

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

Board Order No.: 2019-SDAB-050
File No.: 03223500; PRDP20192742

Appeal by: Jason Rohel
Appeal Against: Development Authority of Rocky View County

Hearing Date: 2019 October 9
Decision Date: 2019 October 24

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 September 3, 2019. In this decision, the Development Authority conditionally approved a development permit for the single-lot regrading and placement of clean fill at 53 – 4 Street NE (the Lands).

[2] Upon notice being given, this appeal was heard on October 9, 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 and the placement of clean fill (approximately 874.00 sq. m.) may commence in accordance with the drawings submitted with the application.

Prior to Issuance:

- (2) That prior to issuance of this permit, the Applicant/Owner shall contact County Road Operations with haul details of equipment or material to determine if any Road Data Permits / Road Use Agreements are required for any fill to be hauled to the property using the County road network:
 - (a) Written confirmation shall be received from Road operations confirming the status of this condition. Any required permits or agreements shall be obtained unless confirmed by Road Operations.

Permanent:

- (3) That any plan, technical submission, agreement, matter, or understanding submitted and approved as part of the application, in response to a Prior to Issuance or Occupancy condition, shall be implemented and adhered to in perpetuity including the required Site Grading Plan.
- (4) That the Applicant/Owner shall provide a record of compaction testing, prepared by a qualified professional, providing the compaction testing results for all areas filled greater than 1.2 m in depth.
- (5) That the fill shall not contain large concrete, rebar, asphalt, building materials, organic materials, or other metal.
- (6) That the Applicant shall implement all necessary Erosion and Sediment Control measures to prevent the transfer of sediment into adjacent properties and roadways.
- (7) That the Applicant shall adhere to the overall drainage plan for the subdivision [Langdon Crossing Phase 9 Surface Improvements prepared by Lee Maher Engineering Associates LTD.; Job No. 230-06-01; Drawing No. SW] in perpetuity.
- (8) That no topsoil shall be removed from the site.
- (9) That the Applicant 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 fill areas shall have a minimum of four inches of topsoil placed on top, which shall then be seeded to native vegetation or landscaped to the satisfaction of the County.
- (11) That the Applicant shall be responsible for rectifying any adverse effect on adjacent lands from drainage alteration.

Advisory:

- (12) That the Applicant/Owner shall take effective measures to control weeds and to ensure compliance with the Alberta Weed Control Act.
- (13) The Applicant/Owner shall be responsible for all required payments of third party reviews and/or inspections as per the Master Rates Bylaw, based on the County's discretion or requirement.
- (14) That any other government permits, approvals, or compliances are the sole responsibility of the Applicant.
- (15) That once this Development Permit is issued (after all prior to issuance conditions have been met); the single-lot regrading and placement of clean fill proposal shall be completed within twelve (12) months from date of issue.
- (16) That if this Development Permit is not issued by **February 29, 2020** or the approved extension date, then this approval is null and void and the Development Permit shall not be issued.

BACKGROUND

[4] On August 2, 2019, John & Patricia Gribble (the Owners) submitted a development permit application for the regrading and addition of fill to improve drainage.

[5] The Lands are located at SW-23-23-27-W4M, located at the southeast junction of 4 Street and Lloyd Crescent in the Hamlet of Langdon. The Lands are approximately 0.12 hectares (0.29 acres) in area and are owned by John & Patricia Gribble.

[6] The Lands' land use designation is Hamlet Residential Single Family District, which is regulated in section 59 of the Rocky View County, *Land Use Bylaw C-4841-97* [the *Land Use Bylaw*].

[7] On September 3, 2019, the Development Authority conditionally approved to grant a development permit on the following grounds:

Description:

- (1) That single-lot regrading and the placement of clean fill (approximately 874.00 sq. m.) may commence in accordance with the drawings submitted with the application.

Prior to Issuance:

- (2) That prior to issuance of this permit, the Applicant/Owner shall contact County Road Operations with haul details of equipment or material to determine if any Road Data Permits / Road Use Agreements are required for any fill to be hauled to the property using the County road network:
 - (a) Written confirmation shall be received from Road operations confirming the status of this condition. Any required permits or agreements shall be obtained unless confirmed by Road Operations.

Permanent:

- (3) That any plan, technical submission, agreement, matter, or understanding submitted and approved as part of the application, in response to a Prior to Issuance or Occupancy condition, shall be implemented and adhered to in perpetuity including the required Site Grading Plan.
- (4) That the Applicant/Owner shall provide a record of compaction testing, prepared by a qualified professional, providing the compaction testing results for all areas filled greater than 1.2 m in depth.
- (5) That the fill shall not contain large concrete, rebar, asphalt, building materials, organic materials, or other metal.
- (6) That the Applicant shall implement all necessary Erosion and Sediment Control measures to prevent the transfer of sediment into adjacent properties and roadways.
- (7) That the Applicant shall adhere the overall drainage plan for the subdivision [Langdon Crossing Phase 9 Surface Improvements prepared by Lee Maher Engineering Associates LTD.; Job No. 230-06-01; Drawing No. SW] in perpetuity.
- (8) That no topsoil shall be removed from the site.
- (9) That the Applicant 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 fill areas shall have a minimum of six inches of topsoil placed on top, which shall then be seeded to native vegetation or landscaped to the satisfaction of the County.
- (11) That the Applicant shall be responsible for rectifying any adverse effect on adjacent lands from drainage alteration.

Advisory:

- (12) That the Applicant/Owner shall take effective measures to control weeds and to ensure compliance with the Alberta Weed Control Act.

- (13) The Applicant/Owner shall be responsible for all required payments of third party reviews and/or inspections as per the Master Rates Bylaw, based on the County's discretion or requirement.
- (14) That any other government permits, approvals, or compliances are the sole responsibility of the Applicant.
- (15) That once this Development Permit is issued (after all prior to issuance conditions have been met), the single-lot regrading and placement of clean fill proposal shall be completed within twelve (12) months from date of issue.
- (16) That if this Development Permit is not issued by **February 29, 2020** or the approved extension date, then this approval is null and void and the Development Permit shall not be issued.

[8] On September 23, 2019, the Appellant appealed the Development Authority's decision. The Notice of Hearing was circulated to 18 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) Jessica Anderson, Municipal Planner, for the Development Authority;
- (2) Sean MacLean, Planning and Development Supervisor, for the Development Authority;
- (3) Gurbir Nijjar, Supervisory Engineer, for the Development Authority;
- (4) Jason Rohel, the Appellant;
- (5) Jeff Woodruff, Glenn & Card Law LLP, for the Applicants;
- (6) Gavin Fitch, McLennan Ross LLP, for the Board.

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

[11] The Board received one letter in opposition to the appeal from:

- (1) Jeffery Woodruff on behalf of John and Patricia Gribble.

Development Authority's Submissions

[12] This application was submitted to improve the drainage on the lands, this will have no effect on current drainage as it is intended that positive drainage be maintained with the current flows.

[13] Conditions included a Road Use Agreement if required and conformance with the existing Storm Water Management plan for the community.

[14] Engineering and Enforcement Services have visited the property previously; however, their report was not included in the agenda package. Any comments would be included in the report in the agenda.

[15] Condition 4 is a standard condition used as a capture all; the planned fill is 4-6 inches.

[16] Condition 11 is also a standard condition and it is used for any future issues that may arise due to the placement of the fill.

[17] As well, the note after Condition 16 is a standard note that is placed on this condition.

[18] The proposed regrading is in line with the restricted covenant on the property.

[19] The amount of fill being proposed in the application will correct the current drainage issue on the property.

[20] Condition 10 is a standard condition; four inches of topsoil would be adequate the board can amend the condition to state that.

Appellant's Submissions

[21] There is currently an ongoing lawsuit against the Appellant by the Applicant. This lawsuit is in regards to a pre-existing fence that is co-owned by six neighbours, this proposed fill is to be located in this area.

[22] The legal action was suggested to be adjourned sine die by the Applicant's counsel.

[23] The proposed regrading and addition of fill is akin to the tampering of evidence within that lawsuit.

[24] The drainage issues on the property are occurring due to the Applicant's negligence in grading their land properly.

Jeff Woodruff Submissions

[25] The restrictive covenant on the Appellant and Applicant's properties prevents the building of any structures on the property that inhibits the drainage of the properties. The lawsuit is to remove the fence that was constructed on the swale.

[26] The ongoing lawsuit is being used to rectify the drainage issue.

[27] There was a recommendation by the Court of Queens Bench to come back to the courts with Engineering Reports to determine if in fact the fence was indeed causing the issue with the drainage. It was then decided to adjourn the matter sine die to see if the drainage issues could be rectified another way by regrading the Applicant's property as suggested by the Appellant.

[28] The proposed development permit is a potential solution to the drainage issues, if this works then the lawsuit will be withdrawn. If it does not remedy the issues then a study will be performed on the site.

Appellant's Rebuttal

[29] The drainage issue with the Applicant's lot was the Applicant's issue from the beginning.

[30] There has been no contact from the Applicant or their counsel that this would indeed be the solution to the drainage issue.

[31] The Engineering Report done by Rocky View County stated that it appeared the Applicant's lot is lower than the Appellant's lot and that is the issue for the drainage issues.

Development Authority's Closing Comments

[32] None.

Appellant's Closing Comments

[33] None.

FINDINGS & REASONS FOR DECISION

[34] Site Grading and the placement of fill is a discretionary use in all districts in accordance with the section 33.6 of the Land Use Bylaw.

[35] 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*.

[36] 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.

[37] The Board acknowledges that the proposed grading and fill will provide proper drainage of the property and bring the property into compliance.

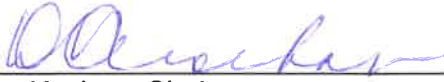
[38] The Board notes that the Appellant did not demonstrate that there would be any negative affects to the surrounding properties.

[39] 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

[40] 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 October 24, 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 (22 pages)