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

DECISION

Hearing held at: Mountain View County Office
Council Chambers

Date of Hearing: July 17, 2018

Members Present: Alana Gibson
Bruce Beattie
Jason Shantz
Laural Pedersen
Mark Olson

Basis of Appeal: This is an appeal from a Development Permit approved for Recreational Resort - 20 Seasonal RV Sites (The **"Proposed Development"**) on NW 32-33-4-5 Plan 0010019 Block 3 (The **"Lands"**) issued by Mountain View County (The **"County"**) on June 7th, 2018. The Appellant stated the following as the Reason for Appeal:

- The Approving Authority failed to properly consider the factors established by **Section 10.14(1), 10.14(2) and 10.14(3)** of the Land Use Bylaw No. 15/15 in the determination of the appropriateness and suitability of the NW 32-33-4-5 Plan 0010019 Block 3 for the proposed campground development or, in the alternative, the Approving Authority misinterpreted the said provision.
- The Approving Authority failed to properly consider the factors established by **Section 10.13(3)** of the Land Use Bylaw No. 15/15 in the determination of the appropriateness and suitability of the NW 32-33-4-5 Plan 0010019 Block 3 for the proposed campground development or, in the alternative, the Approving Authority misinterpreted the said provision.
- The Approving Authority failed to give proper consideration, or any, with regard to its prior decision wherein it limited its discretion in approving a redesignation of NW 32-33-4-5 Plan 0010019 Block 3 from **AGRICULTURAL DISTRICT to RECREATION FACILITY DISTRICT** for the stated purpose to "recognize the existing golf course" and **"to permit the applicants to continue developing the golf course as planned"** (only – emphasis not in the original text) – See County of Mountain View File RD 0878-95. Having previously limited the nature, purpose and extent of contemplated development on the NW 32-33-4-5 Plan 0010019 Block 3, the Approving Authority inappropriately relaxed or varied the provisions of a prior directive under Land Use Bylaw 15/15, or its predecessor bylaw as it then was.

- The Approving Authority failed to properly consider the provisions of the **Eagle Valley Area Structure Plan**, adopted by Bylaw 47/97 on the 12th day of November 1997, including:
 - Section 2.0 – Plan Objectives (b, c and d)
 - Section 3.3 – Environment (3.3.1 and 3.3.4)
 - Section 3.4 – Transportation (3.4.2)
 - Section 3.5 – General Land Use (3.5.3, 3.5.8 and 3.5.9)
 - Section 4.0 – Review and Amendment

Appellant: Douglas McCullough/Frank Greif
Landowner: David Bach, Wayne & Shelly Bach

Description of Appeal

The Development Permit was approved on June 7th, 2018 (the "**Development Permit**") by the Municipal Planning Commission. The Notice of Development Appeal was filed by the Appellant with the Board on June 19th, 2018 (the "**Notice of Appeal**"). The Appellant, Respondent and Landowner all received notification of the date for the hearing on July 4th 2018. (the "**Notification of Hearing**")

On July 17th, 2018, the Subdivision and Development Appeal Board (the "**Board**") opened the appeal hearing for the appeal filed by the Appellant in regard to a Development Permit issued with respect to a Recreational Resort - 20 Seasonal RV Sites (the "**Proposed Development**") on NW 32-33-4 W5M Plan 0010019 Block 3 (the "**Lands**") pursuant to Section 686 of the *Municipal Government Act*, R.S.A. 2000 Chapter M-26, as amended.

Preliminary Matter (First Request for Postponement)

On July 9th, 2018, the Board received a request from the Appellant to postpone the hearing until August 7th, 2018 or August 14th, 2018 to allow for the Appellant to receive access to information through the Freedom of Information and Protection of Privacy (the "**FOIP Request**") process. The Board considered this request as a preliminary matter on July 17th, 2018 and made the decision to **allow** for a postponement until July 24th, 2018 at 9:00 am. The Board clarified that any additional documentation required by any party could be included in a revised agenda package if submitted to the Secretary by July 20th, 2018 at 12:00pm. Further, the Board would accept written submissions to be submitted the day of the Hearing if required, if meeting the July 20th, 2018 deadline would pose challenges.

The Board recessed until July 24th, 2018 at 9:00 am.

Reconvene

Hearing held at: Mountain View County Office
Council Chambers

Date of Hearing: July 24th, 2018

Members Present: Alana Gibson
Bruce Beattie
Laural Pedersen
Mark Olson

Preliminary Matter (Second Request for Postponement)

On July 18th, 2018, the Board received a request from the Appellant to postpone the hearing for an additional 30 days. The reason for the Appellant's request was to allow for the Appellant to develop a factual, accurate and comprehensive presentation to the Board and to allow for submission of a reference annex file for cited documents, plan, technical data and reports contained within the presentation.

The Board considered this request as a preliminary matter on July 24th, 2018, taking into account the following findings of fact:

1. A previous application (the "**First Application**") for the Lands, PLDP20140474, was approved by the Municipal Planning Commission on January 21st 2016 and subsequently refused by the SDAB on March 8th 2016;
2. A further application (the "**Second Application**") was circulated to adjacent landowners on May 5th 2017, again with only minor changes including the number of campsites to attempt to satisfy the Alberta Energy Regulators (AER) requirements;
3. Notice of the application for the Proposed Development was circulated in April, 2018. The Proposed Development is similar in nature to the First and Second Application with only minor changes to comply with the AER requirements and previous SDAB reasons for refusal;
4. The Appellant provided comments regarding the Proposed Development on May 5th, 2018, through a submission to the Municipal Planning Commission in preparation for their June 7th, 2018 meeting;
5. In the Appellant's submission to the Municipal Planning Commission, it is noted that there are elements of the Proposed Development which are similar to those in the First Application and the Second Application;
6. The Municipal Planning Commission approved the Proposed Development on June 7th, 2018.
7. The Appellant made the FOIP Request on June 25th, 2018;
8. The Board granted the Appellant's first postponement request on July 17th 2018;
9. The FOIP information was made available to the Appellant on July 17th, 2018;
10. The Board reconvened the Hearing on July 24th, 2018.

The Board made the decision to **deny** the request for postponement for the following reasons:

1. The Board determined that the majority of information requested through the FOIP Request was information that could have been requested by the Appellant prior to or at the time of the final circulation of the Development Permit in April, 2018.
2. The Board determined that there were no material changes to the application from April, 2018 to present; a determination that was supported by both the Appellant and the Respondent.
3. The Board determined that the Proposed Development was substantially similar to the First Application from January, 2016, and the Second Application from May, 2017, and therefore the majority of information was already provided or available to the Appellant or further could have been accessed by a FOIP request at any point from 2016 to present;
4. The Board determined that the information requested through the FOIP Request would have had substantial overlap with information previously contained within the Municipal Planning Commission agenda package dated June 7th, 2018 which was made available on June 1st, 2018 and the Subdivision and Development Appeal agenda package dated July 17th, 2018 which was forwarded to the Appellant on July, 13th 2018.

5. The Board determined that the initial postponement approval granted the opportunity for the Appellant to adequately develop a presentation to support the four claims as outlined in the Reason for Appeal.
6. The Board is required to ensure procedural fairness for all parties involved in the hearing and determined that a further postponement would be detrimental to the Landowner/Applicant.
7. The Board determined that the Reasons for Appeal could have been supported appropriately by the Appellant through documentation that was provided or available to and easily accessible by the Appellant as early as April, 2018, and in any event prior to the Municipal Planning Commission meeting which occurred on June 7, 2018. Furthermore, the Appellant received a response to his FOIP Request a week prior to the date the Board reconvened.

Findings of Fact:

1. The Lands are located at NW 32-33-4-5 Plan 0010019 Block 3;
2. The Lands are 129.01 acres in total, 13.0 acres of which are to be used for the Proposed Development;
3. That Lands are currently zoned P-PR (Parks and Recreation District);
4. The purpose of the Parks and Recreation District is “to accommodate a wide range of public/private parks and recreational activities, primarily aimed at passive and active outdoor recreation”;
5. The Proposed Development is for Recreational Resort – 20 RV Sites;
6. The Proposed Development is a discretionary use under the P-PR zoning (Parks and Recreation District);
7. The Proposed Development is located within the Eagle Valley Area Structure Plan – Mountain View County Bylaw 47/97;
8. The Proposed Development is adjacent to the Eagle Valley Cemetery and previous concerns were outlined by the Eagle Valley Cemetery Board relative to the impact the Proposed Development would have on the cemetery;
9. A 100 yard buffer is proposed between the Proposed Development and the Eagle Valley Cemetery;
10. Correspondence was received from the Director of Cemeteries for Service Alberta which states that they are satisfied with the steps proposed by the Forest Heights Golf Course to mitigate any concerns raised relative to the proximity of the Proposed Development and the Eagle Valley Cemetery;
11. A level 3 sour gas pipeline owned by Shell Canada is located further than 500m from the Proposed Development;
12. Mountain View County Bylaw 15/15 Section 10.14(1) states that “No development shall be permitted within 100.0 m (328.1 ft) of a level 1 sour gas facility (consisting of a well) as determined by the Provincial and Federal Authorities regulating sour gas facilities.”
13. Mountain View County Bylaw 15/15 Section 10.14(2) states that “in the case of a level 2 sour gas facility no permanent dwelling shall be permitted within 100.0 m (328.1 ft); and no Public Facility shall be permitted within 500.0 m (1,640.4 ft) of the sour gas facility”
14. Mountain View County Bylaw 15/15 Section 10.14(3) states that “In the case of a level 3 or level 4 sour gas facility: No permanent dwelling shall be permitted within 100.0 m (328.1 ft) of the facility; No Unrestricted Country Residential development having a density of more than eight (8) dwellings per quarter section shall be permitted with 500.0 m (1,640.4 ft) of the facility; No Public Facility shall be permitted within a minimum of 1,500 m (4,921.3 ft) of the sour gas facility; and If a Public Facility is proposed, the applicant shall submit as part of a complete Development Permit application confirmation from the operators or owners of all sour gas facilities within 1,500 m of the proposed site of the Public Facility regarding what, if any, impact the proposal will have on their Emergency Response Plan (ERP).”

15. Mountain View County Bylaw 15/15 defines a Public Facility as “defined by the AER in Directive 056, appendix 3 and modified by the County to provide clarity, is a public building, such as a hospital, rural school or major recreational facility, situated outside of an urban centre that can accommodate more than 50 individuals and that requires additional transportation to be provided during an evacuation or less than 50 individuals that require additional transportation to be provided during an evacuation.”
16. The Alberta Energy Regulator defines a Public Facility as “A public building, such as a hospital, rural school, or major recreational facility, situated outside of an urban centre that can accommodate more than 50 individuals and/or that requires additional transportation to be provided during an evacuation.”
17. Shell Canada, the owner of the sour gas pipeline, submitted no objections to the application and noted that in the event of approval, the Proposed Development will be included in their annual Emergency Response Plan.
18. The Board accepts the Applicant’s submission that less than 50 individuals would be permitted at the Proposed Development and that no additional transportation would be required in the event of an evacuation due to patrons arriving in their own modes of transportation in order to access the Proposed Development.
19. Mountain View County Bylaw 15/15 Section 10.15 (3) outlines requirements that may be used by the Approving Authority when evaluating a site design for a proposed campground development.
20. Bylaw 47/97 – Eagle Valley Area Structure Plan Section 2.0 (b)(c)(d) states that the objectives of the plan include ensuring that environmentally sensitive areas are adequately protected from the negative impacts of new developments, ensuring that future development is adequately protected from natural or manmade hazards, and to ensure that new subdivision and development take place in a manner which minimizes impacts on the area’s road systems.
21. Bylaw 47/97 – Eagle Valley Area Structure Plan Section 3.3 (3.3.1) (3.3.4) states that impact from development on or adjacent to significant natural features shall be minimized and that pursuant to the Subdivision and Development Regulation all setbacks as recommended by the A.E.U.B will be adhered to.
22. Bylaw 47/97 – Eagle Valley Area Structure Plan Section 3.4.2 states that all subdivision and development proposals will be carefully evaluated to ensure that a safe access can be provided.
23. Bylaw 47/97 – Eagle Valley Area Structure Plan Section 3.5.3 states that new recreational uses other than development on municipal reserve lots should not be permitted in the Plan area without consultation with adjacent landowners. Recreational uses may be permitted when traffic, noise, dust and visual impacts have been considered.
24. Bylaw 47/97 – Eagle Valley Area Structure Plan Section 3.5 (3.5.8) (3.5.9) states that Applicants for redesignation, subdivision, or development approval should be required to demonstrate that each proposed lot can accommodate a septic tank and tile field system in accordance with Provincial Guidelines, and that all new wells shall meet all water supply and water quality guidelines recommended by Alberta Environment Protection.
25. An Approach Assessment compiled by Al-Terra Engineering (Red Deer) Ltd. in collaboration with comments received from Mountain View County Operations Department provides concern relative to the approach leading to the Proposed Development from Township Road 340.
26. Section 10.13(3) of the Land Use Bylaw 15/15 “Service Station and Gas Bar”, as contained within the Reasons for Appeal, does not relate to the Proposed Development, however the Board accepts that the applicable sections of Land Use Bylaw 15/15 as they relate to Campgrounds were applied to the Proposed Development by the Respondent.
27. Mountain View County Municipal Development Plan Bylaw 09/12 Section 5.1.1 states that there is a goal “to establish opportunities for economic development that will provide variety and diversity in location, servicing standards, and types of uses”.

Decision:

The decision of the Subdivision and Development Appeal Board is to **deny the appeal** and **uphold the decision** of the Municipal Planning Commission to approve Development Permit PLDP 20170114 with the following conditions outlined in the June 7th, 2018 Municipal Planning Commission decision.

Standard Conditions:

1. The provisions of the Land Use Bylaw No. 15/15.
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. N/A
5. All access approaches must be to County standards. A no charge approach permit is required and can be obtained at the Mountain View County office.
6. N/A
7. N/A
8. N/A
9. A rural address is required to be posted on the property. The landowner shall contact Mountain View County to obtain a rural address and the requirements for posting it on the property as per the Rural Addressing Bylaw.
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. N/A
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. If the utility/infrastructure 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.
14. This permit is for the development of 20 RV (recreational vehicle) seasonal sites as indicated within the submitted application. Any future expansion, work area, or site development will require a new permit.
15. That Development Permit DP92-024 - Golf Course, approved on June 1, 1992, remains valid and continued compliance must be maintained.
16. The applicant and/or landowner shall ensure all Provincial and Federal approvals are obtained for the proposed campground prior to proceeding with the development.

17. As per Alberta Energy Regulator (AER), a minimum setback of 500 metres shall be maintained between the campground sites and the Level 3 Sour Gas pipeline located along the westerly boundary of the subject property.
18. That the applicant and/or landowner shall comply with the Stormwater Management Plan, prepared by Al-Terra Engineering (Red Deer) Ltd., dated November 24, 2015.
19. The applicant and/or landowner shall ensure any additional technical studies submitted with this application are adhered to throughout the development of the campground.
20. The applicant and/or landowner shall obtain a private sewage disposal approval through Alberta Environment. Should Alberta Environment require Municipal approval, permits shall be obtained from Mountain View County. The applicant and/or landowner shall provide the County with copies of the Alberta Environment's approval. If the applicant and/or landowner does not provide each campground unit site with a separate septic pump out tank and opts to provide a communal system, then a Private Sewage System Suitability Analysis, prepared by a qualified professional will be required prior to construction of the RV sites.
21. The applicant and/or landowner is responsible to submit water samples to Alberta Health on a semi-annual basis to ensure drinking water is sufficient for human consumption.
22. The applicant and/or landowner shall obtain any provincial and federal approvals that may be required with regards to any stormwater outfall. Should any of the storm ponds be utilized as a potential fire supply, the applicant shall obtain any approvals required from Alberta Environment.
23. The applicant and/or landowner shall ensure that all occupants of the campground sites enter into a rental, lease and/or agreement with the landowners to ensure campground regulations and rules are followed.
24. There shall be an identification sign at the entrance of the campground along Township Road 340. This sign must be legible and shall include the contact information, emergency contact information, the legal and rural address, and hours of operation as well as a diagram of the lot layout of the campground.
25. There shall be no ATV, off-road vehicles, and/or dirt bike use within the campground facility by any occupants of the sites nor shall the campground facility be the staging area for ATV, off-road vehicles, and/or dirt bike uses. Golf carts shall be permitted.
26. There shall be no camping or public occupancy at the RV sites from November 1st to March 31st.
27. That the applicant and/or landowner shall consult with Mountain View County Operations department to remediate the configuration of the access point from Township Road 340, to the Golf Course and campground to ensure that the Y-leg is removed so that there is only one intersection off of Township Road 340. This expense will be the responsibility of the applicant and/or landowner. All remediation work is to be complete prior to any occupancy of the campground sites. Additional and appropriate signing shall be provided by the applicant and/or landowner as required.
28. A minimum setback of 91.44 metres (100 yards) from the Eagle Valley cemetery property lines (Plan 9911791 Blk 2) to the campground sites shall be maintained.
29. The applicant and/or landowner shall provide additional screening in the form of a buffer of trees along the northerly property line adjacent to the Eagle Valley Cemetery to provide visual screening and noise abatement. Screening may include a mixture of deciduous and coniferous trees and, if any of the trees or shrubs either die and/or are removed from the property, replacement trees or shrubs shall be planted.

Prior to Issuance Conditions:

30. PRIOR TO ISSUANCE, the applicant and/or landowner shall provide proof that Water Licensing has been obtained from Alberta Environment as this is a requirement within Alberta Environment's Water Act. Construction of the development shall not proceed until this license

is obtained or an alternative water supply is established. A copy of the license or details regarding the alternative water supply shall be submitted to the County once obtained.

Reasons for Decision:

1. The Board determined that the previous condition of requiring a 100 yard buffer between the adjacent cemetery and the Proposed Development minimizes the impact of the Proposed Development with the current footprint as well as to allow for cemetery expansion, and should therefore be maintained.
2. The Board accepts the response from the Director of Cemeteries for Service Alberta that the Proposed Development has provided acceptable measures to mitigate concerns relative to the Eagle Valley Cemetery.
3. The Board accepts the response from the Alberta Energy Regulator that the Proposed Development only requires a 500m setback from the sour gas pipeline and not the 1500m setback previously required as a 'Public Facility' and therefore, accepts that as the Proposed Development is outside of the 500m setback, that it complies with Mountain View County Bylaw 15/15 and Mountain View County Bylaw 47/97.
4. The Board accepts the response from Shell Canada that no concerns are expressed relative to the Proposed Development and therefore accepts that there is no increased safety risk due to the Proposed Development.
5. The Board determined that the Proposed Development is in accordance with Mountain View County Municipal Development Plan Bylaw 09/12 Section 5.1.1.
6. The Board accepts that the Proposed Development is an acceptable discretionary use within the P-PR (Parks and Recreation District).
7. The Board determined that the Proposed Development is compatible with the purpose of the Parks and Recreation District.
8. The Board determined that the Proposed Development complies with the regulations as outlined within Mountain View County Bylaw 15/15.
9. The Board determined that the Proposed Development is in accordance with the intent and conditions of the Eagle Valley Area Structure Plan.
10. The Board has determined that through the inclusion of condition 27, which requires the Applicant to remediate the configuration of the access point from Township Road 340 to ensure that there is only one intersection off of Township Road 340, that it satisfies the issues stated relative to traffic safety in the area.

Evidence:

The Board considered the following evidence in making its decision:

1. The Agenda and Notice of Appeal;
2. Verbal presentations to the Subdivision and Development Appeal Board presented to the Board by the Appellant;
3. Verbal presentations to the Subdivision and Development Appeal Board in support of the Appellant;
4. Report and verbal presentations to the Subdivision and Development Appeal Board including all attachments presented to the Board by the County's Planning and Development Department;
5. Report and verbal presentations to the Subdivision and Development Appeal Board including all attachments presented to the Board by the Applicant;
6. ***Municipal Government Act***, R.S.A. 2000, Chapter M-26;
7. Mountain View County Municipal Development Plan 09/12;
8. Mountain View County Land Use Bylaw 15/15;
9. Mountain View County Bylaw 47/97 – Eagle Valley Area Structure Plan.

In addition to the above, the Appellant provided the Board with a USB flash drive on July 24th, 2018 containing documents including the response to the Appellant's FOIP request. The Appellant provided a verbal submission to the Board summarizing the contents of the USB flash drive but did not present any of the documents other than to indicate that the documents were available for the Board's review and information.

The Board finds that based on the Appellant's summary of the information contained on the USB flash drive, there is substantial overlap with the information contained in the MPC and SDAB agenda packages referred to in the Board's decision on the Preliminary Matter (Second Request for an Adjournment). The Appellant did not identify any way in which the information contained on the USB flash drive supports the grounds set out in the Notice of Appeal.

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)

An appeal lies to the Court of Appeal on a question of law or jurisdiction with respect to

- (a) a decision of the Subdivision and Development Appeal Board.

Section 688(2)

An application for permission to appeal must be filed and served within 30 days after the issue of the decision sought to be appealed, and notice of the application for permission to appeal must be given to

- (a) the Municipal Government Board or the Subdivision and Development Appeal Board, as the case may be; 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 permission 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.

Section 688(4)

If a judge grants permission to appeal, the judge may:

- (a) direct which persons or other bodies must be named as respondents to the appeal,
- (b) specify the questions of law or the questions of jurisdiction to be appealed, and
- (c) make any order as to the costs of the application that the judge considers appropriate.

Section 688(5)

If an appeal is from a decision of a subdivision and development appeal board, the municipality must be given notice of the application for permission to appeal and the board and the municipality

- (a) Are respondents in the application and, if permission to appeal is granted, in the appeal, and
- (b) Are entitled to be represented by counsel at the application and, if permission to appeal is granted, at the appeal.

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

Per:


Chair

Date Signed: August 7, 2018