

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

Board Order No.: 2019-SDAB-055

File No.: 05715001; PRDP20191527

Appeal by: Rogers Communications Inc. c/o LandSolutions LP

Appeal Against: Development Authority of Rocky View County

Hearing Date: 2019 October 30

Decision Date: 2019 November 13

Board Members: D. Kochan, Chair  
K. Hanson  
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 October 1, 2019. In this decision the Development Authority refused a development permit for a Commercial Communications Facility, Type C at 251147 Range Road 32 (the Lands).

[2] Upon notice being given, this appeal was heard on October 30, 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 not be issued.

## BACKGROUND

[4] On May 14, 2019, Rogers Communications Canada Inc. c/o LandSolutions LP (the Applicant) submitted a development permit application for a 45m lattice-style self-support telecommunications facility (Commercial Communications Facility Type C).

[5] The Lands are located at SE-15-25-03-W5M, located immediately north of Township Road 251A and 0.81 kilometres (1/2 mile) east of Range Road 33. The Lands are approximately 74.65 hectares (184.47 acres) in area and are owned by Elmar Augart.

[6] The Lands' land use designation is Ranch and Farm, which is regulated in section 43 of the Rocky View County, *Land Use Bylaw C-4841-97* [the *Land Use Bylaw*].

[7] On October 1, 2019, the Development Authority refused to grant a development permit on the following grounds:

- (1) The proposed Commercial Communications Facility, Type C exceeds the minimum setback from an existing dwelling requirement as defined in Section 3(c) of Procedure 308 – Guidelines to Evaluate Commercial Communications Facilities.

**Discretionary: 500.00 m (1,640.42 ft.); Proposed: -150.00 m. (492.13 ft.)**

- (2) The proposed Commercial Communications Facility, Type C exceeds the minimum setback from an existing Commercial Communications Facility requirement as defined in Section 3(c) of Procedure 308 - Guidelines to Evaluate Commercial Communications Facilities.

**Discretionary: 2,000.00 m (6,561.68 ft.); Proposed: -1,000.00 m (3,280.84 ft.)**

[8] On October 10, 2019, the Appellant appealed the Development Authority's decision. The Notice of Hearing was circulated to 171 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) Lisa Mrozek, Municipal Planner, for the Development Authority;
- (2) Sean MacLean, Planning and Development Supervisor, for the Development Authority;
- (3) Brendan Smith, LandSolutions LP for Rogers Communications, the Appellant;
- (4) Charles Gusa, in opposition of the appeal;
- (5) Val Finch, in opposition of the appeal;

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

[11] The Board received three letters in opposition to the appeal from:

- (1) Taylor Assen
- (2) Joan Gusa
- (3) Shaun Marty

*Development Authority's Submissions*

[12] The proposed tower location is on the southwest corner of the parcel, with access off Township 251A, a gravel road.

[13] There is an Alta Link transmission line located to the north of the proposed tower location.

[14] The Federal Ministry is the approving authority for the development and operation of radio communication in Canada, however, Industry Canada requires in certain cases the local approving authority and the public must be consulted for input regarding proposed telecommunication antenna structures.

[15] The County assesses telecommunication facilities using Policy and Procedure 308.

[16] There is an existing dwelling 150 metres away from the proposed site; as well, the dwellings across Township Road 251A are only 200 metres away.

[17] Under Policy 308 it states that these facilities should be located at least 2000 metres from one another; however, there is an existing Telus tower 1000 metres away from the proposed site.

[18] The application was refused based on the proximity to the dwellings and due to the fact that it will cause undue impact to the adjacent properties.

[19] Leases are in place between the communications company and the land owners to maintain the towers. These lease agreements are not provided to the County.

[20] If this application is denied at the municipal level, the federal body can still potentially approve the tower.

[21] Securities are not a requirement for these types of applications and permits.

[22] The setback requirements for the installation of a telecommunications tower are different from that of proposed houses located in close proximity to an existing tower.

*Appellant's Submissions*

[23] Rocky View County guidelines are more stringent than the current federal guidelines for these types of developments.

[24] The proposed tower height of 45 metres is to allow the signal to reach other towers in the surrounding area. The height will also allow for potential co-location of other carriers' equipment on the tower, below 33 feet.

[25] The lattice style design of the tower allows for a less obstructive tower as you can see through the individual lattice elements.

[26] Aeronautical lighting is required on the tower by Transport Canada for the safety of the aircraft in the area. Transport Canada requires lighting or painting at the top of the tower as well as potentially mid-way for the planes. Red flashing lights will be visible during the day and at night; however, the lighting is minimal in terms of views from the ground due to shielding. There has been no response received by LandSolutions from the Springbank Airport, these responses would be provided directly to the County.

[27] The existing TELUS tower is too short and does not have space at heights that would meet Roger's network requirements (<9m).

[28] Mounting the antennas on the Alta Link transmission lines is unsafe and requires the power line to be de-energized prior to upgrading or performing maintenance on the equipment.

[29] The Canadian Radio-television and Telecommunications Commission considers it a basic right of Canadians to have access to high-speed wireless internet.

[30] All radio communication sites in Canada must comply with Health Canada's Safety Code 6 limits for radiofrequency energy.

[31] Rogers performs radio frequency energy analyses of its equipment and reports to ISED to ensure Safety Code 6 compliance throughout the lifetime of the telecommunications facility.

[32] In choosing the location for the tower, views of the adjacent landowners were considered.

[33] There is federal direction and policy that mandates the increase of competition between carriers, thereby needing more tower locations to provide service.

[34] The lease agreements include a clause that Rogers take down the facility and return the site to the condition it was prior to the installation of the tower. These agreements generally span over a 20-year period, and the lifespan of a tower is generally 20-40 years.

[35] If non-concurrence is issued Rogers and LandSolutions will need to go back to the drawing board and an alternative location for the tower will need to be found.

[36] In general, the Federal Government does not approve a facility if non-concurrence is issued from the municipality.

*Charles Gusa Submissions*

- [37] House is 400 feet from the tower and 100 feet from the east boundary of their lands.
- [38] The Telus tower is 100 feet to the north of their property, and seven cell towers can be seen from their yard.
- [39] The proposed 150-foot lattice style tower is ugly and reminiscent of a soviet style radio tower.
- [40] This is a circuit area for the planes from the Springbank airport he is unsure on why this is proposed for this site due to this. In fact, a helicopter crashed at the exact site of the proposed tower four years ago.
- [41] More towers are not needed at this point.
- [42] Felt as if the adjacent landowners were kept out of the loop with regards to this application, from both the County and Rogers.

*Val Finch Submissions*

- [43] Their lands are a half a mile east of the proposed tower.
- [44] This tower will just enhance the negative visual impact of all of the towers that are in the area.
- [45] Does not feel there is an issue with cell phone coverage in the area.

*Appellant's Rebuttal*

- [46] The proposed tower is needed for both new and existing customers.
- [47] Industry Canada does not look at need when looking at approving where a tower should or can be located.
- [48] It is beneficial to get the tower in and built prior to the area being built out, thereby increasing the need for services.
- [49] No tower or development will be perfect or liked by everyone.

*Development Authority's Closing Comments*

- [50] Health Canada notes that there is a possibility between the linkage of RF waves and cancer but it is believed that addition research is required.

*Appellant's Closing Comments*

- [51] The research done on the linkage between RF waves and cancer is inconclusive.

## FINDINGS & REASONS FOR DECISION

[52] 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*.

[53] 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.

[54] The Board acknowledges that there is opposition from the surrounding neighbours'. Additionally, the Board notes that there were letters of opposition received by LandSolutions when the original circulation was completed by LandSolutions.

[55] The Board notes that the location of the proposed tower is in contravention of Rocky View County's Policy and Procedure 308 with respect to the setback distance requirement from a residential dwelling. As well, the Board notes that the setback distance requirement from another structure of similar use has not been met.

[56] The Board finds that the proposed development, in accordance with applicable sections of the *Land Use Bylaw, Policy C-308 and Procedure 308 – Guidelines to Evaluate Commercial Communications Facilities*, and section 687 of the *Municipal Government Act*, does not comply with the land use policies of the current *Land Use Bylaw* and, 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

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

Dated at Rocky View County, in the Province of Alberta on November 13, 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 (75 pages)
2.	Development Authority's Presentation to the Board (9 pages)
3.	Development Authority's Proximity Map (1 page)
4.	Appellant Presentation to the Board (13 pages)
5.	Townsend Report on the National Antenna Tower Policy Review (250 pages)