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**SUBDIVISION AND DEVELOPMENT APPEAL BOARD****DECISION**

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Hearing held at: Mountain View County Office  
Council Chambers

Date of Hearing: November 30, 2017

Members Present: Alana Gibson – Chair  
Gil Hegel  
Mark Olson  
Jason Shantz  
Greg Harris

Basis of Appeal: This is an appeal to a development permit approved by the Administrative Subdivision and Development Approving Authority (ASDAA) on October 24, 2017. The Appellant has cited the following as the Reason for Appeal:

- The proposed building will obstruct landing and take off of the airplanes; if there is a problem with the take off or landing this can put the plane and people at risk. Generally, planes carry a full load of fuel and there is high risk of a large fire.
- Fortis was so concerned they buried all the powerlines for liability reasons
- Minty field is federally registered airport (CDM2)
- This development will put people at a high-risk for death and can result in an impact to nearby homes and people.

Appealed By: Colin Minty

**Description of Application:**

On November 30, 2017, the Subdivision and Development Appeal Board heard an appeal by Colin Minty in regard to the approval of a development permit by the Administrative Subdivision & Development Approving Authority for a Dwelling, Move In & Accessory Building, Detached Garage for the NE 16-31-3 W5M Plan 1110629 Block 1 Lot 3. The Administrative Subdivision & Development Approving Authority approved the development application on October 24, 2017.

**Findings of Fact:**

1. The subject 2.01 acre-property is designated Country Residential (1).
2. The designation of Country Residential (1) District parcels is to accommodate clustering of residential uses on smaller parcels.
3. The subject lands are North West of a registered aerodrome (Minty Field). The aerodrome is not a certified aerodrome.

4. As per Section 12.2 Country Residential (1) District, of the Land Use Bylaw 15/15, a Dwelling, Move-In/Relocation is a Discretionary Use and an Accessory Building is a Permitted Use.
5. On October 7, 2009, Council approved the redesignation of approximately 6.6 acres from Agricultural District to Country Residential (1) District for the creation of three (3) subdivided lots.
6. The concern with the proximity of the proposed residential lots to an existing registered aerodrome/private airstrip was raised during the redesignation hearing process.
7. Transport Canada was contacted due to the safety concerns raised as part of the redesignation process, and their response included the following:
  - A private airstrip can not interfere with development on adjacent properties. "A private aerodrome has no protection or airport zoning to protect them" through Transport Canada's legislation.
  - "Airstrips can be built anywhere, and they do not take precedence over residential" development.
  - Municipalities are not required to give any consideration to proposed private airstrips that might cause planes to fly over or close to residences.
8. The subdivision was approved on February 03, 2010, with no appeal.
9. The runway 10-28, identified as Exhibit E that is crosswise from the subject lands, was completed and in operation in 2010.
10. A requirement of the Development Agreement is to obtain an Aeronautical Obstruction Clearance Form (AOC) prior to development.
11. In 2013 & 2014, Lots 1 & 2 south of the subject parcel, were issued Development Permits for manufactured dwellings and Transport Canada sent a letter stating the development is not a safety concern and an Aeronautical Clearance Form was not required.
12. On October 24, 2017, the Administrative Subdivision & Development Approving Authority approved the application for a Dwelling, Move-In/Relocation & Accessory Building, Detached Garage (PLDP20170365).
13. The proposed development is within the building envelope as per the Development Agreement registered on the Certificate of Title 111 032 235. The building height is estimated at 26 ft. and 6 inches above ground level as per the Aeronautical Assessment Form for Obstacle Evaluation.
14. The assessment of the proposed Dwelling, Move-in by the Planning & Development Department does not appear to be of poor appearance or condition.
15. The municipality has the authority for the designation of land control of the use of lands located outside of aerodrome property. The only exception is where an airport zoning regulation is made pursuant to the Aeronautics Act. Airport zoning regulations cannot be made for non-certified aerodromes.
16. The onus remains on a pilot, not Transport Canada, to determine whether a non-certified aerodrome is safe and suitable.
17. Registered aerodromes are not subject to ongoing inspections by Transport Canada.
18. The appellant presented Exhibits of aeronautical incidents from various airports in Canada, Exhibits G, H, I, J & K.
19. No evidence was presented from Fortis Alberta regarding the powerlines.

**Procedural Matter:**

The appellant requested an adjournment after presenting the majority of their exhibits, their verbal submission and advised they were accompanied by a pilot that utilizes the Minty Field to provide further evidence. The appellant requested an adjournment due to concerns with time constraints. The

appellant made mention they were looking for a delay in the process; if the SDAB did not grant the adjournment he would seek other means of litigation. There was reference to other cases involving airports, however, they did not make mention of any specific information or resources they were waiting on to further present their case. They did not make any mention of needing to obtain legal counsel for this hearing.

Pursuant to Section 680(3) of the MGA, once an appeal has been filed, the SDAB must open an appeal within 30 days, this is to ensure a timely hearing process. The SDAB deliberated the request with this in mind, the right to a fair hearing and the right to request an adjournment/postponement. The SDAB concluded that there was sufficient time to prepare for the hearing. The appellant did not provide any written submission prior to the hearing, nor did they contact the Municipality with concerns of the timeline. The SDAB also took into consideration the timeline of activities with the redesignation in 2009, the subdivision approval in 2010 and the adjacent lot development in 2013 and 2014.

**Decision:**

In determining this Appeal, the Board:

Considered all of the relevant evidence presented at the Hearing which included the verbal arguments and evidence submission made by the Appellant, and the verbal arguments and written report provided by the Planning and Development Department and Development Permit Applicant.

The decision of the Subdivision and Development Appeal Board is to deny the appeal and uphold the Administrative Subdivision & Development Approving Authority's decision to approve the Development Permit File No. PLDP20170365 application for a Dwelling, Move In & Accessory Building, Detached Garage, with the following conditions as identified in the October 24, 2017 decision.

**STANDARD CONDITIONS:**

1. The provisions of the Land Use Bylaw No. 15 /1 5.
2. Approval by the approving authority does not exclude the need and/or requirements of the Permittee to obtain any and all other permits as may be required by this or any other legislation, bylaws, or regulations.
3. The Development Officer may, by notice in writing, suspend a Development Permit where development has occurred in contravention to the terms and conditions of the permit and/or Land Use Bylaw.

**STANDARD CONDITIONS IF APPLICABLE:**

4. Landowners shall be responsible for dust control on the County road adjacent to their property.
5. N/A
6. An Alberta Land Surveyor is to locate / post the location of the building(s) / structure(s) prior to construction as per the approved sketch. The County shall not be responsible or liable for non-compliance with this condition.
7. N/A
8. N/A
9. N/A
10. No development shall be constructed, placed or stored over an easement or utility right of way; the applicant/landowner is responsible for contacting Alberta-One-Call and/or other governing authority.

## PERMITS ASSOCIATED WITH BUILDING CONSTRUCTION:

11. If the development authorized by a Development Permit is not completed within twenty-four (24) months from the effective date of the permit, such permit approval ceases and the permit itself is deemed void, expired and without effect, unless an extension to this period has been previously granted.
12. Permittees are advised that they are subject to standards of the Safety Codes Act of Alberta and are responsible to meet the requirements of the Act in regards to building, electrical, gas, plumbing, and private sewage disposal systems. Prior to construction required permits must be obtained from Mountain View County. Mountain View County shall not be responsible or liable in any manner whatsoever for any structural failures, defects or deficiencies whether or not the said development has complied with the Safety Codes Act of Alberta.

## ADDITIONAL CONDITION(S):

13. Issuance of this permit is for the dwelling as shown in the photograph submitted with the application and will be verified by the Safety Codes Officer as part of the inspection of the building once moved onto the property.
14. The owner/applicant shall ensure that the move-in dwelling is finished so that the design and construction complements the surrounding area.
15. The Accessory Building (Garage) shall not be used for business, industrial, commercial purposes or residential occupancy.
16. The owner/applicant shall adhere to all the conditions itemized within the Development Agreement registered on Title as Instrument 111 032 234 & 111 032 235.

**Reasons:**

1. The requested Dwelling Move-In/Relocation, while a Discretionary Use, is a compatible residential use for lands zoned Country Residential (1). The proposed development is within the identified building envelope and did not appear to be of poor appearance or condition. No evidence was presented to dissuade the SDAB that the Dwelling Move-In/Relocation was outside of a use listed in the Land Use Bylaw No. 15/15.
2. As per the Aeronautical Assessment Form for Obstacle Evaluation, Transport Canada did not require any marking and lighting for the dwelling as no protection is required. Further, the correspondences received from Transportation Canada gave no indication the dwelling poses any concern.
3. It was deemed by the SDAB that Transport Canada is the authority in the determination of obstacle evaluation and no evidence presented indicated the SDAB should refuse a Dwelling, Move In & Accessory Building, Detached Garage.
4. The Minty Field is a non-certified aerodrome which is not protected by Transport Canada's legislation and does not take precedence over residential use. Further, there are no provisions within the Land Use Bylaw to further justify restrictions due to the proximity of the aerodrome.
5. The various articles presented as exhibits by the appellant did not specifically reference an incident or concerns involving obstructions in line with the airstrip of a non-certified aerodrome. This did not provide any reason for the SDAB to not adhere to the advisement of the letters received from Transport Canada that a private airstrip should take importance over development on adjacent properties.
6. As no evidence was presented to address why the powerlines were buried by Fortis Alberta for liability reasons, the SDAB was not able to make any determinations of validity.

**Evidence:**

The Board considered the following evidence in making its decision:

1. Verbal presentation and exhibit submissions to the Subdivision and Development Appeal Board by the Appellant.
2. Report and verbal presentation to the Subdivision and Development Appeal Board including all attachments and exhibit presented to the Board by the Planning and Development Department and the Applicant.
3. Verbal presentation in support of the appellant.

**Appeals:**

If you wish to appeal this decision, you must follow the procedure prescribed in Section 688 of the Municipal Government Act as follows:

## Section 688(1)

The appeal must be to the Court of Appeal of the Province on a question of law or jurisdiction with respect to a decision of the Subdivision and Development Appeal Board.

## Section 688(2)

An application for leave to appeal pursuant to subsection (1) must be made to a judge of the Court of Appeal within 30 days after the issue of the decision sought to be appealed, and notice of the application must be given to:

- (a) the Subdivision and Development Appeal Board; and
- (b) any other persons that the judge directs.

## Section 688(3)

On hearing the application and the representations of those persons who are, in the opinion of the judge, affected by the application, the judge may grant leave to appeal if the judge is of the opinion that the appeal involves a question of law of sufficient importance to merit a further appeal and has a reasonable chance of success.

**SUBDIVISION AND DEVELOPMENT APPEAL  
BOARD OF MOUNTAIN VIEW COUNTY**

Per: \_\_\_\_\_

Chair



Date Signed: \_\_\_\_\_

