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

DECISION

Hearing held at: Mountain View County Office
Council Chambers

Date of Hearing: September 21, 2018

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

Basis of Appeal: This is an appeal from a Development Permit approved for Berm – Privacy with Northerly Side Yard Setback Relaxations (The **“Proposed Development”**) on SW 8-33-5-W5M (The **“Lands”**) approved by Mountain View County on August 2, 2018. The Appellant stated the following as the Reason for Appeal, amongst others included in the Notice of Appeal;

- Concerns relative to spraying of chemicals on the berm;
- Excess noise the work on the berm will bring;
- Fire Hazards caused by tall grasses and vegetation on the berm;
- Disruption to livestock by dust, noise and traffic caused by the berm construction; and
- Privacy concerns.

Applicant: Saunders, Kevin and Patricia
Appellant: McAllister, Brendan
Landowner: Saunders, Kevin Duane and Patricia Joan

Description of Application

On September 21, 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 approved with respect to a Berm – Privacy with Northerly Side Yard Setback (the **“Proposed Development”**) on SW 8-33-5-W5M (the **“Lands”**) pursuant to Section 686 of the ***Municipal Government Act***, R.S.A. 2000 Chapter M-26, as amended. The Development Permit was approved by the Municipal Planning Commission on August 2, 2018 (the **“Development Permit”**).

The Notice of Development Appeal was filed by the Appellant with the Board on August 23, 2018. (the **“Notice of Appeal”**).

Findings of Fact:

1. The Lands are located at SW 8-33-5-W5M;

2. The Lands are 140.97 acres with split zoning of Agricultural (A) District and Aggregate Extraction/Processing (AEP) District;
3. The Proposed Development is intended to be placed on the portion of the Lands currently zoned as Agricultural (A) District.
4. The Proposed Development, Berming, is a discretionary use in the Agricultural (A) District;
5. The Proposed Development is 4 metres high and 170 metres long and is located parallel to the north property line of the Lands;
6. Land Use Bylaw 15/15 states that the side yard setback of the Proposed Development is 15 metres (49.2 ft);
7. The Proposed Development requests a side yard setback of 2 metres (6.6 ft), a variance of 13 metres (42.6 ft);
8. The Board accepts the submissions from both the Appellant and Respondent that the Proposed Development has appropriately addressed drainage on the Lands and Appellant's lands;
9. The Board accepts that the Proposed Development satisfies the conditions under Section 10.3 of Land Use Bylaw 15/15;
10. The Board accepts the submission for the Appellant that they are not opposed to the construction of the Proposed Development nor placement with a side yard setback of 2m;
11. The Proposed Development is in the process of being constructed and has been under construction for approximately twelve months;
12. The Board accepts that the **Weed Control Act**, S.A. 2008, Chapter W-5.1 regulates the control and destruction of noxious and prohibited noxious weeds;
13. The Board accepts the submission from the Applicant that the Proposed Development will be completed by July 2019.

Decision:

The decision of the Subdivision and Development Appeal Board is to **deny the appeal** and **support** the decision of the Municipal Planning Commission. The decision of the Board is to approve Development Permit PLDP20180260 **with amended conditions:**

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. Landowners shall be responsible for dust control on the County road adjacent to their property.
5. N/A
6. N/A
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. N/A
12. N/A

Additional Conditions:

13. The Berms shall be seeded to avoid the soil materials from being blown off site and weed control measures shall be implemented.
14. The applicant/owner shall maintain on-site positive drainage and shall not alter the natural drainage course on the parcel without providing a positive alternative means of drainage deemed appropriate by the County.
15. A northerly side yard setback relaxation of two (2) metres from the property line to the toe of the berm once completely developed shall be permitted for the life of the berm.
16. The Berms shall be completed, including seeding, one year from the date of the issuance of the Development Permit.

Reasons for Decision:

1. The Board determined that the Proposed Development is a suitable use for the Lands;
2. The Board accepts that vegetation concerns raised by the Appellant are not intensified due to the Proposed Development and are adequately regulated by the *Weed Control Act* and Mountain View County legislation;
3. The Board accepts that both the Appellant and the Applicant are in support of the construction and the location of the Proposed Development;
4. The Board determined that an additional one year period is adequate for the completion of the Proposed Development.

Evidence:

The Board considered the following evidence in making its decision:

1. The Agenda and Notice of Appeal;
2. Report and verbal presentations to the Subdivision and Development Appeal Board including all attachments presented to the Board by the Appellant;
3. 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;
4. Report and verbal presentations to the Subdivision and Development Appeal Board including all attachments presented to the Board by the Applicant;
5. *Municipal Government Act*, R.S.A. 2000, Chapter M-26;
6. *Weed Control Act*, S.A. 2008, Chapter W-5.1
7. Mountain View County Municipal Development Plan 09/12;

8. Mountain View County Land Use Bylaw 15/15;

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: Oct 4/18