

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

Board Order No.: 2020-SDAB-010
File No.: 06712023 PL20190106
Appeal by: Donald Fraser and Garret Fraser
Hearing Date: 2020 June 24
Decision Date: 2020 July 08
Board Members: Daniel Henn, Chair
Tricia Fehr
Ian Galbraith
Hazel George
Morrie M. Goetjen

SUBDIVISION 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 Subdivision Authority issued June 9, 2020. In this decision, the Subdivision Authority approved a subdivision application to create a ± 0.81 hectare (± 2.00 acre) lot with a ± 1.25 hectare (± 3.09 acre) remainder at 30092 Bunny Hollow Drive (Lot 9 Plan 9510097; SE-12-26-03-W05M) (the Lands).

[2] Upon notice being given, this appeal was heard on June 24, 2020 in the Council Chambers of Rocky View County's County Hall, located at 262075 Rocky View Point, Rocky View County, Alberta.

DECISION

[3] The appeal is allowed and the decision of the Subdivision Authority is varied. Subdivision application PL20190106 is approved subject to the following conditions:

A. The application to create a ± 0.81 hectare (± 2.00 acre) lot with a ± 1.25 hectare (± 3.09 acre) remainder within Lot 9, Plan 9510097 within SE-12-26-03-W05M, having been evaluated in terms of Section 654 of the *Municipal Government Act* and section 7 of the Subdivision and Development Regulation, Alberta 43/2002 and having considered adjacent landowner submissions, is approved as per the revised Tentative Plan for the reasons listed below:

1. The application is consistent with statutory policy;

2. The Lands hold the appropriate land use designation; and
 3. The technical aspects of the subdivision proposal have been considered and are further addressed through the conditional approval requirements.
- B. The Owner is required, at their expense, to complete all conditions attached to and forming part of this conditional subdivision approval prior to Rocky View County (the County) authorizing final subdivision endorsement. This requires submitting all documentation required to demonstrate each specific condition has been met, or agreements (and necessary securities) have been provided to ensure the conditions will be met, in accordance with all County policies, standards, and procedures, to the satisfaction of the County, and any other additional party named within a specific condition. Technical reports required to be submitted as part of the conditions must be prepared by a qualified professional, licensed to practice in the Province of Alberta within the appropriate field of practice. The conditions of this subdivision approval do not absolve an Owner from ensuring all permits, licenses, or approvals required by federal, provincial, or other jurisdictions are obtained.
- C. Further, in accordance with sections 654 and 655 of the *Municipal Government Act*, the application shall be approved subject to the following conditions of approval:

Prior to Issuance

- 1) The Owner shall provide a revised Tentative Plan that does not include a 15.0 metre restrictive covenant area, to the satisfaction of the Subdivision Authority.

Survey Plans

- 2) Subdivision is to be effected by a Plan of Survey, pursuant to section 657 of the *Municipal Government Act*, or such other means satisfactory to the Registrar of the South Alberta Land Titles District.

Transportation & Access

- 3) The Owner shall upgrade the existing gravel road approach to a mutual standard as shown on the revised Tentative Plan to provide access to Lots 1 and 2.
- 4) The Owner shall prepare and register an Access Easement Agreement and associated Right of Way Plan for the existing driveway providing access to Lot 1 through Lot 2 as per County Servicing Standards.
- 5) The Owner is to enter into a Road Acquisition Agreement with the County, to be registered by caveat on the title of Lot 2, to serve as notice that those lands are intended for future development as a County road, as per the revised Tentative Plan. The Agreement shall include:
 - a) The provision of road acquisition \pm 138 metres in length and \pm 12.5 metres wide (\pm 0.43 ac) to extend from Bunny Hollow Drive to the boundary of Lot 10, Plan 9510097; and
 - b) That land is to be purchased for \$1 by the County.

Servicing

- 6) The Owner is to provide confirmation of tie-in for connection to Rocky View Water Co-op, an Alberta Environment licensed piped water supplier, for Lot 1, as shown on the revised Tentative Plan. This includes providing information regarding:
 - a) Confirmation from the water supplier that an adequate and continuous piped water supply is available for the proposed Lot 1;
 - b) Documentation proving that water supply has been purchased and secured for proposed Lot 1; and
 - c) Documentation proving that water supply infrastructure requirements, including servicing to the property, have been installed, or installation is secured between the developer and water supplier, to the satisfaction of the water supplier and the County.
- 7) The Owner is to enter into a Site Improvements / Services Agreement with the County for Lot 1 and shall include the following:
 - a) For the construction of a Packaged Sewage Treatment System (PSTS) that meets Bureau de Normalisation du Quebec (BNQ) standards for treatment; and
 - b) In accordance with the Level 3 PSTS Assessment prepared by Osprey Engineering Inc. (May 27, 2019).
- 8) The Owner is to enter into a Deferred Services Agreement with the County to be registered on title for each proposed Lot(s) 1 and 2, indicating:
 - a) Each future lot owner shall connect the proposed lots to a regional or decentralized wastewater and stormwater systems once available.

Payments and Levies

- 9) The Owner shall pay the Regional Transportation Off-Site Levy in accordance with Bylaw C-8007-2020 prior to subdivision endorsement. The County shall calculate the total amount owing from the total gross acreage of Lot 1 as shown on the Plan of Survey.
 - a) Levies owing on Lot 2 are to be deferred at this time.
- 10) The Owner shall pay the County Subdivision Endorsement fee, in accordance with the County's Master Rates Bylaw, for the creation of one new lot.

Taxes

- 11) All taxes owing up to and including the year in which subdivision is to be registered are to be paid to Rocky View County prior to signing the final documents pursuant to section 654(1) of the *Municipal Government Act*.

D. SUBDIVISION AUTHORITY DIRECTION:

- 1) Prior to final endorsement of the subdivision, the Planning Department is directed to present the Owner with a Voluntary Recreation Contribution Form and ask them if they will contribute to the fund in accordance with the contributions prescribed in the Master Rates Bylaw.

BACKGROUND

[4] On July 26, 2019, Donald Fraser (the Appellant) submitted a subdivision application to create a ± 0.81 hectare (± 2.00 acre) lot with a ± 1.25 hectare (± 3.09 acre) remainder on the Lands.

[5] The Lands are ± 2.06 hectares (± 5.09 acres) in size and owned by Donald and Joanne Fraser.

[6] The Lands' land use designation is Residential One District and is regulated in section 48 of the Rocky View County Land Use Bylaw C-4841-97 (the Land Use Bylaw).

[7] On June 9, 2020, the Subdivision Authority approved a subdivision application to create a ± 0.81 hectare (± 2.00 acre) lot with a ± 1.25 hectare (± 3.09 acre) remainder on the Lands.

[8] On June 12, 2020, Donald Fraser and Garret Fraser submitted an appeal of the Subdivision Authority's conditions of approval for a subdivision application to create a ± 0.81 hectare (± 2.00 acre) lot with a ± 1.25 hectare (± 3.09 acre) remainder on the Lands. The notice of hearing was circulated to 143 adjacent landowners in accordance with the Act 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, Senior Planner for the Subdivision Authority;
- (2) Noor Mirza, Municipal Engineer for the Subdivision Authority; and
- (3) Donald Fraser, the Appellant.

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

Subdivision Authority's submissions

[11] The Lands are subject to the Bearspaw Area Structure Plan (BASP) which generally supports infill development.

[12] It was determined that a conceptual scheme would not provide any additional information or benefit for the proposed subdivision on the Lands.

[13] The proposed subdivision was evaluated against the terms outlined in section 654 of the *Municipal Government Act*, section 7 of the Subdivision and Development Regulations, and policies within the County Plan and BASP and was determined to be compliant.

[14] The existing home on Lot 2 is serviced by an existing private septic system. The creation of Lot 1 will create lots smaller than 4 acres which County policy requires be serviced

by a decentralized or regional wastewater treatment system. A connection to a decentralized or regional wastewater treatment system is not available in the area and as such a packaged sewage treatment plant is required for Lot 1 in addition to a deferred servicing agreement for a connection to a future decentralized or regional system.

[15] The proposed subdivision includes a panhandle to provide road access to Lot 2 therefore in accordance with section 8.1.19 of the BASP and County Servicing Standards a road acquisition agreement was included as a condition of approval. A road acquisition allows the land to be converted to a road in the future to support further subdivision in the area. The road acquisition also offsets the requirement in the BASP to provide a conceptual scheme for the area.

[16] It is standard practice to register a restrictive covenant along the land taken in the road acquisition. This limits the development of structures and infrastructure within 15 metres of the possible future roadway to prevent setback conflicts if the road is developed.

[17] The restrictive covenant land is not dedicated to the County but remains on title to restrict development. The restrictive covenant prevents a septic field from being built but the Board could vary the restrictive covenant condition to allow for a septic field to be placed within the land. The main concern is to prevent buildings from being built within the restrictive covenant.

[18] The submitted Private Sewage Treatment Systems (PSTS) report indicates that the Lands are suitable for a septic field but does not designate a specific spot. The PSTS assessment requires that the Lands have a suitable location for a well and at least two suitable locations for a septic field.

[19] As a condition of subdivision, the Appellant is required to provide payment of the Transportation Off-Site Levy (TOL) at the time of subdivision approval for the total gross acreage of the both proposed lots. The Board has the authority to vary the TOL condition.

[20] The area to the east of the Lands is designated Residential Two and the immediately adjacent parcels are \pm 4.0 acres in size. The BASP allows for room to have \pm 2.0 acre parcels but they would require the creation of a concept plan.

Donald Fraser submissions – the Appellant

[21] Donald Fraser is appealing proposed condition 5, in regards to the restrictive covenant, and proposed condition 9 which requires that the TOL be paid on the total gross acreage of the Lands.

[22] Donald Fraser has no objection to the proposed road allowance but it was not known at the time the Lands were redesignated that a 15.0 metre restrictive covenant would be taken in addition to the 25.0 metre road allowance.

[23] The restrictive covenant land was resurveyed by a professional surveyor to show the Board just how much land is affected, approximately 0.55 acres. This restriction significantly reduces the amount of remaining space to build a house and septic system.

[24] Donald Fraser believes the restrictive covenant should not be applied to Lots 1 and 2 and that it should be addressed in the future when further subdivision is anticipated.

[25] The restrictive covenant reduces the functional lot size to less than 2.0 acres and the restrictive covenant is on the best area for building the septic field. The soil used for the PSTS report was taken from within the restrictive covenant area.

[26] No concept plan was prepared because the proposed subdivision only creates one new lot.

[27] Donald Fraser requests that payment of the TOL on Lot 2 be deferred until future subdivision. The fact that there needs to be a road allowance implies that there will be future subdivisions in the area and the TOL should therefore be deferred.

[28] There is precedent for deferral as outlined in section 6 D of Transportation Offsite Bylaw C-7356-2014 which states that “any lands or portions thereof where Council had determined in its sole and unfettered discretion, this [sic] it is appropriate in the circumstances to not impose the levy upon such portion of the Lands as a result of the development contemplated in the applicable development permit or subdivision approval.”

[29] There is precedence in the area for deferring the TOL on subdivisions, for example a subdivision that was approved by the Subdivision Authority on April 28, 2020.

[30] The Subdivision Authority’s suggestion that the Board can vary the restrictive covenant condition to allow for a septic field brings in doubt whether the restrictive covenant is needed at all.

[31] There are a lot of trees on the Lands which reduces the places a septic field can be placed and the restrictive covenant land is ideally suited for a septic field.

[32] Donald Fraser feels he had a fair opportunity to present his evidence to the Board.

FINDINGS & REASONS FOR DECISION

[33] The Board finds it has the authority to make a decision on this matter pursuant to section 680(2)(e) of the *Municipal Government Act*.

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

[35] The Board finds that the subdivision application meets the regulations of the Residential One District, as outlined in section 48 of the Land Use Bylaw, and other statutory policy, including the Subdivision and Development Regulation, Alberta 43/2002, County Plan, and the Bearspaw Area Structure Plan.

[36] The Board is satisfied that the technical aspects of the subdivision proposal have been considered and are further addressed through the conditional approval requirements.

[37] The Board is satisfied that the proposed subdivision only creates one new residential lot (Lot 1) and its impact on the area does not warrant a restrictive covenant. The Board is satisfied that taking a road allowance through a road acquisition agreement covers the impact of the proposed subdivision.

[38] The Board is satisfied that the proposed subdivision only creates one new residential lot (Lot 1) and therefore the Transportation Off-Site Levy should only be paid on Lot 1 as it is the only lot that will have new impact on the area's transportation infrastructure. Existing Lot 2 will not create any new impact and as such the Transportation Off-Site Levy shall be deferred. As the Subdivision Authority, the Board has sole and unfettered discretion to defer a Transportation Off-Site Levy under section 12 of Regional Transportation Off-Site Bylaw C-8007-2020.

[39] The Board acknowledges that Rocky View County's new Regional Transportation Off-Site Bylaw C-8007-2020 came into effect on June 9, 2020 after the County's Municipal Planning Commission (the original Subdivision Authority) issued its decision on subdivision application PL20190106 and that the Municipal Planning Commission's conditions of approval were based on Transportation Off-Site Levy Bylaw C-7356-2014. The Board is obligated to issue conditions based on the bylaw that is in effect at the time of the Board's decision and as such approved condition 9 is based on Regional Transportation Off-Site Bylaw C-8007-2020.

CONCLUSION

[40] For the reasons set out above, the appeal is allowed and the decision of the Subdivision Authority is varied. Subdivision application PL201900106 is approved subject to the conditions outlined in this decision.

Dated at Rocky View County, in the Province of Alberta on July 08, 2020.



Daniel Henn, Chair
Subdivision and Development Appeal Board

EXHIBIT LIST

Documents presented at the hearing and considered by the Board

NO.	ITEM
1.	Subdivision Authority's Report to the Board (37 pages)
2.	PowerPoint handout submitted by Appellant (9 pages)
3.	PowerPoint electronic presentation submitted by Appellant (10 pages)