

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

DECISION

Hearing held at: Mountain View County Office
Council Chambers

Date of Hearing: April 26, 2019

Members Present: Greg Harris
Lori Conkin
Gil Hegel
Kim Walton

Basis of Appeal: This is an appeal to a proposed subdivision application refused by the Municipal Planning Commission (The **“Proposed Subdivision”**) on NE 34-31-2 W5M (The **"Lands"**) on March 7th, 2019. The Appellant stated the following as the Reason for Appeal, amongst others contained within the Notice of Appeal:

- The Lands are a homestead property; not agriculturally cultivated production lands;
- The Lands are located next to an acreage country residential;
- Mountain View County has allowed Country Residential Subdivisions similar to the Proposed Subdivision in the past;
- The Lands are located across the Range Road 2.2 to the east; and
- The Lands are located 1.25 miles to the east of the Mountain View County Landfill which does not allow for agricultural production at the Lands.

Appellant: Davie Mailer (The **“Appellant”**)

Landowner: Shirley Mailer & Davie Mailer

Description of Application

On April 26, 2019, the Subdivision and Development Appeal Board (the **"Board"**) opened the hearing for the appeal filed by the Appellant in regard to a Subdivision Application to create one (1) two point eight nine (2.89) acre parcel from an existing 151.99 acre parcel (the **“Proposed Subdivision”**) on NE 34-31-2 W5M (the **"Lands"**) pursuant to Section 678 of the *Municipal Government Act*, R.S.A. 2000 Chapter M-26, as amended. The Subdivision Application was denied by the Municipal Planning Commission on March 7th, 2019 (the **"Subdivision Application"**).

The Notice of Development Appeal was filed by the Appellant with the Board on March 26, 2019. (the **"Notice of Appeal"**) and Reasons for Appeal were filed by the Appellant with the Board on March 29, 2019. (the **“Reasons for Appeal”**).

Preliminary Matter (Timeline of Notice of Appeal Submission)

The Secretary of the Board identified a preliminary matter for the Board to consider prior to proceeding with the hearing in regard to the timelines that the Notice of Appeal, and subsequent Reasons for Appeal, were submitted.

Findings of Fact:

1. The Proposed Subdivision was denied by the Municipal Planning Commission on March 7th 2019;
2. Written confirmation of the Municipal Planning Commission denial was issued by Mountain View County to the Appellant on March 7th 2019;
3. The Board accepts the Appellants confirmation that they were present at the Municipal Planning Commission Meeting of March 7th 2019 and verbally acknowledged their desire to appeal the decision;
4. The *Municipal Government Act* Section 678(2) states that “An appeal under subsection (1) may be commenced by filing a notice of appeal within 14 days after receipt of the written decision of the subdivision authority”;
5. The *Municipal Government Act* Section 678(3) states that “For the purpose of subsection (2), the date of receipt of the decision is deemed to be 7 days from the date the decision is mailed.”
6. The *Interpretation Act* Section 23 (1)(a) states that “If an enactment authorizes or requires a document to be sent, given or served by mail and the document is properly addressed and sent by prepaid mail... unless the contrary is proved the services shall be presumed to be effected 7 days from the date of mailing if the document is mailed in Alberta to an address in Alberta”
7. The *Municipal Government Act* Section 678(4)(a)(b) states that “A notice of appeal under this section must contain the legal description and municipal location, if applicable, of the land proposed to be subdivided, and the reasons for appeal including the issues in the decision or the conditions imposed in the approval that are the subject of the appeal.”
8. The Notice of Appeal, including payment for the appeal, was received by the Secretary of the Board on March 26th 2019 excluding the Reasons for Appeal;
9. The Reasons for Appeal were submitted to the Secretary of the Board on March 29th 2019;
10. The *Municipal Government Act* Section 679(1) states that “The board hearing an appeal under Section 678 must give at least 5 days’ written notice of the hearing...”;
11. The Board accepts the Respondent’s position, and as confirmed by the Appellant, that the deadline for submission of the Notice of Appeal in accordance with the *Municipal Government Act* was on March 28th 2019.

Decision:

The decision of the Subdivision and Development Appeal Board is to **proceed with hearing the appeal** on the Proposed Subdivision;

Reasons for Decision:

1. The Board determined that the intent of the *Municipal Government Act* to allow for the Board, and all parties, to identify the property in question and to understand the issues of the appeal was achieved through the submission of the Reasons for Appeal on March 29th 2019;
2. The Board determined that the *Municipal Government Act* Section 679(1) only requires five days written notice of the hearing to be presented to the parties of the appeal and therefore the submission of Reasons for Appeal one day late could not reasonably be expected to prejudice any of the parties of the hearing. Further, the Board determined that none of the parties of

the hearing exemplified how the delay in receiving the Reasons for Appeal affected their ability to establish their position on the appeal before the Board;

3. The Board determined that the demonstration of procedural fairness by allowing the Appellant to proceed with the hearing outweighed the oversight of non-compliance with the requirement to provide Reasons for Appeal in conjunction with the Notice of Appeal.

Findings of Fact:

1. The Lands are located at NE 34-31-2-5;
2. The Lands are 151.99 acres in total with the Proposed Subdivision creating a new parcel of 2.89 acres;
3. The quarter section currently contains a Country Residential District (R-CR) parcel which was re-designated by Council on August 20, 1997 and subsequently subdivided by the Municipal Planning Commission on August 5th 1998 (SD 038-98) which created a parcel that is 6.99 acres in size;
4. The Lands are currently zoned Agricultural (A) District;
5. Mountain View County Bylaw 16/18 defines the purpose of the Agricultural District as “to accommodate and promote agriculture land uses on larger parcels while having regard for the rural, agricultural character of the area.”
6. Mountain View County Bylaw 16/18 lists a number and variety of permitted and discretionary uses within the Agricultural District;
7. The Appellant applied for re-designation by Council from Agricultural (A) District to Country Residential District (R-CR) on February 13th, 2019 which was defeated by Council;
8. The minimum parcel size of an Agricultural (A) District zoned parcel, as outlined by Mountain View County Bylaw 16/18, is 80.0 acres;
9. Mountain View County Bylaw 09/12 identifies the Lands within the Agricultural Preservation Area with the intent of the Agricultural Preservation Area defined as “to only allow for first parcel out residential development to ensure productive agricultural land in the County is preserved for agricultural purposes”;
10. Mountain View County Bylaw 09/12 notes that “As a starting point, the County has used the Canada Land Inventory Class 1, 2, and 3 soils in conjunction with Environmentally Significant Areas (ESA) mapping as a baseline assessment to generally identify ‘productive’ farmland that is worth preserving”;
11. The Board accepts the submission by the Respondent that the Lands contain Class 2 soils as defined by the Canada Land Inventory;
12. Mountain View County Bylaw 09/12 Section 3.3.6 states that “the maximum number of titles in the Agricultural Preservation Area should be two titles per quarter section”;
13. Mountain View County Bylaw 09/12 Section 3.3.8 states that “all new titles created in an agricultural district for non-agricultural use, shall require a re-designation to the appropriate land use district and a concurrent subdivision application”;
14. Mountain View County Bylaw 09/12 Section 4.3.1 states that “Land Use re-designation shall be required for new rural residential subdivision/development”;
15. Mountain View County Bylaw 09/12 Section 4.3.3(b) states that “Low density residential subdivision (up to 3 lots with the balance of the quarter as the fourth lot) should generally occur within the areas identified as Potential Multi-lot Residential Development Areas within Figure 3 – Growth Management Conceptual Strategy”;
16. The Board accepts the submission by the Appellant that due to the proximity of the Lands to the Mountain View Regional Waste Management Commission Landfill, that the Appellant has experienced difficulty raising lambs in the past;
17. The Board accepts the submission by the Appellant that there are other instances in Mountain View County that subdivisions have been approved for a third title on a quarter section;

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 deny the Proposed Subdivision;

Reasons for Decision:

1. The Board determined that the Lands were appropriately classified within the Agricultural Preservation Area outlined with Mountain View County Bylaw 09/12 due to the Lands potential soil productivity, location and historic agricultural activity; Further, the Board found that although raising lambs may be difficult as outlined by the Appellant, there are a variety of other Agricultural uses that may be better suited on the Lands;
2. The Board determined that as the Lands were not granted approval for re-designation and have thus retained their Agricultural (A) District zoning, the approval of the Proposed Subdivision would be in direct contravention of Mountain View County Bylaw 09/12 Section 3.3.8 and Section 4.3.1;
3. The Board determined that although they have the jurisdiction to vary the development standard of the 80.0 acre minimum parcel area required by Mountain View County Bylaw 16/18, the impact that the Proposed Subdivision would have on the rural, agricultural character of the area and the promotion of agricultural land uses within Mountain View County would be greater than the benefit derived by the Proposed Subdivision;
4. The Board determined that the approval of the Proposed Subdivision would result in the third title created for the Lands and therefore would be in contravention of Mountain View County Bylaw 09/12 Section 3.3.6;
5. The Board determined that the Proposed Subdivision may be better suited for the Potential Multi-Lot Residential Development Area as required in Mountain View County Bylaw 09/12 Section 4.3.3(b) rather than within the Agricultural Preservation Area;
6. The Board determined that although there is evidence that other quarter sections have been permitted for three titles by Mountain View County, it is ineffective to compare applications without the entire planning and development history, administrative review, legislative compliance and required technical studies and ultimately, Mountain View County Council retains the absolute authority for the re-designation of lands within the County.

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;
4. *Municipal Government Act*, R.S.A. 2000, Chapter M-26;
5. Mountain View County Land Use Bylaw 16/18;
6. Mountain View County Municipal Development Plan Bylaw 09/12;
7. *Interpretation Act*, R.S.A. 2000, Chapter I-8;

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: 2019/5/27