
SUBDIVISION AND DEVELOPMENT APPEAL BOARD OF
MOUNTAIN VIEW COUNTY

DECISION

Hearing held at: Mountain View County Office
Council Chambers

Date of Hearing: March 15, 2019

Members Present: Bruce Beattie
Lori Conkin
Gil Hegel
Kim Walton

Basis of Appeal: This is an appeal from a Development Permit approved with conditions for a Dwelling, Single detached with attached garage (The "**Proposed Development**") on SW 22-29-3-W5M (The "**Lands**") approved by Mountain View County's Development Officer on February 19, 2019. The Appellant stated the following as the Reason for Appeal, amongst others contained within the Notice of Appeal:

- The Appellant currently has an improved road with a solid clay base that they have used for the past ten years and therefore the requirement for upgrades to the Undeveloped Road Allowance (Condition 16 of the Development Permit) should not be required.

Appellant: Richard Hallett

Landowner: Hallett's Hay & Seed Ltd.

Description of Application

On March 15, 2019, 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 conditions for a Dwelling, Single detached with attached garage (the "**Proposed Development**") on SW 22-29-3-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 Development Officer on February 19, 2019 (the "**Development Permit**").

The Notice of Development Appeal was filed by the Appellant with the Board on February 21, 2019. (the "**Notice of Appeal**").

Findings of Fact:

1. The Lands are located at SW 22-29-3-W5M
2. The Lands are 160 acres and currently zoned Agricultural (A) District;
3. The Proposed Development is defined as Dwelling, Single Detached with attached garage and is a permitted use in the Agricultural (A) District;
4. The Board accepts the determination by the Respondent that the Proposed Development is compatible with Mountain View County Bylaw 16/18;
5. The Board accepts the statement by the Appellant that the current means of accessing the Lands is diagonally through the NE 22-29-3-W5M;
6. The Board accepts the information from the Appellant that this means of access has been used to access the Lands for agricultural purposes for at least ten years;
7. The Board accepts the determination by the Appellant that any potential access agreement would require the approval of the landowners of the NE 22-29-3-W5M and either the landowners of the SE 22-29-3-W5M or the landowners of the NW 22-29-3-W5M;
8. The Board accepts the information presented that currently the Appellant would have the ability to caveat an access agreement to the NE 22-29-3-W5M but has not acquired the approval from the landowners of either the SE 22-29-3-W5M or the landowners of the NW 22-29-3-W5M;
9. The Board accepts the information presented by the Respondent that any potential access agreement would require Mountain View County to be party to the agreement to ensure the access' future sustainability;
10. The *Municipal Government Act* Section 685 (3) states that "...no appeal lies in respect of the issuance of a development permit for a permitted use unless the provisions of the land use bylaw were relaxed, varied, or misinterpreted or the application for the development permit was deemed to be refused under section 683.1(8);
11. The *Municipal Government Act* Section 650 (1)(a) states that "A council may in a land use bylaw require that, as a condition of a development permit's being issued, the applicant enter into an agreement with the municipality to ... construct or pay for the construction of a road required to give access to the development";
12. Mountain View County Bylaw 16/18 Section 5.3(3) states that "Pursuant to Section 650 of the *Act*, as condition of subdivision or development permit being issued, the applicant may be required to enter into an agreement with the County to ... construct or pay for the construction and/or upgrading of public roadways required to give access to the development";
13. Mountain View County Policy 4010 states "The purpose of this Policy is to establish an approval process and construction standards, for construction on undeveloped County road allowances to permit year-round access to new residential construction."
14. Mountain View County Procedure 4010-01 Section 2.1 states "All applications for a Permit must propose physical and legal access."
15. Mountain View County Procedure 4010-01 Section 2.3 states "Undeveloped roads are not acceptable as safe year round public access, and therefore, must be developed to the approved County Road Standard, if being used to access an improvement requiring a Permit."

Decision:

The decision of the Subdivision and Development Appeal Board is to **deny the appeal** and **uphold** the decision of the Development Officer. The decision of the Board is to approve Development Permit PLDP20190033 with the following conditions:

Standard Conditions:

1. The provisions of the Land Use Bylaw No. 16/ 18.

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.
4. If the development authorized by a Development Permit is not complete 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.

Standard Conditions if Applicable:

5. Landowners shall be responsible for dust control on the County road adjacent to their property.
6. 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.
7. 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.
8. N/A
9. N/A
10. 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.
11. 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:

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 With the issuance of this permit (PLDP20190033) previously issued development permit (PLDP20180403) shall be void.
14. The garage shall not be used for business, industrial, commercial purposes or residential occupancy.
15. Construction of the proposed development, Dwelling, Single Detached with Attached Garage shall not start until the applicant/landowner obtains from the County the Construction Completion Certificate (CCC) for the Road Construction as defined in the Road Construction Agreement.

Prior to Issuance Conditions:

16. PRIOR TO ISSUANCE: The road shall be constructed within the designated Right-Of-Way. The applicant shall enter in a Road Construction Agreement with the County and provide the appropriate security to the County as per Policy #4010. The applicant shall submit a \$5,000.00

fee to start the County process of preparing the engineering drawings/surveying & Estimated Cost of Construction.

Reasons for Decision:

1. The Board determined that the Proposed Development, as a permitted use, is suitable for the Lands;
2. The Board determined that the application of the County's discretion to require the development of a road within the existing Undeveloped Road Allowance was within the scope of the County under the *Municipal Government Act* and Mountain View County Bylaw 16/18.
3. The Board determined that the use of Policy 4010 and Procedure 4010-01 by the County to determine the necessity for developing a road within the Undeveloped Road Allowance, was appropriate and essential to ensure proper access to the Proposed Development, while maintaining consistency with similar applications throughout the County;
4. The Board determined that the use of an access agreement through adjacent properties may cause future access concerns, neighbourly disputes and pose safety issues due to potential accessibility challenges and is therefore not an appropriate instrument to ensure future legal and physical access to the Lands. As such, the Board determined that the appropriate measure for mitigating the above concerns is to require the development of a road within the Undeveloped Road Allowance as outlined by Condition 16 of the Development Permit.

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. *Municipal Government Act*, R.S.A. 2000, Chapter M-26;
5. Mountain View County Land Use Bylaw 16/18;
6. Mountain View County Policy 4010;
7. Mountain View County Procedure 4010-01.

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:

22/03/2019