

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

Board Order No.: 2020-SDAB-006

File No.: 05326001; PRDP20200042

Appeal by: Rod Potrie of Planning Protocol 3 Inc.

Appeal Against: Development Authority of Rocky View County

Hearing Date: 2020 May 13

Decision Date: 2020 May 28

Board Members: Daniel Henn, Chair
Tricia Fehr
Hazel George
Morrie M. Goetjen
Wendy 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 March 10, 2020. In this decision, the Development Authority refused a development permit application for single lot regrading and placement of clean fill, for agricultural purposes at 281104 Township Road 254 (SE-26-25-28-W4M) (the Lands).

[2] Upon notice being given, this appeal was heard electronically on May 13, 2020 in accordance with the Meeting Procedures (COVID-19 Suppression) Regulation, Alberta Regulation 50/2020.

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 January 10, 2020, Rodney Potrie of Planning Protocol 3 Inc.(the Appellant) submitted a development permit application on behalf of Heidy Baisi (the Owner) for single lot regrading and placement of clean fill, for agricultural purposes, on the Lands.

[5] The Lands are located at 281104 Township Road 254 (SE-26-25-28-W4M) and are 67.3 hectares (158.83 acres) in size.

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

[7] On March 10, 2020, the Development Authority refused a development permit application for single lot regrading and placement of clean fill, for agricultural purposes. Under section 686 of the *Municipal Government Act*, RSA 2000, c M-26 (the Act), the original appeal deadline of the Development Authority's decision was March 31, 2020.

[8] On March 31, 2020, the Minister of Municipal Affairs issued Ministerial Order 22/20 which extended the appeal deadline under section 686 of the Act to October 1, 2020. This was in response to the COVID-19 pandemic.

[9] On April 17, 2020, the Minister of Municipal Affairs issued Ministerial Order 36/22 rescinding Ministerial Order 22/20 and restoring the appeal deadline under section 686 of the Act to 21 days after the decision of a Development Authority on a development permit application.

[10] Ministerial Order 36/22 included a provision extending any appeal period that fell between March 25, 2020 and April 17, 2020 by a further 21 days. Therefore the effective appeal period for the Development Authority decision considered in this Board decision ended on May 8, 2020.

[11] On April 28, 2020, Rod Potrie of Planning Protocol 3 Inc. submitted an appeal of the Development Authority's decision to refuse a development permit application for single lot regrading and placement of clean fill, for agricultural purposes, on the Lands. The notice of hearing was circulated to 13 adjacent landowners in accordance with the Act and Rocky View County Council policy C-327, *Circulation and Notification Standards*.

[12] Members of the general public were given notice on how to participate in the hearing in accordance with Meeting Procedures (COVID-19 Suppression) Regulation, Alberta Regulation 50/2020.

SUMMARY OF EVIDENCE

[13] The Board heard verbal submissions from:

- (1) Sean MacLean, Supervisor Planning and Development, for the Development Authority;
- (2) Jeff Fleischer, Manager Agricultural and Environmental Services, for the Development Authority; and

(3) Rod Potrie of Planning Protocol 3 Inc., the Appellant.

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

[15] Appellant Exhibits 1 - 3 were submitted by the Appellant to the Clerk of the Board before the hearing date. The exhibits were electronically distributed to the Board Members, Development Authority, and Appellant before the hearing for all parties to review. These exhibits were also posted to the Rocky View County website for members of the public watching the hearing's livestream to access.

Development Authority's submissions

[16] The Lands are currently used for agricultural purposes and have a riparian setback along a drainage course, wetland patches, and two oil and gas right of ways.

[17] The fill placement is proposed over 62.40 acres south of intermittent drainage course and 20.30 acres north of drainage course along the north property line, for a total regrading and fill area of approximately 33.47 hectares (82.70 acres) [334,675 sq. m]. Approximately 330,000 cubic metres of fill is proposed with a soil depth of up to 0.75m (2.46 ft.).

[18] The development permit application was assessed and refused by the Municipal Planning Commission on March 10, 2020 for the following reasons:

- i) that in the opinion of the Municipal Planning Commission, the development unduly interferes with the amenities of the neighbourhood and materially interferes with and affects the use, enjoyment, and value of neighbouring parcels of land; and
- ii) that the amount of fill proposed within the application is not required for agricultural purposes.

[19] In the notice of appeal and submitted exhibits, the Appellant is substantially changing their request from the development permit application that was considered by the Municipal Planning Commission.

[20] The Appellant is now requesting 80,000 cubic metres of fill which is considerably less than the original requested amount of approximately 330,000 cubic metres. The Appellant now proposes to gain access to the Lands through an adjacent property which was not a part of the original development permit application.

[21] The Appellant has not provided additional details about plans for stormwater, consent from neighbouring property owner about access, fill depth, grading, number of required truckloads, or duration of hauling.

[22] The Development Authority recommends that the Appellant submit a new development permit application to provide the information required to evaluate the proposed changes. Regardless of this recommendation, the Board has the authority to approve any amount of topsoil it deems appropriate.

[23] The development permit application indicates that the proposed topsoil is for agricultural purposes. A separate development permit application would be required for RV storage on the Lands.

Rod Potrie submissions – the Appellant

[24] The Appellant has reduced the proposed amount of fill as part of the appeal as the original amount may have been excessive. The Appellant is amendable to any amount of approved fill between 80,000 and 330,000 cubic metres.

[25] Only a small portion of the Lands has been cultivated in the past. The intent is to use more of the land for agricultural use. Several of the adjacent properties are owned by family members of the Owner.

[26] The Owner wants to enhance the agricultural component of the Lands and believes the Lands would be improved overall. The proposed fill is required to pasture the Lands, eradicate vermin, and to level the land. The proposal would help drain the Lands properly without impacting the natural drainage course. There would be no impact on adjacent properties or existing setbacks.

[27] 80,000 cubic metres of fill would likely not be enough to meet the purposes of the Owner. The Appellant prefers an amount between 80,000 and 330,000 cubic metres.

[28] The proposed clean fill needs to be disposed of from CrossIron Mills developments in Balzac.

[29] There are no plans to develop RV storage for commercial purposes on the Lands. The RVs currently on the Lands are personal vehicles and belong to family members.

[30] The Appellant prefers to use the existing residential driveway to access the Lands and the neighbouring quarter section is owned by a family member who is amendable to allowing access through their property.

[31] The existing culvert and farm crossing over the drainage course have been functioning for many decades and will be upgraded for any fill on the east side of the drainage course, thereby eliminating any truck traffic on the eastern road.

[32] There is a northeast approach on the Lands that is used by the oil well operator and would not be used as part of the proposed development. The Appellant's preference is to use the existing residential access, which is also preferred by Alberta Transportation.

[33] The original application required up to two years of hauling because hauling can only occur during the frost season when there are no road bans. Less fill would require a shorter hauling period and could likely be done over one frost season.

[34] The Appellant would prefer an approved amount of fill that would allow for approximately 18 inches of fill depth to compliment the land, improve the drainage, and improve agricultural production.

[35] Two thirds of the Lands are not being used and have not been used for pasture for the past 10 years. The Owner is a third generation landowner and recently moved back to the Lands and intends to restore the Lands back to farmland.

[36] The Owner will be receiving minor compensation for taking the fill to cover the costs of moving and placing the fill. The amount of compensation varies on factors like amount of fill, timelines, and conditions of the receiving land. The main incentive of the Owner is to improve the Lands for agricultural purposes.

Development Authority's Final Comments

[37] The Development Authority recommends that the Appellant submit a new development permit application to address many of the unanswered questions triggered by the proposed changes submitted with the appeal.

[38] The original development permit application did not state that hauling would only occur during the winter months and the Board could include this as an approval condition.

[39] If the Board is satisfied with granting access to the Lands through a neighbouring parcel then the Development Authority suggests adding proof of access as a prior to issuance condition.

[40] From soil to reclamation research there is a diminished return on how much additional fill improves the agricultural quality of land. There is a diminished impact on more than six inches of additional soil. 80,000 cubic metres of additional soil on the Lands would result in approximately 9.2 inches of additional depth.

Appellant's Final Comments

[41] The analysis and agrologist reports that are required as part of the development permit process will state that the Lands would benefit from additional clean fill. The Owner feels the additional fill would be improve the agricultural use of the Lands and the professional report that is required as part of the development permit process would confirm that.

[42] The Appellant and Owner would prefer to not have to go through the development permit application process again.

FINDINGS & REASONS FOR DECISION

[43] The Board finds that stripping, filling, excavation, and grading are discretionary uses in all districts in accordance with section 33 of the *Land Use Bylaw*.

[44] 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*.

[45] 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 development, sound planning considerations, the merits of the application, and all applicable legislation, plans, and policies.

[46] The Board finds that the approximately 330,000 cubic metres of fill proposed in the development permit application is beyond what is required for agricultural use and therefore does not fit the purpose and intent of the Ranch and Farm District as outlined in section 43.1 of the *Land Use Bylaw*.

[47] The Board heard the Appellant's request to vary from the original development permit application to consider an approval of any amount of fill between 80,000 and 330,000 cubic metres and to change the point of access to the Lands. The Board is not satisfied that any amount of fill over 80,000 cubic metres is required on the Lands for agricultural purposes and that insufficient evidence was provided for the Board to properly evaluate the Appellant's new proposal.

CONCLUSION

[48] 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 May 28, 2020.



Daniel Henn, 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 (46 pages)
2.	Appellant Exhibit 1 – Letter to the Board (2 pages)
3.	Appellant Exhibit 2 – Fill site plan (1 page)
4.	Appellant Exhibit 3 – Contour site plan (1 page)