

SUBDIVISION AND DEVELOPMENT APPEAL BOARD OF
MOUNTAIN VIEW COUNTYDECISION

Hearing held at: Mountain View County Office
Council Chambers

Date of Hearing: July 4, 2019

Members Present: Alana Gibson - Chair
Lori Conkin
Greg Harris
Mark Olson
Kim Walton

Basis of Appeal: This is an appeal from a Development Permit approved with conditions for a Recreational Resort – Lodge with a Wastewater Treatment Plant setback variance (The **“Proposed Development”**) on SE 27-31-5 W5M (The **“Lands”**) approved by Mountain View County’s Municipal Planning Commission on May 16, 2019 (The **“Development Permit”**). The Appellant stated the following as the Reason for Appeal, amongst others contained within the Notice of Appeal:

- The Proposed Development will add stress to the area, impact wildlife, increase traffic, dust, number of trespassers, noise and risk of pollution in the Fallentimber Creek;
- The Proposed Development does not fit the character of the area;
- The Proposed Development will increase the number of campers and staff which will increase traffic and potential for motor vehicle accidents;
- The Proposed Development will interfere with the use and enjoyment of the Appellant’s property;
- The wastewater treatment plant within the Proposed Development has the potential for increased impact to the Fallentimber Creek.

Appellant: Gary & Barbara Labute

Applicant: Camp Evergreen, President Don Quapp

Landowner: Alberta Conferences of Mennonite Brethren Churches

Respondent: Mountain View County Municipal Planning Commission

Description of Application

On July 4, 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 Recreational Resort – Lodge with a Wastewater Treatment Plant setback variance (the **“Proposed Development”**) on SE 27-31-5 W5M (the **“Lands”**) pursuant to Section 686 and Section 687 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 May 16, 2019 (the **“Development Permit”**).

The Notice of Development Appeal was filed by the Appellant with the Board on June 4, 2019. (the "Notice of Appeal").

Findings of Fact:

1. The Lands are located at SE 27-31-5-5;
2. The Lands are located within a Level 2 Environmentally Significant Area due to the tree stands and Fallentimber Creek riparian Areas;
3. The Lands are located within Mountain View County Bylaw No. 03/15, Bergen Area Structure Plan;
4. The Lands currently contain an existing camp ("**Camp Evergreen**") and a variety of facilities including kitchen, bunk camps, activity centre, barns and welcome center (the "**Existing Development**");
5. The Existing Development has been in place since 1962 and has experienced expansion in 1997 and 2005 through approved land use re-designations;
6. The Lands are 159 acres with split zoning between Agricultural (A) District and Parks and Recreation (P-PR) District;
7. The Proposed Development is proposed for the Parks and Recreation (P-PR) District portion of the Lands which is 58.0 acres in size;
8. The Proposed Development is defined as a "Recreational Resort" and is listed as a discretionary use within the Parks and Recreation (P-PR) District;
9. The Proposed Development application consists of the construction of a 14,063 sq ft building (the "**Lodge**") to accommodate 300-400 guests and staff with a commercial kitchen, dining hall with storage, and fifteen (15) self-contained residential units;
10. The Board accepts the information from the Applicant that the commercial kitchen and dining hall is necessary to service the existing guests with the capacity for additional guests in the future and that no additional cooking facilities are required with the construction of the Lodge;
11. The Proposed Development also considers the development of a new wastewater system which due to its proposed placement requires a setback relaxation;
12. The *Subdivision and Development Regulation* prohibits a Development Authority from issuing a development permit for a food establishment or residential use within 300 metres of a wastewater treatment working area;
13. Section 12(5) of the *Subdivision and Development Regulation* allows for a Development Authority to vary the setback requirement after receiving written consent of the Deputy Minister of Environment and Sustainable Resource Development;
14. The Proposed Development plans for the development of the new wastewater system within the 300 metre setback contemplated by the *Subdivision and Development Regulation*, and therefore requires a variance from the Minister under Section 12(5) of the *Subdivision and Development Regulation* prior to proceeding;
15. The Board accepts the information provided by the Applicant, and supported by the Appellant, that the new wastewater system is a substantial upgrade compared to the existing wastewater system and likely provides greater environmental protection than the existing wastewater system;
16. The Proposed Development is located 700 metres from Range Road 52, which is the primary access to Camp Evergreen;
17. The Board accepts the claim by the Respondent that Mountain View County Operational Services has reviewed the existing access and Proposed Development and has not requested a traffic safety plan or road enhancements, but will require dust suppression to be placed on Range Road 52 from Bergen Springs to the approach for the Proposed Development;
18. The Board accepts the claim by the Applicant that the Proposed Development will not substantially increase the number of vehicles, nor the amount of guests, at the Lands as it only contemplates an additional fifteen (15) residential units for staff and volunteers and no additional capacity for camp guests;

19. The Board accepts the claim by the Applicant that the Proposed Development will minimally impact the Environmentally Significant Area and that activities of the Existing Development are centered on the preservation of existing tree stands and Fallentimber Creek riparian area;
20. Mountain View County Bylaw No. 03/15 defines an Institutional Campground as “an established group camp maintained for recreation, education, vacation, religious or other similar uses by organized groups that assume supervision of the camp activities.”;
21. Mountain View County Bylaw No. 03/15 defines Commercial Recreation as “Recreation facilities that charge a fee for use or entry and has no relationship to the amount of profit earned, if any”;
22. The Board accepts that the Proposed Development is appropriately defined as both an Institutional Camp and Commercial Recreation by Mountain View County Bylaw No. 03/15;
23. Mountain View County Bylaw No. 03/15 Section 2.4 states that “there are also two major institutional camps in the plan area. Camp Evergreen is located on the east side of Fallentimber Creek in the southeast portion of the plan area...”;
24. Mountain View County Bylaw No. 03/15 Section 7.8.3 states that “the existing Institutional Camps are appropriate within the plan area”;
25. Mountain View County Bylaw No. 03/15 Section 7.8.4 states that “in considering an application for a new or expanding institutional camp the County may grant approval if in the opinion of the County: (a) the size and form of the development has minimal impacts on adjacent land uses; (b) the proposed use is compatible with adjacent land uses; (c) there is provision of adequate access; (d) there will be adequate sewer and water to service the development; (e) there will be appropriate buffering or screening from adjacent land users; and (f) the provisions of Section 7.9 of this Plan are met;
26. Mountain View County Bylaw No. 03/15 Section 7.5.12 states that “Commercial recreation uses may be permitted in the plan area if the County is satisfied the proposed development would meet the following: (a) compatible with the rural character of the plan area; (b) the form, scale, and intensity of the proposed development is compatible with adjacent land uses; (c) the provisions of adequate proposed screening and buffering of noise, light, and other undesirable effects that may be associated with the proposed development; (d) minimal effects on the natural environment, whereby actions to mitigate effects on the environment may be required; (e) adequate existing and proposed vehicular access roads leading to the proposed development, access points, internal roads and on-site parking facilities; and (f) adequate water supply, sewer collection, stormwater management and other services required to accommodate the proposed development;
27. Mountain View County Bylaw No. 03/15 Section 7.5.13 states that “Locations for commercial recreation developments shall require that a natural feature or an element of a natural feature is included in the development. Natural features include but are not limited to streams, wetlands, woodlands and hillsides with views;
28. The Board accepts the claim by the Appellant, and those in support of the Appellant, that the Proposed Development will increase, to an extent, the amount of traffic and therefore the amount of dust produced on Range Road 52;
29. The Board accepts the claim by the Applicant that they are prepared to provide dust suppression required as a condition of Development Permit approval on the entire section of Range Road 52 beginning in front of Bergen Springs and ending at the access to the Proposed Development;
30. The Board accepts the claim by the Applicant that the existing public address system has been decommissioned due to excess noise and that the Proposed Development does not contemplate the installation of a new public address system;

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 approve Development Permit PLDP20190065 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. N/A
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. N/A
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;

PRIOR TO ISSUANCE CONDITIONS:

13. Prior to issuance, the applicant, landowner and/or operator shall provide confirmation all required approvals have been obtained from Alberta Environment and Parks for the existing and proposed water use on the subject property;
14. Prior to issuance, the applicant, landowner and/or operator shall provide the County with the approval(s) required from Alberta Environment for the sewage disposal replacement and/or upgrade as well as the Ministerial written consent to the variance of the setback. Confirmation of the approval from Alberta Environment shall be submitted prior to construction of the disposal system;
15. Prior to issuance, the applicant, landowner and/or operator shall provide the County with a stormwater management plan to the satisfaction of the County to comply with Section 7.5.12 of Mountain View County Bylaw No. 03/15;

ADDITIONAL CONDITIONS:

16. Permit condition is conditional to the information supplied on the application form for a Recreational Resort -Lodge. The applicant shall maintain a non-intrusive business and preserve the privacy and enjoyment of adjacent properties;

17. Future development, expansion, new or additional uses, shall require the issuance of a new Development Permit;
18. The applicant, landowner, and/or operator shall ensure all Provincial and Federal approvals are obtained, if required, for the proposed Lodge prior to proceeding with the development, including but not limited to, the Recreation Area Regulation - Alberta Regulation 198/2004 and the Alberta Private Septic Systems Standards of Practice;
19. The applicant, landowner, and/or operator shall adhere to the Geotechnical Investigation Report, dated October 17, 2018. As identified in the Report, no development shall occur within 7.0 metres of the slope and recommendations of site preparation and grading be observed including positive drainage throughout the construction phase and appropriate grading to prevent the accumulation of water near the structure. Excessive watering of lawns and trees near the slope should be avoided;
20. The applicant, landowner, and/or operator shall provide yearly dust suppression, at their full cost, on Range Road 52 starting at the Township Road 320 intersection, south for 400 meters along the Bergen Springs development; a 200 meter application in front of all residences south of the Bergen Springs development to the entrance of Camp Evergreen, including a 200 meter application that the entrance/approach to Camp Evergreen. Consultation with the County's Operational Services department will occur prior to any dust suppression being completed;
21. That the applicant, landowner and/or operator meet any standards and obtain any approvals required from Alberta Health Services;
22. Parking shall be contained as established on the subject parcel. No parking of vehicles shall be permitted on any County road allowances at any time;
23. The applicant, landowner, and/or operator shall ensure that use of firepits shall be in conformance with Mountain View County's Fire Bylaw No. 11/13 and as amended from time to time;
24. The applicant, landowner, and/or operator shall ensure all waste products, such as garbage, that is generated on the subject property is disposed of in bear-resistant garbage bins and disposed of in a timely manner at a certified Waste Management Facility;
25. The applicant, landowner, and/or operator is encouraged to incorporate BearSmart principles into their proposal. Additional information may be obtained at www.bearsmart.alberta.ca;
26. All new development is encouraged to utilize fire retardant building materials and shall practice FireSmart principles outlined in the FireSmart Manual which can be obtained from www.wildfire.alberta.ca/firesmart/default.aspx;
27. That all previously issued Development Permits remain valid and continued compliance must be maintained;
28. That no public address systems will be installed, or permitted to be used, at Camp Evergreen;
29. That the applicant, landowner and/or operator will install appropriate signage on the boundary of the Lands outlining the property lines and facing into the subject property, noting that trespassing on private property is not permitted;
30. That the applicant, landowner and or operator will ensure that within 12 months of completion of the Lodge that the existing kitchen and dining room are decommissioned so as not to be used for commercial cooking or serving purposes;

Reasons for Decision:

1. The Board determined that the Existing Development has coexisted on the Lands for over 56 years with little to no history of conflict with adjacent land users and has contributed to the development of, and has been compatible with, the rural character of the plan area for that time period. The Board determined that as the Proposed Development does not substantially increase the amount of guests that will be present on the Lands, and that as there was insufficient evidence to support how the Proposed Development will impact adjacent land users through the introduction or expansion of undesirable effects such as noise, light or dust, that it is a suitable and compatible discretionary use for the Lands and is therefore compliant with Mountain View County Bylaw No. 03/15 and Bylaw 16/18;

2. The Board reviewed the necessary requirements contained within Section 7.5.12 of Mountain View County Bylaw No. 03/15 outlined to permit Commercial Recreation uses within the Plan Area and determined that the Proposed Development has provided satisfactory evidence, or appropriate conditions have been added to the Development Permit, to satisfy the requirements listed and therefore the Proposed Development is compliant with Section 7.5.12;
3. The Board reviewed the necessary requirements contained within Section 7.8.4 of Mountain View County Bylaw No. 03/15 outlined to permit expanding Institutional Camps within the Plan Area and determined that the Proposed Development has provided satisfactory evidence, or appropriate conditions have been added to the Development Permit, to satisfy the requirements listed and therefore the Proposed Development is compliant with Section 7.8.4;
4. The Board determined that the addition and revised conditions clarifying the scope of dust control suppression and outlining the prohibition of public address systems will alleviate concerns raised by adjacent landowners relative to dust and noise caused by the Proposed Development;
5. The Board determined that the Existing Development has a documented history of natural environment preservation and that the Applicant has appropriately considered the impact that the Proposed Development will have on the environmental components of the Lands and instituted appropriate measures to mitigate any potential issues;
6. The Board determined that upon receiving Ministerial Approval, that the setbacks proposed for the wastewater treatment system are acceptable for the Proposed Development and determined that there was insufficient evidence provided to support that a setback relaxation would unduly affect adjacent land uses.
7. The Board determined that as the Proposed Development contemplates the construction of sufficient kitchen and dining facilities for the existing number of guests, that the existing kitchen and dining facilities should no longer be required and therefore decommissioned.

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 Applicant and those in support of the Applicant;
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. ***Municipal Government Act***, R.S.A. 2000, Chapter M-26;
6. ***Subdivision and Development Regulation***, Alberta Regulation 43/2002;
7. Mountain View County Land Use Bylaw 16/18;
8. Mountain View County Bylaw 03/15 – Bergen Area Structure Plan.

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.

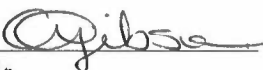
Section 688(5)

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: July 17, 2019