

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

Board Order No.: 2019-SDAB-036

File No.: 05335020; PRDP20190986

Appeal by: John and Janet Gehring

Appeal Against: Development Authority of Rocky View County

Hearing Date: 2019 June 26

Decision Date: 2019 July 11

Board Members: D. Kochan, Chair
I. Galbraith
H. George
D. Henn
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 May 28, 2019. In this decision the Development Authority conditionally approved development permit for the single-lot regrading, for the construction of a parking pad at 255095 Range Road 281 (the Lands).

[2] Upon notice being given, this appeal was heard on June 26, 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 Development Authority is overturned. A development permit shall not be issued.

BACKGROUND

[4] On April 2, 2019, Ghulam Sakhi Abdul Aziz (the Owner) submitted a development permit application for a Home-Based Business, Type II for automobile sales.

[5] The Lands are located at SE-35-25-28-W4M, , located on the west side of Range Road 281, approximately 2.0 kilometres (1 1/4 miles) north of Township Road 254. The Lands are approximately 8.07 hectares (19.93 acres) in area and are owned by Ghulam Sakhi Abdul Aziz, Farooq Gholamsakhi, Shirzad Farooq, Mahjon Abdulali, and Feriba Abdul Razak.

[6] The Lands' land use designation is Agricultural Holdings, which is regulated in section 46 of the Rocky View County, *Land Use Bylaw C-4841-97* [the *Land Use Bylaw*].

[7] On May 28, 2019, the Development Authority conditionally approved to grant a development permit on the following grounds:

Description:

- (1) That single-lot regrading for a parking area, approximately 41.81 cubic metres of soil, shall be permitted to be regraded in general accordance with the drawings submitted with the application and the conditions of this permit.

Prior to Issuance:

- (2) That prior to issuance of this permit, the Applicant/Owner shall confirm that all waste material has been removed from the property, to the satisfaction of the County.
- (3) 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 where the topsoil originated from and confirm that:
 - (a) Texture is balanced and not over 40.00% clay;
 - (b) Organic matter is a minimum of 3.00%, and equal to or greater than the organic matter of the soil on the application site;
 - (c) SAR/EC rating is at least "good"; and
 - (d) PH value is in the "acceptable" range for crop growth.

Permanent:

- (4) That if any fill is to be imported onto the property, the Applicant/Owner shall contact County Road Operations with haul details to determine if a Road Use Agreement is required for use of the County road system for hauling of fill material onto the property.
- (5) 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.

- (6) That it shall be the responsibility of the Applicant/Owners to ensure the fill has been placed in a safe manner that does not cause slope stability issues, slumping, or any other related safety issues.
- (7) That no topsoil shall be removed from the site.
- (8) That the Applicant/Owners shall ensure no organic material is buried and capped in a manner that will cause methane gas related issues.
- (9) That the fill shall not contain large concrete, rebar, asphalt, building materials, organic materials, or other metal.
- (10) That the Applicant/Owners shall take effective measures to control dust on the parcel so that dust originating therein shall not cause annoyance or become a nuisance to adjoining property owners and others in the vicinity.
- (11) 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 which shall then be spread and seeded to native vegetation, farm crop, or landscaped to the satisfaction of the County.
- (12) That the Applicant/Owners shall be responsible for rectifying any adverse effect on adjacent lands from drainage alteration.
- (13) That the subject land shall be maintained in a clean and tidy fashion at all times and all waste material shall be deposited and confined in an appropriate enclosure. All waste material shall be regularly removed from the property to prevent any debris from blowing onto adjacent property or roadways. That all garbage and waste shall be stored in weatherproof and animal proof containers and be in a location easily accessible to containerized garbage pickup.

Advisory:

- (14) That any other government permits, approvals, or compliances are the sole responsibility of the Applicant/Owners.
- (15) That the site shall remain free of restricted and noxious weeds and maintained in accordance with the Alberta Weed Control Act.
- (16) 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.
- (17) That if this Development Permit is not issued by **SEPTEMBER 30, 2019** or the approved extension date, then this approval is null and void and the Development Permit shall not be issued.

[8] On May 31, 2019, the Appellants appealed the Development Authority's decision. The Notice of Hearing was circulated to 45 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) Oksana Newman, Planner, for the Development Authority;
- (2) Sean MacLean, Supervisor Planning and Development, for the Development Authority;
- (3) Gurbir Nijjar, Municipal Engineer, for the Development Authority;
- (4) John and Janet Gehring, the Appellants;
- (5) Mike Hunka, in support of the Appeal;
- (6) Robert Jones, in support of the Appeal;
- (7) Jane Newbold, in support of the Appeal;
- (8) Abdul, in opposition of the Appeal.

[10] The Board received twenty-six letters in support of the appeal from:

- (1) Katherine Bezugley;
- (2) Adam and Sarah Heckbert;
- (3) Jane Newbold;
- (4) Manjirk and Sartaj Pannu;
- (5) Peter and Donna Piercy;
- (6) Steven Gehring;
- (7) Larson Keith and Christine Adams;
- (8) Tina Sagod;
- (9) Jay and Anita Nixon;
- (10) Dave Lockhart;
- (11) Mike and Terri Hunka;
- (12) Georgina Corrigan;
- (13) Brad Lastockin;
- (14) Bernhardt Neumann;

- (15) Ronald and Teresa Carr;
- (16) Sarah Heckbert;
- (17) Jennifer Dipalo;
- (18) James and Colleen Laye;
- (19) Wayne and Maureen Greaves;
- (20) Bob Pozniak;
- (21) Sally Giene;
- (22) Patricia Ritchie;
- (23) Doug Warden;
- (24) Craig Skubleny, Lisa Case and Evan Case- Skubleny;
- (25) Katherine & Jeffrey Bezugley;
- (26) Catherine Summerscales.

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

Development Authority's Submissions

[12] Grading of approximately 279 square meters of existing land to level and area for a parking pad for a Home Based Business for Auto Sales.

[13] This Business would have 5-10 cars for sale and would generate 4-28 customers a week.

[14] The site is well screened by existing trees and is not visible from the road or by the adjacent neighbours.

[15] No technical studies are needed for this permit due to the limited nature of this permit.

[16] Conditions of approval included screening, prohibition of salvage or damaged vehicles for sale and no signage.

[17] Vehicles for sale would only be located on the parking pad.

[18] The Land Use Bylaw does not restrict the number of personal cars located on site, only the cars that are for sale.

[19] The standard trips per day for a Home Based Business in the Agricultural Holdings district is eight, the Applicant have requested for only four on their application. This is stated in Condition 6 of the Notice of Decision.

[20] The grading on the site is minimal therefore; Engineering services noted a Storm Water Management Report is not required.

[21] The size of the parking area is less than the maximum area allotted for outside storage on the parcel.

Appellant's Submissions

[22] The car lot is for commercial use and is not compatible with this land use designation. All the surrounding properties are designated for agricultural use.

[23] There is a barn close to the parking pad and there is a potential this building would be used for the repair of cars and a body shop in addition to the car park.

[24] Stormwater from the property at 255095 Range Road 281 flows directly onto the Appellants property at 255035 Range Road 281. There are two natural water courses on 255095 that cross from north to south, one in front of the house and one immediately behind.

[25] These natural drainage systems will need to be altered to accommodate the proposed development. The natural drainage systems are a primary feeder to Serviceberry Creek. The proposed development affects all the surrounding properties and those to the south as well.

[26] Exhaust, oil, dust, autobody chemicals and paint, as well as other contaminants have the possibility of contaminating the air, ground and storm water.

[27] Noise contamination is also possible.

[28] There will be increased traffic on Range Road 281. As well Range Road 281 is not designed or upgraded to allow for commercial traffic.

[29] There is a dead end road immediately south of the proposed development with no turn around for commercial traffic.

[30] The proposed development could attract increased crime. Chemicals and paint used for vehicles could result in increased fire risk.

[31] Police and Fire Services would use Country Hills Boulevard to access Range Road 281 which is a dead end road. There would be significant delays in obtaining help as fire and police stations are located 20 minutes away in Balzac and Airdrie respectively.

[32] There is no garbage collection in the area.

[33] There is no mention of lighting or security in the permit conditions.

[34] One of the owners of the property owns and runs an auto body shop in the City of Calgary. With the increased cost of property taxes in the city, we are concerned they will move their business to this site.

[35] The introduction of commercial operations in the neighbourhood will reduce the desirability of the area and lower property values.

Mike Hunka Submissions

[36] All resident owners on both Range Road 281 and 282 have submitted letters of objection to the proposed development.

[37] The course of the water drainage into Serviceberry Creek would be adjusted with the addition of the parking pad.

[38] There are no trees for screening between the proposed development and the property directly behind.

Robert Jones Submissions

[39] There is an existing wetland to the west and east of the proposed grading parking pad.

[40] There is a pond in the front and the back of the property where the water naturally flows. Water flows across the front of the property to get into the pond.

[41] There is a concern that the proposed development would adversely affect the ecosystem and wildlife.

[42] Test drives are probably not accounted for in the trips per day to and from the property.

Jane Newbold Submissions

[43] The road that the proposed development is on is well used by the community. As the road is a dead end road the residents walk and play on that road, kids also play on that road. Residents ride their horses in the ditches and one of the neighbours has a draft team that pulls a wagon down the road. The proposed development would impact the neighbourhood greatly with the increased traffic on the road.

[44] There has been no engagement of the neighbours by the applicants.

Abdul Aziz Submissions

[45] Laying down gravel in the back yard, hidden behind barn and house and trees around site. Not building or operating a shop.

[46] There will be no contamination to the water, and there will be no fixing or cleaning of cars on the property.

[47] There is currently two shops on Range Road 281 that deal with materials that are bad for the environment. One of the shops on the road is a mechanics and performance shop that deals with oils and antifreeze and the like.

[48] The house is currently being renovated due to the previous owner having cats and the current owners having allergies to cats. The plan is for the family to move in once the renovations have been completed.

Appellant's Rebuttal

[49] None

Development Authority's Closing Comments

[50] There is one Automotive Repair shop on Range Road 281 currently; this permit is valid until 2021.

Appellant's Closing Comments

[51] None.

FINDINGS & REASONS FOR DECISION

[52] Single-lot regrading, for the construction of a parking pad is a discretionary use in the Agricultural Holdings District, in accordance with section 46 of the *Land Use Bylaw*.

[53] 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*.

[54] 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.

[55] The Board finds that without the development permit for the Home Based Business Type II the grading, filling and berming will not be required on the subject property.

[56] The Board heard evidence that the subject property is subject to seasonal flooding and berming the property could force water to neighbouring properties.

[57] 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*, 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

[58] For the reasons set out above, the appeal is allowed and the decision of the Development Authority is revoked. A development permit shall not be issued.

Dated at Rocky View County, in the Province of Alberta on July 11, 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 (123 pages)
2.	Development Authority's Presentation to the Board (14 pages)
3.	Appellant Presentation to the Board (11 pages)