at 24223 Township Road 242 (the Lands).

[2] Upon notice being given, this appeal was heard on February 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, approximately 3,166 cubic metres, to improve accessibility to the site, shall be permitted in general accordance with the submitted drawings, as prepared by Cosmopolitan Associates Inc, dated August 17, 2017, and the conditions of this permit.

Prior to Issuance:

- 2) That prior to issuance of this permit, the Applicant/Owner shall provide a construction management plan providing details of noise mitigation measures, dust control, management of stormwater during construction, weed control, construction practices, waste management, and all other relevant construction management details, in accordance with the County Servicing Standards.
- 3) That prior to issuance of this permit, the Applicant/Owner shall provide payment of the Transportation Off-site Levy in accordance with the applicable levy at time of Development Permit approval for the total development area of the lands that are actually being developed. Note, the base levy and special area 4 levy shall apply to the subject proposal.
- 4) That prior to issuance of this permit, the Applicant/Owner shall submit a Site Specific Stormwater Implementation Plan (SSIP), prepared by a qualified professional, in accordance with the Springbank Master Drainage Plan and the County Servicing Standards. The report shall be prepared to confirm that the submitted application drawings are in conformance and that the proposed regrading will not create any offsite impacts.
- 5) That prior to issuance of this permit, the Applicant/Owner shall submit an Erosion & Sedimentation Control (ESC) Plan detailing the ESC measures and temporary stormwater management strategies to be implemented during the stripping & grading of the site, in accordance with the County Servicing Standards.
- 6) That prior to issuance of this permit, the Applicant/Owner shall confirm whether topsoil from offsite is being used on the subject land, and if so, provide a soil testing analysis completed on the proposed topsoil, which includes the origins of the topsoil, and confirms that:
 - i. Texture is balanced and not over 40.00% clay;
 - ii. Organic matter is a minimum of 3.00%, and equal to or greater than the organic matter of the soil on the application site;
 - iii. SAR/EC rating is at least "good"; and
 - iv. PH value is in the "acceptable" range for crop growth.

- 7) That prior to issuance of this permit, the Applicant/Owner shall contact County Road Operations and determine if a Road Use Agreement and/or any Road Data Permits are required for the importing of fill, removal of any excess fill, and for the mobilization and demobilization of any construction equipment to and from the subject site utilizing any County Roads.
 - i. The application indicates that the stripping and grading will result in a net fill volume of 3,166 m³. The Applicant/Owner shall confirm how a net fill volume of 3,166 m³ will be achieved without importing material.
 - ii. Written confirmation shall be received from County Road Operations confirming the status of this condition. Any requirement agreement or permits shall be obtained unless otherwise noted by County Road Operations.

Permanent:

- 8) 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 or Occupancy condition shall be implemented and adhered to in perpetuity.
- 9) That no topsoil shall be removed from the site.
- 10) That if no future development of the proposed graded area occurs, the proposed graded area shall have a minimum of six (6) inches of topsoil placed on top that shall then be spread and seeded to native vegetation, farm crop, or landscaped, to the satisfaction of the County.

Advisory:

- 11) That any other government permits, approvals, or compliances are the sole responsibility of the Applicant/Owners.
- 12) That if the development authorized by this Development Permit is not completed within six months of the date of issuance, the permit is deemed to be null and void.
- 13) That if this Development Permit is not issued by June 30, 2019 or the approved extension date, then this approval is null and void and the Development Permit shall not be issued.
- 14) The Applicant/Owner shall be responsible for all Alberta Environment approvals/compensation if any wetland is impacted by the placement of the fill.

BACKGROUND

[4] On November 14, 2018, Cosimo Casale (the Applicant) submitted a development permit application for the placement of fill and regrading to improve accessibility to burial gardens at Eden Brook Memorial Gardens and Funeral Home.

[5] The Lands are located at NW-08-24-02-W5M, in the central Springbank area, at the southwest corner of Lower Springbank Road and Township Road 242. The Lands are approximately 20.63 hectares (50.97 acres) in area and are owned by Arbor Memorial Inc.

[6] The Lands' land use designation is Public Services District, which is regulated in section 65 of the Rocky View County, *Land Use Bylaw C-4841-97* [the *Land Use Bylaw*].

[7] On January 8, 2019, the Development Authority conditionally approved a development permit application for single-lot regrading and the placement of clean fill, approximately 3,166 cubic metres, to improve accessibility to the site.

[8] On January 29, 2019, the Appellant appealed the Development Authority's decision. The Notice of Hearing was circulated to 41 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) Johnson Kwan, Municipal Planner, for the Development Authority;
- (2) Sean McLean, Planning Supervisor, for the Development Authority;
- (3) Gurbir Nijjar, Municipal Engineer, for the Development Authority;
- (4) Eric Schuh, Municipal Engineer, for the Development Authority;
- (5) Doug Hafichuk, Municipal Engineer, for the Development Authority;
- (6) Larry Stewart, owner of 16 Pinetree Drive SW, for the Appellants; and
- (7) Greg Hicklin, owner of 97 Pinetree Drive SW, in support of the appeal.

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

Development Authority's Submissions

[11] The development proposed is the placement of fill and regrading to improve accessibility to burial gardens.

[12] On the development permit application, the Applicant stated that all fill materials would come from existing burial sites and no additional fill material would be used. However, the cut and fill bounds indicate that the net fill volume is 3,000 cubic meters. Given this large amount of fill required, fill material may need to be brought in. Soil testing is necessary if this is the case.

[13] A storm water report was not provided with the development permit application. A site specific storm water plan is required to ensure there are no adverse drainage effects due to the fill and grading on the site. Accordingly, the Development Authority recommends a prior-to-issuance condition which requires a site specific storm water plan be submitted to and approved by the Development Authority before a development permit is issued.

[14] Regarding other conditions proposed in the Development Authority's report to the Board, the Development Authority confirmed that:

- (1) Condition 2 requires noise mitigation measures to construction activities in relation to the permit, not the constructed case. Noise would be limited to operating hours.
- (2) Condition 5 requires the Applicant to submit an erosion and sediment control plan before a development permit is issued. This is due to 14 acres being stripped and graded which creates significant chance of sedimentation runoff.
- (3) Condition 14 speaks to dust control during the stripping and grading activities. These are suggestions from the Development Authority on how to mitigate the dust from the development site.
- (4) Condition 16 allows the County to enact enforcement action upon the Lands with regards to any changes to the Lands.
- (5) The Board can move Condition 18, relating to the disposal of waste and garbage, from a permanent condition to an advisory condition as this condition is regulated by the *Land Use Bylaw*.

[15] Rocky View County Capital Projects will investigate to see if current infrastructure is functioning properly. A site investigation will be completed, through Rocky View County Council Policy 459.

[16] There is no data in terms of soil classification for the area. However, it is reasonable to conclude the area has been highly disturbed from its natural state given the development around the area. Salinity and topographic constraints were not included.

[17] There are regional water issues in the area which the Development Authority has considered in the conditions of the permit. Other issues are being addressed through a levy program and engineering projects in the area. Upgrades to such structures is outside of this permit process.

Appellants' Submissions

[18] Larry Stewart spoke on behalf of the Appellants, as listed on the Notice of Appeal submitted on January 29, 2019.

[19] The Appellants are not against the proposed development. They want to make sure the development is done appropriately and has no negative impact to adjacent properties. Specifically, the Appellants are concerned that the flooding problem on their properties will be exacerbated by the proposed development. Stewart notes that the slope towards his property from the Lands is increasing by 30% with grading changes.

[20] Stewart has been flooded four times since he moved into his home on Pinetree Drive in 1989. The water is direct runoff from the Lands to the west of his property. Photographs of the Stewart's property show how the water drains over the Land's parking lot and down the Land's

roads, which has little to no ditch. Stewart also supplied photographs of his property in winter that demonstrate that the water can accumulate quickly.

[21] In 2007, a culvert system was installed. Before this, water would run through Lands, enter culvert system on the south side of Pinetree Drive. Now water runs on the north side of Pinetree Drive. In cases where there is a thaw and then ice forms in the culverts, the culverts back up. This results in his property flooding. In 2015, a ditch and berm system was installed but it is ineffective. His neighbours, the Guthrie's have raised their garage to mitigate flood damage to their property.

[22] Currently there is a yearly "fire drill" process where the ditches and culverts are cleaned prior to spring break-up by the residents. Stewart has been snow blowing the culverts himself the past couple of years to keep them clear.

[23] The Applicants installed a fence on the Lands in October 2018. The fence crosses the ditch that Stewart helped keep clear of debris. All neighbors' were not contacted prior to the construction of the fence. The Maintenance Manager said they will keep it clear in the spring as Stewart can no longer do this because the fence blocks him from clearing the ditches.

[24] Sylvia Stewart contacts Rocky View County administration every year to advise them that the ditches and culverts need to be cleared. Rocky View County is well aware of the problem, as exhibited by the Development Authority's report. However, the Stewarts still have to maintain the ditches themselves to prevent their land from flooding.

[25] The Appellants suggest that there are areas on the Lands that could accommodate holding ponds or barriers for their storm water plan. This can be used to mitigate drainage, water flow speed, and flooding to nearby properties.

[26] Another concern to the Appellants is that there is a great deal of wildlife in the area. This proposed development could move more wildlife onto the Appellants' properties.

[27] The Appellants want to know if the Applicants or Rocky View County are responsible for the adverse effects of the development to their lands.

Greg Hicklin's Submissions

[28] Greg Hicklin spoke in support of the appeal. Hicklin has resided at his home on Pinetree Drive since 1994. He has had to deal with flooding and ground water issues for a few weeks almost every year.

[29] Water comes down both sides of Pinetree Drive, goes past the culvert and flows into his yard. The water gets knee deep to thigh deep. The water also needs to be pumped away as it will not naturally go. Hicklin installed a weeping tile system and a sump pump pit to put a sump pump in on his property to pump out this water.

[30] Every year, Hicklin calls Rocky View County about the flooding. The County sends trucks to pump out the water, if there are trucks available.

[31] Hicklin is very concerned by the speed at which the water comes onto his property. During spring runoff, he can watch the water levels rise from his deck.

[32] The exiting culverts that take the water from both sides of Pinetree Drive under Pinetree aren't big enough to handle the influx of water from the speed of the runoff. The water then flows into Hicklin's yard.

[33] Every house from the Hicklin house to the Stewart house has had to do remedial drainage work such as dry river beds or weeping tile systems to facilitate the runoff drainage from their property.

FINDINGS OF FACT

[34] The Lands are zoned as Public Service District. The burial gardens have been in existence for several years.

[35] The requested fill that will be placed on the Lands is surplus from existing burials. If any shortfall of fill occurs at the time of regrading, fill will need to be imported.

[36] The existing drainage patterns will be substantially maintained with changing the contours from the existing drainage pattern.

[37] The City of Calgary as well as Rocky View County Enforcement Services and Agriculture Services have no concerns with the proposed development.

[38] A deep fill report is not required as no fill placement will be greater than 1.2 metres in depth.

[39] The Board heard that the speed that water flows off the lands is a cause of flooding concern for several neighbours. There is strong evidence that the culverts in the area are not working or insufficient. The Board also heard that there are flooding issues in the area in the spring and during rain events and that flooding is not limited to this one site.

[40] The Board also heard evidence that one of the Appellants, namely Larry Stewart, installed a berm and drainage swale without the benefit of a development permit.

REASONS FOR DECISION

[41] Site stripping, filling, excavation, grading, and re-contouring are discretionary uses in the Public Services District, in accordance with section 33 of the *Land Use Bylaw*. The appeal is within the Board's jurisdiction to hear.

[42] The Lands are properly zoned.

[43] A Stormwater Implementation Plan is required to give a proper contouring model to follow for the redistribution of land and will serve to lessen the flow impact of water from the property.

[44] Rocky View County is working on a master drainage plan with the area residents to mitigate the overall flooding issues in the area.

[45] Given the above findings and pursuant to section 687(3)(d) of the *Municipal Government Act*, the Board finds that the proposed development would not unduly interfere with the amenities of the neighborhood, or materially interfere with or affect the use, enjoyment or value

of neighboring parcels of land. The Board also finds the proposed development conforms to the use prescribed for the Lands in the *Land Use Bylaw*.

CONCLUSION

[46] For the reasons set out above, the appeal is allowed in part and the decision of the Development Authority is varied. A development permit shall be issued subject to the above-noted prior-to-issuance conditions.

Dated at Rocky View County, in the Province of Alberta on March 7, 2019.



Don Kochan, 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 (45 pages)
2.	Appellant's Report to the Board (24 pages)