

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

Board Order No.: 2019-SDAB-051

File No.: 06704044; PRDP20192553

Appeal by: Gordon and Jenica Copithorne

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

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**DEVELOPMENT APPEAL DECISION**

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**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 87 Glendale Court (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 stripping and grading, for construction of a dwelling, approximately 1,114.84 sq. m (12,000.00 sq. ft.), may take place on the subject land, in general accordance with the site plan submitted with the application and conditions of this permit.

### **Prior to Issuance:**

- (2) That prior to issuance, the Applicant/Owner shall contact County Road Operations, to determine if a Road Use Agreement and/or Road Data Permits are required for the purposes of Stripping & Grading and future construction.
  - (a) Written confirmation shall be received from County Road Operations regarding the status of this condition. Note, any agreement or data permits required shall be issued by County Road Operations.
- (3) That prior to issuance, the Applicant/Owner shall provide a Post Development Site Grading Plan, complete with pre and post-development impact assessment due to the regrading and filling of the site. The assessment shall be completed by a Professional Engineer, to the satisfaction of the County.
  - (a) That should the Site Plan or Site Grading Plan that aligns with the overall storm water management plan for the site, and indicates that the proposed fill depth exceeds 1.20 m; the Applicant/Owner shall submit a Deep Fill Report, in accordance with the County's servicing standards.

### **Permanent:**

- (4) That the Applicant/Owner shall supply an as-built drawing of the fill placement on-site.
- (5) That the Applicant/Owner shall not screen and/or sell the excess topsoil to others without written approval from the County, as there is potential for additional off-site impacts.
- (6) That any copies of all testing and inspection reports shall be submitted to the County within 14 days of the inspection.
- (7) That should a Deep Fill report be required, the Applicant/Owner shall implement and follow the recommendations of the report, and shall keep records of compaction testing in areas that exceed 1.20 m.
- (8) That storm water shall be managed in accordance with the Storm Water Management Plan submitted in support of subdivision application PL20140161.

- (9) That the Applicant/Owner shall take effective measures to control dust in the stripping and grading areas of the subject properties, so that dust originating therein shall not cause annoyance or become a nuisance to adjoining property owners and others in the vicinity.
- (10) That any fill removed from the site shall be hauled off in a covered trailer/truck, which will prevent blowing of dust/small rocks onto the road or cause issues with other vehicles on the road.
- (11) That the Applicant/Owner shall take whatever means necessary to avoid the transfer of dirt onto public roadways.
- (12) That Rocky View County staff or agents shall have access to the site at all times.
- (13) That all stripped and graded areas shall be seeded or treated by May 30, 2020. If by May 30, 2020 no substantial relevant work has been carried out, the County reserves the right to treat and/or seed the stockpile and/or graded untreated areas utilizing the securities held by the County.
- (14) That the Applicant/Owner shall be responsible for rectifying any adverse effect on adjacent lands from drainage alteration.
- (15) That the fill shall not contain construction rubble or any hazardous substances, including but not limited to large concrete, rebar, asphalt, building materials, organic materials, or other metal.
- (16) That the entire site shall be maintained in a neat and orderly manner at all times to the satisfaction of the Development Officer.
- (17) 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 condition, shall be implemented and adhered to in perpetuity.

**Advisory:**

- (18) That the Applicant/Owner shall be responsible for weed control and shall adhere to the regulations in the Alberta Weed Control Act at all times.
- (19) That the Applicant/Owner shall be responsible for all required payments of 3<sup>rd</sup> party reviews and/or inspections as per the Master Rates Bylaw based on the County's discretion or requirement.
- (20) That any other government permits, approvals, or compliances are the sole responsibility of the Applicant.
- (21) That the hauling of fill and site grading shall be completed within twelve (12) months from the date of issuance of this permit.
- (22) That if this Development Permit is not issued by **March 31, 2020** or the approved extension date, then this approval is null and void and the Development Permit shall not be issued.

## **BACKGROUND**

[4] On July 24, 2019, John Sostar (the Applicant) submitted a development permit application for grading and excavation.

[5] The Lands are located at SW-04-26-03-W5M, located 0.4 kilometres (1/4 mile) north of Highway 1A, and to the southeast of Glendale Court. The Lands are approximately 1.49 hectares (3.67 acres) in area and are owned by John Sostar and Sophia Magdalek.

[6] The Lands' land use designation is Residential Two District, which is regulated in section 50 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 stripping and grading, for construction of a dwelling, approximately 1,114.84 sq. m (12,000.00 sq. ft.), may take place on the subject land, in general accordance with the site plan submitted with the application and conditions of this permit.

### **Prior to Issuance:**

- (2) That prior to issuance, the Applicant/Owner shall contact County Road Operations, to determine if a Road Use Agreement and/or Road Data Permits are required for the purposes of Stripping & Grading and future construction.
  - (a) Written confirmation shall be received from County Road Operations regarding the status of this condition. Note, any agreement or data permits required shall be issued by County Road Operations.
- (3) That prior to issuance, the Applicant/Owner shall provide a Post Development Site Grading Plan, complete with pre and post-development impact assessment due to the regrading and filling of the site. The assessment shall be completed by a Professional Engineer, to the satisfaction of the County.
  - (a) That should the Site Plan or Site Grading Plan that aligns with the overall storm water management plan for the site, and indicates that the proposed fill depth exceeds 1.20 m, the Applicant/Owner shall submit a Deep Fill Report, in accordance with the County's servicing standards.

### **Permanent:**

- (4) That the Applicant/Owner shall supply an as-built drawing of the infrastructure construction on-site.
- (5) That the Applicant/Owner shall not screen and/or sell the excess topsoil to others without written approval from the County, as there is potential for additional off-site impacts.

- (6) That any copies of all testing and inspection reports shall be submitted to the County within 14 days of the inspection.
- (7) That should a Deep Fill report be required, the Applicant/Owner shall implement and follow the recommendations of the report, and shall keep records of compaction testing in areas that exceed 1.20 m.
- (8) That stormwater shall be managed in accordance with the Stormwater Management Plan submitted in support of subdivision application PL20140161.
- (9) That the Applicant/Owner shall take effective measures to control dust in the stripping and grading areas of the subject properties, so that dust originating therein shall not cause annoyance or become a nuisance to adjoining property owners and others in the vicinity.
- (10) That any fill removed from the site shall be hauled off in a covered trailer/truck, which will prevent blowing of dust/small rocks onto the road or cause issues with other vehicles on the road.
- (11) That the Applicant/Owner shall take whatever means necessary to avoid the transfer of dirt onto public roadways.
- (12) That Rocky View County staff or agents shall have access to the site at all times.
- (13) That all stripped and graded areas shall be seeded or treated within 45 calendar days of completion of stripping and grading. Within 45 calendar days of stockpiling of material, if no substantial relevant work has been carried out, the County reserves the right to treat and/or seed the stockpile and/or graded untreated areas utilizing the securities held by the County.
- (14) That the Applicant/Owner shall be responsible for rectifying any adverse effect on adjacent lands from drainage alteration.
- (15) That the fill shall not contain construction rubble or any hazardous substances, including but not limited to large concrete, rebar, asphalt, building materials, organic materials, or other metal.
- (16) That the entire site shall be maintained in a neat and orderly manner at all times to the satisfaction of the Development Officer.
- (17) 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 condition, shall be implemented and adhered to in perpetuity.

**Advisory:**

- (18) That the Applicant/Owner shall be responsible for weed control and shall adhere to the regulations in the Alberta Weed Control Act at all times.
- (19) That the Applicant/Owner shall be responsible for all required payments of 3<sup>rd</sup> party reviews and/or inspections as per the Master Rates Bylaw based on the County's discretion or requirement.
- (20) That any other government permits, approvals, or compliances are the sole responsibility of the Applicant.
- (21) That the hauling of fill and site grading shall be completed within twelve (12) months from the date of issuance of this permit.
- (22) That if this Development Permit is not issued by **March 31, 2020** or the approved extension date, then this approval is null and void and the Development Permit shall not be issued.

[8] On September 24, 2019, the Appellant appealed the Development Authority's decision. The Notice of Hearing was circulated to 15 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, Planning and Development Supervisor, for the Development Authority;
- (3) Gurbir Nijjar, Supervisory Engineer, for the Development Authority;
- (4) Gord Copithorne, the Appellant;
- (5) Pat McKenna, in support of Appeal;
- (6) Jenica Copithorne, the Appellant;
- (7) John Sostar, the Applicant;
- (8) Sophie Magdalek, the Owner.

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

*Development Authority's Submissions*

[11] The fill was placed and the property graded without the proper permits; this permit intends to bring the property into compliance due to enforcement action.

[12] Condition 3 states the site requires an inspection regarding the amount of fill that has been placed with regard to the storm water management plan. This condition requires conformance to the storm water plan from when the site was subdivided.

[13] The existing hill on the lands was flattened to allow a dwelling to be constructed on the site.

[14] Prior to any additional work being done on the site, compaction and soil testing will need to be completed.

[15] An Enforcement matter was raised in August of 2018 for the placement of the fill, a development permit was applied for in July of 2019 in accordance with the Enforcement action.

[16] A deep fill report will be required if the fill depth is over 1.2 metres.

[17] Condition 5 is a standard condition that allows for the non-removal of the topsoil from the site.

[18] Condition 4 refers to the as-built condition of the site; the word can be changed to berm if the Board sees fit to do so.

[19] Conditions 6 and 15 addresses the quality of the fill brought to the site.

*Appellant's Submissions*

[20] This permit request has gone beyond the meaning of grading and the placement of fill. They have created a plateau that exceeds the highest point of the pre-existing elevations.

[21] It is thought that there will be a residence placed on top of a pile of loose fill.

[22] The elevated site for the residence will reduce the appeal and property value within the neighbourhood, as this site is the most prominent site within the cul-de-sac.

[23] It is not right to sacrifice everyone's view for the sake of the view of one family.

[24] The construction of the plateau and the driveway has drastically affected the watershed. A culvert has been installed by the applicants, however, it is not thought that this will suffice due to it being overrun with grass and being covered with snow during the winter and spring months.

[25] There is a lack of adherence to due process and regulations on the part of the applicant.

[26] There are old cars being stored on the back of the property. At the front of the property, there is a seacan that sits in front of a neighbour's window.

[27] Two commercial grade light fixtures that have been delivered to the site are typical for car dealerships and the like. Additionally, numerous screw piles have been delivered to the site.

[28] There was damage to the main road that had to be repaired after all of the gravel trucks brought the fill.

*Pat McKenna Submissions*

[29] There is a concern of how big the residence will be and that it will tower over the tree line in the area and would effect the views of all of the neighbours.

*Jenica Copithorne Submissions*

[30] How is soil testing going to be completed after the fact?

[31] There were water issues in 2015; there is concern that this regrading and fill will cause more water issues in the future.

[32] The regrading on the property is 8 feet not 3 feet.

*John Sostar Submissions*

[33] The fill is being compacted using time conditioning, this method allows the soil to pack naturally.

[34] The lands have good natural drainage and a knoll that was perfect for a house, this drove the applicant's desire to purchase the lot.

[35] Gravel was brought in to create a driveway.

[36] Not applying for the permit was not malicious in nature, the applicant was not aware that a permit was needed to grade or bring up the grade of the lands. Once the applicant was made aware that a permit was necessary it was applied for, this process was not done immediately however.

[37] The home being constructed will be a modern post frame structure and will rest on 84 screw piles.

[38] A professional engineer did a site visit and stated that in his opinion the drainage on the lands will not be affected by the grading of the lands that was done.

[39] There have been no drainage issues post grading and there have been 6 seasons passed since the grading was completed.

[40] The roofline of the proposed house is flatter and a more modern style; it is designed so the runoff from the roof will run into the wetlands on site.

*Sophie Magdalek Submissions*

[41] The applicant's have chosen very reputable people to work with on this project. Additionally, they have worked a long time to ensure that everything was completed correctly.

[42] The lights that have been delivered to the site are not being installed.



[43] The vehicles being stored on the lands are classic cars and will be relocated to the garage once it is built.

*Appellant's Rebuttal*

[44] This is more about the volume and the height of the fill.

[45] Unsure how a builder was unsure that a permit was needed to grade and fill the lands.

*Development Authority's Closing Comments*

[46] Permit can be modified to include seeding be done by May of 2020.

*Appellant's Closing Comments*

[47] None.

**FINDINGS & REASONS FOR DECISION**

[48] 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.

[49] 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*.

[50] 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.

[51] The Board acknowledges that the Applicant provided a detailed plan and reasoning regarding the grading and fill placement and the permit intends to bring the property into compliance.

[52] The Board is satisfied that the Prior to Issuance condition number 3 satisfies the concerns regarding fill levels and the quality of the fill on the lands.

[53] The Board acknowledges that Rocky View Engineering confirmed that drainage from the stripping and grading would not negatively effect the surrounding properties.

[54] 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**

[55] 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.



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Don Kochan, Chair  
Subdivision and Development Appeal Board

**EXHIBIT LIST**

DOCUMENTS PRESENTED AT THE HEARING AND CONSIDERED BY THE BOARD

<b>NO.</b>	<b>ITEM</b>
1.	Development Authority's Report to the Board (19 pages)
2.	Photos submitted by the Appellant (18 photos)
3.	Letter submitted by Appellant from Duane Maluga (1 page)
4.	Appellant Closing Remarks (2 pages)
5.	Drawings submitted by Applicant (2 pages)
6.	Photos submitted by Applicant (18 photos)