

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

Board Order No.: 2019-SDAB-038

File No.: 05630099; PRDP20190868

Appeal by: Gary and Donna Jopling

Appeal Against: Development Authority of Rocky View County

Hearing Date: 2019 June 26
2019 August 7

Decision Date: 2019 August 22

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 14, 2019. In this decision, the Development Authority conditionally approved a development permit for single-lot regrading, to allow for remediation of an existing wetland bank at Lot 3, Block 9, Plan 9712356 (the Lands).

[2] Upon notice being given, this appeal was heard on June 26, 2019 and August 7, 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 be issued subject to the following conditions:

Description:

- (1) That single-lot regrading, to allow for remediation of the bank of an existing wetland, 383.40 sq. m (4,126.88 sq. ft.) in size may take place on the subject land, in general accordance with the site plan submitted with the application and conditions of this permit.
- (2) That alteration of the existing on-site wetland may commence in accordance with the Alberta Environment and Parks (AEP) approval.

Permanent:

- (3) That the Applicant/Owner shall not further disturb any wetland area until Water Act approvals from (AEP) for the loss of the on-site wetlands are issued.
- (4) That for any fill to be imported onto the property, the Applicant/Owner shall contact Rocky View 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 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.
- (6) That no topsoil shall be removed from the site.
- (7) That the Applicant/Owners shall ensure no organic material is buried and capped in a manner that will cause methane gas related issues.
- (8) That the fill shall not contain large concrete, rebar, asphalt, building materials, organic materials, or other metal.
- (9) 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.
- (10) That 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.
- (11) That the Applicant/Owners shall be responsible for rectifying any adverse effect on adjacent lands from drainage alteration.

- (12) 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. 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.

Advisory:

- (13) That the site shall remain free of restricted and noxious weeds and maintained in accordance with the Alberta Weed Control Act.
- (14) That any other government permits, approvals, or compliances are the sole responsibility of the Applicant/Owners.
- (15) 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.

BACKGROUND

[4] On March 22, 2019, Quantum Place Developments (the Applicant) submitted a development permit application for the stripping and grading of the parcel to the east of 254138 Bears paw Road.

[5] The Lands are located at NW-30-25-2-W5M, located approximately 0.4 kilometres (1/4 mile) north of Highway 1A and on the east side of Bears paw Road. The Lands are approximately 4.30 hectares (10.63 acres) in area and are owned by Fidelis Management Ltd.

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

[7] On May 14, 2019, the Development Authority conditionally approved to grant a development permit on the following grounds:

Description:

- (1) That single-lot regrading, to allow for remediation of the bank of an existing wetland, 383.40 sq. m (4,126.88 sq. ft.) in size may take place on the subject land, in general accordance with the site plan submitted with the application and conditions of this permit.
- (2) That alteration of the existing on-site wetland may commence in accordance with the Alberta Environment and Parks (AEP) approval.

Permanent:

- (3) That the Applicant/Owner shall not any further disturb any wetland area until Water Act approvals from (AEP) for the loss of the on-site wetlands are issued.
- (4) That for any fill to be imported onto the property, the Applicant/Owner shall contact Rocky View 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 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.
- (6) That no topsoil shall be removed from the site.
- (7) That the Applicant/Owners shall ensure no organic material is buried and capped in a manner that will cause methane gas related issues.
- (8) That the fill shall not contain large concrete, rebar, asphalt, building materials, organic materials, or other metal.
- (9) 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.
- (10) That 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.
- (11) That the Applicant/Owners shall be responsible for rectifying any adverse effect on adjacent lands from drainage alteration.
- (12) 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. 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.

Advisory:

- (13) That the site shall remain free of restricted and noxious weeds and maintained in accordance with the Alberta Weed Control Act.
- (14) That any other government permits, approvals, or compliances are the sole responsibility of the Applicant/Owners.

- (15) 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.

[8] On June 3, 2019, the Appellant appealed the Development Authority's decision. The Notice of Hearing was circulated to 20 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) Stefan Kunz, Municipal Planner, for the Development Authority;
- (2) Sean MacLean, Supervisor Planning and Development, for the Development Authority;
- (3) Gurbir Nijjar, Supervising Engineer, for the Development Authority;
- (4) Milan Patel, Municipal Engineer, for the Development Authority;
- (5) Cheryl and Kurt Schaerer, on behalf of the Appellants;
- (6) Gary Jopling, the Appellant;
- (7) Jessica Karpat – Quantum Place Developments, in opposition.

[10] The Board received one letter in support of the appeal from:

- (1) Cheryl and Kurt Schaerer

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

June 26, 2019

Development Authority's Submission

[12] The Development Permit in question is resulting from a compliance/enforcement issue after the fill was placed on the site without a permit.

[13] Alberta Environment and Parks (AEP) deals with any wetlands on a property and Rocky View County deals with all dryland areas.

[14] AEP inspected the area and determined that a development permit from Rocky View County was needed for the dryland area. The approval of this Development Permit deals only with the dryland area that is adjacent to the water.

[15] The assessment by Engineering concluded that the applicant was intending to restore the drainage or wetland body to what it was prior to the fill being added.

- [16] All fill areas including topsoil and vegetation were acceptable upon the inspection by the Development Authority.
- [17] Offsite developments were likely to be the cause of the overflowing of the berms.
- [18] AEP ordered that any construction material used as fill to be removed from the fill site.
- [19] Condition 8 of the development permit requires that the fill does not contain construction debris such as rebar, asphalt or other building materials.
- [20] Anywhere there is overland drainage present there is an easement and a plan registered.
- [21] Natural overland drainage can be modified with a proper development permit, provided it does not impact any adjacent properties.
- [22] Natural draining was being restored therefore a new storm water report was not deemed necessary.
- [23] The remediation work was done beside the existing culvert; this culvert ends at the property line.
- [24] The pond drains to the south east and meets up with the golf course ponds.
- [25] Rocky View Engineering Services did not initially visit the site.
- [26] AEP has jurisdiction on the waterbody as well as the setback area of the wetland. The Application was deemed to be simply the addition of topsoil and seeding when submitted to Rocky View County. Any permits needed by AEP are not noted as conditions in the Rocky View permit as AEP's conditions do not transfer to the Rocky View County permits.

Appellant's Submission

- [27] There is a pattern of behavior with the applicants and property owners of dumping fill within the wetland and the lands adjacent.
- [28] It was the impression of the appellants that the fill was to be removed, not simply just covered up with topsoil and vegetation.
- [29] Fill material has been dumped at the site since 2008, and subsequently covered with topsoil.
- [30] The area is not a pond; it is a waterway that most of the Bearspaw area drains into.
- [31] Culverts to the waterway were removed and blocked to the neighboring properties. These are natural drainage areas that are being removed.
- [32] The appellants believe that the material should be removed and the matter referred back to AEP.

[33] Dump trucks were backed on to the site to allow the fill material to be built up, prior to it becoming a road.

[34] The culvert that was blocked was draining into the pond. This culvert was buried and with the addition of this fill allowed for the potential for the water to back up onto the land of the appellant's property.

Jessica Karpat Submission

[35] AEP has classified the subject pond as a water body not a wetland.

[36] The Development Permit approval contained no alterations to the shoreline. It did include the establishment of erosion protection of the pond edge by removing the debris from the waterbody, putting down 150mm of topsoil, and reseeding the affected area with drought tolerant seed mix.

[37] The Development Permit is fully contained on the applicant's property.

[38] The appellant's reasons for the appeal are not the subject matter of the Development Permit approval.

[39] There are no overland drainage easements on title to allow for overland drainage onto another property.

[40] All work occurred at the lowest point of the property and could not have affected any drainage patterns.

[41] The work was ordered by AEP and the landowner was completing this work under their direction.

[42] Waterbody is anthropogenic / man-made and is not a storm water facility that may be used by the neighbours.

[43] No overland drainage right-of-way exists from the neighbour's property into the subject property.

[44] The property is located downhill from the appellant's property.

[45] The request from AEP was completed from July to August 2018, after the compliance notice was received in June of 2018. The work was deemed satisfactory by AEP Compliance Officer, Mr. Reed Davis.

[46] The Development Permit is a post-construction development permit. The landowner acted on AEP's compliance order not knowing a Municipal Development Permit was required as well.

[47] There are no municipal lands. There are no overland drainage easements allowing formal drainage onto the subject property.

[48] The neighbour's culverts are not subject to this Development Permit. The neighbour's culverts are wholly within the neighbour's property and are not a matter for the Board's consideration, as they are not a matter considered within the Development Permit.

[49] There were no culverts blocked as part of this work outlined within this Development Permit. Work that was carried out for this Development Permit was laying of loam and seeding of the pond's shoreline to provide erosion protection.

[50] Construction of a berm is not a part of this Development Permit application, nor have any drainage culverts been blocked off with the work that has been completed.

[51] The Development Permit in question does not affect adjacent neighbours. It is simply for laying down loam and grass seed to establish erosion protection of the ponds edge. There is no development plan outside of this work that has been permitted or applied for.

[52] A Rocky View Compliance officer has been to the site.

Appellant's Rebuttal

[53] Appellants have witnessed construction material going into the water.

[54] The main property is for sale currently and there is an option to purchase a private pond on the adjacent land, which is the pond in question.

[55] No topsoil has been added, and the fill material was not removed as required by AEP.

[56] There would be a potential negative effect to the adjacent landowners without an easement or retention pond.

Development Authority's Closing Comments

[57] This application was reviewed as placing topsoil and remediating a bank, with conditions that can be imposed to ensure there is correct drainage.

[58] The permit is for the remediation of the bank to a more natural top soiled and vegetated environment, and was done in conjunction with AEP's requirements.

[59] Inspections have been done in accordance with AEP regulations, correspondence can be provided if necessary.

[60] Top soil and vegetation have not been placed on site; the applicant is waiting for the outcome of the appeal.

Appellant's Closing Comments

[61] The appropriate authorities have not inspected the property.

[62] Under the impression that the work has not been completed.

August 7, 2019

Development Authority's Submission

[63] The development permit in question refers only to the bank not the waterbody itself, as the waterbody is under AEP authority.

[64] Engineering Services performed an on site inspection on July 23, 2019, and it was determined there is no berm on the site.

[65] The site has a restrictive covenant placed on it; the county is not subject to this therefore it has no impact on this permit.

[66] The waterbody is a licensed waterbody under AEP; therefore, the waterbody itself falls under AEP jurisdiction.

[67] There are three functional culverts on the north and east sides of the waterbody. All are fully functional with no drainage or other issues.

[68] Only one culvert is in the area where the Development Permit is located. This culvert is in good working operation.

[69] There was no ponding observed upstream of the culvert during the site inspection.

[70] The Development Authority suspects that the culvert in question was installed without proper respect to the Master Drainage Plan for the site.

[71] There is no berm on the site; the grading of the land would not cause any issues with flooding.

[72] AEP is currently undergoing the process with the land owner for approval.

[73] Conditions 3 and 4 are permanent conditions that any further changes to the site are not allowed without further permits being applied for.

[74] It is suggested that the appellants go to AEP with their concerns over the culverts and the potential presence of materials or hydrocarbons in the waterbody.

Appellant's Submission

[75] The velocity of the water running through the culvert in the location of the permit is higher as the waterbody is now smaller.

[76] There is a suspicion of hydrocarbons in the waterbody.

FINDINGS & REASONS FOR DECISION

[77] 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*.

[78] 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.

[79] The Board finds that the area referenced in the Development Permit does not interfere unduly with the overland drainage flow on the adjacent lands.

[80] The Board acknowledges that Alberta Environment and Parks will be monitoring the successful completion of the outstanding conditions of the Development Permit issued by the Development Authority.

[81] The Board acknowledges the representations made by all parties to this appeal on matters concerning overland drainage due to the stripping and grading of the bank of the waterbody, and the potential overall impact of the overland drainage within the adjacent lands. However, the Board finds that according to the site inspection there is no overland drainage concern as outlined in paragraph 69 and 71 (above) is determinative in its reasoning for denying the appeal.

[82] 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

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

Dated at Rocky View County, in the Province of Alberta on August 22, 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 (17 pages)
2.	Development Authority's Presentation to the Board (18 pages)
3.	Appellant Submission to the Board (72 pages)
4.	Applicant Submission to the Board (25 pages)
5.	Applicant Submission correspondence with AEP (12 pages)
6.	Response letter from Applicant (7 pages)
7.	Pictures submitted by appellant (5 pages)