

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

Board Order No.: 2020-SDAB-015

File No.: 05715001 PRDP20201862

Appeal by: Alison and Oscar Smoole

Hearing Dates: 2020 November 18

Decision Date: 2020 December 03

Board Members: Wendy Metzger, Interim Vice-Chair
Tricia Fehr
Ian Galbraith
Hazel George
Morrie M. Goetjen

DEVELOPMENT APPEAL DECISION

INTRODUCTION

[1] This is an affected party 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 25, 2020. In this decision, the Development Authority approved a development permit application for a commercial communications facility, type c, and associated equipment at 32124 Township Road 251A (SE-15-25-03-W05M) (the Lands).

[2] Upon notice being given, this appeal was heard on November 18, 2020 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 allowed and the decision of the Development Authority is overturned. A development permit shall not be issued.

BACKGROUND

[4] On July 8, 2020, LandSolutions LP (the Applicant) submitted a development permit application on behalf of Rogers Communications Canada Inc. for a commercial communications facility, type c, (the proposed tower) on the Lands.

[5] The Lands are 74.66 hectares (184.47 acres) in size and owned by Elmar Augart (the Owner).

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

[7] On September 25, 2020 the Development Authority approved a development permit application for the proposed tower on the Lands.

[8] On October 20, 2020, Alison and Oscar Smoole (the Appellants) submitted an affected party appeal of the Development Authority's decision to approve the proposed tower on the Lands. The Development Authority, Appellants, Applicant, and adjacent landowners were notified of the hearing in accordance with the *Municipal Government Act*, RSA 2000, c M-26 (MGA) and Rocky View County Council policy C-327, *Circulation and Notification Standards*.

[9] The morning of November 18, 2020, the Applicant notified the Board's clerk via email that the Applicant would not be attending the hearing. Before hearing the merits of the appeal, the Board discussed the preliminary matter of adjourning the hearing due to the Applicant's absence. The Development Authority did not object to a potential adjournment. The Board heard strong objections to a potential adjournment from the Appellant and three other parties attending the hearing in support of the appeal. The Board determined it would move forward with the hearing as scheduled because

- (1) the Applicant did not request an adjournment in their correspondence; and
- (2) the Board was satisfied that the Applicant had been given proper notice of the time, date, and location of the hearing. A notice of hearing was issued to the Applicant on October 30, 2020 which exceeds the notification requirements outlined in section 686(3) of the *Municipal Government Act*.

SUMMARY OF EVIDENCE

[10] The Board heard verbal submissions from:

- (1) Andrea Bryden, Senior Planner, for the Development Authority;
- (2) Sean MacLean, Supervisor Planning and Development, for the Development Authority;
- (3) Oscar and Alison Smoole, the Appellants;
- (4) Charles and Joan Gusa, in support of the appeal;
- (5) Shaun Marty, in support of the appeal;
- (6) Mike Augart, in support of the appeal;
- (7) Vivien Augart, in support of the appeal; and
- (8) Jasvir Grewal, in support of the appeal.

[11] The documents submitted as exhibits and considered by the Board are listed in the exhibit list at the end of this decision.

Development Authority's submissions

[12] The development permit application for the proposed tower was assessed in accordance with *Land Use Bylaw C-4841-97* as the application was received before *Land Use Bylaw C-8000-2020* came into effect on September 8, 2020. There is little difference between the two land use bylaws in regards to regulations for this type of development.

[13] The Lands are surrounded by agricultural and residential parcels.

[14] The proposed tower will be located in the southwest corner of the Lands with access off Township Road 251A. An AltaLink transmission line is located to the north of the proposed tower location.

[15] The proposed tower is a 45.00 metre lattice-style, self-support tower with projecting antennas, a 1.60 metre by 2.40 metre walk-in cabinet, and chain-link fence surrounding a 400.00 square metre tower compound.

[16] The federal government is the final approving authority for the proposed tower and requires that the local authority and public be consulted on the proposed tower.

[17] If the Board approves the proposed tower, the County will issue a statement of concurrence to the federal government. If the Board refuses the proposed tower, the County will issue a statement of non-concurrence to the federal government. Ultimately, the County cannot prevent an applicant from gaining permission from the federal government to place the proposed tower.

[18] Administration's original report to the Municipal Planning Commission recommended refusal of the proposed tower, citing concerns about the proposed tower's proximity to existing dwellings. The Municipal Planning Commission ultimately approved the proposed tower.

[19] Setback requirements for a commercial communications facility, type c, are set in a County administrative policy and are not formally listed in the *Land Use Bylaw*. This is why no relaxations were required when the Municipal Planning Commission approved the proposed tower.

[20] Approximately half of the residential subdivision to the south of the Lands falls within the 500 metre setback from existing dwellings established in administrative policy.

Oscar Smoole submissions – the Appellant

[21] The Smooles live on the quarter section directly north of the quarter section where the proposed tower is planned to be located.

[22] The Smooles were not consulted on this application despite federal requirements. The Smooles were not aware of the proposed tower until after it was approved.

[23] Rogers indicated that they had notified neighbours on the previous application for the proposed tower and therefore they did not need to notify neighbours again for this application.

[24] The federal government does not want to get involved and it is not true that the federal government will automatically overturn the County's decision so it is really up to the community.

[25] The previous development permit for the proposed tower was refused by this Board and those reasons for refusal have not changed. The development permit application is the same.

[26] The proposed tower will be much bigger than the AltaLink transmission towers and will impact people up to two miles away.

[27] The location of the proposed tower is only 0.80 kilometres away from the nearest existing tower.

[28] The number of impacted houses has quadrupled since the last application.

[29] The pictures in the development permit application do not accurately reflect the impact on the adjacent neighbours. Most of the houses are to the south and southeast of the proposed site while the pictures only show to the north and northwest.

[30] Administration has refused this application before and the current application is not materially different.

[31] Elmar Auguart the landowner has died and it is not fair for the Applicant to make the case on behalf of a deceased person.

[32] The Smooles canvassed door to door and most people were opposed to the proposed tower.

[33] The people closest to the proposed tower were not notified.

[34] There are four towers existing in the Springbank area, one already within one kilometre of the proposed tower.

[35] Mr. Smoole is a Rogers customer and has no concerns with coverage in the area. The County has no records of complaints of lack of coverage in the area, there is no need for this tower.

[36] Mr. Smoole is concerned the proposed tower will require lights because of the nearby airport and the lights will impact the area's dark sky.

[37] There are health concerns with high frequency cell towers and sadly the evidence has not fallen to either side. The evidence does not prove the towers are bad but it also does not prove that the towers are not bad.

[38] He feels he had fair opportunity to provide his evidence to the Board.

Alison Smoole submissions – the Appellant

[39] Ms. Smoole has serious health concerns and there are no determining studies that say there are or are not long term effects from towers.

[40] The Smooles already have a cell tower “in their backyard” that is a health concern and has already increased the coverage in the area.

Charles Gusa submissions –in support of the appeal

[41] Mr. Gusa lives on the quarter section directly west of where the proposed tower is planned to be located. Mr. Gusa has lived there for 50 years and proposed tower’s location is within 150 metres of his family’s house and 17 metres from the Gusa property line.

[42] The proposed tower is equivalent to a 15 story building and is three times the height of the existing transmission tower.

[43] The planes training in the area are only about 300-400 feet off the ground so lighting will be placed on top of the proposed tower and Navigation Canada will not consult with anyone about it.

[44] A 15 storey structure in a rural area that is 150 metres from the Gusa house is not appropriate.

Shaun Marty submissions – in support of the appeal

[45] Mr. Marty lives in the Livingstone residential subdivision and has concerns that not everyone in the pink circulation zone received notice of the development’s approval.

[46] The pictures provided in the development permit application do not adequately show the houses impacted by the proposed tower’s location. The application is misleading and makes it look like the proposed tower is going into a place where there are no existing houses.

[47] There were eight houses at the time of application in the Aventerra residential subdivision but there are about 20 now.

[48] Mr. Marty knocked on the all doors in Aventerra and only three did not oppose the tower and that is because they were not home.

[49] Mr. Marty’s father has been a realtor for 40 years and there was a study done that showed 79% of people would not even consider buying a home near a tower or antenna.

[50] Mr. Marty is a doctor but does not have enough information about the health impacts of the proposed tower but is concerned that there are no definitive findings.

[51] Mr. Marty has spoken with the Applicant before and the three towers in the area have line of sight to each other and the area is relatively flat. Based on Mr. Marty’s telecommunications experience from 20 years ago Mr. Marty is not convinced a new tower is needed.

[52] The Applicant has gone the lowest hanging fruit route and picked the lattice design because it is the cheapest.

[53] Mr. Marty is not opposed to development, he just sees no use for this particular development.

[54] The Applicant's picture shows a shelter of poplar trees that block the proposed tower's location. When Mr. Marty visited the Lands on November 18, 2020, the leaves from the trees were gone and there was direct line of sight to the proposed tower's location.

[55] Mr. Marty's submitted pictures were taken on November 18, 2020 and show the view to the east where there are clearly dwellings. The first picture shows at least five houses.

[56] The view to the south shows an additional five houses.

[57] The west view in the application does not show the dwelling that is close enough to be impacted.

[58] There is no need for another tower when another tower is only 0.80 kilometres away.

Mike Augart submissions – in support of the appeal

[59] Mr. Augart is the executor of Elmar Augart's estate and all of the beneficiaries are against the proposed tower.

[60] Probate on the estate is complete but the property is still in Elmar Augart's name.

[61] Mr. Augart did not give the Applicant permission to access the Lands for Fortis two months after Elmar Augart's death. Mr. Augart has not had any communication with the Applicant for a year.

Vivien Augart submissions – in support of the appeal

[62] Ms. Augart is the co-land trustee of her father's estate and the land has been put in trust for Elmar Augart's widow. There has been no need to disperse any assets yet which is why the property title has not yet changed but the process with Land Titles has started.

[63] The will is probated and Elmar Augart's widow lives on the property and is directly impacted by the proposed tower.

[64] There has been lack of communication on behalf of the Applicant. Ms. Augart had a conversation a year ago with someone from Rogers and was under the impression the proposed tower was not going forward.

[65] There is negative impact on the adjacent owners and the Lands will likely be sold and used for more residential development. The proposed tower will negatively impact that development.

[66] There are no trees on the Lands that will cause any relief. The trees in the pictures are on the neighbour's land.

[67] Ms. Augart is the realtor for the Lands and knows that concern about the health impacts of towers is increasing. Whether there is real impact or not, the perception of negative effects is enough to negatively impact the value and enjoyment of a property.

Joan Gusa submissions – in support of the appeal

[68] Ms. Gusa lives with Charles Gusa directly west of the proposed tower's location.

[69] The existing Telus tower is less than a kilometre away from the Gusa house.

[70] The Owner had an application years ago on the north portion of the Lands and it was refused but somehow it was approved to the west of the Lands and that is one of the existing Telus towers.

[71] It is concerning that the Gusas were not given proper notification of the development and last year's application.

[72] The proposed tower is not appropriate for the residential area and there is evidence that indicates towers are not safe.

[73] The tower is not appealing.

[74] Ms. Gusa talked with someone from the federal government who said that Rocky View County decides the location of the tower.

[75] There is some ambiguity as to where the proposed tower will be on the Lands. Someone at the County said it was going to be more to the north of the Lands but it is back to being at the southwest portion of the Lands which is very close to the Gusa property.

Jasvir Grewal – in support of the appeal

[76] Ms. Grewal is a new landowner within the Aventerra residential subdivision and her property is within 500 metres of the proposed tower.

[77] Ms. Grewal will be applying for her building permit in April 2021 and would not have bought the lot if she had known about the proposed tower.

[78] Aventerra is mostly sold and ready for development, there are approximately 50 properties.

[79] Ms. Grewal bought her property to have the views she has always wanted and the proposed tower will negatively impact the enjoyment and value of her property and future house.

[80] There are health concerns that come with towers.

FINDINGS & REASONS FOR DECISION

[81] Section 10 of *Land Use Bylaw C-8000-2020* states that

All development permit applications received in a complete form prior to the effective date of this bylaw shall be processed based on 'Land Use Bylaw C-4841-97', unless the Applicant requests in writing that the application be processed based on the regulations of this bylaw.

The Board finds that

- a. the development permit application for the proposed tower was completed on July 8, 2020;
- b. *Land Use Bylaw C-8000-2020* came into effect on September 8, 2020; and
- c. the Applicant did not provide a written request to the Development Authority to have the development permit application assessed under *Land Use Bylaw C-8000-2020*.

The Board is satisfied that under section 10 of *Land Use Bylaw C-8000-2020* that *Land Use Bylaw C-4841-97* is the correct land use bylaw by which to assess the development permit application for the proposed tower.

[82] Having been satisfied that section 10 of *Land Use Bylaw C-8000-2020* is met, the Board meets its duty to determine an appeal based on the land use bylaw in effect as required in section 687(3)(a.3) of the *Municipal Government Act*.

[83] The Board finds that a proposed commercial communications facility, type c, is a discretionary use in the Ranch and Farm District (RF) in accordance with section 43 of *Land Use Bylaw C-4841-97*.

[84] 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*.

[85] 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.

[86] The Board finds that the commercial communications tower, type c, use is not compatible with the residential parcels that are immediately adjacent to the Lands.

[87] The Board acknowledges the community's opposition to the proposed tower and finds that the proposed tower's close proximity to residential dwellings and another tower of similar use 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

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

Dated at Rocky View County, in the Province of Alberta on December 3, 2020.



Wendy Metzger

Interim Vice-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 – November 18, 2020 (71 pages) |
| 2. | Development Authority's PowerPoint presentation (4 pages) |
| 3. | Bridgewater letter to the Board in support of the appeal (1 page) |
| 4. | Brown and Kritzler letter to the Board in support of the appeal (1 page) |
| 5. | Cattani letter to the Board in support of the appeal (1 page) |
| 6. | Elliot-Cattani letter to the Board in support of the appeal (1 page) |
| 7. | Schlosser letter to the Board in support of the appeal (1 page) |
| 8. | Grewal letter to the Board in support of the appeal (2 pages) |
| 9. | Pictures submitted by S. Marty in support of the appeal (3 pages) |