

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

DECISION

Hearing held at: Mountain View County Office
Council Chambers

Date of Hearing: January 2, 2025

Members Present: Alana Gibson - Chair
Councillor Greg Harris
Jim Bowhay
Keith Branter
Kim Walton

Basis of Appeal: This is an appeal from a Subdivision Application that would see the subdivision of a 10.01 acre parcel into three new lots, the first with an area of 1.46 acres, the second with an area of 1.58 acres and the third with an area of 2.28 acres (The **"Proposed Subdivision"**) on SE 25-33-28-4; Plan 1014141 Block 1 Lot 1 (The **"Lands"**) denied by Mountain View County's Municipal Planning Commission on November 21, 2024. The Appellant stated the following as the Reason for Appeal, amongst others contained within the Notice of Appeal:

- There are other similarly sized lots in Mountain View County;
- The neighbouring landowners did not object to the proposal;
- The application proposes an access easement for proposed lots which removes responsibility of the County to maintain the internal roadway;
- The applicant has proposed a compromise that would consider a two lot subdivision instead of the previous three lot subdivision which will alleviate concerns around adequacy of water and Alberta Health Service's concerns.

Appellant: Budd, Wesley Albert and Carol Anne

Applicant/Landowner: Budd, Wesley Albert and Carol Anne

Respondent: Mountain View County on behalf of the Municipal Planning Commission

Description of Application

On January 2, 2025, the Subdivision and Development Appeal Board (the **"Board"**) opened the appeal hearing for the appeal filed by the Appellant in regard to the Proposed Subdivision on the Lands pursuant to Section 678 of the ***Municipal Government Act***, R.S.A. 2000 Chapter M-26, as amended. The Proposed Subdivision was denied by the Municipal Planning Commission on November 21st 2024.

The Notice of Subdivision Appeal was filed by the Appellant with the Board on December 5, 2024 (the **"Notice of Appeal"**).

Summary of the Appellant's Position:

1. The Appellant outlined that the Proposed Subdivision received the support of all surrounding neighbors and that he had addressed any legitimate concerns previously raised by the Municipal Planning Commission or other agencies;

2. The Appellant noted that they are agreeable to a revised subdivision plan that would see only two additional lots contemplated instead of the three outlined in the Proposed Subdivision;
3. The Appellant outlined that the Proposed Subdivision would be accessed through an Access Easement Agreement which would be maintained to a gravel standard. It is the Appellants position that creating a residential subdivision road in accordance with County policy is unnecessary and would be illogical to become another roadway that the County would need to maintain;
4. The Appellant noted that they had conducted soil testing in 2006 that indicated, at that time, that soil was suitable for multiple septic fields. It is the Appellant's position that that testing disproves the concerns raised by Alberta Health Services;
5. The Appellant summarized the Restrictive Covenant that was registered to title after the initial subdivision of the 10-acre parcel in 2010 which contains a concept plan of a potential subdivision of the Lands into four total lots. It is the Appellant's position that the agreement made between the County and the Appellant through this Restrictive Covenant should supersede any requirements or regulations contained within current statutory plans;
6. The Appellant identified that many subdivisions have been approved across the County that are of a similar nature as the Proposed Subdivision and outlined that it is their belief that without permitting subdivisions of this nature, that the County will become unsustainable.

Summary of the Respondent's Position:

1. The Respondent submitted that the proposal does not comply with the Matters Related to Subdivision and Development Regulation (AR 84/2022) as the proposal does not provide appropriate access as required by the Regulations;
2. The Respondent submitted that the proposal does not comply with the Matters Related to Subdivision and Development Regulation (AR 84/2022) as the application does not provide sufficient information to determine whether the proposal will meet the requirements for water quantity and sewage disposal regulations;
3. The Respondent outlined that the proposal does not meet the requirements outlined within the Municipal Development Plan as the Proposed Subdivision would exceed the maximum allowance of two titles per quarter section due to its location in the Agricultural Preservation Area;
4. The Respondent outlined that the proposal does not meet the requirements outlined within the Municipal Development Plan as the Proposed Subdivision proposes lots less than two acres, which is not allowable within the Municipal Development Plan for a parcel of this nature;
5. The Respondent submitted that the Proposed Subdivision would be classified as a higher density residential development by the Municipal Development Plan. The Respondent outlined that Mountain View County Policy #4005 "Road Template Policy" would require that legal and physical access be provided via a paved or chip sealed internal road which is not contemplated by the Appellant;
6. The Respondent noted that the Proposed Subdivision does not meet the requirements outlined within the Land Use Bylaw as three of the parcels do not meet the minimum parcel size requirement for Country Residential (R-CR) parcels;
7. The Respondent noted that the Proposed Subdivision does not meet the requirements outlined within the Land Use Bylaw as it relates to maximum number of dwellings as the proposal would have a residual lot with two dwellings on it (with a maximum of one dwelling as per the Bylaw) and would create a potential for a total of six dwellings (with a total maximum of four dwellings per quarter section as per the Bylaw);
8. The Respondent confirmed that even if the Appeal Board would consider an amended subdivision as proposed by the Appellant, there would still be numerous contraventions of the Municipal Development Plan and Land Use Bylaw requirements;
9. The Respondent submitted that the Restrictive Covenant contained on the Lands does not supersede the requirements of the County's Municipal Development Plan or Land Use Bylaw

and that the Covenant explicitly notes that it does not absolve the parcel from complying with the Land Use Bylaw or any other bylaw of Mountain View County.

Findings of Fact:

1. The Lands are located at SE 25-33-28-W4, Plan 1014141 Block 1 Lot 1;
2. The Lands are a 10.01 acre parcel designated as Country Residential (R-CR) District by Mountain View County Bylaw No. 10/24 Land Use;
3. Mountain View County's Municipal Planning Commission denied the application for the Proposed Subdivision on November 21, 2024;
4. The Lands currently contain two residential dwellings;
5. The Lands are located within the Agricultural Preservation Area as classified by Mountain View County Bylaw No. 20/20 Municipal Development Plan and is not located within an identified Growth Centre;
6. Section 3.3.6 of Mountain View County Bylaw 20/20 Municipal Development Plan states that the "maximum number of titles in the Agricultural Preservation Area should be two (2) titles per quarter section";
7. Section 4.3.4 of Mountain View County Bylaw 20/20 Municipal Development Plan states that "Multi-lot residential development (five lots up to a maximum of 48 lots on a quarter section) shall be considered within the identified growth centres for land use redesignation and subdivision...";
8. The Board accepts the information provided by the Respondent and supported by the Appellant that the Proposed Subdivision would result in a total of five (5) titles from the quarter section;
9. Section 12.1 of Mountain View County Bylaw 10/24 Land Use states that the purpose of the Country Residential (R-CR) District is to "accommodate low density, country residential uses on unserviced residential parcels...of 1.21-2.02 ha (3.0-5.0 acres) in size that meet Municipal and Provincial servicing standards";
10. Section 4.3.4(b) of Mountain View County Bylaw 20/20 Municipal Development Plan states that "the maximum lot size [for multi-lot residential development] shall be determined by the ASP/ARP process. The minimum lot size shall be two (2) acres (0.81 ha);
11. The Proposed Subdivision would result in four lots, three of which would be created by the subdivision with sizes of 1.46 acres, 1.58 acres and 2.28 acres and then a residual lot of 4.66 acres;
12. Section 4.3.9 of Mountain View County Bylaw 20/20 Municipal Development Plan states that "internal subdivision roads for higher density residential development (five lots or greater per quarter section) shall be paved or chip sealed as determined by Council and provided at the developer's expense";
13. Section 9.3.4 of Mountain View County Bylaw 20/20 Municipal Development Plan states that "internal residential subdivision roads, with the exception of development and/or subdivision under the provisions of Section 3.0 (Agricultural Land Use Policies) should be paved or chip sealed and provided at the developer's expense. The extent of paving required shall be in accordance with approved County Policy";
14. The Board accepts the submission from the Respondent that Policy 4005 – Road Template Policy requires that Residential Subdivision Internal Roadways are required to be to a paved or chip sealed standard;
15. Section 3 of Policy 4005 – Road Template states "All roads shall be built to the selected standard or greater. Any road constructed that does not meet the selected standard will not be accepted by Mountain View County";
16. The Proposed Subdivision contemplates using an Access Easement Agreement to facilitate access to the newly created lots which would be maintained by the landowner at a gravel standard;
17. Section 9.8 (1) of Mountain View County Bylaw 10/24 Land Use states that "outside of Growth Centres and Rural Community Centres as defined in the Municipal Development Plan, the maximum number of dwelling units per quarter section shall be four";

18. The Board accepts the determination from the Respondent that in the event that the Proposed Subdivision was approved and a dwelling constructed on each lot, that the total number of dwelling units on the quarter section would be six;
19. Section 9 of the Matters Related to Subdivision and Development Regulation requires that “in making a decision as to whether to approve an application for subdivision, the subdivision authority must consider, with respect to the land that is the subject of the application, the availability and adequacy of a water supply, a sewage disposal system and solid waste disposal”;
20. On September 13, 2024, Alberta Health Services responded to a circulation opportunity and identified that the department “supports the requirement under Land Use Bylaw (10/24) for R-CR parcels to have a minimum lot size of 3.0 acres” and that it “at this time [has] concerns with the application as submitted and would recommend against approval”;
21. The Board accepts the submission from the Respondent that insufficient information was provided by the Appellant to confirm that adequate water supply is available or that appropriate setback distances can be accommodated for the provision of private sewage disposal systems;
22. The Board accepts the information provided by the Appellant that a Restrictive Covenant exists on title for the Lands which contains a Concept Plan which was originally developed in 2010 and contemplates a four-parcel subdivision;
23. Section 3 (c) of the Restrictive Covenant states “the provisions of this Restrictive Covenant as they apply to the Burdened Lands do not absolve any owner of the Burdened Lands or any parcel within the Burdened Lands from complying with the Land Use Bylaw or any other bylaw of Mountain View County”.

Decision:

The decision of the Subdivision and Development Appeal Board is to **deny** the appeal and **uphold** the decision of the Municipal Planning Commission. The decision of the Board is to **deny** Subdivision Application PLSD20240152.

Reasons for Decision:

1. The Board has determined that the Proposed Subdivision is not compliant with Section 3.3.6 of Mountain View County Bylaw 20/20 Municipal Development Plan as it would result in the exceedance of the total allowable lots permitted to be subdivided from the quarter section. Further, the Board has determined that the Proposed Subdivision is appropriately classified by the Respondent as a ‘Multi-Lot Residential Development’ which is only to be considered within an identified Growth Centre;
2. The Board has determined that the Proposed Subdivision is not compliant with Section 12.1 of Mountain View County Bylaw 10/24 Land Use, nor with Section 4.3.4 (b) of Mountain View County Bylaw 20/20 Municipal Development Plan, as the proposal contemplates lots that are significantly smaller than the minimum requirements contained in those applicable sections and no information was provided by the Appellant to justify a suitable rationale to persuade the Board to relax those requirements;
3. The Board has determined that the Proposed Subdivision is not compliant with Section 4.3.9 or Section 9.3.4 of Mountain View County Bylaw 20/20 Municipal Development Plan, nor with Policy 4005 – Road Template, as the proposal contemplates using an Access Easement Agreement instead of developing a roadway to the County required standard. Although the Board respects that the Applicant feels that it is unnecessary for the County to expend funds for ongoing maintenance of an internal roadway, the Board has determined that the requirement is in place to alleviate future landowner issues and to ensure that all roadways within the County are developed to consistent standards;
4. The Board has determined that the Proposed Subdivision is not compliant with Section 9.8 (1) of Mountain View County Bylaw 10/24 Land Use as the proposal would create a total density potential of six dwelling units which is in excess of the four dwelling unit maximum contained within that applicable legislation;

5. Although the Board respects that the Appellant has extensive experience in the construction industry and intends to provide on-site servicing for each new lot, the Board determined that insufficient information was provided by the Appellant to allow for the Board to confirm if adequate water is available and that the lot sizes proposed would be large enough to facilitate on-site servicing that would satisfy the requirements of the Private Sewage Disposal Systems Regulations. As such, the Board determined that the concerns raised by Alberta Health Services carry sufficient merit to support refusal of the Proposed Subdivision;
6. Although the Board appreciates the comments from the Appellant that the County previously agreed to a concept plan that contemplated a four lot subdivision of the Lands through registering the Restrictive Covenant on the Lands, the Board has determined that the Restrictive Covenant is explicitly worded to require any subdivision to comply with the Land Use Bylaw and Municipal Development Plan of the County at the time of subdivision, which the Proposed Subdivision does not;
7. The Board respects the submission from the Appellant that the Proposed Subdivision does have the support of adjacent landowners and that there may be similar subdivisions approved in various parts of Mountain View County. With that being said, the Board notes that although it does consider adjacent landowner comments as a component of application review, that these comments do not outweigh the various areas of non-compliance with Provincial and County legislation that the Proposed Subdivision demonstrates and therefore cannot be supported.

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 and those in support of 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 acting as the Respondent.
4. ***Municipal Government Act***, R.S.A. 2000, Chapter M-26.
5. ***Matters Related to Subdivision and Development Regulation***, Alberta Regulation 84/2022.
6. Mountain View County Bylaw No. 10/24 Land Use.
7. Mountain View County Bylaw No. 20/20 Municipal Development Plan.
8. Mountain View County Policy 4005 and Procedure 4005-01 Road Template

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: January 14, 2025