

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

Board Order No.: 2019-SDAB-022

File No.: 04714170; PRPD20183706

Appeal by: Karan Brar

Appeal Against: Development Authority of Rocky View County

Hearing Date: 2019 April 24

Decision Date: 2019 May 07

Board Members: D. Henn, Vice-chair
M. Bahcheli
I. Galbraith
H. George
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 March 22, 2019. In this decision the Development Authority refused a development permit for the placement of fill for construction of a single detached dwelling at 242162 Windhorse Way (the Lands).

[2] Upon notice being given, this appeal was heard on April 24, 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. A development permit shall not be issued.

[4] All fill that was placed on the Lands without a development permit must be removed and the Lands must be restored to the condition it was prior to the commencement of the fill being placed no later than August 31, 2019.

BACKGROUND

[5] On September 14, 2018, Karan Brar (the Appellant) submitted a development permit application for single-lot regrading and the placement of fill.

[6] The Lands are located at NE-14-24-03-05, located 0.40 kilometres south of Windhorse Drive and on the east side of Windhorse Way. The Lands are approximately 0.81 hectares (2.0 acres) in area and are owned by Baljit and Sukhchain Saran (the Owners).

[7] The Lands' land use designation is Residential One (R-1), which is regulated in section 48 of the Rocky View County, *Land Use Bylaw C-4841-97* [the *Land Use Bylaw*].

[8] On March 22, 2019, the Development Authority refused to grant a development permit on the following grounds:

- (1) The placement of fill will unduly interfere with the amenities of the neighborhood and materially interfere with or affect the use, enjoyment, or value of the neighboring properties per section 12.2 of *Land Use Bylaw*.

[9] On April 11, 2019, the Appellant appealed the Development Authority's decision. The Notice of Hearing was circulated to 53 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) Sean MacLean, Planning and Development Supervisor, for the Development Authority;
- (2) Gurbir Nijjar, Municipal Engineer, Planning and Development;
- (3) Karan Brar, the Appellant;
- (4) Mike Strauss, owner of 4 Windhorse Bay and the President of the Windhorse Manor Estates Homeowners Association; and
- (5) Kelly Albrecht, owner of 3 Windhorse Green.

[11] The Board received two letters in opposition to the appeal from:

- (1) Andreas (Andy) Moritz, owner of 242208 Windhorse Way; and
- (2) Aldean and Kelly Albrecht, owners of 3 Windhorse Green.

[12] The Board did not receive any letters in support of the appeal.

Development Authority's Submissions

[13] The Lands have a low lying area in the centre. The Applicant stated that the purpose of the grading and placement of fill is to raise the Lands far enough above the water table to construct a dwelling.

[14] The Development Authority had several concerns with the grading plan submitted with the application. The grading plan indicated that fill would be placed from property line to property line and possibly on their neighbour's property. The grading of the entire property would be altered. The proposed fill and re-grading would likely require a substantial retaining wall along the property line. In addition, the font size on the plans was not legible. Accordingly, the Development Authority required more information before it could consider approving the application.

[15] Over a period of three months, the Applicant did not respond to the Development Authority's requests for more information and amended plans. Ultimately, the Development Authority made a decision on the development permit based on the plans that had been submitted with the application.

[16] During the appeal period, the Applicant submitted revised grading plans. These new plans indicate that the placement of fill is more localized to the centre of the Lands. The Development Authority has reviewed these plans and has no concerns.

[17] Recent photos of the Lands show grading activity and the placement of fill. Fill may be over the property line. The south and west sides of the Lands abut a public utility line and a walkway.

Appellant's Submissions

[18] Water had accumulated in a ground depression on the Lands. The wet spot was created because the previous developer didn't grade the Lands properly. The depression deepened with the standing water.

[19] A geotechnical engineer hired by the Appellant found four feet of topsoil below the standing water on the Lands. The Appellants dug to see how far down clay was. When they dug, water came up and it was pumped out to the neighbouring storm pond.

[20] Fill material was hauled in and placed on the Lands prior to a development permit being issued. The fill was brought in to bring the low point on the Lands up to level with the rest of the property. The plan was that once it was flat, then they would further develop it.

[21] Now the Owners plan on selling the Lands and want to make it look as appealing as possible. Filling in the low lying water would make the Lands look better to prospective buyers.

[22] The dirt along the property line shown in the Development Authority's photos was supposed to be pulled into the middle of the Lands. However, it snowed and compaction was not possible.

[23] In regards to the grading plans, each line in the renderings represents a foot of elevation change. The plan was designed so the house could be built where the water on the Lands were. This way the Owners could use the back area of the Lands.

Mike Strauss' Submissions

[24] Mike Strauss spoke in opposition to the appeal. Strauss spoke as an owner in the area and on behalf of the Windhorse Manor Estates Homeowners Association. Strauss has owned his home since November, 2016.

[25] The Appellant and Owners knew they were bringing in fill without a permit to do so. Approximately 300 to 400 truckloads of fill were brought in. The fill was of all different types, containing concrete blocks, rebar, and different metals, and was placed on top soil. This provoked and prompted dumping on the Lands, including organics from old sewers.

[26] As the President of the homeowners' association, he has received 7 phone calls objecting to the fill being placed on the Lands. Strauss made several attempts to communicate with the Owners and the Appellant about the situation to no avail.

[27] There are five ponds in the area. This is the first year they will see how they will work. The ponds were just approved last year and had to be upgraded.

Kelly Albrecht's Submissions

[28] Kelly Albrecht spoke in opposition of the appeal.

[29] Albrecht believes that such a significant change to the grade plan will have a negative impact to the area. The grade plans were created for a reason. Such a dramatic change to the grade plan would cause a deluge of water in heavy rains, especially to the adjacent properties. This will have an impact on landscaping. The properties next to Lands would want to increase their grade plan in response to the Appellant's proposed changes.

[30] Such a significantly grade plan change would also change the views of the homes, which could reduce the value of the homes. Owners bought into this area for the views.

Appellant's Rebuttal

[31] The Appellant is proposing to complete the necessary work to bring the Lands into compliance and make the Lands suitable for sale. The Lands cannot be sold as they are now. The fill that is on the Lands needs to be leveled out or moved. The current plan is to fill the depression in the middle of the Lands and then replace the scraped off topsoil back into place. The poor quality fill and garbage that has been dumped on the Lands will get cleaned up. The necessary experts have been engaged in the grading and fill process.

[32] Even if the Owners were to build the house all the way at the back of the Lands, they would have to dig out all of the top soil and refill it in order to build.

[33] With the original grading plans, the house would be built above the water table. This is because the area has water problems. The house seen in the Development Authority's photos has been flooded before. The Appellant and Owners wanted to avoid the same flooding problem by adding this fill.

[34] With the current grading plan, the highest point of the Lands would be one foot above the approach.

[35] All work on the Lands has ceased.

Development Authority's Rebuttal

[36] In response to the Board's question about the possible location of a home on the Lands, a single detached dwelling does not require a development permit unless there is a variance needed. There is substantial space on the Lands to place a home without requiring a variance to setbacks.

[37] This area had a lot of ground water and storm water issues due to a lack of drainage and undersized storm ponds. To address this, there are now five connected storm water ponds in the area that release to Range Road 31. If the proposed plans are followed, water would not be an issue as it would drain into storm water ponds.

[38] The Development Authority is not aware of any sinking or soft spots in the ground of the area.

[39] In the Development Authority's assessment of the Lands, a developable footprint exists on the Lands without the Appellant's regrading plans. The issue on the Lands is the amount of top soil.

[40] There is a lot of top soil on the Lands that needs to be removed before building on it. The developer should have removed the top soil but did not. This is one of several lots that were not properly graded or stripped by the developer. For a home to be built on the Lands, the foundation would have to be dug to footing elevation, the top soil would have to be removed, and then backfilled to a level grade.

[41] The new proposed grading plan for the Lands should allow for the proper drainage. Once the Lands are filled in as proposed, it will meet the overall intention of the overland drainage plan for the community. Should the recommendations of the most recent geotechnical report be followed, that being fill placed and adequate compacted, and the grading plans returned to what is shown, there are no technical concerns on behalf of the Development Authority.

[42] There is no monitoring or oversight by the County that ensures that the poor quality fill isn't buried on site as the grading activity is going on. Records of compaction testing are provided after the grading is completed. This is the County's check that the Lands were properly filled as per the grading plan.

FINDINGS & REASONS FOR DECISION

[43] Site stripping, filling, excavation, grading and re-contouring are discretionary uses in the Residential One District, in accordance with section 33 of the *Land Use Bylaw*.

[44] 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*.

[45] 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. In making its decision, the Board considered the context of the proposed development, sound

planning considerations, the merits of the application and all applicable legislation, plans, and policies.

[46] The Board heard evidence that the fill on the Lands contains organics, concrete, rebar, and other items that are not suitable for fill.

[47] The Board also heard evidence that the pre-existing grade was developable. The Board was not presented with any compelling evidence that the re-grading and placement of fill was necessary to develop the Lands.

[48] The Board finds that the proposed development, in accordance with applicable sections of the *Land Use Bylaw* and the section 687 of Municipal Government Act, does not comply with the land use policies of the current *Land Use Bylaw* and, if approved, would unduly interfere with the amenities of the neighbourhood, and would materially interfere with or affect the use, enjoyment or value of the neighbouring parcels of land.

CONCLUSION

[49] For the reasons set out above, the appeal is denied and the decision of the Development Authority is upheld. A development permit shall not be issued and the Lands must be restored to the condition it was in prior to the placement of fill and regrading.

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

“ Dan Henn “

Dan Henn, Councillor, Vice-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 (52 pages)
2.	Development Authority's PowerPoint presentation to the Board (8 slides)