

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

Board Order No.: 2019-SDAB-027

File No.: 08201003; PRDP20190217

Appeal by: Lafarge Canada Inc. (Jennifer Weslowski)

Appeal Against: Development Authority of Rocky View County

Hearing Date: 2019 June 05

Decision Date: 2019 June 20

Board Members: D. Kochan, Chair
D. Henn
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 May 9, 2019. In this decision the Development Authority refused a development permit for the renewal of a Natural Resource Extraction and Processing, for a sand and gravel pit, the relaxation of the minimum side and rear yard setback requirement to operations, including excavations and stockpiles at NW-01-28-27-04 (the Lands).

[2] Upon notice being given, this appeal was heard on June 5, 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 and the decision of the Development Authority is overturned. A development permit shall be issued subject to the following conditions:

Description

1. That natural resource extraction processing (mining of sand and gravel) may continue to operate on the subject site and shall be in accordance with the approved drawings submitted with the application dated September 28, 2018, and conditions of this permit.
2. That the setbacks to operations, including excavations and stockpiles shall be: side setback (north) relaxed from 15.00 m (49.21 ft.) to 0.00 m (0.00 ft.) and rear setback (east) relaxed from 15.00 m (49.21 ft.) to 0.00 m (0.00 ft.).

Permanent:

3. That Alberta Environment and Park's registration shall remain in effect at all times.
4. That the area of the site that is open and not reclaimed, excluding material processing and storage areas, shall not exceed 94.1 acres at any one time.
5. That within any single operating year the total surface area reclaimed shall equal the total area stripped for extraction.
6. That no topsoil shall be removed from the site.
7. That all equipment associated with the gravel extraction operation shall be located on the land that is designated NRI.
8. That no water may be used for washing of gravel unless and until written approval has been received from Alberta Environment and Parks.
9. That no wash water shall be discharged off of the site or into any water channel.
10. That there shall not be any storage of any materials or vehicles on the property that are not directly related to the operation of the sand and gravel pit.
11. That all sanitary sewage and water services shall be supplied in accordance with Alberta Safety Codes Act and Alberta Environment.
12. That dust control measures shall be utilized for all vehicles during mining and transport of material and dust control measures applied to haul and access roads so that no visible dust is allowed on adjacent lands from the site.
13. That access to the site shall be by a private access road across SW1/4-12-28-27-W04 and NE1/4-11-28-27-W04.
14. That all improvements, required in the Traffic Impact Assessment shall be at the expense of the applicant/owner to the satisfaction of the County and Alberta Infrastructure and Transportation and shall be completed prior to any further gravel extraction from the subject site.

15. That the applicant shall provide payment of the Community Aggregate Payment Levy in accordance with Bylaw C-6214-2006, as amended, in the amount of \$0.25 per ton of aggregate extracted and removed.
16. That this approval does not include any blasting.
17. That the berms, overburden stockpiles, and similar earthworks shall be seeded and maintained using erosion control measures.
18. That noise control measures that limit noise to 55 dba at the site and at the nearest residence, shall be followed including the crusher to be enclosed for noise attenuation.
19. That in the case of any spillage of hazardous materials, Alberta Environment and the Municipality shall be notified immediately and the appropriate clean-up procedures shall be implemented.
20. That fire suppression and abatement measures shall be followed to the satisfaction of the Municipality.

Advisory:

21. That any other Federal, Provincial, or County permits, approvals, and/or compliances, are the sole responsibility of the Applicant/Owner.
22. That a 5 Year Report be submitted to Alberta Environment and Parks every five years after the date of the registration.
23. Unless otherwise conditioned within this permit, the subject development shall conform to the County's Noise Bylaw C-5773-2003 in perpetuity.
24. That any plan, technical submission, agreement, or other matter submitted and approved as part of the Development Permit application or submitted in response to a Prior to Issuance or Occupancy condition, shall be implemented and adhered to in perpetuity.
25. That this Development Permit if and when issued shall be valid until **DECEMBER 31, 2021.**

BACKGROUND

[4] On January 21, 2019, Jennifer Weslowski on behalf of Lafarge Canada Inc. (the Applicant) submitted a development permit application for the renewal of natural resource extraction and processing for a sand and gravel pit.

[5] The Lands are located at NW-01-28-27-04, located approximately 0.81 kilometres (1/2 mile) north of Township Road 280 and on the east side of Range Road 271. The Lands are approximately 64.75 hectares (160 acres) in area and are owned by the Hutterian Brethren (Beiseker).

[6] The Lands' land use designation is Natural Resource Industrial District, which is regulated in section 58 of the Rocky View County, *Land Use Bylaw C-4841-97* [the *Land Use Bylaw*].

[7] On May 9, 2019, the Development Authority refused to grant a development permit on the following grounds:

- (1) The side yard setback to extraction operations does not meet the minimum side yard setback requirement, as defined in Section 55.4 of Land Use Bylaw C-4841-97. Permitted – 15.00 m (49.21 ft.) Proposed – 0.00 m (0.00 ft.)
- (2) The rear yard setback to extraction operations does not meet the minimum rear yard setback requirement, as defined in Section 55.4 of Land Use Bylaw C-4841-97. Permitted – 15.00 m (49.21 ft.); Proposed – 0.00 m (0.00 ft.)

[8] On May 22, 2019, the Appellant appealed the Development Authority's decision. The Notice of Hearing was circulated to 1 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, Development Assistant, for the Development Authority;
- (2) Sean McLean, Planning and Development Supervisor, for the Development Authority; and
- (3) Gurbir Nijjar, Municipal Engineer, for the Development Authority;
- (4) Jennifer Weslowski, the Appellant.

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

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

Development Authority's Submissions

[12] The operation has been in existence on the lands since 2008.

[13] The request is to relax the side and rear yard setbacks zero metres.

[14] Operations were ongoing from July 2009 to December 2013 and February 2015 to December 2018.

[15] The requested setback allows the mining portion to go directly to the site line.

[16] There are no Enforcement issues on file.

[17] The closest residence is approximately 2 quarter sections away (1 mile).

[18] The area being mined is 94.1 acres stated on the site plan submitted by Applicant.

[19] The Province requires a submission (permit) for an operating area larger than 94.1 acres.

[20] In 2014, a prior-to-issuance condition required the Appellant to perform a TIA.

[21] The original application was for 89.5 acres but the 5 year report submitted to the Province was for 94.1 acres, and was approved. This number was changed in Development Authority's decision to match the Provincial approved number.

Appellant's Submissions

[22] A small portion on the southeast corner still being mined.

[23] Mainly reclamation work is being done on the Lands.

[24] The north property is actively being mined as well, and is being mined to the property line.

[25] The Lands should be mined out (reclaimed) within the next 5 years.

Development Authority's Rebuttal

[26] None.

Appellant's Rebuttal

[27] None.

FINDINGS & REASONS FOR DECISION

[28] The renewal of natural resource extraction and processing for a sand and gravel pit is a discretionary use in the Natural Resource Industrial District, in accordance with section 58 of the *Land Use Bylaw*.

[29] 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*.

[30] 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.

[31] The Board notes that this application is for the continuation of an existing lease.

[32] The Board finds that the use of the Lands is contiguous with the surrounding properties.

[33] The Board notes that there have been no Enforcement issues regarding the operation of this site.

[34] 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

[35] For the reasons set out above, the appeal is allowed and the decision of the Development Authority is revoked. A development permit shall be issued subject to the above-noted conditions.

Dated at Rocky View County, in the Province of Alberta on June 20, 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 (32 pages) |